

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

MISSOURI JOINT MUNICIPAL ELECTRIC)	
UTILITY COMMISSION,)	
)	
Plaintiff,)	
)	
v.)	Case No. 6:20-cv-3316
)	
GRIDLIANCE HIGH PLAINS, LLC,)	
)	
Defendant.)	

**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 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 MJMEUC. MJMEUC’s principal office is located in Columbia, Missouri.

2. Defendant GridLiance High Plains, LLC (“GridLiance HP”), 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 HP is part

of a family of transmission only operating and holding companies (collectively, “GridLiance”).¹ 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 HP was formerly known as the South Central Municipal-Cooperative Network, LLC (“South Central MCN”). GridLiance HP has succeeded to the rights and duties of South Central MCN in the CDA and the APA, as more specifically alleged below.

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 HP because GridLiance HP 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. Specifically, despite GridLiance’s planned sale to NextEra Energy Transmission, LLC (“NextEra Transmission”), a direct competitor of MJMEUC, GridLiance failed and refused to provide MJMEUC with any of the notices of the sale required by Article 10 of the CDA in an apparent attempt to deny

¹ The corporate structure of the GridLiance family of transmission-owning operating and holding companies has changed on several occasions since the CDA was prepared in 2014 and GridLiance has not regularly provided MJMEUC with notifications describing each change. As a result, MJMEUC does not have complete insight into where various GridLiance entities reside within the current overall structure of the GridLiance companies.

MJMEUC its rights under the CDA. GridLiance's failure and refusal to follow the process outlined in Article 10 of the CDA is a clear indication that GridLiance HP does not intend to honor MJMEUC's rights to terminate the CDA and/or repurchase certain transmission assets as described below.

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

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.

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. Section 10.5.7 of the CDA provides that MJMEUC may terminate the CDA prior to the end of any term if there is a Change in Control at GridLiance:

10.5.7 Change in Control of HoldCo. If there is a Change of Control of HoldCo, and the proposed acquirer is a Competitor Utility or the Holding Company of a Competitor Utility then, after the meeting with the proposed acquirer, MJMEUC will have the option to terminate the CDA.

(a) A Competitor Utility is an “electric utility company,” as defined in 18 C.F.R. § 366.1, that has (i) any operations or assets in either SPP or MISO, or (ii) is qualified to bid for transmission projects in either SPP or MISO. A Competitor Utility also include any “affiliate,” as defined in 18 C.F.R. § 366.1 of an electric utility company meeting the requirements of either (i) or (ii) above.

(b) A Holding Company is a “holding company” as defined in 18 C.F.R. § 366.1. Any Person that has publicly announced its intention to be a Competitor Utility or the Holding Company of a Competitor Utility shall be deemed to be one as of the public announcement.

12. Section 10.1.1 of the CDA provides that an upstream Change in Control at GridLiance cannot be used to circumvent MJMEUC’s rights under the CDA:

10.1.1 Upstream Changes in Control. No disposition of assets, sale of equity, upstream Change in Control, or assignment to an Affiliate shall be effective to circumvent a Party’s rights under this Agreement.

13. Section 10.5.3 of the CDA further provides that MJMEUC may exercise its Member Asset Option if there is a Change in Control:

10.5.3 Member Asset Option. If there is a Change in Control, MJMEUC or its Members may exercise the Member Asset Option as to any transmission assets sold to HoldCo or TransCo by MJMEUC or its Members, subject to the notice requirement in Section 10.5.5.

14. Pursuant to Sections 1.56 and 7.3.4(c) of the CDA, the Member Asset Option provides MJMEUC with the option to repurchase from GridLiance HP any assets that any MJMEUC member sold to GridLiance HP:

1.56 Member Asset Option. Member Asset Option is defined in Section 7.3.4(c).

* * *

7.3.4 General Terms Applicable to Termination or Expiration.

* * *

(c) 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 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.

15. 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 certain existing transmission assets ("Nixa Assets"). The sale of the Nixa Assets from the City to South Central MCN (Gridliance HP) closed in 2018 and South Central MCN (GridLiance HP) is now the owner of the Nixa Assets subject to the City's and MJMEUC's right to repurchase as provided in the CDA and APA.

16. The City is a member of MJMEUC.

17. Similar to the Member Asset Option under the CDA, 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.

18. Section 10.5.1 of the CDA defines Change in Control as follows:

10.5.1 Change in Control. A Change in Control shall be defined as a Transfer of (i) all or substantially all of TransCo's or HoldCo's assets or (ii) except with respect to the initial public offering of HoldCo or any of its Affiliates, control of more than fifty percent (50%) of the outstanding equity of TransCo or HoldCo.

19. Promptly after the execution of a letter of intent that contemplates a Change in Control, Section 10.5.2 of the CDA requires GridLiance HP to give MJMEUC written notice ("Acquisition Notice) of the contemplated Change in Control:

10.5.2 Notice Requirements. Promptly after the execution of a letter of intent or similar document that contemplates a Change in Control, TransCo shall give written notice to MJMEUC (Acquisition Notice), naming the proposed acquirer and the expected schedule for closing, which shall be no less than six (6) months from the date of the Acquisition Notice.

20. On September 29, 2020, both GridLiance and NextEra Energy, Inc. issued press releases announcing that definitive agreements have been entered into pursuant to which GridLiance is being sold by affiliates of Blackstone Energy Partners to NextEra Transmission, a Competitor Utility to MJMEUC.

21. MJMEUC was surprised by this announcement, particularly since MJMEUC has been in active litigation with GridLiance HP in this Court, Case No. 6:19-CV-03338-MDH (the

“Pending Action”), concerning the termination of CDA and repurchase of transmission assets previously sold by the City of Nixa, Missouri (a MJMEUC member) to GridLiance HP (the “Nixa Assets”). In the Pending Action, MJMEUC seeks a declaration from this Court that notices of termination that it issued in late 2019 pursuant to Sections 7.3.1 and 7.3.2 of the CDA are effective to terminate the CDA and that MJMEUC’s exercise of the Member Asset Option in connection with those termination notices is effective and requires GridLiance HP to sell the Nixa Assets to MJMEUC.

22. GridLiance HP failed and refused to provide MJMEUC with an Acquisition Notice as required by Article 10 of the CDA in an apparent attempt to deny MJMEUC its rights under the CDA.

23. GridLiance HP’s failure and refusal to follow the process outlined in Article 10 of the CDA is a clear indication that GridLiance HP does not intend to honor MJMEUC’s rights to terminate the CDA and/or repurchase the Nixa Assets pursuant to the Member Asset Option.

24. On October 5, 2020, without prejudice to the prior notices issued by MJMEUC to terminate the CDA, MJMEUC provided notice to GridLiance that it was also terminating the CDA pursuant Article 10, effective upon the closing of the sale of GridLiance to NextEra Transmission.

25. In that same letter, in addition and/or in the alternative to the notice of termination of the CDA and without prejudice to the prior notices issued by MJMEUC to exercise the Member Asset Option concerning the Nixa Assets under 7.3.4(c) of the CDA, MJMEUC informed GridLiance that pursuant Article 10 of the CDA it was also exercising the Member

Asset Option with respect to the Nixa Assets to be effective upon the closing of the sale of GridLiance to NextEra Transmission.

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

27. Section 9.2.1 of the CDA provides for specific performance in the event that GridLiance HP fails to comply with its obligations under the CDA:

9.2.1 Specific Performance and Other Remedies. 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.

28. MJMEUC has given notice to GridLiance of its intent to terminate and to exercise the Member Asset Option.

29. It is clear from GridLiance's conduct, including its failure and refusal to provide an Acquisition Notice or any other communication concerning the sale to NextEra Transmission, that GridLiance HP has no intention of honoring those rights.

COUNT I
DECLARATORY JUDGMENT

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

31. There is a genuine and bona fide dispute and an actual controversy and disagreement between MJMEUC and GridLiance HP regarding whether MJMEUC can terminate

the CDA pursuant to its terms, including but not limited to Article 10, and whether MJMEUC has the right to purchase the Nixa Assets pursuant to the CDA.

32. 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) That MJMEUC has a right to terminate the CDA pursuant to its terms, including but not limited to Article 10.
- b) That MJMEUC terminated the CDA in compliance with the CDA's terms.
- c) That GridLiance HP has a duty to comply with Article 10 and Section 7.3.4(c) of the CDA to sell the Nixa Assets to MJMEUC upon the closing of the sale of GridLiance to NextEra Transmission.

COUNT II
SPECIFIC PERFORMANCE

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

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

35. GridLiance HP 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.

36. MJMEUC is suffering and will continue to suffer irreparable harm as a result of GridLiance HP'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 HP to specifically perform its obligations under the CDA 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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JS 44 (Rev 09/10)

**UNITED STATES DISTRICT COURT
WESTERN DISTRICT OF MISSOURI****CIVIL COVER SHEET**

This automated JS-44 conforms generally to the manual JS-44 approved by the Judicial Conference of the United States in September 1974. The data is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. The information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is authorized for use only in the Western District of Missouri.

The completed cover sheet must be saved as a pdf document and filed as an attachment to the Complaint or Notice of Removal.

Plaintiff(s):**First Listed Plaintiff:**

Missouri Joint Municipal Electric Utility Commission ;
4 Incorporated or Principal Place of Business in This State;
County of Residence: Cole County

Defendant(s):**First Listed Defendant:**

GridLiance High Plains, LLC ;
5 Incorporated and Principal Place of Business in Another State;
County of Residence: Outside This District

County Where Claim For Relief Arose: Christian County

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Basis of Jurisdiction: 4. Diversity of Citizenship

Citizenship of Principal Parties (Diversity Cases Only)

Plaintiff: 4 Incorporated or Principal Place of Business in This State

Defendant: 5 Incorporated and Principal Place of Business in Another State

Origin: 1. Original Proceeding

Nature of Suit: 190 All Other Contract Actions

Cause of Action: Uniform Declaratory Judgment Act, 28 U.S.C. §§ 2201 and 2202

Requested in Complaint

Class Action: Not filed as a Class Action

Monetary Demand (in Thousands):

Jury Demand: Yes

Related Cases: RELATED to case number 6:19-cv-03338-MDH, assigned to Judge Douglas Harpool

Signature: /s/ Kevin W. Prewitt

Date: 10-5-2020

If any of this information is incorrect, please close this window and go back to the Civil Cover Sheet Input form to make the correction and generate the updated JS44. Once corrected, print this form, sign and date it, and submit it with your new civil action.