

156 FERC ¶ 61,219
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Norman C. Bay, Chairman;
Cheryl A. LaFleur, Tony Clark,
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. EC16-110-000

ORDER AUTHORIZING MERGER, DISPOSITION OF
JURISDICTIONAL FACILITIES AND ACQUISITION OF SECURITIES

(Issued September 23, 2016)

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 (International Transmission), Michigan Electric Transmission Company, LLC (Michigan Electric), ITC Midwest LLC (ITC Midwest), and ITC Great Plains, LLC (ITC Great Plains) (collectively, ITC Operating Companies), Enterprise Holdings Pte. Ltd. (Enterprise Holdings), and Finn Investment Pte. Ltd. (Finn),³ request Commission authorization for

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.

a transaction by which (a) Element will merge with and into ITC Holdings, with ITC Holdings as the surviving company; (b) each share of common stock of ITC Holdings will be cancelled; and (c) Finn will acquire an indirect 19.9 percent interest in ITC Holdings through ITC Investment (collectively, Proposed Transaction).⁴ Following consummation of the Proposed Transaction, Applicants state that ITC Holdings will 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 will then also be indirectly minority-owned by Finn by virtue of its 19.9 percent interest in ITC Holdings' sole parent, ITC Investment.

2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.⁵ As discussed below, we authorize the Proposed Transaction as consistent with the public interest.

I. Background

A. Description of Applicants

1. Fortis and Its Relevant Subsidiaries

3. Fortis Inc. is a publicly traded holding company existing under the laws of Newfoundland and Labrador, Canada, with its principal offices in St. John's, Newfoundland and Labrador. It serves more than 3 million customers across Canada, in the United States and the Caribbean. Applicants state that Fortis Inc.'s regulated

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). 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).

holdings in the United States include electric distribution utilities as well as natural gas utilities in New York and Arizona. Applicants further state that neither Fortis Inc. nor any of its U.S. utility subsidiaries is a market participant in either the Midcontinent Independent System Operator, Inc. (MISO) or the Southwestern Power Pool, Inc. (SPP).⁶

a. FortisUS Subsidiaries

4. FortisUS is an indirect, wholly owned subsidiary of Fortis Inc. As noted above, FortisUS has two direct, wholly owned subsidiaries involved in the Proposed Transaction, ITC Investment and Element. FortisUS also has two other direct, wholly owned subsidiaries, CH Energy Group, Inc. (CH Energy) and UNS Energy Corp. (UNS Energy).⁷

i. ITC Investment and Element

5. Applicants state that ITC Investment and Element were formed for the purpose of effecting the Proposed Transaction and that these subsidiaries do not engage in any Commission-jurisdictional business activities.

ii. CH Energy and Its Subsidiaries

6. Applicants state that CH Energy is a public utility holding company that is principally engaged in the business of owning Central Hudson Gas & Electric Corporation (Central Hudson), a New York gas and electric transmission and distribution utility that is regulated by the New York Public Service Commission (New York Commission). Central Hudson is a public utility under the FPA and has been granted market-based rate authority. CH Energy also has three other direct, wholly owned subsidiaries: Central Hudson Enterprises Corporation (CH Enterprises), Central Hudson Electric Transmission (CH Electric), and Central Hudson Gas Transmission, LLC (CH Gas).

7. CH Enterprises owns a 50 percent limited partnership interest in the Hunterdon Cogeneration Limited Partnership, a 4 MW qualifying cogeneration facility operating in the PJM Interconnection, L.L.C. (PJM) market. CH Enterprises also indirectly owns interests in two wind projects in the PJM market, with a combined generating capacity of 31.5 MW. CH Electric holds a 6.1 percent interest in New York Transco, LLC, which was established in 2014 to develop, construct and own electric transmission facilities.

⁶ Application at 5.

⁷ *Id.*

That company has applied to the Commission in Docket No. ER15-572-000 for formula rates and transmission rate incentives for several transmission projects in New York. CH Gas was formed by CH Energy to hold the ownership interest in a natural gas pipeline project regulated by the Commission and does not currently own any assets or engage in any other jurisdictional activity within the Commission's jurisdiction.

iii. UNS Energy and Its Subsidiaries

8. Applicants state that UNS Energy is a public utility holding company that is principally engaged in the business of owning Tucson Electric Power Company (Tucson Electric), UNS Electric, Inc. (UNS Electric), UniSource Energy Development Company (UniSource Energy Development), and UNS Gas, Inc. (UNS Gas).

(a) Tucson Electric

9. Applicants state that Tucson Electric is a vertically integrated utility providing regulated electric service in the greater Tucson metropolitan area in Pima County, Arizona and parts of Cochise County, Arizona. Tucson Electric is subject to regulation by the Arizona Corporation Commission (Arizona Commission) with respect to retail electric rates, the issuance of securities, affiliate transactions, and the maintenance of books and records and other matters. Tucson Electric is a public utility under the FPA and has been granted market-based rate authority by the Commission. Tucson Electric sells electricity at wholesale to other utilities and power marketers in the southwestern United States.

(b) UNS Electric

10. Applicants state that UNS Electric is an electric utility operating company that provides retail electric service to residential or commercial customers in northwest and southern Arizona. It is subject to regulation by the Arizona Commission with respect to retail electric rates, the issuance of securities, affiliate transactions, the maintenance of books and records, and other matters. The Commission has granted UNS Electric market-based rate authority.

(c) UNS Gas

11. Applicants state that UNS Gas has retail gas customers in northern and southern Arizona and owns 31 miles of gas transmission lines.

(d) UniSource Energy Development

12. Applicants state that UniSource Energy Development is a public utility under the FPA because it has a market-based rate tariff on file with the Commission. However, it does not presently engage in any jurisdictional activities.

b. Fortis Canadian Utility Subsidiaries

13. Applicants state that Fortis, Inc. wholly owns several other Canadian subsidiaries, through which it operates electric generation, transmission and distribution systems and natural gas distribution, pipeline and storage facilities in parts of Canada. These include FortisWest Inc., which, through subsidiaries, owns electric distribution systems in Alberta, a vertically integrated electric utility British Columbia, and an integrated electric system on Prince Edward Island; Fortis BC Holdings Inc., which, through subsidiaries, owns and operates natural gas distribution, storage and pipeline facilities in British Columbia; Newfoundland Power Inc., which owns and operates electric generation, distribution and transmission systems in parts of Newfoundland and Labrador; and Fortis Ontario Inc., which directly and indirectly, through wholly and partially owned subsidiaries, owns and operates electric generation, transmission and distribution systems in parts of Ontario. None of these entities owns any electric transmission facilities or natural gas pipeline or storage facilities in the United States or makes any sales of power or natural gas in the United States. Fortis Inc. also owns a controlling interest in Waneta Expansion Limited Partnership, which owns and operates portions of a hydroelectric generating facility in British Columbia.

2. Finn and Its Relevant Affiliates

14. Applicants state that Finn is wholly owned by Enterprise Holdings, which, in turn, is wholly owned by GIC Ventures. GIC Ventures is affiliated with GIC Private Limited (GIC), an investment company that manages the Government of Singapore's foreign reserves, and GIC Special Investments Pte. Ltd. (GIC SI), the private equity and infrastructure arm of GIC. GIC and GIC Ventures are each wholly owned by the Government of Singapore through the Minister for Finance, a statutory corporation set up by the Government of Singapore to own and administer government assets. Applicants state that Finn will be managed and controlled by GIC SI. Neither Finn nor any other subsidiary of GIC Ventures will engage in any jurisdictional business activities. Neither Finn nor any of its affiliates is a market participant in MISO or SPP.

15. GIC Ventures indirectly holds interests in four Commission-regulated entities: Cheyne Walk Investment Pte. Ltd. (Cheyne Walk), Epsom Investment Pte. Ltd. (Epsom), Cambourne Investment Pte. Ltd. (Cambourne), and Finn. Cheyne Walk indirectly owns a 19.75 percent minority interest in Oncor Electric Delivery Company LLC (Oncor). Oncor is a regulated electricity transmission and distribution company that provides service solely within the balancing authority area (BAA) of the Electric Reliability Council of Texas, Inc. (ERCOT), except for a 100 MW undivided interest in the East High Voltage Direct Interconnection between ERCOT and SPP, which is subject to an OATT approved by the Commission. Oncor is an electric utility company under the Public Utility Holding Company Act of 2005 (PUHCA 2005) whose rates are regulated by the Public Utility Commission of Texas. Epsom owns an approximately 31 percent

interest in DQE Holdings LLC, which, in turn, indirectly owns Duquesne Light Company (Duquesne Light), a public utility that purchases, transmits, and distributes electric energy to customers in southwestern Pennsylvania and owns no generation resources, and Duquesne Power, LLC, a power marketer that operates within the PJM market. Service on Duquesne Light's transmission facilities is provided under PJM's OATT. Duquesne Light and Duquesne Power have both been granted market-based rate authority.⁸ Epsom also holds an approximately 25 percent equity interest in Star West Generation LLC, which holds limited liability company interests in Arlington Valley, LLC (Arlington Valley) and Griffith Energy, LLC (Griffith Energy). Arlington Valley owns and operates a 577 MW electric generating facility in Arizona. Arlington Valley has been granted market-based rate authority and is an EWG. Griffith Energy owns and operates a 570 MW natural gas-fired combined-cycle electric generating facility (the Griffith Project) in Arizona. Griffith Energy has been granted market-based rate authority and is an EWG.

16. Cambourne has a minority interest in Eastern Generation Holdings, LLC, which in turn owns 100 percent of Astoria Generating Company (Astoria), Crete Energy Venture LLC (Crete), Lincoln Generating Facility, LLC (Lincoln), New Covert Generating Company, LLC (New Covert), and Rolling Hills Generating, L.L.C. (Rolling Hills) (collectively, the Project Companies). According to Applicants, the Project Companies own four generating facilities with a combined generating capacity of approximately 3,126 MW that operate in the PJM market, and one project operating within the NYISO BAA having a generating capacity of approximately 1,951 MW. All of the Project Companies have been granted market-based rate authority.

3. ITC Holdings, ITC Operating Companies, and Other ITC Holdings Subsidiaries

17. Applicants state that ITC Holdings is a public utility holding company that owns 100 percent of the common stock of International Transmission, and all of the membership interests in Michigan Electric, ITC Midwest, and ITC Great Plains. ITC Holdings has been publicly traded since the completion of its initial public offering in July 2005.⁹

⁸ *Id.* at 18-19.

⁹ *Id.* at 23.

a. ITC Operating Companies

18. The ITC Operating Companies are independent, stand-alone transmission companies engaged exclusively in the development, ownership and operation of facilities for the transmission of electric energy in interstate commerce. ITC Holdings invests exclusively in the electric power transmission grid. Transmission service over facilities owned by International Transmission, Michigan Electric, and ITC Midwest is provided by MISO under the MISO Open Access Transmission Energy and Operating Reserve Markets Tariff (MISO Tariff), and all three of these ITC Operating Companies are transmission owning members of MISO. Transmission over the facilities of ITC Great Plains is provided by SPP under the SPP Open Access Transmission Tariff (SPP Tariff). ITC Great Plains is a transmission owning member of SPP.¹⁰

19. The ITC Operating Companies together own, operate and maintain approximately 15,600 miles of transmission lines in Michigan, Iowa, Minnesota, Illinois, Missouri, Kansas, and Oklahoma, with a combined peak load of over 26,000 MW. ITC Holdings' customers include investor-owned utilities, municipalities, cooperatives, power marketers, and generators, including alternative energy suppliers.

20. Applicants state that the Commission has exclusive jurisdiction over the rates for transmission services provided by the ITC Operating Companies. Either MISO or SPP, as appropriate, is responsible for independently administering the transmission tariff for transmission services provided by the ITC Operating Companies. Each ITC Operating Company is an independent transmission company exclusively engaged in transmitting electric energy in interstate commerce and is a public utility under the FPA. International Transmission, Michigan Electric and ITC Midwest have turned functional control over their respective transmission assets to MISO and have formula rates under Attachment O of the MISO Tariff. ITC Great Plains has turned functional control over its transmission assets to SPP and has a formula rate under Attachment H of the SPP Tariff. International Transmission and Michigan Electric are subject to the jurisdiction of the Michigan Public Service Commission with respect to siting of transmission facilities. ITC Midwest is subject to the jurisdiction of the Minnesota Public Service Commission, Illinois Commerce Commission, Missouri Public Service Commission and the Public Service Commission of Wisconsin with respect to siting, construction, safety and other matters. The ITC Operating Companies own the following assets:

¹⁰ *Id.* at 24.

- International Transmission owns approximately 3,000 circuit miles of transmission lines rated at 120 kV to 345 kV, station assets such as transformers and circuit breakers, and 179 stations and substations.
- Michigan Electric owns approximately 5,600 circuit miles of transmission lines rated at 120 kV to 345 kV and approximately 36,900 transmission towers and poles. It owns station assets, such as transformers and circuit breakers, at 100 stations and substations.
- ITC Midwest owns approximately 6,600 circuit miles of transmission lines rated at voltages 34.5 kV to 345 kV and accompanying transmission towers and poles. It owns station assets, such as transformers and circuit breakers, at approximately 271 substations.
- ITC Great Plains owns approximately 440 miles of transmission lines rated at a voltage of 345 kV as well as approximately 1,900 transmission towers and poles. It owns station assets, such as transformers and circuit breakers, at eight substations.

b. Other ITC Holdings Subsidiaries

21. Applicants state that ITC Holdings has organized several subsidiaries to develop new transmission projects, including ITC Grid Development and ITC Lake Erie Connector, LLC (ITC Lake Erie). ITC Grid Development and its subsidiaries develop new transmission lines in the United States. ITC Grid Development's subsidiaries participate in competitive solicitations to respond to transmission needs identified by regional transmission organizations (RTOs) and to finance, build, own and operate transmission projects identified by RTOs. ITC Grid Development's subsidiaries currently do not own any transmission assets in PJM or elsewhere. ITC Grid Development's subsidiary, ITC Interconnection LLC (ITC Interconnection), is an independent transmission company that invests in interconnections for generating and load-serving entities, as well as system network upgrades for existing and new generation. ITC Interconnection is constructing, and, upon completion, will own an approximately one mile, 345 kV transmission line that will interconnect to PJM the existing 1,100 MW New Covert generating facility owned and operated by New Covert. ITC Interconnection is also an "Other Supplier" member of PJM but will become a transmission owning member of PJM when the New Covert interconnection facilities are placed into service on June 1, 2016.¹¹

¹¹ *Id.* at 28-29. On May 25, 2016, in Docket No. EC16-92-000, the Commission authorized ITC Interconnection to acquire certain transmission assets located in Michigan

22. ITC Lake Erie is developing a proposed high-voltage, direct current merchant transmission project that will originate in Ontario, Canada and terminate in Erie County, Pennsylvania (ITC Lake Erie Connector). Applicants state that the ITC Lake Erie Connector is a 1,000 MW bi-directional line that will be the first direct interconnection between the PJM market and the Independent Electricity System Operator of Ontario, Canada. ITC Lake Erie has been given authority to sell transmission rights at negotiated rates. Upon completion of the ITC Lake Erie Connector, approximately 43 miles of transmission line will be within PJM, and ITC Lake Erie will be a transmission owning member of PJM, with PJM assuming functional control of the line.¹²

B. Description of the Proposed Transaction

23. Applicants state that the terms of the Proposed Transaction are set forth in the Agreement and Plan of Merger, among FortisUS, Element, Fortis Inc. and ITC Holdings (Merger Agreement).¹³ Applicants state that, under the Merger Agreement and subject to regulatory approvals and the satisfaction of certain customary obligations of the parties, Element will merge with and into ITC Holdings with ITC Holdings as the surviving company. After consummation of the Proposed Transaction, all of the outstanding shares of common stock of ITC Holdings will be cancelled.¹⁴

24. Applicants further state that the acquisition by Finn of the minority interest in ITC Holdings is set forth in the Subscription Agreement, among Finn, Fortis Inc., FortisUS, ITC Investment, and Element.¹⁵ Under the Subscription Agreement, Finn will purchase common stock and notes issued by ITC Investment, the direct parent of ITC Holdings. As a result of Finn's purchase of ITC Investment common stock, Finn will indirectly own

from New Covert, which were necessary for New Covert's interconnection to PJM. *ITC Interconnection LLC*, 155 FERC ¶ 61,201 (2016). That transaction was consummated on June 1, 2016.

¹² Application at 29-30.

¹³ Applicants state that the Merger Agreement is attached to the Application as Exhibit I-1.

¹⁴ Application at 30.

¹⁵ Applicants state that the Subscription Agreement is attached to the Application as Exhibit I-2.

19.9 percent of the issued and outstanding common stock of, and economic interest in, ITC Holdings immediately following the Proposed Transaction.¹⁶

25. Applicants explain that, after the consummation of the Proposed Transaction, ITC Holdings will become an indirect majority owned subsidiary of Fortis Inc. and minority owned subsidiary of Finn. As a result of the Proposed Transaction, ITC Holdings and its subsidiaries will be affiliates of both Fortis and Finn. However, Fortis and its subsidiaries and affiliates other than ITC Holdings will not be affiliated with Finn and its subsidiaries and affiliates. The ITC Operating Companies, as well as other subsidiaries of ITC Holdings will remain wholly owned subsidiaries of ITC Holdings.¹⁷

II. Notice of Filing and Responsive Pleadings

26. Notice of the Application was published in the *Federal Register*, 81 Fed. Reg. 28,855, with interventions and protests due on or before May 19, 2016. In response to a motion filed by Alliant Energy Corporate Services, Inc. (Alliant Energy), the comment date was extended to June 2, 2016. Iowa Office of Consumer Advocate, Alliant Energy, American Transmission Company LLC, GridLiance Heartland LLC, Iowa Utilities Board, Iowa Business Energy Coalition, DTE Electric Company, and Dairyland Power Cooperative filed motions to intervene.

27. Michigan Public Service Commission filed a notice of intervention. Consumers Energy Company (Consumers Energy) and Iowa Business Energy Coalition filed motions to intervene and comments. Resale Power Group of Iowa (Iowa Resale) filed a motion to intervene and conditional protest. Jo-Carroll Energy, Inc. filed a motion to intervene and protest. Alliant Energy and Iowa Office of Consumer Advocate filed motions for adoption of merger conditions. Iowa Economic Development Authority (Iowa Authority); City of Cedar Rapids, Iowa (Cedar Rapids); Southern Minnesota Energy Cooperative; Ron J. Corbett, Mayor of City Cedar Rapids; The Greater Burlington Partnership (Greater Burlington); The Board of Directors of Lee County Economic Development Group, Inc. (Lee County); Michigan Agency for Energy and Michigan Economic Development Corporation (jointly, Michigan Parties) filed comments.

28. Sunflower Electric Power Cooperative, Mid-Kansas Electric Company, LLC, and Midwest Energy, Inc. filed motions to intervene out-of-time.

¹⁶ Application at 30-31.

¹⁷ *Id.* at 31. Applicants state that a simplified corporate organizational chart is attached to the Application as Exhibit C-5.

29. Applicants filed a reply to motions for adoption of merger conditions and answer to protests.

III. Discussion

A. Procedural Matters

30. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹⁸ the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

31. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹⁹ we will grant the late-filed motions to intervene filed by Sunflower Electric Power Cooperative, Mid-Kansas Electric Company, LLC, and Midwest Energy, Inc. given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

32. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure²⁰ prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that assisted us in our decision-making process.

B. Substantive Matters

1. FPA Section 203 Standard of Review

33. 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.²¹ 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.²² FPA section 203(a)(4) also requires the

¹⁸ 18 C.F.R. § 385.214.

¹⁹ *Id.* § 385.214(d).

²⁰ *Id.* § 385.213(a)(2).

²¹ 16 U.S.C. § 824b(a)(4).

²² Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

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.”²³ 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.²⁴

2. Analysis of the Proposed Transaction

34. Michigan Parties support the Proposed Transaction, stating that the merger of ITC Holdings and Fortis will provide ITC Holdings with the ability to continue its successful record of growth and performance.²⁵

35. Iowa Authority asks that the Commission consider how the Proposed Transaction might affect transmission costs in Iowa and Iowa’s ability to compete for future business opportunities.²⁶

a. Effect on Competition

i. Applicants’ Analysis

36. Applicants state that the Proposed Transaction will not have an adverse effect on competition and does not raise any horizontal or vertical market power concerns.

37. With respect to horizontal market power issues, Applicants explain that ITC Holdings does not own or control any electric generating assets, and the Proposed Transaction does not involve any change in ownership or control of any generating facilities and will therefore have no impact on concentration in any generating market. Accordingly, Applicants maintain that the Proposed Transaction will have no adverse effect on horizontal market power and no horizontal market power analysis is required.²⁷

²³ 16 U.S.C. § 824b(a)(4).

²⁴ 18 C.F.R. § 33.2(j).

²⁵ Michigan Parties Comments at 1.

²⁶ Iowa Authority Comments at 1.

²⁷ Application at 34.

38. Applicants assert that the Proposed Transaction does not raise any vertical market power concerns because the Proposed Transaction involves the upstream change in control only over transmission assets and no transfer of generation facilities or inputs to electric power generation. Therefore, Applicants state that no vertical competitive analysis is required. Applicants argue that none of the ITC Operating Companies have jurisdictional transmission facilities in PJM, and Applicants plan that PJM will have functional control of the limited, discrete transmission facilities of ITC Interconnection and ITC Lake Erie. Applicants state that ITC Interconnection will provide service on its transmission facilities under a service agreement filed under the PJM Open Access Transmission Tariff (PJM Tariff), and ITC Lake Erie will provide services on the ITC Lake Erie Connector at negotiated rates as authorized by the Commission pursuant to a rate schedule for service under the PJM Tariff.²⁸ Further, none of the Applicants hold any ownership interest in or control of fuel supplies, fuel delivery systems, including intrastate gas transportation, or other inputs to electric power production or any new sites for electric generation that could be used to raise barriers to entry in any relevant markets. Accordingly, Applicants submit that the Proposed Transaction will not result in an anticompetitive combination of generating facilities and inputs to generation in any market.

ii. Protests and Comments

39. Consumers Energy argues that Michigan Electric is behaving in a manner contrary to Commission policy as it pertains to Consumers Energy's reentry into the transmission business. Consumers Energy states that Michigan Electric has filed protests, comments, or complaints in several dockets before the Commission. Consumers Energy argues that, in doing so, Michigan Electric has unreasonably sought to place a series of hurdles and barriers in Consumers Energy's path to discourage its reentry. Consumers Energy therefore argues that the Commission should condition its authorization of the Proposed Transaction on Michigan Electric's agreeing to cease its behavior that is contrary to Commission policy in seeking to prevent Consumers Energy's reentry into the transmission business.²⁹

iii. Applicants' Answer

40. Applicants maintain that Consumers Energy is attempting to relitigate issues currently pending before the Commission in other dockets. In particular, Applicants reference Consumers Energy's argument that Michigan Electric has filed protests,

²⁸ *Id.* at 35.

²⁹ Consumers Energy Comments at 6-7.

comments, or complaints related to Consumers Energy's reentry into the transmission business in multiple dockets and that the Commission should condition its authorization of the Transaction on Michigan Electric agreeing to cease its behavior that is contrary to Commission policy.³⁰ Applicants maintain that such arguments must be rejected here as an inappropriate collateral attack on those proceedings and orders. Applicants further submit that Consumers Energy's argument has no relationship to the factors the Commission considers in analyzing transactions under section 203 of the FPA and is thus beyond the scope of this proceeding.³¹

iv. Commission Determination

41. In analyzing whether a proposed transaction will adversely affect horizontal competition, the Commission examines the effects on concentration in the relevant geographic markets and whether the proposed transaction otherwise creates the incentive and ability to engage in behavior harmful to competition, such as withholding of generation.³²

42. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on horizontal competition. Because ITC Holdings does not own or control any electric generating assets, the Proposed Transaction does not involve any change in ownership or control of any generating facilities. Accordingly, we find that the Proposed Transaction will not have any impact on concentration in any generating market and therefore will not have an adverse impact on horizontal market power.

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

³⁰ Applicants Answer at 8 (citing Consumers Energy Comments at 6-7, where Consumers Energy lists 10 open Commission dockets in which Michigan Electric has filed protests, comments, and complaints).

³¹ *Id.* at 8-9.

³² *Nev. Power Co.*, 149 FERC ¶ 61,079, at P 28 (2014).

competitors or inhibit existing competitors' ability to undercut an attempted price increase in the downstream wholesale electricity market.³³

44. Based on Applicants' representations, we find that the Proposed Transaction will not have an adverse effect on vertical competition. As noted above, neither Fortis Inc. and its subsidiaries nor GIC Ventures and its subsidiaries own any generating facilities or natural gas pipeline or storage facilities in MISO. Further, while affiliates of Finn hold investment interests in generating assets in PJM, as Applicants have noted, transmission service over facilities of ITC Interconnector and ITC Lake Erie in PJM will be provided under the PJM Tariff. The Commission has found that the combination of electric generation and transmission facilities will not give merger applicants an ability to exercise vertical market power where the transmission facilities will continue to be subject to a Commission-approved open access transmission tariff.³⁴ Further, we note that Consumers Energy does not argue that the Proposed Transaction itself creates barriers to entry, but rather than Michigan Electric's filing of comments, protests and complaints in other dockets constitute barriers to entry. We therefore agree with Applicants that Consumers Energy's comments are outside of the scope of this proceeding.

b. Effect on Rates

i. Applicants' Analysis

45. With respect to rates, Applicants state that, in accordance with Generally Accepted Accounting Policies, Fortis will account for the Proposed Transaction using the acquisition (or purchase) method of accounting for business combinations. According to Applicants, the Proposed Transaction will result in the creation of goodwill, which will be recorded at ITC Investment and not pushed down to ITC Holdings or the ITC Operating Companies. In addition, based on the tax structure of the Proposed Transaction, Applicants state that there will not be any change in tax basis in the assets owned by the ITC Operating Companies, and therefore there will be no changes to accumulated deferred income tax balances at the ITC Operating Companies. Thus, Applicants maintain that the books and records of ITC Holdings and the ITC Operating Companies will not be adjusted in any way as a result of the Proposed Transaction, and

³³ *Upstate New York Power Producers, Inc.*, 154 FERC ¶ 61,015, at P 15 (2016); *Exelon Corp.*, 138 FERC ¶ 61,167, at P 112 (2012).

³⁴ *See, e.g., Silver Merger Sub, Inc.*, 145 FERC ¶ 61,261, at P 46 (2013).

the ITC Operating Companies will not recover any acquisition premium or goodwill in rates.³⁵

46. Further, Applicants commit to hold wholesale and unbundled transmission customers harmless from transaction costs. Applicants state that the ITC Operating Companies will not seek to recover transaction costs in their cost-based formula rates absent a compliance filing consistent with the Commission's requirements. In accordance with Commission precedent, Applicants explain that "transaction costs" in this context include all costs related to the Proposed Transaction, including costs related to consummating the Proposed Transaction and transition costs. Applicants recognize that the Commission has full authority to monitor Applicants' hold harmless provisions and specify the procedures and criteria merger applicants must follow if they seek to recover transaction-related costs through their transmission rates under its authority. Applicants also recognize that the Commission may exercise authority to enforce Applicants' hold harmless commitments.³⁶

47. Applicants state that ITC Holdings intends to record all transaction-related costs at the parent company and not at the ITC Operating Companies. Applicants acknowledge the Commission's policy that costs incurred to consummate a merger are non-operational in nature and must be recorded in Account 426.5, Other Deductions, if recorded at the ITC Operating Companies. Further, Applicants understand that Commission policy generally considers transition costs to be operational in nature, and that such costs may be recorded in an operating expense account or capitalized in an asset account, as appropriate. In any case, Applicants maintain that there will be no recovery of transaction-related costs through transmission rates unless and until such recovery is authorized through a section 205 filing.

ii. Protests and Comments

(a) Hold Harmless Commitment

48. Several parties raise issues with Applicants' hold harmless commitment, asserting that the commitment is inferior to those offered by Fortis in previous proceedings, that the commitment is vague because Applicants did not provide a definition of transaction costs or provide protection from unnecessary incurrence of increased costs other than transaction costs or transition costs, and that Applicants did not describe what "procedures and controls" they have in place to abide by the hold harmless commitment.

³⁵ Application at 37.

³⁶ *Id.* at 37-38.

49. Jo-Carroll and Alliant Energy argue that Fortis made a weaker hold harmless commitment in this proceeding than in previous cases, without explanation. They both note two previous applications in which Fortis, as part of its hold harmless commitment, agreed not to seek to recover costs related to the transaction in its cost-based rates, even if such costs are exceeded by the savings.³⁷

50. Similarly, Jo-Carroll argues that Applicants have provided no explanation for offering customers of the ITC Operating Companies a hold harmless commitment that is inferior to the commitment Fortis offered to customers in previous transactions. Jo-Carroll states that, absent a convincing explanation for this unduly discriminatory treatment, the Commission should order Applicants to provide the same hold harmless commitment offered in Fortis's earlier acquisitions.³⁸ Alliant Energy argues that Applicants' failure to make a similar commitment in this proceeding underscores the imperative for the Commission to require a clear and unambiguous statement of the hold harmless commitment proposed by Applicants to ensure that Applicants will fully respect the ratepayer protections required by the Commission.³⁹

51. Jo-Carroll, Iowa Resale, and Alliant Energy assert that Applicants have failed to define "Transaction Costs." Iowa Resale and Alliant Energy claim that Applicants' definition of transaction costs, "costs relating to the Transaction and transition costs,"⁴⁰ fails to define what costs are subsumed in this term. Jo-Carroll and Alliant Energy argue that such failure does not comport with Commission policy. Jo-Carroll therefore maintains that if the Commission approves the Proposed Transaction, it must require Applicants to specifically identify the categories of costs that their hold harmless commitment covers. Jo-Carroll, Iowa Resale, and Alliant Energy contend that Applicants' hold harmless commitment ought to encompass all categories of costs that

³⁷ Fortis, Inc., Application for Authorization for Merger and Disposition of Jurisdictional Facilities, and Request for Waivers of Certain Filing Requirements and Expedited Treatment, Docket No. EC14-56-000, at 25 (filed Feb. 7, 2014); Fortis, Inc., Application for Authorization for Merger and Disposition of Jurisdictional Facilities, and Request for Waivers of Certain Filing Requirements, Docket No. EC12-94-000, at 22 (filed Apr. 23, 2012).

³⁸ Jo-Carroll Protest at 4.

³⁹ Alliant Energy Protest at 8-9.

⁴⁰ Iowa Resale Protest at 9 (citing Application at 37).

the Hold Harmless Policy Statement⁴¹ identifies. Iowa Resale and Alliant Energy both assert that this list is not comprehensive, and that Applicants' commitment should include all costs incurred by Applicants to explore, agree to, and consummate the Proposed Transaction. Iowa Resale recommends that the Commission incorporate the conditions in any order approving the Proposed Transaction, including requiring explanations and documentation on how Applicants determine capital costs that would be included or excluded from the hold harmless commitment, allocation of labor costs for salaried employees, and how Applicants define, designate, accrue, and allocate transaction costs. Additionally, Iowa Resale argues that the Commission should audit the jurisdictional companies' records to ensure Applicants' compliance with these measures.⁴²

52. Alliant Energy adds that in order to ensure that the procedures and controls established by Applicants will be sufficient to protect ratepayers from having to pay the transaction costs, transition costs, and/or costs of Applicants that may be inflated without justification, the Commission should condition any approval of the Proposed Transaction on a requirement that Applicants submit a compliance filing which: (a) identifies clearly the types of costs to which the hold harmless commitment will apply; (b) explains in detail how the ITC Operating Companies intend to track costs related to Applicants' hold harmless commitment and demonstrates that such procedures and controls will be effective; and (c) establishes a process by which the ITC Operating Companies will advise Interstate Power and Light Company (Interstate Power), an affiliate of Alliant Energy, and other entities using their transmission facilities, no less frequently than annually, regarding their investment plans before major investment commitments are made, and will consult with such entities to develop plans for modification of the ITC Operating Companies' transmission system that are best adapted to meet the needs of their customers and therefore that help to mitigate the costs of transmission service that might otherwise be imposed on their customers.⁴³

53. Iowa Resale further recommends that the Commission adopt the Hold Harmless Policy Statement's list of "transition costs," while noting that this list is not exhaustive and that other types of costs incurred or paid in connection with the integration of companies following completion of the Proposed Transaction may also be transition

⁴¹ *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189 (2016) (Hold Harmless Policy Statement).

⁴² Iowa Resale Protest at 11-12.

⁴³ Alliant Energy Protest at 14-15.

costs.⁴⁴ Alliant Energy urges the Commission to require Applicants to enumerate clearly the types of transaction and transition costs that they proposed to include in their hold harmless commitment, and to show how their commitment is consistent with the Hold Harmless Policy Statement.⁴⁵

54. The Iowa Office of Consumer Advocate (Iowa Advocate) argues that the hold harmless commitment Applicants propose is vague and would be difficult to enforce. Iowa Advocate and Alliant Energy state that they would like to see, in addition to the hold harmless clause, a definition of transaction costs that includes a descriptive list of the types of costs that would be considered transaction costs, such as the costs of securing an appraisal, formal written evaluation, or fairness opinions related to the transaction the costs of structuring the transaction, negotiating the structure of the transaction, and obtaining tax advice on the structure of the transaction, and professional services fees paid to accountants, surveyors, engineers, and legal consultants.⁴⁶

55. Iowa Advocate argues that the failure of Applicants to include specific language identifying these costs as “Transaction Costs” subject to their hold harmless commitment increases the possibility that the ITC Operating Companies may collect transaction costs through cost-of-service formula rates to the disadvantage of Iowa ratepayers.⁴⁷

56. Alliant Energy argues that implementation of the Proposed Transaction may also cause an unreasonable increase in certain costs that are not necessarily considered to be transaction costs or transition costs but that may nevertheless be passed through the cost-of-service formula rates of the ITC Operating Companies and unduly increase charges paid by Alliant Energy’s operating company affiliates in the absence of appropriate conditions. Alliant Energy reasons that, in order to ensure that ratepayers of the ITC Operating Companies are fully protected against rate increases caused by unnecessary incurrence of costs, the Commission should expand Applicants’ hold harmless commitment to encompass costs other than those which are considered to be transaction costs or transition costs.⁴⁸ For example, Alliant Energy alleges that ITC Midwest has previously endorsed the practice of accounting for mergers in a way that eliminates

⁴⁴ Iowa Resale Protest at 10-11.

⁴⁵ Alliant Energy Protest at 7-8.

⁴⁶ Iowa Advocate Protest at 3-4; Alliant Energy Protest at 6-7.

⁴⁷ Iowa Advocate Protest at 3-4.

⁴⁸ Alliant Energy Protest at 9.

accumulated deferred income taxes. Alliant Energy therefore argues that the Commission should interpret Applicants' hold harmless commitment to protect ITC Operating Companies' customers, including those of ITC Midwest, from the impact of any action by Applicants which might reduce the pre-merger balances of accumulated deferred income taxes recorded on the books of the ITC Operating Companies.⁴⁹

57. Jo-Carroll asserts that the Commission should require Applicants to add specificity to their claim that "ITC has established procedures and controls to ensure Transaction costs are recorded at the parent company and are not included in the books and records of the ITC Operating Companies."⁵⁰ Jo-Carroll argues that Applicants have not described the "procedures and controls" established by ITC, and that the Commission should require them to do so, with specificity, in accordance with the Hold Harmless Policy Statement.⁵¹

58. Alliant Energy argues that, in order to maximize the likelihood that Alliant Energy's affiliated operating companies and other transmission service customers of the ITC Operating Companies are held harmless from inflated transmission charges as a result of the acquisition of ITC Holdings by Fortis and GIC Ventures, the Commission should condition any approval of the Proposed Transaction on certain requirements, including that the ITC Operating Companies provide an annual 5-year projected revenue requirement, an annual long-term 10-year forecast of transmission expansion plans, annual reporting on congested flow gates, and coordinate future transmission outages with customers and facilitate meetings with customers.

59. Alliant Energy argues that adoption of these conditions will enable Alliant Energy's affiliated operating companies to learn of investment plans of ITC Midwest before major commitments are made, and to assist ITC Midwest to develop plans for modification of its transmission facilities that are best adapted to meet the needs of its customers and therefore that help to mitigate the costs of transmission service that might otherwise be imposed on their customers.⁵² Iowa Resale states that it supports these

⁴⁹ *Id.* at 9-10.

⁵⁰ Jo-Carroll Protest at 4 (citing Application at 38).

⁵¹ *Id.* at 4-5 (citing Hold Harmless Policy Statement, 155 FERC ¶ 61,189 at P 69).

⁵² Alliant Energy at 12-13.

recommendations and requests that the Commission condition any approval of the Proposed Transaction on their adoption.⁵³

(b) **Increased ITC Midwest Transmission Costs and Acquisition Premium**

60. Cedar Rapids, Lee County and Greater Burlington each state that they do not oppose the Proposed Transaction. However, they, along with Alliant Energy and Iowa Resale, maintain that ITC Midwest's transmission costs have risen greatly at least since 2008. Cedar Rapids, Lee County and Greater Burlington take issue with the impact of the acquisition premium on transmission rates, and assert that meaningful action is needed to reduce future transmission rates.⁵⁴ Alliant Energy references the comments of Lee County, Greater Burlington, and Iowa Authority in arguing that the economic climate in the portion of Iowa served by Interstate Power could be threatened by the Proposed Transaction. Alliant Energy argues that it is incumbent on the Commission to adopt appropriate conditions in any order authorizing the Proposed Transaction in order to fully mitigate commenters' concerns.⁵⁵

61. Iowa Resale takes issue with the Proposed Transaction's impact on the rates the Iowa Resale members pay. Iowa Resale requests that the Commission impose conditions on its approval of the Proposed Transaction. Specifically, Iowa Resale argues that the Commission should assure that Applicants do not recover the acquisition premium through wholesale transmission rates. Iowa Resale states that when ITC Midwest purchased Interstate Power's transmission facilities in 2007, it committed not to recover the transaction's acquisition premium of \$330 million through its rates.⁵⁶ Iowa Resale asserts that a subsequent Commission Staff audit found that ITC Midwest had violated this commitment.⁵⁷ Given this history, Iowa Resale recommends that the Commission clarify Fortis's commitment and provide a means of enforcing it.

⁵³ Iowa Resale at 25-26.

⁵⁴ Cedar Rapids Comments at 1; Greater Burlington Comments at 1; and Lee County Comments at 1.

⁵⁵ Alliant Energy Protest at 3-4. The Iowa Business Energy Coalition states that it supports Alliant Energy's proposed conditions.

⁵⁶ Iowa Resale Protest at 7-8 (citing *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 49 (2007)).

⁵⁷ *Id.* at 8 (citing *ITC Holdings Corp.*, 139 FERC ¶ 61,112, at P 6 (2012)).

62. Iowa Resale requests that the Commission explicitly order Fortis and other Applicants not to bring a section 205 proceeding to recover any portion of the acquisition premium or goodwill from the ITC Operating Companies' customers. Iowa Resale also recommends that the Commission condition any approval of the Proposed Transaction upon an audit of ITC Holdings and its jurisdictional subsidiaries that would be commenced at an "appropriate" time following the Proposed Transaction's closing.⁵⁸

(c) **Return on Equity Adder for Independence**

63. Consumers Energy, Iowa Advocate and Iowa Resale question the independence of certain ITC Operating Companies once the Proposed Transaction is consummated. Consumers Energy takes issue with the fact that Applicants have not proposed that Michigan Electric forgo the 100 basis point return on equity (ROE) adder that the Commission granted it for independent ownership. Consumers Energy states that, following the Proposed Transaction, Fortis will be the majority owner of Michigan Electric. Consumers Energy states that Fortis' operating companies include electric utilities, which engage in electric generation, transmission, and distribution, as well as in gas industry businesses. Consumers Energy further states that the executive leadership of Fortis will be the executive leadership of Michigan Electric. Thus, Consumers Energy argues that following the Proposed Transaction, Michigan Electric will no longer be entitled to the ROE adder for independent ownership and the Commission should condition its authorization of the Proposed Transaction on Michigan Electric agreeing to a 100 basis point reduction to its ROE.⁵⁹ Likewise, Iowa Resale suggests that since Fortis owns generation and distribution subsidiaries that also require corporate capital, it is likely that ITC Holdings will be competing with those subsidiaries for that capital, thereby potentially impairing its construction of transmission infrastructure improvements and negating the primary advantage identified by the Commission of the independent transmission company business model.⁶⁰

64. Iowa Resale also questions the independence of ITC Holdings' management, post-transaction. Iowa Resale notes that Fortis and ITC Investment will select and elect all of ITC Investments' directors (except for a director designated by Finn), and that these same directors will serve as directors of ITC Holdings. Iowa Resale states that upon closing of the Proposed Transaction, the executive officers of ITC Holdings will each become a shareholder in Fortis, receiving .7520 shares of Fortis stock for each share in ITC

⁵⁸ *Id.*

⁵⁹ Consumers Energy Comments at 4-5.

⁶⁰ Iowa Resale Protest at 23.

Holdings. Iowa Resale reasons that if management is allowed to retain these shares, an important factor in maintaining management's independence will be gone. Iowa Resale further argues that the Proxy Statement also suggests that Fortis management intends to take a role in ITC Holdings' operations, and that, Fortis, as a market participant, could be exercising significant control and influence over ITC Holdings' day-to-day activities.⁶¹

65. Likewise, Jo-Carroll notes that last year the Commission approved a 50 basis point adder for ITC Midwest on the basis of ITC Midwest's assurance that it would not be affiliated with a traditional public utility company that engages in sales and distribution of electric power to captive retail customers, or with a traditional public utility company that owns and operates generation assets. Jo-Carroll and Alliant Energy state that GIC Ventures, which is proposing to acquire an equity interest in ITC Holdings of almost 20 percent, owns more than 2,400 MW of generating capacity within the PJM market. Jo-Carroll and Alliant Energy argue that, because MISO and PJM are interconnected, generators that GIC Ventures owns may supply electricity to MISO customers over transmission facilities owned by the ITC Operating Companies. Therefore, if the Proposed Transaction is consummated, the ITC Operating Companies will have the ability to make decisions which will affect the economic interests of GIC Ventures and the generating facilities it owns within PJM. Accordingly, Jo-Carroll questions whether the ITC Operating Companies will continue to be entitled to the ROE adder for independent transmission companies.⁶²

66. Alliant Energy and Iowa Advocate argue that, in the event that the Commission approves the Proposed Transaction, it should also institute a rate investigation pursuant to its authority under section 206 of the FPA to determine whether the ITC Operating Companies continue to be entitled to an ROE adder, based on their status as independent transmission companies.⁶³ Iowa Advocate asserts that the Commission should establish a refund effective date concurrent with the date on which Applicants consummate the Proposed Transaction.⁶⁴

⁶¹ *Id.* at 22-23.

⁶² Jo-Carroll Protest at 5-6.

⁶³ Alliant Energy Protest at 16-17.

⁶⁴ Iowa Advocate Protest at 5-6.

(d) **Capital Structure**

67. Iowa Resale and Iowa Advocate argue that the Commission should commence an FPA section 206 investigation to determine whether the ITC Operating Companies' post-merger capital structure continues to be just and reasonable. They state that the Commission has approved for ratemaking purposes a capital structure of 60 percent equity/40 percent debt for each of the ITC Operating Companies. Iowa Resale points out that, as partial consideration for its purchase of ITC Holdings' stock, Fortis is assuming \$4.4 billion of ITC Holdings' consolidated debt – apparently all of the outstanding short-term and long-term debt for both ITC Holdings and the ITC Operating Companies. Iowa Resale states that the Application is not clear as to the impact of Fortis' debt assumption on these capital structures.⁶⁵

68. Iowa Resale further notes that Fortis targets a long-term consolidated capital structure of 35 percent common equity and 65 percent debt and preferred equity. Iowa Resale argues that this proposed capital structure may perpetuate or exacerbate the “double leveraging” which Iowa Resale asserts was instrumental in ITC Holdings' high realized returns.⁶⁶

(e) **Bonus Depreciation**

69. Consumers Energy, Iowa Advocate and Alliant Energy take issue with certain ITC Operating Companies' practice of opting out of using certain bonus depreciation. According to Consumers Energy and Iowa Advocate, since 2010, Michigan Electric has opted out of using bonus depreciation in the calculation of its federal income tax expense, thereby understating the amounts of its accumulated deferred income taxes used to calculate charges for transmission services over its facilities. Consumers Energy claims that, as a result, Michigan Electric's rate base has been inflated, causing the transmission rates that Michigan Electric has charged to its customers, including Consumers Energy, to be significantly overstated. Accordingly, Consumers Energy asserts that the Commission should condition its authorization for the Proposed Transaction on Michigan Electric agreeing to take bonus depreciation for 2015 and as long as such tax treatment is available, unless taking bonus depreciation would cause Michigan Electric financial harm.⁶⁷ Iowa Advocate asserts that the Commission should clearly set forth in any order

⁶⁵ Iowa Resale Protest at 26 (citing *ITC Holdings Corp. Form 10-K for Period Ending December 31, 2015* at 55 and 72); Iowa Advocate Protest at 6.

⁶⁶ Iowa Resale Protest at 26.

⁶⁷ Jo-Carroll Protest at 5-6.

approving the Proposed Transaction conditions that Fortis is subject to the Commission's determinations on the imprudence of opting out of bonus depreciation.⁶⁸

70. Alliant Energy argues that the acquisition of ITC Holdings and its subsidiaries, including ITC Midwest, by Fortis and GIC Ventures may increase incentives and opportunities for ITC Midwest to seek other means of unreasonably inflating its revenue requirement. Alliant Energy speculates that ITC Midwest may propose transmission-related solutions to address certain problems that might be resolved more efficiently through some other means. Alternatively, Alliant Energy argues that ITC Midwest may propose transmission expansion programs that are not well adapted to the needs of Alliant Energy's affiliated operating companies and its other customers but that serve to increase its cost-based revenue requirement. Alliant Energy reasons that even if these actions do not constitute "imprudence" for which a remedy is available, they may inflate the transmission revenue requirements of ITC Midwest and the other ITC Operating Companies unnecessarily. Alliant Energy therefore recommends that the Commission adopt conditions which provide transparent limits on the ability of the ITC Operating Companies to inflate costs unreasonably after the merger has been consummated.⁶⁹

(f) **Financial Disclosure**

71. Alliant Energy notes that ITC Holdings and its subsidiaries are currently subject to financial disclosure requirements imposed by the Securities and Exchange Commission and the New York Stock Exchange. It argues that upon consummation of the Proposed Transaction, such information may no longer be made available routinely to members of the public. Alliant Energy maintains that the loss of access to this financial information makes a requirement for the ITC Operating Companies to provide the information requested by Alliant Energy and other entities even more imperative.⁷⁰

iii. **Applicants' Answer**

(a) **Hold Harmless Commitment**

72. Applicants reply that the concerns that protestors raise regarding Applicants' hold harmless commitment are without merit. Applicants clarify that they will hold harmless

⁶⁸ Iowa Advocate Protest at 5.

⁶⁹ Alliant Energy Protest at 10-11.

⁷⁰ Iowa Resale and Iowa Advocate support the disclosure requirements proposed by Alliant Energy.

all wholesale and unbundled transmission customers from all transaction costs, including transition costs. Applicants disagree with protestors' arguments that Applicants' hold harmless commitment is unreasonably vague and inadequately defines transaction costs, and that the Commission should require Applicants to delineate categories of costs subject to the hold harmless commitment. Applicants state that their hold harmless commitment is identical to those the Commission has consistently found sufficient to demonstrate no adverse effects on rates. Applicants maintain that their application clearly defines the scope of transaction costs to be those costs related to consummating the transaction (including transition costs incurred both before and after consummation of the Proposed Transaction) and affirmatively represent that ITC Holdings has the protocols and controls in place to track such costs. Applicants therefore state that their hold harmless commitment is fully consistent with Commission requirements and no further conditions are necessary or appropriate.⁷¹

73. In addition, to remove all doubt in light of the comments made by protestors, Applicants affirmatively state that: “[T]he ITC Operating Companies will not, *at any time*, seek to recover Transaction costs from this merger, i.e., the ITC Operating Companies will *not* submit an FPA section 205 compliance filing even if Transaction-related savings were to exceed Transaction costs.”⁷² Applicants argue that this commitment, coupled with their other assurances, addresses all concerns voiced by the protestors and underscores that the Applicants' hold harmless commitment exceeds the requirements of the Commission's recent Hold Harmless Policy Statement.⁷³

74. Applicants argue that ITC Holdings has the proper controls and procedures to record and track the typical transaction-related costs (including transition costs) that are subject to Applicants' hold harmless commitment. Specifically, Applicants state that ITC Holdings uses a work order system, allowing it to track and record these costs. Applicants add that ITC Holdings has also implemented monitoring and review controls to ensure compliance with the work order system. Further, Applicants note that the Commission maintains its authority to monitor and enforce the hold harmless commitment under its relevant statutory authority.⁷⁴

⁷¹ Applicants Answer at 5.

⁷² *Id.* at 5-6.

⁷³ *Id.*

⁷⁴ *Id.* at 6.

75. Applicants maintain that the thrust of many of the protestors' "conditions" are collateral attacks on the current rates of the ITC Operating Companies. Applicants maintain that Iowa Resale's arguments that "increases in the ITC Operating Companies' transmission rates resulting from the Transaction are highly likely and perhaps inevitable," and that the appropriate remedy is withdrawing approval of the ITC Operating Companies base ROE adders is purely speculative. Applicants argue that the current proceeding is not the place to challenge the current rates, ROE incentives, or capital structures of the ITC Operating Companies. Applicants reason that any concerns regarding such matters may only be addressed in an FPA section 206 proceeding, not in this proceeding under FPA section 203. Likewise, Applicants maintain that the conditions which Alliant Energy proposes would require the ITC Operating Companies to provide information about their system operations, projected revenue requirements, and forecasted transmission expansion plans, and other matters that go far beyond what their respective formula rate tariffs and formula rate implementation protocols require. Applicants assert that issues regarding inputs into the ITC Operating Companies' respective formula rates must be raised in accordance with their relevant Commission-authorized formula rate protocols, not in this docket.⁷⁵

(b) **ROE Adder for Independence and Capital Structure**

76. Applicants maintain that the assertions regarding the continuing independence of the ITC Operating Companies have no place in this proceeding, as they are unrelated to the Commission's public interest analysis under section 203 of the FPA. Applicants argue that the upstream change in ownership of ITC Holdings resulting from the Proposed Transaction will not affect the independence of the ITC Operating Companies. Applicants state that neither Fortis Inc. nor any of its U.S. utility subsidiaries is a market participant in either MISO or SPP. Further, Applicants state that neither Finn nor any of its affiliates is a market participant in either MISO or SPP, and contend that protestors' assertions about Finn are factually inaccurate. Applicants assert that after consummation of the Proposed Transaction, the ITC Operating Companies will continue to be independent, transmission-only companies.

(c) **Financial Disclosure**

77. Applicants state that certain protestors make broad, speculative, and unsubstantiated assertions about the unavailability of data regarding the ITC Operating Companies' operations, and then request related conditions on the Commission's

⁷⁵ *Id.* at 7-8.

authorization of the Proposed Transaction. Applicants argue that Alliant Energy's lists of "conditions" relate to similar issues that Alliant Energy raised in the regional proceeding that produced the formula rate implementation protocols in Attachment O of the MISO Tariff that apply to each of the ITC Operating Companies in MISO. Applicants add that ITC Transmission, Michigan Electric, and ITC Midwest comply fully with the information sharing and exchange procedures as stated in the formula rate implementation protocols. Applicants argue that Alliant Energy also fails to acknowledge the consultation required, analysis of benefits undertaken, opportunities for input on proposed projects, and consideration of transmission and non-transmission solutions for congested flowgates that are available through the MISO Transmission Expansion Planning (MTEP) process. Applicants state that the ITC Operating Companies in MISO submit all of their projects to the MTEP process, which thus is a further source of information about, and provides transparency regarding, new ITC Holdings' transmission projects in MISO.⁷⁶

78. Applicants state that, beyond the rate-related collateral attack on the MISO Tariff Attachment O protocols, the proposed conditions do not relate at all to any of the standards the Commission relies upon to evaluate transactions under the Merger Policy Statement and are thus beyond the scope of this proceeding. Applicants add that much of the information Alliant Energy appears to be requesting is already publicly available. Applicants maintain that the ITC Operating Companies stand ready to provide assistance to any stakeholder in accessing the information available through the MTEP, through the ITC Partners in Business process, on the Open Access Same-Time Information Systems of the various ITC Operating Companies, and through the annual formula rate update postings.⁷⁷

(d) Other Issues

79. Applicants maintain that some of the other arguments made by protestors amount to attempts to re-litigate issues already decided by binding Commission orders.⁷⁸

⁷⁶ *Id.* at 10-11.

⁷⁷ *Id.* at 11.

⁷⁸ *Id.* at 8. Applicants reference protestors' requests that the Commission impose conditions as a result of the Commission's finding that ITC Midwest had been imprudent by opting out of bonus depreciation (*ITC Midwest LLC*, 154 FERC ¶ 61,188 (2016)); and that the Commission require Fortis to accept reporting and disclosure requirements, even though the Commission refused to conduct regular audits of MISO Transmission Owners

Applicants maintain that these arguments must be rejected here as inappropriate collateral attacks on those proceedings and orders. Applicants reiterate that these arguments have no relationship to the factors the Commission considers in analyzing transactions under section 203 of the FPA and are thus beyond the scope of this proceeding.⁷⁹

iv. Commission Determination

80. We find that the Proposed Transaction will not have an adverse effect on rates. In doing so, we accept Applicants' commitment, as revised in Applicants' Answer, that the ITC Operating Companies will not, at any time, seek to recover transaction-related costs in rates. We agree with Applicants that the revised hold harmless commitment, as submitted in Applicants' Answer, exceeds the requirements of the Commission's recent Hold Harmless Policy Statement, in that it precludes any recovery, at any time, of transaction related costs in the ITC Operating Companies' rates. In response to concerns over Applicants' definition of costs subject to its hold harmless commitment, we interpret transaction related costs, including transition costs, to be the same as those delineated in the Hold Harmless Policy Statement.⁸⁰

81. The Commission will be able to monitor Applicants' hold harmless commitment under its authority under section 301(c) of the FPA⁸¹ and the books and records provision of PUHCA 2005.⁸² Moreover, the commitment is fully enforceable based on the Commission's authority under section 203 of the FPA.

82. We agree 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. Thus, we dismiss these arguments as outside the scope of this proceeding.

or require MISO Transmission Owners to submit five-year rate projections (*Midwest Independent Transmission System Operator, Inc.*, 143 FERC ¶ 61,149 (2013)).

⁷⁹ Applicants Answer at 8-9.

⁸⁰ Hold Harmless Policy Statement, 155 FERC ¶ 61,189 at PP 21-24. We note that the lists of costs provided in the Hold Harmless Policy Statement are not meant to be exhaustive.

⁸¹ 16 U.S.C. § 825(c).

⁸² 42 U.S.C. § 16452 (2012).

83. First, we agree with Applicants that an examination of the current rates and ROE incentives of the ITC Operating Companies is beyond the scope of the current section 203 proceeding. These issues are not part of the Commission's analysis under the Merger Policy Statement. We disagree with Iowa Resale and Iowa Advocate that, based on the information provided in this proceeding, the Commission should review the ITC Operating Companies' capital structure in this proceeding or condition the approval of the merger on initiation of an FPA section 206 investigation to determine whether the ITC Operating Companies' post-merger capital structure continues to be just and reasonable. Importantly, protestors have not demonstrated that the Proposed Transaction (specifically, a change in upstream ownership of ITC Holdings) itself will have any adverse impact on jurisdictional rates of the ITC Operating Companies. We also agree that any party wishing to challenge the current rates of the ITC Operating Companies may do so in a proceeding under FPA section 206.

84. Second, we find that the conditions that Alliant Energy requests the Commission to impose on Applicants are beyond the scope of the current proceeding. We note that any party wishing to raise issues regarding 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.

85. Third, we find that the concerns of Consumers Energy and Iowa Advocate regarding Michigan Electric opting out of using bonus depreciation in the calculation of its Federal income tax expense are beyond the scope of our analysis under the Merger Policy Statement and section 203 of the FPA. As we state above, the Proposed Transaction involves only a change in the upstream ownership of ITC Holdings and does not affect the rates of the ITC Operating Companies. We likewise note that any party wishing to challenge the current rates, including tax expense, of the ITC Operating Companies may do so by filing, as appropriate, a formal challenge pursuant to the relevant company's formula rate protocols or a complaint under FPA section 206.⁸³ Therefore, we decline to condition our authorization for the Proposed Transaction on Michigan Electric agreeing to take bonus depreciation for 2015 and as long as such tax treatment is available.

⁸³ See, e.g., *ITC Midwest LLC*, 154 FERC ¶ 61,188, *order on reh'g*, 115 FERC ¶ 61,247 (2016); *Mich. Elec. Transmission Co., LLC*, 156 FERC ¶ 61,026 (2016).

c. **Effect on Regulation**

i. **Applicants' Analysis**

86. Applicants argue that the Proposed Transaction will not have an adverse effect on regulation. Applicants maintain that the Proposed Transaction will not diminish the Commission's regulatory authority, create a regulatory gap or shift regulatory authority between the Commission and any state commission. The ITC Operating Companies are, and after the Proposed Transaction is consummated will continue to be, public utilities subject to the Commission's jurisdiction under the FPA, and the Commission will continue to regulate the ITC Operating Companies' rates, terms, and conditions of transmission service. Similarly, the states in which the ITC Operating Companies operate will continue to have the same regulatory jurisdiction over the ITC Operating Companies with respect to siting, construction and other matters as they have today.⁸⁴

87. Applicants state that the Proposed Transaction is subject to the approval (or disclaimer of jurisdiction or similar action) of the following states: Wisconsin, Illinois, Oklahoma, Kansas, and Missouri. Fortis and ITC Holdings filed a Notice of Intended Case Filing with the Missouri Public Service Commission on February 25, 2016. Accordingly, Applicants maintain that the Proposed Transaction will not impair the Commission's jurisdiction or that of any state public utility commission.⁸⁵

ii. **Commission Determination**

88. The Commission's review of a transaction's effect on regulation focuses on ensuring that it does not result in a regulatory gap.⁸⁶ 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.⁸⁷

⁸⁴ Application at 39-40

⁸⁵ *Id.* at 40.

⁸⁶ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

⁸⁷ *Id.*

89. We find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. Both before and after the Proposed Transaction is consummated, the ITC Operating Companies will continue to be public utilities subject to the Commission's jurisdiction under the FPA, and the Commission will continue to regulate the ITC Operating Companies' rates, terms, and conditions of transmission service. Similarly, the states in which the ITC Operating Companies operate will continue to have the same regulatory jurisdiction over the ITC Operating Companies as they have today.⁸⁸ Finally, 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.

d. Cross-subsidization

i. Applicants' Analysis

90. Applicants state that, based on facts and circumstances known to them or that are reasonably foreseeable, the Proposed Transaction will not result in, at the time of the Proposed Transaction or in the future, any cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company, including: (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 provides 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 services agreements subject to review under sections 205 and 206 of the FPA.

ii. Commission Determination

91. 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

⁸⁸ Applicants state that the Proposed Transaction is subject to approval (or disclaimer of jurisdiction or similar action) in Wisconsin, Illinois, Oklahoma, Kansas, and Missouri).

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.

3. Accounting Analysis

a. Applicants' Analysis

92. Applicants propose to account for the Proposed Transaction using the purchase method of accounting. Applicants represent that the ITC Operating Companies are subject to the Commission's Uniform System of Accounts and that, after the Proposed Transaction is consummated, these entities will continue to maintain their books and records in accordance with the Uniform System of Accounts.⁸⁹ In addition, Applicants state that the books and records of ITC Holdings and the Operating Companies will not be adjusted in any way as a result of the Proposed Transaction. Lastly, ITC Holdings represents that it has established procedures and controls to ensure transaction costs are recorded at the parent company and are not included in the books and records of the ITC Operating Companies.⁹⁰

b. Commission Determination

93. Since the Proposed Transaction is occurring at the parent company level and ITC Holdings represents that it has established procedures and controls to ensure transaction costs are recorded at the parent company and are not included in the books and records of the ITC Operating Companies, we do not expect that the Proposed Transaction will impact the books and records of the ITC Operating Companies. However, in the event the ITC Operating Companies' books are affected by the Proposed Transaction, ITC Operating Companies must file their proposed accounting with the Commission.

4. Other Considerations

94. 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. 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

⁸⁹ Application at 49.

⁹⁰ *Id.* at 38.

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.

95. 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 the 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 that statute.

96. 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.⁹¹ 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) 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 not pending or may come before the Commission.

⁹¹ *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). *See* 18 C.F.R. § 35.42 (2016).

(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.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.