

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF SOUTHERN INDIANA GAS)
AND ELECTRIC COMPANY D/B/A CENTERPOINT)
ENERGY INDIANA SOUTH ("CEI SOUTH") FOR AN)
ORDER: (1) ISSUING CEI SOUTH A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY ("CPCN"))
TO PURCHASE AND ACQUIRE THROUGH A BUILD)
TRANSFER AGREEMENT ("BTA") A SOLAR POWER)
ELECTRIC GENERATING FACILITY IN PIKE)
COUNTY, INDIANA, THAT WILL HAVE AN)
AGGREGATE NAMEPLATE CAPACITY OF)
APPROXIMATELY 130 MEGAWATTS ALTERNATING)
CURRENT (THE "PIKE COUNTY SOLAR PROJECT");)
(2) FINDING THE PIKE COUNTY SOLAR PROJECT)
CONSTITUTES A "CLEAN ENERGY PROJECT")
UNDER IND. CODE CH. 8-1-8.8; (3) APPROVING)
ASSOCIATED RATEMAKING AND ACCOUNTING)
TREATMENT FOR THE PIKE COUNTY SOLAR)
PROJECT UNDER IND. CODE § 8-1-8.8-11; AND (4))
APPROVING CONFIDENTIAL TREATMENT FOR)
PRICING AND OTHER COMMERCIAL TERMS OF)
THE BTA AND RELATED CONFIDENTIAL)
INFORMATION.)

CAUSE NO. 45754

SUBMISSION OF JOINT PROPOSED ORDER

Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South and the Indiana Office of Utility Consumer Counselor (collectively, the "Settling Parties"), by their respective counsel, hereby submit for the Commission's consideration and use the joint proposed order attached hereto.

[Signature Page Follows]

Dated: November 1, 2022

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing document was served via electronic mail transmission to:

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Dated: November 1, 2022



Steven W. Krohne

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**VERIFIED PETITION OF SOUTHERN INDIANA)
GAS AND ELECTRIC COMPANY D/B/A)
CENTERPOINT ENERGY INDIANA SOUTH)
("CEI SOUTH") FOR AN ORDER: (1) ISSUING CEI)
SOUTH A CERTIFICATE OF PUBLIC)
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TRANSFER AGREEMENT ("BTA") A SOLAR)
POWER ELECTRIC GENERATING FACILITY IN)
PIKE COUNTY, INDIANA, THAT WILL HAVE AN)
AGGREGATE NAMEPLATE CAPACITY OF) CAUSE NO. 45754
APPROXIMATELY 130 MEGAWATTS)
ALTERNATING CURRENT (THE "PIKE) APPROVED:
COUNTY SOLAR PROJECT"); (2) FINDING THE)
PIKE COUNTY SOLAR PROJECT)
CONSTITUTES A "CLEAN ENERGY PROJECT")
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ASSOCIATED RATEMAKING AND)
ACCOUNTING TREATMENT FOR THE PIKE)
COUNTY SOLAR PROJECT UNDER IND. CODE §)
8-1-8.8-11; AND (4) APPROVING CONFIDENTIAL)
TREATMENT FOR PRICING AND OTHER)
COMMERCIAL TERMS OF THE BTA AND)
RELATED CONFIDENTIAL INFORMATION.)**

ORDER OF THE COMMISSION

Presiding Officers:

Stefanie Krevda, Commissioner

Carol Sparks Drake, Senior Administrative Law Judge

On July 29, 2022, Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South ("Petitioner" or "CEI South") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") in this Cause requesting approval and associated cost recovery relating to its purchase and acquisition of a solar power electric generating facility in Pike County, Indiana, through a Build Transfer Agreement ("BTA") that will have an aggregate nameplate capacity of approximately 130 megawatts alternating current ("MWac") (the "Pike County Solar Project" or the "Project"). Also on July 29, 2022, CEI South filed its prepared testimony and exhibits constituting its case-in-chief, including the direct testimony and attachments of the following witnesses:

- Steven C. Greenley, Senior Vice President of Generation Development;
- F. Shane Bradford, Director of Power Supply Services;

- Matthew A. Rice, Director of Indiana Electric Regulatory and Rates;
- Wayne D. Games, Vice President, Power Generation Operations;
- Erin M. Carroll, Senior Vice President of Supply Chain Consulting for Wood Mackenzie;
- Benjamin M. Bailey, Financial Manager;
- Benjamin D. Vallejo; Director, Investor Relations; and
- Rina H. Harris, Director of Energy Solutions and Business Services.

On August 12, 2022, Citizens Action Coalition (“CAC”) filed a petition to intervene, which the Presiding Officers granted by docket entry dated August 23, 2022.

On September 13, 2022, CEI South filed a Motion to Modify Procedural Schedule notifying the Commission that CEI South, the Indiana Office of Utility Consumer Counselor (“OUCC”), and CAC were attempting to negotiate a settlement agreement and required additional time to conclude those discussions. A docket entry was issued on September 13, 2022, modifying the procedural schedule as requested. On September 22, 2022, CEI South, with the agreement of the OUCC and intervenor CAC, filed a Second Motion to Modify Procedural Schedule (“Second Motion”) in which CEI South advised the Commission that it and the OUCC reached an agreement in principle resolving all the issues in this proceeding, and CAC agreed it would not oppose this settlement agreement or cross-examine witnesses at the evidentiary hearing. Accordingly, CEI South and the OUCC requested certain procedural modifications to accommodate the filing of a formal settlement agreement and CEI South indicated it was waiving the 120-day deadline for a Commission Order to be entered under Ind. Code § 8-1-8.8-11(d). By docket entry dated September 28, 2022 the agreed upon procedural modifications were approved.

In accordance with the revised procedural schedule approved by the September 28, 2022 docket entry, Petitioner and the OUCC (the “Settling Parties”) filed a Joint Stipulation and Agreement (the “Settlement Agreement”) on October 6, 2022. On the same day, CEI South filed the settlement testimony of Mr. Bradford, and the OUCC filed the settlement testimony of Caleb R. Loveman, Assistant Director of the OUCC’s Electric Division.

The Commission held an evidentiary hearing in this Cause at 9:30 a.m. on November 1, 2022, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC attended and participated in the hearing by counsel. With the agreement of CAC and the parties, CAC’s counsel was not in attendance at the settlement hearing. CEI South’s direct testimony and attachments, along with the Settling Parties’ settlement testimony were admitted into the record without objection. The Settlement Agreement was entered into evidence as Settling Parties’ Joint Exhibit 1.

The Commission, having considered the evidence and applicable law, now finds:

1. Notice and Jurisdiction. Due, legal, and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. CEI South is a public utility as defined in Ind. Code § 8-1-2-1 and an eligible business as defined in Ind. Code § 8-1-8.8-6. The Commission has jurisdiction to approve Petitioner’s requested relief as provided

under the Public Service Commission Act, including Ind. Code chs. 8-1-8.5 and 8-1-8.8; therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics. CEI South is an operating public utility incorporated under the laws of the State of Indiana and has its principal office at 211 NW Riverside Drive, Evansville, Indiana 47708. CEI South has charter power and authority to engage in, and is engaged in the business of, rendering retail electric service solely within the State of Indiana under indeterminate permits, franchises, and necessity certificates heretofore duly acquired. CEI South owns, operates, manages, and controls, among other things, plant, property, equipment, and facilities which are used and useful for the production, storage, transmission, distribution, and furnishing of electric service to approximately 150,000 electric consumers in southwestern Indiana. Its service territory is spread throughout Pike, Gibson, Dubois, Posey, Vanderburgh, Warrick, and Spencer counties.

3. The Pike County Solar Project. The Pike County Solar Project is a solar generation facility, anticipated to have the capability of generating approximately 130 MWac of electricity, located in Pike County, Indiana, near the City of Petersburg, Indiana. The Pike County Solar Project is anticipated to be completed by March 2025, and when completed, it will interconnect to CEI South's transmission system via CEI South's existing Cato 138 kV substation within the footprint of Midcontinent Independent System Operator ("MISO"). The Pike County Solar Project will be constructed by Crosstrack Solar Energy LLC ("Crosstrack"), a subsidiary of Invenergy LLC.

4. Requested Relief. In its Verified Petition, CEI South requested that the Commission issue an Order: (i) issuing CEI South a certificate of public convenience and necessity ("CPCN") to purchase and acquire the Pike County Solar Project through a BTA; (ii) finding the Pike County Solar Project constitutes a "clean energy project" under Ind. Code ch. 8-1-8.8; (iii) approving associated ratemaking and accounting treatment for the Pike County Solar Project under Ind. Code § 8-1-8.8-11, including recovery of the cost of the project through a levelized rate applied to energy generated by the Pike County Solar Project; and (iv) approving confidential treatment for pricing and other commercial terms of the BTA and related confidential information.

5. CEI South's Case-in-Chief.

A. Steven C. Greenley. CEI witness Greenley provided an overview of CEI South's generation transition plan (the "Generation Transition Plan" or the "Plan"), developed in accordance with the findings of the Company's 2019/2020 Integrated Resource Plan ("2019/2020 IRP"). Pet. Exh. No. 1 at 6. Mr. Greenley testified that the Preferred Portfolio calls for the timely retirement of certain existing generation assets and replacement of those assets with new generation resources. *Id.* Mr. Greenley testified that the Plan requires an initial step of identifying and selecting approximately 700-1,000 MWac of solar generation, 300 MWac of wind generation, and approximately 460 MW of natural gas combustion turbine ("CT") generation, and CEI South has already begun to implement the Plan by seeking approval of three solar power purchase agreements ("PPAs"), one solar BTA, and two natural CTs in Cause Nos. 45501, 45564, and 45600, which were filed in February 2021, June 2021, and August 2021, respectively. *Id.* at 6-7.

Mr. Greenley testified that Petitioner's current generation mix consists of approximately 1,329 MW of installed capacity, including two 2-MW solar arrays, approved in Cause No. 44909, and a 50-MW solar facility, approved in Cause No. 45086. *Id.* at 7. Mr. Greenley stated that the relief sought in Cause No. 45501 was the first step in implementation of CEI South's Plan, which resulted in approval to acquire through a BTA a 300 MWac solar facility in Posey County, Indiana (the "Posey County Solar Project"), and a 100 MW solar project in Warrick County, Indiana (the "Warrick County Solar Project", collectively the "45501 Solar Projects"). *Id.* He testified that CEI South has also received approval in Cause No. 45600 to enter into a 150 MW solar PPA to purchase energy from a facility in Knox County (the "Knox County Solar Project") and a 185 MW solar PPA to purchase energy from a solar farm in Vermillion County (the "Vermillion County Solar Project", or collectively the "45600 Solar Projects"); and in Cause No. 45564, CEI South was issued a CPCN to construct two natural gas CTs providing approximately 460 MW of capacity to complement CEI South's renewable resources. *Id.* at 8. Mr. Greenley stated that CEI South has made progress getting projects approved; however, there have been challenges getting projects in service, largely due to supply chain issues across the energy industry and escalating commodity costs that have impacted the project schedules and timeline. *Id.* Mr. Greenley testified that the Posey County Solar Project is downsizing from 300 MWac to 191 MWac for this reason. *Id.* He stated it is crucial that CEI South obtain approval of the Pike County Solar Project as CEI South works to bring these projects online and to identify new projects needed to meet system needs. *Id.*

Mr. Greenley testified that the Pike County Solar Project is part of the first phase of the Plan. *Id.* He testified that with downsizing of the Posey County Solar Project, CEI South has approximately 626 MWac of approved solar generation capacity, which is less than the 700 to 1,000 MWac solar generation identified in the Generation Transition Plan. *Id.* He stated that if approved, the Pike County Solar Project will add 130 MWac of generation capacity to help meet the goals identified in the Plan. *Id.* at 9.

Mr. Greenley testified that without Pike County Solar Project approval, CEI South will be at risk of having to make high-priced purchases from the Planning Resource Auction ("PRA"). *Id.* He testified that the Project will help mitigate the risk of needing to implement temporary controlled load sheds. *Id.* at 9.

Mr. Greenley testified that the Pike County Solar Project and the Generation Transition Plan are consistent with CEI South's 2019/2020 IRP. *Id.* at 9. Mr. Greenley testified to the benefits the Generation Transition Plan and Preferred Portfolio provide to CEI South and its customers. *Id.* at 10. Mr. Greenley testified that the Pike County Solar Project is a reasonable addition to CEI South's generation resource portfolio that, in the aggregate, serves to increase reliability and efficiency as well as mitigate risk through diversification, not only of resource mix but asset type, and fosters an economic mix of capacity resources, consistent with Commission guidance in previous generation filings. *Id.*

Mr. Greenley testified that the Pike County Solar Project was selected from the Company's second RFP, which was issued on August 12, 2020, and sought a combination of wind, solar, and solar + storage resources to meet the need identified in the Plan (the "2020 Renewable RFP"). *Id.* Mr. Greenley testified that the Vermillion County Solar Project and Knox County Solar Project, approved in Cause No. 45600, were also a result of the 2020 Renewable RFP. *Id.* at 11.

Mr. Greenley testified that the Pike County Solar Project, which was originally bid by Crosstrack as “Cato Solar,” is a 130 MWac project located in Pike County, Indiana, near the City of Petersburg; and will interconnect to CEI South’s transmission system at Cato 138 kV substation. *Id.* Mr. Greenley stated that the Guaranteed Substantial Completion Date is March 31, 2025. *Id.* Mr. Greenley testified that the investment tax credit (“ITC”) eligibility was extended due to COVID-19, so the Project will still qualify for the 30% ITC as planned. *Id.* Mr. Greenley stated that Crosstrack has obtained land rights for the land on which the solar panels and other facilities will be located, and Pike County permitting has been approved. *Id.* Mr. Greenley testified that the Pike County Solar Project is also in the 2019 MISO Interconnection Queue Cycle and is expected to have a signed Generator Interconnection Agreement near the end of 2022. *Id.*

Mr. Greenley testified that the Pike County Solar Project will be fully developed, engineered, procured, and constructed by Crosstrack and then acquired by CEI South in a transfer of the Project Company, Crosstrack Solar Holdings LLC, which is a Special Entity established to facilitate ownership transfer of the Project. *Id.* at 12. Under the BTA, Crosstrack will own the Project until it achieves mechanical completion, after which CEI South will acquire the Project and all of its attributes. *Id.* Mr. Greenley stated that the BTA sets forth Crosstrack’s obligations to bring the Project to final completion after the transaction closing occurs; doing so also will enable CEI South to claim the tax attributes of the Project. *Id.*

B. F. Shane Bradford. CEI South witness Bradford provided an overview of CEI South’s implementation of its Generation Transition Plan, and testified regarding CEI South’s decision to pursue the Pike County Solar Project. Pet. Exh. No. 2 at 7. Mr. Bradford described CEI South’s utilization of the 2020 Renewable RFP, which he provided as Attachment FSB-2, to identify and select the Project. *Id.* at 7-14. Mr. Bradford testified that in CEI South’s 2020 Renewable RFP, 25 individual respondents submitted 232 proposals, 191 of which were for projects in Indiana; and these proposals includes 154 solar projects (31 asset purchase + 113 PPA + 10 other), 60 solar + storage, and 18 wind. *Id.* at 9. He testified that the Pike County Solar Project was identified as a top project based on its cost, location within CEI South’s assigned service territory, interconnection to an existing CEI South substation and transmission system, and placement in the MISO Interconnection Queue Cycle. *Id.* at 10.

Mr. Bradford testified that the Company worked with 1898 & Company to evaluate, score, and rank each complete proposal based on established quantitative and qualitative scoring criteria that assessed reliability, cost, and certainty, including factors such as the Levelized Cost of Energy (“LCOE”), energy settlement location, interconnection and development status, and project risk factors like credit worthiness, development experience, delivery date, project site control statue, permits, and zoning. *Id.* Mr. Bradford provided the Company’s confidential scoring summary, attached as Attachment FSB-3. He testified as to the method CEI South used to compare BTA and PPA proposals with varying term lengths, by normalizing the LCOE over 35 years. *Id.* at 11. Mr. Bradford testified that in addition to cost, CEI South also qualitatively evaluated the bids on Energy Settlement Location, Interconnection Status, and Project Risk Factors. *Id.* at 12-13. Mr. Bradford stated that the Pike County Solar Project has favorable characteristics consistent with all factors. *Id.* at 13. He testified that the Pike County Solar Project was the overall best BTA project choice because the expected LCOE of the BTA was the 2nd lowest of the remaining BTA proposals; the Project is located in CEI South’s assigned service territory and will interconnect to CEI South’s transmission system via the existing Cato 138 kV substation; Crosstrack has obtained land rights

for approximately 2,300 acres for the Pike County Solar Project and construction is expected to commence in the first half of 2023 with a Guaranteed Substantial Completion Date by March 31, 2025; the Project is in the 2019 MISO Interconnection Queue Cycle and is expected to have a signed Generator Interconnection Agreement near the end of 2022; and the Project will qualify for the 30% Investment Tax Credit (“ITC”). *Id.* at 15.

Mr. Bradford testified regarding the pressures on pricing that have transpired since 2020 Renewable RFP was issued, including the jump in solar prices in 2021 due to supply chain constraints in the industry, specifically as a result of the rise in polysilicon costs, which is up 300% since pre-pandemic levels. *Id.* Mr. Bradford testified that polysilicon cost represents approximately 13% of the cost of the Pike County Solar Project. *Id.* He testified that copper, aluminum, and glass have also increased. *Id.* Mr. Bradford testified that in addition to these factors, the price of the Project has also been affected by uncertainties related to potential application of anti-circumventing tariffs by the United States government against crystalline silicon photovoltaic cells, modules, laminates, and panels consisting of crystalline silicon photovoltaic cells imported from China. *Id.* at 16-17.

Mr. Bradford testified regarding the efforts made during the Pike County Solar Project BTA negotiations to mitigate the impact of the rising prices for solar facilities. *Id.* at 18-19. He stated that, notwithstanding the challenges and limited availability of projects, the Pike County Solar Project remains competitive. In Mr. Bradford’s opinion, CEI South was able to negotiate to purchase a reasonably priced solar project. *Id.* at 20.

Mr. Bradford testified that the Pike County Solar Project is in the public interest, as it will enhance or maintain the reliability and efficiency of service provided by CEI South; diversify the Company’s generation portfolio; is consistent with CEI South’s Plan; provides long-term, low-cost renewable energy; is located in the part of the state with the richest natural solar resource; and is connected to CEI South’s own transition system. *Id.* at 26.

Mr. Bradford testified regarding the proposed levelized rate of \$0.07075 per KWh, which he indicated is competitive with the rates being offered under PPAs. *Id.* at 27. He testified to the methodology CEI South employed to evaluate the levelized rate. *Id.* at 27-28.

Mr. Bradford testified that energy output from the Pike County Solar Project will be offered into the MISO wholesale energy market daily per MISO tariff and Business Practice Manual (“BPM”) requirements. *Id.* at 29. He testified that all accredited capacity will be used to satisfy MISO PRMR and Local Clearing Requirements prescribed by the MISO tariff, and that the Project will provide accredited capacity and energy to meet PRMR in the MISO wholesale market and Local Clearing Requirements. *Id.* He testified that if CEI South does not have enough owned capacity or bilateral to meet its PRMR, then CEI South would have to participate in the MISO PRA, which is an annual auction in which CEI South and other utilities can procure capacity to meet MISO’s resource adequacy requirements. *Id.* at 29. Mr. Bradford testified that there are risks of capacity shortfalls in future years, based on a MISO 2022 OMS-MISO Survey Results on June 10, 2022, and that capacity deficits are projected to widen in subsequent years due to demand growth and the continued retirements of coal-fired resources. *Id.* at 31. Mr. Bradford testified that the Pike County Solar Project helps sustain CEI South’s PRMR position. *Id.* Petitioner’s Exh. No.

2, Attachment FSB-5 provides additional details regarding the Pike County Solar Project's interconnection to the MISO system and impact on CEI South's PRMR.

C. Matthew Rice. CEI South witness Rice described the analysis and results of CEI South's 2019/2020 IRP process, the associated RFP process, and the benefits of the selected Preferred Portfolio. Pet. Exh. No. 3, p. 4-16. Mr. Rice testified Petitioner's Exh. No. 3, Attachment MAR-1 and MAR-2 are a copy of CEI South's 2019/2020 IRP. Mr. Rice stated that the Preferred Portfolio of Petitioner's 2019/2020 IRP includes energy efficiency at 1.25% between 2021-2023 and 0.75% thereafter, with 300 MW of wind resources coming online in 2022, 1,150 MW of new solar and solar plus storage expected in 2023-2024, and two CTs expected to come online in 2024-2025. *Id.* at 16. He opined that the Preferred Portfolio is cost effective and expected to save Petitioner's customers up to \$320 million over the IRP's 20-year planning period, as compared to continuing to operate CEI South's coal units. *Id.* at 25. Mr. Rice testified that solar resources were selected in all portfolios, including the Preferred Portfolio, and the Project included in this proceeding is consistent with the needs identified in the 2019/2020 IRP and will fulfill 130 MWac of installed capacity and approximately 34 MWs of CEI South's PRMR. *Id.* at 19-20. He also stated that the pricing for the Project is consistent with the pricing modeled in the 2019/2020 IRP. According to Mr. Rice, the Pike County Solar Project qualifies as a clean energy project under Ind. Code § 8-1-8.8-2 and renewable energy resource under Ind. Code § 8-1-8.8-10. *Id.* at 25-29.

Mr. Rice testified that CEI South is requesting authorization for the necessary ratemaking treatment under CECA, pursuant to Ind. Code § 8-1-8.8-11. *Id.* at 20. He testified that CEI South will include costs incurred for the purchase, construction, and operation of qualifying projects in its annual CECA filing through the use of a levelized rate. *Id.* He testified that the levelized rate will not be subject to an annual escalator but will be flat over the life of the asset. *Id.* at 21.

Mr. Rice estimated the residential bill impact for a residential customer that uses 1,000 kWh per month is approximately \$6 per month. Mr. Rice stated that this amount does not include offsets such as renewable energy credit ("REC") sales, which are expected to lower customer bills. *Id.* at 24.

D. Wayne Games. CEI South witness Games testified that the Pike County Solar Project is anticipated to have the capability of generating approximately 130 MWac of electricity; and its DC capacity will be approximately 163 MWdc. Pet. Exh. No. 4 at 4. He described the way in which the Project will generate electricity through the use of mounted photo voltaic modules and inverters that will be configured on array blocks and how the panels will be organized and transport electricity to the collector substation. *Id.* at 5. Mr. Games testified that all necessary federal, state, and local permits needed for construction and operation of the Project have been applied for and obtained by Crosstrack or will be applied for and obtained by CEI South. *Id.* at 6.

Mr. Games testified that the expected life of the Pike County Solar Project is 35 years, although he believes the Project could continue to operate beyond its expected life. He stated that CEI South will have a 30-year warranty on the modules, a 5-year warranty on the inverters, and a 10-year warranty on the structural tracking systems. *Id.* at 6. He testified that Crosstrack's provider is providing a 2-year wrap warranty on installation of the major components and the balance of

plant equipment. *Id.* He testified that the leases for property that CEI South would acquire under the BTA extend for 50 years. *Id.*

Mr. Games testified that CEI South has hired Sargent & Lundy to serve as the Owner's Engineer for the Project, and Project oversight will be managed by the management team's monitoring progress of the Project through achievement of Critical Milestones, which are set forth in the BTA. *Id.* at 7. Mr. Games testified that the Project is anticipated to achieve COD by March 31, 2025. *Id.* at 8.

Mr. Games testified that CEI South will have responsibility for O&M of the Pike County Solar Project, and the estimated *pro forma* O&M costs are estimated to be \$3.6 million. *Id.* at 9. He testified that required maintenance activities include remote performance monitoring; resolving any outage or system performance concerns; replacement of panels as needed due to breakage or performance loss; routine maintenance of the inverters and power transformers; repair of electrical connections; property lease costs; insurance costs; audit fees; and routine vegetation management, including mowing and vegetation control. *Id.*

Mr. Games opined on the benefits of the BTA structure, which will provide CEI South with a resource that can be operated for beyond 35 years after which the facility will continue to produce and provide low-cost power to the benefit of CEI South's customers. *Id.* at 10. Mr. Games testified that, even if the Pike County Solar Project is online by its anticipated April 2025 date, there will still be a capacity shortfall through 2025 until other projects are placed in service. *Id.* at 11. Mr. Games stated that the Pike County Solar Project is a part of a diversified and balanced portfolio identified in the 2019/2020 IRP with low-cost renewable energy that is complemented by dispatchable generation., and the Pike County Solar Project along with other renewable projects is needed to replace the capacity currently being supplied by coal units set for retirement. *Id.*

E. Erin Carroll. CEI South witness Carroll testified that her consulting firm, Wood Mackenzie, was retained by CEI South to provide insight into the commercial solar generation markets in the United States, with an emphasis on the MISO market. Pet. Exh. No. 5, at 2. Ms. Carroll described the analysis performed by Wood Mackenzie to assess the impact of the current market inflation on the BTA price for the Project. *Id.* at 4. The BTA escalation analysis was provided as Attachment EMC-1.

Ms. Carroll testified that prices for solar are higher than the prices that could be obtained in 2020 when Crosstrack submitted the Project for the 2020 Renewable RFP. *Id.* at 5. She discussed the price of the Project and the factors that have affected the price, including last year's commodity cost increases, and uncertainty in the supply chain created by the global pandemic recovery, the ongoing war between Russia and Ukraine, and regulatory and trade policy uncertainty related to tariffs imposed by Section 201 of the Trade Act of 1974. *Id.* at 5-8. Ms. Carroll testified that these cost pressures have impacted the cost of the Pike County Project, including equipment and material price, construction costs, and labor costs. *Id.* at 8. Ms. Carroll discussed the confidential analysis performed by her firm and concluded that it is prudent for CEI South to move forward with the Pike County Solar Project under the terms of the BTA. *Id.* at 11.

F. Benjamin Bailey. CEI South witness Bailey supported the proposed accounting treatment for the Pike County Solar Project, specifically with respect to the proposed

use of a levelized rate and described how the Pike County Solar Project will be depreciated over a period of 35 years. Pet. Exh. No. 6, p. 3. He stated that the proposed levelized rate is similar to the rate used to recover the cost of constructing and operating the 50 MWac Troy Solar Project and the Posey County Solar Project. *Id.* at 6. He opined that the levelized rate allows the property to be treated as non-Public Utility Property and gives customers the benefits of a rate competitive with solar energy purchase through a PPA.

Mr. Bailey provided confidential attachments regarding the calculation and appropriateness of the levelized rate. Attachments BMB-1, BMB-2, and BMB-3. The projected kWh produced by the Project during its 35-year life is set forth in Pet. Exh. No. 6, Attachment BMB-2. By contrast, Attachment BMB-3 provides an estimates of the cost per kWh to customers over the life of the Project if CEI South would have sought to use traditional ratemaking principles and include the asset in rate base. Mr. Bailey opined that the levelized rate approach reduces the overall impact of the Pike County Solar Project on customer rates, shifts the risk of escalating prices to CEI South, and makes the Pike County Solar Project feasible from the Company's perspective. *Id.* at 11-12.

G. Benjamin Vallejo. CEI witness Vallejo described how CenterPoint Energy, Inc.'s tax capacity allows the Company to directly realize applicable tax incentives without the added cost of a tax equity partner ("TEP"). Pet. Exh. No. 7, p. 3. Mr. Vallejo stated that Section 48(a)(3)(B) of the Internal Revenue Code provides that energy property is any property the construction, reconstruction or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer, and since the original use of the property will commence with CEI South, the Company is eligible for the ITC. *Id.* at 5. Mr. Vallejo testified that this benefit is not available under a PPA structure. *Id.* Mr. Vallejo testified that because CenterPoint Energy, Inc. will immediately realize the benefit of the ITC, Petitioner can amortize the ITC through tax expense over the life of the project. This in turn allows Petitioner to offer a lower levelized rate for energy produced by the project. *Id.* at 8-9.

H. Rina H. Harris. CEI South witness Harris testified that adding renewable energy to utility resources has become increasingly important as large customers emphasize the importance of addressing climate change through their operations and the energy sources their utility relies upon. Pet. Exh. No. 8 at 4. She testified that corporations within Petitioner's service territory have announced renewable energy goals and expect their utilities to move toward diverse generation portfolios to assist with these goals. *Id.* at 5. Ms. Harris testified that CEI South's larger customers, including Toyota, AstraZeneca, Walmart, St. Vincent, Deaconess Health Networks, and the Evansville Vanderburgh School Corporation, support transitioning to more renewable energy. *Id.*; Attachment RHH-1. She testified that the Pike County Solar Project BTA is responsive to Petitioner's large customers' initiatives. *Id.* at 6.

Ms. Harris testified about the City of Evansville's recent Climate Action Plan, which is supported by residential and non-residential customers of the community. *Id.* at 7. She stated this plan outlines how Evansville will reduce its greenhouse gas emissions to mitigate climate change. Ms. Harris also testified about Evansville's Climate Action Plan Strategies, which include support of CEI South's 2019/2020 IRP and adoption of renewable energy. *Id.* Ms. Harris indicated CEI South's customers are increasingly interested in the utility's use of more renewable resources to

meet customers' energy needs, and the Pike County Solar Project is an important step toward strategic alignment with Petitioner's customers. *Id.* at 9.

Ms. Harris also testified that CEI South is working to develop a Green Power tariff that would provide customers with usage greater or equal to 5,000,000 kWh annually on the Large Power ("LP") or High Load Factor ("HLF") tariff with the option of purchasing a fixed percentage of their electricity from a renewable energy source. *Id.* at 8. Ms. Harris testified that a premium rate will be charged monthly for the Green Power kWh over the term of the contract. *Id.* She testified that CEI South expects to have the Green Power tariff available within the next 12-18 months. *Id.*

6. The Settlement Agreement.

On October 6, 2022, the Settling Parties entered into the Settlement Agreement, which is attached hereto and incorporated by reference. In the Settlement Agreement, the Settling Parties agree:

- The Commission should grant CEI South's request for a CPCN under Ind. Code § 8-1-8.5-1 *et seq.* for the Pike County Solar Project BTA; CEI South's cost estimate is a reasonable estimate of the construction costs of the Project and should be approved; and the Project is a "clean energy project" as defined by Ind. Code § 8-1-8.8-3 and should be approved expediently. Joint Exh. 1 at ¶ 1, 2, 3 and 4.
- CEI South will use a levelized rate for the life of the investment in the Pike County Solar Project. The levelized rate will be one of three potential amounts, depending on the precise benefits the Pike County Solar Project qualifies to receive under the recently enacted Inflation Reduction Act of 2022 ("IRA"). If the Project qualifies to receive 100% of the federal Production Tax Credit ("PTC"), before developer concessions, CEI South agrees, subject to IRS guidance or restrictions and/or other obligations of the BTA, to seek the 100% PTC and subject to the same restrictions and obligations, reduce the levelized rate to \$67.11/MWh. If the Project qualifies to receive at least 110% of the PTC, before developer concessions, CEI South agrees, subject to IRS guidance or restrictions and/or other obligations of the BTA, to seek the 110% PTC and subject to the same restrictions and obligations, reduce the levelized rate to \$65.65/MWh. To the extent the Pike County Solar Project does not qualify to receive at least 100% of the PTC and to the extent the Pike County Solar Project qualifies for IRA solar tax benefits above the available 30% ITC as of the Execution Date of the BTA, CEI South agrees, subject to IRS guidance or restrictions (to include a public letter ruling if applicable) and/or other BTA obligations, to pass any such additional IRA ITC solar tax benefits, net of developer concessions, which CEI South receives under the BTA, back to customers.. *Id.* at ¶ 6.
- The levelized rate will be incorporated in the CECA mechanism, approved by the Commission on August 16, 2017, in Cause No. 44909. The Settlement Agreement contains details regarding the manner in which the Pike County Solar Project component of the CECA will be derived and incorporated into CEI South's CECA filing. *Id.* at ¶ 10-13.

- The levelized rate will be adjusted under conditions described in Mr. Bailey’s direct testimony to make a market-based downward adjustment of \$0.00058/kWh for each full \$2.5 million market differential. The Settlement Agreement also authorizes CEI South to change to the levelized rate if changes occur to the state or federal income tax rates. *Id.* at ¶ 7.
- All costs and recoveries associated with the Project will be excluded from the actual net operating income utilized for the quarterly FAC statutory earnings test; all costs and recoveries associated with the Pike County Solar Project also will be excluded from the calculation of Petitioner’s electric revenue requirement in each rate case over the life of the Project; and the Project will be excluded from rate base in a future base rate case. *Id.* at ¶ 8.
- Any RECs obtained by CEI South for energy produced by the Pike County Solar Project will be utilized by CEI South in the best interest of its customers. If CEI South determines such to be in the best interest of CEI South customers, CEI South will agree to monetize RECs generated by the Pike County Solar Project by either: (a) using its currently established processes, to the best of its ability, selling such RECs at the then-current most competitive prices available, to the extent feasible; or, (b) upon a one-time (initial) notification to OUCC, selling RECs to retail customers via a Green Tariff Rider. CEI South reserves the right to retain any and all RECS to meet greenhouse gas (“GHG”) emission reduction targets, carbon intensity standards, or future regulatory requirements. Net proceeds resulting from the sale of RECs generated by the Pike County Solar Project will be used as an offset to revenue requirements and returned to customers through CEI South’s CECA mechanism, filed annually in Cause No. 44909. *Id.* at ¶ 14
- CEI South will make reasonable efforts to meet with the OUCC and other interested stakeholders at least 30 days prior to filing for approval of a Green Tariff Rider to facilitate collaboration and incorporate, to extent feasible and reasonable as determined by CEI South, stakeholder feedback into the program. *Id.* at ¶ 15.
- If an investment is later made to expand or technologically improve the Pike County Solar Project, such investments will be excluded from this Agreement and included within standard CEI South rate base proceedings before the Commission. *Id.* at ¶ 16.
- If and to the extent CEI South were to partner with a Tax Equity Partner (“TEP”) on the Pike County Solar Project through a Tax Equity Partnership, CEI South will seek Commission approval to use a TEP. *Id.* at ¶ 17.

7. CEI South’s Testimony in Support of the Settlement Agreement.

CEI South witness Bradford noted that the Settling Parties agreed the public convenience and necessity support construction of the Pike County Solar Project and the terms of the BTA, as presented in Attachment FSB-1S, are reasonable. Pet. Exh. No. 2-S at 3. Mr. Bradford indicated that the Settling Parties also agreed the cost estimate for the Pike County Solar Project is a reasonable estimate of the construction costs for the Pike County Solar Project and should be approved by the Commission in accordance with Ind. Code § 8-1-8.5-5; and that the Pike County

Solar Project is a clean energy project under Ind. Code § 8-1-8.8-3. Mr. Bradford noted that the foregoing agreements were supported by evidence CEI submitted as part of its case-in-chief, including evidence that CEI South has a pressing need for capacity in the short term and that the Pike County Solar Project is an ideal project to meet those needs. *Id.* at 4.

Mr. Bradford testified that the Settling Parties have structured the ratemaking terms set forth in the Settlement Agreement to use a fixed levelized rate per kWh of produced energy for the life of the investment in the Project, a structure that is appropriate due to the special nature of the Project. *Id.* at 6. Mr. Bradford testified that the Settling Parties agreed to a different potential levelized rate. *Id.* at 7. Mr. Bradford testified that, given how recently the IRA was enacted, CEI South has not definitively determined if the PTC or ITC is more advantageous to the Project, but that the IRS is expected to release guidance regarding certain matters that could impact CEI South's ultimate analysis. *Id.* at 8. Mr. Bradford testified that this is why the Settlement Agreement allows CEI South to have the flexibility to continue to evaluate precisely what benefits the Pike County Solar Project may qualify for based on evolving IRS guidance and sets forth alternative levelized rates depending on the IRA benefits the Project is ultimately eligible to receive. *Id.*

Mr. Bradford testified that under the Settlement Agreement, CEI South agreed to change the threshold for making market-based adjustments to the levelized rate to be more favorable to customers, in essence, creating a smaller trigger point for making downward market-based adjustments to the levelized rate. *Id.* at 19. Mr. Bradford concluded that the levelized rate reduces the overall impact of the Pike County Solar Project on customer rates through the tax incentives offered through the IRA. *Id.* at 10.

Mr. Bradford testified that the Settlement Agreement provides that any RECs obtained by CEI South for energy produced by the Pike County Solar Project will be used to the best interest of Petitioner's customers. *Id.* at 12. He stated that the Settling Parties agree this could include CEI South retaining the RECs or selling some RECs to specific customers or to the REC market. *Id.* He testified that CEI South reserves the right to retain any and all RECs to meet greenhouse gas emission reduction targets, carbon intensity standards, or future regulatory requirements. *Id.* Mr. Bradford testified that the Settlement Agreement gives CEI South the necessary latitude with regard to the use of RECs in order to ensure that they are used in the best interest of customers and promotes collaboration with the OUCC with respect to that issue. *Id.*

Mr. Bradford testified that the Settlement Agreement also provides that CEI South will make reasonable efforts to collaborate with the OUCC and other interested stakeholders, at least 30 days prior to filing for approval of a Green Tariff Rider and to the extent feasible and reasonable as determined by CEI South, incorporate stakeholder feedback into the program. *Id.* at 13. Mr. Bradford testified that he believes collaboration with interested stakeholders will help CEI South develop a better tariff offering to the benefit of all customers. *Id.*

Mr. Bradford testified that, in the event an investment is made at a later date to either expand the Pike County Solar Project to increase production or add improvements, such investments will be included within standard CEI South rate base. *Id.* at 13.

8. OUCC's Testimony in Support of the Settlement Agreement.

OUCC witness Caleb Loveman testified that through the Settlement Agreement, the Settling Parties determined CEI South's proposal, as filed, should be approved, subject to certain following modifications. Mr. Loveman explained that those modifications include:

- CEI South will adjust the threshold to make a downward market-based adjustment to the levelized rate for the Pike County Solar Project to be more favorable to CEI South's ratepayers.
- CEI South will pursue the "energy community" 10% bonus available under IRA and, if the bonus credit can be obtained, will reflect this benefit by decreasing the levelized rate for the Pike County Solar Project regardless of whether it pursues the ITC or PTC
- CEI South will utilize the RECs generated by the Pike County Solar Project in the best interest of its customers.
- CEI South will credit the REC proceeds related to the Pike County Solar Project through its CECA.
- CEI South will meet with the OUCC and other interested parties at least 30 days prior to filing for approval of a Green Tariff Rider.
- If CEI South decides to participate with a TEP for the Pike County Solar Project, it will seek Commission approval do so.

Pub. Exh. No. 1 at 3-4.

Mr. Loveman testified that the Settlement Agreement puts terms in place allowing CEI South's customers to benefit based on changing market conditions. *Id.* at 5. It also allows customers to benefit from any bonus tax incentives resulting from the IRA and to benefit from REC sales. *Id.* Finally, Mr. Loveman stated that the Settlement Agreement allows the OUCC, and other interested parties, to meet with CEI South prior to any future Green Tariff Rider filing. *Id.* at 5-6. Mr. Loveman concluded the Settlement Agreement is in the public interest and recommended Commission approval of the Agreement in its entirety. *Id.* at 6.

9. Commission Discussion and Findings.

A. **Settlement Agreement.** Indiana law strongly favors settlements for resolution of contested proceedings. *Indianapolis Power & Light Co.*, Cause No. 39938, p. 7 (IURC Aug. 24, 1995); *Commission Investigation of N. Ind. Pub. Sew. Co.*, Cause No. 41746, p. 23 (IURC Sept. 23, 2002); *see also, Mendenhall v. Skinner & Broadbent Co.*, 728 N.E.2d 140, 145 (Ind. 2000) ("The policy of the law generally is to discourage litigation and encourage negotiation and settlement of disputes"); *In re Assignment of Courtrooms, Judge's Offices and Other Facilities of St. Joseph Superior Court*, 715 N.E.2d 372, 376 (Ind. 1999) ("Without question, state judicial policy strongly favors settlement of disputes over litigation").

However, settlements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement “loses its status as a strictly private contract and takes on a public interest gloss.” *Id.* (quoting *Citizens Action Coalition v. PSI Energy*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission “may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement.” *Citizens Action Coalition*, 664 N.E.2d at 406. Further, any Commission decision, ruling, or order—including the approval of a settlement—must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 583 N.E.2d 330, 331 (Ind. 1991)). The Commission’s own procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Therefore, before the Commission can approve the Settlement Agreement, we must determine whether the evidence in this Cause sufficiently supports the conclusions that the Settlement Agreement is reasonable, just, consistent with the purpose of Ind. Code ch. 8-1-8.5, and serves the public interest.

In this case, we have sufficient evidence with which to judge the reasonableness of the terms of the Settlement Agreement. In addition to CEI South’s case-in-chief supporting the relief requested in this proceeding, CEI South and the OUCC both filed testimony supporting the modifications to CEI South’s original proposal and agreements made in the Settlement Agreement. CAC did not object to the terms of the Settlement Agreement. The Commission has carefully analyzed the evidence and the proposed Settlement Agreement to evaluate whether the proposed outcome is reasonable and just and properly balances the interests of CEI South, its customers, and the overall public interest. As further discussed below, we find the evidence presented supports the finding that the Settlement Agreement provides a just and reasonable resolution of the issues in this proceeding.

The Settling Parties agree that the Settlement Agreement should not be used as precedent in any other proceeding or for any other purpose, except to the extent necessary to enforce its terms. Therefore, with regard to future citation of the Settlement Agreement, we find that our approval should be construed in a manner consistent with our finding in *Richmond Power & Light*, Cause No. 40434, p. 19-22 (IURC Mar. 19, 1997).

B. Request for CPCN under Ind. Code ch. 8-1-8.5. The Settling Parties agree the Commission should grant CEI South a CPCN pursuant to Ind. Code § 8-1-8.5-1 *et seq.*, to purchase and acquire the Pike County Solar Project through a BTA as described with specificity in CEI South’s case-in-chief. In granting a CPCN, the Commission must consider the items set forth in Ind. Code ch. 8-1-8.5 and make findings as to the best estimate of the project’s cost based on the record, whether the proposal is consistent with our statewide analysis or a utility specific proposal, and whether public convenience and necessity requires the project. As further discussed below, we find that each factor in Ind. Code § 8-1-8.5-4 supports the Settling Parties’ agreement that CEI South should be granted a CPCN to acquire the Pike County Solar Project through the BTA.

i. Competitive Solicitation and Best Cost Estimate for the Project.

Under Ind. Code § 8-1-8.5-5(b)(1), a CPCN may be granted only if the Commission makes a finding “as to the best estimate of construction, purchase, or lease costs based on the evidence of record.” The Settling Parties agree the cost estimate for the Pike County Solar Project, which is established in the BTA offered into evidence in this proceeding as Petitioner’s Exhibit No. 2, Attachment FSB-1 and is discussed in the direct testimony of Petitioner’s witness Bradford constitutes a reasonable estimate of the construction costs for the Pike County Solar Project and should be approved by the Commission. Petitioner’s witnesses described the economic and supply chain pressures directly affecting all solar projects, including the Pike County Solar Project. However, The BTA contains provisions designed to insulate both parties in the event of future price increases that impact the solar construction market.

The evidence also shows the Pike County Solar Project was competitively priced. The Pike County Solar Project was selected through a competitive 2020 Renewable RFP process. Twenty-five individual respondents submitted 232 proposals, 191 of which were for projects in Indiana; and these proposals includes 154 solar projects (31 asset purchase + 113 PPA + 10 other), 60 solar + storage, and 18 wind projects. The Pike County Solar Project was identified as a top project based on its costs, location within CEI South’s assigned service territory, interconnection to an existing CEI South substation and transmission system, and placement in the MISO Interconnection Queue Cycle.

Based on the Settling Parties’ agreement and evidence presented in support thereof, the Commission finds CEI South has provided the best estimate for the cost of the BTA, consistent with the CPCN statutory requirements, and the costs are reasonable for solar projects of this nature and scope.

ii. Consistency of the Project with CEI South’s 2019/2020 IRP.

Indiana Code § 8-1-8.5-3(e)(1) provides that a public utility may submit “a current or updated integrated resource plan as part of a utility specific proposal as to the future needs for electricity to serve the people of the state or the area served by the utility.” Petitioner’s witness Rice sponsored Petitioner’s 2019/2020 IRP as Petitioner’s Exhibit No. 3, Attachment MAR-1 and MAR-2. Ind. Code § 8-1-8.5-5(b)(2) provides that a CPCN shall be granted only if the Commission has made a finding that either:

(A) the construction, purchase, or lease will be consistent with the commission’s analysis (or such part of the analysis as may then be developed, if any) for expansion of electric generating capacity;
or

(B) the construction, purchase, or lease is consistent with a utility specific proposal submitted under section 3(e)(1) [Ind. Code § 8-1-8.5-3(e)(1)] of this chapter and approved under subsection (d). . . .

The record demonstrates the Pike County Solar Project is consistent with the Preferred Portfolio identified in Petitioner’s 2019/2020 IRP. Under the Preferred Portfolio, CEI South must add 1,150 MW of new solar and solar plus storage in 2023-2024 to replace coal capacity. The

Preferred Portfolio reflects CEI South pursuing renewable projects based on the retirement of A.B. Brown Units 1 and 2 and F.B. Culley 2 and the expiration at the end of December 2023 of the Joint Operating Agreement for Warrick Unit #4. Solar resources were selected in all portfolios including the Preferred Portfolio and the capacity attributable to the Pike County Solar Project, along with the capacity attributable to the previously approved 45501 Solar Projects, the 45600 Solar Projects, and CTs approved in Cause No. 45564, will help fill a portion of the capacity necessary to meet Petitioner's retail electric load and adequate reserve margins. Further, the evidence reflects that the Pike County Solar Project represents a reasonable addition to Petitioner's generation resource portfolio that, in the aggregate, serves to increase reliability and efficiency as well as mitigate risk through diversification, not only of resource mix but asset type, and fosters an economic mix of capacity resources, consistent with Commission guidance in previous generation filings.

Based upon the evidence presented, we find the Pike County Solar Project is consistent with CEI South's 2019/2020 IRP.

iii. Public Convenience and Necessity.

Under Ind. Code § 8-1-8.5-5(b)(3), before granting a CPCN, the Commission must make "a finding that the public convenience and necessity require or will require the construction, purchase, or lease of the facility." Without the capacity provided by the projects approved to date and the Pike County Solar Project, CEI South will be at risk of having to make higher priced purchases from the PRA. Petitioner's witness Bradford testified that MISO indicated in its 2022 PRA results that "auction results indicate that MISO North/Central Regions have a slightly increased risk of needing to implement temporary controlled load sheds." Pet. Exh. 2 at 30. The Pike County Solar Project will help mitigate these risks. Petitioner's witness Bradford further testified that the Pike County Solar Project is an ideal project to meet CEI South's near-term capacity needs. Pet. Exh. 2-S at 4. The Pike County Solar Project is located on CEI South's transmission system, which provides reliability and economic benefits to customers and the communities CEI South serves. *Id.* As Mr. Bradford noted, from a reliability perspective, being located on-system reduces the probability of economic and physical transmission congestion. *Id.*

Based on the evidence discussed above, the Commission finds Petitioner has shown a need for the proposed Pike County Solar Project and that public convenience and necessity require Petitioner's construction of the Pike County Solar Project.

iv. Consideration of Alternatives under Ind. Code § 8-1-8.5-4.

The Commission is required under Ind. Code § 8-1-8.5-4, in acting on a petition for the construction, purchase, or lease of any facility for the generation of electricity, to take the following into account:

- (1) The applicant's current and potential arrangement with other electric utilities for:
 - (A) The interchange of power;
 - (B) The pooling of facilities;
 - (C) The purchase of power; and
 - (D) Joint ownership of facilities; and

(2) Other methods for providing reliable, efficient, and economical electric service, including the refurbishment of existing facilities, conservation, load management, cogeneration and renewable energy sources.

The evidence shows Petitioner has conducted three RFPs to evaluate the best mix of resources to meet its capacity needs. CEI South conducted an All-Source RFP on June 12, 2019 for 10 to 700 MWac of capacity from all sources. Pet. Exh. 2 at 7. The responses were varied and enabled CEI South to consider multiple alternatives. The All-Source RFP was used to select the initial projects for its Generation Transition Plan. *Id.* Then, on August 12, 2020, CEI South issued its second RFP – the 2020 Renewable RFP – seeking a combination of wind, solar, 29 and solar + storage resources to meet the needs identified in the Plan. *Id.* The Pike County Solar Project was selected from the 2020 Renewable RFP. On May 11, 2022, CEI South issued a new (its third) RFP seeking a combination of resources including renewables (wind, solar and battery storage), thermal and demand-side resources, and short-term capacity. *Id.* at 8.

Given the foregoing, the Commission finds Petitioner has satisfied the requirement under Ind. Code § 8-1-8.5-4 that it consider alternative methods for providing reliable, efficient, and economical electric service.

v. Conclusion Regarding Ind. Code ch. 8-1-8.5.

Based upon the evidence, the Commission finds CEI South has met the requirements of Ind. Code ch. 8-1-8.5. As found above, public convenience and necessity support construction of the Pike County Solar Project and the Pike County Solar Project is necessary to meet Petitioner’s projected capacity needs. Fuel diversity and the addition of local renewable resources are important in helping insulate electric utilities and their customers from contingencies such as fuel price fluctuations and changes in regulatory practices, including environmental regulations, that can impact the cost of a particular fuel. The Pike County Solar Project was selected following a competitive bidding process using an RFP, and as further discussed below, the Settlement Agreement provides for a favorable rate for energy produced by the Pike County Solar Project and will allow CEI South’s customers to benefit from the tax incentives offered under the IRA. Accordingly, the Commission finds a CPCN for CEI South’s pursuit of the Pike County Solar Project should be issued.

C. Clean Energy Project. Indiana Code § 8-1-8.8-11 provides that “[a]n eligible business must file an application to the commission for approval of a clean energy project under this section” and directs the Commission to encourage clean energy projects by creating certain financial incentives for clean energy projects, if the projects are found to be reasonable and necessary. An eligible business includes an energy utility that “undertakes a project to develop alternative energy sources, including renewable energy projects[.]” Ind. Code § 8-1-8.8-6(3). As a public utility rendering electric service within Indiana, CEI South is an energy utility.

A clean energy project includes “[p]rojects to develop alternative energy sources, including renewable energy projects[.]” Ind. Code § 8-1-8.8-2(2). Solar energy is specifically identified as a clean energy resource in Ind. Code § 8-1-37-4(a)(2), making it a renewable energy resource under

Ind. Code § 8-1-8.8-10. The Commission finds that the Pike County Solar Project is a clean energy project under Ind. Code § 8-1-8.8-11.

Indiana Code ch. 8-1-8.8 does not set forth specific factors the Commission must consider in determining the reasonableness and necessity of a clean energy project. However, the Commission has, in analogous cases, considered some of the factors in Ind. Code chs. 8-1-8.5 and 8-1-8.7 such as the cost of the project, consistency with the IRP, need, and competitive solicitation. Accordingly, based on the factors discussed above, we also find the Pike County Solar Project is a reasonable and necessary clean energy project. Specifically, we find the energy and capacity the BTA will provide to be reasonable and necessary additions to CEI South's portfolio of generating resources to meet the need for electricity within CEI South's service area.

D. The Proposed Levelized Rate. Pursuant to Ind. Code § 8-1-8.8-11, the Commission shall encourage clean energy projects by creating financial incentives for such projects if they are found to be reasonable and necessary. In this case, CEI South asked the Commission to authorize its recovery of the cost of the Pike County Solar Project through a levelized rate incorporated into the CECA. In the Settlement Agreement, the Settling Parties agree that due to the special nature of the Pike County Solar Project, including the availability of potential benefits derived from the August 16, 2022 enactment of the IRA which could offset project costs, the Pike County Solar Project represents an opportunity to implement this alternative approach to traditional ratemaking. Accordingly, the Settling Parties structured the ratemaking terms set forth in this Settlement Agreement to use a fixed levelized rate per kWh of produced energy for the life of the Pike County Solar Project.

In its case-in-chief Petitioner proposed a single levelized rate of \$70.75/MWh. In the Settlement Agreement, the Settling Parties agreed to three different potential levelized rates depending on the availability of tax benefits. The terms of the Settlement Agreement are designed to give CEI South flexibility to pursue the greatest potential tax benefit available under the IRA to the benefit of the utility and its customers.

The IRA made changes to both the ITC and PTC, which among other things may under certain circumstances make seeking benefits under the PTC favorable to seeking ITC benefits. In addition, ITC and PTC credits can increase by another 10 percent if a solar project is located within an "energy community." Accordingly, in the Settlement Agreement the Settling Parties agreed that to the extent the Pike County Solar Project qualifies to receive at least 100 percent of the PTC, before developer concessions, CEI South will, subject to IRS guidance or restrictions and/or other obligations of the BTA, seek the 100 percent PTC and subject to the same restrictions and obligations, reduce the levelized rate to \$67.11/MWh. If, and to the extent, CEI South qualifies to receive at least 110 percent of the PTC, subject to the same restrictions and qualifications, CEI South would reduce the levelized rate to \$65.65/MWh. To the extent, the Pike County Solar Project does not qualify to receive 100 percent of the PTC, CEI South will continue to seek the 30 percent ITC as proposed in CEI South's case in-chief and the levelized rate with a 30 percent ITC would be \$70.75/MWh as set forth in Petitioner's case in chief. However, if the Pike County Solar Project qualifies for benefits above the 30 percent ITC credit, CEI South would, subject to IRS guidance or restrictions (to include a public letter ruling if applicable) and/or other BTA obligations, pass any such additional IRA ITC solar tax benefits, net of developer concessions, which CEI South receives under the BTA, back to customers.

The Settlement Agreement also provides that the levelized rate will be adjusted for certain market-based changes. The Settlement Agreement provides that CEI South will pass on any market-based savings, via the levelized rate, at smaller increments than CEI proposed in its case-in-chief.

In his direct testimony, Petitioner's witness Bradford testified that the initial levelized rate was "below the average PPA rate that could be obtained in the market today." Pet. Exh. 2 at 28. The adjustments agreed upon in the Settlement Agreement make the levelized rate even more favorable. OUCC witness Loveman supported the adjustments to the levelized rate stating that the terms allow CEI South's customers to benefit based on changing market conditions. Public's Exh. 1 at 5. The adjustments the Settling Parties agreed would be made to the levelized rate in the Settlement Agreement will allow customers to benefit from any bonus tax incentives resulting from the IRA. In essence, the levelized rate allows CEI South's customers to obtain the benefits of the tax incentives offered through the IRA immediately – and the terms of the Settlement Agreement provide CEI South with flexibility with respect to selecting which IRA benefits to seek. This flexibility will ensure that customers receive the optimal tax benefit based on available IRS guidance.

Accordingly, we conclude, based on the evidence, that the terms of the Settlement Agreement relating to the levelized rate are reasonable, will allow CEI South to recover its prudently incurred costs associated with the Pike County Solar Project, and reflect current solar prices and therefore should be approved under Ind. Code § 8-1-8.8-11. We further find it is appropriate to collect the levelized rate through the CECA using the methodology set forth in the Settlement Agreement and the levelized rate should be excluded from Petitioner's NOI used for the quarterly FAC earnings test and calculation of Petitioner's revenue requirement in rate cases over the life of the project as also agreed in the Settlement Agreement.

E. Approval Before Contracting with a Tax Equity Investor. The Settlement Agreement provides that if and to the extent, CEI South were to partner with a TEP on the Pike County Solar Project through a Tax Equity Partnership, CEI South will seek Commission approval to use a TEP. CEI South witness Bradford testified that as a practical matter, partnering with a TEP would be a fundamental change that would require CEI South to refile a new case with the Commission seeking different relief. Mr. Bradford also stated that the possibility of CEI South partnering with a TEP is highly unlikely. Pet. Exh. 2-S at 14.

Although unlikely, based on this evidence, the Commission finds CEI South should seek Commission approval, if Petitioner contracts with a TEP through a Tax Equity Partnership

F. Sale of Renewable Energy Credits. The Settlement Agreement provides that any RECs obtained by CEI South for energy produced by the Pike County Solar Project will be used by CEI South in the best interest of its customers. The Settling Parties agree this could include CEI South retaining the RECs or selling some RECs to specific customers or to the REC market as further discussed below. If CEI South determines it to be in the best interest of CEI South customers, CEI South will monetize RECs generated by the Pike County Solar Project by either: (a) using its currently established processes, to the best of its ability, selling such RECs at the then-current most competitive prices available, to the extent feasible; or, (b) upon a one-time (initial) notification to OUCC, selling RECs to retail customers via a Green Tariff Rider once

approved by the Commission. However, CEI South reserves the right to retain any and all RECS to meet GHG emission reduction targets, carbon intensity standards, or future regulatory requirements. Net proceeds resulting from the sale of RECs generated by the Pike County Solar Project will be used as an offset to revenue requirements and returned to customers through the CECA mechanism.

We find that the foregoing terms are reasonable and should be approved. The Settlement Agreement gives CEI South the necessary latitude with regard to the use of RECs in order to ensure that they are used in the best interest of customers and promotes collaboration with the OUCC with respect to that issue.

G. Green Power Tariff. The Settlement Agreement provides that CEI South will make reasonable efforts to meet with the OUCC and other interested stakeholders, at least 30 days prior to filing for approval of a Green Tariff Rider to facilitate collaboration and incorporate, to extent feasible and reasonable as determined by CEI South, stakeholder feedback into the program. OUCC witness Loveman noted that the fact that the Settlement Agreement allows the OUCC, and other interested parties, to meet with CEI South prior to any future Green Tariff Rider filing is one of the reasons he believes it to be in the public interest. Public's Exh. 1 at 5-6. We find that the foregoing terms are reasonable and should be approved.

H. Conclusion. We find the evidence in this proceeding supports approving the Settlement Agreement, the BTA and the proposed method of cost recovery. The BTA terms and costs were shown to be reasonable, and they will provide needed energy, diversify CEI South's supply portfolio, provide environmental benefits, and mitigate fuel cost volatility. The Commission, therefore, finds the costs of the BTA should be recovered through the levelized rate incorporated into the CECA mechanism, which may be adjusted as provided for in the Settlement Agreement. We further find a CPCN should be issued for the purchase and acquisition through the BTA of the Pike County Solar Project consistent with our discussion above.

10. Confidentiality. On July 29, 2022, CEI South filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Motion"), supported by the affidavits of Mr. Rice, Mr. Bradford, and Ms. Carroll. The Motion identified certain documents to be submitted to the Commission as containing trade secrets as defined by Ind. Code § 24-2-3-2 and within the scope of Ind. Code § 5-14-3-4(a)(4). On August 11, 2022, the Presiding Officers issued a docket entry finding the information described in the Motion to be confidential on a preliminary basis.

On September 27, 2022, CEI South filed an updated version of the direct Testimony of Mr. Bradford as well as Attachment EMC-1 to the testimony of witness Carroll and Attachment MAR-3 to the testimony of Mr. Rice. The revised testimony and attachments made public certain additional information that Petitioner determined could be unredacted. On September 29, 2022, Petitioner filed supplemental information in support of its Motion, including the affidavit of Vice President, Contracts of Invenergy Renewables LLC, Joseph Reisinger. Mr. Reisinger's affidavit further supported the confidentiality of the terms of the BTA and provided that each component of every BTA is negotiated, and the terms may differ among counterparties and circumstances.

After reviewing the designated confidential information, the affidavits filed along with the Motion and supplemental affidavit of Mr. Reisinger, the Commission finds such information qualifies as confidential trade secret information under Ind. Code §§ 5-14-3-4 and 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means, and Petitioner takes reasonable steps to maintain its secrecy. Disclosure of such information could harm Petitioner and Invenergy; therefore, the Commission affirms the preliminary ruling on confidentiality and finds this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29, held as confidential, and protected from public disclosure by this Commission.

IT IS THEREFORE ORDERED BY THE INDIANA REGULATORY COMMISSION that:

1. The Settlement Agreement between CEI South and the OUCC, a copy of which is attached hereto, is approved in its entirety.
2. CEI South is granted a Certificate of Public Convenience and Necessity for Petitioner's proposed acquisition of the Pike County Solar Project through the Build Transfer Agreement. This Order shall constitute such Certificate.
3. CEI South's estimated cost for the Pike County Solar Project is approved.
4. CEI South's proposed Pike County Solar Project is approved as a reasonable and necessary clean energy project under Ind. Code § 8-1-8.8-11.
5. Petitioner's proposed levelized rate and associated ratemaking and accounting treatment for the Pike County Solar Project, pursuant to Ind. Code § 8-1-8.8-11, is approved including the potential modifications to the levelized rate described in the Settlement Agreement based on the IRA.
6. Petitioner's request for confidential trade secret treatment is granted, and all such Confidential Information shall continue to be excepted from public disclosure.
7. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, VELETA, AND ZIEGNER CONCUR

APPROVED:

**I hereby certify that the above is a true
and correct copy of the Order as approved.**

Dana Kosco
Secretary of the Commission