

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE VERIFIED PETITION OF BELLFLOWER SOLAR 1, LLC FOR ISSUANCE OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE BELLFLOWER SOLAR PROJECT AND CERTAIN DETERMINATIONS BY THE COMMISSION WITH RESPECT TO ITS JURISDICTION OVER PETITIONER’S ACTIVITIES AS A GENERATOR OF ELECTRIC POWER)))))))))))	CAUSE NO. <u>45485</u>
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VERIFIED PETITION

Bellflower Solar 1, LLC (“Petitioner”), by counsel, respectfully requests that the Indiana Utility Regulatory Commission (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 a proposed electric power generating facility, to be known as Bellflower Solar (the “Project”). The Project will be located in Rush and Henry Counties in Indiana. In support of this Petition, Petitioner states that:

1. Petitioner’s Legal Status. Petitioner is a limited liability company existing under the laws of the State of Delaware. Petitioner’s principal place of business is at 400 Montgomery Street, 8th Floor, San Francisco, CA 94104. Petitioner’s sole member is Lightsource Renewable Energy Development, LLC, a Delaware limited liability company and wholly owned subsidiary of Lightsource Renewable Energy US, LLC, a Delaware limited liability company (“Lightsource US”), each of which has its principal place of business at 400 Montgomery Street, 8th Floor, San Francisco, CA 94104. The ultimate parent of Lightsource US is Lightsource bp Renewable Energy Investments Limited, a company registered under the laws of the Countries of England and

Wales, a strategic joint venture between Lightsource Renewable Energy and global energy giant bp (formerly known as British Petroleum).

2. Bellflower Solar Project. Lightsource US's expertise includes the development, construction and operation of solar power electric generating facilities. Petitioner intends to construct, own and operate the Project, which is located entirely in unincorporated areas of Rush and Henry Counties in Indiana. From the Project's substation, the Project will be interconnected via line tap to Indiana Michigan Power Company d/b/a American Electric Power Company's 138 kilovolt ("kV") Madison to Tanners Creek transmission line, which runs within the Project boundary. The Project is anticipated to have a nameplate electric generation capacity of approximately 152.5 MW_{AC}. Petitioner's proposed activity qualifies it as a "public utility" under Ind. Code § 8-1-2-1(a)(2) and as an "energy utility" under § 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 Project under Ind. Code Ch. 8-1-8.5, the "Powerplant Construction Act" and (b) regulate, under Ind. Code Ch. 8-1-2, the "Public Service Commission Act," Petitioner's construction, ownership and operation of, and other activities in connection with, the Project.

4. Solar Park Certified as an Exempt Wholesale Generator. Petitioner intends to certify the Project as an Exempt Wholesale Generator ("EWG") as provided 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 Project into the wholesale market will be made to FERC.

5. Service Only to Wholesale Power Market. The Project 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, except as may be expressly approved by the Commission. 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 Project will be into the wholesale 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 Project will provide significant public benefits. Petitioner will not engage in the transmission of electric power, other than that which is incidental to the ownership and operation of the Project as an EWG.

6. Sale of Electricity from the Project. Petitioner will sell all the electricity generated by the Project for the first 15 years of the Project's life to Verizon Communications via a virtual purchased power agreement ("PPA").

7. Powerplant Construction Act. The Powerplant Construction Act was not intended to apply to the construction of a facility similar to the Project. 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, Oct. 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.

8. 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 Project 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 Project will increase the amount of electricity generated in the State of Indiana, particularly electricity generated from the sun, 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.

9. Statutory Authority. Petitioner believes that Ind. Code ch. 8-1-2 generally, and ch. 8-1-2.5 specifically, are applicable to this proceeding.

10. Counsel. Counsel for Petitioner who is authorized, on Petitioner's behalf, to receive papers filed in this Cause is set forth below:

Nikki G. Shoultz
Kristina K. Wheeler
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
Office: (317) 684-5152
Facsimile: (317) 223-0242
nshoultz@boselaw.com
kwheeler@boselaw.com

11. Prior Commission Orders. The Commission previously granted other electric generating facilities proposed by other solar developers relief that is similar to the relief the Petitioner seeks in this Cause. *See, e.g., In the Matter of the Petition by Riverstart Solar Park, LLC*, Cause No. 45336 (June 3, 2020); *In the Matter of the Petition by Lone Oak Solar Energy LLC*, Cause No. 45255 (Oct. 29, 2019); *In the Matter of the Petition by Fairbanks Solar Energy Center LLC*, Cause No. 45254 (Oct. 29, 2019); and *In the Matter of the Petition by Speedway Solar, LLC* Cause No. 45230 (Sept. 18, 2019).

The Project is similar to these other electric generating facilities in the sense that it will be a generator of electricity for sale in the wholesale power market, and it represents an increase in the amount of electricity generated in Indiana. Denying the requested relief would inhibit Petitioner from competing with other similarly situated entities facing fewer regulatory burdens. Ind. Code § 8-1-2.5-5(b)(4).

12. Procedural Schedule; Waiver of Prehearing Conference. Petitioner requests consideration of the requested relief on a schedule that will allow for an Order to be issued by the Commission on or before June 1, 2021, so that the Project will be constructed, interconnected, and eligible to participate in the PJM Interconnection 2024/25 Base Reserve Capacity Auction

on June 22, 2022. Petitioner has discussed this petition and its proposed project with the Indiana Office of the Utility Consumer Counselor ("OUCC"), and the parties have agreed to waive the prehearing conference in this Cause and to establish the procedural schedule set forth in Exhibit 1. 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 Exhibit 1 and fixing the date for the evidentiary hearing;
- b. Declare that the Commission declines to exercise jurisdiction consistent with other similarly situated wind and solar developers over Petitioner's construction, ownership and operation of, and other activities in connection with the Project; and
- c. Grant Petitioner an indeterminate permit to operate the Project; and
- d. Grant Petitioner all other just and proper relief as required in this proceeding.

Respectfully Submitted,



Kristina Kern Wheeler
Nikki Gray Shultz
Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204

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 and belief.



Kevin B. Smith

Exhibit 1

**SUBMISSION OF AGREED PROCEDURAL SCHEDULE
IN LIEU OF PRE-HEARING CONFERENCE**

The Petitioner, Bellflower Solar 1, LLC (“Bellflower Solar”) and the Indiana Office of the Utility Consumer Counselor (“OUCC”) (together, the “Parties”), by counsel, respectfully submit a proposed procedural schedule in this Cause. The Parties respectfully request the Commission approve the Agreed Procedural Schedule in lieu of conducting a pre-hearing conference.

Prior to filing, Bellflower Solar discussed the schedule with the OUCC. The OUCC has advised that it does not object to the dates shown in the agreed schedule below:

Bellflower Files Petition and Supporting Direct Testimony:	January 22, 2021
OUCC (and any Intervenors) File Testimony:	March 11, 2021
Bellflower Rebuttal/OUCC & Intervenor Cross-Answering:	March 25, 2021
IURC Evidentiary Hearing*:	Week of April 19, 2021
Requested Final Order Date:	Week of June 1, 2021

*(or another earliest available date on the Commission’s calendar)

Bellflower Solar and the OUCC have also agreed to the following in light of the continuing public health emergency due to the COVID-19 pandemic:

1. Bellflower Solar agrees to allow informal discussions/discovery between OUCC and Bellflower Solar staff;
2. Bellflower Solar will provide all data responses to the OUCC electronically if possible;
3. If requested by the OUCC and in order to accommodate remote working by OUCC technical staff, Bellflower Solar will electronically distribute all filings and data responses to specified OUCC technical staff.

Discovery should be conducted on an informal basis, with responses or objections due within ten (10) calendar days through the rebuttal/cross-answering date; thereafter, responses or objections shall be due within five (5) business days. Discovery requests received after 5:00 p.m.

EDT on Monday through Thursday or after 12:00 p.m. EDT on Fridays shall be deemed received the next business day. The Parties agree that all discovery requests and responses shall be served on all parties of record.

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing has been served upon the following counsel of record via electronic mail this 22nd day of January, 2021:

Jeffrey Reed
INDIANA OFFICE OF UTILITY CONSUMER
COUNSELOR
PNC Center, Suite 1500 South
115 West Washington Street
Indianapolis, IN 46024
jreed@oucc.in.gov
infomgt@oucc.in.gov



Kristina Kern Wheeler

Bose McKinney & Evans LLP
111 Monument Circle, Suite 2700
Indianapolis, IN 46204
(317) 684-5000
(317) 684-5173 Fax

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