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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF ST.)
JOSEPH ENERGY CENTER, LLC FOR)
CERTAIN DETERMINATIONS BY THE)
COMMISSION WITH RESPECT TO ITS)
JURISDICTION OVER PETITIONER'S)
ACTIVITIES AS A GENERATOR OF ELECTRIC)
POWER AND FOR CONSENT TO OCCUPY THE)
PUBLIC RIGHTS-OF-WAY)

CAUSE NO. 44246

APPROVED: FEB 13 2013

ORDER OF THE COMMISSION

Presiding Officers:

James D. Atterholt, Chairman

Loraine L. Seyfried, Chief Administrative Law Judge

On September 7, 2012, St. Joseph Energy Center, LLC ("Petitioner") filed its Verified Petition in this matter requesting the Indiana Utility Regulatory Commission ("Commission") enter an order declining to exercise jurisdiction, pursuant to Ind. Code § 8-1-2.5-5, over Petitioner's construction, ownership and operation of a 1,345 megawatt ("MW") combined cycle gas turbine ("CCGT") power plant located in St. Joseph County, Indiana (the "Project").

On September 10, 2012, Petitioner filed the verified direct testimony of Willard Ladd, Principal at Development Partners Group, LLC ("Development Partners") and sought administrative notice of two reports prepared by the State Utility Forecasting Group ("SUFG"). On November 20, 2012, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled the direct testimony of Ronald L. Keen, a Senior Analyst in the OUCC's Resource Planning and Communications Division. On December 3, 2012, the Indiana Industrial Group ("Industrial Group"), an ad hoc group of industrial companies, filed its Petition to Intervene.¹ The Industrial Group's Petition to Intervene was granted on December 19, 2012. On December 14, 2012, Petitioner filed the rebuttal testimony of Willard Ladd.

Pursuant to notice as provided by law, proof of which was incorporated into the record, an evidentiary hearing in this Cause was held at 9:30 a.m. on January 8, 2013 in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis Indiana. At the hearing, Petitioner, the Industrial Group and the OUCC appeared by counsel. Petitioner and the OUCC offered their respective prefiled testimony and exhibits, which were admitted into evidence without objection. No members of the general public appeared.

Based upon the applicable law and the evidence of record, the Commission now finds as follows:

¹ Members of the Industrial Group include ADM Milling Co., BP Products North America, Inc., Haynes International, Inc., Praxair, Inc., Rochester Metal Products Corporation, and USG Corporation.

1. **Notice and Jurisdiction.** Proper legal notice of the hearing in this Cause was given and published by the Commission as required by law. As discussed in greater detail below, Petitioner intends to engage in activity that would qualify it as a “public utility” under Ind. Code § 8-1-2-1(a)(2) and as an “energy utility” under Ind. Code § 8-1-2.5-2. Petitioner seeks relief pursuant to Ind. Code ch. 8-1-2.5. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this case.

2. **Petitioner’s Characteristics.** Petitioner is a limited liability company duly organized and existing under the laws of the State of Delaware. Petitioner’s principal place of business is at 11 Martine Avenue, White Plains, New York 10606. Petitioner is a subsidiary of an investment fund managed by EIF Management, LLC, which was founded in 1987 as the first investment manager dedicated exclusively to the independent power and electric utility industry. Funds managed by EIF Management, LLC currently own and operate 26 power plants totaling nearly 3,600 MW.

Upon completion, the Project will generate electricity solely for sales for resale in the wholesale market. These sales for resale, and any associated transmission upgrades needed to effect such sales, will be subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”) pursuant to the Federal Power Act, as amended.

3. **Relief Requested.** Petitioner requests that the Commission, pursuant to Ind. Code § 8-1-2.5-5, decline to exercise any jurisdiction to (a) require Petitioner to obtain a certificate of public convenience and necessity (“CPCN”) to construct the Project under Ind. Code ch. 8-1-8.5, the “Powerplant Construction Act” and (b) regulate, under Ind. Code ch. 8-1-2, Petitioner’s construction, ownership and operation of, and other activities in connection with the Project.

4. **Commission Discussion and Findings.** Pursuant to Ind. Code ch. 8-1-2.5, the Commission may decline to exercise its jurisdiction over an energy utility, including its jurisdiction to issue certificates of public convenience and necessity under Ind. Code ch. 8-1-8.5 for the construction or purchase of a facility for the generation of electricity. *See, e.g., Crawfordsville Energy, LLC*, Cause No. 44101 (IURC July 3, 2012). In order for the Commission to decline to exercise jurisdiction over Petitioner pursuant to Ind. Code ch. 8-1-2.5, the Commission must first determine whether Petitioner is a public utility pursuant to Ind. Code §§ 8-1-2-1 and 8-1-8.5-1.

According to the evidence presented, Petitioner’s construction, ownership and operation of the Project is for the sale of the power generated by it into the wholesale market, and the entities purchasing the power may include public utilities inside and outside of Indiana. Petitioner’s property “is used in a business that is public in nature and not one that is private.” Accordingly, Petitioner’s business is “impressed with a public interest” and renders service “of a public character and of public consequence and concern . . .” *Foltz v. City of Indianapolis*, 130 N.E.2d 650, 659 (Ind. 1955). The Commission has found in prior cases that a business that only generates electricity and then sells it directly to public utilities is a public utility. *See, e.g., Crawfordsville Energy, LLC*, Cause No. 44101 (IURC July 3, 2012); *Benton County Wind Farm, LLC*, Cause No. 43068 (IURC Dec. 6, 2006); *AES Greenfield, LLC*, Cause No. 41361 (IURC March 11, 1999); *Commonwealth Edison of Indiana, Inc.*, Cause No. 36093 (IURC June 12, 1980). Consequently, we find that upon construction and operation of the Project, Petitioner will

be a “public utility” pursuant to Ind. Code § 8-1-2-1 (and thus an “energy utility” pursuant to Ind. Code § 8-1-2.5-2) and Ind. Code § 8-1-8.5-1.

Ind. Code § 8-1-2.5-5(a) authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an “energy utility” if the public interest requires it. In determining whether the public interest will be served, Ind. Code § 8-1-2.5-5(b) requires the Commission 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.

Thus, the Commission considers the evidence presented by the parties in light of these factors to determine whether the public interest will be served in declining to exercise its jurisdiction.

In determining whether the public interest would be served by such a declination, the Commission considers, among other things, whether Petitioner’s proposal would significantly and negatively impact an Indiana electricity supplier or its customers. The evidence in this Cause demonstrates Petitioner does not intend, nor does it request authority, to sell electricity generated by the Project to the general public or to any retail customer. Instead, Petitioner intends to pursue an arrangement to sell power, either through a tolling agreement or a power purchase agreement, to one or more of Indiana’s load serving entities. Petitioner’s costs will not be recovered through a rate base/rate of return or other process typically associated with public utility rates. Instead, Petitioner’s wholesale rates and charges for the sale of energy will be filed with FERC and are required to be just and reasonable, in conformity with standards set by FERC.

As part of the Commission’s public interest analysis regarding any proposed declination of jurisdiction, the Commission generally evaluates the proposed construction and operation of facilities such as the one at issue in this Cause based on a number of factors including the following:

- a. **Location:** As part of its public interest determination, the Commission may consider whether or not the location of a proposed facility, or its expansion, is compatible with the surrounding land uses. In determining compatibility, the Commission may evaluate and consider any evidence of compliance with local zoning and land use requirements.

In deciding whether to decline jurisdiction over Petitioner and the Project, the Commission has the authority to consider whether the public interest will be served by the Project being in its planned location. In making such determination, the Commission must consider the potential for adverse effects on Indiana “electricity suppliers” (as that term is used in Ind. Code ch. 8-1-2.3), their customers, or a local community. With specific regard to the Project, Petitioner has demonstrated that the planned location has been previously approved by the Commission for a combined cycle power plant (the “Acadia Bay project”) and has produced evidence of strong community support for the Project. The planned location is a 165-acre tract within the St. Joseph County Economic Development District 2, with several industrial facilities located nearby.

(1) Local Zoning and Permitting Requirements. Petitioner provided evidence that the Project will comply with local zoning and permitting requirements. Mr. Ladd testified that the property was rezoned for heavy industrial use in 2002 and received a special use designation for operation of an electrical power plant that transfers with the zoning. He testified that Petitioner has updated the property site plan for the current development plan and will file this update with the County Building Department and Area Plan Commission.

(2) Noise and Aesthetics. Mr. Ladd testified that an acoustical evaluation and ambient sound survey was made in 2001 to determine the effects of the Acadia Bay project on the surrounding area. That noise study indicated that the Acadia Bay project would meet all of the St. Joseph County noise requirements. He stated that since there have been no material changes to neighboring community or sound levels from electric generating equipment since the 2001 study, the study is a valid indicator of the Project’s ability to meet the noise requirements of St. Joseph County.

With respect to aesthetics issues, Petitioner explained that it is committed to an open and transparent development process in which community comments and concerns are promptly addressed. Mr. Ladd testified that Petitioner held a public meeting on March 10, 2010 and since then Petitioner has met consistently with local leaders to discuss the Project. He said there is strong community support for the Project.

(3) Water Use and Supply. Mr. Ladd testified that the Project will not negatively impact water resources or streams. Petitioner indicated the Project will use water supplied from a new well and water treatment facility to be built on the southern portion of the Project site. This water will be used by the Project in four ways: (1) as process water; (2) to supply the fire water system; (3) to serve non-potable service needs; and (4) to serve potable needs. Mr. Ladd testified the hydrological analysis confirmed the aquifer charged by Lake Michigan is robust and will not be adversely affected by the increased water withdrawal needed to support the Project. He further testified that the quality of the wastewaters discharged either to the city sewer system or to a surface receiving water will meet all applicable federal and state requirements.

(4) Transmission Interconnection. As currently envisioned, the Project will interconnect one of its power blocks into Midwest Independent Transmission System Operator, Inc. (“MISO”) and the other into the PJM regional transmission organization (“PJM”). Mr. Ladd testified that the Project will interconnect to the MISO system through a 14-mile

transmission line and will interconnect to the PJM system through a ring-bus interconnection with a 345 kV transmission line owned by Indiana Michigan Power Company. Petitioner produced copies of formal feasibility studies through both the MISO and PJM interconnection processes. These feasibility studies concluded that the cost of network upgrades required to interconnect the facility to the transmission grid are at a feasible level. Mr. Keen testified that the OUCC agreed with the conclusions presented in each of these studies.

(5) Additional Permitting and Environmental Issues. Mr. Ladd described the various environmental permits and approvals that will be required for the Project. He testified that the Project has received a draft air permit from the Indiana Department of Environmental Management (“IDEM”) based on the PSD and Title V Operating Permit application filed by the Project with IDEM’s Office of Air Quality on October 3, 2011. Mr. Ladd stated the Project will require a Federal Aviation Administration Determination of No Hazard, which the Project anticipates filing for by the first quarter of 2013. Petitioner indicated that with respect to water permitting, the Project will require a NPDES permit for Industrial Discharges to discharge wastewater into the Niespodziany drainage ditch. He said the Project is expected to receive the permit in the third quarter of 2013.

(6) Using the Public Right-of-Way. Petitioner presented evidence that it may require public rights-of-way for its planned transmission line, laterals to interstate natural gas pipelines and/or new infrastructure required to meet the Project’s water and wastewater needs. Petitioner requests that the Commission consent to St. Joseph County granting any license, permit or franchise necessary for Petitioner to occupy the public rights-of-way.

Mr. Keen testified that the OUCC objected to Petitioner’s request for authority to use the public rights-of-way without a specific explanation of the use of the rights-of-way. He further explained that the OUCC did not oppose Petitioner’s use of the power of eminent domain for the limited purpose of siting twelve miles of transmission line because such relief is consistent with prior Commission Orders. However, he said that if Petitioner believes it needs additional eminent domain authority in the future, the OUCC recommends Petitioner be required to come before the Commission and demonstrate the need to exercise such power.

In rebuttal, Mr. Ladd testified that Petitioner has sought permits to utilize public rights-of-way because the transmission facilities it needs to construct to interconnect the Project with transmission systems operated by MISO will cross public rights-of-way. He explained that Petitioner agrees that it will only occupy the public rights-of-way to the extent necessary to construct its transmission facilities.

Mr. Ladd further stated that although Petitioner originally indicated that it would not seek to exercise the power of eminent domain, Petitioner reconsidered its need to exercise eminent domain for the limited purpose of constructing its transmission line. He stated that Petitioner will need to construct approximately twelve miles of transmission facilities to interconnect the Project with MISO. Absent the authority to exercise eminent domain, opposition by a few landowners could significantly interfere with the construction of these transmission facilities. Mr. Ladd testified that Petitioner will work with all landowners in good faith to reach necessary agreements without resort to eminent domain authority, but recognized that it may be necessary to resort to a judicial proceeding to agree on fair terms for use of property required to construct

the transmission facilities. Mr. Ladd agreed with the OUCC that to the extent the need to construct gas lines or other infrastructure requires the use of additional eminent domain authority, Petitioner will request the initiation of a subdocket in this proceeding explaining its need to exercise such eminent domain authority.

Based on the above, we find that the public interest would be served by the Commission consenting to St. Joseph County granting any license, permit or franchise necessary for Petitioner to occupy the public rights-of-way for the purposes of constructing its transmission line. However, with regard to the grant of authority to exercise eminent domain, we decline to grant such authority at this time. Contrary to the OUCC's assertion, the Commission has not previously granted eminent domain authority to public utilities that the Commission has declined to exercise its jurisdiction over pursuant to Ind. Code § 8-1-2.5-5. "The power of eminent domain has been characterized as a very high and dangerous one...." *Kinney v. Citizens' Water & Light Co.*, 90 N.E.129 (Ind. 1909). Although the legislature has seen fit to grant public utilities the power of eminent domain, they have also seen fit to grant the Commission the authority to determine whether public convenience and necessity requires, or will require, construction of new electric facilities, as well as the authority to address the manner and method of a utility's provision of service. *See, Town of Schererville v. Northern Ind. Public Serv. Co.*, 463 N.E.2d 1134 (Ind. App. 1984). Consequently, the Commission should exercise caution in declining its jurisdiction when a public utility seeks to retain eminent domain authority.

Because Petitioner requests the Commission to decline its jurisdiction generally over the Project and it is uncertain whether Petitioner will require eminent domain authority as no specific and sufficiently identifiable need has been established, we need not approve this component of Petitioner's request at this time. To the extent Petitioner determines eminent domain authority is necessary, Petitioner shall request the initiation of a subdocket in this Cause to explain its specific and clearly identifiable need for eminent domain authority.

b. Need: In determining the public interest, the Commission will review and make a determination of need (*i.e.*, whether the development of additional generating capacity will serve the public interest). To demonstrate need, entities must provide evidence that a proposed facility will meet the demands of the market; a mere assertion that the wholesale market is competitive is insufficient to meet this standard.

The evidence presented in this Cause indicates a need for the anticipated power generation. Mr. Ladd testified the latest SUFG report shows a continuing need for additional generating capacity in Indiana. He noted that SUFG forecasts a need of 2,240 MW of capacity and energy from new combined cycle gas turbine power plants, and the Project can meet a substantial portion of this need. In addition, as explained by Mr. Ladd, the Project can provide needed diversity to Indiana's power fleet and serve as a replacement of some of Indiana's older coal plants that will be retired in response to environmental regulations.

Mr. Ladd also testified that the Project will provide employment and economic benefits for the northern Indiana region. The Project is expected to provide 1,762 construction jobs and 187 operation jobs, and have a \$24 million positive economic impact annually during its thirty years, or more, of operation.

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 the proposed financing will not jeopardize retail electric supply. In assessing the financing to ensure the long-term economic viability of a proposed project, the Commission may consider the developer's ability to finance, construct, lease, own and operate generating facilities in a commercially responsible manner.

The Project is being developed and sponsored by Development Partners and Energy Investors Funds ("EIF"). The evidence indicates this team represents a group of professionals with deep experience in successfully developing, constructing, bringing on-line and operating power projects. EIF has raised over \$4.5 billion in equity capital and made over 100 diversified investments. It has 39 professionals with experience in project development and management and manages investment funds with roughly 3.6 gigawatts of electric generation and transmission. Mr. Ladd possesses over 25 years experience in this industry. Based on the evidence presented, the Commission finds Petitioner has the ability to finance, construct and manage the Project.

5. **Reservation of Certain Jurisdiction.** 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 Project. 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.

a. **Affiliate Transactions.** 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, should Petitioner become an affiliate of any regulated retail utility operating in Indiana, it shall immediately notify the Commission, the OUCC and Industrial Group. Further, Petitioner shall obtain prior Commission approval with respect to the sale of any electricity to any such affiliated, regulated Indiana retail utility. The Commission also 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.

b. **Transfer 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 Petitioner's franchise, works, or system. Petitioner, however, shall not be required to seek prior approval of any transfers of ownership of the Project or its assets involving: (1) the grant of a security interest 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); (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.

6. Reporting Requirements. Mr. Keen recommended that Petitioner file an Initial Quarterly Report within thirty days of a Final Order in this Cause, with quarterly reports thereafter.

In rebuttal, Mr. Ladd agreed to submit necessary reports to keep the OUCC and Commission informed about the status of the Project, but proposed a few modifications to the OUCC's recommended reporting requirements. More specifically, Mr. Ladd stated that the Commission should not require Petitioner to seek prior approval for an increase or decrease of 3 MW or more in the capacity of its operation. He stated 3 MW represents only 0.002% of the Project's output and would not be a material change. He recommended eliminating the 3 MW range and instead require approval for a change in estimated capacity of 15% or more.

Finally, with regard to the establishment of an independent financial instrument, Mr. Ladd recommended requiring this to be established at the time construction activity has progressed to the point where the cost of dismantling the infrastructure and returning the site to the condition at the time Petitioner acquired the site exceeds the scrap value of the infrastructure installed.

We find the OUCC's proposed reporting requirements, as modified by Petitioner in rebuttal, to be reasonable and consistent with the reporting requirements approved in prior similar cases. It shall be a condition of this Order and our continued partial declination of jurisdiction over Petitioner, that Petitioner file with the Commission Annual Reports as provided in Ind. Code § 8-1-2-49, and provide such other information as the Commission may from time to time request. These reporting requirements are intended to ensure the Commission obtains reliable, up-to-date information in a timely manner necessary to carry out its statutory obligations.

The following reports ("Reporting Requirements") shall be prepared and filed by Petitioner in this Cause.

a. Initial Report

- (1) Project ownership and name(s) of the Project;
- (2) Name, title, address and phone number(s) for primary contact person(s) for the Project;
- (3) Type and number of turbines deployed;
- (4) Anticipated total output for the Project;
- (5) Manufacturer, model number, and operational characteristics of each type of turbine;
- (6) Connecting utility(s), if any Purchase Power Agreements ("PPA") are developed;
- (7) Copy of all Interconnection System Impact Studies prepared by MISO and/or PJM;
- (8) Expected in-service (commercial operation) date;

- (9) An estimate of the engineering/construction timeline and critical milestones for the Project;
- (10) The status of the Large Generator Interconnection Agreement with MISO and/or PJM; and
- (11) The information listed under subsection (b) below, 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 commercial operation is achieved and that immediately precedes the Annual Report filing date. Thereafter, subsequent reports should be filed as an addendum to Petitioner's Annual Report.

- (1) Any changes in 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 Interconnection Service Agreement ("ISA") as filed with FERC;
- (4) Notice of the establishment of an independent financial instrument, including its form and amount, at such time that the scrap value exceeds the cost of dismantling the infrastructure and returning the site to the condition it was in at the time Petitioner acquired the site;
- (5) Achievement of construction milestones described in the ISA and such events as the procurement of major equipment, receipt of major permits material to the construction and operation of the Project, construction start-up, initial energization and commercial operation; and
- (6) When commercial operation is achieved, any contracts then existing for utility sales, the contract amount and the entity, contingency plans detailing emergency response plans as required by state and/or local units of government, the interconnection transmission owner and/or the MISO and/or PJM ISO, and the Project's certified (or accredited) dependable capacity rating.

7. Notification of Changes in Capacity or Operation. In the event Petitioner intends to materially increase, decrease, or otherwise materially change the Project's capacity or operation, Petitioner must seek and obtain the Commission's prior approval.²

8. Conclusion. Pursuant to the provisions set forth in Ind. Code § 8-1-2.5-5, the Commission declines to exercise its jurisdiction over Petitioner, including the need for a CPCN, other than as set forth in this Order. The evidence in this Cause demonstrates that the characteristics of Petitioner as a producer of power solely for sale for resale subject to FERC's jurisdiction render the exercise of full jurisdiction by the Commission over Petitioner and the Project unnecessary. In addition, the partial declination to exercise jurisdiction over Petitioner and the Project may facilitate needed generation capacity in Indiana, which is beneficial for Petitioner, those public utilities that may indirectly have access to the power produced, and to the

² A material change includes, but is not limited to, the following: an increase or decrease of greater than 15% in the Project's capacity, changes in operating entities, changes in fuel supply and transfers of assets.

State of Indiana. We further conclude that the Commission's partial declination to exercise jurisdiction over Petitioner will promote energy utility efficiency.

Because Petitioner is not granted authority to offer its power for sale at retail to the general public, any revenue that it derives from the sale of electricity to another public or municipal utility for resale by the latter is not subject to the public utility fee.

9. Confidentiality. On October 12, 2012, Petitioner filed a Motion For Protective Order requesting that the Commission find that certain of its exhibits be determined to be confidential and protected from public disclosure under Ind. Code § 8-1-2-29 and § 5-14-3-4 and that the Commission adopt procedures to protect the confidentiality of such information. The motion related to (a) portions of the Direct Testimony of Willard Ladd (Petitioner's Exhibit WL-1); (b) pipeline estimates from Northern Indiana Public Service Company ("NIPSCO"), ANR and Vector (identified as Petitioner's Exhibits WL-3 through WL-5); and (c) a 345kV Interconnect Route Options Tabletop Study Report prepared by Commonwealth Associates, Inc. on behalf of Petitioner evaluating various alternative interstate transmission lines (identified as Petitioner's Exhibit WL-8). The motion was supported by an affidavit of Mr. Ladd regarding the high degree of confidentiality associated with this information.

The evidence demonstrates Petitioner's Exhibits WL-1, WL-3, WL-4, WL-5 and WL-8 (collectively the "Confidential Exhibits") contain trade secret information that has economic value to Petitioner and its affiliates from being neither known to nor ascertainable by its competitors and other persons who could obtain economic value from the knowledge and use of such information; that the public disclosure of such information would have a substantial detrimental effect on Petitioner and its affiliates; and that the information is subject to efforts of Petitioner and its affiliates that are reasonable under the circumstances to maintain its secrecy. Accordingly, the Confidential Exhibits should be exempt from the public access requirements of Ind. Code § 5-14-3-3.5 and § 8-1-2-29.

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

1. Petitioner is hereby determined to be a "public utility" within the meaning of Ind. Code §§ 8-1-2-1 and 8-1-8.5-1 and an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2.
2. The Commission declines to exercise its full jurisdiction over Petitioner pursuant to Ind. Code § 8-1-2.5-5. The Commission retains continuing jurisdiction over Petitioner to the extent required to ensure that Petitioner complies with all of the conditions contained in this Order.
3. Petitioner shall not sell at retail in the State of Indiana any of the electricity generated by the Project without further Order of the Commission.

4. Petitioner shall not exercise an Indiana public utility's rights, powers, and privileges of eminent domain and of exemption from local zoning and land use ordinances in the operation and construction of the Project, except as noted above in Finding Paragraph No. 4.

5. Petitioner shall submit to the Commission all information required by the terms of this Order.

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

ATTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:

APPROVED:

FEB 13 2013

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



Brenda A. Howe
Secretary to the Commission