

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

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

GridLiance High Plains LLC

Docket No. EC18-122-000

ORDER DENYING APPLICATION FOR AUTHORIZATION OF
ACQUISITION OF JURISDICTIONAL FACILITIES

(Issued March 6, 2019)

1. On July 13, 2018, pursuant to section 203(a)(1)(B) of the Federal Power Act (FPA),¹ GridLiance High Plains LLC (GridLiance) filed an application requesting authorization for a transaction whereby GridLiance will acquire from People's Electric Cooperative certain transmission lines and related facilities (Assets) (Proposed Transaction).
2. We have reviewed the Proposed Transaction under the Commission's Merger Policy Statement.² As discussed below, we deny without prejudice authorization for the

¹ 16 U.S.C. § 824b(a)(1) (2012).

² 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 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).

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

I. Background

A. Description of Parties

1. GridLiance

3. GridLiance states that it is a transmission-only utility (transco) formed to partner with municipal electric utilities, electric cooperatives, and joint action agencies in the Southwest Power Pool, Inc. (SPP). GridLiance states that, on April 1, 2018, it became a Transmission-Ownning Member of SPP following its acquisition of approximately 10 miles of transmission lines and related assets from the City of Nixa, Missouri and subsequent transfer of those assets to SPP's operational control.³ GridLiance states that it is not affiliated with any market participant operating in SPP. GridLiance indicates that it has affiliate transcos that have been formed to operate in other Independent System Operators and Regional Transmission Organizations (RTOs).⁴

4. GridLiance states that, except for a small interest owned by management, its 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. GridLiance states that Blackstone Power is controlled by its general partner, Blackstone Power & Natural Resources Holdco G.P., LLC (Blackstone Power Holdco). GridLiance states that each of Blackstone Power, Blackstone Power Holdco, and BEP II are affiliates of the Blackstone Group L.P. (Blackstone).⁵

³ See *South Central MCN LLC*, 162 FERC ¶ 61,214 (2018) (*City of Nixa*) (approving under section 203 of the FPA acquisition by GridLiance (formerly South Central MCN LLC) of transmission assets from the City of Nixa, Missouri). The Commission accepted SPP's request to incorporate GridLiance's Commission-approved formula rate template and protocols into the SPP Tariff to recover the annual transmission revenue requirement for the City of Nixa assets in *Southwest Power Pool, Inc.*, 162 FERC ¶ 61,215 (2018).

⁴ Application for Authorization to Acquire Transmission Facilities Pursuant to Section 203 of the Federal Power Act and Request for Expedited Action and Certain Waivers at 3-4, Docket No. EC18-122-000 (July 13, 2018) (Application).

⁵ *Id.* at 4.

5. GridLiance states that Blackstone is not affiliated with any facilities for the generation or transmission of electric energy in SPP. GridLiance also states that Blackstone is not affiliated with any public utility with a franchised electric service territory in the United States. GridLiance states that Blackstone does have energy-related investments in other areas of the country, including the Electric Reliability Council of Texas, PJM Interconnection, L.L.C., New York Independent System Operator, Inc. and ISO New England Inc. GridLiance also indicates 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.⁶

6. GridLiance states that Blackstone is also affiliated with Twin Eagle Resource Management, LLC, an energy marketing company authorized by the Commission to make wholesale sales at market-based rates. In addition, GridLiance notes that Blackstone is affiliated with 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. GridLiance states that Blackstone is also affiliated with Somerset Railroad Corporation, which owns and leases railroad cars used solely to transport coal.⁷

2. People's Electric Cooperative

7. GridLiance states that People's Electric Cooperative is non-profit, membership-based, rural electric transmission and distribution cooperative and generation owner organized and existing under the laws of the State of Oklahoma. GridLiance states that People's Electric Cooperative provides electrical service to approximately 15,000 members in Atoka, Carter, Coal, Garvin, Hughes, Johnston, McClain, Murray, Pittsburg, Pontotoc, and Seminole Counties. It states that People's Electric Cooperative owns and operates approximately 4,500 miles of distribution and transmission lines and distributes electricity to over 21,000 locations.⁸ GridLiance states that, as an electric cooperative that sells less than 4,000,000 megawatt hours of electricity per year, People's Electric Cooperative is excluded from the Commission's general FPA authority under section 201(f).⁹

⁶ *Id.* at 5-6.

⁷ *Id.* at 6-7.

⁸ *Id.* at 7.

⁹ *Id.*

B. Description of the Proposed Transaction

8. GridLiance explains that the Assets consist of approximately 55 miles of 138 kilovolt lines and related facilities and also include the associated terminal equipment and the real estate interests held by People's Electric Cooperative. GridLiance states that the Assets are located in the State of Oklahoma, within SPP. GridLiance states that, following receipt of the Commission's authorization and closing, GridLiance will acquire title to the Assets pursuant to the provisions of the Asset Purchase Agreement. GridLiance notes that People's Electric Cooperative will retain its distribution assets and will continue to provide distribution service and retail sales to its customers.¹⁰

9. GridLiance states that the transaction is structured as an asset purchase and will not involve any change to the corporate structures of either GridLiance or People's Electric Cooperative. GridLiance states that the final purchase price will be computed based on the net book value of the Assets at closing. GridLiance notes that the estimated purchase price for the Assets is in excess of the net book value of the Assets; however, GridLiance does not seek authorization to recover through rates any amount in excess of the net book value of the Assets. GridLiance states that the closing of the Proposed Transaction is subject to the Commission's acceptance and the effectiveness of amendments to SPP's tariff to include the annual transmission revenue requirement (ATRR) for the Assets into SPP rates.¹¹

II. Notice of Filing and Responsive Pleadings

10. Notice of the Application was published in the *Federal Register*, 83 Fed. Reg. 34,564 (2018), with interventions and protests due on or before August 3, 2018. Timely motions to intervene were filed by Southwestern Power Administration, Oklahoma Gas and Electric Company, Sunflower Electric Power Corporation, Mid-Kansas Electric Company, Inc., American Electric Power Service Corporation, and the Evergy Companies.¹² Late-filed motions to intervene were filed by ARKMO Cities, Midwest Energy, Inc., and Tri-County Electric Cooperative. Timely comments and motions to intervene were filed by Western Farmers Electric Cooperative (Western Farmers), Associated Electric Cooperative, Inc. (Associated Electric), and People's Electric Cooperative. On August 16, 2018, GridLiance filed an answer to the comments.

¹⁰ *Id.* at 8.

¹¹ *Id.* at 7.

¹² The Evergy Companies, all subsidiaries of Evergy, Inc., consist of Westar Energy, Inc., Kansas City Power & Light Company, and KCP&L Greater Missouri Operations Company.

On September 14, 2018, the Evergy Companies filed a reply to GridLiance's answer, which GridLiance replied to on September 19, 2018.

11. On October 11, 2018, Commission staff issued a deficiency letter (Deficiency Letter) requesting additional information from GridLiance. On November 7, 2018, GridLiance submitted a response (Response) to the Deficiency Letter. Notice of the Response was published in the *Federal Register*, 83 Fed. Reg 53,470 (2018), with comments due on or before November 28, 2018. Timely comments were filed by Western Farmers and Associated Electric. On December 10, 2018, GridLiance filed an answer to the comments, which Western Farmers and Associated Electric replied to on December 21, 2018.

III. Discussion

A. Procedural Matters

12. Pursuant to Rule 214 of the Commission's Rules of Practice and Procedure,¹³ the timely, unopposed motions to intervene serve to make the entities that filed them parties to this proceeding. Pursuant to Rule 214(d) of the Commission's Rules of Practice and Procedure,¹⁴ we grant the late-filed motions to intervene given their interest in the proceeding, the early stage of the proceeding, and the absence of undue prejudice or delay.

13. Rule 213(a)(2) of the Commission's Rules of Practice and Procedure¹⁵ prohibits an answer to a protest and/or answer unless otherwise ordered by the decisional authority. We accept the answers because they have provided information that assisted us in our decision-making process.

B. Substantive Matters

1. FPA Section 203 Standard of Review

14. 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.¹⁶ The Commission's analysis of whether a proposed transaction is consistent with the public interest generally

¹³ 18 C.F.R. § 385.214 (2018).

¹⁴ 18 C.F.R. § 385.214(d).

¹⁵ 18 C.F.R. § 385.213(a)(2) (2018).

¹⁶ 16 U.S.C. § 824b(a)(4). Approval of the Proposed Transaction is also required

involves consideration of three factors: (1) the effect on competition; (2) the effect on rates; and (3) the effect on regulation.¹⁷ 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.”¹⁸ 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.¹⁹

15. 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 GridLiance has failed to show that the Proposed Transaction will not have an adverse effect on rates.

2. Analysis of the Proposed Transaction

a. Effect on Rates

i. GridLiance’s Analysis

16. GridLiance states that the Proposed Transaction will not have an adverse effect on rates. GridLiance explains that the Assets have not yet been placed under SPP’s functional control and thus do not have an ATRR derived pursuant to a rate that has been reviewed, approved, and become effective under the Commission’s oversight; rather, People’s Electric Cooperative recovers its costs to own and operate the Assets from its retail customers. However, GridLiance states that after the Proposed Transaction, there will be a defined GridLiance ATRR for the provision of transmission using the Assets pursuant to the SPP Open Access Transmission Tariff (OATT) and GridLiance’s transmission formula rate template and implementation protocols. GridLiance states that its ATRR likely will be recovered from ratepayers in Zone 10 (Southwestern Power Administration) or, in the alternative, partially from ratepayers in Zone 10 and partially

by other regulatory agencies pursuant to their respective statutory authorities before the Proposed Transaction may be consummated. *See* Application, Exhibit L. Our findings under FPA section 203 do not affect those agencies’ evaluation of the Proposed Transaction pursuant to their respective statutory authorities.

¹⁷ Merger Policy Statement, FERC Stats. & Regs. ¶ 31,044 at 30,111.

¹⁸ 16 U.S.C. § 824b(a)(4).

¹⁹ 18 C.F.R. § 33.2(j) (2018).

from ratepayers in Zone 13 (Western Farmers), depending on the outcome of the SPP zonal placement process. GridLiance acknowledges that the Proposed Transaction will cause a rate impact, and some customers in Zone 10 or, alternatively, in Zone 10 and Zone 13, will see a modest increase in their rates. GridLiance asserts that such rate impact is not adverse because it is both small and would be more than offset by the benefits of the Proposed Transaction. In addition, GridLiance notes that it does not seek authorization to recover through rates any amount paid for the Assets in excess of the net book value of the Assets.²⁰

17. To demonstrate that the rate impact of the Proposed Transaction is small, GridLiance estimates the rate impact as the difference between GridLiance's projected ATRR for the Assets after the Proposed Transaction and a hypothetical ATRR that People's Electric Cooperative would recover if it retained the Assets and placed them under SPP's functional control. GridLiance explains that its ATRR for the Assets will be determined by its Commission-approved formula rate. GridLiance states that the principle drivers of the ATRR will be net book value of the Assets and the return on equity. GridLiance states that the net book value of the Assets is \$14,880,176, which translates into an ATRR of \$2,741,177.

18. Similarly, GridLiance developed a hypothetical ATRR that People's Electric Cooperative would recover if it were to retain the Assets, transfer functional control of the Assets to SPP, and become a SPP Transmission Owner. GridLiance obtained and reviewed financial information showing People's Electric Cooperative's transmission plant in service, operations and maintenance expenses, capital structure, and cost of long-term debt for the 2017 fiscal year. Based on projections and financial input assumptions, GridLiance determines that People's Electric Cooperative's ATRR for the Assets would be \$2,498,800.²¹

19. Depending on sensitivities to the inputs of the ATRR calculation and consideration of various zonal placement and load scenarios, GridLiance estimates that the Zone 10 ATRR will increase by between \$104,222 and \$242,377²² as a result of the change in ownership of the Assets, which represents a Zone 10 ATRR increase of

²⁰ Application at 8-9.

²¹ *Id.* at 11-12.

²² This increase represents "the premium" over what the Zone 10 ATRR would be if People's Electric Cooperative joined SPP and incorporated the Assets.

up to 3.5 percent, a Network Integration Transmission Service rate increase of up to 3.2 percent, and a Point-to-Point rate increase of up to 3.8 percent.²³

20. In addition to estimating the rate impact of the Proposed Transaction, GridLiance states that the Commission has acknowledged the distinction between a rate increase and an adverse rate impact for purposes of its public interest analysis under FPA section 203.²⁴ It also notes that, in this case, the Assets will be transferred at net book value and argues that the Proposed Transaction will likewise result in offsetting benefits.

21. Specifically, GridLiance asserts that such benefits include: (1) improving the reliability of People's Electric Cooperative's existing transmission system; (2) promoting transco ownership of transmission facilities; (3) enhancing the operations and efficiency of SPP; and (4) furthering the Commission's objective of increasing public power participation in SPP transmission planning.²⁵ In support of the first offsetting benefit, GridLiance represents that its ownership of the Assets will "allow for People's Electric Cooperative's existing transmission system to operate in a closed configuration, ensuring there is increased redundancy in the system and providing significant reliability benefits."²⁶ With respect to the second offsetting benefit, GridLiance cites *ITC Holdings Corp.*, where the Commission found that an increase in rates was not adverse because it would result in offsetting benefits, primarily transco ownership of transmission facilities.²⁷ To support the third offsetting benefit, it states that "placing the [Assets] under SPP control will increase the transmission facilities considered by SPP in performing its planning functions, thereby maximizing the use of those facilities, and minimizing the necessity for new transmission to serve existing load."²⁸ Further, GridLiance asserts that adding facilities to the SPP system will provide new avenues for transmission expansion when it is needed and appropriate. With regard to the fourth offsetting benefit, GridLiance states that "[i]n Order No. 2000, the Commission

²³ If the Assets are placed into a combination of Zones 10 and 13, GridLiance estimates that the Zone 10 rates will increase by up to 2.2 percent and that Zone 13 rates will increase by approximately 1 percent. *Id.* at 15-16.

²⁴ *Id.* at 16 (quoting *StarTrans IO, LLC*, 122 FERC ¶ 61,307, at PP 27-28 (2008)).

²⁵ *Id.* at 17.

²⁶ *Id.* at 17 n.84.

²⁷ *Id.* at 17 n.85 (citing *ITC Holdings Corp.*, 143 FERC ¶ 61,256 (2013) (*ITC Holdings*)).

²⁸ *Id.* at 17 n.86.

observed that public power and cooperative participation in RTOs will enhance the reliability and economic benefits of an RTO and that participation by public power entities and cooperatives is vital to ensure that each RTO is appropriate in size and scope.”²⁹

22. In its comments in support of the Proposed Transaction, People’s Electric Cooperative argues that GridLiance’s acquisition of the Assets will provide numerous benefits to People’s Electric Cooperative and its members, including: (1) providing People’s Electric Cooperative an opportunity to reduce its debt; (2) relieving People’s Electric Cooperative of various compliance-related obligations; and (3) creating a more level playing field for People’s Electric Cooperative in SPP’s regional transmission planning processes.³⁰

ii. Protests and Answer

23. Associated Electric, Western Farmers, and the Evergy Companies filed comments protesting certain aspects of the Proposed Transaction. Associated Electric asserts that it is difficult to determine the actual rate impacts of the Proposed Transaction and criticizes certain financial assumptions made by GridLiance in calculating People’s Electric Cooperative’s hypothetical ATRR, including the return on equity and depreciation rate. Further, Associated Electric contests the underlying assumption that People’s Electric Cooperative would likely join SPP as a Transmission Owner. Associated Electric also asserts that that it is unclear that the Proposed Transaction will result in benefits that offset the projected rate increases. Associated Electric notes that, although GridLiance asserts that its ownership of the Assets “will allow for People’s Electric Cooperative’s existing transmission system to operate in a closed configuration, ensuring there is increased redundancy in the system and providing significant reliability benefits,” there is no other mention of what the “significant reliability benefits” may be and GridLiance offers no reliability study to support such claim.³¹ While Associated Electric acknowledges that a closed configuration could allow for increased power flows and redundancy, it asserts that it is not necessarily the case that the operational change from an open configuration to a closed configuration will improve system reliability. Associated Electric states that “absent a reliability or power flow study it is impossible to quantify any reliability benefits that may result from the changed configuration”³²

²⁹ *Id.* at 17 n.87 (citing *Regional Transmission Organizations*, Order No. 2000, FERC Stats. & Regs. ¶ 31,089, at 31,200 (1999) (cross-referenced at 89 FERC ¶ 61,285)).

³⁰ People’s Electric Cooperative Comments at 3.

³¹ Associated Electric Comments at 6-7 (quoting Application at 17 n.84).

³² *Id.* at 7.

Where GridLiance asserts that the Proposed Transaction will enhance the operations and efficiency of SPP, Associated Electric argues that GridLiance has not provided evidence that there is a need for new transmission to serve existing load in Zone 10 or Zone 13. Last, Associated Electric states that it is unclear how the acquisition of the Assets by GridLiance, an independent transmission company, would further the Commission's objective of increasing public power participation in the SPP Transmission Planning process.

24. Western Farmers states that it does not oppose the acquisition by GridLiance of the Assets, so long as the Proposed Transaction does not have an adverse rate or other impact on Western Farmers and its member distribution cooperatives or other transmission customers in Zone 13. However, Western Farmers contends that GridLiance has not made such a demonstration. Specifically, Western Farmers argues that the Assets do not qualify as transmission under the SPP OATT, and there is insufficient evidence to conclude that People's Electric Cooperative would transfer functional control of its facilities to SPP. Western Farmers argues that because GridLiance evaluated the rate impact of the Proposed Transaction based on a hypothetical scenario (People's Electric Cooperative transferring functional control of its facilities to SPP), neither Western Farmers nor the Commission has sufficient information to accurately and fully evaluate what the rate impact of the Proposed Transaction will be. In addition, Western Farmers argues that there has been no demonstration that the Assets are required for reliable operation of the SPP system and states that previous interconnection studies by individual utilities and SPP have never shown a necessity for the Assets as transmission, nor that there would be benefits of additional interconnections. Further, Western Farmers contends that GridLiance has not attempted to quantify, and there is little mention of, the alleged benefits that the Proposed Transaction will provide to the SPP customers who will be impacted by an increase in rates.

25. The Evergy Companies argue that the GridLiance analysis fails to make a comparison of rate impacts and offsetting benefits should People's Electric Cooperative decide to retain ownership of the Assets and transfer functional control of the Assets to SPP. While GridLiance asserts that the same offsetting benefits could be achieved if People's Electric Cooperative transferred functional control of the Asset to SPP, the Evergy Companies emphasize that the key difference is the premium associated with GridLiance's ownership of the Assets. The Evergy Companies further reiterate Associated Electric's criticisms of certain financial assumptions used by GridLiance in determining People's Electric Cooperative's hypothetical ATRR.

26. GridLiance responds that its estimation of the rate impact of the Proposed Transaction uses the same methodology that it used in *City of Nixa*,³³ and GridLiance

³³ Motion for Leave to Answer and Answer of GridLiance High Plains LLC at 6 (citing *City of Nixa*, 162 FERC ¶ 61,214 at P 43).

provides additional support for certain financial inputs to People's Electric Cooperative's hypothetical ATRR. In addition, GridLiance reiterates that the Proposed Transaction will result in offsetting benefits to customers in SPP and will promote the Commission's public policy objectives. GridLiance states that reliability or power flow studies are not required under section 203 of the FPA and that the Commission has recognized that placing transmission facilities under an RTO improves market performance and reliability.³⁴

iii. Deficiency Letter, Response, and Comments

27. In the Deficiency Letter, Commission staff requested, among other things, additional information regarding the claimed offsetting benefits that will result from the Proposed Transaction. In particular, Commission staff asked whether the Assets are radial, whether they serve two or more non-affiliated OATT customers, and whether they currently, or could in the future, interconnect SPP zones. In addition, the Deficiency Letter inquired as to whether the Assets have been closed or have ever been studied to operate in a closed configuration. Commission staff also requested detailed descriptions of any benefits that will accrue to the Assets as a result of the Proposed Transaction and any plans that GridLiance currently has to upgrade or enhance the Assets. Further, Commission staff requested a detailed description of any benefits that will accrue to SPP as a result of the transfer of the Assets to transco ownership.

28. In the Response, GridLiance states that the Assets are currently operated radially, such that the Assets do not serve two or more non-affiliated OATT customers. However, GridLiance represents that the Assets were constructed in a loop and are capable of being operated as non-radial, and GridLiance states that it intends to close and network the Assets prior to transferring them to SPP after the required studies are completed. GridLiance acknowledges that the Assets have never been closed and that People's Electric Cooperative has not studied the Assets in a closed configuration, but GridLiance states that it is coordinating with SPP to study and review the impact of closing the connection on the Assets under Section 5.5 of SPP's planning criteria. Although GridLiance states that it does not have any plans to upgrade, enhance, or add to the Assets, GridLiance opines that its ownership of the Assets will benefit the electric grid through its: (1) participation and work with smaller utilities in competitive solicitations; (2) partnerships with smaller utilities that result in advocacy efforts in stakeholder processes as well as the planning and construction of reliability upgrades; and (3) work to enhance reliability and improve the operation of the electric grid. GridLiance asserts that closing the connections between the Assets and other facilities under SPP's control will result in a significant improvement in reliability for transmission customers served off the Assets, and GridLiance believes that "its incorporation of new transmission facilities into

³⁴ *Id.* at 8-9 (citing Order No. 2000, 89 FERC ¶ 61,285 at P 589).

the SPP regional footprint will accomplish many of the benefits ...[described] above, such as increased competition, improved responsiveness to transmission market needs, improved asset management, and greater reliability.”³⁵

29. Associated Electric and Western Farmers argue that GridLiance does not provide the additional information requested by Commission staff concerning specific benefits that will accrue to SPP customers as a result of the Proposed Transaction. Associated Electric contends that, “[w]hile closing certain switches may benefit [People’s Electric Cooperative’s] existing load, GridLiance again offers no evidence that there is a need for new transmission to serve existing load in either Zone 10 or Zone 13 or that customers in those Zones will derive any real benefits from the addition of the [Assets].”³⁶

30. Similarly, Western Farmers argues that GridLiance fails to specify how its acquisition of the Assets will improve reliability and fails to quantify the potential improvements to reliability or improved operation of the grid. Western Farmers asserts that the facilities used to serve People’s Electric Cooperative’s load currently meet the applicable requirements of Western Farmers’ Planning Criteria document, thus indicating that the current level of reliability is not deficient. Furthermore, Western Farmers notes that the Response does not provide a “comparison of the pre-transaction level of reliability with a meaningful study of reliability post-transaction.”³⁷

iv. Commission Determination

31. We emphasize at the outset that our analysis of rate effects under FPA section 203 differs from the analysis of 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.³⁸

³⁵ Response at 6.

³⁶ Comments of Associated Electric Cooperative, Inc. on GridLiance High Plains LLC Deficiency Response at 4.

³⁷ Comments of Western Farmers Electric Cooperative on GridLiance High Plains LLC Deficiency Response at 5.

³⁸ *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 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).

32. We also address, as a threshold matter, Western Farmers' assertion that the Assets "do not qualify as transmission under the SPP OATT."³⁹ Without making a finding as to whether the Assets qualify as currently operated, we note that GridLiance has stated that it intends to close the interconnections between the Assets and the transmission facilities of Western Farmers and Associated Electric, which will create a redundant connection between SPP Zones 10 and 13, which GridLiance asserts will satisfy the definition of transmission facilities under the SPP OATT.⁴⁰ GridLiance further states that SPP will submit the appropriate filing under FPA section 205 to incorporate GridLiance's ATRR into the SPP Tariff, "at which time SPP will confirm [GridLiance's] analysis that inclusion of the [Assets] in the SPP Tariff meets the requirements of the SPP Tariff."⁴¹ If the ATRR of the Assets is not accepted for inclusion in the calculation of SPP's transmission rates then, under the Asset Purchase Agreement, GridLiance will not be obligated to close the transaction.

33. We note that, on its face, the Proposed Transaction resembles a number of previous transactions approved by the Commission involving a transco's proposed acquisition of transmission assets, frequently from a non-jurisdictional entity.⁴² In each of these previous transactions, the applicant acknowledged that its acquisition would result in a rate increase for transmission customers, which the Commission has acknowledged "is not unexpected" when the transaction involves "ownership changes from a not-for-profit utility to a for-profit business with a different capital structure, tax obligations and the need to earn a return."⁴³ In each of the previous transactions, the

³⁹ Western Farmers Electric Cooperative Comments at 4.

⁴⁰ Response at 7.

⁴¹ *Id.* at 4-5.

⁴² See *City of Nixa*, 162 FERC ¶ 61,214; *GridLiance West Transco LLC*, 160 FERC ¶ 61,002 (2017) (*Valley Electric*) (approving the acquisition of transmission facilities from Valley Electric Association); *Startrans IO, L.L.C.*, 122 FERC ¶ 61,307 (2008) (approving the acquisition of interests in transmission facilities owned by the City of Vernon, California); *ITC Holdings*, 143 FERC ¶ 61,256 (approving the acquisition of the transmission facilities owned by Entergy Corp). The Commission also has approved transco acquisitions where, unlike this one, the transaction would not cause a rate increase. See *ITC Midwest LLC*, 133 FERC ¶ 61,169, at PP 15, 23 (2010) (no rate increase because the same ROE and "nearly identical" formula rates apply to acquired facilities before and after the transaction). See also *South Central MCN LLC*, 154 FERC ¶ 61,174, at P 50 (2016) (seller of facilities bears full cost of rates for those facilities and other customers' rates will not increase.).

⁴³ See, e.g., *City of Nixa*, 162 FERC ¶ 61,214 at P 45 (citing *Valley Electric*,

applicants asserted that the rate increase was offset by the non-quantifiable benefits of transco ownership and therefore was not adverse.

34. In most of its prior orders approving these transactions, the Commission considered the claims of benefits from transco ownership, and 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.⁴⁴ However, the Commission’s holdings were based on its consideration of the specific facts of the transactions involved; the Commission did not hold that the benefits of transco ownership will always outweigh an associated increase in rates. The Commission thus left open in its previous decisions the possibility that there might be a situation where a rate increase resulting from transco ownership represents an adverse effect on rates. We find, for the reasons described below, that the Proposed Transaction represents such a case and that GridLiance has failed to demonstrate that the benefits of its ownership of the Assets would offset the rate increases that GridLiance acknowledges would result from the Proposed Transaction. We emphasize that our holding here is based on the facts in the record of this proceeding, and we are not reversing previous Commission findings regarding the benefits of transco ownership of transmission assets.

35. We start our analysis by noting that, although the magnitude of the rate impact of the Proposed Transaction is contested, it is undisputed that the Proposed Transaction will cause an increase in rates for SPP transmission customers as a result of GridLiance’s higher ATRR for the Assets. Indeed, GridLiance’s own illustrative effect on rates calculation shows that the ATRR for the assets under GridLiance ownership would be higher than if the Assets were under SPP’s control but owned by People’s Electric Cooperative.⁴⁵ Further, GridLiance has not proposed ratepayer protection as part of the Proposed Transaction, but instead asserts that the benefits of its ownership of the Assets as a transco will offset the conceded rate increases.⁴⁶

160 FERC ¶ 61,002 at P 52).

⁴⁴ In *City of Nixa*, the Commission did not rely on offsetting benefits of transco ownership to approve the transaction. The Commission concluded that “the potential rate increase in Zone 10 would primarily be due to incorporating the Nixa Assets into Zone 10, not the change in ownership due to the Proposed Transaction,” and therefore did not consider the evidence submitted as to claimed offsetting benefits. *City of Nixa*, 162 FERC ¶ 61,214 at P 44.

⁴⁵ Application at 14-16.

⁴⁶ *Id.* at 16-17.

36. The categories of benefits from transco ownership claimed by GridLiance⁴⁷ are consistent with the types of benefits found by the Commission in its prior decisions to outweigh rate increases associated with transco acquisition of transmission facilities. However, the facts in the prior decisions were different. In the Commission's initial cases establishing the principle that transco ownership could offset rate increases, the nature of the assets being acquired was significant and the benefits of transco ownership were apparent. For example, in *ITC Holdings*, ITC proposed to acquire Entergy's entire transmission system, and ITC made a compelling case for why it would be able to make significant investments in updating and expanding Entergy's system that Entergy otherwise would not be able to accomplish.⁴⁸ Similarly, in *Valley Electric*, GridLiance West Transco LLC acquired Valley Electric Transmission Association, LLC's (Valley Electric) entire transmission system, and committed 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."⁴⁹ *Startrans* involved the acquisition of the City of Vernon's interests in three major transmission lines, and Startrans stated that it intended "to pursue expansion of the [transmission lines] . . . and to help fund this expansion if the other joint owners decline to participate."⁵⁰

37. By contrast, the Assets that GridLiance proposes to acquire here are radial lines currently being used by People's Electric Cooperative to provide distribution service to certain of its retail customers. It is not apparent on its face that transco ownership of these Assets will provide benefits similar to the other cases where the Commission found that the benefits of transco ownership would outweigh the associated rate increase. Further, unlike many of the prior cases where the applicant detailed plans for expansion or other upgrades to the transmission facilities being acquired, here GridLiance stated in the Response that it does not have any plans to upgrade, enhance, or add to the Assets.⁵¹ It therefore is necessary to examine in more detail each of the benefits claimed by GridLiance to evaluate their significance.

⁴⁷ *Id.* at 17.

⁴⁸ *ITC Holdings*, 143 FERC ¶ 61,256 at P 132.

⁴⁹ *Valley Electric*, 160 FERC ¶ 61,002 at P 53.

⁵⁰ *Startrans*, 122 FERC ¶ 61,307 at P 21.

⁵¹ Response at 3.

(a) **Improving the reliability of People's Electric Cooperative's existing transmission system**

38. The Assets include two interconnections with facilities that are part of SPP, one with facilities owned by the Southwestern Power Administration, and one with facilities owned by Western Farmers. However, the Assets currently are operated in an open configuration and to date these interconnections never have been closed. In the Application, GridLiance asserts that its “ownership of the [People’s Electric Cooperative] Assets will allow for [People’s Electric Cooperative’s] existing transmission system to operate in a closed configuration, ensuring there is increased redundancy in the system and providing significant reliability benefits.”⁵² In the Response, GridLiance provides more details regarding this claim. In his testimony attached to the Response, Mr. Holland explains that, although People’s Electric Cooperative operates the Assets as multiple radial lines, they were designed to be operated as a looped network. According to Mr. Holland, closing the interconnections will allow the service provided over the Assets to be networked, which is more reliable than the current operation of the radial lines when the interconnections are left open.⁵³ Mr. Holland also asserts that closing the connections will require the owner of the Assets “to implement a costly NERC-compliance program.”⁵⁴ He claims that People’s Electric Cooperative would be unlikely to close the interconnections if the Assets are not transferred because People’s Electric Cooperative is concerned about coming under NERC’s reliability jurisdiction and as a result assuming the “substantial additional costs and risks they would otherwise incur upon their existing assets becoming a part of the Bulk Electric System.”⁵⁵

39. We agree that closing the interconnections with SPP and putting the Assets under NERC’s reliability jurisdiction would provide reliability benefits to the People’s Electric Cooperative customers currently receiving retail service over the Assets. However, the evidence submitted by GridLiance shows that only “21 MW of load [is] being served radially from the Western Farmers’ feeds and 26 MW of load [is] being served radially from the Southwestern Power Administration (SWPA) feed.” Without further evidence as to the reliability benefits of the transaction, we cannot find that the benefits of increasing the reliability of service to this relatively small amount of retail load is sufficient to offset the rate increase resulting from GridLiance’s acquisition of the Assets, particularly given the fact that, as discussed below, GridLiance has presented no evidence

⁵² Application at 17 n.84.

⁵³ Response, Ex. GHP-800 at 12-13.

⁵⁴ *Id.* at 13.

⁵⁵ *Id.* at 11.

to show that the Proposed Transaction provides a benefit to the SPP customers whose rates will increase.

(b) **Promoting transco ownership of transmission facilities**

40. The support GridLiance provides for its argument that the Proposed Transaction provides benefits by promoting transco ownership of transmission facilities is a citation to *ITC Holdings* for the proposition that “a transaction that resulted in a rate increase was not adverse under Section 203 of the FPA because it would result in offsetting benefits, primarily transco ownership of transmission facilities”⁵⁶ This argument simply restates the general holding of the Commission’s cases described above without explaining how GridLiance’s ownership of the Assets provides benefits that offset the projected rate increase resulting from GridLiance’s acquisition of the Assets.

(c) **Enhancing the operations and efficiency of SPP**

41. In the Application, GridLiance explains the benefits of its ownership of the Assets to the operations and efficiency of SPP as follows:

Placing the [People’s Electric Cooperative] Assets under SPP control will increase the transmission facilities considered by SPP in performing its planning functions, thereby maximizing the use of those facilities, and minimizing the necessity for new transmission to serve existing load. Further, adding facilities to the SPP system also will provide new avenues for transmission expansion when it is needed and appropriate.⁵⁷

42. However, as described by GridLiance, the Assets currently are used solely as radial lines to serve certain retail customers of People’s Electric Cooperative and do not interconnect with any generation resources. Although the Assets can be made more reliable if they are looped, they still will be used principally to serve the same industrial loads. GridLiance has failed to demonstrate how placing the Assets under SPP’s control would maximize the use of the Assets, minimize the need for new transmission, or provide new avenues for transmission expansion.

43. Although not mentioned as a benefit in the Application, Mr. Holland’s testimony submitted by GridLiance with the Response states that “[w]hen GridLiance HP purchases

⁵⁶ Application at 17 n.85.

⁵⁷ *Id.* at 17 n.86.

the [People's Electric Cooperative] Assets, closes the switches at Egypt, and transfers the [People's Electric Cooperative] Assets to SPP's functional control, the assets will form an interconnection between SPP's Western Farmers and SWPA pricing zones." Such an interconnection, which would create a redundant interconnection to the currently existing interconnection between the two zones, potentially could provide a benefit to SPP's operations. However, after mentioning this fact, Mr. Holland attaches no significance to the establishment of the interconnection and does not claim it as a benefit, nor does GridLiance claim a benefit from this new interconnection in any other part of the Application, the Response, or its other pleadings. Neither Southwestern Power Administration nor Western Farmers, which presumably would benefit from the interconnection, have claimed such a benefit, nor has SPP.

44. The lack of any showing of material benefit of the Proposed Transaction to SPP is particularly significant, given that GridLiance proposes to include the Assets in existing SPP zones—either in Zone 10 or in Zones 10 and 13. The proposal to include the Assets in existing zones would mean that SPP's existing customers in those zones would face a rate increase, but GridLiance has made no showing that the existing customers would receive any material benefit as a result of adding the Assets to their zone.

(d) Furthering the Commission's objective of increasing public power participation in SPP transmission planning

45. GridLiance's final assertion of benefits resulting from transco ownership of the Assets is that it would further the Commission's objective of increasing public power participation in SPP transmission planning. According to GridLiance:

In Order No. 2000, the Commission observed that public power and cooperative participation in RTOs will enhance the reliability and economic benefits of an RTO and that participation by public power entities and cooperatives is vital to ensure that each RTO is appropriate in size and scope.⁵⁸

46. We continue to recognize the benefits of public power participation in RTOs. However, the nature of the facilities owned by public power entities being placed into an RTO affects the degree of the benefit obtained. Here, the addition of 55 miles of transmission facilities whose only use is to deliver power to industrial customers does not materially add to the size or scope of SPP nor has it been shown to provide other material benefits to SPP, as explained above.

⁵⁸ *Id.* at 17, n.87.

47. GridLiance also points to its partnerships with other public power entities and claims that these partnerships have led to benefits for those entities, including the submission of numerous proposals for transmission upgrades, planning reliability upgrades, advocating for its partners in stakeholder meetings.⁵⁹ We do not question that GridLiance was able to achieve these benefits for other public power entities, but FPA section 203 requires GridLiance to explain how it can achieve benefits as a result of its acquisition of the Assets as a result of the Proposed Transaction. However, as explained above, GridLiance has stated that it has no plans to upgrade or expand any of the Assets. Moreover, because of the limited nature and function of the Assets, it appears unlikely that that any expansion or reliability upgrades will be required once functional control of the assets is transferred to SPP. Accordingly, GridLiance's expertise and experience with other public power entities therefore appears unlikely to translate into material benefits for People's Electric Cooperative or SPP in this instance.

48. Because GridLiance has failed to show that the benefits of the Proposed Transaction are sufficient to offset the adverse effect on rates, we deny approval of the Proposed Transaction. However, our denial here is without prejudice to GridLiance making a new filing that either proposes adequate ratepayer protection or demonstrates specific additional benefits to offset the rate increase.

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)

Kimberly D. Bose,
Secretary.

⁵⁹ Response, Ex. GHP-800 at 5-11.