

155 FERC ¶ 61,201
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
and Colette D. Honorable.

ITC Interconnection LLC

Docket No. EC16-92-000

ORDER AUTHORIZING ACQUISITION
OF JURISDICTIONAL FACILITIES

(Issued May 25, 2016)

1. On March 24, 2016, pursuant to section 203(a)(1)(B) of the Federal Power Act (FPA)¹ and Part 33 of the Commission's regulations,² ITC Interconnection LLC (ITC Interconnection) submitted an application seeking all authorizations necessary to permit ITC Interconnection to acquire from New Covert Generating Company, LLC (New Covert) certain transmission assets (Assets) located in Covert Township, Michigan (Proposed Transaction). The Commission has reviewed the Proposed Transaction under the Commission's Merger Policy Statement.³ As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

¹ 16 U.S.C. § 824b(a) (2012).

² 18 C.F.R. pt. 33 (2015).

³ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). See also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (*Supplemental Policy Statement*). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (Order No. 642), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). See also *Transactions Subject to FPA Section 203*, Order No. 669, FERC Stats. & Regs. ¶ 31,200 (2005), *order on reh'g*, Order No. 669-A, FERC Stats. & Regs. ¶ 31,214, *order on reh'g*, Order No. 669-B, FERC Stats. & Regs. ¶ 31,225 (2006).

I. Background

A. Description of the Parties to the Proposed Transaction

2. ITC Interconnection states that it is a newly formed independent transmission company. ITC Interconnection states that all of its membership interests are held by ITC Grid Development, LLC, which in turn is wholly owned by ITC Holdings Corp.⁴

3. ITC Interconnection states that it is in the process of becoming a transmission owner within the PJM Interconnection, L.L.C. (PJM) footprint which is expected to occur on June 1, 2016.⁵

4. ITC Interconnection explains that New Covert is the owner of a 1,100 megawatt generating plant located in Covert Township, Michigan that is currently interconnected to Midcontinent Independent System Operator, Inc. (MISO).⁶ ITC Interconnection states that New Covert has been taking the necessary steps to interconnect directly to PJM, with an expected commercial operation date for such interconnection of June 1, 2016. ITC Interconnection states that New Covert does not own or operate transmission facilities.⁷

B. Description of Assets and the Proposed Transaction

5. ITC Interconnection explains that New Covert has entered into a series of agreements to have ITC Interconnection acquire the real estate and third party rights, and to construct or acquire, and then own and operate, a 345 kilovolt transmission line and related equipment from the New Covert Plant switchyard to the Segreto substation near Covert, Michigan.⁸ The Assets include transmission equipment such as breakers, transformers, switches, insulators, control house enclosures, relay panels, and associated structural steel, lighting, and telecom equipment.⁹ ITC Interconnection explains that it needs the Assets for transmission purposes as part of New Covert's interconnection to PJM. ITC Interconnection states that the terms and conditions of the Proposed Transaction are contained in a Substation Purchase Agreement (Agreement) between ITC

⁴ Application at 2.

⁵ *Id.*

⁶ *Id.*

⁷ *Id.* at 3.

⁸ *Id.* at 2-3.

⁹ *Id.* at 1 & Exhibit 1 (Disclosure Schedules describing Assets).

Interconnection and New Covert.¹⁰ ITC Interconnection also states that the purchase price for the Assets is \$8,569,827, and is equal to the net book value of the Assets.¹¹

II. Notice of Filing

6. Notice of the application was published in the *Federal Register*, 81 Fed. Reg. 18,609 (2016), with interventions and protests due on or before April 14, 2016. Consumers Energy Company (Consumers Energy) filed a motion to intervene and comments on April 7, 2016.

III. Discussion

A. Procedural Matters

7. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹² the timely, unopposed motion to intervene of Consumers Energy serves to make it a party to this proceeding.

B. Substantive Matters

1. Standard of Review under FPA Section 203

8. 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.¹³ 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.¹⁴ 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."¹⁵ The

¹⁰ *Id.*

¹¹ *Id.* at 3, 5.

¹² 18 C.F.R. § 385.214.

¹³ 16 U.S.C. § 824b(a)(4).

¹⁴ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹⁵ 16 U.S.C. § 824b(a)(4).

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.¹⁶

2. Analysis of the Proposed Transaction

a. Effect on Competition

i. ITC Interconnection's Analysis

9. ITC Interconnection states that the Proposed Transaction will not have an adverse effect on competition and does not raise any horizontal or vertical market power concerns.

10. With respect to horizontal market power issues, ITC Interconnection explains that it will acquire existing transmission assets currently owned by New Covert and that the Proposed Transaction will not involve the disposition of any generating assets. Therefore, ITC Interconnection states that the Proposed Transaction will not result in any change in market concentration for generation.¹⁷ ITC Interconnection concludes that the Proposed Transaction does not raise any horizontal market power concerns.

11. ITC Interconnection also contends that the Proposed Transaction will have no adverse effect on vertical market power or on competition in transmission because the transmission service over facilities developed and owned by it is provided pursuant to PJM's Open Access Transmission Tariff (Tariff). ITC Interconnection therefore concludes that the Proposed Transaction does not raise any vertical market power issues.

b. Commission Determination

12. Because the Proposed Transaction will involve only the transfer of transmission facilities, we find that it will not have an adverse effect on horizontal competition.¹⁸

¹⁶ 18 C.F.R. § 33.2(j).

¹⁷ Application at 4.

¹⁸ See, e.g., Order No. 642, FERC Stats. & Regs. ¶ 31,111 at 31,903 (recognizing that there is no need for a Competitive Analysis Screen when a transaction only involves a disposition of transmission facilities); *DTE Energy Co.*, 97 FERC ¶ 61,330, at 62,572 (2001) (“ [A]nticompetitive effects are unlikely to arise in a transaction that only involves a disposition of transmission facilities.”).

13. We find that the Proposed Transaction will not have an adverse effect on vertical competition. As ITC Interconnection notes, transmission service over facilities developed and owned by ITC Interconnection is provided under the PJM Tariff.

3. Effect on Rates

a. ITC Interconnection's Analysis

14. ITC Interconnection asserts that the Proposed Transaction will not have any adverse impact on the rates charged to wholesale power and transmission customers. ITC Interconnection explains that it will provide transmission service pursuant to the PJM Tariff. ITC Interconnection also states that the Assets will be transferred at net book value, and that the Proposed Transaction will only increase its rate base in an amount equal to the net book value of the Assets.¹⁹ In this regard, ITC Interconnection states that the Commission has found that there is no adverse impact on rates when a transaction results in different customers paying rates that include only the net book value of a jurisdictional facility, as in the case of the Proposed Transaction.²⁰

15. Further, ITC Interconnection pledges to hold harmless all transmission customers from any costs associated with the Proposed Transaction (*e.g.*, transaction costs) for a period of five years to the extent that such costs exceed savings related to the Proposed Transaction.²¹

b. Commission Determination

16. Based on ITC Interconnection's representations, we find that the Proposed Transaction will not have an adverse effect on rates. The Proposed Transaction will occur at net book value, and ITC Interconnection commits to hold transmission customers harmless from costs related to the Proposed Transaction.

17. We accept ITC Interconnection's hold harmless commitment. We interpret ITC Interconnection's hold-harmless commitment to apply to all transaction-related costs, including costs related to consummating the Proposed Transaction, incurred prior to the consummation of the Proposed Transaction, or in the five years after the Proposed Transaction's consummation.

¹⁹ Application at 5.

²⁰ *Id.* n.13 (citing *ITC Midwest LLC*, 133 FERC ¶ 61,169 (2010), and *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 20 (2009)).

²¹ *Id.*

18. The Commission has established that, where applicants make hold-harmless commitments in the context of FPA section 203 transactions, in order to recover transaction-related costs, applicants must demonstrate offsetting benefits at the time they apply to recover those costs. The Commission has clarified its procedures for recovery of such costs under FPA sections 203 and 205.²² Consistent with those clarifications, and given the commitment by ITC Interconnection to hold transmission customers harmless from transaction-related costs, if ITC Interconnection seeks to recover transaction-related costs incurred prior to the consummation of the Proposed Transaction or in the five years after the consummation of the Proposed Transaction, then it must make that filing in a new FPA section 205 docket²³ and submit that same filing as a concurrent informational filing in this FPA section 203 docket.²⁴ The Commission will notice the new section 205 filing for public comment.

19. In the FPA section 205 proceeding, the Commission will determine first, whether ITC Interconnection has demonstrated offsetting savings, supported by sufficient evidence, to customers served under Commission jurisdictional rate schedules such that recovery of transaction-related costs is consistent with the hold-harmless commitment and, second, whether the resulting new rate is just and reasonable in light of all the other factors underlying the proposed new rate. In the FPA section 205 filing, ITC Interconnection must: (1) specifically identify the transaction-related costs it is seeking to recover, and (2) demonstrate that those costs are exceeded by the savings produced by the Proposed Transaction. ITC Interconnection must show that the proposed rate is just and reasonable in addition to providing appropriate evidentiary support, such as reasonable documentation and estimates of the costs avoided, demonstrating that transaction-related costs have been offset by transaction-related savings in order to recover those transaction-related costs and comply with its hold harmless commitment. Those savings must be realized prior to, or concurrent with, any authorized recovery of transaction-related costs, and cannot be based on estimates or projections of future savings, but must be based on a demonstration of actual transaction-related savings realized by jurisdictional customers.²⁵ The Commission will consider rates not to be

²² *Exelon Corp.*, 149 FERC ¶ 61,148, at PP 106-109 (2014).

²³ The Commission will not authorize the recovery of transaction-related costs in an annual informational filing under existing formula rates. *Union Power Partners, L.P.*, 154 FERC ¶ 61,149, at P 64 n.65 (2016).

²⁴ Upon receipt, the Commission will not act on or notice the concurrent informational filing.

²⁵ See *Audit Report of National Grid USA*, Docket No. FA09-10-000 (Feb. 11, 2011) at 55; see also *Ameren Corp.*, 140 FERC ¶ 61,034, at PP 36-37 (2012).

“just and reasonable” if they include recovery of costs subject to a hold-harmless commitment made in connection with an FPA section 203 application and if applicants fail to show offsetting savings due to the transaction.²⁶

20. The Commission will be able to monitor ITC Interconnection’s hold harmless commitment under its authority under section 301(c) of the FPA²⁷ and the books and records provision for the Public Utility Holding Company Act of 2005 (PUHCA 2005),²⁸ if applicable. Moreover, the commitment is fully enforceable based on the Commission’s authority under section 203 of the FPA.

4. Effect on Regulation

a. ITC Interconnection’s Analysis

21. ITC Interconnection states that the Proposed Transaction will not have any adverse effect on federal or state regulation. ITC Interconnection notes that the Proposed Transaction will not diminish federal regulatory authority over it, and that it will remain subject to the Commission’s jurisdiction under the FPA after the Proposed Transaction is consummated. With respect to state regulation, ITC Interconnection argues that no state regulatory approval was necessary to effectuate the Proposed Transaction, and that the Proposed Transaction will have no effect on the jurisdictional status of either ITC Interconnection or New Covert.²⁹

b. Commission Determination

22. We find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. The Commission’s review of a transaction’s effect on regulation focuses on ensuring that it does not result in a regulatory gap at the federal or state level.³⁰ As to regulation at the state level, 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

²⁶ *Exelon Corp.*, 149 FERC ¶ 61,148 at P 107.

²⁷ 16 U.S.C. § 825(c).

²⁸ 42 U.S.C. § 16452 (2012).

²⁹ Application at 6.

³⁰ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

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.³¹ Based on ITC Interconnection's representations, we find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. No state commission has requested that the Commission address the effect of the Proposed Transaction on state regulation.

5. Cross-Subsidization

a. ITC Interconnection's Analysis

23. ITC Interconnection states that the Proposed Transaction will not result in any proscribed cross-subsidization or the pledge or encumbrance of utility assets for the benefit of an associate company. ITC Interconnection states that: (a) New Covert is neither an associate company nor an affiliate of ITC Interconnection; (b) ITC Interconnection will not be issuing any new securities to effectuate the Proposed Transaction; (c) ITC Interconnection will not be pledging or encumbering any assets to effectuate the Proposed Transaction; and (d) the Proposed Transaction will not result in any new affiliate contract between ITC Interconnection and any associate company.³²

24. ITC Interconnection submits that, based on facts and circumstances known to it or that are reasonably foreseeable, the Proposed Transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company at the time of the Proposed Transaction or in the future. ITC Interconnection demonstrates in an Exhibit M analysis that the Proposed Transaction will not result in: (1) any transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, and an associate company; (2) any new issuance of securities by a traditional public utility associate company that has captive customers or that owns or provided transmission service over jurisdictional transmission facilities, for the benefit of an associate company; (3) any new pledge or encumbrance of assets of a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, for the benefit of an associate company; or (4) any new affiliate contract between a non-utility associate company and a traditional public utility associate company that has captive customers or that owns or provides transmission service over jurisdictional transmission facilities, other than non-power goods and service agreements subject to review under sections 205 and 206 of the FPA.

³¹ *Id.*

³² Application at 8.

b. Commission Determination

25. Based on ITC Interconnection's 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. Comments

26. Consumers Energy does not object to the Proposed Transaction, but it asserts that the second drawing included in Section 1.01(c) of ITC Interconnection's filing is inaccurate and misleading.³³ Specifically, Consumers Energy argues that this drawing shows three lines going from the Segreto substation to the Palisades Nuclear Plant, but that as of today, only two such lines exist because the third line has not yet been built. Consumers Energy states that ITC Interconnection should file a revised drawing to remove the third line.³⁴

2. Commission Determination

27. We decline to direct ITC Interconnection to file a revised drawing. The Commission's analysis of whether a proposed transaction is consistent with the public interest under section 203 generally involves consideration of the effects of the transaction on competition, rates, and regulation,³⁵ and whether the transaction will 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.³⁶ Consumers Energy has not claimed that the Proposed Transaction should be rejected based on any of these considerations, and indeed explicitly states that it does not oppose the Proposed Transaction. As discussed above, we find that the Proposed Transaction satisfies the criteria set forth in section 203(a)(4) and is consistent with the public interest. As a result, we do not find it necessary to require ITC Interconnection to file a revised drawing.

³³ Consumers Energy Motion to Intervene and Comments at 1-3.

³⁴ *Id.* at 3.

³⁵ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

³⁶ 16 U.S.C. § 824b(a)(4).

IV. Accounting Analysis

28. ITC Interconnection explains that the purchase price for the transmission assets acquired from New Covert is \$8,569,827, and proposes accounting in Appendix 2 of the application that records the transmission assets on ITC Interconnection's books based on an estimated original cost and accumulated depreciation. ITC Interconnection proposes to clear the acquisition through Account 102, Electric Plant Purchased or Sold, and record the estimated original cost and related accumulated depreciation on the books consistent with Electric Plant Instruction No. 5, Electric Plant Purchased or Sold.³⁷ ITC Interconnection anticipates a negative acquisition adjustment representing the difference between the estimated depreciated original cost of the assets acquired and the consideration to be paid.³⁸ ITC Interconnection proposes to record the amount as a credit to Account 114, Electric Plant Acquisition Adjustments and then clear Account 114 to Account 108, Accumulated Provision for Depreciation of Electric Utility Plant.

29. The proposed recording of the transmission assets on ITC Interconnection's books at depreciated original cost as reflected in Appendix 2 is consistent with the Commission's Uniform System of Accounts.³⁹ Also, the Commission has held that negative acquisition adjustments recorded in Account 114 should be cleared to Account 108.⁴⁰ ITC Interconnection must submit final accounting entries in accordance with Electric Plant Instruction No. 5 and Account 102 within six months of the date that the Proposed Transaction is consummated. The accounting submissions must provide all the accounting entries and amounts related to the purchase along with narrative explanations describing the basis for the entries, including the method used to estimate the original cost and accumulated depreciation of the assets acquired.

V. Other Considerations

30. Information and/or systems connected to the bulk power system involved in this Proposed Transaction may be subject to reliability and cyber security standards approved

³⁷ 18 C.F.R. Pt. 101 (2015).

³⁸ The original costs of the electric plant acquired and related accumulated depreciation have been estimated by New Covert.

³⁹ Electric Plant Instruction No. 5, Electric Plant Purchased or Sold, and Instructions to Account 102, Electric Plant Purchased or Sold, 18 C.F.R. Pt. 101 (2015).

⁴⁰ See, e.g., *Southwestern Public Service Co. and New Mexico Electric Service Co.*, 23 FERC ¶ 61,153 (1983).

by the Commission pursuant to FPA section 215.⁴¹ 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 cyber security standards. The Commission, the North Electric Reliability Corporation, or the relevant regional entity may audit compliance with reliability and cyber security standards.

31. Section 301(c) of the FPA 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 a proposed transaction is based on such examination ability. In addition, applicants subject to PUHCA 2005 are subject to the record-keeping and books and records requirements of PUHCA 2005.

32. Order No. 652 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.⁴² 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:

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

(B) ITC Interconnection 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.

⁴¹ 16 U.S.C. § 824o (2012).

⁴² *Reporting Requirement for Changes in Status for Public Utilities with Market-Based Rate Authority*, Order No. 652, FERC Stats. & Regs. ¶ 31,175, *order on reh'g*, 111 FERC ¶ 61,413 (2005).

(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 not pending or that 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) ITC Interconnection shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.

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

(H) ITC Interconnection shall account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold of the Uniform System of Accounts. ITC Interconnection shall submit its final accounting entries within six months of the date that the Proposed Transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the Proposed Transaction along with narrative explanations describing the basis for the entries.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.