

**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)

**RESPONSE TO ORDER REGARDING ISSUE OF
THE COMMISSION’S JURISDICTION**

COMES NOW the Staff of the Missouri Public Service Commission (“Staff”), through the undersigned counsel, and for its *Response to Order Regarding Issue of the Commission’s Jurisdiction*, respectfully states as follows:

1. On October 20, 2020, GridLiance High Plains LLC (GridLiance High Plains); GridLiance GP, LLC; GridLiance Holdco, LP (collectively “GridLiance”); 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 statutory authority to review or approve the acquisition at issue in this case.

2. On January 5, 2021, the Commission, on its own motion, requested from all parties briefs on whether the Commission has jurisdiction¹ over the matter.

¹ The Missouri Supreme Court has cautioned against “sloppy” discussions of jurisdiction in administrative cases. *Cass County v. Director of Revenue*, 550 S.W.3d 70, 74 (Mo. banc 2018). Administrative bodies such as the Commission are “merely conferred statutory authority to take certain actions” *Id.* They are not constitutionally vested with “subject matter jurisdiction” like the courts of the state. *Id.* Accordingly, where Staff uses the word “jurisdiction,” it means “statutory authority to act.”

CORPORATE STRUCTURE AND TRANSACTION

3. GridLiance High Plains (formerly known as South Central MCN LLC) was granted a Line Certificate of Convenience and Necessity by the Commission effective August 2, 2016² and another Certificate of Convenience and Necessity effective December 29, 2018³ and is therefore subject to the Commission's jurisdiction under Section 393.190 RSMo. According to the Joint Application, GridLiance High Plains is a wholly-owned direct subsidiary of GridLiance Eastern Holdings, LLC. GridLiance Eastern Holdings, LLC is a wholly-owned direct subsidiary of GridLiance Heartland Holdings, LLC which is wholly owned by GridLiance Holdco.

4. Holding a Certificate of Convenience and Necessity, GridLiance High Plains is subject to Section 393.190.1 RSMo which restricts its sale without the Commission's approval. As discussed in their October 20, 2020 Joint Application, NextEra Energy Transmission Investment, LLC (NETI), a non-regulated entity, will acquire two non-regulated entities, GridLiance Holdco and GridLiance GP, LLC.

ANALYSIS

5. Under Section 393.190.1, an electric corporation cannot "sell, assign, lease, transfer, mortgage or otherwise dispose of or encumber the whole or any part of its franchise, works or system, necessary or useful in the performance of its duties to the public, nor by any means, direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility, without having first secured from the commission an order authorizing it so to do." § 393.190.1, RSMo (2016).

² See EA-2016-0036.

³ Granted in EA-2019-0112.

6. Under Section 393.250, “[r]eorganizations of ... electrical corporations ... shall be subject to the supervision and control of the commission, and no such reorganization shall be had without the authorization of the commission.” § 393.250.1, RSMo (2016). Further, “[a]ny reorganization agreement before it becomes effective shall be amended so that the amount of capitalization shall conform to the amount authorized by the commission,” and “[t]he commission may by its order impose such condition or conditions as it may deem reasonable and necessary.” § 393.250.2, RSMo (2016).

7. In 2001, the Commission declined to review under Section 393.190 the proposed acquisition of American Water Works Company (AWWC) by RWE AG, a German Corporation, where neither AWWC nor RWE AG were regulated utilities under the Commission’s authority, AWWC was the parent company of the regulated water corporation Missouri-American Water Company, and Missouri-American Water Company would remain a wholly owned and regulated subsidiary of AWWC.⁴ The Commission concluded, “there is nothing in the statutes that confers [sic] jurisdiction to examine the acquisition of a non-regulated corporation by another non-regulated corporation, even though one of them may own a Missouri-regulated utility company.”⁵

8. Where the Commission has exercised authority to review the acquisition of an unregulated parent corporation, it has been where the acquisition involved an encumbrance of regulated utility assets related to the debt to fund the acquisition.⁶

⁴ *In the Matter of the Proposed Acquisition of Missouri-American Water Co. and American Water Works Co. by the German Corp. RWE AG*, Case No. WO-2002-206 (PSC, Dec. 13, 2001).

⁵ *Id.*

⁶ *In the Matter of the Joint Application of AIP Project Franklin Bidco, Inc., Veolia Energy North America Holdings, Inc., Thermal North America Holdings, Inc., Veolia Energy Mo., Inc., and Veolia Energy Kansas City, Inc., for Approval of Indirect Merger by Stock Acquisition and Related Encumbrances*, Case No. HM-2020-0039 (PSC, Oct. 30, 2019).

9. The Commission's reading of Section 393.190.1 has not construed the phrase "direct or indirect, merge or consolidate such works or system, or franchises, or any part thereof, with any other corporation, person or public utility" so broadly as to apply to the transaction at issue here. Staff is unable to find any case law indicating that the Commission's construction of Section 393.190 is incorrect.⁷ Cases interpreting other states' public utility laws are not consistent, turn on provisions specific to those states' laws, and in any event are not binding on the Missouri Commission. *Office of Pub. Counsel .v Evergy Mo. West, Inc.*, 609 S.W.3d 857, 869 (Mo. App. W.D. 2020).

10. Here, the proposed acquisition of the parent corporation of GridLiance is similar to the acquisition at issue in the *Missouri-American Water Company* case. GridLiance Holdco and GridLiance GP, LLC, are not regulated by the Commission. Nor is NextEra Energy Transmission Investment, LLC. After the acquisition of GridLiance Holdco and GridLiance GP, LLC by NextEra Energy Transmission Investment, LLC, GridLiance High Plains will maintain its current status as an electrical corporation, it will continue to own and operate the utility assets located in the State of Missouri, and it will still be subject to the jurisdiction of the Commission. Unlike the acquisition at issue in the *Veolia* case, the utility assets of GridLiance High Plains will not be encumbered as part of the transaction in this case.

⁷ Appellate cases construing Section 393.190 have not addressed the type of transaction at issue here, and have instead focused on procedural issues or what standard the Commission must use to review transactions that are within the scope of 393.190. *E.g.*, *State ex rel. Praxair, Inc. v. Pub. Serv. Comm'n*, 344 S.W.3d 178 (Mo. banc 2011) (procedural issues decided); *State ex rel. AG Processing, Inc. v. Pub. Serv. Comm'n*, 120 S.W.3d 732 (Mo. banc 2003) (Commission must consider acquisition premium in conjunction with other issues when evaluating whether a proposed merger would be detrimental to the public). Cases interpreting other states' public utility laws are not binding on the Missouri Commission. *Office of Pub. Counsel .v Evergy Mo. West, Inc.*, 609 S.W.3d 857, 869 (Mo. App. W.D. 2020).

WHEREFORE, Staff respectfully requests that the Commission accept this statement and analysis of the Commission's statutory authority, follow previous rulings involving non-regulated entities, and find that the Commission lacks jurisdiction over this transaction and grant such other and further relief as it deems just in the circumstances.

Respectfully submitted,

/s/ Ron Irving

Ron Irving
Associate Counsel
Missouri Bar No. 56147
Attorney for the Staff of the
Missouri Public Service Commission
P.O. Box 360
Jefferson City, MO 65102
573-526-4612(Voice)
ron.irving@psc.mo.gov

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 25th day of January, 2021.

/s/ Ron Irving