

172 FERC ¶ 61,037  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;  
Richard Glick, Bernard L. McNamee,  
and James P. Danly.

Kansas Corporation Commission

Docket No. EL19-80-000

v.

ITC Great Plains, LLC

ORDER ON COMPLAINT

(Issued July 16, 2020)

1. On June 11, 2019, pursuant to sections 206, 306, and 309 of the Federal Power Act (FPA),<sup>1</sup> the Kansas Corporation Commission (Kansas Commission) filed the instant complaint against ITC Great Plains LLC (ITC Great Plains). Citing the Commission’s order in *Consumers Energy Co. v. International Transmission Company*,<sup>2</sup> the Kansas Commission, argues that ITC Great Plains – ITC Holdings Corporation’s (ITC Holdings) affiliate in Southwest Power Pool, Inc. (SPP) – is no longer independent from market participants as a result of a merger involving ITC Holdings and, consequently, should not continue to receive the 100 basis point Transco Adder<sup>3</sup> that the Commission awarded ITC Great Plains in 2009.<sup>4</sup> The Kansas Commission requests that the Commission either eliminate ITC Great Plains’ Transco Adder entirely or reduce it to no more than 25 basis

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<sup>1</sup> 16 U.S.C. §§ 824e, 825e, 825h (2018).

<sup>2</sup> 165 FERC ¶ 61,021 (2018) (Consumers Energy Complaint Order), *reh’g denied*, 168 FERC ¶ 61,035 (2019) (Consumers Energy Rehearing Order).

<sup>3</sup> “[A] Transco is a stand-alone transmission company that has been approved by the Commission and that sells transmission services at wholesale and/or on an unbundled retail basis, regardless of whether it is affiliated with another public utility.” *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, at P 201, *order on reh’g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh’g*, 119 FERC ¶ 61,062 (2007).

<sup>4</sup> *ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at P 93 (2009) (ITC Great Plains Transco Adder Order), *order on reh’g*, 150 FERC ¶ 61,225 (2015).

points. In this order, we grant the complaint and reduce ITC Great Plains' Transco Adder to 25 basis points, effective June 11, 2019, as discussed below.

## **I. Background**

### **A. ITC MISO Companies**

2. International Transmission Company (*ITCTransmission*), ITC Midwest LLC (ITC Midwest), and Michigan Electric Transmission Company, LLC (METC) (collectively, ITC MISO Companies) are transmission owning members of Midcontinent Independent System Operator, Inc. (MISO) engaged in the development, ownership, and operation of facilities for the transmission of electric energy. The Commission previously found that each of the ITC MISO Companies was a fully independent Transco and separately granted *ITCTransmission* a 100 basis point Transco Adder,<sup>5</sup> METC a 100 basis point Transco Adder,<sup>6</sup> and ITC Midwest a 50 basis point Transco Adder.<sup>7</sup> The Transco Adders are recovered through the ITC MISO Companies' transmission formula rates under the MISO Open Access Transmission, Energy and Operating Reserve Markets (Tariff). All three companies are subsidiaries of ITC Holdings.

### **B. Order No. 679**

3. In 2006, the Commission issued Order No. 679, which implemented FPA section 219<sup>8</sup> (as enacted as part of the Energy Policy Act of 2005) and revised the Commission's transmission incentives policy. With respect to Transco Adders, the Commission stated:

Independence is an important component of the positive contribution of Transcos on investment in needed transmission infrastructure. A Transco with active ownership by a market participant or other new business arrangements is eligible for Transco incentives to the extent it can show, for

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<sup>5</sup> *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 68, *reh'g denied*, 104 FERC ¶ 61,033 (2003).

<sup>6</sup> *Michigan Elec. Transmission Co., LLC*, 113 FERC ¶ 61,343, at PP 15, 17 (2005).

<sup>7</sup> *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,252, at P 45 (2015) (ITC Midwest Transco Order), *order on compliance, clarification and reh'g*, 154 FERC ¶ 61,004 (2016).

<sup>8</sup> 16 U.S.C. § 824s (2018).

example, why active ownership by an affiliate does not affect the integrity of its investment planning, capital formation, and investment processes or how its business structure provides support for transmission investments in a way similar to the structure of non-affiliated Transcos or Transcos with only passive ownership by market participants.<sup>9</sup>

4. The Commission also stated that it would “consider the level of independence of a Transco as part of our analysis when we determine the proper [return on equity (ROE)] for the Transco, and evaluate the specific attributes of a particular proposal, including the level of independence, to determine appropriate incentives.”<sup>10</sup>

### **C. Merger Transaction**

5. In 2016, the Commission authorized the acquisition of ITC Holdings by subsidiaries of Fortis, Inc. (Fortis) and GIC (Ventures) Partners Ltd (GIC), pursuant to section 203 of the FPA<sup>11</sup> (Merger Transaction).<sup>12</sup> Numerous parties to that proceeding questioned whether the ITC MISO Companies would continue to be entitled to the Transco Adders after the Merger Transaction. Parties argued that Fortis and GIC would have greater involvement over the day-to-day activities of the ITC MISO Companies, while also maintaining control over generation and distribution subsidiaries, including affiliates that participate in Eastern Interconnection energy and capacity markets.<sup>13</sup> The Commission determined that these concerns were outside the scope of that section 203 proceeding and that they should instead be raised through a complaint pursuant to section 206 of the FPA.<sup>14</sup>

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<sup>9</sup> Order No. 679, 116 FERC ¶ 61,057 at P 240.

<sup>10</sup> *Id.* P 239.

<sup>11</sup> 16 U.S.C. § 824b (2018).

<sup>12</sup> *Fortis, Inc.*, 156 FERC ¶ 61,219 at PP 63-66 (2016), *order on reh'g*, 158 FERC ¶ 61,019 (2017).

<sup>13</sup> *Id.* PP 63-66.

<sup>14</sup> *Id.* PP 82, 85.

**D. Consumers Energy Complaint Proceeding**

6. On April 30, 2018, Consumers Energy Company, Interstate Power and Light Company, Midwest Municipal Transmission Group, Missouri River Energy Services, Southern Minnesota Municipal Power Agency, and WPPI Energy (collectively, Complainants) filed a complaint under FPA section 206, arguing that the ITC MISO Companies were no longer entitled to collect revenues associated with their Transco Adders, and requesting refunds. Complainants alleged that the ITC MISO Companies' new owners, Fortis and GIC, were able to exert control over the ITC MISO Companies and other market participants.<sup>15</sup> According to Complainants, Fortis owns FortisOntario, which generates, purchases, and sells electricity over the Eastern Interconnection grid, in portions of Canada located just outside MISO.<sup>16</sup> Complainants also contended that Fortis also owns Central Hudson Gas & Electric, which generates, purchases, and sells electricity over the Eastern Interconnection grid, in portions of New York, which, according to Complainants, can be affected by the operation and planning of the ITC MISO Companies' MISO-area facilities.<sup>17</sup> Additionally, according to Complainants, GIC owns 44.4% of Duquesne Light Company and Duquesne Power, which sells and markets electricity within PJM Interconnection, L.L.C. (PJM), while GIC's subsidiary, Cambourne Investment Pte. Ltd., owns a substantial minority stake of the entity that owns the Crete, New Covert, Lincoln, and Rolling Hills generators serving PJM.<sup>18</sup>

7. The ITC MISO Companies disagreed, claiming that they remain eligible for their existing Transco Adders after the Merger Transaction. They argued that they are fully independent from GIC and Fortis because no GIC or Fortis subsidiaries operate in MISO.<sup>19</sup> The ITC MISO Companies also claimed that they remain fully independent because ITC Holdings is governed, managed, operated, and financed on a standalone basis.<sup>20</sup> The ITC MISO Companies asserted that ITC Holdings continues to be governed by its own Board of Directors, the majority of whom are independent, and who are

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<sup>15</sup> Consumers Energy Complaint Order, 165 FERC ¶ 61,021 at PP 11-20.

<sup>16</sup> *Id.* P 12.

<sup>17</sup> *Id.*

<sup>18</sup> *Id.* P 13.

<sup>19</sup> *Id.* PP 25-30.

<sup>20</sup> *Id.* PP 32-34.

subject to restrictions to safeguard the independence of the ITC MISO Companies.<sup>21</sup> The ITC MISO Companies thus maintained that nothing had changed in ITC Holdings' planning of, investment in, or operation of, its transmission systems after the Merger Transaction.<sup>22</sup>

8. On October 18, 2018, in the Consumers Energy Complaint Order, the Commission granted the complaint in part, finding that the Merger Transaction had reduced, but not eliminated, the ITC MISO Companies' independence from market participants.<sup>23</sup> Applying the Commission's incentive policy set forth in Order No. 679,<sup>24</sup> the Commission determined that the ITC MISO Companies had less independence with respect to investment planning, capital formation, and business structure.<sup>25</sup> Accordingly, the Commission reduced the Transco Adders for all three ITC MISO Companies to 25 basis points.<sup>26</sup> The Commission directed the ITC MISO Companies to submit a compliance filing with the revised MISO Tariff Attachment O formula rates to include the revised Transco Adders and provide refunds within 30 days of the order, and file a refund report within 45 days of the order.<sup>27</sup>

9. On July 18, 2019, the Commission denied the ITC MISO Companies' request for rehearing, rejecting their arguments that the Commission erred by: (1) applying an incorrect standard for evaluating whether the ITC MISO Companies are less independent because their affiliates are market participants located outside of MISO; (2) assuming that the Commission applied the correct independence criteria, finding that the ITC MISO

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<sup>21</sup> *Id.* P 32.

<sup>22</sup> *Id.* P 34.

<sup>23</sup> *Id.* P 68.

<sup>24</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345 (2006), *order on reh'g*, 119 FERC ¶ 61,062 (2007).

<sup>25</sup> Consumers Energy Complaint Order, 165 FERC ¶ 61,021 at PP 69-71.

<sup>26</sup> *Id.* PP 73-74.

<sup>27</sup> *Id.* P 74. MISO submitted a tariff filing of an initial refund report on January 29, 2019 and a full refund report on February 7, 2019 in Docket No. ER19-361-000.

Companies are no longer fully independent; and (3) failing to justify its decision to reduce the ITC MISO Companies' Transco Adders to 25 basis points.<sup>28</sup>

**E. ITC Great Plains' Transco Adder**

10. ITC Great Plains, a subsidiary of ITC Holdings, is a Transco operating in the SPP footprint, whose assets include transmission facilities in Kansas. In 2009, in Docket No. ER09-548-000, the Commission granted ITC Great Plains a Transco Adder of 100 basis points for independence.<sup>29</sup>

**F. Kansas Commission Motion for Show Cause Order in Docket No. ER09-548**

11. On December 19, 2018, the Kansas Commission filed a motion for an order to show cause, requesting that the Commission issue an order that requires ITC Great Plains to show cause why the Transco Adder that is included in ITC Great Plains' overall ROE should not be reduced from 100 basis points to 25 basis points in light of the Commission's findings regarding ITC Great Plains' three affiliates (i.e., the ITC MISO Companies) in the Consumers Energy Complaint Order. On March 21, 2019, the Commission denied the Kansas Commission's motion for an order to show cause, without prejudice to the Kansas Commission filing a complaint under FPA section 206.<sup>30</sup>

**II. The Kansas Commission's Complaint**

12. The Kansas Commission argues that the Merger Transaction has either eliminated, or substantially reduced, ITC Holdings' independence from market participants. Thus, the Kansas Commission argues, the basis for the Commission's approval of the 100 basis point Transco Adder no longer exists, as the Commission found in the Consumers Energy Complaint proceeding. The Kansas Commission asserts that the bases for the Commission's findings in the Consumers Energy Complaint proceeding remain accurate and those findings apply equally to ITC Great Plains.<sup>31</sup>

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<sup>28</sup> Consumers Energy Rehearing Order, 168 FERC ¶ 61,035 at PP 9-23.

<sup>29</sup> *See supra* note 4.

<sup>30</sup> *ITC Great Plains, LLC*, 166 FERC ¶ 61,192, at P 8 (2019).

<sup>31</sup> Kansas Commission Complaint at 13-15 (citing Consumers Energy Complaint Order, 165 FERC ¶ 61,021 at PP 69-71 (the Commission's findings regarding integrity of investment planning, integrity of capital formation, and investment processes and how the business structure provides support for transmission investment)).

13. The Kansas Commission<sup>32</sup> states that, for a transmission owner with active ownership by a market participant to demonstrate that it is sufficiently independent to qualify for a Transco Adder, the Commission requires the transmission owner to demonstrate its “integrity of investment planning, capital formation, and investment processes, as well as how its business structure provides support for transmission investments.”<sup>33</sup>

14. The Kansas Commission argues that these key attributes, which the Commission identified in Order No. 679 in support of Transco Adders, are not directly related to whether the market-participant affiliate operates in close geographic proximity to the transmission owner. The Kansas Commission argues that benefits realized by “eliminating competition for capital between generation and transmission functions” only exist if transmission planning and investment decisions are not subject to the influence and control of a diversified company with varying interests.<sup>34</sup> For example, it argues, a parent company with generation affiliates in the Western Interconnection and distribution assets in New York could steer capital toward investments in those areas to the detriment of transmission investment in SPP. The Kansas Commission argues, therefore, that, even if it is shown that transmission and market-participant affiliates do not operate in the same region, or even in adjacent regions, such a showing is not necessarily dispositive of whether the transmission company with active ownership by a market participant is sufficiently independent to qualify for the Transco Adder.<sup>35</sup>

15. The Kansas Commission contends that it would be unavailing to argue that the Commission’s rationale in the Consumers Energy Complaint Order does not apply to ITC Great Plains because Fortis and GIC’s market-participant affiliates are not active in SPP or markets adjacent to SPP. The Kansas Commission contends that a key consideration in determining the level of a transmission company’s independence from market participants involves whether the diversified owner can exert influence and control over transmission planning and investment decisions. The Kansas Commission argues that the Commission’s findings in the Consumers Energy Complaint Order should apply to ITC Great Plains, given that it is similarly situated to its ITC MISO affiliates within the

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<sup>32</sup> The Kansas Commission’s regulatory authority includes service in SPP. *Id.* at 6.

<sup>33</sup> *Id.* at 10 (citing Consumers Energy Complaint Order, 165 FERC ¶ 61,021 at P 67 (quoting Order No. 679, 116 FERC ¶ 61,057 at PP 239-40)).

<sup>34</sup> *Id.* at 11 (citing Order No. 679, 116 FERC ¶ 61,057 at P 224).

<sup>35</sup> *Id.* (citing Consumers Energy Complaint Order, 165 FERC ¶ 61,021 at P 73).

corporate structure.<sup>36</sup> As relief, the Kansas Commission requests that the Commission either eliminate ITC Great Plains' Transco Adder or reduce it to 25 basis points.

16. In addition, the Kansas Commission argues that, independent of the Merger Transaction, ITC Great Plains should not be allowed to continue to receive a 100 basis point Transco Adder now that the maximum Transco Adder under the current policy established by the Commission in the ITC Midwest Transco Order is only 50 basis points.<sup>37</sup> The Kansas Commission argues that the Commission should act under FPA section 206 to bring ITC Great Plains into compliance with the Commission's current policy.<sup>38</sup> Finally, the Kansas Commission requests that the Commission not defer action on the complaint for consideration of its possible modification to its incentive policy as a result of the Notice of Inquiry in Docket No. PL19-3.<sup>39</sup>

### **III. Notice of Complaint and Responsive Pleadings**

17. Notice of the Kansas Commission's complaint was published in the *Federal Register*, 84 Fed. Reg. 28,292 (2019), with interventions and comments due on or before July 1, 2019. On June 12, 2019, the Missouri Public Service Commission (Missouri Commission) filed a notice of intervention. On June 26, 2019, the Missouri Commission filed comments. On June 28, 2019, GridLiance High Plains LLC filed a motion to intervene. On July 1, 2019, ITC Great Plains filed an answer.<sup>40</sup> On July 1, 2019, Western Farmers Electric Cooperative filed a motion to intervene.

### **IV. Comments**

#### **A. ITC Great Plains' Answer**

18. ITC Great Plains argues that, in order to reduce its existing Transco Adder under FPA section 206, the Commission must find evidence in the record that the Merger Transaction has actually reduced ITC Great Plains' Transco-related benefits and compromised its independence. ITC Great Plains argues first that, in fact, it has no

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<sup>36</sup> *Id.* at 16.

<sup>37</sup> *Id.* at 12-13.

<sup>38</sup> *Id.* at 13.

<sup>39</sup> See *Inquiry Regarding the Commission's Electric Transmission Incentives Policy*, Notice of Inquiry, 166 FERC ¶ 61,208 (2019).

<sup>40</sup> On July 18, 2019, ITC Great Plains filed errata to its answer.



affiliates in SPP, no facilities in the relevant market – SPP – that connect with neighboring regions, and that the assets of Fortis and GIC are not pseudo-tied into SPP.<sup>41</sup> Further, ITC Great Plains argues that, under the Commission’s application of Order No. 2000’s<sup>42</sup> independence principle to transmission companies, the market participant must be in the same market in which the transmission company operates to qualify as such.<sup>43</sup> ITC Great Plains argues that, because it has no affiliates in SPP, the Kansas Commission lacks the evidence needed to support a change to the Transco Adder based on affiliation with market participants.

19. Second, ITC Great Plains contends that the Kansas Commission has not provided any evidence that the benefits that ITC Great Plains delivers as a Transco have been reduced or eliminated as a result of the Merger Transaction. ITC Great Plains asserts that it continues to perform the core functions of a Transco because its sole focus remains on developing, owning, and operating transmission facilities. Further, ITC Great Plains argues that there is no evidence in the record that it has taken any action that would favor an affiliate, that would discriminate in any manner against users of the grid, or that undermines its ability to enhance asset management or deliver innovative services. It also asserts that ITC Holdings has made a concerted effort, through provisions in its Shareholder Agreement and its formal Policy on Independence, to ensure that its operations remain independent from market participants.<sup>44</sup> ITC Great Plains further asserts that there has been no change to ITC Holdings that would impair the ability of ITC Great Plains to operate as a Transco. It states that ITC Holdings continues to have its own Board of Directors, the majority of whom are independent, and all of the members of the ITC Holdings Board are subject to restrictions that safeguard the independence of ITC Great Plains.<sup>45</sup>

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<sup>41</sup> ITC Great Plains Answer at 12.

<sup>42</sup> *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff’d sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>43</sup> ITC Great Plains Answer at 12-13 (citing *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 27, *reh’g denied*, 104 FERC ¶ 61,033 (2003) (*ITC Holdings*); 18 C.F.R. § 35.34(b)(2) (2019) (definition of market participant)).

<sup>44</sup> *Id.* at 13 (citing Ex. ITC-1 (Testimony of Linda Apsey) at 9-11 (Apsey Testimony)).

<sup>45</sup> *Id.* at 13-14 (citing Apsey Testimony at 3-4).

20. Third, ITC Great Plains argues that the Kansas Commission's reliance on the Consumers Energy Complaint Order is misplaced because the Commission's analysis in that order was flawed. ITC Great Plains contends that the Commission relied on speculative harm and failed to address and articulate why it departed from precedent established by *NEET New York* and *GridLiance West* and that the precedent established by those orders should govern resolution of this complaint proceeding.<sup>46</sup> ITC Great Plains contends that the Commission, in the Consumers Energy Complaint Order, never determined that the merger-related changes to ITC Holdings' corporate structure had, in fact, reduced or eliminated the ability of the ITC MISO Companies to function as Transcos.<sup>47</sup> In particular, it argues that there was no finding by the Commission that the ITC MISO Companies had acted to preserve the value of their affiliates' assets by avoiding transmission investments, that capital had shifted away from the ITC MISO Companies to other affiliates, or that the ITC MISO Companies had acted inconsistent with a truly independent Transco in order to favor Fortis or GIC affiliates.<sup>48</sup>

21. ITC Great Plains also argues that the Commission made certain erroneous assumptions, later relied upon by the Kansas Commission in its witness' testimony, which ITC Great Plains asserts mischaracterized Fortis's alleged control over its subsidiaries' capital plans. For example, ITC Great Plains asserts that the Commission, and by extension the Kansas Commission, wrongly presumed that Fortis exerts significant control over its subsidiaries' capital plans because they are presented and

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<sup>46</sup> *Id.* at 7-8, 15-17 (citing *NextEra New York*, 162 FERC ¶ 61,196, at P 51 (2018) (*NEET New York*) (granting a 50 basis point Transco Adder where: (1) NEET New York's parent company NextEra's generation holdings outside of the NYISO market were geographically distant from NYISO and do not participate in NYISO markets; and (2) NextEra's generation holdings in the NYISO market were small and either located hundreds of miles away from its transmission project or committed under long-term contracts); *GridLiance West Transco LLC*, 164 FERC ¶ 61,049, at PP 42-43 (2018) (*GridLiance West*) (granting a 50 basis point Transco Adder where: (1) GridLiance West's upstream owner Blackstone's generation holdings outside of the relevant regional market were "geographically distant" and "d[id] not participate in" that market; and (2) Blackstone's generation within the same regional market was "small" and "distant from GridLiance West's transmission facilities," and fully committed under a long-term power purchase agreement)).

<sup>47</sup> *Id.* at 15-16.

<sup>48</sup> *Id.* at 15.

reported on a consolidated basis.<sup>49</sup> ITC Great Plains argues that the fact that Fortis presents its annual report on a consolidated basis for its entire corporate family does not mean that it evaluates capital expenditures on a consolidated basis.<sup>50</sup> ITC Great Plains contends that budgets and investment decisions made by the ITC Board at the local level are rolled up, rather than being dictated from the top down, and that Fortis does not claim to evaluate or in any way exercise control over transmission investment planning or capital budgets.<sup>51</sup>

22. Finally, ITC Great Plains argues that Transcos play a vital role in implementing Commission policy, and that the diminution of the Transco Adder, for ITC Great Plains or any Transco, will adversely impact the level of transmission investment needed to address aging electric infrastructure.<sup>52</sup>

### **B. Other Comments**

23. The Missouri Commission supports the Kansas Commission's complaint. The Missouri Commission argues that the same conditions that demonstrated a change in the independence of ITC Holdings after its merger with Fortis and GIC also apply to the Transco Adder approved for the ITC Great Plains projects within SPP. Consequently, it argues that the Commission should reduce ITC Great Plains' Transco Adder to no more than 25 basis points. The Missouri Commission also supports the Kansas Commission's request that the Commission not defer action on the complaint either for consideration of its possible modification to its incentive policy as a result of the Notice of Inquiry in Docket No. PL19-3<sup>53</sup> or pending the outcome of the request for rehearing in the Consumers Energy Complaint proceeding.

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<sup>49</sup> *Id.* at 15-16.

<sup>50</sup> *Id.* at 15-16 (citing Apsey Testimony at 6-7).

<sup>51</sup> Apsey Testimony at 7, 9.

<sup>52</sup> ITC Great Plains Answer at 19-20.

<sup>53</sup> Missouri Commission Comments at 4-6.

## V. Discussion

### A. Procedural Matters

24. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), the notice of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

### B. Substantive Matters

25. In this order, we grant the Kansas Commission's complaint and reduce ITC Great Plains' Transco Adder to 25 basis points, effective June 11, 2019.

26. Based on the record in this proceeding, we find that the Merger Transaction has reduced, but not eliminated, ITC Great Plains' independence from market participants. The Commission's rationale for finding that the Merger Transaction had reduced the ITC MISO Companies' independence from market participants relied almost entirely on whether Fortis and GIC could exert influence and control over the ITC MISO Companies' transmission planning and investment decisions.<sup>54</sup> ITC Great Plains, though operating in SPP, is similarly situated to the ITC MISO Companies in the ITC Holdings corporate structure. Therefore, we find that the Commission's findings of reduced independence for the ITC MISO Companies apply equally to ITC Great Plains.

27. We are not persuaded by ITC Great Plains' arguments for preserving its current 100 basis point Transco Adder. With respect to many of those arguments, we affirm as equally applicable to ITC Great Plains the analysis that the Commission conducted and conclusions that the Commission reached in the Consumers Energy Complaint Order.

28. We disagree with ITC Great Plains' argument that, in order to reduce a previously granted Transco Adder in a section 206 proceeding, the Commission must find evidence in the record of a specific act(s) by ITC Great Plains that reflects compromised independence. As noted above, consistent with Order No. 679, the Commission looks at the Transco's corporate structure in assessing the level of independence for purposes of deciding whether to grant a Transco Adder.<sup>55</sup> If that corporate structure changes, the Commission may reexamine the level of independence of the Transco within that new corporate structure. The Commission conducted such a reexamination in the proceeding involving the ITC MISO Companies. Here, also as noted above, ITC Great Plains is

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<sup>54</sup> See Consumers Energy Complaint Order, 165 FERC ¶ 61,021 at PP 69-71 (finding a reduced level of independence with respect to investment planning, capital formation and business structure).

<sup>55</sup> See *supra* P 3 (quoting Order No. 679, 116 FERC ¶ 61,057 at P 240).

similarly situated to its affiliates, the ITC MISO Companies, within the ITC Holdings corporate structure. Accordingly, we employ the same analysis to the facts here as the Commission employed in the Consumers Energy Complaint proceeding with respect to how the effect of the Merger Transaction on ITC Holdings' corporate structure affected the independence of the ITC MISO Companies.

29. We also disagree with ITC Great Plains' arguments that the Commission's analysis in the Consumers Energy Complaint Order was flawed. In the Consumers Energy Complaint proceeding, the ITC MISO Companies argued that the Commission applied the wrong precedent in assessing their independence. In the Consumers Energy Rehearing Order, the Commission held that Order No. 679 superseded *ITC Holdings* and Order No. 2000 and that the Commission in the Consumers Energy Complaint Order had appropriately applied the standard set forth in Order No. 679.<sup>56</sup>

30. Similarly, the ITC MISO Companies argued in the Consumers Energy Complaint proceeding, as ITC Great Plains argues here, that the Commission's independence analysis should omit consideration of affiliated market participants if those market participants do not participate in the same regional transmission organization (RTO) as the Transco at issue. In the Consumers Energy Rehearing Order, the Commission disagreed, holding, as an initial matter, that Order No. 679 placed no geographic limitation on the scope of relevant affiliate relationships.<sup>57</sup> Moreover, the Commission stated that its *NEET New York* order demonstrates that the Commission does examine affiliated market participants outside the same RTO as the transmission owner, as the Commission there found that NEET New York could operate independently from its affiliated market interests "located inside *and outside* the NYISO region," including NEET New York's Florida affiliates. The Commission found that NEET New York was eligible for its Transco Adder because its Florida affiliates were sufficiently geographically distant and operationally independent. Thus, participation in the same RTO was not determinative in *NEET New York*.<sup>58</sup>

31. In the Consumers Energy Rehearing Order, the Commission also disagreed with the ITC MISO Companies' argument, also raised here by ITC Great Plains, that the definition of "market participant" in section 35.34(b)(2) of our regulations is RTO

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<sup>56</sup> Consumers Energy Rehearing Order, 168 FERC ¶ 61,035 at PP 10, 14.

<sup>57</sup> *Id.* P 12.

<sup>58</sup> *Id.* P 13.

specific, holding that neither Order No. 2000 nor ITC Holdings suggests that the definition is RTO specific.<sup>59</sup>

32. With respect to ITC Great Plains' contention that the Commission in the Consumers Energy Complaint Order should have applied the precedent in *NEET New York* and *GridLiance West* in assessing the ITC MISO Companies' independence, the Commission was not persuaded by the same argument made by the ITC MISO Companies. In the Consumers Energy Rehearing Order the Commission stated:

As explained in the Complaint Order, Fortis and GIC both own other market participants and each exercises control over the ITC Companies. For example, with respect to investment planning, Fortis evaluates capital expenditures on a consolidated basis for its entire corporate family, which indicates some level of coordination and control. On capital formation, the ITC Companies necessarily rely on Fortis for financing, as they cannot issue their own common stock, and Fortis indicated that cash for subsidiary capital expenditure programs will also come from debt issuances from Fortis. With respect to business structure, Fortis and GIC both have representatives on ITC Holdings' Board of Directors, and all executives of Fortis' regulated utility subsidiaries meet regularly to discuss business operations. Collectively, these factors support the Commission's determination that the ITC Companies' are less independent post-merger. The ITC Companies have not demonstrated that the Commission's determinations are not accurate.<sup>60</sup>

33. As discussed above, in Order No. 679, the Commission established criteria for use in determining whether an entity with active ownership by a market participant is sufficiently independent to qualify for a Transco Adder to its ROE. Those criteria include the entity's "integrity of investment planning, capital formation, and investment processes, as well as how its business structure provides support for transmission investments."<sup>61</sup> The Commission also indicated that such entities could have varied levels of independence, and that it would "consider the level of independence of a Transco as part of our analysis when we determine the proper ROE for the Transco, and

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<sup>59</sup> *Id.* P 15.

<sup>60</sup> *Id.* P 19 (footnote omitted).

<sup>61</sup> Order No. 679, 116 FERC ¶ 61,057 at PP 239-240.

evaluate the specific attributes of a particular proposal, including the level of independence, to determine appropriate incentives.”<sup>62</sup>

34. We also disagree with ITC Great Plains’ argument that the fact that Fortis presents its annual report on a consolidated basis for its entire corporate family does not mean that it evaluates capital expenditures on a consolidated basis.<sup>63</sup> In the Consumers Energy Rehearing Order, the Commission found the ITC MISO Companies’ argument that decisions are rolled up rather than dictated from the top down – the same argument advanced by ITC Great Plains in this case – to be unavailing in light of Fortis’ decision-making authority.<sup>64</sup>

35. Given ITC Great Plains’ reduced level of independence, we find that it is appropriate to revisit the appropriate level of the Transco Adder for ITC Great Plains. In 2009, prior to the Merger Transaction, the Commission found that ITC Great Plains was a fully independent Transco and determined that 100 basis points was an appropriate size for ITC Great Plains’ Transco Adder.<sup>65</sup> The Commission explained that the 100 basis point Transco Adder “strikes the right balance by encouraging independent transmission ... while acknowledging protestors’ concerns regarding the rate impacts of such adders.”<sup>66</sup> However, under current Commission policy, a fully independent transmission company can receive a 50 basis point Transco Adder.<sup>67</sup> Given ITC Great Plains’ reduced level of independence, we find that a Transco Adder of less than 50 basis points is appropriate. Because the merger has reduced, but not eliminated, ITC Great Plains’ level of independence, we find that a 25 basis point Transco Adder appropriately encourages the Transco business model in these circumstances and promotes corresponding consumer benefits.<sup>68</sup>

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<sup>62</sup> *Id.* P 239.

<sup>63</sup> ITC Great Plains Answer at 15-16; Apsey Testimony at 6-7.

<sup>64</sup> Consumers Energy Rehearing Order, 168 FERC ¶ 61,035 at n.54.

<sup>65</sup> ITC Great Plains Transco Order, 126 FERC ¶ 61,223 at P 93.

<sup>66</sup> *Id.* P 45.

<sup>67</sup> *See, e.g., NEET New York*, 162 FERC ¶ 61,196 at PP 48-52; *GridLiance West*, 164 FERC ¶ 61,049 at PP 40-46.

<sup>68</sup> Having reached this conclusion, we find to be moot Kansas Commission’s argument that, even without considering the Merger Transaction, we should reduce ITC

36. Accordingly, we direct ITC Great Plains to revise its formula rate in the SPP Open Access Transmission Tariff (SPP Tariff) to reflect a 25 basis point Transco Adder, effective June 11, 2019, the date of the complaint, and to make associated refunds for the period from June 11, 2019 through the date of this order. We also direct ITC Great Plains to submit its revised SPP Tariff formula rate in a compliance filing due within 60 days of the date of this order. In addition, we direct ITC Great Plains to submit a refund report within 90 days of the date of this order.

The Commission orders:

(A) The Kansas Commission's Complaint is hereby granted, as discussed in the body of this order.

(B) ITC Great Plains' Transco Adder is hereby set at 25 basis points, effective June 11, 2019, as discussed in the body of this order.

(C) ITC Great Plains is hereby directed to submit a compliance filing with revised SPP Tariff formula rates to include the revised Transco Adder of 25 basis points, effective June 11, 2019, within 60 days of the date of this order, as discussed in the body of this order.

(D) ITC Great Plains is hereby directed to provide refunds, with interest calculated pursuant to 18 C.F.R. § 35.19a (2019), within 60 days of the date of this order, for the period from June 11, 2019 through the date of this order, as discussed in the body of this order.

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Great Plains' Transco Adder based on the Commission's intervening precedent capping the amount of a Transco Adder at 50 basis points.



(E) ITC Great Plains is hereby directed to file a refund report detailing the principal amounts plus interest paid to each of their customers within 90 days of the date of this order, as discussed in the body of this order.

By the Commission. Commissioner Glick is dissenting in part with a separate statement attached.

( S E A L )

Nathaniel J. Davis, Sr.,  
Deputy Secretary.

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Kansas Corporation Commission

Docket No. EL19-80-000

v.

ITC Great Plains, LLC

(Issued July 16, 2020)

GLICK, Commissioner, *dissenting in part*:

1. I dissent in part from today's order because I do not believe that ITC Great Plains LLC (ITC Great Plains) is sufficiently independent to justify an ROE adder. Since ITC Great Plains first received the "Transco" ROE adder available to transmission-only companies, its corporate parent—ITC Holdings Corporation (ITC Holdings)—was acquired by Fortis, Inc. (Fortis) and GIC (Ventures) Partners Ltd (GIC), two entities with diverse investments, including significant non-transmission assets in the energy sector. That acquisition eliminated the justification for awarding ITC Great Plains an additional return on its transmission investment. Accordingly, I would grant the complaint and eliminate ITC Great Plains' ROE adder in its entirety.

2. I strongly support the development of new transmission infrastructure, which benefits consumers in many ways, including by reducing congestion, increasing reliability, and integrating remotely located renewable energy resources. The Commission's transmission incentives policy can play an important role in fostering the type of transmission investments that best reap those benefits. But, in awarding incentives, we must balance the need for new transmission facilities with our obligation to ensure rates that are just and reasonable and not unduly discriminatory or preferential.<sup>1</sup> That is particularly important for ROE-based incentives. Those incentives—which come directly out of consumers' pockets—must incentivize transmission owners to develop and operate their facilities in a manner that provides consumers with benefits sufficient to justify the higher rates they produce. Anything short of that is unjust and unreasonable.

3. In Order No. 679, the Commission established an ROE incentive to encourage the formation of Transcos and facilitate their efforts to attract capital.<sup>2</sup> The Commission

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<sup>1</sup> 16 U.S.C. § 824s(d) (2018).

<sup>2</sup> *Promoting Transmission Investment through Pricing Reform*, Order No. 679, 116 FERC ¶ 61,057, at PP 206, 221, 226 (2006), *order on reh'g*, Order No. 679-A, 117 FERC ¶ 61,345, *order on reh'g*, 119 FERC ¶ 61,062 (2007).

explained its belief that the “stand-alone nature” of transmission-only companies would facilitate increased investment in transmission.<sup>3</sup> The Commission reasoned that “[b]y eliminating competition for capital between generation and transmission functions . . . the Transco model responds more rapidly and precisely to market signals indicating when and where transmission investment is needed”<sup>4</sup>—a dynamic it believed would produce higher levels of transmission investment relative to a more diversified company. In the same vein, the Commission explained its belief that the Transco model eliminates the incentive a company may have to forgo transmission investments in order protect its generation assets, which would also increase total transmission investment.<sup>5</sup> Whether the purported benefits of the Transco model ever materialized and, if they did, whether they remain sufficient to justify a bonus ROE are open questions in my view.<sup>6</sup>

4. But even if the Transco Adder were warranted in some instances, ITC Great Plains is not one of them. The 2016 purchase of its parent company, ITC Holdings, by Fortis and GIC eliminated any rationale for awarding ITC Great Plains a Transco Adder. As a result of that acquisition, ITC Holdings’ subsidiaries, including ITC Great Plains, must now compete for capital with Fortis and GIC subsidiaries, thereby undermining the theoretical case for the Transco Adder.

5. Both Fortis and GIC have extensive holdings, including natural gas and electric transmission, distribution utilities, and merchant generation.<sup>7</sup> Fortis, which owns eighty percent of ITC Holdings,<sup>8</sup> assesses capital expenditures on a consolidated basis, meaning

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<sup>3</sup> Order No. 679, 116 FERC ¶ 61,057 at PP 224-225.

<sup>4</sup> *Id.* P 224.

<sup>5</sup> *Id.*

<sup>6</sup> See *Electric Transmission Incentives Policy Under Section 219 of the Federal Power Act*, 170 FERC ¶ 61,204 (2020) (Glick, Comm’r, dissenting in part at P 2) (“[I]t is ‘not clear that Transcos are superior to other public utilities that can and do invest in transmission facilities— including competitively developed transmission facilities—or that awarding Transcos a higher ROE actually leads to greater transmission investment.’” (quoting *GridLiance West Transco LLC*, 164 FERC ¶ 61,049 (2018) (Glick, Comm’r, concurring at 2))).

<sup>7</sup> See *Consumers Energy Co.*, 165 FERC ¶ 61,021, at P 71 (2018) (Glick, Comm’r, dissenting at n.7) (summarizing Fortis’s and GIC’s relevant holdings).

<sup>8</sup> Kansas Commission Complaint, Exhibit KCC-004 at 21 (Fortis 2018 Annual Report).

that in evaluating how to allocate capital among its subsidiaries, it directly compares investments in electric transmission with investments in other aspects of its business, including other energy-sector investments.<sup>9</sup> Although ITC Holdings and its subsidiaries are permitted to develop their own capital and business plans, Fortis and GIC retain ultimate control over those plans. Indeed, in order for ITC Holdings to execute its capital expenditure plan, it—and its subsidiaries, including ITC Great Plains—must rely on equity infusions from Fortis, since ITC Holdings can no longer issue its own equity.<sup>10</sup> That means ITC Great Plains will receive capital to invest in transmission facilities only if Fortis, its ultimate majority owner, concludes that investments in transmission through ITC Great Plains are appealing relative to the investment options presented by its other subsidiaries. That fact alone ought to be fatal to ITC Great Plains efforts to retain any Transco Adder.

6. In addition, Fortis and GIC representatives also hold multiple seats on ITC Holdings' board of directors,<sup>11</sup> giving those companies an opportunity to shape ITC Holdings' investment plan, including its investments through ITC Great Plains, even before that plan is considered as part of Fortis' consolidated capital expenditure plan. The fact that the majority of ITC Holdings' board of directors is not affiliated with Fortis and GIC does not indicate that its subsidiaries are truly independent. After all, the minority of board members represents and may express the views of Fortis and GIC, potentially giving them outsized influence on ITC Holdings' decisionmaking process.

7. ITC Great Plains responds by arguing that the Commission can carry its burden under section 206 of the Federal Power Act<sup>12</sup> (FPA) to show that its existing rate is unjust and unreasonable only if it points to specific transactions or decisions in which ITC Great Plains did not exhibit independence.<sup>13</sup> Although I can understand ITC Great Plains'

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<sup>9</sup> *Id.* at 45-46.

<sup>10</sup> *Id.* at 33 (“Cash required of Fortis to support subsidiary capital expenditures is expected to be derived from borrowings under the Corporation’s committed credit facility, proceeds from the issuances of common shares, preference shares and long-term debt.”); *see also* Kansas Commission Complaint, Exhibit KCC-001 at 17 (explaining why the Commission’s findings regarding ITC Holdings’ reliance on Fortis apply equally to ITC Great Plains).

<sup>11</sup> *See* Kansas Commission Complaint, Exhibit KCC-001 at 94-97 (ITC Holdings Corp. 2018 Form 10-K Report).

<sup>12</sup> 16 U.S.C. § 824e.

<sup>13</sup> ITC Great Plains Answer at 10-12.

desire for such an unrealistically high standard, it is not required by section 206 or principles of reasoned decisionmaking. After all, although Order No. 679 pointed to evidence showing high levels of investment by Transcos, the Commission's justification for the creation of the Transco Adder was primarily based on the theoretical benefits independence could provide, which, it argued, accounted for any elevated levels of investment.<sup>14</sup> As a result, it is perfectly permissible for the Commission to rely on the elimination of those theoretical underpinnings and act accordingly, especially where the theoretical case is as straightforward as it is here.<sup>15</sup>

8. Although today's order recognizes that ITC Holdings is no longer independent in the sense contemplated by Order No. 679, the Commission nevertheless permits ITC Great Plains to retain a 25 basis-point ROE adder.<sup>16</sup> I would eliminate its Transco incentive entirely. Aside from the conclusory statement that ITC Great Plains' independence is "reduced, but not eliminated,"<sup>17</sup> nothing in today's order explains why ITC Great Plains' residuum of independence merits an elevated ROE or why, even if so, 25 basis points is an appropriate figure.<sup>18</sup> A reader of today's opinion is left with the distinct impression that, had ITC Great Plains not previously received an even larger ROE adder, it would not get even the 25 basis points awarded by today's order. Rewarding a company for its previous independence is not what I believe Congress had in mind when it enacted FPA section 219.

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<sup>14</sup> See Order No. 679, 116 FERC ¶ 61,057 at PP 224-226.

<sup>15</sup> Cf. *Assoc. Gas Distributors v. FERC*, 824 F.2d 981, 1008 (D.C. Cir. 1987) ("Agencies do not need to conduct experiments in order to rely on the prediction that an unsupported stone will fall.").

<sup>16</sup> *Kansas Corp. Comm'n v. ITC Great Plains, LLC*, 172 FERC ¶ 61,037, at P 35 (2020).

<sup>17</sup> *Id.* (quoting *ITC Great Plains, LLC*, 126 FERC ¶ 61,223, at P 93 (2009), *order on reh'g*, 150 FERC ¶ 61,225 (2015)).

<sup>18</sup> *Emera Maine v. FERC*, 854 F.3d 9, 27-28 (D.C. Cir. 2017) (explaining that the Commission had not met its burden to show that a rate was just and reasonable where it failed to point to any evidence indicating that the particular number set was, in fact, just and reasonable).

For these reasons, I respectfully dissent in part.

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Richard Glick  
Commissioner