IN THE

Indiana Supreme Court

Supreme Court Case No. 21S-EX-236

Solarize Indiana, Inc.,
Appellant

–v–

Southern Indiana Gas and Electric Co., d/b/a Vectren Energy Delivery of Indiana, Inc., et al.,
Appellees

Argued: June 24, 2021 | Decided: March 8, 2022

Appeal from the Indiana Utility Regulatory Commission
Filing Nos. 50331, 50332

On Petition to Transfer from the Indiana Court of Appeals
20A-EX-1384

Opinion by Chief Justice Rush

Justices David, Massa, and Goff concur.
Justice Slaughter concurs in part and in the judgment with separate opinion.

Rush, Chief Justice.

To seek judicial review of a dispute, a litigant must have standing—that is, it must be a proper party to invoke the court's authority. Standing is a threshold issue: if it is lacking, the court cannot consider the merits of the claim. To seek review of certain administrative decisions, such as those from the Indiana Utility Regulatory Commission, a party must satisfy the statutorily prescribed standing requirements set by our legislature. Specifically, the relevant statute requires the party bringing the appeal to have been "adversely affected" by the Commission decision.

Here, Vectren submitted two filings to the IURC under an expedited process known as the "Thirty-Day Rule." Solarize objected to the filings, asserting they violated federal law. The IURC found the objections did not comply with the Thirty-Day Rule's procedural requirements and issued an order approving both filings. In this appeal, Solarize seeks judicial review of that decision. But because we find Solarize has not shown it was adversely affected by the IURC order, we hold it lacks standing and therefore dismiss the appeal.

Facts and Procedural History

The Indiana Administrative Code provides a filing procedure that allows the Indiana Utility Regulatory Commission to expedite certain requests by utilities. 170 Ind. Admin. Code 1-6. This expedited process, known as the "Thirty-Day Rule," applies to some requests from a utility to change its rates, charges, rules, or regulations. 170 I.A.C. 1-6-1(a). But, the Thirty-Day Rule applies only to "noncontroversial filings," 170 I.A.C. 1-6-1(b), which are those to "which no person or entity has filed an objection," 170 I.A.C. 1-6-2(10).

Southern Indiana Gas and Electric Company, d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren"), a utility company which purchases solar energy from other producers, submitted two Thirty-Day Rule filings in early 2020. Both concerned service arrangements for "qualifying facilities"—nonutility producers of energy, including solar, which have their own energy-generation equipment. The first filing, number 50331,

proposed a revision to the rate at which Vectren would purchase electricity from qualified facilities based on the costs Vectren did not incur to produce this energy. The second, number 50332, proposed a new contract defining the terms of this arrangement.

Solarize Indiana, Inc. ("Solarize"), an organization that promotes the use of solar power in Indiana, subsequently filed objections to both filings, alleging they were not compliant with federal law. In response, Vectren asserted, among other things, that Solarize's objections lacked specificity and that neither filing violated any applicable law, order, or rule. Solarize replied, elaborating on its contention that the filings violated federal law. After reviewing the parties' submissions, the IURC's General Counsel advised the Commission that Solarize's objections were "not compliant" with the Thirty-Day Rule's procedural requirements. The IURC issued an order approving Vectren's filings.

Solarize requested judicial review of the IURC's decision, and the Court of Appeals affirmed. *Solarize Ind., Inc. v. S. Ind. Gas & Elec. Co.*, 163 N.E.3d 880, 882 (Ind. Ct. App. 2021). Solarize then sought transfer, which we granted, vacating the Court of Appeals opinion. Ind. Appellate Rule 58(A).

During oral argument, the IURC explicitly questioned for the first time whether Solarize had standing to seek judicial review. We subsequently invited the parties to file supplemental briefs on standing-related issues. Solarize argued in part that the issue of standing was waived, asserting it was not raised "either in the Commission proceedings or during the Court of Appeals review." Though it is true that a party generally waives an issue that was not raised below, we may decline to find an issue waived when the parties had unequivocal notice of the issue and an opportunity to present respective arguments. *See, e.g.*, *Moryl v. Ransone*, 4 N.E.3d 1133, 1136–37 (Ind. 2014). And here, because we asked for briefing on standing and the parties provided it, each party had notice of the issue and presented arguments. Solarize also submitted a verified declaration from

its treasurer and founding member to support its standing arguments.[1] So, while it is concerning that it took until oral argument for the question of Solarize's standing to be explicitly raised, the issue is not waived. We have a sufficient record on which to decide whether Solarize has standing, and we conclude it does not.

Discussion and Decision

The threshold issue of standing determines whether a litigant is entitled to have a court decide the substantive issues of a dispute. To be entitled to such a decision, a plaintiff must be a "proper person" to invoke the court's authority. *Horner v. Curry*, 125 N.E.3d 584, 589 (Ind. 2019). A party's standing to invoke this authority can be conferred either through common law or by statute. *See Schloss v. City of Indianapolis*, 553 N.E.2d 1204, 1206 (Ind. 1990) (common law); *In re Guardianship of A.J.A.*, 991 N.E.2d 110, 113 (Ind. 2013) (statute).

We generally apply the common-law standing rule, which derives from our state constitution's separation-of-powers clause.[2] *See Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995) (citing Ind. Const. art. III, § 1). This rule requires a party to demonstrate "a personal stake in the outcome of the litigation and . . . show that they have suffered or were in immediate

[1] We grant the Motion of Solarize Indiana, Inc., for Leave to Submit a Verified Declaration Supporting Standing.

[2] The concurring opinion prefers the term "constitutional standing" because of its origins in separation of powers, *post*, at 1–2, and presumably, due process, *see*, *e.g.*, *Wine & Spirits Wholesalers of Ind. v. Ind. Alcoholic Beverage Comm'n*, 556 N.E.2d 17, 19 (Ind. Ct. App. 1990), *trans. denied*. We use the term "common-law standing" because Indiana's standing requirements have been fleshed out by caselaw applying those general constitutional principles. *See State ex rel. Cittadine v. Ind. Dep't of Transp.*, 790 N.E.2d 978, 979 (Ind. 2003) (observing that the requirements for the "judicial doctrine of standing" are a "matter of Indiana jurisprudence"); *see also Schloss*, 553 N.E.2d at 1206. Under either term, we of course agree that the legislature cannot expand—or restrict—beyond constitutional limits the class of persons who possess standing. But a challenge to the constitutionality of a statute is a separate inquiry from whether a litigant has standing. *See*, *e.g.*, *Wine & Spirits Wholesalers*, 556 N.E.2d at 19. No such challenge is raised here, nor does the concurrence question the constitutionality of the statute at issue.

danger of suffering a direct injury as a result of the complained-of conduct." *Bd. of Comm'rs of Union Cnty. v. McGuinness*, 80 N.E.3d 164, 168 (Ind. 2017) (quoting *State ex rel. Cittadine v. Ind. Dep't of Transp.*, 790 N.E.2d 978, 979 (Ind. 2003)). But in certain circumstances, the legislature has established standing requirements. *See, e.g.*, Ind. Code § 4-21.5-5-3 (limiting who has "standing to obtain judicial review of an agency action" under the Administrative Orders and Procedures Act); Ind. Code § 13-30-1-1 (explaining who "may bring an action for declaratory and equitable relief in the name of the state of Indiana"); Ind. Code § 36-7-4-1603 (identifying who has "standing to obtain judicial review of a zoning decision"). This case presents one such example.

In Indiana Code section 8-1-3-1, our legislature set out the standing requirements for obtaining judicial review of an IURC decision. One of these requirements is that a party seeking review must have been "adversely affected" by the Commission's "final decision, ruling, or order." Ind. Code § 8-1-3-1. Analyzing that statute, we conclude that Solarize has not shown it was adversely affected by the IURC's order. Accordingly, Solarize is not a proper party to invoke the court's authority and thus lacks standing.

I. Indiana Code section 8-1-3-1 prescribes the requirements for obtaining judicial review of an IURC decision.

The parties agree that Title 8 of the Indiana Code governs judicial review of IURC decisions. *See* I.C. ch. 8-1-3. But they disagree on which statute, or statutes, within Title 8 confer standing. Vectren and the IURC argue that Indiana Code section 8-1-3-1 alone creates the right to seek judicial review. That section reads:

> Any person, firm, association, corporation, limited liability company, city, town, or public utility adversely affected by any final decision, ruling, or order of the commission may, within thirty (30) days from the date of entry of such decision, ruling, or order, appeal to the court of appeals of Indiana for errors of

> law under the same terms and conditions as govern appeals in ordinary civil actions . . . .

I.C. § 8-1-3-1.

Solarize acknowledges that this statute confers standing, but it asserts that section 8-1-3-3 also creates a right to obtain judicial review. Section 3 states:

> Any person[,] firm, association, corporation, limited liability company, city, town or public utility may file with the clerk of the court a verified petition to be made a party appellant or appellee, which petition shall allege facts showing that the petitioner has a substantial interest in the determination of the action, and such petitioner shall be made a party appellant or appellee as its interest appears. Any party applicant, intervenor or protestant in the proceedings had before the commission in the matter from which the appeal is taken shall be and have the rights of a party on appeal, upon the filing of a written appearance therein.

I.C. § 8-1-3-3.

We agree with Vectren and the IURC that section 1 alone prescribes the standing requirements. As we have previously explained, section 1 "establishes that in order to bring an appeal, a party must be adversely affected by a ruling of the Commission." *Laborers Loc. Union No. 204 v. Pub. Serv. Co. of Ind.*, 524 N.E.2d 318, 319 (Ind. 1988). By contrast, section 3 "is merely an avenue through which a person or entity may be heard in the appeal." *Id.* In other words, section 3 does not create an independent right to appeal; it provides the requirements and process for being heard in an appeal that has already been brought by a proper party.

Thus, the fact that Solarize was a party in the IURC proceedings below does not—on its own—confer standing. And neither does the fact that Solarize may have had a "substantial interest in the determination of" those proceedings. Rather, to obtain judicial review of the IURC's order, Solarize must show it was "adversely affected" by the Commission's

decision.[3] We now consider what is required to make that showing and whether Solarize has satisfied those requirements here.

II. Solarize lacks standing because it has not shown it was "adversely affected" by the IURC's order.

Our courts have previously explained that to be "adversely affected" under section 1, a party must show it "has sustained or is in immediate danger of sustaining a direct injury as a result of the order." *Home Builder's Ass'n of Ind., Inc. v. Ind. Util. Regul. Comm'n*, 544 N.E.2d 181, 184 (Ind. Ct. App. 1989); *accord Ind. Gas Co. v. Ind. Fin. Auth.*, 977 N.E.2d 981, 994 (Ind. Ct. App. 2012), *aff'd in relevant part*, 999 N.E.2d 63 (Ind. 2013); *Terre Haute Gas Corp. v. Johnson*, 221 Ind. 499, 45 N.E.2d 484, 486 (1942).[4] Further, "it is not sufficient that [a party] has merely a general interest common to all members of the public." *Terre Haute Gas*, 45 N.E.2d at 486. The party must instead have a personal stake in the litigation's outcome. *See id.*

Thus, for a party to show it was "adversely affected" under section 1, the party needs to satisfy three requirements: (1) it must have a personal (rather than general) interest in the outcome; (2) it must have suffered or

[3] We disapprove of any decisions stating otherwise. *See Telecomm. Ass'n of Ind, Inc. v. Ind. Bell Tel. Co.*, 580 N.E.2d 713, 714 (Ind. Ct. App. 1991); *Citizens Action Coal. of Ind., Inc. v. N. Ind. Pub. Serv. Co.*, 582 N.E.2d 387, 390 (Ind. Ct. App. 1991).

[4] Interpreting a prior version of the standing statute, this Court in *Terre Haute Gas* explained "that the phrase 'adversely affected' conveys the same meaning as the common-law rule which would be applicable in the absence of the statute." 45 N.E.2d at 486. In other words, "adversely affected" simply means common-law standing to bring an appeal. The Court of Appeals later extended this definition to the current section 1. *Home Builder's Ass'n of Ind.*, 544 N.E.2d at 184. And in 2013, we affirmed this interpretation. *Ind. Gas Co.*, 977 N.E.2d at 994, *aff'd in relevant part*, 999 N.E.2d 63 (Ind. 2013). Thus, to be "adversely affected," a party must have "a personal stake in the outcome of the litigation and . . . show that they have suffered or were in immediate danger of suffering a direct injury as a result of the complained-of conduct." *McGuinness*, 80 N.E.3d at 168 (quoting *Cittadine*, 790 N.E.2d at 979).

be in immediate danger of suffering an injury; and (3) the injury must be a direct result of the final decision, ruling, or order.[5]

Solarize argues it has standing because it operates as a "transaction-facilitating provider" of solar power services "in the market impacted by the Vectren filings at issue." By bringing together suppliers and customers, Solarize "derives operating revenue from the transactions it facilitates to completion." Thus, its "revenue stream grows or diminishes with the number and size of transactions it is able to facilitate in the rooftop solar market." And since Vectren's approved filings affect the rooftop solar market, Solarize contends that its "ability to perform its functions and earn fees . . . has been substantially impaired by the deficiencies in Vectren's prices and terms."

But even accepting these contentions as true, they fall short of satisfying the three requirements necessary to show that Solarize was adversely affected by the IURC's order approving the particular filings in this case. We address each requirement in turn.

First, though Solarize has a personal interest in the rooftop solar market generally, it has not shown a personal stake in the filings at issue. Solarize argues it is "substantially impacted" by the "prices and terms" that Vectren proposed in the filings. But these filings applied only to "qualifying facilities who can enter into a contract with [Vectren] to

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[5] Our colleague would "add redressability" as "a further standing requirement," *post*, at 1—once again calling for Indiana to adopt a federal standing limitation, *see* *Holcomb v. City of Bloomington*, 158 N.E.3d 1250, 1267–68 (Ind. 2020) (Slaughter, J., dissenting); *Horner*, 125 N.E.3d at 615 (Slaughter, J., concurring); *Seo v. State*, 148 N.E.3d 952, 969 (Ind. 2020) (Slaughter, J., dissenting). But "redressability" arises from the U.S. Constitution's Article III "case or controversy" requirement, *see, e.g.*, *Steel Co. v. Citizens for a Better Env't*, 523 U.S. 83, 103–04 (1998), a restraint we've long recognized "the Indiana Constitution does not contain," *In re Lawrance*, 579 N.E.2d 32, 37 (Ind. 1991).

At bottom, the U.S. Constitution expressly limits federal jurisdiction, while Indiana broadly promises that "[a]ll courts shall be open" at the state level. *Compare* U.S. Const. art. III, § 2, *with* Ind. Const. art. 1, § 12. That does not mean that standing in Indiana courts is boundless. *See, e.g.*, *Pence*, 652 N.E.2d at 488. But just as judges ought not decide the limits of our own authority notwithstanding constitutional **restrictions**, neither should we narrow courthouse doorways without constitutional **authority**—for instance, by imposing federal standing limitations in Indiana courts absent a basis in Indiana's constitution.

provide firm capacity for [the] specified term." And Solarize is neither a qualifying facility, nor does it represent any qualifying facilities. In fact, the only facility that qualified and sold power to Vectren at the time of the filings was the Evansville Regional Airport. While we acknowledge that Solarize may be more acutely affected by Vectren's decisions than the public, Solarize has importantly not established that it was personally affected by these particular filings. *Cf.* *McGuinness*, 80 N.E.3d at 168 (holding that a county's general interest in its roads was insufficient to establish standing for an action related to the maintenance of an interstate highway that ran through the county).

Second, Solarize has not shown it "has sustained or was in immediate danger of sustaining" a demonstrable injury. *Hammes v. Brumley*, 659 N.E.2d 1021, 1029–30 (Ind. 1995) (quoting *Higgins v. Hale*, 476 N.E.2d 95, 101 (Ind. 1985)). Rather, it alleges that Vectren's terms affect "the economic viability of a potential project" which will, in turn, "have a material impact" on Solarize's ability to do its work. But a possible effect on "potential" projects isn't a demonstrable injury; and Solarize has not identified any projects that have been, or likely would be, impacted by Vectren's filings. Solarize also adds that Vectren, like other utilities, has a "financial incentive to discourage [rooftop solar] installations through deficient prices and other terms for power purchases from customer-generators." While this may be true, Solarize has not presented any specific allegations of how the two filings here either discouraged installations or in any way impaired Solarize's ability to perform its functions.

Third, Solarize has not established that any injury or potential injury was the direct result of the IURC's decision in this case. Even if we accept Solarize's argument that the decision will result in fewer people entering the solar market and thus Solarize's funding will consequently be affected, an effect on the market impacted by these Vectren filings is not a direct injury for standing purposes. *See* *Fort Wayne Educ. Ass'n v. Ind. Dep't of Educ.*, 692 N.E.2d 902, 904 (Ind. Ct. App. 1998), *trans. denied*. A "direct injury" is "[a]n injury resulting directly from a particular cause, without any intervening causes." *Black's Law Dictionary* (11th ed. 2019). But here, because Vectren's approved filings applied only to "qualifying facilities," there is no direct link to Solarize. Rather, any injury to Solarize would be

the indirect result of intervening causes—market forces—on its potential customers and suppliers. And this sort of "abstract speculation" does not support finding a direct injury. *See Pence*, 652 N.E.2d at 488.

In sum, Solarize has not demonstrated it was "adversely affected" by the IURC's order approving Vectren's filings and is therefore not a proper party to obtain judicial review. This is not to say Solarize will never have standing to seek judicial review of an IURC order approving a Thirty-Day Rule filing. However, the filings here are narrow and applied only to "qualifying facilities"—only the Evansville Regional Airport. Thus, any potential harm to Solarize is simply too remote and speculative to find it has standing to obtain judicial review.

Conclusion

Our legislature, through Indiana Code section 8-1-3-1, imposed standing requirements for receiving judicial review of an IURC order. That statute requires the appealing party to show it was "adversely affected" by the IURC's decision. Because Solarize has not made this showing, it lacks standing, and we dismiss the appeal.

David, Massa, and Goff, JJ., concur.
Slaughter, J., concurs in part and in the judgment with separate opinion.

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Slaughter, J., concurring in part and in the judgment.

I agree that dismissal is warranted because Solarize lacks standing. As the Court holds, Solarize is not entitled to judicial review under the utility code because it was not "adversely affected" by the commission's order. Ind. Code § 8-1-3-1. With that much of the Court's decision, I concur. But the Court goes on to discuss another aspect of standing, too—what the Court calls "common-law standing" and what I would call "constitutional standing". Although I agree with the Court that our standing doctrine is rooted in the constitution, see *ante*, at 4 n.2, because statutory standing is dispositive here, the rest of the Court's opinion is unnecessary to its judgment and thus dictum. It is also wrong, in my view, in two key respects.

First, the Court frames standing as a one-step inquiry, asking whether the party seeking judicial redress has either statutory standing or common-law standing. *Ante*, at 4–5. Under this view, if a claimant satisfies statutory standing, a court can adjudicate its claim. And if it does not, a court cannot. Yet merely because the legislature has set requirements for bringing (or seeking review of) a claim does not mean these requirements are constitutionally sound. Such requirements can go too far or not far enough. They would go too far if the legislature closed the courthouse door to persons entitled to a right of court access under the constitution. They would not go far enough if the legislature opened the courthouse door to persons whose disputes the courts lack power to adjudicate under separation of powers. I would make explicit that the other step in the standing inquiry asks whether the claimant has constitutional (or common-law) standing.

Second, the Court identifies only two standing criteria: claimant's personal stake in the litigation and injury resulting from the defendant's complained-of conduct. *Ante*, at 7 n.4. Beyond these two, as a further standing requirement, I would add redressability—that a judicial decree in the claimant's favor would likely redress its injury. We should insist that a party seeking to invoke the judicial power stands to benefit from a favorable judgment. Otherwise, the court is just whistling in the wind, issuing decrees to no effect. Such meaningless pronouncements not only

waste judicial resources but presume that courts possess a roving license to proclaim what is law, even if their decree neither binds nor benefits any claimant. Such judicial overreach exceeds its lawful grasp and cannot be squared with separation of powers.

To be clear, I do not seek to import federal standing requirements into Indiana law for their own sake. What I seek, rather, are state standing requirements consistent with the structural limits Indiana's constitution imposes on the exercise of judicial power. In my view, the modest requirement that a judicial decree must "redress" a claimant's injury is essential to keeping courts within their rightful place under our tripartite constitutional scheme. The federal constitution imposes such limits through the case-or-controversy requirement of Article III. Our state constitution does so through the separation-of-powers provision of Article 3—a provision that we say "fulfills a similar function" as Article III of the federal constitution. *Pence v. State*, 652 N.E.2d 486, 488 (Ind. 1995). Yet the Court does not even acknowledge this aspect of *Pence*, much less explain why its "similar function" mandate does not warrant similar standing limits under state law.

* * *

For these reasons, I concur in part and in the Court's judgment but do not join its opinion in full.