

OFFICIAL
EXHIBITS

Cause No. 45424
Brickyard Solar, LLC
Petitioner's Exhibit 2
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VERIFIED REBUTTAL TESTIMONY OF ZACHARY MELDA

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PETITIONER'S

EXHIBIT NO. 2
DATE 1-28-21 REPORTER LR

1 **Q1. Please state your name, business address, and title.**

2 A. My name is Zachary Melda, and my business address is 700 Universe Blvd., Juno Beach,
3 Florida, 33408. I am employed by NextEra Energy Resources, LLC ("NextEra Energy
4 Resources") as Project Director, Development and have been delegated responsibility for
5 the development of the Brickyard Solar project ("Project") by Brickyard Solar, LLC
6 ("Petitioner" or "Brickyard Solar").

7 **Q2. Are you the same Zachary Melda who previously prefled direct testimony in this**
8 **Cause?**

9 A. Yes, I am.

10 **Q3. What is the purpose of your rebuttal testimony?**

11 A. The purpose of my rebuttal testimony is to respond to the direct testimony of Lauren M.
12 Aguilar, submitted on behalf of the Indiana Office of Utility Consumer Counselor
13 ("OUCC"), in this proceeding on December 10, 2020 ("Aguilar Direct Testimony"). In her
14 testimony, Ms. Aguilar recommends that the Commission not approve Petitioner's request
15 for a declination of jurisdiction for the Project until further progress is made in developing
16 the Project.¹ In this rebuttal testimony, I will explain why the public interest supports
17 Commission approval of a declination of jurisdiction at this time and respond to Ms.
18 Aguilar's concern that there is insufficient evidence for the Commission to decline
19 jurisdiction under Indiana Code § 8-1-2.5-5.

¹ Aguilar Direct Testimony at page 1, lines 7-13.

1 **Q4. Ms. Aguilar expresses concern that the Project is at an early stage of development.**

2 **Do you agree with this concern?**

3 A. No, I do not. As I explain in my testimony, as a NextEra Energy Resources' subsidiary,
4 Petitioner is well qualified to successfully develop, construct, and commission the Project.
5 NextEra Energy Resources has extensive experience in developing, constructing, owning,
6 and operating solar generation facilities such as the Project and significant financial
7 resources to support the successful development of the Project. For Projects that execute
8 offtake agreements, such as the Project, NextEra Energy Resources' subsidiaries and
9 affiliates have an approximately 95 percent completion rate. Once a Project is contracted,
10 it would be very unusual for it not to be completed. Petitioner will bring its affiliates'
11 experience and resources to bear in developing the Project.

12 Through its subsidiaries and affiliates, NextEra Energy Resources currently owns
13 and/or operates approximately nine percent of the total installed base of utility-scale solar
14 power production capacity in the United States, the vast majority of which was developed
15 and constructed by NextEra Energy Resources' subsidiaries or affiliates. This includes
16 three utility-scale solar generation facilities, with a total nameplate generating capacity of
17 243.3 MW, in the MISO region.

18 NextEra Energy Resources' subsidiaries and affiliates also own and operate
19 approximately 15 percent of the installed base of U.S. wind power production, including
20 two wind generation projects that NextEra Energy Resources' subsidiaries successfully
21 developed and built in Indiana. These projects are the Bluff Point wind project in Jay and

1 Randolph Counties,² which achieved commercial operation in December 2017, and the
2 Jordan Creek wind project in Benton and Warren Counties,³ which achieved commercial
3 operation in December 2020.

4 Based on the substantial expertise and resources and successful development track
5 record of the NextEra Energy Resources organization, Petitioner fully expects to develop,
6 construct, and commission the Project in time to meet the December 2022 Commercial
7 Operation Date ("COD") required in its power purchase agreement ("PPA") with Northern
8 Indiana Public Service Company LLC ("NIPSCO"). Therefore, I do not agree with Ms.
9 Aguilar's position that it would be premature for the Commission to issue a declination of
10 jurisdiction order for the Project.

11 **Q5. Ms. Aguilar mentions the West Fork wind project as a renewable generation project**
12 **that did not move forward.⁴ How is the Project different from the West Fork project?**

13 A. The West Fork project is a wind generation project in Indiana being developed by a
14 NextEra Energy Resources' subsidiary. There are two important distinctions between the
15 Project and the West Fork project. First, as Ms. Aguilar notes, the West Fork project
16 encountered significant delays in the PJM Interconnection generator interconnection
17 process. These delays were largely due to changes in the interconnection queue that were
18 outside of West Fork's control (specifically, withdrawal of an earlier queued project that
19 was interconnecting at the same Point of Interconnection as West Fork, which significantly
20 altered West Fork's proposed interconnection and resulted in extensive delays in the
21 interconnection studies being performed by the interconnecting transmission owner). Here,

² See *In the Matter of the Petition by NextEra Energy Bluff Point, LLC*, Cause No. 44299 (Apr. 3, 2013).

³ See *In the Matter of the Petition by Jordan Creek Wind Farm, LLC*, Cause No. 44978 (Dec. 20, 2017).

⁴ See Aguilar Direct Testimony at page 8, lines 1-4.

1 the Point of Interconnection to which the Project will interconnect is not shared with any
2 other generation projects, and thus is unlikely to be impacted by changes in the
3 interconnection queue such as arose with the West Fork project. The MISO interconnection
4 process continues to be on track for the Project to obtain all required interconnection
5 studies and sign a Generator Interconnection Agreement in the fourth quarter of 2021.⁵
6 Petitioner does not currently anticipate significant delays in meeting this target.

7 Second, Petitioner has entered into a binding commercial agreement to sell the
8 output of the Project to a customer, whereas West Fork had not. Petitioner is contractually
9 obligated here to interconnect, construct, and commission the Project by the COD
10 established in its PPA with NIPSCO.

11 **Q6. Do you believe that the public interest will be served by the Commission granting a**
12 **declination of jurisdiction in this proceeding?**

13 A. Yes, I do. In her testimony, Ms. Aguilar highlights the factors identified in Ind. Code § 8-
14 1-2.5-5(b) that the Commission is required to consider in determining whether the public
15 interest is served by declining to exercise its jurisdiction. These factors are:

16 (b) In determining whether the public interest will be served, the
17 commission shall consider the following:

18 (1) Whether technological or operating conditions, competitive
19 forces, or the extent of regulation by other state or federal
20 regulatory bodies render the exercise, in whole or in part, of
21 jurisdiction by the commission unnecessary or wasteful.

22 (2) Whether the commission's declining to exercise, in whole or in
23 part, its jurisdiction will be beneficial for the energy utility, the
24 energy utility's customers, or the state.

⁵ In my direct testimony, I testified that a Generator Interconnection Agreement was expected for the Project by October 2021. Melda Direct Testimony at page 12, line 22. MISO has recently revised this date slightly to November 18, 2021. This timing still allows for execution of a Generator Interconnection Agreement well in advance of the time by which Petitioner expects to begin construction of the Project in March 2022.

1 (3) Whether the commission's declining to exercise, in whole or in
2 part, its jurisdiction will promote energy utility energy
3 efficiency.

4 (4) Whether the exercise of commission jurisdiction inhibits an
5 energy utility from competing with other providers of
6 functionally similar energy services or equipment.

7 As I will explain in this rebuttal testimony, Petitioner has shown all of these factors have
8 been met in this proceeding.

9 **Q7. Do technological or operating conditions, competitive forces, or the extent of**
10 **regulation by other state or federal regulatory bodies render the exercise, in whole or**
11 **part, of jurisdiction by the Commission unnecessary or wasteful, as required under**
12 **Ind. Code § 8-1-2.5-5(b)?**

13 A. Yes. The issuance of a declination of jurisdiction order by the Commission is just one of a
14 number of regulatory approvals and permits that must be obtained by a generation
15 developer in order to permit, construct, own, and operate a generation project in the State
16 of Indiana. I described many of these approvals and permits in my direct testimony.⁶ Each
17 of the regulatory agencies or permitting bodies that will issue these approvals or permits
18 has jurisdiction governing its particular area of expertise and regulation, and the Project
19 will be subject to extensive regulatory oversight.

20 Specifically, the Federal Energy Regulatory Commission ("FERC") has exclusive
21 jurisdiction over the wholesale sale of power from the Project in interstate commerce.
22 MISO will oversee whether the Project can be safely and reliably interconnected to the
23 transmission grid. Various environmental agencies, such as the U.S. Fish and Wildlife
24 Service, U.S. Army Corps of Engineers, the Indiana Department of Natural Resources, and

⁶ See Melda Direct Testimony at page 8, line 10 through page 11, line 21.

1 the Indiana Department of Environmental Management, will oversee and regulate potential
2 environmental impacts from the Project, to the extent applicable. The Indiana Department
3 of Transportation ("INDOT") will regulate any road crossings that are necessary for the
4 Project's construction. Boone County has jurisdiction to evaluate and enforce local
5 permitting and land-use requirements for the Project. Because these various agencies and
6 regulatory bodies will review the Project in detail and determine whether permits are
7 necessary and have been justified, further oversight by the Commission in these areas
8 would be duplicative, unnecessary, and wasteful.

9 **Q8. Do you anticipate that the Project will obtain all necessary approvals or permits**
10 **before the commencement of construction of the Project, planned for March 2022?**

11 A. Yes, I do. Petitioner is working diligently to obtain all necessary approvals and permits in
12 time to commence construction in March 2022, so that it can meet the December 2022
13 COD required in its PPA with NIPSCO. If any of the required approvals or permits are not
14 obtained, then the Project will not be constructed. Failure to complete the Project as
15 required under Petitioner's PPA with NIPSCO may result in significant financial
16 implications for Petitioner.

17 **Q9. Will the Commission's declining to exercise, in whole or in part, its jurisdiction be**
18 **beneficial to the energy utility, the energy utility's customers, or the state?**

19 A. Yes, it will be beneficial for Petitioner and for Petitioner's customer, NIPSCO, for the
20 Commission to grant a declination of jurisdiction in this proceeding. Obtaining a
21 declination of jurisdiction is required under Petitioner's PPA with NIPSCO. Issuance of a
22 declination of jurisdiction order therefore will provide regulatory certainty for Petitioner

1 and NIPSCO and will allow Petitioner to continue proceeding with its development
2 activities in order to satisfy its contractual obligations.

3 Issuance of a declination of jurisdiction order in this proceeding also will be
4 beneficial for the state, as it will allow the Project to move forward with its development.
5 In my direct testimony, I testified that the Project will result in a number of benefits to the
6 State of Indiana, including: the provision of environmentally friendly generation capacity
7 for the public; efficiencies from locating generation close to load; financial payments to
8 landowners in the Project area; new tax revenue for local taxing bodies; the creation of up
9 to 300 temporary construction jobs and approximately three to four full-time operations
10 and maintenance jobs; and the provision of greater energy security.⁷ If the Commission
11 declines to issue a declination of jurisdiction order, as Ms. Aguilar suggests, this could
12 result in termination of the PPA, which in turn could result in the Project not being built,
13 or being significantly delayed while a new customer is identified. This would delay, reduce,
14 or eliminate entirely the significant economic benefits to the state from the Project being
15 built.

16 **Q10. Will the Commission's declining to exercise, in whole or in part, its jurisdiction**
17 **promote energy utility efficiency, as required by Ind. Code § 8-1-2.5-5(b)?**

18 A. Yes. Petitioner and its customer, NIPSCO, have negotiated and executed a PPA that
19 requires Petitioner to obtain a declination of jurisdiction order from the Commission. It
20 would cause significant disruptions in the agreed upon planning process of Petitioner and
21 NIPSCO if the Commission were to not grant a declination of jurisdiction in this

⁷ Melda Direct Testimony at page 13, line 14 through page 14, line 16.

1 proceeding. Petitioner and NIPSCO would have to reevaluate their agreement to determine
2 if moving forward makes sense. If the PPA were to be terminated, Petitioner would have
3 to identify a new customer, resulting in significant delay for the Project's development or
4 potentially in the Project not being constructed at all.

5 **Q11. Will the exercise of Commission jurisdiction inhibit Petitioner from competing with**
6 **other providers of functionally similar energy services or equipment, as required by**
7 **Ind. Code § 8-1-2.5-5(b)?**

8 A. Yes. My understanding is that the Commission has issued numerous declination of
9 jurisdiction orders in the past to independent power producers that are functionally similar
10 to Petitioner. If the Commission exercises its jurisdiction over Petitioner here, that would
11 place Petitioner at a competitive disadvantage to these other similarly situated entities.

12 **Q12. Ms. Aguilar asserts that there are insufficiencies in Petitioner's evidence supporting**
13 **its request for a declination of the Commission's jurisdiction. How would you respond**
14 **to her concerns?**

15 A. With respect to local permitting and land acquisition for the Project, Petitioner has
16 continued to make progress on its land acquisition activities and associated Boone County
17 permitting. Currently, Petitioner has acquired approximately 75 percent of the land needed
18 for the Project. Petitioner has held a number of meetings with Boone County and other
19 local officials, and we now anticipate submitting our permit application to Boone County
20 in the spring of 2021. I would note, however, that local permitting is not always finalized
21 when a declination of jurisdiction order is obtained from the Commission. County
22 approvals can be appealed to the courts or county boards and counties have the ability to

1 modify their approvals after the fact.⁸ Thus, having county approval at the time a
2 declination of jurisdiction order is granted does not guarantee that a project will be
3 completed. It is my understanding that the Commission has not traditionally required an
4 applicant to have obtained all local permits before issuing a declination of jurisdiction
5 order.

6 Further, while Petitioner is continuing to undertake its environmental and cultural
7 studies related to the Project and will incorporate the results of that diligence in the ultimate
8 Project design, Petitioner does not anticipate that there are environmental issues that will
9 preclude development and construction of the Project. In evaluating potential locations for
10 new projects, NextEra Energy Resources' subsidiaries implement a well-established
11 environmental screening process for new project sites, which includes early consultations
12 with counties and local officials to identify areas that are likely to be environmentally
13 compatible with renewable energy development. Further, if an environmental study
14 unexpectedly identifies a significant issue with the Project site, Petitioner will work with
15 the relevant agencies to mitigate and/or avoid the issue.

16 **Q13. Would the Commission's denial of a declination of jurisdiction complicate and cause**
17 **inefficiencies in Petitioner's development and operation of the Project?**

18 A. It would. It is important to recognize that developing a solar generation project involves
19 balancing a large number of moving parts and can take several years due to the amount of
20 permitting, regulatory oversight, and due diligence involved. Requiring a generation

⁸ See, e.g., the Roaming Bison Wind project, where the county changed its zoning requirements after the Commission granted a declination of jurisdiction in Cause No. 45207. See also the Jordan Creek Wind project, where the Warren County, Indiana Circuit Court affirmed the Warren County Board of Zoning Appeals decision to grant the Jordan Creek Wind Farm a Special Exception permit (Cause No. 86C01-1701-MI-000004 (2018)).

1 developer to obtain most of its permitting before requesting a Commission declination of
2 jurisdiction order places a substantial burden on developers.

3 The Bluff Point and Jordan Creek projects that I mentioned earlier provide good
4 examples of the timelines required to fully develop renewable generation projects in
5 Indiana. For the Bluff Point project, NextEra Energy Bluff Point, LLC ("NextEra Energy
6 Bluff Point") filed its petition for a declination of the Commission's jurisdiction on January
7 31, 2013, and the Commission issued its declination order on April 3, 2013. Construction
8 on the project did not commence until May 1, 2017, and the project began commercial
9 operation on December 31, 2017.⁹ During the more than four years between the issuance
10 of the Commission's declination of jurisdiction order and commencement of construction,
11 NextEra Energy Bluff Point undertook significant additional permitting, procurement, and
12 development of the project. For example, additional PJM interconnection studies were
13 provided by NextEra Energy Bluff Point after the Commission issued its declination of
14 jurisdiction order as part of the quarterly reporting requirements NextEra Energy Bluff
15 Point had agreed to in that proceeding.

16 Similarly, for the Jordan Creek project, Jordan Creek Wind Farm, LLC ("Jordan
17 Creek Wind") filed its petition for a declination of the Commission's jurisdiction on August
18 24, 2017, and the Commission issued its declination order on December 20, 2017. Jordan
19 Creek Wind commenced construction on the project in the spring of 2020, and the project
20 began commercial operation on December 15, 2020. As with the Bluff Point project, during
21 this intervening period between issuance of the Commission's order and the

⁹ See NextEra Energy Bluff Point, LLC's 2017 Annual Report, filed in Cause No. 44299 (April 26, 2018).

1 commencement of construction, Jordan Creek Wind undertook significant additional
2 permitting, procurement, and development activities necessary to begin construction and
3 place the project in service, such as obtaining conditional use permits from the counties,
4 providing decommissioning bonds, performance guarantees, and repair bonds to the
5 counties and INDOT, and obtaining a permit from INDOT to construct the transmission
6 line in a state highway right of way.

7 It would be unnecessary to require a developer to have most of its permitting
8 completed in order to obtain a declination of jurisdiction from the Commission. Petitioner
9 is actively pursuing the permits it needs and is engaging with the relevant agencies and
10 local entities to ensure all permits are obtained prior to COD. If Petitioner is unable to
11 obtain all of the necessary permits, the Project will not move forward. It is unnecessary for
12 the Commission to tie its decision on whether to grant a declination of jurisdiction to the
13 status of other permitting overseen by other regulatory agencies and Boone County.

14 While I am not an attorney, my understanding of Ind. Code § 8-1-2.5-5 is that it
15 says nothing about the specific types of permitting or studies needed to obtain a declination
16 of jurisdiction. This is illustrated by the Commission's reporting requirements that it
17 typically establishes in declination of jurisdiction orders requiring generation developers
18 to provide ongoing updates on development activities, including the status of permitting.¹⁰
19 The only requirement that must be met is that an energy utility must show that the public

¹⁰ One of the key purposes of the quarterly reporting requirements to which a petitioning energy utility agrees in a declination of jurisdiction proceeding is to update the Commission on the status of permitting. These reporting requirements include local permitting (*e.g.*, decommissioning agreements, financial agreements with the county, etc.), and additional interconnection studies with MISO or PJM that were not initially provided by the energy utility. Requiring an energy utility to have most of its permitting completed during the declination of jurisdiction proceeding conflicts with the purpose of the quarterly reporting.


1 interest will be served by the Commission's declining to exercise its jurisdiction over a
2 project based on the four factors identified in the statute. I believe that requirement has
3 been met. Key to the Commission's granting of a declination of jurisdiction is whether an
4 energy utility has the **ability** to construct a project, including the ability to obtain all
5 permits. Petitioner has this ability, and it fully expects to receive all permitting prior to
6 COD. There is also significant demand for the Project, as evidenced by the fact that
7 NIPSCO has agreed to take one hundred percent of the Project's output. Petitioner has
8 shown that it has the financial resources and capability to own, develop, and operate the
9 Project. For these reasons, I believe Petitioner has shown that the public interest will be
10 served by the Commission granting a declination of jurisdiction to Petitioner.

11 **Q14. Does this conclude your rebuttal testimony?**

12 A. Yes, it does.

VERIFICATION

I hereby verify under the penalties for perjury that the foregoing representations are true to the best of my knowledge, information and belief.

Signature: 
Zachary Melda

Date: 1/5/2020