

*In the  
Indiana Court of Appeals*

No. \_\_\_\_-\_\_\_\_-\_\_\_\_

LONE OAK SOLAR ENERGY LLC,

Appellant (Petitioner below),

v.

INDIANA UTILITY REGULATORY COM-  
MISSION, INDIANA OFFICE OF UTILITY  
CONSUMER COUNSELOR, and MADISON  
COUNTY BOARD OF ZONING APPEALS and  
MADISON COUNTY BOARD OF COMMIS-  
SIONERS,

Appellees (Administrative Agency,  
Statutory Party and Respondents below).

Appeal from the Indiana Utility Regula-  
tory Commission

Cause No. 45793

The Hon. Jim Huston, Chairman  
The Hon. Sarah Freeman,  
The Hon. Stefanie Krevda,  
The Hon. David Veleta,  
The Hon. David Ziegner,  
Commissioners

The Hon. Ann Pagonis,  
Administrative Law Judge

**NOTICE OF APPEAL  
(Appearance)**

Appellant, Lone Oak Solar Energy LLC (“Appellant”), by counsel, pursuant to Indiana Appellate Rule 9, respectfully gives notice of the following information for purposes of this appeal:

**Party Information**

1. The name and address of the party initiating the appeal:

Name: Lone Oak Solar Energy LLC  
Address: One South Wacker Drive, Suite 1800  
Chicago, Illinois 60606

*In forma pauperis:* ☐ Yes ☒ No

2. The name, address, attorney number, fax number, telephone number and electronic mail address of the attorney representing the party initiating the appeal:

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Each attorney specified above:

(a) certifies that the contact information listed on the Indiana Supreme Court Roll of Attorneys for each attorney is current and correct as of the date of this Notice of Appeal.

(b) acknowledges that all orders, opinions, and notices in this matter will be sent to the email address(es) specified by the attorney on the Roll of Attorneys regardless of contact information listed on the Notice of Appeal.

(c) understands that he/she is solely responsible for keeping his/her Roll of Attorneys contact information accurate per Ind. Admis. Disc. R. 2(A).

**Information for Judgment/Order Being Appealed**

Date of Judgment/Order being appealed: March 22, 2023

Title of Judgment/Order being appealed: Order of the Commission (**Ex. A**):

Judgment/Order issued by: Order was a final order issued by an administrative agency

Basis for Appellate Jurisdiction:

- ☒ Appeal from a Final Judgment, as defined by App. R. 2(H) and 9(I)
- ☐ Appeal from an interlocutory order, taken as of right pursuant to App. R. 14(A),(C),(D)
- ☐ Appeal from an interlocutory order, accepted by discretion pursuant to App. R. 14(B)(3)
- ☐ Expedited Appeal, taken pursuant to App. R. 14.1

This appeal will be taken to:

- ☒ Court of Appeals of Indiana, pursuant to Appellate Rule 5
- ☐ Indiana Supreme Court, pursuant to Appellate Rule 4
- ☐ This is an appeal in which a sentence of death or life imprisonment without parole is imposed under Ind. Code § 35-50-2-9 or a post conviction relief case in which the sentence was death
- ☐ This is an interlocutory appeal authorized under Rule 14 involving the death penalty or a life without parole case raising a question of interpretation of Ind. Code § 35-50-2-9
- ☐ This is an appeal from an order declaring a statute unconstitutional
- ☐ This is an appeal involving a waiver of parental consent to abortion under Rule 62

☐ This is an appeal involving mandate of funds

**Trial Court Clerk/Administrative Agency/Court Reporter Instructions**

Pursuant to Appellate Rule 10 or 14.1(C), the Clerk of the Indiana Utility Regulatory Commission is requested to assemble the Clerk's Record as defined in Appellate Rule 2(E).

Pursuant to Appellate Rule 11 or 14.1(C), the Court Reporter of the Indiana Utility Regulatory Commission is requested to transcribe, certify, and file with the Clerk of the Indiana Utility Regulatory Commission the following conferences and hearings of record, including exhibits: the hearings conducted on the record on the following dates:

- **Note: no transcript is requested at this time.**

**Public Access**

Was the entire trial court or agency record sealed or excluded from public access?

☐ Yes      ☒ No

Was a portion of the trial court or agency record sealed or excluded from public access?

☐ Yes      ☒ No

If yes, which provision in Administrative Rule 9(G) provides the basis for this exclusion:

If Administrative Rule 9(G)(1)(c) provides the basis for this exclusion, was the trial court or agency order issued in accordance with the requirements of Administrative Rule 9(H)? N/A

☐ Yes      ☐ No

**Appellate Alternative Dispute Resolution**

If civil case, is Appellant willing to participate in Appellate Dispute Resolution?

☐ Yes      ☒ No

If yes, provide a brief statement of the facts of the case:

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**Attachments**

The following SHALL be attached to Notice of Appeal:

☒ Copy of judgment or order being appealed. (**Ex. A**) (“Findings of Fact, Conclusions of Law, and Judgment”)

☐ Copy of judgment or order being appealed.

☐ Copy of judgment or order being appealed.

The following SHALL be attached to this Notice of Appeal if applicable (check if applicable):

☐ Copy of trial court or Administrative Agency’s findings and conclusions (in civil cases)

☐ Copy of sentencing order (in criminal cases)

☐ Order denying Motion to Correct Error or, if deemed denied, copy of Motion to Correct Error

☐ Copy of all orders and entries relating to the trial court or agency’s decision to seal or exclude information from public access

☐ If proceeding pursuant to Appellate Rule 14(B)(3), copy of Order from Court of Appeals accepting jurisdiction over interlocutory appeal

☐ Documents required by Rule 40(C), if proceeding *in forma pauperis*

**Certification**

By signing below, I certify that:

(1) This case ☐ does ☒ does not involve an interlocutory appeal; issues of child custody, support, visitation, adoption, paternity, determination that a child is in need of services, termination of parental rights; or an appeal entitled to priority by rule or statute.

(2) I have reviewed and complied, and will continue to comply, with the requirements of Appellate Rule 9(J) and Administrative Rule 9(G)(4) on appeal; and

(3) I will make satisfactory payment arrangements for any Transcripts ordered in this Notice of Appeal, as required by Appellate Rule 9(H).

Respectfully submitted,



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*Attorneys for Appellant,  
Lone Oak Solar Energy LLC*

## CERTIFICATE OF FILING AND SERVICE

Pursuant to Appellate Rules 24(A)(1) & 68, I certify that on April 21, 2023, I caused the foregoing Notice of Appeal to be (a) electronically filed with the Clerk of the Indiana Court of Appeals via the Indiana Electronic Filing System (IEFS); (b) served via IEFS on the following:

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Kristina Kern Wheeler

**ORIGINAL**

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Veleta	√		
Ziegner	√		

**IN THE MATTER OF THE COMPLAINT OF LONE )  
OAK SOLAR ENERGY LLC AGAINST THE BOARD )  
OF COMMISSIONERS AND BOARD OF ZONING )  
APPEALS OF MADISON COUNTY, INDIANA FOR A )  
DETERMINATION UNDER INDIANA CODE §§ 8-1-2- )  
54 THROUGH -67, 8-1-2-101, 8-1-2-115, AND )  
RELATED STATUTES REGARDING THE )  
UNREASONABLENESS OF THE DECISION OF THE )  
BOARD OF ZONING APPEALS UNDER THE )  
COUNTY'S SOLAR ENERGY ZONING ORDINANCE )**

**CAUSE NO. 45793**

**APPROVED: MAR 22 2023**

**ORDER OF THE COMMISSION**

**Presiding Officers:**

**David E. Ziegner, Commissioner**

**Ann Pagonis, Administrative Law Judge**

On October 28, 2022, Lone Oak Solar Energy LLC ("Lone Oak") filed a complaint petitioning the Indiana Utility Regulatory Commission ("Commission") to find that the Madison County Solar Energy Ordinance No. 2017-BC-0-01 ("Ordinance") passed by the Madison County Board of Commissioners ("Board") and the decisions under the Ordinance by the Madison County Board of Zoning Appeals ("BZA") are unreasonable pursuant to Ind. Code § 8-1-2-101 and related statutes.

On November 17, 2022, the Board and the BZA (jointly, "Madison County") filed an Answer to Verified Complaint, a Motion to Dismiss Complaint, and a Brief in Support of Motion to Dismiss with supporting exhibits.

On November 28, 2022, Lone Oak filed a Submission of Amended Verified Complaint amending its Complaint to include additional statutory authority and a Response to Motion to Dismiss.

On December 5, 2022, Madison County filed a Reply Brief in Support of Motion to Dismiss.

On December 12, 2022, Lone Oak filed a Notice of Additional Authority in support of its Response to the Motion to Dismiss.

Based upon the applicable law and the evidence presented, the Commission now finds:

**1. The Parties.** Lone Oak is a limited liability company organized and existing under the laws of the state of Delaware and authorized to do business in Indiana. Lone Oak is a "public



utility” within the meaning of Ind. Code §§ 8-1-2-1 and 8-1-8.5-1 and an “energy utility” within the meaning of Ind. Code § 8-1-2.5-2. Pursuant to the Commission’s October 29, 2019 Order in Cause No. 45255 (“45255 Order”), the Commission has declined, with certain limited exceptions, its jurisdiction over Lone Oak and its construction, operation, and financing of its proposed solar generation facility in Madison County, Indiana.

Respondent Board is the Madison County Executive pursuant to Ind. Code § 36-2-2-2 for Madison County, Indiana. Respondent BZA is the Madison County administrative and quasi-judicial agency vested with the authority granted to county boards of zoning appeals under Ind. Code ch. 36-7-4.

**2. Background.** Lone Oak proposes to construct a solar generation facility located in Madison County, Indiana (“Facility”). In May 2019, Lone Oak obtained a special use permit from the BZA pursuant to the Ordinance, which establishes solar energy standards in Madison County. The special use permit required the Facility to be complete and operational by December 31, 2023. Exhibit C to the Verified Petition.

After receipt of the special use permit and pursuant to Ind. Code § 8-1-2.5-5, Lone Oak filed a Verified Petition with the Commission on July 8, 2019, requesting that the Commission decline to exercise its jurisdiction with respect to the construction, ownership, operation of, and any other activity in connection with the Facility. 45255 Order at 2. Upon consideration of the evidence presented as to whether the public interest would be served by the Commission declining to exercise its jurisdiction, in whole or in part, over Lone Oak and its energy services, the Commission ultimately concluded that declination of its jurisdiction, except in certain limited areas, was in the public interest. 45255 Order at 11. The Commission retained jurisdiction over Lone Oak only with respect to certain affiliate transactions, transfers of ownership, financial assurance requirements, and material changes in the capacity or operation of the Facility. *Id.* at 8-11. The Commission also imposed certain reporting requirements. *Id.*

Regarding local zoning and permitting requirements, the Commission specifically found that Lone Oak provided “evidence that it has complied or will comply with local zoning and land use requirements, has or will obtain all construction-related permits, and will not rely on the public utility exemption from local zoning regulation.” 45255 Order at 4. Consequently, Lone Oak was prohibited from exercising “an Indiana public utility’s rights, power, and privileges of eminent domain and of exemption from local zoning, land use requirements, land use ordinances, and construction-related permits in the operation and construction of the Facility.” *Id.* at 11.

Lone Oak asserts that due to litigation of the special use permit, the COVID pandemic, and supply chain issues, it could not meet the Facility completion deadline in the special use permit of December 31, 2023. Consequently, it sought to modify the condition that accompanied the BZA’s approval in 2019 of the special use permit to extend the commercial operating date to 2025, which the BZA denied. Lone Oak filed an appeal of the BZA decision in trial court, which has been stayed, and this complaint with the Commission. Lone Oak alleges that the BZA’s denial of its requested extension was unreasonable and requests the Commission find, pursuant to Ind. Code § 8-1-2-101 and other related statutes, that the Ordinance, as applied by the BZA, is unreasonable and void.

**3. Motion to Dismiss.** Madison County filed a Motion to Dismiss asserting that the Commission lacks jurisdiction to grant Lone Oak's requested relief. Referring to the 45255 Order, Madison County argues that based on Lone Oak's commitment to comply with local land use ordinances, the Commission declined its jurisdiction over Lone Oak and the Facility. Lone Oak was also prohibited from exercising any exemption from local ordinances. Consequently, Madison County argues that absent an order from the Commission reasserting jurisdiction over Lone Oak and its Facility under Ind. Code § 8-1-2.5-7, the trial court, not the Commission, has jurisdiction to review local zoning decisions related to Lone Oak.

In its Response, Lone Oak argues that it is not seeking an exemption from local regulation. Instead, it is seeking a determination that Madison County's Ordinance, as applied by the BZA in relation to the Facility's commercial operation date, is unreasonable. Lone Oak argues that because the Commission determined it to be a public utility, the Commission's jurisdiction over Lone Oak continues based on that public utility status. Consequently, Lone Oak asserts the Commission has jurisdiction over the dispute without the Commission needing to reassert its jurisdiction.

Madison County, on reply, states that Lone Oak's arguments concerning whether the BZA's decision was unreasonable or otherwise contrary to law go to the merits of the case and do not address the Commission's jurisdiction over the dispute. Madison County reiterated that the plain language of the 45255 Order shows the Commission did not reserve its jurisdiction to rule on the validity of local land use regulations affecting the construction and operation of Lone Oak's Facility and that this case should be dismissed.

**4. Commission Discussion and Findings.** In ruling on a motion to dismiss, the Commission may consider the complaint, motion, and any affidavits or evidence submitted in reaching its conclusion. *Porter Co. Alliance*, Cause No. 42526, 2004 WL 2697260 at \*2 (IURC Aug. 18, 2004) (citing *GKN Co. v. Magness*, 744 N.E.2d 397, 400 (Ind. 2001)). In addition, we accept the allegations of the complaint as true and consider the pleadings in the light most favorable to the non-moving party. *Id.*

Madison County argues that the Commission lacks jurisdiction over Lone Oak's complaint because the Commission declined its jurisdiction over such matters in its 45255 Order and absent the Commission reasserting its jurisdiction pursuant to Ind. Code § 8-1-2.5-7, jurisdiction over Lone Oak's complaint is vested in the trial court. For the reasons set forth below, we agree and find that based on the 45255 Order, the Commission lacks jurisdiction to resolve Lone Oak's complaint.

In order to render a valid judgment, a court must have jurisdiction over the subject matter and jurisdiction over the parties. *Johnson v. State*, 957 N.E.2d 660 (Ind. Ct. App. 2011). Subject matter jurisdiction is the power of a court to hear and determine a general class of cases. *Matter of Adoption of H.S.*, 483 N.E.2d 777 (Ind. Ct. App. 1985). The actions of a court that does not have subject matter jurisdiction over a case are void and have no effect. *Parkview Hospital Inc. v. American Family Insurance Company*, 151 N.E.3d 1218 (Ind. Ct. App. 2020). Personal jurisdiction refers to a court's power to impose judgment on a particular person. *Boyer v. Smith*, 42 N.E.3d 505, 509 (Ind. 2015).

Instead of submitting to the Commission's plenary jurisdiction over public utilities, Lone Oak sought, and received, from the Commission an order declining to exercise its jurisdiction over Lone Oak and its Facility except in limited areas.<sup>1</sup> Outside of these limited areas, the Commission does not have subject matter jurisdiction over Lone Oak. The only areas in which the Commission retained jurisdiction concerned Lone Oak's affiliate transactions, transfers of ownership, financial assurance, and material changes in the Facility's capacity or operation. 45255 Order at 8-11. None of these areas are involved in Lone Oak's complaint against Madison County.

Lone Oak argues that because it is a public utility, the Commission retains its jurisdiction over Lone Oak and the Facility's operation by virtue of its statutory authority to conduct investigations and address complaints concerning a public utility's service, such as that provided in Ind. Code §§ 8-1-2-54, 8-1-2-61, 8-1-2-101, and 8-1-2-115. However, Ind. Code § 8-1-2.5-5(a) authorizes the Commission to "decline to exercise, in whole or in part, its jurisdiction over either the energy utility or the retail energy service of the energy utility, or both." Consequently, the Commission may decline its personal or subject matter jurisdiction, or both, over an energy utility and its services. The Commission's 45255 Order declined its jurisdiction over both Lone Oak and its proposed wholesale energy service except in limited circumstances, which are not at issue here.<sup>2</sup> 45255 Order at 11. Thus, the Commission lacks jurisdiction to address Lone Oak's complaint regarding the reasonableness of the Ordinance or the BZA's decision. If Lone Oak wants the Commission to reassert its jurisdiction beyond the areas it retained, then Lone Oak would need to comply with the statutory process provided in Ind. Code § 8-1-2.5-7.<sup>3</sup>

Lone Oak also argues that Ind. Code ch 8-1-2.5 is simply a tool for the Commission to use to regulate public utilities in an alternative manner to traditional utility regulation and not intended to divest the Commission of all jurisdiction. However, Lone Oak confuses alternative regulation with declination of jurisdiction. As noted by Madison County, in each of the cases involving Duke Energy Indiana, LLC ("Duke") that were cited by Lone Oak, the Commission approved an alternative regulatory plan under Ind. Code § 8-1-2.5-6 and, when necessary, declined its jurisdiction under Ind. Code § 8-1-2.5-5 for the sole, limited purpose of allowing implementation of the alternative regulatory plan or program offering. *See* Madison County Reply at 6-7. The Commission did not decline its jurisdiction over either Duke or its retail energy services as it has done with Lone Oak's proposed wholesale energy services and the Facility. Instead, the Commission retained full jurisdiction over Duke and its retail energy services.

Likewise, Lone Oak's reliance on *Graham Farms, Inc. v. Indianapolis Power & Light Co.*, 233 N.E.2d 656 (Ind. 1968) and *Duke Energy Ind., LLC v. City of Noblesville, Ind.*, 200 N.E.3d 935 (Ind. Ct. App. 2022) is misplaced. In both of those cases, the utility and its services were subject to the Commission's full jurisdiction. Recognizing that the Commission was created by

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<sup>1</sup> Generally, before commencing construction of electric generating facilities in Indiana, a public utility must obtain Commission approval through the issuance of a certificate of public convenience and necessity under Ind. Code ch. 8-1-8.5, approval under Ind. Code § 8-1-2-42 of any retail rates and charges for the provision of electric service, and approval of the terms and conditions of service in accordance with 170 IAC 4-1. To cover the Commission's cost for such regulation, public utilities also pay a public utility fee based on its gross revenues. Ind. Code ch. 8-1-6.

<sup>2</sup> Lone Oak does not intend, and did not seek approval, to provide retail energy service. 45255 Order at 2, 3 and 11.

<sup>3</sup> If the Commission wanted to reassert its jurisdiction over Lone Oak, it would also need to follow the same procedure, which it has not done.

the General Assembly to regulate public utilities and ensure the provision of reasonably adequate utility service to the citizens of Indiana, the courts found it reasonable that local regulation yield to the Commission's jurisdiction so as to allow the Commission to fulfill its statutory obligations. However, in this case, the Commission has declined its jurisdiction over Lone Oak and its proposed provision of wholesale energy services. The Commission did so, at least in part, based on Lone Oak's agreement to comply with local zoning and permitting requirements.

Accordingly, we find the Commission lacks jurisdiction over Lone Oak's complaint and it should be dismissed.

**IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:**

1. The Motion to Dismiss is GRANTED.
2. The evidentiary hearing scheduled for May 8, 2023, is vacated.
3. This Order shall be effective on and after the date of its approval.

**HUSTON, FREEMAN, KREVDA, VELETA, AND ZIEGNER CONCUR:**

**APPROVED: MAR 22 2023**

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

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**Dana Kosco  
Secretary of the Commission**