

US Department of Energy

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Electricity Delivery and
Energy Reliability

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Office of Electricity Delivery & Energy Reliability
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OE Docket No. EA-184-C

Application to Export Electric Energy; Morgan Stanley Capital Group, Inc.

Public Citizen, Inc. hereby submits this motion to intervene and protest in OE Docket No. EA-184-C.

About Public Citizen, Inc.

Public Citizen, Inc. is a consumer advocacy organization representing the interests of our more than 400,000 members and supporters across the United States. Our members are household consumers of electricity and other energy products. Public Citizen's Energy Program Director, Tyson Slocum, serves on the U.S. Commodity Futures Trading Commission's Energy and Environmental Markets Advisory Committee.¹

Protest

Morgan Stanley's application to export electricity to Mexico features two problems that require rectification. First, the application should be considered incomplete until the company details the tolling agreements it has with "unaffiliated electric generation project companies." Second, a proposed

¹ www.cftc.gov/About/CFTCCcommittees/EnergyEnvironmentalMarketsAdvisory/emac_members

rulemaking by the Board of Governors of the Federal Reserve System would likely disallow Morgan Stanley from engaging in all of the business activities it describes in its Application, including the export of electricity to Mexico. As a result, the U.S. Department of Energy should not consider Morgan Stanley's application to export electricity until the Federal Reserve rule is finalized.

Tolling Agreements Can Bestow Considerable Control Over Power Generation

Morgan Stanley notes that it “is a party to several tolling agreements” that grant the company the right to the output of power facilities not owned by Morgan Stanley², but the company fails to identify the facilities to which the tolling agreements apply, and neglects to disclose details about exactly what types of control these tolling agreements provide to Morgan Stanley.

Tolling agreements are a contract between a power marketer like Morgan Stanley and the owner of a generation facility. The terms of the tolling agreement depend upon the contract signed by both parties.

Because there are examples of where tolling agreements have bestowed significant elements of control over a power generation facility, the Department of Energy cannot adequately review this Application until Morgan Stanley details its tolling agreements.

For example, JP Morgan—like Morgan Stanley, a bank holding company operating as a power marketer—had a tolling agreement over several power plants in Southern California owned by AES.³ When several government agencies requested that AES install critical pollution control equipment, JP Morgan insisted that its tolling agreement allowed the company to overrule any decision by AES to install the equipment. That prompted a filing by the California Independent System Operator to say that JP Morgan's use of the tolling agreement was allowing the company to “exercise anti-competitive

² September 14, 2016 Application of Morgan Stanley, Footnote 2.

control over resources needed to avoid the risk of blackouts for thousands of homes and businesses, as well as critical public infrastructure, in Southern California.”⁴

Similarly, Enron Corporation employed numerous tolling agreements to control power plants both within California and for facilities that exported electricity to California. In several instances, the tolling agreements gave Enron the right to order plant shutdowns, which in some cases led to intentional power blackouts affecting millions of people and businesses.⁵

It is therefore clear that tolling agreements have the potential to provide a company like Morgan Stanley with significant control over a power plant facility. Indeed, that is precisely why the Board of Governors of the Federal Reserve System, which regulates Financial Holding Companies like Morgan Stanley, recently proposed eliminating the ability of Financial Holding Companies from entering into “energy tolling” agreements.⁶

Therefore, Public Citizen’s protest requests that the Department of Energy consider Morgan Stanley’s application incomplete until the company submits on the record in this docket details of all of its tolling agreements with owners of power plants.

The Board of Governors of the Federal Reserve System Proposal To Limit Physical Energy Trading Activities of Financial Holding Companies Conflicts With This Application

In September 2016, the Board of Governors of the Federal Reserve System proposed regulations to significantly limit the ability of Financial Holding Companies like Morgan Stanley from

³ Morgan Lee, "JP Morgan in power market standoff amid nuclear outage," *The San Diego Union-Tribune*, December 19, 2012, www.sandiegouniontribune.com/sdut-jp-morgan-in-power-market-standoff-amid-nuclear-2012dec19-story.html

⁴ FERC Docket No. EL13-21, <http://elibrary.ferc.gov/idmws/common/opennat.asp?fileID=13134067>, at Page 1.

⁵ Timothy Egan, "Tapes Show Enron Arranged Plant Shutdown," *The New York Times*, February 4, 2005, www.nytimes.com/2005/02/04/us/tapes-show-enron-arranged-plant-shutdown.html

⁶ Board of Governors of the Federal Reserve System, Docket No. R-1547, RIN 7100 AE-58, September 30, 2016, www.gpo.gov/fdsys/pkg/FR-2016-09-30/pdf/2016-23349.pdf

owning or controlling physical energy trading activities.⁷ If the proposed rule becomes final, it would likely forbid most of Morgan Stanley's current electricity market operations, including those subject to this application request to export power to Mexico. In light of this significant Federal Reserve rulemaking that threatens to disallow the ability of Morgan Stanley to export electricity to Mexico, Public Citizen is requesting that the Department of Energy delay consideration of this Application until the Federal Reserve rule is finalized.

Respectfully submitted,

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⁷ www.federalreserve.gov/newsevents/press/bcreg/20160923a.htm