Utility Preemption & Local Declination

Siting Solar, Wind & Other Utility-Scale Energy Projects in Indiana

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Roadmap

Six issues shaping renewable siting authority in Indiana

State vs. Local Authority

Indiana Code § 8-1-2 and the Home Rule statute (I.C. § 36-1-3) set the stage.

IURC's Exclusive Authority

Duke Energy v. Noblesville & *Duke Energy v. Carmel* (Ind. 2024).

The Declination Mechanism

How a utility can trade IURC jurisdiction for local zoning review.

Case Study: Lone Oak Solar

A five-year fight over one Madison County solar farm.

Voluntary Siting Standards, I.C. § 8-41 (Wind) and I.C. § 8-42 (Solar)

Indiana's voluntary statewide standards for wind and solar.

County Landscape & 2026 Bills

Ordinance trends, moratoria, and the push for state preemption.

The Underlying Tension

Two statutes point in opposite directions

Utility Preemption (IC 8-1-2)

Created a comprehensive statewide system for regulating public utilities, replacing a patchwork of local rules. Vested authority in what is now the Indiana Utility Regulatory Commission (IURC).

Home Rule Statute (IC 36-1-3)

Gave local government “all powers necessary for effective operation.” Reversed the default presumption: counties may now regulate local affairs unless a power is expressly reserved to a state entity.

Home Rule just reversed the presumption of local power.
Whether a county's solar or wind ordinance is valid now turns on whether it regulates a “public-utility function,” which the Indiana Supreme Court says only the IURC may judge as unreasonable.

IURC's Exclusive Authority

Duke Energy v. City of Noblesville, 234 N.E.3d 890 (Ind. 2024)

Facts

- Duke planned new facilities in Noblesville — a garage, office, substation, and related improvements — and gave notice it would demolish an abandoned house on site.
- Noblesville insisted Duke obtain demolition and building permits under its Unified Development Ordinance.
- Duke refused, arguing the city had no authority to regulate a public utility's service-related construction through zoning.
- Noblesville issued a stop-work order and sued; the trial court and Court of Appeals both sided with the city.

Holding

The Indiana Supreme Court unanimously reversed and remanded, holding that the IURC — not a city or county — is the sole entity with authority to decide whether a zoning ordinance implicating a public-utility function is unreasonable.

A local ordinance is not automatically void — but a utility may challenge it before the IURC rather than comply or litigate in local court.

The Companion Case: *City of Carmel v. Duke Energy*, 234 N.E.3d 816 (Ind. 2024)

Decided the same day applying the same rule to underground-line ordinances – appeal from IURC decision

	Duke v. Noblesville	Duke v. Carmel
Local rule at issue	Demolition & building permits for utility construction	Mandatory underground relocation of utility lines, costs on Duke
Utility's position	IURC has sole authority to enforce ordinances against public utilities	Forcing Duke to bear undergrounding costs would raise rates statewide
Result	Reversed in Duke's favor; IURC has exclusive authority to judge reasonableness	IURC's finding that Carmel's ordinance was unreasonable and void was upheld

Together, the *Duke Energy* cases establish that any county ordinance touching a public utility's construction, siting, or operations must survive review before the IURC — not a local board — if the utility chooses to challenge it there.

The Declination Mechanism

How a public utility can trade IURC oversight for local zoning review

Alternative Regulation Act — Ind. Code § 8-1-2.5-5

Indiana law lets the IURC decline to exercise jurisdiction over an energy utility where the Commission concludes that exercising jurisdiction is not in the public interest.

1. Utility petitions IURC

An independent power producer asks the IURC to decline jurisdiction over its generation project, agreeing instead to comply with local zoning and land-use approval.

2. Local review governs

The county zoning board reviews and conditions the project (setbacks, decommissioning, special-use permits) as it would any other use.

3. Courts, not the IURC, review

Disputes over the local decision go to judicial review of the zoning action under the 1600 Series — not back to the IURC unless the IURC agrees to "reassert" jurisdiction.

The Declination Mechanism

Factors Considered When Determining Whether of Public Interest Will Be Served by Declination

Alternative Regulation Act — Ind. Code § 8-1-2.5-5(b)

(1) Technological or operating conditions, competitive forces or other state and federal regulation render exercise of jurisdiction unnecessary or wasteful

(2) declination of jurisdiction will be beneficial for energy utility, customers or the State

(3) declination will promote energy utility facility

(4) Jurisdiction will inhibit energy utility from competing with other providers of functionally similar energy services for equipment

IURC Jurisdiction Retained After Declination

What a wholesale clean-energy generator still answers for once the Commission declines jurisdiction

Declination is not deregulation. The Commission must first find a wholesale generator is a "public utility" under I.C. § 8-1-2-1 before it can decline jurisdiction under I.C. § 8-1-2.5-5 but the IURC retains a defined set of strings even after granting relief.

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Threshold: Still a "Public Utility"

A generator selling solely at wholesale to utilities, energy service providers, and power marketers is itself a "public utility" under I.C. § 8-1-2-1. Jurisdiction must be asserted before it can be declined.

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No Local-Preemption Shield

Declination strips away a public utility's exemption from local zoning, land-use ordinances, and construction permits, and its eminent-domain power. The generator answers to the county like any other landowner.

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Affiliate & Transfer Oversight and Material Changes

Prior IURC approval is required to transfer the facility to an affiliate or sell power to an affiliated retail utility. Becoming a regulated utility's affiliate can spring full jurisdiction back. Significant changes to output, design or operational scope need approval

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Reporting, Assurance & Reassertion

Initial and semiannual compliance reports, a decommissioning financial-assurance instrument, and a construction deadline all survive. Missing that deadline lets the Commission reassert jurisdiction under I.C. § 8-1-2.5-7.

Note: Federal overlay: FERC retains exclusive Federal Power Act jurisdiction over the wholesale rate itself (16 U.S.C. § 824); the IURC's order governs only the state-law layer — construction, siting, and affiliate protections.

Case Study: *Lone Oak Solar Energy, LLC v. IURC*, 243 N.E.3d 1179 (Ind. Ct. App. 2024)

A five-year dispute over a 120 MW solar farm in Madison County

2019

IURC grants declination

IURC agrees Lone Oak may proceed under Madison County's solar ordinance instead of IURC jurisdiction; BZA issues a special-use permit.

2022-2023

BZA denies extension

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Covid- 19 supply chain issues and remonstrance delays push back Lone Oak's construction deadline; the BZA refuses to extend the permit's completion date.

2023

IURC declines to reassert

Lone Oak asks the IURC to step back in and override the BZA. After an evidentiary hearing, the IURC again declines jurisdiction (Dec. 6, 2023).

2024

Court of Appeals affirms

The Court of Appeals affirms the IURC's decision not to reassert jurisdiction, leaving Lone Oak to pursue judicial review of the BZA in county court.

What Lone Oak Signals

Declination is a binding trade-off

A utility that asks the IURC to decline jurisdiction and gets that relief cannot later argue the IURC erred by granting it.

“Reassertion” is discretionary and narrow

The IURC may reassert jurisdiction, but it will weigh fairness to competitors who also accepted local zoning in exchange for declination.

Judicial review, not IURC review, is the remedy

Once declination is granted, challenges to a BZA's zoning decisions belong in the ordinary state-court appellate process — not before the Commission.

The underlying tension remains unresolved

Developers argue state-approved, public-interest generation projects should not turn on one county's appetite for the project; counties argue land use is inherently local.

Indiana's Voluntary Statewide Siting Standards

IC 8-1-41 (wind) and IC 8-1-42 (solar), enacted 2022, effective for applications after June 30, 2022

How It Works

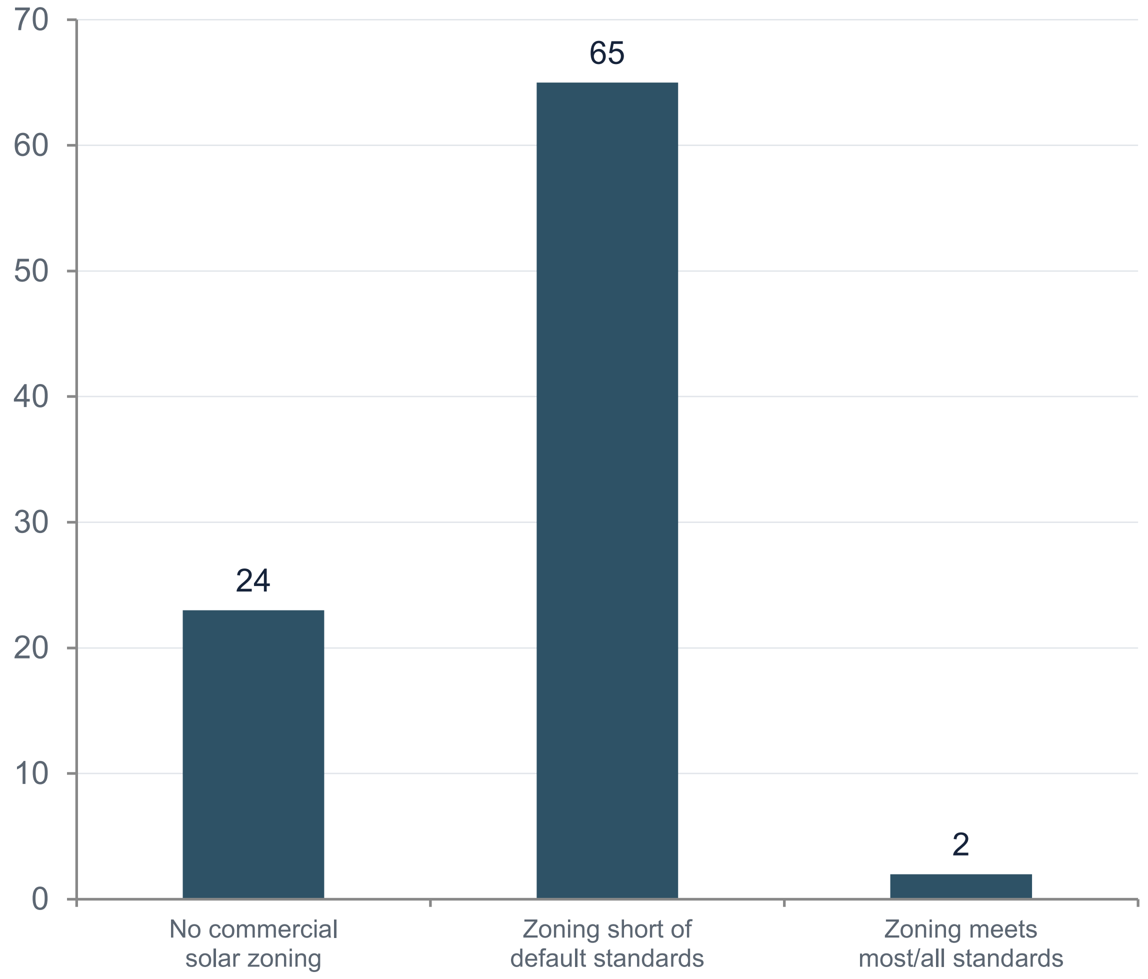
- Counties opt in voluntarily — nothing is mandatory. A county keeps any existing, more restrictive ordinance if it chooses.
- A county that adopts the default standards (or less-restrictive ones) becomes a "solar" or "wind energy ready community."
- Readiness signals to developers that permitting will be predictable — intended to steer investment toward participating counties.

Sample Default Standards (Solar, IC 8-1-42)

Standard	Default Requirement
Setback — state/federal/county highway	At least 10 to 40 feet depending on road type
Setback — nonparticipating dwelling	At least 250 feet
Landscape buffer	Required within 250 ft of a nonparticipating dwelling
Fencing	County can require at least 6 ft high
Underground cabling	Required up to 34.5 kV between inverters and substations

The County Ordinance Landscape

Local response ranges from welcoming standards to outright bans



Notable Local Actions

Vigo County adopted the Voluntary Standards in 2024. 67 of the other Indiana counties have commercial-solar zoning that do not match all voluntary standards. 3 of these counties do not allow solar in any district. 2 counties would likely qualify for solar ready communities

Pulaski & Boone Counties:
Outright bans on new commercial wind development.

Delaware County:
Expanded setbacks to 500 ft from property line and enacted a one-year solar moratorium after opposition to the Meadow Forge project.

Hamilton County:
Bars commercial solar on prime agricultural soils

Elkhart & Gibson Counties:
Commissioners or plan commissions have voted down specific project rezoning requests outright.

2025–2026 Legislative Trends

The General Assembly is actively debating state preemption of local siting authority

2025 SESSION

SB 425 — Energy Production Zones. I.C. 8-1-8.2

Grants the state exclusive authority over siting, construction, and zoning on parcels hosting 80+ MW generation facilities or closed coal mines — preempting local permitting inside those zones – exclude solar and wind

2026 SESSION — STALLED

SB 54 — Solar Overlay Districts

Would have barred counties from creating solar overlay districts unless every district inside is separately zoned or rezoned for solar — effectively ending the overlay tool. Did not receive a hearing.

Outlook: expect continued, incremental proposals to try and shift siting authority upward toward the State, but this is balanced by strong Home Rule advocacy from county associations.

Practical Takeaways

Considerations for developers, counties, and counsel

For Developers

- Decide early whether to seek IURC declination — it trades Commission oversight for local zoning finality reviewable only in court.
- Track whether the host county is a “solar/wind energy ready community” before site selection.
- Build extra schedule buffer for BZA proceedings, remonstrance litigation, and appeals.

For Counties

- An ordinance that regulates a public utility's service-related function may be challenged before the IURC, not just in local court.
- Adopting States’ voluntary standards preserves local process while signaling openness to developers.
- Moratoria and outright bans invite legal risk where they target a specific project already found in the public interest.

For Counsel

- Distinguish *Duke*'s public-utility-function cases from ordinary special-use and rezoning disputes, which still run through local BZAs and courts.
- Watch pending IURC dockets and the General Assembly for further preemption or notice-requirement legislation.
- Document the declination record carefully — Lone Oak shows utilities are bound by the relief they request.

Questions & Discussion

Utility Preemption & Local Declination in Indiana Renewable Siting

Prepared for informational and educational purposes — not a substitute for legal advice on a specific project or ordinance.