

**ORIGINAL**

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman		✓	
Veleta	✓		
Ziegner	✓		

VERIFIED PETITION OF SOUTHERN INDIANA GAS AND )  
ELECTRIC COMPANY d/b/a CENTERPOINT ENERGY )  
INDIANA SOUTH (“CEI SOUTH”) FOR AN ORDER: (1) )  
GRANTING CEI SOUTH A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY, PURSUANT TO IND. )  
CODE CH. 8-1-8.5, TO PURCHASE AND ACQUIRE, )  
THROUGH A BUILD TRANSFER AGREEMENT (“BTA”), A )  
WIND ENERGY GENERATING FACILITY (THE “WIND )  
PROJECT”); (2) FINDING THE WIND PROJECT )  
CONSTITUTES A CLEAN ENERGY PROJECT UNDER IND. )  
CODE CH. 8-1-8.8; (3) APPROVING ASSOCIATED )  
RATEMAKING AND ACCOUNTING TREATMENT FOR )  
THE WIND PROJECT PURSUANT TO IND. CODE CH. 8-1- )  
8.5 AND § 8-1-8.8-11; (4) AUTHORIZING CEI SOUTH TO )  
ACCRUE POST-IN-SERVICE CARRYING COSTS )  
 (“PISCC”) AND DEFER DEPRECIATION, OPERATIONS )  
AND MAINTENANCE (“O&M”) AND PROPERTY TAX )  
EXPENSES ASSOCIATED WITH THE WIND PROJECT; (5) )  
IN THE EVENT THE CPCN IS NOT GRANTED OR THE )  
WIND PROJECT OTHERWISE IS NOT PLACED IN )  
SERVICE, GRANTING AUTHORITY TO DEFER, AS A )  
REGULATORY ASSET, COSTS ASSOCIATED WITH THE )  
WIND PROJECT FOR FUTURE RECOVERY THROUGH )  
RETAIL ELECTRIC RATES, (6) PROVIDING FOR )  
ONGOING REVIEW OF THE WIND PROJECT; (7) )  
AUTHORIZING THE ESTABLISHMENT OF )  
DEPRECIATION RATES FOR THE WIND PROJECT; (8) )  
APPROVING, TO THE EXTENT NECESSARY, AN )  
ALTERNATIVE REGULATORY PLAN (“ARP”) WITH )  
RESPECT TO THE WIND PROJECT UNDER IND. CODE )  
CH. 8-1-2.5; AND (9) APPROVING CONFIDENTIAL )  
TREATMENT OF THE BTA PRICING AND OTHER )  
NEGOTIATED COMMERCIAL TERMS AND RELATED )  
CONFIDENTIAL INFORMATION. )

**CAUSE NO. 45836**

**APPROVED: JUN 06 2023**

## **ORDER OF THE COMMISSION**

### **Presiding Officers:**

**Sarah E. Freeman, Commissioner**

**Loraine L. Seyfried, Chief Administrative Law Judge**

On January 10, 2023, Southern Indiana Gas & Electric Company d/b/a CenterPoint Energy Indiana South (“Petitioner” or “CEI South”) filed its Verified Petition in this Cause, seeking: (1) issuance of a certificate of public convenience and necessity (“CPCN”) to purchase and acquire a wind energy generating facility through a Build Transfer Agreement (“BTA”) (the “Wind Project”) pursuant to Ind. Code ch. 8-1-8.5; (2) a finding that the Wind Project constitutes a clean energy project under Ind. Code ch. 8-1-8.8; (3) approval of associated ratemaking and accounting treatment for the Wind Project pursuant to Ind. Code ch. 8-1-8.5 and § 8-1-8.8-11; (4) authorization for Petitioner to accrue post-in-service carrying costs (“PISCC”) and defer depreciation, operations and maintenance (“O&M”), and property tax expenses associated with the Wind Project; (5) in the event the CPCN is not granted or the Wind Project otherwise is not placed in service, authority to defer, as a regulatory asset, costs associated with the Wind Project for future recovery through retail electric rates; (6) ongoing review of the Wind Project; (7) establishment of depreciation rates for the Wind Project; (8) approval, to the extent necessary, of an alternative regulatory plan (“ARP”) with respect to the Wind Project under Ind. Code ch. 8-1-2.5; and (9) approval of confidential treatment of pricing and other negotiated commercial terms of the BTA and related confidential information.

Also on January 10, 2023, Petitioner filed the direct testimony, attachments and workpapers of the following witnesses:

- Richard C. Leger, Petitioner’s Senior Vice President – Indiana Electric
- F. Shane Bradford, Petitioner’s Director of Power Supply Services
- Matthew A. Rice, Director of Indiana Electric Regulatory and Rates for CenterPoint Energy Service Company, LLC
- Chrissy M. Behme, Manager, Regulatory Reporting for CenterPoint Energy Service Company, LLC
- Jennifer K. Story, Vice President, Tax for CenterPoint Energy Service Company, LLC.

On January 10, 2023, Petitioner also filed a motion for protection and nondisclosure of confidential and proprietary information advising that certain information (“Confidential Information”) CEI South intended to file contains trade secrets as defined by Ind. Code § 24-2-3-2. Petitioner supplemented the motion for protection on January 30, 2023. Confidential treatment was approved on a preliminary basis in docket entries issued January 20, 2023 and January 31, 2023.

On January 17, 2023, CenterPoint Energy Indiana South Industrial Group (“Industrial Group”) filed its petition to intervene in this Cause, which was granted by docket entry on January 25, 2023. On February 7, 2023, Citizens Action Coalition of Indiana, Inc. (“CAC”) filed its petition to intervene in this Cause, which was granted by docket entry on February 15, 2023.

On February 27, 2023, the Indiana Office of Utility Consumer Counselor (“OUCC”) and other Intervenors filed the testimony and attachments of their respective witnesses:

OUCC

- Kaleb G. Lantrip, Utility Analyst, Electric Division
- Brian R. Latham, Utility Analyst, Electric Division
- John W. Hanks, Utility Analyst, Electric Division

CAC

- Benjamin Inskeep, Program Director of CAC.

On March 6, 2023, Petitioner filed a second motion for protection and nondisclosure of Confidential Information included in the OUCC’s and CAC’s pre-filed evidence. Confidential treatment was approved on a preliminary basis in a docket entry issued March 9, 2023.

On March 10, 2023, CEI South filed rebuttal testimony of Mr. Bradford, Mr. Rice, and Ms. Behme.

The Commission held an evidentiary hearing at 9:30 a.m. on April 11, 2023, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioner, the OUCC, the CAC, and the Industrial Group appeared by counsel, and their respective evidence was admitted into the record.

Based upon the applicable law and the evidence presented, the Commission finds:

**1. Notice and Jurisdiction.** Notice of the evidentiary hearing in this Cause was given and published as required by law. Petitioner is a “public utility” as defined in Ind. Code § 8-1-2-1(a) and Ind. Code § 8-1-8.5-1, and an “eligible business” as defined in Ind. Code § 8-1-8.8-6. Petitioner is also an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2 and provides “retail energy service” as that term is defined by Ind. Code § 8-1-2.5-3. The Commission has jurisdiction to approve Petitioner’s requested relief under the Public Service Commission Act, including Ind. Code ch. 8-1-8.5, 8-1-8.8, and 8-1-2.5. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

**2. Petitioner’s Characteristics.** CEI South is public utility incorporated under Indiana law and has its principal office at 211 NW Riverside Drive, Evansville, Indiana. CEI South has authority to engage in and is engaged in rendering retail electric service within Indiana. 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 includes all or parts of Pike, Gibson, Dubois, Posey, Vanderburgh, Warrick, and Spencer Counties.

**3. The Wind Project and the BTA.** Petitioner’s 2019/2020 Integrated Resource Plan (the “2019/2020 IRP”) submitted to the Commission on June 30, 2020 identified a need for the addition of 700 to 1,000 MW of solar resources (some solar paired with storage) and 300 MW of wind resources as part of the “Preferred Portfolio” to meet capacity and energy requirements. The renewable additions are intended to replace approximately 730 MW of coal-fired generation and will be complemented by dispatchable generation consisting of two new gas combustion turbines and the continued operation of F.B. Culley Unit 3 (coal-fired unit). CEI South must plan for changes to its generation portfolio in the next three years to address the retirement or exit of energy provided by F.B. Culley Unit 2 and Warrick Unit 4.

CEI South issued various requests for proposals (“RFPs”), which lead to the identification and selection of the Wind Project. The Wind Project is located outside of Indiana in Midcontinent Independent System Operator, Inc.’s (“MISO’s”) Zone 4. The Wind Project is anticipated to qualify for the federal production tax credit (“PTC”) for wind energy systems. The Wind Project will be fully developed, engineered, procured, and constructed by the Developer and then acquired by CEI South through transfer of a special purpose entity (the “Project Company”) established to facilitate ownership transfer of the Wind Project. The Project Company is a wholly-owned subsidiary of the Developer, which is in turn a wholly-owned subsidiary of an entity specializing in the development of large-scale renewable and other clean energy generation worldwide. The Project Company will own the Wind Project until it achieves substantial completion, at which time CEI South will acquire 100% of the ownership interests in the Project Company, subsequently collapsing the separate corporate structure such that CEI South will own the generating facility directly.

Following CEI South’s selection of the Wind Project, negotiations with the Developer began in June of 2021, with a comprehensive, non-binding term sheet executed in October 2022. The negotiations for a definitive agreement are ongoing.

**4. Relief Requested.** Petitioner seeks a CPCN under Ind. Code § 8-1-8.5-2 to purchase and acquire, indirectly through a BTA, the Wind Project. CEI South also requests ongoing review under Ind. Code § 8-1-8.5-6 and associated ratemaking treatment.

CEI South seeks approval of timely recovery of costs and expenses incurred during the construction and operation of the Wind Project in accordance with Ind. Code § 8-1-8.5-6.5 and Ind. Code § 8-1-8.8-11. CEI South proposes approval and recovery of the eligible revenue requirement amounts associated with the Wind Project to be included either in Petitioner’s Clean Energy Cost Adjustment (“CECA”) mechanism for renewable energy projects, which the Commission approved on August 16, 2017 in Cause No. 44909, or through base rates in Petitioner’s next general rate case. The costs CEI South proposes to include for timely recovery include costs associated with (1) capital investment to complete the acquisition; (2) deferred PISCC; (3) deferred depreciation expense; (4) deferred O&M expense; (5) O&M expenses, depreciation, property tax, and income taxes; and (6) credits related to Renewable Energy Certificates (“RECs”).

To the extent the Wind Project is not included in Petitioner’s rate base in its next rate case and the revenue requirement is recovered through the CECA, CEI South proposes to file annual updates to the Wind Project revenue requirement in a sub-docket of Cause No. 44909. CEI South

proposes to use the CECA to reflect the PTC and RECs generated by the Wind Project to the extent the PTC and RECs differ from amounts reflected in base rates. To the extent the Wind Project is included in the CECA, CEI South proposes to adjust for purposes of the earnings test under Ind. Code § 8-1-2-42(d)(3) its statutory net operating income (“NOI”) by including the operating income associated with the Wind Project as part of its authorized NOI, consistent with the treatment of earnings associated with CEI South’s CECA mechanism from Cause No. 44909.

CEI South proposes to accrue PISCC at Petitioner’s pre-tax weighted average cost of capital (“WACC”) on capital investment for the Wind Project beginning with the month after the investment is placed in service until the date the investment is included for recovery in either the CECA or base rates. CEI South also proposes to defer depreciation expense associated with the Wind Project until such expense is included for recovery in the CECA or base rates. CEI South also proposes to defer O&M expenses incurred pursuant to an O&M contract with a third party as well as other O&M expense incurred, or property tax expense accrued, before such expenses are recovered through base rates or the CECA. CEI South proposes to record the accrued PISCC and deferred depreciation expense as regulatory assets until such time as they can be included for recovery in rates and to amortize the balances over the life of the assets that generated the amounts, expected to be approximately 30 years, with the unamortized portion included in rate base upon which CEI South is authorized to earn a return. CEI South also requests the Commission approve an initial annual depreciation rate of approximately 3.33% for the Wind Project. CEI South proposes that deferred O&M be recovered through the CECA, similar to the recovery of deferred O&M and any deferred property tax expense in connection with its transmission, distribution, and storage system improvement charge.

In the event the requested CPCN is not granted, or the Wind Project assets are otherwise not placed in-service, CEI South requests authority to defer costs associated with the Wind Project as a regulatory asset for recovery in a future general rate case or to be capitalized as part of an alternative generation project.

CEI South also elects to become subject to Ind. Code § 8-1-2.5-6 and is requesting, to the extent necessary, approval of an ARP under Ind. Code § 8-1-2.5-6(a)(1). The ARP is proposed, to the extent the Commission finds it necessary, to allow CEI South’s requested ratemaking treatment even though the asset is located outside of the State of Indiana and to relieve CEI South of the obligations under Ind. Code § 8-1-8.5-5(e) to the extent they are applicable.

## **5. Evidence Presented.**

**A. CEI South Direct.** Mr. Leger provided an overview of CEI South’s Generation Transition Plan and summarized the benefits of adding wind energy to Petitioner’s existing portfolio of generation assets. He testified that CEI South developed the Generation Transition Plan focused on implementation of the Preferred Portfolio in its 2019/2020 IRP. He and Mr. Bradford explained the Generation Transition Plan initially identified and selected approximately 700-1,000 MWac of solar generation, 300 MW of wind generation, and approximately 460 MW of natural gas combustion turbine generation. Mr. Leger and Mr. Bradford also identified the various filings CEI South has made to implement its Generation Transition Plan.

Mr. Leger provided an overview of CEI South's existing generation resources, consisting of approximately 1,329 MW of installed capacity. He mentioned the two wind power purchase agreements ("PPAs") CEI South currently has for the purchase of 30 MW from a wind facility in Benton County and the purchase of 50 MW from a wind facility in Benton and Tippecanoe Counties. He briefly described the projects approved in Cause No. 45501, consisting of an approximately 300 MWac solar project in Posey County<sup>1</sup> to be acquired through a BTA, and a PPA for the purchase of energy and capacity from a 100 MW solar project in Warrick County; Cause No. 45600, consisting of PPAs for energy, capacity, and RECs from a 185 MW solar project in Vermillion County and a 150 MW solar project in Knox County; and Cause No. 45754 for the purchase, indirectly through a BTA, of a solar facility in Pike County with aggregate nameplate capacity of 130 MWac.

Mr. Leger testified that approval of the Wind Project is critical because it fulfills a portion of the capacity and energy needs identified in the 2019/2020 IRP. He stated it is an important component of CEI South's transition to a clean energy future and necessary for CEI South to provide adequate and reliable service to its customers. He testified that the Wind Project promotes reliability by mitigating risk through diversification of CEI South's generation mix to include wind as a carbon free energy resource. He stated wind resources are well suited to provide a source of energy in the winter when solar energy output is at its lowest and customer usage is at its second highest annual level. Wind resources inherently complement solar resources—meaning the resources hit their peaks at different times of the day as well as different seasons of the year. Mr. Leger opined that the Wind Project is a reasonable addition to Petitioner's generation resource portfolio that in the aggregate serves to increase reliability and efficiency.

Mr. Leger testified the Wind Project also offers the advantages of ownership and a life expectancy that can be combined with Petitioner's current solar BTAs and its wind and solar PPAs to optimize off-ramp flexibility for customers. Mr. Rice testified that a BTA offers long-term stability. He also noted that CEI South will maintain the land rights and options, zoning permits, and generator interconnection, shielding customers from potential future costs beyond the 30-year asset life. He further stated that the cost to customers for this resource will continue to decline over time as the asset is depreciated, in contrast to PPAs which often increase over time. Mr. Rice noted that Petitioner's Generation Transition Plan includes both ownership and PPA structures, staggered at various lengths between 20 and 30 years, which helps to diversify CEI South's portfolio and provide off-ramps that enable Petitioner to react to changing circumstances and make appropriate changes in its resources. Mr. Rice testified BTAs and PPAs have unique benefits that work together to minimize risks long-term.

Mr. Leger stated that CEI South cannot delay seeking to add capacity from the Wind Project. Mr. Bradford explained that a generation transition period has proven to be a lengthy process, generally taking at least 3.5 or more years including project solicitation, evaluation and negotiation, the MISO Generator Interconnection Queue process, development tasks such as obtaining site control and permitting, construction, and various other factors. Mr. Bradford noted that MISO has seen an overwhelming amount of generation resources enter the last several MISO Generator Interconnection Queues, which has extensively lengthened the queue process. He explained this means that CEI South will need to rely on the capacity and wholesale energy market

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<sup>1</sup> Mr. Leger explained this was subsequently revised to 191 MWac.

for a period between when CEI South's coal generation units are retired and when the new generation comes online. Mr. Leger testified that with the retirement of A.B. Brown Units 1 and 2 and F.B. Culley Unit 2 and the anticipated exit of the Joint Operating Agreement for Warrick Unit 4, the Wind Project is needed to support CEI South's Planning Reserve Margin Requirements ("PRMR") position and ensure the required capacity in each season is met, especially in the near terms (2024-2025) and in 2028 and beyond. For this reason, CEI South has acted swiftly to identify projects that could come online in the near term during the same relative time period (2024-2025) when additional baseload units in the same MISO Local Resource Zone (i.e., Zone 6) are expected to be taken offline.

Both Mr. Leger and Mr. Bradford testified that CEI South's objective is to reduce reliance on the MISO Planning Resource Auction ("PRA"), because over-reliance on the MISO PRA would increase costs for CEI South's customers and is contrary to Indiana House Bill 1520, which has been codified as Ind. Code § 8-1-8.5-13 and essentially precludes each public utility from acquiring more than 30% of its PRMR from the PRA. Without the capacity provided by the projects to date and the Wind Project, CEI South could be at risk of not having enough owned capacity to meet its PRMR and having to make high priced purchases from the PRA.

Mr. Bradford testified that MISO indicated in its 2022 PRA results that the North/Central Regions have a slightly increased risk of needing to implement temporary controlled load sheds. Additionally, in the 2022 OMS-MISO Survey Results released on June 10, 2022, MISO indicated its footprint is projected to have a capacity deficit of 2.6 GW below the 2023 PRMR. Capacity deficits are projected to widen in subsequent years primarily driven by demand growth and the continued retirements of coal fired resources, but Mr. Leger testified the Wind Project will help mitigate these risks. In addition, he stated, wind resources are scarce within Indiana, including CEI South's service territory; and a demand-supply imbalance could emerge as other nearby utilities move toward implementing wind resources thereby possibly intensifying the pricing for wind projects. Mr. Leger stated that if CEI South were to pass on the Wind Project, it could be exposed to higher pricing for wind projects due to a competitive market.

Mr. Leger and Mr. Rice testified that Petitioner's relief requested in this Cause is consistent with Petitioner's 2019/2020 IRP and Generation Transition Plan. Mr. Rice described in detail Petitioner's process in developing the 2019/2020 IRP. He described the steps taken to ensure that pricing included within modeling its 2019/2020 IRP was as accurate as possible. He identified the forecasts used to develop the 2019/2020 IRP and explained how stakeholder input was incorporated into the portfolio development process. Mr. Rice testified the Preferred Portfolio identified in the 2019/2020 IRP includes significant amounts of solar, solar plus storage, wind, gas, coal demand response, and energy efficiency. He testified the Preferred Portfolio has the characteristics of reliability, cost effectiveness, flexibility, diversity, risk mitigation, sustainability, and timeliness.

Mr. Leger and Mr. Rice explained that the Wind Project is consistent with the needs identified in the Preferred Portfolio to add wind resources and diversify CEI South's resource mix with clean renewable energy. They both stated that a significant amount of wind resources was selected in all portfolios included within the 2019/2020 IRP. The capacity attributable to the Wind Project (together with the capacity attributable to the projects approved in Cause Nos. 45501, 45600, 45754, and 45564) will help fill a portion of the capacity necessary to meet Petitioner's

retail electric load and adequate reserve margin. Mr. Bradford testified that adding wind resources helps diversify CEI South's resource mix with clean renewable energy, consistent with the Preferred Portfolio, while adding value through a balanced portfolio that reduces risk by having a proportional set of resources available to serve customer load (including wind, solar, energy efficiency, gas, and coal). In addition, selection of a wind asset purchase is consistent with CEI South's Generation Transition Plan to diversify its generation mix, not only by resource type, but also investment type (ownership and PPAs) and duration, varying PPA terms providing additional options and/or off-ramps.

Mr. Rice also testified that the Wind Project is consistent with the Commission's state-wide analysis of expansion of electric generating capacity. He stated the Wind Project is consistent with the most recent written report (from 2018) of the Commission's ongoing analysis as well as what he believes is the current state of the ongoing analysis in which wind is identified as a viable resource to help meet the electricity need for the state of Indiana. Mr. Rice also explained his opinion that Petitioner's proposal is consistent with the five pillars identified in the Final Report issued by Indiana's 21<sup>st</sup> Century Energy Policy Development Task Force dated November 19, 2020, of reliability, resilience, stability, affordability, and environmental sustainability.

Mr. Rice further testified that although IRPs are conducted as a point-in-time analysis, he does not expect Petitioner's 2022/2023 IRP will identify new resources in a Preferred Portfolio that differ in any substantial way from the Preferred Portfolio developed through the 2019/2020 IRP. He stated that while the cost of renewable projects has increased, they remain attractive given that renewable resources emit zero CO<sub>2</sub> and are shielded from the current inflationary pressures on gas and coal commodities. He further testified that the supply of coal has become less certain and has increased in cost since the last IRP, which is likely to make solar and wind resources more favorable. While still early in the process, Mr. Rice noted that early 2022/2023 IRP modeling suggests that wind remains attractive and, when part of a well-diversified portfolio, can help shield customers from the risk of a price on carbon. He noted the wind output complements the solar resources in CEI South's Generation Transition Plan and provides a capacity benefit that is projected to be higher in the winter.

Mr. Bradford described CEI South's RFP process, including: (1) an All-Source RFP (the "2019 All-Source RFP") conducted in response to the Commission's feedback in Cause No. 45052, (2) a second RFP (the "2020 Renewable RFP") seeking a combination of wind, solar, and solar plus storage resources, and (3) a new All-Source RFP (the "2022 All-Source RFP") seeking a combination of resources including renewable, thermal and demand-side resources, and short-term capacity. Mr. Bradford testified that the 2019 All-Source RFP was used to select the initial projects for CEI South's Generation Transition Plan, specifically, the Posey County and Warrick County Solar Projects that were the subject of Cause No. 45501 and approved by the Commission on October 27, 2021. The 2020 Renewable RFP was used to help identify replacement generation capacity beginning in 2023, specifically, the Vermillion County and Knox County Solar Projects—two solar PPAs that were the subject of Cause No. 45600 and approved by the Commission on May 4, 2022. The 2022 All-Source RFP will be used to inform CEI South's 2022/2023 IRP.

Mr. Bradford explained that CEI South engaged 1898 and Company, a Burns and McDonnell company ("1898 & Company"), to evaluate, score, and rank each complete proposal based on established quantitative and qualitative scoring criteria that assesses reliability, cost, and



certainty. For renewable proposals, including wind projects, Mr. Bradford testified the assessment included: levelized cost of energy (“LCOE”), energy settlement location, interconnection and development status, and project risk factors like credit worthiness, development experience, project maturity, delivery date, project site control status, permits, and zoning. He explained the use of an LCOE of 35 years for purposes of comparing PPA and BTA proposals. In addition, to normalize the LCOE over the 35-year period, Mr. Bradford testified, a market replacement methodology was adopted using the 2019/2020 IRP forecasts for energy price (Locational Marginal Pricing or “LMP”) and capacity price in the MISO wholesale market. The forecasted pricing was applied to the balance of the 35-year term for each proposal’s expected generation output.

Mr. Bradford explained that the Wind Project was not submitted into one of CEI South’s RFPs but rather was identified through collaboration with 1898 & Company, in May 2021, after one of the projects identified from the 2020 Renewable RFP and for which CEI South was negotiating was withdrawn from consideration, leaving CEI South without a viable wind project. Through this collaboration, CEI South and 1898 & Company identified other potentially viable wind projects that either had been submitted in other utility RFPs or had entered into the MISO Generator Interconnection Queue process (the “2021 Wind Bids”). Similar to the scoring process used for the 2020 Renewable RFP, the 2021 Wind Bids were evaluated, scored, and ranked based on established quantitative and qualitative scoring criteria that assessed reliability, cost, and certainty. This assessment included the same factors as used in the 2020 Renewable RFP: LCOE, energy settlement location, interconnection and development status, and project risk factors like credit worthiness, development experience, project maturity, delivery date, project site control status, permits, and zoning. Ultimately, CEI South selected the Wind Project based on its scoring, in relation to four other proposals, on cost, project/development certainty, location, and developer experience. Mr. Bradford stated that the Wind Project’s LCOE was the lowest of the remaining proposals.

Mr. Leger testified that the Wind Project is a proposed wind generation facility that is anticipated to have the capability of generating approximately 200 MW of electricity. It is located outside the state of Indiana in MISO’s Central Region (Zone 4); and in the 2020 MISO Generator Interconnection Queue with an expected Generator Interconnection Agreement in late-2023.

Mr. Bradford described the primary considerations when choosing a wind system and testified that the Wind Project has several benefits, including a good wind resource location; close proximity to a substation where there is available offtake capacity; abundant, geotechnically sound acreage to accommodate a wind project; a community supportive of wind development; favorable avian environmental study; Federal Aviation Administration approval; and close proximity to a large interstate for simplified turbine transport, construction, and operation. Mr. Bradford stated that the energy output from the Wind Project will be offered into the MISO energy market daily per MISO tariff and Business Practice Manual requirements. This involves offering the expected energy output on a day-ahead basis and settling the actual real-time output against day-ahead awarded volume and market clearing price versus day-ahead awarded price. Additionally, all accredited capacity will be used to satisfy MISO’s PRMR and Local Clearing Requirements prescribed by the MISO tariff.

According to Mr. Leger, CEI South and the Developer have executed a comprehensive, non-binding term sheet and are negotiating a BTA under which CEI South will purchase and acquire the Wind Project, subject to fulfillment of the conditions precedent to closing. The project design life for the Wind Project is expected to be no less than 30 years. The parties anticipated having the BTA executed by March 31, 2023, with construction expected to commence during the second half of 2023 to achieve a target Commercial Operation Date (“COD”) by January 1, 2025. Mr. Leger explained that the agreement with the Developer allows either party to terminate the agreement if all conditions precedent to closing, including a final Commission order, have not been met by July 8, 2023.

Mr. Bradford testified the Wind Project will be fully developed, engineered, procured, and constructed by the Developer and then acquired by CEI South in a transfer of the Project Company established to facilitate ownership of the Wind Project. Under the BTA, the Project Company will own the Wind Project until it achieves substantial completion, upon which time, CEI South will acquire the Wind Project and all its attributes, which are being held in the subsidiary limited liability company. At or about that same time, the separate corporate structure will be collapsed and CEI South will then own the generating facility directly.

The BTA will set forth the Developer’s obligations to bring the Wind Project to final completion after the transaction closing occurs. The Developer is required to use prudent industry practices. In addition, CEI South, with its Owner’s Engineer, will have the opportunity to review and comment on the project design, and construction oversight is planned during construction to ensure the Wind Project is constructed in accordance with relevant standards and practices. The BTA will be structured such that in the event Commission approval is not obtained, the BTA will be terminated.

Mr. Bradford testified the BTA also will set forth the payment schedule and holdbacks, performance security, liquidated damages, and other typical attributes designed to minimize risk to CEI South’s customers. He stated that the BTA transfers the Wind Project and all of its related assets such as properties, rights and interests of every kind and nature which includes books and records, the project site, project contracts, land leases and real property agreements, project fixtures and equipment that include the wind turbines, project improvements, intellectual rights associated with the project, project permits, all interconnection rights and any warranties associated with the equipment and workmanship of the project. Further, the BTA will have conditions regarding completion of the Wind Project development and commencement of construction-related activities as well as customary conditions that must be met prior to closing on the Wind Project. In addition, the BTA will include representations, warranties, terminations, and post-closing indemnification provisions.

Mr. Bradford presented the details of the cost estimate for the Wind Project, totaling approximately \$636 million to construct and purchase the Wind Project. Mr. Bradford testified that it is important to recognize the proposals submitted in response to an RFP nearly always change during the negotiation process. He stated while an RFP or competitive bidding process is valuable in identifying feasible projects and narrowing down the best projects, it is not the end of the process. For this reason, Mr. Bradford explained, the prices submitted during the 2021 Wind Bid process can be viewed as a good starting point but are not necessarily indicative of the final conditions. He said this is especially true where the 2021 Wind Bids were submitted prior to the

broad inflationary challenges that have hit not only the wind industry, but the entire nation. He testified that the Wind Project pricing is competitive with the wind proposals submitted in the 2022 All-Source RFP. He stated every project submitted in the 2021 Wind Bids would have faced similar pricing issues because the economic challenges are an industry wide issue. He opined that prices are not likely to decline near term and, if anything, they will merely stabilize.

Mr. Leger and Mr. Bradford both testified that CEI South plans to enter into a service agreement with the turbine original equipment manufacturer for the O&M of the wind turbines. CEI South also plans to enter a separate balance of plant O&M contract for the maintenance of roads and vegetation management and an additional contract for electrical system maintenance outside of the turbines. CEI South will then assign an in-house project manager to actively manage the contractors, spare parts, and the administrative components of the Wind Project. Mr. Bradford described the annual O&M expenses CEI South anticipates once the Wind Project is transferred pursuant to the BTA based on the Owner's Engineer estimates. Operational costs include planned and unplanned maintenance of the wind turbines and electrical balance of plant—including labor, parts, materials, and consumables—as well as operating expenses, such as facility monitoring and management fees, utilities, land lease payments, professional service fees, taxes, and insurance.

Mr. Rice testified that the Wind Project is a “clean energy project” under Ind. Code § 8-1-8.8-2, which defines that term as including “projects to develop alternative energy sources, including renewable energy projects.” He also noted that “energy from wind” is specifically listed as one of the clean energy resources in Ind. Code § 8-1-37-4(a)(1) through 4(a)(16), thus making it a “renewable energy resource” under Ind. Code § 8-1-8.8-10. Mr. Rice further testified that the proposed Wind Project also promotes a “robust and diverse portfolio of energy production or generating capacity, including . . . the use of renewable energy resources” as provided for in Ind. Code § 8-1-8.8-1.

Ms. Behme addressed the projected revenue requirement for the Wind Project, the proposed initial depreciation accrual rate, and CEI South's requested accounting treatment. She stated Ind. Code ch. 8-1-8.8 provides for financial incentives, including timely recovery of costs and expenses incurred during the construction and operation of clean energy projects, and the Wind Project qualifies for such treatment under Ind. Code § 8-1-8.8-11. Although Ind. Code § 8-1-8.8-11 provides for timely recovery, Mr. Rice and Ms. Behme both testified that CEI South expects that including the Wind Project in rate base in the next general rate case will provide a timelier recovery than the CECA mechanism given the unique circumstances of the timing of the Wind Project and the timing of CEI South's next general rate case.

Ms. Behme explained that to the extent the Wind Project is not included in rate base in the next rate case and the revenue requirement is recovered through the CECA, annual updates to the Wind Project revenue requirement will be filed as a sub-docket of Cause No. 44909. She further explained that even to the extent the Wind Project is included in rate base in CEI South's next general rate case, Petitioner will still use CECA to reflect the PTC and RECs generated by the Project, to the extent actual PTC and RECs differ from the amounts reflected in base rates, and any deferred O&M and property taxes.

Ms. Behme testified that because CEI South will not make a payment under the BTA or take ownership of the Wind Project until it is substantially complete, at which point the Wind

Project will be placed into service, any allowance for funds used during construction (“AFUDC”) would be expected to be a small percentage of the total cost. She further stated, however, that if AFUDC were to become a material amount, CEI South would consider using Construction Work in Progress (“CWIP”) treatment through the CECA to address it.

Ms. Behme explained that CEI South will ultimately record the total cost to acquire the Wind Project to Federal Energy Regulatory Commission (“FERC”) Account 101—Electric Plant in Service and reallocate it to the appropriate utility plant in service accounts. She stated that an allocation for general oversight, management, and administrative costs will be included, consistent with CEI South policy. In addition, costs associated with accounting, legal services, human resource management, insurance and other similar costs are included as overhead costs that are allocated to construction projects. She stated that Petitioner’s work papers in either the CECA or the general rate case filing will segregate the applicable Wind Project costs included for recovery into categories of direct costs and indirect capital overheads.

After the Wind Project is placed in-service, Ms. Behme testified CEI South will incur capital costs, which it will not recover until the new plant is included in rate base in the derivation of rates, whether as part of base rates or the CECA, at which point the cost is recovered through the opportunity to earn a fair return on the value of that plant investment. And, once the project is placed in-service, depreciation will commence. Accordingly, CEI South proposes to accrue PISCC at its pre-tax WACC (utilizing CEI South’s cost of long-term debt and Commission approved cost of equity) on capital investment for the Wind Project beginning with the month after the investment is placed in service until the date the investment is included for recovery in either CECA rates or base rates. This calculation would be updated in subsequent general rate cases or annually if the CECA mechanism is utilized. CEI South also proposes to defer any depreciation expense associated with the Wind Project until such expense is included for recovery in the CECA or base rates. Both the accrued PISCC and deferred depreciation will be recorded as regulatory assets in FERC Account 182.3 until such time that they can be included for recovery in rates. CEI South would begin amortization of the regulatory asset as a recoverable expense for ratemaking purposes over the estimated life of the Wind Project (approximately 30 years) commencing on the date CEI South’s rates include recovery of a return and depreciation on the Wind Project. CEI South also seeks to include the unamortized balance of the regulatory asset in CEI South’s rate base upon which it is permitted to earn a return.

Ms. Behme explained that annually, financing costs for the Wind Project are approximately \$36.6 million and the associated depreciation expense is approximately \$21.9 million, representing over 40% of CEI South’s 2021 electric net operating income of \$132.7 million. Without the requested accounting treatment, Ms. Behme testified, CEI South could suffer a material adverse financial consequence. She stated the requested accounting treatment would allow CEI South the opportunity to immediately offset the negative financial impact to monthly pre-tax earnings by approximately \$4.9 million.

The initial annual depreciation accrual rate proposed by CEI South for the Wind Project is approximately 3.33%, corresponding to the expected life of the assets of 30 years. Ms. Behme testified this rate does not take into consideration costs of removal and CEI South therefore proposes to evaluate adjustments to the depreciation rate and include proposed depreciation rates for these assets in a formal depreciation study as part of its next applicable base rate case.

With respect to the deferral authority sought by CEI South for certain expenses, Ms. Behme explained that CEI South will incur incremental O&M expenses corresponding to the cost incurred pursuant to an O&M contract with a third party and there will be a period of time after those contract expenses begin and before rate recovery begins. CEI South seeks to defer such O&M for future recovery until recovered through either base rates or the CECA. In addition, she noted it is possible that CEI South would incur other O&M expense or accrue property tax expense associated with the Wind Project before property tax expense is being recovered through base rates or the CECA. Accordingly, to the extent CEI South incurs other O&M or accrues such property tax expense before rate recovery, Petitioner seeks to defer such expense for future recovery.

Ms. Story testified that the Wind Project is expected to qualify for a 100% PTC. She explained that to qualify for the PTC, construction on the project must begin prior to January 1, 2025. Ms. Story explained that a “continuous progress safe harbor” applies to allow developers to meet the continuous progress test if construction is completed within four years of construction commencement. Ms. Story described the wage and apprenticeship requirements introduced under the Inflation Reduction Act (“IRA”) and stated Petitioner is committed to achieving the maximum PTC available by satisfying those wage and apprenticeship requirements over the life of the project.

Ms. Story testified that the IRA also addressed the issue of taxpayer “tax capacity” for purposes of the PTC by allowing transferability, which will facilitate more cost-effective utilization of the expanded credits by allowing taxpayers to sell tax credits to an unrelated party, providing a more efficient way to monetize the present value of the tax credits. Prior to the enactment of the IRA, Ms. Story explained, taxpayers without sufficient current income-tax liability to self-monetize credits had to either rely on expensive tax equity financing or carry forward deferred tax assets on their own balance sheets with corresponding losses due to the time value of money.

Ms. Story explained that a PTC is treated differently for the Wind Project than it would be for a PPA. She stated when a developer or other entity retains ownership of a wind project, that entity often receives the PTCs for the project. She explained that in negotiating a PPA agreement, the benefit of those credits can sometimes reduce the cost of energy for the utility offtaker, but not always. Many times, Ms. Story explained, there is no assurance that these tax benefits are passed along to customers in the form of lower energy purchase costs. In addition, she stated PPA pricing is often at competitive rates, which may be significantly higher than the costs produced through traditional ratemaking. In contrast, under traditional ratemaking, such as is proposed for the Wind Project, tax benefits directly reduce the costs of generating electricity and the benefits are passed through to customers. Ms. Story and Ms. Behme testified that as CenterPoint Energy, Inc. realizes the benefits of any PTCs generated, whether by utilizing the credits to reduce its federal income tax liability or by selling the credits, those benefits will be passed on to customers as a reduction to the amount recovered through rates associated with the Wind Project. They further noted that the difference between the actual PTC and any amount reflected in base rates will flow through the CECA, even if the Wind Project itself is reflected in base rates.

Ms. Story testified the full allowable PTC for 2022 is \$0.275/kwh, which will be adjusted for inflation each year thereafter. She stated the full PTC is allowed if the basic PTC requirements regarding construction start and end dates, and the wage and apprenticeship requirements are

satisfied. Ms. Story provided the estimated value of monetizing the PTC benefits associated with the Wind Project, using the estimated annual kWh, a PTC rate of \$0.0275/kwh, and assuming inflation adjustments of 2% for each of the next three years and that the Wind Project will meet the wage and apprenticeship requirements.

Mr. Rice testified that the Wind Project also will be eligible for RECs, which are market-based instruments that certify that the bearer owns one MWh of electricity generated from a renewable energy source. He explained CEI South's current practice is to sell RECs to directly offset the cost of renewable energy projects. Thus, the benefit of REC sales, net of costs, would be included as an offset to the revenue requirement within the CECA. To the extent the sale of RECs differs from the amount reflected in base rates, Ms. Behme stated all proceeds from such sales will be reflected as an adjustment to the revenue requirement within the annual CECA filing. Further, if CEI South becomes subject to a renewable portfolio standard or other regulatory requirement, the RECs may be retained and used by CEI South to satisfy such requirements.

Ms. Behme presented an illustrative CECA revenue requirement for the Wind Project and explained how it was calculated. She stated it includes: (1) the return on capital investment, which includes the unamortized regulatory assets for deferred depreciation and PISCC; (2) an annual level of incremental property taxes, depreciation, and O&M expenses, inclusive of any amounts previously deferred; (3) net PTC and RECs monetized; and (4) recovery of the regulatory assets recorded through the interim deferral of depreciation expense, and PISCC.

Ms. Behme stated that if the CECA mechanism was used for the Wind Project, CEI South would prepare in each annual filing a revenue requirement calculation that would accumulate all eligible costs incurred through December 31 of the prior calendar year. Mr. Rice explained that allocations by rate schedule will be applied to the total revenue requirement to determine the amounts recoverable from each rate schedule. The amounts allocated to each rate schedule will be divided by the estimated billing determinants to calculate the per-unit CECA rates and charges. Any variances will be recovered (or passed back) consistent with the methodology utilized in the annual CECA update.

Mr. Rice presented the estimated residential bill impact for a residential customer that uses 1,000 kWh per month of approximately \$20 per month, depending on the cost of the Wind Project. He noted that this amount includes an offset for PTCs but does not include offsets such as REC sales, which are expected to lower customer bills, or other savings associated with the Generation Transition Plan.

If the CPCN is not granted or the Wind Project assets are otherwise not placed in-service, Ms. Behme testified that CEI South requests authority to defer costs associated with the Wind Project, including costs incurred to evaluate and plan the Wind Project and to develop the evidence submitted in this proceeding. She stated any capitalized costs would be reclassified to FERC Account 182.3 and recovery of those costs would be sought in a future general rate case or capitalized as part of an alternative generation project.

Ms. Behme also described the adjustment to the authorized NOI utilized in the Fuel Adjustment Clause ("FAC") earnings tests, in accordance with Ind. Code § 8-1-2-42(d) and § 8-1-2-42.3, to the extent Petitioner recovers the return on the Wind Project through the CECA

mechanism. She stated CEI South will adjust for FAC earnings test purposes its statutory NOI by including the operating income associated with the Wind Project as part of its authorized NOI, consistent with treatment of earnings associated with CEI South's CECA.

Mr. Rice addressed CEI South's request pursuant to Ind. Code § 8-1-2.5-6(a)(1) for an ARP, if necessary, in connection with the Wind Project. Mr. Rice described the two components of the requested ARP. First, CEI South requests an ARP allowing the ratemaking treatment proposed herein even though the Wind Project is located outside Indiana. He noted that although neither Ind. Code § 8-1-2-6 or Ind. Code § 8-1-8.8-10 appears to require that the Wind Project be constructed in Indiana, the Wind Project is a significant generating asset. Second, CEI South requests to be relieved of any obligation under Ind. Code § 8-1-8.5-5(e) for competitive bidding. He noted that this statute applies if an applicant is proposing to construct the generating facility; and Petitioner is not proposing to construct the Wind Project but to acquire it once completed.

Mr. Rice testified the requested ARP is in the public interest because the acquisition of the Wind Project is needed to continue with the implementation of Petitioner's Preferred Portfolio. He stated the addition of wind generation is needed to help diversify the generation mix, and this Wind Project enhances the value of CEI South's service to its customers. He also testified the selection of the Wind Project was the result of competitive procurement. Mr. Rice stated if the location of the Wind Project or the application of the competitive procurement provisions would cause CEI South not to be able to acquire the Wind Project, the ARP would allow for completion of the Wind Project and therefore be beneficial for the energy utility and its customers. Under circumstances where the ARP is found necessary to allow CEI South the relief requested, Mr. Rice testified the ARP also enhances the value of CEI South's retail energy services.

## **B. OUCC and Intervenor Testimony.**

1. **OUCC.** Mr. Lantrip recommended CEI South's CPCN request be denied and that the costs of the Wind Project be evaluated in the context of a general rate case. He testified that the OUCC continues to be concerned with the affordability of CEI South's rates, the proliferation of its cost trackers, and the magnitude of costs passed through Petitioner's tracking mechanisms. He presented a summary of monthly residential electric bill impacts for Petitioner's current billing charges as of February 2023 and a summary of the monthly cost impact of Petitioner's recent requests that are not yet included in its electric rates.

Mr. Lantrip also expressed concern over what he termed a "lack of transparency" due to redactions in Petitioner's case-in-chief. He argued that CEI South redacted information beyond what is needed to protect legitimate trade secret data and that such a degree of confidentiality does not comply with the doctrine of open government and transparency. Mr. Lantrip also expressed concern over the absence of certain provisions within the BTA. He stated the OUCC objects to the BTA in its current form as it has no protections against a significant change in price for the Wind Project. He testified that without these protections CEI South consumers have no guarantee the requested CPCN will deliver electrical service that meets a just and reasonable cost standard, which is the obligation of CEI South. Mr. Lantrip listed several provisions he believes are "missing" from the BTA that the OUCC sees as a minimum requirement, including binding price and capacity guarantees. He also testified that the capacity factor in the BTA does not consider the potential line losses.

Mr. Lantrip also recommended the Commission deny CEI South's request to recover charges from its customers for the Wind Project, expressing concern with the estimated \$636 million cost of the Wind Project given the "lack of cost overrun protections" and that CEI South does not have experience owning wind energy on its system. If the Commission approves the Wind Project, Mr. Lantrip recommended the recovery schedule timeline be adjusted to mitigate the rate impact on CEI South customers, who he testified have been paying the highest electric rates in the state since 2013 according to the Commission's most recent Annual Report. He further recommended recovery be limited to a levelized cost per kWh based on CEI South's estimated annual production from the Wind Project, similar to what was recommended by the OUCC for the Troy Solar Project in Cause No. 45086 and approved for the Posey County Solar Project in Cause No. 45501.

Mr. Latham testified that if the Commission approves CEI South's request, it should be reduced by \$44 million because Petitioner's owner's cost/overhead amounts appear to be "arbitrary." He testified that CEI South's owner's costs include allowances for the owner's project management team; owner's engineer; environmental and/or other permitting activities not included in the purchase price; overheads such as internal labor and loadings to support construction from planning through construction; administrative and general overheads ("A&G"); AFUDC; expert consultant fees; and owner's contingency. He disagreed with CEI South's application of one percent A&G to project development, interconnection costs, spare parts, study/prework and owner's costs, stating it was unsupported by the evidence because Petitioner did not provide a line-item breakout to support the allocated amounts. He testified that any allocation of A&G is duplicative since the Wind Project is a BTA and the third-party builder is essentially handing over the keys to CEI South. He further stated that it is difficult to understand why ordering spare parts requires an A&G allocation since ordering parts is a normal cost of business.

Mr. Latham testified that if the Commission rejects the proposed Wind Project, the study/pre-work portion of the project should be considered a sunk cost with no recovery because they were incurred prior to any Commission approval and are a cost of doing business. Mr. Latham testified that the amount of A&G applied to owner's costs is unclear because owner's costs are comingled with overheads, rendering the amount of owner's costs "impossible to determine." He stated the OUCC expects, in support of a one percent A&G allocation, at a minimum, a budget detailing the staff who were expected to apply time to the project, the amount of time, and the staff persons' hourly rate. Additionally, any position previously included in the most recent rate case should be eliminated to prevent double recovery. Mr. Latham testified that Petitioner should provide a list of any other costs expected to be incurred as part of the one percent A&G allocation, with elimination of any costs currently in rates, and that Petitioner should also provide a breakout of costs (such as spare parts) with the amount of A&G expenses to be allocated.

Mr. Hanks described CEI South's use of its 2019/2020 IRP to justify its request for a CPCN for the Wind Project. He testified that CEI South has not met the burden of proof to show that the Wind Project is the most affordable option, that it reduces risk, or that it ensures reliability and cost certainty. He stated the cost inputs used in the creation of the 2019/2020 IRP are significantly lower than the estimated costs used in this proceeding and that the Wind Project will not contribute to the economic development of Petitioner's service territory or the State of Indiana because it is located outside Indiana. He suggested the possibility of transmission congestion could lead to



uncertainty regarding reliability and the final cost of energy produced by the Wind Project. He also noted a discrepancy in the scoring of the Wind Project in Petitioner's 2019/2020 IRP and provided an updated score. Mr. Hanks also expressed concern with the risk that the energy from the Wind Project will not reach Petitioner's service territory without incurring significant upgrade or congestion costs and stated there is no certainty regarding whether the Wind Project will be impacted by congestion.

2. **CAC.** Mr. Inskeep presented concerns with CEI South's proposed Wind Project, while expressing general support for additional wind generation and CEI South's Preferred Portfolio with respect to its determination that CEI South procure at least 300 MW of wind. He stated CEI South's request for an expedited decision in this case has created an unreasonable burden on intervenors and the Commission. He asserted that a rushed process that fails to allow intervenors sufficient time for review means the Commission has a less developed record for consideration and projects that are not thoroughly and adequately reviewed can result in higher project costs, increased risks to ratepayers, and ultimately, higher customer rates. He recommended CEI South not rely on expedited 120-day process for requesting approval of generation projects of this cost magnitude absent an extraordinary circumstance.

Mr. Inskeep also expressed concerns about bill impacts of the Wind Project, particularly given the dramatic cost increase that has already materialized for this specific project since it was initially identified. He stated the estimated average residential monthly bill impact inclusive of anticipated sales of RECs is \$15.51. However, he noted CEI South did not provide an up-to-date quantification of the net impacts of various changes in fuel and O&M costs, which he says contributed to the difficulty in assessing the reasonableness of the Wind Project costs and the extent to which ratepayers are still expected to see net bill reductions. Mr. Inskeep expressed concern about the collective impacts of CEI South's investments in generating resources and its transmission and distribution system and expenses on customer affordability. He urged CEI South to use its forthcoming rate case to propose a new electric bill relief program for income-qualified customers.

Mr. Inskeep suggested that CEI South could have pursued PPAs as alternatives to the Wind Project BTA, which he claims could have ultimately resulted in a lower bill impact for customers. He stated there are different risks between a PPA and BTA structure that he believes ultimately advantages PPAs from a ratepayer perspective. He stated under a PPA, the project developer and owner bear the risk of cost overruns or unexpected costs whereas under a BTA, if the utility encounters higher than anticipated costs, the utility typically passes through those costs to its customers. Additionally, he stated a PPA with a term length shorter than the life of the project could benefit customers by allowing an earlier off ramp that gives customers access more quickly to future cost declines in renewable energy technologies.

Mr. Inskeep also expressed concern with CEI South's methodology of developing an LCOE of 35 years to have a common reference between PPAs of different term lengths and BTAs, and the normalization of the LCOE over the 35-year period using a market replacement methodology. He stated this artificially increases the cost of a PPA relative to a BTA based on "arbitrary decisions" about how to calculate a common metric to compare the two. He claimed CEI South did not provide the level of detail needed to understand how the calculations were made or determine whether the data inputs and assumptions were valid and reasonable. He stated the

information provided via discovery was not provided in time for him to conduct a thorough review. Mr. Inskeep identified “very attractive PPA options” submitted in all three of CEI South’s RFPs. He ultimately recommended that CEI South provide more transparency and description in its case-in-chief regarding its key analyses supporting its large capital project requests, especially when it is requesting an expedited timeline for approval that may limit the opportunity for stakeholders to clarify questions through data requests prior to filing direct testimony. He recommended that CEI South analyze BTAs and PPA options from its ratepayers’ perspective and select projects that will mitigate rising customer bills. He also recommended the Commission encourage CEI South to pursue more PPAs instead of being so heavily reliant on BTAs.

Mr. Inskeep also disagreed that CEI South should be allowed to recover Wind Project costs through its CECA mechanism and supports Petitioner’s stated preference for addressing cost recovery and cost allocation for the project through its forthcoming rate case. He took issue with the use of a 4CP demand allocator for the Wind Project because CEI South no longer plans its system around only meeting summer peak periods and instead plans to meet seasonal capacity planning requirements for all seasons under MISO’s recently modified resource adequacy construct. He stated the Wind Project will provide the largest capacity value during the winter season, followed by fall and spring, which are outside of the summer months on which the 4CP is calculated. He also took issue with the fact that under the 4CP demand allocator, Street Lighting customers would not be allocated any of the Wind Project costs even though Street Lighting customers benefit from the capacity and energy provided by the Wind Project. Mr. Inskeep recommended the upcoming general rate case is the best venue for establishing a fair cost allocation methodology for the Wind Project.

Regarding CEI South’s cost estimates, Mr. Inskeep raised concern with: (1) a discrepancy between the annual O&M estimate and the amount included in the illustrative CECA total annual revenue requirement, (2) the amount of contingency included in the estimated costs, which he contended is large and does not seem warranted, (3) the amount included in the generation transition asset allocation for IRP work done in 2016-2019 and costs for planning/preparation work conducted from 2020-2022, which he believes violates the prohibition on retroactive ratemaking, (4) the amount of legal fees associated with the BTA negotiation, CPCN filing, and pre-closing due diligence, which he compared to the amount included in legal fees for NIPSCO’s recent rate case.

**C. CEI South Rebuttal.** Mr. Bradford addressed concerns raised by the OUCC and CAC around the Wind Project’s transparency, its scoring, selection, structure as a BTA, and customer protections, as well as its pricing and deliverability. Mr. Bradford stated that since the filing of its direct case, CEI South obtained approval from the Developer to release certain information related to the Wind Project that was previously redacted, including the size (or capacity) of the Wind Project and the specific MISO Region. He further expressed CEI South’s commitment to work in collaboration with the Developer to continue to evaluate the need to continue to protect competitively sensitive information from public disclosure. To the extent it can be released, he stated Petitioner will take the necessary steps to share the information more broadly.

Mr. Bradford testified that CEI South has redacted or marked confidential only that information necessary to prevent disclosure of information that would allow someone to identify the specific project over which CEI South is negotiating, which he explained not only serves the

interest of CEI South and the Developer, but also serves the best interest of CEI South's customers. He explained that while continuing to negotiate the BTA with CEI South, the Developer is also engaged in ongoing negotiations with third parties that will be contractors under the BTA (i.e., "counterparties to the BTA"). Mr. Bradford explained that knowledge of the identity of the Wind Project and the status of negotiations or this proceeding while the BTA is still being negotiated and the Developer continues to negotiate with the counterparties could give the counterparties to the BTA contracts economic value and power in negotiating the terms of their contracts with the Developer; and place CEI South (and the Developer) at a competitive disadvantage resulting in higher costs for the Wind Project or less favorable BTA terms and conditions. Therefore, the need to protect the items highlighted by OUCC witness Lantrip from public disclosure was not "unilaterally" decided by CEI South, but rather after close collaboration with the Developer and through consideration of impacts to CEI South's customers and other stakeholders.

Mr. Bradford disagreed with Mr. Lantrip's assertion that the public has been "excluded" by the degree to which CEI South has asserted confidentiality of certain information related to the Wind Project. He noted that the public is represented by the OUCC in this case, and the OUCC has had access to all confidential information since the case was filed. Mr. Bradford recited certain information about the Wind Project that has been publicly disclosed since Petitioner filed the case, including the fact that the Wind Project is located outside of Indiana, the status of the Wind Project in the MISO Generator Interconnection Queue, the Developer's experience, and the overall best estimate, or total cost, of the Wind Project. Mr. Bradford asserted that access to the above-referenced information, coupled with the rest of the information publicly provided in this Cause and the public's representation in this matter by the OUCC, provide the public with a robust source of information and participation. He also asserted that the value of protecting disclosure of certain information, such as project name and location, outweighs any additional benefit that could be realized by disclosing those elements prematurely. Mr. Bradford testified that disclosing the information prematurely, before the parties conclude the BTA negotiation, specifically before the Developer has an opportunity to select certain contractors and suppliers and execute the associated agreements that underlie the BTA, would adversely affect CEI South's customers, potentially resulting in higher costs or less favorable terms and conditions within the BTA, to include the customer protections for which Mr. Lantrip advocates.

In addition, Mr. Bradford explained, one of the conditions to closing is Commission approval of the Wind Project. If CEI South were to prematurely release confidential information that in turn then prejudices the negotiations or compromises one of the negotiating parties' positions or leverage, aside from potentially resulting in higher costs or less favorable terms and conditions, CEI South, and in turn its customers, could lose its opportunity to secure the most cost-effective wind project available at this time. He said the loss further risks exposure to potentially higher priced wind projects and further delays in the process, thereby exposing CEI South and its customers to the risk of having to make high priced purchases from the PRA to meet the capacity requirements of the PRMR.

Mr. Bradford also pointed out that the 2019/2020 IRP was CEI South's most detailed resource planning analysis process to date, involving significant opportunity for stakeholder and public involvement, collaboration, and feedback. He testified it is through the open (public) collaborative and transparent process in which the OUCC, several members of the public, and other intervenors participated that CEI South developed its 2019/2020 IRP and selected the

Preferred Portfolio, which called for 300 MW of wind—a portion of which CEI South is proposing be fulfilled by the Wind Project.

Mr. Bradford explained that the document provided as Attachment FSB-2 (Confidential) to his direct testimony is not the BTA, as Mr. Lantrip refers to it, but is instead the Term Sheet for the Wind Project. He clarified that whether the terms and conditions are complete and/or binding is not related to the degree of confidentiality required in this case. He stated the BTA is currently being negotiated and is informed by the Term Sheet, but the two are separate and distinct documents. The BTA, when executed, will be binding and include the components and details referenced by Mr. Lantrip, such as detailed project and equipment specifications as well as provisions related to the major subcontracts (i.e., contractor or supplier agreements).

Mr. Bradford also described certain cost protections that will be incorporated into the BTA and stated that CEI South had presented evidence of the best estimate of costs, accounting for future inflation, interconnection costs, financing costs, owner's costs, overheads and spares, and all other anticipated costs. If the costs are below the best estimate that is found by the Commission, CEI South will only seek to recover the final, actual costs of the Wind Project when placed in-service. He also explained that the BTA will establish schedule, performance, programmatic and engineering protections. In addition, there will be warranties providing protections against defects in the equipment and/or workmanship and legal protections such as contractual representations, warranties, and indemnifications to provide assurance of contract performance.

Mr. Bradford reiterated that the rights under the Term Sheet allow either party to terminate the agreement if certain conditions have not been met by July 8, 2023, including Commission approval through the issuance of a final Order. Accordingly, based on the time to negotiate the comprehensive Term Sheet and anticipated time to negotiate and execute a BTA, Mr. Bradford said Petitioner filed its petition in this Cause, requesting expedited relief, to help ensure the condition related to issuance of a final order was met in a timely manner to achieve the target COD originally contemplated of January 1, 2025.

Mr. Bradford also provided an overview of circumstances that had changed since Petitioner filed its case-in-chief. He stated BTA negotiations are taking longer than anticipated and the current schedule related to the 2020 MISO Generator Interconnection Queue continues to delay with the most recent estimate (updated March 7, 2023) of Definitive Planning Phase 1 results being released April 3, 2023. In addition, Mr. Bradford testified that based on material lead times and the Transmission Owner's standard construction schedule, which considers those lead times, the COD will most likely be delayed past January 1, 2025. Mr. Bradford stated it is unlikely the BTA will be executed by March 31, 2023. Despite this delay, however, Mr. Bradford explained that it is still important to have a Commission order by July 8, 2023, because the Definitive Planning Phase 2, which includes all preliminary interconnection costs, is still on target to be finalized by mid-July. In addition, an understanding of the preliminary interconnection costs is important before the Transmission Owner's work can begin; and before the Developer will approve Transmission Owner's work to begin, Commission approval is necessary.

Responding to OUCC witness Hanks' concerns about the use of the 2019/2020 IRP to justify the Wind Project, Mr. Bradford disagreed with Mr. Hanks assertion that for this Wind Project to be approved, and a CPCN granted, CEI South must show the Wind Project "is the most

affordable option.” He stated this is not the standard or requirement. Nevertheless, Mr. Bradford reiterated why he believes the Wind Project is highly competitive and addresses environmental risk, market risk, and general risk.

He testified the Wind Project is an energy-rich resource that significantly reduces the risk of exposure to energy market price volatility for the 30-year life of the Wind Project and it reduces the risk of capacity shortfall with respect to CEI South’s PRMR. As a renewable energy resource, Mr. Bradford stated, the Wind Project clearly reduces environmental risk. It also contributes to a diverse generating portfolio, which is a favorable reliability attribute, designed to minimize risk. He stated the BTA will contain many terms and conditions designed to ensure the long-term, reliable operation of the plant and will also provide cost certainty by establishing ceiling thresholds on certain costs.

With respect to Mr. Hanks’ concerns regarding transmission congestion, Mr. Bradford testified CEI South will operate the unit in the MISO market just as it does its other units and PPAs both inside and outside of its service territory. He explained that the difference in LMPs, whether favorable or unfavorable, is handled through the FAC in a well-established process, and the analysis of historical LMPs shows that the site is not expected to have significant congestion. He opined that it is purely speculation to guess future grid configurations and events and therefore impossible to know, with complete certainty, what congestion costs will be. Mr. Bradford acknowledged that the Wind Project may incur network upgrade costs, but those are included in the Wind Project estimate and are capped as part of the project’s cost risk protections for customers. He stated that while MISO has continued to delay the system impact study, the Developer has provided CEI South with the results of an independent study estimate of network upgrade costs that fall under the cap. Mr. Bradford explained that the study results are not needed to determine whether energy from the Wind Project will “reach” CEI South’s service territory, but rather what will be the cost for the Transmission Owner to fully integrate the Wind Project onto the transmission system. He reiterated that the historical and present-day values of congestion indicate the project site is a very suitable location.

Mr. Bradford responded to the OUCC’s concerns over the stated capacity of the Wind Project and potential line losses. He explained that the net capacity factor and MISO’s seasonal accredited capacity value are contrasting concepts and are not directly comparable. He explained that the net capacity factor is an energy parameter corresponding to the annual expected energy output of the Wind Project, whereas the accredited capacity refers to the credit CEI South will receive towards meeting its PRMR. Regarding Mr. Lantrip’s claims that line losses can be expected to further reduce the amount of usable generation, Mr. Bradford stated that those electrical line losses have already been considered and are represented in the estimate of annual expected output, and these line losses are independent of the location of the Wind Project. He stated locational line losses do not reduce the amount of energy generated at the site and are part of the wholesale power market dynamics compensated by LMP.

Mr. Bradford conceded that, all other things equal, a project within Indiana borders would be preferred—but he explained that simply is not possible. Mr. Bradford disagreed with Mr. Hanks’ assertion that the Wind Project will not contribute to the economic development of Petitioner’s service territory or the State of Indiana. He cited to Mr. Leger’s direct testimony discussing wind’s critical role in balancing the customers’ increasing desires for the utility to

provide renewable energy options to serve their needs and satisfy sustainability goals while ensuring safe, reliable, and affordable provision of electric service to meet customers' demand and reliability needs. He noted how bringing the Wind Project online as part of CEI South's generation portfolio directly addresses large customers' demand for renewable energy supply and serves to attract new business to the region, which enhances economic development.

In responding to Mr. Hanks' contention that the project cost exceeds that used as an assumption during IRP modeling, Mr. Bradford pointed out that increased project costs are being experienced by the entire utility industry, yet the Wind Project remains competitive with the results of CEI South's most recent 2022 All-Source RFP. Mr. Rice testified that as the costs for wind projects have risen, CEI South updated modeling to reflect higher costs, including the cost of the Wind Project, in its 2022/2023 IRP modeling. He stated the value of wind resources is still being recognized within the 2022/2023 IRP and additional wind resources beyond the Wind Project have been consistently selected based on least cost optimization modeling. Mr. Rice noted that while costs in the 2019/2020 IRP were significantly lower than estimated costs in this proceeding, this is true of many costs in the model, including energy and capacity purchases. He testified that the fact that wind is still being selected is a clear indication that CEI South should continue to pursue the Wind Project. Further, he stated it is no surprise that the costs for wind projects have risen over time due to the energy and capacity benefits provided by wind. Citing to other utilities pursuing wind projects over the next several years, Mr. Rice stated that the level of demand for wind does not suggest that costs will be coming down any time soon, and CEI South's customers would not be well served by waiting for the next wind project.

With respect to the scoring of the Wind Project, Mr. Bradford testified that while some of the projects in CEI South's two most recent RFP solicitations scored marginally higher in the category of Energy Settlement Location, this is no guarantee that congestion costs associated with these alternate sites would be lower than the Wind Project. In addition, Mr. Bradford explained that the Wind Project was scored in the interconnection category consistent with its status in the 2020 MISO Generator Interconnection cycle. While projects in more advanced cycles scored higher in the interconnection and development status scoring category, one of those projects reflected costs that were consistently uncompetitive and another of the projects was withdrawn by the developer. Mr. Bradford stated the Wind Project has consistently been shown to be the most competitive and best option for CEI South to pursue. He further testified that the discrepancy in scoring identified by Mr. Hanks would not change this fact.

Responding to CAC witness Inskeep's position in favor of PPAs versus a BTA, Mr. Bradford pointed out that the levelized cost of the Wind Project is competitive with comparable PPAs even though the price of the Wind Project reflects cost increases that have occurred and the PPA prices do not reflect such increases despite the likelihood that they would experience similar increases. He disagreed with Mr. Inskeep's belief that BTAs result in higher costs to customers due to CEI South earning a rate of return on the project because it fails to consider various financial costs and risks associated with PPAs and the full value of BTA structures. Mr. Bradford testified that customer impact is closely evaluated during the IRP process and during evaluation of RFP proposals. He stated it is smart to have a mix of structures to diversify the risks associated with each. He noted that CEI South, along with the entire renewable industry in recent years, has observed developers' inability to bear the cost risk of unexpected market changes and the stability and financial backing of a utility is one of the advantages of a BTA. He said PPA owners may

change hands or run into financial insolvency, placing CEI South in a difficult situation potentially having to source energy from the wholesale power market, which could be very expensive. Shorter term PPAs also increase customer exposure to energy prices after the term of the PPA expires.

Mr. Bradford also testified that the types of costs Mr. Inskeep contends are not included in PPA structures are passed along in the PPA price, namely costs of capital expenditures, interconnection cost, overheads and owner's costs, and spare parts. Mr. Bradford also contended that to be fair in the economic comparison between PPA and BTA structures, Mr. Inskeep should consider the cost of imputed debt and weight that among the advantages and disadvantages of each type of structure. He testified that wind PPAs are priced in today's market at about the same LCOE as the current Wind Project before taking into consideration the added cost of market replacements, imputed debt, or the expected cost of risk factors associated with PPAs.

With respect to Mr. Inskeep's objections to CEI South's use of the market replacement methodology in the LCOE analysis to compare BTAs and PPAs, Mr. Bradford explained that CEI South provided all formulas and data to view the market replacement methodology calculations. He explained how the market replacement LCOE adders worked and stated there is no flaw in Petitioner's calculations. He also noted that the market replacement methodology was used in each of CEI South's recent solar CPCN filings. Mr. Bradford stated that CEI South will seek the most cost-effective replacement for its PPAs that expire and will hopefully obtain replacement resources at a lower cost than what is used to estimate the cost of market replacements in the LCOE analysis, but finding resources at lower cost is far from guaranteed. He also noted that the newest energy and capacity forecasts in use in the 2022/2023 IRP process predict even higher costs for energy and capacity in the future.

Mr. Bradford testified that all other things being equal, BTAs provide greater reliability assurance for customers than PPAs because the utility can closely control the operation of a plant under a BTA structure and align it with its reliability imperative. Additionally, BTAs allow the utility to retain land rights, zoning permits, and all generator interconnection rights, which are among the most valuable and hardest attributes of a renewable project to obtain. They also provide a long-standing resource with a known cost of energy that can provide economies of scale via reuse and re-utilization of land rights, interconnection rights, and infrastructure.

Responding to Mr. Inskeep's and Mr. Latham's concerns about contingency, Mr. Bradford testified that including a reasonable amount of contingency is standard in the industry and extremely useful, especially in today's volatile market to establish a buffer to absorb reasonable, yet unidentified or unknown changes that could add to the cost of the project. He pointed out that Mr. Inskeep's objection to the cost estimate of legal fees compares the cost estimate of the legal fees for the Wind Project to the legal fees estimated in another utility's rate case proceeding. He said the estimate of legal fees in this case includes commercial transactional fees, extensive due diligence, and local legal support during development tasks such as land procurement and ministerial permitting, whereas the rate case fees cited by Mr. Inskeep are for the cost of representation in the Commission proceeding; thus, making an "apples to oranges" comparison.

Mr. Rice responded to concerns raised by the OUCC and CAC with respect to affordability and bill impacts. He described the efforts taken by CEI South over the last decade to keep customer bills from rising too quickly. He testified that while it is true that CEI South has had higher bills

than its Indiana peers during the past decade, bills have grown less than one percent per year on average between 2013 and 2022 and CEI South is in fact no longer the highest. He also described CEI South's efforts to protect affordability through the selection of the Preferred Portfolio and the securitization of AB Brown Units 1 and 2. Mr. Rice explained that the table of CEI South's recent CPCN filings and other recovery requests presented by Mr. Lantrip is not a complete picture of net impacts of CEI South's Generation Transition Plan. He stated Mr. Lantrip's table does not include O&M or fuel savings that result from plant closures, or savings associated with selling RECs from renewable projects. Mr. Rice testified that affordability was a priority in CEI South's 2019/2020 IRP and still is as CEI South executes on the Generation Transition Plan, including securitization of A.B. Brown Units 1 and 2.

Mr. Rice also responded to testimony from Mr. Inskeep stating it is difficult to assess the reasonableness of the Wind Project without an updated bill impact. Mr. Rice testified that static bill impact calculations are helpful, but do not fully measure cost implications of alternate paths that ultimately affect a customer bill, whereas IRPs do assess alternative paths over a wide range of futures, including the potential for future CO<sub>2</sub> cost. He noted Petitioner's last IRP indicated that wind is needed as a part of a diverse set of resources that shield customers from high cost and future cost risk. Mr. Rice also stated that the cost for the Wind Project should decline over time as the assets depreciate; static bill impacts do not capture this or the fact that these assets are not affected by varying fuel prices over time.

With respect to Mr. Inskeep's suggestions on the proper cost allocation among rate classes, Mr. Rice testified that allocations will be evaluated, and updated as applicable, for all rate schedules within CEI South's next general rate case. Regarding Mr. Lantrip's recommendation to use a levelized rate if the Commission grants cost recovery for the Wind Project, Mr. Rice explained that traditional ratemaking is the *de facto* approach and CEI South is the only utility in the State that has used a levelized rate to recover the cost of certain solar generation projects. He explained why this might be appropriate in the context of solar projects, where there was a need to pass back Investment Tax Credit benefits to customers in this way. However, for the Wind Project, the PTCs will directly offset the revenue requirement, lowering the cost in the first ten years of operation, so the levelized cost approach is not needed.

Ms. Behme defended Petitioner's application of a one percent A&G rate in estimating the total Wind Project costs. She explained that consistent with CEI South's policy, A&G costs associated with supporting capital projects are segregated in CEI South's books and records before being applied to capital projects in the form of an A&G overhead. Overhead costs including accounting, legal services, human resource management, insurance and other similar costs are applied for general oversight, management, and administrative costs. She explained that each capital project has an A&G overhead rate associated with it, which is then applied to that capital project. A&G overhead rates are developed based on the relationship between A&G functions supporting capital projects and ongoing capital spend associated with those same projects. A&G overhead is applied to a capital project using the total project's costs as a basis for the A&G costs allocable to that project. Ms. Behme stated that the nature of A&G costs recorded to any given capital project in the form of A&G overhead does not change what they are. They are separate, distinct A&G costs, which are representative of the overall general oversight, management, and administrative activities associated with the project.



Ms. Behme noted that, per Petitioner's construction overhead policy, the Wind Project, as a major project, has a flat, fixed A&G overhead rate of one percent, which acts to limit variability as even minor fluctuations in the A&G overhead rate could lead to large allocations of A&G costs. Ms. Behme testified that Mr. Latham's expectation of a breakout of costs attributable to the A&G overhead amount shows a misunderstanding of how A&G overhead costs are determined and applied to capital projects. She stated the level of detail that Mr. Latham expects contravenes the purpose of an A&G overhead.

Ms. Behme explained how CEI South's practice is in accordance with FERC Uniform System of Accounts ("USOA") Electric Plant Instructions Nos. 3 and 4. Instruction 3 (Components of Construction Cost), provides for the inclusion, where applicable, of direct and overhead costs in the cost of construction properly includible in electric plant accounts. Instruction 4 (Overhead Construction Costs) goes on to discuss overheads specifically and authorizes a utility to include overhead costs, such as general office salaries and expenses, applicable to construction as a part of its assets. Accordingly, she said, Petitioner's allocation of A&G overhead charges to the Wind Project is not only consistent with CEI South's policy but is also in accordance with guidance under the FERC USOA. Ms. Behme testified that Petitioner received approval of capitalized A&G overhead for similar projects, including Cause Nos. 45564, and CEI South has applied an A&G overhead to capital projects dating back to its last base rate proceeding in Cause No. 43839.

Ms. Behme explained that allocation of A&G to project development is not duplicative, and these costs are typically included in the costs of capital projects given these capital projects are supported by personnel, facilities, and systems in supporting roles not directly involved in the project. She stated the Wind Project, despite being a BTA, is no different in this regard, as it will still be supported by CEI South's management and administrative functions. Ms. Behme expressed concern that the total reduction recommended by Mr. Latham to the Wind Project cost estimate related to A&G overhead appears to be more than double the total amount of A&G overhead for the Wind Project. With respect to the allocation of A&G for spare parts, Ms. Behme explained that it is normal for a utility to capitalize spare parts that are critical to the nature of the operation of the asset and because of the long lead time to acquire new parts. Similarly, CEI South is requesting to include study/prework costs for recovery as part of the total Wind Project costs, and therefore an A&G allocation should also be included. Ms. Behme also pointed out that, contrary to Mr. Latham's assertion, Petitioner included the AFUDC amount in Petitioner's Exhibit 2, Workpaper FSB-1 (Confidential).

In response to Mr. Inskeep's presentation of an O&M estimate, Ms. Behme testified that if the CPCN is granted, there will be actual known values of O&M included at the time of filing for cost recovery, whether in the next general base rate case or through the CECA mechanism. Any incremental deferred O&M amounts will continue to be recovered through the CECA mechanism in the annual filings or a future general base rate case.

Ms. Behme also defended CEI South's proposal to include for recovery costs in the generation transition asset allocation and planning costs for the Wind Project. She stated all planning costs incurred, and expected to be incurred, are incremental costs required to develop the Preferred Portfolio. Ms. Behme pointed out that CEI South has requested and received approval from the Commission for projects that included similar allocated deferred planning costs and generation transition asset allocated amounts. Ms. Behme cited to FERC 183 and 107 Account

descriptions and testified that all the planning costs to be included in the Wind Project are incremental expenditures to the capital project and must be incurred as part of construction. She stated these costs initially meet the criteria to be deferred on the balance sheet, in accordance with FERC 183 or FERC 107, as applicable, and are therefore not considered operating costs of Petitioner in accordance with the FERC USOA. Ms. Behme described further Petitioner's request for deferral authority for planning costs if the CPCN is denied.

## **6. Commission Discussion and Findings.**

**A. Request for a CPCN under Ind. Code ch. 8-1-8.5.** CEI South proposes to purchase and acquire the Wind Project through a BTA. Ind. Code § 8-1-8.5-2 states that a public utility must obtain a CPCN from the Commission prior to constructing, purchasing, or leasing a facility for the generation of electricity. Ind. Code § 8-1-8.5-5 sets forth the criteria for approval of a utility specific generation proposal. The Commission must consider the items set forth in Ind. Code § 8-1-8.5-4 and make a finding as to: the best estimate of cost of the project based on the evidence of record, whether the proposal is consistent with the Commission's statewide analysis or a utility specific proposal, and whether the public convenience and necessity requires the project.

**i. Best Estimate of the Cost.** CEI South witness Bradford testified to the best estimate of the costs of the Wind Project totaling \$636 million. The breakdown of the costs is confidential and set forth in Mr. Bradford's direct testimony. Pet. Ex. 1-C at 16. The Wind Project will be fully developed, engineered, procured, and constructed by the Developer and then acquired by CEI South pursuant to a BTA in a transfer of the Project Company established to facilitate ownership of the Wind Project. Under the proposed BTA, the Project Company will own the Wind Project until it achieves substantial completion, upon which time, CEI South will acquire the Wind Project and all its attributes, which are being held in the subsidiary limited liability company. At or about that same time, the separate corporate structure will be collapsed and CEI South will then own the generating facility directly.

The evidence demonstrates the cost estimate for the Wind Project was based upon competitive bidding built upon the RFPs that Petitioner conducted as part of the IRP process.<sup>2</sup> CEI South engaged 1898 & Company to evaluate, score, and rank proposals based on established quantitative and qualitative scoring criteria that assess reliability, cost, and certainty. While the Wind Project was not submitted into one of CEI South's RFPs, it was identified through collaboration with 1898 & Company to identify other potentially viable wind projects that had either been submitted in other utility RFPs or had entered the MISO Generator Interconnection Queue. The assessment of the 2021 Wind Bids included: LCOE, energy settlement location, interconnection and development status, and project risk factors like credit worthiness, development experience, project maturity, delivery date, project site control status, permits, and

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<sup>2</sup> Ind. Code § 8-1-8.5-5(e) also contains provisions concerning cost estimates being based upon competitively bid engineering, procurement, or construction contracts and that the actual construction will be competitively bid. CEI South is not proposing to construct a generation facility but to acquire a completed facility after it has already been constructed. Ind. Code § 8-1-8.5-5(e) by its terms only applies if the applicant proposes to construct the facility. Nevertheless, the Wind Project arose out of competitive bids received in a process building on the 2019 All-Source RFP conducted for purposes of CEI South's 2019/2020 IRP. Therefore, we need not address this portion of CEI South's requested ARP.

zoning. The evidence demonstrates that the Wind Project pricing is competitive with the wind proposals submitted in the 2022 All-Source RFP.

While the OUCC contends that CEI South bears a burden of proof to show the Wind Project “is the most affordable option,” that is not the standard the Commission applies in determining whether to issue a CPCN. In its June 28, 2022 Order in Cause No. 45564 (the “45564 Order”) the Commission found:

While we have indicated in previous CPCN cases that least-cost planning is an essential component of our CPCN law, we have also recognized that least-cost planning does not require selection of the absolute lowest cost alternative. *See, e.g., Indianapolis Power & Light Co.*, Cause No. 44339, at 20 (May 14, 2014) (quoting *Southern Indiana Gas & Elec. Co.*, Cause No. 38738, at 5 (Oct. 25, 1989)). We have defined least-cost planning as a planning approach that will find the set of options most likely to provide utility services at the lowest cost once appropriate service and reliability levels are determined. We also consider the risk created by future uncertainty. Ind. Code ch. 8-1-8.5 does not require a utility to ignore its obligation to provide reliable service or to disregard its exercise of reasonable judgment on how best to meet its obligation to serve. If a utility reasonably considers and evaluates the statutorily required options for providing reliable, efficient, and economic service, then the utility should, in recognition that it bears the service obligations of Ind. Code § 8-1-2-4, be given some discretion to exercise its reasonable judgment in selecting options to implement which minimize the cost of providing such services. *Id.*

45564 Order at 21.

The OUCC also took issue with the certainty of the \$636 million cost estimate given the fact CEI South is still in the process of negotiating a BTA and the lack of customer protections that are necessary and customary in such BTA transactions. In support of its cost estimate, CEI South’s witness Bradford provided a copy of the negotiated Term Sheet, which sets out the initial terms intended to insulate the parties from out-of-market terms and establishes the foundation for the proposed BTA. Mr. Bradford explained that the negotiated BTA will ultimately include terms and conditions designed to protect customers. While not exhaustive, he identified and explained the consumer protections that the anticipated BTA will include related to purchase price, schedule, project size, performance, warranties, legal, financial, and programmatic and engineering. Pet. Ex. 2-R at 30-31. We find the Term Sheet along with these customer protections that CEI South confidently assured would be included in the BTA to provide sufficient probative evidence for our review of the Wind Project’s estimated cost.<sup>3</sup>

Additionally, the OUCC expressed concern with the certainty of Petitioner’s LMP analysis and possibility of transmission congestion, which could lead to increased costs for the Wind Project. Mr. Bradford testified that CEI South will operate the Wind Project in the MISO market

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<sup>3</sup> We note the Commission previously addressed a similar situation in *Ind. Mich. Power Co.*, Cause No. 44511 at 9 (IURC Feb. 4, 2015), wherein the Commission explained that it did not believe an open-ended project preapproval is reasonable and ultimately linked the utility’s cost estimate and other project assurances to the Commission’s reasonable and necessary determination.

just as it does its other units. He reiterated that the Wind Project is well-sited with respect to foreseeable congestion risk and reaffirmed the analysis of historical LMPs that shows the site is not expected to have significant congestion. He also agreed it is impossible to know at this time what congestion costs will be but noted MISO exists for this reason and provides instruments to manage congestion risk.

We note that Petitioner is not seeking approval of the BTA in this Cause but is instead seeking a CPCN to acquire wind generating capacity. As Petitioner noted in its response to OUCC DR 4.3, to the extent the BTA that is ultimately negotiated produces a total cost that exceeds the best estimate of costs, then Petitioner will not yet have approval of the additional cost through this Order. Pub. Ex. 5. At that point, Petitioner will bear the burden of demonstrating that the Wind Project continues to be needed and the additional cost is reasonable and that the consumer protections it anticipated it would include in the BTA were reasonably pursued and effectuated. If the OUCC or any other party believes the actual terms that were negotiated in the executed BTA should have been different and the cost increase should be rejected, they retain the right to take such a position.

As to the OUCC's and CAC's concerns about the inclusion of contingency in the request for cost recovery, we find that including a reasonable amount of contingency is standard in the industry and a reasonable approach to mitigate risk with respect to unidentified or unknown changes that could add to the cost of the project. We further find that Petitioner's inclusion of A&G overheads is a reasonable methodology consistent with CEI South's corporate policy, guidance under the FERC USOA, and this Commission's findings in other cases for similar projects, including the 45564 Order.

Based on the evidence, the Commission finds that CEI South has provided the best estimate for the cost of the proposed Wind Project in total amount of \$636 million and that it is appropriate to link this estimate along with the customer protections identified by Mr. Bradford as a condition to the issuance of this CPCN and our finding that the Wind Project is reasonable and necessary. To the extent that actual costs exceed Petitioner's cost estimate, Petitioner must seek a modification of this CPCN before seeking to recover any increase in costs.

**ii. Consistency with a Utility Specific Proposal.** Ind. 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 areas served by the utility." Mr. Rice sponsored Petitioner's 2019/2020 IRP as Petitioner's Exhibit 3, Attachment MAR-1. 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 will be 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 Wind Project is consistent with the Preferred Portfolio identified in Petitioner's 2019/2020 IRP, which includes a variety of generation sources. CEI South's 2019/2020 IRP identified a need for the addition of 700 to 1,000 MW of solar resources (some solar paired with storage) and 300 MW of wind resources. The Wind Project would account for 200 MW of the identified 300 MW of needed wind capacity. The record reflects that with the retirement of A.B. Brown Units 1 and 2, F.B. Culley Unit 2, and the anticipated exit of the Joint Operating Agreement for Warrick Unit 4, the Wind Project is needed to support CEI South's PRMR position and ensure the required capacity in each season is fulfilled, both in the near term (2024/2025) and in the long term.

Neither the OUCC nor the CAC claimed the Wind Project is inconsistent with the 2019/2020 IRP, and the CAC expressed support of Petitioner's pursuit of renewable generation, including wind energy. Although the OUCC asserted that the project cost exceeds that used as an assumption during 2019/2020 IRP modeling, Mr. Bradford pointed out that increased project costs are being experienced by the entire utility industry, yet the Wind Project remains competitive with the results of CEI South's recent 2022 All-Source RFP. The evidence shows that while costs in the 2019/2020 IRP were significantly lower than the best estimate of the costs of the Wind Project in this proceeding, this is true of many costs in the model, including energy and capacity purchases. Nevertheless, wind is still being selected in Petitioner's 2022/2023 IRP modeling even with an update to reflect higher costs.

As the Commission has previously found, "[i]nherently, integrated resource plans are performed at a point in time and use modeled scenarios to show how resources perform over a variety of alternative future conditions." *N. Ind. Pub. Serv. Co., LLC, et. al.*, Cause No. 45462 at 62 (IURC May 5, 2021). The evidence demonstrates CEI South utilized an array of best practices, including basing model inputs on its 2019 All-Source RFP, which allowed for an informed analysis. CEI South's Generation Transition Plan includes both ownership and PPA structures, staggered at various lengths between 20 and 30 years, which we continue to find helps to diversify CEI South's portfolio. The Preferred Portfolio performed well across the various metrics in the balanced scorecard used to evaluate portfolio performance across a variety of objectives over a wide range of potential futures, thus demonstrating the flexibility to adapt to changing market conditions.

Based upon the evidence presented, we find the Wind 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." Mr. Bradford testified that the Wind Project would reduce risk by adding diversity to Petitioner's generation portfolio, not only in relation to resource mix and life expectancy of the asset, but in relation to investment type.

The Wind Project will account for 200 MW of the total 300 MW of installed wind capacity identified as necessary in CEI South's 2019/2020 IRP. At the time of Petitioner's filing of its case-in-chief, this wind resource was expected to account for approximately 15 MW toward CEI South's PRMR in the summer, and approximately 40 MW of accredited capacity in the winter.

While these amounts will likely decline slightly over time to account for the expected penetration of wind on the MISO system, Mr. Rice testified that the effective load carrying capability for wind is not expected to decline as dramatically as solar given the large amount of wind currently on the MISO system. The record also reflects that CEI South's wind generation will be supported by dispatchable resources within the Preferred Portfolio, including Culley Unit 3 and the two new gas combustion turbines recently approved in Cause No. 45564.

In addition, Petitioner presented evidence that CEI South's proposal in this proceeding is consistent with the five pillars identified in the Final Report issued by Indiana's 21<sup>st</sup> Century Energy Policy Development Task Force dated November 19, 2020: environmental sustainability, reliability, resilience, stability, and affordability.<sup>4</sup>

The Wind Project promotes environmental sustainability because wind is a renewable, clean energy source. Mr. Bradford explained that wind energy projects do not use fossil or nuclear fuel, which means there is no need for mining or drilling for fuel, no radioactive or hazardous wastes, no use of water for steam or cooling, and no emissions of greenhouse gases or other pollutants. The Wind Project will also help CEI South and central and southwestern Indiana move towards a cleaner generation portfolio by lowering the amount of CO<sub>2</sub> emitted from generating resources.

Traditionally, planning for reliability focused on meeting the annual peak demand and the planning reserve margin. The transition to a greater reliance on renewable resources means the analysis of reliability must also consider energy adequacy across all hours of the year. The evidence shows that the Wind Project promotes reliability because the addition of energy from the Wind Project is needed to supply CEI South's aggregate power and energy demands, particularly as it is preparing to retire 730 MW of coal resources. Wind resources are a good complement to solar resources given the difference in their peak production times, particularly in the winter when solar resources are at their lowest level of energy production. Wind resources complement solar resources in a diversified portfolio and are a proven technology that will help ensure CEI South can continue to meet its PRMR. Additionally, electricity generation from wind is not subject to cost or deliverability concerns related to fuel. Mr. Rice also explained MISO is projecting that the capacity credit associated with wind will remain relatively stable, diminishing slightly over time, and generally aligns with CEI South's winter peak need for energy, and should, therefore, shield customers from high energy costs. We agree that one of the best ways to plan in an uncertain environment is to have a diverse portfolio, which provides a hedge against unforeseen changes in regulations, technologies, and the market.

As to resiliency, the evidence shows that CEI South's Preferred Portfolio, which includes wind energy, will help minimize the risk of sustained disruption and reasonably diversify CEI South's generation portfolio to meet current and future load and reserve margin requirements. Mr. Bradford acknowledged that while wind resources are intermittent in nature, they are no more impacted by short circuits or unanticipated loss of system components than other generation resources. CEI South has also proposed to pair renewable generation with quick start and fast

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<sup>4</sup> We note the Indiana Legislature recently passed HEA 1007, which becomes effective on July 1, 2023, requiring consideration of these five factors when making decisions concerning Indiana's electric generation resource mix, energy infrastructure, and electric service ratemaking constructs.

ramping dispatchable natural gas combustion turbine generation, which will further enhance the ability of the system to withstand sudden disturbances.

The OUCC and CAC both raised concerns with respect to affordability and expected bill impacts. The record reflects CEI South has taken substantial efforts to keep customer bills relatively flat and below inflation levels over the past decade, including through the selection of the Preferred Portfolio and the securitization of AB Brown Units 1 and 2. The record also reflects that CEI South will experience O&M and fuel savings from plant closures as well as savings associated with selling RECs from renewable projects. Petitioner's evidence demonstrates a commitment to prioritizing affordability in its IRP process and implementation of its Generation Transition Plan.

The Wind Project is consistent with CEI South's 2019/2020 IRP and its Generation Transition Plan, and it will add diversity to CEI South's generation portfolio, which reduces risk. The Wind Project is needed to meet energy and capacity needs on Petitioner's system and will reduce the risk of exposure to energy market prices. In addition, fuel diversity and renewable resources protect electric utilities and their customers from variables like fuel price fluctuations and changes in environmental regulations that can drive up costs. Along with fuel diversity, and consistent with our findings in Cause No. 45501, CEI South's proposed Wind Project will diversify its portfolio by adding a utility-owned wind resource that is expected to operate for 30 years, after which the facility is projected to continue to produce and provide low-cost power benefitting CEI South's customers. This long-term operation of a resource with no fuel costs should help insulate CEI South's customers from the risk of rising energy prices.

The OUCC also took issue with the fact that the Wind Project is located outside Indiana, arguing the Wind Project will not contribute to the economic development of Petitioner's service territory. Although CEI South would prefer to acquire a wind project within Indiana, Mr. Bradford explained why Petitioner was not able to secure such a project at this time. The evidence reflects the Wind Project will play a critical role in balancing customers' increasing desires for CEI South to provide renewable energy options while ensuring the safe and reliable provision of electric service. Petitioner also presented evidence that bringing the Wind Project online as part of CEI South's generation portfolio directly addresses large customers' demand for renewable energy supply and could aid in attracting new business to the region, which enhances economic development.

Regarding the OUCC's concern with the stated capacity of the Wind Project and the potential for line losses, the evidence shows that electrical line losses were considered and are represented in the Wind Project's annual expected output. As Mr. Bradford explained, locational line losses do not reduce the energy generated by the Wind Project and are part of the wholesale power market dynamics compensated by LMP. As discussed earlier, the OUCC was also concerned about the potential impact of congestion on LMPs causing increased costs for the Wind Project. Petitioner's analysis demonstrated that the project site is not expected to have problems with increased congestion.

Based on the evidence, as discussed above, the Commission finds Petitioner has shown a need for the proposed Wind Project and that public convenience and necessity require, or will require, Petitioner's acquisition of the Wind Project through the proposed BTA.

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.

As described in the summary of the evidence above, Petitioner conducted multiple RFPs to identify projects available to meet its capacity demands. The responses were varied and enabled CEI South to consider a variety of alternatives. The evidence demonstrates that CEI South employed an array of quantitative and qualitative measures typical in the industry to review the projects. Ultimately, CEI South selected the Wind Project based on its scoring, in relation to four other proposals, on cost, project/development certainty, location, and developer experience. Mr. Bradford stated that the Wind Project's LCOE was the lowest of the available projects. While the OUCC and CAC raised questions regarding aspects of the scoring and methodology CEI South used to select the Wind Project, the process used by CEI South to evaluate the 2021 Wind Bids from which the Wind Project was selected is similar to the process used by other utilities in evaluating and selecting power supply options. The evidence demonstrates the Wind Project is the best choice from among the identified available projects.

The CAC, while generally supportive of wind generation, suggested CEI South should pursue more PPA projects, which Mr. Inskeep viewed as more beneficial from a ratepayer perspective. However, the evidence demonstrates that the levelized cost of the Wind Project is competitive with comparable PPAs. In addition, we agree with Mr. Bradford that there are different risks associated with BTAs and PPAs and a mix of the two structures as part of Petitioner's generation portfolio is reasonable to diversify those risks and is in the best interest of both the utility and its customers.

Neither the OUCC nor the CAC provided guidance on alternatives to address CEI South's near-term capacity and energy needs and complement CEI South's near-term solar generation acquisitions. The evidence shows that denial of the CPCN would require CEI South to start the selection process over, which would delay securing comparable replacement generation and likely subject CEI South's customers to greater price risk through potential energy market purchases. Mr. Bradford testified a selection process would take at least 3.5 years and probably longer, starting with soliciting available projects in a challenging market, evaluating and selecting a project,



negotiating a contract, filing the CPCN, and then executing the project. Additionally, the MISO Generator Interconnection Queue process is currently experiencing a backlog. The record also shows that the pricing for wind resources, given the scarcity of available projects and increasing demand from utilities, is not likely to significantly decrease in the near-term.

Given the foregoing evidence, 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.** Based upon the evidence of record, the Commission finds that CEI South has met the requirements of Ind. Code ch. 8-1-8.5. The evidence shows that the acquisition of the Wind Project is needed for Petitioner to continue implementing the Preferred Portfolio identified in its 2019/2020 IRP. Although costs have increased since the 2019/2020 IRP, the multiple RFPs conducted by CEI South provide support that the Wind Project is competitive with recently bid projects. The Wind Project will provide CEI South with needed energy and capacity in the near term, further diversify its generation portfolio, and provide risk mitigation for the utility and its customers, including fuel cost volatility. Accordingly, the Commission finds a CPCN for CEI South's acquisition of the Wind Project as proposed should be issued.

B. **Clean Energy Project under Ind. Code ch. 8-1-8.8.** Ind. 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” 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). Energy from wind is specifically identified as a clean energy resource in Ind. Code § 8-1-37-4(a)(1), making it a renewable energy resource under Ind. Code § 8-1-8.8-10.<sup>5</sup> Through the proposed BTA, CEI South is undertaking a project to develop energy from wind. Accordingly, the Commission finds that CEI South is an eligible business and the Wind Project is a clean energy project for purposes of reviewing CEI South's request for financial incentives under Ind. Code § 8-1-8.8-11.

Although Ind. Code ch. 8-1-8.8 does not set forth specific factors the Commission should consider in determining the reasonableness and necessity of a clean energy project, the Commission has previously considered, in similar cases, some of the factors outlined 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. *See S. Ind. Gas and Elec. Co.*, Cause No. 45501 at 34 (IURC Oct. 27, 2021) and *N. Ind. Pub. Serv. Co.*, Cause No. 45194 at 52 (IURC Aug. 7, 2019). These factors were discussed above, and we reiterate below the basis for our conclusion that the Wind Project is a clean energy project.

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<sup>5</sup> Ind. Code § 8-1-2-6 does not require a public utility's property be located in Indiana and Ind. Code § 8-1-8.8-10 does not require a renewable energy resource be located in Indiana. Because we find the location of the Wind Project does not impact our decision herein, we need not address this portion of CEI South's requested ARP.

1. Cost of the Wind Project. As discussed in Paragraph 6.A.1. above, the evidence demonstrates the estimated cost of the energy to be obtained from the Wind Project is reasonably priced compared to other alternatives. The Wind Project was selected based on the results of a competitive bid process through which the Wind Project has consistently been shown to be the best all-around option for CEI South to pursue. Any discrepancy in scoring identified by the OUCC has not been shown change this fact. Additionally, to the extent the cost of the Wind Project is greater than \$636 million after negotiation of the BTA, CEI South will be required to obtain additional Commission approval before any recovery over its estimate by demonstrating the reasonableness of those additional costs, taking into consideration the consumer protections CEI South asserted would be provided.

2. Consistency of the Wind Project with CEI South's 2019/2020 IRP. As discussed in Paragraph 6.A.ii above, the Wind Project is consistent with CEI South's 2019/2020 IRP. The Preferred Portfolio calls for 300 MW of wind installed capacity and the Wind Project will fulfill 200 MW of this need.

3. Need for the Wind Project. As discussed in Paragraph 6.A.iii above, the evidence demonstrates CEI South has a need for capacity in the near term, as well as in the long term. In addition to meeting this capacity need, the Wind Project will diversify CEI South's generation portfolio, provide energy from wind to complement CEI South's other generation sources, and meet customers' increasing desire for renewable energy options. While CAC recommended CEI South pursue PPAs for wind energy instead of the BTA, the evidence shows that a combination of these structures provides an appropriate balance of the risks associated with both.

4. Competitive Solicitation for the Wind Project. As discussed in Paragraph 6.A.i above, Petitioner's evidence demonstrates the Wind Project is the result of a competitive procurement process built on a robust set of RFPs and reflects current market conditions. CEI South evaluated multiple options for meeting its capacity needs and relied on an independent, qualified third party to evaluate RFP responses and recommend projects for commercial negotiation.

The Commission finds, consistent with our findings and discussion above, that the Wind Project is a clean energy project under Ind. Code § 8-1-8.8-11. We also find the energy and capacity that the Wind Project provides will be a reasonable and necessary addition to CEI South's portfolio of generating resources to meet the need for electricity within CEI South's service area. The Wind Project will mitigate risk through diversification and use of an economic mix of resources that provides flexibility.

C. Financial Incentives. 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. The financial incentives CEI South seeks with respect to the Wind Project consist of timely recovery of the costs of the Wind Project and certain other accounting authority. Specifically, CEI South proposes to include the eligible revenue requirement amounts associated with the Wind Project, either in base rates in CEI South's next general rate case or in its CECA mechanism approved in Cause No. 44909 for renewable energy projects,

including costs associated with: (1) capital investment to complete the acquisition; (2) deferred PISCC; (3) deferred depreciation expense; (4) deferred O&M expense; (5) O&M expenses, depreciation, property tax, and income taxes; and (6) credits related to REC sales.

The OUCC recommended Petitioner's cost recovery be limited to a levelized rate. However, we find that the availability of the PTCs to directly offset the revenue requirement, lowering the cost in the first ten years of operation of the Wind Project, renders a levelized cost approach unnecessary and such a departure from the *de facto* traditional ratemaking approach is not warranted based on the case specific evidence in this proceeding. We find that CEI South's customers should receive the full value of the PTC if CenterPoint Energy, Inc. is able to fully utilize the PTC as anticipated. If the credit must be monetized by transferring it as described by Ms. Story, we find customers should receive the full amount monetized.

The CAC opposed the inclusion of certain planning costs for the Wind Project in Petitioner's timely recovery of costs as retroactive ratemaking. The evidence reflects that CEI South is allocating the appropriate portion of the deferred planning costs associated with the Wind Project and this amount has been deferred pursuant to the FERC USOA, which the Commission has promulgated as a rule. CEI South has requested and received approval from the Commission for projects that included similar allocated deferred planning costs and generation transition asset allocated amounts. *See e.g.*, 45564 Order. In addition, Petitioner's request in this Cause is factually distinguishable from that presented in *Ind. Office of Util. Consumer Counselor v. Duke Energy Ind. LLC*, 183 N.E.3d 266 (Ind. 2022), wherein the Court found the utility's requested cost recovery should have been denied because the costs had been previously adjudicated in a prior rate case. In this case, we have not been presented with any evidence that these costs were previously adjudicated.<sup>6</sup>

The evidence shows that annually, financing costs for the Wind Project are approximately \$36.6 million and the associated depreciation expense is approximately \$21.9 million, representing over 40% of CEI South's 2021 electric net operating income of \$132.7 million. Without the requested accounting treatment, Ms. Behme testified, CEI South could suffer a material adverse financial consequence. The requested accounting treatment would allow CEI South the opportunity to immediately offset the negative financial impact to monthly pre-tax earnings by approximately \$4.9 million. Once the project is placed in-service, depreciation will commence.

The evidence also shows that CEI South will incur incremental O&M expenses corresponding to the cost incurred pursuant to an O&M contract with a third party and there will be a period of time after those contract expenses begin and before rate recovery begins. Thus, CEI South seeks to defer such O&M for future recovery until recovered through either base rates or the CECA mechanism. In addition, it is possible that CEI South will incur other O&M expense or accrue property tax expense associated with the Wind Project before property tax expense is being recovered through base rates or the CECA mechanism and Petitioner also seeks to defer such expense for future recovery.

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<sup>6</sup> We also note that the Indiana Legislature recently enacted HEA 1417, which became effective on April 20, 2023, and amended Ind. Code § 8-1-2-10 to specifically allow a utility to defer incurred costs for Commission consideration and future recovery in a regulatory asset consistent with accounting rules.

As appropriate financial incentives, we find CEI South should accrue PISCC at Petitioner's pre-tax WACC on capital investment for the Wind Project beginning with the month after the investment is placed in service until the date the investment is included for recovery through either the CECA mechanism or in base rates. CEI South should also be authorized to defer depreciation expense associated with the Wind Project until such expense is included for recovery in the CECA or base rates. CEI South should also be authorized to defer O&M expenses incurred pursuant to an O&M contract with a third party, as well as other O&M expense incurred or property tax expense accrued before such expenses are recovered through base rates or the CECA. We find that all such deferred expenses should be recovered through the CECA. Further, we find CEI South should record the accrued PISCC and deferred depreciation and expenses as regulatory assets in FERC Account 182.3 until such time that they can be included for recovery in rates. CEI South should begin amortization of the regulatory asset as a recoverable expense for ratemaking purposes over the estimated life of the Wind Project (approximately 30 years) commencing on the date CEI South's rates include recovery of a return and depreciation on the Wind Project, with the unamortized portion included in rate base upon which CEI South is authorized to earn a return.

We further find that in the event the Wind Project assets are otherwise not placed in-service, CEI South should be authorized to defer costs associated with the Wind Project in a regulatory asset for recovery consideration in a future general rate case or to be capitalized as part of an alternative generation project. CEI South shall also use the CECA mechanism to reflect the PTC and RECs generated by the Wind Project to the extent the PTC and RECs differ from amounts reflected in base rates.

The CAC raised concerns with the use of a 4CP demand allocator if cost recovery for the Wind Project occurred through the CECA. The evidence demonstrates that CEI South will be filing a base rate case before the end of this year. Thus, we find the proper allocation among rate classes of the Wind Project costs will be evaluated, and updated as applicable, for all rate schedules, including the CECA, within CEI South's next general rate case.

To the extent the Wind Project is included in the CECA, we find CEI South's statutory NOI for purposes of the earnings test under Ind. Code § 8-1-2-42(d)(3) should be adjusted by including the operating income associated with the Wind Project as part of CEI South's authorized NOI, consistent with the treatment of earnings associated with CEI South's CECA mechanism from Cause No. 44909.

While the evidence demonstrates that any AFUDC associated with the Wind Project is expected to be a small percentage of the total cost, if AFUDC were to become a material amount, Petitioner's evidence shows CEI South intends to consider using CWIP treatment through the CECA to address it. We find such consideration to be reasonable and appropriate.

No party presented evidence opposing the application of CEI South's proposed depreciation rate for the Wind Project. We find the initial annual depreciation rate for the Wind Project should be established at approximately 3.33%.

Clean energy projects are specifically encouraged by Ind. Code ch. 8-1-8.8. Ind. Code § 8-1-8.8-11 authorizes the Commission to create financial incentives for the development of

alternative resources. Based on the evidence presented, we find approval of the relief CEI South seeks is consistent with this Indiana energy and regulatory policy.

**D. Reporting and Ongoing Review of the Wind Project.** Ind. Code § 8-1-8.5-6(a) provides:

In addition to the review of the continuing need for the facility under construction prescribed in [Ind. Code § 8-1-8.5-5.5] of this chapter, the commission shall, at the request of the public utility, maintain an ongoing review of such construction as it proceeds. The applicant shall submit each year during construction, or at such other periods as the commission and the public utility mutually agree, a progress report and any revisions in the cost estimates for the construction.

CEI South requested that the Commission conduct ongoing review of the Wind Project, proposing to submit periodic updates on the Wind Project until it goes into service, including progress reports and any revisions to the cost estimates.

The Commission finds that an effective and administratively efficient ongoing review process should employ both compliance filings in this docket and the ongoing CECA proceedings. Accordingly, we find that until the Wind Project reaches commercial operation, CEI South shall semi-annually report to the Commission through compliance filings under this Cause, a summary of the information related to the Wind Project, including: (1) updates on the status and terms of the BTA, (2) construction progress, and (3) revisions to the cost estimate. The final report, submitted within 30 days of when commercial operation is achieved, shall contain: (1) the actual total cost of construction; (2) the total MW output for the facility; and (3) the actual in-service (commercial operation) date for the facility. Upon execution of the BTA, CEI South shall file the BTA confidentially under this Cause. Additionally, CEI South shall provide an annual update to the Wind Project in its annual CECA filings to afford all parties an opportunity to address any cost estimate variances or project development concerns.<sup>7</sup>

**E. Conclusion.** We find the evidence in this proceeding supports granting CEI South a CPCN to purchase and acquire through a BTA the Wind Project and approving CEI South's proposed method of cost recovery. The Wind Project will provide an undisputed need for capacity and energy, diversify CEI South's generation portfolio, provide environmental benefits, and defend against volatility in fuel costs. Although the OUCC raised concerns with the certainty of Petitioner's cost estimate, if a change in costs should cause the economic viability of the Wind Project to change, then the cost will be outside the best estimate that we have approved and will be subject to our ongoing review. It would be short-sighted to reject this project because of the possibility of cost increases. The Commission, therefore, finds Petitioner should be authorized to timely recover the costs of the Wind Project through recovery of eligible revenue requirement amounts associated with the Wind Project in, preferably, CEI South's next general rate case or in the CECA mechanism.

Ultimately, we are persuaded that the Wind Project is consistent with CEI South's 2019/2020 IRP, which was developed to meet the current reliability and resource adequacy

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<sup>7</sup> Should circumstances warrant a timelier action than the annual CECA proceeding provides, a sub-docket to this proceeding is an available option for consideration.

constructs of MISO and the Commission. We find that approval of the Wind Project and the associated relief Petitioner has sought herein is in the public interest, will enhance or maintain the reliability and efficiency of service provided by Petitioner, and is otherwise consistent with Ind. Code § 8-1-8.8-11. Investment in wind energy resources is reasonable and appropriate and will benefit CEI South's customers.

**F. Expedited Proceeding.** The CAC expressed concern with its ability to thoroughly review Petitioner's proposal in this case given CEI South's request for a Commission decision concerning all requested relief within the 120 days provided in Ind. Code § 8-1-8.8-11(d) for a determination on a project's eligibility for financial incentives. While we share the CAC's concerns with the accelerated timeframe for consideration of the CPCN, the record reflects the urgency with respect to the Wind Project was warranted. However, in the future, we strongly encourage CEI South to not delay and file cases that seek authority beyond, or in addition to, a project's eligibility for financial incentives as soon as reasonably practicable.

**7. Confidential Information.** CEI South filed motions for protection and nondisclosure of confidential and proprietary information on January 10, 2023, as supplemented on January 30, 2023, and March 6, 2023. In its motions, CEI South stated certain information redacted in the evidence contained trade secrets as defined under Ind. Code § 24-2-3-2. Docket entries were issued on January 20, 2023, January 31, 2023, and March 9, 2023, finding such information to be preliminarily confidential and protected from disclosure under Ind. Code §§ 8-1-2-29 and 5-14-3-4. The confidential information was subsequently submitted under seal.

The OUCC expressed concern over transparency in this proceeding, arguing that some of Petitioner's redactions were beyond what was needed to protect trade secrets. However, no evidence was offered to dispute that the redacted information was trade secret and entitled to confidential protection. As noted by Mr. Rice, many utilities are seeking wind generation, and there is a scarcity of wind generation available. While many of the details of the proposed BTA and Wind Project have been shielded from public disclosure, Mr. Bradford's rebuttal testimony shows these protections are necessary to preserve the viability of continuing to pursue the Wind Project. In addition, the Commission and the OUCC, as the statutory representative of the public, have had access to all confidential information since the case was filed.

Based on the affidavits and testimony provided, the Commission finds the information for which CEI South seeks confidential treatment is confidential pursuant to Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3, is exempt from public access and disclosure by Indiana law and shall continue to be held by the Commission as confidential and protected from public access and disclosure.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. CEI South is granted a certificate of public convenience and necessity for CEI South's proposed acquisition of the Wind Project through a BTA. This Order constitutes the Certificate.
2. CEI South's estimated cost for the Wind Project is approved.

3. CEI South's proposed Wind Project is approved as a reasonable and necessary clean energy project under § 8-1-8.8-11.

4. CEI South's proposed financial incentives and associated ratemaking and accounting treatment for the Wind Project, pursuant to Ind. Code § 8-1-8.8-11, are approved.

5. Petitioner's request for an initial annual depreciation rate for the Wind Project assets of 3.33% is approved.

6. In the event the Wind Project assets are not placed in-service, CEI South is authorized to defer costs associated with the Wind Project in a regulatory asset for recovery consideration in a future general rate case or to be capitalized as part of an alternative generation project.

7. Petitioner's request for ongoing review is approved and Petitioner shall file under this Cause the semi-annual reports discussed in Finding Paragraph 6.D. above. Petitioner shall also file confidentially under this Cause an executed copy of the BTA. Additionally, CEI South shall file annual updates to the Wind Project in its annual CECA filings.

8. The Confidential Information submitted under seal in this Cause pursuant to CEI South's requests for confidential treatment as well as the confidential information to be submitted in this Cause pursuant to Ordering Paragraph 7 above is determined to be confidential trade secret information as defined in Ind. Code § 24-2-3-2 and shall continue to be held as confidential and exempt from public access and disclosure under Ind. Code §§ 8-1-2-29 and 5-14-3-4.

9. This Order shall be effective on and after the date of its approval.

**HUSTON, VELETA, AND ZIEGNER CONCUR; FREEMAN DISSENTING:**

**APPROVED: JUN 06 2023**

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

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**Dana Kosco  
Secretary of the Commission**

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) )  
GRANTING CEI SOUTH A CERTIFICATE OF PUBLIC )  
CONVENIENCE AND NECESSITY, PURSUANT TO IND. )  
CODE CH. 8-1-8.5, TO PURCHASE AND ACQUIRE, )  
THROUGH A BUILD TRANSFER AGREEMENT (“BTA”), A )  
WIND ENERGY GENERATING FACILITY (THE “WIND )  
PROJECT”); (2) FINDING THE WIND PROJECT )  
CONSTITUTES A CLEAN ENERGY PROJECT UNDER IND. )  
CODE CH. 8-1-8.8; (3) APPROVING ASSOCIATED )  
RATEMAKING AND ACCOUNTING TREATMENT FOR )  
THE WIND PROJECT PURSUANT TO IND. CODE CH. 8-1- )  
8.5 AND § 8-1-8.8-11; (4) AUTHORIZING CEI SOUTH TO )  
ACCRUE POST-IN-SERVICE CARRYING COSTS )  
 (“PISCC”) AND DEFER DEPRECIATION, OPERATIONS )  
AND MAINTENANCE (“O&M”) AND PROPERTY TAX )  
EXPENSES ASSOCIATED WITH THE WIND PROJECT; (5) )  
IN THE EVENT THE CPCN IS NOT GRANTED OR THE )  
WIND PROJECT OTHERWISE IS NOT PLACED IN )  
SERVICE, GRANTING AUTHORITY TO DEFER, AS A )  
REGULATORY ASSET, COSTS ASSOCIATED WITH THE )  
WIND PROJECT FOR FUTURE RECOVERY THROUGH )  
RETAIL ELECTRIC RATES, (6) PROVIDING FOR )  
ONGOING REVIEW OF THE WIND PROJECT; (7) )  
AUTHORIZING THE ESTABLISHMENT OF )  
DEPRECIATION RATES FOR THE WIND PROJECT; (8) )  
APPROVING, TO THE EXTENT NECESSARY, AN )  
ALTERNATIVE REGULATORY PLAN (“ARP”) WITH )  
RESPECT TO THE WIND PROJECT UNDER IND. CODE )  
CH. 8-1-2.5; AND (9) APPROVING CONFIDENTIAL )  
TREATMENT OF THE BTA PRICING AND OTHER )  
NEGOTIATED COMMERCIAL TERMS AND RELATED )  
CONFIDENTIAL INFORMATION. )

CAUSE NO. 45836

APPROVED: JUN 06 2023



## **DISSENTING OPINION OF COMMISSIONER SARAH E. FREEMAN**

I respectfully dissent from the majority order because the public convenience and necessity do not require Petitioner to acquire the Wind Project at this time, because a cost estimate based on inadequate evidence cannot be a best estimate, and because the expedited nature of this proceeding—particularly when combined with the lack of transparency with respect to Petitioner’s ratepayers—does not serve the public interest.

First, the public convenience and necessity do not require Petitioner’s acquisition of the Wind Project at this time. In its efforts to complete its Generation Transition Plan, Petitioner is underestimating the benefits of readily-available alternative resources as well as the costs of purchasing the Wind Project as reflected in the record. The OUCC and CAC presented viable alternatives to the Wind Project that would close any potential capacity gap created by denial of the CPCN for the Wind Project until Petitioner identifies and presents a more reasonable wind project to the Commission for approval.

For example, Petitioner received a CPCN in 2022 in Cause No. 45564 for two natural gas combustion turbines with a combined accredited nameplate capacity of 460 MW; these combustion turbines are currently scheduled to be completed and in operation by the second quarter of 2025. *S. Ind. Gas and Elec. Co.*, Cause No. 45564 (IURC June 28, 2022), December 2022 Progress Report filed on December 28, 2022. The nameplate capacity of the Wind Project is 200 MW and its accredited capacity is expected to account for 15 MW in summer and 40 MW in winter. Petitioner has indicated it plans to operate the combustion turbines at net capacity factors of no more than 6% through 2039. *Id.* at Public Exhibit CX-1. By operating even one of the combustion turbines at a capacity factor greater than modeled, Petitioner could address its own concerns regarding reliability and resilience. Moreover, operating these already-approved resources instead of the Wind Project provides greater reliability for Petitioner’s ratepayers and the larger grid.

Relying on the market is always a risk, but it is not always a guaranteed negative risk as portrayed by Petitioner. Any temporary uncertainty or expense incurred by participating in the market outweighs imposing a known and unaffordable cost of at least \$636 million on Petitioner’s already overburdened ratepayers.

Next, the record does not support a finding that Petitioner has presented a best estimate for the cost of the Wind Project. Petitioner has presented a cost estimate for the Wind Project based upon competitive bidding derived from RFPs conducted as part of its 2019/2020 IRP process. This estimate totals \$636 million but is likely to increase before the Wind Project achieves operation. While the record includes evidence recognizing the effects of inflationary and other cost upswings between 2019 and 2023, it does not address why the Wind Project before us today is 100 MW less than the wind project contemplated in Petitioner’s 2019/2020 IRP. A smaller project presented at a drastically increased cost—and for which there is no final, binding agreement in the record at the time a decision is requested by Petitioner—does not constitute a best estimate that is consistent with a previously submitted utility plan.

Finally, in this expedited proceeding, Petitioner has presented to the Commission a project unsupported by requisite specificity to warrant a CPCN. A 120-day expedited proceeding is not *de facto* adverse to the public interest. However, a 120-day expedited proceeding combined with a highly redacted record, the absence of any binding agreement between Petitioner and Developer, and a cost estimate that is more likely a floor than a ceiling does not and cannot serve the public interest.

In supporting its requests for confidential treatment, Petitioner argues that disclosure of any term of the BTA would put Petitioner and its ratepayers at a competitive disadvantage. Even accepting this as true for the sake of argument, it is not an adequate justification to approve acquisition of a project with an incompletely-negotiated BTA. By agreeing to terms that effectively required Petitioner to initiate this proceeding prematurely with respect to the viability of the Wind Project, Petitioner and the Developer have denied the public—both as individual ratepayers and as ably represented by the OUCC and CAC—the opportunity to use the limited time of this expedited proceeding in a meaningful manner. This is not as egregious as a “justice delayed is justice denied” scenario but any delay in making the most relevant information publicly available to Petitioner’s ratepayers is not in the public interest.

Based on the evidence of record, I find that the public convenience and necessity do not require Petitioner’s acquisition of the Wind Project at this time, Petitioner has not provided a best estimate for the cost of the Wind Project, and the public interest is best served by denying Petitioner’s request for a CPCN. Similarly, I would deny Petitioner’s request to defer and recover costs incurred in preparing and presenting the Wind Project to the Commission because the Wind Project and its associated costs, as presented in the record, are neither reasonable nor prudent. For these reasons as well as those previously expressed, I record my dissent in this proceeding.