STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, LLC FOR APPROVAL OF A TARIFF RATE FOR THE PROCUREMENT OF EXCESS DISTRIBUTED GENERATION PURSUANT TO INDIANA CODE 8-1-40 ET SEQ.	)))))	**CAUSE NO. 45508**

INDIANA DISTRIBUTED ENERGY ALLIANCE'S SEPARATE BRIEF IN SUPPORT OF ITS PROPOSED ORDER

Duke Energy Indiana's ("Duke" or "Duke Energy") proposed no netting, a.k.a. instantaneous netting, is in multiple ways unlawful and poses a very serious threat to the ability of Hoosiers to install distributed generation ("DG"), and to the creation of the broad operational, financial, social and economic development benefits therefrom. Instantaneous netting would squelch the load reductions to system peak demand that DG offers to Duke, particularly on Duke's highest peak demand hot sunny summer days. Instantaneous netting would cause serious economic damage to the Indiana businesses that install distributed solar, forcing them to move their business activities, cash flow and employment to neighboring states that have more reasonable DG rules. Rohaly, pp. 7-10. Severely limiting or driving solar business out of Indiana will deprive the State of an economic stimulus engine that creates local jobs, creates state and local tax revenues, expands valuable clean energy deployment, and provides direct demand reduction, environmental and other benefits to all consumers. *Id.*

Neither the plain language of SEA 309, now Ind. Code. § 8-1-40 ("DG Statute") nor its legislative history require, promote or invite a change in EDG measurement from

normal monthly netting to the financially disastrous "instantaneous" no netting policy proposed by Duke. Even if such a harmful instantaneous netting proposal were discretionarily lawful, to show it is just and reasonable it would have needed to be robustly and transparently supported and justified by the utility to be shown fair to DG and other customers, such as through a class cost of service study using load research data on the utility's existing DG customers or a DG cost-benefit analysis. That has not been done here in a case that is statutorily intended to simply set the initial EDG rate. DG Statute Section 16.

Duke's no netting proposal does not comply with the plain meaning of the statutory definition of EDG as the difference between (1) electricity supplied to a customer, and (2) electricity supplied back to the electricity supplier by the customer. DG Statute Section 5. Duke's proposal only measures EDG by tallying up the DG customer's gross outflow kWh. Duke's proposed tariff also fails to properly apply Section 5 by using components not stated in the statute, and not following the plain language of the statute by not defining and measuring EDG as the difference between exports and imports. It also fails to give any effect to the plain meaning of Ind. Code § 8-1-40-21(a) that clearly requires for both net metering and EDG customers continuation of the provisions of the Net Metering Rule 170 IAC 4-2.2-7. Duke is inconsistent with the definition of EDG under Section 5 and its treatment under Section 21 of the DG statute.

Duke and other Indiana electric utilities appear delighted to own, ratebase, expense and incorporate solar and wind generation into their operations as shown by their IURC Petitions seeking rate making recognition and approval to do so, as well as their integrated resource plans indicating plans to collectively deploy thousands of megawatts of solar in

the coming decade. But they use every excuse and the harshest customer financial barrier – instantaneous no netting – to stifle customer-owned DG, despite its modest size, the diverse benefits it offers, and complementary role it can play to centralized generation resources that comprise the vast majority of Duke's fleet. Hoosiers who are interested in installing solar now and in the future, and the businesses that serve them, are now left to fight for the survival of future Indiana solar DG. Thankfully, the facts in this Cause do not warrant, and the DG Statute does not allow, approving instantaneous netting in Duke's service area.

A. Legislative History Shows Instantaneous Netting Is Not Intended.

Even if Ind. Code § 8-1-40, particularly Section 5's plain language, were not clear and unambiguous, its legislative history shows the General Assembly did not intend for the Commission to implement a major substantive change to the measurement of EDG, as the record in this Cause demonstrates. IndianaDG's witness Mr. Inskeep's complete direct testimony presentation of the publicly available documents from the Indiana legislature's website and elsewhere factually show the evolution of SEA 309 from first proposal to passage. This and other matters are new evidence not presented in the Vectren case. He showed there is no language in the DG Statute that specifies, requires, allows or otherwise invites a change from monthly netting, or directs the Commission to consider a new netting measurement. Inskeep, p. 64. The absence of such language in the DG Statute is un-refuted. He documented that the first version of the bill would have changed from net metering to a buy-all sell-all policy, but that proposal was met with great public resistance. As a result, that first version's language that would have changed the normal ongoing monthly netting was removed from the bill and no change to netting methodology was

included in any subsequent versions of SEA 309. *Id.,* 15-16. The legislature clearly knew how to change the current monthly netting policy as evidenced by the buy-all sell-all provision in the first version of SEA 309. Had they thereafter intended to change from the normal ongoing monthly netting to instantaneous netting they could have clearly done so. They did not.

As Mr. Inskeep documented SEA 309's author wrote in his published Letter to the Editor that the amended bill still encouraged renewable energy generation while stepping down the rate for EDG. Mr. Inskeep's testimony also highlighted other statements made in hearings on the bill by SEA 309's author that clearly indicate the bill's sponsor had no intent to decimate the distributed solar industry. But contrary to the intent to encourage DG, Duke's instantaneous no netting would completely stifle rather than encourage customer DG. It would not provide for only a modest and manageable step-down in the compensation rate provided to DG customers for electricity supplied to the grid. Instantaneous netting is not stepping down the rate, it is a utility monopoly protectionist device to crush the future installation of customer DG by making DG financially impractical.

No language in the DG Statute calls for or requires a change to instantaneous netting. Nor is there any language asking the Commission to allow, invite, or evaluate a change from monthly netting to instantaneous netting. The DG Statute clearly defines EDG as the "difference between" electricity that a DG customer imports and exports – and not simply as the total amount of instantaneous power exported to the grid by a DG customer, as Duke purposes. Instantaneous netting was neither intended nor allowed under the

history and the plain language of SEA 309 and it will stifle customer solar, cause serious harm to Hoosiers, to the businesses that install solar, and to Indiana's economy.

B. Commission Rules Show Instantaneous Netting Is Not Allowed.

I.C. § 8-1-40-21(a) explicitly preserves the Commission's net metering rules at 170 IAC 4-4.2 and applies them to new EDG customers:

> **IC 8-1-40-21 Commission's net metering and interconnection rules; application to distributed generation; permitted changes to rules**
>
> (a) Subject to subsection (b) and sections 10 and 11 of this chapter, after June 30, 2017, the commission's rules and standards set forth in:
>
> (1) 170 IAC 4-4.2 (concerning net metering); and
> (2) 170 IAC 4-4.3 (concerning interconnection);
>
> remain in effect and apply to net metering under an electricity supplier's net metering tariff **and to distributed generation under this chapter**.

(emphasis added).

Plainly, the Commission's own existing Net Metering Rules are to continue and apply to both net metering and to distributed generation. Section 21(b) of the EDG statute states that "the commission may adopt changes" to the net metering rules "only as necessary to: (1) update fees or charges; (2) adopt revisions necessitated by new technologies; or (3) reflect changes in safety, performance, or reliability standards." However, to date, the Commission has not changed its Net Metering Rule. Instead in 2019, long after SEA 309 became law, the Commission re-adopted its net metering rule with identical Section 7 language.[1]

[1] See 20190508 IR 170190136RFA (May 8, 2019), http://iac.iga.in.gov/iac//20190508-IR-170190136RFA.xml.html.

A comparison of the definition of net metering adopted in Commission rules to the definition of EDG in SEA 309 further indicates that the General Assembly intended for monthly netting to continue. The definition in 170 Ind. Admin. Code 4-4.2-1 of net metering is nearly identical to the statutory language under SEA 309 defining excess distributed generation.

Section 170 Ind. Admin. Code 4-4.2-1(i) provides that:

> "Net metering" means measurement of **the difference between the electricity that is supplied** by the investor-owned electric utility **to a net metering customer and the electricity that is supplied back to the investor-owned electric utility** by a net metering customer.
>
> (emphasis added)

Compare that to Section 5 of the DG Statutes (Ind. Code § 8-1-40-5), which provides that:

> As used in this chapter, "excess distributed generation" means the **difference between: (1) the electricity that is supplied by an electricity supplier to a customer** that produces distributed generation; **and (2) the electricity that is supplied back to the electricity supplier** by the customer.
>
> (emphasis added.)

As is apparent from reading these definitions in succession, the definition of "net metering" is substantively identical to the definition of "excess distributed generation." Both definitions clearly identify that both net metering and EDG means taking the "difference between" the amount of electricity supplied by the utility to the DG customer and the electricity supplied by the DG customer to the grid. The definition of net metering had been in place for many years prior to the General Assembly adopting the definition of EDG. It would be illogical to interpret the General Assembly's nearly identical definition of EDG in opposition to the definition of net metering by implementing the first as a

measurement over a monthly billing period and the second on an instantaneous basis, despite no express directives in the latter to change the measurement interval of netting.

C. Duke Misapplies the DG Statute.

Ind. Code § 8-1-40-5 defines "excess distributed generation" as:

> As used in this chapter, "excess distributed generation" means the difference between:
>
> (1) the electricity that is supplied by an electricity supplier to a customer that produces distributed generation; and
>
> (2) the electricity that is supplied back to the electricity supplier by the customer.

As fully detailed in the OUCC's and Joint Parties Brief in Support of Proposed Order, Duke's misapplication of Ind. Code § 8-1-40-5 ignores the statutory definition in its tariff and uses measurements outside of the statute to determine the energy amounts to which it applies the EDG rate. Under the "Billing" section of Duke's Rider EDG tariff, it states: "2) The Company will additionally measure the **instantaneously determined** total Excess Distributed Generation (kWh Exported) to the Company by the customer during the billing cycle which will be valued at the Marginal DG price, reported below, resulting in an Excess Distributed Energy credit (measured in dollars)," (emphasis added). Duke's no netting proposal measures EDG by taking the difference between two components that are not in Section 5 – a DG customer's behind the meter generation and the customer's usage. Duke's no netting proposal is not taking the difference between the electricity supplied to the customer and the amount supplied back to Duke, as required by Section 5. If the legislature had intended to define EDG by instantaneously comparing production and consumption on the customer's side of the meter with no netting, it would have said so. But it did not. The difference between electricity "supplied" to a DG customer and the

electricity that the DG customer "supplied back" to the utility has been measured over a monthly billing period for the past 17 years. Duke does not "supply" the electricity that a DG customer produces and consumes behind the meter. Nor does it supply electricity that is offset each month by the electricity supplied by the customer's own DG unit. By using customer generation and consumption on the customer's side of the meter, Duke is comparing (or "netting") these two non-statutory terms to determine EDG. Duke is not free to substitute the statutory components of EDG (inflow and outflow) for a different set of non-statutory components (behind-the-meter DG production and consumption) that it prefers. Duke's interpretation and application of the measurement of EDG only considers the second part of the statutory EDG definition ("the electricity that is supplied back to the electricity supplier by the customer"), rendering the first portion of the definition superfluous, as at no time is it measuring and taking "the difference between" electricity supplied by the utility to the DG customer with this second component. In addition, Duke's instantaneous proposal is contrary to the clear language of the Commission's Rule 170 IAC 4-4.2 as incorporated into IC. § 8-1-40-21(a).

Moreover, Ind. Code § 8-1-40-17 makes clear this and other EDG cases are to provide "…review of a rate Petition…" thereby setting the rate to be credited for EDG. Nothing in the statute makes an EDG Petition the means of approving a new non-statutory non-traditional EDG measurement method, i.e. no netting. Seeking approval of a new non-traditional netting method in an EDG case statutorily intended to set an initial rate is a stretch into statutory non-compliance.

Instantaneous netting, i.e., no netting, is a misnomer and a non-statutory contrivance designed to crush the scintilla of energy competition customer owned DG

represents to monopoly electric utility retail sales. "In its 'Instantaneous netting" proposal, Duke Energy Indiana's meters would have approximately 4,096 measurements per second." Stipulation IndianaDG CX-1. Over 4,096 measurements per second, versus the current normal netting method provided in the Commission's Rules of taking the "difference between" a DG customer's electricity exports and imports each month. It is no wonder instantaneous netting is so financially crushing to prospective DG customers compared to other netting methods like normal monthly netting.[2] Inskeep, p. 65-70.

It is one thing to have a monopoly service area for retail sales of electricity. But it's completely unreasonable in effort and in result to then seek regulatory approvals that serve to financially prevent customers from using sunshine to illuminate, cool, heat, and power their homes and buildings. Electricity from sunshine is not for the electric utility to financially monopolize. The legislature did not impose the crushing blow of instantaneous no netting upon DG. It chose not to change the monthly netting measurement method and the Commission, as a creature of statute, should not support Duke's effort to impose a new no netting method here. Utilities like Duke have injected their instantaneous netting proposals into EDG cases that Section 17 makes clear are expressly intended to approve a new EDG *rate*, not a novel netting methodology upending an entire industry and driving them out of the State. Severely restricting the value of customers' monthly solar generation exports through instantaneous no netting stifles customer interest in DG and pushes solar installation businesses to cease their operations in Indiana. That moves the utility directly toward monopolizing the installation of solar energy in its service area. It is also contrary

[2] Even netting on a daily basis would preserve a substantial portion of the benefits of netting. But instead Duke and other IOUs reach for the DG crushing blow of no netting. Inskeep, pp. 65-70.

to the substantial benefits that would accrue to all ratepayers under increasing adoption of solar DG in Indiana, as found by the Lawrence Berkey National Laboratory in its report requested by the Commission. Inskeep, pp. 57 and 59.

In cases involving similar utility proposals to end monthly netting and replace it with no netting tariffs for new DG customers, the Kentucky Public Service Commission ("PSC") issued an Order on September 24, 2021 regarding the net metering tariff proposals of the Commonwealth's two largest investor-owned utilities, Kentucky Utilities ("KU") and Louisville Gas and Electric ("LG&E"). The Order implements the Net Metering Act (SB 100, 2019), which gave the PSC clear discretion to make substantial changes to net metering in utility rate cases, including authorizing the PSC to adopt a new rate for DG outflows to the grid. Nevertheless, the PSC rejected the two utilities' proposal to move from monthly netting to instantaneous netting. The PSC maintained monthly netting and approved DG export rates of $0.06924/kWh and $0.07366/kWh, respectively, for LG&E and KU for net excess generation accruing over the monthly billing period. (The PSC also issued a similar order upholding monthly netting and rejecting an alternative netting framework proposed by another utility, Kentucky Power, earlier in 2021, as described in Mr. Inskeep's testimony.) The PSC specifically pointed to language in the Net Metering Act that defines net metering as "the difference between" imports and exports, similar to SEA 309 in Indiana:

> Based upon the evidence of record, the Commission finds that LG&E/KU's proposed methodology for NMS 2 netting period is not fair, just and reasonable, and should be rejected. This is because LG&E/KU's proposed instantaneous credit for all energy exported on to the grid is inconsistent with the plain language of KRS 278.465(4), which provides that "net metering means **the difference between**" the dollar value of all electricity generated by an eligible customer-generator that is exported to the grid over

> a billing period and the dollar value of all electricity consumed by the eligible customer-generator over the same billing period.[3] (Emphasis added.)

As Mr. Inskeep testified with detailed examples, approval of instantaneous or no netting will make Indiana far less competitive with contiguous states in solar economic development. Simply connect the Indiana rate regulation dots and it pictures Duke and other Indiana electric utilities wanting customer-owned DG solar financially disadvantaged through no netting in order to maximize utility earnings and further apply their monopoly ability to rate base and rate recognize their own or contracted solar installations.

With such a stifling DG no netting compensation policy, customers are incentivized to export as little power to the grid as possible, instead shifting their discretionary consumption to peak system demand daylight hours. That would deprive or lessen the utility system of the peak demand offset attributes of customer DG. With customer DG stifled, utilities have little reason to deploy innovative win-win ways to incorporate customer DG exports and any potential for future customer battery energy storage and/or other technologies, to benefit both themselves *and* the grid. That is not in sync with the 21st Century energy planning of modern electric service and the advancements of numerous other states as detailed by Mr. Inskeep. It is not in sync with the DG benefits and savings described in the LBNL Report requested by the Commission. What happened in Vectren with no netting and what is threatened here with no netting is

[3] Kentucky Public Service Commission, Order, p. 48, September 24, 2021, Case Nos. 2020-00349 and 2020-00350, available at http://psc.ky.gov/pscscf/2020%20Cases/2020-00349/20210924_PSC_ORDER.pdf

in not in the public interest. Rather it is in the utilities' shareholders' interest and furthers the monopoly's stranglehold over captive Hoosier ratepayers.

D. <u>There Is No Proof of Harmful Cross Subsidization.</u>

Mr. Inskeep's testimony established there is no real evidentiary basis in the record that monthly netting will cause harmful subsidization between DG and non-DG customers. Inskeep, pp. 53-58. Duke has not separately identified the cost of service for the DG subset of customers within their respective larger retail customer class, and therefore it has not actually analyzed whether there is any cross-subsidy—in either direction—that would provide reason to deviate from the longstanding legal monthly netting policy in place. In fact, Duke has not presented *any* meaningful analysis, let alone of cost of service study, in this case on the impacts of its DG customers or of its EDG tariff proposal.

Even if Duke had presented such a basis demonstrating cross subsidization, it is clear that any arguable costs of DG would be very modest. Through the end of 2020, Duke had only 5,573 MW of installed net metering capacity compared to its much greater peak demand of 5,573 MW. Of its 852,000 customers Duke had only 1,914 net metering customers. IndianaDG CX-2. 2020 Year End Net Metering Report. Unlike other Indiana IOU electric utilities Duke does not know and could not in discovery state what was the gross annual kWh net metering customer excess energy carry over into 2021. Nor could Duke state the 2020 gross kWh amount of net metering customer's monthly excess energy carry into subsequent months. Inskeep Attachments BDI-10, DR Response 1.7 and 1.8. Nor in the 2020 year end Net Metering Report to the Commission did Duke know the net electricity generated by DG customers and responded therein "not available." IndianaDG CX-2. The Duke DG customer credit carry forwards, even at the higher net metering rate

and DG customer output are so inconsequential that Duke has not even calculated them. There is no concerning subsidization. Moreover, Section 19(a) provides that to ensure DG customers are properly charged for any energy delivery costs attributable to them, the utility may request approval for recovery of those costs. Neither Duke nor any other EDG utility petitioner has quantified such a cost or sought any recovery of any such costs. If subsidization were a real concern rather than an excuse to stifle customer DG the concerning costs would be documented, quantified or proven. They are not.

Arguendo, even assuming no value is provided by EDG, it would only amount to a *de minimis* "subsidy" or cost shift to non-DG customers that would not justify the unlawful and bad policy change being proposed by Duke. But when the benefits such as those described in the LBNL Report are considered even such an alleged *de minimis* "subsidy" would not exist, or would be substantially reduced. Inskeep p. 57. Moreover, it is axiomatic that utility ongoing cost recovery can exceed or be less than expected levels due to numerous expected vagaries of economic cycles, weather patterns, higher efficiency appliances, technology and energy efficiency equipment.

Any notion that instantaneous netting should be approved to avoid subsidization or loss of cost recovery is simply false and has no support in the record. In comparison, the Lawrence Berkeley National Laboratory report as commissioned by this Commission in response to a legislative request to provide a detailed analysis of emerging technologies and their impact on generation capacity, reliability, resilience, and rates concluded that "[i]n general, scenarios with high adoption of rooftop solar PV result in system-wide savings," and "[r]ates tend to go down in the short term for the High PV scenarios." Inskeep, p. 57. These findings generally echo the results from DG cost-benefit analyses

and value-of-solar studies commissioned in other states, which Mr. Inskeep discussed in detail. Inskeep, pp. 37-49.

Instead of working to squelch customer DG adoption with instantaneous netting, utilities should be looking at how to harness the potential of DG in meeting the public needs of a modern, reliable, and customer-centric electric system. Without a valid cost-benefit, value-of-solar, or cost of service valuation of customer DG there is no evidence and no valid basis to begin to rely on a theory of cross subsidization that would justify financially stifling interest in customer-owned DG through instantaneous netting.

DG systems will not be oversized to generate more energy than the customer uses on an annual basis under the EDG tariff. Section 3 of the DG Statute provides that DG facilities to which the statute is applicable are those with a "nameplate capacity of the lesser of: (A) not more than one (1) megawatt; or (B) the customer's average annual consumption of electricity on the premises." Sizing a system to meet average annual consumption prevents DG systems from generating more energy than the customer uses over the year. The utility has the lawful ability to enforce that size restriction and prevent oversized system excess credits. But does not have the authority to stifle customer DG through instantaneous no netting. Had the General Assembly intended for DG systems to be sized to never export electricity to the grid on a no netting basis, it could have easily done so in SEA 309. It did not. It approved the clear capacity restrictions described above. That and the DG statute's EDG rate end of month export credit reduction from one for one kWh offset to 1.25 x the wholesale rate are a significant limitations and strong reductions in EDG valuation and attractiveness. There is no justification to worsen EDG value

substantially more by adopting an instantaneous no netting policy that is not based in statute.

Large utility scale solar and wind farms are increasingly common in Indiana. These "intermittent" weather dependent generation sources certainly are not blindly flung into day ahead planning. The weather in which they will operate next day and the resulting expected electricity output can be calculated based on weather forecasts, experience and expertise. Intermittent sources of energy are increasing throughout the U.S. and the world. Our own Indiana State Utility Forecasting Group Report shows that as of July 2021 Indiana Utilities' owned or purchase agreement solar installations totaled 215 MW with another 919 MW to be added by end of 2023.[4] Indiana utilities' growing reliance on and dispatch of large-scale solar generation sources indicates intermittent energy sources to meet customer load can and should incorporate customer DG rather than seeking to stifle it with unlawful instantaneous netting.

E. Basing the EDG Rate on Hours When DG Is Actually Generating Electricity Is Necessary in Resolving Section 6 and 17 Statutory Ambiguity with a Rational Result That Matches 93% of Duke's EDG Capacity.

The DG Statute does not specify which hours of the year are to be included in the hourly market price as determined by Duke's Regional Transmission Organization. Similarly, there is no dispute that as of December 31, 2020 Duke's mix of DG customer nameplate capacity was 62,440 kW total (58,091 of solar, 4,349 kW of wind and 0 kW of biomass). IndianaDG CX-2. Thus, more than **93%** of DG installed in Duke's service area is solar

[4] Page 116, https://www.purdue.edu/discoverypark/sufg/docs/publications/2021%20Indiana%20Renewable%20Resources%20Report.pdf.

capacity. Furthermore, 100% of the new DG capacity installed in Duke's service area in 2020 and 2021 (to date) have been solar resources. Solar DG units only provide exports during daylight hours, when the average wholesale price of electricity tends to be significantly higher than in the low demand nighttime hours. Duke's calculation of an average LMP includes nighttime hours in determining EDG which would undervalue at least 93% of installed DG capacity in Duke's service area, and likely an even higher percentage going forward given recent trends in DG installation being predominately solar resources. Duke gives nighttime non-solar-generating hours as much weight in is EDG rate calculation as bright daylight hours. That is an absurd rather than rational result for 93% of DG capacity in Duke's service area and should not occur, particularly in light of the Sections 6 and 17 combined ambiguity and lack of specificity on which hours of the year are to be included. The statute must be applied in a rational manner that avoids an absurd result." *Walczak v. Labor Works-Ft. Wayne LLC*, 983 N.E.2d 1146, 1154 (Ind. 2013). Mr. Inskeep's proposed methodology of weighting the average LMPs used in the calculation by the expected hourly generation from a typical DG facility in Duke's service territory provides a modest, but nonetheless helpful, 13.5% increase in the price of EDG relative to the EDG rate proposed by Duke. But that small EDG rate increase pales in comparison to and does not remove the much more finically devastating impact threatened by instantaneous netting. However, it would at least financially help and be a rational solution to and implementation of ambiguity of Sections 6 and 17.

F. The Vectren Order Is Not Binding Precedent.

The Commission is not bound by its prior Vectren EDG order to approve instantaneous netting in this Duke case. The record here has substantial new evidence, rationale and arguments not presented in Vectren's case. The multifaceted testimony of Mr. Inskeep was not presented in Vectren's case. The Commission makes its rulings based on the evidence presented in each individual case. The Commission knows 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 the different outcome is explained. *Hamilton S.E. Utilities v. IURC.* 135 N.E.3d 902, 908 (Ind. App. 2019). The Vectren order instantaneous netting results do not control the potential outcomes of Duke's no netting proposal in this Cause, or suggest that Duke need not provide adequate support for its instantaneous netting proposal in this Cause to demonstrate it is consistent with the statute and produces a just and reasonable rate. There is ample supporting substantial evidence and reasoning in the record and described in the proposed orders of the OUCC and IndianaDG to support denial of instantaneous netting in this Cause.

G. The EDG 25% Adder Is No Offset to the Financial Harms of Instantaneous No Netting, Basing EDG on Night Hours, or the Value DG Brings to Duke and Non-DG Customers.

The 25% EDG rate adder applied by Section 17 does not begin to offset the financial harm to DG customers caused by no netting, as the EDG rate would be a crushing abrupt 76% reduction in the effective compensation rate for all exported generation by a DG customer. Inskeep, p. 61. The EDG rate does not compensate for the benefits customer DG brings to the system through peak demand reduction and reduced transmission. Rohaly, p. 9. Duke's proposed EDG rate is $0.028981 per kWh with the 25% adder. With Mr.

Inskeep's proposed use of daylight hours, the EDG rate only increases by 13.5% relative to Duke's proposed EDG rate to $0.032879/kWh. Inskeep, p. 15. Duke's proposed instantaneous no netting and its use of low nighttime hours wholesale prices included in its calculation of the EDG rate would make Indiana an uncompetitive outlier among states in the region. The Michigan Public Service Commission has approved a total compensation rate for exports of $0.10024/kWh for Indiana Michigan Power's DG customers, which is roughly *four times* as much as Duke's proposed compensation rate across the border in Indiana. Inskeep p. 37, 39. Illinois, Ohio, and Kentucky, as well as most utilities across the Midwest, currently offer monthly netting to new residential DG customers. *Id.* A 25% adder does not offset the absurd result of calculating an EDG rate based in part on low wholesale prices during nighttime hours, as 93% of Duke's customer DG is solar, nor does it offset the drastic unlawful result of Duke's proposed no netting policy.

H. EDG Customers Should Receive Fair Terms and Conditions.

The Commission should reject Duke's harmful and insufficient proposals to (1) confiscate a customer's EDG credits when the customer discontinues service from Duke and (2) unnecessarily burden customers with small EDG systems (Level 1 interconnections) with the expensive requirement to install an external disconnect switch. First, the DG Statute does not authorize the utility to take a DG customer's EDG credits without compensation. To the contrary, it clearly provides that EDG has value and customers should be compensated at the statutorily determined rate for EDG. Nothing in the DG Statute suggests that Duke should be allowed to take a customer's credits without providing just compensation. There is nothing in the evidentiary record that supports this taking of private property from DG customers as a fair, just, or reasonable policy.

Section 18 provides:

> An electricity supplier shall compensate a customer from whom the electricity supplier procures excess distributed generation (at the rate approved by the commission under section 17 of this chapter) through a credit on the customer's monthly bill. Any excess credit shall be carried forward and applied against future charges to the customer for as long as the customer receives retail electric service from the electricity supplier at the premises.

Section 18 defines "Premises":

> As used in this chapter, "premises" means a single tract of land on which a customer consumes electricity for residential, business, or other purposes.

As defined "premises" would include both the customer's tract of land upon which the EDG credit was created and the tract of land to which the EDG customer moves and there continues to consume Duke electricity. The customer's remaining EDG credit should move with them. As for customers that leave the Duke system, if they leave with a balance owed, Duke is certainly entitled to payment of that balance for electricity it provided. So, too, the departed customer provided electricity to Duke and is morally, equitably and legally entitled to the value of the electricity it supplied to Duke. A materiality threshold of $1 or more would be reasonable. Duke's only rebuttal response to Mr. Inskeep's recommendation on customer credits was a cash credit is unworkable. Flick Rebuttal, p. 19.

Second, external disconnect switches are not necessary for isolating a small, inverter-based DG facility. Inskeep, p. 80. In fact, this provision is directly contrary to the Commission's determination in its Vectren case. Neither Vectren nor AES Indiana require this burdensome and outdated requirement for Level 1 interconnections, and many other utilities and states have moved away from this requirement, including the Standard Interconnection Requirements in New York and all of the large investor-owned utilities in

California, which collectively have well over 1 million solar DG installations in their service areas. *Id*. at 81. Because installing an external disconnect switch can be expensive and burdensome to DG customers, this provision in Duke's EDG rider is unnecessary, unfair, and simple adds another financial barrier to customer DG.

CONCLUSION

The record demonstrates Duke's proposed no netting or "instantaneous netting" is contrary to the DG Statute's plain language, its legislative history and the Commission's DG Rules. There is no evidence that monthly netting causes a harmful intra or inter class subsidy. Any arguable rate impact – is no more than *de minimis*. All credible evidence shows Duke's proposed EDG rate would not reflect the wholesale market prices at the times of day when 93% of the DG capacity is actually generating electricity, and are thus irrational, inaccurate and unlawful. Nor would it reflect the operational benefits DG offers as described by IndianaDG witnesses, the Commission's Lawrence Berkley Laboratory Report, nor be competitive with the DG compensation rates offered by contiguous states and states across the Midwest for excess DG. Duke's unlawful, unjust and unreasonable no netting and EDG rate proposals should be rejected and IndianaDG's Proposed Order should be adopted.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by electronic mail or U.S. Mail, first class postage prepaid, this 9th day of December, 2021, to the following:

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