STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF LONE OAK SOLAR ENERGY LLC REQUESTING THE COMMISSION REASSERT JURISDICTION, IN PART, PURSUANT TO IND. CODE § 8-1-2.5-7 AND FIX REASONABLE CONDITIONS THE CONSTRUCTION AND OPERATION OF LONE OAK'S SOLAR FACILITY PURSUANT TO IND. CODE §§ 8-1-2-61, 8-1-2-69, 8-1-2 101, 8-1-2-101.2, 8-1-2-115, 36-7-2-8 AND RELATED STATUTES	)	**CAUSE NO. 45883**

LONE OAK SOLAR ENERGY LLC'S REPLY BRIEF AND NOTICE OF INTENT NOT TO FILE EXCEPTIONS

Lone Oak Solar Energy LLC ("Lone Oak" or "Petitioner"), by counsel, hereby submits its post-hearing reply brief in this proceeding. Given that Lone Oak's position is opposite that of Madison County ("County"), Petitioner elects not to file Exceptions to the County's Proposed Order and stands on its own Proposed Order.

Dated: October 11, 2023.

Respectfully submitted,

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I. Introduction.

An old adage among lawyers is, "If you have the facts on your side, pound the facts; if you have the law on your side, pound the law; if you have neither the facts nor the law, pound the table."[1] Madison County ("County") pounds the table loudly by making many conclusory statements in its post-hearing brief with little citation to the evidentiary record, statutes, or case law. This is because the facts and the law are not in the County's favor here. The sole issue in Phase I of this proceeding is whether it is in the public interest for the Commission to reassert jurisdiction over Lone Oak in accordance with Ind. Code § 8-1-2.5-7. Lone Oak cannot be "forum shopping" when it seeks relief from the IURC, because the Commission has primary subject matter jurisdiction over the issues in this case. As explained in more detail below, subject matter jurisdiction cannot be waived by any party.

The County sails past the issue here and fails to offer any evidence that reassertion of Commission jurisdiction is not in the public interest. Instead, the County wants to transform Phase I of this proceeding into the equivalent of a review of the County Board of Zoning Appeals' ("BZA") decision, without consideration of the state regulatory scheme, or the statutory provisions cited in Lone Oak's Petition. That is not why we are here, nor is it the appropriate standard of review or the intent of the legislature. The Commission is not constrained to consider only the BZA record, nor does it review the facts and law in this case on the same basis that a trial court would review a zoning decision. Ultimately, the evidence supports the reassertion of Commission jurisdiction because the state's interest in ensuring adequate utility service is paramount to local interests.

[1] https://quoteinvestigator.com/2010/07/04/legal-adage/

The County did not submit evidence beyond the BZA record because it has no evidence to rebut Lone Oak's substantive claims. The County does not understand how energy utilities are regulated, or that ". . . it is the policy of this state to promote and encourage the use of solar energy systems and to **remove obstacles to their use**." Ind. Code 36-7-2-8(c) (emphasis added). If it did, we would not be here.

The County has no explanation regarding why it is in the public interest, let alone legal, for the Commission to decline jurisdiction. The County merely wants to continue its regulation of solar utilities in violation of Ind. Code § 8-1-2-101.2 (prohibiting local regulation of electric facilities by fuel source) and § 36-7-2-8 (providing that local government may *not* adopt any ordinance which has the effect of prohibiting, or of unreasonably restricting solar energy systems). In the second case in a row, the County tries to divert the Commission's attention with red herring jurisdictional arguments and vague assertions about what is in the public interest. Local zoning and land use authorities cannot impose an unnecessary restriction on the landowner's lawful occupations and uses under the guise of protecting public interests, particularly when the IURC and the Federal Energy Regulatory Commission ("FERC") "occupy the field" on regulating utilities and protecting the public interest.

II. Circumstances Changed When the County Flip-Flopped on Its Support of the Project.

The County cited no legal authority for the proposition that Lone Oak has the "burden of demonstrating an evidence-based change in circumstances . . ." Br. at 4. The County is also wrong to say that "none of the circumstances relevant to who should hear Lone Oak's complaint have changed." Br. at 4. There are significant procedural and substantive postural differences between Lone Oak's first appeal when compared to this case. In the first appeal and at the time Lone Oak

requested declination of the Commission's jurisdiction, the County *joined forces* with Lone Oak in defending the Board of Zoning Appeals' ("BZA") decision to grant the Special Use permit and variances for the project. Pet. Redirect Ex. 5; and *Burton v. Bd. of Zoning Appeals of Madison Cty.*, 174 N.E.3d 202 (Ind. Ct. App. 2021).

Despite the County's claims that Lone Oak somehow should have come to the Commission earlier to challenge the County's authority, Lone Oak had no reason to do so when its application and variance requests were *approved* by the BZA in 2019. It makes no sense that Lone Oak would come to the Commission for relief in 2019, given the County's support and approval of the project. With the County's support, the appropriate venue for defending the 2019 BZA decision was the trial court. *Id*. at 210. Now that the County's support for the Lone Oak project has disappeared and it refuses to extend the commercial operation deadline, the proper venue is the Commission.

When the County unreasonably refused to alter the commercial operation deadline in June 2022, this action triggered the Commission's jurisdiction under Ind. Code § 8-1-2-101 ("Section 101") and related statutes. It is silly to for the County suggest that Lone Oak knew what the results of future County Commissioner elections and BZA appointments would be, or that County officials would switch positions, not to mention how the rise of the COVID pandemic and political issues surrounding solar panels would impact the project.

The change in Lone Oak's approach was directly caused the County flipping positions by refusing to grant an extension of its commercial operation date in the face of circumstances outside of Lone Oak's control. This forced Lone Oak to protect its legal interests, both by filing a trial court action, and filing its Petition in this Cause. As explained in more detail below, the County attorney agreed not once, but twice, to stay the pending trial court proceeding until these issues are resolved by the Commission. That is not forum shopping, it is proper use of the Commission, as

the quasi-judicial body with primary subject matter jurisdiction over the operation and service of public utilities in Indiana. Ind. Code § 8-1-2-101(a)(1).[2]

III. The County Did Not Object to Lone Oak's Representation to the Trial Court that the Commission is the Proper Forum.

The County implies that the trial court stay was only requested by Lone Oak. Br. at 4. In fact, the trial court case has been stayed not once but twice, *in consultation with and without objection by*, the County Attorney. In November 2022, Bose McKinney & Evans LLP ("BME") contacted County Attorney, Jeffrey Graham, regarding that agreed Motion to Stay the trial court proceeding.[3] Copies of the emails between BME and Mr. Graham dated November 11, 2022 and November 13, 2022 are attached hereto as Exhibit 1. Kroger, Gardis and Regas raised this same misleading argument before the Court of Appeals. Therefore, emails documenting the County Attorney's consent to the stay were also filed with the Court of Appeals and verified by Lone Oak's counsel. As reflected in those emails, BME referred to and forwarded a draft of what was titled an "Agreed Motion," and Mr. Graham indicated his consent ("Looks good, Alan") to the filing after his review. The Grant County Stay Motion also specifically references *Duke v. Avon*, and states that the "Commission has jurisdiction over certain ordinances pursuant to Ind. Code 8-1-2-101." *Duke Energy Ind., LLC v. Town of Avon, Ind.*, 82 N.E.3d 319, 321-324 (Ind. Ct. App. 2017).

The County's jurisdictional argument is nothing more than another attempt to use procedural arguments to further delay the remedy Lone Oak seeks, in the hopes that it will kill the project. If the County believed the "Agreed Motion" to stay the trial court proceeding was

[2] Indiana Code § 8-1-2-101(a)(1) states that ". . . the commission **shall** set a hearing, as provided in sections 54 to 67 of this chapter, and if it shall find such ordinance or other determination to be unreasonable, such ordinance or other determination shall be void." (emphasis added).

[3] Grant County Circuit Court Case No. 27C01-2207-PL-000052.

inappropriate, it had *the opportunity and the obligation* to file a pleading to correct the record, state its position in opposition to the stay, and argue that the trial court is the proper place for Lone Oak's relief. Instead, after the Indiana Court of Appeals dismissed Lone Oak's first appeal[4] *without* prejudice,[5] Mr. Graham agreed to continue the Stay of the trial court proceeding a *second time* in July 2023, in an Agreed Motion that again cited *Town of Avon*, *supra*. The trial court agreed to continue the stay *on the same day the request was filed*. This second round of Court of Appeals filings are attached as Exhibit B.

IV. Lone Oak is Not Forum Shopping -- The Commission's Jurisdiction Here is Both Applicable and Mandatory, and Cannot be Waived by Lone Oak.

It is nonsensical for the County to suggest that the Commission has the expertise to determine the extent of its declination of jurisdiction and subject a utility to local zoning authority, but it lacks the expertise to determine whether it should reverse those decisions. It is similarly incorrect for the County to argue that reassertion of Commission jurisdiction is forum shopping. Utilities do not forum shop—they do not have to—*because the Commission is their forum*. It is also the Commission that is familiar with the substantive details and complex issues surrounding solar project development, as well as the regulatory issues that are created when a utility is held to conflicting commercial operation deadlines by local, state and federal authorities. Pet. Ex. 1 (Hill Direct) at pp. 18-19.

This case is not about "forum shopping"—it is about what body has proper subject matter jurisdiction over the issues in this case. "Subject matter jurisdiction is defined as the power to hear and determine cases of the general class to which any particular proceeding belongs." *Edwards v.*

[4] *Lone Oak Solar Energy LLC v. Ind. Util. Reg. Comm'n, et al.*, Court of Appeals Case No. 23A-EX-00881.

[5] Docketed as IURC Cause No. Cause No. 45793.

Edwards, 80 N.E.3d 939, 943 (Ind. Ct. App. 2017). The County is incorrect that the trial court has the authority to award its relief. Br. at 14. "A tribunal receives subject matter jurisdiction over a class of cases only from the constitution or from statutes." *Santiago v. Kilmer*, 605 N.E.2d 237, 240 (Ind. Ct. App. 1992). Indiana Code §§ 8-1-2-101(a)(1) and 8-1-2-115 ("Section 115") unambiguously establish *exclusive* jurisdiction in the IURC and that it is the Commission's duty to enforce all laws relating to public utilities. *Duke*, 82 N.E.3d at 325. Moreover, the Commission's jurisdiction cannot be waived by Lone Oak or the County. "A party can never waive the issue of subject matter jurisdiction. *Id*., *see also*, *Georgetown Bd. of Zoning Appeals v. Keele*, 743 N.E.2d 301, 303 (Ind. Ct. App. 2001).

Lone Oak addressed in detail in its initial brief how Indiana Courts have spoken on the Commission's primary subject matter jurisdiction under Sections 101 and 115. *Austin Lakes Joint Venture v. Avon Utils.*, 648 N.E.2d 641 (Ind. 1995); *Town of Avon*, 82 N.E.3d at 325. Rather than addressing that caselaw, the County claims that Lone Oak has not shown that the Commission has expertise superior to the trial court when it comes to public utilities and the issues in this case. Br. at 18-19. That is a ridiculous argument. Indiana courts have said that the Commission was created primarily as a "fact-finding body with the **technical expertise** to administer the regulatory scheme devised by the legislature." *U.S. Gypsum, Inc. v. Ind. Gas Co.*, 735 N.E.2d 790, 795 (Ind. 2000) (emphasis added) (quoting *United Rural Elec. Membership Corp. v. Ind. & Mich. Elec. Co.*, 549 N.E.2d 1019, 1021 (Ind. 1990)). The Commission's authority also "includes implicit powers necessary to effectuate the statutory regulatory scheme" within the powers conferred to it by statute. *Id*. (quoting *OUCC v. Pub. Serv. Co.*, 608 N.E.2d 1362, 1363-64 (Ind. 1993)).

V. Lone Oak Has Not Waived Its Arguments, the Issue of the BZA's Refusal to Extend the Commercial Operation Date is Before the Commission for the First Time.

The County argues that Lone Oak did not raise any concerns or objections about Condition No. 18/19 or the project completion deadline. Br. at 7. *First*, this is not true, because Lone Oak knew in 2019 that the County Ordinance's three-year commercial operation deadline could not be met by 2022, and sought a variance to extend that requirement to the end of 2023. Br. at 7; Pet. Ex. 1 (Kaplan Direct at p. 9); and Ex. 12 to Amended Complaint in 2019 BZA Findings, at p. 8 (Att. MRK-1). *Second*, Lone Oak could not have known at the time it received the IURC's final declination order that litigation would ensue for two years, or that the global pandemic would produce far-reaching economic, labor, and supply chain impacts to the Project. It also could not have known that its reasonable request to extend the commercial operations deadline would not be approved by the BZA in 2022.

Without citation to any legal authority, the County claims that Lone Oak waived its right to be exempt from local zoning. Br. at 8. Lone Oak has waived nothing. The concept of legal waiver involves an "intentional relinquishment or abandonment of a known right." *United States v. Olano*, 507 U.S. 725, 733 (1993). Waiver also "presupposes that a litigant's arguments have been raised and considered in the trial court." Here, the Commission *is* the equivalent of the trial court. The Spencer-Shively Act,[6] which established the Commission, ". . . clearly provides that the commission is a quasi-judicial body." *State ex rel. Evansville City Coach Lines, Inc. v. Rawlings*, 99 N.E.2d 597, 605 (1951) (internal citations omitted). Moreover, IURC decisions are appealable directly to the Indiana Court of Appeals, not a trial court. Ind. Code § 8-1-3-1.

[6] The Spencer-Shivley Act is codified at Indiana Code ch. 8-1-2.

Therefore, proper judicial review of these issues occurs at the appellate level. Only after Lone Oak has exhausted its administrative remedies fully via Indiana Code § 8-1-3-1 would a trial court proceeding be appropriate, if there is any remaining relief that the Commission cannot provide.

This is the same procedure the courts deemed proper in *Duke v. Avon*. *Town of Avon*, 82 N.E.3d 321-324. When the Commission dismissed Duke Energy's Section 101 complaint based on the parallel case between the parties in a Hendricks County court, the Indiana Court of Appeals properly reversed the dismissal and remanded this Cause to the Commission for further proceedings. *Town of Avon,* 82 N.E.3d at 325. After subsequent evidentiary hearing, the Commission held that the Town's ordinance was unreasonable and void. *In the Matter of the Complaint of Duke Energy Indiana, LLC Against the Town of Avon, Indiana*, Cause No. 44825 2016 WL 5704934 (Indiana U.R.C., Jan. 23, 2019). However, the Commission noted that it lacked authority to order Avon, or any other state actor, to reimburse Duke for its pole relocation expenses; nor did it have jurisdiction to declare that Duke is not entitled to reimbursement. *Id*. at 14. This is why Lone Oak is keeping the avenue for trial court relief open, in the event there is any remaining relief that the Commission cannot provide.

A. The Town of Avon Case Applies Because Duke is Not a "Fully Regulated Utility" as the County Claims.

The County attempts to distinguish the *Avon* case by maintaining that it does not apply to Lone Oak because Duke Energy Indiana ("Duke") is a "fully regulated utility". Br. at 20. This is incorrect for three reasons: (1) there is nothing in the *Duke* case to indicate that its holding applies differently to other types of utilities, (2) the *Duke* court did not even mention Indiana Code ch. 8-1-2.5 (the "Alternative Regulatory Statute"); and (3) Duke itself is, in fact, a partially deregulated utility. Nearly every electric utility under Commission jurisdiction has sought relief under the

Alternative Regulatory Statute in one form or another. This has no impact on the application of those statutes in Title 8 that give the Commission continuing subject matter jurisdiction.

Duke received Commission approval under the Alternative Regulatory Statute (among others) of its 20-year Purchased Power Agreement ("PPA") with the Benton County Wind Farm.[7] Duke also has several other approvals under the Alternative Regulatory Statute for its Residential Prepaid Pilot Program[8]; its Solar Services Program Tariff[9]; its Premier Power Standard Contract Rider[10]; and many other programs over the years. When the City of Carmel filed a complaint in Cause No. 45482 to enforce its local ordinance, no one claimed that the Commission did not have jurisdiction to hear the case under Ind. Code § 8-1-2-101 and other provisions of Title 8, or that the Commission needed to reassert its jurisdiction over Duke, simply because Duke has alternative regulatory treatments in place.

Certainly, Duke is eligible for the Commission to approve an alternative regulatory plan ("ARP") for its retail services under Indiana Code § 8-1-2.5-6, and Lone Oak is not, because Lone Oak has no retail customers. However, both Duke and Lone Oak (and all other energy utilities), must meet the same requirements of Indiana Code § 8-1-2.5-5 at issue here, whether there is an ARP or another form of alternative regulatory treatment in place. For example, when recently

[7] *In Re PSI Energy, Inc.*, No. 43097, 2006 WL 4400581, IURC Cause No. 43097 (Dec. 6, 2006).

[8] *Verified Petition of Duke Energy Indiana, LLC Requesting the Indiana Util. Regul. Comm'n to Decline Its Jurisdiction over, or Otherwise Approve an Alternative Regul. Plan for the Offering of a Prepaid Advantage Pilot Program Applicable to Residential Customers Pursuant to Ind. Code §§ 8-1-2.5-5 & 8-1-2.5-6*, IURC Cause No. 45193, 2019 WL 4541162 (Sept. 11, 2019).

[9] *Petition of Duke Energy Indiana, LLC for Approval of a Solar Services Program Tariff, Rider No. 26, and Approval of Alternative Regulatory Plan ("ARP") and Declination of Jurisdiction to the Extent Required Under Ind. Code 8-1-2.5-1, et seq.*, IURC Cause No. 45145 (June 5, 2019) [Copy of Final Order not found on Westlaw].

[10] *Verified Petition of Duke Energy Indiana, Inc. for Approval of a Premier Power Serv. Standard Cont. Rider No. 25 & Approval of Alternative Regul. Plan (ARP) & Declination of Jurisdiction to the Extent Required Pursuant to Ind. Code § 8-1-2.5-1, et seq.*, IURC Cause No. 45089, 2018 WL 5924598 (Nov. 7, 2018).

approving Duke's ARP for its low-income reduced deposit, deferred payment plan, and voluntary opt-in roundup program, the Commission recently noted that:

> ". . . the Commission's focus centers upon whether the Plan will serve the public interest. Under Ind. Code § 8-1-2.5-5(b), the Commission, in determining whether the public interest will be served, must consider:
>
> > (1) Whether technological or operating conditions, competitive forces, or the extent of regulation by other state or federal regulatory bodies render the exercise, in whole or in part, of jurisdiction by the commission unnecessary or wasteful.
> >
> > (2) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will be beneficial for the energy utility, the energy utility's customers, or the state.
> >
> > (3) Whether the commission's declining to exercise, in whole or in part, its jurisdiction will promote energy utility efficiency.
> >
> > (4) Whether the exercise of commission jurisdiction inhibits an energy utility from competing with other providers of functionally similar energy services or equipment.

Verified Petition of Duke Energy Indiana, LLC, Indiana U.R.C. Cause No. 45775, 2023 WL 2016996, at *8 (Feb. 8, 2023). Duke is an energy utility that benefits from alternative regulatory treatment granted under the same public interest analysis that Lone Oak does.

A **Investor-Owned Utilities ("IOUs") Are Not Granted Any More Rights Under the Alternative Regulatory Statute to Seek Relief at the Commission Under Section 101 than Independent Power Producers ("IPPs") Have.**

The Commission's past orders holding IPPs to local zoning standards do not create a legal precedent, and have never been affirmed by Indiana courts on appellate review. The County's argument that IOUs are "fully regulated" ignores the fact that the Commission has allowed an IOU to retain eminent domain authority, even when granting its request for declination of jurisdiction under the Alternative Regulatory Statute. For example, in 1998, Indianapolis Power and Light

Company ("IPL", now "AES Indiana"), requested that the Commission decline to exercise its jurisdiction over IPL's construction and operation of up to 200 MW of new combustion turbines. *Indianapolis Power and Light Co.*, Cause No. 41337, 1999 WL 397494 (April 7, 1999). IPL argued that the Certificate of Public Convenience and Necessity statute (Ind. Code ch. 8-1-8.5) was not particularly well suited to construction of CTs, and the exercise of such jurisdiction by the Commission was unnecessary and possibly wasteful. The Commission granted IPL's declination request under the Alternative Regulation Statute (Ind. Code ch. 8-1-2.5), an no CPCN was issued. However, the Commission made no mention of local zoning or eminent domain, presumably because IPL did not need to ask for eminent domain authority which it has always had by virtue of being a public utility.

Lone Oak and other IPPs should not be treated differently when they are also indirectly serving the public as utilities and requesting the same declination of jurisdiction over the construction of a generation project that IPL did. It is arbitrary policy that a renewable generation project built by a utility serving at retail does not have to meet local zoning requirements, but an IPP building an identical project in the same location that obtained the same alternative regulatory relief from the Commission could be barred by local zoning from developing the project at all.

VI. Alternative Regulatory Treatment is a Tool, Not a Punishment.

Only a utility can trigger the Commission's alternative regulatory treatment, and that choice should not be used as a punishment against the utility. Ind. Code § 8-1-2.5-4 ("Section 5 or 6, or both, of this chapter do not apply to an energy utility unless the energy utility voluntarily submits a verified petition to the commission stating the energy utility's election to become subject to such section or sections.") That statute recognizes the competitive nature of the wholesale energy market, and the fact that absent captive retail customers, there may not be a need to traditionally

regulate the service offerings and rates of a public utility. While as explained in detail in its initial brief, Lone Oak believes the County's entire solar ordinance is void *ab initio*, it sought relief under Sections 101 and related statutes, as is its right under the law. Full reassertion of Commission jurisdiction would be an overstep, and wholly unnecessary to provide the relief that Lone Oak seeks in this case.

A. The Commission Sent Clear Signals That It Will Not Grant Requests for Eminent Domain Authority in Declination of Jurisdiction Cases.

No IPP has been successful in obtaining Commission approval of eminent domain authority for the construction of a generation project.[11] The Commission sent clear signals that it does not intend to grant eminent domain authority for IPP generation projects, even when the IPP explains why it believes such authority is needed. For example, in Cause No. 44246, while St. Joseph Energy Center ("SJEC") originally indicated that it would not seek to exercise the power of eminent domain, it reconsidered that position. Instead, SJEC requested approval of eminent domain authority for the limited purpose of constructing twelve (12) miles of transmission line for its generation project. SJEC explained that while it intended to work with landowners in good faith, opposition by a few landowners could significantly interfere with the construction of these transmission facilities. Therefore, SJEC argued that that it may be necessary to resort to a judicial proceeding to agree on fair terms for use of property required to construct the transmission facilities. SJEC also agreed to request the initiation of a subdocket of its declination proceeding explaining its need to exercise such eminent domain authority (a process that no other public utility needed).

[11] Lone Oak will not repeat here the arguments in its initial post-hearing brief explaining why it is unnecessary for the Parties to argue why the Commission should "reassert" jurisdiction it already has under Section 101 and related statutes, or can exert itself *sua sponte* under the Alternative Regulatory Statutes.

The IURC declined to grant SJEC eminent domain authority, stating that the project had "no specific and sufficiently identifiable need" at the time, and if such need arose, SJEC could request the initiation of a subdocketed proceeding to explain its specific eminent domain needs at that time. The Commission explained:

> . . . with regard to the grant of authority to exercise eminent domain, we decline to grant such authority at this time. Contrary to the OUCC's assertion, the Commission has not previously granted eminent domain authority to public utilities that the Commission has declined to exercise its jurisdiction over pursuant to Ind. Code § 8-1-2.5-5. "The power of eminent domain has been characterized as a very high and dangerous one...." *Kinney v. Citizens' Water & Light Co.*, 90 N.E.129 (Ind. 1909).[12] Although the legislature has seen fit to grant public utilities the power of eminent domain, they have also seen fit to grant the Commission the authority to determine whether public convenience and necessity requires, or will require, construction of new electric facilities, as well as the authority to address the manner and method of a utility's provision of service. See, *Town of Schererville v. Northern Ind. Public Serv. Co.*, 463 N.E.2d 1134 (Ind. App. 1984). Consequently, the Commission should exercise caution in declining its jurisdiction when a public utility seeks to retain eminent domain authority.

St. Joseph Energy Center, LLC, Cause No. 44246, 2013 WL 653039 (Indiana U.R.C., February 13, 2013). *14-16. The Commission allowed SJEC to use the public rights-of way ("ROW") for transmission lines. However, the Commission did not address how the lack of eminent domain authority might increase SJEC's construction costs, or make IPPs dependent upon IOUs for transmission interconnection.

B. The Alternative Regulation Statute Does Not Authorize the Commission to Consider Compliance with Local Zoning Regulations.

The Commission commonly grants IPP requests to decline full jurisdiction only after considering whether the location of a proposed facility is compatible with surrounding land uses

[12] It should be noted that the *Kinney* case predated the Spencer-Shively Act (codified at Ind. Code ch. 8-1-2) that created the Public Service Commission (now the IURC) in 1913, as well as the eminent domain authority for public utilities in 1921 (codified at Ind. Code 8-1-8).

by considering evidence of compliance with local zoning and land use requirements. The Commission notes that if a proposed facility would ". . . significantly and negatively impact an electricity supplier, its consumer, or a local community, the Commission may refuse to decline jurisdiction under Indiana Code chs. 8-1-2.5 and 8-1-8.5." Indiana Code § 8-1-8.5-5(b)(3) simply requires a Commission finding that that public convenience and necessity require or will require the facility's construction. Neither of these statutes mention local zoning, local communities, or the "impact" of the project on those communities. No IPP has ever directly challenged the IURC's historic reluctance to grant renewable energy generating facilities the same kind of eminent domain and use of public rights-of-way authority that more traditional types of public utilities in Indiana have historically enjoyed.

It is true that Lone Oak accepted the *status quo* of the Commission's refusal to grant eminent domain authority to IPPs, instead finding that local zoning requirements must be met. Lone Oak chose to do what all other IPPs have done in the last 20 years, *e.g.*, "go with the flow" of the Commission's regulatory scheme. It is critical to understand that Lone Oak accepted this *status quo* in 2019, at time when the County supported and approved the project. Lone Oak, like all utilities, is in the business of developing power projects, not litigating them. All businesses make similar decisions about what things to "live with" and which to battle over. However, that does not mean that Lone Oak has waived its right to challenge those findings, or that the Commission's actions were an appropriate statutory interpretation. Taken to its logical conclusion, the County's argument would require project developers to comply blindly and permanently with newly enacted local regulations – no matter how far afield or ludicrous. It was not until the County chose to act unreasonably by not extending the commercial operation date that it became necessary

to litigate these issues. Because the County's interpretation squarely conflicts with Ind. Code §8-1-2-101, it must fail.

C. Legislation Conferring the Power of Eminent Domain to Public Utilities is More Specific and Prevails Over Law Granting the Commission Latitude to Effectuate the Regulatory Scheme.

Providing eminent domain authority to public utilities is called a "Public Use Exception" to the constitutional rule against takings of property without just compensation. Ind. Const. art. 1, Section 21; *see also* U.S. Const. amend. V and XIV. The public use requirement of the Takings Clause states that the government can take private property, but only for government benefit, not for the benefit of a private person or business. There are years of legal precedent in the United States that takings by a public utility are takings for a "public use". *See, e.g.*, *National Railroad Passenger Corporation v. Boston & Maine Corp.*, 503 U.S. 407 (1992); *Mt. Vernon-Woodberry Cotton Duck Co. v. Alabama Interstate Power Co.*, 240 U.S. 30 (1916). While the U.S. Supreme Court and state courts give considerable deference to legislatures' determinations about what governmental activities qualify for a Public Use Exception, the legislative branch (due to its political interests) cannot be the sole arbiters of the public-private distinction. *Cincinnati v. Vester,* 281 U.S. 439, 446 (1930) ("It is well established that ... the question [of] what is a public use is a judicial one"). The Court recognized, as Mr. Hill did in his testimony, that local officials are unlikely to support public utility interests over local interests. Tr. B-36:14-18. The U.S. Supreme Court has noted that if the legislatures were the final say, the Public Use exception would amount to little more than "hortatory fluff". *See* dicta on the scope of the Public Use Exception in the dissent of Justice O'Connor, in which Justices Scalia, Thomas, and Chief Justice Rehnquist joined in *Kelo v. City of New London, Conn.*, 545 U.S. 469, 497 (2005).

An external, judicial check on how the public use requirement is interpreted, however limited, is necessary if this constraint on government power is to retain any meaning. See *Cincinnati v. Vester*, 281 U.S. 439, 446 (1930) ("It is well established that . . . the question [of] what is a public use is a judicial one").

Indiana courts have not squarely addressed whether IPPs, as public utilities, must seek "permission" from the IURC to use the power of eminent domain. In 1996, the Indiana Court of Appeals revisited the *Graham Farms* case, and reaffirmed that public utilities are not subject to local zoning. *Howell v. Indiana-American Water Co.*, 668 N.E.2d 1272, 1275 (Ind. Ct. App. 1996); and *Graham Farms, Inc. v. Indianapolis Power & Light Co.*, 233 N.E.2d 656 (Ind. 1968).

Two more recent decisions from the Indiana Court of Appeals also upheld zoning approvals and conditions. *Dunmoyer v. Wells County, Ind. Area Planning Comm'n*, 32 N.E.3d 785 (Ind. Ct. App. 2015); and *Flat Rock Wind, LLC v. Rush Cty. Area Bd. of Zoning Appeals*, 70 N.E.3d 848, 861 (Ind. Ct. App. 2017). While both cases seemed to presume local zoning authority over the renewable projects, neither specifically addressed the Commission's regulation of them as public utilities, the scope of eminent domain, or a utility's exemption from local zoning established in *Graham Farms*.

Rules of statutory construction require that courts (and the Commission) give words their plain and ordinary meaning, and that specific sections control over those of general applicability. *Holmes v. Acands, Inc.*, 709 N.E.2d 36 (Ind. App. 1999); *Nextel West Corp. v. Ind. Util. Regulatory Comm'n*, 831 N.E.2d 134 (Ind. App. 2005); *Heidbreder, Inc. v. Bd. of Zoning Appeals*, 858 N.E.2d 199 (Ind. App. 2006), *t'fer denied,* (2007). The *Graham Farms* Court recognized that the legislation conferring the power of eminent domain to public utilities was more specific than local

zoning authority.[13] The Court explained that as such, rather than constrain a public utility to obey local zoning authority, if landowners believe a utility has engaged in fraud in siting of a facility, they may file a complaint with the Commission under Indiana Code § 8-1-2-54 claiming that the public utility's siting decision is unjust or unreasonable. *Graham Farms*, 233 N.E.2d at 667.

VII. The County's Reading of Sections 101 and 115 is Too Narrow, and Ignores Relevant Case Law.

The County interprets Sections 101 too narrowly, claiming that since the Ordinance is unrelated to the use of the public rights-of-way under subdivision (a)(1), the Commission does not have jurisdiction to review the reasonableness of the County's application of the Ordinance. In fact, reading on to subdivision (a)(2), that statute also states that municipal and county executives do not have unfettered authority:

> Every municipal council or county executive shall have power . . . [t]o require of any public utility, by ordinance, such additions and extensions to its physical plant within said municipality or county as shall be reasonable and necessary in the interest of the public, and to designate the location and nature of all such additions and extensions, the time within which they must be completed, and all conditions under which they must be constructed, *subject to review by the commission as provided in subdivision (1)*.

Ind. Code 8-1-2-101(a)(2) (emphasis added). Therefore, the Commission has jurisdiction to determine whether the Ordinance, which designates the timing of "additions and extensions to physical plant"[14] is being applied reasonably.

Section 101 goes on further to state:

---

[13] "The 1947 statute does not specifically provide, and it cannot be assumed that the legislature would authorize, a municipality or a county to regulate a public utility when the utility is serving the larger interest of the general public. The utility is regulated by the Public Service Commission, and local regulation is inimical to that larger interest." *Graham Farms*, 233 N.E.2d at 666.

[14] "Physical plant" is generally understood in the industry to mean electric generation, transmission and distribution equipment owned and used by the utility in its operations. This is generally consistent with the how "plant in service" is used in the FERC Uniform System of Accounts for Electric Utilities, a standard set by 170 IAC 4-2-2.

> Provided, however, whenever, after a request by petition in writing of any public utility, department of public utilities, the city, or other political subdivision or other body, having jurisdiction of the matter, shall refuse or fail, for a period of thirty (30) days, **to give or grant to such public utility or department of public utilities permission and authority to construct, maintain, and operate any additional construction, equipment, or facility, reasonably necessary for the transaction of the business of such public utility or department of public utilities and for the public convenience or interest, then such public utility or department of public utilities may file a petition with said commission for such right and permission, which petition shall state, with particularity, the construction, equipment, or other facility desired to be constructed and operated, and show a reasonable public necessity therefor, and also the failure or refusal of such city, political subdivision, or other body to give or grant such right or permission**; and the commission shall thereupon give notice of the pendency of such petition, together with a copy thereof, to such city or other political subdivision or body, and of the time and place of hearing of the matter set forth in such petition; and such commission shall have power to hear and determine such matters and to give or grant such right and permission and to impose such conditions in relation thereto as the necessity of such public utility or department of public utilities and the public convenience and interest may reasonably require.

Ind. Code 8-1-2-101 (emphasis added).

Lone Oak requested and later received a variance from the three-year commercial operation date in its original 2019 BZA application (which otherwise would have created a deadline of 2022 instead of 2023). Ex. 12 to Amended Complaint in 2019 BZA Findings, at p. 8 (Att. MRK-1). Lone Oak requested the variance because it believed that 2023 was a reasonable and achievable commercial operation deadline. The County in turn clearly recognized that a deviation from the deadline imposed by the Ordinance was reasonable in the face of Project-specific circumstances. But as the Commission has seen (and Lone Oak's testimony showed), supply chain and labor delays related to the COVID pandemic, interconnection queue delays, solar panel tariff investigations by the International Trade Commission, inflation and financial uncertainty have caused cascading solar project delays across the industry.

The County's refusal to extend the commercial operation deadline for the Project in light of *force majeure* events violates Indiana Code § 8-1-2-101.2(a)(1) because it is a land use regulation which effectively prohibits a public utility from furnishing utility service to a utility customer (be that customer a future offtaker or the wholesale market generally), and from connecting to a utility service (here, transmission and interconnection service), solely based upon the fact that the solar is its energy source.

The County is also wrong that Section 115 only authorizes the Commission to "investigate" ordinance violations, not invalidate the ordinances themselves. Br. at 20. The Indiana Supreme Court and the Indiana Court of Appeals have said the exact opposite:

> We held that the utility was not subject to the local zoning and building authorities with respect to the location and use of utility facilities within the county. Quoting *Graham Farms*, this court noted:
>
> > "It was to relieve public utilities from the burden of local regulation that the legislature created the Public Service Commission.
>
> ***
>
> > The Public Service Commission Act provides:
> >
> > "The commission . . . shall have the power, and it shall be its duty, to enforce the provisions of this act, as well as *all other laws*, relating to utilities." (citation to former Code omitted; current citation at IND. CODE § 8-1-2-115).
>
> Specifically, we recognized that the commission would have jurisdiction over a proper complaint relating to the location of utility facilities. Here, as in *Graham Farms* and *Darlage*, Indiana-American is not subject to the local zoning authorities in this matter.

Howell v. Ind.-American Water Co., 668 N.E.2d 1272, 1275 (Ind. Ct. App. 1996) (internal citations omitted, quoting *Darlage v. Eastern Bartholomew Water Corp.*, 379 N.E.2d 1018, 1020 (Ind. Ct. App. 1978), *trans*. *denied*; and *Graham Farms*, 233 N.E.2d at 666-667; and Ind. Code §§ 8-1-2-54 and -115.

VIII. The County Makes Conclusory Statements About What Is Not in the Public Interest, Without Citing Any Law or Evidence to Support Its Assertions.

A public interest review by the Commission is much broader than what the County represents. The court has explained:

> In addition, the public interest includes the interest of the utility, its stakeholders, and the State as a whole. Our evaluation of the public interest recognizes that the public interest changes from time to time, and that the State's interests may be more comprehensive and take a longer range view than any of the parties' interests. In the context of settlement, the public interest also concerns compromise and balanced resolution. Finally, in the context of alternative regulation, the public interest is defined by the legislature in the Alternative Regulation Statute, Ind. Code § 8-1-2.6-2.[15]

Nextel W., Corp. v. Ind. Util. Regulatory Comm'n, 831 N.E.2d 134, 156-57 (Ind. Ct. App. 2005), quoting *In re Ind. Bell Tel. Co.,* Cause No. 42405, 2004 WL 2309824 (Ind. U.R.C. June 30, 2004). The County argues that Commission's reassertion of jurisdiction is not in the public interest because it is unnecessary to promote energy utility efficiency where Lone Oak has an effective remedy with the trial court. This ignores not only the primary jurisdiction of the Commission, but also the fact that is not within the court's purpose to "promote energy utility efficiency."

The County also argues the Commission does not need to reassert jurisdiction to enable Lone Oak to compete with other providers of functionally similar energy services. Br. at 19. The County does not understand that Lone Oak provides the same generation services that many other

[15] Indiana Code section 8-1-2.6-2 provides in pertinent part:

> (b) In determining whether the public interest will be served, the Commission shall consider:
> (1) whether technological change, competitive forces, or regulation by other state and federal regulatory bodies render the exercise of jurisdiction by the commission unnecessary or wasteful;
> (2) whether the exercise of commission jurisdiction produces tangible benefits to telephone company customers; and
> (3) whether the exercise of commission jurisdiction inhibits a regulated entity from competing with unregulated providers of functionally similar telephone services or equipment.

Nextel W., Corp. v. Ind. Util. Regulatory Comm'n, 831 N.E.2d 134, 156 (Ind. Ct. App. 2005)

investor-owned utilities provide, into the exact same wholesale markets. Pet. Initial Br. at 8-9. The County fails to rebut any of Lone Oak's public interest evidence. Mr. Hill provided detailed testimony regarding how reassertion of Commission jurisdiction is consistent with the public interest and public policy, given the statutes that define criteria for considering when declination of jurisdiction is appropriate.

Another example is that the IURC has continuing jurisdiction to investigate, among other things, *any regulation, measurement, practice or act whatsoever* affecting or relating to the service of any public utility, or any service in connection therewith, is in any respect unreasonable, unsafe, insufficient or *unjustly discriminatory*, or that any service is inadequate or cannot be obtained. Ind. Code § 8-1-2-54. The Commission has also instituted investigations over broad industry issues like the implications of new federal tax laws and the impact of the COVID pandemic, where the responding public utilities had various forms of alternative regulatory plans in place. The *Graham Farms* Court rejected the idea that public utilities must be subject to local jurisdiction when their practices are challenged, stating:

> Appellants take the position that if no certificate of convenience and necessity is required from the Public Service Commission, then a regulatory gap exists in the powers of the commission as respects the location of public utility facilities. From appellants' reasoning it would follow that regulation by local zoning authorities would not conflict with any effective power of the commission. Such is not the case, for no such gap exists. The Public Service Commission Act sets up adequate machinery for control by the commission of all improper acts of public utilities.

Graham Farms, 233 N.E.2d at 667.

Also, as a public utility, Lone Oak has the authority under Indiana law to file a complaint with the Commission "as to any matter affecting its own rates or service." Ind. Code § 8-1-2-61. The alternative regulatory treatment granted to Lone Oak does not negate these statutory rights or the Commission's authority. Unlike local zoning authorities and trial courts, the IURC also has the

unique subject matter expertise to evaluate the impacts of local regulation over a subset of electric utilities on Indiana's energy supply, including the technical impossibility of the County's commercial operation deadline. If the County's argument were correct (and it is not), the Commission would have no continuing jurisdiction under any provision of Title 8 over any public utility to which it granted alternative regulatory status. That is not what the legislature intended, nor is it in practice the flexible regulatory standard that the Commission has regularly applied for years.

IX. Conclusion.

The Commission should use its clear jurisdiction to proceed to Phase II of this proceeding and determine that Madison County officials may not lawfully impose arbitrary and capricious deadlines for the construction and operation of a power project, which has no bearing on the County's legitimate government interests. The evidence clearly demonstrates that it is in the public interest for the Commission to reassert jurisdiction and proceed to Phase II, where the Commission may properly consider whether the County's refusal to extend the commercial operation deadline of the Project is necessary, and narrowly tailored to meet a legitimate, reasonable and compelling local government interest. The public interest requires that the Commission proceed to Phase II where it may employ its unique technical expertise to determine the larger statewide public interest in the provision of reliable, efficient and affordable electric service.

Therefore, for the reasons stated above, Lone Oak respectfully requests the Commission reassert jurisdiction and grant the relief requested in its Petition.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was delivered electronically or by certified U.S. mail this 11th day of October, 2023 to the following:

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Kristina Kern Wheeler
BOSE MCKINNEY & EVANS LLP

4652073.1

Filed: 11/14/2022 8:43 AM
Judge, Circuit Court
Grant County, Indiana

STATE OF INDIANA	)	IN THE GRANT CIRCUIT COURT
	) SS:	
COUNTY OF GRANT	)	CAUSE NO. 27C01-2207-PL-000052
LONE OAK SOLAR ENERGY LLC,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
BOARD OF ZONING APPEALS OF MADISON COUNTY,	)	
	)	
	)	
Respondent.	)	

PETITIONER'S AGREED MOTION TO STAY

The Petitioner, Lone Oak Solar Energy LLC ("Lone Oak"), by counsel, respectfully requests that the Court enter an order staying this lawsuit and, in support thereof, states as follows:

1. Lone Oak initiated this lawsuit on July 28, 2022 by filing a Verified Petition for Judicial Review.

2. Since filing the Verified Petition for Judicial Review, Lone Oak has filed a Verified Complaint before the Indiana Utility Regulatory Commission, docketed as Cause No. 45793. The Verified Complaint, once adjudicated, may resolve some or all of the issues set forth in the Verified Petition for Judicial Review because the Indiana Utility Regulatory Commission has jurisdiction over certain ordinances pursuant to Ind. Code § 8-1-2-101. Duke Energy Ind., LLC v. Town of Avon, 82 N.E.3d 319, 325 (Ind. Ct. App. 2017).

3. Under the circumstances, and in order to promote judicial economy, Lone Oak respectfully requests that the Court enter an order staying this lawsuit during the pendency of the Verified Complaint before the Indiana Utility Regulatory Commission and any appeal thereof. Decision of the Indiana Utility Regulatory Commission are appealable to the Indiana Court of Appeals. Ind. Code § 8-1-3-1.

4. On November 11, 2022, the undersigned counsel emailed Jeffrey K. Graham, counsel for the Board of Zoning Appeals of Madison County, about the relief requested in this Motion. In response, Mr. Graham, stated that the Board of Zoning Appeals of Madison County had no objection to the relief requested in this Motion.

WHEREFORE, the Petitioner, Lone Oak Solar Energy LLC, by counsel, respectfully requests that the Court enter an order (a) staying this lawsuit during the pendency of the Verified Complaint before the Indiana Utility Regulatory Commission and any appeal thereof, and (b) providing for all other appropriate relief.

Respectfully submitted,

/s/ Alan S. Townsend

Alan S. Townsend, #16887-49
Nikki G. Shoultz, #16509-41
Kristina Kern Wheeler, #20957-49A

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kwheeler@boselaw.com

Attorneys for Petitioner,
Lone Oak Solar Energy LLC

CERTIFICATE OF SERVICE

I hereby certify that on November 14, 2022, a copy of the foregoing *Petitioner's Agreed Motion to Stay* was served upon the following counsel via the Court's IEFS:

Jeffrey K. Graham – jgraham@gfwlawyers.com

/s/ Alan S. Townsend
Alan S. Townsend

4468304_1

Townsend, Alan

From: Jeff Graham <jgraham@inlawemail.com>
Sent: Sunday, November 13, 2022 12:01 PM
To: Townsend, Alan
Subject: RE: Lone Oak

Looks good, Alan. I'm fine with it 'as is.'

Thank you,
Jeff

Jeffrey K. Graham
Attorney at Law
Graham, Farrer & Wilson, P.C.
p: 765-552-9878
a: 1601 S. Anderson Street, Elwood, Indiana 46036
a: 200 E. State St, Pendleton, IN 46064
e: jgraham@gfwlawyers.com

From: Townsend, Alan <atownsend@boselaw.com>
Sent: Friday, November 11, 2022 11:57 AM
To: jgraham@gfwlawyers.com
Subject: Lone Oak

Hi Jeff:

I've attached a draft of Petitioner's Agreed Motion to Stay and a proposed Order.

Let me know if this works for you and, if so, I'll get it filed.

Thanks, Alan

Alan S. Townsend
Bose McKinney & Evans LLP
111 Monument Circle | Suite 2700 | Indianapolis, Indiana 46204
atownsend@boselaw.com | P 317-684-5225 | F 317-223-0225

Assistant Contact | Dana Y. Cowell | dcowell@boselaw.com | P 317-684-5241 | F 317-223-0241

waive confidentiality or a privilege. All personal messages express views only of the individual sender, and may not be copied or distributed without this statement.

STATE OF INDIANA	)	IN THE GRANT CIRCUIT COURT
	) SS:	
COUNTY OF GRANT	)	CAUSE NO. 27C01-2207-PL-000052
LONE OAK SOLAR ENERGY LLC,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
BOARD OF ZONING APPEALS OF MADISON COUNTY,	)	
	)	
	)	
Respondent.	)	

ORDER

This matter came before the Court on an Agreed Motion to Stay filed by the Petitioner, Lone Oak Solar Energy LLC. The Court, having examined the Agreed Motion and being duly advised, now finds that the Agreed Motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this lawsuit shall be and hereby is stayed pending the determination of the Verified Complaint filed by Lone Oak Solar Energy LLC before the Indiana Utility Regulatory Commission and any appeal thereof.

Dated: 11/16/2022

Judge, Grant Circuit Court

Distribution:

All Counsel of Record

Filed: 7/18/2023 3:00 PM
Judge, Circuit Court
Grant County, Indiana

STATE OF INDIANA	)	IN THE GRANT CIRCUIT COURT
	) SS:	
COUNTY OF GRANT	)	CAUSE NO. 27C01-2207-PL-000052
LONE OAK SOLAR ENERGY LLC,		)
		)
Petitioner,		)
		)
vs.		)
		)
BOARD OF ZONING APPEALS OF MADISON COUNTY,		)
		)
		)
Respondent.		)

PETITIONER'S AGREED MOTION TO STAY

The Petitioner, Lone Oak Solar Energy LLC ("Lone Oak"), by counsel, respectfully requests that the Court enter an order staying this lawsuit and, in support thereof, states as follows:

1. Lone Oak initiated this lawsuit on July 28, 2022 by filing a Verified Petition for Judicial Review.

2. Since filing the Verified Petition for Judicial Review, Lone Oak has filed a Verified Petition before the Indiana Utility Regulatory Commission, docketed as Cause No. 45883. The Verified Petition, once adjudicated, may resolve some or all of the issues set forth in the Verified Petition for Judicial Review because the Indiana Utility Regulatory Commission has jurisdiction over certain ordinances pursuant to Ind. Code § 8-1-2-101. Duke Energy Ind., LLC v. Town of Avon, 82 N.E.3d 319, 325 (Ind. Ct. App. 2017).

3. Under the circumstances, and in order to promote judicial economy, Lone Oak respectfully requests that the Court enter an order staying this lawsuit during the pendency of the Verified Petition before the Indiana Utility Regulatory Commission and any appeal thereof. Decisions of the Indiana Utility Regulatory Commission are appealable to the Indiana Court of Appeals. Ind. Code § 8-1-3-1.

4. On July 18, 2023, the undersigned counsel emailed Jeffrey K. Graham, counsel for the Board of Zoning Appeals of Madison County, about the relief requested in this Motion. In response, Mr. Graham, stated that the Board of Zoning Appeals of Madison County had no objection to the relief requested in this Motion.

WHEREFORE, the Petitioner, Lone Oak Solar Energy LLC, by counsel, respectfully requests that the Court enter an order (a) staying this lawsuit during the pendency of the Verified Petition before the Indiana Utility Regulatory Commission and any appeal thereof, and (b) providing for all other appropriate relief.

Respectfully submitted,

/s/ Alan S. Townsend

Alan S. Townsend, #16887-49
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Attorneys for Petitioner,
Lone Oak Solar Energy LLC

CERTIFICATE OF SERVICE

I hereby certify that on July 18, 2023, a copy of the foregoing *Petitioner's Agreed Motion to Stay* was served upon the following counsel via the Court's IEFS:

Jeffrey K. Graham – jgraham@gfwlawyers.com

/s/ Alan S. Townsend
Alan S. Townsend

4608339_1

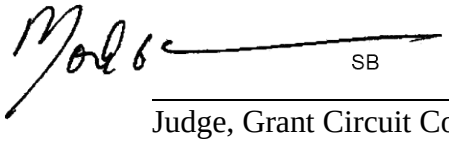
STATE OF INDIANA	)	IN THE GRANT CIRCUIT COURT
	) SS:	
COUNTY OF GRANT	)	CAUSE NO. 27C01-2207-PL-000052
LONE OAK SOLAR ENERGY LLC,	)	
	)	
Petitioner,	)	
	)	
vs.	)	
	)	
BOARD OF ZONING APPEALS OF MADISON COUNTY,	)	
	)	
Respondent.	)	

ORDER

This matter came before the Court on an Agreed Motion to Stay filed by the Petitioner, Lone Oak Solar Energy LLC. The Court, having examined the Agreed Motion and being duly advised, now finds that the Agreed Motion should be granted.

IT IS THEREFORE ORDERED, ADJUDGED, AND DECREED that this lawsuit shall be and hereby is stayed pending the determination of the Verified Petition filed by Lone Oak Solar Energy LLC before the Indiana Utility Regulatory Commission and any appeal thereof.

Dated: July 19, 2023



Judge, Grant Circuit Court

Distribution:

All Counsel of Record