

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

**MOTION TO SUSPEND STAFF RECOMMENDATION AND  
REQUIRE JOINT APPLICANTS TO FILE STATUS REPORT**

**COMES NOW** the Staff of the Missouri Public Service Commission (“Staff”), through the undersigned counsel, and for its *Motion to Suspend Staff Recommendation and Require Joint Applicants to File Status Report*, respectfully states as follows:

1. On October 20, 2020, GridLiance High Plains LLC; GridLiance GP, LLC; GridLiance Holdco, LP (collectively “GridLiance”); and NextEra Energy Transmission Investments, LLC; and NextEra Energy Transmission, LLC (collectively “NextEra Entities”) together (collectively “Joint Applicants”) filed a joint application with the Missouri Public Service Commission (“Commission”) regarding the acquisition of upstream ownership interests in GridLiance entities by NextEra Energy Transmission. The joint application requested that the Commission find that the Commission lacks jurisdiction over the transaction or approve the acquisition.

2. The Joint Applicants stated that “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 ... within the last three years.”<sup>1</sup> The Joint Application did not, however, refer to the federal litigation currently pending between Joint Applicant and the Missouri Joint Municipal Electric Utility Commission (MJMEUC).<sup>2</sup>

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<sup>1</sup> Application at 8 ¶ 21.

<sup>2</sup> *Id.* There are currently two pending cases in the United States District Court for the Western District of Missouri. Since the Joint Application, case 6:19-cv-03338 has been consolidated into 6:20-cv-3316.

3. While Joint Applicants requested a Commission order by February 19, 2021, nothing in the Joint Applicant's filing explains the significance of this date.<sup>3</sup>

4. On October 21, 2020, the Commission ordered any application for intervention to be filed no later than November 10, 2020. Additionally, the Commission ordered Staff to file a recommendation or request additional time to file a recommendation no later than November 23, 2020.

5. On October 28, 2020, Evergy Metro, Inc. and Evergy Missouri West, Inc. (collectively "Evergy") filed a motion to intervene. On November 10, 2020, the Commission granted Evergy's motion.

6. On November 10, 2020, MJMEUC filed an application to intervene, citing the currently-pending litigation between MJMEUC and Joint Applicants. On November 12, 2020, the Joint Applicants filed a response in opposition to MJMEUC's application to intervene and on November 20, 2020, MJMEUC responded to the Joint Applicants response to MJMEUC application to intervene. On November 24, 2020, the Joint Applicants replied to MJMEUC's response. On December 2, 2020, the Commission granted MJMEUC's motion to intervene in its *Order Granting Motion to Intervene* ("Intervening Order").

7. On November 23, 2020, Staff filed a Motion for Extension to extend the due date for its recommendation in this matter until December 23, 2020. On that same date, the Commission granted Staff's requested extension.

8. On November 25, 2020, NextEra Entities filed a Motion for Protective Order concerning Staff Data Request 0004. NextEra Entities indicated they would contest any request by Evergy or MJMEUC to obtain the information. On December 16, 2020, the Commission granted the protective order.

9. Since the Joint Applicants' filings, the federal litigation cited In MJMEUC's Application to Intervene were consolidated and are set for hearing on potentially dispositive motions January 12, 2021.<sup>4</sup> The judge in the consolidated federal cases also required the parties to file a proposed scheduling order by January 4, 2021, and a Rule 26 Conference/Disclosure by December 28, 2020.

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<sup>3</sup> Application at 2 ¶ 5. The Testimony of Eric Gleason only attached Fitch Ratings Watch report stating that "The transaction is expected to close in the first-half 2021, subject to the necessary regulatory approvals." (Gleason Direct at EG-2, pdf 15 of 29).

<sup>4</sup> [Case No. 6:19-cv-03338](#) and [Case No. 6:20-cv-03316](#)

10. Also on October 20, 2020, the Joint Applicants filed a request with the Federal Energy Regulatory Commission (“FERC”) seeking authorization where NextEra would acquire the ownership interests of GridLiance. On December 10, 2020, the FERC sent the Joint Applicants a deficiency notice, stating “Please be advised that the application is deficient and the Commission requires additional information in order to process it.”<sup>5</sup> The deficiencies relate to, among other things, the tax treatment of the transaction and the potential for the elimination of Accumulated Deferred Income Taxes (ADIT) to create a step-up in rate base and an increase in the wholesale transmission rates. Joint Applicants provided the additional information on December 16, and FERC issued a notice and setting a comment deadline for January 6, 2021.<sup>6</sup>

11. In the order allowing MJMEUC to intervene, the Commission provided several reasons the Commission allows intervention. The Commission stated in part:

Commission Rule 20 CSR 4240-2.075(3)(B) states that intervention may be granted if it would serve the public interest. The Commission will also grant the intervention of MJMEUC as it would serve the public interest. Multiple changes of ownership and control of transmission assets occurring with[in] a relatively short timeframe, especially when disputed, may impact the service of those disputed transmission assets to the end-user, the public. The undisputed assertion that ownership and control may change at any time via summary judgement adds further weight to this finding.<sup>7</sup>

12. The Commission also ordered MJMEUC to file a notice in EFIS regarding the resolution of the cases currently pending in the United States District Court for the Western District of Missouri within 2 business days of a final resolution in either case.

13. Given the pending actions in federal court (which are currently set for hearing on outstanding motions on January 12, 2021) and the FERC (which has ordered Joint Applicants to provide additional information regarding the transaction), as well as this Commission’s findings and orders in its order granting intervention to MJMEUC, Staff respectfully submits that it would be premature for Staff to file a recommendation on December 23, particularly in light of the fact that the federal court cases could be disposed of based on the January 12 motions hearing.

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<sup>5</sup> FERC Docket EC21-10 (Dec. 10, 2020).

<sup>6</sup> *Id.*

<sup>7</sup> Commission *Order Granting Motion to Intervene*, page 4.

14. Rather than ordering MJMEUC to file a notice in EFIS within 2 business days of a final resolution in either federal district court case Staff requests that the Commission amend the Intervening Order and require Joint Applicants and MJMEUC to file a status report on the now-consolidated federal cases no later than January 31, 2021. Staff also requests that its obligation to file a recommendation be suspended until it becomes clear that multiple changes in ownership and control of the transmission assets at issue will not be occurring in the near future as a result of the federal court cases.

**WHEREFORE**, Staff respectfully submits this *Motion to Suspend Staff Recommendation and Require Joint Applicants to File Status Report*, and hereby requests the Commission amend its Intervening Order and require the Joint Applicants and MJMEUC to file a status report no later than January 31, 2021, and suspend Staff's obligation to file a recommendation until further order of the Commission.

Respectfully submitted,

**/s/ Ron Irving**

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### **CERTIFICATE OF SERVICE**

I hereby certify that copies of the foregoing have been mailed, hand-delivered, transmitted by facsimile, or electronically mailed to all counsel of record this 22<sup>nd</sup> day of December, 2020.

**/s/ Ron Irving**