

**STATE OF MISSOURI
PUBLIC SERVICE COMMISSION**

At a session of the Public Service Commission held by telephone and internet audio conference on the 17th day of February, 2021.

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

ORDER DISMISSING JOINT APPLICATION

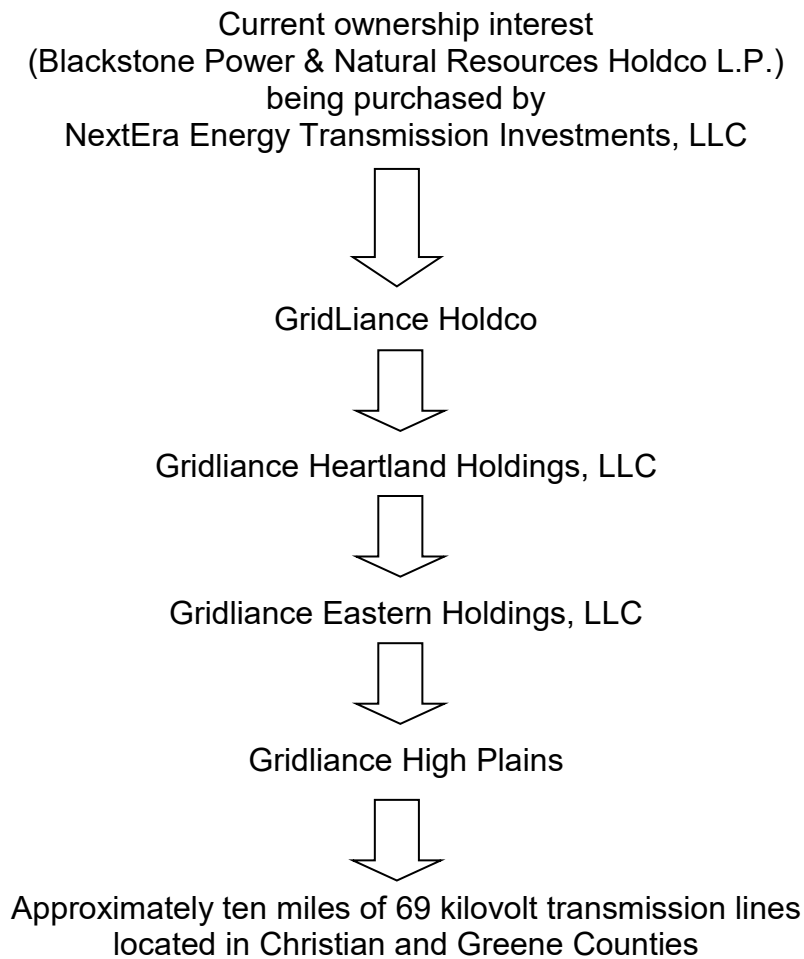
Issue Date: February 17, 2021

Effective Date: March 19, 2021

On October 20, 2020, a joint application was filed with the Missouri Public Service Commission (Commission) requesting either that the Commission approve an acquisition of certain electrical transmission assets pursuant to Section 393.190, RSMo (2016), or that the Commission find it lacks jurisdiction over the matter. The joint applicants are GridLiance High Plains LLC, GridLiance GP, LLC, GridLiance Holdco, LP, NextEra Energy Transmission Investments, LLC, and NextEra Energy Transmission, LLC (altogether, "the Joint Applicants"). The Joint Applicants also requested a waiver of the Commission's rule requiring sixty-day notice of case filing. On January 5, 2021, the Commission directed the filing of briefs regarding the issue of the Commission's statutory authority.¹ The Commission herein decides the issue of its statutory authority and dismisses the joint application.

Joint Applicants state that the transaction involves a non-regulated entity acquiring ownership interest in a non-regulated holding company. Specifically, NextEra Energy Transmission Investments, LLC will acquire one hundred percent of the limited partnership interests in GridLiance Holdco. GridLiance High Plains is an indirect wholly-owned subsidiary of GridLiance Holdco.

A graphic showing the ownership structure may prove helpful:



GridLiance Holdco is the entity being purchased, and its ownership is the only thing that will change under the proposed transaction. Stated another way, an entity not subject

¹ The Missouri Supreme Court has provided guidance on discussing jurisdiction versus statutory authority. The Commission will use statutory authority in what has been previously referred to as jurisdiction in this file. *Cass County v. Director of Revenue*, 550 S.W.3d 70, 74 (Mo. banc 2018).

to the Commission's statutory authority, NextEra Energy Transmission Investments, LLC, is purchasing GridLiance Holdco, which is also not subject to the Commission's statutory authority but which owns entities that ultimately own an electric corporation that is subject to the Commission's statutory authority, GridLiance High Plains.

GridLiance High Plains is a public utility holding a certificate of convenience and necessity from the Commission, granted in files EA-2016-0036 and EA-2019-0012. GridLiance High Plains is not rate-regulated by the Commission and has no Missouri retail ratepayers. GridLiance High Plains is within the statutory authority of the Commission as it is an electrical corporation and a public utility.² The transaction at issue will leave in place the subsidiaries of GridLiance Holdco, including GridLiance High Plains, replacing only the top line of the above graphic. After closing on the proposed transaction, GridLiance High Plains along with GridLiance Holdco, will be subsidiaries of NextEra Energy Transmission Investments, LLC.

Joint Applicants argued that Section 393.190.1, RSMo (2016), the statute that requires Commission approval of certain transfers of utility property, does not apply to the proposed transaction. On January 25, 2021, the Staff of the Missouri Public Service Commission (Staff) filed its response reaching the same conclusion. No other party responded to the question of the Commission's statutory authority.³

Whether the Commission has statutory authority in this file is solely a question of law. Moreover, the facts as pertain to this dismissal are not in dispute.

² Section 386.020(15) and (43) RSMo (Supp. 2019).

³ Missouri Joint Municipal Electric Utility Commission replied that it took no position on the Commission's statutory authority.

The Commission makes the following conclusions of law. Section 393.190.1, RSMo (2016) requires Commission approval of certain transfers of utility property owned by electrical corporations. In pertinent part, the statute reads:

No electrical corporation...shall hereafter sell [or] transfer...any part of its franchise, works or system...without having first secured from the commission an order authorizing it so to do.

The legal issue centers on whether the transaction (the sale of ownership interests in a non-regulated holding company, which indirectly owns a Missouri regulated utility), involves: a) an electrical corporation; and b) the selling or transferring any part of its utility-provision-related property. The Joint Applicants assert that the transfer of property taking place is not ownership of the regulated entity GridLiance High Plains, rather the transfer of property is the ownership of GridLiance Holdco. If this transaction proceeds, GridLiance High Plains will retain all of its utility assets, and will simply be owned by a different holding company. GridLiance High Plains, the only entity regulated by the Commission in this joint application, is not disposing of its franchise, works or system. As the Commission's statutory authority pursuant to Section 393.190.1 applies only to GridLiance High Plains, and GridLiance High Plains will continue to exist and operate as it does currently, there is no transfer of utility assets by GridLiance High Plains to which the Commission's statutory authority applies.

Ultimately, Joint Applicant's request that the Commission find it does not have statutory authority in this file is uncontested. Based on the briefs of the parties and on the Commission's own research and review of the law, and as applied to the facts of the proposed transaction, the Commission finds that it does not have statutory authority to act in this file. The application will be dismissed.

This order and finding is consistent with prior Commission orders in which the Commission determined that there is nothing in the statutes that confers jurisdiction to examine the acquisition of a non-regulated corporation by another non-regulated corporation (or two non-regulated parent corporations), even though one of them may own a Missouri-regulated utility company. Comparable File Nos. include, but are not limited to, the following:

- WO-2002-206, acquisition of American Water Works Company by RWE AG, two non-regulated entities where American Water Works owns Missouri-American Water Company, a Commission-regulated utility. The Commission found no statutory authority to review the acquisition.
- WM-99-224, merger of American Water Works Company and National Enterprises, two non-regulated entities where American Water Works owns Missouri-American Water Company, a Commission-regulated utility. Moreover, National Enterprises owns Continental Water Company which owns St. Louis County Water Company, a Commission-regulated utility. The Commission found no statutory authority to review the merger.

Finally, the Commission will grant the Joint Applicants' request for waiver of the sixty-day case filing notice requirement under 20 CSR 4240-4.017(1)(D). The Commission finds good cause exists for waiver based on the Joint Applicant's verified declaration that they had no communication with the Commission regarding substantive issues likely to arise in this file within 150 days before filing their application.

THE COMMISSION ORDERS THAT:

1. The sixty-day notice of case filing requirement is waived for good cause found pursuant to 20 CSR 4240-4.017(1)(D).
2. The application of the Joint Applicants is dismissed for lack of statutory authority.

3. This order shall become effective March 19, 2021.
4. This file shall close on March 20, 2021.



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