

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of the Joint Application of Great Plains	)	
Energy Incorporated, Kansas City Power & Light	)	Case No. EE-2017-0113
Company and KCP&L Greater Missouri Operations	)	
Company for a variance from 4 CSR 240-20.015.	)	

**JOINT APPLICANTS' SUGGESTIONS IN SUPPORT OF  
THE PROPOSED PROCEDURAL SCHEDULE  
FILED BY STAFF AND JOINT APPLICANTS,  
AND IN OPPOSITION TO THE PROPOSED PROCEDURAL  
SCHEDULE FILED BY THE OPPOSING PARTIES**

Great Plains Energy Incorporated ("GPE"), Kansas City Power & Light Company ("KCP&L") and KCP&L Greater Missouri Operations Company ("GMO")(collectively referred to as "Joint Applicants") hereby file their Suggestions In Support of the Proposed Procedural Schedule filed by the Staff and Joint Applicants on November 29, 2016.

In addition, the Joint Applicants file their Suggestions In Opposition to the Proposed Procedural Schedule filed by Midwest Energy Consumers Group ("MECG"); Renew Missouri; City of Independence, Missouri; Laborers' International Union of North America; Consumers Council of Missouri; IBEW Local Union 412, 1464 and 1613; Missouri Industrial Energy Consumers ("MIEC"), (collectively referred to as "Opposing Parties") on the same day.

**SUGGESTIONS IN SUPPORT OF THE PROPOSED PROCEDURAL SCHEDULE FILED  
BY STAFF AND JOINT APPLICANTS**

1. On November 29, 2016, Staff and the Joint Applicants filed a Proposed Procedural Schedule in this proceeding that is intended to allow the Commission time to resolve the issues in this case on a reasonable time frame, and render a decision to be effective on April 24, 2017. This requested effective date is consistent with the issuance date of the order of the Kansas Corporation

Commission (“KCC”) in the proceeding<sup>1</sup> opened to review and approve GPE’s acquisition of Westar Energy, Inc. (“Westar” and the “Transaction”) before the KCC which has been known for many months.

2 Under K.S.A. 66-131 the KCC must issue a decision on a public utility’s application for a merger or acquisition within 300 days of receiving the application. The statute allows the applicant and the KCC to extend the 300 day period and no such extension has been requested by GPE, KCP&L or Westar. Therefore, the KCC must issue its order by April 24, 2017 to comply with the statute, and the procedural order adopted by the KCC in that proceeding indicates that it intends to do so. (See Attachment No. 1) The KCC’s April 24, 2017 order will be effective on the day of service because K.S.A. 66-118l provides that “[a]ll orders or decisions of the commission shall become operative and effective upon service of the order or decision, in accordance with the provisions of subsection (a) of K.S.A. 77-530 and amendments thereto, unless otherwise ordered by the commission or a stay is granted.” In approving a utility merger (ITC Great Plains, LLC acquisition by Fortis, Inc.) this year, the KCC’s order was effective the day of electronic service (October 11, 2016).<sup>2</sup> (See Attachment No. 2) The KCC’s ITC order did not include any language delaying the effective date of the order beyond the October 11, 2016 service date of the order. The ITC order did indicate the parties had 15 days from service of the order to apply for reconsideration but this language did not mean that the order was not effective immediately upon service since the ITC transaction closed on October 14, 2016, three days after the KCC provided service of its order. Similarly, when the KCC approved the acquisition of

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<sup>1</sup> In the Matter of the Joint Application of Great Plains Energy Incorporated, Kansas City Power and Light Company and Westar Energy, Inc. for approval of the Acquisition of Westar Energy, Inc. by Great Plains Energy Incorporated, 16-KCPE-593-ACQ, filed June 28, 2016.

<sup>2</sup> Order Approving the Transaction with Conditions, Docket No. 16-ITCE-512-ACQ, Oct. 11, 2016.

Aquila by GPE<sup>3</sup>, the order was effective on the May 16, 2008 mailed service date and, as with its order in the ITC transaction, the KCC did not delay the effective date beyond the service date of the order. Joint Applicants therefore believe that the order to be issued no later than April 24, 2017 in the KCC transaction approval proceeding will be effective upon service.

3. As indicated in the Joint Application and accompanying testimony, it is imperative that the Affiliate Transactions Rule Variance be effective when the Transaction closes as transactions among the regulated operations of KCP&L, GMO and Westar will commence immediately upon closing. See Joint Application, pp. 5-7; Direct Testimony of Darrin R. Ives, pp. 4-6. Assuming approval of the proposed Affiliate Transactions Rule Variance by the Commission, as recommended by the Staff Stipulation and OPC Stipulation, the Staff and Joint Applicants' Proposed Procedural Schedule will facilitate the closing of the Transaction by April 27, 2017, as contemplated by Section 1.04 of the Agreement and Plan of Merger ("Agreement")(Attachment No. 3) entered into between GPE and Westar. Under Section 1.04 of the Agreement, the Transaction is anticipated to close no later than the third business day after the KCC issues its final decision related to the approval of the Transaction. As explained above, the KCC is obligated by statute to, and has indicated that it will issue its order related to the approval of the Transaction by April 24, 2017. As a result, it is critical that the Missouri Commission's order approving the Affiliate Transaction Rule variance be effective by April 24, 2017 so that the proposed transaction may close on the schedule that has been contemplated for many months.

4. In order to accommodate a closing of the Transaction by April 27, 2017, the Joint Applicants and Staff have proposed the following procedural schedule:

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<sup>3</sup> Order Granting Joint Motions to Adopt Stipulation and Agreement and Approving Agreements, Docket Nos. 07-BHCG-1063-ACQ and 07 KCPE-1064-ACQ, May 1, 2008.

<b><u>Item</u></b>	<b><u>Date</u></b>
Supplemental Direct Testimony Applicants, Staff and OPC.	December 9, 2016 by Joint
Rebuttal Testimony by Intervenors	January 16, 2017
Last Day for Discovery	January 27, 2017
Surrebuttal Testimony by Staff and OPC.	February 6, 2017 Joint Applicants,
List of Issues and List and Order	February 9, 2017 Of Witnesses
Position Statements	February 10, 2017
Evidentiary Hearing 8:30 a.m.	February 13-15, 2017
Simultaneous Briefs	March 10, 2017
Commission Order	To be effective on [or before] April 24, 2017

5. The Proposed Procedural Schedule recommended by Staff and the Joint Applicants allows opposing parties to file their rebuttal testimony 96 days after the initial filing of the Joint Application and supporting direct testimony on October 12, 2017, and 38 days after the filing of supplemental direct testimony by the Joint Applicants, Staff, and OPC. Three (3) days of evidentiary hearings are scheduled with simultaneous briefs to be filed 23 days after the close of the evidentiary hearings. The Commission would have more than one month following the filing of briefs to render its decision in the matter.

6. The Proposed Procedural Schedule proposed by Staff and the Joint Applicants affords the parties a fair and meaningful hearing on the issues, provides the Commission with adequate time to deliberate and render its decision, while also balancing the need for a decision

effective by April 24, 2017 to allow the closing consistent with the time frame that has been contemplated for months.

**SUGGESTIONS IN OPPOSITION TO THE PROPOSED PROCEDURAL SCHEDULE  
FILED BY THE OPPOSING PARTIES**

7. In contrast to the balanced procedural schedule filed by Staff and the Joint Applicants, the Opposing Parties have recommended a procedural schedule which would delay the closing of the Transaction beyond April 27, 2017.

8. On November 29, 2016, the Opposing Parties filed a Proposed Procedural Schedule which included the following:

<b><u>Item</u></b>	<b><u>Date</u></b>
Supplemental Direct Testimony	December 9, 2016
Rebuttal Testimony	February 13, 2017
Surrebuttal Testimony	March 2, 2017
List of Issues and List and Order Of Witnesses	March 7, 2017
Position Statements	March 7, 2017
Evidentiary Hearing 8:30 a.m.	March 15-17, 2017
Simultaneous Briefs	April 3, 2017
Commission Order	April 27, 2017

9. Under the Opposing Parties' proposal, the earliest that the closing could occur would be May 7, 2017, even assuming the Commission could issue its decision by April 27 because the order presumably could not become effective any sooner than ten days after the order's issuance under Missouri case law.<sup>4</sup> Therefore, the Commission's order would not be

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<sup>4</sup> See State ex rel. Office of the Public Counsel v. Public Service Commission, 409 S.W.3d 522, 528-29 (Mo.App.

effective until May 7, 2017 (10 days after issuance), and the closing could not occur until Friday, May 7, 2017, or within three business days after the effective date of the order. Given that the April 24, 2017 issuance date of the KCC order has been known for months now, such a delay in the schedule is unnecessary and would harm the interests of the Joint Applicants, Westar Energy, their respective shareholders, employees, and customers.

10. The Opposing Parties' proposal is also unworkable since it provides the Commission with an inadequate amount of time to deliberate, and render a final decision in the matter (i.e. 18 business days) following the filing of briefs.

11. For the foregoing reasons, the Commission should reject the Opposing Parties' Proposed Procedural Schedule, and instead approve the Proposed Procedural Schedule filed by the Staff and the Joint Applicants.

**WHEREFORE**, the Joint Applicants request that the Commission approve the Proposed Procedural Schedule filed by Staff and the Joint Applicants on November 29, 2016.

Respectfully submitted,

*/s/ Robert J. Hack*

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2013) (effective date of less than 10 days would be presumptively unreasonable); Harter v. Missouri Public Service Commission, 361 S.W.3d 52, 58, (Mo. App. 2011).

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### **CERTIFICATE OF SERVICE**

I certify that a copy of the foregoing was served either electronically or by hand delivery or by First Class United States Mail, postage prepaid, on all counsel of record this 2<sup>nd</sup> day of December, 2016.

/s/ Robert J. Hack  
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**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners: Jay Scott Emler, Chairman  
Shari Feist Albrecht  
Pat Apple

In the Matter of the Joint Application of )  
Great Plains Energy Incorporated, Kansas )  
City Power & Light Company and Westar ) Docket No. 16-KCPE-593-ACQ  
Energy, Inc. for approval of the Acquisition )  
of Westar Energy, Inc. by Great Plains )  
Energy Incorporated. )

**ORDER SETTING PROCEDURAL SCHEDULE**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having reviewed the pleadings and record, the Commission makes the following findings:

1. On June 28, 2016, Kansas City Power & Light Company (KCP&L) and Westar Energy, Inc. and Kansas Gas and Electric Company (Westar) filed a Joint Application seeking approval for Great Plains Energy's acquisition of Westar. Great Plains Energy is the parent company of KCP&L.<sup>1</sup>

2. On July 14, 2016, the Commission issued an Order Designating Prehearing Officers; Granting Intervention to CURB; and Protective and Discovery Order was filed in the docket.

3. On July 28, 2016, Great Plains Energy, Inc., KCP&L, Westar, Commission Staff, and CURB filed a Joint Motion for Order on Procedural Schedule for the Commission's review and approval.

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<sup>1</sup> Joint Application, June 28, 2016.



4. The Commission adopts the following procedural schedule:

<b>DATE</b>	<b>TIME</b>	<b>ACTION</b>
November 30, 2016	5:00 pm	Affidavit of Mailing, Publication and Electronic Service
December 5, 2016	3:00 pm	Deadline for Petitions to Intervene
December 5, 2016	6:00 pm	Public Hearing at Shawnee Heights High School
December 16, 2016	5:00 pm	Staff/Intervenor Direct Testimony Due
December 22, 2016	5:00 pm	Staff/Intervenor Cross-Answering Testimony Due
January 9, 2017	5:00 pm	Joint Applicants' Rebuttal Testimony Due
TBD	TBD	Settlement Conference(s)
January 11, 2017	5:00 pm	Discovery Cut-off
January 11, 2017	5:00 pm	Motion Cut-off
January 11, 2017	5:00 pm	Contested Issues List Due
January 13, 2017	5:00 pm	Deadline to Submit Settlement Agreement
January 17, 2017	5:00 pm	Deadline to File Settlement Support/Opposition Testimony
January 18, 2017	9:00 am	Prehearing Conference
January 18, 2017	5:00 pm	Public Comment Period Ends
January 25, 2017	5:00 pm	PACP Report of Public Comments
January 30, 2017 - February 10, 2017	9:00 am	Evidentiary Hearing
February 28, 2017	5:00 pm	Joint Applicants' Initial Brief Due
March 13, 2017	5:00 pm	Staff/Intervenor Responsive Brief Due
March 20, 2017	5:00 pm	Joint Applicants' Reply Brief Due
April 24, 2017		Commission Order Due

5. Finding that a prehearing conference is necessary to address any pending matters, to establish procedures to use during the Evidentiary Hearing, and to consider any other prehearing issues that will promote the orderly and prompt conduct of this proceeding,<sup>2</sup> the Commission schedules a Prehearing Conference for January 18, 2017, beginning at 9:00 a.m. in the Commission's Third Floor Hearing Room, 1500 S.W. Arrowhead Road, Topeka, Kansas. The Prehearing Officers will preside. Any party who fails to attend or participate in the Prehearing Conference or in any other stage of this proceeding may be held in default under the

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<sup>2</sup> K.S.A. 77-517; K.A.R. 82-1-222.

Kansas Administrative Procedure Act (KAPA).<sup>3</sup> At the Prehearing Conference, this proceeding without further notice may be converted into a conference hearing or a summary proceeding for disposition of the matter as provided by KAPA.<sup>4</sup>

7. An Evidentiary Hearing, with the Commission presiding, will begin on January 30, 2017, at 9:00 a.m., and continue, as needed, through February 10, 2017, in the Commission's First Floor Hearing Room, 1500 S.W. Arrowhead Road, Topeka, Kansas. Any party who fails to attend or participate in the hearing or in any other stage of this proceeding may be held in default under the KAPA.<sup>5</sup>

8. The Commission plans to hold a public hearing in this docket:

**December 5, 2017, beginning at 6:00 p.m.** at:

Shawnee Heights High School  
4201 SE Shawnee Heights Road  
Tecumseh, Kansas 66542

The hearing will be livestreamed on the Commission's website: [www.kcc.ks.gov](http://www.kcc.ks.gov).

9. Notice of the Joint Application, the public hearing and public comment period as agreed to by the Parties and the Public Affairs and Consumer Protection (PACP) shall be included in a bill insert with the monthly billing statement for each customer in KCP&L's and Westar's service territory and provided by electronic mail to those customers who receive their bill by electronic mail. The notice shall be sent to customers at least seven (7) days prior to the public hearing. Notice shall also be published in the major newspapers in the region. KCP&L and Westar are also required to file an Affidavit confirming notice has been mailed to customers, printed in newspapers, and provided by electronic mail to customers, who receive their bills by electronic mail.

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<sup>3</sup> K.S.A. 77-516(c)(8); K.S.A. 77-520.

<sup>4</sup> K.S.A. 77-516(c)(7).

<sup>5</sup> K.S.A. 77-518(c)(8); K.S.A. 77-520.

10. The Commission encourages the public to submit comments concerning this docket via online at [www.kcc.ks.gov](http://www.kcc.ks.gov), electronic mail, or in writing. The public comment period begins immediately and ends on January 18, 2017, at 5:00 p.m. By January 25, 2017, PACP is directed to file a report summarizing public comments received.

11. KCP&L, Westar, CURB, and PACP shall make information concerning the proceeding accessible to the public through use of their websites. These parties' websites should include links and contact information to enable the public to easily identify how to contact the PACP Office to submit comments and to access filings made in the docket. To the extent practicable, parties are encouraged to include background information explaining this proceeding.

12. The Commission approves the use of electronic service of all testimony, briefs, and orders, without requiring provision of follow-up hard copies as required by K.A.R. 82-1-216(a)(6). Testimony and briefs must be served electronically by 5:00 p.m., on the date due, without requiring service among the parties of a follow-up hard copy. The Commission directs electronic service of testimony and briefs include service on the Prehearing Officers at [b.fedotin@kcc.ks.gov](mailto:b.fedotin@kcc.ks.gov) and [d.kirk@kcc.ks.gov](mailto:d.kirk@kcc.ks.gov).

13. Amber Smith, [a.smith@kcc.ks.gov](mailto:a.smith@kcc.ks.gov), and Michael Neeley, [m.neeley@kcc.ks.gov](mailto:m.neeley@kcc.ks.gov), 1500 S.W. Arrowhead Road, Topeka, Kansas 66604-4027, are the attorneys appearing on behalf of the agency in this proceeding.<sup>6</sup>

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<sup>6</sup> K.S.A. 77-518(c)(2); K.S.A. 77-516(c)(2).


**THEREFORE, THE COMMISSION ORDERS:**

- A. The procedural schedule set forth in paragraph 4 is adopted.
- B. Parties have 15 days from the date of electronic service of this Order to petition for reconsideration.<sup>7</sup>
- C. The Commission retains jurisdiction over the subject matter and parties for the purpose of entering such further orders as it deems necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner

✓ Dated: SEP 27 2016

  
Amy L. Green  
Secretary to the Commission

BGF

**EMAILED**

SEP 27 2016

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<sup>7</sup> K.S.A. 66-118b; K.S.A. 77-529(a)(l).

## CERTIFICATE OF SERVICE

16-KCPE-593-ACQ

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

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16-KCPE-593-ACQ

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## CERTIFICATE OF SERVICE

16-KCPE-593-ACQ

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**CERTIFICATE OF SERVICE**

16-KCPE-593-ACQ

/S/ DeeAnn Shupe  
DeeAnn Shupe

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***EMAILED***

SEP 27 2016

**THE STATE CORPORATION COMMISSION  
OF THE STATE OF KANSAS**

Before Commissioners: Jay Scott Emler, Chairman  
Shari Feist Albrecht  
Pat Apple

In the Matter of the Joint Application of )  
ITC Great Plains, LLC, and its Parent )  
Company, ITC Holdings Corp., Together )  
With Fortis Inc., FortisUS Inc., ITC )  
Investment Holdings Inc. and )  
Element Acquisition Sub Inc., for an ) Docket No. 16- ITCE-512-ACQ  
Order Approving the Acquisition by )  
Fortis Inc. of the Majority of All Classes )  
of the Stock of ITC Holdings Corp., )  
and its Subsidiary Companies, Including )  
ITC Great Plains, LLC. )

**ORDER APPROVING THE TRANSACTION WITH CONDITIONS**

This matter comes before the State Corporation Commission of the State of Kansas (Commission) for consideration and decision. Having examined the files, the Commission finds:

1. On May 10, 2016, ITC Great Plains, LLC (ITC Great Plains), on behalf of itself and its parent company ITC Holdings Corp. (ITC Holdings), together with Fortis Inc. and its subsidiaries, including FortisUS Inc. (FortisUS), ITC Investment Holdings Inc. (ITC Investment), and Element Acquisition Sub Inc. (collectively, Fortis, ITC Great Plains and ITC Holdings or Joint Applicants) filed a Joint Application with supporting testimony pursuant to K.S.A. 66-101, 66-104, 66-131, 66-136, and 66-1401 *et seq.*, requesting approval of Fortis's acquisition of ITC Holdings (the Transaction).

2. On August 2, 2016, Sunflower Electric Power Corporation (Sunflower) and Mid-Kansas Electric Company, LLC (Mid-Kansas) were granted intervention.

3. On August 9, 2016, the Commission issued its Order on Merger Standards, reaffirming the merger standards it first articulated in 1991.<sup>1</sup> The Order on Merger Standards required the application to clearly identify any deviation from the standards and be justified with supporting testimony.<sup>2</sup> The Order gave the Joint Applicants 21 days to make any modifications to conform to the restated merger standards.

4. On August 22, 2016, the Joint Applicants filed a Notice of Clarification Regarding Merger Standards, addressing “whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.” The Joint Applicants explained this issue had already been specifically addressed in the supporting testimony filed with the Joint Application, and reaffirmed the Transaction will not result in job reductions at ITC Great Plains or create labor dislocations.

5. On September 2, 2016, Staff filed its Report and Recommendation (R&R), concluding Fortis possesses the financial, managerial, and technical experience to provide sufficient and efficient service in the State of Kansas.<sup>3</sup> The R&R presented conditions for approval of the Transaction, which are set forth in Exhibit A to the R&R (Merger Conditions). After explaining the Transaction, subject to the Merger Conditions, satisfies the Commission’s merger standards, the R&R indicates Staff considers the Joint Applicants’ and Sunflower/Mid-Kansas’s acceptance of the Merger Conditions to be a prerequisite to approving the Transaction.

6. On September 8, 2016, Joint Applicants filed a Response in Support of Staff’s Recommendation to Approve the Transaction Subject to the Merger Conditions (Response in

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<sup>1</sup> Order on Merger Standards, Aug. 9, 2016, ¶ 5 (*citing* Order, Consolidated Docket Nos. 172,745-U and 174,155-U, Nov. 14, 1991, pp. 35-36).

<sup>2</sup> *Id.*, ¶ 7.

<sup>3</sup> Report and Recommendation (R&R), pp. 6-8 (*citing* Docket No. 11-GBEE-624-COC, Order Approving Stipulation & Agreement and Granting Certificate, December 7, 2011, ¶ 63).

Support). The Joint Applicants confirmed they agreed with the Merger Conditions and sought approval of the Transaction subject to the Merger Conditions. Accordingly, Staff recommends approval of the Transaction subject to the Merger Conditions outlined in Exhibit A.

7. On September 28, 2016, Staff filed a corrected version of its R&R to eliminate discrepancies between certain descriptions of the Merger Conditions in the body of the R&R and the Merger Conditions stated in Exhibit A. The corrected version did not make any changes to Exhibit A, which is controlling. Exhibit A is attached and incorporated by reference.

8. On September 29, 2016, the Commission held an evidentiary hearing. The Joint Applicants, Staff and Sunflower/Mid-Kansas appeared by counsel. The Commission heard testimony from Barry V. Perry, President and Chief Executive Officer of Fortis Inc.; Linda H. Blair, Executive Vice President and Chief Business Unit Officer for ITC Holdings; Adam H. Gatewood, Managing Financial Analyst for Staff; and Justin T. Grady, Chief of Accounting and Financial Analysis for Staff. Mr. Perry sponsored the pre-filed testimony of Karl W. Smith, Executive Vice President, Chief Financial Officer of Fortis Inc. All of the testimony supported approval of the Transaction subject to the Merger Conditions.

9. Based on its review of the evidence, the Commission concludes: (1) after the Transaction, ITC Great Plains will continue to possess the necessary financial, managerial, and technical experience to provide sufficient and efficient service in the State of Kansas; (2) subject to the Merger Conditions, the Transaction satisfies the merger standards; and (3) subject to the Merger Conditions, the Transaction will promote the public interest. Accordingly, the Commission approves the Transaction subject to the Merger Conditions contained in Exhibit A.

10. ITC Holdings is a publicly traded holding company incorporated under the laws of Michigan, with its principal office in Novi, Michigan. ITC Holdings owns and operates

International Transmission Company d/b/a ITC*Transmission*, Michigan Electric Transmission Company, LLC, ITC Midwest LLC, and ITC Great Plains (collectively, the ITC Operating Companies). Each of the ITC Operating Companies is an independent, stand-alone transmission company engaged exclusively in the development, ownership, and operation of electrical transmission facilities. Functional control of the ITC Operating Companies' transmission systems is held by a Regional Transmission Organization (RTO); either the Southwest Power Pool, Inc. (SPP) or Midcontinent Independent System Operator, Inc. (MISO), depending upon the location of the assets. Because SPP and MISO independently administer the ITC Operating Companies' respective systems in accordance with the Open Access Transmission Tariff (OATT) approved by the Federal Energy Regulatory Commission (FERC), the ITC Operating Companies', including ITC Great Plains' transmission rates are exclusively regulated by FERC.

11. Fortis Inc. is a publicly traded holding company existing under the laws of Newfoundland and Labrador, Canada, with its principal offices in St. John's, Newfoundland and Labrador. It has approximately C\$29 billion (US\$ 23.2 billion) in total assets and had fiscal 2015 revenues totaling approximately C\$6.7 billion (US\$ 5.4 billion).<sup>4</sup> Fortis's regulated holdings include electric distribution utilities in five Canadian provinces, New York, Arizona, two Caribbean countries, and Belize, as well as natural gas utilities in Arizona, New York, and British Columbia, Canada. Staff's R&R noted "there is ample evidence that Fortis is knowledgeable of the public utility industry as demonstrated through its years of experience of profitably and effectively operating public utility businesses in the United States and Canada."<sup>5</sup>

12. As stated in the Joint Application, Fortis's long-term business objective is to own and operate well-run regulated electric and natural gas utilities, while providing safe and reliable

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<sup>4</sup> US\$ amounts are converted at a USD/CAD exchange rate of 1.25, the Bank of Canada's closing rate on April 29, 2016.

<sup>5</sup> R&R, p. 7.

service to its customers. Perry testified under Fortis's business philosophy, effective management of regulated electric and natural gas utilities requires local management and decision-making.<sup>6</sup> Under Fortis's ownership, the ITC Operating Companies, including ITC Great Plains, will continue as stand-alone transmission-only companies, focusing on transmission investment and operations.

13. Fortis plans to retain the management of ITC Holdings and ITC Great Plains and pursuant to Merger Condition No. 4, has committed to retain aggregate current employment levels at ITC Great Plains in Kansas for three years after the Transaction closes.<sup>7</sup> Fortis's pledge was crucial to Staff's assessment that Fortis has the requisite financial, managerial, and technical qualifications to manage, operate, and maintain the ITC Great Plains' transmission assets after the acquisition.<sup>8</sup> Pursuant to Merger Condition No. 5, Fortis committed to maintain current aggregate levels of charitable contributions and community support in Kansas provided by ITC Great Plains and ITC Holdings for three years, and thereafter ITC Great Plains and ITC Holdings will have discretion on charitable contributions and community support programs in Kansas.<sup>9</sup> Merger Condition No. 6 requires Fortis to maintain ITC Great Plains' headquarters in Topeka, Kansas, for five years after the Transaction closes. For an additional five years thereafter, Fortis has committed to keeping ITC Great Plains' headquarters in Kansas and to notify the Commission before relocating from Topeka.<sup>10</sup>

14. The Joint Application stated that while Fortis's utility subsidiaries are operated and financed on a stand-alone basis, Fortis will provide ITC Great Plains with financial support. Similarly, ITC Great Plains will benefit from the support and broad experience of Fortis in

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<sup>6</sup> See B. Perry Direct Testimony (Perry Direct), pp. 11-12.

<sup>7</sup> *Id.*, pp. 3, 16-18; Staff's Report and Recommendation, Exhibit A, Merger Condition No. 4.

<sup>8</sup> R&R, p. 7.

<sup>9</sup> *Id.*, Exhibit A, Merger Condition No. 5.

<sup>10</sup> *Id.*, Merger Condition No. 6.

accessing capital and assisting ITC Great Plains to efficiently and cost effectively finance, develop, and own transmission projects. As set forth in Merger Condition No. 11, Fortis has committed to provide equity capital injections as needed to maintain the financial integrity of ITC Great Plains and ITC Great Plains' investment-grade credit rating.<sup>11</sup> Staff stated this commitment is necessary to ensure that the "financial qualifications" requirement will be met.<sup>12</sup>

15. The Transaction includes a minority equity investor, Finn Investment Pte. Ltd. or another direct or indirect and wholly-owned subsidiary of GIC (Ventures) Pte. Ltd. (GIC Ventures).<sup>13</sup> Finn will be an indirect, non-controlling shareholder at the ITC holding company level, without any authority to manage or control the day-to-day operations of the ITC operating companies, including ITC Great Plains. ITC Great Plains will continue to be overseen by the ITC board of directors, which will be made up of a majority of independent directors. Mr. Smith testified the minority equity investor's involvement will not impact Fortis's governance philosophy.<sup>14</sup>

16. ITC Holdings is currently a widely held, publicly traded corporation listed on the New York Stock Exchange (NYSE). Upon completion of the Transaction, ITC Holdings will be a private company with 100% of its stock held by ITC Investment, a direct subsidiary of FortisUS created to effect the Transaction. FortisUS will hold 80.1% of the common equity of ITC Investment, and Finn will hold 19.9% of the common equity of ITC Investment.

17. The Transaction is valued at approximately \$11.3 billion and is structured to preserve Fortis Inc.'s investment-grade credit rating.

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<sup>11</sup> *Id.*, Merger Condition No. 11.

<sup>12</sup> *Id.*, p. 8.

<sup>13</sup> For ease of reference, "Finn" refers to Finn Investment Pte. Ltd. or such other GIC Ventures subsidiary.

<sup>14</sup> See K. Smith Direct Testimony, pp. 10-11.



18. Consistent with commitments made in FERC Docket No. EC16-110, and memorialized in Merger Condition No. 7, neither ITC Great Plains nor any other ITC or Fortis-affiliated entity will, at any time, seek to recover any acquisition premium, goodwill, or transaction costs associated with the Transaction (including transition costs) through FERC or any other federal or state regulatory proceeding.<sup>15</sup> While the precise magnitude of the acquisition premium is not identified in the record, Staff reports that the current value of ITC Holdings' rate base is \$5.6 billion compared to the purchase price of \$11.3 billion.<sup>16</sup>

19. In connection with the Transaction, Fortis Inc. has registered with the Securities and Exchange Commission (SEC) and will cross-list its common shares on the NYSE prior to the closing of the Transaction. Fortis Inc. will continue to have its shares listed on the Toronto Stock Exchange (TSX). Upon completion of the Transaction, approximately 27% of Fortis Inc.'s outstanding common shares will be held by the former ITC Holdings shareholders. The combination of Fortis and ITC Holdings will result in a widely held, publicly traded utility holding company trading on the TSX and NYSE, with an estimated pro forma market capitalization as of the end of 2016 of approximately US\$13.2 billion.

20. In 1991, in consolidated Docket Nos. 172,745-U and 174-155-U, the Commission adopted a list of factors to weigh and consider in determining whether a transaction promotes the public interest. In 1999, the Commission reaffirmed the merger standards in Docket No. 97-WSRE-676-MER. The Commission has acknowledged the standards provide a helpful framework for its analysis of the public interest, but may be supplemented by other consideration relevant to the unique facts and circumstances of each proposed merger.

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<sup>15</sup> See R&R, Exhibit A, Merger Condition No. 7.

<sup>16</sup> *Id.*, p. 12.

21. In the present case, Staff's R&R noted the Commission's limited role in regulating ITC Great Plains warrants a more limited application of the merger standards than a transaction involving utilities fully regulated by the Commission. While the Joint Applicants stated that some of the merger standards are inapplicable to this Transaction, to the extent possible, the Joint Applicants and Staff addressed each factor under the merger standards. Staff's R&R concludes by imposing the Merger Conditions, "Staff is confident that the proposed transaction provides a net benefit to the public and will, therefore, promote the public interest."<sup>17</sup> The Commission agrees the Transaction satisfies the merger standards, provides a net benefit to the public, and promotes the public interest.

**(a) The effect of the transaction on consumers, including:**

**(i) The effect of the proposed transaction on the financial condition of the newly created entity as compared to the financial condition of the stand-alone entities if the transaction did not occur.**

22. Neither Staff nor the Joint Applicants believe that the Transaction will jeopardize the financial condition of ITC Holdings, ITC Great Plains, or Fortis.<sup>18</sup> Additionally, as part of a much larger and more diversified Fortis organization with investment-grade credit ratings, the ITC Operating Companies will continue to have access to capital on favorable terms, will benefit from mitigation of ITC's single-line-of-business risk profile, and will benefit from financial and other forms of support from the Fortis group of companies.<sup>19</sup>

23. Merger Condition Nos. 8, 11, and 12 also provide assurance that ITC Great Plains will maintain its strong financial condition after the Transaction. Condition No. 8 requires ITC Great Plains to maintain both stand-alone credit facilities and senior long-term debt instruments, and prevents ITC Great Plains from making loans under its financing arrangements to Fortis or

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<sup>17</sup> *Id.*, p. 9.

<sup>18</sup> *Id.*, p. 11; Joint Application, p. 18; *see also* Perry Direct, pp. 18-19; L. Blair Direct Testimony (Blair Direct), p. 8.

<sup>19</sup> *See* Perry Direct, pp. 18-19; Blair Direct, p. 8.

its affiliates or guarantee any debt of Fortis or its affiliates for five years from the effective date of the closing of the Transaction. At any time thereafter, if either Fortis or ITC Great Plains wishes to amend Condition No. 8, it must state its intent to do so in a filing with the Commission. Condition No. 11 requires a commitment from Fortis to provide equity capital injections as needed to maintain ITC Great Plains' financial integrity and investment-grade credit rating. Finally, Condition No. 12 requires ITC Great Plains to notify the Commission within five business days if it or Fortis suffers a downgrade of credit quality to below investment-grade and to take the steps necessary to restore that investment-grade rating or state why restoration is not necessary to provide efficient and sufficient service.

24. Subject to Merger Condition Nos. 8, 11, and 12, the Commission finds the Transaction satisfies item (a)(i) of the merger standards.

**(ii) Reasonableness of the purchase price, including whether the purchase price was reasonable in light of the savings that can be demonstrated from the merger and whether the purchase price is within a reasonable range.**

25. Fortis is paying US\$22.57 in cash + 0.7520 of a Fortis common share for each ITC Holdings common share, which represents an approximate 33% premium compared to the US\$ 33.75 ITC Holdings pre-bid unaffected stock price as of market close on November 27, 2015, immediately before ITC Holdings publicly announced it was undertaking a review of its strategic alternatives.<sup>20</sup>

26. Staff's R&R questions whether this merger standard is applicable, given ITC Great Plains' transmission rates are not jurisdictional to this Commission and that Fortis pledged not to seek recovery of the acquisition premium through rates.<sup>21</sup> While not outside the realm of

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<sup>20</sup> This premium is calculated as of February 8, 2016, the day immediately preceding the public announcement of the Transaction. *See Blair Direct*, p. 8.

<sup>21</sup> R&R, p. 12

premiums observed in recent high profile transactions, Staff states the purchase price is not supported by any anticipated savings or operational synergies.<sup>22</sup> Instead, Staff suggests the acquisition premium reflects certain FERC ratemaking decisions. Ultimately, because the Joint Applicants are not requesting to recover the acquisition premium from Kansas ratepayers, Staff would not oppose the transaction based on this merger standard.

27. The Joint Applicants have committed to hold customers harmless from transaction and acquisition costs (including acquisition premium costs) and will not, at any time, seek to recover such costs in the ITC Operating Companies' cost-based rates, including ITC Great Plains' rates.<sup>23</sup> This commitment is memorialized in Merger Condition Nos. 1, 2, and 7. Given these commitments and the Commission's lack of rate regulation over ITC Holdings and ITC Great Plains, the Commission finds the Transaction satisfies item (a)(ii) of the merger standards.

**(iii) Whether ratepayer benefits resulting from the transaction can be quantified.**

28. ITC Great Plains does not have retail ratepayers, only wholesale customers. FERC retains exclusive jurisdiction over the rates ITC Great Plains may charge for use of its transmission system by approving the terms and conditions set forth in ITC Great Plains' SPP formula rate tariff. The Joint Application explains ratepayers will benefit from the Transaction through Fortis's strong support of ITC Great Plains' commitment to the delivery of safe, reliable, and efficient transmission services and further investment in upgrading and expanding transmission infrastructure across ITC Great Plains' operating territory.<sup>24</sup>

29. While Staff reports it is unable to state there will be any benefits to the transmission ratepayers associated with the Transaction, Staff notes the Joint Applicants have

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<sup>22</sup> *Id.*, pp. 12-13.

<sup>23</sup> See Applicants' Reply to Motions for Adoption of Merger Conditions and Applicants' Motion for Leave to Answer and Answer to Protests, pp. 5-6, FERC Docket No. EC16-110, June 17, 2016.

<sup>24</sup> Joint Application, p. 19; see also Blair Direct, p. 9.

made all of the appropriate hold-harmless commitments at FERC.<sup>25</sup> These commitments are memorialized in Merger Condition Nos. 1, 2, 7, and 9. Given these commitments and the Commission's limited authority to regulate ITC Holdings' and ITC Great Plains' rates, the Commission finds the Transaction satisfies item (a)(iii) of the merger standards.

**(iv) Whether there are operational synergies that justify payment of a premium in excess of book value.**

30. The Joint Applicants have committed not to seek recovery of the acquisition premium from ratepayers and the Commission does not regulate ITC Holdings' and ITC Great Plains' rates. Since the Transaction is not premised on operational synergies, whether operational synergies exist to justify payment of a premium in excess of book value is not material in determining whether the Transaction is in the public interest.<sup>26</sup> Based on the commitment not to seek recovery of the acquisition premium from ratepayers, and the Commission's limited ability to regulate ITC Holdings and ITC Great Plains, the Commission finds the Transaction satisfies item (a)(iv) of the merger standards.

**(v) The effect of the proposed transaction on the existing competition.**

31. ITC Great Plains operates within the State of Kansas pursuant to a limited, transmission rights only certificate, and only within specified geographic areas authorized by the Commission.<sup>27</sup> Fortis currently has no operations in Kansas, SPP, or MISO, and Fortis does not own any electric or natural gas transmission lines parallel to or competing with ITC Great Plains. Furthermore, SPP will continue to have functional control over the transmission assets of ITC Great Plains, and ITC Great Plains will continue to provide transmission service pursuant to the terms and conditions under SPP's FERC-approved OATT. FERC has already found the

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<sup>25</sup> R&R, p. 14.

<sup>26</sup> Joint Application, pp. 19-20; R&R, p.14.

<sup>27</sup> Joint Application, p. 20; *see also* Blair Direct, pp. 9-10.

Transaction will not have an adverse effect on competition.<sup>28</sup> Accordingly, the Commission finds the Transaction satisfies item (a)(v) of the merger standards.

**(b) The effect of the transaction on the environment.**

32. Joint Applicants and Staff agree the Transaction will not affect the environment because there will be no change to ITC Great Plains' operations and ITC Great Plains will remain subject to the regulatory oversight of the Kansas Department of Health and Environment.<sup>29</sup> Accordingly, the Commission finds the Transaction satisfies item (b) of the merger standards.

**(c) Whether the proposed transaction will be beneficial on an overall basis to state and local economies and to communities in the area served by the resulting public utility operations in the state. Whether the proposed transaction will likely create labor dislocations that may be particularly harmful to local communities, or the state generally, and whether measures can be taken to mitigate the harm.**

33. Fortis pledged to continue to support ITC Great Plains' efforts to actively engage in the communities where it operates.<sup>30</sup> ITC Great Plains anticipates its operations will be bolstered by Fortis' track record of committing capital to its utilities and Fortis' stability, experience and market diversity.<sup>31</sup> Staff proposed Merger Condition Nos. 4, 5 and 6 to memorialize and strengthen the Joint Applicants' commitments. Merger Condition Nos. 4 and 5 ensure that ITC Great Plains' employment levels and community support in Kansas stay the same for at least three years. Additionally, Condition No. 6 requires that ITC Great Plains keep its regional headquarters in Topeka for five years and in Kansas for ten years. Conditioned on these commitments, the Commission finds the Transaction satisfies item (c) of the merger standards.

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<sup>28</sup> *Fortis Inc., et al.*, 156 FERC ¶ 61,219, Sept. 23, 2016.

<sup>29</sup> Joint Application, p. 20; R&R, p. 15; *see also* Blair Direct, p. 11.

<sup>30</sup> Joint Application, pp. 20-21.

<sup>31</sup> *See* Perry Direct, p. 20; Blair Direct, pp. 10-11.

- (d) **Whether the proposed transaction will preserve the jurisdiction of the KCC and the capacity of the KCC to effectively regulate and audit public utility regulations in the state.**

34. The Joint Applicants and Staff agree the Commission will retain its current jurisdiction over ITC Great Plains.<sup>32</sup> Staff advised the Merger Conditions may provide the Commission with an enhanced level of oversight and regulation of ITC Great Plains. Accordingly, the Commission finds the Transaction satisfies item (d) of the merger standards.

- (e) **The effect of the transaction on affected public utility shareholders.**

35. In exchange for each ITC common share, ITC shareholders will receive US\$22.57 in cash and 0.7520 of a Fortis common share. The Commission finds the Transaction will benefit the ITC Holdings' shareholders and the Transaction satisfies item (e) of the merger standards.

- (f) **Whether the transaction maximizes the use of Kansas energy resources.**

36. The Joint Applicants and Staff agree ITC Great Plains will be well positioned to undertake further investment in transmission infrastructure to support grid reliability and new and existing energy sources in Kansas following the Transaction.<sup>33</sup> Accordingly, the Commission finds the Transaction satisfies item (f) of the merger standards.

- (g) **Whether the transaction will reduce the possibility of economic waste.**

37. Joint Applicants and Staff agree the Transaction will reduce the possibility of economic waste by avoiding the duplication of some administrative and general expenses that are typically incurred related to a stand-alone public company.<sup>34</sup> Accordingly, the Commission finds the Transaction satisfies item (g) of the merger standards.

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<sup>32</sup> Joint Application, p. 21; R&R, p. 16.

<sup>33</sup> Joint Application, p. 21; R&R, p. 17; *see also* Perry Direct, p. 21; Blair Direct, p. 12.

<sup>34</sup> Joint Application, p. 22; R&R, p. 18; *see also* Perry Direct, p. 22.

**(h) What impact, if any, the transaction has on the public safety.**

38. Joint Applicants stated the upstream change in ownership will not affect ITC Great Plains' operations and ITC Great Plains will continue to comply with all applicable safety rules, regulations, and Orders of the Commission.<sup>35</sup> Staff notes Merger Condition No. 10 requires ITC Great Plains to notify the Commission in advance of any substantial changes to its primary operating and maintenance contracts, which may substantially affect the safety and reliability of its transmission assets for five years after the close of the Transaction. Accordingly, the Commission finds the Transaction will not impact public safety and satisfies item (h) of the merger standards.

39. The Commission finds the proposed Transaction, as conditioned by Exhibit A, satisfies the Commission's merger standards and promotes the public interest. Therefore, the Commission grants the Joint Application and approves the proposed Transaction subject to the Merger Conditions contained in Exhibit A. The Commission directs the Joint Applicants to provide notice of closing to the Commission within 10 days of the closing of the Transaction.

**THEREFORE, THE COMMISSION ORDERS:**

A. The Transaction between Fortis and ITC Holdings is approved, subject to the Merger Conditions contained in Exhibit A.

B. Joint Applicants must provide notice of the closing to the Commission within 10 days of the closing of the Transaction.

C. The parties have 15 days from the date of electronic service of this Order to petition for reconsideration.<sup>36</sup>

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<sup>35</sup> Joint Application, p. 22; Blair Direct, p. 12.

<sup>36</sup> K.S.A. 66-118b; K.S.A. 77-529(a)(1).




D. The Commission retains jurisdiction over the subject matter and the parties for the purpose of entering such further orders as it deems necessary.

**BY THE COMMISSION IT IS SO ORDERED.**

Emler, Chairman; Albrecht, Commissioner; Apple, Commissioner.

Date: OCT 11 2016

  
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Amy L. Green  
Secretary to the Commission

**EMAILED**

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OCT 11 2016

**KCC DOCKET NO. 16-ITCE-512-ACQ**  
**CONDITIONS FOR KANSAS CORPORATION COMMISSION**  
**APPROVAL OF TRANSACTION**

Staff recommends that the Commission's approval of the Transaction in this instant docket be subject to the following conditions.

1. Neither the Joint Applicants nor any of their affiliates shall recover from customers directly or indirectly, any costs incurred associated with this Transaction in this or any future rate proceeding.
2. Neither (a) the greater of either goodwill or acquisition premium nor (b) any of the debt financing associated with funding this Transaction will be recorded on the books of any direct or indirect subsidiary of ITC Holdings, including ITC Great Plains, nor on the books of ITC Holdings in a manner that would negatively affect the financial condition of any direct or indirect subsidiary of ITC Holdings, including ITC Great Plains. Additionally, any transaction or transition costs associated with the Transaction, along with any related amortization or expense, will be recorded below the line, taken to mean that these costs will be recovered from shareholders and are not recoverable through the rates of any direct or indirect subsidiary of ITC Holdings, including ITC Great Plains.
3. The Joint Applicants shall file the final accounting entries for the Transaction, showing the actual dollar values of all involved accounts, as a compliance filing in either Docket No. 16-ITCE-512-ACQ, or a compliance Docket established at the time of a final Order in this proceeding, within sixty (60) days of the effective date of the closing of the Transaction. If the Transaction closing has not occurred within six months of the Final Order in this proceeding, the Joint Applicants shall file a status report at six month intervals until the journal entries are filed with the Commission.
4. For three (3) years from the effective date of the closing of the Transaction, no voluntary workforce reductions, employee restructuring, or job elimination programs will be implemented by ITC Great Plains in Kansas. This condition shall be taken to mean that the aggregate level of employment by ITC Great Plains in Kansas shall not be reduced by ITC Great Plains from the level in effect before the effective date of the Transaction.
5. For three (3) years from the effective date of the closing of the Transaction, ITC Great Plains will provide charitable contributions and community support in the communities in Kansas at a level comparable in the aggregate to the levels currently provided by the ITC Holdings and ITC Great Plains. Thereafter, Fortis Inc. will not restrict or in any way attempt to limit or control the discretion of the management of ITC Great Plains and ITC Holdings over such programs.
6. For five (5) years from the effective date of the closing of the Transaction, ITC Great Plains will maintain its headquarters in Topeka, Kansas. For an additional five (5) years thereafter, ITC Great Plains will keep its headquarters in Kansas, and will notify the Commission prior to any relocation outside of Topeka, Kansas.
7. Consistent with the Joint Applicants' hold harmless commitment made in FERC Docket No. EC16-110, neither ITC Great Plains nor any other ITC or Fortis-affiliated entity will, at any time, seek to recover any acquisition premium, goodwill, or transaction costs associated with consummating the Transaction (including transition costs), through FERC or any other federal or state regulatory proceeding.

8. It is Fortis' policy that a subsidiary operating utility company such as ITC Great Plains will maintain both standalone credit facilities and senior long-term debt instruments and will not be made responsible for any debt or other obligations of its parent or affiliate companies, and this policy is consistent with applicable federal law and FERC regulations. Fortis has no plans to change that policy, and will not seek to change its policy for five (5) years from the effective date of the closing of the Transaction and during such time ITC Great Plains will continue to maintain both standalone credit facilities and senior long-term debt instruments, and will not make loans under its financing arrangements to Fortis or its affiliates or guarantee any debt of Fortis or its affiliates. If at any time thereafter Fortis or ITC Great Plains wishes to change this important financial condition, it must state its intent to do so in a filing with the Kansas Corporation Commission.
9. Neither Joint Applicants nor any of their affiliates will at any time attempt to circumvent any condition contained herein or any commitment made in this docket or FERC Docket No. EC16-110 through any action at FERC or another state or federal regulatory body or state or federal court.
10. For five (5) years following the effective date of the closing of the Transaction, in the event that ITC Great Plains makes any substantial change in its primary operating and maintenance contracts which may have a substantial effect on the safety and reliability of its Transmission assets in the state of Kansas, including but not limited to a substantial change in its operation and maintenance contracts currently in effect for its Kansas transmission assets, ITC Great Plains shall make a filing with the Commission 30 days in advance of the changed contract (in either Docket No. 16-ITCE-512-ACQ or a compliance Docket established as a result of the final Commission Order in this proceeding). This filing shall include a description of the change, the rationale for the change (including the business or economic rationale for the change), whether the change is expected to impact service quality, safety, or reliability of ITC Great Plains' transmission operations in the State and all appropriate support for each of the above claims. For greater certainty, no such filings will be required where ITC Great Plains (and/or its primary contractor) routinely updates maintenance and operations practices in the normal course of business, as it currently does, to fully comply with all applicable standards for safety and security as they are issued by NERC or other regulatory bodies. Nothing herein shall restrict the right of ITC Great Plains to designate information as confidential under the applicable provisions of K.S.A. 66-1220a and K.A.R. 82-1-221a.
11. The Commission should explicitly state that Fortis has committed to provide equity capital injections as needed for maintaining the financial integrity of ITC Great Plains such that ITC Great Plains is capable of maintaining an investment-grade credit rating.
12. In the event that ITC Great Plains, Fortis, or any Fortis affiliate from which ITC Great Plains receives financing (including equity capital) should have its corporate credit rating downgraded as determined by Standard and Poor's (S&P) or Moody's to below BBB- or Baa3, respectively, ITC Great Plains commits to file the following:
  1. Notice with the Commission within five (5) business days of the downgrade;
  2. A Pleading with the Commission within 60-days which shall include the following:
    - a. A plan identifying all reasonable steps, taking into account the costs, benefits, and expected outcomes of such actions, that will be taken to restore and maintain a S&P BBB- or Moody's Baa3 or above credit rating for ITC Great Plains, Fortis, or the financing affiliate. If ITC Great Plains' plan does not involve taking the

## EXHIBIT A

steps to restore and maintain a S&P BBB- or Moody's Baa3 or above credit rating, for ITC Great Plains, Fortis, or any financing affiliate, then ITC Great Plains shall comprehensively state why it believes the steps necessary to produce that result are not reasonable or necessary in order for it to continue to provide efficient and sufficient service in Kansas. Thereafter, until ITC Great Plains, Fortis, and/or the financing affiliate have regained a corporate credit rating of BBB- or Baa3 or above, ITC Great Plains shall file a status report with the Commission every 60-days detailing the steps it is taking to restore its investment grade credit rating, and support that its ability to provide efficient and sufficient service has not been detrimentally affected by a corporate credit rating below investment grade.

13. For three (3) years from the effective date of the closing of the Transaction, ITC Great Plains will make an annual filing in Docket No. 16-ITCE-512-ACQ or a compliance Docket that is established as a result of the final Commission Order in this proceeding. This filing shall include a report as to compliance with the conditions imposed by the Commission Order approving the Transaction.

## CERTIFICATE OF SERVICE

16-ITCE-512-ACQ

I, the undersigned, certify that the true copy of the attached Order has been served to the following parties by means of

Electronic Service on OCT 11 2016.

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**CERTIFICATE OF SERVICE**

16-ITCE-512-ACQ

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/s/ DeeAnn Shupe  
DeeAnn Shupe

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***EMAILED***

OCT 11 2016

SECTION 1.04 The Closing. Unless this Agreement has been terminated in accordance with Section 8.01, the consummation of the Merger (the "Closing") shall take place at the offices of Baker Botts L.L.P., 30 Rockefeller Plaza, New York, New York 10112 at 10:00 a.m. New York City time on a date to be mutually agreed to by the Parties, which date shall be no later than the third Business Day after the satisfaction or waiver of the conditions to the Closing set forth in Article VII (except for those conditions to the Closing that by their terms are to be satisfied at the Closing but subject to the satisfaction or waiver of such conditions), unless another time, date or place is mutually agreed to in writing by the Parties. The date on which the Closing occurs is referred to herein as the "Closing Date."

SECTION 1.05 Effects of the Merger. The Merger shall have the effects specified herein and in the applicable provisions of the KGCC, including Article 67 thereof. Without limiting the foregoing, from and after the Effective Time, the Surviving Corporation shall possess all of the properties, rights, privileges, powers and franchises of the Company and Merger Sub, and all of the claims, obligations, liabilities, debts and duties of the Company and Merger Sub shall become the claims, obligations, liabilities, debts and duties of the Surviving Corporation.

SECTION 1.06 Organizational Documents. As of the Effective Time, the articles of incorporation of the Surviving Corporation shall be amended and restated to be the same as the articles of incorporation of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended as provided therein and in accordance with applicable Law, except that the name of the Surviving Corporation shall be "Westar Energy, Inc.". As of the Effective Time, the bylaws of the Surviving Corporation shall be amended and restated to be the same as the bylaws of Merger Sub, as in effect immediately prior to the Effective Time, until thereafter amended as provided therein and in accordance with applicable Law, except that the name of the Surviving Corporation shall be "Westar Energy, Inc.".

SECTION 1.07 Surviving Corporation Directors and Officers. As of the Effective Time, (i) the directors of Merger Sub as of immediately prior to the Effective Time shall be the directors of the Surviving Corporation and (ii) the officers of the Company as of immediately prior to the Effective Time shall be the officers of the Surviving Corporation, in each case until their successors have been duly elected or appointed and qualified or until their earlier death, resignation or removal in accordance with the articles of incorporation and bylaws of the Surviving Corporation.

SECTION 1.08 Plan of Merger. This Article I and Article II and, solely to the extent necessary under the KGCC, the other provisions of this Agreement shall constitute a "plan of merger" for purposes of the KGCC.

## ARTICLE II

### EFFECT ON CAPITAL STOCK; EXCHANGE OF CERTIFICATES AND BOOK-ENTRY SHARES

SECTION 2.01 Effect of Merger on Capital Stock.

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