

**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, )  
and NextEra Energy Transmission, LLC ) Case No. EM-2021-0114  
 (“NextEra Entities”) for approval of the )  
Acquisition of GridLiance by the NextEra )  
Entities )

**RESPONSE TO STAFF MOTION TO SUSPEND**

COME NOW, pursuant to the Commission’s December 23, 2020 Order Directing Responses no later than January 4, 2021 to the *Motion to Suspend Staff Recommendation and Require Joint Applicants to File Status Report* (“Motion to Suspend”) filed by the Staff of the Missouri Public Service Commission (“Staff”), NextEra Energy Transmission Investments, LLC and NextEra Energy Transmission, LLC (collectively, the “NextEra Entities”) and GridLiance High Plains LLC (“GridLiance HP”), GridLiance GP, LLC, and GridLiance Holdco, LP (collectively, “GridLiance”), together, “Joint Applicants,” and respond as follows:

1. Staff’s Motion to Suspend requests that the Missouri Public Service Commission (“Commission”) indefinitely suspend Staff’s obligation to file a report and recommendation (“Report”) and, instead, implement a requirement that Joint Applicants and the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”) file a status report on pending federal litigation no later than January 31, 2021. According to Staff, it should not be required to file a Report until it is clear there will not be multiple requests for approval to own the City of Nixa transmission assets in a relatively short time frame due to the pending federal litigation. For the reasons set forth herein, Joint Applicants request that the Commission direct Staff to issue its Report no later than January 18, 2021.

2. On October 20, 2020, Joint Applicants filed their Joint Application. In the Joint Application, Joint Applicants asserted that:

. . . it is appropriate for the Commission to disclaim jurisdiction because GridLiance HP is presently a wholly-owned subsidiary of GridLiance Eastern Holdings LLC, which is a wholly-owned subsidiary of GridLiance Heartland Holdings LLC, which is a wholly-owned subsidiary of GridLiance Holdco. As a result of the Proposed Transaction, GridLiance Holdco and its general partner will merely have different equity owners.

Joint Application at 7. In the event the Commission ruled it has jurisdiction, Joint Applicants requested the Commission approve the Proposed Transaction as not detrimental to the public interest due to the benefits GridLiance HP would receive from NEET's managerial, technical, and financial capabilities. *Id.* at 10. In addition, Joint Applicants explained that GridLiance HP will continue to be rate-regulated by the Federal Energy Regulatory Commission ("FERC") and has no Missouri retail ratepayers. *Id.* at 3. Further, the Proposed Transaction only pertains to 11 miles of 69 kilovolt transmission facilities in Missouri. Direct Testimony of Hooton at 5.

3. Despite these assertions and facts, Staff's Motion to Suspend would indefinitely place on hold its recommendation on the threshold issue of whether the Commission even has jurisdiction over the Proposed Transaction, based on federal lawsuits initiated by MJMEUC that have no bearing on whether the Commission has jurisdiction over the Proposed Transaction. For this reason alone, Staff's Motion to Suspend should be denied. Indeed, it would be prejudicial to Joint Applicants to suspend ruling on the threshold jurisdictional question, and, if needed, any subsequent consideration of the merits of the Proposed Transaction, because the other regulatory commissions with jurisdiction will rule on the merits of the Proposed Transaction by February 19, 2021.

4. In the FERC proceeding, Joint Applicants fully responded to a deficiency letter requesting additional information on December 16, 2020. Comments on Joint Applicants'

response are due on January 6, 2021. Joint Applicants originally requested a final order on their FERC application from FERC by January 31, 2021 and Joint Applicants reiterated their request for an order by January 31, 2021 in their December 16, 2020 response to FERC's deficiency letter.

5. As in Missouri, Joint Applicants requested orders from the Oklahoma Corporation Commission ("OCC") and Kansas Corporation Commission ("KCC") by February 19, 2021. On December 17, 2020, an Administrative Law Judge for the OCC recommended approval of the transaction and the OCC is required to issue an order on the recommendation by February 19, 2021. In Kansas, the KCC Staff is scheduled to issue a Report and Recommendation by January 6, 2021 and the KCC is scheduled to issue a final order by February 19, 2021. In addition, the Proposed Transaction has already successfully passed the Hart-Scott-Rodino antitrust review process. In light of these facts, Staff's inference that there is no harm to Joint Applicants by an undefined suspension in time of the instant proceeding is incorrect, as such an indefinite suspension is not congruent with the review of other regulatory agencies, and would unduly delay the closing of the Proposed Transaction. Therefore, Staff's Motion should be denied.

6. Staff's Motion to Suspend should also be denied because it is based on an incorrect premise that the MJMEUC-initiated federal cases could be resolved in the near-term, which, in turn, could result multiple changes in ownership and control of the City of Nixa transmission assets in a short period of time. The January 12, 2021 Federal District Court "hearing" referenced by Staff is a telephone conference in chambers regarding all pending motions in both the first and second cases, which have been consolidated: GridLiance HP's motion for summary judgment and MJMEUC's motion for partial summary judgment in the first case, and GridLiance HP's motion to dismiss the second case. *See Missouri Joint Municipal Electric Utility Commission v. GridLiance High Plains LLC*, Case No. 6:19-cv-03338 (Dkt. 98).

7. There has been no indication from the Federal District Court that it intends to issue final dispositive rulings on the motions on January 12, 2021. However, even if the Federal District Court rules on each motion at the January 12, 2021 hearing, Staff's premise that the federal cases could potentially be disposed of on January 12, 2021 is not correct. For example, if the Federal Court grants MJMEUC's partial motion for summary judgment in the first case, the case would still proceed to trial on the counts not resolved by MJMEUC's motion for summary judgment. And if the Federal Court denies the motions, the case would proceed to trial. That trial is currently continued and will be reset at a later date in light of the Federal Court's General Order regarding COVID-19. Therefore, not only will the first case not be finally resolved on January 12, 2021, there is no current timetable even for when a trial would commence.

8. Thus, contrary to Staff's assertion, it is clear that there cannot be multiple changes of ownership of the transmission assets in a relatively short timeframe. Even if MJMEUC prevails on its motion for summary judgment in the first case, given the current state of the pandemic, the trial will not occur for an unknown number of months. Furthermore, the rulings of the trial court could be appealed to the United States Court of Appeals for the Eighth Circuit, and, thereafter, to the United States Supreme Court, which is generally a lengthy multi-year appellate process, not considering motions practice regarding reconsideration and rehearing.

9. Similarly, even if the Federal District Court were to grant GridLiance HP's motion for summary judgment in the first case and grant its motion to dismiss in the second case – which would deny MJMEUC's claims to ownership of the City of Nixa transmission assets prior to 2024, at the earliest – any such ruling could also be subject to a lengthy appeal by MJMEUC.

10. Additionally, MJMEUC's second federal case is premised on MJMEUC's argument that the Proposed Transaction is a change of control under the contract between

GridLiance HP and MJMEUC such that MJMEUC has the right to purchase the City of Nixa transmission assets upon closing of the Proposed Transaction. Thus, while GridLiance disputes MJMEUC's reading of the change of control provision in the contract, it is indisputable that MJMEUC's claim under the second federal case only arises if the Commission's proceeding moves forward and the Proposed Transaction closes. Hence, the pendency of MJMEUC's second case does not support Staff's Motion to Suspend. To the contrary, MJMEUC's second case is predicated on the Commission ruling on the threshold jurisdictional issue, and, if the Commission finds it has jurisdiction, the merits of the Proposed Transaction.

11. Accordingly, Joint Applicants request that the Commission deny Staff's Motion to Suspend, and set a deadline for Staff's Report to be filed no later than January 18, 2021 so that this case may proceed in an orderly and timely fashion. In this regard, Joint Applicants renew their October 20, 2020 Motion for Expedited Treatment of the Joint Application consistent with 20 CSR 4240-2.080 (14). In support of expedited treatment, the Joint Applicants at page 2 of the Motion explained:

There will be no negative impact on the general public, and no negative impact on GridLiance HP's customers, as GridLiance HP has no retail customers within the State of Missouri. Rather, the Proposed Transaction is anticipated to benefit GridLiance HP's Missouri transmission operations through GridLiance HP becoming a member of the NextEra family of companies and thereby retaining its access to financial markets and gaining access to the operational and technical expertise possessed by NEET.

12. Joint Applicants also request that the Commission deny Staff's request to direct MJMEUC and the Joint Applicants to file a status report on the federal litigation cases no later than January 31, 2021, because MJMEUC's federal cases are not relevant to the Commission's determination of whether it has jurisdiction over the Proposed Transaction, and, if it does have jurisdiction, the merits of the Proposed Transaction. Further, the Commission has previously

required MJMEUC to file a notice within two days of a final resolution of the federal litigation, and it is clear, as explained herein, that final resolution of the federal cases will not occur by January 31, 2021

WHEREFORE, Joint Applicants respectfully request the Commission deny Staff's Motion to Suspend and provide the alternative relief requested herein.

Respectfully submitted,

*/s/ Anne E. Callenbach*

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GRIDLIANCE HIGH PLAINS LLC

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon MJMEUC and all parties of record by e-mail or U.S. mail, postage prepaid, this 4<sup>th</sup> day of January, 2021.

*/s/ Anne E. Callenbach*

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