

**BEFORE THE  
PUBLIC SERVICE COMMISSION OF WISCONSIN**

Fortis Inc. )  
Fortis US Holdings Nova Scotia Limited )  
FortisUS Inc. )  
ITC Investment Holdings Inc. )  
Element Acquisition Sub Inc. )  
ITC Holdings Corp. )  
ITC Midwest LLC )

Docket No. 9400-YO-101

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**APPLICATION FOR APPROVAL OF HOLDING COMPANY ACQUISITION**

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## **I. INTRODUCTION**

### **A. Transacting Parties**

This proceeding involves a change in upstream ownership of ITC Midwest LLC (“ITC Midwest”). Fortis Inc. and its subsidiaries, including Fortis US Holdings Nova Scotia Limited (“FortisUS Holdings”), FortisUS Inc. (“FortisUS”), ITC Investment Holdings Inc. (“ITC Investment”) and Element Acquisition Sub Inc. (“Element,” and together with Fortis Inc., FortisUS Holdings, FortisUS, and ITC Investment, “Fortis”), ITC Holdings Corp. (“ITC Holdings”), and ITC Midwest, (Fortis, ITC Holdings, and ITC Midwest, collectively, “Applicants”) jointly submit this application requesting approval from the Commission under the “takeover” provisions in the Wisconsin Public Utility Holding Company Act (“WPUHCA”)<sup>1</sup> for ITC Holdings and its family of companies to merge into the Fortis family of companies pursuant to an Agreement and Plan of Merger by and among FortisUS, Element, Fortis Inc., and ITC Holdings dated as of February 9, 2016 (“Agreement and Plan of Merger”).

ITC Midwest owns no assets in Wisconsin and currently has no plans to own any electric facilities in Wisconsin except for its share of the proposed Cardinal-Hickory Creek Transmission Line Project (“CHC Project”).<sup>2</sup> Despite the absence of any Wisconsin assets being impacted by the transaction, the Commission has jurisdiction because it granted ITC Midwest’s application to be a public utility<sup>3</sup> and ITC Holdings’ application to be formally recognized as a

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<sup>1</sup> Wis. Stat. § 196.795(3). Applicants address other sections of WPUHCA in Section III.C below for the Commission’s consideration as needed.

<sup>2</sup> ITC Midwest, American Transmission Company LLC by its corporate manager, ATC Management Inc., (together, “ATC”), and Dairyland Power Cooperative propose to construct, own and operate the CHC Project, a 345 kilovolt (“kV”) transmission line that would connect the Hickory Creek Substation in Dubuque County, Iowa, with the Cardinal Substation in the Town of Middleton, Wisconsin, and would include a connection at a new intermediate substation near Montfort, Wisconsin. As of this filing, an application for the project has not yet been submitted to the Commission.

<sup>3</sup> See *In Re Application of ITC Midwest LLC for Authority to Become an Electric Utility*, Docket No. 2707-NC-100, *Final Decision*, at 3, 13 (PSCW May 8, 2014) [“ITC Midwest 2014 Order”].

Wisconsin public utility holding company.<sup>4</sup> The transaction involves a change in upstream ownership of ITC Holdings, where Fortis Inc. will become the majority-owner, Finn Investment Pte. Ltd. will become a minority owner, the management and operations of ITC Holdings and ITC Midwest will not change, and the ITC Holdings board will continue to be composed of a majority of independent directors.

ITC Midwest is a Michigan limited liability company and a transmission-owning member of the Midcontinent Independent System Operator, Inc. (“MISO”). ITC Holdings is the parent company of ITC Midwest. ITC Midwest is the only transmission owner to become an independent transmission owner in Wisconsin, and ITC Holdings is the only transmission holding company to become a Wisconsin holding company.<sup>5</sup> In 2013, ITC Holdings and ITC Midwest sought approvals from the Commission to enable ITC Midwest to ultimately co-own and operate the CHC Project. The CHC Project is designated by MISO as a multi-value project that would expand the 345 kV network in Wisconsin and the region. The Commission granted a certificate of authority to ITC Midwest conditioned upon the Commission’s ultimate approval of the CHC Project.<sup>6</sup> If the Commission approves the CHC Project, it is expected to commence operation in 2023, and it will be the first business operations conducted by ITC Midwest in the state of Wisconsin.

Fortis Inc. is a widely held, publicly traded utility holding company that was formed in 1987. Since that time (like ITC Midwest) Fortis Inc. has neither owned assets nor conducted any operations in Wisconsin. Fortis Inc. operates in the North American electric and

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<sup>4</sup> See *In Re Application of ITC Holdings Corp. and ITC Midwest LLC for a Certificate of Approval to Form a Holding Company*, Docket No. 9408-YO-100, *Final Decision*, at 16 (PSCW May 8, 2014) [“ITC Holdings 2014 Order”]. ITC Midwest 2014 Order and ITC Holdings 2014 Order collectively referred to as “the 2014 Orders.”

<sup>5</sup> ATC is not considered an independent transmission owner under Wisconsin law and is statutorily exempt from WPUHCA. See ITC Holdings 2014 Order, at 4; Wis. Stat. § 196.485(1)(dm)2.

<sup>6</sup> ITC Midwest 2014 Order, Order Point 1, and p. 6 (“If ITC Midwest decides not to own or is otherwise prevented from owning and constructing the [CHC Project], the Certificate of Authority shall expire”).

natural gas utility business, providing regulated distribution service to more than three million customers. Regulated utilities currently make up approximately 96% of Fortis Inc.'s assets, with the remaining 4% consisting of unregulated electric generation and natural gas storage assets.

Finn Investment Pte. Ltd. is a wholly-owned, indirect subsidiary of GIC (Ventures) Pte. Ltd. (“GIC Ventures”). Either Finn Investment Pte. Ltd. or another direct or indirect, wholly owned subsidiary of GIC Ventures<sup>7</sup> will acquire a 19.9% indirect minority investment interest in ITC Holdings which does not convey any authority to manage or control the day-to-day operations of ITC Holdings or ITC Midwest pursuant to the Co-Investment Subscription Agreement, dated as of April 20, 2016, by and among Finn, Fortis Inc., FortisUS, ITC Investment, and Element (the “Subscription Agreement”). Finn is not an applicant, but Applicants expect Finn to intervene in this proceeding. For reasons explained in detail below, in view of Finn’s commitment to restrict its voting rights and its lack of a controlling interest over the management or policies of ITC Midwest, Applicants seek clarification that Commission approval is not required for Finn’s minority investment under Wis. Stat. § 196.795(3), that Finn will not be considered a holding company or part of a holding company system following consummation of the transaction, and that Finn will not be an affiliated interest of ITC Midwest.

After the transaction is consummated, ITC Midwest will continue to be a transmission-only company financed on a standalone basis, and all applicable public utility rates will be (as they are now) regulated by the Federal Energy Regulatory Commission (“FERC”).

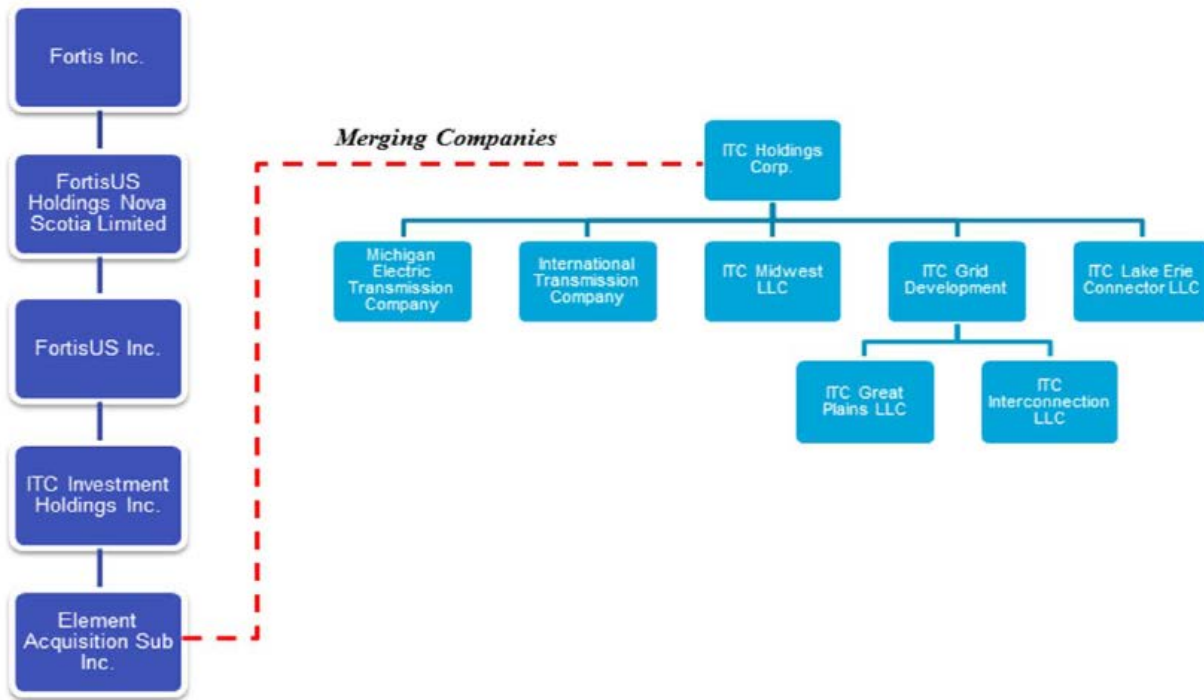
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<sup>7</sup> For ease of reference, “Finn” is used herein to refer to Finn Investment Pte. Ltd. or such other GIC Ventures subsidiary. Applicants will notify the Commission of the identity of the entity that acquires the interest promptly after closing.

## B. Transaction Overview

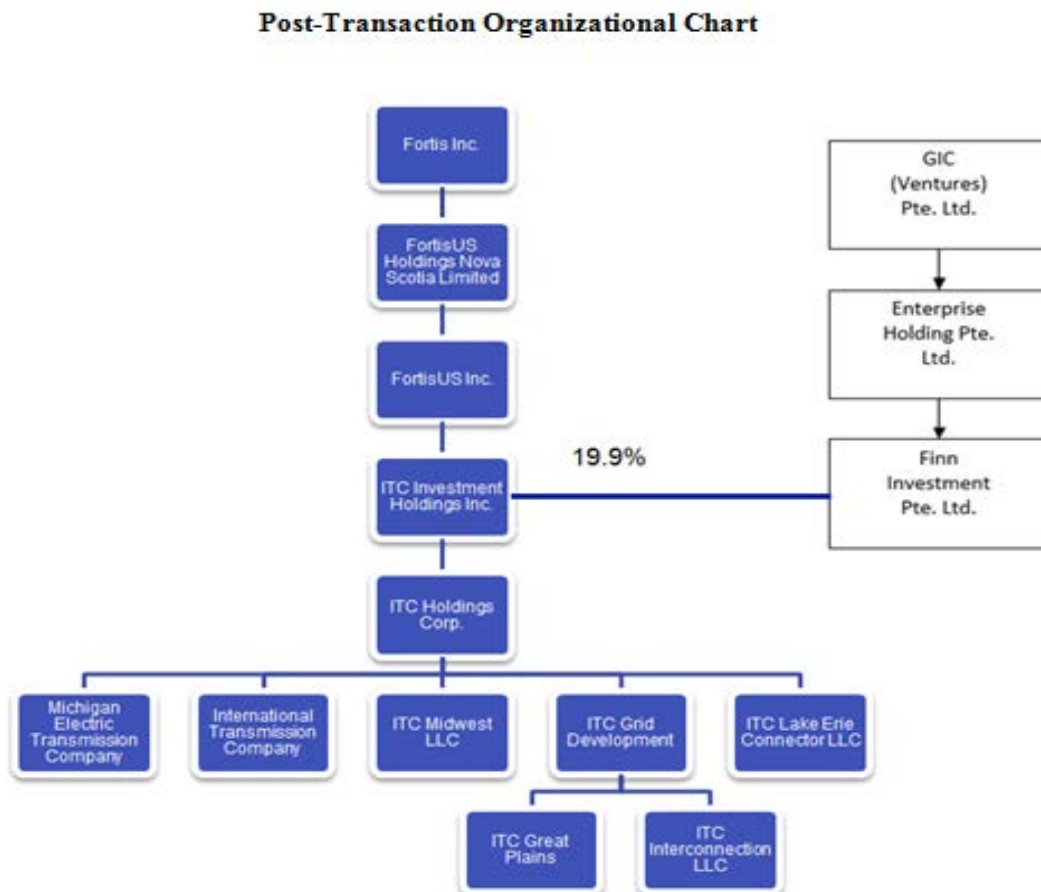
Under the transaction, Element will merge with and into ITC Holdings, with ITC Holdings as the surviving company, and each share of common stock of ITC Holdings will be cancelled. Figure 1 below depicts the pre-transaction company organization.

**Figure 1: Pre-Transaction Company Organization**



Finn will contemporaneously acquire an indirect 19.9% minority interest in ITC Holdings through ITC Investment. Upon consummation of the transaction, ITC Holdings will be a majority-owned (80.1%) indirect subsidiary of FortisUS, and each of ITC Holdings' subsidiaries, including ITC Midwest, will be majority-owned, indirectly, by Fortis Inc. through FortisUS, and minority-owned, indirectly, by Finn. Figure 2 below depicts the post-transaction company organization.

**Figure 2: Post-Transaction Company Organization**



Applicants are seeking Commission approval of the portion of the transaction involving Fortis’ acquisition of ITC Holdings (the “Acquisition”).

**C. The Acquisition Is in the Best Interests of Customers, Investors, and the Public**

The “takeover” provision of WPUHCA requires Commission approval before a person may “take, hold or acquire, directly or indirectly, more than 10% of the outstanding voting securities of a holding company, with the unconditional power to vote those securities.”<sup>8</sup>

<sup>8</sup> Wis. Stat. § 196.795(3).



The Commission may approve an application for an acquisition of a holding company if it finds that it “is in the best interests of utility consumers, investors and the public.”<sup>9</sup>

As further detailed in the remainder of this application, the Acquisition is in the best interests of customers, investors and the public because it combines the best of both worlds. That is, Fortis Inc. intends to preserve and build upon the existing strengths of ITC Midwest and to retain the management of ITC Holdings and ITC Midwest, while providing ITC Midwest with the financial support of its much larger organization. The Acquisition will expand ITC Midwest’s “toolkit,” putting it in an enhanced position to meet future challenges and opportunities and to efficiently and cost effectively finance, develop, own and maintain transmission projects, including the CHC Project.

Fortis Inc. is a widely held, publicly traded company and is highly qualified to become the successful majority-owner of ITC Midwest. Fortis Inc. operates in the North American electric and natural gas utility business, providing regulated distribution service to more than three million customers. Its regulated utility subsidiaries operate under a decentralized, standalone business model and have strong customer service and community orientations. The members of the Fortis family are respectful of and responsive to their regulators. Fortis Inc. is financially sound and capable of carrying out the financial and other commitments relating to the Acquisition. Fortis Inc. intends to preserve and build upon the existing strengths of ITC Midwest. Fortis Inc. has applied this approach across its operations in Canada, the United States and the Caribbean. This philosophy sets Fortis Inc. apart from other potential acquirers, during a period of rapid and widespread industry consolidation.

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<sup>9</sup> *Id.*

Fortis Inc.'s business strategy is to own and operate sound regulated utilities, while always providing a framework for the provision of safe and reliable service to customers. Fortis Inc.'s business philosophy is that effective management of regulated utilities requires local management and decision-making, and therefore, its regulated utility subsidiaries are operated and financed on a standalone basis. While Fortis Inc. plans to retain the management of ITC Holdings and ITC Midwest, Fortis Inc. will also provide ITC Midwest with the financial support of its much larger organization, as well as additional technical and operational expertise upon which the utility can draw as needed. In addition, ITC Midwest will continue to have standalone credit facilities and senior long-term debt instruments and will benefit from the support and broad experience of Fortis Inc. in accessing capital, assisting ITC Midwest to efficiently and cost effectively finance, develop, own and maintain transmission projects, including the CHC Project.

#### **D. Requested Approvals and Conditions**

The Applicants request that the Commission grant all approvals necessary to consummate the Acquisition. In particular, the Applicants request that the Commission find the Acquisition is in the best interests of utility consumers, investors and the general public and approve the Acquisition under Wis. Stat. § 196.795(3). Applicants also request that the Commission clarify that “takeover” approval is not required for Finn’s indirect 19.9% minority investment because Finn’s investment will not provide it a controlling interest over the management or policies of either ITC Holdings or ITC Midwest, and Finn is committing to restrict its voting rights to 4.99% with respect to matters that predominantly relate to the CHC Project and any future Wisconsin project over which the Commission has jurisdiction.

With respect to the remainder of WPUHCA, as the Commission noted when approving ITC Holdings’ application to become a Wisconsin holding company, WPUHCA is an “imperfect fit for both ITC Midwest and ITC Holdings” since it was designed with more

traditional Wisconsin generation and distribution utilities in mind.<sup>10</sup> The Applicants believe that the goals and objectives of WPUHCA can be met by approving the Acquisition under the takeover provisions of WPUHCA, affirming the Commission's decisions and conditions in its approvals of ITC Holdings and ITC Midwest, and imposing additional conditions on Fortis in this docket, as specified below, to ensure continued Commission oversight of and confidence in the operations of ITC Holdings and ITC Midwest.

As such, Applicants seek clarification from the Commission with respect to the applicability of other WPUHCA provisions, and Applicants are proposing certain conditions designed to ensure that the goals and objectives of WPUHCA are met if the Acquisition is approved.

First, if the Acquisition is consummated, Applicants commit that the Commission's authority over and ability to regulate ITC Holdings and ITC Midwest under Wisconsin law will not change. ITC Holdings and ITC Midwest will continue to be subject to all of the requirements in, and meet all of the conditions of, the 2014 Orders.

Second, Applicants seek confirmation that the Commission's interest in protecting the financial integrity of ITC Midwest will be adequately satisfied through continued focus of WPUHCA requirements at the level of ITC Holdings and that Fortis will not be considered a holding company or part of a holding company system following the Acquisition. But, as a condition of approval of the Acquisition, Fortis voluntarily agrees to:

- Provide full access to any book, record, document or other information of Fortis Inc. or its subsidiaries in the ITC Midwest chain of ownership which the Commission staff believes is relevant to fulfill the Commission's statutory duties;

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<sup>10</sup> See ITC Holdings 2014 Order, at 4.

- Seek Commission approval prior to terminating its interest in ITC Midwest; and
- Ensure that ITC Midwest will continue to maintain both standalone credit facilities and senior long-term debt instruments after the Acquisition and that ITC Midwest's utility financing arrangements will not permit lending or guarantees by ITC Midwest in favor of Fortis or its affiliates.

Third, Applicants request that the Commission find that Fortis is not a "public service corporation" and therefore is not subject to regulation under Wisconsin Statutes Chapter 201.<sup>11</sup>

Fourth, should the Commission determine that additional approvals are required to ensure ongoing compliance with WPUHCA, the Applicants request that the Commission provide approvals and clarifications similar to those in the ITC Holdings 2014 Order.

Fifth, for the reasons discussed below, Applicants request clarification that Commission approval is not needed for Finn's minority investment, that Finn will not be deemed a holding company or part of a holding company system, and that Finn will not be an affiliated interest of ITC Midwest after the transaction is consummated.

Sixth, to the extent the Commission deems the Acquisition to be a "reorganization" of a public utility under Wis. Stat. § 196.79, ITC Midwest requests Commission approval under that provision as well.

Finally, the Applicants respectfully request approval by October 1, 2016 to allow the Applicants to close the transaction by the end of 2016.

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<sup>11</sup> The Commission already determined that ITC Holdings is not currently a "public service corporation" in the ITC Holdings 2014 Order. *See* ITC Holdings 2014 Order, at 15-16.

## **II. THE PARTIES AND THE TRANSACTION**

### **A. Fortis**

Fortis Inc. is a widely held, publicly traded utility holding company existing under the laws of Newfoundland and Labrador, Canada, with its principal offices in St. John's, Newfoundland and Labrador. It operates in the North American electric and natural gas utility business, with total assets, as of December 31, 2015 of approximately US\$23.2 billion,<sup>12</sup> and fiscal 2015 revenues totaling approximately US\$5.4 billion. Fortis Inc. serves more than three million customers across Canada, the United States, and the Caribbean. Regulated utilities make up approximately 96% of Fortis' assets, including electric utilities in five Canadian provinces, Arizona, New York state, and the Caribbean,<sup>13</sup> as well as natural gas utilities in British Columbia, Canada, Arizona, and New York state. No single shareholder of Fortis Inc. holds more than 5% of its common stock.<sup>14</sup>

Fortis Inc.'s regulated utilities are governed, managed, operated, and financed on a standalone basis. In the case of Fortis Inc.'s large regulated utilities, the majority of directors are independent<sup>15</sup> and most reside in the area served by the utility. Each Fortis Inc. regulated utility also has its own executive management team based in the area served by the utility, which is accountable to the utility's board of directors. Within the Fortis group, management focus and accountability are reinforced through effective governance. For example, for each Fortis Inc.

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<sup>12</sup> US\$ amounts are converted from Canadian dollars (C\$) based on the Bank of Canada's closing rate of US\$1 to C\$1.25 on April 29, 2016.

<sup>13</sup> Fortis Inc. holds controlling interests in regulated electric utilities in the Cayman Islands and the Turks and Caicos Islands, as well as a non-controlling interest in a regulated electric utility in Belize.

<sup>14</sup> Under Canadian securities laws, beneficial ownership reporting only applies to significant shareholders who beneficially own or control and direct, whether directly or indirectly, 10% or more of the common shares of an issuer. As a result, there is no method by which Fortis Inc. can reliably identify beneficial owners of 5% or more of its common shares. No shareholder of Fortis Inc. has reported that it beneficially owns or controls and directs 10% or more of Fortis Inc.'s common shares. To the knowledge of Fortis Inc.'s management, no single shareholder holds more than 5% of the common shares of Fortis Inc.

<sup>15</sup> The only exceptions are Fortis Inc.'s small regulated utilities in Ontario and the Turks and Caicos Islands, which have boards of directors primarily composed of non-independent directors.

regulated utility, the executive management is required to report to its board of directors on the key aspects of utility operations such as safety, customer satisfaction, service continuity, environmental compliance, cost management and financial performance.

FortisUS Holdings is a Canadian Corporation that owns all of the shares of FortisUS, and is in turn wholly owned by Fortis Inc. FortisUS Holdings has no employees or third party debt, and does not directly engage in operations.

FortisUS is a direct wholly-owned subsidiary of FortisUS Holdings and an indirect, wholly-owned subsidiary of Fortis Inc. FortisUS has no employees or third party debt, and does not directly engage in operations. Currently, FortisUS' subsidiaries include CH Energy Group, Inc., which owns Central Hudson Gas & Electric Corporation and Central Hudson Enterprises Corporation, and UNS Energy Corporation, which owns Tucson Electric Power Company, UNS Electric, Inc., UNS Gas, Inc., and UniSource Energy Development Company (the "UNS Utilities"). Appendix A to this Application describes in greater detail each of these FortisUS subsidiaries, as well as Fortis Inc.'s other operating energy company subsidiaries.

Element is a direct, wholly-owned subsidiary of ITC Investment, which in turn is a direct subsidiary of FortisUS. Element and ITC Investment were expressly formed for the purpose of effecting the transaction. Element and ITC Investment do not engage in any jurisdictional business activities, and Element will cease to exist after the transaction is consummated. Fortis does not have any electric transmission, distribution or generation operations in Wisconsin or MISO.

## **B. ITC**

ITC Holdings is a publicly-traded holding company incorporated under the laws of Michigan, with its principal office in Novi, Michigan. ITC Holdings is a public utility holding

company under Wisconsin law.<sup>16</sup> ITC Holdings owns and operates ITC Midwest, International Transmission Company d/b/a ITC*Transmission*, Michigan Electric Transmission Company, LLC (“METC”), and ITC Great Plains, LLC (“ITC Great Plains”) (collectively, the “ITC Operating Companies”).

Each of the ITC Operating Companies is an independent, standalone transmission company engaged exclusively in the development, ownership, and operation of electrical transmission facilities. A FERC-approved Regional Transmission Organization (“RTO”) has functional control over the ITC Operating Companies’ transmission systems. The RTO independently administers each ITC Operating Company’s respective system in accordance with the RTO’s FERC-approved Open Access Transmission Tariff (“OATT”). Through the ITC Operating Companies, ITC Holdings owns, maintains, and operates approximately 15,600 miles of high-voltage transmission lines in Michigan, portions of Iowa, Minnesota, Illinois, Missouri, Kansas, and Oklahoma, serving a combined peak load exceeding 26,000 megawatts. The ITC Operating Companies’ customers include investor-owned utilities, municipalities, cooperatives, power marketers, and alternative energy suppliers. The ITC Operating Companies invest significant resources into the electric transmission grid to enhance reliability, reduce transmission constraints, facilitate the interconnection of renewable and other generating resources, and improve competition in wholesale electricity markets. Appendix B of this Application describes in greater detail the ITC Operating Companies and ITC Holdings’ other subsidiaries.

ITC Midwest, a wholly-owned direct subsidiary of ITC Holdings, is an independent transmission company exclusively engaged in transmitting electric energy in

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<sup>16</sup> See ITC Holdings 2014 Order.

interstate commerce. ITC Midwest has received a certificate of authority to transact public utility business<sup>17</sup> and is engaged, together with ATC and Dairyland Power Cooperative, in developing the CHC Project.

Outside of Wisconsin, ITC Midwest owns approximately 6,600 circuit miles of transmission lines rated at voltages 34.5 kV to 345 kV and accompanying transmission towers and poles. It owns station assets, such as transformers and circuit breakers, at approximately 271 substations that either interconnect or connect ITC Midwest's transmission facilities with generation or distribution facilities owned by third parties. ITC Midwest owns the monitoring and metering equipment and other equipment necessary to safely operate its transmission system, as well as warehouses and related equipment. Its transmission facilities are located either on land held in fee, on rights of ways, or on easements. ITC Midwest is also subject to the jurisdiction of state agencies in Iowa, Minnesota, Illinois, and Missouri.

ITC Midwest has a FERC-approved MISO formula rate template. FERC retains exclusive jurisdiction over the rates ITC Midwest may charge for use of its transmission system by approving the terms and conditions set forth in ITC Midwest's MISO formula rate tariff.

### **C. Finn**

For background purposes, Applicants provide the following information regarding Finn. Finn does not engage in any jurisdictional business activities. Finn is wholly owned by Enterprise Holding Pte. Ltd., which itself is wholly owned by GIC Ventures. GIC Ventures is affiliated with GIC Private Limited ("GIC"), an investment company that manages the Government of Singapore's foreign reserves,<sup>18</sup> and GIC Special Investments Pte. Ltd. ("GIC

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<sup>17</sup> See ITC Midwest 2014 Order.

<sup>18</sup> GIC is a signatory to the Santiago Principles, a set of Generally Acceptable Principles and Practices for Sovereign Wealth Funds published in 2008 by the International Working Group of Sovereign Wealth Funds.



SI”), the private equity and infrastructure arm of GIC. Finn will be managed and controlled by GIC SI.

GIC and GIC Ventures are each wholly owned by the Government of Singapore through the Minister for Finance (“MOF”), a statutory corporation set up by the Government of Singapore to own and administer government assets. The Government of Singapore, which is represented by MOF in its dealings with GIC, neither directs nor interferes with GIC’s investment decisions.

#### **D. The Transaction**

Multiple agreements have been entered into to complete the Acquisition and effectuate consummation of Finn’s minority investment. First is the Agreement and Plan of Merger, a copy of which is included in this Application as Appendix C. The second is the Subscription Agreement, a copy of which is included in this Application as Appendix D.<sup>19</sup> Under the terms of the Agreement and Plan of Merger, and subject to regulatory approvals and the satisfaction of certain customary obligations of the parties, Element will merge with and into ITC Holdings, with ITC Holdings as the surviving company. After the transaction is consummated, all of the outstanding shares of common stock of ITC Holdings will be cancelled.

The terms of Finn’s minority investment are set forth in the Subscription Agreement. Under the terms of the Subscription Agreement, Finn will subscribe for approximately US\$1.0 billion of shares of ITC Investment, and approximately US\$0.2 billion of ITC Investment notes, for an aggregate investment of approximately US\$1.2 billion. Upon completion of the Acquisition and Finn’s minority investment, ITC Holdings will be a direct

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<sup>19</sup> There is also an Assignment and Assumption Agreement dated as of April 20, 2016 between FortisUS and ITC Investment, in which FortisUS assigned all of its rights (but not its obligations) under the Agreement and Plan of Merger to ITC Investment (currently a direct, wholly-owned subsidiary of FortisUS, and the sole shareholder of Element) with the consent of ITC Holdings.

wholly-owned subsidiary of ITC Investment, which will be owned 80.1% by FortisUS and 19.9% by Finn.

The transaction has been structured to maintain investment-grade credit ratings at Fortis Inc., ITC Holdings, and the ITC Operating Companies, with no incremental debt costs for customers, and no transaction costs being passed on to customers. The transaction is valued at approximately US\$11.3 billion.

The consideration for the transaction is the exchange of Fortis Inc. shares and cash for the common shares of ITC Holdings, representing total consideration of approximately US\$6.9 billion, plus the assumption of approximately US\$4.4 billion in consolidated ITC Holdings debt.<sup>20</sup> Fortis will indirectly purchase the outstanding common shares of ITC Holdings for US\$22.57 in cash (the “Fortis Cash Consideration”) and stock consideration of 0.7520 of a Fortis Inc. common share (the “Fortis Stock Consideration”) per ITC Holdings common share. Of the US\$6.9 billion in consideration being paid to ITC Holdings common shareholders, approximately US\$3.7 billion will be paid in the form of Fortis Cash Consideration, and approximately US\$3.2 billion will be paid in the form of Fortis Stock Consideration.

The Fortis Cash Consideration, totaling approximately US\$3.7 billion, will be financed through (i) the investment in ITC Holdings by Finn (through ITC Investment) in the amount of approximately US\$1.2 billion, (ii) issuance of approximately US\$2 billion in Fortis Inc. debt, and (iii) a combination of one or more offerings of equity securities, equity-linked securities, first preference shares, second preference shares and/or hybrid debt-equity securities to be completed by Fortis, in the amount of approximately US\$500 million. Fortis has

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<sup>20</sup> US\$4.4 billion as of September 30, 2015. US\$4.5 billion as of December 31, 2015.

approximately US\$3.7 billion in committed bridge financing in place which it is not currently planning to draw on to complete the Acquisition.

In connection with the financing of the transaction, FortisUS will subscribe for approximately US\$1.7 billion of common shares of ITC Investment and approximately US\$0.8 billion of notes of ITC Investment. FortisUS will subscribe to additional common shares of ITC Investment in connection with the Fortis Stock Consideration to be provided to ITC Holdings shareholders under the transaction. The Fortis Stock Consideration will be satisfied through the issuance of up to 117 million Fortis Inc. common shares to ITC Holdings' common shareholders upon completion of the merger, representing approximately US\$3.2 billion. The aggregate Fortis Stock Consideration will be paid by ITC Investment to Element, which will direct such payment to ITC shareholders on behalf of Element.

Thus, after the transaction is consummated, ITC Holdings will become an indirect subsidiary of Fortis Inc. Fortis Inc. will be the indirect majority owner of ITC Holdings, with Finn owning an indirect minority ownership interest in ITC Holdings. Attached as Appendix E are simplified corporate organizational charts showing the pre- and post-transaction corporate structure of the ITC Holdings holding company system, the Fortis Inc. system, and Finn's minority investment.

In connection with the transaction, Fortis Inc. registered with the Securities and Exchange Commission ("SEC"), and received approval to list its common shares on the New York Stock Exchange. Fortis Inc. will also continue to have its shares listed on the Toronto Stock Exchange.

Applicants will not pledge or encumber utility assets, and no public utility will issue or incur debt in connection with the transaction. The transaction is subject to customary

closing conditions, including receipt of required regulatory approvals. In addition to the approvals sought by this Application, the parties have applied for approval under Section 203 of the Federal Power Act<sup>21</sup> for the change of control of public utilities and the merger of a holding company. Regulatory approvals are also being requested from state public utility commissions in Illinois, Kansas, Missouri, and Oklahoma.

### **III. WISCONSIN PUBLIC UTILITY HOLDING COMPANY ACT**

#### **A. Takeover of Holding Company – Wis. Stat. § 196.795(3)**

##### **1. Legal Standard**

Section 196.795(3) of the Wisconsin Statutes provides that no person may acquire more than 10% of the outstanding voting securities of a holding company, with the unconditional power to vote those securities, unless the Commission has determined that the acquisition is in the best interests of utility consumers, investors, and the public. Applicants respectfully request that the Commission approve Fortis’ request to take, hold, or acquire ITC Holdings (*i.e.*, the Acquisition) as being in the best interests of utility consumers, investors, and the public.

The Commission clarified the best interests standard in the context of the recent merger between Wisconsin Energy Corporation and Integrys Energy Group.<sup>22</sup> The Commission noted that, although this best interests standard “means something more than finding no harm resulting from the transaction,” the interpretation of that standard “is fact specific and is, in large part, a policy decision of this Commission.”<sup>23</sup> The Commission also noted that, although it had never addressed the issue in these terms, it had approved previous mergers in part because they

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<sup>21</sup> 16 U.S.C. § 824b.

<sup>22</sup> See *In Re Application of Wisconsin Energy Corporation for Approval to Acquire the Outstanding Common Stock of Integrys Energy Group, Inc.*, Docket No. 9400-YO-100, *Final Decision*, at 8-9 (PSCW May 21, 2015) (PSC REF#: 236761).

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

were expected to provide benefits to ratepayers and the public.<sup>24</sup> The Commission further clarified that it considers both short- and long-term benefits of a transaction in its holistic analysis of a proposed acquisition and that each acquisition must be evaluated on a case-by-case basis.<sup>25</sup>

2. The Acquisition is in the Best Interest of ITC Midwest’s Customers, Shareholders and the Public

The Acquisition satisfies the best interests standard because it will benefit utility consumers,<sup>26</sup> shareholders and the public more generally. Fortis Inc. is a financially sound company with an A- corporate credit rating by Standard & Poor’s (“S&P”) and an A(low) corporate credit rating by Dominion Bond Rating Service (“DBRS”). Each of Fortis Inc.’s six largest regulated utility subsidiaries maintains standalone, investment-grade credit ratings with at least two nationally recognized credit rating agencies. Fortis Inc. has ready access to capital, on favorable terms, and as of December 31, 2015, Fortis Inc. had assets of approximately US\$23.3 billion and fiscal 2015 revenues of approximately US\$5.4 billion.

Fortis Inc. also believes that effective management of regulated utilities requires local management and decision making since local management is positioned to understand the utility’s assets, operations, customer service expectations, community relations and the applicable regulatory framework. Each of Fortis Inc.’s large regulated utilities is governed by a majority-independent board that is responsible for management oversight generally, with most directors residing in the area served by the utility.

The management of any utility needs tools and capabilities for responding to the changing conditions in the physical, financial, and regulatory environments in which they

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<sup>24</sup> *Id.* at 9-10.

<sup>25</sup> *Id.* at 10-11.

<sup>26</sup> ITC Midwest has no retail customers; however, its wholesale customers serve utility consumers.

operate. As a result of the Acquisition, ITC Midwest will be better positioned to reliably serve customers and the public as a result of the improved “toolkit” that existing management will have at its disposal to meet the challenges and take advantage of the opportunities that may arise. Fortis Inc. utility subsidiaries each experience a number of such benefits by being part of the Fortis family. While the Fortis Inc. operating model does not use shared or central services companies, the sharing of best practices is encouraged, both formally and informally. The programs and enhanced capabilities further detailed below place ITC Midwest and its management in a better position to serve customers and the public.

One addition to management’s toolkit will be ITC Midwest’s access to the Fortis Corporate Risk Management and Insurance program. This program has brought significant cost savings and other benefits to Fortis Inc.’s regulated utilities. For example, the UNS Utilities, acquired in 2014, have analyzed their cost savings on insurance premiums since joining the Fortis program, and have determined that aggregate savings of over US\$1.1 million were realized during 2015. In addition, for certain types of insurance, coverage was enhanced under the Fortis program, meaning both quantitative and qualitative benefits accrued to the UNS Utilities from participating in the Fortis program.

Another addition to ITC Midwest’s management toolkit will be access to and participation in the Fortis Operations Group (“FOG”), consisting of a group of senior operations and engineering personnel representing each regulated utility. FOG serves as a forum to access the talent and collective operational experience of the entire Fortis team in a non-competitive environment. The group meets regularly, and collaborates on such things as safety and reliability standards, customer service, utility best practices, technical conferences, and training and development. Expertise from within this group is leveraged to assist all Fortis Inc. utilities. As

an example, experts from the UNS Utilities recently provided technical assistance to a Fortis Caribbean utility in renewable generation (solar), metering, and integrated resource planning issues.

Collaboration within this group will also benefit ITC Midwest's management in continuing to ensure utility systems are compliant with the North American Electric Reliability Corporation's ("NERC") reliability standards for the bulk power system.<sup>27</sup> NERC's extensive regulatory scheme addresses issues such as: resource and demand balancing; cyber and physical security of critical infrastructure; emergency preparedness and operations; design, interconnection, and maintenance of transmission infrastructure; interchange scheduling and coordination; interconnection reliability and coordination; modeling, data, and analysis; personnel performance, training, and qualifications; protection and control; transmission operations; transmission planning; and voltage and reactive power management.<sup>28</sup> ITC Holdings Operating Companies operate in two NERC reliability regions (the Midwest Reliability Organization and the Southwest Power Pool Regional Entity) and Fortis Inc.'s regulated utilities operate in two NERC reliability regions (the Northeast Power Coordinating Council and the Western Electricity Coordinating Council). Having access to this larger pool of collective experience will enhance the resources available to ITC Midwest in relation to NERC regulation, which will facilitate the consistent and reliable delivery of electricity across its footprint.

ITC Midwest's management toolkit and the ability to reliably maintain projects like the CHC Project will also be improved through collaboration and assistance across the Fortis Inc. team of regulated utilities as to emergency and crisis management. Fortis Inc.'s regulated

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<sup>27</sup> See Section 215 of the Federal Power Act.

<sup>28</sup> See NERC, United States Mandatory Standards Subject to Enforcement, <http://www.nerc.com/pa/stand/Pages/ReliabilityStandardsUnitedStates.aspx?jurisdiction=United%20States> (last visited Apr. 15, 2016).

utilities can choose to participate in Mutual Emergency Assistance Agreements to render assistance and help in the restoration of customer service in the event of network damage due to extreme weather events, such as hurricanes, floods, and snow and ice storms. For example, FortisOntario has provided mutual aid assistance to Central Hudson Gas & Electric in storm response efforts. The scope of activities managed under this program is broad, and includes planning and logistics, personnel travel, sourcing of materials, transport of support vehicles and equipment, etc. These activities are coordinated across the organization through a centralized website.

Another management tool brought to ITC Midwest through the Acquisition is the opportunity for joint purchasing. Given the scope of the combined Fortis Inc. organization, it has significant purchasing power. This is leveraged to negotiate favorable volume pricing on such fundamental equipment as transformers, poles, conductors and cross-arms, but also on such items as vehicles and travel. The product mix under this program changes over time, and plans are in progress to expand it to include such things as information technology (“IT”) software, meters and flame retardant clothing. Any such cost reductions would generally benefit ITC Midwest’s customers.

ITC Midwest management will also be able to collaborate with other Fortis Inc. utilities in IT planning and cybersecurity. Significant benefit can be gained from drawing on the collective IT skills and experience across the entire Fortis team.

As for the historic sole focus of ITC Holdings on transmission, the Acquisition will bring the “best of both worlds” for Wisconsin utility consumers. It will preserve ITC Holdings’ management and its exclusive focus on developing and delivering safe and reliable transmission services, while eliminating certain costs relating to the public listing of ITC



Holdings' common shares, and simultaneously enveloping the "transmission-only" business in the larger and more diverse Fortis Inc. utility system, with its low risk profile. The Fortis Inc. family has significant resources, formal and informal information sharing practices, and ready access to capital markets to benefit ITC Midwest customers and increase the reliability and stability of the electric system.

These benefits of the Acquisition will place ITC Midwest and its management in a strong position to finance, develop, own, and maintain the CHC Project, if the Commission approves it. As the Commission has noted, ITC Holdings and its operating subsidiaries are focused on building and investing in electric transmission infrastructure "for the benefit of customers through improved reliability and enhanced access to the competitive energy market place."<sup>29</sup> In this regard, the interests of Fortis are fully aligned with ITC Midwest. Fortis has a proven track record of supporting investments in improving and enhancing infrastructure in its utilities. By gaining access to a larger, diversified, and financially sound parent with a decentralized operating model that promotes a continued focus on serving local customer needs, ITC Midwest will be well positioned to develop the CHC Project to advance the cause of reliability, security, and competition in Wisconsin and the upper Midwest more broadly. Thus, the Acquisition will build upon the benefits that the Commission previously recognized ITC Midwest and ITC Holdings would bring to Wisconsin.

The Acquisition also will not affect the Commission's ongoing regulation of ITC Midwest. ITC Midwest will remain subject to the Commission's jurisdiction and to the laws and regulations of the state of Wisconsin. The Applicants will not pledge or encumber ITC Midwest assets and no public utility will issue or incur debt in connection with the Acquisition. All of the

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<sup>29</sup> ITC Holdings 2014 Order, at 6.

conditions that the Commission imposed on ITC Midwest when approving its application for public utility status will remain in place,<sup>30</sup> as will the conditions that the Commission imposed on ITC Holdings as part of the ITC Holdings 2014 Order.<sup>31</sup> Thus, ITC Midwest will continue to provide the Commission with its five-year financial forecast confidentially on an annual basis,<sup>32</sup> and the Applicants will provide the Commission with relevant access to their books and records.<sup>33</sup> The statements made by the Commission regarding investigation authority in connection with dividends will not change as a result of the Acquisition.<sup>34</sup>

Fortis Inc. is respectful of regulatory oversight and takes seriously its obligations and commitments to regulators. It is a key expectation, and a cornerstone of Fortis Inc.'s standalone operating philosophy, that local management of its regulated utility subsidiaries will deal respectfully and responsively with local regulators.

Likewise, the Acquisition is also in the best interests of ITC Holdings' investors. On November 30, 2015, ITC Holdings announced that it was conducting a review of strategic alternatives, including possible sale of the company.<sup>35</sup> As part of that process, ITC Holdings worked with two investment banks as it explored a possible sale and negotiated the proposed transaction. Boards of both Fortis Inc. and ITC Holdings received "fairness opinions" with

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<sup>30</sup> See ITC Midwest 2014 Order, at 13-15.

<sup>31</sup> See ITC Holdings 2014 Order, at 16.

<sup>32</sup> Wis. Stat. § 196.795(2)(b).

<sup>33</sup> *Id.* § 196.795(5)(b).

<sup>34</sup> *Id.* § 196.795(4). The Commission has previously declined to rule on the applicability of this provision to ITC Holdings. ITC Holdings noted that FERC retained authority to restrict the payment of dividends if impairment issues arose, and that the application of this provision to ITC Holdings and ITC Midwest would be unnecessary and unlawful. See ITC Holdings 2014 Order, at 9. The Commission, however, declined to rule on the applicability of this statute and indicated that it could determine the appropriate scope of the statute during the course of an investigation, should one ever arise. *Id.* at 10. Thus, while the Applicants do not concede that the Commission has authority to restrict ITC Midwest payments of dividends to ITC Holdings; they simply note that the Commission could initiate an investigation, should one be necessary, to determine the appropriate scope of the statute and whether it could be applied to ITC Midwest and Fortis.

<sup>35</sup> See ITC Holdings Announces Review of Strategic Alternatives (Nov. 30, 2015), available at: <http://www.itc-holdings.com/itc/newsroom/2015/11/30/itc-holdings-announces-review-of-strategic-alternatives>.

respect to the proposed transaction.<sup>36</sup> On February 9, 2016, ITC Holdings announced that it and Fortis Inc. had entered into the Agreement and Plan of Merger. Under the terms of the Agreement and Plan of Merger, Fortis Inc. will pay ITC Holdings' shareholders for their ownership interest in that company based on a purchase price of (i) US\$22.57 in cash, plus (ii) 0.7520 of a Fortis Inc. common share, per share of ITC Holdings common stock. As of February 8, 2016, being the day immediately before the announcement of the Acquisition, this represented an approximately 33% premium to the pre-bid unaffected ITC Holdings stock price of US\$33.75 as of market close on Friday, November 27, 2015, immediately before the announcement of the ITC Holdings strategic alternatives review. ITC Holdings' shareholders will also benefit from Fortis Inc.'s solid financial performance and track history, having one of the longest records of successive dividend increases of any reporting issuer in Canada. As of market close on February 8, 2016, Fortis Inc.'s annual dividend yield was approximately 3.6% versus ITC Holdings' historical dividend yield of approximately 1.9%. Fortis Inc. is also cross-listing its common shares on the New York Stock Exchange, which will benefit current U.S.-based ITC Holdings shareholders by simplifying the trading process.

**B. The Acquisition Will Not Alter ITC Midwest's Status As an Independent Transmission Owner Or Adversely Impact Competition**

In the ITC Midwest 2014 Order, the Commission found that ITC Midwest qualifies for certification as a Wisconsin public utility. The Commission conditioned the certificate of authority on ITC Midwest's continuing to meet the definition of an independent transmission owner, as defined in Wis. Stat. § 196.485(1)(dm).<sup>37</sup> The Acquisition will not alter

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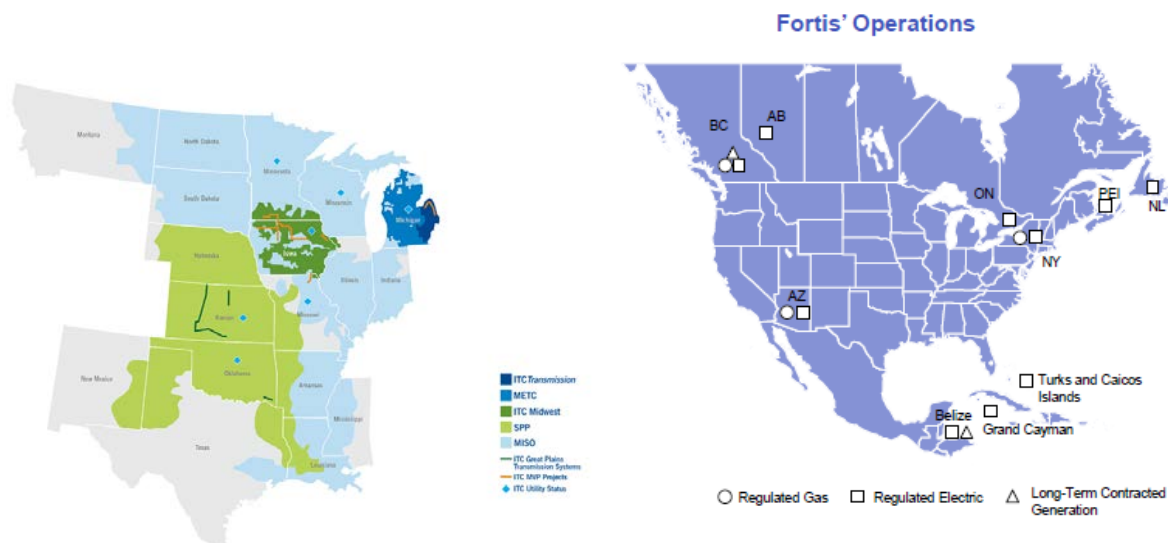
<sup>36</sup> A fairness opinion is a professional evaluation from an independent financial advisor that analyzes whether the terms of a merger or acquisition are fair from a financial point of view.

<sup>37</sup> See ITC Midwest 2014 Order, at 7. Wis. Stat § 196.485(1)(dm)1m defines an independent transmission owner as: "a. The person does not own electric generation facilities or does not sell electric generation capacity or energy in a market within the geographic area that, on December 31, 1997, was served by the Mid-America

ITC Midwest’s status as an independent transmission owner, adversely impact competition or wholesale markets, or raise concerns over the consolidation of horizontal or vertical market power.

When approving ITC Midwest’s application for public utility status, the Commission recognized that ITC Midwest, an independent, transmission-only company, had little incentive to favor or discriminate against market participants in Wisconsin. As shown in Figure 3 below, despite the increased size and scope of Fortis, its existing assets complement those of ITC Holdings and ITC Midwest.

**Figure 3: ITC Holdings’ and Fortis Inc.’s Operations**



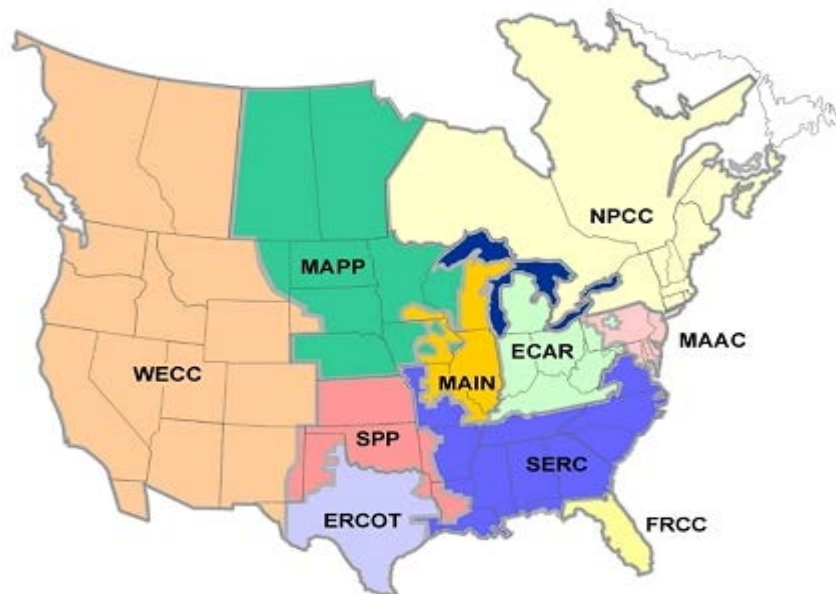
As described in Appendix A, Fortis Inc. indirectly owns other generation, transmission, and distribution assets (vis-à-vis its operating company subsidiaries). But none of these subsidiaries has assets in Wisconsin or the MISO region, and none of these subsidiaries owns or sells electric generation capacity or energy in a market within any of the geographic

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Interconnected Network, Inc. [MAIN], Mid-Continent Area Power Pool [MAPP], East Central Area Reliability Coordination Agreement [ECAR] or Southwest Power Pool [SPP] reliability council of the North American Electric Reliability Council. b. The person is not an affiliated interest of a person specified in subd. 1m.a.”

areas identified in Wis. Stat. § 196.795(1)(d)1m., as shown in Figure 4 below (*i.e.*, MAIN, MAPP, ECAR, and SPP).

**Figure 4: Regional Councils (Historic through 2004)<sup>38</sup>**



The only assets in neighboring states belong to ITC Midwest, which will remain a transmission-only utility. For all of these reasons, ITC Midwest’s status as an independent transmission owner will not be affected by the Acquisition.

**C. Anticipated Regulatory Framework Following Approval of the Acquisition**

Under the facts and circumstances of this case, the Applicants believe that objectives and requirements of WPUHCA can be achieved through the Commission’s continued regulation of ITC Holdings and ITC Midwest, and through the conditions which can be made applicable to Fortis Inc. in conjunction with approval under Wis. Stat. § 196.795(3). In this section, Applicants describe the legislative history and purpose of WPUHCA, address the other WPUHCA provisions and how they do, or do not, apply to the Acquisition, and identify the

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<sup>38</sup> Energy Information Administration, Form EIA-411 Data, available at: <http://www.eia.gov/electricity/data/eia411/>.

conditions to which Fortis Inc. would appropriately and willingly consent as a condition of Acquisition approval.

1. Legislative History and Purpose of WPUHCA

As Commission Staff has noted, concerns over diversification and investment in non-utility businesses by utility holding companies led to enactment of WPUHCA in 1985.<sup>39</sup>

Specifically, when enacting the statute the Wisconsin legislature determined that:

- (a) transactions between a public utility in a public utility holding company system and the holding company or its nonutility affiliates are subject to public service commission approval and regulation to assure that reasonable prices are charged and costs properly allocated;
- (b) the nonutility activities of the public utility holding company system do not substantially lessen competition, do not tend to create a monopoly or restrain trade, and do not constitute an unfair business practice;
- (c) the public utility activities of a non-telecommunications public utility in a public utility holding company system remain subject to public service commission jurisdiction and regulation;
- (d) the activities of the public utility holding company system do not cause any material detrimental effect on the public utility's rates for or reliability of utility service to the public, cost of capital or ability to raise capital;
- (e) the public service commission has access to the books and records of the public utility holding company system to the extent relevant for the commission to regulate any public utility in the system; and
- (f) the provision of reliable and reasonably priced public utility service remains the predominant business of a public utility holding company system.<sup>40</sup>

Likewise, entities such as the National Association of Regulatory Utility Commissioners (“NARUC”) historically found that public utility consumers benefit from management’s focus

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<sup>39</sup> See *In Re Application of ITC Holdings Corp. and ITC Midwest LLC for a Certificate of Approval to Form a Holding Company*, Docket No. 9408-YO-100, Direct-PSC-Bartels-8, ll 5-9 (Jan. 28, 2014) (PSC REF#: 197728) and Transcript Vol. 3., Bartels, Tr. 11-12 (PSC REF#: 201562).

<sup>40</sup> 1985 Wis. Act 79, (1)(7)(a-f).

on providing public utility service, while diversification of a holding company into non-utility businesses could detract from the quality or economics of the public utility business.<sup>41</sup>

The Commission has determined that WPUHCA is an “imperfect fit” for ITC Midwest and ITC Holdings since the Act was designed with the state’s more traditional electric generation and distribution utilities in mind.<sup>42</sup> Applicants do not believe that any approvals beyond those required under Wis. Stat. § 196.795(3), are needed to protect the interests of utility consumers, investors and the public, but nonetheless provide the additional information below to assist the Commission’s deliberation.

2. Fortis Is Not “Forming a Holding Company” Pursuant to Wis. Stat. § 196.795(2), But Will Provide Available Information Covered Under That Subsection for Commission Review

As explained in section III.A. above, the “takeover” provision of WPUHCA applies to the proposed Acquisition. A separate provision of WPUHCA requires a person seeking to “form a holding company” to apply for approval under Wis. Stat. § 196.795(2). To “form a holding company” means: “[a]s a beneficial owner,<sup>[43]</sup> to take, hold or acquire 5% or more of the outstanding voting securities of a public utility, other than a transmission company,<sup>[44]</sup> with the unconditional power to vote those securities.”<sup>45</sup>

The Applicants will not “form a holding company” pursuant to this definition as a result of the Acquisition. Unlike the takeover provision, where Commission approval is required to take “directly or indirectly” the voting securities of a holding company, the action of

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<sup>41</sup> NARUC 1972 Report of Ad Hoc Committee on Non-Utility Investments at 732.

<sup>42</sup> See ITC Holdings 2014 Order, at 4.

<sup>43</sup> Subject to certain exceptions, a “beneficial owner” means, with respect to a security, any person who in any way has the unconditional power to vote or receive the economic gains or losses of the security.” Wis. Stat. § 196.795(1)(c).

<sup>44</sup> While ITC Midwest is an “independent transmission owner,” as used in this statute, ITC Midwest does not qualify as a “transmission company” pursuant to Wis. Stat. § 196.795(1)(p) because it is not organized under Wisconsin Statutes Chapter 180 or 183.

<sup>45</sup> See Wis. Stat. § 196.795(1)(g).

“forming” a holding company occurs under the statute when one *directly* “take[s], hold[s], or acquire[s]” the securities of a public utility.<sup>46</sup> Under the Acquisition, Fortis Inc. will *indirectly* become a beneficial owner of ITC Midwest’s voting securities, while the “direct” activity under the Acquisition will occur only at the level of ITC Holdings.

This reading of WPUHCA is the best way to give independent meaning to the two WPUHCA provisions, Wis. Stat. §§ 196.795(2) and (3). Takeover approval under subsection (3) is required, as here, for transactions at the holding company level. “Form[ing] a holding company” applies when the securities of the utility itself are directly implicated.<sup>47</sup> If the “form a holding company” provision in subsection (2) was intended to apply to every person that sought to take, hold or acquire a *holding company* (as opposed to just taking, holding, or acquiring a *public utility*), there would be no need for the separate “takeover” provision in subsection (3).<sup>48</sup> Thus, this reading of the statute appropriately harmonizes the provisions and avoids subsection (3) being rendered superfluous.<sup>49</sup>

The requirements in subsection (2) are consistent with this reading, as they do not fit well when an existing entity is seeking to merge with an existing holding company. For

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<sup>46</sup> Compare Wis. Stat. §§ 196.795(3) and 196.795(1)(g).

<sup>47</sup> As with the ITC Holdings 2014 Order, it may also be appropriate to examine Wis. Stat. § 196.795(2) issues the very first time a utility becomes subject to Commission jurisdiction, to the extent the utility is part of a holding company.

<sup>48</sup> This reading is also consistent with the Commission’s application of WPUHCA in other takeover situations where one or more entities beneficially owns greater than 5% of the outstanding securities of the holding company but has not been deemed to separately form a Wisconsin holding company. See, e.g., PSCW REPORT TO THE LEGISLATURE ON WISCONSIN HOLDING COMPANIES (2015), <http://psc.wi.gov/reports/documents/2015HoldingCo.pdf>. at 15, fn 19, noting that Apollo Global Management, LLC, beneficially owns 68% of the outstanding shares of Verso Paper’s common stock (although Apollo Global Management, LLC is not separately a Wisconsin public utility holding company).

<sup>49</sup> See, e.g., *State ex rel. Kalal v. Circuit Court for Dane County*, 2004 WI 58, ¶46, 271 Wis. 2d 633 (reviewing framework for statutory interpretation and noting: “Context is important to meaning. So, too, is the structure of the statute in which the operative language appears. Therefore, statutory language is interpreted in the context in which it is used; not in isolation but as part of a whole; in relation to the language of surrounding or closely-related statutes; and reasonably, to avoid absurd or unreasonable results. Statutory language is read where possible to give reasonable effect to every word, in order to avoid surplusage.” internal citations omitted).



example, Wis. Stat. § 196.795(2)(b)3 requires each applicant seeking to “form a holding company” to identify all of “the costs and fees attributable to the formation of the holding company.” As an entity that has existed for nearly 30 years, any “costs and fees” attributable to Fortis Inc.’s formation bear no relationship to the current Acquisition. Similarly, with respect to subsection (2)(b)2, Fortis Inc. has no “plans” to form a holding company other than to enter into the Acquisition as described in this Application.

Finally, this reading of the statute does not impair the Commission’s jurisdiction under WPUHCA. Because the takeover of a holding company requires the Commission’s approval under the “best interests” standard discussed above, the Commission retains the authority to impose, as conditions of its approval, requirements of WPUHCA appropriate to the facts and circumstances of an individual transaction.<sup>50</sup>

Thus, while Applicants are seeking approval under the takeover provision of subsection (3), to assist Commission deliberations Fortis Inc. provides an analysis of other WPUHCA provisions and the information that would be required under the holding company formation provisions of subsection (2)(b), to the extent it is reasonably available.<sup>51</sup>

- a. Subsection (2)(b)1. – The names and corporate relationships of all companies which will be in the holding company system with the applicant when the applicant forms the holding company and the name of the applicant and any parent or subsidiary corporation of the applicant.

The names and corporate relationships of all of the Fortis Inc. companies (not including certain of Fortis Inc.’s inactive, intermediate or immaterial subsidiaries) are described

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<sup>50</sup> Applicants note that under Wis. Stat. § 196.795(2)(e), the applicable standard of review requires the Commission to approve a request to form a holding company “unless it finds that the formation of the holding company would materially harm the interests of utility consumers or investors.”

<sup>51</sup> No information is provided with respect to ITC Holdings as that entity has already received approval under Wis. Stat. § 196.795(2), and none of the information provided in its request for approval is expected to change as a result of the transaction.

in Appendix A and depicted on the organizational chart in Appendix E. Similarly, the names and corporate relationship of all of the active and relevant ITC Holdings' companies are described in Appendix B and depicted in Appendix E.

- b. Subsection (2)(b)2. – A description of how the applicant plans to form the holding company including, if available at the time of application: (a) Copies of the organizational documents associated with the holding company formation, including articles of incorporation or amendments to the articles of incorporation of all companies which will be in the holding company system with the applicant when the applicant forms the holding company. (b) Copies of any filings, including securities filings, related to the formation of the holding company made with any agency of this state or the federal government.

The organizational documents for Fortis Inc., FortisUS Holdings, FortisUS, ITC Investment and Element are included in Appendix F. Securities filings related to the Acquisition (which, as discussed above, should not be considered the formation of a holding company) are available at the System for Electronic Document Analysis and Retrieval (“SEDAR”) website and the SEC’s EDGAR website. Element, which was formed for purposes of the Acquisition, will cease to exist as an independent entity following its merger into ITC Holdings at closure of the Acquisition.

- c. Subsection (2)(b)3. – The costs and fees attributable to the formation of the holding company.

There are no material costs and fees associated with forming ITC Investment or Element. Applicants further note that there are no transaction costs for which recovery under the OATT overseen by FERC is being requested.

- d. Subsection (2)(b)4. – The method by which management, personnel, property, income, losses, costs and expenses will be allocated within the holding company system between public utility affiliates and nonutility affiliates.

All of the Fortis entities maintain their own books and records. ITC Holdings and its subsidiaries use a version of the “Massachusetts Formula” allocation policy, which incorporates a modified version of the allocation factors that are prevalently used by public utility companies and have been accepted by the FERC in previous orders.

- e. Subsection (2)(b)5. – A copy of any proposed agreement between a public utility affiliate and any person with which it will be an affiliated interest at the time the holding company is formed.

There are no new affiliated interest agreements resulting from the transaction.

Note that no Wis. Stat. § 196.52 approval is being requested.<sup>52</sup>

- f. Subsection (2)(b)6. – An identification of all public utility assets or information in existence at the time of formation of the holding company, such as customer lists, which the applicant plans to transfer to or permit a nonutility affiliate, with which it is in the holding company system, to use. The identification shall include a description of the proposed terms and conditions under which the assets or information will be transferred or used.

ITC Midwest is the only public utility impacted by the Acquisition and neither Fortis nor ITC Holdings has any plans to transfer ownership of ITC Midwest assets or information to any nonutility affiliate.

- g. Subsection (2)(b)7. – A copy of a financial forecast showing the capital requirements of every public utility affiliate which at the time of the formation of the holding company will be within the holding company system.

Wis. Stat. § 196.795(1)(L) defines “public utility affiliate” as “a company which is in a holding company system and which is a public utility.” If the Acquisition is consummated, ITC Midwest will be the only public utility under Wisconsin law in the Fortis and ITC Holdings’ systems. Pursuant to the ITC Holdings 2014 Order, ITC Holdings already

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<sup>52</sup> If the Commission approves the Transaction and ITC Midwest subsequently seeks to enter into a Mutual Emergency Assistance Agreement with Fortis Inc. (*see infra* section III.A.2.) or other such agreement involving the Fortis family of companies, ITC Midwest will seek affiliated interest approval from the Commission at that time.

provides a five-year financial forecast on a confidential basis annually to the Commission. The most recent forecast was submitted December 1, 2015.<sup>53</sup>

3. Fortis Inc.'s Regulatory Status Following the Acquisition and Conditions Applicable to It

As noted above in section III.C.2, Fortis Inc. is not seeking to “form a holding company.” Nonetheless, Applicants acknowledge the authority of the Commission to apply appropriate conditions related to WPUHCA as part of its approval of the takeover of a holding company. Thus, for example, if the Commission decided it was necessary and appropriate, it could examine whether each of Fortis Inc., FortisUS Holdings, FortisUS and ITC Investment would be a “holding company”<sup>54</sup> following consummation of the Acquisition, and/or whether those entities, in conjunction with ITC Midwest and ITC Holdings, would be part of a “holding company system.”<sup>55</sup> Because the Commission has already imposed WPUHCA conditions on ITC Holdings that will remain in place, the Commission need not make such findings at this time. FortisUS Holdings, FortisUS and ITC Investment, in any event, have no direct employees or operations and are merely intermediate corporate entities.

More broadly, WPUHCA’s concerns about holding company diversification are not present in the Acquisition or as a result of upstream ownership of ITC Holdings by Fortis Inc. Here, the pre-Acquisition assets of Fortis Inc. are composed of approximately 96%

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<sup>53</sup> See *In Re Application of ITC Holdings Corp. and ITC Midwest LLC for a Certificate of Approval to Form a Holding Company*, Docket No. 9408-YO-100, Affidavit of Timothy Tessier in Support of Confidentiality Request of ITC Holdings Corp., letter to the Public Service Commission of Wisconsin and five-year financial forecast of ITC Midwest, LLC. (Dec. 1, 2015) (PSC REF#: 278581).

<sup>54</sup> WPUHCA defines a “holding company” as “any company which, in any chain of successive ownership, directly or indirectly, as a beneficial owner, owns, controls or holds 5% or more of the outstanding voting securities of a public utility, with the unconditional power to vote such securities.” Wis. Stat. § 196.795(1)(h)1.a. (emphasis added).

<sup>55</sup> WPUHCA defines a “holding company system” as “a holding company and any public utility with which the holding company is an affiliated interest and any company which is an affiliated interest with such public utility and any other company more than 5% of whose ownership interest is owned directly or indirectly in any chain of successive ownership by such public utility or by such company which is an affiliated interest with such public utility.” Wis. Stat. § 196.795(1)(i).

regulated utilities and 4% non-regulated Canadian and Caribbean electric generation and Canadian natural gas storage facilities, most of which are supported by long-term contracts with regulated utilities. Fortis Inc. already operates in a manner completely consistent with the goals of WPUHCA. Fortis Inc. supports local management and requires standalone financing of its regulated utility subsidiaries.

The Acquisition does not involve any change to or reorganization of ITC Holdings or ITC Midwest, nor does it disturb any of the circumstances that formed the basis of the Commission's 2014 Orders. Rather, the changes proposed by this Acquisition will occur entirely upstream of ITC Holdings. Post-Acquisition, Fortis Inc. will be the new indirect upstream majority-owner of ITC Holdings and ITC Midwest. Fortis Inc. was formed in 1987 for purposes unrelated to any Wisconsin public utility and has since grown as a responsible long-term investor in North American regulated utility companies. Each Fortis Inc. regulated utility has the physical, financial, and human resources required to discharge its obligation to provide safe, reliable service. The Fortis Inc. operating model does not use shared or central services companies. Each Fortis Inc. regulated utility is financed on a standalone basis. All Fortis Inc. regulated utilities have both standalone credit facilities and senior long-term debt instruments. Fortis Inc. does have money pooling in certain jurisdictions between regulated utilities within the same state or provincial jurisdiction, where permitted by regulators for the provision of least cost service. ITC Midwest has no plans to participate in a money pool, and ITC Holdings will comply with the ITC Holdings 2014 Order and inform the Commission prior to any future money pool implementation. Accordingly, the Commission will continue to be able to protect the public interest through its ongoing regulation of ITC Holdings and ITC Midwest.

In addition to conditions already applicable to ITC Holdings and ITC Midwest, Fortis Inc. proposes that the following conditions be applicable to it:

- Fortis will provide full access to any book, record, document or other information of Fortis Inc. or its subsidiaries in the ITC Midwest chain of ownership which the Commission staff believes is relevant to fulfill the Commission’s statutory duties.<sup>56</sup>
- Fortis will seek Commission approval prior to terminating its interest in ITC Midwest.<sup>57</sup>
- ITC Midwest will continue to maintain both standalone credit facilities and senior long-term debt instruments after the Acquisition. ITC Midwest’s utility financing arrangements will not permit lending or guarantees by ITC Midwest in favor of Fortis or its affiliates.<sup>58</sup>

Beyond these stipulations, Applicants respectfully request that the Commission find that compliance with the WPUHCA and the Commission’s interests in protecting the financial integrity of ITC Midwest will be adequately satisfied through continued focus of WPUHCA requirements at the level of ITC Holdings.

To the extent the Commission finds that Fortis Inc., FortisUS Holdings, FortisUS and ITC Investments are holding companies and/or that they, with ITC Midwest and ITC Holdings, are part of a holding company system, given the “imperfect fit” of WPUHCA to ITC Midwest and ITC Holdings (and now Fortis), Applicants request clarification regarding the applicability of remaining WPUHCA provisions to Fortis.

4. Requested WPUHCA Clarifications

a. Capital Impairment – Wis. Stat. § 196.795(4)

WPUHCA allows the Commission to limit a public utility affiliate’s payment of a dividend to a holding company if the dividend payment will impair the capital of any public

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<sup>56</sup> See ITC Holdings 2014 Order, at 16.

<sup>57</sup> See *id.*, at 13.

<sup>58</sup> See *id.* at 12.

utility.<sup>59</sup> In ITC Holding’s application to form a holding company, ITC Holdings explained how the Commission has historically interpreted that provision to restrict dividends to common stock equity levels that are used to determine retail load serving entities’ revenue requirements.<sup>60</sup> As in the ITC Holdings’ case, Applicants believe this provision is intended to apply to retail rate-regulated utilities and is not applicable to a transmission only company because ITC Midwest’s transmission rates are subject to plenary FERC review and approval. However, in any case, ITC Midwest cannot “overearn” due to the true up provisions in its FERC approved formula rate.

In the ITC Holdings 2014 Order, the Commission declined to make a decision on the applicability of this portion of the statute.<sup>61</sup> The Commission noted that the statute requires a Commission investigation and an opportunity for hearing before the Commission may limit the payment of dividends, and the question of the appropriate scope can be determined in the context of a specific investigation, should such an investigation ever take place.<sup>62</sup> Applicants respectfully request that the Commission reiterate that determination in this proceeding.

b. Regulation of Holding Company Systems – Wis. Stat. § 196.795(5)

Subsection 5 of Wis. Stat. § 196.795 outlines the Commission’s regulatory authority over holding company systems. Fortis has no concerns with the vast majority of the provisions in this subsection, and, indeed, has already agreed in section III.C.3 above to submit to conditions encompassed by subsections (5)(b) (books and records) and (5)(m) (seeking Commission approval prior to terminating interest in ITC Midwest). With respect to subsections

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<sup>59</sup> Wis. Stat. § 196.795(4).

<sup>60</sup> See, e.g., *Application of Wisconsin Public Service Corporation and WPS Resources Corporation for a Certificate of Approval to form a Holding Company Under s. 196.795, Wis. Stats.*, Docket No. 9405-YO-1000 Findings of Fact, Certificate and Order May 31, 1994) (“The orders have limited the payment of larger-than-normal dividends to earnings above the authorized return.”)

<sup>61</sup> ITC Holdings 2014 Order, at 10.

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

(5)(c) and (d) (pool borrowing), Fortis Inc. does have money pooling arrangements in certain jurisdictions between regulated utilities within the same state or provincial jurisdiction, where permitted by regulators for the provision of least cost service. As ITC Holdings has previously noted, regulation of pool borrowing is in principle related to rates, and entities whose rates are solely regulated by FERC are not subject to these types of state prohibitions. In the ITC Holdings 2014 Order, the Commission declined to rule on the applicability of Wis. Stat. §§ 196.795(5)(c) and (d) and instead required ITC Holdings to inform the Commission prior to any future money pool implementation. That condition will continue to apply post-Acquisition. Nonetheless, if the Commission finds that subsections (5)(c) and (d) need to be addressed in this proceeding, Fortis respectfully requests that the Commission make the same determination here that it did in the ITC Holdings 2014 Order.

c. Asset Cap – Wis. Stat. § 196.795(6m)

Broadly speaking, the asset cap limits the assets of nonutility affiliates<sup>63</sup> within a public utility holding company system to 25% of the public utility affiliate assets used for generating, transmitting, or distributing electric power, plus *at least* 25% of the public utility affiliate’s non-electric (e.g., gas, water, or steam) utility assets.<sup>64</sup> The Commission has previously noted that the purpose of the asset cap is to “maintain a simple holding company structure ensuring utility predominance and effective state regulation,” and to mitigate risks to public utilities by limiting the amount that the public utility holding company could invest in nonutility assets.<sup>65</sup>

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<sup>63</sup> “Nonutility affiliate” means a company in a holding company system that is not a public utility. *See* Wis. Stat. § 196.795(1)(j). A “public utility” is defined as corporation that owns plant or property within Wisconsin to provide heat, light, water, or power to the public. *See* Wis. Stat. § 196.01(5).

<sup>64</sup> *See* Wis. Stat. § 196.795(6m)(b).

<sup>65</sup> *See* ITC Holdings 2014 Order, at 14-15.



Consistent with these objectives, the WPUHCA effectively allows the holding company to invest in foreign (*i.e.*, non-Wisconsin) corporations that provide public utility services outside of Wisconsin. In particular, the WPUHCA carves out the assets of a “foreign affiliate” from the sum of the holding company system’s nonutility assets, and instead includes them in the sum of the public utility affiliate’s assets.<sup>66</sup> A “foreign affiliate” is defined as a person that is:

- (1) engaged in the production, transmission, delivery or furnishing of heat, light, power or natural gas either directly or indirectly to or for use of the public in another state;
- (2) incorporated under the laws of another state, that is an affiliated interest, as defined in s. 196.52 (1), of a public utility; and
- (3) operated on an integrated system basis, as determined by the commission, with the public utility.<sup>67</sup>

In other words, if an out-of-state affiliate within a holding company system provides electric or natural gas service for public consumption and is operated on an “integrated system basis” with the public utility affiliate, then the assets of the “foreign affiliate” do not “count against” the holding company under the asset cap.

In the ITC Holdings 2014 Order, the Commission noted that all of ITC Holdings’ regulated operating subsidiaries are incorporated under the laws of other states, and that the holdings are operated on an integrated system basis by virtue of being subject to the control of two NERC reliability areas and RTOs; *i.e.*, SPP and MISO.<sup>68</sup> As such, the Commission found

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<sup>66</sup> Wis. Stat. § 196.795(6m)(d).

<sup>67</sup> *Id.* § 196.795(6m)(a)3.

<sup>68</sup> *See* ITC Holdings 2014 Order, at 15.

that ITC Holdings' non-Wisconsin operating subsidiaries qualify as "foreign affiliates" for purposes of the asset cap.<sup>69</sup>

The Applicants request that the Commission make a similar finding with respect to Fortis Inc.'s public utility subsidiaries. As discussed above and as detailed in Appendix A, Fortis Inc. owns several subsidiaries that produce, transmit, or distribute electricity or natural gas for consumers in various NERC reliability areas outside of Wisconsin. That is, these subsidiaries are public utilities that operate outside of Wisconsin.

These operating subsidiaries meet the definition of a "foreign affiliate" under the WPUHCA. First, and as discussed above, each subsidiary provides retail electric or natural gas service to consumers outside of Wisconsin. Second, Fortis Inc. and these subsidiaries are incorporated under the laws of Canada and the United States.<sup>70</sup> Finally, the family of subsidiaries is operated on an "integrated system basis." The WPUHCA specifically gives the Commission broad discretion as to how to interpret this phrase.<sup>71</sup> The Commission can reasonably find that the Fortis family of subsidiaries is operated on an "integrated system basis" because Fortis regulated utilities share best utility practices with each other under the umbrella of the same parent company, including best practices to comply with NERC requirements and obligations; operate within NERC reliability areas, and RTO, or similar organization;<sup>72</sup> and are focused solely on the electric and natural gas utility business.

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<sup>69</sup> *See id.*

<sup>70</sup> As of December 31, 2015, Fortis Inc.'s regulated utility subsidiaries in the Cayman Islands, Turks and Caicos and Belize represented approximately 4.5% of Fortis' assets.

<sup>71</sup> *See Wis. Stat. § 196.795(6m)(a)3.* (noting that a foreign affiliate is a person that, among other things, "is operated on an integrated system basis, *as determined by the commission*, with the public utility") (emphasis added).

<sup>72</sup> Fortis Inc.'s Caribbean and Newfoundland regulated utilities, which as of December 31, 2015 represented approximately 9.6% of Fortis Inc.'s total assets, are not subject to NERC, and do not operate in a NERC reliability region, an RTO, or similar organization.

Currently, approximately 96% of the assets of Fortis Inc. companies are directly engaged in the provision of the regulated public utility service, with the remaining 4% attributable to Fortis Inc.'s unregulated electric generating and natural gas storage assets. Post-Acquisition, approximately 99% of the assets of Fortis Inc. and its affiliates will be engaged directly in the provision of regulated public utility service. Thus, to the extent the Commission deems it necessary to address the asset cap in this proceeding, the Commission should conclude that the post-Acquisition holding company system would comply with the provisions of the asset cap.

d. Takeover Provision – Wis. Stat. § 196.795(3)

This application seeks approval under the takeover provision, which requires Commission approval prior to any person taking, holding, or acquiring more than 10% of the outstanding voting securities of a holding company. As to future applicability of this section to trading in shares of Fortis Inc., the Commission recognized the practical difficulty in preventing third parties from acquiring more than 10% of shares that are traded on the open market.<sup>73</sup> Thus, the Commission determined that ITC Holdings could satisfy Wis. Stat. § 196.795(3) by providing the Commission notice when it has knowledge that an investor has acquired 10% or more of ITC Holdings' stock and that it should keep the Commission informed by submitting to the Commission the Schedule 13G(s)<sup>74</sup> and 13D(s)<sup>75</sup> that are filed with the SEC for any shareholder that holds 10% or more of ITC Holdings shares.<sup>76</sup>

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<sup>73</sup> ITC Holdings 2014 Order, at 14.

<sup>74</sup> Schedule 13G is an abbreviated form filed annually setting forth shareholder identification and holding information as of December 31. Schedule 13G applies to:

(a) any shareholder with five percent or more holdings acquired prior to the corporation's registration of shares under Section 12 of the Exchange Act who has not acquired shares constituting more than two percent of the total outstanding thereafter during any 12-month period;

(b) institutional investors holding five percent or more unless party to an arrangement affecting control of the public corporation; and

No party presently owns 10% or more of Fortis Inc. If the Commission finds that the applicability of subsection (3) to Fortis Inc. needs to be addressed in this proceeding, Fortis Inc. respectfully requests that the Commission make the same determination here that it did in the ITC Holdings 2014 Order.

5. Other Clarifications

- a. Findings Related to Status as a Public Service Corporation – Wis. Stat. § 196.795(7)(a) and ch. 201

Chapter 201, Wis. Stats., regulates the issuance of securities from so-called “public service corporations,” and requires such entities to obtain Commission approval before issuing any such security. At the time of the ITC Holdings 2014 Order, the Commission determined that ITC Holdings was not a “public service corporation,” and therefore not subject to Chapter 201, Wis. Stats. The Applicants request that the Commission make the same determination with respect to Fortis.

Under Chapter 201, Wis. Stats., a “public service corporation” is defined as any of the following:

a corporation, except a municipality or subdivision, that is a public utility, as defined under section 196.01(5), Wis. Stats.;

a holding company, as defined under the WPUHCA, that is a public utility; or

a corporation that is a water carrier, as defined under section 195.02, Wis. Stats.

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(c) any other holder of five percent or more (but less than 20 percent) not party to an arrangement affecting control of the corporation.

<sup>75</sup> Schedule 13D requires far more extensive information, including the purpose of share acquisitions (e.g., passive investment, takeover, proxy context) and any arrangements in place to affect control of the public corporation. In addition, Schedule 13D must be amended for any substantive change in the information disclosed. Any holder of five percent or more of the corporation’s shares not falling into the categories described above for Schedule 13G must file Schedule 13D.

<sup>76</sup> ITC Holdings 2014 Order, at 14.

A public service corporation does not include a holding company unless the company was formed after November 28, 1985, and unless the Commission has determined under 196.795(7)(a), Wis. Stats. that each nonutility affiliate does not and cannot reasonably be expected to do at least one of the items specified in section 196.795(7)(a).<sup>77</sup>

Fortis Inc. does not meet the first three statutory definitions of a “public service corporation.” As for the fourth, the Fortis Inc. affiliates each meet the standard specified in Wis. Stat. § 196.795(7)(a), in that they each “[c]onduct a business that is functionally related to the provision of utility service or to the development or acquisition of energy resources,”<sup>78</sup> and otherwise “promote energy conservation or develop, produce or sell renewable energy products.”<sup>79</sup> Specifically, approximately 96% of the assets of Fortis Inc. and its current affiliates are engaged directly in the provision of regulated public utility service, with the other 4% of the assets of Fortis Inc. and its affiliates being devoted to the functionally related provision of non-regulated electric generation and natural gas storage. Post-Acquisition, approximately 99% of the assets of Fortis Inc. and its current affiliates will be engaged directly in the provision of regulated public utility service. In short, Fortis Inc. does not qualify as a public service corporation under Chapter 201, Wis. Stats.

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<sup>77</sup> The items specified in 196.795(7)(a) are:

1. Substantially retain, substantially attract or substantially promote business activity or employment or provide capital to businesses being formed or operating within the wholesale or retail service territory, within or outside this state, of: a. Any public utility affiliate. b. Any public utility or member of a cooperative association organized under ch. 185 which reports or has reported information to the commission under the rules promulgated under s. 196.491 (2) (ag).
2. Increase or promote energy conservation or develop, produce or sell renewable energy products or equipment.
3. Conduct a business that is functionally related to the provision of utility service or to the development or acquisition of energy resources.
4. Develop or operate commercial or industrial parks in the wholesale or retail service territory of any public utility affiliate.

<sup>78</sup> Wis. Stat. § 196.795(7)(a)3.

<sup>79</sup> Wis. Stat. § 196.795(7)(a)2

b. Approval of Affiliated Interest Agreements – Wis. Stat. § 196.52

The Commission must approve any contract or arrangement for furnishing management, supervisory, construction, engineering, accounting, legal, financial or similar services between a public utility and an affiliated interest.<sup>80</sup> There are no new affiliated interest agreements resulting from the Acquisition. Thus, no Wis. Stat. § 196.52 approval is being requested.

c. Approval as a Public Utility Reorganization – Wis. Stat. § 196.79

The Commission has authority to approve the “reorganization” of any public utility.<sup>81</sup> There is no statutory definition of “reorganization.” In this case, the Acquisition is taking place entirely upstream of the Wisconsin public utility, ITC Midwest. Accordingly, the Applicants do not believe that this provision applies to the Acquisition because there will be no change in ITC Midwest’s corporate form, internal structure, or direct ownership.<sup>82</sup> Applicants note, however, that the Commission has previously suggested that the takeover of a Wisconsin public utility holding company could qualify as a “reorganization.”<sup>83</sup> Therefore, out of an abundance of caution ITC Midwest requests that the Commission provide any additional approval it deems required under this section, finding the Acquisition to be “consistent with the public interest” for the reasons discussed above.

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<sup>80</sup> *Id.* § 196.52(3)(a).

<sup>81</sup> *Id.* § 196.79.

<sup>82</sup> *See, e.g., In Re Application of WICOR, Inc. for Approval of a Transaction by which it would Terminate Its Interest in Wisconsin Gas Co., A Public Utility.*, Docket 9401-YO-101, *Final Decision* (June 30, 2004) (authorizing a public utility to convert from a corporation to a limited liability company, and noting that such conversion is a “reorganization” under Wis. Stat. § 196.79); *In Re Wayside Tel. Co.*, Docket No. 6340-TO-100, 81 P.U.R. 4th 310 (1987) (public utility’s formation of holding company and exchange of stock so that utility’s shareholders became shareholders of holding company constituted “reorganization” of public utility); 71 Op. Atty. Gen. Wis. 147 (1982) (same).

<sup>83</sup> *See In Re NewPage Holding Corporation et al.*, Docket No. 1330-DR-101, *Final Decision*, at 5, n.2 (PSCW Dec. 11, 2007) (PSC REF#: 86937).

#### **D. Approval Process**

To achieve the Applicants' target of closing the transaction by December 31, 2016, the Applicants respectfully request that the Commission issue a final decision approving the Acquisition, if at all possible, by no later than October 1, 2016. ITC Midwest has no currently active Wisconsin assets or operations, and the Applicants believe that the proposed timeline will provide both Commission Staff and the public with a reasonable period to investigate and comment on this Application and to develop an adequate record for the Commission. Action on this Application in this timeframe is consistent with the Commission's 65-day disposition of the NewPage-SENA acquisition in 2007<sup>84</sup> and the 67-day disposition of the Verso-NewPage acquisition in 2014,<sup>85</sup> and will facilitate a timely closing of the Acquisition.

#### **IV. REGULATORY ANALYSIS CONCERNING FINN'S MINORITY INVESTMENT**

Commission approval of Finn's minority investment is not required and the Commission should not impose holding company status on Finn for two reasons: (1) Finn's rights as a minority investor in ITC Investment do not provide a controlling interest in ITC Midwest; and (2) as a condition of approval of this Application, Finn will commit to generally restricting its voting rights to no more than 4.99% of the outstanding ITC Investment voting shares for matters falling within the applicable jurisdiction of the Commission that predominantly relate to ITC Midwest's operations in Wisconsin. The precise language of the proposed voting restriction is provided below. With such condition in place, Finn's interest in ITC Midwest for WPUHCA purposes will be below the statutory thresholds for a takeover and

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<sup>84</sup> See *Petition by NewPage Holding Corporation, et al. for Declaratory Ruling and Required Approvals for the sale of Stora Enso North America, Inc.*, Docket No. 1330-DR-101, *Final Decision*, at 1 (PSCW Dec. 11, 2007) (PSC REF#: 86937).

<sup>85</sup> See *Consolidated Water Power Company Application for Approvals Associated with the Acquisition of New Page by Verso Paper Corporation*, Docket No. 1330-EI-100, *Final Decision*, at 1 (PSCW April 3, 2014) (PSC REF#: 201584).

for holding company status. As such, Applicants respectfully request confirmation that Commission approval of Finn's minority investment is not necessary and that Finn will not be regulated as a Wisconsin holding company. In addition, Applicants seek confirmation that Finn's minority investment will not impact ITC Midwest's status as an independent transmission owner.

**A. Commission Approval of Finn's Minority Investment Is Not Required, Nor Should the Commission Impose Holding Company Status or Regulation on Finn**

The takeover provision in WPUHCA is triggered by the taking, holding, or acquiring of "more than **10%** of the outstanding voting securities of a holding company, *with the unconditional power to vote those securities.*"<sup>86</sup> Wis. Stat. § 196.795(1)(h)1. also defines a "holding company" as any of the following (emphasis added):

a. Any company which, in any chain of successive ownership, directly or indirectly as a beneficial owner, owns, controls or holds **5% or more** of the outstanding voting securities of a public utility, *with the unconditional power to vote such securities.*

b. Any person which the commission determines, after investigation and hearing, directly or indirectly, exercises, alone or under an arrangement or understanding with one or more persons, such a controlling interest over the management or policies of a public utility as to make it necessary or appropriate in the public interest or for the protection of the utility's consumers or investors that such person be subject to this section.

Finn's minority investment in ITC Investment does not require Commission approval under the takeover provision, or regulation of Finn as a holding company, because Finn will not acquire control of ITC Holdings or ITC Midwest. Finn's ownership of 19.9% of the shares of ITC Investment does not convey the ability to exercise a controlling interest over the

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<sup>86</sup> Wis. Stat. § 196.795(3), emphasis added. Both the takeover provision and WPUHCA's subsection a. definition of a "holding company" use the phrase "unconditional power to vote such securities." That phrase is not defined in WPUHCA or anywhere else in Wisconsin Statutes Chapter 196, and the Commission has not explicitly interpreted it.



management and policies of ITC Midwest and thus is not the kind of interest targeted by WPUHCA. The subsection 1.b. definition of a holding company above identifies the intended target for WPUHCA regulation – those persons who will exercise “a controlling interest over the management or policies of a public utility.”<sup>87</sup> While a 5% or 10% voting interest arguably could convey a controlling interest in, or control of, a holding company or public utility that is publicly-held, a 19.9% indirect interest plainly does not convey such controlling interest or control where, as here, the only other shareholder holds 80.1% of the voting power and the minority investor is entitled to only one director on an 11-member board made up of a majority of independent directors.<sup>88</sup> Thus, the Applicants respectfully request that the Commission find that Finn’s minority investment does not trigger WPUHCA obligations. This practical reading of WPUHCA is consistent with the judiciary’s practical and long standing interpretation of the public utility statutes.<sup>89</sup>

Moreover, the proffered condition would restrict Finn’s voting rights to below the statutory thresholds. That condition would be enforceable by the Commission and would allow the Commission to continue to effectively regulate ITC Midwest under Wisconsin statutes.

Finn is not an applicant in this proceeding, but Applicants expect Finn to intervene. As part of its intervention, Applicants expect Finn to proffer the following

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<sup>87</sup> Similarly, the use of the word “takeover” in Wis. Stat. § 196.795(3) indicates one is taking control over another. *See, e.g.*, Merriam Webster online dictionary at <http://www.merriam-webster.com/dictionary/takeover> (“Takeover” means “an occurrence in which a person, company, etc., takes control of something.”).

<sup>88</sup> Under the Shareholders’ Agreement, FortisUS will have sole control to choose the independent directors which will comprise a board majority. FortisUS will also be entitled to appoint three FortisUS representatives. The ITC Holdings Chief Executive Officer will also serve on the board. Finn will have the right to appoint one of the 11 board members. The makeup of the ITC Investment Board is expected to be the same as that of the ITC Holdings Board. *See* Shareholders’ Agreement, §§ 4.1(a) and (b), and 4.10. Finn will have one seat on the board if there are a total of 11 members on the board, and two seats if there are a total of 13 members.

<sup>89</sup> For example, compare the broad definition of “public utility” under Wis. Stat. § 196.01 (5) with the Wisconsin Supreme Court’s consistent holdings over 100 years that an entity must intend to provide service to the public and hold itself out to the public as providing service before it would be considered a public utility, even though the entity may be providing service to some members of the public. *See e.g. Cawker v. Meyer*, 147 Wis. 320, 133 NW 157 (1911) and its progeny.

commitment to restrict its power to vote its 19.9% shares in ITC Investment with respect to certain matters falling within the applicable jurisdiction of the Commission, as a condition of Commission approval of the Application:

Finn shall only vote up to 4.99% of the number of ITC Investment voting shares outstanding on matters that predominantly relate to ITC Midwest's operations in Wisconsin, provided however, that Finn may vote all of its shares of ITC Investment voting shares on any matter that may adversely impact Finn's rights or interests as a shareholder of ITC Investment or adversely affect the value of Finn's shareholdings in ITC Investment.<sup>90</sup>

In conjunction with Finn's commitment, and as a condition of approval for the Acquisition, ITC Investment will also commit as follows:

On a quarterly basis, ITC Investment shall notify the Commission of matters that may directly or indirectly affect ITC Midwest's operations in Wisconsin on which Finn votes all of its shares of ITC Investment voting shares. This notification condition shall be discontinued two years after the date of the Final Decision in this proceeding.

By effectively limiting Finn's voting interest to 4.99%, the relevant 10% threshold in the WPUHCA takeover provision is not triggered. Therefore, Finn's minority investment does not require approval under Wis. Stat. § 196.795(3) because: (1) Finn is conditioning its voting rights with respect to its 19.9% shares (*i.e.*, it does not have "unconditional power to vote" its 19.9% shares); and (2) its remaining 4.99% voting rights do not trigger the 10% threshold in the takeover provision.

Similarly, Finn should not be considered a holding company pursuant to Wis. Stat. § 196.795(1)(h)1. Finn's commitment restricts its voting power below the 5% threshold in subsection 1.a. of the holding company definition. Further, under subsection 1.b. of the holding

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<sup>90</sup> For example, the condition is not intended to restrict Finn's rights with respect to the matters referred to in §§ 4.4, 4.5 and 4.7 of the Shareholders Agreement (included in the Subscription Agreement at Appendix D), which are generally the kinds of rights held by minority shareholders to protect their interests and the value of their investment.

company definition, Finn will not have “such a controlling interest over the management or policies of a public utility as to make it necessary or appropriate in the public interest or for the protection of the utility’s consumers or investors that such person be subject to this section.”<sup>91</sup>

As explained above, Finn’s overall 19.9% interest in ITC Investment will not confer a controlling interest in ITC Midwest, and Finn will commit to restrict its voting rights to no more than 4.99% with respect to matters within the applicable jurisdiction of the Commission that predominantly relate to ITC Midwest’s operations in Wisconsin. It is thus neither “necessary [n]or appropriate in the public interest” for Finn to be deemed a “holding company” or to be subject to WPUHCA regulation.

Finding that Finn is not a holding company and that Finn’s minority investment does not trigger WPUHCA obligations is particularly appropriate in this case where the public utility is a transmission-only company with no retail customers in the state and is not the kind of traditional utility with which the Wisconsin legislature was concerned in enacting WPUHCA. Further, the entity that will acquire indirect control of the public utility as a result of the transaction (here, Fortis Inc.) is before the Commission seeking approval for the transaction.

Thus, because Finn will not exercise the type of control contemplated in WPUHCA over the management or policies of ITC Holdings and ITC Midwest and because with the proposed condition its voting rights are below WPUHCA’s statutory thresholds, Applicants respectfully submit that Commission approval of Finn’s minority investment is not required and request that Finn not be considered a holding company or part of a holding company system.

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<sup>91</sup> Wis. Stat. § 196.795(1)(h)1.b.

**B. ITC Midwest’s Status as an Independent Transmission Owner Is Not Impacted by Finn’s Minority Investment**

As noted supra at note 37, Wis. Stat. § 196.485(1)(dm)1m.b. defines an independent transmission owner as a person who does not own electric generation facilities or sell electric generation capacity or energy in a market within the geographic area that, on December 31, 1997, was served by one of four different then-existing reliability organizations, and that is not an “affiliated interest of a person” owning such facilities.<sup>92</sup> Neither Fortis Inc. nor any affiliate thereof owns electric generation facilities or sells electric generation capacity or energy in the four listed markets. Therefore, Fortis Inc.’s interest in ITC Holdings will not affect ITC Midwest’s status as an independent transmission owner.

Applicants here further seek clarification that Finn’s minority investment also will not impact ITC Midwest’s independent transmission owner status. The applicable definitions of “affiliated interest of a person” involve relationships between persons owning or holding 5% or more of the voting securities of another person.<sup>93</sup> The proposed condition, as detailed above, effectively limits Finn’s voting interest to 4.99% for Wisconsin purposes, and thus it would not be an affiliated interest of ITC Midwest and its interests should not be considered for independent transmission owner status purposes.

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<sup>92</sup> Wis. Stat. § 196.485(1)(a) defines “affiliated interest of a person” as any of the following:

1. Any person owning or holding directly or indirectly 5% or more of the voting securities of the person.
2. Any person in any chain of successive ownership of 5% or more of voting securities of the person.
3. Any corporation 5% or more of whose voting securities is owned by any person owning 5% or more of the voting securities of the person or by any person in any chain of successive ownership of 5% or more of the voting securities of the person.
4. Any person who is an officer or director of the person or of any corporation in any chain of successive ownership of 5% or more of the voting securities of the person.
5. Any corporation operating a servicing organization for furnishing supervisory, construction, engineering, accounting, legal or similar services to the person, which corporation has one or more officers or one or more directors in common with the person, and any other corporation which has directors in common with the person if the number of directors of the corporation is more than one-third of the total number of the person’s directors.
6. Any subsidiary of the person.

<sup>93</sup> *Id.*

For a complete record Applicants nonetheless provide the following information. As noted above, Finn is a wholly owned indirect subsidiary of GIC Ventures. Epsom Investment Pte. Ltd. (“Epsom”) is also an indirect, wholly owned subsidiary of GIC Ventures. Epsom owns an approximately 31 percent interest in DQE Holdings LLC, which, in turn, indirectly and wholly owns Duquesne Light Company and Duquesne Power (together, “Duquesne”) located in Pennsylvania. Duquesne does not own any electric generating facilities but does occasionally make power sales into the PJM Interconnection RTO (“PJM”).

One of the listed reliability organizations existing on the December 31, 1997 date identified in the independent transmission owner statutory provision is ECAR. While Duquesne is located in an area that in 1997 was served by ECAR, it now operates in a completely different market (*i.e.*, PJM). The PJM market is entirely separate from the MISO market, in which Wisconsin is located and in which ITC Midwest is a member. After the transaction closes, as is the case today, ITC Midwest will not be affiliated with any entity that owns electric generating facilities or sells power in the MISO market. Therefore, ITC Midwest will not own or be an affiliated interest of any company that owns or sells electric generation capacity or generation in MISO, the RTO that serves Wisconsin.

Even if power sales into PJM were somehow considered relevant (which the Applicants believe should not be the case), Finn’s indirect, non-controlling minority investment interest in ITC Midwest and Epsom’s indirect, non-controlling minority investment interest in Duquesne should not raise any issue with regard to ITC Midwest’s status as an independent transmission company. It is difficult even to imagine how the Commission’s jurisdiction over and authority to protect customers of ITC Midwest could be negatively impacted in any way by the fact that an upstream investor with a minority investment in ITC Investment also owns a

minority investment in an upstream owner of an entity that sells power into PJM, a separate market from MISO. Moreover, the relevant entity for assessing ITC Midwest's post-transaction independence should be the controlling entity, which will be Fortis, not Finn. Finn will have no authority to manage or control the day-to-day operations of ITC Midwest; as such, its minority investment should have no bearing on any evaluation of whether ITC Midwest is an independent transmission company. Thus, Applicants seek confirmation that Finn's minority investment will not impact ITC Midwest's status as an independent transmission owner.

## **V. OTHER FEDERAL AND STATE APPROVALS REQUIRED**

The Acquisition is subject to approval by FERC, as well as state utility commissions in Illinois, Kansas, Missouri, and Oklahoma.<sup>94</sup> The Applicants have filed applications for approval of the Acquisition in these jurisdictions, and agree to notify the Commission regarding the outcome of those proceedings.

## **VI. RELIEF REQUESTED**

For the reasons stated herein, and subject to Finn's and ITC Investment's commitments in section IV.A., the Applicants respectfully request that the Commission issue all consents, authorizations, approvals, rulings and orders necessary by October 1, 2016 to allow Fortis to acquire ITC Holdings, including without limitation the following findings and conclusions:

- Fortis Inc.'s takeover of ITC Holdings is in the best interests of utility consumers, investors, and the general public pursuant to Wis. Stat. § 196.795(3), subject to the following conditions to ensure, for this case and based on the facts described in the Application, ongoing compliance with WPUHCA:
  - The conditions imposed on ITC Holdings and ITC Midwest as part of the 2014 Orders will continue in effect following the consummation of the Acquisition.

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<sup>94</sup> Hart-Scott-Rodino and Federal Communication Commission approvals are also required.

- ITC Midwest will continue to maintain both standalone credit facilities and senior long-term debt instruments after the Acquisition.
- Fortis Inc. will provide full access to any book, record, document or other information of Fortis Inc. or its subsidiaries in the ITC Midwest chain of ownership which the Commission staff believes is relevant to fulfill the Commission's statutory duties.
- Fortis will seek Commission approval prior to terminating its interest in ITC Midwest.
- ITC Midwest's utility financing arrangements will not permit lending or guarantees by ITC Midwest in favor of Fortis Inc. or its affiliates.
- The Applicants are not "public service corporations" and therefore not subject to regulation under Wisconsin Statutes Chapter 201.
- To the extent the Commission deems it required, the Acquisition meets the requirements of Wis. Stat. § 196.79 and the reorganization is consistent with the public interest.
- Finn is not a Wisconsin public utility holding company nor is part of a Wisconsin holding company system.
- Finn is not required to obtain approval for acquiring its minority interest in ITC Investment under Wis. Stat. § 196.795(3).
- Finn is not an affiliated interest of ITC Midwest.
- Post-transaction, ITC Midwest will remain an independent transmission owner.

Respectfully submitted this 1st day of June, 2016.

FOLEY & LARDNER LLP

*/s/ Thomas McCann Mullooly*

By

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Thomas McCann Mullooly  
 Foley & Lardner LLP  
 777 East Wisconsin Avenue  
 Milwaukee, WI 53202-5306  
 414-297-5566  
*tmullooly@foley.com*

Attorneys for Fortis Inc.

FREDRIKSON & BYRON, P.A.

*/s/ Lisa Agrimonti*

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Lisa M. Agrimonti  
200 South Sixth Street, Suite 4000  
Minneapolis, MN 55402  
(612) 492-7000  
*LAgrimonti@fredlaw.com*

Attorneys for ITC Holdings Corp. and ITC  
Midwest LLC