STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY
ROSEWATER WIND FARM LLC
FOR CERTAIN DETERMINATIONS BY
THE COMMISSION WITH RESPECT TO
ITS JURISDICTION OVER PETITIONER’S
ACTIVITIES AS A GENERATOR OF
ELECTRIC POWER

CAUSE NO. 45197

VERIFIED PETITION

Rosewater 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
Rosewater 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. **Rosewater 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 102 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 Rosewater Wind Farm.** The proposed ownership structure and timeline is different than the typical wind project developed by EDPR. Initially, EDPR will own 100% of the membership interests in Petitioner. Upon achieving commercial operation, again projected to be on or about October 31, 2020, 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 in this Cause are David T. McGimpsey of the law firm Bingham Greenebaum Doll LLP, 212 W. 6th Street, Jasper, Indiana 47546 and Justin C. Hage also of the law firm of Bingham Greenebaum Doll LLP, 2700 Market Tower, 10 West Market Street, Indianapolis, Indiana 46204, each of whom is authorized, on Petitioner’s behalf, to receive papers filed in this matter.

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 farm, the Headwaters Wind Farm in Cause No. 44358. 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 about May 29, 2019. Petitioner has met 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: February 1, 2019
- OUCC & Intervenors file testimony: March 15, 2019
- Petitioner files its rebuttal testimony: March 22, 2019
- Evidentiary Hearing: One day during the week of April 1, 2019 (subject to the Commission’s availability; one hour is estimated maximum hearing length)

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 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.

Rosewater Wind Farm LLC

By: [Signature]

Ryan J. Brown
Executive Vice President, Eastern U.S. & Canada
Respectfully submitted,

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Attorneys for Petitioner,
Rosewater Wind Farm LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served by electronic service on the following this 1st day of February 2019.

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An attorney for Petitioner,
Rosewater Wind Farm LLC
Exhibit 1

Petition of Rosewater Wind Farm LLC

[Indiana Utility Regulatory Commission Letterhead]

IN THE MATTER OF THE PETITION BY ROSEWATER WIND FARM LLC FOR CERTAIN DETERMINATIONS BY THE COMMISSION WITH RESPECT TO ITS JURISDICTION OVER PETITIONER’S ACTIVITIES AS A GENERATOR OF ELECTRIC POWER

You are hereby notified that on this date the Indiana Utility Regulatory Commission (the “Commission”) has caused the following entry to be made:

On February 1, 2019, Rosewater Wind Farm LLC (the “Petitioner”) filed its verified petition (the “Petition”) in the above captioned cause. Included in the Petition was a proposed procedural schedule agreed to by the Petitioner and the Indiana Office of the Utility Consumer Counselor (the “OUCC”).

The Presiding Officers, having reviewed the Petition, now establish the following procedural schedule in this matter:

1. **Petitioner’s Prefiling Date.** The Petitioner prefiled with the Commission its prepared testimony and exhibits constituting its case-in-chief on February 1, 2019. Copies of same were served upon all parties of record.

2. **OUCC’s and Intervenors’ Prefiling Date.** The OUCC and all Intervenors shall prefile with the Commission the prepared testimony and exhibits constituting their respective cases-in-chief on or before March 15, 2019. Copies of same shall be served upon all parties of record.

3. **Petitioner’s Rebuttal Prefiling.** The Petitioner shall prefile with the Commission its prepared rebuttal testimony on or before March 22, 2019. Copies of same shall be served upon all parties of record.

4. **Evidentiary Hearing on the Parties’ Cases-in-Chief.** An evidentiary hearing is scheduled to commence at __:__ a.m. on April __, 2019, in Room ____ of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. If the parties reach settlement, the agreement shall be submitted to the Commission ten business days prior to the Evidentiary Hearing.

5. **Sworn Testimony.** Any witness testimony to be offered into the record of this proceeding shall be made under oath or affirmation. In accordance with 170 IAC 1-1-18(h), if the prefiled testimony of a witness is to be offered into evidence at the Evidentiary Hearing, and the witness sponsoring the prefiled testimony is not required to, and does not, attend the Evidentiary Hearing, the prefiled testimony shall be accompanied by the witness’s sworn affidavit or written verification at the time.
the evidence is offered into the record.

6. **Discovery.** Discovery is available for all parties and shall be conducted on an informal basis. Any response or objection to a discovery request should be made within seven (7) calendar days of the receipt of such request.

7. **Prefiling of Work Papers.** When prefiling technical evidence with the Commission, each party shall file copies of the work papers used to produce that evidence within two business days after the prefiling of the technical evidence. Copies of same shall also be served on the other parties to this Cause.

8. **Number of Copies/Corrections.** Filings with the Commission shall comply with General Administrative Order 2016-2. Any corrections to prefiled testimony shall be made in writing as soon as possible after discovery of the need to make such corrections.

9. **Objections to Prefiled Testimony and Exhibits.** Any objections to the admissibility of prefiled testimony or exhibits shall be filed with the Commission and served on all parties of record no less than two (2) business days prior to the date scheduled for commencement of the hearing at which the testimony or exhibit will be offered into the record.

10. **Intervenors.** Any party permitted to become an Intervenor in this Cause should be bound by the record as it stands at the time its Petition to Intervene is granted, pursuant to 170 IAC 1-1.1-11.

**IT IS SO ORDERED.**

_________________________, Commissioner

_________________________, Administrative Law Judge

Date: ______________________________

Exhibit 1

Petition of Rosewater Wind Farm LLC