

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
DUNNS BRIDGE ENERGY STORAGE, LLC)
FOR CERTAIN DETERMINATIONS BY)
THE COMMISSION WITH RESPECT TO)
ITS JURISDICTION OVER PETITIONER'S)
ACTIVITIES AS A GENERATOR OF)
ELECTRIC POWER)

CAUSE NO. 45476

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR ("OUCC")

TESTIMONY OF

LAUREN M. AGUILAR – PUBLIC'S EXHIBIT NO. 1

March 25, 2021

Respectfully submitted,



T. Jason Haas

Attorney No. 34983-29

Deputy Consumer Counselor

**DIRECT TESTIMONY OF LAUREN M. AGUILAR
CAUSE NO. 45476
DUNNS BRIDGE ENERGY STORAGE, LLC**

I. INTRODUCTION

1 **Q: Please state your name, business address, and employment capacity.**

2 A: My name is Lauren M. Aguilar, and my business address is 115 W. Washington
3 St., Suite 1500 South, Indianapolis, IN, 46204. I am employed as a Utility Analyst
4 in the Electric Division for the Indiana Office of Utility Consumer Counselor
5 ("OUCC"). A summary of my qualifications can be found in Appendix A.

6 **Q: What is the purpose of your testimony in this proceeding?**

7 A: The purpose of my testimony is to explain why the OUCC does not oppose the
8 Indiana Utility Regulatory Commission ("Commission" or "IURC") approving
9 Dunns Bridge Energy Storage, LLC's ("Dunns Storage" or "Petitioner") request
10 for partial declination of jurisdiction. Dunns Storage is a wholly-owned subsidiary
11 of NextEra Energy Resources ("NextEra"). My analysis of Dunns Storage's
12 evidence indicates although the Dunns Bridge Solar/Storage Phase II project
13 ("Project") lacks progress in certain aspects of its petition, overall, there is enough
14 evidence submitted to establish the public interest may be served by the
15 Commission declining to exercise jurisdiction.

16 **Q: What have you done to evaluate issues presented in this Cause?**

17 A: I read and reviewed all materials presented in this docket, including the petition
18 initiating this proceeding and Dunns Storage's pre-filed verified direct testimony
19 (and exhibits). I attended a virtual meeting with Dunns Storage on Wednesday,

1 November 18, 2020. I also reviewed Commission orders in a number of similar
2 renewable energy proceedings.¹

3 **Q: Briefly summarize Dunns Storage's request in this proceeding?**

4 A: Dunns Storage requests the Commission enter an order declining to exercise its
5 jurisdiction, pursuant to Ind. Code § 8-1-2.5-5, over Dunns Storage's construction,
6 ownership operation of, and any other activity in connection with the Project, a
7 solar energy and storage facility, and to determine the public interest is served by
8 such declination.

II. STANDARD FOR DECLINATION OF JURISDICTION

9 **Q: Does the Commission have the authority to decline jurisdiction?**

10 A: Yes. Ind. Code § 8-1-2.5-5(a) in relevancy states: "[T]he Commission may enter an
11 order, after notice and hearing, that the public interest requires the Commission to
12 commence an orderly process to decline to exercise, in whole or in part, its
13 jurisdiction over [...] the energy utility² [...]."

14 **Q: How does the Commission determine if the public interest is served?**

15 A: Whether the public interest is served is an important part of the Commission's
16 review in this proceeding. Ind. Code § 8-1-2.5-5(b) states:

¹ See e.g. Meadow Lake Wind Farm VI, LLC, IURC Cause No. 45010, February 28, 2018; Head Waters Wind Farm, LLC, IURC Cause No. 44358, September 19, 2013; Lone Oak Solar Energy, LLC, IURC Cause No. 45255, October 29, 2019; Fairbanks Solar Energy Center, LLC, IURC Cause No. 45254, October 29, 2019; Speedway Solar, LLC, IURC Cause No. 45230, September 18, 2019; West Fork Wind, LLC, IURC Cause No. 45047, filed with the Commission February 8, 2018, and dismissed by Docket Entry issued May 8, 2020; and Riverstart Solar Park, LLC, IURC Cause No. 45336, June 3, 2020.

² Ind. Code § 8-1-2.5-2 defines "energy utility," in part, as a public utility within the meaning of Ind. Code § 8-1-2-1.

(b) In determining whether the public interest will be served, the commission shall consider the following:

(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.

Based on prior Commission orders concerning declination of jurisdiction over renewable energy generation, the Commission considers at least the following when determining public interest: 1) endangered species, 2) land use, 3) other environmental impacts, 4) local government and zoning approval, 5) the need for the additional generation, and 6) the ability for the generated energy to serve Indiana through interconnection with a regional transmission organization.³ These Commission considerations are long established.

Q: Please explain further the evidence typically submitted and used by the Commission when evaluating whether the public interest is served?

A: Reviewing prior Commission orders shows consistency in the types of evidence submitted and used by the Commission in evaluating whether the public interest is

³ See e.g. *Meadow Lake Wind Farm VI, LLC*, IURC Cause No. 45010, February 28, 2018; *Head Waters Wind Farm, LLC*, IURC Cause No. 44358, September 19, 2013; *Lone Oak Solar Energy, LLC*, IURC Cause No. 45255, October 29, 2019; *Fairbanks Solar Energy Center, LLC*, IURC Cause No. 45254, October 29, 2019; *Speedway Solar, LLC*, IURC Cause No. 45230, September 18, 2019; *West Fork Wind, LLC*, IURC Cause No. 45047, filed with the Commission February 8, 2018, and dismissed by Docket Entry issued May 8, 2020; and *Riverstart Solar Park, LLC*, IURC Cause No. 45336, June 3, 2020.

1 served. Typically, petitioners have already conducted many field studies needed to
2 identify endangered species, sensitive environmental areas such as wetlands and
3 protected cultural sites. Completing field studies is necessary to engage in
4 correspondence with state and federal agencies such as U.S. Fish and Wildlife
5 Services, the Indiana Department of Natural Resources and other Federal and State
6 agencies who regulate these areas of interest. In past declination proceedings, I have
7 typically seen petitioners already beginning such correspondence prior to filing
8 their cases-in-chief. Also, generally petitioners typically have secured all local
9 approvals or have made considerable progress in securing those approvals. To show
10 this progress, in previous filings petitioners attached the zoning approvals,
11 decommissioning plans, and described local hearings they attended. To
12 demonstrate interconnection ability, petitioners attach the system impact studies
13 and signed interconnections agreements. If the signed interconnection agreement is
14 not available, drafts are provided.

15 **Q: Please provide examples of the types of attachments provided.**

16 A: *Speedway Solar, LLC* (“Speedway”) is an excellent example of a project making
17 considerable progress before filing with the Commission.⁴ Speedway provided the
18 following attachments:

- 19 1. Attachment PKE-2, the Wildlife Impact Analysis.⁵

⁴ *Speedway Solar, LLC*, IURC Cause No. 45230, September 18, 2019.

⁵ *Speedway Solar, LLC*, IURC Cause No. 45230, Petitioner's Exhibit 1, Verified Direct Testimony of Peter K. Endres, p. 8, line 13.

- 1 2. Attachment PKE-3, the Wetland Delineation and Stream Assessment.⁶
- 2 3. Petitioner's PKE-4, the Visual Impact Analysis.⁷
- 3 4. Attachment PKE-5, the Acoustic Assessment.⁸
- 4 5. Attachment PKE-6, the Drainage Plan.⁹
- 5 6. Attachment PKE-7, the Phase I Cultural Resources Desktop Review.¹⁰
- 6 7. Attachment PKE-8, the [Shelby County Board of Zoning Appeals']
- 7 ("BZA") findings of fact.¹¹
- 8 8. Attachment PKE-9, the Phase I and Phase II System Impact Studies.¹²

III. DUNNS STORAGE NEEDS TO COMPLETE ADDITIONAL WORK

- 9 **Q: Does Dunns Storage need to complete additional work regarding impacts to**
10 **the environment, endangered species, and cultural sites before the Project can**
11 **obtain the proper construction permits?**
- 12 A: Yes. Orion Renewable Energy Group, LLC ("Orion")¹³ already completed some
13 studies and assessments needed to develop the project prior to NextEra's
14 acquisition.¹⁴ However, Petitioner's witness Zachary Melda identified many more
15 studies still needing performed.¹⁵ While studying the environmental, endangered

⁶ Id., line 19.

⁷ Id., p. 9, line 1.

⁸ Id., line 7.

⁹ Id., line 15.

¹⁰ Id., line 16.

¹¹ Id., p. 12, line 3.

¹² Id., p. 14, lines 20 to 21.

¹³ Petitioner's Exhibit No. 1, Verified Direct Testimony of Zachary Melda p. 9, lines 11-12.

¹⁴ Petitioner's Attachments ZM-5 and ZM-6.

¹⁵ Melda Direct, p. 10, lines 10-22.

1 species, and cultural impacts are extremely important, Dunns Storage was already
2 in contact with the agencies responsible for regulating these areas of special public
3 interest. These agencies will ensure the public's interest is protected.¹⁶

4 **Q: Does Dunns Storage need to complete additional work before receiving all**
5 **local approvals?**

6 A: Yes. However, it is worth noting Jasper County has been extremely supportive of
7 the group of projects to be located in Jasper County.¹⁷ The first phase of this project,
8 Dunns Bridge Solar Center, LLC ("Dunns Solar") recently received a Special
9 Exception Permit from Jasper County. Dunns Solar is located near Dunns Storage
10 in Jasper County.¹⁸ Although the progress with Jasper County has not progressed
11 as far as those in previous declination proceedings, based on NextEra's and Orion's
12 work in Jasper County and previous approval of Dunns Solar, there is sufficient
13 evidence demonstrating Jasper County will provide the appropriate oversight of
14 Dunns Storage and ensure the public interest is protected.

15 **Q: Does Dunns Storage need to complete additional work before the facility's**
16 **interconnection can occur?**

17 A: Yes. Petitioner is still awaiting Definitive Planning Phase studies 1, 2, and 3, before
18 it can proceed to the generation interconnection process to sign an interconnection
19 agreement with Midcontinent Independent System Operator.¹⁹ Barring any delays,

¹⁶ Melda Direct, p. 11, lines 3-6.

¹⁷ See <https://solarbuildermag.com/news/nipsco-to-add-900-mw-of-solar-pv-in-indiana-via-three-new-projects/> and <https://yaleclimateconnections.org/2021/03/solar-farm-will-provide-revenue-stream-in-jasper-county-indiana-as-coal-plant-closes/>.

¹⁸ See Jasper County Board of Zoning Appeals July 15, 2019 meeting minutes, p 1-3, found at https://www.jaspercountyin.gov/egov/documents/1568050666_14146.pdf.

¹⁹ Melda Direct, p. 15, lines 8-11.

1 which have happened in the past,²⁰ Dunns Storage expects a signed interconnection
2 agreement in March 2022.²¹

IV. CONCLUSION AND RECOMMENDATION

3 **Q: Does the OUCC oppose a finding that Dunns Storage's request meets the IC §**
4 **8-1-2.5-5(b) factors and the other areas of public interest the Commission**
5 **considers?**

6 A: No. While the OUCC has reviewed cases much further along than Dunns Storage,
7 enough evidence was submitted in this Cause to provide assurance the OUCC need
8 not oppose Petitioner's request.

9 **Q: Has the OUCC previously recommended denial in cases where there was a**
10 **lack of evidence?**

11 A: Yes. Recently the OUCC recommended denying two requests because the
12 petitioner demonstrated very little development progress. In those cases, studies
13 were not conducted, local approval was not secured and, in one instance, not all
14 land had been leased for the facility. My testimony in those proceedings indicated
15 minimal information was, not enough to ensure the Commission could make a
16 finding the public interest would be served by declining jurisdiction.²² As I
17 explained above, while the OUCC would like to see further progress, and maintains
18 minimal progress is not enough, Petitioner demonstrated sufficient progress in this
19 proceeding, and the OUCC does not oppose this particular request.

²⁰ See *West Fork Wind, LLC*, IURC Cause No. 45047, filed with the Commission February 8, 2018, and dismissed by Docket Entry issued May 8, 2020, due to interconnection delays, among other issues.

²¹ Melda Direct, p. 12, line 22.

²² See *Brickyard Solar, LLC*, IURC Cause No. 45424, The Verified Direct Testimony of Lauren M. Aguilar, filed December 10, 2020 and *Greensboro Solar Center, LLC*, IURC Cause No. 45425, The Verified Direct Testimony of Lauren M. Aguilar, filed December 10, 2020.

1 **Q: Is the OUCC suggesting any request for declination of jurisdiction have all**
2 **Project aspects completed before filing with the Commission?**

3 A: No. The OUCC recognizes petitioners in declination of jurisdiction proceedings do
4 not need all regulatory approvals in place before filing with the Commission.
5 However, in previous proceedings, the petitioner's progress is usually further along
6 in obtaining the various approvals. When a petitioner can show some completed
7 milestones and significant progress on others, the OUCC typically supports
8 petitioner's request. Further progress informs the OUCC and Commission that
9 other regulatory entities will have appropriate oversight of the facility and
10 additional Commission jurisdiction is not needed. The Commission must place an
11 appropriate amount of weight on promises of future performance versus the weight
12 it places on significant progress other similarly situated petitioners typically
13 achieve before seeking declination of jurisdiction. The OUCC acknowledges
14 Dunns Storage secured an offtaker for the power; however, IC § 8-1-2.5-5(b) and
15 prior Commission orders clearly show the Commission's analysis considers many
16 more aspects of the request.

17 **Q: What does the OUCC recommend regarding reporting and additional**
18 **requirements concerning material change in Project output or Project**
19 **modification or suspension?**

20 A: The OUCC agrees with reporting and additional requirements concerning material
21 change in Project output or Project modification or suspension, as outlined in Mr.
22 Melda's testimony.²³ These requirements are consistent with the OUCC's

²³ See Melda Direct, Question and Answer 55 and 56, pp. 25 through 27.

1 recommendations in prior dockets and with previous Commission Final Orders
2 regarding renewable energy and Commission jurisdiction. The OUCC further
3 recommends the initial quarterly report be submitted within thirty (30) days of a
4 Final Order granting declination of jurisdiction in the cause.

5 **Q. Does this conclude your testimony?**

6 **A. Yes.**

APPENDIX A

1 **Q: Summarize your professional background and experience.**

2 A: I graduated from Michigan State University in 2008 with a Bachelor of Science
3 degree in Environmental Science and Management. I graduated from Florida State
4 University College of Law in May 2011 with a Juris Doctorate and Environmental
5 Law certificate. I spent over two years while in law school as a certified legal intern,
6 providing pro bono legal services to poverty level residents of Tallahassee, FL. I
7 worked in the legal department of Depuy Synthes, a Johnson & Johnson Company,
8 where I assisted with patent filings and nondisclosure agreements. Starting in 2013,
9 I worked for the Indiana Department of Environmental Management as a rule
10 writer, in which I worked extensively with the public at large, special interest
11 groups, and affected regulated entities to understand the rulemaking process and to
12 respond to their comments on ongoing environmental rules. I joined the OUCC in
13 July of 2017.

14 **Q: Describe some of your duties at the OUCC.**

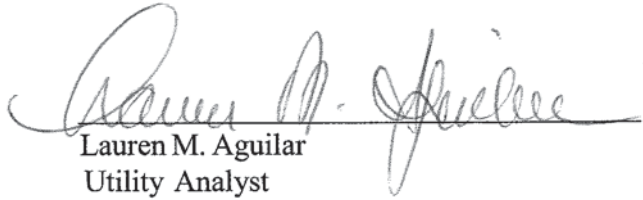
15 A: I review and analyze utilities' requests and file recommendations on behalf of
16 consumers in utility proceedings. As applicable, my duties may also include
17 analyzing state and federal regulations, evaluating rate design and tariffs,
18 examining books and records, inspecting facilities, and preparing various studies.
19 Most of my expertise is in environmental science, environmental state and federal
20 regulation, and state agency administration.

1 **Q: Have you testified before the Indiana Utility Regulatory Commission?**

2 A: Yes. I have previously testified in Cause Nos. 42170 ECR -30, 44340 FMCA-9,
3 44340 FMCA-10, 44340 FMCA-11, 44340 FMCA-12, 44340 FMCA-13, 44963,
4 44978, 44981, 44998, 45010, 45047, 45052, 45071, 45194, 45197, 45235, 45253,
5 45253 S2, 45336, 45361, 45403, 45424, and 45425.

AFFIRMATION

I affirm, under the penalties for perjury, that the foregoing representations are true.

A handwritten signature in cursive script, appearing to read "Lauren M. Aguilar", is written over a horizontal line.

Lauren M. Aguilar

Utility Analyst

Indiana Office of Utility Consumer Counselor

Cause No. 45476

Date: March 25, 2021

CERTIFICATE OF SERVICE

This is to certify that a copy of the *OUCC's Testimony of Lauren M. Aguilar* has been served upon the following parties of record in the captioned proceeding by electronic service on March 25, 2021.

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