

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
HARDY HILLS SOLAR ENERGY LLC FOR)
CERTAIN DETERMINATIONS BY THE)
COMMISSION WITH RESPECT TO ITS)
JURISDICTION OVER PETITIONER'S)
ACTIVITIES AS A GENERATOR OF)
ELECTRIC POWER)

CAUSE NO. 45490

IURC
PETITIONER'S

EXHIBIT NO.

3-5-21
DATE

AT
REPORTER

VERIFIED PETITION

Hardy Hills Solar Energy LLC ("Petitioner"), by counsel, respectfully requests that the Indiana Utility Regulatory Commission ("Commission") enter an order declining to exercise its jurisdiction, pursuant to Ind. Code § 8-1-2.5-5, over Petitioner's construction, ownership, and operation of a proposed solar power electric generating facility to be known as Hardy Hills Solar (the "Hardy Hills Solar Facility"). The Hardy Hills Solar Facility will be located in Clinton County, Indiana. In support of this Petition, Petitioner states:

I. Petitioner's Legal Status. Petitioner is a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of Indiana. Petitioner's principal place of business is at One South Wacker Drive, Suite 1800, Chicago, Illinois 60606. Hardy Hills Solar Energy LLC is a wholly owned subsidiary of Hardy Hills Solar Energy Holdings LLC, which is a wholly owned subsidiary of Invenergy Solar Development North America LLC ("ISDNA"), which in turn is a wholly owned subsidiary of Invenergy Renewables LLC ("Invenergy Renewables"). Petitioner, Hardy Hills Solar Energy Holdings LLC, ISDNA, and Invenergy Renewables are affiliates of Invenergy LLC ("Invenergy"). Invenergy is an Illinois limited liability company specializing in the development of large-scale renewable and other clean energy generation and storage facilities worldwide.

Invenergy is headquartered in Chicago, Illinois. Invenergy has developed more than 27,600 megawatts (“MW”) of large-scale renewable projects throughout North America, Latin America, Europe and Asia, and currently has approximately 8,800 MW of developed renewable projects in the Midwest.

2. Hardy Hills Solar Facility. Petitioner intends to construct, own, and operate the Hardy Hills Solar Facility located in Union and Owen Townships, Clinton County, Indiana near the Town of Kilmore. The long-term plan for the Hardy Hills Solar Facility is that it will generate approximately 195 megawatts (“MW”), alternating current (“AC”), of electricity from approximately 581,594 solar panels over an approximately 1,780 acre solar panel farm. Transmission and substation facilities are planned to be located in Clinton County. Petitioner’s activity qualifies it as a “public utility” under Ind. Code § 8-1-2- 1(a)(2) and as an “energy utility” under Ind. Code § 8-1-2.5-2. Alternative utility regulation is therefore available to Petitioner.

3. Relief Requested. Petitioner requests that the Commission, pursuant to Ind. Code § 8-1-2.5-5, decline to exercise any jurisdiction to: (a) require Petitioner to obtain a certificate of public convenience and necessity to construct the Hardy Hills Solar Facility under Ind. Code § 8-1-8.5, the “Powerplant Construction Act”, and (b) regulate, under Ind. Code § 8-1-2, the “Public Service Commission Act”, Petitioner’s construction, ownership and operation of, and other activities in connection with, the Hardy Hills Solar Facility.

4. Solar Facility Certified as an Exempt Wholesale Generator. Petitioner intends to self-certify the Hardy Hills Solar Facility as an Exempt Wholesale Generator (“EWG”) as that term is defined in 18 C.F.R. § 366.7 of the Federal Energy Regulatory Commission’s (“FERC”)

regulations. Requests for any authorizations required to sell the electrical output from the Hardy Hills Solar Facility into the wholesale market will be made to FERC.

5. Service Only to Wholesale Power Market. The Hardy Hills Solar Facility will exclusively serve the wholesale power market, and Petitioner does not intend to recover the costs of the Facility from Indiana ratepayers through rate base, rate of return, or comparable methods typically associated with retail public utility rates. Petitioner will have no franchises, service territory, or retail customers and will make no retail sales, in Indiana or elsewhere. All sales by Petitioner of electric energy produced by the Hardy Hills Solar Facility will be into the wholesale power market and not at retail. Petitioner will not otherwise dedicate or hold itself out to serve directly the electric needs of the general public; however, the Hardy Hills Solar Facility will provide significant public benefits. Petitioner will not be obligated to sell energy produced by the Hardy Hills Solar Facility to any entity absent a contract to do so. Similarly, no public utility or other entity will be obligated to purchase energy produced by the Hardy Hills Solar Facility other than by mutual agreement. Petitioner will not engage in the transmission of electric power, other than that which is incidental to the ownership and operation of the Hardy Hills Solar Facility as an EWG.

6. Ownership of Hardy Hills Solar. Initially, Hardy Hills Solar Energy Holdings LLC will own 100% of the membership interests in Petitioner. Upon the satisfaction of certain conditions pursuant to a membership interest purchase, project development and construction management agreement, Hardy Hills Solar Energy Holdings LLC will transfer 100% of its membership interests in Petitioner to AES Indiana Devco Holdings 1, LLC, a wholly-owned subsidiary of Indianapolis Power & Light Company (“IPL”), the transfer projected to be during September 2021. At that point, neither Hardy Hills Solar Energy Holdings LLC nor any other

Invenergy affiliate will hold a direct or indirect ownership interest in Petitioner. This arrangement is to be considered in a concurrent docket initiated by IPL.

7. Powerplant Construction Act. The Powerplant Construction Act was not intended to apply to the construction of a facility such as the Hardy Hills Solar Facility. The Indiana General Assembly enacted the Powerplant Construction Act to ensure that public utilities providing retail electric service in Indiana do not build unnecessarily “large, expensive power plants with lengthy construction periods ... to meet expanded growth.” *In re Petition of Southern Indiana Gas and Elec. Co.*, 108 P.U.R. 4th 494, 1989 Ind. PUC LEXIS 378 (IURC Cause No. 38738, October 25, 1989). The Powerplant Construction Act was designed to protect Indiana’s retail customers of regulated electric utilities from the costs associated with excessive generating capacity, while at the same time ensuring that the utilities serving those retail customers would be allowed to recover their prudent investments in new generating facilities. *See* Ind. Code § 8-1-8.5-6.5 (“a utility shall recover through rates the actual costs the utility has incurred in reliance on a certificate issued” by the Commission). The Powerplant Construction Act was not intended to apply in the absence of any obligation to serve and any ability to recover costs through regulated rates. No such protections of the ratepayers in Indiana are requested by Petitioner or are required here.

8. Declination of Jurisdiction. In light of these facts and circumstances, Petitioner respectfully requests that the Commission decline to exercise any jurisdiction over Petitioner’s construction, ownership, or operation of, or any other activity in connection with the Hardy Hills Solar Facility under Ind. Code § 8-1-2.5-5. The tests set out in that statute for the Commission to determine whether the public interest will be served by the Commission’s declining to exercise jurisdiction over Petitioner are clearly met here. *See* Ind. Code § 8-1-2.5-5(b). Competitive

forces in the wholesale power market and FERC's regulatory oversight of Petitioner's operation and wholesale electric rates render the exercise of jurisdiction over such operation and rates by the Commission unnecessary, burdensome, and wasteful of the Commission's time and resources. Market forces also will determine who will buy energy from Petitioner. In addition, the Hardy Hills Solar Facility will increase the amount of electricity generated in the State of Indiana, particularly electricity generated from solar, a renewable, emission-free, and energy-efficient resource not subject to the risk of fuel price increases or increased emission control costs. Thus, the Commission's encouragement of this type of facility by its declining to exercise jurisdiction over Petitioner will be beneficial to the State of Indiana.

9. Statutory Authority. Petitioner believes that Ind. Code § 8-1-2 generally, and Ind. Code § 8-1-2.5 specifically, are applicable to this proceeding. Counsel for Petitioner in this Cause is Michael T. Griffiths of the law firm Dentons Bingham Greenebaum LLP, 2700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204, and counsel is authorized, on Petitioner's behalf, to receive papers filed in this matter.

10. Prior Commission Orders. This Commission has previously granted other similar electric generation projects relief which is similar to the relief Petitioner seeks in this Cause. *See In the Matter of the Petition by NextEra Energy Bluff Point, LLC*, Cause No. 44299 (Apr. 3, 2013); *In the Matter of the Petition by Headwaters Wind Farm, LLC*, Cause No. 44358 (Sept. 19, 2013); *In the Matter of the Petition by Jordan Creek Wind Farm, LLC*, Cause No. 44978 (Dec. 20, 2017); *In the Matter of the Petition by Bitter Ridge Wind Farm, LLC*, Cause No. 45165 (March 20, 2019); *In the Matter of the Petition by Speedway Solar, LLC*, Cause No. 45230 (Sept. 18, 2019); *In the Matter of the Petition by Lone Oak Solar Energy LLC*, Cause No. 45255 (Oct. 29, 2019); *In the Matter of the Petition by Fairbanks Solar Energy Center LLC*, Cause No.

45254 (Oct. 29, 2019); *In the Matter of the Petition by Riverstart Solar Park LLC*, Cause No. 45336 (June 3, 2020). Denying the requested relief would inhibit Petitioner from competing with other similarly-situated entities facing fewer regulatory burdens. *See* Ind. Code §8-1-2.5-5(b)(4).

11. Procedural Schedule; Waiver of Prehearing Conference. Petitioner requests consideration of the requested relief on a schedule that will allow for an Order to be issued by the Commission on or before June 30, 2021. Petitioner has conferred with the Indiana Office of Utility Consumer Counselor to explain the project, and the parties have agreed to waive the prehearing conference in this Cause and to establish the procedural schedule as set forth below:

Petitioner files case-in-chief:	February 5, 2021
OUC and Intervenors file testimony:	March 26, 2021
Petitioner files rebuttal testimony:	April 12, 2021
Evidentiary Hearing:	One day during April 26-28, or May 5-7, 2021

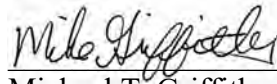
Additionally, Petitioner and the OUC have agreed to other procedural matters, all as set forth in the Proposed Scheduling Order attached hereto as Exhibit 1, and Petitioner requests that the Commission issue the Proposed Scheduling Order and waive the prehearing conference pursuant to 170 IAC 1-1.1-15(e).

WHEREFORE, Petitioner respectfully requests that the Commission:

- a. Issue the Proposed Scheduling Order in this Cause establishing the procedural schedule set forth in Paragraph 11 above and fixing the date for the evidentiary hearing;
 - b. Declare that the Commission declines to exercise jurisdiction consistent with other similarly-situated electric generation developers over Petitioner's construction, ownership, and operation of, and other activities in connection with the Hardy Hills Solar Facility;
 - c. Grant Petitioner an indeterminate permit to operate the Hardy Hills Solar Facility;
- and

- d. Grant Petitioner other just and proper relief as required in this proceeding.

Respectfully submitted,



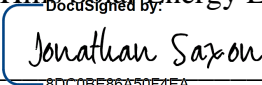
Michael T. Griffiths (26384-49)
Dentons Bingham Greenebaum LLP
2700 Market Tower
10 West Market Street
Indianapolis, Indiana 46204
Telephone: (317) 635-8900
Fax: (317) 236-9907
michael.griffiths@dentons.com

Attorney for Petitioner,
Hardy Hills Solar Energy LLC

VERIFICATION

I hereby affirm, under the penalties of perjury, that the representations contained in the foregoing verified petition are true to the best of my knowledge, information, and belief.

Hardy Hills Solar Energy LLC

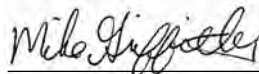
By:  _____
DocuSigned by:
8DC0BE86A50F4EA...

Date: 1/28/2021 _____

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was electronically delivered this 5th day of February, 2021, to the following:

Office of Utility Consumer Counselor
115 West Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
thaas@oucc.in.gov
infomgt@oucc.in.gov



An attorney for Petitioner,
Hardy Hills Solar Energy LLC

PETITION OF HARDY HILLS SOLAR ENERGY LLC

Exhibit 1

Proposed Scheduling Order

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
HARDY HILLS SOLAR ENERGY LLC FOR)
CERTAIN DETERMINATIONS BY THE) CAUSE NO. _____
COMMISSION WITH RESPECT TO ITS)
JURISDICTION OVER PETITIONER'S)
ACTIVITIES AS A GENERATOR OF)
ELECTRIC POWER)

You are hereby notified that on this date the Indiana Utility Regulatory Commission ("Commission") has caused the following entry to be made.

On February 5, 2021, Hardy Hills Solar Energy LLC ("Petitioner") filed its Verified Petition in this matter, which included a proposed procedural schedule agreed to by Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC"). After reviewing the Verified Petition, the Presiding Officers now establish the following procedural schedule in lieu of a prehearing conference:

1. **Petitioner's Prefiling Date.** Petitioner has prefiled with the Commission its prepared testimony and exhibits constituting its case-in-chief on February 5, 2021. Copies of same were served upon all parties of record.
2. **OUCC's and Intervenors' Prefiling Date.** The OUCC and all Intervenors shall prefile with the Commission the prepared testimony and exhibits constituting their respective cases-in-chief on or before March 26, 2021. Copies of same shall be served on all parties of record.
3. **Petitioner's Rebuttal Prefiling.** Petitioner shall prefile with the Commission its prepared rebuttal testimony on or before April 12, 2021. Copies of same shall be served upon all parties of record.
4. **Evidentiary Hearing on the Parties' Cases-In-Chief.** In the event this Cause is not settled, the cases-in-chief of the Petitioner, the OUCC, and any Intervenors shall be presented on _____, 2021, at __:___ .m. in Room _____ of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At such time, the direct evidence of the respective parties shall be presented and their respective witnesses examined. Thereafter, Petitioner shall present its prefiled rebuttal evidence as well as any additional evidence rebutting evidence adduced on cross-examination of the OUCC's or Intervenors' witnesses. If the parties reach settlement, the agreement and supporting testimony and exhibits shall be submitted to the Commission ten business days prior to the evidentiary hearing.

5. **Hearing Exhibits.** Paper copies of exhibits to be offered at the evidentiary hearing must be: (a) single-sided; (b) fastened together with staples, binder clips, or other non-permanent bindings that have no more than three holes along the longest edge. Exhibits that contain excel spreadsheets, are oversized or voluminous in nature, should be run through an optical character recognition program and offered on a compact disc. Confidential exhibits shall be offered on green paper in an envelope marked “confidential” or, if offered on a compact disc, the exhibits and compact disc shall be labeled “confidential.”

6. **Sworn Testimony.** Any witness testimony to be offered into the record of this proceeding shall be made under oath or affirmation. In accordance with 170 IAC 1-1.1-18(h), if the prefiled testimony of a witness is to be offered into evidence at the Evidentiary Hearing, and the witness sponsoring the prefiled testimony is not required to, and does not, attend the Evidentiary Hearing, the prefiled testimony shall be accompanied by the witness’s sworn affidavit or written verification at the time the evidence is offered into the record.

7. **Discovery.** Discovery is available for all parties and shall be conducted on an informal basis. Any response or objection to a discovery request should be made within seven calendar days of the receipt of such request.

8. **Prefiling of Work Papers.** When prefiling technical evidence with the Commission, each party shall file copies of the workpapers used to produce that evidence within two business days after the prefiling of the technical evidence. Copies of same shall also be provided to any other party requesting such in writing. When submitting workpapers to the Commission, two copies of each document shall be filed with the Secretary of the Commission.

9. **Number of Copies/Corrections.** Filings with the Commission shall comply with General Administrative Order 2016-2. Any corrections to prefiled testimony shall be made in writing as soon as possible after discovery of the need to make such corrections.

10. **Objections to Prefiled Testimony and Exhibits.** Any objections to the admissibility of prefiled testimony or exhibits shall be filed with the Commission and served on all parties of record as soon as an objection can be reasonably determined, but no less than ten days prior to the date scheduled for commencement of the hearing at which the testimony or exhibit will be offered into the record.

11. **Intervenors.** Any party permitted to become an Intervenor in this Cause should be bound by the record as it stands at the time its Petition to Intervene is granted, pursuant to 170 IAC 1-1.1-11.

IT IS SO ORDERED.

_____, Commissioner

_____, Administrative Law Judge