

FILED
December 9, 2021
INDIANA UTILITY
REGULATORY COMMISSION

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) CAUSE NO. 45508
GENERATION PURSUANT TO INDIANA CODE 8-1-40)
ET SEQ.)**

**INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR'S
PROPOSED ORDER
(Clean Version)**

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

Respectfully submitted,



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

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

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 Entry 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, and 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. At the outset of the evidentiary hearing, SI appealed to the full Commission, the Commission's October 28, 2021 Docket Entry denying SI's Motion to Supplement the prefiled testimony of Barry S. Kastner and denying Joint Movants' Motion for Summary Judgment. CAC and IndianaDG also joined SI's appeal to the full Commission. 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.

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 their customers with qualifying DG resources supply and offset the cost of the electricity supplied to such customers. 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 electricity¹ 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.

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. Relief Requested. 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 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

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.”

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

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].

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.

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 and relief and methods expressed in his testimony.

6. OUCC’s and Intervenors’ Direct Testimony.

A. OUCC’s Direct Testimony. The OUCC provided the testimony of Anthony A. Alvarez., Utility Analyst at the OUCC in the Electric Division. Mr. Alvarez testified that the definition of EDG is unambiguous as codified in Indiana Code § 8-1-40-5 (“EDG Statute”). Indiana Code § 8-1-40-5 states “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.” He further explained that, as identified in this section, only two components must be

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.”

present to determine EDG: 1) the electricity that is supplied by an electricity supplier; and 2) the electricity that is supplied back to the electricity supplier. Additionally, this section explicitly defines EDG as the resulting difference between these two components. Therefore, to determine EDG, the utility or electricity supplier must first take the difference between the electricity supplied to the distributed generation (“DG”) customer and the electricity supplied back by the DG customer. Mr. Alvarez also testified that marginal price of electricity was defined in Indiana Code § 8-1-40-16, 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.” Mr. Alvarez further testified Indiana Code § 8-1-40-17 states the rate “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).”

Mr. Alvarez testified as to Duke Energy Indiana’s calculation of the EDG rate for the procurement of EDG. Mr. Alvarez described Petitioner’s calculation as described in Mr. Flick’s testimony. Mr. Alvarez expressed concern that Mr. Flick claimed to use the 2020 real time hourly LMPs at the CIN.PSI load node while Petitioner used the Day-Ahead Hourly LMPs at the CIN.PSI load node in its workpaper, instead of the real time hourly LMPs described in testimony. Mr. Alvarez testified that Petitioner will change the reference from “real time” to “day ahead” to be consistent with the workpaper.

Mr. Alvarez testified on Petitioner’s metering and billing methodology. He testified that Duke Energy Indiana’s AMI electric meter is capable of measuring the flow of electricity in two directions (or bidirectional capability) to capture periodic energy imports and exports. As he stated, Duke Energy Indiana’s proposed EDG tariff defined the following:

- a. Excess Distributed Generation (Exports) – The difference between the electricity that is supplied by the Company to a customer that produces distributed generation and the electricity that is supplied back to the electricity supplier by the customer.
- b. Imports – The monthly aggregation of instantaneous measurements of energy supplied to customer from Duke Energy Indiana.
- c. Instantaneous Netting – The shortest period of time Duke Energy Indiana’s AMI technology measures and records the directional flow of energy, currently thirty (30) minutes.

Mr. Alvarez described Duke Energy Indiana’s proposed methodology to determine EDG. He testified that Duke Energy Indiana proposes a methodology to determine its aggregate import and export positions - Duke Energy Indiana’s metering and billing components for EDG - wherein its AMI electric meter will measure and record the “directional flow of energy” for periods of thirty (30) minutes. Mr. Alvarez testified Duke Energy Indiana indicates “[e]nergy netting is not being performed by the Company’s metering equipment.” Duke Energy Indiana accumulates the energy amounts for imports and exports in the respective channels, as shown in 30-minute intervals.

Mr. Alvarez testified that Duke Energy Indiana’s methodology of measuring the two values to determine excess distributed energy does not comply with the statutory definition. As Mr.

Alvarez testified, Duke Energy Indiana admits that “netting” is not being performed by the meter. At any given instant, electricity can only flow in one direction, either in towards the customer from the utility or out towards the utility from the customer, but not both. Duke Energy Indiana’s AMI electric meter has the bidirectional capability of measuring and recording the directional flows of electricity. One channel will record the flow of electricity one way, or another channel will record if the flow of electricity is the other way. However, on an instantaneous basis, when electricity is flowing in one direction, it is not physically possible for electricity to flow in the opposing direction, so there is nothing to “net” against when measuring directional flow on an instantaneous basis. If electricity is flowing to or from the customer, it is not possible for there to be an “opposing” flow from the opposite direction, and therefore the meter is not “netting” or taking the difference of any electricity flow as required by Indiana Code § 8-1-40-5.

Mr. Alvarez further testified that Duke Energy Indiana’s proposed methodology would not conform with the metrology of Duke Energy Indiana’s own electric AMI meters. As he explained, at any given instant, one channel will measure and record the “kWh delivered” if electricity flows from Duke Energy Indiana to the DG customer, or another channel will measure and record the “kWh received” if the electricity flows to Duke Energy Indiana from the DG customer, but not both in the same instant.

Mr. Alvarez testified that he does not agree with Duke Energy Indiana equating EDG to “exports” in its tariff and finds it brought more confusion. He stated that Duke Energy Indiana’s AMI meter is bidirectional with one channel recording the flow of electricity one way, or another channel recording if the flow of electricity is the other way. If the “kWh delivered” meter channel is dedicated to “the electricity that is supplied by an electricity supplier to a customer that produces distributed generation,” it naturally follows that the (other) “kWh received” meter channel should be dedicated to measure and record “the electricity that is supplied back to the electricity supplier by the customer.” As Mr. Alvarez testified, based on the metrology of Duke Energy Indiana’s AMI meter, it has the capability to precisely measure and record the two values required in the statute to determine EDG, although this cannot be done on an instantaneous basis, as Duke Energy Indiana proposes. Therefore, to conform with the statute’s definition of EDG, Duke Energy Indiana must take the difference between “kWh delivered” and “kWh received” as measured and recorded by its electric AMI meter to determine EDG.

Mr. Alvarez testified that he does not agree with Duke Energy Indiana’s billing methodology of EDG/Exports and using “instantaneously determined” in the description. As he testified, on an instantaneous basis, there is nothing to “net” against because it is not possible to record the two values required in the statute to determine EDG. Therefore, the language describing the EDG/Exports billing methodology in the proposed tariff does not conform with the EDG statute. He testified that the appropriate methodology to determine EDG is to retain a monthly interval or “billing period” as stated in Commission rule 170 IAC 4-4.2-7(2), over which to take the difference as required in Indiana Code § 8-1-40-5. He stated that the DG statute is silent on the period over which to take the difference and explained how the silence of the statute on this issue provides direction for the Commission. As he testified, the use of the billing period as the interval over which to take the difference was in the Commission rule for net metering customers when the DG Statute was enacted. The DG statute focuses on determining the rate for EDG and is silent on the period over which to determine the amount of EDG. If the Legislature had wanted to

address this period, it had the opportunity to do so when the DG Statute was enacted. Because the Legislature did not address this time period in statute, the Commission should follow the rule that is already in place, 170 IAC 4-4.2-7(2), and apply this to EDG customers. Mr. Alvarez testified that the Commission has the authority to use other periods to determine EDG. Mr. Alvarez stated, because the statute is silent, the Commission has discretion to determine time periods other than the billing period; however, there must be a time period over which the difference is determined, as required in Indiana Code § 8-1-40-5. Additionally, because the Commission has already determined that the billing period is appropriate in its rule and statute does not provide direction on what time period to use, the Commission should use what it already has in place: using the billing period to determine EDG.

Mr. Alvarez testified that he does not believe that if a customer leaves its premises with unused EDG credits, that Duke Energy Indiana should let the unused EDG credits expire. He believes Duke Energy Indiana should refund any unused EDG credits to all retail customers through Duke Energy Indiana's FAC.

Mr. Alvarez provided the following conclusions: (1) Duke Energy Indiana's application of EDG does not comply with the EDG Statute; (2) Duke Energy Indiana's application to "instantaneously determine" EDG does not conform with Indiana Code § 8-1-40-5; (3) Duke Energy Indiana's manner of capturing, measuring, and calculating EDG on an instantaneous basis will not record the two values required in the statute to determine EDG; (4) the language Duke Energy Indiana used to describe the EDG/Exports billing methodology does not conform with the EDG Statute; (5) the Commission should retain the "billing period" from 170 IAC 4-4.2-7(2) as the interval over which to determine EDG as required in Indiana Code § 8-1-40-5; and (6) Duke Energy Indiana should refund any unused EDG credits to all retail customers through its FAC. Mr. Alvarez recommends that the Commission deny Duke Energy Indiana's proposed EDG Rider tariff.

B. IndianaDG's Direct Testimony.

1. Benjamin D. Inskeep.

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

2. Chris Rohaly.

[The OUCC accepts IndianaDG's summary of Mr. Rohaly's testimony.]

C. SI's Direct Testimony.

1. Michael A. Mullett.

[The OUCC accepts SI's summary of Mr. Mullett's testimony.]

2. Barry S. Kastner.

[The OUCC accepts SI's summary of Mr. Kastner's testimony.]

3. Darrell T. Boggess.

[The OUCC accepts SI's summary of Mr. Boggess' testimony.]

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 2010.⁵

- 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 argued that Duke Energy Indiana's proposal would negatively impact the market for solar DG products and services; however, as 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 argued that Indiana should utilize monthly netting as other states do. Mr. Flick testified that this argument 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:

- (1) the average marginal price of electricity⁶ 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

⁵ See <https://www.pv-magazine.com/2020/06/03/solar-costs-have-fallen-82-since-2010/>.

⁶ Section 6 of the DG Statute defines "marginal price of electricity" as "the hourly market price for electricity as determined by a regional transmission organization of which the electricity supplier serving a customer is a member."

being procured by Duke Energy Indiana through the MISO markets is actually priced in the day-ahead rather than real-time market, I believe the use of a day-ahead price is reasonable.

IndianaDG witness Inskeep argued 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 most DG customers have solar panels that only produce electricity during daylight hours. 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. Further, in making Mr. Inskeep’s argument that the EDG rate would be higher if only daylight hours were used in the calculation, he 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, in fact, Duke Energy Indiana has DG customers operating non-solar generation. For all of these reasons, 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. 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. As the house bill clearly shows, the rate of 25 percent premium over wholesale was determined by Hershman, who said that is an arbitrary number modeled after he reviewed what other states have done.

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.” OUC 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. As 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. 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. As 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. 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. The Commission recognized this in its Order in Cause No. 45378, where it stated as follows:

. . . it 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, however, that because [electricity] can only flow one way, to become outflow, both components of Section 5 are netted at the meter to arrive at EDG. (45378 Order, at 36.)

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 also contends that the use of “difference” in the definition of EDG implies the use of monthly netting; however, Mr. 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 compliance proposal works to provide benefit to customers who have invested in their own distributed generation. As 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. To finish the example, 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). 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/continuation of net metering 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.

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

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

B. EDG Tariff Determination. In addition to seeking approval of its rate for EDG, Duke Energy Indiana asks the Commission to approve its proposed EDG tariff, i.e., Rider EDG, so Petitioner can apply the rate. As proposed, Duke Energy Indiana claims its Rider EDG is based upon instantaneous netting, i.e., instantaneously measuring the difference between the amount of electricity a customer receives from Duke Energy Indiana and the amount of electricity the customer supplies to Duke Energy Indiana. Under Rider EDG, the net electricity a customer supplies Duke Energy Indiana is instantaneously measured. The OUCC and Intervenors challenged Petitioner’s calculation of this difference 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. The Joint Movants mount a two-prong offensive, challenging whether instantaneous netting (as opposed to calculating the difference received and supplied once monthly) is permitted under Indiana Code § 8-1-40-5 and if so, whether instantaneous netting results in unreasonable rates. We address both issues below.

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

The statutory definition of “excess distributed generation” is straightforward. It is the difference between two values: the electricity that Duke Energy Indiana supplies to a DG customer and the electricity that the DG customer supplies back to Duke Energy Indiana. This straightforward interpretation of Excess Distributed Generation is driven by the plain language of the statute, supported by the testimony of OUCC and IndianaDG witnesses, and acknowledged by Duke Energy Indiana’s witness and DR responses.

Petitioner’s Rider EDG tariff language defines “excess distributed generation” using the statutory language. However, under the “Billing” section, the Rider EDG tariff states the “Company will additionally measure the instantaneously determined Excess Distributed Generation (kWh Exported...”. (Pet. Ex. No. 1-B (RAF), p. 1 of 3). The term “instantaneously determined” is not defined in the tariff. Therefore, we look to Duke Energy Indiana’s testimony to ascertain how it determines EDG.

Duke Energy Indiana consistently describes EDG in terms of a customer’s production and consumption, terms not included in Ind. Code § 8-1-40-5. Duke Energy Indiana witness Roger Flick improperly describes EDG: “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 1 the customer for that ‘excess’ electricity at the statutorily-required EDG rate,” (Pet. Ex. No. 2, p. 8, l. 21 – p. 9, l. 2) and “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.” (Pet. Ex. No. 2, p. 10, ll. 17-20). It is improper for Duke Energy Indiana to equate a customer’s “excess” electricity production over consumption as EDG, as stated in Mr. Flick’s testimony. Electricity production and consumption on the customer side of the meter are not included in the specific language defining EDG in Ind. Code § 8-1-40-5, and therefore should not be utilized to determine EDG in this proceeding.

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.

Further, Petitioner’s own evidence acknowledges that the meter reading only reflects the amount of electricity supplied to the Rider EDG customer supplies back to Duke Energy Indiana at the time of the meter read by explicitly admitting energy can only flow in one direction at any instant and that flow in one direction necessarily means zero flow in the opposing direction:

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. (Pet. Ex. No. 2, p. 9, ll. 17-20)

Duke Energy Indiana accepts that “in any instant,” electricity only flows in one direction. If there is electricity flowing from the DG customer to Duke Energy Indiana as measured at the meter, then it is physically impossible for Duke Energy Indiana to provide electricity to the customer at the same instant, and there is nothing with which to take the difference as required by Ind. Code § 8-1-40-5. This is also acknowledged by Duke Energy Indiana, by confirming that electricity delivered will be “netted against zero,” as stated above. Choosing a methodology that would always have one of the required values be zero disregards the statutory requirement that there also must be both components and that EDG is the difference between these two components, producing an absurd application of the statute. Duke Energy Indiana also admits that “[e]nergy netting is not being performed by the Company’s metering equipment,” and “[i]n short, the meter is not netting any energy – the delivered and received kWh energy is captured on individual channels.” (OUCC Ex. No. 1, Attachment AAA-3, DEI Revised Resp. to OUCC DR 2A.5(8), p. 4 of 4) Also, “[r]esponding further, Duke Energy Indiana’s AMI meters do not perform instantaneous netting.” (Solarize Indiana Ex. CX-2, DEI Resp. to SI DR 3.1a). Duke Energy Indiana admits its AMI meters do not perform a calculation of the difference between electricity Duke Energy Indiana supplies to the DG customer and the electricity a DG customer supplies back to Duke Energy Indiana. Rather Duke Energy Indiana explains:

Instantaneous netting, from an energy perspective, refers to a convention that accumulates all kWh delivered and separately and distinctly all kWh received from a customer in a given billing cycle. All kWh delivered to the customer in the billing cycle is billed at its applicable standard Tariff energy rate, and all kWh received in the billing cycle is paid the statutorily required Marginal DO Rate. (Solarize Indiana CX-1, DEI Resp. to SI DR 2.2(i)(2))

Therefore, based on Duke Energy Indiana’s testimony and discovery responses, it is evident that Duke Energy Indiana separately records the energy amounts delivered to a received from a DG customer, does not calculate the difference between these amounts, improperly considers only the electricity supplied by the customer as EDG, and improperly applies the EDG rate solely to the “kWh received” from the customer in violation of Ind. Code § 8-1-40-5.

Duke Energy Indiana’s discussion of a customer’s production and consumption is not the same as the requirement that EDG must be the difference between two components: (1) the electricity that is supplied by an electricity supplier to a customer that produces distributed generation; and (2) the electricity that is supplied back to the electricity supplier by the customer. It is also inconsistent for Duke Energy Indiana to acknowledge that electricity only flows in one direction in any instant and then use the non-existent flow to calculate the “difference” under Ind. Code § 8-1-40-5.

Having reviewed the evidence, as discussed above, 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.

C. Technology, Tariff, and Other Concerns.

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

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 OUCG 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 OUCG 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 improperly determines EDG pursuant to Ind. Code § 8-1-40-5.
2. Duke Energy Indiana's Rider EDG is denied.
3. 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.
4. 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

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *OUCC's Proposed Order (Clean Version)* has been served upon the following counsel of record in the captioned proceeding by electronic service on December 9, 2021.

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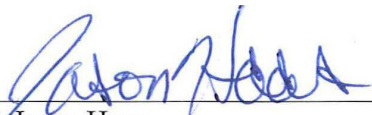
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