

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

VERIFIED PETITION OF SOUTHERN INDIANA GAS AND)
ELECTRIC COMPANY d/b/a CENTERPOINT ENERGY)
INDIANA SOUTH (“CEI SOUTH”) FOR AN ORDER: (1))
AMENDING THE COMMISSION’S OCTOBER 27, 2021)
ORDER IN CAUSE NO. 45501 PURSUANT TO IND. CODE § 8-)
1-2-72 TO AUTHORIZE CEI SOUTH TO ENTER INTO AN)
AMENDMENT TO THE POWER PURCHASE AGREEMENT)
(“PPA”) APPROVED IN THAT CAUSE WITH CLENERA LLC)
AFFILIATE RUSTIC HILLS II LLC (“CLENERA”))
CONTAINING REVISED TERMS UNDER WHICH CEI SOUTH)
WILL PURCHASE ENERGY, CAPACITY, AND RECS FROM A)
100 MW SOLAR PROJECT IN WARRICK COUNTY, INDIANA)
(THE “WARRICK COUNTY SOLAR PROJECT”), AND)
FINDING THOSE REVISED TERMS REASONABLE AND)
NECESSARY; (2) AMENDING THE COMMISSION’S MAY 4,)
2022 ORDER IN CAUSE NO. 45600 PURSUANT TO IND. CODE)
§ 8-1-2-72 TO AUTHORIZE CEI SOUTH TO ENTER INTO)
AMENDMENTS TO THE PPA APPROVED IN THAT CAUSE)
WITH ORIDEN LLC AFFILIATE VERMILLION RISE SOLAR)
LLC (“ORIDEN”) CONTAINING REVISED TERMS UNDER)
WHICH CEI SOUTH WILL PURCHASE ENERGY, CAPACITY,)
AND RECS FROM A 185 MW SOLAR PROJECT IN)
VERMILLION COUNTY, INDIANA (THE “VERMILLION)
COUNTY SOLAR PROJECT”), AND FINDING THOSE)
REVISED TERMS REASONABLE AND NECESSARY; (3))
AUTHORIZING THE FULL RECOVERY OF THE POWER)
PURCHASE COSTS UNDER THE AMENDED PPAS FROM)
CUSTOMERS THROUGH FUEL ADJUSTMENT CLAUSE)
(“FAC”) PROCEEDINGS OVER THE ENTIRE TERM OF THE)
AMENDED PPAS; (4) AUTHORIZING EXPENSES)
ASSOCIATED WITH ENTERING INTO THE AMENDED)
VERMILLION PPA TO BE DEFERRED IN THE)
REGULATORY ASSET THE COMMISSION APPROVED IN)
CAUSE NO. 45600 FOR RECOVERY THROUGH THE FAC;)
AND (5) APPROVING CONFIDENTIAL TREATMENT OF THE)
AMENDED PPAS AND RELATED CONFIDENTIAL)
INFORMATION)

CAUSE NO. 45839

APPROVED: MAY 30 2023

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Loraine L. Seyfried, Chief Administrative Law Judge

On January 17, 2023, Southern Indiana Gas and Electric Company d/b/a CenterPoint Energy Indiana South (“Petitioner” or “CEI South”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) in this Cause, along with the direct testimony and attachments of the following witnesses in support of its Verified Petition:

- Richard C. Leger, Senior Vice President, Indiana Electric
- Roland A. Rosario, Renewable Energy Development Manager
- Matthew A. Rice, Director of Indiana Electric Regulatory and Rates; and
- Chrissy M. Behme, Manager, Regulatory Reporting

On January 17, 2023, Petitioner filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information. In its Motion, Petitioner indicated certain information (“Confidential Information”) it intended to submit in this matter contains trade secrets as defined by Ind. Code § 24-2-3-2. Confidential treatment was approved on a preliminary basis by docket entry dated January 26, 2023. On February 3, 2023, Petitioner submitted the confidential materials in accordance with the docket entry.

On January 20, 2023, the CenterPoint Energy Indiana South Industrial Group (“Industrial Group”) filed its Petition to Intervene, which was granted by docket entry on February 1, 2023.

On March 17, 2023, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed the direct testimony of Derek J. Leader, Utility Analyst. CEI South filed a Notice of Intent Not to File Rebuttal Testimony on March 31, 2023.

The Commission held an evidentiary hearing in this matter on April 25, 2023, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. CEI South, the OUCC, and Industrial Group, by counsel, appeared and participated in the evidentiary hearing. The prefiled evidence was admitted, without objection.

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

1. Notice and Jurisdiction. The Commission published notice of the evidentiary hearing in this Cause as legally required. Petitioner is a “public utility” as defined in Ind. Code § 8-1-2-1 and an “eligible business” as defined in Ind. Code § 8-1-8.8-6. The Commission may amend its prior orders pursuant to Ind. Code § 8-1-2-72, establish financial incentives to encourage clean energy projects pursuant to Ind. Code ch. 8-1-8.8, and approve certain fuel costs pursuant to Ind. Code § 8-1-2-42; therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. Petitioner’s Characteristics. Petitioner is a public utility incorporated under Indiana law and has its principal office at 211 NW Riverside Drive, Evansville, Indiana. Petitioner

has authority to engage in and is engaged in rendering electric service within Indiana. Petitioner owns, operates, manages, and controls, among other things, plant, property, equipment, and facilities that are used and useful for the production, storage, transmission, distribution, and furnishing of electric utility service to approximately 150,000 customers in southwestern Indiana. Petitioner is authorized by the Commission to provide electric utility service in all or parts of Pike, Gibson, Dubois, Posey, Vanderburgh, Warrick, and Spencer Counties.

3. The 45501 Order. In its October 27, 2021 Order in Cause No. 45501 (“45501 Order”), the Commission approved a Long-Term Renewable Power Purchase Agreement with Clenera LLC affiliate Rustic Hills II LLC (“Clenera”), entered into on February 1, 2021 (“2021 Warrick PPA”), under which Clenera would sell, and CEI South would be entitled to, all product and attributes, including all energy, capacity, and renewable energy credits (“RECs”) associated with the Warrick County Solar Project for a 25-year term. CEI South requested that the Commission find the Warrick County Solar Project was an eligible “clean energy project” for the purposes of Ind. Code ch. 8-1-8.8 and authorize full recovery of the power purchase costs through CEI South’s fuel adjustment clause (“FAC”) proceedings over the entire term of the PPA. In Cause No. 45501, CEI South provided evidence that entering into the 2021 Warrick PPA was consistent with its Integrated Resource Plan (“2019/2020 IRP”), which identified a need for the addition of 700 to 1,000 MWs of solar resources and 300 MWs of wind resources as part of the “Preferred Portfolio” to meet capacity and energy requirements.

In the 45501 Order, the Commission found the Warrick County Solar Project to be a “clean energy project[] under Ind. Code § 8-1-8.8-11.” 45501 Order, p. 34. The Commission stated that the Warrick County Solar Project is “consistent with the preferred portfolio identified in Petitioner’s 2019/2020 IRP.” *Id.* at 28. The Commission further found that the energy and capacity the 2021 Warrick PPA “will provide to be [a] reasonable and necessary addition[] to [CEI South’s] service area.” *Id.* at 34. The Commission also concluded the rates set forth in the 2021 Warrick PPA “are reasonable and in the public interest” and, therefore, found CEI South “should be authorized to recover the Warrick County Solar Project PPA costs throughout the full term of the [2021 Warrick] PPA through the FAC pursuant to Ind. Code § 8-1-8.8-11 and in the manner Petitioner proposed.” *Id.* at 40.

4. The 45600 Order. In its May 4, 2022 Order in Cause No. 45600 (“45600 Order”), the Commission approved a Long-Term Renewable Power Purchase Agreement with Oriden LLC affiliate Vermillion Rise Solar LLC (“Oriden”), entered into on August 4, 2021 (“2021 Vermillion PPA”), under which Oriden would sell, and CEI South would be entitled to, all product and attributes, including all energy, capacity, and RECs associated with the Vermillion County Solar Project for a 15-year term. In the same proceeding, CEI South sought authority to enter into a PPA to purchase energy, capacity, and RECs from a solar project in Knox County, Indiana for a 20-year term. CEI South requested that the Commission find both projects were eligible “clean energy projects” for purposes of Ind. Code ch. 8-1-8.8 and authorize full recovery of the power purchase costs through CEI South’s FAC proceedings over the entire term of the PPAs. In addition, CEI South requested that the Commission authorize expenses associated with entering into the PPAs be deferred as regulatory assets for recovery through the FAC. In Cause No. 45600, CEI South provided evidence that entering into the 2021 Vermillion PPA for the Vermillion County Solar Project was consistent with the 2019/2020 IRP.

In the 45600 Order, the Commission found the Vermillion County Solar Project to be a “clean energy project[] under Ind. Code § 8-1-8.8-11.” 45600 Order at 10. The Commission stated that the Vermillion County Solar Project is “consistent with the preferred portfolio identified in Petitioner’s 2019/2020 IRP, which includes a variety of generation sources.” *Id.* at 9. The Commission further found the energy and capacity the Vermillion County Solar Project will provide to be “reasonable and necessary additions to [CEI] South’s portfolio of generating resources to meet the need for electricity within its service area.” *Id.* at 10. The Commission also concluded the rates set forth in the 2021 Vermillion PPA “are reasonable and in the public interest” and, therefore, found CEI South “should be authorized to recover the Vermillion County Solar Project PPA costs...throughout the full term” of the 2021 Vermillion PPA through the FAC pursuant to Ind. Code § 8-1-8.8-11. *Id.* at 11. Finally, the Commission authorized CEI South to include costs associated with entering into the 2021 Vermillion PPA and obtaining approval thereof in a regulatory asset and recover those costs through the FAC pursuant to Ind. Code § 8-1-8.8-11. *Id.* at 12.

5. Requested Relief. In its Verified Petition, Petitioner requests the Commission issue an order: (1) amending the 45501 Order pursuant to Ind. Code § 8-1-2-72 to authorize CEI South to enter into an amendment to the 2021 Warrick PPA containing revised terms under which CEI South will purchase energy, capacity, and RECs from the Warrick County Solar Project, and finding those revised terms reasonable and necessary; (2) amending the 45600 Order pursuant to Ind. Code § 8-1-2-72 to authorize CEI South to enter into amendments to the 2021 Vermillion PPA containing revised terms under which CEI South will purchase energy, capacity, and RECs from the Vermillion County Solar Project, and finding those revised terms reasonable and necessary; (3) authorizing the full recovery of the power purchase costs under the Amended Warrick PPA and Amended Vermillion PPA (collectively the “Amended PPAs”) from customers through FAC proceedings over the entire term of the Amended PPAs; (4) authorizing expenses associated with entering into the Amended Vermillion PPA to be deferred in the regulatory asset the Commission approved in Cause No. 45600 for recovery through the FAC; and (5) approving confidential treatment of the Amended PPAs and related confidential information.

6. Evidence Presented.

A. Petitioner’s Case-in-Chief.

1. Richard Leger. Mr. Leger provided a high-level overview of the modifications to the 2021 Warrick PPA contained in the Amended Warrick PPA and summarized the modifications to the 2021 Vermillion PPA contained in the Amended Vermillion PPA. Mr. Leger explained why the changes made to the 2021 Warrick PPA and the 2021 Vermillion PPA are necessary and were agreed upon by CEI South and why the Warrick County Solar Project and Vermillion County Solar Project still benefit CEI South and its customers and remain reasonable, necessary, and in the public interest.

Mr. Leger testified that approval of the Warrick County Solar Project and Vermillion County Solar Project were part of CEI South’s Generation Transition Plan. He stated that the Plan required an initial step of identifying and selecting approximately 700-1,000 MWac of solar generation, 300 MW of wind generation, and approximately 460 MW of natural gas Combustion Turbine generation. Mr. Leger testified that CEI South filed Cause Nos. 45501, 45564, 45600,

45754, and 45836 to begin implementation of the Plan. He described each project proposed in the foregoing proceedings and stated that completion of each project is still crucial for Petitioner to meet its capacity needs.

Mr. Leger testified that the changes made in the Amended PPAs were required because the cost to develop a solar project have increased substantially since the bids were received for the 2021 Warrick PPA and 2021 Vermillion PPA, the execution of the PPAs, and the Commission's approval of the 2021 Warrick PPA in Cause No. 45501 and the 2021 Vermillion PPA in Cause No. 45600. Mr. Leger explained that the price of photovoltaic ("PV") modules has escalated rapidly, as have the cost of other solar project components. Mr. Leger testified that during the first half of 2022, Clenera and Oriden separately notified CEI South of issues necessitating the changes made in the Amended PPAs.

Mr. Leger stated that not pursuing the Warrick and Vermillion County Solar Projects would have adverse consequences for CEI South's customers. He stated that without the capacity provided by projects approved to date, including the Warrick and Vermillion County Solar Projects, CEI South could be at risk of having to make high priced purchases from the Midcontinent Independent System Operator ("MISO") Planning Resource Auction ("PRA"). He noted that MISO indicated in its 2022 PRA results that "auction results indicate that MISO North/Central Regions have a slightly increased risk of needing to implement temporary controlled load sheds."¹ Mr. Leger testified that the Warrick and Vermillion County Solar Projects will help mitigate these risks.

Mr. Leger stated the Warrick and Vermillion County Solar Projects are consistent with Petitioner's 2019/2020 IRP and are a step towards diversification of generation assets that ensures reliable service to CEI South's customers.

Mr. Leger testified that CEI South has had success in getting renewable projects approved but is struggling to get the projects in service and available to meet Petitioner's capacity needs due to the current economic market. He stated that the Posey County Solar Project approved in Cause No. 45501 was downsized from 300 MWac to approximately 191 MWac due to supply chain issues across the energy industry, as well as escalating commodity costs that have impacted the project schedule and timeline. He explained that global supply chain issues and escalating commodity costs have substantially pushed up the price of completing solar projects and made negotiating the terms of PPAs more difficult.

Mr. Leger testified that amending the 2021 Warrick PPA and the 2021 Vermillion PPA was in the best interest of CEI South and its customers due to the immediate time pressures on CEI South to transition its generation portfolio, and there was a low probability of finding a substitute project at a comparable price to the Warrick and Vermillion County Solar Projects in the current market. He stated that CEI South must make near-term changes to its portfolio to meet capacity needs. Mr. Leger described the capacity gap that will be created when A.B. Brown Units 1 & 2 and F.B. Culley 2 are retired and after the anticipated exit of the Joint Operating Agreement for Warrick Unit 4. This gap will create a need for the Warrick and Vermillion County Solar Projects for CEI South to maintain its Planning Reserve Margin Requirement ("PRMR") position and

¹ See <https://cdn.misoenergy.org/2022%20PRA%20Results624053.pdf> at Slide 2.

ensure the required capacity in each season is met. Mr. Leger noted that CEI South cannot over-rely on the MISO PRA, as Ind. Code § 8-1-8.5-13 requires each public utility be able to reasonably acquire not more than 30% of its PRMR from the PRA. He noted that overreliance on the MISO PRA would increase costs for CEI South customers.

Mr. Leger concluded his testimony by stating the Amended PPAs are reasonable and necessary and are in the public interest.

2. Roland Rosario. Mr. Rosario explained how the Warrick County Solar Project was selected from an All-Source Request for Proposal (“RFP”) that Petitioner conducted in 2019. Mr. Rosario testified that, despite the recent price increase CEI South determined it was in the best interest of its customers to continue with the Warrick County Solar Project, leading to CEI South working with Clenera to negotiate the Amended Warrick PPA.

Mr. Rosario described the Amended Warrick PPA, including the most significant changes from the 2021 Warrick PPA. First, the Amended Warrick PPA includes a provision that requires Clenera to execute and deliver to CEI South a definitive agreement for the purchase of PV solar panels from a nationally recognized Tier 1 manufacturer. Second, the Amended Warrick PPA extends the Commercial Operation Date (“COD”) of December 31, 2023 set forth in the 2021 Warrick PPA to April 1, 2025, with an agreement that if an order in this Cause has not been obtained to CEI South’s satisfaction by September 1, 2023, then the COD date can be extended by a number of days equal to the delay in obtaining Commission approval. Third, the Amended Warrick PPA modifies the price for energy, capacity, and RECs to a rate that Mr. Rosario stated remains competitive with current PPA prices while also taking into consideration the recent tax law changes resulting from the Inflation Reduction Act of 2022. Mr. Rosario described in detail the rate structure in the Amended Warrick PPA and terms of the Amended Warrick PPA regarding interconnection.

Mr. Rosario further explained how the Vermillion County Solar Project was selected from the RFP that Petitioner conducted for renewable projects in 2020. Mr. Rosario discussed the reasoning behind the first, second, and third amendments to the 2021 Vermillion PPA as well as the events leading up to the execution of the Amended Vermillion PPA. Mr. Rosario testified that, despite the recent price increase of the Vermillion County Solar Project, CEI South determined it was in the best interest of its customers to continue with the project, leading to CEI South working with Oriden to negotiate the Amended Vermillion PPA.

Mr. Rosario explained the main changes made to the 2021 Vermillion PPA. First, the Amended Vermillion PPA includes a provision requiring Oriden to execute and deliver to CEI South a definitive agreement for the purchase of PV solar panels from a nationally recognized Tier 1 manufacturer. Second, the Amended Vermillion PPA extends the COD of December 31, 2023 set forth in the 2021 Vermillion PPA to April 1, 2025, with an agreement that the COD may be extended on a day-for-day basis if Commission approval is not obtained to CEI South’s satisfaction by October 1, 2023. Third, the Amended Vermillion PPA modifies the price for the Vermillion energy, capacity, and RECs to a rate that Mr. Rosario states remains competitive with current PPA prices. Mr. Rosario described in detail the rate structure in the Amended Vermillion PPA and terms of the Amended Vermillion PPA regarding interconnection. Mr. Rosario additionally described the expected network upgrade costs for the Vermillion County Solar Project.

Mr. Rosario explained the factors driving the need to modify the pricing of the 2021 Warrick PPA and the 2021 Vermillion PPA, including increased prices for raw materials such as steel and aluminum as well as the cost of modules and other materials.

Mr. Rosario explained that neither Clenera nor Oriden had procured panels for the Warrick or Vermillion County Solar Projects, respectively, before the Amended PPAs were executed because developers typically do not purchase panels that require a substantial outlay of capital until certain milestones have been reached indicating the feasibility and certainty of the project. These milestones generally include initial MISO study results, Commission approval, and certain permitting, engineering, and other contractual milestones. Mr. Rosario testified that the cost of polysilicon (a key component in solar modules) had increased due to supply chain issues after the execution of the 2021 Warrick PPA and the 2021 Vermillion PPA. He stated further issues arose on February 8, 2022 after Auxin Solar Inc. filed a circumvention inquiry request under section 781(b) of the Tariff Act of 1930 and 19 C.F.R. § 351.226 alleging that solar cells and modules completed in Cambodia, Malaysia, Thailand, or Vietnam (“CMTV”) using parts and components manufactured in China are circumventing established duties and, accordingly, should be subject to tariffs. Mr. Rosario stated that the announcement of the U.S. Department of Commerce (“DOC”) investigation led United States companies to halt most imports of solar cells and modules from the CMTV countries, which provide 80 percent of foreign solar cells and modules to the United States. Mr. Rosario provided an update on the current status on the DOC investigation into the circumvention of tariffs on solar panels from the CMTV countries.

Mr. Rosario stated that, in his opinion, the price for both the Amended Warrick PPA and Amended Vermillion PPA is reasonable and stated it would be ill-advised for CEI South to start over with the attempted acquisition of an equivalent PPA, as it would come at higher cost and significant delay. He stated that trying to obtain an equivalent PPA today would cause CEI South to effectively restart the process with a higher PPA cost and would lead to delay in the timing of getting the project online. Mr. Rosario based this opinion on the responses to CEI South’s recent RFPs, including an RFP conducted for renewable resources in 2022 (“2022 Renewable RFP”). He testified that the pricing of the Amended PPAs is competitive with the prices available in the market.

Mr. Rosario discussed CEI South’s petition filed in October 2022 in Cause No. 45786 requesting approval to amend the 45600 Order to authorize CEI South to enter into a First and Second Amendment to the Long-Term Renewable PPA with Origis as well as a subsequent Letter Agreement relating to the Inflation Reduction Act of 2022 to purchase energy, capacity, and RECs from the Knox County Solar Project and finding the terms of those amendments reasonable and necessary. He compared the amended pricing for the two PPAs that are the subject of this proceeding with the amended pricing for the Knox County Solar Project, stating that the increase in the base price across the three PPAs is largely consistent.

Mr. Rosario stated that CEI South’s need for the Warrick and Vermillion County Solar Projects has increased since the Commission’s Order in Cause No. 45600, citing the capacity gap to achieve the MISO PRMR resulting from the retirement of certain generation assets.

Mr. Rosario testified that delays associated with the interconnection process have added to the challenge of bringing new projects online. He stated that in February 2021, as part of Cause

No. 45501, Petitioner's witness Joiner testified that new projects could take a minimum of 3.5 years to come online as part of generation transition efforts. Mr. Rosario stated that delays to the MISO Definitive Planning Phase ("DPP"), originally scheduled to be completed by August 3, 2021, have lengthened interconnection timelines for projects both in the interconnection queue and for new projects that have not entered the queue or have only entered recently.

Mr. Rosario testified that a capacity shortfall presents risks to customers, including a potential load shed impact. He described the risk of capacity shortfalls in future years in the MISO North/Central Regions. Mr. Rosario testified that the Warrick County Solar Project's 100 MWac and the Vermillion County Solar Project's 185 MWac of capacity, starting with their first year of commercial operation in the 2024/2025 MISO capacity planning year, is necessary to support CEI South's PRMR position and ensure the required capacity in each season is met.

3. Matthew Rice. Mr. Rice described how CEI South approached the 2019/2020 IRP, and the process CEI South used in developing the 2019/2020 IRP. He opined that the forecasts Petitioner used in the IRP process are reasonable, including the use of consensus forecasts and the transparency and incorporation of stakeholder input throughout the portfolio development process.

Mr. Rice testified fifteen portfolios were created through Petitioner's process. These fifteen portfolios were grouped into five distinct portfolio development strategies: (i) Status Quo, (ii) Scenario-Based, (iii) Bridge, (iv) Diverse, and (v) Renewables Focused. Mr. Rice described the various analyses conducted by CEI South to test these fifteen portfolios, describing the process as a multi-faceted risk analysis. From these fifteen portfolios, CEI South selected the Preferred Portfolio. Mr. Rice stated the Preferred Portfolio performed well in terms of cost risk relative to other portfolios. He testified that compared to the top portfolios under consideration, the Preferred Portfolio relied the least on energy purchases, ranked among the best in reliance on sales to market, and had considerably less long-term reliance on capacity purchases.

Mr. Rice testified the IRP preferred portfolio was selected because it provides a reliable, resilient portfolio that offers a strong mix of traditional and emerging resources with fast start and fast ramping capability. He stated that the Preferred Portfolio is cost effective and expected to save Petitioner's customers up to \$320 million over the IRP's 20-year planning period, as compared to continuing to operate CEI South's coal units.

Mr. Rice testified that CEI South has taken steps to begin implementing the Preferred Portfolio, including by seeking necessary Commission approvals, and described the projects in the Preferred Portfolio. Despite the increasing difficulties and rising costs in completing solar projects, Mr. Rice opined that it remains crucial that CEI South continue to work to bring these renewable projects online. He opined that the Amended PPAs remain consistent with CEI South's 2019/2020 IRP and that they will provide reasonable and stable energy costs over the long-term.

Mr. Rice stated that, with the downsizing of the Posey County Solar Project, CEI South has received approval of 756 MWac of the initial step of 700-1,000 MWac of solar generation. He testified that, based on this shortfall, he has no doubt that the completion of the Warrick and Vermillion County Solar Projects will be consistent with the Preferred Portfolio identified in the 2022/2023 IRP. Mr. Rice further testified that he does not believe the price revision included in

the Amended PPAs would have changed the results of the 2019/2020 IRP. He noted that the Commission found that both the Warrick County Solar Project and Vermillion County Solar Project were clean energy projects in Cause No. 45501 and 45600, respectively; and stated the Amended PPAs do not change anything that would impact that determination.

Mr. Rice testified that the estimated residential bill impact for the Vermillion Solar Project for a residential customer that uses 1,000 kWh per month is approximately \$3.60 per month. This amount does not include offsets such as REC sales, which are expected to lower customer bills, or other savings associated with the Generation Transition Plan. Mr. Rice testified that this is approximately \$1.20 more than the original bill estimate provided for this project in Cause No. 45600. Mr. Rice stated that, in comparison, the impact of the Warrick County Solar Project on customers as presented in Cause No. 45501 was approximately \$1.40 per month whereas today the expected bill impact is approximately \$1.70 per month. Mr. Rice testified that accordingly, the increased prices in the Amended PPAs at approximately \$1.50 per month do not significantly impact customers.

Mr. Rice testified that inclusion of the incremental cost of the Amended Vermillion PPA in the regulatory asset approved in Cause No. 45600 does not materially impact residential customer bills. Mr. Rice stated that CEI South will recover the Amended Vermillion PPA costs, including the incremental \$125,000 of deferred costs described by Ms. Behme, throughout the full term of the agreements through a rate adjustment mechanism under Ind. Code § 8-1-2-42(d). Mr. Rice stated that as approved in Cause No. 45600, the deferred costs will be recovered over the 15-year term of the Amended PPA.

4. Chrissy Behme. Ms. Behme testified regarding Petitioner's proposal in Cause No. 45600 with respect to the deferral and recovery of direct incremental costs associated with the 2021 Vermillion PPA. She stated that Petitioner's base rates include a level of operations and maintenance expenses to cover the costs of providing regulated services, but that they do not include the incremental costs associated with entering into contracts for new generation projects. Ms. Behme stated that Petitioner sought Commission approval to create a regulatory asset in Cause No. 45600 and recover the direct incremental expenses associated with PPAs in the FAC because, absent authorization to defer these costs into a regulatory asset and recover them through the FAC, Petitioner will incur costs that would not otherwise be eligible for future recovery. Ms. Behme testified that because these costs are a necessary and prudent expense associated with entering into a PPA, they are appropriately recovered through rates.

Ms. Behme testified that the Commission approved CEI South's proposal to recover the incremental costs, totaling \$270,532 between the two solar projects approved in Cause No. 45600, via regulatory assets.

Ms. Behme stated that CEI South is proposing to recover the costs incurred in negotiating and seeking approval of the Amended Vermillion PPA in the regulatory asset for the Vermillion County Solar Project. She opined that the same reasoning on which the Commission based its approval of the creation of the regulatory asset applies to the cost of entering into the Amended Vermillion PPA. She testified that the costs incurred to negotiate and obtain approval of the Amended Vermillion PPA were necessary and prudent expenses and are appropriately recovered through rates. Ms. Behme testified that CEI South is seeking to incorporate an additional \$125,000

in costs in the regulatory asset approved in Cause No. 45600, a total reached by adding together the Amended Vermillion PPA negotiation legal costs (\$75,000) and the legal expenses for regulatory filings for the Amended Vermillion PPA (\$50,000).

Ms. Behme noted that CEI South did not make a similar request in Cause No. 45501 to defer and recover direct incremental costs associated with the 2021 Warrick PPA. In the interest of remaining consistent with the authority sought in Cause No. 45501, Ms. Behme testified that CEI South is not requesting to defer and recover the costs associated with negotiating and obtaining approval of the Amended Warrick PPA through a regulatory asset at this time.

B. OUCC's Case-in-Chief Evidence. Mr. Leader discussed the estimated rate impact of the Warrick and Vermillion Projects, stating that Petitioner estimates increased rates from the Warrick and Vermillion County Solar Projects totaling \$1.50 per month beyond the amounts previously approved by the Commission for a residential customer using 1,000 kWh per month. Mr. Leader testified that this estimated rate increase would be in addition to CEI South's other tracking mechanisms and recent renewable generation requests. Mr. Leader stated that while the OUCC is concerned with the affordability of Petitioner's rates and the proliferation of its cost-tracking mechanisms, the OUCC's analysis shows Petitioner's request in this proceeding is reasonable under the circumstances.

Mr. Leader provided two tables, the first summarizing the monthly bill for a residential customer using 1,000 kWh for all CEI South current billing charges as of March 2023 and the second summarizing the impact of CEI South's recent requests that are not yet reflected in rates. Mr. Leader noted that the rate impacts of the Amended Warrick PPA and Amended Vermillion PPA are smaller than those being requested in other PPA dockets before the Commission and opined that they are reasonable given the current circumstances. Mr. Leader pointed out that from a broader affordability standpoint, it is important to pay attention to the cumulative rate effects of proposed cost revisions, such as this one, as the impacts are not limited to one docket or one utility.

Mr. Leader discussed the material price increases tied to solar panels and testified that solar panels have experienced supply chain disruptions resulting from changes in law, such as additional tariffs being applied to solar panels since the beginning of the summer 2021. Mr. Leader cited several publications discussing the tariffs and detentions of assembled or partially assembled solar panels caused both by allegations that Chinese solar panels were made with forced labor and by a DOC investigation into solar panel imports from the CMTV countries based on allegations that Chinese solar panels were being resold by these countries. Mr. Leader stated that President Biden prevented the enactment of new tariffs and eased solar panel importation in June 2022.

Mr. Leader testified that, as of September 2022, the price per peak watt of solar modules entering the U.S. has increased by approximately 45% since July 2021, according to the U.S. Energy Information Administration. Mr. Leader discussed the fluctuations in shipping costs between the time CEI South submitted its original requests in Cause Nos. 45501 and No. 45600 and now. Mr. Leader testified that, according to the Shanghai Export Container Freight Index, shipping costs have decreased significantly since CEI South's original filings.

Mr. Leader described the delay in the MISO interconnection queue and stated that both delays and costs of interconnection have been rising since 2021. Mr. Leader testified that both the

Warrick and Vermillion County Solar Projects are in the 2020 MISO Interconnection Queue, and that according to MISO's most recent update of the DPP schedule, the expected completion date for the DPP Phase 1 Study for the MISO Central Region has been delayed again until April 3, 2023. Mr. Leader recommended that the Commission approve CEI South's request for increased costs for the Warrick and Vermillion County Solar Projects in this proceeding, stating that while the rates connected to the two projects have increased, they remain competitive compared to similar projects and it is unlikely CEI South would be able to obtain better prices from another solar developer. Mr. Leader testified that his recommended approval of the Warrick and Vermillion County Solar Projects in this proceeding should not be interpreted as a recommendation for approval of other PPA updates. Mr. Leader concluded by recommending that in the future, both CEI South and the solar developers take market risks, including delays in the MISO interconnection process, the DOC investigation, and other supply chain issues into account in the future when determining updated prices and associated changes to contract terms.

7. Commission Discussion and Findings. Ind. Code § 8-1-2-72 grants the Commission the authority to, "at any time, upon notice to the public utility and after opportunity to be heard... rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the commission." In this Cause, Petitioner requests that we amend the 45501 and 45600 Orders to authorize CEI South to enter into the Amended PPAs and approve recovery of the revised costs throughout the terms of the Amended PPAs through the FAC mechanism. Petitioner also requests that the Commission authorize CEI South to defer the incremental expenses associated with entering into the Amended Vermillion PPA for inclusion in the regulatory asset approved in the 45600 Order for future recovery through its FAC over the term of the Amended Vermillion PPA. As set forth in greater detail below, we find that Petitioner has adequately shown the need for the Amended Warrick PPA and Amended Vermillion PPA with Clenera and Oriden, respectively, was driven by circumstances outside of Petitioner's control. Petitioner has further shown that the terms of the Amended Warrick PPA and Amended Vermillion PPA are reasonable, and entering into the Amended PPAs is in the best interest of Petitioner's customers. The OUCC's witness Leader concurred that the Amended PPAs are reasonable and testified that the OUCC recommended their approval.

Accordingly, for the reasons discussed below, we authorize CEI South to enter into the Amended PPAs. We also approve recovery of the revised costs throughout the term of the Amended PPAs through the FAC mechanism. We further find that CEI South should be authorized to defer the incremental expenses associated with entering into the Amended Vermillion PPA for inclusion in the regulatory asset approved by the 45600 Order for future recovery through the FAC over the term of the Amended Vermillion PPA.

A. Warrick and Vermillion County Solar Projects. Ind. Code § 8-1-8.8-11 provides that "[a]n eligible business must file an application to the commission for approval of a clean energy project" and directs the Commission to "encourage clean energy projects by creating certain financial incentives for clean energy projects, if the projects are found to be reasonable and necessary[.]" Ind. Code ch. 8-1-8.8 provides the basis for CEI South's request for Commission approval to enter into the Amended PPAs and for assurance of purchased power cost recovery through the full term of the Amended PPAs. Ind. Code § 8-1-2-42(d) also authorizes recovery of the cost of fuel included in the cost of purchased electricity.

In Cause Nos. 45501 and 45600, we approved the Warrick and Vermillion County Solar Projects as “clean energy project[s]” and concluded CEI South is an “eligible business” for purposes of reviewing its request for financial incentives under Ind. Code § 8-1-8.8-11. *See* 45501 Order at 33-34, 44; 45600 Order at 8-10, 13. The Amended PPAs do not change those findings, and we accordingly find that the Warrick and Vermillion County Solar Projects are “clean energy project[s]” and CEI South is an “eligible business” for purposes of reviewing its request for related financial incentives under Ind. Code § 8-1-8.8-11.

B. Reasonableness and Necessity of the Amended PPAs. Under Ind. Code § 8-1-8.8-11, the Commission shall encourage clean energy projects by creating financial incentives for such projects, if found to be reasonable and necessary. Ind. Code ch. 8-1-8.8 does not set forth specific factors the Commission must consider in determining the reasonableness and necessity of a clean energy project. The Commission has, however, considered some of the factors in Ind. Code chs. 8-1-8.5 and 8-1-8.7 in similar cases.² Therefore, in determining the reasonableness and necessity of the Amended PPAs, we have found it appropriate to consider the following factors: (1) the cost of the project; (2) the consistency of the project with Petitioner’s 2019/2020 IRP; (3) the need for the project; and (4) competitive solicitation of the project.

As explained by Petitioner’s witness Rosario, the Amended Warrick PPA makes the following changes to the 2021 Warrick PPA: (1) Clenera agreed to enter into a contract to purchase PV panels and provide supporting documentation evidencing pricing from a nationally recognized Tier 1 manufacturer; (2) an extension of the COD date from December 31, 2023 to April 1, 2025; and (3) a change in price. Mr. Rosario additionally described the significant changes to the 2021 Vermillion PPA made in the Amended Vermillion PPA, which are: (1) the addition of a provision requiring Oriden to execute and deliver to CEI South a definitive agreement for the purchase of PV solar panels from a nationally recognized Tier 1 manufacturer; (2) an extension the COD to April 1, 2025; and (3) a change in price.

We found in both the 45501 Order and the 45600 Order that the 2021 Warrick PPA and the 2021 Vermillion PPA were consistent with Petitioner’s 2019/2020 IRP and were selected based on the results of a competitive RFP process. 45501 Order at 34; 45600 Order at 9-10. We also found the Warrick and Vermillion County Solar Projects are needed to replace the capacity currently being supplied by coal units set for retirement; that the energy and capacity the Warrick and Vermillion County Solar Projects will provide are reasonable and necessary additions to CEI South’s portfolio of generating resources to meet the need for electricity within its service area; and the projects will mitigate risk through diversification and use of an economic mix of resources that provides flexibility. 45501 Order at 31-34; 45600 Order at 10. We have not been presented with any evidence that would lead us to reach a different conclusion in this proceeding and none of the changes made to the Warrick and Vermillion County Solar Projects in the Amended PPAs impact our determination regarding those issues.

The evidence of record reflects that the Amended PPAs remain consistent with the 2019/2020 IRP. Mr. Rice testified that he “do[es] not believe the price revision included in the

² *See S. Ind. Gas and Electric Co.*, Cause No. 45501, at pp. 33-34 (IURC Oct. 27, 2021); *N. Ind. Pub Serv. Co.*, Cause No. 45403, at pp. 24-25 (IURC Jan. 27, 2021); *N. Ind. Pub. Serv. Co.*, Cause No. 45194 (IURC Aug. 7, 2019), at p. 52; *N. Ind. Pub. Serv. Co.*, Cause No. 45310, at p. 29 (IURC Feb. 19, 2020).

Amended PPAs would have changed the results of the 2019/2020 IRP.” Pet. Ex. 3 at 20. Mr. Rice also stated that he expects “the 2022/2023 IRP to select a similar Preferred Portfolio despite the increase in prices for all solar projects.” *Id.* He further noted that “[w]ithout the capacity provided by the projects approved to date, CEI South will be at risk of having to make high priced purchases from the MISO [PRA].” *Id.* at 21.

The sole remaining issue in determining the reasonableness and necessity of the Amended PPAs is the continued reasonableness of the prices set forth therein. The evidence in this Cause supports a finding that the Warrick and Vermillion County Solar Projects remain competitively priced solar projects under the Amended PPAs and that the energy to be obtained from the Amended PPAs remains reasonably priced compared to other alternatives available in the market.

The continuing competitive strength of the Amended PPAs are supported by the results from CEI South’s 2022 Renewable RFP both before and after Inflation Reduction Act-related proposal updates. Mr. Rosario testified that results of the 2022 Renewable RFP reflect that the Amended PPAs remain at a competitive price point in comparison to similarly sized projects. Pet. Ex. 2 at 17. Further, both Petitioner’s witness Rosario and the OUCC’s witness Leader concluded that if CEI South were to obtain equivalent PPAs today, they would likely be more expensive than the Amended PPAs. Pet. Ex. 2 at 16; Pub. Ex. 1 at 10. Mr. Rosario and Mr. Leader based their conclusions on separate analyses of global market trends, concurring that the price of raw materials required for solar energy projects and solar PV modules have been subject to significant increase for several reasons, including inflation, supply chain issues, and import tariffs. Pet. Ex. 2 at 12-14; Pub. Ex. 1 at 7-8.

The evidence of record reflects that these global economic trends were the reason CEI South needed to renegotiate with Clenera and Oriden and amend the 2021 Warrick PPA and 2021 Vermillion PPA, respectively. The Amended PPAs address and mitigate the potential impact of future market volatility by requiring Clenera and Oriden to enter into contracts to purchase PV solar panels and provide supporting documentation evidencing pricing from a nationally recognized Tier 1 manufacturer to CEI South. This requirement effectively locks Clenera and Oriden into price points for PV solar panels competitive with the market thereby reducing the risk of further price increases.

Based on the evidence of record, the Commission finds the price for energy and capacity produced by the Warrick and Vermillion County Solar Projects under the Amended PPAs remain reasonable for solar projects of this nature and scope. Although we find the Amended PPAs to be reasonable, our finding herein is based upon the specific facts with which we were presented, including consideration of the unusual global economic trends both related to the acquisition of solar panels as well as supply chain and inflation issues coming out of the pandemic. Accordingly, the Commission finds CEI South has provided the best cost estimate of the Amended PPAs, and the Warrick and Vermillion County Solar Projects remain reasonable and necessary clean energy projects under Ind. Code § 8-1-8.8-11 and the Amended PPAs should be approved.

C. Cost Recovery. CEI South proposed that timely cost recovery of the Amended PPAs be administered through its FAC proceedings (or successor mechanism), as was approved in the 45501 and 45600 Orders. CEI South also sought confirmation that costs under each of the Amended PPAs are recoverable through the FAC proceedings (or a successor

mechanism) without regard to the Ind. Code § 8-1-2-42(d)(1) test or other FAC benchmarks. As indicated above, the OUCC did not object to the rate per kWh set forth in the Amended PPAs.

When we approve a PPA under Ind. Code § 8-1-8.8-11, we must determine that the PPA is in the public interest and is reasonable over its term. We find, based on the evidence of record, the rates set forth in the Amended PPAs are reasonable and in the public interest, and CEI South should be authorized to recover the Warrick and Vermillion County Solar Project PPA costs throughout the full term of the Amended PPAs through the FAC pursuant to Ind Code § 8-1-8.8-11 and in the manner Petitioner proposed. Consistent with our finding in the 45501 and 45600 Orders, we further find that Petitioner's recovery of the costs of the Amended PPAs should not be subject to the requirements of Ind. Code § 8-1-2-42(d) or other comparable tests or benchmarks.

D. Financial Incentives. Ind. Code § 8-1-8.8-11 authorizes the Commission to approve financial incentives for renewable energy projects. In Cause No. 45600, Petitioner sought, and the Commission granted, CEI South authority to defer expenses associated with entering into the Vermillion County Solar Project, and the companion Knox County Solar Project, as regulatory assets for future recovery through the FAC over the terms of the Vermillion County and Knox County PPAs.³ In approving Petitioner's request, the Commission found such expenses to be reasonably incurred to enter into the PPAs and within the Commission's authority to grant as a financial incentive to encourage clean energy projects. 45600 Order at 11-12. The Commission further found that absent the ability to recover incremental costs associated with entering into the PPAs, CEI South may have less incentive to enter into such contracts, even when doing so would benefit customers and the environment. *Id.*

In this Cause, CEI South requests the Commission authorize expenses associated with entering into the Amended Vermillion PPA also be deferred in the regulatory asset the Commission approved in the 45600 Order for recovery through the FAC. However, Petitioner did not make a similar request in Cause No. 45501 to defer and recover direct incremental costs associated with the 2021 Warrick PPA. Accordingly, Petitioner indicated that in the interest of remaining consistent with the authority requested in Cause No. 45501, it was not requesting to defer and recover the costs associated with negotiating and obtaining approval of the Amended Warrick PPA through a regulatory asset in this proceeding.

Ms. Behme explained that the costs incurred in negotiating and seeking approval of the Amended Vermillion PPA total an additional \$125,000, including legal costs and expenses for regulatory filings. Pet. Ex. 4 at 5-6. Ms. Behme noted that the additional costs associated with the Amended Vermillion PPA, amortized over 15 years, will not have a material impact on CEI South's customers' monthly bills. *Id.* at 6. The OUCC's witness Leader did not object to Petitioner's request.

For the same reasons we granted Petitioner's request to defer expenses as regulatory assets in the 45600 Order, we grant Petitioner's request to defer its incremental expenses incurred in entering into the Amended Vermillion PPA through the same regulatory asset. The need to negotiate and obtain Commission approval of an amendment to the 2021 Vermillion PPA was

³ The Commission approved Petitioner's request to defer for recovery through Petitioner's FAC the incremental costs associated with an amended PPA for the Knox County Solar Project. *S. Ind. Gas and Elec. Co. d/b/a Centerpoint Energy Indiana South*, Cause No. 45786 (IURC Feb. 22, 2023).

driven by circumstances beyond CEI South's control. Accordingly, we find the evidence in this proceeding supports approving Petitioner's proposal to recover the incremental costs described by Ms. Behme through the regulatory asset approved by the Commission in the 45600 Order for future recovery through the FAC over the term of the Amended Vermillion PPA.

8. Supply Chain Reporting. In the 45600 Order, we required Petitioner to provide an update on any supply chain-related challenges and/or delays starting one year after the date of the 45600 Order and continuing annually until both the Knox County Solar Project and the Vermillion County Solar Project were placed into commercial operation. 45600 Order at 12. We find that Petitioner should continue to provide the supply chain updates as directed in the 45600 Order.

9. Confidentiality. On January 17, 2023, CEI South filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information ("Motion"), supported by Mr. Rosario's affidavit, showing that documents to be submitted to the Commission contained trade secrets as defined by Ind. Code § 24-2-3-2 and within the scope of Ind. Code § 5-14-3-4(a)(4). On January 26, 2023, a docket entry was issued finding the information described in the Motion to be confidential on a preliminary basis.

After reviewing the designated confidential information, the Commission finds such information qualifies as confidential trade secret information as defined by Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means, and Petitioner takes reasonable steps to maintain its secrecy. Disclosure of such information could harm Petitioner; therefore, the Commission affirms the preliminary ruling on confidentiality and finds this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29, held as confidential, and protected from public disclosure by the Commission.

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

1. Petitioner is authorized to enter into the Amended Warrick PPA with Clenera and the Amended Vermillion PPA with Oriden, or their respective assigns and/or successors. The Commission's October 27, 2021 Order in Cause No. 45501 and May 4, 2022 Order in Cause No. 45600 are amended pursuant to Ind. Code § 8-1-2-72 to authorize CEI South to enter into the Amended PPAs.

2. In accordance with Ind. Code § 8-1-8.8-11, the Warrick and Vermillion County Solar Projects remain reasonable and necessary clean energy projects under the terms of the Amended PPAs.

3. Petitioner is authorized to recover the costs of the Amended PPAs over their full terms as proposed, pursuant to Ind. Code §§ 8-1-2-42(a) and 8-1-8.8-11, to be administered within CEI South's FAC proceedings (or a successor mechanism). This recovery shall not be subject to Ind. Code § 8-1-2-42(d) tests or FAC benchmarks.

4. Petitioner is authorized to use the proposed ratemaking treatment to defer incremental expenses incurred to enter into the Amended Vermillion PPA as part of the regulatory

asset the Commission approved in Cause No. 45600 and to recover such deferred costs through the FAC in accordance with Ind. Code § 8-1-8.8-11.

5. Petitioner shall continue to file the annual supply chain updates under Cause No. 45600.

6. Petitioner's request for confidential trade secret treatment is granted, and all such Confidential Information shall continue to be excepted from public disclosure.

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

HUSTON, VELETA, AND ZIEGNER CONCUR; FREEMAN ABSENT:

APPROVED: MAY 30 2023

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

Dana Kosco
Secretary of the Commission