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STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
NEXTERA ENERGY BLUFF POINT, LLC FOR)
CERTAIN DETERMINATIONS BY THE)
COMMISSION WITH RESPECT TO ITS)
JURISDICTION OVER PETITIONER'S)
ACTIVITIES AS A GENERATOR OF)
ELECTRIC POWER)

CAUSE NO. 44299

APPROVED: APR 03 2013

ORDER OF THE COMMISSION

Presiding Officers:
James D. Atterholt, Chairman
Kari A.E. Bennett, Commissioner
David E. Veleta, Administrative Law Judge

On January 31, 2013, NextEra Energy Bluff Point, LLC ("Petitioner") filed its Petition with the Indiana Utility Regulatory Commission ("Commission") in this Cause for certain determinations, declinations of jurisdiction and approvals relating to its proposed construction of up to approximately 120 megawatts ("MW"), phased, wind-power generating facility located in Jay County and Randolph County, Indiana ("Facility" or "Project"), in accordance with Indiana Code ch. 8-1-2.5.

Pursuant to notice as provided by law, proof of which was incorporated into the record, an evidentiary hearing in this Cause was held in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana, at 1:00 p.m. on March 18, 2013. At the hearing, the Petitioner presented its case in chief, consisting of the prefiled direct testimony and exhibits of Anthony Pedroni. The Office of Utility Consumer Counselor ("OUCC") participated in the hearing and presented the prefiled testimony and exhibits of Ronald L. Keen. No other persons appeared or otherwise participated.

Based upon the evidence and being duly advised, the Commission now finds that:

1. Notice and Jurisdiction. Proper legal notice of the hearing in this case was given and published by the Commission as required by law. As discussed further below, Petitioner intends to engage in activity that would qualify it as a "public utility" under Indiana Code § 8-1-2-1 and as an "energy utility" under Indiana Code § 8-1-2.5-1. Therefore, 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 700 Universe Blvd., Juno Beach, Florida, 33408. Petitioner is a wholly-owned subsidiary of NextEra Energy Resources, LLC ("NextEra"), a Delaware limited liability

company. The ultimate parent corporation of Petitioner and NextEra is NextEra Energy, Inc. Petitioner's expertise includes the development, construction and operation of wind power electric generating facilities.

3. Relief Requested. Petitioner has requested the Commission determine that the public interest allows it to decline to exercise its jurisdiction pursuant to Indiana Code § 8-1-2.5-5 over Petitioner with respect to the construction, ownership and operation of, and any other activity in connection with, the Facility. Petitioner will be a wholesale provider of electricity and will generate electricity from wind, a renewable energy resource, for sale in the wholesale power market.

The Facility will generate electricity using wind turbines mounted on steel towers. The long-term plan is for Petitioner to generate up to approximately 120 MW of electricity from 70 turbines. The power output from the Facility will be sold exclusively in the wholesale electric market. Petitioner will 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 will be subject to FERC regulation.

4. Commission Discussion and Findings Upon Review of Facts and Issues. Consistent with prior determinations, if the Commission finds from the record evidence that Petitioner is a public utility for purposes of Indiana's utility power plant construction act (Indiana Code ch. 8-1-8.5 (the "Power Plant Act"), then the Petitioner would be an "energy utility" as defined by Indiana Code § 8-1-2.5-2. The Commission may decline to exercise its jurisdiction pursuant to Indiana Code ch. 8-1-2.5, including the Commission's jurisdiction under Indiana Code ch. 8-1-8.5, to issue certificates of public convenience and necessity for the construction of the Facility. In order for the Commission to decline to exercise jurisdiction over Petitioner pursuant to Indiana Code ch. 8-1-2.5 the Commission must assert jurisdiction over Petitioner.

The Power Plant Act defines "public utility" to mean: a "(1) public, municipally owned or cooperatively owned utility; or (2) a joint agency created under IC 8-1-2.2." Indiana Code § 8-1-8.5-1. 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 Indiana Code ch. 8-1-8.5. *See, e.g., Indianapolis Power & Light Company*, Cause No. 43235 (IURC 06/12/2007). Additionally, Petitioner's property "is used in a business that is public in nature and not one that is private." *Foltz v. City of Indianapolis*, 130 N.E.2d 650, 659 (Ind. 1955). Accordingly, Petitioner's business is "impressed with a public interest" and renders service "of a public character and of public consequence and concern", which leads us to determine that Petitioner is a "public utility" within the meaning of Indiana Code § 8-1-8.5-1. *Id.*

The Commission must also determine that Petitioner satisfies the definition of "public utility" found in Indiana 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 without 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 (IURC 11/20/2007). In *Benton County*, the Commission specifically found that it had jurisdiction over a wind energy generator with wholesale operations such as Petitioner. Consequently, for purposes of the ownership, development, financing, construction and operation of the Facility, we find that Petitioner is a public utility within the meaning of Indiana Code § 8-1-2-1 and Indiana Code ch. 8-1-8.5 and an “energy utility” within the meaning of Indiana Code § 8-1-2.5-2.¹

While the Commission concludes that Petitioner will be 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 § 8-1-2.5-5 provides that “the Commission may enter an order, after notice and hearing, that the public interest requires the Commission to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over ... the energy utility....”

In determining whether the public interest will be served by declination of jurisdiction, the Commission shall 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.

Indiana Code § 8-1-2.5-5(b).

The evidence in this Cause demonstrates that Petitioner does not intend, nor does it request authority, to sell the electricity generated by the Facility to the general public or to any retail customer. Instead, the power will be generated solely for resale subject to the jurisdiction of FERC under the provisions of the Federal Power Act (“FPA”). Petitioner indicated that it will operate the Facility in a manner consistent with good utility practice. The Petitioner also

¹ Indiana 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 Indiana Code § 8-1-2-1 [.] Because we determined Petitioner to be a “public utility” under Indiana Code § 8-1-2-1, Petitioner is an “energy utility”.

indicated that it is not seeking authority to exercise certain of the rights, powers, or privileges of an Indiana public utility in the construction and operation of the Facility, including the power of eminent domain, and the exemption from zoning and land use regulation. Further, the costs of the Facility will not be recovered through a rate base/rate of return or other process typically associated with public utility rates.

The OUCC's witness, Ronald L. Keen, testified in support of Petitioner's construction of the Facility and request for relief. Mr. Keen recommended that the Commission's order declining jurisdiction include various conditions consistent with prior Commission orders. As part of the Commission's public interest analysis regarding any proposed declination of jurisdiction, the Commission must evaluate facilities such as the Petitioner's 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 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, the Commission has the authority to consider whether the public interest will be served by the Facility 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 Indiana Code ch. 8-1-2.3), their customers, or a local community. Indiana statutes regarding surface and groundwater rights and obligations, including those establishing the authority of the Indiana Natural Resources Commission (Indiana Code § 14-25-7-15) do not limit the Commission's jurisdiction to make such determinations under the public interest standard of Indiana Code ch. 8-1-2.5 or the public convenience and necessity standard of Indiana Code § 8-1-8.5-5(b)(3). If a proposed new generating facility will significantly and negatively impact an electricity supplier, its consumers, or a local community, the Commission may refuse to decline jurisdiction under Indiana Code chs. 8-1-1.5 and 8-1-8.5.

(1) **Local Zoning and Permitting Requirements.** Petitioner submitted evidence that it has complied or will comply with local zoning and land use requirements, has or will obtain, all local construction-related permits, and will not rely on the public utility exemption from local zoning regulation. Petitioner's evidence is that the Project is located in Jay and Randolph Counties. Each of these counties has an ordinance governing the development of wind farms. Under these siting ordinances, the Project requires Development Plan Approval from the Jay County Planning Commission, but the Project is a permitted use in the Randolph County Zoning Districts in which the Project is located. Petitioner's evidence shows that the Jay County Planning Commission approved a Development Plan in December of 2012.

(2) **Land Use and Wind Resources.** Based on the evidence presented, it would appear that Petitioner, utilizing its experience in developing other wind projects throughout the United States, has determined that the wind resource at the Project site is sufficient for the development of an economically viable project. In addition, the landowners on whose land the Project wind turbines will be located have consented or will consent to the

locations of the wind turbines on their land. A preliminary site map that reflects the approximate locations of these facilities was submitted in this Cause as Petitioner's Exhibit AP-2.

(3) Noise and Aesthetics. Mr. Pedroni testified that Petitioner will comply with the zoning requirements for minimum setback distances between wind turbines in the Project and existing residences and platted communities, so as to minimize the Project's visual impact on nearby residences. Petitioner will also comply with all county, state, and federal noise standards.

(4) Water Use and Supply. Mr. Pedroni testified that the Project will ~~not use water in any significant quantities, and it will have negligible or no impact on local water supplies.~~ Insignificant quantities of water will be used during construction, reconstruction and removal of Project facilities, primarily for dust control. After construction is completed, small quantities of water will also be used for the Project's operations and maintenance control building, which will most likely be drawn from local wells. Therefore, the evidence presented demonstrates that area water use and supplies will not be adversely affected by the Facility.

(5) Transmission Interconnection. The Facility is expected to interconnect with PJM Interconnection, LLC's ("PJM") transmission system. Mr. Pedroni has testified that the Petitioner has already entered into an Interconnection Construction Service Agreement with PJM Interconnection, LLC and AEP Ohio Transmission Company, Inc. The Facility electrical system will consist of (i) a 34.5 kV collection system, which will collect energy generated by each wind turbine and deliver it via electric cables, which will be primarily, if not entirely underground, to (ii) a new substation created for the Facility, where the collection system voltage of 34.5 kV will be increased to 138 kV, for delivery to (iii) a PJM 138 kV substation.

From the Facility substation, approximately 0.1 miles of overhead 138 kV transmission line will carry the power from the Project's collector substation to the point of interconnection. A facilities study was completed for the Project in August of 2012 and submitted as an exhibit to Mr. Pedroni's testimony. Mr. Pedroni testified that the impact studies indicate that the Project's interconnection with the AEP Transmission system will not negatively impact system performance. The power output from the Facility will be sold exclusively in the wholesale electric market. Petitioner will 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 will be subject to FERC regulation.

(6) Additional Permitting and Environmental Issues. Mr. Pedroni indicated in his testimony that the Petitioner has or will apply for and obtain all necessary federal, state and local permits needed for construction and operation of the Facility. According to Mr. Pedroni, Petitioner will apply for an incidental take permit from the U.S. Fish and Wildlife Service with regards to the Indiana Bat even though the Project will be developed in a manner that minimizes potential impact to the Indiana Bat; obtain water well permits and floodway permits as necessary; apply for and obtain county building, construction, grading and stormwater/drainage permits from Jay and Randolph Counties; and obtain Improvement Location Permits from Jay and Randolph Counties at the time each wind turbine is erected.

The following state permits or specific requirements are applicable to the Petitioner's Project: a permit required under Title 327 of the Indiana Administrative Code for the discharge of construction-related storm water ("Rule 5 permit") and INDOT permits as needed to allow Project electric lines and other facilities to cross state highways. Mr. Pedroni also testified that Petitioner has already obtained a determination by the Federal Aviation Administration that the Project and its location will not have a substantial adverse effect on the safe and efficient use of the navigable airspace and will not be a hazard to air navigation.

Petitioner will self-certify as an exempt wholesale generator and apply for market-based rate authority under the FERC's rules and regulations; and prepare a federal spill prevention, control and countermeasure plan as necessary.

(7) Using the Public Right-of-Way. The Petitioner, in reliance on past Orders of this Commission, is seeking to retain the right to use public right-of-way in collecting electricity produced by turbines in the Project and transmitting power to the point of interconnection with the existing 128 kV power grid. Retention of the use of the public right-of-way will allow Petitioner to place certain of its collector lines in the public right-of-way. It will allow it to use the right-of-way for road crossings and connect to the PJM interconnection. The Petitioner points out that similar treatment has been given other wind projects located in Indiana. Additionally, there has been no objection to Petitioner's retaining the right to use public rights-of-way.

Based upon the evidence presented, we find Petitioner's uncontested request for limited use of the public right-of-way to be reasonable, and the Petitioner retains the right to use the public right-of-way as identified in its evidence.

(b) Need. In determining the public interest, the Commission will determine if the development of additional generating capacity is necessary and serves 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. As set forth below, the Commission finds the evidence presented demonstrates sufficient need for the Facility and it will serve the public interest.

In the present proceeding, Mr. Pedroni testified that according to the most recent forecast of Indiana's future electricity requirements issued in September 2011 by the State Utility Forecasting Group at Purdue University for the Commission, Indiana Electricity Projections: *The 2011 Forecast* ("Report") the electricity that will be generated by Petitioner is very much needed. Table 3-4 of the Report, submitted as Petitioner's Exhibit AP-11, projects future electricity requirements for the period 2009-2029. Over the first half of the forecast period, relying on the most likely scenario, approximately 2,600 megawatts of additional resources will be required by 2020. The same information projects that by 2029, Indiana will need an additional 6,240 megawatts in electric resources.

Mr. Pedroni testified that he believes the public interest will be served in a number of important respects by the addition of the electric generating capacity represented by the Project.

First, the public needs electricity. Second, Petitioner's proposed wind farm represents an environmentally friendly means of generating electricity. Third, the public in Indiana will benefit from the efficiencies which flow from proximity to the source of generation as the high cost of transmitting power over long distances makes it generally advantageous for load to be located near its source. Fourth, landowners in Jay and Randolph Counties will receive substantial economic benefits from the placement of wind farm facilities on their properties. Fifth, local taxing bodies will receive tax revenues as a result of the Facility. Finally, up to 150 construction jobs and up to 8 full-time operations and maintenance jobs will be created by the Project.

~~(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 will 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 a subsidiary of NextEra. NextEra is a publicly traded holding company whose holdings include Florida Power & Light Company. NextEra is one of the largest developers of wind and solar energy installations in the United States. Mr. Pedroni testified that NextEra will provide the Petitioner with all necessary financial, technical and managerial expertise to construct and operate the Facility and that the Petitioner will operate the Project in a commercially reasonable manner in accordance with good utility practice. Mr. Pedroni also sponsored NextEra's annual report as Petitioner's Exhibit AP-12. Based on the evidence presented, the Commission finds that Petitioner has the ability to finance, construct, and manage the Project.

(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 Project. Specifically, the Commission must determine the extent to which it must reserve its authority over the 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.

Based on the evidence presented, we find that presently Petitioner is not intending to sell power to any affiliates. 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 the 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 Indiana Code § 8-1-2-83, and requires the Petitioner to obtain prior Commission approval of any transfer of Petitioner's franchise, works or system.

Additionally, consistent with prior Commission orders involving wind farms, Petitioner 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 the Petitioner 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. 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.

5. Financial Assurance. The Jay and Randolph Counties Siting Ordinances presented in this Cause demonstrate that the Petitioner is required to outline the anticipated means and cost of removing a wind energy conversion system ("WECS") at the end of its serviceable life or upon becoming a discontinued or abandoned use to ensure that the WECS is properly decommissioned. The decommissioning plan must include a contractor cost estimate for demolition and removal of the WECS facility. Removal includes all equipment and facilities to no less than a depth of four feet below ground. The Petitioner testified that both Jay and Randolph Counties approved Decommissioning Agreements in December 2012.

Additionally, the decommissioning plan must include an independent financial instrument in an amount equal to the demolition and removal cost estimate. This financial instrument must be submitted to the county and be in the form of a bond, letter of credit, or other acceptable security. Petitioner shall provide the Commission with notice when such financial instrument has been established, including the form and amount, or in the event that Petitioner is no longer required to comply with all or part of the financial assurance requirements in the Siting Ordinances. We find that the financial assurance requirements set forth in the Siting Ordinances are sufficient to satisfy this requirement.

6. Reporting Requirements. In addition to the foregoing requirements, it shall be a condition of this Order and our continued declination of jurisdiction over Petitioner, that Petitioner file Annual Reports with the Commission as provided in Indiana 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 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. The Petitioner shall provide two (2) paper copies and one (1) electronic copy to the Secretary of the Commission and to the OUCC, within the timeframes prescribed herein.

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

(a) **Initial Report.** Petitioner's initial quarterly report due within 30 days after this Order shall provide, to the extent such information is known and available, the following:

- (1) Project 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 wind turbines deployed;~~
- (4) Anticipated total output of Facility;
- (5) Manufacturer, model number and operational characteristics of turbines;
- (6) Connecting utility(s);
- (7) Copy of any Interconnection System Impact Studies prepared by the PJM ISO;
- (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 Interconnection Construction Service Agreement ("ISA") with the PJM ISO, and
- (11) The information listed under (b) hereof, 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 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 ISA 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 ISA 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 the PJM ISO, 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 obtain the Commission's prior approval.² Petitioner shall notify the Commission in the event that it modifies or suspends the Project under the terms of the ISA and does not reinstitute work within three (3) years following commencement of such suspension. If the Commission determines that the Petitioner has (a) failed to enter into an agreement pursuant to the PJM ISO generator interconnection procedures; (b) suspended the Project under the terms of the ISA and has not reinstated work within three (3) years following commencement of such suspension; or c) has otherwise suspended its efforts to complete the Project within three (3) years of this Order, the Commission may, following notice to the Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth herein.

7. **Conclusion.** Pursuant to the provisions set forth in Indiana Code § 8-1-2.5-5, the Commission finds that declining to exercise its jurisdiction over Petitioner and the Facility will facilitate the immediate construction of the proposed Project and add needed 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 the Commission's declining to exercise jurisdiction over Petitioner will promote energy utility efficiency. Moreover, Petitioner has demonstrated that it has the technical, financial and managerial capability 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 generating capacity and therefore that its market entry is reasonable.

Accordingly, based on the above findings and the additional requirements contained in this Order, the Commission believes that a declination of jurisdiction over Petitioner as an energy utility, except over the areas discussed above as to which we are reserving our jurisdiction, 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 the 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 ISA, then the Commission may, following notice to the Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth herein. The Petitioner agrees to file with the Commission and the OUCC, status reports on the Facility after commencement of construction through commercial operation and, prior to commercial operation of the Facility, will satisfy the reporting requirements outlined in the above findings. The Petitioner shall also file with the Commission any annual report required to be filed with EERC, and provide the Commission such other information as the Commission may from time to time require from other Indiana public utilities.

² A material change includes the following: 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.

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 Indiana Code § 8-1-8.5-1 and Indiana Code § 8-1-2-1 and an “energy utility” within the meaning of Indiana Code § 8-1-2.5-2.
2. The Facility is hereby determined to be a “utility” within the meaning of Indiana 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.
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 hereby adjudged to be exempt from the public utility fee prescribed by Indiana Code ch. 8-1-6.
6. Petitioner shall comply fully with the terms of this Order and submit to the Commission all information required by the terms of this Order.
7. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; BENNETT ABSENT:

APPROVED: APR 03 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