

143 FERC ¶ 61,256
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

ITC Holdings Corp.
Entergy Corporation

Docket Nos. EC12-145-000
EL12-107-000

ORDER APPROVING MERGER AND ACQUISITION AND DISPOSITION OF
JURISDICTIONAL FACILITIES, AND GRANTING PETITION FOR
DECLARATORY ORDER

(Issued June 20, 2013)

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Appendix A: List of Motions to Intervene and Notices of Intervention

Appendix B: List of Motions, Comments and Protests

Appendix C: List of Answers and Other Responsive Pleadings

1. On September 24, 2012, pursuant to sections 203(a)(1), 203(a)(2) and 205 of the Federal Power Act (FPA),¹ and Parts 33 and 35 of the regulations of the Federal Energy Regulatory Commission (Commission),² ITC Holdings Corp. (ITC Holdings) and certain of its subsidiaries³ (together, the ITC Applicants), and Entergy Corporation (Entergy) and certain of its subsidiaries⁴ (together, the Entergy Applicants), (collectively, Applicants), submitted a Joint Application for Authorization of Acquisition and Disposition of Jurisdictional Transmission Facilities, Approval of Transmission Service Formula Rate and Certain Jurisdictional Agreements, and Petition for Declaratory Order on Application of Section 305(a) of the Federal Power Act (Application).⁵

¹ 16 U.S.C. §§ 824b(a)(1), 824b(a)(2), and 824d (2006).

² 18 C.F.R. Parts 33 and 35 (2012).

³ ITC Midsouth LLC (ITC Midsouth).

⁴ Entergy Arkansas, Inc. (Entergy Arkansas), Entergy Gulf States Louisiana, L.L.C. (Entergy Gulf States Louisiana), Entergy Louisiana, LLC (Entergy Louisiana), Entergy Mississippi, Inc. (Entergy Mississippi), Entergy New Orleans, Inc. (Entergy New Orleans), and Entergy Texas, Inc. (Entergy Texas) (collectively, Entergy Operating Companies), and Mid South TransCo LLC (Entergy Mid South).

⁵ Joint Application for Authorization of Acquisition and Disposition of Jurisdictional Transmission Facilities, Approval of Transmission Service Formula Rate and Certain Jurisdictional Agreements, and Petition for Declaratory Order on Application of Section 305(a) of the Federal Power Act, Docket Nos. EC12-145-000, ER12-2681-000, and EL12-107-000 (filed Sept. 24, 2012). On December 3, 2012, Applicants filed corrections to certain statements in the Application and accompanying testimony. Errata, Docket Nos. EC12-145-000, ER12-2681-000, and EL12-107-000 (filed Dec. 3, 2012) (Errata to Application).

2. In the Application, Applicants request all necessary authorizations and approvals to enable the merger of the jurisdictional assets of the Entergy Operating Companies into ITC Midsouth, a newly-created subsidiary of ITC Holdings (Proposed Transaction). Although the Proposed Transaction will be accomplished through several steps, generally speaking the jurisdictional transmission assets of the Entergy Operating Companies will be separated into six new, “wires only” Entergy public utility operating subsidiaries that will ultimately become four new operating subsidiaries of ITC Holdings through a merger of Entergy Mid South, a new Entergy subsidiary that will hold the “wires only” operating companies, into ITC Midsouth.⁶ The Entergy Applicants also request that the Commission confirm that FPA section 305(a)⁷ is not a bar to any steps or sub-steps of the Proposed Transaction.⁸

3. In addition to the authorizations requested pursuant to FPA section 203 for the Proposed Transaction, the ITC Applicants seek approval pursuant to FPA section 205 of a proposed formula rate for the four new operating companies that will hold the Entergy transmission facilities after the Proposed Transaction closes. Applicants also request approval of various rate schedules and agreements. Applicants explain that the proposed rate construct is integral to the Proposed Transaction, and that the proposed formula rates, rate schedules and other jurisdictional agreements included in the Application will provide the Commission with a “complete picture” of the Proposed Transaction.⁹

4. As explained in further detail below, this order addresses Applicants’ request for approval of the Proposed Transaction under FPA section 203 and petition for a declaratory order that FPA section 305(a) does not bar any aspect of the Proposed Transaction. The Commission has reviewed the Proposed Transaction under the Commission’s Merger Policy Statement¹⁰ and approves it as consistent with the public

⁶ Application at 2.

⁷ 16 U.S.C. § 825d(a).

⁸ Application at 76.

⁹ Application at 2. According to Applicants, Midwest Independent Transmission System Operator, Inc. (MISO) joins the Application as “Administrator of the MISO Tariff and as a signatory to the Appendix I Agreement submitted [with the Application] for acceptance, but otherwise takes no position on the substance of [the Application].” Application at 3. Effective April 26, 2013, MISO changed its name from “Midwest Independent Transmission System Operator, Inc.” to “Midcontinent Independent System Operator, Inc.”

¹⁰ *See Inquiry Concerning the Commission’s Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996), (continued...)

interest. Further, the Commission confirms that the Proposed Transaction will not violate FPA section 305(a).

I. Background

A. Entergy's Integration into MISO and the Proposed Transaction

5. In April 2011, Entergy announced its intention to join MISO as a Transmission Owner effective December 2013, subject to receiving the necessary regulatory approvals.¹¹ Eight months later, while MISO was taking preparatory steps towards integrating Entergy into MISO, Entergy and ITC Holdings announced their proposal to separate Entergy's jurisdictional transmission facilities into six separate "wires-only" transmission subsidiaries and merge the parent of those transmission subsidiaries with a new subsidiary holding company of ITC Holdings.¹² In order to meet both of these goals, the proposed integration of Entergy into MISO and the transfer of Entergy's transmission facilities to ITC Holdings through the proposed merger, Entergy, ITC Holdings, and MISO devised a "phased approach."¹³

6. In the first phase, Entergy, ITC Holdings and MISO made several filings at the Commission to effectuate the transfer of Entergy's transmission assets. In the Application, Applicants request approval under FPA section 203 of the Proposed Transaction (Docket No. EC12-145-000); request approval under FPA section 205 of the transmission formula rate to be charged by the new ITC operating companies that will own and operate the Entergy transmission facilities after the Proposed Transaction closes and approval of certain rate schedules and jurisdictional agreements (Docket No. ER12-

reconsideration denied, Order No. 592-A, 79 FERC ¶ 61,321 (1997) (Merger Policy Statement). *See also FPA Section 203 Supplemental Policy Statement*, FERC Stats. & Regs. ¶ 31,253 (2007) (Supplemental Policy Statement). *See also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000), *order 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).

¹¹ Filing of *Pro Forma* Tariff Sheets Including Proposed Module B-1 to MISO's Open Access Transmission, Entergy and Operating Reserves Markets Tariff, Transmittal Letter at 2, Docket No. ER12-2682-000 (filed Sept. 24, 2012) (Module B-1 Filing).

¹² *Id.*

¹³ *Id.*

2681-000); and petition the Commission for a declaratory order regarding the application of FPA section 305(a) to the Proposed Transaction (Docket No. EL12-107-000). In the Module B-1 Filing, MISO proposes the terms and conditions pursuant to which MISO would provide transmission service over the Entergy transmission facilities immediately after closing of the proposed merger until Entergy's full integration into MISO (Docket No. ER12-2682-000). In the TPZ Filing, Entergy Services and MISO request approval of the formula transmission rates that the Entergy Operating Companies would charge as members of MISO, and the four transmission pricing zones in which those rates would be charged.¹⁴ Applicants also separately filed several requests for authorizations under FPA section 204.¹⁵ Other related filings include a filing by the new ITC operating companies seeking approval for the accounting and ratemaking treatment of certain pension and post-retirement welfare plan costs (the OPEB Filing);¹⁶ a filing by Entergy Services, Inc. (Entergy Services) to terminate Service Schedule MSS-2 of the Entergy System Agreement;¹⁷ and a filing by Entergy Services to provide notice of cancellation of Entergy's Open Access Transmission Tariff (OATT) and establish a tariff for the provision of ancillary services.¹⁸

7. In addition to this order, the Commission is issuing concurrently three other orders addressing filings that relate to Entergy's integration into MISO and the Proposed

¹⁴ The TPZ Filing refers to Entergy Services, Inc., Docket No. ER13-948-000 (filed Feb. 15, 2013).

¹⁵ 16 U.S.C. § 824c (2006). The Commission approved these requests on May 16, 2013. See *ITC Arkansas LLC*, 143 FERC ¶ 61,123 (2013); *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,124 (2013); *Transmission Company Arkansas, LLC*, 143 FERC ¶ 61,125 (2013).

¹⁶ Accounting and Ratemaking Treatment for Pension and OPEB Costs, Docket No. ER13-782-000 (filed Jan. 18, 2013).

¹⁷ Notice of Cancellation of Service Schedule MSS-2 under the Entergy System Agreement upon Consummation of Spin-Merger of Entergy Operating Companies' Transmission Business to ITC, Docket No. ER12-2693-000 (filed Sept. 26, 2012). Service Schedule MSS-2 concerns transmission equalization under the Entergy System Agreement (System Agreement). The System Agreement is a Commission-approved tariff that currently requires the Entergy Operating Companies' generation and transmission facilities to be operated as a single integrated operating system.

¹⁸ Entergy Services, Inc. Ancillary Services Tariff and Notice of Cancellation, Docket No. ER12-2683-000 (filed Sept. 24, 2012). *Entergy Services, Inc.*, Docket No. ER12-2683-000 (Jun. 20, 2013) (delegated letter order).

Transaction. This order addresses Applicants' request for approval of the Proposed Transaction under FPA section 203, and the Entergy Applicants' petition for a declaratory order that the Proposed Transaction does not violate FPA section 305(a). The other orders address:

(1) Applicants' requests for approval under FPA section 205 of the formula rates to be charged by the new ITC operating companies and certain rate schedules and jurisdictional agreements filed as part of the Application; the TPZ Filing; and the OPEB Filing;

(2) the Module B-1 Filing; and

(3) the filing to cancel Service Schedule MSS-2 of the System Agreement.

B. Description of Applicants

1. ITC Companies

a. ITC Holdings

8. According to Applicants, ITC Holdings is a public utility holding company whose material assets currently consist primarily of 100 percent of the common stock of International Transmission Company, which does business as *ITC Transmission*; all of the membership interests in Michigan Electric Transmission Company, LLC (Michigan Electric Transmission); all of the membership interests in ITC Midwest LLC (ITC Midwest); and all of the membership interests in ITC Great Plains, LLC (ITC Great Plains) (collectively, the Existing ITC Operating Companies).¹⁹ The Existing ITC Operating Companies are independent, stand-alone transmission companies engaged in the development, ownership, and operation of facilities for the transmission of electric energy in interstate commerce. Applicants state that ITC Holdings invests "exclusively in the electric power transmission grid to improve electric reliability, facilitate access to renewable and other generation, improve access to power markets, and reduce the overall cost of delivered electric power."²⁰

9. Applicants explain that transmission service over facilities developed and owned by International Transmission Company, Michigan Electric Transmission and ITC Midwest is provided by MISO pursuant to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff). International Transmission Company, Michigan Electric Transmission, and ITC Midwest are Transmission Owner

¹⁹ Application at 9.

²⁰ *Id.*

members of MISO. Transmission service over facilities developed and owned by ITC Great Plains is provided by the Southwest Power Pool, Inc. (SPP) pursuant to its open access transmission tariff. ITC Great Plains is a Transmission Owner member of SPP. Applicants state that, together, the Existing ITC Operating Companies own approximately 15,000 miles of transmission and provide transmission service in six states: Michigan, Iowa, Illinois, Minnesota, Kansas, and Oklahoma; the combined service areas of the companies total almost 90,000 square miles.

b. ITC Midsouth

10. Applicants state that ITC Midsouth was formed in December 2011 as a wholly-owned subsidiary of ITC Holdings in order to effectuate the Proposed Transaction. Applicants state that ITC Midsouth exists to be merged into Entergy Mid South, a wholly-owned subsidiary of Entergy formed to hold the transmission businesses of the Entergy Operating Companies. Through the merger of ITC Midsouth into Entergy Mid South, the transmission assets of the Entergy Operating Companies will be moved under ITC Holdings ownership. Entergy Mid South will be the surviving legal entity after the merger, but will be renamed ITC Midsouth.

c. New ITC Operating Companies

11. Applicants state that the New ITC Operating Companies are the four new operating companies under ITC Midsouth that will hold the Entergy transmission assets after closing of the Proposed Transaction. As Applicants explain, as part of the Proposed Transaction, the six “wires only” Entergy operating companies will become the four New ITC Operating Companies.²¹

2. Entergy Companies

a. Entergy

12. Applicants state that Entergy is a public utility holding company with six vertically integrated public utility subsidiary companies, the Entergy Operating Companies. Entergy also owns a centralized service company, Entergy Services, Inc. (Entergy Services), which provides support services for the Entergy Operating Companies and the non-utility subsidiary companies of Entergy.

²¹ *Id.* at 2.

b. Entergy Mid South

13. Applicants state that Entergy Mid South is a wholly-owned subsidiary of Entergy formed in December 2011 to hold the transmission businesses of the Entergy Operating Companies. Applicants explain that through the Proposed Transaction, Entergy Mid South will be merged with ITC Midsouth, with Entergy Mid South as the surviving entity under ITC Holdings ownership. As noted above, following the merger, Entergy Mid South will be renamed ITC Midsouth.²²

c. Entergy Operating Companies

14. Applicants state that the Entergy Operating Companies are vertically integrated electric utilities that provide retail electric power service in Arkansas, Louisiana (including service in the City of New Orleans), Mississippi, and Texas. The Entergy Operating Companies own approximately 15,800 miles of transmission lines and provide transmission service to an area of almost 114,000 square miles.

15. Applicants state that, although each individual Entergy Operating Company owns its own generating and transmission assets, the Entergy system is currently planned and operated as a single, integrated electric system pursuant to the System Agreement. As noted earlier, the System Agreement is a Commission-approved tariff that currently requires the Entergy Operating Companies' generation and transmission facilities to be operated as a single integrated operating system. The System Agreement allocates among the participating Entergy Operating Companies the benefits and costs of coordinated operation of those generation and transmission facilities.²³

16. Applicants state that transmission service over facilities owned by the Entergy Operating Companies is provided under the Entergy OATT. At the time the Application was filed, SPP served as the Independent Coordinator of Transmission (ICT) for Entergy. As ICT for Entergy, SPP independently administered Entergy's OATT, conducted long-term transmission planning, was the Reliability Coordinator for the Entergy transmission system, and oversaw Entergy's operation of "an enhanced and weekly procurement process for obtaining competitive energy supply."²⁴

²² Applicants state that any references to ITC Midsouth in the Application are to the ITC Holdings entity formed prior to the Proposed Transaction. *Id.* at 10.

²³ *Id.* at 11.

²⁴ *Id.* Applicants state that the Commission accepted Entergy's proposal for an ICT in April 2006. *Id.*

17. As Applicants explain, the Entergy ICT agreement with SPP was scheduled to terminate in November 2012. In August of 2012, Entergy proposed that MISO take over the ICT role and filed for approval to transfer from SPP to MISO as the provider of ICT services, effective December 1, 2012. On October 2, 2012, in *Entergy Arkansas, Inc.*,²⁵ the Commission accepted Entergy's proposal to extend the ICT agreement for an interim period and to transfer ICT services from SPP to MISO. MISO assumed the role of ICT for Entergy on December 1, 2012.

18. Applicants also note that on April 25, 2011, Entergy announced that it intended to join MISO as a Transmission Owner member in December 2013, subject to receiving necessary regulatory approvals. On November 28, 2011, MISO and the MISO Transmission Owners proposed amendments to the MISO Tariff to provide for a five-year transition period for the integration of Entergy into the MISO transmission planning and cost allocation process. The Commission conditionally accepted those tariff amendments on April 19, 2012.²⁶

d. Entergy Wires Subs

19. As explained in further detail below, Applicants state that, as part of the Proposed Transaction, each Entergy Operating Company will create a corresponding operating company subsidiary and transfer its transmission assets to that newly created, transmission-only operating company subsidiary. These six new transmission companies are referred to as the Entergy Wires Subs.²⁷

C. The Proposed Transaction

1. Overview of the Proposed Transaction

20. Applicants explain that the Proposed Transaction will take place through several steps.²⁸ As an overview, Applicants state that the Proposed Transaction:

²⁵ 141 FERC ¶ 61,011 (2012).

²⁶ *Midwest Indep. Sys. Operator, Inc. and Transmission Owners of the Midwest Indep. Transmission Sys. Operator, Inc.*, 139 FERC ¶ 61,056, *order on reh'g and compliance*, 141 FERC ¶ 61,128 (2012).

²⁷ In the Application and testimony, Applicants sometimes refer to the Entergy Wires Subs as the Mid South Operating Companies.

²⁸ Applicants state that the details of the Proposed Transaction are set forth in the Separation Agreement, the Merger Agreement, and the Employee Matters Agreement. Application at 13. These agreements are included as Exhibit Nos. I-1 and I-1A; I-2 and I-
(continued...)

will consist of the separation of the transmission assets of the Entergy Operating Companies into separate transmission companies that will be owned by the new Entergy intermediate holding company, [Entergy Mid South], which will then be distributed to Entergy's shareholders in a spin-off or split-off and subsequently merged with the new [ITC Holdings] intermediate public utility holding company, ITC Midsouth.²⁹

Applicants state that Entergy Mid South will be the surviving entity in the merger with ITC Midsouth under ITC Holdings ownership, but that it will be renamed ITC Midsouth. After the Proposed Transaction closes, Entergy will continue to own the Entergy Operating Companies which will continue to possess their electric generation and distribution assets.

21. Applicants explain that the transaction structure is designed to ensure that the Proposed Transaction will be tax free. Although Applicants note that specific steps in the Proposed Transaction may be modified in response to any requirements imposed by the Internal Revenue Service (IRS) during the course of obtaining a Private Letter Ruling to ensure that the distribution and merger are tax free,³⁰ Applicants describe the steps of the Proposed Transaction as follows. First, Applicants state that Entergy has already formed Entergy Mid South, the new subsidiary that will become a holding company for the

2A; and I-3 to the Application, respectively. Applicants explain that the Separation Agreement, which is among Entergy, ITC Holdings, the Entergy Operating Companies, Entergy Mid South and Entergy Services, separates the transmission assets and liabilities from the Entergy Operating Companies and places them with the Entergy Wires Subs held by Entergy Mid South. Application at 13. Applicants also explain that pursuant to the Merger Agreement the common units of Entergy Mid South will be distributed to Entergy shareholders in a spin-off or split-off, Entergy Mid South will be merged with ITC Midsouth, and common units of Entergy Mid South will be converted to shares of ITC Holdings common stock. *Id.* Finally, Applicants explain that the Employee Matters Agreement, which is among ITC Holdings, Entergy Mid South and Entergy Services, allocates among the parties to the agreement "certain assets, liabilities and responsibilities regarding employee matters, benefits and programs" and sets forth the process by which it will be determined which employees of the Entergy Operating Companies and Entergy Services will become employees of ITC Holdings. *Id.* at 14.

²⁹ *Id.* at 12.

³⁰ *Id.* at 12-13. As explained in further detail below, Applicants have structured the Proposed Transaction as a Reverse Morris Trust in order to qualify for tax free treatment.

transmission businesses that will be transferred to ITC Holdings.³¹ Each Entergy Operating Company has also created a corresponding “wires sub” to which each Entergy Operating Company will transfer its transmission assets at net book value (i.e., the Entergy Wires Subs).³²

22. Applicants explain that the transmission assets of the Entergy Operating Companies will be “separated” into the Entergy Wires Subs.³³ As a result of the separation, each Entergy Operating Company’s transmission assets³⁴ and liabilities will be separated into a corresponding Entergy Wires Sub.³⁵ Next, the Entergy Wires Subs will be transferred internally within the Entergy family and become subsidiaries of Entergy Mid South. Entergy Mid South will own the Entergy Wires Subs that have taken on the transmission assets and liabilities of the Entergy Operating Companies so that the collective transmission businesses of the Entergy Operating Companies will be consolidated under Entergy Mid South through the Entergy Wires Subs.³⁶

23. Applicants state that the Entergy Wires Subs will collectively raise approximately \$1.2 billion of debt through an unsecured 366-day bridge facility,³⁷ and Entergy will

³¹ Application, Exhibit No. ETR-100: Direct Testimony of Theodore Bunting, Jr. on Behalf of Entergy Corporation and its Subsidiaries at 24:9-11 (Bunting Test.).

³² *Id.* at 24:12-15.

³³ Application at 12.

³⁴ According to Applicants, the transmission assets to be separated include “transmission lines (69 kV and above) and related equipment, transmission substation facilities, transmission/distribution common use facilities, transmission land rights, transmission control facilities, and transmission control systems, the cost of which are currently being recovered under Entergy’s OATT, as well as real property and leased premises, and other equipment, tools, vehicles and machines that are not transmission assets.” *Id.* at 13. The Separation Agreement includes additional details regarding the transmission assets. *See* Application, Exhibit Nos. I-2: Separation Agreement, and I-2A: Amendment No. 1 to the Separation Agreement.

³⁵ Application, Exhibit No. ETR-100: Bunting Test. at 4:21-23 to 5:1-12.

³⁶ *Id.* at 24:18-20. *See also* Application at 14. Applicants note that each of the Entergy Operating Companies will also each change their corporate structure to a new limited liability corporation. Application, Exhibit No. ETR-100: Bunting Test. at 24:14-15. *See also* Application at 14.

³⁷ Applicants state that the Entergy Wires Subs will “seek authorization for this
(continued...) ”

issue approximately \$575 million of exchangeable debt (Entergy Debt).³⁸ Applicants state that the Entergy Debt will ultimately be exchanged for Entergy Mid South long-term notes to be issued by Entergy Mid South, so that all of the new debt associated with Entergy's transmission business will be obligations of Entergy Mid South and the Entergy Wires Subs.³⁹

24. Next, Entergy will distribute the ownership interests it holds in Entergy Mid South to Entergy's shareholders in a spin-off or split-off, or a combination of a spin-off and split-off.⁴⁰ After Entergy Mid South is spun-off or split-off, Entergy Mid South will be merged with ITC Mid South, and Entergy shareholders will exchange their ownership interests in Entergy Mid South for ITC Holdings common stock.⁴¹ Entergy Mid South will be the surviving entity under ITC Holdings ownership, but, as noted above, it will be renamed ITC Midsouth.

borrowing under Section 204 of the [FPA],” and that the filing will demonstrate compliance with the conditions set forth in *Westar Energy, Inc.*, 102 FERC ¶ 61,186, *order on reh'g*, 104 FERC ¶ 61,018 (2003). Application at n.14. As noted above, Applicants filed three requests under FPA section 204 on October 31, 2012 in Docket

Nos. ES13-5-000, ES13-6-000, and ES11-40-002, and the Commission approved those requests. *See* n.15, *supra*.

³⁸ Application at 15. *See also* Application, Exhibit No. ITC-100: Bunting Test. at 26:21-25 to 27:1-9.

³⁹ Application at 15. *See also* Application, Exhibit No. ETR-100: Bunting Test. at 24-25. Applicants explain that the debt proceeds received by the Entergy Operating Companies to compensate for the transfer of their transmission assets will be used to retire their debt in proportion to each Entergy Operating Company's transmission assets, so that the current capital structure of each Entergy Operating Company will be approximately the same after the Proposed Transaction is completed. Application, Exhibit No. ETR-100: Bunting Test. at 25.

⁴⁰ Application at 15. In a spin-off transaction, the ownership interests in Entergy Mid South would be distributed *pro rata* to Entergy's shareholders. In a split-off transaction, Entergy's shareholders would have the option to exchange their Entergy shares for ownership interests in Entergy Mid South.

⁴¹ Application, Exhibit No. ETR-100: Bunting Test. at 25:11-14. *See also* Application at 15.

25. Applicants explain that after the Proposed Transaction is consummated, Entergy will continue to own the Entergy Operating Companies, which will continue to possess their electric generation and distribution assets,⁴² but that the Entergy Operating Companies will no longer have ownership or control of their transmission assets.⁴³ Further, as a result of the Proposed Transaction, Entergy shareholders will own 50.1 percent of the common stock of ITC Holdings at closing, and the former Entergy transmission businesses held by Entergy Mid South, through the Entergy Wires Subs, will be held by ITC Holdings.⁴⁴

26. Applicants state that the Proposed Transaction is structured as a Reverse Morris Trust, and is designed to ensure that the Proposed Transaction will be tax free.⁴⁵ According to Applicants, under a Reverse Morris Trust, a business unit or division of a company is spun off to the company's shareholders and then merged with another company. Applicants state that IRS requirements mandate that after the spin-off and merger, the shareholders of the company spinning off its assets, in this case Entergy's shareholders, must own over 50 percent of the combined company, in this case ITC Holdings and Entergy Mid South, in order for the transaction to be tax free. Applicants contend that the tax free nature of the Proposed Transaction provides a "significant benefit" to customers, and that if the Proposed Transaction "otherwise involved a tax expense, that expense would be added to the tax basis of the transmission assets that will be transferred, and, ultimately, would increase charges for transmission service."⁴⁶

27. Applicants observe that a Reverse Morris Trust is practical when the business unit or division to be spun off and the company with which it will be merged have comparable market equity values. Applicants state that a Reverse Morris Trust is "ideally suited" for the Proposed Transaction because ITC Holdings and Entergy Mid South will have comparable market equity values.⁴⁷ Specifically, Applicants state that prior to merging Entergy Mid South with ITC Midsouth, ITC Holdings will effectuate a recapitalization in an amount of up to \$700 million, which will take the form of a one-time special dividend,

⁴² Application at 12.

⁴³ Application, Exhibit No. ETR-100: Bunting Test. at 5:2-4.

⁴⁴ Application at 13. *See also* Application, Exhibit No. ETR-100: Bunting Test. at 25:15-18.

⁴⁵ Application at 15.

⁴⁶ *Id.*

⁴⁷ *Id.* at 16.

a share repurchase, or a combination of the two (ITC Recapitalization).⁴⁸ Applicants state that the purpose of the ITC Recapitalization will be to align ITC Holding's equity value with Entergy Mid South's in order to meet the requirements of a Reverse Morris Trust.⁴⁹ Upon completion of the Proposed Transaction, the ITC corporate family will assume up to \$1.775 billion of the debt held by Entergy Mid South and the Entergy Wires Subs. Of the \$1.775 billion in debt to be assumed, approximately \$1.2 billion will be in the form of a 366-day bridge facility. ITC Holdings expects to refinance this bridge facility with longer-term debt at each of the New ITC Operating Companies. Applicants state that this refinancing will provide permanent financing and will maintain the capital structure of the New ITC Operating Companies at the requested 60 percent equity and 40 percent debt.⁵⁰

2. Proposed Internal Reorganizations

28. Applicants state that as part of the transfer of Entergy Mid South and the Entergy Wires Subs to ITC Holdings, two internal reorganizations will occur.

29. The first internal reorganization involves Entergy. Applicants explain that Entergy intends to engage in a reorganization that will result in all of the Entergy Operating Companies and their supporting affiliates being owned by a single intermediate holding company (HoldCo), which will be a first-tier subsidiary of Entergy.⁵¹ Applicants state that the supporting affiliates include System Energy Resources, Inc. (SERI), a public utility and an Arkansas corporation that currently is a wholly-owned direct subsidiary of Entergy. SERI owns and leases an aggregate 90 percent undivided interest in Unit No. 1 of the Grand Gulf nuclear generation facility, and sells the capacity and energy from that interest to the Entergy Operating Companies pursuant to a FERC rate schedule.⁵² Applicants explain that as part of the internal reorganization, SERI will change its corporate structure to a limited liability company by merging into a newly created limited liability company, and the common membership interest of the new limited liability company will be transferred to HoldCo.

30. The second reorganization involves ITC Holdings. Specifically, ITC Holdings intends to combine the transmission businesses of Entergy Louisiana, Entergy Gulf States

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

⁵¹ Errata to Application at 2, revised 17.

⁵² *Id.*

Louisiana, and Entergy New Orleans into a single operating company: ITC Louisiana LLC (ITC Louisiana). According to Applicants, creation of ITC Louisiana aligns with the scope of the Louisiana pricing zone that will be proposed by the Entergy Applicants in a subsequent filing.⁵³ Applicants state that having “one transmission operating company in Louisiana is more efficient from a cost perspective, is consistent with how the business will be operated and allows [ITC Holdings] greater flexibility in how the business is financed going forward.”⁵⁴

31. Applicants contend that these reorganizations will “facilitate the efficient operation of the Entergy and ITC holding company systems after the [Proposed Transaction] without any adverse public interest effects, and should therefore be approved as consistent with the public interest.”⁵⁵ Applicants request that the Commission explicitly approve these aspects of the Proposed Transaction.

3. Exchange Trust Election

32. Applicants state that, under the terms of the Merger Agreement and as part of the Proposed Transaction, Entergy may make an exchange trust election. Applicants explain that, at least 30 days prior to the closing of the Proposed Transaction, Entergy may elect to retain and subsequently transfer to an irrevocable trust (the Exchange Trust) the number of limited liability company membership common units in Entergy Mid South that would convert in the Proposed Transaction to up to 4.99 percent of the total number of shares of ITC Holdings common stock outstanding immediately following consummation of the Proposed Transaction.⁵⁶ Under the exchange trust election, upon

⁵³ Application, Exhibit No. ITC-200: Prepared Direct Testimony of Cameron M. Bready on Behalf of ITC Holdings Corp. at 30:14-15 (Bready Test.). Applicants explain that the transmission formula rate proposed as part of the Application will be charged in four pricing zones under the MISO Tariff, one each for Arkansas, Louisiana, Mississippi, and Texas. According to Applicants, “the establishment of these four pricing zones will be proposed by Entergy in its forthcoming filing related to Entergy’s application to join MISO.” Application at 49. *See also* Application, Exhibit No. ETR-200: Direct Testimony of Jay A. Lewis on Behalf of Entergy Corporation and its Subsidiaries (Lewis Test.). These four transmission pricing zones, including the Louisiana transmission pricing zone, were proposed in the TPZ Filing.

⁵⁴ Application, Exhibit No. ITC-200: Bready Test. at 30:15-18.

⁵⁵ Application at 17.

⁵⁶ Application, Exhibit No. ETR-100, Bunting Test. at 33:18-23 to 34:1-3. *See also* Application at 16-17.

delivery of notice by Entergy, the trustee of the Exchange Trust would conduct an exchange offer “whereby Entergy shareholders may exchange Entergy common stock for the [ITC Holdings] common stock held by the [Exchange Trust].”⁵⁷ Applicants state that if no exchange offer occurs within six months following the distribution of Entergy Mid South common units to Entergy shareholders in connection with the Proposed Transaction, or if an exchange offer occurs but is not fully subscribed, any ITC Holdings common stock remaining in the Exchange Trust after six months would be distributed *pro rata* to Entergy shareholders.⁵⁸ Until the time of the exchange offer, the shares of ITC Holdings common stock would be held in a trust managed by an independent third-party trustee.

33. Applicants state that the Exchange Trust has been structured to address any potential Commission concerns regarding ITC Holdings’ independence as an independent transmission company.⁵⁹ Specifically, Applicants contend that Entergy will have no ability to control or influence ITC Holdings in any respect as a consequence of the trust. For example, the trustee will be obligated to vote the shares that it holds in trust in the same proportion as all other ITC Holdings’ shares are voted. Applicants explain that since Entergy will not own any ITC Holdings shares, it will have no ability to affect the way that the shares held by the trustee are voted. Applicants request that the Commission explicitly approve the Exchange Trust as consistent with the continued independence of ITC Holdings and its affiliates, such that Entergy may exercise the exchange trust election.

4. Employee Matters Agreement

34. Applicants also request Commission approval for an extension of the time period during which new ITC Holdings employees transferring from Entergy to ITC Holdings must dispose of any Entergy stock.⁶⁰ According to Applicants, ITC Holdings’ Policy on

⁵⁷ *Id.* at 34:19-23.

⁵⁸ *Id.* at 35:1-5.

⁵⁹ Application, Exhibit No. ETR-100: Bunting Test. at 35: 15-22.

⁶⁰ Application at 14. *See also* Application, Exhibit No. I-3: Employee Matters Agreement, section 4.4. The requested extension of time relates to the independence of ITC Holdings’ employees and ITC Holdings’ independence. ITC Holdings previously asked the Commission, in 2005, to confirm that it would continue to be independent of market participants after a change in ownership structure associated with an initial public offering. The Commission affirmed ITC Holdings’ continued independence, based on ITC Holdings’ “standards of conduct,” including prohibiting employees from having direct financial interests in market participants. *See ITC Holdings Corp.*, 111 FERC (continued...)

Independence prohibits all members of the company's Board of Directors and management, as well as any employees, from having "any 'direct financial interest in, or a financial conflict of interest with, any Market Participant, or an Affiliate of any Market Participant.'"⁶¹ While new employees are normally required to divest any stock held in a market participant within six months, Applicants propose to provide "employees transferring from Entergy to [ITC Holdings] with 12 months to divest their Entergy stock, as opposed to the six months provided for new employees to divest stock of market participants provided under ITC Holdings' Policy on Independence."⁶²

35. Applicants request that, in light of the "significant number of employees moving from Entergy to [ITC Holdings],"⁶³ the Commission approve this extension of the regular six-month deadline for disposal by these new ITC Holdings employees of their stock in market participants given "the unique circumstances" of the Proposed Transaction.⁶⁴

II. Notice of Filing and Responsive Pleadings

36. Notice of the Application was published in the *Federal Register*, 77 Fed. Reg. 60,417 (2012), with interventions and protests due on or before November 8, 2012. In response to a motion to extend the comment date,⁶⁵ the deadline for filing comments, protests, and interventions on the Application was subsequently extended to December 7, 2012. In response to a second request to extend the comment date,⁶⁶ the deadline for

¶ 61,149, at P 26 (2005). Section 4.4 of the Employee Matters Agreement affects this component of ITC Holdings' independence because it extends the period of time within which Entergy employees who will become employees of ITC Holdings must divest any stock they hold in Entergy.

⁶¹ Application, Exhibit No. ITC-100, Prepared Direct Testimony and Exhibits of Joseph L. Welch on behalf of ITC Holdings Corp. (Welch Test.) at 19:10-13 (quoting Application, Exhibit No. ITC-101: ITC Holdings Corp. Policy on Independence (ITC Holdings Policy on Independence) at 3). The Policy on Independence uses the Commission's definition of Market Participant found at 18 C.F.R. § 35.34(b)(2). Application, Exhibit No. ITC-100: Welch Test. at n.11.

⁶² Application at 14.

⁶³ Application, Exhibit No. ITC-100, Welch Test. at 19:16-19.

⁶⁴ Application at 14.

⁶⁵ See generally Entergy Retail Regulators Oct. 4 Motion for Extension of Comment Deadline.

⁶⁶ See generally Entergy Retail Regulators Nov. 27 Motion for Extension of
(continued...)

filing comments, protests and interventions on the Application was extended to January 22, 2013.

37. On November 20, 2012, ITC Holdings and Entergy Services submitted a filing styled as an answer that included a series of confidential workpapers and additional background information relating to the Application.⁶⁷ Notice of the amendment to the Application was published in the *Federal Register*, 77 Fed. Reg. 72,846 (2012), with interventions and protests due on or before January 22, 2013.

38. On March 22, 2013, the Commission issued an order tolling time for action on the Application under FPA section 203 until September 18, 2013.⁶⁸

39. Various parties filed motions to intervene, comments, protests, answers and other pleadings in response to the Application. The entities that filed these pleadings are listed in the appendices to this order, while summaries of the protests and substantive comments are included in the appropriate sections below.

III. Discussion of Proposed Transaction

A. Procedural Matters

40. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,⁶⁹ the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to these proceedings. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,⁷⁰ we will grant the late-filed motions to

Comment Deadline.

⁶⁷ See Answer of ITC Holdings Corp. and Entergy Services, Inc. to Motion to Direct the Filing of Additional Information or to Reject Filings, Docket Nos. EC12-145-000, ER12-2681-000, and EL12-107-000 (filed Nov. 20, 2012) (Amendment to the Application). On December 4, 2012, in response to a request from a party to this proceeding, Applicants incorporated additional confidential materials into the analysis provided in the Amendment to the Application. ITC Holdings Corp., *et al.*, Docket Nos. EC12-145-000, ER12-2681-000, and EL12-107-000 (filed Dec. 4, 2012).

⁶⁸ See *ITC Holdings, Corp.*, 142 FERC ¶ 61,217 (2013). The Commission subsequently issued an errata notice to this order which corrected the citation for the order. See *Errata Notice*, Docket Nos. EC12-145-000, ER12-2681-000, EL12-107-000 (Mar. 26, 2013).

⁶⁹ 18 C.F.R. § 385.214 (2012).

⁷⁰ 18 C.F.R. § 385.214(d) (2012).

intervene given intervenors' interests in the proceeding, the early stages of the proceeding, and the absence of undue prejudice or delay.

41. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure⁷¹ prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We will accept the answers filed in this proceeding because they have provided information that assisted us in our decision-making process.

42. Some protestors request that the Commission consolidate consideration of the Proposed Transaction with various other proceedings.⁷² In addition, some parties request that the Commission set the Proposed Transaction for hearing.⁷³ The Commission denies these requests to consolidate the proceedings in this docket with the other filings related to Entergy's integration into MISO. In general, the Commission consolidates proceedings only if a trial-type evidentiary hearing is required in the first place and there are common issues of law and fact, and thus consolidation would ultimately result in greater efficiency.⁷⁴ In this case, we conclude that consolidating these proceedings with those proceedings suggested by the parties is not appropriate because there are no issues relating to the Proposed Transaction and the petition for declaratory order that are being set for a trial-type evidentiary hearing.⁷⁵

43. Similarly, some protestors allege that Applicants have not provided sufficient information for them to evaluate the impact of the Proposed Transaction on transmission

⁷¹ 18 C.F.R. § 385.213(a)(2) (2012).

⁷² See, e.g., Joint Customers Jan. 22 Protest at 117.

⁷³ See, e.g., Texas Commission Jan. 22 Protest at 15; Louisiana Commission Jan. 22 Protest at 2.

⁷⁴ See, e.g., *Duke Energy Corp.*, 136 FERC ¶ 61,245, at P 33 (2011); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,253, at P 25 (2008); *In re: Terra-Gen Dixie Valley*, 132 FERC ¶ 61,215, at P 44, n.74 (2010).

⁷⁵ We note that, concurrently with this order, the Commission is also issuing orders on Applicants' requests pursuant to FPA section 205 in the Application, the TPZ filing, the OPEB Filing, the termination of Service Schedule MSS-2 of the System Agreement, and the Module B-1 Filing. See *ITC Holdings Corp, et al.*, 143 FERC ¶ 61,257 (2013); *Midwest Independent Transmission System Operator, Inc.*, 143 FERC ¶ 61,258 (2013); and *Entergy Arkansas, Inc., et al.*, 143 FERC ¶ 61,259 (2013).

rates.⁷⁶ We disagree with protestors. We note that Applicants provide estimates of the effects of the Proposed Transaction on rates in the Application and supplemented that information with additional analysis.⁷⁷ Applicants provide sufficient information to enable the Commission and interested parties to evaluate the impacts of the Proposed Transaction on rates. As Applicants explain, “materially all of the transmission business of each Entergy Operating Company” will be transferred as part of the merger,⁷⁸ and the Separation Agreement describes these facilities with sufficient detail.⁷⁹

B. Analysis of the Proposed Transaction under FPA Section 203

44. FPA section 203(a)(4) requires the Commission to approve a transaction if it determines that the transaction will be consistent with the public interest.⁸⁰ The Commission’s analysis of whether a transaction will be 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.⁸¹ FPA section 203(a)(4) also requires the Commission to find that the 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.”⁸² The Commission’s regulations establish verification and information requirements for applicants that seek a

⁷⁶ See, e.g., Joint Customers Nov. 5 Motion to Direct Filing of Additional Information at 2, 5-7; Joint Customers Jan. 22 Protest at 9-12; Texas Industrial Energy Consumers Jan. 22 Comments at 2; Texas Commission Jan. 22 Protest at 4.

⁷⁷ See Applicants November 20 Amendment to Application 6-10 and accompanying workpapers.

⁷⁸ Applicants November 20 Amendment to Application at 3-4.

⁷⁹ See Application, Exhibit No. I-2: Separation Agreement, section III: Transfer of the Transmission Business. See also Applicants November 20 Amendment at 3-4 (summarizing categories of transmission facilities to be transferred as part of the Proposed Transaction).

⁸⁰ 16 U.S.C. § 824b(a)(4) (2006).

⁸¹ See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

⁸² 16 U.S.C. § 824b(a)(4) (2006).

determination that a transaction will not result in inappropriate cross-subsidization or a pledge or encumbrance of utility assets.⁸³

45. Applicants analyze the Proposed Transaction under the Commission's FPA section 203 analysis and the Merger Policy Statement and conclude that, consistent with FPA section 203, the Merger Policy Statement and Commission precedent, the Proposed Transaction will have no adverse effect on competition, rates, or regulation.⁸⁴ In addition, Applicants state that the Proposed Transaction will not cause, now or in the future, the cross-subsidization of a non-utility associate company or any pledge or encumbrance of utility assets for the benefit of an associate company.⁸⁵ Applicants note that the Proposed Transaction will "result in the transfer of jurisdictional transmission assets from vertically integrated public utility companies to stand alone independent transmission companies."⁸⁶ Applicants conclude that, as a result, the Proposed Transaction

serves the public interest by placing more transmission assets under the ownership of an independent entity with a singular focus on transmission and a proven track record of investment, a regional view toward transmission planning, and the financial ability to invest in transmission projects that bring reliability and economic benefits to customers.⁸⁷

46. As discussed in further detail below, the Commission finds that the Proposed Transaction will not have an adverse effect on competition, rates, or regulation. The Commission also concludes that the Proposed Transaction will not result in cross-subsidization.⁸⁸

⁸³ 18 C.F.R. § 33.2(j) (2011).

⁸⁴ Application at 18-19.

⁸⁵ *Id.* at 35-36.

⁸⁶ *Id.* at 17.

⁸⁷ Application at 17.

⁸⁸ While the Commission has reached these findings based on the impacts of the merger on wholesale markets, the Commission recognizes that this merger is still pending before a number of state and local agencies that also have jurisdiction over this merger. Those state and local agencies will be able to address the impacts of the merger on retail markets.

1. Effect on Competition

a. Applicants' Analysis

47. Applicants assert that the Proposed Transaction will not have an adverse effect on competition, but will instead facilitate competition. Applicants explain that upon completion of the Proposed Transaction, the Entergy transmission facilities will be owned by independent transmission companies not affiliated with any market participant engaged in the generation or marketing of wholesale or retail electricity or the ownership, operation or control over inputs to electricity production.⁸⁹ Applicants also note that the transmission facilities will be placed under MISO's functional control, and that the Proposed Transaction will promote the continued development of competitive wholesale power markets by increasing the amount of independently-owned transmission within MISO.

48. Applicants explain that the Commission's regulations provide that an FPA section 203 applicant must file the horizontal Competitive Analysis Screen described in the Commission's regulations "if, as a result of the proposed transaction, a single corporate entity obtains ownership or control over the generating facilities of previously unaffiliated merging entities..."⁹⁰ Applicants state that the Proposed Transaction does not involve any change in ownership or control of generating facilities and involves only the change in control of jurisdictional transmission facilities. Applicants note that the New ITC Operating Companies will not, as a result of the Proposed Transaction, own or control any generating assets, and will not be affiliated with any market participants. For these reasons, Applicants conclude that the Proposed Transaction cannot have any adverse horizontal market power effects and that no horizontal market power analysis is required. Applicants explain that this conclusion is consistent with Commission precedent.⁹¹

49. Applicants contend that while the Commission's analysis does not require an affirmative showing of competitive benefits from a proposed transaction, the Proposed Transaction will provide those types of benefits. Specifically, Applicants note that under ITC Holdings' independent transmission company business model, there is no internal competition between functions for capital, and thus ITC Holdings does not have to balance capital needs from other functions when making transmission investments

⁸⁹ Application at 19.

⁹⁰ *Id.* at 19-20 (quoting 18 C.F.R. § 33.3(a)(1)).

⁹¹ *Id.* at 20 (citing Commission decisions approving previous acquisitions of transmission facilities by ITC Holdings).

needed for reliability or to upgrade or expand the grid. Applicants claim that ITC Holdings' sole focus on transmission has been a key factor in its reliable performance and transmission investment. Applicants also highlight ITC Holdings' independent planning and regional perspective, noting that both will result in increased investment in transmission infrastructure, which will in turn benefit customers by reducing congestion and line losses.

50. Applicants also explain that an FPA section 203 applicant must file the vertical Competitive Analysis described in the Commission's regulations "if, as result of the proposed transaction, a single corporate entity has ownership or control over one or more merging entities that provides inputs to electricity products and one or more merging entities that provides electric generation products...."⁹² Applicants conclude that because the Proposed Transaction only involves a change in control over transmission assets, and no transfer of generation facilities or inputs to electric power generation, the Proposed Transaction raises no vertical market power concerns. Citing several cases, Applicants observe that this conclusion is consistent with Commission precedent.⁹³

b. Comments and Protests

51. Both TVA and AAI claim that Applicants have not provided sufficient information to evaluate the effect of the Proposed Transaction on competition.⁹⁴ Specifically, TVA questions Applicants' conclusion that the Proposed Transaction will have no adverse effect on competition because Applicants have provided only limited information to parties that may be impacted by the Proposed Transaction.

52. AAI's concerns stem from the size of the company that will be created by the Proposed Transaction. AAI states that ITC Holdings' acquisition of the Entergy transmission assets will make ITC Holdings the largest transmission company by load served and the second largest by line miles.⁹⁵ AAI asserts that the Commission must "carefully scrutinize [Applicants'] assertion that no analysis of the competitive effects of combining [ITC Holdings'] and Entergy's transmission is necessary to satisfy the

⁹² *Id.* at 21 (citing 18 C.F.R. § 33.4(a)(1)).

⁹³ *Id.* at 21 (citing *Union Elec. Co.*, 114 FERC ¶ 61,254, at P 36 (2006); *PSEG Waterford Energy, LLC*, 112 FERC ¶ 61,308, at P 32 (2005); *Exelon Corp.*, 112 FERC ¶ 61,011, at P 198 (2005)).

⁹⁴ TVA Jan. 22 Motion to Intervene and Protest at 4; AAI Jan. 23 Comments at 4.

⁹⁵ AAI Jan. 23 Comments at 2.

statutory public interest standard” of FPA section 203.⁹⁶ AAI requests that the Commission collect and evaluate additional information from Applicants in this case.⁹⁷

53. AAI argues that while Applicants do not explicitly ask for expedited approval of the Proposed Transaction, they are essentially asking for such treatment by claiming that no competitive analysis of the Proposed Transaction is necessary. AAI argues that the Commission has explained that expedited treatment is not available for transactions with certain characteristics. Specifically, AAI notes that the Commission has stated that it “will generally provide expedited review for a disposition of only transmission facilities, particularly those that both before and after the transaction remain under the functional control of a Commission-approved RTO or ISO.”⁹⁸ AAI concludes that because Entergy’s transmission assets are not under the functional control of a Commission-approved regional transmission organization (RTO), the Proposed Transaction should not receive expedited review.

54. AAI also points to the absence of a track record on RTO control over Entergy’s transmission assets and longstanding concerns that Entergy has potentially used its transmission assets to constrain competition as reasons for requiring Applicants to file additional information. AAI claims that these concerns should weigh in favor of the Commission taking a closer look at Applicants’ claims that the Proposed Transaction does not raise any concerns regarding the creation or enhancement of transmission market power.⁹⁹ AAI claims that additional information would allow the Commission to determine whether the Proposed Transaction, by eliminating a transmission competitor, would: (1) create or enhance Applicants’ ability and incentive to exercise transmission market power; or (2) create barriers to entry to rival transmission operators, to the detriment of competition and consumers.¹⁰⁰

55. AAI states that a closer examination by the Commission would also provide the Commission with the ability to evaluate Applicants’ claims regarding increases in efficiencies due to the Proposed Transaction. AAI contends that, for FPA section 203 purposes, the Commission must consider only merger-specific and cognizable

⁹⁶ AAI Jan. 23 Comments at 3.

⁹⁷ AAI Jan. 23 Comments at 4.

⁹⁸ AAI Jan. 23 Comments at 4 (quoting Order No. 669, FERC Stats. & Regs. ¶ 31,200 (cross-referenced at 113 FERC ¶ 61,315 at P 190, n.135)).

⁹⁹ AAI Jan. 23 Comments at 6.

¹⁰⁰ AAI Jan. 23 Comments at 6-7.

efficiencies that could potentially result from a transmission-only transaction.¹⁰¹ AAI argues that Applicants must show why the Proposed Transaction is necessary to achieve the projected benefits, as opposed to efficiency-enhancing improvements that are achievable without the merger. AAI suggests that such careful scrutiny is worthwhile to examine whether the efficiencies Applicants claim derive from the Proposed Transaction are actually merger-specific, especially due to the difficulty of verifying Applicants' claimed efficiencies.¹⁰² AAI notes, for example, that some of the prospective benefits cited by Applicants are supported by examples from past experience, while others are supported by studies of future transmission projects that ITC Holdings might, but might not, undertake.

56. Finally, AAI asserts that the Proposed Transaction will test the extent to which the Commission is willing and able to defer to RTO principles, operation, market monitoring functions, transmission planning, and track record to address competitive concerns surrounding the potential exercise of transmission market power, especially since Entergy's transmission system is not currently under the functional control of an RTO.¹⁰³ Noting that parties to this proceeding have raised a variety of issues relating to the Proposed Transaction, AAI states that these issues all bear, in some way, on an analysis of how combining ITC Holdings' and Entergy's transmission is likely to affect competition. AAI argues that, for example, the Commission must resolve how the timetable for integrating Entergy's transmission into MISO will affect the extent to which the merged company cedes functional control of the transmission facilities. AAI also states that it is unclear how the merged company will participate in the MISO transmission planning process without exerting undue influence, and how the merged company will set transmission rates during the transition period.¹⁰⁴

c. Applicants' Response

57. Applicants reject AAI's suggestion that the Proposed Transaction may not qualify for an exemption of the requirement to submit a competitive analysis of the Proposed Transaction.¹⁰⁵ Applicants state that, under the Commission's regulations, an analysis of horizontal competitive effects is required only for transactions involving a change of

¹⁰¹ AAI Jan. 23 Comments at 8.

¹⁰² AAI Jan. 23 Comments at 8-11.

¹⁰³ AAI Jan. 23 Comments at 12.

¹⁰⁴ AAI Jan. 23 Comments at 13.

¹⁰⁵ Applicants Feb. 22 Answer at 51-52.

control over generation facilities, and an analysis of vertical competitive effects is required only for transactions through which a single corporate entity gains control over one or more merging entities that provide inputs to electricity products or electric generation products.¹⁰⁶ Applicants argue that the Proposed Transaction falls within the specifically-enumerated exemptions contained within the Commission's regulations.

58. Applicants dispute AAI's suggestion that the Proposed Transaction raises competitive concerns. Applicants note that the 30-day waiting period under the Hart-Scott-Rodino Act expired without the Department of Justice or the Federal Trade Commission requesting additional information or seeking other relief with respect to the Proposed Transaction.¹⁰⁷

d. Commission Determination

59. In analyzing whether a transaction will adversely affect competition, the Commission first examines its effects on concentration in generation markets or whether the transaction otherwise creates an incentive to engage in behavior harmful to competition, such as the withholding of generation.¹⁰⁸ The Commission also considers the vertical combination of upstream inputs, such as transmission or natural gas, with downstream generating capacity.¹⁰⁹ Here, Applicants have shown that the Proposed Transaction does not have an adverse effect on competition in either respect, horizontal or vertical. First, the Proposed Transaction does not involve generation assets. As Applicants explain, none of the New ITC Operating Companies or any of their affiliates will own or control any generating assets, and they will not be affiliated with any market participants.¹¹⁰ Second, the Proposed Transaction does not create any new vertical combinations of assets. For these reasons, we find that the Proposed Transaction does not raise any concerns regarding horizontal or vertical competition.

60. We disagree with AAI's suggestion that the Commission should direct Applicants to file additional information or that the Commission needs such additional information

¹⁰⁶ Applicants Feb. 22 Answer at 52 (citing 18 C.F.R. §§ 33.3(a)(2)(i) and 33.4(a)(2)(i), respectively).

¹⁰⁷ Applicants Feb. 22 Answer at 52.

¹⁰⁸ *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 105 (2007) (*ITC Holdings-IPL*). These concerns are usually referred to as horizontal competition concerns.

¹⁰⁹ *ITC Holdings-IPL*, 121 FERC ¶ 61,229 at P 105. These concerns are usually referred to as vertical competition concerns.

¹¹⁰ Application at 20.

to evaluate the effect of the Proposed Transaction on competition. The Proposed Transaction involves only a transfer of transmission facilities and does not present horizontal or vertical power market concerns. AAI has not persuaded us to deviate from the Commission's prior precedent, which demonstrates that anticompetitive effects are unlikely to arise with regard to internal corporate reorganizations or transactions that involve only the disposition of transmission facilities.¹¹¹ Further, concerns about how the merged company will participate in the MISO transmission planning process and set transmission rates are being addressed in *ITC Holdings Corp., et al.*, 143 FERC ¶ 61,257 (2013); *Midwest Independent Transmission System Operator, Inc.*, 143 FERC ¶ 61,258 (2013); and Docket No. ER12-480-000, the proceeding establishing transition procedures for the integration of Entergy and its operating companies into MISO as transmission-owning members.

61. The Commission finds, based on Commission precedent and the Commission's regulations, that Applicants are not required to submit horizontal or vertical competitive analyses of the Proposed Transaction. Neither will the Commission require Applicants to file additional information regarding the effect of the Proposed Transaction on competition.

2. Effect on Rates

a. Applicants' Analysis

i. Applicants' Commitments

62. Applicants claim that the Proposed Transaction will not have an adverse effect on wholesale transmission rates or wholesale requirements rates, due to commitments by ITC Holdings and Entergy. With respect to the New ITC Operating Companies, Applicants state that those companies will not have any wholesale requirements customers, and that, as a consequence, ITC Holdings' ratepayer commitments are focused on the wholesale transmission rates to be charged by the New ITC Operating Companies. Applicants offer the following commitments.

63. First, Applicants state that although the Proposed Transaction will result in goodwill for Generally Accepted Accounting Principles (GAAP) accounting purposes at each of the New ITC Operating Companies, the New ITC Operating Companies commit "not to recover any acquisition premium or goodwill in rates."¹¹² Second, ITC Holdings commits, for a period of five years, to hold the New ITC Operating Companies'

¹¹¹ See, e.g., Order No. 669, FERC Stats. & Regs. ¶ 31,200 at P 190.

¹¹² Application at 22.

transmission customers harmless from costs related to the Proposed Transaction. ITC Holdings commits that “the New ITC Operating Companies will not collect through transmission rates any Transaction-related costs that exceed demonstrated Transaction-related savings, for a period of five years.”¹¹³ Applicants state that the Commission has full authority to monitor this hold harmless provision, and that if “the New ITC Operating Companies seek to recover any Transaction-related costs, they will submit a compliance filing to the Commission that details how they are satisfying the hold harmless commitment, identifying the Transaction-related costs they seek to recover in rates and demonstrating that those costs are exceeded by the savings produced as a result of the Transaction.”¹¹⁴ Third, Applicants explain that “rates under Grandfathered Agreements (GFAs) for transmission service will be unaffected by the Transaction.”¹¹⁵ Applicants state that “because GFAs will be honored, there will be no changes in pricing provisions, ownership arrangements or other aspects of these contracts as a result of the Transaction.”¹¹⁶

64. With respect to the Entergy Operating Companies, Applicants note that after the Proposed Transaction closes, those companies will no longer have any transmission customers or provide any transmission service. Applicants also explain that there will be no acquisition premium or goodwill recorded on the books of the Entergy Operating Companies as a result of the Proposed Transaction, and therefore there is no potential for the companies to recover such items in wholesale power rates. With regard to cost-based wholesale requirements rates, Applicants state that the Entergy Applicants make the same commitments as made by ITC Holdings. Specifically, the Entergy Applicants commit that “for a period of five years, they will not seek to include Transaction-related costs in the Entergy Operating Companies’ cost-based wholesale requirements rates revenue requirements, except to the extent the Entergy Operating Companies can demonstrate that Transaction-related savings are equal to or in excess of all of the Transaction-related costs so included.”¹¹⁷ Applicants note that this hold harmless commitment, applicable to the Entergy Operating Companies, is identical to the commitment described above applicable to the New ITC Operating Companies’ wholesale transmission rates, and

¹¹³ *Id.*

¹¹⁴ *Id.* at 23.

¹¹⁵ *Id.*

¹¹⁶ *Id.*

¹¹⁷ *Id.* at 33.

reiterate that the Commission has full authority and capability to monitor the Entergy Applicants' hold harmless provision.¹¹⁸

65. According to Applicants, the Commission should find that the hold harmless commitments fully address any concerns regarding the effect of the Proposed Transaction on wholesale transmission rates. Applicants assert that ITC Holdings' commitments fully address the concerns that the Commission typically considers in evaluating proposed transactions under FPA section 203 – whether rates to customers will increase as a result of transaction-related costs created by the proposed transaction.¹¹⁹ Nevertheless, Applicants acknowledge that the new formula rates proposed for the New ITC Operating Companies will result in “modest increases” in wholesale transmission rates, ranging from 1.4 percent to 8.1 percent depending on the state/pricing zone.¹²⁰ Applicants assert, however, that “this modest rate increase does not result from the collection of Transaction-related costs, but rather reflects the effects of the change in capital structure from that currently used by the Entergy Operating Companies to [ITC Holdings'] requested capital structure targeting 60 percent equity/40 percent debt.”¹²¹

66. Applicants explain that their analysis did not consider return on equity (ROE) because there is no difference between the ROE that the Entergy Operating Companies would use as members of MISO and the ROE that the New ITC Operating Companies would use – both would use the 12.38 percent MISO regional ROE (MISO ROE). Furthermore, Applicants state that their analysis did not consider the use of four transmission pricing zones proposed as part of the TPZ Filing because Entergy has proposed the use of four pricing zones in MISO, and the New ITC Operating Companies will adopt the same transmission pricing zones. Applicants assert that any effects of using the four pricing zones are not attributable to the Proposed Transaction.

67. Applicants conclude that the Commission “should not find an adverse effect on rates resulting from the fact that ITC Applicants simultaneously are requesting approval for the capital structure to be used to establish the transmission rates for the New ITC

¹¹⁸ *Id.* The Entergy Applicants confirm that if “the Entergy Operating Companies seek to recover Transaction-related costs through their cost-based wholesale requirements rates, they will submit a compliance filing that details how they are satisfying the hold harmless commitment.” *Id.*

¹¹⁹ *Id.* at 24 (citing *Exelon Corp.*, 138 FERC ¶ 61,167, at P 119 (2012)).

¹²⁰ *Id.* at 24.

¹²¹ *Id.*

Operating Companies.”¹²² Further, according to Applicants, the resulting rate increase “does not reflect any recovery of Transaction-related costs.”¹²³

ii. **Countervailing Benefits from Proposed Transaction**

68. Applicants argue that even if “the Commission does deem the modest rate increases resulting from the change in capital structure to be related to the Transaction, that does not end the Commission’s analysis.”¹²⁴ Applicants observe that the Commission has found that even if rates will increase for some customers, a transaction “can still be consistent with the public interest if there are countervailing benefits from the transaction.”¹²⁵ Applicants state that the Commission has cited transmission investment in transmission assets as a countervailing benefit that allows a transaction that may increase rates to be consistent with the public interest.¹²⁶ Applicants assert that the following “substantial countervailing benefits” resulting from the Proposed Transaction offset the modest effects of the transaction on wholesale transmission rates and allow the Proposed Transaction to be consistent with the public interest.¹²⁷

69. Applicants point to four benefits of the “ITC independent model”: increased transmission investment; operational excellence; an independent, regional approach to transmission planning; and financial strength.¹²⁸ With respect to transmission investment, Applicants observe that the Proposed Transaction will result in the transfer of Entergy’s transmission facilities to an independent transmission company. According to Applicants, the independent transmission business model “promotes efficient investment in transmission infrastructure and best-in-class transmission operations and innovation.”¹²⁹ Applicants state that the singular focus of independent transmission

¹²² *Id.* at 25.

¹²³ *Id.*

¹²⁴ *Id.*

¹²⁵ *Id.* at 25 (quoting *TRANSLink Transmission Co., LLC*, 99 FERC ¶ 61,106, at 61,474 (2002)).

¹²⁶ *Id.* at 25 (citing *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 123 (2007)).

¹²⁷ *Id.* at 25.

¹²⁸ *Id.* at 26-32.

¹²⁹ *Id.* at 26.

companies “eliminates the competition for capital that occurs when utilities must balance competing demands for investment in generation and distribution.”¹³⁰ Applicants also contend that ITC Holdings’ focus on transmission provides a strong incentive for ITC Holdings to improve transmission performance.¹³¹ Applicants state that ITC Holdings’ “proactive preventive maintenance philosophy and track record of operational excellence” will be applied to strengthen the grid and enhance the performance of the transmission system ITC Holdings will acquire from Entergy. Applicants also note that the Proposed Transaction will augment ITC Holdings’ skills with those of approximately 750 Entergy employees who will become ITC Holdings employees and help staff and manage the New ITC Operating Companies.

70. Applicants claim that the independent transmission company model provides benefits because it “ensures no bias and eliminates any perception of bias in transmission operation and investment.”¹³² Applicants contend that complete independence from market participants allows ITC Holdings “to identify projects that reduce transmission constraints, strengthen reliability and facilitate wholesale competition through greater market access and transparency for customers.”¹³³ Applicants also highlight the advantages provided by the MISO transmission planning process and the interrelationship between that process and the projects submitted for review by MISO Transmission Owners. Applicants state that the kinds of projects that result from ITC Holdings’ transmission planning process can provide quantified and unquantified benefits throughout the Entergy transmission system.

71. Finally, Applicants note the benefits that the independent transmission business model provides as a result of the model’s financial strength. Applicants state that ITC

¹³⁰ *Id.*

¹³¹ *Id.* at 28.

¹³² *Id.* at 29.

¹³³ *Id.* As noted above, pursuant to the ITC Holdings Policy on Independence, ITC Holdings directors and employees are prohibited from holding interests in any market participant. Under the ITC Holdings Policy on Independence, new employees joining ITC Holdings, like the employees from Entergy, are required to divest any stock held in market participants within six months. ITC Applicants request that the Commission approve an extension of this time limit to one year. *Id.* at 28. This request is addressed below. Applicants also note that ITC Holdings’ Articles of Incorporation “restrict potential ownership of stock in the company by market participants to avoid any influence on the company that could hinder its independence.” Application, Exhibit No. ITC-100: Welch Test. at 20:5-7.

Holdings' credit rating enables efficient access to credit markets at a time when the Entergy transmission system is in need of significant capital investments. Applicants also claim that ITC Holdings' lower debt financing costs, as compared to Entergy's debt financing costs, will result in savings for the New ITC Operating Companies. Applicants explain that the Entergy Operating Companies will also benefit from the Proposed Transaction. Specifically, Applicants state that, due to the Proposed Transaction, the Entergy Operating Companies will continue to have access to capital on "reasonable terms" to finance the "significant capital expenditures expected in the coming decades."¹³⁴ Applicants state that the Proposed Transaction will also eliminate the debt that the Entergy Operating Companies would be expected to incur to fund transmission investments, thereby reducing the risk of financial distress and improving their financial strength. Applicants state that the Proposed Transaction provides a vehicle for Entergy to manage effectively the pressures of future capital expenditures by shifting responsibility for capital expenditures for transmission investment to ITC Holdings, an entity that is "ready, willing and able to take on the responsibility for making the investment that is needed in the transmission system."¹³⁵

b. Comments and Protests

72. Many protestors take issue with Applicants' conclusion that the Proposed Transaction will not have an adverse effect on rates. Generally speaking, protestors challenge how Applicants performed their effect on rates analysis and protest Applicants' use of the MISO ROE, the proposed capital structure, and Applicants' claims regarding the offsetting benefits of the Proposed Transaction. Protestors also challenge Applicants' hold harmless commitments.

73. In addition to these issues, the Louisiana Commission challenges a related filing by the New ITC Operating Companies that seeks Commission approval of certain regulatory assets that will compensate for liabilities created by unrecovered pension and post-retirement welfare plan costs.¹³⁶ The Louisiana Commission claims that the proposed change may have substantial rate impacts. The Louisiana Commission also urges the Commission to investigate the proposed depreciation rates, alleging that the change would further modify the amounts that would be recovered under the New ITC Operating Companies' proposed formula rates. The Louisiana Commission claims that the preliminary impact of this change is to create a decrease in those costs passed through

¹³⁴ Application at 31.

¹³⁵ *Id.* at 32.

¹³⁶ Louisiana Commission Jan. 22 Protest at 25 (citing to OPEB Filing).

to ratepayers in early years, but that this temporary decrease is “accomplished by an increase in the costs passed through to ratepayers in later years.”¹³⁷

i. ROE

74. Many protestors challenge Applicants’ conclusion that the Proposed Transaction will not have an adverse effect on rates on the basis that Applicants fail to consider the impact of the MISO ROE. The Louisiana Commission, for example, rejects Applicants’ claim that because there is no difference between the ROE that the Entergy Operating Companies would use for wholesale transmission as members of MISO and the ROE that the New ITC Operating Companies would use as members of MISO, Applicants were not required to consider the impact of the MISO ROE.¹³⁸ The Louisiana Commission argues that the impact of the MISO ROE must be considered in analyzing the rate impact of the Proposed Transaction under FPA section 203 because it will constitute a rate increase for Entergy’s Louisiana operating companies, and because it is a consequence of the Proposed Transaction.¹³⁹ Similarly, the Texas Commission accuses Applicants of beginning from a “false starting point” since Entergy is not in MISO, and Entergy’s currently authorized ROE is “significantly less” than the 12.38 percent MISO ROE.¹⁴⁰

75. Other parties challenge the MISO ROE itself, arguing that the ROE is too high, based on outdated information, and will lead to an increase in rates.¹⁴¹ Joint Customers, for example, claim that the stated ROE should be no higher than 8.91 percent and support their position by providing a Discounted Cash Flow (DCF) analysis based on the methodology used to establish the original MISO ROE in 2002, but with updated information, such as current capital market conditions.¹⁴² Joint Customers assert that the 12.38 percent MISO ROE is one of the factors that contributes to the New ITC Operating Companies charging higher transmission rates than the Entergy Operating Companies as MISO Transmission Owners, and that the MISO ROE does not accurately reflect the current risks of RTO participation.

¹³⁷ Louisiana Commission Jan. 22 Protest at 25-26.

¹³⁸ Louisiana Commission Jan. 22 Protest at 5.

¹³⁹ Louisiana Commission Jan. 22 Protest at 5-7.

¹⁴⁰ Texas Commission Jan. 22 Protest at 8.

¹⁴¹ *See, e.g.*, Joint Customers Jan. 22 Protest at 32; Texas Commission Jan. 22 Protest at 8; Louisiana Commission Jan. 22 Protest at 5; Texas Industrial Energy Consumers Jan. 22 Comments at 2.

¹⁴² *See, e.g.*, Joint Customers Jan. 22 Protest at 60-70.

ii. Capital Structure

76. Protestors also challenge the 60 percent equity and 40 percent debt capital structure proposed for the New ITC Operating Companies, arguing that it will lead to an unjustified increase in rates. The NRG Companies, for example, note that the proposed capital structure uses a higher equity component than the Entergy Operating Companies.¹⁴³ The NRG Companies argue that, because equity results in higher rates than debt, the 60 percent equity capital structure translates into higher rates than Entergy's existing transmission rates.¹⁴⁴

77. Joint Customers claim that, after the Proposed Transaction closes, ITC Holdings will continue its practice of “double leveraging,” using holding company debt to fund the equity of the New ITC Operating Companies. Joint Customers argue that this practice “inflates the equity/debt ratios of these companies and enables ITC Holdings to earn equity returns on its corporate debt.”¹⁴⁵ Joint Customers assert that although ITC Holdings' existing operating subsidiaries in MISO report capital structures that are close to the capital structure proposed for the New ITC Operating Companies, the consolidated balance sheet of ITC Holdings reveals a capital structure that, conservatively stated, is 36 percent equity and 64 percent debt.¹⁴⁶ According to Joint Customers, “the highly-leveraged capital structure at the holding-company level and the 60 [percent] equity and 40 [percent] debt capital structure of its operating subsidiaries show that [ITC Holdings] has issued large sums of holding-company debt and pushed this debt down to the operating subsidiaries as equity investment.”¹⁴⁷

¹⁴³ NRG Companies Jan. 22 Protest at 6-7.

¹⁴⁴ The Texas Industrial Energy Consumers also question whether the proposed capital structure will increase costs for Entergy's customers without sufficient evidence of offsetting benefits. Texas Industrial Energy Consumers Jan. 22 Comments at 2.

¹⁴⁵ Joint Customers Jan. 22 Protest at 20.

¹⁴⁶ Joint Customers state that during the last four years, from 2008-2011, ITC Holdings' capital structure has averaged 30 percent equity and 70 percent debt. Joint Customers Jan. 22 Protest at 21.

¹⁴⁷ Joint Customers Jan. 22 Protest at 21. We note that in the companion order issued concurrently with this order addressing Applicants' FPA section 205 filings and requests, the Commission addresses the just and reasonableness of the proposed capital structure, including concerns regarding double leveraging.

78. Joint Customers conclude that the effect of this practice is that ITC Holdings will earn equity returns on borrowed funds. Joint Customers explain that ITC Holdings will borrow money at 3.5 percent (as projected by Applicants), and convert the borrowed funds into contributed common equity capital at the operating company level by pushing the borrowed funds down to the operating companies. There, the borrowed funds will earn a guaranteed formula-based equity return, the 12.38 percent MISO ROE. ITC Holdings will pay the bondholders the 3.5 percent for the borrowed funds, and provide the remaining 8.88 percent that was collected from ratepayers directly to ITC Holdings' stockholders.¹⁴⁸ Joint Customers assert that the Commission cannot continue to accept the "myth" that ITC Holdings' operating companies are financed with 60 percent equity, when they are actually financed with approximately 30 percent equity. Joint Customers claim that the Commission should require that the real source of the funds used to finance the rate bases of the operating companies and their actual costs be used in the transmission formula rates of the New ITC Operating Companies.

79. Joint Customers also claim that in addition to the excessive rate of return that would be produced by using a highly leveraged capital structure at the ITC Holdings level in conjunction with the proposed 60 percent equity and 40 percent debt capital structure at the New ITC Operating Companies level, the proposed capital structure will also produce "an insidious phantom tax effect."¹⁴⁹ Specifically, Joint Customers explain that since the proposed formula rate for the New ITC Operating Companies would determine the required income tax component of costs based on a formula that uses the composite state and federal income tax rate for each New ITC Operating Company and the equity return for that company, the resulting income tax component of the formula rate will be inflated because of the excessive ROE component of the cost of capital due to the 60 percent equity ratio. Joint Customers claim that, as a result, ITC Holdings will collect from transmission ratepayers income taxes that ITC Holdings will not actually pay because its holding company tax obligation will be based on a much lower equity ratio and much higher tax deductible interest expense. Joint Customers conclude that authorizing the excessive 60 percent equity capital ratio at the New ITC Operating Companies level will result in transmission ratepayers "infusing excessive cash flow into ITC Holdings due to this phantom tax effect."¹⁵⁰

¹⁴⁸ Joint Customers Jan. 22 Protest at 23.

¹⁴⁹ Joint Customers Jan. 22 Protest at 25.

¹⁵⁰ Joint Customers Jan. 22 Protest at 26.

iii. **Offsetting Benefits**

80. Joint Customers and other parties urge the Commission to reject Applicants' claims that the increase in transmission rates is offset by the benefits cited by Applicants. While some protestors assert that the Commission should not even consider the benefits Applicants claim will offset the increase in transmission rates resulting from the Proposed Transaction, others challenge both the magnitude and the certainty of the benefits themselves.

81. Joint Customers argue that Applicants have conceded that the Proposed Transaction will result in an increase in wholesale transmission rates but have not committed to insulate Entergy's wholesale transmission customers from these rate effects. Joint Customers assert that Applicants' claim that the rate increases will be offset or outweighed by the benefits of the Proposed Transaction is contrary to the Commission's policy against attempting to weigh merger benefits and costs. Joint Customers state that, in the Merger Policy Statement, the Commission declared its intention to move away from weighing the benefits and costs of mergers to requiring applicants to protect wholesale ratepayers. Joint Customers state that Applicants have not attempted to implement any protections to shield ratepayers from the rate effects of the merger.¹⁵¹

82. Joint Customers state that Applicants seem to rely on the "ITC exception" to the Commission's policy against comparing merger benefits and costs.¹⁵² According to Joint Customers, the ITC exception originated in the Commission's order approving ITC Holdings' purchase of the transmission assets of Interstate Power and Light Company.¹⁵³ In that case, the Commission concluded that the effects on customers from the proposed transaction were offset by the benefits provided by ITC Holdings' ownership of the transmission facilities. Joint Customers note that Applicants cite *ITC Holdings-IPL* as precedent supporting approval of the Proposed Transaction, but Joint Customers argue that, for several reasons, the Commission cannot rely on the reasoning in that case with respect to the Proposed Transaction.

¹⁵¹ Joint Customers Jan. 22 Protest at 35. Specifically, Joint Customers state that Applicants did not attempt to reach "mutually satisfactory protective agreements," nor do they commit to insulate wholesale transmission customers from the rate effects of the merger. *Id.*

¹⁵² Joint Customers Jan. 22 Protest at 36.

¹⁵³ Joint Customers Jan. 22 Protest at 36-37 (citing *ITC Holdings-IPL*, 121 FERC ¶ 61,229).

83. First, Joint Customers assert that *ITC Holdings-IPL* represents an unexplained and unreviewed departure from Commission policy, and that no amount of repetition of the logic of that order will change that fact.¹⁵⁴ Second, Joint Customers argue that the Commission cannot extrapolate future success in operating the Entergy transmission system from ITC Holdings' past experience in operating the much smaller and much different systems it currently owns in MISO. Joint Customers point to the challenges faced by MISO in incorporating the Entergy transmission system as evidence that the Commission should not assume that ITC Holdings' past experience is a guarantee of future performance in the current circumstances.¹⁵⁵ Third, Joint Customers highlight the fact that the Proposed Transaction is a merger, rather than an asset purchase as in *ITC Holdings-IPL*. Joint Customers claim that since ITC Holdings intends to hire approximately 750 Entergy employees to run the Entergy transmission system for the New ITC Operating Companies, there is less reason to expect customers to benefit from a merger where the operating company employees remain largely the same.

84. Protestors also question the benefits that Applicants claim will result from the Proposed Transaction. Joint Customers argue that Applicants have underestimated the net transmission rate increase.¹⁵⁶ Joint Customers allege that Applicants' claims that ITC Holdings' ownership of the facilities will produce better planning and operations are "pure speculation," and that whether such benefits, if they materialize, would outweigh the increased charges to customers is "unclear at best."¹⁵⁷ Joint Customers assert that the benefits Applicants claim will result from the Proposed Transaction are "inchoate, nebulous and unverifiable."¹⁵⁸ Similarly, the Louisiana Commission states that the adverse rate effects are "substantial" and that "no demonstration has been made that [there] are quantified, quantifiable, or qualitative benefits that outweigh their detriments."¹⁵⁹

85. The Louisiana Commission and Joint Customers also challenge Applicants' claims regarding the financial savings that Applicants assert will result from the Proposed Transaction. Joint Customers note that the largest estimate of savings due to the

¹⁵⁴ Joint Customers Jan. 22 Protest at 37.

¹⁵⁵ Joint Customers Jan. 22 Protest at 38.

¹⁵⁶ Joint Customers Jan. 22 Protest at 33.

¹⁵⁷ Joint Customers Jan. 22 Protest at 20.

¹⁵⁸ Joint Customers Jan. 22 Protest at 36.

¹⁵⁹ Louisiana Commission Jan. 22 Protest at 8.

Proposed Transaction that Applicants calculate comes from the plan for ITC Holdings to refinance the \$1.2 billion bridge facility at a 3.5 percent interest rate.¹⁶⁰ According to Joint Customers, Applicants calculate the savings attributable to the refinancing by comparing the difference between the expected 3.5 percent cost rate and Entergy's current average embedded cost rate for long-term debt of approximately 6.0 percent (a difference of approximately 250 basis points). Joint Customers claim that this comparison mixes current debt costs with embedded costs that have been incurred over a long period of time when capital costs were much higher. Joint Customers assert that Entergy could realize the "vast majority" of these savings simply by refinancing this debt at today's substantially lower costs, making the difference in debt cost rates "far less dramatic" than indicated in the Application.¹⁶¹ The Louisiana Commission makes the same point, asserting that it is reasonable to conclude that if Entergy were to refinance the Entergy Operating Companies' outstanding debt in today's market, the resulting debt cost would be similar to the current marginal interest rate which ITC Holdings touts as a benefit of the Proposed Transaction.¹⁶²

86. The Louisiana Commission also argues that the substantial majority of the purported financial savings that allegedly result from the Proposed Transaction are based on the difference between the embedded debt cost of the Entergy Operating Companies and the current marginal debt cost of ITC Holdings. The Louisiana Commission states that this comparison is not an accurate measure of the financial risk difference between ITC Holdings and Entergy; rather, such a comparison demonstrates only how low utility capital costs are currently in comparison to what they have been in the past.¹⁶³ The Louisiana Commission asserts that the embedded costs for the Entergy Operating Companies cited in Applicants' financial benefits analysis is the weighted average of all currently outstanding debt, which was issued years ago when the levels of interest rates and capital costs were much higher. The Louisiana Commission concludes that the 250 basis point debt cost benefit that Applicants' claim is therefore not an accurate measure of any debt cost savings that might accrue due to the differences in financial risk between ITC Holdings and the Entergy Operating Companies, but rather is due only to the difference between historical interest rates and those that currently exist.¹⁶⁴

¹⁶⁰ Joint Customers Jan. 22 Protest at 28.

¹⁶¹ Joint Customers Jan. 22 Protest at 30.

¹⁶² Louisiana Commission Jan. 22 Protest at 10.

¹⁶³ Louisiana Commission Jan. 22 Protest at 9.

¹⁶⁴ Louisiana Commission Jan. 22 Protest at 9.

87. Joint Customers also challenge Applicants' reliance on the fact that ITC Holdings' existing operating companies in MISO have better senior secured bond ratings than the Entergy Operating Companies. Joint Customers point out that the secured bond ratings of the existing ITC Holdings' operating companies in MISO are only better by one rating category, and that the historical spread between bond rates at the respective levels are closer to 37 to 52 basis points, as opposed to the 250 basis point difference cited by Applicants.¹⁶⁵ Joint Customers conclude that the 250 basis point differential is significantly overstated and reduces any potential savings of the refinancing to approximately \$6 million per year, rather than \$29 million per year. The Louisiana Commission likewise states that the corporate credit ratings of Entergy and ITC Holdings are very similar, even though ITC Holdings has far less business risk than Entergy.

88. Like Joint Customers, the Louisiana Commission asserts that the financial cost analysis provided by Applicants relies on a historical measure of bond yield differences to assess financial cost savings, but that Applicants incorrectly assume a three ratings level difference between the ITC Holdings operating companies and Entergy Louisiana.¹⁶⁶ The Louisiana Commission states that there is actually only one ratings level difference between them. The Louisiana Commission also explains that the estimated debt cost savings are further overstated through the use of bond yield differentials from 2008/2009, during the recent financial crisis.¹⁶⁷ According to the Louisiana Commission, comparing bond yield spread data from that time to projected cost savings under normal on-going operating conditions does not provide "a reliable indication of probable savings."¹⁶⁸ Accordingly, the Louisiana Commission states that the upper end of possible interest cost savings by Applicants and those based on the financial crisis of 2008/2009 should be ignored, as they are unlikely to represent "any actual debt cost savings."¹⁶⁹

89. Finally, the Louisiana Commission concludes that of the \$34 million to \$45 million in annual debt cost savings claimed by Applicants, only those attributable to the small differential in bond rating between the ITC Holdings operating companies and the Entergy Operating Companies may represent reliable estimates of potential cost savings. The Louisiana Commission asserts that those potential savings might amount to between

¹⁶⁵ Joint Customers Jan. 22 Protest at 30.

¹⁶⁶ Louisiana Commission Jan. 22 Protest at 10.

¹⁶⁷ Louisiana Commission Jan. 22 Protest at 10.

¹⁶⁸ Louisiana Commission Jan. 22 Protest at 11.

¹⁶⁹ Louisiana Commission Jan. 22 Protest at 11.

\$1 million and \$4 million annually, but because the lower bond rating of ITC Holdings is not considered in the analysis, the savings estimates are likely to be overstated.¹⁷⁰

iv. **Hold Harmless Commitments, Transaction-Related Costs, and Requests for Additional Conditions**

90. Several protestors assert that Applicants' hold harmless commitments are insufficient to protect customers from the adverse rate impacts of the Proposed Transaction. The Texas Commission, for example, argues that Applicants' commitments do not demonstrate that the Proposed Transaction will have no adverse effect on rates, nor are the commitments sufficient to protect consumers from the adverse effects of the Proposed Transaction.¹⁷¹

91. Protestors also allege that Applicants have taken a narrow view of what costs should be covered by the proposed hold harmless commitments. The City of New Orleans expresses concern regarding an unacknowledged potential rate impact of Applicants' plan to take on "significant new debt" and ITC Holdings' plan to pay a special \$700 million dividend to shareholders in connection with the Proposed Transaction.¹⁷² The City of New Orleans explains that, as part of the Proposed Transaction, Applicants propose to pay dividends to their shareholders, based on the need to equalize their market values to qualify for special tax treatment under the transactional framework of the Reverse Morris Trust. The City of New Orleans states that the Reverse Morris Trust structure involves both Entergy and ITC Holdings raising or issuing significant amounts of debt which then is to be exchanged and distributed as dividends between the companies during the course of several intermediate steps. The City of New Orleans states that Applicants' description of the various debt transfers and the possible one-time special dividend raises three concerns regarding the potential rate impacts from the debt and dividend proposals.

92. First, the City of New Orleans claims that Applicants' approach appears to benefit shareholders at the expense of ratepayers. The City of New Orleans states that the Reverse Morris Trust structure would eliminate shareholder tax liability, but that, in some respects, it is analogous to either an acquisition adjustment or merger-related costs. The City of New Orleans notes that Applicants have acknowledged that it would be improper for ITC Holdings to attempt to recover goodwill or other acquisition premiums from the Proposed Transaction, but that ITC Applicants' recapitalization plan could result "in the

¹⁷⁰ Louisiana Commission Jan. 22 Protest at 11.

¹⁷¹ Texas Commission Jan. 22 Protest at 9.

¹⁷² City of New Orleans Jan. 22 Protest at 11-12.

functional equivalent of an acquisition premium being passed down to customers through the formula rate.”¹⁷³ The City of New Orleans states that, instead of including such a premium in rate base to increase rate base or receive a return on the “investment,” the usual scenario addressed by the Commission, Applicants propose to issue debt to recapitalize the companies. Presuming that the debt incurred by ITC Holdings to recapitalize would then be included in the New ITC Operating Companies transmission formula rates for recovery, the City of New Orleans asserts that the debt, which would not have been assumed but for the merger and dividend payment, is more like a merger-related cost. To the extent that the Commission concludes that the dividend/debt proposal constitutes either an acquisition adjustment or a merger-related cost, the City of New Orleans argues that Applicants must demonstrate that recovery of such costs are just and reasonable and must separately receive approval from the Commission.¹⁷⁴

93. Second, the City of New Orleans claims that Applicants may be defining too narrowly the costs that constitute transaction-related costs that will be subject to Applicants’ hold harmless commitments. According to the City of New Orleans, Applicants limit the term to mean only the employee labor and other costs incurred by ITC Holdings “to consummate and implement the Transaction.”¹⁷⁵ The City of New Orleans explains that the Commission has taken a much broader view of what constitutes transaction-related costs, and has included even the cost of transmission enhancements.¹⁷⁶ The City of New Orleans states that if ITC Holdings “takes on new debt to effectuate its recapitalization to align its market equity value with that of [the Entergy Operating Companies], the Commission should consider the cost of paying back that debt as subject to the hold harmless provisions,” which ITC Holdings may not recover absent Commission authorization.¹⁷⁷

94. Third, the City of New Orleans argues that Applicants misunderstand the merger-related cost recovery restriction, citing testimony on behalf of Applicants stating that ITC Holdings may collect merger-related costs during the hold harmless period to the extent

¹⁷³ City of New Orleans Jan. 22 Protest at 12.

¹⁷⁴ City of New Orleans Jan. 22 Protest at 13.

¹⁷⁵ City of New Orleans Jan. 22 Protest at 13 (citing Application, Exhibit No. ITC-500: Prepared Direct Testimony of Fred G. Stibor on Behalf of ITC Holdings Corp. (Stibor Test.) at 6:13-7:2).

¹⁷⁶ City of New Orleans Jan. 22 Protest at 14 (citing *Duke Energy Corp.*, 139 FERC ¶ 61,194, at P 91 (2012)).

¹⁷⁷ City of New Orleans Jan. 22 Protest at 14.

merger-related benefits exceed merger-related costs. The City of New Orleans states that Commission precedent actually precludes ITC Holdings from recovering merger-related costs during the five-year hold harmless period, and allows recovery of such costs after the hold harmless period only to the extent ITC Holdings can demonstrate that the savings exceed the costs when it files under FPA section 205.

95. The Louisiana Commission echoes the City of New Orleans in calling for vigilance by the Commission with respect to potential recovery of goodwill. According to the Louisiana Commission, Applicants state that the Merger Agreement implies an enterprise value for Entergy's transmission business of approximately \$5 billion, and that the companies project that the Proposed Transaction will create goodwill of approximately \$2.1 billion over the fair value of Entergy's transmission business. The Louisiana Commission asserts that a determination needs to be made whether any of this goodwill represents an acquisition premium windfall to Entergy's shareholders as a direct result of ratepayers paying higher rates under the New ITC Operating Companies' proposed formula rates versus rates under the status quo.¹⁷⁸ The Louisiana Commission asserts that the Commission should not allow an unintended consequence of the New ITC Operating Companies' rate construct "to allow for Entergy's shareholders to extract excess value from a merger solely and directly as a result of higher rates being paid by ratepayers."¹⁷⁹ The Louisiana Commission notes that although Applicants assert that the value associated with goodwill and/or acquisition premiums will not be reflected in the rate base of the assets transferred pursuant to the Proposed Transaction, recent proceedings at the Commission regarding ITC Midwest's improper reporting and recovery of the tax effects of amortized goodwill require further investigation into this issue in the context of the Proposed Transaction.¹⁸⁰

96. Joint Customers argue that if Entergy's transmission customers are truly to be held harmless, the Proposed Transaction must be conditioned with concrete mechanisms that will in fact protect transmission customers. According to Joint Customers, the most obvious method for achieving this goal is to restrict the amount by which the rates of the New ITC Operating Companies can increase for some period following closing of the Proposed Transaction. Joint Customers state that Applicants have not shown any reason

¹⁷⁸ Louisiana Commission Jan. 22 Protest at 22.

¹⁷⁹ Louisiana Commission Jan. 22 Protest at 22.

¹⁸⁰ Louisiana Commission Jan. 22 Protest at 22 (citing *ITC Holdings Corp.*, 139 FERC ¶ 61,112 (2012)).

cognizable under Commission policy why the Proposed Transaction should be permitted to cause an increase in rates for services that utilize existing transmission facilities.¹⁸¹

97. According to Joint Customers, the Commission could reasonably accommodate the need for additions to Entergy's transmission system and the need for customers to support those investments by imposing several conditions in approving the Proposed Transaction. Joint Customers recommend that the Commission require that the two rate construct components that are the primary contributors to increased rates, the proposed capital structure and the MISO ROE, be fixed at different levels for a reasonable period of time. Specifically, Joint Customers state that the ITC Holdings capital structure and non-equity capital cost rates and an ROE no higher than 8.91 percent should be used.¹⁸² Joint Customers assert that to hold ratepayers harmless, no filing that proposes to change these formula rate components should be filed during the five-year hold harmless period proposed by Applicants.¹⁸³ Joint Customers conclude that if these changes were implemented during the five-year moratorium period, the formula rates would recover the capital and operating costs of new transmission facilities, as well as charges imposed by MISO for its RTO operations, so that ITC Holdings could collect its actual costs, but not "the inflated and partially contrived equity returns it has proposed."¹⁸⁴

98. Joint Customers also question Applicants' commitment regarding GFAs. Joint Customers assert that Applicants have failed to identify the affected GFAs or to explain how the GFAs will be honored, and that Applicants' GFA commitment is only a start to addressing these issues. According to Joint Customers, Applicants cannot claim that the Proposed Transaction is consistent with the public interest under FPA section 203 and the Merger Policy Statement when they have not addressed the significant matter of the

¹⁸¹ Joint Customers Jan. 22 Protest at 31. Joint Customers assert that it is the Commission's policy to protect customers from cost increases that result from nothing more than a change in ownership of facilities, but do not cite any supporting precedent.

¹⁸² Under Joint Customers' DCF analysis, 8.91 percent is the midpoint ROE. Joint Customers Jan. 22 Protest at 69.

¹⁸³ Joint Customers note that this five-year period corresponds to the five-year period during which the Entergy transmission system will be transitioned into the MISO planning and cost allocation processes. Joint Customers Jan. 22 Protest at 32.

¹⁸⁴ Joint Customers Jan. 22 Protest at 32-33.

GFA.¹⁸⁵ Further, Joint Customers express concern that Applicants may intend for the GFA commitment to be limited to keeping constant the pricing provisions in those agreements, as opposed to the actual rates paid by customers.¹⁸⁶

99. Other protestors also suggest additional conditions that the Commission should impose as part of its approval of the Proposed Transaction.¹⁸⁷ Arkansas Electric Energy Consumers, for example, argue that the Commission should, if it does not deny approval of the Proposed Transaction, condition approval upon, among other things, implementation of a regulatory rate freeze and acceptance by ITC Holdings of the same ROE and debt to equity ratio that Entergy would have had under applicable state regulation in Arkansas.¹⁸⁸ The NRG Companies argue that the Commission should condition the Proposed Transaction on the requirement that the transaction not be consummated until on or after Entergy's integration into MISO. The NRG Companies explain that Applicants have provided no justification for why the Proposed Transaction must close prior to Entergy's integration into MISO, and that allowing the transaction to close provides no benefits to the Entergy region and "merely increases the cost of transmission with no offsetting value," since the benefits cited by Applicants are long-term benefits.¹⁸⁹

v. **Other Issues**

100. Several parties argue that the Proposed Transaction and related filings will result in loop flows on the SPP transmission system which will have an adverse effect on

¹⁸⁵ Joint Customers state that informal discussions with Entergy and ITC Holdings representatives have "revealed that apparently little or no thought has been given" as to how certain GFAs that involve generation and transmission arrangements will be honored. Joint Customers Jan. 22 Protest at 87.

¹⁸⁶ Joint Customers Jan. 22 Protest at 88.

¹⁸⁷ *See, e.g.*, Southwestern Electric Cooperative Dec. 7 Comments at 5; Arkansas Electric Energy Consumers Jan. 22 Initial Comment at 5-6; NRG Companies Jan. 22 Protest at 9-10.

¹⁸⁸ Arkansas Electric Energy Consumers Jan. 22 Initial Comment at 5-6.

¹⁸⁹ NRG Companies Jan. 22 Protest at 9.

competition and rates.¹⁹⁰ Other parties raise similar issues with respect to the TVA¹⁹¹ and PJM¹⁹² transmission systems.

101. Several parties, including the City of New Orleans¹⁹³ and Joint Customers,¹⁹⁴ also raise issues regarding the four transmission pricing zones construct that Applicants refer to in the Application, and that Entergy Services and MISO request approval of in the TPZ Filing. The City of New Orleans, for example, argues that that rate impact of the four transmission pricing zone proposal must be analyzed as part of the Application, and that the plan to create the four transmission pricing zones is part of the Proposed Transaction.¹⁹⁵

c. Applicants' Answer

102. Applicants dispute protestors' claims that the Proposed Transaction will have an adverse effect on rates.

103. First, Applicants argue that no party has challenged the benefits of independent transmission ownership and cite Commission precedent that recognizes those benefits. Applicants claim that their testimony documenting the substantial benefits of the independent transmission company business model went unchallenged by parties, and that RTO membership alone would not provide the same benefits as the Proposed Transaction. Specifically, Applicants claim that "improved asset management, increased appropriate investment, improved access to capital markets at favorable rates and development of innovative services" are benefits of the independent transmission company business model that will flow from the Proposed Transaction.¹⁹⁶

104. Second, Applicants reject challenges to their effect on rates analysis, which they assert properly assumes Entergy's use of the 12.38 percent MISO ROE. According to

¹⁹⁰ See, e.g., SPP Transmission Owners Jan. 11 Protest, SPP Jan. 22 Comments, Xcel Energy Jan. 22 Comments.

¹⁹¹ See generally TVA Jan. 22 Protest.

¹⁹² See generally Exelon Jan. 30 Comments.

¹⁹³ City of New Orleans Jan. 22 Protest at 4-10.

¹⁹⁴ Joint Customers Jan. 22 Protest at 40-47.

¹⁹⁵ City of New Orleans Jan. 22 Protest at 10.

¹⁹⁶ Applicants Feb. 22 Answer at 31-34.

Applicants, their effect on rates analysis “focuses on the difference between [the New ITC Operating Companies’] proposed rates in MISO and Entergy’s expected MISO rates, consistent with Entergy’s announced plans and efforts to join MISO.”¹⁹⁷ Applicants dispute the Louisiana Commission’s claims that the Proposed Transaction will have significant adverse impacts on ratepayers. Applicants explain that the Louisiana Commission’s analysis overstates the rate effects of the Proposed Transaction because that analysis uses the Entergy OATT rate for 2012 as its starting point and fails to account for certain adjustments, including the transition to MISO’s 12 coincident peak demand methodology and the planned use of four transmission pricing zones and the 12.38 percent MISO ROE. Applicants state that correcting the Louisiana Commission’s analysis reveals that the rate impact is actually significantly less than what the Louisiana Commission claims it is.

105. Third, Applicants respond to challenges to their credit savings analysis. Applicants explain that although Joint Customers claim that the debt savings are overstated because the savings compare the embedded cost of Entergy’s debt to the expected cost of debt under current market conditions, it is reasonable that an analysis of rate effects should compare costs that are reflected in current rates for the existing Entergy Operating Companies with costs that will be built into the New ITC Operating Companies’ formula rates.¹⁹⁸ With respect to arguments questioning the 250 basis point differential, Applicants explain that the 250 basis point differential assumed for the debt savings for the initial refinancing was “based on the current Entergy embedded cost of debt of approximately 6.0 percent and indicative pricing provided by [ITC Holdings’] financial advisors (JP Morgan) for secured debt issuances for [ITC Holdings’] current MISO operating companies of 3.50 percent.”¹⁹⁹ Applicants also reject claims that Entergy could realize the majority of the credit savings which Applicants claim are due to the Proposed Transaction by simply refinancing at today’s interest rates. Applicants state that refinancing the debt independently of the Proposed Transaction would involve costs and other considerations (such as call premiums or legal and other issuance fees) that would make the level of refinancing unlikely to occur absent the Proposed Transaction. Applicants also state that the Entergy Operating Companies would expect to refinance at higher interest rates than what ITC Holdings is expected to obtain, since the Entergy Operating Companies have lower credit ratings than those of ITC Holdings’ existing MISO operating companies, and “the terms (in particular, tenor and call features) of any

¹⁹⁷ *Id.* at 34.

¹⁹⁸ *Id.* at 36-37.

¹⁹⁹ *Id.* at 37.

debt refinancing undertaken by the Entergy Operating Companies would likely be different from what [ITC Holdings'] expects to have in its debt issuances.”²⁰⁰

106. Fourth, Applicants address arguments regarding the debt/dividends to be assumed/issued by ITC Holdings. In response to the City of New Orleans' concerns that the cost of debt used for the planned recapitalization of ITC Holdings prior to the Proposed Transaction will be included in the New ITC Operating Companies MISO Attachment O formula rates, Applicants clarify that these costs will not be recovered in those rates because: “1) the recapitalization will occur at the holding company level; 2) the recapitalization will be financed with senior unsecured debt sold by ITC Holdings; and 3) dividend payments also will be made at the holding company level.”²⁰¹ Applicants state that “[n]either the recapitalization nor the debt raised to effectuate the recapitalization will be recovered in transmission rates,”²⁰² and conclude that there is no need to subject either the recapitalization or the debt to the hold harmless provision.

107. Applicants also explain that debt raised by the New ITC Operating Companies will not be used to effectuate the recapitalization of ITC Holdings, but to refinance the debt that will be assumed from the Entergy Wires Subs. Applicants state that that debt will provide funds to the Entergy Operating Companies in exchange for their transmission assets, and that the Entergy Operating Companies will use those funds to repay historic debt. Applicants note that there will be debt associated with the transmission facilities irrespective of whether the Proposed Transaction is approved and consummated, but that if the Proposed Transaction is not approved and consummated, that debt will be held by the Entergy Operating Companies at a cost of debt of approximately 6.0 percent; if the Proposed Transaction is approved and consummated, the debt would be held by the New ITC Operating Companies at an expected cost of approximately 3.5 percent. Lastly, Applicants clarify that the dividend Entergy expects to declare is not intended to align its equity value with that of ITC Holdings, as the City of New Orleans suggests. Rather, Entergy expects to declare the stock dividend in order to distribute the common units of Entergy Mid South to Entergy's shareholders, and those units will ultimately be exchanged with shares of ITC Holdings common stock upon the merger of Entergy Mid South with ITC MidSouth.²⁰³

²⁰⁰ *Id.* at 38.

²⁰¹ *Id.*

²⁰² *Id.* at 39.

²⁰³ Applicants note that this distribution is referred to as the “spin” or “spin-off.” Applicants Feb. 22 Answer at 40.

108. Fifth, Applicants respond to criticisms of the hold harmless commitments, asserting that the commitments satisfy and are consistent with Commission precedent, and ensure that transaction-related costs are not recovered in rates. Applicants assert that protestors are incorrect in claiming that the hold harmless commitment is too narrow and should apply to increases in transmission rates resulting from the changes in capital structure, ROE and other changes proposed by ITC Holdings. According to Applicants, protestors fail to cite any Commission precedent to support the assertion that the hold harmless commitment is too narrow. Applicants claim that “[i]t has never been the Commission’s policy that customers of merging utilities are entitled to be protected from all rate increases no matter the reason.”²⁰⁴ Applicants state that the objective of the hold harmless commitment is to preclude the recovery of merger-related costs in excess of the merger benefits, and that their hold harmless commitments achieve this result in a manner that the Commission has approved on numerous occasions.

109. Applicants also respond to the City of New Orleans’ claim regarding the provision of the hold harmless commitment that permits ITC Holdings to collect transaction-related costs during the five-year hold harmless period to the extent that the merger-related benefits exceed merger-related costs. Applicants state that the Commission has accepted proposals that allow the recovery of merger-related costs offset by merger-related benefits on numerous occasions²⁰⁵ and that the cases cited by the City of New Orleans reach the same result.

110. Applicants also state that they are not, as some protestors claim, required to demonstrate net benefits resulting from the Proposed Transaction. Applicants explain that although the Proposed Transaction is expected to yield benefits, the legal standard applicable to mergers requires the Commission to find that a proposed transaction is consistent with the public interest, and does not require a quantified demonstration of benefits resulting from a transaction. Applicants note that the Merger Policy Statement makes clear that the reasoning for rate commitments such as Applicants’ hold harmless commitments is to avoid the need for lengthy comparisons of merger-related costs and benefits.²⁰⁶ Finally, Applicants note that they are not required to commit to passing merger-related benefits to retail customers through their retail rates. Applicants state that

²⁰⁴ Applicants Feb. 22 Answer at 42 (citing *Duke Energy Corp.*, 136 FERC ¶ 61,245, at PP 168, 173 (2011)).

²⁰⁵ Applicants Feb. 22 Answer at 43 (citing, among other cases, *FirstEnergy Corp.*, 133 FERC ¶ 61,222, at P 63 (2010) and *PPL Corp.*, 133 FERC ¶ 61,083, at PP 26-27 (2010)).

²⁰⁶ Applicants Feb. 22 Answer at 44-45.

concerns about retail rates will be addressed by retail regulators with jurisdiction over the Entergy Operating Companies.

111. Applicants also respond to arguments that the Proposed Transaction will result in unauthorized parallel/loop flows across neighboring transmission systems. According to Applicants, these issues relate to the integration of the Entergy Operating Companies into MISO, rather than the Proposed Transaction, and are more appropriately addressed in the integration proceedings.²⁰⁷

112. Finally, Applicants dispute protestors' claims that the transmission pricing zones proposed in the TPZ Filing should be addressed in these proceedings, as part of the Proposed Transaction. According to Applicants, "[i]ssues raise with respect to integration into MISO, such as the decision to incorporate separate MISO transmission pricing zones instead of the use of a single zone, are to be considered by the Commission separately from the issues raised by this Transaction."²⁰⁸

d. Other Responsive Pleadings

113. The City of New Orleans notes that Applicants' answer fails to address its claim that Applicants' definition of transaction-related costs that will be subject to Applicants' hold harmless commitment is overly narrow. The City of New Orleans rejects Applicants' assertion that protestors failed to cite Commission precedent to support their position that the hold harmless commitment is too narrow. The City of New Orleans again cites to recent Commission orders which it claims demonstrates the Commission's "broad interpretation of what constitutes transaction-related costs."²⁰⁹ The City of New Orleans states that the Commission should specify that Applicants' hold harmless provision applies to all transaction-related costs, not just the employee labor and other costs incurred by ITC Holdings to consummate and implement the Proposed Transaction.

114. The City of New Orleans accepts Applicants' explanation and commitment that the cost of the debt/dividends issued to facilitate the Proposed Transaction will not be recovered in rates.²¹⁰ According to the City of New Orleans, it views Applicants' statements in response to its concerns regarding the debt/dividends at the ITC Holdings

²⁰⁷ See, e.g., Applicants and MISO Feb. 1 Answer, Applicants Feb. 22 Answer at 65.

²⁰⁸ Applicants Feb. 22 Answer at 29 (citing *Midwest Indep. Transmission Sys. Operator, Inc.* 139 FERC ¶ 61,056, at P 229 (2012)).

²⁰⁹ City of New Orleans Mar. 11 Response at 9, n.33.

²¹⁰ City of New Orleans Mar. 11 Response at 11.

level as “an unequivocal commitment to not seek to recover the costs associated with the issuance of dividends or recapitalization, including the issuance of new debt, through rates.”²¹¹ The City of New Orleans requests that the Commission memorialize Applicants’ commitment in its order on the Application, and that the Commission impose the same obligation on Entergy.²¹²

115. Joint Customers reiterate their argument that the Proposed Transaction will have an adverse impact on customer rates, and that the Commission must impose additional conditions. Joint Customers continue to argue that the benefits of independent transmission company ownership that Applicants cite in support of the Proposed Transaction are speculative and do not provide a reasonable basis for approving a transaction that will “substantially increase” rates.²¹³ Joint Customers criticize Applicants for relying on the purported benefits of the Proposed Transaction, but then responding that no showing of net benefits is required when protestors challenge the benefits themselves.²¹⁴ Joint Customers also reject Applicants’ claim, in response to criticism of their projected financial savings from the Proposed Transaction, that Entergy is unlikely to refinance the debt because doing so would involve costs and other considerations. Joint Customers allege that Applicants do not quantify these costs and fail to recognize that Entergy would, in any case, incur some of them in reducing and refinancing to close the Proposed Transaction. Lastly, Joint Customers reiterate their claim that Applicants’ hold harmless commitments are inadequate and urge the Commission to require Applicants to protect customers from increases resulting from the proposed formula rate construct and to provide additional information that would permit customers and the Commission to calculate “just how large” the rate-driven increases will be.²¹⁵

²¹¹ City of New Orleans Mar. 11 Response at 13.

²¹² In its response, the City of New Orleans notes that Applicants’ answer did not address whether the Reverse Morris Trust is intended to benefit Entergy’s shareholders by reducing their tax liability following the Proposed Transaction or whether the cost of those dividends or any recapitalization costs would ultimately be recovered from ratepayers. The City of New Orleans states that Applicants’ answer appears limited to the ITC Holdings-side of the Proposed Transaction, and thus request that Entergy be treated in the same manner as ITC Holdings. City of New Orleans Mar. 11 Response at 13.

²¹³ Joint Customers Mar. 11 Answer at 37.

²¹⁴ Joint Customers Mar. 11 Answer at 37-38.

²¹⁵ Joint Customers Mar. 11 Answer at 37-38.

116. In response to Applicants' claims regarding the potential for unauthorized parallel/loop flows, the SPP Transmission Owners reiterate their arguments that the loop flow issues must be evaluated as part of a holistic evaluation of the Proposed Transaction and Entergy integration into MISO.²¹⁶

117. Finally, several parties, including Joint Customers and the City of New Orleans, reiterate their concerns and arguments regarding the four transmission pricing zones proposal,²¹⁷ and urge the Commission to address the proposal in these proceedings.²¹⁸

e. **Commission Determination**

118. As the Commission has explained on prior occasions, our analysis of rate effects under FPA section 203 differs from the analysis of whether rates are just and reasonable,²¹⁹ which we are considering separately in our order on Applicants' FPA section 205 filings and requests. Our focus here, in this order, is on the effect that the Proposed Transaction itself will have on rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the Proposed Transaction.

119. As an initial matter, as noted above, some protestors challenge how Applicants performed their effect on rates analysis, alleging that Applicants failed to consider certain changes that protestors claim are due to the Proposed Transaction. Protestors focus on three components of the Proposed Transaction that they argue will result in adverse rate impacts: the use of the MISO ROE; the proposed depreciation rates; and the proposed capital structure. The Commission concludes that in the unique circumstances of this case, in which the company currently holding the assets to be acquired is in the process of joining an RTO, Applicants analyzed properly the effects of the Proposed Transaction on rates. In addition, we find, based on the evidence in the record, that Applicants have demonstrated that the Proposed Transaction will not have an adverse effect on rates. Although rates will increase for some customers as a result of this transaction, Applicants have shown that the Proposed Transaction will result in offsetting benefits. Further, pursuant to Applicants' hold harmless commitments, as set out in the Application and

²¹⁶ SPP Transmission Owners Feb. 14 Answer at 2-5.

²¹⁷ See, e.g., Joint Customers Mar. 11 Answer at 27-37.

²¹⁸ See, e.g., City of New Orleans Mar. 11 Response at 2-4.

²¹⁹ See, e.g., *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, at P 25 (2008); *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 19 (2009).

clarified in Applicants February 22 Answer, customers will be held harmless from transaction-related costs for five years.

120. We first address protestors' arguments that Applicants should have analyzed the effect of the MISO ROE on rates, and that Applicants' analysis fails to consider the impacts of that change. Contrary to protestors' arguments, we find that the increase in ROE is a consequence of Entergy's integration into MISO rather than the Proposed Transaction: Entergy would adopt the MISO ROE irrespective of the Proposed Transaction, thus that change is due to the integration of the Entergy facilities into MISO, not the Proposed Transaction.²²⁰ The Commission notes that the Proposed Transaction is explicitly predicated upon the Entergy Operating Companies joining MISO,²²¹ and Applicants' analysis properly rests on this condition. Accordingly, the Commission finds that it was reasonable for Applicants to base their effect on rates analysis on the Entergy Operating Companies' proposed MISO ROE, as that is the ROE that the Entergy Operating Companies would use in MISO.

121. As to the effect of the MISO ROE on rates, as we note in the concurrent order addressing Applicants' FPA section 205 filings and requests, as members of MISO, the Entergy Operating Companies would, under Commission precedent, be entitled to the MISO ROE as part of their formula rates. The Commission has stated: "[t]he Commission has approved a single base ROE for transmission-owning members of MISO" and "[t]ransmission-owning members of MISO are currently authorized to use a 12.38 percent ROE for calculating their annual transmission revenue requirement."²²² Accordingly, by joining MISO, the Entergy Operating Companies, as MISO

²²⁰ We note that the Merger Agreement requires, as a precondition to closing the Proposed Transaction, that Entergy shall have received "all necessary approvals from state and federal regulatory authorities" to allow Entergy to become a member of an RTO. Applicants Feb. 22 Answer at 29 (citing and quoting Merger Agreement, section 6.01(g)). Applicants state that the Merger Agreement contemplates the Proposed Transaction closing in June 2013. Application at 81. Entergy is anticipated to integrate fully into MISO effective December 19, 2013.

²²¹ As Applicants have stated: "The [Proposed Transaction]...is predicated on the Entergy Operating Companies obtaining the required regulatory approvals to join MISO...." Applicants February 22 Answer at 28-29. Further, the Merger Agreement requires, as a precondition to closing the Proposed Transaction that Entergy shall have received "all necessary approvals from state and federal regulatory authorities" to allow Entergy to become a member of an RTO. Applicants Feb. 22 Answer at 29 (citing and quoting Merger Agreement, section 6.01(g)).

²²² *DATC Midwest Holdings, LLC*, 139 FERC ¶ 61,224, at P 83 (2012).

Transmission Owners, would be entitled to the 12.38 percent MISO ROE. Likewise, since ITC Holdings will also become a MISO Transmission Owner with respect to the Entergy transmission facilities if the Proposed Transaction closes, the New ITC Operating Companies would also be entitled to the 12.38 percent MISO ROE as part of their formula rates.²²³ Thus, there would be no difference in the ROEs in the Entergy Operating Companies' and the New ITC Operating Companies' proposed MISO formula rates that Applicants would need to account for as part of their effect on rates analysis. The Commission finds that, in the unique circumstances of this case, Applicants' effect on rates analysis was appropriate.

122. The City of New Orleans argues that the Commission cannot determine whether the Proposed Transaction will have an adverse effect on rates without examining the impact of the four transmission pricing zones construct proposed by Entergy in the TPZ Filing.²²⁴ We disagree. As with adoption of the MISO ROE, the Commission finds that the four transmission pricing zones construct is a consequence of Entergy's integration into MISO, not the Proposed Transaction, and is therefore being addressed in the companion order on Applicants' FPA section 205 filings and requests and under the FPA section 205 standard of review. As Applicants state in the Application, Entergy proposes the use of the four transmission pricing zones in MISO, and ITC Holdings will adopt the same transmission pricing zones.²²⁵ Accordingly, any effects of the four transmission pricing zones are not due to the Proposed Transaction. Likewise, the Commission concludes that any unauthorized parallel/loop flows that may or may not result from Entergy's integration into MISO are also not due to the Proposed Transaction.

123. We also find that the proposed depreciation rates for the transmission assets in the states of Arkansas, Louisiana, Mississippi and Texas under ITC Holdings' ownership²²⁶ will not have an adverse effect on rates. Although the Commission is setting for hearing in the concurrent order addressing Applicants' FPA section 205 filings and requests the depreciation rates proposed by the New ITC Operating Companies, the proposed depreciation rates do not change the amount of the costs to be recovered through those

²²³ In the companion order issued concurrently with this order addressing Applicants' FPA section 205 filings and requests, the Commission concludes that the New ITC Operating Companies are also entitled to the MISO ROE based on Commission precedent, and that challenges to the MISO ROE must be made in a separate proceeding.

²²⁴ City of New Orleans Jan. 22 Protest at 10.

²²⁵ Application at 25.

²²⁶ *Id.* at 74.

rates, but rather the timing of recovery of those costs. Accordingly, the proposed depreciation rates will not have an adverse effect on rates.

124. Although Applicants have acknowledged that the Proposed Transaction will have an effect on rates due to the use of an actual capital structure targeting 60 percent equity and 40 percent debt,²²⁷ we agree with Applicants' conclusion that those effects are offset by the benefits of independent transmission company ownership over the Entergy transmission facilities. As Applicants note, the Proposed Transaction will benefit customers in the Entergy footprint and bring an independent transmission company to a region that has not experienced the benefits of independent transmission ownership.²²⁸ We agree with Applicants that transferring Entergy's transmission facilities to ITC Holdings will strengthen the Entergy Operating Companies' focus on generation and distribution.²²⁹ Further, we note that the benefits discussed below are over and above any benefits that will result from Entergy's integration into MISO. In other words, these benefits are due to ownership of Entergy's transmission assets by an independent transmission company, and are benefits that are not attributable to Entergy's integration into MISO.

125. The Commission has noted the benefits that the independent transmission company business model can provide on previous occasions. Specifically, the Commission has noted that "[b]y eliminating the competition for capital between generation and transmission functions and thereby focusing only on transmission investment, the Transco model responds more rapidly and precisely to market signals indicating when and where transmission investment is needed."²³⁰ As Applicants explain, ITC Holdings' only business is electric transmission, and the company "is structured to be free from influence by entities that buy or sell energy as a commodity"; does not own generation or distribution assets (or fuel suppliers); and makes no retail or

²²⁷ *Id.* at 24-25. According to Exhibit No. ITC-202 of the Application, the difference in gross revenue requirement under ITC Holdings' ownership due to the change in capital structure is \$56.1 million. Errata to Application, Exhibit No. ITC-202: Illustrative 2014 Rate Effect Schedule for Wholesale Customers Charged the OATT Rate, ln.26. As discussed more fully below, Applicants state that this amount would be reduced by credit quality savings stemming from the difference in credit ratings between ITC Holdings and Entergy.

²²⁸ Application, Exhibit No. ITC-100: Welch Test. at 13:13-14.

²²⁹ *Id.* at 13:15-17.

²³⁰ *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307, at P 27 (2008). *See also ITC Holdings-IPL*, 121 FERC ¶ 61,229 at P 123; *ITC Midwest LLC*, 133 FERC ¶ 61,169, at P 23 (2010) (*ITC Midwest*).

wholesale electricity sales.²³¹ The ITC Holdings Policy on Independence and Articles of Incorporation, which restrict potential ownership of stock in the company by market participants, also bolster and help maintain ITC Holdings' independence.²³²

126. Applicants note that ITC Holdings' focus on transmission has led to improved transmission investments, particularly where ITC Holdings has acquired transmission systems. With respect to transmission systems that it has previously acquired, Applicants state that ITC Holdings has "completed capital projects targeted at remediating the effects of decades of underinvestment, improving reliability, providing non-discriminatory access to transmission, promoting competition in electric energy markets and facilitating interconnection of new generation and load."²³³ Applicants explain that ITC Holdings' independent transmission company business model has supported capital investments across all of the operating companies, and those investments totaled approximately \$3 billion from the company's start in early 2003 through June 30, 2012.²³⁴ Applicants also provide examples of projects that ITC Holdings has undertaken that reduce congestion and strengthen reliability.²³⁵ Applicants state that if the Proposed Transaction closes, ITC Holdings would also be focused on investing in the Entergy transmission system.²³⁶

127. Applicants provide evidence that ITC Holdings begins to address existing issues and improve the transmission systems that it acquires within a short period of time after acquiring a transmission system. Applicants' evidence shows that, within three years of acquiring transmission systems, ITC Holdings has achieved improvements in sustained outages caused by transmission system equipment. *ITC Transmission* achieved a 55 percent improvement between 2005 and 2011 in sustained outages caused by

²³¹ Application, Exhibit No. ITC-100: Welch Test at 18:14-20. Applicants also note that ITC Holdings is not owned by integrated utility companies or affiliated with them in any way. *Id.* at 19:18-19.

²³² *Id.* at 19:5-19 to 20:1-18.

²³³ *Id.* at 27:5-10. *See also* Application, Exhibit No. ITC-300: Prepared Direct Testimony of Jon C. Jipping on Behalf of ITC Holdings Corp. (Jipping Test.) at 10:9-21 to 11:1-10. Applicants note that these investments were fully vetted as part of the applicable RTO planning process. Application, Exhibit No. ITC-100: Welch Test. at 27:9-10.

²³⁴ Application, Exhibit No. ITC-200: Bready Test. at 15:4-9.

²³⁵ Application, Exhibit No. ITC-100: Welch Test. at 27:18-22 to 29:1-12.

²³⁶ *Id.* at 31:15-16 to 32:1-9.

transmission system equipment;²³⁷ Michigan Electric Transmission achieved a 13 percent sustained outage improvement between 2008 and 2011;²³⁸ and ITC Midwest achieved a 58 percent sustained outage improvement between 2008 and 2011.²³⁹ In addition, Applicants have shown that they can put in new transmission assets quickly. For instance, *ITCTransmission* completed the Jewell-Spokane project in 2004, one year after *ITCTransmission* became an ITC company in 2003.²⁴⁰ Finally, ITC Holdings' usage of standard equipment when possible drives greater efficiencies in cost and installation time.²⁴¹

128. Applicants claim that the independent transmission company model provides greater financial strength for transmission investment. First, as noted above, Applicants state that there is no internal competition for capital or other resources as with other business models. Second, Applicants state that ITC Holdings has been able to maintain a

²³⁷ Application, Exhibit No. ITC-300: Jipping Test. at 13:3-5. *ITCTransmission* has been an ITC Holdings company since 2003. *Id.* at 12:13. The outage data comes from the SGS Statistical Services' Transmission Reliability Benchmarking Study, the largest independent benchmarking comparison forum for electric transmission reliability, which rated the companies for sustained outages performance per circuit (Number of Sustained Outages per Circuit) as well as for the average duration of circuit outages (in minutes). *Id.* at 12:7-11.

²³⁸ Application, Exhibit No. ITC-300: Jipping Test. at 13:5-6. ITC Holdings acquired Michigan Electric Transmission in 2006. *Id.* at 12:13. ITCT and METC are within the top ten percent of best rated companies for both metrics – sustained outages performance per circuit and average duration of circuit outages – and outperform both their region and their peer group in both categories. *Id.* at 12:7-11

²³⁹ Application, Exhibit No. ITC-300: Jipping Test. at 13:5-6. As noted earlier, ITC Holdings acquired ITC Midwest in December 2007 and began operating and maintaining the system in 2009.

²⁴⁰ Applicants explain that the Jewell-Spokane project was originally identified in 1988 by the previous owner of the *ITCTransmission* assets, but that the owner opted to operate around the constrained facility instead of relieving the constraint. According to Applicants, the project was a one-time \$10.2 million investment that was “estimated to provide *annual* net benefits of over \$60 million, with a benefit to the [*ITCTransmission*] footprint alone of over \$64 million.” Application, Exhibit No. ITC-100: Welch Test. at 29:5-12.

²⁴¹ *See, e.g.*, Application, Exhibit No. ITC-100: Welch Test. at 32:12 -33:5.

strong balance sheet, steady cash flow, and solid investment grade ratings.²⁴² Applicants state that the financial strength of ITC Holdings' operating companies has reduced the cost of debt and improved access to cost-effective capital, especially during periods of market turmoil, such as during the 2008-2009 credit crisis.²⁴³

129. According to Applicants, ITC Holdings' strong credit ratings also attract a larger pool of investors that are willing to invest in ITC Holdings and in its operating companies' subsidiaries' debt. Applicants note that, given the capital intensive nature of transmission investment, solid investment grade credit ratings are critical as they enable ITC Holdings to regularly access the debt capital market at lower costs, which are ultimately reflected in the operating companies' transmission rates.²⁴⁴ Applicants expect ITC Holdings' enhanced credit quality to yield debt financing savings of approximately \$30 million to \$34 million in 2014 for the New ITC Operating Companies in their first full year under ITC Holdings ownership.²⁴⁵ Applicants claim that these savings are measured in comparison to the forecasted interest expense for the transmission business under Entergy ownership over the same time period, and are a direct result of the difference in credit quality between what is anticipated for the New ITC Operating Companies and the current Entergy Operating Companies. Applicants estimate that over a five-year period, the debt cost savings for the New ITC Operating Companies will range from approximately \$159 million to \$197 million (in nominal dollars).²⁴⁶

130. With respect to transmission planning, Applicants also note that ITC Holdings' independence promotes better communication among stakeholders and that the ITC Holdings' operating companies go above and beyond the requirements of MISO's transmission planning process.²⁴⁷

131. In light of this evidence, which demonstrates that ownership of the Entergy transmission assets by an independent transmission company will provide benefits over and above the benefits stemming from Entergy's integration into MISO, we find that the

²⁴² *Id.* at 37:10-12.

²⁴³ Application, Exhibit No. ITC-200: Bready Test. at 17:12-15.

²⁴⁴ *Id.* at 19:3-9.

²⁴⁵ *Id.* at 21:7-9.

²⁴⁶ *Id.* at 21:13-16.

²⁴⁷ Application, Exhibit No. ITC-100: Welch Test. at 23: 20-22 to 24:1. *See also* Application, Exhibit No. ITC-800: Prepared Direct Testimony and Exhibits of Thomas H. Wrenbeck on Behalf of ITC Holdings Corp. (Wrenbeck Test.) at 15:10-14.

expected benefits of the Proposed Transaction are likely to outweigh the adverse impacts. Even assuming, as Joint Customers and the Louisiana Commission argue, that Applicants' credit quality savings estimates are overstated, the evidence provided by Applicants demonstrates that the expected benefits of the Proposed Transaction will likely offset the effect on rates. Applicants have not only demonstrated that the Proposed Transaction will result in benefits that offset the increase in gross revenue requirement due to the proposed capital structure, but that the Proposed Transaction will likely yield many different types of benefits.

132. We also rely on the following representations from Applicants, and accept Applicants' following commitments, on behalf of the New ITC Operating Companies and the Entergy Operating Companies. As noted above, with respect to the New ITC Operating Companies, Applicants explain that the New ITC Operating Companies will not have any wholesale requirements customers, and that, as a consequence, the ITC ratepayer hold harmless commitments are focused on the wholesale transmission rates to be charged by the New ITC Operating Companies. Applicants state as follows:

The Transaction will result in goodwill for Generally Accepted Accounting Principles ("GAAP") accounting purposes at each of the New ITC Operating Companies. The New ITC Operating Companies commit not to recover any acquisition premium or goodwill in rates. ...

Furthermore, ITC commits for a period of five years to hold the New ITC Operating Companies' transmission customers harmless from Transaction-related costs. Specifically, ITC commits that the New ITC Operating Companies will not collect through transmission rates any Transaction-related costs that exceed demonstrated Transaction-related savings, for a period of five years. ...

Finally, rates under Grandfathered Agreements (GFAs) for transmission service will be unaffected by the Transaction. Because GFAs will be honored, there will be no changes in pricing provisions, ownership arrangements or other aspects of these contracts as a result of the Transaction.²⁴⁸

133. In Applicants February 22 answer, Applicants clarify that the cost of debt for the planned recapitalization of ITC Holdings will not be recovered in the New ITC Operating Companies' transmission rates. Specifically, Applicants explain that:

²⁴⁸ Application at 22-23 (internal citations omitted).

The assumption in the [City of New Orleans Jan. 22 Protest] that the cost of debt used for the planned recapitalization of ITC Holdings prior to closing the Transaction would be included in the formula rate is incorrect. These costs will not be recovered in [the New ITC Operating Companies'] rates because: 1) the recapitalization will occur at the holding company level; 2) the recapitalization will be financed with senior unsecured debt sold by ITC Holdings; and 3) dividend payments also will be made at the holding company level. ...

First, ITC Holdings, and not [the New ITC Operating Companies], will effectuate the recapitalization. Any special dividend to effectuate the recapitalization (or, in the alternative, a share repurchase or some combination thereof) will not be paid by [the New ITC Operating Companies], whose transmission rates will be regulated by the Commission; it will be paid by ITC Holdings and thus cannot be recovered through transmission rates. Thus, any special dividend will have no impact on rates. Second, and similarly, debt raised to effectuate the recapitalization will be raised by ITC Holdings and not by [the New ITC Operating Companies]. Thus, that debt cannot be recovered through transmission rates and will have no impact on rates. ...

Lastly, the debt raised by [the New ITC Operating Companies] will not be used to effectuate the recapitalization of ITC Holdings, but to refinance the debt that will be assumed from [the Entergy Wires Subs]. That debt raised by [the Entergy Wires Subs] will provide funds to the Entergy Operating Companies in exchange for their transmission assets. The Entergy Operating Companies will use those funds to repay historic debt. Thus, in effect, the debt raised by [the New ITC Operating Companies] will "replace" the historic debt of the Entergy Operating Companies.²⁴⁹

134. In finding that the Proposed Transaction is consistent with the public interest, we accept and rely on Applicants' commitments with respect to the transmission rates of the New ITC Operating Companies, as stated in the Application and clarified in Applicants' February 22 answer. Further, we find that these commitments adequately address the concerns raised by protestors on this issue that are properly within the scope of this proceeding.

135. With respect to the Entergy Operating Companies, Applicants state that the effect of the Proposed Transaction on the Entergy Operating Companies is the converse of the New ITC Operating Companies. As the Entergy Operating Companies are transferring

²⁴⁹ Applicants Feb. 22 Answer at 38-40.

their transmission assets and transmission business to ITC Holdings through the Proposed Transaction, the Entergy Operating Companies' commitments do not address transmission service or rates. Applicants state that "there will be no acquisition premium or goodwill recorded on the books of the Entergy Operating Companies as a consequence of the Transaction and thus no potential for the Entergy Operating Companies to recover such items in wholesale power rates."²⁵⁰ Applicants also state that:

With respect to cost-based wholesale requirements rates, the Entergy Applicants are willing to make the same commitments as made above by ITC. Specifically, the Entergy Applicants commit that for a period of five years, they will not seek to include Transaction-related costs in the Entergy Operating Companies' cost-based wholesale requirements rates revenue requirements, except to the extent the Entergy Operating Companies can demonstrate that Transaction-related savings are equal to or in excess of all of the Transaction-related costs so included. ... This hold harmless commitment applicable to the Entergy Operating Companies is identical to the commitment described above applicable to the new ITC Companies' wholesale transmission rates.²⁵¹

136. As above, in finding that the Proposed Transaction is consistent with the public interest, we accept and rely on Applicants' commitments with respect to the cost-based wholesale requirements rates of the Entergy Operating Companies, as stated in the Application and clarified in Applicants' February 22 answer. Further, we find that these commitments adequately address the concerns raised by protestors on this issue that are properly within the scope of this proceeding.

137. We interpret Applicants' statements in the Application and Applicants February 22 Answer to mean that Applicants will not collect from the New ITC Operating Companies' transmission customers, for a period of five years, any transaction-related costs, which we have interpreted to include all transaction-related costs, not only costs related to consummating the transaction, to the extent that such costs exceed transaction related savings. With respect to the Entergy Operating Companies, we interpret Applicants' statements in the Application and Applicants' February 22 answer to mean that Applicants will not seek to include in the Entergy Operating Companies' cost-based wholesale requirements rates revenue requirements, for a period of five years, any transaction-related costs, which we have interpreted to include all transaction-related costs, not only costs related to consummating the transaction, to the extent that such costs exceed transaction related savings. The Commission has also

²⁵⁰ Application at 32-33.

²⁵¹ Application at 32-33.

interpreted hold harmless commitments to apply to transition costs, both capital and operating, incurred to achieve merger synergies.²⁵² The Commission will be able to monitor Applicants' hold harmless commitments under its authority under section 301(c) of the FPA²⁵³ and the books and records provision of the Public Utility Holding Company Act 2005,²⁵⁴ and the commitments are fully enforceable based on the Commission's authority under FPA section 203. Furthermore, Applicants have confirmed that the cost of debt for the recapitalization of ITC Holdings will not be recovered in the New ITC Operating Companies transmission rates, and the Commission will require Applicants to abide by the explanation provided in their February 22 answer.

138. The Commission has found that a hold harmless commitment is enforceable and administratively manageable if customers have an opportunity to scrutinize costs before they are included in the formula rate, and therefore are able to alert the Commission to costs that might be transaction-related.²⁵⁵ If the New ITC Operating Companies or the Entergy Operating Companies seek to recover transaction-related costs through their transmission rates or their cost-based wholesale requirements rates revenue requirements, respectively, within five years after the Proposed Transaction is consummated, they must submit a compliance filing that details how they are satisfying the hold harmless requirement. If the New ITC Operating Companies or the Entergy Operating Companies seek to recover transaction-related costs in an existing formula rate that allows for such recovery, then that compliance filing must be filed in the FPA section 205 docket in which the formula rate was approved by the Commission, as well as in the instant FPA section 203 docket.²⁵⁶ We also note that, if the New ITC Operating Companies or the Entergy Operating Companies seek to recover transaction-related costs in a filing, whereby the New ITC Operating Companies or the Entergy Operating Companies are proposing a *new* rate (either a new formula rate or a new stated rate), then that filing must be made in a *new* FPA section 205 docket as well as in the instant FPA section 203 docket.²⁵⁷ The Commission will notice such filings for public comment. In such filings,

²⁵² See, e.g., *Exelon Corp.*, 138 FERC ¶ 61,167 at P 118.

²⁵³ 16 U.S.C. § 825(c).

²⁵⁴ 42 U.S.C. § 16452 (2006).

²⁵⁵ See, e.g., *ITC Midwest*, 133 FERC ¶ 61,169 at P 25.

²⁵⁶ In this case, the filing would be a compliance filing in both the FPA section 203 and 205 dockets.

²⁵⁷ In this case, the filing would be a compliance filing in the FPA section 203 docket, but a rate application in the FPA section 205 docket.

the New ITC Operating Companies or the Entergy Operating Companies must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the transaction, in addition to any requirements associated with filings made under FPA section 205. Such a hold harmless commitment will protect the transmission customers of the New ITC Operating Companies and the Entergy Operating Companies' customers paying cost-based wholesale requirements rates from being adversely affected by the Proposed Transaction.²⁵⁸

139. Accordingly, we reject City of New Orleans' claims that the Commission would only permit Applicants to recover transaction-related costs after the hold harmless period and then only to the extent that the New ITC Operating Companies can demonstrate the savings exceed the costs when it files under FPA section 205. As stated above, if the New ITC Operating Companies seek to recover transaction-related costs within five years after the Proposed Transaction is consummated, they must submit a compliance filing that details how they are satisfying the hold harmless commitment. As explained above, the procedures for recovering these costs are different based on whether they will be recovered through an existing formula rate or a new rate (a formula or a stated rate).

140. Finally, the Commission declines to impose additional hold harmless requirements as suggested by protestors. Applicants have demonstrated that the benefits of the Proposed Transaction will offset the impact on rates, and the hold harmless commitment offered by Applicants will further protect customers from any impacts of the Proposed Transaction.

3. Effect on Regulation

a. Applicants' Analysis

141. According to Applicants, the Proposed Transaction will have no adverse effect on regulation by the Commission because the rates, terms and conditions of service for wholesale customers served by the transmission facilities to be transferred from Entergy to ITC Holdings will continue to be regulated by the Commission. Applicants also contend that the Proposed Transaction does not raise any concerns with regard to state regulation. Applicants explain that, at the retail rate level, the Entergy Operating Companies will continue to be regulated by state commissions in states where the companies serve retail load, as well as by the City of New Orleans, while the Commission will continue to have jurisdiction over transmission services.

²⁵⁸ See *ITC Midwest LLC*, 133 FERC ¶ 61,169 at PP 24-25; *FirstEnergy Corp.*, 133 FERC ¶ 61,222, at P 63 (2010); *PPL Corp.*, 133 FERC ¶ 61,083, at PP 26-27 (2010).

b. Comments and Protests

142. Protestors question whether the Proposed Transaction will have an adverse effect on regulation. The Texas Industrial Energy Consumers, for example, express concern that the Application may result in a loss of state jurisdiction over transmission rates without any measurable benefit to Entergy's retail customers.²⁵⁹ The Arkansas Electric Energy Consumers express similar concerns.²⁶⁰ Some state commissions have raised concerns regarding conditions that they have imposed as part of their approval of Entergy's integration into MISO and concerns relating to ongoing state proceedings on the Proposed Transaction.²⁶¹

c. Commission Determination

143. We find no evidence that either state or federal regulation will be impaired by the Proposed Transaction. The Commission's review of a transaction's effect on regulation focuses on ensuring that the transaction does not result in a regulatory gap at the federal or state level.²⁶² We find that the Proposed Transaction will not create a regulatory gap at the federal level because the Commission will retain its regulatory authority over the companies after the transaction. Specifically, as Applicants note, the rates, terms and conditions of service for wholesale customers served by the transmission facilities to be transferred from Entergy to the New ITC Operating Companies will continue to be regulated by the Commission. With respect to state commission arguments regarding conditions that they have imposed as part of their approval of Entergy's integration into MISO and concerns regarding ongoing state proceedings, we find that nothing in the Commission's disposition of the Application will interfere with the exercise of state regulatory commission jurisdiction over Entergy's integration into MISO or the Proposed Transaction.

144. The Commission stated in the Merger Policy Statement that it ordinarily will not set the issue of the effect of a transaction on state regulatory authority for a trial-type hearing where a state has authority to act on the transaction. However, if the state lacks this authority and raises concerns about the effect on regulation, the Commission stated that it may set the issue for hearing, and that it will address such circumstances on a case-

²⁵⁹ Texas Industrial Energy Consumers Jan. 22 Comments at 2.

²⁶⁰ Arkansas Electric Energy Consumers Jan. 22 Initial Comment at 2.

²⁶¹ See, e.g., Louisiana Commission Jan. 22 Protest at 2; Arkansas Commission Feb. 6 Answer at 5.

²⁶² Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,124.

by-case basis.²⁶³ We note that no state commission has requested that the Commission address the issue of the effect of the Proposed Transaction on state regulation. Further, the Entergy Operating Companies will continue to be regulated at the retail level by state commissions in states where the Entergy Operating Companies serve retail load, and the City of New Orleans.

145. Accordingly, the Commission finds that the Proposed Transaction will not have an adverse effect on regulation.

4. Cross-subsidization

a. Applicants' Analysis

146. Applicants state that the Proposed Transaction does not present the type of concerns with cross-subsidization that typically are associated with transactions that involve traditional vertically integrated public utilities. First, Applicants explain that the New ITC Operating Companies will be independent stand-alone transmission companies that will not be affiliated with any traditional public utility company that engages in sales and distribution of electric power to captive retail customers.²⁶⁴ Applicants also note that the New ITC Operating Companies will also not be affiliated with any associate companies engaged in unregulated businesses that could be cross-subsidized.

147. With respect to the Entergy Operating Companies, Applicants state that the companies will not have any transmission customers or provide any transmission service, other than certain ancillary services to be provided during the short period of time between the closing of the Proposed Transaction and the Entergy Operating Companies' entry into the MISO market.²⁶⁵

148. Further, Applicants provide assurance that, based on facts and circumstances known or that are reasonably foreseeable, the Proposed Transaction will not result in cross-subsidization of a non-utility associate company or pledge or encumbrance of utility assets for the benefit of an associate company. Applicants verify that the Proposed Transaction will not result in "transfer of facilities between a traditional public utility associate company that has captive customers or that owns or provides transmission

²⁶³ *Id.* at 30,125.

²⁶⁴ Application at 35.

²⁶⁵ Application at 35.

service over jurisdictional transmission facilities, and an associate company.”²⁶⁶ With respect to this verification, Applicants state that “[a]t its most basic, the Proposed Transaction involves the transfer of jurisdictional transmission facilities between Entergy and ITC, two unaffiliated companies.”²⁶⁷ Applicants note that certain intra-corporate transfers of the transmission assets will occur, but solely for the purpose of effectuating the Proposed Transaction. Applicants state that it is not reasonably foreseeable that the Proposed Transaction will give rise to any transfer of facilities among associate companies in the future.

149. Applicants also verify that the Proposed Transaction will not result in “new issuances of securities by traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, for the benefit of an associate company.”²⁶⁸ Applicants explain that while the Proposed Transaction contemplates the incurrence of indebtedness by Entergy Mid South and the Entergy Wires Subs and the issuance of debt securities by the New ITC Operating Companies to refinance the debt assumed from Entergy Mid South and the Entergy Wires Subs, these issuances will be undertaken for the purpose of financing and completing the Proposed Transaction and establishing the capital structure of the New ITC Operating Companies. Applicants state that the issuances are not for the benefit of any associate company. Applicants note that the Entergy Operating Companies, the Entergy Wires Subs and the New ITC Operating Companies will seek Commission approval pursuant to FPA section 204 to issue securities and incur indebtedness in connection with the Proposed Transaction, and that the Commission will thus have the opportunity to review the issuances.²⁶⁹ Applicants state that it is reasonably foreseeable that the New ITC Operating Companies may, in the future, seek authorization from the Commission for the issuance of securities or incurrence of indebtedness, but observe that such issuances would be subject to the requirements of FPA section 204.

²⁶⁶ Application, Exhibit M: Assurance, Based on Facts and Circumstances Known or that are Reasonably Foreseeable, that the Proposed Transaction will not Result in Cross-Subsidization of a Non-Utility Associate Company or Pledge or Encumbrance of Utility Assets for the Benefit of an Associate Company (Exhibit M).

²⁶⁷ Application at 36.

²⁶⁸ Application, Exhibit M.

²⁶⁹ Application at 36-37. Applicants further state that the applications for approval under FPA section 204 will demonstrate compliance with the requirements of *Westar Energy, Inc.*, 102 FERC ¶ 61,186, *order on reh’g*, 104 FERC ¶ 61,018 (2003). The Commission approved Applicants’ FPA section 204 requests on May 16, 2013. *See* n.15, *supra*.

150. Applicants verify that the Proposed Transaction will not result in “new pledges or encumbrances 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.”²⁷⁰ Applicants reiterate that any new pledges or encumbrances of assets entered into by the Entergy Operating Companies or the New ITC Operating Companies will be for the purpose of completing the Proposed Transaction, not for the benefit of an associate company, and will be subject to approval by the Commission pursuant to FPA section 204, as would any future pledges or encumbrances of the transmission assets. In addition to this verification, Applicants request waiver of the requirement to list all current pledges and encumbrances of assets for the Entergy Operating Companies that will not be transferred to the New ITC Operating Companies, claiming that such information is not necessary for the Commission to determine whether the Proposed Transaction is consistent with the public interest. Applicants state that “there will be no pledge or encumbrances on the transmission assets being transferred to the New ITC Operating Companies other than those that will be entered into the future, and the Commission will have the opportunity to review those pledges and encumbrances as part of its review of the [FPA] [s]ection 204 application described above.”²⁷¹ Applicants conclude that, accordingly, at this time there are no pledges or encumbrances on the assets of the New ITC Operating Companies for the Applicants to provide with the Application.

151. Finally, Applicants verify that the Proposed Transaction will not result in “new affiliate contacts [*sic*] between non-utility associate companies and traditional public utility associate companies that have captive customers or that own or provide transmission service over jurisdictional transmission facilities, other than non-power goods and services agreements subject to review pursuant to FPA Section 205 and 206.”²⁷² Applicants state that all of the operating companies in the ITC holding company structure are public utilities and independent transmission companies, and that any future affiliate contracts among such associate companies related to services over which the Commission has jurisdiction would be subject to Commission review under FPA section 205.

²⁷⁰ Application, Exhibit M.

²⁷¹ Application at 38.

²⁷² Application, Exhibit M. The Commission assumes that Applicants intended to verify that the Proposed Transaction will not result in “new affiliate contracts” rather than “contacts” in Exhibit M, as the Application states that the Proposed Transaction does not provide for any new affiliate contracts between non-utility associate companies. Application at 38.

b. Protests and Comments

152. No parties allege that the Proposed Transaction will lead to cross-subsidization or any pledge or encumbrance of utility assets for the benefit of an associate company.

c. Commission Determination

153. Based on the representations as presented in the Application, we find that the Proposed Transaction will not result in cross-subsidization, or the pledge or encumbrance of utility assets for the benefit of an associate company.²⁷³

C. Other Issues and Approvals

1. Employee Matters Agreement and Extension of Time for Disposition of Stock by Employees

a. Applicants' Analysis

154. As noted above, Applicants state that, as part of the Proposed Transaction, a “significant number of employees” will move from Entergy to ITC Holdings.²⁷⁴ Applicants explain that the Employee Matters Agreement, which is among ITC Holdings, Entergy Mid South and Entergy Services, allocates among the parties to the agreement “certain assets, liabilities and responsibilities regarding employee matters, benefits and programs”²⁷⁵ and sets forth the process by which it will be determined which employees of the Entergy Operating Companies and Entergy Services will become employees of ITC Holdings.

155. According to Applicants, section 4.4 of the Employee Matters Agreement provides that, subject to Commission approval, employees transferring from Entergy to ITC Holdings will have twelve months to divest their Entergy stock.²⁷⁶ Applicants explain that under the ITC Holdings Policy on Independence, all members of the company’s

²⁷³ See also *ITC Arkansas LLC*, 143 FERC ¶ 61,123 (2013); *Entergy Arkansas, Inc.*, 143 FERC ¶ 61,124 (2013); *Transmission Co. Arkansas, LLC*, 143 FERC ¶ 61,125 (2013). In these orders, the Commission approved several requests by Applicants under FPA section 204.

²⁷⁴ Application, Exhibit No. ITC-100: Welch Test. at 19:16-19.

²⁷⁵ Application at 14.

²⁷⁶ Application at 14. See also Application, Exhibit No. ITC-101: ITC Holdings Corp. Policy on Independence at 3.

Board of Directors, management, and employees are prohibited from having “any direct financial interest in, or a financial conflict of interest with, any Market Participant, or an Affiliate of any Market Participant.”²⁷⁷ Although new employees are ordinarily required to divest any stock held in market participants within six months, the Employee Matters Agreement would extend this period for six additional months, giving Entergy employees transferred to ITC Holdings a total of twelve months to divest any Entergy stock that they own. Applicants request that, in light of the “significant number of employees moving from Entergy to [ITC Holdings],”²⁷⁸ the Commission approve this extension of the regular six month deadline for disposal by these new ITC Holdings employees of their stock in market participants given “the unique circumstances” of the Proposed Transaction.²⁷⁹

b. Protests

156. Joint Customers question ITC Holdings’ ability to remain independent after the transfer of a large number of employees from Entergy. Specifically, Joint Customers explain that the proposed Appendix I Agreement would transfer certain responsibilities from MISO to ITC Holdings, but that ITC Holdings will have a vested, non-independent interest in the outcome of the planning and operation of the Midsouth area of the transmission grid.²⁸⁰ Joint Customers state that the employees transferred from Entergy to ITC Holdings will constitute a majority of ITC Holdings’ employees,²⁸¹ and argue that Applicants have not demonstrated that these employees would be able to carry out impartially studies for the availability of service or transmission planning.²⁸²

²⁷⁷ Application, Exhibit No. ITC-100: Welch Test. at 19: 10-13 (quoting Exhibit No. ITC-101: ITC Holdings Corp. Policy on Independence at 3).

²⁷⁸ *Id.* at 19:16-19.

²⁷⁹ Application at 14. We note that, while the Application speaks in terms of extending to twelve months the period in which the new ITC Holdings employees would be required to dispose of “their stock in market participants,” under the terms of section 4.4 of the Employee Matters Agreement, the extension to twelve months would only apply to their disposition of Entergy stock.

²⁸⁰ Joint Customers Jan. 22 Protest at 96. Midsouth refers to the area of MISO that will be served by the Entergy transmission facilities.

²⁸¹ Joint Customers Jan. 22 Protest at 97.

²⁸² Joint Customers Jan. 22 Protest at 97.

c. Applicants' Answer

157. Applicants reject Joint Customers' suggestions that ITC Holdings will not remain fully independent after the Proposed Transaction. Applicants respond that there is no question that employees transferred to ITC Holdings will be independent because after the transfer they will be bound by the ITC Holdings Policy on Independence.²⁸³

d. Commission Determination

158. We reject without prejudice Applicants' request to extend the deadline for new employees to dispose of their stock by six months. First, we note that Applicants' description of the scope of the extension is inconsistent. While Applicants state in the Application that the extension is for "disposal by the new ITC employees of their stock in market participant,"²⁸⁴ section 4.4 of the Employee Matters Agreement seems to apply only to "Entergy Common Stock."²⁸⁵ Second, other than "the unique circumstances" of the Proposed Transaction and the large number of Entergy employees transferring to ITC Holdings, Applicants have provided no support for granting the six month extension provided for in the Employee Matters Agreement. Accordingly, our rejection of Applicants' request is without prejudice to Applicants making a new filing that clarifies and explains the extension they seek, and that also explains why the extension to dispose of the stock is needed.

159. We also find that Joint Customers' concerns regarding the effect of transferring Entergy employees to ITC Holdings are unfounded. In addition to abiding by the ITC Holdings Policy on Independence, all new employees of ITC Holdings will be required to comply with MISO's requirements and processes for determining availability of service and transmission planning.²⁸⁶ Accordingly, we do not share Joint Customers' concerns that the Entergy employees transferring to ITC Holdings will compromise ITC Holdings' independence.

²⁸³ Applicants Feb. 22 Answer at 53, n.78.

²⁸⁴ Application at 14.

²⁸⁵ Application, Exhibit No. I-3: Employee Matters Agreement, section 4.4.

²⁸⁶ See also *ITC Holdings Corp, et al.*, 143 FERC ¶ 61,257 (2013) and *Midwest Independent Transmission System Operator, Inc.*, 143 FERC ¶ 61,258 (2013).

2. Exchange Trust Election

a. Applicants' Analysis

160. As explained above, under the terms of the Merger Agreement and as part of the Proposed Transaction, Entergy may make an exchange trust election. Applicants explain that, at least 30 days prior to the closing of the Proposed Transaction, Entergy may elect to retain and subsequently transfer to the Exchange Trust, an irrevocable trust, the number of limited liability company membership common units in Entergy Mid South that would convert in the Proposed Transaction to up to 4.99 percent of the total number of shares of ITC Holdings common stock outstanding immediately following consummation of the Proposed Transaction.²⁸⁷ Upon delivery of notice by Entergy, the trustee of the Exchange Trust would conduct an exchange offer “whereby Entergy shareholders may exchange Entergy common stock for the [ITC Holdings] common stock held by the [Exchange Trust].”²⁸⁸ Until the time of the exchange offer, the shares of ITC Holdings common stock would be held in a trust managed by an independent third-party trustee.²⁸⁹

161. Applicants explain that “[t]he trust exchange offer, if elected by Entergy, is an option to help Entergy efficiently manage its post-transaction capitalization structure and improve cash flow and credit metrics.”²⁹⁰ Applicants state that the Exchange Trust has been structured to address any potential Commission concerns regarding ITC Holdings’ independence as an independent transmission company.²⁹¹ Specifically, Applicants contend that Entergy will have no ability to control or influence ITC Holdings in any respect as a consequence of the trust, and that the trustee will be obligated to vote the shares that it holds in trust in the same proportion as all other ITC Holdings’ shares are

²⁸⁷ Application, Exhibit No. ETR-100: Bunting Test. at 33:18-23-34:1-3. *See also* Application at 16-17.

²⁸⁸ Application, Exhibit No. ETR-100: Bunting Test. at 34:19-23.

²⁸⁹ Applicants state that if no exchange trust occurs after six months following the distribution of Entergy Mid South common units to Entergy shareholders in connection with the Proposed Transaction, or if an exchange offer occurs but is not fully subscribed, any ITC Holdings common stock remaining in the Exchange Trust after six months would be distributed *pro rata* to Entergy shareholders. Application, Exhibit No. ETR-100: Bunting Test. at 35:1-5.

²⁹⁰ Application at 16-17.

²⁹¹ Application, Exhibit No. ETR-100: Bunting Test. at 35:15-22.

voted. Applicants state that since Entergy will not own any ITC Holdings shares, it will have no ability to affect the way that the shares held by the trustee are voted.

b. Protests

162. No parties protested the proposed Exchange Trust election.

c. Commission Determination

163. The Commission finds that, as proposed, the Exchange Trust election does not raise concerns regarding the continued independence of ITC Holdings and its affiliates. First, the structure of the Exchange Trust will prevent Entergy from exercising any control over ITC Holdings. As Applicants explain, the shares held in trust will be voted by the trustee in the same proportion as all other ITC Holdings' shares are voted. Since Entergy will not own any ITC Holdings shares, it will have no ability to affect the way that the shares held by the trustee are voted. Second, should no exchange offer occur within six months following the distribution of Entergy Mid South common units to Entergy shareholders in connection with the merger, or if an exchange offer is not fully subscribed, any ITC Holdings' common stock remaining in the exchange trust will be distributed *pro rata* to Entergy shareholders. Accordingly, the Commission finds that the Exchange Trust election will not undermine or interfere with the independence of ITC Holdings.

D. Accounting Matters

1. Goodwill

164. The New ITC Operating Companies propose to account for the Proposed Transaction by recording the plant assets acquired at their historical net book value, consistent with Electric Plant Instruction (EPI) No. 5. Additionally, ITC Holdings proposes to record all other assets and liabilities at their book value on the New ITC Operating Companies' books. The excess consideration transferred over the historical cost of net assets acquired is recorded as goodwill for GAAP accounting and reporting purposes. Applicants state that the New ITC Operating Companies are not seeking recovery of the goodwill generated in the Proposed Transaction and propose to make additional journal entries to remove goodwill, when starting with their GAAP financial statements, to arrive at their FERC financial statements. The journal entries consist of a credit to the goodwill asset balance (*i.e.* Account 186, Miscellaneous Deferred Debits) equal to the goodwill balance record in their GAAP financial statements and a corresponding debit to the proprietary capital account (*i.e.* Account 211, Miscellaneous Paid in Capital) to eliminate the goodwill and equity balances. Specifically, Applicants propose to remove \$775,211,000 of goodwill from ITC Louisiana LLC, \$573,324,000 of

goodwill from ITC Arkansas LLC, \$356,256,000 of goodwill from ITC Mississippi LLC, and \$358,324,000 from ITC Texas LLC, for FERC Form No. 1 reporting purposes.²⁹²

165. We accept the New ITC Operating Companies' proposed treatment of goodwill for FERC accounting, reporting and ratemaking purposes. The goodwill and related effects on equity will remain on the books and records at the New ITC Operating Companies for GAAP accounting and reporting. However, in order to provide additional transparency we will require the New ITC Operating Companies to include in their FERC Form No. 1 notes to the financial statements a reconciliation between the amounts of goodwill and equity reported in their GAAP financial statements with the amounts reported in their FERC Form No. 1.

2. Costs Associated with the Transaction

166. Applicants commit, for a period of five years, to hold the New ITC Operating Companies' transmission customers and the Entergy Operating Companies' cost-based wholesale requirements customers harmless from transaction-related costs, which we have interpreted to include all transaction-related costs, including but not limited to costs related to consummating the transaction and costs incurred to achieve merger synergies. Applicants state that the Entergy Operating Companies established project codes to track costs associated with the Proposed Transaction and that the costs captured in these project codes are reflected in operations and maintenance accounts in the period in which they are incurred.²⁹³ Applicants state that the Entergy Operating Companies' transaction costs include the cost of internal and external labor, such as legal and accounting fees, financing costs, and other transaction-related expenses.²⁹⁴ Additionally, Applicants state that ITC Holdings has established work orders to which employees record their time related to the Proposed Transaction. Applicants state this employee labor, including other related compensation and benefits costs, is being recorded on ITC Holdings' books and is not pushed down to the New ITC Operating Companies. Apart from the labor costs Applicants state that ITC Holdings is tracking other costs that would not have been incurred but for the Proposed Transaction. Applicants state that these costs include expenses of consummating the transaction such as investment advisors, brokerage, legal printing and accounting fees, filing costs and other costs associated with negotiating,

²⁹² See Application, Exhibit N-2: ITC's Proposed Accounting for the Transaction.

²⁹³ Application, Exhibit No. ETR-300: Direct Testimony of Kimberly A. Fontan on Behalf of Entergy Corporation and its Subsidiaries (Fontan Test.) at 7:18-22.

²⁹⁴ See Application, Exhibit No. ETR-300: Fontan Test. at 7.

reviewing and seeking regulatory approval of the transaction, and costs of integrating the Entergy transmission business into ITC Holdings.²⁹⁵

167. It is Commission policy that costs incurred to consummate a merger are non-operational in nature and must be recorded in Account 426.5, Other Deductions.²⁹⁶ These costs may include, but are not limited to, internal and external third-party labor costs for legal, consulting, and professional services incurred to consummate the merger. Accordingly, Applicants' costs to consummate the Proposed Transaction must be recorded in Account 426.5 rather than in various operation and maintenance expense accounts as the Entergy Operating Companies proposed.

168. Finally, transition costs to achieve merger synergies are generally considered to be operating in nature and may be recorded in an operating expense account or capitalized in an asset account, as appropriate.²⁹⁷ This accounting however does not permit Applicants to recover any transaction-related costs, including transition costs, through their transmission or wholesale power rates during the hold harmless period without first making an FPA section 205 filing and receiving authorization from the Commission, as discussed above. Applicants must ensure they have appropriate internal controls and procedures to ensure the proper identification, accounting, and rate treatment for all transaction-related costs incurred prior to and subsequent to the announcement of the Proposed Transaction in December 2011, including all transition costs incurred after the merger is consummated.

E. Reliability and Cyber Security Standards

169. Information and/or systems connected to the bulk power system involved in this transaction may be subject to reliability and cyber security standards approved by the Commission pursuant to FPA section 215. Compliance with these standards is

²⁹⁵ See Application, Exhibit No. ITC-500: Direct Testimony of Fred G. Stibor on Behalf of ITC Holdings Corp. at 6.

²⁹⁶ See, e.g., *Exelon Corp.*, 138 FERC ¶ 61,167 (2012); *Midwest Power Sys., Inc., and Iowa Illinois Gas and Elec. Co.*, 71 FERC ¶ 61,386 (1995); *NSTAR Elec. and Gas Corp.*, Docket No. AC07-183-000 (Aug. 9, 2007) (unpublished letter order); *BHE Holdings Inc.*, 133 FERC ¶ 61,231 (2010). The Commission notes that the term "transaction-related costs" is broader than the term "costs incurred to consummate a merger."

²⁹⁷ See, e.g., *FirstEnergy and Allegheny Energy*, 133 FERC ¶ 61,222 (2010); *Sierra Pacific Power Co. and Nevada Power Co.*, 87 FERC ¶ 61,077 (1999); *American Electric Power Co. and Central and Southwest Corp.*, 85 FERC ¶ 61,201 (1998).

mandatory and enforceable regardless of the physical location of the affiliates or investors, information databases, and operating systems. If affiliates, personnel or investors are not authorized for access to such information and/or systems connected to the bulk power system, a public utility is obligated to take the appropriate measures to deny access to this information and/or the equipment/software connected to the bulk power system. The mechanisms that deny access to information, procedures, software, equipment, etc., must comply with all applicable reliability and cyber security standards. The Commission, North American Electric Reliability Corporation, or the relevant regional entity may audit compliance with reliability and cyber security standards.

IV. Request for Declaratory Order under FPA Section 305(a)

A. Applicants' Request

170. According to the Entergy Applicants, certain steps must be taken as part of the Proposed Transaction in order to achieve (1) separation of the Entergy Operating Companies' transmission assets and liabilities into the Entergy Wires Subs; (2) consolidation of the Entergy Wires Subs under Entergy Mid South; and (3) distribution of the membership units in the Entergy Wires Subs to Entergy (together, the Separation Plan). The Entergy Applicants request, pursuant to Rule 207 of the Commission's regulations, that the Commission "confirm that section 305(a) of the FPA... is not a bar to any steps or sub-steps of the Separation Plan."²⁹⁸

171. The Entergy Applicants explain that the Commission has interpreted FPA section 305(a) as not barring dividend payments out of the paid-in capital account of a public utility, including the dividend stock for the purpose of spinning off a subsidiary, where "(a) the sources from which dividends are to be paid are clearly identified; (b) the dividend payments are not excessive – that is, such dividends would result in no impairment to the financial strength of any public utility; and (c) there is no self-dealing on the part of corporate officials."²⁹⁹ The Entergy Applicants argue that each of these elements is met for all of the steps required to implement the Separation Plan.

172. FPA section 305(a) states that it is "unlawful for any officer or director of any public utility...to participate in the making or paying of any dividends of such public utility from any funds properly included in capital account."³⁰⁰ The Entergy Applicants

²⁹⁸ Application at 76 (citing 18 C.F.R. § 385.207). The Entergy Applicants state that the "steps and corollary steps" of the Separation Plan are explained in the Application and Exhibit No. ETR-100: Bunting Test.

²⁹⁹ *Id.* at 76.

³⁰⁰ 16 U.S.C. § 825d(a) (2006).

explain that although the courts have not interpreted FPA section 305(a), the legislative history suggests that the provision was intended to prevent corporate officials from “raiding corporate coffers for their personal financial benefit.”³⁰¹

173. According to the Entergy Applicants, the Commission has confirmed, on multiple occasions, that a corporate restructuring, including a restructuring achieved through a distribution of stock, does not implicate FPA section 305(a).³⁰² The Entergy Applicants note that, in finding that the transaction in *Citizens Utilities Co.* was not barred under FPA section 305(a), the Commission stated that Citizens Utilities had clearly identified the source from which the distribution of stock would be made; that there was nothing to indicate that the dividends paid would be excessive; and that the proposed separation would have no adverse effect on the value of shareholders’ interests.³⁰³ With respect to the last point, the Commission observed that shareholders would have the same ownership interests after the separation as before, but that the ownership would be of stock in two companies rather than one.

174. The Entergy Applicants state that the Commission made similar findings in *ALLETE, Inc.*³⁰⁴ and *Ameren*. The Entergy Applicants state that, as in *Citizens*, in *ALLETE* the Commission found that the transaction was not barred by FPA section 305(a) because the concerns underlying that provision were not present. According to the Entergy Applicants, the Commission found the source of ALLETE’s proposed distribution had been clearly identified; that nothing indicated that the distribution was excessive or preferential because it represented the value of ALLETE’s investment; and that the separation of the company involved in the transaction was “less like a payment of dividends than it was a corporate restructuring with a one-time distribution of property.”³⁰⁵ The Entergy Applicants state that the Commission in *Ameren* reaffirmed the analysis in *Citizens* and *ALLETE*. In approving the reorganization proposed in *Ameren*, the Commission adopted the same conclusions as in *Citizens* and *ALLETE*, including the conclusion that the distribution at issue was less like a distribution of

³⁰¹ Application at 77 (citing *Ameren Corporation*, 131 FERC ¶ 61,240, at P 35 (2010) (*Ameren*)).

³⁰² *Id.* at 77 (citing *Citizens Utilities Co.*, 84 FERC ¶ 61,158, at 61,865 (1998) (*Citizens*)).

³⁰³ *Id.* at 77.

³⁰⁴ 107 FERC ¶ 61,041 (2004) (*ALLETE*).

³⁰⁵ Application at 78 (quoting *ALLETE*, 107 FERC ¶ 61,041 at P 11).

dividends than a corporate restructuring with a one-time distribution and subsequent contribution within the Ameren corporate family.³⁰⁶

175. The Entergy Applicants argue that, for the same reasons identified by the Commission in *Citizens*, *ALLETE*, and *Ameren*, the Separation Plan does not implicate the concerns FPA section 305(a) was intended to address. First, the Entergy Applicants explain that the source of any distribution implicated by FPA section 305(a) is clearly identified and transparent.³⁰⁷ Second, the Entergy Applicants explain that there is nothing to indicate that any distribution of capital account funds will be excessive or preferential. According to the Entergy Applicants, the Separation Plan “merely creates a corporate mechanism for the transmission assets of the Entergy Operating Companies to be separated and consolidated under [Entergy Mid South], with a distribution of the [Entergy Mid South] common units to Entergy shareholders.”³⁰⁸ The Entergy Applicants note that the dividends at issue would not result in any impairment to the financial strength of any public utility, and that in other cases, the Commission has found that dividends would not be excessive provided that a company maintains a minimum equity balance equal to 30 percent of capital.³⁰⁹ Consistent with these decisions, the Entergy Applicants “agree that, subsequent to the closing of the Proposed Transaction, they will maintain for the Entergy Operating Companies a minimum 30 percent equity to total capitalization ratio the Commission has found acceptable in prior cases, and [that] the ITC Applicants make the same commitment for the New ITC Operating Companies.”³¹⁰

176. Third, and finally, the Entergy Applicants claim that the Separation Plan will not have an adverse effect on the value of shareholders’ stock in the public utilities from which payments of dividends from capital accounts would be made. The Entergy Applicants state that Entergy’s shareholders will continue to have the same ownership interests in the transmission assets before and after the Separation Plan, and that shareholders could actually be harmed if the Commission were to determine that FPA section 305(a) acts as bar to the Separation Plan because, in that case, shareholders would

³⁰⁶ *Id.* at 78-79.

³⁰⁷ The Entergy Applicants state that Exhibit No. ETR-300: Fontan Test. explains in detail the accounting treatment required to accomplish the Separation Plan. Application at 79.

³⁰⁸ Application at 79-80.

³⁰⁹ *Id.* at 80 (citing *Ameren*, 131 FERC ¶ 61,240 at P 36).

³¹⁰ *Id.* at 80.

not have the opportunity “to participate in the benefits that would be realized by the [Proposed] Transaction”³¹¹ discussed above.

B. Comments and Protests

177. The Commission did not receive any comments or protests specifically addressing the Entergy Applicants’ petition for a declaratory order that FPA section 305(a) does not serve as a bar to any steps or sub-steps of the Separation Plan.

C. Commission Determination

178. We will grant the Entergy Applicants’ petition because the concerns underlying FPA section 305(a) are not present in this transaction. FPA section 305 (a) reads:

It shall be unlawful for any officer or director of any public utility to receive for his own benefit, directly or indirectly, any money or thing of value in respect of the negotiation, hypothecation, or sale by such public utility of any security issued or to be issued by such public utility, or to share in any of the proceeds thereof, or to participate in the making or paying of any dividends of such public utility from any funds properly included in capital account.³¹²

179. The concerns underlying the enactment of FPA section 305(a) included “that sources from which cash dividends were paid were not clearly identified and that holding companies had been paying out excessive dividends on the securities of their operating companies. A key concern, thus, was corporate officials raiding corporate coffers for their person financial benefit.”³¹³

180. The Commission finds that the source of any distribution in the Separation Plan has been clearly identified, and nothing indicates that the distribution will be excessive or preferential. As the Entergy Applicants explain, the Separation Plan is simply a mechanism for the separation of the Entergy Operating Companies’ transmission assets and liabilities into the separate Entergy Wires Subs, consolidation of the Entergy Wires Subs under Entergy Mid South, and a distribution of the Entergy Mid South common units to Entergy’s shareholders. Further, the steps in the Separation Plan will not result in any impairment to the financial strength of any public utility. The Commission will also

³¹¹ *Id.*

³¹² 16 U.S.C. § 825d(a).

³¹³ *Entergy Louisiana, Inc.*, 114 FERC ¶ 61,060, at P 12 (2006); *Exelon Corp.*, 109 FERC ¶ 61,172, at P 8 (2004); *ALLETE*, 107 FERC ¶ 61,041 at P 10.

accept the Entergy Applicants' and the ITC Applicants' commitments to maintain, subsequent to the closing of the Proposed Transaction, minimum equity to total capitalization ratios of 30 percent for the Entergy Operating Companies and the New ITC Operating Companies.³¹⁴ Finally, Entergy's shareholders will continue to have the same ownership interest in the transmission assets before and after the Separation Plan.

The Commission orders:

- (A) The Proposed Transaction is hereby authorized.
- (B) Applicants must inform the Commission within thirty (30) days of any material change in circumstances that departs from the facts the Commission relied upon in conditionally authorizing the Proposed Transaction.
- (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 now pending or which may come before the Commission.
- (D) Nothing in this order shall be construed to imply acquiescence in any estimate or determination of cost or any valuation of property claimed or asserted.
- (E) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.
- (F) Applicants shall make any appropriate filings under section 205 of the FPA, as necessary, to implement the Proposed Transaction.
- (G) If Applicants seek to recover transaction-related costs through their wholesale power or transmission rates, they must first submit a compliance filing in this docket that details how they are satisfying the hold harmless requirement. In particular, in such a filing, Applicants must: (1) specifically identify the transaction-related costs they are seeking to recover; and (2) demonstrate that those costs are exceeded by the savings produced by the transaction.
- (H) Applicants shall notify the Commission within ten (10) days of the date on which the Proposed Transaction is consummated.

³¹⁴ The Commission's acceptance of this commitment is consistent with its acceptance of a similar commitment. *See Ameren*, 131 FERC ¶ 61,240 at P 36.

(I) The Entergy Operating Companies and the New ITC Operating Companies must account for the transaction in accordance with Electric Plant Instruction No. 5 and Account 102, Electric Plant Purchased or Sold, of the Uniform System of Accounts. They shall submit their proposed accounting entries within six (6) months of the date that the transaction is consummated, and the accounting submissions shall provide all the accounting entries and amounts related to the transaction along with narrative explanations describing the basis for the entries.

By the Commission. Commissioners Norris and LaFleur are dissenting in part with a joint separate statement attached.

(S E A L)

Kimberly D. Bose,
Secretary.

Appendix A: Motions to Intervene and Notices of Intervention

American Electric Power Service Corporation, on behalf of affiliates Public Service Company of Oklahoma and Southwestern Electric Power Company (collectively, American Electric Power), Docket Nos. EC12-145-000, EL12-107-000

Arkansas Electric Cooperative Corporation (Arkansas Electric Cooperative), Docket Nos. EC12-145-000, EL12-107-000

Arkansas Electric Energy Consumers, Inc. (Arkansas Consumers), Docket Nos. EC12-145-000, EL12-107-000

Arkansas Public Service Commission (Arkansas Commission), Docket No. EC12-145-000, EL12-107-000

Associated Electric Cooperative, Inc. (Associated Electric Cooperative), Docket Nos. EC12-145-000, EL12-107-000

Calpine Corporation (Calpine), Docket Nos. EC12-145-000, EL12-107-000

City of North Little Rock, Arkansas (City of North Little Rock), Docket Nos. EC12-145-000, EL12-107-000

City of Springfield, Missouri (City of Springfield), Docket Nos. EC12-145-000, EL12-107-000

Consumers Energy Company (Consumers Energy), Docket Nos. EC12-145-000, EL12-107-000¹

Conway Corporation; West Memphis Utilities Commission; City of Osceola, Arkansas; City of Benton, Arkansas; Hope Water & Light Commission; and City of Prescott, Arkansas (collectively, Arkansas Cities), Docket Nos. EC12-145-000, EL12-107-000

Council of the City of New Orleans (City of New Orleans), Docket Nos. EC12-145-000, EL12-107-000

¹ Consumers Energy filed an out-of-time motion to intervene but the motion was actually filed timely, before the intervention deadline.

Dairyland Power Cooperative (Dairyland), Docket Nos. EC12-145-000, EL12-107-000

Detroit Edison Company (Detroit Edison), Docket Nos. EC12-145-000, EL12-107-000

Dow Chemical Company (Dow Chemical), Docket Nos. EC12-145-000, EL12-107-000

East Texas Electric Cooperative, Inc.; Sam Rayburn G&T Electric Cooperative, Inc.; and Tex-La Electric Cooperative of Texas, Inc. (together, East Texas Cooperatives), Docket Nos. EC12-145-000, EL12-107-000

Edison Mission Energy (Edison Mission), Docket Nos. EC12-145-000, EL12-107-000

Empire District Electric Company (Empire District), Docket Nos. EC12-145-000, EL12-107-000

Exelon Corporation (Exelon), Docket No. EC12-145-000

Iberdrola Renewables, LLC (Iberdrola), Docket Nos. EC12-145-000, EL12-107-000

Interstate Power and Light Company (Interstate Power and Light), Docket Nos. EC12-145-000, EL12-107-000

Kansas City Power & Light Company and KCP&L Greater Missouri Operations Company (collectively, Kansas City Power & Light), Docket Nos. EC12-145-000, EL12-107-000

Kansas Corporation Commission (Kansas Commission), Docket Nos. EC12-145-000, EL12-107-000

Lafayette Utilities System (Lafayette Utilities), Docket Nos. EC12-145-000, EL12-107-000

Lincoln Electric System (Lincoln Electric), Docket Nos. EC12-145-000, EL12-107-000

Louisiana Energy and Power Authority (LEPA), Docket Nos. EC12-145-000, EL12-107-000

Louisiana Public Service Commission (Louisiana Commission), Docket No. EC12-145-000

Louisiana Generating LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Cottonwood Energy Company LP, NRG Sterlington Power LLC, NRG Power Marketing, LLC, GenOn Energy Management, LLC and GenOn Wholesale Generation, LP (collectively, NRG Companies), Docket Nos. EC12-145-000, EL12-107-000

LS Power Transmission, LLC and LSP Transmission Holdings, LLC (LS Power Transmission), Docket Nos. EC12-145-000, EL12-107-000

MDEA; Clarksdale, and Yazoo City, Docket Nos. EC12-145-000, EL12-107-000

MidAmerican Transmission, LLC (MidAmerican Transmission), Docket Nos. EC12-145-000, EL12-107-000

Mississippi Public Service Commission (Mississippi Commission), Docket Nos. EC12-145-000, EL12-107-000

Missouri Joint Municipal Electric Utility Commission (Missouri Joint Municipal Commission), Docket Nos. EC12-145-000, EL12-107-000

Municipal Energy Agency of Mississippi (MEAM), Docket Nos. EC12-145-000, EL12-107-000

Municipal Energy Agency of Nebraska (MEAN), Docket Nos. EC12-145-000, EL12-107-000

National Rural Electric Cooperative Association (NRECA), Docket Nos. EC12-145-000, EL12-107-000

Nebraska Power Review Board (Nebraska Power Board), Docket Nos. EC12-145-000, EL12-107-000

Nebraska Public Power District (Nebraska District), Docket Nos. EC12-145-000, EL12-107-000

Occidental Chemical Corporation (Occidental), Docket Nos. EC12-145-000, EL12-107-000

Oklahoma Corporation Commission (Oklahoma Commission), Docket No. EC12-145-000

Oklahoma Gas and Electric Company (OG&E), Docket Nos. EC12-145-000, EL12-107-000

Omaha Public Power District (Omaha Public Power), Docket No. EC12-145-000

Public Utility Commission of Texas (Texas Commission), Docket Nos. EC12-145-000, EL12-107-000

South Mississippi Electric Power Association (SMEPA), Docket Nos. EC12-145-000, EL12-107-000

Southern Company Services, Inc. on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Southern Power Company (collectively, Southern Companies), Docket Nos. EC12-145-000, EL12-107-000

Southwest Power Pool, Inc. (SPP), Docket No. EC12-145-000

Southwestern Electric Cooperative, Inc. (Southwestern Electric), Docket Nos. EC12-145-000, EL12-107-000

Sunflower Electric Power Corporation (Sunflower Electric) and Mid-Kansas Electric Company, LLC (Mid-Kansas Electric), Docket Nos. EC12-145-000, EL12-107-000

Tenaska Frontier Partners, Ltd. (Tenaska Frontier), Docket Nos. EC12-145-000, EL12-107-000²

Tennessee Valley Authority (TVA), Docket Nos. EC12-145-000, EL12-107-000

Texas Industrial Energy Consumers, Docket Nos. EC12-145-000, EL12-107-000

Union Power Partners, L.P. (Union Power), Docket Nos. EC12-145-000, EL12-107-000

² Tenaska Frontier filed an out-of-time motion to intervene but the motion was actually filed timely, before the intervention deadline.

Westar Energy, Inc. (Westar), Docket Nos. EC12-145-000, EL12-107-000

Western Farmers Electric Cooperative (Western Farmers), Docket Nos. EC12-145-000, EL12-107-000

Xcel Energy Services, Inc. on behalf of Northern States Power Company Minnesota, Northern States Power Company Wisconsin, and Southwestern Public Service Company (collectively, Xcel Energy), Docket Nos. EC12-145-000, EL12-107-000

Motions for Leave to Intervene Out-of-Time

Ameren Services, on behalf of Ameren Illinois Company, Union Electric Company, and Ameren Energy Marketing Company (collectively, Ameren Companies), Docket Nos. EC12-145-000, EL12-107-000

Appendix B: Motions, Comments, and Protests

Motions

Entergy Retail Regulators,³ Motion of the Entergy Retail Regulators for Extension of Comment Deadline (filed Oct. 4, 2012), Docket Nos. EC12-145-000, EL12-107-000 (Entergy Retail Regulators Oct. 4 Motion for Extension of Comment Deadline)

Joint Customers,⁴ Motion to Direct the Filing of Additional Information or to Reject Filings and Motion for Expedited Consideration and Limited Time for Answer of Arkansas Electric Cooperative Corporation, South Mississippi Electric Power Association, and Arkansas Cities (filed Nov. 5, 2012), Docket Nos. EC12-145-000, EL12-107-000 (Joint Customers Nov. 5 Motion to Direct Filing of Additional Information).

Entergy Retail Regulators, Joint Motion of Louisiana Public Service Commission, Council of the City of New Orleans, Public Utilities Commission of Texas and Mississippi Public Service Commission for Additional 45 Day Extension of Intervention, Protest and Comment Deadline and for Shortened Response Time (filed Nov. 27, 2012),⁵ Docket Nos. EC12-145-000, EL12-107-000 (Entergy Retail Regulators Nov. 27 Motion for Extension of Comment Deadline)

Comments and Protests

American Antitrust Institute (AAI), Docket Nos. EC12-145-000, EL12-107-000⁶

³ For purposes of this motion, the Entergy Retail Regulators consisted of the City of New Orleans, the Mississippi Commission, the Texas Commission, the Louisiana Commission, and the Arkansas Commission.

⁴ For purposes of this motion, Joint Customers consisted of the Arkansas Electric Cooperative Corp., SMEPA, and the Arkansas Cities.

⁵ For purposes of this motion, the Entergy Retail Regulators consisted of the Louisiana Commission, the City of New Orleans, the Mississippi Commission, and the Texas Commission.

⁶ AAI's comments were filed out of time, on January 23, 2013.

Arkansas Electric Energy Consumers, Inc. (Arkansas Consumers), Docket Nos. EC12-145-000, EL12-107-000

Arkansas Public Service Commission (Arkansas Commission), Docket Nos. EC12-145-000, EL12-107-000

Associated Electric Cooperative, Inc. (Associated Electric Cooperative), Docket Nos. EC12-145-000, EL12-107-000

Council of the City of New Orleans (City of New Orleans), Docket Nos. EC12-145-000, EL12-107-000

Interstate Power and Light Company (Interstate Power and Light), Docket Nos. EC12-145-000, EL12-107-000

Exelon Corporation (Exelon Corp.), Docket Nos. EC12-145-000, EL12-107-000⁷

Joint Customers, Docket Nos. EC12-145-000, EL12-107-000⁸

Kansas Corporation Commission (Kansas Commission), Docket Nos. EC12-145-000, EL12-107-000

KCP&L Greater Missouri Operations Company (GMO), Docket Nos. EC12-145-000, EL12-107-000

Lafayette Utilities System (Lafayette Utilities), Docket Nos. EC12-145-000, EL12-107-000

Louisiana Generating LLC, Bayou Cove Peaking Power LLC, Big Cajun I Peaking Power LLC, Cottonwood Energy Company LP, NRG Sterlington Power

⁷ Exelon Corp.'s comments were filed out of time, on January 30, 2013.

⁸ For purposes of their protest, Joint Customers consisted of Arkansas Electric Cooperative Corporation; Conway Corporation, the West Memphis Utilities Commission, the City of Osceola, Arkansas, the City of Benton, Arkansas, the City of Prescott, Arkansas (together, the Arkansas Cities); Mississippi Delta Energy Agency, the Clarksdale Public Utilities Commission, and the Public Commission of Yazoo City; and the South Mississippi Electric Power Association.

LLC, NRG Power Marketing, LLC, GenOn Energy Management, LLC and GenOn Wholesale Generation, LP (collectively, NRG Companies), Docket Nos. EC12-145-000, EL12-107-000

Louisiana Public Service Commission (Louisiana Commission), Docket Nos. EC12-145-000, EL12-107-000⁹

LS Power Transmission, LLC and LSP Transmission Holdings, LLC (LSP Transmission), Docket Nos. EC12-145-000, EL12-107-000

Municipal Energy Agency of Mississippi (MEAM), Docket Nos. EC12-145-000, EL12-107-000

Public Utility Commission of Texas (Texas Commission), Docket Nos. EC12-145-000, EL12-107-000

Southwest Power Pool, Inc. (SPP), Docket No. EC12-145-000

Southwest Power Pool Transmission Owners (SPP Transmission Owners), Docket Nos. EC12-145-000, EL12-107-000¹⁰

Southwestern Electric Cooperative, Inc. (Southwestern Electric), Docket Nos. EC12-145-000, EL12-107-000

Tennessee Valley Authority, Docket Nos. EC12-145-000, EL12-107-000

Texas Industrial Energy Consumers (Texas Energy Consumers), Docket Nos. EC12-145-000, EL12-107-000

⁹ The Louisiana Commission also filed confidential and public versions of its protest.

¹⁰ For purposes of their protest, the SPP Transmission Owners consisted of Kansas City Power & Light Company; KCP&L Greater Missouri Operations Company; American Electric Power Service Company, on behalf of Public Service Company of Oklahoma and Southwestern Electric Power Company; Lincoln Electric System; Omaha Public Power District; Nebraska Public Power District; Empire District Electric Company; Westar Energy; Sunflower Electric Power Corporation; Mid-Kansas Electric Company, LLC; City Utilities of Springfield, Missouri; and Oklahoma Gas and Electric Company.

Westar Energy, Inc. (Westar), Docket Nos. EC12-145-000, EL12-107-000

Xcel Energy Services, Inc. on behalf of Northern States Power Company
Minnesota, Northern States Power Company Wisconsin, and Southwestern Public
Service Company (collectively, Xcel Energy), Docket Nos. EC12-145-000, EL12-
107-000

Appendix C: Answers and Other Responsive Pleadings

ITC Holdings Corp., Entergy Services, Inc., Answer of ITC Holdings Corp. and Entergy Services, Inc. to Motion of the Entergy Retail Regulators for Extension of Comment Deadline (filed Oct. 9, 2012), Docket Nos. EC12-145-000, EL12-107-000

ITC Holdings Corp., Entergy Services, Inc., Answer of ITC Holdings Corp. and Entergy Services, Inc. to Motion for Expedited Consideration and Limited Time for Answer (filed Nov. 7, 2012), Docket Nos. EC12-145-000, EL12-107-000

Arkansas Electric Energy Consumers, Inc., Answer of Arkansas Electric Energy Consumers, Inc., to the Motion of Arkansas Electric Cooperative Corporation, South Mississippi Electric Power Association, and Arkansas Cities to Direct the Filing of Additional Information or to Reject Filings and Motion for Expedited Consideration and Limited Time for Answer (filed Nov. 20, 2012), Docket Nos. EC12-145-000, EL12-107-000

Joint Customers,¹¹ Answer in Support of Motion for a 45 Day Extension of South Mississippi Electric Power Association, Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, Public Service Commission of Yazoo City, Arkansas Cities and Municipal Energy Agency of Mississippi (filed Nov. 30, 2012), Docket Nos. EC12-145-000, EL12-107-000

Entergy Services, Inc., on behalf of Entergy Arkansas, Inc., Entergy Gulf States Louisiana, L.L.C., Entergy Louisiana, LLC, Entergy Mississippi, Inc., Entergy New Orleans, Inc., and Entergy Texas, Inc., Motion for Leave to Answer and Answer of Entergy Services, Inc., (filed Dec. 11, 2012), Docket Nos. EC12-145-000, EL12-107-000

ITC Holdings Corp., Entergy Services, Inc., MISO, Answer and Motion for Leave to Answer (filed Feb. 1, 2013), Docket Nos. EC12-145-000, EL12-107-000 (Applicants and MISO Feb. 1 Answer)

¹¹ For purposes of this answer, Joint Customers consisted of South Mississippi Electric Power Association, Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Service Utilities Commission, Public Service Commission of Yazoo City, Arkansas Cities, and Municipal Energy Agency of Mississippi.

Council of the City of New Orleans, Motion for Leave to Respond and Response of the Council of the City of New Orleans (filed Feb. 6, 2013), Docket Nos. EC12-145-000, EL12-107-000

Arkansas Public Service Commission, Motion for Leave to Answer and Answer of the Arkansas Public Service Commission (filed Feb. 6, 2013), Docket Nos. EC12-145-000, EL12-107-000

Southwest Power Pool Transmission Owners,¹² Southwest Power Pool Transmission Owners' Motion for Leave to Answer and Answer (filed Feb. 14, 2013), Docket Nos. EC12-145-000, EL12-107-000 (SPP Transmission Owners Feb. 14 Answer)

Public Utility Commission of Texas, Answer of the Public Utilities Commission of Texas to the Motion to Consolidate of the Joint Customers (filed Feb. 19, 2013), Docket Nos. EC12-145-000, EL12-107-000

ITC Holdings Corp., Entergy Services, Inc., Motion for Leave to Answer and Answer of ITC Holdings Corp. and Entergy Corporation to Protests and Comments (filed Feb. 22, 2013), Docket Nos. EC12-145-000, EL12-107-000 (Applicants Feb. 22 Answer)

ITC Arkansas LLC, ITC Louisiana LLC, ITC Mississippi LLC, and ITC Texas LLC, Motion for Leave to Answer and Answer of ITC Arkansas, LLC, ITC Louisiana LLC, ITC Mississippi LLC, and ITC Texas LLC (filed Feb. 25, 2013), Docket Nos. EC12-145-000, EL12-107-000

Associated Electric Cooperative, Inc., Answer of Associated Electric Cooperative, Inc. to Answer of ITC Holdings Corp. and Entergy Corporation (filed Mar. 4,

¹² For purposes of this pleading, the "Southwest Power Pool Transmission Owners" are members of SPP and consist of: Kansas City Power & Light Company, KCP&L Greater Missouri Operations Company, American Electric Power Service Company on behalf of Public Service of Oklahoma and Southwestern Electric Power Company, Lincoln Electric System, Omaha Public Power District, Nebraska Public Power District, Empire District Electric Company, Westar Energy, Sunflower Electric Power Corporation, Mid-Kansas Electric Company, LLC, City Utilities of Springfield, Missouri, and Oklahoma Gas and Electric Company.

2013), Docket Nos. EC12-145-000, EL12-107-000

Joint Customers,¹³ Answer to Applicants' Motion for Leave to Answer and Alternative Motion for Leave to Answer and Answer of Arkansas Electric Cooperative Corporation, Mississippi Delta Energy Agency, Clarksdale Public Utilities Commission, the Public Service Commission of Yazoo City, and South Mississippi Electric Power Association (filed Mar. 11, 2013), Docket Nos. EC12-145-000, EL12-107-000 (Joint Customers Mar. 11 Answer)

Council of the City of New Orleans, Motion for Leave to Respond and Response of the Council of the City of New Orleans (Mar. 11, 2013), Docket Nos. EC12-145-000, EL12-107-000 (City of New Orleans Mar. 11 Response)

Arkansas Cities,¹⁴ Answer to Applicants' Motion for Leave to Answer and Alternative Motion for Leave to Answer and Answer of Arkansas Cities (filed Mar. 12, 2013), Docket Nos. EC12-145-000, EL12-107-000

Council of the City of New Orleans, Motion for Leave to Respond and Limited Response of the Council of the City of New Orleans to Joint Customers' March 11, 2013 Answer (filed Mar. 15, 2013), Docket Nos. EC12-145-000, EL12-107-000

Joint Customers, Joint Customers' Answer to the Council for the City of New Orleans' Motion for Leave to Respond to Joint Customers' March 11, 2013 Answer (filed Apr. 1, 2013), Docket Nos. EC12-145-000, EL12-107-000

Arkansas Public Service Commission, Motion for Leave to Answer and Answer of the Arkansas Public Service Commission (filed Apr. 8, 2013), Docket Nos. EC12-145-000, EL12-107-000

¹³ For purposes of this pleading, Joint Customers consist of Arkansas Electric Cooperative Corporation; Mississippi Delta Energy Agency and its two members, the Clarksdale Public Utilities Commission and the Public Service Commission of Yazoo City; and South Mississippi Electric Power Association.

¹⁴ The Arkansas Cities consist of the Conway Corporation; the West Memphis Utilities Commission; the City of Osceola, Arkansas; the City of Benton, Arkansas; and the City of Prescott, Arkansas.

UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

ITC Holdings Corp.
Entergy Corporation

Docket Nos.

EC12-145-000
EL12-107-000

(Issued June 20, 2013)

LaFLEUR, Commissioner, and NORRIS, Commissioner, *dissenting in part*:

We support the ITC-Entergy merger and the Commission's approval of that merger. However, we dissent in part to explain that we would have applied our merger authority to require greater customer protection.

In determining whether a jurisdictional transaction is in the public interest pursuant to Federal Power Act section 203(a),¹ the Commission generally considers the proposed transaction's effect on competition, rates, and regulation.² The ITC-Entergy transaction approved today will increase rates, requiring customers to pay more for the same transmission service they received prior to the transaction.³ The higher rates are due to ITC's higher level of equity in its proposed capital structure.⁴ Without mitigation of such rate impacts, the transaction lacks the necessary protections and may benefit ITC shareholders at the expense of customers.

The order finds that the expected benefits of the transaction will likely outweigh the adverse effect on rates;⁵ these benefits are largely rooted in the attributes that ITC brings to the table as an independent transmission company.⁶

¹ 16 U.S.C. § 824b(a)(4)(2006). Additionally, the Commission must find the proposed transaction will not result in cross-subsidization. *Id.*

² See Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

³ ITC-Entergy estimate that wholesale transmission rates will increase between 1.4 percent and 8.1 percent after the consummation of the merger, depending on the pricing zone. See Application at 24.

⁴ ITC proposes to use a capital structure of 60 percent equity and 40 percent debt, whereas the Entergy Operating Companies currently utilize capital structures of approximately 50 percent equity and 50 percent debt. See Application, Exhibit No. ITC-200 at 25:17-20.

⁵ See *ITC Holdings Corp.*, 143 FERC ¶ 61,256 at P 131 (2013).

⁶ See *id.* PP 124-125.

We agree that this transaction, which transfers Entergy's transmission assets to an independent transmission company, will ultimately benefit customers. This Commission has strongly supported the independent transmission company model to address the sometimes conflicting interests between generation and transmission to promote more effective competition in wholesale electricity markets. We continue to support those efforts. Where we depart from the order is with respect to the expected timing of when the benefits of this transaction will be realized by customers. Reasonable people can debate when these benefits will accrue,⁷ but it is clear that customers will be paying higher rates for some time before the full benefits of improved transmission service materialize.

Therefore, we would have imposed mitigation to protect customers from the transaction's adverse effect on rates in the years immediately following the merger. Specifically, we would not have allowed ITC to include the proposed 60/40 capital structure in rates for five years. Instead, we would have required ITC to include the Entergy Operating Companies' capital structure in rates during that period. We believe this would have been more consistent with the Commission's statutory responsibility to protect customers by ensuring that mergers are in the public interest.

Accordingly, we respectfully dissent in part.

Cheryl A. LaFleur
Commissioner

John R. Norris
Commissioner

⁷ Compare *id.* P 127 (finding that ITC begins to improve the transmission systems that it acquires within a short period of time) with Application, Exhibit No. ITC 100 at 31:15-16, 32:1-6 (“In the near term, ITC would expect to complete any in-progress transmission projects and planned projects.... In the longer term, after starting with existing Entergy Operating Company capital plans as a base, ITC will apply its own independent planning judgments and processes to determine the amount and timing of proposed transmission investments....”), and Application, Exhibit No. ITC-300 at 12:12-22 (“ITCT has been an ITC company since 2003; ITC acquired METC in 2006.... ITC acquired ITCMW in December 2007 and began operating and maintaining the system in 2009. Since this acquisition is more recent, the benefits of ITC's operations and maintenance practices have not been fully realized in the ITCMW system, and the system does not perform as well as our longer-held Michigan companies.”).