

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANA MICHIGAN POWER )  
COMPANY FOR APPROVAL OF A TARIFF )  
RATE AND ACCOMPANYING TARIFF TERMS )  
AND CONDITIONS FOR THE PROCUREMENT )  
OF EXCESS DISTRIBUTED GENERATION )  
PURSUANT TO IND. CODE CH. 8-1-40. )

CAUSE NO. 45506

**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S**  
**PROPOSED ORDER**

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

Respectfully submitted,



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

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ORDER OF THE COMMISSION

**Presiding Officers:**

**David L. Ober, Commissioner**

**David Veleta, Administrative Law Judge**

On March 1, 2021, Indiana Michigan Power Company (“Petitioner” or “I&M”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking approval of its proposed tariff rate (“Rider EDG”) for the procurement of excess distributed generation (“EDG”), pursuant to Ind. Code ch. 8-1-40 (the “Distributed Generation Statute” or “DG Statute”). In support of its Verified Petition, on March 12, 2021, Petitioner prefiled the direct testimony of the following witnesses:

- Dona R. Seger-Lawson, Director of Regulatory Services; and
- Kurt C. Cooper, Regulatory Consultant Principal.

Multiple petitions to intervene were filed in this Cause, including a petition to intervene filed on March 3, 2021, by Citizens Action Coalition of Indiana, Inc. (“CAC”) that was granted on March 22, 2021; a petition to intervene filed on March 22, 2021, by Indiana Distributed Energy Alliance, Inc. (“IndianaDG”), which was granted on March 30, 2021; and a petition to intervene filed by Solar United Neighbors (“SUN”), which was granted on March 31, 2021. Because CAC’s counsel also appeared for SUN, CAC and SUN may collectively be referenced as “Joint Intervenors.”

On July 13, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled the testimony of John E. Haselden, Senior Utility Analyst. On the same date, IndianaDG prefiled the testimony and attachments of the following:

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

Additions and corrections to Mr. Inskeep’s direct testimony were filed on July 28, 2021.

On August 6, 2021, I&M prefiled the rebuttal testimony and attachments of Ms. Seger-Lawson and Mr. Cooper. Corrections to Mr. Cooper's rebuttal testimony were filed on August 12, 2021.

On August 27, 2021, I&M filed Petitioner's Objections to and Motion to Strike Portions of the Prefiled Testimony of Mr. Inskeep and Mr. Straeter's prefiled testimony. On September 3, 2021, IndianaDG filed IndianaDG's Response to I&M's Objections and Motion to Strike.

On September 7, 2021, the OUCC filed Public's Exhibit No. 2, consisting of certain discovery responses from the Petitioner. On August 7, 2021, I&M filed a Notice of Agreement to Waive Cross-Examination, Stipulation of Facts, and Withdrawal of Motion to Strike.

An evidentiary hearing was held in this matter on at 9:30 a.m. on September 8, 2021, in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, the prefiled testimony and exhibits of Petitioner, the OUCC, and the Joint Intervenors were offered and admitted into evidence without objection, and all parties waived cross-examination of the other parties' witness.

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

**1. Notice and Jurisdiction.** Due, legal, and timely notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. I&M is a public utility as defined in Ind. Code § 8-1-2-1 and an electricity supplier as defined in Ind. Code § 8-1-40-4(a). I&M is subject to the jurisdiction of the Commission in the manner and to the extent provided by Indiana law. Indiana 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 that electricity supplier's customers. Accordingly, the Commission has jurisdiction over I&M and the subject matter of this Cause.

**2. Petitioner's Characteristics.** I&M is a wholly-owned subsidiary of American Electric Power Company, Inc. I&M is a corporation organized and existing under the laws of the State of Indiana with its principal offices at Indiana Michigan Power Center, Fort Wayne, Indiana. I&M has corporate power and authority, among other things, to engage in generating, transmitting, distributing, and selling electric energy within the states of Indiana and Michigan.

**3. Applicable Law.** In 2017, the Indiana General Assembly enacted the Distributed Generation Statute (Ind. Code § 8-1-40-1 *et seq.*) The DG Statute established a new statutory paradigm -- ending net metering in 2022, grandfathering in existing net metering customers for multiple years, requiring Indiana's electricity suppliers to allow qualifying DG customers to offset their own electricity requirements, and requiring electricity suppliers to compensate qualifying DG customers for the excess distributed generation those customers send back to the electricity supplier's grid at a prescribed rate based on wholesale prices for electricity. Under the DG Statute, "[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.”<sup>1</sup>  
*See* Section 16.

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<sup>2</sup> paid by the electricity supplier during the most recent calendar year; multiplied by
- (2) one and twenty-five hundredths (1.25).

Following approval of Rider EDG, Section 16 requires I&M 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 I&M 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 I&M at the premises. Under Ind. Code § 8-1-40-15 (“Section 15”), amounts credited to a customer for EDG “shall be recognized in the electricity supplier’s fuel adjustment proceedings under IC 8-1-2-42.”

**4. Relief Requested.** Pursuant to Sections 10 and 16, I&M requests approval of its proposed rate for the procurement of EDG from qualifying DG customers, as well as approval of its proposed Rider EDG, to be effective July 1, 2022. Petitioner submitted its proposed Rider EDG as part of its evidence. Per Section 18, proposed Rider EDG 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 Rider EDG customer for as long as that customer receives service from I&M at the premises. Petitioner proposes to determine EDG based on instantaneously measuring the net of the electricity supplied to I&M by the customer and the electricity supplied to the customer by Petitioner. I&M also requests authority to update Rider EDG annually, by March 1, via a compliance filing, in addition to all other appropriate relief.

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<sup>1</sup> Ind. Code § 8-1-40-10 (“Section 10”) of the DG Statute provides for an earlier filing date if the electricity supplier will reach the net metering cap before July 1, 2022. Petitioner’s evidence indicates that it will not reach that cap prior to July 1, 2022. Pet. Ex. 2, at p. 10. Subject to Ind. Code §§ 8-1-40-13 and -14, I&M’s net metering tariff must remain available to its customers until July 1, 2022. *See* Section 1

<sup>2</sup> Ind. Code § 8-1-40-6 (“Section 6”) of the DG Statute 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.”

**5. Petitioner's Case-in-Chief.**

A. Dona R. Seger-Lawson. Ms. Dona Seger-Lawson testified that I&M's filing was made in accordance with Ind. Code § 8-1-40-16, which requires an electric utility to file a petition requesting a rate for the procurement of excess distributed generation by March 1, 2021, and to provide an updated rate each year. Pet. Ex. No. 2, p. 3.

Ms. Seger-Lawson testified that I&M has proposed an EDG tariff as part of its filing, which under Ind. Code § 8-1-40-10, must be in place by July 1, 2022. *f* p. 3.

Ms. Seger-Lawson testified that I&M calculated the EDG credit in accordance with Sections 17 and 18, which require an electric utility to compensate a customer that provides excess distributed generation through a credit on the customer's monthly bill equal to the average marginal price of electricity paid by the utility during the most recent calendar year, multiplied by 1.25. *Id.* at p. 4. Ms. Seger-Lawson stated that the "marginal price of electricity" is defined as the hourly market price for electricity as determined by the utility's regional transmission organization. *Id.* at p. 4. Consistent with the statute, Ms. Seger-Lawson testified that I&M calculated the average Real-Time Locational Marginal Price ("LMP") for its load zone within PJM Interconnection ("PJM"), and multiplied that by 1.25 in order to calculate its EDG credit. *Id.* at p. 4. Ms. Seger-Lawson testified that the Average LMP for the I&M load zone in 2020 was \$20.65/MWh or \$0.02065/kWh; and therefore, the EDG credit I&M has proposed in its initial tariff is \$0.02581/kWh. *Id.* at p. 4, Attachment DSL-1.

Ms. Seger-Lawson testified that I&M proposes to base the EDG credit on the Real-Time LMP because the Day-Ahead LMP is based upon generation that is forecasted to be needed, while the Real-Time LMP is based upon generation that is utilized but was not forecasted in the Day-Ahead process. *Id.* at p. 4. She testified that excess distributed generation that I&M will purchase from customers is not forecasted, which makes the Real-Time LMP the most logical basis for the calculation of the EDG credit. *Id.* at p. 4. Ms. Seger-Lawson testified that I&M plans to make an annual 30-day filing by March 1 each year to update the EDG credit based on the most recent calendar year Real-Time LMP prices for I&M's load zone. *Id.* at p. 4.

Ms. Seger-Lawson testified that I&M will administer its Net Metering Tariff in accordance with the two grandfathering provisions in the DG Statute: Ind Code §§ 8-1-40-13 and -14. *Id.* at p. 5. Ms. Seger-Lawson testified that customers who meet the grandfathering criteria specified in those sections of the DG Statute will be permitted to remain on I&M's Net Metering Tariff until the earlier of the date the customer removes or replaces their net metering facility or the dates specified in Ind Code §§ 8-1-40-13 and -14. *Id.* at 5.

Ms. Seger-Lawson testified that I&M plans to reflect the cost of purchasing EDG in its Fuel Adjustment Clause ("FAC") so that any amount paid for customer generated electricity will be purchased at the EDG amount and used as a source of supply to all customers throughout I&M's service territory. *Id.* at p. 6.

Ms. Seger-Lawson testified to how I&M plans to calculate excess distributed generation under Ind. Code § 8-1-40-5, explaining that I&M will use a two-channel metering system to measure all energy consumed by the customer (delivered by the utility) and energy produced

(received by the utility) onto the grid by a customer-owned generator in Indiana. *Id.* at p. 6. She testified that I&M will measure excess distributed generation by recording each instance where the amount of energy produced by the customer-owned generation exceeds the amount of energy that is being consumed at that point in time. *Id.* at p. 6. Ms. Seger-Lawson testified that I&M is not proposing a time period over which energy received by the utility will be netted against energy delivered by the utility. *Id.* at p. 7.

Ms. Seger-Lawson testified that I&M will charge a qualifying DG customer standard tariff rates for all energy the customer consumes (delivered by I&M), and it will be credited the EDG rate for all energy it produces (received by I&M). *Id.* at p. 7. Ms. Seger-Lawson explained that the proposal is based on the fact that the DG Statute replaces net metering with a procurement requirement that approximates utility purchases from the wholesale market, and “netting” energy delivered against energy received over a long period of time (i.e., a monthly basis) would effectively keep net metering in place. *Id.* at p. 7.

Ms. Seger-Lawson testified that the net metering provisions in 170 IAC 4-4.2 are based on monthly billing. *Id.* at p. 7. She testified that under net metering, a customer is billed on the net energy delivered versus received over a monthly billing period, meaning all energy consumed (delivered) less all excess energy generated (received) is measured over the billing period, which for I&M, is normally 25-40 days. *Id.* at p. 8. Ms. Seger-Lawson stated that if the net amount shows that more energy was consumed by the customer during the billing period, then the customer receives a charge for that usage, but if the net amount results in more energy being pushed onto the grid, then the customer gets a credit for that amount. *Id.* at p. 8.

Ms. Seger-Lawson testified that the DG Statute makes net metering no longer available to new customers on or after July 1, 2022. *Id.* at p. 8.

B. Kurt C. Cooper. Mr. Cooper testified that Rider EDG is consistent with the requirements of the Indiana DG Statute. Pet. Ex. No. 3, at p. 3. Mr. Cooper testified that one difference from I&M’s net metering tariff is the payment methodology -- instead of a system of netting the customer’s monthly usage against their monthly output to the utility, the customer will be paid a market-based rate (plus a premium) under Rider EDG. *Id.* at p. 3. Mr. Cooper testified that costs allocated to all customers will be less under this new market pricing construct. *Id.* at p. 3.

Mr. Cooper testified that there is no cap under Rider EDG as there is under the Rider NMS. *Id.* at p. 3. Mr. Cooper also stated that Rider EDG is not as limited as Rider NMS on the type of generation allowed, although the generator cannot be one that is only used for emergency purposes. *Id.* at p. 3. Mr. Cooper testified that Rider EDG will be available to customers receiving retail electric service from I&M with a generator on their premises that is owned by the customer and is sized at not more than a nameplate capacity of 1 MW or the customer’s average annual consumption of electricity on the premises. *Id.* at p. 4. Mr. Cooper noted that many underlying technical terms of the net metering program are being used as the basis for Rider EDG, for example, those relating to interconnection requirements. *Id.* at p. 3.

Mr. Cooper testified that I&M will provide and maintain metering for Rider EDG customers, and when possible, I&M will install a single watt-hour, dual register meter that can

measure both the kWh “delivered” to and “received” from the customer. *Id.* at p. 4. Mr. Cooper testified that when a single watt-hour dual register is not practical, the service will need to be set to handle two meters -- one to record “delivered” and one to record “received.” *Id.* at p. 5. Mr. Cooper testified that when customer generation is less than customers’ consumption, this is a “delivered” scenario, and all delivered kWh are recorded on that register. *Id.* at p. 4. He testified that when customer generation exceeds their consumption (excess generation), this is a “received” scenario, and all kWh to be procured by I&M is recorded on that register. *Id.* at p. 4. Mr. Cooper explained that under these “delivered” and “received” scenarios, the customer will be billed their standard retail tariff rate for all kWh recorded on the delivered register and will be credited at the approved EDG rate for all kWh recorded on the received register. *Id.* at p. 4.

Mr. Cooper testified that as of July 1, 2022, or earlier if I&M were to reach the cap, I&M will not accept new applications for Rider NMS, and any new customers interested in net metering will be directed to the new Rider EDG. *Id.* at p. 5. Mr. Cooper testified that customers currently participating in Rider NMS will be grandfathered in for a period of time, consistent with the D G Statute. *Id.* at p. 5. Mr. Cooper testified that once the grandfathering period has expired, customers can transition into the EDG program. *Id.* at p. 5. Mr. Cooper testified that I&M plans to communicate the fact that the terms and conditions of a net metering tariff will expire and become unenforceable after June 30, 2022. *Id.* at p. 5. Mr. Cooper also testified about how new customers can enroll in the Rider EDG program. *Id.* at p. 6.

## **6. OUCC’s Direct Testimony.**

A. John E. Haselden. Mr. Haselden testified that the OUCC disagrees with I&M’s definition and application of the term “excess distributed generation” in its proposed Rider EDG tariff. He testified that the OUCC recommends denying I&M’s request for approval of its proposed Rider EDG tariff because the Rider EDG tariff does not comply with the definition of EDG in Ind. Code § 8-1-40-5. Pub.’s Ex. No. 1, pp. 1-2. Mr. Haselden testified that under Ind. Code § 8-1-40-5, 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. *Id.* at p. 2. According to Mr. Haselden, 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. *Id.* at p. 2. Mr. Haselden testified that the OUCC opposes I&M’s proposed metering and billing methodologies for its EDG customers because they do not satisfy or conform to the DG Statute’s requirements. *Id.* at p. 3.

Mr. Haselden testified that I&M’s proposal of crediting the customer for the power cumulatively registered on the meter channel received by the Company from the customer is not consistent with the DG Statute, noting that the proposed tariff reads, “The meter register will record instances when the eligible onsite generation is producing more than what is being consumed at the premises (excess distributed generation) and the customer will be credited for the total of this excess generation on the customer’s current bill for the billing period.” *Id.* at pp. 3-4. He testified that this is not the “difference” between electricity supplied by the electricity supplier to a customer that produces distributed generation and the electricity that is supplied back to the electricity supplier by the customer, as specified by the DG Statute. *Id.* at p. 4. Mr. Haselden testified that I&M’s methodology incorrectly calculates EDG by determining the difference between onsite generation and consumption, as measured in the “received” register, which is not included in the

statutory definition. *Id.* at p. 4. Mr. Haselden testified that this methodology also ignores the statutory component of “electricity that is supplied by an electricity supplier to a customer that produces distributed generation.” *Id.* at p. 4.

Mr. Haselden testified that I&M’s proposal differs from Vectren South’s recently approved order in Cause No. 45378, in that I&M’s proposal specifically references these non-statutory factors as the basis for the EDG methodology. *Id.* at p. 4. Mr. Haselden further noted that the OUCC respectfully disagrees with the Commission’s decision in Cause No. 45378 and has appealed the final order. *Id.*

**7. IndianaDG’s Direct Testimony.**

A. Benjamin D. Inskeep.

[The OUCC accepts IndianaDG’s summary of Mr. Inskeep’s testimony]

B. Jim Straeter.

[The OUCC accepts IndianaDG’s summary of Mr. Straeter’s testimony]

**8. Petitioner’s Rebuttal Evidence.**

A. Dona Seger-Lawson. On rebuttal, Ms. Seger-Lawson responded to policy issues raised by IndianaDG witnesses Inskeep and Straeter regarding their claims that the proposed EDG rate will adversely impact solar companies and solar customers. Pet. Ex. No. 4, p. 2. She stated that the Indiana General Assembly made the policy decision to end net metering in Indiana and as such, policy issues are irrelevant in this cause. *Id.* Nevertheless, Ms. Seger-Lawson pointed out that there are a number of countervailing policy considerations that support ending net metering. *Id.* at pp. 2-3. Ms. Seger-Lawson reiterated that I&M’s proposal follows the DG Statute and is made in compliance with the law. *Id.* at p. 3.

Ms. Seger-Lawson refuted Mr. Inskeep’s claim that I&M does not possess “the most basic data on its DG customers.” *Id.* at p. 4. She testified that, although I&M did not have all the information in the form that IndianaDG requested, I&M possesses detailed information concerning proposed and in-service DG facilities. *Id.*

In response to Mr. Inskeep’s discussion about I&M’s COGEN tariff rate being higher than the EDG rate, Ms. Seger-Lawson argued that the two rates are the result of two different government-prescribed calculations—the COGEN rate is calculated based on a Commission rule, while the EDG rate calculation is prescribed by the DG Statute. *Id.* at pp. 4-5. Ms. Seger-Lawson stated that if a customer meets the eligibility requirements for both tariffs, then that customer may choose which tariff it wants to participate in. *Id.* at p. 5.

Regarding Mr. Inskeep’s statements that Indiana should use monthly netting because other states use monthly netting, Ms. Seger-Lawson stated again that I&M’s proposal follows the DG Statute. *Id.* at p. 6. Ms. Seger-Lawson rebutted Mr. Inskeep’s argument that the DG Statute calls for monthly netting, testifying that the statute references the monthly bill as to “where” the credit is provided to EDG customers, not “how” the credit is calculated. *Id.* She testified that it is logical



that the DG Statute requires the utility to provide the EDG credit on the monthly bill because that is how customers are normally billed. *Id.*

Ms. Seger-Lawson argued that the “no regrets” proposal that IndianaDG supports would effectively maintain net metering beyond the required end date of July 1, 2022. *Id.* She further testified that the DG Statute exemplifies gradualism through its grandfathering periods, and the EDG rate calculation is simple and easy to understand, and provides a level playing field with other wholesale power options. *Id.* at 6-7. She testified that the statutory EDG rate calculation is fair, avoids undue discrimination, and represents a considered policy choice made by the legislature. *Id.* at 7.

In response to Mr. Inskeep’s criticism that I&M’s proposed EDG rate is not supported by a cost of service study, Ms. Seger-Lawson testified that the results of a cost of service study of the costs imposed on the system by DG customers as a class is not needed to comply with the DG Statute. She testified that the EDG rate is analogous to market-based wholesale rate, which is not developed through a cost of service study. *Id.*

B. Kurt C. Cooper. In his rebuttal, Mr. Cooper reiterated that I&M’s proposal meets the statutory definition of “excess distributed generation.” Pet. Ex. No. 5, at p. 2-3. He testified that Ind. Code ch. 8-1-40 requires the utility to compensate a DG customer for electricity produced by the customer and delivered to the grid, over and above any electricity produced by the customer and used for the customer’s own electricity requirements at a certain rate. *Id.* at p. 3. He stated that under I&M’s proposal, I&M will compensate the customer for that “excess” electricity at the statutorily-required rate. *Id.*

Mr. Cooper testified that the “difference” required by the DG Statute is calculated at the meter during the instantaneous measure that the meter performs. *Id.* He testified that the metering will separately track energy supplied by the utility that is used by the customer, and energy sent back to I&M’s distribution infrastructure that is produced by the customer in excess of what they can use. The monthly billing statement will include charges for utility-provided energy consumed by the customer and credits for all the excess energy produced by the customer and sent back to the grid. *Id.* Mr. Cooper testified that nothing in the DG Statute implies the use of monthly netting. *Id.* at p. 8.

Mr. Cooper testified that the DG Statute unequivocally ends net metering and that there is nothing in the statute that indicates parts of the old net metering paradigm should remain in place, with the exception of the grandfathering provisions. *Id.* at p. 6. Mr. Cooper disagreed with Mr. Inskeep’s interpretation of SB 309’s legislative history, testifying that there is no indication that the legislature intended to keep a part of net metering in place. *Id.* Further, Mr. Cooper testified that I&M’s proposal is not a buy-all, sell-all proposal because under the EDG Statute, the customer is able to serve itself first and then be charged the standard tariff rates only for its incremental usage above the amount of electricity the customer produces. *Id.* at p. 8. Mr. Cooper testified that this is a net billing structure, not a buy-all, sell-all structure. *Id.*

Mr. Cooper responded to Mr. Inskeep’s argument that I&M should calculate the EDG rate by using only daylight hours to calculate the average wholesale rate, testifying that the DG Statute requires the EDG rate to be calculated using a historical average annual wholesale power price and

says nothing about limiting the calculation to daylight hours. *Id.* at p. 9. Mr. Cooper testified that Mr. Inskeep ignored the fact that the DG Statute includes a 25% adder to the average annual wholesale price and that the statute reasonably considers all eligible generation types, including non-solar generation. *Id.*

Mr. Cooper testified that there is nothing in the DG Statute which directs retention or use of monthly netting, and I&M disagrees with Mr. Inskeep's proposed daily or weekly netting alternatives, with the added reason that the majority of the metering in place today at I&M or I&M's billing system would not support an hourly, daily, or weekly netting methodology. *Id.*

Mr. Cooper testified that I&M's proposed EDG tariff contains the following language: "If the credit for energy procured from the customer exceeds the current charges in the billing period, any excess credit shall be carried forward and applied against future charges to the customer as long as the customer receives retail electric service from I&M at this meter location on the customer premises. Any unused credit shall revert to the Company." *Id.* at p. 10. He testified that I&M is agreeable to modifying this provision to state: "If the credit for energy procured from the customer exceeds the current charges in the billing period, any excess credit shall be carried forward and applied against future charges to the customer as long as the customer receives retail electric service from I&M at this meter location on the customer premises. Any unused credit shall be credited back to all customers through the FAC." *Id.*

Regarding Mr. Inskeep's recommendation that the Commission reject the provision in the proposed tariff that the customer install a disconnect switch, Mr. Cooper testified why the requirement is prudent, in the public interest, and permitted under Indiana law. *Id.* at p. 11.

Mr. Cooper concluded his rebuttal testimony by stating that I&M's proposed EDG tariff rate language closely aligns with Vectren South's in that they both have a straightforward marginal DG price calculation that follows the statute, treat inflow and outflow of energy the same, and do not utilize any system of netting the customer generation with utility supplied generation. *Id.* at pp. 11-12.

**9. Commission's Discussion and Findings.**

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

[The OUC takes no position on the language proposed in this section A.]

**B. EDG Tariff Determination.** In addition to seeking approval of its rate for EDG, I&M asks the Commission to approve its proposed EDG tariff, i.e., Rider EDG, so Petitioner can apply the rate. As proposed, Rider EDG is based upon instantaneous netting, i.e., instantaneously measuring the difference between the amount of electricity a customer receives from the utility and the amount of electricity the customer supplies to the utility. Under Rider EDG, the net electricity a customer supplies I&M ("received") is instantaneously measured. The OUC and IndianaDG challenged Petitioner's calculation of this difference, arguing whether instantaneous

“netting” is permitted under Section 5, and if so, whether instantaneous “netting” results in unreasonable rates. We address both issues below.

1. Section 5. The OUCC and IndianaDG both assert Petitioner’s proposal to use instantaneous netting does not comply with the Distributed Generation Statute. Specifically, they contend I&M 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 I&M’s determination in its proposed tariff of the statutory definition of “excess distributed generation.” If not, the Commission must reject I&M’s proposed tariff. As described further below, we find that I&M’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 I&M’s proposal cannot be approved. 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 I&M supplies to a DG customer and the electricity that the DG customer supplies back to I&M. This straightforward interpretation of Excess Distributed Generation is driven by the plain language of the statute, supported by the testimony of OUCC and IndianaDG witnesses.

I&M’s EDG tariff language does not define “excess distributed generation” using the statutory language, nor does the tariff language refer to the difference between electricity that is supplied by an electricity supplier to a customer that produces distributed generation; and the electricity that is supplied back to the electricity supplier by the customer. Rather, I&M’s Rider EDG states the meter “will record instances when the eligible onsite generation is producing more than what is being consumed at the premises” as excess distributed generation, and that “the

customer will be credited for the total of this excess generation on the customer's current bill for the billing period." (Pet. Ex. No. 3, Attachment KCC-1, p. 3 of 7).

It is improper for I&M to equate a customer's electricity consumption and generation, as explicitly stated by I&M in its proposed tariff, with "excess distributed generation." 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 electricity supplied from a DG customer to the utility to be compensated at the EDG rate, it could have easily done so by specifically defining "excess distributed generation" as only "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. Cooper's discussion that:

This definition [in Ind. Code § 8-1-40-5] of 'excess distributed generation', along with other provisions of Ind. Code ch. 8-1-40, requires the utility to compensate a distributed generation (DG) customer for electricity produced by the customer and delivered to the grid, over and above any electricity produced by the customer and used for the customer's own electricity requirements, at a certain rate

is not the same as the requirement in Ind. Code § 8-1-40-5 that EDG is the difference between two components: (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. (Pet. Ex. No. 5, p 2-3). I&M recognizes that electricity only flows in one direction on an instantaneous basis. (Public's Ex. No. 2, I&M's Response to Data Request OUC 1-02). If electricity is flowing from the DG customer to I&M, there *cannot* be electricity I&M 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 I&M as measured at the meter, and it is physically impossible for I&M to provide electricity to the customer at the same instant. Using only electricity delivered from the DG customer to the utility as EDG disregards this fact, and invalidates the statutory requirement that there also must be "electricity supplied from an electricity supplier to a customer that produces distributed generation" and a difference between these two components. Finally, the tariff proposed by I&M is distinguished from that proposed in Cause No. 45378 by Vectren South (now CenterPoint), as the description of "excess distributed generation" used by I&M in Rider EDG is different than the definition for "excess distributed generation" as used by Vectren South. In that proceeding, "excess distributed generation" was defined using the statutory language, and "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 language describing "excess distributed generation" as used by I&M in Rider EDG, I&M improperly determines the amount of "excess distributed generation" and we find that I&M's proposed methodology should be rejected.

Having reviewed the evidence, as discussed above, the Commission finds that I&M's proposed methodology incorrectly measures EDG for purposes of Section 5. I&M improperly measures 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 I&M's proposal.

**C. Technology, Tariff, and Other Concerns.**

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

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

1. I&M improperly determines EDG pursuant to Ind. Code § 8-1-40-5.
2. I&M's Rider EDG 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.**

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**Dana A. Kosco,  
Secretary of the Commission**

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the *Indiana Office of Utility Consumer Counselor Proposed Order* has been served upon the following parties of record in the captioned proceeding by electronic service on October 26, 2021.

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