

## VERIFIED DIRECT TESTIMONY OF RYAN J. BROWN

### INTRODUCTION

1   **Q1. Please state your name and business address.**

2   A. My name is Ryan J. Brown, and my business address is 129 E. Market Street,  
3   Suite 600, Indianapolis, Indiana 46204.

4   **Q2. By whom are you employed and in what capacity?**

5   A. I am employed by EDP Renewables North America LLC ("EDPR") as Executive  
6   Vice President, Eastern Region and Canada. I have been delegated responsibility  
7   for the development of the Rosewater Wind Farm (the "Project") by Rosewater  
8   Wind Farm LLC ("Petitioner"). I am responsible for EDPR's business in the  
9   eastern U.S., including the State of Indiana, and Canada. EDPR is a global leader  
10   in the renewable energy sector and the world's fourth-largest wind energy  
11   producer, with a presence in 12 countries. EDPR's business comprises the  
12   development, construction and operation of wind farms and solar plants to  
13   generate and deliver clean electricity.

14   **Q3. Please summarize your educational and professional background.**

15   A. I received my Bachelor's Degree in Economics from the University of Chicago in  
16   2001. I have 15 years of experience in the energy sector, including work at the  
17   Indiana Office of Energy Development from 2004-2008 and at EDPR since 2008  
18   in several roles, including Development Project Manager, Senior Development  
19   Project Manager, Director of Development-Canada, and my current position as  
20   Executive Vice-President since January 2015. I also have previous work

1 experience in corporate finance and education and volunteer work in Mexico and  
2 Ecuador.

3 **Q4. Have you previously testified before government bodies or agencies?**

4 A. Yes. I have recently provided testimony before the Indiana Utility Regulatory  
5 Commission in Cause No. 44998 and Cause No. 45010. I have also previously  
6 testified before the Maine Public Utility Commission in a 2015 docket pertaining  
7 to our wind and transmission developments in that state.

8 **Q5. What is the purpose of your direct testimony in this proceeding?**

9 A. The purpose of my direct testimony is to discuss the relief sought by Petitioner in  
10 this proceeding and to provide the Commission with information regarding the  
11 Petitioner and the Project.

12 **Q6. Please describe EDPR.**

13 A. EDPR is a Delaware limited liability company, and its ultimate parent company is  
14 Energias de Portugal, S.A. ("EDP"), a major Portuguese utility headquartered in  
15 Lisbon, Portugal. EDPR is a wholly-owned subsidiary of EDP Renováveis, S.A.  
16 ("EDP Renováveis"), a Spanish company and subsidiary of EDP. EDPR has over  
17 600 employees and is headquartered in Houston, Texas, with regional offices  
18 throughout the United States.

19 **Q7. What relief does Petitioner request of the Commission in this Cause?**

20 A. Petitioner is requesting that the Commission decline to exercise jurisdiction  
21 pursuant to Ind. Code § 8-1-2.5-5 over Petitioner's construction, ownership and  
22 operation of, and any other activity in connection with the Project, and determine

1       that the public interest will be served by the Commission's declining to exercise  
2       jurisdiction over Petitioner.

3

4

**PROJECT BACKGROUND**

5       **Q8. Please describe the Rosewater Wind Farm.**

6       A. The Rosewater Wind Farm is situated in White County, Indiana, and will have a  
7       total nameplate capacity of approximately 102 megawatts ("MW") of electricity.  
8       Electricity generated by the Project will be transmitted to the project substation in  
9       White County, which is adjacent to the point of interconnection in Northern  
10      Indiana Public Service Company's ("NIPSCO") Reynolds Substation in White  
11      County, Indiana. Major construction is set to commence by October 1, 2019.

12      **Q9. Is the Project similar to other electric generating plants for which the**  
13      **Commission has previously declined to exercise jurisdiction?**

14      A. Yes. The Commission has already declined to exercise jurisdiction over the  
15      construction, ownership and operation of the 6 phases of Meadow Lake Wind  
16      Farm also constructed by EDPR in White County, with the exception of  
17      specifically stated conditions set out in the Commission's declination of  
18      jurisdiction orders. *See In the Matter of the Petition by Meadow Lake Wind Farm,*  
19      *LLC*, Cause No. 43602 (Feb. 18, 2009); *In the Matter of the Petition by Meadow*  
20      *Lake Wind Farm II, LLC*, Cause No. 43678 (Aug. 19, 2009); *In the Matter of the*  
21      *Petition of Meadow Lake Wind Farm III, LLC*, Cause No. 43759 (Nov. 24, 2009);  
22      *In the Matter of the Petition of Meadow Lake Wind Farm IV, LLC*, Cause No.  
23      43758 (Nov. 24, 2009); *Joint Petition of Meadow Lake Wind Farm IV, LLC*,

1        *Meadow Lake Wind Farm V, LLC*, Cause No. 43876 (Sept. 15, 2010) and  
2        *Meadow Lake Wind Farm VI, LLC*, Cause No. 45010 (February 28, 2018) . The  
3        Commission further declined to exercise much of its jurisdiction over the project  
4        entity for another one of EDPR's Indiana wind farms, the Headwaters Wind  
5        Farm. *In the Matter of the Petition of Headwaters Wind Farm LLC*, Cause No.  
6        44358 (Sept. 19, 2013)

7        The Commission also issued orders declining much of its jurisdiction over electric  
8        generating facilities proposed by other wind farms. *See In the Matter of the*  
9        *Petition by Benton County Wind Farm, LLC*, Cause No. 43068 (Dec. 6, 2006); *In*  
10        *the Matter of the Petition by Fowler Ridge Wind Farm, LLC*, Cause No. 43338  
11        (Nov. 20, 2007) (and subsequent related Cause Nos. 43443 and 43444); *In the*  
12        *Matter of the Petition by Hoosier Wind Project, LLC*, Cause No. 43484 (Oct. 1,  
13        2008); *NextEra Energy Bluff Point, LLC*, Cause No. 44299 (April 3, 2013). This  
14        Commission has also in recent years issued several other orders declining much of  
15        its jurisdiction over electric generating facilities proposed by independent power  
16        producers. Typical of these other orders are those issued to *Tenaska Indiana*  
17        *Partners, L.P.* (IURC Cause No. 41823) and *Duke Energy Vermillion, LLC*  
18        (IURC Cause No. 41388). The proposed Project is similar to these electric  
19        generating facilities in the sense that it will be a generator of electricity for sale in  
20        the wholesale power market, and represents an increase in the amount of  
21        electricity generated in Indiana.

22    **Q10. Where will the Project be located?**

1 A. The Rosewater Wind Farm is located approximately 25 miles northwest of  
2 Reynolds, Indiana, and is spread out over approximately 12,000 acres in White  
3 County. A preliminary site map depicting the approximate turbine and facility  
4 locations for the Project is attached as Petitioner's Attachment RJB-1.

5 **Q11. How will the Project generate electricity?**

6 A. The Project will generate electricity using wind turbines mounted on steel towers.  
7 The wind turbine generator voltage of approximately 650V will be stepped up to  
8 34.5 kV by transformers located in the turbine nacelle or near each wind turbine.  
9 Electricity produced by the turbines will then be delivered to an electric substation  
10 via 34.5 kV power collection lines, which will be located substantially  
11 underground. The collection lines will feed into the Project substation. From the  
12 Project substation, the Project will be interconnected to the NIPSCO's Reynolds  
13 Substation through an approximately 1,000 foot long, 138 kV overhead  
14 transmission line owned by Petitioner. The proposed Project substation, the 138  
15 kV transmission line, the point of interconnection, and NIPSCO's Reynolds  
16 Substation are depicted on Attachment RJB-1.

17 **Q12. Have the component pieces to construct the Project been secured?**

18 A. Petitioner has secured some of the components, including all of the "safe harbor"  
19 components needed to qualify for the production tax credit. Orders for all  
20 component pieces will be made to facilitate completion of construction in late  
21 2020.

**PROJECT SITE**

**Q13. What information or exhibits have been collected to demonstrate the appropriateness of the site?**

A. Based upon our due diligence and permitting work to date, no environmental issues are foreseen that would delay or prevent the permitting and construction of the Project within the timeline listed herein. Also, EDPR's more than 10 years of experience successfully developing wind projects in the area as part of the Meadow Lake Wind Farm informs Petitioner's analysis.

Petitioner retained KTA Associates, Inc. ("KTA") to complete a Phase I Environmental Site Assessment in accordance with ASTM Standard E-1527-13. Petitioner anticipates that KTA will complete its work on or about February 4, 2019, and Petitioner will late-file the executive summary of KTA's report as Petitioner's Attachment RJB-2. Petitioner does not believe KTA's report will identify any known, existing on-site recognized environmental conditions that would require a formal cleanup under Federal or State regulatory programs or that would potentially have a negative impact on the feasibility of the development of the Project.

Petitioner also contracted with Ecology and Environment, Inc., to perform a Site Characterization Study. The Site Characterization Study reviewed land use and biological resources within the Project area and a 2-mile area immediately surrounding the Project. The executive summary of the Site Characterization Study is attached as Petitioner's Attachment RJB-3 (The study identifies the

1 Project as Meadow Lake VII, which was the original name of the Project before  
2 changing names to Rosewater Wind Farm to highlight changes such as a MISO  
3 connection for the Project as contrasted with PJM interconnection for the  
4 Meadow Lake Wind Farm). As noted in the Site Characterization Study, there are  
5 federal and state protected species that have the potential to occur within the  
6 Project area. In particular, the Indiana bat, the northern long-eared bat, and the  
7 bald eagle have the potential to occur in the area.

8 EDPR introduced this Project to U.S. Fish and Wildlife Service ("USFWS") and  
9 Indiana Department of Natural Resources ("IDNR") in 2017. Based on EDPR's  
10 experience in developing wind farms in Indiana and the wildlife studies required  
11 by USFWS and IDNR, Petitioner contracted with Western EcoSystems  
12 Technology, Inc. ("WEST") to conduct wildlife surveys. Wildlife surveys began  
13 in December 2016 with avian use surveys. The first year of avian use surveys was  
14 completed in November 2017, and a second year of avian use surveys began in  
15 March 2018. Bald eagles have been observed during surveys. Aerial-based raptor  
16 nest surveys were conducted in March 2018. No eagle nests were observed during  
17 surveys. Petitioner is currently evaluating the risk of impact to bald eagles and  
18 will coordinate with USFWS regarding whether an Eagle Take Permit is  
19 warranted.

20 WEST completed desktop risk assessments for three small mammal species:  
21 Franklin's ground squirrel (state endangered) and the plains pocket gopher and  
22 badger (species of concern), as well as various mussel species. Results of the  
23 assessments indicate low risk of impact to these species. Petitioner will discuss

1 the results with USFWS and IDNR to determine whether field studies are  
2 warranted based on the design of the Project. Additionally, USFWS and IDNR  
3 have expressed concern over the potential for wind energy projects in White  
4 County to impact American golden plovers, and WEST completed a risk  
5 assessment for that species as well. Results of the assessments indicate that risk of  
6 impact to the American golden plover is low.

7 WEST will conduct a targeted bat mist-netting study during summer 2019 to  
8 determine presence or probable absence of Indiana bats and northern long-eared  
9 bats within the Project area, following a study plan approved by USFWS.  
10 Petitioner will seek a Technical Assistance Letter from USFWS stating that the  
11 standard of insignificant or discountable take of the Indiana bat and northern long-  
12 eared bat will be met by the implementation of certain minimization measures and  
13 monitoring efforts by Petitioner in the Project area. EDPR's more than 10-year  
14 track record of wind development in the Project area without incident further  
15 demonstrates that these minimization and monitoring efforts are successful and  
16 effective. In addition, Petitioner will develop a Habitat Conservation Plan in order  
17 to obtain an Incidental Take Permit from USFWS. This permit will govern  
18 ongoing operation of the Project with respect to federally-listed bat species.

19 **Q14. Will the Project use water and will there be any impact on local water**  
20 **supplies?**

21 A. The Project will not use water in any significant quantities, and it will have  
22 negligible or no impact on local water supplies. Water will be used during  
23 construction, reconstruction and removal of Project facilities, primarily for dust



1 control and concrete mixing. After construction is completed, small quantities of  
2 water will also be used for the Project's operations and maintenance control  
3 building, which will most likely be drawn from local wells. Petitioner will obtain  
4 storm water permits as necessary.

5 **Q15. Will the Project have any substantial negative impact on any groundwater**  
6 **rights and obligations, or any streams or wetlands?**

7 A. No, the Project will not have any substantial negative impact on any groundwater  
8 rights, streams or wetlands.

9 **Q16. With regard to aesthetics and noise from the wind turbines in the Project,**  
10 **what impact will they have on nearby citizens?**

11 A. Petitioner expects the sound and aesthetic impacts to be comparable to those of  
12 other utility scale wind farms in the State of Indiana. However, wind turbine  
13 technology is constantly improving, resulting in turbines that are both quieter and  
14 more efficient than ever before, and the Project will utilize turbines from this  
15 latest generation of wind turbines that have been designed with both sound and  
16 aesthetic concerns in mind.

17

18 **PUBLIC UTILITY STATUS AND PERMITTING ISSUES**

19 **Q17. Will Petitioner qualify as a public utility under Indiana law?**

20 A. The Indiana legislature has defined "public utility" to include any entity that  
21 owns, operates, manages or controls any plant or equipment within the state for  
22 the production of electricity. As described above, Petitioner intends to develop,  
23 own, and operate an electric generating facility, so even though it does not intend

1 to sell electricity directly to retail customers, it may fall within this very broad  
2 definition of “public utility” under Indiana law. As a public utility, Petitioner  
3 would then also meet the definition of an “energy utility” for purposes of Ind.  
4 Code § 8-1-2.5-5. This Code section permits an energy utility electing to be  
5 subject to this section to request the Commission to decline to exercise its  
6 jurisdiction with respect to the energy utility, which prompted the Petition in this  
7 case.

8 **Q18. Has Petitioner applied for and obtained, or will Petitioner apply for and**  
9 **obtain, all necessary federal, state, and local permits needed for construction**  
10 **and operation of the Project?**

11 A. Yes.

12 **Q19. What local permits are required for the Project?**

13 A. County and municipal building, construction, grading, and wastewater permits are  
14 required, as they apply in White County.

15 **Q20. Please describe the requirements of the various zoning ordinances with**  
16 **respect to the Project facilities to be installed in White County.**

17 A. White County has specific project design, setback, and noise standards with  
18 which the Project will comply. Petitioner will execute a Road Use Agreement  
19 with White County. Petitioner anticipates that under the Road Use Agreement,  
20 White County will agree to a set of roads that will be utilized by the Petitioner,  
21 and Petitioner will be responsible to fund any road upgrades required to deliver  
22 the wind turbines and associated equipment. Petitioner also anticipates that under  
23 the Road Use Agreement the Petitioner will be responsible to either repair or pay

1 for repairs necessary due to Petitioner's use of the roads. Petitioner will also enter  
2 into an Economic Development Agreement with White County. Petitioner  
3 anticipates this agreement will be similar to other economic development  
4 agreements that EDPR project entities have entered into with White County for  
5 the development of the 5 phases of the Meadow Lake Wind Farm located in  
6 White County.

7 **Q21. Will the Project require an Improvement Location Permit?**

8 A. Yes, to be issued by White County prior to erection of each wind turbine and  
9 construction of Project facilities.

10 **Q22. Will the Project have a decommissioning plan?**

11 A. Yes. Petitioner will have its decommissioning plan approved in accordance with  
12 the White County zoning ordinance.

13 **Q23. What is the purpose of the decommissioning plan?**

14 A. The decommissioning plan provides assurance that the Project facilities are  
15 properly decommissioned at the end of the Project's useful life or upon facility  
16 abandonment. Each applicant must provide a cost estimate for demolition and  
17 removal of the Project facilities. To guard against the worst-case possibility that  
18 the Project will be unable to meet its obligation to dismantle the wind project, a  
19 decommissioning security will be established. The decommissioning security is  
20 intended primarily to cover the cost of removing project infrastructure, of  
21 restoring the leased premises to their original condition, and of removing the  
22 foundation pedestals to a depth of 48 inches. Detail regarding the type and amount

1 of the security and method of calculating it will be specified in the  
2 decommissioning plan.

3 **Q24. What State permits are required for the Project?**

4 A. State requirements for this Project include the following:

- 5 • An NPDES general permit is required under Title 327 of the Indiana  
6 Administrative Code for the discharge of construction-related storm water  
7 (“Rule 5 permit”). Petitioner will submit a written construction plan to the  
8 local county Soil and Water Conservation District office in White County.  
9 Once the plan is approved, the review has been waived, or the 28-day review  
10 period has passed, Petitioner will submit a Notice of Intent to the Indiana  
11 Department of Environmental Management (“IDEM”) at least 48 hours prior  
12 to starting land-disturbing activities. After IDEM determines that Petitioner's  
13 activity is covered by Rule 5, it will issue a notice of sufficiency to Petitioner,  
14 the Notice of Intent applicant.
- 15 • A determination by the Indiana Department of Transportation (“INDOT”) that  
16 the Project and its location will not present any Indiana-specific air navigation  
17 hazards. Under Indiana law, after INDOT makes or is deemed to have made a  
18 no-hazards finding, the Federal Aviation Administration’s (“FAA”) permits  
19 (as discussed later in my testimony) are deemed valid Indiana tall structure  
20 permits and no additional permits are issued or required to be issued by  
21 INDOT.

- 1       • Permits, as needed, from INDOT to allow Project electric lines and other  
2       facilities to cross state highways and for driveways, road exits, etc. Petitioner  
3       will apply for these permits as they become necessary.
- 4       • Isolated wetlands are regulated by the IDEM under the State Isolated  
5       Wetlands Law and development activities conducted within the floodway of  
6       any waterway of the State are regulated by the IDNR under the Flood Control  
7       Act and the Floodplain Management Rule. Petitioner has conducted micro-  
8       siting activities for turbines and associated access roads and infrastructure in  
9       an effort to avoid and minimize impacts to wetlands and surface water  
10      features with the Project area. The Project as designed does not require an  
11      isolated wetland permit from IDEM. The Petitioner intends to avoid  
12      construction activity within state regulated floodways. However, if  
13      construction within floodways cannot be avoided, Petitioner will obtain  
14      appropriate IDNR floodway permits, if necessary for the Project.

15   **Q25. What federal requirements apply to the Project?**

16   A.   Several federal requirements apply to the Project, and Petitioner will comply with  
17   all of them. The Project will comply with the following requirements:

- 18       • Petitioner will obtain Determinations of No Hazard to Air Navigation from  
19       the FAA for structures that exceed 200 feet in height, including all turbines in  
20       the Project site.
- 21       • Petitioner intends to self-certify as an exempt wholesale generator and apply  
22       for market-based rate authority under Federal Energy Regulatory Commission  
23       ("FERC") rules and regulations.

- 1       • Petitioner will prepare a federal spill prevention, control and countermeasure  
2       ("SPCC") plan for oil spill contingencies.
- 3       • Development activities that affect wetlands and other waters of the U.S. in the  
4       State of Indiana are regulated by the U.S. Army Corps of Engineers  
5       ("USACE"). A Water Quality Certification from IDEM is also required when  
6       applying for a federal permit. Petitioner has conducted micro-siting activities  
7       for turbines and associated access roads and infrastructure, in an effort to  
8       avoid and minimize impacts to wetlands and surface water features within the  
9       Project area. Based on the nature and extent of the anticipated impacts to  
10      wetlands or waters of the U.S., the Project is eligible for authorization under a  
11      USACE Nationwide Permit ("NWP"). The Section 401 Water Quality  
12      Certification from IDEM is pre-authorized under NWPs #12, 33 and 51.
- 13      • As described above, Project operations may impact two federally-listed  
14      species, the Indiana bat and northern long-eared bat. Petitioner will seek to  
15      secure a Technical Assistance Letter from the USFWS, and will develop a  
16      Habitat Conservation Plan in order to obtain an Incidental Take Permit from  
17      USFWS for the Project. Petitioner will also consult with USFWS or IDNR as  
18      applicable concerning the necessity of an Eagle Take Permit and any  
19      necessary or advisable permitting regarding the American golden plover,  
20      Franklin's ground squirrel, the plains pocket gopher and badger, and various  
21      mussel species.

**INTERCONNECTION**

**Q26. How will the Project interconnect with the wholesale electric transmission grid?**

A. The Project is expected to interconnect with NIPSCO's 138 kV transmission system at NIPSCO's Reynolds Substation in White County, Indiana. The Project's electrical system will consist of: (i) a 34.5 kV collection system, which will collect energy generated by each wind turbine at approximately 650 volts, then will increase voltage to 34.5 kV through step-up transformers located in the turbine nacelle or near each wind turbine, and deliver it via electric cables, which will be entirely underground, to (ii) a new 138 kV Project substation, where the collection system voltage of 34.5 kV will be increased to the transmission system voltage of 138 kV, for (iii) interconnection through the new, Petitioner-owned, 138 kV overhead transmission line with (iv) NIPSCO's Reynolds Substation and 138 kV transmission system.

**Q27. What studies have been done regarding the interconnection with NIPSCO?**

A. A feasibility study for the Project was completed on December 17, 2015, and is attached as Petitioner's Attachment RJB-4. NIPSCO's transmission system is part of the wholesale power grid controlled by Midcontinent Independent System Operator, Inc. ("MISO"). Petitioner's queue position with MISO is J513. A System Impact Study was completed by MISO for the Project in May 23, 2018. A copy of MISO's System Impact Study is attached as Petitioner's Attachment RJB-5. Finally, Petitioner, NIPSCO and MISO entered into a Large Generator

1 Interconnection Agreement ("LGIA") dated August 15, 2018. A copy of the  
2 LGIA is attached as Petitioner's Attachment RJB-6.

3 **Q28. Can the Project be interconnected without negatively impacting system**  
4 **performance?**

5 A. Yes. The Feasibility Study, the System Impact Study, and the LGIA indicate that  
6 the Project's interconnection with the NIPSCO transmission system will not  
7 negatively impact system performance.

8

9 **THE PROJECT WILL SERVE THE PUBLIC INTEREST**

10 **Q29. Is there a need for electricity generated by the Project?**

11 A. Yes. According its most recent Integrated Resource Plan, NIPSCO has actively  
12 engaged in the open source acquisition of renewable energy to add its generation  
13 portfolio and chose to partner with EDPR. Accordingly, NIPSCO will take all the  
14 electricity generated by the Project. The details of the structure under which  
15 NIPSCO will offtake the electricity is discussed later in my testimony.

16 **Q30. Will the development of additional generating capacity serve the public**  
17 **interest?**

18 A. Yes, the public interest will be served in a number of important respects by the  
19 addition of the electric generating capacity represented by the Project. First, the  
20 public needs electricity. Second, Petitioner's proposed wind farm represents one  
21 of the most environmentally friendly means of generating electricity. Wind  
22 energy helps reduce the negative effects of electricity generation on the  
23 environment by being a source of clean power. Wind farms do not release any



1 pollutants, such as SO<sub>2</sub> (which causes acid rain), NO<sub>x</sub> (which causes smog),  
2 mercury (which causes neurological damage in fetuses and children), or CO<sub>2</sub> (a  
3 greenhouse gas that contributes to global climate change). Third, the public in  
4 Indiana will benefit from the efficiencies which flow from proximity to the source  
5 of generation; that is, because of the high cost of transmitting power over long  
6 distances, it is generally advantageous for load not to be located too far from its  
7 source. Fourth, landowners in White County will receive economic benefits from  
8 the placement of wind farm facilities on their properties. Fifth, local taxing bodies  
9 will receive new tax revenues. Sixth, up to 300 construction jobs and 4 to 6 full-  
10 time operations and maintenance jobs will be created by the Project. Seventh,  
11 wind energy provides greater energy security. It will diversify Indiana's  
12 electricity generation portfolio, protecting against volatile price spikes and risks  
13 from relying too heavily on just a few sources of generation. The wind itself is a  
14 domestic source of fuel, harnessed in this case over Indiana lands, and not subject  
15 to the geopolitical complexities of foreign energy sources. The wind's renewable  
16 nature will help protect future generations from the risks of dwindling energy  
17 supplies.

18 **Q31. In past Commission orders declining, in part, jurisdiction over wind farms,**  
19 **petitioners have waived the right to use eminent domain and to be exempt from**  
20 **local zoning, but retained the right to use the public right-of-way, correct?**

21 A. Yes.

22 **Q32. Does Petitioner seek or need the power of eminent domain?**

23 A. No.

1 **Q33. Does Petitioner seek or need the power to be exempt from local zoning?**

2 A. No.

3 **Q34. Does Petitioner seek to retain the right to use public rights-of-way?**

4 A. Yes, in a limited manner. Petitioner seeks to retain the right to use the public  
5 right-of-way within the Project area. Retention of the use of the public right-of-  
6 way will allow Petitioner to place collector lines in the public right-of-way.  
7 Additionally, retention of this right will clarify issues surrounding use of the  
8 public right-of-way for road crossings. This is similar to the treatment given to  
9 other wind projects in Indiana.

10 **Q35. Is Petitioner asking this Commission to designate a service territory or**  
11 **establish electric rates?**

12 A. No. By limiting its activities to the generation of electricity for sale in the  
13 wholesale market, Petitioner will not have any retail customers, nor will its sales  
14 be constrained by geography to the extent technology and the presence of  
15 transmission capacity allow. To the extent wholesale rates are not determined by  
16 the marketplace, they are regulated by FERC, which preempts the jurisdiction of  
17 state regulatory bodies to regulate wholesale rates for electricity.

18 **Q36. To whom will Petitioner sell the electricity generated by the Project?**

19 A. As I noted above, NIPSCO will purchase all of the electrical output of the Project.  
20

21 **PROJECT TIMELINE AND CONSTRUCTION**

22 **Q37. What is the Project's planning timeline (after receiving all required**  
23 **regulatory approvals)?**

1 A. The Project is anticipated to achieve commercial operation by late 2020.

2 **Q38. Will Petitioner advise the Commission through notice of any change in the**  
3 **in-service date, which the Commission may use to refine its integrated**  
4 **resource planning for Indiana retail utilities?**

5 A. Yes.

6 **Q39. Does Petitioner have the ability to construct the Project?**

7 A. Yes.

8 **Q40. Who will have construction responsibility?**

9 A. Petitioner is responsible for the construction of the Project, and it will hire an  
10 experienced contractor to perform engineering, procurement, and construction  
11 activities.

12

13 **PROJECT OWNERSHIP AND OPERATION**

14 **Q41. Will Petitioner own the Project?**

15 A. Yes, Petitioner will own the Project. The proposed ownership structure for  
16 Petitioner and the timeline for the ownership of Petitioner is different than the  
17 typical wind project developed by EDPR, however. Initially, EDPR will own  
18 100% of the membership interests in Petitioner. Upon achieving commercial  
19 operation, again projected to be in late 2020, EDPR will transfer the membership  
20 interests in Petitioner to a joint venture entity (the "JV") owned by NIPSCO,  
21 EDPR and a tax equity partner. NIPSCO will be the managing member of the JV.  
22 This transfer will be made pursuant to a Build-Transfer Agreement between JV  
23 and EDPR (the "BTA"). Under the joint venture agreement, NIPSCO will buy out

EDPR's ownership interest in the JV in mid-2023. At that point, Petitioner will be owned exclusively by NIPSCO and the tax equity partner through the JV entity structure, and EDPR will no longer hold a director or indirect ownership interest in Petitioner. Petitioner anticipates that the terms and conditions upon which NIPSCO makes this investment and consummates the above-described transaction will be approved in a concurrent proceeding initiated by NIPSCO, wherein NIPSCO, among other things, explains the proposed transaction structure in greater detail. A flow chart depicting the proposed transfer of Petitioner to an affiliated interest of NIPSCO is attached as Petitioner's Attachment RJB-7.

Alternatively, if the Commission does not approve the BTA structure or if any other conditions precedent are not met, EDPR and NIPSCO have a backstop power purchase agreement ("PPA") wherein NIPSCO will purchase the entirety of the electrical output from the Project. Accordingly, whether the JV entity structure is approved or not, NIPSCO will offtake all of the electrical output from the Project.

**Q42. Don't prior Commission declination orders involving wind projects require notice to the Commission if a wind project becomes affiliated with an Indiana retail electric utility?**

A. Yes. Petitioner proposes to file a notice in this Cause within one (1) business day after the consummation of the transfer of Petitioner to the JV entity. Petitioner also requests that the order in this proceeding approve the transfer of Petitioner to an affiliated interest of NIPSCO to the extent deemed necessary. Petitioner understands that NIPSCO has initiated a concurrent proceeding, wherein NIPSCO

1 is requesting, among other relief, that the Commission approve the transfer of  
2 Petitioner to one of its affiliated interests. Petitioner requests that all conditions  
3 placed upon the transfer will be finalized in that concurrent proceeding.

4 **Q43. Has Petitioner's owner, EDPR, or any of its other affiliates constructed or**  
5 **operated other electric generating facilities?**

6 A. Yes. EDPR's experience includes developing, owning and operating 50 wind  
7 farms and solar parks generating more than 6,000 MW in nameplate capacity.  
8 These projects are spread across 14 states (including Meadow Lake Wind Farm  
9 Phases I through VI and Headwaters Wind Farm in Indiana), Canada and Mexico.  
10 EDPR is a global leader in the renewable energy sector and the world's fourth  
11 largest wind energy producer with a presence in 12 countries.

12 **Q44. Will Petitioner operate the Project in a commercially reasonable manner in**  
13 **accordance with good utility practice?**

14 A. Yes.

15 **Q45. Does Petitioner have the ability to finance the Project?**

16 A. Yes. Petitioner is a subsidiary of EDPR, which in turn is a wholly-owned  
17 subsidiary of EDP Renováveis. To demonstrate EDPR's financial strength and  
18 ability to finance the Project, EDP Renováveis' annual report for fiscal year 2017  
19 (the most recent report available) is attached as Petitioner's Attachment RJB-8  
20 and is also available online at: [http://annualreport.edprenovaveis.pt/2017/wp-](http://annualreport.edprenovaveis.pt/2017/wp-content/uploads/pdf/EDPR_EN17_WEB.pdf)  
21 [content/uploads/pdf/EDPR\\_EN17\\_WEB.pdf](http://annualreport.edprenovaveis.pt/2017/wp-content/uploads/pdf/EDPR_EN17_WEB.pdf)

1   **Q46. Will EDPR and EDP Renováveis provide to Petitioner all the necessary**  
2       **financial, technical and managerial expertise to construct and operate the**  
3       **Project while EDPR is involved with the Project?**

4   A.    Yes.

5   **Q47. What does Petitioner request with respect to any future transfer of its assets?**

6   A.    Petitioner requests that this Commission grant it treatment similar to that which  
7       the Commission has afforded in other declination of jurisdiction orders, i.e.,  
8       decline to require prior Commission approval of any transfers of ownership of  
9       Project assets or ownership interests in Petitioner involving: (1) the grant of a  
10      security interest, mortgage, deed of trust or other encumbrance to a bank or other  
11      lender or collateral agent, administrative agent or other security representative, or  
12      a trustee on behalf of bondholders in connection with any financing or refinancing  
13      (including any lease financing), or any investor, guarantor, equipment supplier or  
14      financing entity; (2) EDPR or Petitioner becoming a debtor in possession; or (3) a  
15      foreclosure (or deed in lieu of foreclosure) on the property owned by Petitioner.

16   **Q48. Will Petitioner inform the Commission and the OUCC if and when Petitioner**  
17       **becomes an affiliated interest of a regulated Indiana retail utility?**

18   A.    Yes. Petitioner proposes to file notices in this Cause within one (1) business day  
19       after: (a) the date on which EDPR transfers the membership interests in Petitioner  
20       to the JV; and (b) the date on which NIPSCO buys out EDPR's ownership  
21       interests in the JV.

1 **Q49. Will Petitioner establish and maintain a form of security to ensure that funds**  
2 **will be available in the event of abandonment, financial failure, and/or**  
3 **bankruptcy to return the Project site to its current condition?**

4 A. Yes. As noted above, Petitioner is required by the applicable county ordinance to  
5 provide a decommissioning plan for the Project. This decommissioning plan must  
6 include a contractor estimate for demolition and removal of the Project. A form of  
7 security for decommissioning will be established in the event of abandonment,  
8 financial failure and/or bankruptcy.

9  
10 **DECLINATION OF JURISDICTION**

11 **Q50. With regard to the requirements of Ind. Code § 8-1-2.5-5, do technological or**  
12 **operating conditions, competitive forces, or the extent of regulation by other**  
13 **state or federal regulatory bodies render the exercise, in whole or in part, of**  
14 **jurisdiction over Petitioner by the Commission unnecessary or wasteful?**

15 A. Yes. The requirements imposed by White County, the rules and regulations of the  
16 FERC, and other federal, state and local regulatory agencies adequately address  
17 the concerns the Commission should otherwise have and protect the public  
18 interest regarding the future operation and wholesale transactions involving the  
19 Project. Importantly, the Commission has oversight of the proposed transfer of  
20 Petitioner to an affiliated interest of NIPSCO, so the declination of jurisdiction  
21 maintains checks and balances on regulatory oversight of Petitioner. In addition,  
22 competitive forces in the wholesale power markets serve as an adequate check on  
23 these activities, particularly on the wholesale power price. Also, MISO is

1 responsible for the safe and reliable operation and planning, including generation  
2 interconnection planning, of the electric transmission systems under their  
3 functional control, which includes the NIPSCO transmission system to which the  
4 Project will interconnect. Further regulation of these matters by the Commission  
5 would be unnecessary and wasteful of the Commission's resources, and  
6 burdensome for Petitioner.

7 **Q51. Will the Commission's declining to exercise, in whole or in part, its**  
8 **jurisdiction be beneficial for Petitioner, Petitioner's customers or Indiana,**  
9 **and promote the efficiency of Petitioner?**

10 A. Yes. Petitioner would benefit from the ability to devote its efforts and resources to  
11 complying fully with the requirements of the federal, local, and other state  
12 regulatory agencies with jurisdiction over its operations, as well as the  
13 requirements of MISO, which would promote the efficiency of Petitioner's  
14 ongoing development and operation of the Project. Indiana will benefit from the  
15 generation of electric power from wind power generally, and this Project  
16 specifically. The exercise of Commission jurisdiction over Petitioner prior to its  
17 contemplated transfer to the JV entity would encumber Petitioner with duplicative  
18 requirements that are unnecessary in view of other regulatory requirements.  
19 Moreover, because the Commission maintains oversight over the proposed  
20 transfer to an affiliated interest of NIPSCO, the Commission can ensure the public  
21 interest is served by such transfer.



1 **Q52. Would the exercise of Commission jurisdiction inhibit Petitioner in**  
2 **competing with other providers of functionally similar energy services or**  
3 **equipment?**

4 A. Yes. Should the Commission not decline to exercise jurisdiction over Petitioner,  
5 the Commission will be placing Petitioner at a disadvantage with respect to other  
6 independent power producers over whom the Commission has declined to  
7 exercise jurisdiction. Such regulation would expose Petitioner to the risk of  
8 regulatory lag and hinder the quick implementation of business decisions in a  
9 highly competitive market, which would create a significant competitive  
10 disadvantage for Petitioner. In addition, the Commission's exercise of jurisdiction  
11 may compel Petitioner publicly to disclose proprietary information, to its  
12 disadvantage. Prior to the transfer of Petitioner to the JV entity, it is important for  
13 competitive purposes that Petitioner not be burdened with regulatory oversight  
14 that its competitors do not experience. Without a declination of jurisdiction order  
15 from the Commission, delays related the procurement of components parts and  
16 the Petitioner's ability to achieve milestones established the LGIA may also arise  
17 due to the regulatory uncertainty caused by an Indiana wind project not receiving  
18 a declination order.

19 **Q53. Does Petitioner agree to the same reporting requirements as have been**  
20 **imposed on other wind farms in Indiana?**

21 A. Yes. Petitioner agrees to the following reporting obligations, which have  
22 generally been imposed on other wind energy developers:

1           (i)     **Initial Report.** Petitioner agrees to file an initial quarterly report  
2                     within 30 days of the issuance of an Order in this proceeding that  
3                     will provide, to the extent such information is known and  
4                     available, the following:

5                     (1)     Project ownership and name(s) of the facility (the  
6                                 “Facility”);

7                     (2)     Name, title, address, and phone number(s) for primary  
8                                 contact person(s) for the Facility;

9                     (3)     Number and location of wind turbines deployed;

10                    (4)     Anticipated total output of Facility;

11                    (5)     Manufacturer, model number and operational  
12                                 characteristics of turbines;

13                    (6)     Connecting utility(s);

14                    (7)     Copy of any Interconnection System Impact Studies  
15                                 prepared by MISO;

16                    (8)     Expected in-service (commercial operation) date;

17                    (9)     An estimate of the engineering/construction timeline and  
18                                 critical milestones for the Facility;

19                    (10)    The status of the Large Generator Interconnection  
20                                 Agreement with MISO; and

21                    (11)    The information listed below in the **Subsequent Reports**  
22                                 section to the extent such information is available.

1           (ii)    **Subsequent Reports.** Petitioner agrees to file subsequent reports  
2                   within 30 days of the end of each calendar quarter until the quarter  
3                   that occurs after commercial operation is achieved and that  
4                   immediately precedes the Annual Report filing date of April 30<sup>th</sup>  
5                   of each year. Thereafter, Petitioner will file reports on or before  
6                   April 30<sup>th</sup> of each year in this Cause. The reports would include the  
7                   following:

8                   (1)    Any changes of the information provided in the Initial  
9                   Report;

10                  (2)    Any reports of Interconnection System Impact Studies not  
11                  previously submitted to the Commission;

12                  (3)    Copy of the Large Generator Interconnection Agreement as  
13                  filed with FERC;

14                  (4)    Notice of the establishment of an independent financial  
15                  instrument, including its form and amount;

16                  (5)    Achievement of construction milestones described in the  
17                  Large Generator Interconnection Agreement and such  
18                  events as the procurement of major equipment, the receipt  
19                  of major permits material to the construction and operation  
20                  of the Facility, construction start-up, initial energization  
21                  and commercial operation; and

22                  (6)    When commercial operation is achieved, the nameplate  
23                  existing for utility sales, contingency plans (if any)

1 detailing response plans to emergency conditions as  
2 required by state or local units of government, the  
3 interconnecting transmission owner and/or MISO, and the  
4 Facility's certified (or accredited) dependable capacity  
5 rating.

6 **Q54. Does Petitioner also agree to the additional requirements concerning**  
7 **material change in Project output or project modification or suspension**  
8 **under the terms of the LGIA?**

9 A. Yes. Petitioner agrees to the following additional requirements: In the event that  
10 Petitioner intends to materially increase or decrease or otherwise materially  
11 change the Project's capacity or operation, the owner must obtain the  
12 Commission's prior approval. Petitioner considers a material change to include an  
13 increase of greater than three (3) MW or a decrease of greater than twelve (12)  
14 MW in the Project's nameplate capacity; a change in operating entities; a transfer  
15 of assets; and changes identified in subsequent case law as constituting a material  
16 change. Petitioner will notify the Commission in the event that it modifies or  
17 suspends the Project under the terms of the LGIA and does not reinstitute work  
18 within three (3) years following commencement of such suspension. In the event  
19 of a proposed increase greater than 3MW, the Petitioner will provide the  
20 Commission with at least thirty (30) days' notice prior to the increase. If the  
21 Commission determines that the Petitioner has (a) failed to enter into an  
22 agreement pursuant to MISO's generator interconnection procedures; (b)  
23 suspended the project under the terms of the LGIA and has not reinstated work

1        within three (3) years following commencement of such suspension; or (c) has  
2        otherwise suspended its efforts to complete the Project within three (3) years of its  
3        Order, the Commission may, following notice to the Petitioner, proceed to issue  
4        an Order terminating the declination of jurisdiction set forth herein.

5        **Q55. Haven't prior Commission declination orders for wind projects included a 3**  
6        **MW materiality threshold for a decrease in nameplate capacity in contrast to**  
7        **the 12 MW threshold proposed for the Rosewater Project?**

8        A.     Yes, they have. In this case, however, while EDPR has made arrangements for all  
9        the "safe harbor" components for a nameplate capacity of approximately 102 MW  
10       for the Project, the federal production tax credit expires at the end of 2020.  
11       Petitioner projects a tight market for wind project components and despite  
12       securing contractual rights to components, some components might be difficult to  
13       physically obtain despite those contract rights. The end of the federal production  
14       tax credit juxtaposed with the requirement of the BTA to achieve commercial  
15       operation no later than December 31, 2020, requires Petitioner to seek a higher  
16       materiality threshold for a decrease in nameplate capacity. Adjusting the  
17       materiality threshold for a decrease in nameplate capacity to 12 MW will also  
18       accommodate EDPR's obligations under the BTA, which provide for delivery of  
19       the Project with a nameplate capacity of at least 90% of 102 MW for non-force  
20       majeure circumstances. If the nameplate capacity of the Project is decreased at all  
21       within the materiality thresholds, Petitioner will, of course, report that decrease  
22       pursuant to the reporting obligations agreed to above in my testimony.

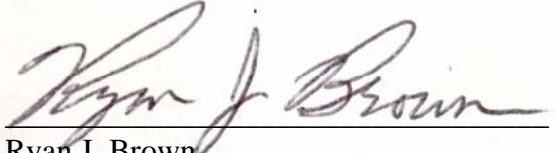
1           Accordingly, Petitioner requests the ability to decrease the nameplate capacity of  
2           the Project by up to 12 MW without impacting the materiality threshold.

3   **Q56. Does this conclude your direct testimony?**

4   A.     Yes, it does.

**VERIFICATION**

I hereby verify under the penalties of perjury that the foregoing representations are true to the best of my knowledge, information, and belief.



Ryan J. Brown

**LIST OF ATTACHMENTS**  
**FOR VERIFIED DIRECT TESTIMONY OF RYAN J. BROWN**

Attachment RJB-1	Preliminary Site Map
Attachment RJB-2	Executive Summary of Phase I Environmental Site Assessment
Attachment RJB-3	Site Characterization Study Executive Summary
Attachment RJB-4	Feasibility Study
Attachment RJB-5	System Impact Study
Attachment RJB-6	Large Generator Interconnection Agreement
Attachment RJB-7	Flow Chart Depicting Transfer of Petitioner to JV Entity
Attachment RJB-8	EDP Renováveis' 2017 Annual Report