

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

Iowa Coalition for)	
Affordable Transmission)	
)	
v.)	Docket No. EL22-56-000
)	
ITC Midwest, LLC)	

WIRES COMMENTS IN RESPONSE TO COMPLAINT

Pursuant to the Federal Energy Regulatory Commission’s (“FERC” or “Commission”) Notice of Extension of Time issued on May 17, 2022, WIRES hereby submits the following Comments in Response to the Complaint filed by the Iowa Coalition for Affordable Transmission (“Complainants”) in the above-captioned proceeding.¹

WIRES is a non-profit trade association of investor-, publicly-, and cooperatively-owned transmission providers and developers, transmission customers, regional grid managers, and equipment and service companies.² Since its inception, WIRES has focused on supporting investment in needed and beneficial transmission infrastructure – investments that Congress and the Commission have recognized are critical to establish a resilient, reliable, cost-effective, modern, and clean bulk power system. As explained further below, WIRES urges the Commission to deny the complaint.

¹ This filing is supported by the full supporting members of WIRES but does not necessarily reflect the views of the Regional Transmission Operator/Independent System Operator (“RTO/ISO”) associate members of WIRES.

² For more information about WIRES, please visit www.wiresgroup.com.

I. BACKGROUND

In 2007, ITC Midwest LLC (“ITC Midwest”) was created as a wholly-owned subsidiary of ITC Holdings, LLC (“ITC Holdings”) to own and operate certain transferred FERC-jurisdictional transmission assets.³ At that time, ITC Midwest submitted under Federal Power Act (“FPA”) section 205⁴ proposed transmission rates that, among other things, sought approval of use of an actual capital structure targeted to reflect 60 percent equity and 40 percent debt to calculate the overall rate of return in ITC Midwest’s transmission rate formula.⁵ In support of its request, ITC Midwest argued that the Commission had previously approved the use of the same actual capital structure before for another independent transmission company and that the proposed use of an actual capital structure is consistent with Commission precedent and is appropriate from a financial standpoint.⁶

The Commission approved , among other things, ITC Midwest’s proposal to use an actual capital structure targeted to reflect 60 percent equity and 40 percent debt to calculate the overall rate of return as part of its approval of proposed rates ITC Midwest would charge as an independent transmission company.⁷ In doing so, the Commission explained that the acceptance of ITC Midwest’s proposal to use its actual capital structure with a

³ *ITC Holdings Corp.*, 121 FERC ¶ 61,229 (2007) (“2007 Order”).

⁴ 16 U.S.C. § 824d.

⁵ *Id.* at P 8.

⁶ *Id.* at PP 46 and 48.

⁷ *Id.* at P 49.

target equity ratio of 60 percent “reflects the Commission’s preference to use a utility’s own capital structure if the utility issues its own debt without guarantees, has its own bond rating, and has a capital structure within the range of capital structures approved by the Commission.”⁸ Moreover, the Commission rejected protesters’ arguments that ITC Midwest’s proposed equity ratio was too high, finding instead that ITC Midwest’s capital structure was within the range of other similarly situated transmission owners and was consistent with Commission precedent.⁹ As a result, the Commission concluded that “using ITC Midwest’s actual capital structure will not produce unjust and unreasonable rates.”¹⁰ To the contrary, the Commission found that “using ITC Midwest’s capital structure and its actual cost of long-term debt to calculate its weighted cost of capital will reflect its actual financing costs and provide a return sufficient to maintain its debt and corporate credit ratings.”¹¹

On May 10, 2022, Complainants filed a complaint pursuant to sections 206 and 306 of the FPA¹² and Rule 206 of the FERC’s Rules of Practice and Procedure¹³ contending that ITC Midwest’s previously approved capital structure is now unjust and unreasonable

⁸ *Id.* citing *Transcontinental Gas Pipe Line Corp.*, Opinion No. 414-A, 84 FERC ¶ 61,084 at 61,413-415, *reh’g denied*, Opinion No. 414-B, 85 FERC ¶ 61,323 (1998), *petition for review denied*, *North Carolina Utilities Commission v. FERC*, D.C. Cir. Case No. 99-1037 (Feb. 7, 2000) (per curium).

⁹ *Id.* at P 49.

¹⁰ *Id.*

¹¹ *Id.*

¹² 16 U.S.C. §§ 824e and 825e.

¹³ 18 C.F.R. § 385.206 (2022).

and asking the Commission to modify ITC Midwest's existing 60% equity and 40% debt capital structure and establish an equity ratio for ITC Midwest of 53%.

II. THE COMMISSION SHOULD DENY COMPLAINANT'S REQUEST TO ABANDON ITS LONGSTANDING PRECEDENT ESTABLISHING A PREFERENCE FOR USING ACTUAL CAPITAL STRUCTURES FOR RATEMAKING PURPOSES

The Commission's policy and precedent on approval of a utility's capital structure for ratemaking purposes is well established: the Commission uses the operating company's actual capital structure where the operating company: (1) issues its own debt without guarantees; (2) has its own bond rating; and (3) has a capital structure within the range of capital structures approved by the Commission.¹⁴ Commission policy favors using an operating company's actual capital structure unless (a) the company has requested and received a hypothetical capital structure for a transmission project as a rate incentive under Order No. 679, on a case-by-case basis,¹⁵ or (b) the actual capital structure is beyond generally accepted limits so as to cause "anomalous rates of return."¹⁶ The Commission has rejected complaints challenging capital structures where there is no showing that the capital structures employed in formula rates are inaccurate, unreflective of their actual capital structures, or inconsistent with capital structures that have been approved by the Commission for ratemaking purposes.¹⁷

¹⁴ Opinion No. 414-A at 61,415.

¹⁵ Order No. 679, FERC Stats. & Regs. ¶ 31,222 at P 132.

¹⁶ *Ala.-Tenn. Natural Gas Co.*, 38 FERC ¶ 61,251 at 61,849-50.

¹⁷ *Ass'n. of Businesses Advocating Tariff Equity v. Midcontinent Indep. Sys. Operator, Inc.*, 148 FERC ¶ 61,049 at P 195 (2014).

Fifteen years after the Commission approved ITC Midwest’s capital structure using its longstanding methodology, Complainants seek to upend FERC precedent and policy in favor of a more result-oriented outcome. The Commission should reject the complaint for legal and policy reasons.

Under FPA section 206, the proponent of a rate change “bears ‘the burden of proving that the existing rate is unlawful....’ Therefore, unlike section 205, section 206 mandates a two-step procedure that requires FERC to make an explicit finding that the existing rate is unlawful before setting a new rate.”¹⁸ FPA section 206 requires more than a showing that an alternative rate would be just and reasonable to demonstrate that the existing rate is unjust and unreasonable.¹⁹ “The requirement biases Commission action toward preservation of prevailing rates absent a heightened showing,” and “[t]he inertia created by the heightened 206 standard enhances stability and encourages the development of expectations that utilities ... must have to conduct business in a capital-intensive industry.”²⁰

The Complainants do not meet their burden under FPA section 206. The complaint fails to demonstrate that the circumstances under which the Commission authorized ITC Midwest to use its actual capital structure for ratemaking purposes have changed in any material respect. The complaint makes no showing that the capital structure ITC Midwest uses in its formula rate is inaccurate, unreflective of ITC Midwest’s actual capital structure,

¹⁸ *Emera Me. v. FERC*, 854 F.3d 9, 21 (D.C. Cir. 2017) (internal citations omitted).

¹⁹ *PJM Interconnection, LLC*, 177 FERC ¶ 61,209 at P 44 (2021)

²⁰ *Id.*, Commissioner Danly dissenting.

or is inconsistent with other FERC-approved capital structures.²¹ Under Commission precedent, that failure alone warrants dismissal of the complaint.

Instead, the complaint asks the Commission to fundamentally change its well-established policy using a three-pronged test to determine whether a utility's actual capital structure can be used and replace ITC Midwest's actual capital structure with one determined by the mean and median of certain selectively chosen proxy groups. If, as Complainants' propose, challenges to utilities' capital structure can be based on whether their bond ratings mirror that of their parent, or simply because the operating company shares management with its parent, the Commission should anticipate an influx of challenges to utility capital structures. As a result, the Commission should reject the Complainants' request to abandon its precedent and adopt a new test for whether to allow a utility to use its actual capital structure because of the disruptive consequences a significant number of utilities would face as a result.

Finally, there are compelling policy reasons for not changing Commission policy to adopt a methodology for determining a capital structure by use of the mean and median of proxy groups compiled by a witness. Self-evidently, a policy of determining a utility's capital structure by establishing a methodology that is designed to result in increasingly lower rates of return would be at odds with the Commission's goal of facilitating the development of transmission infrastructure in order to address the changing resource mix,

²¹ In fact, the complaint shows that ITC Midwest's equity ratio falls within the range of accepted just and reasonable equity percentages produced by all investor-owned utilities from across the United States. *See* Complaint at p. 5, Proxy Group 1 of Table.

respond to increasing resilience challenges, and meet the nation’s future energy needs.²² Moreover, requiring ITC Midwest to restructure debt during the current time of economic volatility and rising interest rates could bring significant cost risk to ITC Midwest’s customers. To the extent the Commission correctly anticipates the need for planning and building significant additional transmission facilities to accommodate future changes in the resource mix and demand,²³ the Commission needs to retain and implement policies that entice transmission owners to build that transmission. This is especially important for longer-distance, multi-state transmission lines that necessarily involve greater siting and development challenges.

Given the risks involved with transmission development, WIRES has urged the Commission to provide regulatory certainty with respect to its policies impacting investment in transmission so that transmission owners will have the opportunity to earn a stable, just and reasonable return on their investments.²⁴ Similarly, others have also urged the Commission to avoid frequent revisions to transmission policies that “introduce[] regulatory uncertainty that, counterproductively, tends to stifle investment in large capital projects like transmission infrastructure.”²⁵ Accordingly, the Commission should continue

²² See *Building for the Future Through Electric Regional Transmission Planning and Cost Allocation and Generator Interconnection*, 179 FERC ¶ 61,028 (2022).

²³ *Id.* at P 26.

²⁴ See *e.g.*, Supplemental Comments of WIRES at p. 18, Docket No. PL19-04 (June 18, 2020).

²⁵ See Comments of Electricity Consumers Resource Council (“ELCON”) at p. 7, Docket No. RM20-10 (June 25, 2021) (noting a series of changes to Commission transmission incentives policy).

to adhere to its well-established policy on using actual capital structure for ratemaking purposes.

III. CONCLUSION

For the foregoing reasons, WIRES respectfully requests that the Commission deny the complaint.

Respectfully submitted,

/s/ Larry Gasteiger

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June 15, 2022

CERTIFICATE OF SERVICE

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

Dated at Washington, DC this 15th day of June, 2022.

/s/ Larry Gasteiger

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