

ORIGINAL

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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**VERIFIED PETITION OF MAPLE CREEK)
ENERGY II LLC FOR CERTAIN)
DETERMINATIONS BY THE COMMISSION) CAUSE NO. 46344
WITH RESPECT TO ITS JURISDICTION)
OVER PETITIONER’S ACTIVITIES AS A) APPROVED: JUN 30 2026
GENERATOR OF ELECTRIC POWER.)**

ORDER OF THE COMMISSION

Presiding Officers:

**Anthony F. Swinger, Chairman
Steve Henke, Administrative Law Judge**

On December 19, 2025, Maple Creek Energy II LLC (“Petitioner” or “Maple Creek II”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) requesting that the Commission enter an order declining to exercise jurisdiction, pursuant to Ind. Code § 8-1-2.5-5, over Petitioner’s construction, ownership, and operation of an approximately 600 megawatt (“MW”) combined cycle gas turbine (“CCGT”) power generation facility, fueled by natural gas, to be located in Sullivan County, Indiana (“Project”). The Project will replicate the project proposed by Maple Creek Energy LLC (“Maple Creek I”), an affiliated but separate entity, over which the Commission declined much of its jurisdiction in Cause No. 45840 on June 14, 2023 (“45840 Order”).

Also, on December 19, 2025, Petitioner filed the verified direct testimony of Nicholas Zaborowsky, Maple Creek II’s Project Manager of Petitioner. On February 13, 2026, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed the direct testimony of Patrick A. Kelley, PhD, Utility Analyst. On March 6, 2026, Petitioner filed the rebuttal testimony of Mr. Zaborowsky.

The Commission conducted an evidentiary hearing in this Cause on March 23, 2026. Petitioner and the OUCC appeared, by counsel, at the hearing, during which each party’s evidence was admitted into evidence without objection, and Mr. Zaborowsky was cross-examined.

Based on the law and facts, the Commission finds:

1. Notice and Jurisdiction. Proper legal notice of the hearing in this Cause was given and published as required by law. As discussed below, Petitioner intends to engage in activity that will qualify 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. The Commission may decline to exercise, in whole or in part, its jurisdiction over an energy utility under Ind. Code ch. 8-1-2.5. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this case.

2. Petitioner’s Characteristics. Maple Creek II is a limited liability company organized and existing under Delaware law. Petitioner’s principal place of business is at 155

Federal Street, 17th Floor, Boston, Massachusetts. Maple Creek II is a subsidiary of a fund managed by ArcLight Capital Partners, LLC (“ArcLight”), and the Project is under development by Advanced Power Services (NA) Inc. (“Advanced Power”). ArcLight is an investor in critical electrification infrastructure. Advanced Power is a global developer of low-carbon power generation facilities based in Boston, Massachusetts.

3. Description of the Project. The Project will consist of one 1x1 CCGT power block. The power block will consist of one gas turbine, one heat recovery steam generator, and one steam turbine, in addition to the standard balance of plant equipment. Upon completion, the Project will generate electricity solely for sale in the wholesale market. Petitioner intends to self-certify the Project as an Exempt Wholesale Generator, as that term is defined in 18 C.F.R. § 366.1 of the Federal Energy Regulatory Commission’s (“FERC”) regulations. Maple Creek II’s requests for any authorizations required to sell the electrical output from the Project into the wholesale market will be made to FERC.

4. Relief Requested. Petitioner requests that the Commission, pursuant to Ind. Code § 8-1-2.5-5, decline to exercise its jurisdiction to (a) require Petitioner to obtain a certificate of public convenience and necessity (“CPCN”) to construct the Project under Ind. Code ch. 8-1-8.5, the “Powerplant Construction Act,” and (b) regulate, under Ind. Code ch. 8-1-2, Petitioner’s construction, ownership, and operation of the Project. Maple Creek II also seeks declination of the Commission’s jurisdiction over shared facility arrangements so the Project may maintain operational and financial flexibility.

5. Commission Discussion and Findings. Pursuant to Ind. Code ch. 8-1-2.5, the Commission may decline to exercise its jurisdiction over an energy utility, including its jurisdiction to issue a CPCN under Ind. Code ch. 8-1-8.5 for the construction or purchase of a facility for the generation of electricity. *See, e.g., Crawfordsville Energy, LLC*, Cause No. 44101 (IURC July 3, 2012). For the Commission to decline to exercise its jurisdiction, the Commission must first determine whether Petitioner is a public utility pursuant to Ind. Code §§ 8-1-2-1 and 8-1-8.5-1.

According to the evidence presented, Petitioner’s construction, ownership, and operation of the Project will sell its generated Power into the wholesale market. The entities purchasing the power may include public utilities inside and outside of Indiana. 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 renders service “of a public character and of public consequence and concern” The Commission has found in prior cases that a business that only generates electricity and then sells it directly to public utilities is a public utility. *See, e.g., Crawfordsville Energy, LLC*, Cause No. 44101 (IURC July 3, 2012). Consequently, we find that upon construction and operation of the Project, Petitioner will be a “public utility” under Ind. Code § 8-1-2-1 (and thus an “energy utility” pursuant to Ind. Code § 8-1-2.5-2) and Ind. Code § 8-1-8.5-1.

Ind. Code § 8-1-2.5-5(a) authorizes the Commission to decline to exercise, in whole or in part, jurisdiction over an “energy utility” if the public interest requires it. In determining whether the public interest will be served, Ind. Code § 8-1-2.5-5(b) requires the Commission to consider:

(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.

Mr. Zaborowsky testified that Petitioner is subject to the rules and regulations of state agencies, FERC, and other federal agencies. Mr. Zaborowsky stated a declination of jurisdiction by the Commission, in whole or in part, would be beneficial for Petitioner, Petitioner's customers, and Indiana. He testified Petitioner would benefit by a declination of the Commission's jurisdiction because this will facilitate construction of the Project, which would benefit the public by providing additional generation capacity in the region.

He testified that should the Commission exercise jurisdiction over Petitioner, the Commission would place Petitioner at a disadvantage with respect to wholesale power producers over whom the Commission has declined to exercise jurisdiction. Mr. Zaborowsky added that traditional regulation would impair Petitioner's ability to respond rapidly to changes in the marketplace.

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

The evidence presented demonstrates further Commission regulation of the Project: (1) would be duplicative of other regulatory bodies; (2) could complicate and cause inefficiencies in Petitioner's development and operation of the Project; (3) could impede Petitioner's ability to compete with other wholesale generators; and (4) would be an unnecessary use of the Commission's resources.

As part of the Commission's public interest analysis regarding any proposed declination of jurisdiction, the Commission considers several other factors.

A. Location. As part of its public interest determination, the Commission may consider whether the location of a proposed facility, or its expansion, is compatible with the surrounding land uses. Based on the factors reviewed below, the Commission finds the evidence shows the Project's proposed location within Sullivan County is compatible with the adjacent Maple Creek I facility and may be compatible with other surrounding land uses. The appropriate

state and local government entities will make final determinations as warranted before construction of the Project moves forward.

i. Zoning and Permitting. Mr. Zaborowsky testified the planned location is in Fairbanks Township, which is an unincorporated area without local zoning or land use ordinances. He said Petitioner is committed to working with Sullivan County to negotiate and obtain local permitting required for the construction and operation of the Project, including road use and maintenance agreements.

ii. Environmental Impact and Permits. Mr. Zaborowsky stated the Project will use state-of-the-art, highly efficient CCGT technology with best-in-class emissions controls that employ selective catalytic reduction for nitrogen oxide control and an oxidative catalyst for carbon monoxide control. He testified that none of the completed environmental studies identified any fatal flaws for the Project.

Mr. Zaborowsky testified the Project will meet national standard air emissions criteria that are protective of public health, including National Ambient Air Quality Standards and Significant Impact Levels. He said Petitioner expects to receive an air permit from the Indiana Department of Environmental Management allowing the plant to operate consistent with these standards. Mr. Zaborowsky stated wetland permitting is expected to be unnecessary because of wetland avoidance via facility design and construction methods. Other project permits, including Federal Aviation Administration determinations for the heat recovery steam generator and transmission structures, as applicable, will be obtained prior to construction of those structures.

iii. Gas Supply. Mr. Zaborowsky testified the Project could require a maximum of approximately 100,000 million British thermal units per day of natural gas, assuming it operates at full output for an entire day. He testified there is sufficient gas supply available to satisfy the demand. He said natural gas will be transported to the Project from the interconnection point with the Midwestern interstate pipeline operated by Midwestern Gas Transmission Company through a dedicated 3.5-mile service line for which Maple Creek I received a CPCN in Cause No. 46125. Petitioner plans to share this infrastructure with Maple Creek I pursuant to a shared facilities agreement.

Mr. Zaborowsky explained that given the Project's likely commercial arrangement in the form of a tolling agreement in which the supply of natural gas is the responsibility of the tolling agreement counterparty, Petitioner has not pursued the execution of definitive agreements with natural gas suppliers at this time. He stated that as tolling agreement discussions mature and counterparties provide guidance on preferred natural gas supply and transportation strategies, Petitioner will pursue definitive engineering and negotiations with the appropriate entities.

iv. Water Supply and Wastewater Disposal. Mr. Zaborowsky explained the Project is expected to be supplied with water by Sullivan-Vigo Rural Water Corporation via its existing water main line. He confirmed the water supplier is a reliable source of water for operation of the Project, with minimal impact on the surrounding community. He testified the Project will not negatively impact water resources, streams, or wetlands. Mr. Zaborowsky stated the Project will recycle all processed water onsite, avoiding the need for offsite wastewater discharge.

B. Need. The evidence presented in this Cause indicates a reasonable expectation of need for the anticipated power generation. Mr. Zaborowsky testified that the State Utility Forecasting Group (“SUFG”) 2023 Forecast of Indiana Electricity Projections has confirmed the need for new natural gas power plants. The SUFG’s forecast indicates the addition of 5,541 MW of CCGT capacity as part of the optimal resource mix to meet an impending resource adequacy deficiency in the State of Indiana.

C. Financing and Management. To ensure Indiana consumers are not adversely affected by the proposed development of generation plants in Indiana, developers have provided evidence that the proposed financing will not jeopardize retail electric supply. In assessing the financing to ensure the long-term economic viability of a proposed project, the Commission has considered the developer’s ability to finance, construct, lease, own and operate generating facilities in a commercially responsible manner.

Mr. Zaborowsky explained that Advanced Power has raised over \$7 billion in equity and debt capital to support construction of over 6,000 MW of energy generation facilities in the United States. He further testified that Petitioner will operate the Project in a commercially reasonable manner with a qualified third-party operations and maintenance contractor overseen by Advanced Power’s asset management team.

The Commission finds Petitioner demonstrated it has the financing capacity and technical and managerial capability to construct and operate the Project.

6. General Administrative Order (“GAO”) 2025-02 and Transmission Interconnection. GAO 2025-02 provides guidelines as to what additional evidence should be provided in connection with declination of jurisdiction petitions. Mr. Zaborowsky provided this information in his testimony. He explained that the Project is expected to interconnect to the Midcontinent Independent System Operator, Inc (“MISO”) system via existing on-site high voltage transmission infrastructure. He stated the Project queue position is J3604 and is currently in Definitive Planning Phase I of the MISO interconnection queue. He stated that over the first 10 years, the Project is anticipated to operate at an approximately 80% capacity factor and is estimated to average above 59% over the asset’s 35-year life. He stated the Project will be 100% dispatchable. Mr. Zaborowsky testified the Project is expected to meet all MISO requirements as an annual dispatchable resource. He expected that the Project will contribute to the need for transmission system upgrades, but that the cost of these upgrades is feasible.

7. Reservation of Certain Jurisdiction. In addition to determining whether the public interest will be served if the Commission declines jurisdiction, the Commission also must consider what actions it must take to ensure the public interest is served throughout the commercial life of the Project. 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.

A. Affiliate Transactions. 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 must also 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.

B. Transfer 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 is not required to seek prior approval, but must provide written notice under this Cause to the Commission and the OUCC, of any transfers of ownership of the Project 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 (including any tax equity structuring); (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 Project or its assets pursuant to a shared facility agreement.

Additionally, a third-party owner and operator may succeed to Petitioner's declination of jurisdiction, provided: (1) the Commission, prior to succession, determines the successor has the necessary technical, financial, and managerial capability to own and operate the Project; and (2) the successor agrees to satisfy and satisfies the same terms and conditions imposed on Petitioner as set forth in this Order.

C. Financial Assurance. The Commission carefully considered the OUCC's recommendation that Petitioner be required to maintain financial assurance to ensure the Project's proper decommissioning at the end of its serviceable life. Imposing such a requirement would be within its authority. *See, e.g.*, Cause Nos. 41757, 43212, 44868, 46133 (Lawrenceburg Generating Station); Cause No. 46295 (Sycamore Riverside Energy LLC). On this record, the public interest in the decommissioning of the Project is not best served by imposing a financial assurance.

Both the OUCC's and Petitioner's witnesses testified that Sullivan County could, through contract or zoning ordinance, address the public's interest in decommissioning. As of the date of the evidentiary hearing, Sullivan County has not taken steps to govern decommissioning. In Cause No. 45840 for the Maple Creek I sister project, neither party presented evidence on whether Sullivan County sought or received financial assurances for that project. In fact, no testimony was presented from Sullivan County at all in either this Cause or Cause No. 45840.

But Sullivan County appears better positioned to weigh costs and benefits of financial assurances for decommissioning this local Project. The costs for financial assurances can be significant, and Petitioner has enumerated aspects of this Project that provide non-monetary security regarding the decommissioning process.

The Commission finds no compelling reason in the record to impose different requirements on Petitioner for an essentially identical project sited immediately adjacent to the project for which no financial assurance was required. The Commission finds that, on the evidence presented in this Cause, to impose a financial assurance requirement here would be the exact sort of “unnecessary or wasteful” use of its jurisdiction that the declination statute seeks to avoid. *See* Ind. Code § 8-1-2.5-5. Worse, an imposition of the Commission jurisdiction could undercut Sullivan County’s own authority in deciding when or whether to require financial assurances for facility decommissioning. *See* Ind. Code § 36-1-3-4(b).

Accordingly, the Commission declines to impose a financial assurance requirement on Petitioner for the Project. However, Petitioner must comply with all applicable federal, state, and local laws and regulations regarding the eventual decommissioning of the Project and must provide the notices required below, including those under Finding Paragraph 8.C.

8. Reporting Requirements. In addition to the above requirements, as a condition of this Order and the Commission’s continued declination of jurisdiction, Petitioner must file the below reports with the Commission and provide any other information requested by the Commission. These reporting requirements help ensure the Commission obtains reliable and up-to-date information in a timely manner necessary to carry out its statutory obligations. A responsible officer of Petitioner must verify all reports, and Petitioner must file the reports under this Cause within the timeframes prescribed herein.

A. Initial Report. Petitioner’s initial report, due within 30 days after the date of this Order, must provide the following information, to the extent it is known and available:

- (1) Project ownership and name(s) of the Project;
- (2) Name, title, address, phone number(s) and email address for primary contact person(s) for the Project;
- (3) Anticipated type and number of turbines anticipated to be deployed;
- (4) Anticipated total output for the Project;
- (5) Connecting utility(ies);
- (6) Links to Interconnection System Impact Studies prepared by MISO not previously filed;
- (7) Expected in-service (commercial operation) date;
- (8) An estimate of the engineering/construction timeline and critical milestones for the Project;
- (9) The status of the Generator Interconnection Agreement (“GIA”) with MISO; and
- (10) The information required for subsequent reports, to the extent such information is available.

B. Subsequent Reports. Petitioner must file subsequent reports by January 15 and July 15 each year until commercial operation is achieved. Subsequent reports should include the following information:

- (1) Manufacturer, model number, and operational characteristics of turbines;
- (2) Any changes in the information provided in the Initial Report;

- (3) Links to any interconnection studies and/or reports 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, receipt of major permits material to the construction and operation of the Project, construction start-up, initial energization and commercial operation;
- (7) When commercial operation is achieved, the nameplate capacity, terms, and identity of a purchaser for any contracts then existing for utility sales, contingency plans (if any) detailing emergency response plans as required by state and/or local units of government, the interconnection transmission owner and/or MISO and the Project's certified (or accredited) dependable capacity rating; and
- (8) An update on all supply chain related challenges and/or delays.

C. Notices Associated with Repowering or Decommissioning. Petitioner must notify the Commission at least six months before repowering or decommissioning is expected, and again upon completion of repowering or decommissioning.

9. Additional Requirements. Petitioner must also notify the Commission if it modifies or suspends the Project under the terms of the GIA and does not reinstate work within three years following commencement of such suspension.

If the Commission determines Petitioner: (1) has failed to enter into an agreement pursuant to MISO generator interconnection procedures; (2) has suspended the Project 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 Project 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 must notify the Commission at least six months before repowering or decommissioning is expected and upon completion of repowering or decommissioning.

10. Conclusion. Consistent with Ind. Code § 8-1-2.5-5, the Commission finds that declining to exercise its jurisdiction, except as reserved above, over Petitioner in this Cause will facilitate the construction of the proposed Project and add generation capacity in Indiana. This should be beneficial for those public utilities that may indirectly have access to the power produced and to Indiana. The Commission further finds that declining to exercise jurisdiction over Petitioner, except as noted above, will promote energy utility efficiency. In addition, Petitioner has demonstrated that it has the technical, financial, and managerial capabilities to construct and operate the proposed Project. Petitioner has also shown the wholesale market for electricity in Indiana may benefit from the addition of the Project'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 Project within the timeframe provided under this Order; (2) is no longer diligently pursuing the commencement of construction of the Project; or (3) has not completed construction of the Project 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 status reports required by this Order, Petitioner must notify the Commission and the OUCC when construction begins and when commercial operation of the Project begins. Petitioner will satisfy the reporting requirements outlined above before commercial operation of the Project begins. Petitioner must also file with the Commission any Annual Report required to be filed with FERC and provide the Commission other information as requested from time to time.

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

1. Petitioner is a "public utility" within the meaning of Ind. Code §§ 8-1-2-1 and 8-1-8.5-1 and an "energy utility" within the meaning of Ind. Code § 8-1-2.5-2.
2. The Project is a "utility" within the meaning of Ind. Code § 8-1-2-1.
3. The Commission declines to exercise its full jurisdiction over Petitioner and its construction, operation, and financing of the Project, except as specifically stated within this Order.
4. Petitioner must not sell at retail in Indiana any of the electricity generated by the Project without further Order of the Commission. The gross revenues generated by sales for resale of the electricity generated by the Project are adjudged to be exempt from the public utility fee prescribed by Ind. Code ch. 8-1-6.
5. Petitioner may not exercise an Indiana public utility's rights, powers, and privileges of eminent domain and of exemption from local zoning, land use ordinances, and construction-related permits in the operation and construction of the Project.
6. Petitioner must comply fully with the terms of this Order and timely file with the Commission under this Cause all information required by the terms of this Order.
7. This Order is effective on and after the date of its approval.

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

APPROVED: JUN 30 2026

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

**Dana Kosco
Secretary of the Commission**