

158 FERC ¶ 61,019
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Fortis Inc.
FortisUS Inc.
ITC Investment Holdings Inc.
Element Acquisition Sub Inc.
Enterprise Holdings Pte. Ltd.
Finn Investment Pte. Ltd.
ITC Holdings Corp.

Docket No. EC16-110-001

ORDER ON CLARIFICATION AND REHEARING

(Issued January 12, 2017)

1. On April 28, 2016, pursuant to sections 203(a)(1) and 203(a)(2) of the Federal Power Act (FPA)¹ and Part 33 of the Commission's regulations,² Fortis Inc. and its subsidiaries, including FortisUS Inc. (FortisUS), ITC Investment Holdings Inc. (ITC Investment), and Element Acquisition Sub Inc. (Element) (collectively, Fortis), ITC Holdings Corp. (ITC Holdings), on behalf of itself and its public utility operating company subsidiaries, including International Transmission Company, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains, LLC (collectively, ITC Operating Companies), Enterprise Holdings Pte. Ltd. (Enterprise Holdings), and Finn Investment Pte. Ltd. (Finn),³ requested Commission authorization for a transaction by which: (1) Element will merge with and into ITC Holdings, with ITC Holdings as the surviving company; (2) each share of common stock of ITC Holdings will be cancelled; and (3) Finn will acquire an indirect 19.9 percent interest in ITC

¹ 16 U.S.C. §§ 824b(a)(1), (a)(2) (2012).

² 18 C.F.R. pt. 33 (2016).

³ Applicants consist of Fortis Inc., Fortis, ITC Holdings, ITC Operating Companies, Enterprise Holdings, and Finn.

Holdings through ITC Investment (collectively, Proposed Transaction).⁴ Following consummation of the Proposed Transaction, Applicants stated that ITC Holdings would be an indirect majority-owned subsidiary of FortisUS, and each of ITC Holdings' subsidiaries will be majority-owned, indirectly, by Fortis Inc. through FortisUS. ITC Holdings would then also be indirectly minority-owned by Finn by virtue of its 19.9 percent interest in ITC Holdings' sole parent, ITC Investment.

2. The Commission reviewed the Proposed Transaction under the Commission's Merger Policy Statement⁵ and authorized the Proposed Transaction as consistent with the public interest.⁶ Among other findings, the Commission determined that the Proposed Transaction will not have an adverse effect on rates based, in part, on Applicants' commitment that the ITC Operating Companies will not, at any time, seek to recover transaction-related costs in rates. The Commission stated that it interpreted transaction-related costs, including transition costs, to be the same as delineated in the Commission's recent *Policy Statement on Hold Harmless Commitments*.⁷ On October 24, 2016, Applicants notified the Commission that the Proposed Transaction was consummated on October 14, 2016.

⁴ On August 29, 2016, Applicants filed copies of orders authorizing the Proposed Transaction issued by the Oklahoma Corporation Commission and the Illinois Commerce Commission. On September 19, 2016, Applicants filed a copy of the order authorizing the Proposed Transaction issued by the Missouri Public Utilities Commission.

⁵ See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); see also *FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008). See also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *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).

⁶ *Fortis Inc.*, 156 FERC ¶ 61,219 (2016) (September 23 Order).

⁷ *Id.* P 80 (citing *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 (2016)).

3. On October 24, 2016, the Resale Power Group of Iowa (Iowa Resale) filed a request for clarification or, in the alternative, rehearing of the September 23 Order. For the reasons discussed below, we grant in part, and deny in part, Iowa Resale's request for clarification and deny its request for rehearing.

I. Request for Clarification and/or Rehearing

4. Iowa Resale notes that the Shareholders Agreement, by and among ITC Investment, ITC Holdings, FortisUS and Finn, which Applicants submitted as part of their application, identifies two types of new ongoing operating costs that ITC Holdings will bear: Allocated Overhead Costs and Shared Services Costs. Iowa Resale speculates that ITC Holdings will allocate these costs among the ITC Operating Companies.⁸ Iowa Resale asserts that these costs do not fall within the definitions of transaction costs or transition costs and that the September 23 Order does not directly address them.⁹

5. Iowa Resale maintains that the Commission should clarify the September 23 Order to provide that if the Proposed Transaction generates additional operating costs, and those costs are sought to be recovered in transmission rates of the ITC Operating Companies, then Iowa Resale and/or other customers are authorized to challenge the recovery of such costs. In addition, Iowa Resale contends that the Commission should: (1) specify the forum or proceeding(s) in which any such challenge may be raised; (2) require Applicants to track any Allocated Overhead Costs and the Shared Services Costs separately and disclose them annually in the work papers supporting their operating companies' annual projected transmission rates; and (3) require Applicants to disclose, along with work papers specified in (2), the total amount of those costs allocated to each subsidiary of Fortis, Inc. and explain the method by which they were allocated.¹⁰

6. Iowa Resale states that absent such clarification, the Commission should grant rehearing to consider the adverse rate effects of the Allocated Overhead Costs and the Shared Services Costs on Iowa Resale's members and other customers and determine whether the approval of the merger can be reconciled with the applicable standards, which require that such adverse rate impacts be given due consideration and, where necessary, mitigated. In particular, Iowa Resale contends that with regard to ITC Midwest, the Commission should determine whether continuation of the 50-basis point

⁸ Iowa Resale Request for Rehearing at 4, n.7.

⁹ *Id.* at 2.

¹⁰ *Id.*

return on equity independence adder approved in Docket No. ER15-945-000 and similar adders for other ITC Operating Companies is warranted under the circumstances.¹¹

II. Commission Determination

7. We grant in part, and deny in part, Iowa Resale's request for clarification. In finding that the Proposed Transaction would have no adverse effect on rates, the Commission stated in the September 23 Order that it "agree[d] with Applicants that other arguments that protestors make with respect to the ITC Operating Companies' rates are not relevant to the analysis the Commission conducts to evaluate a proposed transaction under the Merger Policy Statement and pursuant to section 203 of the FPA."¹² Thus, the Commission dismissed those arguments as outside the scope of this proceeding. We clarify that this finding encompassed the issues raised by Iowa Resale regarding Allocated Overhead Costs and Shared Services Costs, to the extent that any such costs are ongoing operating costs that ITC Holdings allocates to the ITC Operating Companies.¹³ As for a forum in which a challenge may be raised, the Commission stated in the September 23 Order that any party wishing to challenge the current rates of the ITC Operating Companies may do so in a proceeding under FPA section 206.¹⁴ The Commission also stated that any party wishing to raise issues regarding the inputs into the ITC Operating Companies' respective formula rates may do so in accordance with their relevant formula rate protocols as authorized by the Commission.¹⁵

8. We deny Iowa Resale's request for clarification regarding the tracking of any Allocated Overhead Costs and the Shared Services Costs separately. The Commission's accounting regulations already require the ITC Operating Companies to keep their accounts and records to show, for all transactions with associated companies (which would include Allocated Overhead Costs and the Shared Services Costs), the general nature of the transactions, the amounts involved therein and the amounts included in each

¹¹ *Id.* at 2-3.

¹² September 23 Order, 156 FERC ¶ 61,219 at P 82.

¹³ We make no finding here whether the Allocated Overhead Costs and Shared Services Costs assigned by ITC Investment to ITC Holdings under the terms of the Shareholders Agreement would be considered transaction-related costs subject to Applicants' hold harmless commitment as no party has requested us to do so.

¹⁴ September 23 Order, 156 FERC ¶ 61,219 at P 83.

¹⁵ *Id.* P 84.

account.¹⁶ The Commission also requires the preservation of these accounting records by the ITC Operating Companies.¹⁷ Additionally, the FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others, requires the ITC Operating Companies to report and disclose certain information regarding the costs and amounts billed from affiliated companies, albeit subject to a threshold, which would include any Allocated Overhead Costs and Shared Services Costs.¹⁸

9. With respect to the return on equity independence adder, we affirm the Commission's finding in the September 23 Order that an examination of the current rates and return on equity incentives of the ITC Operating Companies is beyond the scope of the current section 203 proceeding.¹⁹ These issues are not part of the Commission's analysis under the Merger Policy Statement.²⁰ Thus, we deny Iowa Resale's alternative request for rehearing.

¹⁶ See 18 CFR pt. 101, General Instruction No. 14, Transactions with Associated Companies; Electric Plant Instruction No. 4, Overhead Construction Costs; Electric Plant Instruction No. 13, Common Utility Plant; and Operating Expense Instruction No. 1, Supervision and Engineering.

¹⁷ See 18 CFR pt. 125, Preservation of Records of Public Utilities and Licensees.

¹⁸ See FERC Form No. 1, Annual Report of Major Electric Utilities, Licensees and Others, at 429.

¹⁹ We note that ITC Holdings and International Transmission Company have an ongoing obligation to inform the Commission of changes in circumstances, including changes in stock ownership, that could affect their continued independence. See *ITC Holdings Corp. and International Transmission Co.*, 111 FERC ¶ 61,149, at PP 25-26, Ordering Paragraph (F) (2005); *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 44, *reh'g denied*, 104 FERC ¶ 61,033 (2003).

²⁰ September 23 Order, 156 FERC ¶ 61,219 at P 83.

The Commission orders:

(A) Iowa Resale's request for clarification is hereby granted in part, and denied in part, as discussed in the body of this order.

(B) Iowa Resale's request for rehearing is hereby denied, as discussed in the body of this order.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.