STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC FOR APPROVAL OF RIDER 889 – EXCESS DISTRIBUTED GENERATION RIDER FOR THE PROCUREMENT OF EXCESS DISTRIBUTED GENERATION PURSUANT TO IND. CODE CH. 8-1-40	)))))	**CAUSE NO. 45505**

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S AND JOINT PARTIES PROPOSED ORDER

Comes now, the Indiana Office of Utility Consumer Counselor ("OUCC") and Joint Parties', by counsel, hereby submits its Proposed Order to the Commission for its approval.

Respectfully submitted,

T. Jason Haas
Attorney No. 34983-29
Deputy Consumer Counselor

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC FOR APPROVAL OF RIDER 889 – EXCESS DISTRIBUTED GENERATION RIDER FOR THE PROCUREMENT OF EXCESS DISTRIBUTED GENERATION PURSUANT TO IND. CODE CH. 8-1-40.	))))))	**CAUSE NO. 45505** **APPROVED:**

ORDER OF THE COMMISSION

Presiding Officers:
David L. Ober, Commissioner
Carol Sparks Drake, Senior Administrative Law Judge

On March 1, 2021, Northern Indiana Public Service Company LLC ("NIPSCO" or "Petitioner") filed a Verified Petition with the Indiana Utility Regulatory Commission ("Commission") seeking approval of a tariff rate ("EDG Rider") for the procurement of excess distributed generation ("EDG") under Ind. Code ch. 8-1-40 (the "Distributed Generation Statutes"). Petitioner, on March 1, 2021, prefiled the direct testimony of Kevin A. Kirkham, Manager of New Business of NIPSCO.

Several petitions to intervene were filed. These included a petition to intervene filed on March 1, 2021, by Citizens Action Coalition of Indiana, Inc. ("CAC") that was granted on March 12, 2021; on March 8, 2021, by Indiana Distributed Energy Alliance ("Indiana DG") that was granted on March 17, 2021; and on March 23, 2021, by Solar United Neighbors ("SUN") that was granted on April 1, 2021.

In accordance with the Docket Entry issued on May 4, 2021 establishing the revised procedural schedule for this matter, NIPSCO prefiled the revised direct testimony of the following NIPSCO employees:

- Kevin A. Kirkham, Manager of New Business, and
- Robert C. Sears, Director of Regulatory Policy.

On May 10, 2021, NIPSCO also filed a motion requesting leave, pursuant to 170 IAC 1-1.1-8(b), to file an amended petition because, based upon review of the Commission's final order in Cause No. 45378 dated April 7, 2021 (the "Vectren Order"), NIPSCO determined certain revisions to its proposed Rider 889 – Excess Distributed Generation Rider ("EDG Rider") were necessary. A Docket Entry was issued on May 21, 2021, authorizing NIPSCO to file an amended petition, and NIPSCO made this filing on May 21, 2021.

On July 27, 2021, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled the testimony and attachments of Anthony A. Alvarez, Utility Analyst in the OUCC's electric division. That same date, Indiana DG prefiled the testimony and attachments of:

- Benjamin D. Inskeep, Principal Energy Policy Analyst with EQ Research LLC, and
- Jim Straeter, President and Owner of Ag Technologies Inc.

On August 9, 2021, NIPSCO prefiled the rebuttal testimony and attachments of case-in-chief witnesses Mr. Sears and Mr. Kirkham.

On August 17, 2021, NIPSCO filed Petitioner's Objection and Motion to Strike a portion of Mr. Inskeep's prefiled testimony. On August 25, 2021, Indiana DG filed IndianaDG's Response to NIPSCO's Objection and Motion to Strike.

On August 27, 2021, the OUCC filed Public's Exhibit No. 2. On August 30, 2021, NIPSCO filed its Submission of Hearing Exhibit, and, on August 31, 2021, NIPSCO submitted a Stipulation of Facts.

The Commission noticed the public evidentiary hearing in this Cause at 9:30 a.m. on September 1, 2021, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, NIPSCO, OUCC, Indiana DG, CAC, and SUN appeared by counsel. At the evidentiary hearing, NIPSCO withdrew its Objection and Motion to Strike filed on August 17, 2021. NIPSCO offered its prefiled testimony and attachments, along with its NIPSCO's Hearing Exhibit (NIPSCO Exh. No. 3) and its Stipulation of Facts, without objection. The testimony and attachments of the OUCC, including Public's Exhibit No. 2, and the testimony and attachments of Indiana DG were also admitted into evidence without objection. No member of the general public appeared or participated at the hearing.

Based upon the applicable law and evidence presented, the Commission finds:

1. Notice and Jurisdiction. Due, legal and timely notice of the evidentiary hearing in this case was given and published by the Commission as required by law. NIPSCO is a public utility within the meaning of Ind. Code § 8-1-2-1(a) and an electricity supplier within the meaning of Ind. Code § 8-1-40-4(a). Petitioner is subject to the jurisdiction of the Commission in the manner and to the extent provided by Indiana law. Ind. Code § 8-1-40-16 ("Section 16") requires an electricity supplier to file a petition with the Commission requesting a rate for its procurement of EDG from the electricity supplier's customers. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Organization and Business. NIPSCO is a limited liability company under Indiana law and has its principal office 801 East 86th Avenue, Merrillville, Indiana. Petitioner is engaged in rendering electric and gas public utility service within Indiana, and NIPSCO owns, operates, manages and controls, among other things, plant and equipment used for the generation, transmission, distribution and furnishing of such electric service to approximately 476,000 residential, commercial, industrial, wholesale and other customers in northern Indiana.

3. Applicable Law. Senate Enrolled Act 309 ("SEA 309") enacted the Distributed Generation Statutes (Ind. Code § 8-1-40-1 *et seq*.) and established a new statutory paradigm under which Indiana's electricity suppliers, including Petitioner, will receive electricity their customers with qualifying DG resources supply and offset the cost of the electricity supplied to such customers. Under the Distributed Generation Statutes, "[n]ot later than March 1, 2021, an

electricity supplier shall file with the commission a petition requesting a rate for the procurement of excess distributed generation by the electricity supplier." Section 16. Ind. Code § 8-1-40-10 ("Section 10") of the Distributed Generation Statutes further provides:

> Before July 1, 2022, if an electricity supplier reasonably anticipates, at any point in a calendar year, that the aggregate amount of net metering facility nameplate capacity under the electricity supplier's net metering tariff will equal at least one and one-half percent (1.5%) of the most recent summer peak load of the electricity supplier, the electricity supplier shall, in accordance with section 16 [of the Distributed Generation Statutes], petition the commission for approval of a rate for the procurement of excess distributed generation.

Section 10.

Subject to Ind. Code §§ 8-1-40-13 and -14, NIPSCO's net metering tariff must remain available to its customers until the earlier of the following: "January 1 of the first calendar year after the calendar year in which the aggregate amount of net metering facility nameplate capacity 7 under the electricity supplier's net metering tariff equals at least one and one-half percent (1.5%)" of the supplier's most recent summer peak load or July 1, 2022. Section 10.

Once an electricity supplier files a petition under Section 16 for a rate for EDG, Ind. Code § 8-1-40-17 ("Section 17") provides:

> The commission shall review a petition filed under section 16 of this chapter by an electricity supplier and, after notice and a public hearing, shall approve a rate to be credited to participating customers by the electricity supplier for excess distributed generation if the commission finds that the rate requested by the electricity supplier was accurately calculated and equals the product of:
>
> > (1) the average marginal price of electricity[1] paid by the electricity supplier during the most recent calendar year; multiplied by
> >
> > (2) one and twenty-five hundredths (1.25).

In this proceeding, NIPSCO seeks Commission approval of its initial EDG rate.

Following approval of Rider EDG, Section 16 requires NIPSCO to annually submit, "not later than March 1 of each year, an updated rate for EDG in accordance with the methodology set forth in section 17 of this chapter." Section 16. And Ind. Code § 8-1-40-18 ("Section 18") requires that NIPSCO compensate its customers from whom Petitioner procures EDG through a credit on the customer's monthly bill, with any excess credit carried forward and applied against future charges to the customer for as long as the customer receives electric service from NIPSCO at the premises.

Under Ind. Code § 8-1-40-15 ("Section 15"), amounts credited to a customer for EDG

[1] Ind. Code § 8-140-6 ("Section 6") of the Distributed Generation Statutes defines "marginal price of electricity" as "the hourly market price for electricity as determined by a regional transmission organization of which the electricity supplier serving a customer is a member."

"shall be recognized in the electricity supplier's fuel adjustment proceedings under IC 8-1-2-42."

4. Requested Relief. Pursuant to Sections 10 and 16, NIPSCO requests approval of a rate for the procurement of EDG. As further discussed below, and pursuant to Section 10, NIPSCO filed for its proposed EDG rate to be effective January 1, 2022, or as soon thereafter as practicable, and to remain in effect until replaced in a subsequent filing. Petitioner submitted the proposed form of EDG Rider as part of its evidence. Per Section 18, proposed EDG Rider will compensate customers in the form of a credit on their monthly bill, with any excess credit carried forward and applied against future charges to the EDG Rider customer for as long as that customer receives service from NIPSCO at the premises. Petitioner proposes to determine EDG based on instantaneously measuring the net of the electricity supplied to NIPSCO by the customer and the electricity supplied to the customer by Petitioner. NIPSCO also requests authority to update EDG Rider annually, by March 1, via a compliance filing, in addition to all other appropriate relief.

5. Petitioner's Case-in-Chief.

A. Robert C. Sears. Mr. Sears explained that under Section 5 of the Distributed Generation Statutes, EDG is the difference between the electricity provided to the customer by the electricity supplier and the electricity the customer supplies back to the supplier. He noted that in the Vectren Order (at pp. 34-36), the Commission found that the instantaneous Outflow calculation of a meter, such as those meters used by NIPSCO, is capturing the "difference" between the electricity the utility is supplying to the customer and the electricity the customer is supplying to the utility, and thus is a measurement of "excess distributed generation" as defined under Section 5 of the Distributed Generation Statutes.[2]

Mr. Sears explained how Distributed Generation differs from Net Metering. He stated the Distributed Generation Statutes made two substantial changes for Distributed Generation resources. First, it set an end date to Net Metering, based upon the installation date of the Distributed Generation resources (Ind. Code §§ 8-1-40-7 13 and 14) and the timing of when the aggregate operating Net Metering capacity reached the statutory cap (Ind. Code § 8-1-40-10). He stated this was a critical step established by the General Assembly to sunset the incentive provided by Net Metering for the installation of Distributed Generation resources. Second, Ind. Code ch. 8-1-40 defined the process for compensating EDG customers for EDG – a separate and distinct process for compensation than the process that had been available for traditional Net Metering customers. Thus, the Distributed Generation Statutes did not just change the applicable rate that would be paid to excess generation, but also modified the way in which the excess generation would be calculated. Mr. Sears stated that based on the language of the Distributed Generation Statutes, it appears clear the process was not intended to simply echo the language from the Net Metering tariff requirements set forth in 170 IAC 4-4.2, but rather intentionally deviated to differentiate EDG customers from those eligible for Net Metering. He stated that one of those deviations was defining EDG without specification for the measurement period which exists under 170 IAC 4-4.2-7. He explained that another deviation was to explicitly specify how the EDG rate would be calculated noting that the retail rate designed for EDG under the Distributed Generation

[2] *See, e.g.*, page 35 of the Vectren Order, where the Commission stated: "Essentially, the meter counts what is going through the meter and puts it into either the inflow or the outflow 'bucket,' but to get into the outflow 'bucket,' the meter has computed the difference between the two components under Section 5."

Statutes was intended to result in customers being paid the average market price for energy, plus a 25% adder.

Mr. Sears provided a summary of NIPSCO's proposed EDG Rider. He stated that in accordance with Section 16, NIPSCO is requesting approval of its EDG Rider to establish a rate for the procurement of excess distributed generation. He stated the EDG Rider will apply to any customer that is not eligible for Rider 880 – Net Metering ("Net Metering Rider"). He explained that in accordance with the Distributed Generation Statutes, any non-reserved customer that has submitted a complete application prior to October 1, 2021 which is approved by December 31, 2021 will be considered eligible under the Net Metering Rider, and that all residential and biomass customers will be considered eligible under the Net Metering Rider until the category threshold is reached, or July 1, 2022, whichever is earlier.

Mr. Sears testified NIPSCO currently has dual channel meters that have the capability to measure "inflow" and "outflow" either monthly or instantaneously. In the future, an advanced metering infrastructure ("AMI") metering system and other billing technologies could allow NIPSCO to consider other periods to measure and compensate customers with Distributed Generation. He stated that NIPSCO plans to use a two-channel metering system to measure the net difference in all energy consumed by the customer (delivered by the utility) and net difference of all energy produced (received by the utility) onto the grid by a customer-owned generator in Indiana. He explained that NIPSCO will measure EDG by recording the instantaneous net difference in the amount of energy produced by the customer-owned generation which exceeds the amount of energy that is being consumed at that point in time.[3]

Mr. Sears testified that NIPSCO's metering is measuring the net difference of the kWh amount and monetizing the difference. He explained that the Outflow is the net difference, in kWh, of the "electricity that is supplied back to the electricity supplier by the customer" and the "electricity that is supplied by an electricity supplier to a customer." He stated this net difference amount is what Rider EDG is applied to in accordance with Ind. Code § 8-1-40-5.

Mr. Sears testified NIPSCO's proposed EDG Rider will continue to provide Distributed Generation customers the opportunity to offset the full retail rate for energy produced by their Distributed Generation system. He explained that to the extent that the electricity produced by the customer's Distributed Generation system offsets the energy being used by the customer on an instantaneous basis, the customer would be using the electricity produced by their Distributed Generation system to completely avoid paying the full NIPSCO retail rate.

Mr. Sears explained that in Cause No. 45378, the Commission was presented with a proposal by Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren") that proposed instantaneous netting, which was challenged by several parties who advocated for monthly netting. In the Vectren Order, the Commission made several findings in which it ultimately determined that instantaneous netting was a just and reasonable approach to calculating the excess distributed generation by a Distributed Generation customer.

[3] Consistent with Ind. Code § 8-1-40-3(b), NIPSCO's definition of EDG does not include electricity produced by (1) an electric generator used exclusively for emergency purposes or (2) a metering facility operating under NIPSCO's net metering tariff.

Mr. Sears identified some of the key findings in the Vectren Order and explained how those findings informed NIPSCO's proposal for instantaneous netting. He explained that in its Vectren Order (at p. 37), the Commission found that the instantaneous measurement of EDG (or "instantaneous netting"), using the components the General Assembly set forth in Section 5 and calculating the rate per Section 17, yields rates that are just and reasonable. He noted this finding was supported by the Commission's belief that the Distributed Generation Statutes is intended to be a transition away from the net metering construct for new Distributed Generation customers, with the primary value of Distributed Generation creation in the retail rate context being it's offsetting of demand behind the meter. He explained that the Commission also noted that Section 19 provides support that the General Assembly intended to eliminate potential subsidies to EDG customers, which supports approval of instantaneous netting, as it reasonably limits using the grid as Distributed Generation customer storage. Finally, he noted that the Commission (at p. 38) also called into the question the appropriateness of utilizing monthly netting, when it stated: "[a]ccordingly, we *cannot conclude it is just and reasonable* for Petitioner's other customers to subsidize the payback periods of DG customers by the continuation of monthly netting as opposed to instantaneous netting." (Emphasis added.)

He testified that NIPSCO's metering technology only affords the possibility of using monthly netting or instantaneous netting. He stated the Distributed Generation Statutes do not specify the frequency with which a utility must calculate EDG, but left this decision to the Commission to exercise its expertise and discretion in determining the reasonableness of a utility's proposed netting period for EDG. Mr. Sears testified that NIPSCO believes instantaneous netting is a just and reasonable proposal and is consistent with the Distributed Generation Statutes, which is informed by the Vectren Order.

Mr. Sears testified that NIPSCO believes its proposed EDG measurement and compensation complies with the Distributed Generation State. He stated that NIPSCO's proposal for instantaneous netting and compensation for EDG based upon the Real-Time Locational Marginal Price ("LMP") is in compliance with the Distributed Generation Statutes, including as interpreted and applied by the Commission in the Vectren Order, and produces rates that are just and reasonable.

B. <u>Kevin A. Kirkham.</u> Mr. Kirkham supported NIPSCO's request for approval of its EDG Rider for inclusion in NIPSCO's approved IURC Electric Service Tariff, Original Volume No. 14 ("Electric Tariff") in accordance with the requirements of the Distributed Generation Statutes. He also testified that NIPSCO was including, as Attachment 2-C, other changes necessary to its Electric Tariff to incorporate the EDG Rider. He provided the aggregate amount of net metering capacity for NIPSCO remaining under NIPSCO's current Net Metering Rider as of January 31, 2021. Mr. Kirkham stated that as of January 1, 2021, NIPSCO exceeded the overall 1.5% threshold established by Section 10 of the Distributed Generation Statutes. He noted that NIPSCO has exceeded the non-reserved amount (by 20,529 kW), as well as the total in aggregate (by 2,123 kW), but both the residential and biomass categories have not exceeded their individual capacity thresholds. He testified that while NIPSCO manages its capacity in the aggregate, it will honor the non-reserved amounts for its customers, which provides a benefit to non-reserved customers since more projects have been and will be allowed to participate in the Net Metering Rider than would have otherwise been allowed if NIPSCO managed its capacity by customer categories.

Mr. Kirkham stated NIPSCO maintains a queue for residential, biomass, and non-reserved categories and that although NIPSCO has received applications in excess of the available capacity statutorily required to be made available for the non-reserved category under its Net Metering Rider, the Company has continued to accept those applications. He stated that since NIPSCO has reached the statutory threshold, but not the capacity threshold for residential and/or biomass capacity, the Company will continue to accept applications and connect installations for those two categories until January 1 of the first calendar year after the calendar year in which the capacity threshold for residential and/or biomass capacity has been reached or July 1, 2022, whichever comes first.

Mr. Kirkham described how the net metering queue is organized for each of the customer categories. He stated that as of January 31, 2021, NIPSCO only had 6,421 kW of total capacity for residential customers and no kW of capacity for biomass customers under the Net Metering Rider, which leaves 11,635 kW of available capacity for residential customers and 6,771 kW of available capacity for biomass customers. Mr. Kirkham also stated that NIPSCO does not anticipate the remaining capacity for residential and biomass customers will be exhausted before July 1, 2022 (the date NIPSCO will implement the EDG Rider with respect to these categories of customers). He stated that NIPSCO will continue accepting applications under the Net Metering Rider while the EDG Rider is pending approval and will honor all applications that are approved by December 31, 2021, consistent with Section 10 of the Distributed Generation Statutes. He explained that to ensure an application can be approved to meet the December 31, 2021 approval deadline, NIPSCO is requiring that completed applications be submitted by October 1, 2021. He stated that NIPSCO has continued to approve non-reserved amounts in excess of the minimum threshold.

Mr. Kirkham testified NIPSCO will continue to process applications through its Net Metering Rider until such time as the residential category threshold is reached, or until July 1, 2022, whichever is earlier. He stated NIPSCO will do the same until the biomass threshold is reached. He indicated that if either category threshold is reached, the application queue will allow NIPSCO to track applicants to ensure correct placement for available capacity, which would be maintained so that customers who were scheduled to participate in the EDG Rider (because all Net Metering capacity had been subscribed) could instead participate in the Net Metering Rider if another Net Metering customer drops out of the Net Metering program before becoming operational.

Mr. Kirkham testified that in accordance with Section 16 of the Distributed Generation Statutes, NIPSCO is requesting approval of its EDG Rider to establish a rate for the procurement of EDG. He stated the EDG Rider will apply to any customer that is not eligible for the Net Metering Rider. He said that in accordance with the Distributed Generation Statutes, any non-reserved customer that has submitted a complete application prior to October 1, 2021 will be considered eligible under the Net Metering Rider and all residential and biomass customers will be considered eligible under the Net Metering Rider until the category threshold is reached, or July 1, 2022, whichever is earlier.

Mr. Kirkham testified that under the EDG Rider, NIPSCO will measure EDG by capturing the inflow and outflow of energy as measured by the utility meter on an instantaneous basis. He explained that the utility meter for EDG customers will have two channels: (1) a channel labeled "inflow" that measures the electricity being used by the customer, net of the amount of electricity

being produced by the customer during the period recorded by the meter;[4] and (2) a channel labeled "outflow" that measures the electricity being produced by the customer above the electricity being used by the customer for the same period. He stated the instantaneous calculation the meter performs of the difference between the electricity NIPSCO is supplying to the customer and the electricity the customer is supplying to NIPSCO is measuring EDG, as required under Section 5 of the Distributed Generation Statutes.

Mr. Kirkham testified this method of measurement is different than how NIPSCO measures the amount of electricity generated by customers under the Net Metering Rider. He stated that the resulting kilowatt-hour ("kWh") that is captured during each cycle measured by a customer's meter will be totaled, and the total as recorded by the inflow channel will be utilized at the end of monthly billing cycle as the amount of energy in kWh to bill under the customer's standard tariff rate. He explained that the resulting total kWh that is recorded by the outflow channel will be utilized at the end of monthly billing cycle as the amount of energy in kWh used in the calculation of the DG Billing Credit applied to the customer's monthly utility bill.

Mr. Kirkham testified the measurement of inflow and outflow allow a customer to utilize its distributed generation resource to offset load explaining that the energy produced by the distributed generation resource can be used to offset the customer's load.

Mr. Kirkham explained how the EDG Rider differs from the Net Metering Rider. First, NIPSCO's instantaneous netting proposal differs from the way Net Metering netting is calculated. Second, NIPSCO's proposed EDG Rider differs from the current Net Metering Rider in the way any "excess" generation produced by the distributed generation is carried forward each month. He explained that under the Net Metering Rider, all generation that is produced above the consumption is credited to the monthly utility bill in energy credits (kWh). These energy credits are then applied to energy consumption (kWh) charged each month to the customer on the monthly utility bill. Mr. Kirkham stated that if the energy credits for the month are greater than the energy consumption charged for the month, the difference (in kWh) is carried forward and applied to energy consumption charged in future months. He said that under the proposed EDG Rider, each instantaneous measurement will have a charge or credit associated with it.

Mr. Kirkham described how the Marginal DG Price will be applied to a customer's monthly bill. He explained that at the end of the month, the amount of kWh accumulated in the outflow channel will be multiplied by the Marginal DG Price to establish the "DG Billing Credit" to be applied as a credit to the customer's bill. He stated that the DG Billing Credit will not be returned to the customer but instead will reduce the amount owed on the monthly utility bill, down to the Minimum Monthly Charge (as defined in the customer's applicable Rate Schedule). He noted that any remaining DG Billing Credit will be carried forward to the following month as a DG Billing Credit Balance to reduce the amount owed on the monthly utility bill, down to the Minimum Monthly Charge (as defined in the customer's applicable Rate Schedule). He stated that if the customer discontinues service at the interconnection address, any unused and remaining DG Billing Credit Balance will be forfeited by the customer and passed back to other customers

[4] The "period" being measured by the meter is an interval of less than one second. There can be inflow or outflow for any particular period, or the meter can register "0" if the electricity NIPSCO is supplying to the customer and the electricity the customer is supplying to NIPSCO match during a particular period.

through NIPSCO's Fuel Cost Adjustment ("FAC") under Rider 870.

Mr. Kirkham described how the Marginal DG Price is calculated in the EDG Rider. He testified that pursuant to Section 17 of the Distributed Generation Statutes, the marginal price of electricity to be used for EDG ("Marginal DG Price") is calculated as the average marginal price of electricity paid by the electricity supplier during the most recent calendar year, multiplied by one and twenty-five hundredths (1.25). He explained that the marginal price of electricity paid by NIPSCO for the most recent calendar year was determined by averaging the 2020 Real-Time hourly LMP at NIPSCO's NIPS.NIPS commercial pricing ("CP") node, as reported by the Midcontinent Independent System Operator, Inc. ("MISO").[5] He noted that this is the CP node at which NIPSCO is charged for energy and indicated that for 2020, the average LMP at the NIPS.NIPS CP node was $21.16 per megawatt-hour ("MWh").

Mr. Kirkham testified that to calculate the Marginal DG Price, NIPSCO took the 2020 average Real-Time LMP at the NIPS.NIPS CP node of $21.16 per MWh, multiplied by 1.25 ($26.45 per MWh) and then converted to a per kWh basis by dividing the $26.45 per MWh by 1,000, resulting in a Marginal DG Price of $0.02645 per kWh. He explained that the Real-Time LMP is based upon generation that is utilized but was not forecasted in the Day-Ahead process. EDG that NIPSCO will purchase from customers is not forecasted. Consequently, the Real-Time LMP is the most appropriate basis for the calculation of the Marginal DG Price. He noted that since the Marginal DG Price is calculated using the annual average Real-Time LMP at NIPSCO's NIPS.NIPS CP node for the most recent calendar year, it will change each year. He testified that NIPSCO proposes to make an annual compliance filing in this docket that reflects the updated Marginal DG Price. He stated that since the average marginal price for electricity paid by NIPSCO during the most recent calendar year will not be confirmed until the end of February of each year, NIPSCO proposes to make the annual compliance filing on or before March 1, for implementation on April 1.[6]

Mr. Kirkham testified that as the DG Billing Credits represent a purchase by NIPSCO of excess generation to serve other customers on NIPSCO's system, these costs will be recovered from NIPSCO's customers as part of fuel costs, specifically purchased power costs, in its monthly FAC in accordance with Section 15 of the Distributed Generation Statutes.

Finally, Mr. Kirkham explained how NIPSCO will transition eligible customers from its Net Metering Rider to the EDG Rider. He testified that NIPSCO will continue to offer its Net Metering Rider to customers based on the capacity availability of the category. He noted that for non-reserved capacity, NIPSCO will continue accepting applications while the EDG Rider is pending approval and will honor applications approved by December 31, 2021. For residential or biomass capacity, NIPSCO will continue to offer the Net Metering Rider until the threshold for the category is met or July 1, 2022, whichever is earlier. He stated that assuming NIPSCO has an approved EDG Rider at that time, new qualifying residential and biomass applicants will participate under the EDG Rider. He said that if the threshold is met for either of those categories before NIPSCO has an approved EDG Rider, NIPSCO will treat residential and biomass applicants

[5] MISO is the regional transmission organization of which NIPSCO is a member, as defined in Section 6 of the Distributed Generation Statutes.

[6] Section 16 of the Distributed Generation Statutes requires an updated rate for excess distributed generation be submitted on an annual basis, not later than March 1 of each year.

in a similar fashion to the non-reserved applicants. He also stated that NIPSCO will continue to keep its customers updated about the status of residential and biomass capacity, including if it appears the applicable threshold for either category will be met before July 1, 2022.

Mr. Kirkham testified that a customer would be transferred from the Net Metering Rider to the EDG Rider but only based on the requirements set forth in Sections 13 and 14 of the Distributed Generation Statutes. Specifically, for a customer with facilities installed on or before December 31, 2017, the Net Metering Rider expires July 1, 2047.[7] For a customer with facilities installed after December 31, 2017, the Net Metering Rider expires July 1, 2032.[8] Thus, based on these statutory deadlines, some customers will be moved from the Net Metering Rider to the EDG Rider on July 1 of 2032 or 2047. He explained that while Sections 13 and 14 of the Distributed Generation Statutes also provide that a Net Metering Rider customer that removes or replaces its net metering facility can also be removed from the Net Metering Rider, no customer that participates in the Net Metering Rider will be moved to the EDG Rider unless the customer removes or replaces the net metering facility, or after the applicable expiration date passes. He stated that if a customer under the Net Metering Rider increases the size of its facility above the approved capacity and there is no available capacity available for that facility category, the customer would be allowed to either reduce the installed capacity down to the capacity available under the Net Metering Rider or submit a new application for the total capacity amount, which would then transfer the entire capacity for the facility to the new EDG Rider.

6. OUCC and Intervenors' Direct Testimony.

A. OUCC's Direct Testimony.

1. Anthony A. Alvarez. Mr. Alvarez testified his opposition to NIPSCO's application of the term "excess distributed generation," NIPSCO's metering and billing methodologies, and recommended the Commission deny NIPSCO's proposed EDG Rider tariff. He testified that, as identified in Ind. Code § 8-1-40-5, only two components must be present to determine EDG: 1) the electricity that is supplied by an electricity supplier; and 2) the electricity that is supplied back to the electricity supplier. He said this section explicitly defines EDG as the resulting difference between these two components. According to Mr. Alvarez, to determine EDG, the utility or electricity supplier must first take the difference between the electricity supplied to the DG customer and the electricity supplied back by the DG customer. Mr. Alvarez testified that NIPSCO will deploy a utility meter for EDG customers with two channels to capture and measure the inflow and outflow of energy on an instantaneous basis. Mr. Alvarez referred to NIPSCO witness Mr. Kirkham's description of the two channels in NIPSCO's meters and Mr. Kirkham's explanation that NIPSCO will utilize the total amount of energy in kWh recorded by the inflow channel to bill the customer at its standard tariff rate, and utilize the total kWh recorded by the outflow channel to calculate "the DG Billing Credit applied to the customer's monthly utility bill." He said that the OUCC opposes NIPSCO's proposed metering and billing methodologies for its EDG customers because they do not satisfy or conform to the Distributed Generation Statutes' requirements. He noted that NIPSCO's proposed EDG Rider tariff includes the definition of the term "excess distributed generation" as it is defined in Ind. Code § 8-1-40-5. He also stated the definitions

[7] Ind. Code § 8-1-40-14.
[8] Ind. Code § 8-1-40-13.

NIPSCO provided in the proposed tariff for "inflow," "outflow," "DG Billing Credit," and "Marginal DG Price."

Mr. Alvarez testified that based on NIPSCO's definitions, both the "inflow" and "outflow" channels of its utility meter for EDG customers register multiple "net" readings. He said that by utilizing a utility meter for EDG customers with channels pre-programmed to register net readings of various energy components, it runs counter to the plain language of the statutory definition of "excess distributed generation" requiring the difference between two components: "the electricity that is supplied by an electricity supplier to a customer…" and "the electricity that is supplied back to the electricity supplier…" According to Mr. Alvarez, the statutory language is clear and unambiguous regarding how to measure EDG. He noted that Mr. Kirkham explicitly described, and the Rider 889 explicitly defines, "inflow" and "outflow" as the net of electricity used and produced by a DG customer. He testified the "electricity that is supplied by an electricity supplier to a customer…" should not be a net of any other components, nor should the "the electricity that is supplied back to the electricity supplier…" be a net, over or above of some other components. Mr. Alvarez opined NIPSCO's request should be denied because the manner in which its proposed utility meters measure EDG do not conform with the statute's requirements.

Mr. Alvarez testified that NIPSCO also claimed its utility meters for EDG customers perform instantaneous calculations and capture the inflow and outflow of energy (as measured by the utility meter) on an instantaneous basis. He stated that in the Vectren Order, the Commission acknowledged the fact that "…[electricity] can only flow one way…," (Vectren Order at p. 13). Mr. Alvarez stated that, at any given instant, instantaneous measurement would not record the two values required in the statute to calculate the difference to determine "excess distributed generation," and thus, would not comply with the statutory definition. He opined NIPSCO's request should be denied because it proposes to capture and measure the inflow and outflow of energy in an instantaneous basis, which does not conform or comply with the statutory requirement and definition of EDG.

Mr. Alvarez also described how NIPSCO proposed to measure and record EDG, referencing that NIPSCO will measure EDG by recording the instantaneous net difference in the amount of energy produced by the customer owned generation which exceeds the amount of energy that is being consumed at that point in time.

Mr. Alvarez testified that the manner NIPSCO proposes to measure and record EDG does not comply with Ind. Code § 8-1-40-5. He said the statutory language is plain, clear and unambiguous regarding how to measure EDG and that this section does not reference energy produced or consumed by the customer. He stated the manner in which NIPSCO proposes to measure and record EDG is beyond the purview of the statutory language. Mr. Alvarez testified that he does not agree with Mr. Sear's Q&A 17 statement because Mr. Sear's statement contradicted the information provided in Mr. Sear's previous Q&A 16 testimony. He explained that Mr. Sear's Q&A 16 statement described production and generation on the customer side of the meter rather than the statutory definition used in Mr. Sear's Q&A 17. He said that NIPSCO does not know the production and use on the customer's side of the meter and the only measurement NIPSCO knows at the meter is whether there is "inflow" or "outflow." He testified that it appears NIPSCO's utility meters for EDG customers are pre-programmed to measure and register the net readings of various energy components that do not conform to the Distributed

Generation Statutes' requirements. Mr. Alvarez further stated that by Mr. Sears' description of the "outflow" channel of NIPSCO's meter, it appears NIPSCO's utility meters for EDG customers are pre-programmed to measure and register the net readings of various energy components that do not conform with the EDG Statute's requirements. Mr. Alvarez testified NIPSCO's proposed EDG Rider tariff does not correctly define and apply the EDG determination. He said that although NIPSCO restated the statutory definition of EDG in its proposed rider, it incorrectly applies EDG, according to the definition, by not taking the difference between measurable "Inflow" and "Outflow" amounts as required in the EDG Statute.

Mr. Alvarez testified that based on his review that NIPSCO's: 1) application of EDG does not comply with the EDG Statute; 2) definition and application of its "Inflow" and "Outflow" to determine EDG does not conform with Ind. Code § 8-1-40-5; 3) manner of capturing, measuring, and calculating EDG on an instantaneous basis will not record the two values required in the statute to determine EDG; 4) utility meters for EDG customers are pre-programmed to measure and register the net readings of customer production and consumption and are beyond the statutory language's scope; and 5) application of "Outflow" to measure EDG does not comply with the Distributed Generation Statute's requirements to calculate the marginal price of electricity and determine the appropriate rate to procure EDG. Mr. Alvarez testified that based on his conclusions he recommends the Commission deny NIPSCO's proposed Rider tariff.

B. Indiana DG's Direct Testimony.

[The OUCC accepts IndianaDG's edits to the testimony summary]

7. Petitioner's Rebuttal Evidence.

A. Robert C. Sears. On rebuttal, Mr. Sears responded to challenges raised by OUCC Witness Alvarez and Indiana DG Witness Inskeep about the time period over which NIPSCO will "net" or calculate the difference between the two components listed in Section 5 of the Distributed Generation Statutes. Mr. Alvarez argued that NIPSCO's proposed definition of EDG does not comply with the Distributed Generation Statutes because NIPSCO does not (a) separately calculate or record "the electricity that is supplied by an electricity supplier to a customer that produces distributed generation;" separately calculate and record "the electricity that is supplied back to the electricity supplier by the customer;" and then (c) separately calculate the difference between the values of (a) and (b). On this basis, Mr. Alvarez alleges NIPSCO's method for calculating EDG does not comply with the Distributed Generation Statutes.

Mr. Sears noted that Mr. Inskeep does not claim that NIPSCO's EDG methodology fails to comply with the Distributed Generation Statutes, as Mr. Alvarez does but instead, believes there is a better method for doing so and states that he "proposes a more accurate methodology for crediting EDG."[9] Mr. Sears cited to Mr. Inskeep's claim (at p. 9, lines 17-21) that "NIPSCO is not subtracting, or taking the difference between, imports and exports, either at any instance or over any time period, before it then applies the EDG Rider rate to the resulting net amount or total."

[9] However, in NIPSCO's Stipulations of Fact, NIPSCO stipulated that "Mr. Inskeep does testify that NIPSCO's EDG methodology fails to comply with the DG Statute, I.C. 8-1-40 *et. seq*." (Citing to Indiana DG Exh. No. 1 at p. 16, lines 4-8 and p. 22, lines 14-17).

Mr. Sears explained that, instead of NIPSCO's instantaneous netting proposal, Mr. Inskeep argues for a monthly netting proposal or methodology. Mr. Sears noted that Mr. Inskeep went into a lot of background about the legislative history of the Distributed Generation Statutes, cited to various theoretical ratemaking principles and policy arguments to support his point, and (at p. 25, lines 6-7) called NIPSCO's instantaneous netting proposal under the EDG Rider "a radical departure from its current policy" under net metering. However, according to Mr. Sears, much of Mr. Inskeep's opposition to NIPSCO's EDG proposal seems to be based on the purported impact it may have on the distributed solar industry. He testified this is likely best evidenced by pages 72-73 of Mr. Inskeep's testimony, where he says that, "as a result of the large reduction in potential savings for installing DG, NIPSCO's 'no netting' proposal would have a devastating impact on the adoption rate of DG technologies like solar by preventing most customers from being able to install such a DG system based on the economics."

Mr. Sears disagreed with Mr. Inskeep that NIPSCO's EDG proposal is, in essence, a "no netting" proposal, noting that his use of this term is contradicted by his own admission which notes NIPSCO's "EDG Rider is distinguishable from a buy-all, sell-all tariff in that it does allow a DG customer to self-consume electricity generated by its own private DG equipment behind the meter[.]"

In response to Mr. Alvarez' criticism about how NIPSCO does not separately calculate or record the two statutory components in Section 5, Mr. Sears testified that Mr. Alvarez is technically correct that NIPSCO does not know the exact production by the EDG facility and the exact amount of energy being provided by NIPSCO and consumed by the customers. However, Mr. Sears explained that he is incorrect that NIPSCO's definition of EDG does not comply with the Distributed Generation Statutes. He pointed out that nothing in the language of Section 5 (or any other portion of the Distributed Generation Statutes) requires separate recording of the two components; instead, Section 5 requires that there be a calculation of "the difference between" these two components—with this difference being the basis for what the customer will receive compensation for. Mr. Sears then explained that NIPSCO's meters can and will accurately measure the "net" or the difference between these two components through the Outflow channel and stated that the fact that this calculation is efficiently and accurately performed on an instantaneous basis by NIPSCO's meters does not mean that NIPSCO's proposal fails to comply with the Distributed Generation Statutes.

Regarding Mr. Inskeep's criticisms, while Mr. Sears did not agree with his use of the "no netting" terminology, he noted that Mr. Inskeep seems to acknowledge instantaneous netting is one of the potential methods of calculating the difference of the two components under Section 5. He pointed out that while Mr. Inskeep may believe there is a better methodology for crediting EDG, his statements about "fairer" or "less punitive" netting methodologies implies that NIPSCO's instantaneous proposal is a "netting" methodology—he just prefers other ones.

Mr. Sears testified that although Mr. Inskeep may believe that "longer netting periods . . . are fairer to EDG customers", the question before the Commission is simply whether what NIPSCO has proposed complies with the Distributed Generation Statutes, which it does. He explained that NIPSCO's current metering technology does not allow it to even consider any netting period other than instantaneous or monthly netting; thus, other potential netting periods that Mr. Inskeep may have discussed are not relevant to NIPSCO's proposal. Mr. Sears testified

that NIPSCO's instantaneous netting proposal is based upon a reasonable interpretation of the Distributed Generation Statutes and is consistent with previous Commission pronouncements on the subject.

Mr. Sears pointed out that in the Commission's Vectren Order, the Commission was explicit that instantaneous netting is a proper measurement of EDG under Section 5 of the Distributed Generation Statutes. (*See* p. 34.[10]) Further, the Commission explicitly found (at p. 37) that "instantaneous netting is permissible under Section 5" *and* that instantaneous netting "yields rates that are just and reasonable." He also pointed out that, regarding the criticism Mr. Alvarez raises about NIPSCO's meters performing the netting calculation in a single measurement, this was addressed by the Commission in the Vectren Order. Mr. Sears testified that NIPSCO's instantaneous netting proposal and its metering technology are materially identical to the netting methodology and metering technology approved in the Vectren Order.

Mr. Sears noted that in the Vectren Order, the Commission specifically questioned (at p. 37) whether monthly netting results in just and reasonable rates. He cited to further language from page 36 of this order, which raised substantial questions about monthly netting. Mr. Sears explained that these findings by the Commission informed NIPSCO's decision to put forth its proposed EDG Rider to comply with the Distributed Generation Statutes and, ultimately, to propose an instantaneous netting methodology instead of a monthly netting methodology.

Mr. Sears testified the Distributed Generation Statutes do not mandate that netting occur over a particular interval for purposes of calculating EDG.[11] He explained that the language of Section 5 of the Distributed Generation Statutes clearly states that "the difference between" the two components by calculated, but it does not specify over what period of time it must be calculated, which was acknowledged by the Commission in the Vectren Order (at p. 38). He stated that the Vectren Order clearly found that instantaneous netting was an acceptable method for calculating EDG and raised significant questions about the monthly netting—the only other alternative that NIPSCO could consider.

Mr. Sears stated that it appears from his review that both the OUCC and Indiana DG would agree that the Distributed Generation Statutes does not mandate that a particular period be used for calculating EDG. For example, on page 6, Mr. Inskeep states that "[t]o the extent the Commission disagrees with my *recommendation* to maintain monthly netting under the EDG Rider, I recommend it consider *alternative netting methodologies* that are less punitive to customers." (Emphasis added.) He noted that Sections II.F (Other Netting Periods) and II.G (Analysis of Impacts) of Mr. Inskeep's testimony also discussed several netting time periods, including instantaneous, hourly, daily, and monthly. Thus, to Mr. Sears, it seemed clear that Mr. Inskeep would agree that the Distributed Generation Statutes do not mandate the period for calculating EDG. Finally, Mr. Sears noted that, while Mr. Inskeep does not explicitly state the Commission has discretion to determine the appropriate netting period, he did acknowledge (at p.

---

[10] The Commission found Vectren's EDG tariff, which utilized instantaneous netting, defines EDG consistent with Section 5, and that Vectren's meter's measurement of outflow "instantaneously nets both components of EDG under Section 5 at the meter to arrive at EDG."

[11] In NIPSCO's Stipulation of Facts, NIPSCO also stipulated that "NIPSCO believes that multiple types of EDG netting are lawful under the DG Statute and are potentially reasonable, including instantaneous, monthly, weekly, and daily."

63) the Commission *has stated* that it has such discretion.

Mr. Sears stated that it appears that Mr. Alvarez would agree that the Distributed Generation Statutes do not mandate a particular period be utilized. For example, on page 3, Mr. Alvarez states that "to determine EDG, the utility or electricity supplier must first take the difference between the electricity supplied to the [DG] customer and the electricity supplied back by the DG customer[,]" but he nowhere definitively states over what period of time the "difference" has to be measured or taken.

Mr. Sears testified the OUCC did not take issue with NIPSCO's proposed Marginal DG Price, but Mr. Inskeep claims that NIPSCO's "EDG credit rate" (e.g., Marginal DG Price) is not reasonable. He explained that Mr. Inskeep did not claim that NIPSCO's formula or method for calculating the Marginal DG Price does not comply with the Distributed Generation Statutes; instead, similar to his criticisms about the netting methodology, Mr. Inskeep proposed alternative methods for calculating the compensation rate, which he believes are better or more reasonable.

Mr. Sears also testified that Section 17 simply and clearly states that the Commission "shall approve a rate to be credited to participating customers by the electricity supplier for excess distributed generation" if the rate proposed by the electricity supplier (in this case, NIPSCO) "was accurately calculated and equals the product of: (1) the average marginal price of electricity paid by the electricity supplier during the most recent calendar year; multiplied by (2) one and twenty-five hundredths (1.25)." He noted that Section 17 does not state that a certain "subset" of hours be used, nor does it state that specific hours are to be given greater weight than others. Rather, it plainly states NIPSCO is to take "the average marginal price of electricity paid by the electricity supplier during the most recent calendar year;" and NIPSCO has averaged each hour of the most recent calendar year in calculating the Marginal DG Price. He testified that this is admitted by Mr. Inskeep where he correctly notes (at p. 11) that "NIPSCO has averaged the wholesale electricity price for *all hours* of the year." (Emphasis in original.)

Mr. Sears noted two ways that Mr. Inskeep outlined as potential ways for the DG Price to be calculated. Mr. Sears then testified that the end result of one of his proposals is a rate that is 12.9% higher than NIPSCO's Marginal DG Price, which is based on a simple average of every hour of the prior calendar year as required by Section 17. He stated that Mr. Inskeep does not allege that NIPSCO's proposed Marginal DG Price does not comply with the Distributed Generation Statutes and that while he may have proposals that he feels would better incentivize DG investment, all NIPSCO is required to do is comply with the plain language of the Distributed Generation Statutes—as it has done. He noted that the Distributed Generation Statutes require a mathematical calculation to arrive at a "product," meaning the result of multiplying certain factors – one of those factors is the average price NIPSCO paid for energy during the most recent calendar year. Mr. Sears testified that nowhere does that statutory calculation state that certain hours of the most recent calendar year may be ignored or assigned different weighting. He also noted that Mr. Inskeep never explains how the Distributed Generation Statutes can be interpreted to allow NIPSCO to pick-and-choose which parts of the calendar year to use in the prescribed calculation. Second, Mr. Sears stated that it is also important to note that if a higher Marginal DG Price were required to be paid to customers taking service under the EDG Rider, these higher rates would be fully recovered from NIPSCO's non-DG customers through NIPSCO's FAC. He testified that consistent with the Distributed Generation Statutes, NIPSCO's Marginal DG Price already is based

on 125% of the price NIPSCO has paid for energy in the wholesale market over the prior calendar year, with this amount being paid to EDG customers and recovered from FAC customers. Thus, NIPSCO's proposed Marginal DG Price should be approved.

In response to Mr. Inskeep's claim that NIPSCO proposes to "confiscate any credits remaining when the customer discontinues service and that NIPSCO's proposal is not fair to customers and "recommend[s] that earned EDG credits be refundable to customers upon service termination," Mr. Sears cited to the plain language in Section 18 of the Distributed Generation Statutes where it states: "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." He noted that it is this language that is relevant, not what other states may require or allow. Mr. Sears stated that consistent with this language, NIPSCO proposes in Section 6 of the EDG Rider that "[w]hen Customer discontinues service under this Rider and no longer receives retail electric service from the Company at the Premises, any unused and remaining DG Billing Credit Balance will be forfeited by the Customer and passed back to Company's other customers through the Fuel Cost Adjustment (Rider 870) or successor mechanism." Thus, NIPSCO is not "confiscat[ing] any credits remaining when the customer discontinues service." Mr. Sears testified that consistent with Section 18, NIPSCO is proposing that the credits cannot be carried forward and will not be refunded, but will, instead, be passed back to FAC customers.

Mr. Sears testified that NIPSCO's proposed EDG Rider will continue to provide DG customers the opportunity to offset the full retail rate for energy produced by their DG system. He stated that to the extent that the electricity produced by the customer's distributed generation system offsets the energy being used by the customer on an instantaneous basis, the customer would be using the electricity produced by their distributed generation system to completely avoid paying NIPSCO's full retail rate. He stated that future DG customers will have to determine the most appropriate sizing of their system and manage their system and usage to achieve the economic result they wish to achieve.

Mr. Sears cited to Mr. Inskeep's claims that "NIPSCO seeks to impose the most restrictive EDG paradigm possible, which will result in many customers not being able to install solar and the potential demise of solar installation business in Indiana," and Mr. Straeter's claim that NIPSCO's proposal "treats customer solar as punitively as possible." Mr. Sears then responded that both of these quotes assign malintent to NIPSCO, which is not justified. He stated that NIPSCO has simply proposed a reasonable approach to compliance with the language and requirements of the Distributed Generation Statutes, as it has been interpreted by the Commission. He noted that based on current technological capabilities, NIPSCO had two potential options for calculating the difference between the two components listed in Section 5 of the Distributed Generation Statutes—either monthly netting or instantaneous netting. He stated that NIPSCO proposed instantaneous netting because it is an appropriate and accurate way of calculating this difference, and because the Commission explicitly called into question the justness and reasonableness of monthly netting in the Vectren Order (at p. 38), when it stated that "we cannot conclude it is just and reasonable for Petitioner's other customers to subsidize the payback periods of DG customers by the continuation of monthly netting as opposed to instantaneous netting."

Mr. Sears testified that with respect to NIPSCO's proposed Marginal DG Price, NIPSCO

likewise has calculated the price at which EDG will be compensated in compliance with the Distributed Generation Statutes, based on every hour of the prior calendar year utilizing the Real-Time LMP. He stated that for these reasons, NIPSCO's EDG Rider should be approved and found to be in compliance with the Distributed Generation Statutes.

B. Kevin A. Kirkham. On rebuttal, Mr. Kirkham testified that NIPSCO currently has dual channel meters that have the capability to measure "inflow" and "outflow" either monthly or instantaneously; thus, other netting time periods–such as hourly, daily, weekly, or any other interval—are not technically feasible for NIPSCO at this time. He said the period being measured by the meter is an interval of less than one second.[12] There can be inflow or outflow for any particular period, or the meter can register "0" if the electricity NIPSCO is supplying to the customer and the electricity the customer is supplying to NIPSCO match during a particular period. Mr. Kirkham explained the "inflow" and "outflow" channels and explained that if the customer is producing more than they are consuming, it is registered as Outflow. And if they are consuming more than they are producing, it is registered as Inflow.

Mr. Kirkham unequivocally testified that the calculation being performed by the meter is calculating "the difference between" the two applicable components, as required by Section 5 of the Distributed Generation Statutes. He said the Outflow (as measured and recorded by NIPSCO's meters) is the net, in kWh, of both components of Section 5—the "electricity that is supplied back to the electricity supplier by the customer" and the "electricity that is supplied by an electricity supplier to a customer." Mr. Kirkham explained that, while NIPSCO defines Outflow as "[t]he separate meter channel measurement of electricity being produced by Customer above the electricity being used by Customer" in the EDG Rider, this simply a simplified statement that uses the word "above" to refer to the "net" or "difference" between the two components. Mr. Kirkham testified that, as provided in Section 3 of the EDG Rider, NIPSCO takes the "Outflow kWh (Excess Distributed Generation)" for the monthly billing cycle, multiplies it by the Marginal DG Price, and gets the customer's DG Billing Credit.

Mr. Kirkham testified that in the Vectren Order, on pages 34-36, the Commission discussed the issue of an instantaneous netting calculation directly and extensively and, ultimately, it rejected this same (or very similar argument) that was raised by Mr. Alvarez in his testimony. He explained that NIPSCO's meters operate similarly to Vectren's in the way they calculate Inflow and Outflow. He expressed confidence that what NIPSCO's meters register as "outflow" is "the difference between" the two components under Section 5 of the Distributed Generation Statutes.

Mr. Kirkham testified that NIPSCO's requirement that the customer install a disconnect switch is about the safety of the customer and NIPSCO's employees, as well as first responders who may have to access a customer's property or equipment in the event of an emergency. He said a disconnect switch is a standard requirement for all customer-owned generation, and it is currently required for all Level 1, Level 2, and Level 3 interconnections.[13] It also is required for all Net

---

[12] In NIPSCO's Stipulation of Facts, NIPSCO also stipulated that "NIPSCO's meters would have 60 measurement cycles per second, and each cycle would be made up of 68 snapshots of energy values."

[13] *See* https://www.nipsco.com/docs/librariesprovider11/rates-and-tariffs/electric-rates/2020-current-rates/electric-service-tariff-(entire-book).pdf?sfvrsn=24, at Rider 789, Sheet No. 7 of 16 (Level 1) and Sheet No. 10 of 16 (Levels 2 and 3).

Metering facilities.[14] He noted this standard safety requirement has been previously approved by the Commission in multiple instances and cited to the interconnection requirements of Duke Energy, Indiana Michigan Power, and DTE Energy, all of whom require disconnect switches for all interconnections. He testified this requirement is similar to other utilities in Indiana. He also noted that, according to NIPSCO System Planning, it is also a requirement under Section 690.13 of the National Electric Code (Photovoltaic System Disconnecting Means), including specifically in Section E. Furthermore, Mr. Kirkham testified requiring disconnect switches for safety purposes is allowed under Section 22 of the Distributed Generation Statutes.

8. Commission's Discussion and Findings. Implementation and Calculation of EDG Rider under the Distributed Generation Statutes.

[The OUCC takes no position on the language proposed in this section]

B. EDG Tariff Determination.

In addition to seeking approval of its rate for EDG, NIPSCO asks the Commission to approve its proposed EDG rider, so Petitioner can apply the rate. As proposed, EDG Rider is based upon the instantaneous measurement of electricity used by the customer net of the electricity being produced by the customer ("Inflow") and the electricity produced by the customer above the electricity used by the customer ("Outflow"). The OUCC and Intervenors challenged NIPSCO's used of these instantaneous measurements in EDG Rider.

1. Section 5.

The OUCC and Indiana DG both assert Petitioner's proposal to use instantaneous netting does not comply with the Distributed Generation Statutes. Specifically, they contend NIPSCO is not determining EDG in accordance with Section 5. When interpreting a statute, the first step is to consider "whether the Legislature has spoken clearly and unambiguously on the point in question." *KS&E Sports v. Runnels*, 72 N.E.3d 892, 898–99 (Ind. 2017) (citing *Basileh v. Alghusain*, 912 N.E.2d 814, 821 (Ind. 2009)). If a statute is clear and unambiguous, the Commission and reviewing courts must "put aside various canons of statutory construction and simply 'require that words and phrases be taken in their plain, ordinary, and usual sense.'" *Id*. When determining whether a statute is clear, Indiana courts presume that "the legislature uses undefined terms in their common and ordinary meaning." *NIPSCO Indus. Grp. v. N. Indiana Pub. Serv. Co.*, 100 N.E.3d 234, 242 (Ind. 2018), modified on reh'g (Sept. 25, 2018). Additionally, "[t]he language of the statute itself is the best evidence of legislative intent, and we must give all words their plain and ordinary meaning unless otherwise indicated by statute." *U.S. Steel Corp. v. N. Indiana Pub. Serv. Co.*, 951 N.E.2d 542, 552 (Ind. Ct. App. 2011). Thus, in this case, the Commission's primary job is to determine whether the "common and ordinary meaning" of the words in Ind. Code § 8-1-40-5 support NIPSCO's determination in its proposed tariff of the statutory definition of "excess distributed generation." If not, the Commission must reject NIPSCO's proposed tariff. As described further below, we find that NIPSCO's interpretation of "excess distributed generation" as defined in Ind. Code § 8-1-40-5 violates the plain, ordinary, and usual meaning of the language of the statute, and therefore NIPSCO's proposal cannot be approved.

[14] *See id.* at Rider 880, Sheet No. 5 of 9.

Ind. Code 8-1-40-5 states:

> 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.

The statutory definition of "excess distributed generation" is straightforward. It is the *difference* between two values: the electricity that NIPSCO supplies to a DG customer and the electricity that the DG customer supplies back to NIPSCO. This straightforward interpretation of Excess Distributed Generation is driven by the plain language of the statute, supported by the testimony of OUCC and Indiana DG's witnesses.

NIPSCO includes the statutory language as the definition of EDG in NIPSCO's proposed tariff. Additionally, NIPSCO's proposed tariff also includes definitions for "Inflow" as the "[t]he separate meter channel measurement of the electricity being used by the Customer, net of the electricity being produced by the Customer," and "Outflow" as "[t]he separate meter channel measurement of electricity being produced by Customer above the electricity being used by Customer." However, in determining EDG in the tariff, NIPSCO links the terms "Outflow" and "Excess Distributed Generation," even though the two terms are defined differently. Specifically, under the "Billing" section of the proposed tariff, it states: "3. The Outflow kWh (Excess Distributed Generation) for the monthly billing cycle shall be multiplied by the Marginal DG Price to determine the DG Billing Credit."

It is improper for NIPSCO to equate "Outflow," as defined by NIPSCO in its proposed tariff, with "Excess Distributed Generation." EDG is not defined as "electricity being produced by [the] Customer above the electricity being used by [the] Customer." Electricity production and consumption on the customer side of the meter are not included in the specific language defining EDG in Ind. Code § 8-1-40-5, and therefore cannot be utilized to determine EDG in this proceeding. Had the Indiana Legislature intended for "Outflow" from a DG customer to be compensated at the EDG rate, it could have easily done so by defining "excess distributed generation" as "the electricity that is supplied back to the electricity supplier by the customer." Instead, the Indiana Legislature used almost the same definition for "excess distributed generation" as is in Commission rules for "net metering," which provides for a specific time period over which the "difference" is taken between the electricity supplied to a customer and the electricity supplied back to the electric supplier.

Mr. Kirkham's discussion that "electricity being produced by the customer *above* the electricity being used by the customer for the same period" [emphasis in original] is not the same as "the difference between two components: (1) the electricity NIPSCO is supplying to the customer and the customer is consuming and (2) electricity being produced by the customer's distributed generation facility." NIPSCO recognizes that electricity only flows in one direction on an instantaneous basis. (Public's Exhibit No. 2, Response to OUCC request 1-001). If electricity

is flowing from the DG customer to NIPSCO, there *cannot* be electricity NIPSCO is supplying to the customer, and therefore, there is nothing with which to take the difference as required by Ind. Code § 8-1-40-5. If the DG customer is generating electricity above its consumption, there is *only* electricity flowing from the DG customer to NIPSCO, and it is physically impossible for NIPSCO to provide electricity to the customer at the same instant. Additionally, Mr. Kirkham's description of the "two components" also does not follow the statutory definition of EDG. Finally, the definition for "Outflow" used by NIPSCO is different that the definition for "Outflow" as used by Vectren South in its proposed tariff, which we approved in Cause No. 45378. In that proceeding, "Outflow" was specifically defined as "the separate meter channel measurement of energy delivered by Customer to Company as Excess Distributed Generation." Based on the specific definition of "Outflow" as used in NIPSCO's proposed tariff, NIPSCO improperly determines the amount of "excess distributed generation" and we find that NIPSCO's proposed methodology should be rejected.

Having reviewed the evidence, as discussed above, the Commission finds that NIPSCO's methodology incorrectly measures EDG purposes of Section 5. NIPSCO improperly equates EDG as the difference between electricity production and consumption by the DG customer, which occurs behind the meter and is not included in the statutory definition of EDG. We therefore reject NISPCO's proposal.

C. Miscellaneous Technology, Tariff, and Other Concerns.

[The OUCC takes no position on the language in this section]

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. NIPSCO's improperly determines EDG pursuant to Ind. Code § 8-1-40-5.

2. NIPSCO's proposed EDG Rider is rejected.

3. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:
APPROVED:

I hereby certify that the above is a true
and correct copy of the Order as approved.

_____

Dana Kosco,
Secretary of the Commission

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC FOR APPROVAL OF RIDER 889 – EXCESS DISTRIBUTED GENERATION RIDER FOR THE PROCUREMENT OF EXCESS DISTRIBUTED GENERATION PURSUANT TO IND. CODE CH. 8-1-40.	))))))	**CAUSE NO. 45505** **APPROVED:**

ORDER OF THE COMMISSION

Presiding Officers:
David L. Ober, Commissioner
Carol Sparks Drake, Senior Administrative Law Judge

On March 1, 2021, Northern Indiana Public Service Company LLC ("NIPSCO" or "Petitioner") filed a Verified Petition with the Indiana Utility Regulatory Commission ("Commission") seeking approval of a tariff rate ("EDG Rider") for the procurement of excess distributed generation ("EDG") under Ind. Code ch. 8-1-40 (the "Distributed Generation Statutes"). Petitioner, on March 1, 2021, prefiled the direct testimony of Kevin A. Kirkham, Manager of New Business of NIPSCO.

Several petitions to intervene were filed. These included a petition to intervene filed on March 1, 2021, by Citizens Action Coalition of Indiana, Inc. ("CAC") that was granted on March 12, 2021; on March 8, 2021, by Indiana Distributed Energy Alliance ("Indiana DG") that was granted on March 17, 2021; and on March 23, 2021, by Solar United Neighbors ("SUN") that was granted on April 1, 2021.

In accordance with the Docket Entry issued on May 4, 2021 establishing the revised procedural schedule for this matter, NIPSCO prefiled the revised direct testimony of the following NIPSCO employees:

- Kevin A. Kirkham, Manager of New Business, and
- Robert C. Sears, Director of Regulatory Policy.

On May 10, 2021, NIPSCO also filed a motion requesting leave, pursuant to 170 IAC 1-1.1-8(b), to file an amended petition because, based upon review of the Commission's final order in Cause No. 45378 dated April 7, 2021 (the "Vectren Order"), NIPSCO determined certain revisions to its proposed Rider 889 – Excess Distributed Generation Rider ("EDG Rider") were necessary. A Docket Entry was issued on May 21, 2021, authorizing NIPSCO to file an amended petition, and NIPSCO made this filing on May 21, 2021.

On July 27, 2021, the Indiana Office of Utility Consumer Counselor ("OUCC") prefiled the testimony and attachments of Anthony A. Alvarez, Utility Analyst in the OUCC's electric division. That same date, Indiana DG prefiled the testimony and attachments of:

- Benjamin D. Inskeep, Principal Energy Policy Analyst with EQ Research LLC, and
- Jim Straeter, President and Owner of Ag Technologies Inc.

On August 9, 2021, NIPSCO prefiled the rebuttal testimony and attachments of case-in-chief witnesses Mr. Sears and Mr. Kirkham.

On August 17, 2021, NIPSCO filed Petitioner's Objection and Motion to Strike a portion of Mr. Inskeep's prefiled testimony. On August 25, 2021, Indiana DG filed IndianaDG's Response to NIPSCO's Objection and Motion to Strike.

On August 27, 2021, the OUCC filed Public's Exhibit No. 2. On August 30, 2021, NIPSCO filed its Submission of Hearing Exhibit, and, on August 31, 2021, NIPSCO submitted a Stipulation of Facts.

The Commission noticed the public evidentiary hearing in this Cause at 9:30 a.m. on September 1, 2021, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, NIPSCO, OUCC, Indiana DG, CAC, and SUN appeared by counsel. At the evidentiary hearing, NIPSCO withdrew its Objection and Motion to Strike filed on August 17, 2021. NIPSCO offered its prefiled testimony and attachments, along with its NIPSCO's Hearing Exhibit (NIPSCO Exh. No. 3) and its Stipulation of Facts, without objection. The testimony and attachments of the OUCC, including Public's Exhibit No. 2, and the testimony and attachments of Indiana DG were also admitted into evidence without objection. No member of the general public appeared or participated at the hearing.

Based upon the applicable law and evidence presented, the Commission finds:

1. Notice and Jurisdiction. Due, legal and timely notice of the evidentiary hearing in this case was given and published by the Commission as required by law. NIPSCO is a public utility within the meaning of Ind. Code § 8-1-2-1(a) and an electricity supplier within the meaning of Ind. Code § 8-1-40-4(a). Petitioner is subject to the jurisdiction of the Commission in the manner and to the extent provided by Indiana law. Ind. Code § 8-1-40-16 ("Section 16") requires an electricity supplier to file a petition with the Commission requesting a rate for its procurement of EDG from the electricity supplier's customers. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Organization and Business. NIPSCO is a limited liability company under Indiana law and has its principal office 801 East 86th Avenue, Merrillville, Indiana. Petitioner is engaged in rendering electric and gas public utility service within Indiana, and NIPSCO owns, operates, manages and controls, among other things, plant and equipment used for the generation, transmission, distribution and furnishing of such electric service to approximately 476,000 residential, commercial, industrial, wholesale and other customers in northern Indiana.

3. Applicable Law. Senate Enrolled Act 309 ("SEA 309") enacted the Distributed Generation Statutes (Ind. Code § 8-1-40-1 *et seq*.) and established a new statutory paradigm under which Indiana's electricity suppliers, including Petitioner, will receive electricity their customers with qualifying DG resources supply and offset the cost of the electricity supplied to such customers. Under the Distributed Generation Statutes, "[n]ot later than March 1, 2021, an

electricity supplier shall file with the commission a petition requesting a rate for the procurement of excess distributed generation by the electricity supplier." Section 16. Ind. Code § 8-1-40-10 ("Section 10") of the Distributed Generation Statutes further provides:

> Before July 1, 2022, if an electricity supplier reasonably anticipates, at any point in a calendar year, that the aggregate amount of net metering facility nameplate capacity under the electricity supplier's net metering tariff will equal at least one and one-half percent (1.5%) of the most recent summer peak load of the electricity supplier, the electricity supplier shall, in accordance with section 16 [of the Distributed Generation Statutes], petition the commission for approval of a rate for the procurement of excess distributed generation.

Section 10.

Subject to Ind. Code §§ 8-1-40-13 and -14, NIPSCO's net metering tariff must remain available to its customers until the earlier of the following: "January 1 of the first calendar year after the calendar year in which the aggregate amount of net metering facility nameplate capacity 7 under the electricity supplier's net metering tariff equals at least one and one-half percent (1.5%)" of the supplier's most recent summer peak load or July 1, 2022. Section 10.

Once an electricity supplier files a petition under Section 16 for a rate for EDG, Ind. Code § 8-1-40-17 ("Section 17") provides:

> The commission shall review a petition filed under section 16 of this chapter by an electricity supplier and, after notice and a public hearing, shall approve a rate to be credited to participating customers by the electricity supplier for excess distributed generation if the commission finds that the rate requested by the electricity supplier was accurately calculated and equals the product of:
>
> > (1) the average marginal price of electricity[1] paid by the electricity supplier during the most recent calendar year; multiplied by
> >
> > (2) one and twenty-five hundredths (1.25).

In this proceeding, NIPSCO seeks Commission approval of its initial EDG rate.

Following approval of Rider EDG, Section 16 requires NIPSCO to annually submit, "not later than March 1 of each year, an updated rate for EDG in accordance with the methodology set forth in section 17 of this chapter." Section 16. And Ind. Code § 8-1-40-18 ("Section 18") requires that NIPSCO compensate its customers from whom Petitioner procures EDG through a credit on the customer's monthly bill, with any excess credit carried forward and applied against future charges to the customer for as long as the customer receives electric service from NIPSCO at the premises.

Under Ind. Code § 8-1-40-15 ("Section 15"), amounts credited to a customer for EDG

[1] Ind. Code § 8-140-6 ("Section 6") of the Distributed Generation Statutes defines "marginal price of electricity" as "the hourly market price for electricity as determined by a regional transmission organization of which the electricity supplier serving a customer is a member."

"shall be recognized in the electricity supplier's fuel adjustment proceedings under IC 8-1-2-42."

4. Requested Relief. Pursuant to Sections 10 and 16, NIPSCO requests approval of a rate for the procurement of EDG. As further discussed below, and pursuant to Section 10, NIPSCO filed for its proposed EDG rate to be effective January 1, 2022, or as soon thereafter as practicable, and to remain in effect until replaced in a subsequent filing. Petitioner submitted the proposed form of EDG Rider as part of its evidence. Per Section 18, proposed EDG Rider will compensate customers in the form of a credit on their monthly bill, with any excess credit carried forward and applied against future charges to the EDG Rider customer for as long as that customer receives service from NIPSCO at the premises. Petitioner proposes to determine EDG based on instantaneously measuring the net of the electricity supplied to NIPSCO by the customer and the electricity supplied to the customer by Petitioner. NIPSCO also requests authority to update EDG Rider annually, by March 1, via a compliance filing, in addition to all other appropriate relief.

5. Petitioner's Case-in-Chief.

A. Robert C. Sears. Mr. Sears explained that under Section 5 of the Distributed Generation Statutes, EDG is the difference between the electricity provided to the customer by the electricity supplier and the electricity the customer supplies back to the supplier. He noted that in the Vectren Order (at pp. 34-36), the Commission found that the instantaneous Outflow calculation of a meter, such as those meters used by NIPSCO, is capturing the "difference" between the electricity the utility is supplying to the customer and the electricity the customer is supplying to the utility, and thus is a measurement of "excess distributed generation" as defined under Section 5 of the Distributed Generation Statutes.[2]

Mr. Sears explained how Distributed Generation differs from Net Metering. He stated the Distributed Generation Statutes made two substantial changes for Distributed Generation resources. First, it set an end date to Net Metering, based upon the installation date of the Distributed Generation resources (Ind. Code §§ 8-1-40-7 13 and 14) and the timing of when the aggregate operating Net Metering capacity reached the statutory cap (Ind. Code § 8-1-40-10). He stated this was a critical step established by the General Assembly to sunset the incentive provided by Net Metering for the installation of Distributed Generation resources. Second, Ind. Code ch. 8-1-40 defined the process for compensating EDG customers for EDG – a separate and distinct process for compensation than the process that had been available for traditional Net Metering customers. Thus, the Distributed Generation Statutes did not just change the applicable rate that would be paid to excess generation, but also modified the way in which the excess generation would be calculated. Mr. Sears stated that based on the language of the Distributed Generation Statutes, it appears clear the process was not intended to simply echo the language from the Net Metering tariff requirements set forth in 170 IAC 4-4.2, but rather intentionally deviated to differentiate EDG customers from those eligible for Net Metering. He stated that one of those deviations was defining EDG without specification for the measurement period which exists under 170 IAC 4-4.2-7. He explained that another deviation was to explicitly specify how the EDG rate would be calculated noting that the retail rate designed for EDG under the Distributed Generation

[2] *See, e.g.*, page 35 of the Vectren Order, where the Commission stated: "Essentially, the meter counts what is going through the meter and puts it into either the inflow or the outflow 'bucket,' but to get into the outflow 'bucket,' the meter has computed the difference between the two components under Section 5."

Statutes was intended to result in customers being paid the average market price for energy, plus a 25% adder.

Mr. Sears provided a summary of NIPSCO's proposed EDG Rider. He stated that in accordance with Section 16, NIPSCO is requesting approval of its EDG Rider to establish a rate for the procurement of excess distributed generation. He stated the EDG Rider will apply to any customer that is not eligible for Rider 880 – Net Metering ("Net Metering Rider"). He explained that in accordance with the Distributed Generation Statutes, any non-reserved customer that has submitted a complete application prior to October 1, 2021 which is approved by December 31, 2021 will be considered eligible under the Net Metering Rider, and that all residential and biomass customers will be considered eligible under the Net Metering Rider until the category threshold is reached, or July 1, 2022, whichever is earlier.

Mr. Sears testified NIPSCO currently has dual channel meters that have the capability to measure "inflow" and "outflow" either monthly or instantaneously. In the future, an advanced metering infrastructure ("AMI") metering system and other billing technologies could allow NIPSCO to consider other periods to measure and compensate customers with Distributed Generation. He stated that NIPSCO plans to use a two-channel metering system to measure the net difference in all energy consumed by the customer (delivered by the utility) and net difference of all energy produced (received by the utility) onto the grid by a customer-owned generator in Indiana. He explained that NIPSCO will measure EDG by recording the instantaneous net difference in the amount of energy produced by the customer-owned generation which exceeds the amount of energy that is being consumed at that point in time.[3]

Mr. Sears testified that NIPSCO's metering is measuring the net difference of the kWh amount and monetizing the difference. He explained that the Outflow is the net difference, in kWh, of the "electricity that is supplied back to the electricity supplier by the customer" and the "electricity that is supplied by an electricity supplier to a customer." He stated this net difference amount is what Rider EDG is applied to in accordance with Ind. Code § 8-1-40-5.

Mr. Sears testified NIPSCO's proposed EDG Rider will continue to provide Distributed Generation customers the opportunity to offset the full retail rate for energy produced by their Distributed Generation system. He explained that to the extent that the electricity produced by the customer's Distributed Generation system offsets the energy being used by the customer on an instantaneous basis, the customer would be using the electricity produced by their Distributed Generation system to completely avoid paying the full NIPSCO retail rate.

Mr. Sears explained that in Cause No. 45378, the Commission was presented with a proposal by Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren") that proposed instantaneous netting, which was challenged by several parties who advocated for monthly netting. In the Vectren Order, the Commission made several findings in which it ultimately determined that instantaneous netting was a just and reasonable approach to calculating the excess distributed generation by a Distributed Generation customer.

[3] Consistent with Ind. Code § 8-1-40-3(b), NIPSCO's definition of EDG does not include electricity produced by (1) an electric generator used exclusively for emergency purposes or (2) a metering facility operating under NIPSCO's net metering tariff.

Mr. Sears identified some of the key findings in the Vectren Order and explained how those findings informed NIPSCO's proposal for instantaneous netting. He explained that in its Vectren Order (at p. 37), the Commission found that the instantaneous measurement of EDG (or "instantaneous netting"), using the components the General Assembly set forth in Section 5 and calculating the rate per Section 17, yields rates that are just and reasonable. He noted this finding was supported by the Commission's belief that the Distributed Generation Statutes is intended to be a transition away from the net metering construct for new Distributed Generation customers, with the primary value of Distributed Generation creation in the retail rate context being it's offsetting of demand behind the meter. He explained that the Commission also noted that Section 19 provides support that the General Assembly intended to eliminate potential subsidies to EDG customers, which supports approval of instantaneous netting, as it reasonably limits using the grid as Distributed Generation customer storage. Finally, he noted that the Commission (at p. 38) also called into the question the appropriateness of utilizing monthly netting, when it stated: "[a]ccordingly, we *cannot conclude it is just and reasonable* for Petitioner's other customers to subsidize the payback periods of DG customers by the continuation of monthly netting as opposed to instantaneous netting." (Emphasis added.)

He testified that NIPSCO's metering technology only affords the possibility of using monthly netting or instantaneous netting. He stated the Distributed Generation Statutes do not specify the frequency with which a utility must calculate EDG, but left this decision to the Commission to exercise its expertise and discretion in determining the reasonableness of a utility's proposed netting period for EDG. Mr. Sears testified that NIPSCO believes instantaneous netting is a just and reasonable proposal and is consistent with the Distributed Generation Statutes, which is informed by the Vectren Order.

Mr. Sears testified that NIPSCO believes its proposed EDG measurement and compensation complies with the Distributed Generation State. He stated that NIPSCO's proposal for instantaneous netting and compensation for EDG based upon the Real-Time Locational Marginal Price ("LMP") is in compliance with the Distributed Generation Statutes, including as interpreted and applied by the Commission in the Vectren Order, and produces rates that are just and reasonable.

B. Kevin A. Kirkham. Mr. Kirkham supported NIPSCO's request for approval of its EDG Rider for inclusion in NIPSCO's approved IURC Electric Service Tariff, Original Volume No. 14 ("Electric Tariff") in accordance with the requirements of the Distributed Generation Statutes. He also testified that NIPSCO was including, as Attachment 2-C, other changes necessary to its Electric Tariff to incorporate the EDG Rider. He provided the aggregate amount of net metering capacity for NIPSCO remaining under NIPSCO's current Net Metering Rider as of January 31, 2021. Mr. Kirkham stated that as of January 1, 2021, NIPSCO exceeded the overall 1.5% threshold established by Section 10 of the Distributed Generation Statutes. He noted that NIPSCO has exceeded the non-reserved amount (by 20,529 kW), as well as the total in aggregate (by 2,123 kW), but both the residential and biomass categories have not exceeded their individual capacity thresholds. He testified that while NIPSCO manages its capacity in the aggregate, it will honor the non-reserved amounts for its customers, which provides a benefit to non-reserved customers since more projects have been and will be allowed to participate in the Net Metering Rider than would have otherwise been allowed if NIPSCO managed its capacity by customer categories.

Mr. Kirkham stated NIPSCO maintains a queue for residential, biomass, and non-reserved categories and that although NIPSCO has received applications in excess of the available capacity statutorily required to be made available for the non-reserved category under its Net Metering Rider, the Company has continued to accept those applications. He stated that since NIPSCO has reached the statutory threshold, but not the capacity threshold for residential and/or biomass capacity, the Company will continue to accept applications and connect installations for those two categories until January 1 of the first calendar year after the calendar year in which the capacity threshold for residential and/or biomass capacity has been reached or July 1, 2022, whichever comes first.

Mr. Kirkham described how the net metering queue is organized for each of the customer categories. He stated that as of January 31, 2021, NIPSCO only had 6,421 kW of total capacity for residential customers and no kW of capacity for biomass customers under the Net Metering Rider, which leaves 11,635 kW of available capacity for residential customers and 6,771 kW of available capacity for biomass customers. Mr. Kirkham also stated that NIPSCO does not anticipate the remaining capacity for residential and biomass customers will be exhausted before July 1, 2022 (the date NIPSCO will implement the EDG Rider with respect to these categories of customers). He stated that NIPSCO will continue accepting applications under the Net Metering Rider while the EDG Rider is pending approval and will honor all applications that are approved by December 31, 2021, consistent with Section 10 of the Distributed Generation Statutes. He explained that to ensure an application can be approved to meet the December 31, 2021 approval deadline, NIPSCO is requiring that completed applications be submitted by October 1, 2021. He stated that NIPSCO has continued to approve non-reserved amounts in excess of the minimum threshold.

Mr. Kirkham testified NIPSCO will continue to process applications through its Net Metering Rider until such time as the residential category threshold is reached, or until July 1, 2022, whichever is earlier. He stated NIPSCO will do the same until the biomass threshold is reached. He indicated that if either category threshold is reached, the application queue will allow NIPSCO to track applicants to ensure correct placement for available capacity, which would be maintained so that customers who were scheduled to participate in the EDG Rider (because all Net Metering capacity had been subscribed) could instead participate in the Net Metering Rider if another Net Metering customer drops out of the Net Metering program before becoming operational.

Mr. Kirkham testified that in accordance with Section 16 of the Distributed Generation Statutes, NIPSCO is requesting approval of its EDG Rider to establish a rate for the procurement of EDG. He stated the EDG Rider will apply to any customer that is not eligible for the Net Metering Rider. He said that in accordance with the Distributed Generation Statutes, any non-reserved customer that has submitted a complete application prior to October 1, 2021 will be considered eligible under the Net Metering Rider and all residential and biomass customers will be considered eligible under the Net Metering Rider until the category threshold is reached, or July 1, 2022, whichever is earlier.

Mr. Kirkham testified that under the EDG Rider, NIPSCO will measure EDG by capturing the inflow and outflow of energy as measured by the utility meter on an instantaneous basis. He explained that the utility meter for EDG customers will have two channels: (1) a channel labeled "inflow" that measures the electricity being used by the customer, net of the amount of electricity

being produced by the customer during the period recorded by the meter;[4] and (2) a channel labeled "outflow" that measures the electricity being produced by the customer above the electricity being used by the customer for the same period. He stated the instantaneous calculation the meter performs of the difference between the electricity NIPSCO is supplying to the customer and the electricity the customer is supplying to NIPSCO is measuring EDG, as required under Section 5 of the Distributed Generation Statutes.

Mr. Kirkham testified this method of measurement is different than how NIPSCO measures the amount of electricity generated by customers under the Net Metering Rider. He stated that the resulting kilowatt-hour ("kWh") that is captured during each cycle measured by a customer's meter will be totaled, and the total as recorded by the inflow channel will be utilized at the end of monthly billing cycle as the amount of energy in kWh to bill under the customer's standard tariff rate. He explained that the resulting total kWh that is recorded by the outflow channel will be utilized at the end of monthly billing cycle as the amount of energy in kWh used in the calculation of the DG Billing Credit applied to the customer's monthly utility bill.

Mr. Kirkham testified the measurement of inflow and outflow allow a customer to utilize its distributed generation resource to offset load explaining that the energy produced by the distributed generation resource can be used to offset the customer's load.

Mr. Kirkham explained how the EDG Rider differs from the Net Metering Rider. First, NIPSCO's instantaneous netting proposal differs from the way Net Metering netting is calculated. Second, NIPSCO's proposed EDG Rider differs from the current Net Metering Rider in the way any "excess" generation produced by the distributed generation is carried forward each month. He explained that under the Net Metering Rider, all generation that is produced above the consumption is credited to the monthly utility bill in energy credits (kWh). These energy credits are then applied to energy consumption (kWh) charged each month to the customer on the monthly utility bill. Mr. Kirkham stated that if the energy credits for the month are greater than the energy consumption charged for the month, the difference (in kWh) is carried forward and applied to energy consumption charged in future months. He said that under the proposed EDG Rider, each instantaneous measurement will have a charge or credit associated with it.

Mr. Kirkham described how the Marginal DG Price will be applied to a customer's monthly bill. He explained that at the end of the month, the amount of kWh accumulated in the outflow channel will be multiplied by the Marginal DG Price to establish the "DG Billing Credit" to be applied as a credit to the customer's bill. He stated that the DG Billing Credit will not be returned to the customer but instead will reduce the amount owed on the monthly utility bill, down to the Minimum Monthly Charge (as defined in the customer's applicable Rate Schedule). He noted that any remaining DG Billing Credit will be carried forward to the following month as a DG Billing Credit Balance to reduce the amount owed on the monthly utility bill, down to the Minimum Monthly Charge (as defined in the customer's applicable Rate Schedule). He stated that if the customer discontinues service at the interconnection address, any unused and remaining DG Billing Credit Balance will be forfeited by the customer and passed back to other customers

[4] The "period" being measured by the meter is an interval of less than one second. There can be inflow or outflow for any particular period, or the meter can register "0" if the electricity NIPSCO is supplying to the customer and the electricity the customer is supplying to NIPSCO match during a particular period.

through NIPSCO's Fuel Cost Adjustment ("FAC") under Rider 870.

Mr. Kirkham described how the Marginal DG Price is calculated in the EDG Rider. He testified that pursuant to Section 17 of the Distributed Generation Statutes, the marginal price of electricity to be used for EDG ("Marginal DG Price") is calculated as the average marginal price of electricity paid by the electricity supplier during the most recent calendar year, multiplied by one and twenty-five hundredths (1.25). He explained that the marginal price of electricity paid by NIPSCO for the most recent calendar year was determined by averaging the 2020 Real-Time hourly LMP at NIPSCO's NIPS.NIPS commercial pricing ("CP") node, as reported by the Midcontinent Independent System Operator, Inc. ("MISO").[5] He noted that this is the CP node at which NIPSCO is charged for energy and indicated that for 2020, the average LMP at the NIPS.NIPS CP node was $21.16 per megawatt-hour ("MWh").

Mr. Kirkham testified that to calculate the Marginal DG Price, NIPSCO took the 2020 average Real-Time LMP at the NIPS.NIPS CP node of $21.16 per MWh, multiplied by 1.25 ($26.45 per MWh) and then converted to a per kWh basis by dividing the $26.45 per MWh by 1,000, resulting in a Marginal DG Price of $0.02645 per kWh. He explained that the Real-Time LMP is based upon generation that is utilized but was not forecasted in the Day-Ahead process. EDG that NIPSCO will purchase from customers is not forecasted. Consequently, the Real-Time LMP is the most appropriate basis for the calculation of the Marginal DG Price. He noted that since the Marginal DG Price is calculated using the annual average Real-Time LMP at NIPSCO's NIPS.NIPS CP node for the most recent calendar year, it will change each year. He testified that NIPSCO proposes to make an annual compliance filing in this docket that reflects the updated Marginal DG Price. He stated that since the average marginal price for electricity paid by NIPSCO during the most recent calendar year will not be confirmed until the end of February of each year, NIPSCO proposes to make the annual compliance filing on or before March 1, for implementation on April 1.[6]

Mr. Kirkham testified that as the DG Billing Credits represent a purchase by NIPSCO of excess generation to serve other customers on NIPSCO's system, these costs will be recovered from NIPSCO's customers as part of fuel costs, specifically purchased power costs, in its monthly FAC in accordance with Section 15 of the Distributed Generation Statutes.

Finally, Mr. Kirkham explained how NIPSCO will transition eligible customers from its Net Metering Rider to the EDG Rider. He testified that NIPSCO will continue to offer its Net Metering Rider to customers based on the capacity availability of the category. He noted that for non-reserved capacity, NIPSCO will continue accepting applications while the EDG Rider is pending approval and will honor applications approved by December 31, 2021. For residential or biomass capacity, NIPSCO will continue to offer the Net Metering Rider until the threshold for the category is met or July 1, 2022, whichever is earlier. He stated that assuming NIPSCO has an approved EDG Rider at that time, new qualifying residential and biomass applicants will participate under the EDG Rider. He said that if the threshold is met for either of those categories before NIPSCO has an approved EDG Rider, NIPSCO will treat residential and biomass applicants

[5] MISO is the regional transmission organization of which NIPSCO is a member, as defined in Section 6 of the Distributed Generation Statutes.

[6] Section 16 of the Distributed Generation Statutes requires an updated rate for excess distributed generation be submitted on an annual basis, not later than March 1 of each year.

in a similar fashion to the non-reserved applicants. He also stated that NIPSCO will continue to keep its customers updated about the status of residential and biomass capacity, including if it appears the applicable threshold for either category will be met before July 1, 2022.

Mr. Kirkham testified that a customer would be transferred from the Net Metering Rider to the EDG Rider but only based on the requirements set forth in Sections 13 and 14 of the Distributed Generation Statutes. Specifically, for a customer with facilities installed on or before December 31, 2017, the Net Metering Rider expires July 1, 2047.[7] For a customer with facilities installed after December 31, 2017, the Net Metering Rider expires July 1, 2032.[8] Thus, based on these statutory deadlines, some customers will be moved from the Net Metering Rider to the EDG Rider on July 1 of 2032 or 2047. He explained that while Sections 13 and 14 of the Distributed Generation Statutes also provide that a Net Metering Rider customer that removes or replaces its net metering facility can also be removed from the Net Metering Rider, no customer that participates in the Net Metering Rider will be moved to the EDG Rider unless the customer removes or replaces the net metering facility, or after the applicable expiration date passes. He stated that if a customer under the Net Metering Rider increases the size of its facility above the approved capacity and there is no available capacity available for that facility category, the customer would be allowed to either reduce the installed capacity down to the capacity available under the Net Metering Rider or submit a new application for the total capacity amount, which would then transfer the entire capacity for the facility to the new EDG Rider.

6. OUCC and Intervenors' Direct Testimony.

A. OUCC's Direct Testimony.

1. Anthony A. Alvarez. Mr. Alvarez testified his opposition to NIPSCO's application of the term "excess distributed generation," NIPSCO's metering and billing methodologies, and recommended the Commission deny NIPSCO's proposed EDG Rider tariff. He testified that, as identified in Ind. Code § 8-1-40-5, only two components must be present to determine EDG: 1) the electricity that is supplied by an electricity supplier; and 2) the electricity that is supplied back to the electricity supplier. He said this section explicitly defines EDG as the resulting difference between these two components. According to Mr. Alvarez, to determine EDG, the utility or electricity supplier must first take the difference between the electricity supplied to the DG customer and the electricity supplied back by the DG customer. Mr. Alvarez testified that NIPSCO will deploy a utility meter for EDG customers with two channels to capture and measure the inflow and outflow of energy on an instantaneous basis. Mr. Alvarez referred to NIPSCO witness Mr. Kirkham's description of the two channels in NIPSCO's meters and Mr. Kirkham's explanation that NIPSCO will utilize the total amount of energy in kWh recorded by the inflow channel to bill the customer at its standard tariff rate, and utilize the total kWh recorded by the outflow channel to calculate "the DG Billing Credit applied to the customer's monthly utility bill." He said that the OUCC opposes NIPSCO's proposed metering and billing methodologies for its EDG customers because they do not satisfy or conform to the Distributed Generation Statutes' requirements. He noted that NIPSCO's proposed EDG Rider tariff includes the definition of the term "excess distributed generation" as it is defined in Ind. Code § 8-1-40-5. He ~~and noted~~ also stated the

[7] Ind. Code § 8-1-40-14.
[8] Ind. Code § 8-1-40-13.

definitionsthat NIPSCO provideposed a definition of in the proposed tariff for "inflow," and "outflow," "DG Billing Credit," and "Marginal DG Price."

Mr. Alvarez testified that based on NIPSCO's definitions, both the "inflow" and "outflow" channels of its utility meter for EDG customers register multiple "net" readings. He said that by utilizing a utility meter for EDG customers with channels pre-programmed to register net readings of various energy components, it runs counter to the plain language of the statutory definition of "excess distributed generation" requiring the difference between two components.: "the electricity that is supplied by an electricity supplier to a customer…" and "the electricity that is supplied back to the electricity supplier…" He also recited certain definitions in NIPSCO's proposed Rider EDG. According to Mr. Alvarez, the statutory language is clear and unambiguous regarding how to measure EDG. He noted that Mr. Kirkham explicitly described, and the Rider 889 explicitly defines, "inflow" and "outflow" as the net of electricity used and produced by a DG customer. He testifiedargued the "electricity that is supplied by an electricity supplier to a customer…" should not be a net of any other components, nor should the "the electricity that is supplied back to the electricity supplier…" be a net, over or above of some other components. Mr. Alvarez opined NIPSCO's request should be denied because the manner in which its proposed utility meters measure EDG do not conform with the statute's requirements.

Mr. Alvarez testified that NIPSCO also claimed its utility meters for EDG customers perform instantaneous calculations and capture the inflow and outflow of energy (as measured by the utility meter) on an instantaneous basis. He stated that in the Vectren Order, the Commission acknowledged the fact that "…[electricity] can only flow one way…," (Vectren Order at p. 13). Mr. Alvarez opined stated that, at any given instant, instantaneous measurement would not record the two values required in the statute to calculate the difference to determine "excess distributed generation," and thus, would not comply with the statutory definition. He opined NIPSCO's request should be denied because it proposes to capture and measure the inflow and outflow of energy in an instantaneous basis, which does not conform or comply with the statutory requirement and definition of EDG.

Mr. Alvarez also described how NIPSCO proposed to measure and record EDG, referencing that NIPSCO will measure EDG by recording the instantaneous net difference in the amount of energy produced by the customer owned generation which exceeds the amount of energy that is being consumed at that point in time.

Mr. Alvarez testified that the manner NIPSCO proposes to measure and record EDG does not comply with Ind. Code § 8-1-40-5. He said the statutory language is plain, clear and unambiguous regarding how to measure EDG and that this section does not reference energy produced or consumed by the customer. He stated the manner in which NIPSCO proposes to measure and record EDG is beyond the purview of the statutory language. Mr. Alvarez testified that he does not agree with Mr. Sear's Q&A 17 statement because Mr. Sear's statement contradicted the information provided in Mr. Sear's previous Q&A 16 testimony. He explained that Mr. Sear's Q&A 16 statement described production and generation on the customer side of the meter rather than the statutory definition used in Mr. Sear's Q&A 17. He said that NIPSCO does not know the production and use on the customer's side of the meter and . He said the only measurement NIPSCO knows at the meter is whether there is "inflow" or "outflow." He testified that it appears NIPSCO's utility meters for EDG customers are pre-programmed to measure and

register the net readings of various energy components that do not conform to the Distributed Generation Statutes' requirements. Mr. Alvarez further stated that by Mr. Sears' description of the "outflow" channel of NIPSCO's meter, it appears NIPSCO's utility meters for EDG customers are pre-programmed to measure and register the net readings of various energy components that do not conform with the EDG Statute's requirements. Mr. Alvarez testified NIPSCO's proposed EDG Rider tariff does not correctly define and apply the EDG determination. He said that although NIPSCO restated the statutory definition of EDG in its proposed rider, it incorrectly applies EDG, according to the definition, by not taking the difference between measurable "Inflow" and "Outflow" amounts as required in the EDG Statute.

Mr. Alvarez testified that based on his review that NIPSCO's: 1) application of EDG does not comply with the EDG Statute; 2) definition and application of its "Inflow" and "Outflow" to determine EDG does not conform with Ind. Code § 8-1-40-5; 3) manner of capturing, measuring, and calculating EDG on an instantaneous basis will not record the two values required in the statute to determine EDG; 4) utility meters for EDG customers are pre-programmed to measure and register the net readings of customer production and consumption and are beyond the statutory language's scope; and 5) application of "Outflow" to measure EDG does not comply with the Distributed Generation Statute's requirements to calculate the marginal price of electricity and determine the appropriate rate to procure EDG. Mr. Alvarez testified that based on his conclusions he recommends the Commission deny NIPSCO's proposed Rider tariff.

B. Indiana DG's Direct Testimony.

[The OUCC accepts IndianaDG's edits to the testimony summary]

7. Petitioner's Rebuttal Evidence.

A. Robert C. Sears. On rebuttal, Mr. Sears responded to challenges raised by OUCC Witness Alvarez and Indiana DG Witness Inskeep about the time period over which NIPSCO will "net" or calculate the difference between the two components listed in Section 5 of the Distributed Generation Statutes. Mr. Alvarez argued that NIPSCO's proposed definition of EDG does not comply with the Distributed Generation Statutes because NIPSCO does not (a) separately calculate or record "the electricity that is supplied by an electricity supplier to a customer that produces distributed generation;" separately calculate and record "the electricity that is supplied back to the electricity supplier by the customer;" and then (c) separately calculate the difference between the values of (a) and (b). On this basis, Mr. Alvarez alleges NIPSCO's method for calculating EDG does not comply with the Distributed Generation Statutes.

Mr. Sears noted that Mr. Inskeep does not claim that NIPSCO's EDG methodology fails to comply with the Distributed Generation Statutes, as Mr. Alvarez does but instead, believes there is a better method for doing so and states that he "proposes a more accurate methodology for crediting EDG."[9] Mr. Sears cited to Mr. Inskeep's claim (at p. 9, lines 17-21) that "NIPSCO is not subtracting, or taking the difference between, imports and exports, either at any instance or over

[9] However, in NIPSCO's Stipulations of Fact, NIPSCO stipulated that "Mr. Inskeep does testify that NIPSCO's EDG methodology fails to comply with the DG Statute, I.C. 8-1-40 *et. seq*." (Citing to Indiana DG Exh. No. 1 at p. 16, lines 4-8 and p. 22, lines 14-17).

any time period, before it then applies the EDG Rider rate to the resulting net amount or total."

Mr. Sears explained that, instead of NIPSCO's instantaneous netting proposal, Mr. Inskeep argues for a monthly netting proposal or methodology. Mr. Sears noted that Mr. Inskeep went into a lot of background about the legislative history of the Distributed Generation Statutes, cited to various theoretical ratemaking principles and policy arguments to support his point, and (at p. 25, lines 6-7) called NIPSCO's instantaneous netting proposal under the EDG Rider "a radical departure from its current policy" under net metering. However, according to Mr. Sears, much of Mr. Inskeep's opposition to NIPSCO's EDG proposal seems to be based on the purported impact it may have on the distributed solar industry. He testified this is likely best evidenced by pages 72-73 of Mr. Inskeep's testimony, where he says that, "as a result of the large reduction in potential savings for installing DG, NIPSCO's 'no netting' proposal would have a devastating impact on the adoption rate of DG technologies like solar by preventing most customers from being able to install such a DG system based on the economics."

Mr. Sears disagreed with Mr. Inskeep that NIPSCO's EDG proposal is, in essence, a "no netting" proposal, noting that his use of this term is contradicted by his own admission which notes NIPSCO's "EDG Rider is distinguishable from a buy-all, sell-all tariff in that it does allow a DG customer to self-consume electricity generated by its own private DG equipment behind the meter[.]"

In response to Mr. Alvarez' criticism about how NIPSCO does not separately calculate or record the two statutory components in Section 5, Mr. Sears testified that Mr. Alvarez is technically correct that NIPSCO does not know the exact production by the EDG facility and the exact amount of energy being provided by NIPSCO and consumed by the customers. However, Mr. Sears explained that he is incorrect that NIPSCO's definition of EDG does not comply with the Distributed Generation Statutes. He pointed out that nothing in the language of Section 5 (or any other portion of the Distributed Generation Statutes) requires separate recording of the two components; instead, Section 5 requires that there be a calculation of "the difference between" these two components—with this difference being the basis for what the customer will receive compensation for. Mr. Sears then explained that NIPSCO's meters can and will accurately measure the "net" or the difference between these two components through the Outflow channel and stated that the fact that this calculation is efficiently and accurately performed on an instantaneous basis by NIPSCO's meters does not mean that NIPSCO's proposal fails to comply with the Distributed Generation Statutes.

Regarding Mr. Inskeep's criticisms, while Mr. Sears did not agree with his use of the "no netting" terminology, he noted that Mr. Inskeep seems to acknowledge instantaneous netting is one of the potential methods of calculating the difference of the two components under Section 5. He pointed out that while Mr. Inskeep may believe there is a better methodology for crediting EDG, his statements about "fairer" or "less punitive" netting methodologies implies that NIPSCO's instantaneous proposal is a "netting" methodology—he just prefers other ones.

Mr. Sears testified that although Mr. Inskeep may believe that "longer netting periods . . . are fairer to EDG customers", the question before the Commission is simply whether what NIPSCO has proposed complies with the Distributed Generation Statutes, which it does. He explained that NIPSCO's current metering technology does not allow it to even consider any

netting period other than instantaneous or monthly netting; thus, other potential netting periods that Mr. Inskeep may have discussed are not relevant to NIPSCO's proposal. Mr. Sears testified that NIPSCO's instantaneous netting proposal is based upon a reasonable interpretation of the Distributed Generation Statutes and is consistent with previous Commission pronouncements on the subject.

Mr. Sears pointed out that in the Commission's Vectren Order, the Commission was explicit that instantaneous netting is a proper measurement of EDG under Section 5 of the Distributed Generation Statutes. (*See* p. 34.[10]) Further, the Commission explicitly found (at p. 37) that "instantaneous netting is permissible under Section 5" *and* that instantaneous netting "yields rates that are just and reasonable." He also pointed out that, regarding the criticism Mr. Alvarez raises about NIPSCO's meters performing the netting calculation in a single measurement, this was addressed by the Commission in the Vectren Order. Mr. Sears testified that NIPSCO's instantaneous netting proposal and its metering technology are materially identical to the netting methodology and metering technology approved in the Vectren Order.

Mr. Sears noted that in the Vectren Order, the Commission specifically questioned (at p. 37) whether monthly netting results in just and reasonable rates. He cited to further language from page 36 of this order, which raised substantial questions about monthly netting. Mr. Sears explained that these findings by the Commission informed NIPSCO's decision to put forth its proposed EDG Rider to comply with the Distributed Generation Statutes and, ultimately, to propose an instantaneous netting methodology instead of a monthly netting methodology.

Mr. Sears testified the Distributed Generation Statutes do not mandate that netting occur over a particular interval for purposes of calculating EDG.[11] He explained that the language of Section 5 of the Distributed Generation Statutes clearly states that "the difference between" the two components by calculated, but it does not specify over what period of time it must be calculated, which was acknowledged by the Commission in the Vectren Order (at p. 38). He stated that the Vectren Order clearly found that instantaneous netting was an acceptable method for calculating EDG and raised significant questions about the monthly netting—the only other alternative that NIPSCO could consider.

Mr. Sears stated that it appears from his review that both the OUCC and Indiana DG would agree that the Distributed Generation Statutes does not mandate that a particular period be used for calculating EDG. For example, on page 6, Mr. Inskeep states that "[t]o the extent the Commission disagrees with my *recommendation* to maintain monthly netting under the EDG Rider, I recommend it consider *alternative netting methodologies* that are less punitive to customers." (Emphasis added.) He noted that Sections II.F (Other Netting Periods) and II.G (Analysis of Impacts) of Mr. Inskeep's testimony also discussed several netting time periods, including instantaneous, hourly, daily, and monthly. Thus, to Mr. Sears, it seemed clear that Mr. Inskeep would agree that the Distributed Generation Statutes do not mandate the period for

[10] The Commission found Vectren's EDG tariff, which utilized instantaneous netting, defines EDG consistent with Section 5, and that Vectren's meter's measurement of outflow "instantaneously nets both components of EDG under Section 5 at the meter to arrive at EDG."

[11] In NIPSCO's Stipulation of Facts, NIPSCO also stipulated that "NIPSCO believes that multiple types of EDG netting are lawful under the DG Statute and are potentially reasonable, including instantaneous, monthly, weekly, and daily."

calculating EDG. Finally, Mr. Sears noted that, while Mr. Inskeep does not explicitly state the Commission has discretion to determine the appropriate netting period, he did acknowledge (at p. 63) the Commission *has stated* that it has such discretion.

Mr. Sears stated that it appears that Mr. Alvarez would agree that the Distributed Generation Statutes do not mandate a particular period be utilized. For example, on page 3, Mr. Alvarez states that "to determine EDG, the utility or electricity supplier must first take the difference between the electricity supplied to the [DG] customer and the electricity supplied back by the DG customer[,]" but he nowhere definitively states over what period of time the "difference" has to be measured or taken.

Mr. Sears testified the OUCC did not take issue with NIPSCO's proposed Marginal DG Price, but Mr. Inskeep claims that NIPSCO's "EDG credit rate" (e.g., Marginal DG Price) is not reasonable. He explained that Mr. Inskeep did not claim that NIPSCO's formula or method for calculating the Marginal DG Price does not comply with the Distributed Generation Statutes; instead, similar to his criticisms about the netting methodology, Mr. Inskeep proposed alternative methods for calculating the compensation rate, which he believes are better or more reasonable.

Mr. Sears also testified that Section 17 simply and clearly states that the Commission "shall approve a rate to be credited to participating customers by the electricity supplier for excess distributed generation" if the rate proposed by the electricity supplier (in this case, NIPSCO) "was accurately calculated and equals the product of: (1) the average marginal price of electricity paid by the electricity supplier during the most recent calendar year; multiplied by (2) one and twenty-five hundredths (1.25)." He noted that Section 17 does not state that a certain "subset" of hours be used, nor does it state that specific hours are to be given greater weight than others. Rather, it plainly states NIPSCO is to take "the average marginal price of electricity paid by the electricity supplier during the most recent calendar year;" and NIPSCO has averaged each hour of the most recent calendar year in calculating the Marginal DG Price. He testified that this is admitted by Mr. Inskeep where he correctly notes (at p. 11) that "NIPSCO has averaged the wholesale electricity price for *all hours* of the year." (Emphasis in original.)

Mr. Sears noted two ways that Mr. Inskeep outlined as potential ways for the DG Price to be calculated. Mr. Sears then testified that the end result of one of his proposals is a rate that is 12.9% higher than NIPSCO's Marginal DG Price, which is based on a simple average of every hour of the prior calendar year as required by Section 17. He stated that Mr. Inskeep does not allege that NIPSCO's proposed Marginal DG Price does not comply with the Distributed Generation Statutes and that while he may have proposals that he feels would better incentivize DG investment, all NIPSCO is required to do is comply with the plain language of the Distributed Generation Statutes—as it has done. He noted that the Distributed Generation Statutes require a mathematical calculation to arrive at a "product," meaning the result of multiplying certain factors – one of those factors is the average price NIPSCO paid for energy during the most recent calendar year. Mr. Sears testified that nowhere does that statutory calculation state that certain hours of the most recent calendar year may be ignored or assigned different weighting. He also noted that Mr. Inskeep never explains how the Distributed Generation Statutes can be interpreted to allow NIPSCO to pick-and-choose which parts of the calendar year to use in the prescribed calculation. Second, Mr. Sears stated that it is also important to note that if a higher Marginal DG Price were required to be paid to customers taking service under the EDG Rider, these higher rates would be

fully recovered from NIPSCO's non-DG customers through NIPSCO's FAC. He testified that consistent with the Distributed Generation Statutes, NIPSCO's Marginal DG Price already is based on 125% of the price NIPSCO has paid for energy in the wholesale market over the prior calendar year, with this amount being paid to EDG customers and recovered from FAC customers. Thus, NIPSCO's proposed Marginal DG Price should be approved.

In response to Mr. Inskeep's claim that NIPSCO proposes to "confiscate any credits remaining when the customer discontinues service and that NIPSCO's proposal is not fair to customers and "recommend[s] that earned EDG credits be refundable to customers upon service termination," Mr. Sears cited to the plain language in Section 18 of the Distributed Generation Statutes where it states: "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." He noted that it is this language that is relevant, not what other states may require or allow. Mr. Sears stated that consistent with this language, NIPSCO proposes in Section 6 of the EDG Rider that "[w]hen Customer discontinues service under this Rider and no longer receives retail electric service from the Company at the Premises, any unused and remaining DG Billing Credit Balance will be forfeited by the Customer and passed back to Company's other customers through the Fuel Cost Adjustment (Rider 870) or successor mechanism." Thus, NIPSCO is not "confiscat[ing] any credits remaining when the customer discontinues service." Mr. Sears testified that consistent with Section 18, NIPSCO is proposing that the credits cannot be carried forward and will not be refunded, but will, instead, be passed back to FAC customers.

Mr. Sears testified that NIPSCO's proposed EDG Rider will continue to provide DG customers the opportunity to offset the full retail rate for energy produced by their DG system. He stated that to the extent that the electricity produced by the customer's distributed generation system offsets the energy being used by the customer on an instantaneous basis, the customer would be using the electricity produced by their distributed generation system to completely avoid paying NIPSCO's full retail rate. He stated that future DG customers will have to determine the most appropriate sizing of their system and manage their system and usage to achieve the economic result they wish to achieve.

Mr. Sears cited to Mr. Inskeep's claims that "NIPSCO seeks to impose the most restrictive EDG paradigm possible, which will result in many customers not being able to install solar and the potential demise of solar installation business in Indiana," and Mr. Straeter's claim that NIPSCO's proposal "treats customer solar as punitively as possible." Mr. Sears then responded that both of these quotes assign malintent to NIPSCO, which is not justified. He stated that NIPSCO has simply proposed a reasonable approach to compliance with the language and requirements of the Distributed Generation Statutes, as it has been interpreted by the Commission. He noted that based on current technological capabilities, NIPSCO had two potential options for calculating the difference between the two components listed in Section 5 of the Distributed Generation Statutes—either monthly netting or instantaneous netting. He stated that NIPSCO proposed instantaneous netting because it is an appropriate and accurate way of calculating this difference, and because the Commission explicitly called into question the justness and reasonableness of monthly netting in the Vectren Order (at p. 38), when it stated that "we cannot conclude it is just and reasonable for Petitioner's other customers to subsidize the payback periods of DG customers by the continuation of monthly netting as opposed to instantaneous netting."

Mr. Sears testified that with respect to NIPSCO's proposed Marginal DG Price, NIPSCO likewise has calculated the price at which EDG will be compensated in compliance with the Distributed Generation Statutes, based on every hour of the prior calendar year utilizing the Real-Time LMP. He stated that for these reasons, NIPSCO's EDG Rider should be approved and found to be in compliance with the Distributed Generation Statutes.

B. Kevin A. Kirkham. On rebuttal, Mr. Kirkham testified that NIPSCO currently has dual channel meters that have the capability to measure "inflow" and "outflow" either monthly or instantaneously; thus, other netting time periods–such as hourly, daily, weekly, or any other interval—are not technically feasible for NIPSCO at this time. He said the period being measured by the meter is an interval of less than one second.[12] There can be inflow or outflow for any particular period, or the meter can register "0" if the electricity NIPSCO is supplying to the customer and the electricity the customer is supplying to NIPSCO match during a particular period. Mr. Kirkham explained the "inflow" and "outflow" channels and explained that if the customer is producing more than they are consuming, it is registered as Outflow. And if they are consuming more than they are producing, it is registered as Inflow.

Mr. Kirkham unequivocally testified that the calculation being performed by the meter is calculating "the difference between" the two applicable components, as required by Section 5 of the Distributed Generation Statutes. He said the Outflow (as measured and recorded by NIPSCO's meters) is the net, in kWh, of both components of Section 5—the "electricity that is supplied back to the electricity supplier by the customer" and the "electricity that is supplied by an electricity supplier to a customer." Mr. Kirkham explained that, while NIPSCO defines Outflow as "[t]he separate meter channel measurement of electricity being produced by Customer above the electricity being used by Customer" in the EDG Rider, this simply a simplified statement that uses the word "above" to refer to the "net" or "difference" between the two components. Mr. Kirkham testified that, as provided in Section 3 of the EDG Rider, NIPSCO takes the "Outflow kWh (Excess Distributed Generation)" for the monthly billing cycle, multiplies it by the Marginal DG Price, and gets the customer's DG Billing Credit.

Mr. Kirkham testified that in the Vectren Order, on pages 34-36, the Commission discussed the issue of an instantaneous netting calculation directly and extensively and, ultimately, it rejected this same (or very similar argument) that was raised by Mr. Alvarez in his testimony. He explained that NIPSCO's meters operate similarly to Vectren's in the way they calculate Inflow and Outflow. He expressed confidence that what NIPSCO's meters register as "outflow" is "the difference between" the two components under Section 5 of the Distributed Generation Statutes.

Mr. Kirkham testified that NIPSCO's requirement that the customer install a disconnect switch is about the safety of the customer and NIPSCO's employees, as well as first responders who may have to access a customer's property or equipment in the event of an emergency. He said a disconnect switch is a standard requirement for all customer-owned generation, and it is currently required for all Level 1, Level 2, and Level 3 interconnections.[13] It also is required for all Net

---

[12] In NIPSCO's Stipulation of Facts, NIPSCO also stipulated that "NIPSCO's meters would have 60 measurement cycles per second, and each cycle would be made up of 68 snapshots of energy values."

[13] *See* https://www.nipsco.com/docs/librariesprovider11/rates-and-tariffs/electric-rates/2020-current-rates/electric-service-tariff-(entire-book).pdf?sfvrsn=24, at Rider 789, Sheet No. 7 of 16 (Level 1) and Sheet No. 10 of 16 (Levels 2 and 3).

Metering facilities.[14] He noted this standard safety requirement has been previously approved by the Commission in multiple instances and cited to the interconnection requirements of Duke Energy, Indiana Michigan Power, and DTE Energy, all of whom require disconnect switches for all interconnections. He testified this requirement is similar to other utilities in Indiana. He also noted that, according to NIPSCO System Planning, it is also a requirement under Section 690.13 of the National Electric Code (Photovoltaic System Disconnecting Means), including specifically in Section E. Furthermore, Mr. Kirkham testified requiring disconnect switches for safety purposes is allowed under Section 22 of the Distributed Generation Statutes.

8. Commission's Discussion and Findings. ~~Before we directly address the particulars of NIPSCO's proposed EDG Rider and whether it complies with the requirements of the Distributed Generation Statutes, we first address our April 7, 2021 order issued in Cause No. 45378.[15] We do so for two reasons. Primarily, we discuss the Vectren Order because Cause No. 45378 was the first instance in which we evaluated a tariff filing made in compliance with the Distributed Generation Statutes. As such, the Vectren Order announced the Commission's interpretation of key provisions of the Distributed Generation Statutes and represents recent precedent which we apply below. Notably, subsequent to the Vectren Order, the Distributed Generation Statutes have not changed. And the facts presented in NIPSCO's petition and accompanying evidence are substantially similar to that presented in the proceeding resulting in the Vectren Order. Therefore, our pronouncements on the Distributed Generation Statutes remain applicable in this proceeding considering approval of a very similar proposed tariff filed to comply with the Distributed Generation Statutes. Second, in addition to its precedential value, the Vectren Order was explicitly cited in NIPSCO's Motion to Amend Petition, filed on May 10, 2021, as an important factor in its determination of the appropriateness of its EDG Rider and, ultimately, its determination to make certain revisions to its originally-proposed EDG Rider. *See* Motion to Amend at par. 5. Throughout its case-in-chief and rebuttal testimony, NIPSCO repeatedly cites to and relies upon our determinations and findings in the Vectren Order as support for its currently-proposed EDG Rider, which is based upon an instantaneous netting methodology.~~

~~In the Vectren Order, we directly addressed several of the contested issues that are likewise contested in this proceeding. These issues include, but are not limited to, (1) whether instantaneous netting complies with Section 5; (2) whether instantaneous netting results in rates that are just and reasonable; (3) the appropriate EDG Rider rate under Section 17; and (4) recovery of EDG customers' credits upon discontinuance or termination of service under Section 15. On each of these issues, below, we affirm the conclusions we reached in the Vectren Order.~~

A. Implementation and Calculation of EDG Rider under the Distributed Generation Statutes.

[The OUCC takes no position on the language proposed in this section]

B. EDG Tariff Determination.

In addition to seeking approval of its rate for EDG, NIPSCO asks the Commission to approve its proposed EDG rider, so Petitioner can apply the rate. As proposed, EDG Rider is

[14] *See id.* at Rider 880, Sheet No. 5 of 9.

[15] ~~We acknowledge that the Vectren Order has been appealed by the OUCC, Indiana DG, CAC, and others.~~

based upon the instantaneous measurement of electricity used by the customer net of the electricity being produced by the customer ("Inflow") and the electricity produced by the customer above the electricity used by the customer ("Outflow"). The OUCC and Intervenors challenged NIPSCO's used of these instantaneous measurements in EDG Rider.

1. Section 5.

The OUCC and Indiana DG both ~~claim~~ assert Petitioner's proposal to use instantaneous netting does not comply with the Distributed Generation Statutes. Specifically, they contend NIPSCO is not determining EDG in accordance with Section 5. When interpreting a statute, the first step is to consider "whether the Legislature has spoken clearly and unambiguously on the point in question." *KS&E Sports v. Runnels*, 72 N.E.3d 892, 898–99 (Ind. 2017) (citing *Basileh v. Alghusain*, 912 N.E.2d 814, 821 (Ind. 2009)). If a statute is clear and unambiguous, the Commission and reviewing courts must "put aside various canons of statutory construction and simply 'require that words and phrases be taken in their plain, ordinary, and usual sense.'" *Id*. When determining whether a statute is clear, Indiana courts presume that "the legislature uses undefined terms in their common and ordinary meaning." *NIPSCO Indus. Grp. v. N. Indiana Pub. Serv. Co.*, 100 N.E.3d 234, 242 (Ind. 2018), modified on reh'g (Sept. 25, 2018). Additionally, "[t]he language of the statute itself is the best evidence of legislative intent, and we must give all words their plain and ordinary meaning unless otherwise indicated by statute." *U.S. Steel Corp. v. N. Indiana Pub. Serv. Co.*, 951 N.E.2d 542, 552 (Ind. Ct. App. 2011). Thus, in this case, the Commission's primary job is to determine whether the "common and ordinary meaning" of the words in Ind. Code § 8-1-40-5 support NIPSCO's determination in its proposed tariff of the statutory definition of "excess distributed generation." If not, the Commission must reject NIPSCO's proposed tariff. As described further below, we find that NIPSCO's interpretation of "excess distributed generation" as defined in Ind. Code § 8-1-40-5 violates the plain, ordinary, and usual meaning of the language of the statute, and therefore NIPSCO's proposal cannot be approved.

~~The Commission, therefore, looks first at this section of the statute, which states:~~Ind. Code 8-1-40-5 states:

> 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.

The statutory definition of "excess distributed generation" is straightforward. It is the *difference* between two values: the electricity that NIPSCO supplies to a DG customer and the electricity that the DG customer supplies back to NIPSCO. This straightforward interpretation of Excess Distributed Generation is driven by the plain language of the statute, supported by the testimony of OUCC and Indiana DG's witnesses.

NIPSCO includes the statutory language as the definition of EDG in NIPSCO's proposed

tariff. Additionally, NIPSCO's proposed tariff also includes definitions for "Inflow" as the "[t]he separate meter channel measurement of the electricity being used by the Customer, net of the electricity being produced by the Customer," and "Outflow" as "[t]he separate meter channel measurement of electricity being produced by Customer above the electricity being used by Customer." However, in determining EDG in the tariff, NIPSCO links the terms "Outflow" and "Excess Distributed Generation," even though the two terms are defined differently. Specifically, under the "Billing" section of the proposed tariff, it states: "3. The Outflow kWh (Excess Distributed Generation) for the monthly billing cycle shall be multiplied by the Marginal DG Price to determine the DG Billing Credit."

It is improper for NIPSCO to equate "Outflow," as defined by NIPSCO in its proposed tariff, with "Excess Distributed Generation." EDG is not defined as "electricity being produced by [the] Customer above the electricity being used by [the] Customer." Electricity production and consumption on the customer side of the meter are not included in the specific language defining EDG in Ind. Code § 8-1-40-5, and therefore cannot be utilized to determine EDG in this proceeding. Had the Indiana Legislature intended for "Outflow" from a DG customer to be compensated at the EDG rate, it could have easily done so by defining "excess distributed generation" as "the electricity that is supplied back to the electricity supplier by the customer." Instead, the Indiana Legislature used almost the same definition for "excess distributed generation" as is in Commission rules for "net metering," which provides for a specific time period over which the "difference" is taken between the electricity supplied to a customer and the electricity supplied back to the electric supplier.

Mr. Kirkham's discussion that "electricity being produced by the customer *above* the electricity being used by the customer for the same period" [emphasis in original] is not the same as "the difference between two components: (1) the electricity NIPSCO is supplying to the customer and the customer is consuming and (2) electricity being produced by the customer's distributed generation facility." NIPSCO recognizes that electricity only flows in one direction on an instantaneous basis. (Public's Exhibit No. 2, Response to OUCC request 1-001). If electricity is flowing from the DG customer to NIPSCO, there *cannot* be electricity NIPSCO is supplying to the customer, and therefore, there is nothing with which to take the difference as required by Ind. Code § 8-1-40-5. If the DG customer is generating electricity above its consumption, there is *only* electricity flowing from the DG customer to NIPSCO, and it is physically impossible for NIPSCO to provide electricity to the customer at the same instant. Additionally, Mr. Kirkham's description of the "two components" also does not follow the statutory definition of EDG. Finally, the definition for "Outflow" used by NIPSCO is different that the definition for "Outflow" as used by Vectren South in its proposed tariff, which we approved in Cause No. 45378. In that proceeding, "Outflow" was specifically defined as "the separate meter channel measurement of energy delivered by Customer to Company as Excess Distributed Generation." Based on the specific definition of "Outflow" as used in NIPSCO's proposed tariff, NIPSCO improperly determines the amount of "excess distributed generation" and we find that NIPSCO's proposed methodology should be rejected.

~~We find the offered testimony from OUCC witness Alvarez, as will be discussed more fully below, is incorrect in asserting that the outflow Petitioner's meter captures only recognizes Section 5(2). Petitioner's EDG tariff defines EDG consistent with Section 5, and mechanically, Petitioner's evidence shows that in measuring outflow, NIPSCO's meter instantaneously nets both~~

components of EDG under Section 5 at (or within) the meter to arrive at EDG. The EDG that the meter measures is the "difference between" these components, not merely one component. As Mr. Kirkham explained on rebuttal:

> There is one channel labeled 'inflow' that measures the electricity being used by the customer, *net of* the amount of electricity being produced by the customer during the period recorded by the meter. Stated differently, the inflow channel is calculating the difference between two components: (1) electricity being produced by the customer's distributed generation facility and (2) the electricity that NIPSCO is supplying to the customer. It is the difference between these two components that is being measured and recorded by the meter as 'inflow.'
>
> Similarly, the channel labeled 'outflow' measures electricity being produced by the customer *above* the electricity being used by the customer for the same period. Again, stated differently, the outflow channel is calculating the difference between two components: (1) electricity that NIPSCO is supplying to the customer and the customer is consuming and (2) electricity being produced by the customer's distributed generation facility. It is the difference between these two components that is being measured and recorded by the meter as 'outflow.'
>
> If the customer is producing more than they are consuming, it is registered as Outflow. And if they are consuming more than they are producing, it is registered as Inflow.

Petitioner's Exh. No. 2-R at p. 3, lines 1-17 (emphasis in original).

In Cause No. 45378, the OUCC offered testimony from Mr. Alvarez that was substantially similar to what was offered in this proceeding. Here, Mr. Alvarez claims that "[b]y utilizing a utility meter for EDG customers with channels pre-programmed to register net readings of various energy components, it runs counter to the plain language of the statutory definition of 'excess distributed generation' requiring the difference between two components[.]" OUCC Exh. No. 1 at p. 5, line 14-18. Interestingly, in this statement, Mr. Alvarez admits that NIPSCO's meters are registering "net readings," but he still argues that NIPSCO's proposal should not be approved "because the manner in which its proposed utility meters measure EDG do [sic] not conform with the statute's requirements." *Id*. at p. 6, lines 1-3.

We affirm our findings from the Vectren Order on this issue. Mr. Alvarez's position "arrives at the difference between Section 5(1) and 5(2) at the wrong time, effectively deducting inflow a second time and not recognizing the meter itself is measuring the difference in the process, instantaneously netting the two components of EDG at the meter, to arrive at EDG."[16] Vectren Order at p. 35. As provided in OUCC Exh. No. 2 (at p. 8), which is NIPSCO's responses to the OUCC's First Set of Data Requests, "NIPSCO admit[ted] that the kWh amounts recorded and

[16] While Mr. Inskeep pejoratively refers to NIPSCO's proposal as "no netting" throughout his testimony, it is actually more accurate to refer to the monthly netting proposal proffered by the OUCC and Indiana DG as "double netting," as it would net the outflow and inflow on a monthly basis, when netting has already occurred within the meter. For this reason, we do not use the term "no netting" in our Discussion and Findings and, instead, utilize the term "instantaneous netting."

captured in the inflow channel by NIPSCO's meters are not netted against the kWh amounts recorded and captured under the outflow channel by NIPSCO's meters." But this does not mean that NIPSCO's EDG Rider is not compliant with Section 5. Nothing in the language of Section 5 (or any other portion of the Distributed Generation Statutes) requires separate recording of the two components; instead, Section 5 requires that there be a calculation of "the difference between" these two components – with this difference being the basis for what the customer will receive compensation for. Of course, NIPSCO could install two separate meters – one to measure only "the electricity that is supplied by an electricity supplier to a customer that produces distributed generation" and one to measure "the electricity that is supplied back to the electricity supplier by the customer" – and then NIPSCO could separately net the readings from these two meters to come up with "the difference between" the two statutory components. *See* Petitioner's Exh. No. 1-R at p. 7, footnote 3. But this would be inefficient and wasteful, as doing so would require use of two meters at an additional expense, yet would reach the same result as utilization of a single meter.

The Commission finds the instantaneous calculation the meter performs of the difference between the electricity NIPSCO is supplying and the electricity the customer is supplying to Petitioner properly measures EDG under Section 5. Our finding is supported by the substantial evidence Petitioner presented explaining that outflow is calculated in accordance with Section 5 and accounts for both the electricity supplied by the customer to Petitioner and the electricity NIPSCO supplied to the DG customer.

NIPSCO was unequivocal in explaining that the meter registers as outflow the net of both components of EDG in accordance with Section 5. As Petitioner's witness Kirkham testified, "[t]he Outflow (as measured and recorded by NIPSCO's meters) is the net, in kWh, of both components of Section 5 – the 'electricity that is supplied back to the electricity supplier by the customer' and the 'electricity that is supplied by an electricity supplier to a customer.'" Petitioner's Ex. No. 2-R at p. 5, lines 11-14. Essentially, as explained in the above-quoted portion from page 3 of Mr. Kirkham's rebuttal testimony, the meter counts what is going through the meter and puts it into either the inflow or the outflow "bucket," but to get into the outflow "bucket," the meter has computed the difference between the two components under Section 5.

Consistent with NIPSCO's testimony, the proposed EDG Rider tariff defines EDG in accordance with Section 5 as 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. Petitioner's Exh. No. 2, Attach. 2-A at p. 1. An example we used in the Vectren Order is also helpful here.

> [I]t is useful to conceptualize the difference at each instant of time, where the electricity supplied by the supplier and the customer's distributed generation meet at the meter as opposing forces, with the stronger force determining the direction of the flow. If the customer needs less electricity than its distributed generation is supplying, the statute terms the excess or difference between what is being supplied at that instant by [Petitioner] and what is flowing from behind the customer's meter as EDG.

Vectren Order at p. 36.

~~Notwithstanding the foregoing, including our findings in the Vectren Order,[17] the OUCC still claims outflow, as registered in NIPSCO's meter, is not actually the difference between electricity supplied to the customer by the electricity supplier and electricity supplied to the electricity supplier by the customer because electricity only flows one way. We reaffirm our finding from the Vectren Order that "because it can only flow one way, to become outflow, both components of Section 5 are netted at the meter to arrive at EDG." Vectren Order at p. 36.~~

Having reviewed the evidence, as discussed above, the Commission finds that NIPSCO's methodology incorrectly measures ~~the electricity that flows through the meter and registers as outflow is the~~ EDG ~~produced by a DG customer for~~ purposes of Section 5. NIPSCO improperly equates EDG as the difference between electricity production and consumption by the DG customer, which occurs behind the meter and is not included in the statutory definition of EDG. We therefore reject NISPCO's proposal. ~~This excess electricity registered as outflow on the meter is the electricity NIPSCO must accept from the DG customer, regardless of whether that excess electricity is then needed or not needed to meet NIPSCO's overall system needs. The amount of electricity NIPSCO must accept from the customer is the amount of electricity that is supplied back to Petitioner by the customer in excess of the amount NIPSCO supplied to the customer at the same moment – i.e., the difference between the two components of Section 5 occurring at that instant and time.~~

~~In contrast, under the OUCC's interpretation of Section 5 and under Indiana DG's proposal to require NIPSCO to utilize monthly netting, Section 5 would require a utility to permit DG customers to net the amount of the EDG they deliver to Petitioner at various times during the month against the amount of electricity supplied by the utility to them over the course of the same month. However, as discussed below, the Distributed Generation Statutes do not require the monthly or billing period netting which Mr. Inskeep proposes, and the timing of this proposed monthly netting "fails to recognize that the outflow measurement on the meter already is net of the amount of electricity supplied by [Petitioner] to meet the customer's load at the instant the outflow occurs." Vectren Order at p. 36.~~

~~Accordingly, if the OUCC and Indiana DG's view were adopted, the Commission finds it would result in over-valuing EDG beyond what the statute directs. The result would, essentially, be a continuation of net metering under which EDG Rider customers could continue to bank their EDG on the utility's system at no charge until needed at some time later in the month, thereby also continuing to provide EDG Rider customers the retail rate allowed under net metering for "banked" excess generation throughout the month. Only at the end of the monthly netting period would excess energy "returned" to the grid by the distributed generator be valued at the EDG rate.~~

~~Mr. Inskeep argued that "[t]here is no language in the statute that says monthly netting should stop." Indiana DG Exh. No. 1 at p. 16, lines 4-5. But we do not believe the General Assembly enacted the Distributed Generation Statutes to sunset net metering and replace it with a construct that achieves a similar outcome, and none of the testimony offered by Mr. Inskeep on the various, unadopted versions of the DG Statutes (*see generally* Indiana DG Exh. No. 1 at pp.~~

~~[17] The OUCC acknowledges that it "does not agree with the Commission's decision in Cause No. 45378 approving an 'instantaneous netting' methodology and has appealed that decision." Petitioner's Exh. No. 3, OUCC responses to NIPSCO's First Set of Data Requests at Request 1-2.~~

17-21 and Attachments BDI-2 through 6) convinces us otherwise. Our conclusion is buttressed by the legislature having capped the amount of net metering capacity on electricity suppliers' systems, but placing no comparable cap on EDG.

Based on the substantial evidence of record, the Commission finds that, at any given moment in time, NIPSCO's meters register the difference between: (1) the electricity that is supplied by an electricity supplier to a customer that produces DG; and (2) the electricity that is supplied back to the electricity supplier by the customer and that instantaneous netting is permissible under Section 5.

2. Reasonableness of Rates and Charges.

Mr. Inskeep argues that NIPSCO's instantaneous netting proposal "is inconsistent with the principles underlying just and reasonable rates" (*Id.* at p. 5, lines 22-23) and spends several pages testifying why he believes "NIPSCO's [] Proposal Is Inconsistent with Longstanding Ratemaking Principles." *Id.* at Section II.D.5. Instead, Mr. Inskeep advocates for a monthly netting period. As discussed below, and consistent with our findings in the Vectren Order (at p. 37), the Commission finds the instantaneous measurement of EDG, i.e., instantaneous netting as that term is used herein, using the components the General Assembly set forth in Section 5 and calculating the rate per Section 17, yields rates that are just and reasonable. In so finding, we believe the Distributed Generation Statutes are intended to be a transition away from the net metering construct for new DG customers, with the primary value of DG creation in the retail rate context being its offsetting of demand behind the meter, a value overlooked or unreasonably discounted by Indiana DG's focus upon prospective payback and bill differences. Nevertheless, the EDG rate must be reasonable.

There is no dispute that under NIPSCO's proposed EDG Rider, DG customers continue to be able to use the output of their DG systems to offset their need to procure energy from NIPSCO at the full retail rate. We have already found that instantaneous netting reasonably determines any excess DG the customer provides to NIPSCO, net of their own usage, and that NIPSCO has properly calculated a rate to compensate its customers for their EDG. As a result, while we address many of the specific arguments raised by Mr. Inskeep, it is clear that NIPSCO' proposed EDG tariff is reasonable.

The evidence reflects that netting the two elements set forth in Section 5 on a monthly rather than an instantaneous basis, has the effect of substantially reducing the DG customer's bill for energy Petitioner provides, but this reduction is shifted to the NIPSCO customers that do not have a behind-the-meter generation resource. Mr. Inskeep presented a comparison of monthly netting and instantaneous netting (and other netting periods), which shows the amounts DG customers will pay for electricity they consume are lower under a monthly netting paradigm. Indiana DG Exh. No. 1 at p. 67, Table 2.[18]

Although Indiana DG raised some cost-of-service concerns, a large portion of Mr. Inskeep's testimony is spent in support of monthly netting focus on the payback period for customers that install a DG system. *See generally* Indiana DG Exh. No. 1 at Section G, Analysis of Impacts.

[18] We also note that NIPSCO presented a comparison of its current Net Metering paradigm with the proposed instantaneous netting methodology under the EDG Rider in its Petitioner's Exh. No. 2.

Indiana DG witness Straeter similarly offers testimony on this topic. *See generally* Indiana DG Exh. No. 2 at pp. 4-5. For instance, Mr. Inskeep testified a customer's payback period will go from 13.3 years under monthly netting to 27.2 years under instantaneous netting. Indiana DG Exh. No. 1 at p. 69, Table 3. Mr. Inskeep may believe that this longer payback period is evidence that the instantaneous netting proposal is not just and reasonable. But the Commission is concerned with the reasonableness and implications for DG customers *and* non-DG customers.

Consistent with our findings in the Vectren Order, we find the evidence in this proceeding demonstrates that, "ultimately, DG customers' faster payback periods translate to the utility's [non-DG] customers paying costs associated with the excess electricity DG customers put on [Petitioner's] system – whether needed or not – including through the FAC." Vectren Order at p. 38 (internal citations omitted). Under a monthly netting paradigm, NIPSCO's non-DG customers would also pay for the electricity consumed by the DG customers when they take electricity from Petitioner at no cost, at a different time later in the month. EDG is not, literally, stored for the DG customer's future use. Accordingly, we cannot conclude it is just and reasonable for Petitioner's other customers to subsidize the payback periods of DG customers by the continuation of monthly netting, as opposed to instantaneous netting. Monthly netting is prescribed for net metering customers. However, the legislature created a specific EDG rate that differs from the net metering retail rate. Furthermore, "the statute is silent regarding the frequency with which a utility must calculate EDG, leaving it to the Commission to exercise its expertise and discretion in determining the reasonableness of a utility's proposed netting period for EDG." Vectren Order at p. 38.

Without acknowledging the legislative intent to limit the amount of DG that utilities must accept, Mr. Inskeep asserts that NIPSCO's instantaneous netting proposal is not "reflective of the value DG customers of the benefits DG customers provide." Indiana DG Exh. No. 1 at p. 24, line 1; *see also id.* at p. 30, line 17 to p. 31, line 4. Similarly, Mr. Straeter offers testimony about the purported "benefits that distributed customer owned solar generation bring to NIPSCO and all NIPSCO customers." Indiana DG Exh. No. 2 at p. 8, lines 1-2 and pp. 8-9. The Commission finds, however, that the record does not support finding any such benefit justifies subsidization by non-DG customers of DG customers' payback periods.

If a DG customer wants to continue the monthly netting paradigm and use the electricity they produce over the course of a month to offset their consumption later in the month, they have the option to do so by installing additional behind the meter equipment such as a battery. Mr. Inskeep may complain that "NIPSCO offers no proposal to mitigate the upfront cost of customer investments in battery energy storage systems, or innovative proposals. . . that would help customers and the grid benefit from batteries' capacity located on the customer's premises" (*Id.* at p. 74, lines 1-4), but this is no grounds for not approving NIPSCO's EDG Rider. It is also not surprising that NIPSCO's EDG Rider, which NIPSCO repeatedly noted is intended simply to comply with the Distributed Generation Statutes, would not include proposals to subsidize battery energy storage or other "innovative proposals." This does not change the fact that batteries for home solar systems are readily available in today's market and can be purchased by DG customers if they so choose. Mr. Inskeep testified that battery energy storage systems are typically too expensive for individual customers to install (*Id.* at p. 73, lines 12-13), which would presumably lengthen the financial payback time for a solar energy investment.

The Commission is not persuaded the evidence offered by Indiana DG, including but not limited

~~to a lengthened payback period, requires NIPSCO to continue allowing customers that own DG resources to, effectively, use its electric system essentially as their battery by using EDG credited during prior periods to offset inflows occurring any time during the month. We also note that Section 19 provides support that legislative intent was otherwise by providing a means to eliminate any subsidy if the EDG tariff does not do so. We find instantaneous netting reasonably limits using the grid as DG customer storage.~~

~~Based on the evidence, the Commission finds instantaneous netting will reasonably result in new EDG Rider customers paying for the energy they are supplied by NIPSCO, no more and no less. Likewise, instantaneous netting compensates the DG customer for the energy they produce in excess of the amount NIPSCO supplied at that time at the prescribed EDG rate. Accordingly, the Commission finds Petitioner's proposed instantaneous netting mechanism yields rates that are just and reasonable for NIPSCO DG and non-DG customers, consistent with applicable statutes and cost-of-service principles. The fact that DG customers are generating behind the meter and, consequently, buying less, will generate value and return on their private investment.~~

~~Additionally, Mr. Inskeep notes that Rider 878 represents NIPSCO's avoided cost rate under the Public Utility Regulatory Policies Act of 1978 ("PURPA"), and as such, reflects NIPSCO's incremental cost. He argues that "[i]t would be an absurd result and illogical to assume the General Assembly intended for DG customers to be compensated at a rate far below NIPSCO's avoided cost rate while also experiencing less certainty in pricing from year-to-year." *Id*. at p. 30, lines 10-16. Above, we have found that NIPSCO's EDG price is both compliant with the Distributed Generation Statutes and just and reasonable. This argument by Mr. Inskeep does nothing to change our determination on this issue.~~

C. Miscellaneous Technology, Tariff, and Other Concerns.

[The OUCC takes no position on the language in this section]

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. NIPSCO's ~~rate for the procurement of~~improperly determines EDG ~~is approved in accordance with~~pursuant to Ind. Code §§ 8-1-40-5~~16 and -17~~.

2. NIPSCO's proposed EDG Rider ~~and other changes contained in Petitioner's Exh. No. 2, Attachment C to its Tariff for Electric Service to implement EDG Rider are approved~~is rejected.

~~3. Prior to implementing its EDG Rider and changes contained in Petitioner's Exh. No. 2, Attachment C to its Tariff for Electric Service, and any amendment thereto, NIPSCO shall file such documents under this Cause for approval by the Commission's Energy Division.~~

~~4. NIPSCO is authorized to recover credits provided to EDG Rider customers through its FAC proceedings.~~

~~5. Until otherwise ordered, NIPSCO shall annually update its approved EDG rate by March 1 via a compliance filing under this Cause based on updated LMP data for the prior calendar year.~~

~~6~~3. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:
APPROVED:

I hereby certify that the above is a true
and correct copy of the Order as approved.

_____
Dana Kosco,
Secretary of the Commission

CERTIFICATE OF SERVICE

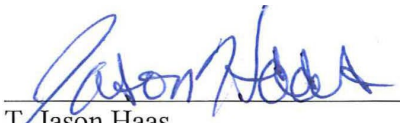
This is to certify that a copy of the ***Indiana Office of Utility Consumer Counselor's and Joint Parties Proposed Order*** has been served upon the following parties of record in the captioned proceeding by electronic service on September 24, 2021.

NIPSCO, LLC
Robert E. Heidorn
Bryan M. Likins
Alison M. Becker
NIPSCO, LLC
rheidorn@nisource.com
blikins@nisource.com
abecker@nisource.com

CAC-Intervenor
Jennifer A. Washburn
Reagan Kurtz
CITIZENS ACTION COALITION
jwashburn@citact.org
rkurtz@citact.org

Indiana DG-Intervenor
Robert M. Glennon
robertglennonlaw@gmail.com

SUN-Intervenor
Jennifer Washburn
CITIZENS ACTION COALITION
jwashburn@citact.org



T. Jason Haas
Attorney No. 34983-29
Deputy Consumer Counselor

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
PNC Center
115 West Washington Street
Suite 1500 South
Indianapolis, IN 46204
infomgt@oucc.in.gov
317/232-2494 – Phone
317232-3315 – Haas Direct Line
317/232-5923 – Facsimile