UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Blue Sky West, LLC Docket No. ER15-1471-

CID Solar, LLC Docket No. ER15-632-

Comanche Solar PV, LLC Docket No. ER16-915-

Cottonwood Solar LLC Docket No. ER15-634-

El Paso Electric Company Docket No. ER10-2721-

Evergreen Wind Power II, LLC Docket No. ER15-1672-

Fountain Valley Power, LLC Docket No. ER10-2861-007

Goal Line L.P. Docket No. ER13-2169

Hancock Wind, LLC Docket No. ER16-2010

Imperial Valley Solar Company (IVSC) 2, LLC Docket No. ER14-2939

J.P. Morgan Ventures Energy Corp Docket No. ER10-2331-073

KES Kingsburg, L.P. Docket No. ER11-3634

Mankato Energy Center, LLC Docket No. ER10-1874

Mankato Energy Center II, LLC Docket No. ER19-9

Maricopa West Solar PV, LLC Docket No. ER15-2728

Mesquite Power, LLC Docket No. ER10-2977

Mulberry Farm, LLC Docket No. ER14-2140

Palouse Wind, LLC Docket No. ER12-1308

Pavant Solar LLC Docket No. ER15-1952

Pio Pico Energy Center, LLC Docket No. ER16-0711-001

RE Camelot, LLC Docket No. ER14-2466

RE Columbia Two LLC Docket No. ER14-2465

Selmer Farm, LLC Docket No. ER14-2141

Sunflower Wind Project LLC Docket No. ER16-2561

SWG Arapahoe, LLC Docket No. ER13-1504-008

Valencia Power, LLC Docket No. ER10-2867-

**Motion to Intervene of Public Citizen, Inc., and Protest The MBR Sellers Failure to Report J.P. Morgan Chase & Co. As An Affiliate**

The market based rate authority sellers have failed to report their affiliation with the Wall Street investment bank J.P. Morgan Chase & Co, as required by 18 C.F.R. § 35.42. The MBR sellers are affiliated with shell holding companies organized under the umbrella moniker Infrastructure Investments Fund (IIF). IIF controls three companies that have subsidiaries granted MBR authority: El Paso Electric Company, Southwest Generation Operating Company LLC, and Novatus Energy LLC. The record shows that J.P. Morgan Chase & Co created IIF, currently manages and controls daily operations for all the IIF shell companies, and J.P. Morgan executives serve on the Board of Directors of all three parent companies of the MBR sellers. As a result, for the purposes of the Commission’s regulations under the Federal Power Act, J.P. Morgan appears to be affiliated with IIF, and therefore affiliated with all of the MBR sellers.

This filing is in response to a suggestion in a recent Commission Order:

*We note that, while the Commission made no finding in the March 2020 Order as to whether J.P. Morgan Investment is an affiliate of Sun Jupiter, it is possible this issue could be considered in a future proceeding concerning El Paso’s, Sun Jupiter’s, or any affiliates’ thereof, authority to charge market-based rates.[[1]](#footnote-1)*

A recent Commission Order involving a shell company structure similar to J.P. Morgan’s IIF determined that a private equity shell company managed by The Goldman Sachs Group was an affiliate of Goldman Sachs.[[2]](#footnote-2) In making this decision, FERC relied entirely upon language in the management services agreement between the shell company and Goldman Sachs.

To assist the Commission in determining affiliation, it is necessary to require the disclosure of certain articles of incorporation, management agreements and other documentation that detail all rights and authorities delegated to J.P. Morgan Chase & Co. by the various IIF shell companies. Such documents constitute the IIF shell companies’ “DNA,” and are necessary to ascertain exactly what control IIF has delegated to J.P. Morgan Chase & Co, including voting rights.

**Motion to Intervene**

On July 31, two IIF-affiliated MBR sellers—Fountain Valley Power LLC and SWG Arapahoe LLC—filed an amendment to their market power analysis for the northwest region, with the Commission noticing it for public comment by August 21.[[3]](#footnote-3) This amendment failed to report sellers’ affiliation with J.P. Morgan Chase & Co. Consistent with the Commission’s notice, we are intervening in the proceeding.

Public Citizen intervened and filed a similar protest in a change of status J.P. Morgan Ventures Energy Corp MBR proceeding on April 22 and May 6, respectively. In that MBR proceeding J.P. Morgan failed to report its affiliation with IIF. The Commission has yet to issue an order on Public Citizen’s May 6 protest.

Public Citizen files this Protest of the MBR sellers’ failure to report J.P. Morgan Chase & Co. as an affiliate in all IIF-affiliated MBR sellers’ dockets, as required by 18 C.F.R. § 35.42.

Established in 1971, Public Citizen is a national, not-for-profit, non-partisan, research and advocacy organization representing the interests of household consumers. We are active before FERC promoting just and reasonable rates, and supporting efforts for utilities to be accountable to the public interest. Our financial details are located at our web site.[[4]](#footnote-4)

**The MBR Sellers**

All of the MBR sellers are affiliated with IIF. IIF controls three operating companies which are affiliated with over 5,600 MW of capacity:[[5]](#footnote-5)

* El Paso Electric Company is a franchised, vertically integrated utility with over 2,200 MW of generation capacity with MBR authority.[[6]](#footnote-6) El Paso Electric Company is controlled by the shell company IIF US Holding 2 GP, LLC. IIF US Holding 2 GP LLC has delegated day-to-day management to J.P. Morgan Chase & Co., and also positioned two J.P. Morgan executives on El Paso’s board of directors: Andrew “Landy” Gilbert and Kathleen Lawler.[[7]](#footnote-7)
* Novatus Energy, LLC is controlled by IIF US Holding 2 GP, LLC, and has nearly 1,000 MW of generation capacity with MBR authority.[[8]](#footnote-8) IIF US Holding 2 GP LLC delegates day-to-day management to J.P. Morgan Chase & Co, and J.P. Morgan’s Andrew Kapp serves on Novatus Energy’s board of directors.[[9]](#footnote-9)
* Southwest Generation Operating Company, LLC is controlled by IIF US Holding GP, LLC, with nearly 2,300 MW of generation with MBR authority.[[10]](#footnote-10) IIF US Holding GP LLC has delegated day-to-day management to J.P. Morgan Chase & Co, and J.P. Morgan’s Andrew Kapp serves on Southwest’s board of directors.[[11]](#footnote-11)

**J.P. Morgan Chase & Co. Is An Affiliate of the IIF Shell Companies**

J.P. Morgan Chase & Co. created IIF as an off-the-books private equity division one year after committing to the Federal Reserve that it would not “acquire or operate” power plants. Prior to J.P. Morgan creating IIF in 2006, J.P. Morgan submitted a *Notice to the Board of Governors of the Federal Reserve System* on July 21, 2005, where J.P. Morgan explicitly pledged to the Board of Governors of the Federal Reserve that:

*JPM Chase commits to the Board that it will not acquire or operate facilities in the United States for the extraction, transportation, storage or distribution of commodities.[[12]](#footnote-12)*

One year after making this pledge to the Federal Reserve, J.P. Morgan Chase & Co. created a new lightly-regulated private equity arm of the bank’s asset management division and legally called it *J.P. Morgan IIF*.[[13]](#footnote-13) J.P. Morgan had financial incentive to self-brand its new private equity arm, as selling securities to institutional investors is far easier when the name on those securities is “J.P. Morgan”. J.P. Morgan retained its name on IIF’s securities sales through the first ten years of its existence.[[14]](#footnote-14) J.P. Morgan’s decision to remove its name from IIF by 2016 did not reflect any diminished management role for the bank, but rather acknowledged that J.P. Morgan had successfully established IIF as an investment vehicle for institutional investors. IIF has delegated sweeping day-to-day authorities to J.P. Morgan.

IIF disclosed to the U.S. Nuclear Regulatory Commission that IIF is overwhelmingly comprised of investments from outside the United States. Seventy-nine percent of IIF’s equity is raised from foreign sources: 27% from the United Kingdom, 18% from Europe (excluding the U.K.), 13% from Canada, 8% from Japan, 6% from the Middle East, 4% from Australia, 2% from Asia (excluding Japan) and 1% “other”. Only 21% of IIF’s equity is from the United States.[[15]](#footnote-15)

J.P. Morgan’s control over IIF is far deeper than just the legacy of naming rights—J.P. Morgan designed IIF’s weak corporate controls to maximize the bank’s ability to direct and manage all of IIF’s operations and investments. To deflect regulator’s curiosity of upstream control by J.P. Morgan, the bank designed a false “ownership” structure consisting of three term-limited individuals who, in turn, delegate all day-to-day authorities to J.P. Morgan Chase & Co. IIF has previously acknowledged that J.P. Morgan Chase & Co. nominated current IIF “owners,” and can influence the selection of new “owners”.[[16]](#footnote-16)

IIF’s delegation of day-to-day authorities to J.P. Morgan extends to ensuring that J.P. Morgan executives serve on all of the board of directors of companies under the control of IIF.

The Commission has authority to determine whether IIF and J.P. Morgan Chase & Co. are affiliates. 18 CFR § 35.36(a)(9)(iii) defines “Affiliate” to include:

*Any person or class of persons that the Commission determines, after appropriate notice and opportunity for hearing, to stand in such relation to the specified company that there is liable to be an absence of arm's-length bargaining in transactions between them as to make it necessary or appropriate in the public interest or for the protection of investors or consumers that the person be treated as an affiliate.*

As part of a Commission determination of affiliation, an important variable is whether authorities granted by IIF to J.P. Morgan Chase & Co include the delegation of voting rights to J.P. Morgan. In order to make the affiliation determination, it is necessary for the Commission to compel the disclosure of all management services agreements, articles of incorporation, articles of organization, corporate bylaws, operating agreements, certificate of formation, corporate charters and shareholder agreements for the following IIF shell companies:

* IIF US Holdings GP, LLC
* IIF US Holdings 2 GP, LLC
* IIF US Holding GP, LLC
* IIF US Holding GP 2, LLC
* IIF US Holding LP
* IIF US Holding 2 LP
* IIF US Holding 2 GP, LLC
* IIF BH Investment LLC
* Sun Jupiter Holdings, LLC
* IIF Manager, LLC
* IIF Novatus Fund Ultimate Holdings LP

Respectfully submitted,

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1. 172 FERC ¶ 61,083, *Order Accepting Proposed Mitigation And Addressing Arguments Raised on Rehearing*, Docket EC19-120, Issued July 22, 2020, at Footnote 21. [↑](#footnote-ref-1)
2. *Order Granting Market-Based Rate Authorization*, Issued April 27, 2020, Docket No. ER20-547-001. [↑](#footnote-ref-2)
3. Docket Nos. ER10-2861-007 and ER13-1504-008. [↑](#footnote-ref-3)
4. [www.citizen.org/about/annual-report/](http://www.citizen.org/about/annual-report/) [↑](#footnote-ref-4)
5. This includes 200 MW of capacity affiliated with QFs that have not been granted MBR authority: QF13-47, QF13-48, QF13-49, QF13-547, QF13-603, QF14-194, QF14-31, QF14-64, QF14-65, QF14-69, QF15-601, QF15-650 and QF15-88. [↑](#footnote-ref-5)
6. MBR Docket No. ER10-2721. [↑](#footnote-ref-6)
7. <https://ir.epelectric.com/news/news-details/2020/El-Paso-Electric-Announces-Closing-of-Acquisition-by-the-Infrastructure-Investments-Fund/default.aspx> [↑](#footnote-ref-7)
8. MBR Docket Nos. ER12-1308, ER14-2140, ER14-2141, ER14-2465, ER14-2466, ER14-2939, ER15-1471, ER15-1672, ER15-1952, ER15-2728, ER15-632, ER15-634, ER16-2010, ER16-2561 and ER16-915. [↑](#footnote-ref-8)
9. [www.novatusenergy.com/who-we-are/#directorsboard](http://www.novatusenergy.com/who-we-are/#directorsboard) [↑](#footnote-ref-9)
10. MBR Docket Nos. ER10-1874, ER10-2861-007, ER10-2867, ER10-2977, ER11-3634, ER13-1504-008, ER13-2169, ER16-0711-001 and ER19-9. [↑](#footnote-ref-10)
11. [www.southwestgen.com/about-us/#board-section](http://www.southwestgen.com/about-us/#board-section) [↑](#footnote-ref-11)
12. At page 1440, [www.govinfo.gov/content/pkg/CHRG-113shrg91522/pdf/CHRG-113shrg91522.pdf](http://www.govinfo.gov/content/pkg/CHRG-113shrg91522/pdf/CHRG-113shrg91522.pdf) [↑](#footnote-ref-12)
13. www.sec.gov/Archives/edgar/vprr/0606/06064516.pdf [↑](#footnote-ref-13)
14. [www.sec.gov/Archives/edgar/data/1384002/000114036116050858/xslFormDX01/primary\_doc.xml](http://www.sec.gov/Archives/edgar/data/1384002/000114036116050858/xslFormDX01/primary_doc.xml) [↑](#footnote-ref-14)
15. July 26, 2020 *Response to the NRC Request for Additional Information*, at footnote 7. [↑](#footnote-ref-15)
16. See *Public Citizen Rehearing Request*, Docket No. EC19-120, April 29, 2020, at paragraph 14. [↑](#footnote-ref-16)