

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF REPUBLIC TRANSMISSION, LLC FOR:)
(1) AUTHORITY TO OPERATE AS A PUBLIC)
UTILITY UNDER IND. CODE §8-1-38-7;)
(2) A DETERMINATION THAT IT IS A PUBLIC)
UTILITY UNDER IND. CODE §8-1-2-1 AND §8-1-8.5-1)
AND AUTHORITY TO EXERCISE ALL RIGHTS AND)
PRIVILEGES OF A PUBLIC UTILITY AS ACCORDED)
BY INDIANA LAW; (3) AUTHORITY TO TRANSFER)
FUNCTIONAL CONTROL OF ITS TRANSMISSION)
FACILITIES TO A FULLY FUNCTIONING REGIONAL)
TRANSMISSION ORGANIZATION; (4) A)
DETERMINATION THAT THE COMMISSION)
SHOULD DECLINE TO EXERCISE CERTAIN)
ASPECTS OF ITS JURISDICTION OVER PETITIONER;)
(5) AUTHORITY TO LOCATE ITS BOOKS AND)
RECORDS OUTSIDE THE STATE OF INDIANA;)
(6) CONSENT TO BOARDS OF COUNTY)
COMMISSIONERS FOR PETITIONER TO OCCUPY)
PUBLIC RIGHTS-OF-WAY; AND (7) ALL OTHER)
APPROPRIATE AND ASSOCIATED APPROVALS)
AND RELIEF.)

FILED

May 25, 2017

INDIANA UTILITY
REGULATORY COMMISSION

CAUSE NO. 44912

SUBMISSION OF PROPOSED ORDER

Republic Transmission, LLC hereby respectfully submits the attached Proposed Order in
the above-captioned Cause to the Indiana Utility Regulatory Commission.

Respectfully submitted,

By: /s/ Liane K. Steffes
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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following by e-mail transmission this 25th day of May, 2017:

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APPROPRIATE AND ASSOCIATED APPROVALS)
AND RELIEF.)

CAUSE NO. 44912

ORDER OF THE COMMISSION

Presiding Officers:

Sarah E. Freeman, Commissioner

Aaron A. Schmoll, Senior Administrative Law Judge

On March 6, 2017, Republic Transmission, LLC (“Republic Transmission” or “Petitioner”) filed its Verified Petition (“Petition”) in this Cause with the Indiana Utility Regulatory Commission (“Commission” or “IURC”), requesting: (1) authority to operate as a public utility and a finding it is a new electric transmission owner under Ind. Code § 8-1-38-7; (2) a determination that it is a public utility and authorization to exercise all rights and privileges of a public utility as accorded by Indiana law and Ind. Code §§ 8-1-2-1 and 8-1-8.5-1, including the right to exercise eminent domain under Ind. Code Ch. 32-24-4; (3) a determination that the Commission should decline to exercise certain aspects of its jurisdiction over Republic Transmission under Ind. Code § 8-1-2.5-5; (4) authorization for Republic Transmission to maintain its books and records outside of Indiana under Ind. Code § 8-1-2-15; (5) authorization for Republic Transmission to transfer functional control of assets to an applicable regional transmission organization (“RTO”) under Ind. Code § 8-1-2-83; (6) the Commission to grant consent to the boards of county commissioners of all Indiana counties to grant Republic Transmission such licenses, permits or franchises as may be necessary for Republic

Transmission to use and occupy county roads, highways and other public rights-of-way for the provision of services to facilities pursuant to Ind. Code § 36-2-2-23; and (7) approval for the confidential treatment of certain information to filed in this proceeding.

On March 6, 2017, Republic Transmission also pre-filed direct testimony and exhibits of the following:

- Lawrence Willick
- Joseph D. Esteves

On March 8, 2017, Hoosier Energy Rural Electric Cooperative, Inc. (“Hoosier Energy”) filed a Petition to Intervene, which was granted by a docket entry dated March 28, 2017.

On March 21, 2017, Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. (“Vectren”) filed a Petition to Intervene, which was granted by a docket entry dated March 28, 2017.

On April 21, 2017, Hoosier Energy pre-filed direct testimony of David W. Sandefur.

On April 28, 2017, the Indiana Office of Utility Consumer Counselor (“OUCC”) pre-filed direct testimony and exhibits of Peter Boerger, Ph.D.

On May 2, 2017, Republic Transmission filed its Notice of Substitution of Witness and Submission of Revisions to Direct Testimony, in which Richard Roloff was substituted for and adopted the testimony of Joseph D. Esteves.

On May 2, 2017, Republic Transmission pre-filed rebuttal testimony and exhibits of the following:

- Lawrence Willick
- Richard Roloff

On May 16, 2017, Republic Transmission filed its Motion for Administrative Notice requesting the Commission take administrative notice of a Certificate of Conversion from the Office of the Secretary of State of Indiana converting Republic Transmission, LLC from a Foreign Limited Liability Company to an Indiana Limited Liability Company.

Pursuant to notice published as provided by law, the Commission conducted an evidentiary hearing in this Cause on May 18, 2017 at 10:00 a.m. in Room 222, 101 West Washington Street, Indianapolis, Indiana. Petitioner offered into evidence the pre-filed testimony and exhibits sponsored by Lawrence Willick and Richard Roloff, the pre-filed rebuttal testimony and exhibits sponsored by Lawrence Willick and Richard Roloff, and its Motion for Administrative Notice. Hoosier Energy offered into evidence the pre-filed testimony of David W. Sandefur. The OUCC offered into evidence the testimony of Peter Boerger, Ph.D. No members of the general public appeared at the evidentiary hearing or attempted to participate in this Cause.

Based on the applicable law and evidence presented, the Commission now finds as follows:

1. Notice and Commission Jurisdiction. Due, legal and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. Petitioner will provide electric transmission service and facilities and own, operate, manage and control plant and equipment within Indiana for the transmission of electricity at wholesale. As such, Petitioner has requested the Commission find that it is a “public utility” as defined in Ind. Code § 8-1-2-1, Ind. Code § 8-1-8.5-1 and Ind. Code § 8-1-38-5. Accordingly, the Commission has jurisdiction over Petitioner in the subject matter of this proceeding.

2. Petitioner’s Characteristics. Republic Transmission is a limited liability company organized under the laws of the State of Indiana, with its principal office at One Tower Center Boulevard, 21st Floor, East Brunswick, NJ 08816. Republic Transmission is a fully-owned subsidiary of Republic Transmission Holdings, LLC (“RT Holdings”), which is currently a fully owned subsidiary of LS Power Associates, L.P. (“LS Power”). Republic Transmission and Hoosier Energy have a memorandum of understanding and are finalizing an agreement under which Hoosier Energy will acquire 10% of RT Holdings and have an option to purchase up to an additional 10% of RT Holdings at a future date. Republic Transmission was organized to construct, own, operate and maintain an electric transmission facility, in whole or in part, in Indiana. Republic Transmission does not currently own, operate or maintain an electric transmission facility, in whole or in part, in Indiana.

3. Relief Requested. Republic Transmission intends to develop, own and operate competitive electric transmission projects in Indiana within the Midcontinent Independent System Operator, Inc. (“MISO”), or other applicable RTOs, footprint. Specifically, Republic Transmission submitted a proposal and was selected, through MISO’s competitive developer selection process, to develop, own, and operate the Duff-Coleman Extra High Voltage 345kV Competitive Transmission Project (the “Project”). Republic Transmission will be a new electric transmission owner and seeks authority to operate as a public utility in Indiana pursuant to Ind. Code § 8-1-38-7. Republic Transmission also seeks a determination from the Commission that it will be a public utility under Ind. Code §§ 8-1-2-1 and 8-1-8.5-1 and a confirmation that Republic Transmission has authority to exercise all rights and privileges of a public utility accorded by Indiana law, including the right to exercise the power of eminent domain pursuant to Ind. Code ch. 32-24-4.

Pursuant to Ind. Code § 8-1-2.5-5, Republic Transmission requests the Commission to decline to exercise certain aspects of its jurisdiction over Republic Transmission, which are further described in Section 8.B below. Republic Transmission also requests authority to maintain its books and records outside of Indiana under Ind. Code § 8-1-2-15 and authority to transfer functional control of assets to an applicable RTO under Ind. Code § 8-1-2-83. Republic Transmission requests the Commission to grant consent to the boards of county commissioners of all Indiana counties to grant Republic Transmission such licenses, permits or franchises as may be necessary for Republic Transmission to use and occupy county roads, highways and other public rights-of-way for the provision of services to facilities pursuant to Ind. Code § 36-2-

2-23. Finally, Republic Transmission requests approval for the confidential treatment of certain information filed in this proceeding.

4. Republic Transmission's Direct Evidence.

A. Direct Testimony of Lawrence Willick. Mr. Willick, a Sr. Vice President for LS Power Development, LLC, the general partner and manager of LS Power, testified on behalf of Petitioner. He provided an overview of the Petitioner, LS Power, the Project, and the relief sought.

Mr. Willick testified that LS Power is a power generation and transmission company that owns and manages one of the largest and most diverse independent power generation and transmission portfolios in the United States and is an experienced and capable electric transmission planner, developer, owner and operator. Mr. Willick testified that LS Power is one of the most successful competitive transmission development companies, having been designated for multiple projects by multiple regional transmission operators. LS Power, Mr. Willick stated, through its subsidiaries and affiliates (also affiliates of Republic Transmission), has successfully developed, constructed, financed and energized over 500 miles of extra-high voltage transmission lines and the associated substations and equipment for those projects. Mr. Willick testified that such projects have included 235 miles of new double circuit 345 kV transmission and related facilities in Texas (Texas CREZ), 231 miles of 500 kV and eight miles of 345 kV transmission facilities in Nevada (One Nevada Transmission Line), and a twenty-five mile, 345 kV transmission line in Texas (Gray to Allen Creek).

Mr. Willick testified that one of LS Power's subsidiaries developed and is currently constructing 67 miles of new double circuit 345 kV transmission north of Houston, Texas (Limestone to Gibbons Creek), another LS Power subsidiary was selected by the California Independent System Operator through a competitive solicitation to deliver approximately 60 miles of new 500 kV transmission facilities (Harry Allen to Eldorado), and another LS Power subsidiary was selected by PJM Interconnection LLC ("PJM") in its first competitive transmission solicitation to develop, own, and operate a new 230 kV transmission line approximately 5 miles in length in New Jersey and Delaware, which includes a three mile underground crossing of the Delaware River (Artificial Island).

Mr. Willick testified that Petitioner's objective is to provide safe, reliable, economic transmission service and that while Republic Transmission is currently planning to implement, own and operate the Project, it also hopes to own additional transmission projects within Indiana in the future.

Mr. Willick testified that Petitioner will not provide any retail electric utility service in Indiana, intending only to develop competitive transmission projects approved by an applicable RTO (currently MISO and PJM) and provide wholesale transmission service through a Federal Energy Regulatory Commission ("FERC") approved tariff.

Mr. Willick testified that the Project was approved by the MISO Board of Directors in December, 2015 as a Market Efficiency Project ("MEP") and that, pursuant to the MISO Open

Access Transmission, Energy and Operating Reserves Market Tariff (the “MISO Tariff”), an MEP is subject to competition from Qualified Transmission Developers if the project is located in jurisdictions that do not have laws prohibiting non-incumbent transmission developers from owning, operating, and maintaining electric transmission facilities. Mr. Willick described the process that Petitioner went through to obtain status as a Qualified Transmission Developer in MISO and stated that Petitioner has been selected by MISO as the developer for the Project based upon the proposal it submitted to MISO for the Project.

Mr. Willick described MISO’s evaluation process, evaluation principles, and evaluation criteria for the proposals submitted for the Project and stated that, according to MISO’s selection report, Petitioner’s proposal for the Project received the highest ranking out of all proposals submitted. Mr. Willick testified that Petitioner collaborated with Hoosier Energy and Big Rivers Electric Corporation (“Big Rivers”) to better position Petitioner in the competitive process, noting that Hoosier Energy intends to be a minority owner of Petitioner’s parent company, RT Holdings, and will provide technical support to Petitioner in the construction and operation of the Project, with Big Rivers providing support for the Kentucky portion of the Project.

Mr. Willick testified that although there are currently no other competitive transmission projects in Indiana identified for development, Petitioner will consider submitting proposals for future competitive projects in Indiana as they come up for consideration. Mr. Willick stated that, in the future, if MISO identifies necessary upgrades or there is a generation interconnection or other issue that would impact the Duff-Coleman assets, Petitioner, as the applicable Transmission Owner, may be required to construct, own, operate and maintain additional infrastructure related to the Project. Mr. Willick testified that Petitioner intends to transfer functional control of the Project to MISO upon completion of construction, as so required by MISO, and would similarly expect to do so for any future competitive transmission projects.

Mr. Willick testified as to the importance of Petitioner having the authority to exercise the power of eminent domain in conjunction with its operation as an electric transmission public utility, stating that the majority of the Project will be constructed on private property and not within the public right-of-way and that, if the rights necessary for the Project or any future competitive transmission projects in Indiana that Petitioner is awarded cannot be obtained through means of negotiation, the authority to exercise eminent domain could be needed to obtain such rights. He testified further, however, that there may be sections that must be located within public right-of-way, and, as a result, Petitioner may be required to obtain, from the boards of commissioners of the counties in which facilities are located, a license, permit or franchise to occupy and use county roads, highways and other property and public rights-of-way.

Mr. Willick testified that Petitioner seeks authority to maintain its books and records outside of Indiana because the accounting, financial and administrative management and staff of LS Power perform and will continue to perform accounting, financial, treasury and other administrative services for Petitioner, including maintenance of Petitioner’s accounting and financial books and records. He testified that, for these reasons, it would be inefficient and unduly expensive and could necessitate duplicative efforts for Petitioner to maintain its books and records in Indiana. Mr. Willick testified that Petitioner will ensure that the Commission, Commission Staff, and other interested parties have necessary access to its books and records.

Mr. Willick testified that, in drawing upon the extensive managerial, technical, and financial capabilities and experience of LS Power, a developer of large-scale energy projects, including several transmission projects, with a strong track record, Petitioner has the financial, managerial, and technical capability to construct, own, operate, and maintain an electric transmission facility. Mr. Willick stated that Petitioner intends to manage the development, construction and operation of competitive electric transmission projects in Indiana by relying primarily on employees of LS Power Development, LLC, which will allow Petitioner to access specific expertise in a wide variety of technical areas, including accounting, project management, environmental permitting, transmission engineering, legal, compliance, human resources, information technology, tax, finance and others; for the Project, specifically, additional technical support will be provided by Hoosier Energy, Big Rivers, and pre-screened, qualified third-party contractors with specialized skills. Mr. Willick testified that Petitioner plans to utilize the operations and maintenance personnel and resources of LS Power and Hoosier Energy to operate and maintain its transmission projects in Indiana, and, for the Project, Petitioner intends to contract with Hoosier Energy to provide ongoing operation and maintenance.

Mr. Willick testified Petitioner is contractually obligated to MISO to meet specific commitments regarding project delivery, quality, project costs, and cost recovery in its proposal for the Project and risks losing its cash deposit and termination of its Selected Developer Agreement if it fails to meet its obligations to MISO.

Mr. Willick supported Petitioner's request for partial declination in testifying that Petitioner is a wholesale transmission service provider that intends to construct, own, operate and maintain competitive transmission facilities within Indiana for the transmission of electricity at wholesale prices under rates, terms and conditions regulated by FERC, noting that as Petitioner will only own and operate wholesale transmission facilities, reliability will be comprehensively monitored and regulated by MISO, FERC and NERC. Mr. Willick testified further, full jurisdiction by the Commission is unnecessary because Petitioner does not intend to build wholesale transmission facilities in Indiana that are not in accordance with the tariff of an RTO, and because Petitioner expects that it will turn over functional control of its wholesale transmission facilities to MISO or an applicable RTO upon completion. Mr. Willick also testified that competitive forces in the wholesale power market and FERC's regulatory oversight of Petitioner render the exercise of the Commission's full jurisdiction of Petitioner unnecessary, burdensome, and wasteful of the Commission's time and resources.

B. Direct Testimony of Richard Roloff. Mr. Roloff, Senior Vice President for LS Power Development, LLC, the general partner and manager of LS Power, testified on behalf of Petitioner.

Mr. Roloff testified that Petitioner has the financial capability to construct, own, operate, and maintain electric transmission facilities in Indiana. Mr. Roloff stated that Petitioner will leverage the financial capabilities of LS Power, which has raised over \$1 billion for competitive high voltage transmission projects since 2011, to raise capital for new transmission projects in Indiana. Mr. Roloff stated that Petitioner will utilize a combination of equity contributions from its owners and third party debt to fund transmission projects in Indiana. Mr. Roloff testified that,

as projects near commercial operation, permanent financing can be utilized, with Petitioner planning to access long-term debt financing in either the institutional capital markets or via long-term commercial bank financing.

Specific to the Project, Mr. Roloff testified that, due to the relatively small amount of capital required for the Project, Petitioner plans to fund 100% of the Project capital requirements through contributions from LS Power and Hoosier Energy, both having available capital surpassing that required for the Project, proportional to their respective ownership shares. He stated that, once operational, Petitioner plans to utilize long-term, project-specific financing.

Mr. Roloff testified that LS Power's financial strength and creditworthiness is demonstrated by its access to the capital markets, having raised over \$30 billion of capital for investment in the electric power industry. Mr. Roloff stated that Petitioner, a new entrant in the MISO region, formed to be a transmission-only company to pursue new transmission projects, will rely on its owners for equity contributions and LS Power's access to capital markets for raising third party debt.

Mr. Roloff cited MISO's approval of Petitioner as a Qualified Transmission Developer and selection of Petitioner as the developer for the Project over several other Qualified Transmission Developers as strong support for Petitioner's financial soundness and capability to develop, construct, and operate competitive electric transmission facilities in Indiana.

Mr. Roloff testified Petitioner will recover costs associated with competitive transmission projects in the MISO footprint, such as the Project, through its formula rates, subject to FERC approval and acceptance, in accordance with the MISO Tariff. Mr. Roloff testified Petitioner will have the financial ability to sustain ongoing operations as regional transmission projects in the MISO market, such as the Project, generate revenues through FERC-approved tariffs to allow the owner to recover both a return on the investment and operating and maintenance costs, and, in addition, Petitioner will have the ability to raise capital.

In regards to its request for Commission declination over Petitioner's long-term financing activities, Mr. Roloff testified that, as Petitioner's rates are regulated by FERC, there is no need for the Commission to exercise jurisdiction to protect retail customers from costs of Petitioner's financings and acquisitions or sales because FERC regulation will provide the appropriate check on Petitioner in lieu of Commission oversight. Mr. Roloff testified that the Commission declining to exercise jurisdiction over the company's long-term financing activities would promote efficiency by eliminating the time and cost associated with a regulatory proceeding prior to engaging in long-term financing and allow the company to take advantage of attractive financing opportunities without any delay.

5. Hoosier Energy's Direct Evidence.

A. Direct Testimony of David W. Sandefur. Mr. Sandefur, Vice President of Power Supply at Hoosier Energy, testified on behalf of Hoosier Energy for the purpose of supporting the relief requested by Republic Transmission in the Petition.

Mr. Sandefur testified Republic Transmission and Hoosier Energy have a memorandum of understanding and are finalizing an agreement under which Hoosier Energy will acquire 10% of RT Holdings and have an option to purchase up to an additional 10% of RT Holdings at a future date; thereafter, Hoosier Energy will be a minority owner of RT Holdings. Mr. Sandefur testified the parties are in the final stages of negotiation on a partnership agreement that will detail this purchase and option arrangement, anticipating the final agreement to be finalized by mid-2017.

Mr. Sandefur testified that Hoosier Energy personnel will be involved in Republic Transmission's projects in Indiana, as Republic Transmission intends to contract with Hoosier Energy to provide ongoing operation and maintenance for the Project. Mr. Sandefur noted that Hoosier Energy currently operates and maintains transmission facilities in the same region as the Project and has existing operations and maintenance staff, equipment and programs near the Project. Mr. Sandefur stated Hoosier Energy will perform much of the maintenance activities utilizing existing internal staff; however, Hoosier Energy will also rely on some outside contractors for activities such as vegetation management and major maintenance, if required.

Mr. Sandefur testified Hoosier Energy has more than sufficient available capital to fund its anticipated costs related to the Project and that Hoosier Energy maintains an A2 and A rating from Standard and Poor's and Moody's Investor Services with a stable outlook.

6. OUCC's Direct Evidence.

A. Direct Testimony of Peter M. Boerger, Ph.D. Mr. Boerger, Senior Utility Analyst in the Electric Division of the OUCC, testified that the OUCC is generally supportive of the concept of having electric transmission facilities built through competitive processes, like that under which Republic Transmission was selected by MISO to build the Project, stating that competition can lower the cost of transmission facilities to the benefit of Indiana retail customers.

Mr. Boerger testified that the OUCC believes Republic Transmission has presented sufficient evidence for the Commission to make findings necessary to grant Republic Transmission the designation of "public utility" under Ind. Code § 8-1-38-7, noting that the information Republic Transmission provided in testimony and discovery regarding LS Power, a significant participant in the national transmission market, and affiliate companies, as well as the partial ownership of RT Holdings by Hoosier Energy, provide enough evidence to convince the OUCC that Republic Transmission has "the financial, technical and managerial ability to construct, own, operate and maintain an electric transmission facility" to fulfill the requirements of Ind. Code § 8-1-38-7.

Mr. Boerger testified that the OUCC does not believe that it would be appropriate for the Commission to grant Republic Transmission's request for declination over its long-term financing, stating long-term financing relates to the retention by Republic Transmission of its financial ability over time and financial ability is a topic addressed in Ind. Code § 8-1-38. Mr. Boerger testified that while FERC will have financing review over Republic Transmission, it is in the public interest for the Commission to retain authority over Republic Transmission's long-

term financing, as it has for other entities approved as public utilities for the purpose of constructing and operating transmission facilities.

Mr. Boerger testified further that the OUCC believes that while the Commission is required to grant authority to operate as a public utility if the requirements of Ind. Code § 8-1-38-7 are met, Republic Transmission's additional requests could be considered justifiable with certain additional requirements imposed on Republic Transmission beyond the statutory requirements and commitments made in the Petition and Petitioner's testimony.

Mr. Boerger testified that the OUCC recommends the following additional requirements: 1) notice to the Commission for any change in direct ownership (the immediate parent company) within the LS Power Group (in addition to Republic Transmission's proposal in its Petition for Commission approval when transfer is made to a company outside of the LS Power Group); 2) required meetings with the OUCC and Commission staff every six months, and, if those entities respond positively to Republic Transmission's offer to meet, to describe the status and latest information regarding current and projected costs of its project(s) and other matters relating to its operations, for the first year after approval as a public utility and then annually thereafter; 3) the following reporting and event-related requirements, with reports filed with both the Commission and the OUCC: a) notice of any lawsuits filed by Republic Transmission against Indiana entities or persons and of any lawsuits filed by Indiana entities or persons against Republic Transmission; b) within a reasonable period of time, file notice of any publicly-available request or obligation by Republic Transmission at MISO or PJM (or at FERC or any other RTO entity) for the purpose of developing, owning or operating any additional transmission projects that are in whole or in part within Indiana; c) file notice of if Republic Transmission becomes owned by or affiliated with any entity that is rate-regulated by the Commission for the provision of retail service and comply with additional reporting requirements and/or other protections as the Commission deems necessary to protect Indiana retail ratepayers.

Mr. Boerger, drawing distinction between transmission providers for entities affiliated with incumbent retail-rate-regulated Indiana utilities with an established record of performance who have been granted previous authorization from the Commission (specifically, *Pioneer Transmission, LLC*, Cause No. 44135 and *AEP Indiana Michigan Transmission Company, Inc. and Indiana Michigan Power Company*, Cause No. 44000) and Republic Transmission's majority-owner, who is new to Indiana, testified that asking Republic Transmission to provide such additional information is useful, in keeping with the Commission's general oversight obligations, and is not onerous.

Finally, Mr. Boerger testified that, to the extent that any of the information Republic Transmission provides pursuant to the reporting requirements constitutes trade secrets or contains other competitively sensitive information, the OUCC recommends that the Commission create a secure mechanism for submission that will protect Republic Transmission's interests and allow the OUCC and Commission to review the information. Mr. Boerger stated that such protections will allow the OUCC and Commission to fulfill each agency's statutory mandate to protect the public interest, while guaranteeing that utility trade secrets and competitive information are not publicly exposed.

7. Republic Transmission's Rebuttal Testimony.

A. Rebuttal Testimony of Lawrence Willick. Mr. Willick testified in response to recommendations set forth in the testimony of OUCC witness Peter Boerger regarding reporting requirements, noting that while Petitioner believes some of the reporting recommendations should be clarified or modified, Petitioner is accepting of most of the OUCC's recommended meeting and reporting requirements.

Specifically, in regards to the OUCC's recommendation that Petitioner provide notice to the Commission for any change in direct ownership (the immediate parent company) within the LS Power Group, Mr. Willick testified that he found the words "within the LS Power Group" to be a bit ambiguous. Mr. Willick stated that Petitioner proposes clarifying the language as follows, "Republic Transmission will submit notice to the Commission for any change in ownership of Republic Transmission, LLC or its direct owner, which is Republic Transmission Holdings, LLC" and such reporting requirement would be in addition to Petitioner's proposal in its Petition that to the extent Petitioner seeks to transfer all or substantially all of its assets located in Indiana to an entity that is not ultimately controlled by a subsidiary of LS Power, the Commission will retain jurisdiction.

Mr. Willick testified that Petitioner does not oppose the OUCC's recommendation that Petitioner be required to meet with OUCC and Commission every six months for the first year after approval as a public utility, then annually thereafter, noting that implementation of appropriate protective measures will be necessary to ensure that no confidential information is improperly disclosed.

With regards to the OUCC's recommendation that Petitioner file with the Commission notice of any lawsuits filed by Petitioner against Indiana entities or persons and any lawsuits filed by Indiana entities or persons against Petitioner, Mr. Willick testified that while Petitioner is willing to discuss such lawsuits, Petitioner opposes a requirement to file this information in writing. Mr. Willick noted that no similar reporting requirement has been imposed upon other wholesale transmission public utilities in Indiana and that a requirement to file such information with the Commission would result in the public disclosure of commercially-sensitive information that would place Petitioner in an unreasonable, competitively disadvantaged position with respect to future competitive transmission projects and could also create a competitive disadvantage for Petitioner in negotiating land rights, potentially discouraging settlements and resulting in increased litigation.

Mr. Willick testified Petitioner does not oppose the OUCC's recommendation that Petitioner will, within a reasonable period of time, file notice of any publicly available request or obligation by Petitioner at MISO or PJM (or at FERC or any other RTO entity) for the purpose of developing, owning or operating any additional transmission projects that are in whole or in part within Indiana.

In response to the OUCC's recommendation that Petitioner should file notice with the Commission in the event Petitioner becomes owned by or affiliated with any entity that is rate-regulated by the Commission for retail service and comply with additional reporting

requirements the Commission deems necessary, Mr. Willick testified that affiliates of Petitioner, may own (from time to time) shares in publicly held corporations, including investor-owned utilities; thus, this reporting requirement could technically trigger a filing requirement due to one of Petitioner's distant affiliates acquiring shares (but not control) of an Indiana rate-regulated investor-owned utility. To avoid triggering a requirement to file notice of purely financial transactions of distant affiliates, Mr. Willick testified that Petitioner proposes modifying this requirement as follows: "Republic Transmission will file notice in the event that Republic Transmission directly or indirectly controls, or is under common control with, or is controlled by an entity that is rate-regulated by the Commission for the provision of retail service."

Finally, Mr. Willick provided information on Petitioner's rate filing at FERC, in which Petitioner is requesting that FERC issue a declaratory order authorizing limited transmission rate incentives, noting all requests therein are consistent with Petitioner's proposal to MISO in the competitive bidding process for the Project. He testified further that Petitioner anticipates making a formula rate filing with FERC later in 2017.

B. Rebuttal Testimony of Richard Roloff. Mr. Roloff testified in response to the OUCC's recommendation that the Commission should retain authority over Petitioner's long-term financing, stating that the Commission should decline to exercise jurisdiction over Petitioner's long-term financing activities because Petitioner is a FERC-regulated public utility whose issuance and assumption of securities (broadly defined to include notes, stocks, treasury stocks, bonds, debenture, or other interest in or indebtedness) is subject to review and prior approval by FERC.

Mr. Roloff testified, under the Federal Power Act (FPA), FERC will conduct a meaningful and substantive review of Petitioner's requests for approval of long-term financing activities; Mr. Roloff described FERC's review and approval process for a FERC regulated public utility's issuance or assumption of securities under FPA Section 204(a) and the information that Petitioner would be required to provide to FERC when seeking financing approval from FERC. Mr. Roloff testified FERC's review of financing activities, generally taking 45-60 days, is typically faster than a financing case heard by the Commission, which, based on a review of recent financing cases at the Commission, ranged from 110 days to 181 days from petition to final order. Mr. Roloff noted this additional review time will delay Petitioner's ability to close on financing activities, reduce Petitioner's flexibility in financing activities, and could result in Petitioner missing an opportunity to lock in favorable rates and terms, thereby increasing its financing costs.

Mr. Roloff also testified that Petitioner is organized to develop, construct, own, operate and maintain electric transmission infrastructure across the MISO footprint, which includes all or part of fifteen states, and that Petitioner may pursue projects outside of Indiana and additional interstate projects similar to the Project. Mr. Roloff testified that, as such, FERC jurisdiction would provide a one-stop shop for financing approvals, which is important when Petitioner is developing interstate transmission projects. Mr. Roloff stated that if Petitioner had to obtain approval from multiple state commissions, it would create a significant burden on Petitioner and would create the potential for inconsistent conditions imposed by two or more agencies.

Mr. Roloff testified that Petitioner is willing to submit notice to the Commission and the OUCC if Petitioner submits an application to FERC under Section 204 of the FPA seeking FERC authorization to issue any security or assume any obligation or liability in respect of any security of another person, which would facilitate Commission and OUCC review of Petitioner's financing activities by giving immediate notice of FERC applications and permit the Commission and OUCC to intervene and participate in any FERC proceeding.

8. Commission Discussion and Findings.

A. Request for Approval to Operate as a Public Utility.

Republic Transmission seeks authority to operate as a public utility in Indiana pursuant to Ind. Code § 8-1-38-7. Republic Transmission also seeks a determination from the Commission that it will be a public utility under Ind. Code §§ 8-1-2-1 and 8-1-8.5-1 and a confirmation that Republic Transmission has authority to exercise all rights and privileges of a public utility accorded by Indiana law, including the right to exercise the power of eminent domain pursuant to Ind. Code ch. 32-24-4.

Ind. Code §8-1-38-7 provides:

(a) The commission shall grant a new electric transmission owner authority to operate as a public utility in Indiana if the commission makes the following findings:

- (1) The new electric transmission owner has the financial, managerial, and technical capability to construct, own, operate, and maintain an electric transmission facility.
- (2) The new electric transmission owner has the ability and intent to comply with all statutes, rules, and regulations enforced by the commission.
- (3) The new electric transmission owner has the intent to construct, own, operate, and maintain an electric transmission facility that is under consideration by an applicable regional transmission organization.
- (4) The new electric transmission owner has provided written notice of its request for authority under this section to each incumbent electric transmission owner that may connect its existing electric transmission facility to the new electric transmission facility of the new electric transmission owner.

(b) In making findings under subsection (a), the commission may consider the creditworthiness of the new electric transmission owner, including:

- (1) the new electric transmission owner's investment grade rating;
- (2) guarantees of a parent company of the new electric transmission owner that has an investment grade rating;
- (3) a bank reference letter or bonding commitment on behalf of the new electric transmission owner;
- (4) the authority of the new electric transmission owner to directly set rates or impose taxes; and
- (5) the capability of the new electric transmission owner to meet its financial obligations if it abandons the new electric transmission facility after its construction.

Accordingly, in order to grant Republic Transmission authority to operate as a public utility in Indiana, we must determine that Republic Transmission is a new electric transmission owner as defined by Ind. Code § 8-1-38-4 and make the four findings required by Ind. Code § 8-1-38-7(a).

(a)(1) & (a)(4) New electric transmission owner in Indiana and Intent to construct, own, operate and maintain electric transmission facilities in Indiana under consideration by an applicable regional transmission organization

Mr. Willick testified that Republic Transmission's purpose is to develop, own and operate competitive electric transmission projects within the MISO footprint, including Indiana, and within other RTOs in Indiana. On December 20, 2016, MISO announced it had selected Republic Transmission as the developer for the Project. Mr. Willick testified that Project is a new single circuit 345 kV transmission line between the existing Duff substation, located in southern Indiana, and the existing Coleman EHV substation, located in northern Kentucky. The Project is expected to span between 30 and 35 miles within Dubois County, Indiana, Spencer County Indiana, and Hancock County, Kentucky. Mr. Willick testified the Project will be Republic Transmission's first transmission facility. Based on our review of the evidence, we find that Republic Transmission will be a new electric transmission owner in Indiana as defined by Ind. Code § 8-1-38-4. These same facts in evidence support our finding that Republic Transmission has intent to construct, own, operate and maintain electric transmission facilities in Indiana (the Project) under consideration by an applicable regional transmission organization (MISO).

(a)(2) Financial, managerial and technical capability

Republic Transmission submitted substantial evidence that it has the financial, managerial and technical capability to construct, own, operate and maintain electric transmission facilities, and no party provided evidence to the contrary.

Regarding Republic Transmission's financial capabilities, the evidence shows that Republic Transmission will draw on the financial capabilities and resources of owners LS Power and Hoosier Energy (upon Hoosier Energy becoming an owner of RT Holdings) to construct, own, operate and maintain electric transmission facilities in Indiana. Of note, Mr. Roloff testified that LS Power has successfully raised over \$1 billion specifically for new transmission infrastructure in recent years and has raised over \$30 billion for investment in electric power infrastructure. We find that Republic Transmission's creditworthiness is further supported by the bank reference letters provided by two financial institutions that describe their continued interest in working with LS Power and Republic Transmission as well as evidence of the institutions' prior investments in LS Power projects.

Mr. Roloff testified that, similar to all MISO transmission owners, Republic Transmission will file a petition with FERC for approval to recover its prudently incurred costs plus a return through its formula rates in accordance with the MISO Tariff. Republic Transmission's formula rate, including applicable incentives, and implementation protocols will be subject to the jurisdiction of and acceptance by FERC. Mr. Roloff testified that for future transmission projects beyond the Project, Republic Transmission intends to recover its prudently

incurred costs pursuant to the MISO Tariff either through Schedule 26 or another similar recovery mechanism. The evidence shows that LS Power and Hoosier Energy have a long history of successfully completing and operating electrical infrastructure projects, and both companies place a very high value on their reputation. Furthermore, the evidence shows that MISO will monitor Republic Transmission's progress on projects. If MISO determines that Republic Transmission is unable to complete the project, it could reassign the project to the incumbent transmission owner(s) or cancel the project. Based on this evidence, we find that abandonment of a MISO-approved transmission project is unlikely, and we conclude there are appropriate mechanisms in place to monitor Republic Transmission as a transmission developer and take action when necessary acts to protect Indiana consumers from project abandonment. We also find that the ability to recover prudently incurred costs through a FERC approved tariff will reduce the risk of abandonment of the Project and advance Republic Transmission's financial capability to construct, operate, and maintain a transmission project.

Based on these facts and our review of the substantial evidence of record, we find that Republic Transmission has the financial ability to construct, own, operate and maintain electric transmission facilities.

There is also substantial evidence supporting the managerial and technical capabilities of Republic Transmission through its parent companies, LS Power and Hoosier Energy. Mr. Willick testified Republic Transmission will draw on the extensive managerial, technical, and financial capabilities and experience of LS Power. Mr. Willick testified that LS Power is a developer of large-scale energy projects, including several transmission projects. Since 1990, LS Power has had the technical and engineering capability to develop, own and/or operate over 30,000 MW of power generation facilities and over 570 miles of extra high-voltage (345 kV and 500 kV) transmission facilities. LS Power's affiliate, Cross Texas Transmission, LLC, constructed and operates and maintains 240 miles of 345kV line and it is currently regulated as a public utility in Texas.

Mr. Willick explained that Republic Transmission will primarily rely on employees of LS Power Development, LLC to manage the development, construction and operation of competitive electric transmission projects in Indiana. The corporate support services arrangement will allow for Republic Transmission to access specific expertise in a wide variety of technical areas including accounting, project management, environmental permitting, transmission engineering, legal, compliance, human resources, information technology, tax, finance and others. This is the same team of experts who have designed, developed, financed, constructed, and operated the generation and transmission facilities developed by LS Power companies.

The evidence demonstrates that LS Power has a strong history of completing projects on-time and on-budget through the use of traditional project management techniques such as budgets and schedules combined with proactive risk management. Mr. Willick also testified that Republic Transmission plans to utilize the operations and maintenance personnel and resources of LS Power and Hoosier Energy to operate and maintain its transmission projects in Indiana. For the Project, Republic Transmission intends to contract with Hoosier Energy to provide ongoing operation and maintenance. Hoosier Energy currently operates and maintains transmission facilities in the same region as the Project and has existing operations and

maintenance staff, equipment and programs near the project. Based on these factors and our review of the evidence in the record, we find that Republic Transmission has the managerial and technical capability to construct, own, operate and maintain electric transmission facilities.

(a)(3) Ability and intent to comply with all statutes, rules and regulations

Mr. Willick testified that in order to become a Qualified Transmission Developer in MISO, Republic Transmission provided a commitment to MISO that it will comply with all applicable laws and regulations, codes, standards governing the engineering, design, construction, operation, and maintenance of transmission facilities including, but not limited to, federal laws, state laws, local laws, state and local building codes, federal regulatory requirements, state and local regulatory requirements, state and local licensing authorities, the National Electric Safety Code, the National Electric Code, Applicable Reliability Standards, and Good Utility Practice. The evidence also shows that Republic Transmission has entered into a Selected Developer Agreement with MISO that requires Republic Transmission to comply with all applicable laws, regulations and safety standards applicable to the project. *See* Section 5.2 of Attachment 1-G (Redacted).

Mr. Willick testified that Republic Transmission has the ability to comply will all applicable laws, statutes, rules, and regulations enforced by the Commission. Republic Transmission's parent company, LS Power, has a long history of complying with the laws, statutes, rules and regulations applicable to transmission and energy infrastructure across the United States. Based on the uncontroverted evidence in the record, and the commitments Republic Transmission has made in this proceeding and to MISO, we find that Republic Transmission has the ability and intent to comply with all statutes, rules and regulations enforced by the Commission.

(a)(5) Written notice of request for authority to incumbent electric transmission owners

Mr. Willick testified that Republic Transmission provided written notice to the following incumbent electric transmission owners prior to filing the Petition in this Cause: 1) Southern Indiana Gas & Electric Company d/b/a Vectren Energy Delivery of Indiana Inc.; and 2) Big Rivers. Mr. Willick also testified that because there is a possibility that certain facilities owned by an American Electric Power ("AEP") company may, in the future, become interconnected with a portion of the Project, Republic Transmission also provided written notice of this filing to Indiana Michigan Power Company and AEP Indiana Michigan Transmission Company, Inc. Based on our review of the evidence, we find that Republic Transmission has provided written notice of its request for authority to each incumbent electric transmission owner that may connect its existing transmission facility to the new electric transmission facility of Republic Transmission.

Based on our review of the evidence, our consideration of the factors set forth in Ind. Code § 8-1-38-7, our findings set forth herein, and our interpretation of Indiana law, we conclude that Republic Transmission should be authorized to operate as a public utility in Indiana, including authority to exercise all rights and privileges a public utility is accorded under Indiana

law, including the right to exercise the power of eminent domain. In addition, consistent with our conclusions in prior cases, we conclude that Republic Transmission will be a public utility as defined by Ind. Code § 8-1-2-1 and Ind. Code § 8-1-8.5-1, because it will own and operate facilities used to provide wholesale electric transmission service in Indiana. *See, e.g., Petition of Grain Belt Express Clean Line LLC*, Cause No. 44264 (IURC 5/22/13); *Petition of Pioneer Transmission, LLC*, Cause No. 44135 (IURC 4/17/13); *Joint Petition of AEP Indiana Michigan Transmission Co., Inc. and Indiana Michigan Power Co.*, Cause No. 44000 (IURC 11/2/11).

B. Request for the Commission to Decline to Exercise Certain Aspects of its Jurisdiction over Republic Transmission.

Pursuant to Ind. Code § 8-1-2.5-5, Republic Transmission requested the Commission decline to exercise certain aspects of its jurisdiction over Republic Transmission. Ind. Code § 8-1-2.2-5(a) provides, in relevant part, “the commission may enter an order . . . that the public interest requires the commission to . . . decline to exercise, in whole or in part, its jurisdiction over either the energy utility or the retail energy service of the energy utility, or both.” Ind. Code § 8-1-2.2-5(b) sets forth the factors the Commission should consider in determining whether the public interest will be served:

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

(1) Approval authority over long-term financing (Ind. Code § 8-1-2-78 -81).

Mr. Roloff testified Republic Transmission requests that the Commission decline to exercise jurisdiction over the company's long-term financing activities because it would promote efficiency by eliminating the time and cost associated with a regulatory proceeding prior to engaging in long-term financing and allow the company to take advantage of attractive financing opportunities without delay. He also testified that FERC regulation will provide the appropriate check on Republic Transmission in lieu of Commission oversight.

OUCG witness Boerger testified the OUCG believes the Commission should retain authority over Republic Transmission's long-term financing. He acknowledged that FERC will have financing review over Republic Transmission, but the OUCG believes it is in the public interest for the Commission to retain authority. He also noted that the Commission has retained financing jurisdiction over Pioneer Transmission, LLC and AEP Indiana Michigan Transmission Company, Inc.

In rebuttal, Mr. Roloff testified that under the FPA, FERC will conduct a meaningful and substantive review of Republic Transmission's requests for approval of long-term financing activities. He explained the review and approval process at FERC and provided evidence that such process takes less time than the Commission's review process. He explained this additional review time for IURC approval will delay Republic Transmission's ability to close on financing activities, reduce Republic Transmission's flexibility in financing activities, and could result in Republic Transmission missing an opportunity to lock in favorable rates and terms, thereby increasing its financing costs. Mr. Roloff also explained that Republic Transmission is organized to develop, construct, own, operate and maintain electric transmission infrastructure across the MISO footprint. Mr. Roloff testified that in order to facilitate Commission and OUCC review of Republic Transmission's financing activities, Republic Transmission will agree to submit notice to the Commission and the OUCC if Republic Transmission submits an application to FERC under Section 204 of the FPA seeking FERC authorization to issue any security or assume any obligation or liability in respect of any security of another person.

Based on our review of the evidence, we find that Republic Transmission is a FERC-regulated public utility whose issuance and assumption of securities is subject to review and prior approval by FERC. The evidence also shows Republic Transmission is organized to develop, construct, own, operate and maintain electric transmission infrastructure across the MISO footprint, which includes all or part of fifteen states. Republic Transmission may pursue projects outside of Indiana and additional interstate projects similar to the Project. FERC jurisdiction would provide a single forum for Republic Transmission to obtain financing approval, which is important when Republic Transmission is developing interstate transmission projects. We find that if Republic Transmission had to obtain approval from multiple state public utility commissions, it would create a significant burden on Republic Transmission and would create the potential for inconsistent conditions imposed by two or more agencies. We find further that, to the extent that the timeframe for FERC review of Republic Transmission's issuance or assumption of securities provides for increased flexibility in Republic Transmission's financing activities and lower financing costs, it would benefit Indiana ratepayers.

In addition, Republic Transmission's request for the IURC to decline to exercise its jurisdiction over financing activities is consistent with the IURC's treatment of many other competitive wholesale public utilities in Indiana. *See Grain Belt Express Clean Line LLC*, Cause No. 44264; *NextEra Energy Bluff Point, LLC*, Cause No. 44299; *St. Joseph Energy Center, LLC and St. Joseph Energy Center Phase II, LLC*, Cause No. 44745; *St. Joseph Energy Center, LLC*, Cause No. 44246; *Crawfordsville Energy, LLC*, Cause No. 44101; and *Bioenergy, LLC*, Cause No. 43882.

These cases are distinguishable from the cases cited by the OUCC, including *Pioneer Transmission, LLC*, Cause No. 44135 and *AEP Indiana Michigan Transmission Company, Inc. and Indiana Michigan Power Company*, Cause No. 44000, because Pioneer Transmission, LLC and AEP Indiana Michigan Transmission Company, Inc. are affiliates of fully-regulated Indiana IURC-jurisdictional utilities and those entities did not request the IURC to decline to exercise jurisdiction over financing activities.

Finally, we find that the meeting and reporting obligations to which it has agreed in this case will provide the Commission with sufficient information and oversight to monitor Republic Transmission's activities in Indiana. Both the IURC and OUCC will have the opportunity to intervene in a FERC proceeding should we have concerns about Republic Transmission's financing activities and the impact on Republic Transmission's financial capabilities. Therefore, based on these findings and our prior orders, we conclude that public interest would be served if the Commission declines to exercise jurisdiction over Republic Transmission's long-term financing activities subject to the requirement that Republic Transmission must submit notice to the Commission and the OUCC if Republic Transmission submits an application to FERC under Section 204 of the FPA seeking FERC authorization to issue any security or assume any obligation or liability in respect of any security of another person.

(2) Approval authority over reorganization and the purchase and sale of ownership interests and facilities (Ind. Code §§ 8-1-2-83, 84).

Mr. Willick testified Republic Transmission requests that the Commission decline to exercise approval authority over reorganization and the purchase and sale of ownership interests and facilities (Ind. Code § 8-1-2-83, 84), including, but not limited to: (a) a purchase or sale related to a reorganization within the LS Power group; (b) Hoosier Energy's option to purchase up to 20% ownership interest in Republic Transmission or RT Holdings; and (c) the transfer of the ownership of Project assets located in Kentucky to Big Rivers. Mr. Willick testified that if Republic Transmission seeks to transfer all or substantially all of its assets located in Indiana to an entity that is not within the LS Power group, Republic Transmission proposes the Commission should retain jurisdiction to ensure the entity has the necessary technical, managerial and financial capability to own and operate the facilities.

OUCC witness Boerger recommended a modification to this proposal, specifically that Republic Transmission should file notice with the Commission in the event Republic Transmission becomes owned by or affiliated with any entity that is rate-regulated by the Commission for retail service and then comply with additional reporting requirements the Commission deems necessary.

Mr. Willick testified in rebuttal that Republic Transmission proposes to modify the OUCC's proposed reporting requirement to clarify that it applies if there is a change in ownership that directly impacts Republic Transmission.

Based on our review of the evidence, we find that affiliates of Republic Transmission, may own (from time to time) shares in publicly held corporations, including investor-owned utilities. As proposed by the OUCC, this reporting requirement could technically trigger a filing requirement due to one of Republic Transmission's distant affiliates acquiring shares (but not control) of an Indiana rate-regulated investor-owned utility. In order to retain the spirit of this requirement, but avoid triggering a requirement to file notice of purely financial transactions of distant affiliates, we conclude that Republic Transmission should file notice in the event that Republic Transmission directly or indirectly controls, or is under common control with, or is controlled by an entity that is rate-regulated by the IURC for the provision of retail service. In addition, to the extent Republic Transmission seeks to transfer all or substantially all of its assets

located in Indiana to an entity that is not within the LS Power group, the Commission will retain jurisdiction to ensure the entity has the necessary technical, managerial and financial capability to own and operate the facilities. Subject to these conditions, we conclude that the public interest would be served if the Commission declines to exercise jurisdiction over Republic Transmission's reorganization activities and the purchase and sale of ownership interests and facilities under Ind. Code §§ 8-1-2-83 and 84.

(3) Public utility reporting requirements.

Mr. Willick testified Republic Transmission requests that the Commission decline to exercise its jurisdiction over public utility reporting requirements except for the following specifically enumerated requirements: (a) annual FERC Form 1; (b) notice within 30 days of being awarded a competitive transmission project in Indiana by MISO or PJM; and (c) notice to the Commission in a timely manner of the dates on which construction of the new electric transmission facility begins and is completed pursuant to Ind. Code § 8-1-38-8.

In addition to the reporting requirements proposed by Republic, the OUCC recommended several reporting and meeting requirements. First, Mr. Boerger recommended that Republic Transmission should provide notice to the Commission for any change in direct ownership (the immediate parent company) within the LS Power Group. Mr. Willick testified in rebuttal that Republic Transmission does not oppose the OUCC's request to provide notice to the Commission for any change in the direct ownership of Republic Transmission, but he proposed to clarify this reporting requirement to remove any ambiguity.

Based on our review of the recommendations from the OUCC and evidence offered by Republic Transmission, we conclude that Republic Transmission should submit notice to the Commission for any change in ownership of Republic Transmission, LLC or its direct owner, which currently is Republic Transmission Holdings, LLC.

The OUCC recommended that Republic Transmission should be required to meet with OUCC and Commission every six months for the first year after approval as a public utility, then annually thereafter. Republic Transmission did not oppose this recommendation. Based on our review of the recommendations from the OUCC and evidence offered by Republic Transmission, we conclude that Republic Transmission should meet with OUCC and Commission every six months for the first year after approval as a public utility, then annually thereafter. We note that confidential information might be discussed at these meetings, and implementation of appropriate protective measures will be necessary to ensure that no confidential information is improperly disclosed.

The OUCC recommended that Republic Transmission file with the Commission notice of any request or obligation submitted by Republic Transmission to MISO or PJM (or at FERC or any other RTO) for the purpose of developing, owning or operating any additional transmission projects that are in whole or in part within Indiana within a reasonable time of such information becoming publically available. Republic Transmission did not oppose this recommendation. We conclude that Republic Transmission should comply with this reporting requirement.

The OUCC recommended that Republic Transmission should file with the Commission notice of any lawsuits filed by Republic Transmission against Indiana entities or persons and any lawsuits filed by Indiana entities or persons against Republic Transmission. Mr. Willick testified in rebuttal that Republic Transmission is willing to discuss lawsuits filed by Republic Transmission against Indiana entities or persons and any lawsuits filed by Indiana entities or persons against Republic Transmission in meetings with the Commission and OUCC, but Republic Transmission opposes a requirement to file this information in writing. Mr. Willick testified that imposing a requirement to file such information with the Commission would result in the public disclosure of commercially-sensitive information that would place Republic Transmission in an unreasonable, competitively disadvantaged position.

Based on our review of the evidence, we find that requiring a competitive wholesale electric transmission provider such as Republic Transmission to file notice of all lawsuits would harm the competitive position of the company and potentially place the company at a disadvantage in negotiating with landowners. The evidence also shows this type of reporting could reduce the incentive for landowners to settle in right-of-way acquisition negotiations and potentially increase the need for litigation. We find the value to the Commission of having Republic Transmission file such information is significantly outweighed by the potential harm this filing requirement could have upon Republic Transmission, especially when Republic Transmission has agreed to discuss these activities in meetings with the Commission. Finally, we note that this reporting requirement has not been imposed upon other wholesale transmission public utilities in Indiana. *See Grain Belt Express Clean Line LLC*, Cause No. 44264; *Pioneer Transmission, LLC*, Cause No. 44135; and *AEP Indiana Michigan Transmission Company, Inc. and Indiana Michigan Power Company*, Cause No. 44000. Further, this reporting requirement has not been imposed upon various other wholesale public utilities Indiana. *See NextEra Energy Bluff Point, LLC*, Cause No. 44299; *St. Joseph Energy Center, LLC and St. Joseph Energy Center Phase II, LLC*, Cause No. 44745; *St. Joseph Energy Center, LLC*, Cause No. 44246; and *Crawfordsville Energy, LLC*, Cause No. 44101; *Bioenergy, LLC*, Cause No. 43882. We conclude that it would be inappropriate for Republic Transmission to have a filing requirement that is not required for other similarly situated Indiana public utilities.

(4) Approval authority over the transmission of electric power generated outside the borders of the United States (Ind. Code § 8-1-2-126).

(5) Authority over affiliate contracts and transactions (Ind. Code § 8-1-2-49 & GAO 2016-5).

Mr. Willick also testified that Republic Transmission requested the Commission to decline to exercise its jurisdiction over the transmission of electric power generated outside the borders of the United States (Ind. Code § 8-1-2-126) and over affiliate contracts and transactions (Ind. Code § 8-1-2-49 and GAO 2016-5). No party offered testimony in opposition to these specific requests. Based on the findings and conclusions set forth in the following four paragraphs, we conclude that the public interest would be served if the Commission declines to exercise jurisdiction over these two aspects of Republic Transmission.

Based on our review of the evidence, we find that Republic Transmission intends to construct, own, operate and maintain competitive wholesale transmission facilities in accordance

with the tariff of an RTO and will not be providing retail electric utility service in Indiana. Republic Transmission's wholesale transmission rates and transmission assets will all be FERC-jurisdictional. We also find that reliability of Republic's wholesale transmission facilities will be comprehensively monitored and regulated by MISO, FERC and NERC, and Republic Transmission will be accountable to these entities in the operation of its facilities. Moreover, Republic Transmission expects that it will turn over functional control of its wholesale transmission facilities to MISO or an applicable RTO upon completion. Based on our review of the evidence, we find that MISO requires a project developer to make contractual commitments regarding the construction and operation of competitive transmission projects. Finally, FERC, NERC, MISO, PJM all have technical and operating regulations and standards that Republic Transmission must meet. As a result, we conclude that technological and operating conditions and competitive forces surrounding Republic Transmission's prospective wholesale transmission facilities, as well as the fact that Republic Transmission's assets and rates will be regulated by FERC, make full jurisdiction by the Commission unnecessary.

The evidence demonstrates that Republic Transmission would benefit from the ability to devote its efforts and resources to complying fully with the requirements of the federal, local, and other state regulatory agencies with jurisdiction over its operations, as well as the requirements of the RTOs, which would promote the efficiency of Republic Transmission's operations. Limiting the scope of jurisdiction will free up both Republic Transmission's and the Commission's resources to focus on other matters, including, for Republic Transmission, focus on its wholesale customers, improving efficiency and reducing regulatory cost for both entities. As a result, we conclude that partial declination of jurisdiction as proposed by Republic Transmission will be beneficial for Republic Transmission, Republic Transmission's wholesale customers, and the state, and will promote efficiency.

We also find that partial declination of jurisdiction over Republic Transmission, who will be subject to FERC regulation, is consistent with the Commission's treatment of other competitive wholesale public utilities in Indiana. *See Grain Belt Express Clean Line LLC*, Cause No. 44264; *NextEra Energy Bluff Point, LLC*, Cause No. 44299; *St. Joseph Energy Center, LLC and St. Joseph Energy Center Phase II, LLC*, Cause No. 44745; *St. Joseph Energy Center, LLC*, Cause No. 44246; and *Crawfordsville Energy, LLC*, Cause No. 44101; *Bioenergy, LLC*, Cause No. 43882. The aforementioned cases are distinguishable from cases wherein declination of jurisdiction was not sought or granted for entities that are affiliates of fully regulated Indiana IURC-jurisdictional utilities. *See Pioneer Transmission*, Cause No. 44135 and *AEP Indiana Michigan Transmission Company, Inc. and Indiana Michigan Power Company*, Cause No. 44000. We conclude that partial declination of jurisdiction by the Commission will put Republic Transmission on even footing with similarly situated wholesale providers.

Based on these findings and conclusions, we conclude a Commission decision to partially decline its jurisdiction, subject to the modifications and reporting requirements set forth herein, is consistent with the public interest.

C. Authority to maintain its books and records outside Indiana.

Petitioner proposed that, under Ind. Code § 8-1-2-15, Petitioner should be granted authority to locate its books and records outside the state of Indiana, with appropriate provisions for access thereto by the Commission and the OUCC. We grant Petitioner the authority to locate its books and records outside Indiana under the following conditions: (a) upon reasonable notice, Petitioner shall produce in Indiana copies of those portions of its books and records necessary for the OUCC and the Commission to perform their statutory duties; and (b) in the event it is not possible, for any reason, for Petitioner to produce the necessary books and records in Indiana, Petitioner must reimburse the OUCC and the Commission for all reasonable travel expenses, including travel fare, mileage, lodging and meals incurred while inspecting Petitioner's books and records outside of Indiana.

D. Authority to transfer functional control of the Project to MISO or Applicable RTO.

Ind. Code § 8-1-2-83 provides that Commission approval is required for, among other things, contracts for the operation of any part of a public utility's works or system by another person. We have previously interpreted this provision as requiring Commission approval for a public utility to transfer functional control of its transmission system to an RTO, such as MISO or PJM. *See, e.g., Hoosier Energy Rural Elec. Coop. et al.*, Cause Nos. 42027 and 42032 (IURC, Dec. 17, 2001). We have also previously found that Indiana customers will benefit from Indiana public utilities' participation in either MISO or PJM and that MISO and PJM both possess the capability to functionally operate regional transmission systems. Benefits of RTO participation include improved reliability and reduction in costs. *Id.*; *see also Indiana Michigan Power Company*, Cause Nos. 42350 and 42352 (IURC, Sep. 10, 2003). Accordingly, we find that the Petitioner should be authorized to transfer functional control of its Indiana transmission facilities to MISO or an applicable RTO at the appropriate time.

E. Consent to the Board of Commissioners of all Indiana Counties.

The evidence shows that although the majority of the Project and future competitive transmission projects will likely be constructed on private property, there may be sections that must be located within public right-of-way. As a result, Republic Transmission may be required to obtain from the boards of commissioners of the counties in which facilities are located a license, permit or franchise to occupy and use county roads, highways and other property and public rights-of-way. Consistent with the Commission's conclusion that Republic should be authorized to operate as a public utility in Indiana, the Commission will also give its consent to Boards of County Commissioners of all Indiana counties to grant the Petitioner such licenses, permits, or franchises as may be necessary for Petitioner to occupy and use county roads, highways, and other public rights-of-way for the provision of its services and facilities, pursuant to Ind. Code § 36-2-2-23. This is consistent with our orders in *Grain Belt Express Clean Line LLC*, Cause No. 44264 (IURC, May 22, 2013), and *AEP Indiana Michigan Transmission Co., Inc. and Indiana Michigan Power Co.*, Cause No. 44000 (IURC, Nov. 2, 2011).

F. Confidential Material

Concurrently with its Petition, Petitioner filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information (“Motion”). Attached to the Motion was the Affidavit of Lawrence Willick. On March 28, 2017, the Presiding Officers issued a Docket Entry finding that the information as set forth therein (“Confidential Information”) should be held as confidential by the Commission on a preliminary basis.

Upon review of the Confidential Information, the Commission concludes that the information for which Petitioner sought confidential treatment contains confidential, proprietary and competitively sensitive trade secret information that has economic value to Petitioner and other parties. It should be protected from being known to, or ascertainable by, its competitors and other persons who could obtain economic value from the knowledge and use of such information. In addition, the Commission finds that the public disclosure of the Confidential Information would have a substantial detrimental effect on Petitioner, and the information is subject to Petitioner’s efforts to maintain its secrecy that are reasonable under the circumstances. Accordingly, the Confidential Information submitted to the Commission pursuant to the Motion and the March 28, 2017 Docket Entry is exempt from the public access requirements of Ind. Code § 5-14-3-3, Ind. Code § 8-1-2-29, and Ind. Code § 24-2-3-1 and shall continue to be held as confidential by the Commission.

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

1. Republic Transmission is hereby determined to be a new electric transmission owner and a public utility under Indiana law, including Ind. Code § 8-1-2-1, Ind. Code § 8-1-8.5-1 and Ind. Code § 8-1-38-5;
2. Republic Transmission is hereby authorized to operate as a public utility in Indiana and shall have the right to exercise all rights and privileges a public utility is accorded under Indiana law, including the right to exercise the power of eminent domain;
3. Republic Transmission is hereby determined to have the financial, managerial and technical capability to construct, own, operate and maintain electric transmission facilities;
4. Republic Transmission is hereby determined to have the ability and intent to comply with all statutes, rules and regulations enforced by the Commission;
5. Republic Transmission is hereby determined to have the intent to construct, own, operate and maintain electric transmission facilities in Indiana under consideration by an applicable regional transmission organization;
6. Republic Transmission is hereby determined to have provided written notice of its request for authority to each incumbent electric transmission owner that may connect its existing transmission facility to the new electric transmission facility of Republic Transmission;

7. Republic Transmission is hereby authorized to transfer functional control of operation of its transmission facilities to an applicable regional transmission organization;

8. The Commission hereby declines to exercise certain aspects of its jurisdiction over Republic Transmission as delineated in Section 8(B) of this Order and subject to the modifications and reporting requirements set forth therein;

9. Republic Transmission is authorized to locate its books and records outside the State of Indiana with appropriate provisions for access thereto by the Commission, OUCC and other interested parties subject to the requirements set forth in Section 8(C) of this Order;

10. The Commission hereby grants consent to the Boards of Commissioners of all Indiana counties to grant Republic Transmission such licenses, permits or franchises as may be necessary for Republic Transmission to occupy county roads, highways and other property and public rights-of-way;

11. The Confidential Information filed under seal by Republic Transmission in this Cause shall continue to be treated by the Commission as confidential and not subject to public disclosure.

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

ATTERHOLT, FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR:

APPROVED:

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

Mary M. Becerra
Secretary to the Commission

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