

OFFICIAL
EXHIBITS

FILED
October 9, 2020
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY RATT'S 1)
SOLAR LLC FOR CERTAIN DETERMINATIONS BY)
THE COMMISSION WITH RESPECT TO ITS)
JURISDICTION OVER PETITIONER'S ACTIVITIES)
AS A GENERATOR OF ELECTRIC POWER)

CAUSE NO. 45426

IURC
PUBLIC'S
EXHIBIT NO. 1
11-18-20
DATE REPORTER

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

TESTIMONY OF

CYNTHIA M. ARMSTRONG - PUBLIC'S EXHIBIT NO. 1

OCTOBER 9, 2020

Respectfully submitted,



T. Jason Haas
Attorney No. 34983-29
Deputy Consumer Counselor

TESTIMONY OF OUCC WITNESS CYNTHIA M. ARMSTRONG
CAUSE NO. 45426
RATTS I SOLAR, LLC.

I. INTRODUCTION

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

2 A: My name is Cynthia M. Armstrong, and my business address is 115 W. Washington
3 St., Suite 1500 South, Indianapolis, IN, 46204.

4 **Q: By whom are you employed and in what capacity?**

5 A: I am employed as a Senior Utility Analyst in the Electric Division for the Indiana
6 Office of Utility Consumer Counselor ("OUCC"). A summary of my qualifications
7 can be found in Appendix A.

8 **Q: Have you previously provided testimony to the Indiana Utility Regulatory**
9 **Commission ("Commission")?**

10 A: Yes.

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

12 A: I read and reviewed all materials presented in this docket, including Ratts I Solar,
13 LLC.'s ("Ratts I Solar" or "Petitioner") Petition initiating this proceeding and its
14 pre-filed verified direct testimony and exhibits.

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

16 A: The purpose of my testimony is to present my review of whether it is appropriate
17 for the Commission to decline to exercise its jurisdiction over the proposed Ratts I
18 Solar power generating facility (the "Project"). In analyzing requests for
19 declination of Commission jurisdiction, the OUCC is concerned with ensuring the
20 public interest is served.

1 **Q: How is your testimony organized?**

2 A: First I summarize the requested relief and the Commission's jurisdiction over
3 Petitioner. Next, I discuss public interest matters possibly affecting the relief
4 requested. I then address Petitioner's proposed reporting requirements. Lastly, I
5 present the OUCC's recommendation the Commission approve Petitioner's
6 requested relief to limit Commission jurisdiction subject to specific reporting
7 requirements outlined by Petitioner.

II. PETITIONER'S REQUEST FOR DECLINATION OF JURISDICTION

8 **Q: What is Petitioner's request in this proceeding?**

9 A: In its Petition initiating this Cause, Ratts I Solar requests the Commission enter an
10 order, pursuant to Ind. C. § 8-1-2.5-5, declining to exercise its jurisdiction to (a)
11 require Petitioner to obtain a Certificate of Public Convenience and Necessity
12 ("CPCN") to construct the Project under Ind. C. ch. 8-1-8.5, the "Powerplant
13 Construction Act" and (b) regulate, under Ind. C. ch. 8-1-2, the "Public Service
14 Commission Act," Petitioner's construction, ownership and operation of, and other
15 activities in connection with, the Project to be located in Pike County, Indiana.
16 Under Ind. C. § 8-1-2.5-5, the Commission may decline jurisdiction if Petitioner is
17 an "energy utility," and if such declination of jurisdiction serves public interest.

18 **Q: Is Petitioner an "energy utility"?**

19 A: Yes, it is, based on the information presented in this Cause and my reading of
20 relevant statute and previous Commission decisions. Ind. C. § 8-1-2.5-2 defines
21 "energy utility," in part, as a public utility within the meaning of Ind. C. § 8-1-2-1.
22 Both the Petition initiating this Cause and Petitioner's Exhibit 1, the Verified Direct

1 Testimony of Tiago Sabino Dias, describe Petitioner's intent to develop, own, and
2 operate a power generating facility in the state of Indiana. Accordingly, Ratts I
3 Solar could be considered a "public utility" under the Ind. C. § 8-1-2-1 definition.¹
4 This determination means Petitioner is an "energy utility" under Ind. C. § 8-1-2.5-
5 2.

6 **Q: May the Commission enter an order declining to exercise jurisdiction over**
7 **Petitioner?**

8 A: Yes. Under Ind. C. § 8-1-2.5-5, "on the request of an energy utility ... the
9 commission may enter an order, after notice and hearing, that the public interest
10 requires the commission to commence an orderly process to decline to exercise, in
11 whole or in part, its jurisdiction over either the energy utility..." Absent a
12 proceeding under Ind. C. § 8-1-2.5-5, Petitioner's status as a public utility could
13 trigger other regulatory obligations (such as needing a CPCN per Ind. C. ch. 8-1-
14 8.5 et seq.). The immediate proceeding is a request for such relief and for the
15 Commission to determine public interest warrants it decline jurisdiction (per Ind.
16 C. § 8-1-2.5-5(b)).

III. PUBLIC INTEREST

17 **Q: What must the Commission consider in determining whether public interest**
18 **warrants it decline jurisdiction?**

19 A: In determining whether the public interest will be served, the Commission must
20 consider the following:

¹ In Cause No. 43068 (Benton County Wind Farm), the Commission determined a business that only generates electricity and then sells that electricity directly to public utilities is itself a public utility. The Commission has also found numerous recent wholesale solar power facilities to be public utilities. See Cause Nos. 45230 (Speedway Solar, LLC.), 45254 (Fairbanks Solar Energy Center, LLC.), and 45255 (Lone Oak Solar Energy, LLC.).

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 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.²

Q: Has Petitioner made a showing that it meets all of the above factors?

A: Yes. Petitioner has shown it meets the above factors. Essentially, Ratts I Solar will fall under the regulation of other state and federal regulatory bodies that will protect the public interest regarding the Project's future operation and wholesale energy transactions. Further regulation by the Commission would be duplicative of other regulatory bodies, could impede Ratts I Solar's ability to compete with other wholesale solar providers, and would waste the Commission's resources. So long as Ratts I Solar commits and follows through with the reporting requirements it

² Ind. Code § 8-1-2.5-5(b).

proposes,³ the OUCC does not take issue with the Commission declining to exercise its jurisdiction over Ratts I Solar.

Q: What other regulatory bodies will be overseeing the Project?

A: There are several which review environmental, wildlife, reliability, safety, and land use concerns. These regulatory bodies include: the U.S. Fish and Wildlife Service, the Indiana Department of Environmental Management ("IDEM"), the Indiana Department of Natural Resources, the U.S. Army Corps of Engineers, the Indiana Department of Transportation ("INDOT"), the Federal Energy Regulatory Commission ("FERC"), and the Midcontinent Independent System Operator ("MISO").

Q: Do you view potential abandonment of the solar generating structures to be an issue with the Project?

A: No. While there are currently no zoning requirements in Pike County, Indiana, where the Project will be located, it has entered into an Economic Development Agreement with Pike County that includes a Road Use Agreement and a Decommissioning Agreement.⁴ The Decommissioning Agreement requires Petitioner to have a decommissioning plan and security.⁵

Q: Is the OUCC aware of public concerns due to solar farms in the area?

A: Yes. There are a few landowners in the area who have voiced opposition to the Project. Their primary concern appears to be how the Project will impact nearby

³ Petitioner's Exhibit 1, Direct Testimony of Tiago Sabino Dias, pp. 26-29.

⁴ Dias Direct, p. 12, lines 15-20. See also, Brown, A. (September 3, 2020). *Inside Indiana Business. Major Solar Project Planned for Pike County.* <https://www.insideindianabusiness.com/story/42586831/major-solar-project-planned-for-pike-county>

⁵ Dias Direct, p. 13, lines 8-9.

1 property values.⁶ They are also concerned the Project will create a heat or radiation
2 hazard, particularly for local avian wildlife. One landowner stated his concern for
3 birds flying in the path of the solar panels being incinerated.⁷ However, this is a
4 hazard associated with solar thermal plants (also referred to as concentrated solar
5 plants) and not traditional photovoltaic solar facilities such as the proposed
6 Project.⁸

7 **Q: Should these concerns prohibit the Project?**

8 A: No. If the Pike County Council takes issue with the Project, or with solar projects
9 in general, it could act on these concerns through implementing zoning
10 requirements or declining to issue tax abatements for the Project. Residents
11 concerned about the issue had the opportunity to voice these concerns at a public
12 hearing; however, county officials approved the Project.⁹

13 Additionally, Pike County's economy has been dependent on power
14 generators located in the county. With the retirement of Hoosier Energy's Ratts
15 Generating Station in 2015 and announced retirements at Indianapolis Power and
16 Light's Petersburg Generating station over the next few years, the county stands to
17 lose a significant number of jobs and tax revenue. The Project will boost the local
18 economy by providing high-income construction jobs and property tax revenue.

⁶ Tercek, K. (July 8, 2020). WFIE Channel 14 News. *Pike Co. Residents Speak Out About \$128M Solar Project*. <https://www.14news.com/2020/07/08/pike-co-residents-speak-out-about-m-solar-project/>

⁷ *Id.*

⁸ Josh Hrala. (Original Article: September 15, 2016, Updated: September 9, 2019). Science Alert. *This Solar Plant Accidentally Incinerates Up to 6,000 Birds a Year*. <https://www.sciencealert.com/this-solar-plant-accidentally-incinerates-up-to-6-000-birds-a-year#:~:text=The%20sight%20of%20a%20bird,burn%20up%20in%20the%20sky.>

⁹ Brown, A. (September 3, 2020). Inside Indiana Business. *Major Solar Project Planned for Pike County*.

1 Local officials state the revenue from the Project will offset a third of the \$1.2
2 million in tax revenue the county lost in 2020.¹⁰

3 **Q: Is there a need for this additional electric generation source?**

4 A: Potentially. The State Utility Forecasting Group ("SUG") analyzed multiple
5 scenarios to assist the Commission in developing its report to the 21st Century
6 Energy Policy Task Force. In its reference case, which takes into account
7 announced plant retirements over the next three years, the SUG predicts a need
8 for over 1,500 MW of resource additions by 2024, over 6,000 MW by 2030, and
9 over 11,000 MW by 2037.¹¹ It is possible Ratts I Solar could assist with these future
10 resource needs.

11 **Q: Does Indiana support clean energy development?**

12 A: Yes. The Indiana Voluntary Clean Energy Portfolio Standard Program¹² provides
13 incentives to utilities that voluntarily increase the amount of clean energy resources
14 in their electricity portfolios. Additionally, the OUCC has supported, and the
15 Commission has approved, the development of both multiple investor-owned and
16 independent power producers' renewable energy projects in the past.

17 **Q: Is the Project in the public interest?**

18 A: Yes. The Project would provide a renewable, emission-free power resource.
19 Environmentally, Petitioner's proposal appears designed to preserve the use of the
20 land and minimize impacts to endangered species and environmentally sensitive

¹⁰ Thiele, R. (September 15, 2020). *WFYI News. Solar Projects in Southern Indiana to Boost Economies, Double Solar Capacity.* <https://www.wfyi.org/news/articles/solar-projects-in-southern-indiana-to-boost-economies-double-solar-capacity>.

¹¹ State Utility Forecasting Group. (May 2020). *Scenario Analysis for IURC Report to the 21st Century Energy Policy Task Force.* <https://www.purdue.edu/discoverypark/sufg/resources/publications.php>

¹² Authorized by Ind. C. ch. 8-1-37 and implemented by 170 IAC 17.1.

1 areas. The Project will not release pollutants such as carbon dioxide (CO₂), sulfur
2 dioxide (SO₂), nitrous oxide (NO_x), or mercury. The Project will provide economic
3 development benefits and increase tax revenue for Pike County. Petitioner
4 thoroughly outlines all the Project's benefits in Mr. Dias's direct testimony.¹³

IV. PETITIONER'S USE OF PUBLIC RIGHTS-OF-WAY

5 **Q: Is Petitioner seeking the right to use public rights-of-way for this Project?**

6 A: Yes, on a limited basis. Petitioner is seeking the right to use public rights-of-way
7 within the Project area in order to facilitate installation and use of transmission
8 lines.¹⁴ Retaining the use of the public right-of-way in this limited manner clarifies
9 issues surround the use of public rights-of-way for road crossings.

10 **Q: Do utilities relinquish their rights to use the public rights-of-way when they**
11 **seek declination of jurisdiction?**

12 A: It depends on the request. Prior Commission Orders addressing wind farm requests
13 for declination of jurisdiction suggest the Commission determine rights to use the
14 public rights-of-way on a case-by-case basis. As an example, the Commission
15 allowed a limited use of the public rights-of-way:

16 Petitioner shall not exercise an Indiana public utility's rights,
17 powers, and privileges of eminent domain and of exemption from
18 local zoning and land use ordinances in the construction and
19 operation of the Facility. Petitioner specifically retains the rights,
20 powers and privileges of a public utility ... to use public rights-of-
21 way ... for Facility transmission lines.¹⁵

¹³ Dias Direct, pp. 17-18.

¹⁴ Dias Direct, pp. 19-20.

¹⁵ *Fowler Ridge Wind Farm, LLC*, Commission Cause No. 43338, November 27, 2007 Order, Ordering Paragraph 4.

1 However, the Commission has ordered an independent power producer “shall not
2 exercise any of the rights, powers, and privileges of an Indiana public utility in the
3 construction and operation of the project, e.g., the power of eminent domain, use of
4 public rights-of-way, exemption from zoning, and land use regulation.”¹⁶

5 **Q: Does the OUCC agree with Petitioner's request to retain the right to use public**
6 **rights-of-way for this Project?**

7 A: Yes. Without the Commission granting this request, it is my understanding
8 Petitioner will not be able to secure a permit from INDOT allowing its facilities to
9 cross roads. The OUCC concurs with Petitioner's request for limited use of public
10 rights-of-way. Petitioner requests use of the rights-of-way to facilitate construction
11 and use of a transmission line, much like Fowler Ridge Wind Farm, LLC, in Cause
12 No. 43338.¹⁷

V. INTERCONNECTON

13 **Q: Are there any issues with Petitioner's planned interconnection with MISO?**

14 A: No. The OUCC does not take issue with the planned interconnection. MISO
15 completed the Facilities Study for the project in May 2020 and a Phase I Impact
16 Study. These studies indicate the Project's interconnection will not negatively
17 impact system performance once the upgrades needed for interconnection are
18 completed.¹⁸ Petitioner plans to complete the Large Generator Interconnection
19 Agreement by September 2021.¹⁹

¹⁶ *Benton County Wind Farm, LLC*, Commission Cause No. 43068, December 6, 2006 Order, Ordering Paragraph 4.

¹⁷ The Commission has also approved such limited use of public rights-of-way in previous declination of jurisdiction proceedings. See Cause Nos. 45230 (*Speedway Solar, LLC.*), 45254 (*Fairbanks Solar Energy Center, LLC.*), and 45255 (*Lone Oak Solar Energy, LLC.*).

¹⁸ *Dias Direct* p. 16-17, and Attachments TSD-5 and TSD-6.

¹⁹ *Dias Direct*, p. 16, lines 19-20.

VI. REPORTING REQUIREMENTS AND MATERIAL CHANGE

1 **Q: Does the OUCC agree with Petitioner's proposed reporting requirements and**
2 **additional requirements concerning material change in project output or**
3 **project modification or suspension?**

4 A: Yes. Petitioner outlines proposed reporting requirements and additional
5 requirements concerning material change in project output or project modification
6 or suspension in Mr. Dias's Direct testimony.²⁰ These requirements are consistent
7 with the OUCC's recommendations in prior dockets and with previous Commission
8 Final Orders regarding renewable energy and declination of jurisdiction.

VII. CONCLUSION AND RECOMMENDATION

9 **Q: If the Commission declines jurisdiction, will Petitioner be left unregulated?**

10 A: No. Petitioner is subject to local, state, and federal governing bodies regardless of
11 whether the commission exercises or declines jurisdiction in whole or in part.
12 Petitioner will be regulated by IDEM, the United States Fish and Wildlife Services,
13 the U.S. Army Corps of Engineers, INDOT, MISO and FERC.

14 **Q: Should the Commission decline to exercise its jurisdiction over Petitioner?**

15 A: Yes. For the reasons I discussed earlier, Ratts I Solar is an energy utility, and its
16 Project is in the public interest. If the Commission declines jurisdiction, sufficient
17 local, state, and federal regulatory oversight will remain. Therefore, the
18 Commission should decline to exercise its jurisdiction over Petitioner as allowed
19 by Indiana law.

²⁰ Dias Direct, pp. 26-29.

1 **Q: What does the OUCC recommend in this proceeding?**

2 A: The OUCC recommends the Commission issue an order in this Cause, declining to
3 exercise full jurisdiction over Ratts I Solar's construction, ownership and operation
4 of, and other activities in connection with its proposed Project. Additionally, the
5 OUCC recommends the Commission require Petitioner to submit reports on the
6 status of the Project's development, as proposed by Petitioner.

7 **Q: Does this conclude your testimony?**

8 A: Yes.

APPENDIX A

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

2 A: I graduated from the University of Evansville in 2004 with a Bachelor of Science
3 degree in Environmental Administration. I graduated from Indiana University,
4 Bloomington in May 2007 with a Master of Public Affairs degree and a Master of
5 Science degree in Environmental Science. I have also completed internships with
6 the Environmental Affairs Department at Vectren in the spring of 2004, with the
7 U.S. Environmental Protection Agency in the summer of 2005, and with the U.S.
8 Department of the Interior in the summer of 2006. During my final year at Indiana
9 University, I served as a research and teaching assistant for a Capstone course
10 offered at the School of Public and Environmental Affairs. I also have obtained my
11 OSHA Hazardous Operations and Emergency Response ("HAZWOPER")
12 Certification. I have been employed by the OUCC since May 2007. As part of my
13 continuing education at the OUCC, I have attended both weeks of the National
14 Association of Regulatory Utility Commissioners' ("NARUC") seminar in East
15 Lansing, Michigan, completed three 8-hour OSHA HAZWOPER refresher courses
16 to maintain my certification, and attended the Indiana Chamber of Commerce's
17 Environmental Permitting Conference.

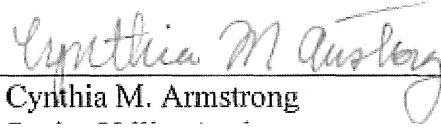
18 **Q: Describe some of your duties at the OUCC.**

19 A: I review and analyze utilities' requests and file recommendations on behalf of
20 consumers in utility proceedings. Depending on the case at hand, my duties may
21 also include analyzing state and federal regulations, evaluating rate design and
22 tariffs, examining books and records, inspecting facilities, and preparing various

1 studies. Since my expertise lies in environmental science and policy, I assist in
2 many cases where environmental compliance is an issue.

AFFIRMATION

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



Cynthia M. Armstrong

Senior Utility Analyst

Indiana Office of Utility Consumer Counselor

Cause No. 45426

Ratts 1 Solar LLC

October 9, 2020

Date

CERTIFICATE OF SERVICE

This is to certify that a copy of the ***OUCC TESTIMONY OF CYNTHIA M. ARMSTRONG*** has been served upon the following parties of record in the captioned proceeding by electronic service on October 9, 2020.

Ratts 1 Solar LLC
David T. McGimpsey
Hannah G. Bennett
david.mcgimpsey@dentons.com
hannah.bennett@dentons.com



T. Jason Haas
Attorney No. 34983-29
Deputy Consumer Counselor

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

PNC Center

115 West Washington Street
Suite 1500 South
Indianapolis, IN 46204

infomgt@oucc.in.gov

317/232-2494 – Telephone

317/232-5923 – Facsimile