

ITC Holdings Corp.
Form 8-K
May 23, 2016

**UNITED STATES
SECURITIES AND EXCHANGE COMMISSION**

Washington, DC 20549

FORM 8-K

**CURRENT REPORT
Pursuant to Section 13 or 15(d) of the
Securities Exchange Act of 1934**

Date of Report (Date of earliest event reported): **May 20, 2016**

ITC HOLDINGS CORP.

(Exact Name of Registrant as Specified in its Charter)

Commission File Number: **001-32576**

Michigan
(State of Incorporation)

32-0058047
(IRS Employer Identification No.)

27175 Energy Way, Novi, Michigan 48377
(Address of principal executive offices) (zip code)

(248) 946-3000
(Registrant's telephone number, including area code)

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Not Applicable

(Former name or former address, if changed since last report)

Check the appropriate box below if the Form 8-K filing is intended to simultaneously satisfy the filing obligation of the registrant under any of the following provisions:

- o Written communications pursuant to Rule 425 under the Securities Act (17 CFR 230.425)

 - o Soliciting material pursuant to Rule 14a-12 under the Exchange Act (17 CFR 240.14a-12)

 - o Pre-commencement communications pursuant to Rule 14d-2(b) under the Exchange Act (17 CFR 240.14d-2(b))

 - o Pre-commencement communications pursuant to Rule 13e-4(c) under the Exchange Act (17 CFR 240.13e-4(c))
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Item 8.01 OTHER EVENTS.

Transaction Litigation

As previously disclosed, on February 9, 2016, ITC Holdings Corp (ITC) entered into an Agreement and Plan of Merger (as amended or modified from time to time, the Merger Agreement) with Fortis Inc. (Ultimate Parent), FortisUS Inc. (Parent) and Element Acquisition Sub Inc. (Merger Sub), pursuant to which, upon the terms and subject to the conditions of the Merger Agreement, Merger Sub will be merged with and into ITC (the Merger), with ITC continuing as the surviving corporation and a subsidiary of Parent. ITC is supplementing its disclosure regarding the Merger in connection with a proposed settlement of three of the four litigations brought by purported stockholders of ITC. Nothing in this Current Report on Form 8-K shall be deemed an admission of the legal necessity or materiality under applicable laws of any of the disclosures set forth herein. ITC and the other named defendants continue to deny any wrongdoing alleged in all such litigation.

As previously disclosed in ITC s definitive proxy statement filed with the Securities and Exchange Commission on May 16, 2016 (as amended or supplemented from time to time, the proxy statement/prospectus), purported stockholders of ITC have initiated legal actions challenging the Merger.

On February 26, 2016, an action captioned *Paolo Guerra v. Albert Ernst, et al.*, No. 2016-151709-CB was filed in the Oakland County Circuit Court of the State of Michigan. The complaint names as defendants a combination of ITC and the individual members of the ITC board of directors, Fortis, FortisUS and Merger Sub. The complaint generally alleges, among other things, that (i) ITC s directors breached their fiduciary duties in connection with the merger agreement (including, but not limited to, various alleged breaches of duties of good faith, loyalty, care and independence), (ii) ITC s directors failed to take appropriate steps to maximize shareholder value and claims that the merger agreement contains several deal protection provisions that are unnecessarily preclusive and (iii) a combination of Fortis, FortisUS and Merger Sub aided and abetted the purported breaches of fiduciary duties. The complaints seek class action certification and a variety of relief including, among other things, enjoining defendants from completing the proposed merger transaction, unspecified rescissory and compensatory damages, and costs, including attorneys fees and expenses. On March 14, 2016, the *Guerra* state court action was dismissed by the plaintiff and refiled in the United States District Court, Eastern District of Michigan (the Court), as *Paolo Guerra v. Albert Ernst, et al.*, No 2:16-cv-10914. The federal complaint names the same defendants, asserts the same general allegations and seeks the same types of relief as in the state court case. On March 25, 2016, Guerra amended his federal complaint. The amended complaint drops FortisUS, Fortis and Merger Sub as defendants and adds claims alleging that the defendants violated Sections 14(a) and 20(a) of the Securities Exchange Act of 1934 because the proxy statement/prospectus is allegedly materially misleading and allegedly omits material facts that are necessary to render it non-misleading.

On March 29, 2016, an action captioned *Mehrotra v. Welch, et. al.*, No. 2016-152233-CB was filed in the Oakland County Circuit Court of the State of Michigan naming the individual members of the ITC board of directors, FortisUS and Merger Sub as defendants and asserting the same general allegations and seeking the same types of relief as the other state court actions. On April 22, 2016, the *Mehrotra* state court action was dismissed and refiled in the United States District Court, Eastern District of Michigan, as *Mehrotra v. Welch, et al.*, No. 2:16-cv-11449. The federal complaint names the same defendants, asserts the same general allegations and seeks the same types of relief as in the state court case.

On April 8, 2016, an action captioned *Harold Severance v. Joseph L. Welch, et. al.*, No. 2:16-cv-11293 was filed in the United States District Court for the Eastern District of Michigan by the purported shareholder who had previously sent a demand letter to ITC s board of directors on March 8, 2016. The complaint, which purports to bring claims both directly on behalf of the class and derivatively on behalf of ITC, names the individual members of ITC s board of directors, Fortis, FortisUS and Merger Sub as defendants and ITC as nominal defendant, and asserts the same general allegations and seeks the same types of relief as in the Guerra federal court action.

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Plaintiffs and defendants in these three actions have reached an agreement in principle to settle the actions and release the defendants from all claims relating to the Merger, subject to approval of the Court. ITC continues to believe that the *Guerra*, *Mehrotra* and *Severance* Actions are without merit and that no further disclosure is required to supplement the proxy statement/prospectus under applicable laws. However, to eliminate the burden, expense and uncertainties inherent in litigation, and without admitting any liability or wrongdoing, ITC has determined to make certain supplemental disclosures to the proxy statement/prospectus as set forth below. Nothing in these supplemental disclosures shall be deemed an admission of the legal necessity or materiality under applicable laws of any of the disclosures set forth herein.

ITC and the other named defendants have vigorously denied, and continue to vigorously deny, that they have committed any violation of law or engaged in any of the wrongful acts that were alleged in these Actions.

Supplemental Disclosure

The supplemental disclosure set forth in this Current Report on Form 8-K below should be read alongside the proxy statement/prospectus, and to the extent that information in this Current Report on Form 8-K differs from or updates information contained in the proxy statement/prospectus, this Current Report on Form 8-K supersedes the information contained in the proxy statement/prospectus. Defined terms used but not otherwise defined herein have the meanings set forth in the proxy statement/prospectus.

1. The section of the proxy statement/prospectus titled PROPOSAL 1: THE MERGER Background of the Merger is hereby supplemented as follows:

A. The following disclosure replaces the second full paragraph on page 56 (which paragraph begins On November 5, 2015, ITC engaged) of the proxy statement/prospectus:

On November 5, 2015, ITC engaged Barclays and Morgan Stanley as financial advisors in connection with the strategic review process after considering various factors, including each bank's overall reputation and experience as an investment banking firm, their respective knowledge of the utilities industry generally and ITC's business and operations and other respective capabilities and strengths, and after making the determination that having two financial advisors who had deep experience in the utilities industry would be conducive to maximizing shareholder value.

B. The following disclosure replaces the second sentence in the fourth full paragraph on page 56 (which sentence begins These parties were selected based in part) of the proxy statement/prospectus:

In addition to ITC's desire to preserve the confidentiality of the process, these parties were selected as the most logical group of both potential strategic and financial parties based in part on advice from Barclays and Morgan Stanley in respect of their financial capacity and ability to timely execute a transaction of this size, ability to preserve independence under FERC standards, industry experience and perceived potential interest in a transaction with ITC. On November 10, 2015, Party A declined to participate in the strategic review process despite its preliminary proposal to acquire ITC for US\$39.00 per share in an all-cash transaction.

C. The following disclosure replaces the last sentence in the fourth full paragraph on page 58 (which sentence begins The ITC board of directors also determined) of the proxy statement/prospectus:

The independent directors also determined that Albert Ernst and Hazel O'Leary, both lawyers with extensive utility experience, and Lee Stewart, the lead director and a former investment banker, should oversee the possible selection of independent counsel to the ITC board of directors due to their experience with legal and financial advisors and their status as independent directors.

D. The following disclosure replaces the first paragraph on page 60 (which paragraph begins On December 24, 2015, the ITC board of directors) of the proxy statement/prospectus:

The ITC board of directors, in consultation with representatives of Jones Day, determined that, in accordance with good governance practice, it would be advisable for the ITC board of directors to engage an independent financial advisor to separately advise the board with respect to the strategic assessment process. Upon such determination, on December 24, 2015, the ITC board of directors engaged Lazard to act as the independent financial advisor to the ITC board of directors.

E. The following disclosure replaces the third full paragraph on page 61 (which paragraph begins Later that day, Mr. Perry) of the proxy statement/prospectus:

Later that day, Mr. Perry contacted Mr. Welch by telephone to withdraw the January 11 Fortis Proposal, indicating that Fortis had received an unexpected unfavorable report from a national debt rating agency service with respect to the proposed transaction structure in the January 11 Fortis Proposal. As a result of the withdrawal of the January 11 Fortis Proposal, the Consortium's need for additional time to complete its confirmatory due diligence review and the lack of submissions from any other third party, ITC's management, in consultation with the ITC board of directors, determined it would be advisable to extend the deadline of the strategic review process to give the potentially interested parties additional time to conclude due diligence and develop proposals for consideration.

F. The following disclosure is added following the second sentence in the first paragraph on page 65 of the proxy statement/prospectus:

Morgan Stanley provided information to the ITC Board regarding the relationships between Morgan Stanley and each of Fortis and ITC, including with respect to the aggregate holdings of the common stock of Fortis and ITC held by Morgan Stanley, which were not material.

G. The following disclosure replaces the first and second sentences in the first full paragraph on page 65 (which sentences begin "During the course of the February 8, 2016 ITC board of directors meeting") of the proxy statement/prospectus:

During the course of the February 8, 2016 ITC board of directors meeting, Party G delivered a revised proposal to enter into a transaction with ITC in an all-stock transaction with a fixed exchange ratio, valuing ITC at approximately US\$43.25 per share based upon unaffected trading prices for Party G's common stock and indicating that Party G would require approximately two additional weeks to complete its due diligence. The ITC board of directors, with the assistance of the financial advisors, reviewed the revised Party G proposal, noting that there was a substantial risk that Fortis would abandon its pursuit of ITC, or adversely change the terms of its proposal, were ITC to delay the process given the period of time that Party G indicated it would require to finalize its proposal. In addition, the ITC board of directors, based in part on the advice of the financial advisors, noted that the \$43.25 per share price reflected in Party G's proposal did not take into consideration the impact that the difference between the multiple of earnings at which ITC is valued and the multiple of earnings at which companies in the industry in which Party G operated are valued would have on the pro forma trading multiple of the combined company, which the financial advisors believed would likely result in substantial degradation in value for ITC shareholders if the two companies were combined.

2. The section of the proxy statement/prospectus titled "PROPOSAL 1: THE MERGER - Opinions of ITC's Financial Advisors - Opinion of Lazard" is hereby supplemented as follows:

A. The following disclosure is added following the tenth bullet on page 79 of the proxy statement/prospectus:

ITC Comparable Company Name	Share Price to 2016E EPS (2016 P/E Multiple)	Share Price to 2017E EPS (2017 P/E Multiple)	Enterprise Value to 2016E EBITDA	Enterprise Value to 2017E EBITDA
Consolidated Edison, Inc.	17.7x	17.2x	9.1x	8.7x
Eversource Energy	18.1x	17.1x	10.8x	10.3x
WEC Energy Group, Inc.	19.5x	18.3x	11.4x	10.8x
Xcel Energy Inc.	17.9x	16.9x	9.6x	9.1x

Fortis Comparable Company Name	Share Price to 2016E EPS (2016 P/E Multiple)	Share Price to 2017E EPS (2017 P/E Multiple)	Enterprise Value to 2016E EBITDA	Enterprise Value to 2017E EBITDA
Alliant Energy Corporation	17.9x	16.9x	10.6x	9.6x
Ameren Corporation	17.3x	16.3x	8.2x	7.8x
Canadian Utilities Limited	17.6x	16.4x	10.2x	9.5x
CMS Energy Corporation	19.8x	18.4x	9.7x	9.2x
DTE Energy Company	17.4x	16.4x	9.3x	8.7x
Emera Inc.	19.3x	16.6x	N/A	N/A
WEC Energy Group, Inc.	19.5x	18.3x	11.4x	10.8x
Xcel Energy Inc.	17.9x	16.9x	9.6x	9.1x

Based on Lazard's analysis of the relevant metrics for each of the ITC comparable companies and Fortis comparable companies, including the high and low multiples, as well as its professional judgment and experience, Lazard derived the applied ranges of multiples.

B. The following disclosure is added following the second bullet on page 81 of the proxy statement/prospectus:

The estimated future cash flow for the years 2016 through 2020 that Lazard calculated for ITC, based on financial projections provided to it by ITC, were as follows:

	FY 2016E	FY 2017E	FY 2018E	FY 2019E	FY 2020E
	(in millions of US dollars)				
Future Cash Flow	(63)	17	224	412	468

C. The following disclosure is added following the second paragraph on page 81 of the proxy statement/prospectus:

In calculating the estimated range of weighted average cost of capital for ITC, Lazard used a weighted average of the estimated cost of equity capital and the after-tax cost of debt of 2.7%, based on a target debt to total capitalization percentage of 45%. To calculate the estimated cost of equity, Lazard utilized the capital asset pricing model and incorporated a beta metric of 0.38 (unlevered), a risk-free rate of return of 2.27% and a market risk premium of 7.00%.

In calculating the estimated range of weighted average cost of capital for Fortis, Lazard used a weighted average of the estimated cost of equity capital and the after-tax cost of debt of 3.5%, based on a target debt to total capitalization percentage of 46%. To calculate the estimated cost of equity, Lazard utilized the capital asset pricing model and incorporated a beta metric of 0.40 (unlevered), a risk-free rate of return of 1.92% and a market risk premium of 7.00%.

D. The following disclosure is added following the first table on page 84 of the proxy statement/prospectus:

Lazard's illustrative infrastructure returns analysis is a reference-only analysis that seeks to determine ranges of prices an infrastructure investor may be able to afford based on certain illustrative assumptions, including such investor's target range of internal rates of return (IRR) and assumed incremental debt capacity, among other assumptions. For such analysis, Lazard utilized the ITC management plan between 2016 - 2020 and extrapolations thereafter approved by management of the Company and based on run-rate capital expenditures and assumed earned ROE and capital structure.

3. The section of the proxy statement/prospectus titled PROPOSAL 1: THE MERGER Opinions of ITC's Financial Advisors Opinion of Barclays is hereby supplemented as follows:

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A. The following disclosure replaces the second to last sentence in the first paragraph on page 90 (which sentence begins Based upon these judgments, Barclays selected) of the proxy statement/prospectus:

Based upon these judgments, Barclays' experience in the public utility industry and an analysis of the relevant metrics for each of the ITC selected comparable companies, Barclays selected a range of multiples for ITC and applied such range to the ITC Projections to calculate a range of implied prices per share of ITC common stock.

B. The following disclosure replaces the table on page 90 of the proxy statement/prospectus:

	LTM	P/E	2016E	Price / Book
Consolidated Edison, Inc.	18.8x		17.5x	1.6x
Eversource Energy	18.8x		18.3x	1.7x
WEC Energy Group Inc	20.8x		19.2x	2.1x
Xcel Energy Inc.	18.8x		17.6x	1.9x

C. The following disclosure replaces the first table on page 91 of the proxy statement/prospectus:

Announcement Date	Acquiror	Target	Selected Multiple Ranges		EV/Rate Base
			FY1	P/B	
9/4/2015	Emera	TECO Energy	25.0x	2.5x	2.1x
2/25/2015	Iberdrola USA	UIL Holdings Corp.	21.7x	2.2x	1.9x
12/3/2014	NextEra Energy, Inc.	Hawaiian Electric Industries, Inc.	19.7x	1.9x	1.7x
6/23/2014	Wisconsin Energy Corporation	Integrus Energy Group	20.0x	1.7x	1.5x
4/30/2014	Exelon Corp.	Pepco Holdings, Inc.	22.5x	1.6x	1.7x
12/11/2013	Fortis	UNS Energy	18.0x	2.2x	1.5x
5/29/2013	MidAmerican	NV Energy, Inc.	18.3x	1.6x	1.5x
2/21/2012	Fortis	CH Energy Group	20.2x	2.0x	1.7x
6/23/2011	Gaz Métro	Central Vermont PSC	21.4x	1.7x	1.7x

D. The following disclosure replaces the second to last sentence in the second paragraph on page 91 (which sentence begins Based upon these judgments, Barclays selected) of the proxy statement/prospectus:

Based upon these judgments, Barclays' experience in the public utility industry and an analysis of the relevant metrics for each of the selected precedent transactions, Barclays selected a range of multiples for ITC and applied such range to the ITC Projections to calculate a range of implied prices per share of ITC common stock.

E. The following disclosure replaces the second table on page 91 of the proxy statement/prospectus:

	Implied Value Per Share of ITC common stock	
FY1 P/E	US\$37.12	US\$51.55
EV/Rate Base	US\$20.71	US\$41.70
P/B	US\$17.47	US\$28.11

F. The following disclosure is added following the second to last sentence in the first paragraph on page 92 of the proxy statement/prospectus:

The weighted average cost of capital was derived by application of the capital asset pricing model, taking into account certain metrics including target capital structure, the cost of long-term U.S. Treasury debt, tax rates, unlevered and levered betas for certain selected comparable companies, as well as certain fin