

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA MICHIGAN)
POWER COMPANY FOR APPROVAL OF A)
TARIFF RATE AND ACCOMPANYING)
TARIFF TERMS AND CONDITIONS FOR) CAUSE NO. 45506
THE PROCUREMENT OF EXCESS)
DISTRIBUTED GENERATION PURSUANT)
TO IND. CODE CH. 8-1-40.)

**INDIANA DISTRIBUTED ENERGY ALLIANCE’S RESPONSE TO
I&M’S OBJECTIONS AND MOTION TO STRIKE**

Indiana Distributed Energy Alliance (“IndianaDG”) hereby responds to I&M’s Objections and Motion to Strike portions of the prefiled testimony submissions of IndianaDG Witnesses Inskeep and Straeter.

I. Summary

The testimony I&M seeks to strike is relevant, responds to issues raised by I&M’s quest to change to its self-described “**no netting**” proposal. Lawson Direct p. 7 lines 1-5. I&M Response to INDG DR 1-03, Inskeep p.7 fn. 7. All the evidence was timely filed and is relevant to the issues arising from I&M’s requests and application of a new statute to I&M. The Indiana Rules of Evidence may provide guidance but are not controlling upon the Commission and do not limit the Commission’s regulatory discretion to accept evidence. Nonetheless, the testimony is “of consequence in determining action” on which of the competing proposed netting methodologies proposed in this cause by the Parties should be approved and what should be the EDG per kWh rate, and whether no netting is even lawful. The issues created by I&M’s EDG proposals deserve the Commission’s consideration of all the evidence, concerns, observations and opinions raised in this

Cause. The outcome of these issues is critical to the viability of customer owned solar and Indiana solar businesses. I&M's objections may go to the discretionary weight to be given to the testimony rather than its admissibility, but present no valid reason for tossing that testimony into the evidentiary trashcan.

II. I&M's Introductory "Background" Is Incomplete and Inaccurate

The DG statute is for the first time being applied to I&M and the other Indiana investor owned electric utilities. In this first I&M EDG case, rather than limit the review and possible issues to the calculation of an EDG rate, I&M chose to make it much more controversial, punitive to new DG customers, and oppressive upon the DG industry by proposing its no netting methodology, rather than continuing the time proven monthly netting, or some other form of real netting. Having created the controversy, I&M now wants to strike key testimony that describes why no netting is so controversial, unfair, harmful contrary to the DG statute, contrary to sound rate making principles and should not be approved. The legislature's SEA 309 did not specify, authorize or suggest changing netting methodologies in an EDG case. Yet we are all left to deal with I&M's non statutory no netting proposal. Issues regarding what the statute's language plainly says, what it does not say, a rational application of the statute and how it can be applied in a manner that is in harmony with other encompassing statutory requirements, e.g. all rates must be just and reasonable, are relevant to evaluating I&M's proposals. These are all fair matters for impacted stakeholders and consumer advocates to bring to the Commission attention for its factual, legal, and discretionary consideration. Yet I&M seeks to strike testimony on these and other important relevant matters.

As I&M notes the DG statute Section 17 with regard to the EDG **rate** says “(1) the average marginal price of electricity paid by the electricity supplier **during** the most recent calendar year; multiplied by (2) 1.25.” But what it does not say is when or for what hours during the most recent calendar year the marginal price should be pulled and averaged. Section 6 only provides that marginal price of electricity “means the hourly market price for electricity as determined by a regional transmission organization of which the electricity supplier serving a customer is a member.” It does not specify the hours to be considered.

The DG statute does not say each hour of the year. It does not say the total 8,765.82 hours in the most recent calendar year. Its reference to “during the most recent calendar year” is not specific. Mr. Inskeep rationally points out that basing the marginal price in part on low wholesale price nighttime hours, when solar is not even sending power to I&M will seriously undervalue EDG output and under compensate I&M’s solar customers for their EDG. He explains using the annual daylight hours when solar is actually sending power to the grid is the reasonable way to apply the language and reach a rational rate result. The result is he proposes an EDG rate of 2.96 cents per kWh, 14.9% higher than proposed by I&M. Page 10. The vast bulk of I&M’s customer DG is solar.

The DG statute does not in any place indicate that utilities should stop the monthly netting of excess DG energy and instead use I&M’s self-described “no netting” method or an “instantaneous method.” However, in the recent Vectren EDG case Cause No. 45378, based on the evidence presented and assertion of regulatory discretion the Commission approved instantaneous netting rather than continuing monthly netting. If the Commission had the discretion to approve instantaneous netting for Vectren when the

statute does not mention changing from the normal monthly netting to any other form of netting, it is certainly within its discretion to accept evidence and argument on the issue of first impression that the EDG rate should be priced based on annual daylight hours marginal rate rather than including low demand low cost wholesale nighttime hours when solar DG is not even being generated or sent to the grid.

The Commission has stated on numerous occasions that the Indiana Rules of Evidence *may* provide guidance but are not controlling in Commission administrative proceedings. 170 IAC 1-1.1-26. Moreover, in compliance with Ind. Evid. Rule 401, the testimony I&M seeks to strike does tend to make certain facts more probable than without the evidence and the facts are of consequence in determining if no netting should be approved or denied and what should be the EDG per kWh rate. Moreover, if after hearing all the evidence the Commission finds the objected to pages unhelpful it has the discretion to ignore them. But if they are struck even before the evidentially proceeding it has lost its ability to substantively exercise its discretion on the matter.

Tellingly, nowhere does I&M allege prejudice. Nor does it have basis to do so as all the objected pages, including the fact that Mr. Inskeep's corrections, were filed long ago, I&M has had the opportunity to address these matters in its rebuttal, the opportunity to do discovery thereon and will the opportunity to conduct cross examination at hearing.

The Commission makes its rulings based on the evidence presented in each case. It is free to rule differently on the same or similar issue in a subsequent case so long as the substantial evidence supporting the ruling is described and the reason for different outcome is explained. Indiana Bell Telephone Co., Inc. v. Indiana Utility Regulatory

Com'n, 715 N.E.2d 351 (Ind. 1999). The Vectren order instantaneous netting results do not control the potential outcomes of I&M's no netting proposal in this Cause.

III. I&M's Objections

Mr. Inskeep's page 11, line 23—page 15, line 23.

As noted previously the language in the DG Statutes requires the Commission to approve a *rate*. But nowhere does the statute's language require or suggest a new measurement methodology or netting measurement for determining EDG. This objected to section is where Mr. Inskeep describes his research of the evolution of SEA 309's five bill variations from public documents on the Indiana General Assembly's website. He notes of five versions of the bill only the first contained language that would have changed the monthly netting method by establishing a buy all sell all tariff. None of the subsequent four versions retained buy all sell all or stated a new netting methodology. Clearly, the legislature knew how to change from monthly netting to some other measurement treatment, but chose not to do so. He documents that the bill's author wrote a published newspaper Letter to the Editor explaining the controversial change to buy-all, sell-all provisions that had been removed from the bill to address many of the public concerns that had been expressed.

Because I&M has proposed a "no netting" change from normal monthly netting, while the statute's plain language does not call for such a change Mr. Inskeep's research into the legislative versions and description of SEA 309 provides insight into the legislatures actions leading to the plain meaning of the current statute. The legislative history of a statute can be key it understanding how it was intended to be applied. Indiana

Bell supra. This information is relevant to the Commission's deciding if I&M's no netting proposal is allowable or proper under the DG statute. It tends to prove after buy all sell all was removed from version on there was no action to change the netting process. The Commission should retain its opportunity to fashion a lawful just and reasonable EDG proposal by accepting Mr. Inskeep's research results and conclusions into the record and allowing the administrative process thereon to proceed.

Mr. Inskeep's pages 19, line 2—page 54, line 6. Here, Mr. Inskeep describes the drawbacks of I&M's no netting proposal. He describes the many negative impacts that would result from approval of I&M's "no netting" EDG methodology. It would be harmful to Indiana solar industry, harmful to job growth, economic development and produce unjust and unreasonable rates. p. 19. He describes that I&M's "no netting" proposal is a major policy change in calculating EDG solar customer compensation without offering the necessary DG cost benefit analysis to support such a radical change or show that it reaches a just and reasonable rate result. p. 20-21. He describes I&M's no netting proposal will severely limit customers' ability to install solar energy. p. 22. He describes how I&M's no netting proposal would be drastically different from best practices and other states netting review conclusions.

He describes the perverse incentives that I&M's no netting proposal will create. It would cause DG customers to shift their discretionary energy usage to daylight peak and high energy use hours to further offset their total energy needs with their own generation. This would occur because no netting severely limits a customer's ability to use EDG kWh to offset their normal usage. So they are incited to shift as much energy

usage as possible to daylight higher system demand hours. That perverse no netting incentive to load up daytime DG customer usage would harm non DG customers by them not receiving the EDG electricity that otherwise would have gone to the grid to offset peak daylight period demands.

He points out that the compensation that an EDG customer would receive under I&M's no netting EDG proposals is materially lower than that available under I&M's COGEN/SPP PURPA tariffed rate, and COGEN/SPP would provide them a material capacity credit. He points out that if I&M's EDG proposal is approved it should be seldom used by customers because the COGEN/SPP rate and its capacity credit would provide a much higher level of DG compensation. He testifies this is an irrational result of I&M's statutory interpretation that the legislature could not have intended. Pages 24-26.

All of this evidence is relevant in considering which of the parties' proposed netting method should be approved. The negative impacts of no netting favor approval of monthly netting.

At pages 27 – 38, Mr. Inskeep offers the result of his study of DG policies in other states. He explains:

It has been my experience that utility regulatory commissions inquire about and watch with interest how evolving regulatory matters in other states raise new ideas, address emerging issues, and integrate new technologies. Such knowledge is beneficial to regulators when navigating evolving or new regulatory matters and **in applying their discretionary findings to reach an overall balanced outcome on issues consistent with the public interest. This is particularly so when a multifaceted issue like EDG can be broken down into its subcomponents and each subcomponent is subject to a regulatory finding, and potentially differing levels of regulatory discretion. Knowledge and understanding facilitate a balanced outcome in the formation of just and reasonable rates and sound regulatory public policy.**

Page 27 (emphasis added).

This objected to material is relevant and useful in that it provides information that may create ideas and insights as to where and in what way the Commission may choose to exercise its discretion where appropriate. Mr. Inskeep's summary of his learned investigation of other states regulatory treatments of DG should not be stricken. His report covers neighboring states with which Indiana competes for jobs and economic opportunities. It buttresses the value of monthly netting benefits described by Mr. Inskeep. Once in evidence the Commission is free to give this testimony section as much or as little weight as it sees fit. But simply striking it removes the Commission's ability to even consider it in their individual thoughts on discretionary matters. If how other states are addressing emerging issues is of no value then NARUC and numerous utility publications must be of no or little value. But obviously how emerging issues are dealt with elsewhere creates knowledge helpful in wisely addressing similar controversies in Indiana.

At pages 38-43 Mr. Inskeep describes why I&M's "no netting" proposal is inconsistent with core regulatory principles and the statutory requirement that rates and services must be just and reasonable. He cites IC § 8-1-2-4:

Every public utility is required to furnish reasonably adequate service and facilities. The charge made by any public utility for any service rendered or to be rendered either directly or in connection therewith shall be reasonable and just, and every unjust or unreasonable charge for such service is prohibited and declared unlawful.

He explains I&M's no netting proposal is contrary to several of Professor Bonbright's seminal rate making principals. *Principles of Public Utility Rates, Columbia*

Univ. Press (1961) He explains how I&M's no netting proposal violates several of these principals including Simplicity, Understandability, Public Acceptability, Feasibility of Application and True Cost of Service. It is completely fair and relevant that he point out how I&M's novel "no netting" proposal is inconsistent with several core rate making principles and with the requirement of just and reasonable rates. Bombsights principals are worthy consideration in fashioning just and reasonable rates under a new rate paradigm.

He then goes on to cite other state regulatory commissions that have considered the lack information needed to reasonably consider requests for instantaneous netting. p. 41-43. I&M chose to propose its novel "no netting" methodology. It is completely fair and relevant for Mr. Inskeep to point out the information I&M failed to provide that would be needed to fairly consider the reasonableness of the proposed no netting method.

At pages 43-47, Mr. Inskeep points out that I&M has proposed its novel no netting methodology despite the facts that: has not estimated or calculated the financial impact of net metering service on its non-net metered customers; or estimated or calculated potential cross-subsidies; does not even possess the most basic data on its DG customers, confirmed that it "does not have net metering specific load profiles" or hourly data on DG customer imports and exports; cannot explain how much DG customers contribute to I&M's coincident peak demand and how solar affects a customer's contributions to peaks. I&M is without data or assessment of what impacts will result from its novel no netting proposal, yet I&M nonetheless asks the Commission for approval. I&M has not studied the potential for cross subsidies and data needed to know the impacts of its proposal. I&M's lack of documenting any subsidy and not knowing the impacts of it no netting proposal weigh

against no netting's approval. Those facts are completely relevant to considering I&M change from monthly netting to no netting.

Mr. Inskeep goes on to describe the benefits that a DG cost of service study may bring to ensuring reasonable DG results. He then describes why targeted cost of service information would be needed to prove other customers may be subsidizing DG customers. He concludes that a cost of service study would not be required in an EDG case that simply seeks approval of an EDG rate. But when as here the utility seeks approval of a novel new netting methodology, a DG cost of service study would be needed. Page 46.

At pages 47-48, Mr. Inskeep testifies that I&M's novel "no netting" proposal would result in Indiana job losses, loss of economic development, and loss of state and local tax revenues. Evidence of these detrimental economic impacts from approval of I&M's novel no netting proposal are entirely relevant in the Commission's consideration of no netting. The Commission in serving public convenience and necessity and balancing utility and public needs does not and should not turn a deaf ear to the economic impacts of a new novel proposal before them. Economic impacts are always a legitimate regulatory concern.

At pages 48-51, Mr. Inskeep explains monthly netting of DG customers does not harm non DG customers. This testimony is completely relevant to I&M's no netting request because in the Vectren EDG Order the Commission stated its concern that such subsidization does occur. 'We find the evidence demonstrates that ... faster payback periods translate to the utility's other customers paying costs associated with the excess electricity DG customers put on the Vectren system' ... "it is not just and reasonable for

Petitioner's other customers to subsidize the payback periods of DG customers...."

Order p. 38. It is proper and relevant that Mr. Inskeep present evidence to prove that there is no subsidy paid to DG customers and that instead DG customers are providing substantial net benefits. And also to prove that the monetary value of EDG customer credits will be so small as to be immaterial. The testimony is relevant to the potential subsidy concern issues raised by I&M's no netting proposal.

At pages 51-54, Mr. Inskeep describes the benefits and advantages of retaining monthly netting rather than approving I&M's no netting. He describes numerous state studies of monthly netting benefits and costs often finding that total DG value exceeds the retail electricity rate. This is relevant in tending to prove monthly netting yields savings rather than cost. It addresses concerns that monthly netting requires non DG customer subsidization.

IV. Mr. Inskeep's Corrections Are Proper and Timely Filed.

Mr. Inskeep's Direct Testimony was timely filed on July 13, 2021. The Prehearing Order in this Cause requires "Any corrections to prefiled testimony shall be made in writing as soon as possible after discovery of the need to make such corrections." IndianaDG did just that; Mr. Inskeep's corrections were filed as soon as possible after the discovery of the need to do so. The corrections were filed on July 28th, **six full weeks before** the evidentiary hearing in this Cause. I&M has had every opportunity to conduct any discovery it likes on those corrections. I&M is not prejudiced by these necessary corrections or when they were filed, and did not plead prejudice in its Motion. I&M saw fit to raise no objection to these corrections until the very last opportunity before the

evidentiary hearing by serving its Objections after business hours on Friday August 27th.

As IndianaDG's Submission of Corrections explained three areas of Mr. Inskeep's Direct Testimony, pages 10, 26, and 60 were incomplete when filed and for completeness and accuracy require correction and revision. As soon as Mr. Inskeep realized those pages were erroneously incomplete the corrections were prepared and filed. Adding what is missing from testimony is a valid correction of the testimony. There is no valid basis to strike these necessary corrections timely made a full six weeks before hearing.

V. Mr. Straeter's Testimony Is Relevant and Should Not Be Stricken.

I&M asserts Mr. Straeter's testimony should be stricken because it "discusses the implications of the statutorily prescribed pricing for EDG..." I&M's novel no netting proposal is **not** statutorily prescribed. The DG statute says nothing about changing from monthly netting, nothing about switching to an alternative no netting proposal. I&M injects the no netting controversy in its EDG case and then complains when the businesses it will ruin state their concerns to the Commission. There are competing netting proposals from I&M and from IndianaDG. The Commission is not and should not be deaf to the economic impacts its netting rulings may create. The Commission is not deaf to the businesses that employ approximately 3400 Hoosiers, help drive economic development and local and state tax revenues and provide valuable service to Hoosiers. To say the testimony of men like Mr. Straeter that describes the broad harm that will arise from I&M's no netting proposal is not relevant in this case seeking no netting approval, ignores the need for Public Service regulation to balance the interests of the people of Indiana with the pecuniary interests and power of monopoly public utilities owners. Mr.

Straeter's testimony is relevant, should be admitted and the Commission should accord it appropriate weight.

I&M's objections should be denied. If anything they merely go to the weight to be given to the evidence not its admissibility.

Respectfully submitted,

/s/ Robert M. Glennon

Robert M. Glennon

Robert Glennon & Associates, PC

3697 N. County Rd. 500 East

Danville, IN 46122

robertglennonlaw@gmail.com

CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail or U.S. Mail, first class postage prepaid, this 3rd day of September, 2021, to the following:

Kay Pashos
ICE MILLER LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282
kay.pashos@icemiller.com

T. Jason Haas
Indiana Office of Utility Consumer Counselor
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
thaas@oucc.IN.gov
infomgt@oucc.IN.gov

Courtesy copy:
Tammara D. Avant
Indiana Michigan Power Company
tdavant@aep.com

Jennifer Washburn
Citizens Action Coalition of Indiana
1915 W. 18th Street, Suite C
Indianapolis, Indiana 46202
jwashburn@citact.org
rkurtz@citact.org

/s/ Robert M. Glennon
Robert M. Glennon