

170 FERC ¶ 61,074
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

Before Commissioners: Neil Chatterjee, Chairman;
Richard Glick and Bernard L. McNamee.

GridLiance Heartland LLC

Docket Nos. ER19-2092-000
ER19-2092-001
ER19-2092-002

ORDER ACCEPTING AND SUSPENDING PROPOSED TARIFF FILING, SUBJECT
TO CONDITION, GRANTING WAIVERS, AND ESTABLISHING HEARING AND
SETTLEMENT JUDGE PROCEDURES

(Issued January 31, 2020)

1. On June 10, 2019, as amended on September 26, 2019 and December 5, 2019, GridLiance Heartland LLC (GridLiance Heartland) filed, pursuant to section 205 of the Federal Power Act (FPA)¹ and Part 35 of the Commission's regulations,² a proposed open access transmission tariff (OATT) to govern the terms of transmission service over its facilities that are not under Midcontinent Independent System Operator, Inc.'s (MISO) functional control (Filing). In this order, we accept the Filing and suspend it for a nominal period, to become effective the first day of the month after the date on which GridLiance Heartland acquires from Electric Energy, Inc. (EEI) certain transmission facilities (EEI Assets), as proposed in Docket No. EC20-13-000, subject to refund, subject to condition, and subject to the outcome of the proceeding in Docket No. ER19-1961, and we set the Filing for hearing and settlement judge procedures.

I. Background

A. GridLiance Heartland

2. GridLiance Heartland states that it is an independent transmission-only utility (Transco) formed to partner with electric cooperatives, municipally owned electric utilities, joint action agencies, and renewable energy developers in the MISO region to identify and develop transmission solutions to meet its partners' ownership, capital

¹ 16 U.S.C. § 824d (2018).

² 18 C.F.R. pt. 35 (2019).

investment, and reliability goals. GridLiance Heartland asserts that it is a limited liability company organized under the laws of the State of Delaware and is a subsidiary of GridLiance Holdco, LP (GridLiance Holdco). GridLiance Heartland states that it is affiliated with two other GridLiance Holdco Transcos that own, operate, and invest in Commission-regulated electric transmission assets in other Regional Transmission Organizations (RTO).

B. The Proposed Transaction

3. GridLiance Heartland states that, on August 13, 2018, GridLiance Heartland and EEI executed an Asset Purchase Agreement under which GridLiance Heartland will acquire the EEI Assets, which comprise six 161 kV transmission lines, two 161 kV substations, and auxiliary equipment located in the States of Illinois and Kentucky. GridLiance Heartland states that, on September 20, 2018, MISO's Board of Directors approved GridLiance Heartland's Application to become a Transmission-Owning Member in MISO pending its acquisition of the EEI Assets. GridLiance states that, additionally, MISO has confirmed that the EEI Assets meet the Commission's seven-factor test set forth in Order No. 888³ and therefore, satisfy the definition of "Transmission" and qualify for inclusion in the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff).⁴

4. GridLiance Heartland states that, on December 21, 2018, it and EEI submitted a Joint Application (December 2018 Application) under section 203 of the FPA⁵ in Docket No. EC19-42-000 requesting that the Commission authorize GridLiance Heartland's acquisition of the EEI Assets.⁶ GridLiance Heartland explains that, when it closes the acquisition of the EEI Assets, it plans to immediately transfer four of the six lines (MISO Assets) to MISO's functional control. GridLiance Heartland states that, to accommodate certain existing power supply agreements between EEI and other entities, it will retain

³ *Promoting Wholesale Competition Through Open Access Non-Discriminatory Transmission Services by Public Utilities; Recovery of Stranded Costs by Public Utilities and Transmitting Utilities*, Order No. 888, FERC Stats. & Regs. ¶ 31,036 (1996) (cross-referenced at 75 FERC ¶ 61,080), *order on reh'g*, Order No. 888-A, FERC Stats. & Regs. ¶ 31,048 (cross-referenced at 78 FERC ¶ 61,220), *order on reh'g*, Order No. 888-B, 81 FERC ¶ 61,248 (1997), *order on reh'g*, Order No. 888-C, 82 FERC ¶ 61,046 (1998), *aff'd in relevant part sub nom. Transmission Access Policy Study Group v. FERC*, 225 F.3d 667 (D.C. Cir. 2000), *aff'd sub nom. New York v. FERC*, 535 U.S. 1 (2002).

⁴ Filing at 1-2 (citing, *inter alia*, Ex. GLH-100 at 4-5).

⁵ 16 U.S.C. § 824b (2018).

⁶ Filing at 3 (citation omitted).

operational control of the remaining two lines (Non-MISO Assets) until 2022 and will provide open access, nondiscriminatory service over those facilities pursuant to the proposed OATT. GridLiance Heartland explains that it owns and stores in Illinois a limited amount of utility assets in anticipation of its commencing business, a satellite phone that will be used for control center communications, and metering equipment that will be required for operations.

5. On August 28, 2019, the Commission denied the December 2018 Application in Docket No. EC19-42-000 without prejudice.⁷ On November 1, 2019, EEI and GridLiance Heartland filed in Docket No. EC20-13-000 a new section 203 application seeking authorization of GridLiance Heartland's acquisition of the EEI Assets (Proposed Transaction). In a concurrently issued order, we are authorizing the Proposed Transaction as consistent with the public interest, subject to condition regarding Applicants' proposed mitigation.⁸

C. GridLiance Heartland Formula Rate Template and Protocols

6. On January 29, 2019, in Docket No. ER18-2342-000, et al., the Commission accepted, subject to condition, GridLiance Heartland's proposed formula rate template and protocols to determine and to recover the costs of GridLiance Heartland's investment in transmission facilities in the MISO region.⁹ The Commission also accepted GridLiance Heartland's proposal to include an income tax allowance in the proposed formula rate template, suspended it for a nominal period, and set the matter for hearing and settlement judge procedures. In addition, the Commission approved GridLiance Heartland's requested base rate of return on equity (ROE) of 10.32 percent, which was then used by MISO transmission-owning members (MISO TOs), subject to the outcome of the proceedings in Docket Nos. EL14-12 and EL15-45.¹⁰ In addition, the Commission granted GridLiance Heartland's request for authorization to include a 50 basis point RTO Participation Adder, subject to the resulting ROE being within the zone of reasonableness, as determined by Docket Nos. EL14-12 and EL15-45. The Commission further authorized certain transmission rate incentives.¹¹

⁷ *Elec. Energy, Inc.*, 168 FERC ¶ 61,130 (2019) (August 2019 Order).

⁸ *Elec. Energy, Inc.*, 170 FERC ¶ 61,072 (2020) (Section 203 Order).

⁹ *GridLiance Heartland LLC*, 166 FERC ¶ 61,067 (2019) (January 2019 Order).

¹⁰ *Id.* P 38.

¹¹ *Id.* PP 42, 46, 57, 65.

7. On December 19, 2019, the Commission approved an Offer of Settlement (Settlement) filed by GridLiance Heartland and two of its affiliates, GridLiance High Plains LLC and GridLiance West LLC.¹² The Settlement concerned the income tax allowance to be included in the formula rates of GridLiance Heartland, GridLiance High Plains LLC, and GridLiance West LLC. The Commission found that the Settlement resolved all issues in dispute in Docket No. ER18-2342-000, et al. Further, the Commission directed GridLiance Heartland, GridLiance High Plains LLC, and GridLiance West LLC to make a compliance filing with revised tariff records.

II. OATT Filing

8. GridLiance Heartland states that the OATT will govern the terms of transmission service over the Non-MISO Assets, which are a subset of the EEI Assets.¹³ GridLiance Heartland notes that it also will utilize the OATT to provide transmission service over any future facilities it acquires in the MISO region but does not transfer to MISO's functional control. GridLiance Heartland states that the OATT is based on the Commission's *pro forma* OATT but that it requests certain waivers and other proposed deviations, and that its proposal is consistent with or superior to the Commission's *pro forma* OATT. GridLiance Heartland asserts that the OATT deviates from the *pro forma* OATT in some respects to accommodate certain aspects of its business model and plans for operating its transmission facilities in the MISO region.¹⁴

9. GridLiance Heartland proposes to include in its OATT the unpopulated formula rate template and protocols that the Commission accepted, subject to condition, in the January 2019 Order.¹⁵ GridLiance Heartland includes the formula rate template in Attachment R of its OATT (though it is referenced as Attachment O – GLH throughout the template), and Attachment R includes accompanying worksheet Attachments 1 through 8F. In Docket No. ER19-2050, GridLiance Heartland also proposes to use the formula rate template conditionally accepted in the January 2019 Order to calculate the revenue requirement for the MISO Assets. In Docket No. ER19-2050, the formula rate template is included in Attachment O – GLH of the MISO Tariff, and includes the same worksheet Attachments 1 through 8F. Both the proposed OATT and the proposed MISO Tariff revisions contain the same protocols. In the OATT, however, these protocols are

¹² *GridLiance Heartland LLC*, 169 FERC ¶ 61,206 (2019) (December 2019 Order).

¹³ Filing at 1.

¹⁴ *Id.* GridLiance Heartland's proposed deviations from the *pro forma* OATT are described in more detail in section IV.B, *infra*.

¹⁵ *Id.* at 5 (citing January 2019 Order, 166 FERC ¶ 61,067).

contained in Attachment S. Here, we refer to the proposed OATT's formula rate template (Attachment R) and protocols (Attachment S), together, as the Formula Rate.

10. GridLiance Heartland states that it will populate its Formula Rate with all the necessary inputs to determine its Annual Transmission Revenue Requirement (ATRR) for the Non-MISO Assets. GridLiance Heartland contends that, because MISO will calculate the ATRR for GridLiance Heartland's MISO Assets using the formula rate approved in the January 2019 Order,¹⁶ it is just and reasonable for GridLiance Heartland to utilize the same Formula Rate to calculate the ATRR for the Non-MISO Assets. GridLiance Heartland explains that it will conduct all necessary activities under the protocols (*e.g.*, annual projections, stakeholder meetings, and true-ups) concurrently for both the MISO Assets and the Non-MISO Assets. Further, GridLiance Heartland states that, to implement the utilization of the Formula Rate in GridLiance Heartland's OATT, GridLiance Heartland revised certain sections of the Commission's *pro forma* OATT.

11. GridLiance Heartland states that, given that it will utilize its OATT to provide transmission service over facilities that are located in the MISO region, GridLiance Heartland proposes to utilize a base ROE of 10.32 percent to calculate its ATRR in the Formula Rate.¹⁷ GridLiance Heartland notes that the proposed base ROE is equal to the base ROE the Commission previously approved for MISO TOs and for other entities that will become MISO TOs, subject to the outcome of the proceedings in Docket Nos. EL14-12 and EL15-45. GridLiance Heartland states that it will make a compliance filing, if necessary, to prospectively modify the stated ROE consistent with the outcome of those pending proceedings. In addition, GridLiance Heartland asserts that any subsequent filing to implement the Formula Rate made after the MISO-wide ROE is finalized in that docket will be adjusted to be consistent with the then-effective base ROE.

12. Further, GridLiance Heartland states that its proposed Schedule 7, Long-Term Firm and Short-Term Firm Point-to-Point Transmission Service, and Schedule 8, Non-Firm Point-to-Point Transmission Service, conform to the Commission's *pro forma* OATT.¹⁸ GridLiance Heartland contends that the pre-allocated ATRR for all of the EEI assets, using the formula rate approved in the January 2019 Order, is \$9,747,835. GridLiance Heartland further contends that the difference between the pre-allocated ATRR for all of the EEI Assets (\$9,747,835) and GridLiance Heartland's ATRR for the

¹⁶ MISO and GridLiance Heartland filed the formula rate to calculate the ATRR for the MISO Assets in Docket No. ER19-2050-000, et al. The Commission is accepting this filing, subject to condition, in a concurrently issued order. *Midcontinent Indep. Sys. Operator, Inc.*, 170 FERC ¶ 61,073 (2020).

¹⁷ Filing at 6.

¹⁸ Filing at 8.

MISO Assets (\$7,400,682) imputes an ATRR of \$2,347,153 for the Non-MISO Assets. GridLiance Heartland states that, to calculate the rates to be charged under Schedules 7 and 8, it divided the \$2,347,153 ATRR for the Non-MISO Assets by 600 MW, the line capacity of the Non-MISO Assets. GridLiance Heartland explains that it utilized the total line capacity as its divisor because the Non-MISO Assets do not currently serve load and a 12-month average transmission peak cannot be determined. GridLiance Heartland states that it then took the annual rate and calculated the monthly, weekly, daily, and hourly rates included in the schedules.

13. GridLiance Heartland notes that, given the existence of certain power supply agreements between EEI and other entities, EEI will become a Transmission Customer under the OATT and will take transmission service under Schedule 7.¹⁹ GridLiance Heartland states that it was important to EEI, for preservation of the economics of that power sale, that EEI have a fixed cost for continued delivery. GridLiance Heartland explains that, therefore, as part of the consideration paid for purchase of the EEI Assets, EEI required that GridLiance Heartland agree to a fixed rate for Long-Term Firm Point-to-Point Transmission Service of \$2,600/MW annually from the effective date of GridLiance Heartland's OATT until April 30, 2022. GridLiance Heartland states that this amount was set using GridLiance Heartland's best estimate at the time of what actual costs would be. GridLiance Heartland argues that it does not believe this equates to a discounted rate but rather, if anything, an additional premium for its acquisition of the EEI Assets. However, GridLiance Heartland states that, for the purposes of the OATT, GridLiance Heartland will consider it a discounted rate, will offer this discounted rate to all Eligible Customers who request transmission service over the Non-MISO Assets, and will post both its discounted rate and its formula rate on its Open Access Same Time Information System (OASIS).²⁰

14. In addition, GridLiance Heartland states that, under the terms of the Asset Purchase Agreement, EEI and GridLiance Heartland have agreed to enter into a Control Room Lease Agreement upon GridLiance Heartland's closing the acquisition of the EEI Assets under which GridLiance Heartland will lease a transmission control room located at the Joppa Generation Station for the purposes of operating the Non-MISO Assets.²¹ GridLiance Heartland notes that, as a result, GridLiance Heartland will have the ability to provide Scheduling, System Control and Dispatch Service under Schedule 1 of its Proposed OATT. GridLiance Heartland states that it does not own interconnected generation resources necessary to provide the ancillary services identified in Schedules 2-6 of its OATT. However, GridLiance Heartland states that, if a Transmission Customer requests such

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 4.

services, GridLiance Heartland will arrange with third parties to provide them and will develop rates based only on a pass-through of the costs charged to GridLiance Heartland.

III. Notice of Filing and Responsive Pleadings

15. Notice of the Filing was published in the *Federal Register*, 84 Fed. Reg. 28,546 (2019), with interventions and comments due on or before July 1, 2019. Ameren Services Company (Ameren Services), on behalf of Ameren Illinois Company (Ameren Illinois) (collectively, Ameren), filed a timely motion to intervene and comments (Ameren First Protest).

16. On July 12, 2019, GridLiance Heartland filed a motion for leave to answer and answer to the Ameren First Protest (GridLiance Heartland Answer). On July 24, 2019, Ameren filed a motion for leave to answer and answer to the GridLiance Heartland Answer.

17. On August 9, 2019, Commission staff issued a letter notifying GridLiance Heartland that its Filing was deficient (First Deficiency Letter).²² On September 26, 2019, GridLiance Heartland filed a response to the Deficiency Letter (First Deficiency Response) in Docket No. ER19-2092-001. Notice of the First Deficiency Response was published in the *Federal Register*, 84 Fed. Reg. 52,882 (2019), with interventions and comments due on or before October 17, 2019. Ameren filed a protest (Ameren Second Protest).²³

18. On November 22, 2019, Commission staff issued a letter notifying GridLiance Heartland that, even with the First Deficiency Response, its Filing was deficient (Second Deficiency Letter). On December 5, 2019, GridLiance Heartland filed a response to the Deficiency Letter (Second Deficiency Response) in Docket No. ER19-2092-002. Notice of the Second Deficiency Response was published in the *Federal Register*, 84 Fed. Reg. 67,935 (2019), with interventions and comments due on or before December 26, 2019. None was filed.

²² On September 17, 2019, GridLiance Heartland's motion for an extension of time was granted, and the response to the Deficiency Letter became due on or before October 9, 2019.

²³ The Ameren Second Protest was also filed in Docket No. ER19-2050-001. However, the text of this pleading demonstrates that Ameren intended to file it in Docket No. ER19-2050-002 as a protest to MISO and GridLiance Heartland's October 9, 2019 deficiency response in that proceeding.

A. Ameren First Protest

19. Ameren asserts that GridLiance Heartland's planned acquisition and bifurcation of the EEI Assets as between those that will be immediately turned over to MISO's operational control (MISO Assets) and those that will not (i.e., the Non-MISO Assets) creates concerns that must be addressed.²⁴ Ameren contends that chief among these concerns is the issue of the discounted rate or additional premium paid in consideration for the purchase of the EEI Assets.

20. Ameren states that the Fixed Rate for Long-Term Firm Point-to-Point Transmission Service over the fixed rate path is \$2.60/kW-Year (i.e., \$2,600/MW-Year), as compared to the non-discounted rate of \$3.91 kW-Year for any customer requesting service over non-MISO assets that are not over the fixed rate path.²⁵ Ameren notes that the Commission has stated that "the sole purpose of transmission rate discounting is to increase throughput" and a "key tenet . . . is that if the transmission provider offers a discount on a particular path it must offer the same discount for the same time period on all unconstrained paths that go to the same point(s) of delivery on the transmission provider's system."²⁶ Ameren argues that, by GridLiance Heartland's own admission, its proposed discount is not for the purpose of increasing throughput, but rather, it was a consideration offered in the context of GridLiance Heartland's acquisition of the EEI Assets. Ameren argues that, if GridLiance Heartland is excluding for purposes of the discount any unconstrained paths that go to the same points of delivery on the transmission provider's system that are not fixed rate paths, this practice would be inconsistent with Commission policy. Further, Ameren argues that, if no such paths exist, GridLiance Heartland's proposal to make the \$2,600/MW discounted rate available to all eligible customers rings hollow.

21. Ameren asserts that, given that GridLiance Heartland plans to use a formula rate with the imputed ATRR for the Non-MISO Assets and also plans to discount certain transmission rates, the formula needs to reflect the credits to the ATRR and include a note explaining how the credits will be based on the non-discounted rate to ensure that GridLiance Heartland is absorbing the discount it provides to EEI and any other Eligible Customers. Ameren argues that, otherwise, these costs may shift to other customers.

22. In addition, Ameren notes that GridLiance Heartland witness Williams has referred to the fixed rate of \$2,600/MW annually as being part of the consideration paid for the purchase price of the EEI Assets and has equated it, if anything, to an additional

²⁴ Ameren First Protest at 2.

²⁵ *Id.* at 4.

²⁶ *Id.* (quoting *Cargill Power Marketers, LLC v. Midwest Indep. Transmission Sys. Operator, Inc.*, 113 FERC ¶ 61,233, at P 14 (2005)).

premium for GridLiance Heartland's acquisition of the EEI Assets.²⁷ Ameren notes that, under long-standing Commission policy, rate recovery of an existing facility is generally limited to the original cost of the facility and recovery of acquisition premiums in cost-based rates is allowed only if the acquisition is prudent and provides measurable, demonstrable benefits to ratepayers.²⁸ Ameren argues that, absent express authorization to recover acquisition premiums, the Commission requires removal of the effects of acquisition premiums from a utility's cost of service.²⁹ Further, Ameren contends that GridLiance Heartland cannot pay an acquisition premium and then ask the Commission to consider the premium as a discounted rate.³⁰

B. GridLiance Heartland Answer

23. GridLiance Heartland contends that Ameren's reliance on the Commission's discount policy to challenge GridLiance Heartland's rate agreement with EEI is both misplaced and ignores GridLiance Heartland's commitment to the Commission's open access requirements.³¹ GridLiance Heartland states that, although it deferred to the Commission on whether the rate should be properly termed a "discounted rate," GridLiance Heartland committed in its Filing to offer the rate on a nondiscriminatory basis to any customer requesting service over the Non-MISO Assets. GridLiance Heartland also notes that it stated that it would post the rate on its OASIS.

24. Further, GridLiance Heartland argues that Ameren also provides no basis for its comments about the potential for cost shifts under GridLiance Heartland's formula rate that will support GridLiance Heartland's ATRR for the Non-MISO Assets.³² GridLiance Heartland contends that, although GridLiance Heartland has proposed to use the same formula rate template for both its MISO and Non-MISO Assets, the rate MISO will charge for service under the MISO Tariff will be separate and distinct from the rate GridLiance Heartland will charge for service under the OATT. GridLiance Heartland explains that the Formula Rate being used "pulls all totals from [GridLiance Heartland's FERC] Form [No.] 1 into the spreadsheet and allocates them between the MISO and non-

²⁷ *Id.* at 5; *see also id.* at 2-3 (citing Testimony of Norman Williams at 9).

²⁸ *Id.* at 5 (citing *Commonwealth Edison Co.*, 91 FERC ¶ 61,036 at 61,138 (2000); *Entergy Services, Inc.* 65 FERC ¶ 61,332 at 62,537 (1993)).

²⁹ *Id.* at 5-6 (citing *ITC Holdings Corp.*, 139 FERC ¶ 61,112 (2012)).

³⁰ *Id.* at 6.

³¹ GridLiance Heartland Answer at 3.

³² *Id.* at 3-4.

MISO charges.”³³ GridLiance Heartland argues that this practice ensures that all interested parties can easily confirm there is no “double counting.” Moreover, GridLiance Heartland contends that the use of the formula rate template ensures that any interested party can verify that costs in excess of the revenues for the non-MISO facilities will not be collected from MISO customers.

25. GridLiance Heartland notes that, currently, the Non-MISO Assets are being used only to serve EEI’s electric power supply needs and, after closing, will continue to serve the same purpose until GridLiance Heartland transfers the facilities to MISO in 2022.³⁴ GridLiance Heartland asserts that Ameren has not identified which customers could potentially bear the burden of any cost shifts or why those hypothetical cost shifts would occur at all.

26. In addition, GridLiance Heartland argues that Ameren’s comments on the Commission’s policy regarding acquisition premiums are irrelevant to the instant proceeding and provide no basis for the Commission to delay or condition approval of the OATT.³⁵ GridLiance Heartland argues that nothing in the Filing or in its December 2018 Application³⁶ reflects any effort by GridLiance Heartland to collect an acquisition premium. GridLiance Heartland asserts that no line item in the Formula Rate would allow that recovery.

C. Ameren Answer

27. Ameren argues that GridLiance Heartland has not demonstrated that its proposal to use the same formula rate template for both its MISO and Non-MISO Assets will not result in unjust and unreasonable cost shifting.³⁷ Ameren explains that it did not raise concerns about “double counting,” but rather its concern is that the costs be properly allocated and that the discounted rate GridLiance Heartland negotiated with EEI is properly credited to assure against cost shifting from the Non-MISO charges to the MISO charges. Ameren states that GridLiance Heartland is proposing to base rates on all costs reported in its FERC Form No. 1 and then allocate a portion of those costs to be

³³ *Id.* at 4.

³⁴ *Id.*

³⁵ *Id.*

³⁶ As noted above in section I.B, *supra*, the December 2018 Application in Docket No. EC19-42-000 was rejected without prejudice and superseded by the section 203 application in Docket No. EC20-13-000.

³⁷ Ameren Answer at 2.

recovered through MISO charges. Ameren contends that neither the GridLiance Heartland Answer nor GridLiance Heartland witness Williams's testimony addresses the basis for the allocation of "all totals from [GridLiance Heartland's FERC] Form [No.] 1" as MISO and Non-MISO charges.³⁸

28. Ameren requests that the Commission require GridLiance Heartland to supplement or clarify its Filing to explain and make clear whether it is proposing to: (1) calculate a total ATRR and then allocate it to MISO and non-MISO services; (2) allocate individual inputs between MISO and non-MISO and then calculate a separate revenue requirement for each; or (3) take another approach.³⁹ Ameren asserts that, without understanding which approach GridLiance Heartland is proposing and the basis upon which the allocations will be made, Ameren cannot determine whether the proposal will result in MISO Pricing Zone 3A customers, including Ameren Illinois' customers, picking up costs associated with the Non-MISO Assets including the negotiated discount that GridLiance Heartland is providing to EEI.

D. First Deficiency Response

29. In the First Deficiency Response, GridLiance Heartland proposes to revise the Formula Rate to include three new worksheets that GridLiance Heartland asserts will improve the structure of the Formula Rate and add greater transparency to the ATRR calculation for the Non-MISO Assets and, if acquired, other non-MISO assets.⁴⁰

30. GridLiance Heartland explains that it proposes to add three new worksheet attachments to the Attachment R, called Attachments 9A, 9B, and 9C. GridLiance Heartland explains that worksheet Attachments 9A, 9B, and 9C will mirror Attachment R, and worksheet Attachments 1, and 2 thereto, respectively, except that the new worksheet Attachments will calculate the ATRR for the Non-MISO Assets instead of the ATRR for the MISO Assets. GridLiance Heartland states that these revisions will also enable the Formula Rate to include any future assets not transferred to MISO's functional control (i.e., other non-MISO assets). GridLiance Heartland argues that its proposal to use the formula rate template proposed in Docket No. ER19-2050 as the starting point for the formula rate template in Docket No. ER19-2092, with the three new worksheets, ensures consistency between the two templates and enhances transparency by reconciling back to GridLiance Heartland's FERC Form No. 1.

³⁸ *Id.* at 3 (quoting GridLiance Heartland Answer at 4).

³⁹ *Id.* at 3-4.

⁴⁰ First Deficiency Response at 2.

31. GridLiance Heartland explains that worksheet Attachment 9A replicates the formulas and calculations to derive the ATRR included in the Attachment R but calculates the projected net ATRR for the Non-MISO Assets by using a transmission plant allocator (TP Allocator) reflecting the ratio of the Non-MISO Assets' gross transmission plant value to the EEI Assets' gross transmission plant value.⁴¹ In addition, GridLiance Heartland states that, because it intends for its OATT to be applicable to all assets it acquires that will not be transferred to MISO's functional control, if it acquires other non-MISO assets, the values for those assets would be shown in the Total Company column in both Attachment R and worksheet Attachment 9A, which would adjust the TP Allocator on page 4, lines 1 to 4, accordingly. GridLiance Heartland asserts that, in this way, the allocation of costs between MISO Assets and any non-MISO assets would automatically change to ensure that the appropriate set of customers are paying the correct rate for use of those facilities.

32. GridLiance Heartland states that worksheet Attachment 9B - Non-MISO Project Revenue Requirement Worksheet replicates the formulas in worksheet Attachment 1 - Project Revenue Requirement Worksheet.⁴² However, GridLiance Heartland explains that worksheet Attachment 9B, page 2, line 15a, is populated with Non-MISO Asset values, rather than for MISO Asset values shown on worksheet Attachment 1. GridLiance Heartland further explains that it will input the values for other non-MISO assets into worksheet Attachment 9B, lines 15b and below.⁴³ GridLiance Heartland states that each set of transmission facilities reflected in worksheet Attachment 9B would have its own Net Revenue Requirement that would be used to calculate the transmission rate applicable to the specific set of customers that takes service along those facilities.⁴⁴ GridLiance Heartland states this will ensure that each specific class of customers that use a set of transmission facilities will pay the rate associated with those facilities, which GridLiance Heartland asserts is consistent with the Commission's cost causation principles. GridLiance Heartland explains that this will also allow any non-MISO assets to be included in worksheet Attachment 9B and flow through to the ATRR calculation in worksheet Attachment 9A. GridLiance Heartland states that worksheet Attachment 9C - Non-MISO Project True-Up Worksheet replicates the formulas in worksheet Attachment 3 - Project True-up

⁴¹ *Id.* at 3, 8.

⁴² *Id.* at 3.

⁴³ *Id.* at 5.

⁴⁴ *Id.* at 4.

Worksheet.⁴⁵ GridLiance Heartland asserts that it will populate this revised worksheet to calculate its true-up for the Non-MISO Assets and other non-MISO assets.

33. GridLiance Heartland also explains that the value of the discount offered to EEI is being shown on line 15a, column 17 in worksheet Attachment 9B.⁴⁶ GridLiance Heartland notes that the ceiling rate of \$2,031,780, minus the discount of \$731,780, produces a net revenue requirement of \$1,300,000, which is equal to the discounted rate negotiated with EEI of \$2,600/MW times 500 MW. GridLiance Heartland states that Attachment 9B works to show that GridLiance Heartland is absorbing the cost of the discount and not collecting it from any other class of customers. GridLiance Heartland notes that the ceiling rate of \$2,031,780 is used to calculate the general rate shown in the GLH Non-MISO Revenue File and that the net revenue requirement of \$1,300,000 is used to calculate the discounted rate for the fixed rate path.

34. GridLiance Heartland explains that, in calculating the ATRR for the non-MISO assets on worksheet Attachment 9A, the TP Allocator will not be applied to any discounts intended for a specific class of transmission customers.⁴⁷ GridLiance Heartland states that the revenue credit or discount, if any, will only benefit the specific class of customers that is charged the rate applicable to that project's revenue requirement.

35. Finally, GridLiance Heartland states that it has revised the divisor in its GLH Non-MISO Data File from 600 MW, the line capacity of the Non-MISO Assets, to 500 MW, the amount associated with the contract for use of the Non-MISO Assets.⁴⁸ GridLiance Heartland notes that this revision changes the resultant rates correspondingly. GridLiance Heartland states that it has also updated GridLiance Heartland's OATT Schedule 1 to use a divisor of 500 MW and to capture the value properly allocated to the Non-MISO Assets.

36. GridLiance Heartland requests that the Commission accept the OATT to become effective on the first day of the month after the date upon which GridLiance Heartland acquires the EEI Assets.⁴⁹

⁴⁵ *Id.* at 3.

⁴⁶ *Id.* at 6.

⁴⁷ *Id.* at 8.

⁴⁸ *Id.* at 9.

⁴⁹ *Id.* at 1; *see also* Second Deficiency Response at 1.

E. Ameren Second Protest

37. Ameren argues that, through the First Deficiency Response and deficiency response filed in Docket No. ER19-2050-002, GridLiance Heartland has effectively put forth a newly formed, expanded approach to the formula rate templates.⁵⁰ Ameren contends that deficiency letters are not for the purpose of allowing an applicant to effectively put forward a new rate proposal but are instead intended to allow an applicant to cure deficiencies with an original proposal. Ameren argues that here, GridLiance Heartland uses the opportunity to expand the application of its formula rates to more than just the EEI transmission facilities contemplated for sale in the original filings in contravention of the intended purpose of the deficiency letter process. Ameren contends that this is a procedural misuse of process and the Commission should reject it.

38. Ameren notes that GridLiance Heartland's proposal effectively links the two formula rates through the TP Allocator.⁵¹ Ameren contends that, to ensure that customers are paying the cost and expense of only the appropriate transmission facilities, close scrutiny is required of the transmission plant and other allocators. Ameren requests that, if the Commission does not set for hearing the inter-linked formula rates to ensure their proper working, the Commission allow, as part of the protocol process, challenge to the allocator methodologies, similar to the decision in the January 2019 Order.⁵²

39. In addition, Ameren argues that GridLiance Heartland's proposed OATT is premature, as it is premised on an acquisition the Commission has rejected.⁵³ Ameren asserts that, although GridLiance Heartland seeks to have the proposed OATT on file for the purpose of providing service over assets it may acquire in the future, GridLiance Heartland has no clear path to acquire such assets now in light of the Commission's rejection of GridLiance Heartland's section 203 application in Docket No. EC19-42-000. Ameren notes that the Commission has, in the past, rejected tariff revisions as premature when the filing entity did not yet have an interest in, or had not constructed or received service requests using, jurisdictional facilities that would be subject to the tariff provision(s).⁵⁴

⁵⁰ Ameren Second Protest at 5.

⁵¹ *Id.* at 8.

⁵² *Id.* at 9 (citation omitted).

⁵³ *Id.* at 6.

⁵⁴ *Id.* at 7 (citations omitted).

40. Ameren states that it is concerned that the use of a stand-alone OATT to govern the rates, terms, and conditions of service over facilities that GridLiance Heartland contends are in the MISO region is a step backward in terms of the efficiencies created by having an RTO footprint.⁵⁵ Ameren contends that GridLiance Heartland's desire to have a stand-alone OATT on a longer-term basis rather than the limited period of a few years originally contemplated for the Non-MISO Assets should not be overlooked.

41. In addition, Ameren argues that it is inappropriate for GridLiance Heartland to use the base ROE authorized for MISO transmission owners for service on their facilities committed to the operational control of MISO of 10.32 percent as the ROE for its Formula Rate and its corresponding non-MISO ATRR.⁵⁶ First, Ameren argues that the facilities meant to be subject to the OATT will not be under the operational control of MISO and should not be allowed to use the MISO transmission owners' ROE. Second, Ameren asserts that GridLiance Heartland is not a group of utilities and using an ROE in its OATT based on an analysis of data for a group of utilities is unsupported by Commission policy and precedent. Further, Ameren contends that GridLiance Heartland has provided no evidence to support a finding that a 10.32 percent ROE would be just and reasonable for service under its OATT, and Ameren argues that the Commission should not permit an unsupported single-utility ROE to go into effect. Accordingly, Ameren argues that the Commission should reject GridLiance Heartland's proposal to use a 10.32 percent ROE in its proposed OATT.

42. Finally, Ameren asserts that it appears that Line 209 of the new Attachment 9A-Non-MISO ATRR (i.e., worksheet Attachment 9A, page 4, line 5) is mislabeled.⁵⁷ Ameren states that this line refers to "Percentage of Transmission plant included in ISO rates" but the calculation is "Transmission plant not included in ISO rates" divided by "Total Transmission plant."

F. Second Deficiency Response

43. In the Second Deficiency Response, GridLiance Heartland proposes additional changes to its Formula Rate. GridLiance Heartland states that worksheet Attachment 9A, page 4, line 5 should refer to the percentage of transmission plant not included in ISO rates and should read "Percentage of Transmission plant not included in ISO Rates."⁵⁸ GridLiance Heartland also states that Note L should refer to transmission plant included

⁵⁵ *Id.* at 8.

⁵⁶ *Id.* at 9-10.

⁵⁷ *Id.* at 10-11.

⁵⁸ Second Deficiency Response at 1.

in ISO rates and should read “Includes transmission plant under MISO functional control and included in Attachment O-GLH.”

IV. Discussion

A. Procedural Matters

44. Pursuant to Rule 214 of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2019), Ameren’s timely, unopposed motion to intervene serves to make it party to this proceeding.

45. Rule 213(a)(2) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2019), prohibits an answer to a protest or answer unless otherwise ordered by the decisional authority. We accept the answers filed by Ameren and GridLiance Heartland because they have provided information that has assisted us in our decision-making process.

B. Substantive Matters

46. As discussed below, we accept the proposed OATT for filing and suspend it for a nominal period, to become effective the first day of the month after the date on which GridLiance Heartland acquires the EEI Assets as proposed in Docket No. EC20-13-000, subject to refund, subject to condition, and subject to the outcome of the proceeding in Docket No. ER19-1961, and we set GridLiance Heartland’s base ROE for hearing and settlement judge procedures. We direct GridLiance Heartland to notify the Commission, within 10 days of the date on which the acquisition of the EEI Assets is consummated, of the date on which the proposed OATT will become effective. We find that GridLiance Heartland’s proposed deviations from the *pro forma* OATT are consistent with or superior to the *pro forma* OATT.

47. As an initial matter, we find GridLiance Heartland’s proposal to use a stand-alone OATT to govern the rates, terms, and conditions of service over the Non-MISO Assets and any future transmission facilities owned by GridLiance Heartland, but not transferred to MISO’s functional control, to be just and reasonable. We are not persuaded by Ameren’s argument that this proposal is a step backwards because GridLiance Heartland is eschewing the efficiencies of an RTO footprint. RTO participation is not mandatory⁵⁹ and Order No. 888 requires that an OATT be on file in order to provide transmission

⁵⁹ *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, (1999) (cross-referenced at 89 FERC ¶ 61,285), *order on reh’g*, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000) (cross-referenced at 90 FERC ¶ 61,201), *aff’d sub nom. Pub. Util. Dist. No. 1 v. FERC*, 272 F.3d 607 (D.C. Cir. 2001).

service.⁶⁰ Therefore, we need only determine whether the OATT itself is just and reasonable. Moreover, we find Ameren's argument that the Filing is premature given that GridLiance Heartland does not own any assets in MISO, to be moot in light of the order conditionally approving the Proposed Application being issued concurrently in Docket No. EC20-13.

48. We disagree with Ameren's contention that GridLiance Heartland's Deficiency Responses have effectively put forth a new rate proposal. GridLiance Heartland's original Filing in this proceeding, as well as its original ATRR filing in Docket No. ER19-2050-000, reflect the intent to apply to the EEI Assets and any future GridLiance Heartland acquired assets. We find that the Deficiency Responses clarify the formula rates consistent with this intent.⁶¹

49. We accept GridLiance Heartland's proposed Attachments R and S containing the Formula Rate. We also accept GridLiance Heartland's proposal to calculate and offer a discounted rate for transmission service to all Eligible Customers, as that term is defined in the OATT. As noted by GridLiance Heartland, the Formula Rate is largely based on the formula rate template and protocols accepted in the January 2019 Order. The Formula Rate modifies the formula rate accepted in the January 2019 Order by applying a TP Allocator to calculate the ATRR for transmission facilities governed by the OATT. Further, GridLiance Heartland has added worksheet Attachments 9A through 9C to the previously accepted formula rate template to both add transparency and calculate any discounted rate available to Eligible Customers. As discussed further below, we find that these modifications provide a just and reasonable method to calculate GridLiance Heartland's ATRR and any discounted rate.

50. Ameren is concerned that GridLiance Heartland's Non-MISO Assets costs will not be properly allocated and that the discounted rate GridLiance Heartland negotiated with EEI as part of GridLiance Heartland's acquisition of the EEI Assets will not be properly credited to prevent cost shifting from the Non-MISO charges to the MISO charges. We disagree and find that GridLiance Heartland's revised Formula Rate, as clarified in the deficiency responses, transparently demonstrates how the revenue requirement for the Non-MISO Assets is calculated, as well as how that calculation interacts with the calculation of the revenue requirements for the MISO Assets. As GridLiance Heartland explains, worksheet Attachment 9A calculates the projected net ATRR for the Non-MISO Assets by using a transmission plant allocator reflecting the ratio of Non-MISO Assets'

⁶⁰ Order No. 888, FERC Stats. & Regs. ¶ 31,036.

⁶¹ *See, e.g.*, Filing at 1 ("GridLiance Heartland also will utilize its OATT to provide transmission service over any future facilities it acquires in the MISO region but does not transfer to MISO's functional control.").

gross transmission plant value to the EEI Assets' gross transmission plant value.⁶² Because all other allocators in the Formula Rate are derived in part from the transmission plant allocator, the Formula Rate removes the portion of costs or expenses not related to Non-MISO Assets from each cost of service item. As a result, application of the transmission plant allocator provides that transmission customers will only pay for service provided by facilities governed by the OATT, while MISO customers will only pay for transmission service provided by GridLiance Heartland facilities that have been transferred to MISO's functional control. While the TP Allocator addresses the unique circumstances of GridLiance Heartland's business model, we note that use of a TP Allocator to allocate costs among facilities or groups of facilities is a common element among the Commission-approved MISO Attachment O formula rate templates.⁶³

51. Accordingly, we disagree with Ameren that an evidentiary hearing is necessary to provide closer scrutiny of GridLiance Heartland's proposed use of the TP Allocator. As described above, GridLiance Heartland's deficiency response has provided us with sufficient understanding of the intended use and functionality of the allocator. In response to Ameren's alternative request, we clarify that the inputs to the TP Allocator, like any other input in the Formula Rate, are subject to the protocols' information exchange and challenge procedures. However, we disagree with Ameren's suggestion that the TP Allocator be subject to challenge under the protocols in a manner similar to the affiliate cost allocation methodologies addressed in the January 2019 Order. Unlike the affiliate cost allocation methodologies, the use of the TP Allocator and the method by which it is calculated is part of the filed rate and thus not subject to challenges provided for in the protocols. Instead, the protocols provide that any interested party may request more information on or challenge only the inputs and information affecting the inputs to, as well as the proper application of, the TP Allocator.⁶⁴

52. We also disagree with Ameren's argument that GridLiance Heartland's proposed discounted rate is inconsistent with Commission policy. We find that, irrespective of whether the rate is characterized as a discount or a premium, any revenue shortfall resulting from the discounted rate for Long-Term Firm Point-to-Point Transmission

⁶² As accepted in the January 2019 Order, the transmission plant allocator also removes costs associated with "transmission plant determined by Commission order to be state jurisdictional according to the seven-factor test (until Form No. 1 balances are adjusted to reflect application of seven-factor test)." GridLiance Heartland Formula Rate, Attachment O, page 4, line 2, and page 5, Note L.

⁶³ See, e.g., MISO Tariff, Attachment O, 3.FERC Form 1 Generic Rate Formula Template.

⁶⁴ See, proposed MISO FERC Electric Tariff, Attachment O, 89, GridLiance Heartland Annual True-Up, Info Exchange, 32.0.0.

Service will not be shifted to any other class of customers who take service under the OATT or to any MISO customers who pay the ATRR for the MISO Assets. GridLiance Heartland's Attachment 9B adequately demonstrates that GridLiance Heartland will absorb the cost of the discount and will not collect it from any other class of customers. GridLiance Heartland also explains that other non-MISO assets acquired in the future will each have its own net revenue requirement used to calculate the transmission rate applicable to the specific set of customers that takes service along those facilities. GridLiance Heartland further explains that such facilities will be included as its own line item in worksheet Attachment 9B, which will ensure that GridLiance Heartland matches discounted transmission rates with the appropriate transmission facilities and customers taking service on those facilities, and that any revenue credits will be directly assigned to the relevant facilities. In addition, GridLiance Heartland explains that the TP Allocator will not be applied to any discounts intended for a specific class of transmission customers. Accordingly, we find that GridLiance Heartland's proposed methodology adequately addresses the concern over potential cost-shifting.

53. Regarding the hearing and settlement judge procedures established in the January 2019 Order, as noted above,⁶⁵ in the December 2019 Order, the Commission approved a Settlement resolving all issues in dispute in those proceedings.⁶⁶ Additionally, in that order, the Commission directed GridLiance Heartland and certain of its affiliates to make a compliance filing with revised tariff records. Consequently, we direct GridLiance Heartland to make a compliance filing within 30 days of this order, if necessary, and any additional compliance filings as required to incorporate any revisions necessary to conform to the Settlement.

54. Regarding GridLiance Heartland's proposed base ROE, our preliminary analysis indicates that GridLiance Heartland's proposed use of the MISO TOs' base ROE has not been shown to be just and reasonable and may be unjust, unreasonable, unduly discriminatory or preferential, or otherwise unlawful. GridLiance Heartland's proposed base ROE raises issues of material fact that cannot be resolved based on the record before us and are more appropriately addressed in the hearing and settlement judge procedures ordered below. Accordingly, we accept the proposed OATT for filing and suspend it for a nominal period, to become effective the first day of the month after the date on which GridLiance Heartland acquires the EEI Assets as proposed in Docket No. EC20-13-000, subject to refund, subject to condition, and subject to the outcome of the proceeding in Docket No. ER19-1961, and we set GridLiance Heartland's base ROE for hearing and settlement judge procedures.

⁶⁵ *See supra* section I.C.

⁶⁶ December 2019 Order, 169 FERC ¶ 61,206.

55. Regarding the OATT itself, in Order No. 890,⁶⁷ the Commission allowed transmission providers to propose non-rate terms and conditions that differ from those in Order No. 890, if those provisions are consistent with or superior to the *pro forma* OATT.⁶⁸ To the extent that deviations from the *pro forma* OATT are necessary, the Commission requires applicant transmission owners to explain and support the deviations sufficiently,⁶⁹ and the Commission evaluates proposed OATT deviations on a case-by-case basis.⁷⁰ The Commission will only find proposed deviations from the *pro forma* OATT to be just and reasonable if the filing party provides an adequate explanation of how the deviations in the proposed OATT are consistent with or superior to the *pro forma* OATT, or provides a full and convincing explanation of how the *pro forma* provisions are not applicable, given the filing party's business model.⁷¹

56. Multiple provisions of the proposed OATT deviate from the *pro forma* OATT. Based on our review, as discussed below, we find that GridLiance Heartland has demonstrated that its proposed OATT is consistent with or superior to the *pro forma* OATT.

1. Order No. 1000 Requirements

a. Filing

57. GridLiance Heartland states that, to the extent deemed necessary, it requests waiver of any requirements arising from the Commission's Order No. 1000⁷² as they may

⁶⁷ *Preventing Undue Discrimination and Preference in Transmission Service*, Order No. 890, 118 FERC ¶ 61,119, *order on reh'g*, Order No. 890-A, 121 FERC ¶ 61,297 (2007), *order on reh'g*, Order No. 890-B, 123 FERC ¶ 61,299 (2008), *order on reh'g*, Order No. 890-C, 126 FERC ¶ 61,228, *order on clarification*, Order No. 890-D, 129 FERC ¶ 61,126 (2009).

⁶⁸ *Id.* P 135.

⁶⁹ *Chinook Power Transmission, LLC*, 126 FERC ¶ 61,134, at P 47, *order on reh'g*, 128 FERC ¶ 61,074 (2009).

⁷⁰ *Montana Alberta Tie Ltd.*, 116 FERC ¶ 61,071, at PP 55-60 (2006).

⁷¹ *Id.* P 60.

⁷² *Transmission Planning and Cost Allocation by Transmission Owning and Operating Public Utilities*, Order No. 1000, 136 FERC ¶ 61,051 (2011), *order on reh'g*, Order No. 1000-A, 139 FERC ¶ 61,132, *order on reh'g and clarification*, Order

apply to the Non-MISO Assets.⁷³ GridLiance Heartland states that it has been approved to become a Transmission Owner in MISO upon closing its acquisition of the EEI Assets and that it will participate in the MISO Order No. 1000-compliant regional transmission planning process. However, GridLiance states that, to the extent that GridLiance Heartland's participation in the MISO regional transmission planning process does not account for or otherwise incorporate the Non-MISO Assets, GridLiance Heartland requests waiver of the requirement to include such facilities in a regional transmission planning process as required by Order No. 1000.

58. GridLiance Heartland states that the Commission has found that the criteria for applicants seeking waiver of Order No. 1000 requirements are the same criteria used to evaluate requests for waiver under Order Nos. 888, 889,⁷⁴ and 890.⁷⁵ GridLiance Heartland states that the Commission will grant requests for waiver if utilities can show that they own, operate, or control only limited and discrete transmission facilities.⁷⁶ GridLiance Heartland notes that the Commission granted EEI's request for waiver of the Commission's Order No. 1000 requirements for the EEI Assets because the Commission found that "[EEI] controls limited and discrete transmission facilities that do not form an integrated transmission grid."⁷⁷ GridLiance Heartland also notes that the Non-MISO Assets that will be subject to GridLiance Heartland's proposed OATT are a subset of the transmission facilities for which the Commission previously waived the Order No. 1000 requirements for EEI. GridLiance Heartland states that, moreover, the Non-MISO Assets will be transferred to MISO's functional control in 2022, and GridLiance Heartland asserts that thus there is no practicable opportunity for application of the competitive bidding requirements of Order 1000.

No. 1000-B, 141 FERC ¶ 61,044 (2012), *aff'd sub nom. S.C. Pub. Serv. Auth. v. FERC*, 762 F.3d 41 (D.C. Cir. 2014).

⁷³ Filing at 4 (citation omitted).

⁷⁴ *Open Access Same-Time Information System and Standards of Conduct*, Order No. 889, FERC Stats. & Regs. ¶ 31,035 (1996) (cross-referenced at 75 FERC ¶ 61,078), *order on reh'g*, Order No. 889-A, FERC Stats & Regs. ¶ 31,049 (cross-referenced at 78 FERC ¶ 61,221), *reh'g denied*, Order No. 889-B, 81 FERC ¶ 61,253 (1997).

⁷⁵ Filing at 4 (citing Order No. 1000, 136 FERC ¶ 61,051 at P 832).

⁷⁶ *Id.* (citing *Black Creek Hydro, Inc.*, 77 FERC ¶ 61,232, at 61,941 (1996)).

⁷⁷ *Id.* (quoting *Elec. Energy, Inc.*, 144 FERC ¶ 61,028, at P 9 (2013)).

b. Commission Determination

59. As noted by GridLiance Heartland, the Non-MISO Assets are a subset of larger facilities previously governed by EEI's OATT, and the Commission previously granted EEI's request for waiver of Order No. 1000's requirements. Further, GridLiance Heartland will transfer functional control of the Non-MISO Assets to MISO in 2022, providing no practicable opportunity for GridLiance to apply the competitive bidding requirements of Order No. 1000. Based on these unique circumstances, to the extent necessary, we grant waiver of the Order No. 1000 requirements.

60. However, we note that, because GridLiance Heartland's request is based entirely on the nature and status of the Non-MISO Assets, GridLiance Heartland's waiver will remain in effect unless and until GridLiance Heartland acquires or builds transmission facilities additional to the Non-MISO Assets that are subject to the OATT. GridLiance Heartland must notify the Commission if there is a material change in facts that affects its waiver, within 30 days of the date of such change.⁷⁸

2. Order No. 845 Requirements

a. Filing

61. GridLiance Heartland notes that in Order Nos. 845⁷⁹ and 845-A, the Commission revised the *pro forma* Large Generator Interconnection Procedures (LGIP) and Large Generator Interconnection Agreement (LGIA) to improve certainty for interconnection customers, promote more informed interconnection decisions, and enhance the interconnection process.⁸⁰ GridLiance Heartland states that its affiliate, GridLiance High Plains LLC, recently submitted revisions in Docket No. ER19-1961 to the GridLiance High Plains LLC OATT to conform to the requirements of Order Nos. 845 and 845-A. GridLiance Heartland notes that the Commission has not yet acted on GridLiance High Plains LLC's filing. GridLiance Heartland states that it is proposing the same exact revisions to its LGIP and LGIA. GridLiance Heartland commits that if the Commission directs any revisions to GridLiance High Plains LLC's LGIP or LGIA in Docket No.

⁷⁸ See *Material Changes in Facts Underlying Waiver of Order No. 889 and Part 358 of the Commission's Regulations*, 127 FERC ¶ 61,141, at P 5 (2009).

⁷⁹ *Reform of Generator Interconnection Procedures and Agreements*, Order No. 845, 163 FERC ¶ 61,043 (2018), *order on reh'g and clarification*, Order No. 845-A, 166 FERC ¶ 61,137, *order on reh'g and clarification*, Order No. 845-B, 168 FERC ¶ 61,092 (2019).

⁸⁰ Filing at 9 (citations omitted).

ER19-1961, GridLiance Heartland will make conforming revisions to its own LGIP or LGIA in the instant dockets.

b. Commission Determination

62. We accept GridLiance Heartland's proposed revisions to conform to Order Nos. 845 and 845-A, subject to the outcome of the proceeding in Docket No. ER19-1961. We note GridLiance Heartland's commitment that, to the extent the Commission directs any revisions to GridLiance High Plains LLC's LGIP or LGIA in Docket No. ER19-1961, GridLiance Heartland will make conforming revisions to its own LGIP or LGIA in the instant docket.⁸¹

3. Rate Treatment for Failure to Comply with OATT

a. Filing

63. GridLiance Heartland proposes to revise the *pro forma* OATT's "placeholder" language related to the rate treatment and related terms and conditions for certain situations in which the transmission customer fails to comply with the terms of the OATT. Specifically, GridLiance Heartland proposes changes to sections 13.7(iii) and 14.5 to provide the rate treatment if a transmission customer exceeds its firm or non-firm reserved capacity. It also proposes changes to section 28.6 to specify charges and penalties if a network customer uses network integration transmission service to facilitate a wholesale sale that does not serve network load; changes to section 30.4 to specify the rate treatment if a network customer's scheduled delivery exceeds its designated capacity; and changes to section 33.7 to specify the rate treatment if a network customer fails to respond to load shedding or curtailment directives.⁸²

b. Commission Determination

64. We find GridLiance Heartland's proposed language to be consistent with or superior to the *pro forma* OATT, as the proposed language clearly outlines the rate treatment and terms and conditions for failure by transmission customers to adhere to the terms of the OATT and provides clarity to transmission customers.

⁸¹ *Id.*

⁸² *Id.* at 7-8.

4. Local Planning Process – Attachment K

a. Filing

65. GridLiance Heartland proposes a new coordinated, open, and transparent local planning process (LPP), described in Attachment K of its proposed OATT, which GridLiance Heartland states will facilitate transmission planning for all of GridLiance Heartland's facilities, including facilities that will be subject to the OATT and those that are transferred to the functional control of MISO.⁸³ GridLiance Heartland states that the LPP will meet anticipated future transmission needs of GridLiance Heartland's customers who are receiving generator interconnection services and transmission services on or across GridLiance Heartland's transmission facilities.⁸⁴ GridLiance Heartland further states that, through this process, it will annually post a draft Transmission Plan (Plan) and, after soliciting and considering comments from stakeholders, it will release a final Plan.

66. GridLiance Heartland asserts that its proposed LPP meets the requirements of Order Nos. 890 and 1000.⁸⁵ GridLiance Heartland states that the LPP will apply to all GridLiance Heartland assets, not just the Non-MISO Assets, and, as such, GridLiance Heartland will be one of three MISO TOs with its own LPP. GridLiance Heartland states that, under its proposal, it will annually develop a Plan that identifies transmission enhancements needed to maintain the reliability of its facilities, maintain interconnection and transmission services across its facilities, and reliably serve the connected load. GridLiance Heartland explains that, when developing its Plan, it will annually draft the Plan scope, host open stakeholder meetings, and publicly solicit input on the Plan scope, project proposals, and the draft Plan. GridLiance Heartland states that it will make its planning assumptions, criteria, and Plans available on its website and that the Plan will be developed on a comparable and nondiscriminatory basis to meet anticipated transmission needs, avoid unnecessary duplication of facilities, and avoid imposing unreasonable costs on the transmission provider and customers. GridLiance Heartland states that the LPP included as Attachment K to GridLiance Heartland's proposed OATT is nearly identical to the LPP the Commission accepted in a filing submitted by GridLiance Heartland's affiliate, GridLiance High Plains LLC.⁸⁶

⁸³ *Id.* at 8.

⁸⁴ *Id.*

⁸⁵ *Id.* at 9 (citation omitted).

⁸⁶ *Id.* (citing *S. Cent. MCN LLC*, 164 FERC ¶ 61,114 (2018)).

b. Commission Determination

67. In Order No. 890, the Commission reformed the *pro forma* OATT to clarify and expand the obligations of transmission providers to ensure that transmission service is provided on a nondiscriminatory basis. One of the Commission's primary reforms addressed the lack of specificity regarding how customers and other stakeholders should be treated in the transmission planning process. To remedy the potential for undue discrimination in planning activities, the Commission directed all transmission providers to develop a transmission planning process that satisfies nine principles and to clearly describe that process in a new Attachment K to their OATT.

68. The nine planning principles the Commission directed each transmission provider to address in its Attachment K planning process are: (1) coordination; (2) openness; (3) transparency; (4) information exchange; (5) comparability; (6) dispute resolution; (7) regional participation; (8) economic planning studies; and (9) cost allocation for new projects. The Commission also directed transmission providers to address the recovery of planning-related costs. The Commission explained that, although Order No. 890 allows for flexibility, each transmission provider has a clear obligation to address each of the nine principles in its transmission planning process, and all of these principles must be fully addressed in the tariff language filed with the Commission. The Commission emphasized that tariff rules, as supplemented with web-posted business practices when appropriate, must be specific and clear to facilitate compliance by transmission providers and place customers on notice of their rights and obligations.⁸⁷

69. GridLiance Heartland proposes to utilize a local planning process substantively identical to the local planning process accepted by the Commission in Docket No. ER18-1267, et al.⁸⁸ We find that this local planning process as utilized by GridLiance Heartland continues to meet the nine planning principles and, thus, complies with the requirements of Order No. 890.

C. Establishment of Hearing and Settlement Judge Procedures

70. As discussed above,⁸⁹ in this order we establish hearing and settlement judge procedures to examine GridLiance Heartland's base ROE. While we are setting this matter for a trial-type evidentiary hearing, we encourage the parties to make every effort to settle their disputes before hearing procedures commence. To aid the parties in their

⁸⁷ *Sky River, LLC*, 136 FERC ¶ 61,162, at P 36 (2011) (citing Order No. 890, 118 FERC ¶ 61,119 at PP 1649-1655).

⁸⁸ *South Central MCN LLC*, 164 FERC ¶ 61,114 at PP 18-42.

⁸⁹ *See supra* P 54.

settlement efforts, we will hold the hearing in abeyance and direct that a settlement judge be appointed, pursuant to Rule 603 of the Commission's Rules of Practice and Procedure.⁹⁰ If the parties desire, they may, by mutual agreement, request a specific judge as the settlement judge in the proceeding.⁹¹ The Chief Judge, however, may not be able to designate the requested settlement judge based on workload requirements which determine judges' availability. The settlement judge shall report to the Chief Judge and the Commission within 30 days of the date of the appointment of the settlement judge, concerning the status of settlement discussions. Based on this report, the Chief Judge shall provide the parties with additional time to continue their settlement discussions or provide for commencement of a hearing by assigning the case to a presiding judge.

The Commission orders:

(A) GridLiance Heartland's proposed OATT is hereby accepted for filing and suspended for a nominal period, to become effective the first day of the month after the date on which GridLiance Heartland acquires the EEI Assets as proposed in Docket No. EC20-13-000, subject to refund, subject to condition, and subject to the outcome of the proceeding in Docket No. ER19-1961, as discussed in the body of this order.

(B) GridLiance Heartland is hereby directed to notify the Commission, within 10 days of the date on which the acquisition of the EEI Assets is consummated, of the date on which the proposed OATT will become effective, as discussed in the body of this order.

(C) GridLiance Heartland is hereby directed to submit a compliance filing within 30 days of the date of this order and any other further compliance filings as necessary, as discussed in the body of this order.

(D) Pursuant to the authority contained in and subject to the jurisdiction conferred on the Commission by section 402(a) of the Department of Energy Organization Act and the Federal Power Act, particularly sections 205 and 206 thereof, and pursuant to the Commission's Rules of Practice and Procedure and the regulations under the Federal Power Act (18 C.F.R. Chapter I), a public hearing shall be held concerning the justness and reasonableness of GridLiance Heartland's proposed base

⁹⁰ 18 C.F.R. § 385.603 (2019).

⁹¹ If the parties decide to request a specific judge, they must make their joint request to the Chief Judge by telephone at (202) 502-8500 within five days of this order. The Commission's website contains a list of Commission judges available for settlement proceedings and a summary of their background and experience (<http://www.ferc.gov/legal/adr/avail-judge.asp>).

ROE. However, the hearing will be held in abeyance to provide time for settlement judge procedures, as discussed in Ordering Paragraphs (E) and (F) below.

(E) Pursuant to Rule 603 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.603 (2019), the Chief Judge is hereby directed to appoint a settlement judge in this proceeding within 15 days of the date of this order. Such settlement judge shall have all powers and duties enumerated in Rule 603 and shall convene a settlement conference as soon as practicable after the Chief Judge designates the settlement judge. If the participants decide to request a specific judge, they must make their request to the Chief Judge within five days of the date of this order.

(F) Within 30 days of the appointment of the settlement judge, the settlement judge shall file a report with the Commission and the Chief Judge on the status of the settlement discussions. Based on this report, the Chief Judge shall provide the participants with additional time to continue their settlement discussions, if appropriate, or assign this case to a presiding judge for a trial-type evidentiary hearing, if appropriate. If settlement discussions continue, the settlement judge shall file a report at least every 60 days thereafter, informing the Commission and the Chief Judge of the participants' progress toward settlement.

(G) If settlement judge procedures fail and a trial-type evidentiary hearing is to be held, a presiding judge, to be designated by the Chief Judge, shall, within 15 days of the date of the presiding judge's designation, convene a prehearing conference in these proceedings in a hearing room of the Commission, 888 First Street NE, Washington, DC 20426. Such a conference shall be held for the purpose of establishing a procedural schedule. The presiding judge is authorized to establish procedural dates, and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

By the Commission.

(S E A L)

Kimberly D. Bose,
Secretary.