

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANAPOLIS POWER)
& LIGHT COMPANY REQUESTING THE)
INDIANA UTILITY REGULATORY COMMISSION)
TO ISSUE AN ORDER PURSUANT TO INDIANA)
CODE § 8-1-2-72 REVISING RATE REP TO (1))
REDEFINE THE TERM QUALIFYING)
RENEWABLE ENERGY POWER PRODUCTION)
FACILITY; (2) ELIMINATE LANGUAGE IN RATE)
REP SUGGESTING IT INCLUDES A)
COMMISSION-APPROVED WHOLESALE POWER)
RATE; (3) EXTEND THE MAXIMUM TERM OF)
RATE REP AGREEMENTS FROM TEN TO)
FIFTEEN YEARS; (4) INCORPORATE LANGUAGE)
REQUIRING PARTICIPANTS TO HAVE)
NECESSARY AUTHORITY TO MAKE)
WHOLESALE POWER SALES AND (5) CLARIFY)
RATE REP ENERGY PURCHASES CONSTITUTE)
ENERGY SAVINGS)

CAUSE NO. 44018

APPROVED: MAR 07 2012

ORDER OF THE COMMISSION

Presiding Officers:
James D. Atterholt, Chairman
Angela Rapp Weber, Administrative Law Judge

On April 11, 2011, Indianapolis Power & Light Company (“Petitioner” or “IPL”) filed its Verified Petition requesting that the Indiana Utility Regulatory Commission (“Commission”) approve certain revisions to Rate REP Renewable Energy Production (“Rate REP”). IPL further requested clarification, to the extent such clarification is not provided in Cause No. 43960, that energy purchased from customers pursuant to Rate REP counts as energy savings to satisfy the targets established in the Commission’s December 9, 2009 Phase II Order in Cause No. 42693 (“Generic DSM Order”).

Petitions to Intervene were filed by the Indiana Distributed Energy Advocates (“IDEA”), Ecos Energy (“Ecos”), EDP Renewables North America LLC (“EDP”),¹ and Bio Town Ag, Inc. (“Bio Town”). The Presiding Officers granted the Petitions to Intervene, and these entities were made parties to this Cause. The Indiana Office of Utility Consumer Counselor (“OUCC”) also participated as a party. On May 2, 2011, IPL prefiled its direct testimony and exhibits constituting its case-in-chief. On June 29, 2011, EDP submitted its case-in-chief,² and on June 30, 2011, Ecos and IDEA prefiled their respective cases-in-chief. On August 22, 2011, the OUCC prefiled its testimony and exhibits constituting its case-in-chief.

¹ EDP originally intervened under the company name Horizon Wind Energy LLC.
² EDP submitted revised testimony on July 22, 2011 to reflect the change in its company name.

On September 7, 2011, IPL prefiled its rebuttal testimony and exhibits, along with its Hearing Brief on Federal Issues Associated with Rate REP. Petitioner filed a Motion for Limitation of Cross-Examination by Parties with Similar Interests and Supporting Memorandum on September 12, 2011. On September 14, 2011, Ecos filed a Motion to Strike Portions of the Prefiled Direct Testimony of John E. Haselden as well as its Answering Brief on Federal Issues Associated with Rate REP. Also on September 14, 2011, IPL filed its Objection to and Motion to Strike Portions of the Prefiled Direct Testimony filed by the OUCC and IDEA.

Pursuant to notice of hearing given as provided by law, proof of which was incorporated into the record by reference and placed in the official files of the Commission, a public hearing in this Cause was held on September 19 and 21, 2011, at which time the parties presented their testimony and their witnesses were cross-examined.

The Commission, based upon the applicable law and the evidence presented, 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” under Indiana Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by the Public Service Commission Act, as amended. Accordingly, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner’s Characteristics and Business.** IPL is a public utility corporation organized and existing under the laws of the State of Indiana with its principal office and place of business at One Monument Circle, Indianapolis, Indiana. Petitioner is engaged in rendering electric utility service in the State of Indiana and owns, operates, manages, and controls, among other things, plant and equipment within the State of Indiana used for the generation, transmission, distribution, and furnishing of such service to the public.

3. **Background.** In its Phase I Order in *Indianapolis Power & Light Co.*, Cause No. 43623, (IURC 2/10/10) (“43623 Order”), the Commission approved IPL’s proposed Rate REP as a three-year pilot program. On October 13, 2010, IPL filed its Verified Petition initiating Cause No. 43960, which, among the relief sought by IPL, requested modifications to the language of Rate REP to reflect the voluntary nature of the contract offer and the associated retail ratemaking. Specifically, IPL sought (1) confirmation that IPL could count energy produced by Rate REP towards its energy savings goals imposed by the Generic DSM Order; (2) revision of the maximum term agreement from ten to fifteen years; and (3) changes to the regulatory oversight process of the wholesale power purchases IPL makes under Rate REP. On February 7, 2011, IPL filed a motion in Cause No. 43960 to withdraw the proposed Rate REP revisions and to temporarily suspend its terms. The Presiding Officers issued a Docket Entry in Cause No. 43960 on March 23, 2011 concluding that Indiana Code § 8-1-2-72 required the suspension of Rate REP to be made by Commission Order after the commencement of a public hearing. The Docket Entry noted IPL’s intention to initiate a separate docket to consider issues associated with Rate REP. Consistent with this Docket Entry, IPL initiated this proceeding.

4. **Relief Requested.** In this proceeding, IPL seeks approval to (1) redefine the term Qualifying Renewable Energy Power Production Facility (“Renewable Facility” or “Facility”); (2)

eliminate language in Rate REP suggesting it contains a Commission-approved wholesale power rate; (3) revise the maximum term of Rate REP agreements from ten to fifteen years; and (4) incorporate language requiring participants to have necessary authority to make wholesale power sales. IPL further requests clarification that energy purchased from customers pursuant to Rate REP counts as energy savings to satisfy the targets established in the Generic DSM Order.

5. Petitioner's Evidence. John Haselden, Principal Engineer in the Regulatory Affairs Department for IPL, testified regarding the proposed revisions to Rate REP and how customer-sited renewable energy technologies fit into IPL's plan to comply with the Generic DSM Order. Mr. Haselden also testified regarding the development of Rate REP.

He explained rate structures like Rate REP are frequently referred to as a feed-in tariff ("FIT"). Rate REP enables IPL to recover the cost of purchasing power from qualifying customer-sited renewable energy technologies through a rate adjustment mechanism approved pursuant to Indiana Code ch. 8-1-8.8 and Indiana Code § 8-2-1-42(a) and administered within IPL's Fuel Adjustment Charge proceedings. Mr. Haselden indicated IPL is not proposing any changes to the rate recovery mechanism in this proceeding.

Mr. Haselden described the customer-sited renewable energy technologies that qualify for the Rate REP program. He also explained IPL's purchase of the customer's power under Rate REP. IPL voluntarily offers to enter into multi-year contracts with eligible renewable energy generation resources for the sale to IPL of the generator's total production of energy or capacity, or both, along with any environmental attributes associated with the production of renewable energy by the generator, e.g., Renewable Energy Credits ("RECs") and carbon credits. He explained that currently the maximum term of such a contract is ten years, although IPL is proposing in this proceeding to extend the maximum term to fifteen years. He added that the contracts must be submitted to the Commission for pre-approval via the thirty-day filing process before IPL finalizes the voluntary contract.

Mr. Haselden testified IPL proposed Rate REP because net metering has not spurred development of renewable energy projects in IPL's service territory. He stated that, coupled with federal incentives, Rate REP's level of pricing and certainty of pricing over a sufficiently long term provides the basis for making these long-term investments.

Mr. Haselden stated IPL originally proposed some changes in Cause No. 43960 to Rate REP's tariff language to (1) extend the term of the proposed agreements to address some concerns raised by interested customers and (2) eliminate potential argument that Rate REP was pre-empted by federal law. He stated that after the filing of the petition in that Cause, changes in federal tax law and IPL's proposed changes resulted in a number of developers proposing to become IPL customers for the purpose of making sales under Rate REP. IPL did not anticipate that the proposed rates and terms offered under Rate REP would attract stand-alone developers who would become IPL customers by possibly acquiring small amounts of energy for the purpose of making sales under Rate REP. He testified IPL's original intention was to promote investment by traditional customers in renewable energy projects at their facilities.

Mr. Haselden next discussed customer interest in Rate REP. He said that since Rate REP became effective, two customers have executed Rate REP agreements with IPL. IPL has met with customers to explain the program and has made presentations about Rate REP at conferences,

programs, and other forums. He stated seven developers have submitted proposals for twenty-five stand-alone projects, all but two of which relied on solar technology. Two developers have subsequently withdrawn their proposed projects upon learning of IPL's intent to refocus on projects associated with traditional customer facilities. Mr. Haselden stated IPL is aware of customer interest in Rate REP and has been working with customers and equipment providers to explore options for the installation of qualifying facilities for IPL's traditional customers. One other proposed project that has received some positive press coverage involves the Indianapolis International Airport. He said IPL has engaged in discussions with many other customers who are interested in Rate REP.

Mr. Haselden listed IPL's proposed changes to Rate REP. He stated IPL proposes to make the following changes to its voluntary offer: (1) revise the maximum term of a long-term Rate REP contract from ten years to fifteen years; (2) eliminate language in Rate REP suggesting it contains a Commission-approved wholesale purchase power rate; (3) incorporate language requiring participants to have the necessary authority to make wholesale power sales; and (4) redefine the term Renewable Facility. He explained IPL proposes to extend the term of Rate REP contracts based upon input from Intervenor in Cause No. 43960 and interested customers. IPL is agreeable to this change provided that the negotiated purchase rates are not escalated by 2% per year. This change will extend the period during which the costs of purchased power pursuant to Rate REP agreements are recovered in retail rates, and the impact of the annual costs of power over the first ten years under future contracts will be reduced.

With respect to IPL's proposed elimination of certain language from Rate REP, Mr. Haselden explained that some language in the existing tariff suggests the Commission, in approving Rate REP, established a purchase price for wholesale sales. However, the Commission did not approve rates for wholesale purchase but instead found that IPL could recover purchase power costs consistent with the terms of Rate REP through retail rates. He said the language IPL is proposing renders the tariff consistent with the Commission's approval and eliminates potential inconsistency in the tariff. These changes are particularly important because the Federal Energy Regulatory Commission ("FERC") recently stated its authority under the Federal Power Act ("FPA") includes the exclusive jurisdiction to regulate the rates, terms, and conditions of sales for resale of electric energy in interstate commerce by public utilities. He cited FERC's recent decision in *California Pub. Utils. Comm'n*, 132 FERC 61,047 (2010) ("FIT Order"), wherein FERC clarified it had jurisdiction over wholesale sales of energy from renewable energy projects unless the sales fall within the limited authority given to states to regulate the wholesale sales of electricity under the Public Utility Regulatory Act ("PURPA").

Mr. Haselden testified PURPA sales must be made at the utility's avoided cost, while the rates IPL pays for energy under Rate REP are not based on its avoided cost. He explained the changes proposed by IPL address any potential arguments that Rate REP is preempted by FERC. He also clarified that the rates shown on the tariff are maximum rates and IPL may negotiate lower rates as circumstances warrant. IPL has also explicitly included improvements in costs or performance of technologies in the list of factors to consider when negotiating lower rates.

Mr. Haselden stated this federal regulation is the reason why IPL is adding language requiring participants to have the necessary authority to make wholesale sales of energy. He said IPL's experience with customers and developers has been that they may not have considered the regulatory framework associated with these sales. Clarifying that an entity selling power to IPL needs to be a Qualifying Facility ("QF") or otherwise authorized by FERC to make wholesale

power sales serves to highlight this issue and ensures that no violation of federal law is occurring. He believed this change would not be a burden on IPL's customers because most, if not all, of the Renewable Facilities will qualify as QFs under FERC regulations.

Mr. Haselden explained IPL seeks to redefine a Renewable Facility to preserve Rate REP's original intent. He stated that around December 2010, IPL began receiving significant interest from renewable energy project developers desiring to construct large wind and solar photovoltaic facilities on vacant or agricultural ground located in IPL's service territory which would be economically supported and financed by energy sales under Rate REP. He said these projects varied in size from 2 MW to 10 MW each and were submitted by seven developers who were not IPL customers.

The interest from the developers threatened to eliminate the opportunity for IPL's customers to take advantage of Rate REP in two possible ways. First, he explained, securing renewable energy from stand-alone generators through Rate REP is an inefficient way to induce stand-alone generators to offer this level of power to IPL for the benefit of its customers. IPL could have issued a request for proposals ("RFP") for the full Rate REP capacity and received competitive bids for the prices that would be paid, which would have likely resulted in IPL securing the capacity at a lower rate. He said IPL did not pursue an RFP because the purpose of Rate REP is to enable IPL's customers to install renewable facilities.

Second, Mr. Haselden stated, Rate REP contains a provision that caps the quantity of energy purchased under Rate REP to 1% of IPL's retail electric kWh sales for the prior calendar year to limit the rate impact of Rate REP purchases on IPL's customers. Mr. Haselden explained that by February 1, 2011, IPL had received applications for interconnection for twenty-five stand-alone renewable energy projects which would produce annual output of approximately 240,000 MWh if all proposed capacity were constructed, or 160% of the cap on Rate REP energy purchases. He said that assuming all or most of the proposed capacity from the stand-alone renewable energy projects were constructed, no additional capacity would be available for IPL's customers. As a result, projects proposed by IPL's customers, like those being discussed by the Indianapolis Airport Authority, would not be eligible for the purchases under Rate REP because capacity would not be available.

Mr. Haselden testified IPL is not proposing to increase the cap on the quantity of purchases at this time because Rate REP does have a rate impact on customers, and IPL wishes to complete the pilot period before deciding whether an expansion of the program is appropriate so that the data from actual experience can be evaluated. Instead, he believed the definition of a Renewable Facility contained in the current tariff should be amended to add the following additional qualifications:

1. The expected annual output from any project shall not exceed the annual consumption of the host facility. Biomass Facilities are exempt from this qualification.
2. A host facility is defined as a building, production equipment, or collection of the same in the same area such as a campus. The surrounding land owned or leased by the host customer is part of the Facility.

3. The maximum nameplate capacity of any Renewable Facility associated with a Facility or any one IPL customer, its parent, subsidiaries, or affiliates is 10 MW.
4. The footprint of a Renewable Facility must be wholly within the boundaries of the Facility and IPL's service territory.
5. Host customers may contract with third parties to own and operate renewable energy projects at their Facility. These third parties will be responsible for the interconnection agreement and the host facility will additionally sign the interconnection agreement and be responsible in the event of a default by the third party.

Mr. Haselden said examples of host facilities include buildings comprising a college or school campus, the collection of buildings and production equipment operated by a manufacturer, and the collection of buildings and land owned by the Indianapolis Airport Authority.

According to Mr. Haselden, the first qualification listed above will serve to stop entities only in the business of generating power from seeking to use IPL customers as a means to qualify what would be, essentially, stand-alone projects. This revision is also consistent with IPL's proposal to count the output towards the demand side management ("DSM") goals. In later years, qualifying projects could serve as net metering resources for customers, depending on the size restrictions or other criteria in effect at that time.

Mr. Haselden explained the second qualification recognizes that customers may have many different electric services serving their buildings or factories although they may be contiguous to each other. For example, a hospital complex or college campus may have many buildings, warehouses, stadiums, and parking garages. The tops of parking garages or warehouses may be the most feasible location for a large solar photovoltaic ("PV") array, but the electric consumption of the parking garage or warehouse may be very small. He said it would be appropriate to include the parking garage or warehouse site in aggregate to the customer's Facility.

With respect to the third proposed qualification, Mr. Haselden stated some IPL customers may have large annual energy consumption and large amounts of land that could be rented from the customer by developers. This qualification will serve to keep entities whose only business is to generate power from using IPL customers as a means to qualify what would be, essentially, multiple stand-alone projects. He said 10 MW is a large renewable energy project by any standard and is an ample share for a single Facility. This limit will serve to make Rate REP available for more IPL customers. Mr. Haselden testified the fourth qualification is another protection from possible legal complications and gaming associated with projects located in other electric utility territories connecting to IPL customers for the purpose of seeking to use IPL customers as a means to qualify what would otherwise be stand-alone projects.

Mr. Haselden said the fifth proposed qualification recognizes that tax incentives are an important part of the financial aspect of a Renewable Facility and that some customers do not have a tax position that would otherwise make a Renewable Facility project financially feasible. For this reason, such customers may align themselves with a third party who can realize the tax benefits and share the project returns with the customer. He said that because such a Renewable Facility would

be located on the IPL customer's property and associated with the customer's electric service, the IPL customer must also sign the IPL interconnection agreement.

Mr. Haselden stated IPL is aware of interest from customers whose proposals would satisfy the revised definition of a Renewable Facility, but he acknowledged that interest may not equal what has been proposed by the developers. At the same time, he said there is no assurance all of the developers would move forward with all of their projects if IPL offered them Rate REP agreements. There is also no assurance IPL and the developers could reach a satisfactory agreement that would also be approved by the Commission. In addition, there are too many unknown variables to determine if jobs or tax revenues would be lost if IPL does not contract with the stand-alone developers for purchases under Rate REP. Mr. Haselden opined other jobs will be created as a result of this change because other entities will invest human and financial capital in developing projects for customer-sited facilities.

Mr. Haselden testified IPL has been transparent about its intentions, and these changes are not unfair to stand-alone developers. He explained IPL engaged in discussions with several stand-alone developers in 2010, but no agreements were reached. By February 1, 2011, IPL concluded that a change in approach was necessary to protect the interests of its traditional customers. On February 7, 2011, a letter was sent to all developers informing them IPL intended for Rate REP to be available to its customers, and IPL filed a motion with the Commission to make this change. He said IPL has continued to engage in interconnection agreement discussions with any party interested in interconnecting because it is required to do so under the terms of the Commission's rules and regulations.

Mr. Haselden stated none of the stand-alone developers have signed agreements for System Impact Studies and thus entered the interconnection queue process as of the date of the submission of his testimony. He said IPL will continue to process interconnection applications as required by the Commission's regulations. Further, IPL will agree to purchase energy from stand-alone developers pursuant to Rate CGS if they qualify.

Mr. Haselden next addressed why IPL believes energy purchased under Rate REP should count toward the energy savings goals established in the Commission's Generic DSM Order. He said the Generic DSM Order set forth a non-exhaustive list of potential programs, including incentives for customer-sited renewable energy technologies that reduce electric use. It is consistent with the Generic DSM Order to count energy purchased under Rate REP by customer-sited renewable energy technologies because the energy produced by these facilities reduces electric energy that otherwise would be supplied by IPL's traditional generating resources. In addition, counting this energy toward savings targets is in the best interest of IPL's customers because the energy purchased under Rate REP would offset the need for investing in additional DSM.

6. Intervenors' Evidence.

A. EDP. Mr. Peter Park, Senior Project Manager for EDP, testified regarding EDP's rationale for participating in Rate REP and offered recommendations concerning the wind energy aspects of IPL's Rate REP program. He testified EDP has been a customer of IPL since September 2008 and has been an active participant in the IPL Rate REP program since October 2010. EDP formally submitted two requests and deposits for interconnection studies with IPL under this program in December 2010 for a 9.0 MW facility and a 7.2 MW facility.

Mr. Park stated EDP became involved with Rate REP for three reasons. First, EDP believed it qualified to be a participant in the Rate REP program based on IPL's Rate REP criteria. EDP convened a series of meetings with IPL to confirm its understanding of the Rate REP program and to comply with the program's requirements. According to Mr. Park, IPL assured EDP it qualified for participation in the Rate REP program. Second, EDP believed its participation in Rate REP would benefit the program by having a proven wind developer demonstrate that wind projects can be successful in this program, particularly since the program is in its pilot phase and wind is one of the technologies eligible under the program. Finally, EDP believed its participation would benefit the program by developing the lowest rate segment of the program: wind projects greater than 1MW up to 10MW in scale, which hold rates of \$75/MWh. EDP thought its participation would help mitigate overall rate impacts of the Rate REP program to Indianapolis ratepayers.

Mr. Park stated that with respect to Rate REP, EDP initiated development efforts for wind power projects into the Rate REP program. For example, EDP identified and evaluated several feasible sites for wind development in the IPL service territory and performed technical assessments and preliminary engineering design work on these sites. He stated EDP expended significant business and engineering time and resources in early stage development work for its Rate REP projects.

Mr. Park testified that on February 7, 2011, EDP received notice from IPL that EDP's participation in Rate REP would be suspended, and IPL would be suspending the program until further notice. Mr. Park provided copies of two letters received by EDP from IPL describing IPL's rationale for the suspension. He said that as a result, EDP's development activities are suspended until EDP gets more clarity through this proceeding on the status of Rate REP.

Mr. Park also provided some comments and corrections in response to IPL's case-in-chief. More specifically, he stated that while EDP's Indianapolis office receives electricity from IPL, it is not located within IPL's service territory solely for the purpose of selling power into Rate REP. He disagreed that wind generation technology advancements result in windfall profits at the expense of all customers. Rather, these advancements allow wind projects in central Indiana to be feasible for development for the first time at the rates provided in IPL's Rate REP program. At the Rate REP rates published by IPL, coupled with new wind technologies, wind power projects are able to meet an investment threshold to participate in Rate REP, but not at significant windfall margins.

Mr. Park stated that while EDP understands the issues IPL has brought up in its case-in-chief and enjoys a professional relationship with IPL, EDP believes IPL should not be allowed to impose significant, game-changing rules as they go along. He added that this is especially true if the changes increase the cost of participation in the program and because developers have already spent resources with the understanding that they were eligible for participation.

Mr. Park next offered some recommendations regarding the wind energy components of IPL's Rate REP. He said technological advances allow large wind turbines to be placed in wind resource areas such as IPL's, and in other lower wind speed regions where they could not be placed before. With respect to wind energy's contributions to Rate REP, he said commercial scale wind turbines are the only viable wind turbines based on Rate REP pricing and wind resources in IPL's service territory. Due to land use, distribution line, and airspace constraints, wind energy projects will only be able to contribute approximately 30 – 40 MW to the Rate REP program. He added that under the proposed eligibility changes submitted by IPL, the opportunity for customer-owned wind

projects greater than 1MW in size dramatically decreases, and there are no or virtually no opportunities for commercial wind for customers with greater than 1 MW of load under these new requirements.

Mr. Park stated that to EDP's knowledge, it is the only wind developer to submit interconnection requests for wind projects greater than 1 MW in nameplate capacity. He believed that under the right framework, other wind developers would also participate in Rate REP's wind program, which would provide a benefit to the overall program by keeping prices on the lower end of the spectrum.

He recommended that IPL allow wind projects to be sited off customer facilities/real property, affording wind projects the same siting treatment as biomass plants. He agreed with IPL that biomass generating facilities, by their nature, must be stand-alone. Wind generating facilities must also be treated as stand-alone generating facilities. He said if this recommendation is not implemented by IPL, EDP recommends IPL strike out the wind energy portion of the Rate REP program for any facilities larger than 1 MW because it places an untenable constraint on project developments for wind facilities greater than 1 MW.

Mr. Park also recommended there be no requirement that interconnection and Rate REP contracts must include a customer of IPL as a party to the agreement. He said greater efficiency and lower cost is possible by having developers lead and manage these projects. Requiring the customer to submit a Rate REP request adds needless cost and complexity to the project.

Mr. Park further recommended that IPL drop the proposed requirement for the project facility to match customer load for wind and biomass projects. This requirement may be appropriate for solar projects, but it is inappropriate for wind or biomass facilities due to siting requirements. Additionally, he believed the capacity of IPL's distribution system and the cap of 10 MW on the size of a project facilities are sufficient constraints to ensure this part of the program will naturally limit itself to an acceptable level of participation.

Finally, Mr. Park recommended the creation of a clear and transparent interconnection queue process across all technologies. He said this process should have transparent timelines, milestones, informational requirements, and financial commitments from developers/owners at each milestone. It is reasonable and necessary for IPL to adopt a transparent, orderly, and fair process to work through the interconnection of facilities under Rate REP. These policy amendments would allow wind to provide an important part of the overall portfolio of the Rate REP program.

B. Ecos. Thomas Melone, Ecos's Chief Executive Officer, testified Ecos started discussions with IPL with respect to Rate REP in April 2010. Until late 2010, Mr. Melone said there was never any indication or concern expressed by Mr. Haselden regarding developers, such as Ecos, selling power under Rate REP. He said that based upon those discussions and the terms of Rate REP, Ecos proceeded in good faith to develop projects and directed substantial resources toward developing projects for Rate REP. He opined that IPL was not expecting the Rate REP program to potentially be fully subscribed so quickly.

Mr. Melone disagreed that IPL's changes are necessary to allow its long-time existing customers to participate in Rate REP. He stated IPL can achieve its goal of reserving capacity for its long-time existing customers by changing the rate on its net metering tariff. Except in the case of

biomass, the changes requested by IPL would turn Rate REP into a net metering tariff. He added that IPL's proposal to restrict the size of a Facility to the annual consumption of the host facility would likely result in a program that is only a small fraction of the 100 MW program the Commission approved.

Mr. Melone also disagreed that Rate REP as currently in effect violates federal law. With respect to IPL's argument that the current Rate REP is preempted by the FPA, Mr. Melone disagreed that PURPA was relevant to Rate REP. He stated Mr. Haselden's reliance on the FIT Order reflects an erroneous interpretation and application of the FPA and FERC's decision and, most importantly, fails to take into account the *Mobile-Sierra* doctrine.³

Mr. Melone agreed with Mr. Haselden that under 18 C.F.R. § 292.304(a)(4), the rate for purchases from new facilities must be at full avoided costs when PURPA is applicable. In the context of PURPA, FERC has made clear that the question is what likely costs the utility is avoiding by interconnection of the renewable energy generator. Assuming PURPA would be the correct context in which to review Rate REP, Mr. Melone said Rate REP contains two components. First is the payment by IPL to the renewable energy generator of an amount equal to IPL's full avoided costs. Second is the payment by IPL to the renewable energy generator for the RECs, or solar renewable energy certificates ("SRECs") that IPL receives. He said it is only if the sum of those components exceeds Rate REP that there should be an issue under PURPA. However, according to Mr. Melone, the issue of whether a state commission must separately assign values to each of those components was not addressed in the FIT Order. Furthermore, he noted in that case, the utilities were not voluntarily requesting approval of a FIT rate, but instead the FIT rate was imposed upon them by the California Public Utilities Commission. In the present case, IPL voluntarily sought approval of a wholesale rate for a limited amount of power in the same manner as it received approval for its wind energy power purchase agreements ("PPA"), and as a result, the avoided cost test is not the proper standard.

Mr. Melone said that because Rate REP is limited to 100 MW at rates voluntarily set by IPL, it is no different from a FPA and PURPA standpoint than a 100 MW PPA at the Rate REP rate. He said the FPA and PURPA do not prohibit a utility from creating a standard offer at a rate above its avoided costs and thus PURPA is simply not implicated. Under the FPA, the standard of review is dictated by the *Mobile-Sierra* doctrine and not PURPA, and any challenge to the rates in Rate REP would therefore be subject to the rigorous public interest standard. The fact that IPL is prohibited from amending its standard offer under state law without further approval of the Commission does not result in PURPA being implicated. Rather, the procedure for amendment of Rate REP is a function of state contract and regulatory law, like the amendment of a PPA. Under *Mobile-Sierra*, FERC must presume rates set by contracts that are freely negotiated at arms-length between willing buyers and sellers meet the statutory just and reasonable standard of review. The fact that the buyers were not identified at the time of the approval of the binding tariff does not diminish the fact that the rates were voluntarily set from a contractual standpoint. Mr. Melone testified the Rate REP rates clearly satisfy the *Mobile-Sierra* public interest standard and, as a result, the Rate REP in its current form would not be subject to any challenge under the FPA or PURPA.

³ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956) (Mobile); *FPC Sierra Pac. Power Co.*, 350 U.S. 348 (1956) (Sierra) (collectively, "*Mobile-Sierra* doctrine").

Mr. Melone discussed whether, if PURPA is implicated, it is necessary that the avoided cost and SREC/REC component be separated, or whether the state commission is permitted to accept the rate proposed by the utility. He questioned whether PURPA is satisfied if the state commission assumes the utility is acting in accordance with law and has no reason to doubt that the FIT price does not exceed the range of likely avoided costs plus the reasonably expected value from the SRECs/RECs. He said that in order to make the relevant determinations under PURPA, the Commission should determine the dollar amount to assign to each component of Rate REP. As to the first component, the avoided cost, Mr. Melone said Mr. Haselden's claim concerning IPL's avoided costs as a result of the interconnection of a renewable energy generator should not be accorded any weight. Rather, he opined IPL should be required to present evidence so that the Commission may determine what IPL's current avoided costs would be from the interconnection of each specific category of renewable energy generator covered by Rate REP. As to the second component, he believed IPL should present evidence as to the current projected value of the RECs and/or SRECs that it would receive. He said the SRECs received by IPL from Rate REP could be sold by IPL to Ohio utilities.

Mr. Melone next discussed the FIT Order. In the FIT Order FERC provided a roadmap for state commissions concerning the way in which avoided costs should be determined under PURPA in light of various categories of costs that would likely be avoided in the future by the interconnection of certain renewable energy QFs, as defined in 18 C.F.R. § 292.203(a) without being preempted under the FPA. He said according to FERC, a multi-tiered avoided cost rate structure is consistent with the avoided cost rate requirements set forth in PURPA and FERC regulations. Further, FERC affirmed that according to section 210 of PURPA and FERC's regulations, avoided costs are costs the electric utility avoids by virtue of purchasing from the QF. While the avoided cost rate may not contain a bonus or adder for all environmental externalities, it could include environmental costs that are costs which would likely be incurred by utilities in the future, such as costs associated with greenhouse gas ("GHG"), renewable portfolio, or other types of compliance costs. As a result, by purchasing energy from renewable energy facilities, the purchasing utility is avoiding potential future GHG, compliance, and other costs that are properly included in a long-run PURPA avoided cost rate. Mr. Melone testified that outside the context of PURPA, FERC agreed with the California utilities that the establishment of a fixed price would constitute impermissible wholesale-rate setting by the California Public Utilities Commission, which was preempted by the FPA. In the context of PURPA, however, FERC ruled that to the extent the projects were QFs, the fixing of a long-term run rate by the public utility commission would be considered an implementation of PURPA and thus not preempted if the rate established did not exceed the likely avoided cost of the purchasing utility.

Mr. Melone stated Rate REP by its terms only involves QFs, and as a result (assuming PURPA applies), it would be wholly within the confines of PURPA. IPL's testimony in the original proceeding approving Rate REP makes it clear that Rate REP was a valid exercise of the Commission's authority under PURPA. Additionally, there was no reason to doubt IPL's analysis concerning the likely avoided costs and IPL's voluntary agreement regarding the value of RECs. He cited IPL's testimony in Cause No. 43623, which provides that Indiana's definition of avoided cost is consistent with that term's use in other states. According to Mr. Melone, Indiana's approach to avoided costs is consistent with California's. Also, in Cause No. 43623, the IPL Rate REP determination included not only IPL's determination of likely avoided costs but also consideration for RECs and SRECs.

Mr. Melone discussed the possible implications that would result if FERC were to determine PURPA is applicable to Rate REP. He said that unless FERC requires voluntary wholesale PPA rates to be separated into components, any challenge to IPL's current Rate REP rates would have an impossible burden. Such a challenge would be required to prove that the sum of (1) the maximum likely avoided costs, plus (2) the voluntary value IPL attributes to the RECs it would receive were in excess of the Rate REP rates. He said this is an impossible burden because IPL voluntarily set the price for the RECs it would receive as being equal to the excess, if any, of the Rate REP over its likely avoided costs. This burden is even clearer if one considers the value of SRECs for sale to Ohio utilities from neighboring states, such as Indiana.

Mr. Melone said any discussion of avoided costs in this proceeding must necessarily be informed by IPL's and AES Corporation's business view of the possible long-term avoided costs realized by the interconnection of a renewable energy generator. The Commission's view of the likely future procurement of generation resources should also be considered. He stated it is important to review various categories of avoided costs, including market price suppression, long-term price stability, compliance with likely renewable energy goals, limitations on GHG emissions, enhanced reliability, moderation of peak load, avoided transmission improvements, capacity, and costs of compliance with any additional state and/or federal current or reasonably expected GHG emissions limits.

Mr. Melone stated the Commission should review the avoided cost calculation. He said the discussion regarding avoided costs raised in this Cause and in Cause No. 43623 make it clear the avoided cost rate specified in IPL Rate CGS does not reflect the avoided costs likely to be realized by IPL from the interconnection of a renewable energy generator.

Mr. Melone also disagreed with IPL's assertion that allowing developers to participate in Rate REP would harm IPL's customers. He said Mr. Haselden's contention that securing renewable energy from stand-alone generators through Rate REP is an inefficient way to induce stand-alone generators to offer this level of power to IPL is contrary to the fundamental premise of a FIT. IPL could have issued an RFP for renewable energy and may or may not have received any significant interest from renewable energy developers. He said the attractiveness of a FIT is to allow for the financing of a project in a transparent manner that is subject to the approval of the Commission. Rate REP projects in IPL's service territory will generate jobs in Indiana, establish a certain level of generation that is not subject to fuel price fluctuations, and minimize transmission upgrades. Furthermore, Mr. Melone stated the SRECs generated from projects in Indiana can be sold to Ohio utilities, and in some cases for more than the Rate REP rate. At that pricing, Mr. Melone indicated Rate REP might result in a reduction in ratepayers' monthly bills, the creation of jobs in Indiana, long-term energy security, and the achievement of environmental goals.

Mr. Melone disagreed with Mr. Haselden's assertion that developers would use almost all the capacity under Rate REP. Developers can bring economies of scale that potentially result in projects which are financeable. He stated if IPL desires to reserve a certain amount of capacity for its existing customers, such as the Indianapolis Airport Authority, IPL would be best served by amending its net metering tariff to provide for a higher fixed rate and a higher cap. IPL would also be able to manage the limits for that type of facility. Alternatively, Mr. Melone stated IPL could increase the capacity available under the Rate REP program. If IPL considers such an increase, he suggested the term of the PPA be longer to coincide with a project's expected useful life, which would result in a lower impact for Indiana ratepayers. He said the rate would probably be so much

lower than Rate REP's, and thus the overall program capacity should be able to be raised by approximately 50% (to 150 MW) without any potential increase in the cost of the program during the first fifteen years.

Mr. Melone testified IPL's proposed changes to Rate REP will result in a failed program, a loss of jobs and tax revenues for Indiana, and a narrower distribution of the economic effect of Rate REP. He believed the revisions to Rate REP will also result in an amount of volume no more than a small fraction of the 100MW program approved by the Commission. Further, the changes would effectively limit substantially all of the program's economic benefit to a small group of existing large commercial customers.

Mr. Melone stated IPL should honor the terms of its original commitment regarding Rate REP when parties rely upon them. The very essence of a utility tariff is a contractual commitment that may be amended or changed prospectively with the approval of the Commission. Moreover, a tariff insures that a utility cannot act in a discriminatory manner. Mr. Melone said the voluntary nature of the program enables IPL to request Commission approval to change Rate REP on a prospective basis. In order to accurately assess IPL's request, however, he believed a full review should occur on the various categories of likely avoided costs and long-term projections of rates for energy, capacity, and RECs.

Finally, Mr. Melone offered some additional suggestions the Commission should consider in order to improve Rate REP. He suggested that a 20% developer limitation be provided. Also, IPL's affiliates should be prohibited from participating in the initial 100 MW of Rate REP. The Commission should concur with, or modify, the clarification of the queue process for Rate REP provided by IPL. He suggested the Rate REP queue be based upon when projects conclude the interconnection process and the execution of an interconnection agreement. Because smaller projects would make it through the queue much faster than larger projects, the smaller projects (Level 1 and Level 2) would likely have first access to Rate REP. Mr. Melone stated an overall project limitation should be considered below 10 MW, which would result in a greater variation in projects, and by definition, provide a wider distribution of the local benefits. If Rate REP is expanded in size, he suggested, at least in the case of solar, consideration should be given to a longer-term PPA (such as twenty-five years). This would result in a much lower initial PPA rate in the early years and in IPL's ratepayers enjoying the economic benefit of the projects for much longer without any increase in the cost on a present value basis. In addition, in the case of expansion of the Rate REP program, consideration should be given to reserving a minimum portion to smaller projects to encourage a wider participation.

C. **IDEA.** Ms. Laura Arnold, President of IDEA, testified regarding the proper basis for evaluating the proposed changes to IPL's Rate REP. Ms. Arnold stated that although IPL is not proposing any changes in this Cause to its net metering tariff approved in Cause No. 43623, the proposed changes to Rate REP will have an indirect impact on net metering. She believed IPL's suggestion that Rate REP projects use net metering in later years was not realistic or practical. First, net metering the renewable energy output for a qualifying project would likely require a different interconnection agreement. Second, neither IPL's current net metering tariff nor the Commission's new proposed net metering rule permit net metering for projects over 1 MW. She recommended that IPL allow net metering for projects up to 10 MWs right now. Third, given the useful life of solar PV systems, it would be most beneficial for IPL to allow the project to enter into another Rate REP contract when the current contract expires and not convert to net metering.

Ms. Arnold discussed the terms and status of IPL's current net metering tariff. She said IPL has the lowest number of net metering customers and the smallest total nameplate capacity of the five investor-owned electric utilities in the State of Indiana. She said that although IPL has had the most expansive net metering tariff since March 30, 2010, IPL's net metering enrollment represents 2.3% of the total net metering capacity, 3.4% of the solar net metering, and 0% of wind net metering.

Ms. Arnold next discussed the proposed changes to IPL's Rate REP. So far only two IPL customers have filed and received approval under Rate REP—the Time Factory and the General Services Administration Major General Emmett J. Bean Federal Center. She testified IPL is proposing four revisions to Rate REP: (1) increase the maximum length of the term of a Rate REP contract from ten to fifteen years, which IDEA supports; (2) eliminate language in Rate REP suggesting it contains a Commission-approved wholesale purchase power rate, which IDEA supports; (3) incorporate language requiring participants to have necessary authority to make wholesale power sales, which IDEA does not oppose; and (4) redefine the term Qualified Renewable Energy Power Production Facility, which IDEA opposes. She also disagreed with the concerns expressed by Mr. Haselden regarding the exclusive jurisdiction of FERC over wholesale power rates and the effect of FERC jurisdiction over Rate REP.

Ms. Arnold stated IDEA opposes IPL's proposal to require that the expected annual output from any project shall not exceed the annual consumption of the host facility. She believed this change and the exemption of biomass facilities are arbitrary and discriminatory. No other FIT places this limitation proposed by IPL. She said IDEA also opposes IPL's proposal to define a host facility as a building, production equipment, or collection of same in the same area. Ms. Arnold testified IDEA is not opposed to IPL's request for the maximum nameplate capacity of any Renewable Facility associated with a facility or any one IPL customer, its parent, subsidiary, or affiliates be 10 MW as long as an entity is allowed to propose more than one project under Rate REP.

Ms. Arnold testified IDEA opposes IPL's requirement that the footprint of a Renewable Facility be wholly within the boundaries of the facility but does not oppose the requirement that the footprint to be wholly within IPL's service territory. IPL's proposed requirement that the host facility sign the interconnection agreement and be responsible in the event of a default by the third party is another unnecessary condition which will render Rate REP unworkable.

Ms. Arnold then provided her perspective, from a policy standpoint, of the elements of a successful FIT and provided a definition of a FIT. She said the Rate REP approach supported by IDEA is based on the actual cost of renewable energy generation, which is the most commonly used approach in the European Union. This is the approach that IPL appears to have adopted in this docket. Ms. Arnold indicated that during discovery, IPL said it did not have a goal (in years) for the length of the "simple payback" for an average system under Rate REP, which is a basic tenant of FITs around the world.

Ms. Arnold said it is unreasonable for IPL to propose far reaching changes to Rate REP at this time because of the Commission's Order in Cause No. 43623, which established Rate REP as a three-year pilot. With respect to the pricing under Rate REP, she believed Rate REP should compensate a renewable energy producer for the costs to produce the electricity it produces plus a reasonable rate of return as IP. In addition, Rate REP should consider a number of additional

factors. She stated IPL's current Rate REP includes differentiation for wind system size but does not include sufficient differentiation for solar PV and biomass.

Mr. Eric Cotton, CEO and founder of ECI Wind and Solar Incorporated, provided a technical evaluation of IPL's proposed changes to Rate REP, discussed the methodology used to justify the offering, and presented his perspective on the current state of FITs. He defined a FIT as a market-based contract between an owner of a renewable electricity generation system and a wholesale producer, distributor, or buyer of electricity that details the terms by which the buyer will purchase electricity generated and delivered by the seller. To be a FIT, the terms of the contract must be such that the seller earns a payback plus a reasonable rate of return during the duration of the contract. A well constructed FIT will not favor one developer over another, and it will not seek to exclude any particular class of customer or potential customer from participation. Mr. Cotton said FITs are not based on the usage at a particular site, but rather a standard offering for production of energy. The contract lengths should be at least fifteen years and the offered rate should be a published minimum to assure a suitable financial model can be developed for potential investors.

Mr. Cotton stated the FIT concept provides producers of renewable energy a financial model similar to that of regulated investor-owned utility companies. FITs publicly examine the costs associated with each technology and set a rate for the electricity commensurate with the return on investment provided for the investor-owned utility by the ratepayers. He said FITs also protect ratepayers from unnecessary costs by limiting the impact of the FIT up front. In addition, by using the same criteria to set the rates by technology, ratepayers are assured a wide variety of generation facilities are installed. He believed the FIT gives producers a reason to invest while giving the ratepayers the most diversity in clean energy generation, the best opportunity for widespread economic development with the best understanding of the liability, and the protection from changing costs of technology.

Mr. Cotton testified IPL's proposed changes are not consistent with the basic concepts of FITs. More specifically, Mr. Cotton said the most incompatible suggestions are: (1) the requirement that the expected annual output from any project not exceed the annual consumption of the host facility, with the exception of biomass facilities; (2) the proposed definition of a host facility; and (3) the 10 MW limit on the maximum nameplate capacity of any Renewable Facility associated with a facility or any one IPL customer, its parent, subsidiaries, or affiliates. He stated the first proposed change would unfairly eliminate customers who might, for example, have the space for a large solar facility, but not the load requirements as proposed by IPL. The second proposal is moot if the first proposal is removed. Also, the second proposal is best dealt with in the tiered system.

Mr. Cotton disagreed with Mr. Haselden's assertion that the proposed changes are not unfair to stand-alone developers. He said transparency is not the same as fairness, and IPL has actively and openly engaged in behavior that is prejudiced and overtly favorable to a particular type of developer and customer class. He believed IPL's intention to not negotiate Rate REP agreements with stand-alone developers is, by definition, unfair to stand-alone developers.

Mr. Cotton next addressed the deficiencies of Rate REP. He said improvements in the offered rate need to be made along with the adoption of a tiered pricing structure based on technology, size, and location. He said this includes separate tiering for governmental, non-profit organizations, and other non-taxable entities. Consideration should also be made for materials manufactured in Indiana. In Mr. Cotton's opinion, Rate REP does a poor job of creating a

transparent queuing and capacity reservation process and lacks any control mechanism reserving portions of the capacity for differing project sizes. Also, the contract length should be extended, and the thirty-day filing process should be replaced with a standard contract offering. He also believed there should be a clear dispute resolution process. Mr. Cotton stated IPL's proposed changes to Rate REP do not address these deficiencies, with the exception of the proposed contract term length change to length of the contract. However, he stated disallowing the 2% per year escalator in favor of the fifteen-year term was unjustified.

According to Mr. Cotton, Rate REP's offered rate per kWh is too small for certain classes of systems, and does not address the differential costs of installation based on technology or installation type. Limiting Rate REP to systems 20 kW or larger eliminates most of the smaller contractors and customers from participating in the offering and leaves any future FIT overtly discriminatory. The proposed changes do not address the deficiencies he identified with Rate REP and continue to discriminate against large developers.

Mr. Cotton explained Rate REP's offered purchase pricing is too small because IPL has set no definitive simple payback goal. He said this prevents investors from realizing a reasonable rate of return if the arbitrary rate is too low. The discounted cash flow ("DCF") method could be used to set the purchase rates for Rate REP because it helps investors assess the potential benefits from an investment by considering the time value of money. He stated the DCF analysis will look at the investment and project a current value on future income so if the DCF over the course of the investment period is negative, the investment is considered bad. Conversely, if the DCF analysis is positive, then the investment is regarded as good. He stated the DCF analysis can be used to directly determine the purchase rates, and it would be trivial to determine the rate that would yield a positive net present value ("NPV") over the course of the contract.

Mr. Cotton recommended a number of specific remedies to address the deficiencies of Rate REP. With respect to pricing, he said Rate REP should include a tiered pricing structure based on the type of technology, the size of the installation, and the type of customer. He suggested the rate for each technology be the amount, rounded up to the nearest 1¢, which will allow the cash flow of the investment to garner a positive NPV at the end of the contract term, using a 7% discount rate. The capital costs for each system type by technology and size should be accurately modeled to reflect a low average to average cost of deploying this technology in the State of Indiana. He said operation and maintenance costs should be included separately in the cash flows of the financial model.

Mr. Cotton testified that in order to set the rate, there needs to be either a simple payback goal or an NPV goal over the contract term. Because IPL has no goal, the NPV goal can be used as the benchmark. The rate will be some amount in dollars per kWh that will allow the investor/owner of a system to garner a positive NPV during the contract term, given appropriate assumptions about the cost and size of the installation and the technology employed. Mr. Cotton presented some suggested rates for solar PV and wind systems using the output of the financial model provided by IPL as adjusted by IDEA. He stated non-taxable investors get no benefit from the tax benefits included in the financial model, and he suggested that in order for non-taxable entities to garner the same return on investment provided to investors with tax liabilities, the rate needs to be doubled. He said he was not directly advocating a tier for non-taxable investors which is double that for other investors. However, it should be understood that the financial model commonly used makes no consideration for this type of investor.

Mr. Cotton stated Rate REP should use a queuing system that requires potential customers to apply for an interconnection agreement, and the interconnection agreements should require the customer to have specific plans for a specific system at a specific site. Also, the submitted application agreement, with these requirements, should constitute a position in the queue. He testified each project with a position in the queue should be awarded capacity based on its order in the queue, with earlier entrants having preference. In addition to the tiering system, Mr. Cotton recommended that IPL set aside 10% of the total capacity of Rate REP to each tier, which would leave 40% of the program available to developers on a first-come, first-served basis. IPL should also consider systems as small as 5 kW so all customer classes can participate in Rate REP. Finally, he said there can be added value from encouraging the use of products made in Indiana, although he did not have a specific proposal on how to implement that in the context of Rate REP.

Mr. Cotton also testified regarding the current state of the REC market. He noted SRECs generated in Indiana are eligible to be sold into mandatory SREC markets in Ohio, the District of Columbia, North Carolina, and Illinois (starting in 2012). It is important to understand the REC market because the proposed FIT transfers the ownership of the REC from the renewable energy system owner to the utility company. He stated this represents the transfer of real value, which should be considered in setting the rate for the FIT. More specifically, if the rate for the FIT is less than the avoided costs plus the value of the REC, then the utility company is earning a profit by engaging in the FIT. Conversely, if the system owner can garner a higher return on investment by simply net-metering their renewable energy system, retaining the RECs for themselves and selling them on the open market, then participation in the FIT will be limited.

Dean C. Leischow, Managing Director of Sunrise Energy Ventures LLC (“SEV”), also testified on behalf of IDEA. SEV is one of the seven developers identified by Mr. Haselden who submitted proposals for stand-alone projects. He said SEV expressed interest to IPL before December 2010, and initiated contact with IPL about proposed projects using Rate REP during late summer or early fall of 2010. He stated SEV held several in-person meetings and telephone calls with IPL and arranged for a solar PV inverter manufacturer to make a presentation to IPL employees to further their knowledge and understanding of solar PV technology. IPL did not express to SEV any concerns or doubts concerning SEV’s proposed stand-alone solar PV projects until SEV received a letter from IPL dated February 7, 2011. Mr. Leischow said that prior to receipt of the letter, SEV only received encouragement from IPL.

Mr. Leschow described SEV’s experience with the interconnection application processes in New Mexico and North Carolina. He said that in comparison to these other states, IPL seems to be lacking any sort of formally designed application process. Furthermore, he believed IPL’s actions have contradicted their verbal commitments on numerous occasions, which has made applying and effectively planning difficult.

Mr. Leischow said SEV supports IPL’s proposed increase to the maximum length of a Rate REP contract from ten to fifteen years, as well as the elimination of language in Rate REP suggesting it contains a Commission-approved wholesale purchase power rate. He said SEV does not oppose incorporating language requiring participants to have necessary authority to make wholesale power sales. However, SEV opposes the proposed new definition for Renewable Facility. Mr. Leischow also testified SEV opposes the requirement that the expected annual output from any project not exceed the annual consumption of the host facility because the exemption for biomass facilities is arbitrary and discriminatory. He also opposed IPL’s suggested definition of host facility

because this change is not necessary if the first change is not adopted (i.e., the extension of the contract term to fifteen years). Mr. Leischow was not opposed to the limit of 10 MW for any one Renewable Facility or customer, provided that an entity is allowed to propose more than one project under Rate REP. He said SEV does not oppose the requirement that the footprint of a Renewable Facility be wholly within IPL's service territory, but does oppose the requirement that the footprint be wholly within the boundaries of the Renewable Facility. Finally, he disagreed with the requirement that the host facility sign the interconnection agreement and be responsible in the event of a default by the third party.

Mr. Leischow stated IPL's proposed changes to Rate REP would send a chilling effect to all the developers with projects proposing to use Rate REP. If the Commission approves these changes, it will signal that the State of Indiana is not serious about developing renewable energy resources. Thus, it would make all renewable energy developers wary of any future programs offered by utilities under the jurisdiction of the Commission.

Mr. Leischow believed the changes proposed by IPL are unfair to stand-alone developers, and he did not agree that IPL has been transparent about its intentions with respect to Rate REP. He described a letter received by SEV from IPL dated April 21, 2011, which, among other things, stated IPL would not be negotiating a Rate REP agreement with SEV for the proposed projects but would be willing to discuss purchasing power pursuant to its Rate CGS. He said the most recently approved prices under IPL's Rate CGS would be less than \$0.03 per kWh.

Mr. Leischow acknowledged SEV does not have a signed System Impact Study with IPL, and he testified it appears IPL does not view Rate REP as a standard contract offer available to all parties on a non-discriminatory basis. He stated SEV is surprised with IPL's position because Indiana is not deregulated with respect to electric utilities and this program was approved by the Commission in an Order in Cause No. 43623. He said it appears IPL is saying it is under no obligation to offer Rate REP to anyone regardless of whether it is a developer proposing a stand-alone system or a more traditional IPL customer.

Mr. Leischow stated it is unrealistic for IPL to believe that either developers proposing stand-alone projects or IPL customers would develop projects under Rate REP if they cannot achieve a simple payback plus a reasonable rate of return using Rate REP. He said IPL has a very disjointed, confusing, and at times, contradictory process and procedure for handling those wishing to sell electricity from renewable energy resources under Rate REP. Most, if not all, of the proposed projects involve solar PV systems, which has resulted in a clouded and less than totally transparent pilot program. He recommended that the Commission order IPL to follow through with the proposed projects for Rate REP as the tariff is currently written and to honor the order of the proposed projects based on a first-come, first-served basis. IPL could propose to limit each developer to one or two projects for a maximum of 20–25 MW to ensure that capacity would be available for IPL's traditional customers under Rate REP. He said IPL could also implement a request for formal documentation of site control for proposed projects, which might reduce the number of proposed projects currently under consideration.

7. **OUCC's Evidence.** Ronald L. Keen, Senior Analyst in the OUCC's Resource Planning and Communication Division, testified regarding FITs and proposed a model FIT program for IPL. He also addressed Petitioner's request to eliminate language in its existing Rate REP tariff

suggesting that Rate REP constitutes a Commission-approved wholesale power rate. He also explained why, in his opinion, FIT programs are not DSM programs.

Mr. Keen testified the OUCC continues to support the concept of FITs. FITs are a revenue-generating program in which the developer is generating energy to sell to the utility, creating a long-term future revenue stream for persons with business or other financial interests in the ownership, construction, management, or operation of renewable power generation facilities. Mr. Keen stated the OUCC is not satisfied with how IPL appears to have managed the Rate REP pilot program. Commission intervention and direction is needed at this point to realize the original goals of the pilot program. The OUCC is concerned the uncertainty and angst caused by IPL has resulted in waning interest and reinforces the OUCC's belief that further Commission review is required.

Mr. Keen stated that after considerable research and discussion with other utilities, the OUCC has developed a model FIT it believes the Commission should consider in whole or in part for IPL. The model is based on the recognition that different technologies and different classes of technology developers must be accommodated in a synergistic manner to ensure a successful FIT program. He said the "Project Queue" should be viewed as a holding pen for projects that will require further development if ultimately pursued to implementation. The "Interconnection Queue" is the point where the interaction between the utility and developer becomes more intimate and where resource deployment is considered in light of known constraints, such as limited capacity and options for project siting. He stated the model contains various technology buckets with designated capacity ranges, which allow for a full range of developers and technologies to make use of the available FIT.

He said that throughout the process, IPL would maintain an up-to-date online dashboard concerning projects in the Project Queue. This would allow developers to determine whether specific technology-capacity buckets are full or likely to become full before a project under consideration by that developer could be approved for participation in IPL's Rate REP. IPL would not necessarily be active in the Project Queuing process, which would simply serve as a holding tank. Mr. Keen stated this process would provide valuable planning data, but the onus would be on the developer to move a project forward from the Project Queue to the Interconnection Queue. The utility would need to develop a method to ensure entities in the Project Queue are aware of available capacity within each bucket without disclosing sensitive project information to competitors.

Mr. Keen testified a pilot using this model should have sufficient nameplate capacity available in each bucket to attract at least two developers. The OUCC used 100 MW as a base starting point, with the following delineations: Large Wind – 30 MW; Medium Wind – 10 MW; Small Wind – 2.5 MW; Large Solar – 30 MW; Medium Solar – 10 MW; Small Solar – 2.5 MW; Biomass – 10 MW; and Other Technologies – 5 MW. He said these specific delineations were only a starting point, but the concept remains the same regardless of the total nameplate capacity used in the model. He said that if programs like this are to be successful, it is necessary to have robust, well-designed pilots that offer dynamic operation, detailed and comprehensive metrics, and wide-ranging participation. If IPL does not voluntarily remedy current pilot program deficiencies, the Commission should order appropriate changes to IPL's current Rate REP program.

Mr. Keen acknowledged the current Rate REP tariff was developed cooperatively between IPL and a small core of independent renewable energy generation stakeholders, with input from interested environmental and consumer groups. He said despite that early collaborative effort, IPL's

Rate REP has fallen short of all stakeholders' expectations. The OUCC model FIT envisions multiple levels of review available to the utility, the Commission, and to the OUCC. Further, the metrics obtained from the Interconnection Queue would give the parties a detailed examination of what is already available and what will soon be made available online. Mr. Keen said the metrics from the buckets can offer parties the ability to periodically review and potentially adjust bucket parameters in a manner that would allow additional clean or renewable energy projects to move forward.

Mr. Keen next addressed IPL's request to eliminate language that suggests Rate REP contains a Commission-approved wholesale power rate. He described the relevant definitions of a QF, a qualifying small power production facility ("QSPPF"), and qualifying cogeneration facility ("QCF") under PURPA and the criteria for each. He said the significant majority of projects participating in any form of IPL's current or proposed Rate REP tariff program would be QSPPFs. There are potential benefits to becoming a QF, and under 18 C.F.R. § 292.304, QFs have the right to sell energy and capacity to a utility, provided the purchasing utility has not been relieved from its QF purchase obligation. QFs generally have the option to sell to a utility either at the utility's avoided cost or at a negotiated rate. He noted IPL has not been relieved of its purchasing obligation.

Mr. Keen stated that according to FERC, IPL's avoided cost should be calculated as the incremental cost to an electric utility of electric energy or capacity, which, but for the purchase from the QF, the utility would be required to generate itself or required to purchase from another source. Under this concept, QFs also have the option to sell energy either as-available at the utility's avoided cost or as part of a legally enforceable obligation for delivery of energy or capacity over a specified term, such as through a PPA.

Mr. Keen testified QFs have the right under federal law to purchase supplementary power, back-up power, maintenance power, and interruptible power from electric utilities at rates that are just and reasonable and apply to the utility's other customers with similar load or cost characteristics. He said certain categories of QFs may qualify for relief from regulatory burdens of state or federal statutes. Projects that are the subject of applications for participation in IPL's Rate REP have been 10 MW or smaller, and thus may be exempt from requirements under the Public Utilities Holding Company Act of 2005 ("PUHCA") and could be exempt from state laws and regulations concerning rates, financing activities, and other financial matters, and organizational requirements applicable to regulated public utilities. Mr. Keen said small QFs are exempt from most sections of the FPA. Although language from 18 C.F.R. § 292.304(a) might appear to support IPL's position that QFs are (or should be) precluded from participating in IPL's Rate REP or other FITs with prices that could exceed the purchasing utility's avoided costs, the OUCC concurs with the arguments presented by Mr. Melone on this issue.

Mr. Keen disagreed with IPL's proposed limitations on which technologies should be permitted to participate in the Rate REP program. He recommended that the Commission require that all technologies approved by the State of Indiana as clean or renewable technologies be included in net metering and FIT offerings by regulated electric utilities.

Mr. Keen next testified regarding how rates for "new capacity" are handled under applicable federal law. He said that in 18 C.F.R. § 292.304(e), FERC identified a number of factors which could impact rates charged for renewable energy purchases under PURPA. This list of factors suggests that state utility regulators have a fair amount of discretion in approving or rejecting

proposed rates for renewable energy purchases which differ from the utility's avoided cost rate, although he was unaware of any case where the Commission did so.

Mr. Keen disagreed that the rates represented in the Rate REP tariff exceed IPL's avoided costs. The rates in IPL's current Rate REP tariff were not determined by the Commission after review and calculation of various factors but instead were offered by IPL and approved by the Commission. He said the OUCC assumes IPL took into account the provisions and requirements of 18 C.F.R. § 292.304 in determining the necessary calculations to reach the conclusion that the rates offered by the utility were just and reasonable to the utility's customers, in the public interest, and not discriminatory against QCFs and QSPPFs. He said that IPL, in offering the tariff containing those rates in the original Petition, never asserted whether all values considered for Rate REP were based on IPL's avoided cost calculation. Rate REP was not offered by IPL as a permanent tariff offering, but rather was requested to be approved as a pilot program. Accordingly, he disagreed that the Commission should eliminate language in Rate REP suggesting it contains a Commission-approved wholesale power rate.

Brendon Baatz, a Utility Analyst in the OUCC's Resource Planning and Communications Division, testified regarding the rate impact of the proposed Rate REP, the economic benefits of the FIT pilot program, the length of the contract for Rate REP and the associated purchase rates, and the Rate REP energy production cap.

Mr. Baatz testified the rate impact of 3.26% on the average residential customer described by Mr. Haselden is no longer accurate due to changed circumstances. More specifically, he stated Mr. Haselden relied on assumptions that are no longer relevant. For example, the analysis assumed the generating portfolio of Rate REP participants would be comprised of all small solar with a capacity of no more than 30 kW per facility. He noted the two projects that have been approved and are operating under Rate REP exceed 30 kW and are less costly than a small solar installation under the current Rate REP, which therefore results in a smaller rate impact. Rate REP has drawn greater interest from larger facilities, which are paid a lesser rate per kWh. According to Mr. Baatz, the two projects currently operating under Rate REP have a minimal impact on retail rates, a 0.04% rate increase with a monthly cost of \$0.029 for an average residential customer.

Mr. Baatz stated if IPL were to allow all projects that have either expressed interest in or submitted an application for interconnection under Rate REP, the rate increase would be 3.56%, or a monthly increase of \$2.35 for an average residential customer. This rate impact is higher than acceptable for a pilot program of this duration. Also, if all of these projects were implemented, the cumulative capacity would be 151% of the cap that was proposed in Cause No. 43623 Phase I for Rate REP. Conversely, if only projects that have submitted interconnection applications were allowed to construct capacity and operate under Rate REP, the rate impact would be a 2.97% increase, with a cost of \$1.96 per month for an average residential customer. He stated this scenario represents generation that is 127% of the Rate REP energy cap. Mr. Baatz testified these estimates were based on an update of Mr. Haselden's rate impact estimate, which was supplied to the OUCC in discovery.

Mr. Baatz presented a number of different project scenarios and the resulting impact on customer rates. He said the scenario proposed by the OUCC would best represent the interests of IPL's ratepayers. According to Mr. Baatz, this proposal would add 100 MW of incremental renewable energy capacity to IPL's generating fleet with a minimal increase to retail rates. The

OUCC's proposed scenario would also limit annual production to approximately 153,000 MWh, which is near IPL's proposed cap of 1% of retail sales from the prior calendar year.

Mr. Baatz testified the Rate REP pilot program has not yet achieved the goal of diversifying IPL's generation resources through the addition of customer sited renewable energy facilities. He said Rate REP has been effective, however, in generating interest in the program, which shows promise of becoming an effective program. IPL has only approved two projects under Rate REP and, by suspending the remaining applications to the program, IPL is hindering intermediately sized renewable energy projects from becoming financially viable.

Mr. Baatz said many potential benefits of the Rate REP program exist, including the diversification of IPL's generation portfolio, the reduction of emissions, an increase in economic development in IPL's service territory, an increase in tax revenue, the reduction in the risk of price shocks through fuel increases that would affect traditional fossil fuel generation, and the increase in employment through the jobs necessary to build and maintain renewable energy facilities. He testified that while it is difficult to quantify the benefits of a diverse generating portfolio, it does not mean there are no benefits associated with a diverse portfolio. Risks associated with reliance on one type of fuel, including sensitivity to a volatile fuel price or environmental regulations that could increase certain fuel costs, can be reduced through a diverse portfolio.

Mr. Baatz stated the OUCC supports and recommends increasing the maximum length of a contract under Rate REP to twenty years. The most significant benefit from extending the contract length would be reduced rate impacts for the same level of renewable generation because the cost of capital for projects would be spread out over twenty years, rather than ten years. He said a second benefit would be ensuring stable revenues to the developers over the life of the generating asset used to produce power. The life of a solar or wind powered producing asset is longer than ten years, and the contract rate should reflect that reality.

Mr. Baatz next addressed the current Rate REP purchase rates. He said the Rate REP purchase rates vary by renewable technology type and size of facility. The purchase rates would need to be recalculated if the ten-year contract term were extended to twenty years. If Rate REP purchase rates are to be calculated through a DCF model, model adjustments would need to compute the new, lower rates associated with a longer contract term.

Mr. Baatz stated the OUCC supports a cap in the Rate REP pilot program and recognizes the need to continue to mitigate the rate impact on IPL's customers as a result of this program. However, he does not support the use of an energy production cap, and instead he proposed a two-tiered cap to control the costs of the program and to mitigate rate shock from the pilot. First, a cap should be placed on the incremental capacity resulting from this pilot program. He said the OUCC proposes to limit the capacity to 100 MW. He opined that placing a limit on capacity instead of production creates consistency from year to year on the cap level. Second, he argued a cap should be placed on each type of generation under Rate REP to limit over-development of one type of generation. Some types of generation (like small solar) are more costly. If the majority of the projects constructed under Rate REP use small solar technology, the cost of the pilot project could be significantly higher than a diverse mix of generation projects. Mr. Baatz said that if the proposed cap were to be utilized and the quotas for each type of generation were filled, the impact would be a 1.63% rate increase, with a monthly cost of \$1.08 for an average residential customer. He said the energy production in this scenario would be 103% of IPL's cap.

Ms. Stacie Gruca, Senior Utility Analyst in the OUCC's Electric Division, testified regarding the impact of IPL's proposed modifications on cost recovery through IPL's adjustment recovery mechanism. She stated IPL's proposed contract term extension will reduce the impact of annual purchased power costs passed through to retail ratepayers under Rate REP.

Ms. Gruca also testified regarding the federal tax credits and incentives available to developers. She explained that two of these credits and incentives, the Modified Accelerated Cost-Recovery System ("MACRS") and the U.S. Department of Treasury – Renewable Energy Grants have deadlines that are approaching. Under MACRS, developers may recover investments in certain property through depreciation deductions. She said that there are also several different types of investment tax credits ("ITC") and renewable electricity production tax credits ("PTC") available to developers, depending on the specific technology being used. She said that in general, ITC credits are available for eligible systems placed in service on or before December 31, 2016, and PTC credits generally last for ten years after the date the facility is placed in service.

Ms. Gruca stated the American Recovery and Reinvestment Act of 2009 allows taxpayers who are eligible for the ITC to take this credit or receive a U.S. Department of Treasury renewable energy grant. The new law also allows PTC eligible taxpayers to receive a grant for new installations instead of taking the PTC. She said there is also a renewable energy production incentive ("REPI") available to qualifying renewable energy facilities. The REPI complements the PTC and is available only to businesses that pay federal corporate taxes. She described the maximum allowable credits and in-service date requirements for various technologies in order for taxpayers to claim the Residential Renewable Energy Tax Credit. Ms. Gruca also discussed the state tax credits and incentives currently available to developers. The main credit provided by the State of Indiana is property tax exemptions for the renewable energy system and affiliated equipment that generate energy using solar, wind, hydropower, or geothermal resources.

Ms. Gruca stated developers have the opportunity to receive federal tax credits and incentives once renewable energy is placed into production. Developers in this Cause have testified they have spent several months participating in numerous discussions and/or meetings with IPL regarding the requirements of Rate REP. Developers also indicated they received assurance from IPL that their projects qualified for participation in the Rate REP program, only to receive notice that IPL would no longer work with the developers and IPL was suspending the program. She said that until an Order is issued by the Commission in this Cause, stand-alone developers are unable to move forward with the production of their renewable energy facilities.

She opined that if IPL continues to exclude stand-alone developers from Rate REP, those developers that would be entitled to or are relying on tax credits and incentives may be constrained for time in achieving tax credit and incentive deadlines or may miss deadlines altogether. Although stand-alone developers have the option of interconnecting under Rate CGS, it is not logical for a developer to choose to receive a lower payment under Rate CGS when there is no language in Rate REP that disqualifies them from interconnecting. Furthermore, she said that with the lower purchase rate of Rate CGS, there does not appear to be a cost benefit for developers to move forward with a project that may not allow them to recoup the project costs or provide a very high return.

Ms. Gruca stated stand-alone developers are unable to meet tax credit and incentive deadlines until their projects are up and running and selling power. She noted Rate REP allows IPL to negotiate lower rates with developers if the impact of tax credits, grants, and other financial

incentives (combined with the rate) produces excessive profits for the Facility. If developers are unable to claim tax credits and incentives, retail ratepayers may have higher rates if IPL and developers are not able to negotiate a lower purchase rate because costs are passed on to retail ratepayers through IPL's rate adjustment mechanism. She testified that although the OUCC does not have any concerns with IPL's Rate REP rate adjustment recovery mechanism, the OUCC supports extending the contracted term under Rate REP. IPL should adjust Rate REP purchase rates and provide a breakdown of the calculation of the reduced purchased power costs that would be recovered from ratepayers through IPL's rate adjustment mechanism administered within IPL's FAC (as currently included in workpapers IPL provides to the OUCC in FAC filings). Finally, Ms. Gruca expressed concern that IPL's refusal to enter into agreements under Rate REP is not only delaying developers from moving forward in the construction and placement of renewable energy projects into production, but may have a negative effect on ratepayers by hindering potential reduction in purchased power costs. She therefore recommended that IPL be obligated to work with qualifying developers to enter into an agreement for Rate REP purchases in a timely manner and in good faith.

Ray L. Snyder, Utility Analyst in the OUCC's Resource Planning and Communications Division, provided a technical review of IPL's proposal for modifications to Rate REP. Mr. Snyder provided a brief history of FITs in Indiana. Mr. Snyder also stated nine states have approved or proposed legislation requiring FIT programs, and there are four municipal FIT programs. He said utility-based FIT programs are primarily offered to help meet specific renewable energy portfolio standards or goals. He said California FIT contracts range from ten to twenty years in duration and are available for multiple renewable energy technologies. Programs in other states tend to be limited to single technologies.

Mr. Snyder cited a recent report by the National Renewable Energy Laboratory ("NREL") stating that key elements of successful FITs include technology and payment differentiation. He said differentiating FIT payments by project size allows projects to be scaled to the particular site and interconnection point, while lowering FIT payments for larger projects to account for economies of scale. A high degree of price differentiation in a wide variety of technology types and project sizes was listed in the NREL report as a success factor of FIT programs in European countries.

Mr. Snyder described IPL's initial rationale behind Rate REP, the results achieved with Rate REP through June 1, 2011, and the status of the stand-alone applications for Rate REP. He said Rate REP has a very basic queue policy, without program caps for individual renewable energy service and capacity tiers, and without a timeline for queue events for planning purposes.

Mr. Snyder next provided an review of IPL's proposed changes to Rate REP. He agreed with many of the minor language changes, but he believed IPL has not provided a sufficient argument to support tariff changes made solely to disqualify stand-alone developers from qualifying for Rate REP. With respect to the proposed redefinition of the term Renewable Facility, IPL did not mention or indicate any intent to exclude wholesale power production facilities from Rate REP in Cause No. 43623. Also, IPL's testimony in that proceeding placed no limits on large-scale investment in and development of renewable energy projects. He said IPL neither defines what constitutes a traditional customer, nor indicates Rate REP is limited to that undefined customer class.

Mr. Snyder recommended a contract term of at least twenty years to be consistent with FITs in other states. According to the NREL report, the use of longer-term contracts lowers the levelized cost of the project, which can help reduce the overall rate impact of renewable energy generation. The longer the contract term, the longer the period during which investment costs can be recovered, resulting in a lower levelized annual cost recovery from other customers through rates or trackers. In addition, Mr. Snyder said the longer contract term provides more assurance that the project will pay for itself, making it easier for the Rate REP customer to obtain suitable financing for the project.

Mr. Snyder next testified net metering is a means for utility customers to reduce their electric bills by generating electricity to supply part or all of their own electrical consumption. FITs, however are a revenue-generating program in which the developer is producing energy to sell to the utility in exchange for a continuing stream of revenue. He stated FITs are significantly different from net metering arrangements, and IPL's proposal to limit the annual output from any project to the consumption of the host facility confuses the two types of arrangements. The limit proposed by IPL would exclude stand-alone renewable energy projects or at least make them less profitable. Mr. Snyder said this restriction could also be used by IPL as further support for its claim that the output from FIT facilities should be counted as DSM, when it is actually a supply-side resource.

According to Mr. Snyder, a FIT program should not be treated like a DSM program. The definition of DSM provided in 170 IAC 4-8-1.1(e) includes the phrase "influence customer use," which would be a change in the consumption of electricity. A FIT does not influence or cause customers to change the amount of electricity they consume. The electricity generated by a FIT project becomes a source of electricity to the utility, and therefore is a supply side resource. He said these principles do not change even if the output of the FIT project equals or exceeds the electricity consumed by the host facility. He concluded that although an increase in the generation of renewable energy under Rate REP could help keep the environment cleaner and greener, it does not constitute DSM. Accordingly, he said he does not support IPL's request to treat renewable energy production under Rate REP as DSM.

8. Petitioner's Rebuttal. Mr. Haselden said IPL's purpose with respect to Rate REP was to facilitate investment in renewable resources for IPL's customers. The revisions proposed by IPL are intended to ensure that Rate REP achieves its original purpose by allowing traditional IPL customers an opportunity to participate in Rate REP. He said that allowing non-customer developers of stand-alone projects to reap windfall profits at the expense of all IPL customers over the next decade is not in the interest of IPL's customers.

Mr. Haselden testified Rate REP offers several benefits to customers who elect to participate, including a payment stream. This helps to keep money flowing into operations located in Indianapolis that produce jobs long after construction of the facilities is complete. Mr. Haselden noted the Indianapolis Airport Authority and the City of Indianapolis are considering installing PV panels to help offset operating costs and generate additional revenue sources.

Mr. Haselden stated IPL's tariff defines the term customer, and not one of the intervenor developers in this proceeding has requested to become an IPL customer. He noted EDP claimed to be a customer in its Petition to Intervene, but it does not meet the definition of customer because the landlord of its offices is the actual IPL customer. However, IPL is concerned the stand-alone developers might try to become customers by installing a street light or some other piece of

equipment to consume a small amount of electricity and thereby technically be deemed a customer. He contrasted this with a traditional customer who has not interconnected solely to make sales to IPL. Mr. Haselden stated that if IPL wants to solicit development from non-customers, it would issue a request for a utility-scale proposal and would likely obtain a more favorable price than what is available under Rate REP.

Mr. Haselden disagreed that limiting Rate REP to customers would result in the rate being undersubscribed. He said IPL's objective was not to attract a certain quantity of renewable generation, but rather was to remove barriers to customer investment in renewable projects, which would benefit the customers and IPL. Interest has been building among customers as they come to understand Rate REP and the benefit it can provide to them. Mr. Haselden provided examples of projects being pursued by the Indianapolis Airport Authority, City of Indianapolis, and the Indianapolis Housing Authority as evidence of customer interest in Rate REP. If IPL's request to reserve Rate REP for customers is rejected and all of the developer projects that have been proposed are built, the cap on Rate REP would be exhausted and there would be no room remaining for customer projects.

Mr. Haselden testified he is not surprised several developers opposed IPL's policy of reserving Rate REP for interested customers, and it was apparent that these projects were intended to create large profits for the developers in a short period of time. The developers do not have a significant presence in Indiana, and he expects the developers to have few, if any, full-time employees in Indiana. He stated he was surprised, however, at the OUCC's position. He said the OUCC seems more interested in protecting the interests of these out-of-state developers than in the retail customers it is statutorily authorized to represent. Nevertheless, Mr. Haselden said Rate REP should be available to IPL customers, not developers whose principal objective is to profit from arranging these investments.

Mr. Haselden disagreed that IPL is hindering intermediately-sized renewable energy projects from becoming financially viable by suspending the remaining applications to the program. On the contrary, he said if IPL had taken no action, there would be no capacity to accept any other projects—large, medium, or small.

Mr. Haselden acknowledged IPL talked with several developers early in the process and encouraged their participation. Some of these developers have refocused their efforts on customer-sited projects and have made applications for interconnection for several significant projects. IPL waited until February 2011 to propose changes to Rate REP because, for the most part, IPL was told the economics simply did not work for developers prior to December 2010. He noted Ecos ceased working on development of projects in September 2010 and did not contact IPL until after the tax law changed in December 2010. Mr. Haselden indicated his interactions with other developers and customers confirmed that this was true for them as well. In recognition of this, IPL proposed extending the maximum term of a Rate REP contract from ten to fifteen years in Cause No. 43960. However, when the federal incentives changed in December 2010, these developers and others exhibited renewed interest. He said the flood of applications for stand-alone projects by non-customer developers commenced. It was apparent the purpose of Rate REP was being subverted, and the program would soon be fully subscribed by stand-alone developers. He said preserving the opportunity to participate in Rate REP for traditional customers (customers who actually take and pay for electric service from IPL as opposed to developers trying to game the concept) caused IPL to take action.

Mr. Haselden said there is no guarantee that IPL would have come to an agreement with these entities or that the Commission would have approved the ensuing large batch of contracts. He stated IPL and SEV discussed their contractual relationship and were unable to mutually agree on the form of a Rate REP agreement. In the case of EDP, Mr. Haselden expressed reservations that this project would have ultimately proved feasible.

Mr. Haselden disagreed that Rate REP lacks vision, organization, or proper management. He noted that IPL's Rate REP was the first tariff in Indiana (and an early adoption nationwide) to provide for purchases of energy from customers investing in Renewable Facilities. He said being an early mover brings with it the responsibility to evaluate and learn from things that are not working, which IPL did by proposing to extend the original ten-year term to fifteen years in October 2010. IPL has also been highly organized, quickly working to develop an interconnection queue process when faced with a large number of interconnection applications in a short period of time. He said IPL is perplexed by the OUCC's decision to accept the complaints raised by stand-alone developers whose profit motivation has been impacted by IPL's decision to stick with its original intention. He said he has been working with IPL customers interested in Rate REP, and based on the good terms of this relationship, disagreed that IPL's Rate REP lacks vision, organization, or proper management.

Mr. Haselden opined that Rate REP is meeting and will continue to meet IPL's goals and those of its customers. He said the Intervenor and the OUCC believe the sole purpose of Rate REP is to promote renewable energy and diversification of IPL's generating assets with small scale renewable resources. While this is a benefit and one objective of the program, Rate REP is designed to remove barriers to investment in renewable resources by IPL customers, not by developers who wish to set up renewable technologies and immediately resell them for a profit. Nonetheless, Mr. Haselden agreed that Commission intervention is needed to realize the original goals of this program. IPL has been seeking to make adjustments to Rate REP to make it an economical opportunity for customers to host or invest in renewable energy projects.

Mr. Haselden testified IPL did not set the contract prices in Rate REP at its avoided cost. He said IPL presented to the OUCC the schedule used by IPL to determine the rates in Rate REP, which were calculated to support the renewable energy projects. No consideration for IPL's avoided cost was made and no consideration was made for the factors in 18 C.F.R. § 292.304. He explained the passages of his testimony from Cause No. 43623 referred to by Mr. Melone focused on avoided costs used for evaluating DSM programs IPL was also proposing as part of Cause No. 43623; the passages did not pertain to the Rate REP prices. He disagreed with Mr. Cotton's concern that Rate REP's offering prices are too low based on the interest the prices have generated.

Mr. Haselden next testified regarding his belief that Rate REP should not be modified to match FITs from other jurisdictions. He pointed out that although Ms. Arnold applauds the effort throughout Europe to subsidize renewable resources, she fails to acknowledge that many European countries are having second thoughts about the impact high subsidies are having on their ratepayers. He said that while IDEA is principally concerned with generating profits for its client developers, IPL is focusing on the best interests of its customers who ultimately pay the subsidized rates. More generally, the Intervenor is attempting to transform the goal of Rate REP into a public policy objective that includes the type of stand-alone projects they desire to invest in. He noted IPL has repeatedly emphasized that its intention was to promote investment by customers in renewable energy facilities at their facilities and not to attract stand-alone developers.

Mr. Haselden explained FITs in other jurisdictions have a different purpose; they are offered to help meet specific renewable energy portfolio standards or goals. Rate REP is not intended for that purpose because Indiana does not have a renewable portfolio standard. He also noted efforts in the Legislature to implement a FIT in 2009 failed, and no subsequent legislation involving FITs has been introduced. In Mr. Haselden's opinion, this is a clear indication that Indiana is not interested in a generic FIT of the type that is available in other jurisdictions. He also disagreed that IPL is confusing FIT programs with net metering. Under Rate REP, IPL sets a separate meter to measure the renewable energy output and purchases all of the output of the project, while customers continue to purchase all of their electrical requirements from IPL.

Mr. Haselden said the FIT model proposed by the OUCC is more of a restricted experiment than a model. Based on responses received through discovery from the OUCC, it appears the OUCC has not fully considered the program for which it proposes implementation. He said it is surprising that the objectives and goals under the OUCC's model would be developed by negotiation. Also, it appears the OUCC's goal is to evaluate the business case for all manner of renewable projects. Thus, presumable metrics such as development costs, operation and maintenance expense, and tax credits would help evaluate what type of rate the OUCC would want to see adopted.

The chief problem with the OUCC's proposal is developers and customers are unlikely to report confidential and competitively sensitive information concerning costs, technologies, timelines, financial structures, or project performance to anyone (and certainly not to IPL, the OUCC, or the Commission), only to have that information used against IPL at a later date. He said this fundamentally defeats the means to the OUCC's goal of studying metrics. Second, he opined that the size of the pilot is too big. Also, the buckets represent utility-scale projects instead of a representative sample of what IPL customers might employ. Third, the OUCC proposes a 100 MW pilot program upon which to grow. However, Mr. Baatz noted that much more production produces unacceptable rate impacts.

Mr. Haselden stated that when the OUCC was asked in discovery to explain the type of data that would be needed to conduct the analysis of performance and cost/benefit ratios discussed by Mr. Keen, the OUCC vaguely inferred that it be left up to a stakeholder process. He said the OUCC's answer implies project cost data will be required by the OUCC that, given its competitively sensitive nature, developers would be unlikely to provide. He added that if a stakeholder process were started, it would likely take a long time in view of the wide ranging and conflicting opinions of those interested in this issue.

Mr. Haselden said IPL does not support the OUCC's proposed generic FIT tariff because it is not fully thought out and is ill-defined. The terms of the generic tariff are not focused on customers but on promulgating the OUCC's vision for a FIT. He said that if this generic model were adopted, there would be a long delay while the proposal was sorted out. Mr. Haselden said there may be too many stand-alone projects already proposed by non-customers to allow capacity for any subsequently planned customer-hosted projects like the proposed Airport or City of Indianapolis projects.

Mr. Haselden also disagreed with other features of the OUCC's generic FIT. He noted IPL already has a project queue and no party has suggested changes to IPL's written policy. With respect to the OUCC's proposed dashboard, he stated the costs would be significant and not warranted for the relatively small nature of this project. With respect to the OUCC's suggestion that

Rate REP be modified to include all technologies approved by the State of Indiana as clean or renewable, Mr. Haselden stated it would not be appropriate to expand Rate REP to cover all of the enumerated items in Indiana Code § 8-1-37-4, which includes a broad array of clean energy, including nuclear and newly-constructed natural gas facilities.

Mr. Haselden did not agree that the limitation on capacity purchased under Rate REP should be changed to 100 MW of nameplate capacity. IPL considered this when Rate REP was first proposed and determined this approach has a number of problems. First, renewable energy projects, especially solar PV and small wind, represent their nameplate capacity in terms of Watts DC. Inverters can have varying efficiencies/losses, so nameplate is not always precisely known, it is not always an accurate assessment of what IPL is purchasing. Also, he pointed out different technologies have different capacity factors that significantly vary the amount of energy output per kW of nameplate capacity. A biomass project could have an output of five times the OUCC's assumed 17.5% capacity factor, which could push the kWh of the portfolio far beyond the 153,000 MWh estimated by Mr. Baatz with corresponding rate impacts. Mr. Haselden stated IPL would be agreeable to accepting a firm MWh limit such as 153,000 MWh/year instead of the moving figure of 1% of retail sales per year provided there is sufficient ability to exceed the cap due to sales and production fluctuations described earlier.

Mr. Haselden testified that Mr. Baatz's recommendation to extend the contract term to twenty years and adjust the payment rates accordingly should be investigated when IPL submits its filing to the Commission nine months prior to the end of Rate REP's three-year term. The changes IPL proposed to Rate REP, having set not-to-exceed rates in conjunction with a maximum fifteen-year term, will work. IPL is also proposing to eliminate the 2% escalation of rates, so the extension to fifteen years is necessary to offset the loss of this escalation. He agreed that if the term is extended to twenty years, the maximum rates should be re-evaluated. He disagreed with Mr. Snyder's rejection of language in Rate REP clarifying that the renewable energy facility must be a QF or otherwise authorized by federal law to make wholesale power sales. IPL has found that many parties interested in Rate REP have not considered the implications of their wholesale sales of electricity, which are subject to the jurisdiction of FERC. Mr. Haselden testified IPL proposes to add this language to ensure its customers consider the federal regulatory implications of Rate REP sales.

Mr. Haselden said IDEA utilized this proceeding to rewrite Rate REP to benefit its constituents without regard to the rate impact to IPL's other customers. He said that while IPL believes its customers benefit from diversification of supply, the provisions requested by IDEA are intended to improve the profits of its members who market distributed energy products. IDEA's proposals will add complexity. Mr. Haselden reiterated IPL cannot be compelled to purchase energy from these entities on the terms proposed by the IDEA.

Mr. Haselden agreed that in later years qualifying projects could serve as net metering resources for customers. This is a reasonable alternative for projects up to 1 MW in size after their Rate REP contract expires. For larger projects, if connected properly, customers could offset their load and sell any overproduction to IPL via its Rate CGS. Mr. Haselden stated if IPL's proposal to require that the output from the renewable energy facility not exceed the consumption of the host Facility is denied, Ms. Arnold's recommendation would become moot. Very nearly all of the available capacity would be consumed by stand-alone, non-customer projects such as those proposed by SEV, Ecos, and EDP.

Mr. Haselden disagreed that the minimum size for Rate REP should be reduced to 5 kW and that IPL should allow Rate REP customers to choose to net meter a portion of their electrical production from the facility. IPL has DSM programs that provide cash incentives for small scale projects and net metering is also available for such customers. He said Ms. Arnold's recommendations are intended to provide more business opportunities for members of IDEA. Mr. Haselden said Ms. Arnold provided no justification for her proposal to allow Rate REP customers to choose to net meter a portion of the electrical production from their Facility.

Mr. Haselden said IPL will not agree to voluntarily offer the revised prices recommended by Mr. Cotton because he disagreed with Mr. Cotton's calculations and believed that they did not result in reasonable rates. The value of the RECs should not be included in the price paid under Rate REP because the prices paid under Rate REP are not composed of components such as avoided costs or REC values. Rather, they were constructed to answer the question of what needs to be true to provide a reasonable return for certain technologies. Mr. Haselden said customers are free to interconnect their projects under a net metering scheme or to accept IPL's compensation under Rate CGS for the purchase of their excess power and retain, retire, or sell the RECs generated by their projects. Mr. Haselden disagreed that FITs are a market-based contract. FITs exist to provide a subsidy to achieve a policy goal that the markets do not otherwise support.

Mr. Haselden testified that Mr. Park describes a number of issues associated with large wind development in the IPL service territory. Specifically, Mr. Haselden said EDP's desire to avoid any connection to a host IPL customer essentially carves out a niche for EDP. Because EDP is not an IPL customer and expressly wishes to avoid associating with an IPL customer, Mr. Haselden believed there is no reason or obligation to make changes that primarily benefit EDP. He noted IPL has contracted for over 300 MW of utility-scale wind power at prices far lower than that provided by Rate REP. Additional acquisition of wholesale wind power purchase contracts would be much more cost effective through the competitive RFP process to give customers the best value.

Mr. Haselden stated Mr. Melone's perception of net metering is different than that employed in Indiana. He interpreted Mr. Melone's premise to be that IPL should pay IPL customers for any excess power generated at some higher rate than their retail rate (instead of netting excess kWh production to the next month). IPL customers would, in effect, receive compensation that is a blend of the value of their load offset by their renewable energy project at IPL retail rates and the excess priced presumably much higher. Mr. Haselden stated this is significantly less compensation than the compensation Mr. Melone wishes to reserve for himself and his fellow developers. In addition, he said this substantial increase in purchases would have unacceptable rate impacts as discussed in Cause No. 43623 and by Mr. Baatz.

He further disagreed with Mr. Melone's statement that IPL is repudiating and attempting to disavow Rate REP on a retroactive basis. In the case of Ecos, it has not passed the threshold of submitting a sufficiently complete application for interconnection, and Ecos does not meet the definition of a customer, which is a basic eligibility requirement to participate in Rate REP. While IPL has proposed changes, there is nothing retroactive about its actions. He added that Ecos stopped working on its projects in September 2010 and concluded they were not viable until December 2010 when the tax laws changed.

Mr. Haselden also addressed Mr. Melone's legal analysis of the interaction of Rate REP and FERC. Although he is not an attorney, he did have some comments on mischaracterizations set

forth in Mr. Melone's analysis. Mr. Haselden said that although Mr. Melone states Rate REP set the rates, he ignores the tariff language, which clearly indicates IPL can change prices by the Commission's thirty-day administrative filing process and may decrease the rate in recognition of various factors. Even if Ecos met the definition of a customer, IPL would likely address the rate issue to preclude excessive profits accruing to Ecos at the expense of IPL customers. Mr. Melone's assertion that there must be a summation of avoided power costs and avoided environmental costs or REC values which equal the Rate REP ignores the fact that no such analysis was used to support Rate REP.

Finally, Mr. Haselden reiterated why counting energy purchased under Rate REP as energy savings is consistent with the Generic DSM Order. Rate REP provides an incentive in the form of guaranteed energy purchased at prices intended to provide a reasonable return on investment in renewable energy projects. The energy produced by these Facilities also reduces electric energy that would otherwise be supplied by IPL's traditional generating resource. Counting this energy towards the energy savings targets is in the best interest of IPL's customers because it offsets the need for investing in additional DSM. Mr. Haselden disagreed that output from projects using Rate REP are supply-side resources which do not fit the statutory definition of DSM. He noted that the Generic DSM Order singled out customer-sited renewable projects as a means to help reach the goals. He concluded that if the Commission is unwilling to modify Rate REP to ensure it is limited to IPL's customers, IPL will implement Rate REP in accordance with the Commission's direction, but would not propose to extend Rate REP beyond its original pilot period.

9. Commission Discussion and Findings. The Commission begins with a general discussion of the legal framework concerning wholesale power purchases. The purchases made by IPL pursuant to Rate REP represent wholesale sales of electricity that are subject to FERC's jurisdiction as granted by the FPA. *See* FIT Order at P 61,337. PURPA provides an exception to FERC's exclusive jurisdiction with respect to wholesale power sales. States have jurisdiction over the sale of electricity by a QF if the rate for the electricity is at the public utility's avoided cost. Pursuant to PURPA, States may set the public utility's avoided cost rate in accordance with FERC's regulations. *Connecticut Light & Power Co.*, 70 FERC ¶ 61,012, at P 61,027–28 (1995). If the sale of electricity by a QF is above the public utility's avoided cost rate, State regulation is preempted. *Id.* at P 61,029. Pursuant to 18 C.F.R. § 292.303(a), public utilities must purchase the energy produced by QFs at an avoided cost rate. Public utilities, however, are not precluded from negotiating a rate that is different than its avoided cost. 18 C.F.R. § 292.301. As discussed below, the Commission's approval of Rate REP did not establish an avoided cost rate. Instead, Rate REP is a voluntary offering setting forth the types of energy purchases and limitations on those purchases that IPL may agree to make with customers. Thus, IPL's purchases of energy pursuant to Rate REP are not mandatory.

With respect to this proceeding, IPL initiated it seeking several changes to Rate REP it believes are necessary to preserve its original purpose and enhance its attractiveness to customers during the initial three-year pilot period. The OUCC and intervening parties asserted not all proposed changes are necessary and proposed changes of their own. The Commission agrees some changes to Rate REP are appropriate and reasonable during this three-year pilot period to promote its original purpose.

A. Redefining the Term Qualifying Renewable Energy Power Production Facility. IPL proposes additional qualifications for Rate REP eligibility to preserve the program's original purpose, including:

1. The expected annual output from any project shall not exceed the annual consumption of the host facility. Biomass Facilities are exempt from this qualification.
2. A host facility is defined as a building, production equipment, or collection of the same in the same area such as a campus. The surrounding land owned or leased by the host customer is part of the Facility.
3. The maximum nameplate capacity of any Renewable Facility associated with a host facility or any one IPL customer, its parent, subsidiaries, or affiliates is 10 MW.
4. The footprint of a Renewable Facility must be wholly within the boundaries of the Facility and IPL's service territory.
5. Host customers may contract with third parties to own and operate renewable energy projects at their Facility. These third parties will be responsible for the interconnection agreement and the host facility will additionally sign the interconnection agreement and be responsible in the event of a default by the third party.

According to the evidence, IPL proposed Rate REP to facilitate investment in renewable resources by IPL's customers who were so inclined. Rate REP was designed as an alternative to net metering, which produces no cash flow to customers. Rate REP, in contrast, produces a cash flow that can be used by customers to support the financing of investments. "Customer" is defined by IPL's general tariff as "[a]ny person, corporation, municipality or other government agency which has agreed, orally or otherwise, to pay for electric service from [IPL]." I.U.R.C. no. E-16, Original No. 180 (effective July 1, 1996). Consistent with the purpose of Rate REP and the definition of customer, Rate REP is available only to customers of IPL.

IPL's proposed revisions to the Rate REP tariff language would add additional qualifications for eligibility under Rate REP, preserving the option for IPL customers. The revisions would also eliminate the participation of developers of stand-alone projects who desire to become customers solely for purposes of making sales to IPL. Specifically, IPL proposes to require that (1) the expected annual output from any project shall not exceed the annual consumption of the host facility, (2) the Facility be located wholly within the boundaries of the host facility, and (3) the customer be required to sign an interconnection agreement for a Facility. The OUCC, IDEA, Ecos, and EDP oppose these revisions to Rate REP.

The Commission finds that the revisions proposed by IPL should be incorporated into Rate REP to reflect the original intent to offer opportunities to IPL customers for investment in renewable resources. We find limiting the initial pilot program to customers is in the public interest. Further, the argument that limiting purchases to the customer's output would impair participation in Rate REP is not supported by the evidence. Therefore, we find IPL is authorized to modify Rate REP to ensure that interested customers will have the opportunity to invest in renewable resources. Furthermore, because Rate REP does not establish an avoided cost rate it is a voluntary offering by IPL, and as discussed below, the Commission declines to mandate IPL to enter into agreements for the purchase of electricity with developers.

The situation caused by the overwhelming and unanticipated response from developers concerning possible participation in Rate REP is unfortunate. As a result, because of the potential disadvantage these changes may cause to developers who explored the potential for becoming customers of IPL to make sales under Rate REP, and as proposed by Mr. Haselden when questioned by Chairman Atterholt at the public hearing, we will also require IPL to modify Rate REP to set aside 30% of the energy available under Rate REP to establish a reverse auction open to developers of renewable energy projects. Tr. at C-94. While the development of projects inherently requires the assumption of risk that projects will not proceed, the Commission believes it appropriate to give developers who ultimately would have become IPL customers but could not accomplish that prior to these revisions to the Rate REP tariff language an opportunity to benefit from their investment.⁴ Successful bidders will have one year from the signature of the Rate REP Agreement to complete their projects and produce power. Capacity reservations may not be sold or traded. Reservations that do not result in an interconnection agreement by January 30, 2013 will not be replaced.

B. Approval of a Wholesale Power Rate. As discussed above, sales to IPL from renewable energy facilities constitute a wholesale sale of electricity under the provisions of the FPA. FERC recently reiterated that its authority over wholesale sales of energy is exclusive unless the sales fall within the limited authority given to States to regulate the wholesale sales of electricity under PURPA. FIT Order at P 61,337–38. Rate REP currently provides that the “RATE REP PURCHASE RATES shall be” the rates set forth in the tariff. IPL has proposed to revise this language to avoid the potential for a preemption challenge to Rate REP on the grounds that it represents an impermissible State regulation of wholesale power sales.

In approving Rate REP, IPL did not seek, and it was not the Commission’s intention, to establish wholesale power prices. In our 43623 Order approving Rate REP we discussed the recovery of costs associated with purchases made pursuant to Rate REP. We stated, “IPL shall be authorized to recover purchased power costs related to renewable energy purchased under Rate REP via a rate adjustment mechanism.” 43623 Order at 61. No discussion of the price for wholesale power was included in the 43623 Order. We did not evaluate whether the prices set forth in IPL’s proposed Rate REP could be supported under PURPA’s avoided cost standard. In fact, according to the evidence in this proceeding, the Rate REP Purchase Rates in the tariff are not representative of IPL’s avoided cost as calculated under the Commission’s Rules.

Even if the likelihood of a successful federal preemption challenge to Rate REP is remote, the consequences to customers who have entered into Rate REP agreements and invested in Facilities are significant. The rates would be held invalid, leaving customers who have made substantial investments in renewable energy projects unsure of the revenue to support those investments. Avoiding this uncertainty is in the best interest of IPL’s customers.

Accordingly, the Commission finds IPL’s proposed revisions to Rate REP intended to eliminate any potential for a successful federal preemption challenge to be reasonable and in the public interest. First, we agree the tariff should be modified to state that it represents a “voluntary

⁴ We note that there was no assurance every interested developer would have had an opportunity to participate in Rate REP absent the changes we approve in this Order. Mr. Haselden noted contract negotiations with one developer had failed and another developer indicated its exploration of a project with the airport was not financially feasible. Moreover, as IPL indicates some of the proposed projects would have been rejected because the proposed capacity exceeded the cap.

offer available to any Customer of IPL as proposed in Petitioner's Exhibit JEH-2. Clarifying that Rate REP is a voluntary offer ensures it fits within the provisions of 18 C.F.R. § 292.301, expressly recognizing that FERC's PURPA regulations do not preclude a utility from voluntarily negotiating rates with a QF which are not equivalent to the utility's avoided cost. Second, the Commission agrees the language providing that Rate REP Purchase Rates "shall be" as set forth in Rate REP should be eliminated. IPL's alternative language stating that "the Rate REP Purchase Rates eligible for retail ratemaking purposes shall not exceed" the prices set forth in the tariff makes it clear the Commission is establishing the maximum rates eligible for recovery for retail ratemaking purposes—an approval that is exclusively within our jurisdiction.

C. Inclusion of Language Notifying Customers of FPA Implications of Rate REP. IPL proposes to modify Rate REP to state that the Facility "shall be a QF or otherwise authorized by Federal law to make wholesale power sales" because IPL discovered that many interested customers may have been unaware of the Federal law implications of selling power to IPL. IPL also proposed adding a definition of a QF.

As already discussed, sales to IPL under Rate REP represent the wholesale sale of power subject to the FPA and FERC, and IPL's revisions will inform interested customers of the federal regulatory implications under Rate REP. While most projects that would qualify under Rate REP would qualify for treatment as a Small Power QF (and therefore qualify for minimal federal oversight), FERC requires entities to submit applications of this status. Inclusion of this language in Rate REP serves to inform customers of this issue early in their evaluation of Rate REP. Accordingly, the Commission finds IPL's proposed revision is reasonable, in the public interest, and is therefore approved. While the OUCC opposes the revisions to the tariff, no evidence presented indicates that IPL's proposal is unreasonable or contrary to the public interest.

D. Rate REP Term. Rate REP currently provides that the length of any contract shall not exceed ten years. IPL proposes in this proceeding to extend the maximum term of Rate REP contracts to fifteen years. The OUCC proposes to extend the term to twenty years and contends that the rates need to be revised if the term is extended to twenty years. The remaining parties did not oppose extension of the contract term to fifteen years. However, IDEA did oppose the elimination of the 2% escalator.

According to the evidence presented, IPL's request to extend the contract term is based on customer input. Further, an extension of the contract term to fifteen years will extend the period during which the fixed costs of the renewable energy facilities selling power to IPL under Rate REP agreements are recovered in retail rates. Accordingly, this extension will reduce the rate impact to IPL's ratepayers over the first ten years. The Commission agrees that as a result of the extension of the contract term, the 2% per year escalator is not necessary. The evidence does not indicate that the extension to fifteen years is unreasonable, or that extension of the contract term to twenty years and a recalculation of the rates is necessary at this time. However, this recommendation may be revisited if IPL elects to continue Rate REP beyond the initial three-year pilot period.

The Commission finds that, based on the evidence presented, IPL's proposal to extend the contract term to fifteen years and eliminate the 2% per year rate escalator is reasonable and in the public interest.

E. **Other Changes Recommended by IPL.** IPL also proposes a revision to the factors in Rate REP that negotiated purchase prices are to reflect improvements in costs or performance of technologies. The OUCC opposes this because it does not believe customers should be penalized for receiving a better than expected return on an investment. However, the Commission finds this change will help ensure that IPL's customers are not paying more than what is necessary for renewable energy. Therefore, we approve this revision. IPL also proposes a number of other miscellaneous revisions with which no party disputes. As a result, the Commission also approves these changes.

F. **Other Parties' Recommendations.** The OUCC, IDEA, and Ecos offered different recommendations in this Cause. The Commission addresses the recommendations separately.

1. **OUCC Recommendations.** The OUCC proposes consideration of a generic FIT model as a pilot program to collect metrics for purposes of evaluating purchases from renewable resources. The OUCC also proposes that we order all regulated utilities to modify their net metering and any FIT programs to include all technologies approved by the State as clean or renewable technologies. These proposals are not responsive to IPL's proposed language changes to Rate REP and are opposed by IPL. Also, it is not necessary for the Commission to grant the OUCC's requests in order to find IPL's proposed changes to be reasonable and in the public interest. Therefore, the Commission declines to adopt the OUCC's proposals in this proceeding.

The OUCC further recommends that the Commission and the OUCC evaluate the effects of Rate REP on IPL's rates and the potential for economic benefits by continuing the tariff. We decline to impose this requirement. If IPL wishes to continue Rate REP or make further changes to Rate REP beyond the three-year pilot period, it must comply with the 43623 Order and initiate a proceeding at least nine months prior to the end of the three-year pilot period. An evaluation of Rate REP may be done at that time.

Finally, the OUCC recommends that the limitation on capacity purchased under Rate REP be changed to 100 MW of nameplate capacity. IPL states this approach presents significant problems. First, nameplate capacity is not always precisely known and is not an accurate assessment of what IPL is purchasing. Second, different technologies have different capacity factors that significantly vary the amount of energy output per kW of nameplate capacity. However, IPL indicates it would agree to a firm MWh limit such as 153,000 MWh/year instead of the moving figure of 1% of retail sales per year provided there is sufficient ability to exceed the cap due to sales and production fluctuations. Accordingly, the Commission finds IPL should amend Rate REP to provide that no additional customers will be signed-up if the projected energy purchased under Rate REP in a given year would exceed 153,000 MWh/year. We recognize that in some years actual output may exceed 153,000 MWh/year due to production fluctuations. This arrangement will appropriately limit the exposure to customers from unreasonable Rate REP rate increases while recognizing that production fluctuations may result in exceeding the cap.

2. **IDEA Recommendations.** IDEA recommends that IPL allow Rate REP customers to choose to net meter a portion of their electrical production from the facility. This recommendation is independent of IPL's request for certain changes to its voluntary offering, unrelated to IPL's proposed changes to Rate REP, and is a change opposed by IPL. Therefore, the

Commission declines to require Rate REP to be modified to allow customers to choose to net meter a portion of their electrical production.

IDEA recommends that the minimum size eligible for Rate REP be reduced to 5 kW to enable the majority of IPL residential customers to participate in Rate REP. IPL opposes this revision on the basis that IPL has DSM programs which provide cash incentives for such small scale projects, and net metering is also available for such customers. The Commission declines at this time to require this revision to Rate REP. No evidence has been presented indicating that IPL's existing incentives for such customers are insufficient or that Rate REP would provide an attractive option for such customers.

Finally, IDEA witness Mr. Cotton conducted his own discounted cash flow analysis of rates for various forms of renewable energy that generated higher prices, which, according to Mr. Cotton, are necessary to drive interest in Rate REP. IPL states it would not voluntarily agree to purchase energy at the higher prices determined by Mr. Cotton. If we were to impose such prices, we would be setting a wholesale power price and thereby infringing on FERC's jurisdiction. Accordingly, the Commission will not require IPL to modify Rate REP to reflect the prices calculated by Mr. Cotton.

3. **Ecos Recommendation.** Ecos states IPL can reserve capacity for its long-time existing customers by changing the rate on its net metering tariff. The net-metering rider would pay customers rates higher than the current retail rates for the net power production under this rider so that capacity is available under Rate REP for developers like Ecos. The Commission declines to adopt this proposed modification. Ecos's proposal does not address IPL's proposed language changes to Rate REP. Also, as Mr. Haselden testifies, Ecos's proposal is inconsistent with Indiana's regulatory requirements for net metering. Moreover, Rate REP is only available to current customers of IPL. Therefore, there should be no issues with non-customer developers taking all of the available capacity under Rate REP.⁵

G. **Rate REP Energy Purchases as Energy Savings.** IPL requests clarification that energy purchased from its customers under the terms of Rate REP can be counted towards the energy savings goals established in the Generic DSM Order. The Generic DSM Order established an annual energy savings target for jurisdictional electric utilities, including IPL, to be achieved through Core and Core Plus Programs. Noting that "it will be necessary for jurisdictional utilities to develop additional joint or utility-specific program offerings to meet the annual energy savings goals established," we provided a non-exhaustive list of potential programs and specifically identified "incentives for customer-sited renewable energy technologies which reduce electric use." Generic DSM Order at 36.

IPL contends its Rate REP acts as an incentive for customer-sited renewable energy technologies that reduces electric use and should qualify as a program for which the energy produced off-sets the Phase II Order's energy savings goals. The OUCC opposes counting the energy purchased under Rate REP as energy savings required under the Generic DSM Order. The

⁵ Ecos also argues that Rate REP constitutes a standing offer by IPL such that a seller of electricity need only accept the offer to form a binding contract with IPL under Rate REP, the acceptance of which can only be abrogated pursuant to the *Mobile-Sierra* doctrine. Ecos contends it has such a contract with IPL, and the Commission disagrees. The clear language of Rate REP indicates a written contract for purchases between IPL and the seller may be negotiated, and an executed contract will be submitted to the Commission for approval. No written contract between Ecos and IPL has been submitted to the Commission for our approval.

OUCC contends Rate REP is not demand-side management because it does not, in and of itself, influence or cause customers to change the amount of electricity they consume. Rather, according to OUCC, Rate REP is a supply-side resource. The Commission agrees with the OUCC.

The focus of the Generic DSM Order was to reduce electricity usage by customers and eliminate waste. The Commission recognizes that properly sited distributed generation can provide distribution system benefits that could support the DSM goals established by the Generic DSM Order. While Rate REP diversifies IPL's energy portfolio with renewable energy resources, which is beneficial from an environmental and generational resource standpoint, energy usage is not reduced and is not being managed by the terms of the Rate REP tariff. In short, the purchases made pursuant to Rate REP do not inherently have the effect of reducing energy usage by IPL's customers. Therefore, the Commission denies IPL's request to include purchases made pursuant to Rate REP in IPL's calculation of energy savings for the purposes of meeting the goals established by the Generic DSM Order.

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

1. IPL shall file with the Electricity Division a revised Rate REP reflecting the approved changes to Rate REP.
2. This Order shall be effective on and after the date of its approval.

ATTERHOLT, LANDIS, MAYS AND ZIEGNER CONCUR; BENNETT ABSENT:

APPROVED: MAR 07 2012

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


Brenda A. Howe
Secretary to the Commission