ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Ober	√		
Ziegner	√		

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY TRADE POST SOLAR LLC FOR CERTAIN DETERMINATIONS BY THE COMMISSION WITH RESPECT TO ITS JURISDICTION OVER PETITIONER'S ACTIVITIES AS A GENERATOR OF ELECTRIC POWER	)	**CAUSE NO. 45539** **APPROVED: AUG 18 2021**

ORDER OF THE COMMISSION

Presiding Officers:
Sarah E. Freeman, Commissioner
Brad J. Pope, Administrative Law Judge

On April 30, 2021, Trade Post Solar LLC ("Petitioner") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") for certain determinations, declinations of jurisdiction, and approvals relating to its proposed construction of a solar electric generation facility, including a project substation and an electric generation transmission line owned and operated by Petitioner, located entirely in Sullivan County, Indiana (the "Facility") in accordance with Ind. Code ch. 8-1-2.5. In support of the Petition, Petitioner filed the direct testimony and attachments of Hannah Pawelczyk, Manager, Renewable Development for Invenergy LLC.

On June 16, 2021, the Indiana Office of the Utility Consumer Counselor ("OUCC") filed a Notice of Intent Not to File Testimony.

The Commission set this matter for an Evidentiary Hearing to be held on July 15, 2021, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. On July 8, 2021, a docket entry was issued advising that due to technology upgrades being made to the Commission's hearing rooms, the hearing would be conducted via WebEx video conferencing. Petitioner and the OUCC appeared and participated in the hearing at which the testimony and exhibits of Petitioner were admitted into the record without objection.

Based upon the applicable law and evidence presented, 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 below, 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 Cause.

2. **Petitioner's Characteristics.** Petitioner is a limited liability company organized and existing under the laws of Delaware and is authorized to do business in Indiana. Petitioner's

principal place of business is at One South Wacker Drive, Suite 1800, Chicago, Illinois. Petitioner is a wholly owned subsidiary of Invenergy Solar Development North America LLC ("ISDNA"), which in turn is a wholly owned subsidiary of Invenergy Renewables LLC ("Invenergy Renewables"). Petitioner, ISDNA, and Invenergy Renewables are affiliates of Invenergy LLC ("Invenergy"). Invenergy is an Illinois limited liability company specializing in the development of large-scale renewable and other clean energy generation and storage facilities worldwide.

3. **Relief Requested.** As summarized above and further discussed below, Petitioner requests that 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's Evidence.** Petitioner witness Hannah Pawelczyk testified that the Facility will be located in Sullivan County, Indiana and would be capable of generating up to approximately 200 megawatts of alternating current ("MWac") electricity from approximately 501,592 solar panels across parts of approximately 1,500 acres. Ms. Pawelczyk testified the Facility will have a net capacity factor of approximately 26.19% and that it is expected to achieve a commercial operation date ("COD") by December 31, 2023.

Ms. Pawelczyk testified that Petitioner entered into a 15-year virtual power purchase agreement ("VPPA") for all 200 MW of the Facility's nameplate power with a commercial and industrial company. She explained that under a VPPA, an end-user company agrees to pay a renewable energy developer a fixed rate for electricity during the term of the contract while continuing to buy electricity from the local electric utility. The renewable energy developer then sells the power it generates into the wholesale power market. If the wholesale market price is higher than the VPPA contract price, the company is entitled to the difference as determined every month during the contract's term. If the contract price is higher than the wholesale market price, the renewable energy developer bills the company for the difference. Ms. Pawelczyk testified that the long-term contract affords Petitioner the guaranteed market for the electricity generated and the opportunity to make additional investments in clean energy in Indiana. The long-term contract also enables the company to mitigate risk from electric price volatility, while assisting the company to achieve its increasingly important sustainability goals.

Mr. Pawelczyk explained that the Facility would generate electricity via solar panels located within a solar panel field and would include mounted photovoltaic ("PV") modules and Power Conversion Stations ("PCS") configured in array blocks. Each PCS would contain an inverter, a medium voltage transformer, and electrical and communication equipment to power and communicate with the tracker units. All electrical equipment would be housed in protective enclosures on concrete pads, precast vaults, or posts. The collection system would transport the electricity from each array block to an onsite substation via underground 34.5 kV cabling. From there, the electricity would be stepped up to 345 kV. The Facility will then interconnect to American Electric Power's ("AEP") 345 kV transmission system via an approximately 1.0 to 1.5 mile long 345 kV transmission line from the Facility to AEP's Sullivan 345 kV substation.

Ms. Pawelczyk testified that the AEP transmission system is within the footprint of PJM

Interconnection LLC ("PJM"). She stated that the Facility's queue position with PJM is AC2-157. She testified that PJM published a Feasibility Study in October 2017, which was included as Attachment HP-5. She also stated that PJM completed a System Impact Study in November 2020, which was included as Attachment HP-6. Furthermore, she testified that PJM is expected to complete a Facilities Study by June 2021. She testified that the Feasibility Study and the System Impact Study show how the Facility will interconnect with the wholesale transmission grid and that these studies show the Facility's interconnection with AEP's transmission system will not negatively impact system performance. She added that the Interconnection Service Agreement ("ISA") is expected to be completed by July 2021. She testified that Petitioner agrees to provide the Facilities Study and fully executed ISA as part of its post-Order reporting requirements.

Ms. Pawelczyk stated 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. She explained Petitioner is performing several environmental and cultural resource studies to evaluate the appropriateness of the Facility site. She testified that Petitioner contracted with SWCA Environmental Consultants ("SWCA") to perform a Tier 1-2 Site Characterization Study ("SCS") of the Facility site and surrounding area. As part of the SCS, SWCA performed a desktop review and field reconnaissance analyzing land cover, protected species' habitats, designated sensitive or critical areas, federal and state managed lands, and the potential for waters of the U.S. or Indiana, including wetlands, within the Facility area and vicinity in accordance with the U.S. Fish and Wildlife Service's ("USFWS") Land-based Wind Energy Guidelines ("WEG"). She explained that the WEG was used because USFWS has not yet developed a solar-specific guidance document. As part of the SCS, Petitioner consulted with USFWS and the Indiana Department of Natural Resources ("IDNR"). The SCS was included as Attachment HP-2. She testified that Petitioner also contracted with SWCA to conduct a formal field delineation of wetlands, streams, and other regulated water resources within the Facility site and that this work is currently ongoing.

Ms. Pawelczyk explained that Westwood Professional Services, Inc. ("Westwood") performed a Cultural Resources Desktop Review to provide a preliminary review of cultural and historic resources that could be located within the Facility site or near the Facility. The Cultural Resources Desktop Review was included as Attachment HP-3. Ms. Pawelczyk stated that Petitioner also contracted with Westwood to perform a Phase 1 Environmental Site Assessment ("ESA") in accordance with ASTM Standard E 2247-16 and 40 C.F.R. § 312 Subp. C. The ESA revealed no ASTM Recognized Environmental Conditions, no Controlled Recognized Environmental Conditions, and no Historical Recognized Environmental Conditions in connection with the Facility area. The ESA was included as Attachment HP-4.

Ms. Pawelczyk testified that Petitioner will need to execute a Road Use Agreement with Sullivan County prior to the start of construction of the Facility. She explained that Petitioner has worked with the Sullivan County Redevelopment Commission to ensure that the Facility complies with any local requirements and that the Sullivan County Council and Board of Commissioners have also been updated frequently on the Facility's status. She added that initial feedback from local officials and landowners in the Facility area has been positive and supportive of the Facility.

Ms. Pawelczyk stated that there are no local zoning permits or approvals required for the Facility. She explained that even though Sullivan County does not require Petitioner to enter into a decommissioning plan, Petitioner has voluntarily agreed to certain decommissioning requirements directly with landowners whose land will be impacted by the Facility. Specifically, the landowner solar lease and easement agreement ("Agreement") entered into with each landowner requires Petitioner to obtain and provide a Removal Bond, defined as a letter of credit or similar financial assurance, in form and substance reasonably satisfactory to the landowner, securing performance of Petitioner's obligation to remove project facilities from the landowner's property. The decommissioning security is intended primarily to cover the cost of removing project infrastructure and for restoring the leased premises to their preconstruction condition. Additionally, each landowner can terminate the Agreement early in the event Petitioner fails to commence construction within a certain amount of time. In the event of early termination or upon expiration of the Agreement, Petitioner is required to remove the project's facilities and restore the landowner's property to a condition reasonably similar to its original condition at Petitioner's cost.

Ms. Pawelczyk stated that 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; (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; and (3) appropriate permits from IDNR and the Indiana Department of Environmental Management, to the extent necessary, if isolated wetlands and floodways are impacted by the Facility.

Ms. Pawelczyk testified that 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 Nationwide Permit from the U.S. Army Corps of Engineers ("USACE") for impacts to wetlands or other waters of the United States.

Ms. Pawelczyk explained that the Facility would not use water in any significant quantities, and it would have negligible or no impact on local water supplies. She stated that water would be used during construction and removal of project facilities primarily for dust control. After construction is completed, water may be used for panel washing, if necessary.

Ms. Pawelczyk testified 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. She testified this is similar to the treatment given to other renewable energy projects in Indiana.

Ms. Pawelczyk stated that Petitioner agrees to submit the status reports that have typically been required for similar generation projects in Indiana, including solar and wind projects, and she listed the initial and subsequent reports that Petitioner agreed to submit.

Ms. Pawelczyk explained that she believes the public interest will be served in several important respects by the addition of the electric generating capacity represented by the Facility. She testified the public needs electricity as demonstrated by the fact that Petitioner has already secured an off-taker pursuant to the VPPA. Second, the Facility represents one of the most environmentally friendly means of generating electricity. Third, the public in Indiana would also 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. Fourth, landowners near the Facility will receive economic benefits from the placement of solar generation facilities on their properties. Fifth, local taxing bodies will receive new tax revenues. Sixth, approximately 200-250 temporary construction jobs and approximately two full-time operations and maintenance jobs will be created by the Facility. Finally, solar energy provides greater energy security by diversifying the region's and Indiana's electricity generation portfolio and by protecting against volatile price spikes and risks from relying too heavily on a few sources of generation.

Ms. Pawelczyk described the Facility's ownership and operation. She stated that Petitioner's indirect parent company, Invenergy Renewables, has substantial experience financing, owning, and operating renewable energy assets worldwide. Invenergy Renewables' portfolio of renewable energy projects in operation or in development currently includes more than 80 wind and 30 solar projects in the United States that represent more than 20,400 MW of aggregate capacity. She testified that Petitioner would develop the Facility in a commercially reasonable manner and in accordance with good utility practice.

Ms. Pawelczyk testified that Petitioner has the ability to finance the Facility. She testified Invenergy has successfully financed over 25,200 MW of renewable and other clean energy generation and storage facilities worldwide, including 3,944 MW of solar projects, representing more than $43 billion in capital investment. She added that Petitioner will have all the necessary financial, technical, and managerial expertise to construct and operate the Facility.

Ms. Pawelczyk described the requirements of Ind. Code § 8-1-2.5-5. She stated that 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 over Petitioner by the Commission unnecessary or wasteful. She explained that Petitioner is already subject to the requirements of Sullivan County, the rules and regulations of FERC, and other federal, state, and local agencies. As such, the requirements of those governmental entities adequately address concerns the Commission may otherwise have and protect the public interest regarding the future operation and wholesale transactions involving the Facility. In addition, competitive forces in the wholesale power markets serve as an adequate check on these activities, particularly on the wholesale power price. She added that PJM is responsible for the safe and reliable operation and planning, including generation interconnection planning, of the electric transmission systems under their functional control, which includes the AEP transmission system to which the Facility will interconnect. She explained that further regulation of these matters by the Commission would be unnecessary and wasteful of the Commission's resources and burdensome for Petitioner.

Ms. Pawelczyk testified that a declination of jurisdiction by the Commission, in whole or in part, would be beneficial for Petitioner, Petitioner's customers, and Indiana, and would promote the efficiency of Petitioner. She explained that Petitioner would benefit from the ability to devote its efforts and resources to complying fully with the requirements of the federal, local, and other state regulatory agencies with jurisdiction over its operations, as well as the requirements of PJM, which would promote the efficiency of Petitioner's ongoing development and operation of the Facility. She stated that the exercise of jurisdiction by the Commission would encumber Petitioner with duplicative requirements that are unnecessary in view of other regulatory requirements.

Ms. Pawelczyk concluded that the exercise of Commission jurisdiction would inhibit Petitioner in competing with other providers of similar energy services. She explained that should the Commission exercise jurisdiction over Petitioner, the Commission would be placing Petitioner at a disadvantage with respect to other independent power producers such as wind projects over whom the Commission has declined to exercise jurisdiction. Such regulation would expose Petitioner to the risk of regulatory lag and hinder the quick implementation of business decisions in a highly competitive market, which would create a significant competitive disadvantage for Petitioner. Finally, she added that the Commission's exercise of jurisdiction may compel Petitioner to publicly disclose proprietary information to its disadvantage.

5. Commission 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 § 8-1-2.5-2. 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 Ind. 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 (IURC June 13, 2007). In addition, 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 (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.[1]

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, the Indiana Code 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 ..." Ind. Code § 8-1-2.5-5(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.

The evidence presented demonstrates that further Commission regulation of the Facility: (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. Consequently, we find Petitioner's request that the Commission decline to exercise its jurisdiction over the Facility is in the public interest and is granted. In so finding,

[1] 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."

we also considered other factors the Commission has typically considered in prior declination of jurisdiction proceedings.

A. Location. As part of its analysis, 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. Ms. Pawelczyk testified there are no local zoning approvals required for the Facility. She explained that the Facility may require construction-related permits such as entrance permits, which Petitioner will obtain to the extent necessary. She stated that Petitioner will need to execute a Road Use Agreement with Sullivan County prior to the start of construction. Ms. Pawelczyk testified that Petitioner has worked with the Sullivan County Redevelopment Commission to ensure that the Facility complies with any local requirements and that the Sullivan County Council and Board of Commissioners have also been updated frequently on the Facility's status. She explained the steps Petitioner has taken to minimize any potential negative impacts the Facility might have on the local community.

Ms. Pawelczyk testified that even though Sullivan County does not require Petitioner to enter into a decommissioning plan, Petitioner has voluntarily agreed to certain decommissioning requirements directly with landowners whose land will be impacted by the Facility. She described the landowner solar lease and easement agreement entered into with each landowner and the decommissioning requirements included in that agreement.

ii. Land Use and Solar Resources. Ms. Pawelczyk testified that Petitioner is an affiliate of Invenergy Renewables, which has extensive experience owning and operating large-scale renewable projects in the United States. Based on the evidence presented, it appears that Petitioner, utilizing its experience in developing other solar projects, 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 the solar facilities was submitted as Petitioner Exhibit No. 1, Attachment HP-1.

iii. Water Use and Supply. Ms. Pawelczyk testified that the Facility would not have significant water use and would have negligible or no impact on local water supplies. She explained that water would be used during construction and removal of project facilities, primarily for dust control. She stated that 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. Ms. Pawelczyk testified that electricity generated by the Facility is expected to interconnect to the AEP transmission system. She explained the Facility would generate electricity via solar panels located within a solar panel field and would include mounted PV modules and PCS 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 collector substation via underground 34.5 kV cabling. From there, the electricity would be stepped up to 345 kV. The Facility would then interconnect to AEP's 345 kV transmission system via an approximately 1 to 1.5 mile long 345 kV transmission line from the Facility site to AEP's Sullivan 345 kV substation.

Ms. Pawelczyk testified regarding the Facility's interconnection with the AEP transmission system. She explained that the AEP transmission system is within the footprint of PJM. She testified that the Facility's queue position with PJM is AC2-157. She stated that PJM published a Feasibility Study in October 2017, included as Attachment HP-5. She testified PJM completed a System Impact Study in November 2020, included as Attachment HP-6. She added that PJM is expected to complete a Facilities Study by June 2021. She testified that the Feasibility Study and the System Impact Study show how the Facility will interconnect with the wholesale transmission grid and that these studies show the Facility's interconnection with AEP's transmission system will not negatively impact system performance. Finally, she stated that the Interconnection Service Agreement is expected to be completed by July 2021.

v. Additional Permitting and Environmental Issues. 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; (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; and (3) appropriate permits from IDNR and IDEM, to the extent necessary, if isolated wetlands and floodways are impacted by the Facility.

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 Nationwide permit for impacts to wetlands or other waters of the United States.

Ms. Pawelczyk indicated in her 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 has performed several environmental and site studies, including a Site Characterization Study, Cultural Resources Desktop Review, and Phase 1 ESA.

vi. Using the Public Right-of-Way. Ms. Pawelczyk testified that Petitioner seeks to retain the right to use the public right-of-way within the Facility site. She explained that 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. She 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. In determining whether to decline to exercise jurisdiction, the Commission has also previously considered whether the development of additional generating capacity will serve the public interest. The Commission finds that the evidence presented by Petitioner demonstrates a reasonable expectation of need for the Facility and finds that its construction and operation will serve the public interest in several ways. First, the electricity generated by the Facility will be sold to a commercial and industrial company pursuant to a VPPA. Second, the Facility represents one of the most environmentally friendly means of generating electricity. Third, the public in Indiana may 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. Fourth, landowners in the area of the Facility will receive economic benefits from the placement of solar generation facilities on their properties. Fifth, local taxing bodies would receive new tax revenues. Finally, the Facility would provide additional economic benefit by creating approximately 200 to 250 temporary construction jobs and approximately two full-time operations and maintenance jobs.

Based on the evidence presented, we find that Petitioner's proposed development of additional generating capacity through the Facility is reasonable 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 have provided evidence showing 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.

Ms. Pawelczyk testified that Petitioner has the ability to finance the Facility. She explained that Petitioner's affiliate Invenergy has successfully financed over 25,200 MW of renewable and other clean energy generation and storage facilities worldwide, including 3,944 MW of solar projects, representing more than $43 billion in capital investment. She stated that Petitioner will have all the necessary financial, technical, and managerial expertise to construct and operate the Facility. Ms. Pawelczyk testified Petitioner's indirect parent company, Invenergy Renewables, has substantial experience financing, owning, and operating renewable energy assets worldwide. Invenergy Renewables portfolio of renewable energy projects in operation or in development currently includes 80 wind and 30 solar projects in the United States that represent more than 20,400 MW of aggregate capacity. She testified that Petitioner would develop the Facility in a commercially reasonable manner and in accordance with good utility practice.

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

D. 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 Commission 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: (l) 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) Petitioner or an affiliate becoming 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.

E. 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).

6. Financial Assurance. Even though Sullivan County has no zoning or other ordinance establishing decommissioning requirements, Petitioner has voluntarily agreed to certain decommissioning requirements directly with landowners whose land will be impacted by the Facility. Specifically, the landowner easement Agreement entered into with each landowner requires Petitioner to obtain and provide to each landowner a Removal Bond, defined as a letter of credit or similar financial assurance, in form and substance reasonably satisfactory to the landowner, securing performance of Petitioner's obligation to remove project facilities from the landowner's property. The decommissioning security is intended primarily to cover the cost of removing project infrastructure and for restoring the leased premises to their preconstruction condition. Additionally, each landowner can terminate the Agreement early in the event Petitioner fails to commence construction within a certain amount of time. In the event of early termination, or upon expiration of the Agreement, Petitioner is required to remove the project facilities and restore the landowner's property to a condition reasonably similar to its original condition at Petitioner's cost.

Petitioner shall provide the Commission with notice when such financial instrument has been established, including the form and amount, or in the event Petitioner is no longer required to comply with all or part of the financial assurance requirements agreed to with landowners. We find that the financial assurance requirements set forth in the Agreement are sufficient to satisfy this requirement.

7. Reporting Requirements. Petitioner agreed to the same reporting requirements that have been established for other renewable generation facilities in Indiana. 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.

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 solar panels;
(6) Connecting utility(s);
(7) Copy of any Interconnection System Impact Studies prepared by PJM;
(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 ISA with PJM; and
(11) The information listed below in the Subsequent Reports section to the extent such information is available.

B. Subsequent Reports. Petitioner agrees to file subsequent reports 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 of April 30th of each year. Thereafter, subsequent reports should be filed on an annual basis in this Cause. Subsequent reports should include the following information:

(1) Any changes to the information provided in the Initial Report;
(2) Any interconnection study from PJM 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 PJM, 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 ten days of the notification of project modification.[2] Petitioner shall notify the Commission when it modifies or suspends the Facility under the terms of the ISA 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 PJM generator interconnection procedures; (2) has suspended the Facility under the terms of the ISA 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.

8. Conclusion. Consistent with Ind. Code § 8-1-2.5-5, the Commission finds that declining to exercise its jurisdiction over Petitioner 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

[2] A material change includes the following: increase or decrease of greater than five MW in the Facility's nameplate capacity; a change in operating entities; a transfer of ownership or assets, other than the activities identified in this Order; and any change identified in case law as a material change.

as provided under Ind. Code § 8-1-2.5-5(b)(2). We further find that declining to exercise our jurisdiction over Petitioner will promote energy utility efficiency under Ind. Code § 8-1-2.5-5(b)(3). In addition, Petitioner has demonstrated 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. As a result, although all the permits and approvals over which other governmental bodies, agencies, or third parties have authority and oversight have not yet been issued, the Commission finds the evidence is sufficient to decline to exercise our jurisdiction, as set forth herein, at this juncture based on Ind. Code § 8-1-2.5-5(b).

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 ISA, then the Commission may, following notice to Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth herein. Through the quarterly status reports required by this Order, Petitioner shall notify the Commission and the OUCC when construction begins and when 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 8-1-2-1 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. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: AUG 18 2021

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

Regina K. Joyner Digitally signed by Regina K. Joyner Date: 2021.08.18 10:11:01 -04'00' on behalf of

Dana Kosco
Secretary of the Commission