

FILED
May 6, 2021
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY)
STARKE SOLAR LLC D/B/A MAMMOTH)
SOLAR FOR CERTAIN ETERMINATIONS)
BY THE COMMISSION WITH RESPECT TO)
ITS JURISDICTION OVER PETITIONER'S)
ACTIVITIES AS A GENERATOR OF)
ELECTRIC POWER)

CAUSE NO. 45518

PUBLIC'S

EXHIBIT NO. 6-1-21 LR
DATE REPORTER

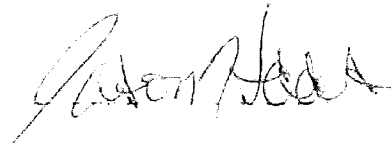
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR ("OUCC")

TESTIMONY OF

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

May 6, 2021

Respectfully submitted,



T. Jason Haas

Attorney No. 34983-29

Deputy Consumer Counselor

TESTIMONY OF OUCC WITNESS CYNTHIA M. ARMSTRONG
CAUSE NO. 45518
STARKE SOLAR LLC D/B/A MAMMOTH SOLAR

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 Starke Solar
13 LLC d/b/a Mammoth Solar's ("Mammoth Solar" or "Petitioner") Petition initiating
14 this proceeding and its pre-filed verified direct testimony and exhibits.
15 Additionally, I participated in a pre-filing video conference with Petitioner on
16 February 16, 2021.

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

18 A: The purpose of my testimony is to present my review regarding whether it is
19 appropriate for the Commission to decline to exercise its jurisdiction over the
20 proposed Mammoth Solar Phase I power generating facility (the "Project"). In

1 analyzing requests for declination of Commission jurisdiction, the OUCC is
2 concerned with ensuring the public interest is served.

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

4 A: First, I summarize the requested relief and the Commission's jurisdiction over
5 Petitioner. Next, I discuss public interest matters possibly affecting the relief
6 requested. I then address Petitioner's proposed reporting requirements. Lastly, I
7 present the OUCC's recommendation regarding the Commission approving
8 Petitioner's request for the Commission to decline to exercise its jurisdiction over
9 Petitioner, subject to specific reporting requirements Petitioner outlined.

10 **II. PETITIONER'S REQUEST FOR DECLINATION OF JURISDICTION**

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

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

1 **Q: Is Petitioner an “energy utility”?**

2 A: Yes, it is. I base this on the information presented in this Cause and my reading of
3 relevant statute and previous Commission decisions. Ind. Code § 8-1-2.5-2 defines
4 “energy utility,” in part, as a public utility within the meaning of Ind. Code § 8-1-
5 2-1. Both the Petition initiating this Cause and Petitioner’s Exhibit 1, Kevin
6 Parzyck’s Verified Direct Testimony describe Petitioner’s intent to develop, own,
7 and operate a power generating facility in the state of Indiana. Accordingly,
8 Mammoth Solar could be considered a “public utility” under the Ind. Code § 8-1-
9 2-1 definition.¹ This determination means Petitioner is an “energy utility” under
10 Ind. Code § 8-1-2.5-2.

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

13 A: Yes. Under Ind. Code § 8-1-2.5-5, “on the request of an energy utility ... the
14 commission may enter an order, after notice and hearing, that the public interest
15 requires the commission to commence an orderly process to decline to exercise, in
16 whole or in part, its jurisdiction over either the energy utility...” Absent a
17 proceeding under Ind. Code § 8-1-2.5-5, Petitioner’s status as a public utility could
18 trigger other regulatory obligations (such as needing a CPCN per Ind. Code ch. 8-
19 1-8.5 et seq.). This proceeding is a request for such relief and for the Commission
20 to determine public interest warrants it decline jurisdiction (per Ind. Code § 8-1-
21 2.5-5(b)).

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).

III. PUBLIC INTEREST

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

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

- 5 1. Whether technological or operating conditions, competitive forces, or
6 the extent of regulation by other state or federal regulatory bodies
7 render the exercise, in whole or in part, of jurisdiction unnecessary or
8 wasteful.
- 9 2. Whether the Commission's declining to exercise, in whole, or in part,
10 its jurisdiction will be beneficial for the energy utility, the energy
11 utility's customers, or the state.
- 12 3. Whether the Commission's declining to exercise, in whole or in part,
13 its jurisdiction will promote energy utility efficiency.
- 14 4. Whether the exercise of commission jurisdiction inhibits an energy
15 utility from competing with other providers of functionally similar
16 energy services or equipment.²

17 **Q: Has Petitioner made a showing it meets all the above factors?**

18 A: Yes. Petitioner has shown it meets the above factors. Essentially, Mammoth Solar
19 will fall under other state and federal regulatory bodies responsible for regulating
20 and protecting the public interest regarding the Project's future operation and
21 wholesale energy transactions. Further Commission regulation would be

² Ind. Code § 8-1-2.5-5(b).

1 duplicative of other regulatory bodies, could impede Mammoth Solar's ability to
2 compete with other wholesale solar providers, and would waste the Commission's
3 resources. So long as Mammoth Solar commits and follows through with the
4 reporting requirements it proposes,³ the OUCC does not take issue with the
5 Commission declining to exercise its jurisdiction over Mammoth Solar.

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

7 A: There are several regulatory bodies which review environmental, wildlife,
8 reliability, safety, and land use concerns. These regulatory bodies include: the U.S.
9 Fish and Wildlife Service, the Indiana Department of Environmental Management
10 ("IDEM"), the Indiana Department of Natural Resources, the U.S. Army Corps of
11 Engineers, the Indiana Department of Transportation ("INDOT"), the Federal
12 Energy Regulatory Commission ("FERC"), and the Pennsylvania Jersey Maryland
13 Interconnection ("PJM").

14 **Q: Is potential solar generating structure abandonment an issue with the Project?**

15 A: No. The Starke County Solar Ordinance requires Petitioner to execute a
16 Decommissioning Agreement prior to starting construction.⁴ The
17 Decommissioning Agreement requires Petitioner to have a decommissioning plan
18 and provide a financial assurance mechanism to ensure proper decommissioning.⁵
19 Pulaski County's Unified Development Ordinance also requires a

³ Petitioner's Exhibit 1, Direct Testimony of Kevin Parzyck, pp. 19-21.

⁴ Parzyck Direct, p. 8, lines 18-19.

⁵ Petitioner's Attachment KP-7, Section I, paragraph 12.

decommissioning plan be in place prior to starting construction. As part of this plan, Petitioner is required to provide a decommissioning security.⁶

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

A: Yes. As more large solar farms are being developed in Indiana, some local residents and landowners are concerned about solar facilities occupying fertile farmland, impacting land aesthetics, and their safety.⁷ In Mammoth Solar's case, it seems there are some local residents opposed to or concerned about the Project. The major concerns are the Project's effect on land aesthetics, impacts to local property values, less agricultural land available for farming, and the Project's safety. Several were concerned the project would increase radiation levels in the area.⁸

Q: Should these concerns prohibit the Project?

A: No. If Starke County and Pulaski County officials take issue with the Project, or with solar projects in general, it could act on those concerns through implementing additional zoning requirements or declining to issue tax abatements for the Project.

⁶ Pulaski County Indiana Unified Development Ordinance, Ordinance #2019-08, Section 7.4, pp. 216-217. <http://gov.pulaskionline.org/wp-content/uploads/sites/4/2019/12/CountyUDO2020.pdf>. See also, Parzyck Direct, p. 8, line 19, through p. 9, lines 1-2.

⁷ See, e.g., Weaver, Greg. (January 10, 2021). *The Republic*. *New cash crop: Industrial-solar-farm boom hits Hoosier backlash*.

http://www.therepublic.com/2021/01/10/new_cash_crop_industrialsolarfarm_boom_hits_hoosier_backlash/

⁸ Gallenberger, M. *WKVI FM 99.3 News*. (August 24, 2020) *Pulaski County BZA Approves Mammoth Solar Project but Adds a Number of Stipulations*. <https://wkvi.com/2020/08/pulaski-county-bza-approves-mammoth-solar-project-but-adds-a-number-of-stipulations/>

See also, Goodan, Anita. *WKVI FM 99.3 News*. (February 2, 2021) *Starke County Commissioners Make Decision on Parcel Rezoning for Solar Panel Project*. <https://wkvi.com/2021/02/starke-county-commissioners-make-decision-on-parcel-rezoning-for-solar-panel-project/>

See also, *Pulaski Post*. (July 15, 2020) *Local officials confirm proposed plans for solar project in Pulaski County*. http://pulaskipost.com/index.php?option=com_content&view=article&id=7086:local-officials-confirm-proposed-plans-for-solar-project-in-pulaski-county&catid=4:news

Both Starke County and Pulaski County have dealt with concerns regarding aesthetics by requiring significant setbacks and vegetative barriers for the Project.⁹

Residents concerned about the issue had the opportunity to voice their concerns at public hearings. However, the Pulaski County Board of Zoning Appeals (“BZA”) approved a Special Exception request for the Project,¹⁰ and Starke County officials approved the Project’s rezoning request of land parcels to agricultural, as the Starke County solar ordinance only allows commercial solar facilities to be built in agricultural zones.¹¹

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

A: Potentially. The State Utility Forecasting Group (“SUGF”) analyzed multiple scenarios to assist the Commission in developing its report to the 21st Century Energy Policy Task Force. In its reference case, which takes into account announced plant retirements over the next three years, the SUGF predicts a need for over 1,500 MW of resource additions by 2024, over 6,000 MW by 2030, and over 11,000 MW by 2037.¹² It is possible Mammoth Solar could assist with these future resource needs.

⁹ Petitioner’s Attachment KP-7, Sections D and G.

See also, Gallenberger, Michael. (March 12, 2021) WKVI FM 99.3 News. *Pulaski Plan Commission Sends Updated Solar Regulations to County Commissioners but Proposed State Legislation Could Supersede Them.* <https://wkvi.com/2021/03/pulaski-plan-commission-sends-updated-solar-regulations-to-county-commissioners-but-proposed-state-legislation-could-supersede-them/>

¹⁰ Gallenberger, Michael. (March 16, 2021) WKVI FM 99.3 News. *Pulaski County BZA Approves another Special Exception for Mammoth Solar Project.* <https://wkvi.com/2021/03/pulaski-county-bza-approves-another-special-exception-for-mammoth-solar-project/>

¹¹ Goodan, Anita. (February 2, 2021).

¹² 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>

1 Additionally, American Electric Power (“AEP”) Energy recently
2 announced it has executed a Power Purchase Agreement (“PPA”) with Mammoth
3 Solar.¹³

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

5 A: Yes. The Indiana Voluntary Clean Energy Portfolio Standard Program¹⁴ provides
6 incentives to utilities voluntarily increasing the amount of clean energy resources
7 in their electricity portfolios. Additionally, the OUCC has supported, and the
8 Commission has approved, the development of both multiple investor-owned and
9 independent power producers’ renewable energy projects in the past.

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

11 A: Yes. The Project would provide a renewable, emission-free power resource.
12 Environmentally, Petitioner’s proposal appears designed to preserve the use of the
13 land and minimize impacts to endangered species and environmentally sensitive
14 areas. The Project will not release pollutants such as carbon dioxide (CO₂), sulfur
15 dioxide (SO₂), nitrous oxide (NO_x), or mercury. The Project will provide economic
16 development benefits and increase tax revenue for Stake and Pulaski Counties.
17 Petitioner thoroughly outlines all the Project’s benefits in Mr. Parzyck’s direct
18 testimony.¹⁵

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

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

¹³ AEP News Release. (May 3, 2021). *AEP Energy and Global Energy Generation Execute Solar Purchase Power Agreement in PJM*. <https://www.aep.com/news/releases/read/6094/AEP-Energy-and-Global-Energy-Generation-Execute-Solar-Power-Purchase-Agreement-in-PJM>

¹⁴ Authorized by Ind. Code ch. 8-1-37 and implemented by 170 IAC 17.1.

¹⁵ Parzyck Direct, pp. 12-13.

1 A: Yes, on a limited basis. Petitioner is seeking the right to use public rights-of-way
2 within the Project area to facilitate installation and use of transmission lines.¹⁶
3 Retaining the use of the public right-of-way in this limited manner clarifies issues
4 surrounding using public rights-of-way for road crossings.

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

7 A: Yes, sometimes; however, it depends on the request. Prior Commission Orders
8 addressing wind farm requests for declination of jurisdiction suggest the
9 Commission determines rights to use the public rights-of-way on a case-by-case
10 basis. As an example, the Commission allowed limited use of the public rights-of-
11 way:

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

18 However, the Commission ordered an independent power producer "shall not
19 exercise any of the rights, powers, and privileges of an Indiana public utility in the
20 construction and operation of the project, e.g., the power of eminent domain, use of
21 public rights-of-way, exemption from zoning, and land use regulation."¹⁸

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

¹⁶ Parzyck Direct, p. 14.

¹⁷ *Fowler Ridge Wind Farm, LLC*, Commission Cause No. 43338, November 27, 2007 Order, Ordering Paragraph 4.

¹⁸ *Benton County Wind Farm, LLC*, Commission Cause No. 43068, December 6, 2006 Order, Ordering Paragraph 4.

1 A: Yes. Without the Commission granting this request, it is my understanding
2 Petitioner will not be able to secure a permit from INDOT allowing its facilities to
3 cross roads. The OUCC concurs with Petitioner's request for limited use of public
4 rights-of-way. Petitioner requests use of the rights-of-way to facilitate construction
5 and use of a transmission line, much like Fowler Ridge Wind Farm, LLC, in Cause
6 No. 43338.¹⁹

V. INTERCONNECTON

7 **Q: Are there any issues with Petitioner's planned PJM interconnection?**

8 A: No. While the Project is not as far along in the interconnection process as the OUCC
9 would like to see, the OUCC does not take issue with the planned interconnection.
10 The Project's queue positions with PJM are AF1-215 and AF2-134. PJM completed
11 a System Impact Study for queue position AF1-215 and AF2-134 in August 2020,
12 and February 2021, respectively.²⁰ These studies indicate the Project's
13 interconnection will not negatively impact system performance once the upgrades
14 needed for interconnection are completed.²¹ Petitioner anticipates the Facilities
15 Study completion for queue position AF1-215 and AF2-134 by November 2021
16 and March 2022, respectively.²² Petitioner expects to complete the Interconnection
17 Service Agreement for queue positions AF1-215 and AF2-134 by March 2022 and
18 May 2022, respectively.²³

¹⁹ The Commission has also approved such limited use of public rights-of-way in previous declaration of jurisdiction proceedings for solar facilities. See Cause Nos. 45230 (Speedway Solar, LLC.), 45254 (Fairbanks Solar Energy Center, LLC.), and 45255 (Lone Oak Solar Energy, LLC.).

²⁰ Parzyck Direct, p. 11, lines 5-9.

²¹ Parzyck Direct p. 12, lines 1-3, and Attachments PK-8 and PK-9.

²² Parzyck Direct. P. 11, lines 9-14.

²³ Parzyck Direct, p. 11, lines 16-20.

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,**
3 **modification, or suspension?**

4 A: Yes. Petitioner outlines proposed reporting requirements and additional
5 requirements concerning material change in project output, modification, or
6 suspension in Mr. Parzyck's Direct testimony.²⁴ 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 remains subject to local, state, and federal governing bodies whether
11 the commission exercises or declines jurisdiction in whole or in part. Petitioner will
12 be regulated by IDEM, the United States Fish and Wildlife Services, the U.S. Army
13 Corps of Engineers, INDOT, PJM and FERC.

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

15 A: Yes. For the reasons I discussed earlier, Mammoth Solar is an energy utility, and
16 its Project is in the public interest. If the Commission declines jurisdiction,
17 sufficient 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 Additionally, while Petitioner has not yet secured all permits needed for the
21 Project, it completed several site studies necessary to secure such local, state, and

²⁴ Parzyck Direct, pp. 19-21.

1 federal permits. Typically, when a Petitioner seeks declination of Commission
2 jurisdiction, the OUCC expects the Petitioner to have made reasonable progress
3 towards development. The OUCC finds Petitioner's evidence shows reasonable
4 progress to approve its request.

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

6 A: The OUCC recommends the Commission issue an order in this Cause declining to
7 exercise full jurisdiction over Petitioner's construction, ownership and operation
8 of, and other activities in connection with, the proposed Project. Additionally, the
9 OUCC recommends the Commission require Petitioner to submit reports regarding
10 the Project's development status, as Petitioner proposed.

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

12 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.

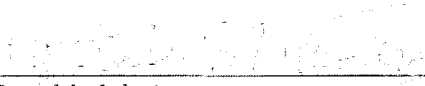
18 **Q: Describe some of your duties at the OUCC.**

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. 45518

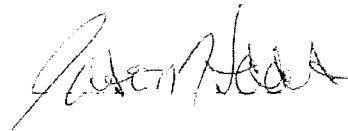
Starke Solar LLC d/b/a Mammoth Solar

May 6, 2021

CERTIFICATE OF SERVICE

This is to certify that a copy of the *OUCC's Testimony of Cynthia M. Armstrong* has been served upon the following parties of record in the captioned proceeding by electronic service on May 6, 2021.

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