

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

In the Matter of the Joint Application of )  
GridLiance High Plains LLC, GridLiance GP, )  
LLC, and GridLiance Holdco, LP ("GridLiance"), )  
NextEra Energy Transmission Investments, LLC, ) Case No. EM-2021-0114  
and NextEra Energy Transmission, LLC )  
("NextEra Entities") for approval of the )  
Acquisition of GridLiance by the )  
NextEra Entities. )

**APPLICATION TO INTERVENE**  
**OF THE MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

COMES NOW the Missouri Joint Municipal Electric Utility Commission ("MJMEUC"), by and through counsel, pursuant to Commission Rule 4 CSR 4240-2.075, and respectfully files its Application to Intervene in this matter. In support of this Application, MJMEUC states as follows:

1. On October 20, 2020, NextEra Energy Transmission Investments, LLC ("NETI"), and NextEra Energy Transmission, LLC ("NEET") (collectively "NextEra"), as well as GridLiance High Plains LLC ("GridLiance HP"), GridLiance GP, LLC, and GridLiance Holdco, LP (collectively "GridLiance"), together, the "Joint Applicants," filed a Joint Motion For An Order Disclaiming Jurisdiction Over The Proposed Transaction, Or, In The Alternative, Joint Application For Approval Of Proposed Transaction.

2. MJMEUC is a body corporate and politic of the State of Missouri, organized as a joint municipal utility commission pursuant to section 393.700 *et seq.* RSMo., with authority to exercise public powers of a political subdivision of the state for the benefit of the inhabitants of

municipalities jointly contracting to establish MJMEUC. Seventy Missouri municipalities are current parties to the joint contract establishing MJMEUC.

3. MJMEUC played a critical role in the creation of GridLiance, with one of GridLiance's original corporate purposes focusing on developing transmission projects for the benefit of MJMEUC members in the Southwest Power Pool ("SPP"). Specifically, MJMEUC was the first entity to negotiate and enter into a Co-Development Agreement ("CDA") with GridLiance for the purpose of developing such projects. GridLiance, however, failed to develop any said transmission projects for MJMEUC Members in accordance with the CDA.

4. Correspondence, communications, orders, and the decision in this matter should be addressed to:

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5. On October 21, 2020, the Commission issued its *Order Directing Notice, Setting Deadlines for Intervention Requests, and Directing Staff Recommendation*. In that Order, the Commission stated that any application to intervene shall be filed no later than November 10, 2020.

6. In 2018, the City of Nixa, Missouri ("Nixa"), a MJMEUC member, transferred its transmission assets ("Nixa Assets") to GridLiance for the purpose of GridLiance becoming a Transmission Owner ("TO") in SPP. By becoming a TO, upon information and belief,

GridLiance believed it could enhance its ability to develop transmission ownership opportunities for MJMEUC's Members under the CDA. These are the only transmission assets owned by GridLiance in the State of Missouri, and the only assets transferred by a MJMEUC member to facilitate GridLiance's ability to fulfill its purpose.

7. Importantly, in order to protect the Nixa Assets and the people they serve in the event the relationship between MJMEUC and GridLiance did not ultimately succeed, MJMEUC, Nixa, and GridLiance each agreed that if the CDA between MJMEUC and GridLiance was ever terminated, MJMEUC would have the option to re-purchase the Nixa Assets to retain local control and local accountability.

8. Unfortunately, GridLiance failed to perform as desired, and MJMEUC, per the terms of the CDA, terminated the CDA in September of 2019 due to GridLiance's multiple failures. Upon termination of the CDA, MJMEUC exercised its option to re-purchase the Nixa Assets. Immediately thereafter, GridLiance informed MJMEUC it had no intention of honoring MJMEUC's termination of the CDA or MJMEUC's option to re-purchase the Nixa Assets.

9. As a result of GridLiance's refusal to accept the termination of the CDA and honor its obligation to sell the Nixa Assets to MJMEUC, on September 20, 2019, MJMEUC filed an action against GridLiance in the United States District Court for the Western District of Missouri seeking (1) a declaratory judgment that MJMEUC properly terminated its CDA with GridLiance and (2) to enforce its option to purchase the Nixa Assets. This matter is set for trial on March 1, 2021, in front of Judge Harpool in the United States District Court for the Western District of Missouri. All depositions and written discovery were completed before the filing of the Joint Application of GridLiance and NextEra in this proceeding. *See Missouri Joint*

*Municipal Electric Utility Commission v. GridLiance High Plains, LLC*, Case No. 6:19-cv-03338-DPR (W.D. Mo.) (a copy of the First Amended Complaint for Declaratory Judgment and Specific Performance is attached as Exhibit A).

10. Despite multiple depositions in August 2020 and continued conversations between GridLiance and MJMEUC thereafter, GridLiance failed to disclose to MJMEUC that it was attempting to sell its business, including the very assets for which MJMEUC was enforcing its re-purchase option. When MJMEUC discovered through press articles that GridLiance had allegedly agreed to a sale to NextEra, MJMEUC filed a second action in the United States District Court for the Western District of Missouri, again before Judge Harpool, on October 5, 2020. In its second action, MJMEUC requests a declaratory judgment finding that GridLiance has experienced a change in ownership based upon its proposed sale to NextEra, and said change of ownership resulted in MJMEUC having additional rights to terminate its CDA with GridLiance, and, again, exercise its option to re-purchase the Nixa Assets. *See, Missouri Joint Municipal Electric Utility Commission v. GridLiance High Plains, LLC*, Case No. 6:20-cv-03316-MDH (W.D. Mo.) (a copy of the Complaint for Declaratory Judgment and Specific Performance is attached as Exhibit B).

11. In this proceeding before this Commission, GridLiance and NextEra have filed an incorrect and misleading pleading with this Commission, which ignores and seems calculated to circumvent MJMEUC's rights and the authority of the United States District Court in which both of the above-referenced actions are currently pending. In Paragraph 21 of the Joint Application, the Parties claim as follows:

21. None of the Joint Applicants are subject to any pending action or unsatisfied judgment or decision from any state or federal agency or court involving customer service or rates which action, judgment, or decision that has occurred within the last three years. 20 CSR 4240.2-060(1)(K).

12. A pending action concerning a claim of ownership of the very assets that are the subject of this Application necessarily involves customer service or rates, as a transfer of ownership of the assets will directly impact both who serves the customer (whether that is MJMEUC or the Joint Parties) and rates (whether it is a MJMEUC FERC-approved rate or the FERC-approved rate applied by the Joint Parties to the Nixa Assets). To plead otherwise ignores the reality of those actions. Accordingly, the pleading filed by GridLiance and NextEra is both incorrect and misleading.

13. MJMEUC's interest in intervening in this case is not to interfere with the proposed transaction between GridLiance and NextEra, but to preserve all of MJMEUC's rights, claims, and interests pursuant to the terms of MJMEUC's contract with GridLiance—including, but not limited to, its right to re-purchase the Nixa Assets.

14. In light of GridLiance and NextEra's (1) failure to fully disclose to the Commission the existence and details of the pending litigation regarding ownership of the Nixa Assets and the potential impacts that litigation will have on customer service and rates, and (2) request that this Commission grant an expedited procedural schedule<sup>1</sup> in an apparent attempt to gain an order from this Commission transferring the CCN prior to the March trial date regarding the enforcement of MJMEUC's contract rights under the CDA, it is clear that MJMEUC has an

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<sup>1</sup> GridLiance and NextEra asked this Commission to issue a ruling by February 19, 2021, or nine (9) days before the start of the federal trial regarding ownership of the Nixa Assets.

interest that is different from that of the general public in that it could be directly and adversely affected by any decision of this Commission regarding GridLiance and the Nixa Assets. Also, any decision or action by this Commission could be mooted by rulings in the two actions pending in the United States District Court. MJMEUC has direct and immediate interests in this proceeding that are not currently represented in this matter.

15. MJMEUC opposes any action in this case that could negatively impact MJMEUC's rights under its CDA with GridLiance or that could circumvent the United States District Court for the Western District of Missouri's resolution of MJMEUC's two actions pending in that court.

WHEREFORE, MJMEUC respectfully requests that the Commission grant its Application to Intervene on its behalf and on behalf of its members, entitling it to fully participate in this proceeding.

Respectfully submitted,

DATED: November 10, 2020

ARMSTRONG TEASDALE LLP

By: /s/ Jeffrey L. Schultz

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*ATTORNEYS FOR MISSOURI JOINT MUNICIPAL  
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**CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, emailed or hand-delivered to all parties on the official service list for this case on this 10<sup>th</sup> day of November 2020.

/s/ Jeffrey L. Schultz