

**IN THE UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MISSOURI
SOUTHERN DIVISION**

MISSOURI JOINT MUNICIPAL ELECTRIC)
UTILITY COMMISSION,)
)
Plaintiff,)
)
v.)
)
GRIDLIANCE HIGH PLAINS, LLC,)
)
Defendant.)

Case No. 6:19-CV-03338

**FIRST AMENDED COMPLAINT FOR
DECLARATORY JUDGMENT AND SPECIFIC PERFORMANCE**

Pursuant to 28 U.S.C. § 2201, Plaintiff, Missouri Joint Municipal Electric Utility Commission (“MJMEUC”), brings this action for Declaratory Judgment and Specific Performance to enforce the provisions of a Co-Development Agreement entered into with MJMEUC (the “CDA”) and Asset Purchase Agreement entered into with the City of Nixa, Missouri (the “APA”), and alleges as follows:

THE PARTIES

1. Plaintiff MJMEUC is a body corporate and politic of the State of Missouri, organized as a joint municipal utility commission pursuant to section 393.700 *et seq.* RSMo., with authority to exercise public powers of a political subdivision of the state for the benefit of the inhabitants of municipalities jointly contracting to establish MJMEUC. Sixty-eight Missouri municipalities are current parties to the joint contract establishing the MJMEUC. MJMEUC’s office is located in Columbia, Missouri.

2. Defendant GridLiance High Plains, LLC (“GridLiance”), is a limited liability company organized under the laws of Delaware. It has registered with the Missouri Secretary of

State as a Foreign LLC and is authorized to conduct business in Missouri. GridLiance's core business is to partner with electric cooperatives, public power, and others to plan for the future of the grid, invest in transmission infrastructure, and improve grid reliability. It has offices located in Irving, Texas, and Washington, DC. GridLiance was formerly known as the South Central Municipal-Cooperative Network, LLC ("South Central MCN"). GridLiance has succeeded to the rights and duties of South Central MCN in the CDA and the APA, as more specifically alleged below.¹

VENUE AND JURISDICTION

3. This Court has subject matter jurisdiction over this action for declaratory relief pursuant to 28 U.S.C. §§ 2201 and 2202 and Rule 57 of the Federal Rules of Civil Procedure.

4. This Court has personal jurisdiction over GridLiance because GridLiance conducts business in the State of Missouri and within this district, including contracts with MJMEUC and the City of Nixa, Missouri.

5. Venue is proper in this district pursuant to 28 U.S.C. §§ 1391(b)(2), 1391(c)(2), and 1391(d).

6. An actual case or controversy has arisen between the parties. MJMEUC has notified GridLiance that it intends to terminate the CDA with GridLiance as allowed under the express terms of the CDA, and GridLiance has contested MJMEUC's right to terminate the CDA, and, as a result, MJMEUC's right to repurchase certain transmission assets described below.

7. This court has diversity jurisdiction pursuant to 28 U.S.C. § 1332(a)(1) because the

¹ GridLiance is a subsidiary of GridLiance GP, LLC, which is a family of transmission only operating and holding companies. Another subsidiary is GCP Transmission Holdings, LLC.

amount in controversy exceeds the sum or value of \$75,000.00, exclusive of interest and costs, and the suit is between citizens of different states.

GENERAL ALLEGATIONS

MJMEUC's Co-Development Agreement with GridLiance

8. On June 30, 2014, MJMEUC entered into a CDA with South Central MCN and GCP Transmission Holdings, LLC, regarding transmission development and acquisitions within the Southwest Power Pool, Inc. ("SPP") footprint. Under the CDA, MJMEUC and its members would have assistance and support in having local transmission issues addressed in the SPP transmission planning processes, and the opportunity to participate in transmission acquisitions and development in SPP, which are defined in paragraph 4.2.2 of the CDA as "Proposed Project."

9. Having a financial interest in transmission facilities was the primary reason for MJMEUC to enter into the CDA because it would allow MJMEUC and its members to help mitigate rising costs for the use of the SPP-controlled transmission system by having a financial interest in certain of the transmission assets that are part of that system.

10. The initial term of the Agreement is thirty (30) years, with automatic renewal terms of five (5) years at a time.

11. Paragraph 7.3.2 of the CDA provides that:

At MJMEUC's Option. MJMEUC may terminate this Agreement during the initial Term or any renewal term with two-years written notice such termination to be effective on any day after the tenth anniversary of the Effective Date.

12. Section 7.3.1 of the CDA provides that:

For Failure to Meet Start-Up Requirements. Either Party may terminate this Agreement by giving the other Party written notice of the intent to terminate effective (30) days from the delivery of such

notice, after the periods set forth below; provided, however, that if the requirement is met during such thirty (30) day period, then the termination shall not be effective.

- (a) If TransCo's² Financial Closing has not occurred on or before September 30, 2014.
- (b) If TransCo has not acquired at least Five Million Dollars (\$5,000,000) in assets pursuant to Fully Effective APAs on or before December 31, 2014.
- (c) If the Parties and any other UPs with fully effective CDAs have not agreed to the form of JOA³ and TCL⁴ or the parties have not agreed to the form of APA on or before the first to occur of execution and delivery by a UP of the first APA with TransCo and December 31, 2014.
- (d) If TransCo has neither been awarded an NTC for a Proposed Project nor commenced Construction of a Direct Assignment Facility on or before December 31, 2017.

13. MJMEUC did not agree to the form of JOA and TCL, either by December 31, 2014 or within any reasonable time thereafter. Upon information and belief, no other UP with a fully effective CDA has agreed to the form of JOA and TCL, either by December 31, 2014 or within a reasonable time thereafter.

14. GridLiance was not awarded an NTC for a Proposed Project by December 31, 2017.

15. GridLiance failed to commence Construction of a Direct Assignment Facility by

² The term "TransCo" in Section 7.3.1 of the CDA refers to GridLiance.

³ A "JOA" is a Joint Ownership Agreement, the terms and conditions of which were required to be agreed to by the parties to the CDA and would provide one option for MJMEUC to participate in the development, financing, and ownership of TransCo Projects. CDA Section 4.5.

⁴ A "TCL" is a Transfer Capability Lease, the terms and conditions of which were required to be agreed to by the parties to the CDA and would provide a second option for MJMEUC to participate in the development financing, and on-going financial participation in TransCo Projects. CDA Section 4.6.

December 31, 2017.

16. Because GridLiance has failed to provide an opportunity to MJMEUC to participate in the development, financing, ownership, and operation of transmission assets either through JOA's and TLC's concerning Proposed Projects or Direct Assignment Facilities as contemplated by the CDA, the CDA has failed its primary purpose and MJMEUC has the right to terminate the CDA pursuant to section 7.3.1 and 7.3.2 of the agreement.

17. On September 19, 2019, as amended on October 10, 2019, MJMEUC provided notice to GridLiance that it was terminating the CDA pursuant to section 7.3.1, effective 30 days thereafter.

18. On October 11, 2019, MJMEUC provided notice to GridLiance that, in the alternative, it was terminating the CDA pursuant to section 7.3.2, effective June 14, 2026. In the alternative, based upon the definition of "Effective Date" in section 7.1.1 for purposes of Articles 2, 5, 7, and 8, MJMEUC is terminating the CDA pursuant to section 7.3.2, effective June 30, 2024.

19. On September 19, 2019, and thereafter by letter on October 18, 2019, GridLiance notified MJMEUC that it contested MJMEUC's right to terminate the CDA.

20. GridLiance has not cured and cannot cure its failure to meet the requirements of the CDA.

City of Nixa Assets

21. On August 14, 2015, South Central MCN and the City of Nixa, Missouri (the "City") executed an Asset Purchase Agreement ("APA") under which South Central MCN agreed to purchase and the City agreed to sell (the "Transaction") certain existing transmission assets

(“Nixa Assets”).

22. The City is a member of MJMEUC.

23. Section 7.3.4(c) of the CDA provides to MJMEUC the option to purchase the Nixa

Assets from GridLiance. That provision reads:

If MJMEUC terminates this Agreement prior to the end of the Initial Term or any Renewal Term, then, as more fully described in the applicable APA, at MJMEUC’s option exercised by written notice to TransCo [GridLiance] within sixty (60) days of such termination (Member Asset Option), TransCo shall be obligated to sell back to MJMEUC or the selling Member any Transmission Facilities purchased by TransCo from MJMEUC or such selling Member, such sale to be at TransCo’s PP&E as of the last day of the month prior to the closing.

24. Likewise, section 8.3 of the APA gives MJMEUC the option of repurchasing the

Nixa Assets upon termination of the CDA. It states:

If MJMEUC terminates the CDA prior to the end of the Initial Term (as defined in the CDA) or any Renewal Term (as defined in the CDA), then Seller or MJMEUCU [sic] may repurchase the Assets and any improvements thereto (the Repurchase Option). To exercise the Repurchase Option, Seller or MJMEUC shall provide written notice to Buyer within sixty (60) days of MJMEUC’s termination of the CDA (the Repurchase Notice). If the Repurchase Option is exercised, Buyer shall sell the Assets and any improvements thereto to MJMEUC or Seller, as applicable, for an amount equal to Buyer’s PP&E, but otherwise on the terms and conditions set forth in this Agreement, to the extent such terms are applicable. For purposes of this Agreement, Buyer’s PP&E means the net property, plant and equipment value of the Assets and any improvements thereto reflected on Buyer’s asset register based on Buyer’s financial statements reduced by accumulated depreciation associated with such Assets and improvements thereto, in all cases in accordance with the system of accounts approved by FERC and applicable to electric public utilities under subchapter C, Part 101 of 18 C.F.R. The rights and obligations of this Section 8.3 shall survive termination of this Agreement and MJMEUC shall be an express third party beneficiary of this Section 8.3.

25. Section 10.7 of the APA provides that:

In the event that any of the provisions of this Agreement is not performed in accordance with its specific terms or is otherwise breached, the non-breaching Party shall be entitled to commence an action to require the breaching Party to remedy such breach and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof, and may exercise such other rights and remedies as it may have in equity or at law.

26. Section 9.2.1 of the CDA likewise provides that:

Upon the occurrence of an Event of Default that is not cured in accordance with Section 9.1 above, a non-defaulting Party shall be entitled to commence an action to require the defaulting Party to remedy such Event of Default and specifically perform its duties and obligations hereunder in accordance with the terms and conditions hereof, and may exercise such other rights and remedies as it may have in equity or at law, which rights shall include, a Party's right to terminate this Agreement with respect to future Projects.

27. MJMEUC has given notice to GridLiance of its intent to exercise the option to purchase the Nixa Assets pursuant to section 7.3.4(c) of the CDA and section 8.3 of the APA.

28. Upon receiving such notice from MJMEUC on September 19, 2019, and thereafter on October 10, 2019, GridLiance rejected MJMEUC's right to terminate the CDA, and as a consequence, rejected MJMEUC's option to purchase the Nixa Assets.

COUNT I
DECLARATORY JUDGMENT

29. MJMEUC incorporates into this Count by reference all allegations in this Complaint.

30. There is a genuine and bona fide dispute and an actual controversy and disagreement between MJMEUC and GridLiance regarding whether MJMEUC can terminate the CDA pursuant to its terms, including but not limited to section 7.3.1 or 7.3.2, and whether

MJMEUC has the right to purchase the Nixa Assets pursuant to the APA.

31. Pursuant to the Uniform Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202, MJMEUC in good faith asks that this Court declare the following:

- a) The CDA has failed in its primary purpose.
- b) That MJMEUC has a right to terminate the CDA pursuant to its terms, including but not limited to section 7.3.1 or section 7.3.2.
- c) That MJMEUC terminated the CDA in compliance with the CDA's terms.
- d) That GridLiance has a duty to comply with section 7.3.4(c) of the CDA and section 8.3 of the APA to sell the Nixa Assets to MJMEUC now or, in the alternative, no later than 2026.

COUNT II
SPECIFIC PERFORMANCE

32. MJMEUC incorporates into this Count by reference all allegations in this Complaint.

33. MJMEUC has a contractual right under the CDA and APA to seek specific performance of GridLiance's contractual obligations including selling the Nixa Assets to MJMEUC upon MJMEUC's exercise of its option to repurchase.

34. GridLiance has refused and continues to refuse to comply with its obligations by wrongfully rejecting MJMEUC's exercise of MJMEUC's option to repurchase the Nixa Assets.

35. MJMEUC is suffering and will continue to suffer irreparable harm as a result of GridLiance's failure to comply with its obligations and MJMEUC is being and will be damaged as a result.

PRAYER FOR RELIEF

WHEREFORE, Plaintiff MJMEUC prays that this Court:

1. Enter judgment according to the declaratory relief sought by MJMEUC;
2. Enter judgment obligating GridLiance to specifically perform its obligations under the APA by selling the Nixa Assets; and
3. Enter such other and further relief to which MJMEUC may be entitled as a matter of law or equity, or which this Court determines to be just and proper and to award to MJMEUC its costs and attorney's fees in this action.

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By: /s/ Kevin W. Prewitt

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ATTORNEYS FOR PLAINTIFF

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on October 29, 2019, a true and accurate copy of the above and foregoing was e-filed with the Court which sent notification to all parties entitled to service.

/s/ Kevin W. Prewitt
