

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**IN THE MATTER OF THE PETITION BY )**  
**RIVERSTART SOLAR PARK LLC FOR )**  
**CERTAIN DETERMINATIONS BY THE )**  
**COMMISSION WITH RESPECT TO ITS )** CAUSE NO. 45336  
**JURISDICTION OVER PETITIONER'S )**  
**ACTIVITIES AS A GENERATOR OF )**  
**ELECTRIC POWER )**

**VERIFIED PETITION**

Riverstart Solar Park 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 Riverstart Solar Park (the “Project”). The Project will be located in Randolph 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 and solar power electric generating facilities. The ultimate parent corporation of Petitioner and EDPR is Energias de Portugal, S.A., the largest utility in Portugal.

2. Riverstart Solar Park. Petitioner intends to construct, own and operate the Project, which is located entirely in unincorporated Randolph County, Indiana. From the Project’s substation, the Project will be interconnected to American Electric Power’s (“AEP”) Losantville

substation via existing generator lead line running between the Headwaters Wind Farm and the Losantville Substation. The Project is anticipated to have a nameplate electric generation capacity of approximately 200 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. Solar Park Certified as an Exempt Wholesale Generator. Petitioner intends to certify the Project as an Exempt Wholesale Generator ("EWG") as provided in 18 C.F.R. § 366.7 of the Federal Energy Regulatory Commission's ("FERC") regulations. Requests for any authorizations required to sell the electrical output from the Project into the wholesale market will be made to FERC.

5. Service Only to Wholesale Power Market. The Project will exclusively serve the wholesale power market, and Petitioner does not intend to recover the costs of the facility from Indiana ratepayers through rate base, rate of return or comparable methods typically associated with retail public utility rates, except as may be expressly approved by the Commission. Petitioner will have no franchises, service territory or retail customers and will make no retail sales, in Indiana or elsewhere. All sales by Petitioner of electric energy produced by the Project will be into the wholesale market and not at retail. Petitioner will not otherwise dedicate or hold itself out to serve directly the electric needs of the general public; however, the Project will

provide significant public benefits. Petitioner will not engage in the transmission of electric power, other than that which is incidental to the ownership and operation of the Project as an EWG.

6. Ownership of the Riverstart Solar Park. Petitioner will continue to be owned 100% by EDPR and sell all the electricity generated by the Project to Hoosier Energy Rural Electric Cooperative, Inc.

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 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 requested by Petitioner or are required here.

8. Declination of Jurisdiction. In light of these facts and circumstances, Petitioner respectfully requests that the Commission decline to exercise any jurisdiction over Petitioner’s construction, ownership or operation of, or any other activity in connection with the Project

under Ind. Code § 8-1-2.5-5. The tests set out in that statute for the Commission to determine whether the public interest will be served by the Commission's declining to exercise jurisdiction over Petitioner are clearly met here. *See* Ind. Code § 8-1-2.5-5(b). Competitive forces in the wholesale power market and FERC's regulatory oversight of Petitioner's operation and wholesale electric rates render the exercise of jurisdiction over such operation and rates by the Commission unnecessary, burdensome and wasteful of the Commission's time and resources. Market forces also will determine who will buy energy from Petitioner. In addition, the Project will increase the amount of electricity generated in the State of Indiana, particularly electricity generated from the sun, a renewable, emission free and energy efficient resource not subject to the risk of fuel price increases or increased emission control costs. Thus, the Commission's encouragement of this type of facility by its declining to exercise jurisdiction over Petitioner will be beneficial to the State of Indiana.

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

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

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11. Prior Commission Orders. The Commission previously granted other electric generating facilities proposed by other solar developers relief that is similar to the relief the Petitioner seeks in this Cause. *See, e.g., In the Matter of the Petition by Lone Oak Solar Energy LLC*, Cause No. 45255 (Oct. 29, 2019); *In the Matter of the Petition by Fairbanks Solar Energy*

*Center LLC*, Cause No. 45254 (Oct. 29, 2019); *In the Matter of the Petition by Speedway Solar, LLC* Cause No. 45230 (Sept. 18, 2019).

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

12. Procedural Schedule; Waiver of Prehearing Conference. Petitioner requests consideration of the requested relief on a schedule that will allow for an Order to be issued by the Commission on or before May 25, 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:	January 27, 2020
OUC & Intervenors file testimony:	March 12, 2020
Petitioner files its rebuttal testimony:	March 26, 2020
Evidentiary Hearing:	April 9, 13, 14, or 15, 2020 (or another available date on the Commission's calendar; one hour is estimated maximum hearing length)

Additionally, Petitioner and the OUC & Intervenors 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 12 above and fixing the date for the evidentiary hearing;

b. Declare that the Commission declines to exercise jurisdiction consistent with other similarly situated wind and solar developers over Petitioner's construction, ownership and operation of, and other activities in connection with the Project; and

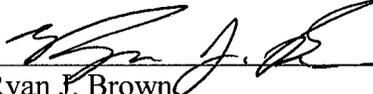
c. Grant Petitioner an indeterminate permit to operate the Project; and

d. Grant Petitioner 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.

Riverstart Solar Park LLC

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

Respectfully submitted,



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David T. McGimpsey (21015-49)

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Attorney for Petitioner,  
Riverstart Solar Park LLC

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing has been served by electronic service on the following this 27<sup>th</sup> day of January 2020.

T. Jason Haas, Esq.  
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An attorney for Petitioner,  
Riverstart Solar Park LLC

**Petition of Riverstart Solar Park LLC**

**Exhibit 1**

Proposed Scheduling Order

[Indiana Utility Regulatory Commission Letterhead]

IN THE MATTER OF THE PETITION BY )  
RIVERSTART SOLAR PARK LLC FOR CERTAIN )  
DETERMINATIONS BY THE COMMISSION WITH ) CAUSE NO. \_\_\_\_\_  
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 (“Commission”) has caused the following entry to be made:

On January 27, 2020, Riverstart Solar Park LLC (“Petitioner”) filed its Verified Petition in thi smatter, which included a proposed procedural schedule agreed to by the Petitioner and the Indiana Office of the Utility Consumer Counselor (“OUCC”). After reviewing the Verified Petition, the Presiding Officers now establish the following procedural schedule in lieu of a prehearing conference:

1. **Petitioner’s Prefiling Date.** Petitioner has prefiled with the Commission its prepared testimony and exhibits constituting its case-in-chief. 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 12, 2020. Copies of same shall be served upon all parties of record.

3. **Petitioner’s Rebuttal Prefiling.** Petitioner shall prefile with the Commission its prepared rebuttal testimony on or before March 26, 2020. Copies of same shall be served upon all parties of record.

4. **Evidentiary Hearing on the Parties’ Cases-In-Chief.** In the event this Cause is not settled, the cases-in-chief of the Petitioner, the OUCC, and any Intervenors shall be presented on April \_\_, 2020 at \_\_: \_\_ .m. in Room \_\_\_\_ of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At such time, the direct evidence of the respective parties shall be presented and their respective witnesses examined. Thereafter shall present its prefiled rebuttal evidence as well as any additional evidence rebutting evidence adduced on cross-examination of the OUCC’s or Intervenors’ witnesses. If the parties reach settlement, the agreement shall be submitted to the Commission ten business days prior to the evidentiary hearing.

5. **Hearing Exhibits.** Paper copies of exhibits to be offered at the evidentiary hearing must be: (a) single-sided; (b) fastened together with staples, binder clips, or other non-permanent bindings that have no more than three holes along the longest edge. Exhibits that contain excel spreadsheets, are oversized or voluminous in nature, should be run through an optical character recognition program and offered on a compact disc. Confidential exhibits shall be offered on green paper in an envelope marked “confidential”

or, if offered on a compact disc, the exhibits and compact disc shall be labeled "confidential."

6. **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.

7. **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 calendar days of the receipt of such request.

8. **Prefiling of Work Papers.** When prefiling technical evidence with the Commission, each party shall file copies of the workpapers used to produce that evidence within two business days after the prefiling of the technical evidence. Copies of same shall also be provided to any other party requesting such in writing. When submitting workpapers to the Commission, two copies of each document shall be filed with the Secretary of the Commission.

9. **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.

10. **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 as soon as an objection can be reasonably determined, but no less than ten days prior to the date scheduled for commencement of the hearing at which the testimony or exhibit will be offered into the record.

11. **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: \_\_\_\_\_