

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE PETITION BY DUNNS)
BRIDGE SOLAR CENTER, LLC FOR CERTAIN)
DETERMINATIONS BY THE COMMISSION WITH)
RESPECT TO ITS JURISDICTION OVER) CAUSE NO. 45467
PETITIONER'S ACTIVITIES AS A GENERATOR OF)
ELECTRIC POWER)

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR

TESTIMONY OF

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

FEBRUARY 2, 2021

Respectfully submitted,



T. Jason Haas

Attorney No. 34983-29

Deputy Consumer Counselor

TESTIMONY OF OUCC WITNESS CYNTHIA M. ARMSTRONG
CAUSE NO. 45467
DUNNS BRIDGE SOLAR CENTER, 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 Dunns Bridge
13 Solar Center, LLC.’s (“Dunns Bridge” or “Petitioner”) Petition initiating this
14 proceeding and its pre-filed verified direct testimony and exhibits. I also
15 participated in a pre-filing video conference with Petitioner on November 18, 2020,
16 and a video conference with Petitioner on January 29, 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 of whether it is appropriate
19 for the Commission to decline to exercise its jurisdiction over the proposed Dunns
20 Bridge Solar Phase I solar power generating facility (the “Project”). In analyzing

1 requests for declination of Commission jurisdiction, the OUCC is concerned with
2 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 the Commission approve Petitioner's
8 requested relief to limit Commission jurisdiction subject to specific reporting
9 requirements outlined by Petitioner.

II. PETITIONER'S REQUEST FOR DECLINATION OF JURISDICTION

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

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

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

21 A: Yes, it is, based on the information presented in this Cause and my reading of
22 relevant statute and previous Commission decisions. Ind. Code § 8-1-2.5-2 defines

1 “energy utility,” in part, as a public utility within the meaning of Ind. Code § 8-1-
2 2-1. Both the Petition initiating this Cause and Petitioner’s Exhibit 1, the Verified
3 Direct Testimony of Zachary Melda, describe Petitioner’s intent to develop, own,
4 and operate a power generating facility in the state of Indiana. Accordingly, Dunns
5 Bridge could be considered a “public utility” under the Ind. Code § 8-1-2-1
6 definition.¹ This determination means Petitioner is an “energy utility” under Ind.
7 Code § 8-1-2.5-2.

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

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

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

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

16 A: Yes. Petitioner has shown it meets the above factors. Essentially, Dunns Bridge will
17 fall under the regulation of other state and federal regulatory bodies that will protect
18 the public interest regarding the Project's future operation and wholesale energy
19 transactions. Further regulation by the Commission would be duplicative of other
20 regulatory bodies, could impede Dunns Bridge's ability to compete with other
21 wholesale solar providers, and would waste the Commission's resources. So long

² Ind. Code § 8-1-2.5-5(b).

1 as Dunns Bridge commits and follows through with the reporting requirements it
2 proposes,³ the OUCC does not take issue with the Commission declining to
3 exercise its jurisdiction over Dunns Bridge.

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

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

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

14 A: No. The Jasper County Board of Zoning Appeals ("BZA") approved a Special
15 Exception permit for a commercial solar energy system at the Project site on July
16 19, 2019. As a condition of receiving the Special Exception permit, Dunns Bridge
17 agreed to the terms of a Decommissioning Plan Agreement.⁴ Mr. Melda indicates
18 Dunns Bridge anticipates it will provide a decommissioning security, such as a
19 performance or surety bond, to guard against the worst-case possibility that it would
20 be unable to meet its obligation to remove the Project.⁵

³ Petitioner's Exhibit 1, Direct Testimony of Zachary Melda, pp. 22-25.

⁴ Jasper County BZA July 15, 2019, Meeting Minutes.

https://www.jaspercountyin.gov/egov/apps/document/center.egov?view=browse&eGov_searchType=12&eGov_searchDepartment=31.

⁵ Melda Direct, p. 11, lines 4-12.

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

2 A: Yes. As more large solar farms are being developed in Indiana, some local residents
3 and landowners are concerned about solar facilities occupying fertile farmland,
4 impacting on land aesthetics, and their safety.⁶ At the May 19, 2019, Jasper Co.
5 BZA initial public hearing for the Project, many residents voiced concerns about
6 the impact to local wildlife such as Sand Hill cranes, toxins from solar panels when
7 they are decommissioned, fire hazards, land aesthetics, the transparency of project
8 developers, the loss of farmland, and damage to agricultural drainage tiles.⁷ Reports
9 indicate the discussion at the hearing became heated, and two individuals had to be
10 escorted from the building.⁸

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

12 A: No. If Jasper County takes issue with the Project, it could act on these concerns
13 through the BZA rescinding the Special Exception approval or declining to issue
14 tax abatements for the Project. Concerned residents had the opportunity to voice
15 these concerns at a public hearing at the county level, and county officials approved
16 the Project.⁹ At the initial hearing, there were also community members that
17 supported the Project and were grateful the Project could help the local economy.¹⁰

⁶ 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/

⁷ Jasper County BZA May 20, 2019, Meeting Minutes.

https://www.jaspercountyin.gov/egov/apps/document/center.egov?view=browse&eGov_searchType=12&eGov_searchDepartment=31.

⁸ Sparks, Tom. (July 16, 2019) *Rensselaer Republican*. *Jasper County Board of Zoning Appeals approves solar array*. https://www.newsbug.info/rensselaer_republican/news/local/jasper-county-board-of-zoning-appeals-approves-solar-array/article_e4ddcbcc-bdeb-50c1-8802-d16450febf01.html.

⁹ *Id.* See also, Jasper County BZA July 15, 2019, Meeting Minutes.

¹⁰ Jasper Co. BZA May 19, 2019, Meeting Minutes.

1 Additionally, Jasper County's economy has been dependent on power
2 generators located in the county. With the announced retirement of Northern
3 Indiana Public Service Company's ("NIPSCO") Schahfer Generating Station in
4 2023, the county stands to lose a significant number of jobs and tax revenue. The
5 Project will boost the local economy by providing high-income construction jobs
6 and property tax revenue. Dunns Bridge combined with Dunns Bridge Solar II,
7 which is also currently seeking declination of jurisdiction in Cause No. 45476, will
8 bring in \$59 million in additional tax revenue over the life of the projects.¹¹

9 **Q: Do you have any concerns regarding local approval of the Project?**

10 A: Local approval for the Project occurred when Orion Energy was still developing it.
11 Orion Energy was the original developer of the Project. NextEra Energy Resources
12 acquired the Project from Orion Energy. If there are major changes to the Project
13 and the Project area expands, Dunns Bridge will need to seek additional approval
14 from Jasper County. Petitioner indicated in the January 29, 2021, video conference
15 with the OUCC it did not intend for the Project to expand beyond the boundaries
16 of what has already been approved. Additionally, Petitioner is already aware it will
17 have to seek additional approval as it develops Dunns Bridge Solar II, which will
18 be addressed in Cause No. 45476.

19 Given the initial Project site approval was somewhat contentious and with
20 a different company, I am concerned any major changes to the original Project may

¹¹ Tomlinson, Harley. (October 23, 2020) Kankakee Valley Post News. *NIPSCO announces new Indiana-based solar projects in Jasper County.*
https://www.newsbug.info/kankakee_valley_post_news/news/local/nipsco-announces-new-indiana-based-solar-projects-in-jasper-county/article_56e97c8f-6938-5261-92f9-d7031fcc78c.html#:~:text=Dunns%20Bridge%20Solar%20II&text=Dunns%20Bridge%20II%20will%20be,approximately%20300%20jobs%20during%20construction.

1 be met with local pushback. Several residents already voiced concerns regarding
2 the transparency of the previous developer, Orion Energy. My concern does not
3 warrant denying Petitioner's request, but I wanted to note it for the Commission.

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

5 A: Possibly. As part of its request in Cause No. 45462, NIPSCO plans to enter into a
6 joint venture with a tax equity partner to acquire Dunns Bridge once Petitioner
7 completes construction of the Project. NIPSCO indicates the Project will fulfill a
8 portion of its generation replacement plan for its retiring coal assets.

9 Additionally, the State Utility Forecasting Group ("SUFG") analyzed
10 multiple scenarios to assist the Commission in developing its report to the 21st
11 Century Energy Policy Task Force. In its reference case, which takes into account
12 announced plant retirements over the next three years, the SUFG predicts a need
13 for over 1,500 MW of resource additions by 2024, over 6,000 MW by 2030, and
14 over 11,000 MW by 2037.¹² It is possible Dunns Bridge could assist with these
15 future resource needs.

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

17 A: Yes. The Indiana Voluntary Clean Energy Portfolio Standard Program¹³ provides
18 incentives to utilities that voluntarily increase the amount of clean energy resources
19 in their electricity portfolios. Additionally, the OUCC supported, and the
20 Commission approved, the development of both multiple investor-owned and
21 independent power producers' renewable energy projects in the past.

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>

¹³ Authorized by Ind. C. ch. 8-1-37 and implemented by 170 IAC 17.1.

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

2 A: Yes. The Project would provide a renewable, emission-free power resource.
3 Environmentally, Petitioner's proposal appears designed to preserve the use of the
4 land and minimize impacts to endangered species and environmentally sensitive
5 areas. The Project will not release pollutants such as carbon dioxide (CO₂), sulfur
6 dioxide (SO₂), nitrous oxide (NO_x), or mercury. The Project will provide economic
7 development benefits and increase tax revenue for Jasper County. Petitioner
8 thoroughly outlines all the Project's benefits in Mr. Melda's direct testimony.¹⁴

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

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

10 A: Yes, on a limited basis. Petitioner is seeking the right to use public rights-of-way
11 within the Project area in order to facilitate installation and use of transmission
12 lines.¹⁵ Retaining the use of the public right-of-way in this limited manner clarifies
13 issues surround the use of public rights-of-way for road crossings.

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

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

20 Petitioner shall not exercise an Indiana public utility's rights,
21 powers, and privileges of eminent domain and of exemption from
22 local zoning and land use ordinances in the construction and
23 operation of the Facility. Petitioner specifically retains the rights,

¹⁴ Melda Direct, pp. 14-15.

¹⁵ Melda Direct, pp. 15-16.

1 powers and privileges of a public utility ... to use public rights-of-
2 way ... for Facility transmission lines.¹⁶

3 However, the Commission ordered an independent power producer “shall not
4 exercise any of the rights, powers, and privileges of an Indiana public utility in the
5 construction and operation of the project, e.g., the power of eminent domain, use of
6 public rights-of-way, exemption from zoning, and land use regulation.”¹⁷

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

9 A: Yes. Without the Commission granting this request, it is my understanding
10 Petitioner will not be able to secure a permit from INDOT allowing its facilities to
11 cross roads. The OUCC concurs with Petitioner's request for limited use of public
12 rights-of-way. Petitioner requests use of the rights-of-way to facilitate construction
13 and use of a transmission line, much like Fowler Ridge Wind Farm, LLC, in Cause
14 No. 43338.¹⁸

V. INTERCONNECTON

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

16 A: No. The OUCC does not take issue with the planned interconnection. Dunns Bridge
17 executed an amended and restated Generator Interconnection Agreement (“GIA”)
18 for the Project with NIPSCO and MISO on May 5, 2020, which replaced a prior

¹⁶ *Fowler Ridge Wind Farm, LLC*, Commission Cause No. 43338, November 27, 2007 Order, Ordering Paragraph 4.

¹⁷ *Benton County Wind Farm, LLC*, Commission Cause No. 43068, December 6, 2006 Order, Ordering Paragraph 4.

¹⁸ 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.*).

1 GIA for the Project on August 30, 2019. The amended and restated GIA was filed
2 with FERC, and FERC accepted it on July 9, 2020.¹⁹

VI. REPORTING REQUIREMENTS AND MATERIAL CHANGE

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

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

VII. CONCLUSION AND RECOMMENDATION

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

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

16 **Q: Do you have any additional comments regarding Petitioner's request?**

17 A: Yes. Typically, when developers seek declination of jurisdiction from the
18 Commission, the Commission and the OUCC expects the developer to have made
19 reasonable progress toward securing the necessary approvals from local, state, and

¹⁹ Melda Direct, p. 13, lines 13-18.

Note: The GIA was executed by Dunns Bridge Solar, LLC prior to NextEra Energy Resources' acquiring the Project from Orion.

²⁰ Melda Direct, pp. 22-25.

1 federal officials prior to filing its request with the Commission. While the Project
2 is not as far along in the pre-development stage as the OUCC generally likes to see
3 with developers before they seek declination, Petitioner secured enough of the
4 approvals from other local and federal bodies for the OUCC to feel comfortable
5 supporting Petitioner's request.

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

7 A: Yes. For the reasons I discussed earlier, Dunns Bridge is an energy utility, and the
8 Project is in the public interest. If the Commission declines jurisdiction, sufficient
9 local, state, and federal regulatory oversight will remain. Therefore, the
10 Commission should decline to exercise its jurisdiction over Petitioner as allowed
11 by Indiana law.

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

13 A: The OUCC recommends the Commission issue an order in this Cause, declining to
14 exercise full jurisdiction over Dunns Bridge construction, ownership and operation
15 of, and other activities in connection with its proposed Project. Additionally, the
16 OUCC recommends the Commission require Petitioner to submit reports on the
17 status of the Project's development, as proposed by Petitioner.

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

19 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 several 8-hour OSHA HAZWOPER refresher
16 courses to maintain my certification, and attended the Indiana Chamber of
17 Commerce's 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. 45467

February 2, 2021

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 February 2, 2021.

Dentons Bingham Greenebaum LLP

Randolph L. Seger

David T. McGimpsey

randy.seger@dentons.com

david.mcgimpsey@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

thaas@oucc.in.gov

317.232.2494 – Telephone

317.232.3315 – Haas Direct Line

317.232.5923 – Facsimile