

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 2nd day of December, 2020.

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)
 (“NextEra Entities”) for approval of the)
Acquisition of GridLiance by the NextEra)
Entities)

File No. EM-2021-0114

ORDER GRANTING MOTION TO INTERVENE

Issue Date: December 2, 2020

Effective Date: December 2, 2020

On October 20, 2020, a joint application was filed with the Missouri Public Service Commission (Commission) requesting either that the Commission approve the acquisition of GridLiance High Plains LLC, GridLiance GP, LLC, and GridLiance Holdco, LP (collectively “GridLiance”) by NextEra Energy Transmission Investments, LLC and NextEra Energy Transmission, LLC (collectively “NextEra”), or that the Commission find it lacks jurisdiction over this matter. The Commission issued notice, and received a timely intervention request on November 10, 2020, from Missouri Joint Municipal Electric Utility Commission (MJMEUC). MJMEUC claimed an interest that is different than that of the general public in that there is an existing contractual relationship between MJMEUC and GridLiance regarding the transmission assets the application seeks to transfer.

The transmission assets are currently the subject of two actions in federal court.¹ MJMEUC states the first matter has a trial date of March 1, 2021. MJMEUC claims that even as discussions regarding settlement of the broken contractual relationship were ongoing, GridLiance failed to disclose the pending sale of the disputed transmission assets to NextEra. Once the sale to NextEra was discovered, MJMEUC filed a second action in federal court. Given the dispute over ownership of the transmission assets at issue in the application, MJMEUC states that its interests could be directly and adversely affected by any decision in this matter.

GridLiance and NextEra (together “Applicants”) objected to intervention by MJMEUC. The Applicants state that their acquisition application does not request the Commission make any decision regarding the contractual relationship with MJMEUC or ownership of the transmission assets. The Applicants correctly state that the Commission is not a court and has no jurisdiction to adjudicate private contractual disputes. The Applicants then argue that due to a lack of jurisdiction over the contractual dispute, the Commission’s decision cannot adversely impact the contractual dispute – thus there can be no adverse effect from a Commission decision in this matter.²

On November 20, 2020, MJMEUC responded to the Applicants’ response. It stated that there are dual summary judgement motions pending, meaning that ownership and control could be ordered transferred at any time. MJMEUC further stated that it not only is seeking permissive intervention per Commission Rule, it also seeks to intervene as a matter of right because the subject matter of this litigation is the same subject matter of two

¹ Case No. 6:19-CV-03338, and Case No. 6:20-CV-03316.

² Opposition to Application for Intervention of Missouri Joint Municipal Electric Utility Commission, filed November 12, 2020, para. 4.

pending actions in federal court.³ MJMEUC stated that GridLiance agrees that MJMEUC possesses the right to re-purchase the disputed transmission assets no later than 2026.⁴ MJMEUC explains its potential adverse impact not in the context of the Commission deciding ownership of the disputed transmission assets, rather in the context that should the Commission approve the acquisition of GridLiance, then control of the disputed transmission assets will transfer to NextEra which may potentially have an adverse impact on MJMEUC's re-purchase rights. MJMEUC highlights that the Commission's intervention rule does not require a showing of how interests will be harmed, only that interests may be harmed. Lastly, MJMEUC asserts a separate interest in this file in that it has significant interest in activities in the Southwest Power Pool, similar to Evergy Metro, Inc. and Evergy Missouri West, Inc., which have previously been granted intervention in this file.

On November 24, 2020, the Applicants filed a further response. In acknowledging MJMEUC's right to re-purchase in the future, Applicants maintain that such further asset transfer would require its own application with the Commission. In the meantime, the control of the disputed assets would remain with GridLiance, thus the acquisition of GridLiance by NextEra cannot negatively impact MJMEUC's re-purchase rights, according to the Applicants. The Applicants also argue that MJMEUC's intervention would not serve the public interest as the issue raised by MJMEUC is a private contractual dispute.

Commission Rule 20 CSR 4240-2.075(3)(A) states that intervention may be granted if the proposed intervenor has an interest different from the general public and which interest may be adversely affected by a final order in the matter. The Commission finds that

³ Response to the Opposition to Application for Intervention of Missouri joint Municipal Electric Utility Commission, filed November 20, 2020, para. 2.

⁴ Response to the Opposition to Application for Intervention of Missouri joint Municipal Electric Utility Commission, filed November 20, 2020, para. 3.

MJMEUC's interest in this application is different from the interest of the general public in that MJMEUC is concerned with a prior and ongoing contractual dispute regarding the transmission assets at issue. As to whether MJMEUC's interests may be adversely affected by a final order arising from this file, the Commission need not determine the likelihood of such harm, only that it may occur. The Commission makes such a determination here. MJMEUC's interests in the physical transmission assets at issue may be adversely affected by a final order.⁵ The nature of that harm and the likelihood that it will occur may be determined through this proceeding.

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 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.

The Commission concludes that the interests described by MJMEUC are different from those of the general public and may be adversely affected by a decision in this matter, thus meeting the requirements of 20 CSR 4240-2.075(3)(A). Further, the Commission finds that granting the proposed intervention will serve the public interest, thus meeting the requirements of 20 CSR 4240-2.075(3)(B). Therefore, the Commission will grant the motion to intervene on both grounds.

⁵ As the Commission has determined in the affirmative as to MJMEUC's passive intervention request, MJMEUC's second passive intervention request, its interest in the Southwest Power Pool, and its request for intervention as a matter of right will not be taken up.

THE COMMISSION ORDERS THAT:

1. MJMEUC's Application to Intervene is granted.
2. Within 2 business days of a final resolution in either Case No. 6:19-CV-03338 or Case No. 6:20-CV-03316, MJMEUC shall file a notice regarding such resolution in EFIS.
3. This order shall be effective when issued.



BY THE COMMISSION

A handwritten signature in black ink that reads "Morris L. Woodruff".

Morris L. Woodruff
Secretary

Silvey, Chm., Kenney, Rupp, Coleman, and
Holsman CC., concur.

Hatcher, Regulatory Law Judge