

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
DUNNS BRIDGE SOLAR CENTER, LLC FOR)
CERTAIN DETERMINATIONS BY THE) CAUSE NO. 45467
COMMISSION WITH RESPECT TO ITS)
JURISDICTION OVER PETITIONER'S)
ACTIVITIES AS A GENERATOR OF)
ELECTRIC POWER)

SUBMISSION OF AGREED TO PROPOSED ORDER

Petitioner, Dunns Bridge Solar Center, LLC, by counsel, respectfully files with the Indiana Utility Regulatory Commission an agreed to proposed order in this proceeding. Petitioner has incorporated in the proposed order the comments received from the Indiana Office of Utility Consumer Counselor, and the parties have agreed to the submission of the attached agreed to proposed order.

Respectfully submitted,



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Attorneys for Petitioner,
Dunns Bridge Solar Center, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was electronically delivered this 18th day of March, 2021, to the following:

Office of Utility Consumer Counselor
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An attorney for Petitioner,
Dunns Bridge Solar Center, LLC

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ACTIVITIES AS A GENERATOR OF)	APPROVED:
ELECTRIC POWER		

ORDER OF THE COMMISSION

Presiding Officers:

James F. Huston, Chairman

Stefanie Krevda, Commissioner

David E. Veleta, Senior Administrative Law Judge

On December 15, 2020, Dunns Bridge Solar Center, LLC (“Petitioner”) filed its Petition with the Indiana Utility Regulatory Commission (“Commission”) in this Cause for certain determinations, declinations of jurisdiction, and approvals relating to its proposed construction of a solar electric generation facility of up to approximately 265 megawatts (“MW”) of nameplate capacity (alternating current (“AC”)), including a project substation and an electric generation transmission line owned and operated by Petitioner, located entirely in Kankakee Township of Jasper County, Indiana (“Facility”), in accordance with Ind. Code ch. 8-1-2.5.

On December 16, 2020, Petitioner prefiled the direct testimony and attachments of Zachary Melda, Project Director, Development for NextEra Energy Resources, LLC (“NextEra Energy Resources”).

On February 2, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled the direct testimony of Cynthia M. Armstrong, Senior Utility Analyst in the Electric Division.

On February 16, 2021, Petitioner filed a Notice of Intent Not to File Rebuttal Testimony.

On February 18, 2021, Petitioner prefiled its Late-Filed Petitioner’s Exhibit 2.

The Commission noticed this matter for an evidentiary hearing at 9:30 a.m. on March 12, 2021, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. A Docket Entry was issued on March 4, 2021, advising that due to the ongoing COVID-19 pandemic, the hearing would be conducted via WebEx and providing related participation information. Petitioner and the OUCC, by counsel, participated in the evidentiary hearing via WebEx video. The testimony and exhibits of Petitioner and the OUCC were admitted into the record without objection.

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

1. **Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission as required by law. As discussed herein, Petitioner intends to engage in activity that would qualify it as a “public utility” under Ind. Code § 8-1-2-1 and as an “energy utility” under Ind. Code § 8-1-2.5-2. The Commission may decline to exercise, in whole or in part, its jurisdiction over an energy utility pursuant to Ind. Code § 8-1-2.5-5. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. **Petitioner’s Characteristics.** Petitioner is a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of Indiana. Petitioner’s principal place of business is at 700 Universe Blvd., Juno Beach, Florida 33408. Petitioner is an indirect, wholly-owned subsidiary of NextEra Energy Resources, which is the competitive energy subsidiary of NextEra Energy, Inc. (“NextEra”). NextEra Energy Resources specializes in the development, construction, and operation of large-scale renewable power projects and is the world’s largest operator of renewable energy from the wind and sun. NextEra Energy Resources and NextEra are headquartered in Juno Beach, Florida.

3. **Relief Requested.** Petitioner requested the Commission decline to exercise its jurisdiction over Petitioner pursuant to Ind. Code § 8-1-2.5-5 as it pertains to the construction, ownership, operation, and any other activity in connection with the Facility. Petitioner will generate electricity from solar energy, a renewable energy resource, for sale in the wholesale power market.

4. **Petitioner’s Evidence.** Petitioner’s witness Zachary Melda described the Facility and its location. According to Mr. Melda, the Facility will be located across parts of approximately 3,200 acres in Kankakee Township, Jasper County, Indiana and will consist of approximately 900,000 solar panels. Mr. Melda testified the Facility will have the capability to generate up to a nameplate capacity of approximately 265 MW AC and will have a Net Capacity Factor of approximately twenty-three point eight percent (23.8%). The Facility is expected to achieve a commercial operation date (“COD”) by December 2022.

Mr. Melda testified as to whom Petitioner will sell the electricity generated by the Facility. He explained that Petitioner’s upstream parent company, Dunns Bridge Holdings, LLC, has entered into a build-transfer agreement (“BTA”) with a joint venture subsidiary of Northern Indiana Public Service Company LLC (“NIPSCO”), Dunn’s Bridge I Solar Generation LLC. If the membership interests in Petitioner are transferred pursuant to the BTA, electricity generated by the Facility will be sold either to (a) NIPSCO, under a power purchase agreement (“PPA”) between NIPSCO and Petitioner to be entered into upon the closing of the membership interest transfer, or (b) to Midcontinent Independent System Operator (“MISO”), under a financially-settled contract for differences, between NIPSCO and Petitioner to be entered into upon the closing of the BTA. Mr. Melda testified that if the BTA is terminated prior to closing under certain circumstances, then the electricity generated by the Facility will be sold to NIPSCO under a backstop PPA between NIPSCO and Petitioner, which was signed concurrently with the signing of the BTA, but which only becomes effective upon termination of the BTA. He explained that NIPSCO and Dunn’s Bridge I Solar Generation LLC have filed a joint petition with the Commission for approval of the BTA and other associated approvals in Cause No. 45462.

Mr. Melda testified as to how the Facility will generate electricity. Mr. Melda explained the Facility would generate electricity via solar modules (*i.e.*, panels) located within the solar panel field. The solar field would include mounted photovoltaic (“PV”) modules and Power Conversion Stations (“PCS”) that would be configured in array blocks. Each PCS would contain an inverter and a medium voltage transformer, as well as other electrical equipment. Each PCS would also contain electrical and communication equipment to power and communicate with the tracker units. All electrical equipment would be housed in protective enclosures on concrete pads, on precast vaults, or on posts. The collection system would transport the electricity from each array block to an onsite collector substation via underground 34.5 kV cabling. From there, the electricity would be stepped up to 138 kV. The Facility would then interconnect to a 138 kV bus in a new NIPSCO 138 kV substation, which will be located within the Facility’s boundary.

Mr. Melda testified regarding the Facility’s interconnection with the NIPSCO transmission system. He testified that the NIPSCO transmission system is within the footprint of MISO. He testified that the Facility’s queue positions with MISO are J643 and J847 and that queue position J643 was combined with queue position J847 to encompass the Facility’s full 265 MW. MISO completed a Phase I System Impact Study for the Facility on December 14, 2018, a Phase II System Impact Study on March 27, 2019, and a Phase III System Impact Study on July 17, 2019. The interconnection studies were provided as Petitioner’s Attachments ZM-8 through ZM-10. Mr. Melda testified that the system impact studies show how the Facility will interconnect with the wholesale transmission grid and that the Facility’s interconnection with the NIPSCO system would not negatively impact system performance. Mr. Melda testified that an amended and restated Generator Interconnection Agreement (“GIA”) had been executed and accepted by the Federal Energy Regulatory Commission (“FERC”), and he included a copy of the GIA with his testimony as Petitioner’s Attachment ZM-11.

Mr. Melda testified Petitioner has applied or would apply for and obtain all necessary federal, state, and local permits needed for construction and operation of the Facility. He explained Petitioner is performing a number of environmental and cultural resource studies to evaluate the appropriateness of the Facility site. Mr. Melda testified that a Phase I Environmental Site Assessment (“ESA”) had been performed for the Facility site, and he included a copy of the ESA with his testimony as Petitioner’s Attachment ZM-4. Mr. Melda provided other environmental and site studies with his testimony as Petitioner’s Attachment ZM-5, consisting of a wetland delineation study, a preliminary visual analysis, and a preliminary sound analysis. Mr. Melda testified additional environmental studies are being performed, including a biological site assessment, a bat habitat assessment, cultural resources desktop and field surveys, wetlands and water resources surveys, eagle and raptor nest surveys, and sandhill crane surveys. Petitioner provided many of these additional environmental studies as part of its Late-Filed Petitioner’s Exhibit 2. Mr. Melda testified Petitioner has been corresponding with U.S. Fish and Wildlife Service (“USFWS”) and the Indiana Department of Natural Resources (“IDNR”) to coordinate their review of the Facility. He testified Petitioner would work with USFWS and IDNR to incorporate their recommendations into the final Facility layout in order to minimize environmental impacts.

Mr. Melda testified Petitioner has complied or would comply with local zoning and land use requirements. According to Mr. Melda, Jasper County, Indiana has an ordinance governing the development of solar generation facilities. He testified the Jasper County Board of Zoning Appeals issued a Special Exception Permit for the Facility, a copy of which was provided as Petitioner's Attachment ZM-6. Petitioner also obtained a Special Exception Permit from the Town of Wheatfield to locate solar panels within the Town of Wheatfield's buffer zone, and a copy of this permit was provided as Petitioner's Attachment ZM-7. Mr. Melda testified that Petitioner also will execute road use agreements with Jasper County. He explained the Facility will require an Improvement Location Permit, which Petitioner anticipates will be issued by Jasper County at the time of construction of the Facility. Mr. Melda testified the Facility will have a decommissioning plan, which is required by Jasper County's permit approval. He testified Petitioner is required to prepare a decommissioning plan and post decommissioning security in order to construct the Facility and that detail regarding the type of security and the amount would be specified in the decommissioning plan approved by Jasper County.

Mr. Melda testified that Petitioner may need to obtain the following Indiana permits and determinations: (1) a permit under Title 327 of the Indiana Administrative Code for the discharge of construction-related storm water, also known as a Rule 5 Permit; (2) Indiana Department of Transportation ("INDOT") permits to allow the Facility's electric lines and other equipment to cross state highways and for driveways, road exits, and similar infrastructure; and (3) appropriate permits from IDNR and the Indiana Department of Environmental Management ("IDEM"), to the extent necessary, if isolated wetlands and floodways are impacted by the Facility.

Mr. Melda testified Petitioner may also be required by federal law to do the following: (1) self-certify as an exempt wholesale generator and apply for market-based rate authority under FERC's rules and regulations; (2) develop and implement a federal spill prevention, control, and countermeasure plan; and (3) obtain a Nationwide Permit from the U.S. Army Corps of Engineers ("USACE") for impacts to wetlands or other waters of the United States.

Mr. Melda testified the Facility would not use water in any significant quantities, and it would have negligible or no impact on local water supplies. Water would be used during construction and removal of project facilities primarily for dust control. After construction is completed, water may be used for panel washing, if necessary.

Mr. Melda testified Petitioner seeks to retain the right to use the public right-of-way within the Facility site to place collector lines and transmission lines in the public right-of-way. Additionally, retention of this right would clarify issues surrounding use of the public right-of-way for road crossings. Mr. Melda testified this is similar to the treatment given to other renewable energy projects in Indiana.

Mr. Melda testified that Petitioner agrees to submit the status reports that have typically been required for similar generation projects in Indiana, including solar and wind projects, and he listed the initial and subsequent reports that Petitioner has agreed to submit.

Mr. Melda testified that he believes the public interest will be served in a number of important respects by the addition of the electric generating capacity represented by the Facility.

He testified the public needs electricity as demonstrated by the fact that Petitioner has already secured an off-taker (NIPSCO) to purchase 100 percent (100%) of the electricity generated by the Facility pursuant to the BTA. He testified the Facility represents one of the most environmentally friendly means of generating electricity. Solar energy helps reduce the negative effects of electricity generation on the environment by being a source of clean power. Solar generation facilities do not release any pollutants, such as SO₂ (which may cause acid rain), NO_x (which may cause smog), mercury (which may cause neurological damage in fetuses and children), or CO₂ (a greenhouse gas that may contribute to global climate change). Mr. Melda testified the public in Indiana also may benefit from the efficiencies that flow from proximity to the source of generation; that is, because of the high cost of transmitting power over long distances, it is generally advantageous for load not to be located too far from its source. Mr. Melda testified landowners in the area of the Facility will receive economic benefits from the placement of solar generation facilities on their properties. Local taxing bodies would receive new tax revenues. The Facility would provide additional economic benefit by creating up to 300 temporary construction jobs and approximately three to four full-time operations and maintenance jobs. Mr. Melda testified that solar energy provides greater energy security. It would diversify the region's and Indiana's electricity generation portfolio, protecting against volatile price spikes and risks from relying too heavily on just a few sources of generation. He testified solar energy is a domestic source of fuel, harnessed in this case within Indiana, and not subject to the geopolitical complexities of foreign energy sources. According to Mr. Melda, solar energy's renewable nature will help protect future generations from the risks of dwindling energy supplies.

Mr. Melda testified regarding the Facility's ownership and operation. He testified that NextEra Energy Resources owns and operates approximately 15 percent of the installed base of U.S. wind power production capacity and owns and/or operates approximately 9 percent of the installed base of U.S. utility-scale solar power production capacity. He testified Petitioner would operate the Facility in a commercially reasonable manner and in accordance with good utility practice. He explained NextEra affiliates operate in all eight North American Electric Reliability Corporation ("NERC") regions as a generator owner and generator operator and as such are required to comply with the applicable NERC Reliability Standards. He testified NextEra is committed to operating its generating facilities, including solar facilities, in a commercially reasonable manner and in accordance with good utility practice.

Mr. Melda testified that Petitioner has the ability to finance the Facility. He testified Petitioner is a wholly-owned subsidiary of NextEra, a Fortune 200 company, and provided NextEra's year-end 2019 annual report as Petitioner's Attachment ZM-12. He testified that NextEra Energy Capital Holdings, Inc. ("NEECH"), the anticipated provider of initial funding for the Facility, is a wholly-owned subsidiary of NextEra and holds ownership interests in and provides funding for NextEra's operating subsidiaries other than Florida Power & Light Company and Gulf Power Company, its rate-regulated electric utilities in the state of Florida. NEECH's unsecured long-term credit/debentures rating is Baa1 (Stable) and BBB+ (Stable) by Moody's Investors Services, Inc. and Standard & Poor's Ratings Services, respectively. As of year-end 2019, NEECH had approximately \$5.7 billion of net available liquidity, primarily consisting of bank revolving line of credit facilities, letter of credit facilities, cash and cash equivalents, less letters of credit issued under the credit facilities. Moreover, as of year-end 2019, 73 banks participate in NextEra's revolving credit facilities.

Mr. Melda testified that NextEra would provide to Petitioner all the necessary financial, technical and managerial expertise to construct and operate the Facility. He explained through its subsidiaries, NextEra Energy Resources develops, constructs, manages, and operates electric-generating facilities in wholesale energy markets primarily in the U.S. and Canada. NextEra Energy Resources, with approximately 21,900 MW of total net generation capacity at year-end 2019, is one of the largest wholesale generators of electric power in the U.S., with approximately 21,240 MW of net generating capacity across 37 states, and has 520 MW of net generating capacity in four Canadian provinces.

Mr. Melda testified regarding the requirements of Ind. Code § 8-1-2.5-5. He testified that technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction over Petitioner by the Commission unnecessary or wasteful. He explained that Petitioner is already subject to the requirements of Jasper County, the rules and regulations of FERC, and other federal, state and local agencies and that the requirements of those governmental entities adequately address concerns the Commission may otherwise have and protect the public interest regarding the future operation and wholesale transactions involving the Facility. In addition, competitive forces in the wholesale power markets serve as an adequate check on these activities, particularly on the wholesale power price. Also, MISO is responsible for the safe and reliable operation and planning, including generation interconnection planning, of the electric transmission systems under their functional control, which includes the NIPSCO transmission system to which the Facility will interconnect. Mr. Melda testified further regulation of these matters by the Commission would be unnecessary and wasteful of the Commission's resources, and burdensome for Petitioner.

Mr. Melda testified that a declination of jurisdiction by the Commission, in whole or in part, would be beneficial for Petitioner, Petitioner's customers, and Indiana, and would promote the efficiency of Petitioner. He explained Petitioner would benefit from the ability to devote its efforts and resources to complying fully with the requirements of the federal, local, and other state regulatory agencies with jurisdiction over its operations, as well as the requirements of MISO, which would promote the efficiency of Petitioner's ongoing development and operation of the Facility. Mr. Melda testified Indiana would benefit from the generation of electric power from solar power generally, and this Facility specifically. He testified that the exercise of jurisdiction by the Commission would encumber Petitioner with duplicative requirements that are unnecessary in view of other regulatory requirements. Moreover, because Petitioner will be competing with other generators to sell its electricity, energy utility efficiency would be promoted as more efficient projects will better be able to compete and will offer lower prices for the sale of their electrical output.

Mr. Melda testified that the exercise of Commission jurisdiction would inhibit Petitioner in competing with other providers of functionally similar energy services or equipment. He testified that should the Commission exercise jurisdiction over Petitioner, the Commission would be placing Petitioner at a disadvantage with respect to other independent power producers such as wind projects over whom the Commission has declined to exercise jurisdiction. Such regulation would expose Petitioner to the risk of regulatory lag and hinder the quick implementation of business decisions in a highly competitive market, which would create a significant competitive

disadvantage for Petitioner. In addition, the Commission's exercise of jurisdiction may compel Petitioner publicly to disclose proprietary information to its disadvantage.

5. **OUCC's Evidence.** Ms. Armstrong testified regarding the OUCC's recommendation that the Commission approve Petitioner's request for a declination of jurisdiction. Ms. Armstrong described the public interest factors the Commission must consider when evaluating a request for a declination of jurisdiction pursuant to Ind. Code § 8-1-2.5-5. Ms. Armstrong testified that Petitioner has met these statutory factors. She explained the Facility will be subject to oversight from several regulatory bodies, including FERC, MISO, USFWS, and IDNR. She testified that members of the public have raised concerns about solar projects in Jasper County but that these concerns should not prohibit construction of the Facility due to Jasper County's approval of the Facility through the BZA permitting process and the economic benefits the Facility will have on the local economy. Ms. Armstrong testified the Facility could assist with future electric resource needs in Indiana and that the Facility is in the public interest. Ms. Armstrong commented that when developers seek declination of jurisdiction from the Commission, the OUCC expects the developer to have made reasonable progress toward securing the necessary approvals from local, state, and federal officials prior to filing its request with the Commission. She stated that while the Facility is not as far along in the pre-development stage as the OUCC generally likes to see with developers before they seek declination, Petitioner secured enough of the approvals from other local and federal bodies for the OUCC to feel comfortable supporting Petitioner's request. Ms. Armstrong recommended the Commission's order declining jurisdiction include reporting requirements regarding the status of the Facility's development as proposed by Petitioner.

6. **Commission's Discussion and Findings.** If the Commission finds that Petitioner is a public utility for the purposes of Indiana's Utility Power Plant Construction Act, Ind. Code ch. 8-1-8.5 (the "Power Plant Act"), then Petitioner would be considered an "energy utility" as defined by Ind. Code § 8-1-2.5-2. The Commission may decline to exercise jurisdiction over Petitioner pursuant to Ind. Code ch. 8-1-2.5, including its jurisdiction under the Power Plant Act, to issue certificates of public convenience and necessity for the construction of the Facility. For the Commission to decline to exercise jurisdiction over Petitioner pursuant to Ind. Code ch. 8-1-2.5, the Commission must first assert jurisdiction over Petitioner.

The Power Plant Act in Ind. Code § 8-1-8.5-1(a) defines "public utility" to mean a: (1) public, municipally owned, or cooperatively owned utility; or (2) joint agency created under Ind. Code ch. 8-1-2.2. Petitioner is a limited liability company that will generate electricity, some of which may ultimately be consumed by Indiana residents. The Commission has previously asserted jurisdiction over investor-owned public utilities pursuant to Ind. Code ch. 8-1-8.5. *See, e.g., Indianapolis Power & Light Co.*, Cause No. 43235, 2007 WL 8420716 (IURC June 13, 2007). In addition, Petitioner's property "is used in a business that is public in nature and not one that is private." *See Foltz v. City of Indianapolis*, 130 N.E.2d 650, 659 (Ind. 1955) ("Foltz"). Petitioner's business is "impressed with a public interest" and would render service "of a public character and of public consequence and concern" as also considered in *Foltz*. *Id.*

The Commission must also determine that Petitioner satisfies the definition of "public utility" found in Ind. Code § 8-1-2-1. The evidence establishes that Petitioner's ownership,

development, financing, construction, and operation of the Facility is for the purpose of sale of the power generated by that plant in the wholesale market to public utilities, energy service providers, and power marketers within and outside of Indiana. The Commission has found in prior cases that a business that only generates electricity and then sells that electricity directly to public utilities is itself a public utility. *See, e.g., Benton County Wind Farm, LLC*, Cause No. 43068, 2006 WL 4400582 (IURC Dec. 6, 2006) (“Benton County”). In *Benton County*, the Commission specifically found that it had jurisdiction over a wind energy generator with wholesale operations such as Petitioner. Consequently, based upon our application of the statutes and precedents discussed herein to the facts and circumstances in this case, we find that Petitioner is a “public utility” within the meaning of Ind. Code § 8-1-2-1 and Ind. Code § 8-1-8.5-1 and is an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2 for purposes of the ownership, development, financing, construction, and operation of the Facility.¹

When the Commission concludes that Petitioner is a “public utility” as defined in the Public Service Commission Act and in the Power Plant Act, the Indiana Code authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an “energy utility” if certain conditions are satisfied. In particular, the Indiana Code provides that the Commission may enter an Order, after notice and hearing, that the public interest requires the Commission “to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over ... the energy utility ...” Ind. Code § 8-1-2.5-5(a).

In determining whether the public interest will be served by a declination of jurisdiction, the Commission will consider the following:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.
- (2) Whether the commission’s declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility’s customers, or the state.
- (3) Whether the commission’s declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
- (4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

Ind. Code § 8-1-2.5-5(b).

¹ Ind. Code § 8-1-2.5-2 defines “energy utility” to mean, among other things, a public utility or municipally owned utility within the meaning of Ind. Code § 8-1-2-1. Because we have determined that Petitioner is a “public utility” under Ind. Code § 8-1-2-1, Petitioner is also an “energy utility.”

The evidence in this Cause demonstrates that Petitioner does not intend, nor does it request authority, to sell the electricity generated by the Facility to the general public or to any retail customer. Instead, the power would be generated solely for resale subject to the jurisdiction of FERC under the provisions of the Federal Power Act, 16 U.S.C. § 824 *et seq.* Petitioner has indicated that it would operate the Facility in a manner consistent with good utility practice. Further, the costs of the Facility would not be recovered through a rate base/rate of return or other process typically associated with public utility rates.

As part of the Commission's analysis under Ind. Code § 8-1-2.5-5(b) regarding any proposed declination of jurisdiction, we evaluate facilities such as Petitioner's based on a number of factors, as discussed further in the following sections.

A. Location. As part of its analysis, the Commission may consider whether the location of a proposed facility is compatible with the surrounding land uses by evaluating and considering evidence of compliance with local zoning and land use requirements. In deciding whether to decline jurisdiction, the Commission has the authority to consider whether the public interest would be served by the Facility being in its planned location. In making such a determination, the Commission must consider the potential for adverse effects on Indiana "electricity suppliers" as that term is used in Ind. Code § 8-1-2.3-2(b), their customers, or local communities. Indiana statutes regarding surface and groundwater rights and obligations, including those establishing the authority of the Indiana Natural Resources Commission, Ind. Code § 14-25-7-15, do not limit the Commission's jurisdiction to make such determinations under the public interest standard of Ind. Code ch. 8-1-2.5 or the public convenience and necessity standard of Ind. Code § 8-1-8.5-5(b)(3). If a proposed new generating facility would significantly and negatively impact an electricity supplier, its consumers, or a local community, the Commission may refuse to decline jurisdiction under Ind. Code chs. 8-1-2.5 and 8-1-8.5. Based on the factors described below, the Commission finds that the Facility's proposed location is compatible with the surrounding land uses and the Facility would not significantly and negatively impact an electricity supplier, its consumers, or a local community.

i. Local Zoning and Permitting Requirements. Petitioner submitted evidence that it has complied or would comply with local zoning and land use requirements, has or would obtain all construction, grading, and wastewater permits, and would not rely on the public utility exemption from local zoning regulation. Mr. Melda testified that Petitioner has obtained a Special Exception Permit from the Jasper County Board of Zoning Appeals. Additionally, Petitioner has obtained a Special Exception Permit from the Town of Wheatfield to locate solar panels within the Town of Wheatfield's buffer zone. Mr. Melda testified that Petitioner also will execute road use agreements with Jasper County. He explained the Facility will require an Improvement Location Permit, which Petitioner anticipates will be issued by Jasper County at the time of construction of the Facility. Mr. Melda testified the Facility will have a decommissioning plan, which is required by Jasper County's permit approval.

ii. Land Use and Solar Resources. Mr. Melda testified Petitioner is an affiliate of NextEra Energy Resources, which has extensive experience with owning and operating solar and wind projects in the United States. Based on the evidence presented, it appears that Petitioner, utilizing its experience in developing other solar projects throughout the United

States, has determined that the solar resource at the Facility site is sufficient for the development of an economically viable project. A preliminary site map that reflects the approximate locations of these facilities was submitted as Petitioner Exhibit 1, Attachment ZM-3.

iii. Water Use and Supply. Mr. Melda testified that the Facility would not have significant water use and would have negligible or no impact on local water supplies. Water would be used during construction and removal of project facilities, primarily for dust control. After construction is completed, water may be used for panel washing, if necessary. Therefore, the evidence presented demonstrates that area water use and supplies would not be adversely affected by the Facility.

iv. Transmission Interconnection. Mr. Melda testified the Facility is expected to interconnect to NIPSCO's 138 kV transmission system via a 138 kV transmission line between the Facility's collector substation and NIPSCO's 138 kV substation. Mr. Melda testified as to how the Facility will generate electricity. Mr. Melda explained the Facility would generate electricity via solar modules (*i.e.*, panels) located within the solar panel field. The solar field would include mounted PV modules and PCS that would be configured in array blocks. Each PCS would contain an inverter and a medium voltage transformer, as well as other electrical equipment. Each PCS would also contain electrical and communication equipment to power and communicate with the tracker units. All electrical equipment would be housed in protective enclosures on concrete pads, on precast vaults, or on posts. The collection system would transport the electricity from each array block to an onsite collector substation via underground 34.5 kV cabling. From there, the electricity would be stepped up to 138 kV and transmitted to the point of interconnection.

Mr. Melda testified that MISO completed a Phase I System Impact Study for the Facility on December 14, 2018, a Phase II System Impact Study on March 27, 2019, and a Phase III System Impact Study on July 17, 2019. The interconnection studies were provided as Petitioner's Attachments ZM-8 through ZM-10. Mr. Melda testified that the system impact studies show how the Facility will interconnect with the wholesale transmission grid and that the Facility's interconnection with the NIPSCO system would not negatively impact system performance. Mr. Melda testified that an amended and restated Generator Interconnection Agreement GIA had been executed and accepted by FERC, and he included a copy of the GIA with his testimony as Petitioner's Attachment ZM-11.

v. Additional Permitting and Environmental Issues. Mr. Melda indicated in his testimony that Petitioner has applied or would apply for and obtain all necessary federal, state, and local permits needed for construction and operation of the Facility. Petitioner has performed several environmental and site studies, including a Phase I ESA, a wetland delineation study, a preliminary visual analysis, a preliminary sound analysis, a biological site assessment, a bat habitat assessment, and cultural resources desktop and field surveys. These were provided as Petitioner's Attachments ZM-4 and ZM-5, and Late-Filed Petitioner's Exhibit 2.

To the extent required by state law, Petitioner may need to obtain the following permits and determinations: (1) a permit under Title 327 of the Indiana Administrative Code for the discharge of construction-related storm water, also known as a Rule 5 Permit; (2) INDOT permits to allow the Facility's electric lines and other equipment to cross state highways and for driveways,

road exits, and similar infrastructure; and (3) appropriate permits from IDNR and IDEM, to the extent necessary, if isolated wetlands and floodways are impacted by the Facility.

Petitioner may also be required by federal law to do the following: (1) self-certify as an exempt wholesale generator and apply for market-based rate authority under FERC's rules and regulations; (2) develop and implement a federal spill prevention, control, and countermeasure plan; (3) and obtain a Nationwide permit for impacts to wetlands or other waters of the United States.

vi. Using the Public Right-of-Way. Mr. Melda testified Petitioner seeks to retain the right to use the public right-of-way within the Facility site. Retention of the use of the public right-of-way would allow Petitioner to place collector lines and transmission lines in the public right-of-way and would clarify issues surrounding use of the public right-of-way for road crossings. Mr. Melda testified this is similar to the treatment given to other renewable energy projects in Indiana. Based upon the evidence presented, we find Petitioner's request for limited use of the public right-of-way to be reasonable. Petitioner would retain the right to use the public right-of-way as identified in its evidence.

B. Need. The Commission must determine if the development of additional generating capacity will serve the public interest. As explained below, the Commission finds that the evidence presented demonstrates a reasonable expectation of need for the Facility and finds that its construction will serve the public interest. The electricity generated by the Facility will either be sold to (a) NIPSCO, pursuant to a PPA, or (b) MISO, pursuant to a financially-settled contract for differences, that will be entered into upon the closing of the BTA. Mr. Melda concluded that he believes the public interest would be served in several ways through the addition of the electric generating capacity represented by the Facility. He testified the public needs electricity as demonstrated by the fact that Petitioner has already secured an off-taker, NIPSCO, pursuant to the BTA transaction. Mr. Melda testified the Facility represents one of the most environmentally friendly means of generating electricity. Mr. Melda testified the public in Indiana also may benefit from the efficiencies that flow from proximity to the source of generation; that is, because of the high cost of transmitting power over long distances, it is generally advantageous for load not to be located too far from its source. Mr. Melda testified landowners in the area of the Facility will receive economic benefits from the placement of solar generation facilities on their properties. Local taxing bodies would receive new tax revenues. The Facility would provide additional economic benefit by creating up to 300 temporary construction jobs and approximately three to four full-time operations and maintenance jobs.

Based on the evidence presented, we find that Petitioner's proposed development of additional generating capacity through the Facility is supported by the evidence and will serve the public interest.

C. Financing and Management. To ensure that Indiana consumers are not adversely affected by the proposed development of generation plants in Indiana, developers must demonstrate to the Commission that the financial structure of a proposed project would not jeopardize retail electric supply. In assessing a developer's financing to ensure the viability of a proposed project, the Commission may consider the developer's ability to finance, construct, lease,

own, and operate other generating facilities in a commercially responsible manner. As necessary, the Commission may also consider the specific method proposed to finance a particular project.

Mr. Melda testified that Petitioner has the ability to finance the Facility. He testified Petitioner is a wholly-owned subsidiary of NextEra, a Fortune 200 company, and provided NextEra's year-end 2019 annual report as Petitioner's Exhibit 1, Attachment ZM-12. He testified that NEECH, the anticipated provider of initial funding for the Facility, is a wholly-owned subsidiary of NextEra. As of year-end 2019, NEECH had approximately \$5.7 billion of net available liquidity, primarily consisting of bank revolving line of credit facilities, letter of credit facilities, cash and cash equivalents, less letters of credit issued under the credit facilities.

Mr. Melda testified that NextEra would provide to Petitioner all the necessary financial, technical, and managerial expertise to construct and operate the Facility. He explained through its subsidiaries, NextEra Energy Resources develops, constructs, manages, and operates electric-generating facilities in wholesale energy markets primarily in the U.S. and Canada. NextEra Energy Resources, with approximately 21,900 MW of total net generation capacity at year-end 2019, is one of the largest wholesale generators of electric power in the U.S., with approximately 21,240 MW of net generating capacity across 37 states, and has 520 MW of net generating capacity in four Canadian provinces.

Based on the evidence presented, the Commission finds that Petitioner has the ability to finance, construct, and manage the Facility.

D. Transfers of Ownership. The Commission reserves its jurisdiction under Ind. Code § 8-1-2-83 and requires Petitioner to obtain prior Commission approval of any transfer of assets owned by Petitioner. Petitioner, however, shall not be required to seek prior Commission approval of any transfers of ownership of Facility assets or ownership interests in Petitioner involving: (1) the grant of a security interest, mortgage, deed of trust or other encumbrance to a bank or other lender or collateral agent, administrative agent or other security representative, or a trustee on behalf of bondholders in connection with any financing or refinancing (including any lease financing), or any investor, guarantor, equipment supplier or financing entity; (2) NextEra or Petitioner becoming a debtor in possession; (3) a foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner; or (4) a transfer of all or a part of the ownership of Dunns Bridge Solar Center or its assets to an affiliate of Petitioner other than the BTA transaction with NIPSCO. Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility and (2) the successor satisfies the same terms and conditions imposed on Petitioner as set forth in this Order.

E. Affiliate Transactions. In addition to determining whether the public interest would be served if the Commission declines jurisdiction, the Commission also must consider what actions it must take to ensure that the public interest is served throughout the commercial life of the Facility. Specifically, the Commission must determine the extent to which it must reserve its authority over Petitioner's activities involving affiliate transactions and transfers of ownership. To ensure that the Commission's declination of jurisdiction over an "energy utility" is in the public interest, the Commission must be assured that adequate consumer protections are

in place, should an “energy utility” subsequently become an affiliate, as defined in Ind. Code § 8-1-2-49, of any regulated Indiana retail utility.

Initially, Petitioner’s upstream parent company, Dunns Bridge Holdings, LLC, will own one-hundred percent (100%) of the membership interests in Petitioner. Pursuant to the BTA, the membership interests in Petitioner will transfer to a joint venture subsidiary of NIPSCO, Dunn’s Bridge I Solar Generation LLC (“Purchaser”). The BTA provides for a transfer of all of the limited liability company membership interests in Petitioner to Purchaser upon the fulfillment (or waiver) of all conditions precedent to the parties’ respective obligations to consummate closing under the BTA. While the transfer to Purchaser is unrelated to our reservation of jurisdiction under Ind. Code § 8-1-2-83, Mr. Melda testified that Petitioner proposes to file a notice in this Cause within five (5) business days after the consummation of the transfer of the membership interests of Petitioner to Purchaser to satisfy the notice requirements related to the affiliation of Petitioner with a retail electric utility providing service in Indiana. We find Petitioner shall file and serve on all parties of record such a notice within five (5) business days of its affiliation with a retail electric utility that provides service in Indiana, which includes the proposed transaction with NIPSCO and all future affiliations involving this reservation of jurisdiction.

Separate from this declination of jurisdiction proceeding, NIPSCO and Purchaser have filed a joint petition with the Commission for approval of the Dunns Bridge Solar BTA and other associated approvals in Cause No. 45462. The Commission notes that it retains certain authority under Section 201 of the Federal Power Act to examine Petitioner’s books, accounts, memoranda, contracts, and records consistent with the limitations contained therein. 16 U.S.C. § 824 (2005).

7. Financial Assurance. Mr. Melda testified that as a requirement of permit approval, Jasper County requires Petitioner to prepare a decommissioning plan and post decommissioning security in order to construct the Facility. The decommissioning plan provides assurance that the Facility’s facilities are properly decommissioned at the end of the Facility’s useful life or upon facility abandonment. Petitioner must provide a cost estimate for demolition and removal of the Facility’s facilities. To guard against the unlikely and worst-case possibility that Petitioner will be unable to meet its obligation to remove the solar project, a decommissioning security (a performance or surety bond) will be established. The decommissioning security is intended primarily to cover the cost of removing project infrastructure and restoration of the leased premises to their original condition. Detail regarding the type and amount of the security and method of calculating will be specified in the decommissioning plan. Petitioner provided evidence that it will provide such security as required. Petitioner shall notify the Commission when its decommissioning security has been established, including the form and amount of the security.

8. Reporting Requirements. Petitioner agreed to the same reporting requirements as have been established for other renewable generation facilities in Indiana. In addition to the foregoing requirements, as a condition of this Order and our continued declination of jurisdiction, Petitioner must file Annual Reports with the Commission as provided in Ind. Code § 8-1-2-49, and provide any other information requested by the Commission. These reporting requirements are intended to ensure that the Commission obtains reliable, up-to-date information in a timely manner necessary to carry out its statutory obligations. A responsible officer of Petitioner shall verify all

reports, and Petitioner shall file the reports under this Cause within the timeframes prescribed herein.

The following reports shall be prepared and filed by Petitioner:

A. Initial Report. Petitioner's initial quarterly report, due within 30 days after the date of this Order, shall provide the following information, to the extent it is known and available:

- (1) Facility ownership and name(s) of the Facility;
- (2) Name, title, address and phone number(s) for primary contact person(s) for the Facility;
- (3) Number and location of solar panels deployed;
- (4) Anticipated total output of Facility;
- (5) Manufacturer, model number, and operational characteristics of panels;
- (6) Connecting utility(s);
- (7) Copy of any Interconnection System Impact Studies prepared by MISO;
- (8) Expected in-service (commercial operation) date;
- (9) An estimate of the engineering/construction timeline and critical milestones for the Facility;
- (10) The status of the GIA with MISO; and
- (11) The information listed below in the Subsequent Reports section to the extent such information is available.

B. Subsequent Reports. Petitioner agrees to file subsequent reports within thirty (30) days of the end of each calendar quarter until the quarter that occurs after commercial operation is achieved and that immediately precedes the annual report filing date of April 30th of each year. Thereafter, Petitioner will file reports on an annual basis in this Cause. Subsequent reports should include the following information:

- (1) Any changes to the information provided in the Initial Report;
- (2) Any reports of Interconnection System Impact Studies not previously submitted to the Commission;
- (3) Copy of the GIA as filed with FERC;
- (4) Notice of the establishment of an independent financial instrument, including its form and amount;
- (5) Achievement of construction milestones described in the GIA and such events as the procurement of major equipment, the receipt of major permits material to the construction and operation of the Facility, construction start-up, initial energization, and commercial operation; and
- (6) When commercial operation is achieved, the nameplate capacity, term and identity of a purchaser for any contracts then existing for utility sales, contingency plans (if any) detailing response plans to emergency conditions as required by state or local units of government, the interconnecting transmission owner and/or MISO, and the Facility's certified (or accredited) dependable capacity rating.

C. **Additional Requirements.** In the event that Petitioner intends to materially increase or decrease or otherwise materially change the Facility's capacity or operation, the owner must provide the Commission with at least 30 days' notice prior to the change, and any party wishing to protest such change must file an objection under this Cause within 10 days of the notification of project modification.² Petitioner shall notify the Commission if it modifies or suspends the Facility under the terms of the GIA and does not reinstitute work within three years following commencement of such suspension. If the Commission determines that Petitioner: (1) has failed to enter into an agreement pursuant to MISO generator interconnection procedures; (2) has suspended the Facility under the terms of the GIA and has not reinstated work within three years following commencement of such suspension; or (3) has otherwise suspended its efforts to complete the Facility within three years of this Order, the Commission may, following notice to Petitioner, issue an Order terminating its declination of jurisdiction.

9. **Conclusion.** Pursuant to the provisions set forth in Ind. Code § 8-1-2.5-5, the Commission finds that declining to exercise its jurisdiction over Petitioner in this Cause will facilitate the immediate construction of the proposed Facility and add generation capacity in Indiana. This should be beneficial for those public utilities that may indirectly have access to the power produced and to the State of Indiana. We further conclude that declining to exercise our jurisdiction over Petitioner will promote energy utility efficiency. In addition, Petitioner has demonstrated that it has the technical, financial, and managerial capabilities to construct and operate the proposed Facility. It has also shown that the wholesale market for electricity in Indiana will benefit from the addition of the Facility's generating capacity, and, therefore, its market entry is reasonable.

Accordingly, based on these findings and the additional requirements contained in this Order, the Commission believes that a declination of jurisdiction over Petitioner as an energy utility, except in the areas in which we reserve jurisdiction that are identified above, is in the public interest. While the Commission is not declining jurisdiction for a particular term of years, the Commission does not intend to reassert jurisdiction absent circumstances affecting the public interest. Petitioner is not granted authority to offer its power for sale to the general public. Therefore, any revenue that it derives from the sale of electricity for resale by the purchaser is not subject to the public utility fee.

If the Commission determines that Petitioner either: (1) has failed to commence construction of the Facility within the timeframe provided under this Order; (2) is no longer diligently pursuing the commencement of construction of the Facility; or (3) has not completed construction of the Facility under the terms of the GIA, then the Commission may, following notice to Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth herein. Through the quarterly status reports required by this Order, Petitioner shall notify the Commission and the OUCC when construction begins and when commercial operation of the Facility begins. Petitioner will satisfy the reporting requirements outlined above before commercial operation of the Facility begins. Petitioner shall also file with the Commission any Annual Report required to

² A material change includes the following: increase or decrease of greater than three (3) MW in the Facility's nameplate capacity; a change in operating entities; a transfer of assets; and any change identified in case law as a material change. A material change does not include the BTA transaction with NIPSCO.

be filed with FERC and provide the Commission such other information as we may from time to time require from other Indiana public utilities.

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

1. Petitioner is a “public utility” within the meaning of Ind. Code §§ 8-1-8.5-1 and 8-1-2-1 and an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2.

2. The Facility is a “utility” within the meaning of Ind. Code § 8-1-2-1.

3. The Commission declines to exercise its jurisdiction over Petitioner and its construction, operation, and financing of the Facility, except as specifically stated within this Order.

4. Petitioner shall not exercise an Indiana public utility’s rights, powers, and privileges of eminent domain and of exemption from local zoning, land use requirements, land use ordinances, and construction-related permits in the operation and construction of the Facility. Petitioner shall retain the right to a limited use of the public right-of-way within the Facility area as described above.

5. Petitioner shall not sell at retail in the State of Indiana any of the electricity generated by the Facility without further Order of the Commission. The gross revenues generated by sales for resale of the electricity generated by the Facility are adjudged to be exempt from the public utility fee prescribed by Ind. Code ch. 8-1-6.

6. Based on the ownership structure described above, Petitioner shall file a notice in this Cause within five (5) business days after the consummation of the transfer of the membership interests in Petitioner to Purchaser and serve notice on all parties of record.

7. Petitioner shall comply fully with the terms of this Order and submit to the Commission all information required by the terms of this Order.

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

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

Approved:

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

Dana Kosco
Secretary of the Commission