

# ORIGINAL

## STATE OF INDIANA

Commissioner	Yes	No	Not Participating
Huston	✓		
Freeman	✓		
Krevda	✓		
Ober	✓		
Ziegner	✓		

### INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANAPOLIS POWER & LIGHT )  
COMPANY (“IPL”) FOR (1) ISSUANCE TO IPL OF A )  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY )  
FOR THE ACQUISITION AND DEVELOPMENT BY A )  
WHOLLY-OWNED IPL SUBSIDIARY OF A SOLAR POWER )  
GENERATING FACILITY TO BE KNOWN AS HARDY HILLS )  
SOLAR (“THE HARDY HILLS PROJECT”); (2) APPROVAL OF )  
THE HARDY HILLS PROJECT, INCLUDING A JOINT )  
VENTURE STRUCTURE BETWEEN AN IPL SUBSIDIARY )  
AND ONE OR MORE TAX EQUITY PARTNERS AND A )  
CONTRACT FOR DIFFERENCES BETWEEN IPL AND THE )  
PROJECT COMPANY THAT HOLDS AND OPERATES THE )  
SOLAR GENERATION ASSETS, AS A CLEAN ENERGY )  
PROJECT AND ASSOCIATED TIMELY COST RECOVERY )  
UNDER IND. CODE § 8-1-8.8-11; (3) APPROVAL OF )  
ACCOUNTING AND RATEMAKING FOR THE HARDY HILLS )  
PROJECT, INCLUDING AN ALTERNATIVE REGULATORY )  
PLAN UNDER IND. CODE § 8-1-2.5-6 TO FACILITATE IPL’S )  
INVESTMENT IN THE HARDY HILLS PROJECT THROUGH )  
A JOINT VENTURE; AND (4) TO THE EXTENT NECESSARY, )  
ISSUANCE OF AN ORDER PURSUANT TO IND. CODE § 8-1- )  
2.5-5 DECLINING TO EXERCISE JURISDICTION OVER THE )  
JOINT VENTURE, INCLUDING THE PROJECT COMPANY, )  
AS A PUBLIC UTILITY. )

CAUSE NO. 45493

APPROVED: JUN 16 2021

### ORDER OF THE COMMISSION

#### Presiding Officers:

James F. Huston, Chairman

Brad J. Pope, Administrative Law Judge

On February 12, 2021, Indianapolis Power & Light Company d/b/a AES Indiana (“IPL,” “AES Indiana,” or “Petitioner”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) for the following approvals and authority for the acquisition and development of a solar power generating facility to be known as Hardy Hills Solar being undertaken by IPL: (1) issuance to IPL of a certificate of public convenience and necessity (“CPCN”) for the acquisition and development, by a wholly owned IPL subsidiary, of Hardy Hills Solar, including development of transmission interconnection and network upgrades (“Hardy Hills Project” or “Project”); (2) approval of the Hardy Hills Project, including a Joint Venture structure between an IPL subsidiary and one or more tax equity partners, and a contract for differences between IPL and the Project Company that holds and operates the solar generation facility, as a Clean Energy Project, and associated timely cost recovery under Ind. Code § 8-1-8.8-11; (3) approval of accounting and ratemaking for the Hardy Hills Project including an Alternative Regulatory Plan (“ARP”) to facilitate IPL’s investment in the Hardy Hills Project through the Joint Venture; and (4) to the extent necessary,

issuance of an order pursuant to Ind. Code § 8-1-2.5-5 declining to exercise jurisdiction over the Joint Venture, including the Project Company, as a public utility.

Also on February 12, 2021, IPL filed its prepared testimony and exhibits constituting its case-in-chief as well as supporting workpapers.

On February 16, 2021, Citizens Action Coalition of Indiana, Inc. (“CAC”) filed its Petition to Intervene, which the Presiding Officers granted by docket entry dated February 26, 2021.

On March 23, 2021, the IPL Industrial Group (“Industrial Group”) filed its Petition to Intervene, which the Presiding Officers granted by docket entry dated April 5, 2021.

On April 7, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) and the Industrial Group filed testimony and exhibits constituting their respective cases-in-chief. IPL filed rebuttal testimony on April 23, 2021.

The Commission set this matter for an Evidentiary Hearing to be held on May 12, 2021, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. On May 6, 2021, a docket entry was issued advising that due to the ongoing COVID-19 pandemic and with the consent of the parties, the hearing would be conducted via WebEx video conferencing. Petitioner, the OUCC, CAC, and the Industrial Group appeared and participated in the hearing at which the testimony and exhibits of Petitioner, the OUCC, and the Industrial Group were admitted into the record without objection.

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

**1. Notice and Jurisdiction.** Notice of the hearing in this Cause was given and published by the Commission and IPL as required by law.<sup>1</sup> IPL is a “public utility” within the meaning of that term as used in Ind. Code §§ 8-1-2-1 and 8-1-8.5-1. IPL is also an “eligible business” as that term is defined in Ind. Code § 8-1-8.8-6. IPL is also an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2 and provides “retail energy service” as that term is defined by Ind. Code § 8-1-2.5-3. IPL is subject to the jurisdiction of the Commission in the manner and to the extent provided by the Public Service Commission Act, as amended, and other pertinent laws of the State of Indiana. Therefore, the Commission has jurisdiction over IPL and the subject matter of this proceeding.

**2. Petitioner’s Characteristics.** IPL’s principal office and place of business is One Monument Circle, Indianapolis, Indiana. IPL provides retail electric utility service to more than 500,000 retail customers located principally in and near Indianapolis and in portions of the following Indiana counties: Boone, Hamilton, Hancock, Hendricks, Johnson, Marion, Morgan, Owen, Putnam, and Shelby Counties. IPL owns and operates electric generating, transmission, and distribution plant, property, and equipment and related facilities, which are used and useful for the convenience of the public in the production, transmission, delivery, and furnishing of electric energy, heat, light, and power. IPL is part of The AES Corporation (“AES” or “AES Corporation”). On February 24, 2021, after the filing of this Petition, IPL formally changed its name to AES Indiana. The AES US strategic business unit, including US Utilities, is headquartered in Indianapolis, Indiana, as is AES US

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<sup>1</sup> IPL’s proofs of publication of notice were admitted into the record with IPL witness Rogers’ direct testimony, as Petitioner’s Exhibit No. 10, Attachment CAR-1.

Services, LLC, which is the service company that provides services to IPL and other AES affiliates. CDP Infrastructure Fund GP, a wholly owned subsidiary of La Caisse de depot et placement du Quebec, has a minority ownership interest in IPALCO Enterprises, Inc. (“IPALCO”), IPL’s immediate parent company, and in AES U.S. Investments, Inc., IPALCO’s, immediate parent company. IPL is also subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”). As authorized by the Commission’s Order, in Cause No. 42027, dated December 17, 2001, IPL’s transmission system is under the functional control of the Midcontinent Independent Transmission System Operator, Inc. (“MISO”).

**3. Overview of the Hardy Hills Project.** Based on its 2019 Integrated Resource Plan (“IRP”), Short-Term Action Plan, and updated capacity need analysis, IPL anticipates a 2023 capacity shortfall of approximately 250 MW of unforced capacity (“UCAP”). Petitioner’s Exhibit No. 5, p. 9. To address part of this capacity need, IPL, through a subsidiary, has entered into an agreement to acquire and develop a solar generation facility to be known as Hardy Hills Solar (“Hardy Hills,” “Hardy Hills Project,” or “Project”). This agreement is subject to Commission approval. The agreement – the confidential Membership Interest Purchase, Project Development and Construction Management Agreement (“MIPA”) – is with Invenergy Solar Project Development North America LLC (“Invenergy”), which is developing Hardy Hills Solar through Hardy Hills Solar Energy LLC, a special purpose entity (“ProjectCo”). The definitive agreement provides that, subsequent to regulatory approval, Invenergy will sell ProjectCo to IPL Devco Holdings 1, LLC, a limited liability company owned by IPL. ProjectCo will ultimately be owned by Joint Venture, LLC. Petitioner’s Exhibit No. 1, Attachment KL-1, p. 9.

Hardy Hills is a 195 MWac, 240.9 MWdc solar facility utilizing approximately 581,594 solar panels over an approximately 1,780-acre solar panel farm located in Clinton County, Indiana. Transmission and substation facilities are planned to be located in Clinton County. *Id.*, pp. 9-10. To reduce costs for the benefit of customers, IPL proposes to invest in a Joint Venture ownership structure with a tax equity partner(s) (“TEP”). Petitioner’s Exhibit No. 12, p. 5.

Per IPL’s Petition, the Hardy Hills location is near IPL’s service territory and is beneficial for deliverability support for the IPL system. Its location also facilitates IPL’s ability, through a wholly owned subsidiary, to manage operations and maintenance at the Hardy Hills Project. Petitioner’s Exhibit No. 1, Attachment KL-1, p. 10. The Hardy Hills Project will connect with Duke Energy Indiana’s New London – Frankfort 230 kV line adjacent to the site. Hardy Hills is designed to qualify for 30% Investment Tax Credit (“ITC”). The commercial operation date (“COD”) for the project is Q2 2023, prior to the start of the 2023-2024 MISO Planning Year. Hardy Hills will contribute 97.5 MW of UCAP to IPL’s 2023-2024 MISO Planning Year projected capacity shortfall of approximately 250MW (UCAP). *Id.*

IPL will enter into a Capacity Agreement and Contract for Differences (“CFD”) with the ProjectCo that owns the solar generation assets. *Id.*, p. 11. The overall transaction is structured to enable IPL to exercise oversight while the facility is being built and to manage its operation and maintenance once the new Project becomes commercially operable. *Id.*

The separate petition by Hardy Hills Solar Energy LLC for certain determinations by the Commission with respect to its jurisdiction over Hardy Hills Solar as a generator of electric power was filed with the Commission on February 5, 2021, and has been docketed as Cause No. 45490.

4. **Relief Requested.** As summarized above and further discussed below, IPL asks the Commission to approve the Hardy Hills Project, including the Joint Venture investment structure and CFD, as a Clean Energy Project and to issue IPL a CPCN for the acquisition and development of this new solar generation facility. IPL asks the Commission to approve associated accounting and ratemaking, including authorizations necessary to facilitate the Joint Venture structure. These ratemaking authorizations include the creation of regulatory assets for investment in the Project, Project development costs, carrying charges, inclusion of regulatory assets in IPL's rate base in a subsequent rate case, and recovery of Project development costs and timely ratemaking for the CFD to be administered in conjunction with IPL's ongoing Fuel Adjustment Clause ("FAC") proceedings. Finally, IPL requests ongoing review and proposes to submit semi-annual progress reports to the Commission for approval.

5. **Statutory Framework.** Ind. Code § 8-1-8.5-5 sets forth the conditions for receiving a CPCN. Ind. Code § 8-1-8.8-2 concerns the development of "clean energy projects," including renewable energy projects. Per Ind. Code § 8-1-8.8-10, the definition of "renewable energy resource" includes solar energy. Pursuant to Ind. Code § 8-1-8.8-11 ("Section 11"), a clean energy project that is determined to be reasonable and necessary is eligible for Commission-approved financial incentives, including timely recovery of costs. Ind. Code § 8-1-2-42(a) ("Section 42(a)") also authorizes rate adjustment mechanisms for the recovery of costs incurred in the provision of retail service. Finally, Ind. Code § 8-1-2.5-6 (the "ARP Statute") provides a basis to facilitate the establishment of the Joint Venture, LLC as an ARP, and to authorize IPL to reflect its investment, through a wholly owned subsidiary, in Joint Venture, LLC in IPL's net original cost rate base and grant to IPL associated accounting and ratemaking relief.

In our Orders in Cause No. 45462 ("Dunns Bridge/Cavalry Order"), Cause Nos. 45310, and 45463 (the "Crossroads Wind Orders"), and Cause No. 45194 (the "Rosewater Order"), we approved similar requests for relief.<sup>2</sup>

6. **Petitioner's Case-in-Chief.** Petitioner presented the testimony of nine witnesses in its case-in-chief: Kristina Lund, President and CEO of AES US Utilities, including IPL; G. Aaron Cooper, Chief Commercial Officer, AES US Utilities; Frank J. Salatto, Director, AES US Tax Reporting; Matthew R. Thibodeau, Senior Vice President, Sargent & Lundy ("S&L"); Erik K. Miller, IPL Manager, Resource Planning; Danielle S. Powers, Senior Vice President, Concentric Energy Advisors, Inc.; Matthew E. Lind, Director, Resource Planning & Market Assessments, 1898 & Co.; Ronald J. Moe, Vice President at Leidos Engineering, LLC; and Chad A. Rogers, Senior Manager, AES Indiana Regulatory and RTO Policy.

A. **Project Overview.** Ms. Lund provided an overview of the relief sought by IPL and discussed the importance of a timely decision. She described IPL and its ongoing work to meet customers' ongoing need for reliable service through further diversification of its generation and use of renewable energy. She discussed how IPL will manage the proposed Hardy Hills Project and supported IPL's request for ongoing review. She discussed Project benefits and presented her view as to why Commission approval of the Project serves the public convenience and necessity.

B. **Project Selection and Agreements.** Mr. Cooper described IPL's All-Source

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<sup>2</sup> *N. Ind. Pub. Serv. Co.*, Cause No. 45462 (IURC May 5, 2021); Cause No. 45310 (IURC Feb. 19, 2020); Cause No. 45463, (IURC Mar. 29, 2021); and Cause No. 45194, (IURC Aug. 7, 2019)

Request for Proposals (“RFP”), the evaluation of the resulting proposals received, and the selection of the Hardy Hills Project. He also discussed the terms of the MIPA and the proposed CFD. He described IPL’s rights to Renewable Energy Certificates (“RECs”) and any other generation benefits. Mr. Cooper also presented the best estimate of the cost of the Hardy Hills Project.

**C. Joint Venture Structure and Tax Benefits.** Mr. Salatto described the structure and timing of IPL’s investment in the Hardy Hills Project, including the tax benefits and Joint Venture structure that will play a role in reducing the overall costs to IPL’s customers. He also discussed certain tax considerations relevant to the CFD and other accounting matters.

**D. All-Source RFP.** Mr. Thibodeau described S&L’s role in IPL’s 2019 All-Source RFP process, including the activities performed by S&L such as preparing and issuing the RFP document, conducting a web-based information session for prospective bidders, receiving all proposals, storing the associated files, and performing evaluations of the proposals. His report summarized many aspects of the All-Source RFP, RFP background, the RFP structure, and the schedule, and it described the initial evaluation process and results.

**E. IPL IRP and Production Cost Analysis.** Mr. Miller presented IPL’s Preferred Resource Portfolio and Short-Term Action Plan defined in the IPL’s 2019 IRP. He explained the Short-Term Action Plan to retire Petersburg Units 1 and 2 and the resulting capacity need in 2023. He described the Resource Planning Production Cost analysis used in the RFP evaluation. He presented an analysis showing that the Hardy Hills Project, when included in IPL’s resource mix, is consistent with IPL’s Preferred Resource Portfolio and Short-Term Action Plan defined in IPL’s 2019 IRP. He also discussed the resource alternatives identified in Ind. Code § 8-1-8.5-4.

Mr. Miller testified that IPL considered the State Utility Forecasting Group (“SUFG”) Electricity Projections, SUFG’s “Scenario Analysis for IURC Report to the 21st Century Task Force” report that was performed for the Commission’s report to the Task Force, the findings of the Indiana 21st Century Task Force Report, and the IURC/SUFG 2020 Study Report. He stated that IPL has considered flexibility and optionality in its IRP planning. He explained that the approach to coal unit retirements in the 2019 IRP Preferred Resource Portfolio Short-Term Action Plan reflects the economic conditions underlying the 2019 IRP. He stated that because the 2019 IRP Preferred Resource Portfolio focuses on a 2023 UCAP need, this approach provides IPL options and flexibility going forward with respect to resource needs beyond this timeframe and added that this in turn provides IPL with flexibility to change course as appropriate as key variables – like fuel prices, resource costs, carbon regulation and consumer needs – change over time. Mr. Miller concluded that IPL’s decision to proceed with procuring 97.5 MW of solar UCAP through Hardy Hills is a reasonable, least cost option to meet its need for additional capacity in 2023. He testified that the Project would enable IPL to make progress towards meeting resource adequacy requirements while providing optionality and a transition to a greener energy future. Therefore, he recommended Commission approval of the Hardy Hills Project as proposed by IPL.

**F. Present Value Revenue Requirement (“PVRR”) Ranking Analysis.** Ms. Powers’ testimony focused on the analytical support services related to the economic decision modeling in support of IPL’s All-Source RFP. She explained that Concentric developed a model to rank the relative costs and benefits of each proposal against the other proposals and that this Ranking Analysis model looked at the PVRR of the shortlisted proposals.

**G. Interconnection Reliability and Congestion Evaluation.** Mr. Lind described 1898 & Co.'s role in the evaluation of power supply proposals received through the All-Source RFP solicitation process. He also presented the results and methodology used to evaluate the system impacts and congestion associated with select proposals.

**H. Reasonableness of Hardy Hills Project Cost.** Mr. Moe presented Leidos' calculation of the levelized cost of energy ("LCOE") for a sample of eight projects: (1) with which Leidos is familiar; and (2) that could be considered comparable to Hardy Hills from an LCOE perspective. He summarized the analysis and associated results and testified that Hardy Hills' cost, as measured by LCOE, is well within the range of costs from other projects that Leidos analyzed and that Leidos would consider comparable to Hardy Hills. He stated in particular, excluding transmission capital costs, which are highly variable across locations and over time, the Hardy Hills' LCOE is essentially equal to the median LCOE as well as the LCOEs for 56% of the comparable projects Leidos analyzed (and lower than the remaining 44% of the projects). He added that including transmission capital costs, the Hardy Hills' LCOE is essentially equal to the median LCOE as well as the LCOEs for 63% of the comparable projects Leidos analyzed.

**I. Accounting and Ratemaking.** Mr. Rogers discussed the accounting and ratemaking for the Hardy Hills Project, including IPL's request for approval pursuant to Ind. Code § 8-1-2.5-6 of an ARP to facilitate the establishment of the Hardy Hills Joint Venture structure and the reflection in IPL's net original cost rate base of its investment in the Hardy Hills Project.<sup>3</sup> He stated that as discussed by IPL witness Salatto, IPL will not be the owner of the generating assets that make up the Hardy Hills Project. He testified that IPL, through a wholly owned subsidiary, will own a membership interest in the Joint Venture, LLC, which in turn will own the ProjectCo that owns the solar generation assets. Mr. Rogers stated that IPL seeks approval of the Joint Venture structure and associated investment and added that the Joint Venture structure ultimately reduces the overall cost of the Project for the benefit of IPL customers.

Mr. Rogers explained that IPL seeks approval to record its investment in the Hardy Hills Project as a regulatory asset in FERC Account 182.3. He identified IPL's estimated investment amount upon completion and after the TEP has made its contribution. He stated that IPL proposes to amortize the regulatory asset used to record the investment in the Hardy Hills Project over the estimated remaining life of the Hardy Hills Project as of when the amortization begins. He testified that IPL would begin to amortize the regulatory asset once the asset is reflected in customer rates in IPL's next basic rate case. He explained that IPL seeks authority to record carrying charges on the regulatory asset balance until the regulatory asset is reflected in customer rates in IPL's next basic rate case, and he estimated those carrying charges. He stated that IPL seeks approval to include, in its next basic rate case, the balance of the regulatory asset in net original cost rate base and in the value of its rate base for purposes of Ind. Code § 8-1-2-6.

Mr. Rogers explained that IPL also seeks approval to record approximately \$5.2 million of Project Development Costs as a regulatory asset in FERC Account 182.3. He testified that these costs reflect the analysis, evaluation, and development of the Hardy Hills Project. He stated that IPL is not requesting carrying charges on the Project Development Costs; however, IPL is seeking approval to include, in its next basic rate case, the balance of the regulatory asset it has recorded for these costs

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<sup>3</sup> In its Petition, IPL elected to become subject to Ind. Code §§ 8-1-2.5-5 and -6 for purposes of IPL's proposed relief under the ARP Statute.

in net original cost rate base and in the value of its rate base for purposes of Ind. Code § 8-1-2-6.

Mr. Rogers discussed the request that the Commission (to the extent necessary and pursuant to Ind. Code § 8-1-2.5-5) decline to exercise its jurisdiction over the Joint Venture and ProjectCo that owns the solar generation assets, as public utilities. He also testified that the proposed ARP and declination of jurisdiction is in the public interest as that term is used in Ind. Code § 8-1-2.5-6(1)(A) and the proposed Joint Venture and participation in the Hardy Hills Project will enhance or maintain the value of IPL's retail electric energy services or property as set forth in Ind. Code § 2.5-6(a)(1)(B).

Mr. Rogers addressed the proposed timely cost recovery to be administered in IPL's FAC proceedings. He testified that IPL requests the Commission authorize IPL to recover the CFD costs net of credits from retail customers via a rate adjustment mechanism in accordance with Ind. Code § 8-1-8.8-11. He testified that this statute provides for timely cost recovery as a financial incentive for a Commission-approved renewable energy project and added that such timely cost recovery is consistent with Section 42(a). He explained that IPL proposes the timely recovery of the contract costs and credits be administered with its quarterly FAC proceedings. He stated that IPL proposes timely cost recovery be accomplished by treating the CFD cost as one recoverable in a fashion similar to the FAC mechanism, where cost recovery is based on the forecasted cost for a particular quarter subject to reconciliation in a subsequent quarter.

Mr. Rogers explained that although IPL proposes to recover costs through its FAC, this cost recovery would not be subject to the Section 42(d)(1) test or any FAC benchmarks, including the Benchmark approved by the Commission in Cause No. 43414. He stated that this proposal is similar to the recovery mechanism the Commission approved for the Hoosier and Lakefield Wind Park Power Purchase Agreements ("PPA") in Cause Nos. 43485 and 43740, which were approved by the Commission as renewable energy projects under Ind. Code § 8-1-8.8-11. He explained that this proposed cost recovery mechanism is also consistent with that requested by NIPSCO in its recent renewable generation proceedings (Cause Nos. 45310, 45462, and 45463). Mr. Rogers testified that administering this mechanism via the FAC proceedings would allow this timely cost recovery to be folded into an existing docket rather than the creation of new dockets. He stated that because IPL's Wind PPA cost recovery is already administered via the FAC filings, the inclusion of the CFD costs/credits would be administratively efficient.

Mr. Rogers explained that as the Joint Venture accumulates distributable cash, it may make cash distributions to its owners and because a wholly owned IPL subsidiary will be the sponsor of the Joint Venture, LLC, IPL will receive its ownership share of those distributions. He testified that cash accumulation may be caused by cash inflows for the sales of energy in the MISO Market and from IPL in the CFD exceeding cash expenses for extended periods of time. He stated that IPL proposes to record cash distributions to benefit IPL customers and added that IPL proposes to flow funds distributed to IPL from the Joint Venture to IPL customers in a timely manner administered through IPL's FAC in a similar method as the cash flows for the CFD. He also discussed the estimated customer rate impact of the proposed ratemaking treatment. Mr. Rogers stated that IPL will continue to sell and purchase capacity related to its MISO capacity requirement and added that the Hardy Hills Project will not impact IPL's Off-System Sales margins.

Mr. Rogers concluded that the requests made in this filing lower the overall cost of the Project for the benefit of IPL's customers; IPL's requests are reasonable and necessary to implement its 2019 IRP Short-Term Action Plan; and the accounting and ratemaking relief allow IPL to recover the cost

of its investment plus a fair return on the investment, allow for the timely recovery of the CFD payments, and allow for the timely credit to customers of Joint Venture cash distributions.

7. **The OUCC's Evidence.** The OUCC presented the testimony of Peter M. Boerger, Ph.D., Senior Utility Analyst Electric Division of the OUCC; Lauren M. Aguilar, Utility Analyst Electric Division of the OUCC; and Wes R. Blakley, Senior Utility Analyst Electric Division of the OUCC.

Dr. Boerger testified that the OUCC and IPL facilitated meetings to gather information about the Project. He addressed the economic justification for IPL's proposal to obtain a CPCN under Ind. Code ch. 8-1-8.5 and authorization under Ind. Code ch. 8-1-8.8 for IPL's proposal to enter into a joint venture with a TEP and related relief providing 195 MW of installed capacity. He identified several issues of concern pertaining to the Project's LCOE, as well as the selection of Hardy Hills among other RFP responses. He also addressed recent reliability-related initiatives pertaining to maintaining reliability as levels of intermittent resources increase and the relevance of those matters to IPL's request in this proceeding. He stated his understanding that the Commission does not have authority to approve or disapprove public utility generation facility retirements. He noted IPL's increased reliance on its Harding Street generation facilities ("Harding Street") for purposes of fulfilling its capacity requirements with MISO and requested that IPL provide more detail as to how it intends to ensure the gas supply at Harding Street is available to meet IPL's generation needs when called upon.

Dr. Boerger concluded that the Project's LCOE falls within a reasonable range of joint venture projects. He also concluded that IPL's current (low) level of renewable energy penetration does not provide cause for concern at this time regarding the concerns raised in MISO's recent Renewable Integration Impact Assessment ("RIIA") report. He recommended that IPL present more detailed information to explain why it did not choose similar RFP responses with significantly lower LCOE values.

Dr. Boerger recommended that IPL take a more balanced view in its evaluation of benefits and costs of owning facilities versus using PPA structures in evaluating future projects. He added that such evaluation should not necessarily lead to the use of PPAs; however, PPA options should not be inappropriately disadvantaged in the process. He also highlighted Hardy Hills' high interconnection cost and recommended that IPL think more carefully about how interconnection cost estimates can be effectively integrated into future decision processes.

Ms. Aguilar presented the OUCC's concerns regarding captive ratepayers possibly being subjected to additional costs due to certain known and unknown risks. She explained that the OUCC is willing to support IPL's request if the Commission imposes a cost sharing risk management strategy and disallows any collection from ratepayers beyond the caps proposed by the OUCC. She proposed a 50/50 cost sharing between ratepayers and shareholders and further proposed that ratepayers' cost share shall be capped. She testified that cost sharing with a ratepayer cap provides additional ratepayer protections, thereby making the OUCC more agreeable to accepting this Project. She testified that the OUCC recommends the Commission require IPL to file a report describing any major changes to the contracts not executed at the time of this filing. She stated that as negotiations can occur at a varying pace, the OUCC requests these reports be filed at least 45 days before executing the agreements and if additional changes are made after a report, the OUCC recommends that IPL submit another report within five business days after the change.



Mr. Blakley analyzed and addressed the accounting and ratemaking treatment for the Hardy Hills Project that IPL witness Chad Rogers proposed. Mr. Blakley recommended that the Commission order IPL to: (1) use its long-term debt rate only for the carrying charge related to the Hardy Hills Project's construction; (2) limit deferring additional carrying costs for a period up to ten months after the Hardy Hills Project's in-service date; and (3) include only the amount of net original cost it has invested in the Hardy Hills Project in any future rate case, including after IPL purchases the TEP's interest in the Joint Venture.

**8. The Industrial Group's Evidence.** The Industrial Group presented the testimony of Michael P. Gorman, Managing Principal at Brubaker & Associates, Inc. Mr. Gorman noted that IPL's economic studies of the resource options, including Hardy Hills, suggest that there may be other lower-cost resource options available to IPL that should be considered. He recommended that IPL's pre-COD capital expenditures should be carried at IPL's short-term debt cost, which should be refinanced with long-term permanent funding after the capital contributions from the TEP are known and contributed to the Project. He stated that IPL's proposal for a declining balance recovery of the Project should not be approved. He stated that a levelized cost recovery of a joint venture investment may produce more benefits to all generations of IPL's customers.

Mr. Gorman testified that the Commission should require more detailed and firm commitments on the CFD pricing and the implied rate of return with any Commission approval of the Project. He stated that the Commission should ensure that the rate of return implicit in the CFD pricing is fair and reasonable based on the investment risk of Hardy Hills, so that resulting rates are just and reasonable. He testified that IPL maintains that a Joint Venture ownership structure is more appropriate because IPL cannot immediately use the tax benefits of the solar investment. He explained, however, that IPL has not yet demonstrated whether its diminished appetite for tax benefits is caused by IPL's financial circumstances or its consolidated tax filing with its parent company, the AES Corporation. He recommended that to the extent conventional, base rate of return financing would produce a lower resource option to IPL, and setting aside the possible constraints applicable to its relationship with its parent company, the Commission should consider an adjustment to the rate of return applied to IPL's Project capital investment to make customers whole by the lack of a lower cost financing option.

Mr. Gorman stated that any Commission approval of IPL's request for a CPCN in this case should be conditional until final CFD and TEP contractual terms, including pricing, Project performance guarantees, etc. have been reviewed by the Commission and determined to be reasonable, prudent, and appropriate for passing on to IPL's customers. He stated that IPL should ensure that the ultimate pricing structure and financing contemplated under the Joint Venture and CFD pricing are just and reasonable for customers by submitting them to the Commission for further review.

**9. Petitioner's Rebuttal.** IPL witness Rogers responded to issues raised by the OUCC and the Industrial Group. He presented certain modifications to IPL's proposals which IPL agreed to in response to the OUCC's and the Industrial Group's concerns and explained why he views the proposed resolution to be reasonable. These proposals were set forth in Petitioner's Exhibit No. 11, Attachment CAR-1R, which was co-sponsored by IPL witnesses Cooper and Salatto.

Mr. Cooper responded to Dr. Boerger's request for additional information regarding other potential projects and to his comments regarding IPL's evaluation of PPAs. He stated that while IPL

considered qualitative factors present for build-transfer proposals, it has not, at this stage, rejected any PPA proposal on this basis. Mr. Cooper explained that the selection of Hardy Hills does not exclude any of the other proposals advanced to Phase 3. He also discussed the complexities of the project selection and negotiation process. He explained that in addition to the Hardy Hills Project being at a more advanced stage of development, the counterparty was willing to dedicate the resources to negotiate in a timely manner on the desired timeline. Mr. Cooper also provided information as to how IPL is planning for reliability of Hardy Street Station gas supply in light of the retirement of Petersburg Units 1 and 2.

In response to Ms. Aguilar's testimony regarding potential for increases to IPL's best estimate of the Hardy Hills Project costs, Mr. Cooper discussed the contractual protections included in the MIPA with Invenergy to limit that possibility. He also discussed the proposed CFD agreement and terms for the Limited Liability Company Operating Agreement between the TEP and IPL Sponsor ("Joint Venture LLCA") and TEP MIPA and explained why this agreement cannot be executed now.

With respect to cost increase sharing and the proposed cost cap, Mr. Cooper explained that not all Project cost increases may impact rates. He testified that IPL's analysis shows the Hardy Hills Project has a favorable PVRR, meaning that from a revenue requirements perspective, even if Project cost changes would cause this benefit to decrease, customers are not adversely affected until this benefit becomes a cost to the consumer. Mr. Cooper added that IPL is not in control of all circumstances that might cause a cost increase, such as a force majeure event or change in law. He stated that if such events occur, it is reasonable to present any resulting impact to the Commission for a decision regarding cost recovery. Finally, Mr. Cooper testified that IPL has taken reasonable steps to limit risk and the potential for cost increases. To reduce controversy, Mr. Cooper stated that IPL recommends this issue be resolved by the modifications set forth in Petitioner's Exhibit No. 11, Attachment CAR-1R (Sections 1-4). He stated that the proposed modifications reasonably balance the cap and cost sharing concept proposed by the OUCC.

Mr. Cooper discussed interconnection costs regarding the Hardy Hills Project. He testified that knowing the level of transmission costs sooner would not have changed the outcome. He recognized the need to incorporate the best information into RFP evaluations as early as practicable and stated that IPL will continue to seek ways to do so in future RFP evaluation processes.

Mr. Rogers reiterated that IPL, through its subsidiary, will be and will remain the managing member of the Joint Venture. He stated that this should address Ms. Aguilar's concern that the final agreement could change how IPL will manage the Project. He added that the concept of ongoing reporting is consistent with IPL's request for ongoing review, but the OUCC's specific recommendation raises some concerns. He stated that IPL has a general plan and timeline for the negotiations and execution of the CFD and Joint Venture LLCA. He stated that the precise date for the execution of these agreements is not known and attempting to "hard code" such a date into the process would unduly constrain the process. He added that the process could be adversely affected if final terms are agreed and the product must be placed on a shelf for a period of 45 days.

He explained that as shown in Petitioner's Exhibit No. 11, Attachment CAR-1R (Sections 8-10), IPL proposes a modified process to address the OUCC's desire for additional information. He added that the proposed modified process is also designed to address the Industrial Group's desire for additional information regarding the CFD and agreements with the TEP.

Mr. Rogers responded to Mr. Blakley's recommendation that IPL be ordered to use its long-term debt rate only for calculation of carrying charges for the Hardy Hills Project regulatory asset. He also explained why he disagreed with Mr. Gorman's proposal that a more reasonable carrying charge during pre-COD should be IPL's cost of short-term debt. To mitigate controversy, Mr. Rogers stated that IPL proposes the matter be resolved by calculating the carrying charges at the lower of the AFUDC Rate or the WACC rate as set forth in Petitioner's Exhibit No. 11, Attachment CAR-1R (Section 5). Mr. Rogers added that while some portion of the carrying charges will be accrued based on the AFUDC rate formula, it is being used as a convenience, since it already exists and captures the components that the parties to this Cause agree are important to include. To avoid any confusion on the carrying charges, he stated that these amounts are not AFUDC.

Mr. Rogers also explained why he disagreed with Mr. Blakley's proposal to limit carrying costs up to ten months after the Hardy Hills Project COD. To address this concern and reduce the carrying charges deferred until IPL's next rate case, Mr. Rogers stated that IPL proposes that pre-COD and post-COD carrying charges will accrue and be included for full timely recovery in IPL's existing annual ECR rider filings as set forth in Petitioner's Exhibit No. 11, Attachment CAR-1R (Section 6). He explained that as a result of the proposed tracking of carrying charges, in IPL's next basic rate case, the estimated amount of the regulatory asset will be lower than the amount presented in his direct testimony.

Mr. Rogers clarified the difference in the revenue conversion rate compared to that used by Ms. Powers in Petitioner's Exhibit No. 10, Attachment CAR-3 identified by Mr. Gorman and explained that this difference is not a mistake. He also explained that Mr. Gorman's statement that O&M expense would flow through the FAC filing does not accurately reflect the IPL's proposed ratemaking.

Finally, Mr. Rogers disagreed with Mr. Gorman's contention that a levelized return on the asset over the life of the regulatory asset should be used and his contention that a levelized recovery would be more economic for all generations of customers. However, Mr. Rogers added that the parties had reached a compromise to allow this issue to be addressed in IPL's next rate case as reflected in Petitioner's Exhibit No. 11, Attachment CAR-1R (Section 7). He stated that this approach will allow the Commission to consider and decide the issue in the context of the entire revenue requirement.

IPL witness Miller addressed Dr. Boerger's and Mr. Gorman's comments regarding LCOE as well as Dr. Boerger's comments on MISO's recent RIIA report. Mr. Miller discussed the solar accreditation issue with respect to Concentric's Ranking Analysis, which used a present value revenue requirements calculation for the ranking of the RFP proposals. He stated that the LCOE calculations used for this filing were never intended to serve as an evaluation metric for comparing the RFP proposals. Mr. Miller discussed the MISO RIIA report and testified that IPL agrees with the OUCC that this matter, while important, does not affect the reasonableness of its proposal in this proceeding. He explained that IPL will work with stakeholders during the 2022 IRP to ensure that the underlying planning assumptions account for the implications of shifting to more renewable energy within MISO.

In response to Mr. Gorman's testimony, Ms. Powers clarified the approach to and purpose of the Ranking Analysis. She discussed the difference between PVRR and LCOE calculations and explained that the Ranking Analysis reasonably reflects the Hardy Hills Joint Venture ownership and CFD pricing structure proposed in this case.

Mr. Salatto responded to witness Gorman's contention that IPL has not sufficiently justified the use of a Joint Venture with TEP in the Hardy Hills transaction. He explained that IPL does not have the tax appetite to currently monetize the tax benefits related to the Hardy Hills Project. He also addressed the uncertainty of possible tax law changes and responded to Mr. Gorman's proposal that the Commission should condition its final approval until after the TEP capital contribution to the Project and resulting CFD are known and measurable. He suggested that the proposed conditional approval may diminish interest in the Project by potential TEP's or be seen as a fatal flaw that would preclude them from investing as they compare the Hardy Hills investment versus other opportunities they are evaluating. Mr. Salatto added that IPL has a known capacity shortage that must be covered, and in order for IPL to meet its responsibilities, it is important for this Project to start timely and not be delayed for a change in tax law that may never occur. Mr. Salatto stated that IPL proposes to address these concerns through the ongoing review process and confidential briefings as shown in Petitioner's Exhibit No. 11, Attachment CAR-1R (Sections 8-10).

Mr. Salatto testified that as shown by Petitioner's Exhibit No. 13-C, Attachment FJS-2 (Section 11), IPL has taken reasonable steps to address a possible change in tax law and to safeguard the interests of IPL and its customers through the Change in Tax law provisions of the proposed TEP investment terms. He stated that this provision addresses a possible change in tax law before and after the TEP funding of the Project and reasonably safeguards the interests of IPL and its customers with respect to the value of the ITC, depreciation, and project cash flows. Mr. Salatto added that as shown in Petitioner's Exhibit No. 11, Attachment CAR-1R (Section 4), IPL commits that it will include a change of tax law provision in the Joint Venture LLCA comparable to the proposed term included in Petitioner's Exhibit No. 13-C, Attachment FJS-2. He explained that as also shown in Petitioner's Exhibit No. 11, Attachment CAR-1R (Section 4), the incremental value received by IPL as a result of a change in tax law would then be used to reduce costs for the benefit of customers, such as reducing the Hardy Hills regulatory asset or as otherwise approved.

Mr. Salatto responded to OUCC witness Blakley's recommendation that the Project regulatory asset be included in rates at its original cost, and no fair value estimate be applied to this asset in any future ratemaking calculation. To resolve this concern, Mr. Salatto presented certain commitments made by IPL. Mr. Rogers and Mr. Cooper explained that IPL and the OUCC had multiple "tech-to-tech" and other discussions prior to the filing of the OUCC's case-in-chief. Mr. Rogers testified that these discussions were broadened to include all parties. He stated that these meetings facilitated the parties' understanding of the issues and concerns and ultimately resulted in the compromises set forth in Petitioner's Exhibit No. 11, Attachment CAR-1R. He stated his understanding is that with these proposed modifications, the other parties either support or do not object to Commission approval of the relief sought by IPL here.

## **10. Commission Discussion and Findings.**

**A. CPCN.** Ind. Code § 8-1-8.5-5 sets forth specific findings the Commission must make in order to approve and grant the requested CPCN. The Commission must consider the items set forth in Ind. Code § 8-1-8.5-4, must make a finding as to the best estimate of cost of the project, must make a finding whether the proposal is consistent with our statewide analysis or a utility specific proposal, and must make a finding whether the public convenience and necessity requires a proposed project. In addition, the Commission must make findings pursuant to Ind. Code § 8-1-8.5-5(e). We address these statutory requirements below.

i. Best Cost Estimate. IPL witness Cooper presented IPL's best estimate for the cost of the Hardy Hills Project. The amount is confidential and set forth in Petitioner's Exhibit No. 2-C, Page 27, Table 1. OUCC witness Aguilar testified that any increases in IPL's investment in the Hardy Hills Project above the best estimate should be subject to 50/50 sharing and a cap. In rebuttal, IPL agreed to 50/50 sharing of certain cost increases as well as a cap as set forth on Petitioner's Exhibit No. 11, Attachment CAR-1R. IPL also committed to keep the Commission, the OUCC, and Intervenors (if interested) apprised of IPL Sponsor's plans regarding the exercise of the option to purchase the TEP share of the Joint Venture as the time nears and will seek Commission approval and cost recovery as necessary or appropriate in a separately docketed proceeding. Should IPL exercise this option in the future, IPL has committed that it will not seek to recover through rates an amount that exceeds the fair market value of the TEP interest as determined at the time the option to purchase is exercised. IPL has also agreed that in a future rate case, it will not seek to include in rate base, under a fair value ratemaking argument, an amount that is greater than IPL's actual cost of acquiring the TEP's interest.

Mr. Cooper explained that although Hardy Hills was the first solar-only asset transfer proposal that fell outside the cutoff for the category to advance to Phase 2, the proposal price was improved compared to its original level through subsequent negotiations with Invenergy. The best estimate for Hardy Hills is then taken directly from the MIPA and associated documents. The MISO interconnection and system upgrade costs reflected in the best estimate are from the 1898 & Co as shown in the Interconnection Reliability and Congestion Evaluation Report (Table 12) sponsored by IPL witness Lind. IPL witness Salatto explained the basis for the estimated TEP contribution. IPL also confirmed that the Project's estimated cost is consistent with the market for similar projects by engaging Leidos to perform a comparative analysis. Mr. Rogers explained that IPL proposes to create a regulatory asset for the amount of its investment in the Hardy Hills Project. In rebuttal, Mr. Rogers stated that IPL will accrue carrying charges on the regulatory asset until such time as it is reflected in rates. Also in rebuttal, Mr. Rogers presented modifications regarding the calculation and recovery of such carrying charges, as shown in Petitioner's Exhibit No. 11, pp. 7-14, Attachment CAR-1R.

Based upon the evidence and IPL's agreement to share in and cap cost recovery as provided in Petitioner's Exhibit No. 11, Attachment CAR-1R, the Commission finds that IPL has provided the best estimate of the Hardy Hills Project.

ii. Ind. Code § 8-1-8.5-5(e). This statutory subpart provides that the Commission must find that the estimated costs of the proposed facility are, to the extent commercially practicable, the result of competitively bid engineering, procurement, or construction contracts, as applicable. The statutory provision contains other related provisions relevant to the competitive procurement of generating facilities. The Commission recently found that the purpose behind this statutory provision is: (1) to confirm the reasonableness and reliability of the cost estimates that form the basis for the Commission's best estimate finding; and (2) to assure that the actual costs that are incurred are, to the extent commercially practicable, based on competitive procurement.<sup>4</sup>

Here, the need for the renewable generation for which IPL seeks approval in this filing was originally defined in IPL's 2019 IRP. IPL issued an All-Source RFP in December 2019. Since IPL's proposal to develop Hardy Hills emanated from the competitive All-Source RFP, the estimated cost of the Project stems from competitive bids from developers. However, we note that the estimated cost

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<sup>4</sup> Dunns Bridge/Cavalry Order at 71; Rosewater Order at 56.

of the Project was reconsidered following negotiations after being initially excluded. Mr. Cooper stated that in the case of Hardy Hills, Invenergy is using a competitive solicitation to select the Engineering, Procurement, and Construction contractor.

We find that in this instance, it was reasonable to secure the estimated costs of the Hardy Hills Project in this manner. The cost sharing and cap on costs IPL agreed to on rebuttal, as set forth in Petitioner's Exhibit No. 11, Attachment CAR-1R, reasonably address the risk of cost overruns. The Commission finds that the requirements of Ind. Code § 8-1-8.5-5(e) have been reasonably satisfied. Further exercise of these requirements would be unnecessary or wasteful and our declining to exercise those requirements is beneficial to IPL and its customers and will promote energy utility efficiency. Ind. Code § 8-1-2.5-5(b)(1)-(3). Accordingly, pursuant to Ind. Code § 8-1-2.5-5, the Commission declines to further exercise jurisdiction under this section of the statute.

iii. Consistency with the Statewide Analysis or IPL's Utility-Specific Proposal. Ind. Code § 8-1-8.5-5(b)(2) requires that the proposed construction, purchase, or lease of a facility for the generation of electricity be consistent with either the Commission's analysis for expansion of electric generating capacity or with a utility specific proposal that we approve. For the latter, we evaluate the project's consistency with the utility's IRP.

The record reflects that the study period for IPL's 2019 IRP was 2020-2039, giving due consideration to various options, potential risks, and stakeholder input. Based on extensive IRP modeling of five portfolios across five future scenarios, IPL determined that the cost of operating Petersburg Units 1 and 2 is less attractive than securing new alternative generation resources. Retiring these units according to the Short-Term Action Plan allows IPL to diversify its generation portfolio and transition to cleaner resources while maintaining a reliable system at a reasonable, least cost. The 2019 IRP and Mr. Miller's testimony show IPL is in a long capacity position in 2020, and that will continue even after Petersburg Unit 1 is retired in 2021. However, once Petersburg Unit 2 is retired in 2023, IPL is forecasted to be in a short capacity position. IPL must remedy this short capacity position prior to the 2023-2024 MISO Planning Year. The assumed capacity available from the Hardy Hills Project would fill only a portion of the shortfall anticipated in 2023.

Mr. Miller testified that the retirement of Petersburg Units 1 and 2 and addition of Hardy Hills to fill the resource need is consistent with the SUFG's most recent Indiana Electricity Projections Report. Mr. Miller testified that IPL has considered flexibility and optionality in its IRP planning and also considered the findings of the Indiana 21st Century Task Force Report and the IURC/SUFG 2020 Study Report.

Based upon the evidence presented, the Commission finds that IPL has shown a need for the requested Hardy Hills Project. We further find IPL's decision to proceed with procuring 97.5 MW of solar UCAP through Hardy Hills is a reasonable, least-cost option to meet IPL's need for additional capacity in 2023. The Project will enable IPL to make progress towards meeting resource adequacy requirements while providing optionality and a transition to a greener energy future. IPL's 2019 IRP and the testimony of Mr. Miller address each of the items set forth in Ind. Code § 8-1-8.5-4, which we have considered as required by statute. As such, we find that the Hardy Hills Project is consistent with IPL's 2019 IRP.

iv. Public Convenience and Necessity. Ind. Code § 8-1-8.5-5(b)(2) requires that we find that public convenience and necessity requires or will require the proposed Hardy Hills

Project. As discussed above, IPL identified a need for additional capacity. IPL's analysis, as sponsored by Ms. Lund and Mr. Miller, shows the development of Hardy Hills represents a reasonable, least-cost option for IPL to utilize in meeting its ongoing obligation to provide adequate and reliable electric service and facilities. Since the Project is a renewable solar energy resource, it will further diversify IPL's resource mix and benefit the environment by providing a new source of clean energy located in Indiana.

As shown by IPL witness Miller and IPL's 2019 IRP, IPL considered alternative options using sound load forecasting and resource planning processes. Mr. Miller's PVRR analysis demonstrated that the addition of Hardy Hills is consistent with the Preferred Resource Portfolio and the Short-Term Action Plan identified in IPL's 2019 IRP. The Hardy Hills Project is the product of a competitive resource solicitation. The proposed Joint Venture with a TEP enables the effective use of the ITC to reduce the overall cost of the Project for the benefit of IPL's customers. The location of the Hardy Hills Project in Clinton County, Indiana will also provide other benefits, as discussed by IPL witness Lund.

Based on the evidence presented, we find that the capacity provided through the Hardy Hills Project is a reasonable addition to IPL's portfolio of generating resources necessary to meet the need for electricity within IPL's service area, while also mitigating risk through the diversification and use of an economic mix of capacity resources that preserves flexibility. We further find that public convenience and necessity requires the proposed Hardy Hills Project.

v. CPCN Conclusion. Based upon the evidence presented, the Commission finds that IPL has met the requirements of Ind. Code § 8-1-8.5-5. A CPCN for IPL's development and acquisition of the Hardy Hills Project through the MIPA and Joint Venture as described in IPL's testimony is approved.

**B. Clean Energy Project and Financial Incentives**. Ind. Code § 8-1-8.8-11 provides that "[t]he commission shall encourage clean energy projects by creating ... financial incentives for clean energy projects, if the projects are found to be reasonable and necessary." An "eligible business" is an energy utility that "undertakes a project to develop alternative energy sources, including renewable energy projects." Ind. Code § 8-1-8.8-6(3). We have already found that IPL is an "energy utility." A "clean energy project" includes "[p]rojects to develop alternative energy sources, including renewable energy projects." Ind. Code § 8-1-8.8-2(2). "Solar energy" is specifically listed as one of the clean energy resources in Ind. Code § 8-1-37-4(a)(1) through Ind. Code § 8-1-37-4(a)(16), thus making it a "renewable energy resource" under Ind. Code § 8-1-8.8-10. Through the Joint Venture and the associated CFD, IPL is undertaking a project to develop solar energy resource and so is eligible for the relief provided in Ind. Code § 8-1-8.8-11.

In addition to timely cost recovery as described by IPL witness Rogers, and approval to develop the Hardy Hills Project in accordance with the MIPA as described by IPL witness Cooper, IPL seeks approval of the Joint Venture, as described by IPL witness Salatto, which will ultimately own the ProjectCo that owns the Hardy Hills Solar facility. As discussed by Mr. Rogers, IPL asks the Commission to approve associated accounting and ratemaking, including authorizations necessary to facilitate the Joint Venture structure, recovery of Project Development Costs, and timely ratemaking for the CFD to be administered in conjunction with IPL's ongoing FAC proceedings. IPL seeks approval to record its investment as a regulatory asset in FERC Account No. 182.3 and to begin to amortize its investment once the regulatory asset is reflected in customer rates in IPL's next basic rate

case. IPL seeks authority to record carrying charges on the regulatory asset balance until the regulatory asset is reflected in customer rates. IPL also seeks approval to include, in its next basic rate case, the balance of the regulatory asset in net original cost rate base and in the value of its rate base for purposes of Ind. Code § 8-1-2-6. IPL further seeks to record its Project Development Costs as a regulatory asset in FERC Account No. 182.3 and will begin to amortize the regulatory asset once it is reflected in customer rates in IPL's next basic rate case. IPL does not request carrying charges on the Project Development Costs and seeks to include, in its next basic rate case, the balance of the regulatory asset IPL has recorded for these costs in net original cost rate base and in the value of its rate base for purposes of Ind. Code § 8-1-2-6.

There are several limitations on IPL's requested financial incentives, which it offered on rebuttal. These limitations, set forth in Petitioner's Exhibit No. 11, Attachment CAR-1R, are as follows:

Capital Cost Recovery:

1. Net Project Capital Cost Increases:
  - a. Up to the amount specified on Petitioner's Exhibit No. 11-C, Attachment CAR-1R-C will be recoverable through rates with IPL splitting the cost 50/50 except as provided in Section 2. The 50% of recoverable costs under this Section will be added to the regulatory asset created for IPL's investment in the Project.
  - b. IPL will not seek to recover Net Project Capital Cost Increases over the amount specified on Attachment CAR-1R-C except as provided in Section 2.
2. Project cost increases due to force majeure, including unforeseeable conditions at the site, and changes in law, including changes in tax law, net of any insurance proceeds or other offsets, may be presented to the Commission as part of the ongoing review process for determination whether cost recovery shall be allowed. The OUCC and Intervenors reserve the right to oppose any proposed cost increases sought under this Section. Cost increases under this Section approved for recovery by the Commission will be added to the regulatory asset created for IPL's investment in the Hardy Hills Project.
3. IPL will offer to meet with OUCC and Intervenors prior to any filing to present the cost increases and the cause(s).
4. To allow IPL's customers to benefit from any increase in value associated with a change in corporate income tax rates, the Joint Venture LLCA will include a change in tax law provision comparable to the proposed term included in Petitioner's Exhibit No. 13-C, Attachment FJS-2. Any incremental value received by IPL as a result of such a change in tax law will be used to reduce costs for the benefit of customers, such as by reducing the Hardy Hills regulatory asset or as otherwise approved by the Commission.

Carrying Charges authorized as proposed by IPL as modified below:

5. IPL will calculate the carrying charges at the lower of the AFUDC Rate or the WACC rate. The current WACC rate is approximately 6.52% and the current AFUDC rate is approximately 5.93%. If implemented today, the initial carrying charge thus will be at the



AFUDC rate. If in a future period, the WACC rate becomes lower than the AFUDC rate, the WACC rate will be the carrying charge rate. These rates will be computed and compared on a quarterly basis and any change implemented on a prospective basis.

6. In an effort to reduce the amount of deferred carrying charges until IPL's next rate case, pre-COD and post-COD carrying charges will accrue and be included for full timely recovery in IPL's existing ECR tracker filings. Except for the carrying charge rate, which will be computed with Section 5, the carrying charges for the regulatory asset will be treated in the same manner as carrying charges for projects in the ECR tracker. Tracking of the carrying charges will begin with the first ECR filing following IPL's initial investment in the Hardy Hills Project and will continue through the inclusion of the Hardy Hills Project regulatory asset in rate base in a subsequent IPL rate case.

7. IPL will begin to amortize the regulatory asset once the regulatory asset is reflected in customer rates in IPL's next basic rate case. No party shall be precluded from proposing an approach to the amortization of the regulatory asset in IPL's next basic rate case when the treatment of this regulatory asset will be considered in the context of the entire revenue requirement.

Periodic Reporting:

8. As part of the ongoing review process, IPL proposed to submit semi-annual progress reports to the Commission during construction, including any revisions to the cost estimates for the Project cost. The final project report will contain the following information: (a) the actual total cost of construction; (b) the total megawatt output for the Project; and (c) the actual in-service (commercial operation) date for the Project. The semiannual progress reports would be filed in a subdocket subject to the protection of confidential information.

- a. First progress report will be filed by December 31, 2021.
- b. Second progress report will be filed by June 30, 2022.
- c. Reports thereafter will be filed on a like schedule until project COD.
- d. The OUCC, Intervenors and IPL will agree to a procedural process that will allow the reports, including any cost increase requests under Section 2, to be reviewed and addressed by Commission decision in 120 days.

9. IPL will offer to meet with the OUCC and Intervenors at least twice as IPL moves through the negotiation of these agreements. The purpose of the confidential briefing will be to update the OUCC and Intervenors on the status of the agreements and any changes in contract terms that result in additional costs that will impact rates or changes in how IPL may manage the project. The briefing will also cover updates on expected economics for the CFD and TEP Joint Venture LLCA and MIPA including, but not limited to: (1) CFD: Pricing and term; and (2) TEP Joint Venture LLCA & MIPA: TEP contribution amounts, TEP rate of return, projected flip date, and Cash and Tax distribution splits.

- a. IPL contemplates that the first meeting will be in Q3 2022; and
- b. the second meeting will be prior to the execution of the agreements.

10. IPL will file the executed CFD and the TEP Joint Venture LLCA and MIPA in the ongoing review process (subject to protection of confidential information).

Additionally, IPL witness Salatto confirmed in rebuttal that no decision has been made with respect to IPL exercising its option to acquire TEP's interest. He testified that IPL would keep the Commission apprised of IPL Sponsor's plans regarding the exercise of this option as the time nears and will request Commission approval and cost recovery as necessary or appropriate in a separately docketed proceeding. He added that should IPL exercise this option in the future, IPL commits that it will not seek to recover through rates an amount that exceeds the fair market value of the TEP interest as determined at the time the option to purchase is exercised. He said IPL agrees that in future rate case, IPL will not seek to include in rate base, under a fair value ratemaking argument, an amount that is greater than IPL's actual cost of acquiring the TEP's interest. He testified that subject to the protection of confidential information, and prior to the IPL Sponsor member proceeding to exercise the option to purchase the TEP's membership interest, IPL commits to meet with the OUCC (and Intervenors if interested). Mr. Salatto explained that the purpose of this meeting will be to discuss IPL's analysis of the purchase with OUCC and Intervenors but will not be to seek OUCC or Intervenor approval of any such decision.

In rebuttal, Mr. Rogers testified that Petitioner's Exhibit No. 11, Attachment CAR-1R reasonably addresses the concerns raised in this proceeding and provides a balanced, cooperative outcome of the issues in this Cause. He asked the Commission to approve IPL's request as modified by Petitioner's Exhibit No. 11, Attachment CAR-1R.

OUCC witness Aguilar testified at the hearing that the OUCC had reviewed the term sheet (Petitioner's Exhibit No. 11, Attachment CAR-1R) and the rebuttal testimony; the term sheet and rebuttal testimony adequately address its concerns; and while the OUCC does not necessarily endorse each specific statement or assertion in IPL's rebuttal testimony, generally speaking and in the context of amicably resolving the case, the OUCC has no objections to the relief sought by IPL as modified by its rebuttal. CAC and Industrial Group joined the Parties' proposed order, which included, without objection, the relief sought by IPL as modified by its rebuttal.

According to Ind. Code § 8-1-8.8-11, the Commission shall encourage clean energy projects by creating financial incentives for such projects, if found to be reasonable and necessary. While Ind. Code ch. 8-1-8.8 does not set forth specific factors the Commission should consider in determining the reasonableness and necessity of a clean energy project, the Commission has considered some of the factors outlined in Chapters 8.5 and 8.7 in other cases.<sup>5</sup> As set forth further below, the evidence in this Cause supports a finding that the capacity to be developed via the Hardy Hills Project and associated Joint Venture and CFD is needed by IPL, and is reasonably priced and beneficial. The evidence demonstrates that the Joint Venture will provide emission-free electric generation and allow for the development of local renewable resource that will further diversify IPL's generation resources.

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<sup>5</sup> See *Dunns Bridge/Cavalry* Order at 66; *Rosewater* Order at 50-54; *N. Ind. Pub. Serv. Co.*, Cause No. 45403 at 24-26 (IURC Jan. 27, 2021); *Ind. Mich. Power Co.*, Cause No. 44511 at 7-8 (IURC Feb. 4, 2015); and *N. Ind. Pub. Serv. Co.*, Cause No. 45195 at 8 (IURC Jun. 5, 2019) (Chapter 8.5 factors relevant for clean energy projects under Chapter 8.8); see also *Ind. Mich. Power Co.*, Cause No. 44182 at 53-54 (IURC July 17, 2013) (Chapter 8.7 factors relevant for Life Cycle Management Project under Chapter 8.8).

IPL has a demonstrated need for additional resources in 2023. The evidence demonstrates that the acquisition of Hardy Hills Project is consistent with IPL's 2019 IRP Preferred Resource Portfolio and Short-Term Action Plan. The proposed Joint Venture also enables effective use of the ITC to reduce the cost of solar energy.

As the Commission has noted previously, "[a] key consideration in long-term resource planning is the need to retain maximum flexibility in utility resource decisions to minimize risks. . . . The credibility of the analysis is critical to the effort of Indiana utilities to maintain as many options as possible, which includes off-ramps to react quickly to changing circumstances and make appropriate changes in the resources." *N. Ind. Pub. Serv. Co.*, Cause No. 45462 at 68 (IURC May 5, 2021) (quoting *S. Ind. Gas & Elec. Co.*, Cause No. 45052, at 24 (quoting 2018 Statewide Analysis), (IURC Apr. 24, 2019)). We find IPL's proposal in this Cause preserves optionality and flexibility and is also consistent with the Commission's findings in *S. Ind. Gas & Elec. Co.*, Cause No. 45052 (IURC April 24, 2019). IPL is not obligated to purchase, and we are not asked to approve IPL's potential future purchase of the TEP's share of the Joint Venture. Accordingly, we find the Hardy Hills Project is a clean energy project under Ind. Code § 8-1-8.8-11, and IPL's requested acquisition and development of the Project through the MIPA and Joint Venture structure and the associated CFD are reasonable and necessary and should be approved. We further find that IPL's requested financial incentives, as limited on rebuttal, summarized above, and set forth in Petitioner's Exhibit No. 11, Attachment CAR-1R, should be granted.

IPL proposes the timely recovery of costs incurred pursuant to the CFD be administered through IPL's FAC proceedings. We further find that recovery of the CFD costs through a rate adjustment mechanism under Section 11 and 42(a) should be administered through IPL's FAC proceeding (or successor mechanism), which is consistent with prior Commission approvals of solar and wind projects under Chapter 8.8. Based upon the evidence presented and consistent with prior Commission Orders in similar proceedings, we find that IPL's recovery of its CFD costs should not be subject to the Section 42(d) tests or any other FAC benchmarks. These requirements do not apply to rate adjustment mechanisms authorized under Sections 11 and 42(a). We have provided for the administration of this mechanism through the FAC filings because doing so is administratively efficient and consistent with Commission practice. We further find that attempting to apply the requirements set forth in Ind. Code § 8-1-2-42(d)(1)-(4) to this cost recovery would be wasteful and our declining to apply those requirements will be beneficial to IPL and its customers and will promote energy utility efficiency. Ind. Code § 8-1-2.5-5(b)(1)-(3).

**C. IPL's Proposed ARP.** IPL seeks relief under the ARP Statute to support the Joint Venture structure and proposed cost recovery. The Joint Venture structure ultimately reduces the overall cost of the Project for the benefit of IPL's customers. Under this structure, IPL, through a wholly owned subsidiary, will own a membership interest in the Joint Venture, LLC, which in turn will own the ProjectCo that owns the solar generation assets.

Since IPL is not the direct owner for the Hardy Hills Project, the generating assets would not reside in IPL's Utility Plant in Service balance to be included in rate base in subsequent rate cases, and IPL would not record depreciation expense on its Income Statement. Similarly, the Project Development Costs are not able to be capitalized because IPL is not the direct owner of the asset.

As discussed above, IPL seeks approval to record its investment in the Hardy Hills Project and its Project Development Costs as regulatory assets in FERC Account 182.3. IPL proposes to

record carrying charges on the regulatory asset that reflects the investment in the Hardy Hills Project. As also discussed above and explained by Mr. Rogers, both regulatory assets will be included in IPL's rate base in its subsequent basic rate cases in order to allow IPL to reflect a return of and return on the investment in the revenue requirement. The request to record regulatory assets for these costs allows IPL to recover the costs associated with making the investment and is consistent with Ind. Code § 8-1-8.8-11, which provides for "other financial incentives the commission considers appropriate" to encourage Clean Energy Projects. If the requirements of Ind. Code § 8-1-2-6 would deny IPL the opportunity to earn a return on its Hardy Hills Project investments, the investment required by IPL would be much greater due to reduced tax benefits. We find this result would be wasteful and is unnecessary. Ind. Code § 8-1-2.5-5(b).

Ind. Code § 8-1-2.5-6 authorizes the adoption of alternative regulatory practices, procedures, and mechanisms found by the Commission to be in the public interest and to enhance or maintain the value of the energy utility's retail energy services or property. As explained above, the proposed accounting and ratemaking allows IPL to invest in renewable energy in a way that reduces overall costs of the Project for the benefit of its customers. As the managing member of the Joint Venture, IPL's wholly owned subsidiary will have operational control of the renewable energy Project. Having renewable generation investment in IPL's portfolio near IPL's service territory is an enhancement of IPL's retail electric services and property. By reducing the overall cost of the investment while recognizing IPL's need to earn a return of and on its investments, the ARP promotes energy utility efficiency. Commission approval of the ARP will be beneficial to IPL, its customers, and the State of Indiana. The renewable project also benefits customers by providing capacity, and RECs, which can be utilized to serve customers or monetized to lower the overall cost of the Project to customers. The Hardy Hills Project also promotes utility efficiency by diversifying IPL's generation portfolio with the addition of solar generation, a resource not currently included in IPL's generation portfolio. Additionally, it is significant that the Project does not have a direct fuel cost.

After considering the factors set forth in Ind. Code § 8-1-2.5-5 and -6, we find the Joint Venture structure and each element of the requested ARP as modified in IPL's rebuttal are in the public interest. Approval of the ARP, including the Joint Venture structure and IPL's proposed cost recovery plan, advances the development of the Project. The Commission finds the Project's ownership structure as well as the requested accounting and ratemaking treatment as modified in IPL's rebuttal reasonably facilitates IPL's ability to carry out its 2019 IRP Preferred Resource Portfolio, Short-Term Action Plan while mitigating the ratemaking impact on IPL's customers. Accordingly, we further find the ARP, as modified by IPL in rebuttal, is in the public interest and should be approved.

**D. Jurisdiction over Joint Venture.** Since the Joint Venture will not be the title owner of the Hardy Hills Project, the Joint Venture will not own electric generation facilities that provide electricity. As such, Joint Venture is not a "public utility." Hardy Hills ProjectCo, (which the Joint Venture will own) is the MISO market participant and will sell all the energy from the Hardy Hills facility into the MISO market subject to FERC regulation. The circumstances of this arrangement, the Commission's exercise of jurisdiction of IPL, and the regulation by FERC render the exercise of jurisdiction by this Commission over Joint Venture, including ProjectCo, as a public utility unnecessary or wasteful. Declining to exercise jurisdiction will promote energy utility efficiency by avoiding this unnecessary regulation and allowing IPL to invest in economic renewable generation. Declining to exercise jurisdiction will be beneficial to the Joint Venture, IPL, its customers, and the State of Indiana. Finally, the exercise of the Commission's jurisdiction over ProjectCo as a public utility would increase the regulation of this entity unnecessarily, and this in turn

would burden IPL's implementation of the Hardy Hills Project. Accordingly, the Commission declines to exercise its jurisdiction over Joint Venture including ProjectCo, as a public utility. The Commission further finds that the declination of jurisdiction (assuming such is granted in Cause No. 45490) should be maintained once Hardy Hills ProjectCo becomes an affiliated interest of IPL. Once Hardy Hills ProjectCo becomes an affiliated interest of IPL, the parties' agreements will be subject to the requirements of Ind. Code § 8-1-2-49(2) and the Commission's General Administrative Order 2016-5.

**E. Conclusion.** We find the evidence presented supports approval of the Hardy Hills Project, including the MIPA, the Joint Venture Structure, the CFD, and the proposed method of cost recovery as modified on rebuttal. The Hardy Hills Project provides needed capacity, diversifies IPL's supply portfolio, provides environmental benefits, and safeguards against fuel cost volatility. We further find the CFD costs should be recovered through a rate adjustment mechanism to be administered through IPL's FAC filings, as proposed by Mr. Rogers. We also find that a CPCN should be issued for the development and acquisition of the Hardy Hills Project; IPL's proposed accounting and ratemaking as modified on rebuttal and summarized in Paragraphs 10.B and 10.C should be granted; and IPL's proposed ARP and declination of jurisdiction should be approved.

**11. Confidential Information.** On February 12, 2021, and April 23, 2021, IPL filed motions seeking a determination that designated confidential information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14- 3. The requests were supported by affidavits showing the designated documents offered into evidence at the evidentiary hearing were trade secret information within the scope of Ind. Code § 5-14-3-4(a)(4) and Ind. Code § 24-2-3-2. On February 26, 2021, and April 26, 2021, the Presiding Officers issued docket entries finding such information confidential on a preliminary basis. On March 3, 2021, and April 26, 2021, IPL submitted its designated confidential information.

After reviewing the designated confidential information, we find all such information qualifies as confidential trade secret information pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. IPL takes reasonable steps to maintain the secrecy of the information and disclosure of such information would cause harm to IPL. Therefore, we affirm the preliminary ruling and find this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29 and held confidential and protected from public disclosure by this Commission.

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

1. IPL is issued a certificate of public convenience and necessity for IPL's acquisition and development of the Hardy Hills Project through the MIPA and the Joint Venture. This Order constitutes the certificate.
2. The MIPA is approved.
3. IPL's estimated cost of the Hardy Hills Project as set forth in Petitioner's Exhibit No. 2-C, Table 1 is approved.

4. The Hardy Hills Project, including the MIPA, the Capacity Agreement and Contract for Differences (“CFD”), and the Joint Venture structure is a clean energy project under Ind. Code § 8-1-8.8-2, and is reasonable and necessary under Ind. Code § 8-1-8.8-11.

5. IPL’s proposed accounting and ratemaking, as modified in rebuttal and summarized in Paragraphs 10.B and 10.C of this Order, are approved.

6. IPL is authorized to enter into the CFD and the Joint Venture as modified in rebuttal.

7. IPL is authorized to recover costs incurred pursuant to the CFD through a rate adjustment mechanism to be administered through IPL’s FAC proceeding (or successor mechanism). This recovery shall not be subject to any Ind. Code § 8-1-2-42(d) tests or FAC benchmarks.

8. IPL’s request for ongoing review of the Hardy Hills Project as modified in rebuttal and set forth in Petitioner’s Exhibit No. 11, Attachment CAR-1R is approved.

9. IPL’s ARP summarized in Paragraph 10.C of this Order is approved.

10. IPL is authorized to record its investments in the Hardy Hills Project and its Project Development Costs as regulatory assets in FERC Account 182.3 with carrying charges and cost recovery as summarized in Paragraphs 10.B and 10.C of this Order and set forth in Petitioner’s Exhibit No. 11, Attachment CAR-1R.

11. The Commission declines to exercise jurisdiction over the Joint Venture and ProjectCo.

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

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

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

**APPROVED: JUN 16 2021**

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

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**Dana Kosco**  
**Secretary of the Commission**