

**ORIGINAL**

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Veleta	√		
Ziegner	√		

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

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

**CAUSE NO. 45754**

**APPROVED: JAN 11 2023**

**ORDER OF THE COMMISSION**

**Presiding Officers:  
 Stefanie Krevda, Commissioner  
 Carol Sparks Drake, Senior Administrative Law Judge**

On July 29, 2022, Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South (“Petitioner” or “CEI South”) filed a Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) in this Cause seeking approval and associated cost recovery related to its purchase and acquisition of a solar powered electric generating facility in Pike County, Indiana, (the “Pike County Solar Project” or the “Project”) through a Build Transfer Agreement (“BTA”). Concurrently, CEI South filed its case-in-chief, including the direct testimony of Erin M. Carroll, Senior Vice President of Supply Chain Consulting for Wood Mackenzie, and the following witnesses whose roles with CEI South are as shown:

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

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

On August 12, 2022, Citizens Action Coalition of Indiana, Inc. (“CAC”) filed a petition to intervene that was granted on August 23, 2022.

On September 13, 2022, CEI South filed a motion notifying the Commission that CEI South, the Indiana Office of Utility Consumer Counselor (“OUCC”), and CAC were attempting to negotiate a settlement and requesting additional time to conclude these discussions. A docket entry was issued on September 13, 2022, modifying the procedural schedule as requested. On September 22, 2022, CEI South, with the agreement of the OUCC and CAC, filed a Second Motion to Modify Procedural Schedule (“Second Motion”) in which CEI South advised that Petitioner and the OUCC had reached an agreement in principle resolving the issues in this proceeding, and CAC had agreed to not oppose this agreement. Accordingly, CEI South and the OUCC requested additional modifications to the procedural schedule to accommodate filing their settlement agreement, and CEI South waived the statutory deadline for a Commission Order to be entered under Ind. Code § 8-1-8.8-11(d). By docket entry dated September 28, 2022, the Second Motion was granted.

In accordance with the revised procedural schedule, Petitioner and the OUCC (together, “Settling Parties”) filed the Stipulation and Settlement Agreement between CEI South and the Indiana Office of Utility Consumer Counselor (the “Settlement Agreement”) on October 6, 2022. That same day, CEI South prefiled the settlement testimony of Mr. Bradford, and the OUCC prefiled the settlement testimony of Caleb R. Loveman, an Assistant Director in the OUCC’s Electric Division.

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

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

**1. Notice and Jurisdiction.** Due, legal, and timely notice of the settlement hearing in this Cause was given and published by the Commission as required by law. CEI South is a public utility as defined in Ind. Code § 8-1-2-1 and an eligible business as defined in Ind. Code § 8-1-8.8-6. The Commission has jurisdiction to approve Petitioner’s requested relief under the Public Service Commission Act, including Ind. Code chs. 8-1-8.5 and 8-1-8.8; therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

**2. Petitioner’s Characteristics.** CEI South is a public utility incorporated under Indiana law with 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. Petitioner owns, operates, manages, and controls, among other things, plant, property, equipment, and facilities that are used for the production, storage, transmission, distribution, and furnishing of electric service to approximately 150,000 electric consumers in southwestern Indiana within Pike, Gibson, Dubois, Posey, Vanderburgh, Warrick, and Spencer Counties.

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

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

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

**A. Steven C. Greenley.** Mr. Greenley provided an overview of CEI South's generation transition plan (the "Generation Transition Plan" or the "Plan") that Petitioner developed consistent with CEI South's 2019/2020 Integrated Resource Plan ("2019/2020 IRP") findings. Mr. Greenley testified the Preferred Portfolio in the 2019/2020 IRP calls for the timely retirement of certain existing generation assets and replacing those assets with new generation resources. He testified the Plan requires initially identifying and selecting approximately 700 to 1,000 MWac of solar generation, 300 MWac of wind generation, and approximately 460 MW of natural gas combustion turbine ("CT") generation, and CEI South has begun implementing the Plan by seeking approval of three solar power purchase agreements ("PPAs"), one solar BTA, and two natural gas CTs in Cause Nos. 45501, 45564, and 45600 that CEI South filed in February 2021, June 2021, and August 2021, respectively. He stated this proceeding is the next step in the Plan.

Mr. Greenley testified that Petitioner's current generation mix consists of approximately 1,329 MW of installed capacity, including two 2-MW solar arrays approved in Cause No. 44909 and a 50-MW solar facility approved in Cause No. 45086. Mr. Greenley advised the relief sought in Cause No. 45501 was the first step in implementing the Plan, which resulted in Petitioner being approved to acquire through a BTA a 300 MWac solar facility in Posey County, Indiana, (the "Posey County Solar Project") and a 100 MW solar project in Warrick County, Indiana, (the "Warrick County Solar Project"). He testified CEI South also received approval in Cause No. 45600 to enter into a 150 MW solar PPA to purchase energy from a facility in Knox County (the "Knox County Solar Project") and a 185 MW solar PPA to purchase energy from a solar farm in Vermillion County (the "Vermillion County Solar Project"), and in Cause No. 45564, CEI South

was issued a CPCN to construct two natural gas CTs providing approximately 460 MW of capacity to complement CEI South's renewable resources. Mr. Greenley stated CEI South has made progress in getting projects approved; however, there have been challenges getting projects in service due to supply chain issues across the energy industry and escalating commodity costs that have impacted project schedules and timelines. Mr. Greenley testified the Posey County Solar Project is downsizing from 300 MWac to 191 MWac for this reason. He stated it is critical CEI South secure approval of the Pike County Solar Project as Petitioner works to bring all its projects online and meet system needs.

Mr. Greenley testified the Pike County Solar Project is part of the Plan's first phase. He testified that with downsizing the Posey County Solar Project, CEI South has approximately 626 MWac of approved solar generation capacity, which is less than the 700 to 1,000 MWac solar generation identified in the Generation Transition Plan. If approved, the Pike County Solar Project will add 130 MWac of generation capacity to help meet Plan goals. Without such approval, Mr. Greenley testified CEI South will be at risk of having to make high-priced purchases from the Planning Resource Auction ("PRA"). He stated the Project will also help mitigate the risk of needing to implement temporary controlled load sheds.

Mr. Greenley testified the Pike County Solar Project and the Generation Transition Plan are consistent with CEI South's 2019/2020 IRP. He testified regarding the benefits the Generation Transition Plan and Preferred Portfolio provide to CEI South and its customers and stated the Project is a reasonable addition to CEI South's generation resource portfolio.

Mr. Greenley testified the Pike County Solar Project was selected from Petitioner's second Request for Proposals ("RFP") issued on August 12, 2020, in which CEI South sought a combination of wind, solar, and solar plus storage resources to meet the needs the Plan identified (the "2020 Renewable RFP"). He stated the Vermillion County Solar Project and Knox County Solar Project approved in Cause No. 45600 were also a result of the 2020 Renewable RFP. He testified the Pike County Solar Project, which was originally bid by Crosstrack as "Cato Solar," is a 130 MWac project located near Petersburg, Indiana, and will interconnect to CEI South's transmission system. The Guaranteed Substantial Completion Date is March 31, 2025. Mr. Greenley explained that investment tax credit ("ITC") eligibility was extended due to COVID-19, so the Project continues to qualify for the 30% ITC as planned. Mr. Greenley advised that Crosstrack has obtained leasing rights for the land on which the solar panels and other facilities will be located, and Pike County permitting has been approved. He noted the Pike County Solar Project is also in the 2019 MISO Interconnection Queue Cycle and is expected to have a signed Generator Interconnection Agreement near year-end 2022.

Mr. Greenley testified the Project will be fully developed, engineered, procured, and constructed by Crosstrack and then acquired by CEI South in a transfer of the Project's company, Crosstrack Solar Holdings LLC, which is a special entity established to facilitate ownership transfer. Under the BTA, Crosstrack will own the Project until mechanical completion is achieved, after which CEI South will acquire the Project and all of its attributes. Mr. Greenley stated the BTA sets forth Crosstrack's obligation to bring the Project to final completion after the transaction closing occurs, and he explained this structure will enable CEI South to claim the tax attributes of the Project. Mr. Greenley opined that investing in this solar resource is reasonable and will benefit

Indiana and Petitioner's customers, with the Pike County Solar Project, if approved, diversifying Petitioner's generation portfolio.

**B. F. Shane Bradford.** Mr. Bradford provided an overview of CEI South's implementation of its Generation Transition Plan and testified regarding Petitioner's decision to pursue the Pike County Solar Project. He described CEI South's utilization of the 2020 Renewable RFP, which he provided as Attachment FSB-2, to identify and select the Project. Per Mr. Bradford, in CEI South's 2020 Renewable RFP, 25 individual respondents submitted 232 proposals, 191 of which were for projects in Indiana, including 154 solar projects (31 asset purchase + 113 PPA + 10 other), 60 solar plus storage projects, and 18 wind projects. He testified the Pike County Solar Project was identified as a top project based on its cost, location within CEI South's service territory, interconnection to an existing CEI South substation and transmission system, and placement in the MISO Interconnection Queue Cycle.

Mr. Bradford testified that Petitioner worked with 1898 & Company to evaluate, score, and rank each complete proposal based on established quantitative and qualitative scoring criteria that assessed reliability, cost, and certainty, including factors such as the Levelized Cost of Energy ("LCOE"), energy settlement location, interconnection and development status, and project risk factors like credit worthiness, development experience, delivery date, project site control status, permits, and zoning. Mr. Bradford provided CEI South's confidential scoring summary, attached to his testimony as Attachment FSB-3. He testified as to the method CEI South used to compare BTA and PPA proposals with varying term lengths by normalizing the LCOE over 35 years, noting most BTA proposals had an asset life of 35 years while PPA proposals were 30 years or less. Mr. Bradford testified that in addition to cost, CEI South also qualitatively evaluated the bids. He stated the Pike County Solar Project has favorable characteristics consistent with all factors and was the overall best BTA project because: (a) the BTA's expected LCOE was the second lowest of the remaining BTA proposals; (b) the Project is located in CEI South's assigned service territory and will interconnect to CEI South's transmission system via the existing Cato 138 kV substation; (c) Crosstrack has obtained land rights for approximately 2,300 acres for the Project; (d) construction is expected to commence in the first half of 2023 with a Guaranteed Substantial Completion Date by March 31, 2025; (e) the Project is in the 2019 MISO Interconnection Queue Cycle and is expected to have a signed Generator Interconnection Agreement near the end of 2022; and (f) the Project will qualify for the 30% ITC.

Mr. Bradford testified regarding pricing pressures, including the jump in solar prices in 2021 due to supply chain constraints in the industry, specifically, the rise in polysilicon costs that are up 300% since pre-pandemic levels. Mr. Bradford stated polysilicon costs represent approximately 13% of the cost of the Pike County Solar Project. He advised that copper, aluminum, and glass prices have also increased and testified that in addition to these factors, the price of the Project has been affected by uncertainties related to the United States government potentially applying anti-circumventing tariffs against imported crystalline silicon photovoltaic cells, modules, laminates, and panels consisting of crystalline silicon photovoltaic cells.

Mr. Bradford testified regarding the efforts taken during the Pike County Solar Project BTA negotiations to mitigate the impact of rising prices. He stated that notwithstanding the challenges and limited availability of projects, the Pike County Solar Project remains competitive.

In Mr. Bradford's opinion, CEI South was able, with respect to the Project, to negotiate to purchase a reasonably priced solar project.

Mr. Bradford testified the Pike County Solar Project is in the public interest as it will enhance or maintain the reliability and efficiency of Petitioner's service, diversify Petitioner's generation portfolio, is consistent with CEI South's Plan, provides long-term, low-cost renewable energy, is located in the part of Indiana with the richest natural solar resource, and is connected to CEI South's transmission system. Mr. Bradford testified the proposed levelized rate of \$0.07075 per kWh is competitive with the rates being offered under PPAs.

Mr. Bradford testified that energy output from the Pike County Solar Project will be offered into the MISO wholesale energy market daily per MISO tariff and Business Practice Manual ("BPM") requirements. The Project will provide accredited capacity and energy to meet planning reserve margin requirements ("PRMR") in the MISO wholesale market and local clearing requirements. He testified that if CEI South does not have enough owned capacity or bilateral to meet its PRMR, CEI South will have to participate in the MISO PRA, which is an annual auction in which CEI South and other utilities can procure capacity to meet MISO's resource adequacy requirements. Mr. Bradford testified there are risks of capacity shortfalls in future years based on the 2022 OMS-MISO Survey Results released on June 10, 2022, with capacity deficits projected to widen in subsequent years due to demand growth and the continued retirement of coal-fired resources. Mr. Bradford testified the Pike County Solar Project should help sustain Petitioner's PRMR position, and he provided additional details regarding the Project's interconnection to the MISO system and impact on CEI South's PRMR.

**C. Matthew Rice.** Mr. Rice described the analysis and results of CEI South's 2019/2020 IRP process, the associated RFP process, and the benefits of the selected Preferred Portfolio. Mr. Rice stated the 2019/2020 IRP's Preferred Portfolio includes energy efficiency at 1.25% between 2021-2023 and 0.75% thereafter, with 300 MW of wind resources coming online in 2022, 1,150 MW of new solar and solar plus storage expected in 2023-2024, and two CTs expected to come online in 2024-2025. He opined that the Preferred Portfolio is cost effective and expected to save Petitioner's customers up to \$320 million over the IRP's 20-year planning period as compared to continuing to operate CEI South's coal units. Mr. Rice testified that solar resources were selected in all portfolios, including the Preferred Portfolio, and the Project is consistent with the needs identified in the 2019/2020 IRP and will fulfill 130 MWac of installed capacity and approximately 34 MWs of CEI South's PRMR. He also stated the Project pricing is consistent with the pricing modeled in the 2019/2020 IRP. Per Mr. Rice, the Pike County Solar Project qualifies as a clean energy project under Ind. Code § 8-1-8.8-2 and renewable energy resource under Ind. Code § 8-1-8.8-10.

Mr. Rice testified that CEI South is requesting authorization for the necessary ratemaking treatment under its clean energy cost adjustment ("CECA") consistent with Ind. Code § 8-1-8.8-11. He testified CEI South will include costs incurred for the purchase, construction, and operation of qualifying projects in its annual CECA filing through the use of a levelized rate. The levelized rate will not be subject to an annual escalator but will be flat over the life of the asset. Mr. Rice testified CEI South is taking an operating cost risk to provide customers with this flat rate over the asset's life, with the BTA offering long-term stability.

Mr. Rice estimated the bill impact for a residential customer using 1,000 kWh per month is approximately \$6 per month, depending on the cost of the Project. He stated this amount does not include offsets such as renewable energy credit (“REC”) sales that are expected to lower customer bills or other savings associated with the Generation Transition Plan.

**D. Wayne Games.** Mr. Games testified the Pike County Solar Project is anticipated to have the capability of generating approximately 130 MWac of electricity, and its DC capacity will be approximately 163 MWdc. He described the way in which the Project will generate electricity through the use of mounted photovoltaic modules and inverters configured on array blocks and how the panels will be organized and transport electricity to the collector substation. Mr. Games testified all federal, state, and local permits needed for construction and operation of the Project have been applied for and obtained by Crosstrack or will be applied for and obtained by CEI South.

Mr. Games testified the expected life of the Pike County Solar Project is 35 years, although he believes the Project could continue to operate beyond its expected life. He stated CEI South will have a 30-year warranty on the modules, a five-year warranty on the inverters, and a 10-year warranty on the structural tracking systems. Additionally, Crosstrack’s contractor is providing a two-year wrap warranty on installation of the major components and the balance of plant equipment. He testified the property leases CEI South will acquire under the BTA extend for 50 years.

Mr. Games testified that CEI South has hired Sargent & Lundy to serve as the Owner’s Engineer for the Project, and Project oversight will be managed by the management team monitoring Project progress through achievement of critical milestones set forth in the BTA. Mr. Games explained that CEI South will have responsibility for operation and maintenance (“O&M”) of the Project, and the pro forma O&M costs are estimated to be \$3.6 million. He testified required maintenance activities include remote performance monitoring, resolving outage or system performance concerns, replacing panels, maintenance of the inverters and power transformers, repairing electrical connections, property lease costs, insurance costs, audit fees, and routine vegetation management, including mowing and vegetation control.

Mr. Games testified the primary benefit of the BTA structure, as opposed to a PPA, is that utility ownership provides Petitioner and its customers with more stability. The Project will provide CEI South with a resource that can be operated beyond 35 years that will continue to produce and provide low-cost power, benefitting CEI South’s customers. Mr. Games testified that if the Pike County Solar Project is online when anticipated, Petitioner will still have a capacity shortfall through 2025 until other projects are placed in service, but the Project will help fill a portion of the capacity needs identified in the 2019/2020 IRP. Mr. Games opined that the Pike County Solar Project is part of the diversified and balanced portfolio identified in the 2019/2020 IRP with low-cost renewable energy that is complemented by dispatchable generation, and the Project, along with other renewable projects, is needed to replace the capacity currently being supplied by coal units. Per Mr. Games, with the need to retire coal units to avoid large capital investments and reduce future risk, low-cost renewables supported by flexible, controllable, quick start, fast ramping dispatchable resources are necessary to provide adequate low-cost and reliable service to CEI South’s customer base.

**E. Erin Carroll.** Ms. Carroll testified that her consulting firm, Wood Mackenzie, was retained by CEI South to provide insight into the commercial solar generation markets in the United States, with an emphasis on the MISO market. She described the analysis Wood Mackenzie performed to assess the impact of current market inflation on the BTA price for the Project, with the BTA escalation analysis provided as Attachment EMC-1.

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

**F. Benjamin Bailey.** Mr. Bailey supported the proposed accounting treatment for the Pike County Solar Project, specifically, the proposed use of a levelized rate, and he described how the Project will be depreciated over 35 years. He stated the proposed levelized rate approach is similar to the rate used to recover the cost of constructing and operating the 50 MWac Troy Solar Project and the Posey County Solar Project. Mr. Bailey testified the levelized rate requires the property to be treated as non-Public Utility Property without a traditional rate base return and gives customers the benefit of a rate competitive with solar energy purchased through a PPA.

Mr. Bailey provided confidential attachments regarding the calculation and appropriateness of the levelized rate. (Attachments BMB-1, BMB-2, and BMB-3.) He also confidentially shared the projected kWh to be produced by the Project during its 35-year life, advising the projected kWh is based on the minimum anticipated output per the BTA, and if the design documents specify a facility capacity less than nameplate, Crosstrack is required to pay liquidated damages. By contrast, Attachment BMB-3 provides an estimate of the cost per kWh to customers over the life of the Project if CEI South had sought to use traditional ratemaking principles and include this asset in rate base. Mr. Bailey opined that the levelized rate reduces the overall impact of the Pike County Solar Project on customer rates, shifts the risk of escalating prices to CEI South, and makes the Project feasible from Petitioner's perspective. The BTA also contains a liquidated damages provision designed to mitigate CEI South's risk if Crosstrack is unable to meet its BTA obligations. Per Mr. Bailey, the liquidated damages provision allows Petitioner to offer a competitive, stable levelized rate that results in long-term cost certainty for Petitioner's customers. If the Project is expanded or significant capital additions are undertaken, Mr. Bailey assured that it is anticipated Commission approval will be obtained before such investments are made.

**G. Benjamin Vallejo.** Mr. Vallejo described how CenterPoint Energy, Inc.'s tax capacity allows Petitioner to directly realize applicable tax incentives without the added cost of a tax equity partner ("TEP"). He stated Section 48(a)(3)(B) of the Internal Revenue Code provides



that energy property is any property the construction, reconstruction, or erection of which is completed by the taxpayer, or which is acquired by the taxpayer if the original use of such property commences with the taxpayer, and since the original use of the Project property will commence with CEI South, Petitioner is eligible for the ITC. Mr. Vallejo testified this benefit is not available under a PPA structure because CEI South is not the facility's owner. Mr. Vallejo stated that because CenterPoint Energy, Inc. will immediately realize the benefit of the ITC, Petitioner can amortize the ITC through tax expense over the life of the Project. This in turn allows Petitioner to offer a lower levelized rate for energy the Project produces.

**H. Rina H. Harris.** Ms. Harris testified that adding renewable energy to utility resources has become increasingly important as large customers emphasize the importance of addressing climate change through their operations and the energy sources their utility relies upon. She testified that corporations within Petitioner's service territory have announced renewable energy goals and expect their utilities to move toward diverse generation portfolios to assist with these goals. Ms. Harris testified that CEI South's larger customers, including Toyota, AstraZeneca, Walmart, St. Vincent, Deaconess Health Networks, and the Evansville Vanderburgh School Corporation, support transitioning to more renewable energy. She testified the Pike County Solar Project BTA is responsive to Petitioner's large customers' initiatives and stated it is also significant that the Project will be located in southern Indiana so Petitioner's customers know its generation includes a local renewable resource.

Ms. Harris testified about Evansville's recent Climate Action Plan, which is supported by residential and non-residential customers within the community. This plan outlines how Evansville will reduce its greenhouse gas ("GHG") emissions to mitigate climate change, and she advised that Evansville's Climate Action Plan Strategies include supporting CEI South's 2019/2020 IRP and adoption of renewable energy. Ms. Harris stated CEI South's customers are increasingly interested in the utility's use of more renewable resources to meet customers' energy needs, and the Pike County Solar Project is an important step toward strategic alignment with Petitioner's customers.

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

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

- The Commission should grant CEI South a CPCN under Ind. Code § 8-1-8.5-1 *et seq.* to purchase and acquire the Pike County Solar Project through a BTA. The Settling Parties agree public convenience and necessity support construction of the Project, and the BTA's terms are reasonable.

- CEI South’s cost estimate is a reasonable estimate of the Project construction costs and should be approved.
- The Project is a clean energy project as defined by Ind. Code § 8-1-8.8-3, and the energy and capacity the BTA will provide are a reasonable and necessary addition to Petitioner’s portfolio of generation resources. An Order should be approved expediently to be in place before April 3, 2023.
- CEI South will use a levelized rate for the life of the investment in the Pike County Solar Project. The levelized rate will be one of three potential amounts, depending on the precise benefits the Project qualifies to receive under the Inflation Reduction Act of 2022 (“IRA”). If the Project qualifies to receive 100% of the federal Production Tax Credit (“PTC”), before developer concessions, CEI South agrees, subject to IRS guidance or restrictions and/or other obligations of the BTA, to seek the 100% PTC and subject to the same restrictions and obligations, reduce the levelized rate to \$67.11/MWh. If Petitioner qualifies to receive at least 110% of the PTC, before developer concessions, CEI South agrees, subject to IRS guidance or restrictions and/or other obligations of the BTA, to seek the 110% PTC and subject to the same restrictions and obligations, reduce the levelized rate to \$65.65/MWh. Alternatively, to the extent the Project does not qualify to receive at least 100% of the PTC, Petitioner will continue to seek the 30% ITC as described in its case-in-chief, and the levelized rate with a 30% ITC will be \$70.75/MWh. To the extent the Pike County Solar Project qualifies for IRA solar tax benefits above the available 30% ITC as of the Execution Date of the BTA, CEI South agrees, subject to IRS guidance or restrictions (to include a public letter ruling if applicable) and/or other BTA obligations, to pass any additional IRA ITC solar tax benefits, net of developer concessions, which CEI South receives under the BTA, back to customers.
- The levelized rate will be incorporated in the CECA mechanism the Commission approved on August 16, 2017, in Cause No. 44909. The Settlement Agreement contains details regarding the manner in which the Project component of the CECA will be derived and incorporated into CEI South’s CECA filing.
- The levelized rate will be adjusted under the conditions Mr. Bailey described in his direct testimony to make a market-based downward adjustment of \$0.00058/kWh for each full \$2.5 million market differential. Under the Settlement Agreement, CEI South may also change the levelized rate if changes occur to state or federal income tax rates.
- All costs and recoveries associated with the Project will be excluded from the actual net operating income utilized for Petitioner’s quarterly FAC statutory earnings test. All costs and recoveries associated with the Project also will be excluded from the calculation of Petitioner’s electric revenue requirement in each rate case over the life of the Project, and the Project will be excluded from rate base in future base rate cases.
- CEI South will utilize any RECs Petitioner obtains for energy produced by the Pike County Solar Project in the best interest of its customers. If CEI South determines such to be in the best interest of CEI South customers, CEI South will agree to monetize RECs generated by the Project by either: (a) using its currently established processes, to the best of

Petitioner's ability, selling such RECs at the then-current most competitive prices available, to the extent feasible; or (b) upon a one-time (initial) notification to the OUCC, sell RECs to retail customers via a Green Tariff Rider. CEI South reserves the right to retain any and all RECs to meet GHG emission reduction targets, carbon intensity standards, or future regulatory requirements. Net proceeds resulting from the sale of RECs generated by the Project will be used as an offset to revenue requirements and returned to customers through CEI South's CECA mechanism filed annually in Cause No. 44909.

- CEI South will make reasonable efforts to meet with the OUCC and other interested stakeholders at least 30 days before filing for approval of a Green Tariff Rider to facilitate collaboration and incorporate, to the extent feasible and reasonable, as determined by CEI South, stakeholder feedback into the program.
- If an investment is later made to expand or technologically improve the Pike County Solar Project, such investments will be excluded from this Agreement and included within standard CEI South rate base to be proposed for recovery in a future proceeding before the Commission.
- If CEI South were to partner with a TEP on the Pike County Solar Project through a Tax Equity Partnership, CEI South will seek Commission approval to use a TEP.

**7. CEI South's Settlement Testimony.** In supporting the Settlement Agreement, Mr. Bradford stated the Settling Parties agreed the public convenience and necessity support construction of the Pike County Solar Project and that the terms of the BTA, as presented in Attachment FSB-1S, are reasonable. Mr. Bradford testified the Settling Parties also agreed the cost estimate for the Project is a reasonable estimate of the construction costs and should be approved in accordance with Ind. Code § 8-1-8.5-5 and that the Pike County Solar Project is a clean energy project under Ind. Code § 8-1-8.8-3. Mr. Bradford opined that the settlement agreements are supported by the evidence CEI South submitted in its case-in-chief, including the evidence showing CEI South's need for capacity in the short-term, and the Pike County Solar Project is an ideal project to meet these needs.

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

Mr. Bradford testified that under the Settlement Agreement, CEI South agreed to change the threshold for making market-based adjustments to the levelized rate to be more favorable to customers, in essence, creating a smaller trigger point for making downward market-based adjustments to that rate. Mr. Bradford advised that the levelized rate provisions reduce the overall

impact of the Pike County Solar Project on customer rates while still making the Project feasible from Petitioner's perspective.

Mr. Bradford testified the Settlement Agreement provides that any RECs obtained by CEI South for energy the Project produces will be used in the best interest of Petitioner's customers. The Settling Parties agreed this could include CEI South retaining the RECs or selling RECs to specific customers or to the REC market. He stated CEI South reserved the right to retain RECs to meet GHG reduction targets, carbon intensity standards, or future regulatory requirements. Per Mr. Bradford, the Settlement Agreement gives CEI South latitude with regard to the use of RECs to ensure they are used in the best interest of customers and promotes collaboration with the OUCC with respect to this issue.

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

Mr. Bradford testified that in the event an investment is made at a later date to either expand the Pike County Solar Project to increase production or to add improvements, such investments will be included within standard CEI South rate base. Additionally, Mr. Bradford stated Commission approval of the Settlement Agreement will allow the Project to timely commence so it is available to meet CEI South's capacity needs.

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

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

Public's Exhibit No. 1 at 3-4.

Mr. Loveman testified the Settlement Agreement enables CEI South's customers to benefit based on changing market conditions. It also allows customers to benefit from any bonus tax incentives resulting from the IRA and to benefit from REC sales. Finally, Mr. Loveman indicated the Settlement Agreement assures the OUCC and other interested parties have the opportunity to meet with CEI South prior to any future Green Tariff Rider filing. Mr. Loveman opined that the Settlement Agreement is in the public interest, and he recommended the Settlement Agreement be approved.

## **9. Commission Discussion and Findings.**

**A. Settlement Agreement.** As the Commission has previously held, settlements presented to the Commission are not ordinary contracts between private parties. *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coal. of Ind. Inc. v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coal.*, 664 N.E.2d at 406.

Further, any Commission decision, ruling, or order, including the approval of a settlement, must be supported by specific findings of fact and sufficient evidence. *U.S. Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coal. v. Public Serv. Co.*, 582 N.E.2d 330, 331 (Ind. 1991)). The Commission's procedural rules require that settlements be supported by probative evidence. 170 IAC 1-1.1-17(d). Before the Commission can approve the Settlement Agreement, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and consistent with the purpose of Ind. Code ch. 8-1-8.5 and that such agreement serves the public interest.

Substantial evidence was presented demonstrating the reasonableness of the Settlement Agreement's terms. In addition to CEI South's case-in-chief supporting Petitioner's requested relief, CEI South and the OUCC both filed testimony supporting the Settlement Agreement and their agreed modifications to CEI South's original proposal, and the sole intervenor, CAC, did not object to any terms of the Settlement Agreement or opt to cross-examine the Settling Parties' witnesses. The Commission, after reviewing the evidence and the Settlement Agreement, finds the Settlement Agreement is reasonable and balances the interests of CEI South's customers, Petitioner, and the overall public interest. As discussed more fully below, we further find the evidence shows the Settlement Agreement provides a just and reasonable resolution of the issues in this proceeding.

**B. Request for CPCN under Ind. Code ch. 8-1-8.5.** The Settling Parties agree the Commission should grant CEI South a CPCN under Ind. Code § 8-1-8.5-1 *et seq.* to purchase and acquire the Pike County Solar Project through a BTA, as described in CEI South's case-in-chief. In granting a CPCN, the Commission must consider the items set forth in Ind. Code ch. 8-1-8.5 and make findings as to the best estimate of the Project's cost based on the record, whether the proposal is consistent with Indiana statewide analysis or a utility specific proposal,

and whether public convenience and necessity require or will require the Project. As discussed below, the Commission finds each factor in Ind. Code § 8-1-8.5-4 supports the Settling Parties' agreement that CEI South should be granted a CPCN to acquire the Project through the BTA.

i. Competitive Solicitation and Best Cost Estimate. Under Ind. Code § 8-1-8.5-5(b)(1), a CPCN may be granted only if the Commission makes a finding "as to the best estimate of construction, purchase, or lease costs based on the evidence of record." The Settling Parties agree the cost estimate for the Pike County Solar Project, as established in the BTA offered into evidence as Petitioner's Exhibit No. 2, Attachment FSB-1, constitutes a reasonable estimate of the construction costs for the Project and should be approved by the Commission. Petitioner's witnesses described the economic and supply chain pressures affecting solar projects, including the Pike County Solar Project, noting the BTA contains provisions designed to insulate Petitioner in the event future price increases impact the solar construction market.

The evidence also shows the Pike County Solar Project was competitively priced. This Project was selected through a competitive 2020 Renewable RFP process. Twenty-five individual respondents submitted 232 proposals, 191 of which were for projects in Indiana, and these proposals include 154 solar projects, 60 solar plus storage projects, and 18 wind projects. The Pike County Solar Project was identified as a top project based on its cost, location within CEI South's assigned service territory, interconnection to an existing CEI South substation and Petitioner's transmission system, and its placement in the MISO Interconnection Queue Cycle. Although the cost is now higher than originally bid, based on the analysis Ms. Carroll's firm performed assessing the impact of market cost escalation on the Project price since the 2020 RFP, this higher cost is consistent with industry-wide trends.

Based on the Settlement Agreement and supporting evidence, the Commission finds CEI South has provided the best estimate for the cost of the BTA, consistent with the CPCN statutory requirements, and the costs were shown to be reasonable for solar projects of this nature and scope.

ii. Consistency of the Project with CEI South's 2019/2020 IRP. 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 area served by the utility." Petitioner's witness Rice sponsored Petitioner's 2019/2020 IRP as Petitioner's Exhibit No. 3, Attachments MAR-1 and MAR-2. Ind. Code § 8-1-8.5-5(b)(2) provides that a CPCN shall be granted only if the Commission has made a finding that either:

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

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

The Commission finds the record demonstrates the Pike County Solar Project is consistent with the Preferred Portfolio identified in Petitioner’s 2019/2020 IRP. Under the Preferred Portfolio, CEI South must add 1,150 MW of new solar and solar plus storage in 2023-2024 to replace retired coal capacity. The Preferred Portfolio reflects CEI South pursuing renewable projects to offset the retirement of A.B. Brown Units 1 and 2 and F.B. Culley 2 and the expiration at the end of December 2023 of the Joint Operating Agreement for Warrick Unit #4. Solar resources were selected in all portfolios, including the Preferred Portfolio, and the capacity attributable to the Pike County Solar Project, along with the capacity attributable to the solar projects approved in Cause Nos. 45501 and 45600 and the CTs approved in Cause No. 45564, will help provide a portion of the capacity necessary to meet Petitioner’s retail electric load and adequate reserve margins. Further, the evidence shows the Project represents a reasonable addition to Petitioner’s generation resource portfolio that should increase reliability and efficiency as well as mitigate risk through diversification, not only of resource mix but also asset type, and foster an economic mix of capacity resources consistent with Commission guidance in previous generation filings.

Based upon the evidence, the Commission finds the Pike County Solar Project is consistent with CEI South’s 2019/2020 IRP.

iii. Public Convenience and Necessity. Under Ind. Code § 8-1-8.5-5(b)(3), before granting a CPCN, the Commission must make “a finding that the public convenience and necessity require or will require the construction, purchase, or lease of the facility.” Without the capacity provided by the renewable projects approved to date and the Pike County Solar Project, CEI South will be at risk of having to make higher priced purchases from the PRA. Additionally, Petitioner’s witness Bradford testified that MISO indicated in its 2022 PRA results that “auction results indicate that MISO North/Central Regions have a slightly increased risk of needing to implement temporary controlled load sheds.” Petitioner’s Exhibit No. 2 at 31. The Pike County Solar Project will help mitigate these risks. Mr. Bradford also testified the Project is an ideal project to meet CEI South’s near-term capacity needs. Petitioner’s Exhibit No. 2-S at 4. The Project’s location on CEI South’s transmission system will also provide reliability and economic benefits to customers and the communities CEI South serves. As Mr. Bradford noted, from a reliability perspective, being located on-system reduces the probability of economic and physical transmission congestion.

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

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

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

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

The evidence shows Petitioner conducted three RFPs to evaluate the best mix of resources to meet its capacity needs. CEI South conducted an All-Source RFP on June 12, 2019, for 10 to 700 MWac of capacity from all sources. The responses were varied and enabled CEI South to consider multiple alternatives. Per Mr. Bradford, the All-Source RFP was used to select the initial projects for Petitioner's Generation Transition Plan. Subsequently, on August 12, 2020, CEI South issued its second RFP, the 2020 Renewable RFP, seeking a combination of wind, solar, and solar plus storage resources to meet the needs identified in the Plan. The Pike County Solar Project was selected from the 2020 Renewable RFP. On May 11, 2022, CEI South issued a new (its third) RFP seeking a combination of resources, including renewables (wind, solar, and battery storage), thermal and demand-side resources, and short-term capacity. The RFPs were based on the resource need identified in the 2019/2020 IRP.

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

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

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

A clean energy project includes “[p]rojects to develop alternative energy sources, including renewable energy projects[.]” Ind. Code § 8-1-8.8-2(2). Solar energy is specifically identified as a clean energy resource in Ind. Code § 8-1-37-4(a)(2), making it a renewable energy resource under Ind. Code § 8-1-8.8-10. The Commission finds the Pike County Solar Project is a clean energy project under Ind. Code § 8-1-8.8-11.



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

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

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

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

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

In his direct testimony, Mr. Bradford testified the initial levelized rate was “below the average PPA rate that could be obtained in the market today.” Petitioner’s Exhibit No. 2 at 28. The adjustments agreed upon in the Settlement Agreement make the levelized rate even more favorable. OUCC witness Loveman supported the agreed adjustments to the levelized rate stating the terms allow CEI South’s customers to benefit based on changing market conditions. Public’s Exhibit No. 1 at 5. The adjustments the Settling Parties agreed to make to the levelized rate in the Settlement Agreement will allow Petitioner’s customers to benefit from any bonus tax incentives resulting from the IRA. In essence, the levelized rate allows CEI South’s customers to obtain the benefits of the tax incentives offered through the IRA immediately, and the terms of the Settlement Agreement provide CEI South with flexibility with respect to selecting which IRA benefits to seek. This flexibility is designed to ensure customers receive the optimal tax benefit based on available IRS guidance.

The Commission concludes that the terms of the Settlement Agreement relating to the levelized rate were shown to be reasonable, will allow CEI South to recover its prudently incurred costs associated with the Pike County Solar Project, and reflect current solar prices and should, therefore, be approved under Ind. Code § 8-1-8.8-11. We further find it is appropriate to collect the levelized rate through the CECA using the methodology set forth in the Settlement Agreement, and the levelized rate should be excluded from Petitioner’s net operating income used for the quarterly FAC earnings test and calculation of Petitioner’s revenue requirement in rate cases over the life of the Project as agreed in the Settlement Agreement.

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

The Commission finds CEI South shall seek Commission approval to use a TEP, if Petitioner partners or contracts with a TEP on the Project through a Tax Equity Partnership

**F. Sale of Renewable Energy Credits.** Under the Settlement Agreement, any RECs CEI South obtains for energy produced by the Pike County Solar Project will be used by CEI South in the best interest of its customers. The Settling Parties agree this could include CEI South retaining the RECs or selling some RECs to specific customers or to the REC market. If CEI South determines it is in the best interest of CEI South’s customers, CEI South will monetize the RECs generated by the Project by either: (a) using its currently established processes, to the best of Petitioner’s ability, selling such RECs at the then-current most competitive prices available, to the extent feasible; or (b) upon a one-time (initial) notification to the OUCC, sell RECs to retail customers via a Green Tariff Rider once such a tariff is approved by the Commission. CEI South has reserved the right to retain any and all RECS to meet GHG emission reduction targets, carbon intensity standards, or future regulatory requirements. Additionally, net proceeds resulting from the sale of RECs generated by the Pike County Solar Project will be used as an offset to revenue requirements and returned to customers through the CECA mechanism.

The Commission finds the Settling Parties' agreements related to RECs are reasonable and should be approved. The Settlement Agreement gives CEI South latitude with regard to the use of RECs to ensure they are used in the best interest of customers.

**G. Green Power Tariff.** The Settlement Agreement also provides that CEI South will make reasonable efforts to meet with the OUCC and other interested stakeholders at least 30 days before filing for approval of a Green Tariff Rider to facilitate collaboration and incorporate, to the extent feasible and reasonable as determined by CEI South, stakeholder feedback upon the program. OUCC witness Loveman identified this agreement to meet prior to any future Green Tariff Rider filing as one of the reasons he believes the Settlement Agreement is in the public interest. Public's Exhibit No. 1 at 5-6. The Commission finds these agreements related to the potential Green Power tariff are reasonable and should be approved.

**H. Conclusion.** The Commission finds the evidence supports approving the Settlement Agreement, the BTA, and the proposed method of cost recovery. The BTA terms and costs were shown to be reasonable and will facilitate providing Petitioner with needed energy, diversify CEI South's supply portfolio, and mitigate fuel cost volatility. The Commission, therefore, finds the costs of the BTA should be recovered through the levelized rate incorporated into the CECA mechanism, subject to adjustment as provided in the Settlement Agreement. We further find a CPCN should be issued for the purchase and acquisition through the BTA of the Pike County Solar Project.

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

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

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

After reviewing the designated confidential information and the affidavits, along with the Motion and supplemental affidavit of Mr. Reisinger, the Commission finds the subject information

was shown to be confidential trade secret information under Ind. Code §§ 5-14-3-4 and 24- 2-3-2. Petitioner showed this information has independent economic value from not being generally known or readily ascertainable by proper means and that Petitioner takes reasonable steps to maintain its secrecy, and disclosure could harm Petitioner; therefore, the Commission affirms the preliminary ruling on confidentiality and finds the Confidential Information should continue to be exempt from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29, held as confidential, and protected from public disclosure by this Commission.

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

1. The Settlement Agreement between CEI South and the OUCC, a copy of which is attached, is approved.
2. CEI South is granted a Certificate of Public Convenience and Necessity under Ind. Code ch. 8-1-8.5 for Petitioner’s proposed acquisition of the Pike County Solar Project through the Build Transfer Agreement. This Order shall constitute such Certificate.
3. CEI South’s estimated cost for the Pike County Solar Project is approved.
4. CEI South’s proposed Pike County Solar Project is approved as a reasonable and necessary clean energy project under Ind. Code § 8-1-8.8-11.
5. Petitioner’s proposed levelized rate and associated ratemaking and accounting treatment for the Pike County Solar Project, pursuant to Ind. Code § 8-1-8.8-11, are approved, including the potential modifications to the levelized rate described in the Settlement Agreement based on the IRA.
6. CEI South shall seek Commission approval to use a TEP if Petitioner partners or contracts with a TEP with respect to the Project through a Tax Equity Partnership.
7. Petitioner’s request for confidential trade secret treatment is granted, and the Confidential Information shall, therefore, continue to be excepted from public disclosure.
8. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, VELETA, AND ZIEGNER CONCUR:**

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

CAUSE NO. 45754

**STIPULATION AND SETTLEMENT AGREEMENT BETWEEN  
CEI SOUTH AND THE INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR**

This Stipulation and Settlement Agreement (the “Settlement Agreement”) is entered into by and between Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South (“CEI South” or the “Petitioner”) and the Indiana Office of Utility Consumer Counselor (“OUCC”). CEI South and the OUCC are collectively referred to herein as the “Settling Parties.” The Settling Parties, solely for purposes of compromise and settlement and having been duly advised by their respective staff, experts and counsel, stipulate and agree that the terms and conditions set forth in this Settlement Agreement represent a fair, just and reasonable resolution of all matters raised in this proceeding, subject to their incorporation by the Indiana Utility Regulatory Commission (“Commission”) into a final, non-appealable order without modification or further condition that is unacceptable to either Settling Party (“Final Order”). The Settling Parties agree that this Settlement Agreement resolves all disputes,

claims and issues arising from the Commission proceeding currently pending in Cause No. 45754 and that the relief requested by CEI South in this proceeding should be granted subject only to the modifications set forth herein.

**I. CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY  
AND RELATED REQUESTS FOR RELIEF**

1. **Certificate of Public Convenience and Necessity.** The Settling Parties agree the Commission should grant CEI South a certificate of public convenience and necessity (“CPCN”) pursuant to Ind. Code § 8-1-8.5-1 *et seq.*, to purchase and acquire a solar power electric generating facility in Pike County, Indiana, through a Build Transfer Agreement (“BTA”) that will have an aggregate nameplate capacity of approximately 130 megawatts alternating current (“MWac”) as described with specificity in CEI South’s case-in-chief (referred to herein as the “Pike County Solar Project”). The Pike County Solar Project is anticipated to be completed by March 2025, and when completed, it will interconnect to CEI South’s transmission system via CEI South’s existing Cato 138 kV substation within the footprint of Midcontinent Independent System Operator (“MISO”). The Settling Parties agree that public convenience and necessity support construction of the Pike County Solar Project and that the terms of the BTA as presented in Petitioner’s Exhibit No. 2, Attachment FSB-1 are reasonable.

2. **Cost Estimate.** The Settling Parties agree CEI South’s cost estimate for the Pike County Solar Project, which is set forth in the BTA and further discussed in the direct testimony of F. Shane Bradford, constitutes a reasonable estimate of the construction costs for the Pike County Solar Project and should be approved by the Commission in accordance with Ind. Code § 8-1-8.5-5.

3. **Clean Energy Project.** The Settling Parties agree the Pike County Solar Project is a “clean energy project” as defined in Indiana Code § 8-1-8.8-3 and the energy and capacity the BTA will provide is 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.

4. **Commencement of Pike County Solar Project.** The Settling Parties acknowledge time is of the essence and will use their best efforts to obtain an Order in this proceeding as soon as practicable, so that a final Commission Order will be in place before April 3, 2023 in recognition of the fact that the BTA allows either party to terminate absent a final Order having been obtained before that date.

## II. **LEVELIZED RATE**

5. **Levelized Rate Approach.** The Settling Parties acknowledge that due to the special nature of the Pike County Solar Project, including the availability of potential benefits available as a result of the August 16, 2022 enactment of the Inflation Reduction Act of 2022 ("IRA") which could offset project costs, the Pike County Solar Project represents a unique opportunity to implement alternative approaches to traditional ratemaking that might not be applicable to other or future CPCN projects. Based on that understanding, the Settling Parties have structured the ratemaking terms set forth in this Settlement Agreement to use a fixed levelized rate per kilowatt hour ("kWh") of produced energy for the life of the investment in the Pike County Solar Project ("Levelized Rate"). The approach is further designed to allow customers to realize the impact of the benefits that might be available through the enactment of the IRA more quickly than otherwise could be accomplished through traditional ratemaking.

6. **Alternative Levelized Rates.** Given the recency of the passage of the IRA, the Settling Parties understand CEI South continues to evaluate precisely what benefits the Pike County Solar Project may qualify for based on evolving Internal Revenue Service ("IRS") guidance. The Settling Parties agree the Levelized Rate initially will be as follows depending on the precise benefits the Pike County Solar Project qualifies to receive:

- a. To the extent the Pike County Solar Project qualifies to receive at least 100% of the Federal Production Tax Credit ("PTC"), before developer concessions, CEI South

agrees, subject to IRS guidance or restrictions and/or other obligations of the BTA, to seek the 100% PTC (defined as \$26/MWh in 2022) and subject to the same restrictions and obligations, reduce the Levelized Rate to **\$67.11/MWh**.

- b. If, and to the extent, CEI South qualifies to receive at least 110% of the PTC, before developer concessions, CEI South agrees, subject to IRS guidance or restrictions and/or other obligations of the BTA, to seek the 110% PTC and subject to the same restrictions and obligations, reduce the Levelized Rate to **\$65.65/MWh**.
- c. To the extent, the Pike County Solar Project does not qualify to receive 100% of the PTC, CEI South will continue to seek the 30% Investment Tax Credit (“ITC”) as described in CEI South’s case-in-chief. The Levelized Rate with a 30% ITC would be **\$70.75/MWh** as set forth in Petitioner’s case in chief.

To the extent the Pike County Solar Project does not qualify to receive at least 100% of the PTC and to the extent the Pike County Solar Project qualifies for IRA solar tax benefits above the available 30% ITC as of the Execution Date of the BTA, CEI South agrees, subject to IRS guidance or restrictions (to include a public letter ruling if applicable) and/or other BTA obligations, to pass any such additional IRA ITC solar tax benefits, net of developer concessions, which CEI South receives under the BTA, back to customers. CEI South will make a 30-day filing seeking an adjustment to the Levelized Rate to the extent the Pike County Solar Project receives IRA solar tax benefits above the available 30%. CEI South will provide support for the adjustment to the Levelized Rate to the OUCC upon request subject to Nondisclosure Agreement.

The Levelized Rate will be incorporated in the Clean Energy Cost Adjustment (“CECA”) mechanism, which the Commission approved on August 16, 2017 in Cause No. 44909 (the “44909 Order”) for renewable energy projects, in the manner described in Section III of this Settlement Agreement. Once the Levelized Rate is established, it may be adjusted absent



Commission approval in a subsequent proceeding only under the circumstances described in Section 7, below.

7. **Adjustments to Levelized Rate.** The Levelized Rate will be adjusted under the following circumstances:

- a. In the event the conditions described on pages 7 through 8 of the direct testimony of Benjamin D. Bailey require a market based downward adjustment to the Levelized Rate, CEI South will make such adjustment regardless of the approach taken for recognizing tax incentives as discussed in Section 6, as follows: CEI South will make a market based downward adjustment to the Levelized Rate of \$0.00058/kWh for each full \$2.5 Million differential to the amount specified in Mr. Bailey's testimony. CEI South will make a 30-day filing seeking an adjustment to the Levelized Rate. CEI South will provide support for the adjustment to the Levelized Rate to the OUCC upon request subject to Nondisclosure Agreement.
- b. If any adjustments are made to the law governing Indiana State and/or Federal Income Tax Rates that result in a change to other approved tariff rates, the Levelized Rate will be adjusted to reflect the revised tax rates. CEI South will make a 30-day filing seeking an adjustment to the Levelized Rate. CEI South will provide support for the adjustment to the Levelized Rate to the OUCC upon request.

8. **Exclusion of Costs and Recoveries from Fuel Adjustment Clause ("FAC").** All costs and recoveries associated with the Pike County Solar Project will be excluded from the actual net operating income ("NOI") utilized for the quarterly FAC statutory earnings test. All costs and recoveries associated with the Pike County Solar Project also will be excluded from the calculation of Petitioner's electric revenue requirement in each rate case over the life of the Pike County Solar Project. Likewise, the Pike County Solar Project will be excluded from rate base in a future base rate case.

### III. LEVELIZED RATE RECOVERED THROUGH CECA

9. **CECA Components.** The CECA will recover: (a) the approved revenue requirement associated with the three solar energy projects and one energy storage system approved in Cause No. 44909 (the “44909 Projects”); (b) the Levelized Rate approved with respect to the 50 MW Solar Project in Cause No. 45086 (the “45086 Project”); (c) the Levelized Rate for the Posey County Solar Project, originally approved in Cause No. 45501 (the “45501 Project”); and (d) the Levelized Rate for the Pike County Solar Project (the “45754 Project”). CEI South is not making any changes to the CECA mechanism as approved in Order 44909, except as necessary to support the incorporation of the Pike County Solar Project.

10. **Derivation of Pike County Solar Project Component of CECA.** The Pike County Solar Project component of the CECA will be derived by multiplying the then effective Levelized Rate per kWh by the Production Baseline kWh produced by the Pike County Solar Project during the upcoming twelve-month period. The Production Baseline will be set based on the final design of the solar facility, utilizing the percent annual capacity factor set forth on Page 21 of the direct testimony of Mathew A. Rice in the first year of operation and 0.5 percent degradation factor for subsequent years.

a. In the event that actual annual production from the Pike County Solar Project for a rolling three-year period is less than 90 percent of the Production Baseline for the same rolling three-year period and such deviation is not the result of a force majeure event (e.g., and without limitation, tornado, lightning damage, fire, earth quake, acts of state or governmental action impeding performance), CEI South shall credit the CECA in the next annual filing in the amount of the Levelized Rate multiplied by the difference between the rolling three-year period actual annual production and 90 percent of the Production Baseline, demonstrated in the following calculation:

	Actual Production	Baseline Production
2025	100,000,000	109,193,400
2026	97,000,000	108,647,433
2027	95,000,000	108,104,196
	97,333,333	108,648,343
Rolling 3-year Average Baseline Production Threshold (90%)		97,783,509
Actual Production Below Baseline Threshold	450,175	
Levelized Rate per kWh	\$ 0.07075	
CECA Production Credit	\$ 31,850	

- b. In the event that actual annual production from the Pike Solar Project for a rolling three-year period is greater than 110 percent of the Production Baseline for the same rolling three-year period, CEI South shall include as a recoverable cost in the CECA in the next annual filing the amount of the Levelized Rate multiplied by the difference between the rolling three-year period actual annual production and 110 percent of the Production Baseline, demonstrated in the following calculation:

	Actual Production	Baseline Production
2025	121,000,000	109,193,400
2026	120,000,000	108,647,433
2027	119,000,000	108,104,196
	120,000,000	108,648,343
Rolling 3-year Average Baseline Production Threshold (110%)		119,513,177
Actual Production Below Baseline Threshold	486,823	
Levelized Rate per kWh	\$ 0.07075	
CECA Production Charge	\$ 34,443	

11. **Filing of CECA.** The Pike County Solar Project will be incorporated into the CECA as follows. Petitioner would file two sets of rates for approval in the annual CECA filing prior to the projected in-service date of the Pike County Solar Project.:

- a. The first set of rates will recover the eligible revenue requirement associated with the

44909 Projects, the 45086 Project, and the 45501 Project; and

- b. The second set of rates, effective on the date of in-service of the Pike County Solar Project, will recover the eligible revenue requirement associated with all of the following: the 44909 Projects, 45086 Project, and 45501 Project as well as the Pike County Solar Project.

12. **Allocation of CECA to Rate Schedules.** The CECA will be allocated to the Rate Schedules in each CECA tracker filing using the four coincident peak (“4CP”) allocation percentages as approved by the Commission in Cause No. 43354 MCRA 21 S1, unless or until modified in a future Commission proceeding.

13. **Reconciliation.** The CECA will be reconciled annually as a part of each annual CECA filing, with any over- or under-recovery collection variances returned to or recovered from customers in CEI South’s subsequent CECA filings. In this manner, the Levelized Rate for the Pike County Solar Project will not change during the agreed upon recovery period, but the variances due to actual customer usage will be reconciled in the CECA.

#### **IV. RECs AND GREEN TARIFF RIDER**

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

is approved by the Commission. CEI South reserves the right to retain any and all RECS to meet greenhouse gas (“GHG”) emission reduction targets, carbon intensity standards, or future regulatory requirements.

Net proceeds resulting from the sale of RECs generated by the Pike County Solar Project will be used as an offset to revenue requirements and returned to customers through CEI South’s CECA mechanism, filed annually in Cause No. 44909. CEI South will provide supporting evidence (in the form of an attachment or workpaper to CEI South’s annual CECA filing) of the amount of, and total brokerage costs for, RECs generated by the Pike County Solar Project and subsequently sold during the relevant reporting period for each CECA annual filing.

15. **Green Tariff Rider.** CEI South is working to develop a Green Power tariff that would be available to customers interested in purchasing energy generated from renewable and/or environmentally friendly sources. The proposed Green Power tariff is anticipated to be available to Large Power (“LP”) and High Load Factor (“HLF”). CEI South will make reasonable efforts to meet with the OUCC and other interested stakeholders, at least 30 days prior to filing for approval of a Green Tariff Rider to facilitate collaboration and incorporate, to extent feasible and reasonable as determined by CEI South, stakeholder feedback into the program.

#### **V. FUTURE IMPROVEMENTS AND TAX EQUITY PARTNER**

16. **Future Improvements.** In the event an investment is made at a later date to either expand the Pike County Solar Project to increase production or add technological improvements (e.g., battery storage or other investments to extend the life of the Pike County Solar Project beyond that which is contemplated in this Settlement Agreement), such investments will be excluded from this Agreement and included within standard CEI South rate base to be proposed for recovery in a future proceeding before the Commission.

17. **Tax Equity Partner.** If and to the extent, CEI South were to partner with a tax equity partner (“TEP”) on the Pike County Solar Project through a Tax Equity Partnership, CEI South will seek Commission approval to use a TEP.

**VI. SETTLEMENT AGREEMENT -- SCOPE AND APPROVAL**

18. Neither the making of this Settlement Agreement nor any of its provisions shall constitute in any respect an admission by any Settling Party in this or any other litigation or proceeding. Neither the making of this Settlement Agreement, nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.

19. This Settlement Agreement shall not constitute nor be cited as precedent by any person or deemed an admission by any Settling Party in any other proceeding except as necessary to enforce its terms before the Commission, or any tribunal of competent jurisdiction. This Settlement Agreement is solely the result of compromise in the settlement process and, except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any of the Settling Parties may take with respect to any or all of the issues resolved herein in any future regulatory or other proceedings.

20. The Settling Parties’ entry into this Settlement Agreement shall not be construed as a limitation on any position they may take or relief they may seek in other pending or future Commission proceedings not specifically addressed in this Settlement Agreement.

21. The undersigned have represented and agreed that they are fully authorized to execute this Settlement Agreement on behalf of their designated clients, and their successors and assigns, who will be bound thereby, subject to the agreement of the Settling Parties on the provisions contained herein.

22. The communications and discussions during the negotiations and conferences have been conducted based on the explicit understanding that said communications and discussions are or relate to offers of settlement and therefore are privileged. All prior drafts of this Settlement Agreement and any settlement proposals and counterproposals also are or relate to offers of settlement and are privileged.

23. This Settlement Agreement is conditioned upon and subject to Commission acceptance and approval of its terms in their entirety, without any change or condition that is unacceptable to any Settling Party.

24. The Settling Parties will offer supplemental testimony supporting the Commission's approval of this Settlement Agreement and will request that the Commission issue a Final Order incorporating the agreed proposed language of the Settling Parties and accepting and approving the same in accordance with its terms without any modification. Such supportive testimony will be agreed-upon by the Settling Parties and offered into evidence without objection by any Settling Party. The Settling Parties hereby waive cross-examination of each other's witnesses.

25. The Settling Parties will support this Settlement Agreement before the Commission and request that the Commission accept and approve the Settlement Agreement. This Settlement Agreement is a complete, interrelated package and is not severable, and shall be accepted or rejected in its entirety without modification or further condition(s) that may be unacceptable to any Settling Party. If the Commission does not approve the Settlement Agreement in its entirety, the Settlement Agreement shall be null and void and deemed withdrawn, upon notice in writing by any Settling Party within fifteen (15) business days after the date of the Final Order that any modifications made by the Commission are unacceptable to it. In the event the Settlement Agreement is withdrawn, the

Settling Parties will request that an Attorneys' Conference be convened to establish a procedural schedule for the continued litigation of this proceeding.

26. The Settling Parties will work together to prepare an agreed upon proposed order to be submitted in this Cause on or before the date scheduled for the evidentiary hearing. The Settling Parties will request Commission acceptance and approval of this Settlement Agreement in its entirety, without any change or condition that is unacceptable to any party to this Settlement Agreement.

27. The Settling Parties also will work cooperatively on news releases or other announcements to the public about this Settlement Agreement.

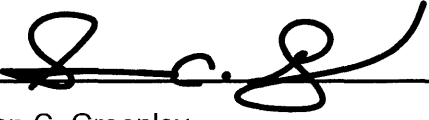
28. The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of any Final Order entered by the Commission approving the Settlement Agreement in its entirety without changes or condition(s) unacceptable to any Settling Party (or related orders to the extent such orders are specifically and exclusively implementing the provisions hereof) and shall not oppose this Settlement Agreement in the event of any appeal or a request for rehearing, reconsideration or a stay by any person not a party hereto.

Accepted and Agreed on this 6<sup>th</sup> day of October, 2022

**[signature pages follow]**



SOUTHERN INDIANA GAS AND ELECTRIC  
COMPANY D/B/A CENTERPOINT ENERGY  
INDIANA SOUTH



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Steven C. Greenley  
Senior Vice President – Generation Development

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



A handwritten signature in black ink, appearing to read "KSEarls", is positioned above a horizontal line. To the left of the signature, there is a vertical line segment.

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Kelly S. Earls

An Attorney for the Indiana Office of Utility Consumer Counselor