147 FERC ¶ 61,005
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Cheryl A. LaFleur, Acting Chairman;
Philip D. Moeller, John R. Norris,
and Tony Clark.

ITC Great Plains, LLC | Docket No. ES14-26-000

ORDER AUTHORIZING ISSUANCES OF SECURITIES

(Issued April 1, 2014)

1. On January 31, 2014, as supplemented on February 24, 2014, ITC Great Plains, LLC (ITC Great Plains) filed an application pursuant to section 204 of the Federal Power Act (FPA)[1] (Application) seeking Commission authorization to issue first mortgage bonds, senior secured notes, or other long-term debt (collectively, the Long-Term Debt) in an amount not to exceed $150 million outstanding at any one time. We will grant the authorization as discussed below.

I. Background

2. ITC Great Plains is a Michigan limited liability company and an indirect wholly-owned subsidiary of ITC Holdings Corporation. ITC Great Plains engages exclusively in interstate transmission of electric energy.

II. Application

3. ITC Great Plains requests authorization to issue the Long-Term Debt for two years from the date of issuance of the Commission's authorizing order. It states that the Long-Term Debt is necessary and appropriate for utility purposes; its business model relies upon the efficient operation, maintenance, planning and improvement of its transmission facilities to reduce congestion, mitigate generation market power, and optimize the efficiency and reliability of the transmission grid for the benefit of transmission customers.[2] ITC Great Plains states that it will use the funds borrowed pursuant to the Long-Term Debt for utility purposes, including as working capital and to construct and improve transmission

[1] 16 U.S.C. § 824c (2012).

[2] Application at 5.

infrastructure. ITC Great Plains also states that a portion of the Long-Term Debt will be used to refinance and replace existing revolving and long-term loan credit facilities.[3]

4. ITC Great Plains seeks Commission approval to issue the Long-Term Debt in an amount not to exceed $150 million outstanding at any one time. ITC Great Plains states that its Long-Term Debt instruments will mature in a minimum of 366 days and in a maximum of 40 years from issuance.[4]

5. ITC Great Plains states that the interest rate for the Long-Term Debt will not exceed the 30-year U.S. Treasury Rate, as published in the Wall Street Journal at the time of issuance, plus up to 300 basis points.[5]

6. ITC Great Plains requests waiver of the competitive bidding and negotiated placement requirements in section 34.2 of the Commission's regulations.[6] To assure the Commission that such waiver is appropriate, it asserts that it will issue the Long-Term Debt to commercial banks, insurance companies, or similar institutions, with interest at rates "related to market conditions."[7] It further asserts that successful placement of this debt may require the selection of underwriters, agents, and purchasers "who are knowledgeable about ITC Great Plains and highly qualified to be involved in such transactions."[8] ITC Great Plains asserts that such firms have a "significant interest in devoting the requisite efforts to the due diligence and marketing necessary for the placement of such debt on terms beneficial to ITC Great Plains and within the time schedules required by ITC Great Plains to meet its needs."[9] Additionally, ITC Great Plains asserts that it can protect itself and its

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[3] *Id.* at 4-5.

[4] *Id.* at 4. In the February 24, 2014 supplement to its original application, ITC Great Plains included existing debt authorizations in its calculation of the interest coverage ratio. These previously omitted authorizations consist of $50 million of long-term debt and a $200 million revolving credit facility authorized in Docket Nos. ES13-16-000 and ES13-40-000, respectively. ITC Great Plains Feb. 24, 2014 Supplement at 2.

[5] Application at 5.

[6] Section 34.2 of the Commission's regulations state, in part, that utilities may issue securities by either a competitive bid or negotiated placement, provided that competitive bids are obtained from at least two prospective dealers, purchasers, or underwriters, and negotiated offers are obtained from at least three prospective dealers, purchasers, or underwriters. *See* 18 C.F.R. § 34.2(a) (2013).

[7] Application at 8.

[8] *Id.*

[9] *Id.*

customers against non-competitive fees, commissions, and expenses by comparing published data for other debt incurrence transactions. For this reason, it argues that competitive bidding and negotiated offer procedures are unnecessary for ITC Great Plains to "obtain the best available cost of money or net proceeds . . . while assuring successful and timely closing of the transaction."[10]

III. Notices of Filing, Interventions, and Protests

7. Notice of the Application was published in the *Federal Register*, 79 Fed. Reg. 7,449 (2014), with interventions and protests due on or before February 21, 2014. None was filed. Notice of the Supplement was published in the *Federal Register*, 79 Fed. Reg. 12,503 (2014), with interventions and protests due on or before March 17, 2014. None was filed.

IV. Discussion

8. FPA section 204(a) provides that requests for authorization to issue securities or to assume obligations or liabilities shall be granted if the Commission finds that the issuance or assumption: (1) is for some lawful object, within the corporate purposes of the applicant and compatible with the public interest, which is necessary or appropriate for or consistent with the proper performance by the applicant of service as a public utility and which will not impair its ability to perform that service, and (2) is reasonably necessary or appropriate for such purposes.[11]

9. In *Westar Energy, Inc.*, the Commission explained that, in reviewing filings under FPA section 204, "the Commission evaluates a utility's financial viability based on a review of the financial statements submitted in the application and the utility's interest coverage ratio. An interest coverage ratio is a measure of the utility's ability to meet future debt and interest payments."[12] The interest coverage ratio is the sum of income before interest and income taxes divided by total interest expense.[13] The Commission generally requires that applicants filing under FPA section 204 demonstrate, on a *pro forma* basis in accordance with its regulations, that net income will equal or exceed twice total interest expense. This is a screen test used primarily to provide the Commission with comfort that the financing authorized will not impair an applicant's ability to perform public utility service.[14]

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[10] *Id.*

[11] 16 U.S.C. § 824c(a) (2012).

[12] *Westar Energy, Inc.*, 102 FERC ¶ 61,186, at P 15 (2003), *order on reh'g*, 104 FERC ¶ 61,018 (2003) (*Westar*).

[13] *Id.* n.15.

[14] *Montana Alberta Tie Ltd.*, 128 FERC ¶ 61,217, at P 16 (2009) (citing *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 18 (2008) (*Startrans*)).

Nevertheless, the Commission has stated that whether or not an applicant meets this interest coverage screen does not by itself determine whether the Commission will authorize or deny the application,[15] and the Commission has approved section 204 applications that have not met this threshold.[16]

10. ITC Great Plains has filed, as Exhibits C, D, and E to the Supplement, actual and *pro forma* financial statements for the 12-month period that ended on September 30, 2013.[17] Exhibit E shows that ITC Great Plains has a *pro forma* interest coverage ratio of 1.52, which is below the Commission's 2.0 times interest coverage test.[18]

11. ITC Great Plains states that Addendum 9 to Attachment H of the Southwest Power Pool, Inc. Open Access Transmission Tariff contains a formula ITC transmission service rate.[19] ITC Great Plains further asserts that this formula rate provides for rate updates effective January 1 of each year, which are based upon ITC Great Plains' estimate of its revenue requirement for that year. While ITC Great Plains acknowledges that its interest coverage ratio falls below the 2.0 times threshold, it contends that its formula rate permits the recovery of all prudently incurred costs of providing service, including the cost of debt issuances such as the requested Long-Term Debt.[20]

12. As noted above, in section 204 filings, the Commission utilizes an interest coverage ratio calculation in its evaluation of a public utility's financial viability, and generally requires applicants filing under section 204 to demonstrate, on a *pro forma* basis, that net income will equal or exceed twice total interest expense.[21] As ITC Great Plains notes, its *pro forma* interest coverage ratio is below the 2.0 times benchmark. However, ITC Great Plains' formula rate previously accepted by the Commission provides for the recovery of all prudently incurred costs of providing service, including the costs of the debt issuances that are the subject of this authorization. Therefore, we have an alternative basis to conclude

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[15] *Id.* n.7.

[16] *See*, *e.g.*, *Westar*, 102 FERC ¶ 61,186 at P 15; *Aquila*, *Inc.*, 107 FERC ¶ 61,044, at P 15 (2004).

[17] Supplement at Exhibit E.

[18] ITC Great Plains states that the interest coverage calculation provided in Exhibits C, D, and E to the application assumes interest for Long-Term Debt at a rate of 300 basis points over a recent 30-year Treasury Rate of 7.00 percent.

[19] Application at 7.

[20] Supplement at 2.

[21] *Startrans*, 122 FERC ¶ 61,253 at P 18.

that ITC Great Plains may reasonably be expected to service its debt and interest expenses without impairing its ability to provide service as a public utility.[22]

13. In *Westar*, the Commission announced four restrictions on all future public utility issuances of secured and unsecured debt.[23] First, public utilities seeking authorization to issue debt backed by a utility asset must use the proceeds of the debt for utility purposes. Second, if any utility assets that secure debt issuances are divested or "spun off," the debt must follow the assets and also be divested or spun off. Third, if any of the proceeds from unsecured debt are used for non-utility purposes, the debt must follow the non-utility assets. Specifically, if the non-utility assets are divested or spun off, then a proportionate share of the debt must follow the divested or spun off non-utility assets. Finally, if utility assets financed by unsecured debt are divested or spun off to another entity, then a proportionate share of the debt must also be divested or spun off. We will condition our authorization on ITC Great Plains abiding by these restrictions.

14. We conclude that ITC Great Plains meets the standards of FPA section 204. We find, based on the statements set forth in the Application, that ITC Great Plains has demonstrated that the proposed issuances of securities sought in this Application: (1) will be for lawful objects within the corporate purposes of ITC Great Plains and compatible with the public interest, are necessary or appropriate for, or consistent with, the proper performances by ITC Great Plains of service as a public utility, and will not impair ITC Great Plains' ability to perform that service; and (2) are reasonably necessary or appropriate for such purposes.

15. Accordingly, we authorize the following:

> a. ITC Great Plains is authorized to issue the Long-Term Debt in an amount not to exceed $150 million outstanding at any one time.
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> b. The interest rate for the Long-Term Debt will not exceed the 30-year U.S. Treasury Rate, as published in the Wall Street Journal at the time of issuance, plus up to 300 basis points.

16. Finally, we find good cause to grant the requested waiver of the Commission's competitive bidding and negotiated placement requirements applicable to long-term debt.

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[22] *See Transource Missouri, LLC*, 145 FERC ¶ 61,146, at PP 21, 23 (2013).

[23] *Westar*, 102 FERC ¶ 61,186 at P 21.

<u>The Commission orders</u>:

(A) ITC Great Plains is hereby authorized to issue first mortgage bonds, senior secured notes or other long-term debt securities in an amount not to exceed $150 million, at the interest rates stated in the body of this order.

(B) The authorization is granted effective April 1, 2014 and terminates on April 1, 2016.

(C) The authorization granted in this order is subject to the restrictions specified in the body of this order and the restrictions on secured and unsecured debt as outlined in *Westar*.

(D) The requested waiver of the Commission's competitive bidding or negotiated placement requirements under 18 C.F.R. § 34.2(a) (2013) is hereby granted.

(E) ITC Great Plains must file a Report of Securities Issued, under 18 C.F.R. § § 34.9, 131.43, and 131.50 (2013), no later than 30 days after the sale or placement of the long-term debt securities or the entry into guarantees or assumption of liabilities.

(F) The authorization granted in Ordering Paragraphs (A) and (B) above is without prejudice to the authority of the Commission or any other regulatory body with respect to rates, service, accounts, valuation, estimates or determination of cost or any other matter whatsoever now pending or which may come before this Commission.

(G) Nothing in this order shall be construed to imply any guarantee or obligation on the part of the United States with respect to any security to which this order relates.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.