

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE VERIFIED)
PETITION OF INDIANAPOLIS POWER)
& LIGHT COMPANY D/B/A AES)
INDIANA PURSUANT TO IND. CODE §) CAUSE NO. 45504
8-1-40-16 FOR APPROVAL OF RATE)
FOR THE PROCUREMENT OF EXCESS)
DISTRIBUTED GENERATION BY AES)
INDIANA.)

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

Indiana Distributed Energy Alliance (“IndianaDG”), by counsel, submits this brief in support of the proposed order filed by IndianaDG recommending that the Indiana Utility Regulatory Commission (“Commission”) deny the proposal by Indianapolis Power & Light Company d/b/a/ AES Indiana (“Petitioner” or “AES”) for an Excess Distributed Generation Rider, as the proposal does not comply with the statutory requirements of Ind. Code ch. 8-1-40 *et seq.* AES proposes a no netting, or instantaneous netting, EDG methodology without calling it such. It’s no netting proposal is unlawful and poses a very serious threat to the ability of Hoosiers to install distributed generation (“DG”), and to creation of the broad operational, financial, social and economic development benefits therefrom. If adopted, instantaneous netting would cause serious economic damage to the Indiana businesses that install distributed solar, forcing them to move their business activities and employment to neighboring states that have more reasonable DG rules. Ludwig, p. 5-8. Severely limiting or driving solar business out of Indiana will deprive the State of an economic development engine that creates local jobs, creates state and local tax

revenues, expands valuable clean energy deployment, and provides direct benefits to all consumers. *Id.*

Neither the legislative history nor the plain language of SEA 309, now Ind. Code. ch. 8-1-40 (“DG Statute”) require, promote or invite a change in EDG measurement from normal monthly netting to financially disastrous no netting. Even if such a novel 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.

AES’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. In reality AES’s proposal only measures the DG customer outflow kWh. AES’s proposed tariff 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 continues the provisions of the Net Metering Rule 170 IAC 4-2.2-7 for net metering and EDG customers. AES is inconsistent with the definition of EDG under Section 5 and its treatment under Section 21 of the DG statute.

AES and other Indiana electric utilities appear delighted to own and incorporate solar and wind generation into their operations as shown by all their IURC Petitions seeking rate making recognition and approval to do so. But they use every possible excuse

and the harshest customer financial barrier – instantaneous no netting – to stifle customer-owned DG, despite its modest size and the diverse benefits it offers. 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 AES’s service area.

A. Legislative History Shows Instantaneous Netting Is Not Intended.

Even if Ind. Code. ch. 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 presentation in his direct testimony 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 or otherwise invites a change from monthly netting, or directs the Commission to consider a new netting measurement. Inskeep, p. 17. The absence of such language in the DG Statute is unrefuted. He pointed out 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 was included in any subsequent versions of SEA 309. *Id.*, pp. 18-19. 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, AES'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.

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 as the total amount of instantaneous power exported to the grid by a DG customer. Instantaneous netting was neither intended nor allowed under the history and the plain language of SB 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 Appropriate.

A comparison of the definition of net metering adopted in Commission rules to the definition of EDG in SEA 309 further indicate 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.

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.

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. Years after The DG statute was enacted in 2019 the Commission readopted its net metering rule without changes to the longstanding netting policy.

C. AES 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, AES’s interpretation 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 marginal DG price, or as referenced in AES’s tariff, the “excess DG rate.” If the legislature had intended to define EDG by instantaneously comparing production and consumption on the customer’s side of the meter, 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. AES 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, AES is comparing (or “netting”) two non-statutory terms. AES 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. AES’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.

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. “AES Indiana’s AMI meters, which are provided to DG customers, read electricity flow on either Channel 1 or Channel 2 approximately 2520 times per second, or at a rate of 2.52 kHz.” AES Stipulation of Fact 6. Over 2520 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.¹ Inskip, pp. 70-73.

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 treatments 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 netting upon DG. It chose not change the measurement method and the Commission, as a creature of statute, should not support AES effort to impose a new method here. Utilities like AES have injected their instantaneous netting proposals into EDG cases that SEA 309

¹ Even netting on a daily basis would preserve a substantial portion of the benefits of netting. Inskip, pp. 67-73.

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 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 to the substantial benefits that would accrue to all ratepayers under increasing adoption of solar DG in Indiana, as found by the Lawrence Berkeley National Laboratory in its report requested by the Commission. Inskeep, pp. 60, 63.

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 discretion to make substantial changes to net metering in utility rate cases, including authoring 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.² (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 AES and other Indiana electric utilities wanting customer 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 and 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

² 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

modern electric service and the advancements of numerous other states as detailed by Mr. Inskip. 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 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. There Is No Proof of Harmful Cross Subsidization.

There is no sound basis in the record of this case for concern that monthly netting will cause harmful intraclass subsidization between DG and non-DG customers. AES has admitted “that it has not separately identified the cost of service for the DG subset of customers within their respective larger retail customer class,” and so therefore it has not actually analyzed whether there is any cross-subsidy—in either direction—that would provide reason to deviate from the longstanding monthly netting policy in place. (AES Indiana Response to IndianaDG Data Request 2-1, Stipulation of Fact 2.) In fact, AES 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 AES 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, AES Indiana had only 5.5 MW of installed net metering capacity compared to its much greater peak demand of 2,585 MW. Of its 450,000 customers AES had only 566 net metering customers through the first quarter of 2021. AES Indiana Q.1 2021 Net Metering Report (Attached to Parties' Stipulation of Facts, No. 5). Net metering customers of AES Indiana had net exports of only 1,704 MWh for the 2020 year. AES Indiana Q4 2020 Net Metering

Report. At AES's proposed EDG credit rate of \$0.02796/kWh, this equates to less than \$48,000 in credits, a completely inconsequential amount in AES's total annual revenue requirement of \$1.41 billion. There is no meaningful evidence that DG adoption to date or its future growth will create a material AES revenue impact. Inskeep, pp. 60-61. 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 major policy change being proposed by AES. 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. 60. AES alleged that EDG may result in loss of fixed cost recovery. But did not prove if that even does happen that it would be material. Moreover, as AES admits in Response to IndianaDG DR 2-7 and 8 that fixed 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 loss of fixed cost recovery is simply false and has no support in the record.

First, the overall impact of DG customers to fixed cost recovery, if any, is clearly *de minimis*. Second, fixed cost recovery constantly varies with the changing demands for electricity caused by the vagaries of abnormally hot or cold weather, economic boom and bust cycles, changes in technologies, social change etc. For instance, the large population of Baby Boomers that are now becoming retired, down-sized empty nesters can lead to a reduced utility cost recovery contribution from that sub-class of residential customers. Must other customers – intra or inter classes – be protected from this group of customers,

from whom the utility may no longer recover the average fixed cost contribution they had hope for? Should AES call for an old folks' subsidy recovery Rider? Of course not. Utilities are granted the *opportunity* to earn their approved aggregate annual revenue requirement including fixed cost recovery; they are not *guaranteed* to do so. They're not entitled to permanent guaranteed profits, nor are they allowed to use their status as public utilities to block competition or stifle technological innovation and customer choice. Those are the lessons from the Supreme Court's seminal Market Street Railway case. *Mkt. St. Ry. Co. v. R.R. Comm'n of State of Cal.*, 324 U.S. 548, 566–67 (1945). Were they so guaranteed, they would have no financial risk and their regulated earned returns should mirror U.S. treasury rates of interest and not the much higher authorized return on equity approved by this Commission.

Second, fixed cost recovery and revenue responsibility are matters determined in a base rate case, where such proposals are supported by substantial evidence and data, such as a class cost of service study—and not merely by rhetoric and innuendo as in this case due to its abject lack of actual analysis supporting its no netting position. If AES wants a higher degree of fixed cost recovery it can and has pursued such rate proposals in its succession of base rate cases. It should not try to pin so-called “fixed” cost recovery fluctuations or concerns on a relatively miniscule handful of customers who are able to use God's sunshine to give them the electricity they need, and share any extra generation for the use and benefit of their neighbors. AES and the other electric utilities in Indiana have not done any DG customer cost of service or cost-benefit analyses to substantiate any concerns about “fixed” cost recovery or cross-subsidization. In fact, the instantaneous no netting proposal is bereft of any significant analysis of any sort. The fundamental lack of

support and evidence provided to demonstrate the reasonableness of the instantaneous netting proposal is telling. In comparison, the Lawrence Berkeley National Laboratory was 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. It 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.” 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.

Third, DG systems will not be oversized to generate more energy and credits than the customer uses on an annual basis under the EDG tariff. Ind. Code § 8-1-40-3 (“Section 3”) 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. AES arguments that EDG customers will accumulate huge “windfall” EDG credits under EDG system capacity restrictions with monthly netting are false. Had

the General Assembly intended for DG systems to be sized to minimize or never export electricity to the grid on an *instantaneous* 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 export credit reduction are a significant limitation and strong reduction in EDG valuation and attractiveness. There is no justification to worsen EDG value substantially more by adopting an instantaneous netting policy that is not based in statute.

Fourth, AES witness Mr. Fields argued that the electricity generated by residential DG customers is not dispatchable, is not sufficiently significant or predictable for AES Indiana to include that generation into its Day-Ahead generation and load estimates, and doing so would wear AES's generation equipment. Fields Direct, pp. 12-13. However, when asked in a data request whether it actually has attempted to forecast DG customer generation and exports to the grid, AES Indiana said it "admits it does not forecast DG customer generation and exports to the grid for purposes of its Day-Ahead generation and load estimates." AES Indiana Response to IndianaDG Data Request 2-22(a). Furthermore, AES Indiana said it did not have any information responsive when asked to provide its analyses, studies, memos, reports, or calculations that it relies on as its basis for concluding that DG is not sufficiently predictable for AES Indiana to include into its Day-Ahead generation and load estimates. *Id.* at 2-22(b). So while AES Indiana was unable to actually demonstrate that DG is not forecastable, it did confirm that it has not tried and does not try and to actually do so. Certainly, as AES's reliance on DG increases it should begin to include that energy source in its daily planning.

Large 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 2023.³ Indiana utilities' growing reliance on and dispatch of large-scale solar generation sources indicates intermittent energy sources can and should be incorporated into planning to meet customer load. Admittedly, the level of AES customer DG exports is very small. Thus, AES has time to plan for future incorporation of customer DG output into its daily planning.

E. Basing the EDG Rate on Hours When DG Is Actually Generating Electricity Is Necessary in Resolving Statutory Ambiguity with a Rational Result that Matches the Vast Bulk of AES'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 AES's Regional Transmission Organization. Similarly, there is no dispute that as of March 31, 2021 AES's mix of DG customer nameplate capacity was 6,157 kW total (6,107 of solar, 50 kW of wind and 0 kW of biomass). AES Stipulation of Fact, Attachment A. Thus, more than **99%** of AES's DG is solar capacity. Solar DG units only provide exports during daylight hours, when the average wholesale price of electricity tends to be significantly higher than in the nighttime hours. AES's calculation of an average LMP that also includes nighttime hours in determining EDG

³ See page 116 at:
<https://www.purdue.edu/discoverypark/sufg/docs/publications/2021%20Indiana%20Renewable%20Resources%20Report.pdf>.

undervalues at least 99% of AES's DG capacity. AES gives nighttime non-solar-generating hours as much weight in its EDG rate calculation as bright daylight hours. The statute must be applied in a rational manner that avoids an absurd result. That is not a rational result for 99% of AES's solar capacity and should not occur, particularly in light of the statute's ambiguity and lack of specificity. 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 AES's service territory provides a modest, but nonetheless helpful, 13.3% increase in the price of EDG relative to the EDG rate proposed by AES. That small EDG rate increase pales in comparison to and does not remove the much more financially devastating impact threatened by instantaneous netting. But it would at least financially help and be a rational solution to and implementation of ambiguous statutory language.

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 AES 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 AES's no netting proposal in this Cause, or suggest that AES 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 Harms of Instantaneous Netting, Basing EDG on Night Hours, or the Value DG Brings to AES and Non-DG Customers.

AES's instantaneous netting proposal 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 AES's proposed compensation rate across the border in Indiana. Inskip, p. 30. Illinois, Ohio, and Kentucky, as well as most utilities across the Midwest, currently offer monthly netting to residential DG customers. *Id.*

H. EDG Customers Should Receive Fair Terms and Conditions.

The Commission should reject AES's harmful and insufficiently supported proposal to confiscate a customer's EDG credits when the customer discontinues service from AES. 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 AES 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:

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 AES electricity. The customer's remaining EDG credit should move with them. As for customers that leave the AES system, if they leave with a balance owed, AES is certainly entitled to payment of that balance for electricity it provided. So, too, the departed customer provided electricity to AES and is morally, equitably and legally entitled to the value of the electricity it supplied to AES. A materiality threshold of \$1 or more would be reasonable.

AES's only justification of this provision is that non-DG customers would lose the FAC benefit of forfeited EDG credits, and there may be a cost of paying the departed DG customer the amount owed to them. Cutshaw Rebuttal, p. 19. But AES has not described how large the accumulated forfeited credits, from the tiny number of former DG customers from AES's very small subclass of DG customers, would have to discontinue service before their remaining EDG credits would even become material enough to make the slightest possible difference in an FAC factor. AES presented no proof that the cost of paying a DG customer for owed EDG credits would in the slightest way exceed the O&M

already in rates or even add incremental O&M expense. Moreover, to argue you want to take the value of energy property delivered from one customer and give it to other customers is on the facts presented here an unreasonable taking. The General Assembly has not authorized the Commission to establish such a policy of taking the property of one subset of customers without just compensation and socializing the financial benefit of that property across other customers. Again, a materiality threshold of \$1 would make sense for all.

CONCLUSION

The record demonstrates AES'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 AES's proposed EDG rate would not reflect the wholesale market prices at the times of day when 99% 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 Lawrence Berkley Laboratory Report, nor be competitive with the DG compensation rates offered by contiguous states and states across the Midwest for excess DG. AES'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

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