

ORIGINAL

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

JOINT PETITION OF ST. JOSEPH ENERGY CENTER, )  
LLC AND ST. JOSEPH PHASE II, LLC FOR (1) )  
TRANSFER OF A PORTION OF ST. JOSEPH ENERGY )  
CENTER, LLC'S FRANCHISE, WORKS, OR SYSTEM )  
PURSUANT TO INDIANA CODE § 8-1-2-83; (2) FOR )  
CONTINUED DECLINATION OF THE )  
COMMISSION'S JURISDICTION OVER THE )  
PORTIONS OF THE POWER GENERATING )  
FACILITY TRANSFERRED TO ST. JOSEPH PHASE II, )  
LLC; AND (3) APPROVAL, TO THE EXTENT )  
NECESSARY, OF THE SHARED FACILITIES )  
AGREEMENT. )

CAUSE NO. 44745

APPROVED: JUL 12 2016

ORDER OF THE COMMISSION

**Presiding Officers:**  
**David E. Ziegner, Commissioner**  
**Marya E. Jones, Administrative Law Judge**

On February 5, 2016, St. Joseph Energy Center, LLC ("SJEC"), and St. Joseph Phase II, LLC ("SJEC II" and together with SJEC, the "Joint Petitioners") filed a Verified Joint Petition with the Indiana Utility Regulatory Commission ("Commission") requesting approval of: (1) the transfer of a portion of SJEC's franchise, works, or system to SJEC II pursuant to Ind. Code § 8-1-2-83 ("Section 83"); (2) continued declination of the Commission's jurisdiction over the portions of the power generating facility transferred to SJEC II; and (3) to the extent necessary, the Shared Facilities Agreement between SJEC, SJEC II and St. Joseph Shared Assets, LLC ("SJSA"). Also on February 5, 2016, Joint Petitioners filed the direct testimony of Willard Ladd, Principal at Development Partners Group, LLC.

The Indiana Office of Utility Consumer Counselor ("OUCC") filed the testimony of Ray L. Snyder, Utility Analyst, on April 18, 2016.

The Commission held an evidentiary hearing in this Cause on May 9, 2016, at 9:30 a.m., in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Joint Petitioners and the OUCC appeared at the hearing by counsel. Joint Petitioners and the OUCC offered their respective prefiled testimony and exhibits into evidence without objection. No members of the general public appeared.

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

1. **Notice and Jurisdiction.** Due, legal, and timely notice of the hearing in this Cause was given and published by the Commission as provided for by law. In an Order dated February 13, 2013 (the “Declination Order”), in Cause No. 44246, the Commission determined that SJEC was a “public utility” within the meaning of Ind. Code §§ 8-1-2-1 and 8-1-8.5-1, and an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2. The Declination Order requires SJEC to seek prior approval of any transfer of assets pursuant to Ind. Code § 8-1-2-83. Accordingly, the Commission has jurisdiction over Joint Petitioners and the subject matter of this case.

2. **Joint Petitioners’ Characteristics.** SJEC is a limited liability company duly organized and existing under the laws of the State of Delaware. Petitioner’s principal place of business is at 54805 Walnut Road, New Carlisle, Indiana, 46552. SJEC holds the authority to construct, own, and operate the St. Joseph Energy Center (the “Project”), which is an approximately 1,400 MW combined cycle gas turbine (“CCGT”) power plant being constructed in St. Joseph County, Indiana, near the Town of New Carlisle. In the Declination Order, pursuant to Ind. Code § 8-1-2.5-5, the Commission determined that it was in the public interest to decline to exercise its jurisdiction over SJEC with a few exceptions as set forth in the Declination Order.

SJEC II is a limited liability company duly organized and existing under the laws of the State of Delaware with its principal place of business located at Three Charles River Place, 63 Kendrick Street, Suite 101, Needham, MA 02494. SJEC II was created to hold the assets and rights related to the development of Phase II of the Project.

3. **Background and Relief Requested.** The Project consists of two approximately 700MW CCGT “power blocks.” One power block will be interconnected to the Midcontinent Independent System Operator, Inc. (“MISO”) regional transmission system (the “MISO Block”) and the other power block will be interconnected to the PJM Interconnection LLC (“PJM”) regional transmission organization (the “PJM Block”). In order to facilitate financing, development, and construction of the Project, it was determined that the Project would be developed in phases. The PJM Block will be constructed and operated through SJEC as Phase I of the Project. The MISO Block is proposed to be constructed and operated through SJEC II as Phase II of the Project.

Joint Petitioners request that the Commission: (1) allow the transfer of SJEC’s franchise, works, or system related to Phase II, including, but not limited to, the assets, construction, operating and financing authority, and reporting obligations associated with the development and construction of Phase II to SJEC II (the “Phase II Transfer”); (2) determine that the same provisions of declination of jurisdiction authorized for SJEC in the Declination Order also be authorized for SJEC II with respect to the assets and obligations transferred to it; and (3) to the extent necessary, approve the Shared Facilities Agreement.

4. **Joint Petitioners’ Evidence.** Willard Ladd, Principal at Development Partners Group, LLC (“Development Partners”), testified on behalf of Joint Petitioners. He provided an overview of the Joint Petitioners, the Project, and the relief sought. Mr. Ladd explained why the transfer of Phase II assets and rights from SJEC to SJEC II is important to the financing and development of Phases I and II.

Mr. Ladd testified that financing for Phase I was completed in November 2015, and that construction of Phase I has begun and is expected to be completed by March 2018, with commercial operations anticipated to begin in June 2018. He stated that construction of the MISO Power Block is expected to commence in the next 12-18 months.

Mr. Ladd testified that splitting the Project into two phases optimizes the financing, construction, and sale of electric power. Specifically, Mr. Ladd testified that separating each phase facilitates the financing of the respective phases on the most favorable terms available at the time each phase is built. He noted that SJEC is currently developing Phase I, but needs to transfer the assets, the construction, the operating authority, and other rights and obligations related to Phase II to SJEC II. Mr. Ladd testified that SJEC II was created to hold the assets and rights related to the development of Phase II, and more specifically, to construct and operate the MISO Power Block.

Mr. Ladd testified that SJEC II has the experience, technical and managerial expertise, and financial resources to construct and operate Phase II of the Project. He stated that Phase II is being developed by Development Partners and sponsored by investment funds managed by Ares Energy Investment Fund Management, LLC ("EIF") as well as other third party investors. He noted that this team represents a group of professionals with deep experience in successfully developing, constructing, bringing on-line, and operating power projects. Mr. Ladd testified that he personally had over 25 years' experience in this industry and has successfully developed, financed, and constructed over 3,200 MW of CCGT power plants in his career. He stated that EIF was originally founded in 1987 as one of the first U.S. investment fund managers to focus on the independent power industry. Mr. Ladd testified that since that time, EIF has raised over \$4.5 billion in equity capital and made over 100 diversified investments which have an underlying asset value greater than \$15 billion.

Mr. Ladd testified that SJEC II proposes to finance Phase II of the Project through a traditional project financing model which has proven to be a successful approach in the power industry. Specifically, he stated that the Phase II debt will be financed through a non-recourse project financing structure, and that the Phase II equity will be funded from EIF's managed investment funds. He noted that this approach has been utilized on all of EIF's previous project financings, and explained that in a non-recourse project financing, the assets of the project provide the collateral for the project lenders. Mr. Ladd testified that the assets of the project include, but are not limited to, real estate rights, environmental and regulatory permits, contracts for design, construction and equipment supply, contracts for fuel supply and transportation, electrical interconnection agreements, power purchase agreements, and the equity commitment provided by the project owner. He stated that commitments for the full amount of both debt and equity required to complete Phase II of the Project will be issued by project lenders, investment funds managed by EIF, and other third party investors. Mr. Ladd testified that Development Partners and EIF maintain strong commercial relationships with all the major investment and commercial banks and will lead the ultimate construction financing of the Project. He stated that Development Partners and EIF are confident that Phase II is prime financing opportunity. He noted that since the start of the credit crisis in mid-2007, EIF has raised more than \$3.5 billion in non-recourse financings. Mr. Ladd further stated that EIF employs professionals with vast experience in project development and management as well as component disciplines including finance, engineering, legal, accounting,

tax, and marketing. Mr. Ladd testified that Development Partners and EIF will have mature discussions with the Project's lenders as it accomplishes major Project milestones, including Commission approval and definitive commercial arrangements to sell capacity and energy. Mr. Ladd testified that EIF managed investment funds own approximately 5,100 net MW of capacity in facilities that are currently operating or under construction, and an additional 3,900 net MW in facilities that are in various stages of development.

Mr. Ladd testified that SJEC II will operate Phase II in a commercially reasonable manner. More specifically, he stated Phase II will be operated and maintained by a qualified third-party operations and maintenance ("O&M") contractor to be identified at a later date, similar to that proposed and approved for Phase I. He stated that the operator will be overseen by Power Plant Management Services, LLC ("PPMS"), a general and administrative services management consulting firm focused on the domestic independent power industry. Mr. Ladd stated further that PPMS will provide O&M contractor interface, construction interface, due diligence, support, and permitting support for the Project, and that PPMS has provided services to EIF's power plants from New England to Hawaii and currently manages a majority of EIF's facilities.

Mr. Ladd testified that SJEC II agrees to abide by the terms of the Declination Order. With respect to any future transfer of SJEC II's assets, Mr. Ladd testified that SJEC II requests the same treatment to the extent related to Phase II that the Commission granted to SJEC in the Declination Order. He further stated that SJEC II does not request eminent domain at this time. Mr. Ladd testified that assuming the Commission determines that SJEC II is a public utility, it should decline to exercise its jurisdiction over SJEC II for the same reasons set forth in the Declination Order for SJEC. He testified that traditional regulation would impair SJEC's ability to respond rapidly to changes in the marketplace and would undermine SJEC II's competitive advantage.

Mr. Ladd testified that the Shared Facilities Agreement provides for the ownership, operation, and maintenance of certain shared facilities necessary for the Project, as well as the sharing of certain permits necessary for construction and operation of the Project. He stated that Joint Petitioners request Commission approval of the agreement to the extent the Commission finds it necessary to specifically approve the Shared Facilities Agreement beyond its approval of the Phase II transfer of rights.

Mr. Ladd testified that the Project will provide numerous benefits to consumers and the State of Indiana and will provide a new source of natural gas-fired generation capacity to the region. He stated that the proposed transfer is reasonable and necessary to ensure the orderly development of Phase II of the Project, and that SJEC II is well-positioned to provide the necessary technical, managerial, and financial oversight to finance, construct, and operate Phase II of the Project. Further, he stated that SJEC II agrees to follow the reporting requirements set forth in the Declination Order as those requirements relate to Phase II, and that for ease of reporting, SJEC II proposes to file joint reports with SJEC in Cause No. 44246. Mr. Ladd stated that he recommends the Commission approve the relief requested by Joint Petitioners.

**5. OUCC's Evidence.** Ray Snyder, OUCC Utility Analyst, testified in support of the relief requested by Joint Petitioners. He stated the OUCC agrees that the Phase II Transfer is necessary. First, he testified that splitting the Project in this manner will simplify regulatory

governance and operational aspects resulting from interconnections to the two Regional Transmission Organizations (“RTOs”). He stated that the economic dispatch of resources within each RTO is very complex, and separation in this manner will reduce the complexity which would result from a single ownership structure in dealing with two separate RTOs. Second, Mr. Snyder testified it is reasonable to expect opportunities for financing will vary over time. He stated that it is also reasonable to provide the opportunity for each Power Block to secure financing separately, due to the one to two-year difference in the construction execution between the two Power Blocks.

Mr. Snyder testified that the OUCC believes that Phase II of the Project is in the public interest, because it will offer consumers a generation resource that will also have a positive impact on the state’s economy, especially at the local level. He noted that in Cause No. 44246, Petitioner stated in testimony that the Project has the capability to foster economic growth within the local community through the potential creation of over 1,762 jobs during the construction phase of the Project, and 187 full-time permanent positions associated with the completed Project. He stated that in addition to the creation of jobs, Joint Petitioners will be able to competitively bid for energy generation contracts offered by Indiana utilities to provide additional sources of electric generation as required by the state’s ratepayers. Mr. Snyder testified that the competitive bidding process has the potential to offer reduced energy costs to both the utility and the ratepayer while offering more effective, efficient, and environmentally friendly methods of energy generation.

Mr. Snyder stated there in addition to the need for the 1400 MW of electric generation proposed by the Project, the OUCC believes the continued pressure on coal-fired generation will result in even greater new generation requirements over the next decade, and the additional gas-fired generation of the Project will also be needed to meet consumer demands for electricity.

**6. Commission Discussion and Findings.** In the Declination Order, we found that SJEC was a “public utility” within the meaning of Ind. Code § 8-1-2-1, but, pursuant to Ind. Code § 8-1-2.5-5, determined that it was in the public interest to decline to exercise our jurisdiction over SJEC with the exception of a few limited provisions that are detailed in the Declination Order. Among the exceptions was a paragraph titled “Transfers of Ownership.” In that paragraph we stated that “[t]he Commission reserves its jurisdiction under Ind. Code § 8-1-2-83, and requires Petitioner to obtain prior Commission approval of any transfer of Petitioner’s franchise, works, or system.” Joint Petitioners also request that the Commission make an affirmative determination that the same provisions regarding declination of jurisdiction ordered for SJEC in the Declination Order also be applied to SJEC II in this Order with respect to the assets, authority, and obligations proposed to be transferred in this Cause.

**A. Phase II Transfer of Ownership pursuant to Ind. Code § 8-1-2-83.** As noted above, the Commission requires SJEC to obtain prior Commission approval of any transfer of its franchise, works, or system in the Declination Order. However, SJEC, was not required to seek prior approval of any transfers of ownership of the Project or its assets involving: (1) the grant of a security interest 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); (2) a debtor in possession; or (3) a foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner or ownership interests in Petitioner. None of these exceptions apply to the relief requested in this Cause.

The evidence demonstrates that SJEC II was specifically created to hold the assets and rights related to the development of Phase II of the St. Joseph Energy Center and, in particular, to construct and operate the MISO Power Block as Phase II of the Project. The evidence shows that the Phase II Transfer will not only facilitate the development of the Project, but will also allow the Project to be developed in manageable phases. Mr. Ladd testified specifically that the Phase II Transfer will permit the most favorable financing terms available, while Mr. Snyder testified that the Phase II Transfer will simplify the regulatory governance and operational aspects resulting from interconnections to the two RTOs. The evidence further shows that the OUCC also agrees that the Phase II Transfer is necessary, in the public interest, and should be approved. Based on the evidence presented, we approve SJEC's request to transfer to SJEC II operating and construction authority and other rights and obligations under the Declination Order related to Phase II. Thus, we find that the Phase II Transfer should be approved.

**B. Declination of Jurisdiction Applicable to Assets, Authority, and Obligations Transferred to SJEC II.** Joint Petitioners request that SJEC II succeed to SJEC's declination of jurisdiction with respect to the construction, ownership, and operation of Phase II of the project and that the Commission find that SJEC II has the necessary technical, financial, and managerial capability to own and operate Phase II. The evidence demonstrates that SJEC II is a limited liability company specifically created to hold the assets and rights related to the development of Phase II of the Project. The evidence further indicates that SJEC II proposes to finance Phase II of the Project through a traditional project financing model with a proven approach in the power industry.

Specifically, the Phase II debt will be financed via a non-recourse project financing structure, with Phase II equity funded from EIF's managed investments funds. The evidence demonstrates that Phase II will be developed by Development Partners and sponsored by investment funds managed by EIF as well as other third party investors. This team represents a group of professionals with extensive experience in successfully developing, constructing, bringing on-line, and operating power projects. EIF has raised over \$4.5 billion in equity capital and made over 100 diversified investments which have an underlying asset value greater than \$15 billion. Furthermore, the evidence shows that EIF employs professionals with deep experience in project development and management as well as component disciplines including finance, engineering, legal, accounting, tax, and marketing. EIF managed investment funds own approximately 5,100 net MW of capacity in facilities that are currently operating or under construction, and an additional 3,900 net MW in facilities that are in various stages of development. In addition, Mr. Ladd testified that he possesses more than 25 years of experience in this industry.

The evidence demonstrates that SJEC II will operate and maintain Phase II in a commercially reasonable manner by a qualified third-party O&M contractor similar to that proposed and approved for Phase I. In addition, the evidence indicates that the operator will be overseen by a general and administrative services management consulting firm focused on providing O&M contractor interface, construction interface, due diligence, support, and permitting assistance for the Project. Based on the foregoing, we find that SJEC II has the necessary technical, financial, and managerial capability to own and operate Phase II.

As noted above, Mr. Ladd testified that SJEC II was created to hold the assets and rights related to the development of Phase II of the Project, and that SJEC will abide by the same terms and conditions set forth in the Declination Order with regard to its ownership, construction and development of Phase II. Thus, we find that SJEC II succeeds to the declination of jurisdiction granted to SJEC in the Declination Order, such that SJEC II has the same rights, powers, privileges, and obligations with respect to Phase II as SJEC would have had under the Declination Order, but for the transfer requested in this Cause, including, but not limited to, those of an Indiana public utility granted to SJEC in the Declination Order. The terms and conditions applicable to SJEC as set out in the Declination Order shall apply to SJEC II.

**C. Reporting Requirements.** SJEC II shall file Annual Reports with the Commission as provided in Ind. Code § 8-1-2-49, and provide such other information as the Commission may from time to time request. 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 regarding the construction and operation of generating facilities, as well as those of the Commission's State Utility Forecasting Group and the OUCC.

Joint Petitioners shall file a Joint Notice in this Cause within 30 days after the Phase II Transfer is consummated. All subsequent reports required by the Declination Order shall also be prepared and filed by SJEC II. We find it reasonable and approve SJEC's request to file these joint reports in Cause No. 44246.

**D. Conclusion.** Based on the foregoing, we find that SJEC II is a public utility as that term is defined in Ind. Code § 8-1-2-1(a) and an energy utility as that term is defined in Ind. Code § 8-1-2.5-2. SJEC II, therefore, succeeds to the declination of jurisdiction granted to SJEC in the Declination Order, such that SJEC II has the same rights, powers, privileges, and obligations with respect to Phase II as SJEC had under the Declination Order. Thus, we find that SJEC shall transfer to SJEC II the assets, operating and construction authority, and other rights and obligations under the Declination Order related to Phase II. Further, SJEC II is not granted authority to offer its power for sale at retail to the general public, and any revenue derived from the sale of electricity to another public or municipal utility for resale by the latter is not subject to the public utility fee.

Upon completion of the Phase II Transfer and the filing of the Joint Notice with the Commission, SJEC shall be relieved of its obligations arising from the Declination Order that relate to Phase II. The declination of jurisdiction granted to SJEC in the Declination Order shall, in all other respects, remain unchanged as to SJEC's ownership, construction and development of Phase I of the Project. Finally, approval of the shared facilities agreement is unnecessary subject to the Commission's limited retention of jurisdiction over Joint Petitioners.

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

1. SJEC II is a "public utility" within the meaning of Ind. Code § 8-1-8.5-1 and Ind. Code § 8-1-2-1 and an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2.

2. SJEC is authorized to transfer to SJEC II all of its franchise, works or system related to Phase II, including but not limited to, assets related to Phase II and the privileges, construction, operating, and financing authority, and reporting obligations related to Phase II under the Declination Order. SJEC shall maintain its declination of jurisdiction with respect to Phase I. SJEC shall continue its reporting and other obligations with respect to Phase I as required by the Declination Order.

3. The Commission declines to exercise jurisdiction over SJEC II pursuant to Ind. Code § 8-1-2.5-5, retains jurisdiction over SJEC II to the extent required to ensure that SJEC II complies with all the conditions of this Order, and SJEC II succeeds to the declination of jurisdiction granted to SJEC in Cause No. 44246, as set forth in this Order.

4. SJEC II shall not sell at retail in the State of Indiana any of the electricity generated by Phase II without further order of the Commission.

5. SJEC II shall file its reports and shall satisfy its Phase II reporting obligations in Cause No. 44246, contemporaneous with the reports filed by SJEC.

6. SJEC II shall comply fully with the terms of this Order and submit to the Commission all information required by the terms of this Order.

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

**STEPHAN, HUSTON, WEBER, AND ZIEGNER CONCUR:**

**APPROVED: JUL 12 2016**

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

  
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Mary M. Becerra  
Secretary of the Commission