

STATE OF INDIANA

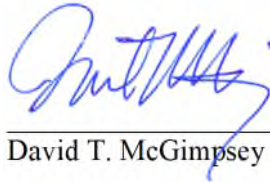
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY )  
MEADOW LAKE SOLAR PARK LLC D/B/A )  
INDIANA CROSSROADS SOLAR PARK FOR )  
CERTAIN DETERMINATIONS BY THE ) CAUSE NO. 45523  
COMMISSION WITH RESPECT TO ITS )  
JURISDICTION OVER PETITIONER'S )  
ACTIVITIES AS A GENERATOR OF )  
ELECTRIC POWER )

**MEADOW LAKE SOLAR PARK LLC D/B/A INDIANA CROSSROADS SOLAR PARK'S  
SUBMISSION OF PROPOSED ORDER**

Petitioner, Meadow Lake Solar Park LLC d/b/a Indiana Crossroads Solar Park, by counsel, hereby  
files its proposed order in this proceeding.

Respectfully submitted,



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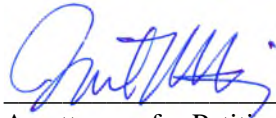
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Attorneys for Petitioner,  
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Solar Park

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served by electronic service on the following this 8<sup>th</sup> day of June, 2021.

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An attorney for Petitioner,  
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Indiana Crossroads Solar Park

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PROPOSED ORDER

ORDER OF THE COMMISSION

**Presiding Officers:**

**David Ziegner, Commissioner**

**Brad Pope, Administrative Law Judge**

On March 19, 2021, Meadow Lake Solar Park LLC d/b/a Indiana Crossroads Solar Park (“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 the Indiana Crossroads Solar Park, a solar electric generation facility located entirely in the unincorporated areas of White County, Indiana (the “Facility” or the “Project”), in accordance with Ind. Code ch. 8-1-2.5. Petitioner also filed the direct testimony and attachments of Ryan J. Brown, Executive Vice President of EDP Renewables North America LLC (“EDPR”).

On May 14, 2021, the Indiana Office of the Utility Consumer Counselor (“OUCC”) filed its Notice of Intent Not to File Testimony.

On May 21, 2021, Petitioner filed its Notice of Intent Not to File Rebuttal Testimony.

The Commission noticed this matter for an evidentiary hearing at 1:30 p.m. on June 9, 2021, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. A Docket Entry was issued on June 3, 2021, advising that due to the ongoing COVID-19 pandemic, the hearing would be conducted via WebEx and providing related participation information. Petitioner and the OUCC by counsel participated in the hearing via teleconference, and the testimony and exhibits 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 case.

**2. Petitioner’s Characteristics.** Petitioner is a Delaware limited liability company with its principal place of business at 1501 McKinney, Suite 1300, Houston, Texas. Petitioner is a subsidiary of EDP Renewables North America LLC (“EDPR”), a Delaware limited liability company with offices across the United States, including at 129 East Market Street, Indianapolis, Indiana. The ultimate parent corporation of Petitioner and EDPR is EDP – Energias de Portugal, S.A. (“EDP”), the largest utility in Portugal. EDPR’s expertise includes the development, construction, and operation of wind power electric generating facilities.

**3. Relief Requested.** Petitioner requested the Commission decline to exercise its jurisdiction over it 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 Evidence.** Ryan J. Brown testified Petitioner is an affiliate of EDPR, who has extensive experience owning and operating a fleet of solar and wind projects. Mr. Brown testified EDPR’s experience includes developing, owning and operating more than 50 wind farms and solar parks generating more than 6,900 MW in nameplate capacity. These projects are spread across 14 states (including Riverstart Solar Park, Meadow Lake Wind Farm Phases I through VI, Headwaters Wind Farm Phases I and II, Rosewater Wind Farm, and Indiana Crossroads Wind Farm, all in Indiana), Canada, and Mexico. EDPR is a global leader in the renewable energy sector and the world’s fourth largest wind energy producer with a presence in 14 countries.

Mr. Brown testified that EDP and EDPR would provide Petitioner with all the necessary financial, technical, and managerial expertise to construct and operate the Project while EDPR is involved with the Project. A redacted financial report of EDP’s financial results through the third quarter of 2020 were submitted as Petitioner Exhibit 1, Attachment RJB-9.

Mr. Brown testified Petitioner anticipates that the Facility would be capable of generating up to approximately 200 megawatts of alternating current (“MW AC”) electricity from approximately 530,000 solar panels over an approximately 1,600-acre solar generation facility. Electricity generated by the Project would be transmitted to the Project substation, where interconnection would be made via a new, approximately 0.6 mile generator lead line that is unique to the Project and that connects to Indiana Crossroads Wind Farm’s existing generator lead line in White County (together, the “Gen-Tie Lines”). The Gen-Tie lines would then interconnect to Northern Indiana Public Service Company’s (“NIPSCO”) Reynolds substation. A preliminary site map was submitted as Petitioner Exhibit 1, Attachment RBJ-3. The power output from the Facility is contracted to be sold exclusively to NIPSCO. Petitioner would self-certify the Facility as an exempt wholesale generator and apply for market-based rate authority under rules and regulations of the Federal Energy Regulatory Commission (“FERC”). Therefore, its wholesale rates for power would be subject to FERC regulation.

Mr. Brown testified the Facility would generate electricity via solar modules (i.e., panels) located within a fenced solar panel field. The solar field would include mounted photovoltaic (“PV”) modules

and Power Conversion Stations (“PCS”) that would be configured in array blocks. Each PCS would contain an inverter and a medium voltage transformer, as well as other electrical equipment. Each PCS would also contain electrical and communication equipment to power and communicate with the tracker units. All electrical equipment would be housed in protective enclosures on concrete pads, on precast vaults, or on posts. The collection system would transport the electricity from each array block to an onsite substation via underground 34.5 kV cabling. The onsite substation would contain a main power transformer to transform voltage from 34.5 kV to 345kV. The Project will be interconnected to NIPSCO’s Reynolds substation via the Gen-Tie lines.

Mr. Brown testified Petitioner already has an off taker for the electricity produced by the Facility. NIPSCO will purchase the entirety of the electrical output from the Project. EDPR will initially own 100% of the membership interests in Petitioner. Upon achieving mechanical completion, projected to be in mid- to late-2022, EDPR will transfer the membership interests in Petitioner to NIPSCO. This transfer will be made pursuant to a Build-Transfer Agreement between NIPSCO and EDPR (the “BTA”). At that point, Petitioner will be owned exclusively by NIPSCO, and EDPR will no longer hold a direct or indirect ownership interest in Petitioner. Whether the BTA structure is approved or not, NIPSCO will offtake all of the electrical output from the Project.

Mr. Brown testified that a System Impact Study was completed by MISO for the Project in July 2019. A copy of the study was submitted as Petitioner Exhibit 1, Attachment RJB-7. The System Impact Study indicates that the Project’s interconnection with the NIPSCO transmission system will not negatively impact system performance. Mr. Brown also testified that Petitioner, NIPSCO, and MISO entered into a Generator Interconnection Agreement (“LGIA”) dated November 18, 2019. A copy of the LGIA was submitted as Petitioner Exhibit 1, Attachment RBJ-8.

Mr. Brown 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 is coordinating with the U.S. Fish and Wildlife Service (“USFWS”) and the Indiana Department of Natural Resources (“IDNR”) on potential impacts to federal and state threatened and endangered species. Petitioner contracted with Ecology and Environment, Inc. and Tetra Tech to conduct biological resource surveys. The biological resources assessment began in October 2018 with a Site Characterization Study, which identified no issues that would restrict project development, construction or operation. There are, however, several federal and state protected species that have the potential to occur within the Project area. Petitioner will avoid and minimize impacts to federally- and state-listed threatened and endangered species and their habitat, as practical, and coordinate with coordinate with the USFWS and IDNR if impacts are unavoidable.

Mr. Brown testified Petitioner submitted evidence that it has complied or would comply with local zoning and land use requirements, has obtained or would obtain all construction, grading, and wastewater permits, and would not rely on the public utility exemption from local zoning regulation. Mr. Brown testified that Petitioner will enter into an Economic Development Agreement with White County. Petitioner will establish a decommissioning plan and a decommissioning security for the Facility in accordance with the White County zoning ordinance. The Decommissioning Security will ensure the Facility is properly decommissioned upon the end of the project life or abandonment. Mr. Brown testified Petitioner may need to obtain the following Indiana permits and determinations: (1) a permit under Title 327 of the Indiana Administrative Code for the discharge of construction-related storm water, also known as a Rule 5 Permit; and (2) Indiana Department of Transportation (“INDOT”)

permits to allow the Facility's electric lines and other equipment to cross state highways and for driveways, road exits, and similar infrastructure.

Mr. Brown also 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 FERC's rules and regulations; (2) develop and implement a federal spill prevention, control, and countermeasure plan; (3) and obtain a Clean Water Act, Section 404 General Permit from the United States Army Corps of Engineers ("USACE") for impacts to wetlands or other waters of the United States.

Mr. Brown 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 and concrete mixing. After construction is completed, water may be used for panel washing, if necessary.

Mr. Brown explained 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. Mr. Brown testified this is similar to the treatment given to other renewable energy projects in Indiana.

Mr. Brown also testified that Petitioner agrees to submit the status reports that have typically been imposed on similar generation projects in Indiana, including solar and wind projects, and he listed the initial and subsequent reports to be submitted.

Mr. Brown concluded that he believes the public interest would be served in several ways through the addition of the electric generating capacity represented by the Facility. Mr. Brown testified the public needs electricity as demonstrated by the fact that Petitioner has already secured the BTA with the off taker, NIPSCO. Petitioner's proposed solar project represents one of the most environmentally friendly means of generating electricity. The public in Indiana would benefit from the efficiencies that flow from proximity to the source of generation because it is generally advantageous for load not to be located too far from its source. Mr. Brown testified landowners in White County would receive economic benefits from the placement of solar facilities on their properties. Local taxing bodies would receive new tax revenues. The Facility would provide additional economic benefit by creating a need for 200 full-time construction jobs, and six full-time operations and maintenance jobs. Mr. Brown testified solar energy provides greater energy security and would diversify Indiana's electricity generation portfolio, protecting against volatile price spikes and risks from relying too heavily on just a few sources of generation. Mr. Brown testified solar energy is a domestic source of fuel, harnessed over Indiana lands, and not subject to the geopolitical complexities of foreign energy sources. He explained use of farmland for solar purposes has the incidental benefit of enhancing the land's productivity in the long term by allowing the land underneath to lay fallow during the operational period, which increases the quality of the soil by allowing nutrients to return to and stay in the soil, reduces erosion, and improves drainage, so that once the solar facility is returned to farmland, the land would be more productive. Mr. Brown testified that White County will benefit from the tax revenues from the Facility. Finally, Mr. Brown testified that the benefit renewable energy projects provide to the public interest is underscored by support from the local community. EDPR has a long-standing and productive relationship with White County and the landowners within and surrounding the Project. These relationships have been fostered over the past 14 years, over the course of which EDPR has

delivered multiple projects totaling over 700 MW of nameplate capacity and the attendant community benefits in the form of lease payments and payments to local governments.

5. **OUCC Evidence.** The OUCC did not file testimony in this Cause.

6. **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 § 8-12.5-2. 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 Indiana 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). Considerations in determining whether an entity is a public utility, 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) ("*Foltz*"). Petitioner's business is "impressed with a public interest" and would render service "of a public character and of public consequence and concern" as also considered in *Foltz*. *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 such as Petitioner. Consequently, based upon our application of the statutes and precedents discussed herein to the facts and circumstances in this case, we find that Petitioner is a "public utility" within the meaning of Ind. Code § 8-1-2-1 and Ind. Code § 8-1-8.5-1 and is an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2 for purposes of the ownership, development, financing, construction, and operation of the Facility.<sup>1</sup>

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, Indiana Code provides that the Commission may enter an Order, after notice

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<sup>1</sup> 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."

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 § 8-12.5-5(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 would 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 would operate the Facility in a manner consistent with good utility practice. Further, the costs of the Facility would not be recovered through a rate base/rate of return or other process typically associated with public utility rates.

Further Commission regulation: (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.

As part of the Commission’s public interest analysis regarding any proposed declination of jurisdiction, we must evaluate facilities such as Petitioner’s based on several factors, as discussed in the following sections.

**A. Location.** As part of its public interest determination, 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 described 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.** Mr. Brown testified Petitioner submitted evidence that it has complied or would comply with local zoning and land use requirements, has or would obtain all construction, grading, and wastewater permits, and would not rely on the public utility exemption from local zoning regulation. Mr. Brown testified that the Facility would comply with all local land use requirements. Mr. Brown further testified that Petitioner will enter into an Economic Development Agreement with White County.

ii. **Land Use and Solar Resources.** Mr. Brown testified Petitioner is an affiliate of EDPR, who has extensive experience owning and operating a fleet of solar and wind projects. Mr. Brown testified EDPR’s experience includes developing, owning and operating more than 50 wind farms and solar parks generating more than 6,900 MW in nameplate capacity. These projects are spread across 14 states (including Riverstart Solar Park, Meadow Lake Wind Farm Phases I through VI, Headwaters Wind Farm Phases I and II, Rosewater Wind Farm, and Indiana Crossroads Wind Farm, all in Indiana), Canada, and Mexico. EDPR is a global leader in the renewable energy sector and the world’s fourth largest wind energy producer with a presence in 14 countries. Based on the evidence presented, it appears that Petitioner, utilizing its experience in developing other solar 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 Exhibit 1, Attachment RJB-3.

iii. **Water Use and Supply.** Mr. Brown testified that the Facility would not have significant water use 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 and concrete mixing. After construction is completed, water may be used for panel washing, if necessary. Therefore, the evidence presented demonstrates that area water use and supplies would not be adversely affected by the Facility.

iv. **Transmission Interconnection.** Mr. Brown testified that electricity generated by the Project would be transmitted to the Project substation, where interconnection with the NIPSCO transmission system would be made via the Gen-Tie lines. The Gen-Tie lines would then interconnect to Northern Indiana Public Service Company’s (“NIPSCO”) Reynolds substation. The Facility would generate electricity via solar modules located within a fenced solar panel field. The solar field would include mounted PV modules and PCS that would be configured in array blocks. Each PCS contains an inverter and a medium voltage transformer as well as other electrical equipment. Each PCS

would also contain electrical and communication equipment to power and communicate with the tracker units. All electrical equipment would be housed in their respective protective enclosures on concrete pads or precast vaults, or on posts. The collection system would transport the electricity from each array block to an onsite substation via underground 34.5 kV cabling. The onsite substation would contain a main power transformer to transform voltage from 34.5 kV to 345kV. The Project will be interconnected to NIPSCO's Reynolds substation via the Gen-Tie lines.

Mr. Brown testified that a System Impact Study was completed by MISO for the Project in July 2019. A copy of the study was submitted as Petitioner Exhibit 1, Attachment RJB-7. The System Impact Study indicates that the Project's interconnection with the NIPSCO transmission system will not negatively impact system performance. Mr. Brown also testified that Petitioner, NIPSCO, and MISO entered into a Generator Interconnection Agreement ("LGIA") dated November 18, 2019. A copy of the LGIA was submitted as Petitioner Exhibit 1, Attachment RBJ-8.

The power output from the Facility would be sold exclusively to NIPSCO. Petitioner would self-certify the Facility as an exempt wholesale generator and apply for market-based rate authority under FERC rules and regulations. Therefore, its wholesale rates for power would be subject to FERC regulation.

v. **Additional Permitting and Environmental Issues.** Mr. Brown indicated in his testimony that 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 is coordinating with USFWS and INDR on potential impacts to federal and state threatened and endangered species. Petitioner will avoid and minimize impacts to federally- and state-listed threatened and endangered species and their habitat, as practical, and coordinate with coordinate with the USFWS and IDNR if impacts are unavoidable.

Petitioner would also obtain construction storm water, county and municipal building, construction grading, and wastewater permits as needed. Petitioner and White County will enter into an Economic Development Agreement.

To the extent required by state law, Petitioner may need to obtain the following permits and determinations: (1) a permit under Title 327 of the Indiana Administrative Code for the discharge of construction-related storm water, also known as a Rule 5 Permit; and (2) INDOT permits to allow the Facility's electric lines and other equipment to cross state highways and for driveways, road exits, and similar infrastructure.

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 Clean Water Act, Section 404 General Permit from the USACE for impacts to wetlands or other waters of the United States.

vi. **Using the Public Right-of-Way.** Mr. Brown testified Petitioner seeks to retain the right to use the public right-of-way within the Facility site. Retention of the use of the public right-of-way would allow Petitioner to place collector lines and transmission lines in the public right-of-way and would clarify issues surrounding use of the public right-of-way for road crossings. Mr. Brown

testified this is similar to the treatment given to other renewable energy projects in Indiana. Based upon the evidence presented, we find Petitioner's request for limited use of the public right-of-way to be reasonable, and that Petitioner retains the right to use the public right-of-way as identified in its evidence.

**B. Need.** The Commission must determine if the development of additional generating capacity will serve the public interest. As explained below, the Commission finds that the evidence presented demonstrates a reasonable expectation of need for the Facility and finds that its construction will serve the public interest.

Mr. Brown testified that he believes the public interest would be served in several ways through the addition of the electric generating capacity represented by the Facility. Mr. Brown testified the public needs electricity as demonstrated by the fact that Petitioner has already secured the BTA with the off taker, NIPSCO. Petitioner's proposed solar project represents one of the most environmentally friendly means of generating electricity. The public in Indiana would benefit from the efficiencies that flow from proximity to the source of generation because it is generally advantageous for load not to be located too far from its source. Mr. Brown testified landowners in White County would receive economic benefits from the placement of solar facilities on their properties. Local taxing bodies would receive new tax revenues. The Facility would provide additional economic benefit by creating a need for 200 full-time construction jobs, and six full-time operations and maintenance jobs. Mr. Brown testified solar energy provides greater energy security and would diversify Indiana's electricity generation portfolio, protecting against volatile price spikes and risks from relying too heavily on just a few sources of generation. Mr. Brown testified solar energy is a domestic source of fuel, harnessed over Indiana lands, and not subject to the geopolitical complexities of foreign energy sources. He explained use of farmland for solar purposes has the incidental benefit of enhancing the land's productivity in the long term by allowing the land underneath to lay fallow during the operational period, which increases the quality of the soil by allowing nutrients to return to and stay in the soil, reduces erosion, and improves drainage, so that once the solar facility is returned to farmland, the land would be more productive. Mr. Brown testified that White County will benefit from the tax revenues from the Facility. Finally, Mr. Brown testified that the benefit renewable energy projects provide to the public interest is underscored by support from the local community. EDPR has a long-standing and productive relationship with White County and the landowners within and surrounding the Project. These relationships have been fostered over the past 14 years, over the course of which EDPR has delivered multiple projects totaling over 700 MW of nameplate capacity and the attendant community benefits in the form of lease payments and payments to local governments.

Based on the evidence presented, we find that Petitioner's proposed development of additional generating capacity through the Facility is supported by the evidence and 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.

Petitioner is an affiliate of EDP and EDPR. Mr. Brown testified that EDP and EDPR will provide Petitioner with all the necessary financial, technical, and managerial expertise to construct and operate the Project while EDPR is involved with the Project. A redacted financial report of EDP's financial results through the third quarter of 2020 were submitted as Petitioner Exhibit 1, Attachment RJB-9.

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

**D. 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 (2005).

**E. 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 approval, but shall provide written notice 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) a debtor in possession; or (3) a foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner or ownership interests in 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.

**7. Financial Assurance.** Mr. Brown testified that Petitioner is in the process of negotiating an Economic Development Agreement with the local White County government and that Petitioner will establish a decommissioning plan and a decommissioning security for the Facility as required by the White County zoning ordinance. The Decommissioning Security will ensure the Facility is properly

decommissioned upon the end of the project life or abandonment. As a condition of this Order, the Commission requires Petitioner to maintain financial assurance to ensure that the Facility will be properly decommissioned at the end of its serviceable life. The decommissioning plan provides assurance that the Facility's facilities are properly decommissioned at the end of the Facility's useful life or upon facility abandonment. Petitioner must provide a cost estimate for demolition and removal of the Facility's facilities. To guard against the unlikely and worst-case possibility that Petitioner will be unable to meet its obligation to remove the solar project, a decommissioning security (a performance or surety bond) will be established. The decommissioning security is intended primarily to cover the cost of removing project infrastructure and restoration of the leased premises to their original condition. Detail regarding the type and amount of the security and method of calculating will be specified in the decommissioning plan. Petitioner provided evidence that it will provide such security as required.

Petitioner shall notify the Commission when its decommissioning security has been established, including the form and amount of the security. We find that the financial assurance requirements set forth in the Decommissioning Agreement are sufficient to satisfy this requirement.

**8. Reporting Requirements.** 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. 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) 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 LGIA with MISO; and
- (11) The information listed below in the Subsequent Reports section to the extent such information is available.

**B. Subsequent Reports.** Petitioner's subsequent reports shall be filed within 30 days of the end of each calendar quarter until the quarter that occurs after the COD is achieved and that immediately precedes the Annual Report filing date of each year. Thereafter, subsequent reports should

be filed as an addendum to Petitioner's Annual Report. Subsequent reports should include the following information:

- (1) Any changes of the information provided in the Initial Report;
- (2) Any reports of Interconnection System Impact Studies not previously submitted to the Commission;
- (3) Copy of the LGIA 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 LGIA 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; and
- (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.

**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. Petitioner shall notify the Commission if it modifies or suspends the Facility under the terms of the LGIA 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 LGIA 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.

**9. Conclusion.** Pursuant to the provisions set forth in 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. We further conclude that declining to exercise our jurisdiction over Petitioner will promote energy utility efficiency. 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 LGIA, then the Commission may, following notice to Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth herein. Petitioner shall file status reports with the Commission and the OUCC when construction begins and shall continue providing such reports until 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 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 8-12-1 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. The information filed in this Cause pursuant to the Motion for Protection under Ind. Code § 5-14-3-4 is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.
8. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, OBER, 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**