

STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
INDIANA CROSSROADS WIND FARM LLC)
FOR CERTAIN DETERMINATIONS BY) CAUSE NO. 45320
THE COMMISSION WITH RESPECT TO)
ITS JURISDICTION OVER PETITIONER'S)
ACTIVITIES AS A GENERATOR OF)
ELECTRIC POWER)
VERIFIED PETITION

Indiana Crossroads Wind Farm 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 Indiana Crossroads Wind Farm (the “Project”), including a transmission line. The Project will be located in White County, Indiana. In support of this Petition, Petitioner states that:

1. Petitioner’s Legal Status. Petitioner is a limited liability company organized and existing under the laws of the State of Delaware. Petitioner’s principal place of business is at 808 Travis Street, Suite 700, Houston, Texas 77002. Petitioner is a subsidiary of EDP Renewables North America LLC (“EDPR”), which is a limited liability company existing under the laws of the State of Delaware with offices across the United States, including at 129 E. Market St., Indianapolis, IN 46204. EDPR’s expertise includes the development, construction and operation of wind power electric generating facilities. The ultimate parent corporation of Petitioner and EDPR is EDP - Energias de Portugal, S.A., the largest utility in Portugal.

2. Indiana Crossroads Wind Farm. Petitioner intends to construct, own and operate the Project, which is located entirely in unincorporated White County, Indiana. An overhead gen-tie line will transmit electrical energy from the Project substation located in White County to the point of interconnection at Northern Indiana Public Service Company's ("NIPSCO") Reynolds substation located in White County. The Project is anticipated to have a nameplate electric generation capacity of approximately 302 MW. 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. Wind Farm 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. Ownership of the Indiana Crossroads Wind Farm. The proposed ownership structure and timeline is different than the typical wind project developed by EDPR and substantially mirrors the ownership structure and timeline approved for Rosewater Wind Farm LLC in Cause No. 45197. Initially, EDPR will own 100% of the membership interests in Petitioner. Upon achieving commercial operation, again projected to be in late 2021, EDPR will transfer the membership interests in Petitioner to a joint venture entity (the “JV”) owned by NIPSCO, EDPR and a tax equity partner. NIPSCO will be the managing member of the JV. Then, NIPSCO will buy out EDPR’s ownership interest in the JV in mid-2023. At that point, Petitioner will be owned exclusively by the JV entity structure with NIPSCO and the tax equity partner being the only members. At that point, EDPR will no longer hold a direct or indirect ownership interest in Petitioner. This arrangement is to be considered in a concurrent docket initiated by NIPSCO. Alternatively, if the Commission does not approve the transfer to the JV (or if any other conditions precedent are not achieved), Petitioner will continue to be owned 100% by EDPR and sell all the electricity generated by the Project to NIPSCO pursuant to a backstop power purchase agreement.

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

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10. Prior Commission Orders. The Commission granted similar relief to that which Petitioner seeks in this Cause for the six Meadow Lake project entities in Cause Nos. 43602, 43678, 43758, 43759, 43876, and 45010 respectively, as well as EDPR's project entity for its other Indiana wind farms, the Headwaters Wind Farm in Cause Nos. 44358 (Phase I) and 45202 (Phase II), and the Rosewater Wind Farm in Cause No. 45197. This Commission has also previously granted multiple other wind farms relief which is similar to the relief Petitioner seeks in this Cause. *See, e.g., In the Matter of the Petition by Benton County Wind Farm, LLC*, Cause No. 43068 (Dec. 6, 2006); *In the*

Matter of the Petition by Fowler Ridge Wind Farm, LLC, Cause No. 43338 (Nov. 20, 2007) (and subsequent related Cause Nos. 43443 and 43444); *In the Matter of the Petition by Hoosier Wind Project, LLC*, Cause No. 43484 (Oct. 1, 2008). 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).

11. 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 February 12, 2020. Petitioner interfaced with the Indiana Office of the Utility Consumer Counselor to explain the project, and the parties have agreed to waive the prehearing conference in this Cause and to establish the procedural schedule set forth below:

Petitioner files case-in-chief:	November 15, 2019
OUC & Intervenor file testimony:	December 20, 2019
Petitioner files its rebuttal testimony:	December 24, 2019
Evidentiary Hearing:	One day during the week of January 6, 2020 (subject to the Commission's availability; one hour is estimated maximum hearing length)

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

WHEREFORE, Petitioner respectfully requests that the Commission:


a. Issue the Proposed Scheduling Order in this Cause establishing the procedural schedule set forth in Paragraph 11 above and fixing the date for the evidentiary hearing;

- b. Declare that the Commission declines to exercise jurisdiction consistent with other similarly situated wind 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 other just and proper relief as required in this proceeding.

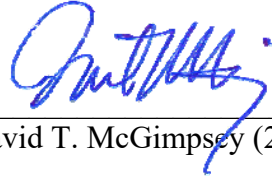
VERIFICATION

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.

Indiana Crossroads Wind Farm LLC

By: 
Ryan J. Brown
Executive Vice President, Eastern U.S. & Canada

Respectfully submitted,



David T. McGimpsey (21015-49)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by electronic service on the following this 15th day of November 2019.

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An attorney for Petitioner,
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