Indiana Distributed Energy Advocates, Inc.
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Indianapolis, IN 46202

15 August 2011

Beth Krogel Roads
Legal Counsel, RTO/FERC Issues
Indiana Utility Regulatory Commission
101 W. Washington St., Suite 1500 East
Indianapolis, IN 46204

Dear Ms. Roads:

Thank you for the opportunity to submit written comments from Indiana Distributed Energy Advocates, Inc. (IDEA) concerning IURC RM #11-05 to implement the Indiana Voluntary Clean Energy Portfolio Standards Program (IN VCEPS). I will try to summarize and expand upon the verbal remarks IDEA made during our stakeholder meeting on 17 July 2011. I will also make some comments on the summaries of the meetings with other stakeholder groups.

First, IDEA is organized as a business trade association representing the interests of renewable energy and distributed generation companies involved in the sale, installation as well as manufacturing of renewable energy and distributed generation systems. We have member companies located both inside and outside the State of Indiana. All members are interested in developing projects in the State of Indiana which would qualify as "Clean energy resources" under IC 8-1-37-4. Our members are primarily concerned with the clean energy resources enumerated under IC 8-1-37-4 (a) (1) thru (16) inclusive, (19) and (20).

Second, IDEA believes that the rulemaking needs to address and meld into this rulemaking other definitions and procedures in other IURC rules and state laws such as:

- P.L. 72-1982 Alternate Energy Production, Cogeneration, and Small Hydro Facilities (IC 8-1-2.4)
- 170 IAC 4-4.1-1 (a) "alternate energy production facility" is defined as an arrangement of equipment for the production of electricity from the movement of water or wind, by photoelectric transformation, or through the combustion of refuse, a renewable source, or a recovered source.
- 170 IAC 4-7 Guidelines for Integrated Resource Planning by an Electric Utility. Under the Definitions in 170 IAC 4-7-1 (ff) "renewable resource" means a generation facility or technology utilizing a fuel source such as, but not limited to, the following:
    - (1) Wind
    - (2) Solar
    - (3) Geothermal
    - (4) Waste
    - (5) Biomass
    - (6) Small hydro
- IC 8-1-8.5 Utility Powerplant Construction and Certificate of Public Convenience and Necessity (CPCN). The summary of the IURC meeting with the IEA states: "IN VCEPS program does not

replace the CPCN process."[1] The summary of the IURC meeting with CAC states: "The CPCN requirements are not supplanted by the IN VCEPS program."[2] IDEA would concur with both these statements; however, it is neither reasonable nor desirable for an electric utility to file a CPCN for each and every renewable energy resource added to their system. For example, IDEA does not think that filing a CPCN for a 100 kW solar PV system contributing power under a voluntary feed-in tariff makes sense. Likewise, IDEA does not believe that the impact of a 10 kW, 100 kW or 1 MW solar PV system utilizing net metering should be treated the same under CPCN.

- 170 IAC 4-8-1 **Guidelines for Demand-Side Cost Recovery by Electric Utilities.**

Third, IDEA believes there is a need to ensure that an electric utility is not double dipping with various other financial incentives. Therefore, we agree with the statements from INDIEC's stakeholder meeting[3] as follows: "No double dipping should be allowed. If the project's costs are already recoverable or if the utility is already receiving an incentive for the project, then either it doesn't count toward the goal and/or it doesn't receive an additional incentive under the IN VECPS program."

For example, IC 8-1-37-13(a)(2) states: "The additional basis points authorized by the commission under this subsection for each CPS goal period are not cumulative and may not be authorized for a clean energy resource for which the commission has authorized an incentive under IC 8-1-8.8-11(a)(2)."

This requirement against "double dipping" should not apply only to IC 8-1-8.8-11(a) (2) but to everything listed under IC 8-1-8.8-11(a).

Sec. 11. (a) The commission shall encourage clean energy projects by creating the following financial incentives for clean energy projects, if the projects are found to be reasonable and necessary:
(1) The timely recovery of costs and expenses incurred during construction and operation of projects described in section 2(1) or 2(2) of this chapter.
(2) The authorization of up to three (3) percentage points on the return on shareholder equity that would otherwise be allowed to be earned on projects described in subdivision (1).
(3) Financial incentives for the purchase of fuels or energy produced by a coal gasification facility or by a nuclear energy production or generating facility, including cost recovery and the incentive available under subdivision (2).
(4) Financial incentives for projects to develop alternative energy sources, including renewable energy projects or coal gasification facilities.
(5) Other financial incentives the commission considers appropriate.

Fourth, there are three different places in the new state law which address cost containment concerns as follows: (yellow highlighted)

#1 **IC 8-1-37-10 Adoption of rules establishing program**

[1] IN VCEPS Stakeholder Meeting with Indiana Energy Association (IEA) –July 28, 2011, p. 2

[2] IN VECEPS Stakeholder Meeting with Citizens Action Coalition (CAC) –July 25, 2011, p. 2

[3] IN VECEPS Stakeholder Meeting with Indiana Industrial Energy Consumers, Inc. (INDIEC) – July 25, 2011, p.1

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Sec. 10. (a) Subject to subsection (d), the commission shall adopt rules under IC 4-22-2 to establish the Indiana voluntary clean energy portfolio standard program. The program established under this section must be a voluntary program that provides incentives to participating electricity suppliers that undertake to supply specified percentages of the total electricity supplied to their Indiana retail electric customers from clean energy.

(b) The rules adopted by the commission under this section to establish the program must:
(1) incorporate:
(A) the CPS goals set forth in section 12(a) of this chapter;
(B) methods for measuring and evaluating a participating electricity supplier's compliance with the CPS goals set forth in section 12(a) of this chapter;
(C) the financial incentives and periodic rate adjustment mechanisms set forth in section13 of this chapter; and
(D) the reporting requirements set forth in section 14 of this chapter;
(2) require the commission to determine, before approving an application under section 11 of this chapter, that the approval of the application will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved;

#2 **IC 8-1-37-11 Application to program; review by the commission**

Sec. 11. (a) An electricity supplier that seeks to participate in the program established by the commission under section 10 of this chapter must apply to the commission:
(1) in the manner and on a form prescribed by the commission; and
(2) not later than a date specified by the commission in the rules adopted under section 10 of this chapter;
for approval to participate in the program.
(b) Upon receiving an application under subsection (a), the commission shall review the application for completeness. The commission may request additional information the commission considers necessary to aid in the commission's review.
(c) If the commission determines that:
(1) an application submitted under subsection (a) is complete and reasonably complies with the purpose of this chapter;
(2) the electricity supplier submitting the application has demonstrated that the electricity supplier has a reasonable expectation of obtaining clean energy to meet the energy requirements of its Indiana retail electric customers during the calendar year ending December 31, 2025, in an amount equal to at least ten percent (10%) of the total electricity supplied by the participating electricity supplier to its Indiana retail electric customers during the base year, as set forth in section 12(a) (3) of this chapter; and
(3) approving the application will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected if the application were not approved; the commission shall approve the application. If, however, the commission determines that the application does not meet the requirements set forth in this subsection, the commission shall reject the application. The electricity supplier that submitted the application under subsection (a) bears the burden of proving to the commission that the application meets the requirements set forth in this subsection.

#3 IC 8-1-37-12 Qualifications for shareholder financial incentive; application;

Sec. 12
(d) An electricity supplier is not required to obtain clean energy to meet a particular CPS goal

if the commission determines that the cost of clean energy resources available to the electricity supplier would result in an increase in the rates and charges of the electricity supplier that would not be just and reasonable.

From the perspective of the small renewable energy resource and distributed generation operator there is a clear need to identify "up front" the probability that a proposed "clean energy resource" obtained via a Purchase Power Agreement (PPA) will meet these three iterations that it will not result in an increase to the retail rates and charges of the electricity supplier above what could reasonably be expected or would result in an increase in the rates and charges of the electricity supplier that would not be just and reasonable.

IDEA Urges Utilities to Adopt Voluntary FITs

The Application to programs in IC 8-1-37-11 could include a check list of items as described in the Handout from the Office of the Utility Consumer Counselor A(OUCC) [4] IDEA believes that one constructive way to alleviate both cost concerns and to provide more certainty to encourage more renewable energy development is to encourage electric utilities to initiate proceedings to establish voluntary feed-in tariffs (VFITs) as a standard contract offer for various clean energy technologies and differing size projects as has been already established by the IURC for IPL in Cause No. 43690 and for NIPSCO in Cause No. 43922. The VFIT could be incorporated as a part of the Sec. 11 Application. IDEA's preference would be to open a generic feed-in tariff proceeding to establish such rates for each electric utility; however, this could also be accomplished via individually docketed proceedings for those electric utilities which do not currently have feed-in tariffs, namely, Duke Energy Indiana, Indiana Michigan Power and Vectren. Renewal and/or expansion of the IPL and NIPSCO VFITs could then become a part of the Sec. 11 application process.

IDEA's concern is that terms such as "will not result in an increase to the retail rates and charges of the electricity supplier above what could be expected if the application were not approved", "above what could be reasonably be expected", and "an increase in rates and charges of the electricity supplier that would not be just and reasonable" are not well-defined and subject to much interpretation.

What relationship do these terms have to the electric utilities "avoided cost" filed annually under 170 IAC 4-4.1 and Cause No. 37494? The existing rates currently in effect are not adequate for acceptable development of clean energy resources. Existing rates currently range from $0.02192 - $0.04569/kWh. See Table 1: Comparison of IOU Cogen Rates.

So how might this mechanism work? As soon as the emergency rule is adopted, any electric utility could voluntarily file a petition with the IURC to establish a feed-in tariff which could establish the rates, terms and conditions for purchasing various renewable energy resources covered by IC 8-1-37. A proposed feed-in tariff would then list the rates or standard contract offer by technology and size that the utility would be willing to purchase under a long term contract (15-25 years). Such a petition could also request cost recovery for purchases made under the VFIT and pre-approval for the CPS Goals. This would allow the utility to specify in advance the price or rate they were willing to pay for such renewable energy resources and under what terms and conditions. The petition could further specify a cap on the amount of renewable resources it wished to obtain from the feed-in tariff. For actual examples of existing VFITs see

[4] IN VECPS Stakeholder Meeting with Indiana Office of Utility Consumer Counselor (OUCC) –July 21, 2011, p. 3-4

http://www.iplpower.com/library/IPL/Rate%20REP-Apr%2010.pdf and
http://www.nipsco.com/Libraries/Electric_Tariffs/Rate_850.sflb.ashx .

For example, CPS Goal Period I is for the six calendar years 1/1/2013 through 12/31/2018 specifies an average of at least 4% of their total electricity. Therefore, a petitioning utility could request that 1%, 2%, 3% or 4% of the CPS Goal could be met with purchase under the VFIT.

Such a proceeding before the IURC with participating intervenors and the Office of the Utility Consumer Counselor (OUCC) could then determine the appropriate price levels or rates to be paid for such renewable energy resources in advance and provide much needed certainty for independent producers of renewable energy resources or clean energy. If electricity was then purchased under the voluntary FIT it would be "pre-approved" to meet the CPS Goal. Rates to be paid under the VFIT could be in effect for the entire CPS Goal Period or reviewed and adjusted at the mid-point.

- CPS Goal Period I: 1/1/2013 – 12/31/2018 (6 years)
  - CPS VFIT Tariff A: 1/1/2013 – 12/31/2015 (3 years)
  - CPS VFIT Tariff B: 1/1/2016 – 12/31/2018 (3 years)
- CPS Goal Period II: 1/1/2019 – 12/31/2024 (6 years)
  - CPS VFIT Tariff C: 1/1/2019 – 12/31/2021 (3 years)
  - CPS VFIT Tariff D: 1/1/2022- 12/31/2024 (3 years)

VFIT tariffs in effect for three years are comparable to the effective periods now in effect in other countries with FIT tariffs. IDEA would contend that once the Commission approves a CPS VFIT through an order of the Commission it is no longer "voluntary" and should be offered to all clean energy producers who meet the terms and conditions specified in the approved tariff.

Reviewing and revising the tariffs for various sizes and technologies would allow for modification in response to market forces which may dramatically reduce the price for technologies such as solar PV. With increased solar PV manufacturing within the state of Indiana by companies such as Abound Solar in Tipton, IN and NuSUN Solar in Columbus, IN as well as solar PV components such as solar inverters by manufacturers such as Fronius in Portage, IN—there well may be significant reductions in the price of solar PV.

For example, Abound Solar[5] has stated:

> "Abound Solar has snagged a $400 million federal loan to help build 775 megawatts of factories in Colorado and Indiana. The company shipped about 30 megawatts of solar panels in 2010 and expects to produce close to 60 megawatts in 2011, Chen said. The company is in the process of doubling its existing, 65 megawatts of annual production capacity. **When the new production equipment is up and running, the company believes it can cut manufacturing cost down to 90 cents per watt."**

[5] http://indianadg.wordpress.com/2011/05/03/abound-solar-wants-italian-sun-will-italian-government-extention-of-current-feed-in-tariff-impact-indiana/

Paul Gipe states: "In a ruling 21 October 2010, the Federal Energy Regulatory Commission (FERC) effectively cleared the way for multi-tiered feed-in tariffs for various renewable energy technologies, like the programs found in Ontario, Canada and across Europe."[6]

Such a Voluntary Feed-in Tariff (VFIT) is preferred by IDEA over a public bidding procedure or traditional RFP process. Gipe explains: "The federal decision also casts doubt on the justification for the much-hyped Renewable Auction Mechanism proposed in California. The auction--or bidding system--is predicated on the necessity of complying with federal law. Bidding systems for developing renewable energy have been widely abandoned in Europe in favor of feed-in tariffs in part to better control costs and the pace of development."[7]

In the Order Granting Clarification and Dismissing Rehearing, FERC explained its decision in more detail. In doing so, FERC explicitly states, ". . . a state may appropriately recognize procurement segmentation by making separate avoided cost calculations." Moreover, FERC says ". . . the concept of a multi-tiered avoided cost rate structure is consistent with the avoided cost requirements set forth in section 210 of PURPA" and in FERC regulations.

Furthermore, the FERC order[8] states:

> ". . . Avoided cost rates may also 'differentiate among qualifying facilities using various technologies on the basis of the supply characteristics of the different technologies'. . .
>
> ". . . We find that the concept of a multi-tiered avoided cost rate structure can be consistent with the avoided cost rate requirements set forth in PURPA and our regulations. Both section 210 of PURPA and our regulations define avoided costs in terms of costs that the electric utility avoids by virtue of purchasing from the QF. The question, then, is what costs the electric utility is avoiding. Under the Commission's regulations, a state may determine that capacity is being avoided, and so may rely on the cost of such avoided capacity to determine the avoided cost rate. Further, in determining the avoided cost rate, just as a state may take into account the cost of the next marginal unit of generation, so as well the state may take into account obligations imposed by the state that, for example, utilities purchase energy from particular sources of energy or for a long duration.51 Therefore, the CPUC may take into account actual procurement requirements, and resulting costs, imposed on utilities in California. . .
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> ". . . permitting states to set a utility's avoided costs based on all sources able to sell to that utility means that where a state requires a utility to procure a certain percentage of energy from generators with certain characteristics, generators with those characteristics constitute the sources that are relevant to the determination of the utility's avoided cost for that procurement requirement. . ."

[6] "Federal Regulator Blasts Open Door to Differentiated Feed-in Tariffs in USA; FERC Decision Clears Way for Multi-Tiered State FITSs", by Paul Gipe, Oct. 22, 2011 http://www.wind-works.org/FeedLaws/USA/FederalRegulatorBlastsOpenDoortoDifferentiatedFeed-inTariffsinUSA.html

[7] Ibid.

[8] 133 FERC ¶ 61,059, Issued October 21, 2010.

IDEA also urges the IURC to revisit the current regulation for calculating "avoided costs" in 170 IAC 4-4.1-1 Cogeneration and Alternate Energy Production Facilities. I also recently re-read the order in 37494 approved Oct. 5, 1984. I was directly involved in the passage of P.L. 72-1982 by the Indiana General Assembly. I believe that a comprehensive review of this rulemaking in light of the foregoing FERC order and the newly enacted IN VCEPS warrants a fresh review of this rulemaking to provide the necessary guidance to the Commission with respect to the cost containment language in SEA 251. To not do so would be a disservice to the intent of this legislation to promote the development and deployment of clean energy and especially renewable energy and distributed generation in the generation mix for Indiana's investor-owned electric utilities.

I would like to remind the Commission that existing state law under IC 8-1-2.4-1 states:

> "Sec. 1. It is the policy of this state to encourage the development of alternate energy production facilities, cogeneration facilities, and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient utilization."

Furthermore, IC 8-1-2.4-3 states:

> "Sec. 3. The commission shall encourage the participation of utilities in alternate energy production facilities, cogeneration facilities, and small hydro facilities."

P.L. 72-1982 was enacted by the Indiana General Assembly under then Governor Robert Orr when both Houses of the General Assembly were controlled by Republican lawmakers. Now, nearly thirty years later we can see these efforts to encourage such development have enjoyed very limited success.

Lastly, IDEA understands that a tracking and trading system needs to be established for clean energy credits (CECs) in Indiana. IDEA is not prepared to make specific recommendations on that topic at this time. IDEA encourages the Commission to investigate the recommendations made by the OUCC on this topic. It is important not to reinvent the wheel and to allow for the appropriate connection to the MISO Renewable Energy Trading System and the PJM GATS market.

Thank you for the opportunity to submit these written comments. IDEA looks forward to continuing to work with the IURC in this rulemaking. We would be happy to answer any questions or provide additional information concerning these written remarks.

Cordially yours,

Laura Ann Arnold

Laura Ann Arnold, President