

**BEFORE THE PUBLIC SERVICE COMMISSION  
OF THE STATE OF MISSOURI**

In the Matter of a Working Case to	)	
Consider Policies to Improve	)	File No. EW-2016-0313
Electric Utility Regulation	)	

**COMMENTS OF GRIDLIANCE HEARTLAND, LLC**

GridLiance Heartland LLC (GridLiance) submits these comments in this working docket as requested in the Commission’s June 8, 2016, Order.

**INTRODUCTION**

GridLiance is the nation’s first competitive transmission company focused on collaborating with municipal utilities, cooperative utilities, and joint action agencies and districts (Public Power). Through its subsidiary transmission companies formed to operate in each Regional Transmission Organization (RTO),<sup>1</sup> GridLiance will jointly plan, develop, own, and operate transmission assets with Public Power. GridLiance’s mission is to provide its Public Power partners with opportunities to invest in regulated transmission development projects, enabling them to earn margins from regionally funded projects to offset transmission rate increases, as well as receive other benefits, including lower energy and delivery costs and increased reliability to their customers, while providing greater access to alternative energy sources.

GridLiance seeks to establish long-term agreements with all interested Public Power utilities. It currently has 30-year joint development agreements with the Missouri Joint Municipal Electric Utility Commission (MJMEUC), Oklahoma Municipal Power Authority (OMPA), Tri-County Electric Cooperative, Inc. in Oklahoma (Tri-County), and the Kansas Power Pool. GridLiance is negotiating CDAs with other Public Power utilities in SPP, MISO, and ERCOT. South Central has purchased approximately 410 miles of 69 kV and 115 kV transmission lines from Tri-County. South Central also is in the process of purchasing

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<sup>1</sup> South Central MCN LLC (South Central) and Midcontinent MCN LLC are GridLiance’s wholly owned subsidiaries operating in the Southwest Power Pool, Inc. (SPP) and Midcontinent Independent System Operator, Inc. (MISO) regions, respectively.

transmission assets in Missouri from the City of Nixa and has an Application for a Certificate of Convenience and Necessity (CCN) pending before the Commission. See, *File No. EA-2016-0036, In the Matter of the Application of South Central MCN, LLC for Approval of Transfer of Assets and a Certificate of Convenience and Necessity*. Confidential negotiations are under way for additional acquisitions in multiple RTOs.

As a transmission-only utility (Transco), GridLiance has an interest in seeing that state law and policy reflects the vast changes that have been occurring in transmission development over the past few years. Particularly, with the Federal Energy Regulatory Commission's (FERC) issuance of its Order No. 1000, many new Transcos have been created, most being affiliated with an incumbent utility, but a few, like South Central, that are independent of incumbents. The Transco business model was not contemplated when the Commission was created over 100 years ago. As such, laws and policies need to be updated to embrace this new industry paradigm and the benefits it delivers to ratepayers.

## **DISCUSSION**

### ***The Changing Landscape for Transmission Providers***

The evolving model for transmission development, including the implementation of competitive project selection, has created new opportunities for Transcos to construct, own, and operate transmission infrastructure. Like the independent power producers that were created in response to the FERC's pro-competition policies of the last century, many Transcos have been created in response to this century's efforts to bring the benefits of competition to ratepayers through transmission development.

Transcos are the result of a convergence of influences at the federal and state levels, beginning in the 1990s. Utility restructuring policies in many states encouraged and sometimes mandated divestiture of

transmission assets by the local utility.<sup>2</sup> In other circumstances, companies made a business decision to divest transmission assets to an independent transmission company. For example, several transmission-owning vertically integrated utilities, such as Ameren Missouri, have divested all of their transmission assets to transmission-only subsidiaries.

At the federal level, RTOs grew out of FERC Order Nos. 888<sup>3</sup> and 889,<sup>4</sup> where FERC proposed the concept as one way for existing tight power pools to satisfy the requirement of providing non-discriminatory access to the transmission system. Subsequently, in Order No. 2000<sup>5</sup>, the Commission encouraged the voluntary formation of RTOs to administer the transmission grid on a regional basis throughout North America (including Canada).<sup>6</sup> Since that time, the RTOs in Missouri, MISO and SPP, have developed comprehensive transmission planning processes that have been thoroughly scrutinized and approved by FERC. MISO developed its “MISO Transmission Expansion Planning Process” (MTEP) to ensure the reliable operation of the transmission system, support achievement of state and federal energy policy requirements, and enable a competitive electricity market to benefit all customers. The planning process, in conjunction with an inclusive, transparent stakeholder process, must identify and support development of transmission infrastructure that is sufficiently robust to meet local and regional reliability standards, enable competition among wholesale capacity and energy suppliers in the MISO markets, and allow for competition among transmission developers in the assignment of transmission projects. Likewise, SPP maintains its “SPP Transmission Expansion Plan” which is a comprehensive listing of all transmission

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<sup>2</sup> For example, in 2002, public utilities in Michigan formed Michigan Electric Transmission Company (METC) and International Transmission Company (ITC) and spun off their existing transmission assets to the newly formed companies.

<sup>3</sup> Order No. 888, *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services By Public Utilities*, 75 FERC ¶ 61,080 (1996).

<sup>4</sup> Order No. 889, *Open Access Same-Time Information System (Formerly Real-Time Networks) and Standards of Conduct*, 75 FERC ¶ 61,078 (1996).

<sup>5</sup> Order No. 2000, *Regional Transmission Organizations*, 89 FERC ¶ 61,285 (1999).

<sup>6</sup> See Regional Transmission Organizations (RTO)/Independent System Operators (ISO), available at <http://www.ferc.gov/industries/electric/indus-act/rto.asp>.

projects in SPP for the 20-year planning horizon. SPP created a Competitive Transmission Process Task Force (CTPTF), which assists SPP members and staff with supporting and responding to the FERC Order No. 1000 issues which impact SPP and its stakeholders. CTPTF will coordinate developing solutions and guidance to the issues presented from staff and stakeholders. These procedures consider a wide range of potential transmission and non-transmission solutions for improving system reliability, enhancing market efficiency, and satisfying public policy requirements, and provide for analysis by stakeholders, the relevant RTO's staff, as well as the RTO's board of directors.

In this environment, Transcos have crafted a variety of unique business models. For instance, American Transmission Company, LLC is a Transco whose equity is jointly owned by investor-owned, and Public Power entities. Project-specific Transcos, such as the subsidiaries of Clean Line Energy Partners, have also been formed to develop new merchant transmission projects. As noted above, ITC and METC were formed in response to state laws mandating Michigan utilities' divestiture of their transmission assets.<sup>7</sup> More recently, Transcos have been formed to develop regional transmission projects in accordance with FERC's Order No. 1000, the cost of which are broadly allocated across a multi-utility footprint through a RTO tariff. Transcos will become even more common as the RTOs begin overseeing the development of a larger number of projects pursuant to Order No. 1000 and expand the use of competitive processes for the selection of transmission project developers.

As responsibility for transmission planning and development shifts from the local utility to regional transmission planning organizations and Transcos, the concept of efficient regional transmission development will only be successful if it can coexist with the regulatory models state commissions carry out. Federal and state regulators each exercise jurisdiction over different aspects of transmission facilities. Generally, FERC sets the rules for how transmission facilities are planned, their costs recovered, and their

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<sup>7</sup> See, S.B. 937, 90th Leg., Reg. Sess. § 10w (Mich. 2000).

terms and conditions of use, while state commissions generally control where transmission is sited in their states, whether a particular entity is qualified to own and operate transmission facilities in their states, and how rates of utilities serving end-use retail customers reflect FERC-approved transmission rates. Most of the current federal and state statutory framework governing transmission regulation was enacted in the early 20th century, with the transmission development model of the early 20th century in mind (transmission developed by a vertically integrated utility for use by that utility).

Thus, “states have traditionally assumed all jurisdiction to approve or deny permits for the siting and construction of electric transmission facilities.”<sup>8</sup> Many states have enacted statutes related to energy facility siting that cover transmission facilities.<sup>9</sup> Under those authorities, state regulators or siting boards often determine, either under express statutory grants or de facto, whether a proposed project as a whole is in the public interest. A state permit to construct a transmission line often takes the form of a certificate of convenience and necessity (CCN).<sup>10</sup> Over forty states require permits and siting approval for high-voltage electric transmission lines within their borders. In most of those states, the public utilities commission permits and sites transmission lines; a few states have dedicated facility siting agencies.<sup>11</sup>

Unsurprisingly, given the focus of both federal and state regulatory schemes on transmission, the existing framework often results in redundancies, unnecessary expense, delays and general regulatory inefficiencies. At worst, it can produce contradictory results. For example, by withholding authority to construct a disfavored project or developer, states can erect barriers to regional transmission development and competitive solicitations.<sup>12</sup> State utility commissions may also hinder the ability of regional planners to

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<sup>8</sup> James J. Hoecker and Douglas W. Smith, *Regulatory Federalism and Development of Electric Transmission: A Brewing Storm?* 35 ENERGY L.J. 1 at 82 (2014).

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

<sup>11</sup> *Id.*

<sup>12</sup> See Drew Thornley, Ctr. for Energy Policy & the Env't, *Regulatory Barriers to a National Electricity Grid*, ENERGY POL'Y & ENV'T REP., Sept. 2010, available at [http://www.manhattan-institute.org/pdf/eper\\_06](http://www.manhattan-institute.org/pdf/eper_06).

select new entities under competitive processes to construct transmission projects within a state by restricting access to public utility status, which is often a condition for obtaining a CCN and accompanying authority for eminent domain.<sup>13</sup>

### ***FERC Order No. 1000 Expands the Transmission Paradigm***

Order No. 1000 opened the door to the benefits of competition in transmission ownership.<sup>14</sup> The fundamental underpinning of the Order was the FERC's finding that competition for transmission construction would lower costs to consumers.<sup>15</sup> Another key component of Order No. 1000 is putting further teeth into the prior orders by requiring transmission planning and cost allocation on a regional and interregional basis. The regional plan must identify transmission needs, and evaluate and select solutions that are more efficient or cost-effective than individual solutions developed by each of the individual transmission providers in a region. As part of this regional transmission planning process reform, FERC ordered the elimination of the incumbent transmission providers' "rights of first refusal" to build and own regional transmission for projects that are regionally cost allocated. Instead, FERC has mandated that the future construction and ownership of all regional transmission projects receiving regional cost allocation be open to both incumbent utilities and non-incumbent transmission developers on a competitive basis, subject to approved qualification criteria. This opening of regional transmission development to competitive processes will provide substantial benefits to ratepayers as new Transcos (including some that have been formed by existing utilities to develop transmission outside of their certificated areas) compete to develop new transmission. FERC affirmed its commitment to competitive transmission development in its initial orders on the Order No. 1000 compliance filings by rejecting any special legal protection of asserted

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<sup>13</sup> For example, the Arkansas Public Service Commission denied a Transco public utility status. See *In the Matter of the Application of Plains and Eastern Clean Line LLC for a Certificate of Public Convenience and Necessity to Construct, Own and Operate as an Electric Transmission Public Utility in the State of Arkansas*, Docket No 10-041-U, Order No. 9, (2011).

<sup>14</sup> Order No. 1000, *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, 136 FERC ¶ 61,051 (2011).

<sup>15</sup> *Id.*

exclusive rights on the part of incumbent transmission owners to build transmission. The benefits of competition are already being seen in RTOs who have conducted competitive solicitations. **Exhibit A** attached hereto contains a summary of recent RTO awards with estimated savings achieved.

Under Order No. 1000, the regional transmission planning processes must also consider transmission needs driven by public policy requirements established by statutes and regulations of federal, state and local governmental entities. Such requirements include renewable energy and environmental requirements, but there are other public policy objectives that states could endorse such as increasing Public Power transmission reliability and ownership, and participation in the regional planning process, where GridLiance's model is focused. Planning for public policy requirements will be a major change and could lead to significant expansion of transmission to meet state requirements because: (1) much of the renewable generation potential is remote from load centers in the United States; and (2) policies promoting Public Power involvement could enhance the reliability of transmission outside of the traditional utilities' footprints. In short, Order No. 1000 will increase opportunities across the United States for investment in new transmission projects, with non-incumbent transmission providers playing an increasing role.

***Missouri Law and Regulatory Policy May Not Be in Sync With the New Transmission Paradigm***

The Commission was created in 1913 to “administer, construe and enforce the laws of this State governing the rates, service, the issue of bonds and stock, etc., by common carriers, gas, electrical and telephone companies, etc., which are engaged in serving the public” in Missouri. *State ex rel. Pub. Serv. Comm'n v. Roach*, 165 S.W. 703-04 (Mo. 1914). Just like in Missouri, most of the current federal and state statutory framework governing transmission regulation was enacted in the early 20th century, with the transmission development model of the times in mind, *i.e.*, transmission developed by a vertically integrated utility for use by that utility.<sup>16</sup> Changes in the transmission development arena—regionalism,

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<sup>16</sup> James J. Hoecker and Douglas W. Smith, *Regulatory Federalism and Development of Electric Transmission: A Brewing Storm?* 35 ENERGY L.J. 1 at 79 (2014).

competition, and new types of developers, like Transcos—are likely to disrupt the past practices of both industry participants and regulators.<sup>17</sup>

Policy changes and industry responses to those changes can lead to significant, well-planned, and cost-effective transmission investments and a system that achieves its multiple purposes efficiently, as FERC intended. However, poor regulatory policy could undermine needed grid investment, and if developers cannot find innovative solutions to overcome such obstacles, consumers and the U.S. economy will bear the costs. It is within this context that GridLiance believes state policy should evolve to accept and encourage this new transmission paradigm.<sup>18</sup>

### ***Public Power Transmission Issues***

Missouri customers served by many Public Power entities face pressing transmission infrastructure challenges. Regional planning studies often do not effectively model or study transmission assets below 100 KV—the majority of the Public Power facilities. Public Power entities are often served by single line and/or low-voltage connections to the high-voltage transmission system. The existing infrastructure is also aging: 70% of transmission lines are 25 years or older; 70% of transformers are 25 years or older; and 60% of circuit breakers are 30 years or older. Transmission investment by Public Power entities, on average, lags far behind their investor-owned counterparts in terms of dollars and as a percentage of net plant, and annual capital expenditure by municipal owned utilities tends not to cover depreciation. Furthermore, many Public Power entities lack the resources to meaningfully participate in the RTO transmission planning processes (which are estimated to require four full-time employees and cost approximately \$500,000 annually) or develop competitive bids. As mentioned above, GridLiance was formed specifically to help Public Power entities address and improve their transmission problems.

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<sup>17</sup> *Id.* at 99.

<sup>18</sup> See, the WIRES Report, *Well-Planned Electric Transmission Saves Customer Costs: Improved Transmission Planning is Key to the Transition to a Carbon –Constrained Future*, available at [http://www.wiresgroup.com/docs/reports/WIRES%20Brattle%20Report\\_TransmissionPlanning\\_June2016.pdf](http://www.wiresgroup.com/docs/reports/WIRES%20Brattle%20Report_TransmissionPlanning_June2016.pdf) (2016).



## ***Recommendations***

Missouri should consider updating its state law and regulatory policies to address these new transmission business models. Transcos have run up against statutes in some states that do not allow for, or have been interpreted not to allow for, issuance of a CCN to Transcos with no retail customers in the state or projects that do not interconnect to the grid in the state. This Commission should consider reviewing state regulatory laws and policies to ensure that it can enable healthy competition and accommodate new corporate models. Following are some suggestions.

- Missouri law should recognize that, in the RTO transmission planning process, a Transco must provide substantial materials establishing financial, technical and operational ability to develop transmission lines in order to be designated as the selected developer for a project. The current state CCN process, in large part, duplicates the RTO process. Requiring Transcos to repeat the entire RTO process to obtain a CCN for every project is burdensome, causes unnecessary regulatory delay, and thus increases costs to ratepayers. GridLiance suggests that state policy should allow a Transco to obtain a general CCN and further provide that once a Transco has been granted a CCN and is a public utility, it should not have to obtain a CCN for every project. So long as a transmission construction project or acquisition has been studied and approved by the applicable RTO, this should satisfy the state that adequate regulatory oversight has been accomplished and that the project or acquisition is beneficial and in the public interest. The Commission will still retain jurisdiction over the Transco as a public utility, can monitor the Transco's activities, and take appropriate action if it believes that the Transco is not acting in the public interest.
- State policy should be modified to expressly exclude the development of facilities owned in whole or in part by Public Power entities in Missouri, over which this Commission has very limited

jurisdiction.<sup>19</sup> Under current law, these Public Power entities have their own eminent domain authority, and could construct and operate transmission facilities in their own service territories without a CCN from the Commission. As described above, GridLiance seeks to improve the reliability of facilities serving Public Power customers and to enable Public Power utilities to offset rising transmission rates by investing in much-needed new infrastructure. However, requiring GridLiance and its Public Power partners to obtain a CCN for projects that are co-developed and co-owned by Public Power entities and relying on the Public Power partner's eminent domain authority would, in effect, regulate indirectly entities that would not otherwise be expected to obtain a CCN. While requiring a Transco that partners with Public Power entities to obtain a CCN may not require the latter to appear before the Commission, from a practical perspective, the co-owned projects would remain subject to the additional cost, delay and risk associated with obtaining a CCN. Such measures are unnecessary when Public Power entities are building with their Transco partners new transmission projects pursuant to their existing authorities. Under these circumstances, GridLiance believes it would be appropriate to expressly exclude these types of Public Power transmission projects from the CCN process.

- Commission policy should also exempt from the CCN requirements Transcos constructing new or refurbishing existing transmission facilities on property they have already acquired. In light of the robust transmission planning procedures carried out by MISO and SPP, as well as the

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<sup>19</sup> The Commission, except in limited circumstances, has no statutory authority to regulate public utilities that are owned and operated by governmental entities. *City of Columbia v. Pub. Serv. Comm'n*, 329 Mo. 38, 43 S.W.2d 813, 817 (1931). For example, the Commission has jurisdiction over municipally owned electrical utilities wishing to serve customers outside their service territories, Section 386.800, and over the territorial agreements entered into by rural electric cooperatives, electrical corporations and municipally owned utilities, Section 394.312. In addition, Section 394.160.1 provides that Commission jurisdiction over rural electric cooperatives is limited to "the construction, maintenance and operation of the physical equipment of such cooperative to the extent of providing for the safety of the public and the elimination or lessening of induction or electrical interference, including the power to minimize retail distribution electric line duplication for the sole purpose of providing for the safety of employees and the general public in those cases when, upon complaint, the commission finds that a proposed retail distribution electric line cannot be constructed in compliance with commission safety rules."

Commission's ample authority to monitor Transcos' activities in Missouri, the Commission's primary concern in protecting the public interest should be principally focused on the location of a proposed project. This consideration, however, is significantly reduced where a Transco (or any utility) has already obtained the necessary land rights and no additional land rights are needed to construct or refurbish the transmission line in question.

- If Missouri chooses to keep the current CCN process, then it should be modified to make it easier and less time consuming for Transcos to obtain a CCN. A simplified process could be developed that would reduce the time and expense for both the Transco and the Commission. For example, in Kansas, the Commission has a statutory duty to rule on a CCN application within 180 days,<sup>20</sup> and Illinois law requires the Commission to decide a CCN case no later than 150 days after an application is filed.<sup>21</sup> Furthermore, once a Transco has obtained a CCN, its qualifications have already been proven to the satisfaction of the Commission. Therefore, a simplified and expedited process makes sense.

### **CONCLUSION**

GridLiance would like to thank the Commission for the opportunity to provide comments in this working docket, and hopes that these comments will assist the Commission in developing policies to improve electric utility regulation in Missouri.

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<sup>20</sup> K.S.A. 66-131.

<sup>21</sup> 220 ILCS 5/8-406.1

Respectfully submitted,

A handwritten signature in black ink that reads "Terry M. Jarrett". The signature is written in a cursive style with a horizontal line above the name.

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Terry M. Jarrett, Missouri Bar #45663  
HEALY LAW OFFICES, LLC  
514 East High Street, Suite 22  
Jefferson City, MO 65101  
Phone: (573) 415-8379  
Fax: (573) 415-8379  
Email: [terry@healylawoffices.com](mailto:terry@healylawoffices.com)

**ATTORNEY FOR GRIDLIANCE HEARTLAND, LLC**