IURC General Counsel Response to
Questions and Comments regarding IURC GAO 2017-2

The following response is being provided by the General Counsel of the Indiana Utility Regulatory Commission ("Commission" or "IURC") for clarification purposes and is solely the opinion of the General Counsel. This response is not a determination of any complaint that may be submitted to the Commission's Consumer Affairs Division ("CAD") or that may be submitted or appealed to the full Commission. Both the Commission and CAD make their determinations based on the facts and evidence presented at the time of the complaint.

This response follows the numbering in the "Questions and Comments to the IURC regarding GAO 2017-2", submitted on August 24, 2017, by Carmel Green Initiative et al.

1) Having an IURC website page regarding net metering and interconnection information, including links to the net metering and interconnection rules and links to the utilities' interconnection applications and agreements, is a great idea. The Commission has implemented changes to its website and the link to the new webpage can be found on the home page of the Commission's website – www.in.gov/iurc.

2) Consumers with net metering issues should contact their utilities first and, if their questions or issues are not timely resolved, then contact CAD with their complaints, questions, and concerns. There was no intention to have the Indiana Energy Association act as an intermediary between consumers and utilities or between consumers and CAD. The intent of the statement is to record the commitment of the utilities made through their representative.

3) The statute has two requirements in order for a customer to have net metering until July 1, 2047: (1) a net metering facility installed before January 1, 2018; and (2) be participating in a net metering tariff on December 31, 2017. A customer that meets those two requirements shall have net metering until July 1, 2047, unless the customer removes the net metering facility before that date. The customer that chooses to have a net metering facility installed is in the best position to require and retain documentation from the installer regarding the date the facility was installed (i.e., set up and ready to operate and that the system can be safely energized but for any metering or inspection requirements the utility has not yet performed). The customer should also retain a copy of the executed interconnection agreement. To the extent a set of facts is in question, the CAD complaint process is available to weigh evidence as required to establish such facts.

4) There are a number of ways to document the date on which the signed interconnection agreement was received by the utility, including registered mail with a return receipt requested, as well as email (to get a time-stamp upon submittal). Copying the Commission on an email would not assure documentation, because state record retention is generally only for three years (not the almost 30 years under the statute) and the state has limited resources for the retention and retrieval of these documents. Both parties to

the interconnection agreement (the customer and the utility) need to have the interconnection agreement signed by both parties. If only the utility signs the interconnection agreement and sends it to the customer, and the customer has no obligation to sign and return the agreement to the utility, then the utility would have no documentation or evidence that the customer has actually agreed to the interconnection agreement. To the extent the date of execution is in question, the CAD complaint process is available to weigh evidence as required to establish such date.

5) The statement questioned was intended to provide the reasoning as to why "participating in an electricity supplier's net metering tariff" was defined in GAO 2017-2 as an interconnection agreement signed by the customer and the utility and received by the utility. Both parties need to be bound by an interconnection agreement in order for the customer to be participating in the tariff. The relevant and appropriate terms and conditions flow from 170 IAC 4-4.3 and are contained in the interconnection agreements, which are part of the utility's tariff and have been approved by the Commission.

In addition, to the extent that any of the terms in an interconnection agreement may conflict with Indiana Code chapter 8-1-40, the statute controls and would trump those terms of the interconnection agreement. If there are concerns or issues regarding the terms of an interconnection agreement, the CAD complaint process is available to determine whether the contested terms are consistent with the statute.

6) The interconnection agreements include the date(s) executed and the capacity amount. By statute, the grandfathering status is based on the date of installation, which the customer should know and have documentation from the installer, and the date of the interconnection agreement, which the customer and the utility should both have.

The customer which has elected to participate has a vested interest in retaining the appropriate documentation. Assigning the responsibility in this manner is consistent with a goal of aligning an investor's financial interest with their reasonable efforts to support such investment.

At this point in time, the Commission does not have the resources to create a central repository as proposed in the question. Even if the Commission attempted to create such a central repository, there would still be no guarantee that it would be up-to-date and accurate over the course of the next 30 years, because the customer is the one in control of the net metering facilities and could remove it or otherwise change it (without the Commission's knowledge) in such a way that the facility would no longer qualify for grandfathering under the statute. Again, the customer has the greatest interest in and has control over retaining the appropriate documentation.

GAO 2017-2 suggests that it would be the customer's responsibility to have the documentation regarding the net facility recorded with "the appropriate government agency." My assumption is that the county recorder's office may be able to record

documentation regarding net metering facilities if the documentation is attached to an affidavit giving the legal address of the premises. However, the Commission and its staff, including its General Counsel and other legal staff, are not experts in real estate transactions, the appropriate method of recording documents, or the government agencies that record documents regarding real property. This suggestion was provided as a possible method for providing the documentation to future successors-in-interest to the customer's premises and net metering facilities. It is not a requirement. The additional detail requested in the question would best be answered by a recorder's office and/or an attorney with expertise in real estate transactions.

7) Additions that are installed after December 31, 2017, and that do not change the nameplate capacity (i.e., the AC output of the inverter) will not have a different end date for participating in a net metering tariff.

For additions that are installed after December 31, 2017, and increase the nameplate capacity, the increased amount would be grandfathered according to the net metering end date that applies at that time. For example, if a customer typically uses 4 kW of electricity and installs an inverter with a 2 kW AC output and installs 2 kW of solar panels prior to December 31, 2017, and then in 2020 installs an additional 2 kW of solar panels with a new inverter with a 4 KW AC output, the 2 additional kW would be grandfathered to 2032, not 2047.

Please note that the electricity generated by the net metering facility which the customer consumes would still serve as an offset to utility-provided electricity at the retail rate. The difference would be in how long any excess electricity generated and provided to the grid in a month is credited at the retail rate.

8) The statement in GAO 2017-2 regarding batteries is not based on how the battery is used, as long as it is part of a net metering facility. The issue at hand, net metering facilities subject to the 170 IAC 4-4.2, and the lack of significant time-of-use pricing tariffs available to customers today, serve as the backdrop for the clarification presented in the footnote. The issue of how batteries are treated in the context of the pricing construct of distributed generation as defined in Indiana Code chapter 8-1-40 was not the subject of GAO 2017-2.

9) The purpose of the Technical Conference held on July 20, 2017, and the resulting GAO 2017-2 was to provide guidance and clarification for the transition period through December 31, 2017. As specifically stated at the Technical Conference, those aspects of Indiana Code chapter 8-1-40 that involve future decisions by the Commission would not be discussed. GAO 2017-2 only addresses Indiana Code § 8-1-40-14 and is intentionally silent regarding any other aspect of the statute.

The Public Utilities Regulatory Policy Act ("PURPA"), Indiana Code chapter 8-1-2.4, and 170 IAC 4-4.1 are all still applicable; and the Commission has reviewed and, as

appropriate, approved (and will continue to review and approve as appropriate) avoided cost rates for qualifying facilities. Net metering and distributed generation customers are in simplistic terms a subset of PURPA facilities and may choose to be treated as a member of the broader universe of qualifying facilities under PURPA, although it is unclear to me why they would want to do so, at least, at this time. It is my understanding that the avoided cost rate required by PURPA and approved by the Commission is significantly less than net metering retail rates and may be roughly equivalent to wholesale rates or possible future distributed generation rates (wholesale plus 25%). As far as the rate applicable to "excess distributed generation" under Indiana Code § 8-1-40-17, that is a determination that will be made by the Commission upon petition by an electricity supplier and based on the evidence presented at that time.

In addition, I note that the State of Illinois has a different regulatory structure for electric utilities and it appeared to me that the Commonwealth Edison form on the webpage referenced in the question is based in large part on those regulatory differences (i.e., that the retail customer producing electricity could choose how to sell that electricity and to whom).