

173 FERC ¶ 61,232  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: James P. Danly, Chairman;  
Neil Chatterjee and Richard Glick.

IIF US Holding LP  
IIF US Holding 2 LP

Docket No. EC20-94-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES

(Issued December 17, 2020)

1. On August 31, 2020, pursuant to section 203(a)(1) of the Federal Power Act (FPA)<sup>1</sup> and Part 33 of the Commission's regulations,<sup>2</sup> IIF US Holding LP (IIF US Holding) and IIF US Holding 2 LP (IIF US Holding 2) filed an application requesting, on behalf of their public utility subsidiaries (together with IIF US Holding and IIF US Holding 2, Applicants), Commission authorization for the disposition of jurisdictional facilities that will result from the transfer of an approximately 33.3% membership interest in the general partner of IIF US Holding and the general partner of IIF US Holding 2 from one private individual, Dennis Clarke (Mr. Clarke or Seller), to another private individual, Anne Cleary (Ms. Cleary or Buyer) (Proposed Transaction).
2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.<sup>3</sup> As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

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<sup>1</sup> 16 U.S.C. § 824b.

<sup>2</sup> 18 C.F.R. pt. 33 (2020).

<sup>3</sup> *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (cross-referenced at 77 FERC ¶ 61,263) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *see also FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008); *Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 (2005), *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g and clarification*, Order No. 669-B, 116 FERC ¶ 61,076 (2006); *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111

## I. Background

### A. Description of Applicants

#### 1. IIF US Holding and IIF US Holding 2

3. Applicants state that IIF US Holding is part of the Infrastructure Investment Fund (IIF), a private investment vehicle advised by J.P. Morgan Investment Management Inc. (J.P. Morgan Investment).<sup>4</sup> According to Applicants, IIF US Holding is structured as a limited partnership investment vehicle, the equity of which is held by passive limited partners. Applicants represent that none of the limited partners of IIF US Holding directly or indirectly owns or controls 10% or more of the outstanding voting securities (in aggregate with any of its affiliates) of IIF US Holding; the limited partners do not have the ability to direct the management of or control of IIF US Holding or its subsidiaries. According to Applicants, IIF US Holding is controlled by its general partner, IIF US Holding GP, LLC (IIF GP). IIF US Holding's public utility subsidiaries are described below and are referred to collectively as the IIF Public Utilities.

4. Applicants explain that IIF US Holding 2 is also part of IIF, with the same limited partners that own the economic interests in IIF US Holding owning the economic interests in IIF US Holding 2. Applicants state that none of the limited partners of IIF Holding 2 directly or indirectly owns or controls 10% or more of the outstanding voting securities (in aggregate with any of its affiliates) of IIF US Holding 2; the limited partners in IIF US Holding 2 do not have the ability to direct the management or control of IIF US Holding 2 or any of its subsidiaries. IIF US Holding 2 is also controlled by its own general partner, IIF US Holding 2 GP, LLC (IIF 2 GP, and, together with IIF GP, the

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(2000) (cross-referenced at 93 FERC ¶ 61,164), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001).

<sup>4</sup> Applicants represent that J.P. Morgan Investment has been delegated certain of the rights, powers, and duties for the administration and operation of IIF US Holding and IIF US Holding 2 in its capacity as investment advisor, subject at all times to the oversight of the IIF GPs. Application for Authorization under Section 203 of the Federal Power Act and Request for Expedited Review at 13, (filed Aug. 31, 2020) (Application). Applicants claim that even if the Commission were to deem J.P. Morgan Investment and its affiliates to be affiliated with any of the IIF GPs, IIF US Holding, IIF US Holding 2, the IIF GP Owners or any of their respective affiliates, such affiliation would not change the analysis in the Application that the Proposed Transaction will not have an adverse effect on competition, rates, or regulation, and does not raise any cross-subsidization issues because J.P. Morgan Investment only owns passive interests or interests held as a fiduciary. *Id.*

IIF GPs). IIF US Holding 2's public utility subsidiaries are described below and are referred to collectively as the IIF 2 Public Utilities.

5. Applicants state that, except for the transmission facilities owned by El Paso Electric Company (El Paso) described below, none of IIF US Holding, IIF US Holding 2, or any of their respective affiliates owns, operates or controls any electric transmission facilities in the United States or outside the United States that can be used to reach markets in the United States, other than the limited and discrete interconnection facilities associated with individual generation facilities. Applicants note that IIF US Holding 2 is affiliated with entities that own natural gas distribution facilities in Arkansas, Colorado, Maine, Missouri, and Oklahoma, and that, other than these gas distribution facilities, none of IIF US Holding, IIF US Holding 2, or any of their respective affiliates owns or controls any essential inputs to electricity products or electric power production, as defined in sections 33.4 and 35.36 of the Commission's regulations, in the United States.

6. Applicants explain that the IIF GPs are currently owned by Seller and two other private individuals, Rita J. Sallis and Christopher Ward (collectively, the IIF GP Owners), each of which owns an approximately 33.3% interest in each of the IIF GPs. Applicants represent that, except through IIF US Holding and IIF US Holding 2, none of the IIF GP Owners owns, operates or controls any electric generation facilities, transmission facilities, or essential inputs to electricity products or electric power production, as defined in sections 33.4 and 35.36 of the Commission's regulations, in the United States, or any transmission facilities outside of the United States that can be used to reach markets in the United States. In addition, except through IIF US Holding and IIF US Holding 2, none of the IIF GP Owners is employed by, affiliated with, or holds the position of officer or director of any public utility with a franchised electric service territory in the United States.<sup>5</sup>

## 2. The IIF Public Utilities

7. Applicants describe the IIF Public Utilities as follows.<sup>6</sup> Each is an exempt wholesale generator (EWG) that is authorized to sell electric energy, capacity, and ancillary services at wholesale at market-based rates. Applicants state that the IIF Public Utilities are wholly owned indirect subsidiaries of IIF US Holding.

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<sup>5</sup> *Id.* at 13-15.

<sup>6</sup> *Id.* at 3-7.

**a. Fountain Valley Power, LLC**

8. Fountain Valley Power, LLC owns and operates an approximately 240 megawatt (MW) natural gas-fired generating facility located in Fountain, Colorado that is within the Public Service Company of Colorado (PSCo) balancing authority area (BAA).

**b. Goal Line L.P.**

9. Goal Line L.P. owns and operates a 51.4 MW natural gas-fired generating facility located in Escondido, California that is within the California Independent System Operator Corporation (CAISO) market.

**c. KES Kingsburg, L.P.**

10. KES Kingsburg, L.P. owns and operates a 36.2 MW natural gas-fired generating facility located in Kingsburg, California that is within the CAISO market.

**d. Mankato Energy Center, LLC**

11. Mankato Energy Center, LLC (Mankato I) is the owner of a 375 MW natural gas- and fuel oil-fired generating facility located in Mankato, Minnesota within the Midcontinent Independent System Operator, Inc. (MISO) market (Mankato I Facility). Mankato I has a reactive rate schedule on file with the Commission that establishes a cost-based revenue requirement for reactive power service provided to MISO pursuant to Schedule 2 of MISO's Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff).

**e. Mankato Energy Center II, LLC**

12. Mankato Energy Center II, LLC (Mankato II) is the owner of a 345 MW expansion of the Mankato I Facility, which includes a combustion turbine generator, a heat recovery steam generator, and associated equipment (Mankato II Facility). The Mankato II Facility is interconnected to the transmission system operated by MISO through the same substation used for the Mankato I Facility. Mankato II also has a reactive rate schedule on file with the Commission that establishes a cost-based revenue requirement for reactive power service pursuant to Schedule 2 of the MISO Tariff.

**f. Mesquite Power, LLC**

13. Mesquite Power, LLC owns Block 2 of the Mesquite Generating Station, a 691.6 MW natural-gas fired facility located in Maricopa County, Arizona. Applicants state that Block 2 is located in a generation-only BAA that is interconnected to the Salt River Project Agricultural Improvement and Power District BAA.

**g. Pio Pico Energy Center, LLC**

14. Pio Pico Energy Center, LLC owns and operates an approximately 321 MW natural gas-fired generating facility located in Otay Mesa, California that is within the CAISO market.

**h. SWG Arapahoe, LLC**

15. SWG Arapahoe, LLC owns and operates an approximately 130 MW natural gas-fired generating facility located in Denver, Colorado that is within the PSCo BAA.

**i. Valencia Power, LLC**

16. Valencia Power, LLC owns and operates a 149 MW natural gas-fired generating facility located in Valencia, New Mexico that is within the Public Service Company of New Mexico BAA.

**3. The IIF 2 Public Utilities**

17. Applicants describe the IIF 2 Public Utilities as follows.<sup>7</sup> Except as noted below, each of the IIF 2 Public Utilities is an EWG that is also authorized to sell electric energy, capacity, and ancillary services at wholesale at market-based rates.

**a. Blue Sky West, LLC**

18. Blue Sky West, LLC (Blue Sky) owns and operates an approximately 186 MW wind-powered electric generating facility located in Somerset and Piscataquis counties, Maine within the ISO New England, Inc. (ISO-NE) market. Blue Sky is an indirect subsidiary (93.38%) of IIF US Holding 2.

**b. Comanche Solar PV, LLC**

19. Comanche Solar PV, LLC (Comanche Solar) owns and operates an approximately 120 MW solar photovoltaic generating facility located in Pueblo County, Colorado within the PSCo BAA. Comanche Solar is an indirect subsidiary (92.38%) of IIF US Holding 2.

**c. El Paso**

20. El Paso is a public utility whose primary business is serving native load in Texas and New Mexico. El Paso is also engaged in the generation, transmission, distribution, and sale of electricity at wholesale and retail. El Paso owns or holds an interest in a number of electric generating units in the El Paso BAA and the Arizona Public Service

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<sup>7</sup> *Id.* at 7-12.

Company BAA. El Paso has market-based rate authority outside of its own BAA and makes power sales to wholesale customers at cost-based rates pursuant to certain rate schedules on file with the Commission. El Paso owns transmission facilities and offers transmission service over those facilities pursuant to its open access transmission tariff (OATT). El Paso is also a participant under the WestConnect Point-to-Point Regional Transmission Service Tariff and Commission-approved grandfathered agreements and other nonconforming agreements.<sup>8</sup> El Paso is a wholly owned indirect subsidiary of IIF US Holding 2 but is not an EWG.

**d. Evergreen Wind Power II, LLC**

21. Evergreen Wind Power II, LLC (Evergreen Wind) owns and operates an approximately 148 MW wind-powered electric generating facility located in Aroostook County, Maine within the ISO-NE market (Evergreen II Facility). Evergreen Wind is an indirect subsidiary (92.38%) of IIF US Holding 2.

**e. Hancock Wind, LLC**

22. Hancock Wind, LLC (Hancock Wind) owns and operates an approximately 51 MW wind-powered electric generating facility located in Hancock County, Maine within the ISO-NE market. Hancock Wind is an indirect subsidiary (92.38%) of IIF US Holding 2.

**f. Maine GenLead**

23. Maine GenLead is an EWG that owns a 59-mile, 115 kilovolt generator interconnection line that connects the Evergreen II Facility to the Keene Road Substation, which is under the operational control of ISO-NE. Maine GenLead delivers the output of the Evergreen II Facility to the Keene Road Substation pursuant to a Facilities Use Agreement that is on file with the Commission (Maine GenLead Agreement). Maine GenLead is an indirect subsidiary (92.38%) of IIF US Holding 2.

**g. Palouse Wind, LLC**

24. Palouse Wind, LLC (Palouse Wind) owns and operates a 105.3 MW wind-powered electric generating facility located in Whitman County, Washington within the Avista Corporation BAA. Palouse Wind is an indirect subsidiary (92.38%) of IIF US Holding 2.

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<sup>8</sup> *Id.* at n.76.

**h. Pavant Solar, LLC**

25. Pavant Solar, LLC (Pavant) owns and operates an approximately 50 MW solar photovoltaic generating facility located in Millard County, Utah within the PacifiCorp East BAA. Dominion Energy, Inc. (Dominion) indirectly owns approximately 67% of Pavant, with IIF US Holding 2 owning approximately 33% of Pavant. Applicants represent that Dominion's indirect interest in Pavant will not be affected by the Proposed Transaction.<sup>9</sup>

**i. RE Camelot, LLC**

26. RE Camelot, LLC (RE Camelot) owns and operates an approximately 45 MW wind-powered electric generating facility located in Kern County, California within the CAISO market. Dominion owns approximately 67% of RE Camelot, with IIF US Holding 2 owning approximately 33% of RE Camelot. Applicants represent that Dominion's indirect interest in RE Camelot will not be affected by the Proposed Transaction.<sup>10</sup>

**j. RE Columbia Two, LLC**

27. RE Columbia Two, LLC (RE Columbia) owns and operates an approximately 15 MW solar photovoltaic generating facility located in Kern County, California within the CAISO market. Dominion owns approximately 67% of RE Columbia Two, with IIF US Holding 2 owning approximately 33% of RE Columbia Two. Applicants represent that Dominion's indirect interest in RE Columbia Two will not be affected by the Proposed Transaction.<sup>11</sup>

**k. Sunflower Wind Project, LLC**

28. Sunflower Wind Project, LLC (Sunflower Wind) owns and operates an approximately 104 MW wind-powered electric generating facility located in Stark and Morton counties, North Dakota within the Southwest Power Pool, Inc. market. Sunflower Wind is an indirect subsidiary (92.38%) of IIF US Holding 2.

**4. Buyer**

29. Applicants state that Buyer is a private individual that does not currently own, operate, or control any electric generation or transmission facilities in the United States,

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<sup>9</sup> *Id.* at 11.

<sup>10</sup> *Id.*

<sup>11</sup> *Id.* at 12.

or, in the case of transmission facilities, outside of the United States that can be used to reach markets in the United States. Applicants represent that Buyer also does not own or control any essential inputs to electricity products or electric power production in the United States, including fuel supplies, fuel delivery systems, or intrastate natural gas transportation, intrastate natural gas storage or distribution facilities, physical coal supply sources, or ownership of or control over who may access transportation of coal supplies. Applicants state that Buyer is not employed by, affiliated with, and does not hold the position of officer or director of any public utility with a franchised electric service territory.<sup>12</sup>

## **B. Description of the Proposed Transaction**

30. Applicants assert that pursuant to the Proposed Transaction, Buyer will acquire Seller's approximately 33.3% interest in each of the IIF GPs. As a result, Buyer will be affiliated with Applicants, and the remaining interests in the IIF GPs will not be affected by the Proposed Transaction.<sup>13</sup>

## **II. Notice of Filing and Responsive Pleadings**

31. Notice of the Application was published in the *Federal Register*, 85 Fed. Reg. 55,445 (Sept. 8, 2020), with interventions and protests due on or before September 21, 2020. On September 8, 2020, Public Citizen, Inc. (Public Citizen) filed a motion to intervene. On September 21, 2020, Public Citizen filed a protest of the Application. On October 6, 2020, Applicants filed a motion for leave to answer and answer to Public Citizen's protest.

## **III. Discussion**

### **A. Procedural Matters**

32. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214, Public Citizen's timely, unopposed motion to intervene serves to make it a party to this proceeding.

33. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We accept Applicants' answer because it has provided information that assisted us in our decision-making process

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<sup>12</sup> *Id.* at 16.

<sup>13</sup> *Id.* at 17.



**B. Substantive Matters****1. FPA Section 203 Standard of Review**

34. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.<sup>14</sup> The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.<sup>15</sup> FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."<sup>16</sup> The Commission's regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.<sup>17</sup>

**2. Analysis of the Proposed Transaction****a. Effect on Horizontal Competition****i. Applicants' Analysis**

35. Applicants assert that the Proposed Transaction will have no adverse effect on horizontal competition because Buyer is not currently affiliated with any electric generation facilities located in the United States. As a result, Applicants conclude that the Proposed Transaction will not result in any new combination of electric generation assets that could have an adverse effect on the competitive situation in the relevant markets.<sup>18</sup>

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<sup>14</sup> 16 U.S.C. § 824b(a)(4).

<sup>15</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

<sup>16</sup> 16 U.S.C. § 824b(a)(4).

<sup>17</sup> 18 C.F.R. § 33.2(j) (2020).

<sup>18</sup> Application at 19.

**ii. Commission Determination**

36. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the generation markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.<sup>19</sup>

37. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition. As explained by Applicants, the Buyer is not affiliated with any electric generation or transmission facilities and the Proposed Transaction will not result in any new combination of electric generating assets and does not raise any horizontal market power issues.

**b. Effect on Vertical Competition****i. Applicants' Analysis**

38. Applicants claim that the Proposed Transaction will not have an adverse effect on vertical competition. Applicants explain that the Proposed Transaction does not involve any transmission facilities except for: (a) certain limited and discrete interconnection facilities necessary to connect individual generation facilities to the transmission grid, including the 59-mile interconnection line owned by Maine GenLead (Maine GenLead Line); and (b) El Paso's transmission facilities, over which it provides transmission service in accordance with its OATT, which mitigates any potential vertical market power concerns. Applicants also represent that the Proposed Transaction will not have an effect on any of El Paso's non-OATT arrangements.<sup>20</sup> Applicants state that Buyer is not affiliated with any transmission facilities in the United States.

39. Applicants also assert that although IIF US Holding 2 indirectly owns natural gas distribution facilities, the Proposed Transaction does not involve any other essential inputs to electricity products or inputs to electric power production. Applicants state that Buyer is also not affiliated with any essential inputs to electricity products or inputs to electric power production in the United States.<sup>21</sup>

**ii. Commission Determination**

40. In analyzing whether a proposed transaction presents vertical market power concerns, the Commission considers the vertical combination of upstream inputs, such as

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<sup>19</sup> *Nev. Power Co.*, 149 FERC ¶ 61,079, at P 28 (2014).

<sup>20</sup> Application at n.76.

<sup>21</sup> *Id.* at 19-20.

transmission or natural gas, with downstream generating capacity. As the Commission has previously found, transactions that combine electric generation assets with inputs to generating power (such as natural gas, transmission, or fuel) can harm competition if the transaction increases an entity's ability or incentive to exercise vertical market power in wholesale electricity markets. For example, by denying rival entities access to inputs or by raising their input costs, an entity created by a transaction could impede entry of new competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.<sup>22</sup>

41. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition. The Proposed Transaction does not raise any vertical market power concerns with respect to transmission because the only transmission facilities involved are: (1) limited and discrete interconnection facilities necessary to connect generation facilities to the transmission grid; and (2) El Paso's transmission facilities, over which El Paso provides transmission services pursuant to a Commission-approved OATT. In addition, Buyer is not affiliated with any transmission facilities in the United States. With respect to inputs to electricity products or electric power production, while IIF US Holding 2 indirectly owns some natural gas distribution facilities, Buyer is not affiliated with any essential inputs to electricity products or inputs to electric power production in the United States.

**c. Effect on Rates**

**i. Applicants' Analysis**

42. Applicants represent that the Proposed Transaction will have no adverse effect on rates. Applicants assert that the IIF Public Utilities and the IIF 2 Public Utilities will continue to sell all of the output of their generation facilities pursuant to their market-based rate tariffs or cost-based rate schedules. Applicants maintain that the Proposed Transaction will have no effect on the terms and conditions of any related power purchase agreements or the Maine GenLead Agreement. Applicants also claim that the Proposed Transaction will have no effect on El Paso's transmission customers or rates, which will not change as a result of the Proposed Transaction,<sup>23</sup> and will not have an effect on any of El Paso's non-OATT arrangements.<sup>24</sup>

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<sup>22</sup> *Upstate N.Y. Power Producers, Inc.*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

<sup>23</sup> Application at 20.

<sup>24</sup> *Id.* at n.76.

**ii. Commission Determination**

43. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on rates. With respect to wholesale ratepayers, the IIF Public Utilities and the IIF 2 Public Utilities will continue to sell the output of their generation facilities pursuant to their market-based rate tariffs or cost-based rate schedules, and the Proposed Transaction will not have an effect on the terms and conditions of any power purchase agreements. The Proposed Transaction will also not have an effect on El Paso's transmission customers or rates, because those rates will not change as a result of the Proposed Transaction, nor will it have any effects on the terms and conditions of the Maine GenLead Agreement.<sup>25</sup>

**d. Effect on Regulation**

**i. Applicants' Analysis**

44. Applicants state that the Proposed Transaction will not have an adverse effect on federal or state regulation because it will not affect the manner or extent to which the Commission, any state, or any other federal agency may regulate Applicants or Buyer. Applicants represent that the extent to which Applicants and Buyer are subject to the jurisdiction of the Commission, or any other regulatory agency or office, will not change as a result of the Proposed Transaction.<sup>26</sup>

**ii. Commission Determination**

45. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.<sup>27</sup> As to whether a proposed transaction will have an effect on state regulation, the Commission explained in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a proposed transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the proposed transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission may set the issue for hearing and it will address such circumstances on a case-by-case basis.<sup>28</sup> Based on Applicants' representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. The Proposed Transaction will not affect

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<sup>25</sup> See *supra* P 23.

<sup>26</sup> Application at 20.

<sup>27</sup> Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

<sup>28</sup> *Id.*

the Commission's, or any state's, regulatory authority or jurisdiction over Applicants or Ms. Cleary. We note that no party alleges that regulation, state or federal, would be impaired by the Proposed Transaction, and no state commission has requested that the Commission address the issue of the effect on state regulation.

e. **Cross-Subsidization**

i. **Applicants' Analysis**

46. Applicants assert that the Proposed Transaction is "within the scope of the 'safe harbor' for transactions 'involving only non-affiliates,' and does not raise any issue with respect to cross-subsidization."<sup>29</sup> Applicants also verify, in Exhibit M of the Application, that the Proposed Transaction does not present cross-subsidization concerns, and will not result in, at the time of the Proposed Transaction or in the future, cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company.

ii. **Commission Determination**

47. Based on Applicants' representations, we find that the Proposed Transaction will not result in the cross-subsidization of a non-utility associate company by a utility company, or in a pledge or encumbrance of utility assets for the benefit of an associate company. We note that no party has argued otherwise.

C. **Other Issues**

1. **Public Citizen Protest**

a. **Protest**

48. Public Citizen protests the Application on two grounds. First, Public Citizen argues that IIF is actually controlled by J.P. Morgan Chase & Co. (J.P. Morgan), and that, as a consequence, Ms. Cleary will not be an owner in the typical sense of the word. According to Public Citizen, J.P. Morgan established IIF as a lightly-regulated private equity arm of the bank's asset management division and designed IIF's corporate controls to maximize its ability to direct IIF's operations and investments. Public Citizen alleges that the ownership structure of IIF is a part of such controls, noting that the "owners" are three, term-limited individuals who delegate day-to-day authorities to J.P. Morgan. Public Citizen further claims that J.P. Morgan can influence the selection of new owners, and that the owners do not actually contribute any money or capital. With respect to the

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<sup>29</sup> Application at 21 (citing Supplemental Policy Statement, 120 FERC ¶ 61,060 at P 19).

latter, Public Citizen asserts that IIF has previously explained that the ownership interests are assigned a nominal value and transferred to new owners after an owner's term expires. Public Citizen concludes that Buyer is not an "owner" of IIF, but a caretaker member of a trustee board that has delegated authority to J.P. Morgan.<sup>30</sup>

49. Second, Public Citizen argues that the Commission should reject Applicants' request for waivers to file Exhibits A, B, D, and E because Applicants have failed to document all of Ms. Cleary's energy-related affiliations.<sup>31</sup> According to Public Citizen, the Application should be amended to include Exhibits A, B, and D because it otherwise fails to comprehensively document Ms. Cleary's energy-related affiliations, including affiliation with: (a) a member of PJM Interconnection, L.L.C.'s (PJM) board of managers, through an affiliation with Ascendant Group Ltd. (Ascendant); (b) Modern Grid Solutions (Modern Grid), which provides project management services for electric utilities and RTOs/ISOs; and (c) the Taffrail Group, LLC (Taffrail Group) which provides project management services for electric power clients.<sup>32</sup> Public Citizen argues that the Commission should also require the submission of Exhibit E because Ms. Cleary serves on the board of directors of Southwest Generation Operating Company, LLC (Southwest Generation), an IIF subsidiary, and it is unclear what role J.P. Morgan played in selecting her for that board seat. Public Citizen also notes that Applicants did not provide any information regarding Ms. Cleary's compensation for serving on the board of Southwest Generation.

**b. Applicants' Answer**

50. Applicants disagree with Public Citizen's allegations, noting that Public Citizen does not claim that the Proposed Transaction would have an adverse effect on competition, rates, or regulation, or raise any cross-subsidization issues.

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<sup>30</sup> Public Citizen, Protest at 2-3 (filed Sept. 21, 2020) (Protest).

<sup>31</sup> The Commission's regulations require applicants under FPA section 203 to provide certain information in specified exhibits. Applicants are required to file a description of all their business activities in Exhibit A; a list of all energy subsidiaries and energy affiliates, percentage ownership interests in such subsidiaries and affiliates, and a description of the primary business in which each energy subsidiary and affiliate is engaged in Exhibit B; a description of, among other things, all joint ventures, strategic alliances, or other business arrangements in Exhibit D; and the identity of common officers or director of parties to the proposed transaction in Exhibit E. 18 C.F.R. § 33.2(c)(1), (2), (4), and (5).

<sup>32</sup> Protest at 3.

51. Applicants dispute Public Citizen's allegations regarding IIF's ownership structure. Applicants claim that, contrary to Public Citizen's claims, the IIF GP Owners are not figureheads and the IIF GP Owners, not any other person or entity, own all of the membership interests in the IIF GPs. Applicants represent that the IIF GP Owners control the decisions and activities of the IIF GPs as a matter of corporate law and Commission regulations, and control, indirectly, Applicants' public utility subsidiaries. Applicants clarify that J.P. Morgan Investment's advisory services include fundraising, sourcing and recommending potential investments, administration, and financial management of IIF US Holding's and IIF US Holding 2's portfolio of investments, and they reiterate that J.P. Morgan Investment remains subject to the ongoing oversight and ultimate control of the IIF GPs. Applicants state that the IIF GP Owners have the ability to revoke or limit J.P. Morgan Investment's delegated responsibility.<sup>33</sup>

52. Applicants also dispute Public Citizen's claim that the IIF GP Owners have delegated the day-to-day authorities of Applicants to J.P. Morgan. According to Applicants, the day-to-day management and activities of each of the IIF Public Utilities and the IIF 2 Public Utilities take place at the level of the individual entity (often a special purposes entity) and the management companies through which IIF US Holding and IIF US Holding 2 own their interests in those public utilities. Applicants state that the management team and staff of each entity and its respective management company handles day-to-day operations, subject to oversight by the management company's board of directors. The boards of directors include one or more employees of J.P. Morgan Investment, whose selection and appointment are approved by the respective IIF GP. In all cases the boards are composed of at least a majority of directors who are independent from J.P. Morgan and its affiliates.

53. Applicants dispute Public Citizen's claim that they did not comply with the section 203 filing requirements. First, Applicants state that they described all of their business activities in the Application and requested waiver of the requirement to reiterate them in Exhibit A. Second, with respect to Exhibit B, Applicants state that they listed all of their energy subsidiaries and energy affiliates in that appendix and explained that Ms. Cleary herself has no energy subsidiaries or energy affiliates. Third, with respect to Exhibit D, Applicants state that they requested waiver because the Proposed Transaction does not involve any jurisdictional arrangements apart from those already described elsewhere in the Application. Fourth, with respect to Exhibit E, Applicants explain that they requested waiver to file that exhibit because both the buyer and the seller in the Proposed Transaction are private individuals with no common officers or directors.<sup>34</sup>

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<sup>33</sup> Applicants, Motion for Leave to Answer and Answer to Protest of Public Citizen, Inc. at 4-5 (filed Oct. 6, 2020) (Answer).

<sup>34</sup> *Id.* at 6.

54. Applicants state that the specific information Public Citizen alleges they should have provided regarding Ms. Cleary is outdated or irrelevant to the Proposed Transaction. According to Applicants, Ms. Cleary's role on the board of directors of Ascendant, a Bermuda-based company that does not own or operate any Commission-jurisdictional assets, is irrelevant, as is the fact that a now-former officer of Ascendant happens to also serve on a committee of PJM. For the same reasons, Applicants assert that Ms. Cleary's role as a principal with Modern Grid, a company that provides management and technology consulting and training services, is also irrelevant. Applicants state that Ms. Cleary is no longer an Advisor of the Taffrail Group, an international strategic advisory firm. Applicants observe that Public Citizen does not assert that any of Ms. Cleary's current or former roles could result in the Proposed Transaction having any adverse effect on competition, rates, or regulation, or causing any cross-subsidization.<sup>35</sup>

**c. Commission Determination**

55. We decline to address Public Citizen's allegations regarding J.P. Morgan in this proceeding. Public Citizen has not argued, let alone demonstrated, that its allegations, if proved true, show that the Proposed Transaction will have an adverse effect on competition, rates, regulation, or result in cross-subsidization.

56. We disagree with Public Citizen's claim that Applicants have failed to document Ms. Cleary's energy-related affiliations and will grant Applicants' waiver to file Exhibits A, B, and D. While sections 33.2(c)(1), (2), and (4) require applicants to provide certain information in specified exhibits,<sup>36</sup> Applicants provided the information in the body of the Application such that waiver of the requirements to file the information in separate exhibits to the Application is appropriate.

57. We will also grant Applicants' request for waiver of the requirement to file Exhibit E, which requires FPA section 203 applicants to identify any common officers or directors of parties to proposed transactions. While Applicants explain that Ms. Cleary currently serves, and may continue to serve, on the board of directors of Southwest Generation, a wholly owned, indirect subsidiary of IIF US Holding that owns several of the IIF Public Utilities, Applicants also state that because Ms. Cleary and Mr. Clarke are private individuals, there are no common officers or directors of parties to the Proposed

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<sup>35</sup> *Id.* at 8.

<sup>36</sup> Section 33.2(c)(1) requires applicants to provide a description of their business activities in Exhibit A; § 33.2(c)(2) requires applicants to list, among other things, all of their energy subsidiaries and energy affiliates in Exhibit B; § 33.2(c)(4) requires applicants to provide a description of, among other things, all joint ventures and business arrangements in Exhibit D.



Transaction. Based on these facts, we agree with Applicants that, in the context of the Application, waiver of the requirement to file Exhibit E is appropriate.

## 2. Other Considerations

58. Information and/or systems connected to the bulk system involved in this transaction may be subject to reliability and cybersecurity standards approved by the Commission pursuant to FPA section 215.<sup>37</sup> Compliance with these standards is mandatory and enforceable regardless of the physical location of the affiliates or investors, information database, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cybersecurity standards. The Commission, North American Electric Reliability Corporation, or the relevant regional entity may audit compliance with reliability and cybersecurity standards.

59. FPA section 301(c) gives the Commission authority to examine the books and records of any person who controls, directly or indirectly, a jurisdictional public utility insofar as the books and records relate to transactions with or the business of such public utility. The approval of the Proposed Transaction is based on such examination ability. In addition, applicants subject to the Public Utility Holding Company Act of 2005 (PUHCA 2005)<sup>38</sup> are subject to the record-keeping and books and records requirements of PUHCA 2005.

60. Section 35.42 of the Commission's regulations requires that sellers with market-based rate authority timely report to the Commission any change in status that would reflect a departure from the characteristics the Commission relied upon in granting market-based rate authority.<sup>39</sup> To the extent that a transaction authorized under FPA section 203 results in a change in status, sellers that have market-based rates are advised that they must comply with the requirements of Order No. 652.

The Commission orders:

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<sup>37</sup> 16 U.S.C. § 824o.

<sup>38</sup> 42 U.S.C. §§ 16451-63.

<sup>39</sup> 18 C.F.R. § 35.42 (2020); *see also Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, 110 FERC ¶ 61,097, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

(A) The Proposed Transaction is hereby authorized, as discussed in the body of this order.

(B) Applicants must inform the Commission of any material change in circumstances that departs from the facts or representations that the Commission relied upon in authorizing the Proposed Transaction within 30 days from the date of the material change in circumstances.

(C) The foregoing authorization is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determinations of costs, or any other matter whatsoever now pending or which may come before the Commission.

(D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.

(E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

(G) Applicants shall notify the Commission within 10 days of the date on which the Proposed Transaction is consummated.

By the Commission. Commissioner Clements is not participating.

( S E A L )

Kimberly D. Bose,  
Secretary.