

STATE OF INDIANA

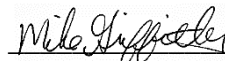
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
APPLESEED SOLAR, LLC FOR CERTAIN)
DETERMINATIONS BY THE COMMISSION) CAUSE NO. 45899
WITH RESPECT TO ITS JURISDICTION)
OVER PETITIONER'S ACTIVITIES AS A)
GENERATOR OF ELECTRIC POWER)

PETITIONER'S SUBMISSION OF AGREED PROPOSED ORDER

Petitioner, Appleseed Solar, LLC, by counsel, respectfully files with the Indiana Utility Regulatory Commission an agreed proposed order in this proceeding. Petitioner has incorporated in the proposed order the comments received from the Indiana Office of Utility Consumer Counselor, and the parties have agreed to the submission of the attached proposed order.

Respectfully submitted,



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Attorneys for Petitioner,
Appleseed Solar, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was electronically delivered this 18th day of August, 2023, to the following:

Office of Utility Consumer Counselor
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Attorney for Petitioner,
Appleseed Solar, LLC

STATE OF INDIANA

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APPLESEED SOLAR, LLC FOR CERTAIN)	
DETERMINATIONS BY THE COMMISSION)	CAUSE NO. 45899
WITH RESPECT TO ITS JURISDICTION)	
OVER PETITIONER’S ACTIVITIES AS A)	APPROVED:
GENERATOR OF ELECTRIC POWER)	

ORDER OF THE COMMISSION

Presiding Officers:

Sarah E. Freeman, Commissioner

Kristin E. Kresge, Administrative Law Judge

On May 30, 2023, Appleseed Solar, LLC (“Petitioner”) filed its Petition with the Indiana Utility Regulatory Commission (“Commission”) in this Cause for certain determinations, declinations of jurisdiction, and approvals relating to its proposed construction of a solar electric generation facility of up to approximately 200 megawatts (“MW”) of nameplate capacity (alternating current (“AC”)), located entirely in Cass County, Indiana (“Facility”), in accordance with Ind. Code ch. 8-1-2.5.

On May 30, 2023, Petitioner prefiled the direct testimony and attachments of Zachary Melda, Senior Director, Development for NextEra Energy Resources, LLC (“NextEra Energy Resources”).

On July 19, 2023, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed a Notice of Intent Not to File Testimony.

On July 28, 2023, Petitioner filed a Notice of Intent Not to File Rebuttal Testimony.

The Commission noticed this matter for an evidentiary hearing at 1:00 p.m. on August 14, 2023, Hearing Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Counsel for Petitioner and the OUCC appeared and participated in the hearing at which the prefiled exhibits and attachments of Petitioner were admitted into the record without objection.

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

1. Notice and Jurisdiction. Notice of the hearing in this Cause was given and published by the Commission as required by law. As discussed herein, Petitioner intends to engage in activity that would qualify it as a “public utility” under Ind. Code § 8-1-2-1 and as an “energy utility” under Ind. Code § 8-1-2.5-2. The Commission may decline to exercise, in whole or in part, its jurisdiction over an energy utility pursuant to Ind. Code § 8-1-2.5-5. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Characteristics. Petitioner is a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of Indiana. Petitioner's principal place of business is at 700 Universe Blvd., Juno Beach, Florida 33408. Petitioner is an indirect wholly owned subsidiary of NextEra Energy Resources, which is the renewable energy subsidiary of NextEra Energy, Inc ("NextEra"). NextEra Energy Resources specializes in the development, construction, and operation of large-scale renewable power projects and is the world's largest operator of renewable energy from the wind and sun. NextEra Energy Resources is headquartered in Juno Beach, Florida.

3. Relief Requested. Petitioner requested the Commission decline to exercise its jurisdiction over Petitioner pursuant to Ind. Code § 8-1-2.5-5 as it pertains to the construction, ownership, operation, and any other activity in connection with the Facility. Petitioner will generate electricity from solar energy, a renewable energy resource, for sale in the wholesale power market.

4. Petitioner's Evidence. Petitioner's witness Zachary Melda described the Facility and its location. According to Mr. Melda, the Facility will be located across parts of approximately 1,500 buildable acres to which Petitioner has consensually obtained land rights in Tipton and Washington Townships, Cass County, Indiana. Mr. Melda testified the Facility will consist of approximately 450,000 solar panels, will have the capability to generate up to a nameplate capacity of approximately 200 MW AC, and will have a Net Capacity Factor of approximately 23.6%. The Facility is expected to achieve a commercial operation date ("COD") by Q4 2025.

Mr. Melda testified as to how the Facility will generate electricity. He explained the Facility will generate electricity via solar modules (*i.e.*, panels) located within a fenced solar array field. The solar field will include mounted photovoltaic ("PV") modules and Power Conversion Stations ("PCS") that will be configured in array blocks. Each PCS will contain an inverter and a medium voltage transformer, as well as other electrical equipment. Each PCS will also contain electrical and communication equipment to power and communicate with the tracker units. All electrical equipment will be housed in protective enclosures on concrete pads, on precast vaults, or on posts. The collection system will transport the electricity from each array block to an onsite collector substation via underground 34.5 kV cabling. From there, the electricity will be stepped up to 230 kV. The Facility will then interconnect to Duke Energy Indiana's ("Duke") transmission system via a 2 mile gen-tie to Duke's Walton 230 kV substation.

Mr. Melda testified Petitioner has an off-taker for the electricity generated by the Facility. He testified Petitioner has entered into a power purchase agreement ("PPA") with Northern Indiana Public Service Company ("NIPSCO") to sell 100 percent of the electrical output of the Facility and any environmental attributes associated with the Facility for a term of 20 years beginning at the Facility's COD. Separately, NIPSCO submitted the PPA for Commission approval in Cause No. 45887.

Mr. Melda testified regarding the Facility's interconnection with the Duke transmission system. He testified Duke's transmission system is a part of the wholesale power grid controlled by Midcontinent Independent System Operator ("MISO"). Because the Facility will interconnect

with the transmission system operated by MISO, it is required to be in MISO's generator interconnection queue. He testified the Facility's queue position with MISO is J992. He testified MISO completed a Phase I System Impact Study in December 2019 and a Phase II System Impact Study in March 2021, and he provided copies of the studies with his testimony as Attachments ZM-11 and ZM-12. He testified Petitioner entered into a Generator Interconnection Agreement ("GIA") in February 2022, a copy of which was provided with his testimony as Attachment ZM-13. He testified MISO's generator interconnection process, which includes extensive system impact studies and the GIA, will ensure that the Facility's interconnection with the Duke transmission system will not negatively impact transmission system performance.

Mr. Melda provided additional generation characteristics and interconnection details applicable to the Facility as required by the Commission's GAO 2022-1. Regarding the Facility's expected capacity factors, dispatchability and accreditation characteristics, Mr. Melda testified the Facility's expected Net Capacity Factor (P50) is 23.6%. However, the expected capacity factors are over 35% for the peak hours and up to 81% in the summer, and he included a table (Table 1) in his testimony showing the expected capacity factors for any given hour and month. He testified the production and capacity factors are expected to be about 93% (P90) and 88% (P99) of those values as shown in Table 1, which demonstrates solid dispatchability. He testified that through MISO's generator interconnection process, the Facility will secure network resource interconnection service for the 200 MW AC capacity. He testified the Facility will be dispatched according to MISO's interconnection tariff and the GIA. Mr. Melda testified as to how the Facility is expected to perform at MISO's peak pursuant to its capacity construct. He testified the Facility will have a capacity factor up to 81.6% at peak hours during the summer months, as shown in Table 1 of his testimony.

Mr. Melda testified Petitioner is performing a number of environmental and site studies to evaluate the appropriateness of the Facility site. He testified Petitioner contracted with Environmental Consulting & Technology ("ECT") to perform the necessary studies. He testified ECT performed the following studies: biological habitat assessment; bat habitat assessment; cultural resources desktop evaluation; cultural resources field survey; wetland and stream delineation report; Phase I Environmental Site Assessment; and a sound level analysis. These studies were provided with Mr. Melda's testimony as Attachments ZM-4 through ZM-10. Mr. Melda testified that Petitioner has been corresponding with the U.S. Fish and Wildlife Service ("USFWS") and the Indiana Department of Natural Resources ("IDNR") to coordinate their review of the Facility and to minimize environmental impacts. He testified Petitioner does not anticipate any significant environmental impacts from the Facility.

Mr. Melda testified Petitioner has applied or would apply for and obtain all necessary federal, state, and local permits needed for construction and operation of the Facility. Regarding local approvals required by Cass County, he testified that Cass County has an ordinance governing commercial solar energy systems ("Ordinance"). He testified that in accordance with the Ordinance, Petitioner submitted an application for a Special Exception with the Cass County Board of Zoning Appeals ("BZA"), which the BZA granted on November 22, 2021. He testified the Ordinance also requires Petitioner to enter into an Economic Development Agreement, Decommissioning Agreement, Drainage Agreement, and Maintenance Agreement approved by

the Cass County Commissioners prior to the issuance of a building permit and that these agreements were approved by Cass County on December 6, 2021.

Mr. Melda testified regarding the Decommissioning Agreement applicable to the Facility. He testified the purpose of a decommissioning plan is to provide assurance that project facilities are properly decommissioned at the end of the Facility's useful life. To guard against the unlikely and worst-case possibility that Petitioner would be unable to meet its obligation to remove the Facility, Petitioner must provide a decommissioning security (a performance bond, letter of credit, or other form of financial security) to Cass County. The decommissioning security is intended to cover the cost of removing project infrastructure and to restore the leased premises to their preconstruction condition. Detail regarding the type and amount of the security and method for calculating are specified in the Decommissioning Agreement approved by Cass County.

Mr. Melda testified that Petitioner may need to obtain the following Indiana permits and determinations:

(1) Prior to commencing construction activity, Petitioner must seek a Construction Stormwater General Permit ("CSGP") from the Indiana Department of Environmental Management ("IDEM"), who administers the program in cooperation with the Cass County Soil and Water Conservation District office ("SWCD"). To obtain a CSGP, Petitioner must first submit for review a Construction Plan, which includes a Stormwater Pollution Prevention Plan for construction activities and post-construction land use. The Construction Plan must be submitted to IDEM (or the SWCD, if designated by IDEM) for Construction Plan review. Upon receiving notice that the Construction Plan review is complete or a review is not required, Petitioner must then submit an application for a CSGP to the IDEM Stormwater Program. He testified Petitioner will obtain a CSGP prior to commencement of construction.

(2) If IDEM during its plan review determines that an adverse environmental impact from the Facility is evident (ex: due to impairing the quality of the receiving stream or identification of Outstanding State Resource Water), IDEM may require an individual stormwater permit under the National Pollutant Discharge Elimination System ("NPDES"). After making that determination, IDEM would notify the Facility in writing of its NPDES determination, the reasoning for its determination, and the Facility's required NPDES submittals pursuant to 327 IAC 15-2-9(c). Until the individual stormwater permit becomes effective and a Construction/Stormwater Pollution Prevention Plan is reviewed and determined to meet the intent of the permit, the Facility may not begin land-disturbing activities. He testified Petitioner will obtain such a permit to the extent required by IDEM.

(3) Permits, as needed, from the Indiana Department of Transportation ("INDOT") to allow Facility electric lines and other facilities to cross state highways for driveways, road exits, etc. Petitioner will apply for these permits as they become necessary.

(4) Appropriate permits from IDNR and IDEM, to the extent necessary, if isolated wetlands and floodways are impacted by the Facility.

Mr. Melda testified Petitioner may also be required by federal law to do the following: (1) self-certify as an exempt wholesale generator and apply for market-based rate authority under the Federal Energy Regulatory Commission's ("FERC") rules and regulations; (2) develop and implement a federal spill prevention, control, and countermeasure plan; and (3) obtain a Nationwide Permit from the U.S. Army Corps of Engineers for impacts to wetlands or other waters of the United States, to the extent necessary.

Mr. Melda testified the Facility would not use water in any significant quantities, and it would have negligible or no impact on local water supplies. Water would be used during construction and removal of project facilities primarily for dust control. After construction is completed, water may be used for panel washing, if necessary.

Mr. Melda testified Petitioner seeks to retain the right to use the public right-of-way within the Facility site to place collector lines and transmission lines in the public right-of-way. Additionally, retention of this right would clarify issues surrounding use of the public right-of-way for road crossings. He testified this is similar to the treatment given to other renewable energy projects in Indiana.

Mr. Melda testified Petitioner agrees to submit the status reports that have typically been required for similar generation projects in Indiana, including solar and wind projects, and he listed the initial and subsequent reports that Petitioner has agreed to submit.

Mr. Melda testified that he believes the public interest will be served in a number of important respects by the addition of the electric generating capacity represented by the Facility. First, he testified there is a need for the electricity generated by the Facility, as demonstrated by the PPA with NIPSCO. Second, the Facility represents one of the most environmentally friendly means of generating electricity. Solar energy helps reduce the negative effects of electricity generation on the environment by being a source of clean power. Solar generation facilities do not release any pollutants, such as SO₂ (which may cause acid rain), NO_x (which may cause smog), mercury (which may cause neurological damage in fetuses and children), or CO₂ (a greenhouse gas that may contribute to global climate change). Third, the public in Indiana also may benefit from the efficiencies that flow from proximity to the source of generation; that is, because of the high cost of transmitting power over long distances, it is generally advantageous for load not to be located too far from its source. Fourth, landowners in the area of the Facility will receive economic benefits from the placement of solar generation facilities on their properties. Fifth, local taxing bodies will receive new tax revenues. Sixth, up to 225 temporary construction jobs and approximately 1-2 full-time operations and maintenance jobs will be created by the Facility. Finally, solar energy provides greater energy security. It will diversify the region's and Indiana's electricity generation portfolio, protecting against volatile price spikes and risks from relying too heavily on just a few sources of generation. Solar energy is a domestic source of fuel, harnessed in this case within Indiana, and not subject to the geopolitical complexities of foreign energy sources. Solar energy's renewable nature will help protect future generations from the risks of dwindling energy supplies.

Mr. Melda testified regarding the Facility's ownership and operation. He testified that Petitioner's indirect parent company NextEra Energy Resources has experience constructing or

operating electric generating facilities. He testified that through its subsidiaries and affiliates, NextEra Energy Resources owns and/or operates approximately 11 percent of the installed base of U.S. utility-scale solar power production capacity and approximately 18 percent of the installed base of U.S. wind power production capacity. NextEra subsidiaries operate in all eight North American Electric Reliability Corporation (“NERC”) regions as generator owners and generator operators and, as such, are required to comply with applicable NERC Reliability Standards. He testified Petitioner will operate the Facility in a commercially reasonable manner and in accordance with good utility practice.

Mr. Melda testified Petitioner has the necessary financial, technical, and managerial expertise to construct and operate the Facility. He testified Petitioner is a wholly-owned subsidiary of NextEra. A Fortune 200 company, NextEra has \$165.3 billion of assets and shareholder equity, with an average growth of 10% per year. Consequently, NextEra has the financial capacity to finance, develop, construct, operate, and maintain solar energy projects over the long-term. He testified NextEra’s financial strength and ability to finance the Facility are demonstrated in NextEra’s 2022 Annual Report, which he attached to his testimony as Petitioner’s Attachment ZM-14.

Mr. Melda testified Petitioner has the ability to finance the Facility. He testified NextEra Energy Capital Holdings, Inc. (“NEECH”), the anticipated provider of initial funding for the Facility, is a wholly-owned subsidiary of NextEra and holds ownership interests in and provides funding for NextEra’s operating subsidiaries other than Florida Power & Light Company, its rate-regulated electric utility in the State of Florida. NEECH’s unsecured long-term credit/debentures rating is Baa1 (Stable) and BBB+ (Stable) by Moody’s Investors Services, Inc. and Standard & Poor’s Ratings Services, respectively. As of year-end 2022, NEECH had approximately \$5.7 billion of net available liquidity, primarily consisting of bank revolving line of credit facilities, letter of credit facilities, cash and cash equivalents, less letters of credit issued under the credit facilities. As of year-end 2022, 73 banks participate in NextEra’s revolving credit facilities.

Mr. Melda testified regarding the requirements of Ind. Code § 8-1-2.5-5. He testified that technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction over Petitioner by the Commission unnecessary or wasteful. He explained that Petitioner is already subject to the requirements of Cass County, the rules and regulations of FERC, and other federal, state and local agencies and that the requirements of those governmental entities adequately address concerns the Commission may otherwise have and protect the public interest regarding the future operation and wholesale transactions involving the Facility. In addition, competitive forces in the wholesale power markets serve as an adequate check on these activities, particularly on the wholesale power price. Also, MISO is responsible for the safe and reliable operation and planning, including generation interconnection planning, of the electric transmission systems under their functional control, which includes the Duke transmission system to which the Facility will interconnect. Mr. Melda testified further regulation of these matters by the Commission would be unnecessary and wasteful of the Commission’s resources, and burdensome for Petitioner.

Mr. Melda testified that a declination of jurisdiction by the Commission, in whole or in part, would be beneficial for Petitioner, Petitioner’s customers, and Indiana, and would promote

the efficiency of Petitioner. He explained Petitioner would benefit from the ability to devote its efforts and resources to complying fully with the requirements of the federal, local, and other state regulatory agencies with jurisdiction over its operations, as well as the requirements of MISO, which would promote the efficiency of Petitioner's ongoing development and operation of the Facility. He testified Indiana would benefit from the generation of electric power from solar power generally, and this Facility specifically. He testified that the exercise of jurisdiction by the Commission would encumber Petitioner with duplicative requirements that are unnecessary in view of other regulatory requirements.

Mr. Melda testified that the exercise of Commission jurisdiction would inhibit Petitioner in competing with other providers of functionally similar energy services or equipment. He testified that should the Commission exercise jurisdiction over Petitioner, the Commission would be placing Petitioner at a disadvantage with respect to other independent power producers such as wind projects and other solar projects over whom the Commission has declined to exercise jurisdiction. Such regulation would expose Petitioner to the risk of regulatory lag and hinder the quick implementation of business decisions in a highly competitive market, which would create a significant competitive disadvantage for Petitioner. In addition, the Commission's exercise of jurisdiction may compel Petitioner publicly to disclose proprietary information to its disadvantage.

5. Commission Discussion and Findings. If the Commission finds that Petitioner is a public utility for the purposes of Indiana's Utility Power Plant Construction Act, Ind. Code ch. 8-1-8.5 (the "Power Plant Act"), then Petitioner would be considered an "energy utility" as defined by Ind. Code § 8-1-2.5-2. The Commission may decline to exercise jurisdiction over Petitioner pursuant to Ind. Code ch. 8-1-2.5, including its jurisdiction under the Power Plant Act, to issue certificates of public convenience and necessity for the construction of the Facility. For the Commission to decline to exercise jurisdiction over Petitioner pursuant to Ind. Code ch. 8-1-2.5, the Commission must first assert jurisdiction over Petitioner.

The Power Plant Act in Ind. Code § 8-1-8.5-1(a) defines "public utility" to mean a: (1) public, municipally owned, or cooperatively owned utility; or (2) joint agency created under Ind. Code ch. 8-1-2.2. Petitioner is a limited liability company that will generate electricity, some of which may ultimately be consumed by Indiana residents. The Commission has previously asserted jurisdiction over investor-owned public utilities pursuant to Ind. Code ch. 8-1-8.5. *See, e.g., Indianapolis Power & Light Co.*, Cause No. 43235, 2007 WL 8420716 (IURC June 13, 2007). In addition, Petitioner's property "is used in a business that is public in nature and not one that is private." *See Foltz v. City of Indianapolis*, 130 N.E.2d 650, 659 (Ind. 1955). Accordingly, Petitioner's business is "impressed with a public interest" and would render service "of a public character and of public consequence and concern," which leads us to determine that Petitioner is a "public utility" within the meaning of Ind. Code § 8-1-8.5-1. *Id.*

The Commission must also determine that Petitioner satisfies the definition of "public utility" found in Ind. Code § 8-1-2-1. The evidence establishes that Petitioner's ownership, development, financing, construction, and operation of the Facility is for the purpose of sale of the power generated by that plant in the wholesale market to public utilities, energy service providers, and power marketers within and outside of Indiana. The Commission has found in prior cases that a business that only generates electricity and then sells that electricity directly to public utilities is

itself a public utility. *See, e.g., Benton County Wind Farm, LLC*, Cause No. 43068, 2006 WL 4400582 (IURC Dec. 6, 2006) (“Benton County”). In *Benton County*, the Commission specifically found that it had jurisdiction over a wind energy generator with wholesale operations. Thus, based on the evidence and applicable law, the Commission finds Petitioner is a “public utility” within the meaning of Ind. Code §§ 8-1-2-1 and 8-1-8.5-1 and is “an energy utility” under Ind. Code § 8-1-2.5-2 for purposes of owning, developing, financing, constructing, and operating the Facility.¹

When the Commission concludes that Petitioner is a “public utility” as defined in the Public Service Commission Act and in the Power Plant Act, the Indiana Code authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an “energy utility” if certain conditions are satisfied. In particular, the Indiana Code provides that the Commission may enter an Order, after notice and hearing, that the public interest requires the Commission “to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over ... the energy utility ...” Ind. Code § 8-1-2.5-5(a).

In determining whether the public interest will be served by a declination of jurisdiction, the Commission will consider the following:

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

Ind. Code § 8-1-2.5-5(b).

The evidence in this Cause demonstrates that Petitioner does not intend, nor does it request authority, to sell the electricity generated by the Facility to the general public or to any retail customer. Instead, the power will be generated solely for resale subject to the jurisdiction of FERC under the provisions of the Federal Power Act, 16 U.S.C. § 824 *et seq.* Petitioner has indicated that it will operate the Facility in a manner consistent with good utility practice. Further, the costs of the Facility will not be recovered through a rate base/rate of return or other process typically associated with public utility rates.

¹ Ind. Code § 8-1-2.5-2 defines “energy utility” to mean, among other things, a public utility or municipally owned utility within the meaning of Ind. Code § 8-1-2-1. Because we have determined that Petitioner is a “public utility” under Ind. Code § 8-1-2-1, Petitioner is also an “energy utility.”

The evidence presented demonstrates that further Commission regulation of the Facility: (1) would be duplicative of other regulatory bodies; (2) could complicate and cause inefficiencies in Petitioner's development and operation of the Facility; (3) could impede Petitioner's ability to compete with other wholesale solar providers; and (4) would be an unnecessary use of the Commission's resources. Consequently, we find Petitioner's request that the Commission decline to exercise its jurisdiction over the Facility is in the public interest and is granted. In so finding, as part of the Commission's public interest analysis regarding Petitioner's proposed declination of jurisdiction, we have considered several additional factors the Commission has typically considered in similar proceedings, as discussed below.

A. Location. As part of its analysis, the Commission may consider whether the location of a proposed facility is compatible with the surrounding land uses by evaluating and considering evidence of compliance with local zoning and land use requirements. In deciding whether to decline jurisdiction, the Commission has the authority to consider whether the public interest would be served by the Facility being in its planned location. In making such a determination, the Commission must consider the potential for adverse effects on Indiana "electricity suppliers" as that term is used in Ind. Code § 8-1-2.3-2(b), their customers, or local communities. Indiana statutes regarding surface and groundwater rights and obligations, including those establishing the authority of the Indiana Natural Resources Commission, Ind. Code § 14-25-7-15, do not limit the Commission's jurisdiction to make such determinations under the public interest standard of Ind. Code ch. 8-1-2.5 or the public convenience and necessity standard of Ind. Code § 8-1-8.5-5(b)(3). If a proposed new generating facility would significantly and negatively impact an electricity supplier, its consumers, or a local community, the Commission may refuse to decline jurisdiction under Ind. Code chs. 8-1-2.5 and 8-1-8.5.

Based on the factors reviewed below, the Commission finds that the Facility's proposed location is compatible with the surrounding land uses and the Facility would not significantly and negatively impact an electricity supplier, its consumers, or a local community.

i. Local Zoning and Permitting Requirements. Petitioner submitted evidence that it has complied or will comply with local zoning and land use requirements, has or will obtain all construction, grading, and wastewater permits, and will not rely on the public utility exemption from local zoning regulation. Mr. Melda testified that Cass County has an ordinance governing commercial solar energy systems ("Ordinance"). He testified that, in accordance with the Ordinance, Petitioner submitted an application for a Special Exception with the BZA, which the BZA granted on November 22, 2021. He testified that the Ordinance also requires Petitioner to enter into an Economic Development Agreement, Decommissioning Agreement, Drainage Agreement, and Maintenance Agreement approved by the Cass County Commissioners prior to the issuance of a building permit and that these agreements were approved by Cass County on December 6, 2021.

Mr. Melda testified regarding the decommissioning requirements applicable to the Facility. He testified that the Decommissioning Agreement approved by Cass County requires that a decommissioning security be provided and that the detail regarding the type and amount of the security and method for calculating it is detailed in the Decommissioning Agreement.

ii. **Land Use and Solar Resources.** Mr. Melda testified Petitioner is an affiliate of NextEra Energy Resources, which specializes in the development of utility-scale solar and wind projects in the United States. Based on the evidence presented, it appears that Petitioner, utilizing NextEra Energy Resource's experience in developing other renewable projects throughout the United States, has determined that the solar resource at the Facility site is sufficient for the development of an economically viable project. A preliminary site map that reflects the approximate locations of these facilities was submitted as Petitioner's Attachment ZM-3.

iii. **Water Use and Supply.** Mr. Melda testified the Facility will not have significant water use and will have negligible or no impact on local water supplies. Water will be used during construction and removal of project facilities, primarily for dust control. After construction is completed, water may be used for panel washing, if necessary. Therefore, the evidence presented demonstrates that area water use and supplies will not be adversely affected by the Facility.

iv. **Transmission Interconnection.** Mr. Melda testified regarding the Facility's interconnection with Duke's transmission system. He explained the Facility will generate electricity via solar modules (*i.e.*, panels) located within a fenced solar array field. The solar field will include mounted PV modules and PCS that will be configured in array blocks. Each PCS will contain an inverter and a medium voltage transformer, as well as other electrical equipment. Each PCS will also contain electrical and communication equipment to power and communicate with the tracker units. All electrical equipment will be housed in protective enclosures on concrete pads, on precast vaults, or on posts. The collection system will transport the electricity from each array block to an onsite collector substation via underground 34.5 kV cabling. From there, the electricity will be stepped up to 230 kV. The Facility will then interconnect to Duke's transmission system via a two-mile gen-tie to Duke's Walton 230 kV substation.

Mr. Melda testified Duke's transmission system is a part of the wholesale power grid controlled by MISO. Because the Facility will interconnect with the transmission system operated by MISO, it is required to be in MISO's generator interconnection queue. He testified the Facility's queue position with MISO is J992. He testified MISO completed a Phase I System Impact Study in December 2019 and a Phase II System Impact Study in March 2021 and that Petitioner entered into a GIA in February 2022. He testified MISO's generator interconnection process, which includes extensive system impact studies and the GIA, will ensure that the Facility's interconnection with the Duke transmission system will not negatively impact transmission system performance.

v. **Additional Permitting and Environmental Issues.** Mr. Melda testified Petitioner has applied or would apply for and obtain all necessary federal, state, and local permits needed for construction and operation of the Facility. Petitioner performed a number of environmental and site studies to evaluate the appropriateness of the Facility site, including a biological habitat assessment; bat habitat assessment; cultural resources desktop evaluation; cultural resources field survey; wetland and stream delineation report; Phase I Environmental Site Assessment; and a sound level analysis. He testified Petitioner has been corresponding with USFWS and IDNR to coordinate their review of the Facility and to minimize environmental

impacts. He testified Petitioner does not anticipate any significant environmental impacts from the Facility.

To the extent required by state law, Petitioner may need to obtain the following permits and determinations: (1) a Construction Stormwater General Permit from IDEM; (2) an NPDES permit from IDEM; (3) INDOT permits to allow the Facility's electric lines and other equipment to cross state highways and for driveways, road exits, and similar infrastructure; and (4) appropriate permits from IDNR and IDEM, to the extent necessary, if isolated wetlands and floodways are impacted by the Facility.

Petitioner may also be required by federal law to do the following: (1) self-certify as an exempt wholesale generator and apply for market-based rate authority under FERC's rules and regulations; (2) develop and implement a federal spill prevention, control, and countermeasure plan; and (3) obtain a Nationwide Permit for impacts to wetlands or other waters of the United States.

vi. Using the Public Right-of-Way. Mr. Melda testified Petitioner seeks to retain the right to use the public right-of-way within the Facility site. Based upon the evidence presented, we find Petitioner's request for limited use of the public right-of-way to be reasonable. Petitioner will retain the right to use the public right-of-way as identified in its evidence.

B. Need. In determining whether to decline to exercise jurisdiction, the Commission has previously considered whether the development of additional generating capacity will serve the public interest. Mr. Melda testified there is a need for the electricity generated by the Facility, as demonstrated by the PPA with NIPSCO. Mr. Melda discussed the various benefits of the Facility, including the environmental benefits of solar generation, efficiencies that flow from proximity to generation resources, economic benefits to landowners, generation of local tax revenues, and the creation of jobs during the construction and operation of the Facility.

Based on the evidence of record, the Commission finds a reasonable expectation of need for the Facility and finds that its construction will serve the public interest.

C. Financing and Management. To ensure that Indiana consumers are not adversely affected by the proposed development of generation plants in Indiana, developers must demonstrate to the Commission that the financial structure of a proposed project would not jeopardize retail electric supply. In assessing a developer's financing to ensure the viability of a proposed project, the Commission may consider the developer's ability to finance, construct, lease, own, and operate other generating facilities in a commercially responsible manner. As necessary, the Commission may also consider the specific method proposed to finance a particular project.

Mr. Melda testified Petitioner has the necessary financial, technical, and managerial expertise to construct and operate the Facility. According to Mr. Melda, Petitioner is an indirect wholly-owned subsidiary of NextEra. A Fortune 200 company, NextEra has \$165.3 billion of assets and shareholder equity, with an average growth of 10% per year. He opined that NextEra has the financial capacity to finance, develop, construct, operate, and maintain solar energy

projects over the long-term. He testified NEECH, the anticipated provider of initial funding for the Facility, is a wholly-owned subsidiary of NextEra and holds ownership interests in and provides funding for NextEra's operating subsidiaries other than Florida Power & Light Company, its rate-regulated electric utility in the State of Florida. NEECH's unsecured long-term credit/debentures rating is Baa1 (Stable) and BBB+ (Stable) by Moody's Investors Services, Inc. and Standard & Poor's Ratings Services, respectively. As of year-end 2022, NEECH had approximately \$5.7 billion of net available liquidity, primarily consisting of bank revolving line of credit facilities, letter of credit facilities, cash and cash equivalents, less letters of credit issued under the credit facilities. As of year-end 2022, 73 banks participate in NextEra's revolving credit facilities.

Mr. Melda testified that Petitioner's indirect parent company NextEra Energy Resources has experience constructing or operating electric generating facilities. He testified that through its subsidiaries and affiliates, NextEra Energy Resources owns and/or operates approximately 11 percent of the installed base of U.S. utility-scale solar power production capacity and approximately 18 percent of the installed base of U.S. wind power production capacity. NextEra subsidiaries operate in all eight NERC regions as generator owners and generator operators and, as such, are required to comply with applicable NERC Reliability Standards. He testified Petitioner will operate the Facility in a commercially reasonable manner and in accordance with good utility practice.

Based on the evidence presented, the Commission finds Petitioner has shown it has the ability to finance, construct, and manage the Facility.

D. Transfers of Ownership. The Commission reserves its jurisdiction under Ind. Code § 8-1-2-83 and requires Petitioner to obtain prior Commission approval of any transfer of assets owned by Petitioner. Petitioner, however, shall not be required to seek prior Commission approval, but shall provide written notice under this Cause to the Commission and the OUCC, of any transfers of ownership of Facility assets or ownership interests in Petitioner involving: (1) the grant of a security interest, mortgage, deed of trust or other encumbrance to a bank or other lender or collateral agent, administrative agent or other security representative, or a trustee on behalf of bondholders in connection with any financing or refinancing (including any lease financing), or any investor, guarantor, equipment supplier or financing entity; (2) Petitioner or an affiliate becoming a debtor in possession; (3) a foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner; or (4) a transfer of all or a part of the ownership of the Facility or its assets to an affiliate of Petitioner. Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility and (2) the successor satisfies the same terms and conditions imposed on Petitioner as set forth in this Order.

E. Affiliate Transactions. In addition to determining whether the public interest would be served if the Commission declines jurisdiction, the Commission also must consider what actions it must take to ensure that the public interest is served throughout the commercial life of the Facility. Specifically, the Commission must determine the extent to which it must reserve its authority over Petitioner's activities involving affiliate transactions and transfers of ownership. To ensure that the Commission's declination of jurisdiction over an "energy utility"

is in the public interest, the Commission must be assured that adequate consumer protections are in place, should an “energy utility” subsequently become an affiliate, as defined in Ind. Code § 8-1-2-49, of any regulated Indiana retail utility. While the Commission is declining jurisdiction over Petitioner’s affiliate transactions initially, the Commission reserves its authority to regulate Petitioner should it become an affiliate of any regulated Indiana retail utility. Accordingly, Petitioner must inform the Commission and the OUCC at the time it becomes an affiliate of any regulated retail utility operating in Indiana.

Petitioner shall obtain prior Commission approval with respect to the sale of any electricity to any affiliated, regulated Indiana retail electric utility. The Commission notes that it retains certain authority under Section 201 of the Federal Power Act to examine Petitioner’s books, accounts, memoranda, contracts, and records consistent with the limitations contained therein. 16 U.S.C. § 824.

F. Compliance with GAO 2022-01. In his testimony, Mr. Melda provided information responsive to GAO 2022-01. This included confirmation that the Facility will interconnect with Duke’s transmission system which is part of the wholesale grid MISO controls. He stated Petitioner’s project is required to go through MISO’s interconnection queue process and has been assigned queue position J992. He provided details regarding the Facility’s expected capacity factors, dispatchability and accreditation characteristics. He testified that through MISO’s generator interconnection process, the Facility will secure network resource interconnection service for the 200 MW AC capacity. He testified the Facility will be dispatched according to MISO’s interconnection tariff and the GIA. He testified as to how the Facility is expected to perform at MISO’s peak pursuant to its capacity construct. Based on Mr. Melda’s testimony, the Commission finds Petitioner provided information responsive to GAO 2022-01 as required.

6. Financial Assurance. As discussed above, Mr. Melda identified the decommissioning requirements applicable to the Facility and stated that Petitioner is required to provide a decommissioning security (a performance bond, letter of credit, or other form of financial security) to Cass County and that the details of such security are specified in the Decommissioning Agreement approved by the County.

Petitioner shall provide the Commission with notice when such financial instrument has been established, including the form and amount, or in the event Petitioner is no longer required to comply with all or part of the financial assurance requirements agreed to in the decommissioning plan.

7. Reporting Requirements. Petitioner agreed to the same reporting requirements as have been established for other renewable generation facilities in Indiana. In addition to the foregoing requirements, as a condition of this Order and our continued declination of jurisdiction, Petitioner must file Annual Reports with the Commission as provided in Ind. Code § 8-1-2-49, and provide any other information requested by the Commission. These reporting requirements are intended to ensure that the Commission obtains reliable, up-to-date information in a timely manner necessary to carry out its statutory obligations. Additionally, due to recent supply chain issues that could potentially limit the availability of components necessary to build the Facility, Petitioner shall provide an update on any supply chain-related challenges and/or delays until the Facility is

placed into commercial operation. A responsible officer of Petitioner shall verify all reports, and Petitioner shall file the reports under this Cause within the timeframes prescribed herein.

The following reports shall be prepared and filed by Petitioner:

A. Initial Report. Petitioner's initial quarterly report, due within 30 days after the date of this Order, shall provide the following information, to the extent it is known and available:

- (1) Facility ownership and name(s) of the Facility;
- (2) Name, title, address and phone number(s) for primary contact person(s) for the Facility;
- (3) Number and location of solar panels deployed;
- (4) The anticipated total output of Facility;
- (5) Manufacturer, model number, and operational characteristics of panels;
- (6) Connecting utility(s);
- (7) Copy of any Interconnection System Impact Studies prepared by MISO;
- (8) Expected in-service (commercial operation) date;
- (9) An estimate of the engineering/construction timeline and critical milestones for the Facility;
- (10) The status of the GIA with MISO; and
- (11) The information listed below in the Subsequent Reports section to the extent such information is available.

B. Subsequent Reports. Petitioner agrees to file subsequent reports within thirty (30) days of the end of each calendar quarter until the quarter that occurs after commercial operation is achieved and that immediately precedes the annual report filing date of April 30th of each year. Thereafter, Petitioner will file reports on an annual basis in this Cause. Subsequent reports should include the following information:

- (1) Any changes to the information provided in the Initial Report;
- (2) Any reports of Interconnection Studies not previously submitted to the Commission;
- (3) Copy of the GIA as filed with FERC;
- (4) Notice of the establishment of an independent financial instrument, including its form and amount;
- (5) Achievement of construction milestones described in the GIA and such events as the procurement of major equipment, the receipt of major permits material to the construction and operation of the Facility, construction start-up, initial energization, and commercial operation;
- (6) When commercial operation is achieved, the nameplate capacity, term and identity of a purchaser for any contracts then existing for utility sales, contingency plans (if any) detailing response plans to emergency conditions as required by state or local units of government, the interconnecting transmission owner and/or MISO, and the Facility's certified (or accredited) dependable capacity rating; and
- (7) An update on all supply chain related challenges and/or delays.

C. Additional Requirements. In the event that Petitioner intends to materially increase or decrease or otherwise materially change the Facility's capacity or operation, the owner must provide the Commission with at least 30 days' notice prior to the change, and any party wishing to protest such change must file an objection under this Cause within 10 days of the notification of project modification.² Petitioner shall notify the Commission if it modifies or suspends the Facility under the terms of the GIA and does not reinstitute work within three years following commencement of such suspension. If the Commission determines that Petitioner: (1) has failed to enter into an agreement pursuant to MISO generator interconnection procedures; (2) has suspended the Facility under the terms of the GIA and has not reinstated work within three years following commencement of such suspension; or (3) has otherwise suspended its efforts to complete the Facility within three years of this Order, the Commission may, following notice to Petitioner, issue an Order terminating its declination of jurisdiction.

8. Conclusion. Consistent with Ind. Code § 8-1-2.5-5, the Commission finds that declining to exercise its jurisdiction over Petitioner in this Cause will facilitate the immediate construction of the proposed Facility and add generation capacity in Indiana. This should be beneficial for those public utilities that may indirectly have access to the power produced and to the State of Indiana as provided under Ind. Code § 8-1-2.5-5(b)(2). We further find that declining to exercise our jurisdiction over Petitioner will promote energy utility efficiency under Ind. Code § 8-1-2.5-5(b)(3). In addition, Petitioner has demonstrated that it has the technical, financial, and managerial capabilities to construct and operate the proposed Facility. It has also shown that the wholesale market for electricity in Indiana will benefit from the addition of the Facility's generating capacity, and, therefore, its market entry is reasonable.

Accordingly, based on these findings and the additional requirements contained in this Order, the Commission believes that a declination of jurisdiction over Petitioner as an energy utility, except in the areas in which we reserve jurisdiction that are identified above, is in the public interest. While the Commission is not declining jurisdiction for a particular term of years, the Commission does not intend to reassert jurisdiction absent circumstances affecting the public interest. Petitioner is not granted authority to offer its power for sale to the general public. Therefore, any revenue that it derives from the sale of electricity for resale by the purchaser is not subject to the public utility fee.

If the Commission determines that Petitioner either: (1) has failed to commence construction of the Facility within the timeframe provided under this Order; (2) is no longer diligently pursuing the commencement of construction of the Facility; or (3) has not completed construction of the Facility under the terms of the GIA, then the Commission may, following notice to Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth herein. Through the quarterly status reports required by this Order, Petitioner shall notify the Commission and the OUCC when construction begins and when commercial operation of the Facility begins. Petitioner will satisfy the reporting requirements outlined above before commercial operation of the Facility begins. Petitioner shall also file with the Commission any Annual Report required to

² A material change includes the following: increase or decrease of greater than five (5) MW in the Facility's nameplate capacity; a change in operating entities; a transfer of ownership or assets, other than the activities identified in this Order; and any change identified in case law as a material change.

be filed with FERC and provide the Commission such other information as we may from time to time require from other Indiana public utilities.

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

1. Petitioner is a “public utility” within the meaning of Ind. Code §§ 8-1-8.5-1 and 8-1-2-1 and an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2.
2. The Facility is a “utility” within the meaning of Ind. Code § 8-1-2-1.
3. The Commission declines to exercise its jurisdiction over Petitioner and its construction, operation, and financing of the Facility, except as specifically stated within this Order.
4. Petitioner shall not exercise an Indiana public utility’s rights, powers, and privileges of eminent domain and of exemption from local zoning, land use requirements, land use ordinances, and construction-related permits in the operation and construction of the Facility. Petitioner shall retain the right to a limited use of the public right-of-way within the Facility area as described above.
5. Petitioner shall not sell at retail in the State of Indiana any of the electricity generated by the Facility without further Order of the Commission. The gross revenues generated by sales for resale of the electricity generated by the Facility are adjudged to be exempt from the public utility fee prescribed by Ind. Code ch. 8-1-6.
6. Petitioner shall comply fully with the terms of this Order and submit to the Commission all information required by the terms of this Order.
7. This Order shall be effective on and after the date of its approval.

HUSTON, BENNETT, FREEMAN, 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