

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

Commissioner	Yes	No	Not Participating
Zay	√		
Deig	√		
Swinger	√		
Veleta	√		
Ziegner	√		

IN THE MATTER OF THE PETITION)
BY DOLPHIN SOLAR LLC FOR)
CERTAIN DETERMINATIONS BY THE) CAUSE NO. 46287
COMMISSION WITH RESPECT TO ITS)
JURISDICTION OVER PETITIONER'S)
ACTIVITIES AS A GENERATOR OF) APPROVED: JAN 21 2026
ELECTRIC POWER)

ORDER OF THE COMMISSION

Presiding Officers:

David E. Ziegner, Commissioner

Kristin E. Kresge, Administrative Law Judge

On August 15, 2025, Dolphin Solar LLC ("Petitioner") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") in this Cause for certain determinations, declinations of jurisdiction, and approvals relating to its proposed construction, ownership, and operation of a solar electric generation facility of up to approximately 700 megawatts ("MW") of nameplate capacity (alternating current ("AC")), located entirely in Fountain County, Indiana ("Facility"), in accordance with Ind. Code ch. 8-1-2.5. Also on August 15, 2025, Petitioner prefiled the direct testimony and attachments of Nicholas Epstein, Director of Development for ENGIE Renewables NA LLC ("ENGIE Renewables").

On October 27, 2025, Petitioner filed Petitioner's Stipulated Exhibit No. 1, which is a letter received by Petitioner regarding the commercial solar energy system permit issued to Petitioner by Fountain County, Indiana in December 2024.

The Commission held an evidentiary hearing at 1:30 p.m. on October 28, 2025, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Counsel for Petitioner and the Indiana Office of Utility Consumer Counselor ("OUCC") appeared and participated in the hearing at which the prefiled exhibits and attachments of Petitioner were admitted into the record without objection.

Based upon the applicable law and evidence, the Commission now finds:

1. Notice and Jurisdiction. Notice of the hearing in this Cause was given and published by the Commission as required by law. As discussed herein, Petitioner intends to engage in activity that would qualify it as a "public utility" under Ind. Code § 8-1-2-1 and as an "energy utility" under Ind. Code § 8-1-2.5-2. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. **Petitioner’s Characteristics.** Petitioner is a limited liability company organized and existing under the laws of Indiana. Petitioner’s principal place of business is at 1360 Post Oak Blvd., Suite 400, Houston, TX 77056. Petitioner is a direct subsidiary of ENGIE IR Holdings LLC, and an indirect subsidiary of ENGIE Renewables. ENGIE Renewables is an indirect subsidiary of ENGIE North America, Inc. (“ENGIE North America”), a Delaware corporation specializing in the development of large-scale renewable and other clean energy generation and storage facilities in North America. ENGIE North America is headquartered in Houston, Texas. Petitioner, ENGIE Renewables, and ENGIE North America are subsidiaries of ENGIE S.A., a French multinational utility company that specializes in the development and operation of low carbon energy projects.

3. **Relief Requested.** Petitioner requested that the Commission decline to exercise its jurisdiction over Petitioner pursuant to Ind. Code § 8-1-2.5-5 regarding the construction, ownership, operation, and any other activity in connection with the Facility.

4. **Commission Discussion and Findings.** Consistent with prior determinations, if the Commission finds that Petitioner is a public utility for the purposes of Indiana’s Utility Power Plant Construction Act (Ind. Code ch. 8-1-8.5) (the “Power Plant Act”), then Petitioner would be considered an “energy utility” as defined by Ind. Code § 8-1-2.5-2. The Commission may decline to exercise jurisdiction pursuant to Ind. Code ch. 8-1-2.5-1 to issue certificates of public convenience and necessity for the construction of the Facility. For the Commission to decline to exercise jurisdiction over Petitioner pursuant to Ind. Code ch. 8-1-2.5, the Commission must first assert jurisdiction over Petitioner.

The Power Plant Act defines “public utility” as: “(1) public, municipally owned, or cooperatively owned utility; or (2) joint agency created under Ind. Code ch. 8-1-2.2.” Petitioner is a limited liability company that will generate electricity, some of which may ultimately be consumed by Indiana residents. The Commission has previously asserted jurisdiction over investor-owned public utilities pursuant to Ind. Code ch. 8-1-8.5. *See, e.g., Indianapolis Power & Light Co.*, Cause No. 43235, 2007 WL 8420716 (IURC June 13, 2007). Additionally, Petitioner’s property “is used in a business that is public in nature and not one that is private.” *Foltz v. City of Indianapolis*, 130 N.E.2d 650, 659 (Ind. 1955). Accordingly, Petitioner’s business is “impressed with a public interest” and would render service “of a public character and of public consequence and concern,” which leads us to determine that Petitioner is a “public utility” within the meaning of Ind. Code § 8-1-8.5-1.

The Commission must also determine that Petitioner satisfies the definition of “public utility” found in Ind. Code § 8-1-2-1. The evidence establishes that Petitioner’s ownership, development, financing, construction, and operation of the Facility is for the purpose of sale of the power generated by that plant in the wholesale market to public utilities, energy service providers, and power marketers within and outside of Indiana. The Commission has found in prior cases that a business that only generates electricity and then sells that electricity directly to public utilities is itself a public utility. *See, e.g., Benton County Wind Farm, LLC*, Cause No. 43068, 2006 WL 4400582 (IURC Dec. 6, 2006) (“*Benton County*”). In *Benton County*, the Commission specifically found that it had jurisdiction over a wind energy generator with wholesale operations. Thus, based on the evidence and applicable law, the Commission finds Petitioner 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.¹

If the Commission concludes that Petitioner is a “public utility” as defined in the Public Service Commission Act and in the Power Plant Act, the Indiana Code authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an “energy utility” if certain conditions are satisfied. In particular, the Indiana Code provides that the Commission may enter an Order, after notice and hearing, that the public interest requires the Commission “to commence an orderly process to decline to exercise, in whole or in part, its jurisdiction over ... the energy utility ...” Ind. Code § 8-1-2.5-5(a).

In determining whether the public interest will be served by a declination of jurisdiction, the Commission will consider the following:

- (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.
- (2) Whether the commission’s declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility’s customers, or the state.
- (3) Whether the commission’s declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
- (4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

Ind. Code § 8-1-2.5-5(b).

Mr. Epstein testified that Petitioner will be subject to the requirements of other regulatory bodies, including Fountain County, Federal Energy Regulatory Commission (“FERC”), PJM Interconnection LLC (“PJM”), and other federal, state, and local agencies. He explained that competitive forces in the whole power markets will serve as a check on Petitioner’s activities, particularly on the wholesale power price.

Mr. Epstein testified that declination of jurisdiction by the Commission, in whole or in part, would be beneficial for Petitioner and Indiana. He explained that Petitioner would benefit from the ability to devote its efforts and resources to complying fully with requirements of the federal, local, and other state regulatory agencies with jurisdiction over its operation, as well as the requirements of PJM, which would promote efficiency of Petitioner’s ongoing development and operation of the Facility. He stated that the public in Indiana may benefit from efficiencies that flow from proximity to the source of electric generation.

Mr. Epstein testified that the exercise of Commission jurisdiction would inhibit Petitioner in competing with other providers of functionally similar energy services or equipment. He

¹ Ind. Code § 8-1-2.5-2 defines “energy utility” to mean, among other things, a public utility or municipally owned utility within the meaning of Ind. Code § 8-1-2-1. Because we have determined that Petitioner is a “public utility” under Ind. Code § 8-1-2-1, Petitioner is also an “energy utility.”

testified that, should the Commission exercise jurisdiction over Petitioner, the Commission would place Petitioner at a competitive disadvantage with respect to other independent power producers over whom the Commission has declined to exercise jurisdiction. He opined that such regulation would expose Petitioner to the risk of regulatory lag and could hinder the quick implementation of business decisions in a highly competitive market, which would create a significant competitive disadvantage for Petitioner.

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

The evidence presented demonstrates that further Commission regulation of the Facility pursuant to Ind. Code § 8-1-2.5-5(b): (1) would be duplicative of other regulatory bodies; (2) could complicate and cause inefficiencies in Petitioner's development and operation of the Facility; (3) could impede Petitioner's ability to compete with other wholesale solar providers; and (4) would be an unnecessary use of the Commission's resources. Consequently, we find Petitioner's request that the Commission decline to exercise its jurisdiction over the Facility is in the public interest and should be granted. In so finding, as part of the Commission's public interest analysis, we have considered several additional factors the Commission has typically considered in similar proceedings, as discussed below.

A. Location. In deciding whether to decline jurisdiction, the Commission may consider whether the Facility's planned location would serve the public interest. Based on the factors reviewed below, the Commission finds that the Facility's proposed location may be compatible with the surrounding land uses.

i. Local Zoning and Permitting Requirements. Petitioner submitted evidence that it has complied or will comply with local zoning and land use requirements, has or will obtain all construction, grading, and wastewater permits, and will not rely on the public utility exemption from local zoning regulation.

ii. Land Use and Solar Resources. Based on the evidence presented, it appears that Petitioner, utilizing ENGIE North America's experience in developing other renewable projects throughout the United States, has determined that the solar resource at the Facility site is sufficient for the development of an economically viable project.

iii. Water Use and Supply. Mr. Epstein testified the Facility will not have significant water use and will have negligible or no 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.

iv. Transmission Interconnection and Compliance with General Administrative Order 2025-02. The Facility is expected to connect to AEP’s transmission system, which is part of the wholesale power grid controlled by PJM. The Facility has two solar-specific queue positions with PJM. Queue position AG1-226 is for 450 MW AC (nameplate capacity) and is being studied under PJM’s reformed interconnection study process as part of Transition Cycle #1. Queue position AG2-163 is for 250 MW AC (nameplate capacity) and is being studied under PJM’s reformed interconnection study process as part of Transition Cycle #2. The Generator Interconnection Agreement (“GIA”) with PJM is not yet complete and will be entered into after completion of PJM’s interconnection study process, which will ensure that the Facility’s interconnection with the AEP transmission system will not negatively impact transmission system performance.

Petitioner provided information regarding the Facility’s expected capacity factors, dispatchability and accreditation characteristics. Through PJM’s generator interconnection process, the Facility will secure network resource interconnection service for the 700 MW AC capacity. The Facility will be dispatched according to PJM’s interconnection tariff and the GIA.

Based on Petitioner’s evidence, the Commission finds Petitioner provided information responsive to GAO 2025-02 as required.

v. Additional Permitting and Environmental Issues. Mr. Epstein testified Petitioner has applied or would apply for and obtain all necessary federal, state, and local permits needed for construction and operation of the Facility. Petitioner performed several environmental and site studies to evaluate the appropriateness of the Facility site. No environmental issues are foreseen that would delay or prevent construction of the Facility.

vi. Use of the Public Right-of-Way. Petitioner seeks to retain the right to use the public right-of-way in a limited manner within the Facility site to allow Petitioner to place collector lines and transmission lines in the public right-of-way. Retention of this right will clarify issues surrounding use of the public right-of-way for road crossings. Based upon the evidence presented, we find Petitioner’s request for limited use of the public right-of-way to be reasonable. Petitioner retains the right to use the public right-of-way identified in its evidence.

B. Need. The Commission has previously considered whether the development of additional generating capacity will serve the public interest.

Mr. Epstein testified there is a need for the electricity generated by the Facility, and he cited to the State Utility Forecasting Group’s *Indiana Electricity Projections: The 2023 Forecast*. Mr. Epstein discussed the various benefits of the Facility, including the environmental benefits of solar generation, efficiencies that flow from proximity to generation resources, economic benefits to landowners, generation of local tax revenues, and the creation of jobs during the construction and operation of the Facility.

Based on the evidence presented, the Commission finds that Petitioner’s proposed development of additional generating capacity via Facility will serve the public interest.

C. **Financing and Management.** To help ensure that Indiana consumers are not adversely affected by the proposed development of generation plants in Indiana, developers have provided evidence that the financial structure of a proposed project would not jeopardize retail electric supply. Mr. Epstein provided evidence that Petitioner has the necessary financial, technical, and managerial expertise to construct and operate the Facility. He provided evidence that Petitioner's indirect parent company ENGIE North America and its affiliates have substantial experience financing and developing renewable energy assets throughout the United States. Based on the evidence presented, 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 and requires Petitioner to obtain prior Commission approval of any transfer of assets owned by Petitioner. However, Petitioner shall not be required to seek prior approval, but shall provide written notice under this Cause to the Commission and the OUCC of any 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 or an affiliate 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 determines that the successor has the necessary technical, financial, and managerial capability to own and operate the Facility and (2) the successor satisfies the same terms and conditions imposed on Petitioner as set forth in this Order.

E. **Affiliate Transactions.** In addition to determining whether the public interest would be served if the Commission declines jurisdiction, the Commission must also consider what actions it must take to ensure that the public interest is served throughout the commercial life of the Facility. Specifically, the Commission must determine the extent to which it must reserve its authority over Petitioner's activities involving affiliate transactions and transfers of ownership. To ensure the Commission's declination of jurisdiction over an "energy utility" is in the public interest, the Commission must be assured that adequate consumer protections are in place, should an "energy utility" subsequently become an affiliate, as defined in Ind. Code § 8-1-2-49, of any regulated Indiana retail utility. While the Commission is declining jurisdiction over Petitioner's affiliate transactions initially, the Commission reserves its authority to regulate Petitioner should it become an affiliate of any regulated Indiana retail utility. Accordingly, Petitioner must inform the Commission and the OUCC at the time it becomes an affiliate of any regulated retail utility operating in Indiana.

Petitioner shall obtain prior Commission approval with respect to the sale of any electricity to any affiliated, regulated Indiana retail electric utility. The Commission notes that it retains certain authority under Section 201 of the Federal Power Act to examine Petitioner's books, accounts, memoranda, contracts, and records consistent with the limitations contained therein. 16 U.S.C. § 824 (2005).

5. **Financial Assurance.** As a condition of this Order, the Commission requires Petitioner to maintain financial assurance to ensure that the Facility will be properly decommissioned at the end of its serviceable life. Petitioner states that it will establish and maintain a form of security to ensure that funds will be available in the event of abandonment, financial, failure, and/or bankruptcy to return the project site to its current condition. Founty County and Attica do not specifically have decommissioning requirements, but Petitioner has voluntarily agreed to provide a Decommissioning Plan based on discussions with the County. As part of the Decommissioning Plan, Petitioner agreed to provide a decommissioning security to the County. Petitioner shall provide the Commission with notice when such financial instrument has been established, including the form and amount.

6. **Reporting Requirements.** As a condition of this Order and our continued declination of jurisdiction, Petitioner must file reports with the Commission as described below, and provide any other information requested by the Commission. These reporting requirements are intended to ensure that the Commission obtains reliable, up-to-date information in a timely manner necessary to carry out its statutory obligations. A responsible officer of Petitioner shall verify all reports, and Petitioner shall file the reports under this Cause within the prescribed timeframes.

The following reports shall be prepared and filed by Petitioner:

A. **Initial Report.** Petitioner's initial report, due within 30 days after 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, email address, and phone number(s) for primary contact person(s) for the Facility;
- (3) Anticipated number of solar panels;
- (4) Anticipated total output of Facility;
- (5) Connecting utility(s);
- (6) Links to any Interconnection System Impact Studies prepared by PJM;
- (7) Expected in-service (commercial operation) date;
- (8) An estimate of the engineering/construction timeline and critical milestones for the Facility;
- (9) The status of the GIA with PJM; and
- (10) The information listed below in the Subsequent Reports section to the extent such information is available.

B. **Subsequent Reports.** Petitioner's subsequent reports shall be filed by each January 15 and July 15 until the quarter that occurs after commercial operation is achieved. Subsequent reports should include the following information:

- (1) Manufacturer, model number, and operational characteristics of panels;
- (2) Any changes to the information provided in the Initial Report;
- (3) Links to any Interconnection Studies not previously submitted to the Commission;

- (4) Link to the GIA as filed with FERC;
- (5) Notice of the establishment of an independent financial instrument, including its form and amount;
- (6) 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;
- (7) When commercial operation is achieved, the nameplate capacity, the Facility's PJM accredited capacity rating(s), the term and identity of a purchaser for any contracts then existing for utility sales, contingency plans (if any) detailing response plans to emergency conditions as required by state or local units of government, the interconnecting transmission owner and/or PJM; and
- (8) An update on all supply chain related challenges and/or delays.

C. **Additional Requirements.** Petitioner shall notify the Commission in the event that 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 that Petitioner: (1) has failed to enter into an agreement pursuant to PJM generator interconnection procedures, (2) has suspended the Facility under the terms of the 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 issue an order in accordance with Ind. Code § 8-1-2.5-7 providing notice to Petitioner of the Commission's intent to proceed to issue an Order terminating the declination of jurisdiction set forth herein. Petitioner shall notify the Commission at least six months before repowering or decommissioning is expected and upon completion of repowering or decommissioning.

7. **Conclusion.** Consistent with Ind. Code § 8-1-2.5-5, the Commission finds that declining to exercise jurisdiction, except as reserved above, over Petitioner in this Cause will facilitate moving forward with construction of the proposed Facility and add generation capacity in Indiana. This should be beneficial to Indiana and for those public utilities that may indirectly have access to the power produced. We further find that declining to exercise our jurisdiction over Petitioner will promote energy utility efficiency. In addition, Petitioner has demonstrated that it has the technical, financial, and managerial capabilities to construct, own, and operate the proposed Facility. It has also shown that 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 its jurisdiction over Petitioner as an energy utility, except over 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 public. Therefore, any revenue Petitioner derives from the sale of electricity for resale by the purchaser is not subject to the public utility fee.

If the Commission determines Petitioner: (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 issue an Order in accordance with Ind. Code § 8-1-2.5-7 providing notice to Petitioner of the Commission's intent to proceed to issue an Order terminating the declination of jurisdiction set forth herein.

Through the subsequent 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 shall also file with the Commission such other information as we may from time to time require from other Indiana public utilities.

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

1. Petitioner is a "public utility" within the meaning of Ind. Code §§ 8-1-8.5-1 and 8-1-2-1 and an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2.
2. The Facility is an 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 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 generated by the Facility without further order of the Commission. The gross revenues generated by sales for resale of the electricity generated by the Facility are adjudged to be exempt from the public utility fee prescribed by Ind. Code ch. 8-1-6.
6. Petitioner shall comply fully with the terms of this Order and submit to the Commission under this Cause all information required by the terms of this Order.
7. This Order shall be effective on and after the date of its approval.

ZAY, DEIG, SWINGER, VELETA, AND ZIEGNER CONCUR:

APPROVED: JAN 21 2026

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

Dana Kosco

Digitally signed by
Dana Kosco
Date: 2026.01.21
10:08:48 -05'00'

**Dana Kosco
Secretary of the Commission**