168 FERC ¶ 61,130
UNITED STATES OF AMERICA
FEDERAL ENERGY REGULATORY COMMISSION

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

Electric Energy, Inc.
GridLiance Heartland LLC

Docket No. EC19-42-000

ORDER DENYING APPLICATION FOR AUTHORIZATION OF DISPOSITION AND ACQUISITION OF JURISDICTIONAL FACILITIES

(Issued August 28, 2019)

1. On December 26, 2018, as amended on April 1, 2019, pursuant to sections 203(a)(1)(A) and (B) of the Federal Power Act (FPA)[1] and the Commission's regulations,[2] Electric Energy, Inc. (EEInc) and GridLiance Heartland LLC (GridLiance Heartland) (together, Applicants) filed a joint application seeking authorization for EEInc to sell, and GridLiance Heartland to acquire, certain existing transmission lines and related assets (Proposed Transaction).[3]

2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.[4] As discussed below, we deny, without prejudice, authorization for the

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[1] 16 U.S.C. § 824b(a)(1)(A) and (B) (2012), *amended by* "An Act to amend section 203 of the Federal Power Act," Pub. L. No. 115-247, 132 Stat. 3152 (2018).

[2] 18 C.F.R. Pt. 33 (2018).

[3] Joint Application for Authorization to Sell and Acquire Transmission Facilities Pursuant to Section 203 of the Federal Power Act and Request for Certain Waivers, Expedited Consideration and Confidential Treatment, Docket No. EC19-42-000 (filed Dec. 26, 2018) (Application).

[4] *See Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044 (1996) (cross-referenced at 77 FERC ¶ 61,263) (Merger Policy Statement), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997); *see also FPA Section 203 Supplemental Policy Statement*, 120 FERC ¶ 61,060 (2007) (Supplemental Policy

Proposed Transaction because Applicants have failed to demonstrate that the Proposed Transaction will not have an adverse effect on rates.

I. Background

A. Description of Parties

1. Description of EEInc

3. Applicants state that EEInc was originally formed in 1950 to provide electricity to a uranium enrichment facility in Paducah, Kentucky (Paducah Facility).[5] According to Applicants, EEInc owns and operates a limited, discrete set of transmission assets that have historically been used to deliver power from EEInc's generating facilities, including the 1,000 megawatt (MW) Joppa generating station located in Joppa, Illinois (Joppa Facility), to the Paducah Facility. The transmission assets include six 161 kilovolt (kV) transmission lines that range from approximately eight and 10 miles in length each, two 161 kV substations, and associated auxiliary equipment (Transmission Assets). In 2017, EEInc reconfigured its transmission system to disconnect from the Paducah Facility. Currently, four of the transmission lines connect with the Tennessee Valley Authority (TVA); the other two lines connect with the Louisville Gas and Electric Company and Kentucky Utilities Company (together, LG&E/KU) balancing authority area.[6] The Transmission Assets are also connected to the transmission system operated by the Midcontinent Independent System Operator, Inc. (MISO), via Ameren's transmission lines.[7]

Statement), *order on clarification and reconsideration*, 122 FERC ¶ 61,157 (2008). *See also Revised Filing Requirements Under Part 33 of the Commission's Regulations*, Order No. 642, FERC Stats. & Regs. ¶ 31,111 (2000) (cross-referenced at 93 FERC ¶ 61,164), *order on reh'g*, Order No. 642-A, 94 FERC ¶ 61,289 (2001). *See also Transactions Subject to FPA Section 203*, Order No. 669, 113 FERC ¶ 61,315 (2005), *order on reh'g*, Order No. 669-A, 115 FERC ¶ 61,097, *order on reh'g*, Order No. 669-B, 116 FERC ¶ 61,076 (2006).

[5] Application at 4. *See also* Application, Attachment 4: Prepared Direct Testimony of John A. Krajewski, P.E., Ex. No. GLH-400 at 4:6-11 (Krajewski Test.).

[6] Application at 4.

[7] Krajewski Test. at 4:19-20.

4. Applicants explain that EEInc has a Commission-approved open access transmission tariff (EEInc OATT) on file that governs service over the Transmission Assets. Applicants note, however, that no non-affiliated entity has ever requested transmission service over the Transmission Assets. In granting EEInc waiver of Order No. 1000 requirements, the Commission found that EEInc "controls limited and discrete transmission facilities that do not form an integrated transmission grid," and recognized that EEInc "does not have any other existing or potential customers directly interconnected with its transmission facilities" and that its transmission system is "primarily radial with limited interconnections."[8]

5. Applicants state that EEInc makes sales at wholesale pursuant to a market-based rate tariff on file with the Commission and is affiliated with various companies that are principally engaged in the generation of electric power and wholesale power sales in the markets administered by PJM Interconnection, L.L.C. (PJM), California Independent System Operator Corporation, MISO, New York Independent System Operator, Inc. (NYISO), and ISO New England Inc. (ISO-NE), and bilateral transactions with investor-owned utilities, municipal utilities, and cooperatives in those regions. Applicants explain that, to the extent EEInc's affiliated entities make jurisdictional wholesale power sales, they do so pursuant to market-based rate authorizations granted by the Commission or under cost-based rate or other schedules on file with the Commission. Applicants add that none of EEInc's affiliates have unbundled transmission services customers and that none of its affiliates own, operate or control any jurisdictional facilities other than facilities that connect their electric generation to the grid, market-based rate tariffs and cost-based rate or other schedules, and associated books and records.[9]

6. Currently, Vistra Energy Corp. (Vistra) owns an 80 percent interest in EEInc and Kentucky Utilities Company (Kentucky Utilities) owns a 20 percent interest in EEInc.[10]

2. Description of GridLiance Heartland

7. Applicants state that GridLiance Heartland is a transmission-only utility (transco) formed to partner with electric cooperatives, municipal electric utilities, and joint action agencies in MISO. Applicants note that GridLiance Heartland is not affiliated with any

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[8] Application at 5-6 (citing *Electric Energy, Inc.*, 144 FERC ¶ 61,028, at P 9 (2013)).

[9] *Id.* at 5.

[10] *Id.* at 4.

market participant operating in MISO,[11] but that it has affiliate transcos that have been formed to operate in other Independent System Operators (ISO) and Regional Transmission Organizations (RTO).[12] GridLiance Heartland and its affiliated transcos (GridLiance Transcos) operating in other RTOs are subsidiaries of GridLiance HoldCo, LP (GridLiance HoldCo).

8. Applicants explain that, except for a small interest owned by management, GridLiance HoldCo's shares are owned exclusively by Blackstone Power and Natural Resources, LP (Blackstone Power), whose limited partners are Blackstone Energy Partners II, LP (BEP II), together with its alternative investment vehicles and affiliates. Applicants state that Blackstone Power is controlled by its general partner, Blackstone Power & Natural Resources Holdco G.P., LLC (Blackstone Power Holdco). Each of Blackstone Power, Blackstone Power Holdco, and BEP II are affiliates of the Blackstone Group L.P. (Blackstone).[13]

9. Applicants note that Blackstone is not affiliated with any owner or operator of facilities for the generation or transmission of electric energy in the MISO region, but that it does have energy-related investments in other areas of the country, including the Electric Reliability Council of Texas, PJM, NYISO, and ISO-NE. Applicants also state that, through its credit-oriented affiliate, GSO Capital Partners LP, Blackstone owns a 10 percent or greater equity interest in several companies that are exempt wholesale generators and authorized by the Commission to make wholesale sales at market-based rates.[14] Applicants represent that Blackstone is not affiliated with any public utility with a franchised electric service territory in the United States.

10. Applicants explain that Blackstone is affiliated with Twin Eagle Resource Management, LLC, an energy marketing company authorized by the Commission to make wholesale sales at market-based rates, and Cheniere Energy Partners, L.P., the owner of Sabine Pass LNG, L.P., Sabine Pass Liquefaction, LLC, and Cheniere Creole Trail Pipeline, L.P., which own and develop natural gas liquefaction and export facilities, as well as interconnecting pipelines. Applicants also note that Blackstone is affiliated

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[11] Application, Attachment 1: Prepared Direct Testimony of Trent Carlson, Ex. No. GLH-100 at 3:22 (Carlson Test.).

[12] Application at 8.

[13] *Id.* at 8-9.

[14] *Id.* at 9.

with Somerset Railroad Corporation, which owns and leases railroad cars used solely to transport coal.[15]

B. Description of the Proposed Transaction

11. Pursuant to the terms of an asset purchase agreement, EEInc will sell, and GridLiance Heartland will acquire, the Transmission Assets at net book value.[16] Applicants state that the Proposed Transaction is structured as an asset purchase and will not involve any changes to the corporate structures of either applicant.

12. Applicants explain that, upon closing the Proposed Transaction, GridLiance Heartland will transfer functional control of four of the six transmission lines that comprise the Transmission Assets to MISO. Applicants anticipate that those lines will be incorporated into MISO Pricing Zone 3A (MISO Zone 3A) pursuant to a Joint Pricing Zone Agreement (Pricing Zone Agreement) that MISO will submit to the Commission.[17] Applicants explain that, to accommodate an existing power supply agreement between an EEInc affiliate and Kentucky Municipal Energy Agency, GridLiance Heartland will retain functional control of the other two transmission lines that comprise the Transmission Assets until 2022, when it plans also to transfer control of them to MISO.[18] Applicants state that, during the interim period from closing of the Proposed Transaction until such time in 2022 as it transfers the lines to MISO, GridLiance Heartland will provide open access transmission service over the lines and related substation facilities pursuant to an open access transmission tariff that GridLiance Heartland will submit to the Commission in a separate FPA section 205 filing.[19]

13. Applicants note that closing of the Proposed Transaction is subject to the Commission's acceptance and effectiveness of (1) the Pricing Zone Agreement between

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[15] *Id.* at 10-11.

[16] Based on GridLiance Heartland's analysis of EEInc's books and records, Applicants estimate that the net book value of the facilities is $11.723 million. *Id.* at 1.

[17] The Pricing Zone Agreement was submitted on March 8, 2019, in Docket No. ER19-1229-000.

[18] Application, Attachment 3: Prepared Direct Testimony of Stephen Wait, Ex. No. GLH-300 at 6:19-22.

[19] GridLiance Heartland submitted this tariff for filing on June 10, 2019, in Docket No. ER19-2092-000.

GridLiance Heartland and the current transmission owners in MISO Zone 3A; (2) amendments to the MISO Open Access Transmission, Energy and Operating Reserve Markets Tariff (MISO Tariff) to include GridLiance Heartland's Annual Transmission Revenue Requirement (Revenue Requirement) for the Transmission Assets; (3) an open access transmission tariff to govern GridLiance Heartland's provision of transmission service over the two transmission lines it will not transfer to MISO's functional control until 2022; and (4) various interconnection agreements between GridLiance Heartland and other transmission owners that own interconnecting facilities.[20]

14. Currently, EEInc serves as Transmission Owner, Transmission Operator, and Balancing Authority for the Transmission Assets.[21] Applicants state that, after the Proposed Transaction closes, GridLiance Holdco will assume the role of Transmission Owner and Transmission Operator for all of the Transmission Assets for GridLiance Heartland for purposes of complying with the North American Electric Reliability Corporation's (NERC's) Reliability Standards. In addition, MISO will become the Balancing Authority for the Transmission Assets that are transferred to MISO, and GridLiance Heartland will become the Balancing Authority for the Transmission Assets that are not transferred to MISO.

II. <u>Notice of Filing and Responsive Pleadings</u>

15. Notice of the Application was published in the *Federal Register*, 84 Fed. Reg. 84 (2019), with interventions and protests due on or before January 16, 2019.

16. American Transmission Company LLC, LG&E/KU, ITC Midwest LLC, Hoosier Energy Rural Electric Cooperative, Inc., and Kentucky Municipal Energy Agency filed motions to intervene.

17. Ameren Services Company filed, on behalf of Ameren Illinois Company (together with Ameren Services Company, Ameren), a motion to intervene and protest.

18. On January 25, 2019, Applicants filed a motion for leave to answer and answer to Ameren's protest.

19. On February 8, 2019, Ameren filed a motion for leave to answer and answer to Applicants' January 25, 2019 answer. On February 19, 2019, Applicants filed a motion for leave to reply and reply to Ameren's February 8, 2019 answer.

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[20] Application at 11.

[21] *Id.* at 12.

20. On February 28, 2019, Commission staff issued a deficiency letter requesting additional information from Applicants. On April 1, 2019, Applicants submitted a response to the letter and requested expedited consideration and a shortened comment period.[22] Notice of Applicants' response was published in the *Federal Register*, 84 Fed. Reg. 14,110 (2019), with comments due on or before April 22, 2019. Ameren opposed the request for shortened comment period and the comment date was subsequently extended through May 1, 2019.

21. On May 1, 2019, Ameren filed comments on and a protest of Applicants' response to the deficiency letter. On May 15, 2019, Applicants filed a motion for leave to answer and answer to Ameren's May 1, 2019 protest.

22. On June 4, 2019, Ameren filed an answer to Applicants' May 15, 2019 answer. On June 12, 2019, Applicants filed a motion for leave to reply and reply to Ameren's June 4, 2019 answer.

23. On June 20, 2019, Ameren filed a motion for leave to answer and answer to Applicants' June 12, 2019 answer. On June 24, 2019, Applicants filed a motion for leave to reply and reply to Ameren's June 20, 2019 answer.

24. On July 24, 2019, Ameren filed a motion to lodge (Motion to Lodge) a transcript of a hearing in a proceeding before the Illinois Commerce Commission (Illinois Commission) regarding the application of GridLiance Heartland for a certificate of public convenience and necessity for the Transmission Assets (Illinois Certificate Proceeding). On July 25, 2019, GridLiance Heartland filed a motion in opposition to Ameren's Motion to Lodge.

III. Discussion

A. Procedural Matters

25. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.214 (2018), the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding.

26. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure, 18 C.F.R. § 385.213(a)(2) (2018), prohibits an answer to a protest or an answer unless otherwise

[22] Applicants Apr. 1, 2019 Response to Deficiency Letter and Request for Expedited Consideration (Response to Deficiency Letter).

ordered by the decisional authority. We will accept the answers because they have provided information that assisted us in our decision-making process.

27. Motions to lodge information from other proceedings may be appropriate in some instances to supplement the Commission's record.[23] We find that the information provided in the Motion to Lodge has assisted us in our decision-making and grant the motion.

B. Substantive Matters

1. FPA Section 203 Standard of Review

28. FPA section 203(a)(4) requires the Commission to approve proposed dispositions, consolidations, acquisitions, or changes in control if the Commission determines that the proposed transaction will be consistent with the public interest.[24] The Commission's analysis of whether a proposed transaction is consistent with the public interest generally involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.[25] FPA section 203(a)(4) also requires the Commission to find that the proposed transaction "will not result in cross-subsidization of a non-utility associate company or the pledge or encumbrance of utility assets for the benefit of an associate company, unless the Commission determines that the cross-subsidization, pledge, or encumbrance will be consistent with the public interest."[26] The Commission's regulations establish verification and informational requirements for entities that seek a determination that a proposed transaction will not result in inappropriate cross-subsidization or pledge or encumbrance of utility assets.[27]

29. We discuss below the effect on rates of the Proposed Transaction. We do not address the other factors of the merger analysis here because we find that Applicants have failed to show that the Proposed Transaction will not have an adverse effect on rates.

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[23] *Consumers Energy Co. v. Midcontinent Indep. Sys. Operator, Inc.*, 167 FERC ¶ 61,212, at P 11 (2019) (citing *California Indep. Sys. Operator, Inc.*, 139 FERC ¶ 61,072, at P 8 (2012)).

[24] 16 U.S.C. § 824b(a)(4).

[25] Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

[26] 16 U.S.C. § 824b(a)(4).

[27] 18 C.F.R. § 33.2(j) (2018).

2. Analysis of the Proposed Transaction

a. Effect on Rates

i. Applicants' initial analysis

30. Applicants claim that the Proposed Transaction will not have an adverse effect on rates. Applicants note that, after the Proposed Transaction closes, the Transmission Assets will be added to the MISO market, and claim that there they can be better utilized and benefit the MISO and interconnected regions.

31. Applicants explain that, after the Proposed Transaction closes, there will be a defined GridLiance Heartland Revenue Requirement for the Transmission Assets under the MISO Tariff and GridLiance Heartland's transmission formula rate and implementation protocols. Applicants expect that the Revenue Requirement will be recovered from ratepayers in MISO Zone 3A, pursuant to the Pricing Zone Agreement negotiated and executed by the incumbent transmission owners in that zone. According to Applicants, the principal drivers of the Revenue Requirement will be the net book value of the Transmission Assets, operating expenses, GridLiance Heartland's return on equity, and income taxes.[28]

32. To assess the impact of the Proposed Transaction on rates, Applicants compare the GridLiance Heartland Revenue Requirement for the Transmission Assets assuming their inclusion in MISO to a hypothetical EEInc Revenue Requirement for the Transmission Assets assuming that they are owned by EEInc and included in MISO. Applicants state that EEInc's projected Revenue Requirement for all of the Transmission Assets is \$6.1 million, with \$4.95 million related to the first four lines being transferred to MISO upon close of the Proposed Transaction and \$1.1 million related to the two transmission lines not being transferred until 2022. Applicants state that GridLiance Heartland's Revenue Requirement for the Transmission Assets is estimated to be \$7.6 million for the first four lines and \$2.0 million for the two transmission lines that will not be transferred until 2022.[29] Applicants calculate that the difference between the GridLiance Heartland and EEInc Revenue Requirements is \$2.65 million for the first four lines. Applicants calculate that the \$2.65 million increase in the MISO Zone 3A Revenue Requirement amounts to an overall 1.02 percent increase in zonal rates.[30]

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[28] Application at 14-15.

[29] *Id.* at 15. *See* also Krajewski Test. at 10:3-7.

[30] Application at 16.

33. Applicants confirm that the Transmission Assets will be included in GridLiance Heartland's formula rate at net book value. Applicants claim that the Proposed Transaction will result in offsetting benefits that will counteract the rate increase. First, Applicants note that, to date, the EEInc OATT has not been used to provide transmission service, and that EEInc is primarily a generation owner whose core business does not include owning and maintaining transmission assets. In contrast, Applicants state that, under GridLiance Heartland's ownership, the Transmission Assets will be placed in MISO, which will improve regional coordination with respect to north-south constraints.

34. Another benefit claimed by Applicants is that, when the Transmission Assets become part of MISO, the existing EEInc interconnection with the Tennessee Valley Authority will become a new MISO interconnection with the Tennessee Valley Authority. Applicants further assert that, when part of MISO, the Transmission Assets will be more economic for generator interconnections because there will be no pancaked charges for access to and from MISO load, and that eliminating these charges will help increase usage of the lines. Applicants conclude that, under GridLiance Heartland's ownership, the Transmission Assets will be better integrated and better utilized to provide open and non-discriminatory services to all potential customers that have access to the MISO markets.[31]

35. Applicants also note that the Proposed Transaction will represent the first opportunity for the GridLiance Transcos to expand their business model into MISO. According to Applicants, the GridLiance Transcos were formed under a business model that results in increased competition; increased coordination and development with other utilities; and opportunities for improved reliability and operation of the grid. Applicants also refer to the non-quantifiable benefits the Commission has recognized when transactions result in the increase in transmission ownership by independent transmission companies.[32]

36. According to Applicants, the GridLiance Transcos have increased competition in two ways. First, they are recognized as qualified transmission developers in their respective regions that have actively pursued stakeholder processes to "'get the rules right' for competition including new entrants."[33] Second, Applicants state that the GridLiance Transcos have worked with other utilities, primarily public power and rural electric cooperatives, in RTO and ISO transmission planning processes to move

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[31] *Id.* at 17. *See also* Carlson Test. at 10-11.

[32] Application at 17.

[33] Carlson Test. at 11-12.

transmission into RTO and ISO transmission tariffs and to eliminate rate pancaking.[34] Applicants cite to two specific examples of the GridLiance Transcos working with partners to understand their transmission needs and implement mechanisms to address those needs to demonstrate that the GridLiance Transcos have promoted increased coordination with other utilities.[35]

37. Finally, Applicants claim that the GridLiance business model enhances reliability and improves operations in at least two ways: (1) by assuming responsibility for compliance with NERC standards using a central program that some utilities find costly when doing alone; and (2) by optimizing a combination of local "boots on the ground" and nationally-recognized contractors for operations and maintenance. According to Applicants, under the centralized compliance program the GridLiance Transcos assume all risk of penalties as a demonstration of their commitment to compliance where they co-own assets with public power entities and rural electric cooperatives. Applicants also assert that centralized efforts reduce costs while improving compliance. With respect to the operations and maintenance benefit of GridLiance ownership, Applicants state that the GridLiance Transcos utilize their partners' experience and knowledge by leveraging their existing operation and maintenance personnel to the extent practicable to operate and maintain assets they acquire.[36]

ii. <u>Applicants' response to the deficiency letter</u>

38. In the deficiency letter, Commission staff requested additional information regarding the offsetting benefits that Applicants claim would result from the Proposed Transaction.

(a) <u>Benefits to MISO transmission customers</u>

39. Commission staff asked Applicants to explain how GridLiance Heartland's acquisition of the Transmission Assets will benefit MISO transmission customers.

40. In response, Applicants claim that, because EEInc is a market generation owner/operator that only owns limited and discrete transmission facilities, EEInc is not focused on maximizing the strategic value of the Transmission Assets. Applicants state that EEInc has no plans to undertake any expansion of the Transmission Assets or to be a Transmission Owner in MISO, and has neither the personnel nor profit-incentive to proactively invest time and resources in the MISO stakeholder and transmission planning

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[34] *Id.* at 12.

[35] *Id.* at 13.

[36] *Id.* at 14.

processes. Applicants argue that, in contrast, GridLiance Heartland will focus its resources consistent with its sole purpose of developing and owning transmission facilities under MISO's functional control.

41. Applicants also assert that, to the extent the Proposed Transaction is not considered in isolation and the effect of transferring functional control of the Transmission Assets to MISO is considered as part of the Application, the Proposed Transaction and the integration of the Transmission Assets into MISO will result in several benefits not discussed in the Application.

42. First, Applicants claim that the transfer of the Transmission Assets to MISO will increase the size of the MISO footprint and the scope of the MISO planning process. According to Applicants, the transfer of the assets will promote and allow broader customer reach and increased access to more diverse and potentially less expensive power supply resources in and beyond MISO. In addition, the transfer of the assets to MISO would create a larger geographic footprint, thereby increasing the scope of existing facilities considered in MISO's regional planning process and dispatch decisions, resulting in more efficient planning for the region and operation of the regional system.[37]

43. Second, Applicants assert that the transfer of the Transmission Assets to MISO will provide economic access to and from these resources without pancaked transmission charges for both bilateral and market transactions. Applicants claim, based on a study of the economic benefits of adding EEInc's generation to MISO, that adding the Transmission Assets and EEInc's generation to MISO will eliminate the separate drive-in and drive-out costs for that generation and result in benefits to MISO ratepayers. Applicants also suggest that new generation development in the industrial area near the Transmission Assets is a distinct possibility.

44. Third, noting that obtaining permits to build new transmission across the Ohio River would be costly and difficult to obtain, Applicants claim that the Proposed Transaction will "unlock" the value of the Transmission Assets' six Ohio River crossings.[38]

45. Fourth, Applicants state that GridLiance Heartland ownership of the Transmission Assets will provide the transco benefits the Commission has recognized in prior

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[37] Response to Deficiency Letter at 5-6.

[38] *Id.* at 7.

decisions, such as the lack of internal competition for capital between business functions.[39]

(b) Existing customers and rate pancaking

46. Commission staff asked whether there are current customers paying pancaked rates that would receive rate relief from the Proposed Transaction and why such a benefit should be considered an offsetting benefit of the transaction rather than an effect of transferring functional control of the assets to MISO.

47. Applicants respond that rate depancaking is a benefit of transferring control of the Transmission Assets to MISO, regardless of ownership. Applicants assert that, if the Proposed Transaction is going to be considered in isolation, without regard to the benefits of transferring functional control of the Transmission Assets to MISO, then the rate effects of the Proposed Transaction should also be considered in isolation. Applicants conclude that because the EEInc OATT has not been used to provide transmission service to unaffiliated third parties, the Proposed Transaction, taken in isolation, will have no effect on the rates paid by anyone and Applicants are not required to show any offsetting benefits.[40] If the Commission does not consider the Proposed Transaction in isolation, Applicants state that there are several depancaking-related benefits that should be considered an offsetting benefit of the Proposed Transaction.

(c) Congestion between MISO and first tier balancing authority areas.

48. Commission staff asked whether there is congestion between MISO and any first tier balancing authority area that would be relieved by the Proposed Transaction.

49. Applicants state that they are unaware of any congestion between MISO and any first tier balancing authority area that will be relieved by incorporating the Transmission Assets into MISO other than the congestion reflected in Applicants' study of the impact of moving EEInc's generation into MISO. Applicants claim, however, that there are transmission constraints that negatively affect the flow of energy between MISO North and MISO South and that the Transmission Assets will create an additional interconnection with the Tennessee Valley Authority that presents an opportunity for MISO to direct improvements to the Transmission Assets to relieve those constraints.

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[39] *Id.* at 7-8 (citing *Startrans IO, LLC*, 122 FERC ¶ 61,307 (2008), *GridLiance West Transco LLC*, 160 FERC ¶ 61,002 (2017) (*GridLiance West*)).

[40] *Id.* at 9.

Applicants list several upgrades they claim could be made to the Transmission Assets to alleviate congestion in MISO.[41]

(d) <u>Benefits due to GridLiance Heartland's ownership of the Transmission Assets and benefits due to including the Transmission Assets in MISO.</u>

50. Commission staff requested that Applicants explain how certain benefits provided by GridLiance Heartland's ownership of the Transmission Assets are separate and apart from the benefits of including the assets in MISO, and why these benefits could not be achieved by EEInc.

51. Applicants reiterate many of the claims they make in the Application regarding the offsetting benefits of GridLiance Heartland's ownership of the Transmission Assets, such as the competitive benefits to MISO[42] and the non-quantifiable benefits that the Commission has recognized can accrue from transactions that increase transmission ownership by transcos.[43] Applicants note that the GridLiance Heartland business model is tailored to align with the "top down, bottom up" approach of the MISO regional transmission planning process, which they claim EEInc's generation-centered ownership structure does not support. Applicants also reiterate the benefits attendant to the transco business model.[44]

(e) <u>How the Proposed Transaction will improve regional coordination in MISO and alleviate constraints.</u>

52. Commission staff asked Applicants to explain, in detail, how the Proposed Transaction would improve regional coordination in MISO; to identify the north-south constraints that the Proposed Transaction would alleviate and how it would alleviate such constraints; and to explain how these benefits are due to the Proposed Transaction, rather than the integration of the Transmission Assets into MISO.

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[41] *Id.* at 10-11.

[42] *Id.* at 12.

[43] *Id.* at 7-8.

[44] *Id.* at 11-13.

53. Applicants reiterate that the additional MISO-controlled interconnections with LG&E/KU and Tennessee Valley Authority that would result from the Proposed Transaction present opportunities for MISO to direct improvements to the Transmission Assets that would address MISO's north-south constraints. Applicants state: "Regardless of ownership, the integration of the [Transmission Assets] into MISO increases the transmission interconnection capacity under the control of MISO and neighboring transmission systems, and thus promotes more effective regional and interregional coordination."[45] Applicants state that GridLiance Heartland's ownership of the Transmission Assets, and its active participation as a Transmission Owner in MISO, will enhance regional and interregional coordination because GridLiance Heartland will pursue cost effective upgrade opportunities of the Transmission Assets to enhance the performance and reliability of the regional transmission system. Applicants state that EEInc has no current plans to undertake such an expansion.

iii. Protest and Responsive Pleadings

54. Ameren challenges, on various grounds, Applicants' claim that the Proposed Transaction will not have an adverse effect on rates. Applicants dispute those challenges.

(a) Applicants' analytical framework for analyzing the effect of the Proposed Transaction on rates.

(1) Ameren's position

55. Ameren argues that Applicants' rate comparison is flawed because it relies on a hypothetical transfer of control of the Transmission Assets to MISO by EEInc. Ameren asserts that EEInc has made no mention of an intent to transfer control of the Transmission Assets, and that the impact of the Proposed Transaction is larger than Applicants represent. Ameren contends that the increased costs will be borne by customers in MISO Zone 3A, but the alleged benefits of the Proposed Transaction will not accrue to those customers.[46]

56. Ameren also argues that because the transfer of facilities to the functional control and cost recovery mechanisms of MISO is a precondition of the Proposed Transaction, it is impossible to accurately evaluate the Proposed Transaction in isolation from

[45] *Id.* at 14.

[46] Ameren January 16, 2019 Motion to Intervene and Protest at 7-9 (Ameren January 2019 Protest).

GridLiance Heartland's plan to integrate the facilities into MISO.[47] According to Ameren, the Commission must consider the effect of adding the entire EEInc Revenue Requirement for the Transmission Assets to MIZO Zone 3A, rather than only the difference between the EEInc and GridLiance Revenue Requirements, since customers in that zone will be bearing the costs of the Transmission Assets for the first time ever if the Proposed Transaction closes.[48]

(2) Applicants' position

57. Applicants dispute Ameren's characterization of their effect on rates analysis. According to Applicants, the rate impact of the Proposed Transaction is the difference in rates due to the change in ownership from EEInc to GridLiance Heartland, while the impact of including the Transmission Assets in MISO Zone 3A is an issue to be addressed in MISO's future FPA section 205 filings regarding the assets. Applicants allege that Ameren conflates the two analyses, but characterize the rate impact as minimal under either one: a 1.02 percent increase based on the difference in Revenue Requirements between GridLiance Heartland and EEInc ownership, and a 3.0 percent increase based on the addition of the GridLiance Heartland Revenue Requirement to MISO Zone 3A.[49]

(b) Benefits of the Proposed Transaction

(1) Ameren's position

58. Ameren questions the benefits Applicants claim will accrue from the Proposed Transaction. Ameren argues it is indeterminable which benefits are due to GridLiance Heartland's acquisition of the Transmission Assets and which are attributable to their integration into MISO. With respect to Applicants' claim that the Proposed Transaction will eliminate pancaked rates, Ameren notes that no unaffiliated entity of EEInc has requested service over the Transmission Assets in approximately 25 years and that Applicants have not submitted an analysis showing the likelihood of that happening. As

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[47] Ameren May 1, 2019 Protest at 13-14 (Ameren Protest of Response to Deficiency Letter).

[48] Ameren Jun. 4, 2019 Motion for Leave to Answer and Answer at 30-32 (Ameren June 2019 Answer).

[49] Applicants Jan. 25, 2019 Motion for Leave to Answer and Answer at 5-6 (Applicants January 2019 Answer). *See also* Applicants May 15, 2019 Motion to Leave to Answer and Answer at 16-17 (Applicants May 2019 Answer).

to the impact of the Proposed Transaction on interconnections between MISO and other markets, Ameren notes that MISO is already interconnected with Tennessee Valley Authority and LG&E/KU, and that GridLiance Heartland has represented before the Illinois Commission that it will continue to operate the Transmission Assets as EEInc operates them today, without any plans for upgrading them or constructing new facilities.[50]

59. Ameren also argues that Applicants' claimed economic benefits that will result from the movement of power that has allegedly been stifled as the result of pancaked transmission charges is conjecture and unsupported. First, Ameren states that the Commission limited the ability for pancaked rates between LG&E/KU and MISO when the Commission approved LG&E/KU's exit from MISO.[51] Second, Ameren notes that Applicants' argument that more efficient dispatch of generation between MISO and Tennessee Valley Authority will occur as a result of the Proposed Transaction eliminating pancaked rates is unsupported because they have not shown that the existing lines between MISO and Tennessee Valley Authority are fully subscribed. Third, Ameren questions how the Proposed Transaction could have any benefits for the customers, including Ameren Illinois customers, whose rates will increase as a result of the transaction given that GridLiance Heartland has no plans to alter the electrical configuration of the Transmission Assets, construct new facilities, or make any changes to the interconnection between the Transmission Assets and Ameren.[52]

60. Ameren also challenges the additional offsetting benefits discussed by Applicants in their response to the deficiency letter. Ameren argues that the addition of the Transmission Assets to the MISO footprint and the MISO planning process is not a meaningful benefit because, generally speaking, customers are not seeking additional transmission tie capacity into and out of MISO to Tennessee Valley Authority or LG&E/KU along those lines. Ameren also characterizes statements suggesting future access to less expensive power via the Transmission Assets as speculative. With respect to the MISO planning process, Ameren notes that participation can vary from year to year, that the Transmission Assets are already included in the MISO reliability and

[50] Ameren January 2019 Protest at 10-11 (citing GridLiance Heartland petition submitted in Illinois Certificate Proceeding).

[51] Ameren Feb. 8, 2019 Motion for Leave to Answer and Answer at 6 (Ameren February 2019 Answer) (citing *Louisville Gas and Elec. Co.*, 114 FERC ¶ 61,282, at P 45 (2006)).

[52] *Id.* at 7 (citing statements by GridLiance Heartland before the Illinois Commission).

economic planning models, and that GridLiance Heartland already participates in MISO.[53]

61. Ameren also asserts that EEInc's decision to transition its generation resources to MISO is irrelevant to the Proposed Transaction and that its generation could already participate in the MISO capacity market. Ameren disputes Applicants' claim that the transition will provide benefits, noting that Applicants' own study shows that the additional sales from EEInc's generation would provide only a nominal benefit to the MISO Zone 3A customers that will bear the costs of the Proposed Transaction. Ameren also challenges the methodology of the study.[54] Ameren argues that its ratepayers have adequate access to generation, and that nothing in the asset purchase agreement governing the Proposed Transaction requires EEInc to commit its resources to or bid its generation exclusively into MISO. Ameren contends that the benefits to ratepayers Applicants claim will accrue as a result of transitioning EEInc's generation to MISO are actually benefits to EEInc as owner of that generation.[55]

62. With respect to Applicants' claim that GridLiance Heartland will maximize the value of the Ohio River crossings, Ameren asserts that there is unlikely to be a need to construct additional lines following the path of the Transmission Assets since there are no customers taking service under the EEInc OATT. Ameren asserts further that Applicants have failed to show whether the existing crossings would be structurally sufficient to accommodate any new or upgraded lines.[56]

(2) <u>Applicants' position</u>

63. Applicants assert that Ameren's claim that the Proposed Transaction will not expand the scope of the MISO transmission planning process ignores the fact that, if the Transmission Assets are not under MISO's control, MISO cannot order upgrades on those facilities. Applicants distinguish the ability to propose a solution from the ability to order that such proposed solution be undertaken.[57] Likewise, Applicants claim that Ameren's arguments regarding the transition of EEInc's generation to MISO is premised

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[53] Ameren Protest of Response to Deficiency Letter at 19-21.

[54] *Id.* at 21-24.

[55] Ameren June 2019 Answer at 19-23.

[56] Ameren Protest of Response to Deficiency Letter at 26-27.

[57] Applicants May 2019 Answer at 8-9.

on a misunderstanding given that the transition of that generation is dependent on, and timed to coincide with, the closing of the Proposed Transaction. Applicants clarify that, without the Proposed Transaction, EEInc's generation faces pancaked transmission rates to access MISO, and that the transition of that generation into MISO is being made possible by the Proposed Transaction.[58]

64. Applicants also assert that the rate depancaking mechanism at issue in *Louisville Gas & Electric* has no bearing on the benefits of the Proposed Transaction because the hold harmless provision in that proceeding only required LG&E/KU, not EEInc, to eliminate transmission rate pancaking, and the provision only applies to a limited number of LG&E/KU's customers. Applicants also allege that Ameren ignores the possibility that the reason the lines between MISO and Tennessee Valley Authority are not fully subscribed is that the current rate pancake itself may discourage use of the lines, and that, in any case, current use of the lines is not indicative of future use.

65. With respect to GridLiance Heartland's statements before the Illinois Commission regarding its future plans for the Transmission Assets, Applicants explain that, as a prudent utility, GridLiance Heartland has not expended funds on detailed planning studies prior to owning the assets. Applicants note that GridLiance Heartland has described the expected ways the facilities might be upgraded to resolve issues in and near MISO Zone 3A, but that any proposals for zonal upgrades or transmission projects would have to be made using GridLiance Heartland's Order No. 890-compliant local planning process or the MISO Transmission Expansion Planning process, respectively.[59] Applicants clarify that GridLiance Heartland has "outlined several specific upgrades that would be beneficial to MISO ratepayers,"[60] including new lines that would utilize the existing Ohio River crossings. Noting that those projects, and any others, would be subject to MISO's planning process, Applicants state that GridLiance Heartland has committed to pursue those and other opportunities to improve the Transmission Assets, and that, as of May 2019, it was undertaking preliminary studies of various options before even having ownership of the assets in order to submit proposals in MISO's 2019 planning process.

[58] *Id.* at 9-14.

[59] Applicants February 2019 Reply at 3-6.

[60] Applicants May 2019 Answer at 5.

(c) Whether the Commission should deny the Proposed Transaction for reasons consistent with *GridLiance High Plains LLC*.

(1) Ameren's position

66. Ameren asserts that the facts of this proceeding are similar to the facts underlying a transaction recently proposed by one of GridLiance Heartland's affiliates, GridLiance High Plains LLC (GridLiance High Plains), that the Commission rejected.[61] According to Ameren, after concluding that the transaction proposed by GridLiance High Plains would increase rates, the Commission found that GridLiance High Plains had not provided any evidence that the transaction would benefit the Southwest Power Pool, Inc. (SPP) customers whose rates would increase as a result of the transaction, and that the integration into SPP of the transmission facilities, which did not serve any SPP customers, would not materially add to the size or scope of SPP nor provide other material benefits to SPP.

67. Ameren notes that the Commission found that GridLiance High Plains made only generalized claims about the benefits of transco ownership of the transmission facilities and failed to explain how GridLiance High Plain's "specific ownership of the subject transmission assets would provide benefits that offset the rate increase that would result from the proposed acquisition of those assets."[62] Recognizing that the Commission denied authorization of GridLiance High Plain's application without prejudice to applicants submitting a new application, Ameren contends that the decision is precedential as a guide to what the Commission will look for in approving future transactions proposed under FPA section 203.[63]

(2) Applicants' position

68. Applicants contest Ameren's attempt to parallel the Proposed Transaction to *GridLiance High Plains*. First, Applicants argue that because the Commission's decision in that case was based on the specific evidence submitted in that proceeding and the underlying application was dismissed without prejudice to GridLiance High Plains submitting a new filing, the decision is not precedential. Second, Applicants note that the Commission specifically stated that it was not overturning previous decisions under FPA section 203 regarding the benefits of transco ownership. Third, Applicants argue that

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[61] Ameren Protest of Response to Deficiency Letter at 9 (citing *GridLiance High Plains LLC*, 166 FERC ¶ 61,171 (2019) (*GridLiance High Plains*)).

[62] *Id.* at 10.

[63] Ameren June 2019 Answer at 8.

GridLiance High Plains is factually distinguishable given that there is no question that the Transmission Assets meet the criteria for being included as transmission under the MISO Tariff, and that Ameren has not refuted Applicants' assertion that the Transmission Assets are strategically located and connect three unaffiliated balancing authority areas and will provide MISO with new interconnections to those neighboring balancing authority areas.

69. With respect to Ameren's allegation that GridLiance Heartland has no firm plans to make upgrades or improvements to the Transmission Assets if it acquires them, Applicants note that the Commission has not required the acquiring entity in an FPA section 203 application to have fully completed expansion plans. Applicants state that they have explained that EEInc is not focused on growing its transmission business, while GridLiance Heartland will pursue opportunities through the MISO planning process "to provide measurable benefits to MISO ratepayers."[64] Applicants state that GridLiance Heartland has outlined several specific upgrades that would be beneficial to MISO ratepayers, and reiterates that it is currently undertaking preliminary studies of options in order to submit proposals in MISO's 2019 planning process. Applicants also argue that the Commission did not overrule its transco benefit precedent in *GridLiance High Plains*, and that the Proposed Transaction is similar to previous proceedings in which the Commission found that the non-quantifiable benefits of transco ownership outweighed the "not unexpected" rate increases resulting from the transco's acquisition of the transmission facilities involved.[65]

iv. Commission Determination

70. As discussed below, we deny, without prejudice, Applicants' request for authorization of the Proposed Transaction. We emphasize at the outset that our analysis of rate effects under FPA section 203 differs from the analysis we apply to determine whether rates are just and reasonable under FPA section 205. Our focus here is on the effect that the Proposed Transaction will have on jurisdictional rates, whether that effect is adverse, and whether any adverse effect will be offset or mitigated by benefits that are likely to result from the Proposed Transaction.[66]

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[64] Applicants May 2019 Answer at 5 (quoting Response to Deficiency Letter at 10-11).

[65] *Id.* at 6 (quoting *South Central MCN LLC*, 162 FERC ¶ 61,214, at P 45 (2018)).

[66] *See, e.g.*, Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,123 (noting that an increase in rates "can be consistent with the public interest if there are

71. We note that, as in *GridLiance High Plains*, the Proposed Transaction resembles a number of previous transactions approved by the Commission that involved a transco's acquisition of transmission assets.[67] As in those cases, Applicants acknowledge here that the Proposed Transaction will result in an increase in rates for customers in MISO Zone 3A. Applicants, argue, however, that the rate increase is offset by non-quantifiable benefits. In particular, Applicants rely on two primary categories of benefits which they claim result from the Proposed Transaction: benefits due to integrating the Transmission Assets into MISO and benefits due to GridLiance Heartland's ownership of the assets.

72. We have considered the specific facts of the Proposed Transaction and the voluminous record established in this proceeding. Based on our review, we conclude that Applicants have not demonstrated that the Proposed Transaction will result in benefits that offset the rate increase they acknowledge will result from the transaction. As in *GridLiance High Plains*, although we deny the Proposed Transaction, our denial is without prejudice to Applicants making a new filing that either proposes adequate ratepayer protection or that demonstrates specific additional benefits to offset the rate increase.

(a) The analytical framework for considering the effect of the Proposed Transaction on rates.

73. As an initial matter, in order to assess Applicants' claims of offsetting benefits, the Commission must consider what would occur in the absence of the Proposed Transaction and then determine if the Proposed Transaction provides any benefits to offset the effect on rates. In making this determination, the Commission relies on testimony presented before the Illinois Commission that Applicants submitted to the Commission as part of their response to the deficiency letter.[68]

74. In that testimony, GridLiance Heartland's witness explained that EEInc's ultimate parent company, Vistra, was in the process of transitioning several units at the Joppa

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countervailing benefits that derive from the transaction"); *see also ITC Midwest LLC*, 133 FERC ¶ 61,169, at P 24 (2010); *ALLETE, Inc.*, 129 FERC ¶ 61,174, at P 19 (2009).

[67] *GridLiance High Plains*, 166 FERC ¶ 61,171 at P 33.

[68] Response to Deficiency Letter, Attachment 8: Prepared Direct Testimony of Noman L. Williams on behalf of GridLiance Heartland LLC, Appendix 4: ICC Williams Testimony (ICC Williams Test.).

Facility into MISO.[69] In explaining the relevance of that transition to the cost impact of the Transmission Assets under GridLiance Heartland ownership, GridLiance Heartland's witness stated that, if the Proposed Transaction is not consummated, Vistra would need to arrange to transfer functional control of the Transmission Assets to MISO because the lines are required to deliver the output of the units at the Joppa Facility into MISO. GridLiance Heartland's witness concluded that "regardless of whether GridLiance Heartland purchases the EEInc transmission facilities, those facilities will be placed into MISO's functional control."[70] Applicants included in their deficiency response an attestation by this witness that his testimony continues to be true and correct.[71]

75. Based on Applicants' representations in this testimony, we conclude that the benefits from integration of the Transmission Assets into MISO would occur irrespective of the Proposed Transaction. Accordingly, we focus our analysis on the rate impacts and offsetting benefits that would result from the change in ownership of the Transmission Assets, rather than the rate impacts and offsetting benefits that would result from both the change in ownership and the integration of the assets into MISO. In other words, the base case against which GridLiance Heartland's ownership must be compared is one in which the Transmission Assets have been transferred to MISO but are owned by EEInc instead of GridLiance Heartland.

76. In that regard, Applicants' own calculations show that the GridLiance Heartland Revenue Requirement for the Transmission Assets would be greater than the Revenue Requirement if EEInc retained ownership of the assets. The primary difference in the two revenue requirements is in operating expenses: GridLiance Heartland's operating expense for the Transmission Assets is \$8.2 million, while EEInc's operating expense for the facilities is \$4.6 million, a difference of \$3.6 million.[72] This rate increase could be greater if GridLiance Heartland follows through in its intent to request rate recovery of a

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[69] ICC Williams Test. at 34.

[70] *Id.* at 35.

[71] ICC Williams Test., Verification of Testimony.

[72] Krajewski Test., Ex. Nos. GLH-403 and -404. We note that, throughout this proceeding, Applicants have claimed that the difference between the EEInc and GridLiance Heartland Revenue Requirements is \$2.65 million, which they characterize as "minimal." *See, e.g.* Application at 16. Applicants' analysis, however, fails to account for the impact of transferring all six lines to GridLiance Heartland's ownership and thus understates the rate increase due to the change in ownership.

regulatory asset related to certain development costs.[73] This increase is due solely to GridLiance Heartland taking ownership of the Transmission Assets as a result of the Proposed Transaction instead of EEInc retaining ownership.

77. Applicants do not offer any ratepayer protections to mitigate the acknowledged rate increase associated with GridLiance Heartland's ownership of the Transmission Assets. Rather, they assert that that the benefits of the Proposed Transaction offset the increase. Specifically, Applicants argue that the Proposed Transaction will result in benefits that stem from (1) integration of the Transmission Assets into MISO and (2) GridLiance Heartland's ownership of the assets. Those claimed benefits are discussed below.

(b) <u>Applicants' Claims of Offsetting benefits</u>

(1) <u>Benefits due to integrating the Transmission Assets into MISO.</u>

78. Applicants argue that the Proposed Transaction will result in various benefits to MISO transmission customers because GridLiance Heartland will transfer functional control over the Transmission Assets to MISO after the transaction closes. Applicants claim, for example, that integrating the Transmission Assets into MISO will eliminate pancaked rates between MISO and Tennessee Valley Authority and LG&E/KU; increase the scope of the MISO footprint and the MISO planning process; and increase transmission interconnection capacity under the control of MISO. Ameren disputes all of Applicants' claims regarding offsetting benefits.

79. As noted above, Applicants have submitted testimony stating that, "regardless of whether GridLiance Heartland purchases the [Transmission Assets], those facilities will be placed into MISO's functional control."[74] Accordingly, we conclude that the benefits due to integrating the Transmission Assets into MISO are not attributable to the Proposed Transaction, and we do not consider them to be offsetting benefits of the Proposed Transaction for purposes of our effect on rates analysis.

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[73] Ameren, Motion to Lodge, Transcript of Record at 332, 352–361, and 396–400, *GridLiance Heartland, LLC Application for Permanent Certificate of Public Convenience and Necessity*, Docket No. 18-1617 (Ill. Commerce Comm'n June 28, 2019).

[74] ICC Williams Test. at 35:760-762.

(2) Benefits due to GridLiance Heartland's ownership of the Transmission Assets.

80. Applicants assert that GridLiance Heartland's ownership of the Transmission Assets will result in the offsetting benefits discussed below. We find, on the basis of the record established in this proceeding, that Applicants have failed to demonstrate that the alleged benefits would offset the rate increase due to the Proposed Transaction.

81. Applicants assert that GridLiance Heartland's "singular focus"[75] on expanding and developing transmission will bring competitive benefits to the MISO region, including prices disciplined by competition. Applicants claim that the GridLiance business model has increased competition by actively pursuing stakeholder processes to "'get the rules right' to promote meaningful competition"[76] in the regions in which the GridLiance Transcos operate and by proposing low cost solutions to transmission needs both within and outside of formal Order No. 1000 competitive solicitation processes. Applicants also argue that the GridLiance Heartland business model is tailored to align with the "top-down, bottom-up" methodology of MISO's regional transmission planning process.

82. While we acknowledge GridLiance's continued participation in transmission development and planning processes, and its continued efforts to expand and develop transmission outside of those processes, Applicants do not provide any details regarding specific actions that GridLiance Heartland intends to take or, indeed, could take, once it acquires the Transmission Assets that would produce any unique benefits to MISO's customers. Moreover, Applicants have not distinguished how GridLiance Heartland's participation in the MISO planning process, or in other transmission planning processes outside of MISO, would be any different from that of other participants in those processes. We are not persuaded that GridLiance Heartland's participation in transmission planning processes is a sufficient benefit that offsets the rate increase caused by its ownership of the Transmission Assets, particularly where GridLiance Heartland has not distinguished its participation in those processes from that of other participants.

83. As in *GridLiance High Plains*, Applicants point to partnerships entered into by other GridLiance Transcos with public power entities as evidence that GridLiance Heartland's participation in transmission planning processes will yield benefits and offset the increase in rates due to its ownership of the assets. Applicants, however, have not explained how GridLiance Heartland in particular can achieve similar benefits as a result

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[75] Response to Deficiency Letter at 12.

[76] *Id.*

of acquiring the Transmission Assets.[77] To the contrary, the ability of GridLiance Heartland or other GridLiance Transcos to form partnerships with public power entities would appear to be completely unrelated to GridLiance Heartland's acquisition of the Transmission Assets.

84. Further, Applicants have not identified any potential partnerships or identified any specific plans related to the Transmission Assets. In fact, in response to allegations that GridLiance Heartland has represented before the Illinois Commission that it does not intend to make any changes to the Transmission Assets, to alter the electrical configuration of them, or to construct new facilities, Applicants respond that not expending funds on detailed planning studies prior to obtaining the assets is prudent utility practice.[78] While it may be prudent to delay planning until after the completion of any Proposed Transaction, Applicants have not provided evidence to support their claim that GridLiance Heartland's ownership of the Transmission Assets will result in benefits stemming from upgrading or expanding the Transmission Assets, or the construction of new transmission facilities. Furthermore, MISO will have the ability to require upgrades to the Transmission Assets as part of its transmission planning function when the assets are moved into MISO regardless of whether the Transmission Assets are owned by GridLiance Heartland or EEInc. We contrast GridLiance Heartland's response here with the actions of its affiliate transco, GridLiance West LLC, which, in seeking authorization from the Commission to acquire a high voltage transmission system, provided specific evidence of its intent to develop upgrades on facilities that it had not yet acquired.[79] Applicants' arguments regarding GridLiance Heartland's increasing coordination and development with other utilities are unsupported by specific evidence.

85. We are likewise unpersuaded by Applicants' claims that GridLiance Heartland's ownership of the Transmission Assets will provide opportunities to enhance reliability and improve operation of the grid. Applicants have not shown how the Proposed Transaction will improve reliability, particularly where the transmission facilities at issue

[77] *GridLiance High Plains*, 166 FERC ¶ 61,171 at P 47.

[78] Applicants February 2019 Reply at 5.

[79] *GridLiance West*, 160 FERC ¶ 61,002, at P 53 ("…we find that GridLiance West has demonstrated that its ownership of the Transmission System will provide benefits that offset the rate increase due to the Proposed Transaction. GridLiance West represents that it intends to develop needed upgrades and important transmission projects that will improve system reliability and increase transmission capacity to meet growing demand for renewable resources, including, and in particular, exports out of the Valley Electric area.").

are already subject to NERC reliability standards and will be subject to MISO's planning authority. Similarly, we find Applicants' claim that GridLiance Heartland's ownership of the Transmission Assets will improve operations to be unpersuasive. It appears that, following the Proposed Transaction, GridLiance Heartland intends to maintain the operational status quo by hiring the six EEInc employees that currently perform control room services,[80] and that GridLiance Heartland's third-party contractor will closely monitor and work with EEInc staff in the ongoing day-to-day operation of the assets.[81] This evidence demonstrates that the Transmission Assets would continue to be operated in the same manner before and after the Proposed Transaction. Consequently, it is unclear how GridLiance Heartland's ownership of the Transmission Assets will result in offsetting operational benefits.

86. Applicants also assert that the transfer of the Transmission Assets to GridLiance Heartland, a transco, will result in the benefits the Commission has recognized are inherent to the transco business model. Applicants claim, for example, that, as a transco, GridLiance Heartland is better situated to propose transmission expansion opportunities given its singular focus on transmission operation, expansion and development, and investment in the MISO system. Applicants contrast GridLiance Heartland to EEInc, a market-based generation owner/operator that is focused on energy and capacity sales.

87. In *GridLiance High Plain*s, the Commission affirmed its previous findings regarding the benefits of transco ownership of transmission assets, but it also explained that it has never held that the benefits of transco ownership will always outweigh an associated increase in rates.[82] Applicants' claims related to the benefits of transco ownership fail for the same reasons as in that case. Rather than providing specific evidence and support to demonstrate what the benefits of GridLiance Heartland ownership are, and that such benefits are likely to accrue to customers, Applicants recite Commission holdings related to the offsetting benefits that the transco business model can provide.[83] While EEInc's business interests as a market-based generation owner/operator may differ from GridLiance Heartland's business interests, it is not enough to simply refer to the transco business model without providing additional support to demonstrate the specific benefits that a particular transco can provide. Such is especially the case here, where there is no evidence to support the conclusion that the

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[80] Carlson Test. at 9:14-18.

[81] Application at 12.

[82] *GridLiance High Plains*, 166 FERC ¶ 61,171 at P 34.

[83] *Id.* P 40.

Transmission Assets, with their limited scope and utility, could provide such benefits if owned by a transco.

(c) Conclusion

88. Because Applicants have failed to show that the benefits of the Proposed Transaction are sufficient to offset the admitted increase in rates, we deny approval of the Proposed Transaction. Our denial, however, is without prejudice to Applicants making a new filing that either proposes adequate ratepayer protection or demonstrates specific additional benefits to offset the rate increase.[84]

The Commission orders:

The Application is hereby denied, without prejudice, as discussed in the body of this order.

By the Commission.

(S E A L)

Nathaniel J. Davis, Sr.,
Deputy Secretary.

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[84] We note that Ameren argues that the Commission should not approve the Proposed Transaction prior to the Illinois Commission acting in a proceeding that is related to the transaction. Ameren January 2019 Protest at 11. Citing Commission precedent, Applicants observe that the Commission does not delay ruling on FPA section 203 applications pending the outcome of state Commission proceedings. Applicants January 2019 Answer at 8-9. As we are denying the Application without prejudice, Ameren's argument on this point is moot.