

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
FAIRBANKS SOLAR ENERGY CENTER)
LLC FOR CERTAIN DETERMINATIONS) CAUSE NO. 45254
BY THE COMMISSION WITH RESPECT TO)
ITS JURISDICTION OVER PETITIONER'S)
ACTIVITIES AS A GENERATOR OF)
ELECTRIC POWER)

VERIFIED PETITION

Fairbanks Solar Energy Center LLC (“Petitioner”), by counsel, respectfully requests that the Indiana Utility Regulatory Commission (“Commission”) enter an order declining to exercise its jurisdiction, pursuant to Ind. Code § 8-1-2.5-5, over Petitioner’s construction, ownership, and operation of a proposed solar power electric generating facility to be known as Fairbanks Solar (the “Fairbanks Solar Facility”). The Fairbanks Solar Facility will be located in Sullivan County, Indiana. In support of this Petition, Petitioner states:

1. Petitioner’s Legal Status. Petitioner is a limited liability company organized and existing under the laws of the State of Delaware and authorized to do business in the State of Indiana. Petitioner’s principal place of business is at One South Wacker Drive, Suite 1800, Chicago, Illinois 60606. Petitioner is a wholly-owned subsidiary of Invenergy Solar Development North America LLC (“ISDNA”), which is a limited liability company organized and existing under the laws of the State of Delaware, and which in turn is a wholly-owned subsidiary of Invenergy Renewables LLC (“Invenergy Renewables”), which is a limited liability company organized and existing under the laws of the State of Delaware. Invenergy specializes in the development of large-scale renewable energy projects and is headquartered in Chicago,

Illinois. Invenenergy has developed more than 15,000 MW of large-scale renewable projects throughout North America, Latin America, Europe and Asia, and currently has approximately 4,500 MW operating or under development in the Midwest.

2. Fairbanks Solar Facility. Petitioner intends to construct, own and operate the Fairbanks Solar Facility located near Fairbanks, Indiana in Sullivan County. The long-term plan for the Fairbanks Solar Facility is that it will generate up to approximately 250 MW AC of electricity from approximately 579,652 solar panels over an approximately 1,800 acre solar panel farm. Transmission and substation facilities are planned to be situated in Sullivan County. Petitioner's activity qualifies it as a "public utility" under Ind. Code § 8-1-2-1(a)(2) and as an "energy utility" under Ind. Code § 8-1-2.5-2. Alternative utility regulation is therefore available to Petitioner.

3. Relief Requested. Petitioner requests that the Commission, pursuant to Ind. Code § 8-1-2.5-5, decline to exercise any jurisdiction to: (a) require Petitioner to obtain a certificate of public convenience and necessity to construct the Fairbanks Solar Facility under Ind. Code § 8-1-8.5, the "Powerplant Construction Act", and (b) regulate, under Ind. Code § 8-1-2, the "Public Service Commission Act", Petitioner's construction, ownership and operation of, and other activities in connection with, the Fairbanks Solar Facility.

4. Solar Facility Certified as an Exempt Wholesale Generator. Petitioner intends to self-certify the Fairbanks Solar Facility as an Exempt Wholesale Generator ("EWG") as that term is defined in 18 C.F.R. § 366.7 of the Federal Energy Regulatory Commission's ("FERC") regulations. Requests for any authorizations required to sell the electrical output from the Fairbanks Solar Facility into the wholesale market will be made to FERC.

5. Service Only to Wholesale Power Market. The Fairbanks Solar Facility will exclusively serve the wholesale power market, and Petitioner does not intend to recover the costs of the Facility from Indiana ratepayers through rate base, rate of return, or comparable methods typically associated with retail public utility rates. Petitioner will have no franchises, service territory, or retail customers and will make no retail sales, in Indiana or elsewhere. All sales by Petitioner of electric energy produced by the Fairbanks Solar Facility will be into the wholesale power market and not at retail. Petitioner will not otherwise dedicate or hold itself out to serve directly the electric needs of the general public; however, the Fairbanks Solar Facility will provide significant public benefits. Petitioner will not be obligated to sell energy produced by the Fairbanks Solar Facility to any entity absent a contract to do so. Similarly, no public utility or other entity will be obligated to purchase energy produced by the Fairbanks Solar Facility other than by mutual agreement. Petitioner will not engage in the transmission of electric power, other than that which is incidental to the ownership and operation of the Fairbanks Solar Facility as an EWG.

6. Powerplant Construction Act. The Powerplant Construction Act was not intended to apply to the construction of a facility such as the Fairbanks Solar Facility. The Indiana General Assembly enacted the Powerplant Construction Act to ensure that public utilities providing retail electric service in Indiana do not build unnecessarily “large, expensive power plants with lengthy construction periods ... to meet expanded growth.” *In re Petition of Southern Indiana Gas and Elec. Co.*, 108 P.U.R. 4th 494, 1989 Ind. PUC LEXIS 378 (IURC Cause No. 38738, October 25, 1989). The Powerplant Construction Act was designed to protect Indiana’s retail customers of regulated electric utilities from the costs associated with excessive generating capacity, while at the same time ensuring that the utilities serving those retail customers would

be allowed to recover their prudent investments in new generating facilities. *See* Ind. Code § 8-1-8.5-6.5 (“a utility shall recover through rates the actual costs the utility has incurred in reliance on a certificate issued” by the Commission). The Powerplant Construction Act was not intended to apply in the absence of any obligation to serve and any ability to recover costs through regulated rates. No such protections of the ratepayers in Indiana are requested by Petitioner or are required here.

7. Declination of Jurisdiction. In light of these facts and circumstances, Petitioner respectfully requests that the Commission decline to exercise any jurisdiction over Petitioner’s construction, ownership or operation of, or any other activity in connection with the Fairbanks Solar Facility under Ind. Code § 8-1-2.5-5. The tests set out in that statute for the Commission to determine whether the public interest will be served by the Commission’s declining to exercise jurisdiction over Petitioner are clearly met here. *See* Ind. Code § 8-1-2.5-5(b). Competitive forces in the wholesale power market and FERC’s regulatory oversight of Petitioner’s operation and wholesale electric rates render the exercise of jurisdiction over such operation and rates by the Commission unnecessary, burdensome and wasteful of the Commission’s time and resources. Market forces also will determine who will buy energy from Petitioner. In addition, the Fairbanks Solar Facility will increase the amount of electricity generated in the State of Indiana, particularly electricity generated from solar, a renewable, emission free and energy efficient resource not subject to the risk of fuel price increases or increased emission control costs. Thus, the Commission’s encouragement of this type of facility by its declining to exercise jurisdiction over Petitioner will be beneficial to the State of Indiana.

8. Statutory Authority. Petitioner believes that Ind. Code § 8-1-2 generally, and Ind. Code § 8-1-2.5 specifically, are applicable to this proceeding. Counsel for Petitioner in this

Cause is Michael T. Griffiths and Justin C. Hage of the law firm Bingham Greenebaum Doll LLP, 2700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204, and counsel is authorized, on Petitioner's behalf, to receive papers filed in this matter.

9. Prior Commission Orders. This Commission has previously granted other electric generation projects such as wind farms relief which is similar to the relief Petitioner seeks in this Cause. *See In the Matter of the Petition by Benton County Wind Farm, LLC*, Cause No. 43068 (Dec. 6, 2006); *In the Matter of the Petition by Fowler Ridge Wind Farm, LLC*, Cause No. 43338 (Nov. 20, 2007) (and subsequent related Cause Nos. 43443 and 43444); *In the Matter of the Petition by Hoosier Wind Project, LLC*, Cause No. 43484 (Oct. 1, 2008); *In the Matter of Meadow Lake Wind Farm, LLC*, Cause No. 43602 (Feb. 18, 2009) (and subsequent related Cause Nos. 43678, 43758, 43759, 43876 and 45010); *In the Matter of the Petition by NextEra Energy Bluff Point, LLC*, Cause No. 44299 (Apr. 3, 2013); *In the Matter of the Petition by Wildcat Wind Farm II, LLC*, Cause No. 44335 (July 3, 2013); *In the Matter of the Petition by Headwaters Wind Farm, LLC*, Cause No. 44358 (Sept. 19, 2013); *In the Matter of Jordan Creek Wind Farm, LLC*, Cause No. 44978 (Dec. 20, 2017); *In the Matter of Bitter Ridge Wind Farm, LLC*, Cause No. 45165 (March 20, 2019). Denying the requested relief would inhibit Petitioner from competing with other similarly-situated entities facing fewer regulatory burdens. *See* Ind. Code §8-1-2.5-5(b)(4).

10. Procedural Schedule; Waiver of Prehearing Conference. Petitioner requests consideration of the requested relief on a schedule that will allow Petitioner to continue to advance development and make significant financial investments in the Fairbanks Solar Facility. In particular, Petitioner is looking for regulatory certainty from the Commission so that it can make investments and commence certain activities to obtain the full value of the Solar

Investment Tax Credit (“ITC”). The value of the ITC decreases if a solar project does not commence certain activities by December 31, 2019. Petitioner has met with the Indiana Office of Utility Consumer Counselor (“OUCC”) to explain the project, and the parties have agreed to waive the prehearing conference in this Cause and to establish the procedural schedule set forth below:

Petitioner files case-in-chief:	July 8, 2019
OUCC files its prefiled testimony:	September 4, 2019
Petitioner files its rebuttal testimony:	September 17, 2019
Evidentiary Hearing:	September 24, 25 or 26 (preferably the same day as the Lone Oak Solar Energy proceeding)

Additionally, Petitioner and the OUCC have agreed to other procedural matters, all as set forth in the Proposed Scheduling Order attached hereto as Exhibit 1, and Petitioner requests that the Commission issue the Proposed Scheduling Order and waive the prehearing conference pursuant to 170 IAC 1-1.1-15(e).

WHEREFORE, Petitioner respectfully requests that the Commission:

- a. Issue the Proposed Scheduling Order in this Cause establishing the procedural schedule set forth in Paragraph 10 above and fixing the date for the evidentiary hearing;
- b. Declare that the Commission declines to exercise jurisdiction consistent with other similarly-situated electric generation developers over Petitioner’s construction, ownership and operation of, and other activities in connection with the Fairbanks Solar Facility;
- c. Grant Petitioner an indeterminate permit to operate the Fairbanks Solar Facility;
and
- d. Grant Petitioner other just and proper relief as required in this proceeding.

Respectfully submitted,



Michael T. Griffiths (26384-49)

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Attorneys for Petitioner,

Fairbanks Solar Energy Center LLC

VERIFICATION

I hereby affirm, under the penalties of perjury, that the representations contained in the foregoing Verified Petition are true to the best of my knowledge, information and belief.

Fairbanks Solar Energy Center LLC

By: 

Jonathan Saxon

Vice President, Renewable Development

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was electronically delivered this 8th day of July, 2019, to the following:

Office of Utility Consumer Counselor
115 West Washington Street
Suite 1500 South
Indianapolis, Indiana 46204
kkrohn@oucc.in.gov
thaas@oucc.in.gov
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An attorney for Petitioner,
Fairbanks Solar Energy Center LLC

Exhibit 1
Proposed Scheduling Order

[Indiana Utility Regulatory Commission Letterhead]

IN THE MATTER OF THE PETITION BY)
FAIRBANKS SOLAR ENERGY CENTER)
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BY THE COMMISSION WITH RESPECT TO)
ITS JURISDICTION OVER PETITIONER'S)
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You are hereby notified that on this date the Indiana Utility Regulatory Commission “Commission”) has caused the following entry to be made:

On July 8, 2019, Fairbanks Solar Energy Center LLC (the “Petitioner”) filed its verified petition (the “Petition”) in the above captioned Cause. Included in the Petition was a proposed procedural schedule agreed to by the Petitioner and the Indiana Office of Utility Consumer Counselor (the “OUCC”).

The Presiding Officers, having reviewed the Petition, now establish the following procedural schedule in this matter:

1. **Petitioner’s Prefiling Date.** The Petitioner prefiled with the Commission its prepared testimony and exhibits constituting its case-in-chief on July 8, 2019. Copies of same were served upon all parties of record.
2. **OUCC’s and Intervenors’ Prefiling Date.** The OUCC and all Intervenors shall prefile with the Commission the prepared testimony and exhibits constituting their respective cases-in-chief on or before September 4, 2019. Copies of same shall be served upon all parties of record.
3. **Petitioner’s Rebuttal Prefiling.** The Petitioner shall prefile with the Commission its prepared rebuttal testimony on or before September 17, 2019. Copies of same shall be served upon all parties of record.
4. **Evidentiary Hearing on the Parties’ Cases-in-Chief.** An evidentiary hearing is scheduled to commence at _____ on September __, 2019, in Room ____ of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At such time, the direct evidence of the respective parties should be presented and their respective witnesses examined. Thereafter, Petitioner should present its prefiled rebuttal evidence as well as any additional evidence adduced on cross-examination of the OUCC’s or any intervening parties’ witnesses. If the parties reach settlement, the agreement shall be submitted to the Commission ten business days prior to the Evidentiary Hearing.

5. **Sworn Testimony.** Any witness testimony to be offered into the record of this proceeding shall be made under oath or affirmation. In accordance with 170 IAC 1-1.1-18(h), if the prefiled testimony of a witness is to be offered into evidence at the Evidentiary Hearing, and the witness sponsoring the prefiled testimony is not required to, and does not, attend the Evidentiary Hearing, the prefiled testimony shall be accompanied by the witness's sworn affidavit or written verification at the time the evidence is offered into the record.

6. **Discovery.** Discovery is available for all parties and shall be conducted on an informal basis. Any response or objection to a discovery request should be made within seven (7) calendar days of the receipt of such request; provided that as of the date the OUCC or any intervenor prefiles its case-in-chief, any response or objection to a discovery request shall thereafter be made within 3 business days of such request.

7. **Number of Copies/Corrections.** Filings with the Commission shall comply with General Administrative Order 2016-2. Any corrections to prefiled testimony shall be made in writing as soon as possible after discovery of the need to make such corrections.

8. **Objections to Prefiled Testimony and Exhibits.** Any objections to the admissibility of prefiled testimony or exhibits shall be filed with the Commission and served on all parties of record no less than two (2) business days prior to the date scheduled for commencement of the hearing at which the testimony or exhibit will be offered into the record.

9. **Intervenors.** Any party permitted to become an Intervenor in this Cause should be bound by the record as it stands at the time its Petition to Intervene is granted, pursuant to 170 IAC 1-1.1-11.

IT IS SO ORDERED.

_____, Commissioner

_____, Administrative Law Judge

Date: _____