

ORIGINAL

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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**IN THE MATTER OF THE PETITION BY)
 CROSSROADS SOLAR, LLC FOR)
 CERTAIN DETERMINATIONS BY THE) CAUSE NO. 45681
 COMMISSION WITH RESPECT TO ITS)
 JURISDICTION OVER PETITIONER’S) APPROVED: JUN 28 2022
 ACTIVITIES AS A GENERATOR OF)
 ELECTRIC POWER)**

ORDER OF THE COMMISSION

**Presiding Officers:
 Stefanie N. Krevda, Commissioner
 Carol Sparks Drake, Senior Administrative Law Judge**

On February 18, 2022, Crossroads Solar, LLC (“Crossroads” or “Petitioner”) filed a Petition with the Indiana Utility Regulatory Commission (“Commission”) in this Cause seeking certain determinations, declinations of jurisdiction, and approvals related to its proposed construction of a solar electric generation facility in Fountain County, Indiana, (the “Facility”) to be known as Crossroads Solar. Petitioner concurrently prefiled the direct testimony and attachments of Colin Snow, Senior Development Manager for Ranger Power LLC (“Ranger Power”).

On April 14, 2022, the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled the testimony and attachments of Anthony A. Alvarez, Utility Analyst in the OUCC’s Electric Division.

On April 28, 2022, Petitioner prefiled the rebuttal testimony of Mr. Snow.

On May 17, 2022, the Commission issued a docket entry requesting Petitioner to clarify the total acreage the proposed solar project will utilize. On May 18, 2022, Petitioner filed its response with this clarification.

The Commission noticed this matter for an evidentiary hearing at 1:30 p.m. on May 18, 2022, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. The hearing, as originally noticed, was continued to May 26, 2022, to commence at 2:00 p.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Petitioner and the OUCC appeared, by counsel, and participated in the hearing, and their respective testimony and attachments were admitted without objection.

Based upon applicable law and the evidence, the Commission 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, Crossroads intends to engage in activity that will 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 under 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. Crossroads is a limited liability company organized and existing under Delaware law and authorized to do business in Indiana. Petitioner's principal place of business is at 226 North Morgan Street, Suite 200 in Chicago, Illinois. Ranger Power is developing the Facility on Crossroad's behalf and is also a Delaware limited liability company. Ranger Power specializes in developing utility-scale solar energy projects in the United States and is headquartered in Chicago, Illinois. Petitioner's indirect parent company is D.E. Shaw Renewable Investments, L.L.C. ("DESRI"). DESRI and its affiliates acquire, own, and manage long-term contracted renewable energy assets in North America. DESRI is a member of the D.E. Shaw Group, a global investment and technology development firm with more than \$50 billion in investment and committed capital as of December 1, 2020.

3. Relief Requested. Crossroads requests the Commission decline to exercise its jurisdiction over Petitioner pursuant to Ind. Code § 8-1-2.5-5 with respect to the construction, ownership, operation, and any other activity in connection with the Facility. At the Facility, Petitioner will generate electricity from solar energy, a renewable energy resource, for sale in the wholesale power market.

4. Petitioner's Evidence. Mr. Snow described the Facility and its location on unincorporated land in Fountain County. The solar facilities are to be located within an 1,800 acre fenced area on 2,144 acres Petitioner has under long-term leases or purchase options. Mr. Snow testified the Facility will include approximately 658,825 solar panels, have the capability to generate up to a nameplate capacity of approximately 200 megawatts ("MW") alternating current, and have a Net Capacity Factor of approximately 23.5%. The Facility is expected to achieve commercial operation by the end of 2024.

Mr. Snow explained the Facility will generate electricity via solar modules (*i.e.*, panels), with the solar field to include mounted photovoltaic ("PV") modules and inverters to be configured in array blocks. PV modules will be constructed primarily of non-metallic materials, and the panels will measure approximately 84 inches by 44 inches. The panels, at their highest point, will be less than 20 feet off the ground, and drive motors will rotate the horizontally mounted solar panels from east to west to follow the sun on a single axis throughout the day. Mr. Snow testified the highest point for a horizontal tracker will be achieved during the morning and evening hours when the trackers are tilted at their maximum angle. Each Power Conversion Station ("PCS") will contain an inverter and a medium voltage transformer, as well as other electrical equipment. Each PCS will also contain communication equipment to power and communicate with the tracker units. Mr. Snow stated all electrical equipment will be housed in protective enclosures on concrete pads, on precast vaults, or on posts. The collection system will transport the electricity from each array block to an onsite collector substation via underground 34.5 kV cabling. From there, the electricity will be stepped up to 230 kV, with the Facility interconnecting to Duke Energy Indiana's ("Duke")

230 kV Veedersburg West substation via an approximately 100-foot gen-tie line that runs through the Facility site.

Mr. Snow testified Duke's transmission system is within the Midcontinent Independent System Operator ("MISO") footprint, and the Facility's queue position with MISO is J1378, which is in the MISO Definitive Planning Phase ("DPP") 2019 Central Area study cycle. He stated MISO completed a DPP Phase I System Impact Study in July 2021, which was provided as Attachment CS-6 to Mr. Snow's direct testimony. He testified MISO is expected to complete the DPP Phase II System Impact Study by March 2022 and the DPP Phase III System Impact Study by August 2022.¹ Mr. Snow testified the DPP Phase I System Impact Study shows how the Facility will interconnect with the wholesale transmission grid and that the Facility's interconnection with Duke's transmission system will not negatively impact system performance. Mr. Snow testified the Generator Interconnection Agreement ("GIA") is expected to be completed by December 2022 pursuant to completion of the MISO DPP 2019 Central Area study cycle. He stated Petitioner will provide the DPP Phase III System Impact Study and the fully-executed GIA as part of the post-Order reporting requirements Petitioner is agreeing to in this proceeding.

Mr. Snow testified Petitioner has applied or will apply for and obtain all federal, state, and local permits needed for the Facility's construction and operation. He advised that Petitioner is performing environmental and cultural resource studies to evaluate the appropriateness of the Facility site and contracted with Kimley-Horn and Associates, Inc. ("Kimley-Horn") to perform a Desktop Cultural and Historic Resources Review ("Cultural Resources Review") of the Facility area that is attached to his direct testimony as Attachment CS-2. Kimley-Horn also performed a Wetland Delineation Study that was attached to Mr. Snow's direct testimony as Attachment CS-3 and an Endangered Species Act review attached as Attachment CS-4. Mr. Snow stated Petitioner contracted with Kimley-Horn, and Intertek PSI as a subcontractor to Kimley-Horn, to perform a Phase I Environmental Site Assessment ("Phase I ESA") in conformance with the scope and limitations of ASTM Practice E1527-13. The Phase I ESA, a copy of which was attached to Mr. Snow's direct testimony as Attachment CS-5, reflects no Recognized Environmental Conditions, Controlled Recognized Environmental Conditions, or Historical Recognized Environmental Conditions are located within the Facility area.

Mr. Snow testified the public interest will be served in a number of important respects by adding the electric generating capacity the Facility represents. First, he stated there is a need for the electricity the Facility will generate, as shown in Table 3-4 of the Purdue University State Utility Forecasting Group's *Indiana Electricity Projections: The 2021 Forecast* prepared for the Commission in December 2021 that was attached to Mr. Snow's testimony as Attachment CS-7. Mr. Snow stated the Facility also represents one of the most environmentally friendly means of generating electricity. Per Mr. Snow, solar energy helps reduce the negative effects of electricity generation on the environment by being a source of clean power. The public in Indiana may also benefit from the efficiencies that flow from proximity to the source of generation. Because of the high cost of transmitting power over long distances, it is generally advantageous for load not to be located too far from its source. Mr. Snow testified landowners in the area of the Facility will receive economic benefits from placing the solar generation facilities on their properties, while

¹ The DPP Phase II System Impact Study was completed on March 18, 2022, and included with OUCS witness Alvarez's testimony as Attachment AAA-1.

local taxing bodies will receive new tax revenues. Additionally, the Facility is projected to create at least 200 temporary construction jobs and three to six full-time operations and maintenance jobs. Mr. Snow stated solar energy provides greater energy security and will diversify the region's and Indiana's electricity generation portfolio, protecting against volatile price spikes and risks from relying too heavily on just a few sources of generation. He testified solar energy is a domestic source of fuel, harnessed in this case within Indiana, and not subject to the geopolitical complexities of foreign energy sources, and its renewable nature will help protect future generations from the risks of dwindling energy supplies.

Additional pertinent testimony from Mr. Snow is included and reviewed below within the Commission's findings.

5. OUC's Evidence. Mr. Alvarez raised concerns about the status of the MISO interconnection process as it relates to the Facility. He testified the network upgrade costs allocated to the Facility as of the MISO DPP Phase II System Impact Study ("Phase II SIS") are significant, and these costs are reflective of the high degree of mitigation (network upgrades) necessary to alleviate the Facility's system impact. Mr. Alvarez conveyed concern about the Facility's 0 MW and 0% deliverability results shown in the Phase II SIS. He testified the Phase II SIS results indicate the Facility does not comply with Federal Energy Regulatory Commission ("FERC") Order 827 ("Order 827") because the Facility's lagging power factor of 0.8100 falls outside of Order 827 limits. Mr. Alvarez testified these MISO definitive planning phase milestones are critical decision points to proceed with or abandon a project for each project in the study cycle, and Petitioner should not marginalize this as simply preliminary. According to Mr. Alvarez, the Facility has deficiencies resulting in a high-risk profile at its early planning stage. He testified the Facility's regulatory status could influence an investor-owned utility's selection of the Facility over a less risky project over whom the Commission has not yet declined jurisdiction. Notwithstanding these concerns about the Facility's interconnection status, Mr. Alvarez testified the OUC does not oppose Petitioner's request for a declination of jurisdiction.

6. Petitioner's Rebuttal Evidence. Mr. Snow responded to Mr. Alvarez's concerns regarding the MISO interconnection process with respect to the Facility's network upgrade costs. Mr. Snow testified he does not see the costs identified in the Phase II SIS as being a significant issue that will delay the Facility's development. He opined that it is not unusual for significant upgrade costs to be identified during the interconnection study cycle, especially during the initial phases of the study cycle. He stated the network upgrade costs are based on a project's preliminary engineering design at this phase of the study cycle, and a project's design can be adapted to mitigate impacts identified through the study process. Mr. Snow compared the Phase I SIS results to the Phase II SIS results and explained that as the study process progresses, it is typical for estimated upgrade costs to be reduced significantly as developers refine each project's design to address identified upgrades and constraints and as a result of other projects withdrawing from the study cycle. He testified that even if the total network upgrade costs remain at the level identified in the Phase II SIS, he does not view this as a barrier to constructing the Facility. He testified Crossroads understands upgrades will likely be necessary and is committed to paying those costs, once finalized, in accordance with the GIA to be entered into after the interconnection study cycle is completed.

Mr. Snow also discussed the OUCC's concerns regarding the Facility's deliverability results as of the Phase II SIS. He testified he is confident the Facility will have full deliverability. Per Mr. Snow, MISO's initial interconnection results are based on the Facility's preliminary engineering design, and it is not unusual for a project to have a 0 MW/0% deliverability finding prior to the Phase III SIS being finalized. He cited language from the completed System Impact Studies that states if a generator is deemed not fully-deliverable, the interconnection customer can proceed with the system upgrades that will make the generator fully-deliverable. Mr. Snow explained that this means the Facility is fully-deliverable, contingent upon the identified system upgrades being made, as stated in the Phase I SIS. He reiterated that Crossroads is fully committed to making the necessary upgrades once they are all identified upon completion of the Phase III SIS. Mr. Snow expects the Facility to have 100% deliverability for up to 200 MW once the interconnection study process is completed, and the upgrades have been made.

Additionally, Mr. Snow discussed the OUCC's concerns regarding the Facility's compliance with Order 827. He testified the Facility's final design will comply. He testified that over the course of a project's development, there are technological changes that will influence a project's final design, and such changes can have a material effect on Order 827 compliance. He testified there is a coordination process with MISO where a developer must adapt to changes to MISO's system, and this coordination process can also materially affect Order 827 compliance results. He stated the additional MVAR support needed for the Facility to be compliant with Order 827 is small (1.5 MVAR as of the Phase II SIS), with this small difference due to the Facility's preliminary engineering design. At the time of final design, he stated there is increased certainty as to the variables influencing the Facility's design, and at that time, the design will incorporate, to the extent necessary, reprogramming of the Facility's inverters or installation of additional Var support to ensure compliance with Order 827.

Mr. Snow disagreed with Mr. Alvarez's assertion that the Facility has deficiencies or a high-risk profile. He testified concerns about the Facility's impact on Indiana retail customers are premature and outside the scope of this proceeding, noting the Facility has not yet identified an off-taker. Mr. Snow testified Petitioner's request for a declination of jurisdiction is appropriate, consistent with Ind. Code § 8-1-2.5-5 and Commission precedent, and supported by the evidence.

7. Commission Discussion and Findings. If the Commission finds Crossroads is a public utility for purposes of Indiana's Utility Power Plant Construction Act, Ind. Code ch. 8-1-8.5 (the "Power Plant Act"), then Petitioner will 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 under Ind. Code ch. 8-1-2.5, the Commission must first assert jurisdiction over Petitioner.

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 under Ind. Code ch. 8-1-8.5. *See, e.g., Indianapolis Power & Light*

Co., Cause No. 43235, 2007 WL 8420716 (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). Accordingly, Petitioner’s business is “impressed with a public interest” and will render service “of a public character and of public consequence and concern,” leading the Commission to determine Petitioner is a public utility within the meaning of Ind. Code § 8-1-8.5-1. *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 Petitioner’s ownership, development, financing, construction, and operation of the Facility is for purposes of selling the power generated by the Facility in the wholesale market to public utilities, energy service providers, and power marketers within and outside of Indiana. The Commission has found in prior cases that a business that only generates electricity and then sells that electricity directly to public utilities is itself a public utility. See, e.g., *Benton County Wind Farm, LLC*, Cause No. 43068, 2006 WL 4400582 (IURC December 6, 2006) (“*Benton County*”). In *Benton County*, the Commission found it had jurisdiction over a wind energy generator with wholesale operations. Thus, based on the evidence and applicable law, the Commission finds Crossroads is a public utility within the meaning of Ind. Code §§ 8-1-2-1 and 8-1-8.5-1 and is an energy utility under Ind. Code § 8-1-2.5-2 for purposes of owning, developing, financing, constructing, and operating the Facility.²

When the Commission concludes Petitioner is a public utility under the Indiana Code, the Commission is authorized to decline to exercise, in whole or in part, jurisdiction over an energy utility if certain conditions are satisfied. In particular, 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.

² 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 Crossroads is a public utility under Ind. Code § 8-1-2-1, Petitioner is also an energy utility.

Ind. Code § 8-1-2.5-5(b).

The evidence demonstrates Petitioner does not intend, nor does it request authority, to sell the electricity the Facility generates to the general public or to any retail customer. The power will be generated solely for resale subject to the jurisdiction of the FERC under the provisions of the Federal Power Act, 16 U.S.C. § 824 *et seq.* Petitioner has indicated it will operate the Facility in a manner consistent with good utility practice, and the Facility's costs will not be recovered through a rate base/rate of return or other process typically associated with public utility rates.

In testifying regarding the requirements of Ind. Code § 8-1-2.5-5, Mr. Snow stated 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 over Crossroads unnecessary or wasteful. He explained that Petitioner is subject to Fountain County's requirements, the FERC's rules and regulations, and other federal, state, and local agencies, and the requirements of these governmental entities adequately address concerns the Commission might otherwise have and will protect the public interest regarding future operation and wholesale transactions involving the Facility. In addition, he opined that competition in the wholesale power markets also serves as an adequate check on these activities, particularly wholesale power prices. Additionally, MISO is responsible for safe and reliable operation and planning, including generation interconnection planning, of the electric transmission systems under MISO's functional control, including Duke's transmission system to which the Facility will interconnect. Mr. Snow testified regulation by the Commission is unnecessary and would be wasteful of Commission resources and burdensome for Petitioner.

Mr. Snow testified a declination of jurisdiction by the Commission, in whole or in part, will benefit Petitioner, Petitioner's customers, and Indiana, and will promote Petitioner's efficiency. He explained that Petitioner will benefit from the ability to devote its efforts and resources to complying with the requirements of the federal, local, and other state regulatory agencies with jurisdiction over its operations, as well as MISO's requirements, thereby furthering Petitioner's efficiency and the development and operation of the Facility. He testified Indiana will benefit from the generation of additional electric power from solar resources, generally, and this Facility specifically. Per Mr. Snow, the Commission's exercise of jurisdiction would encumber Petitioner with duplicative requirements that are unnecessary in view of other regulatory oversight and requirements.

Mr. Snow testified the exercise of Commission jurisdiction would also inhibit Petitioner in competing with other providers of functionally similar energy services or equipment. He testified if the Commission exercises jurisdiction over Petitioner, Crossroads will be at a disadvantage with respect to other independent power producers with wind or solar projects over whom the Commission has declined to exercise jurisdiction. According to Mr. Snow, such regulation would also expose Petitioner to the risk of regulatory lag and hinder quickly implementing business decisions in a highly competitive market, creating a competitive disadvantage for Petitioner. He also asserted the Commission's exercise of jurisdiction might compel Petitioner to publicly disclose proprietary information to its disadvantage.

The evidence presented demonstrates further Commission regulation of the Facility: (1) will 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) is an unnecessary use of the Commission's resources; consequently, the Commission finds Petitioner's request that the Commission decline to exercise its jurisdiction over the Facility is in the public interest and should be granted. In so finding, as part of the Commission's public interest analysis, we have considered several additional factors typically considered in prior declination proceedings, as discussed below.

A. Location. As part of its public interest 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 will be served by the Facility being in its planned location. In making such a determination, the Commission considers 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 will 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 reviewed below, the Commission finds the evidence shows the Facility's proposed location within an unincorporated area of Fountain County, Indiana, may be compatible with surrounding land uses, but we have insufficient evidence from which to discern whether the Facility is, indeed, compatible and will not have significant negative impacts. We are, however, persuaded the appropriate state and local government bodies and/or agencies will make this determination, including those in Fountain County having jurisdiction over zoning and related matters, before construction of the Facility moves forward.

i. Local Zoning and Permitting Requirements. Crossroads submitted evidence showing it has complied or will comply with local zoning and land use requirements, will obtain required construction, grading, and wastewater permits, and will not rely on the public utility exemption from local zoning regulation. Mr. Snow testified the Facility is subject to the Fountain County Zoning Ordinance ("Ordinance"), pursuant to which a commercial solar energy system permit must be obtained. He testified a commercial solar energy system permit was obtained for the Facility on January 24, 2022, consistent with the Ordinance which also requires that Crossroads secure approval of a drainage plan and a road plan before beginning construction. Mr. Snow assured this approval will be obtained in accordance with the Ordinance.

Mr. Snow also testified regarding the decommissioning requirements applicable to the Facility. He stated Fountain County does not require Petitioner to enter into a decommissioning plan, but Crossroads has agreed to certain decommissioning requirements directly with the landowners whose land will be impacted by the Facility. Specifically, under the landowner lease agreements Petitioner is required to provide each landowner with a performance bond, letter of

credit, or similar financial assurance, securing performance of Petitioner's obligation to remove the project facilities from the landowner's property. Mr. Snow stated the financial assurance must be equal to the estimated amount, if any, by which the cost of removing the project facilities exceeds their scrap and salvage value. Petitioner is required to provide this financial assurance to the landowners no less than 120 days before the decommissioning term of the Facility commences. According to Mr. Snow, this decommissioning security is intended primarily to cover the cost of removing project infrastructure and substantially restoring the leased premises to their preconstruction condition. In the event of early termination or upon expiration of the lease agreement, Petitioner is required to remove the project facilities and restore the landowner's property to a condition substantially similar to its original condition at Petitioner's cost.

ii. **Land Use and Solar Resources.** Mr. Snow testified Crossroads is an affiliate of Ranger Power, which has extensive experience owning and operating large-scale renewable energy assets. Based on Petitioner's evidence, it appears Crossroads, utilizing Ranger Power's experience in developing other renewable projects, has determined the Facility will be an economically viable project. A preliminary site plan reflecting the approximate locations of the facilities was submitted as Attachment CS-1.

iii. **Water Use and Supply.** Mr. Snow testified the Facility will not use water in any significant quantities and will have negligible impact on local water supplies. Water will 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; therefore, the evidence demonstrates area water use and supplies should not be adversely affected by the Facility.

iv. **Transmission Interconnection.** Mr. Snow testified regarding the Facility's interconnection with Duke's transmission system, advising that Duke's transmission system is within MISO's footprint. He stated the Phase III SIS is expected to be completed by August 2022, and the GIA is expected to be completed by December 2022.

OUCS witness Alvarez raised concerns about the Facility's interconnection results as of the Phase II SIS, including significant network upgrade costs, deliverability concerns, and Order 827 compliance. On rebuttal, Mr. Snow responded to these concerns by explaining MISO's results as of the Phase II SIS are based on the Facility's preliminary engineering design and stated it is not unusual for initial interconnection studies to show a project has significant network upgrade costs or 0 MW/0% deliverability. Mr. Snow explained that as the Facility's design is refined and finalized in coordination with MISO, network upgrade costs are expected to go down, and full deliverability up to the Facility's nameplate capacity of 200 MW is expected once the network upgrades are made. Mr. Snow confirmed that Petitioner understands network upgrades will likely be necessary and is committed to paying these costs once they have been finalized. Regarding Order 827 compliance, Mr. Snow stated the latest results show a small amount of additional MVar support is needed (1.5 MVar) based on the Facility's preliminary engineering design. He assured the Facility's final design will incorporate, to the extent necessary, reprogramming of the Facility's inverters or installation of additional MVar support to ensure compliance with Order 827.

Based on the evidence, the Commission finds Petitioner understands MISO's interconnection results as of the Phase II SIS and will take those results into account when

finalizing the Facility's design to ensure the Facility's full deliverability and compliance with Order 827. Additionally, Mr. Snow testified Crossroads will provide copies of the MISO Phase III SIS and the GIA as part of the post-Order reporting requirements. We find this is appropriate and sufficient for purposes of prospectively keeping the Commission apprised of the Facility's interconnection status.

v. **Additional Permitting and Environmental Issues.** Mr. Snow testified Petitioner has applied or will apply for and obtain all necessary federal, state, and local permits needed for construction and operation of the Facility. He testified Petitioner has performed several environmental and site studies, including a Cultural Resources Review, a Wetland Delineation Study, an Endangered Species Act Review, and a Phase I ESA.

To the extent required by state law, Mr. Snow acknowledged 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 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 the Indiana Department of Natural Resources and the Indiana Department of Environmental Management, to the extent necessary, if the Facility impacts isolated wetlands and floodways.

Mr. Snow testified Petitioner may also be required by federal law to do the following: (1) self-certify as an exempt wholesale generator and apply for market-based rate authority under the 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 for impacts to wetlands or other waters of the United States.

vi. **Using the Public Right-of-Way.** Mr. Snow testified Petitioner seeks to retain a limited 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, he stated retention of this right will clarify issues surrounding use of the public right-of-way for road crossings. Per Mr. Snow, this limited request is similar to the approval given to other Indiana renewable energy projects. Based upon the evidence presented, the Commission finds Petitioner's request for limited use of the public right-of-way within the Facility is reasonable. Petitioner will retain 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. Mr. Snow testified there is a need for the electricity generated by the Facility, citing the Purdue University State Utility Forecasting Group's *Indiana Electricity Projections: The 2021 Forecast* prepared for the Commission. He testified the Facility represents one of the most environmentally friendly means of generating electricity. Per Mr. Snow, the public in Indiana also may benefit from the efficiencies that flow from proximity to the source of generation, as it is generally advantageous for load to not be located too far from its source. He testified landowners in the area of the Facility will receive economic benefits from placing solar generation facilities on their properties while local taxing bodies will receive new tax revenues.

Mr. Snow testified at least 200 temporary construction jobs and three to six full-time operations and maintenance jobs will be created.

Based on the evidence, the Commission finds Petitioner's proposed development of additional generating capacity via the Facility and its operation will serve the public interest by making this additional solar resource available.

C. Financing and Management. To help ensure Indiana consumers are not adversely affected by the proposed development of generation in Indiana, developers have provided evidence showing 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 generating facilities in a commercially responsible manner. As necessary, the Commission may also consider the specific method proposed to finance a particular project.

Mr. Snow testified Crossroads has the ability to finance the Facility and that Ranger Power has substantial experience developing renewable energy projects. He stated Ranger Power has over 10,000 MW under active development while Petitioner's indirect parent company, DESRI, and its affiliates acquire, own, and manage long-term contracted renewable energy assets in North America. Per Mr. Snow, DESRI has financed and owns 70 operating and in-construction solar and wind projects representing more than 5.7 GW of aggregate capacity. He testified Petitioner will have all the financial, technical, and managerial expertise necessary to construct and operate the Facility.

Based on Mr. Snow's testimony, the Commission finds Petitioner has shown it 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; therefore, Crossroads remains required to obtain prior Commission approval of any transfer of assets owned by Petitioner. Petitioner, however, shall not be required to seek prior Commission approval of transfers of ownership of Facility assets or ownership interests in Petitioner involving: (1) the grant of a security interest, mortgage, deed of trust, or other encumbrance to a bank or other lender or collateral agent, administrative agent, or other security representative, or a trustee on behalf of bondholders in connection with any financing or refinancing (including any lease financing), or any investor, guarantor, equipment supplier, or financing entity; (2) Petitioner becoming a debtor in possession; (3) a foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner; or (4) a transfer of all or a part of the ownership of the Facility or its assets to an affiliate of Petitioner. Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission, prior to such succession, determines the successor has the necessary technical, financial, and managerial capability to own and operate the Facility, and (2) the successor agrees to satisfy and satisfies all the terms and conditions imposed on Petitioner under this Order.

E. Affiliate Transactions. In addition to determining whether the public interest will be served if the Commission declines jurisdiction, the Commission has also considered what actions may be necessary to ensure the public interest is served throughout the

commercial life of the Facility. Specifically, the Commission has considered the extent to which it should reserve its authority over Petitioner's activities involving affiliate transactions and transfers of ownership. To help ensure the Commission's declination of jurisdiction over an energy utility is in the public interest, the Commission seeks assurance 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 finds it is appropriate to decline jurisdiction over Petitioner's affiliate transactions initially, the Commission reserves its authority to regulate Crossroads should it become an affiliate of any regulated Indiana retail utility. Accordingly, Petitioner shall provide written notice under this Cause to the Commission and the OUCC prior to or at the time it becomes an affiliate of any regulated retail utility operating in Indiana.

The Commission further finds 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.

8. Financial Assurance. As discussed above, Mr. Snow testified the Facility will be subject to certain decommissioning requirements agreed to directly with landowners. He stated Fountain County has no specific decommissioning requirements, but the landowner lease agreement with each landowner requires Petitioner to provide and maintain a performance bond, letter of credit, or similar financial assurance, in form and substance securing performance of Petitioner's obligation to remove project facilities from the landowner's property.

Petitioner shall provide the Commission with written notice under this Cause when the agreed financial instruments have 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.

9. Reporting Requirements. Petitioner agreed to comply with the same reporting requirements as the Commission has established for other renewable generation facilities in Indiana, and the Commission directs Petitioner to do so. In addition to these requirements, as a condition of this Order and the Commission's continued declination of jurisdiction, Petitioner shall also file Annual Reports with the Commission as provided in Ind. Code § 8-1-2-49 and provide and file other information as the Commission may from time to time request. These reporting requirements are intended to ensure Crossroads provides the Commission with accurate, up-to-date information in a timely manner to carry out its statutory obligations. Additionally, due to supply chain issues that could potentially limit the availability of components necessary to build the Facility, Petitioner shall report any supply chain challenges and/or delays until the Facility begins commercial operation. A responsible officer of Petitioner shall verify all reports, and Petitioner shall file the reports under this Cause within the timeframes prescribed herein.

The following reports shall be prepared and filed by Crossroads:

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) The anticipated total output of the Facility;
- (5) Manufacturer, model number, and operational characteristics of panels;
- (6) Connecting utility(s);
- (7) Copy of any Interconnection System Impact Studies or other interconnection studies prepared by MISO;
- (8) Expected in-service (commercial operation) date;
- (9) An estimate of the engineering/construction timeline and critical milestones for the Facility;
- (10) The status of the GIA with MISO; and
- (11) The information listed below in the Subsequent Reports section to the extent such information is available.

B. Subsequent Reports. Crossroads shall 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, Petitioner will file reports on an annual basis in this Cause. Subsequent reports shall include the following information:

- (1) Any changes to the information provided in the Initial Report;
- (2) Any Interconnection System Impact Studies or other interconnection studies and/or reports not previously submitted to the Commission;
- (3) Copy of the GIA as filed with the FERC;
- (4) Notice of the establishment of an independent financial instrument, including its form and amount;
- (5) Achievement of construction milestones described in the GIA 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;
- (6) When commercial operation is achieved, the nameplate capacity, term, and identity of a purchaser for any contracts then existing for utility sales, contingency plans (if any) detailing response plans to emergency conditions as required by state or local units of government, the interconnecting transmission owner and/or MISO, and the Facility's certified (or accredited) dependable capacity rating; and
- (7) An update on all supply chain related challenges and/or delays.

C. Additional Requirements. In the event Petitioner intends to materially increase, decrease, or otherwise materially change the Facility's capacity or operation, the owner must provide the Commission with at least 30 days' notice prior to the change, and any party

wishing to protest such change must file an objection under this Cause within 10 days of the notification of project modification.³ Petitioner shall notify the Commission if it modifies or suspends the Facility under the terms of the GIA and does not reinstitute work within three years following commencement of such suspension. If the Commission determines Petitioner: (1) has failed to enter into an agreement pursuant to MISO generator interconnection procedures; (2) has suspended the Facility under the terms of the GIA 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.

10. Conclusion. Consistent with Ind. Code § 8-1-2.5-5, the Commission finds that declining to exercise its jurisdiction over Petitioner, as requested and discussed above, will facilitate moving forward with construction of the proposed Facility and add generation capacity in Indiana. This should be beneficial for those public utilities that may indirectly have access to the power produced and to the State of Indiana. We further find that declining to exercise our jurisdiction over Petitioner will promote energy utility efficiency. In addition, Crossroads has demonstrated it has the technical, financial, and managerial capabilities to construct and operate the Facility. It has also shown the wholesale market for electricity in Indiana may benefit from the addition of the Facility's generating capacity, and, therefore, its market entry is reasonable.

Accordingly, based on these findings and the additional requirements contained in this Order, the Commission finds 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, revenue Crossroads derives from the sale of electricity for resale by the purchaser is not subject to the public utility fee.

If the Commission determines 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 GIA, then the Commission may, following notice to Petitioner, proceed to issue an Order terminating the declination of jurisdiction set forth in this Order. 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 the FERC and provide the Commission such other information as we may from time to time require from other Indiana public utilities or otherwise request.

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

³ 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.

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. Petitioner 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 Indiana any of the electricity the Facility generates without further Order of the Commission; consequently, the gross revenues generated by sales for resale of the electricity generated by the Facility will be exempt from the public utility fee prescribed by Ind. Code ch. 8-1-6.

6. Crossroads shall comply fully with the terms of this Order and timely submit to the Commission under this Cause all information and reports the terms of this Order require.

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

HUSTON, FREEMAN, KREVDA, AND ZIEGNER CONCUR:

APPROVED: JUN 28 2022

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

Dana Kosco
Secretary of the Commission