

UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Pat Wood, III, Chairman;  
Nora Mead Brownell, Joseph T. Kelliher,  
and Suedeem G. Kelly.

ITC Holdings Corp. and  
International Transmission Company

Docket Nos. EC05-65-000  
EL05-94-000

ORDER AUTHORIZING DISPOSITION OF JURISDICTIONAL FACILITIES  
AND CONFIRMING INDEPENDENCE

(Issued May 5, 2005)

1. On March 30, 2005, ITC Holdings Corp. (ITC Holdings) and International Transmission Company (International Transmission) (collectively, Applicants) filed a joint application under section 203 of the Federal Power Act (FPA)<sup>1</sup> requesting authorization for a disposition of jurisdictional facilities associated with a public offering of ITC Holdings' common stock. Applicants also request that the Commission confirm that International Transmission will continue to be independent of market participants after the change in ownership structure associated with the public offering.<sup>2</sup>

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<sup>1</sup> 16 U.S.C. § 824b (2000).

<sup>2</sup> Applicants notified us of a change in ownership structure to comply with the requirements of a prior Commission order. *See ITC Holdings Corp., et al.*, 102 FERC ¶ 61,182 at P44 (2003), *reh'g denied*, 104 FERC ¶ 61,033 (2003) (allowing special rate treatment based on finding that International Transmission was independent of market participants) (February 20 Order).

2. The Commission has reviewed the proposed transaction under the Merger Policy Statement<sup>3</sup> and will authorize the transaction as consistent with the public interest. The Commission also confirms that International Transmission will remain independent of market participants after the public offering of ITC Holdings stock.<sup>4</sup> This order benefits customers because it facilitates investment in transmission infrastructure, improving reliability and the functioning of power markets.

## **I. Background**

### **A. Description of the Parties**

3. ITC Holdings and International Transmission are direct and indirect subsidiaries of International Transmission Holdings Limited Partnership (the Partnership), respectively. The general and controlling partner of the Partnership is Ironhill Transmission, L.L.C. (Ironhill), whose sole member is Mr. Lewis M. Eisenberg. The limited partners in the Partnership are investment partnerships managed by affiliates of Kohlberg Kravis Roberts & Co., L.P. (KKR), investment partnerships managed by affiliates of Trimaran Capital Partners, L.L.C. (Trimaran), and Stockwell Fund, L.P. (collectively, Limited Partners). As described in the application underlying the February 20 Order, the Limited Partners have consent rights regarding certain

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<sup>3</sup> See *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, 61 Fed. Reg. 68,595 (1996); FERC Stats. & Regs. ¶ 31,044 (1996), *reconsideration denied*, Order No. 592-A, 62 Fed. Reg. 33,341 (1997), 79 FERC ¶ 61,321 (1997) (Merger Policy Statement); see also *Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, 65 Fed. Reg. 70,983 (2000), FERC Stats. & Regs., Regulations Preambles July 1996-Dec. 2000 ¶ 31,111 (2000), *order on reh'g*, Order No. 642-A, 66 Fed. Reg. 16,121 (2001), 94 FERC ¶ 61,289 (2001) (Merger Filing Requirements).

<sup>4</sup> "Market participant" is defined in the Commission's rules as "[a]ny entity that, either directly or through an affiliate, sells or brokers electric energy, or provides ancillary services to the Regional Transmission Organization" (RTO) (unless the Commission finds that the entity does not have economic or commercial interests that would be affected by the RTO's actions or decisions) and "[a]ny other entity that the Commission finds has economic or commercial interest that would be significantly affected by the [RTO's] actions or decisions." 18 C.F.R. § 34.35 (b)(2)(i) - (ii) (2004).

extraordinary and other transactions that might materially affect their investment in the Partnership, but are not involved in the daily management of the business of the Partnership, ITC Holdings or International Transmission.<sup>5</sup>

4. The Partnership owns approximately 91 percent of the common stock of ITC Holdings, with the remaining approximately 9 percent owned by management and employees of ITC Holdings and International Transmission. ITC Holdings, in turn, owns all of the common stock of International Transmission.

5. International Transmission owns the transmission system formerly indirectly owned by DTE Energy Company. It provides jurisdictional transmission of electricity throughout southeastern Michigan, including Detroit. International Transmission participates in the Midwest Independent Transmission System Operator, Inc. (Midwest ISO) as an independent, stand-alone transmission company engaged exclusively in the transmission of electricity. Based on the ownership structure described above, the February 20 Order affirmed International Transmission's independence from market participants and allowed incentive rates as a result.<sup>6</sup>

#### **B. Description of the Transaction**

6. Applicants state that they intend to offer up to 49.9 percent of ITC Holdings common stock to the general public through an initial public offering (IPO) and that the "going public" process will continue with additional offerings from time to time until ITC Holdings' common stock is 100 percent publicly traded.<sup>7</sup> Applicants state that after the IPO, ITC Holdings will have one class of common stock and the common stock will have one vote per share. Applicants indicate that the investment capital raised through the sale of stock will be used in part to repay a portion of ITC Holdings outstanding debt. As described below, there will be other changes with respect to the Partnership and ITC Holdings in connection with the IPO, designed to ensure that International Transmission stays independent.

7. First, the Partnership's partnership agreement will be amended to eliminate many of the consent rights currently held by the Limited Partners, including rights with respect

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<sup>5</sup> See February 20 Order at P 31.

<sup>6</sup> February 20 Order at P 29-47.

<sup>7</sup> Applicants allege that they should not have to file further applications for planned future offerings of additional ITC Holdings stock.

to declaring dividends, incurring indebtedness, entering into contracts or capital expenditures in excess of certain amounts and adopting new annual budgets or business plans in excess of certain thresholds. Second, ITC Holdings will “amend and restate” its articles of incorporation and by-laws to be consistent with organizational documents for similar public companies.<sup>8</sup> As described below, the restated articles of incorporation will also restrict market participants’ ownership of, and voting rights with respect to, ITC Holdings’ stock. Third, certain letter agreements under which some of the Limited Partners now provide advisory, consulting and financial services (advisory services) to ITC Holdings and International Transmission will be amended and restated to terminate such arrangements when the IPO is completed. Additional advisory services will be provided under the amended and restated letter agreements as requested by ITC Holdings and International Transmission.

## **II. Notice, Interventions and Protests**

8. Notice of the filing was published in the *Federal Register*, 70 Fed. Reg. 17,683 (2005), with interventions and protests due on or before April 13, 2005. The Michigan Public Power Agency (Michigan Public Power) filed a timely motion to intervene and protest. The Detroit Edison Company (Detroit Edison); Thumb Electric Cooperative, Sebewaing Light & Water of Sebewaing, Michigan, and Croswell Light & Power of Croswell, Michigan (collectively, Transmission Customers); Utility Workers Union of America Local 223 (Local 223); International Brotherhood of Electrical Workers Local Union 17 (Local 17); and Utility Workers Union of America (UWUA) filed motions to intervene and comments. The Department of Municipal Services of Wyandotte, Michigan filed a motion to intervene. Applicants filed an answer to Detroit Edison’s and Michigan Public Power’s comments.

## **III. Discussion**

### **A. Procedural Matters**

9. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2004), the notices of intervention and timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

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<sup>8</sup> Joint Application for Authorization of Indirect Disposition of Jurisdictional Facilities Under Section 203 of the Federal Power Act and Notification of Change in Ownership Structure at 4 (Mar. 30, 2005).

10. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2004), prohibits an answer to a protest unless otherwise ordered by the decisional authority. We will accept Applicants' answer because it has provided information that has assisted us in our decision-making process.

**B. Independence**

**1. Applicants' Proposal for Ensuring Independence**

11. Applicants state that International Transmission will continue to operate as an independent transmission company independent of market participant control or influence after ITC Holdings "goes public." They request that the Commission confirm, based on the considerations below, that International Transmission will remain independent of market participants after the proposed transaction and any later public offerings of ITC Holdings stock.

12. Applicants state that the proposed transaction will diffuse ITC Holdings' ownership among many more stockholders. They suggest that the new stockholders likely will be individual and institutional investors. Applicants assert that having a broader base of stockholders will make it less likely that any one entity, particularly any one market participant, will be able to control International Transmission.

13. The February 20 Order stated that International Transmission would be managed by an independent management team with no financial ties to market participants and that none of the company's employees would have an economic or financial stake in any market participant. Applicants note that International Transmission's Standards of Conduct prohibit its directors, officers and employees from having direct financial interests in market participants and require that the company be operated independent of the operations of market participants. Applicants state that after the proposed transaction is completed, International Transmission's management team will continue to be independent of market participants.<sup>9</sup>

14. Applicants also argue that there is statutory protection against market participants making stock purchases that could impair the independence of International Transmission's operations. First, any public utility market participant may be required to obtain Commission approval under section 203 of the FPA before acquiring ITC

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<sup>9</sup> Applicants indicate that ITC Holdings and International Transmission share the same directors and officers and that any employees of ITC Holdings are personnel employed by International Transmission.

Holdings stock. Although ITC Holdings itself is not a public utility, it is a holding company with a public utility subsidiary, and Applicants suggest that the Commission could deem it appropriate to pierce the corporate veil to ensure that section 203 safeguards apply. Second, Applicants point out that prior Commission approval is required to directly or indirectly acquire control of International Transmission through the acquisition of ITC Holdings stock.<sup>10</sup> Applicants assert that Commission policy will ensure that a market participant could not obtain control of International Transmission without prior Commission approval under section 203 of the FPA. Third, Applicants state that under the Public Utility Holding Company Act of 1935 (PUHCA), any person affiliated with a public utility that seeks to acquire five percent or more of ITC Holdings stock would first need approval from the Securities and Exchange Commission (SEC).<sup>11</sup>

15. Finally, Applicants offer several additional measures of protection against market participants making stock purchases that could adversely affect International Transmission's independence. They state that ITC Holdings' restated articles of incorporation contain three restrictions that will limit voting and influence by any market participant to the lowest level that is practically possible for a public company under SEC regulations. First, ITC Holdings shall not issue shares of stock that would cause a market participant (or a group of stockholders containing a market participant) to beneficially own five percent or more of any class of ITC Holdings stock.<sup>12</sup> Second, if a market participant (or a group containing a market participant) acquires five percent or more of any class of ITC Holdings' stock, no market participant (or a group containing a market participant) may vote, give consent in respect of, or direct or control five percent or more of any class of ITC Holdings stock. Third, the Board of Directors of ITC Holdings shall be empowered to redeem shares so that a market participant (or a group containing a market participant) will not own five percent or more of any class of ITC Holdings stock. Applicants state that these restrictions will be applied based on: (1) the number of shares owned by a stockholder or a stockholder group; and (2) whether that stockholder is a market participant or that stockholder group contains a market participant.<sup>13</sup> Applicants

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<sup>10</sup> See *Enova Corp. and Pacific Enterprises*, 79 FERC ¶ 61,107 (1997); *Morgan Stanley Capital Group Inc.*, 79 FERC ¶ 61,109 (1997).

<sup>11</sup> 15 U.S.C. §§ 79b(a)(11)(A), 79i(a)(2) (2000).

<sup>12</sup> Under 17 C.F.R. § 240.13d-5 (2004), a "group" is two or more persons who act in concert with respect to acquiring, holding, or voting shares of a corporation.

<sup>13</sup> The definition of "market participant" in the restated articles is based on the definition set forth in 18 C.F.R. § 35.34(b)(2) (2004), under which an affiliate of a market participant is itself a market participant.

state that ITC Holdings will have no practical way of knowing if a market participant acquires a *de minimis* amount of its stock. However, they also state that SEC notice requirements will allow ITC Holdings to identify stockholders and groups of stockholders that beneficially own five percent or more of ITC Holdings stock after the proposed transaction.<sup>14</sup> Once the SEC notice requirements are triggered, the ITC Holdings Board of Directors can determine whether such a stockholder is a market participant and subject to the restrictions noted above.

16. Commenters generally support the application. Transmission Customers, UWUA, Local 223 and Local 17 state that the public offerings will be a significant development in, and validation of, the independent transmission company business model. UWUA and Local 223 foresee benefits to customers and to reliability as a result of the transaction. Local 17 adds that the IPO will help to ensure that International Transmission will continue to be able to get the financing necessary to support its capital improvement program.

17. Transmission Customers identify a number of benefits: (1) ITC Holdings will gain greater access to capital through the stock market; (2) the increased access to capital will reinforce International Transmission's ability to invest in, and improve, transmission infrastructure, thereby increasing reliability; and (3) ITC Holdings will be able to repay outstanding debt and increase its capital strength and borrowing power. In addition, Transmission Customers note that, as a publicly-traded company, ITC Holdings will become subject to SEC regulations, New York Stock Exchange rules and the Sarbanes-Oxley Act. Under such regulations, ITC Holdings' finances and operations will be even more open to the public than they are now. Finally, Transmission Customers agree with Applicants that diversifying the ownership of ITC Holdings will make it less likely that the company could be controlled by a market participant.

## **2. Commission Determination**

18. The Commission has on several occasions explained that it supports special transmission rates to provide incentives for much-needed investment in transmission infrastructure. In Order No. 2000, the Commission stated that it would allow RTOs and

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<sup>14</sup> SEC Rules 13d-1 and 13d-7 require that any person or group that becomes a beneficial owner of more than five percent or more of ITC Holdings' stock must file a Schedule 13D or Schedule 13G notice with the SEC and ITC Holdings, respectively. *See* 17 C.F.R. §§ 240.13d-1, 240.13d-7 (2004).

members of existing ISOs that satisfy the minimum RTO requirements to seek incentive transmission pricing to encourage the efficient operation of, and investment in, the transmission grid.<sup>15</sup>

19. Order No. 2000 analyzed the effect on RTO independence of active (voting) and passive (non-voting) market participant ownership of RTO assets. It noted the need to balance RTO independence against the problem of creating disincentives for transmission owners to relinquish ownership or control of their voting assets.<sup>16</sup> The Commission stated that its policy on proposals for passive ownership of RTOs by market participants will have three elements: (1) proposals will be reviewed on a case-by-case basis, and approved only if the Commission is satisfied that passive owners have relinquished enough control to ensure that all grid users are treated equally; (2) passive ownership must remain passive over time, verified through independent compliance audits; and (3) the Commission will take “appropriate action” in response to evidence of abuses.<sup>17</sup> The Commission established a “safe harbor” of five percent for active ownership interest of RTOs by market participants for a transition period of five years. While Order No. 2000 does not prohibit holdings of more than five percent of outstanding voting securities for longer than five years, these situations require case-by-case Commission approval.<sup>18</sup> Finally, the Commission set a benchmark of 15 percent RTO ownership by classes of market participants, and noted that its willingness to allow a greater ownership share by a class of market participants would depend on the circumstances of the filing.<sup>19</sup>

20. In September, 2000, the Commission specifically addressed the independence of International Transmission and its affiliates from market participants for purposes of incentive rate treatment. In order to help International Transmission become a fully independent transco, the Commission approved International Transmission’s proposal to

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<sup>15</sup> See *Regional Transmission Organizations*, Order No. 2000, 65 Fed. Reg. 809 (Jan. 6, 2000), FERC Stats. & Regs. ¶ 31,089 at 31,192 (2000), *order on reh’g*, Order No. 2000-A, 65 Fed. Reg. 12,088 (Feb. 25, 2000), FERC Stats. & Regs. ¶ 31,092 (2000), *aff’d*, *Public Utility District No. 1 of Snohomish County, Washington v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

<sup>16</sup> Order No. 2000 at 31,069.

<sup>17</sup> *Id.* at 31,066-67.

<sup>18</sup> *Id.* at 31,069-70.

<sup>19</sup> *Id.* at 31,071.



collect incentive rates before becoming an independent transco (as long as International Transmission refunded the amounts that it collected above its open access transmission tariff rate should it fail to attain its goal). The Commission conditioned its approval on International Transmission's becoming a fully independent transco within two years and on its joining a Commission-approved RTO by December 15, 2001.<sup>20</sup>

21. Subsequently, the February 20 Order: (1) approved the independence of the ownership structure involving International Transmission's new proposed owners, the Partnership and ITC Holdings, based on an independence standard requiring no active or passive ownership in the transco; and (2) allowed the incentive rate treatment to become effective. The February 20 Order noted that the indirect voting interests held in a market participant (Dayton Power & Light Company or Dayton) by one of International Transmission's indirect passive owners were less than 4.9 percent, below the level that would make the passive owner an affiliate of Dayton. The Commission thus found that the passive owner itself was not a market participant under our regulations implementing Order No. 2000. The February 20 Order went on to find that if the passive owner exercised warrants that allowed it to purchase additional voting shares of Dayton that would cause its voting interest to reach or exceed five percent, then International Transmission would not be permitted to continue to receive its incentive rate treatment.<sup>21</sup>

22. The IPO and subsequent public offerings of ITC Holdings' stock now proposed by Applicants will essentially change (indirectly) the ownership interests in International Transmission from passive ownership involving relatively few entities and individuals, none of whom are market participants, to active ownership that may involve a large number of entities or individuals, some of whom may be market participants. As the Commission held in Order No. 2000, market participants' active ownership of transmission facilities under an RTO's operational control do not threaten the RTO's independence unless the owners have legal rights and operational responsibilities that make it difficult for an RTO to provide non-discriminatory transmission service to other market participants.<sup>22</sup> Thus, the issue here is whether possible active, indirect ownership by market participants of International Transmission resulting from the proposed IPO and subsequent public offerings will compromise its independence, so that International

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<sup>20</sup> See *International Transmission Company*, 92 FERC ¶ 61,276 (2000).

<sup>21</sup> See February 20 Order at P 43.

<sup>22</sup> In this context, the Midwest ISO, in which International Transmission participates as an independent transmission company, is a Commission-approved RTO with an independent governance structure.

Transmission should no longer be granted incentive rate treatment. The Commission finds that it will not, with the restrictions on ownership by market participants as proposed by Applicants and with other conditions, discussed below.

23. We are concerned that market participants, through the exercise of shareholder voting rights, could undermine or influence International Transmission's independence by: (1) causing investment policies to be followed that may frustrate International Transmission's ability to add transmission infrastructure the Midwest ISO needs to continue providing non-discriminatory transmission service, maintain system reliability and energy market vitality; and (2) influencing directors, officers and employees of International Transmission, which are ultimately determined by the Board of Directors elected by ITC Holdings shareholders to engage in conduct to benefit the market participant. The significance of these concerns will vary in different situations.

24. The Commission has not established a "bright-line" test for a percentage of ownership that constitutes control over, or ability to influence, an entity's actions, and we do not intend to do so here. As discussed above, in Order No. 2000 the Commission permitted transitional active ownership of up to five percent by a market participant in an RTO with an approved independent governance structure. More recently, the Commission has granted two power marketers blanket prior authorization to acquire up to five percent of another public utility's voting securities held as principal.<sup>23</sup> Although this was in the context of the statutory requirement that prior Commission approval is required for a public utility to acquire *any* securities of another public utility, the Commission's paramount concern was that the acquiring public utility not be able to gain control of another public utility. The Commission determined that a limitation of five percent would ensure that result.<sup>24</sup>

25. In light of our prior holdings and the broad base of stockholders expected to result from the public offerings, and with one modification to the restrictions proposed by Applicants, we are satisfied that a limitation of up to five percent of ITC Holdings' stock, as proposed by Applicants, will prevent market participants from being able to influence or control International Transmission and thus undermine its independence. This is also consistent with PUHCA and SEC requirements. We will, however, require Applicants to inform us within 10 days if they receive notice from the SEC, a market participant, or a group including a market participant that the five percent level has been reached or exceeded. That change would allow the Commission to conduct an examination of the

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<sup>23</sup> See *UBS AG*, 103 FERC ¶ 61,284 (2003).

<sup>24</sup> *Id.* at P 15.

entity's market participant status without waiting for ITC Holdings' determination. If Applicants have invoked one or more of the protections described above to prevent a market participant's ownership share from rising above five percent,<sup>25</sup> they must describe the action taken and its effect on the market participant's ownership share.

26. International Transmission's Standards of Conduct are an additional protection ensuring that active owners that are market participants are not able to influence the operation of International Transmission to benefit themselves or their affiliates. The Standards of Conduct prohibit International Transmission's directors, officers and employees from having direct financial interests in market participants. They also require that International Transmission be operated independently from the operations of market participants. We note as well that the management and Board of Directors of International Transmission and ITC Holdings are identical. Stockholders will now elect the Board of Directors of ITC Holdings and will indirectly determine the management of both ITC Holdings and International Transmission. Applicants are reminded that, as required in P 44 of the February 20 Order, they must notify the Commission of any change that could affect International Transmission's continued independence. This would include a change that would result in different officers and directors for the two companies.

27. Applicants will not be required to make further filings under section 203 of the FPA in connection with additional offerings of shares of its common stock to the public subsequent to the IPO, as described in the application, provided that such additional offerings occur within two years. We do not regard it as in the public interest to allow indefinite periods of time to accomplish a section 203 transaction, when circumstances may depart substantially from those under which we are approving this section 203 transaction now.

## **B. Section 203 Analysis**

28. Section 203(a) of the FPA provides that the Commission must approve a disposition of facilities if it finds that the disposition "will be consistent with the public interest."<sup>26</sup> The Commission's analysis under the Merger Policy Statement of whether a disposition is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on

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<sup>25</sup> See P 15, *supra*.

<sup>26</sup> *Id.*

regulation. As discussed below, we will approve the proposed disposition of jurisdictional facilities as consistent with the public interest.

### **1. Effect on Competition**

29. Applicants assert that the offering of ITC Holdings stock will not adversely affect competition. They state that the proposed transaction will not result in any merger or other combination of electric generation or transmission facilities, or of entities that provide inputs to electricity products. Applicants state that the proposed transaction will have no effect on the operations of, or the services provided by, International Transmission.

30. The Commission finds that the transaction will not adversely affect competition. ITC Holdings and International Transmission do not own generation assets. Therefore, the transaction will not consolidate control of generation assets and will not increase horizontal market power. The transaction also does not involve the acquisition of ownership or control of other transmission systems or other key inputs into electric generation. We note further that International Transmission will remain a member of the Midwest ISO, a Commission-approved RTO. The Commission thus finds that the transaction does not present vertical market power concerns. While market participants owning generation or transmission facilities may acquire up to five percent of International Transmission indirectly, such acquisitions would not alter our conclusion on competitive effects, for the reasons stated above.

### **2. Effect on Rates**

31. Applicants state that offering ITC Holdings' stock to the public will not affect International Transmission's transmission rates. They state that there will be no change to International Transmission's use of its Commission-approved formula rate and that transmission service will continue at rates provided for under the Midwest ISO tariff.

32. Detroit Edison comments that the use of investment capital raised through the sale of stock may affect ITC Holdings' capital structure and, in turn, International Transmission's jurisdictional rates. Detroit Edison does not oppose the proposed transaction, but requests that the Commission clarify that Detroit Edison is free to address any rate issues related to the proposed stock offering.

33. In response to Detroit Edison's concerns, Applicants recognize that the proposed transaction does not affect Detroit Edison's ability to raise rate issues in another proceeding. Applicants also state that in the event that ITC Holdings pays down debt following the issue of equity, only the capital structure of ITC Holdings, the holding company, would be affected, with no impact on International Transmission's capital

structure or jurisdictional rates. Applicants note that International Transmission maintains a capital structure of 60 percent equity and 40 percent debt in accordance with the February 20 Order.

34. Michigan Public Power states that in connection with its ownership interest in the Belle River Generating Plant, it has an undivided ownership interest in, and related use rights over, the International Transmission transmission system. Those rights are governed by the Belle River Transmission Ownership and Operating Agreement between Detroit Edison and Michigan Public Power (O&O Agreement). Under the O&O Agreement, Michigan Public Power is obligated to pay International Transmission its *pro rata* share of operation and maintenance expenses and capital improvement expenses for the transmission lines in which it has undivided ownership interests. Michigan Public Power states that the application is unclear as to whether it will incur increased operation and maintenance or capital investment costs as a result of the proposed transaction. It states that it should not be forced to pay higher rates under the O&O Agreement because of Applicants' desire to change their corporate structure. Michigan Public Power requests that the Commission order Applicants to ensure that the proposed transaction will not adversely affect the O&O Agreement and Michigan Public Power's ownership, use rights, and operating and allocated overhead costs thereunder. Michigan Public Power also requests that the Commission take no action in this proceeding that would prejudice market participants' rights to recover the revenue requirement associated with its ownership interest in the transmission facilities that International Transmission operates.

35. In response to Michigan Public Power's concerns, Applicants state that the issuance of ITC Holdings' stock has no effect on Michigan Public Power's rights and obligations as stated in the O&O agreement.

36. Under section 205 of the FPA,<sup>27</sup> the rates, terms and conditions of service provided by International Transmission will remain subject to the Commission's jurisdiction. We therefore find that the proposed transaction will not adversely affect International Transmission's rates.

37. With respect to Michigan Public Power's concerns, we note that Applicants have not proposed to modify any service agreement or any agreement providing for joint ownership and use rights of transmission lines, including the O&O Agreement. Nor has International Transmission filed to change any provision related to charges that are based on the allocation of operating and overhead costs under the O&O agreement. As regards

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<sup>27</sup> 16 U.S.C. § 824d (2000).

Detroit Edison's concern, our authorization of the proposed transaction does not limit the ability of any transmission customer of International Transmission to challenge any rate increase proposed by International Transmission. If any transmission customer, including Michigan Public Power or Detroit Edison, believes that the rates charged under an agreement with International Transmission are unjust and unreasonable, it may file a complaint under section 206 of the FPA.<sup>28</sup>

### **3. Effect on Regulation**

38. Applicants assert that the transaction will not affect the ability of the Commission or state commissions to regulate jurisdictional facilities and transactions of Applicants. They note that Applicants are not registered public utility holding companies or affiliates or subsidiaries of registered public utility holding companies and that the transaction will not create a new, registered public utility holding company. In addition, Applicants state that the rates, terms and conditions of service provided by International Transmission will continue to be subject to the Commission's jurisdiction. Applicants also state that there will be no effect on state regulation since the proposed IPO involves only the issuance of common stock. Applicant further state that the State of Michigan will continue to have the same authority it has now over the siting of transmission lines and compliance with environmental standards and regulation.

39. The Commission finds that the transaction will not adversely affect the Commission's or state regulation. We note that no state commission has intervened in this proceeding.

#### The Commission orders:

(A) Applicants' proposed disposition of jurisdictional facilities is authorized, as discussed in the body of this order. Applicants will not be required to make further filings under section 203 of the FPA in connection with additional offerings of its common stock to the public subsequent to the IPO, as described in the application, provided such additional offerings occur within two years.

(B) 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.

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<sup>28</sup> 16 U.S.C. § 824e (2000).

(C) 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.

(D) The Commission retains authority under sections 203(b) and 309 of the FPA to issue supplemental orders as appropriate.

(E) Applicants shall notify the Commission within 10 days of the date that the Transaction has been consummated. Applicants must also file informational reports with the Commission at six-month intervals to provide updates on further public offerings of ITC Holdings stock.

(F) Applicants shall notify the Commission within 10 days of receiving a notification that any market participant has acquired five percent or more of ITC Holdings' common stock, as described in the body of this order.

By the Commission.

( S E A L )

Linda Mitry,  
Deputy Secretary.