

171 FERC ¶ 61,197  
UNITED STATES OF AMERICA  
FEDERAL ENERGY REGULATORY COMMISSION

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

Electric Energy, Inc.  
GridLiance Heartland LLC

Docket No. EC20-13-001

ORDER DENYING REHEARING

(Issued June 4, 2020)

1. On January 31, 2020, the Commission issued an order pursuant to section 203 of the Federal Power Act (FPA)<sup>1</sup> conditionally authorizing a proposed transaction between Electric Energy, Inc. (EEInc) and GridLiance Heartland LLC (GridLiance Heartland) (together, Applicants) whereby EEInc would sell, and GridLiance Heartland would acquire, certain transmission lines and related assets (Transaction).<sup>2</sup> On February 21, 2020, Ameren Services Company (Ameren), on behalf of its affiliate, Ameren Illinois Company, filed a “Request for Clarification and Conditional Rehearing” of the January 2020 Order. As discussed further below, we view this pleading as a rehearing request, and we deny rehearing.

**I. Background**

2. The transmission assets that are the subject of the Transaction include six 161 kilovolt (kV) transmission lines that range from approximately eight to 10 miles in length each, two 161 kV substations, and associated auxiliary equipment (Transmission Assets). Four of the transmission lines connect with the Tennessee Valley Authority and the other two lines connect with the Louisville Gas and Electric Company and Kentucky Utilities Company balancing authority area. The Transmission Assets are also connected to the transmission system operated by the Midcontinent Independent System Operator, Inc. (MISO), via Ameren Corporation’s transmission lines. Prior to the Transaction, EEInc

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<sup>1</sup> 16 U.S.C. § 824b (2018).

<sup>2</sup> *Elec. Energy, Inc.*, 170 FERC ¶ 61,072 (2020) (January 2020 Order).

served as Transmission Owner, Transmission Operator, and Balancing Authority for the Transmission Assets.<sup>3</sup>

3. Upon consummation of the Transaction, functional control of four of the six transmission lines will transfer to MISO (MISO 2020 Assets), which will be incorporated into MISO Joint Pricing Zone 3A (MISO Zone 3A) pursuant to a Joint Pricing Zone Revenue Allocation Agreement. To accommodate an existing power supply agreement between an EEInc affiliate and the Kentucky Municipal Energy Agency, GridLiance Heartland will retain functional control of the other two transmission lines that comprise the Transmission Assets until 2022, when the term of the underlying power supply agreement expires. Upon termination of the power supply agreement, GridLiance Heartland will transfer those two lines to MISO (MISO 2022 Assets). Until then, GridLiance Heartland will provide open access transmission service over the MISO 2022 Assets and related substation facilities.<sup>4</sup>

4. Applicants had previously requested authorization for EEInc to sell, and for GridLiance Heartland to purchase, the Transmission Assets.<sup>5</sup> The Commission denied that prior application on the ground 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.”<sup>6</sup> However, the denial was “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.”<sup>7</sup>

5. In the 2019 Application, Applicants proposed fixed credits (Rate Mitigation Credits) intended to offset the projected rate increase for customers in MISO Zone 3A that would result from including the Transmission Assets in the MISO Open Access Transmission, Energy and Reserve Markets Tariff (MISO Tariff). Specifically,

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<sup>3</sup> 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 at 14, Docket No. EC20-13-000 (filed Nov. 1, 2019) (2019 Application).

<sup>4</sup> January 2020 Order, 170 FERC ¶ 61,072 at P 10.

<sup>5</sup> 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).

<sup>6</sup> *Elec. Energy, Inc.*, 168 FERC ¶ 61,130, at P 72 (2019).

<sup>7</sup> *Id.*

GridLiance Heartland committed to credit a fixed amount, \$2,650,000, on an annualized basis, to offset the rate impact of the increased operational expenses due to GridLiance Heartland's ownership of the MISO 2020 Assets. The credits for these four transmission lines would be provided for five years from the date of closing of the Transaction (Rate Mitigation Period). GridLiance Heartland also committed to credit an additional fixed amount, \$950,000, on an annualized basis, specifically to offset the rate impact of the MISO 2022 Assets. The credit for these two lines would be provided for the time they are added to the MISO Tariff, at which time the rate credits will equal \$3,600,000, through the end of the Rate Mitigation Period.<sup>8</sup> Applicants explained that the Rate Mitigation Credits will be applied as a fixed "revenue credit" each rate year and will reduce GridLiance Heartland's projected and true-up revenue requirements by a corresponding amount for five years.<sup>9</sup>

6. In addition, Applicants claimed that the Transaction would result in: (1) benefits that will accrue to MISO solely as a result of GridLiance Heartland's ownership and operation of the Transmission Assets; (2) a partnership with a non-public utility that is tied to the Transmission Assets; and (3) benefits to MISO customers from the GridLiance Heartland business model as a transmission company focused on strategic partnerships.<sup>10</sup>

7. In the January 2020 Order, the Commission authorized the Transaction as consistent with the public interest, subject to two modifications to the proposed mitigation. First, the Commission directed GridLiance Heartland to extend the duration of the Rate Mitigation Credits for the MISO 2022 Assets to five years from the date those lines are transferred to MISO's functional control and placed into the MISO Tariff.<sup>11</sup> Second, the Commission stated that GridLiance Heartland must commit to not recover any amounts related to its regulatory asset during the first five years of the rate effect mitigation.<sup>12</sup> With these two modifications to the mitigation, the Commission concluded that the Transaction will not have an adverse effect on rates. Having made this determination, the Commission declined to address Applicants' claims of benefits resulting from GridLiance Heartland's ownership of the Transmission Assets.<sup>13</sup>

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<sup>8</sup> Application at 17-18.

<sup>9</sup> *Id.* at 19.

<sup>10</sup> *Id.* at 16-17.

<sup>11</sup> January 2020 Order, 170 FERC ¶ 61,072 at P 49.

<sup>12</sup> *Id.* P 51.

<sup>13</sup> *Id.* P 48.

8. On February 21, 2020, Applicants informed the Commission that they accepted the additional mitigation specified in the January 2020 Order conditionally authorizing the Transaction.<sup>14</sup> The Transaction was consummated on February 29, 2020.<sup>15</sup>

## II. Ameren's Clarification and Conditional Rehearing Request

9. On February 21, 2020, Ameren requested clarification, or in the absence of the requested clarification, rehearing of the January 2020 Order. Ameren states that it supports the Commission's decision to require a full five years of rate mitigation through revenue credits and the Commission's efforts to mitigate the rate impacts of GridLiance Heartland's regulatory asset but suggests that there may be "ambiguities or misunderstandings" in the January 2020 Order that require clarification to prevent adverse rate impacts on customers due to the recovery of the regulatory asset.<sup>16</sup>

10. Noting that the Commission required GridLiance Heartland to "commit to not recover any amounts related to its regulatory asset during the first five years of the rate mitigation,"<sup>17</sup> Ameren requests clarification that, if GridLiance Heartland does thereafter seek to recover the costs of its regulatory asset, this directive also includes a requirement that GridLiance Heartland demonstrate that the Transaction results in benefits to affected customers that outweigh the cost of the regulatory asset.<sup>18</sup> Without this demonstration, Ameren contends that the Commission would be abdicating its responsibility under section 203 of the FPA to ensure that there are no adverse rate effects as a result of the Transaction.<sup>19</sup>

11. According to Ameren, the Commission agreed that the pre-commercial costs of the regulatory asset were related to past development activities that do not confer

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<sup>14</sup> On that same day, MISO submitted a compliance filing on behalf of GridLiance Heartland in Docket No. ER20-1050-000 to revise its rate mitigation proposal consistent with the January 2020 Order.

<sup>15</sup> See *Elec. Energy, Inc.*, Notification of Closing and Effective Date of Tariff Sheets, Docket No. EC20-13-000, et al. (filed Mar. 2, 2020).

<sup>16</sup> Request for Clarification and Conditional Rehearing at 2-3.

<sup>17</sup> January 2020 Order, 170 FERC ¶ 61,072 at P 51.

<sup>18</sup> Request for Clarification and Conditional Rehearing at 4.

<sup>19</sup> *Id.*

additional benefits equivalent to the construction of the MISO upgrades.<sup>20</sup> Ameren next posits that “it appears that the Commission is treating GridLiance Heartland’s ‘precommercial costs’ as transaction-related costs associated with the . . . Transaction.”<sup>21</sup> Ameren thus urges the Commission take the further step of requiring a showing of offsetting benefits to MISO Zone 3A ratepayers before allowing recovery of the regulatory asset.<sup>22</sup>

12. With respect to the five-year deferral of the recovery of GridLiance Heartland’s regulatory asset, Ameren requests clarification that this mitigation be “administered in a way that provides actual relief to affected customers.”<sup>23</sup> Ameren contends that a five-year deferral of the regulatory asset does not provide any real relief to MISO Zone 3A customers but instead “merely delays the pain and, in fact, could make it worse.”<sup>24</sup> Ameren explains that GridLiance Heartland could continue accruing the regulatory asset carrying charges for the costs of the asset, which ultimately would increase the costs to be recovered from MISO Zone 3A customers, and which would in turn “frustrate the Commission’s attempt to ensure adequate ratepayer protection.”<sup>25</sup>

13. Therefore, Ameren requests that the Commission “clarify” three additional conditions on the Transaction relating to the regulatory asset: (1) that GridLiance Heartland commit to cap recovery, or at least MISO Zone 3A recovery, of the regulatory asset at no more than \$23.6 million and accrue no more carrying charges after the closing of the Transaction; (2) that the amortization of the regulatory asset begin as of the closing date of the Transaction; and (3) that no carrying charges be recovered from the closing date of the Transaction until the date that recovery of the regulatory asset begins.<sup>26</sup> Ameren states that this third condition, coupled with the requirement that GridLiance Heartland demonstrate offsetting benefits when seeking recovery of the regulatory asset, are the minimum clarifications that the Commission should make.

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<sup>20</sup> *Id.* at 5-6 (citing January 2020 Order, 170 FERC ¶ 61,072 at P 51).

<sup>21</sup> *Id.* at 6.

<sup>22</sup> *Id.*

<sup>23</sup> *Id.* at 10.

<sup>24</sup> *Id.*

<sup>25</sup> *Id.* at 10-11.

<sup>26</sup> *Id.* at 11-12.

14. Ameren also requests clarification that MISO Zone 3A customers will not be called upon to pay any costs of the Transaction that do not provide an offsetting benefit to them. Ameren contends that, at the very least, if GridLiance Heartland is unable to demonstrate the presence of offsetting benefits at the time of its regulatory asset filing, GridLiance Heartland should not be allowed to recover those costs from MISO Zone 3A customers.<sup>27</sup> Ameren states that a clarification on this point would be consistent with the Commission’s principle of cost causation, which requires that those that benefit from facilities or services should bear their costs.<sup>28</sup>

15. Absent these clarifications, Ameren requests rehearing of the January 2020 Order, alleging that the Commission erred in failing to fully protect ratepayers from the Transaction.<sup>29</sup> Specifically, Ameren requests that the Commission: (1) find that Applicants have failed to demonstrate that the Transaction will not have an adverse rate effect on MISO Zone 3A customers; and (2) issue a rehearing order that adopts ratepayer protection mechanisms that “could include the exact clarifications Ameren requests above in the form of a rehearing order rather than a clarification.”<sup>30</sup>

16. On March 6, 2020, GridLiance Heartland filed a motion for leave to answer, answer, and a conditional motion to allow filing of briefs or oral argument on Ameren’s request for rehearing. On March 24, 2020, Ameren filed a motion for leave to answer and answer in response to GridLiance Heartland’s pleading.

### III. Discussion

#### A. Procedural Matters

17. As discussed further below, Ameren’s “Request for Clarification and Conditional Rehearing” is, in substance, a request for rehearing. We evaluate a pleading based on its substance, rather than its style or form.<sup>31</sup> Rule 713(d) of the Commission’s Rules of Practice and Procedure, 18 C.F.R. § 385.713(d)(1) (2019), prohibits an answer to a

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<sup>27</sup> *Id.* at 12-13.

<sup>28</sup> *Id.* at 13.

<sup>29</sup> *Id.*

<sup>30</sup> *Id.* at 13-14.

<sup>31</sup> *Light Power & Gas of N.Y. LLC v. N.Y. Indep. Sys. Operator, Inc.*, 169 FERC ¶ 61,216, at P 26 & n.63 (2019) (citing *Stowers Oil & Gas Co.*, 27 FERC ¶ 61,001, at 61,002 n.3 (1984) (“Nor does the style in which a petitioner frames a document necessarily dictate how the Commission must treat it.”)).

request for rehearing. Accordingly, we deny the motions to answer filed by GridLiance Heartland and Ameren and reject those answers.

**B. Substantive Matters**

18. As a preliminary matter, we note that Ameren's requests for clarification seek to impose additional conditions on the Transaction beyond those set forth in the January 2020 Order. Ameren suggests that there are ambiguities or misunderstandings in the January 2020 Order but has not pointed to any language that can be construed as imposing the additional restrictions outlined in Ameren's pleading. Instead, Ameren's request is predicated on the assumption that the rate effects of the Transaction are not fully mitigated. This assumption is contrary to the Commission's conclusion that the Transaction "will not have adverse effects on rates because the proposed mitigation, as revised, will address the rate increase resulting from GridLiance Heartland's ownership of the Transmission Assets."<sup>32</sup> Granting any of the requested clarifications would constitute a rehearing determination of this finding. Accordingly, we view Ameren's pleading as a rehearing request<sup>33</sup> and, for the reasons discussed below, we deny rehearing.

19. Ameren argues that, without requiring a demonstration of offsetting benefits at the time of GridLiance Heartland's FPA section 205 filing to recover the regulatory asset, the Commission will have abdicated its responsibility under section 203 of the FPA. We disagree. In determining that the Transaction would not have an adverse effect on rates, the Commission relied on the ratepayer mitigation measures, as modified by the conditions of the January 2020 Order, and expressly stated that it was unnecessary to address Applicants' claims of offsetting benefits.<sup>34</sup> This finding is consistent with the Merger Policy Statement, in which the Commission stated that "[r]ather than requiring estimates of somewhat amorphous net merger benefits and addressing whether the applicant has adequately substantiated those benefits, we will focus on ratepayer protection."<sup>35</sup> In focusing on and requiring such ratepayer protection mechanisms in the instant case, the Commission fulfilled its responsibility under section 203 of the FPA

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<sup>32</sup> January 2020 Order, 170 FERC ¶ 61,072 at P 54.

<sup>33</sup> We evaluate a pleading based on its substance, rather than its style or form. *See supra* note 31.

<sup>34</sup> January 2020 Order, 170 FERC ¶ 61,072 at P 48.

<sup>35</sup> *Inquiry Concerning the Commission's Merger Policy Under the Federal Power Act: Policy Statement*, Order No. 592, FERC Stats. & Regs. ¶ 31,044, at 30,123 (1996) (Merger Policy Statement) (cross-referenced at 77 FERC ¶ 61,263), *reconsideration denied*, Order No. 592-A, 79 FERC ¶ 61,321 (1997).

to determine whether the Transaction would have an adverse effect on rates. Ameren's argument instead conflates the standard for the Commission's review of GridLiance Heartland's recovery of its regulatory asset under section 205 of the FPA<sup>36</sup> with the standard for Commission's section 203 review of this Transaction.

20. In addition, we deny Ameren's request to impose additional restrictions on GridLiance Heartland's regulatory asset. In the January 2020 Order, the Commission required a five-year period during which customers would be protected from rate increases. This mitigation period consists of the Rate Mitigation Credits, coupled with the assurance that GridLiance Heartland will also not be permitted to recover its regulatory asset during the Rate Mitigation Period.<sup>37</sup> Ameren's request for clarification presumes that a time-limited mitigation period is insufficient. We disagree. The Commission has relied on five-year ratepayer protection mitigation periods in several prior cases to conclude that a transaction will not have an adverse effect on rates,<sup>38</sup> and Ameren has not demonstrated that a five-year mitigation period is insufficient in the circumstances of this case.<sup>39</sup>

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<sup>36</sup> 16 U.S.C. § 824d. Before the regulatory asset can be included and recovered in Commission-jurisdictional rates, GridLiance Heartland must make a filing under section 205 of the FPA to demonstrate that the charges are just and reasonable.

<sup>37</sup> See January 2020 Order, 170 FERC ¶ 61,072 at P 52 (recognizing that the mitigation credits would lose their force if GridLiance Heartland were permitted to recover its regulatory asset in rates during the first five years of the rate effect mitigation).

<sup>38</sup> *Ameren Energy Generating Co.*, 145 FERC ¶ 61,034, at P 89 (2013) (accepting a five-year rate freeze as adequate ratepayer protection); *NextEra Energy Inc.*, 165 FERC ¶ 61,263 (2018) (accepting a five-year rate cap as adequate ratepayer protection for a merger). The Commission has also accepted five-year commitments to hold customers harmless from rate increases as an appropriate period of time on limits to rate increases following mergers. *ITC Holdings Corp.*, 121 FERC ¶ 61,229, at P 122 n.76 (2007) (citing *See Duke Energy Corp. and Cinergy Corp.*, 113 FERC ¶ 61,297 (2005); *PNM Resources, Inc.*, 110 FERC ¶ 61,204 (2005)).

<sup>39</sup> To the contrary, Ameren states that it "supports the Commission's decision to require a full five years of rate mitigation." Clarification and Conditional Rehearing Request at 2.

21. Five years is also the standard period for hold harmless commitments as described in the Commission's Hold Harmless Policy Statement.<sup>40</sup> The Commission considered but ultimately rejected a proposal to set an unlimited duration on hold harmless commitments, noting that "as time passes . . . it becomes more difficult to determine which costs share a nexus with the transaction and should thus be subject to an offered hold harmless commitment."<sup>41</sup> The additional restrictions on the regulatory asset as advocated for by Ameren would have the effect of extending mitigation beyond the five years that the Commission determined was sufficient to ensure no adverse rate effects.

22. To the extent Ameren is concerned that the recovery of the regulatory asset will result in unjust and unreasonable rates for MISO Zone 3A ratepayers, it may raise these arguments at the time GridLiance Heartland submits its section 205 filing to recover the regulatory asset. As noted in the Commission's order authorizing the regulatory asset incentive:

While we will allow GridLiance Heartland to record its prudently incurred costs as a regulatory asset, GridLiance Heartland must make a section 205 filing to demonstrate that the pre-commercial and formation costs are just and reasonable before it includes them in rates. In that filing, GridLiance Heartland must establish that the costs included in the regulatory asset are costs that otherwise would have been chargeable to expense in the period incurred but were deferred consistent with the authorization granted herein. Parties will be able to challenge the reasonableness of those costs at that time.<sup>42</sup>

23. GridLiance Heartland also stated that it intends to propose an appropriate amortization period when it submits its section 205 filing to recover those costs in a way that would prevent rate shock.<sup>43</sup> Ameren will have an opportunity at that time to address all of these aspects of GridLiance Heartland's section 205 filing.

24. For similar reasons, we also dismiss Ameren's request that MISO Zone 3A customers not be called upon to pay any regulatory asset costs that do not benefit MISO Zone 3A customers. This proceeding does not involve the assignment of costs, which is

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<sup>40</sup> *Policy Statement on Hold Harmless Commitments*, 155 FERC ¶ 61,189, at P 85 (2016).

<sup>41</sup> *Id.* P 83.

<sup>42</sup> *GridLiance Heartland LLC*, 166 FERC ¶ 61,067, at P 59 (2019).

<sup>43</sup> *Id.*

an issue Ameren may pursue, as appropriate, when GridLiance Heartland makes its section 205 filing to recover the regulatory asset. Accordingly, Ameren's attempt to invoke the Commission's principle of cost causation in this context is similarly unavailing because cost allocation issues are outside the scope of this proceeding.

The Commission orders:

Ameren's request for rehearing of the January 2020 Order is hereby denied, as discussed in the body of this order.

By the Commission.

( S E A L )

Kimberly D. Bose,  
Secretary.