

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED JOINT PETITION OF HEADWATERS WIND )  
FARM LLC AND INDIANA MICHIGAN POWER )  
COMPANY FOR APPROVAL OF THE TRANSFER OF ) CAUSE NO. 44998  
PART OF THE FRANCHISE, WORKS OR SYSTEM OF )  
THE HEADWATERS WIND FARM TO INDIANA ) APPROVED: JAN 31 2018  
MICHIGAN POWER COMPANY PURSUANT TO )  
INDIANA CODE §§ 8-1-2-83 AND 8-1-2-84 )

ORDER OF THE COMMISSION

**Presiding Officers:**

**James F. Huston, Commissioner**

**David E. Veleta, Senior Administrative Law Judge**

On October 13, 2017, Headwaters Wind Farm LLC ("Headwaters") and Indiana Michigan Power Company ("I&M") (collectively "Joint Petitioners") filed their Verified Joint Petition for Approval of Transfer ("Joint Petition") with the Indiana Utility Regulatory Commission ("Commission") for approval of the transfer of assets from Headwaters to I&M. On the same day Joint Petitioners also filed the direct testimony of Ryan J. Brown, Executive Vice President, Eastern Region and Canada, EDP Renewables North America LLC ("EDPR") and Sara Rastegar, Project Manager, American Electric Power Service Corporation. On November 20, 2017, the Indiana Office of the Utility Consumer Counselor ("OUCC") filed the testimony of Lauren M. Aguilar, a Utility Analyst in the Energy Resources Division for the OUCC.

The Commission held an Evidentiary Hearing in this Cause at 9:30 a.m. on December 18, 2017, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC were present and participated by counsel.

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

1. **Notice and Jurisdiction.** Notice of the evidentiary hearing in this cause was given and published by the Commission as required by law. I&M is a public utility as defined by Ind. Code § 8-1-2-1. Headwaters is a "public utility" under Ind. Code §§ 8-1-2-1 and 8-1-8.5-1 and an "energy utility" under Ind. Code § 8-1-2.5-2. However, pursuant to Ind. Code § 8-1-2.5-5, the Commission determined that it was in the public interest to decline to exercise its jurisdiction over Headwaters, subject to a few limited exceptions as detailed in the Commission's Order in Cause No. 44358. Pursuant to Ind. Code §§ 8-1-2-83 and -84, the Commission has jurisdiction over the purchase of utility property. Accordingly, the Commission has jurisdiction over the Joint Petitioners, and the subject matter of this proceeding.

2. **Joint Petitioners' Characteristics and Business.** Headwaters is a limited liability company organized and existing under the laws of the State of Delaware. Headwaters' principal place of business is at 808 Travis Street, Suite 700, Houston, Texas 77002. Headwaters is a subsidiary of EDP Renewables North America LLC, which is a limited liability company existing under the laws of the State of Delaware.

I&M is a corporation organized and existing under the laws of the State of Indiana, with its principal offices at Indiana Michigan Power Center, Fort Wayne, Indiana. I&M is a wholly-owned subsidiary of American Electric Power Company, Inc. I&M is engaged in rendering electric service and owns, operates, manages, and controls plant and equipment within the States of Indiana and Michigan that are in service and used and useful in the generation, transmission, distribution and furnishing of such service to the public.

3. **Relief Requested.** Headwaters and I&M seek Commission approval of the sale and transfer by Headwaters to I&M of certain electric assets, namely the Losantville substation ("the Substation"), located in Randolph County, Indiana.

4. **Joint Petitioners' Case-in-Chief.** Mr. Brown testified that the Joint Petitioners are seeking an order from the Commission approving the transfer of the Substation to I&M. The Substation is part of the Headwaters Wind Farm facility located in Randolph County, Indiana, (the "Facility") which is owned and operated by Headwaters. In the Commission's Final Order in Cause No. 44358 (the "Declination Order"), the Commission reserved its jurisdiction under Ind. Code § 8-1-2-83 and required that Headwaters obtain prior Commission approval of any transfer of Headwaters' franchise, works or system. The Commission also required that Headwaters obtain Commission approval for any "material change" to the Facility's capacity or operations. According to Mr. Brown, the Commission defined "material change" as an increase or decrease of greater than three (3) MW in the Facility's capacity; changes in operating entities; transfers of assets and changes identified in case law as a material change.

Mr. Brown stated Headwaters is seeking to transfer the Substation to I&M in accordance with the Interconnection Service Agreement ("ISA") and Interconnection Construction Service Agreement ("ICSA") by and among PJM Interconnection, L.L.C. ("PJM"), Headwaters, and I&M, both effective May 5, 2010. Headwaters elected the option to build the Substation and is required to transfer ownership of the Substation to I&M upon completion and after meeting all applicable requirements. Mr. Brown testified that the transfer of the Substation to I&M is in the public interest, and that I&M has the necessary technical, financial, and managerial capability to own and operate the Substation.

Ms. Rastegar testified that Headwaters proposed to sell to I&M pursuant to a Transfer Agreement the Substation, which is a 345kV interconnection switchyard with certain electrical equipment, land, and an access road. Ms. Rastegar stated that Headwaters built the Substation and is required to transfer ownership of the Substation to I&M upon completion in accordance with the ICSA by and among PJM, Headwaters, and I&M. I&M will operate the switchyard per all applicable laws in order to provide reliable power to the community.

Ms. Rastegar testified the purchase price is \$10.00 and the impact of the sale and transfer of the Substation on I&M's retail customers is de minimis. Ms. Rastegar stated the sale and transfer is in the public interest and that I&M has the necessary technical, financial, and managerial capability to own and operate the substation.

5. **OUCC's Evidence.** Ms. Aguilar testified the OUCC does not oppose the sale and change in ownership as presented in this proceeding. Ms. Aguilar stated Headwaters and I&M are requesting the Commission approve the transfer of ownership of Headwaters' Losantville switchyard and its appurtenant facilities, which are part of Headwaters' franchise, works, and system. Specifically, Joint Petitioners request: (1) the Commission find I&M possesses the technical, managerial, and financial capability to own and operate the Substation; (2) the Commission determine this ownership transfer is reasonable and serves the public interest; and (3) the Commission find the asset transfer meets the criteria established in Cause No. 44358 and Ind. Code § 8-1-2-83 and Ind. Code § 8-1-2-84.

Ms. Aguilar noted the OUCC followed up on Joint Petitioners' testimony specifically related to their assertion that the transfer serves the public interest. She stated public interest is an important part of the Commission's review, and statements regarding I&M's ownership and operation of the facilities are particularly relevant in the review of public interest. Ms. Aguilar noted the discovery requests sent by the OUCC and responses in this case provide substance to Joint Petitioner's testimony statements regarding I&M's ability as it relates to public interest. Ms. Aguilar concluded her testimony by noting the OUCC encourages assertions of a utility's capability, whether managerial, financial, or technical be accompanied by information to support those claims.

6. **Commission Findings.** Ind. Code § 8-1-2-84 provides that any public utility may sell its used or useful property, plant, or business, or any part thereof, to any other public utility at a price and on terms approved by the Commission. Based on the evidence, the Commission finds that the proposed sale and transfer of the Substation from Headwaters to I&M is reasonable and approves the purchase.

As shown on Attachment RJB-1, the ISA, Headwaters (as Interconnection Customer) exercised the option to construct certain Transmission Owner Interconnection Facilities located on I&M's side of the point of interconnection for the project, including the Substation facilities. Headwaters entered into the ICSA, which allowed it to construct the Substation facilities on the condition that title to the completed facilities is transferred to I&M. In accordance with Section 5.5 of the ICSA, Headwaters must transfer legal title to the facilities to I&M upon receipt of all necessary regulatory approvals for the transfer of title.

Based on the foregoing, we approve Joint Petitioners' proposed transfer of the Losantville Substation assets pursuant to the Transfer Agreement.

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

1. The proposed sale and transfer of assets from Headwaters to I&M is approved.
2. This Order shall be effective on and after the date of its approval.

**FREEMAN, HUSTON, WEBER, AND ZIEGNER CONCUR:**

**APPROVED: JAN 31 2018**

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

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**Mary M. Becerra  
Secretary of the Commission**