STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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

INDIANA DISTRIBUTED ENERGY ALLIANCE'S

SUBMISSION OF PROPOSED ORDER

Indiana Distributed Energy Alliance ("IndianaDG"), by counsel, respectfully submits its form of proposed order in the above-referenced Cause as attached hereto.

Respectfully,

/s/ R. M. Glennon

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CERTIFICATE OF SERVICE

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

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

ORDER OF THE COMMISSION

Presiding Officers:
Stefanie Krevda, Commissioner
David Ober, Commissioner
David Veleta Administrative Law Judge

On February 28, 2021, Duke Energy Indiana, LLC ("Duke Energy Indiana," "Company," or "Petitioner") filed its Verified Petition with the Indiana Utility Regulatory Commission ("Commission") for approval of a tariff rate for the procurement of excess distributed generation ("Rider EDG") pursuant to Indiana Code 8-1-40 (the "Distributed Generation Statute" or "DG Statute").

Numerous Petitions to Intervene were filed. These included a Petition to Intervene filed on March 3, 2021, by Citizens Action Coalition of Indiana, Inc. ("CAC") and a Petition to Intervene filed on March 8, 2021, by Indiana Distributed Energy Alliance, Inc. ("IndianaDG"). On March 22, 2021, the Commission issued Docket Entries granting the CAC's and IndianaDG's Petitions to Intervene. On March 23, 2021, Solar United Neighbors ("SUN") filed its Petition to Intervene and on March 31, 2021, the Commission granted SUN's Intervention. On April 14, 2021, Solarize Indiana, Inc. ("SI") filed its Verified Petition to Intervene and on April 28, 2021, the Commission granted SI's intervention. On May 14, 2021, Vote Solar and Environmental Law & Policy Center ("ELPC") both filed Petitions to Intervene and on June 17, 2021, the Commission granted each of their interventions.

On May 27, 2021, Duke Energy Indiana filed its case-in-chief testimony, exhibits, and workpapers. On September 20, 2021, the OUCC, IndianaDG and SI filed their respective case-in-chief testimony and exhibits. On September 21, 2021, the OUCC filed a Motion for Leave to Late File Joint Motion for Summary Judgment and Joint Movant's Motion for Summary Judgment. On September 23, 2021, Duke Energy Indiana filed a Motion for Protection of Confidential and Proprietary Information to cover the confidential materials certain intervenors were wanting to file as part of their cases-in-chief. Also, on September 23, 2021, Duke Energy Indiana filed its Response to Joint Movants' Motion for Summary Judgment.

On October 12, 2021, Duke Energy Indiana filed its rebuttal testimony and Petitioner's Objections to and Motion to Strike Portions of the Prefiled Testimony of Benjamin D. Inskeep, Chris Rohaly, Barry S. Kastner, Darrell T. Boggess, and Michael A. Mullett. On October 14, 2021, SI filed its Verified Motion for Leave to Supplement the Prefiled Testimony of Barry S. Kastner and the OUCC filed Joint Movants' Reply to Duke Energy Indiana's Response to Motion for Summary Judgment. On October 19, 2021, Petitioner filed its Opposition to SI's Motion for Leave to Supplement the Prefiled Testimony of Barry S. Kastner. On October 20, 2021, the Commission issued a Docket Energy granting Petitioner's Motion for Confidentiality. On October 21, 2021, IndianaDG and SI filed their Responses to Petitioner's Motion to Strike and the OUCC filed its Notice of Filing Confidential Information. On October 25, 2021, the OUCC filed an Opposed Joint Motion to Continue the Evidentiary Hearing Pending Hearing and Order on Joint Motion for Summary Judgment. On October 28, 2021, the Commission issued a Docket Entry on the outstanding motions, denying Joint Movants' Motion for Summary Judgment, denying Petitioner's Motion to Strike, and denying SI's Motion to Supplement the prefiled testimony of Barry S. Kastner.

The Commission noticed this matter for an evidentiary hearing at 9:30 a.m. on November 1, 2021, in Hearing Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. Duke Energy Indiana, the OUCC, IndianaDG, SI, and CAC, by counsel, participated in the hearing. At the outset of the evidentiary hearing, on behalf of all Joint Movants, counsel for the OUCC appealed to the full Commission the Presiding Officers' October 28, 2021 Docket Entry denying Joint Movants' Motion for Summary Judgment. Counsel for SI, CAC and IndianaDG confirmed that those parties were joining this appeal to the full Commission. SI also appealed to the full Commission the Presiding Officers' October 28, 2021 Docket Entry denying its Motion to Supplement the Prefiled Testimony off Barry S. Kastner. Counsel for SI offered argument in support of both appeals. The Commission allowed SI to enter SI OOP-1, the Supplemental Testimony of Barry S. Kastner, which was admitted into the record for the sole limited purpose of making an offer of proof. The Commission took the appeals to the full Commission under advisement. Thereafter, the testimony and exhibits of Duke Energy Indiana, the OUCC, IndianaDG, and SI were admitted without objection. Also, additional cross-examination exhibits were entered into the record without objection including Public's CX-1 and CX-1C; IndianaDG CX-1 and CX-2; SI CX-1, SI CX-2, SI CX-3, and SI Administrative Notice Exhibit 1.

Based upon applicable law and evidence presented herein, the Commission now finds as follows:

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. Petitioner is a public utility within the meaning of Indiana Code § 8-1-2-1 and an electricity supplier within the meaning of Indiana 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. Indiana Code § 8-1-40-16 requires an electricity supplier to file a Petition with the Commission requesting a rate for its procurement of excess distributed generation from that electricity supplier's customers. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this Cause.

2. Petitioner's Organization and Business. Duke Energy Indiana is a public utility organized and existing under the laws of the State of Indiana and has its principal office at 1000 E. Main Street, Plainfield, Indiana 46168. Duke Energy Indiana is engaged in rendering electric utility service in the State of Indiana and owns, operates, manages, and controls, among other things, plants and equipment within the State of Indiana used and useful for the production, transmission, delivery, and furnishing of electric service to the public. Duke Energy Indiana directly supplies electric energy to approximately 858,000 customers located in 69 counties in the central, north central, and southern parts of Indiana, and supplies steam service to one customer from its Cayuga Generating Station. Duke Energy Indiana also sells electric energy for resale to Wabash Valley Power Association, Inc. ("WVPA"), Indiana Municipal Power Agency ("IMPA"), and to other utilities that in turn supply electric utility service to numerous customers in areas not served directly by Petitioner.

3. Applicable Law. Senate Enrolled Act 309 ("SEA 309") enacted the Distributed Generation Statute (Indiana Code § 8-1-40-1 *et seq.*) and established a new statutory paradigm under which Indiana's electricity suppliers, including Petitioner, will receive electricity which their customers with qualifying DG resources supply to offset the cost of the electricity supplied to such customers by Petitioner. Under the Distributed Generation 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." Section 16. Indiana Code § 8-1-40-10 of the Distributed Generation Statute 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. *Ind. Code § 8-1-40-10*.

Subject to Indiana Code §§ 8-1-40-13 and -14, Petitioner'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 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. *Ind. Code § 8-1-40-10*.

Once an electricity supplier files a petition under Indiana Code § 8-1-40-16 for a rate for excess distributed generation ("EDG"), Indiana Code § 8-1-40-17 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, Duke Energy Indiana seeks Commission approval of its initial EDG rate various other tariff provisions and the replacement of monthly netting with no netting i.e. "instantaneous netting."

Following approval of Rider EDG, Indiana Code § 8-1-40-16 requires Duke Energy Indiana 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." And Indiana Code § 8-1-40-18 requires that Duke Energy Indiana 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 Duke Energy Indiana at the premises.

Under Indiana Code § 8-1-40-15, 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. <u>Relief Requested</u>. Pursuant to Indiana Code §§ 8-1-40-10 and -16, Duke Energy Indiana requests approval of a rate for the procurement of EDG. Under Indiana Code § 8-1-40-17, that rate is to be effective January 1, 2021, or as soon thereafter as practicable, and to remain in effect until replaced in a subsequent filing. Petitioner submitted the proposed form of Rider EDG as part of its evidence. Per Indiana Code § 8-1-40-18, 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 Duke Energy Indiana at the premises.

Any applications received and approved while Duke Energy Indiana has remaining net metering capacity, as defined in Indiana Code § 8-1-40-12, will remain eligible for and be compensated under the terms of Duke Energy Indiana's Net Metering tariff (Standard Contract

[1] Indiana Code § 8-1-40-6 of the Distributed Generation 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."

Rider 57) through July 1, 2032, assuming the customer's net metering facility is not removed or replaced, in accordance with Indiana Code § 8-1-40-13. In the event Duke Energy Indiana reaches the net metering capacity as defined in the Distribution Generation Statute, Indiana Code § 8-1- 40-10(1) states that Net Metering will remain available for new customers until January 1 of the first calendar year after the net metering capacity is reached or July 31, 2022, whichever is earlier. Duke Energy Indiana anticipates that its Net Metering tariff will remain in effect until July 31, 2022.

5. Petitioner's Case-in-Chief. Petitioner provided the testimony of Roger A. Flick II, Manager, Rates and Regulatory Strategy, to explain and support Petitioner's Verified Petition, which was filed in this Cause on March 1, 2021 (Petitioner's Exhibit 1-A (RAF)) and Petitioner's proposed EDG Tariff (Petitioner's Exhibit 1-B (RAF)). Mr. Flick testified that Petitioner was seeking the Commission's approval of: 1) the Company's proposed EDG rate; 2) the proposed netting period for use in applying the EDG rate; 3) the proposed EDG Tariff; and 4) certain relief related to the expiration of accrued EDG credits when a customer leaves a premise.

Mr. Flick testified that he used the term "Distributed Generation" in his testimony as defined by Indiana Code § 8-1-40-3, which means electricity produced by a generator or other device that is: (1) located on the customer's premises; (2) owned by the customer; (3) sized at a nameplate capacity of the lesser of: (A) not more than one (1) megawatt; or (B) the customer's average annual consumption of electricity on the premises; and (4) interconnected and operated in parallel with the electricity supplier's facilities in accordance with the commission's approved interconnection standards. The term does not include electricity produced by the following: (1) an electric generator used exclusively for emergency purposes; (2) a net metering facility (as defined in 170 IAC 4-4.2-1(k)) operating under a net metering tariff. Mr. Flick further defined the term "Excess Distributed Generation" as used in his testimony as being consistent with the definition of such in Indiana Code § 8-1-40-5, which 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.

Mr. Flick testified as to the statutory definition of the formula to determine the rate to be credited to customers for the procurement of EDG. He testified that under Indiana Code § 8-1-40-17, the proposed rate is 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 further testified that Duke Energy Indiana calculated the average marginal price of electricity paid by the Company during the most recent calendar year in accordance with Indiana Code § 8-1-40-17. The Company calculated the average marginal price of electricity by averaging the 2020 day ahead hourly LMPs at the CIN.PSI load node. The average was calculated by summing the hourly LMPs for the preceding calendar year and then dividing by 8,784, which represents the total hours in the 366 days in 2020. The result was $23.185/MWh. Mr. Flick further testified as to how the Company calculated the EDG rate for the procurement of EDG using the formula and input just described. He testified that the rate, as referenced above, is $23.185 per MWh, which when converted to a per kilowatt-hours (*i.e.*, divided by 1,000), is $0.023185 per kWh. Indiana Code § 8-1-40-6, calls for that marginal cost of electricity, $0.023185 per kWh, to be multiplied by 125%. The product of that formula is $0.028981 per kWh. This rate, $0.028981 per kWh, is offered for Commission review and

approval for use valuing EDG. Workpaper 1 was offered to support the Company's rate calculation.

Mr. Flick testified as to the EDG netting period the Company was proposing. He explained that Indiana Code § 8-1-40-5 defines EDG as the difference between: (1) the electricity that is supplied by an electricity supplier to a customer that produces distributed generation (imports); and (2) the electricity that is supplied back to the electricity supplier by the customer (exports). Unlike the regulations setting the methodology for net metering,[2] the statutory definition for EDG is silent as to the appropriate period of time a utility should use to net a customer's imports and exports of energy over. The Parties in Cause No. 45378 proposed two possibilities for the frequency of the statutorily required EDG calculation. The utility proposed that EDG be calculated instantaneously." Other Parties in Cause No. 45378 proposed that EDG be calculated monthly, just like net metering. The Commission's Order in Cause No. 45378 approved the instantaneous netting term. The Company took notice of this finding and is similarly proposing instantaneous netting for determining aggregate import and export positions.

Mr. Flick testified that there were other issues Petitioner sought to address in its testimony. Specifically, that while it appears clear that Indiana Code § 8-1-40-18 requires participating customers receive a credit on their monthly bills for the total EDG that month and that any excess credit carries forward to the next month, the statute is silent as to the application of any excess EDG credit if a DG customer leaves the premises before that credit has been fully set off against the customer's other charges. As such, the Company proposes that when/if a customer leaves his/her premise any unused credits at the time of a customer leaving expire. Mr. Flick further testified that Indiana Code §§ 8-1-40-10 and -12 will not affect this proceeding as the aggregate amount of net metering facility capacity (62,440 kW)[3] under Petitioner's net metering tariff was approximately 1.2% of its most recent summer peak load (5,091,000 kW)[4] and thus is not expected to equal 1.5% of Petitioner's most recent summer peak load before July 1, 2022. Consequently, Petitioner reasonably expects that its current net metering tariff will remain available until July 1, 2022. The approach proposed herein will allow the Commission to determine the relevant issues in an orderly manner and in advance of July 1, 2022.

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[2] 170 IAC 4-4.2-7 provides, in relevant part, that "[t]he investor-owned electric utility shall measure the difference between the amount of electricity delivered by the investor-owned electric utility to the net metering customer and the amount of electricity generated by the net metering customer and delivered to the investor-owned electric utility *during the billing period*[,]" [emphasis added).

[3] Figure reported in the Commission's 2020 year end Net Metering Report, dated March 2021.

[4] Indiana Code § 8-1-40-10 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 this chapter, petition the commission for approval of a rate for the procurement of excess distributed generation."

Mr. Flick also testified as to how, under Indiana Code § 8-1-40-15, Petitioner would procure the EDG produced by a customer at a rate approved by the Commission. He explained that as this procurement represents a purchase by Petitioner of excess generation, to serve other customers on Petitioner's system, these costs will be recovered as fuel costs, specifically purchased power costs, in its monthly Fuel Adjustment Clause ("FAC").

Mr. Flick concluded his testimony by recommending that the Commission approve Petitioner's requested rate, tariff and other relief and methods expressed in his testimony.

6. Joint Motion for Summary Judgment

A. Introduction. The Joint Motion for Summary Judgment filed by OUCC, IndianaDG, Joint Intervenors and Solarize Indiana ("Joint Movants") is limited to a single but dispositive legal issue: whether Ind. Code Chapter 8-1-40 ("DG Act") authorizes the so-called "instantaneous" netting proposed by DEI to calculate the amount of "excess distributed generation" as that term is defined by the Act. Joint Movants argue that there are no genuine issues of material fact regarding the DEI tariff language and the plain meaning of Sections 5 and 21 of the Act preclude "instantaneous" netting as proposed by the tariff. See Joint Motion, pp. 3-8; Reply, p. 2. In response, DEI argues that "instantaneous" netting is consistent with Section 5 of the Act and the Commission's final order in Cause No. 45378 and there are material issues of disputed fact regarding the Company's tariff language and thus the Commission must deny the Joint Motion. See DEI Response, p. 2. The Presiding Officers issued a docket entry denying the Joint Motion. See October 28, 2021 Docket Entry, p. 1. Joint Movants then all appealed this docket entry to the full Commission, an appeal which the Commission formally took under advisement at the outset of the November 1, 2021 hearing held in this matter. See Hearing Transcript, pp. 7-8, 15.

Generally speaking, DEI views the Joint Motion for Summary Judgment in this case to be a replay of the Joint Motion for Summary Judgment in the Vectren DG Case, Cause No. 45378, with respect to the netting issue. DEI Response, pp. 2-5. In addition, DEI argues that there are disputes of material facts relating to other issues in the case which preclude summary judgment. DEI Response, pp. 5-6. By contrast, Joint Movants contend that there is actually no genuine issue of material fact relating to whether DEI's tariff language complies with the DG Act and that the netting issue is dispositive of DEI's petition as filed so summary judgment is warranted based on that issue alone. Joint Movants' Reply, pp. 2-3. Joint Movants also explain that their motion for summary judgment expressly contemplates leave for DEI to refile its petition and tariff with netting language compliant with the DG Act. Reply, p. 3 n.1. The Presiding Officers' docket entry denied summary judgment, as follows:

> The issues in this proceeding are more extensive than what constitutes excess distributed generation. Thus, the Presiding Officers find the Commission should have the benefit of a full evidentiary hearing upon the issues and are not persuaded Joint Movants have shown there are no genuine issues as to any material fact and they are now entitled to the requested judgment as a matter of law. Therefore, the Presiding Officers DENY the Motion and decline to enter summary judgment for Joint Movants.

Docket Entry, p. 2.

In ruling on Joint Movants' Appeal, the Commission is not bound by either its own prior decision denying summary judgment in the Vectren DG case, Cause No. 45378, nor by the Presiding Officers' denial of summary judgment in their Docket Entry in this case because neither of those rulings are res judicata here regarding the pending Appeal to the Full Commission. *See, e.g., Indiana Gas Co. v. Office of Util. Cons. Counselor*, 610 N.E.2d 865, 869-70 (Ind. Ct. App. 1993; *see also* 170 IAC 1-1.1-25. Moreover, the Commission may change its course and is not forever bound by prior policy or precedent as long as it explains its reasons for doing so. *See Ind. Bell Tel. Co. v. Ind. Util. Reg. Comm'n*, 810 N.E.2d 1179, 1186 (Ind. Ct. App. 2004), *trans. denied*. Accordingly, we review and decide Joint Movants pending appeal based on the summary judgment record and argument presented in this case.

B. Commission Discussion and Findings re Summary Judgment. The purpose of summary judgment is to terminate litigation about which there can be no factual dispute and which may be determined as a matter of law. Summary judgment is appropriate where there are no genuine issues of material fact and the moving party is entitled to judgment as a matter of law. See Indiana-Kentucky Elec. v. Comm 'r, Ind. Dept. of Enviro. Mgmt, 820 N.E.2d 771, 776 (Ind. App. 2005). Ind. Trial Rule 56(C) addresses the process and standard for summary judgment, providing in relevant part, "The judgment sought shall be rendered forthwith if the designated evidentiary matter shows that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law."

While summary judgment is not frequent practice in Commission proceedings, under 170 IAC § 1-l.1-26(a), the Commission may be guided by the Indiana Rules of Trial Procedure to the extent consistent with agency-specific rules; therefore, the provisions of T .R. 56 are properly applied in appropriate cases. Notably, the Commission has previously entertained and ruled upon summary judgment motions. S*ee, e.g., In Re Complaint of US. Steel Group*, Cause No. 43204, 2007 Ind. PUC LEXIS 154, *6 (IURC May 9, 2007). Moreover, in *Northern Ind. Pub. Serv. Co. v. U.S. Steel Corp.*, 907 N.E.2d 1012 (Ind. 2009), the Indiana Supreme Court affirmed a grant of summary judgment by the Commission. And, in *U.S. Steel Corp. v. Northern Ind. Pub. Serv. Co.*, 951 N.E.2d 542, 554-561 (Ind. Ct. App. 2011), *reh'g denied, trans. denied*, the Indiana Court of Appeals both upheld some and reversed other rulings in a Commission order of summary judgment in consolidated Cause Nos. 43363 and 43369 involving the proper statutory interpretation of several key provisions of the Public Service Commission and Service Area Assignments Acts. Thus, it is clearly within the authority of the Commission here either to grant or deny Joint Movants motion for summary judgment consistent with the provisions of T.R. 56.

Here, Joint Movants and DEI agree that the pending motion for summary judgment is limited to a single issue, namely whether Ind. Code Chapter 8-1-40 authorizes the so-called "instantaneous" netting proposed by DEI's DG tariff to calculate the amount of "excess distributed generation" as defined by the DG Act. That said, the authority cited by Joint Movants makes clear that a motion for summary judgment need not address all of the issues in a case if the issue raised is dispositive of the claim for relief being sought in the case. In particular, the Indiana Supreme Court has held, "[D]espite conflicting facts and inferences on

some elements of a claim, summary judgment may be proper where there is no dispute or conflict regarding a fact that is dispositive of the claim." *Bushong v. Williamson*, 790 N.E.2d 467, 474 (Ind. 2003); *see also Board of School Com'rs of City of Indianapolis v. Pettigrew,* 851 N.E.2d 326, 330 (Ind. Ct. App. 2006)*, trans*. *denied and Krueger v. Hogan*, 780 N.E.2d 1199, 1201 (Ind. Ct. App. 2003). And, here, there can be no doubt that DEI's proposed tariff would calculate "excess distributed generation" on the basis of so-called "instantaneous" netting and the Commission could not approve that tariff if "instantaneous" netting does not comply with the applicable provisions of the DG Act. Thus, the issue raised by Joint Movants motion for summary judgment would unquestionably be dispositive of DEI's claim if "instantaneous" netting as proposed by DEI does not comply with the applicable provisions of the DG Act.

DEI claims that what it calls "exports" are synonymous with "excess distributed generation" as defined in the DG Act. *See* Petitioner's Corrected Exhibit 1-B, p. 1 of 3. However, this is incorrect as a matter of linguistic logic. "Excess distributed generation" is defined in Ind. Code § 8-1-40-5 as follows:

> Sec. 5. 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 statute contains three, and only three, elements that must be considered to determine "excess distributed generation."

1. First, excess distributed generation is the "difference" between subsections (1) and (2). In this situation, the plain and ordinary meaning[5] of "difference" is "the degree or amount by which things differ in quantity or measure."[6]
2. Second, subsection (1) is "electricity that is supplied by an electricity supplier to a customer."
3. Third, subsection (2) is "electricity that is supplied back to the electricity supplier by the customer."

Thus, "excess distributed generation" is calculated per the DG Statute by taking the difference between subsections (1) and (2). Any other calculation is outside this statutory framework.

[5] "As with all questions of statutory interpretation, we first look to the statute's text, reading its terms in their plain and ordinary meaning." *Powell v. State,* 151 N.E.3d 256, 265 (Ind. 2020).
[6] Merriam-Webster, https://www.merriam-webster.com/dictionary/difference, visited on October 11, 2020.

In its Response, however, DEI contends that there is a genuine issue of material fact as to whether what it calls "exports" meet the statutory definition of "excess" distributed generation. Specifically, DEI states:

Duke Energy Indiana's EDG proposal will, in every instant, measure the electricity supplied by the utility to a DG customer and the electricity supplied back to the utility by the DG customer, as required by the Act. Duke Energy Indiana's EDG proposal will thus precisely measure and capture both electricity delivered by Duke Energy Indiana to the customer and electricity delivered by the customer to Duke Energy Indiana.

DEI Response, p. 3. DEI then quotes this excerpt from the Commission's Vectren order in Cause No. 45378 to support its position:

> [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 [the utility] and what is flowing from behind the customer's meter as EDG.
>
> . . . We find . . .that because [electricity] can only flow one way, to become outflow, both components of Section 5 are netted at the meter to arrive at DG. (In re Southern Indiana Gas & Elec. Co., Cause No. 45378 (IURC; Apr. 7, 2021, at p. 36.)
>
> DEI Response, p.4.

While the language quoted by Duke from the Commission's order in the Vectren case could be better in its grammar and thus clearer in its meaning, the context in which the cited quotation is included in the Vectren order is the testimony of Vectren witnesses – especially witness Rice -- that its digital smart meters measure and store "inflow" and "outflow" on an instantaneous basis. While this testimony is neither surprising nor controversial, the follow on testimony cited by the Commission's Vectren Order is both. For example:

> Petitioner's evidence shows that in measuring outflow, Vectren South's meter instantaneously nets both components of EDG under Section 5 [i.e. "inflow" and "outflow"] at the meter to arrive at EDG

Vectren Order, p. 34.

As Mr. Rice explained on rebuttal:

> The net of the electricity supplied by Vectren South to the customer and the electricity that is supplied back to Vectren South is specifically captured as "Outflow" on the customer's meter. In other words, the meter registers as

> "Outflow' the net of both components of 'excess distributed generation' as set forth in IC § 8-2-40-5 [sic]. . . .

Vectren Order, p. 35.

> As Petitioner's witness Rice testified, "The net of the electricity supplied by Vectren South to the customer and the electricity supplied back to Vectren South is captured as 'Outflow' on the customer's meter." (Petitioner's Ex. 3 at p. 6). Mr. Rice was unequivocal in explaining that the meter registers as outflow the net of both components of EDG in accordance with Section 5.

Vectren Order, p. 35.

> Mr. Rice was unequivocal in explaining that the meter registers as outflow the net of both components of EDG in accordance with Section 5.
>
> Q. Both Mr. Alvarez and Solarize witness Kastner claim that Vectren South is not netting the kWh amount and monetizing the difference, but instead is summing Inflows multiplied by the retail rate and Outflows multiplied by the EDG rate and then calculating the difference. Is that accurate?
>
> A. No. The Outflow is the net, 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.' This net amount is what Rider EDG is applied to in accordance with IC § 8-1-40-5.
>
> Petitioner's Ex. 3 at p. 9, lines 7-14.

Vectren Order, p. 35.

While Joint Movant remain steadfast in their position that OUCC witness Alvarez was correct and Vectren witness Rice and the Commission were incorrect in Cause No. 45378 with respect to the way in which Vectren's digital smart meters measure and store "inflows" and "outflows" of electricity, that dispute in the Vectren case has no relevance to this DEI case. This is because DEI witness Flick has provided different information regarding the way in which DEI's digital smart meters measure and store "inflows" (or "imports" as DEI calls them) and "outflows" (or "exports" as DEI calls them). In particular, DEI witness Flick in DEI's responses to SI's Data Requests 2.2(i), 3.l(a)&(b), and 3.2(a)&(b) (included in Supplemental Exhibit 1 to Joint Movants' Reply in support of their summary judgment motion) show that DEI's smart meters operate in a manner different than Vectren witness Rice testified the Vectren smart meters do.

Specifically, in the DEI discovery responses included in Joint Movants' Supplemental Exhibit 1, Mr. Flick states unequivocally that so-called "instantaneous netting" involves neither a technical configuration of DEI's "smart" meters nor an arithmetic calculation made by those meters. Instead, it is a billing "convention" which the DEI Complex Billing Department will

follow to monetize separately tariff charges to the customer for "Imports" ("Inflow" per Vectren) and tariff credits to the customer for "Exports" ("Outflow" per Vectren). Contrary to Vectren, DEI is not claiming that its "smart" meters perform an electronic calculation "netting" one amount of electricity from another because there are not two amounts of electricity to net and no calculation to perform with so-called "instantaneous netting" where "excess distributed generation" is simply equated with "Exports" ("Outflow" per Vectren). The only "netting" being claimed by DEI is financially in dollars and cents in the Complex Billing Department, not electronically in kilowatt-hours in DEI's smart meters. Thus, there is no genuine issue of material fact between DEI and Joint Movants regarding how "instantaneous netting" works with DEI's digital smart meters equivalent to the dispute which the Commission found existed between Vectren and Joint Movants in its order in Cause No. 45378.

Finally and crucially, Joint Movants' argument here in the DEI DG case is based on other plain language in the DG Act – plain language completely disregarded by the DEI Response to Joint Movants' summary judgment motion. Specifically, Joint Movants rely on, but DEI completely disregards, the plain language of Ind. Code § 8-1-40-21:

IC 8-1-40-21 Commission's net metering and interconnection rules; application to distributed generation; permitted changes to rules

(a) Subject to subsection (b) and sections 10 and 11 of this chapter, after June 30, 2017, the commission's rules and standards set forth in:

(1) 170 IAC 4-4.2 (concerning net metering); and
(2) 170 IAC 4-4.3 (concerning interconnection);

remain in effect and apply to net metering under an electricity supplier's net metering tariff and to distributed generation under this chapter.

(b) After June 30, 2017, the commission may adopt changes under IC 4-22-2, including emergency rules in the manner provided by IC 4-22-2-37.1, to the rules and standards described in subsection (a) only as necessary to:

(1) update fees or charges;
(2) adopt revisions necessitated by new technologies; or
(3) reflect changes in safety, performance, or reliability standards.

Notwithstanding IC 4-22-2-37.l(g), an emergency rule adopted by the commission under this subsection and in the manner provided by IC 4-22-2-37.1 expires on the date on which a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

As explained in detail in the Joint Motion, pp. 4-8, Section 21(a) makes it explicit that the Commission's existing Net Metering Rules continue to apply after June 30, 2017, both as to net metering and to distributed generation, subject only to Sections 10 and 11 and Section 21(b) of Ind. Code Chapter 8-1-40. Sections 10 and 11 do not apply in this case, but Section 21 (b) does.

Section 21 (b) does authorize changes to the Commission's net metering rules, but only to the extent and in the manner specified. However, the Commission has not heretofore even initiated let alone approved an amended Net Metering Rule or a new Distributed Generation rule modifying in any way this provision of Section 7 of the existing Net Metering Rule:

The investor-owned electric utility shall measure the difference between the amount of electricity delivered by the investor-owned electric utility to the net metering customer and the amount of electricity generated by the net metering customer and delivered to the investor-owned electric utility during the billing period, in accordance with normal metering practices. If the kilowatt hours (kWh) delivered by the investor-owned electric utility to the net metering customer exceed the kWh delivered by the net metering customer to the investor-owned electric utility during the billing period, the net metering customer shall be billed for the kWh difference at the rate applicable to the net metering customer if it was not a net metering customer. If the kWh generated by the net metering customer and delivered to the investor-owned electric utility exceed the kWh supplied by the investor-owned electric utility to the net metering customer during the billing period, the net metering customer shall be credited in the next billing cycle for the kWh difference.

Instead, in 2019, long after the passage of the DG Statute the Commission re-adopted its net metering rule with identical Section 7 language. *See* 20190508 IR 170190136RFA (May 8, 2019), *http://iac.iga.in.gov/iac//20190508-IR- 17D190136RFA.xml.html*. Consequently, the Net Metering Rule Section 7 billing language still applies to the compensation of "excess distributed generation" for both net metering and distributed generation as expressly provided in Section 21(a) of lnd. Code Chapter 8-1-40 -- and DEI's Response has offered literally nothing to dispute that conclusion.[7]

C. Conclusion. The arguments presented and authorities cited by Joint Movants, including especially, but not exclusively, the express language of DEI's proposed EDG tariff, DEI's discovery responses to Solarize Indiana, and the plain language of lnd. Code §§ 8-1-40-5 and 21, have convinced the Commission that there are no genuine issues of material fact and that DEI is incorrectly applying the DG Act in proposing so-called "instantaneous" netting to define and calculate "excess distributed generation" in its proposed EDG tariff in this Cause. Therefore, Joint Movants' are entitled, as a matter of law, to a summary judgment denying DEI's pending petition and rejecting its tariff heretofore filed in this matter. However, consistent with Joint Movants' request, this judgment is granted with leave for DEI to refile on or before April 1, 2022, its petition, tariff and case-in-chief in accordance with the provisions of the DG Act and the findings of this order. Pending this refiling, the Commission reserves judgment with respect to all other matters raised either by the DEI petition which is being dismissed without prejudice pursuant to this order or the evidence presented on that petition by all parties.

[IN THE EVENT THE COMMISSION DOES NOT GRANT THE PENDING APPEALED MOTION FOR SUMMERY JUDGMENT, EXCEPTIONS TO THE BALANCE OF DUKE ENERGY'S PROPOSED ORDER ARE AS FOLLOWS.]

7 Of course, any carry-forward credit from one billing period to the next would be compensated at the rate in cents per kwh calculated in accordance with Section 18 of the Act.

OUCC's and Intervenors' Direct Testimony.

A. OUCC's Direct Testimony. IndianaDG accepts and inserts by reference OUCC's version of its testimony and evidence in this case

B. IndianaDG's Direct Testimony.

1. Benjamin D. Inskeep. Mr. Inskeep, Principal Energy Policy Analyst with EQ Research LLC, recommended that the Commission deny Duke Energy Indiana's proposed EDG Rider and proposal to end monthly netting. If the Commission disagrees with Mr. Inskeep's recommendation, he asks the Commission to consider alternative policies that are less punitive to customers than the "no netting' proposed by Petitioner. If the Commission approves Petitioner's filing as proposed or with limited modifications, he recommends the Commission direct Petitioner to provide additional consumer information and education regarding its Rate QF – Parallel Operation for Qualifying Facility tariff to ensure all eligible DG customers have access to and are fully informed of this rate option, which might be more financially beneficial to certain DG customers or under certain circumstances than the proposed EDG tariff. He also recommends that Petitioner modify its calculation of the EDG Rider credit rate to reflect the average marginal price at the daylight times solar DG systems are generating and exporting power to the grid. He also recommends that the Commission reject Petitioner's proposal to take without compensation a DG customer's earned but unused EDG credits at the end of a DG customer's service and require DG customers to install an external disconnect switch.

Mr. Inskeep testified regarding his view of flaws in Duke Energy Indiana's EDG procurement rate methodology, the inappropriateness of Duke Energy Indiana's proposed method for determining EDG under the plain language of the DG Statutes, other major flaws in Duke Energy Indiana's proposed methodology for determining EDG, and other problematic terms and conditions of Duke Energy Indiana's EDG Rider. IndianaDG Ex. No. 1 Inskeep Direct.

First, Mr. Inskeep pointed out that Duke Energy Indiana customers do not have access to their granular usage data that would enable them to know their instantaneous electricity usage, and concluded that Duke Energy Indiana is proposing a tariff with price signals to which DG customers will be unable to effectively respond,. *Id.* at 8-9..

Next, Mr. Inskeep testified Duke Energy Indiana's calculations of its EDG rate are not reasonable because they are based on an average of the wholesale electricity price for all hours of the year. *Id*. at 10. He testified that Duke Energy Indiana's calculation is unreasonable because Duke Energy Indiana has averaged the wholesale electricity price for all hours of the year, including night time hours which does not align with the hours in which a DG system actually generates electricity, and therefore, does not accurately reflect the marginal price of electricity during the hours in which a DG system is providing EDG to Duke Energy Indiana. *Id*. Mr. Inskeep testified that Duke Energy Indiana's customers' highest summer demands typically occur during the afternoons when solar is typically generating electricity, and during these hours

customers' EDG exports can help reduce the need for daylight market purchases when market prices for electricity are generally higher. *Id*. Mr. Inskeep testified that Duke Energy Indiana should instead calculate "the average marginal price of electricity paid by the electricity supplier during the most recent calendar year" by using a weighting methodology for hourly LMPs that would result in the average marginal price for when DG generation is being exported. *Id*. at 11-12. Mr. Inskeep testified that his approach results in a 2020 average LMP of $26.30/MWh, or $0.02630/kWh, which produces an EDG credit rate of $0.032879/kWh, which is 13.5% higher than Duke Energy Indiana's proposed EDG credit rate. *Id*. at 11.

Mr. Inskeep explained calculating the solar EDG rate based on daylight solar-producing hours simply avoids the irrational calculation and absurd result of solar EDG based in large part on the non-solar producing nighttime market price of wholesale electricity. *Id.* at 12-13. But he said it alone does not result in a just and reasonable EDG rate as it still seriously undervalues EDG exports. *Id*. More importantly, it will not yield a just and reasonable EDG framework or result. The slightly higher solar EDG credit from his calculation is an improvement on Duke Energy Indiana's EDG credit calculation, but it is not sufficient to offset to any meaningful degree the far more substantial negative impact of the "no netting" proposal. He testified that while correcting the EDG credit rate calculation is logical; it is not a remedy for the harm to DG customers that will result from Duke Energy Indiana's "no netting" proposal. *Id.* He explained that DEI reported that 58.091 MW out of 62.440 MW (93.0%) of its net metering capacity are solar resources, and that 100% of new capacity additions in 2020 were solar resources. *Id.* at 12. Since the current total deployment and the deployment rates of biomass and wind resources show these resources currently have an immaterial effect on the overall value of DG on average, and recent trends do not indicate this is likely to change in the foreseeable future, Mr. Inskeep concluded it is reasonable to use his proposed methodology for calculating the EDG rate based on solar for all DG resources. He noted applying his proposed EDG rate to solar, wind and biomass would still not reflect the benefits EDG brings to the utility system and other customers. *Id.* p. 13.

With regard to the issue of netting, Mr. Inskeep testified there is no language in the DG Statute that says monthly netting should stop or that prescribes or invites a new method for measuring EDG. *Id*. at p. 14. Mr. Inskeep provided the five bill versions' legislative history of Senate Bill 309 ("SB 309") from the 2017 Session of the Indiana General Assembly, SB 309. Originally the first version of the bill would have changed the netting methodology by expressly removing all netting. It would have established a buy-all sell-all tariff. *Id*. at p. 14-15. He noted that SB 309 was subsequently amended four times before becoming Senate Enrolled Act 309 ("SEA 309"). *Id*. at 15. He provided copies of each of the amended bills. with version 5 becoming SEA 309. Attachments BDI-2, BDI-3, BDI-4, BDI-5, and BDI-6. Mr. Inskeep documented that none of the subsequent versions retained the buy-all, sell-all framework or stated a new netting nor indicated netting methodology different from the current normal monthly netting should be used. None of them invited or directed the Commission to consider a new netting methodology. *Id.* at 16. Mr. Inskeep also provided testimony about additional legislative history regarding SEA 309, including SEA 309's author stating "by stepping us down over a fairly long period of time, so that we don't kill the solar industry, but we start to transition them to a market-driven rate…". *Id*. at 17. Mr. Inskeep explained that in his review of the legislative hearings on SEA 309, he did not observe SEA 309's sponsor or other members of the General Assembly discuss any intent to modify the method of measuring EDG from monthly

netting. *Id.* at 18.

Mr. Inskeep testified that the DG Statute expressly provides that the measurement of EDG requires a calculation between the "difference between" (1) electricity supplied by the utility ("imports" of electricity from the DG customer's perspective) and (2) the electricity supplied by the DG customer to the utility ("exports" of electricity from the DG customer's perspective). *Id*. at 18. Mr. Inskeep testified that under Duke Energy Indiana's methodology, Duke Energy Indiana is not actually taking the "difference between" electricity supplied by Duke Energy Indiana and by the customer to Duke Energy Indiana, respectively. *Id*. at 18-19. He said that applying this methodology instead of the "difference between" prescribed by the DG Statute results in DG customers being compensated for all exported electricity at an extremely low compensation credit relative to the per-kWh credit to which they should have their excess generation netted against, with no "difference between" offset to their imported energy consumption. *Id.* Mr. Inskeep testified that in contrast the statutory language implicitly defines EDG as occurring over a period of time, and necessarily requires a taking the *difference between* two values, electricity imports and exports over a period of time. *Id*. at 19. He said that period of time should be the monthly billing period. *Id*. Mr. Inskeep provided diagrams to visualize the statutory definition of EDG compared to the implementation of EDG in Duke Energy Indiana's EDG Rider. *Id.* at 20-23. He identified that when asked in a data request to explain the components being netted under "instantaneous netting," DEI responded:

> Solar generation and a customer's load on the customer's side of the delivery point are instantaneously netted and result in either energy being delivered to the customer from Duke Energy Indiana or exported to Duke Energy Indiana's grid.

Id. at 24. Accordingly, Mr. Inskeep concluded that "instantaneous netting" as proposed by Duke Energy Indiana is measuring EDG as the difference between a DG customer's *solar generation* and a *customer's load* – not taking the difference between electricity provided by the DG customer to the utility and the electricity provided by the utility to the DG customer, as required by the DG Statutes. *Id.*

Mr. Inskeep testified that there is no indication in the DG Statute's language that the DG facility should be designed to limit EDG exports on an instantaneous basis; instead, the DG Statute requires that DG systems be designed to generate electricity only to meet a customer's *average annual* energy needs. *Id.* at 25-26. He explained that had the General Assembly intended for *all* exported DG generation to be compensated at the EDG rate as occurs under Duke Energy Indiana's proposal, it could have defined "excess distributed generation" as "the electricity that is supplied back to the electricity supplier by the customer" – i.e. using only the second part of the statutory language and omitting the first part regarding the "the electricity that is supplied by an electricity supplier to a customer that produces distributed generation." *Id.* at 25. Duke Energy Indiana's proposal renders the first statutory component meaningless. *Id.* at 26. He pointed out the DG statute speaks of the EDG credit being a rate approved by this Commission through a monthly bill credit, not an instantaneous credit. *Id.*

> In addition, Section 18 of the DG Statutes provides, in relevant part, that:
> An electricity supplier shall compensate a customer from whom the electricity

> supplier procures EDG (at the rate approved by the commission under section 17 of this chapter) through **a credit on the customer's *monthly* bill**… (emphasis added)

Id. at 26.

He testified that in response to SEA 309, the Commission held collaborative meetings, issued Emergency Rulemaking 17-04, and General Administrative Orders 2017-2 and 2019-2. *Id.* However, it did not issue any new regulations that would modify the measurement of EDG as continues to be prescribed under its net metering rules. Currently, Commission Rule, 170 IAC 4-4.2-7 provides, in part, that:

> The investor-owned electric utility shall measure the difference between the amount of electricity delivered by the investor-owned electric utility to the net metering customer and the amount of electricity generated by the net metering customer and delivered to the investor-owned electric utility during the billing period, in accordance with normal metering practices.

He explained that normal metering practice is monthly netting, not a new "no netting" metering. *Id.* at 26.

Mr. Inskeep testified that there are numerous other drawbacks of Duke Energy Indiana's no netting proposal, including that is a departure from the current DG policy in Indiana and the best practices established in other states, that it is not based on sound ratemaking or cost-of-service principles, and that it is difficult to overstate the harmful effects the proposal will have on Indiana's solar market and industry. *Id.* at 27. He stated that Duke Energy Indiana's no netting proposal would result in a major policy change to how rooftop solar and other DG technologies will be compensated in the future compared to the monthly netting policy that has been in place for roughly the past 16 years in Indiana. *Id*. He stated SEA 309 ended net metering with the lowered EDG rate. To impose "no netting" atop that is unwarranted and contrary to the DG Statute. *Id.* at 28. Mr. Inskeep observed that Duke Energy Indiana's proposal is not supported with a class cost of service study or any other evidence demonstrating that moving to a "no netting" framework would produce just and reasonable rates. *Id.* He also said Duke Energy Indiana did not provide a DG benefit-cost analysis or a value of distributed solar study that would demonstrate on a forward-looking basis (as opposed to a backwards looking snapshot in time that is typical of an embedded cost of service study) that its "no netting" proposal produces net benefits rather than costs, or reflects an overall fair policy for compensating DG customers for the benefits that they provide to both DG and non-DG customers. *Id.* Mr. Inskeep stated that Duke Energy Indiana did not include any information on how its proposal will impact future DG growth, solar installation businesses, their employment levels, or related economic impacts in its service territory. *Id.* Mr. Inskeep testified that Duke Energy Indiana has not demonstrated its proposed no netting policy would not recover *more* than Duke Energy Indiana's cost to serve DG customers. *Id.* at 28-29. Mr. Inskeep testified that Duke Energy Indiana has failed to provide any reasonable basis on which the Commission can conclude its specific "no netting" approach is the best or even a reasonable one compared to many alternatives. *Id.* at 29. Mr. Inskeep said the Rider EDG rate itself is calculated through an arbitrary, albeit legislative, 25% adjustment to the

average wholesale market locational marginal price. *Id.* Mr. Inskeep testified that the EDG rate changing every year will deprive an EDG customer of certainty regarding the financial metrics of purchasing a DG system. *Id*. at 29-30. He said Duke Energy Indiana's proposal will also harm non-DG customers by both limiting their ability to later adopt DG and by reducing the benefits non-DG customers can realize from having more clean, local, distributed generation on the grid. *Id.* at 30.

Mr. Inskeep testified that the "no netting" component of the Rider EDG would create harmful perverse incentives by encouraging DG customers to increase their consumption during Duke Energy Indiana's highest-cost summer on-peak periods. *Id.* at 30-32. He said instantaneous or "no netting" gives the DG customer a strong financial incentive to export as little electricity as possible and instead increase daylight hour usage when it is directly offset by solar production's highest output. *Id.* at 31-32. He said this perverse incentive baked in to "no netting" would harm non-DG customers because non-DG customers would no longer be able to benefit from the EDG the DG customer would otherwise have provided during higher-cost peak daylight hours. *Id.* at 32. Instantaneous netting creates a use it or lose it situation.

Mr. Inskeep also testified that Duke Energy Indiana's Rate QF – Parallel Operation for Qualifying Facility ("Rate QF") tariff could, under certain circumstances or for certain customers, be higher than Duke Energy Indiana's EDG Rider, and that it contains certain provisions that are more favorable than Duke Energy Indiana's EDG Rider. *Id.* at p. 32-35. He stated that providing a compensation rate for all exported electricity that could be below Duke Energy Indiana's PURPA avoided cost rate would be unjust and unreasonable. *Id.* at 33. Mr. Inskeep recommended that if the Commission adopts Duke Energy Indiana's EDG Rider as proposed or with only modest revisions, the Commission should also direct Duke Energy Indiana to ensure prospective DG customers are clearly presented with the option taking service under Rate QF on an equal basis to the EDG Rider. *Id.* at 34-35.

Mr. Inskeep testified that monthly netting continues to be one of the most widespread and important components of DG compensation policies across the U.S. and that states that have moved away from it have, in most cases, established a compensation rate for exported electricity that is significantly higher than the EDG rate proposed by Duke Energy Indiana. *Id.* at 35-38. Mr. Inskeep testified regarding the existence of monthly netting policies and how they have been widely adopted various jurisdictions in the U.S., with most IOUs in 39 states and the District of Columbia currently offering monthly netting to new residential and small commercial customers. *Id.* at 37-38. He also described the types of changes to DG policies that have been proposed, adopted, and rejected in other U.S. jurisdictions. *Id.* at 39-46. He concluded that Duke Energy Indiana's proposed "no netting" policy in combination with its implementation of the EDG Rider to replace net metering would likely be more detrimental than the vast majority of the changes adopted to DG policies in other jurisdictions, including those with far greater deployment rates of DG. *Id.* at 42.

Mr. Inskeep testified that Duke Energy Indiana's "no netting" proposal is not consistent with long-standing ratemaking principles. *Id*. 46-52. These included the principle of gradualism, as Duke Energy Indiana's "no netting" proposal is an abrupt, far reaching, two-fold negative impact on prospective DG customers and the Indiana businesses that install solar. *Id.* at 47-48.

Other violated principles were Simplicity, Understandability, Public Acceptability, and Feasibility of Application, as well as the fair apportionment of cost responsibility. *Id.* at 48-49. He stated that other utilities have used and other state utility regulators have required that utilities conduct load research on their actual net metering customers to produce an accurate class cost of service study prior to significantly modifying DG policies. *Id.* at 49-52.

Mr. Inskeep testified that Duke Energy Indiana has provided no evidence that its "no netting" proposal is consistent with Duke Energy Indiana's cost to serve DG customers. *Id.* at 52-55. He identified several ways that, when properly factored into a cost of service study, DG customers provide benefits to non-DG customers in their class. *Id.* at 54-55. He concluded that when the utility is not only implementing a calculation of the EDG rate in accordance with the statute, but is also proposing additional, major policy changes that are a significant departure from important existing policies and not directed by the statute, such as Duke Energy Indiana's "no netting" proposal, then it is the utility's responsibility and burden to demonstrate these additional changes are just and reasonable as well as consistent with the DG Statutes. He testified Duke Energy has not done either. *Id*. at 55.

Mr. Inskeep testified that while Indiana solar jobs have grown to more than 3,300, Duke Energy Indiana's proposal would significantly harm Indiana's residential and commercial sector solar industry, leading to job losses and reduced economic development benefits for communities in Indiana. *Id.* at 56-57. He said that retaining monthly netting would not harm Duke Energy Indiana or non-DG customers, and that DG customers are likely providing substantial net benefits, meaning the Commission should exercise its discretion in a manner that encourages the continued growth of DG in Indiana. *Id.* at 57-59. Mr. Inskeep pointed out that through the end of 2020 Duke Energy had only 1,914 net metering customers out of more than 852,000 total customers. Those net metering customers had only 62.44 MW of installed capacity, compared to Duke Energy peak demand of 5,573 MW. With Duke Energy's annual revenue requirement of approximately $2.7 billion he concluded that even under conservative assumptions and assuming no system value is provided by EDG, monthly netting would only amount to a *de minimis* "subsidy" or cost shift to non-DG customers. *Id*. at 58.

Mr. Inskeep summarized key advantages that have contributed to monthly netting to becoming widely adopted, popular among customers, and effective at growing DG. *Id*. at 59-60. He cited studies regarding the value of solar in other states with one review finding that 14 out of 24 value of solar analyses conducted in 2012-2018 calculated that the value of solar was at or above the retail rate, and only one analysis calculated a value that was below 50% of the residential retail rate. *Id*. at 60-63. Mr. Inskeep argued that retaining monthly netting represents a "no regrets" policy option for the Commission in this case. *Id*. at p. 64.

Mr. Inskeep summarized the methodology and results of a quantitative analysis he conducted that compared the impacts on residential DG customers from net metering, monthly netting (with monthly net excess generation credited at the EDG rate), daily netting, and Duke Energy's proposed no netting. *Id.* at 65-70. The results of his quantitative analysis found that no netting and hourly netting result in a 48.9% and 43.7%, respectively, value diminishment in the value of solar produced by a DG system relative to the current net metering policy, and a 45.3% and 39.7% value diminishment relative to monthly netting with EDG credited at the EDG Rider

rate. He also found that daily netting results in only a 15.4% value diminishment of DG generation compared to the current net metering policy, and a 9.4% value diminishment relative to monthly netting with EDG credited at the EDG Rider rate. *Id.* at 68. Mr. Inskeep calculated that the payback period for a 9.3 kW system costing a residential customer $3.05/watt would be 25.9 years under Duke Energy Indiana's "no netting" proposal, compared to 13.4 years under the current net metering policy, or 14.4 years under monthly netting with EDG credited at the EDG Rider rate. *Id.* at 69. Mr. Inskeep testified that this would increase the payback period to the point where it no longer would save a customer money over an assumed 25-year life of a rooftop solar facility. If the federal Investment Tax Credit expires as planned for residential customers beginning January 1, 2024, the payback period of residential solar would increase to 32.5 years in Mr. Inskeep's analysis. *Id.* at 70. Mr. Inskeep concluded that Duke Energy Indiana's proposal would have a devastating impact on the adoption rate of DG technologies like solar by financially preventing most customers from being able to install such a DG system. Thus, only high-income Hoosiers and perhaps some larger businesses would be able to afford to invest in on-site DG technologies like rooftop solar. *Id.* at 72-73.

He testified that batteries are too expensive for individual customers to install and should not be *de facto* mandatory for EDG participation. *Id.* at 73-74. He indicated a normal size residential battery system would cost $7,000, plus additional costs that could add thousands of dollars, such as hardware costs, installation costs, and taxes. *Id.* at 73. He pointed out that Duke Energy Indiana has not proposed any means of lowering customer battery costs to bring increased benefits to the Duke Energy Indiana grid. *Id.* at 74. He stated that the DG Statute does not require customers to install batteries. He pointed out that customer batteries would offer the most value by discharging during peak demand periods. In contrast, Duke Energy Indiana's proposed "no netting" policy would prompt customers to use the battery to avoid exports by charging during daylight hours, and discharging when solar production is not available at night rather than during peak periods, thus decreasing the potential value DG batteries can bring to the utility system and other customers. *Id.* at 75-76. He testified that monthly netting does not require the utility to serve as the EDG customer's battery and that monthly netting is merely a compensation framework that provides fair compensation measurement to a DG customer for excess generation they provide to the utility and to the benefit of other customers. *Id.* at 76-77. He explained the greatest benefits to the grid accrue when exports, either from on-site solar alone or battery storage, are maximized during peak conditions. *Id.* at 76. Devaluing exports during peak periods as Duke Energy Indiana proposes does exactly the opposite. It sends exactly the wrong signal to customers from the standpoint of maximizing the value of a DG system in terms of the benefits it provides to all customers. *Id*.

Mr. Inskeep also testified about how Duke Energy Indiana's proposed tariff would confiscate a DG customer's EDG credits when they terminate service. *Id.* at 77-79. He testified that the language in the DG Statute does not expressly specify how unused credits should be treated when a customer no longer receives retail electric service from the utility. *Id*. at 78. He said it is common for states to allow net metering customers to cash out unused net metering credits, such as on an annual basis for any credits that accrued over the year, or at the end of service. *Id.* He, therefore, recommended that earned EDG credits be refundable to customers upon service termination or, if the DG customer moves but remains a Duke Energy Indiana customer, be carried forward to their subsequent Duke Energy Indiana bill. *Id.* at 79.

Mr. Inskeep testified that, while Duke Energy Indiana requires all EDG customers to install a disconnection device at their expense, it is his understanding that external disconnect switches are not necessary for isolating a small, inverter-based DG facility. *Id.* at 80. He identified that modern inverters that are part of rooftop solar facilities today meet Underwriters Laboratory Standard 1741, which means the inverter has passed rigorous testing requirements that demonstrate the inverter provides for anti-islanding protections that will safely and quickly isolate the solar facility in the event of a grid outage. *Id.* He noted Vectren's approved EDG tariff does not require Level 1 interconnections to install an external disconnect switch. *Id.* Likewise, Duke Energy Indiana does not require Level 1 interconnections to install an external disconnect switch. *Id.* He also cited to New York's Standardized Interconnection Requirements, which do not require a disconnect switch for inverter-based DG system sized 25 kW or less, as well as the standards in place for California's large IOUs that have collectively installed more than 1 million solar net metering facilities. *Id.* at 81. He claimed this provision in Duke Energy Indiana's Rider EDG is unnecessary, unfair, and unjustified and recommended the Commission direct Duke Energy Indiana to clarify in its Rider EDG that disconnect switches are not required for Level 1 interconnections. *Id.* at 81-82. If the Commission declines to adopt his recommendation, he requests the Commission direct Duke Energy Indiana to keep records of the number of instances and circumstances in which its personnel use a DG customer's external disconnect switch so that the Commission has more data to assess the reasonableness of this requirement in the future.

Mr. Inskeep recommended that the Commission reject Duke Energy Indiana's EDG Rider and concluded that Duke Energy Indiana's proposal is inconsistent with the plain language of the Distributed Generation Statutes. He said Duke Energy Indiana's case-in-chief, in his view, has failed to prove its case and Duke Energy Indiana has not demonstrated that its proposals would produce rates that are just and reasonable. He stated that there are many good reasons for the Commission to reject Duke Energy Indiana's proposed method for determining EDG and to maintain the longstanding, widely adopted, and commonsense monthly netting framework for determining EDG as it transitions away from net metering through implementation of the Rider 16. *Id.* at 82. He added that to the extent the Commission disagrees with his recommendation to maintain monthly netting to determine EDG, he recommends it consider other alternatives to Duke Energy Indiana's proposed methodology, such as the less punitive daily netting. *Id.* at 82-83. If the Commission approves Duke Energy Indiana's filing as proposed or with limited modifications, he recommended that the Commission direct Duke Energy Indiana to provide additional consumer information and education regarding its Rate QF tariff to ensure all eligible DG customers have access to and are fully informed of this rate option, which could provide a more favorable compensation rate than the EDG Rider as proposed for certain DG customers. *Id.* He recommended that the Commission direct Duke Energy Indiana to modify its calculation methodology for the EDG Rider credit rate as described in his testimony to recognize the fact that solar is producing and exporting generation only during daylight hours and should be compensated accordingly. He also recommended the Commission ensure that all DG customers are provided fair terms and conditions under net metering and the EDG Rider. Specifically, he recommended the Commission reject what he considered Duke Energy Indiana's taking without just compensation of EDG credits remaining at the end of a customer's service. He said these terms are unjustified and would further harm EDG customers by imposing additional, unnecessary costs or take away benefits to which DG customers are entitled without providing

fair compensation. *Id*.

2. Chris Rohaly. Mr. Rohaly is the President and Owner of Green Alternatives Inc. ("GAI"). He described the negative impacts Duke Energy's EDG proposals would have on his and othe solar installation business, Duke customers, and local and state economies. He testified the vast majority of people, businesses and government entities install solar DG to have a long term cost effective fuel-less energy supply, that over a reasonable time off sets its cost through savings, i.e. investment pay back period. Without a reasonable investment payback period, there would be very little demand for solar energy systems. IndianaDG Ex. 2, 4-5. He testified that the current residential customer solar investment payback period is typically estimated to be 7-10 years, but he said Duke Energy Indiana's proposal would increase the customer payback period to over 20 years. *Id.* Mr. Rohaly also testified that customer battery installation would not solve the increased customer payback financial problem as it is too expensive, generally not affordable. Also batteries have long wait times to receive because the bulk of them go to states with more favorable solar treatment. He also testified that the federal tax credit will keep stepping down and will later end in 2024 causing customer payback periods to increase. *Id.* Mr. Rohaly testified that the resulting lengthening of customer investment payback period would make Duke Energy Indiana customers extremely reluctant or unwilling to make the investment in solar, which will be devastating to Indiana's solar industry, resulting in job losses and market contraction. He noted most Hoosiers who graduate from Ivy Tech renewable energy program take employment in other states that treat solar DG more favorably. Mr. Rohaly said Duke Energy Indiana's proposal could force his company to lay off workers, not hire independent contractors and union electricians, and possibly no longer install solar energy systems in Duke Energy Indiana's service area. He testified that other Indiana solar installation companies will suffer the same financial harm from EDG proposals like Duke Energy Indiana's and will logically shift their solar business focus, employment opportunities, and financial stimulus to neighboring states like Kentucky, Illinois and Michigan that treat solar customers more reasonably. He provided EDG rates from those states that are about four times that proposed by Duke Indiana. *Id*. 6-7. He noted that current Indiana solar jobs are approximately 3,400.

Mr. Rohaly then testified regarding the benefits of distributed generation. He said these benefits include improvement to the environment; reduction of load and wear on the transmission system; reduced demand for electricity in daylight hours; reduced transmission line loss; improved reliability and avoided carbon-based fuel use and costs. He said customer-owned solar brings jobs, economic stimulus, increased state and local tax revenues. Finally, Mr. Rohaly expressed concerns regarding Duke Energy Indiana's proposal because, in his view, it prevents customers from installing solar generation. Id.9-10. He expressed concern that as utilities get customers to pay for abandoned coal fired generation plants and shift their rate base addition focus to installing utility owned renewable generation at customer expense, it will drive up customer rates and be used as an excuse to further prevent future customer owned solar. He explained its one thing to have a monopoly service area but it is completely inequitable to then seek regulatory treatments that seek to financially prevent customers from using sunshine to illuminate, cool and heat their homes and businesses. He stated the sun shines to sustain all our lives, not to become the monopoly tool of Duke Energy Indiana. He testified Duke Energy has done nothing in its proposals to give solar customers value for environmental

benefits and operational savings. In sum he concluded Duke Indiana's proposals are punitive, unjust, unreasonable and their "no netting" proposal should be denied. Mr. Rohaly recommended to the Commission that it reject Duke Energy Indiana's EDG proposal and continue with monthly netting. *Id*. 10-11.

A. SI's Direct Testimony. IndianaDG accepts and inserts by reference SI's description of its evidence

Michael A. Mullett.

Barry S. Kastner.

Darrell T. Boggess.

7. Petitioner's Rebuttal Evidence. Petitioner provided the rebuttal testimony of Roger A. Flick II. Mr. Flick summarized the issues raised by the Public and Intervening Parties as to Duke Energy Indiana's EDG tariff proposal as follows:

(1) The calculation of the EDG rate -- including a proposal to use only daylight hours, claims of confiscation, lack of cost of service study, and purported "arbitrary" nature of the EDG rate calculated pursuant to the DG Statute;
(2) The use of "instantaneous netting";
(3) The treatment of unused EDG credits;
(4) Purported "double recovery" of EDG payments;
(5) Customer information requirements, including information about Duke Energy Indiana's PURPA/QF rate;
(6) Duke Energy Indiana's external disconnect switch requirement;
(7) Concerns about Duke Energy Indiana's customer information systems and information available to potential distributed generation ("DG") customers;
(8) Concerns about potential liability of solar vendors under the DG Statute;
(9) Concerns about "grandfathered" net metering customers; and
(10) Various policy issues, including impacts on solar companies, potential solar DG customers, and the economy, as well as what other states are doing.

Mr. Flick addressed the policy issues that IndianaDG and SI witnesses raised with respect to Duke Energy Indiana's proposed EDG rate and methodology as they argued that the proposed EDG rate will adversely impact solar companies, solar customers, and Indiana's economy. As Mr. Flick testified, the Indiana General Assembly considered various policy issues and made a policy decision to end net metering in Indiana (except for grandfathered customers), and that policy decision is memorialized in the DG Statute. Accordingly, these policy issues are arguably irrelevant in this case. However, in addition to the lack of relevance, Duke Energy Indiana disagrees that net metering and/or monthly netting should be continued due to these policy concerns. As Mr. Flick testified, factors such as the following are also relevant to any policy discussion about net metering and monthly netting:

- By ending net metering and monthly netting, the DG Statute puts electricity produced by DG facilities on more of a level playing field with other

wholesale power options, which better reflects Duke Energy Indiana's wholesale cost of electricity.

- By ending net metering and monthly netting, the DG Statute recognizes that DG customers provide intermittent and unpredictable power, and that they use the utility's equipment and facilities both when they produce power and when they take power from the utility.
- To the extent an incentive or subsidy for DG was appropriate when net metering was first instituted in Indiana approximately 15 years ago, such an incentive or subsidy is arguably not needed today, given the significant decline in the cost of solar panels. For example, in 2020, PV Magazine stated that the cost of solar panels had declined 82% since 2010.[8]
- While DG customers may be better off with a higher EDG rate by means of monthly netting or continuation of net metering, all other things held equal, Duke Energy Indiana's other customers will be better off if the Company compensates DG customers as it proposes and as we believe the DG Statute requires, rather than continuing net metering or monthly netting.
- IndianaDG and Solarize Indiana members presumably have their own financial interest in mind as they argue to increase the amount that Duke Energy Indiana pays its EDG customers. The higher the EDG payment, the easier it is for solar vendor members to sell their products and services and the less solar DG customers will pay in utility charges.

IndianaDG and SI also testified that Duke Energy Indiana's proposal would negatively impact the market for solar DG products and services Mr. Flick testified, it is not Duke Energy Indiana's proposal that changed the DG landscape it was the DG statute as net metering is no longer available to new customers on or after July 1, 2022. Duke Energy Indiana's proposal simply is an effort to comply with the DG Statute. IndianaDG witness Inskeep also testified that Indiana should utilize monthly netting as other states do. Mr. Flick asserted that this is not persuasive as the Indiana General Assembly has determined the policy choice it believes is appropriate for Indiana and Duke Energy Indiana's proposal is consistent with the DG Statute.

Mr. Flick testified as the calculation of the EDG rate, testifying that Indiana Code § 8-1-40-17 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:

[8] See https://www.pv-magazine.com/2020/06/03/solar-costs-have-fallen-82-since-2010/.

> (1) the average marginal price of electricity[9] paid by the electricity supplier during the most recent calendar year; multiplied by
> (2) one and twenty-five hundredths (1.25).

He further testified that Duke Energy Indiana calculated its proposed EDG rate by using day-ahead hourly LMP prices for the previous calendar year (2020) at the at the CIN.PSI load node. OUCC witness Alvarez suggests on page 6 of his testimony that Duke Energy Indiana should calculate its EDG rate by using real time hourly LMPS instead of day ahead hourly LMPS; however, Mr. Flick testified that he does not believe this change is warranted. As Mr. Flick testified, some years the annual average day ahead LMP price is slightly higher than the real time and other years the opposite is true. In recognition that the differences are small and the vast majority of electricity being procured by Duke Energy Indiana through the MISO markets is actually priced in the day-ahead rather than real-time market, he believes the use of a day-ahead price is reasonable.

IndianaDG witness Inskeep testified on pages 9-13 of his testimony that Duke Energy Indiana should calculate the EDG rate using only daylight hours to calculate the average wholesale rate as 90% of Duke's DG customers have solar panels that only produce electricity during daylight hours and to calculate otherwise would be an irrational application of the statutory language. Mr. Flick testified that he does not agree with this. As he testified, the DG Statute requires the EDG rate be calculated using a historical average annual wholesale power price – the statute says nothing about limiting the calculation to daylight hours. He further asserted that, Mr. Inskeep's recommendation that the EDG rate would be higher if only daylight hours were used in the calculation, ignores the fact that the statute also includes a 25% adder to the average annual wholesale price. In addition, the statute does not limit the EDG Rider to only solar customers and Duke Energy Indiana has DG customers operating non-solar generation. For all of these reasons, Mr. Flick recommended Mr. Inskeep's proposal to use only daylight hours to calculate the EDG rate should be rejected.

Mr. Inskeep and Mr. Mullett in their testimony both criticized Duke Energy Indiana's proposed EDG rate because it is not supported by a cost of service study. Mr. Flick testified that this was not a valid criticism, because as at issue here is a statutorily prescribed rate based on competitive wholesale prices, not a utility-developed rate. He asserted the results of a cost of service study of the costs imposed on the system by DG customers as a class are not needed to comply with the DG Statute, given the statute's focus on putting the EDG rate on a level playing field with other wholesale power options. The EDG rate is analogous to a market-based wholesale rate, which is not developed by means of a cost of service study. SI witness Mullett also claimed that the author of the DG statute characterized the EDG rate as "arbitrary"; however, Mr. Flick testified that he does not agree with this as only the author of the DG Statute knows precisely what he meant to say. Mr. Flick testified that he read the author's use of the word "arbitrary" as referring to the 25% adder, not the calculation of the base wholesale EDG rate itself.

[9] 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."

In regard to instantaneous netting, Mr. Flick testified that Indiana Code § 8-1-40-5 defines "Excess Distributed Generation" 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." OUCC witness, Alvarez, IndianaDG witness, Inskeep, and SI witness, Mullett, all claim that Duke Energy Indiana's proposal does not meet the statutory definition; however, Mr. Flick does not agree. Mr. Flick testified, Duke Energy Indiana's proposal will compensate a DG customer for all "excess distributed generation" at the statutorily-required rate. The definition of "excess distributed generation," along with other provisions of Indiana 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 (essentially an average wholesale price plus 25%). Duke Energy Indiana's proposal will accomplish just that. He asserted that at any point in time where a DG customer is producing more electricity than it needs for its own requirements and delivers that surplus electricity to the grid, under Duke Energy Indiana's proposal, the Company will compensate the customer for that "excess" electricity at the statutorily-required EDG rate. Mr. Flick further testified that he does not take the language in the DG statute "the difference between" to make it a requirement to "net" customer excess generation with energy supplied by the utility and used by the customer. He testified, the "difference" between the electricity being supplied by the utility to the customer and the electricity being supplied back to the utility by the customer will be determined instantaneously under Duke Energy Indiana's proposed methodology. Duke Energy Indiana's EDG proposal will establish through very specific means the difference between the electricity supplied by the utility to a DG customer and the electricity supplied back to the utility by the DG customer, as required by the DG Statute. Duke Energy Indiana's EDG proposal will thus precisely measure and capture both energy delivered by Duke Energy Indiana to the customer and energy delivered by the customer to Duke Energy Indiana. Mr. Flick further testified that while it is accurate that in any instant, energy can only flow in one direction, as a matter of physics, in that instant the energy produced and delivered by one party will be netted against zero, which is the amount of energy being delivered by the other party in that same instant. He testified the OUCC and intervenors fail to appreciate that zero can be netted against the instantaneous flow of energy going in one direction or the other, and that netting of a customer's load and generation output is continuously occurring to arrive at that result.

He testified if you were to take the result of the meter measurements and then net again over some period of time during the billing process, you would have effectively netted the customer generation against the utility supply a second time. Duke Energy Indiana's metering will track separately, energy supplied by the utility that is used by the customer and energy sent back to Duke Energy Indiana's distribution infrastructure (the grid) 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 excess energy produced by the customer and sent back to the grid.

IndianaDG witness Inskeep contends that the use of "difference" in the definition of EDG implies the use of monthly netting; however, Mr. Flick testified that he does not agree as there is

nothing in the definition that implies the use of monthly netting. Just as there is nothing in the DG Statute that implies the continuation of net metering (except for grandfathered customers). Mr. Flick provided an example of how Duke Energy Indiana's EDG proposal works to provide benefit to customers who have invested in their own distributed generation. He stated, assuming that a DG customer, at noon on a sunny day, is generating 100 Watts of electricity from solar panels on the customer's home, while they consume only 60 Watts of their own generation. At that point in time, Duke Energy Indiana is supplying 0 Watts to the customer and the customer is sending their excess generation of 40 Watts to the grid via Duke Energy Indiana's electrical infrastructure. The difference between the amount of energy Duke Energy Indiana is supplying to the customer, and the quantity the customer is supplying back to the Duke Energy Indiana electrical infrastructure is 40 Watts. The reverse of this scenario will also be present when the customer generation is less than the amount they are consuming, so they consume all of their own generation plus an amount generated and delivered by the utility. Duke Energy Indiana's metering equipment will measure the amount of customer generation that exceeds the customer's consumption (or vice versa) at any point in time, and the Company will compensate the customer for any "excess" generation as required by the statute (or will charge the customer at the retail rate for any amount supplied by Duke Energy Indiana and consumed by the customer). The cumulative amount of Watts provided by the customer to the utility and by the utility to the customer in all such instances over a month, will be translated to kilowatt hours. At the end of the month, if the customer has generated 1,000 kWh in which they consume 600 kWh for their own use, the excess 400 kWh was sent back to the utility. In addition, the customer consumed 300 kWh of energy supplied by the utility when their generation was less than what they needed. The customer benefits both by avoiding paying the utility the retail rate for 600 kWh they consumed from their own generation and they are getting credited the EDG rate for the 400 kWh of excess generation going back to Duke Energy Indiana's distribution grid. The customer pays the utility the retail rate for the 300 kWh that was delivered by the utility and consumed by the customer. Mr. Flick further described how the same example would work under a netting methodology proposed by the intervenors. As he testified, under the apparent IndianaDG definition of how the Duke Energy Indiana EDG tariff should work, the customer not only benefits in the two ways Mr. Flick described above, but they also want to incorporate a process of netting in which the customer generation and energy provided by the utility are netted against each other over a long period of time (*i.e.*, over a month). Mr. Flick claimed that this effectively compensates the customer at the retail rate for the quantity of kWh being netted – just as net metering did. In a monthly netting scenario, the customer in the example above would benefit by avoiding retail rates for the 600 kWh that was generated by the solar system and consumed by the customer. In addition, the customer's 400 kWh of excess generation is now able to be netted against the customer's 300 kWh of usage supplied to them by the utility leaving the customer with 0 kWh to be billed for by the utility at retail rates – even though there were times when the customer needed and used electricity supplied by Duke Energy Indiana equipment and facilities. The 100 kWh of excess customer generation sent back to the Duke Energy Indiana grid (and not utilized in the netting step) is credited on the customer's monthly bill at the EDG rate for use against future charges. *See* Figure 1 below for clarity. The common billing determinants between both proposals are: Customer generation - 1,000 kWh; Customer consumption of own generation -600 kWh; Customer consumption from utility supply – 300 kWh and EDG sent back to Duke Energy Indiana distribution grid – 400 kWh.

Figure 1

	Statute-Driven Duke Energy Indiana Proposal	IndianaDG Monthly Netting Proposal
Customer pays retail rate	300 kWh	0 kWh
Netted at retail rate	0 kWh	300 kWh
Credit at EDG rate	400 kWh	100 kWh

Mr. Flick testified that he did not agree with IndianaDG witness Inskeep, on page 18 of his testimony, that the DG Statute requires the calculation of a rate but does not require a change to the netting methodology used in net metering. As Mr. Flick testified, the DG Statute ends net metering (except for grandfathered customers) and puts in place a new paradigm for paying customers for excess electricity produced by customers and delivered to the grid. Other than the grandfathering provisions, there is nothing in the statute that indicates that parts of the old net metering paradigm should remain in place. Mr. Flick further testified that he does not agree with IndianaDG witness Inskeep that the history and amendments to SB 309 (enacted as Indiana Code 8-1-40) support his position that the intent of the legislature was to keep the monthly netting portion of the net metering paradigm in place. As Mr. Flick testified, the DG Statute ends the net metering paradigm and replaces it with a paradigm that requires payment for electricity delivered to the grid by customers at an average rate similar to a wholesale power rate (plus 25%). The fact that SB 309 started out as a "buy all, sell all" structure then changed to a "net billing" structure in no way implies that the statute was intended to keep a part of net metering in place. It is helpful to consider that there are three (3) basic DG paradigms in place across the U.S. today, commonly referred to as: (1) net energy metering (what we refer to as net metering); (2) buy all, sell all; and (3) net billing (the Indiana Code ch. 8-1-40 paradigm). The history of SB 309 indicates that the bill started as a buy all, sell all bill, then evolved to a net billing bill. It was never a net (energy) metering bill – except with respect to the grandfathering provisions.

Mr. Flick further refuted IndianaDG witness Inskeep's testimony on page 19 that Duke Energy Indiana's proposal resembles a "Buy All, Sell All" proposal in some respects. As Mr. Flick testified, if Duke Energy Indiana's proposal were a buy all, sell all proposal, the DG customer would pay the utility for all its electricity requirements at standard tariff rates, and would be compensated for all the electricity the customer produces at the EDG rate. Instead, Duke Energy Indiana's proposal – under the DG Statute – allows the customer to "serve itself" first and be charged standard tariff rates only for its incremental usage above the amount of electricity the customer produces. Like the DG Statute, Duke Energy Indiana's proposal falls within the category of net billing, not buy all, sell all. Mr. Flick further testified that he does not agree with IndianaDG witness Inskeep's contention that the DG statute's sizing constraint (*i.e.* limited to average annual energy needs) implies the use of monthly netting. As Mr. Flick testified, participation in state programs such as net metering and EDG were established by statute to allow customers to self-serve their own electrical needs, and the DG Statute reflects that. Customers wishing to fundamentally exceed their own electrical needs, and operate as commercial electrical generating facilities, have other avenues, such as participating in the wholesale capacity and energy markets through the MISO Interconnection Queue.

Mr. Flick testified that the OUCC and SI recommends the Commission reject Duke Energy Indiana's proposal. IndianaDG recommends rejection as well, unless monthly netting is

retained; however, Mr. Inskeep recommends that the Commission approve Duke Energy Indiana's proposal with daily netting. As Mr. Flick testified, Duke Energy Indiana recommends the Commission approve its EDG rate proposal, which is consistent with the DG Statute. As the statute ends net metering, there is nothing in the statute which directs the retention or use of monthly netting or the adoption of daily netting. Duke Energy Indiana disagrees with Mr. Inskeep's proposal. Mr. Flick also testified that he did not agree with Mr. Inskeep's characterization of monthly netting/continuation of net metering as a "no regrets" policy choice for the Commission. He states he believes the Commission should follow the DG Statute, as it did in the *Vectren South* Order in Cause No. 45378 and approve Duke Energy Indiana's tariff as proposed. The "no regrets" proposal that IndianaDG supports would effectively maintain net metering beyond the required end date of July 1, 2022, and that would be in conflict with the DG Statute.

Mr. Flick further testified that he does not agree with Mr. Inskeep's argument that monthly netting better comports with Bonbright's principles of ratemaking and the principle of gradualism than Duke Energy Indiana's proposed EDG rate. As Mr. Flick testified, he believes the DG Statute exemplifies gradualism, through its lengthy grandfathering periods for existing DG customers. In addition, the statutory EDG rate calculation is simple and easy to understand – it approximates a level playing field with other wholesale power options; and it is calculated once a year based on actual historical wholesale power prices. Also, the statutory EDG rate calculation is fair and avoids undue discrimination by recognizing that DG customers use utility facilities and equipment, and by putting utility purchases from DG customers on more of a level playing field with competitive wholesale power purchases. Finally, the EDG statute represents a considered policy choice made by the legislature. As the DG Statute is silent on the issue of netting, Mr. Flick testified as to why Duke Energy Indiana believes instantaneous netting is reasonable. As he states, Duke Energy Indiana believes instantaneous netting is consistent with the overall intent of the DG Statute – to terminate net metering and replace it with a compensation system for excess distributed generation that more closely approximates Duke Energy Indiana's other purchased power alternatives. This new EDG compensation is beneficial to Duke Energy Indiana's customers as a whole, as it provides a more competitive price for the excess distributed generation that the Company is required to purchase. Furthermore, it is fair to DG customers, because it provides a competitive price, plus a 25% adder, for their excess generation supplied back to the Duke Energy Indiana grid.

Mr. Flick addressed the public and intervenor's concerns regarding treatment of unused EDG credits. Mr. Flick testified that Duke Energy Indiana is agreeable to the OUCC's recommendation to refund any unused EDG credits to customers through its FAC proceeding rather than let unused EDG credits expire. He further states that Duke Energy Indiana is agreeable to modifying its proposed tariff to provide that any unused credits will be flowed back to all retail customers through the FAC process, which is consistent with the Commission's decision in the *Vectren South* order (IURC Cause No. 45378). As to Mr. Inskeep's proposal to provide cash to individual DG customers for their unused EDG credits, Mr. Flick testified that this is not workable nor does the DG Statute require cash compensation. It only talks in terms of credits.

Mr. Flick also addressed the purported "double recovery" of EDG payments that SI witness Mullett claims in his testimony. Mr. Flick testified that Mr. Mullett is not correct in his claim that a utility's recovery of EDG credits paid to FAC customers would constitute "double recovery" as costs eligible for recovery in the FAC are recovered based on energy (kWh) consumed by customers. In the case of an EDG customer, the FAC charges would be applied to the measurement of energy delivered to the customer on their meter, which represents fuel costs associated with the energy consumed by the EDG customer. In other words, there is no double recovery – the customer will be paying the variable FAC based on energy consumed which is separate and distinct from the Rider EDG credits paid for EDG. The same FAC rate is applied to all rate schedules, with the only difference representing the line loss applied.

Mr. Flick also addressed IndianaDG witness Inskeep's concern that Duke Energy Indiana's PURPA/QF tariff rate could be higher than the EDG rate. Mr. Flick testified that this is not correct. As he testified, Mr. Inskeep is comparing apples and oranges. The PURPA/QF rate stems from the federal PURPA, which was enacted in 1978 and was intended to provide incentives to the development of certain qualifying facilities and was instituted before the existence of a robust and competitive wholesale power market. Since PURPA was enacted, not only has a competitive wholesale market developed, but so have regional transmission organizations, including MISO of which Duke Energy Indiana is a member. In fact, in 2005 the Energy Policy Act of 2005 provided a new PURPA section that requires FERC to excuse host utilities from entering into new purchase or contract obligations if there is access to a sufficiently competitive market for a QF to sell its power. The two rates are the result of two different government-prescribed calculations. The PURPA/QF rate calculation is prescribed by PURPA, as implemented by an IURC rule, while the EDG rate calculation is prescribed by the DG Statute. That said, if a customer meets the eligibility requirements for both tariffs, that customer may choose which tariff it wants to participate in. Mr. Flick testified that Duke Energy Indiana rejects Mr. Inskeep's proposal to impose an affirmative duty upon it to provide information to customers about PURPA/QF rates versus EDG rates, Duke Energy Indiana will of course answer any questions customers may have about our various rates.

In regard to Mr. Inskeep's recommendation that the Commission reject the provision in Duke Energy Indiana's proposed Tariff that requires customers to install a disconnect switch, Mr. Flick testified that Duke Energy Indiana does not agree with this recommendation. As Mr. Flick testified, the disconnect switch provides an option of last resort to quickly and easily isolate a customer generator from the grid. He further stated that there are several circumstances when the Company may need to isolate the customers' generation equipment: (1) the inverter is broken and not properly isolating the system; (2) the system is no longer in compliance with IEEE 1547, either through equipment, software, firmware updates resulting in an islanding situation; or (3) storm restoration where technicians are working around affected areas and are not sure if a DG system is fully isolated or not. In the last case, the Company can disconnect the system out of an abundance of caution, but the result is the same, Duke Energy Indiana has isolated the customer's generator/battery without having to cut their service line or pull their meter. Without that disconnect, the only reliable options the Company would have to disconnect the customer's generator would be completely disconnecting the customer's service, which is not a great option for our customers. Not isolating the generator at certain times may put utility employees or the public in harm's way. First responders may need to utilize the disconnect in case of fire or other

hazards at the property. The General Interconnection provisions section of the Indiana Administrative Code, 170 IAC 4-4.3-4(d), states: "The utility may require the applicant to include a disconnect switch as a supplement to the equipment package." In addition to the reasons listed above, changes incorporated into the 2020 National Electric Code ("NEC") continue to become more stringent to reduce accidental electrical contact. Changes include the addition of whole house surge protection and Ground Fault Circuit Interrupter ("GFCI") protection for A/C units for one- and two-family dwellings. NEC 230.85 speaks directly to the requirement of an exterior, readily accessible emergency disconnect switch for first responders. As states adopt the 2020 National Electric Code, this disconnect switch will become a basic requirement for service. As such, it is Mr. Flick's opinion that Mr. Inskeep's recommendation, including his proposed recordkeeping and reporting recommendation, should be rejected.

Mr. Flick also testified that he does not agree with SI witness Mullett recommendation that the Commission reject Duke Energy Indiana's proposal and require the Company to refile it's cause with detailed information about its customer information systems. As Mr. Flick testified, details about Duke Energy Indiana's customer information systems are not necessary to the resolution of this proceeding. Indiana Code § 8-1-40-17 outlines the scope of this proceeding, and details concerning the utility's customer information systems are not within this limited statutory scope. Mr. Flick also testified that SI witness Mullett's concerns about solar vendors' liability under the DG statute are not relevant to this proceeding as Indiana Code § 8-1-40-17 outlines the scope of this proceeding and solar vendors' liability is outside of this scope. Indiana Code § 8-1-40-23 is a separate part of the DG Statute that sets out DG customers' rights vis a vis solar vendors.

Mr. Flick addressed SI witness Boggess' concerns about protections for legacy net metering customers. As Mr. Flick testified, the DG Statute provides specific protections for legacy net metering customers, through its grandfathering provisions. Accordingly, Mr. Flick does not understand what concerns Mr. Boggess has. However, protections for legacy net metering customers are not a necessary part of this proceeding. Indiana Code § 8-1-40-17 outlines the scope of this proceeding, and protections for legacy net metering customers are not within this limited statutory scope. Again, Indiana Code §§ 8-1-40-13 and -14 adequately address protections for legacy net metering customers and Duke Energy Indiana will comply with these grandfathering provisions for qualifying legacy net metering customers.

Mr. Flick concluded his rebuttal testimony by again reiterating that it is his opinion that Duke Energy Indiana's proposed EDG tariff will produce just and reasonable rates. Furthermore, Duke Energy Indiana's proposal complies with the DG Statute and is consistent with the Commission's Order in the Vectren South case (IURC Cause No. 45378). In addition, the DG Statute and Duke Energy Indiana's proposal level the playing field between DG power and other wholesale power options available to Duke Energy Indiana. This will benefit Duke Energy Indiana's customers as a whole, as they will be paying a more competitive amount for DG power than they do under net metering. At the same time, the EDG rate will provide DG customers with a reasonable rate for its excess distributed generation – 25% above what Duke Energy Indiana pays on the wholesale market. The OUCC's and intervenors' positions consider only the DG customer (and solar vendor) side of the equation. The DG Statute, in contrast, considers both the interests of DG customers and the remainder of Duke Energy Indiana's retail customers. Mr.

Flick also testified that after reviewing their proposed EDG tariff rate language, he believes Duke Energy Indiana's proposal closely aligns with Vectren South's as Vectren South has a straightforward marginal DG price calculation that follows the statute, they treat the inflow and outflow of energy the same as in Duke Energy Indiana's proposal, and do not utilize any system of netting the customer generation with utility supplied generation.

8. Commission Discussion and Findings. This is the fifth EDG Rider Petition under the Distributed Generation Statutes to be addressed by this Commission. Of the five IOU electric utilities only Vectren has received an order in Cause No. 45378 issued April 7, 2021, and it is currently on appeal. The Vectren Order was based on the evidence provided in that case. In this Duke Energy Indiana case additional and different evidence has been admitted. The Commission makes its rulings based on the evidence presented in each case. It is free to rule differently on the same or similar issues in a subsequent case so long as the substantial evidence supporting our ruling is described and the reason for the different outcome is explained. Hamilton)S.E.)Utilities)v.) IURC. *Hamilton S.E. Utilities v. IURC.* 135 N.E.3d 902, 908 (Ind. App. 2019). *Indiana Bell Telephone Co., Inc. v* Utility Reg. Comm. 715 N.E. 2d 351, 356 (Ind. 1999).

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

1. Timeliness of Petitioner's Filing for an EDG Rate. Indiana Code § 8-1-40-10 requires a utility to make its net metering tariff available until the earlier of July 1, 2022, or "January 1 of the first calendar year after the calendar year in which [Petitioner's] aggregate amount of net metering facility nameplate capacity . . . equals at least one and one-half percent (1.5%) of [Petitioner's] most recent summer peak load." Indiana Code § 8-1-40-10 further requires a utility to petition the Commission for approval of a rate for the procurement of EDG if, before July 1, 2022, the utility reasonably anticipates, at any point in a calendar year, that the aggregate amount of its net metering facility nameplate capacity will equal at least one and one-half percent of its most recent summer peak load. Otherwise, an electricity supplier must file a petition seeking approval of a rate for the procurement of EDG by March 1, 2021.

Petitioner initiated this proceeding on March 1, 2021. Petitioner's witness, Mr. Flick, testified that Duke Energy Indiana is requesting approval of a rate for the procurement of excess distributed generation by March 1, 2021 in accordance with this statutory requirement.

The propriety of the timing of Duke Energy Indiana's filing for approval of a rate for EDG under Indiana Code § 8-1-40-10 was not disputed. Based on Petitioner's evidence, the Commission finds that Duke Energy Indiana's Petition seeking approval of a rate for the procurement of EDG was timely filed.

2. Rider EDG Rate. Once a utility timely files a request for an EDG rate in accordance with Indiana Code § 8-1-40-10, Indiana Code § 8-1-40-17 of the Distributed Generation Statutes requires the following:

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

Thus, under Indiana Code § 8-1-40-17, the Commission is charged with approving a rate to be credited for EDG. Section 17 states that "the average marginal price of electricity paid by the electricity supplier during the most recent calendar year" but is silent as to what hours during that calendar year are to be included or how the LMPs during those hours are may be weighted.

Mr. Flick explained and supported Duke Energy Indiana's calculation of the Rider EDG rate. *Petitioner's Exhibit 1 and Workpaper 1 (RAF)*. He stated that, consistent with Indiana Code § 8-1-40-18, Duke Energy Indiana calculated the average marginal price of electricity paid by the company by averaging the 2020 day ahead hourly LMPs at the CIN.PSI load node. Mr. Flick testified that the average was calculated by summing the hourly LMPs for the preceding calendar year and then dividing by 8,784, which represents the total hours in the 366 days in 2020, resulting in $23.185/MWh or $0.023185 per kWh, which results in Duke Energy Indiana's proposed EDG rate of $0.028981/kWh, in its initial tariff. *Id*.

No party took issue with Mr. Flick's calculation; however, SI and IndianaDG took issue that Duke Energy Indiana's calculation of the EDG credit rate was just and reasonable. Mr. Mullett testified that Duke Energy Indiana's rate was arbitrary and confiscatory and thus not "just and reasonable." *SI Exhibit 1, page 10, lines 9-10*. Mr. Mullett supports his contention stating that Duke Energy Indiana has not based its rate on any detailed cost or value of service study or data specific to Duke Energy Indiana. *Id, page 10, lines 15-17.*

Mr. Inskeep challenged the methodology used by Duke Energy Indiana to calculate the average LMP applicable to EDG. He pointed out that while the statute does not specify which hours of market prices are to be included in the annual average calculation, Duke Energy Indiana has equally weighted all hours of the year to calculate the wholesale price of electricity, including the nighttime hours when solar is not generating electricity and provides no EDG exports. He explained that wholesale market LMPs tend to be lower at night than during the day when solar is generating electricity. He testified Duke Energy Indiana's customers' highest demands for electricity generally occur during the afternoon. Therefore, Mr. Inskeep concluded that Duke Energy Indiana's methodology does not accurately reflect the marginal price of electricity during the hours in which a typical DG system is providing EDG to Duke Energy Indiana and undervalues EDG. He asserted it would be irrational to calculate the value of EDG based on hours when EDG is not being generated and exported to the grid and would yield an irrational result.

Mr. Inskeep recommended instead calculating the average marginal price of electricity for each hour of the previous year and applying an appropriate factor that weights the average price in each hour according to the amount of generation a typical DG system is expected to actually produce during that hour. He used the National Renewable Energy Laboratory's PV Watts calculator to estimate solar generation during the year from a typical DG facility located in Duke Energy Indiana's service territory. For accuracy he calculated the average marginal price of electricity for each hour of the previous year and applied an appropriate factor that weights the average price in each hour according to the amount of generation a DG system is expected to actually produce during that hour, e.g., the high noon hour produces 13.7% of a solar DG system total annual production and so he weighted the average wholesale price by 13.7% for this hour. Mr. Inskeep testified that his approach results in a 2020 average LMP of $26.30/MWh, or $0.02630/kWh, which produces an EDG credit rate of $0.032879/kWh, which is 13.5% higher than Duke Energy Indiana's proposed EDG credit rate. A less accurate approach is the one taken by Duke Energy Indiana where the individual 24 hours of LMP are averaged with total disregard to when solar DG is actually producing electricity. He concluded that calculating the solar EDG rate based on daylight hours (i.e., solar-producing hours) simply avoids the irrational calculation of an EDG credit rate that primarily compensates distributed solar from being based in part on the wholesale market pricing during non-solar producing nighttime hours. This competing daylight hours EDG calculation proposal was not presented in the Vectren EDG case.

There is no dispute that the EDG Statute does not specify the details of the hours to be included. Nor does it detail how the hours can be representative of the hours the exported customer DG is actually generated and provided to Duke Energy Indiana in the calculation to be used to determine "the average marginal price of electricity paid by the electricity supplier during the most recent calendar year." Similarly, there is no dispute that through 2020, 93% of Duke Energy Indiana's mix of DG customer nameplate capacity was from solar, and that 100% of new net metering facilities in 2020 were solar resources. The Commission further notes that the Q2 2021 Net Metering report provided by Duke Energy Indiana confirms that 100% of new net metering capacity additions in the first half of 2021 are solar resources. Thus, all of Duke Energy Indiana's new DG being added to the grid today is solar capacity. IURC 2020 Year-End Net Metering Report; IURC 2021 Q1 Net Metering Quarterly Reporting Summary; IURC 2021 Q2 Net Metering Quarterly Reporting Summary. To determine "the average marginal price of electricity paid by the electricity supplier during the most recent calendar year" with total indifference to the fact that more than 100% of Duke Energy Indiana's new DG is solar, which only generates electricity during daylight hours, would be needlessly inaccurate, fail to tie to actual wholesale market prices at the time the EDG is exported and yield an irrational absurd result.

In the case of statutory ambiguity courts are required to determine, give effect to, and implement the legislative intent underlying the statute and to construe the statute in such a way as to prevent absurdity and hardship and to favor public convenience. *Livingston v. Fast Cash USA, Inc.*, 753 N.E.2d 572, 575 (Ind.2001). In so doing, the Court should consider the objects and purposes of the statute as well as the effects and repercussions of such an interpretation. *Id.* The legislative intent as ascertained from the provision as a whole prevails over the strict literal meaning of any word or term. *Shell Oil Co. v. Meyer*, 705 N.E.2d 962, 970 (Ind. 1998).

All of Duke Energy Indiana's customer DG additions have been solar in recent years. We agree with Mr. Inskeep that it would yield an irrational and absurd result to value the exports of 100% of new DG capacity in Duke Energy Indiana's service territory based on using a simple arithmetic mean of the LMP across all hours, which would equally weight the LMP during the hours of darkness when solar is not generating EDG (and electricity demand and LMP are typically lower) with the LMP during the hours of light when solar is generating electricity. It is true that one of our interpretive canons is to "avoid construing a statute so as to create an absurd result." *Walczak v. Labor Works-Ft. Wayne LLC*, 983 N.E.2d 1146, 1154 (Ind. 2013). But the ultimate *purpose* of that canon is to interpret the text "consistently with the statute's underlying policy and goals." *Id.*

To apply a wholesale EDG rate that seriously undervalues the output of all of Duke Energy Indiana new customer DG capacity by ignoring that it is only generated during daylight, when electricity demand and price is typically higher, would be an inaccurate and unreasonable outcome the legislature could not have intended. We cannot approve and implement a wholesale price based EDG rate for 100% of Duke Energy Indiana's new EDG capacity that lacks a rational tie to the wholesale prices and demands of when that 100% of new EDG capacity is even offered to Duke Energy Indiana. As Duke Energy Indiana transitions out of net metering it would be unnecessarily harsh to DG customers and the businesses that install DG to undervalue EDG by equally weighting the market price of electricity during hours of darkness and the market price of electricity during daylight hours.

Accordingly we find the EDG rate should be calculated in the manner proposed by IndianaDG to most accurately reflect the average annual wholesale market price when customers actually are supplying EDG to Duke Energy Indiana.

3. Carryover of EDG Credits. Petitioner seeks approval of a retail rate crediting mechanism that affords an EDG customer a credit on the customer's monthly bill, with any excess credit to be carried forward and applied by Petitioner against future charges to that EDG customer for as long as such customer receives electric service at the premises from Petitioner. Petitioner's proposal to carry credits forward consistent with Indiana Code § 8-1-40-18 was not opposed; however, certain parties took issue with what happened to those credits when a customer elected to discontinue its Net Metering service at their premises. Mr. Inskeep took issue with Petitioner's proposal that, upon discontinuance of service, any unused credit will be granted to the Company. *IndianaDG Exhibit No. 1, page 77, line 15 through page 78, line 17*. Mr. Inskeep recommended that a customer's earned EDG credits be refundable to the customer upon service termination. *IndianaDG Exhibit No. 1, page 79, line 2*. He asserts those credits represent the approved value of electricity the customer generated and sent to Duke Energy Indiana. To not compensate them for that valuable electricity is to take the DG customer's property without compensation. If the customer moves but remains a Duke Energy Indiana customer, Mr. Inskeep says they should receive their EDG credits on their subsequent Duke Energy Indiana bill. They earned it, it has value, and it should be theirs to keep. OUCC witness Alvarez, recommended that Duke Energy Indiana refund any unused EDG credits to all retail customers through Duke Energy Indiana's FAC if a DG customer leaves the premises instead of Duke Energy Indiana forfeiting the unused credits. *Public's Exhibit No. 1, page 11, lines 4-7.*

In evaluating these alternatives, the Commission looks first to the requirements of the DG Statute. Indiana Code § 8-1-40-18 provides:

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

Section 18 defines "Premises" as follows:

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

As defined "premises" would include both the customers tract of land upon which the EDG credit was created and the tract of land to which the EDG customer moves and there continues to consume Duke Energy Indiana electricity. Nothing in the statutory definition of "premises" requires that the new customer have DG installed at her new Duke service address to receive credit for past EDG supplied to the utility. The customer's remaining EDG credit should move with them.

The language in the DG Statutes does not expressly specify how unused credits should be treated when a customer no longer receives retail electric service from the utility. It does not say the former customer's excess credit is to be forfeited, cashed out, or credited to all customers in the FAC. There is no language in the DG Statute resolving this issue. In this regard, the Commission finds it important to recognize what the statute says as well as what it does not say. *See Van Orman v. State*, 416 N.E.2d 1301, 1305 (Ind. Ct. App. 1981). Indiana Code § 8-1-40-18 calls for a credit to be applied against future charges for electric service which is consistent with the premise that EDG is a retail rate crediting mechanism. Similar to Indiana Code § 8-1-40-18, Indiana Code §§ 8-1-40-15 and -17 also provide for the approved rate to EDG customers to be credited, with Indiana Code § 8-1-40-17 providing that the Commission shall "approve a rate to be credited to participating customers by the electricity supplier for excess distributed generation." Ind. Code § 8-1-40-17. We also note that under Indiana Code § 8-1-40-3(a)(3), to be properly sized, a DG customer's system is to be sized to meet the customer's load, limiting the likelihood or size of a credit positive position over the course of time.

The simple facts are the unused EDG credit represents excess electricity that the DG customer provided to Duke Energy Indiana valued only at the EDG rate, that Duke Energy Indiana then sold to other customers at its full retail rates. That excess EDG is a result of the customer investing their own capital in DG equipment to produce electricity to offset their own use and to make any excess available to Duke Energy Indiana at the EDG rate. It seems inequitable and a case of unjust enrichment that the customer's excess energy be sold by Duke Energy Indiana at full retail rates but the customer who moves from her current "premises" to

their new "premises" and continues Duke Energy Indiana electric service at the new "premises" not receive their credit for the balance of the value provided to Duke Energy Indiana as a credit to the service bill at their new premises. On the flip side, if a customer moves without paying a portion of their electric bill Duke Energy Indiana will certainly seek to recover the balance from that customer at their new Duke Energy Indiana service location, or elsewhere. To confiscate the customers unused EDG violates fundamental equity principles and the intent of the statute. If the customer moves and has an EDG credit owed to them Duke Energy Indiana can apply that credit at their new Duke Energy Indiana service location premises.

Likewise in the case of a customer who has given notice that they want their service disconnected, their final bill should reflect the remaining EDG credit value of electricity exported to Duke Energy Indiana. Their final bill will certainly reflect what they owe Duke Energy Indiana, and the final bill or a subsequent payment should be made to reflect what Duke Energy Indiana owes that customer for EDG provided to Duke Energy Indiana by the customer. To simply automatically roll the final EDG credits over into the FAC would be inequitable and unnecessary.

Based on the Distributed Generation Statute and the evidence in this Cause, the Commission finds Duke Energy Indiana should adopt an EDG customer retail rate crediting mechanism that affords EDG customers a credit of any credit balance remaining when the participating customer moves to a new premises within Duke Energy Indiana's service area or gives notice of their need to disconnect service and leave Duke Energy Indiana's service area.

4. Compliance Filing Updates. Indiana Code § 8-1-40-16 provides that after approval of the initial rate, a utility shall "submit on an annual basis, not later than March 1 of each year, an updated rate for excess distributed generation in accordance with the methodology set forth in section 17 of this chapter." Ind. Code § 8-1-40-16. Accordingly, Petitioner proposes updating its Rider EDG annually, by March 1, via a compliance filing under this Cause. Having reviewed and approved Petitioner's method of calculating the EDG rate under Indiana Code § 8-1-40-17 and after reviewing the evidence presented upon Duke Energy Indiana's methodology for annually updating Rider EDG, the Commission finds Duke Energy Indiana's proposal for annually updating its EDG rate is consistent with, and meets the requirements of, Indiana Code § 8-1-40-16, so long as the annual updating does not contain or create new or material issues or issues otherwise unsuited for a compliance filing.

5. Recovery of amounts credited to EDG customers through the FAC. Indiana Code § 8-1-40-15 provides, "Amounts credited to a customer by an electricity supplier for excess distributed generation shall be recognized in the electricity supplier's fuel adjustment proceedings under IC 8-1-2-42." SI witness Mullett testified that SI is concerned that, with respect to DG customers, recovery of EDG credits through the FAC will constitute a "double recovery" of an "energy delivery charge." *SI Exhibit 1, page 34, lines 1-4*.

As Mr. Flick explained on rebuttal, there is no double recovery because the costs eligible for recovery in the FAC are recovered based on energy (kWh) consumed by customers. In the case of an EDG customer, the FAC charges will be applied to the measurement of energy delivered to the customer on their meter, which represents fuel costs associated with the energy

consumed by the EDG customer. Mr. Flick testified there is no double recovery because the customer pays the variable FAC based on energy consumed which is separate and distinct from the Rider EDG credits paid for EDG. *Petitioner's Exhibit 2, page 20, lines 5-13*. Given Petitioner's rebuttal and the recovery of only energy costs in the FAC, the Commission finds that applying Indiana Code § 8-1-40-15 does not result in a double recovery from EDG customers. Rather, the EDG customer will be paying the variable FAC charge based on energy consumed which is separate and distinct from the Rider EDG credits paid for EDG; therefore, the Commission authorizes Petitioner, consistent with the statute, to recover amount credited to EDG through its FAC.

B. EDG Tariff Determination. In addition to seeking approval of its rate for an EDG rate, Duke Energy Indiana asks the Commission to approve its proposed EDG tariff, i.e., Rider EDG, but includes therein a new "instantaneous" i.e. no netting measurement proposal.. As proposed, Duke asserts Rider EDG is based upon so-called "instantaneous" netting, i.e., ending the practice of netting kWh supplied by the customer against kWh supplied by the utility, and instead crediting all kWh of electricity the customer supplies to Duke Energy Indiana at the EDG credit rate. Duke admits that under its proposal the meter is not netting any energy- the delivered and received kWh is captured on individual channels. OUCC CX-1 p. 6. Under Rider EDG, the gross electricity a customer supplies to Duke Energy Indiana is instantaneously measured on Channel 2 of the customer's meter. The OUCC and Intervenors challenged Petitioner's assertion that its measurement of EDG calculates the difference between kWh supplied by the utility and kWh supplied by the customer at each instant, contending that Petitioner's methodology does not calculate the "difference" between the amount of electricity supplied to the Rider EDG customer and the amount of electricity the Rider EDG customer supplied back to Duke Energy Indiana must be calculated as required by Ind. Code § 8-1-40-5. initially moving for summary judgment and subsequently, when that motion was denied, appealing that denial to the full Commission.

1. Indiana Code § 8-1-40-5. The OUCC and Intervenors both assert Petitioner's proposal to use instantaneous netting, rather than continuing normal monthly netting, does not comply with the DG Statute. Specifically, they contend Duke Energy Indiana is not determining EDG in accordance with Section 5. IndianaDG further presented evidence of the legislative evolution of SEA 309, the Distributed Generation Statutes.

Given Duke Energy Indiana's stipulated position that Section 5 does not specify a netting method and alternative netting methods may be lawful and Duke's testimony discussion of legislative intent, we first address Mr. Inskeep's evidence of legislative evolution of SEA 309. He studied, described and provided copy of the five variations of the DG legislation, the fifth being the final SEA 309. Version 1 expressly removed all netting and established a buy-all, sell-all tariff to replace net metering. The buy-all, sell-all tariff would have the DG customer pay retail rates for their full electricity usage, receive a set EDG rate for their electricity production, and their usage would not be offset by any of their own on-site DG generation output. That buy-all, sell-all Version 1 would have been a change from the existing measurement methodology of monthly netting. Mr. Inskeep documented there was strong written public opposition to Version 1. As a result Version 2 removed the buy-all, sell-all provisions and it was never reinserted. None of the subsequent Versions described a change in monthly netting methodology nor have

language that mentions, suggests, or contains provisions implying a change to the monthly netting methodology.

No evidence was presented to show a contrary view of SEA 309's legislative evolution. Legislative history can be useful in ascertaining the true intention of the legislature and meaning of statutory language. For example our Supreme Court turned to the legislative history of Ind. Code 8-1-2-83 in ruling that the Commission does not have jurisdiction over the transfer of utility stock even when the transfers result in a change in utility control. *Ind. Bell Tel. v. Utility Reg. Comm*., 715 N.E. 2d 351, 356 (Ind. 1999). In this case all evidence of legislative history points to the conclusion the legislature did not intend to move from the normal monthly netting to an "instantaneous" netting measurement cycle. Duke Energy Indiana's instantaneous netting meters would have 4,096 measurements per second. Duke Energy Indiana Stipulation of Fact, IndianaDG CX-1. Monthly netting would at time of the monthly meter read for billing purposes take the difference between the electricity the customer imported from Duke Energy Indiana and the electricity the customer exported to Duke Energy Indiana and multiply that difference by the EDG rate. The undisputed legislative history presented points in favor of the conclusion the DG Statute was not intended to result in a change from monthly netting to instantaneous netting.

In addition, Section 18 of the DG Statutes provides, in relevant part, that:

> An electricity supplier shall compensate a customer from whom the electricity supplier procures EDG (at the rate approved by the commission under section 17 of this chapter) **through a credit on the customer's monthly bill.**
>
> (emphasis added.)

This provision identifies that EDG is being calculated and credited on a **monthly** bill basis, and not on an instantaneous basis. Duke Energy Indiana argues that only indicates that the customer credit is to be included in the monthly bill. But to the contrary, with instantaneous netting the customer's EDG is calculated many times per second, not once in the monthly bill.

The Commission next looks at section 5 of the statute, which 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.

"Our first task when interpreting a statute is to give its words their plain meaning and consider the structure of the statute as a whole." See *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1195 (Ind. 2016). We also must avoid interpretations that render parts of a statute

"meaningless or superfluous." Id. at 1199. We must consider the structure of the DG Statute as a whole. Ind. Code § 8-1-40-21(a) states:

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

The plain meaning of this provision of the DG Statute is that "subject to subsection (b) of section 21 and sections 10 and 11 of this chapter, the Commission's net metering rules as set forth in 170 IAC 4-4.2 "remain in effect and apply. . . to distribution generation under this chapter."

Section 7 of the Commission's net metering rules, 170 IAC 4-4.2-7, expressly states:

> (1) The investor-owned electric utility shall measure the difference between the amount of electricity delivered by the investor-owned electric utility to the net metering customer and the amount of electricity generated by the net metering customer and delivered to the investor-owned electric utility during the billing period, <u>in accordance with normal metering practices</u>. If the kilowatt hours (kWh) delivered by the investor-owned electric utility to the net metering customer exceed the kWh delivered by the net metering customer to the investor-owned electric utility during the billing period, the net metering customer shall be billed for the kWh difference at the rate applicable to the net metering customer if it was not a net metering customer. If the kWh generated by the net metering customer and delivered to the investor-owned electric utility exceed the kWh supplied by the investor-owned electric utility to the net metering customer during the billing period, the net metering customer shall be credited in the next billing cycle for the kWh difference.
> (emphasis added)

Section 21(b) of the DG Statute authorizes changes to the provisions of the Commission's net metering rules, but in the absence of such changes, ensures their continued applicability to both utility net metering and distributed generation tariffs. Section 21(b) is unequivocal as to what rule changes are authorized and how they are to be made.

Section 21(b) provides:

> After June 30, 2017, the commission may adopt changes under IC 4-22-2, including emergency rules in the manner provided by IC 4-22-2-37.1, to the rules and standards described in subsection (a) only as necessary to:
>
> (1) update fees or charges;
>
> (2) adopt revisions necessitated by new technologies; or

> (3) reflect changes in safety, performance, or reliability standards. Notwithstanding IC 4-22-2-37.1(g), an emergency rule adopted by the commission under this subsection and in the manner provided by IC 4-22-2-37.1 expires on the date on which a rule that supersedes the emergency rule is adopted by the commission under IC 4-22-2-24 through IC 4-22-2-36.

In the four years since the date set forth in statute, the Commission has not adopted or proposed a separate distributed generation rule or any revision to its net metering rule which affects the provisions or the applicability of Section 7 of its net metering rule pursuant to Section 21(a) of the DG Statute. In fact, in 2019, the Commission re-adopted its net metering rule with identical Section 7 language. See 20190508 IR 170190136RFA (May 8, 2019). Consequently, the Net Metering Rule Section 7 billing language still applies to both net metering and distributed generation as expressly provided in Section 21(a) of the DG Act.

The determination of the measurement of EDG in Duke Energy Indiana's proposed tariff fails to properly apply Section 5 by using components not stated in the statute, and not following the plain language of the statute by not defining and measuring EDG as the difference between exports and imports. It also fails to give any effect to the plain meaning of Ind. Code § 8-1-40-21(a) which continues in effect for distributed generation as well as net metering customers the provisions of the Net Metering Rule found in 170 IAC 4-2.2-7. This application is inconsistent with the definition of EDG under Section 5 and its billing under Section 21 of the DG statute.

The plain language of the statute defines EDG as the difference between (1) electricity supplied to a customer, and (2) electricity supplied back to the electricity supplier by the customer. Having reviewed the evidence, as discussed above, the Commission finds that the electricity that flows through the meter and registers as electricity received by Duke Energy Indiana is "the electricity that is supplied back to the electricity supplier by the customer" (i.e., exports) and the electricity that flows through the meter and registers as electricity received by the DG customer is "the electricity that is supplied by an electricity supplier to a customer that produces distributed generation" (i.e., imports) for purposes of Section 5. The difference between these two values recorded by the meter over the monthly billing period is therefore EDG.

However, Duke Energy Indiana's proposed tariff does not calculate and bill EDG as defined in the statute. Rather, during the billing period, Duke Energy Indiana would separately measure the accumulated amount of electricity provided from the supplier and separately measure the amount from the customer instantaneously (i.e., over four thousand of times per second). Duke Energy Indiana then considers *only* the electricity supplied by the customer as EDG and applies the EDG rate to this amount. By using only the amount of exported electricity by a DG customer to measure EDG, Duke Energy Indiana does not follow the plain language of Ind. Code § 8-1-40-5, which requires that EDG be the difference between both electricity supplied by the customer to the utility and electricity supplied by the utility to the customer. In order to properly conform with the requirements of the statute, Duke Energy Indiana must measure exported electricity and imported electricity and then take the difference between these amounts to determine EDG. "Excess" distributed generation exists under the statutory definition only if and to the extent that exports exceed imports over the monthly billing period.

While Duke Energy Indiana claims to be measuring EDG on Channel 2 of its meters, the evidence in the record demonstrates otherwise. For instance, when asked to identify and fully explain the components being netted under "instantaneous netting," as that phrase is used by Duke Energy Indiana, it admitted that "[s]olar generation and a customer's load on the customer's side of the delivery point are instantaneously netted and result in either energy being delivered to the customer from Duke Energy Indiana or exported to Duke Energy Indiana's grid." Duke Energy Indiana Response to IndianaDG Data Request 2.15(a), Inskeep Attachment BDI-10. As is clear from Duke Energy Indiana's response, its measurement of EDG under instantaneous netting is taking the difference between a DG customer's *generation* and a DG customer's *gross electricity load* – two non-statutory terms that do not comply with the plain language of the DG Statutes. When asked to identify how Duke Energy Indiana is measuring each component of the "instantaneous netting" calculation being performed to calculate a customer's EDG, it tersely responded, "[t]hrough the use of separate channels on Duke Energy Indiana's metering systems." Duke Energy Indiana Response to IndianaDG Data Request 2.15(b). Finally, Duke Energy Indiana stated that "[a]t any instant a customer is either receiving energy from the Company or delivering energy to the grid," (emphasis original). Duke Energy Indiana Response to IndianaDG Data Request 2.15(e). Clearly, by Duke Energy Indiana's own admissions, and contrary to its arguments elsewhere, Channel 2 is only measuring a DG customer's exports, and not the "difference between" a DG customer's exports and imports, as required under the plain language of the DG Statutes.

By defining "excess distributed generation" as the "difference between" exports and imports, the plain language of the DG Statute Section 5 directs utilities to conduct a real netting calculation rather than no netting. Had the General Assembly simply intended for all exported generation from a DG facility to be compensated at the EDG Rider 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" – i.e., using only the second part of the definition that was adopted, and completely omitting any reference to the first part of the definition regarding "the electricity that is supplied by an electricity supplier to a customer that produces distributed generation." Duke Energy Indiana's proposed interpretation of the DG Statute and its instantaneous netting renders meaningless the first component of the definition of EDG. Version 1 of SEA 309 contained provisions that would have required all generation by a DG facility to be credited at a prescribed rate, but in totally removing that provision from all 4 subsequent versions of the bill without any further change to normal monthly netting in subsequent amendments, it is clear that a change to instantaneous no netting were not intended in the plain language of the DG Statute.

Had the Indiana Legislature intended to solely use 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 "energy being produced by Customer Generator in excess of the electricity being used by Customer." Instead, the Indiana Legislature used almost the same definition for "excess distributed generation" as is in Commission rules for "net metering," which defines EDG as the "difference" taken between the electricity supplied to a customer and the electricity supplied back to the electric supplier.

Contrary to Duke's assertions, Mr. Inskeep's proposal does not require or result in a "second" netting as claimed , as it is not accurate to characterize instantaneous netting as actually "netting" anything in the first place. Duke admits that under its instantaneous netting proposal, "In short, the meter is not netting any energy-…" Following the clear "difference between" language of Section five and the Commission netting rule is one netting not two. In the Duke Energy discovery responses included in Joint Movants' Supplemental Exhibit 1, Mr. Flick states unequivocally that so-called "instantaneous netting" involves neither a technical configuration of DEI's "smart" meters nor an arithmetic calculation made by those meters. Instead, it is a billing "convention" which the DEI Complex Billing Department will follow to monetize separately tariff charges to the customer for "Imports" ("Inflow" per Vectren) and tariff credits to the customer for "Exports" ("Outflow" per Vectren). Contrary to Vectren, DEI is not claiming that its "smart" meters perform an electronic calculation "netting" one amount of electricity from another because there are not two amounts of electricity to net and no calculation to perform with so-called "instantaneous netting" where "excess distributed generation" is simply equated with "Exports" ("Outflow" per Vectren). Rather, instantaneous netting is tallying up the *gross* Exports in a month and crediting that amount at the EDG rate and is separately tallying up the *gross* Imports in a month and charging that amount at the applicable retail rate.

The DG Statute's plain language changes the rate at which EDG is compensated, moving away from the full retail-rate rollover crediting under Net Metering to a credit rate based on an average marginal price, plus 25%. The prior net metering end of month carry-forward of full one-for-one kWh credits under net metering is modified for EDG customers such that the end of month balance of kWh exports are credited on the customer's bill at the 1.25 multiplied by the average wholesale rate. Also, Section 3(a)(3) limits the size of the EDG customers DG system to match their annual electricity consumption at the premises. But no language in the DG Statute calls for or invites Duke Energy Indiana's proposed instantaneous no netting measurement. Any legislative intent to limit the amount of EDG that utilities must accept is provided by applying the wholesale rate to the end of month kWh export balance (i.e., imposing the new lower EDG rate instead of rolling over the full kWh balance) and limiting the total size of a DG customer's system to generate up to the customer's annual electricity usage. It would be significantly over-reaching, inconsistent with the DG statute's language, would stifle future customer DG deployment and impose harmful economic and social impacts to also implement the punitive instantaneous no netting measurement. The reduction in value of monthly export balances and limitation on DG system size are sufficient to guarantee there is no "windfall" to EDG customers as suggested by Duke Energy Indiana. Mr. Flick's Figure 1 hypothetical example calculation of the amount of a DG customer's bill netted at retail rate and amount compensated at the wholesale rate is unpersuasive for several reasons. The EDG Statute's language does not end monthly netting. In fact pursuant to Ind. Code 8-1-40-21(a) our rule 170 IAC 4-4.2 continues monthly netting for both EDG and net metering customers. That Rule has been readopted and has not eliminated monthly netting in the years since the EDG was enacted. The language of the DG Statute does not eliminate all netting of a DG customer's usage. Had that been the legislative intent it would have been easy enough to say so, just as Version One of SB 309 clearly proposed a buy-all-sell-all paradigm. After Version One no other version contained language to eliminate or change the netting method from normal monthly netting. SEA 309 ends net metering but does so by applying the wholesale rate to end of month kWh balances rather than carrying them forward as a kWh per kWh offset to the next month usage; reducing the EDG credit rate to the

average wholesale rate multiplied by 1.25; and continuing to limit the system capacity of DG systems to the lesser of one MW or the customer's average annual usage. To impose DEI's proposed no netting atop those requirements would be overreaching, would have the crushing results to future DG deployment evidenced by the intervening parties in this Cause and be contrary to the plain language of the DG Statute and our rules at 170 IAC 4-4.2

The Commission finds that each reading on Channel 2 of Duke Energy Indiana's bidirectional meters captures only "the electricity that is supplied back to the electricity supplier by the customer" under Section 5 of the DG Statutes. Therefore, each reading on Channel 2 reflects only one part of the definition of EDG as defined in Section 5 and the monthly total of the readings on Channel 2 reflects only that component of EDG for any given month.

We conclude that nothing in the DG statute's plain language invites, suggests or mandates the use of instantaneous no netting. Moreover, the un-rebutted legislative history presented in this case shows the legislature did not intend to replace monthly netting, with instantaneous or no netting and certainly did not require such a change, nor invite it to be proposed in a case intended to set an EDG rate. This Commission's own rules regarding distributed generation call for monthly netting today, four years after the passage of the DG Statute. Duke Energy Indiana's proposed instantaneous netting measurement does not comply with the plain language of Section 5. The Commission finds that Duke Energy Indiana's proposed methodology incorrectly measures EDG for purposes of Ind. Code § 8-1-40-5. Duke Energy Indiana improperly describes 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 Duke Energy Indiana's proposal and find Duke Energy Indiana's proposal to use instantaneous or "no netting" in its EDG tariff should be denied.

Were we mandated or authorized by the DG Statute to deviate from monthly netting, based on the evidence presented here daily netting would be a more reasonable option than the instantaneous no netting proposed by Duke Energy Indiana. As Mr. Inskeep's testimony demonstrated, daily netting is less harsh on EDG customers and Indiana's solar industry, yet diminishes the financial benefits of DG, thereby serving Duke Energy Indiana's desire to dampen its growth. Daily netting reflects the daily cycle of life that controls most of our activities and business operations. Daily netting and monthly netting each offer a cycling balance. However, we conclude the DG Statute does not mandate or invite a change from monthly netting and we therefore approve use of monthly netting in this cause.

2. Reasonableness of rates and charges. Mr. Inskeep and Mr. Rohaly testified I&M's instantaneous netting and the proposed EDG rate result in unjust and unreasonable rates and charges. All rates and charges must be just and reasonable. Ind. Code 8-1-2-4 requires that:

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

"Service" is defined at Ind. Code 8-1-2-1:

> The term 'service' is used in this act in its broadest and most inclusive sense and includes not only the use or accommodation afforded consumers or patrons but also any product or commodity furnished by any public or other utility and the plant, equipment, apparatus, appliances, property and facility employed by any public or other utility in performing any service or in furnishing any product or commodity and devoted to the purposes in which such public or other utility is engaged and to the use and accommodation of the public.

Case law has found it helpful in analysis to dissect the definition into three categories of "service" included therein:

(1) The use or accommodation afforded consumers or patrons;
(2) Any product or commodity furnished by the utility; or
(3) The plant, equipment, apparatus, appliances, property, and facility employed by the utility
(a) in performing any service, or
(b) in furnishing any product or commodity and devoted
(a) to the purposes in which such utility is engaged and
(b) to the use and accommodation of the public.

CAC v. NIPSCO 485 N.E. 2d 610 (Ind. 1985), Illinois-Indiana Cable T.V. v. Public Service Commission (1981), Ind. App., 427 N.E.2d 1100, 1108-1109.

EDG obtained from Duke Energy Indiana customers and the resulting lowering of DG customers' bills to reflect the EDG provided to Duke Energy Indiana is clearly an accommodation afforded to customers. EDG obtained by Duke Energy Indiana can then be furnished and sold to other customers. The EDG process involves Duke Energy Indiana equipment to receive and meter the EDG. In fact, EDG treatment is afforded by mandate of the DG Statute as part of Duke Energy Indiana's retail rates and retail rate making. Thus, the EDG rate and the netting process by which the rate is applied to DG output are appropriate inquiry. Duke Energy rebuttal assertions that EDG is a wholesale transaction are inaccurate. The broadest and most inclusive statutory view of "service" incorporates the legislative mandate to accommodate EDG customers, encourage DG and allow use of EDG by other utility customers through Duke Energy Indiana's lines and equipment.

We now address the concerns raised that Duke Energy's instantaneous netting and proposed EDG rate are unjust and unreasonable.

(a) Perverse Incentive. Mr. Inskeep testified that Duke Energy Indiana's instantaneous netting proposal would create the perverse incentive by doing the *opposite* of what rate price signals in designed to incentivize: "***The "no netting" component of the EDG Rider would encourage DG customers to increase their consumption during DEI's [Duke Energy Indiana's] highest cost summer on-peak periods***." Inskeep p. 31. As he explained Duke Energy

Indiana's summer on-peak hours align with the production of solar generation, which is 100% of DG technology capacity installed on Duke Energy Indiana's grid in 2020, the first half of 2021, and anticipated into the future. A solar DG system designed to generate electricity in an amount equal to a customer's average annual electricity needs, as provided by the DG Statutes, will tend to produce more electricity during the daylight than the DG customer immediately consumes during daylight hours behind-the-meter. However, with instantaneous netting the DG customer no longer can net their exported electricity against their imported electricity. That gives the DG customer a strong financial incentive to export as little electricity as possible by shifting discretionary or time-flexible electricity use (e.g., clothes and dish washing and drying, EV charging, pre-cooling living space) to daylight hours. No evidence was presented to disprove this perverse incentive and the harm it would cause for customers. This perverse incentive would add load to peak consumption periods, thereby increasing costs on all Duke Energy Indiana customers. Duke Energy is currently a summer peaking utility. IndianaDG CX-2. Thus, on hot sunny summer days when customer DG would be most beneficial in reducing Duke Energy Indiana's energy system demand, "no netting" gives the DG customer an incentive to shift consumption in order to self-consume that most beneficial peak production / peak demand energy rather than leaving it to flow to the utility to the benefit of non-DG customers. We find this perverse rate incentive is contrary to reasonable rates and is another reason to deny Duke Energy Indiana's instantaneous netting proposal.

(b) EDG Rate Could Be Lower Than PURPA Avoided Cost Rate. As Mr. Inskeep pointed out, Duke Energy Indiana's Rate QF could provide a higher compensation rate to some DG customers than Duke Energy Indiana's proposed EDG rate. *Id.* at p. 32-33. We find Duke Energy Indiana's interpretation of the DG Statutes to replace monthly netting with instantaneous or "no netting" would produce an absurd result by pushing small EDG customers to Duke Energy Indiana's Rate QF tariff. We do not believe the intent of the DG Statutes was to encourage potential EDG customers, and especially residential customers, to take service under Duke Energy Indiana's PURPA avoided cost tariff by creating an EDG tariff with a compensation rate and terms that could be worse for DG customers.

(c) Violation Of Cardinal Rate Making Principals. Mr. Inskeep described how Duke Energy's instantaneous netting proposal is inconsistent with long standing fundamental ratemaking principles as first established by Professor James Bonbright. He explained that the two-fold impact of instantaneous netting and the substantially reduced EDG credit rate would be an abrupt and dramatic change in DG policy and would serve as rate shock to those who are impacted by the rates approved for distributed generation, i.e., Hoosiers who are interested in DG and the Indiana businesses that install DG, as well as current net metering customers who will take service under the EDG Rider once their eligibility to continue net metering expires under the terms of the DG Statutes. Mr. Rohaly's testimony of the dramatic impact instantaneous netting would have on DG participants and Indiana solar installation businesses buttresses Mr. Inskeep's position. We find the concern over gradualism is valid given the instantaneous netting proposal would dramatically and suddenly increase customer payback periods, abruptly decreasing customers' ability to afford installing DG, on top of the DG customer impacts associated with decline in the excess energy compensation from the application of the EDG rate and the EDG Statute's limitation on the size of an EDG customers DG facility.

Mr. Inskeep's concern regarding the rate principal of Simplicity, Understandability, Public Acceptability, and Feasibility of Application is also valid. Monthly netting is understandable to, accepted by, and intuitive to customers. In contrast, Duke Energy Indiana's instantaneous or "no netting" proposal creates an impossibly complicated compensation scheme for DG customers, most of whom lack the capacity and capability to manage their moment-by-moment consumption relative to their generation.

Mr. Inskeep's concern regarding fairness of the specific rates in the apportionment of total costs of service among the different consumers is also valid. We have no evidence demonstrating that instantaneous netting would recover the net costs to serve its DG customers and thereby is appropriately and fairly apportioning costs to DG customers relative to non-DG customers. If we are to consider the complication of instantaneous netting, in a proceeding that should be a far less complicated matter of reviewing competing EDG rate calculations, we would have to review load research and cost of service data on DG customers as has been done in other jurisdictions described by Mr. Inskeep and/or undertake a cost-benefit analysis or value of solar study.

(d) Instantaneous Netting Will Undermine Indiana Jobs and Economic Development. Mr. Lugwig and Mr. Inskeep both testified instantaneous netting would undermine current and future jobs and business activity in the solar industry, an industry that currently has created approximately 3,400 Indiana jobs. Mr. Rohaly's small business alone did approximately $1.6 million of Indiana projects. He, his employees and the contractors he hires all use their wages to pay state and local taxes, purchase area goods and services and promote Indiana's economy. That economic stimulus spurs ripple economic stimulus through payments to the business that provide goods and services to them. Yet instantaneous netting will cause residential, farm, school, government, and commercial customers to not be able to afford solar DG. In turn the record shows solar businesses like Mr. Rohaly's and the many other Indiana DG installation companies will have no choice but to focus their business efforts and employee hiring in neighboring states where the DG customer compensation framework is far better than Duke Energy Indiana's proposal. This economic and social harm described by Mr. Rohaly's and Mr. Inskeep is un-refuted in this record. We would be remiss to turn a deaf ear to the harmful economic impacts that a purely non-essential measurement proposal would have on Hoosiers, in what should otherwise be a simple EDG rate setting case. Changing to instantaneous netting, at the same time as Duke Energy seeks to dramatically reduce EDG compensation from the retail electric rate would understandably have the negative Indiana social and economic repercussions Mr. Rohaly describes.

Mr. Inskeep estimated that Duke Energy's "no netting" policy would reduce residential customer bill savings by roughly 45.3% compared to monthly netting where EDG is credited at the EDG credit rate. Inskeep at 68. Even allowing solar customers to retain their export credits for a day with daily netting results in only a 15.4% value diminishment of DG generation compared to the current net metering policy, and a 9.4% value diminishment relative to monthly netting with EDG credited at the EDG Rider rate. *Id*. Instantaneous netting is too much too soon to represent a reasonable transition from net metering under the EDG tariff. While customer payback periods standing alone may not be a deciding factor, moving from a 13.4-year to a 25.9-year payback period is too shocking to condone, without clear statutory mandate and much more

compelling evidence of adverse impacts. The negative social and economic impacts from instantaneous netting are additional reasons for denial of instantaneous netting in this Cause. We agree with Mr. Inskeep that maintaining monthly netting in this case represents a "no regrets" policy that will allow the Commission and others time to evaluate the impacts of moving from net metering to an EDG Rider without rushing to making additional substantial changes to DG policy that could cause negative impacts to Indiana customers and businesses alike.

(e) No Harm to Non-DG Customers or Duke Energy From Monthly Netting. There is no compelling evidence before us that changing from monthly to instantaneous netting is needed to prevent harm to others. As cited by Mr. Inskeep the Lawrence Berkeley National Laboratory was commissioned by this Commission in response to a legislative request to provide a detailed analysis of emerging technologies and their impact on generation capacity, reliability, resilience, and rates ("LBNL DER Study"). It concluded that "[i]n general, scenarios with high adoption of rooftop solar PV result in system-wide savings," and "[r]ates tend to go down in the short term for the High PV scenarios." These findings generally echo the results from studies commissioned on net metering or the value of solar in other states, which Mr. Inskeep discussed in detail. We have evidence from Mr. Rohaly and Mr. Inskeep that DG reduces wear and tear on transmission equipment, reduces line loss and reduces energy consumption on high demand summer days, not to mention the environmental and public health benefits of replacing fossil fuel generation with solar output.

Moreover, any arguable costs of DG are very modest to Duke Energy Indiana and non-DG customers. Through the end of 2020, Duke Energy had only 1,914 net metering customers out of more than 852,000 total customers. Those net metering customers had only 62.44 MW of installed capacity, compared to Duke Energy Indiana's peak demand of 5,573 MW. Duke Energy Indiana objected to and did not provide a response to IndianaDG's Data Requests 1.7 and 1.8, which asked what the amount of gross kWh of net metering customers' excess energy carried over into 2021 and what was the gross kWh amount of net metering customers' monthly excess energy carried over into the next subsequent months, respectively. Inskeep Testimony, Attachment BDI-10. Given Duke Energy Indiana's refusal to provide this pertinent information, and given the small adoption of DG to date in its service area, we assume it is a completely inconsequential amount compared to Duke Energy's total annual revenue requirement of approximately $2.7 billion. We have no evidence that DG adoption to date or its future growth will create a material Duke Energy revenue impact, or basis justifying concerns about hypothetical cross-subsidization between DG and non-DG customers. Arguendo, assuming no value is provided by EDG, it would only amount to a *de minimis* "subsidy" or cost shift to non-DG customers that would not justify the major policy change being proposed by Duke Energy. But when the benefits such as those described in the LBNL Report are considered even such an alleged *de minimis* "subsidy" would not exist, or would be substantially reduced. Inskeep at 58.

In this case we find there is no need to deploy instantaneous netting in favor of normal monthly netting over concern of possible cross subsidization between customers or under recovery of fixed costs. No compelling evidence has been offered that a meaningful cross-subsidization is occurring – in either direction – between DG customers and non-DG customers.

(f) Batteries are Not the Counter Balance to Instantaneous Netting. The record here reflects that while battery energy storage is a promising grid system resource that can provide customers and the grid with many benefits, they are typically too expensive for individual customers to install, especially lower and moderate-income residential customers, and should not be *de facto* mandatory for participation in an EDG tariff. For instance, one 5.8 kW / 13.5 kWh Tesla Powerwall costs $7,000, and that is before consideration of supporting hardware that can cost about $1,000, sales tax, plus installation costs that are site dependent and can run into thousands of dollars. Most residential solar installations would need to be paired with multiple batteries for the customer to fully serve their entire load on an annual basis without importing or exporting any electricity. Inskeep at 74. Moreover, we have no reason to establish a new policy that would discourage customers from exporting their excess energy, particularly given that the likely timing of exports coincides with the times of Duke Energy Indiana's peak demand. The DG Statute's provision restricting the size of a customer's DG unit to match their annual usage adequately limits exports.

In sum, based on the record and for the reasons stated herein we find approval of instantaneous netting would not result in just and reasonable EDG charges, credits or service.

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C. Technology, Tariff, and Other Concerns. Intervenors raised various concerns related to Petitioner's ability to implement Rider EDG, including bill accuracy, data retrieval and processing, and provisions in Petitioner's proposed Sheet No. 54 implementing Rider EDG. These issues are addressed below.

1. Technology Issues. Sl's witness Mr. Mullett questioned Petitioner's ability or readiness to implement Rider EDG and accurately bill DG customers under Rider EDG. *SI Exhibit 1, page 7, lines 16-19*. Mr. Mullett also requested that the Commission reject Duke Energy Indiana's proposal and require the Company to refile with detailed information about its customer information systems. *Id. pages 17-31*. Petitioner presented substantial evidence supporting its capabilities, readiness, and ability to implement and accurately bill customers under Rider EDG and in fact, Petitioner's witness, Mr. Flick, testified that "Details about Duke Energy Indiana's customer information systems are not necessary to the resolution of this proceeding. Ind. Code § 8-1-40-17 outlines the scope of this proceeding, and details concerning the utility's customer information systems are not within this limited statutory scope." *Petitioner's Exhibit 2, page 23, lines 10-13*. Furthermore, Petitioner's evidence reflects that it is currently retrieving and processing data from its AMI meters and will be positioned to implement its Rider EDG rates with the ability to properly and accurately bill its EDG customers.

2. Disconnect Devices. Mr. Inskeep also raised concerns regarding Duke Energy Indiana's Rider EDG related to disconnecting devices. As Mr. Inskeep testified, Duke Energy Indiana "'will continue to require the installation of an external disconnect for all generation interconnections' and that '[t]he disconnect, by mechanical operation, must interrupt the flow of energy on the electric conductors physically connected to the generation source. The use of contactors, relays inverters or other similar equipment are not permitted." *IndianaDG Exhibit 1, page 29, lines 16-20*. Mr. Inskeep testified that, based on his understanding, external disconnect switches are not necessary for isolating a small, inverter-based DG facility, such as

Level 1 interconnection. *IndianaDG Exhibit 1, page 80, lines 4-5*. On this basis, he requested that the Commission direct Duke Energy Indiana to clarify in its Rider EDG that disconnect switches are not required for Level 1 interconnections, and if the Commission declines to do such, that it direct it to keep records of the number of instances, as well as the circumstances in which, its personnel use a DG customer's external disconnect switch, *Id., page 82, lines 4-9*.

On rebuttal, Duke Energy Indiana witness Mr. Flick stated that this requirement "provides an option of last resort to quickly and easily isolate a customer generator form the grid. *Petitioner's Exhibit 2, page 21, lines 21-22*. He also testified that there are several circumstances when the Company may need to isolate the customers' generation equipment.

In the *Vectren* Order (at Section 9.C.3), we approved language in Vectren's Rider EDG related to disconnecting devices and Vectren witness Abshier testified that Vectren does not require disconnects for Level 1 interconnections and certain Level 2 interconnections. AES Indiana also does not require Level 1 interconnections to install an external disconnect device. Mr. Inskeep also testified that other states like California and New York have moved away from this requirement, as it is no longer necessary and it can impose significant additional costs on customers.

Upon review of the evidence and tariff language, the Commission rejects Duke Energy Indiana's tariff provisions that require disconnect switches for all DG facilities, no matter their size. Duke Energy Indiana has not presented any evidence that demonstrates why disconnect switches on all DG equipment are necessary for safety reasons when clearly states and utilities with far greater deployment of DG do not need this requirement for safe Level 1 interconnection. On this basis, the Commission will require Duke Energy Indiana to clarify its Rider EDG and requires Duke Energy Indiana to remove the disconnect switch requirement for Level 1 interconnections. As such, Mr. Inskeep's alternative recommendation to require Duke Energy Indiana to keep records of the number of instances, as well as the circumstances in which, its personnel use a DG customer's external disconnect switch, is moot.

3. Solar Vendor's liability. SI witness Mr. Mullett raised concerns with potential solar vendor liability under Indiana Code § 8-1-40-23, "Customer's Rights regarding Distributed Generation Equipment". As Mr. Mullett testified, "SI is concerned that the ambiguity and uncertainty of this Section of SEA 309 could become a 'trap for the unwary' insofar as solar vendors are concerned." *SI Exhibit 1, page 32, lines 4-6*. He also testified that "we are concerned that these provisions taken together could create confusion in the minds of both vendors and customers which could lead to dispute, lawsuits and potential liability. *Id., page 32, lines 20-22*. On rebuttal, Mr. Flick responded to Mr. Mullett's concerns. As Mr. Flick testified, he does not believe these concerns are germane to this proceeding as, "solar vendors' liability under the DG Statute is not relevant to this proceeding. Indiana Code § 8-1-40-17 outlines the scope of this proceeding, and solar vendors' liability is outside of this scope. Indiana Code § 8-1-40-23 is a separate part of the DG Statute that sets out DG customers' rights vis a vis solar vendors." *Petitioner's Exhibit 2, page 23, lines 18-21.* We agree with Mr. Flick that any hypothetical theories regarding solar vendor's liability is not relevant to this current proceeding and we decline to address such in this proceeding.

4. Cost-of-Service. IndianaDG witness, Mr. Inskeep, testified that Duke Energy Indiana's instantaneous netting proposal is not based on sound ratemaking or cost-of-service principles and addressed how other states, such as Arkansas, to justify its proposal by using a "timely and properly designed cost-of-service study". *IndianaDG Exhibit 1, page 27, lines 8-9 and page 36, lines 22-23*. In regard to Solarize Indiana's cost-of-service concerns, Mr. Mullett testified that "DEI simply has not demonstrated any cost-of-service basis for the "instantaneous" netting proposed to define and calculate EDG" (*SI Exhibit 1, page 12, lines 10-12*) and is a departure from "best practices established in other states, and is not based on sound ratemaking or cost-of-service principles." *SI Exhibit 1, page 27, lines 8-9*.

As described above, we agree with IndianaDG and SI's concerns. While the DG Statute does not require a cost-of-service study to determine the *rate* for Rider EDG customers, Duke Energy Indiana has gone much further than simply proposing a rate in this Cause, as it has also proposed a novel instantaneous netting approach to determining a customer's EDG. As demonstrated through intervenors' testimony in this Cause, the novel instantaneous netting approach to determining EDG would have a significant negative impact on the economics of a customer investing in distributed generation. Despite this and other drawbacks identified by intervenors related to instantaneous netting, Duke Energy Indiana has offered no evidence, such as a cost-of-service study or other demonstration that its proposal is consistent with sound ratemaking principles, that would justify this radical change in policy. Duke Energy Indiana cannot claim that monthly netting is a "subsidy" if it has not actually done the requisite analysis to show the presence of a subsidy. Flick Rebuttal Testimony at 4.

5. Legacy Net Metering Customers. SI witness, Mr. Boggess, expressed concerns regarding protections for legacy net metering customers. Specifically, Mr. Boggess testified that, "Absent from the DEI Proposal for future EDG customers are assurances that legislatively mandated protections are being provided for legacy NM customers". *SI Exhibit 3, page 16, lines 4-6*. As Petitioner's witness, Mr. Flick, responded in his rebuttal testimony, "The DG Statute provides specific protections for legacy net metering customers, through its grandfathering provisions." Mr. Flick further testified that "protections for legacy net metering customers are not a necessary part of this proceeding. Indiana Code § 8-1-40-17 outlines the scope of this proceeding, and protections for legacy net metering customers are not within this limited statutory scope. *Petitioner's Exhibit 2, page 24, lines 5-12*.

While we understand and appreciate SI's concerns, we agree with Mr. Flick. This statutory framework—and this proceeding—relate to how DG customers will be compensated for the EDG that utilities must accept. Accordingly, the Commission finds it is beyond the matters at issue in this proceeding to require Duke Energy Indiana to include in its proposal assurances and protections for legacy NM customers. Furthermore, Indiana Code §§ 8-1-40-13 and -14 adequately address protections for legacy net metering customers and Mr. Flick testified that "Duke Energy Indiana will comply with these grandfathering provisions for qualifying legacy net metering customers." *Id. page 24, lines 11-12*.

6. Other Issues. Mr. Inskeep recommended that, if we approve Duke Energy Indiana's Rider EDG, we "direct DEI to provide additional consumer information and education regarding its Rate QF to ensure all eligible DG customers have access to and are fully

informed of this rate option." *IndianaDG Exhibit 1, page 83, lines 4-8*. As the Commission is modifying Duke Energy Indiana's Rider EDG to require monthly netting, this recommendation is moot.

In Petitioner's Exhibit 2, on page 19, Duke Energy Indiana proposed changes to its proposed EDG tariff relating to unused credits – specifically, proposing that such unused credits flow back to Duke Energy Indiana's customers through the FAC process. As previously discussed herein, it is not reasonable for Duke Energy Indiana to take a customer's unused credits without compensation. Therefore, the Commission rejects this proposal and directs Duke Energy Indiana to provide a refund to EDG customers for any remaining EDG credit balance when a customer discontinues service with Duke Energy Indiana. For EDG customers that move to a different premise, their EDG credit balance shall transfer to their new premise with them and shall be credited against future bill charges.

9. Confidential Information. Petitioner filed a Motion for Protection of Confidential and Proprietary Information on September 23, 2021, which was supported by an affidavit showing certain information to be submitted to the Commission constitutes trade secret information within the scope of Indiana Code §§ 5-14-3-4(a)(4) and 24-2-3-2. Specifically, the customer specific load profiles and the meter technical reference guide utilized by IndianaDG witness, Mr. Inskeep, in his Workpaper 1 and OUCC witness, Mr. Alvarez, in his exhibits.

On September 22, 2021, IndianaDG filed its Notice of Intent to File Confidential Workpapers. On October 20, 2021, a Docket Entry was issued in which the Commission found the information outlined in the Motion for Protection of Confidential and Proprietary Information was found to be confidential on a preliminarily basis. On October 21, the OUCC filed its Notice of Filing Confidential Information. The Commission finds all such information should continue to be afforded confidential treatment under Indiana Code §§ 8-1-2-29 and 5-14-3-4 and is, therefore, exempt from public access and disclosure by Indiana law and shall be held and protected from public access and disclosure by the Commission.

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

1. Duke Energy Indiana's calculation of its proposed rate for the procurement of EDG is approved, as modified by the findings of this order based on IndianaDG's recommended EDG rate calculation methodology. Duke Energy Indiana is directed to file in this Cause, no later than March 1, 2022, an update to its EDG rate, calculated in the same manner.

2. Duke Energy Indiana's Rider EDG request for instantaneous netting is denied. Duke Energy Indiana shall modify Rider EDG to implement monthly netting rather than "instantaneous" netting, as described herein, such that EDG is calculated on a monthly billing basis.

3. Duke Energy Indiana is authorized to recover credits provided to Rider EDG customers through its FAC proceeding.

4. Any unused EDG credits shall be flowed back to the EDG customers whose DG system generated those credits as detailed herein.

5. Prior to implementing Rider EDG and proposed Sheet No. 54 of Duke Energy Indiana's Tariff for Electric Service, Duke Energy Indiana shall file an updated EDG Tariff under this Cause for approval by the Commission's Energy Division.

6. Until otherwise ordered, Duke Energy Indiana 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 as calculated in conformity with the findings of this order.

7. The materials filed in this Cause under seal are declared to contain trade secret information and deemed confidential under Indiana Code §§ 5-14-3-4 and 24-2-3-2, are exempt from public access and disclosure, and shall be held by the commission as protected from public access and disclosure consistent with Finding No. 9 above.

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

FREEMAN, HUSTON, 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