

166 FERC ¶ 61,192
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Cheryl A. LaFleur, Richard Glick,
and Bernard L. McNamee.

ITC Great Plains, LLC

Docket No. ER09-548-000

ORDER DENYING WITHOUT PREJUDICE MOTION FOR ORDER TO SHOW
CAUSE

(Issued March 21, 2019)

1. On December 19, 2018, the Kansas Corporation Commission (Kansas Commission) filed a motion requesting that the Commission issue an order requiring ITC Great Plains, LLC (ITC Great Plains) to show cause why the independence adder (Transco adder) that is included in ITC Great Plains' overall return on equity (ROE) should not be reduced from 100 to 25 basis points in light of the Commission's findings in *Consumers Energy Company v. International Transmission Company*.¹ As discussed below, we deny the Kansas Commission's motion without prejudice to the Kansas Commission filing a complaint under section 206 of the Federal Power Act (FPA).²

I. Background

2. ITC Great Plains is a transmission-only company, or Transco, authorized to do business in Kansas and Oklahoma. ITC Great Plains is a subsidiary of ITC Holdings Corporation (ITC Holdings) and owns transmission assets in Southwest Power Pool, Inc. (SPP). On March 16, 2009, the Commission granted ITC Great Plains a 100 basis points Transco adder.³

3. In *Consumers Energy v. ITC*, the Commission determined that three subsidiaries of ITC Holdings operating in Midcontinent Independent System Operator, Inc. (MISO) – International Transmission Company; Michigan Electric Transmission Company; and

¹ 165 FERC ¶ 61,021 (2018) (*Consumers Energy v. ITC*).

² 16 U.S.C. § 824e (2012).

³ *ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at PP 93-96 (2009), *order on reh'g*, 150 FERC ¶ 61,225 (2015).

ITC Midwest, LLC (collectively, the ITC MISO Transcos) – were no longer fully independent. The Commission found that a recent Commission-authorized merger (Merger Transaction) among ITC Holdings, Fortis, Inc. (Fortis) and GIC (Ventures) Pte. Ltd (GIC), and their subsidiaries had reduced, but not eliminated, the ITC MISO Transcos' level of independence.⁴ The Commission noted that, under current Commission policy, a fully independent transmission company can receive a 50 basis point Transco adder. The Commission determined that, because of their reduced independence, a 25 basis point Transco adder was appropriate for the ITC MISO Transcos. Accordingly, the Commission directed the ITC MISO Transcos to revise their formula rates in Attachment O of the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff to reduce each of the three ITC MISO Transcos' Transco adder from their previous levels of either 100 or 50 basis points to 25 basis points.⁵

II. Motion for Order to Show Cause and Answer

4. The Kansas Commission requests that, given *Consumers Energy v. ITC*, the Commission issue an order that requires ITC Great Plains to show cause why its Transco adder should not likewise be reduced from 100 to 25 basis points.⁶

5. On December 20, 2018, ITC Great Plains filed a motion for an extension of time to file an answer. On December 27, 2018, the Commission granted ITC Great Plains an extension of time until January 16, 2019 to file an answer. On January 8, 2019, GridLiance High Plains LLC (GridLiance HP) filed a motion to intervene.⁷ On January 10, 2019, ITC Great Plains filed an answer to the Kansas Commission's motion.

6. ITC Great Plains, in addition to making substantive arguments against the reduction of its Transco adder, responds that the Commission should deny the motion for a show cause order and direct the Kansas Commission to file a section 206 complaint. It argues that, under section 206, the burden of proof to show that any rate, charge,

⁴ *Consumers Energy v. ITC*, 165 FERC ¶ 61,021 at P 68.

⁵ *Id.* PP 73-74.

⁶ The Kansas Commission states that it filed its motion in Docket No. ER09-548-000 because that is the proceeding where the Commission approved ITC Great Plains' formula rate and Transco adder. Kansas Commission Motion for Order to Show Cause at 2, n.3.

⁷ GridLiance HP states that it is a Transco operating in SPP and is a wholly-owned subsidiary of GridLiance Holdco LP.

classification, rule, regulation, practice, or contract is unjust, unreasonable, unduly discriminatory, or preferential is on the Commission or the complainant.⁸ It also argues that the courts have held that “[t]he proponent of a rate change under section 206 [] bears ‘the burden of proving that the existing rate is *unlawful*.’”⁹ ITC Great Plains contends that the Kansas Commission’s motion inappropriately seeks to avoid satisfying the burden of proof necessary to challenge the justness and reasonableness of ITC Great Plains’ existing rate.¹⁰

7. Alternatively, if the Kansas Commission’s motion is not denied, ITC Great Plains argues that the Commission should delay issuance of any show cause order until the later of: (1) the issuance of an order on rehearing in the *Consumers Energy v. ITC* proceeding;¹¹ or (2) the completion of the Commission’s anticipated review of its transmission incentives policy.¹²

III. Commission Determination

8. ITC Great Plains’ Transco adder was granted several years ago in an order that became final when no party appealed the 2015 order on rehearing. The Commission has held that, if a party believes that changed circumstances warrant a revisiting of previously granted transmission incentives, that party should file a complaint under section 206 of the FPA.¹³ Accordingly, we deny the motion for an order to show cause. However, our denial of the motion for an order to show cause is without prejudice to the Kansas Commission filing a section 206 complaint.

⁸ ITC Great Plains Answer at 5-6 (citing section 206 of the FPA).

⁹ *Id.* at 6 (citing *Emera Maine v. FERC*, 854 F.3d 9, 24 (D.C. Cir. 2017) (quoting, with emphasis added by the *Emera Maine* court, *Alabama Power Co. v. FERC*, 993 F.3d 1557, 1571 (D.C. Cir. 1993)).

¹⁰ *Id.*

¹¹ *Id.* at 8-9.

¹² *Id.* at 9-10 (citing statements by the Commissioners at the Commission’s November 15, 2018 open meeting with respect to undertaking a review of the Commission’s transmission incentives policy).

¹³ See *ITC Great Plains*, 150 FERC ¶ 61,225 at n.20 (if parties believed the modifications to the projects rendered invalid the basis for the transmission incentives granted in the original incentives order, they could file a FPA section 206 complaint); *Tallgrass Transmission, LLC*, 150 FERC ¶ 61,224, at P 16 (2015) (same).

9. In view of our denial of the motion for an order to show cause, there is no ongoing proceeding in which to participate. Therefore, we dismiss GridLiance HP's late motion to intervene as moot.

The Commission orders:

The Kansas Commission's motion for an order to show cause is hereby denied, without prejudice to the Kansas Commission filing a section 206 complaint, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.