FILED
February 6, 2023
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE COMPLAINT OF LONE OAK SOLAR ENERGY LLC AGAINST THE BOARD OF COMMISSIONERS AND BOARD OF ZONING APPEALS OF MADISON COUNTY, INDIANA FOR A DETERMINATION UNDER INDIANA CODE §§ 8-1-2-54 THROUGH -67, 8-1-2-101, 8-1-2-115, AND RELATED STATUTES REGARDING THE UNREASONABLENESS OF THE DECISION OF THE BOARD OF ZONING APPEALS UNDER THE COUNTY'S SOLAR ENERGY ZONING ORDINANCE	)	**CAUSE NO. 45793**
RESPONDENTS: MADISON COUNTY BOARD OF ZONING APPEALS AND MADISON COUNTY BOARD OF COMMISSIONERS	)	

COMPLAINANT LONE OAK SOLAR ENERGY LLC'S OBJECTION TO PETITION TO INTERVENE OF REMONSTRATORS

Lone Oak Solar Energy LLC ("Lone Oak" or "Complainant"), by counsel, hereby submits its Objection to the Petition to Intervene of David K. Burton, Jane A. Burton, Ross E. Hunter, Katrina S. Hunter, Curtis L. Harrison, Rebecca Harrison, Bob Mills, Jean Mills, Richard E. Brown, Kara L. Brown, Phillip R. Pratt, Linda C. Pratt, Lee Walls, Colt Reichart, and F. Denise Spooner ("Remonstrators"). The Commission's procedural rules provide that a Petition to Intervene must show the proposed intervenor's participation *will not unduly broaden the issues or result in an unreasonable delay*. 170 IAC 1-1.1-11(d). These Remonstrators fail to make anything more than a conclusory statement that their intervention will not broaden the issues or delay the proceeding.

These Remonstrators are the exact same individuals who filed the appellate litigation challenging the Madison County Board of Zoning Appeal's ("BZA's") decision which *caused the*

two year delay that led Lone Oak to seek relief from the Commission.[1] *See Burton v. Bd. of Zoning Appeals of Madison Cnty.*, 174 N.E.3d 202, 207–09 (Ind. Ct. App. 2021), *transfer denied*, 176 N.E.3d 443 (Ind. 2021). The Remonstrators have had years of due process to address their claims, *all of which were unsuccessful*. Their intent in filing an intervention at the Commission is to broaden the issues as the case stands today, and cause even more delay.

The Remonstrators' arguments are reflected in the BZA's record that is already a part of the prefiled evidence in this proceeding. Even a cursory review of Remonstrators' statements shows a much broader intent to address issues beyond the limited scope of this proceeding, i.e., whether a county has jurisdiction to regulate the commercial operation date of a solar project owned by a public utility in Indiana. Indeed, the Remonstrators candidly admit their intent to reopen the door to the appropriateness of the Proposed Development as a whole and admit they will expand the issues well beyond those presented by Lone Oak to effectively re-litigate this proceeding. Petition to Intervene, ¶ 14(b) at p. 4. Again, this is a question that has been rejected by every body to consider it – by the Madison County Board when it approved Lone Oak's project, and by every court that thereafter rejected all challenges to the propriety of that approval.

Therein lies the problem that renewable developers are facing across the State of Indiana. It is not whether the solar project is needed to meet the energy and capacity needs of Hoosiers, but rather whether these projects (which the Commission has already found to be in the public interest) are "appropriate"—a very broad term that insinuates that each county in Indiana can block a solar project because they do not want it in their backyards. "When local regulation attempts to control an activity in which the whole state or a large segment thereof is interested, local regulation must

[1] Appellants-Petitioners in the appeal of the initial Madison County BZA's decision were: David and Jane Burton, Bob and Jean Mills, Curtis and Rebecca Harrison, Kara and Richard Brown, Ross and Katrina Hunter, Joshua Hiday, John Doe, and Jane Doe.

fall." *Graham Farms v. Indianapolis Power & Light Co.*, 233 N.E.2d 656, 666 (Ind. 1968). These self-interests create a bottleneck at the local zoning level, blocking the renewable energy development that load-serving utilities are relying on to meet projected need as baseload coal assets are retired.

Remonstrators also make the conclusory statement that Lone Oak lacked diligence in securing other approvals needed for the project. Lone Oak's quarterly reports to the Commission, filed since 2019, show otherwise. These quarterly reports filed with the Commission for more than three years reflect that Lone Oak continued to diligently pursue interconnection approvals during the pendency of the appeal. The project is now fully approved by PJM Interconnection ("PJM"). Lone Oak executed the Interconnection Service Agreement with PJM and American Electric Power, supported by $1,486,380 in cash as security. Remonstrators also mistakenly presume that a stay or injunction would have incentivized a financial partner to invest in a project whose fate was uncertain due to ongoing appeals. No financial entity who had done their own due diligence in the project would have taken on that risk. These facts and circumstances are also explained in Michael Kaplan's prefiled direct testimony.

Lone Oak recognizes that the Commission historically liberally interprets the intervention rule, and most requests are granted. However, there is never an absolute right to intervene. *Gary Transit, Inc. v. Public Serv. Comm'n*, 314 N.E.2d 88, 91 (Ind. Ct. App. 1974). The Commission has denied interventions in appropriate circumstances, stating in once such instance:

> The discretion to allow or disallow status as a Party-Intervenor resides with the Commission. The prospect of the Commission allowing Intervention to a Party which neither has a substantial interest in the controversy or can be reasonably expected to confine its participation to the issues which may be legitimately addressed in the proceeding, can be prejudicial not only to the efficient and fair administration of this Commission's duties but also can create a record for a reviewing court which is unnecessarily encumbered by repetitive objections, motions to strike, and voluminous irrelevant testimony. Other considerations

> compel rejection of the requested Intervention. Major public policy considerations support the prohibition of intervention when participation by the proposed Intervenor would unduly broaden the issues or the scope of the proceeding. . . The prospect of parties with collateral interest broadening the scope of the proceeding is unacceptable when evaluated in terms of unnecessary delay.

In re Elec. Serv. Area Assignments, Cause No. 36299-S209(x) (PSCI Sept. 21, 1984), 1984 WL 995184, at pp. 10-11. By Remonstrators' own admission, they cannot be reasonably expected to confine their participation to the issues that may be legitimately addressed in this proceeding. Accordingly, Remonstrators' Petition to Intervene should be denied.

In the event the Commission grants intervention, Remonstrators should be reminded that they take the case as it stands. The window for direct testimony is now closed. All that remains before the March evidentiary hearing is Lone Oak's rebuttal, due February 16, 2023. The Office of the Utility Consumer Counselor filed a Notice of Intent not to file direct testimony. The County's only direct testimony consisted of the remaining parts of the BZA record. Thus, there is nothing left for Remonstrators to address in cross-answering testimony. Any attempt by Remonstrators to file cross-answering testimony would only be adding on to their statements already in the BZA record, which is unfair and prejudicial to Lone Oak.

For the reasons stated herein, the Petition to Intervene should be denied.

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 6th day of February, 2023 to the following:

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