

**ORIGINAL**

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

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**IN THE MATTER OF THE PETITION )**  
**BY DUFF SOLAR PARK LLC FOR )**  
**CERTAIN DETERMINATIONS BY THE ) CAUSE NO. 46104**  
**COMMISSION WITH RESPECT TO ITS )**  
**JURISDICTION OVER PETITIONER’S ) APPROVED: NOV 20 2024**  
**ACTIVITIES AS A GENERATOR OF )**  
**ELECTRIC POWER )**

**ORDER OF THE COMMISSION**

**Presiding Officers:**  
**Wesley R. Bennett, Commissioner**  
**Greg S. Loyd, Administrative Law Judge**

On August 14, 2024, Duff Solar Park LLC (“Petitioner”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) initiating this Cause. Pursuant to Ind. Code ch. 8-1-2.5, Petitioner requests from the Commission certain determinations, declinations of jurisdiction, and approvals relating to Petitioner’s proposed construction of a solar electric facility (“Facility”). On August 14, 2024, Petitioner prefiled the direct testimony and attachments of Thomas LoTurco, Executive Vice President, Eastern United States, Canada, and Government Affairs of EDP Renewables North America LLC (“EDPR”).

The Commission held an evidentiary hearing in this Cause at 1:30 p.m. on October 22, 2024, in Room 224 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Counsel for Petitioner and the OUCC appeared and participated in the hearing, during which Petitioner’s exhibits were admitted into the record without objection.

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

1. **Notice and Jurisdiction.** Notice of the evidentiary hearing was given and published as required by law. As discussed below, Petitioner intends to engage in activity that would qualify it as a “public utility” under Ind. Code § 8-1-2-1 and as an “energy utility” under Ind. Code § 8-1-2.5-2. The Commission may decline to exercise, in whole or in part, its jurisdiction over an energy utility pursuant to Ind. Code § 8-1-2.5-5. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.
  
2. **Petitioner Characteristics.** Petitioner is a Delaware limited liability company authorized to do business in Indiana. Its headquarters is in Houston, Texas. Petitioner is a subsidiary of EDPR, which develops renewable energy projects across North America and is headquartered in Houston, Texas. Petitioner’s ultimate parent company is Energias de Portugal, S.A. (“EDP”).

**3. Facility Overview and Relief Requested.** Mr. LoTurco testified the Facility will have the capability to generate up to a nameplate capacity of approximately 100 MW alternating current (“MW<sub>AC</sub>”). The Facility’s projected net capacity (P50) factor is approximately 21.62%. He testified that the Facility will be located across approximately 1,600 acres in Dubois County, Indiana, and will interconnect to Southern Indiana Gas & Electric Company d/b/a CenterPoint Energy Indiana South’s (“CenterPoint”) transmission assets at the 138 kV Duff Substation.

The Facility is expected to achieve commercial operation by December 31, 2025. Petitioner intends to self-certify the Facility as an exempt wholesale generator and apply for market-based rate authority under rules and regulations of the Federal Energy Regulatory Commission (“FERC”). Therefore, its rates for power will be subject to FERC regulation.

Petitioner requests the Commission decline to exercise its jurisdiction over Petitioner pursuant to Ind. Code § 8-1-2.5-5 as it pertains to the construction, ownership, and operation of the Facility. Petitioner also seeks declination of the Commission’s jurisdiction over shared facility arrangements.

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

Ind. Code § 8-1-8.5-1(a) defines “public utility” to mean a “public, municipally owned, or cooperatively owned utility... .” 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., Indpls. 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.” *See Foltz v. City of Indpls.*, 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. *Id.*

The Commission must also determine that Petitioner satisfies the definition of “public utility” found in Ind. Code § 8-1-2-1. The evidence establishes that Petitioner’s ownership, development, financing, construction, and operation of the Facility is for the purpose of selling Facility-generated power in the wholesale market. 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 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.<sup>1</sup>

When the Commission concludes that Petitioner is a “public utility” as defined in the Public Service Commission Act and in the Power Plant Act, Ind. Code § 8-1-2.5-5 authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an “energy utility” if certain conditions are satisfied. In particular, Indiana Code 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 must 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. LoTurco testified regarding the requirements of Ind. Code § 8-1-2.5-5. He testified that Petitioner will be subject to the requirements of Dubois County, the rules and regulations of FERC, and other federal, state, and local agencies. Midcontinent Independent System Operator, Inc. (“MISO”) is responsible for the safe and reliable operation and planning, including generation interconnection planning, of the electric transmission systems under its functional control, including the CenterPoint transmission system to which the Facility will interconnect. In addition, competitive forces in the wholesale power markets will serve as an adequate check on Petitioner’s activities, particularly on the wholesale power price.

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<sup>1</sup> 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. Since we have determined Petitioner is a “public utility” under Ind. Code § 8-1-2-1, Petitioner is also an “energy utility.”

Mr. LoTurco testified that a declination of jurisdiction by the Commission, in whole or in part, would be beneficial for Petitioner. He explained Petitioner would benefit from the ability to devote its efforts and resources to complying fully with the requirements of the federal, local, and other state regulatory agencies with jurisdiction over its operations, as well as the requirements of MISO, which would promote the efficiency of Petitioner's ongoing development and operation of the Facility.

Mr. LoTurco testified that the exercise of Commission jurisdiction would inhibit Petitioner in competing with other providers of functionally similar energy services or equipment. He 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 could 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 general public or to any retail customer. Instead, the power will be generated solely for resale subject to the jurisdiction of FERC under the provisions of the Federal Power Act, 16 U.S.C. § 824 *et seq.* Petitioner has 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 and rate of return or other process typically associated with public utility rates.

The evidence presented demonstrates further Commission regulation of the Facility: (1) would be duplicative of other regulatory bodies, (2) could complicate and cause inefficiencies in Petitioner's development and operation of the Facility, (3) could impede Petitioner's ability to compete with other wholesale solar providers, and (4) would be an unnecessary use of the Commission's resources. Consequently, we find Petitioner's request that the Commission decline to exercise its jurisdiction over the Facility is in the public interest and 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 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, State, and Federal Requirements.** Mr. LoTurco summarized the local, state, and federal permits and laws that may impact the Facility. He testified that Petitioner has applied or would apply for and obtain all necessary federal, state, and local permits needed for construction and operation of the Facility. He noted that the Facility will comply with Dubois County's ordinance which establishes default standards for commercial solar energy systems. Mr. LoTurco testified that Petitioner received its building permit for the Facility from Dubois County and that Petitioner has already entered into a decommissioning agreement with Dubois County. Mr. LoTurco stated Petitioner did not seek nor need the power to be exempt from local zoning. He further stated no environmental issues are foreseen that would delay or prevent the permitting and construction of the project.

ii. **Land Use and Solar Resources.** Mr. LoTurco testified Petitioner is an affiliate of EDPR, a developer of renewable energy projects across North America, including 61 wind farms and 18 solar generation facilities. Therefore, based on the evidence presented, it appears that Petitioner, utilizing EDPR's prior experience in developing other renewable energy, 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. LoTurco testified that the Facility will not use water in significant quantities and will have negligible or no impact on local water supplies.

iv. **Transmission Interconnection and Compliance with General Administrative Order 2022-01.** Mr. LoTurco explained that the Facility will be interconnected to CenterPoint's 138 kV Duff Substation. He testified that CenterPoint's transmission system is part of the wholesale power grid controlled by MISO. Petitioner's queue position with MISO is J1391. He sponsored copies of the System Impact Study, the Facility Study, and the Generator Interconnection Agreement ("GIA") as Attachments TL-7, TL-8 and TL-9, respectively, to Petitioner Exhibit 1. He said the System Impact Study and the Facility Study indicate that the Facility's interconnection with the CenterPoint transmission system will not negatively impact system performance. Mr. LoTurco testified Petitioner anticipates the Facility attaining commercial operation by December 31, 2025.

Mr. LoTurco testified the Facility's expected net capacity factor (P50) is 21.62%. The expected factors, exceed 47.71% for the peak hours and reach up to 85.27% during the summer, as shown in Petitioner Exhibit 1, Table 1. Mr. LoTurco testified the production and capacity factors are expected to be about 19.66% (P90) and 18.04% (P99), also as shown in Petitioner Exhibit 1, Table 1. Mr. LoTurco stated that through MISO's generator interconnection process the Facility has secured interconnection service for 100 MW<sub>AC</sub> of capacity injection rights. The Facility will be dispatched according to MISO's interconnection tariff and the GIA. He noted that the Facility has significant coincidence with the needs of load within MISO because the Facility's solar generation profile is largely consistent with peak demand. Based on Mr. LoTurco's testimony, the Commission finds Petitioner provided information responsive to GAO 2022-01 as required.

v. **Use of the Public Right-of-Way.** Mr. LoTurco testified Petitioner seeks to retain the right to use the public right-of-way within the Facility site to place collector and transmission lines in the public right-of-way and to 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 and that Petitioner retains the right to use the public right-of-way as identified in its evidence.

**B. Need.** The Commission has previously considered whether the development of additional generating capacity will serve the public interest. Mr. LoTurco stated Petitioner has already entered into a power purchase agreement for the entirety of the project's electrical output. Based on the evidence of record, we find a reasonable expectation of need for the Facility and find that its construction will serve the public interest.

Mr. LoTurco also summarized the benefits associated with the Facility, including (1) local employment and tax benefits, (2) how the Facility may promote energy security, (3) the agricultural benefits of allowing the land under the Facility to lay fallow, and (4) and lease payments to participating landowners. He also mentioned the environmental benefits of using solar energy to produce electricity.

Based on the evidence presented, the Commission finds Petition showed its proposed development of new generation via the 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. Petitioner submitted Attachment TL-10 to Petitioner Exhibit 1, which consists of EDP's financial results through the first quarter of 2024. Based on this exhibit, the Commission finds Petitioner has shown it has the ability to finance, construct, and manage the Facility.

**D. Transfers of Ownership.** Petitioner requested the Commission decline jurisdiction over transfers of undivided interests in Petitioner's transmission assets to affiliates of Petitioner. Mr. LoTurco explained that EDPR develops renewable energy facilities that take advantage of the efficiencies of shared use of gen-tie transmission interconnection facilities. He noted that by sharing those facilities, lower interconnection costs are achieved on a per entity basis, which in turn serves the public interest by lowering the cost structure that could be achieved by each entity if it functioned independently and constructed its own interconnection. Mr. LoTurco added that facilitating such transfers would aid Petitioner's standing as an exempt wholesale generator under federal law.

Based on this evidence, we find that it is in the public interest for the Commission to decline to exercise jurisdiction over transfers of undivided interests in Petitioner's transmission assets to affiliates of Petitioner. Petitioner is not required to seek prior Commission 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 Facility assets to or with an affiliate of Petitioner. *See Honeysuckle Solar*, Cause No. 45742 (IURC Oct. 12, 2022) (approving substantially similar language). The required notice shall be provided within 30 days of such a transfer.

Other than the above potential transfers, 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 interests in Facility assets 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 to exercise its 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 to exercise its 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 if such an affiliation occurs.

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.

**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. Mr. LoTurco testified Petitioner has entered into a decommissioning agreement with Dubois County for the Facility. The decommissioning agreement provides assurance that project facilities are properly decommissioned at the end of the Facility's useful life. To guard against the unlikely and worst-case possibility that Petitioner would be unable to meet its obligation to remove the Facility, Petitioner must comply with the decommissioning agreement with Dubois County, including the establishment of a performance bond, letter of credit, or other form of financial security.

Petitioner shall promptly notify the Commission when its decommissioning security has been established, including the form and amount, or in the event Petitioner is no longer required to comply with all or part of the financial assurance requirements agreed to in the decommissioning agreement.

**6. Reporting Requirements.** In addition to the foregoing requirements, as a condition of this Order and our continued declination of jurisdiction, Petitioner must file Annual Reports with the Commission as provided in Ind. Code § 8-1-2-49, and provide any other information requested by the Commission. These reporting requirements are intended to ensure that the Commission obtains reliable, up-to-date information in a timely manner necessary to carry out its

statutory obligations. Additionally, due to recent supply chain issues that could potentially limit the availability of components necessary to build the Facility, Petitioner shall provide updates on any supply chain-related challenges and/or delays until the Facility is placed into commercial operation. 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 in this Cause:

**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 anticipated to be deployed;
- (4) Anticipated total output of the Facility;
- (5) Manufacturer, model number, and operational characteristics of solar panels;
- (6) Connecting utility(ies);
- (7) Copy of any Interconnection System Impact Studies or other interconnection studies prepared by MISO not previously provided;
- (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.** Petitioner's subsequent reports shall be filed within 30 days of the end of each calendar quarter until the quarter that occurs after commercial operation is achieved and that immediately precedes the Annual Report filing date of April 30 of each year. Thereafter, Petitioner shall 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 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 any 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 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 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.

**7. 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 to the State of 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, utilizing EDPR's experience and financial position, 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 in the areas in which we reserve jurisdiction that are identified above, is in the public interest. While the Commission is not declining jurisdiction for a particular term of years, the Commission does not intend to reassert jurisdiction absent circumstances affecting the public interest. Petitioner is not granted authority to offer its power for sale to the general public; therefore, any revenue 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 quarterly status reports required by this Order, Petitioner shall notify the Commission and the OUCC when construction begins and when commercial operation of the Facility begins. Petitioner will satisfy the reporting requirements outlined above before commercial operation of the Facility begins. Petitioner shall

also file with the Commission any Annual Report required to be filed with FERC and provide the Commission such other information as we may from time to time require from other Indiana public utilities or otherwise request.

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

1. Petitioner is a “public utility” within the meaning of Ind. Code §§ 8-1-8.5-1 and 8-1-2-1 and an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2.

2. The Facility is a “utility” within the meaning of Ind. Code § 8-1-2-1.

3. The Commission declines to exercise its jurisdiction over Petitioner and its construction, operation, and financing of the Facility, except as specifically stated within this Order.

4. Petitioner shall not exercise an Indiana public utility’s rights, powers, and privileges of eminent domain and of exemption from local zoning, land use requirements, land use ordinances, and construction-related permits in the operation and construction of the Facility. Petitioner shall retain the right to a limited use of the public right-of-way within the Facility area as described above.

5. Petitioner shall not sell at retail in the State of Indiana any of the electricity generated by the Facility without further Order of the Commission. The gross revenues generated by sales for resale of the electricity generated by the Facility are adjudged to be exempt from the public utility fee prescribed by Ind. Code ch. 8-1-6.

6. Petitioner shall comply fully with the terms of this Order and file with 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.

**HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:**

**APPROVED: NOV 20 2024**

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

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**Dana Kosco**  
**Secretary of the Commission**