UNITED STATES OF AMERICA

BEFORE THE

FEDERAL ENERGY REGULATORY COMMISSION

Longview Power LLC Docket No. EC20-70

**Protest of Public Citizen, Inc.**

The Section 203 Application of Longview Power LLC is deficient because it fails to identify owners controlling 40% of its equity.

**About Public Citizen, Inc.**

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 supporting just and reasonable rates, and promoting utilities to be accountable to the public interest. Our financial details are located at our web site.[[1]](#footnote-1) Public Citizen intervened in this docket on June 4, 2020.

**Public Citizen Protest**

The June 3 Application under Section 203 of the Federal Power Act involves a transfer of ownership to senior secured lenders through a debt-for-equity swap stemming from Longview Power LLC declaring Chapter 11 bankruptcy on April 14. This is the second bankruptcy for Longview Power LLC, which owns a 700 MW coal-fired power plant in West Virginia (its first was in August 2013). Longview Power CEO Jeffrey Keffer told reporters that the bankruptcy was triggered by pre-COVID circumstances: “We really started working [on the bankruptcy] in late January when we realized that we weren’t going to have any kind of winter energy price boost. It was just such an unseasonably warm winter, if anything, pricing for us was running less than half of what we normally see.” With the Longview Power plant reliant on price bumps in the winter months, mild temperatures made it impossible for the company to repay its debts.[[2]](#footnote-2)

We have identified two issues with the Application. The Application states:

*The Commission’s regulations create a rebuttable presumption that a person or entity that owns less than 10% of the outstanding voting securities of a public utility lacks control of that public utility and, therefore, is not an affiliate of the public utility. As a result,* *Applicant is not providing information with respect to any individual Lender-Owner that, together with its affiliates, will hold less than 10% of the equity in Reorganized Longview as a result of the Transaction.[[3]](#footnote-3)*

First, the Application itself rebuts the presumption that an entity owning less than 10% of voting securities lacks control. Exhibit I of the Application (“Agreements Related to the Proposed Transaction”) includes a Limited Liability Company Agreement of Longview Intermediate Holdings C LLC. Article V, Section 5.3 of this LLC agreement defines the rights and responsibilities of the LLC’s Board of Managers. This LLC agreement explicitly conveys voting rights and control for entities controlling as little as 7.5% of shares. Therefore, according to the Exhibit I of the Application, entities with less than 10% actually **do** control a public utility.

This recalls a recent event when two hedge funds—which combined owned less than 9.4% of the public utility NRG—nonetheless possessed enough control to force the company to install two of the hedge fund’s designated board members.[[4]](#footnote-4) Clearly, owning 10% is a relatively meaningless number when it comes to opportunities to control a public utility. That’s why the Commission defines Affiliate as:

*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.*[[5]](#footnote-5)

Second, Public Citizen protests that the Applicant refuses to disclose the identities of upstream owners that together control 40.47% of Longview’s equity. It is in the public interest to disclose the names of all owners.

As noted above: “Applicant is not providing information with respect to any individual Lender-Owner that, together with its affiliates, will hold less than 10% of the equity in Reorganized Longview as a result of the Transaction.” As a result, the Applicant is shielding from both FERC and the public the identities of entities that own 40.47% of Longview.

Section 201 of the Federal Power Act states “that the business of transmitting and selling electric energy for ultimate distribution to the public is affected with a public interest.”[[6]](#footnote-6) It is in the public interest to disclose ownership of a public utility—regardless of whether that ownership conveys full control or not. The names of all owners of Longview Power LLC must be disclosed in this docket.

Respectfully submitted

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1. [www.citizen.org/about/annual-report/](http://www.citizen.org/about/annual-report/) [↑](#footnote-ref-1)
2. Fotios Tsarouhis, “Longview Power sees quick bankruptcy exit,” *SNL Generation Markets Week*, April 28, 2020. [↑](#footnote-ref-2)
3. Application, at page 5. [↑](#footnote-ref-3)
4. Ryan Maye Handy, “Hedge funds get spots on NRG board,” *Houston Chronicle*, Feb. 13, 2017. [↑](#footnote-ref-4)
5. 18 CFR § 35.36(a)(9)(iii). [↑](#footnote-ref-5)
6. 16 U.S.C. § 824(a). [↑](#footnote-ref-6)