

In the  
Indiana Court of Appeals

No. 24A-EX-00033

LONE OAK SOLAR ENERGY LLC,

Appellant (Petitioner below),

v.

INDIANA UTILITY REGULATORY  
COMMISSION, INDIANA OFFICE OF  
UTILITY CONSUMER COUNSELOR, and  
MADISON COUNTY BOARD OF ZONING  
APPEALS and MADISON COUNTY BOARD  
OF COMMISSIONERS,

Appellees (Administrative Agency,  
Statutory Party and Respondents  
below).

Appeal from the Indiana Utility  
Regulatory Commission

Cause No. 45883

The Hon. David E. Ziegner,  
Commissioner

The Hon. Loraine L. Seyfried,  
Chief Administrative Law Judge

---

**BRIEF OF *AMICI CURIAE***  
Clean Grid Alliance  
Citizens Action Coalition of Indiana, Inc.  
Indiana Conservative Alliance for Energy

---

Todd A. Richardson (16620-49)  
LEWIS KAPPES, P.C.  
One American Square, Suite 2500  
Indianapolis, Indiana 46282  
Phone: (317) 639-1210  
Fax: (317) 639-4882  
[TRichardson@Lewis-Kappes.com](mailto:TRichardson@Lewis-Kappes.com)

Counsel for Clean Grid Alliance

Jennifer A. Washburn (30462-49)  
CITIZENS ACTION COALITION  
1915 West 18<sup>th</sup> Street, Suite C  
Indianapolis, Indiana 46202  
Phone: (317) 735-7764  
Fax: (317) 205-3599  
[jwashburn@citact.org](mailto:jwashburn@citact.org)

Counsel for Citizens Action Coalition of  
Indiana, Inc., and Indiana Conservative  
Alliance for Energy

**Table of Contents**

I.	STATEMENT OF INTEREST .....	7
II.	STATEMENT OF THE CASE .....	7
III.	STATEMENT OF THE FACTS .....	7
IV.	SUMMARY OF THE ARGUMENT .....	7
V.	ARGUMENT .....	9
	A. Renewable Energy Resources Are Increasingly Important But Face Serious Obstacles to Development in Indiana .....	13
	B. The Framework of Indiana Law Is Premised on Statewide Regulation of Public Utilities by the IURC .....	16
	C. Reliable Electric Service Requires Sufficient Supply Resources, a Subject Integral to the IURC’s Expertise and Statewide Authority but Outside the Purview of Local Officials .....	18
	D. The AUR Act Does Not Authorize the IURC to Discriminate Among Public Utilities or Impair Wholesale Competition .....	22
	1. The AUR Act does not authorize the IURC to condition flexible regulation on compliance with local ordinances ..	24
	2. The theory that compliance with local regulation is justified by the declination of jurisdiction is inconsistent with the treatment of other utilities .....	27
	3. Under a parallel telecommunications statute prior to the AUR Act, the IURC properly retained authority and did not require compliance with local regulations ..	30
	E. The IURC’s Approach Impairs the Strong Public Interest in Economical, Reliable, and Sustainable Electric Service .....	32
VI.	CONCLUSION .....	35

## **Table of Authorities**

### **Cases**

<u>City of Huntington v. Northern Indiana Power Co.</u> , 211 Ind. 502, 5 N.E.2d 889 (1937) .....	16
<u>Graham Farms, Inc. v. Indianapolis Power &amp; Light Co.</u> , 249 Ind. 498, 233 N.E.2d 656 (1968) .....	16-17, 22, 24, 28, 34
<u>Indiana Bell Telephone Co. v. Indiana Utility Regulatory Commission</u> , 715 N.E.2d 351 (Ind. 1999) .....	16
<u>Kankakee Valley Rural Electric Membership Corp. v. United Telephone Co.</u> , 843 N.E.2d 987 (Ind. Ct. App.), <u>trans. denied</u> , 860 N.E.2d 585 (Ind. 2006) .....	25
<u>New York v. FERC</u> , 535 U.S. 1 (2002) .....	9-10, 19
<u>NIPSCO Industrial Group v. Northern Indiana Public Service Co.</u> , 31 N.E.3d 1 (Ind. Ct. App. 2015) .....	27
<u>Public Service Commission v. Panhandle Eastern Pipeline Co.</u> , 224 Ind. 662, 71 N.E.2d 117, <u>aff'd</u> , 332 U.S. 507 (1947) .....	17
<u>United States Steel Corp v. Northern Indiana Public Service Co.</u> , 486 N.E.2d 1082 (Ind. App. 1985) .....	17

### **Regulatory Orders**

<u>In re Duke Energy Indiana, LLC</u> , 2019 WL 342923 (Ind. U.R.C. Jan. 23, 2019) .....	33
<u>In re Local Telephone Exchange Competition</u> , 1996 WL 482657 (Ind. U.R.C. July 1, 1996) .....	31

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

In re PSI Energy, Inc.,  
2006 WL 4400581 (Ind. U.R.C. Dec. 6, 2006)..... 25

In the Matter of the Petition of CinCap VII, LLC,  
2001 WL 798066 (Ind. U.R.C. Apr. 23, 2001)..... 26

Petition of Duke Energy Indiana, LLC,  
2019 WL 4541162 (Ind. U.R.C. Sept. 11, 2019) ..... 25

Petition of Duke Energy Indiana, LLC,  
Cause No. 45145 (Ind. U.R.C. June 5, 2019) ..... 25

Petition of Duke Energy Indiana, Inc.,  
2018 WL 5924598 (Ind. U.R.C. Nov. 7, 2018) ..... 25

Petition of Midwest Telecom of America, Inc.,  
2007 WL 4321817 (Ind. U.R.C. Dec. 5, 2007) ..... 31

Re Indiana Michigan Power Co.,  
2001 WL 1868851 (Ind. U.R.C. Dec. 17, 2001) ..... 23

Re Indiana Michigan Power Co.,  
2003 WL 23232027 (Ind. U.R.C. Sept. 10, 2003) ..... 23

Reg'l Transmission Orgs.,  
Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999),  
order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000),  
aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC,  
272 F.3d 607 (D.C. Cir. 2001) ..... 23

**Statutes**

16 U.S.C. §824 ..... 9, 19

16 U.S.C. §824(b)(1) ..... 10

Ind. Code ch. 8-1-2 ..... 9, 31

Ind. Code §8-1-2-0.6 ..... 34

Ind. Code §8-1-2-0.6(5) ..... 12

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

Ind. Code §8-1-2-1 .....	28
Ind. Code §§8-1-2-54 through 67.....	32
Ind. Code §8-1-2-101 .....	32
Ind. Code §8-1-2-115 .....	16, 24, 32
Ind. Code ch. 8-1-2.2 .....	28
Ind. Code §8-1-2.2-27 .....	28
Ind. Code ch. 8-1-2.3 .....	9, 17
Ind. Code §8-1-2.4-1 .....	33
Ind. Code §8-1-2.4-2(b)(1) .....	33
Alternative Utility Regulation Act, Ind. Code ch. 8-1-2.5 .....	10, 22-32
Ind. Code §8-1-2.5-1 .....	22
Ind. Code §8-1-2.5-5 .....	22, 25, 29
Ind. Code §8-1-2.5-5(b) .....	26
Ind. Code §8-1-2.5-6 .....	22
Ind. Code §8-1-2.5-7 .....	24
Ind. Code ch. 8-1-2.6 .....	27, 30-32
Ind. Code ch. 8-1-2.7 .....	28
Ind. Code ch. 8-1-8 .....	8
Ind. Code §8-1-8-1 .....	28
Ind. Code ch. 8-1-8.5 .....	8, 10-12, 23-24
Ind. Code §8-1-8.5-3 .....	10-12

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

Ind. Code §8-1-8.5-13(a) .....	11
Ind. Code §8-1-13-3(i) .....	28
Ind. Code §8-1-13-18.5 .....	28
Ind. Code §8-1.5-3-9 .....	28
Ind. Code §8-1.5-3-9.1 .....	28
Ind. Code §32-24-1-1 <u>et seq.</u> .....	28
Ind. Code §32-24-1-3(g) .....	24
Ind. Code ch. 32-24-2 .....	28

## **I. STATEMENT OF INTEREST**

The Energy Industry *Amici Curiae*<sup>1</sup> (“*Amici Curiae*”) represent a spectrum of energy industry stakeholders, including an organization supporting renewable power in the Midwest, an advocate for consumers and environmental interests that regularly participates in utility proceedings, and an alliance promoting conservative solutions to energy policy issues in Indiana. *Amici Curiae* support Appellant Lone Oak Solar Energy LLC (“Lone Oak”) in its appeal of the Indiana Utility Regulatory Commission’s (“IURC”) refusal to assert its jurisdiction to prevent local ordinances from unreasonably blocking the deployment of energy resources in Indiana. At issue is whether a county can effectively decide for the *entire state* whether a particular energy source may be constructed at all. Accordingly, *Amici Curiae* are qualified to address this important issue, and urge this Court to reverse.

## **II. STATEMENT OF CASE**

*Amici Curiae* adopt Appellant’s Statement of the Case.

## **III. STATEMENT OF THE FACTS**

*Amici Curiae* adopt Appellant’s Statement of the Facts.

## **IV. SUMMARY OF THE ARGUMENT**

Both independent power producers (“IPPs”) like Lone Oak and electric utilities that serve at retail (“Retail Utilities”) are “public utilities” under Indiana law, and

<sup>1</sup> The Energy Industry *Amici Curiae* consist of Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy.

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

both are equally entitled to the exemption from local zoning and the right to construct utility facilities as provided in Ind. Code ch. 8-1-8. The IURC is and must be the sole regulator for determining whether utility-scale electric generation facilities, including solar farms, will be built. See Ind. Code ch. 8-1-8.5. The IURC's insistence that utility-scale renewable energy projects from IPPs must submit to land use regulation is discriminatory and inconsistent with the federal and state regulatory framework governing electric generation projects.

Instead of performing its role as regulator, the IURC refused even to consider the merits of Lone Oak's case. This approach has allowed local governments across Indiana to ban renewable energy projects or create obstacles that make these projects difficult or impossible to build. However, local government officials lack expertise on the generating resources needed to maintain reliable electric service in Indiana, and should not be placed in a position to make decisions for the rest of the State regarding energy supply. Local regulation only leads to loss of generation capacity and increases in costs, which are later passed on to all customers.

The IURC created a discriminatory regulatory process by concluding Lone Oak, as an IPP, must obey local zoning to build a project, while traditional electric utilities do not have to do so. Other public utilities are not required to seek local zoning approvals, including Retail Utilities and providers of communications, water, and sewer services. Nothing in the Alternative Utility Regulation Act authorizes or requires the IURC to subject IPPs to local regulations from 92 counties that are not applicable to other electric utilities.



Indiana is facing a risk that there will be insufficient energy in the wholesale market to serve Indiana's long-term needs. Retail Utilities alone cannot build solar projects quickly enough to fill the projected need, and IPPs can do so effectively, efficiently, and economically. For that reason, IPPs are important to the reliability and affordability of electric service in Indiana.

## V. ARGUMENT

The regulation of electric utilities is a shared function between the federal and state governments. Under federal law, the Federal Energy Regulatory Commission ("FERC") regulates: (1) *wholesale* transactions, *i.e.*, sales of power for purposes of resale; and (2) the interstate transmission grid. See 16 U.S.C. §824; New York v. FERC, 535 U.S. 1, 16-17 (2002). Under state law, commissions such as the IURC regulate the *retail* rates and services of public utilities, *i.e.*, service directly to end use consumers. See Ind. Code ch. 8-1-2. The electric power that Lone Oak seeks to produce would not be sold directly to retail consumers in Indiana. See Ind. Code ch. 8-1-2.3 (establishing exclusive retail service territories for electric utilities). Rather, sales from the Lone Oak facility to utilities or into the regional market would be for purposes of resale, and hence subject to FERC's wholesale jurisdiction as opposed to the IURC's retail authority.

The problem presented in this case, however, is that by statute FERC does not have jurisdiction over the siting and permitting of power plants, and yet by the Order under review here the IURC, too, is declining to assert authority to regulate the development of essential energy resources. The Federal Power Act, in the same

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

section establishing FERC's jurisdiction over the wholesale market and interstate transmission grid, includes a savings clause preserving *state* authority "over facilities used for the generation of electric energy." See 16 U.S.C. §824(b)(1). Even though FERC has authority over the rates and terms for wholesale transactions, it lacks authority over power plants themselves, and does not regulate the construction of facilities like the Lone Oak project. See New York, 535 U.S. at 22-23. Correspondingly, under Indiana law, the IURC does have specific authority over the construction of power plants. See Ind. Code ch. 8-1-8.5 ("Chapter 8.5"). For the exercise of that function, the IURC further oversees periodic resource plans by each electric Retail Utility to ensure the sufficiency of the generation capacity needed for reliable service for decades into the future. See Ind. Code §8-1-8.5-3.

The development of generation resources within Indiana, then, clearly falls squarely within the authority of the IURC. In this case, however, the IURC construed the Alternative Utility Regulation Act ("AUR Act") as an invitation to step out of that role and instead leave the viability of the Lone Oak project to the idiosyncrasies of local land use regulation. That step creates a perilous gap in the regulatory structure: FERC is barred by statute from regulating, the IURC elects not to do so, and the local authorities who are then left with exclusive responsibility have no energy-related expertise and no charge to maintain the adequacy of electric generation resources in the State. No one is left to ensure that needed generation facilities are built in Indiana.

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

The importance of regulatory oversight to ensure there are adequate capacity resources to provide reliable electric service in Indiana is clear from the provisions of Chapter 8.5. See Ind. Code §8-1-8.5-13(a) (legislative finding that “it is in the public interest to support the reliability, availability, and diversity of electric generating capacity in Indiana for the purpose of providing reliable and stable electric service to customers of public utilities”). Under the oversight of the IURC, electric utilities are required to conduct rigorous planning to assure necessary capacity resources will be in place to support reliable service decades into the future, precisely because resource adequacy is integral to reliable service. Id. §3. However, due to the regulatory gap left by the IURC’s decision here not to assert jurisdiction, the function of regulating the development of energy resources in the State has been lost altogether.

That deficiency is a serious concern, because the status of electric generating capacity is poised at a crucial turning point in Indiana. The State’s electric utilities are currently undergoing a major transition in their portfolios of supply resources. Much of their existing capacity consists of power plants that are nearing the end of their useful lives and are scheduled for retirement in upcoming years, predominantly aging units that burn coal as fuel. The utilities, consequently, need a massive volume of replacement capacity, and their resource plans depend on the development of enough new generation assets to meet future needs. See Ex. vol. II, pp. 13-14, 31; 2022 IURC Annual Report, <https://www.in.gov/iurc/files/IURC-2022-AR-WEB.pdf> at pp. 44-46.

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

Moreover, considering energy market economics coupled with the strong interest in environmental sustainability (see Ind. Code §8-1-2-0.6(5)), the electric utilities in Indiana are uniformly planning for portfolios of replacement capacity that are much more heavily weighted with solar and other renewable resources than has been the case historically.<sup>2</sup> Currently, Indiana electric utilities already purchase a portion of their power resources from independent producers, including operators of solar facilities like the Lone Oak project. Into the future, their resource plans continue to reflect a substantial component of purchased power from market sources, in addition to energy generated by power plants that are operated by the utility itself. The development and availability of such market resources in Indiana, therefore, is an essential element of the regulatory authority vested in the IURC by Chapter 8.5.

It is important to bear in mind that the IURC already determined in 2019 that the Lone Oak project is needed and will serve the public interest. See Ex. vol. I, pp. 94-95. By virtue of the IURC's decision under review here, however, the fate of the

<sup>2</sup> The most current Integrated Resource Plans of each of the five investor-owned Retail Utilities serving Indiana consumers, prepared in accordance with Ind. Code §8-1-8.5-3, are published on the IURC website. See Indiana Michigan Power (AEP): <https://www.in.gov/iurc/files/2021-I-and-M-IRP-Summary-Revised.pdf>; AES Indiana: <https://www.in.gov/iurc/files/AES-Indiana-2022-IRP-Volume-I.pdf> at Executive Summary; Northern Indiana Public Service Company: <https://www.in.gov/iurc/files/NIPSCO-2021-Integrated-Resource-Plan-Document-1.pdf> at pp. 3-15; Duke Energy Indiana: <https://www.in.gov/iurc/files/REVISED-PUBLIC-DUKE-ENERGY-INDIANA-2021-IRP-VOLUME-I.pdf> at pp. 4-26; Centerpoint Energy Indiana: <https://www.in.gov/iurc/files/2022-2023-CNP-IRP-Non-technical-Summary.pdf>.

Lone Oak project was nonetheless ultimately decided by local officials lacking expertise or authority to ascertain whether the planned project aligns with Indiana energy policy, or whether additional solar capacity in the State is in the public interest, or whether the integrated resource plans of Indiana electric utilities support the deployment of this supply resource, or how this project otherwise fits in the planned development of the State's generating capacity. It is contrary to Indiana law and the public interest to allow local governments to supersede an IURC determination of need for a generation facility.

**A. Renewable Energy Resources Are Increasingly Important But Face Serious Obstacles to Development in Indiana**

Solar energy accounted for more than half of all new electric generating capacity added to the grid last year.<sup>3</sup> Yet, local opposition to solar, wind and battery storage projects has rapidly increased in recent years, pressuring local elected officials to place restrictions on such projects far beyond the needs of public health and safety. That resistance to siting of renewable energy projects has become an acute problem in Indiana, where local ordinances imposing burdensome restrictions or prohibiting such projects altogether have become prevalent.<sup>4</sup>

<sup>3</sup> See U.S. Solar Market Insight, <https://www.seia.org/us-solar-market-insight> (March 6, 2024).

<sup>4</sup> Examples of County zoning ordinances imposing burdensome restrictions or prohibitions on solar installations include:

Adams County: [https://energyzoning.org/sites/default/files/PDF/18001\\_Adams\\_20230306.pdf](https://energyzoning.org/sites/default/files/PDF/18001_Adams_20230306.pdf);

- Bartholomew County: [https://www.dropbox.com/s/uqjqe3ecuoqm1xd/Comm.%20Solar%20Final%20Approved%20Text%20\(effective%2011.9.22\).pdf?e=2&dl=0](https://www.dropbox.com/s/uqjqe3ecuoqm1xd/Comm.%20Solar%20Final%20Approved%20Text%20(effective%2011.9.22).pdf?e=2&dl=0)
- Boone County: <https://boonecounty.in.gov/wp-content/uploads/2024/04/Solar-and-Wind-Moratorium.pdf>;
- Dearborn County: [https://extension.purdue.edu/cdext/thematic-areas/community-planning/collaborative-projects/docs/dearborncounty\\_ordinance.pdf](https://extension.purdue.edu/cdext/thematic-areas/community-planning/collaborative-projects/docs/dearborncounty_ordinance.pdf);
- Decatur County: [http://www.decaturocounty.in.gov/doc/area-plan-commission/updates/zoning\\_ordinance\\_-\\_article\\_20\\_solar\\_energy\\_facilities\\_.pdf](http://www.decaturocounty.in.gov/doc/area-plan-commission/updates/zoning_ordinance_-_article_20_solar_energy_facilities_.pdf);
- DeKalb County: [https://www.co.dekalb.in.us/egov/documents/1631884113\\_64116.pdf](https://www.co.dekalb.in.us/egov/documents/1631884113_64116.pdf);
- Delaware County: [https://www.co.delaware.in.us/egov/documents/1697740895\\_58472.pdf](https://www.co.delaware.in.us/egov/documents/1697740895_58472.pdf);
- Franklin County: [https://extension.purdue.edu/cdext/thematic-areas/community-planning/collaborative-projects/docs/franklincounty\\_ordinance.pdf](https://extension.purdue.edu/cdext/thematic-areas/community-planning/collaborative-projects/docs/franklincounty_ordinance.pdf);
- Grant County: <https://www.in.gov/counties/grant/files/153.700SolarOrdinanceV2.pdf>;
- Hamilton County: [https://library.municode.com/in/hamilton\\_county/codes/unified\\_development\\_ordinance?nodeId=UNDEORHACOIN\\_ART08COSOENSYSEOVDISEPR](https://library.municode.com/in/hamilton_county/codes/unified_development_ordinance?nodeId=UNDEORHACOIN_ART08COSOENSYSEOVDISEPR);
- Huntington County: [https://www.huntington.in.us/egov/documents/1632922109\\_92302.pdf](https://www.huntington.in.us/egov/documents/1632922109_92302.pdf);
- Jackson County: [https://library.municode.com/ga/jackson\\_county/ordinances/code\\_of\\_ordinances?nodeId=706403](https://library.municode.com/ga/jackson_county/ordinances/code_of_ordinances?nodeId=706403);
- Johnson County: [https://co.johnson.in.us/egov/documents/1713453507\\_87179.pdf](https://co.johnson.in.us/egov/documents/1713453507_87179.pdf);
- Kosciusko County: [https://www.kegov.com/egov/documents/1575995045\\_25227.pdf](https://www.kegov.com/egov/documents/1575995045_25227.pdf);
- Lake County: <https://www.lakecountyin.org/departments/planning-commission/Foundry-Works-LLC-Solar-Farm-Special-Exception/Lake%20County%20Solar%20Ordinance>;
- Miami County: <https://www.miamicountyin.gov/DocumentCenter/View/2006/Solar-Energy-Systems-Sitting-Ordinance-10-18-2021>;
- Noble County: [https://www.kpcnews.com/newssun/article\\_6bdefbaf-3b39-5836-8476-0ec03db233bd.html](https://www.kpcnews.com/newssun/article_6bdefbaf-3b39-5836-8476-0ec03db233bd.html);
- Posey County: <https://www.poseycountyin.gov/wp-content/uploads/2020/03/Solar-and-Wind-Ordinance-for-Unincorporated-Posey-County.pdf>;
- Tippecanoe County: <http://www.tippecanoe.in.gov/AgendaCenter/ViewFile/Item/10634?fileID=20887>;
- St. Joseph County: <https://www.sjcindiana.com/DocumentCenter/View/1392/Section-154505---Renewable-Energy-Systems>;
- Steuben County: <https://cms2.revize.com/revize/steuben/09B%20Solar%20Energy%20System.pdf>;
- Wabash County: <http://gov.wabash.in.datapitstop.us/DATA/REPORTS/FLD00004/00010390.PDF>;

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

Local opposition may involve outright bans or moratoriums, or the imposition of burdensome limits on size, height, and other requirements that effectively block green power projects. Sometimes there are caps on total project size or complex rules that prevent placement of solar facilities in specially designated areas. Furthermore, in addition to ordinances that overtly restrict renewable energy projects, some local jurisdictions create “shadow bans” by simply rejecting all green energy projects on a case-by-case basis.

The consequence is exemplified by this case: a beneficial solar energy project, providing badly needed generation capacity to Indiana’s electric utilities, after gaining threshold approval by both the IURC and local officials and then securing interconnection rights following rigorous review by the regional electric capacity authority, nevertheless still finds itself unable to proceed with construction because

Wells County: [https://extension.purdue.edu/cdext/thematic-areas/community-planning/collaborative-projects/docs/wellscounty\\_ordinance.pdf?sa=D&source=editors&ust=1706902982264002&usg=AOvVaw3-hOTaqYnoNUU5udjsl2hY](https://extension.purdue.edu/cdext/thematic-areas/community-planning/collaborative-projects/docs/wellscounty_ordinance.pdf?sa=D&source=editors&ust=1706902982264002&usg=AOvVaw3-hOTaqYnoNUU5udjsl2hY);

White County: [http://www.whitecountyin.us/pdfs/ap/15.2008\\_Zoning\\_Ord\\_updated\\_thru\\_081919.pdf](http://www.whitecountyin.us/pdfs/ap/15.2008_Zoning_Ord_updated_thru_081919.pdf);

Whitley County: [https://www.whitleycounty.in.gov/egov/documents/1439231634\\_83082.pdf](https://www.whitleycounty.in.gov/egov/documents/1439231634_83082.pdf);

Vanderburgh County: <https://www.codepublishing.com/IN/VanderburghCounty/html/VanderburghCounty17/VanderburghCounty1728.html#17.28>;

Warrick County: [https://www.energyzoning.org/sites/default/files/PDF/18173\\_Warrick\\_20220915.pdf](https://www.energyzoning.org/sites/default/files/PDF/18173_Warrick_20220915.pdf).

of a shift in position at the county level. And the IURC, the agency with statewide authority over the construction of power plants, declines even to hear the case.

**B. The Framework of Indiana Law Is Premised on Statewide Regulation of Public Utilities by the IURC**

In 1913, the Public Service Commission – now the IURC – was created to *relieve* public utilities from the burden of the hodgepodge of standards under individual local regulations. See City of Huntington v. Northern Indiana Power Co., 211 Ind. 502, 510-11, 5 N.E.2d 889, 892 (1937). The effect was to take from local governments all control over public utilities and create statewide regulation through the IURC as agent of the state. Id. The IURC “is the *sole authority* operating in the state to grant franchises and to control the manner of operation” of utilities. Id. (emphasis added). Its fundamental purpose is to “ensure that public utilities provide constant, reliable, and efficient service to the citizens of Indiana.” See Indiana Bell Telephone Co. v. Indiana Utility Regulatory Commission, 715 N.E.2d 351, 354 n.3 (Ind. 1999). For more than a century, Indiana law has provided that “[t]he commission...shall have the power, *and it shall be its duty*, to enforce the provisions of this act, *as well as all other laws*, relating to utilities.” Ind. Code §8-1-2-115 (emphasis added).

As the Indiana Supreme Court has held, public utilities serve “the larger interest of the general public” and “local regulation is inimical to that larger interest.” See Graham Farms, Inc. v. Indianapolis Power & Light Co., 249 Ind. 498, 516, 233 N.E.2d 656, 666 (1968). The Commission found that Lone Oak is a “public utility”



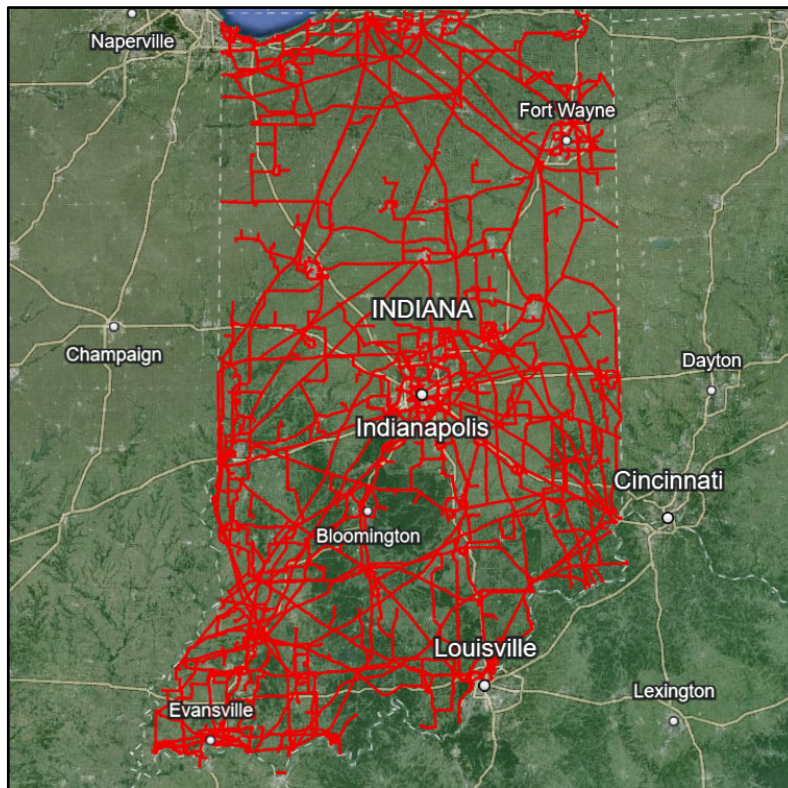
*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

under Indiana law. See Ex. vol. I, p.91. Under Indiana law, a “public utility” is an entity that delivers energy directly or indirectly to the public. See United States Steel Corp v. Northern Indiana Public Service Co., 486 N.E.2d 1082, 1084-85 (Ind. App. 1985). Retail Utilities providing *retail* service directly to end use consumers operate with monopoly service territories (see Ind. Code ch. 8-1-2.3), whereas *wholesale* utilities such as Lone Oak provide service indirectly to the public by supplying power to other utilities for resale to consumers. IPPs such as Lone Oak and Retail Utilities are equally “public utilities” under Indiana law, and accordingly are equally entitled to the exemption from local zoning and land use regulations. See Public Service Commission v. Panhandle Eastern Pipeline Co., 224 Ind. 662, 685-86, 71 N.E.2d 117, 127, aff’d, 332 U.S. 507 (1947) (holding entity was a “public utility” under Indiana law because it was “selling gas in Indiana *indirectly* to and for the public through distributing companies”) (emphasis added).

In Graham Farms, the Supreme Court rejected the proposition that the IURC’s statewide authority could be superseded by local regulation. See 249 Ind. at 516-17, 233 N.E.2d at 666-67. The Court emphasized that approach would mean “chaos.” Id. Now, by forcing IPPs like Lone Oak to obtain local zoning approval, the IURC has subjected certain public utilities to the “chaos” envisioned by the Court in Graham Farms. Given Lone Oak’s status as a public utility, the IURC effectively concluded certain consequences of that status apply only to some public utilities but not others. It was error for the IURC to selectively subject some public utilities to the burdens of local regulation.

**C. Reliable Electric Service Requires Sufficient Supply Resources, a Subject Integral to the IURC’s Expertise and Statewide Authority but Outside the Purview of Local Officials**

Indiana’s energy is derived from a diverse portfolio of energy sources, including coal and natural gas plants, nuclear facilities, wind turbines, and solar farms. The power that is generated from these facilities is delivered to consumers through a complex network of transmission and distribution lines throughout the State<sup>5</sup>:



<sup>5</sup> Map source: Indiana Geographic Information Office, Indiana Map: Electric Power Transmission Lines (May 5, 2024: 9:40 AM), <https://indianamap-inmap.hub.arcgis.com/datasets/INMap::electric-power-transmission-lines-2022/about>.

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

Using that statewide network, an IPP such as Lone Oak can sell power to any electric utility in Indiana for distribution to consumers. Notably, Congress and FERC over the last thirty years have introduced competition to the wholesale market. See New York, 535 U.S. at 9-12. Although retail service to end use consumers is rendered in Indiana on a regulated monopoly basis, Retail Utilities face competition in the *wholesale* market from IPPs like Lone Oak in the development of generation facilities.

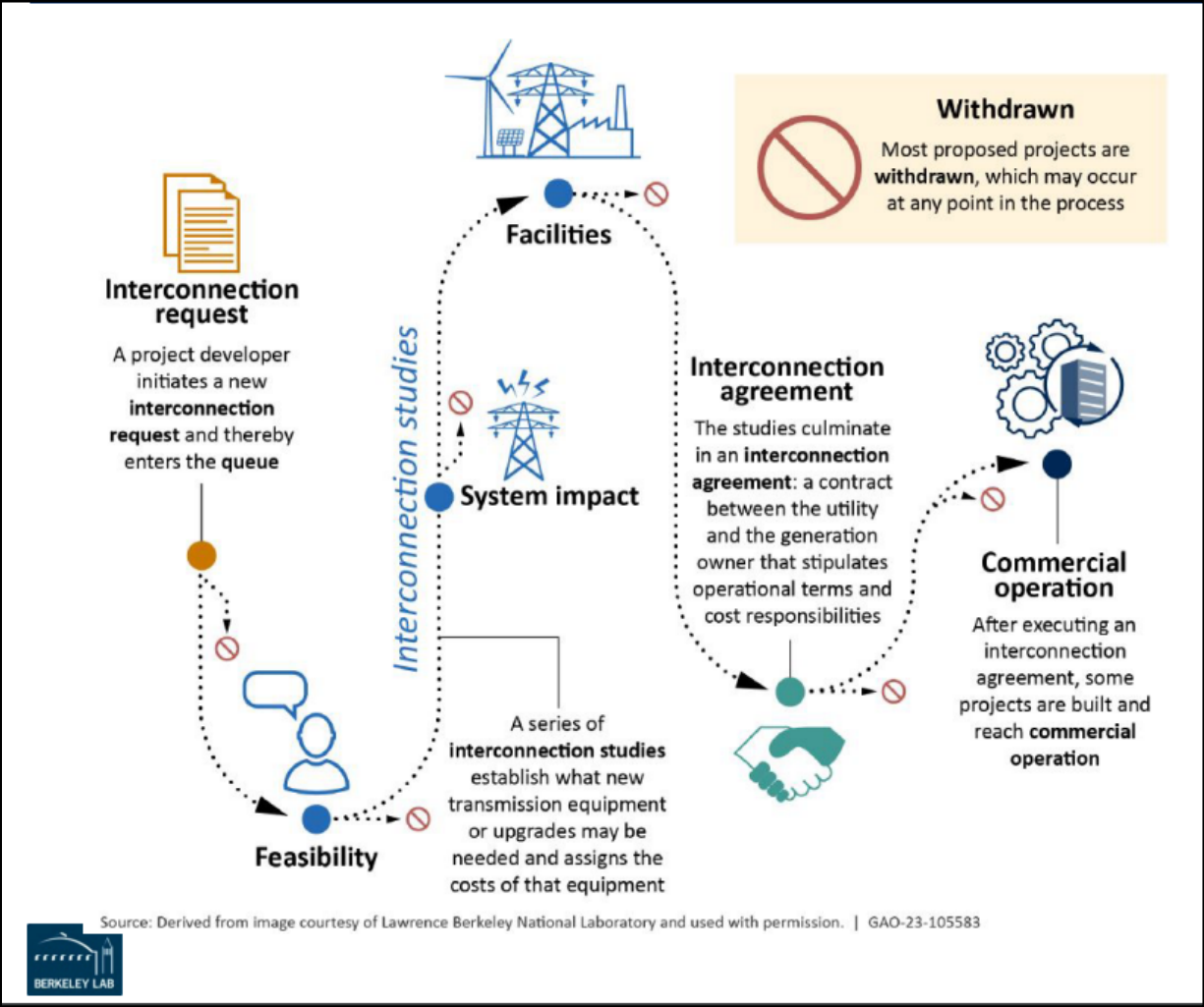
FERC regulates the competitive wholesale power market as well as the “interstate highway” of the interstate electric system. See 16 U.S.C. §824; New York, 535 U.S. at 16-17. Under FERC oversight, the interstate grid has been further structured into a set of regional transmission organizations (“RTOs”), which control the transmission system and manage wholesale markets within their footprints. Indiana is served by two RTOs: the Midcontinent Independent System Operator (“MISO”) and PJM Interconnection (“PJM”).<sup>6</sup>

<sup>6</sup> Map source: Indiana Office of Energy Development, Regional Transmission Organizations (May 5, 2024, 9:49 AM), <https://www.in.gov/oed/indianas-energy-landscape/electricity/regional-transmission-organizations/>.



To access the electric grid, an IPP must first interconnect with the Retail Utility's system. For Lone Oak, that Retail Utility is Indiana Michigan Power Company. The FERC-approved interconnection process for a new generation project is complex, detailed, and expensive. Each step imposes its own increasing contractual and financial obligations on the developer, as well as increasing detail in the technical support for the project.<sup>7</sup>

<sup>7</sup> Source: Joseph Rand, *Queued Up: Status and Drivers of Generator Interconnection Backlogs*, Lawrence Berkeley National Laboratory and U.S. Department of Energy (June 2023), [https://www.energy.gov/sites/default/files/2023-07/Rand\\_Queued%20Up\\_2022\\_Tx%26Ix\\_Summit\\_061223.pdf](https://www.energy.gov/sites/default/files/2023-07/Rand_Queued%20Up_2022_Tx%26Ix_Summit_061223.pdf).



Given the time and expense of this process, generation siting is largely driven by the location of the interconnection. Lone Oak has already successfully made it through each step, has a signed interconnection agreement with PJM, and has expended a substantial investment to secure the necessary interconnection. On top of the IURC’s initial authorization for the project, the rigorous RTO process analyzes the project location, costs, benefits to service reliability, and the capacity and supply outlook. If a project has received approvals through the RTO interconnection process as well as from the IURC, there is a concurrence that the project should be built.

Local opposition should not be permitted to block a project that has been approved under both Indiana and federal law.

If local governments can unilaterally bar the development of renewable IPP energy projects, the sufficiency of energy resources in Indiana and the region is threatened. Less energy supply, coupled with higher energy demand, equals higher costs to ratepayers. Determinations relating to electric reliability and impact on rates fall squarely in the special expertise of the IURC. By contrast, local governments lack the expertise needed to assess and evaluate the significance of a given project to the electric supply needs and resource mix within the State. See Graham Farms, 249 Ind. at 516-17, 233 N.E.2d at 666-67.

**D. The AUR Act Does Not Authorize the IURC to Discriminate Among Public Utilities or Impair Wholesale Competition**

In 1995, in light of increasing competition in the energy industry, the General Assembly authorized a degree of flexibility in the IURC's regulation of energy utilities by passing the AUR Act. See Ind. Code ch. 8-1-2.5. That statute recognizes the competition in the energy industry is increasing and traditional regulation may not be designed to address such competition. See Ind. Code §8-1-2.5-1. In specified circumstances, if certain criteria are satisfied, the AUR Act allows two types of flexible regulation: (1) the IURC may decline to exercise its jurisdiction in whole or in part (id. §5); or (2) an alternative regulatory plan may be approved to modify the utility's services, its rates and charges, or both (id. §6).

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

Although the IURC emphasizes that Lone Oak is a wholesale IPP as a justification for its Order, nothing in the AUR Act authorizes or requires the IURC to subject alternatively regulated IPPs to local regulations that are not applicable to Retail Utilities (who may themselves be subject to alternative regulation). Retail Utilities are not required to obtain local zoning approvals for new generation and transmission projects, even when those projects are also renewable generation or subject to an alternative regulatory plan. Indiana law does not distinguish between the rights of wholesale or retail energy providers, and both are equally subject to the IURC's jurisdiction over power plant construction. See Ind. Code ch. 8-1-8.5. Utility-scale electric generation is purchased and sold in the wholesale market administered by the RTOs for benefit of *all* customers, both wholesale and retail, regardless of the source of the generation.<sup>8</sup> The AUR Act is designed to promote efficient regulation in increasingly competitive energy markets, not to impose barriers to wholesale public utilities that are not faced by Retail Utilities.

<sup>8</sup> See Reg'l Transmission Orgs., Order No. 2000, FERC Stats. & Regs. ¶ 31,089 (1999), order on reh'g, Order No. 2000-A, FERC Stats. & Regs. ¶ 31,092 (2000), aff'd sub nom. Pub. Util. Dist. No. 1 v. FERC, 272 F.3d 607 (D.C. Cir. 2001); Re Indiana Michigan Power Co., 2001 WL 1868851 (Ind. U.R.C. Dec. 17, 2001); and Re Indiana Michigan Power Co., 2003 WL 23232027 (Ind. U.R.C. Sept. 10, 2003).

1. **The AUR Act does not authorize the IURC to condition flexible regulation on compliance with local ordinances**

In its Order dismissing Lone Oak's first complaint against the County on jurisdictional grounds, the IURC suggested it is not regulating the Lone Oak project at all (Appellant's App. vol. II, pp. 3-9), despite the terms of its prior order specifically retaining its jurisdiction over Lone Oak in a number of respects. See Ex. vol. I, pp. 90-100. The IURC also can, on its own motion at any time or upon request, rescind or revise its declination order and regulate the Project more closely going forward if it so chooses. See Ind. Code §8-1-2.5-7. Nevertheless, the IURC concluded that the County has jurisdiction over the Project as it relates to siting. In doing so, the IURC failed to discharge its responsibilities under the law. See Ind. Code ch. 8-1-8.5; id. §8-1-2-115.

Moreover, the Commission's position ignores the exemption from local regulation for all public utilities established in Graham Farms. That case, notably, concerned eminent domain authority, but eminent domain cases involving public utilities fall under the jurisdiction of the trial court, not the Commission. See Ind. Code §32-24-1-3(g) (providing for enforcement in county court). Thus, it is irrelevant that Lone Oak is alternatively regulated under the AUR Act, because the use of eminent domain, and the associated Graham Farms exemption from local zoning, is not premised on Commission jurisdiction. Therefore, it is not authority that is the Commission's to assert or decline. Nonetheless, the IURC required Lone Oak to comply with local zoning as a condition to receive an order under the AUR Act.



*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

Retail Utilities under IURC jurisdiction, however, can secure relief under the AUR Act, without such restrictions. Even where regulation is ceded or relaxed, the IURC retains continuing subject matter jurisdiction over public utilities. See Kankakee Valley Rural Electric Membership Corp. v. United Telephone Co., 843 N.E.2d 987, 993 (Ind. Ct. App.), trans. denied, 860 N.E.2d 585 (Ind. 2006) (holding IURC retained jurisdiction over utility pole attachment dispute even though the public utility had opted out of IURC jurisdiction).

Retail Utilities have been granted relief under Section 5 of the AUR Act (Ind. Code § 8-1-2.5-5), the same statute applied in the declination orders for Lone Oak and other IPPs. For example, Duke Energy received IURC approval under the AUR Act for several projects including: its 20-year Purchased Power Agreement (“PPA”) with the Benton County Wind Farm; its Residential Prepaid Pilot Program; its Solar Services Program Tariff; and its Premier Power Standard Contract Rider.<sup>9</sup> Nevertheless, the Commission requires IPPs to submit to local zoning, but not Retail Utilities like Duke.

This disparate treatment for IPPs originated in a 2001 proceeding where CinCap VII, LLC (“CinCap”) sought approval to build a “merchant plant” facility whose output would be sold into the wholesale market for peaking power needs.

<sup>9</sup> In re PSI Energy, Inc., 2006 WL 4400581 (Ind. U.R.C. Dec. 6, 2006); Petition of Duke Energy Indiana, LLC, 2019 WL 4541162 (Ind. U.R.C. Sept. 11, 2019); Petition of Duke Energy Indiana, LLC, Cause No. 45145 (Ind. U.R.C. June 5, 2019); and Petition of Duke Energy Indiana, Inc., 2018 WL 5924598 (Ind. U.R.C. Nov. 7, 2018).

CinCap asked the IURC to decline to exercise its full jurisdiction because the facility would only produce electricity for wholesale customers. In evaluating the four elements identified in Ind. Code § 8-1-2.5-5(b), the IURC declared that as part of its public interest analysis, the IURC must “consider whether the location of a proposed facility is compatible with surrounding land uses. In determining compatibility, the IURC may evaluate and consider any evidence of compliance with local zoning and land use requirements.” In the Matter of the Petition of CinCap VII, LLC, 2001 WL 798066 (Ind. U.R.C. Apr. 23, 2001) at \*18. In response to evidence of local opposition, the IURC noted:

*Although the Henry County Commissioners were not anxious to intervene in what they considered to be a state matter . . . , they submitted a report to the IURC that revealed that, on balance, the County Commissioners believed that if approved with certain conditions, the CinCap project would not unreasonably tax the existing infrastructure in the County or adversely affect the land use management controls.*

Id. at \*20-21 (emphasis added). The IURC found “the public interest will be served if the facility is located as planned” but conditioned its declination of jurisdiction on CinCap’s performance of its commitments to Henry County. Id. at \*25.

Following CinCap, a commitment to comply with local zoning requirements has become a standard condition for declination of IURC jurisdiction over renewable projects by wholesale energy developers. The IURC typically grants the requests for alternative regulation, usually after considering whether the location of a proposed solar or wind facility is compatible with surrounding land uses, but requires compliance with local land use regulations.

The IURC requires IPPs to comply with local zoning and demonstrate there are no negative community impacts of a project, but Retail Utilities need not do so. There is no statutory basis for this distinction in the terms of the AUR Act. The Commission may only exercise power granted to it by statute, and “[a]ny doubts regarding the [IURC’s] statutory authority must be resolved against the existence of such authority.” NIPSCO Industrial Group v. Northern Indiana Public Service Co., 31 N.E.3d 1, 5 (Ind. Ct. App. 2015). Absent a statutory basis, the Commission lacks authority to require certain public utilities but not others to comply with local zoning as a condition of obtaining alternative regulatory treatment.

**2. The theory that compliance with local regulation is justified by the declination of jurisdiction is inconsistent with the treatment of other utilities**

It is simply untrue that “[u]nder the current regulatory framework, Lone Oak is on a level playing field with all other wholesale providers who have requested that the Commission decline jurisdiction over their operations.” See Appellant’s App. vol. II, p.11. A variety of different types of public utilities are not subject to IURC jurisdiction at all, much less alternative regulatory treatment:

- Retail communications providers are largely deregulated under a paper form process. See Ind. Code ch. 8-1-2.6. Yet, the IURC does not require wholesale or retail communications service providers to obtain local zoning approval.

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

- Municipal sewer utilities (Ind. Code §8-1-2-1) are not under the jurisdiction of the IURC, but municipalities can place their utility facilities using eminent domain. See Ind. Code ch. 32-24-2.
- The Indiana Municipal Power Agency (“IMPA”) is a wholesale power provider to its municipal members. See Ind. Code ch. 8-1-2.2. The IURC does not regulate IMPA’s wholesale electric rates. IMPA also has eminent domain authority to build its facilities across the state. See Ind. Code §8-1-2.2-27.
- Retail water utilities also provide wholesale water service by selling bulk water supply to other utilities. Yet, the IURC does not require water utilities to seek local zoning approval to site facilities needed to support that wholesale service.

In addition, certain types of utilities are under IURC jurisdiction but can “opt out” of that regulation under various statutes, including: rural electric membership corporations (Ind. Code §8-1-13-18.5); municipal electric and municipal water utilities (Ind. Code §§8-1.5-3-9, 8-1.5-3-9.1); and non-profit and small for-profit water and sewer utilities (Ind. Code ch. 8-1-2.7). Despite the fact these utilities are not regulated by the IURC, all retain eminent domain authority to build utility facilities for public use pursuant to Ind. Code §§8-1-8-1, 8-1-2.2-27, 8-1-13-3(i), or 32-24-1-1 et seq. By the reasoning in Graham Farms, all are exempt from local regulation. See 249 Ind. at 516-17, 233 N.E.2d at 666-67. By the theory adopted by the IURC here,

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

however, all these utilities should be subject to local zoning authority because, like Lone Oak, they are not subject to full regulation by the IURC.

Finally, Retail Utilities are eligible under the AUR Act to seek a declination of jurisdiction, under the same process and criteria applied to IPPs. See Ind. Code §8-1-2.5-5. But in contrast to the treatment of IPPs, the IURC does not condition such a declination on submission to local governmental authority when it is a Retail Utility making the request.

This table summarizes the treatment of IPPs in contrast to other utilities that similarly are not subject to full IURC jurisdiction:

Public Utility Type?	Serves <b>Retail</b> or <b>Wholesale</b> Customers, or <b>Both</b> ?	IURC Regulated?	Eligible for Alternative Regulation?	Local Zoning Approval Required by IURC?
Independent Power Producer - Generator (e.g., Lone Oak)	Wholesale	Yes	Yes	Yes
Independent Power Producer – Transmission	Wholesale	Yes	Yes	No
Investor-Owned Retail Utility (e.g., Duke Energy)	Both	Yes	Yes	No
Electric Joint Agency (e.g., IMPA)	Wholesale	Limited to CPCN approval and bond financing.	No	No
REMCs	Both	Limited to CPCN approval.	Yes	No
Communications (telephone, cable, internet, cellular)	Retail	Yes	No, but not needed because jurisdiction	No

			is limited by statute.	
Private Water Companies (e.g., Indiana-American)	Both	Yes	N/A	No
Non-profit and small for-profit water and sewer utilities	Both	Yes	N/A	No

Consequently, for Retail Utilities subject to a declination of jurisdiction, for utilities that have exercised a statutory right to opt out of IURC regulation, and for utilities over which the IURC exercises limited or no authority, there is no requirement of compliance with local ordinances and no waiver of eminent domain. The declination of jurisdiction for Lone Oak, therefore, does not meaningfully distinguish it from the many other types of utilities that are allowed to site and install their service facilities without the imposition of such restrictions.

**3. Under a parallel telecommunications statute prior to the AUR Act, the IURC properly retained authority and did not require compliance with local regulations**

A decade before the AUR Act was enacted for energy, the General Assembly passed similar legislation to address competition in the telecommunications market. See Ind. Code ch. 8-1-2.6 (“Chapter 2.6”). For a 20-year period ending in 2006, the IURC utilized an alternative regulatory scheme much like the AUR Act, in recognition that competition in the provision of telephone service warranted flexible

regulation.<sup>10</sup> In that context, the competitive providers operating alongside incumbent utilities, like IPPs in the electric market, were competitive local exchange carriers or “CLECs.” During the period that CLECs were alternatively regulated, the IURC recognized that alternative regulation did not extinguish its general subject-matter jurisdiction over public utilities.

In connection with Chapter 2.6, the IURC found it possessed continuing jurisdiction over telecommunications providers notwithstanding prior orders declining to exercise its jurisdiction:

*We determined in our June 15, 1994 Order initiating this Cause that, “the vast majority of the providers of telecommunications services within the State of Indiana are public utilities within the meaning of IC 8-1-2 et seq.” . . . While this Commission has declined to exercise its jurisdiction over many types of telecommunications services and providers under authority granted in IC 8-1-2.6, the parties have not challenged our determination that we have retained jurisdiction sufficient to conduct an investigation of matters pertinent to local exchange competition pursuant to this Commission’s statutory authority.*

In re Local Telephone Exchange Competition, 1996 WL 482657 (Ind. U.R.C. July 1, 1996) (emphasis added). See also Petition of Midwest Telecom of America, Inc., 2007 WL 4321817 (Ind. U.R.C. Dec. 5, 2007) at 7-9 (rejecting argument by CLECs that alternative regulation divested the IURC of jurisdiction to require submission of financial data).

<sup>10</sup> In 2006, Chapter 2.6 was amended and the IURC’s authority over basic telecommunications services was repealed altogether.

Notwithstanding the parallels between Chapter 2.6 and the AUR Act, the IURC did not during the 20-year alternative regulation period adopt a position requiring CLECs to obtain local zoning approval, nor did it suggest CLECs lacked the ability to seek relief from the IURC by filing a complaint, or that the IURC lacked jurisdiction just because a CLEC had received alternative regulatory treatment.

The IURC should follow the same approach with IPPs. Just as the IURC found that Chapter 2.6 did not divest it of jurisdiction over CLECs under Indiana law, the IURC should have found here that the AUR Act did not divest it of jurisdiction under Ind. Code §8-1-2-101 (county executive power affecting utilities); Ind. Code §8-1-2-115 (enforcement of Public Service Commission Act); Ind. Code §§8-1-2-54 through 67 (complaints by and against utilities); and related statutes. For the same reasons the IURC had continuing jurisdiction over alternatively regulated telecommunications carriers, it has continuing jurisdiction over Lone Oak and other IPPs.

**E. The IURC's Approach Impairs the Strong Public Interest in Economical, Reliable, and Sustainable Electric Service**

Each time a community rejects or bans a solar project, the IPP must abandon the effort or move on to a place that is less efficient, more expensive, and less sunny than the first choice. Under the IURC's decision to defer to local regulation, IPPs face the dilemma of locating a solar project in the best location, or in a suboptimal and more expensive location that has less local opposition. Sometimes, as experienced by Lone Oak, local authorities support a project, but later withdraw that support after some citizens express opposition. Either way, the cost of providing utility services



will go up with the inefficiencies, delays, and cancelled projects. These increased costs of electric generation flow through the wholesale market and will eventually be passed on to retail consumers through IURC-approved rates.

Indeed, the General Assembly has declared that “[i]t is the policy of this State to encourage the development of alternate energy production facilities<sup>11</sup> . . . in order to conserve our finite and expensive energy resources and to provide for their most efficient utilization.” See Ind. Code §8-1-2.4-1. Contrary to that express public policy, the IURC’s approach effectively gives every city, town, and county veto power over solar projects, regardless of statewide and regional impacts. These local decisions affect utility rates statewide, but ratepayers in surrounding communities have no standing to challenge the costs that a local government indirectly imposes upon them by blocking solar development.<sup>12</sup>

More recently, in 2023, the General Assembly declared that “decisions concerning Indiana's electric generation resource mix, energy infrastructure, and electric service ratemaking constructs” *must* be based on consideration of five listed

<sup>11</sup> The term “alternate energy production facility” includes, among other things, any *solar*, wind turbine, waste management, resource recovery, refuse-derived fuel, organic waste biomass, or wood burning facility. See Ind. Code §8-1-2.4-2(b)(1) (emphasis added).

<sup>12</sup> See In re Duke Energy Indiana, LLC, 2019 WL 342923 (Ind. U.R.C. Jan. 23, 2019) at \*15 (explaining that “[c]ost-shifting ordinances such as these could ultimately force utility customers all over the state to bear the cost for numerous municipal construction projects that are located far from their homes, which is inequitable and unreasonable”).

*Brief of Amici Curiae: Clean Grid Alliance, Citizens Action Coalition of Indiana, Inc., and Indiana Conservative Alliance for Energy*

attributes: reliability, affordability, resiliency, stability, and environmental sustainability. See Ind. Code §8-1-2-0.6. The decision here advances none of those objectives, and is contrary to that stated policy in several respects. Driving up the costs of constructing power plants is an impediment to affordability. Furthermore, especially considering upcoming coal plant retirements, Indiana needs generating capacity to maintain reliability. And finally, deference to local officials who are opposed to any projects involving solar power establishes a harder road for renewable energy projects specifically, contrary to the environmental sustainability standard.

For good reason, then, the Supreme Court held in Graham Farms that Indiana law calls for state, not local, oversight of the construction of utility facilities. See 249 Ind. at 516-17, 233 N.E.2d at 666-67. The surrender of that function by the IURC in this case, and the decision to condition alternative regulation on compliance with local land use regulations, was both an error of law and contrary to the public policy expressly recited by Indiana statute.

## VI. CONCLUSION

The Energy Industry *Amici Curiae* respectfully submit that the Court should reverse the IURC's denial of Lone Oak's Verified Petition and should grant the relief sought by Lone Oak.

Respectfully submitted,

LEWIS KAPPES, P.C.

/s/ Todd A. Richardson  
Attorney for *Amicus Curiae*  
Clean Grid Alliance

/s/ Jennifer A. Washburn  
Attorney for *Amici Curiae*  
Citizens Action Coalition of Indiana, Inc.  
Indiana Conservative Alliance for Energy

Todd A. Richardson (16620-49)  
LEWIS KAPPES, P.C.  
One American Square, Suite 2500  
Indianapolis, Indiana 46282  
Phone: (317) 639-1210  
Fax: (317) 639-4882  
[TRichardson@Lewis-Kappes.com](mailto:TRichardson@Lewis-Kappes.com)

Jennifer A. Washburn (30462-49)  
CITIZENS ACTION COALITION  
1915 West 18<sup>th</sup> Street, Suite C  
Indianapolis, Indiana 46202  
Phone: (317) 735-7764  
Fax: (317) 205-3599  
[jwashburn@citact.org](mailto:jwashburn@citact.org)

**WORD COUNT CERTIFICATE**

The undersigned counsel hereby verifies, in accordance with Ind. Appellate Rules 44 and 46, that except for those portions of the brief excluded from the word count, the foregoing *Brief of Amici Curiae* contains no more than 7,000 words, as calculated by the word count function of the word processing software used to prepare the Brief.

*/s/ Todd A. Richardson*

Todd A. Richardson, #16620-49

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on May 6, 2024, the foregoing document was electronically filed using the Indiana E-Filing System (IEFS). The undersigned further certifies that on that same date the foregoing document was served upon the following persons via IEFS:

Kevin D. Koons: [kkoons@kgrlaw.com](mailto:kkoons@kgrlaw.com)  
Adam R. Doerr: [adoerr@kgrlaw.com](mailto:adoerr@kgrlaw.com)  
William Irwin Fine: [WFine@oucc.IN.gov](mailto:WFine@oucc.IN.gov)  
T. Jason Haas: [THaas@oucc.IN.gov](mailto:THaas@oucc.IN.gov)  
Benjamin M.L. Jones: [Benjamin.Jones@atg.in.gov](mailto:Benjamin.Jones@atg.in.gov)  
Kyle Hunter: [Kyle.Hunter@atg.in.gov](mailto:Kyle.Hunter@atg.in.gov)  
Beth Heline: [bheline@urc.in.gov](mailto:bheline@urc.in.gov)  
Jeremy Comeau: [jcomeau@urc.in.gov](mailto:jcomeau@urc.in.gov)  
James Surd: [jsurd@urc.in.gov](mailto:jsurd@urc.in.gov)

/s/ Todd A. Richardson  
Todd A. Richardson