STATE OF INDIANA
INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION OF LONE OAK SOLAR LLC REQUESTING THE COMMISSION REASSERT JURISDICTION, IN PART, PURSUANT TO IND. CODE § 8-1-2.5-7 AND FIX REASONABLE CONDITIONS FOR 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 LLC'S RESPONSE TO MADISON COUNTY'S OBJECTIONS TO REQUEST FOR ADMINISTRATIVE NOTICE

Lone Oak Solar LLC ("Lone Oak" or "Petitioner"), by counsel, hereby submits its Response to the Madison County Board of Commissioners (collectively, "Madison County" or the "County") Objections to Lone Oak's Request for Administrative Notice (the "Objections").

Introduction

The County's Objections to Lone Oak's request for administrative notice largely ignores the plain language of 170 IAC 1-1.1-21.5, and purely analyzes its Objections under the judicial notice standard pursuant to the Indiana Trial Rules. The Commission's ability to take administrative notice under 170 IAC 1-1.1-21.5 is necessarily broader than judicial notice, as the plain language of the administrative rule includes both those facts that must be judicially noticed by an Indiana court ***and*** other facts that may be administratively noticed so long as certain notice requirements are met (which have been in this Cause). Moreover, the County failed to even cite to the Commission's rule for taking administrative notice in its Objections. The County's objections are unfounded and do not make a cogent argument under the Commission's administrative rules.

Therefore, the County's Objections should be overruled, and Lone Oak's Request for Administrative Notice should be granted.

I. Administrative notice is broader than judicial notice.

The Commission is bound by its own administrative rules at 170 IAC 1-1.1-1, *et seq*., which are different from the Indiana Trial Rules and Rules of Evidence. As the Commission has explained:

> the Commission may be guided generally by relevant provisions of the Indiana Rules of Trial Procedure and the Indiana Rules of Evidence to the extent they are consistent with that rule. However, the Commission is not a judicial body, and the Rules of Trial Procedure and Rules of Evidence are not specifically controlling over the Commission's administrative rules of practice and procedure. The Commission generally proceeds with a looser application . . . ."

Complaint of Northcrest R.V. Park, et al. Against the Lakeland Regional Sewer District Concerning the Provision of Sewer Utility Service, Cause No. 44973 (May 16, 2018), 2018 WL 2329328 (Ind. U.R.C.) at 6. The administrative rule governing administrative notice before the Commission, 170 IAC 1-1.1-21.5, embraces these "looser" concepts by expressly requiring the Commission to take administrative notice over facts that a court must take by judicial notice, and then providing the Commission a more lenient and permissive standard over other facts, provided certain notices are afforded to the parties. In relevant part, 170 IAC 1-1.1-21.5 states:

> (a) The commission shall take administrative notice of a fact that must be judicially noticed by a court of Indiana.
> (b) The commission may take administrative notice of a fact on its own or upon a party's motion if the parties are:
>
> (1) notified of the specific facts and the source of the facts, including memoranda or data of the commission staff related thereto;
> (2) provided a copy of the document; and
> (3) afforded an opportunity, upon timely request, to be heard as to the propriety of taking administrative notice.
>
> In the absence of prior notification, the request may be made after administrative notice has been taken.

Subsections (a) and (b) contain two separate situations when the Commission may take administrative notice: mandatory language in subsection (a) regarding the judicial notice standard, and more permissive language in subsection (b). The unambiguous implication this language is that administrative notice under 170 IAC 1-1.1-21.5 necessarily is broader than judicial notice under Trial Rule 201(b) because it wholly encompasses both those facts that are required to be taken by judicial notice, and also those which fall under subsection (b). The County's Objections failed to analyze Lone Oak's request for administrative notice under the Commission's administrative rules, and only objected under a judicial notice standard.

II. Lone Oak's request for administrative notice should be granted.

The County objects, in part, to the Commission taking administrative notice of a filing NIPSCO made in Cause No. 45403 ("NIPSCO Filing"), contending that certain statements were made "outside the adversarial process." (Objections, pp. 2-3). The County cited no authority from the Commission to support this contention, but instead attempts to conflate judicial notice in a child-in-need-of-services case with the Commission's ability to take administrative notice over filings with the Commission. *Id.* Additionally, the County objects to the Commission taking administrative notice over portions of a study prepared by Purdue University's Extension Office - Community Development that analyzes Indiana county local solar ordinances with the statutory voluntary standards for "Commercial Solar Energy Ready Communities" ("Purdue Report"). Lastly, the County argues that portions of the study prepared by Columbia University's Sabin Center for Climate Change Law ("Columbia Study") analyzing local regulations on renewable energy projects should not be administratively noticed because the study contains the author's opinions and has citations to internet articles. *Id.* at 4-5. The County also argues that references to wind farms in the Columbia Study and Purdue Report are irrelevant to this case. *Id.* The County

did not analyze its Objections under the Commission's administrative rule for administrative notice, and failed to cite any authority from the Commission in support of its Objections.

When the Commission takes "administrative notice of a certain fact or of one of its own or another Commission's Orders or any other matter, such fact, Order or matter is considered to be a part of the record of the Cause." *In the Matter of an Investigation to Determine the Propriety Surrounding the Continued Imposition of PSCI Fees, as Now Calculated, Upon Utilities Over Which the Commission Has Declined to Exercise its Jurisdiction in Whole or in Part Pursuant to Public Law 92-1985, I.C. 8-1-2.6-1 et. seq.*, Cause No. 38135 (Feb. 10, 1988), 1988 WL 1621343 (Ind. U.R.C.) at 1; *see also* 170 IAC 1-1.1-21.5(e) ("Documents administratively noticed by the commission shall become part of the record for the proceeding.").

While an administratively noticed fact becomes part of the record of the Cause, the weight that fact might have is within the discretion of the Commission. Moreover, the Commission has the expertise to properly weigh the veracity of the facts contained within NIPSCO's Filing, the Purdue Report, and the Columbia Study. And while the Purdue Report and Columbia Study may state they are for informational or educational purposes, that does not eliminate the Commission's ability to take administrative notice and review such findings and make a determination of the potential impact of such articles on this case. Or at the very least, the articles contextualize the unreasonable hurdles local governments regularly require renewable energy projects to go through for the *chance* of reaching commercial operation. Wind, solar, and any other type of renewable energy project are relevant to this case and provide this contextualization, as local government authorities use their local zoning authority to impede, unduly burden, or completely block renewable energy projects generally. This is a phenomenon that frequently occurs throughout the state, as indicated by the NIPSCO Filing, and analyzed by the Purdue Report and the Columbia

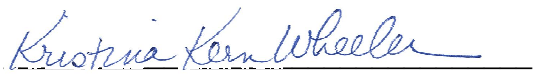
Study. Here, Madison County (a local government) has made a determination on the commercial reasonableness of Lone Oak's utility-grade renewable energy project after it was halted due to litigation with Madison County remonstrators, and was impacted by global COVID-19 related force majeure events. Again, these types of occurrences are not uncommon, as indicated by the NIPSCO Filing, and have been the subject of extensive scholarly analysis in the Purdue Report and Columbia Study.

Lone Oak has (1) notified of the specific facts and the source of the facts, (2) provided a copy of the documents, and (3) afforded an opportunity to be heard as to the propriety of taking administrative notice, all in compliance with 170 IAC 1-1.1-21.5. Accordingly, Lone Oak respectfully requests that the Commission grant its request for administrative notice filed on August 30, 2023, and weigh the veracity of those facts pursuant to the Commission's discretion and expertise.

Conclusion

For the reasons stated herein, the County's Objections should be overruled, and Lone Oak's request for administrative notice should be granted under 170 IAC 1-1.1-21.5.

Respectfully submitted,



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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 September, 2023 to the following:

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