

UNITED STATES OF AMERICA
BEFORE THE
FEDERAL ENERGY REGULATORY COMMISSION

Mankato Energy Center, LLC
Mankato Energy Center II, LLC

Docket No. ER20-2705-001
ER20-2706-001

Protest of Public Citizen, Inc.

The confidential attachments that Mankato filed on November 12 confirm that the Commission must deem JP Morgan Chase & Co. to be affiliated with IIF, and therefore with Mankato Energy Center. IIF was created by JP Morgan, and its inherent structure, combined with specific delegated rights granted to JP Morgan, render IIF incapable of operating independently from JP Morgan.

Confidential Attachments 2, 3, 17, 26, 27 and 29 provide various detail on the extent of JP Morgan's influence and control over IIF.

It is clear that IIF functionally operates as an affiliate of JP Morgan for the purposes of the Federal Power Act and the Commission's regulations.

The Contractual Structure of IIF Inhibits The Ability Of IIF to Detach Itself From JP Morgan's Control And Influence

[REDACTED]

[REDACTED]

A second structural obstacle is that JP Morgan provides the entirety of the IIF's staffing and management needs. IIF cannot presently function without JP Morgan serving as its investment advisor and manager, and so severing ties with JP Morgan would mean IIF would have significant challenges to continue operations.

A similar management agreement between Fortress Transportation & Infrastructure Investors and its manager FIG LLC cautions investors that "our independent directors may refrain from terminating our Manager because doing so could result in the loss of key personnel."² If IIF offered public shares subject to regulation under the Securities Exchange Act, it would be required to provide a similar warning given IIF's complete dependence upon JP Morgan for "key personnel". This utter dependence upon JP Morgan renders IIF functionally dependent upon JP Morgan, and therefore highly susceptible to its influence and control.

Confidential Attachment 29

Attachment 29 is the *Investment Advisory Agreement* between IIF and JP Morgan.

[REDACTED]

² www.sec.gov/ix?doc=/Archives/edgar/data/1590364/000159036420000002/ftai-20191231.htm

Confidential Attachments 2 and 3

Mankato's response to Question 2 states that "at least 75%" of "the initial board of directors when IIF US Holding acquires a new portfolio company . . . will be independent of J.P. Morgan Investment."³ So it appears from this statement that IIF has requirements of board members independent from JP Morgan. [REDACTED]

[REDACTED] Confidential Attachment 2, the *Fifth Amended and Restated Limited Liability Company Agreement of Southwest Generation Parentco LLC*, [REDACTED]

[REDACTED]

This is further confirmed in confidential Attachment 3, the *Southwest Generation Parentco LLC Board Charter*, [REDACTED]

Confidential Attachment 17

Confidential Attachment 17 is the *Third Amended and Restated Limited Liability Company Agreement of Pio Pico Energy Center LLC*. [REDACTED]

³ At page 8.

[REDACTED]

Confidential Attachment 26

Attachment 26 is the *Amended and Restated Agreement of Limited Partnership of IIF US Holding LP.* [REDACTED]

[REDACTED]

[REDACTED]

JP Morgan Was Just Sanctioned For Violating Its Fiduciary Responsibilities

The Mankato Answer claims that JP Morgan “owes fiduciary duties to IIF US Holding in accordance with the Investment Advisers Act” in an effort to demonstrate that JP Morgan’s management of IIF will be done in the best interest of IIF, and not of JP Morgan.¹⁰

But on November 24, 2020, the Office of the Comptroller of the Currency assessed a \$250 million civil penalty against JP Morgan Chase for maintaining “a weak management and control framework for its fiduciary activities” and “insufficient framework for avoiding conflicts of interest”¹¹. This suggests that JP Morgan actually has weak controls regarding its fiduciary responsibilities to IIF.

Respectfully submitted,

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¹⁰ Response to Question 1, at page 5.

¹¹ At page 2, www.occ.gov/static/enforcement-actions/ea2020-067.pdf