

**UNITED STATES OF AMERICA  
BEFORE THE  
FEDERAL ENERGY REGULATORY COMMISSION**

Midwest Ratepayers	)	
v.	)	Docket No. EL18-140-000
Specified Fortis/GIC Subsidiaries	)	

**NOTICE OF INTERVENTION AND COMMENTS OF THE ORGANIZATION OF MISO STATES**

Pursuant to Rule 211 and 214(a)(2) of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (“Commission”), 18 C.F.R. §385.211 and §385.214(a)(2), the Organization of MISO States (“OMS”) submits its Notice of Intervention and Comments in the above-captioned docket.

On April 20, 2018, a group of Midcontinent Independent System Operator (“MISO”) transmission customers (“Complainants”) filed a Complaint<sup>1</sup> under Section 206 and 306 of the Federal Power Act<sup>2</sup> and Rules 206 and 212 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission<sup>3</sup> asking that the Commission revoke the return on equity (“ROE”) incentive adder for independence (“Independence Adder” or “Transco Adder”) currently provided to three named ITC Operating Companies (“ITC Companies”), each a transmission-owning member of MISO. The complaint is based on the fact that the new owners of the ITC Companies are market participants, or have sufficient interest in market participants, in the Eastern Interconnection and therefore the ITC Companies are no longer independent. The OMS files these comments to support removal of the Independence Adder if FERC determines that the ITC Companies are no longer sufficiently independent to

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<sup>1</sup> *Midwest Ratepayers v. Specified Fortis/GIC Subsidiaries*, Docket No. EL18-140-000 (Apr. 20, 2018).

<sup>2</sup> 16 U.S.C. §§ 824e and 825e.

<sup>3</sup> 18 C.F.R. §§ 385.206 and 385.212 (2010).

warrant such treatment.

## **I. NOTICE OF INTERVENTION**

The OMS files this Notice of Intervention in accordance with 18 C.F.R. §385.214(a)(2). The OMS is a not-for-profit, self-governing organization of representatives from each regulatory body with retail jurisdiction over entities participating in the MISO and serves as the regional state committee. The purpose of the OMS is to coordinate regulatory oversight among its members, to make recommendations to the MISO, the MISO Board of Directors, the Commission, and other relevant government entities and state commissions as appropriate, and to intervene in proceedings before the Commission to express the positions of the OMS member agencies.

Service of communications should be made on:

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## **II. COMMENTS**

The OMS has been engaged in a number of ROE-related matters before the Commission since its formation in 2003. This involvement stems from the belief that customers deserve an efficient, reliable transmission system that is developed at a cost that is appropriate to bring about that outcome without providing a financial windfall to the companies that build the infrastructure. That is the driver of the OMS involvement in the subject docket, as well as its historic participation in other matters before the Commission and at MISO related to transmission costs. The Commission has an opportunity to adjust the ROE for three MISO transmission owners to reduce costs to customers that may no longer be

warranted.

It Is Critical that the Commission Revoke the Independence Adder for the ITC Companies If It Determines That Its New Owners Are Market Participants that Can Influence Planning or Operating Decisions.

Under Section 205 and 219 of the Federal Power Act, the Commission has established policies intended to incentivize transmission development that is beneficial to customers. One category of incentive that the Commission created is for a Transco, defined as, “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.”<sup>4</sup> Though not granted often, as relevant here, each of the ITC Companies has received a ROE adder on the basis of their independent Transco status.<sup>5</sup>

In the Orders granting the incentive, the Commission specifically recognized the value of full independence from market participant interests of the ITC Companies<sup>6</sup> The Commission found that customers benefitted from truly independent transmission ownership and development being free from any incentive to advantage the business interests of affiliates in other parts of the industry, including generation and distribution, noting that ITC, “‘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 wholesale electricity sales.”<sup>7</sup> Furthermore, the Commission established a framework to ensure the high

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<sup>4</sup> *Promoting Transmission Investment through Pricing Reform*, Order 679, 116 FERC ¶ 61,057, P 201 (July 31, 2006).

<sup>5</sup> 100 basis points for ITC Transmission from *ITC Holdings Corp.*, 102 FERC ¶ 61,182, at P 68, *reh’g denied*, 104 FERC ¶ 61,033 (2003); 100 basis points for Michigan Electric Transmission Company (METC) from *Michigan Elec. Transmission Co., LLC*, 113 FERC ¶ 61,343, at P 17 (2005), *order on reh’g*, 116 FERC ¶ 61,164 (2006); 50 basis points for ITC Midwest from *Midcontinent Indep. Sys. Operator, Inc.*, 150 FERC ¶ 61,252, at P 41 (2015).

<sup>6</sup> *Id.* Note the adder has been reduced based on the Commission’s upper limit on the overall ROE in *Assoc. of Business Advocacy Tariff Equity v. Midwest Independent System Operator, Inc.*, 156 FERC ¶ 61,234, at P 298 (2016).

<sup>7</sup> See *ITC Holdings Corp. and Entergy Corp.*, 143 FERC ¶ 61,256, at P 125 (2013) (footnotes omitted), *reh’g pending*.

level of independence for the ITC Companies' holding company by limiting stock ownership by market participants to less than 5%.<sup>8</sup> The uniqueness of the ITC Companies fully independent structure was the basis for the generous incentives granted.

Yet, as noted in the Complaint, circumstances have changed since the ITC Companies were granted the independence adder in 2003, 2005, and 2015. Specifically, in 2017, ITC Holdings Corp., the publicly-traded holding company of the ITC Companies, was acquired by two new owners; Fortis, Inc. with an 80.1% interest and GIC (Ventures) Pte. Ltd. with a 19.9% interest.<sup>9</sup> Each new owner brought an existing portfolio of investments and ownership of companies in the U.S. energy industry. The change in ownership intertwines the ITC Companies into the portfolios of Fortis and GIC, raising important questions about the ITC Companies' continued independence and potential impact on planning and operating decisions. If the Commission decides the ITC Companies can no longer operate free of influence from the market participant interests of its new owners, the Independence Adder must be revoked to ensure rates remain just and reasonable.

### III. CONCLUSION

The OMS submits these comments because a majority of its members are generally in support. The Illinois Commerce Commission abstains. The Manitoba Public Utilities Board and Montana Public Service Commission did not participate in the vote. OMS members reserve the right to file separate comments regarding the issues discussed in these comments.

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<sup>8</sup> See *ITC Holdings Corp. and International Transmission Company*, 111 FERC ¶ 61,149, at PP 23-27 (2005). "ITC Holdings notifies the Commission whenever any shareholder owns five percent or more of ITC Holdings' common stock and initiates an investigation to determine if that entity is a market participant and takes actions if necessary to remediate any conflicts by purchasing back stock."

<sup>9</sup> *Fortis, Inc.*, 156 FERC ¶ 61,218, at PP 23-25 (2016).

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that I have served the foregoing document upon each person designated on the official service list compiled by the Secretary in this proceeding.

Dated this 10th day of May 2018.

*Tanya Paslawski*