

In the
Indiana Supreme Court

Duke Energy Indiana, LLC,
Appellant(s),

v.

Bellwether Properties, LLC, individually
and on behalf of all others similarly
situated,

Appellee(s).

Court of Appeals Case No.
21A-CT-01848

Trial Court Case No.
53C01-1506-CT-1172



Order

This matter has come before the Indiana Supreme Court on a petition to transfer jurisdiction, filed pursuant to Indiana Appellate Rules 56(B) and 57, following the issuance of a decision by the Court of Appeals. The Court has reviewed the decision of the Court of Appeals, and the submitted record on appeal, all briefs filed in the Court of Appeals, and all materials filed in connection with the request to transfer jurisdiction have been made available to the Court for review. Each participating member has had the opportunity to voice that Justice's views on the case in conference with the other Justices, and each participating member of the Court has voted on the petition.

Being duly advised, the Court DENIES the petition to transfer.

Done at Indianapolis, Indiana, on 6/23/2023.

Loretta H. Rush
Chief Justice of Indiana

Rush, C.J., and Massa, Goff, and Molter, JJ., concur.

Slaughter, J., concurs with separate opinion.

Slaughter, J., respecting the denial of transfer.

I join my colleagues in voting to deny the petition to transfer filed by Plaintiff, Bellwether Properties, LLC, and write separately to explain why.

Bellwether claims that Defendant, Duke Energy Indiana, LLC, took its property when Duke notified Bellwether that its proposed construction of a warehouse on its own property would interfere with an electrical-transmission-line safety clearance the utility regulatory commission imposed on Duke, a regulated Indiana utility. In response to Duke's notice, Bellwether modified its proposed construction plans to accommodate Duke's existing transmission line and the commission-mandated safety clearance. Bellwether's theory of this case is that Duke's notification—not the commission's regulation—effected a physical invasion of Bellwether's property for which Duke owes just compensation under federal and state law. Bellwether specifically disavowed that its property was the subject of a regulatory taking.

I am content to let the court of appeals' decision stand. *Duke Energy Ind., LLC v. Bellwether Props., LLC*, 192 N.E.3d 1003 (Ind. Ct. App. 2022). In my view, the court was correct that Duke did not physically invade Bellwether's property and that this case should be analyzed, if anything, as a regulatory taking. *Id.* at 1007. The court was also correct that Indiana's prevailing takings law follows the federal standard. *Id.* at 1006. On this latter point, we invited the parties to file supplemental briefs addressing whether Indiana should adopt its own takings standard different than the federal standard. I am grateful to the parties for the quality of their submissions. But based on those submissions and the parties' arguments, I have concluded that this case is not the right vehicle for revisiting Indiana's longstanding takings standard.

In a future case, I remain open to adopting an Indiana-specific takings standard—one consistent with the text, history, and structure of article 1, section 21 of our state constitution and with broader protections for property owners than federal law. See, e.g., Richard A. Epstein, *Takings: Private Property and the Power of Eminent Domain* (1985).