

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF SOUTHERN INDIANA GAS AND)
ELECTRIC COMPANY d/b/a CENTERPOINT ENERGY)
INDIANA SOUTH (“CEI SOUTH”) FOR AN ORDER: (1))
GRANTING CEI SOUTH A CERTIFICATE OF PUBLIC)
CONVENIENCE AND NECESSITY, PURSUANT TO IND.)
CODE CH. 8-1-8.5, TO PURCHASE AND ACQUIRE,)
THROUGH A BUILD TRANSFER AGREEMENT (“BTA”), A)
WIND ENERGY GENERATING FACILITY (THE “WIND)
PROJECT”); (2) FINDING THE WIND PROJECT)
CONSTITUTES A CLEAN ENERGY PROJECT UNDER IND.)
CODE CH. 8-1-8.8; (3) APPROVING ASSOCIATED)
RATEMAKING AND ACCOUNTING TREATMENT FOR)
THE WIND PROJECT PURSUANT TO IND. CODE CH. 8-1-)
8.5 AND § 8-1-8.8-11; (4) AUTHORIZING CEI SOUTH TO)
ACCRUE POST-IN-SERVICE CARRYING COSTS)
 (“PISCC”) AND DEFER DEPRECIATION, OPERATIONS)
AND MAINTENANCE (“O&M”) AND PROPERTY TAX)
EXPENSES ASSOCIATED WITH THE WIND PROJECT; (5))
IN THE EVENT THE CPCN IS NOT GRANTED OR THE)
WIND PROJECT OTHERWISE IS NOT PLACED IN)
SERVICE, GRANTING AUTHORITY TO DEFER, AS A)
REGULATORY ASSET, COSTS ASSOCIATED WITH THE)
WIND PROJECT FOR FUTURE RECOVERY THROUGH)
RETAIL ELECTRIC RATES, (6) PROVIDING FOR)
ONGOING REVIEW OF THE WIND PROJECT; (7))
AUTHORIZING THE ESTABLISHMENT OF)
DEPRECIATION RATES FOR THE WIND PROJECT; (8))
APPROVING, TO THE EXTENT NECESSARY, AN)
ALTERNATIVE REGULATORY PLAN (“ARP”) WITH)
RESPECT TO THE WIND PROJECT UNDER IND. CODE)
CH. 8-1-2.5; AND (9) APPROVING CONFIDENTIAL)
TREATMENT OF THE BTA PRICING AND OTHER)
NEGOTIATED COMMERCIAL TERMS AND RELATED)
CONFIDENTIAL INFORMATION.

CAUSE NO. 45836

ORDER OF THE COMMISSION

Presiding Officers:
Sarah Freeman, Commissioner
Carol Sparks Drake, Senior Administrative Law Judge

On January 10, 2023, Southern Indiana Gas & Electric Company d/b/a CenterPoint Energy Indiana South (“Petitioner”, “Company”, or “CEI South”) filed its verified petition in this Cause, seeking: (1) issuance of a certificate of public convenience and necessity (“CPCN”) to purchase and acquire a wind energy generating facility through a Build Transfer Agreement (“BTA”) (the “Wind Project”) pursuant to Ind. Code ch. 8-1-8.5; (2) a finding that the Wind Project constitutes a clean energy project under Ind. Code ch. 8-1-8.8; (3) approval of associated ratemaking and accounting treatment for the Wind Project pursuant to Ind. Code ch. 8-1-8.5 and § 8-1-8.8-11; (4) authorization for Petitioner to accrue post-in-service carrying costs (“PISCC”) and defer depreciation, operations and maintenance (“O&M”) and property tax expenses associated with the Wind Project; (5) in the event the CPCN is not granted or the Wind Project otherwise is not placed in service, authority to defer, as a regulatory asset, costs associated with the Wind Project for future recovery through retail electric rates; (6) ongoing review of the Wind Project; (7) establishment of depreciation rates for the Wind Project; (8) approval, to the extent necessary, of an alternative regulatory plan (“ARP”) with respect to the Wind Project under Ind. Code ch. 8-1-2.5; and (9) approval of confidential treatment of pricing and other negotiated commercial terms of the BTA and related confidential information.

Also on January 10, 2023, Petitioner filed the direct testimony, attachments and workpapers of the following Company witnesses:

- Richard C. Leger, Senior Vice President – Indiana Electric (Pet. Ex. 1 and 1-C)
- F. Shane Bradford, Director of Power Supply Services (Pet. Ex. 2 and 2-C)
- Matthew A. Rice, Director of Indiana Electric Regulatory and Rates (Pet. Ex. 3 and 3-C)
- Chrissy M. Behme, Manager, Regulatory Reporting (Pet. Ex. 4 and 4-C)
- Jennifer K. Story, Vice President, Tax (Pet. Ex. 5 and 5-C)

On January 10, 2023, Petitioner also filed a motion for protection and nondisclosure of confidential and proprietary information advising that certain information (“Confidential Information”) CEI South intends to file contains trade secrets under Ind. Code § 24-2-3-2. Petitioner supplemented the motion for protection on January 30, 2023. Confidential treatment was approved on a preliminary basis in docket entries issued January 20, 2023 and January 31, 2023.

On January 17, 2023, CenterPoint Energy Indiana South Industrial Group (“Industrial Group”) filed its petition to intervene in this Cause, which was granted by docket entry on January 25, 2023. On February 7, 2023, Citizens Action Coalition of Indiana, Inc. (“CAC”) filed its petition to intervene in this Cause, which was granted by docket entry on February 15, 2023.

On February 27, 2023, the Indiana Office of Utility Consumer Counselor (“OUCC”) and other Intervenor filed the testimony and attachments of their respective witnesses as follows:

OUCC

- Kaleb G. Lantrip, Utility Analyst, Electric Division (Pub. Ex. 1)
- Brian R. Latham, Utility Analyst, Electric Division (Pub. Ex. 2)
- John W. Hanks, Utility Analyst, Electric Division (Pub. Ex. 3)

CAC

- Benjamin Inskeep, Program Director of CAC (CAC Ex. 1)

On March 6, 2023, Petitioner filed a second motion for protection and nondisclosure of Confidential Information included in the OUCC's and CAC's pre-filed evidence. Confidential treatment was approved on a preliminary basis in a docket entry issued March 9, 2023.

On March 10, 2023, CEI South filed rebuttal testimony of Mr. Bradford (Pet. Ex. 2-R and 2-R-C), Mr. Rice (Pet. Ex. 3-R) and Ms. Behme (Pet. Ex. 4-R and 4-R-C).

The Commission held an evidentiary hearing at 9:30 a.m. on April 11, 2023, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioner, the OUCC, the CAC, and the Industrial Group appeared by counsel, and their respective evidence was admitted into the record without objection. The Commission, having heard the evidence and being duly advised, now finds as follows:

1. Notice and Jurisdiction. Due legal and timely notice of the evidentiary hearing in this Cause was given and published as required by law. Petitioner is a “public utility” as defined in Ind. Code § 8-1-2-1(a) and Ind. Code § 8-1-8.5-1, and an “eligible business” as defined in Ind. Code § 8-1-8.8-6. Petitioner 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. Petitioner is subject to the jurisdiction of this Commission in the manner and to the extent provided by Indiana law. Pursuant to Ind. Code ch. 8-1-8.5, Petitioner may seek Commission approval of a Certificate of Public Convenience and Necessity (“CPCN”). Pursuant to Ind. Code § 8-1-8.8-11, Petitioner may seek approval of a “clean energy project” within the meaning of Ind. Code § 8-1-8.8-2. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding in the manner and to the extent provided by laws of the State of Indiana.

2. Petitioner's Characteristics. Petitioner CEI South is an operating public utility incorporated under the laws of the State of Indiana and has its principal office at 211 NW Riverside Drive, Evansville, Indiana. CEI South has charter power and authority to engage in, and is engaged in the business of, rendering retail electric service solely within the State of Indiana under indeterminate permits, franchises, a necessity certificates heretofore duly acquired. CEI South owns, operates, manages, and controls, among other things, plant, property, equipment, and facilities which are used and useful for the production, storage, transmission, distribution, and furnishing of electric service to approximately 150,000 electric consumers in southwestern Indiana. Its service territory is spread throughout seven counties: Pike, Gibson, Dubois, Posey, Vanderburgh, Warrick and Spencer counties. Petition ¶1 (Pet. Ex. No. 1, Attachment RCL-1).

3. The Wind Project and the BTA. Petitioner's 2019/2020 Integrated Resource Plan (the “2019/2020 IRP”) submitted to the Commission on June 30, 2020 identified a need for the

addition of 700 to 1,000 MWs of solar resources (some solar paired with storage) and 300 MWs of wind resources as part of the “Preferred Portfolio” to meet capacity and energy requirements. The renewable additions are intended to replace approximately 730 MWs of coal-fired generation and are complemented by dispatchable generation consisting of two new gas combustion turbines (“CTs”) and the F.B. Culley 3 (coal-fired unit). CEI South’s case-in-chief stated its plans for changes to its generation portfolio in the next three years to address the retirement or exit of energy provided by F.B. Culley Unit 2 and Warrick Unit #4. CEI South also stated that pursuing renewable projects during this timeframe has the added benefit of allowing CEI South customers to take advantage of renewable tax incentives before they expire. Petition ¶2 (Pet. Ex. No. 1, Attachment RCL-1).

In pursuit of this generation transition plan, CEI South issued various requests for proposals (“RFPs”) leading to the identification and selection of the Wind Project. The Wind Project is located outside of Indiana in Midcontinent Independent System Operator, Inc.’s (“MISO’s”) Central Region. The Wind Project is anticipated to qualify for the federal production tax credit (“PTC”). The Wind Project is clean energy resource under Ind. Code § 8-1-37-4 and a renewable energy resource under Ind. Code § 8-1-8.8-10 and a clean energy project as defined in Ind. Code § 8-1-8.8-2(2). Petition ¶3 (Pet. Ex. No. 1, Attachment RCL-1).

The Wind Project will be fully developed, engineered, procured, and constructed by a Developer and then acquired by CEI South through transfer of a special purpose entity (the “Project Company”) established to facilitate ownership transfer of the Project. The Project Company is a wholly-owned subsidiary of the Developer, which is in turn a wholly-owned subsidiary of an entity specializing in the development of large-scale renewable and other clean energy generation worldwide. The Project Company will own the Project until it achieves substantial completion, at which time CEI South will acquire 100% of the ownership interests in the Project Company, subsequently collapsing the separate corporate structure such that CEI South will own the generating facility directly. Petition ¶3 (Pet. Ex. No. 1, Attachment RCL-1)

Following CEI South’s selection of the Wind Project, negotiations with the Developer began in June of 2021, with a comprehensive, non-binding term sheet executed in October 2022. The negotiations for a definitive agreement are ongoing. The best estimate of the total capital cost of the Wind Project is estimated to be \$636 million. Petition ¶3 (Pet. Ex. No. 1, Attachment RCL-1)

4. Relief Requested. Petitioner seeks a certificate of public convenience and necessity (“CPCN”) under Ind. Code § 8-1-8.5-2 to purchase and acquire, indirectly through a BTA, the Wind Project. CEI South is also requesting ongoing review under Ind. Code § 8-1-8.5-6 and ratemaking treatment consistent therewith.

CEI South also seeks approval of timely recovery of costs and expenses incurred during the construction and operation of the Wind Project in accordance with Ind. Code § 8-1-8.5-6.5 and Ind. Code § 8-1-8.8-11. CEI South proposes approval and recovery of the eligible revenue requirement amounts associated with the Wind Project to be included either in CEI South’s Clean Energy Cost Adjustment (“CECA”) mechanism, which the Commission approved on August 16, 2017, in Cause No. 44909 for renewable energy projects, or through base rates in CEI South’s next general rate case. The costs CEI South proposes to include for timely recovery include costs

associated with (1) Capital investment to complete the acquisition; (2) Deferred post-in-service carrying costs (“PISCC”); (3) Deferred depreciation expense; (4) Deferred operations and maintenance (“O&M”) expense; (5) O&M expenses, depreciation, property tax, and income taxes; and (6) Credits related to Renewable Energy Certificates (“RECs”). To the extent the Wind Project is not included in rate base in the next rate case and the revenue requirement is recovered through the CECA, annual updates to the Wind Project revenue requirement will be filed as a sub-docket of Cause No. 44909. CEI South proposes to use the CECA to reflect the PTC and RECs generated by the Wind Project to the extent PTC and RECs differ from amounts reflected in base rates. To the extent the Wind Project is included in the CECA, CEI South proposes to adjust for purposes of the earnings test under Ind. Code § 8-1-2-42(d)(3) its statutory net operating income (“NOI”) by including the operating income associated with the Wind Project as part of its authorized NOI, consistent with the treatment of earnings associated with CEI South’s CECA mechanism from Cause No. 44909.

CEI South proposes to accrue PISCC at the Company’s pre-tax weighted average cost of capital (“WACC”) on capital investment for the Wind Project beginning with the month after the investment is placed in service until the date the investment is included for recovery in CECA rates or base rates, as the case may be. CEI South also proposes to defer depreciation expense associated with the Wind Project until such expense is included for recovery in the CECA or base rates. CEI South also proposes to defer O&M expenses incurred pursuant to an O&M contract with a third party, as well as other O&M expense incurred or property tax expense accrued before such expenses are recovered through base rates or the CECA. CEI South proposes to record the accrued PISCC and deferred depreciation expense as regulatory assets until such time as they can be included for recovery in rates and amortize the balances over the life of the assets that generated the amounts, expected to be approximately 30 years, with the unamortized portion included in rate base upon which CEI South is authorized to earn a return. CEI South also requests the Commission approve an initial annual depreciation rate of approximately 3.33% for the Wind Project. CEI South proposes that deferred O&M be recovered through the CECA, similar to the recovery of deferred O&M and any deferred property tax expense in connection with the TDSIC.

In the event the requested CPCN is not granted, or the Wind Project assets are otherwise not placed in-service, CEI South requests authority to defer costs associated with the Wind Project in a regulatory asset for recovery in a future general rate case or to be capitalized as part of an alternative generation project.

CEI South also elects to become subject to Ind. Code § 8-1-2.5-6 and is requesting, to the extent necessary, approval of an alternative regulatory plan (“ARP”) under Ind. Code § 8-1-2.5-6(a)(1). The ARP is proposed, to the extent the Commission finds it necessary, to allow CEI South’s requested ratemaking treatment even though the asset is located outside of the State of Indiana and also to relieve CEI South of the obligations under Ind. Code § 8-1-8.5-5(e) to the extent they are applicable.

5. Evidence Presented.

A. CEI South Direct. Mr. Leger provided an overview of CEI South’s Generation Transition Plan (the “Plan”) and summarized the benefits of adding wind energy to the Company’s existing portfolio of generation assets. Pet. Ex. 1 at 4-9. He testified that CEI South

developed the Plan focused on implementation of the Preferred Portfolio in its 2019/2020 IRP. He and Mr. Bradford explained that the Plan initially identified and selected approximately 700-1,000 MWac of solar generation, 300 MW of wind generation, and approximately 460 MW of natural gas Combustion Turbine generation. Pet. Ex. 1 at 4-5; Pet. Ex. 2 at 4. Mr. Leger and Mr. Bradford identified the various filings CEI South has made to implement the Generation Transition Plan. Pet. Ex. 1 at 4-5; Pet. Ex. 2 at 4. Mr. Leger provided an overview of CEI South's existing generation resources, consisting of approximately 1,329 MW of installed capacity. He mentioned the two wind power purchase agreements ("PPAs") CEI South currently has for the purchase of 30 MW from a wind facility in Benton County, Indiana and the purchase of 50 MW from a wind facility in Benton and Tippecanoe Counties. *Id.* at 5. He briefly described the solar projects approved in Cause No. 45501, consisting of an approximately 300MWac project in Posey County, Indiana¹ to be acquired through a BTA, and a PPA for purchase of energy and capacity from a 100 MW solar project in Warrick County, Indiana. In addition, CEI South received authority in Cause No. 45600 to enter into PPAs for energy, capacity and RECs from a 185 MW solar project in Vermillion County, Indiana and from a 150 MW solar project in Knox County, Indiana. *Id.* at 6. In addition, CEI South received a CPCN in Cause No. 45754 for the purchase, indirectly through a BTA, of a solar facility in Pike County, Indiana with aggregate nameplate capacity of 130 MWac. *Id.*

Role of Wind Project within Generation Transition Plan

Mr. Leger testified that approval of the Wind Project is critical. He explained that the Wind Project fulfills a portion of the capacity and energy needs identified in the 2019/2020 IRP. He stated it is an important component of CEI South's transition to a clean energy future and necessary for CEI South to provide adequate and reliable service to its customers. *Id.* at 7. He testified that the Wind Project promotes reliability by mitigating risk through diversification of CEI South's generation mix to include wind as a carbon free energy resource. *Id.* He stated wind resources are well suited to provide a source of energy in the winter when solar energy output is at its lowest and customer usage is at its second highest annual level. *Id.* Wind resources inherently complement solar resources – meaning the resources hit their peaks at different times of the day as well as different seasons of the year. Mr. Leger opined that the Wind Project is a reasonable addition to Petitioner's generation resource portfolio that in the aggregate serves to increase reliability and efficiency. He testified that this Project also offers the advantages of ownership and a life expectancy that can be combined with CEI South's current solar BTAs and its wind and solar PPAs to optimize off-ramp flexibility for CEI South's customers. *Id.* Mr. Rice testified that a BTA offers long-term stability. Pet. Ex. 3 at 22. He noted that CEI South will maintain the land rights and options, zoning permits, and Generator Interconnection, shielding customers from potential future costs beyond the 30-year asset life. He further stated that the cost to customers for this resource will continue to decline over time as the asset is depreciated, in contrast to PPAs which often increase over time. *Id.* Mr. Rice noted that Petitioner's Generation Transition Plan includes both ownership and PPA structures, staggered at various lengths between 20 and 30 years, which helps to diversify CEI South's portfolio and provide off-ramps that enable Petitioner to react to changing circumstances and make appropriate changes in its resources. *Id.* at 23. Mr. Rice testified BTAs and PPAs have unique benefits that work together to minimize risks long-term. *Id.*

¹ Mr. Leger explained this was subsequently revised to 191 MWac. Pet. Ex. 1 at 6; *see also* Cause No. 45847.

Mr. Leger explained that CEI South cannot delay seeking to add capacity from the Wind Project. Mr. Bradford testified that a generation transition period has proven to be a lengthy process, generally taking at least 3.5 or more years including project solicitation, evaluation and negotiation, the MISO Interconnection Queue process, development tasks such as obtaining site control and permitting, construction, and various other factors. Pet. Ex. 2 at 5. Mr. Bradford noted that MISO has seen an overwhelming amount of generation resources enter the last several MISO Interconnection Queues which has extensively lengthened each interconnection queue process. *Id.* He explained this means that CEI South will need to rely on the capacity and wholesale energy market for a period between when CEI South's coal generation units are retired and when the new generation come online. *Id.* Mr. Leger testified that with the retirement of A.B. Brown Units 1 & 2, F.B. Culley 2, and anticipated exit of the Joint Operating Agreement for Warrick Unit 4, the Wind Project is needed to support CEI South's Planning Reserve Margin Requirements ("PRMR") position and ensure the required capacity in each season is met, especially in the near terms (2024/2025) and in 2028 and beyond. Pet. Ex. 1 at 7; Pet. Ex. 2 at 29. For this reason, CEI South has acted swiftly to identify projects that could come online in the near term during the same relative time period (2024-2025 timeline) when additional baseload units in the same MISO Local Resource Zone (Zone 6 – CEI South's Local Resource Zone) are expected to be taken offline. Pet. Ex. 2 at 5.

Both Mr. Leger and Mr. Bradford testified that CEI South's objective is to reduce reliance on the MISO Planning Resource Auction ("PRA"), because over-reliance on the MISO PRA would increase costs for CEI South's customers and is contrary to Indiana House Bill 1520, which has been codified as Ind. Code § 8-1-8.5-13 and essentially precludes each public utility from acquiring more than 30% of its PRMR from the PRA. Pet. Ex. 1 at 7; Pet. Ex. 2 at 27. Without the capacity provided by the projects to date and the Wind Project, CEI South could be at risk of not having enough owned capacity to meet its PRMR and having to make high priced purchases from the PRA. Pet. Ex. 1 at 8; Pet. Ex. 2 at 27. Moreover, MISO indicated in its 2022 PRA results that "auction results indicate that MISO North/Central Regions have a slightly increased risk of needing to implement temporary controlled load sheds." *Id.* at 8; Pet. Ex. 2 at 28. In the 2022 OMS-MISO Survey Results released on June 10, 2022, MISO pointed out that the MISO footprint is "projected to have a capacity deficit of 2.6 GW below the 2023 PRMR."² Capacity deficits are projected to widen in subsequent years primarily driven by demand growth and the continued retirements of coal fired resources. Pet. Ex. 2 at 28. The Wind Project will help mitigate these risks. In addition, wind resources are scarce within Indiana including CEI South's service territory; and a demand-supply imbalance could emerge as other nearby utilities move toward implementing wind resources thereby possibly intensifying the pricing for wind projects. Pet. Ex. 1 at 8; Pet. Ex. 2 at 20. If CEI South were to pass on the Wind Project, it could be exposed to higher pricing for wind projects due to a competitive market especially starting the 3.5+ year process all over again including the MISO Generator Interconnection Queue process that continues to be delayed. Pet. Ex. 1 at 8; Pet. Ex. 2 at 20.

Consistency with IRP and Statewide Analysis

² Pet. Ex. 2 at 28 (citing <https://cdn.misoenergy.org/20220610%20OMSMISO%20Survey%20Results%20Workshop%20Presentation625148.pdf>).

Mr. Leger and Mr. Rice offered testimony that Petitioner's relief requested in this Cause is consistent with the 2019/2020 IRP and CEI South's Generation Transition Plan. Pet. Ex. 1 at 8; Pet. Ex. 3 at 16-17. Mr. Rice offered testimony describing in detail Petitioner's process in developing the 2019/2020 IRP. Pet. Ex. 3 at 4-16. He described the steps taken by CEI South to ensure that pricing included within the modeling in its 2019/2020 IRP was as accurate as possible. Pet. Ex. 3 at 6. He described the forecasts used to develop the 2019/2020 IRP and explained how stakeholder input was incorporated into the portfolio development process. *Id.* at 7-8. He described the Preferred Portfolio identified in the 2019/2020 IRP, which includes significant amounts of solar, solar + storage, wind, gas, coal demand response, and energy efficiency. *Id.* at 14. He testified the Preferred Portfolio has the characteristics of reliability, cost effectiveness, flexibility, diversity, risk mitigation, sustainability, and timeliness. *Id.*

Mr. Leger and Mr. Rice explained that the Wind Project is consistent with the needs identified in the Preferred Portfolio to add wind resources and to diversify CEI South's resource mix with clean renewable energy. Pet. Ex. 1 at 8; Pet. Ex. 3 at 16-17. They both stated that a significant amount of wind resources was selected in all portfolios included within the 2019/2020 IRP, including the Preferred Portfolio. The capacity attributable to the Wind Project (together with the capacity attributable to the 45501 Solar Projects, the 45600 PPAs, the 45754 Solar Project, and the CTs approved in Cause No. 45564) will help fill a portion of the capacity necessary to meet Petitioner's retail electric load and adequate reserve margin. *Id.* Mr. Bradford testified that adding wind resources helps diversify CEI South's resource mix with clean renewable energy, consistent with the Preferred Portfolio, while adding value through a balanced portfolio that reduces risk by having a proportional set of resources available to serve customer load (including wind, solar, energy efficiency, gas, and coal). In addition, selection of a wind asset purchase is consistent with CEI South's Plan to diversify its generation mix, not only by resource type, but also investment type (ownership and PPAs) and duration, varying PPA terms providing additional options and/or off-ramps. Pet. Ex. 2 at 8.

Mr. Rice also testified that the Wind Project is consistent with the Commission's state-wide analysis of expansion of electric generating capacity. He stated the Wind Project is consistent with the most recent written report (from 2018) of the Commission's ongoing analysis as well as what he believes is the current state of the ongoing analysis in which wind is identified as a viable resource to help meet the electricity need for the state of Indiana. Pet. Ex. 3 at 17. Mr. Rice also offered testimony that CEI South's proposal in this proceeding is consistent with the five pillars identified in the Final Report issued by Indiana's 21st Century Energy Policy Development Task Force dated November 19, 2020: reliability, resilience, stability, affordability, and environmental sustainability. Pet. Ex. 3 at 24.

Mr. Rice further testified that although IRPs are conducted as a point-in-time analysis, he does not expect that the 2022/2023 IRP will identify new resources in a Preferred Portfolio that differ in any substantial way from the Preferred Portfolio developed through the 2019/2020 IRP. Pet. Ex. 3 at 20. He stated that while the cost of renewable projects has increased, they remain attractive given that renewable resources emit zero CO₂ and are shielded from the current inflationary pressures on gas and coal commodities. *Id.* He further testified that the supply of coal has become less certain and has increased in cost since the last IRP, which is likely to make solar and wind resources more favorable. *Id.* While still very early in the process, Mr. Rice noted that early 2022/2023 IRP modeling suggests that wind remains attractive and, when part of a well-

diversified portfolio, can help shield customers from the risk of a price on carbon. He noted the wind output complements the solar resources in CEI South's Generation Transition Plan and provides a capacity benefit that is projected to be higher in the winter. *Id.*

Selection of Wind Project and CEI South's RFP Process

Mr. Bradford described CEI South's Request for Proposals ("RFP") process, including (1) an All-Source RFP (the "2019 All-Source RFP") conducted in response to the Commission's feedback in Cause No. 45052, (2) a second RFP (the "2020 Renewable RFP") seeking a combination of wind, solar, and solar + storage resources, and (3) a new All-Source RFP (the "2022 All-Source RFP") seeking a combination of resources including renewable, thermal and demand-side resources, and short-term capacity. Mr. Bradford testified that the 2019 All-Source RFP was used to select the initial projects for CEI South's Generation Transition Plan, specifically, the Posey County and Warrick County Solar Projects which were the subject of Cause No. 45501 and approved by the Commission on October 27, 2021. The 2020 Renewable RFP was used to help identify replacement generation capacity beginning in 2023, specifically, the Vermillion County and Knox County Solar Projects – two solar PPAs, which were the subject of Cause No. 45600 and approved by the Commission on May 4, 2022. The 2022 All-Source RFP will be used to inform CEI South's 2022/2023 IRP. Pet. Ex. 2 at 6-7.

Mr. Bradford explained that CEI South engaged 1898 and Company, a Burns and McDonnell company ("1898 & Company"), to evaluate, score, and rank each complete proposal based on established quantitative and qualitative scoring criteria that assesses reliability, cost, and certainty. *Id.* at 7. For renewable proposals, including wind projects, Mr. Bradford testified the assessment included: levelized cost of energy ("LCOE"), energy settlement location, interconnection and development status, and project risk factors like credit worthiness, development experience, project maturity, delivery date, project site control status, permits, and zoning. *Id.* He explained the use of an LCOE of 35 years for purposes of comparing PPA and BTA proposals. In addition, to normalize the LCOE over the 35-year period, Mr. Bradford testified, a market replacement methodology was adopted using the 2019/2020 IRP forecasts for energy price (Locational Marginal Pricing or "LMP") and capacity price in the MISO wholesale market. The forecasted pricing was applied to the balance of the 35-year term for each proposal's expected generation output. Pet. Ex. 2 at 8.

Mr. Bradford explained that the Wind Project was not submitted into one of CEI South's RFPs but rather was identified through collaboration with 1898 & Company, in May 2021, after one of the projects identified from the 2020 Renewable RFP and for which CEI South was negotiating was withdrawn from consideration, leaving CEI South without a viable wind project. Pet. Ex. 2 at 9. Through this collaboration, CEI South and 1898 & Company identified other potentially viable wind projects that either had been submitted in other utility RFPs or had entered into the MISO Generator Interconnection Queue process (the "2021 Wind Bids"). *Id.* Similar to the scoring process used for the 2020 Renewable RFP, the 2021 Wind Bids were evaluated, scored, and ranked based on established quantitative and qualitative scoring criteria that assessed reliability, cost, and certainty. This assessment included the same factors as used in the 2020 Renewable RFP: LCOE, energy settlement location, interconnection and development status, and project risk factors like credit worthiness, development experience, project maturity, delivery date, project site control status, permits, and zoning. *Id.* at 10. Ultimately, CEI South selected the Wind

Project that is the subject of this Cause based on its scoring, in relation to four other proposals, on cost, project/development certainty, location, and developer experience. Mr. Bradford stated that the Wind Project's LCOE was the lowest of the remaining proposals. Pet. Ex. 2 at 11. He testified that in evaluating the 2021 Wind Bids, CEI South used a similar process to that used in evaluating and selecting projects from the 2019 All-Source RFP and the 2020 Renewable RFP; and the process used by CEI South is consistent with the process used by other utilities in evaluating and selecting power supply options. *Id.* at 12. He stated that LCOE is a typical quantitative measure used to compare proposals. He also stated that qualitative criteria considered in this 2021 Wind Bids also were consistent with industry practices, such as the preference for projects showing greater maturity in the development cycle, project and energy settlement location, as well as relevant developer experience. *Id.*

Description of Wind Project and BTA

The Wind Project is a proposed wind generation facility that is anticipated to have the capability of generating approximately 200 MWs of electricity. The Project is located outside the state of Indiana in MISO's Central Region (Zone 4); and in the 2020 MISO Interconnection Queue with an expected Generator Interconnection Agreement ("GIA") in late-2023.³ Pet. Ex. 1 at 9; Pet. Ex. 2 at 11. Mr. Bradford described the primary considerations when choosing a wind system and testified that the Wind Project has several benefits including a good wind resource location; close proximity to a substation where there is available offtake capacity; abundant, geotechnically sound acreage to accommodate a wind project; a community supportive of wind development; favorable avian environmental study; Federal Aviation Administration ("FAA") approval; and close proximity to a large interstate for simplified turbine transport, construction, and operation. Pet. Ex. 2 at 12. Energy output from the Wind Project will be offered into the MISO energy market daily per MISO tariff and Business Practice Manual ("BPM") requirements. Pet. Ex. 2 at 26. This involves offering the expected energy output on a day-ahead basis and settling the actual real-time output against day-ahead awarded volume and market clearing price versus day-ahead awarded price. Additionally, all accredited capacity will be used to satisfy MISO's PRMR and Local Clearing Requirements ("LCR") prescribed by the MISO tariff. *Id.*

CEI South and the Developer have executed a comprehensive, non-binding term sheet and are negotiating a BTA under which CEI South will purchase and acquire the Wind Project, subject to fulfillment of the conditions precedent to closing. Pet. Ex. 1 at 10. Petitioner's case-in-chief testimony stated the parties anticipated having the BTA executed by March 31, 2023 and that the construction phase is expected to commence during the second half of 2023 to achieve target COD by January 1, 2025.⁴ Pet. Ex. 2 at 13, 15. Mr. Bradford explained that certain conditions to begin construction of the Wind Project must be met no later than July 8, 2023, including a final non-appealable order in this Cause granting a CPCN for the Project. Pet. Ex. 2 at 16-17, 19. The project design life for the Wind Project is expected to be no less than 30 years. Pet. Ex. 2 at 22.

³ On rebuttal, Mr. Bradford explained that the most recent estimate (updated March 7, 2023) of the schedule for the 2020 MISO Queue reflects a delay with DPP1 results expected to be released April 3, 2023. Pet. Ex. 2-R at 11.

⁴ On rebuttal, Mr. Bradford explained that changes in circumstances, including length of negotiations for the BTA, delays in the MISO Queue, and material lead times, mean the commercial operation date for the Wind Project will most likely be delayed past January 1, 2025. Pet. Ex. 2-R at 11.

The Wind Project will be fully developed, engineered, procured and constructed by a Developer and then acquired by CEI South in a transfer of a special purpose entity (the “Project Company”) established to facilitate ownership of the Project. Pet. Ex. 2 at 13. Under the BTA, the Project Company will own the Project until it achieves substantial completion, upon which time, CEI South will acquire the Project and all its attributes which are being held in the subsidiary limited liability company. At or about that same time, the separate corporate structure will be collapsed and CEI South will then own the generating facility directly. Pet. Ex. 2 at 13. The BTA will set forth the Developer’s obligations to bring the Wind Project to final completion after the transaction closing occurs. The BTA will be structured such that in the event approvals requested in this proceeding are not granted by the Commission, the BTA will be terminated. Pet. Ex. 1 at 10; Pet. Ex. 2 at 13. In addition, the BTA, as explained by Mr. Bradford, will set forth the payment schedule and holdbacks, performance security, liquidated damages, and other typical attributes designed to minimize risk to CEI South’s customers. *Id.* Mr. Bradford testified that the BTA transfers the Wind Project and all of its related assets such as properties, rights and interests of every kind and nature which includes books and records, the project site, project contracts, land leases and real property agreements, project fixtures and equipment that include the wind turbines, project improvements, intellectual rights associated with the project, project permits, all interconnection rights and any warranties associated with the equipment and workmanship of the project. Pet. Ex. 2 at 14. Mr. Bradford stated the BTA will have conditions set forth signifying completion of the Wind Project development and commencement of construction-related activities as well as customary conditions that must be met prior to closing on the Wind Project. In addition, the BTA will include representations, warranties, terminations, and post-Closing indemnification provisions. *Id.* at 15. As a part of the BTA, the Developer is required to use prudent industry practices. Pet. Ex. 2 at 23. CEI South, with its Owner’s Engineer (“OE”), will have the opportunity to review and comment on the wind project design and construction oversight is planned during construction to ensure the Wind Project is constructed in accordance with relevant standards and practices. *Id.*

Best Estimate of Costs

Mr. Bradford presented a detailed cost estimate for the Wind Project, totaling approximately \$636 million to construct and purchase the Wind Project. Pet. Ex. 2 at 15-16. Mr. Bradford testified that it is important to recognize that the proposals submitted in response to an RFP nearly always change during the negotiation process. He stated while an RFP or competitive bidding process is valuable in identifying feasible projects and narrowing down the best projects, it is not the end of the process – there is much more involved in bringing a project online. Pet. Ex. 2 at 15. For this reason, Mr. Bradford explained, the prices submitted during the 2021 Wind Bid process can be viewed as a good starting point but are not necessarily indicative of the final conditions. He said this is especially true where the 2021 Wind Bids were submitted prior to the broad inflationary challenges that have hit not only the wind industry, but the entire nation. *Id.* He testified that the Wind Project pricing is competitive with the wind proposals submitted in the 2022 All-Source RFP. He stated every project submitted in the 2021 Wind Bids would have faced similar pricing issues because the economic challenges are an industry wide issue. He opined that prices are not likely to decline near term and, if anything, they will merely stabilize. Pet. Ex. 2 at 17.

Operation of Wind Project

Mr. Leger and Mr. Bradford both testified that CEI South plans to enter into a service agreement with the turbine original equipment manufacturer (“OEM”) for the operation and maintenance (“O&M”) of the wind turbines. CEI South also plans to enter a separate balance of plant O&M contract for the maintenance of roads and vegetation management; and an additional contract for electrical system maintenance outside of the turbines, such as the AC collection system. CEI South will then assign an in-house project manager to actively manage the contractors, spare parts, and the administrative components of the Project. Pet. Ex. 1 at 11; Pet. Ex. 2 at 21. Mr. Bradford described the annual O&M expenses CEI South anticipates once the Wind Project is transferred pursuant to the BTA based on the Project’s Owner’s Engineer estimates. Pet. Ex. 2 at 22. Operational costs include planned and unplanned maintenance of the wind turbines and electrical balance of plant – including labor, parts, materials, and consumables – as well as operating expenses, such as facility monitoring and management fees, utilities, land lease payments, professional service fees, taxes, and insurance. *Id.*

Expedited Relief Requested

Mr. Leger explained Petitioner’s request for expedited relief in this proceeding, stating that the Wind Project is contingent upon the approval of the Commission and that the agreement with the Developer allows either party to terminate the agreement if all conditions precedent to closing have not been met by July 8, 2023, and Commission approval through the issuance of a final Order is one of those conditions. Pet. Ex 1 at 12; Pet. Ex. 2 at 19. As a practical matter the Developer will likely minimize its time investment until Commission approval has been issued. Mr. Bradford explained that it takes time to negotiate terms to bring a new generation resource on-line coupled with inflationary pressures and long lead times across the renewables industry. As such, expedited relief will help ensure all conditions precedent to closing are met in a timely manner. Pet. Ex. 1 at 12; Pet. Ex. 2 at 20.

“Clean Energy Project” under Ind. Code ch. 8-1-8.8

Mr. Rice testified that the Wind Project is a “clean energy project” under Ind. Code § 8-1-8.8-2, which defines that term as including “projects to develop alternative energy sources, including renewable energy projects.” In addition, “energy from wind” is specifically listed as one of the clean energy resources in Indiana Code § 8-1-37-4(a)(1) through -4(a)(16), thus making it a “renewable energy resource” under Ind. Code § 8-1-8.8-10. Pet. Ex. 3 at 20-21. Mr. Rice further testified that the proposed Wind Project also promotes a “robust and diverse portfolio of energy production or generating capacity, including . . . the use of renewable energy resources”. Ind. Code § 8-1-8.8-1. Pet. Ex. 3 a 21.

Accounting and Ratemaking Treatment

Ms. Behme supported the projected revenue requirement for the Wind Project, the proposed initial depreciation accrual rate, and CEI South's requested accounting treatment, including deferral of depreciation expense, O&M expense and property tax expense, and accrual of post-in-service carrying costs ("PISCC"). Pet. Ex. 4 at 4-12. She stated Ind. Code ch. 8-1-8.8 provides for financial incentives including timely recovery of costs and expenses incurred during the construction and operation of clean energy projects, and the Wind Project qualifies for such treatment under Ind. Code § 8-1-8.8-11. While timely recovery may be through the Company's CECA mechanism approved in Cause No. 44909, Ms. Behme explained that in all likelihood it will be through base rates in CEI South's next general rate case. Pet. Ex. 4 at 4. Indiana Code § 8-1-8.8-11 provides for "timely recovery." Mr. Rice and Ms. Behme both testified that CEI South expects that including the Wind Project in rate base in the next general rate case will provide a more timely recovery than the CECA given the unique circumstances of the timing of the Wind Project and the timing of CEI South's next general rate case. Pet. Ex. 3 at 21; Pet. Ex. 4 at 5.

Specifically, Ms. Behme testified, CEI South proposes approval and recovery of the eligible revenue requirement amounts associated with the Wind Project to be included in the CECA or base rates, as the case may be, including costs associated with: (a) Capital investment to complete the acquisition; (b) Deferred PISCC; (c) Deferred depreciation expense; (d) Deferred O&M expense; (e) O&M expenses, depreciation, property tax, and income taxes; and (f) Credits related to Renewable Energy Certificates ("RECs"). *Id.* at 4. If approved, CEI South proposed to include these costs in its next general rate case or, if not there, in the Company's annual CECA filing. Ms. Behme explained that to the extent the Wind Project is not included in rate base in the next rate case and the revenue requirement is recovered through the CECA, annual updates to the Wind Project revenue requirement will be filed as a sub-docket of Cause No. 44909. *Id.* Ms. Behme further explained that even to the extent the Wind Project is included in rate base in CEI South's next general rate case, the Company will still use CECA to reflect the Production Tax Credit ("PTC") and Renewable Energy Certificates ("RECs") generated by the Project, to the extent actual PTC and RECs differ from the amounts reflected in base rates. As has traditionally been reflected in the Company's TDSIC filings, CEI South proposes that any deferred O&M and property taxes be recovered through the CECA. Pet. Ex. 4 at 5.

Ms. Behme testified that because CEI South will not make payment under the BTA or take ownership of the Wind Project until it is substantially complete, at which point the Wind Project will be placed into service, any allowance for funds used during construction ("AFUDC") would be expected to be a small percentage of the total cost. She further stated, however, that if AFUDC were to become a material amount, CEI South would consider using Construction Work in Progress ("CWIP") treatment through the CECA to address it. Pet. Ex. 4 at 5.

Ms. Behme explained that CEI South will ultimately record the total cost to acquire the Wind Project to FERC Account 101 – Electric Plant in Service and reallocate it to the appropriate utility plant in service accounts. She stated that an allocation for general oversight, management, and administrative costs will be included, consistent with CEI South policy. Costs associated with accounting, legal services, human resource management, insurance and other similar costs are included as overhead costs that are allocated to construction projects. Pet. Ex. 4 at 6. She stated that the Company's work papers in the CECA or the general rate case filing, as

the case may be, will segregate the applicable Wind Project costs included for recovery into categories of direct costs and indirect capital overheads. *Id.* After new plant is placed in-service, Ms. Behme testified CEI South will incur capital costs, which it will not recover until the new plant is included in rate base in the derivation of rates, whether as part of base rates or the CECA, at which point the cost is recovered through the opportunity to earn a fair return on the value of that plant investment. *Id.* Once the project is placed in-service, depreciation will commence. Accordingly, CEI South proposes to accrue PISCC at its pre-tax Weighted Average Cost of Capital (“WACC”) (utilizing CEI South’s cost of long-term debt and Commission approved cost of equity) on capital investment for the Wind Project beginning with the month after the investment is placed in service until the date the investment is included for recovery in CECA rates or base rates, as the case may be. Pet. Ex. 4 at 7; Pet. Ex. 3 at 22. This calculation would be updated in subsequent general rate cases or annually if the CECA mechanism is utilized. Pet. Ex. 3 at 22. CEI South also proposes to defer any depreciation expense associated with the Wind Project until such expense is included for recovery in the CECA or base rates. Both the accrued PISCC and deferred depreciation will be recorded as regulatory assets in FERC account 182.3 until such time that they can be included for recovery in rates. CEI South would begin amortization of the regulatory asset as a recoverable expense for ratemaking purposes over the estimated life of the Wind Project (approximately 30 years) commencing on the date CEI South’s rates include recovery of a return and depreciation on the Wind Project. Pet. Ex. 4 at 7-8. CEI South also seeks to include the unamortized balance of the regulatory asset in CEI South’s rate base upon which it is permitted to earn a return. *Id.* Ms. Behme explained that annually, financing costs for the Wind Project are approximately \$36.6 million and the associated depreciation expense is approximately \$21.9 million, representing over 40% of CEI South’s 2021 electric net operating income of \$132.7 million. Without the requested accounting treatment, Ms. Behme testified, CEI South could suffer a material adverse financial consequence. *Id.* at 7. Ms. Behme stated the requested accounting treatment would allow CEI South the opportunity to immediately offset the negative financial impact to monthly pre-tax earnings by approximately \$4.9 million. *Id.*

The initial annual depreciation accrual rate proposed by CEI South for the Wind Project is approximately 3.33%, corresponding to the expected life of the assets of 30 years. Ms. Behme testified this rate does not take into consideration costs of removal and CEI South therefore proposes to evaluate adjustments to the depreciation rate and include proposed depreciation rates for these assets in a formal depreciation study as part of its next applicable base rate case. Pet. Ex. 4 at 8.

With respect to the deferral authority sought by CEI South with respect to certain expenses, Ms. Behme explained that CEI South will incur incremental O&M expenses corresponding to the cost incurred pursuant to an O&M contract with a third party and there will be a period of time after those contract expenses begin and before rate recovery begins. Pet. Ex. 4 at 8. CEI South seeks to defer such O&M for future recovery until recovered through base rates or the CECA, as the case may be. In addition, it is possible that CEI South would incur other O&M expense or accrue property tax expense associated with the Wind Project before property tax expense is being recovered through base rates or the CECA. Accordingly, Ms. Behme testified, to the extent CEI South incurs other O&M or accrues such property tax expense before rate recovery, the Company seeks to defer such expense for future recovery. *Id.* at 9.

Production Tax Credits

CEI South witness Story explained that the Wind Project is expected to qualify for 100% PTC. Pet. Ex. 5 at 5. She explained that to qualify for the PTC, construction on the project must begin prior to January 1, 2025. Ms. Story explained that a “continuous progress safe harbor” applies to allow developers to meet the continuous progress test if construction is completed within four years of commencement of construction. *Id.* Additionally, she stated, the Company is committed to achieving the maximum PTC available by satisfying the wage and apprenticeship requirements over the life of the project. *Id.* Ms. Story described the wage and apprenticeship requirements introduced under the Inflation Reduction Act (“IRA”) as follows:

To satisfy the prevailing wage requirement, laborers, mechanics, contractors and subcontractors must be paid wages at least at prevailing rates in the locality in which the facility or project is located as determined by the Secretary of Labor, during the construction, alteration, and repair of the “qualified facility” for a ten-year period beginning with the date the facility was originally placed in service.

To satisfy the apprenticeship requirement, the following percentage of total labor hours for construction, alteration, or repair work on the qualified facility or energy project must be performed by qualified apprentices:

Before 1/1/23 – 10%; During 2023 – 12.5%; After 12/31/23 – 15%

Each contractor and subcontractor who employs four or more individuals to perform construction with respect to a qualified facility or an applicable project must employ at least one qualified apprentice.

IRC Sections 45(b)(7)(A)(ii) and 45(b)(8)(A)(i-ii).

Ms. Story testified that the IRA also addressed the issue of taxpayer “tax capacity” for purposes of the PTC by allowing transferability, which will facilitate more cost-effective utilization of the expanded credits by allowing taxpayers to sell tax credits to an unrelated party, providing a more efficient way to monetize the present value of the tax credits. Pet. Ex. 5 at 5. Prior to the enactment of the IRA, Ms. Story explained, taxpayers without sufficient current income-tax liability to self-monetize credits had to either (a) rely on expensive tax equity financing or (b) carry forward deferred tax assets on their own balance sheets with corresponding losses due to the time value of money. *Id.*

Ms. Story explained that a PTC will be treated differently for the Wind Project than for a PPA. She stated when a developer or other entity retains ownership of a wind project, that entity often receives the PTCs for the project. Pet. Ex. 5 at 6. She explained that in negotiating a PPA agreement, the benefit of those credits can sometimes reduce the cost of energy for the utility offtaker, but not always. Many times, Ms. Story explained, there is no assurance that these tax benefits are passed along to customers in the form of lower energy purchase costs. She stated PPA pricing is often at competitive rates which may be significantly higher than the costs produced

through traditional ratemaking as is sought here. Pet. Ex. 5 at 6. In contrast, under traditional ratemaking such as is proposed for the Wind Project, tax benefits directly reduce the costs of generating electricity and the benefits are passed through to customers. Ms. Story testified that when a utility owns the project itself, the credits are received by the utility and the utility passes those benefits to customers through lower tax expense, or in the case of the Wind Project, through a reduction to the amount recovered through rates associated with this Project. *Id.* Ms. Behme and Ms. Story explained that as CenterPoint Energy, Inc. realizes the benefits of any PTCs generated, whether by utilizing the credits to reduce CenterPoint Energy Inc.'s federal income tax liability or by selling the credits, those benefits will be passed on to customers as a reduction to the amount recovered through rates associated with this Project. Pet. Ex. 4 at 9. The difference between the actual PTC and any amount that is reflected in base rates will flow through the CECA, even if the Project itself is reflected in base rates. Pet. Ex. 4 at 9; Pet. Ex. 5 at 9.

Ms. Story testified the full allowable PTC for 2022 is \$0.275/kwh, which will be adjusted for inflation each year thereafter. She stated the full PTC is allowed if the basic PTC requirements regarding construction start and end dates, and the wage and apprenticeship requirements are satisfied. Pet. Ex. 5 at 7. Ms. Story estimated the value of monetizing the PTC benefits associated with the Project, using the estimated annual kWh and a PTC rate of \$0.0275/kwh and assuming inflation adjustments of 2% for each of the next three years, and assuming the Wind Project will meet the wage and apprenticeship requirements. Pet. Ex. 5 at 8.

RECs

As described in the direct testimony of Mr. Rice and Ms. Behme, the Wind Project will also be eligible for RECs. Pet. Ex. 3 at 23; Pet. Ex. 4 at 9. RECs are market-based instruments that certify that the bearer owns one MWh of electricity generated from a renewable energy source. Pet. Ex. 3 at 23. RECs associated with the output of the Wind Project may be monetized through market sales. Pet. Ex. 4 at 9. CEI South's current practice is to sell RECs on behalf of CEI South customers to directly offset the cost of renewable energy projects. The benefit of REC sales, net of costs, would be included as an offset to the revenue requirement within the CECA. However, CEI South could choose to not sell RECs in the future or allow the RECs to be utilized in a Green Power tariff for customers. Pet. Ex. 3 at 23. To the extent the sale of RECs differs from the amount reflected in base rates, all proceeds from such sales will be reflected as an adjustment to the revenue requirement within the annual CECA filing. In the future, if CEI South becomes subject to a Renewable Portfolio Standard or other regulatory requirement, the RECs may be retained and used by CEI South in order to satisfy such requirements. Pet. Ex. 4 at 9.

Revenue Requirement

Ms. Behme presented an illustrative CECA revenue requirement for the Wind Project and explained how it was calculated. Pet. Ex. 4 at 11 and Attachment CMB-1 (Confidential). It includes 1) the return on capital investment, which includes the unamortized regulatory assets for deferred depreciation and PISCC; (2) an annual level of incremental property taxes, depreciation, and O&M expenses, inclusive of any amounts previously deferred; (3) net PTC and RECs monetized; and (4) recovery of the regulatory assets recorded through the interim deferral of depreciation expense, and PISCC. Pet. Ex. 4 at 11. Ms. Behme stated that if CECA were to be used for the Project, CEI South would prepare in each annual filing a revenue

requirement calculation which would accumulate all eligible costs incurred through December 31 of the prior calendar year. *Id.* Mr. Rice explained that allocations by rate schedule are applied to the total revenue requirement to determine the amounts recoverable from each Rate Schedule. The amounts allocated to each Rate Schedule are divided by the estimated billing determinants to calculate the per-unit CECA rates and charges. Any variances will be recovered (or passed back) consistent with the methodology utilized in the annual CECA mechanism update Pet. Ex. 3 at 21. Mr. Rice presented the estimated residential bill impact for a residential customer that uses 1,000 kWh per month of approximately \$20 per month, depending on the cost of the Project. That amount includes an offset for PTCs, but does not include offsets such as REC sales, which are expected to lower customer bills, or other savings associated with the Generation Transition Plan. Pet. Ex. 3 at 23.

In the event the CPCN is not granted or the Wind Project assets are otherwise not placed in-service, Ms. Behme described CEI South's request to defer costs associated with the Wind Project, including costs incurred to evaluate and plan the Wind Project and to develop the evidence submitted in this proceeding. She stated any capitalized costs would be reclassified to FERC account 182.3, Other Regulatory Assets and recovery of those costs would be sought in a future general rate case or capitalized as part of an alternative generation project. Pet. Ex. 4 at 9-10.

Ms. Behme also described the adjustment to the authorized net operating income ("NOI") utilized in the FAC earnings tests, in accordance with Ind. Code § 8-1-2-42(d) and § 8-1-2-42.3, to the extent the Company recovers the return on the Wind Project through the CECA mechanism. She stated CEI South will adjust for FAC earnings test purposes its statutory NOI by including the operating income associated with the Wind Project as part of its authorized NOI, consistent with treatment of earnings associated with CEI South's CECA mechanism from Cause No. 44909. Pet. Ex. 4 at 10.

Alternative Regulatory Plan

Mr. Rice supported CEI South's request for an alternative regulatory plan ("ARP") in connection with the Wind Project, to the extent an ARP is needed. He explained that to the extent necessary, CEI South is requesting approval of an ARP pursuant to Ind. Code § 8-1-2.5-6(a)(1). Mr. Rice described the two components of the requested ARP as follows:

(1) The Project is located outside Indiana. . . . Ind. Code § 8-1-2-6 does not require that a public utility's "property" be located in Indiana and Ind. Code § 8-1-8.8-10 does not require that a renewable energy resource be located in Indiana. Nevertheless, this is a significant generating asset and, to the extent the Commission feels it necessary, [CEI South] seek[s] an ARP allowing the ratemaking treatment [CEI South] ha[s] sought even though the asset is located outside the State.

(2) Ind. Code § 8-1-8.5-5(e) contains provisions concerning cost estimates being based upon competitively bid engineering, procurement or construction contracts and that the actual construction will be competitively bid. This subsection, by its terms,

only applies if the applicant proposes to construct the facility, and the Company is not proposing to construct the facility but to acquire a completed facility after it has already been constructed. As such, [CEI South] do[es] not believe it applies. To the extent subsection (e) applies, [CEI South] seek[s] to be relieved of these obligations.

Pet. Ex. 3 at 26-27. Mr. Rice testified the acquisition of the Wind Project is needed in order to continue with the implementation of the Company's Preferred Portfolio. He stated the addition of wind generation is needed to help diversify the generation mix, and this Project in particular enhances the value of CEI South's service to our customers. Pet. Ex. 3 at 28. He testified the selection of this Project was the result of competitive procurement. *Id.* Mr. Rice stated if the location of the Project or the application of the competitive procurement provisions would cause CEI South not to be able to acquire the Wind Project, the ARP would allow for completion of the Project and therefore be beneficial for the energy utility and its customers. Under circumstances where the ARP is found necessary to allow CEI South the relief requested, Mr. Rice testified the ARP also enhances the value of CEI South's retail energy services. *Id.* He sponsored the required published legal notice as Attachment MAR-5 to his testimony.

B. OUCC and Intervenor Testimony.

i. OUCC. Mr. Lantrip recommended CEI South's CPCN request be denied and that the costs of the Wind Project be evaluated in the context of a general rate case. Pub. Ex. 1 at 1-2. He testified that the OUCC continues to be concerned with the affordability of CEI South's rates, the proliferation of its cost trackers, and the magnitude of costs passed through Petitioner's tracking mechanisms. *Id.* at 2. He presented a summary of monthly residential electric bill impacts for Petitioner's current billing charges as of February 2023 and a summary of the monthly cost impact of Petitioner's recent requests that are not yet included in its electric rates. *Id.* at 4-5.

Mr. Lantrip also expressed concern over what he termed a "lack of transparency" due to redactions in Petitioner's case-in-chief. *Id.* at 6. He argued that CEI South redacted information beyond what is needed to protect legitimate trade secret data and that such a degree of confidentiality does not comply with the doctrine of open government and transparency. *Id.* at 7. Mr. Lantrip also expressed concern over the absence of certain provisions within the BTA. He stated the OUCC objects to the BTA in its current form as it has no protections against a significant change in price for the Wind Project. He testified that without these protections, CEI South consumers have no guarantee the requested CPCN will deliver electrical service that meets a just and reasonable cost standard, which is the obligation of CEI South. *Id.* at 8. Mr. Lantrip listed a number of provisions he believes are "missing" from the BTA that the OUCC sees as a minimum requirement, including binding price and capacity guarantees. *Id.* at 9. He also testified that the capacity factor in the BTA does not consider potential line losses. *Id.* at 9-10.

Mr. Lantrip recommended the Commission deny CEI South's request to recover charges from its customers for the Wind Project, expressing concern with the estimated \$636 million cost of the Wind Project given the "lack of cost overrun protections" and that CEI South does not have experience owning wind energy on its system. Pub. Ex. 1 at 12. If the Commission approves the Wind Project, Mr. Lantrip recommended the recovery schedule timeline be adjusted to mitigate

the rate impact on CEI South customers, who he testified have been paying the highest electric rates in the state since 2013 according to the Commission's most recent Annual Report. *Id.* at 13. Ultimately Mr. Lantrip recommended the Commission deny cost recovery for the Wind Project due to its high capital cost and projected impact on ratepayer bills. Pub. Ex. 1 at 15. If the Commission grants the CPCN, he recommends the Wind Project's recovery be limited to a levelized cost per kWh based on CEI South's estimated annual production from the Wind Project, similar to what was recommended by the OUCC for the Troy Solar Project in Cause No. 45086 and approved for the Posey County Solar Project in Cause No. 45501. *Id.*

Mr. Brian Latham testified that if the Commission approves CEI South's request, the request should be reduced by \$44 million because Petitioner's Owner's Cost/Overheads amounts appear to be "arbitrary." Pub. Ex. 2 at 2, 6. He testified that CEI South's Owner's Costs include allowances for the owner's project management team; owner's engineer; environmental and/or other permitting activities not included in the Purchase Price; overheads such as internal labor and loadings to support construction from planning through construction; Administrative and General overheads ("A&G"); Allowance for Funds Used During Construction ("AFUDC"); expert consultant fees; and owner's contingency. *Id.* at 2-3. He stated CEI South is applying one percent A&G to Project Development, Interconnection Costs, Spare Parts, Study/Pework and Owner's Costs. *Id.* at 3. Mr. Latham disagreed with CEI South's proposed Owner's Costs, stating that the proposed one percent A&G application rate is not supported by evidence and Petitioner did not provide a line-item breakout to support the allocated amounts. *Id.* He testified that any allocation of A&G is duplicative, since the Wind Project is a BTA and the third-party builder is essentially handing over the keys to CEI South. He further stated that it is difficult to understand why ordering spare parts requires an A&G allocation since ordering parts is a normal cost of business. *Id.* at 4.

Mr. Latham testified that if the Commission rejects the proposed Wind Project, the Study/Pre-work portion of the project should be considered a sunk cost with no recovery. *Id.* at 5. He stated these costs were incurred prior to any Commission approval and are a cost of doing business and "should not incur any allocated costs." *Id.* Mr. Latham testified that the amount of A&G applied to Owner's Costs is unclear because Owner's Costs are comingled with Overheads, rendering the amount of Owner's Costs "impossible to determine." *Id.* He stated the OUCC expects, in support of a one percent A&G allocation, at a minimum, a budget detailing the staff who were expected to apply time to the project, the amount of time, and the staff persons' hourly rate. In addition, he stated the OUCC expects that any position previously included in the most recent rate case be eliminated to prevent double recovery. *Id.* Mr. Lantrip testified that Petitioner should provide a list of any other costs expected to be incurred as part of the one percent A&G allocation, eliminating any costs currently in rates, and that Petitioner should also provide a breakout of costs (such as spare parts) with the amount of A&G expenses to be allocated. *Id.* at 6.

Mr. John Hanks described CEI South's use of its 2019/2020 IRP to justify its request for a CPCN for the Wind Project. Pub. Ex. 3 at 2-6. He testified that CEI South has not met the burden of proof to show that the Wind Project is the most affordable option, that it reduces risk, or that it ensures reliability and cost certainty. Pub. Ex. 3 at 3. He stated the cost inputs used in the creation of the IRP are significantly lower than the estimated costs used in this proceeding and that the project will not contribute to the economic development of Petitioner's service territory or the State of Indiana because the project is located outside Indiana. *Id.* He suggested the possibility of transmission congestion could lead to uncertainty regarding reliability and the final cost of energy

produced by the Project. *Id.* He also noted a discrepancy in the scoring of the project and provided an updated score. *Id.* at 5-6. Mr. Hanks cited risk that the energy from the Wind Project will not reach Petitioner's service territory without incurring significant upgrade or congestion costs. *Id.* at 7. He stated there is no certainty regarding whether the Wind Project will be impacted by congestion or not. *Id.* at 8.

ii. CAC. Mr. Inskeep presented concerns with CEI South's proposed Wind Project, while expressing general support for additional wind generation and CEI South's IRP Preferred Portfolio with respect to its determination that CEI South procure at least 300 MW of wind. CAC Ex. 1 at 6. He stated CEI South's request for an expedited decision in this case has created an unreasonable burden on intervenors and the Commission. *Id.* He asserted that a rushed process that fails to allow intervenors sufficient time for review means the Commission has a less developed record for consideration and projects that are not thoroughly and adequately reviewed can result in higher project costs, increased risks to ratepayers, and ultimately, higher customer rates. *Id.* at 7. He recommended CEI South not rely on expedited 120-day processes for requesting approval of generation projects of this cost magnitude absent an extraordinary circumstance. *Id.* at 8.

Mr. Inskeep also expressed concerns about bill impacts of the Wind Project, particularly given the dramatic cost increase that has already materialized for this specific project since it was initially identified. *Id.* at 6. He stated the estimated average residential monthly bill impact inclusive of anticipated sales of RECs is \$15.51, but stated CEI South did not provide an up-to-date quantification of the net impacts of various changes in other fuel and O&M costs which he says contributed to the difficulty in assessing the reasonableness of the Wind Project costs and the extent to which ratepayers are still expected to see net bill reductions. *Id.* at 8-9. Mr. Inskeep expressed concern about the collective impacts of CEI South's investments in generating resources and its transmission and distribution system and expenses on customer affordability. *Id.* at 10. He urged CEI South to use its forthcoming rate case to propose a new electric bill relief program for income-qualified customers. *Id.* at 11.

Mr. Inskeep suggested that CEI South could have pursued PPAs as alternatives to the Wind Project BTA, which he claims could have ultimately resulted in a lower bill impact for customers. *Id.* at 11. He stated there are different risks between PPA and BTA structure that he believes ultimately advantage PPAs from a ratepayer perspective. He stated under a PPA, the project developer and owner bear the risk of cost overruns or unexpected costs, whereas under a BTA, if the utility encounters higher than anticipated costs, the utility typically passes through those costs to its customers. He also noted a PPA with a term length shorter than the life of the project could benefit customers by allowing an earlier off ramp that gives customers access more quickly to future cost declines in renewable energy technologies. *Id.* at 12. Mr. Inskeep also expressed concern with CEI South's methodology of developing an LCOE of 35 years to have a common reference between PPAs of different term lengths and BTAs, and the normalization of the LCOE over the 35-year period using a market replacement methodology. He stated this artificially increases the cost of a PPA relative to a BTA based on "arbitrary decisions" about how to calculate a common metric to compare the two. *Id.* at 13. He claimed CEI South did not provide the level of detail needed to actually understand how the calculations were made or determine whether the data inputs and assumptions were valid and reasonable. *Id.* He stated the information provided via discovery was not provided in time for him to conduct a thorough review. *Id.* Mr.

Inskeep identified “very attractive PPA options” submitted in all three of CEI South’s RFPs. *Id.* at 16. He ultimately recommended that CEI South provide more transparency and description in its case-in-chief regarding its key analyses supporting its large capital project requests, especially when it is requesting an expedited timeline for approval that may limit the opportunity for stakeholders to clarify questions through data requests prior to filing direct testimony. *Id.* at 17. He recommended that CEI South analyze BTAs and PPA options from its ratepayers’ perspective and select projects that will mitigate rising customer bills. He also recommended the Commission encourage CEI South to pursue more PPAs instead of being so heavily reliant on BTAs. *Id.* at 18.

Mr. Inskeep also disagreed that CEI South should be allowed to recover Wind Project costs through its CECA mechanism and supports the Petitioner’s stated preference for addressing cost recovery and cost allocation for the project through its forthcoming rate case. *Id.* at 6. He took issue with the use of a 4CP demand allocator for the Wind Project because CEI South no longer plans its system around only meeting summer peak periods and instead plans to meet seasonal capacity planning requirements for all seasons under MISO’s recently modified resource adequacy construct. CAC Ex. 1 at 19. He stated the Wind Project specifically will provide the largest capacity value during the winter season, followed by fall and spring, which are outside of the summer months on which the 4CP is calculated. *Id.* He also took issue with the fact that under the 4CP demand allocator, Street Lighting customers would not be allocated any of the Wind Project costs even though Street Lighting customers benefit from the capacity and energy provided by the Wind Project. *Id.* at 23. Mr. Inskeep recommended the upcoming general rate case is the best venue for establishing a fair cost allocation methodology for the Wind Project. *Id.* at 24.

Mr. Inskeep stated concerns with respect to CEI South’s cost estimates, namely (1) a discrepancy between the annual O&M estimate and the amount included in the illustrative CECA total annual revenue requirement, (2) the amount of contingency included in the estimated costs, which he contended is large and does not seem warranted, (3) the amount included in the Generation Transition Asset Allocation for IRP work done in 2016-2019 and costs for planning/preparation work conducted from 2020 through year end 2022, which he believed is in violation of the prohibition on retroactive ratemaking, (4) the amount of legal fees associated with the BTA negotiation, CPCN filing, and pre-closing due diligence, which he compared to the amount included in legal fees for NIPSCO’s recent rate case in Cause No. 45772. *Id.* at 24-26.

C. CEI South Rebuttal. Mr. Bradford addressed concerns raised by the OUCC and CAC around the Wind Project’s transparency, its scoring, selection, structure as a BTA, and customer protections therein, as well as the Wind Project’s pricing and deliverability. Pet. Ex. 2-R at 1. Mr. Bradford began by stating that since the filing of its case-in-chief in this Cause, CEI South has obtained approval from the Developer to release certain information related to the Wind Project that was previously redacted, including the size (or capacity) of the Wind Project, which is 200 MW, as well as the specific MISO Region, which is MISO Zone 4. *Id.* at 2. He further expressed CEI South’s commitment to work in collaboration with the Developer to continue to evaluate the need to continue to protect competitively sensitive information from public disclosure. To the extent it can be released, he stated the Company will take the necessary steps to share the information more broadly. *Id.* at 3. Mr. Bradford testified that CEI South has redacted or marked confidential only that information necessary to prevent disclosure of information that would allow someone to identify the specific project over which CEI South is negotiating, which he explained not only serves the interest of CEI South and the Developer, but also serves the best interest of

CEI South's customers. *Id.* He explained that while continuing to negotiate the BTA with CEI South, the Developer is also engaged in ongoing negotiations with third parties that will be contractors under the BTA ("counterparties to the BTA"). Mr. Bradford explained that the consequence of counterparties to the BTA knowing not only the identity of the Wind Project but also the status of negotiations and/or the status (or decision) in this proceeding while the BTA is still being negotiated and the Developer continues to negotiate with the counterparties could give the counterparties to the BTA contracts economic value and power in negotiating the terms of their contracts with the Developer; and place CEI South (and the Developer) at a competitive disadvantage resulting in higher costs for the Project or less favorable BTA terms and conditions. *Id.* Therefore, the need to protect the items highlighted by OUCC witness Lantrip from disclosure was not "unilaterally" decided by CEI South, but rather after close collaboration with the Developer and through consideration of impacts to CEI South's customers and other stakeholders. *Id.* at 4.

Mr. Bradford disagreed with Mr. Lantrip's assertion that the public has been "excluded" by the degree to which CEI South has asserted confidentiality of certain information related to the Wind Project. He noted that the public is represented by the OUCC in this case, and the OUCC has had access to all confidential information since the case was filed. Mr. Bradford recited certain information about the Wind Project that has been publicly disclosed since Petitioner filed the case, including the fact that the Project is located outside of Indiana, the status of the Project in the MISO Queue, the Developer's experience, and the overall best estimate, or total cost, of the Wind Project. *Id.* at 4-5. Mr. Bradford asserted that access to the above-referenced information, coupled with the rest of the information publicly provided in this Cause and the public's representation in this matter by the OUCC, provide the public with a robust source of information and participation. *Id.* at 5. He asserted that the value of protecting disclosure of certain information, such as project name and project location, that would help counterparties to the BTA identify the Developer in this Cause outweighs any additional benefit that could be realized by disclosing those elements prematurely. *Id.* Mr. Bradford testified that disclosing the information prematurely, before the parties conclude the BTA negotiation, specifically before the Developer has an opportunity to select certain contractors and suppliers and execute the associated agreements that underlie the BTA, would adversely affect CEI South's customers, potentially resulting in higher costs or less favorable Terms and Conditions within the BTA, to include the customer protections for which Mr. Lantrip advocates. *Id.* at 6.

In addition, Mr. Bradford explained, one of the conditions to closing is Commission approval of the Wind Project. If CEI South were to prematurely release confidential information that in turn then prejudices the negotiations or compromises one of the negotiating parties' positions or leverage, aside from potentially resulting in higher costs or less favorable Terms and Conditions due to a failure to adequately protect competitively sensitive information, CEI South, and in turn its customers could lose its opportunity to secure the most cost-effective wind project available at this time. *Id.* at 6. This further risks exposure to potentially higher priced wind projects due to the high demand and competitive market and it risks further delays caused by having to start the 3.5+ year process all over again, including the MISO Generator Interconnection Queue process that continues to experience delays, thereby exposing CEI South and its customers to the risk of having to make high priced purchases from the PRA to meet the capacity requirements of the PRMR. *Id.* at 6-7.

Mr. Bradford also pointed out that the 2019/2020 IRP was CEI South's most detailed resource planning analysis process to date, involving significant opportunity for stakeholder and public involvement, collaboration, and feedback. *Id.* at 8. He testified it is through the open (public) collaborative and transparent process in which OUCC, several members of the public, and other intervenors participated that CEI South developed its 2019/2020 IRP and selected the Preferred Portfolio, which called for 300 MWs of wind – a portion of which CEI South is proposing be fulfilled by the Wind Project that is the subject of this Cause. *Id.*

Mr. Bradford explained that the document provided as Attachment FSB-2 (Confidential) to his Direct Testimony is not the BTA, as Mr. Lantrip refers to it, but is instead the Term Sheet for the Wind Project. He clarified first that whether the terms and conditions are complete and/or binding is not related to the degree of confidentiality required in this case. The BTA is currently being negotiated and is informed by the Term Sheet, but the two are separate and distinct documents. *Id.* at 10. The BTA, when executed by the parties, will be binding, and include the components and specific and significant details Mr. Lantrip cites as seeing in “multiple utility filings” such as detailed project and equipment specifications, as well as provisions related to the major subcontracts (i.e., contractor or supplier agreements). *Id.* He described certain cost protections that will be incorporated into the BTA and stated that CEI South had presented evidence of the best estimate of costs, accounting for future inflation, interconnection costs, financing costs, owner's costs, overheads and spares, and all other anticipated costs. If the costs are below the best estimate that is found by the Commission, CEI South will only seek to recover the final, actual costs of the Project when placed in-service. *Id.* at 30. He also explained that the BTA will establish schedule, performance, programmatic and engineering protections. In addition, there will be warranties providing protections against defects in the equipment and/or workmanship and legal protections such as contractual representations, warranties, indemnifications, etc. to provide assurance of contract performance. *Id.* at 30-31.

Mr. Bradford reiterated that the rights under the Term Sheet allow either party to terminate the agreement if certain conditions have not been met by July 8, 2023, including Commission approval through the issuance of a final Order. Accordingly, based on the time to negotiate the comprehensive Term Sheet and anticipated time to negotiate and execute a BTA, Mr. Bradford said Petitioner filed its Petition in this Cause, requesting expedited relief, to help ensure the condition related to issuance of a final order was met in a timely manner to achieve the target Commercial Operation Date (“COD”) originally contemplated to be by January 1, 2025. *Id.* at 11.

Mr. Bradford then provided an overview of circumstances that had changed since Petitioner filed its case-in-chief. He stated BTA negotiations are taking longer than anticipated and the current schedule related to the 2020 MISO Queue continues to delay with the most recent estimate (updated March 7, 2023) of Definitive Planning Phase 1 (“DPP1”) results being released April 3, 2023. *Id.* at 11. In addition, Mr. Bradford testified that based on material lead times and the Transmission Owner's (“TO”) standard construction schedule which takes into account those lead times, the Commercial Operation Date (“COD”) will most likely be delayed past January 1, 2025. *Id.* Mr. Bradford stated it is unlikely the parties will have the BTA executed by March 31, 2023 despite the parties' continued diligent efforts to finalize the BTA. *Id.* Despite this delay, however, Mr. Bradford explained that it is still important to have a Commission Order by July 8, 2023, in part because based on the March 7, 2023 update to the 2020 MISO Queue schedule, Definitive Planning Phase 2 (“DPP2”), which includes all preliminary interconnection costs, is still on target

to be finalized by mid-July. An understanding of the preliminary interconnection costs is important before the TO work can begin; in any event, before the Developer will approve TO work to begin, Commission approval is necessary. *Id.* at 12.

Mr. Bradford also responded to OUCC witness Hanks' concerns about the use of the 2019/2020 IRP to justify the Wind Project and Mr. Hanks' assertions that CEI South has not met its "burden of proof" with respect to the Wind Project. Mr. Bradford testified that first, Mr. Hanks erroneously asserts that for this Wind Project to be approved, and a CPCN granted, CEI South must meet a "burden of proof," showing the Wind Project "is the most affordable option," which he said is not the standard or requirement. *Id.* at 13. Nevertheless, Mr. Bradford reiterated, drawing on data from his direct testimony and attachments, that the Wind Project is highly competitive and addresses environmental risk, market risk and general risk. *Id.* at 14-15. He testified the Wind Project is an energy-rich resource which significantly reduces the risk of exposure to energy market price volatility for the 30-year life of the Project and it reduces the risk of capacity shortfall with respect to CEI South's PRMR. *Id.* at 15. As a renewable energy resource, Mr. Bradford stated, the Wind Project clearly reduces environmental risk, and the Project contributes to a diverse generating portfolio designed to minimize risk. *Id.* Mr. Bradford noted the diversity of the portfolio is also a favorable reliability attribute. He stated the BTA contract will contain many terms and conditions designed to ensure the long-term, reliable operation of the plant and will also provide cost certainty by establishing ceiling thresholds on certain costs. *Id.* Mr. Bradford explained that analysis of the Locational Marginal Pricing ("LMPs") indicates reliable deliverability and transmission characteristics. *Id.* With respect to Mr. Hanks' concerns regarding transmission congestion, Mr. Bradford disagreed with Mr. Hanks because CEI South will operate the unit in the MISO market just as it does its other units and PPAs both inside and outside of its service territory. He explained that the difference in LMPs, whether favorable or unfavorable, is handled through the Fuel Adjustment Clause in a well-established process, and the analysis of historical LMPs shows that the site is not expected to have significant congestion. *Id.* He opined that it is purely speculation to guess future grid configurations and events and therefore impossible to know, with complete certainty, what congestion costs will be. *Id.* at 16. Mr. Bradford acknowledged that the Project may incur Network Upgrade costs, but those are included in the Wind Project estimate ("Interconnection Costs") and are capped as part of the Project's cost risk protections for CEI South's customers. *Id.* While MISO continued to delay the System Impact Study ("SIS"), the Developer has provided CEI South with the results of an independent study estimate of network upgrade costs that fall under the cap. *Id.* Mr. Bradford explained that the SIS results are not needed to determine whether energy from the Wind Project will "reach" CEI South's service territory, but rather what will be the cost for the TO to fully integrate the Wind Project onto the transmission system. He reiterated that the historical and present-day values of congestion indicate the project site as a very suitable location. *Id.* at 17.

Mr. Bradford responded to the OUCC's concerns over the stated capacity of the Wind Project and potential line losses. He explained that the net capacity factor ("NCF") and MISO's Seasonal Accredited Capacity Value are contrasting concepts and are not directly comparable as Mr. Lantrip has attempted to do. *Id.* at 17. He explained that the NCF is an energy parameter corresponding to the annual expected energy output of the Project, whereas the accredited capacity refers to the credit CEI South will receive towards meeting its PRMR. *Id.* Mr. Bradford responded to Mr. Lantrip's claims that line losses can be expected to further reduce the amount of usable generation by stating that the electrical line losses Mr. Lantrip is referring to have already been

taken into account and represented in the estimate of annual expected output, and these line losses are independent of the location of the Project. He stated locational line losses do not reduce the amount of energy generated at the site and are part of the wholesale power market dynamics compensated by LMP. *Id.*

Mr. Bradford conceded that, all other things equal, a project within Indiana borders would be preferred – but he explained that simply is not possible. *Id.* at 18. Mr. Bradford disagreed with Mr. Hanks’ assertion that the project “will not contribute to the economic development of Petitioner’s service territory or the State of Indiana,” citing Mr. Leger’s description in direct testimony of wind’s critical role in balancing the customers’ increasing desires for the utility to provide renewable energy options to serve their needs and satisfy sustainability goals while ensuring safe, reliable, and affordable provision of electric service to meet customers’ demand and reliability needs. *Id.* (citing Pet. Ex. 1 at 11). He noted how bringing the Wind Project online as part of CEI South’s generation portfolio directly addresses large customers’ demand for renewable energy supply and serves to attract new business to the region, which enhances economic development. Pet. Ex. 2-R at 18.

In responding to Mr. Hanks’ contention that the project cost exceeds that used as an assumption during IRP modeling, Mr. Bradford pointed out that increased project costs are being experienced by the entire utility industry, yet the Wind Project remains competitive with the results of CEI South’s most recent 2022 All-Source RFP. *Id.* at 19. Mr. Rice testified on rebuttal that as the costs for wind projects have risen, CEI South updated modeling to reflect higher costs, including the cost of this Wind Project, in its 2022/2023 IRP modeling. He stated the value of wind resources is still being recognized within the 2022/2023 IRP and additional wind resources beyond the included Wind Project have been consistently selected based on least cost optimization modeling. Pet. Ex. 3-R at 4. Mr. Rice noted that while costs in the 2019/2020 IRP were significantly lower than estimated costs in this proceeding, this is true of many costs in the model, including energy and capacity purchases. *Id.* He testified that the fact that wind is still being selected is a clear indication that CEI South should continue to pursue the Wind Project. *Id.* He stated it is no surprise that the costs for wind projects have risen over time due to the energy and capacity benefits provided by wind. He listed several other utilities pursuing wind projects in over the next several years, and highlighted that the level of demand for wind does not suggest that costs will be coming down any time soon, and CEI South’s customers would not be well served by waiting for the next wind project. *Id.* at 5. Mr. Rice pointed out that no one in the case has disputed that wind continues to be part of CEI South’s Preferred Portfolio and is needed.

With respect to the scoring of the Wind Project, Mr. Bradford testified that while some of the projects in CEI South’s two most recent RFP solicitations scored marginally higher in the category of Energy Settlement Location, this is no guarantee that congestion costs associated with these alternate sites would be lower than the current Wind Project. *Id.* In addition, Mr. Bradford explained that the Wind Project was scored in the Interconnection category consistent with its status in the MISO 2020 Interconnection Cycle. While projects in more advanced cycles scored higher in the Interconnection and Development Status scoring category, one of those projects reflected costs that were consistently uncompetitive and another of the projects was withdrawn by the developer. *Id.* at 19-20. Mr. Bradford stated the current Wind Project has consistently been shown to be the most competitive and best option for CEI South to pursue. *Id.* at 20. He testified that the discrepancy in scoring identified by Mr. Hanks would not change this fact. *Id.*

Mr. Bradford also responded to CAC witness Inskeep's position in favor of PPAs versus a BTA. He began by pointing out that the levelized cost of the current Wind Project is competitive with comparable PPAs, even though the price of the Wind Project reflects increases that have occurred whereas the PPA prices are merely indicative and do not reflect such increases despite the likelihood they would experience similar increases. *Id.* at 21. In addition, there were numerous other considerations making the current Wind Project the best choice among the possible options. *Id.* at 26. He stated that Mr. Inskeep's belief that BTAs result in higher costs to customers simply because CEI South earns a rate of return on the project fails to consider various financial costs and financial risks associated with PPAs and also fails to consider the full value of BTA structures. *Id.* Mr. Bradford testified that customer impact is closely evaluated during the IRP process and during evaluation of RFP proposals. *Id.* at 28. He stated it is smart to have a mix of structures to diversify the risks associated with each. He noted that CEI South, along with the entire renewable industry in recent years, has observed developers' inability to bear the cost of risk of unexpected market changes and the stability and financial backing of a utility is one of the advantages of a BTA. *Id.* PPA owners may change hands or may run into financial insolvency which would place CEI South in a difficult situation potentially having to source energy from the wholesale power market which could be very expensive. Shorter term PPAs also increase customer exposure to energy prices after the term of the PPA expires. *Id.* Mr. Bradford also testified that the types of costs Mr. Inskeep contends are not included in PPA structures are passed along in the PPA price, namely costs of capital expenditures, interconnection cost, overheads and owner's costs, and spare parts. *Id.* at 24. Mr. Bradford also contended that to be fair in the economic comparison between PPA and BTA structures, Mr. Inskeep should consider the cost of imputed debt and weight that among the advantages and disadvantages of each type of structure. *Id.* at 25. He testified that today's market prices wind PPAs at about the same LCOE as the current Wind Project, before taking into consideration the added cost of market replacements, imputed debt, or the expected cost of risk factors associated with PPAs. *Id.* at 27.

With respect to Mr. Inskeep's objections to CEI South's use of the market replacement methodology in the LCOE analysis to compare BTAs and PPAs, Mr. Bradford explained that CEI South provided all formulas and data to view every detail of the market replacement methodology calculations in its case-in-chief. He explained how the market replacement LCOE adders worked and that there is no flaw in Petitioner's calculations. *Id.* at 22-23. He also noted that the market replacement methodology was used in each of CEI South's recent solar CPCN filings. *Id.* at 25. Mr. Bradford stated that CEI South will seek the most cost-effective replacement for its PPAs that expire and will hopefully obtain replacement resources at a lower cost than what is used to estimate the cost of market replacements in the LCOE analysis, but finding resources at lower cost is far from guaranteed. *Id.* at 24. He also noted that the newest energy and capacity forecasts in use in the 2022/2023 IRP process project even higher costs for energy and capacity in the future. *Id.* at 25; Pet. Ex. 3-R at 4.

Mr. Bradford testified that all other things being equal, BTAs provide greater reliability assurance for customers than PPAs because the utility can closely control the operation of a plant under a BTA structure and align it with its reliability imperative. *Id.* at 28. Additional advantages of BTA structures compared to PPAs include the fact that BTAs allow the utility to retain land rights, zoning permits, and all Generator Interconnection rights, which are among the most valuable and hardest attributes of a renewable project to obtain; in addition to providing a long-

standing resource with known cost of energy that can provide economies of scale via reuse and re-utilization of land rights, interconnection rights, and infrastructure. *Id.*

In responding to Mr. Inskeep's and Mr. Latham's concerns about the inclusion of contingency in the request for cost recovery, Mr. Bradford testified that including a reasonable amount of contingency is standard in the industry and extremely useful, especially in today's volatile market to establish a buffer to absorb reasonable, yet unidentified or unknown changes that could add to the cost of the project. *Id.* at 32-33. Mr. Bradford pointed out that Mr. Inskeep's objection to the cost estimate of legal fees for the Project compares the cost estimate of the legal fees in this Project to the legal fees estimated in another utility's rate case proceeding. The estimate of legal fees in this case includes commercial transactional fees, extensive due diligence, and local legal support during development tasks such as land procurement, ministerial permitting, etc. The rate case fees cited by Mr. Inskeep are for the cost of representation in the IURC proceeding, thus making for an "apples to oranges" comparison. *Id.* at 32.

Mr. Rice responded to concerns raised by the OUCC and CAC with respect to affordability and bill impacts. He described the efforts taken by CEI South over the last decade to keep customer bills from rising too quickly, pointing out that customer bills have in fact remained relatively flat, below inflation levels over the same time period. Pet. Ex. 3-R at 2. He testified that while it is true that CEI South has had higher bills than its Indiana peers during the past decade, bills have grown less than 1% per year on average between 2013 and 2022 and CEI South is in fact no longer the highest. *Id.* at 2-3. He also described CEI South's efforts to protect affordability through the selection of the Preferred Portfolio and the securitization of AB Brown Units 1 & 2. *Id.* at 3. Mr. Rice explained that the table of CEI South's recent CPCN filings and other recovery requests presented by Mr. Lantrip is not a complete picture of net impacts of CEI South's Generation Transition Plan. He stated Mr. Lantrip's table does not include O&M or fuel savings that result from plant closures, or savings associated with selling RECs from renewable projects. *Id.* at 5. Mr. Rice testified that affordability was a priority in CEI South's 2019/2020 IRP and still is as CEI South executes on the Generation Transition Plan, including securitization of A.B. Brown Units 1 & 2. *Id.*

Mr. Rice also responded to testimony from Mr. Inskeep stating it is difficult to assess the reasonableness of the Wind Project without an updated bill impact. Mr. Rice testified that static bill impact calculations are helpful, but do not fully measure cost implications of alternate paths that ultimately affect customer bill, whereas IRPs do assess alternative paths over a wide range of futures, including the potential for future CO₂ cost. Pet. Ex. 3-R at 6. He noted that the last IRP indicated that wind is needed as a part of a diverse set of resources that shield customers from high cost and future cost risk. Mr. Rice also stated that the cost for the Wind Project should decline over time as the assets depreciate; static bill impacts do not capture this or the fact that these assets are not affected by varying fuel prices over time. *Id.*

With respect to Mr. Inskeep's suggestions on the proper allocation among rate classes of the Wind Project costs, Mr. Rice testified that allocations will be evaluated, and updated as applicable, for all rate schedules within CEI South's next general rate case. Pet. Ex. 3-R at 7. With respect to Mr. Lantrip's recommendation to use a levelized rate if the Commission grants cost recovery for the Wind Project, Mr. Rice explained that traditional ratemaking is the *de facto* approach and CEI South is the only utility in the State that has used a levelized rate to recover the

cost of certain solar generation projects. *Id.* at 7. He explained why this might be appropriate in the context of solar projects, where there was a need to pass back Investment Tax Credit (“ITC”) benefits to customers in this way. However, for the Wind Project, the PTCs will directly offset the revenue requirement, lowering the cost in the first ten years of operation, so the levelized cost approach is not needed. *Id.*

Ms. Behme defended Petitioner’s application of a one percent A&G rate in estimating the total Wind Project costs. She explained that consistent with CEI South’s policy, A&G costs associated with supporting capital projects are segregated in CEI South’s books and records before being applied to capital projects in the form of an A&G overhead. Overhead costs including accounting, legal services, human resource management, insurance and other similar costs are applied for general oversight, management, and administrative costs. Pet. Ex. 4-R at 2. She explained that each capital project has an A&G overhead rate associated with it, which is then applied to that capital project. A&G overhead rates are developed based on the relationship between A&G functions supporting capital projects and ongoing capital spend associated with those same projects. A&G overhead is applied to a capital project using the total project’s costs as a basis for the A&G costs allocable to that project. *Id.* at 3. Ms. Behme stated that the nature of A&G costs recorded to any given capital project in the form of A&G overhead does not change what they are. They are separate, distinct A&G costs, which are representative of the overall general oversight, management, and administrative activities associated with the project. *Id.* at 3. Ms. Behme noted that, per the Company’s construction overhead policy, the Wind Project, as a major project, has a flat, fixed A&G overhead rate of 1.0%, which acts to limit variability in A&G overhead costs that are applied to the Wind Project, as even minor fluctuations in the A&G overhead rate could lead to large allocations of A&G costs to the Project. *Id.* Ms. Behme testified that Mr. Latham’s expectation of a breakout of costs with A&G overhead amounts attributable to each shows a misunderstanding of how A&G overhead costs are determined and applied to capital projects. *Id.* at 3. She stated the level of detail that Mr. Latham expects contravenes the purpose of an A&G overhead. *Id.* at 4. Ms. Behme explained how CEI South’s practice is in accordance with FERC Uniform System of Accounts (“USOA”) Electric Plant Instructions Nos. 3 and 4. Instruction 3 (Components of Construction Cost), states that, “the cost of construction properly includible in electric plant accounts shall include, where applicable, the direct and overhead cost as listed and defined hereunder.” Instruction 4 (Overhead Construction Costs) goes on to discuss overheads specifically and authorizes a utility to include overhead costs, such as general office salaries and expenses, applicable to construction as a part of its assets. Accordingly, the Company’s allocation of A&G overhead charges to the Wind Project is not only consistent with CEI South’s policy but is also in accordance with guidance under the FERC USOA. *Id.* at 4. Ms. Behme testified that Petitioner received approval of capitalized A&G overhead for similar projects, including Cause Nos. 45564 and CEI South has applied an A&G overhead to capital projects dating back to its last base rate proceeding in Cause No. 43839. *Id.*

Ms. Behme explained that allocation of A&G to project development is not duplicative and these costs are typically included in the costs of capital projects given these capital projects are supported by personnel, facilities and systems in supporting roles not directly involved in the project. She stated the Wind Project, despite being a BTA, is no different in this regard, as it will still be supported by CEI South’s management and administrative functions. *Id.* at 5. Ms. Behme expressed concern that the total reduction recommended by Mr. Latham to the Wind Project cost estimate related to A&G overhead appears to be more than double the total amount of A&G

overhead for the Wind Project shown on Workpaper FSB-1 (Confidential). *Id.* at 5-6. With respect to the allocation of A&G for spare parts, Ms. Behme explained that it is normal for a utility to capitalize spare parts that are critical to the nature of the operation of the asset and because of the long lead time to acquire new parts. *Id.* at 6. Similarly, CEI South is requesting to include study/prework costs for recovery as part of the total Wind Project costs, and therefore an A&G allocation should be included. *Id.* Despite Mr. Latham's acknowledgement that some level of A&G overhead is appropriate, Ms. Behme noted that Mr. Latham has suggested a disallowance of all of CEI South's applied costs. *Id.* Ms. Behme also pointed out on rebuttal where the AFUDC amount is included in Petitioner's Workpaper FSB-1 (Confidential). *Id.* at 7.

In response to Mr. Inskip's presentation of an O&M estimate, Ms. Behme testified that if the CPCN is granted in this request there will be actual known values of O&M included at the time of filing, whether in the next general base rate case or through the CECA mechanism. Any incremental deferred O&M amounts will continue to be recovered through the CECA mechanism in the annual filings or a future general base rate case. *Id.* at 7.

Ms. Behme also defended CEI South's proposal to include for recovery costs in the generation transition asset ("GTA") allocation and planning costs for the Wind Project. She stated all planning costs incurred, and expected to be incurred, are incremental costs required to develop the Preferred Portfolio. Ms. Behme pointed out that CEI South has requested and received approval from the Commission for projects that included similar allocated deferred planning costs and GTA allocated amounts. *Id.* at 8. Ms. Behme cited the USOA FERC 183 and FERC 107 account descriptions and testified that all the planning costs to be included in the Wind Project are incremental expenditures to the capital project and must be incurred as part of the construction of this generation asset. *Id.* at 8-9. These costs initially meet the criteria to be deferred on the balance sheet, in accordance with FERC 183 or FERC 107, as applicable, and are therefore not considered operating costs of the Company in accordance with the FERC USOA. *Id.* at 9. Ms. Behme described further Petitioner's request for deferral authority for planning costs if the CPCN were denied. *Id.* at 10.

6. Commission Discussion and Findings:

A. Approval of CPCN for CEI South's Acquisition of the Wind Project Pursuant to the BTA.

Indiana Code § 8-1-8.5-5 sets forth the criteria for approval of a utility specific generation proposal. 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 based on the evidence of record, 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 the project.⁵

As raised by the OUCC and CAC, CEI South redacted significant information in its filing. Pub. Ex. 1 at 6. While the Commission was able to access the details of the project after submission

⁵ In addition, the Commission must make findings pursuant to § 8-1-8.5-5(e). This requirement is the subject of CEI South's proposed ARP, a matter we will address later.

of confidential material, until the day before the hearing when CEI South filed its updated testimony, the general public could not have known that the project is located in MISO Zone 4 and that it is 200 MW - although CEI South did state in its original testimony that the Project was out of state. CEI South asserts that it needs to maintain confidentiality of the material in order to preserve its competitive advantage with the Developer, as clean energy projects are in high demand. Pet. Ex. 2-R at 3. Thus, CEI South redacted details of the location of the Project, the number of MW (again, revealed the day before hearing), identity of the developer, and pricing from its filings, leaving the public in the dark about the value and prudence of the proposal.

CEI South's rebuttal asserted that the OUCC's involvement on behalf of the public, and its access to confidential material, mitigates the concern about project transparency. Pet. Ex. 2-R at 4-5. But we think that CEI South misses the point on the criticism of its redactions – the *general public* cannot access that confidential material, and the OUCC and CAC cannot reveal it under the strict terms of CEI South's requested protection. For example, the actual location of the project remains confidential. While we understand that competition in the market for clean energy projects is high, the extent to which CEI South shrouded its proposal in mystery is a disservice to its customers and the public at large. It is unclear to what extent this Commission's approval of a project outside the boundaries of our jurisdiction impacts a potentially unknowing public in the locality where the project is proposed to be located.⁶ No information was provided regarding the locality's openness to the project, zoning or other details normally provided when such a project is submitted for approval.

Even now as we make our decision we are bound by the Presiding Officers' confidentiality rulings to maintain the secrecy of CEI South's information. In our on-going responsibility to balance the interests of utilities with those of that utility's ratepayers, we find that being hamstrung by the degree that CEI South's evidence has been shielded from public review is not in this Commission's or the public's interest.

It is with this background that we review CEI South's request. While CEI South makes much of the fact that the proposed Project is in conformity with its last IRP, and while neither the OUCC nor CAC claimed the Wind Project is inconsistent with the 2019/2020 IRP, consistency is not the only issue for us to examine. The OUCC asserted that the project cost exceeds that used as an assumption during IRP modeling, while Mr. Bradford pointed out that increased project costs are being experienced by the entire utility industry. *Id.* at 19. The evidence shows that while costs in the 2019/2020 IRP were significantly lower than the best estimate of the costs of the Wind Project in this proceeding, this is true of many costs in the model, including energy and capacity purchases. Pet. Ex. 3-R at 4. Based upon the evidence, we find the Wind Project was shown to be consistent with CEI South's 2019/2020 IRP and the statewide analysis.

CEI South stated that the capacity factor of the project is 40.58%.⁷ What credit CEI South will receive for its generation is a different matter: MISO's most recent capacity credit report showed capacity credit factors for wind for the 2023-24 season of 18.1% for Summer; 23.1% for

⁶ CEI South states that the locality in question is supportive of the project, but there is no other evidence in the record to show this. Pet. Ex. 2 at 12.

⁷ CEI South Attachment FSB-4 (Public), p. 2.

Fall; 40.3% for Winter 2023-2024; and 23.0% for Spring 2024. *Planning Year 2023-2024 Wind and Solar Capacity Credit Report*, at 3, [misoenergy.org](https://www.misoenergy.org) (last accessed April 24, 2023).⁸

Assuming the Project has an actual capacity factor of 40.58%, CEI South will only receive capacity *credit* for a smaller amount. At the time of Petitioner's filing of its case-in-chief, this resource was expected to cover approximately 15 MWs toward CEI South's Planning Reserve Margin Requirement ("PRMR") in the summer, and approximately 40 MWs of accredited capacity in the winter. Thus, the project will only provide an incremental amount of capacity to meet CEI South's PRMR.

Mr. Rice testified the Preferred Portfolio (and the Wind Project) have the characteristics of reliability, cost effectiveness, flexibility, diversity, risk mitigation, sustainability, and timeliness. Pet. Ex. 3 at 14. Wind suffers from intermittency, and intermittent power is the opposite of reliable power. While the project includes battery back-up, the charging of a battery necessarily requires that energy is available to power the battery. Without wind blowing, batteries will sit idle. CEI South states that the wind project supplements its solar projects to offset the seasonal aspect of solar; the sun shines more in the summer and less in the winter, and the wind blows more in the winter and less in the summer. While we accept this general precept, it does not serve to alleviate our general concern about intermittency per se.

As for diversity, the retirement of CEI South's coal units at A.B. Brown and Culley have resulted in CEI South's need to replace generation, as evidenced by the two gas-fired combustion turbines ("CTs") approved in Cause No. 45564. In combination with the solar projects approved and pending before the Commission, we can agree that the Project diversifies CEI South's generation sources. We note that while diversity of generation sources is a component of the State's desired profile for electricity, it is just one aspect.

As to risk mitigation, the risks presented by the search for additional generation are legion. As experienced in the last few years, the industry has been presented with new environmental mandates requiring remediation and/or cessation of certain generation activities, such as the need for new and different water treatment for coal ash. The price of both gas and coal has surged and then retreated. Transportation problems caused by rail limitations after the pandemic have hamstrung utilities attempting to maintain sufficient coal at plants. Coal plant retirements have placed higher emphasis on new forms of generation that mitigate the contingencies inherent in the marketplace.

Within these competing priorities, diversity of generation sources provides layered protection against the vagaries of the market. However, as noted above, diversity of generation is but one piece of the puzzle and risk mitigation itself is countered by the risk aspects of each type of generation. Having wind generation does provide a hedge against coal and gas prices, but also is subject to Mother Nature's whims. Therefore, the risk reduction by the inclusion of wind suffers from the same issues as all generation; it provides one piece of overlapping generation that helps fill gaps, with limitations.

⁸ We note that these are *average* capacity factors, calculated over MISO's multiple zones.

Wind energy is “sustainable” in the same way that solar energy is – it is derived from natural forces that have been harnessed to serve our electric needs. However, the mechanisms used to harness that energy are subject to market forces. The prices of metal needed to create wind turbines have increased. Wind is sustainable, but still has its costs. To the extent that timeliness is a factor, we defer to CEI South’s own calculation of when its generation will need to be on line. CEI South must meet its capacity obligations to MISO in time for each year’s capacity auction. CEI South also stated that selection of a wind asset purchase is consistent with CEI South’s Plan to diversify its generation mix, not only by resource type, but also investment type (ownership and PPAs) and duration, varying PPA terms providing additional options and/or off-ramps. Pet. Ex. 2 at 8. These are all laudable goals, but consistency with a corporate plan is per se not a measure of prudence. A chosen plan may be consistent with goals but still be laden with flaws.

i. Best Estimate of the Cost.

CEI South witness Bradford testified to the best estimate of the costs of the Wind Project totaling \$636 million. The breakdown of the costs is confidential and set forth at page 16 of Mr. Bradford’s direct testimony. As presented by CEI South, the Wind Project will be fully developed, engineered, procured and constructed by a Developer and then acquired by CEI South pursuant to a BTA in a transfer of a special purpose entity (the “Project Company”) established to facilitate ownership of the Project. Under the BTA, the Project Company will own the Project until it achieves substantial completion, upon which time, CEI South will acquire the Project and all its attributes which are being held in the subsidiary limited liability company. At or about that same time, the separate corporate structure will be collapsed and CEI South will then own the generating facility directly. Pet. Ex. 2 at 13.

CEI South argues that it does not bear a burden of proof to show the Wind Project “is the most affordable option,” citing the June 28, 2022 Order in Cause No. 45564. We recognize that “least-cost planning does not require selection of the absolute lowest cost alternative.” 45564 Order at 21. Similarly, a “utility should, in recognition that it bears the service obligations of Ind. Code § 8-1-2-4, be given some discretion to exercise its reasonable judgment in selecting options to implement which minimize the cost of providing such services.” *Id.* But this leniency has limits.

We reviewed CEI South’s evidence stating the cost estimate for the Project was based upon competitive bidding derived from RFPs conducted as part of the IRP process. CEI South engaged 1898 & Company to evaluate, score, and rank proposals based on established quantitative and qualitative scoring criteria that assesses reliability, cost, and certainty. Pet. Ex. 2. at 7. While the Wind Project was not submitted into one of CEI South’s RFPs, it was identified through collaboration with 1898 & Company, in May 2021, through a process in which CEI South and 1898 & Company identified other potentially viable wind projects that either had been submitted in other utility RFPs or had entered into the MISO Generator Interconnection Queue process (the “2021 Wind Bids”). *Id.* at 8. The assessment of the 2021 Wind Bids included: levelized cost of energy (“LCOE”), energy settlement location, interconnection and development status, and project risk factors like credit worthiness, development experience, project maturity, delivery date, project site control status, permits, and zoning. *Id.* at 10. Ultimately, CEI South selected the Wind Project that is the subject of this Cause based on its scoring, in relation to four other proposals, on cost, project/development certainty, location, and developer experience. CEI South states that the

proposed Wind Project has consistently been shown to be the most competitive and best option for CEI South to pursue. Pet. Ex. 2-R at 20.

Negotiations for the BTA are on-going and CEI South states that the “expected” cost for the Wind Project is \$636 million for a 200 MW wind farm located outside of Indiana in MISO Zone 4. In acknowledging that the BTA has not yet been finalized, we are troubled by CEI South’s argument that it is nonetheless “cost effective.” Combined with CEI South’s statements that the price is likely to increase, not decrease, this causes us further concern. Pet. Ex. 3 at 20. CEI South derived this Project from its 2019-2020 IRP, at a time when the full disruptions of the COVID-19 pandemic had not fully manifested. CEI South testified that costs in the 2019/2020 IRP were significantly lower than estimated costs in this proceeding, adding that this is true of other costs in the model, including energy and capacity purchases. Pet. Ex. 3-R at 4. Rather than easing our concern, this underscores how uncertain the price for the Project, and all of its attendant costs, is, and strains CEI South’s argument that the Project is “consistent” with the 2019-20 IRP. By contrast with that IRP, the Project is smaller and more expensive (300 MW to 200 MW).⁹ As noted by OUCC witness Lantrip, the BTA presented in this case contains no protection against a significant increase in the Project cost. Pub. Ex. 1, p. 8, ll. 20-21.

On rebuttal, CEI South stated that “[t]he BTA, when executed by the parties, will... include the components and specific and significant details...such as detailed project and equipment specifications, as well as provisions related to the major subcontracts (i.e., contractor or supplier agreements).” Pet. Ex. 2-R at 10. In addition, CEI South “stated the BTA contract will contain many terms and conditions designed to ensure the long-term, reliable operation of the plant and will also provide cost certainty by establishing ceiling thresholds on certain costs.” *Id.* at 15. However, these types of details are what this Commission expects to see when a utility applies for a CPCN. The Commission cannot accurately judge a project for which the details are yet to be determined.

Further, we cannot ignore the impact that this Project will have on customers’ bills. CEI South has high rates now (notwithstanding the vagaries of FAC impacts), and is scheduled to file a rate case by the end of calendar year 2023.¹⁰ That rate case will likely include the new CTs being built at A.B. Brown, which will swell CEI South’s rate base. An additional \$19.86 per month for the Project proposed herein – *based on a non-final estimate* – adds insult to injury. We view this cost in light of the capacity concerns expressed above. Customers will pay nearly twenty dollars a month whether the Project produces energy or not, and the capacity that will be produced will not be close to the 200 MW nameplate capacity.

CEI South’s rebuttal took issue with the CAC and OUCC’s concerns about cost, and in an effort to counter those arguments, stated that “the table of CEI South’s recent CPCN filings and other recovery requests presented by Mr. Lantrip is not a complete picture of net impacts of CEI South’s Generation Transition Plan.” Pet. Ex. 3-R at 5. CEI South argued that Mr. Lantrip’s table did not include O&M or fuel savings resulting from plant closures, or savings associated with selling RECs from renewable projects. We must note that O&M savings from closed plants will

⁹ As a mitigating note, the IRA was not in place during the 2019-2020 IRP, and the production tax credits available to the Project do ameliorate some of the financial impact.

¹⁰ CEI South is required to file a rate case as a consequence of having reached the end of the seven-year period set forth in the TDSIC statute. Pub. Ex. 1, p. 3, ll. 9-12.

not be recognized until CEI South updates its rates, fuel savings are recognized through the FAC process, and the sale of RECs is recognized in CEI South's CECA filings. Therefore CEI South's protestations are without merit.

In addition, CEI South's argument that its rates have increased the least during the period of 2013 to 2022, Pet. Ex. 3-R at 2-3, must be viewed through the important lens that the final Order in CEI's last rate case was issued in April of 2011. Final Order, Cause No. 43839 at 3 (Ind. Util. Regul. Comm'n Apr. 27, 2011). In the absence of rate cases in the intervening years, it is unsurprising that CEI South's rates have not increased *as much* as other Indiana IOU's.

The Project comes at a high price for CEI South's customers, whether it produces energy or not. Depending on the season, the Project may offer limited MWs of energy. If the battery backup is successful, that energy can be stored for future release. If CEI South is lucky, the Project will produce at a higher capacity, ameliorating some of the cost-benefit burdens. But that is not the end of the story.

CEI South currently takes wind energy from two farms within Indiana, and both are encumbered with frequent occurrences of negative locational marginal prices ("LMPs"). In market terms, a negative LMP means utilities must pay to provide energy into the market when demand is low. Having battery backup can mitigate this problem by storing energy, rather than discharging it to the grid. The other alternative, of course, is to shut down turbines when demand is low, should storage be insufficient. CEI South stated that it anticipates that prices at the node (the location of which still remains confidential) will only be somewhat negative. LMPs are calculated by combining the cost of the generation and transmission costs. While wind has no fuel costs, we are aware that the Project is outside the State and in MISO Zone 4. We can reasonably infer that transmission costs will impact the LMP of the Project, even absent other market factors.¹¹

Based on CEI South's own testimony, we know that the \$636 million price tag is a non-binding estimate. Pet. Ex. 1 at 10. CEI South witness Bradford testified that the prices in the 2021 Wind Bid process "can be viewed as a good starting point but are not necessarily indicative of the final conditions", especially when the bids "were submitted prior to the broad inflationary challenges that have hit not only the wind industry, but the entire nation." Pet. Ex. 2 at 15. Until CEI South completes the BTA, the final estimate will not be known. This Commission is concerned with the rate impact of the current \$636 million estimate, which will be almost \$20 per month for a customer using 1,000 kWh. We find that the level of uncertainty as to the final price to be too great to qualify as a "best estimate."

We also know that the \$636 million estimate does not include removal costs for the Project's retirement after 30 years. CEI South will include those removal costs as part of a formal depreciation study as part of its next applicable base rate case. Pet. Ex. 4 at 8. Therefore, the

¹¹ FERC has examined the issue of negative LMPs, and in one case found that they were caused by a high proportion of self-committed units in the real-time market. Negative LMPs can also be an indication of too much energy being produced during periods of low demand as well as transmission constraints. *See, Southwestern Pub. Serv. Co.*, 70 FERC P 61071 at *8, 2020 WL 509102 (Fed. Energy Regul. Comm'n 2020).

unknown additional amount to complete the Project will be compounded by demolition costs that will ultimately be placed into base rates.

To be clear, we are not ignoring the value of the Production Tax Credits or RECs in the overall financial picture of the Project. Both could apply to reduce the rate impact on customers. But the subtraction of an unknown amount from an already-large number does not overcome our concerns.

CEI South has also requested that it be allowed to recover the costs related to the Project even if we do not approve it. Pet. Ex. 4 at 9-10. We are aware of the passage of HEA 1417, allowing utilities to defer assets for later rate recovery without prior Commission approval.¹² But the Commission retains its jurisdiction to determine whether or not those deferred amounts are later recoverable. As amended, I.C. § 8-1-2-10 now states:

(b) A public utility...may defer for consideration by the commission and for future recovery costs incurred or to be incurred in a regulatory asset consistent with the accounting rules that concern the recognition of regulatory assets and that are in effect at the time the deferral decision is made by the utility, including any of the following costs, to the extent those specific costs are incremental and are not otherwise already included for recovery in the utility's rates:

- (1) Financing costs.
- (2) Depreciation expenses.
- (3) Asset retirement obligations.
- (4) Operation and maintenance costs.
- (5) Capital costs.
- (6) Tax costs.
- (7) Tax credits.
- (8) Incurred costs that are directly related to the preparation and conduct of a regulatory proceeding.

(c) Commission preapproval for the creation of a regulatory asset is not required.

(d) Notwithstanding section 68 of this chapter, a utility described in subsection (b) may recover through the utility's rates over a reasonable period, as determined by the commission, costs that are:

- (1) deferred under this section; and
- (2) *found to be reasonable and prudent by the commission.*

Emphasis added.

While HEA 1417 has expanded the rights of a utility to defer assets without prior approval, this Commission is still obligated to decide whether rate recovery of that amount is reasonable and prudent. In this case, we find that it is neither. As we are denying CEI South's requested Project, the amounts spent by CEI South will never result in property that is used and useful in the provision of utility service. *See*, I.C. § 8-1-2-6. Whatever changes the legislature has made to statutes, we must still ensure that utility requests comply with *all* parts of the statutes that govern us, and that they be read *in pari materia*. Harmonizing as we must all applicable language, we find our decision

¹² HEA 1417 was effective on passage.

herein to be fully supported by old and new statutory language, and within our prescribed jurisdiction over the rates of the utilities we regulate.

Based on the evidence, the Commission cannot find that CEI South has provided the best estimate for the cost of the BTA in total amount of \$636 million. We therefore deny CEI South's Project and its ancillary request to recover costs incurred to prepare the Project.

B. Conclusion.

CEI South has presented a Project without the requisite specificity to warrant a CPCN. It has not provided the kind of project details or binding estimate that this Commission requires under the terms of I.C. § 8-1-8.5., in that the evidence presented does not provide a "best estimate." Under the current "estimate" of \$636 million, which is more in the nature of a placeholder, customers using 1,000 kWh per month will pay almost \$20.00 more per month. This cost will be borne by ratepayers regardless of how much energy the Project actually generates, and CEI South's own evidence is that the cost will increase. We find that this combination of factors renders this Project infirm to the point that we must deny it.

Similarly, we deny CEI South's request to defer and recover costs incurred in the preparation and presentation of the Project to the Commission. It is the Commission's duty to determine whether costs are recoverable under a reasonable and prudent standard, and we find the Project is neither.

We remind CEI South that it has recently been granted approval to build two new CTs at the A.B. Brown station under Cause No. 45564. While those units may be impacted by the varying cost of gas, those costs are less likely to add \$20.00 a month to bills, while simultaneously producing less energy. CEI South's customers will be better served through the use of a generating unit with less intermittency and uncertainty, and we commend CEI South to use this already-approved resource.

7. Confidential Information. CEI South filed motions for protection and nondisclosure of confidential and proprietary information on January 10, 2023 as supplemented on January 30, 2023, and March 6, 2023, respectively. In its motions, CEI South states certain information redacted in the evidence is confidential, proprietary, competitively sensitive, and/or trade secrets. Docket entries were issued on January 20, 2023, January 31, 2023, and March 9, 2023, finding such information to be preliminarily confidential and protected from disclosure under Ind. Code §§ 8-1-2-29 and 5-14-3-4. The confidential information was subsequently submitted under seal. The Commission finds the information for which CEI South seeks confidential treatment is confidential pursuant to Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3, is exempt from public access and disclosure by Indiana law and shall continue to be held by the Commission as confidential and protected from public access and disclosure.

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

1. CEI South is denied a certificate of public convenience and necessity for CEI South's proposed acquisition of the Wind Project through the Build Transfer Agreement.

2. CEI South's estimated cost for the Wind Project is denied.

3. CEI South's request to recover the costs of the Project despite a Commission rejection of the Project is denied.

4. The Confidential Information submitted under seal in this Cause (including confidential information to be submitted under Ordering Paragraph 7) pursuant to CEI South's requests for confidential treatment is determined to be confidential trade secret information as defined in Ind. Code § 24-2-3-2 and shall continue to be held as confidential and exempt from public access and disclosure under Ind. Code §§ 8-1-2-29 and 5-14-3-4.

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

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

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

**Dana Kosco
Secretary of the Commission**