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FILED

JUN 28 2013

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY )
HEADWATERS 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. 44358

VERIFIED PETITION

Headwaters 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 wind power electric generating facility to be known as the Headwaters Wind Farm. The Headwaters Wind Farm will be located in Randolph County, Indiana. In support of this Verified Petition, Petitioner states that:

1. Petitioner's Legal Status. Petitioner is a limited liability company duly 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 NA"), a Delaware limited liability company. EDPR NA is ultimately controlled by Energias de Portugal, S.A., a major Portuguese utility. EDPR NA's expertise includes the development, construction and operation of wind power electric generating facilities in the United States.

2. Headwaters Wind Farm. Petitioner will construct, own and operate the Headwaters Wind Farm. The anticipated aggregate nameplate capacity of the Headwaters Wind Farm is 200 megawatts ("MW"). Transmission and switchyard facilities for the Headwaters

Wind Farm are planned to be situated in Randolph County. 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 Ind. Code § 8-1-2.5-2. Alternative utility regulation is therefore available to Petitioner subject to Commission approval.

3. Relief Requested. Petitioner request 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 Headwaters Wind Farm 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 Headwaters Wind Farm.

4. Wind Farm Certified as an Exempt Wholesale Generator. Petitioner intends to certify the Headwaters Wind Farm 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 Headwaters Wind Farm into the wholesale market will be made to FERC.

5. Service Only to Wholesale Power Market. The Headwaters Wind Farm 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. Petitioner will have no franchises, service territory or retail customers and will make no retail sale, in Indiana or elsewhere. All sales by Petitioner of electric energy produced by the Headwaters Wind Farm will be sold 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 Headwaters Wind Farm will provide significant public benefits. Petitioner will not be obligated to sell energy produced by the

Headwaters Wind Farm to any entity absent a contract to do so. Similarly, no public utility or other entity will be obligated to purchase energy produced by the Headwaters Wind Farm other than by mutual agreement. Petitioner will not engage in the transmission of electric power, other than that which is incidental to the ownership and operation of the Headwaters Wind Farm as an EWG.

6. Powerplant Construction Act. The Powerplant Construction Act was not intended to apply to the construction of a facility such as the Headwaters Wind Farm. 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. 4<sup>th</sup> 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 required here since Petitioner is not seeking authority to provide retail electric service in Indiana.

7. 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 Headwaters Wind Farm 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 Commission jurisdiction over such operation and rates unnecessary, potentially burdensome and wasteful of the Commission's time and resources. Market forces also will determine who will buy energy from Petitioner. In addition, the Headwaters Wind Farm 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.

8. 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 is David T. McGimpsey of the law firm of Rothgerber Johnson & Lyons LLP, One Tabor Center, Suite 3000, 1200 Seventeenth Street, Denver, Colorado 80202, (303) 623-9000, [dmcgimpsey@rothgerber.com](mailto:dmcgimpsey@rothgerber.com), who is authorized, on Petitioner's behalf, to receive papers filed in this matter.

9. Prior Commission Orders. This Commission has also previously granted multiple other wind farms relief which is similar to the relief Petitioner seeks in this Cause. *See 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); *In the Matter of Meadow Lake Wind Farm, LLC*, Cause No. 43602 (Feb. 18, 2009) (and subsequent related Cause Nos. 43678, 43758, 43759

and 43876); *NextEra Energy Bluff Point LLC*, Cause No. 44299 (April 3, 2013). Denying the requested relief would inhibit Petitioner from competing with other similarly-situated entities facing fewer regulatory burdens.

10. Procedural Schedule; Waiver of Prehearing Conference. Petitioner requests consideration of the requested relief on a schedule that will allow commencement of construction by December 31, 2013. Petitioner has conferred with the OUCC 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:	July 1, 2013
OUCC files its prefiled testimony:	July 23, 2013
Petitioner files its rebuttal testimony:	July 30, 2013
Evidentiary Hearing:	August 26 or August 30, 2013 (Subject to the Commission's availability; one hour is the 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 Attachment 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).

**[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]**

WHEREFORE, Petitioner respectfully requests that the Commission:

a. Issue the attached proposed Scheduling Order in this Cause establishing the procedural schedule and the evidentiary hearing date in accordance with Paragraph 10 above;

b. Declare that the Commission declines to exercise jurisdiction over Petitioner's construction, ownership and operation of, and other activities in connection with, the Headwaters Wind Farm in a manner consistent with that of other independent power producers similarly situated to Petitioner; and

c. Grant Petitioner an indeterminate permit to operate the Headwaters Wind Farm;  
and

d. Grant Petitioner other just and proper relief as required in this proceeding.

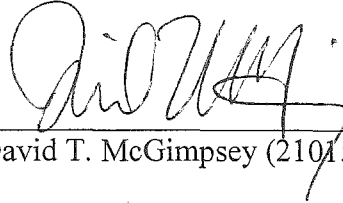
VERIFICATION

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, INFORMATION AND BELIEF.

By: Bill Whitlock

Bill Whitlock  
Executive Vice President, Eastern Region  
EDP Renewables North America LLC

Respectfully submitted,



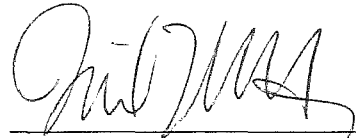
David T. McGimpsey (21015-49)

ROTHGERBER JOHNSON & LYONS LLP  
One Tabor Center, Suite 3000  
1200 Seventeenth St.  
Denver, Colorado 80202  
Tel: 303.623.9000  
Fax: 303.623.9222  
[dmcgimpsey@rothgerber.com](mailto:dmcgimpsey@rothgerber.com)

Attorney for Petitioner,  
Headwaters Wind Farm LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that electronic copies of the foregoing Verified Petition have been served on the Office of Utility Consumer Counselor by email to [infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov) and to [kkrohn@oucc.in.gov](mailto:kkrohn@oucc.in.gov), this 27<sup>th</sup> day of June, 2013.



An attorney for Petitioner,  
Headwaters Wind Farm LLC



ATTACHMENT 1

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY )  
HEADWATERS 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. \_\_\_\_\_

SCHEDULING ORDER

Approved:

Presiding Officers:

\_\_\_\_\_, Commissioner  
\_\_\_\_\_, Administrative Law Judge

Headwaters Wind Farm LLC ("Petitioner") filed its Verified Petition initiating this Cause on June 28, 2013. In its Verified Petition, Headwaters requested to waive a prehearing conference and set out a proposed procedural schedule and proposed form of Scheduling Order. Headwaters represented in its Verified Petition that the Office of Utility Commission Counsel (the "OUCC") concurs with the waiver of the prehearing conference and with the proposed schedule. The OUCC consented to the proposed schedule.

The Commission now enters the following findings and order, which should become a part of the record in this proceeding:

1. **Petitioner's Prefiling Date.** Headwaters prefiled its prepared testimony and exhibits constituting its case-in-chief on July 1, 2013. Copies of same were served upon the OUCC.
2. **OUCC and Intervenors' Prefiling Date.** The OUCC and any intervening parties should prefile with the Commission the prepared testimony and exhibits constituting their respective case-in-chief on or before July 23, 2013. Copies of same should be served upon all parties of record.
3. **Petitioner's Rebuttal Prefiling Date.** Headwaters should prefile with the Commission its prepared rebuttal testimony and exhibits on or before July 30, 2013. Copies of same should be served upon all parties of record.
4. **Evidentiary Hearing.** The case-in-chief of Headwaters, the OUCC and any intervening parties should be presented in an evidentiary hearing to commence at \_\_\_\_\_.m., on August \_\_, 2013, in Hearing Room \_\_, 101 West Washington Street, Indianapolis, Indiana. At

such time, the direct evidence of the respective parties should be presented and their respective witnesses examined. Thereafter, Petitioner should present its prefiled rebuttal evidence.

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 1-1.1-18(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 shall be made within ten (10) calendar days of the receipt of such request.

7. **Prefiling of Workpapers.** When prefiling technical evidence with the Commission, each party shall file copies of the workpapers used to produce that evidence within two (2) business days after the prefiling of the technical evidence. Copies of same shall also be served on the other parties to this Cause. When submitting workpapers to the Commission, two (2) copies of each document shall be filed with the Secretary of the Commission.

8. **Number of Copies/Corrections/Service.** With the exception of workpapers, the parties shall file with the Commission an original and five (5) copies of all prefiled testimony and exhibits. Any corrections to prefiled testimony shall be made in writing as soon as possible after discovery of the need to make such corrections. Although the Commission's rules require that original copies be one-sided, it is the Commission's preference that duplicate copies use both sides of the paper.

Parties may also elect to file documents with the Commission using the Commission's Electronic Filing System in lieu of filing paper documents. Pursuant to the terms and conditions of the Electronic Filing System, documents filed electronically are deemed filed the date they are submitted, subject to verification and acceptance by the Commission, and will receive an electronic file stamp. For filings greater than thirty (30) pages in length, a party shall file with the Commission an original and one (1) paper copy within two (2) business days of the electronic filing. When supplying such copies, the party must provide a copy of the email reflecting that the electronic filing was accepted by the Commission. Finally, the parties have consented to electronic service of documents filed in this Cause.

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 shall 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 THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The findings set forth above are made a part of the record in this Cause and shall be binding on all present and future parties of record during the proceedings in this Cause.
2. This Scheduling Order shall be effective on and after the date of its approval.

**AFTERHOLT, BENNETT, LANDIS, MAYS AND ZIEGNER CONCUR:**  
**APPROVED:**

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

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**Brenda Howe,**  
**Secretary to the Commission**