

**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.)	

**RESPONSE TO THE OPPOSITION TO APPLICATION FOR INTERVENTION
OF MISSOURI JOINT MUNICIPAL ELECTRIC UTILITY COMMISSION**

COMES NOW the Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), pursuant to Commission Rule 20 CSR 4240-2.080(13), and in its Response to the Opposition to Application for Intervention of Missouri Joint Municipal Electric Utility Commission filed by NextEra Energy Transmission Investments, LLC, NextEra Energy Transmission, LLC (“NEET”), GridLiance High Plains LLC, GridLiance GP, LLC, and GridLiance Holdco, LP (collectively, the “Joint Applicants”), states as follows:

1. The Joint Applicants imply to this Commission that they will prevail in their litigation with MJMEUC when they claim that GridLiance will continue as owner of the Nixa transmission facilities (the “Nixa Assets”) at the end of the Proposed Transaction. By way of example, the Joint Applicants state in their Opposition to Intervention that “At the close of the Proposed Transaction, GridLiance HP will continue as the owner of Missouri public utility assets subject to the same rights, obligations, and liabilities as it currently holds.” Opposition to Intervention, ¶ 1. However, the Joint Applicants failed to inform this Commission that in first of MJMEUC’s two United States District Court actions

against GridLiance,¹ summary judgment motions filed by both MJMEUC and GridLiance are pending. If the District Court finds in favor of MJMEUC, GridLiance may be required to *immediately* honor MJMEUC’s re-purchase rights of the Nixa Assets, and presumably GridLiance will be required to dismiss this Application, and file an application with this Commission for permission to sell the Nixa Assets to MJMEUC at the previously agreed-upon price.² Similarly, even if MJMEUC does not prevail on its summary judgment motion in the first action, if MJMEUC prevails at trial in the first action, currently set for March 1, 2021, or if MJMEUC prevails in the second action,³ GridLiance may still be required to *immediately* honor MJMEUC’s re-purchase rights and, again, dismiss this Application and file an application with this Commission for permission to sell the Nixa Assets to MJMEUC at the previously agreed-upon price. Furthermore, even if neither of the two District Court actions results in an order requiring an immediate transfer of the Nixa Assets, it is clear from GridLiance’s own admissions that the Nixa Assets must be sold to MJMEUC at the latest by 2026 “in any event.” Specifically, in describing the pending litigation in its purchase agreement with NextEra, GridLiance acknowledged that “Under the terms of the CDA, MJMEUC has an option to purchase those facilities [the Nixa Assets] in 2026 in any event.”⁴ Ultimately, it seems that the Joint Applicants would have been better served, as would judicial economy, to have waited until the District Court ruled on the pending cases before it before approaching this Commission with this premature request, particularly given the lack of a

¹ *Missouri Joint Municipal Electric Utility Commission v. GridLiance High Plains, LLC*, Case No. 6:19-cv-03338-MDH (W.D. Mo.).

² See RSMo §393.190.

³ *Missouri Joint Municipal Electric Utility Commission v. GridLiance High Plains, LLC*, Case No. 6:20-cv-03316-MDH (W.D. Mo.).

⁴ See Plaintiff MJMEUC’s Supplement to Its Reply Suggestions In Support of Motion for Partial Summary Judgment, *Missouri Joint Municipal Electric Utility Commission v. GridLiance High Plains, LLC*, Case No. 6:19-cv-03338-MDH (W.D. Mo.).

dispute between GridLiance and MJMEUC as to the eventuality of the re-purchase of the Nixa Assets by MJMEUC. Nevertheless, whether MJMEUC has an immediate right to purchase the Nixa Assets or a right to purchase those assets no later than 2026, MJMEUC has an interest in this proceeding to protect its repurchase rights in the Nixa Assets.

2. MJMEUC agrees with the Joint Applicants' statement of law in paragraph 2 of their Opposition to Intervention. MJMEUC's interest is unique from that of the general public, and MJMEUC's rights may be adversely impacted by a final order arising from this case without MJMEUC's participation. In addition to the permissive intervention request filed by MJMEUC per the Intervention Rule, MJMEUC also asserts its right to intervene as a matter of right because the subject-matter of this litigation—the control of the Nixa Assets—is the same subject-matter of the two actions pending in the United States District Court, and MJMEUC may be prejudiced or legally bound by any rulings in this case.⁵
3. The Joint Applicants note that MJMEUC stated in paragraph 13 of its Application to Intervene that MJMEUC's interest in intervening in this case is “not to interfere with the proposed transaction between GridLiance and NextEra,” but misleadingly omit the remainder of MJMEUC's statement: that MJMEUC's interest in intervening is “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.” Accordingly, MJMEUC has no interest in interfering with the transaction so long as such transaction does not involve property or rights of MJMEUC.

⁵ Intervention of right exists “when one seeking to intervene claims an interest relating to the transaction that is the subject of the action that is not adequately represented by existing parties and the disposition of the action may as a practical matter impair or impede the applicant's ability to protect that interest.” *Mo.-American Water Co. v. Hall*, 470 S.W.3d 761, 764 (Mo. App. 2015), citing *In re C.G.L.*, 28 S.W.3d at 504 (2000); *See also* Mo. Sup. Ct. R. 52.12

However, as MJMEUC has averred, the Nixa Assets belong to MJMEUC. Indeed, GridLiance and MJMEUC are in agreement that MJMEUC possesses the right to re-purchase the Nixa Assets no later than 2026 at an already agreed-upon purchase price.⁶

Accordingly, the only remaining dispute between GridLiance and MJMEUC involves the timing of that re-purchase—immediately, in 2026, or at some time in between.

4. While the Joint Applicants claim that their Application does not require the Commission to make any decision regarding the ownership of the Nixa Assets, it fails to acknowledge that whether the sale of the Nixa Assets occurs by way of an equity purchase or an asset purchase, this transfer of control of GridLiance involves only one Missouri asset—the Nixa Assets—the ownership and control of which is in dispute in two actions pending in the United States District Court. On the face of the Joint Applicants' Application, it is apparent that the Joint Applicants have requested that this Commission make a decision which will adversely impact MJMEUC, in that this Application will transfer control of GridLiance, and thus the Nixa Assets, to NextEra, and potentially adversely impact MJMEUC's re-purchase rights. As for the Joint Applicants' argument that MJMEUC can only intervene once MJMEUC has been harmed, Joint Applicants provide no authority for such statement of law because no such authority exists.
5. In their Opposition to Intervention, the Joint Applicants cite to case EF-2006-0279,⁷ which appears to have no relevance to this case other than MJMEUC being a party to that case fourteen years ago. In a conclusory statement, the Joint Applicants state that MJMEUC is unable to state any interest in the current docket. Contrary to the Joint

⁶ See Plaintiff MJMEUC's Supplement to Its Reply Suggestions In Support of Motion for Partial Summary Judgment, *Missouri Joint Municipal Electric Utility Commission v. GridLiance High Plains, LLC*, Case No. 6:19-cv-03338-DPR (W.D. Mo.).

⁷ It is assumed that the Joint Applicants intended to cite to EF-2006-0278, as there is no Mo. P.S.C. Case EF-2006-0279.

Applicants' conclusory assertion, MJMEUC has clearly stated its interest in this docket. Notably, in the case cited by the Joint Applicants, in a concurring opinion, MJMEUC was encouraged to resolve its issues regarding Ameren's participation in MISO in a separate docket.⁸ Accordingly, that advice was taken, and MJMEUC's MISO transmission concerns were later litigated before this Commission in a different docket.⁹ The Commission stated in *dicta* in that case, "Far from restricting the ability of interested persons and entities to bring their concerns to the Commission's attention, the Commission wants to encourage such actions."¹⁰ MJMEUC is before the Commission now with such a concern.

6. The Joint Applicants ignore the plain language of the Commission's Intervention Rule, which states as follows:

- (3) The commission may grant a motion to intervene or add new member(s) if—
 - (A) The proposed intervenor or new member(s) has an interest ***which is different*** from that of the general public and which ***may*** be adversely affected by a final order arising from the case (emphasis added); or
 - (B) Granting the proposed intervention would serve the public interest.¹¹

Under subsection (A), MJMEUC is not required to show how its interests ***will*** be harmed, but only that its interest ***may*** be harmed. Here, MJMEUC's interest very obviously ***may*** be harmed if the Joint Applicants request an order from this Commission which is in any way adverse to MJMEUC's ownership rights in the Nixa Assets. And clearly MJMEUC's interest in this case is different from that of the general public, who have no

⁸ See *Application of Union Electric Company*, EF-2006-0279 (2006), Concurring Opinion of Comm. Davis.

⁹ See *In the Matter of the Application of Union Electric Company for Authority To Continue the Transfer of Functional Control of Its Transmission System to the Midwest Independent Transmission System Operator, Inc.*, EO-2011-0128 (2012), 2012 Mo. PSC LEXIS 420 (Mo. P.S.C. April 19, 2012).

¹⁰ *Id.* at *11.

¹¹ See 20 CSR 4240-2.075(3)

ownership rights in the Nixa Assets. MJMEUC meets the standard to be granted intervention in this matter.

7. The Joint Applicants' argument that ownership of transmission assets does not impact customer service or rates lacks merit. Tellingly, the Joint Applicants expressly decline to elaborate upon this argument. Instead, the Joint Applicants simply assert (without explanation as to the relevance of the assertion) that GridLiance will continue to address MJMEUC's allegations in the federal court. Rather than admitting their mistake in either failing to disclose or concealing this matter from the Commission, and taking corrective action to amend their Application to comply with the Application Rule,¹² the Joint Applicants are doubling down and simply ignoring the Application Rule. MJMEUC has requested intervention per the Intervention Rule,¹³ and MJMEUC urges the Commission to uphold and enforce the Intervention Rule in this matter. Per the Intervention Rule, MJMEUC has shown an interest that is different than the general public, and that its rights may be impacted. MJMEUC has also demonstrated that it has a right to intervene separate from that of the Intervention Rule. MJMEUC requests that it receive due process in this matter.
8. Finally, it should be noted that the Joint Applicants did not oppose Evergy's Application for Intervention in this proceeding. Much like Evergy, which has been granted intervention in this proceeding, MJMEUC has significant interest in activities in the Southwest Power Pool, which may adversely impact MJMEUC and its members'

¹² See 20 CSR 4240-2.060(K)

¹³ See 20 CSR 4240-2.075(3)

interests.¹⁴ These interests are different from that of the general public and may be adversely impacted from an order in this case.

WHEREFORE, MJMEUC respectfully requests that the Commission issue an order granting its Application to Intervene in this matter.

Respectfully submitted,

DATED: November 20, 2020

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¹⁴ MJMEUC is both a member and transmission customer of SPP, and has members that are SPP members, transmission owners, and transmission customers. In addition to its member's interests, MJMEUC provides all capacity, energy, and ancillary services for the Missouri Public Energy Pool #1 ("MoPEP") which currently has thirty five Missouri municipal members, and the Southwest Missouri Public Energy Pool ("SWMPEP"), which has two Missouri municipal members, all of whose load is within SPP.

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 20th day of November 2020.

/s/ Jeffrey L. Schultz