



INDIANA UTILITY REGULATORY COMMISSION  
 101 WEST WASHINGTON STREET, SUITE 1500 EAST  
 INDIANAPOLIS, INDIANA 46204-3407

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## MEMORANDUM

TO: Commission Chairman James F. Huston  
 Commissioners Freeman, Ober, and Ziegner

FROM: Commission Technical Divisions

DATE: April 27, 2018

RE: 30-Day Utility Articles for Conference on *Wednesday May 2, 2018 @ 2:00 p.m.*

The following thirty-day filings have been submitted to the Commission. Each item was reviewed by the appropriate Commission Technical Divisions and all regulations were met in accordance with 170 IAC 1-6 Thirty-Day Administrative Filing Procedures and Guidelines. Therefore, the following filings listed below and attached hereto are recommended to be considered by the Commission at the next conference:

Attachment Number	30-Day Filing No.	Name of Utility Company	Type of Request	Date Received
1	50119	Duke Energy Indiana, LLC	COGEN 2018	2/23/2018
2	50122	Northern Indiana Public Service Co. - Electric	COGEN 2018	2/28/2018
3	50123	Indianapolis Power & Light Company	COGEN 2018	2/28/2018
4	50124	Southern Indiana Gas and Electric Company - Electric	COGEN 2018	2/28/2018
5	50125	Indiana Michigan Power Company	COGEN 2018	3/1/2018

Submitted By: Jane Steinhauer  
Director, Electric Division

**Filing Party:** Duke Energy Indiana, LLC  
**30-Day Filing ID No.:** 50119  
**Date Filed:** February 23, 2018  
**Filed Pursuant To:** 170 I.A.C. 4-4.1-10  
**Request:** New rate schedules for Cogeneration and Alternate Energy Production Facilities.  
**Customer Impact:** N/A

<b>STANDARD CONTRACT RIDER NO. 50</b>		
<b>Parallel Operation for Qualifying Facility</b>		
<i>Time Period</i>	<i>Rate for Purchase of Energy (\$/kWh)</i>	<i>Rate for Purchase of Capacity (\$/kW/month)</i>
Peak Period – Summer <sup>1</sup>	\$0.028230	\$4.26
Peak Period – Other Months <sup>2</sup>	\$0.028230	\$4.26

**Tariff Page(s) Affected:** IURC No. 14:  
Seventeenth Revised Sheet No. 50, Page No. 1 of 2, and Seventeenth Revised Sheet No. 50, Page No. 2 of 2.

**Staff Recommendations:** Requirements met. Recommend approval.

**Additional Information:**

The Indiana Utility Regulatory Commission (“Commission” or “IURC”) received objections (Attachment A) from the Citizens Action Coalition (“CAC”) and the Environmental Law & Policy Center (“ELPC”) on March 23, 2018, regarding this filing. Commission staff sent a notification email (Attachment B) to the utility representative on the same day that the objections were filed. Duke Energy Indiana, LLC (“Duke Energy”), submitted a response (Attachment C) on April 2, 2018. CAC and ELPC provided a joint reply (Attachment D) on April 6, 2018. On April 9, 2018, Duke Energy revised its filing so that it no longer requested approval of a form contract.

Upon review of these documents, the Commission’s General Counsel has advised that CAC’s and ELPC’s objections do not comply with 170 IAC 1-6-7(b)(2), which requires an applicable law objection to be regarding the applicable law of the filing and an objection regarding completeness to be related to the law, rule, or order that applies to the filing. The 30-day filing as revised was filed pursuant to 170 IAC 4-4.1-10 (“Section 10”) and in accordance with the Commission’s order in IURC Cause No. 37494 (1984 WL994597 (Ind. P.S.C.) – approved Oct. 5, 1984). However, the objections raised in CAC’s and ELPC’s filings are silent regarding the 30-day filing’s compliance with Section 10. In addition, the relief requested by the CAC and ELPC for revised filings with a required longer term and for a Commission investigation cannot be granted through the 30-day filing process. Accordingly, Commission staff understands that the objections are outside of the scope of the filing and that the filing may proceed to the Commission for its determination and approval or denial.

<sup>1</sup> For the months of June through September, the Peak Period shall be Monday through Saturday 9:00 a.m. through 9:00 p.m. (Eastern Standard Time), excluding holidays Independence Day and Labor Day.

<sup>2</sup> For the months of October through May, the Peak Period shall be Monday through Saturday 7:00 a.m. through 9:00 p.m. (Eastern Standard Time), excluding holidays New Year’s Day, Memorial Day, Thanksgiving Day, and Christmas Day.

March 23, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204  
mbecerra@urc.in.gov  
*Electronically delivered*

RE: Duke Energy Indiana, LLC's 30-day filing on February 23, 2018, IURC 30-Day Filing No. 50119.

**Objection to Duke Energy's 30-Day Filing on behalf of  
Citizens Action Coalition and the Environmental Law & Policy Center**

Pursuant to the guidelines for submitting an objection to a 30-day filing as outlined on the Commission's website at <https://www.in.gov/iurc/2519.htm>, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") (collectively "Objectors") respectfully submit this Objection to the 30-day filing made by Duke Energy Indiana, LLC ("Duke Energy") on February 23, 2018, IURC 30-Day Filing No. 50119. Duke Energy's 30-day filing is attached as Exhibit A.

Duke Energy's 30-day filing concerns its obligations under the Public Utility Regulatory Policies Act ("PURPA"), including PURPA's implementing regulations and Indiana's PURPA implementation. *See generally* 18 CFR § 292.101, *et seq.*; Burns Ind. Code Ann. § 8-1-2.4-1, *et seq.*; 170 IAC 4-4.1-1 *et seq.* PURPA requires electric utilities to purchase energy and capacity from qualifying facilities ("QFs"), such as renewable energy facilities, and the rate for these mandatory purchases are based on the utility's avoided costs. *See* 18 C.F.R. §§ 292.303, 292.304.

An objection is valid if it alleges that a 30-day filing is in violation of applicable law or the filing is incomplete. *See* 170 IAC 1-6-7(b)(2)(A)(i), (b)(2)(C)(i). Duke Energy's 30-day filing violates applicable law by failing to include provisions for long-term standard contracts with fixed rates in compliance with Burns Ind. Code Ann. § 8-1-2.4-4(a), 170 IAC 4-4.1-11(c)(1) and 18 C.F.R. § 292.304(d)(2)(ii). Duke Energy's 30-day filing also failed to include avoided cost information required by 18 C.F.R. § 292.302(b). The failure to provide this legally required information violates applicable law and constitutes an incomplete filing.

Duke Energy's failure to provide a long-term standard contract with a fixed-rate inhibits development of QFs in Indiana and violates the state's policy to "encourage the development of alternate energy production facilities." Burns Ind. Code Ann. § 8-1-2.4-1. Increased QF development would introduce additional competition into Indiana's market by enabling private QF development at the utility's own avoided costs. Thus, PURPA is not a "subsidy" program for renewable energy. Instead, it is a cost-neutral policy that protects ratepayers by creating downward pressure on utility costs.

ELPC and CAC respectfully request that the Commission deny Duke Energy's 30-day filing and open a statewide docket to investigate and establish modernized PURPA implementation methodologies that will enable Indiana utilities to comply with state and federal law.

### **BACKGROUND ON OBJECTORS**

CAC is a 501(c)(4) membership organization of organizations and more than 40,000 individual members and contributors throughout the State of Indiana. CAC initiates, facilitates, and coordinates citizen action directed at improving the quality of life of all Indiana residents through principled advocacy of public policies that, among other things, promote government accountability and protect consumers and ratepayers. CAC and its members have an interest in promoting the development and availability of renewable energy through implementation of PURPA and are likely to suffer an injury if Duke Energy does not comply with its obligations under PURPA.

ELPC is a 501(c)(3) public interest organization that works to achieve cleaner air and water, promote renewable energy and energy efficiency resources, and preserve natural resources in Indiana and the Midwest. ELPC has an office located in Indianapolis and has members throughout the state of Indiana and the Midwest. On behalf of itself and its members, ELPC played a significant role in recent proceedings in Michigan, Iowa, and Minnesota where those states updated their implementation of PURPA. ELPC and its members have an interest in promoting the development and availability of renewable energy through implementation of PURPA and are likely to suffer an injury if Duke Energy does not comply with its obligations under PURPA.

### **BACKGROUND ON PURPA**

Congress enacted PURPA to "encourage the development of cogeneration and small power production facilities." *Am. Paper Inst. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 405 (1983). PURPA combats an inefficient preference for utility self-generation and removes barriers for non-utility generation where such generation is cost-effective, thereby increasing competition and creating a downward pressure on power generation costs. *See In re Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities*, 75 F.E.R.C. P61,080, at § III.C (1996) ("Congress recognized that the rising costs and decreasing efficiencies of utility-owned generating facilities were increasing rates and harming the economy as a whole."); *see also FERC v. Mississippi*, 456 U.S. 742, 750-751 (1982).

Accordingly, Indiana's PURPA policy implementation is "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." Burns Ind. Code Ann. § 8-1-2.4-1. Indiana's implementation contains positive requirements that could encourage QF development, such as requiring long-term contracts and the establishment of standard contracts. *See* Burns Ind. Code Ann. § 8-1-2.4-4(a); 170 IAC 4-4.1-11. However, as will be shown below, utilities in Indiana are not complying with



such requirements, and therefore Indiana utilities are falling short of the state’s explicit policy to “encourage the development of alternate energy production facilities.”

PURPA is the only federal law that requires competition in states that have not restructured their electricity markets. PURPA accomplishes this through its mandatory purchase obligation that ties the rates for purchase to a utility’s avoided cost. Tying rates to avoided costs (1) ensures no subsidization occurs, (2) protects ratepayer interests, and (3) provides ratepayers the benefit of low-cost renewable generation.

State regulators and stakeholders are increasingly focused on PURPA in light of the dramatic reduction in renewable energy development costs. With the growing relevance of PURPA, other states are updating their implementation for the first time in over two decades. For instance, the Michigan Public Service Commission (“MPSC”) has been conducting a process to update its PURPA implementation. Beginning in late 2015, the MPSC ordered the creation of a working group to investigate the state’s implementation of PURPA and invited all utilities, developers, and other interested stakeholders to participate.<sup>1</sup>

In 2016, the investigation culminated in the MPSC’s Staff publishing a report detailing the state’s implementation with recommendations on how the MPSC could modernize its PURPA implementation.<sup>2</sup> The MPSC then instituted dockets for each regulated utility to modernize its PURPA implementation and to determine, among other things, (1) the appropriate avoided cost methodology, (2) adequate term length for standard contracts, and (3) adequate procedures to encourage development of QFs.<sup>3</sup> The MPSC ordered Michigan utilities to offer long-term contracts, and concluded that QF development could benefit ratepayers in several ways, such as offsetting or deferring the construction of large utility power plants. As the Commission recognized, “there is significant ratepayer value in deferring large, capacity additions through contracting with QFs for incremental capacity.”<sup>4</sup>

ELPC played a key role in Michigan’s update as an active participant in the investigation and as an intervenor in the subsequent dockets opened for each utility. ELPC has also participated as an intervenor in Iowa’s 2017 update to its PURPA implementation<sup>5</sup> and as intervenors in an ongoing complaint case between a QF and utility in Minnesota, which could result in Minnesota updating its PURPA implementation for the first time in over a decade.<sup>6</sup> ELPC and CAC respectfully request that the Commission deny Duke Energy’s 30-day filing and

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<sup>1</sup> See generally *In re, on the Commission’s own motion, commencing an investigation into the continuing appropriateness of the Commission’s current regulatory implementation of the Public Utility Regulatory Policies Act of 1978*, Case No. U-17973, Order Commencing Investigation (Oct. 27, 2015) available at <https://perma.cc/4ZVM-XFVD>.

<sup>2</sup> *Id.*, PURPA TECHNICAL ADVISORY COMMITTEE, Report on the Continued Appropriateness of the Commission’s Implementation of PURPA (April 8, 2016) available at <https://perma.cc/7JFL-HWEK>.

<sup>3</sup> See generally *In re Consumers Energy Co., et al.*, Case Nos. U-18089, U-18090, U-18091, U-18092, U-18093, U-18094, U-18095, Order (May 3, 2016) available at <https://perma.cc/B739-R7B5>.

<sup>4</sup> *In re Consumers Energy Co.*, Case No. U-18090, Order at 18, (Mich. Pub. Serv. Comm’n May 31, 2017) available at <https://perma.cc/4K2Z-5WWW>.

<sup>5</sup> See generally *In re Interstate Power and Light Co.*, Docket No. TF-2016-0290 (Iowa Util. Bd.); *In re MidAmerican Energy Co.*, Docket No. TF-2016-0294 (Iowa Util. Bd.).

<sup>6</sup> See generally *Red Lake Falls Community Hybrid, LLC v. Otter Tail Power Co.*, Docket No. 16-1021 (Minn. Pub. Util. Comm’n).

follow the lead of other Midwestern states to ensure that Indiana utilities are in full compliance with state and federal law.

## OBJECTIONS

### **OBJECTION ONE: Duke Energy's 30-Day Filing Fails to Contain a Long-Term Contract and Contract Term Length, Both of Which are Required by Indiana Law.**

There are three requirements applicable to the standard contracts attached to Duke Energy's 30-day filing. First, Indiana law requires electric utilities to enter into "long term" contracts for the purchase of energy and capacity by PURPA QFs. Burns Ind. Code Ann. § 8-1-2.4-4(a). Second, Indiana's PURPA regulations require electric utilities to file a standard contract that must include "[t]he term of the contract." 170 IAC 4-4.1-11(c)(1). Third, federal law requires that long-term contracts include the ability to obtain fixed rates. 18 C.F.R. § 292.304(d)(2)(ii); *see also Winding Creek Solar LLC v. Peevey*, No. 13-04934, 2017 WL 6040012, at \*9 (N.D. Cal. 2017) (finding that a standard contract violates PURPA if it fails to contain an option to obtain fixed rates).

Duke Energy's 30-day filing fails to contain a standard contract with a term length, as required by 170 IAC 4-4.1-11(c)(1), and failure to provide a term length also fails to provide the opportunity for a "long term" contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a). In Duke Energy's standard Contract for the purchase of energy, the term length is left blank. *See* Exhibit A at 7, ¶ 12. Likewise, in standard Contract for the purchase of energy and capacity, the term length is left blank. *See* Exhibit A at 12, ¶ 17. By leaving the term length blank, Duke fails to comply with Indiana law requiring "the term of the contract," 170 IAC 4-4.1-11(c)(1), and fails to provide a "long term" contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a).

Duke Energy's standard contract also fails to contain an option for a fixed rate contract, as required by 18 C.F.R. § 292.304(d)(2)(ii). For both the standard contract for energy and the standard contract for energy and capacity, the rates for purchase are updated annually, which means rates are not fixed if the contract is longer than one year. *See* Exhibit A at 6, ¶ 6; at 10, ¶¶ 6-7. Nowhere else in the standard contract is there an option for fixed rates in contracts longer than a year, as required by 18 C.F.R. § 292.304(d)(2)(ii). *See also Winding Creek Solar LLC*, No. 13-04934, 2017 WL 6040012, at \*9. "[S]tate regulatory authorities cannot preclude a QF — even an intermittent QF — from obtaining a legally enforceable obligation with a forecasted avoided cost rate." *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 6 (2016).

The inability to obtain long-term, fixed-rate contracts has discouraged developers from pursuing projects in Indiana. *See* Affidavit of Jim Straeter at ¶ 2. Not only does Duke Energy's standard contract fail to contain an option for long-term, fixed-rate contracts, but they have been unwilling to agree to long-term, fixed-rate contracts through negotiations with developers. *See* Affidavit of Sam Kliever at ¶ 2.

The lack of a legally required, long-term contract with fixed rates in Duke Energy's 30-day filing is important because the lack of long-term, fixed-rate contracts both violates the specific requirements of Indiana law *and* inhibits the development of QFs across Indiana, thus failing to promote Indiana's policy of encouraging QF development. *See* Burns Ind. Code Ann. § 8-1-2.4-1. The Federal Energy Regulatory Commission ("FERC"), the agency delegated authority to promulgate federal regulations and enforce PURPA, recognized that long-term contracts with QFs must be "long enough to allow QFs reasonable opportunities to attract capital from potential investors." *Windham Solar LLC*, 157 F.E.R.C. P61,134, at ¶ 8.

PURPA QFs cannot develop in Indiana without long-term, fixed-rate contracts, because such contracts are required to obtain the financing necessary to develop such projects. *See* Affidavit of Jim Straeter at ¶ 3; Affidavit of Sam Kliewer at ¶ 3.

Other states recognize the link between the availability of long-term, fixed-rate contracts and the encouragement of QF development. For instance, during Michigan's recent update to its PURPA implementation, the MPSC required utilities to offer 20-year standard contracts because it "found persuasive the claim that longer contracts would benefit both QFs and the [utility] by allowing better access to investment and financing. . ."<sup>7</sup> The Oregon Public Utility Commission ("OPUC"), in setting standard contract terms at 20 years, concluded that such a term length was necessary "to ensure the terms of the standard contract facilitate appropriate financing for a QF project."<sup>8</sup> The Wyoming Public Service Commission concluded that long-term standard contracts are necessary for financing and that 20-year contract terms are "adequate for obtaining a QF project financing."<sup>9</sup>

Short-term contracts do not encourage QF development because short-term contracts make financing QFs prohibitively difficult. *See* Affidavit of Jim Straeter at ¶ 3; Affidavit of Sam Kliewer at ¶ 3. To illustrate, compare the number of PacifiCorp's QF contracts in Washington, which has 5-year terms<sup>10</sup>, to other states in which PacifiCorp operates. In Oregon and Wyoming where 20-year contract terms are required, PacifiCorp has **twenty-eight QF contracts** and **eight QF contracts**, respectively.<sup>11</sup> In Utah where 15-year contract terms are required, PacifiCorp has **twenty-six QF contracts**.<sup>12</sup> In contrast, the company has **only three QF contracts in Washington**, which again only allows for 5-year terms in its standard contract.<sup>13</sup>

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<sup>7</sup> *In re Consumers Energy Co.*, Case No. U-18090, Order at 22-23, (Mich. Pub. Serv. Comm'n May 31, 2017) available at <https://perma.cc/4K2Z-5WWW>.

<sup>8</sup> *In re Investigation Relating to Electric Utility Purchases from QFs*, OPUC Docket No. UM 1129, Order No. 05-584 at 19 (Ore. Pub. Util. Comm'n May 13, 2005) available at <https://perma.cc/C5YX-R3GG>.

In 2014, the OPUC reaffirmed the 20-year standard contract term length. *In re Investigation into QF Contracting*, OPUC Docket No. UM 1610, Order No. 14-058 (Feb. 24, 2014) available at <https://perma.cc/HL76-YJUG>.

<sup>9</sup> *In re the Application of RMP to Implement a Permanent Avoided Cost Methodology for Customers that do Not Qualify for Tariff Schedule 37 – Avoided Cost Purchases from QFs*, WPSC Docket No. 20000-388-EA-11, Record No. 12750, Order No. 20416 at 19 (Wyo. Pub. Serv. Comm'n Nov. 4, 2011) available at <https://perma.cc/EC8Q-FE4L>.

<sup>10</sup> *See* PacifiCorp, dba Pacific Power & Light Co., Schedule 37, Sheet No. 37.2 available at <https://perma.cc/97YD-LWKX>.

<sup>11</sup> *See* PacifiCorp 2017 Integrated Resource Plan at 78-79, available at <https://perma.cc/2JVR-U7SQ>.

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

Long-term contracts are vitally important to promoting QF development and furthering the policy goals of PURPA. Duke Energy's failure to include a standard contract with a term length and fixed rates renders its 30-day filing in violation of applicable Indiana law requiring long-term contracts and a defined term length. Burns Ind. Code Ann. § 8-1-2.4-4(a); 170 IAC 4-4.1-11(c)(1). The standard contract also fails to contain the option for fixed rates over the long-term, in violation of 18 C.F.R. § 292.304(d)(2)(ii).

**OBJECTION TWO: Duke Energy's 30-Day Filing Fails to Contain Avoided Cost Information Required by 18 C.F.R. § 292.302(b).**

Federal regulations require electric utilities to biennially file three categories of avoided cost information with the Commission and utilities must maintain this information for "public inspection." 18 C.F.R. 292.302(b). First, utilities are required to submit 5-year estimates of their avoided energy costs. § 292.302(b)(1). Second, utilities are required to submit planned capacity additions over the next 10 years. § 292.302(b)(2). Third, utilities are required to submit the cost estimates for such capacity additions. § 292.302(b)(3).

Duke Energy's 30-day filing at issue in this Objection does not contain the avoided cost information required by 18 C.F.R. § 292.302(b), and neither does Duke Energy's 2017 30-day filing, IURC 30-Day Filing No. 50038. In contrast, Indiana Michigan Power Company has filed the information required by 18 C.F.R. § 292.302(b)(1) in the last two years<sup>14</sup>—but they too have not filed the information required by 292.302(b)(2) or (b)(3) in compliance with the biennial requirement.

In addition, Objectors are not aware of Duke Energy filing this required avoided cost information with the Commission in any other docket. Therefore, Duke Energy's 30-day filing at issue in this docket fails to comply with applicable federal law by not containing the required biennial avoided cost information.

**CONCLUSION**

Objectors respectfully request the Commission:

(1) Find that this Objection complies with 170 IAC 1-6-7, and that Duke Energy's 30-day filing, IURC 30-Day Filing No. 50119, not be presented to the full Commission for consideration under the 30-day administrative filing rule until these deficiencies are rectified;

(2) Require Duke Energy to file an updated standard contract with a defined term of sufficient length and the ability to fix rates over the term of the contract;

(3) Open a statewide docket to investigate PURPA implementation in Indiana. This investigation could examine and establish sufficient standard contract term lengths, whether the current avoided cost methodology adequately represents Duke Energy's avoided costs, and any other issues the Commission deems desirable.

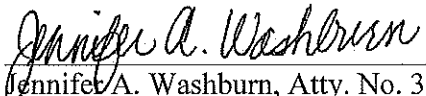
(signature page follows)


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<sup>14</sup> See IURC 30-Day Filing Nos. 50125 (2018) and 50037 (2017).

Dated March 23, 2018

Respectfully submitted,

  
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**Received: February 23, 2018**  
**IURC 30-Day Filing No.: 50119**  
Indiana Utility Regulatory Commission

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*Jim.riddle@duke-energy.com*

February 28, 2018

Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 W. Washington St.  
Suite 1500 East  
Indianapolis, IN 46204-3407

Dear Secretary:

Duke Energy Indiana, LLC hereby submits, in accordance with 170 IAC 1-4-4.1-10, for review and approval under the Commission's thirty-day filing procedure, Standard Contract Rider No. 50 – Parallel Operation for Qualifying Facility.

Standard Contract Rider 50 shows Duke Energy Indiana's standard offer energy and capacity rates for 2018 for a qualifying facility. As per the Commission, under 170 IAC 1-6-3, Section 3-6, this filing should be made under the thirty-day filing procedure.

Attached are the working papers that show the development of the standard offer energy and capacity rates for 2018. This filing reflects the variable and fixed costs impacts from an updated study from Burns and Mac. Further, this filing reflects the capital structure and current cost rates as of December 31, 2017. It also reflects the cost of common equity rate approved by the Commission in Cause No. 42359. The energy rate was developed utilizing a Planning and Risk (PaR) model version 6.1 simulation run that treats the 100 MW decrement as a dispatchable non-firm, external purchase. Thus, the marginal energy cost savings is the replacement cost for the 100 MW purchase. This cost includes fuel, fuel handling, variable O&M related to energy, effluent values and fuel auxiliary costs. Generator start-up cost have been included.

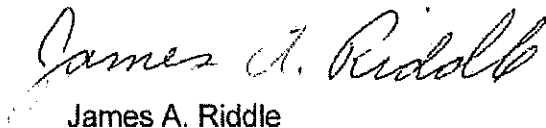
The marginal energy cost shows little change from the prior year. A 221.1 MW combustion turbine is used as the 2018 standard offer capacity rate. We have compared this to a 221.1 MW combustion turbine with an in-service date of 2021.

We are filing Rider 50 and all associated work papers, including the Company's verified statement that we have provided or will provide notice to our customers as required under Section 6 of the thirty-day filing rules, electronically. We would appreciate the return of a file-stamped copy for our files.

Secretary of the Commission  
February 28, 2018  
Page 2

If there are any questions concerning this filing, please contact me at 513.287.2386.

Sincerely,

A handwritten signature in cursive script that reads "James A. Riddle".

James A. Riddle  
Attachments

cc: J. R. Bailey  
B. P. Davey  
M. T. Diaz  
C. D. Hixson  
K. A. Karn  
K. C. Lilly  
S. Park  
M. D. Price  
A. S. Ritch  
D. L. Smotherman  
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Office of Utility Consumer Counselor  
Dr. B. Borum (IURC)  
J. Steinhauer (IURC)  
D. Thomas (IURC)

Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Eighteenth Revised Sheet No.50  
Cancels and Supersedes  
Seventeenth Revised Sheet No. 50  
Page No. 1 of 2

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Availability**

Available to any Customer contracting for parallel operation of a qualifying facility (cogeneration or small power production facility) in accordance with 170 IAC 4-4.1-1 et. seq. The qualifying facility must be located adjacent to an electric line of Company that is adequate for the service provided by such qualifying facility.

**Contract**

Customer shall enter into a contract in the applicable form (Exhibit A—Contract for the Purchase of Energy from Qualifying Facility or Exhibit B—Contract for the Purchase of Energy and Capacity from Qualifying Facility) before operating any generating equipment electrically connected with Company's electric system.

**Rate for Purchase of Energy**

Company will purchase energy from the qualifying facility of Customer in accordance with the conditions and limitations of this Rider and the applicable contract at the following rate:

For all kWh supplied per month.....\$0.28230per kWh

Measured by suitable integrating instruments.

**Rate for Purchase of Capacity**

Company will purchase capacity supplied from the qualifying facility of Customer in accordance with the conditions and limitations of this Rider and the applicable contract at the following rate:

Rate per kW per month of Contracted Capacity .....\$4.26 per kW

Customer shall receive from Company payment for such qualifying facility capacity in accordance with the following:

$$\text{\$ per kW} \times \text{Contracted Capacity in kW} \times \left( \frac{E}{K \times T} \right) \text{ per month}$$

- Where: E = kilowatt-hours supplied by qualifying facility during the Peak Period
- K = kilowatts of capacity the qualifying facility contracts to provide to Company
- T = number of hours in the Peak Period

Peak Period shall be defined as follows:

For the months of June through September, the Peak Period shall be Monday through Saturday 9:00 a.m. through 9:00 p.m. (Eastern Standard Time), excluding holidays defined below. For the months of October through May, the Peak Period shall be Monday through Saturday 7:00 a.m. through 9:00 p.m. (Eastern Standard Time), excluding holidays defined below.

Issued:

Effective:



**Duke Energy Indiana, LLC**  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Eighteenth Revised Sheet No.50  
Cancels and Supersedes  
Seventeenth Revised Sheet No. 50  
Page No. 2 of 2

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

The entire twenty-four (24) hours of the following holidays will be considered as off-peak hours:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Independence Day	Christmas Day

Whenever any of the above holidays occur on a Sunday and the following Monday is legally observed as a holiday, the entire twenty-four (24) hours of such Monday will be considered as off-peak hours.

Whenever any of the above holidays occur on a Saturday and the preceding Friday is legally observed as a holiday, the entire twenty-four (24) hours of such Friday will be considered as off-peak hours.

Contracted Capacity shall be the amount of capacity expressed in terms of kilowatts that Customer guarantees the qualifying facility will supply to Company as provided for in the contract for such service.

**Special Terms and Conditions**

1. It shall be Customer's responsibility to inform Company of any changes in its electric generation capability.
2. Customer shall comply with all applicable requirements of Standard Contract Rider No. 80 – Interconnection Service.
3. Customer may be required to enter into a "Substation Operation and Maintenance Agreement" for setting, resetting, and adjusting the Control Equipment.
4. Customer shall agree to pay Company, in accordance with "Standard Contract Rider No. 53—Excess Facilities," for all excess facilities required by Company to provide service to such parallel operation, as determined by Company, including any additional metering equipment required for Company to purchase electric energy from the qualifying facility.
5. Customer shall agree that Company shall not be liable for any damage to, or breakdown of Customer's equipment operated in parallel with Company's electric system.
6. Customer shall agree to release, indemnify, and hold harmless Company from any and all claims for injury to persons or damage to property due to or in any way connected with the operation of Customer's said generators.
7. Company may install necessary metering to monitor the electric output of Customer's generating facility. Customer shall agree that the watt-hour and reactive-ampere-hour meters installed by Company to measure electric energy may be equipped to prevent reverse registration.
8. Supplementary, Backup, Interruptible and/or Maintenance Power, as defined in 170 IAC 4-4.1-1, will be supplied by Company only in accordance with the applicable rate schedules, this Rider, the applicable contract and the applicable Service Schedules to be filed by Company with the Commission. Such rates shall be non-discriminatory and shall be based on the costs to provide such service to Customer.
9. To the extent required by law, Company will make available wheeling service to Customer in accordance with the provisions of 170 IAC 4-4.1-6.

Issued:

Effective:

Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Fourth Revised Exhibit  
Cancel and Supersedes  
Third Revised Exhibit A  
Page No. 1 of 4

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Contract for the Purchase of  
Energy from Qualifying Facility**

This Contract, made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_ , by and between Duke Energy Indiana, LLC (hereinafter "Company"), an Indiana corporation and an electric utility subject to the jurisdiction of the Indiana Utility Regulatory Commission (hereinafter "Commission"), and \_\_\_\_\_ (hereinafter "Customer").

WITNESSETH:

WHEREAS, Customer is constructing or has constructed the following facilities (description): \_\_\_\_\_ located in \_\_\_\_\_, Indiana; and

WHEREAS, Customer's facility is a "qualifying facility" (hereinafter "QF") as defined in 170 IAC 4-4.1-1; and

WHEREAS, Customer desires to operate its QF in parallel with Company's electric system, and to engage in electric energy transactions with Company, but Customer does not desire to have Company purchase any of the capacity of Customer's QF; and

WHEREAS, Company's electric energy service to Customer and Customer's electric energy service to Company shall have the following characteristics: \_\_\_\_\_

NOW, THEREFORE, in consideration thereof, Customer and Company agree as follows:

- 1. **Service Option.** At the beginning of the contract period, Customer shall elect one of the two following options:

Option A. Simultaneous sale of the entire electric energy output of the QF to Company, and purchase of all of Customer's electric energy requirements from Company (simultaneous purchase and sale shall relate to the net electric energy output of the QF, exclusive of the electricity used in the generating process); or

Option B. Use of electric energy output of the QF by Customer to supply Customer's own electric energy requirements, and purchase of Customer's remaining requirements, if any, from Company.

Customer elects Option \_\_\_\_\_ .

- 2. **Interconnection.** Customer shall comply with all applicable requirements of Standard Contract Rider No. 80 – Interconnection Service and 170 IAC 4-4.1-7.

If required by Company, Customer agrees to enter into a "Substation Operation and Maintenance Agreement" providing for Company to set, reset and adjust the Control Equipment. Customer shall make no modification to the QF or Control Equipment without prior review and approval of Company.

- 3. **Application.** It is understood and agreed that this Contract applies only to the operation of Customer's QF located at \_\_\_\_\_, Indiana.

- 4. **Metering and Excess Facilities.** The electric energy supplied hereunder by Customer shall be measured by integrating instruments supplied by Company. Customer shall pay Company, in accordance with "Standard Contract Rider No. 53—Excess Facilities," for all excess facilities required by Company to provide service to such parallel operation, as determined by Company, including any additional metering equipment required for Company to purchase electric energy from the QF, as determined by Company. Company may, at its sole option, install additional recording instruments at its own expense.

Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Fourth Revised Exhibit  
Cancel and Supersedes  
Third Revised Exhibit A  
Page No. 2 of 4

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Contract for the Purchase of  
Energy from Qualifying Facility**

- 5. **System Emergency.** Company shall not be required to purchase from or sell electric energy to Customer at the time of an emergency on either Company's or Customer's electric system. System emergencies causing discontinuance of parallel operation are subject to verification by the Commission.
- 6. **Purchase of Energy.** Company will purchase the electric energy supplied to its system from Customer's QF at the rate of the average of the marginal running costs of Company adjusted for line losses in accordance with 170 IAC 4-4.1-8 (a), as then set forth in "Standard Contract Rider No. 50—Parallel Operation For Qualifying Facility." Company shall file annually with the Commission data supporting such costs. The basis for the determination of such rate for the purchase of energy shall be an appropriate generation simulation program with and without one hundred megawatts of load decrement. Company shall make no capacity payments for the energy supplied by Customer's QF.
- 7. **Output.** The maximum electric energy output of Customer's QF expected to be made available to Company is \_\_\_\_\_.
- 8. **Power Supplied by Company.** Supplementary, Backup, Interruptible and/or Maintenance Power, as defined in 170 IAC 4-4.1-1, requested by Customer shall be supplied by Company only in accordance with the applicable rate schedules, "Standard Contract Rider No. 50—Parallel Operation For Qualifying Facility," this Contract and the applicable Service Schedules to be filed by Company with the Commission. Such rates shall be non-discriminatory and shall be based on the costs to provide such service.
- 9. **Billing.** The meter measuring the supply of electric energy to Company's electric system shall be read by Company every \_\_\_\_\_, and Company shall provide those meter readings to Customer and render payment therefor within \_\_\_\_\_ after the meter reading.

Customer shall be billed for the electric service requirements used by Customer in accordance with Section 10 of this Contract.

- 10. **Insurance.** Customer shall procure and keep in force during all periods of parallel operation with Company's electric system, the following insurance, with insurance carriers acceptable to Company, and in amounts not less than the following:

<b>Coverage</b>	<b>Limits</b>
<b>Comprehensive General Liability</b>	
<b>Contractual Liability</b>	(to be inserted depending upon the
Bodily Injury	nature and size of the QF)
Property Damage	

Customer shall deliver a CERTIFICATE OF INSURANCE verifying the required coverage to:

Duke Energy Indiana, LLC  
Attention: District Manager

at least fifteen (15) days prior to any interconnection with Company's electric system by Customer.

Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Fourth Revised Exhibit  
Cancel and Supersedes  
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**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Contract for the Purchase of  
Energy from Qualifying Facility**

- 11. Release and Indemnification.** Each party shall release, indemnify and hold harmless the other party from and against all claims, liability, damages and expenses, including attorneys' fees, based on any injury to any person, including loss of life, or damage to any property, including loss of use thereof, arising out of, resulting from or connected with, or that may be alleged to have arisen out of, resulted from or connected with, an act or omission by such other party, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of such party's facilities used in connection with this Contract. Upon the written request of the party seeking relief under this Section 13, the other party shall defend any suit asserting a claim covered by this Section 13. If a party is required to bring an action to enforce its rights under this Section 13, either as a separate action or in connection with another action, and said rights are upheld, the party from whom the relief was sought shall reimburse the party seeking such relief for all expenses, including attorneys' fees, incurred in connection with such action.
- 12. Term.** This Contract shall be in effect for an initial term of \_\_\_\_\_ years, beginning \_\_\_\_\_, 20\_\_\_\_ and ending \_\_\_\_\_, 20\_\_\_\_, and thereafter shall continue in effect for succeeding like terms, unless and until terminated by written notice given by one party to the other party at least sixty (60) days prior to the initial date of expiration, or any succeeding expiration date, and stating an intention to terminate this Contract as of the applicable expiration date.
- 13. Termination of Any Applicable Existing Agreement.** From and after the date when service commences under this Contract, this Contract shall supersede any oral and/or written agreement between Company and Customer concerning the service covered by this Contract and any such agreement shall be deemed to be terminated as of the date service commences under this Contract.
- 14. Force Majeure.** "Force Majeure" means any cause or event not reasonably within the control of the party claiming Force Majeure, including, but not limited to, the following: acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; unavailability of a fuel or resource used in connection with the generation of electricity; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockade; or quarantine.

If either party is rendered wholly or partly unable to perform its obligations because of Force Majeure, both parties shall be excused from whatever obligations are affected by the Force Majeure (other than the obligation to pay money) and shall not be liable or responsible for any delay in the performance of, or the inability to perform, any such obligations for so long as the Force Majeure continues. The party suffering an occurrence of Force Majeure shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy its inability to perform, provided, however, that the settlement of any strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Fourth Revised Exhibit  
Cancel and Supersedes  
Third Revised Exhibit A  
Page No. 4 of 4

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Contract for the Purchase of  
Energy from Qualifying Facility**

- 15. **Invalid Legal Basis.** This Contract has been entered into by Company and Customer pursuant to the Commission's October 5, 1984 Order in Cause No. 37494 approving rules and regulations with respect to cogeneration and alternate energy production facilities, 170 IAC 4-4.1-1 et. seq., under Public Law 72-1982, IC 8-1-2.4-1 et. seq. In the event that any part of such Commission Order, such rules and regulations or such law is finally adjudged by a court of competent jurisdiction to be invalid, then either Company or Customer may, at its sole option, terminate this Contract at any time within one hundred eighty (180) days of the date such determination becomes final by giving sixty (60) days' written notice to the other party stating an intention to terminate this Contract at the expiration of such sixty (60) day period.
- 16. **Wheeling Service.** To the extent required by law, Company will make available wheeling service to Customer in accordance with the provisions of 170 IAC 4-4.1-6.

IN WITNESS WHEREOF, the parties have executed this Contract, effective as of the date first above written.

Duke Energy Indiana, LLC  
"Company"

By: \_\_\_\_\_

\_\_\_\_\_  
"Customer"

By: \_\_\_\_\_

Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Fourth Revised Exhibit B  
Cancels and Supersedes  
Third Revised Exhibit B  
Page No. 1 of 6

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Contract for the Purchase of  
Energy and Capacity from Qualifying Facility**

This Contract, made and entered into as of this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_, by and between Duke Energy Indiana, LLC (hereinafter "Company"), an Indiana corporation and an electric utility subject to the jurisdiction of the Indiana Utility Regulatory Commission (hereinafter "Commission"), and \_\_\_\_\_ (hereinafter "Customer").

WITNESSETH:

WHEREAS, Customer is constructing or has constructed the following facilities (description): \_\_\_\_\_ located in \_\_\_\_\_, Indiana; and

WHEREAS, Customer's facility is a "qualifying facility" (hereinafter "QF") as defined in 170 IAC 4-4.1-1; and

WHEREAS, Customer desires to operate its QF in parallel with Company's electric system, and to engage in electric energy and capacity transactions with Company; and

WHEREAS, Company's electric energy service to Customer and Customer's electric energy service to Company shall have the following characteristics: \_\_\_\_\_:

NOW, THEREFORE, in consideration thereof, Customer and Company agree as follows:

1. **Service Option.** At the beginning of the contract period, Customer shall elect one of the two following options:

Option A. Simultaneous sale of the entire electric energy output of the QF to Company, and purchase of all of Customer's electric energy requirements from Company (simultaneous purchase and sale shall relate to the net electric energy output of the QF, exclusive of the electricity used in the generating process); or

Option B. Use of electric energy output of the QF by Customer to supply Customer's own electric energy requirements, and purchase of Customer's remaining requirements, if any, from Company.

Customer elects Option \_\_\_\_\_.

2. **Interconnection.** Customer shall comply with all applicable requirements of Standard Contract Rider No. 80 – Interconnection Service and 170 IAC 4-4.1-7.

If required by Company, Customer agrees to enter into a "Substation Operation and Maintenance Agreement" providing for Company to set, reset and adjust the Control Equipment. Customer shall make no modification to the QF or Control Equipment without prior review and approval of Company.

3. **Application.** It is understood and agreed that this Contract applies only to the operation of Customer's QF located at \_\_\_\_\_, Indiana.

Duke Energy Indiana, LLC  
 1000 East Main Street  
 Plainfield, Indiana 46168

IURC NO. 14  
 Fourth Revised Exhibit B  
 Cancels and Supersedes  
 Third Revised Exhibit B  
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**STANDARD CONTRACT RIDER NO. 50  
 PARALLEL OPERATION—  
 FOR QUALIFYING FACILITY**

**Contract for the Purchase of  
 Energy and Capacity from Qualifying Facility**

4. **Metering and Excess Facilities.** The electric energy supplied hereunder by Customer shall be measured by integrating instruments supplied by Company. Customer shall pay Company, in accordance with "Standard Contract Rider No. 53 Excess Facilities," for all excess facilities required by Company to provide service to such parallel operation, as determined by Company, including any additional metering equipment required for Company to purchase electric energy from the QF, as determined by Company. Company may, at its sole option, install additional recording instruments at its own expense.
5. **System Emergency.** Company shall not be required to purchase from or sell electric energy to Customer at the time of an emergency on either Company's or Customer's electric system. System emergencies causing discontinuance of Parallel operation are subject to verification by the Commission.
6. **Purchase of Energy.** Company will purchase the electric energy supplied to its system from Customer's QF at the rate of the average of the marginal running costs of Company adjusted for line losses in accordance with 170 IAC 44.18 (a), as then set forth in "Standard Contract Rider No. 50 Parallel Operation For Qualifying Facility." Company shall file annually with the Commission data supporting such costs. The basis for the determination of such rate for the purchase of energy shall be an appropriate generation simulation program with and without one hundred megawatts of load decrement. Except as set forth in section 7. below, Company shall make no capacity payments for the energy supplied by Customer's QF.
7. **Purchase of Capacity.** Company will purchase the electric capacity supplied to its system from Customer's QF at the Company's monthly avoided cost of capacity for Company per kilowatt in accordance with 170 IAC 4-4.1-9 (a), as then set forth in "Standard Contract Rider No. 50—Parallel Operation For Qualifying Facility." Company shall file annually with the Commission data supporting such costs.

Monthly payments for such purchase of capacity shall be adjusted by the application of a factor developed in accordance with 170 IAC 4-4.1-9 (d) reflecting actual output of the QF.

8. **Capacity.** The amount of "Contracted Capacity" that Customer guarantees the QF will make available to Company during each year of the Contract is \_\_\_\_\_ kw.
9. **Performance.** The parties agree that the amount of the capacity payment which Company is to make to Customer for the QF is based upon the QF's performance of its obligation to provide Contracted Capacity during the term of this Contract. The parties further agree that in the event Company does not receive such full performance by reason of a termination of this Contract prior to its expiration or a reduction in the amount of such Contracted Capacity, (1) Company shall be deemed damaged by reason thereof, (2) it would be impracticable or extremely difficult to fix the actual damages to Company resulting therefrom, (3) the reductions, offsets and refund payments as provided hereafter, as applicable, are in the nature of adjustments in prices and are to be considered liquidated damages, and not a penalty, and are fair and reasonable, and (4) such reductions, offsets and refund payments represent a reasonable endeavor by the parties to estimate a fair compensation for the reasonable damages that would result from such premature termination or failure to deliver the specified amount of capacity.

Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Fourth Revised Exhibit B  
Cancels and Supersedes  
Third Revised Exhibit B  
Page No. 3 of 6

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Contract for the Purchase of  
Energy and Capacity from Qualifying Facility**

10. **Refund.** In the event this Contract is terminated or the Contracted Capacity is reduced prior to the expiration of the initial term of this Contract, Customer shall refund to Company the capacity payments in excess of those capacity payments which would have been made had all of the capacity or the reduced capacity, whichever is applicable, been subject to a capacity rate based on the actual term of delivery to Company.
11. **Probationary Period.** Except in the event of Force Majeure, as defined in Section 21 of this Contract, if, within any twelve (12) month period during the term of this Contract ending on the anniversary date of the date that the QF first provided capacity to Company under this Contract, the QF fails to provide Company with the Contracted Capacity specified in this Contract, the capacity for which Customer shall be entitled to capacity payments during the subsequent twelve (12) month period (hereinafter "the Probationary Period") shall be reduced to the capacity provided during the prior twelve (12) month period. If, during the Probationary Period, the QF provides the Contracted Capacity specified in this Contract, Company, within thirty (30) days following the end of the Probationary Period, shall reinstate the full capacity amount originally specified in this Contract. If, during the Probationary Period, the QF again fails to provide the Contracted Capacity specified in this Contract, Company may permanently reduce the capacity purchased from the QF for the remainder of the term of this Contract. Company may also require that the reduction in the capacity be subject to the refund provisions of Section 12 of this Contract.
12. **Scheduled Outages.** Scheduled outages of the QF shall be usefully coordinated with scheduled outages of Company's generating facilities.
13. **Power Supplied by Company.** Supplementary, Backup, Interruptible and/or Maintenance Power, as defined in 170 IAC 4-4.1-1, requested by Customer shall be supplied by Company only in accordance with the applicable rate schedules, "Standard Contract Rider No. 50—Parallel Operation For Qualifying Facility," this Contract and the applicable Service Schedules to be filed by Company with the Commission. Such rates shall be non-discriminatory and shall be based on the costs to provide such service.
14. **Billing.** The meter measuring the supply of electric energy to Company's electric system shall be read by Company every \_\_\_\_\_, and Company shall provide those meter readings to Customer and render payment therefor within after the meter reading.  
  
Customer shall be billed for the electric service requirements used by Customer in accordance with Section 10 of this Contract.
15. **Insurance.** Customer shall procure and keep in force during all periods of parallel operation with Company's electric system, the following insurance, with insurance carriers acceptable to Company, and in amounts not less than the following:



Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Fourth Revised Exhibit B  
Cancels and Supersedes  
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Page No. 4 of 6

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Contract for the Purchase of  
Energy and Capacity from Qualifying Facility**

<b>Coverage</b>	<b>Limits</b>
<b>Comprehensive General Liability</b>	
<b>Contractual Liability</b>	(to be inserted depending upon the
Bodily Injury	nature and size of the QF)
Property Damage	

Customer shall deliver a CERTIFICATE OF INSURANCE verifying the required coverage to:

Duke Energy Indiana, LLC  
Attention: District Manager

at least fifteen (15) days prior to any interconnection with Company's electric system by Customer.

16. **Release and Indemnification.** Each party shall release, indemnify and hold harmless the other party from and against all claims, liability, damages and expenses, including attorneys' fees, based on any injury to any person, including loss of life, or damage to any property, including loss of use thereof, arising out of, resulting from or connected with, or that may be alleged to have arisen out of, resulted from or connected with, an act or omission by such other party, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of such party's facilities used in connection with this Contract. Upon the written request of the party seeking relief under this Section 18, the other party shall defend any suit asserting a claim covered by this Section 13. If a party is required to bring an action to enforce its rights under this Section 18, either as a separate action or in connection with another action, and said rights are upheld, the party from whom the relief was sought shall reimburse the party seeking such relief for all expenses, including attorneys' fees, incurred in connection with such action.
  
17. **Term.** This Contract shall be in effect for an initial term of \_\_\_\_ years, beginning \_\_\_\_\_, 20\_\_, and ending \_\_\_\_\_, 20\_\_, and thereafter shall continue in effect for succeeding like terms, unless and until terminated by written notice given by one party to the other party at least sixty (60) days prior to the initial date of expiration, or any succeeding expiration date, and stating an intention to terminate this Contract as of the applicable expiration date.
  
18. **Termination of Any Applicable Existing Agreement.** From and after the date when service commences under this Contract, this Contract shall supersede any oral and/or written agreement between Company and Customer concerning the service covered by this Contract and any such agreement shall be deemed to be terminated as of the date service commences under this Contract.

Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Fourth Revised Exhibit B  
Cancels and Supersedes  
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Page No. 5 of 6

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Contract for the Purchase of  
Energy and Capacity from Qualifying Facility**

19. **Force Majeure.** "Force Majeure" means any cause or event not reasonably within the control of the party claiming Force Majeure, including, but not limited to, the following: acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; unavailability of a fuel or resource used in connection with the generation of electricity; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or material man; sabotage; injunction; blight; famine; blockade; or quarantine.

If either party is rendered wholly or partly unable to perform its obligations because of Force Majeure, both parties shall be excused from whatever obligations are affected by the Force Majeure (other than the obligation to pay money) and shall not be liable or responsible for any delay in the performance of, or the inability to perform, any such obligations for so long as the Force Majeure continues. The party suffering an occurrence of Force Majeure shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy its inability to perform, provided, however, that the settlement of any strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

20. **Invalid Legal Basis.** This Contract has been entered into by Company and Customer pursuant to the Commission's October 5, 1984 Order in Cause No. 37494 approving rules and regulations with respect to cogeneration and alternate energy production facilities, 170 IAC 4-4.1-1 et. seq., under Public Law 72-1982, IC 8-1-2.4-1 et. seq. In the event that any part of such Commission Order, such rules and regulations or such law is finally adjudged by a court of competent jurisdiction to be invalid, then either Company or Customer may, at its sole option, terminate this Contract at any time within one hundred eighty (180) days of the date such determination becomes final by giving sixty (60) days' written notice to the other party stating an intention to terminate this Contract at the expiration of such sixty (60) day period.

21. **Wheeling Service.** To the extent required by law, Company will make available wheeling service to Customer in accordance with the provisions of 170 IAC 4-4.1-6.

**Duke Energy Indiana, LLC**  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
Fourth Revised Exhibit B  
Cancels and Supersedes  
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Page No. 6 of 6

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Contract for the Purchase of  
Energy and Capacity from Qualifying Facility**

IN WITNESS WHEREOF, the parties have executed this Contract, effective as of the date first above written.

Duke Energy Indiana,  
LLC "Company"

By: \_\_\_\_\_

\_\_\_\_\_  
"Customer"

By: \_\_\_\_\_

## 2. Cogeneration and Alternate Energy Production Facilities

The following utility has submitted a proposed tariff for the purchase of power and energy from a qualifying facility as required in Appendix A, Rules and Regulations with Respect to Cogeneration and Alternate Energy Production Facilities, (170 I.A.C. 4-4.1), Cause No. 37494. Supporting documentation has been supplied.

<u>Utility</u>	<u>Rate Schedule</u>	<u>Energy (\$/kWH)</u>	<u>Demand (\$/kW/month)</u>
Duke Energy Indiana, LLC	Rider No. 50	0.028230	4.26

The tariff sheet affected by this filing is Sheet No. 50.

DUKE ENERGY INDIANA, LLC  
2018 COGENERATION FILING  
CALCULATION OF PRESENT VALUE OF CARRYING CHARGES

CCR = 9.64%

Cumulative Present Worth Factor =  $\frac{(1 + r)^n - 1}{r * (1 + r)^n}$  = 11.98493

Where:

r = 7.35%  
n = 30

D = CCR \* Cumulative Present Worth Factor  
= 9.64% X 11.984934  
= 1.15535

Source: Financial Capital Structure as of 12/31/2017 per company books and records.  
Long term debt rate is for 30 year first mortgage bond new issue as of 2/1/2018.

DUKE ENERGY INDIANA, LLC  
2018 COGENERATION FILING  
CALCULATION OF STANDARD OFFER RATE  
FOR THE PURCHASE OF ENERGY

RATE FOR THE PURCHASE OF ENERGY

2018 ENERGY RATE = ( \$0.027475 PER KWH )

2018 ENERGY RATE ADJUSTED FOR LOSSES

= \$0.027475 PER KWH / ( 1 - ( 0.053440042 / 2) )  
= \$0.028230 PER KWH

---

WHERE : (A) The Planning and Risk (PaR) model version 6.1 cost program performed a single run that treats the one hundred MW decrement as a dispatchable non-firm, external purchase. Thus, the marginal energy cost savings is the replacement cost for the 100 MW purchase. This cost includes fuel, fuel handling, variable O&M related to energy, effluent values and fuel auxiliary costs. We have included changes in generator start-up costs.

(B) The loss factor is 5.3440042% .

Source: Primary Metered Sales Retail Loss Factor from latest retail rate case (Cause No. 42359)

DUKE ENERGY INDIANA, LLC  
2018 COGENERATION FILING  
CALCULATION OF STANDARD OFFER RATE  
FOR THE PURCHASE OF CAPACITY

FOR GENERIC COMBUSTION TURBINE

RATE FOR THE PURCHASE OF CAPACITY

$$C = \frac{1}{12} * [ (D * V * F * ((1+lp)^{t-1})) + (O * ((1 + lo)/(1+r)) * ((1 + lo)^{t-1})) ] / (1 - L/2)$$

$$= \$4.26 \text{ PER KW PER MONTH}$$

$$Ca = C * (((1 + lp)/(1 + r))^{(Yi-Yc)})$$

$$= \$4.26 \text{ PER KW PER MONTH}$$


---

- WHERE :
- D = 1.15535
  - V = \$626 PER KW (2018 \$)
  - F = 0.056352 (Based on formula contained in 170 IAC 4-4.1-9)
  - lp = 2.50%
  - lo = 2.50%
  - O = \$9.39 PER KW (2018 \$)
  - r = 7.35%
  - n = 35
  - L = 5.3440042%
  - t = 1
  - Yi = 2018 (In service year of CT)
  - Yc = 2018 (Current year)

NOTE : (a) Investment cost based on a 221.1 MW hypothetical combustion turbine with a 2018 in service date.  
 (b) Escalation rates is standard rate used in model.

**DUKE ENERGY INDIANA, LLC**  
**2018 COGENERATION FILING**  
**CALCULATION OF STANDARD OFFER RATE**  
**FOR THE PURCHASE OF CAPACITY**

**FOR 2021 222.1 MW Combustion Turbine Unit**

**RATE FOR THE PURCHASE OF CAPACITY**

$$C = 1/12 * [ (D * V * F * ((1+lp)^{(t-1)})) + ( O * (( 1 + lo )/(1+r)) * ((1 + lo)^{(t-1)} ) ) ] / ( 1 -L/2)$$

$$= \$4.47 \text{ PER KW PER MONTH}$$

$$Ca = C * (((1 + lp)/(1 + r))^{(Yi-Yc)})$$

$$= \$3.89 \text{ PER KW PER MONTH}$$

WHERE :

D =	1.15535
V =	\$626 PER KW (2018 \$)
F =	0.056352 (Based on formula contained in 170 IAC 4-4.1-9)
lp =	2.50%
lo =	2.50%
O =	\$9.39 PER KW (2018 \$)
r =	7.35%
n =	35
L =	5.3440042%
t =	3
Yi =	2021 (In service year of CT)
Yc =	2018 (Current year)

NOTE : (a) Investment cost based on a 222.1 MW combined cycle unit with a 2021 in service date.  
(b) Escalation rates is standard rate used in model.



Schedule 1

**DUKE ENERGY INDIANA, INC.**

**Calculation Of Carrying Charge  
Rate For Cogeneration Facilities  
With A 30 Year Life For The 2018 Filing  
Based On Calendar Year 2017 Information**

$$CCR = (1/(1-t))^n ((r+d) + ((T/(1-T)) * (r+d-D) * ((r-(bL+lp))/r)))$$

r:	Rate of Return	7.35%
d:	Sinking fund depreciation rate	0.99%
T:	Federal and State composite income tax rate	25.740%
D:	Book depreciation rate	3.33%
b:	Interest rate on debt capital	3.90%
L:	Debt ratio	47.70%
l:	Interest rate on preferred stock	0.00%
p:	Preferred stock ratio	0.00%
n:	Service life	30
t:	Other taxes & expense from revenues	0.000%

CCR = 9.64%

Memo:

$$\begin{aligned}
 CCR &= \left( \frac{1}{1 - 0.2574} \right)^{30} \left( 7.35 + 0.99 + \left( \frac{25.74}{1 - 0.2574} \right) \left( 7.35 - 3.33 - 3.9 \cdot 0.477 \right) \right) \\
 &= 1.00000 * ( 8.34 + ( ( 0.3466 ) * ( 5.01 ) * ( 7.35 - 1.8603 ) ) / 7.35 ) \\
 &= 1.00000 * ( 8.34 + 1.29696 ) \\
 &= 9.64
 \end{aligned}$$

Carrying Costs Calculation Check 9.64%

Difference 0.00%

### 2018 Cogeneration-Compliance Filing

A.	Marginal Energy Cost	100 MW Run
J. Riddle	Annual Run for with one hundred MW decrement (mills/kWh).	27.48
B.	For Generic Combustion Turbine	
1.	In-Service Date	01/01/18
2.	Type of Unit	Combustion Turbine
3.	Size of Unit (MW - summer)	222.1
4.	Investment Cost per kW-summer	625.79
5.	A. Fixed O&M Expense in the first year of service (\$/kW-yr, summer)	4.459
	Variable O&M Expense in the first year of service (\$/kW-yr, summer)	4.928
	B. Total Fixed & Variable O&M Expense in the first year of service (\$/kW-yr, summer)	9.386
6.	Expected Life (years)	35
7.	Escalation Rates (%):	
	2018-2036 Investment	2.50
	O&M	2.50

Note: All costs expressed in January 2018 dollars.

Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
~~Eight~~Seventeenth Revised Sheet  
No.50  
Cancels and Supersedes  
~~Seven~~sixteenth Revised Sheet No. 50  
Page No. 1 of 2

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

**Availability**

Available to any Customer contracting for parallel operation of a qualifying facility (cogeneration or small power production facility) in accordance with 170 IAC 4-4.1-1 et. seq. The qualifying facility must be located adjacent to an electric line of Company that is adequate for the service provided by such qualifying facility.

**Contract**

Customer shall enter into a contract in the applicable form (Exhibit A—Contract for the Purchase of Energy from Qualifying Facility or Exhibit B—Contract for the Purchase of Energy and Capacity from Qualifying Facility) before operating any generating equipment electrically connected with Company's electric system.

**Rate for Purchase of Energy**

Company will purchase energy from the qualifying facility of Customer in accordance with the conditions and limitations of this Rider and the applicable contract at the following rate:

For all kWh supplied per  
month.....\$~~0.282300~~~~0.29706~~per kWh

Measured by suitable integrating instruments.

**Rate for Purchase of Capacity**

Company will purchase capacity supplied from the qualifying facility of Customer in accordance with the conditions and limitations of this Rider and the applicable contract at the following rate:

Rate per kW per month of Contracted Capacity .....\$~~4,264.20~~ per kW

Customer shall receive from Company payment for such qualifying facility capacity in accordance with the following:

$$\text{\$ per kW} \times \text{Contracted Capacity in kW} \times \left( \frac{E}{K \times T} \right) \text{ per month}$$

- Where: E = kilowatt-hours supplied by qualifying facility during the Peak Period
- K = kilowatts of capacity the qualifying facility contracts to provide to Company
- T = number of hours in the Peak Period

Peak Period shall be defined as follows:

For the months of June through September, the Peak Period shall be Monday through Saturday 9:00 a.m. through 9:00 p.m. (Eastern Standard Time), excluding holidays defined below. For the months of October through May, the Peak Period shall be Monday through Saturday 7:00 a.m. through 9:00 p.m. (Eastern Standard Time), excluding holidays defined below.

Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, Indiana 46168

IURC NO. 14  
~~Eight~~Seventeenth Revised Sheet  
No.50  
Cancels and Supersedes  
~~Seven~~sixteenth Revised Sheet No. 50  
Page No. 2 of 2

**STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION—  
FOR QUALIFYING FACILITY**

The entire twenty-four (24) hours of the following holidays will be considered as off-peak hours:

New Year's Day	Labor Day
Memorial Day	Thanksgiving Day
Independence Day	-Christmas Day

Whenever any of the above holidays occur on a Sunday and the following Monday is legally observed as a holiday, the entire twenty-four (24) hours of such Monday will be considered as off-peak hours.

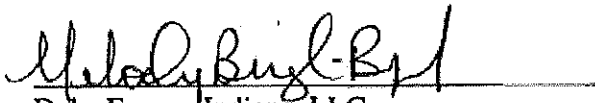
Whenever any of the above holidays occur on a Saturday and the preceding Friday is legally observed as a holiday, the entire twenty-four (24) hours of such Friday will be considered as off-peak hours.

Contracted Capacity shall be the amount of capacity expressed in terms of kilowatts that Customer guarantees the qualifying facility will supply to Company as provided for in the contract for such service.

**Special Terms and Conditions**

1. It shall be Customer's responsibility to inform Company of any changes in its electric generation capability.
2. Customer shall comply with all applicable requirements of Standard Contract Rider No. 80 – Interconnection Service.
3. Customer may be required to enter into a "Substation Operation and Maintenance Agreement" for setting, resetting, and adjusting the Control Equipment.
4. Customer shall agree to pay Company, in accordance with "Standard Contract Rider No. 53—Excess Facilities," for all excess facilities required by Company to provide service to such parallel operation, as determined by Company, including any additional metering equipment required for Company to purchase electric energy from the qualifying facility.
5. Customer shall agree that Company shall not be liable for any damage to, or breakdown of Customer's equipment operated in parallel with Company's electric system.
6. Customer shall agree to release, indemnify, and hold harmless Company from any and all claims for injury to persons or damage to property due to or in any way connected with the operation of Customer's said generators.
7. Company may install necessary metering to monitor the electric output of Customer's generating facility. Customer shall agree that the watt-hour and reactive-ampere-hour meters installed by Company to measure electric energy may be equipped to prevent reverse registration.
8. Supplementary, Backup, Interruptible and/or Maintenance Power, as defined in 170 IAC 4-4.1-1, will be supplied by Company only in accordance with the applicable rate schedules, this Rider, the applicable contract and the applicable Service Schedules to be filed by Company with the Commission. Such rates shall be non-discriminatory and shall be based on the costs to provide such service to Customer.
9. To the extent required by law, Company will make available wheeling service to Customer in accordance with the provisions of 170 IAC 4-4.1-6.

In accordance with 170 IAC 1-6 *et seq.*, I hereby verify under the penalties of perjury that all affected customers have been notified as required under section 6 of the above-referenced rule by posting the attached legal notice on Duke Energy Indiana's website as well as publishing the legal notice in the newspaper(s) of general circulation encompassing the highest number of the utility's customers affected by the filing to the best of my knowledge, information and belief.



Duke Energy Indiana, LLC  
Melody Birmingham-Byrd, President

Dated: February 28, 2018

**LEGAL NOTICE OF  
DUKE ENERGY INDIANA, LLC'S  
STANDARD CONTRACT RIDER NO. 50  
PARALLEL OPERATION –  
FOR QUALIFYING FACILITY**

DUKE ENERGY INDIANA, LLC (“Duke Energy Indiana”) hereby provides notice that on February 28, 2018, Duke Energy Indiana, in accordance with 170 IAC 4-4.1-10, will submit its Standard Contract Rider No. 50, Parallel Operation-For Qualifying Facility (“Standard Contract Rider 50”) to the Indiana Utility Regulatory Commission (“Commission”) for approval under the Commission’s thirty-day administrative filing procedures and guidelines. Standard Contract Rider 50 provides the calculation for the standard offer for the purchase of energy and capacity.

Standard Contract Rider 50 is available to all qualifying Duke Energy Indiana customers and should be approved thirty-days from the date of filing, February 28, 2018, unless an objection is made. Any objections may be made by contacting the Secretary of the Commission, or Barbara A. Smith or Randall C. Helmen or Mary M. Becerra with the Indiana Office of the Utility Consumer Counselor at the following addresses or phone numbers:

Indiana Utility Regulatory Commission  
101 W. Washington St.  
Suite 1500 East  
Indianapolis, IN 46204-3407  
317-232-2703

Indiana Office of Utility Consumer Counselor  
PNC Center  
115 W. Washington St.  
Suite 1500 South  
Indianapolis, IN 46204  
317-232-2494.

**Duke Energy Indiana, LLC**  
By: Melody Birmingham-Byrd,  
President

**STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION**

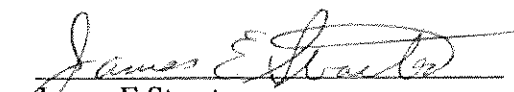
**AFFIDAVIT OF JAMES E STRAETER**

James E Straeter, being duly sworn, deposes and states as follows:

1. I am the President of Ag Technologies, Inc in Rochester, IN. We have been installing solar as a part of our business since August of 2012. We have developed a patented system that provides for superior efficiency. We are a family-owned business and Ag Technologies is part of a seven-store farm equipment dealership organization covering North Central Indiana. I sell solar along with two sons and manage sales through other dealers in Indiana, Illinois and Ohio.
2. I have considered pursuing development of solar energy projects in Indiana under the PURPA tariff for Duke Energy Indiana and NIPSCO as well as several REMCs. However, upon reviewing the PURPA tariff for Duke Energy, there did not appear to be any method of obtaining long-term contracts with fixed rates. I was unable to locate a standard contract for NIPSCO's PURPA tariff, too. Due to the apparent inability to obtain long-term, fixed rate contracts, I decided against pursuing plans to develop solar energy projects based on the PURPA tariff.
3. I need the ability to obtain long-term contracts with fixed rates in order to obtain the financing necessary to develop solar projects. Without fixed rate contracts over a sufficient period of time, in my experience, financiers will not be willing to take on the risk involved with variable rates and short term contracts. Because financiers will not take on the risk, a risk my business cannot take as well, they will not finance possible solar project development.
4. I affirm, under the penalties of perjury, that the representations in the foregoing are true to the best of my knowledge, information and belief.

(signature follows)

Dated: March 23, 2018



James E Straeter  
President

Ag Technologies Inc  
1268 E 100 S, Rochester, IN 46975  
574-224-8324



**STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION**

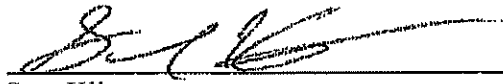
**AFFIDAVIT OF SAM KLIEWER**

Sam Kliewer, being duly sworn, deposes and states as follows:

1. My name is Sam Kliewer. I am a Policy Manager for Cypress Creek Renewables. Cypress Creek Renewables is one of the leading utility scale solar and solar + storage developers in the nation. In my role as a Policy Manager I am a subject matter expert on PURPA avoided costs and energy storage in eastern markets.
2. From mid-2016 to early 2017, Cypress Creek negotiated with Duke Energy Indiana (“Duke”) in an effort to execute a contract under Duke’s PURPA Tariff. At one point, Duke offered a 10-year contract with a variable rate that changed annually based on Duke’s annual update to its PURPA Tariff’s avoided cost rates. Duke would not agree to a contract with fixed rates longer than a year. The inability to reach an agreement on a long-term, fixed rate contract ended negotiations.
3. The lack of long-term, fixed rate contracts ended negotiations because it would be impossible for Cypress Creek to obtain the necessary financing to develop a project without long-term, fixed-rate contracts. In my experience, long-term, fixed rate contracts provide stability and minimize risk. This stability and minimized risk is necessary before a financier will provide the funds necessary to develop projects. It would be difficult to find any financier willing to provide funds with a contract that does not have fixed rates. In my experience, 15- to 20-year fixed rate contracts provide the stability and minimal risk necessary to attract financing.
4. I affirm, under the penalties of perjury, that the representations in the foregoing are true to the best of my knowledge, information and belief.

(signature follows)

Dated: March 23, 2018



---

Sam Kliewer  
Policy Manager  
Cypress Creek Renewables  
130 Roberts Street  
Asheville, NC 28801  
(828) 233-8159  
sam.kliewer@ccrenew.com

**From:** [Steinhauer, Jane](#)  
**To:** [Jim.riddle@duke-energy.com](mailto:Jim.riddle@duke-energy.com)  
**Cc:** [Helene, Beth E.](#); [Veneck Jr., Robert](#); [Stevens, George](#); [Jones, Meredith W](#); [Thomas, Dale](#)  
**Subject:** CAC Objection to 30-day Filing No. 50119  
**Date:** Friday, March 23, 2018 3:55:53 PM  
**Attachments:** [ELPC CAC Objection to Duke 30-day Filing PURPA - FINAL w attachments.pdf](#)

---

Mr. Riddle,

The Citizens Action Coalition (CAC) submitted an objection to the pending 30-day filing identified with the tracking number 50119. The Commission is required to promptly notify the utility of any objection it receives. This email serves as notification of such an objection. Additionally, the objection is attached to this email. Pursuant to 170 IAC 1-6-7(c), the utility may submit, within 10 calendar days following this notification, one or more of the following:

- 1) A response to the objection
- 2) Clarification of the filing
- 3) Additional information
- 4) An amendment to the filing
- 5) A withdrawal of its filing

Here is a link to the guidelines regarding objections to 30-day filings - <http://in.gov/iurc/2519.htm>.

Sincerely,

Jane Steinhauer



Duke Energy Indiana, LLC  
1000 East Main Street  
Plainfield, IN 46168

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April 2, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 East  
Indianapolis, Indiana 462604  
[mbecerra@urc.in.gov](mailto:mbecerra@urc.in.gov)

RE: Response to Objection to Duke Energy Indiana's Standard Contract Rider No. 50,  
IURC 30-Day Filing No. 50119

Duke Energy Indiana herein responds to the Objection filed by the Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") (collectively, the "Objectors"). Duke Energy Indiana's 30-day filing ("30-Day Filing") complies with applicable Indiana state law and the Indiana Utility Regulatory Commission ("Commission") rules. *See generally* Ind. Code ch. 8-1-2.4; 170 IAC 4-4.1-1 *et seq.* Duke Energy Indiana made its filing in accordance with Indiana law and its filing was wholly complete and compliant with applicable laws and regulations, as filed. The Commission has accepted the same or similar filings from Duke Energy Indiana since 1985.

**Duke Energy Indiana's 30-Day Filing Complies with State Law.**

Duke Energy Indiana's 30-Day Filing was made pursuant to 170 IAC 4-4.1-10 ("Section 10") and fully complies with the requirements of that rule. The standard contract provides for a long-term arrangement, has evergreen provisions that do not contain a defined expiration date, and as required by the Public Utility Regulatory Policies Act ("PURPA") provides for a fixed rate (*i.e.*, not merely an "as-available" rate arrangement) which is refreshed each year so long as the QF desires to sell to Duke Energy Indiana. This standard contract has been available, and approved by the Commission, ever since the implementation of the Qualifying Facility ("QF") rules in 1985. This long-term, evergreen, and fixed rate contract complies with the requirement in Ind. Code § 8-1-2.4-4.

Under Ind. Code § 8-1-2.4-4, utilities must offer a contract with a fixed rate for a defined term and contractual provisions for a long-term arrangement. Duke Energy Indiana's offering has met and continues to meet these requirements. There is no defined tenor for the fixed rate offer under Indiana law or PURPA. The tenor of the fixed rate offer is left to the state's discretion in implementing PURPA considering reliability and cost impacts to customers. Section 210(b) of PURPA states the Commission's rules "*shall insure* that, in requiring any electric utility to offer to purchase electric energy from any [QF], the *rates* for such purchase *shall be just and reasonable to the electric consumers . . .*" Further, Section 2 of PURPA states:



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Congress finds that the protection of the public health, safety, and welfare, the preservation of national security, and the proper exercise of congressional authority . . . require —

- (1) a program providing for increased conservation of electric energy, increased efficiency in the use of facilities and resources by electric utilities, and equitable retail rates for electric consumers, [and]
- (2) a program to improve ... the reliability of electric service. . .

These foundational principles are also located in the Congressional record concerning PURPA §§201 and 210, and in FERC’s Order No. 69 implementing PURPA. Duke Energy Indiana is in full compliance with PURPA, Indiana law and the Commission rules that implement PURPA in accordance with state requirements and local conditions determined by Indiana legislators and regulators.

Neither the CAC nor the EPLC have alleged that Duke Energy Indiana has failed to make available the long-term, evergreen contracts with rates refreshed each year to those facilities that qualify as a QF. Rather, the Objectors argue that Duke Energy Indiana simply does not include the term in its standard form of agreement. The contract term is left blank in the standard contract to account for the possibility that at the option of the QF, Duke Energy Indiana and the QF would enter into a contract of a period shorter than one year. If the Commission determines that Duke Energy Indiana should include a term of one year in the body of its standard contract, Duke Energy Indiana is willing to make such a change.

As stated above, Duke Energy Indiana’s standard offer at this time is one year. This would include a fixed rate at that year’s prevailing Rider 50 tariff. Duke Energy Indiana’s one-year term is a long-term contract under prior FERC and appellate precedent. FERC has previously ruled that in implementing PURPA, the states and state regulatory authorities have “great latitude” to determine the manner of implementing the PURPA purchase obligation – and implementation is primarily effectuated by the avoided cost rate and terms and conditions of the purchase agreement.<sup>1</sup>

Other states have addressed the issue directly and found that a one-year term is sufficient for purposes of compliance with PURPA. Recently, the Alabama Public Service Commission (“PSC”) approved Alabama Power’s proposal for a standard avoided cost contract for QFs. AL PSC Docket No. U-5213, 2017 WL 977573 (Mar. 7, 2017). With regard to the one-year term, the PSC stated that “in various PURPA-related actions regarding its PURPA regulations, FERC has offered broad guidance as to the length of contract sufficient to encourage the development

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<sup>1</sup> See, e.g., *Exelon Wind* at 385. See also *Regulations Implementing Section 210 of the Public Utility Regulatory Policies Act of 1978*, 45 Fed. Reg., 12214, 12230-31 (Feb. 25, 1980).



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of QFs.” First, the PSC cited to *Windham*, stating that “in one context, FERC has stated that the contract must be of a sufficient length to encourage investment.” *Id.*, citing *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P 61,134 (2016). Second, the PSC noted that FERC has stated that a long-term contract, in the context of PURPA, is “one year or longer,” citing to New PURPA Section 210(m) Regulations Applicable to Small Power Production Facilities and Cogeneration Facilities, Order No. 688-A, 119 FERC ¶ 61,305, at P 27 & n.17 (2007). Based on these “and other such [not cited] acknowledgements,” together with existing law and regulations, the PSC held Alabama Power’s proposed rate design “reasonable” as to both QFs and utility customers. *Id.* at 5.

Duke Energy Indiana has provided its Rider 50 since the implementation of PURPA in 1985, providing for an evergreen provision with fixed rates for one year. The rates are updated annually. Therefore, Rider 50 should be sufficient to obtain third-party financing. Duke Energy Indiana’s obligation under PURPA and state law is not going away, and the avoided cost rate provided to a QF is calculated in accordance with Commission rules and is not subject to significant variation each year. As demonstrated in Petitioner’s Ex. A to this letter, Duke Energy Indiana’s avoided cost has remained consistent over the past 10 years. Therefore, QF customers of Duke Energy Indiana have sufficient rate history and future certainty to obtain third-party financing if necessary.

While the Objectors PURPA analysis is helpful background information, it has no bearing on Duke Energy Indiana’s compliance filing made pursuant to the Commission’s rules and Indiana law. With its filing, Duke Energy Indiana merely updated its energy and capacity rates as required under the Commission’s rules. Duke Energy Indiana did not change its existing standard contract in any way. Additionally, Duke Energy Indiana’s standard offer and contract fully comply with PURPA. A one-year contract fulfills the PURPA requirement for a long-term contract.

#### **Duke Energy Indiana’s Section 10 Filing Need Not Comply with 18 CFR §292.302(b)**

Duke Energy Indiana made its filing pursuant to Section 10. That section does not require the provision of avoided cost information of the type outlined in 18 C.F.R. 292.302(b). The Objector’s argue that the 30-Day Filing made pursuant to Section 10 does not include the avoided cost information required by 18 CFR § 292.302(b). This is not a legitimate basis to object to Duke Energy Indiana’s 30-Day Filing. Duke Energy Indiana did not submit the filing to comply with 18 C.F.R. § 292.302(b), but to comply with Section 10. No provision in Section 10 requires a generating electric utility to submit the information required by 18 CFR § 292.302 as part of the annual 30-day filing required by Section 10. A filing cannot reasonably be held to violate Section 10 or be incomplete because it fails to include information not required by Section 10.



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Duke Energy Indiana presents the information requested in 18 CFR § 292.302(b) in its Integrated Resource Plan (“IRP”). Duke Energy Indiana provided this information to the Commission in its last IRP filing in November 2015. Duke Energy Indiana maintains that this information has no bearing on the approval and reauthorization of this Rider 50, and due to the recent change in the cadence of IRP filings Duke Energy Indiana will submit this information to the Commission as part of its 2018 IRP filing.

**Initiation of a Statewide Docket to Investigate PURPA Implementation  
Is Not Appropriate At This Time**

Objectors’ true purpose for their objections appears to be the initiation of a statewide docket to investigate Indiana’s implementation of PURPA. This is not a legitimate basis for objecting to the 30-day Filing, since Section 10 contemplates submission of the energy and capacity rates pursuant to the Commission’s 30-day filing procedures to avoid lengthy proceedings considering them.

In any event, Duke Energy Indiana does not support a statewide docket to investigate PURPA implementation. The very regulations cited by Objectors are being reviewed by the FERC in Docket No. AD16-16. See Notice Inviting Post-Technical Conference Comments, Docket No. AD16-16 (FERC Sept. 6, 2016).<sup>2</sup> FERC’s Chairman, Neil Chatterjee, has explained the purpose of this investigation:

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation and modern realities.

Letter from Chairman Neil Chatterjee to Representative Tim Walberg (Nov. 29, 2017).<sup>3</sup> Moreover, Congress is currently considering changes that may be necessary to PURPA. The Energy and Commerce Subcommittees of the House of Representatives held a hearing on September 6, 2017 to hear testimony on the need for revisions to PURPA. *Powering America: Reevaluating PURPA’s Objectives and its Effects on Today’s Consumers before the H. Energy and Commerce S. Comm.*<sup>4</sup> Legislation has been introduced in the House of Representatives to

<sup>2</sup> Available at <https://www.ferc.gov/CalendarFiles/20160906164926-AD16-16-000%20TC2.pdf>.

<sup>3</sup> Available at [https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14624205](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14624205).

<sup>4</sup> Available at <https://energycommerce.house.gov/hearings/powering-america-reevaluating-purpas-objectives-effects-todays-consumers/>.



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modernize PURPA. H.R. 4476, 115<sup>th</sup> Congress (2015).<sup>5</sup> Given Congressional and FERC investigations into the need to update PURPA, any inquiry in Indiana, if appropriate, should await the outcome of these other PURPA inquiries because of the significant likelihood any changes would need to be considered by Indiana.

### Conclusion

Insomuch as the Objectors have issue with the manner in which the State of Indiana has implemented PURPA, their forum should be FERC. Duke Energy Indiana has met all rules set forth by the IURC and its filing complies with all state laws. Therefore, the IURC should reject the Objection filed by the CAC and the ELPC and approve Duke Energy Indiana's 30-Day Filing for its Standard Contract Rider No. 50.

Further, the Commission should reject the Objector's request to open an exhaustive, far-reaching statewide investigation on this issue. The Commission's rules and implementation of its QF policy adequately satisfies PURPA and the intent of PURPA.

Respectfully submitted,

Casey M. Holsapple, Atty. No. 27165-49  
Associate General Counsel  
Duke Energy Indiana, LLC  
1000 E. Main Street  
Plainfield, Indiana 46168  
(317) 838-1318  
[casey.holsapple@duke-energy.com](mailto:casey.holsapple@duke-energy.com)

cc: Barb Smith  
Jennifer Washburn  
Jeffrey Hammons  
Jane Steinhauer  
Jim Riddle

<sup>5</sup> Available at <https://www.congress.gov/bill/115th-congress/house-bill/4476/text>.



EXHIBIT A

Year	\$/kwh Energy	\$/kw Capacity
2006	0.034270	3.85
2007	0.032720	4.64
2008	0.032064	5.11
2009	0.024353	5.23
2010	0.026977	5.54
2011	0.031683	5.70
2012	0.033687	9.85
2013	0.028541	7.05
2014	0.031669	4.60
2015	0.030439	4.40
2016	0.029368	4.76
2017	0.029706	4.20
2018 proposed	0.028230	4.26

April 6, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204  
mbecerra@urc.in.gov  
*Electronically delivered*

RE: Reply to Duke Energy Indiana's Response to CAC and ELPC Objection

**Reply to Duke Energy's Response to Objection on behalf of  
Citizens Action Coalition and the Environmental Law & Policy Center**

Pursuant to Rule 170 IAC 1-6-7(d)(1), which states that 30-Day filings that have not been resolved to the satisfaction of the objector shall not be presented for Commission approval, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") respectfully submit this Reply to express their lack of satisfaction with Duke Energy Indiana, LLC's ("Duke Energy") Response, filed on April 2, 2018, to CAC and ELPC's Objection filed on March 23, 2018. The Commission's procedures allow a party to reply to a response in similar contexts. *See, e.g.* 170 IAC 1-1.1-12(f). The Objections and Response at issue concerns Duke Energy's 30-day filing, filed on February 23, 2018, IURC 30-Day Filing No. 50119.

Duke Energy's response failed to satisfy ELPC and CAC's objection, as required by 170 IAC 1-6-7(d)(1), and the response raised a number of issues demonstrating why the Commission should open an investigation into Indiana's implementation of PURPA. There are five key reasons why the Commission should deny Duke Energy's 30-day filing and open an investigation into Indiana's PURPA implementation.

**1. Duke Energy's Proposed Failure to Offer a Fixed Rate in its Standard Contract Conflicts with Federal Law.**

In its response, Duke Energy admitted that the rate in its standard contract changes every year annually, and this annual update does not allow qualifying facilities ("QFs") to obtain contracts longer than one-year with a rate fixed over a whole term. *See* Duke Response at 1 ("The standard contract. . . provides for a fixed rate. . . which is refreshed each year").

Duke Energy's admission demonstrates that its standard contract does not comply with federal law. The annual refresh to the avoided cost in Duke Energy's standard contract conflicts with 18 C.F.R. § 292.304(d)(2)(ii), which "requires QFs to have the option of fixing the contract price for the delivery of energy and capacity "at the time the obligation is incurred." *See Allco Renewable Energy Ltd v. Massachusetts Electric Co.*, 208 F. Supp. 3d 390, 400 (D. Mass. 2016) *aff'd* 875 F.3d 64 (1st Cir. 2017) (lack of option to obtain fixed rate in long term contracts renders state's PURPA implementation in conflict with PURPA); *Winding Creek Solar LLC v. Peevey*, \_ F. Supp. 3d. \_, No. 13-04934, 2017 WL 6040012, at \*10 (N.D. Cal. 2017) (PURPA

standard contract without option to fix rates over entire term conflicts with PURPA).

The North Carolina Utilities Commission (“NCUC”) recently rejected Duke Energy Carolinas, LLC, similar proposal to change the avoided cost rates in its standard contract every two years.<sup>1</sup> The NCUC explained:

The Commission determines, for purposes of this case, that Duke’s proposed two-year reset in the avoided energy rate component of the standard offer rate should not be adopted at this time. While some larger facilities may be able to negotiate for different terms and degrees of certainty with regard to securing capital and return on investment, the proposed two-year energy rate reset for facilities eligible for the standard offer rates adds an additional element of uncertainty to their ability to reasonably forecast their anticipated revenue, which may make obtaining financing more difficult than a longer term, fixed-rate PPA.<sup>2</sup>

Annual avoided cost updates, like those proposed by Duke Energy in Indiana, would be even more uncertain than Duke Energy’s unsuccessful biennial update proposal in North Carolina. According to the testimony of Cypress Creek Renewables, a QF developer in North Carolina, annual or biennial change to contract prices make QF financing prohibitively difficult:

Cypress Creek argues that financing parties would view a ten-year PPA with a two-year readjustment to the avoided energy rate no more favorably than they would a two-year contract, which would not be financeable. Cypress Creek witness McConnell testified that rates fixed over the term of the contract are critical to securing financing, stating that “fixed rates for a fixed period of time create financeable contracts,” and that what creates value in the contract is having a set avoided cost rate for a set period of time. He further testified that without these fixed rates, lenders are unwilling to bet on what the avoided cost rates will be going forward.<sup>3</sup>

Duke’s failure to offer QFs the choice of a long-term fixed rate contract conflicts with PURPA, as interpreted by FERC and other recent state commission orders. In addition, the lack of fixed rate contracts and its negative effect on QF development is an issue the Commission should investigate further, and the Commission should require Duke Energy offer QFs the ability to fix rates over an entire term, as required by PURPA.

## **2. Duke Energy’s One-year Standard Contract is not “Long Term,” as Required by Indiana Law.**

In its response, Duke Energy admitted that, in practice, it only offers one-year term lengths for its standard contract, and Duke Energy claimed that its one-year standard contract

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<sup>1</sup> See *In re Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2016*, Docket No. E-100 SUB 148, Order at 7 ¶ 10 (N. C. Pub. Util. Comm’n Oct. 11, 2017) available at <https://perma.cc/UUJ6-2G5Q>.

<sup>2</sup> *Id.*, Order at 69.

<sup>3</sup> *Id.*, Order at 67.

length “should be sufficient to obtain third-party financing.” Duke Response at 3. However, Duke Energy’s belief that one-year term lengths are sufficient conflicts with the affidavit of a potential QF developer that stated that term lengths of 15- to 20-years are required to obtain financing. *See* Affidavit of Sam Kliever at ¶ 3.<sup>4</sup>

The drastic difference of opinion between potential QF developers and Duke Energy demonstrates the need for Indiana to investigate the issue of adequate contract term lengths further. One-year contracts are not “long term,” as required by Indiana law. Burns Ind. Code Ann. § 8-1-2.4-4(a).

### **3. Duke Energy’s Reliance on a Recent Alabama Public Service Commission Decision is Misplaced.**

Duke Energy’s response cited a decision from Alabama but its reliance on this decision is misplaced. In that decision, the Alabama Public Service Commission (“APSC”) found Alabama Power Company’s (“Alabama Power”) one-year standard contract was sufficiently long to encourage development. Duke Response at 2-3. Unlike Indiana, however, Alabama law has no requirement for “long term” contracts. *See* Burns Ind. Code Ann. § 8-1-2.4-4(a).

In addition, a review of APSC Docket No. 5213 shows that the only party involved in the proceeding was the utility, and Alabama Power introduced no evidence concerning the adequacy of its proposed one-year standard contracts.<sup>5</sup> In that case, because the only party involved was the utility, the issue of contract length was not contested or litigated. Accordingly, the Commission should afford it little weight on the issue of adequate contract length.

APSC’s decision also conflicts with the well-reasoned decisions of Michigan, Oregon, and Wyoming where those states determined 20-year standard contracts were adequate and necessary.<sup>6</sup> A review of EIA data containing a list of all generators shows that Alabama Power only has two small power production QF on its system.<sup>7</sup> In contrast, Oregon, with 20-year term lengths, has *sixty-one* small power production QFs in the state. As the comparison demonstrates, Alabama Power’s one-year term lengths, like Duke Energy’s, do not encourage QF development.

Indiana law requires long-term contracts, Burns Ind. Code Ann. § 8-1-2.4-4(a), and Duke Energy’s one-year standard contract fails to comply with this requirement.

### **4. Duke Energy Has Not Complied With All Requirements of 18 C.F.R. § 292.302(b).**

In its response, Duke Energy admitted that it has not filed any information in compliance with 18 C.F.R. § 292.302(b) since its November 2015 integrated resource plan (“IRP”). Duke Response at 4. Accordingly, because 18 C.F.R. § 292.302(b) requires this information to be filed

<sup>4</sup> This affidavit was filed with ELPC and CAC’s Objection to NIPSCO’s 30-day filing.

<sup>5</sup> The only filing in the docket before the APSC’s March 7, 2017 Order was Alabama Power’s initial filing, which contained no evidence as to the sufficiency of its one-year standard contract. *See In re Alabama Power Co.*, Docket No. U-5213, Initial Filing (Feb. 21, 2017) available at <https://perma.cc/P2TZ-RW4Y>

<sup>6</sup> A detailed explanation of these states’ reasons for 20-year terms can be found in ELPC and CAC’s Objection to Duke Energy’s 30-day filing on page 5.

<sup>7</sup> <https://www.eia.gov/electricity/data/eia860/> (last updated Nov. 2017)

at least every two years, Duke Energy is not in compliance with this biennial requirement.

In addition, although Duke Energy's November 2015 IRP does show its planned capacity additions over the next ten years,<sup>8</sup> as required by 18 C.F.R. § 292.302(b)(2), nowhere in the IRP does it contain the "estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour." 18 C.F.R. § 292.302(b)(3).

Perhaps these estimated capacity costs are available in the non-public version of the IRP, but that too fails to comply with the regulation. The regulation states that utilities "shall maintain for public inspection" these "estimated capacity costs." 18 C.F.R. §§ 292.302(b), 292.302(b)(3). The "public inspection" requirement preempts application of trade secret or confidential treatment of the information required to comply with this regulation.<sup>9</sup> If Duke Energy wants to use its IRP to comply with 18 C.F.R. §§ 292.302(b)(3), then it cannot shield those estimated capacity costs from public view.

Duke Energy's and other utilities' lack of compliance with 18 C.F.R. § 292.302(b) undermines the purpose of these avoided cost informational filings and this lack of compliance demonstrates the need for Indiana to investigate the issue further.

**5. There Are Currently No Federal Investigations or Rulemakings into PURPA, and Even If There Were, It Should Not Stop the Commission from Exercising its Duly-delegated Authority to Implement PURPA and State Law.**

Duke Energy believes an investigation of PURPA implementation is not warranted in Indiana because there are already federal investigations into PURPA ongoing and therefore the State should allow the federal government to dictate what Indiana should do. Duke Response at 4-5. However, contrary to Duke Energy's assertions, there are no active FERC investigations or rulemakings related to PURPA. Duke Energy cited to a FERC order soliciting comments in Docket AD16-16, but FERC created that docket solely for its 2016 PURPA technical conference.<sup>10</sup> Conference participants filed their comments in Fall 2016, and FERC has taken no action and conducted no investigation or rulemaking following those comments.

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<sup>8</sup> Duke Energy Indiana, 2015 INTEGRATED RESOURCE PLAN at 158 (Nov. 2015), available at <https://perma.cc/XZB7-QNDT>.

<sup>9</sup> See *In Re Investigation of Central Maine Power Company's Resource Planning, Rate Structures, and Long-Term Avoided Costs (Rate Design Phase)*, Docket No. 92-315, 1995 Me. PUC LEXIS 11 at \*13-14 (Jan. 27, 1995 Me. Pub. Util. Comm'n). The Maine Public Utilities Commission stated:

Plainly, under this federal regulation, the specified avoided cost information must be filed with state regulatory agencies and the information must be publicly available. The federal regulation expressly regulates state activities and, under the supremacy clause, undoubtedly precludes any state action that would make the specified information not publicly available, e.g., pursuant to state trade secret protection law.

*Id.* at \*13.

<sup>10</sup> See *Notice of technical conference re Implementation Issues under the Public Utility Regulatory Policies Act of 1978*, Docket No. AD16-16 (F.E.R.C. Feb. 9, 2016) available at <https://perma.cc/TKU5-CBW9>; see also *Supplemental Notice Concerning Technical Conference*, Docket No. AD16-16 (F.E.R.C. Mar. 4, 2016) available at <https://perma.cc/A9TV-DLZW>.

Duke Energy misrepresented statements made by FERC's Chairman Neil Chatterjee. On October 30, 2017, Representative Tim Walberg sent a letter to FERC asking FERC to update its PURPA regulations. *See* Exhibit B. On November 29, 2017, FERC Chairman Neil Chatterjee responded with a two-paragraph letter and did not initiate an investigation or rulemaking in response to Walberg's letter. *See* Exhibit C. Nevertheless, Duke Energy attempts to use an excerpt of Neil Chatterjee's letter to explain "the purpose of this investigation," Duke Response at 4, even though no such investigation exists and the Chairman's letter does not reference an active investigation or rulemaking.

Duke Energy also cited to a recent bill introduced in Congress as evidence of another federal investigation. That bill, titled the PURPA Modernization Act, H.R. 4476, has sat in a House of Representative subcommittee since December 1, 2017 and has yet to be offered up for a vote.<sup>11</sup> Even if it passes the committee stage, it is unlikely to pass the full House of Representatives or the Senate. In addition, the legislation only effects the size of QFs and how PURPA could interact with integrated resource plans—it has nothing to do with adequate contract term lengths under Indiana law or compliance with 18 C.F.R. 292.302(b).

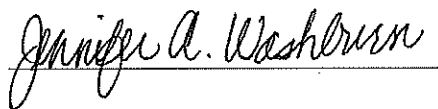
Duke Energy's reliance on federal activity as a reason for why the Commission should not open an investigation rings hollow. PURPA operates under a cooperative federalism framework whereby FERC issued the primary regulations but the State of Indiana is delegated authority to implement those regulations at the state level. *See* 16 U.S.C. § 824a-3(f). Indiana has adopted state laws and regulations to implement these requirements, including a state law that directs the commission to require electric utilities to enter into long-term contracts with alternate energy production facilities. Burns Ind. Code Ann. § 8-1-2.4-4(a). The existence, or not, of federal proceedings related to PURPA in no way negates the Commission's responsibility to implement and enforce existing state law. Finally, as Duke Energy noted, PURPA provides the Commission with the discretion to determine issues like contract term lengths, Duke Response at 1, and therefore Indiana's discretion and authority to investigate such issues is unaffected by the hypothetical existence of federal investigations into matters unrelated to Indiana's requirement for "long term" contracts. Burns Ind. Code Ann. § 8-1-2.4-4(a).

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Indiana should use its considerable discretion under PURPA to deny approval of Duke Energy's 30-day filing and open an investigation into PURPA implementation in the State. Issues for investigation should be adequate contract term lengths, compliance with 18 C.F.R. 292.302(b)'s biennial avoided cost information requirements, and other issues that the Commission determines are relevant. Other relevant issues could be how utilities calculate their avoided energy cost rates and whether the standard offer tariff and standard contracts should be available to QFs larger than 100 kW.

Dated April 6, 2018

Respectfully submitted,

  
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<sup>11</sup> *See* <https://www.congress.gov/bill/115th-congress/house-bill/4476/all-actions>

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Jeffrey Hammons  
Staff Attorney  
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Chicago, IL 60601  
(312) 795-3717  
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AD 16-16

**Congress of the United States  
Washington, DC 20515**

OFFICE OF  
EXTERNAL AFFAIRS

2017 OCT 31 P 2:45

FEDERAL ENERGY  
REGULATORY COMMISSION

October 30, 2017

The Honorable Neil Chatterjee  
Chairman  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Dear Mr. Chairman:

We are writing to urge the Federal Energy Regulatory Commission (FERC) to update its implementing regulations for the Public Utility Regulatory Policies Act (PURPA). As you know, PURPA was enacted in 1978 in response to an oil crisis. Over the last 40 years, we have seen dramatic changes in energy markets that have resulted in an abundance of domestic energy supplies. Two of the most significant changes have been the development of competitive wholesale electricity markets, which enable qualifying facilities (QFs) under PURPA to reach more willing buyers, and the declining costs for natural gas and renewable energy resources. These developments, along with others, have changed both the economics of QF development, as well as the impact of an increasing amount of QF output being placed on the transmission grid.

While there are aspects of the reform of PURPA that will require congressional action, there are also regulatory changes that FERC can make to ensure that its implementing regulations reflect the changes occurring in electricity markets. Many of these changes are already familiar to FERC and were addressed at the technical conference that your agency held on June 29, 2016, in Docket No. AD16-16-000. Among the issues addressed at the conference was the purported gaming of FERC's "one-mile rule" (*see* 18 CFR § 292.204(a)(2)) by certain QF developers. More than a year later, the House Energy and Commerce Subcommittee on Energy heard testimony during its September 6, 2017, hearing on PURPA, that some QFs are continuing to take advantage of FERC's regulations to effectively build projects that exceed the various size thresholds in the wholesale electricity markets regulated by FERC. However, since FERC has made clear in its decisions that its one-mile rule is irrebuttable, parties involved cannot challenge the lawfulness of these projects.

Eliminating the opportunity for certain QF developers to game FERC's one-mile rule will directly benefit electricity customers, who are paying billions of dollars in above-market prices for QF power sold under mandatory PURPA contracts. While the Energy and Commerce Committee considers additional reforms to PURPA, we encourage FERC to address the concerns raised at its 2016 technical conference and to use its authority to undertake needed modernization to the Commission's PURPA one-mile rule regulations while taking into consideration non-geographic factors as well.

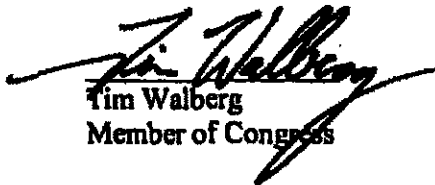
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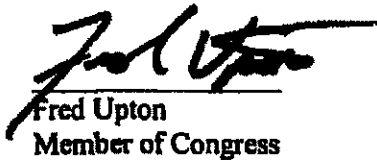


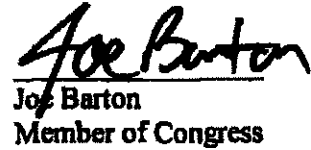
As Congress continues its review of PURPA, we request the list of changes and reforms the Commission believes it can make under its existing authority.

We look forward to working with the Commission to ensure our constituents can benefit from lower cost electricity, more competitive markets and advancements made in renewable generation.

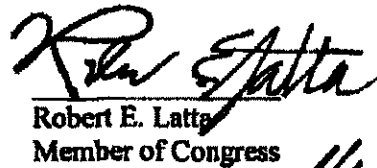
Sincerely,

  
Tim Walberg  
Member of Congress

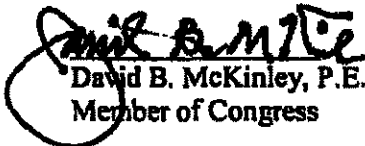
  
Fred Upton  
Member of Congress

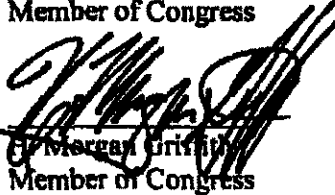
  
Joe Barton  
Member of Congress


  
Marsha Blackburn  
Member of Congress

  
Robert E. Latta  
Member of Congress

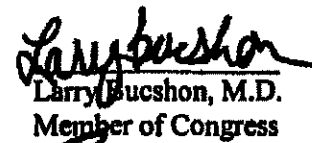
  
Gregg Harper  
Member of Congress

  
David B. McKinley, P.E.  
Member of Congress

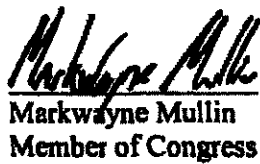
  
Morgan Griffith  
Member of Congress

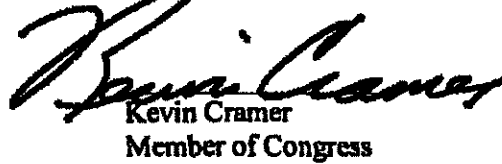
  
Bill Johnson  
Member of Congress

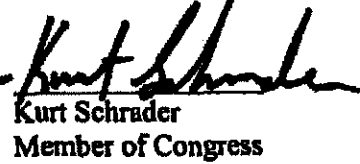
  
Dave Loebsack  
Member of Congress

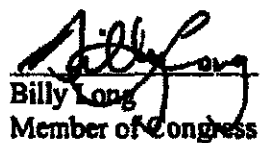
  
Larry Bucshon, M.D.  
Member of Congress

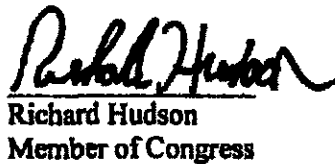
  
Bill Flores  
Member of Congress

  
Markwayne Mullin  
Member of Congress

  
Kevin Cramer  
Member of Congress

  
Kurt Schrader  
Member of Congress

  
Billy Long  
Member of Congress

  
Richard Hudson  
Member of Congress

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**FEDERAL ENERGY REGULATORY COMMISSION  
WASHINGTON, DC 20426**

November 29, 2017

**OFFICE OF THE CHAIRMAN**

**The Honorable Tim Walberg  
U. S. House of Representatives  
Washington, D.C. 20515**

Dear Congressman Walberg:

Thank you for your October 30, 2017, letter regarding the Public Utility Regulatory Policies Act of 1978 (PURPA).

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe that the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation with modern realities.

As you know, the Commission held a technical conference on June 29, 2016, in Docket No. AD16-16-000, to examine issues related to PURPA. Subsequently, the Commission solicited written comments from interested parties, which were submitted by November 7, 2016. One particular area where many parties have indicated a need for a different approach is the "one-mile rule" for qualifying facilities. Of course, other such areas may exist, too, and we owe it to stakeholders to continue taking a hard look at our regulations to identify those opportunities for improvement. Please be assured that I will keep your concerns in mind as the Commission explores these important issues. Your letter and this reply will be placed in the public record of Docket No. AD16-16-000.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Neil Chatterjee  
Chairman

Document Content(s)

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Submitted By: Jane Steinhauer  
Director, Electric Division

**Filing Party:** Northern Indiana Public Service Co.  
**30-Day Filing ID No.:** 50122  
**Date Filed:** February 28, 2018  
**Filed Pursuant To:** 170 I.A.C. 4-4.1-10  
**Request:** New Rate Schedules for Cogeneration and Alternate Energy Production Facilities.  
**Customer Impact:** N/A

<b>RIDER 778</b>			
<b>Purchases from Cogeneration Facilities and Small Power Production Facilities</b>			
<i>Measurement Method</i>	<i>Time Period</i>	<i>Energy (\$/kWh)</i>	<i>Capacity (\$/kW/month)</i>
Time of Use Meter	<i>Summer Period (May – Sept.)</i>		
	On-Peak <sup>1</sup>	\$0.03483	\$8.86
	Off-Peak <sup>2,5</sup>	\$0.02303	\$8.86
	<i>Winter Period (Oct. – Apr.)</i>		
	On-Peak <sup>3</sup>	\$0.03434	\$8.86
	Off-Peak <sup>4,5</sup>	\$0.02772	\$8.86
Standard Meter	Summer Period	\$0.02920	\$8.86
	Winter Period	\$0.03061	\$8.86

**Tariff Pages Affected:** IURC Original Volume No. 13:  
Second Revised Sheet No. 137, and Second Revised Sheet No. 138.

**Staff Recommendations:** Requirements met. Recommend approval.

**Additional Information:**

The Indiana Utility Regulatory Commission (“Commission” or “IURC”) received objections (Attachment A) from the Citizens Action Coalition (“CAC”) and the Environmental Law & Policy Center (“ELPC”) on March 23, 2018, regarding this filing. Commission staff sent a notification email (Attachment B) to the utility representative on the same day that the objections were filed. Northern Indiana Public Service Co. submitted a response (Attachment C) on April 2, 2018. CAC and ELPC provided a joint reply (Attachment D) on April 6, 2018.

Upon review of these documents, the Commission’s General Counsel has advised that CAC’s and ELPC’s objections do not comply with 170 IAC 1-6-7(b)(2), which requires an applicable law objection to be regarding the applicable law of the filing and an objection regarding completeness to be related to the law, rule, or order that applies to the filing. The 30-day filing was filed pursuant to 170 IAC 4-4.1-10 (“Section 10”) and in accordance with the Commission’s order in IURC Cause No. 37494 (1984 WL994597 (Ind. P.S.C.) – approved Oct. 5, 1984). However, the objections raised in CAC’s and ELPC’s filings are silent regarding the 30-day filing’s compliance with Section 10. In addition, the relief requested by the CAC and ELPC for revised filings with a required longer term and for a Commission investigation cannot be granted

through the 30-day filing process. Accordingly, Commission staff understands that the objections are outside of the scope of the filing and that the filings may proceed to the Commission for its determination and approval or denial.

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<sup>1</sup> Monday through Saturday 8 a.m. CST to 11 p.m. CST.

<sup>2</sup> Monday through Saturday 11 p.m. CST to midnight CST and midnight CST to 8 a.m. CST and all day Sunday.

<sup>3</sup> Monday through Friday 8 a.m. CST to 11 p.m. CST.

<sup>4</sup> Monday through Friday 11 p.m. CST to midnight CST and midnight CST to 8 a.m. CST and all day Saturday and Sunday.

<sup>5</sup> The twenty-four (24) hours of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day will be include in the Off-Peak Hours.

March 23, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204  
mbecerra@urc.in.gov  
*Electronically delivered*

RE: NIPSCO's 30-day filing on February 28, 2018, IURC 30-Day Filing No. 50122.

**Objection to NIPSCO's 30-Day Filing on behalf of  
Citizens Action Coalition and the Environmental Law & Policy Center**

Pursuant to the guidelines for submitting an objection to a 30-day filing as outlined on the Commission's website at <https://www.in.gov/iurc/2519.htm>, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") (collectively "Objectors") respectfully submit this Objection to the 30-day filing made by NIPSCO on February 28, 2018, IURC 30-Day Filing No. 50122. NIPSCO's 30-day filing is attached as Exhibit A.

NIPSCO's 30-day filing concerns its obligations under the Public Utility Regulatory Policies Act ("PURPA"), including PURPA's implementing regulations and Indiana's PURPA implementation. *See generally* 18 CFR § 292.101, *et seq.*; Burns Ind. Code Ann. § 8-1-2.4-1, *et seq.*; 170 IAC 4-4.1-1 *et seq.* PURPA requires electric utilities to purchase energy and capacity from qualifying facilities ("QFs"), and the rate for these mandatory purchases are based on the utility's avoided costs. *See* 18 C.F.R. §§ 292.303, 292.304.

An objection is valid if it alleges that a 30-day filing is in violation of applicable law or the filing is incomplete. *See* 170 IAC 1-6-7(b)(2)(A)(i), (b)(2)(C)(i). NIPSCO's 30-day filing violates applicable law by failing to include a standard contract as required by 170 IAC 4-4.1-11 and by failing to include avoided cost information required by 18 C.F.R. § 292.302(b). The failure to provide this legally required information violates applicable law and constitutes an incomplete filing.

NIPSCO's failure to provide a long-term standard contract with a fixed-rate inhibits development of QFs in Indiana and violates the state's policy to "encourage the development of alternate energy production facilities." Burns Ind. Code Ann. § 8-1-2.4-1. Increased QF development would introduce additional competition into Indiana's market by enabling private QF development at the utility's own avoided costs. Thus, PURPA is not a "subsidy" program for renewable energy. Instead, it is a cost-neutral policy that protects ratepayers by creating downward pressure on utility costs.

ELPC and CAC respectfully request that the Commission deny NIPSCO's 30-day filing and open a statewide docket to investigate and establish modernized PURPA implementation methodologies that will enable Indiana utilities to comply with state and federal law.

## BACKGROUND ON OBJECTORS

CAC is a 501(c)(4) membership organization of organizations and more than 40,000 individual members and contributors throughout the State of Indiana. CAC initiates, facilitates, and coordinates citizen action directed at improving the quality of life of all Indiana residents through principled advocacy of public policies that, among other things, promote government accountability and protect consumers and ratepayers. CAC and its members have an interest in promoting the development and availability of renewable energy through implementation of PURPA and are likely to suffer an injury if NIPSCO does not comply with its obligations under PURPA.

ELPC is a 501(c)(3) public interest organization that works to achieve cleaner air and water, promote renewable energy and energy efficiency resources, and preserve natural resources in Indiana and the Midwest. ELPC has an office located in Indianapolis and has members throughout the state of Indiana and the Midwest. On behalf of itself and its members, ELPC played a significant role in recent proceedings in Michigan, Iowa, and Minnesota where those states updated their implementation of PURPA. ELPC and its members have an interest in promoting the development and availability of renewable energy through implementation of PURPA and are likely to suffer an injury if NIPSCO does not comply with its obligations under PURPA.

## BACKGROUND ON PURPA

Congress enacted PURPA to “encourage the development of cogeneration and small power production facilities.” *Am. Paper Inst. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 405 (1983). PURPA combats an inefficient preference for utility self-generation and removes barriers for non-utility generation where such generation is cost-effective, thereby increasing competition and creating a downward pressure on power generation costs. *See In re Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities*, 75 F.E.R.C. P61,080, at § III.C (1996) (“Congress recognized that the rising costs and decreasing efficiencies of utility-owned generating facilities were increasing rates and harming the economy as a whole.”); *see also FERC v. Mississippi*, 456 U.S. 742, 750-751 (1982).

Accordingly, Indiana’s PURPA policy implementation is “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.” Burns Ind. Code Ann. § 8-1-2.4-1. Indiana’s implementation contains positive requirements that could encourage QF development, such as requiring long-term contracts and the establishment of standard contracts. *See Burns Ind. Code Ann. § 8-1-2.4-4(a); 170 IAC 4-4.1-11.* However, as will be shown below, utilities in Indiana are not complying with such requirements, and therefore Indiana utilities are falling short of the state’s explicit policy to “encourage the development of alternate energy production facilities.”

PURPA is the only federal law that requires competition in states that have not restructured their electricity markets. PURPA accomplishes this through its mandatory purchase obligation that ties the rates for purchase to a utility’s avoided cost. Tying rates to avoided costs



(1) ensures no subsidization occurs, (2) protects ratepayer interests, and (3) provides ratepayers the benefit of low-cost renewable generation.

State regulators and stakeholders are increasingly focused on PURPA in light of the dramatic reduction in renewable energy development costs. With the growing relevance of PURPA, other states are updating their implementation for the first time in over two decades. For instance, the Michigan Public Service Commission (“MPSC”) has been conducting a process to update its PURPA implementation. Beginning in late 2015, the MPSC ordered the creation of a working group to investigate the state’s implementation of PURPA and invited all utilities, developers, and other interested stakeholders to participate.<sup>1</sup>

In 2016, the investigation culminated in the MPSC’s Staff publishing a report detailing the state’s implementation with recommendations on how the MPSC could modernize its PURPA implementation.<sup>2</sup> The MPSC then instituted dockets for each regulated utility to modernize its PURPA implementation and to determine, among other things, (1) the appropriate avoided cost methodology, (2) adequate term length for standard contracts, and (3) adequate procedures to encourage development of QFs.<sup>3</sup> The MPSC ordered Michigan utilities to offer long-term contracts, and concluded that QF development could benefit ratepayers in several ways, such as offsetting or deferring the construction of large utility power plants. As the Commission recognized, “there is significant ratepayer value in deferring large, capacity additions through contracting with QFs for incremental capacity.”<sup>4</sup>

ELPC played a key role in Michigan’s update as an active participant in the investigation and as an intervenor in the subsequent dockets opened for each utility. ELPC has also participated as an intervenor in Iowa’s 2017 update to its PURPA implementation<sup>5</sup> and as intervenors in an ongoing complaint case between a QF and utility in Minnesota, which could result in Minnesota updating its PURPA implementation for the first time in over a decade.<sup>6</sup> ELPC and CAC respectfully request that the Commission deny NIPSCO’s 30-day filing and follow the lead of other Midwestern states to ensure that Indiana utilities are in full compliance with state and federal law.

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<sup>1</sup> See generally *In re, on the Commission’s own motion, commencing an investigation into the continuing appropriateness of the Commission’s current regulatory implementation of the Public Utility Regulatory Policies Act of 1978*, Case No. U-17973, Order Commencing Investigation (Oct. 27, 2015) available at <https://perma.cc/4ZVM-XFVD>.

<sup>2</sup> *Id.*, PURPA TECHNICAL ADVISORY COMMITTEE, Report on the Continued Appropriateness of the Commission’s Implementation of PURPA (April 8, 2016) available at <https://perma.cc/7JFL-HWEK>.

<sup>3</sup> See generally *In re Consumers Energy Co., et al.*, Case Nos. U-18089, U-18090, U-18091, U-18092, U-18093, U-18094, U-18095, Order (May 3, 2016) available at <https://perma.cc/B739-R7B5>.

<sup>4</sup> *In re Consumers Energy Co.*, Case No. U-18090, Order at 18, (Mich. Pub. Serv. Comm’n May 31, 2017) available at <https://perma.cc/4K2Z-5WWW>.

<sup>5</sup> See generally *In re Interstate Power and Light Co.*, Docket No. TF-2016-0290 (Iowa Util. Bd.); *In re MidAmerican Energy Co.*, Docket No. TF-2016-0294 (Iowa Util. Bd.).

<sup>6</sup> See generally *Red Lake Falls Community Hybrid, LLC v. Otter Tail Power Co.*, Docket No. 16-1021 (Minn. Pub. Util. Comm’n).

## OBJECTIONS

### **OBJECTION ONE: NIPSCO's 30-Day Filing Fails to Contain a Long-Term Contract and Contract Term Length, Both of Which are Required by Indiana Law.**

There are three requirements applicable to the standard contracts required in Indiana. First, Indiana law requires electric utilities to enter into “long term” contracts for the purchase of energy and capacity by PURPA QFs. Burns Ind. Code Ann. § 8-1-2.4-4(a). Second, Indiana’s PURPA regulations require electric utilities to file a standard contract that must include “[t]he term of the contract.” 170 IAC 4-4.1-11(c)(1). Third, federal law requires that long-term contracts include the ability to obtain fixed rates. 18 C.F.R. § 292.304(d)(2)(ii); *see also Winding Creek Solar LLC v. Peevey*, No. 13-04934, 2017 WL 6040012, at \*9 (N.D. Cal. 2017) (finding that a standard contract violates PURPA if it fails to contain an option to obtain fixed rates). “[S]tate regulatory authorities cannot preclude a QF — even an intermittent QF — from obtaining a legally enforceable obligation with a forecasted avoided cost rate.” *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 6 (2016).

NIPSCO’s 30-day filing fails to contain a standard contract, as required by 170 IAC 4-4.1-11. In contrast, Duke Energy Indiana has filed its standard contract every year since 2013.<sup>7</sup> In addition, Counsel for Objectors used reasonable efforts to locate NIPSCO’s standard contract but was unsuccessful. Counsel for Objectors:

- (1) Searched on NIPSCO’s website, including through NIPSCO’s rate book published online, but was unable to find the standard contract on NIPSCO’s website;
- (2) Reviewed all of NIPSCO’s 30-day PURPA filings dating back to 2009, which the Commission archived on its website,<sup>8</sup> but NIPSCO has not filed a standard contract in any of its 30-day filing dating back to 2009; and
- (3) Contacted NIPSCO through the contact information on its 30-day filing, but was informed by a representative that there are no standard contracts for their PURPA tariff.

The lack of a long-term, fixed rate contract has discouraged developers from pursuing projects in Indiana. *See* Affidavit of Jim Straeter at ¶ 2. Not only does NIPSCO apparently not have a standard contract with an option for long-term, fixed-rates, but it is unclear whether they are willing to offer contracts with rates fixed for periods longer than one-year. *See* Affidavit of Sam Kliewer at ¶ 2. NIPSCO’s currently effective PURPA tariff references a contract but does not indicate what term lengths are offered under the tariff or contract, other than stating that it must be at least three years, *see* Exhibit B at 4, but there is no indication of whether the rate is fixed over the term or whether longer term contracts are available.

The lack of a legally required, long-term contract with fixed rates in NIPSCO’s 30-day filing is important because the lack of long-term, fixed-rate contracts both violates the specific requirements of Indiana law *and* inhibits the development of QFs across Indiana, thus failing to promote Indiana’s policy of encouraging QF development. *See* Burns Ind. Code Ann. § 8-1-2.4-1. The Federal Energy Regulatory Commission (“FERC”), the agency delegated authority to

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<sup>7</sup> *See* IURC 30-Day Filing Nos. 50119 (2018), 50038 (2017), 3429 (2016), 3319 (2015), 3225 (2014), 3141 (2013).

<sup>8</sup> 30-day filings from 2009 to 2018 can be found at: <https://www.in.gov/iurc/2514.htm>

promulgate federal regulations and enforce PURPA, recognized that long-term contracts with QFs must be “long enough to allow QFs reasonable opportunities to attract capital from potential investors.” *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 8.

PURPA QFs cannot develop in Indiana without long-term, fixed-rate contracts, because such contracts are required to obtain the financing necessary to develop such projects. *See* Affidavit of Jim Straeter at ¶ 3; Affidavit of Sam Kliewer at ¶ 3.

Other states recognize the link between the availability of long-term, fixed-rate contracts and the encouragement of QF development. For instance, during Michigan’s recent update to its PURPA implementation, the MPSC required utilities to offer 20-year standard contracts because it “found persuasive the claim that longer contracts would benefit both QFs and the [utility] by allowing better access to investment and financing. . . .”<sup>9</sup> The Oregon Public Utility Commission (“OPUC”), in setting standard contract terms at 20 years, concluded that such a term length was necessary “to ensure the terms of the standard contract facilitate appropriate financing for a QF project.”<sup>10</sup> The Wyoming Public Service Commission concluded that long-term standard contracts are necessary for financing and that 20-year contract terms are “adequate for obtaining a QF project financing.”<sup>11</sup>

Short-term contracts do not encourage QF development because short-term contracts make financing QFs prohibitively difficult. *See* Affidavit of Jim Straeter at ¶ 3; Affidavit of Sam Kliewer at ¶ 3. To illustrate, compare the number of PacifiCorp’s QF contracts in Washington, which has 5-year terms<sup>12</sup>, to other states in which PacifiCorp operates. In Oregon and Wyoming where 20-year contract terms are required, PacifiCorp has **twenty-eight QF contracts and eight QF contracts**, respectively.<sup>13</sup> In Utah where 15-year contract terms are required, PacifiCorp has **twenty-six QF contracts**.<sup>14</sup> In contrast, the company has **only three QF contracts in Washington**, which again only allows for 5-year terms in its standard contract.<sup>15</sup>

Long-term contracts are vitally important to promoting QF development and furthering the policy goals of PURPA. NIPSCO’s failure to include a standard contract renders its 30-day filing in violation of applicable Indiana law requiring long-term contracts and a defined term length. Burns Ind. Code Ann. § 8-1-2.4-4(a); 170 IAC 4-4.1-11(c)(1).

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<sup>9</sup> *In re Consumers Energy Co.*, Case No. U-18090, Order at 22-23, (Mich. Pub. Serv. Comm’n May 31, 2017) available at <https://perma.cc/4K2Z-5WWW>.

<sup>10</sup> *In re Investigation Relating to Electric Utility Purchases from QFs*, OPUC Docket No. UM 1129, Order No. 05-584 at 19 (Ore. Pub. Util. Comm’n May 13, 2005) available at <https://perma.cc/C5YX-R3GG>.

In 2014, the OPUC reaffirmed the 20-year standard contract term length. *In re Investigation into QF Contracting*, OPUC Docket No. UM 1610, Order No. 14-058 (Feb. 24, 2014) available at <https://perma.cc/HL76-YJUG>.

<sup>11</sup> *In re the Application of RMP to Implement a Permanent Avoided Cost Methodology for Customers that do Not Qualify for Tariff Schedule 37 – Avoided Cost Purchases from QFs*, WPSC Docket No. 20000-388-EA-11, Record No. 12750, Order No. 20416 at 19 (Wyo. Pub. Serv. Comm’n Nov. 4, 2011) available at <https://perma.cc/EC8Q-FE4L>.

<sup>12</sup> *See* PacifiCorp, dba Pacific Power & Light Co., Schedule 37, Sheet No. 37.2 available at <https://perma.cc/97YD-LWKK>.

<sup>13</sup> *See* PacifiCorp 2017 Integrated Resource Plan at 78-79, available at <https://perma.cc/2JVR-U7SQ>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

**OBJECTION TWO: NIPSCO's 30-Day Filing Fails to Contain Avoided Cost Information Required by 18 C.F.R. § 292.302(b).**

Federal regulations require electric utilities to biennially file three categories of avoided cost information with the Commission and utilities must maintain this information for “public inspection.” 18 C.F.R. 292.302(b). First, utilities are required to submit 5-year estimates of their avoided energy costs. § 292.302(b)(1). Second, utilities are required to submit planned capacity additions over the next 10 years. § 292.302(b)(2). Third, utilities are required to submit the cost estimates for such capacity additions. § 292.302(b)(3).

NIPSCO's 30-day filing at issue in this Objection does not contain the avoided cost information required by 18 C.F.R. § 292.302, and neither does NIPSCO's 2017 30-day filing, IURC 30-Day Filing No. 50035. In contrast, Indiana Michigan Power Company has filed the information required by 18 C.F.R. § 292.302(b)(1) in the last two years<sup>16</sup>—but they too have not filed the information required by 292.302(b)(2) or (b)(3) in compliance with the biennial requirement.

In addition, Objectors are not aware of NIPSCO filing this required avoided cost information with the Commission in any other docket. Therefore, NIPSCO's 30-day filing at issue in this docket fails to comply with applicable federal law by not containing the required biennial avoided cost information.

**CONCLUSION**

Objectors respectfully request the Commission:

(1) Find that this Objection complies with 170 IAC 1-6-7, and that NIPSCO's 30-day filing, IURC 30-Day Filing No. 50122, not be presented to the full Commission for consideration under the 30-day administrative filing rule until these deficiencies are rectified;

(2) Require NIPSCO to file a standard contract with a defined term of sufficient length and the ability to fix rates over the term of the contract;

(3) Open a statewide docket to investigate PURPA implementation in Indiana. This investigation could examine and establish sufficient standard contract term lengths, whether the current avoided cost methodology adequately represents NIPSCO's avoided costs, and any other issues the Commission deems desirable.

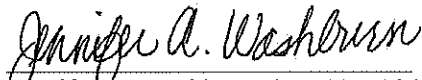
(signatures below)

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<sup>16</sup> See IURC 30-Day Filing Nos. 50125 (2018) and 50037 (2017).

Dated March 23, 2018

Respectfully submitted,



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(317) 735-7764  
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Chicago, IL 60601  
(312) 795-3717  
JHammons@elpc.org

February 28, 2018

Via Electronic Filing – 30 Day Filings - Electric

Mary M. Becerra  
Secretary to the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street  
Suite 1500 East  
Indianapolis, Indiana 46204

**RE: NIPSCO 30 Day Filing Pursuant to 170 IAC 1-6-1 et seq.**

Dear Ms. Becerra:

In accordance with 170 IAC 1-6-1, enclosed please find NIPSCO's (1) Second Revised Sheet No. 137 and (2) Second Revised Sheet No. 138 – to Rider 778 – Purchases from Cogeneration and Small Power Production Facilities. The referenced filing consists of NIPSCO's proposed revisions to update its energy and capacity rate schedule for purchases from cogeneration and small power production facilities pursuant to 170 IAC 4-4.1 et seq. The revisions are shown in the attached redlined tariff sheet. NIPSCO notes that although NIPSCO's most recently submitted IRP in 2016 identifies a Combined Cycle Gas Turbine ("CCGT") as NIPSCO's avoidable or deferrable unit, NIPSCO has based the rates for capacity purchases on the cost estimates for a Combustion Turbine ("CT") by operation of 170 IAC 4-4.1-9(c). The revisions impact any cogeneration and/or small power production facilities that qualify under the IURC Rules (170 IAC 4-4.1 et seq.) ("Qualifying Facilities") and that have executed a contract with NIPSCO setting forth all terms and conditions governing the purchase of electric power from the Qualifying Facility.

The proposed revisions are intended to revise the purchase rates applicable to participating customers under Rider 778. 170 IAC 1-6-3(6) states that a filing for which the Commission has already approved or accepted the procedure for the change is an allowable filing under the referenced procedures. NIPSCO is filing this tariff revision pursuant to 170 IAC 4-4.1, the Cogeneration and Alternate Energy Production Facilities Rule. Specifically, Rule 10 requires that on or before February 28 of each year a generating

electric utility shall file with the Commission a standard offer for purchase of energy and capacity at rates derived from the appropriate sections of this rule. Thus, this filing is an allowable request under 170 IAC 1-6-3. This filing does not require confidential treatment nor does it seek any other relief identified in 170 IAC 1-6-4, so it is not prohibited under the Commission's Rule.

In accordance with 170 IAC 1-6-5(2), contact information for the utility regarding this filing is:

Timothy R. Caister  
Vice President, Regulatory Policy  
Northern Indiana Public Service Company  
150 West Market Street, Suite 600  
Indianapolis, Indiana 46204  
317-684-4908  
317-684-4918 (Fax)  
[tcaister@nisource.com](mailto:tcaister@nisource.com)

In accordance with 170 IAC 1-6-5(3), the proposed tariff sheet is attached. In accordance with 170 IAC 1-6-5(4), the work papers supporting this filing are attached.

In accordance with 170 IAC 1-6-5(5), I have verified this letter as to these representations in compliance with 170 IAC 1-6-5(5). A copy of this filing is being provided via electronic mail to the Indiana Office of Utility Consumer Counselor ("OUCC").

In accordance with 170 IAC 1-6-6, NIPSCO has posted notice of this change in its local customer service office at 3229 Broadway, Gary, Indiana and has placed the notice on its website under pending tariffs (see <http://www.nipsco.com/About-us/Rates-Tariffs/30-Day-Filings.aspx>). A copy of the notice to be published in a newspaper of general circulation that has a circulation encompassing the highest number of NIPSCO customers affected by this filing is attached hereto. A copy of the proof of publication will be provided immediately upon its receipt.

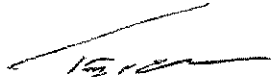
Indiana Utility Regulatory Commission

February 28, 2018

Page 3

Please let me know if the Commission Staff has any questions or concerns about this submission.

Sincerely,



Timothy R. Caister

Vice President, Regulatory Policy

Encl.

cc (w/ encl. – via email transmission)

William Fine, Indiana Office of Utility Consumer Counselor ([wfine@oucc.in.gov](mailto:wfine@oucc.in.gov),  
[infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov))



**RIDER 778**  
**PURCHASES FROM COGENERATION FACILITIES**  
**AND SMALL POWER PRODUCTION FACILITIES**

Sheet No. 1 of 4

**TO WHOM AVAILABLE**

As shown on Appendix A, this Rider is available to Cogeneration Facilities and/or Small Power Production Facilities which qualify under the IURC Rules (170 IAC 4-4.1-1 *et seq.*), as well as to Private Generation Projects as defined in Ind. Code § 8-1-2.4-2(g) (herein "Qualifying Facility"). A contract shall be required between the Company and each Qualifying Facility, setting forth all terms and conditions governing the purchase of electric power from the Qualifying Facility. The Qualifying Facility must be located adjacent to existing Company electric facilities having capacity sufficient to meet the Customer's requirements. Service under this Rider is subject to the conditions set forth in this Rider and the Company Rules.

**INTERCONNECTION STANDARDS**

The Qualifying Facility shall comply with the interconnection standards as defined in Rider 779 Interconnection Standards Rider.

**PURCHASE RATES**

Company will purchase Energy from the Qualifying Facility of Customer in accordance with the conditions and limitations of this Rider and the applicable contract at the following rate:

Rate for Purchase of Energy	<u>Current Rate per kWh</u>
Summer Period (May - Sept.)	
On-Peak Hours <sup>(1)</sup>	\$0.03483
Off-Peak Hours <sup>(2)(5)</sup>	\$0.02303
Winter Period (Oct. - Apr.)	
On-Peak Hours <sup>(3)</sup>	\$0.03434
Off-Peak Hours <sup>(4)(5)</sup>	\$0.02772

- (1) Monday through Saturday 8 a.m. C.S.T. to 11 p.m. C.S.T.
- (2) Monday through Saturday 11 p.m. C.S.T. to midnight C.S.T. and midnight C.S.T. to 8 a.m. C.S.T. and all day Sunday.
- (3) Monday through Friday 8 a.m. C.S.T. to 11 p.m. C.S.T.
- (4) Monday through Friday 11 p.m. C.S.T. to midnight C.S.T. and midnight C.S.T. to 8 a.m. C.S.T. and all day Saturday and Sunday.
- (5) The twenty-four (24) hours of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day will be included in the Off-Peak Hours.

**Issued Date**  
 \_\_/\_\_/2018

**Effective Date**  
 \_\_/\_\_/2018

**RIDER 778**  
**PURCHASES FROM COGENERATION FACILITIES**  
**AND SMALL POWER PRODUCTION FACILITIES**

Sheet No. 2 of 4

**PURCHASE RATES (Continued)**

For those Qualifying Facilities for whom metering not capable of recognizing different rating periods is installed:

	<u>Current Rate per kWh</u>
Summer Period	\$0.02920
Winter Period	\$0.03061

Energy metered during any month more than half of which is in any month of May to September, inclusive, shall be calculated under the Summer Period rates listed above. Energy credited during other periods of the year shall be calculated under the Winter Period rates listed above.

**Rate for Purchase of Capacity Component**

The Company will purchase capacity supplied from the Qualifying Facility of Customer in accordance with the conditions and limitations of this Rider and the applicable contract at the following rate:

\$ per kW per month of contracted capacity                      \$8.86 per kW per month.

The contracted capacity shall be the amount of capacity expressed in terms of kW that Customer guarantees the Qualifying Facility will supply to Company as provided in the contract for such service.

The monthly capacity component shall be adjusted by the following factor:

$$F = \frac{E_p}{K(T_p)}$$

Where:

F = Capacity component adjustment factor.

E<sub>p</sub> = kWhs delivered to the Company during the On-Peak Hours defined as:

Summer Period - Monday through Saturday 8 a.m. C.S.T. to 11 p.m. C.S.T.

Winter Period - Monday through Friday 8 a.m. C.S.T. to 11 p.m. C.S.T.

The twenty-four (24) hours of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day will not be included in the On-Peak Hours.

K = kW of capacity the Qualifying Facility contracts to provide.

T<sub>p</sub> = Number of On-Peak Hours.

Issued Date  
\_\_/\_\_/2018

Effective Date  
\_\_/\_\_/2018

**NIPSCO**

**RIDER 778**  
**PURCHASES FROM COGENERATION FACILITIES**  
**AND SMALL POWER PRODUCTION FACILITIES**

Sheet No. 1 of 4

**TO WHOM AVAILABLE**

As shown on Appendix A, this Rider is available to Cogeneration Facilities and/or Small Power Production Facilities which qualify under the IURC Rules (170 IAC 4-4.1-1 *et seq.*), as well as to Private Generation Projects as defined in Ind. Code § 8-1-2.4-2(g) (herein "Qualifying Facility"). A contract shall be required between the Company and each Qualifying Facility, setting forth all terms and conditions governing the purchase of electric power from the Qualifying Facility. The Qualifying Facility must be located adjacent to existing Company electric facilities having capacity sufficient to meet the Customer's requirements. Service under this Rider is subject to the conditions set forth in this Rider and the Company Rules.

**INTERCONNECTION STANDARDS**

The Qualifying Facility shall comply with the interconnection standards as defined in Rider 779 Interconnection Standards Rider.

**PURCHASE RATES**

Company will purchase Energy from the Qualifying Facility of Customer in accordance with the conditions and limitations of this Rider and the applicable contract at the following rate:

Rate for Purchase of Energy	<u>Current Rate per kWh</u>
Summer Period (May - Sept.)	
On-Peak Hours <sup>(1)</sup>	\$0.034833764
Off-Peak Hours <sup>(2)(5)</sup>	\$0.023032352
Winter Period (Oct. - Apr.)	
On-Peak Hours <sup>(3)</sup>	\$0.034343702
Off-Peak Hours <sup>(4)(5)</sup>	\$0.027722871

- (1) Monday through Saturday 8 a.m. C.S.T. to 11 p.m. C.S.T.
- (2) Monday through Saturday 11 p.m. C.S.T. to midnight C.S.T. and midnight C.S.T. to 8 a.m. C.S.T. and all day Sunday.
- (3) Monday through Friday 8 a.m. C.S.T. to 11 p.m. C.S.T.
- (4) Monday through Friday 11 p.m. C.S.T. to midnight C.S.T. and midnight C.S.T. to 8 a.m. C.S.T. and all day Saturday and Sunday.
- (5) The twenty-four (24) hours of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day will be included in the Off-Peak Hours.

Issued Date  
 / /20184/5/2017

Effective Date  
 / /20184/5/2017

**RIDER 778**  
**PURCHASES FROM COGENERATION FACILITIES**  
**AND SMALL POWER PRODUCTION FACILITIES**

Sheet No. 2 of 4

**PURCHASE RATES (Continued)**

For those Qualifying Facilities for whom metering not capable of recognizing different rating periods is installed:

	<u>Current Rate per kWh</u>
Summer Period	\$0.029203096
Winter Period	\$0.030613233

Energy metered during any month more than half of which is in any month of May to September, inclusive, shall be calculated under the Summer Period rates listed above. Energy credited during other periods of the year shall be calculated under the Winter Period rates listed above.

**Rate for Purchase of Capacity Component**

The Company will purchase capacity supplied from the Qualifying Facility of Customer in accordance with the conditions and limitations of this Rider and the applicable contract at the following rate:

\$ per kW per month of contracted capacity                      \$~~8.86~~10.31 per kW per month.

The contracted capacity shall be the amount of capacity expressed in terms of kW that Customer guarantees the Qualifying Facility will supply to Company as provided in the contract for such service.

The monthly capacity component shall be adjusted by the following factor:

$$F = \frac{E_p}{K(T_p)}$$

Where:

- F = Capacity component adjustment factor.
- E<sub>p</sub> = kWhs delivered to the Company during the On-Peak Hours defined as:
  - Summer Period - Monday through Saturday 8 a.m. C.S.T. to 11 p.m. C.S.T.
  - Winter Period - Monday through Friday 8 a.m. C.S.T. to 11 p.m. C.S.T.
 The twenty-four (24) hours of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day will not be included in the On-Peak Hours.
- K = kW of capacity the Qualifying Facility contracts to provide.
- T<sub>p</sub> = Number of On-Peak Hours.

**Issued Date**  
  /  /20184/5/2017

**Effective Date**  
  /  /20184/5/2017

**Avoided Cost 1218.xls**  
**IURC Filing Summary Page**

**NORTHERN INDIANA PUBLIC SERVICE COMPANY**  
**Rate Schedule For Purchases From Cogeneration And Small Power Production Facilities**

**Revised Sheet No. 138**  
**Page 2 of 4**

**Purchase Rates (Continued)**

**YEAR 2018**  
**Rate Per kWh**

Summer Period (May - Sept.)

On-Peak (1)	3.483	cents
Off-Peak (2) (5)	2.303	cents

Winter Period (Oct. - Apr.)

On-Peak (3)	3.434	cents
Off-Peak (4) (5)	2.772	cents

- (1) Monday - Saturday, 8 AM - 11 PM
- (2) Monday - Saturday, 11 PM - midnight & midnight - 8 AM & all day Sunday
- (3) Monday - Friday, 8 AM - 11 PM
- (4) Monday - Friday, 11 PM - midnight & midnight - 8 AM & all day Saturday & Sunday
- (5) 24 hours of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day & Christmas Day will be included in the Off-Peak period.

B. For those qualifying facilities for whom metering not capable of recognizing different rating periods is installed:

**YEAR 2018**  
**Rate Per kWh**

Summer Period	2.920	cents
Winter Period	3.061	cents

**YEAR 2018**

**Capacity Component**

\$ 8.86 per KW per month

NORTHERN INDIANA PUBLIC SERVICE COMPANY

SUMMARY OF AVOIDED ENERGY COSTS  
YEAR 2018

<u>Period</u>	<u>Avoided Cost Without Start-Up &amp; Econ. (mils/kWh)</u>	<u>Avoided Cost With Start-Up &amp; Econ. (mils/kWh)</u>	<u>Avoided Cost Adjusted For Losses (mils/kWh)</u>
<u>Summer</u>			
Peak Period	34.01	34.01	34.83
Off-Peak Period	22.49	22.49	23.03
Average	28.52	28.52	29.20
<u>Winter</u>			
Peak Period	33.54	33.54	34.34
Off-Peak Period	27.07	27.07	27.72
Average	29.89	29.89	30.61
Annual Average	29.32	29.32	30.02

The avoided costs have been adjusted for losses of 1/2 of: 4.81%  
 The above costs are based on estimated YEAR 2018 utilizing YEAR 2018 fuel budget.

**NORTHERN INDIANA PUBLIC SERVICE COMPANY**

Calculation of Unadjusted Monthly Capacity Payment Per KW  
December 2017 Capital Structure - End of Year Cost

<u>t</u> <u>Year</u>	<u>D</u> <u>(Col. 1)</u>	<u>A</u> <u>(Col. 2)</u>	<u>B</u> <u>(Col. 3)</u>	<u>A/B</u> <u>(Col. 4)</u>	<u>E</u> <u>(Col. 5)</u>	<u>D*V*A/B*E</u> <u>(Col. 6)</u>	<u>O*F</u> <u>(Col. 7)</u>	<u>C</u> <u>(Col. 8)</u>
1	1.09026	0.054804	0.815646	0.067191235	1.000000	92.95746	10.82	\$ 8.86

V of carrying costs = D = 1.09026  
 Investment = V = \$ 1,269  
 Life of Plant = n = 30  
 Plant Cost Inflation = ip = 0.021172506  
 O & M Inflation = io = 0.021172506  
 After tax Rate of Return = r = 0.080382042  
 O & M in first year = O = \$ 11.45  
 Average Annual Losses = I = 4.81%  
 Year of Contract = t = 1 to 25

Column 2 = A = 1 -  $\left[ \frac{(1+ip)}{(1+r)} \right]$   
 Column 3 = B = 1 -  $\left[ \frac{(1+ip)}{(1+r)} \right]^n$   
 Column 3 = B = 1 -  $(1+ip)^{(t-1)}$

F = Unadjusted Monthly Capacity Payment per KW

$$F = \left[ \frac{(1+ip)}{(1+r)} \right] * (1+io)^{(t-1)}$$

$$= \frac{(1/12) * ((D * V (A/B) * E) + (O * F))}{1 - (I/2)}$$

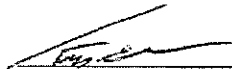
**Verified Statement of Northern Indiana Public Service Company  
Concerning Notification of Customers Affected by February 28, 2018 30-Day Filing**

Northern Indiana Public Service Company complied with the Notice Requirements under 170 IAC 1-6-6 in the following manner:

- The attached notice was posted in a public place at NIPSCO's customer service office at 3229 Broadway, Gary, Indiana;
- The same notice was posted on NIPSCO's website under 30-Day Filings (see <http://www.nipSCO.com/About-us/Rates-Tariffs/30-Day-Filings.aspx>).
- A legal notice was published in the Post Tribune, a newspaper of general circulation that has a circulation encompassing the highest number of the utility's customers affected by the filing on February 25, 2018. A copy of the Publisher's Affidavit will be submitted promptly upon receipt; and

I affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge, information and belief.

Dated this 28<sup>th</sup> day of February, 2018.



---

Timothy R. Caister  
Vice President, Regulatory Policy



## **NOTICE OF 30-DAY FILING**

On or about February 28, 2018, Northern Indiana Public Service Company (“NIPSCO”) will submit to the Indiana Utility Regulatory Commission for approval under its 30-Day Filing procedures, 170 IAC 1-6-1, *et seq.* a revised Rider 778 – Purchases from Cogeneration and Small Power Production Facilities (“Cogen Rider”). The referenced filing will consist of NIPSCO’s proposed revisions to update its energy and capacity rate schedule for purchases from cogeneration and small power production facilities. A decision on the 30-Day Filing is anticipated at least thirty days after the February 28, 2018 filing date. Any objection to the filing should be directed to (a) the Secretary of the Indiana Utility Regulatory Commission, PNC Center, 101 West Washington Street, Suite 1500 East, Indianapolis, IN 46204 or (b) the Indiana Office of Utility Consumer Counselor, PNC Center, 101 West Washington Street, Suite 1500 South, Indianapolis, IN 46204.

**RIDER 778**  
**PURCHASES FROM COGENERATION FACILITIES**  
**AND SMALL POWER PRODUCTION FACILITIES**

Sheet No. 1 of 4

**TO WHOM AVAILABLE**

As shown on Appendix A, this Rider is available to Cogeneration Facilities and/or Small Power Production Facilities which qualify under the IURC Rules (170 IAC 4-4.1-1 *et seq.*), as well as to Private Generation Projects as defined in Ind. Code § 8-1-2.4-2(g) (herein "Qualifying Facility"). A contract shall be required between the Company and each Qualifying Facility, setting forth all terms and conditions governing the purchase of electric power from the Qualifying Facility. The Qualifying Facility must be located adjacent to existing Company electric facilities having capacity sufficient to meet the Customer's requirements. Service under this Rider is subject to the conditions set forth in this Rider and the Company Rules.

**INTERCONNECTION STANDARDS**

The Qualifying Facility shall comply with the interconnection standards as defined in Rider 779 Interconnection Standards Rider.

**PURCHASE RATES**

Company will purchase Energy from the Qualifying Facility of Customer in accordance with the conditions and limitations of this Rider and the applicable contract at the following rate:

Rate for Purchase of Energy	<u>Current Rate per kWh</u>
Summer Period (May - Sept.)	
On-Peak Hours <sup>(1)</sup>	\$0.03764
Off-Peak Hours <sup>(2)(5)</sup>	\$0.02352
Winter Period (Oct. - Apr.)	
On-Peak Hours <sup>(3)</sup>	\$0.03702
Off-Peak Hours <sup>(4)(5)</sup>	\$0.02871

- (1) Monday through Saturday 8 a.m. C.S.T. to 11 p.m. C.S.T.
- (2) Monday through Saturday 11 p.m. C.S.T. to midnight C.S.T. and midnight C.S.T. to 8 a.m. C.S.T. and all day Sunday.
- (3) Monday through Friday 8 a.m. C.S.T. to 11 p.m. C.S.T.
- (4) Monday through Friday 11 p.m. C.S.T. to midnight C.S.T. and midnight C.S.T. to 8 a.m. C.S.T. and all day Saturday and Sunday.
- (5) The twenty-four (24) hours of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day will be included in the Off-Peak Hours.

**Issued Date**  
4/5/2017

**Effective Date**  
4/5/2017

**RIDER 778**  
**PURCHASES FROM COGENERATION FACILITIES**  
**AND SMALL POWER PRODUCTION FACILITIES**

Sheet No. 2 of 4

**PURCHASE RATES (Continued)**

For those Qualifying Facilities for whom metering not capable of recognizing different rating periods is installed:

	<u>Current Rate per kWh</u>
Summer Period	\$0.03096
Winter Period	\$0.03233

Energy metered during any month more than half of which is in any month of May to September, inclusive, shall be calculated under the Summer Period rates listed above. Energy credited during other periods of the year shall be calculated under the Winter Period rates listed above.

**Rate for Purchase of Capacity Component**

The Company will purchase capacity supplied from the Qualifying Facility of Customer in accordance with the conditions and limitations of this Rider and the applicable contract at the following rate:

\$ per kW per month of contracted capacity                      \$10.31 per kW per month.

The contracted capacity shall be the amount of capacity expressed in terms of kW's that Customer guarantees the Qualifying Facility will supply to Company as provided in the contract for such service.

The monthly capacity component shall be adjusted by the following factor:

$$F = \frac{E_p}{K(T_p)}$$

Where:

F = Capacity component adjustment factor.

E<sub>p</sub> = kWhs delivered to the Company during the On-Peak Hours defined as:

Summer Period - Monday through Saturday 8 a.m. C.S.T. to 11 p.m. C.S.T.

Winter Period - Monday through Friday 8 a.m. C.S.T. to 11 p.m. C.S.T.

The twenty-four (24) hours of New Year's Day, Memorial Day, Independence Day, Labor Day, Thanksgiving Day and Christmas Day will not be included in the On-Peak Hours.

K = kW's of capacity the Qualifying Facility contracts to provide.

T<sub>p</sub> = Number of On-Peak Hours.

**Issued Date**  
4/5/2017

**Effective Date**  
4/5/2017

**NIPSCO**

**RIDER 778  
PURCHASES FROM COGENERATION FACILITIES  
AND SMALL POWER PRODUCTION FACILITIES**

Sheet No. 3 of 4

**PURCHASE RATES (Continued)**

The kW capacity available and the kWhs in the On-Peak Hours shall be determined by a suitable recording type instrument acceptable to the Company.

For intended purchases of 72,000 kWhs or more per month from a Qualifying Facility, the Company and the Qualifying Facility may agree to increase or decrease the rate for Energy purchase in recognition of the following factors:

1. The extent to which scheduled outages of the Qualifying Facility can be usefully coordinated with scheduled outages of the Company's generation facilities; or
2. The relationship of the availability of Energy from the Qualifying Facility to the ability of the Company to avoid costs, particularly as is evidenced by the Company's ability to dispatch the Qualifying Facility; or
3. The usefulness of Energy from the Qualifying Facility during system emergencies, including the ability of the Qualifying Facility to separate its load from its generation.

The Company and Qualifying Facility may negotiate a rate for Energy or capacity purchase which differs from this filed rate.

**DETERMINATION OF AMOUNT OF ENERGY PURCHASED**

To properly record the number of kWhs, and where applicable, kW of purchases, the Company and the Qualifying Facility should mutually agree on the metering configuration to be utilized in accordance with 170 IAC 4-4.1 Section 7 (b). The metering facilities shall be installed and will be owned by the Company, and the Qualifying Facility will be required to reimburse the Company for the installed cost of said metering equipment. The Company need not make purchases during the time of a system emergency.

**GENERAL TERMS AND CONDITIONS FOR PURCHASE**

**Contract**

Any cogenerator or small power producer requesting service under this Rider shall enter into a written contract for an initial period of not less than one (1) Contract Year.

**Issued Date  
7/18/2016**

**Effective Date  
9/29/2016**

**NIPSCO**

**RIDER 778**  
**PURCHASES FROM COGENERATION FACILITIES**  
**AND SMALL POWER PRODUCTION FACILITIES**

Sheet No. 4 of 4

**Curtailing Purchase**

The Company reserves the right to Curtail the purchase at any time when necessary to make emergency repairs. For the purpose of making other than emergency repairs, the Company reserves the right to disconnect the Qualifying Facility's electric system for four (4) consecutive hours on any Sunday, or such other day or days as may be agreed to by the Qualifying Facility and the Company, provided forty-eight (48) hours' notification previous to the hour of cut-off is given the Qualifying Facility of such intention.

**Additional Load**

The Qualifying Facility shall notify the Company in writing of any substantial additions to or alterations in the equipment supplying electric Energy to the Company and such additions or alterations shall not be connected to the system until such notice shall have been given by the Qualifying Facility and received by the Company.

**Discontinuance of Purchase**

The Company shall have the right to cut off and discontinue the purchase of electric Energy and remove its metering equipment and other property when there is a violation by the Qualifying Facility of any of the terms or conditions of the contract or this Rider.

**Back-up and Maintenance Power**

Back-up and maintenance power is electrical Energy and capacity provided by the Company to a Qualified Facility to replace Energy, ordinarily generated by the Qualifying Facility, during a scheduled or unscheduled outage of the Qualifying Facility. Any back-up and maintenance power taken by the Qualified Facility will be billed under the appropriate Rate Schedule.

**GENERAL TERMS AND CONDITIONS OF SERVICE - CONTRACT**

Any Qualified Facility requesting service under this Rider shall enter into a written contract for an initial period of not less than three (3) Contract Years.

In such contract it shall be proper to include such provisions, if any, as may be agreed upon between the Company and the Qualified Facility with respect to special terms and conditions under which service is to be furnished hereunder, including but not limited to, amount of Contract Demand, voltage to be supplied, and facilities to be provided by each party in accordance with the Company Rules.

**Issued Date**  
**7/18/2016**

**Effective Date**  
**9/29/2016**

**NIPSCO**

**STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION**


**AFFIDAVIT OF JAMES E STRAETER**

James E Straeter, being duly sworn, deposes and states as follows:

1. I am the President of Ag Technologies, Inc in Rochester, IN. We have been installing solar as a part of our business since August of 2012. We have developed a patented system that provides for superior efficiency. We are a family-owned business and Ag Technologies is part of a seven-store farm equipment dealership organization covering North Central Indiana. I sell solar along with two sons and manage sales through other dealers in Indiana, Illinois and Ohio.
2. I have considered pursuing development of solar energy projects in Indiana under the PURPA tariff for Duke Energy Indiana and NIPSCO as well as several REMCs. However, upon reviewing the PURPA tariff for Duke Energy, there did not appear to be any method of obtaining long-term contracts with fixed rates. I was unable to locate a standard contract for NIPSCO's PURPA tariff, too. Due to the apparent inability to obtain long-term, fixed rate contracts, I decided against pursuing plans to develop solar energy projects based on the PURPA tariff.
3. I need the ability to obtain long-term contracts with fixed rates in order to obtain the financing necessary to develop solar projects. Without fixed rate contracts over a sufficient period of time, in my experience, financiers will not be willing to take on the risk involved with variable rates and short term contracts. Because financiers will not take on the risk, a risk my business cannot take as well, they will not finance possible solar project development.
4. I affirm, under the penalties of perjury, that the representations in the foregoing are true to the best of my knowledge, information and belief.

(signature follows)

Dated: March 23, 2018



---

James E Straeter

President

Ag Technologies Inc

1268 E 100 S, Rochester, IN 46975

574-224-8324

**STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION**

**AFFIDAVIT OF SAM KLIEWER**

Sam Kliewer, being duly sworn, deposes and states as follows:

1. My name is Sam Kliewer. I am a Policy Manager for Cypress Creek Renewables. Cypress Creek Renewables is one of the leading utility scale solar and solar + storage developers in the nation. In my role as a Policy Manager I am a subject matter expert on PURPA avoided costs and energy storage in eastern markets.
2. From early 2016 to early 2018, Cypress Creek negotiated with NIPSCO in an effort to execute a contract under NIPSCO's PURPA Tariff. NIPSCO indicated it could offer contracts over a year in length, but that contract would have a variable avoided cost rate that changed annually based on NIPSCO's annual update to its PURPA Tariff's avoided cost rates. NIPSCO would not agree to a contract with fixed rates longer than a year. The inability to reach an agreement on long-term, fixed rate contract has made it impossible for us to execute an agreement.
3. Long-term, fixed rate contracts are necessary for Cypress Creek to obtain the necessary financing to develop a project. In my experience, long-term, fixed rate contracts provide stability and minimize risk. This stability and minimized risk is necessary before a financier will provide the funds necessary to develop projects. It would be difficult to find any financier willing to provide funds with a contract that does not have fixed rates. In my experience, 15- to 20-year fixed rate contracts provide the stability and minimal risk necessary to attract financing.
4. I affirm, under the penalties of perjury, that the representations in the foregoing are true to the best of my knowledge, information and belief.

(signature follows)



Dated: March 23, 2018



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Sam Kliewer  
Policy Manager  
Cypress Creek Renewables  
130 Roberts Street  
Asheville, NC 28801  
(828) 233-8159  
sam.kliewer@ccrenew.com

**From:** [Steinhauer, Jane](#)  
**To:** [tcaister@nisource.com](mailto:tcaister@nisource.com)  
**Cc:** [Heline, Beth E.](#); [Veneck Jr., Robert](#); [Stevens, George](#); [Jones, Meredith W](#); [Thomas, Dale](#)  
**Subject:** CAC Objection to 30-day Filing No. 50122  
**Date:** Friday, March 23, 2018 4:06:55 PM  
**Attachments:** [ELPC CAC Objection to NIPSCO 30-day Filing PURPA - FINAL w attachments.pdf](#)

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Mr. Caister,

The Citizens Action Coalition (CAC) submitted an objection to the pending 30-day filing identified with the tracking number 50122. The Commission is required to promptly notify the utility of any objection it receives. This email serves as notification of such an objection. Additionally, the objection is attached to this email. Pursuant to 170 IAC 1-6-7(c), the utility may submit, within 10 calendar days following this notification, one or more of the following:

- 1) A response to the objection
- 2) Clarification of the filing
- 3) Additional information
- 4) An amendment to the filing
- 5) A withdrawal of its filing

Here is a link to the guidelines regarding objections to 30-day filings - <http://in.gov/iurc/2519.htm>.

Sincerely,

Jane Steinhauer

April 2, 2018

Mary M. Becerra  
Secretary to the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street  
Suite 1500 East  
Indianapolis, Indiana 46204

**RE: NIPSCO's 30-Day Administrative Filing No. 50122**

Dear Ms. Becerra:

Northern Indiana Public Service Company LLC ("NIPSCO") hereby responds to the objection filed by the Citizens Action Coalition of Indiana and the Environmental Law & Policy Center (collectively the "Objectors") to NIPSCO's Thirty Day Administrative Filing (the "Filing") for Rider 778. The Filing has been assigned the tracking number 50122 by the Indiana Utility Regulatory Commission ("Commission"). The Filing was made by NIPSCO to comply with 170 IAC 4-4.1-10 ("Section 10"). Section 10 requires each generating electric utility to annually file updated standard offer rates for the purchase of energy and capacity from a cogeneration facility. The energy and capacity rates must be derived from the appropriate application of 170 IAC 4-4.1-8(a) and 9(c) through 9(d).

The Objectors do not object to the Filing on the basis that the energy and capacity rates are not derived from the appropriate application of Sections 8(a) or 9(c) through 9(d) or otherwise fail to comply with the requirements of Section 10. Instead, the Objectors contend the Filing is "incomplete and violates applicable law" because NIPSCO (a) did not submit a standard contract pursuant to 170 IAC 4-4.1-11 and (b) does not include avoided cost information the Objectors imply must be included in the Filing by 18 CFR § 292.302(b). The Objectors' contentions misconstrue the obligations imposed on NIPSCO. Section 10 does not require NIPSCO to include a standard contract with its annual update to the rates for energy and capacity purchases from a cogeneration facility and no other provisions of the Indiana regulations require such a submission. Neither does Section 10 require NIPSCO to submit rates that comply with 18 C.F.R. § 292.302(b) as part of the Section 10 filing. Consequently, the Filing does not violate applicable

Attachment C

law, is not incomplete and there is no permissible basis identified by the Objectors to object to the Filing.

### **NIPSCO Is Not Required To Submit A Standard Contract**

NIPSCO submitted the Filing to comply with Section 10. Objectors do not refer or site to any provision in Section 10 requiring NIPSCO to submit a standard offer contract when submitting its standard offer rates for purchase of energy and capacity each February 28. Indeed, no provision in Section 10 requires a standard offer contract to be submitted with this annual filing. Since Section 10 does not require a standard contract, no credible objection can be raised to a Section 10 filing on the basis that a standard contract was not included in the filing.

170 IAC 4-4.1-11 ("Section 11") does require submission of a standard offer contract, but Objectors ignore the specific language of the regulation making clear that a generating electric utility is not required to annually submit a standard offer contract with each filing made under Section 10:

Sec. 11. (a) Within sixty (60) days of the effective date of this rule each generating electric utility shall submit for approval via the commission's thirty (30) day filing process a standard form contract which it would enter into with a qualifying facility in connection with the generating electric utility's purchase of energy or capacity or both.

The submission of these standard offer contracts was a one-time requirement that was required to have been performed within sixty (60) days of the effective date of the rule. NIPSCO complied with this requirement by submitting a copy of its standard form agreement at the time the rule was adopted. Nothing further is required by Sections 10 or 11 with respect to this standard form contract.

The Objectors also state they were unable to locate NIPSCO's standard contract and that NIPSCO did not provide it upon request. However, the Objectors' ability to locate the contract has no bearing on the Filing's compliance with Section 10. Although the Objectors state that they contacted Tim Caister and were informed by him that there was no standard contract, Mr. Caister has no recollection of such a conversation, nor was the undersigned able to find anyone at NIPSCO who was asked for a copy of the standard contract in the recent past. In fact, the first contact from the Objectors of which the undersigned is aware was

Mary M. Becerra

April 2, 2018

Page 3 of 5

on the Monday after the objection was filed. Attached to this letter is a copy of the 1985 standard contract. To the best of the undersigned's knowledge, no customer has requested service pursuant to this form contract in the past 8 years and in fact, while NIPSCO has customers receiving compensation pursuant to Rider 778 or pursuant to its Feed In Tariff offerings, all of those agreements were approved either in docketed commission proceedings and/or through thirty day filings, all of which are publicly available. Notwithstanding the affidavits attached to Objectors' objection, as previously stated NIPSCO already has entered into contracts. For example, Mr. Straeter's affidavit fails to note the existence of NIPSCO's feed in tariff. Mr. Kliewer's affidavit also fails to mention NIPSCO's feed in tariff or why his project is not eligible for consideration for that treatment.

At bottom, the Objectors contention that "lack of a long-term, fixed rate standard contract has likely discouraged developers from pursuing projects in Indiana," is not relevant to NIPSCO's compliance with the thirty day filing rules.

**NIPSCO's Section 10 Filing Need Not Comply With 18 CFR §292.302(b)**

Similarly, the Objectors' contention that the Filing, which was made pursuant to Section 10, does not include the avoided cost information required by 18 CFR § 292.302(b) provides no legitimate basis to object to the Filing. NIPSCO was not submitting the Filing to comply with 18 C.F.R. § 292.302(b), but to comply with Section 10. The Objectors do not contend that the Filing fails to comply with Section 10 in any respect. No provision in Section 10 requires a generating electric utility to submit the information required by 18 CFR § 292.302 as part of the annual 30-day filing required by Section 10. A filing cannot reasonably be held to violate Section 10 or be incomplete because it fails to include information not required by Section 10.

While not relevant to the legitimacy of the Objectors' objections, NIPSCO has complied with many of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan ("IRP") which was filed on November 1, 2016. The IRP evaluates NIPSCO's planned capacity additions over at least 10 years and establishes the cost of capacity additions.

The basis for Objectors' objection to NIPSCO's Filing is without merit. The Filing is neither incomplete nor in violation of applicable law. For these reasons, NIPSCO's Filing should be presented to the Commission for consideration.

**Initiation Of a Statewide Docket To Investigate PURPA Implementation  
Is Not Appropriate At This Time**

Objectors' true purpose for their objection appears to be the initiation of a statewide docket to investigate Indiana's implementation of the Public Utilities Regulatory Policy Act ("PURPA"). This is not a legitimate basis for objecting to the Filing, since Section 10 contemplates submission of the energy and capacity rates pursuant to the Commission's 30-day filing procedures to avoid lengthy proceedings considering them.

Apart from Objectors' misuse of the objection provision of the 30-day filing procedure, now is not the time for Indiana to initiate a statewide docket to investigate PURPA implementation. The very regulations cited by Objectors are being reviewed by the Federal Energy Regulatory Commission ("FERC") in Docket No. AD16-16. *See* Notice Inviting Post-Technical Conference Comments, Docket No. AD16-16 (FERC Sept. 6, 2016).<sup>1</sup> FERC's Chairman, Neil Chatterjee, has explained the purpose of this investigation:

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation and modern realities.

Letter from Chairman Neil Chatterjee to Representative Tim Walberg (Nov. 29, 2017).<sup>2</sup> Moreover, Congress is considering changes that may be necessary to PURPA. The Energy and Commerce Subcommittees of the House of Representatives held a hearing on September 6, 2017 to hear testimony on the need for revisions to PURPA. *Powering America: Reevaluating PURPA's Objectives and its Effects on Today's Consumers before the H. Energy and Commerce S. Comm.*<sup>3</sup> Legislation has been introduced in the House of Representatives to modernize PURPA. H.R. 4476, 115<sup>th</sup> Congress (2015).<sup>4</sup> Given Congressional and FERC investigations into the need to update PURPA, any inquiry in

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<sup>1</sup> Available at <https://www.ferc.gov/CalendarFiles/20160906164926-AD16-16-000%20TC2.pdf>.

<sup>2</sup> Available at [https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14624205](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14624205).

<sup>3</sup> Available at <https://energycommerce.house.gov/hearings/powering-america-reevaluating-purpas-objectives-effects-todays-consumers/>.

<sup>4</sup> Available at <https://www.congress.gov/bill/115th-congress/house-bill/4476/text>.

Mary M. Becerra

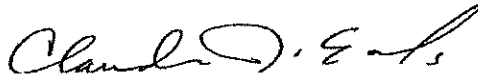
April 2, 2018

Page 5 of 5

Indiana, if appropriate, should await the outcome of these other PURPA inquiries because of the significant likelihood any changes would need to be considered by Indiana.

For the reasons set forth herein, NIPSCO's Filing should be presented to the Commission for consideration.

Sincerely,

A handwritten signature in cursive script, appearing to read "Claudia J. Earls".

Claudia J. Earls

THIS DOCUMENT IS A STANDARD FORM  
PREPARED IN COMPLIANCE WITH 170 IAC 4-4.1-11.  
IT IS NOT INTENDED AND SHOULD NOT BE CONSTRUED AS AN  
OFFER TO PURCHASE CAPACITY AND ENERGY GENERATED BY  
A SPECIFIC QUALIFYING FACILITY.  
NIPSCO RESERVES THE RIGHT TO MAKE MODIFICATIONS OR  
REVISIONS TO THIS STANDARD DOCUMENT, SUBJECT TO THE  
REVIEW AND APPROVAL OF THE PUBLIC SERVICE COMMISSION OF INDIANA.

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NORTHERN INDIANA PUBLIC SERVICE COMPANY

STANDARD TERMS AND CONDITIONS

For Purchase Of

CAPACITY AND ENERGY

From

QUALIFYING FACILITIES

June 4, 1985

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COGENERATION AGREEMENT

This Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, between \_\_\_\_\_, a \_\_\_\_\_, hereinafter called the "Qualifying Facility" and NORTHERN INDIANA PUBLIC SERVICE COMPANY, an Indiana corporation, hereinafter called the "Company," WITNESSETH:

STATUS OF QUALIFYING FACILITY

The qualifying facility owns a cogeneration and/or small power production facility which qualifies under the Order of the Public Service Commission of Indiana in Cause No. 37494. The qualifying facility wishes to sell, and the Company wishes to purchase electric power from the qualifying facility.

AMOUNT OF SALE AND PURCHASE

The qualifying facility agrees to sell and deliver and the Company agrees to purchase and accept delivery of the energy or energy and capacity as indicated below:

- 1. ENERGY \_\_\_\_\_ Kwh per Month
- 2. CAPACITY \_\_\_\_\_ Kw

CONTRACT TERM

The qualifying facility shall begin to supply electric service hereunder on or about \_\_\_\_\_, 19 \_\_, and this contract shall then continue in effect for an initial term ending \_\_\_\_\_, 19 \_\_, and from year to year thereafter unless cancelled by either party giving to the other not less than sixty days' prior written notice of the termination thereof at the expiration of the initial term or, at the end of the yearly period first occurring after the giving of such notice.

PAYMENT CONDITIONS

The Company agrees to pay the qualifying facility within 15 days from the date of bills issued monthly by the qualifying facility for all electric service supplied hereunder in accordance with the schedule of rates for such service applicable at the time such service is supplied.

APPLICABILITY OF RATE SCHEDULE

This contract is in accordance with the present current schedule of rates on file with, and approved by, the Public Service Commission of Indiana, which rates are subject to change as provided by law. In case such rates are decreased, the qualifying facility may cancel this contract by giving written notice thereof at any time prior to 60 days after the rate decrease becomes effective. Electric service supplied after such lower rates become effective shall be taken and paid for at such decreased rates.

The terms, provisions and conditions of the rate schedule applicable to the electric service supplied hereunder are made a part of this contract, and shall be binding upon the parties hereto.

The Company's rate schedule for purchases from cogeneration and small power production facilities applicable at the date of this contract to the electric service supplied hereunder is, by reference thereto, hereby made a part hereof, and the Customer acknowledges receipt of a copy of the same.

INTERCONNECTION TERM AND CONDITIONS

The qualifying facility shall reimburse the Company for all interconnection costs the Company has reasonably incurred, and the Company will connect its power supply lines to the terminals of a service entrance connection which shall be provided by the qualifying facility and located on an outside wall of the qualifying facility's building or at a point

satisfactory to the Company. The qualifying facility shall install, operate, and maintain in good order such relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as shall be designated by the Company for safe, efficient and reliable operation in parallel to the Company's system. The qualifying facility shall bear full responsibility for the installation and safe operation of this equipment. Breakers capable of isolating the qualifying facility from the Company shall at all times be immediately accessible to the Company. The Company may isolate any qualifying facility at its own discretion if the Company believes continued parallel operation with the qualifying facility creates or contributes to a system emergency.

All wiring and other electric equipment installed by the qualifying facility shall be maintained by the qualifying facility at all times in conformity with the requirements of the National Board of Fire Underwriters and other authorities having jurisdiction, and an inspector from the Company shall be permitted to inspect qualifying facility's wiring and apparatus and the Company may transmit his recommendations in connection with any such inspection to the qualifying facility, but nothing herein contained shall mean, or be construed to mean, that the Company shall be required to inspect or examine, or in any way be responsible for the condition of the conduits, pipes, wires or appliances on the qualifying facility's premises.

#### METERING TERMS AND CONDITIONS

Subject to the provisions of the rate schedule applicable at the time of the service, electric service to be used under the terms of this contract shall be measured, as to maximum demand, energy and power factors by meters to be installed by the Company on or near the premises of the qualifying facility. The qualifying facility hereby agrees to provide

suitable electric connections for such meters and suitable housing for the same, and upon the registration of these meters, all bills other than bills for the minimum payments shall be calculated.

The Company shall at all times have the right to inspect and test meters and if found defective to repair, or replace them at its option. Such meters shall be tested periodically in accordance with the Rules and Standards of Service prescribed by the Public Service Commission of Indiana. At the qualifying facility's request, the Company shall inspect and test such meters once each yearly period.

The Company shall repair and re-test or replace a defective meter within a reasonable time. During the time there is no meter in service, it shall be assumed that the power delivered is the same as the delivery of power of the qualifying facility during similar periods of the qualifying facility's operations.

In case of impaired or defective service, the qualifying facility shall immediately give notice to the Company by telephone, confirming such notice in writing on same day notice is given.

#### INDEMNIFICATION

The Company and the qualifying facility shall indemnify and hold the other party harmless from and against all claims, liability, damages and expenses, including attorneys' fees, based on any injury to any person, including loss of life, or damage to any property, including loss of use thereof, arising out of, resulting from or connected with, or that may be alleged to have arisen out of, resulted from or connected with, an act or omission by such other party, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of such party's facilities used in connection with this Agreement. Upon the written request of the party seeking indemnification

under this provision, the other party shall defend any suit asserting a claim covered by this provision. If a party is required to bring action to enforce its indemnification rights under this provision, either as a separate action or in connection with another action, and said indemnification rights were upheld, the party from whom the indemnification was sought shall reimburse the party seeking indemnification for all expenses, including attorneys' fees, incurred in connection with such action.

FORCE MAJEURE

Neither the Company nor the qualifying facility shall be liable to the other for damages caused by the interruption, suspension, reduction or curtailment of the delivery of electric energy hereunder due to, occasioned by or in consequence of, any of the following causes or contingencies, viz: acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; unavailability of a fuel or resource used in connection with the generation of electricity; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockade; or

quarantine. The party suffering an occurrence of Force Majeure shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy its inability to perform, provided, however, that the settlement of any strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

#### FAILURES TO PERFORM

The parties agree that the amount of the capacity payment which the Company is to make to the qualifying facility is based on the agreed value to the Company of the qualifying facility's performance of its obligation to provide capacity during the full term of this Agreement. The parties further agree that in the event the Company does not receive such full performance by reason of a termination of this Agreement prior to its expiration or reduction in the amount of capacity agreed to be provided by the qualifying facility as specified in this Agreement, (1) the Company shall be deemed damaged by reason thereof, (2) it would be impracticable or extremely difficult to fix the actual damages to the Company resulting therefrom, (3) the reductions, offsets and refund payments as provided hereafter, as applicable, are in the nature of adjustments in prices and are to be considered liquidated damages, and not a penalty, are fair and reasonable, and (4) such reductions, offsets and refund payments represent a reasonable endeavor by the parties to estimate a fair compensation for the reasonable damages that would result from such premature termination or failure to deliver the specified amount of capacity.

In the event this Agreement is terminated or the contract capacity is reduced prior to the end of the contract term, the qualifying facility

shall refund to the Company the capacity payments in excess of those capacity payments which would have been made had all or the reduced capacity been subject to a capacity rate based on the actual term of delivery to the Company.

Except in the event of Force Majeure as defined in this Agreement, if, within, any twelve-month period during the term of this Agreement ending on the anniversary date of the date of the qualifying facility first provided capacity to the Company under this Agreement, the qualifying facility fails to provide the Company with the capacity specified in this Agreement, the capacity for which the qualifying facility shall be entitled to capacity payments during the subsequent twelve-month period ("the probationary period") shall be reduced to the capacity provided during the prior twelve-month period. If, during the probationary period, the qualifying facility provides the capacity specified in this Agreement, the Company, within thirty days following the end of the probationary period, shall reinstate the full capacity amount originally specified in this Agreement. If, during the probationary period, the qualifying facility again fails to provide the capacity specified in this Agreement, the Company may permanently reduce the capacity purchased from the qualifying facility for the remainder of the term of this Agreement. Such causes or contingencies affecting performance shall not relieve the Company nor the qualifying facility of liability in the event of its concurring negligence or in the event of failure of either to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies or any thereof relieve either from its obligation to pay amounts due hereunder during such interruption or suspension of service.

INTERRUPTION OR CURTAILMENT OF PURCHASE

The Company reserves the right to interrupt purchase at any time when necessary to make emergency repairs. For the purpose of making other than emergency repairs, the Company reserves the right to disconnect the qualifying facility's electric system for four (4) consecutive hours on any Sunday, or such other day or days as may be agreed to by the qualifying facility and the Company, provided forty-eight (48) hours' notification previous to the hour of cut-off is given the qualifying facility of such intention.

All terms and stipulations made or agreed to by the parties in relation to said electric service are completely expressed and merged in this contract, and no previous promises, representations or agreements made by the Company's officers or agents, shall be binding on the Company, and no previous promises, representations or agreements made by the qualifying facility's officers or agents, shall be binding on the qualifying facility, unless herein contained. The terms of this contract cannot be added to, varied or waived, either verbally or in writing, by any agent, solicitor, or other person connected with the Company, or connected with the qualifying facility, excepting executive officers of the Company and officers of the qualifying facility.

From and after the date when electric service is commenced under this contract, this contract shall supersede and terminate any and all existing agreements between the parties hereto under the terms of which the qualifying facility furnishes and the Company receives electric service at the premises covered by this Agreement.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.



This Agreement shall not be binding upon the Company until approved by the president or a vice-president of the Company and attested by the secretary or an assistant secretary.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed in duplicate the day and year first above written.

Attest:

NORTHERN INDIANA PUBLIC SERVICE COMPANY

By \_\_\_\_\_  
Assistant Secretary

By \_\_\_\_\_  
Its \_\_\_\_\_

Attest:

\_\_\_\_\_  
(Qualifying Facility)

By \_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Its \_\_\_\_\_

April 6, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204  
mbecerra@urc.in.gov  
*Electronically delivered*

RE: Reply to NIPSCO's Response to CAC and ELPC Objection

**Reply to NIPSCO's Response to Objection on behalf of  
Citizens Action Coalition and the Environmental Law & Policy Center**

Pursuant to Rule 170 IAC 1-6-7(d)(1), which states that 30-Day filings that have not been resolved to the satisfaction of the objector shall not be presented for Commission approval, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") respectfully submit this Reply to express their lack of satisfaction with NIPSCO's Response, filed on April 2, 2018, to CAC and ELPC's Objections filed on March 23, 2018. The Commission's procedures allow a party to reply to a response in similar contexts. *See, e.g.* 170 IAC 1-1.1-12(f). The Objections and Response at issue concerns NIPSCO's 30-day filing, filed on February 28, 2018, IURC 30-Day Filing No. 50122.

NIPSCO's response failed to satisfy ELPC and CAC's objection, as required by 170 IAC 1-6-7(d)(1), and the response raised a number of issues demonstrating why the Commission should open an investigation into Indiana's implementation of PURPA. There are three key reasons why the Commission should deny NIPSCO's 30-day filing and open an investigation into Indiana's PURPA implementation.

**1. NIPSCO's Standard Contract Fails to Comply with Indiana and Federal Law.**

In its response, NIPSCO attached its standard contract, which attached to this reply as Exhibit C, and there are three relevant requirements applicable to NIPSCO's standard contract. First, Indiana law requires electric utilities to enter into "long term" contracts for the purchase of energy and capacity by PURPA QFs. Burns Ind. Code Ann. § 8-1-2.4-4(a). Second, Indiana's PURPA regulations require electric utilities to file a standard contract that must include "[t]he term of the contract." 170 IAC 4-4.1-11(c)(1). Third, federal law requires that long-term contracts include the ability to obtain fixed rates. 18 C.F.R. § 292.304(d)(2)(ii); *see also Winding Creek Solar LLC v. Peevey*, \_\_\_ F. Supp. 3d. \_\_\_, No. 13-04934, 2017 WL 6040012, at \*10 (N.D. Cal. 2017) (PURPA standard contract without option to fix rates over entire term conflicts with PURPA).

NIPSCO's standard contract fails to contain a term length, as required by 170 IAC 4-4.1-11(c)(1), and failure to provide a term length also fails to provide the opportunity for a "long term" contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a). In NIPSCO's standard

contract the term length is left blank. See Exhibit C at 2. By leaving the term length blank, NIPSCO fails to comply with Indiana law requiring “the term of the contract,” 170 IAC 4-4.1-11(c)(1), and fails to provide a “long term” contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a). In addition, NIPSCO failed to respond to the affidavit of a potential QF developer that stated that term lengths of 15- to 20-years are required to obtain financing. See Affidavit of Sam Kliewer at ¶ 3<sup>1</sup>.

In NIPSCO’s standard contract, the rates for purchase are changed every year, which means avoided cost rates are not fixed if the contract is longer than one year. See Exhibit C at 3. Nowhere else in the standard contract is there an option for fixed rates in contracts longer than a year, as required by 18 C.F.R. § 292.304(d)(2)(ii).

NIPSCO’s standard contract’s change to the avoided cost every year conflicts with 18 C.F.R. § 292.304(d)(2)(ii), which “requires QFs to have the option of fixing the contract price for the delivery of energy and capacity “at the time the obligation is incurred.” See *Allco Renewable Energy Ltd v. Massachusetts Electric Co.*, 208 F. Supp. 3d 390, 400 (D. Mass. 2016) *aff’d* 875 F.3d 64 (1st Cir. 2017) (lack of option to obtain fixed rate in long term contracts renders state’s PURPA implementation in conflict with PURPA); *Winding Creek Solar LLC v. Peevey*, \_\_ F. Supp. 3d \_\_, No. 13-04934, 2017 WL 6040012, at \*10 (N.D. Cal. 2017) (PURPA standard contract without option to fix rates over entire term conflicts with PURPA).

The North Carolina Utilities Commission (“NCUC”) recently rejected Duke Energy Carolinas, LLC, similar proposal to change the avoided cost rates in its standard contract every two years.<sup>2</sup> The NCUC explained:

The Commission determines, for purposes of this case, that NIPSCO’s proposed two-year reset in the avoided energy rate component of the standard offer rate should not be adopted at this time. While some larger facilities may be able to negotiate for different terms and degrees of certainty with regard to securing capital and return on investment, the proposed two-year energy rate reset for facilities eligible for the standard offer rates adds an additional element of uncertainty to their ability to reasonably forecast their anticipated revenue, which may make obtaining financing more difficult than a longer term, fixed-rate PPA.<sup>3</sup>

Annual avoided cost updates, like those in NIPSCO’s standard contract, would be even more uncertain than Duke Energy Carolina’s unsuccessful biennial update proposal in North Carolina. According to the testimony of Cypress Creek Renewables, a QF developer in North Carolina, annual or biennial change to contract prices make QF financing prohibitively difficult:

Cypress Creek argues that financing parties would view a ten-year PPA with a two-year readjustment to the avoided energy rate no more favorably than they

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<sup>1</sup> This affidavit was filed with ELPC and CAC’s Objection to NIPSCO’s 30-day filing.

<sup>2</sup> See *In re Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2016*, Docket No. E-100 SUB 148, Order at 7 ¶ 10 (N. C. Pub. Util. Comm’n Oct. 11, 2017) available at <https://perma.cc/UUJ6-2G5Q>.

<sup>3</sup> *Id.*, Order at 69.

would a two-year contract, which would not be financeable. Cypress Creek witness McConnell testified that rates fixed over the term of the contract are critical to securing financing, stating that “fixed rates for a fixed period of time create financeable contracts,” and that what creates value in the contract is having a set avoided cost rate for a set period of time. He further testified that without these fixed rates, lenders are unwilling to bet on what the avoided cost rates will be going forward.<sup>4</sup>

NIPSCO’s failure to offer QFs the choice of a long-term fixed rate contract conflicts with PURPA, as interpreted by FERC and other recent state commission orders. In addition, the lack of fixed rate contracts and its negative effect on QF development is an issue the Commission should investigate further, and the Commission should require NIPSCO to offer QFs the ability to fix rates over an entire term, as required by PURPA.

## **2. NIPSCO Has Not Complied With All Requirements of 18 C.F.R. § 292.302(b).**

In its response, NIPSCO admitted that it has not filed *all* of the information required by 18 C.F.R. § 292.302(b). NIPSCO Response at 3 (“NIPSCO has complied with *many* of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan (‘IRP’) which was filed on November 1, 2016.”) (emphasis added). NIPSCO’s response indicates it has only supplied the information required by 18 C.F.R. § 292.302(b)(2)-(3) (capacity additions over 10 years and their costs), but did not indicate it has supplied the forecasted avoided cost information required by 18 C.F.R. § 292.302(b)(1). Accordingly, because 18 C.F.R. § 292.302(b) requires this information to be filed at least every two years, NIPSCO is not in compliance because it has not filed the information required by § 292.302(b)(1) in the last two years.

In addition, although NIPSCO’s November 2016 IRP does show its planned capacity additions over the next ten years,<sup>5</sup> as required by 18 C.F.R. § 292.302(b)(2), nowhere in the IRP does it contain the “estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour.” 18 C.F.R. § 292.302(b)(3).

Perhaps these estimated capacity costs are available in the non-public version of the IRP, but that too fails to comply with the regulation. The regulation states that utilities “shall maintain for public inspection” these “estimated capacity costs.” 18 C.F.R. §§ 292.302(b), 292.302(b)(3). The “public inspection” requirement preempts application of trade secret or confidential treatment of the information required to comply with this regulation.<sup>6</sup> If NIPSCO wants to use its

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<sup>4</sup> *Id.*, Order at 67.

<sup>5</sup> NIPSCO, 2016 INTEGRATED RESOURCE PLAN at 158 (Nov. 2016), available at <https://perma.cc/A4BV-Q8YA>.

<sup>6</sup> See *In Re Investigation of Central Maine Power Company's Resource Planning, Rate Structures, and Long-Term Avoided Costs (Rate Design Phase)*, Docket No. 92-315, 1995 Me. PUC LEXIS 11 at \*13-14 (Jan. 27, 1995 Me. Pub. Util. Comm’n). The Maine Public Utilities Commission stated:

Plainly, under this federal regulation, the specified avoided cost information must be filed with state regulatory agencies and the information must be publicly available. The federal regulation expressly regulates state activities and, under the supremacy clause, undoubtedly precludes any state action that would make the specified information not publicly available, e.g., pursuant to state trade secret protection law. *Id.* at \*13.

IRP to comply with 18 C.F.R. §§ 292.302(b)(3), then it cannot shield those estimated capacity costs from public view.

NIPSCO's lack of compliance with 18 C.F.R. § 292.302(b)(1) undermines the purpose of these avoided cost informational filings and this lack of compliance demonstrates the need for Indiana to investigate the issue further.

**3. There Are Currently No Federal Investigations or Rulemakings into PURPA, and Even If There Were, It Should Not Stop the Commission from Exercising its Duly-delegated Authority to Implement PURPA and State Law.**

NIPSCO believes an investigation of PURPA implementation is not warranted in Indiana because there are already federal investigations into PURPA ongoing and therefore the State should allow the federal government to dictate what Indiana should do. NIPSCO Response at 4-5. However, contrary to NIPSCO's assertions, there are no active FERC investigations or rulemakings related to PURPA. NIPSCO cited to a FERC order soliciting comments in Docket AD16-16, but FERC created that docket solely for its 2016 PURPA technical conference.<sup>7</sup> Conference participants filed their comments in Fall 2016, and FERC has taken no action and conducted no investigation or rulemaking following those comments.

NIPSCO misrepresented statements made by FERC's Chairman Neil Chatterjee. On October 30, 2017, Representative Tim Walberg sent a letter to FERC asking FERC to update its PURPA regulations. *See* Exhibit D. On November 29, 2017, FERC Chairman Neil Chatterjee responded with a two-paragraph letter and did not initiate an investigation or rulemaking in response to Walberg's letter. *See* Exhibit E. Nevertheless, NIPSCO attempts to use an excerpt of Neil Chatterjee's letter to explain "the purpose of this investigation," NIPSCO Response at 4, even though no such investigation exists and the Chairman's letter does not reference an active investigation or rulemaking.

NIPSCO also cited to a recent bill introduced in Congress as evidence of another federal investigation. That bill, titled the PURPA Modernization Act, H.R. 4476, has sat in a House of Representative subcommittee since December 1, 2017 and has yet to be offered up for a vote.<sup>8</sup> Even if it passes the committee stage, it is unlikely to pass the full House of Representatives or the Senate. In addition, the legislation only effects the size of QFs and how PURPA could interact with integrated resource plans—it has nothing to do with adequate contract term lengths under Indiana law or compliance with 18 C.F.R. 292.302(b).

NIPSCO's reliance on federal activity as a reason for why the Commission should not open an investigation rings hollow. PURPA operates under a cooperative federalism framework whereby FERC issued the primary regulations but the State of Indiana is delegated authority to implement those regulations at the state level. *See* 16 U.S.C. § 824a-3(f). Indiana has adopted

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<sup>7</sup> *See Notice of technical conference re Implementation Issues under the Public Utility Regulatory Policies Act of 1978*, Docket No. AD16-16 (F.E.R.C. Feb. 9, 2016) available at <https://perma.cc/TKU5-CBW9>; *see also Supplemental Notice Concerning Technical Conference*, Docket No. AD16-16 (F.E.R.C. Mar. 4, 2016) available at <https://perma.cc/A9TV-DLZW>.

<sup>8</sup> *See* <https://www.congress.gov/bill/115th-congress/house-bill/4476/all-actions>

state laws and regulations to implement these requirements, including a state law that directs the commission to require electric utilities to enter into long-term contracts with alternate energy production facilities. Burns Ind. Code Ann. § 8-1-2.4-4(a). The existence, or not, of federal proceedings related to PURPA in no way negates the Commission's responsibility to implement and enforce existing state law. Finally, PURPA provides the Commission with the discretion to determine issues like contract term lengths, and, therefore, Indiana's discretion and authority to investigate such issues is unaffected by the hypothetical existence of federal investigations into matters unrelated to Indiana's requirement for "long term" contracts. Burns Ind. Code Ann. § 8-1-2.4-4(a).

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Indiana should use its considerable discretion under PURPA to deny approval of NIPSCO's 30-day filing and open an investigation into PURPA implementation in the State. Issues for investigation should be adequate contract term lengths, compliance with 18 C.F.R. 292.302(b)'s biennial avoided cost information requirements, and other issues that the Commission determines are relevant. Other relevant issues could be how utilities calculate their avoided energy cost rates and whether the standard offer tariff and standard contracts should be available to QFs larger than 100 kW.

(signature page follows)

Dated April 6, 2018

Respectfully submitted,



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THIS DOCUMENT IS A STANDARD FORM  
PREPARED IN COMPLIANCE WITH 170 IAC 4-4.1-11.  
IT IS NOT INTENDED AND SHOULD NOT BE CONSTRUED AS AN  
OFFER TO PURCHASE CAPACITY AND ENERGY GENERATED BY  
A SPECIFIC QUALIFYING FACILITY.  
NIPSCO RESERVES THE RIGHT TO MAKE MODIFICATIONS OR  
REVISIONS TO THIS STANDARD DOCUMENT, SUBJECT TO THE  
REVIEW AND APPROVAL OF THE PUBLIC SERVICE COMMISSION OF INDIANA.

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NORTHERN INDIANA PUBLIC SERVICE COMPANY

STANDARD TERMS AND CONDITIONS

For Purchase Of

CAPACITY AND ENERGY

From

QUALIFYING FACILITIES

June 4, 1985

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COGENERATION AGREEMENT

This Agreement, entered into this \_\_\_\_\_ day of \_\_\_\_\_, 19 \_\_, between \_\_\_\_\_, a \_\_\_\_\_, hereinafter called the "Qualifying Facility" and NORTHERN INDIANA PUBLIC SERVICE COMPANY, an Indiana corporation, hereinafter called the "Company," WITNESSETH:

STATUS OF QUALIFYING FACILITY

The qualifying facility owns a cogeneration and/or small power production facility which qualifies under the Order of the Public Service Commission of Indiana in Cause No. 37494. The qualifying facility wishes to sell, and the Company wishes to purchase electric power from the qualifying facility.

AMOUNT OF SALE AND PURCHASE

The qualifying facility agrees to sell and deliver and the Company agrees to purchase and accept delivery of the energy or energy and capacity as indicated below:

- 1. ENERGY \_\_\_\_\_ Kwh per Month
- 2. CAPACITY \_\_\_\_\_ Kw

CONTRACT TERM

The qualifying facility shall begin to supply electric service hereunder on or about \_\_\_\_\_, 19 \_\_, and this contract shall then continue in effect for an initial term ending \_\_\_\_\_, 19 \_\_, and from year to year thereafter unless cancelled by either party giving to the other not less than sixty days' prior written notice of the termination thereof at the expiration of the initial term or, at the end of the yearly period first occurring after the giving of such notice.



PAYMENT CONDITIONS

The Company agrees to pay the qualifying facility within 15 days from the date of bills issued monthly by the qualifying facility for all electric service supplied hereunder in accordance with the schedule of rates for such service applicable at the time such service is supplied.

APPLICABILITY OF RATE SCHEDULE

This contract is in accordance with the present current schedule of rates on file with, and approved by, the Public Service Commission of Indiana, which rates are subject to change as provided by law. In case such rates are decreased, the qualifying facility may cancel this contract by giving written notice thereof at any time prior to 60 days after the rate decrease becomes effective. Electric service supplied after such lower rates become effective shall be taken and paid for at such decreased rates.

The terms, provisions and conditions of the rate schedule applicable to the electric service supplied hereunder are made a part of this contract, and shall be binding upon the parties hereto.

The Company's rate schedule for purchases from cogeneration and small power production facilities applicable at the date of this contract to the electric service supplied hereunder is, by reference thereto, hereby made a part hereof, and the Customer acknowledges receipt of a copy of the same.

INTERCONNECTION TERM AND CONDITIONS

The qualifying facility shall reimburse the Company for all interconnection costs the Company has reasonably incurred, and the Company will connect its power supply lines to the terminals of a service entrance connection which shall be provided by the qualifying facility and located on an outside wall of the qualifying facility's building or at a point

satisfactory to the Company. The qualifying facility shall install, operate, and maintain in good order such relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as shall be designated by the Company for safe, efficient and reliable operation in parallel to the Company's system. The qualifying facility shall bear full responsibility for the installation and safe operation of this equipment. Breakers capable of isolating the qualifying facility from the Company shall at all times be immediately accessible to the Company. The Company may isolate any qualifying facility at its own discretion if the Company believes continued parallel operation with the qualifying facility creates or contributes to a system emergency.

All wiring and other electric equipment installed by the qualifying facility shall be maintained by the qualifying facility at all times in conformity with the requirements of the National Board of Fire Underwriters and other authorities having jurisdiction, and an inspector from the Company shall be permitted to inspect qualifying facility's wiring and apparatus and the Company may transmit his recommendations in connection with any such inspection to the qualifying facility, but nothing herein contained shall mean, or be construed to mean, that the Company shall be required to inspect or examine, or in any way be responsible for the condition of the conduits, pipes, wires or appliances on the qualifying facility's premises.

#### METERING TERMS AND CONDITIONS

Subject to the provisions of the rate schedule applicable at the time of the service, electric service to be used under the terms of this contract shall be measured, as to maximum demand, energy and power factors by meters to be installed by the Company on or near the premises of the qualifying facility. The qualifying facility hereby agrees to provide

suitable electric connections for such meters and suitable housing for the same, and upon the registration of these meters, all bills other than bills for the minimum payments shall be calculated.

The Company shall at all times have the right to inspect and test meters and if found defective to repair, or replace them at its option. Such meters shall be tested periodically in accordance with the Rules and Standards of Service prescribed by the Public Service Commission of Indiana. At the qualifying facility's request, the Company shall inspect and test such meters once each yearly period.

The Company shall repair and re-test or replace a defective meter within a reasonable time. During the time there is no meter in service, it shall be assumed that the power delivered is the same as the delivery of power of the qualifying facility during similar periods of the qualifying facility's operations.

In case of impaired or defective service, the qualifying facility shall immediately give notice to the Company by telephone, confirming such notice in writing on same day notice is given.

#### INDEMNIFICATION

The Company and the qualifying facility shall indemnify and hold the other party harmless from and against all claims, liability, damages and expenses, including attorneys' fees, based on any injury to any person, including loss of life, or damage to any property, including loss of use thereof, arising out of, resulting from or connected with, or that may be alleged to have arisen out of, resulted from or connected with, an act or omission by such other party, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of such party's facilities used in connection with this Agreement. Upon the written request of the party seeking indemnification

under this provision, the other party shall defend any suit asserting a claim covered by this provision. If a party is required to bring action to enforce its indemnification rights under this provision, either as a separate action or in connection with another action, and said indemnification rights were upheld, the party from whom the indemnification was sought shall reimburse the party seeking indemnification for all expenses, including attorneys' fees, incurred in connection with such action.

FORCE MAJEURE

Neither the Company nor the qualifying facility shall be liable to the other for damages caused by the interruption, suspension, reduction or curtailment of the delivery of electric energy hereunder due to, occasioned by or in consequence of, any of the following causes or contingencies, viz: acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; unavailability of a fuel or resource used in connection with the generation of electricity; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockade; or

quarantine. The party suffering an occurrence of Force Majeure shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy its inability to perform, provided, however, that the settlement of any strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

FAILURES TO PERFORM

The parties agree that the amount of the capacity payment which the Company is to make to the qualifying facility is based on the agreed value to the Company of the qualifying facility's performance of its obligation to provide capacity during the full term of this Agreement. The parties further agree that in the event the Company does not receive such full performance by reason of a termination of this Agreement prior to its expiration or reduction in the amount of capacity agreed to be provided by the qualifying facility as specified in this Agreement, (1) the Company shall be deemed damaged by reason thereof, (2) it would be impracticable or extremely difficult to fix the actual damages to the Company resulting therefrom, (3) the reductions, offsets and refund payments as provided hereafter, as applicable, are in the nature of adjustments in prices and are to be considered liquidated damages, and not a penalty, are fair and reasonable, and (4) such reductions, offsets and refund payments represent a reasonable endeavor by the parties to estimate a fair compensation for the reasonable damages that would result from such premature termination or failure to deliver the specified amount of capacity.

In the event this Agreement is terminated or the contract capacity is reduced prior to the end of the contract term, the qualifying facility

shall refund to the Company the capacity payments in excess of those capacity payments which would have been made had all or the reduced capacity been subject to a capacity rate based on the actual term of delivery to the Company.

Except in the event of Force Majeure as defined in this Agreement, if, within, any twelve-month period during the term of this Agreement ending on the anniversary date of the date of the qualifying facility first provided capacity to the Company under this Agreement, the qualifying facility fails to provide the Company with the capacity specified in this Agreement, the capacity for which the qualifying facility shall be entitled to capacity payments during the subsequent twelve-month period ("the probationary period") shall be reduced to the capacity provided during the prior twelve-month period. If, during the probationary period, the qualifying facility provides the capacity specified in this Agreement, the Company, within thirty days following the end of the probationary period, shall reinstate the full capacity amount originally specified in this Agreement. If, during the probationary period, the qualifying facility again fails to provide the capacity specified in this Agreement, the Company may permanently reduce the capacity purchased from the qualifying facility for the remainder of the term of this Agreement. Such causes or contingencies affecting performance shall not relieve the Company nor the qualifying facility of liability in the event of its concurring negligence or in the event of failure of either to use due diligence to remedy the situation and remove the cause in an adequate manner and with all reasonable dispatch, nor shall such causes or contingencies or any thereof relieve either from its obligation to pay amounts due hereunder during such interruption or suspension of service.

INTERRUPTION OR CURTAILMENT OF PURCHASE

The Company reserves the right to interrupt purchase at any time when necessary to make emergency repairs. For the purpose of making other than emergency repairs, the Company reserves the right to disconnect the qualifying facility's electric system for four (4) consecutive hours on any Sunday, or such other day or days as may be agreed to by the qualifying facility and the Company, provided forty-eight (48) hours' notification previous to the hour of cut-off is given the qualifying facility of such intention.

All terms and stipulations made or agreed to by the parties in relation to said electric service are completely expressed and merged in this contract, and no previous promises, representations or agreements made by the Company's officers or agents, shall be binding on the Company, and no previous promises, representations or agreements made by the qualifying facility's officers or agents, shall be binding on the qualifying facility, unless herein contained. The terms of this contract cannot be added to, varied or waived, either verbally or in writing, by any agent, solicitor, or other person connected with the Company, or connected with the qualifying facility, excepting executive officers of the Company and officers of the qualifying facility.

From and after the date when electric service is commenced under this contract, this contract shall supersede and terminate any and all existing agreements between the parties hereto under the terms of which the qualifying facility furnishes and the Company receives electric service at the premises covered by this Agreement.

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns.

This Agreement shall not be binding upon the Company until approved by the president or a vice-president of the Company and attested by the secretary or an assistant secretary.

IN WITNESS WHEREOF, the parties hereto have caused this instrument to be duly executed in duplicate the day and year first above written.

Attest:

NORTHERN INDIANA PUBLIC SERVICE COMPANY

By \_\_\_\_\_  
Assistant Secretary

By \_\_\_\_\_  
Its \_\_\_\_\_

Attest:

\_\_\_\_\_  
(Qualifying Facility)

By \_\_\_\_\_  
Secretary

By \_\_\_\_\_  
Its \_\_\_\_\_



AD 16-16

**Congress of the United States  
Washington, DC 20515**

OFFICE OF  
EXTERNAL AFFAIRS

2017 OCT 31 P 2:45

October 30, 2017

FEDERAL ENERGY  
REGULATORY COMMISSION

The Honorable Neil Chatterjee  
Chairman  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Dear Mr. Chairman:

We are writing to urge the Federal Energy Regulatory Commission (FERC) to update its implementing regulations for the Public Utility Regulatory Policies Act (PURPA). As you know, PURPA was enacted in 1978 in response to an oil crisis. Over the last 40 years, we have seen dramatic changes in energy markets that have resulted in an abundance of domestic energy supplies. Two of the most significant changes have been the development of competitive wholesale electricity markets, which enable qualifying facilities (QFs) under PURPA to reach more willing buyers, and the declining costs for natural gas and renewable energy resources. These developments, along with others, have changed both the economics of QF development, as well as the impact of an increasing amount of QF output being placed on the transmission grid.

While there are aspects of the reform of PURPA that will require congressional action, there are also regulatory changes that FERC can make to ensure that its implementing regulations reflect the changes occurring in electricity markets. Many of these changes are already familiar to FERC and were addressed at the technical conference that your agency held on June 29, 2016, in Docket No. AD16-16-000. Among the issues addressed at the conference was the purported gaming of FERC's "one-mile rule" (see 18 CFR § 292.204(a)(2)) by certain QF developers. More than a year later, the House Energy and Commerce Subcommittee on Energy heard testimony during its September 6, 2017, hearing on PURPA, that some QFs are continuing to take advantage of FERC's regulations to effectively build projects that exceed the various size thresholds in the wholesale electricity markets regulated by FERC. However, since FERC has made clear in its decisions that its one-mile rule is irrebuttable, parties involved cannot challenge the lawfulness of these projects.

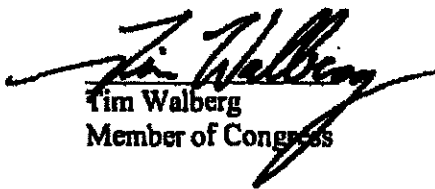
Eliminating the opportunity for certain QF developers to game FERC's one-mile rule will directly benefit electricity customers, who are paying billions of dollars in above-market prices for QF power sold under mandatory PURPA contracts. While the Energy and Commerce Committee considers additional reforms to PURPA, we encourage FERC to address the concerns raised at its 2016 technical conference and to use its authority to undertake needed modernization to the Commission's PURPA one-mile rule regulations while taking into consideration non-geographic factors as well.

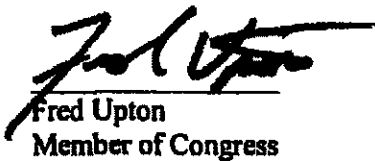
2017-00119

As Congress continues its review of PURPA, we request the list of changes and reforms the Commission believes it can make under its existing authority.

We look forward to working with the Commission to ensure our constituents can benefit from lower cost electricity, more competitive markets and advancements made in renewable generation.

Sincerely,

  
Tim Walberg  
Member of Congress

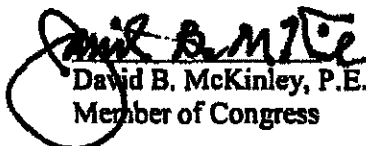
  
Fred Upton  
Member of Congress

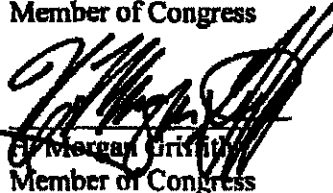
  
Joe Barton  
Member of Congress

  
Marsha Blackburn  
Member of Congress


  
Robert E. Latta  
Member of Congress

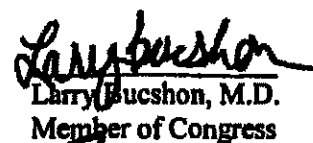
  
Gregg Harper  
Member of Congress

  
David B. McKinley, P.E.  
Member of Congress

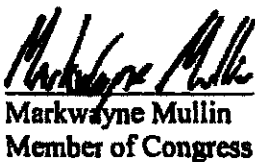
  
Morgan Griffith  
Member of Congress

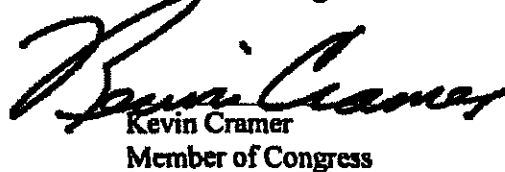
  
Bill Johnson  
Member of Congress

  
Dave Loebsack  
Member of Congress


  
Larry Bucshon, M.D.  
Member of Congress

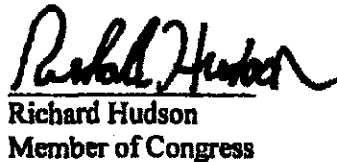
  
Bill Flores  
Member of Congress

  
Markwayne Mullin  
Member of Congress

  
Kevin Cramer  
Member of Congress

  
Kurt Schrader  
Member of Congress

  
Billy Long  
Member of Congress

  
Richard Hudson  
Member of Congress

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**RECEIVED  
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**FEDERAL ENERGY REGULATORY COMMISSION**

WASHINGTON, DC 20426

November 29, 2017

**OFFICE OF THE CHAIRMAN**

The Honorable Tim Walberg  
U. S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Walberg:

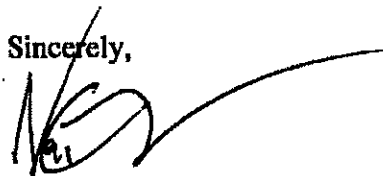
Thank you for your October 30, 2017, letter regarding the Public Utility Regulatory Policies Act of 1978 (PURPA).

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe that the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation with modern realities.

As you know, the Commission held a technical conference on June 29, 2016, in Docket No. AD16-16-000, to examine issues related to PURPA. Subsequently, the Commission solicited written comments from interested parties, which were submitted by November 7, 2016. One particular area where many parties have indicated a need for a different approach is the "one-mile rule" for qualifying facilities. Of course, other such areas may exist, too, and we owe it to stakeholders to continue taking a hard look at our regulations to identify those opportunities for improvement. Please be assured that I will keep your concerns in mind as the Commission explores these important issues. Your letter and this reply will be placed in the public record of Docket No. AD16-16-000.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Neil Chatterjee  
Chairman

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Submitted By: Jane Steinhauer  
Director, Energy Division

**Filing Party:** Indianapolis Power & Light Co.  
**30-Day Filing ID No.** 50123  
**Date Filed:** February 28, 2018  
**Filed Pursuant To:** 170 I.A.C. 4-4.1-10  
**Request:** New Rate Schedules for Cogeneration and Alternate Energy Production Facilities.  
**Customer Impact:** N/A

RATE CGS Cogeneration and Small Power Production		
<i>Time Period</i>	<i>Energy (\$/kWh)</i>	<i>Capacity (\$/kW/month)</i>
Peak Period <sup>1</sup>	\$0.0309	\$6.20
Off Peak Period <sup>2</sup>	\$0.0266	\$6.20

**Tariff Pages Affected:** IURC No. E-17:  
3<sup>rd</sup> Revised No. 122

**Staff Recommendations:** Requirements met. Recommend approval.

**Additional Information:**

The Indiana Utility Regulatory Commission (“Commission” or “IURC”) received objections (Attachment A) from the Citizens Action Coalition (“CAC”) and the Environmental Law & Policy Center (“ELPC”) on March 23, 2018, regarding this filing. Commission staff sent a notification email (Attachment B) to the utility representative on the same day that the objections were filed. Indianapolis Power & Light Co. submitted a response (Attachment C) on April 2, 2018. CAC and ELPC provided a joint reply (Attachment D) on April 6, 2018.

Upon review of these documents, the Commission’s General Counsel has advised that CAC’s and ELPC’s objections do not comply with 170 IAC 1-6-7(b)(2), which requires an applicable law objection to be regarding the applicable law of the filing and an objection regarding completeness to be related to the law, rule, or order that applies to the filing. The 30-day filing was filed pursuant to 170 IAC 4-4.1-10 (“Section 10”) and in accordance with the Commission’s order in IURC Cause No. 37494 (1984 WL994597 (Ind. P.S.C.) – approved Oct. 5, 1984). However, the objections raised in CAC’s and ELPC’s filings are silent regarding the 30-day filing’s compliance with Section 10. In addition, the relief requested by the CAC and ELPC for revised filings with a required longer term and for a Commission investigation cannot be granted through the 30-day filing process. Accordingly, Commission staff understands that the objections are outside of the scope of the filing and that the filing may proceed to the Commission for its determination and approval or denial.

<sup>1</sup> Peak Period means the time between 6 a.m. and 10 p.m. (April through September) or between 7 a.m. and 11 p.m. (October through March) on all days except Saturdays and Sundays, which daily time period will be subject to change from time to time at the Company’s option. This change would occur after no less than ten (10) days notice has been given to all Customers who would be affected, and to the Commission.

<sup>2</sup> Off Peak Period means the time not included in the Peak Period.

March 23, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204  
mbecerra@urc.in.gov  
*Electronically delivered*

RE: IPL's 30-day filing on February 28, IURC 30-Day Filing No. 50123.

**Objection to Indianapolis Power & Light Company's 30-Day Filing on behalf of  
Citizens Action Coalition and the Environmental Law & Policy Center**

Pursuant to the guidelines for submitting an objection to a 30-day filing as outlined on the Commission's website at <https://www.in.gov/iurc/2519.htm>, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") (collectively "Objectors") respectfully submit this Objection to the 30-day filing made by Indianapolis Power & Light Company ("IPL") on February 28, 2018, IURC 30-Day Filing No. 50123. IPL's 30-day filing is attached as Exhibit A.

IPL's 30-day filing concerns its obligations under the Public Utility Regulatory Policies Act ("PURPA"), including PURPA's implementing regulations and Indiana's PURPA implementation. *See generally* 18 CFR § 292.101, *et seq.*; Burns Ind. Code Ann. § 8-1-2.4-1, *et seq.*; 170 IAC 4-4.1-1 *et seq.* PURPA requires electric utilities to purchase energy and capacity from qualifying facilities ("QFs"), and the rate for these mandatory purchases are based on the utility's avoided costs. *See* 18 C.F.R. §§ 292.303, 292.304.

An objection is valid if it alleges that a 30-day filing is in violation of applicable law or the filing is incomplete. *See* 170 IAC 1-6-7(b)(2)(A)(i), (b)(2)(C)(i). IPL's 30-day filing violates applicable law by failing to include a standard contract as required by 170 IAC 4-4.1-11 and by failing to include avoided cost information required by 18 C.F.R. § 292.302(b). The failure to provide this legally required information violates applicable law and constitutes an incomplete filing.

IPL's failure to provide a long-term standard contract with a fixed-rate inhibits development of QFs in Indiana and violates the state's policy to "encourage the development of alternate energy production facilities." Burns Ind. Code Ann. § 8-1-2.4-1. Increased QF development would introduce additional competition into Indiana's market by enabling private QF development at the utility's own avoided costs. Thus, PURPA is not a "subsidy" program for renewable energy. Instead, it is a cost-neutral policy that protects ratepayers by creating downward pressure on utility costs.

ELPC and CAC respectfully request that the Commission deny IPL's 30-day filing and open a statewide docket to investigate and establish modernized PURPA implementation

methodologies that will enable Indiana utilities to comply with state and federal law.

### **BACKGROUND ON OBJECTORS**

CAC is a 501(c)(4) membership organization of organizations and more than 40,000 individual members and contributors throughout the State of Indiana. CAC initiates, facilitates, and coordinates citizen action directed at improving the quality of life of all Indiana residents through principled advocacy of public policies that, among other things, promote government accountability and protect consumers and ratepayers. CAC and its members have an interest in promoting the development and availability of renewable energy through implementation of PURPA and are likely to suffer an injury if IPL does not comply with its obligations under PURPA.

ELPC is a 501(c)(3) public interest organization that works to achieve cleaner air and water, promote renewable energy and energy efficiency resources, and preserve natural resources in Indiana and the Midwest. ELPC has an office located in Indianapolis and has members throughout the state of Indiana and the Midwest. On behalf of itself and its members, ELPC played a significant role in recent proceedings in Michigan, Iowa, and Minnesota where those states updated their implementation of PURPA. ELPC and its members have an interest in promoting the development and availability of renewable energy through implementation of PURPA and are likely to suffer an injury if IPL does not comply with its obligations under PURPA.

### **BACKGROUND ON PURPA**

Congress enacted PURPA to “encourage the development of cogeneration and small power production facilities.” *Am. Paper Inst. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 405 (1983). PURPA combats an inefficient preference for utility self-generation and removes barriers for non-utility generation where such generation is cost-effective, thereby increasing competition and creating a downward pressure on power generation costs. *See In re Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities*, 75 F.E.R.C. P61,080, at § III.C (1996) (“Congress recognized that the rising costs and decreasing efficiencies of utility-owned generating facilities were increasing rates and harming the economy as a whole.”); *see also FERC v. Mississippi*, 456 U.S. 742, 750-751 (1982).

Accordingly, Indiana’s PURPA policy implementation is “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.” Burns Ind. Code Ann. § 8-1-2.4-1. Indiana’s implementation contains positive requirements that could encourage QF development, such as requiring long-term contracts and the establishment of standard contracts. *See* Burns Ind. Code Ann. § 8-1-2.4-4(a); 170 IAC 4-4.1-11. However, as will be shown below, utilities in Indiana are not complying with such requirements, and therefore Indiana utilities are falling short of the state’s explicit policy to “encourage the development of alternate energy production facilities.”

PURPA is the only federal law that requires competition in states that have not restructured their electricity markets. PURPA accomplishes this through its mandatory purchase



obligation that ties the rates for purchase to a utility's avoided cost. Tying rates to avoided costs (1) ensures no subsidization occurs, (2) protects ratepayer interests, and (3) provides ratepayers the benefit of low-cost renewable generation.

State regulators and stakeholders are increasingly focused on PURPA in light of the dramatic reduction in renewable energy development costs. With the growing relevance of PURPA, other states are updating their implementation for the first time in over two decades. For instance, the Michigan Public Service Commission ("MPSC") has been conducting a process to update its PURPA implementation. Beginning in late 2015, the MPSC ordered the creation of a working group to investigate the state's implementation of PURPA and invited all utilities, developers, and other interested stakeholders to participate.<sup>1</sup>

In 2016, the investigation culminated in the MPSC's Staff publishing a report detailing the state's implementation with recommendations on how the MPSC could modernize its PURPA implementation.<sup>2</sup> The MPSC then instituted dockets for each regulated utility to modernize its PURPA implementation and to determine, among other things, (1) the appropriate avoided cost methodology, (2) adequate term length for standard contracts, and (3) adequate procedures to encourage development of QFs.<sup>3</sup> The MPSC ordered Michigan utilities to offer long-term contracts, and concluded that QF development could benefit ratepayers in several ways, such as offsetting or deferring the construction of large utility power plants. As the Commission recognized, "there is significant ratepayer value in deferring large, capacity additions through contracting with QFs for incremental capacity."<sup>4</sup>

ELPC played a key role in Michigan's update as an active participant in the investigation and as an intervenor in the subsequent dockets opened for each utility. ELPC has also participated as an intervenor in Iowa's 2017 update to its PURPA implementation<sup>5</sup> and as intervenors in an ongoing complaint case between a QF and utility in Minnesota, which could result in Minnesota updating its PURPA implementation for the first time in over a decade.<sup>6</sup> ELPC and CAC respectfully request that the Commission deny IPL's 30-day filing and follow the lead of other Midwestern states to ensure that Indiana utilities are in full compliance with state and federal law.

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<sup>1</sup> See generally *In re, on the Commission's own motion, commencing an investigation into the continuing appropriateness of the Commission's current regulatory implementation of the Public Utility Regulatory Policies Act of 1978*, Case No. U-17973, Order Commencing Investigation (Oct. 27, 2015) available at <https://perma.cc/4ZVM-XFVD>.

<sup>2</sup> *Id.*, PURPA TECHNICAL ADVISORY COMMITTEE, Report on the Continued Appropriateness of the Commission's Implementation of PURPA (April 8, 2016) available at <https://perma.cc/7JFL-HWEK>.

<sup>3</sup> See generally *In re Consumers Energy Co., et al.*, Case Nos. U-18089, U-18090, U-18091, U-18092, U-18093, U-18094, U-18095, Order (May 3, 2016) available at <https://perma.cc/B739-R7B5>.

<sup>4</sup> *In re Consumers Energy Co.*, Case No. U-18090, Order at 18, (Mich. Pub. Serv. Comm'n May 31, 2017) available at <https://perma.cc/4K2Z-5WWW>.

<sup>5</sup> See generally *In re Interstate Power and Light Co.*, Docket No. TF-2016-0290 (Iowa Util. Bd.); *In re MidAmerican Energy Co.*, Docket No. TF-2016-0294 (Iowa Util. Bd.).

<sup>6</sup> See generally *Red Lake Falls Community Hybrid, LLC v. Otter Tail Power Co.*, Docket No. 16-1021 (Minn. Pub. Util. Comm'n).

## OBJECTIONS

### **OBJECTION ONE: IPL's 30-Day Filing Fails to Contain a Long-Term Contract and Contract Term Length, Both of Which are Required by Indiana Law.**

There are three requirements applicable to the standard contracts required in Indiana. First, Indiana law requires electric utilities to enter into “long term” contracts for the purchase of energy and capacity by PURPA QFs. Burns Ind. Code Ann. § 8-1-2.4-4(a). Second, Indiana’s PURPA regulations require electric utilities to file a standard contract that must include “[t]he term of the contract.” 170 IAC 4-4.1-11(c)(1). Third, federal law requires that long-term contracts include the ability to obtain fixed rates. 18 C.F.R. § 292.304(d)(2)(ii); *see also Winding Creek Solar LLC v. Peevey*, No. 13-04934, 2017 WL 6040012, at \*9 (N.D. Cal. 2017) (finding that a standard contract violates PURPA if it fails to contain an option to obtain fixed rates). “[S]tate regulatory authorities cannot preclude a QF — even an intermittent QF — from obtaining a legally enforceable obligation with a forecasted avoided cost rate.” *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 6 (2016).

IPL’s 30-day filing fails to contain a standard contract, as required by 170 IAC 4-4.1-11. In contrast, Duke Energy Indiana has filed its standard contract every year since 2013.<sup>7</sup> In addition, Counsel for Objectors used reasonable efforts to locate IPL’s standard contract but was unsuccessful. Counsel for Objectors:

- (1) Searched on IPL’s website, including through IPL’s rate book published online, but was unable to find the standard contract on IPL’s website;
- (2) Reviewed all of IPL’s 30-day PURPA filings dating back to 2009, which the Commission archived on its website,<sup>8</sup> but IPL has not filed a standard contract in any of its 30-day filings dating back to 2009; and
- (3) Contacted IPL through the contact information on its 30-day filing, but the representative was unsure whether such a standard contract existed. The representative directed Counsel for Objectors to IPL’s webpage containing its net-metering interconnection application and the sample contract for net-metering interconnection, neither of which contained a specified term length.<sup>9</sup>

The lack of a long-term, fixed rate standard contract has likely discouraged developers from pursuing projects in Indiana. IPL’s currently effective PURPA tariff references a written contract, but nowhere in the tariff does it indicate what the term of such a contract would be and there is no indication of whether the rate is fixed over a term or whether a longer term standard contracts exists. *See generally* Exhibit B.

The lack of a legally required, long-term contract with fixed rates in IPL’s 30-day filing

<sup>7</sup> *See* IURC 30-Day Filing Nos. 50119 (2018), 50038 (2017), 3429 (2016), 3319 (2015), 3225 (2014), 3141 (2013).

<sup>8</sup> 30-day filings from 2009 to 2018 can be found at: <https://www.in.gov/iurc/2514.htm>

<sup>9</sup> Standard interconnection agreement available at <https://www.iplpower.com/content.aspx?id=313>. The interconnection agreement for 10 kW or less does not contain a term length. The interconnection agreement for over 10 kW does contain a term, but it does not have a specified length and the term can be ended with a 60-day notice by either party. *See* Page 3-4 of 5, ¶ 8 of the sample interconnection agreement for over 10 kW.

is important because the lack of long-term, fixed-rate contracts both violates the specific requirements of Indiana law *and* inhibits the development of QFs across Indiana, thus failing to promote Indiana’s policy of encouraging QF development. *See* Burns Ind. Code Ann. § 8-1-2.4-1. The Federal Energy Regulatory Commission (“FERC”), the agency delegated authority to promulgate federal regulations and enforce PURPA, recognized that long-term contracts with QFs must be “long enough to allow QFs reasonable opportunities to attract capital from potential investors.” *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 8 (2016).

Other states recognize the link between the availability of long-term, fixed-rate contracts and the encouragement of QF development. For instance, during Michigan’s recent update to its PURPA implementation, the MPSC required utilities to offer 20-year standard contracts because it “found persuasive the claim that longer contracts would benefit both QFs and the [utility] by allowing better access to investment and financing. . . .”<sup>10</sup> The Oregon Public Utility Commission (“OPUC”), in setting standard contract terms at 20 years, concluded that such a term length was necessary “to ensure the terms of the standard contract facilitate appropriate financing for a QF project.”<sup>11</sup> The Wyoming Public Service Commission concluded that long-term standard contracts are necessary for financing and that 20-year contract terms are “adequate for obtaining a QF project financing.”<sup>12</sup>

Short-term contracts do not encourage QF development because short-term contracts make financing QFs prohibitively difficult. To illustrate, compare the number of PacifiCorp’s QF contracts in Washington, which has 5-year terms<sup>13</sup>, to other states in which PacifiCorp operates. In Oregon and Wyoming where 20-year contract terms are required, PacifiCorp has **twenty-eight QF contracts and eight QF contracts**, respectively.<sup>14</sup> In Utah where 15-year contract terms are required, PacifiCorp has **twenty-six QF contracts**.<sup>15</sup> In contrast, the company has **only three QF contracts in Washington**, which again only allows for 5-year terms in its standard contract.<sup>16</sup>

Long-term contracts are vitally important to promoting QF development and furthering the policy goals of PURPA. IPL’s failure to include a standard contract renders its 30-day filing in violation of applicable Indiana law requiring long-term standard contracts and a defined term length. Burns Ind. Code Ann. § 8-1-2.4-4(a); 170 IAC 4-4.1-11(c)(1).

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<sup>10</sup> *In re Consumers Energy Co.*, Case No. U-18090, Order at 22-23, (Mich. Pub. Serv. Comm’n May 31, 2017) available at <https://perma.cc/4K2Z-5WWW>.

<sup>11</sup> *In re Investigation Relating to Electric Utility Purchases from QFs*, OPUC Docket No. UM 1129, Order No. 05-584 at 19 (Ore. Pub. Util. Comm’n May 13, 2005) available at <https://perma.cc/C5YX-R3GG>. In 2014, the OPUC reaffirmed the 20-year standard contract term length. *In re Investigation into QF Contracting*, OPUC Docket No. UM 1610, Order No. 14-058 (Feb. 24, 2014) available at <https://perma.cc/HL76-YJUG>.

<sup>12</sup> *In re the Application of RMP to Implement a Permanent Avoided Cost Methodology for Customers that do Not Qualify for Tariff Schedule 37 – Avoided Cost Purchases from QFs*, WPSC Docket No. 20000-388-EA-11, Record No. 12750, Order No. 20416 at 19 (Wyo. Pub. Serv. Comm’n Nov. 4, 2011) available at <https://perma.cc/EC8Q-FE4L>.

<sup>13</sup> *See* PacifiCorp, dba Pacific Power & Light Co., Schedule 37, Sheet No. 37.2 available at <https://perma.cc/97YD-LWKX>.

<sup>14</sup> *See* PacifiCorp 2017 Integrated Resource Plan at 78-79, available at <https://perma.cc/2JVR-U7SQ>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

**OBJECTION TWO: IPL's 30-Day Filing Fails to Contain Avoided Cost Information Required by 18 C.F.R. § 292.302(b).**

Federal regulations require electric utilities to biennially file three categories of avoided cost information with the Commission and utilities must maintain this information for “public inspection.” 18 C.F.R. 292.302(b). First, utilities are required to submit 5-year estimates of their avoided energy costs. § 292.302(b)(1). Second, utilities are required to submit planned capacity additions over the next 10 years. § 292.302(b)(2). Third, utilities are required to submit the cost estimates for such capacity additions. § 292.302(b)(3).

IPL's 30-day filing at issue in this Objection does not contain the avoided cost information required by 18 C.F.R. § 292.302, and neither does IPL's 2017 30-day filing, IURC 30-Day Filing No. 50036. In contrast, Indiana Michigan Power Company has filed the information required by 18 C.F.R. § 292.302(b)(1) in the last two years<sup>17</sup>—but they too have not filed the information required by 292.302(b)(2) or (b)(3) in compliance with the biennial requirement.

In addition, Objectors are not aware of IPL filing this required avoided cost information with the Commission in any other docket. Therefore, IPL's 30-day filing at issue in this docket fails to comply with applicable federal law by not containing the required biennial avoided cost information.

**CONCLUSION**

Objectors respectfully request the Commission:

(1) Find that this Objection complies with 170 IAC 1-6-7, and that IPL's 30-day filing, IURC 30-Day Filing No. 50125, not be presented to the full Commission for consideration under the 30-day administrative filing rule until these deficiencies are rectified;

(2) Require IPL to file a standard contract with a defined term of sufficient length and the ability to fix rates over the term of the contract;

(3) Open a statewide docket to investigate PURPA implementation in Indiana. This investigation could examine and establish sufficient standard contract term lengths, whether the current avoided cost methodology adequately represents IPL's avoided costs, and any other issues the Commission deems desirable.

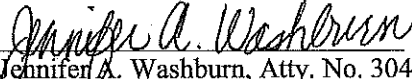
(signatures below)


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<sup>17</sup> See IURC 30-Day Filing Nos. 50125 (2018) and 50037 (2017).

Dated March 23, 2018

Respectfully submitted,

  
Jennifer A. Washburn, Atty. No. 30462-49  
1915 W. 18<sup>th</sup> Street, Suite C  
Indianapolis, Indiana 46202  
(317) 735-7764  
jwashburn@citact.org

---

Jeffrey Hammons  
Staff Attorney  
Environmental Law & Policy Center  
Chicago, IL 60657  
(312) 795-3717  
JHammons@elpc.org



Via Electronic Filing

February 28, 2018

Secretary of the Commission and  
Director of Electricity Division  
Indiana Utility Regulatory Commission  
101 W. Washington St., Suite 1500E  
Indianapolis, IN 46204

RE: Annual IPL Cogeneration Filing

Under 170 IAC 1-6, the Thirty-Day Administrative Filing Procedures and Guidelines Rule, Indianapolis Power & Light Company (IPL) submits herewith for filing a revision to our Tariff No. E-17 entitled:

Rate CGS - Cogeneration and Small Power Production  
3<sup>rd</sup> Revised No. 122

IPL is filing this tariff revision pursuant to 170 IAC 4-4.1, the Cogeneration and Alternate Energy Production Facilities Rule. Specifically, Section 10 requires that on or before February 28 of each year a generating electric utility shall file with the Commission a standard offer for purchase of energy and capacity at rates derived from the appropriate sections of this rule.

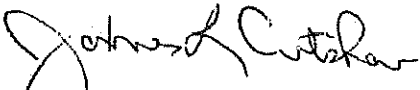
This tariff revision supersedes the 2<sup>nd</sup> Revised No. 122 included with IPL's annual cogeneration filing made February 28, 2017 and approved April 05, 2017. The Company's standard offer and form contract for the purchase of energy and capacity from cogeneration and alternate energy production facilities operating within IPL's service territory has not been revised since the last filing.

Only the affected tariff sheet is submitted for approval in this filing. All other tariff sheets of Rate CGS and the riders for maintenance, back-up and supplementary power remain unchanged from those previously approved.

This filing also includes a mark-up of the existing tariff sheet, and supporting documentation and assumptions consistent with prior Annual IPL Cogeneration Filings. In addition, this filing contains the Determination of Average System Losses for the Twelve Months Ended December 31, 2017, a Verified Statement by IPL concerning notification of customers regarding the proposed revision of Rate CGS, a copy of such notification, and proof of publication.

If you have any questions, please feel free to contact me at 317-261-5341, at the address on the letterhead, or at [Jim.Cutshaw@aes.com](mailto:Jim.Cutshaw@aes.com)

Respectfully submitted,

A handwritten signature in black ink, appearing to read "James L. Cutshaw". The signature is written in a cursive style with a large initial "J".

James L. Cutshaw  
Revenue Requirements Manager

Enclosures

xc: Office of the Utility Consumer Counselor (via email)

Indianapolis Power & Light Company  
 One Monument Circle  
 Indianapolis, Indiana

I.U.R.C. No. E-17

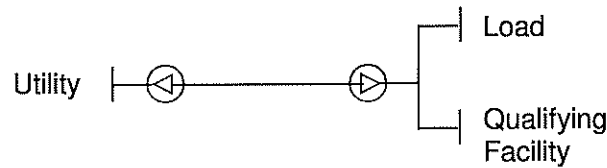
~~2<sup>nd</sup>~~ 3<sup>rd</sup> Revised No. 122  
 Superseding  
~~1<sup>st</sup>~~ 2<sup>nd</sup> Revised No. 122

RATE CGS (Continued)

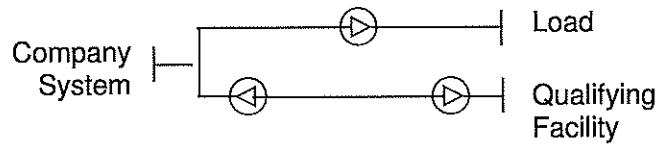
INTERCONNECTION CONDITIONS AND COSTS: (Continued)

(f) (Continued)

- (1) Where purchases are intended to be less than 1000 kilowatthours per month, and the Company and Qualifying Facility mutually agree, a single bidirectional meter may be placed between, at one side, the Company system and, on the other side, the Qualifying Facility and any load associated with it.
- (2) Where such measurement is appropriate for measurement of energy, the circuit shall include at minimum two monodirectional meters in a series arrangement between, at one side, the Company system and, on the other side, the Qualifying Facility and any load associated with it:



- (3) Where such is appropriate for measurement of energy, the circuit shall include a monodirectional meter between the on-site load and the Company and, in a series arrangement, two monodirectional meters between the Qualifying Facility and the Company system:



- (4) The meter measuring purchases by the Company shall be of a design to record time periods, and shall be capable of electronically transmitting instantaneous readings.
- (5) Other metering arrangements shall be the subject of negotiations between the Company and the Qualifying Facility.

RATE FOR PURCHASE:

The rate the Company will pay each Qualifying Facility for energy and capacity purchased will be established in advance by written contract with the Company as filed and approved by the Commission and will be based on the RATE FOR PURCHASE on file from time to time with the Commission, adjusted as outlined in the remaining parts of this section. Unless otherwise agreed the RATES FOR PURCHASE shall be:

(1)	Capacity	\$7.276.20 per KW per month
(2)	Energy - Peak Period	3.753.09¢ per KWH
	- Off Peak Period	2.732.66¢ per KWH

Effective



Indianapolis Power & Light Company  
One Monument Circle  
Indianapolis, Indiana

I.U.R.C. No. E-17

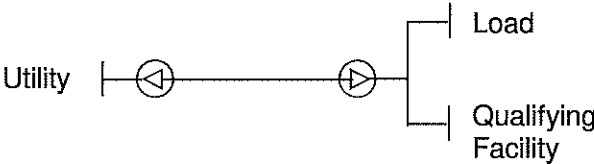
3<sup>rd</sup> Revised No. 122  
Superseding  
2<sup>nd</sup> Revised No. 122

RATE CGS (Continued)

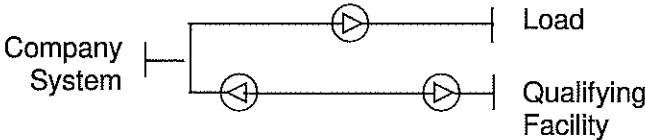
INTERCONNECTION CONDITIONS AND COSTS: (Continued)

(f) (Continued)

- (1) Where purchases are intended to be less than 1000 kilowatthours per month, and the Company and Qualifying Facility mutually agree, a single bidirectional meter may be placed between, at one side, the Company system and, on the other side, the Qualifying Facility and any load associated with it.
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- (3) Where such is appropriate for measurement of energy, the circuit shall include a monodirectional meter between the on-site load and the Company and, in a series arrangement, two monodirectional meters between the Qualifying Facility and the Company system:



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- (1) Capacity \$6.20 per KW per month
- (2) Energy - Peak Period 3.09¢ per KWH
- Off Peak Period 2.66¢ per KWH

## INDIANAPOLIS POWER & LIGHT COMPANY

### RATES FOR PURCHASE OF CAPACITY

C	unadjusted monthly capacity payment per kW	\$ 6.20
C <sub>a</sub>	adjusted monthly capacity payment	\$ 6.20
D	present value carrying charges \$1 investment	\$ 1.28
V	investment avoidable unit \$ per kW	\$ 700
n	expected life avoidable unit (years)	30
i <sub>p</sub>	annual escalation rate for avoidable unit	2.5%
i <sub>o</sub>	annual escalation rate O & M expense	2.5%
r	cost of capital	7.14%
O	annual O&M expense per kW avoidable unit	\$ 20.50
L	line losses	5.10%
t	year of the contract	1
f	carrying charge rate	10.48%
tu	in-service year avoidable unit	2018
tq	in-service year QF	2018
Y	year of capacity payment	2018

## INDIANAPOLIS POWER &amp; LIGHT COMPANY

## CARRYING CHARGE RATE CALCULATION

r	rate of return	7.14%
A	Ad Valorum tax rate	1.13%
P	insurance rate	0.15%
d	sinking fund depreciation rate	1.03%

$$d = \frac{r}{(1+r)^n - 1}$$

T	federal and state composite income tax rate	25.641%
D	book depreciation rate	3.33%
b	marginal interest rate on debt capital	5.03%
L	debt ratio	54.30%
n	service life of the deferrable unit	30

$$\text{carrying charge rate} = r + A + P + d + (T / (1-T)) * (r + d - D) * ((r-bL) / r) = \underline{10.48\%}$$

## INDIANAPOLIS POWER &amp; LIGHT COMPANY

## RATE OF RETURN CALCULATION

December 31, 2017

Type of <u>Capital</u>	Amount <u>(000)</u>	Percentage of <u>Capital Structure</u>	Marginal Cost <u>of Capital</u>	Weighted <u>Cost</u>
Long Term Debt	\$ 1,694,513	54.30%	5.03%	2.73%
Preferred Equity	\$ 59,784	1.92%	5.37%	0.10%
Common Equity	\$ <u>1,366,476</u>	<u>43.78%</u>	9.85%	<u>4.31%</u>
	\$ <u>3,120,773</u>	<u>100.00%</u>		<u>7.14%</u>

# INDIANAPOLIS POWER & LIGHT COMPANY

## ESTIMATED INVESTMENT AND O&M EXPENSES

### Estimated Investment Cost per kW for Avoidable Unit

Plant Capital Cost            160 MW CT

Total Capital Requirement (includes AFUDC)       

\$ 700
--------

 per kW

### Annual O&M Expenses per kW for Avoidable Unit

Fixed    \$ 17.00 per kW/yr

Variable     \$ 3.50 per kW/yr

Total \$/kW/yr                                        

\$ 20.50
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## INDIANAPOLIS POWER & LIGHT COMPANY

### AVOIDED ENERGY COST CALCULATION BASED ON MIDAS GOLD PRODUCTION RUN

		On Peak Period	Off Peak Period
Avoided Cost per Midas	Per kWh	\$ 0.03010	\$ 0.02594
Average System Losses for Year Ended December 31, 2017		5.101%	5.101%
Line losses factor	$1 / (1 - (\text{losses}/2))$	1.02617	1.02617
Avoided Cost adjusted for line losses	Per kWh	\$ 0.0309	\$ 0.0266

# INDIANAPOLIS POWER & LIGHT COMPANY

## Determination of Average System Losses Based on Twelve Months Ended December 31, 2017

Line No.	Description	KWH	Line No.
<b><u>Sources of Energy</u></b>			
<b>Generation (Excludes Station Use)</b>			
1	Coal	9,338,718,000	1
2	Gas	1,278,962,000	2
3	Other	0	3
4	<b>Total Net Generation</b>	10,617,680,000	4
5	Interchanges (Net)	3,110,924,000	5
6	Other	70,499,000	6
7	Transmission for/by Others - Wheeling (Net)	0	7
8	<b>Total KWH Available</b>	13,799,103,000	8
9	Purchases (Net) Solar	139,265,000	9
10	Citizens Purchase Power	13,124,000	10
11	<b>Grand Total KWH Available</b>	13,951,492,000	11
<b><u>Disposition of Energy</u></b>			
12	Billed & Unbilled Sales to Retail Customer	13,216,392,653	12
13	Bilateral Contracts (REMC)	0	13
14	Company Use (Office, Maintenance Bldgs., etc.)	23,372,512	14
15	<b>Total KWH Accounted for</b>	13,239,765,165	15
16	Total Energy Losses (Line 12 less Line 15)	711,726,835	16
17	<b>Average System Losses (16 Divided by 15 in %)</b>	5.101%	17

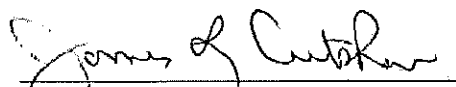
**Verified Statement of Indianapolis Power & Light Company (IPL)  
Concerning Notification of Customers Affected by the Revision of Rate CGS  
In the Annual IPL Cogeneration Filing**

Indianapolis Power & Light Company complied with the Notice Requirements under 170 IAC 1-6-6 in the following manner:

- beginning on February 20, 2018 and continuing through the filing date, the attached notice was posted in the Customer Service Office at 2102 N. Illinois Street
- beginning on February 20, 2018 and continuing through the filing date, the same notice was posted on IPL's website under the Pending section of the Rates, Rules and Regulations area
- a legal notice placed in the Indianapolis Star on February 20, 2018 as evidenced by the attached Publishers Affidavit; and
- beginning on the filing date, a copy of the Annual IPL Cogeneration filing will be included on IPL's website under the Pending section of the Rates, Rules and Regulations area

I affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge, information, and belief.

Dated this 28th day of February, 2018

  
James L. Cutshaw  
Revenue Requirements Manager



**LEGAL NOTICE**

Notice is hereby given that on or about February 28, 2018, Indianapolis Power & Light Company expects to submit a revision to its Tariff No. E-17 entitled Rate CGS - Cogeneration and Small Power Production, 3<sup>rd</sup> Revised No. 122 ("Rate CGS"). The revision to Rate CGS will affect any customer taking electric service under the Company's standard offer and form contract for the purchase of energy and capacity from cogeneration and alternate energy production facilities operating within IPL's service territory. IPL expects approval of the filing on or about April 4, 2018.

This notice is provided to the public pursuant to 170 IAC 1-6-6. The contact information, to which an objection should be made, is as follows:

Secretary  
Indiana Utility Regulatory Commission  
101 W. Washington Street, Suite 1500 East  
Indianapolis, Indiana 46204  
Telephone: (317) 232-2700  
Fax: (317) 232-6758  
Email: [info@urc.in.gov](mailto:info@urc.in.gov)

Office of Utility Consumer Counselor  
115 W. Washington Street, Suite 1500 South  
Indianapolis, Indiana 46204  
Telephone: (317) 232-2484  
Toll Free: 1-888-441-2494  
Fax: (317) 232-5923  
Email: [uccinfo@oucc.in.gov](mailto:uccinfo@oucc.in.gov)

Dated February 20, 2018

The Indianapolis Star  
130 South Meridian Street  
Indianapolis, IN 46225  
Marion County, Indiana

Federal Id: 06-1032273

INDPLS POWER & LIGHT

Account #:INI-46410  
Order #:0002738781  
Total Amount of Claim:\$600.70

INDPLS POWER & LIGHT  
ATTN KARLA IVES  
1 MONUMENT CIR  
INDIANAPOLIS, IN 46204

### PUBLISHER'S AFFIDAVIT

STATE OF INDIANA,  
County Of Marion } **SS:**

Personally appeared before me, a notary public in and for said county and state, the undersigned

I, being duly sworn, say that I am a clerk for THE INDIANAPOLIS NEWSPAPERS a DAILY STAR newspaper of general circulation printed and published in the English language in the city of INDIANAPOLIS in state and county aforesaid, and that the printed matter attached hereto is a true copy, which was duly published in said paper for 1 times., the dates of publication being as follows:

The insertion being on the 02/20/2018

Newspaper has a website and this public notice was posted in the same day as it was published in the newspaper.

Pursuant to the provisions and penalties of Ch. 155, Acts 1953,

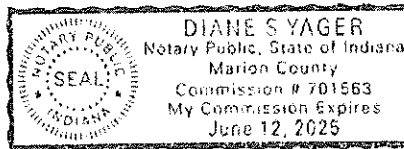
I hereby certify that the foregoing account is just and correct, that the amount claimed is legally due, after allowing all just credits, and that no part of the same has been paid.

*Karla Ives*

Date: 2-20, 2018 Title: Clerk

Subscribed and sworn to before me this 20 day of February, 2018

*Diane S Yager*  
Notary Public



Form Prescribed by State Board of Accounts  
(Rev. 2002)

General Form N89P

\_\_\_\_\_  
(Governmental Unit)  
  
\_\_\_\_\_  
County Indiana

To: **INDIANAPOLIS STAR**

**Indianapolis, IN**

**PUBLISHER'S CLAIM**

**COMPUTATION OF CHARGES**

45 lines, 2 columns wide equals 90 equivalent lines at \$6.54 per line @ 1 days, **\$588.20**

Website Publication **\$0**

Acct # : INI-46410  
Ad # : 0002738781

Charge for proof(s) of publication **\$0.00**

**TOTAL AMOUNT OF CLAIM \$600.70**

DATA FOR COMPUTING COST  
Width of single column 9.5 ems  
Number of insertions 1  
Size of type 7 point

Claim No. \_\_\_\_\_ Warrant No. \_\_\_\_\_  
**IN FAVOR OF**  
**The Indianapolis Star**  
**Indianapolis, IN**  
**Marion County**  
**130 S. Meridian St. Indianapolis, IN 46225**

I have examined the within claim and hereby certify as follows:

That it is in proper form.

This it is duly authenticated as required by law.

That it is based upon statutory authority.

That it is apparently (correct)  
(incorrect)

\$ \_\_\_\_\_  
On Account of Appropriation For

FED. ID  
#06-1032273

Allowed \_\_\_\_\_ . 20 \_\_\_\_\_

In the sum of \$ \_\_\_\_\_

I certify that the within claim is true and correct; that the services there-in itemized and for which charge is made were ordered by me and were necessary to the public business.

**LEGAL NOTICE**

Notice is hereby given that on or about February 28, 2018, Indianapolis Power & Light Company expects to submit a revision to its Tariff No. E-17 entitled Rate CGS - Cogeneration and Small Power Production, 3rd Revised No. 122 ("Rate CGS"). The revision to Rate CGS will affect any customer taking electric service under the Company's standard offer and form contract for the purchase of energy and capacity from cogeneration and alternate energy production facilities operating within IPL's service territory. IPL expects approval of the filing on or about April 4, 2018.

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Secretary  
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Fax: (317) 232-5923  
Email: [uccinfo@oucc.in.gov](mailto:uccinfo@oucc.in.gov)

Dated February 20, 2018

S - 2/20/18 - 0002738781)

hspaxlp

Indianapolis Power & Light Company  
One Monument Circle  
Indianapolis, Indiana

I.U.R.C. No. E-17

Original No. 120

RATE CGS  
COGENERATION & SMALL POWER PRODUCTION

AVAILABILITY:

Available to any Customer of Indianapolis Power & Light Company (the "Company") that operates within the Company's service territory a Qualifying Cogeneration Facility or a Qualifying Small Power Production Facility subject to the Company's rules and regulations and, any terms, conditions and restrictions imposed by any valid and applicable law or regulation. This tariff is submitted pursuant to the requirements of the Commission's regulations and shall cease to be effective if such regulations are set aside, withdrawn or for any reason cease to be applicable to the Company. An Existing Qualifying Facility is not subject to, or entitled to the benefits of this Rate CGS except as otherwise expressly provided by law.

DEFINITIONS:

- (a) Qualifying Facility is either a Cogeneration Facility or Small Power Production Facility, but does not include any facility substantial construction of which was not begun on or after November 9, 1978, or any facility not meeting applicable ownership requirements.
- (b) Existing Qualifying Facility means a Qualifying Facility which was in operation before July 1, 1983.
- (c) Cogeneration Facility means a facility that simultaneously generates electricity and useful thermal energy; and meets the energy efficiency standards established for cogeneration facilities by the FERC pursuant to 16 U.S.C. 824a-3.
- (d) Small Power Production Facility means an arrangement of equipment for the production of electricity with capacity no greater than eighty megawatts, all of which equipment is located within a site one mile in radius from the generating equipment or, for hydroelectric facilities, at the same impoundment of water, and which equipment must be powered at least seventy-five percent (75%) by biomass, waste, renewable resources, geothermal resources, or any combination thereof, and not more than twenty-five percent (25%) by oil, natural gas, and coal or any combination thereof.
- (e) Purchase means the purchase of electric energy or capacity or both from a Qualifying Facility by the Company.
- (f) Sale means the sale of electric energy or capacity or both by the Company to a Qualifying Facility.
- (g) Avoided Costs means the incremental costs to the Company of electric energy or capacity or both which, but for the purchase from a Qualifying Facility or Facilities, the Company would generate itself or purchase from another source.
- (h) Interconnection Costs means the reasonable costs of connection, switching, metering, transmission, distribution, safety provisions, and administrative costs incurred by the Company directly related to the installation and maintenance of the physical facilities necessary to permit interconnected operations with a Qualifying Facility, to the extent such costs are in excess of the corresponding costs which the Company would have incurred if it had not engaged in interconnected operations, but instead generated an equivalent amount of electric energy itself or purchased an equivalent amount of electric energy or capacity from other sources. Interconnection Costs do not include any costs included in the calculation of Avoided Costs.
- (i) Supplementary Power means electric energy or capacity supplied by the Company, regularly used by a Qualifying Facility in addition to that which the facility generates itself.
- (j) Back-up Power means electric energy or capacity supplied by the Company to replace energy ordinarily generated by a facility's own generation equipment during an unscheduled outage of the facility.
- (k) Interruptible Power means electric energy or capacity supplied by the Company subject to interruption by the Company under specified conditions.
- (l) Maintenance Power means electric energy or capacity supplied by the Company during scheduled outages of the Qualifying Facility.

Effective March 31, 2016

Indianapolis Power & Light Company  
 One Monument Circle  
 Indianapolis, Indiana

I.U.R.C. No. E-17

Original No. 121

RATE CGS (Continued)

DEFINITIONS: (Continued)

- (m) System Emergency means a condition on the Company's system which is liable to result in imminent significant disruption of service to Customers or in substantial deviation from normal service standards or which is imminently liable to endanger life or property.
- (n) Commission means the Indiana Utility Regulatory Commission.
- (o) FERC means the Federal Energy Regulatory Commission.
- (p) Peak Period means the time between 6 a.m. and 10 p.m. (April through September) or between 7 a.m. and 11 p.m. (October through March) on all days except Saturdays and Sundays, which daily time period will be subject to change from time to time at the Company's option. This change would occur after no less than ten (10) days notice has been given to all Customers who would be affected, and to the Commission.
- (q) Off Peak Period means the time not included in the Peak Period.

PURCHASE AND SALE:

The Company shall purchase energy or capacity which is made available by a Qualifying Facility and shall sell energy or capacity to a Qualifying Facility only in accordance with the terms and conditions set forth herein, but subject to all applicable requirements of Federal law or regulation, court decisions or orders from courts of competent jurisdiction and the continuing jurisdiction of the Commission and FERC. A written contract shall be required between the Company and each Qualifying Facility incorporating specific provisions governing the interconnection and each purchase and sale.

Purchases and sales shall also be subject to the following general terms and conditions:

- (a) Purchases and sales may occur simultaneously.
- (b) The Company need not purchase or sell at the time of a System Emergency.

INTERCONNECTION CONDITIONS AND COSTS:

- (a) The Company, subject to prior compliance by the Qualifying Facility with all applicable Federal and State laws and regulations, shall make parallel interconnection with the Qualifying Facility in such a way as to accomplish purchases and sales as described in Sections (b) through (f).
- (b) The Qualifying Facility shall comply with the National Electrical Safety Code, as supplemented, the applicable requirements of 170 IAC 4-4.3, and the Company's rules and regulations for electric service.
- (c) Interconnection Costs from the Qualifying Facility to the Company's distribution or transmission system, including those costs of (d) and (e) below, shall be borne by the Qualifying Facility. There shall be no obligation on the Company to finance such interconnection.
- (d) The Qualifying Facility shall install, operate, and maintain in good order such relays, locks and seals, breakers, automatic synchronizer, and other control and protective apparatus as shall be designated by the Company for operation parallel to its system. The Qualifying Facility shall bear full responsibility for the installation and safe operation of this equipment.
- (e) Breakers capable of isolating the Qualifying Facility from the Company shall at all times be immediately accessible to the Company. The Company may isolate the Qualifying Facility at its own discretion if the Company believes continued parallel operation with the Qualifying Facility creates or contributes to a System Emergency. System Emergencies causing discontinuance of parallel operation are subject to verification by the Commission.
- (f) To properly record numbers of kilowatthours for, respectively, purchase and sale, the following configurations shall be the basis for metering:

Indianapolis Power & Light Company  
One Monument Circle  
Indianapolis, Indiana

I.U.R.C. No. E-17

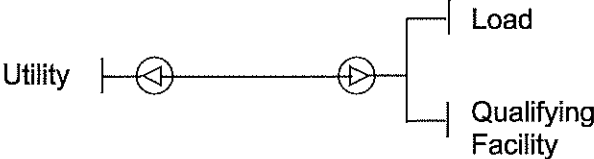
2<sup>nd</sup> Revised No. 122  
Superseding  
1<sup>st</sup> Revised No. 122

RATE CGS (Continued)

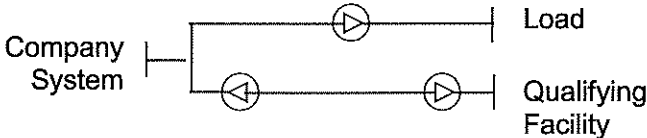
INTERCONNECTION CONDITIONS AND COSTS: (Continued)

(f) (Continued)

- (1) Where purchases are intended to be less than 1000 kilowatthours per month, and the Company and Qualifying Facility mutually agree, a single bidirectional meter may be placed between, at one side, the Company system and, on the other side, the Qualifying Facility and any load associated with it.
- (2) Where such measurement is appropriate for measurement of energy, the circuit shall include at minimum two monodirectional meters in a series arrangement between, at one side, the Company system and, on the other side, the Qualifying Facility and any load associated with it:



- (3) Where such is appropriate for measurement of energy, the circuit shall include a monodirectional meter between the on-site load and the Company and, in a series arrangement, two monodirectional meters between the Qualifying Facility and the Company system:



- (4) The meter measuring purchases by the Company shall be of a design to record time periods, and shall be capable of electronically transmitting instantaneous readings.
- (5) Other metering arrangements shall be the subject of negotiations between the Company and the Qualifying Facility.

RATE FOR PURCHASE:

The rate the Company will pay each Qualifying Facility for energy and capacity purchased will be established in advance by written contract with the Company as filed and approved by the Commission and will be based on the RATE FOR PURCHASE on file from time to time with the Commission, adjusted as outlined in the remaining parts of this section. Unless otherwise agreed the RATES FOR PURCHASE shall be:

- (1) Capacity \$7.27 per KW per month
- (2) Energy - Peak Period 3.75¢ per KWH  
- Off Peak Period 2.73¢ per KWH

Indianapolis Power & Light Company  
One Monument Circle  
Indianapolis, Indiana

I.U.R.C. No. E-17

Original No. 123

RATE CGS (Continued)

RATE FOR PURCHASE: (Continued)

In the event of an impasse in negotiations concerning RATES FOR PURCHASE of energy or capacity, either party may petition the Commission for a determination naming the other party as respondent.

The monthly capacity payment shall be adjusted by the following factor:

$$F = \frac{E_p}{(K)(T_p)}$$

Where: F = Capacity payment adjustment factor.  
E<sub>p</sub> = Kilowatt-hours delivered to the Company during the Peak Period.  
K = Kilowatts of capacity the Qualifying Facility contracts to provide.  
T<sub>p</sub> = Number of hours in the peak period.

The KW capacity available and the kilowatthours in the peak period shall be determined by a suitable recording type instrument.

For intended purchases of 72,000 kilowatthours or more per month of energy from a Qualifying Facility, the Company and the Qualifying Facility may agree to increase or decrease the rate in recognition of the following factors:

- (1) The extent to which scheduled outages of the Qualifying Facility can be usefully coordinated with scheduled outages of the Company's generation facilities;
- (2) The relationship of the availability of energy from the Qualifying Facility to the ability of the Company to avoid costs, particularly as is evidenced by the Company's ability to dispatch the Qualifying Facility;
- (3) The usefulness of energy from the Qualifying Facility during System Emergencies, including the ability of the Qualifying Facility to separate its load from its generation.

The Company and a Qualifying Facility may negotiate a rate for energy or capacity purchase which differs from the filed rate of Rate CGS.

RATES FOR SALE BY COMPANY:

Back-up Power shall be provided under Standard Contract Rider No. 10. Maintenance Power shall be provided under Standard Contract Rider No. 11. Supplementary Power shall be provided under Standard Contract Rider No. 12. A Customer may not simultaneously qualify for Rate CGS, Rate REP Renewable Energy Production, Standard Contract Rider No. 9 Net Metering, and Standard Contract Rider No. 8 for off-peak service.

STANDARD CONTRACT RIDERS APPLICABLE:

No. 1	Customer Load Characteristics	see Page 150
No. 10	Back-up Power	see Page 162
No. 11	Maintenance Power	see Page 163
No. 12	Supplementary Power	see Page 164



**From:** [Steinhauer, Jane](#)  
**To:** [Jim.Cutshaw@aes.com](mailto:Jim.Cutshaw@aes.com)  
**Cc:** [Heline, Beth E.](#); [Veneck Jr., Robert](#); [Stevens, George](#); [Jones, Meredith W](#); [Thomas, Dale](#)  
**Subject:** CAC Objection to 30-day Filing No. 50123  
**Date:** Friday, March 23, 2018 3:59:20 PM  
**Attachments:** [ELPC CAC Objection to IPL 30-day Filing PURPA - FINAL w attachments.pdf](#)

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Mr. Cutshaw,

The Citizens Action Coalition (CAC) submitted an objection to the pending 30-day filing identified with the tracking number 50123. The Commission is required to promptly notify the utility of any objection it receives. This email serves as notification of such an objection. Additionally, the objection is attached to this email. Pursuant to 170 IAC 1-6-7(c), the utility may submit, within 10 calendar days following this notification, one or more of the following:

- 1) A response to the objection
- 2) Clarification of the filing
- 3) Additional information
- 4) An amendment to the filing
- 5) A withdrawal of its filing

Here is a link to the guidelines regarding objections to 30-day filings - <http://in.gov/iurc/2519.htm>.

Sincerely,

Jane Steinhauer



Received: April 2, 2018  
IURC 30-Day Filing No.: 50123  
Indiana Utility Regulatory Commission

April 2, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street  
Suite 1500 E  
Indianapolis, IN 46204

**RE: Indianapolis Power & Light Company Thirty Day Administrative Filing (# 50123)**

Dear Ms. Becerra,

Indianapolis Power & Light Company (“IPL”) hereby responds to the objection filed by the Citizens Action Coalition of Indiana and the Environmental Law & Policy Center (collectively the “Objectors”) to IPL’s Thirty Day Administrative Filing (the “Filing”) for Rate CGS. The Filing has been assigned the tracking number 50123 by the Indiana Utility Regulatory Commission (“Commission”). The Filing was made by IPL to comply with 170 IAC 4-4.1-10 (“Section 10”). Section 10 requires each generating electric utility to annually file updated standard offer rates for the purchase of energy and capacity from a cogeneration facility. The energy and capacity rates must be derived from the appropriate application of 170 IAC 4-4.1-8(a) and 9(c) through 9(d).

The Objectors do not object to the Filing on the basis that the energy and capacity rates are not derived from the appropriate application of Sections 8(a) or 9(c) through 9(d) or otherwise fail to comply with the requirements of Section 10. Instead, the Objectors contend the Filing is “incomplete and violates applicable law” because IPL (a) did not submit a standard contract pursuant to 170 IAC 4-4.1-11 and (b) does not include avoided cost information the Objectors imply must be included in the Filing by 18 CFR § 292.302(b). The Objectors’ contentions misconstrue the obligations imposed on IPL. Section 10 does not require IPL to include a standard contract with its annual update to the rates for energy and capacity purchases from a cogeneration facility and no other provisions of the Indiana regulations require such a submission. Neither does Section 10 require IPL to submit rates that comply with 18 C.F.R. § 292.302(b) as part of the Section 10 filing. Consequently, the Filing does not violate applicable law, is not incomplete and there is no permissible basis identified by the Objectors to object to the Filing.

**IPL Is Not Required To Submit A Standard Contract**

IPL submitted this Filing to comply with Section 10. Objectors do not refer to or cite any provision in Section 10 requiring IPL to submit a standard offer contract when submitting its standard offer rates for purchase of energy and capacity each February 28. Indeed, no provision in Section 10

requires a standard offer contract to be submitted with this annual filing. Since Section 10 does not require a standard contract, no credible objection can be raised to a Section 10 filing on the basis that a standard contract was not included in the filing.

170 IAC 4-4.1-11 ("Section 11") does require submission of a standard offer contract, but Objectors ignore the specific language of the regulation making clear that a generating electric utility is not required to annually submit a standard offer contract with each filing made under Section 10:

Sec. 11. (a) Within sixty (60) days of the effective date of this rule each generating electric utility shall submit for approval via the commission's thirty (30) day filing process a standard form contract which it would enter into with a qualifying facility in connection with the generating electric utility's purchase of energy or capacity or both.

Section 11(a). The submission of these standard offer contracts is a one-time requirement that was required to have been performed within sixty (60) days of the effective date of the rule. IPL complied with this requirement by submitting a copy of its standard form agreement at the time the rule was adopted. Nothing further is required by Sections 10 or 11 with respect to this standard form contract.

The Objectors also state they were unable to locate IPL's standard contract and that IPL did not provide it upon request. However, the Objectors' ability to locate the contract has no bearing on the Filing's compliance with Section 10. Even so, IPL recently provided CAC's counsel with a copy of the filed agreement. The agreement was provided within ten business days of the request (which request was made two days before the objection was filed). IPL required some time to locate the agreement because no customer has expressed interest in a long-term, fixed rate contract for such purchases at rates other than available under Rate CGS in the recent past and time was required to locate the agreement. Objectors have received what they sought.

The Objectors also contend that "lack of a long-term, fixed rate standard contract has likely discouraged developers from pursuing projects in Indiana," however they provide no support for this contention, nor is the argument relevant to IPL's compliance with the thirty day filing rules.

**IPL's Section 10 Filing Need Not Comply With 18 CFR §292.302(b)**

Similarly, the Objector's contention that the Filing, which was made pursuant to Section 10, does not include the avoided cost information required by 18 CFR § 292.302(b) provides no legitimate basis to object to the Filing. IPL was not submitting the Filing to comply with 18 C.F.R. § 292.302(b), but to comply with Section 10. The Objectors do not contend that the Filing fails to comply with Section 10 in any respect. No provision in Section 10 requires a generating electric utility to submit the information required by 18 CFR § 292.302 as part of the annual 30-day filing

required by Section 10. A filing cannot reasonably be held to violate Section 10 or be incomplete because it fails to include information not required by Section 10.

While not relevant to the legitimacy of the Objectors' objections, IPL has complied with many of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan ("IRP") which was filed on November 1, 2016. The IRP evaluates IPL's planned capacity additions over at least 10 years and establishes the cost of capacity additions.

The basis for CAC's objection to IPL's Filing is without merit. The Filing is neither incomplete nor in violation of applicable law. For these reasons, IPL believes its Filing should be presented to the Commission for consideration.

**Initiation Of a Statewide Docket To Investigate PURPA Implementation  
Is Not Appropriate At This Time**

Objectors' true purpose for their objections appears to be the initiation of a statewide docket to investigate Indiana's implementation of the Public Utilities Regulatory Policy Act ("PURPA"). This is not a legitimate basis for objecting to the Filing, since Section 10 contemplates submission of the energy and capacity rates pursuant to the Commission's 30-day filing procedures to avoid lengthy proceedings considering them.

Apart from Objectors' mis-use of the objection provision of the 30-day filing procedure, now is not the time for Indiana to initiate a statewide docket to investigate PURPA implementation. The very regulations cited by Objectors are being reviewed by the Federal Energy Regulatory Commission ("FERC") in Docket No. AD16-16. *See* Notice Inviting Post-Technical Conference Comments, Docket No. AD16-16 (FERC Sept. 6, 2016).<sup>1</sup> FERC's then Chairman, Neil Chatterjee, has explained the purpose of this investigation:

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation and modern realities.

Letter from then Chairman Neil Chatterjee to Representative Tim Walberg (Nov. 29, 2017).<sup>2</sup> Moreover, Congress is considering changes that may be necessary to PURPA. The Energy and Commerce Subcommittees of the House of Representatives held a hearing on September 6, 2017 to hear testimony on the need for revisions to PURPA. *Powering America: Reevaluating PURPA's Objectives and its Effects on Today's Consumers before the H. Energy and Commerce*

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<sup>1</sup> Available at <https://www.ferc.gov/CalendarFiles/20160906164926-AD16-16-000%20TC2.pdf>.

<sup>2</sup> Available at [https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14624205](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14624205).

Mary Becerra  
April 2, 2018  
Page 4 of 4

*S. Comm.*<sup>3</sup> Legislation has been introduced in the House of Representatives to modernize PURPA. H.R. 4476, 115<sup>th</sup> Congress (2015).<sup>4</sup> Given Congressional and FERC investigations into the need to update PURPA, any inquiry in Indiana, if appropriate, should await the outcome of these other PURPA inquiries because of the significant likelihood any changes would need to be considered by Indiana.

Sincerely,



Andrew J. Wells  
Regulatory Counsel  
AES US Services, LLC  
Indianapolis Power & Light Company

CC: Ms. Jane Steinhauer

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<sup>3</sup> Available at <https://energycommerce.house.gov/hearings/powering-america-reevaluating-purpas-objectives-effects-todays-consumers/>.

<sup>4</sup> Available at <https://www.congress.gov/bill/115th-congress/house-bill/4476/text>.

April 6, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204  
mbecerra@urc.in.gov  
*Electronically delivered*

RE: Reply to IPL's Response to CAC and ELPC Objection

**Reply to IPL's Response to Objection on behalf of  
Citizens Action Coalition and the Environmental Law & Policy Center**

Pursuant to Rule 170 IAC 1-6-7(d)(1), which states that 30-Day filings that have not been resolved to the satisfaction of the objector shall not be presented for Commission approval, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") respectfully submit this Reply to express their lack of satisfaction with Indianapolis Power & Light's ("IPL") Response, filed on April 2, 2018, to CAC and ELPC's Objections filed on March 23, 2018. The Commission's procedures allow a party to reply to a response in similar contexts. *See, e.g.* 170 IAC 1-1.1-12(f). The Objections and Response at issue concerns IPL's 30-day filing, filed on February 28, 2018, IURC 30-Day Filing No. 50123.

IPL's response failed to satisfy ELPC and CAC's objection, as required by 170 IAC 1-6-7(d)(1), and the response raised a number of issues demonstrating why the Commission should open an investigation into Indiana's implementation of PURPA. There are three key reasons why the Commission should deny IPL's 30-day filing and open an investigation into Indiana's PURPA implementation.

**1. IPL's Standard Contract Fails to Comply with Indiana and Federal Law.**

After ELPC and CAC filed its Objection, IPL's counsel provided its standard contract to ELPC and CAC, which attached to this reply as Exhibit C. There are three relevant requirements applicable to IPL's standard contract. First, Indiana law requires electric utilities to enter into "long term" contracts for the purchase of energy and capacity by PURPA QFs. Burns Ind. Code Ann. § 8-1-2.4-4(a). Second, Indiana's PURPA regulations require electric utilities to file a standard contract that must include "[t]he term of the contract." 170 IAC 4-4.1-11(c)(1). Third, federal law requires that long-term contracts include the ability to obtain fixed rates. 18 C.F.R. § 292.304(d)(2)(ii); *see also Winding Creek Solar LLC v. Peevey*, \_ F. Supp. 3d. \_, No. 13-04934, 2017 WL 6040012, at \*10 (N.D. Cal. 2017) (PURPA standard contract without option to fix rates over entire term conflicts with PURPA).

IPL's standard contract fails to contain a term length, as required by 170 IAC 4-4.1-11(c)(1), and failure to provide a term length also fails to provide the opportunity for a "long term" contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a). In IPL's standard contract,

the term length is undefined. *See* Exhibit C at 5. By leaving the term undefined, IPL fails to comply with Indiana law requiring “the term of the contract,” 170 IAC 4-4.1-11(c)(1), and fails to provide a “long term” contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a). Although the term contains an evergreen provision, the lack of a defined term fails to provide a QF with any meaningful opportunity to fix rates over a term certain. It is impossible to fix rates over a specified term when that term is indefinite.

In IPL’s standard contract, the rates for purchase change annually, which means avoided cost rates are not fixed if the contract is longer than one year. *See* Exhibit C at 4. Nowhere else in the standard contract is there an option for fixed rates in contracts longer than a year, as required by 18 C.F.R. § 292.304(d)(2)(ii).

IPL’s standard contract’s annual change to the avoided cost conflicts with 18 C.F.R. § 292.304(d)(2)(ii), which requires QFs to have the option of fixing the contract price for the delivery of energy and capacity “at the time the obligation is incurred.” *See Allco Renewable Energy Ltd v. Massachusetts Electric Co.*, 208 F. Supp. 3d 390, 400 (D. Mass. 2016) *aff’d* 875 F.3d 64 (1st Cir. 2017) (lack of option to obtain fixed rate in long term contracts renders state’s PURPA implementation in conflict with PURPA); *Winding Creek Solar LLC v. Peevey*, \_\_ F. Supp. 3d \_\_, No. 13-04934, 2017 WL 6040012, at \*10 (N.D. Cal. 2017) (PURPA standard contract without option to fix rates over entire term conflicts with PURPA).

The North Carolina Utilities Commission (“NCUC”) recently rejected Duke Energy Carolinas, LLC, similar proposal to change the avoided cost rates in its standard contract every two years.<sup>1</sup> The NCUC explained:

The Commission determines, for purposes of this case, that IPL’s proposed two-year reset in the avoided energy rate component of the standard offer rate should not be adopted at this time. While some larger facilities may be able to negotiate for different terms and degrees of certainty with regard to securing capital and return on investment, the proposed two-year energy rate reset for facilities eligible for the standard offer rates adds an additional element of uncertainty to their ability to reasonably forecast their anticipated revenue, which may make obtaining financing more difficult than a longer term, fixed-rate PPA.<sup>2</sup>

Annual avoided cost updates, like those in IPL’s standard contract, would be even more uncertain than Duke Energy Carolina’s unsuccessful biennial update proposal in North Carolina. According to the testimony of Cypress Creek Renewables, a QF developer in North Carolina, annual or biennial change to contract prices make QF financing prohibitively difficult:

Cypress Creek argues that financing parties would view a ten-year PPA with a two-year readjustment to the avoided energy rate no more favorably than they would a two-year contract, which would not be financeable. Cypress Creek

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<sup>1</sup> *See In re Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2016*, Docket No. E-100 SUB 148, Order at 7 ¶ 10 (N. C. Pub. Util. Comm’n Oct. 11, 2017) available at <https://perma.cc/UUJ6-2G5Q>.

<sup>2</sup> *Id.*, Order at 69.

witness McConnell testified that rates fixed over the term of the contract are critical to securing financing, stating that “fixed rates for a fixed period of time create financeable contracts,” and that what creates value in the contract is having a set avoided cost rate for a set period of time. He further testified that without these fixed rates, lenders are unwilling to bet on what the avoided cost rates will be going forward.<sup>3</sup>

IPL’s failure to offer QFs the choice of a long-term fixed rate contract conflicts with PURPA, as interpreted by FERC and other recent state commission orders. In addition, the lack of fixed rate contracts and its negative effect on QF development is an issue the Commission should investigate further, and the Commission should require IPL to offer QFs the ability to fix rates over an entire term, as required by PURPA.

## **2. IPL Has Not Complied With All Requirements of 18 C.F.R. § 292.302(b).**

In its response, IPL admitted that it has not filed *all* of the information required by 18 C.F.R. § 292.302(b). IPL Response at 3 (“IPL has complied with *many* of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan (“IRP”) which was filed on November 1, 2016.”) (emphasis added). IPL’s response indicates it has only supplied the information required by 18 C.F.R. § 292.302(b)(2)-(3) (capacity additions over 10 years and their costs), but did not indicate it has supplied the forecasted avoided cost information required by 18 C.F.R. § 292.302(b)(1). Accordingly, because 18 C.F.R. § 292.302(b) requires this information to be filed at least every two years, IPL is not in compliance because it has not filed the information required by § 292.302(b)(1) in the last two years.

In addition, although IPL’s November 2016 IRP does show its planned capacity additions over the next ten years,<sup>4</sup> as required by 18 C.F.R. § 292.302(b)(2), nowhere in the IRP does it contain the “estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour.” 18 C.F.R. § 292.302(b)(3).

Perhaps these estimated capacity costs are available in the non-public version of the IRP, but that too fails to comply with the regulation. The regulation states that utilities “shall maintain for public inspection” these “estimated capacity costs.” 18 C.F.R. §§ 292.302(b), 292.302(b)(3). The “public inspection” requirement preempts application of trade secret or confidential treatment of the information required to comply with this regulation.<sup>5</sup> If IPL wants to use its IRP to comply with 18 C.F.R. §§ 292.302(b)(3), then it cannot shield those estimated capacity costs

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<sup>3</sup> *Id.*, Order at 67.

<sup>4</sup> IPL, 2016 INTEGRATED RESOURCE PLAN at 209 (Nov. 2016), available at <https://perma.cc/NS83-AR8M>.

<sup>5</sup> See *In Re Investigation of Central Maine Power Company's Resource Planning, Rate Structures, and Long-Term Avoided Costs (Rate Design Phase)*, Docket No. 92-315, 1995 Me. PUC LEXIS 11 at \*13-14 (Jan. 27, 1995 Me. Pub. Util. Comm’n). The Maine Public Utilities Commission stated:

Plainly, under this federal regulation, the specified avoided cost information must be filed with state regulatory agencies and the information must be publicly available. The federal regulation expressly regulates state activities and, under the supremacy clause, undoubtedly precludes any state action that would make the specified information not publicly available, e.g., pursuant to state trade secret protection law. *Id.* at \*13.



from public view.

IPL's lack of compliance with 18 C.F.R. § 292.302(b)(1) undermines the purpose of these avoided cost informational filings and this lack of compliance demonstrates the need for Indiana to investigate the issue further.

**3. There Are Currently No Federal Investigations or Rulemakings into PURPA, and Even If There Were, It Should Not Stop the Commission from Exercising its Duly-delegated Authority to Implement PURPA and State Law.**

IPL believes an investigation of PURPA implementation is not warranted in Indiana because there are already federal investigations into PURPA ongoing and therefore the State should allow the federal government to dictate what Indiana should do. IPL Response at 4-5. However, contrary to IPL's assertions, there are no active FERC investigations or rulemakings related to PURPA. IPL cited to a FERC order soliciting comments in Docket AD16-16, but FERC created that docket solely for its 2016 PURPA technical conference.<sup>6</sup> Conference participants filed their comments in Fall 2016, and FERC has taken no action and conducted no investigation or rulemaking following those comments.

IPL misrepresented statements made by FERC's Chairman Neil Chatterjee. On October 30, 2017, Representative Tim Walberg sent a letter to FERC asking FERC to update its PURPA regulations. *See* Exhibit D. On November 29, 2017, FERC Chairman Neil Chatterjee responded with a two-paragraph letter and did not initiate an investigation or rulemaking in response to Walberg's letter. *See* Exhibit E. Nevertheless, IPL attempts to use an excerpt of Neil Chatterjee's letter to explain "the purpose of this investigation," IPL Response at 3, even though no such investigation exists and the Chairman's letter does not reference an active investigation or rulemaking.

IPL also cited to a recent bill introduced in Congress as evidence of another federal investigation. That bill, titled the PURPA Modernization Act, H.R. 4476, has sat in a House of Representative subcommittee since December 1, 2017 and has yet to be offered up for a vote.<sup>7</sup> Even if it passes the committee stage, it is unlikely to pass the full House of Representatives or the Senate. In addition, the legislation only effects the size of QFs and how PURPA could interact with integrated resource plans—it has nothing to do with adequate contract term lengths under Indiana law or compliance with 18 C.F.R. 292.302(b).

IPL's reliance on federal activity as a reason for why the Commission should not open an investigation rings hollow. PURPA operates under a cooperative federalism framework whereby FERC issued the primary regulations but the State of Indiana is delegated authority to implement those regulations at the state level. *See* 16 U.S.C. § 824a-3(f). Indiana has adopted state laws and regulations to implement these requirements, including a state law that directs the commission to

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<sup>6</sup> *See Notice of technical conference re Implementation Issues under the Public Utility Regulatory Policies Act of 1978*, Docket No. AD16-16 (F.E.R.C. Feb. 9, 2016) available at <https://perma.cc/TKU5-CBW9>; *see also Supplemental Notice Concerning Technical Conference*, Docket No. AD16-16 (F.E.R.C. Mar. 4, 2016) available at <https://perma.cc/A9TV-DLZW>.

<sup>7</sup> *See* <https://www.congress.gov/bill/115th-congress/house-bill/4476/all-actions>

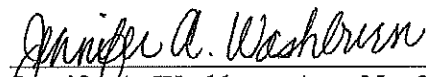
require electric utilities to enter into long-term contracts with alternate energy production facilities. Burns Ind. Code Ann. § 8-1-2.4-4(a). The existence, or not, of federal proceedings related to PURPA in no way negates the Commission's responsibility to implement and enforce existing state law. Finally, PURPA provides the Commission with the discretion to determine issues like contract term lengths, and, therefore, Indiana's discretion and authority to investigate such issues is unaffected by the hypothetical existence of federal investigations into matters unrelated to Indiana's requirement for "long term" contracts. Burns Ind. Code Ann. § 8-1-2.4-4(a).


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Indiana should use its considerable discretion under PURPA to deny approval of IPL's 30-day filing and open an investigation into PURPA implementation in the State. Issues for investigation should be adequate contract term lengths, compliance with 18 C.F.R. 292.302(b)'s biennial avoided cost information requirements, and other issues that the Commission determines are relevant. Other relevant issues could be how utilities calculate their avoided energy cost rates and whether the standard offer tariff and standard contracts should be available to QFs larger than 100 kW.

Dated April 6, 2018

Respectfully submitted,

  
Jennifer A. Washburn, Atty. No. 30462-49  
1915 W. 18<sup>th</sup> Street, Suite C  
Indianapolis, Indiana 46202  
(317) 735-7764  
jwashburn@citact.org

  
Jeffrey Hammons  
Staff Attorney  
Environmental Law & Policy Center  
Chicago, IL 60601  
(312) 795-3717  
JHammons@elpc.org

IPL STANDARD FORM  
AGREEMENT FOR PURCHASE  
OF CAPACITY AND/OR ENERGY FROM COGENERATION  
OR SMALL POWER PRODUCTION FACILITY

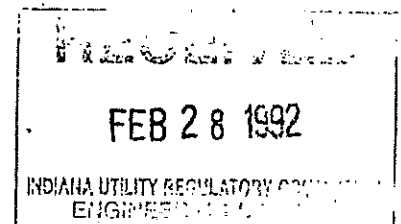
THIS AGREEMENT, made as of the \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, by and between \_\_\_\_\_ (herein called "Seller") and INDIANAPOLIS POWER & LIGHT COMPANY, an Indiana corporation (herein called "IPL"),

WITNESSETH, That:

The parties hereto agree as follows:

Preliminary Provisions

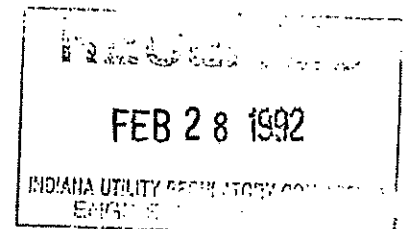
1. Seller warrants to IPL that Seller is a qualifying facility under Indiana law and, in addition, that Seller is either a federally qualified facility under 18 CFR, Part 292, Subpart B, or it has all requisite authority and approvals from the Federal Energy Regulatory Commission ("FERC") for interconnection with and sales of electric power and energy to IPL. Seller agrees to keep such certification or authority and approvals in full force and effect and to provide IPL copies of all documentation thereon on request.



2. This Agreement and all action to be taken hereunder is and shall be subject to all the terms and conditions of IPL's Rate CGS (Cogeneration & Small Power Production) in its Rates, Rules and Regulations for Electric Service, P.S.C.I. No. E-15, and the related Standard Contract Riders appertaining thereto and referred to therein, as the same may be revised, amended or supplemented from time to time, or any replacement thereof, all of which are incorporated herein and made a part of this Agreement by this reference.

3. Seller's Facility ("Facility") from which it will serve IPL hereunder consists of:

and has a name plate rate of \_\_\_\_\_ KW. Its primary energy source is \_\_\_\_\_. The Facility is located at



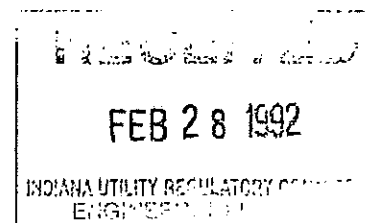
Seller intends to sell the (net energy output) (surplus energy output) [strike out inapplicable phrase] from the Facility and to make available to IPL \_\_\_\_\_ KW of capacity and up to \_\_\_\_\_ KWH of energy per month.

IPL Warranty

4. It is understood and agreed that the only warranties made by IPL hereby with respect to any interconnection facilities constructed, designed or required by it are those which may be made by third parties supplying materials or services. IPL MAKES NO WARRANTY OF DESIGN, MATERIAL, WORKMANSHIP, QUALITY OR OTHERWISE, WHETHER EXPRESS OR IMPLIED (INCLUDING ALL WARRANTIES OF MERCHANTABILITY AND FITNESS FOR A PARTICULAR PURPOSE) WITH RESPECT TO THE INTERCONNECTION FACILITIES, THE INSTALLATION AND CONSTRUCTION THEREOF, OR ANY MATERIALS OR SERVICES PROVIDED BY IPL OR ANY CONTRACTOR IN CONNECTION WITH SUCH INSTALLATION AND CONSTRUCTION.

Purchases

5. Seller shall sell and deliver and IPL shall purchase and accept from the Facility capacity and energy at the voltage level



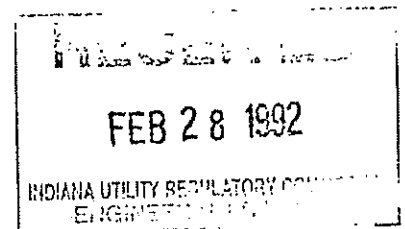
of \_\_\_\_\_ KV or any other level agreed to in writing by IPL. Seller shall limit its actual rate of delivery into the IPL system to \_\_\_\_\_ KW.

6. Seller estimates that deliveries shall commence on \_\_\_\_\_, 19\_\_\_\_. Seller shall promptly give IPL written notice of any expected change in such date and promptly after the end of each calendar quarter from the date of this Agreement to the date of actual service commencement Seller shall give IPL written confirmation of the expected service commencement date.

7. If Seller does not complete construction of the Facility by \_\_\_\_\_, 19\_\_\_\_, IPL may reallocate to other uses the existing capacity of IPL's transmission and/or distribution system which would have been used to accommodate Seller's power deliveries. In the event of such reallocation, Seller shall pay IPL the cost of any upgrading or addition to IPL's system to accommodate the output from the Facility. Such upgrades and additions shall be installed, owned and maintained by IPL.

Purchase Price

8. IPL shall pay Seller for the capacity provided and energy delivered at the rates set forth in IPL's Rate CGS as filed with and approved by the Indiana Utility Regulatory Commission (the "Commission") from time to time or any replacement thereof.

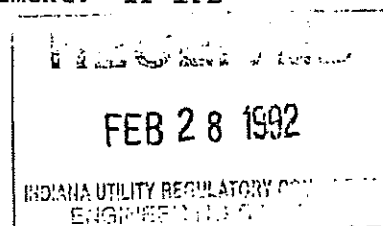


Term

9. Subject to the provisions of paragraphs 10 and 11 herein, this Agreement shall continue in effect until terminated by Seller on 90 days' advance written notice to IPL.

10. IPL makes this Agreement pursuant to the requirement of an Order of the Commission entered on October 5, 1984, in Cause No. 37494, as thereafter amended, and the Commission's rules and regulations with respect to cogeneration and alternate energy production facilities, 170 IAC 4-4.1, approved by said Order, and its obligations herein continue in effect so long as said rules and regulations, or a replacement thereof, remain in effect. This Agreement and IPL's obligations hereunder shall terminate if and when said rules and regulations are held to be invalid or suspended or withdrawn or cease being effective for any other reason.

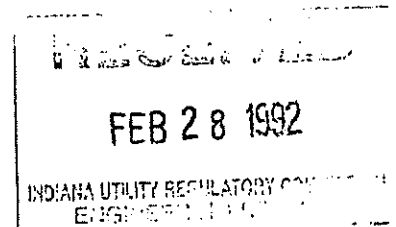
11. Anything in this Agreement to the contrary notwithstanding, should IPL at any time during the term of this Agreement fail to obtain or be denied the Commission's authorization, or the authorization of any other regulatory body which now has or in the future may have jurisdiction over IPL's rates and charges, to recover from its customers all the payments required to be made to Seller under the terms of this Agreement or any subsequent amendment to this Agreement, the parties agree that, at IPL's option, they shall renegotiate this Agreement or any applicable amendment. If IPL



exercises such option to renegotiate, IPL shall not thereafter be required to make such payments to the extent IPL's authorization to recover them from its customers is not obtained or is denied. It is the intent of the parties that IPL's payment obligations under this Agreement or any amendment hereto are conditioned upon IPL being fully reimbursed for such payments through its authorized rates or charges. Any amounts initially recovered by IPL from its rate payers but for which recovery is subsequently disallowed by the Commission and charged back to IPL may be set off or credited against subsequent payments made by IPL for purchases from Seller, or alternatively, shall be repaid by Seller.

Mandatory Provision

12. Each party shall indemnify and hold the other party harmless from and against all claims, liability, damages and expenses, including attorneys' fees, based on any injury to any person, including loss of life, or damage to any property, including loss of use thereof, arising out of, resulting from or connected with, or that may be alleged to have arisen out of, resulted from or connected with, an act or omission by such party, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of such party's facilities used in connection with this Agreement. Upon the written request of the party seeking indemnification under this provision, the other party shall defend any suit asserting a claim covered by this provision.

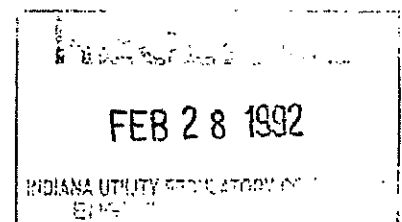




If a party is required to bring action to enforce its indemnification rights under this provision, either as a separate action or in connection with another action, and said indemnification rights were upheld, the party from whom the indemnification was sought shall reimburse the party seeking indemnification for all expenses, including attorneys' fees, incurred in connection with such action:

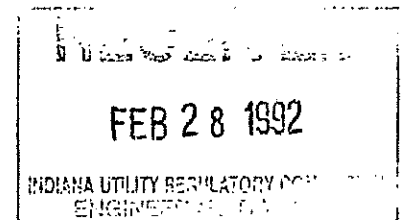
13. If either party is rendered wholly or partly unable to perform its obligations because of Force Majeure, both parties shall be excused from whatever obligations are affected by the Force Majeure and shall not be liable or responsible for any delay in the performance of, or the inability to perform, any such obligations for so long as the Force Majeure continues. The party suffering an occurrence of Force Majeure shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy its inability to perform, provided, however, that the settlement of any strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

"Force Majeure" means any cause or event not reasonably within the control of the party claiming Force Majeure, including, but not limited to, the following: acts of God, strikes, lockouts or other



industrial disturbances; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; unavailability of a fuel or resource used in connection with the generation of electricity; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractor, laborer or materialman; sabotage; injunction; blight; famine; blockade; or quarantine.

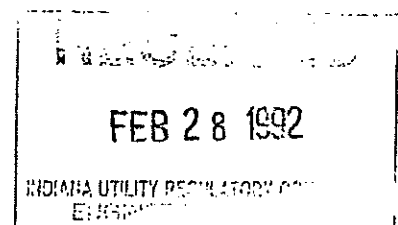
14. The parties agree that the amount of the capacity payment which IPL is to make to Seller is based on the agreed value to IPL of Seller's performance of its obligation to provide capacity during the full term of this Agreement. The parties further agree that in the event IPL does not receive such full performance by reason of a termination of this Agreement prior to its expiration or reduction in the amount of capacity agreed to be provided by Seller as specified in this Agreement (1) IPL shall be deemed damaged by reason thereof, (2) it would be impracticable or extremely difficult to fix the



actual damages to IPL resulting therefrom, (3) the reductions, offsets and refund payments as provided hereafter, as applicable, are in the nature of adjustments in prices and are to be considered liquidated damages, and not a penalty, are fair and reasonable, and (4) such reductions, offsets and refund payments represent a reasonable endeavor by the parties to estimate a fair compensation for the reasonable damages that would result from such premature termination or failure to deliver the specified amount of capacity.

15. In the event this Agreement is terminated or the contract capacity is reduced prior to the end of the contract term, Seller shall refund to IPL the capacity payments in excess of those capacity payments which would have been made had all or the reduced capacity been subject to a capacity rate based on the actual term of delivery to IPL.

16. Except in the event of Force Majeure as defined in this Agreement, if, within any twelve months' period during the term of this Agreement ending on the anniversary date of the date Seller first provided capacity to IPL under this Agreement, Seller fails to provide IPL with the capacity specified in this Agreement, the capacity for which Seller shall be entitled to capacity payments during the subsequent twelve months' period (the "Probationary Period") shall be reduced to the capacity provided during the twelve months' period. If, during the Probationary Period, Seller provides



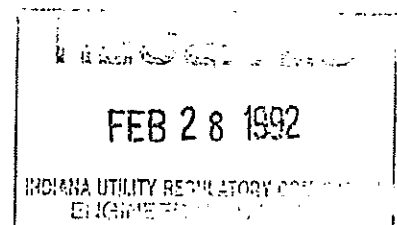
the capacity specified in this Agreement, IPL within 30 days following the end of the Probationary Period, shall reinstate the full capacity amount originally specified in this Agreement. If, during the Probationary Period, Seller again fails to provide the capacity specified in this Agreement, IPL may permanently reduce the capacity purchased from Seller for the remainder of the term of this Agreement. IPL may also require that the reduction in the capacity be subject to the refund provisions of paragraph 14 above.

Insurance

17. So long as this Agreement remains in effect, Seller agrees to maintain in force insurance policies with comprehensive general liability coverage, with IPL named as an additional insured party, having a policy limit of not less than \$2,000,000 each occurrence if Seller operates a generating facility of 100 KW or more, and not less than \$1,000,000 for each occurrence if seller operates a generating facility of less than 100 KW. The insurance carrier or carriers and form of policy shall be subject to IPL's review and approval.

Right to Refuse Performance

18. In event of any breach of warranty or agreement by either party hereto or of any failure to meet the conditions of IPL's Rate CGS or any replacement thereof, the other party may refuse performance hereunder until such breach or failure is cured.



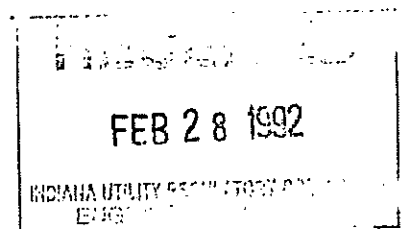
Other Provisions

19. Special provisions on various matters such as (but not limited to) coordination of scheduled outages, application of demand charges payable to IPL in event of breakdown or emergency shutdown of Seller's equipment, wheeling, etc., may be set forth in the supplement annexed hereto and any such additional provisions are made a part of this Agreement.

20. Wheeling is available to the Seller under the provisions of 170 I.A.C. 4-4.1-6 to the extent that such provisions are applicable in view of the Federal Power Act jurisdiction of the Federal Energy Regulatory Commission over IPL's transmission operations.

21. This Agreement embodies the entire agreement of the parties and supersedes all other discussions, understandings or agreements relating to the subject matter hereof.

22. This Agreement shall be effective from and after the date it is approved by the Indiana Utility Regulatory Commission.



23. All written notices shall be directed as follows:

To Seller:

To IPL: William H. Henley  
Manager, Rates and Regulations  
Indianapolis Power & Light Company  
Post Office Box 1595  
Indianapolis, Indiana 46206-1595

or to such other name and address as a party shall furnish to the other party in writing.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the month and year first above written.

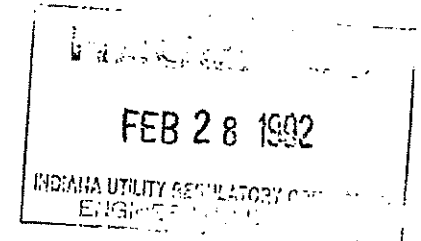
\_\_\_\_\_  
By \_\_\_\_\_

\_\_\_\_\_  
Seller

INDIANAPOLIS POWER & LIGHT COMPANY

By \_\_\_\_\_  
\_\_\_\_\_

IPL



AD 16-16

**Congress of the United States**  
**Washington, DC 20515**

OFFICE OF  
 EXTERNAL AFFAIRS

2017 OCT 31 P 2:45

October 30, 2017

FEDERAL ENERGY  
 REGULATORY COMMISSION

The Honorable Neil Chatterjee  
 Chairman  
 Federal Energy Regulatory Commission  
 888 First Street, NE  
 Washington, DC 20426

Dear Mr. Chairman:

We are writing to urge the Federal Energy Regulatory Commission (FERC) to update its implementing regulations for the Public Utility Regulatory Policies Act (PURPA). As you know, PURPA was enacted in 1978 in response to an oil crisis. Over the last 40 years, we have seen dramatic changes in energy markets that have resulted in an abundance of domestic energy supplies. Two of the most significant changes have been the development of competitive wholesale electricity markets, which enable qualifying facilities (QFs) under PURPA to reach more willing buyers, and the declining costs for natural gas and renewable energy resources. These developments, along with others, have changed both the economics of QF development, as well as the impact of an increasing amount of QF output being placed on the transmission grid.

While there are aspects of the reform of PURPA that will require congressional action, there are also regulatory changes that FERC can make to ensure that its implementing regulations reflect the changes occurring in electricity markets. Many of these changes are already familiar to FERC and were addressed at the technical conference that your agency held on June 29, 2016, in Docket No. AD16-16-000. Among the issues addressed at the conference was the purported gaming of FERC's "one-mile rule" (*see* 18 CFR § 292.204(a)(2)) by certain QF developers. More than a year later, the House Energy and Commerce Subcommittee on Energy heard testimony during its September 6, 2017, hearing on PURPA, that some QFs are continuing to take advantage of FERC's regulations to effectively build projects that exceed the various size thresholds in the wholesale electricity markets regulated by FERC. However, since FERC has made clear in its decisions that its one-mile rule is irrebuttable, parties involved cannot challenge the lawfulness of these projects.


Eliminating the opportunity for certain QF developers to game FERC's one-mile rule will directly benefit electricity customers, who are paying billions of dollars in above-market prices for QF power sold under mandatory PURPA contracts. While the Energy and Commerce Committee considers additional reforms to PURPA, we encourage FERC to address the concerns raised at its 2016 technical conference and to use its authority to undertake needed modernization to the Commission's PURPA one-mile rule regulations while taking into consideration non-geographic factors as well.


2017-00119

As Congress continues its review of PURPA, we request the list of changes and reforms the Commission believes it can make under its existing authority.

We look forward to working with the Commission to ensure our constituents can benefit from lower cost electricity, more competitive markets and advancements made in renewable generation.

Sincerely,

  
Tim Walberg  
Member of Congress

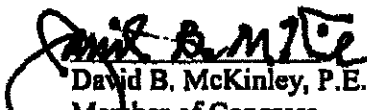
  
Fred Upton  
Member of Congress

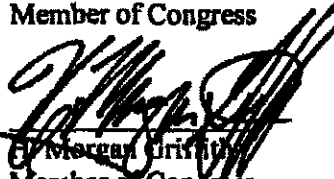
  
Joe Barton  
Member of Congress


  
Marsha Blackburn  
Member of Congress


  
Robert E. Latta  
Member of Congress


  
Gregg Harper  
Member of Congress

  
David B. McKinley, P.E.  
Member of Congress


  
Morgan Griffin  
Member of Congress


  
Bill Johnson  
Member of Congress

  
Dave Loebsack  
Member of Congress

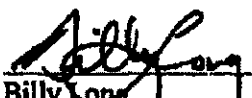
  
Larry Bucshon, M.D.  
Member of Congress


  
Bill Flores  
Member of Congress

  
Markwayne Mullin  
Member of Congress

  
Kevin Cramer  
Member of Congress

  
Kurt Schrader  
Member of Congress

  
Billy Long  
Member of Congress

  
Richard Hudson  
Member of Congress



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**EXHIBIT E**  
**NOV 29 2017**

**FEDERAL ENERGY REGULATORY COMMISSION**

WASHINGTON, DC 20426

November 29, 2017

**OFFICE OF THE CHAIRMAN**

The Honorable Tim Walberg  
U. S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Walberg:

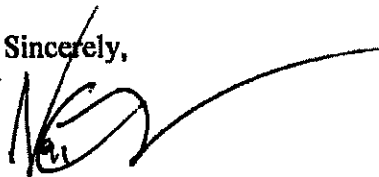
Thank you for your October 30, 2017, letter regarding the Public Utility Regulatory Policies Act of 1978 (PURPA).

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe that the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation with modern realities.

As you know, the Commission held a technical conference on June 29, 2016, in Docket No. AD16-16-000, to examine issues related to PURPA. Subsequently, the Commission solicited written comments from interested parties, which were submitted by November 7, 2016. One particular area where many parties have indicated a need for a different approach is the "one-mile rule" for qualifying facilities. Of course, other such areas may exist, too, and we owe it to stakeholders to continue taking a hard look at our regulations to identify those opportunities for improvement. Please be assured that I will keep your concerns in mind as the Commission explores these important issues. Your letter and this reply will be placed in the public record of Docket No. AD16-16-000.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Neil Chatterjee  
Chairman

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Submitted By: Jane Steinhauer  
Director, Electric Division

**Filing Party:** Southern Indiana Gas and Electric Company - Electric  
**30-Day Filing ID No.:** 50124  
**Date Filed:** February 28, 2018  
**Filed Pursuant To:** 170 I.A.C. 4-4.1-10  
**Request:** New Rate Schedules for Cogeneration and Alternate Energy Production Facilities.  
**Customer Impact:** N/A

RATE CSP Cogeneration and Small Power Production		
<i>Time Period</i>	<i>Energy Payment to a Qualifying Facility (\$/kWh)<sup>1</sup></i>	<i>Capacity Payment to a Qualifying Facility (\$/kW/per month)</i>
Annual On-Peak	\$0.03395	\$3.88
Annual Off-Peak	\$0.02559	\$3.88

**Tariff Page(s) Affected:** IURC No. E-13:  
Sheet No. 79, Seventh Revised Page 2 of 4

**Staff Recommendations:** Requirements met. Recommend approval.

**Additional Information:**

The Indiana Utility Regulatory Commission (“Commission” or “IURC”) received objections (Attachment A) from the Citizens Action Coalition (“CAC”) and the Environmental Law & Policy Center (“ELPC”) on March 23, 2018, regarding this filing. Commission staff sent a notification email (Attachment B) to the utility representative on the same day that the objections were filed. Southern Indiana Gas and Electric Company (“Vectren”) submitted a response (Attachment C) on April 2, 2018. CAC and ELPC provided a joint reply (Attachment D) on April 6, 2018. Vectren submitted a sur-reply (Attachment E) on April 16, 2018, and a clarification (Attachment F) to that sur-reply on April 17, 2018.

Upon review of these documents, the Commission’s General Counsel has advised that CAC’s and ELPC’s objections do not comply with 170 IAC 1-6-7(b)(2), which requires an applicable law objection to be regarding the applicable law of the filing and an objection regarding completeness to be related to the law, rule, or order that applies to the filing. The 30-day filing was filed pursuant to 170 IAC 4-4.1-10 (“Section 10”) and in accordance with the Commission’s order in IURC Cause No. 37494 (1984 WL994597 (Ind. P.S.C.) – approved Oct. 5, 1984). However, the objections raised in CAC’s and ELPC’s filings are silent regarding the 30-day filing’s compliance with Section 10. In addition, the relief requested by the CAC and ELPC for revised filings with a required longer term and for a Commission investigation cannot be granted through the 30-day filing process. Accordingly, Commission staff understands that the objections are outside of the scope of the filing and that the filing may proceed to the Commission for its determination and approval or denial.

<sup>1</sup> On-Peak hours = 6:00 A.M.-10:00 P.M. weekdays.  
Off-Peak hours = All other hours, including weekends and designated holidays.

March 23, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204  
mbecerra@urc.in.gov  
*Electronically delivered*

RE: Vectren's 30-day filing on February 28, IURC 30-Day Filing No. 50124.

**Objection to Vectren Energy Delivery of Indiana 30-Day Filing on behalf of  
Citizens Action Coalition and the Environmental Law & Policy Center**

Pursuant to the guidelines for submitting an objection to a 30-day filing as outlined on the Commission's website at <https://www.in.gov/iurc/2519.htm>, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") (collectively "Objectors") respectfully submit this Objection to the 30-day filing made by Vectren Energy Delivery of Indiana ("Vectren") on February 28, 2018, IURC 30-Day Filing No. 50124. Vectren's 30-day filing is attached as Exhibit A.

Vectren's 30-day filing concerns its obligations under the Public Utility Regulatory Policies Act ("PURPA"), including PURPA's implementing regulations and Indiana's PURPA implementation. *See generally* 18 CFR § 292.101, *et seq.*; Burns Ind. Code Ann. § 8-1-2.4-1, *et seq.*; 170 IAC 4-4.1-1 *et seq.* PURPA requires electric utilities to purchase energy and capacity from qualifying facilities ("QFs"), and the rate for these mandatory purchases are based on the utility's avoided costs. *See* 18 C.F.R. §§ 292.303, 292.304.

An objection is valid if it alleges that a 30-day filing is in violation of applicable law or the filing is incomplete. *See* 170 IAC 1-6-7(b)(2)(A)(i), (b)(2)(C)(i). Vectren's 30-day filing violates applicable law by failing to include a standard contract as required by 170 IAC 4-4.1-11 and by failing to include avoided cost information required by 18 C.F.R. § 292.302(b). The failure to provide this legally required information violates applicable law and constitutes an incomplete filing.

Vectren's failure to provide a long-term standard contract with a fixed-rate inhibits development of QFs in Indiana and violates the state's policy to "encourage the development of alternate energy production facilities." Burns Ind. Code Ann. § 8-1-2.4-1. Increased QF development would introduce additional competition into Indiana's market by enabling private QF development at the utility's own avoided costs. Thus, PURPA is not a "subsidy" program for renewable energy. Instead, it is a cost-neutral policy that protects ratepayers by creating downward pressure on utility costs.

ELPC and CAC respectfully request that the Commission deny Vectren's 30-day filing and open a statewide docket to investigate and establish modernized PURPA implementation

Attachment A

methodologies that will enable Indiana utilities to comply with state and federal law.

### **BACKGROUND ON OBJECTORS**

CAC is a 501(c)(4) membership organization of organizations and more than 40,000 individual members and contributors throughout the State of Indiana. CAC initiates, facilitates, and coordinates citizen action directed at improving the quality of life of all Indiana residents through principled advocacy of public policies that, among other things, promote government accountability and protect consumers and ratepayers. CAC and its members have an interest in promoting the development and availability of renewable energy through implementation of PURPA and are likely to suffer an injury if Vectren does not comply with its obligations under PURPA.

ELPC is a 501(c)(3) public interest organization that works to achieve cleaner air and water, promote renewable energy and energy efficiency resources, and preserve natural resources in Indiana and the Midwest. ELPC has an office located in Indianapolis and has members throughout the state of Indiana and the Midwest. On behalf of itself and its members, ELPC played a significant role in recent proceedings in Michigan, Iowa, and Minnesota where those states updated their implementation of PURPA. ELPC and its members have an interest in promoting the development and availability of renewable energy through implementation of PURPA and are likely to suffer an injury if Vectren does not comply with its obligations under PURPA.

### **BACKGROUND ON PURPA**

Congress enacted PURPA to “encourage the development of cogeneration and small power production facilities.” *Am. Paper Inst. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 405 (1983). PURPA combats an inefficient preference for utility self-generation and removes barriers for non-utility generation where such generation is cost-effective, thereby increasing competition and creating a downward pressure on power generation costs. *See In re Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities*, 75 F.E.R.C. P61,080, at § III.C (1996) (“Congress recognized that the rising costs and decreasing efficiencies of utility-owned generating facilities were increasing rates and harming the economy as a whole.”); *see also FERC v. Mississippi*, 456 U.S. 742, 750-751 (1982).

Accordingly, Indiana’s PURPA policy implementation is “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.” Burns Ind. Code Ann. § 8-1-2.4-1. Indiana’s implementation contains positive requirements that could encourage QF development, such as requiring long-term contracts and the establishment of standard contracts. *See Burns Ind. Code Ann. § 8-1-2.4-4(a); 170 IAC 4-4.1-11.* However, as will be shown below, utilities in Indiana are not complying with such requirements, and therefore Indiana utilities are falling short of the state’s explicit policy to “encourage the development of alternate energy production facilities.”

PURPA is the only federal law that requires competition in states that have not restructured their electricity markets. PURPA accomplishes this through its mandatory purchase

obligation that ties the rates for purchase to a utility's avoided cost. Tying rates to avoided costs (1) ensures no subsidization occurs, (2) protects ratepayer interests, and (3) provides ratepayers the benefit of low-cost renewable generation.

State regulators and stakeholders are increasingly focused on PURPA in light of the dramatic reduction in renewable energy development costs. With the growing relevance of PURPA, other states are updating their implementation for the first time in over two decades. For instance, the Michigan Public Service Commission ("MPSC") has been conducting a process to update its PURPA implementation. Beginning in late 2015, the MPSC ordered the creation of a working group to investigate the state's implementation of PURPA and invited all utilities, developers, and other interested stakeholders to participate.<sup>1</sup>

In 2016, the investigation culminated in the MPSC's Staff publishing a report detailing the state's implementation with recommendations on how the MPSC could modernize its PURPA implementation.<sup>2</sup> The MPSC then instituted dockets for each regulated utility to modernize its PURPA implementation and to determine, among other things, (1) the appropriate avoided cost methodology, (2) adequate term length for standard contracts, and (3) adequate procedures to encourage development of QFs.<sup>3</sup> The MPSC ordered Michigan utilities to offer long-term contracts, and concluded that QF development could benefit ratepayers in several ways, such as offsetting or deferring the construction of large utility power plants. As the Commission recognized, "there is significant ratepayer value in deferring large, capacity additions through contracting with QFs for incremental capacity."<sup>4</sup>

ELPC played a key role in Michigan's update as an active participant in the investigation and as an intervenor in the subsequent dockets opened for each utility. ELPC has also participated as an intervenor in Iowa's 2017 update to its PURPA implementation<sup>5</sup> and as intervenors in an ongoing complaint case between a QF and utility in Minnesota, which could result in Minnesota updating its PURPA implementation for the first time in over a decade.<sup>6</sup> ELPC and CAC respectfully request that the Commission deny Vectren's 30-day filing and follow the lead of other Midwestern states to ensure that Indiana utilities are in full compliance with state and federal law.

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<sup>1</sup> See generally *In re, on the Commission's own motion, commencing an investigation into the continuing appropriateness of the Commission's current regulatory implementation of the Public Utility Regulatory Policies Act of 1978*, Case No. U-17973, Order Commencing Investigation (Oct. 27, 2015) available at <https://perma.cc/4ZVM-XFVD>.

<sup>2</sup> *Id.*, PURPA TECHNICAL ADVISORY COMMITTEE, Report on the Continued Appropriateness of the Commission's Implementation of PURPA (April 8, 2016) available at <https://perma.cc/7JFL-HWEK>.

<sup>3</sup> See generally *In re Consumers Energy Co., et al.*, Case Nos. U-18089, U-18090, U-18091, U-18092, U-18093, U-18094, U-18095, Order (May 3, 2016) available at <https://perma.cc/B739-R7B5>.

<sup>4</sup> *In re Consumers Energy Co.*, Case No. U-18090, Order at 18, (Mich. Pub. Serv. Comm'n May 31, 2017) available at <https://perma.cc/4K2Z-5WWW>.

<sup>5</sup> See generally *In re Interstate Power and Light Co.*, Docket No. TF-2016-0290 (Iowa Util. Bd.); *In re MidAmerican Energy Co.*, Docket No. TF-2016-0294 (Iowa Util. Bd.).

<sup>6</sup> See generally *Red Lake Falls Community Hybrid, LLC v. Otter Tail Power Co.*, Docket No. 16-1021 (Minn. Pub. Util. Comm'n).

## OBJECTIONS

### **OBJECTION ONE: Vectren's 30-Day Filing Fails to Contain a Long-Term Contract and Contract Term Length, Both of Which are Required by Indiana Law.**

There are three requirements applicable to the standard contracts required in Indiana. First, Indiana law requires electric utilities to enter into “long term” contracts for the purchase of energy and capacity by PURPA QFs. Burns Ind. Code Ann. § 8-1-2.4-4(a). Second, Indiana’s PURPA regulations require electric utilities to file a standard contract that must include “[t]he term of the contract.” 170 IAC 4-4.1-11(c)(1). Third, federal law requires that long-term contracts include the ability to obtain fixed rates. 18 C.F.R. § 292.304(d)(2)(ii); *see also Winding Creek Solar LLC v. Peevey*, No. 13-04934, 2017 WL 6040012, at \*9 (N.D. Cal. 2017) (finding that a standard contract violates PURPA if it fails to contain an option to obtain fixed rates). “[S]tate regulatory authorities cannot preclude a QF — even an intermittent QF — from obtaining a legally enforceable obligation with a forecasted avoided cost rate.” *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 6 (2016).

Vectren’s 30-day filing fails to contain a standard contract, as required by 170 IAC 4-4.1-11. In contrast, Duke Energy Indiana has filed its standard contract every year since 2013.<sup>7</sup> In addition, Counsel for Objectors used reasonable efforts to locate Vectren’s standard contract but was unsuccessful. Counsel for Objectors:

- (1) Searched on Vectren’s website, including through Vectren’s rate book published online, but was unable to find the standard contract on Vectren’s website;
- (2) Reviewed all of Vectren’s 30-day PURPA filings dating back to 2009, which the Commission archived on its website,<sup>8</sup> but Vectren has not filed a standard contract in any of its 30-day filings dating back to 2009; and
- (3) Contacted Vectren through the contact information on its 30-day filing, but the representative was unsure whether such a standard contract existed and informed Counsel for Objectors that someone would follow up. As of the date of this Objection, no one has followed up and provided a standard contract.

The lack of a long-term, fixed rate standard contract has likely discouraged developers from pursuing projects in Indiana. Vectren’s currently effective PURPA tariff references the possibility of a contract, but nowhere in the tariff does it indicate what the term of such a contract would be and there is no indication of whether the rate is fixed over a term or whether a longer term standard contracts exists. *See generally* Exhibit B.

The lack of a legally required, long-term contract with fixed rates in Vectren’s 30-day filing is important because the lack of long-term, fixed-rate contracts both violates the specific requirements of Indiana law *and* inhibits the development of QFs across Indiana, thus failing to promote Indiana’s policy of encouraging QF development. *See* Burns Ind. Code Ann. § 8-1-2.4-1. The Federal Energy Regulatory Commission (“FERC”), the agency delegated authority to promulgate federal regulations and enforce PURPA, recognized that long-term contracts with

<sup>7</sup> *See* IURC 30-Day Filing Nos. 50119 (2018), 50038 (2017), 3429 (2016), 3319 (2015), 3225 (2014), 3141 (2013).

<sup>8</sup> 30-day filings from 2009 to 2018 can be found at: <https://www.in.gov/iurc/2514.htm>



QFs must be “long enough to allow QFs reasonable opportunities to attract capital from potential investors.” *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 8 (2016).

Other states recognize the link between the availability of long-term, fixed-rate contracts and the encouragement of QF development. For instance, during Michigan’s recent update to its PURPA implementation, the MPSC required utilities to offer 20-year standard contracts because it “found persuasive the claim that longer contracts would benefit both QFs and the [utility] by allowing better access to investment and financing. . .”<sup>9</sup> The Oregon Public Utility Commission (“OPUC”), in setting standard contract terms at 20 years, concluded that such a term length was necessary “to ensure the terms of the standard contract facilitate appropriate financing for a QF project.”<sup>10</sup> The Wyoming Public Service Commission concluded that long-term standard contracts are necessary for financing and that 20-year contract terms are “adequate for obtaining a QF project financing.”<sup>11</sup>

Short-term contracts do not encourage QF development because short-term contracts make financing QFs prohibitively difficult. To illustrate, compare the number of PacifiCorp’s QF contracts in Washington, which has 5-year terms<sup>12</sup>, to other states in which PacifiCorp operates. In Oregon and Wyoming where 20-year contract terms are required, PacifiCorp has **twenty-eight QF contracts** and **eight QF contracts**, respectively.<sup>13</sup> In Utah where 15-year contract terms are required, PacifiCorp has **twenty-six QF contracts**.<sup>14</sup> In contrast, the company has **only three QF contracts in Washington**, which again only allows for 5-year terms in its standard contract.<sup>15</sup>

Long-term contracts are vitally important to promoting QF development and furthering the policy goals of PURPA. Vectren’s failure to include a standard contract renders its 30-day filing in violation of applicable Indiana law requiring long-term standard contracts and a defined term length. Burns Ind. Code Ann. § 8-1-2.4-4(a); 170 IAC 4-4.1-11(c)(1).

**OBJECTION TWO: Vectren’s 30-Day Filing Fails to Contain Avoided Cost Information Required by 18 C.F.R. § 292.302(b).**

Federal regulations require electric utilities to biennially file three categories of avoided cost information with the Commission and utilities must maintain this information for “public

<sup>9</sup> *In re Consumers Energy Co.*, Case No. U-18090, Order at 22-23, (Mich. Pub. Serv. Comm’n May 31, 2017) available at <https://perma.cc/4K2Z-5WWW>.

<sup>10</sup> *In re Investigation Relating to Electric Utility Purchases from QFs*, OPUC Docket No. UM 1129, Order No. 05-584 at 19 (Ore. Pub. Util. Comm’n May 13, 2005) available at <https://perma.cc/C5YX-R3GG>.

In 2014, the OPUC reaffirmed the 20-year standard contract term length. *In re Investigation into QF Contracting*, OPUC Docket No. UM 1610, Order No. 14-058 (Feb. 24, 2014) available at <https://perma.cc/HL76-YJUG>.

<sup>11</sup> *In re the Application of RMP to Implement a Permanent Avoided Cost Methodology for Customers that do Not Qualify for Tariff Schedule 37 – Avoided Cost Purchases from QFs*, WPSC Docket No. 20000-388-EA-11, Record No. 12750, Order No. 20416 at 19 (Wyo. Pub. Serv. Comm’n Nov. 4, 2011) available at <https://perma.cc/EC8Q-FE4L>.

<sup>12</sup> See PacifiCorp, dba Pacific Power & Light Co., Schedule 37, Sheet No. 37.2 available at <https://perma.cc/97YD-LWKX>.

<sup>13</sup> See PacifiCorp 2017 Integrated Resource Plan at 78-79, available at <https://perma.cc/2JVR-U7SQ>.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.*

inspection.” 18 C.F.R. 292.302(b). First, utilities are required to submit 5-year estimates of their avoided energy costs. § 292.302(b)(1). Second, utilities are required to submit planned capacity additions over the next 10 years. § 292.302(b)(2). Third, utilities are required to submit the cost estimates for such capacity additions. § 292.302(b)(3).

Vectren’s 30-day filing at issue in this Objection does not contain the avoided cost information required by 18 C.F.R. § 292.302, and neither does Vectren’s 2017 30-day filing, IURC 30-Day Filing No. 50034. In contrast, Indiana Michigan Power Company has filed the information required by 18 C.F.R. § 292.302(b)(1) in the last two years<sup>16</sup>—but they too have not filed the information required by 292.302(b)(2) or (b)(3) in compliance with the biennial requirement.

In addition, Objectors are not aware of Vectren filing this required avoided cost information with the Commission in any other docket. Therefore, Vectren’s 30-day filing at issue in this docket fails to comply with applicable federal law by not containing the required biennial avoided cost information.

### CONCLUSION

Objectors respectfully request the Commission:

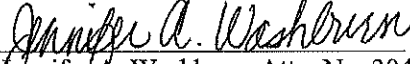
(1) Find that this Objection complies with 170 IAC 1-6-7, and that Vectren’s 30-day filing, IURC 30-Day Filing No. 50124, not be presented to the full Commission for consideration under the 30-day administrative filing rule until these deficiencies are rectified;


(2) Require Vectren to file a standard contract with a defined term of sufficient length and the ability to fix rates over the term of the contract;

(3) Open a statewide docket to investigate PURPA implementation in Indiana. This investigation could examine and establish sufficient standard contract term lengths, whether the current avoided cost methodology adequately represents Vectren’s avoided costs, and any other issues the Commission deems desirable.

Dated March 23, 2018

Respectfully submitted,

  
Jennifer A. Washburn, Atty. No. 30462-49  
1915 W. 18<sup>th</sup> Street, Suite C  
Indianapolis, Indiana 46202  
(317) 735-7764  
jwashburn@citact.org



Jeffrey Hammons

<sup>16</sup> See IURC 30-Day Filing Nos. 50125 (2018) and 50037 (2017).

Staff Attorney  
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Chicago, IL 60657  
(312) 795-3717  
JHammons@elpc.org



Vectren Corporation  
One Vectren Square  
Evansville, IN 47708

February 28, 2018

Mary M. Becerra  
Secretary to the Commission  
Indiana Utility Regulatory Commission  
PNC Center  
101 W. Washington Street, Suite 1500 East  
Indianapolis, IN 46204

RE: Southern Indiana Gas and Electric Company (SIGECO) 30-Day Filing for Rate CSP

Dear Ms. Becerra:

This filing is being made on behalf of Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Company") under the Commission's Thirty-Day Administrative Filing Procedures and Guidelines ("Guidelines") in compliance with Commission's Rules and Regulations with respect to Cogeneration and Alternative Energy Production Facilities. Enclosed is the proposed tariff sheet covering rates for purchase of energy and capacity as required by 170 IAC 4-4.1-8, 170 IAC 4-4.1-9, and 170 IAC 4-4.1-10, and the supporting data for the rates and rate filing as required by 170 IAC 4-4.1-4.


The Company's filing is an allowable filing under 170 IAC 1-6-3 because the proposal is a filing for which the Commission has already approved or accepted the procedure for the change.

The Company affirms a legal notice regarding this filing in the form attached hereto has been published in the *Evansville Courier & Press*, a newspaper of general circulation in Vanderburgh County that has a circulation encompassing the highest number of the Company's customers affected by the filing. The legal notice was published in the February 27, 2018 edition of the *Evansville Courier & Press* but the verified proof was not received by the February 28, 2018 CSP filing date. The Company also affirms that the notice has been posted on its website. The Company does not have a local customer service office in which to post the notice.

Any questions concerning this submission should be directed to J. Cas Swiz by using the following contact information:

J. Cas Swiz  
Director, Rates and Regulatory Analysis  
One Vectren Square  
211 N.W. Riverside Drive  
Evansville, IN 47708  
Tel.: 812.491.4033  
Fax: 812.491.4138  
Email: [jcs wiz@vectren.com](mailto:jcs wiz@vectren.com)

Sincerely,



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Matt McDowell  
Senior Regulatory Analyst

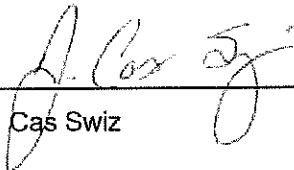
Enclosures

cc: William Fine

Indiana Office of Utility Consumer Counselor (w/ encl.)

**VERIFICATION**

The undersigned, J. Cas Swiz, being duly sworn, under penalty of perjury affirms that the affected customers of the Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. Rate CSP filing have been notified by publication in the *Evansville Courier & Press*, as required by 170 IAC 1-6-6. A copy of said legal notice of publication is enclosed.

  
\_\_\_\_\_  
J. Cas Swiz

Southern Indiana Gas and Electric Company D/B/A  
 Vectren Energy Delivery of Indiana, Inc. (Vectren South)  
 Tariff for Electric Service  
 I.U.R.C. No. E-13

Sheet No. 79  
 Seventh Revised Page 2 of 4  
 Cancels Sixth Revised Page 2 of 4

**RATE CSP**  
**COGENERATION AND SMALL POWER PRODUCTION**

(Continued)

**Capacity Component**

There shall be demand credit paid to qualifying facilities who can enter into a contract with Company to provide firm capacity for specified term. Capacity payments are expressed on a dollars per Kilowatt per month basis in Table 1 of this schedule.

The monthly capacity payment shall be adjusted by the following factor:

$$F = \frac{E_p}{(K)(T_p)}$$

Where:

F = Capacity payment adjustment factor

E<sub>p</sub> = Kilowatt-hours delivered to Company by the qualifying facility during the peak period defined as the hours of 6:00 A.M. to 10:00 P.M. during weekdays, excluding holidays.

K = Kilowatts of capacity the qualifying facility contracts to provide.

T<sub>p</sub> = Number of hours in the peak period.

Company and a qualifying facility may negotiate a rate for energy or capacity which differs from the filed Rate CSP.

**Table 1**

**ENERGY PAYMENT TO A QUALIFYING FACILITY<sup>(1)</sup>**

Annual On-Peak	=	\$0.03395/kWh
Annual Off-Peak	=	\$0.02559/kWh

**CAPACITY PAYMENT TO A QUALIFYING FACILITY**

\$3.88 per kW Per Month

<sup>(1)</sup> On-Peak hours = 6:00 A.M.– 10:00 P.M. weekdays  
 Off-Peak hours = All other hours, including weekends and designated holidays

Effective:

Southern Indiana Gas and Electric Company D/B/A  
 Vectren Energy Delivery of Indiana, Inc. (Vectren South)  
 Tariff for Electric Service  
 I.U.R.C. No. E-13

Sheet No. 79  
~~Sixth~~Seventh Revised Page 2 of 4  
 Cancels ~~Fifth~~Sixth Revised Page 2 of 4

**RATE CSP**  
**COGENERATION AND SMALL POWER PRODUCTION**  
 (Continued)

**Capacity Component**

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K = Kilowatts of capacity the qualifying facility contracts to provide.

T<sub>p</sub> = Number of hours in the peak period.

Company and a qualifying facility may negotiate a rate for energy or capacity which differs from the filed Rate CSP.

**Table 1**

**ENERGY PAYMENT TO A QUALIFYING FACILITY<sup>(1)</sup>**

Annual On-Peak	=	\$0.033213395/kWh
Annual Off-Peak	=	\$0.023282559/kWh

**CAPACITY PAYMENT TO A QUALIFYING FACILITY**

\$43.0988 per kW Per Month

<sup>(1)</sup> On-Peak hours = 6:00 A.M.– 10:00 P.M. weekdays  
 Off-Peak hours = All other hours, including weekends and designated holidays



**SOUTHERN INDIANA GAS & ELECTRIC COMPANY**

**CALCULATION OF PRESENT VALUE  
OF CARRYING CHARGES  
YEAR 2018**

**Formulas:**

Carrying Charge = cc,  
 $cc = r + d + I + P + T$ , where  
 T = Income Tax, and  
 $T = (t/1 - t) (r + d - D) (r - bL) / r$

**Inputs:**

r	=	Cost of Capital	=	7.96%
d	=	Sinking fund depreciation rate [ $(r) / ((1 + r)^n - 1)$ ]	=	0.89%
n	=	Service life (years)	=	30
I	=	Insurance cost rate (\$945,688 ÷ \$2,826,000,404)	=	0.03%
P	=	Property tax rate (\$8,161,539 ÷ \$2,826,000,404)	=	0.29%
D	=	Book depreciation rate (30 year life - per EPRI "TAG")	=	3.33%
t	=	Income tax rate (composite) (21% Federal, 5.875% State)	=	25.6413%
b	=	Debt interest cost rate	=	4.81%
L	=	Debt capital structure ratio	=	43.56%

**Carrying Charge**

T	=	1.40%
cc	=	<b>10.57%</b> (r + d + I + P + T)

**SOUTHERN INDIANA GAS & ELECTRIC COMPANY**

**CALCULATION OF COGENERATION RATE  
FOR PURCHASE OF CAPACITY  
YEAR 2018**

**Formula per 170 IAC 4-4.1-9:**

$$C = \frac{1}{12} \left[ DV \left[ \frac{1 - \frac{1+ip}{1+r}}{1 - \left(\frac{1+ip}{1+r}\right)^n} \right] (1+ip)^{t-1} + O \left( \frac{1+io}{1+r} \right) (1+io)^{t-1} \right] \div \left( 1 - \frac{L}{2} \right)$$

$$Ca = C \left( \left( (1+ip) \div (1+r) \right)^{(Y_i - Y_c)} \right)$$

**Inputs:**

- D =  $\frac{(cc) (1+r)^n - 1}{(r) (1+r)^n} = (cc) * 11.6365 = 1.2300$
- cc = 10.57% (See Carrying Charge calculation)
- V = \$732/ kW (See Burns & McDonnell Technical Assessment –Prototypes – Alternative Technology Options, (including gas pipeline work and excl. AFUDC) inflated to 2021.
- ip = 6.7% (Growth Rate in Handy Whitman Cost Index for Gas Turbogenerators)
- io = 2.0% (Growth Rate in Producer Price Index for Finished Goods)
- r = 7.96% (See Cost of New Capital)
- O = \$12.29 / kW (Estimated Operating Cost for 2021)
- L = 4.85% (2016 FERC Form 1 data)  
(286,440 ÷ 5,910,227)
- t = 1
- n = 30 years (EPRI - TAG 1993)

Y<sub>i</sub> = 2021 (In service date of turbine)  
Y<sub>c</sub> = 2018 (Current Year)

**Rate:**

C = Unadjusted Capacity Payment = **\$4.01** per kW per month for year 2021

Ca = Adjusted Capacity Payment = **\$3.88** per kW per month for year 2018

**SOUTHERN INDIANA GAS & ELECTRIC COMPANY**

**ESTIMATED CAPACITY CAPITAL COST  
YEAR 2018**

**Basis of Cost**

Based on SIGECO generic 220 MW simple cycle turbine.

**Capacity Cost**

Cost per kW (2021 \$)

= \$732/kW

**SOUTHERN INDIANA GAS & ELECTRIC COMPANY**

**CALCULATIONS OF COGENERATION RATE  
FOR PURCHASE OF ENERGY  
YEAR 2018**

**Basis of Calculation:**

The system's energy cost was derived utilizing a simple average of two separate LMP forecasts provided by the 2016 IRP Model.

**Energy Rate:**

Values from dispatch model:

Annual On-Peak avoided cost <sup>(1)</sup>	=	\$0.03312 /kWh
Annual Off-Peak avoided cost	=	\$0.02497 /kWh

Adjustment for losses <sup>(2)</sup>

$\frac{1}{(1 - (0.048465/2))}$	=	1.02483
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Adjusted Energy Rates

Annual On-Peak avoided cost	=	\$0.03395 /kWh
Annual Off-Peak avoided cost	=	\$0.02559 /kWh

Notes:

- (1) On-Peak hours = 6 am – 10 pm, weekdays  
Off-Peak hours = All other hours, including weekends and designated holidays
- (2) Energy losses from 2016 FERC Form 1, page 401a.

**SOUTHERN INDIANA GAS & ELECTRIC COMPANY**

**CALCULATION OF COST OF NEW CAPITAL  
YEAR 2018**

<u>Item</u>	<u>Capital Structure</u> <sup>(1)</sup>	<u>Cost Rate</u> <sup>(1)</sup>	<u>Composite Rate</u>
Debt	43.56%	4.81%	2.09%
Preferred Stock	0.00%	0.00%	0.00%
Common Equity	<u>56.44%</u>	10.40%	<u>5.87%</u>
	100.00%		7.96%

Notes: <sup>(1)</sup> Capital structure and cost rates as of December 31, 2017. Common equity cost rate from Order in Cause No. 43839, page 32.

## Southern Indiana Gas &amp; Electric Company

**Weighted  
Cost of Capital  
Year 2018**

<u>Item</u>	<u>Capital Structure</u>	<u>Cost Rate</u>	<u>Composite Cost</u>	
Debt	43.56%	4.81%	2.09%	Balance 12-31-17
Preferred Stock	0.00%	0.00%	0.00%	Balance 12-31-17
Common Equity	<u>56.44%</u>	10.40%	<u>5.87%</u>	Rate Per Order in Cause No. 43839
	100.00%		7.96%	

**Inputs:**

r	=	Cost of capital	7.96%
d	=	Sinking fund depreciation rate [[r] / ((1+r)^n - 1)]	0.89%
n	=	Service life (years)	30
l	=	Insurance cost rate (\$945688/\$2826000404)	0.03% 2016 FERC 1 page 323, line 185 / page 200, line 13
P	=	Property tax rate (\$8161539/\$2826000404)	0.29% 2016 FERC 1 page 263, line 9 / page 200, line 13
D	=	Book depreciation rate (30 year life - per EPRI "TAG")	3.33%
t	=	Income tax rate (composite)	25.6413%
b	=	Debt interest cost rate	4.81%
L	=	Debt capital structure ratio	43.56%

**Carrying Charge**

T	=	1.40%	
cc	=	10.57%	(r + d + l + P + T)

**Southern Indiana Gas & Electric Company**

**Calculation of Cogeneration Rate  
For Purchase of Capacity  
Year 2018**

C	=	Unadjusted monthly capacity payment per-kilowatt of contracted capacity year of completion of unit.	4.01	Unadjusted Capacity Rate
Ca	=	$C * (((1 + Ip)/(1 + r))^{(Yi-Yc)})$	<b>3.88</b>	Adjusted Capacity Rate
D	=	Present value of carrying charges for one dollar of investment over n years with carrying charges assumed to be paid at end of each year. $(1+r)^{(n-1)}/r(1+r)^n$	(cc)* 11.6365	= 1.2300
cc			10.57%	
V	=	Investment amount in year of completion, including allowance for funds used during construction, of the avoidable or deferrable unit, stated on a per-kilowatt basis and including rated share of common costs.	732	2016 IRP inflated to 2021 level
n	=	Expected life of the avoidable or deferrable unit.	30	
Ip	=	Annual escalation rate associated with the avoidable or deferrable unit.	6.7%	From Handy Whitman
Io	=	Annual escalation rate associated with the operation and maintenance expenses, less fuel and fuel-related expenses, of the avoidable or deferrable unit.	2.0%	From Producer Price Index
r	=	Purchasing utility's after tax cost of capital.	7.96%	
O	=	Expected total fixed and variable yearly operating and maintenance expenses, less fuel and fuel-related expenses, in expected first year of avoidable or deferrable unit's operation stated on a per-kilowatt basis	12.29	2016 IRP inflated to 2021 level
L	=	Line losses, expressed as a percentage, for the previous year. (286440/5910227)	4.85%	2016 FERC 1 Page 401a, line 27/ line 28
t	=	Contract term in years, with t = 1 to t.	1	
Yi	=	In service date of the avoidable or deferrable unit	2021	
Yc	=	Current Year	2018	



	Escalated Capital Cost
<b>Capability, MW (nominal)</b>	<b>219.8</b>

**Fixed O&M, \$/kW-yr** 7.19  
**\$/yr** 1,581,083

**Variable O&M, \$/MWh** \$ 3.88

MW (Technical Assessment)	219.8
hours in a year	8760
Capacity Factor (Assumption)	0.08
MWH (MW*Yearly Hours* CF)	154,035.84
Maintenance Cost per Start (TA)	\$ 15,240.00
Starts (Assumption)	30
(Maintenance Cost per start*Starts)	\$ 457,200.00
\$/MWH	\$ 2.97
\$/MWH (Tech. Assessment Variable O&M)	\$ 0.91
Total Variable O&M (\$/MWH)	\$ 3.88

<b>Total O&amp;M, \$/kW</b>	<b>11.08</b>
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**Capital Cost Estimate (2016 \$)**

<b>\$/kW</b>	<b>660</b>
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[1] Source: Generation Technology Assessment SCGT F- Class (September 2015)

<b>Total O &amp; M \$/kW 2017</b>	\$	11.31
	\$	11.55
	\$	11.79
	\$	12.04
	\$	12.29 =O

<b>capital cost estimate</b>	2017	674
	2018	688
	2019	702
	2020	717
	2021	732 =V

<p><b>1.020952</b>                  Inflation Factor of 1.020952 per EIA                  Annual Energy Outlook 2017 Early Release, Table A20</p>
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**Southern Indiana Gas & Electric Company  
Compound Growth Rate of  
Handy-Whitman Cost Index for Gas Turbogenerators**

Year	Year Index	Handy-Whitman Index	Annual Growth Rate	y = Year Index	x = LN (H-W Index)
2005	1	420		1	6.04025
2006	2	435	0.03571	2	6.07535
2007	3	511	0.17471	3	6.23637
2008	4	581	0.13699	4	6.36475
2009	5	619	0.06540	5	6.42811
2010	6	680	0.09855	6	6.52209
2011	7	683	0.00441	7	6.52649
2012	8	757	0.10835	8	6.62936
2013	9	797	0.05284	9	6.68085
2014	10	810	0.01631	10	6.69703
2015	11	847	0.04568	11	6.74170
2016	12	871	0.02834	12	6.76964
2017	13	912	0.04707	13	6.81564
Log-Linear Growth					0.06459
Compound Growth Rate (Exponential of Log-Linear Growth) Stated as percentage					0.06672 6.7%

**Southern Indiana Gas & Electric Company  
Compound Growth Rate of  
Producer Price Index**

Year	Year Index	Producer Price Finished Goods Index	Annual Growth Rate	y = Year Index	x = LN (H-W Index)
2005	1	155.7		1	5.04793
2006	2	160.4	0.02987	2	5.07736
2007	3	166.6	0.03887	3	5.11550
2008	4	177.1	0.06313	4	5.17671
2009	5	172.5	(0.02579)	5	5.15059
2010	6	179.8	0.04197	6	5.19171
2011	7	190.7	0.06077	7	5.25070
2012	8	194.3	0.01892	8	5.26945
2013	9	196.7	0.01222	9	5.28159
2014	10	200.4	0.01911	10	5.30052
2015	11	193.9	(0.03280)	11	5.26717
2016	12	191.9	(0.01014)	12	5.25697
2017	13	198.0	0.03179	13	5.28827
Log-Linear Growth					0.02010
Compound Growth Rate (Exponential of Log-Linear Growth) Stated as percentage					0.02030 2.0%

IRP Model Inputs updated on 01/31/2018

2018 CSP

All values shown in 2017 dollars

month	Data	
	Average of onpk	Average of offpk
Mar-18	\$ 30.23	\$ 25.33
Apr-18	\$ 30.12	\$ 24.08
May-18	\$ 32.04	\$ 23.20
Jun-18	\$ 32.76	\$ 24.15
Jul-18	\$ 37.30	\$ 24.36
Aug-18	\$ 37.08	\$ 24.87
Sep-18	\$ 31.48	\$ 24.60
Oct-18	\$ 30.63	\$ 24.25
Nov-18	\$ 31.20	\$ 25.09
Dec-18	\$ 35.13	\$ 26.91
Jan-19	\$ 34.91	\$ 26.40
Feb-19	\$ 34.62	\$ 26.37
12 month average	\$ 33.12	\$ 24.97

ferc 1 line losses 4.85%  
 Adjusted for losses 1.02483

	On peak \$/MWh	Off-Peak \$/MWh
Adjusted Energy Rates	33.94528	25.58766
<b>\$ per kWh</b>	<b>\$ 0.03395</b>	<b>\$ 0.02559</b>

**SUMMARY OF UTILITY PLANT AND ACCUMULATED PROVISIONS  
FOR DEPRECIATION, AMORTIZATION AND DEPLETION**

Report in Column (c) the amount for electric function, in column (d) the amount for gas function, in column (e), (f), and (g) report other (specify) and in column (h) common function.

Line No.	Classification (a)	Total Company for the Current Year/Quarter Ended (b)	Electric (c)
1	Utility Plant		
2	In Service		
3	Plant in Service (Classified)	2,646,367,174	2,302,465,767
4	Property Under Capital Leases		
5	Plant Purchased or Sold		
6	Completed Construction not Classified	594,621,687	495,258,091
7	Experimental Plant Unclassified		
8	Total (3 thru 7)	3,240,988,861	2,797,723,858
9	Leased to Others		
10	Held for Future Use	1,391,263	1,391,263
11	Construction Work in Progress	32,165,939	26,885,283
12	Acquisition Adjustments		
13	Total Utility Plant (8 thru 12)	3,274,546,063	2,826,000,404
14	Accum Prov for Depr, Amort, & Depl	1,482,972,597	1,318,161,282
15	Net Utility Plant (13 less 14)	1,791,573,466	1,507,839,122
16	Detail of Accum Prov for Depr, Amort & Depl		
17	In Service:		
18	Depreciation	1,482,972,597	1,318,161,282
19	Amort & Depl of Producing Nat Gas Land/Land Right		
20	Amort of Underground Storage Land/Land Rights		
21	Amort of Other Utility Plant		
22	Total In Service (18 thru 21)	1,482,972,597	1,318,161,282
23	Leased to Others		
24	Depreciation		
25	Amortization and Depletion		
26	Total Leased to Others (24 & 25)		
27	Held for Future Use		
28	Depreciation		
29	Amortization		
30	Total Held for Future Use (28 & 29)		
31	Abandonment of Leases (Natural Gas)		
32	Amort of Plant Acquisition Adj		
33	Total Accum Prov (equals 14) (22,26,30,31,32)	1,482,972,597	1,318,161,282

**TAXES ACCRUED, PREPAID AND CHARGED DURING YEAR (Continued)**

5. If any tax (exclude Federal and State income taxes)- covers more than one year, show the required information separately for each tax year, identifying the year in column (a).
6. Enter all adjustments of the accrued and prepaid tax accounts in column (f) and explain each adjustment in a foot- note. Designate debit adjustments by parentheses.
7. Do not include on this page entries with respect to deferred income taxes or taxes collected through payroll deductions or otherwise pending transmittal of such taxes to the taxing authority.
8. Report in columns (i) through (l) how the taxes were distributed. Report in column (i) only the amounts charged to Accounts 408.1 and 409.1 pertaining to electric operations. Report in column (l) the amounts charged to Accounts 408.1 and 109.1 pertaining to other utility departments and amounts charged to Accounts 408.2 and 409.2. Also shown in column (l) the taxes charged to utility plant or other balance sheet accounts.
9. For any tax apportioned to more than one utility department or account, state in a footnote the basis (necessity) of apportioning such tax.

BALANCE AT END OF YEAR		DISTRIBUTION OF TAXES CHARGED				Line No.
(Taxes accrued Account 236) (g)	Prepaid Taxes (Incl. in Account 165) (h)	Electric (Account 408.1, 409.1) (i)	Extraordinary Items (Account 409.3) (j)	Adjustments to Ret. Earnings (Account 439) (k)	Other (l)	
						1
185,599		7,920,353			1,198,434	2
						3
174,903					493,136	4
404,555		7,820,036			-117,479	5
					941	6
						7
1,172					-1,771	8
9,813,067		8,161,539			1,459,788	9
						10
10,579,296		23,901,928			3,033,049	11
						12
						13
4,501		20,735			-1,261	14
805,551		561,858				15
						16
810,052		582,593			-1,261	17
						18
						19
-4,545					3,498	20
		29,804,262			-4,812,404	21
		178,752			36	22
-1		201			35	23
-4,546		29,983,215			-4,808,835	24
						25
						26
						27
						28
						29
						30
						31
						32
						33
						34
						35
						36
						37
						38
						39
						40
11,384,802		54,467,736			-1,777,047	41

Name of Respondent Southern Indiana Gas and Electric Company		This Report Is: (1) <input type="checkbox"/> An Original (2) <input checked="" type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 05/30/2017	Year/Period of Report Exhibit A Page 19 of 24
ELECTRIC OPERATION AND MAINTENANCE EXPENSES (Continued)				
If the amount for previous year is not derived from previously reported figures, explain in footnote.				
Line No.	Account (a)	Amount for Current Year (b)	Amount for Previous Year (c)	
165	6. CUSTOMER SERVICE AND INFORMATIONAL EXPENSES			
166	Operation			
167	(907) Supervision			
168	(908) Customer Assistance Expenses	120,333	107,553	
169	(909) Informational and Instructional Expenses	16,942	15,073	
170	(910) Miscellaneous Customer Service and Informational Expenses	479,651	200,123	
171	TOTAL Customer Service and Information Expenses (Total 167 thru 170)	616,926	322,749	
172	7. SALES EXPENSES			
173	Operation			
174	(911) Supervision	12,543	12,685	
175	(912) Demonstrating and Selling Expenses	10,417,949	8,277,068	
176	(913) Advertising Expenses			
177	(916) Miscellaneous Sales Expenses	13,546	3,913	
178	TOTAL Sales Expenses (Enter Total of lines 174 thru 177)	10,444,038	8,293,666	
179	8. ADMINISTRATIVE AND GENERAL EXPENSES			
180	Operation			
181	(920) Administrative and General Salaries	15,258,317	13,774,963	
182	(921) Office Supplies and Expenses	4,944,879	4,967,264	
183	(Less) (922) Administrative Expenses Transferred-Credit	2,340,800	2,396,160	
184	(923) Outside Services Employed	13,125,733	12,966,825	
185	(924) Property Insurance	945,688	916,599	
186	(925) Injuries and Damages	1,307,519	1,431,286	
187	(926) Employee Pensions and Benefits	24,545	12,950	
188	(927) Franchise Requirements			
189	(928) Regulatory Commission Expenses	1,021,493	1,102,376	
190	(929) (Less) Duplicate Charges-Cr.			
191	(930.1) General Advertising Expenses			
192	(930.2) Miscellaneous General Expenses	4,225,027	3,700,629	
193	(931) Rents	37,064	28,089	
194	TOTAL Operation (Enter Total of lines 181 thru 193)	38,549,465	36,504,821	
195	Maintenance			
196	(935) Maintenance of General Plant	289,064	231,473	
197	TOTAL Administrative & General Expenses (Total of lines 194 and 196)	38,838,529	36,736,294	
198	TOTAL Elec Op and Maint Expns (Total 80,112,131,156,164,171,178,197)	345,398,428	342,919,667	

Name of Respondent Southern Indiana Gas and Electric Company	This Report Is: (1) <input type="checkbox"/> An Original (2) <input checked="" type="checkbox"/> A Resubmission	Date of Report (Mo, Da, Yr) 05/30/2017	Year/Period of Report 2016 Exhibit A Page 20 of 24
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**ELECTRIC ENERGY ACCOUNT**

Report below the information called for concerning the disposition of electric energy generated, purchased, exchanged and wheeled during the year.

Line No.	Item (a)	MegaWatt Hours (b)	Line No.	Item (a)	MegaWatt Hours (b)
1	SOURCES OF ENERGY		21	DISPOSITION OF ENERGY	
2	Generation (Excluding Station Use):		22	Sales to Ultimate Consumers (Including Interdepartmental Sales)	5,474,206
3	Steam	4,090,807	23	Requirements Sales for Resale (See instruction 4, page 311.)	
4	Nuclear		24	Non-Requirements Sales for Resale (See instruction 4, page 311.)	136,053
5	Hydro-Conventional		25	Energy Furnished Without Charge	
6	Hydro-Pumped Storage		26	Energy Used by the Company (Electric Dept Only, Excluding Station Use)	13,528
7	Other	47,048	27	Total Energy Losses	286,440
8	Less Energy for Pumping		28	TOTAL (Enter Total of Lines 22 Through 27) (MUST EQUAL LINE 20)	5,910,227
9	Net Generation (Enter Total of lines 3 through 8)	4,137,855			
10	Purchases	1,672,511			
11	Power Exchanges:				
12	Received	5,338,360			
13	Delivered	5,238,499			
14	Net Exchanges (Line 12 minus line 13)	99,861			
15	Transmission For Other (Wheeling)				
16	Received				
17	Delivered				
18	Net Transmission for Other (Line 16 minus line 17)				
19	Transmission By Others Losses				
20	TOTAL (Enter Total of lines 9, 10, 14, 18 and 19)	5,910,227			

**PPI Commodity Data  
Original Data Value**

Series Id: WPUFD49207  
 Not Seasonally Adjusted  
 Series Title: PPI Commodity data for Final demand-Finished  
 Group: Final demand  
 Item: Finished goods  
 Base Date: 198200  
 Years: 2007 to 2017

Year	Jan	Feb	Mar	Apr	May	Jun	Jul	Aug	Sep	Oct	Nov	Dec	Annual
2007	160.1	161.8	164.1	165.9	167.5	167.2	168.5	166.1	167.4	168.6	171.4	170.4	166.6
2008	172.0	172.3	175.1	176.5	179.8	182.4	185.1	182.2	182.2	177.4	172.0	168.8	177.1
2009	170.4	169.9	169.1	170.3	171.1	174.3	172.4	174.2	173.2	173.8	175.7	176.0	172.5
2010	178.0	176.9	179.1	179.5	179.9	179.0	179.5	180.0	180.0	181.2	181.6	182.6	179.8
2011	184.5	186.7	189.3	191.6	192.7	191.6	192.4	191.8	192.8	191.9	191.9	191.2	190.7
2012	192.1	193.0	194.5	195.0	193.8	192.9	193.3	195.5	196.9	196.4	194.5	193.8	194.3
2013	194.9	196.4	196.7	196.0	196.9	197.3	197.3	197.9	197.3	196.9	196.1	196.5	196.7
2014	198.1	198.9	200.3	202.1	201.8	202.9	203.0	202.5	201.7	200.4	198.2	195.4	200.4
2015	192.2	192.6	193.6	193.1	196.0	197.7	197.4	196.3	193.4	192.4	191.6	190.1	193.9
2016	189.9	188.8	189.2	190.3	191.7	193.8	193.5	192.6	193.2	193.7	192.4	193.7	191.9
2017	195.4	196.0	196.3	198.0	197.0	197.8	197.6	198.4	199.6	199.3	200.6	200.1	198.0



## 20. Macroeconomic Indicators

(billion 2009 chain-weighted dollars, unless otherwise noted)

Indicators	2016-									
	2015	2016	2017	2018	2019	2020	2021	2022	2023	2050
<b>Real Gross Domestic Product</b>	<b>16,397</b>	<b>16,652</b>	<b>17,114</b>	<b>17,499</b>	<b>17,817</b>	<b>18,236</b>	<b>18,734</b>	<b>19,221</b>	<b>19,650</b>	<b>2.1%</b>
<b>Components of Real Gross Domestic Product</b>										
Real Consumption	11,215	11,522	11,837	12,124	12,391	12,673	13,019	13,380	13,707	2.2%
Real Investment	2,869	2,816	2,986	3,164	3,221	3,343	3,488	3,610	3,693	2.6%
Real Government Spending	2,884	2,919	2,945	2,949	2,950	2,953	2,957	2,974	2,995	0.9%
Real Exports	2,121	2,114	2,204	2,268	2,351	2,489	2,657	2,809	2,946	3.9%
Real Imports	2,661	2,692	2,831	2,983	3,075	3,197	3,362	3,527	3,665	3.7%
<b>Energy Intensity</b>										
<b>(thousand Btu per 2009 dollar of GDP)</b>										
Delivered Energy	4.36	4.30	4.23	4.20	4.16	4.07	3.97	3.89	3.81	-1.7%
Total Energy	5.91	5.79	5.69	5.63	5.58	5.47	5.34	5.22	5.12	-1.8%
<b>Price Indices (Inflated at 1.020952%)</b>										
GDP Chain-type Price Index (2009=1.000)	1.100	1.116	1.140	1.162	1.187	1.213	1.239	1.267	1.295	2.095%
<b>Consumer Price Index (1982=1.00)</b>										
All-urban	2.37	2.40	2.46	2.51	2.58	2.65	2.71	2.79	2.86	2.4%
Energy Commodities and Services	2.03	1.87	2.00	2.06	2.21	2.33	2.44	2.57	2.66	3.2%
<b>Wholesale Price Index (1982=1.00)</b>										
All Commodities	1.90	1.85	1.91	1.96	2.02	2.08	2.13	2.18	2.22	1.9%
Fuel and Power	1.60	1.44	1.58	1.69	1.84	1.97	2.04	2.13	2.20	3.5%
Metals and Metal Products	2.00	1.93	2.00	2.07	2.10	2.15	2.19	2.22	2.24	0.9%
Industrial Commodities excluding Energy	1.94	1.93	1.97	2.00	2.04	2.08	2.12	2.16	2.20	1.4%
<b>Interest Rates (percent, nominal)</b>										
Federal Funds Rate	0.13	0.42	0.98	1.76	2.59	2.95	3.04	3.09	3.08	--
10-Year Treasury Note	2.14	1.73	2.28	2.88	3.48	3.75	3.81	3.83	3.81	--
AA Utility Bond Rate	3.99	3.65	4.42	5.12	5.43	5.71	5.75	5.78	5.78	--
<b>Value of Shipments (billion 2009 dollars)</b>										
Non-Industrial and Service Sectors	23,925	24,364	25,104	25,693	26,186	26,695	27,321	28,083	28,764	2.0%
Total Industrial	7,374	7,453	7,880	8,058	8,187	8,345	8,541	8,726	8,896	1.8%
Agriculture, Mining, and Construction	2,049	2,079	2,208	2,288	2,328	2,359	2,401	2,446	2,488	1.5%
Manufacturing	5,325	5,374	5,672	5,770	5,859	5,986	6,140	6,280	6,408	2.0%
Energy-Intensive	1,867	1,898	2,002	2,036	2,068	2,094	2,128	2,163	2,193	1.2%
Non-Energy-Intensive	3,458	3,476	3,670	3,733	3,791	3,892	4,012	4,117	4,215	2.3%
Total Shipments	31,298	31,817	32,984	33,750	34,373	35,041	35,862	36,808	37,660	2.0%
<b>Population and Employment (millions)</b>										
Population, with Armed Forces Overseas	322.0	324.5	327.1	329.8	332.4	335.0	337.6	340.2	342.8	0.6%
Population, aged 16 and over	256.7	259.3	261.9	264.3	266.8	269.3	271.7	274.1	276.6	0.7%
Population, aged 65 and over	48.0	49.6	51.3	53.0	54.8	56.7	58.5	60.5	62.4	1.7%
Employment, Nonfarm	141.6	144.3	146.3	147.6	148.5	149.7	151.3	153.5	155.3	0.7%
Employment, Manufacturing	12.1	12.1	12.7	13.0	13.2	13.3	13.4	13.5	13.6	0.0%
<b>Key Labor Indicators</b>										
Labor Force (millions)	157.1	159.2	161.2	163.1	164.7	166.0	167.0	168.1	169.3	0.6%
Nonfarm Labor Productivity (2009=1.00)	1.06	1.06	1.08	1.09	1.11	1.13	1.15	1.17	1.18	1.7%
Unemployment Rate (percent)	5.28	4.88	4.69	4.68	4.87	4.98	4.97	4.77	4.83	--
<b>Key Indicators for Energy Demand</b>										
Real Disposable Personal Income	12,343	12,663	13,020	13,414	13,752	14,112	14,514	14,917	15,295	2.2%
Housing Starts (millions)	1.18	1.26	1.48	1.63	1.67	1.72	1.77	1.82	1.85	1.0%
Commercial Floorspace (billion square feet)	88.9	89.7	90.7	91.7	92.8	93.9	95.0	96.1	97.2	1.0%
Unit Sales of Light-Duty Vehicles (millions)	17.39	17.47	18.00	17.87	17.25	17.21	17.49	17.34	17.20	0.4%

GDP = Gross domestic product.

Btu = British thermal unit.

-- = Not applicable.

Sources: 2015 and 2016: IHS Markit, Macroeconomic, Industry, and Employment models, August 2016.

Projections: U.S. Energy Information Administration, AEO2017 National Energy Modeling System run ref2017.d120816a.

**LEGAL NOTICE**

Notice is hereby given that on or about February 28, 2018, Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. (“Vectren South”) will file a request with the Indiana Utility Regulatory Commission for approval to update its Rate CSP – Cogeneration and Small Power Production, to establish prices for the purchase of energy and capacity from owners of a qualifying facility, as defined by the Commission. The capacity component of Rate CSP will also impact the capacity charge for firm backup power under Rate BAMP (Backup, Auxiliary and Maintenance Power Services), as well as capacity credits to be paid to customers under Rider IC (Interruptible Contract Rider), Rider IO (Interruptible Option Rider), and Rider IP-2 (Interruptible Power Service Rider), as applicable.

Vectren South anticipates approval of the filing by June 1, 2018, but no sooner than 30 days after receipt of the filing by the Commission. Objections to the filing should be made in writing addressed to:

Mary M. Becerra  
Secretary to the Commission  
Indiana Utility Regulatory Commission  
PNC Center  
101 W. Washington Street, Suite 1500 East  
Indianapolis, Indiana 46204

William Fine  
Indiana Utility Consumer Counselor  
Indiana Office of Utility Consumer Counselor  
PNC Center  
115 W. Washington St., Suite 1500 South  
Indianapolis, Indiana 46204

Scott E. Albertson  
Vice President, Regulatory Affairs & Gas Supply  
VECTREN UTILITY HOLDINGS, INC.

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**Mary M. Becerra**

Secretary to the Commission  
Indiana Utility Regulatory Commission  
PNC Center  
101 W. Washington Street, Suite 1500  
East  
Indianapolis, Indiana 46204

**William Fine**

Indiana Utility Consumer Counselor  
Indiana Office of Utility Consumer  
Counselor  
PNC Center  
115 W. Washington St., Suite 1500  
South  
Indianapolis, Indiana 46204

**Scott E. Albertson**

Vice President, Regulatory Affairs &  
Gas Supply  
VECTREN UTILITY HOLDINGS, INC.

EC-1028261

Southern Indiana Gas and Electric Company D/B/A  
Vectren Energy Delivery of Indiana, Inc. (Vectren South)  
Tariff for Electric Service  
I.U.R.C. No. E-13

Sheet No. 79  
Original Page 1 of 4

## **RATE CSP** **COGENERATION AND SMALL POWER PRODUCTION**

### **APPLICABILITY**

The schedule of purchase prices set forth herein shall apply to owners of cogeneration or small power producing "qualifying facilities" as defined by the Commission, in Cause No. 37494, approved December 6, 1984. Prior to any purchase by Company, the qualifying facility must enter into a contractual agreement.

### **RATES FOR SALE OF ENERGY AND CAPACITY**

If the qualifying facility desires to purchase electric service from Company, the electric requirements for the qualifying facility shall be separately metered and billed in accordance with the applicable Rate Schedule.

### **PURCHASE PRICES**

Company will pay for energy and capacity received from the qualifying facility on a monthly basis as follows:

#### **Energy Component:**

Prices paid are based on Company's avoided cost of energy associated with a one (1) megawatt decrement of load. The energy payment is expressed on a cents-per-kWh basis in Table 1 of this schedule.

Payments for energy are adjusted to reflect line losses, expressed as a percentage for the previous year. It is expected that the projected energy payment will vary as Company's actual fuel costs change. Energy rates listed in Table 1 will be revised on or before February 28<sup>th</sup> in each subsequent year in accordance with the Commission Cause No. 37494.

In the case of contracts for purchases of 72,000 Kilowatt-hours or more per month from a qualifying facility, the following factors may be considered and an appropriate adjustment made to the agreed purchase price in each contract:

1. The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of Company's generation facilities.
2. The relationship of the availability of energy from the qualifying facility to the ability of Company to avoid costs, particularly as is evidenced by Company's ability to dispatch the qualifying facility.
3. The availability of energy from a qualifying facility during Company's system daily or seasonal peak.
4. The usefulness of energy from a qualifying facility during Company system emergencies, including its ability to separate its load from its generation.

Effective: May 3, 2011

Southern Indiana Gas and Electric Company D/B/A  
 Vectren Energy Delivery of Indiana, Inc. (Vectren South)  
 Tariff for Electric Service  
 I.U.R.C. No. E-13

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 Sixth Revised Page 2 of 4  
 Cancels Fifth Revised Page 2 of 4

**RATE CSP**  
**COGENERATION AND SMALL POWER PRODUCTION**  
 (Continued)

**Capacity Component**

There shall be demand credit paid to qualifying facilities who can enter into a contract with Company to provide firm capacity for specified term. Capacity payments are expressed on a dollars per Kilowatt per month basis in Table 1 of this schedule.

The monthly capacity payment shall be adjusted by the following factor:

$$F = \frac{E_p}{(K)(T_p)}$$

Where:

F = Capacity payment adjustment factor

E<sub>p</sub> = Kilowatt-hours delivered to Company by the qualifying facility during the peak period defined as the hours of 6:00 A.M. to 10:00 P.M. during weekdays, excluding holidays.

K = Kilowatts of capacity the qualifying facility contracts to provide.

T<sub>p</sub> = Number of hours in the peak period.

Company and a qualifying facility may negotiate a rate for energy or capacity which differs from the filed Rate CSP.

**Table 1**

**ENERGY PAYMENT TO A QUALIFYING FACILITY<sup>(1)</sup>**

Annual On-Peak	=	\$0.03321/kWh
Annual Off-Peak	=	\$0.02328/kWh

**CAPACITY PAYMENT TO A QUALIFYING FACILITY**

\$4.09 per kW Per Month

- <sup>(1)</sup> On-Peak hours = 6:00 A.M.– 10:00 P.M. weekdays  
 Off-Peak hours = All other hours, including weekends and designated holidays

Southern Indiana Gas and Electric Company D/B/A  
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**RATE CSP**  
**COGENERATION AND SMALL POWER PRODUCTION**  
(Continued)

**CONDITIONS OF PURCHASE**

1. A qualifying facility, operating electric generating equipment, may connect in parallel with Company's system, providing the facility complies with the National Electrical Safety Code, as supplemented, the applicable requirements of 170 IAC 4-4.3, and the Company's rules and regulations for electric service. The Customer will provide, at Customer's expense, all necessary protective and synchronizing equipment.
2. The qualifying facility shall pay in advance of construction all costs estimated by Company for metering or other facilities necessary to provide for the energy purchase. Upon completion of the construction, Company will reconcile the actual costs with the advance payment and bill or credit the facility accordingly.
3. The qualifying facility shall operate its electric generating equipment in such a manner so as not to adversely affect Company's voltage waveform.
4. The qualifying facility shall permit Company at any time as it deems necessary to install or modify any equipment to protect the safety of its employees or the accuracy of its metering equipment as a result of the operation of the facility's equipment. The facility shall reimburse Company for the cost of such installation or modification upon receipt of a statement from Company.
5. The qualifying facility shall permit Company's employees to enter upon its property at any reasonable time for the purpose of inspecting and/or testing its facilities to ensure their continued safe operation and the accuracy of Company's metering equipment, but such inspections shall not relieve the qualifying facility from its obligation to maintain the facilities in satisfactory operating condition.
6. The qualifying facility shall agree to indemnify Company and its employees against liability for any injuries or damages caused by the operation of the facility's equipment or by any failure of the facility to maintain its equipment in satisfactory and/or safe operating condition.
7. Company will require that a contract be executed which will detail meter reading and billing practices to be followed, as well as other technical and operating parameters for the qualifying facility's generation facilities.

Southern Indiana Gas and Electric Company D/B/A  
Vectren Energy Delivery of Indiana, Inc. (Vectren South)  
Tariff for Electric Service  
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**RATE CSP**  
**COGENERATION AND SMALL POWER PRODUCTION**

(Continued)

8. Qualifying facilities wishing to operate electric generating equipment in parallel with Company system and not sell electricity to Company shall abide by these Conditions of Purchase, including allowing Company to prevent the existing Company metering facilities from recording any flow of energy from the facility's generation into Company's system.
9. Company need not purchase or sell at the time of a system emergency.
10. The determination of whether or not a facility qualifies, as well as other terms and conditions of purchase and sale, shall be subject to and in accordance with the Commission's order approved December 6, 1984, in Cause No. 37494.
11. Company's standard terms and conditions shall apply to the purchase and sale of surplus energy and capacity, unless specifically superseded by the terms and conditions presented herein.

Effective: May 3, 2011

**From:** [Steinhauer, Jane](#)  
**To:** [Swiz, Cas](#)  
**Cc:** [Helene, Beth E.](#); [Veneck Jr., Robert](#); [Stevens, George](#); [Jones, Meredith W](#); [Thomas, Dale](#)  
**Subject:** CAC Objection to 30-day Filing No. 50124  
**Date:** Friday, March 23, 2018 4:04:08 PM  
**Attachments:** [ELPC CAC Objection to Vectren 30-day Filing PURPA - FINAL w attachments.pdf](#)

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Mr. Swiz,

The Citizens Action Coalition (CAC) submitted an objection to the pending 30-day filing identified with the tracking number 50124. The Commission is required to promptly notify the utility of any objection it receives. This email serves as notification of such an objection. Additionally, the objection is attached to this email. Pursuant to 170 IAC 1-6-7(c), the utility may submit, within 10 calendar days following this notification, one or more of the following:

- 1) A response to the objection
- 2) Clarification of the filing
- 3) Additional information
- 4) An amendment to the filing
- 5) A withdrawal of its filing

Here is a link to the guidelines regarding objections to 30-day filings - <http://in.gov/iurc/2519.htm>.

Sincerely,

Jane Steinhauer



April 2, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street  
Suite 1500 E  
Indianapolis, IN 46204

**RE: Vectren South Thirty Day Administrative Filing (# 50124)**

Dear Ms. Becerra,

Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren South") hereby responds to the objection filed by the Citizens Action Coalition of Indiana and the Environmental Law & Policy Center (collectively the "Objectors") to Vectren South's Thirty Day Administrative Filing (the "Filing") for Rate CSP. The Filing has been assigned the tracking number 50124 by the Indiana Utility Regulatory Commission ("Commission"). The Filing was made by Vectren South to comply with 170 IAC 4-4.1-10 ("Section 10"). Section 10 requires each generating electric utility to annually file updated standard offer rates for the purchase of energy and capacity from a cogeneration facility. The energy and capacity rates must be derived from the appropriate application of 170 IAC 4-4.1-8(a) and 9(c) through 9(d).

The Objectors do not object to the Filing on the basis that the energy and capacity rates are not derived from the appropriate application of Sections 8(a) or 9(c) through 9(d) or otherwise fail to comply with the requirements of Section 10. Instead, the Objectors contend the Filing is "incomplete and violates applicable law" because Vectren South (a) did not submit a standard contract pursuant to 170 IAC 4-4.1-11 and (b) does not include avoided cost information the Objectors imply must be included in the Filing by 18 CFR § 292.302(b). The Objectors' contentions misconstrue the obligations imposed on Vectren South. Section 10 does not require Vectren South to include a standard contract with its annual update to the rates for energy and capacity purchases from a cogeneration facility and no other provisions of the Indiana regulations require such a submission. Neither does Section 10 require Vectren South to submit rates that comply with 18 C.F.R. § 292.302(b) as part of the Section 10 filing. Consequently, the Filing does not violate applicable law, is not incomplete and there is no permissible basis identified by the Objectors to object to the Filing.

**Vectren South Is Not Required To Submit A Standard Contract**

Vectren South submitted this Filing to comply with Section 10. Objectors do not refer or site to any provision in Section 10 requiring Vectren South to submit a standard offer contract when submitting its standard offer rates for purchase of energy and capacity each February 28. Indeed, no provision in

Section 10 requires a standard offer contract to be submitted with this annual filing. Since Section 10 does not require a standard contract, no credible objection can be raised to a Section 10 filing on the basis that a standard contract was not included in the filing.

170 IAC 4-4.1-11 ("Section 11") does require submission of a standard offer contract, but Objectors ignore the specific language of the regulation making clear that a generating electric utility is not required to annually submit a standard offer contract with each filing made under Section 10:

Sec. 11. (a) Within sixty (60) days of the effective date of this rule each generating electric utility shall submit for approval via the commission's thirty (30) day filing process a standard form contract which it would enter into with a qualifying facility in connection with the generating electric utility's purchase of energy or capacity or both.

The submission of these standard offer contracts is a one-time requirement that was required to have been performed within sixty (60) days of the effective date of the rule. Vectren South complied with this requirement by submitting a copy of its standard form agreement at the time the rule was adopted. Nothing further is required by Sections 10 or 11 with respect to this standard form contract.

The Objectors also state they were unable to locate Vectren South's standard contract and that Vectren South did not provide it upon request. However, the Objectors' ability to locate the contract has no bearing on the Filing's compliance with Section 10. Even so, Vectren South recently provided CAC's counsel with a copy of the filed agreement. The agreement was provided within five business days of the request (which request was made two days before the objection was filed). Vectren South required some time to locate the agreement because no customer has expressed interest in purchases under Rate CSP in the recent past and time was required to locate the agreement. Objectors received what they sought.

The Objectors also contend that "lack of a long-term, fixed rate standard contract has likely discouraged developers from pursuing projects in Indiana," however they provide no support for this contention, nor is the argument relevant to Vectren South's compliance with the thirty day filing rules.

**Vectren South's Section 10 Filing Need Not Comply With 18 CFR §292.302(b)**

Similarly, the Objector's contention that the Filing, which was made pursuant to Section 10, does not include the avoided cost information required by 18 CFR § 292.302(b) provides no legitimate basis to object to the Filing. Vectren South was not submitting the Filing to comply with 18 C.F.R. § 292.302(b), but to comply with Section 10. The Objectors do not contend that the Filing fails to comply with Section 10 in any respect. No provision in Section 10 requires a generating electric utility to submit the information required by 18 CFR § 292.302 as part of the annual thirty day filing required by Section 10. A filing cannot reasonably be held to violate Section 10 or be incomplete because it fails to include information not required by Section 10.

While not relevant to the legitimacy of the Objectors' objections, Vectren South has complied with many of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan ("IRP") which was filed on December 16, 2016. The IRP evaluates Vectren South's planned capacity additions over at least 10 years and establishes the cost of capacity additions.

The basis for CAC's objection to Vectren South's Filing is without merit. The Filing is neither incomplete nor in violation of applicable law. For these reasons, Vectren South believes its Filing should be presented to the Commission for consideration.

**Initiation Of a Statewide Docket To Investigate PURPA Implementation  
Is Not Appropriate At This Time**

Objectors' true purpose for their objections appears to be the initiation of a statewide docket to investigate Indiana's implementation of the Public Utilities Regulatory Policy Act ("PURPA"). This is not a legitimate basis for objecting to the Filing, since Section 10 contemplates submission of the energy and capacity rates pursuant to the Commission's thirty day filing procedures to avoid lengthy proceedings considering them.

Apart from Objectors' mis-use of the objection provision of the thirty day filing procedure, now is not the time for Indiana to initiate a statewide docket to investigate PURPA implementation. The very regulations cited by Objectors are being reviewed by the Federal Energy Regulatory Commission ("FERC") in Docket No. AD16-16. See Notice Inviting Post-Technical Conference Comments, Docket No. AD16-16 (FERC Sept. 6, 2016).<sup>1</sup> FERC's Chairman, Neil Chatterjee, has explained the purpose of this investigation:

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation and modern realities.

Letter from Chairman Neil Chatterjee to Representative Tim Walberg (Nov. 29, 2017).<sup>2</sup> Moreover, Congress is considering changes that may be necessary to PURPA. The Energy and Commerce Subcommittees of the House of Representatives held a hearing on September 6, 2017 to hear testimony on the need for revisions to PURPA. *Powering America: Reevaluating PURPA's Objectives and Its Effects on Today's Consumers before the H. Energy and Commerce S. Comm.*<sup>3</sup> Legislation has been introduced in the House of Representatives to modernize PURPA. H.R. 4476, 115<sup>th</sup> Congress (2015).<sup>4</sup> Given

<sup>1</sup> Available at <https://www.ferc.gov/CalendarFiles/20160906164926-AD16-16-000%20TC2.pdf>.

<sup>2</sup> Available at [https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14624205](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14624205).

<sup>3</sup> Available at <https://energycommerce.house.gov/hearings/powering-america-reevaluating-purpas-objectives-effects-todays-consumers/>.

<sup>4</sup> Available at <https://www.congress.gov/bill/115th-congress/house-bill/4476/text>.

Mary Becerra  
April 2, 2018  
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Congressional and FERC investigations into the need to update PURPA, any inquiry in Indiana, if appropriate, should await the outcome of these other PURPA inquiries because of the significant likelihood any changes would need to be considered by Indiana.

Sincerely,

A handwritten signature in black ink, appearing to read "Jason Stephenson", written in a cursive style.

Jason Stephenson  
Vice President, General Counsel of Vectren Utility  
Holdings, Inc.

April 6, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204  
mbecerra@urc.in.gov  
*Electronically delivered*

RE: Reply to Vectren's Response to CAC and ELPC Objection

**Reply to Vectren's Response to Objection on behalf of  
Citizens Action Coalition and the Environmental Law & Policy Center**

Pursuant to Rule 170 IAC 1-6-7(d)(1), which states that 30-Day filings that have not been resolved to the satisfaction of the objector shall not be presented for Commission approval, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") respectfully submit this Reply to express their lack of satisfaction with Vectren Energy Delivery of Indiana's ("Vectren") Response, filed on April 2, 2018, to CAC and ELPC's Objections filed on March 23, 2018. The Commission's procedures allow a party to reply to a response in similar contexts. *See, e.g.* 170 IAC 1-1.1-12(f). The Objections and Response at issue concerns Vectren's 30-day filing, filed on February 28, 2018, IURC 30-Day Filing No. 50124.

Vectren's response failed to satisfy ELPC and CAC's objection, as required by 170 IAC 1-6-7(d)(1), and the response raised a number of issues demonstrating why the Commission should open an investigation into Indiana's implementation of PURPA. There are three key reasons why the Commission should deny Vectren's 30-day filing and open an investigation into Indiana's PURPA implementation.

**1. Vectren's Standard Contract Fails to Comply with Indiana and Federal Law.**

After ELPC and CAC filed its Objection, Vectren's counsel provided its standard contract to ELPC and CAC, which attached to this reply as Exhibit C. There are two relevant requirements applicable to Vectren's standard contract. First, Indiana law requires electric utilities to enter into "long term" contracts for the purchase of energy and capacity by PURPA QFs. Burns Ind. Code Ann. § 8-1-2.4-4(a). Second, federal law requires that long-term contracts include the ability to obtain fixed rates. 18 C.F.R. § 292.304(d)(2)(ii); *see also Winding Creek Solar LLC v. Peevey*, \_ F. Supp. 3d. \_, No. 13-04934, 2017 WL 6040012, at \*10 (N.D. Cal. 2017) (PURPA standard contract without option to fix rates over entire term conflicts with PURPA).

Vectren's standard contract contains a 3-year term, Exhibit C at 18, and this term length fails to provide the opportunity for a "long term" contract, as required by Burns Ind. Code Ann. § 8-1-2.4-4(a). In its objections to Duke Energy Indiana's 30-day filing, IURC 30-Day Filing No. 50119, ELPC and CAC submitted an affidavit from a potential QF developer that explained

contract term lengths must be at least 15- to 20-years in order to allow QFs reasonable opportunities to obtain financing. *See* Affidavit of Sam Kliever at ¶ 3.<sup>1</sup> According to this potential QF developer, Vectren’s 3-year standard contract would not “long enough to allow QFs reasonable opportunities to attract capital from potential investors.” *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 8 (2016).

In addition, a review of EIA data containing a list of all generators shows that Vectren currently has no small power production QFs in its service territory,<sup>2</sup> and ELPC and CAC are not aware of any small power production QFs in Vectren’s service territory. The lack of any QF activity in Vectren’s service territory is evidence that its three-year standard contract are not “encourage[ing] the development of alternate energy production facilities.” Burns Ind. Code Ann. § 8-1-2.4-1.

In Vectren’s standard contract, it is unclear whether the rates for purchase are fixed over the 3-year term or are changed annually, which means avoided cost rates are not fixed over the 3-year term. *See* Exhibit C at 17. If Vectren’s standard contract’s avoided cost rate changes annually, then this annual change conflicts with 18 C.F.R. § 292.304(d)(2)(ii), which requires QFs to have the option of fixing the contract price for the delivery of energy and capacity “at the time the obligation is incurred.” *See Allco Renewable Energy Ltd v. Massachusetts Electric Co.*, 208 F. Supp. 3d 390, 400 (D. Mass. 2016) *aff’d* 875 F.3d 64 (1st Cir. 2017) (lack of option to obtain fixed rate in long term contracts renders state’s PURPA implementation in conflict with PURPA); *Winding Creek Solar LLC v. Peevey*, \_\_ F. Supp. 3d \_\_, No. 13-04934, 2017 WL 6040012, at \*10 (N.D. Cal. 2017) (PURPA standard contract without option to fix rates over entire term conflicts with PURPA).

The North Carolina Utilities Commission (“NCUC”) recently rejected Duke Energy Carolinas, LLC, similar proposal to change the avoided cost rates in its standard contract every two years.<sup>3</sup> The NCUC explained:

The Commission determines, for purposes of this case, that Vectren’s proposed two-year reset in the avoided energy rate component of the standard offer rate should not be adopted at this time. While some larger facilities may be able to negotiate for different terms and degrees of certainty with regard to securing capital and return on investment, the proposed two-year energy rate reset for facilities eligible for the standard offer rates adds an additional element of uncertainty to their ability to reasonably forecast their anticipated revenue, which may make obtaining financing more difficult than a longer term, fixed-rate PPA.<sup>4</sup>

Annual avoided cost updates, like that possibly in Vectren’s standard contract, would be even more uncertain than Duke Energy Carolina’s unsuccessful biennial update proposal in

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<sup>1</sup> This affidavit was filed with ELPC and CAC’s Objection to Duke Energy Indiana’s 30-day filing.

<sup>2</sup> <https://www.eia.gov/electricity/data/eia860/> (last updated Nov. 2017).

<sup>3</sup> *See In re Biennial Determination of Avoided Cost Rates for Electric Utility Purchases from Qualifying Facilities – 2016*, Docket No. E-100 SUB 148, Order at 7 ¶ 10 (N. C. Pub. Util. Comm’n Oct. 11, 2017) available at <https://perma.cc/UUJ6-2G5Q>.

<sup>4</sup> *Id.*, Order at 69.

North Carolina. According to the testimony of Cypress Creek Renewables, a QF developer in North Carolina, annual or biennial change to contract prices make QF financing prohibitively difficult:

Cypress Creek argues that financing parties would view a ten-year PPA with a two-year readjustment to the avoided energy rate no more favorably than they would a two-year contract, which would not be financeable. Cypress Creek witness McConnell testified that rates fixed over the term of the contract are critical to securing financing, stating that “fixed rates for a fixed period of time create financeable contracts,” and that what creates value in the contract is having a set avoided cost rate for a set period of time. He further testified that without these fixed rates, lenders are unwilling to bet on what the avoided cost rates will be going forward.<sup>5</sup>

Vectren’s failure to offer QFs the choice of a long-term fixed rate contract conflicts with PURPA, as interpreted by FERC and other recent state commission orders. The ambiguity in Vectren’s standard contract concerning the ability to fix rates over the 3-year term should be an issue investigated by the Commission. In addition, 3-year standard contracts are not “long term,” as required by Burns Ind. Code Ann. § 8-1-2.4-4(a), and adequate contract term lengths should be another issue the Commission should investigate.

## **2. Vectren Has Not Complied With All Requirements of 18 C.F.R. § 292.302(b).**

In its response, Vectren admitted that it has not filed *all* of the information required by 18 C.F.R. § 292.302(b). Vectren Response at 3 (“Vectren South has complied with *many* of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan (“IRP”) which was filed on December 16, 2016.”) (emphasis added). Vectren’s response indicates it has only supplied the information required by 18 C.F.R. § 292.302(b)(2)-(3) (capacity additions over 10 years and their costs), but did not indicate it has supplied the forecasted avoided cost information required by 18 C.F.R. § 292.302(b)(1). Accordingly, because 18 C.F.R. § 292.302(b) requires this information to be filed at least every two years, Vectren has not in compliance because it has not filed the information required by § 292.302(b)(1) in the last two years.

In addition, although Vectren’s December 2016 IRP does show its planned capacity additions over the next ten years,<sup>6</sup> as required by 18 C.F.R. § 292.302(b)(2), nowhere in the IRP does it contain the “estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour.” 18 C.F.R. § 292.302(b)(3).

Perhaps these estimated capacity costs are available in the non-public version of the IRP, but that too fails to comply with the regulation. The regulation states that utilities “shall maintain for public inspection” these “estimated capacity costs.” 18 C.F.R. §§ 292.302(b), 292.302(b)(3). The “public inspection” requirement preempts application of trade secret or confidential

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<sup>5</sup> *Id.*, Order at 67.

<sup>6</sup> Vectren, 2016 INTEGRATED RESOURCE PLAN at 232-243 (Dec. 2016), available at <https://perma.cc/YG98-M43F>.

treatment of the information required to comply with this regulation.<sup>7</sup> If Vectren wants to use its IRP to comply with 18 C.F.R. § 292.302(b)(3), then it cannot shield those estimated capacity costs from public view.

Vectren's lack of compliance with 18 C.F.R. § 292.302(b)(1) undermines the purpose of these avoided cost informational filings and this lack of compliance demonstrates the need for Indiana to investigate the issue further.

### **3. There Are Currently No Federal Investigations or Rulemakings into PURPA, and Even If There Were, It Should Not Stop the Commission from Exercising its Duly-delegated Authority to Implement PURPA and State Law.**

Vectren believes an investigation of PURPA implementation is not warranted in Indiana because there are already federal investigations into PURPA ongoing and therefore the State should allow the federal government to dictate what Indiana should do. Vectren Response at 3-4. However, contrary to Vectren's assertions, there are no active FERC investigations or rulemakings related to PURPA. Vectren cited to a FERC order soliciting comments in Docket AD16-16, but FERC created that docket solely for its 2016 PURPA technical conference.<sup>8</sup> Conference participants filed their comments in Fall 2016, and FERC has taken no action and conducted no investigation or rulemaking following those comments.

Vectren misrepresented statements made by FERC's Chairman Neil Chatterjee. On October 30, 2017, Representative Tim Walberg sent a letter to FERC asking FERC to update its PURPA regulations. *See* Exhibit D. On November 29, 2017, FERC Chairman Neil Chatterjee responded with a two-paragraph letter and did not initiate an investigation or rulemaking in response to Walberg's letter. *See* Exhibit E. Nevertheless, Vectren attempts to use an excerpt of Neil Chatterjee's letter to explain "the purpose of this investigation," Vectren Response at 3, even though no such investigation exists and the Chairman's letter does not reference an active investigation or rulemaking.

Vectren also cited to a recent bill introduced in Congress as evidence of another federal investigation. That bill, titled the PURPA Modernization Act, H.R. 4476, has sat in a House of Representative subcommittee since December 1, 2017 and has yet to be offered up for a vote.<sup>9</sup> Even if it passes the committee stage, it is unlikely to pass the full House of Representatives or the Senate. In addition, the legislation only effects the size of QFs and how PURPA could

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<sup>7</sup> *See In Re Investigation of Central Maine Power Company's Resource Planning, Rate Structures, and Long-Term Avoided Costs (Rate Design Phase)*, Docket No. 92-315, 1995 Me. PUC LEXIS 11 at \*13-14 (Jan. 27, 1995 Me. Pub. Util. Comm'n). The Maine Public Utilities Commission stated:

Plainly, under this federal regulation, the specified avoided cost information must be filed with state regulatory agencies and the information must be publicly available. The federal regulation expressly regulates state activities and, under the supremacy clause, undoubtedly precludes any state action that would make the specified information not publicly available, e.g., pursuant to state trade secret protection law. *Id.* at \*13.

<sup>8</sup> *See Notice of technical conference re Implementation Issues under the Public Utility Regulatory Policies Act of 1978*, Docket No. AD16-16 (F.E.R.C. Feb. 9, 2016) available at <https://perma.cc/TKU5-CBW9>; *see also Supplemental Notice Concerning Technical Conference*, Docket No. AD16-16 (F.E.R.C. Mar. 4, 2016) available at <https://perma.cc/A9TV-DLZW>.

<sup>9</sup> *See* <https://www.congress.gov/bill/115th-congress/house-bill/4476/all-actions>



interact with integrated resource plans—it has nothing to do with adequate contract term lengths under Indiana law or compliance with 18 C.F.R. 292.302(b).

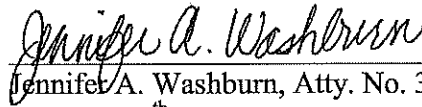
Vectren’s reliance on federal activity as a reason for why the Commission should not open an investigation rings hollow. PURPA operates under a cooperative federalism framework whereby FERC issued the primary regulations but the State of Indiana is delegated authority to implement those regulations at the state level. *See* 16 U.S.C. § 824a-3(f). Indiana has adopted state laws and regulations to implement these requirements, including a state law that directs the commission to require electric utilities to enter into long-term contracts with alternate energy production facilities. Burns Ind. Code Ann. § 8-1-2.4-4(a). The existence, or not, of federal proceedings related to PURPA in no way negates the Commission’s responsibility to implement and enforce existing state law. Finally, PURPA provides the Commission with the discretion to determine issues like contract term lengths, and, therefore, Indiana’s discretion and authority to investigate such issues is unaffected by the hypothetical existence of federal investigations into matters unrelated to Indiana’s requirement for “long term” contracts. Burns Ind. Code Ann. § 8-1-2.4-4(a).

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Indiana should use its considerable discretion under PURPA to deny approval of Vectren’s 30-day filing and open an investigation into PURPA implementation in the State. Issues for investigation should be adequate contract term lengths, compliance with 18 C.F.R. 292.302(b)’s biennial avoided cost information requirements, and other issues that the Commission determines are relevant. Other relevant issues could be how utilities calculate their avoided energy cost rates and whether the standard offer tariff and standard contracts should be available to QFs larger than 100 kW.

Dated April 6, 2018

Respectfully submitted,



Jennifer A. Washburn, Atty. No. 30462-49  
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SOUTHERN INDIANA GAS AND ELECTRIC COMPANY

20-24 N.W. FOURTH STREET • EVANSVILLE, INDIANA 47741 • TEL. (812) 424-6411



December 1, 1987

Mr. L. D. Philpott, Secretary  
Indiana Utility Regulatory Commission  
913 State Office Building  
Indianapolis, Indiana 46204

In Re: In the matter of the Adoption and Promulgation  
by the Public Service Commission of Indiana of  
Rules and Regulations with Respect to Cogeneration  
and Alternate Energy Production Facilities Pursuant  
to Title II, Sections 201 and 210 of the Public  
Utility Regulatory Policies Act of 1978, and Public Law  
72 Enacted by the 102nd Indiana General Assembly(Public  
Law 72-182), Cause No. 37494.

Dear Mr. Philpott:

In compliance with the Commission's Rules and Regulations with Respect to  
Cogeneration and Alternate Energy Production Facilities as published in the  
Indiana Register, Volume 8, Number 6, April 1, 1985, please find enclosed ten  
(10) copies of the following for filing under the Commission's thirty day filing  
process:

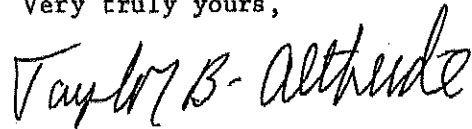
1. A tariff covering terms, conditions, and rates for purchase  
and sale of energy and capacity as required by  
170 IAC 4-4.1-5, 170 IAC 4-4.1-7, 170 IAC 4-4.1-8,  
170 IAC 4-4.1-9, 170 IAC 4-4.1-10
2. Supporting data for the rates and rate filings as required by  
170 IAC 4-4.1-4.
3. Standard form contract as required by 170 IAC 4-4.1-11.

Please return three (3) file marked copies to us.

Any questions concerning the enclosed information should be addressed to:

Taylor B. Altheide  
Manager of Rates  
20 N. W. Fourth Street  
Evansville, Indiana 47741

Very truly yours,

A handwritten signature in cursive script that reads "Taylor B. Altheide". The signature is written in dark ink and is positioned below the typed name.

Taylor B. Altheide  
Manager of Rates

TBA/bl  
encls.

Cc: N. P. Wagner  
R. G. Reherman  
A. E. Goebel  
G. A. Porch

RATE "CSP"  
COGENERATION AND SMALL POWER PRODUCTION

AVAILABILITY

The schedule of purchase prices set forth herein shall apply to owners of cogeneration or small power producing "qualifying facilities" as defined by the Public Service Commission of Indiana, in Cause No. 37494, approved December 6, 1984. Prior to any purchase by the Company, the qualifying facility must enter into a contractual agreement.

RATES FOR SALE OF ENERGY AND CAPACITY

If the qualifying facility desires to purchase electric service from the Company, the electric requirements for the qualifying facility shall be separately metered and billed in accordance with the applicable rate schedule.

PURCHASE PRICES

The Company will pay for energy and capacity received from the qualifying facility on a monthly basis as follows:

Energy Component

Prices paid are based on the Company's avoided cost of energy associated with a one (1) megawatt decrement of load. The energy payment is expressed on a cents-per-kwh basis in Table 1 of this schedule.

Payments for energy are adjusted to reflect line losses, expressed as a percentage for the previous year. It is expected that the projected energy payment will vary as the Company's actual fuel costs change. Energy rates listed in Table 1 will be revised on or before February 28th in each subsequent year in accordance with the Commission Cause No. 37494.

In the case of contracts for purchases of 72,000 kilowatt-hours or more per month from a qualifying facility, the following factors may be considered and an appropriate adjustment made to the agreed purchase price in each contract:

Effective:

RATE "CSP"  
COGENERATION AND SMALL POWER PRODUCTION  
(Continued)

1. The extent to which scheduled outages of the qualifying facility can be usefully coordinated with scheduled outages of the Company's generation facilities.
2. The relationship of the availability of energy from the qualifying facility to the ability of the Company to avoid costs, particularly as is evidenced by the Company's ability to dispatch the qualifying facility.
3. The availability of energy from a qualifying facility during the Company's system daily or seasonal peak.
4. The usefulness of energy from a qualifying facility during Company system emergencies, including its ability to separate its load from its generation.

Effective:

RATE "CSP"  
COGENERATION AND SMALL POWER PRODUCTION  
(Continued)

Table 1

ENERGY PAYMENT TO A QUALIFYING FACILITY

1.56¢ Per KWH

UNADJUSTED CAPACITY PAYMENT TO A QUALIFYING FACILITY

\$2.68 Per KW Per Month

Effective:

RATE "CSP"  
COGENERATION AND SMALL POWER PRODUCTION  
(Continued)

Capacity Component

There shall be a demand credit paid to qualifying facilities who can enter into a contract with the Company to provide firm capacity for a specified term. Capacity payments are expressed on a dollars per kilowatt per month basis in Table 1 of this schedule.

The monthly capacity payment shall be adjusted by the following factor:

$$F = \frac{E_p}{(K)(T_p)}$$

Where:

F = Capacity payment adjustment factor

E<sub>p</sub> = Kilowatt-hours delivered to the Company by the qualifying facility during the peak period defined as the hours of 7:00 a.m. to 10:00 p.m. during weekdays, excluding holidays.

K = Kilowatts of capacity the qualifying facility contracts to provide.

T<sub>p</sub> = Number of hours in the peak period.

The Company and a qualifying facility may negotiate a rate for energy or capacity which differs from the filed rate CSP.

Effective:

COGENERATION AND SMALL POWER PRODUCTION  
(Continued)

CONDITIONS OF PURCHASE

1. A qualifying facility, operating electric generating equipment, may connect it in parallel with the Company's system, providing the facility complies with applicable safety standards and provides, at its expense, all necessary protective and synchronizing equipment.
2. The qualifying facility shall pay in advance of construction all costs estimated by the Company for metering or other facilities necessary to provide for the energy purchase. Upon completion of the construction, the Company will reconcile the actual costs with the advance payment and bill or credit the facility accordingly.
3. The qualifying facility shall operate its electric generating equipment in such a manner so as not to adversely affect the Company's voltage waveform.
4. The qualifying facility shall permit the Company at any time as it deems necessary to install or modify any equipment to protect the safety of its employees or the accuracy of its metering equipment as a result of the operation of the facility's equipment. The facility shall reimburse the Company for the cost of such installation or modification upon receipt of a statement from the Company.
5. The qualifying facility shall permit Company's employees to enter upon its property at any reasonable time for the purpose of inspecting and/or testing its facilities to ensure their continued safe operation and the accuracy of the Company's metering equipment, but such inspections shall not relieve the customer from its obligation to maintain the facilities in satisfactory operating condition.
6. The qualifying facility shall agree to indemnify the Company and its employees against liability for any injuries or damages caused by the operation of the facility's equipment or by any failure of the facility to maintain its equipment in satisfactory and/or safe operating condition.
7. The Company will require that a contract be executed which will detail meter reading and billing practices to be followed, as well as other technical and operating parameters for the qualifying facility's generation facilities.

Effective:



RATE "CSP"  
COGENERATION AND SMALL POWER PRODUCTION  
(Continued)

8. Qualifying facilities wishing to operate electric generating equipment in parallel with the Company system and not sell electricity to the Company shall abide by these Conditions of Purchase, including allowing the Company to prevent the existing Company metering facilities from recording any flow of energy from the facility's generation into the company's system.
9. The Company need not purchase or sell at the time of a system emergency.
10. The determination of whether or not a facility qualifies, as well as other terms and conditions of purchase and sale, shall be subject to and in accordance with the Public Service Commission's order approved December 6, 1984, in Cause No. 37494.
11. The Company's standard terms and conditions shall apply to the purchase and sale of surplus energy and capacity, unless specifically superseded by the terms and conditions presented herein.

Effective:

SOUTHERN INDIANA GAS & ELECTRIC COMPANY

CALCULATION OF COGENERATION RATE  
FOR PURCHASE OF CAPACITY  
YEAR 1988

Formula

$$C = \frac{1}{12} \left[ DV \left[ \frac{1 - \left( \frac{1 + ip}{1 + r} \right)^n}{1 - \left( \frac{1 + ip}{1 + r} \right)^n} \right] (1 + ip)^{t-1} + O \left( \frac{1 + io}{1 + r} \right) (1 + io)^{t-1} \right] \div \left( 1 - \frac{L}{2} \right)$$

Inputs

- D =  $(cc) \frac{(1 + r)^n - 1}{(r) (1+r)^n} = 7.0374 (cc)$
- cc = 17.53% (See Carrying Charge Calculation)
- V = \$300/kW (See Capacity Capital Cost)
- ip = 5.34% (DRI Long-Term Forecast - IPD)
- io = 5.53% (DRI Long-Term Forecast - PPI)
- r = 12.73% (see Cost of New Capital)
- O = \$1.26/kW (3 year average cost, FERC Form #1)
- L = 4.44% (1986 FERC Form #1)
- t = 1
- n = 30 years (EPRI-TAG 1986)

Rate

Rate = \$2.68 per kW per month

SOUTHERN INDIANA GAS & ELECTRIC COMPANY

CALCULATION OF COST OF NEW CAPITAL  
YEAR 1988

<u>Item</u>	<u>Capital Structure</u> (1)	<u>Cost Rate</u> (2)	<u>Composite Cost</u>
Debt	51.0%	10.50%	5.36%
Preferred Stock	6.0%	10.00%	.60%
Common Equity	<u>43.0%</u>	15.75%	<u>6.77%</u>
	100.0%		<u>12.73%</u>

NOTE: (1) Structure from last rate case - Cause 37803.

(2) Estimate current costs for "AA" rated utility. Equity cost at level last allowed by PSC (Cause No. 37803).

SOUTHERN INDIANA GAS & ELECTRIC COMPANY

CALCULATIONS OF COGENERATION  
RATE FOR PURCHASE OF ENERGY  
YEAR 1988

Basis of Calculation

The system's energy cost was derived utilizing a production cost simulation model for the estimated 1988 system loads. The production cost model MARGIN is a model developed from the general dispatch model SYSGEN. The MARGIN model dispatches the system on a weekly basis by hour, and reports both the total, hourly, and marginal hourly running costs. The marginal values which reflect a small load change (1 MW) are used in this calculation.

Energy Rate

Average 12 months marginal cost values from dispatch:	= 1.53¢/kWh
Adjustment for losses <sup>(1)</sup> :	
$\frac{1}{(1 - (0.0444/2))}$	= 1.0227
Adjusted Energy Rate	= 1.56¢/kWh

NOTE: (1) Losses from 1986 FERC Form #1, page 401.

SOUTHERN INDIANA GAS & ELECTRIC COMPANY

ESTIMATED CAPACITY CAPITAL COST  
YEAR 1988

Basis of Cost

At present the Company has no definitive plans for its next capacity addition. The cost of capacity has therefore been estimated based on a 75 MW combustion turbine with an in-service date of approximately October 1987.

The capital cost estimate is derived from values given by EPRI in the Technical Assessment Guide, Volume 1: Electricity Supply - 1986, p. B-83, for a 75 MW distillate/gas unit in the East/West Central region. This cost in 1984 \$ has been escalated to 1988 by use of Handy-Whitmans Index values for 7/1/84 to 7/1/88.

Capital Cost

Cost per kW (1984):	= \$269/kW
Escalation to mid-year 1987 per Handy-Whitman Index (Bulletin No. 126, 9/87) North Central Region:	267/239 = 1.117
Estimated Cost (1988) \$269 x 1.117	\$300/kW

SOUTHERN INDIANA GAS & ELECTRIC COMPANY

CALCULATION OF PRESENT VALUE  
OF CARRYING CHARGES  
YEAR 1988

Formulas

Carrying Charge = cc,

cc = r + d + I + P + T, where

Income Tax = T, and

$T = (t/1-t) (r + d - D) (r - bL)/r$

Inputs

r	=	Cost of Capital	12.73%
d	=	Sinking fund depreciation rate $[(i)/(1+i)^n - 1]$	0.36%
n	=	(Service life (years))	30
I	=	Insurance cost rate $\$977,405/\$497,306,427$	0.20%
P	=	Property Tax rate $(\$4,571,932/\$497,306,427)$	0.92%
D	=	Book depreciation rate (30 year life - per EPRI "TAG")	3.33
t	=	Income tax rate (composite) (34% Federal, 4.5% State)	36.97%
b	=	Debt interest cost rate	10.50%
L	=	Debt capital structure ratio	.510%

Carrying Charge

T	=	3.32%
CC	=	12.73 + 0.36 + 0.20 + 0.92 + 3.32
CC	=	17.53%

SOUTHERN INDIANA GAS AND ELECTRIC COMPANY

STANDARD OFFER #1

POWER PURCHASE AGREEMENT

FOR

AS-DELIVERED CAPACITY AND ENERGY

STANDARD OFFER #1:  
AS-DELIVERED CAPACITY AND ENERGY  
POWER PURCHASE AGREEMENT

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STANDARD OFFER AND FORM CONTRACT  
FOR AS-DELIVERED CAPACITY  
AND ENERGY POWER PURCHASE  
BETWEEN

\_\_\_\_\_  
AND  
SOUTHERN INDIANA GAS AND ELECTRIC COMPANY

\_\_\_\_\_  
("Seller") and SOUTHERN INDIANA  
GAS AND ELECTRIC COMPANY ("Sigeco"), referred to collectively as  
"Parties" and individually as "Party", agree as follows:

ARTICLE 1 QUALIFYING STATUS

Seller warrants that, at the date of first power deliveries from Seller's Facility and during the term of agreement, its Facility shall meet the qualifying facility requirements established as of the effective date of this Agreement by the Indiana Utility Regulatory Commission's rules implementing the Public Utility Regulatory Policies Act of 1978 (16 U.S.C.A. 796, et seq.) as embodied and defined in 170 IAC 4-4.1-1, and the parties expressly agree that this Agreement shall apply only to Seller's qualified Facility located at \_\_\_\_\_, Indiana.

ARTICLE 2 PURCHASE OF POWER

- (a) Seller shall sell and deliver and Sigeco shall purchase and accept from the Facility having a nameplate rating of \_\_\_\_\_ kw located at \_\_\_\_\_ the as-delivered capacity and energy at the voltage level of \_\_\_\_\_ kv.
- (b) The scheduled operation date when Seller estimates first delivery of electric energy from the Facility to Sigeco is \_\_\_\_\_. At the end of each calendar quarter Seller shall give to Sigeco written notice of any change in the scheduled operation date.
- (c) To avoid exceeding the physical limitations of the interconnectin facilities, Seller shall limit the Facility's actual rate of delivery into the Sigeco system to \_\_\_\_\_ kw.
- (d) The primary energy source for the Facility is \_\_\_\_\_

\_\_\_\_\_.

(e) If Seller does not begin construction of its Facility by \_\_\_\_\_, Sigeco may reallocate the existing capacity on Sigeco's transmission and/or distribution system which would have been used to accommodate Seller's power deliveries to other uses. In the event of such reallocation, Seller shall pay Sigeco for the cost of any upgrades or additions to Sigeco's system necessary to accommodate the output from the Facility. Such additional facilities shall be installed, owned, and maintained in accordance with the applicable Sigeco tariff.

(f) The transformer loss adjustment factor is \_\_\_\_\_.

#### ARTICLE 3 PURCHASE PRICE

Sigeco shall pay Seller for as-delivered capacity at prices authorized from time to time by the Indiana Utility Regulatory Commission and which are derived from Sigeco's full avoided costs based on the cost of Sigeco's next avoidable base plant or the cost of a new combustion turbine as approved by the Indiana Utility Regulatory Commission. Sigeco shall pay Seller for energy at prices equal to Sigeco's full avoided costs as approved by the Indiana Utility Regulatory Commission. Sigeco's current as-delivered capacity price calculation is shown in Appendix \_\_\_\_\_. Sigeco's current energy price calculation is shown in \_\_\_\_\_.

#### ARTICLE 4 NOTICES

All written notices shall be directed as follows:

to Sigeco: Southern Indiana Gas and Electric Company  
Attention: Vice President - Electric Operations  
20-24 N. W . Fourth Street  
Evansville, Indiana 47741

to Seller: \_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

ARTICLE 5 TERMS AND CONDITIONS

Sigeco shall not be required to purchase from or sell electric energy to Seller at the time of an emergency on, in or to any electric facility or system of either Sigeco or Seller. Scheduled outages of Seller's QF shall be cooperatively coordinated with scheduled outages of Sigeco's generating facilities. A contract for wheeling service may be negotiated to the extent that federal law and the provisions of 170 IAC 4-4.1-6 permit.

This Agreement includes the following appendices which are attached, made a part hereof and incorporated by reference:

- APPENDIX A - GENERAL TERMS AND CONDITIONS
- APPENDIX B - ENERGY PRICES
- APPENDIX C - AS-DELIVERED CAPACITY PRICES
- APPENDIX D - INTERCONNECTION
- APPENDIX E - AUXILIARY OR STANDBY SERVICE

ARTICLE 6 TERM OF AGREEMENT

This Agreement shall become effective on the date of execution by the Parties and shall remain in effect for a period of thirty-six (36) months from the date hereof unless earlier terminated by either or both parties.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized representatives and effective as of the last date set forth below.

\_\_\_\_\_  
(SELLER)

SOUTHERN INDIANA GAS AND ELECTRIC  
COMPANY

By: \_\_\_\_\_

By: \_\_\_\_\_

\_\_\_\_\_  
(Type Name)

\_\_\_\_\_  
(Type Name)

TITLE: \_\_\_\_\_

TITLE: \_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

DATE SIGNED: \_\_\_\_\_

APPENDIX A  
GENERAL TERMS AND CONDITIONS  
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## APPENDIX A

### GENERAL TERMS AND CONDITIONS

#### A-1 DEFINITIONS

Whenever used in this Agreement, appendices, and attachments hereto, the following terms shall have the following meanings:

IURC - Indiana Utility Regulatory Commission.

Facility - That generation apparatus described in Article 2 and all associated equipment owned, maintained, and operated by Seller.

Interconnection Facilities - All means required and apparatus installed to interconnect and deliver power from the Facility to the Sigeco system including, but not limited to, connection, transformation, switching, metering, communications, and safety equipment, such as equipment required to protect (1) the Sigeco system and its customers from faults occurring at the Facility, and (2) the Facility from faults occurring on the Sigeco system or on the systems of others to which the Sigeco system is directly or indirectly connected. Interconnection facilities also include any necessary additions and reinforcements by Sigeco to the Sigeco system required as a result of the interconnection of the Facility to the Sigeco system.

Net energy output - The Facility's gross output in kilowatt-hours less station use and transformation and transmission losses to the point of delivery into the Sigeco system. Where Sigeco agrees that it is impractical to connect the station use on the generator side of the power purchase meter Sigeco may, at its option, apply a station load adjustment.

Prudent electrical practices - Those practices, methods, and equipment, as changed from time to time, that are commonly used in prudent electrical engineering and operations to design and operate electric equipment lawfully and with safety, dependability, efficiency, and economy.

Special facilities - Those additions and reinforcements to the Sigeco system which are needed to accommodate the maximum delivery of energy and capacity from the Facility as provided in this Agreement and those parts of the interconnection

facilities which are owned and maintained by Sigeco at Seller's request, including metering and data processing equipment. All special facilities shall be owned, operated, and maintained pursuant to Sigeco's electric standards and rules, which is attached hereto.

Station use - Energy used to operate the Facility's auxiliary equipment. The auxiliary equipment includes, but is not limited to, forced and induced draft fans, cooling towers, boiler feed pumps, lubricating oil systems, plant lighting, fuel handling systems, control systems, and sump pumps.

Surplus energy output - The Facility's gross output, in kilowatt-hours, less station use, and any other use by the Seller, and transformation and transmission losses to the point of delivery into the Sigeco system.

Term of agreement - The period of time during which this Agreement will be in effect as provided in Article 6.

Voltage level - The voltage at which the Facility interconnects with the Sigeco system, measured at the point of delivery.

## A-2 CONSTRUCTION

### A-2.1 Land Rights

Seller hereby grants to Sigeco all necessary rights of way and easements to install, operate, maintain, replace, and remove the special facilities, including adequate and continuing access rights on property of Seller. Seller agrees to execute such other grants, deeds, or documents as Sigeco may require to enable it to record such rights of way and easements. If any part of Sigeco's equipment is to be installed on property owned by other than Seller, Seller shall, at its own cost and expense obtain from the owners thereof all necessary rights of way and easements in a form satisfactory to Sigeco, for the construction, operation, maintenance, and replacement of Sigeco's equipment upon such property. If Seller is unable to obtain these rights of way and easements, Seller shall reimburse Sigeco for all costs incurred by Sigeco in obtaining them. Sigeco shall at all times have the right of ingress to and egress from the Facility at all reasonable hours for any purposes reasonably connected with this Agreement or the exercise of any and all rights secured to Sigeco by law or its tariff schedules.

### A-2.2 Design, Construction, Ownership, and Maintenance

- (a) Seller shall design, construct, install, own, operate and maintain all interconnection facilities, except special

facilities, to the point of interconnection with the Sigeco system as required for Sigeco to receive as-delivered capacity and energy from the Facility. The Facility and interconnection facilities shall meet all requirements of applicable codes and all standards of prudent electrical practices and shall be maintained in a safe and prudent manner. A description of the interconnection facilities for which Seller is solely responsible is set forth in Appendix D or if the interconnection requirements have not yet been determined at the time of the execution of this Agreement, the description of such facilities will be appended to this Agreement at the time such determination is made.

- (b) Seller shall submit to Sigeco the design and all specifications for the interconnection facilities (except special facilities) for review and written acceptance prior to their release for construction purposes. Sigeco shall notify Seller in writing of the outcome of Sigeco's review of the design and specifications for Seller's interconnection facilities within 60 days of the receipt of the design and all of the specifications for the interconnection facilities. Any flaws perceived by Sigeco in the design and specifications for the interconnection facilities will be described in Sigeco's written notification. Sigeco's review and acceptance of the design and specifications shall not be construed as confirming or endorsing the design and specifications or as warranting their safety, durability, or reliability. Sigeco shall not, by reason of such review or lack of review, be responsible for strength, details of design, adequacy, or capacity of equipment built pursuant to such design and specifications, nor shall Sigeco's acceptance be deemed to be an endorsement of any of such equipment. Seller shall change the interconnection facilities as may be reasonably required by Sigeco to meet changing requirements of the Sigeco system.
- (c) In the event it is necessary for Sigeco to install interconnection facilities for the purposes of this Agreement, they shall be installed as special facilities.
- (d) Upon the request of Seller, Sigeco shall provide a binding estimate for the installation of interconnection facilities by Sigeco.

#### A-2.3 Meter Installation

- (a) Sigeco shall specify, provide, install, own, operate, and maintain as special facilities all metering and data processing

equipment for the registration and recording of energy and other related parameters which are required for the reporting of data to Sigeco and for computing the payment due Seller from Sigeco.

- (b) Seller shall provide, construct, install, own, and maintain at Seller's expense all that is required to accommodate the metering and data processing equipment, such as, but not limited to, metal-clad switchgear, switchboards, cubicles, metering panels, enclosures, conduits, rack structures, and equipment mounting pads.
- (c) Sigeco shall permit meters to be fixed on Sigeco's side of the transformer. If meters are placed on Sigeco's side of the transformer, service will be provided at the available primary voltage and no transformer loss adjustment will be made. If Seller chooses to have meters placed on Seller's side of the transformer, an estimated transformer loss adjustment factor of 2 percent, unless the Parties agree otherwise, will be applied.

#### A-3 ENERGY SALES

##### A-3.1 General

This Agreement is only for the sale of Seller's surplus energy output. Sigeco is not required to and does not agree to purchase any energy from Seller other than its surplus energy output.

#### A-4 OPERATION

##### A-4.1 Inspection and Approval

Seller shall not operate the Facility in parallel with Sigeco's system until an authorized Sigeco representative has inspected the interconnection facilities, and Sigeco has given written approval to begin parallel operation. Seller shall notify Sigeco of the Facility's start-up date at least 45 days prior to such date. Sigeco shall inspect the interconnection facilities within 30 days of the receipt of such notice. If parallel operation is not authorized by Sigeco, Sigeco shall notify Seller in writing within five days after inspection of the reason authorization for parallel operation was withheld.

##### A-4.2 Facility Operation and Maintenance

Seller shall operate and maintain its Facility according to prudent electrical practices, applicable laws, orders, rules, and



tariffs and shall provide such reactive power support as may be reasonably required by Sigeco to maintain system voltage level and power factor. Seller shall operate the Facility at the power factors or voltage levels prescribed by Sigeco's system dispatcher or designated representative. If Seller fails to provide reactive power support, Sigeco may do so at Seller's expense.

#### A-4.3 Point of Delivery

Seller shall deliver the energy at the point where Seller's electrical conductors contact Sigeco's system as it shall exist whenever the deliveries are being made or at such other point or points as the Parties may agree in writing. The initial point of delivery of Seller's power to the Sigeco system is set forth in Appendix D.

#### A-4.4 Operating Communications

- (a) Seller shall maintain operating communications with Sigeco's power center. The operating communications shall include, but not be limited to, system paralleling or separation, scheduled and unscheduled shutdowns, equipment clearances, levels of operating voltage or power factors, and daily capacity and generation reports.
- (b) Seller shall keep a daily operations log for each generating unit which shall include information on unit availability, maintenance outages, circuit breaker trip operations requiring a manual reset, and any significant events related to the operation of the Facility.
- (c) If Seller makes deliveries greater than one megawatt, Seller shall measure and register on a graphic recording device power in kW and voltage in kV at a location within the Facility agreed to by both Parties.
- (d) If Seller makes deliveries greater than one and up to and including ten megawatts, Seller shall report to the Sigeco power center, twice a day at agreed upon times for the current day's operation, the hourly readings in kW of capacity delivered and the energy in kWh delivered since the last report.
- (e) If Seller makes deliveries of greater than ten megawatts, Seller shall telemeter the delivered capacity and energy information, including real power in kW, reactive power in kVAR, and energy in kWh to the Sigeco power center. Sigeco may also require Seller to telemeter transmission kW, kVAR,

and kV data depending on the number of generators and transmission configuration. Seller shall provide and maintain the data circuits required for telemetering. When telemetering is inoperative, Seller shall report daily the capacity delivered each hour and the energy delivered each day to the Sigeco power center.

#### A-4.5 Meter Testing and Inspection

- (a) All meters used to provide data for the computation of the payments due Seller from Sigeco shall be sealed, and the seals shall be broken only by Sigeco when the meters are to be inspected, tested, or adjusted.
- (b) Sigeco shall inspect and test all meters upon their installation and annually thereafter. At Seller's request and expense, Sigeco shall inspect or test a meter more frequently. Sigeco shall give reasonable notice to Seller of the time when any inspection or test shall take place, and Seller may have representatives present at the test or inspection. If a meter is found to be inaccurate or defective, Sigeco shall adjust, repair, or replace it at its expense in order to provide accurate metering.

#### A-4.6 Adjustments to Meter Measurements

If a meter fails to register, or if the measurement made by a meter during a test varies by more than two percent from the measurement made by the standard meter used in the test, an adjustment shall be made correcting all measurements made by the inaccurate meter for (1) the actual period during which inaccurate measurements were made, if the period can be determined, or if not, (2) the period immediately preceding the test of the meter equal to one-half the time from the date of the last previous test of the meter, provided that the period covered by the correction shall not exceed six months.

#### A-5 PAYMENT

Sigeco shall mail to Seller not later than 30 days after the end of each monthly billing period (1) a statement showing the kilowatt-hours delivered to Sigeco during on-peak, partial-peak, and off-peak periods during the monthly billing period, (2) Sigeco's computation of the payment due Seller, and (3) Sigeco's check in payment of said amount. Except as provided in Section A-6, if within 30 days of receipt of the statement Seller does not make a report in writing to Sigeco of an error, Seller shall be deemed to have waived any error in Sigeco's

statement, computation, and payment, and they shall be considered correct and complete.

A-6 ADJUSTMENTS OF PAYMENTS

- (a) In the event adjustments to payments are required as a result of inaccurate meters, Sigeco shall use the corrected measurements described in Section A-4.6 to recompute the amount due from Sigeco to Seller for the as-delivered capacity and energy delivered under this Agreement during the period of inaccuracy.
- (b) The additional payment to Seller or refund to Sigeco shall be made within 30 days of notification of the owing Party of the amount due.

A-7 ACCESS TO RECORDS AND SIGECO DATA

Each Party, after reasonable written notice to the other Party, shall have the right of access to all metering and related records including the operations logs of the Facility. Data filed by Sigeco with the IURC pursuant to IURC orders governing the purchase of power from qualifying facilities shall be provided to Seller upon request; provided that Seller shall reimburse Sigeco for the costs it incurs to respond to such request.

A-8 CURTAILMENT OF DELIVERIES

- (a) Sigeco shall not be obligated to accept or pay for and may require Seller to interrupt or reduce deliveries of as-delivered capacity and energy (1) when necessary in order to construct, install, maintain, repair, replace, remove, investigate, or inspect any of its equipment or any part of its system, or (2) if it determines that interruption or reduction is necessary because of emergencies, forced outages, force majeure, or compliance with prudent electrical practices.
- (b) Sigeco shall not be obligated to accept or pay for and may require Seller to interrupt or reduce deliveries of as-delivered capacity and energy during periods when purchases under this Agreement would result in costs greater than those which Sigeco would incur if it did not make such purchases but instead generated an equivalent amount of energy itself.
- (c) Whenever possible, Sigeco shall give Seller reasonable notice of the possibility that interruption or reduction of deliveries under subsections (a) or (b), above, may be required.

## FORCE MAJEURE

- (a) The term force majeure as used herein means unforeseeable causes beyond the reasonable control of and without the fault or negligence of the Party claiming force majeure including, but not limited to, acts of God, labor disputes, sudden actions of the elements, actions by federal, state, and municipal agencies, and actions of legislative, judicial, or regulatory agencies which conflict with the terms of this Agreement.
- (b) If either Party because of force majeure is rendered wholly or partly unable to perform its obligations under this Agreement, that Party shall be excused from whatever performance is affected by the force majeure to the extent so affected provided that:
- (1) the non-performing Party, within thirty days after the occurrence of the force majeure, gives the other Party written notice describing the particulars of the occurrence.
  - (2) the suspension of performance is of no greater scope and of no longer duration than is required by the force majeure,
  - (3) the non-performing Party uses its best efforts to remedy its inability to perform (this subsection shall not require the settlement of any strike, walkout, lockout, or other labor dispute on terms which, in the sole judgment of the Party involved in the dispute, are contrary to its interest. It is understood and agreed that the settlement of strikes, walkouts, lockouts, or other labor disputes shall be at the sole discretion of the Party having the difficulty), and
  - (4) when the non-performing Party is able to resume performance of its obligations under this Agreement, that Party shall give other Party written notice to that effect.
- (c) In the event a Party is unable to perform due to legislative, judicial, or regulatory agency action, this Agreement shall be renegotiated to comply with the legal change which caused the non-performance.

A-10 INDEMNITY

THE SELLER AGREES TO INDEMNIFY, DEFEND, AND HOLD HARMLESS SOUTHERN INDIANA GAS AND ELECTRIC COMPANY AND ITS AGENTS AND EMPLOYEES from any claims, demands or liability of any kind or nature for injuries or damages to any person or property growing out of the performance of this contract or arising in any manner, ways or means from any product supplied or activity required in this contract, WHETHER DUE IN WHOLE OR IN PART TO THE NEGLIGENCE OF SAID SIGECO, ITS AGENTS OR EMPLOYEES OR THE SELLER, ITS AGENTS OR EMPLOYEES OR OTHER PERSONS OR ENTITIES ENGAGED IN THE PERFORMANCE OF THE CONTRACT, OR THE JOINT NEGLIGENCE OF ANY OF THE AFORESAID IN ANY COMBINATION.

A-11 LIABILITY; DEDICATION

- (a) Nothing in this Agreement shall create any duty to, any standard of care with reference to, or any liability to any person not a Party to it. Neither Party shall be liable to the other Party for consequential damages.
- (b) Each Party shall be responsible for protecting its facilities from possible damage by reason of electrical disturbances or faults caused by the operation, faulty operation, or non-operation of the other Party's facilities, and such other Party shall not be liable for any such damages so caused.
- (c) No undertaking by one Party to the other under any provisions of this Agreement shall constitute the dedication of that Party's system or any portion thereof to the other Party or to the public nor affect the status of Sigeco as an independent public utility corporation or Seller as an independent individual or entity and not a public utility.

A-12 SEVERAL OBLIGATIONS

Except where specifically stated in this Agreement to be otherwise, the duties, obligations, and liabilities of the Parties are intended to be several and not joint or collective. Nothing contained in this Agreement shall ever be construed to create an association, trust, partnership, or joint venture or impose a trust or partnership duty, obligation, or liability on or with regard to either Party. Each Party shall be liable individually and severally for its own obligations under this Agreement.

A-13 NON-WAIVER

Failure to enforce any right or obligation by either Party with respect to any matter arising in connection with this Agreement shall not constitute a waiver as to that matter or any other matter.

A-14 ASSIGNMENT

Neither Party shall voluntarily assign its rights nor delegate its duties under this Agreement, or any part of such rights or duties, without the written consent of the other Party, except in connection with the sale or merger of a substantial portion of its properties. Any such assignment or delegation made without such written consent shall be null and void. Consent for assignment will not be withheld unreasonably. Such assignment shall include, unless otherwise specified therein, all of Seller's rights to any refunds which might become due under this Agreement.

A-15 CAPTIONS

All indexes, titles, subject headings, section titles, and similar items are provided for the purpose of reference and convenience and are not intended to affect the meaning of the contents or scope of this Agreement.

A-16 CHOICE OF LAWS

This Agreement shall be interpreted in accordance with the laws of the State of Indiana.

A-17 GOVERNMENTAL JURISDICTION AND AUTHORIZATION

Seller shall obtain any governmental authorizations and permits required for the construction and operation of the Facility. Seller shall reimburse Sigeco for any and all losses, damages, claims, penalties, or liability it incurs as a result of Seller's failure to obtain or maintain such authorizations and permits.

A-18 NOTICES

Any notice, demand, or request required or permitted to be given by either Party to the other, and any instrument required or permitted to be tendered or delivered by either Party to the other, shall be in writing and so given, tendered, or delivered, as the case may be, by depositing the same in any United States Post Office with postage prepaid for transmission by certified mail, return receipt requested, addressed to the Party, or personally delivered to the Party, at the address in Article 4 of this Agreement. Changes in such designation may be made by notice similarly given.

A-19 INSURANCE

A-19.1 General Liability Coverage

- (a) Seller shall maintain during the performance hereof, General

Liability Insurance of not less than \$10,000,000 if the Facility is over 1 megawatt and \$5,000,000 if the Facility is under 1 megawatt of combined single limit or equivalent for bodily injury, personal injury, and property damage as the result of any one occurrence.

- (b) General Liability Insurance shall include coverage for Premises-Operations, Owners and Contractors Protective, Products/Completed Operations Hazard, Explosion, Collapse, Underground, Contractual Liability, and Broad Form Property Damage including Completed Operations.
- (c) Such insurance, by endorsement to the policy(ies), shall include Sigeco as an additional insured, shall contain a severability of interest clause, shall provide that Sigeco shall not by reason of its inclusion as an additional insured incur liability to the insurance carrier for payment of premium for such insurance, and shall provide for 30-days' written notice to Sigeco prior to cancellation, termination, alteration, or material change of such insurance.

A-19.2 Additional Insurance Provisions

- (a) Evidence of coverage described above in Section A-19.1 shall state that coverage provided is primary and is not excess to or contributing with any insurance or self-insurance maintained by Sigeco.
- (b) Sigeco shall have the right to inspect or obtain a copy of the original policy(ies) of insurance.
- (c) Seller shall furnish the required certificates and endorsements to Sigeco prior to commencing operation.
- (d) All insurance certificates, endorsements, cancellations, terminations, alterations, and material changes of such insurance shall be issued and submitted to the following:

SOUTHERN INDIANA GAS AND ELECTRIC COMPANY  
Attention: Vice President - Electric  
Operations  
20-24 N. W. Fourth Street  
Evansville, Indiana 47741

APPENDIX B  
ENERGY PRICES

TABLE A

Energy Prices Effective



APPENDIX C

AS-DELIVERED CAPACITY PRICES

Purchase Price for As-Delivered Capacity  
from Qualifying Facilities for 198

APPENDIX D  
INTERCONNECTION

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APPENDIX D  
INTERCONNECTION

D-1 INTERCONNECTION TARIFFS (IF APPLICABLE).

(The applicable tariffs in effect at the time of execution of this Agreement shall be attached).

D-2

POINT OF DELIVERY LOCATION SKETCH

D-3

INTERCONNECTION FACILITIES FOR WHICH SELLER IS RESPONSIBLE

## APPENDIX E

### AUXILIARY OR STANDBY SERVICE

Auxiliary service is that service which supplements another source of power where switching arrangements enable the use of either or both sources of power.

Standby service is that service which is capable of being used in place of another source of power where there is no actual use except during emergencies.

Customers utilizing auxiliary or standby service will be billed on the applicable rate schedule available for the size of load and class of service rendered, subject to the following special provisions:

- (a) A "contract" demand shall be initially established by mutual agreement, between the Company and the Customer and stated in the service contract. Whenever the contract demand, as initially established is exceeded by the creation of a greater demand, then such greater demand shall become the contract demand until again exceeded, and so on, for the duration of the contract.
- (b) The off-peak provision in the applicable rate schedule shall not apply.

AD No-16

**Congress of the United States**  
Washington, DC 20515

OFFICE OF  
EXTERNAL AFFAIRS

2017 OCT 31 P 2:45

October 30, 2017

FEDERAL ENERGY  
REGULATORY COMMISSION

The Honorable Neil Chatterjee  
Chairman  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Dear Mr. Chairman:

We are writing to urge the Federal Energy Regulatory Commission (FERC) to update its implementing regulations for the Public Utility Regulatory Policies Act (PURPA). As you know, PURPA was enacted in 1978 in response to an oil crisis. Over the last 40 years, we have seen dramatic changes in energy markets that have resulted in an abundance of domestic energy supplies. Two of the most significant changes have been the development of competitive wholesale electricity markets, which enable qualifying facilities (QFs) under PURPA to reach more willing buyers, and the declining costs for natural gas and renewable energy resources. These developments, along with others, have changed both the economics of QF development, as well as the impact of an increasing amount of QF output being placed on the transmission grid.

While there are aspects of the reform of PURPA that will require congressional action, there are also regulatory changes that FERC can make to ensure that its implementing regulations reflect the changes occurring in electricity markets. Many of these changes are already familiar to FERC and were addressed at the technical conference that your agency held on June 29, 2016, in Docket No. AD16-16-000. Among the issues addressed at the conference was the purported gaming of FERC's "one-mile rule" (*see* 18 CFR § 292.204(a)(2)) by certain QF developers. More than a year later, the House Energy and Commerce Subcommittee on Energy heard testimony during its September 6, 2017, hearing on PURPA, that some QFs are continuing to take advantage of FERC's regulations to effectively build projects that exceed the various size thresholds in the wholesale electricity markets regulated by FERC. However, since FERC has made clear in its decisions that its one-mile rule is irrebuttable, parties involved cannot challenge the lawfulness of these projects.

Eliminating the opportunity for certain QF developers to game FERC's one-mile rule will directly benefit electricity customers, who are paying billions of dollars in above-market prices for QF power sold under mandatory PURPA contracts. While the Energy and Commerce Committee considers additional reforms to PURPA, we encourage FERC to address the concerns raised at its 2016 technical conference and to use its authority to undertake needed modernization to the Commission's PURPA one-mile rule regulations while taking into consideration non-geographic factors as well.


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2017-00119

As Congress continues its review of PURPA, we request the list of changes and reforms the Commission believes it can make under its existing authority.

We look forward to working with the Commission to ensure our constituents can benefit from lower cost electricity, more competitive markets and advancements made in renewable generation.


Sincerely,

  
Tim Walberg  
Member of Congress


  
Fred Upton  
Member of Congress


  
Joe Barton  
Member of Congress

  
Marsha Blackburn  
Member of Congress

  
Robert E. Latta  
Member of Congress


  
Gregg Harper  
Member of Congress


  
David B. McKinley, P.E.  
Member of Congress


  
Margaret Griffith  
Member of Congress


  
Bill Johnson  
Member of Congress

  
Dave Loebsack  
Member of Congress

  
Larry Bucshon, M.D.  
Member of Congress

  
Bill Flores  
Member of Congress

  
Markwayne Mullin  
Member of Congress

  
Kevin Cramer  
Member of Congress

  
Kurt Schrader  
Member of Congress

  
Billy Long  
Member of Congress

  
Richard Hudson  
Member of Congress



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**FEDERAL ENERGY REGULATORY COMMISSION**  
WASHINGTON, DC 20426

November 29, 2017

OFFICE OF THE CHAIRMAN

The Honorable Tim Walberg  
U. S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Walberg:

Thank you for your October 30, 2017, letter regarding the Public Utility Regulatory Policies Act of 1978 (PURPA).

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe that the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation with modern realities.

As you know, the Commission held a technical conference on June 29, 2016, in Docket No. AD16-16-000, to examine issues related to PURPA. Subsequently, the Commission solicited written comments from interested parties, which were submitted by November 7, 2016. One particular area where many parties have indicated a need for a different approach is the "one-mile rule" for qualifying facilities. Of course, other such areas may exist, too, and we owe it to stakeholders to continue taking a hard look at our regulations to identify those opportunities for improvement. Please be assured that I will keep your concerns in mind as the Commission explores these important issues. Your letter and this reply will be placed in the public record of Docket No. AD16-16-000.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Neil Chatterjee  
Chairman

Document Content (s)

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April 16, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street  
Suite 1500 E  
Indianapolis, IN 46204

**RE: Vectren South Thirty-Day Administrative Filing (#50124) – Sur-reply**

Dear Ms. Becerra,

Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. (“Vectren South”) hereby tenders this sur-reply to the Citizens Action Coalition and the Environmental Law & Policy Center (collectively the “Objectors”) Response. While the Indiana Utility Regulatory Commission (“Commission”) Rules allow for a utility response to an objection filed under 170 IAC 1-6-7, the rules do not contemplate a response from the objector. The Objectors have submitted a Reply anyway and raise new issues therein that Vectren South feels compelled to respond to.

Vectren South calls the Commission’s attention to what Objectors’ do not say in their response. Significantly, the Objectors’ Response offer no response to Vectren South’s demonstration that the Rate CSP thirty-day filing fails to comply with the pertinent Commission regulations under which it is filed. Rather, Objectors’ Response makes clear that Objectors’ purpose is to frustrate the Commission’s Thirty-Day Filing process to force an investigation into which it can raise issues that have nothing to do with whether Vectren South’s updated Rate CSP is calculated in accordance with 170 IAC 4-4.1-8(a) and 9(c) through 9(d). The Commission should not, and is not required under applicable Rules, to allow the Objectors’ to turn a matter delegated to a thirty-day filing precisely because the issues are straightforward, into a wide ranging investigation of other matters the Objectors’ wish to raise.

**Vectren South’s Standard Form Contract does Comply with Indiana and Federal Law.**

The Objectors claim that Vectren South’s standard form contract (“contract”) is not in compliance with Indiana law because Burns Ind. Code Ann. § 8-1-2.4-4(a) requires electric utilities to enter into long term contracts to purchase electricity from qualifying facilities. The Objectors state that because Vectren South’s contract contains a 3-year-term, the term length does not constitute a “long term contract.” I.C. 8-1-2.4-4 does not define “long term contract”, and there is no basis in the statutory language to contend that a 3-year term is insufficient. More importantly, this question has no bearing on whether Rate CSP was appropriately calculated—the question at issue in the Filing.

The Objectors also criticize Vectren South’s contract for being unclear about whether rates are fixed or changed annually, and that 18 C.F.R. § 292.304(d)(2)(ii) require qualifying facilities have the option of a fixed contract price over the contract term. Electric utilities are required to purchase electricity from qualifying facilities in accordance with 18 C.F.R. § 292.304 *unless* exempted by § 292.309 and § 292.310.

Attachment E

Vectren South received an exemption from § 292.310 by FERC in November 2011 in Docket No. QM11-4-00. Since Vectren South is exempt from § 292.310, it is not subject to the requirements of § 292.304 and therefore the Objector's basis for concerns about Vectren South's contract has no basis.

The Objectors also contend that Vectren South has not complied with all the requirements of 18 C.F.R. § 292.302(b), however, compliance with § 292.302(b) is not a requirement of Vectren South's thirty-day filing, and as such the Objector's argument is beyond the scope of this proceeding.

**The Commission Is Not Required To Reject A 30-Day Filing Due To Baseless Objections.**

The thirty-day filing process was put in place as a means to expedite noncontroversial filings for consideration before the Commission (see 170 IAC 1-6-1 Policy and scope). While objections are allowed under section 7 of the rule, objections must be based on aspects of the filings that violate applicable law, commission order, commission rule, and inaccurate and incomplete filings. The basis for the objections filed by the Objectors do not address rules and requirements specific to Vectren South's thirty-day filing, but instead speak to rules that go beyond the scope of what is required. Objectors are misusing the ability to object to attempt to force a broad-based investigation that has nothing to do with the Filing (*i.e.* whether Vectren South's updated Rate CSP is correctly calculated). A PURPA investigation is something the Objectors have requested as part of their objection not only to Vectren South's thirty-day filing, but to the thirty-day filings of Indiana's other electric utilities. Such abuse of Commission procedures should not be tolerated.

Given that Vectren South's Thirty-Day filing remains in compliance with Indiana and federal laws, its Filing should be presented to the Commission for consideration.

Sincerely,



Jason Stephenson

Vice President, General Counsel of Vectren Utility Holdings, Inc.



Jason Stephenson  
Vice President, General Counsel

Vectren Corporation  
One Vectren Square  
Evansville, IN 47708  
Tel: 812 491 4231  
Fax: 812 491 4238  
Cell: 812 431 7994  
jstephenson@vectren.com

April 17, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street  
Suite 1500 E  
Indianapolis, IN 46204

**RE: Vectren South Thirty-Day Administrative Filing (#50124) – Sur-reply**

Dear Ms. Becerra,

Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren South") submits this clarification to its April 16, 2018 sur-reply (the "Sur-Reply") to the Citizens Action Coalition and the Environmental Law & Policy Center (collectively the "Objectors") Response.

The Sur-Reply noted that Vectren South had obtained an exemption from the obligation to purchase electricity from qualifying facilities (QF) in accordance with 18 C.F.R. § 292.304 pursuant to § 292.309 and § 292.310 in FERC Docket No. QM11-4-00. The Objectors contacted Vectren South by email and noted that Vectren South's exemption applies only to QF with a size greater than 20 megawatts. Vectren South acknowledges this qualification on its exemption from QF purchases.

Vectren South's exemption remains relevant, even with this qualification, because it demonstrates the limitations on the regulations Objectors seek to inject into this thirty-day process. Moreover, Vectren South's Thirty-Day filing continues to be in compliance with relevant Indiana regulations and should be presented to the Commission for consideration.

Sincerely,

Jason Stephenson  
Vice President, General Counsel of Vectren Utility  
Holdings, Inc.

Submitted By: Jane Steinhauer  
 Director, Electric Division

**Filing Party:** Indiana Michigan Power Co.  
**30-Day Filing ID No.:** 50125  
**Date Filed:** March 1, 2018  
**Filed Pursuant To:** 170 I.A.C. 4-4.1-10  
**Request:** New Rate Schedules for Cogeneration and Alternate Energy Production Facilities.  
**Customer Impact:** N/A

TARIFF COGEN/SPP (Cogeneration and/or Small Power Production Service)					
Measurement Method		Monthly Credits or Payments for Energy and Capacity Deliveries		Monthly Metering Charge	
		Energy Credit (\$/kWh)	Capacity Credit (\$/kW/month)	Single Phase Meter	Polyphase Meter
Standard Measurement		\$0.0291	\$7.02	\$1.75	\$2.25
TOD Measurement	On-peak <sup>1</sup>	\$0.0350	\$7.02	\$1.90	\$2.30
	Off-peak <sup>2</sup>	\$0.0248	\$7.02	\$1.90	\$2.30

**Tariff Pages Affected:** IURC No. 16:  
 Sixth Revised Sheet No. 27.2, and Sixth Revised Sheet No. 27.3

**Staff Recommendations:** Requirements met. Recommend approval.

**Additional Information:**

The Indiana Utility Regulatory Commission (“Commission” or “IURC”) received objections (Attachment A) from the Citizens Action Coalition (“CAC”) and the Environmental Law & Policy Center (“ELPC”) on March 23, 2018, regarding this filing. Commission staff sent a notification email (Attachment B) to the utility representative on the same day that the objections were filed. Indiana Michigan Power Co. submitted a response (Attachment C) on April 2, 2018. CAC and ELPC provided a joint reply (Attachment D) on April 6, 2018.

Upon review of these documents, the Commission’s General Counsel has advised that CAC’s and ELPC’s objections do not comply with 170 IAC 1-6-7(b)(2), which requires an applicable law objection to be regarding the applicable law of the filing and an objection regarding completeness to be related to the law, rule, or order that applies to the filing. The 30-day filing was filed pursuant to 170 IAC 4-4.1-10 (“Section 10”) and in accordance with the Commission’s order in IURC Cause No. 37494 (1984 WL994597 (Ind. P.S.C.) – approved Oct. 5, 1984). However, the objections raised in CAC’s and ELPC’s filings are silent regarding the 30-day filing’s compliance with Section 10. In addition, the relief requested by the CAC and ELPC for revised filings with a required longer term and for a Commission investigation cannot be granted through the 30-day filing process. Accordingly, Commission staff understands that the objections are outside of the scope of the filing and that the filing may proceed to the Commission for its determination and approval or denial.

<sup>1</sup> The on-peak period is defined as 7 a.m. to 9 p.m., local time, Monday through Friday.  
<sup>2</sup> The off-peak period is defined as starting at 9 p.m. and ending at 7 a.m., local time, Monday through Friday, and all hours of Saturday and Sunday.

March 23, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204  
mbecerra@urc.in.gov  
*Electronically delivered*

RE: I&M's 30-day filing on March 1, IURC 30-Day Filing No. 50125.

**Objection to Indiana Michigan Power Company's 30-Day Filing on behalf of  
Citizens Action Coalition and the Environmental Law & Policy Center**

Pursuant to the guidelines for submitting an objection to a 30-day filing as outlined on the Commission's website at <https://www.in.gov/iurc/2519.htm>, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") (collectively "Objectors") respectfully submit this Objection to the 30-day filing made by Indiana Michigan Power Company ("I&M") on March 1, 2018, IURC 30-Day Filing No. 50125. I&M's 30-day filing is attached as Exhibit A.

I&M's 30-day filing concerns its obligations under the Public Utility Regulatory Policies Act ("PURPA"), including PURPA's implementing regulations and Indiana's PURPA implementation. *See generally* 18 CFR § 292.101, *et seq.*; Burns Ind. Code Ann. § 8-1-2.4-1, *et seq.*; 170 IAC 4-4.1-1 *et seq.* PURPA requires electric utilities to purchase energy and capacity from qualifying facilities ("QFs"), and the rate for these mandatory purchases are based on the utility's avoided costs. *See* 18 C.F.R. §§ 292.303, 292.304.

An objection is valid if it alleges that a 30-day filing is in violation of applicable law or the filing is incomplete. *See* 170 IAC 1-6-7(b)(2)(A)(i), (b)(2)(C)(i). I&M's 30-day filing violates applicable law by failing to include a standard contract as required by 170 IAC 4-4.1-11 and by failing to include avoided cost information required by 18 C.F.R. § 292.302(b)(2)-(3). The failure to provide this legally required information violates applicable law and constitutes an incomplete filing.

I&M's failure to provide a long-term standard contract with a fixed-rate inhibits development of QFs in Indiana and violates the state's policy to "encourage the development of alternate energy production facilities." Burns Ind. Code Ann. § 8-1-2.4-1. Increased QF development would introduce additional competition into Indiana's market by enabling private QF development at the utility's own avoided costs. Thus, PURPA is not a "subsidy" program for renewable energy. Instead, it is a cost-neutral policy that protects ratepayers by creating downward pressure on utility costs.

ELPC and CAC respectfully request that the Commission deny I&M's 30-day filing and open a statewide docket to investigate and establish modernized PURPA implementation

Attachment A



methodologies that will enable Indiana utilities to comply with state and federal law.

### **BACKGROUND ON OBJECTORS**

CAC is a 501(c)(4) membership organization of organizations and more than 40,000 individual members and contributors throughout the State of Indiana. CAC initiates, facilitates, and coordinates citizen action directed at improving the quality of life of all Indiana residents through principled advocacy of public policies that, among other things, promote government accountability and protect consumers and ratepayers. CAC and its members have an interest in promoting the development and availability of renewable energy through implementation of PURPA and are likely to suffer an injury if I&M does not comply with its obligations under PURPA.

ELPC is a 501(c)(3) public interest organization that works to achieve cleaner air and water, promote renewable energy and energy efficiency resources, and preserve natural resources in Indiana and the Midwest. ELPC has an office located in Indianapolis and has members throughout the state of Indiana and the Midwest. On behalf of itself and its members, ELPC played a significant role in recent proceedings in Michigan, Iowa, and Minnesota where those states updated their implementation of PURPA. ELPC and its members have an interest in promoting the development and availability of renewable energy through implementation of PURPA and are likely to suffer an injury if I&M does not comply with its obligations under PURPA.

### **BACKGROUND ON PURPA**

Congress enacted PURPA to “encourage the development of cogeneration and small power production facilities.” *Am. Paper Inst. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 405 (1983). PURPA combats an inefficient preference for utility self-generation and removes barriers for non-utility generation where such generation is cost-effective, thereby increasing competition and creating a downward pressure on power generation costs. *See In re Promoting Wholesale Competition Through Open Access Non-discriminatory Transmission Services by Public Utilities*, 75 F.E.R.C. P61,080, at § III.C (1996) (“Congress recognized that the rising costs and decreasing efficiencies of utility-owned generating facilities were increasing rates and harming the economy as a whole.”); *see also FERC v. Mississippi*, 456 U.S. 742, 750-751 (1982).

Accordingly, Indiana’s PURPA policy implementation is “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.” Burns Ind. Code Ann. § 8-1-2.4-1. Indiana’s implementation contains positive requirements that could encourage QF development, such as requiring long-term contracts and the establishment of standard contracts. *See Burns Ind. Code Ann. § 8-1-2.4-4(a); 170 IAC 4-4.1-11*. However, as will be shown below, utilities in Indiana are not complying with such requirements, and therefore Indiana utilities are falling short of the state’s explicit policy to “encourage the development of alternate energy production facilities.”

PURPA is the only federal law that requires competition in states that have not restructured their electricity markets. PURPA accomplishes this through its mandatory purchase

obligation that ties the rates for purchase to a utility's avoided cost. Tying rates to avoided costs (1) ensures no subsidization occurs, (2) protects ratepayer interests, and (3) provides ratepayers the benefit of low-cost renewable generation.

State regulators and stakeholders are increasingly focused on PURPA in light of the dramatic reduction in renewable energy development costs. With the growing relevance of PURPA, other states are updating their implementation for the first time in over two decades. For instance, the Michigan Public Service Commission ("MPSC") has been conducting a process to update its PURPA implementation. Beginning in late 2015, the MPSC ordered the creation of a working group to investigate the state's implementation of PURPA and invited all utilities, developers, and other interested stakeholders to participate.<sup>1</sup>

In 2016, the investigation culminated in the MPSC's Staff publishing a report detailing the state's implementation with recommendations on how the MPSC could modernize its PURPA implementation.<sup>2</sup> The MPSC then instituted dockets for each regulated utility to modernize its PURPA implementation and to determine, among other things, (1) the appropriate avoided cost methodology, (2) adequate term length for standard contracts, and (3) adequate procedures to encourage development of QFs.<sup>3</sup> The MPSC ordered Michigan utilities to offer long-term contracts, and concluded that QF development could benefit ratepayers in several ways, such as offsetting or deferring the construction of large utility power plants. As the Commission recognized, "there is significant ratepayer value in deferring large, capacity additions through contracting with QFs for incremental capacity."<sup>4</sup>

ELPC played a key role in Michigan's update as an active participant in the investigation and as an intervenor in the subsequent dockets opened for each utility. ELPC has also participated as an intervenor in Iowa's 2017 update to its PURPA implementation<sup>5</sup> and as intervenors in an ongoing complaint case between a QF and utility in Minnesota, which could result in Minnesota updating its PURPA implementation for the first time in over a decade.<sup>6</sup> ELPC and CAC respectfully request that the Commission deny I&M's 30-day filing and follow the lead of other Midwestern states to ensure that Indiana utilities are in full compliance with state and federal law.

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<sup>1</sup> See generally *In re, on the Commission's own motion, commencing an investigation into the continuing appropriateness of the Commission's current regulatory implementation of the Public Utility Regulatory Policies Act of 1978*, Case No. U-17973, Order Commencing Investigation (Oct. 27, 2015) available at <https://perma.cc/4ZVM-XFVD>.

<sup>2</sup> *Id.*, PURPA TECHNICAL ADVISORY COMMITTEE, Report on the Continued Appropriateness of the Commission's Implementation of PURPA (April 8, 2016) available at <https://perma.cc/7JFL-HWEK>.

<sup>3</sup> See generally *In re Consumers Energy Co., et al.*, Case Nos. U-18089, U-18090, U-18091, U-18092, U-18093, U-18094, U-18095, Order (May 3, 2016) available at <https://perma.cc/B739-R7B5>.

<sup>4</sup> *In re Consumers Energy Co.*, Case No. U-18090, Order at 18, (Mich. Pub. Serv. Comm'n May 31, 2017) available at <https://perma.cc/4K2Z-5WWW>.

<sup>5</sup> See generally *In re Interstate Power and Light Co.*, Docket No. TF-2016-0290 (Iowa Util. Bd.); *In re MidAmerican Energy Co.*, Docket No. TF-2016-0294 (Iowa Util. Bd.).

<sup>6</sup> See generally *Red Lake Falls Community Hybrid, LLC v. Otter Tail Power Co.*, Docket No. 16-1021 (Minn. Pub. Util. Comm'n).

## OBJECTIONS

### **OBJECTION ONE: I&M's 30-Day Filing Fails to Contain a Long-Term Contract and Contract Term Length, Both of Which are Required by Indiana Law.**

There are three requirements applicable to the standard contracts required in Indiana. First, Indiana law requires electric utilities to enter into “long term” contracts for the purchase of energy and capacity by PURPA QFs. Burns Ind. Code Ann. § 8-1-2.4-4(a). Second, Indiana’s PURPA regulations require electric utilities to file a standard contract that must include “[t]he term of the contract.” 170 IAC 4-4.1-11(c)(1). Third, federal law requires that long-term contracts include the ability to obtain fixed rates. 18 C.F.R. § 292.304(d)(2)(ii); *see also Winding Creek Solar LLC v. Peevey*, No. 13-04934, 2017 WL 6040012, at \*9 (N.D. Cal. 2017) (finding that a standard contract violates PURPA if it fails to contain an option to obtain fixed rates). “[S]tate regulatory authorities cannot preclude a QF — even an intermittent QF — from obtaining a legally enforceable obligation with a forecasted avoided cost rate.” *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 6 (2016).

I&M’s 30-day filing fails to contain a standard contract, as required by 170 IAC 4-4.1-11. In contrast, Duke Energy Indiana has filed its standard contract every year since 2013.<sup>7</sup> In addition, Counsel for Objectors used reasonable efforts to locate I&M’s standard contract but was unsuccessful. Counsel for Objectors:

- (1) Searched on I&M’s website, including through I&M’s rate book published online, but was unable to find the standard contract on I&M’s website;
- (2) Reviewed all of I&M’s 30-day PURPA filings dating back to 2009, which the Commission archived on its website,<sup>8</sup> but I&M has not filed a standard contract in any of its 30-day filings dating back to 2009; and
- (3) Contacted I&M through the contact information on its 30-day filing, but the representative was unsure whether such a standard contract existed. The representative directed Counsel for Objectors to I&M’s webpage containing its net-metering interconnection application and the sample contract for net-metering interconnection, neither of which contained a specified term length.<sup>9</sup>

The lack of a long-term, fixed rate standard contract has likely discouraged developers from pursuing projects in Indiana. I&M’s currently effective PURPA tariff references a contract but it limits it to a maximum length of 5 years, see Exhibit B at 4, and there is no indication of whether the rate is fixed over the term or whether a longer term standard contracts exists.

The lack of a legally required, long-term contract with fixed rates in I&M’s 30-day filing is important because the lack of long-term, fixed-rate contracts both violates the specific

<sup>7</sup> See IURC 30-Day Filing Nos. 50119 (2018), 50038 (2017), 3429 (2016), 3319 (2015), 3225 (2014), 3141 (2013).

<sup>8</sup> 30-day filings from 2009 to 2018 can be found at: <https://www.in.gov/iurc/2514.htm>

<sup>9</sup> Standard interconnection agreement available at <https://www.indianamichiganpower.com/global/utilities/lib/docs/builders/IndianaNetMeteringServiceCustomerPackage.pdf>. The term can be found on page 6 of 7, ¶ 11, of the sample interconnection agreement (on page 16 of 20 of the PDF).

requirements of Indiana law *and* inhibits the development of QFs across Indiana, thus failing to promote Indiana’s policy of encouraging QF development. *See* Burns Ind. Code Ann. § 8-1-2.4-1. The Federal Energy Regulatory Commission (“FERC”), the agency delegated authority to promulgate federal regulations and enforce PURPA, recognized that long-term contracts with QFs must be “long enough to allow QFs reasonable opportunities to attract capital from potential investors.” *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 8 (2016).

The 5-year contract referenced in I&M’s effective tariff, Exhibit B at 4, is too short to encourage development of QFs because it would be prohibitively difficult to obtain QF project financing with only 5-year contracts. It would be even more difficult to encourage development if the contracts do not offer fixed rates, which the tariff does not indicate are possible. In order to secure project financing, there must be available standard contracts with terms longer than 5 years with fixed rates.

Other states recognize the link between the availability of long-term, fixed-rate contracts and the encouragement of QF development. For instance, during Michigan’s recent update to its PURPA implementation, the MPSC required utilities to offer 20-year standard contracts because it “found persuasive the claim that longer contracts would benefit both QFs and the [utility] by allowing better access to investment and financing. . . .”<sup>10</sup> The Oregon Public Utility Commission (“OPUC”), in setting standard contract terms at 20 years, concluded that such a term length was necessary “to ensure the terms of the standard contract facilitate appropriate financing for a QF project.”<sup>11</sup> The Wyoming Public Service Commission concluded that long-term standard contracts are necessary for financing and that 20-year contract terms are “adequate for obtaining a QF project financing.”<sup>12</sup>

Short-term contracts do not encourage QF development because short-term contracts make financing QFs prohibitively difficult. To illustrate, compare the number of PacifiCorp’s QF contracts in Washington, which has 5-year terms<sup>13</sup>, to other states in which PacifiCorp operates. In Oregon and Wyoming where 20-year contract terms are required, PacifiCorp has **twenty-eight QF contracts** and **eight QF contracts**, respectively.<sup>14</sup> In Utah where 15-year contract terms are required, PacifiCorp has **twenty-six QF contracts**.<sup>15</sup> In contrast, the company has **only three QF contracts in Washington**, which again only allows for 5-year terms in its standard contract.<sup>16</sup>

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<sup>10</sup> *In re Consumers Energy Co.*, Case No. U-18090, Order at 22-23, (Mich. Pub. Serv. Comm’n May 31, 2017) available at <https://perma.cc/4K2Z-5WWW>.

<sup>11</sup> *In re Investigation Relating to Electric Utility Purchases from QFs*, OPUC Docket No. UM 1129, Order No. 05-584 at 19 (Ore. Pub. Util. Comm’n May 13, 2005) available at <https://perma.cc/C5YX-R3GG>. In 2014, the OPUC reaffirmed the 20-year standard contract term length. *In re Investigation into QF Contracting*, OPUC Docket No. UM 1610, Order No. 14-058 (Feb. 24, 2014) available at <https://perma.cc/HL76-YJUG>.

<sup>12</sup> *In re the Application of RMP to Implement a Permanent Avoided Cost Methodology for Customers that do Not Qualify for Tariff Schedule 37 – Avoided Cost Purchases from QFs*, WPSC Docket No. 20000-388-EA-11, Record No. 12750, Order No. 20416 at 19 (Wyo. Pub. Serv. Comm’n Nov. 4, 2011) available at <https://perma.cc/EC8Q-FE4L>.

<sup>13</sup> *See* PacifiCorp, dba Pacific Power & Light Co., Schedule 37, Sheet No. 37.2 available at <https://perma.cc/97YD-LWKX>.

<sup>14</sup> *See* PacifiCorp 2017 Integrated Resource Plan at 78-79, available at <https://perma.cc/2JVR-U7SQ>.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

Long-term contracts are vitally important to promoting QF development and furthering the policy goals of PURPA. I&M's failure to include a standard contract renders its 30-day filing in violation of applicable Indiana law requiring long-term standard contracts and a defined term length. Burns Ind. Code Ann. § 8-1-2.4-4(a); 170 IAC 4-4.1-11(c)(1).

**OBJECTION TWO: I&M's 30-Day Filing Fails to Contain Avoided Cost Information**  
**Required by 18 C.F.R. § 292.302(b).**

Federal regulations require electric utilities to biennially file three categories of avoided cost information with the Commission and utilities must maintain this information for "public inspection." 18 C.F.R. 292.302(b). First, utilities are required to submit 5-year estimates of their avoided energy costs. § 292.302(b)(1). Second, utilities are required to submit planned capacity additions over the next 10 years. § 292.302(b)(2). Third, utilities are required to submit the cost estimates for such capacity additions. § 292.302(b)(3).

I&M's 30-day filing at issue in this Objection fails to contain the avoided cost information required by 18 C.F.R. § 292.302(b)(2)-(3), and I&M's 2017 30-day filing, IURC 30-Day Filing No. 50037, also fails to contain this required information. In addition, Objectors are not aware of I&M filing this required avoided cost information with the Commission in any other docket. Therefore, I&M's 30-day filing at issue in this docket fails to comply with applicable federal law by not containing some of the required biennial avoided cost information.

I&M's 30-day filing does contain the information required by 18 C.F.R. § 292.302(b)(1). *See* Exhibit A at 14.

**CONCLUSION**

Objectors respectfully request the Commission:

(1) Find that this Objection complies with 170 IAC 1-6-7, and that I&M's 30-day filing, IURC 30-Day Filing No. 50125, not be presented to the full Commission for consideration under the 30-day administrative filing rule until these deficiencies are rectified;

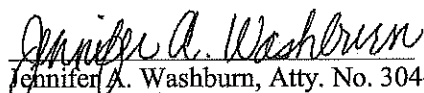
(2) Require I&M to file a standard contract with a defined term of sufficient length and the ability to fix rates over the term of the contract;

(3) Open a statewide docket to investigate PURPA implementation in Indiana. This investigation could examine and establish sufficient standard contract term lengths, whether the current avoided cost methodology adequately represents I&M's avoided costs, and any other issues the Commission deems desirable.

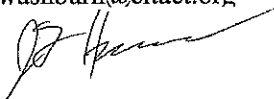
(signatures below)

Dated March 23, 2018

Respectfully submitted,



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(317) 735-7764  
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**BOUNDLESS ENERGY**

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Secretary of the Commission  
Indiana Utility Regulatory Commission  
PNC Center  
101 West Washington Street, Suite 1500 East  
Indianapolis, Indiana 46204

March 1, 2018

Dear Secretary:

Pursuant to 170 IAC 1-6, I&M submits this thirty-day filing requesting approval of amendments to I&M's Tariff COGEN/SPP (Cogeneration and/or Small Power Production Service) which is being submitted pursuant to 170 Ind. Admin. Code 4-4.1-10.

In support of this 30-Day filing, I&M is submitting the following information:

1. Indiana Michigan Power Company's proposed updates to Tariff COGEN/SPP (Cogeneration and/or Small Power Production Service) in clean and redline format.
2. Supporting workpapers.
3. Verified Statement of Publication.

Upon completion of your review, please return to us one set of the stamped approved tariff sheets.

If you have any questions regarding I&M's filing please contact me at (260) 408-3536 or at my email address [kccooper@aep.com](mailto:kccooper@aep.com).

Sincerely,

A handwritten signature in black ink that reads "Kurt C. Cooper". The signature is fluid and cursive, with a long horizontal flourish extending to the right.

Kurt C. Cooper  
Regulatory Consultant Principal

Enclosures

cc: Jane Steinhauer-IURC  
William I. (Bill) Fine-OUCC

**TARIFF COGEN/SPP**  
**(Cogeneration and/or Small Power Production Service)**

(Cont'd from Sheet No. 27.1)

Additional Charges.

There shall be additional charges to cover the cost of special metering, safety equipment, and other local facilities installed by the Company due to COGEN/SPP facilities, as follows:

(1) Metering Charges

The additional charge for special metering facilities shall be as follows:

(a) Option 1

Where the customer does not sell electricity to the Company, a detent shall be used on the energy meter to prevent reverse rotation. The cost of such meter alteration shall be paid by the customer as part of the Local Facilities Charge.

(b) Options 2 & 3

Where energy meters are required to measure the excess energy and average on-peak capacity purchased by the Company or the total energy and average on-peak capacity produced by the customer's COGEN/SPP facilities, the cost of the additional metering facilities shall be paid by the customer as part of the Local Facilities Charge. In addition, a monthly metering charge shall be as follows to cover the cost of operation and maintenance of such additional facilities:

	<u>Single Phase</u>	<u>Polyphase</u>	
Standard Measurement	\$1.75	\$2.25	
TOD Measurement	\$1.90	\$2.30	

Under Option 3, when metering voltage for COGEN/SPP facilities is the same as the Company's delivery voltage, the customer shall, at his option, either route the COGEN/SPP totalized output leads through the metering point or make available at the metering point for the use of the Company and as specified by the Company metering current leads which will enable the Company to measure adequately the total electrical energy and average on-peak capacity produced by the qualifying COGEN/SPP facilities, as well as to measure the electrical energy consumption and capacity

(Cont'd on Sheet No. 27.3)

ISSUED BY  
TOBY L. THOMAS  
PRESIDENT  
FORT WAYNE, INDIANA

COMMENCING WITH THE FIRST BILLING CYCLE  
IN THE MONTH OF \_\_\_\_\_

ISSUED UNDER AUTHORITY OF THE  
INDIANA UTILITY REGULATORY COMMISSION  
DATED \_\_\_\_\_  
30 DAY FILING NO.



**TARIFF COGEN/SPP**  
**(Cogeneration and/or Small Power Production Service)**

(Cont'd from Sheet No. 27.2)

requirements of the customer's total load. When metering voltage for COGEN/SPP facilities is different from the Company's delivery voltage, metering requirements and charges shall be determined specifically for each case.

(2) Local Facilities Charge

Additional charges to cover the cost of special metering facilities, safety equipment, and other local facilities installed by the Company shall be determined by the Company for each case and collected from the customer. The customer shall make a one-time payment for such charges upon completion of the required additional facilities or, at the customer's option, 12 consecutive equal monthly payments reflecting an annual interest charge equal to the maximum rate permitted by law not to exceed the prime rate in effect at the first billing for such installments.

Monthly Credits or Payments for Energy and Capacity Deliveries.

(1) Energy Credit

The following credits or payments from the Company to the customer shall apply for the electrical energy delivered to the Company:

Standard Meter			
All kWh	2.91¢		I
TOD Meter			
On-peak kWh	3.50¢		I
Off-peak kWh	2.48¢		I

(2) Capacity Credit

If the customer contracts to deliver a specified average capacity during the on-peak monthly billing period (on-peak contract capacity), then the first-year monthly capacity credit or payment from the Company to the customer shall be \$7.02/kW times the lowest of:

- (a) monthly on-peak contract capacity, or
- (b) current month on-peak metered average capacity, i.e., on-peak kWh delivered to the Company divided by 305, or

(Cont'd on Sheet No. 27.4)

ISSUED BY  
TOBY L. THOMAS  
PRESIDENT  
FORT WAYNE, INDIANA

COMMENCING WITH THE FIRST BILLING CYCLE  
IN THE MONTH OF \_\_\_\_\_

ISSUED UNDER AUTHORITY OF THE  
INDIANA UTILITY REGULATORY COMMISSION  
DATED \_\_\_\_\_  
30-DAY FILING NO. \_\_\_\_\_

**TARIFF COGEN/SPP  
(Cogeneration and/or Small Power Production Service)**

(Cont'd from Sheet No. 27.1)

Additional Charges.

There shall be additional charges to cover the cost of special metering, safety equipment, and other local facilities installed by the Company due to COGEN/SPP facilities, as follows:

(1) Metering Charges

The additional charge for special metering facilities shall be as follows:

(a) Option 1

Where the customer does not sell electricity to the Company, a detent shall be used on the energy meter to prevent reverse rotation. The cost of such meter alteration shall be paid by the customer as part of the Local Facilities Charge.

(b) Options 2 & 3

Where energy meters are required to measure the excess energy and average on-peak capacity purchased by the Company or the total energy and average on-peak capacity produced by the customer's COGEN/SPP facilities, the cost of the additional metering facilities shall be paid by the customer as part of the Local Facilities Charge. In addition, a monthly metering charge shall be as follows to cover the cost of operation and maintenance of such additional facilities:

	<u>Single Phase</u>	<u>Polyphase</u>	
Standard Measurement	\$ <u>1.501.75</u>	\$ <u>1.952.25</u>	
TOD Measurement	\$ <u>1.651.90</u>	\$ <u>2.002.30</u>	

Under Option 3, when metering voltage for COGEN/SPP facilities is the same as the Company's delivery voltage, the customer shall, at his option, either route the COGEN/SPP totalized output leads through the metering point or make available at the metering point for the use of the Company and as specified by the Company metering current leads which will enable the Company to measure adequately the total electrical energy and average on-peak capacity produced by the qualifying COGEN/SPP facilities, as well as to measure the electrical energy consumption and capacity

(Cont'd on Sheet No. 27.3)

ISSUED BY  
TOBY L. THOMAS  
PRESIDENT  
FORT WAYNE, INDIANA

COMMENCING WITH THE FIRST BILLING CYCLE  
IN THE MONTH OF MAY 2017

ISSUED UNDER AUTHORITY OF THE  
INDIANA UTILITY REGULATORY COMMISSION  
DATED APRIL 5, 2017  
30 DAY FILING NO. 50037

**TARIFF COGEN/SPP**  
**(Cogeneration and/or Small Power Production Service)**

(Cont'd from Sheet No. 27.2)

requirements of the customer's total load. When metering voltage for COGEN/SPP facilities is different from the Company's delivery voltage, metering requirements and charges shall be determined specifically for each case.

(2) Local Facilities Charge

Additional charges to cover the cost of special metering facilities, safety equipment, and other local facilities installed by the Company shall be determined by the Company for each case and collected from the customer. The customer shall make a one-time payment for such charges upon completion of the required additional facilities or, at the customer's option, 12 consecutive equal monthly payments reflecting an annual interest charge equal to the maximum rate permitted by law not to exceed the prime rate in effect at the first billing for such installments.

Monthly Credits or Payments for Energy and Capacity Deliveries.

(1) Energy Credit

The following credits or payments from the Company to the customer shall apply for the electrical energy delivered to the Company:

Standard Meter			
All kWh	2.882.91¢		R!
TOD Meter			
On-peak kWh	3.493.50¢		R!
Off-peak kWh	2.452.48¢		R!

(2) Capacity Credit

If the customer contracts to deliver a specified average capacity during the on-peak monthly billing period (on-peak contract capacity), then the first-year monthly capacity credit or payment from the Company to the customer shall be  $\$7.547.02/\text{kW}$  times the lowest of:

- (a) monthly on-peak contract capacity, or
- (b) current month on-peak metered average capacity, i.e., on-peak kWh delivered to the Company divided by ~~303305~~, or

(Cont'd on Sheet No. 27.4)

ISSUED BY  
TOBY L. THOMAS  
PRESIDENT  
FORT WAYNE, INDIANA

COMMENCING WITH THE FIRST BILLING CYCLE  
IN THE MONTH OF MAY 2017

ISSUED UNDER AUTHORITY OF THE  
INDIANA UTILITY REGULATORY COMMISSION  
DATED APRIL 5, 2017  
30-DAY FILING NO. 50037

**I. Assumptions**

		<u>Variable</u>	<u>Value</u>
A) Capital Cost per kW of Capacity		V	\$740 /kW
B) Weighted Cost of Capital **		R	7.55%
	Balance * <u>Last Case</u> (\$)	Capitalization <u>Ratio **</u>	Current <u>Cost Rate</u>
1) Long Term Debt	1,563,320,246	47.47%	4.95%
2) Preferred Equity	8,072,400	0.26%	0.00%
3) Common Equity	1,721,707,204	52.28%	9.95%
4) Total	3,293,099,850	100.00%	7.55%
C) Carrying Charge Rate		CCR	11.27%
D) Operation & Maintenance Cost per Year (Fixed & Variable)		O	\$19.27 /kW
E) Line Losses		L	5.80%
F) Estimated Unit Life		N	30 years
G) Present Value of Carrying Charge for \$1 Investment for N years		D	1.3246
H) Fixed Operation and Maintenance Cost Escalation Rate		IO	2.00%
I) Construction Cost Escalation Rate		IP	2.00%

\* Per Commission order in IURC Cause No. 44075, page 44.

\*\* I&M agreed to use 100% embedded capital cost

**II. Calculation of Present Value of Carrying Charge**

$$D = CCR \times \frac{(1 + R)^N - 1}{R \times (1 + R)^N}$$

D = 11.27% x  $\frac{7.8779}{0.6703}$  = 1.3246

III. Calculation of Unadjusted Monthly Avoided Cost of Capacity

$$C = \left(\frac{1}{12}\right) \times \left[ \frac{\left(D \times V \times \frac{S1}{S2} \times S3\right) + (S4 \times S5)}{S6} \right]$$

Where:

$$S1 = 1 - \frac{1 + IP}{1 + R}$$

$$S2 = 1 - \left(\frac{1 + IP}{1 + R}\right)^N$$

$$S3 = (1 + IP)^{(T-1)}$$

$$S4 = O \times \left(\frac{1 + IO}{1 + R}\right)$$

$$S5 = (1 + IO)^{(T-1)}$$

$$S6 = 1 - \frac{L}{2}$$

Calculation for First Year

T =	1	S4 =	18.2756
S1 =	0.0516	S5 =	1.0000
S2 =	0.7960	S6 =	0.9710
S3 =	1.0000		

$$C = \left(\frac{1}{12}\right) \times \left[ \frac{\left(1.3246 \times 740 \times \frac{0.0516}{0.7960} \times 1\right) + (18.2756 \times 1)}{0.9710} \right]$$

C = \$7.02

**Cost Calculations (Support Page 1, Assumptions A & D)**

**I. Fixed Operations & Maintenance Cost per kW (2018 Dollars)**

Fixed Operations & Maintenance Cost		5.82 mills/kWh
Hours per Year	x	8,760 hours
Unit Size	x	513,000 kW
Capacity Factor	x	10.00%
Total Fixed O&M Cost		\$2,615,438 /year
Unit Size	/	513,000 kW
Per Unit Fixed O&M Cost		\$5.10 /kW

**II. Variable Operations & Maintenance Cost per kW (2018 Dollars)**

Variable Operations & Maintenance Cost		16.18 mills/kWh
Hours per Year	x	8,760 hours
Unit Size	x	513,000 kW
Capacity Factor	x	10.00%
Total Variable O&M Cost		\$7,271,098 /year
Unit Size	/	513,000 kW
Per Unit Variable O&M Cost		\$14.17 /kW

**III. Total Operations & Maintenance Cost per kW (2018 Dollars)**

Fixed O&M Cost		\$5.10 /kW
Variable O&M Cost	+	14.17 /kW
Total O&M Cost (Page 1, Assumption D)		\$19.27 /kW

I. Calculation of Annual Carrying Charge Rate (Page 1, Assumption C)

	<u>Variable</u>	<u>Value</u>
Weighted Cost of Capital	R	7.55%
Property Tax Rate:		
Account 4081005 - State of Indiana, 12/17		17,511,328
Electric Plant in Service - State of Indiana, 12/17	/	3,846,083,956
Property Tax Rate	a	0.46%
Insurance Rate:		
Account 9240000, 12/17		4,235,382
Electric Plant in Service - Total Company, 12/17	/	7,523,419,998
Insurance Rate	p	0.06%
Depreciation Rate	d	1.72%
Composite Tax Rate	ct	26.54%
Book Depreciation	bd	3.33%
Rate on Debt Capital	b	4.95%
Debt Ratio from last filed rate case (IURC Cause No. 43306)	dr	47.47%

$$CCR = R + a + p + d + \left[ \left( \frac{ct}{1-ct} \right) \times (R + d - bd) \times \left( \frac{R - (b \times dr)}{R} \right) \right]$$

CCR = 11.27%

**I. Energy Payment Calculation**

**On-Peak      Off-Peak      Non-TOD**

**A. Potential Loss Savings**

Primary Losses			5.20%
Divided by 2		/	2
Loss Adjustment (Potential Loss Savings)			2.60%

**B. Time-of-Day Energy Payments**

Avoided Energy Costs		3.41	2.42	¢/kWh
Divided by (1 - Loss Savings)	/	0.9740	0.9740	
Time-of-Day Energy Payments		<b>3.50</b>	<b>2.48</b>	¢/kWh

**C. Non-Time-of-Day Energy Payment**

Time-of-Day Energy Payments		3.50	2.48	¢/kWh
Hours per Year *	x	3,654	5,106	hours
Weighted Average of Hourly TOD Payments		12,789	12,663	25,452
Hours Per Year				8,760
Non-Time-of-Day Energy Payment				<b>2.91 ¢/kWh</b>

\* On-Peak Period per Cogen tariff is 7am - 9pm, Monday through Friday  
Off-Peak Period is all other hours

**II. Demand and Energy Loss Calculations \*\***

<u>System</u>	<u>Demand</u>	<u>Energy</u>
Transmission	2.914%	2.293%
Subtransmission	0.649%	0.798%
Primary		
Transformer	0.713%	0.759%
Line	1.419%	1.286%
Compound Loss Factor	<b>5.8%</b>	<b>5.2%</b>

\*\* Assuming COGEN/SPP Service at Primary



<b>I. <u>Annual Carrying Charge Rates</u></b>	<b><u>Variable</u></b>	<b><u>Value</u></b>
Fixed Costs		0%
O&M		2.8%
Carrying Costs	<b>CC</b>	<b>2.8%</b>

<b>II. <u>Charges</u></b>		
Contingencies		5%
Stores Expense		9%
Total Charges on Material	<b>MC</b>	<b>14%</b>
Labor		58%
Transportation Expense		21%
Total Charges on Labor	<b>LC</b>	<b>79%</b>

<b>III. <u>Overheads</u></b>		
Company Construction Overheads	<b>OC</b>	36%

**IV. Monthly Charge on Incremental Material**

IM = Incremental Material Cost  
 IL = Incremental Labor Cost (50% of Material) = 0.5 x IM

$$\text{Monthly Charge on IM} = (1 + OC) \times [(1 + MC) \times IM + (1 + LC) \times IL] \times \frac{CC}{12}$$

Monthly Charge on IM = **0.65%** of Incremental Material Cost

V. **Monthly Meter Charges**

Incremental <u>Material (IM)</u>	Monthly <u>Charge</u> 0.65%	Average <u>Charge</u>
-------------------------------------	-----------------------------------	--------------------------

**Standard Measurement**

Single Phase

Option 2-1 - Primary - Transformer Rated	420	\$2.73
Option 2-3 - Secondary - Self-Contained	36	0.23
Option 3-1 - Primary - Transformer Rated	420	2.73
Option 3-3 - Secondary - Transformer Rated	420	2.73
Option 3-5 - Secondary - Self Contained	36	0.23

Total	\$ 8.65 / 5 =	\$1.73
	<b>Use:</b>	<b>\$1.75</b>

Polyphase

Option 2-2 - Primary - Transformer Rated	420	\$2.73
Option 2-4 - Secondary - Self-Contained	230	1.5
Option 3-2 - Primary - Transformer Rated (or Sec. >200 Amps)	420	2.73
Option 3-4 - Secondary - Transformer Rated (Below 200 Amps)	420	2.73
Option 3-6 - Secondary - Self Contained (Below 200 Amps)	230	1.5

Total	\$ 11.19 / 5 =	\$2.24
	<b>Use:</b>	<b>\$2.25</b>

**Time-of-Day Measurement**

Single Phase

Option 2-5 - Primary - Transformer Rated	429	\$2.79
Option 2-7 - Secondary - Self-Contained	147	0.96
Option 3-7 - Primary - Transformer Rated	429	2.79
Option 3-9 - Secondary - Transformer Rated	429	2.79
Option 3-11 - Secondary - Self Contained	36	0.23

Total	\$ 9.56 / 5 =	\$1.91
	<b>Use:</b>	<b>\$1.90</b>

Polyphase

Option 2-6 - Primary - Transformer Rated	429	\$2.79
Option 2-8 - Secondary - Self-Contained	239	1.55
Option 3-8 - Primary - Transformer Rated	429	2.79
Option 3-10 - Secondary - Transformer Rated	429	2.79
Option 3-12 - Secondary - Self Contained	239	1.55

Total	\$ 11.47 / 5 =	\$2.29
	<b>Use:</b>	<b>\$2.30</b>

I. Diversity Ratio Development

Annual Total GS-Secondary Billing Demand	9,029,951 kW
Divided by 12	12 months
Average Monthly Billing Demand	752,496 kW
Average Monthly Coincident Peak Demand*	390,036 kW
Diversity Ratio	1.929

\* Data from Rate Design & Cost-of-Service in IURC Cause No. 44075 (WP-DMR-17, pg. 60)

II. Back-Up Service Rate Calculation

Current GS - Secondary Demand Charge	\$4.695 /kW
Diversity Ratio	1.929
Coincident Peak Demand Cost	\$9.057 /kW
Typical Unavailability Rate	15%
Back-Up Service Rate	\$1.359 /kW

INDIANA MICHIGAN POWER COMPANY  
ESTIMATED "AVOIDED COSTS" OF ENERGY  
FOR ASSUMED LEVELS OF COGENERATION PURCHASES  
2018 - 2023  
(Cents Per Kilowatt-Hour)

	<u>ASSUMED COGENERATION PURCHASE LEVEL</u>			
	<u>First</u>		<u>Second</u>	
	<u>100-MW</u>		<u>100-MW</u>	
	<u>Block</u>		<u>Block</u>	
	<u>Peak</u>	<u>Off-Peak</u>	<u>Peak</u>	<u>Off-Peak</u>
2018	3.41	2.42	3.41	2.42
2019	4.12	3.04	4.12	3.04
2020	4.31	3.25	4.31	3.25
2021	4.45	3.35	4.45	3.35
2022	4.60	3.46	4.60	3.46
2023	4.75	3.53	4.75	3.53

Note: The peak costing period is 0700 to 2100 local time Monday through Friday. All other hours comprise the off-peak costing period. Energy costs are expressed in current-year dollars.

STATE OF INDIANA  
INDIANA UTILITY REGULATORY COMMISSION

VERIFIED STATEMENT OF PUBLICATION

Kurt C. Cooper, being duly sworn upon oath, deposes and says that:

1. I am a Regulatory Consultant Principal for Indiana Michigan Power Company (I&M).

2. Pursuant to 170 IAC 1-6-5(a), I affirm that affected customers have been notified of I&M's thirty-day filing of an updated Tariff COGEN/SPP (Cogeneration and/or Small Power Production Service) for purchase of energy and capacity at rates derived from the application of regulations.

3. Notification of the thirty-day filing updating Tariff COGEN/SPP (Cogeneration and/or Small Power Production Service) was made by publication of a Legal Notice in a newspaper of general circulation that has a circulation encompassing the highest number of I&M's customers, and posting the notice on I&M's website.

4. A true and correct copy of I&M's Legal Notice is attached hereto as Exhibit "A".

Date: March 1, 2018



Kurt C. Cooper  
Regulatory Consultant Principal  
Indiana Michigan Power Company

STATE OF INDIANA        )  
                                  ) ss:  
COUNTY OF ALLEN        )

Subscribed and sworn to before me, a Notary Public, in and for said County and State this 1st day of March 2018.

  
Regina M. Sistevaris, Notary Public

I am a resident of Allen County, Indiana.  
My commission expires: January 7, 2023

LEGAL NOTICE STATE OF INDIANA INDIANA UTILITY REGULATORY COMMISSION  
Indiana Michigan Power Company (I&M), an Indiana corporation, gives notice that on or before March 2, 2018, it will submit for approval under the Indiana Utility Regulatory Commission's thirty-day filing process an updated Tariff COGEN/SPP for purchase of energy and capacity at rates derived from the application of regulations. The referenced filing will consist of Indiana Michigan Power Company's proposed 2018 Tariff COGEN/SPP (Cogeneration and/or Small Power Production Service). Customers potentially affected by this filing include alternate energy production facilities, cogeneration facilities, or small hydro facilities located in the Indiana Michigan Power Company service territory. Those customers may be affected by changes in metering charges related to special metering facilities, and by monthly credits or payments for energy and capacity deliveries. A decision on the proposed revisions to Tariff COGEN/SPP is expected from the Indiana Utility Regulatory Commission on or before April 15, 2018. Please direct inquiries to: Indiana Michigan Power Company Attn: Director of Regulatory Services P.O. Box 60 Fort Wayne, IN 46801 Objections to this filing can be made to the following: Indiana Utility Regulatory Commission Attn: Commission Secretary PNC Center 101 West Washington Street Suite 1500 East Indianapolis, Indiana 46204 Indiana Office of Utility Consumer Counselor PNC Center 115 W. Washington Street Suite 1500 South Indianapolis, Indiana 46204 3--1 1319353 hspaxlp

Ad Id: 7474399 (0001319353-01) originally listed in Fort Wayne Newspapers on 3/1/2018

[Return to Classifieds Main Page](#)

**TARIFF COGEN/SPP  
(Cogeneration and/or Small Power Production Service)**

Availability of Service.

This schedule is available to customers with cogeneration and/or small power production (COGEN/SPP) facilities which qualify under Section 210 of the Public Utilities Regulatory Policies Act of 1978 and have a total design capacity of 100 kW or less. Such facilities shall be designed to operate properly in parallel with the Company's system without adversely affecting the operation of equipment and services of the Company and its customers and without presenting safety hazards to the Company and customer personnel.

The customer has the following options under this schedule, which will affect the determination of energy and capacity and the monthly metering charges:

(1) Option 1

The customer does not sell any energy or capacity to the Company and purchases from the Company its net load requirements, as determined by appropriate meters located at one delivery point.

(2) Option 2

The customer sells to the Company the energy and average on-peak capacity produced by the customer's qualifying COGEN/SPP facilities in excess of the customer's total load and purchases from the Company its net load requirements, as determined by appropriate meters located at one delivery point.

(3) Option 3

The customer sells to the Company the total energy and average on-peak capacity produced by the customer's qualifying COGEN/SPP facilities while simultaneously purchasing from the Company its total load requirements, as determined by appropriate meters located at one delivery point.

Billing under this schedule shall consist of charges for delivery of electrical energy and capacity from the Company to the customer to supply the customer's net or total load according to the rate schedule appropriate for the customer except as modified herein, plus charges to cover additional costs due to COGEN/SPP facilities as specified herein, less credits for excess or total electrical energy and capacity produced by the customer's qualifying COGEN/SPP facilities as specified herein.

(Cont'd on Sheet No. 27.1)

**ISSUED BY  
PAUL CHODAK III  
PRESIDENT  
FORT WAYNE, INDIANA**

**EFFECTIVE FOR ELECTRIC SERVICE RENDERED  
ON AND AFTER FEBRUARY 28, 2013**

**ISSUED UNDER AUTHORITY OF THE  
INDIANA UTILITY REGULATORY COMMISSION  
DATED FEBRUARY 13, 2013  
IN CAUSE NO. 44075**

**TARIFF COGEN/SPP**  
**(Cogeneration and/or Small Power Production Service)**  
(Cont'd from Sheet No. 27)

Monthly Charges for Delivery From the Company to the Customer.

(1) Supplemental Service

Available to the customer to supplement its COGEN/SPP source of power supply which will enable either or both sources of supply to be utilized for all or any part of the customer's total requirements.

Charges for energy, and demand where applicable, to serve the customer's net or total load shall be determined according to the rate schedule appropriate for the customer. Option 1 and Option 2 customers with COGEN/SPP facilities having a total design capacity of more than 10 kW shall be served under demand-metered rate schedules.

(2) Back-up and Maintenance Service

Option 1 and Option 2 customers with COGEN/SPP facilities having a total design capacity of more than 10 kW shall be required to purchase backup service to replace energy from COGEN/SPP facilities during maintenance and unscheduled outages of its COGEN/SPP facilities. Contracts for such service shall be executed on a special contract form for a minimum term of one year.

Option 3 customers purchasing their total energy requirements from the Company will not be considered as taking backup service. Customers having cogeneration and/or small power production facilities that operate intermittently during all months (i.e. wind or solar) such that the customer's monthly billing demands under the demand-metered rate schedule will be based upon the customer's maximum monthly demand which will occur at a time when the cogeneration and/or small power production facility is not in operation will also not be considered as taking backup service.

The backup capacity in kilowatts shall be initially established by mutual agreement for electrical capacity sufficient to meet the maximum backup requirements which the Company is expected to supply. Whenever the backup capacity so established is exceeded by the creation of a greater actual maximum demand, excluding firm load regularly supplied by the Company, then such greater demand becomes the new backup capacity.

A monthly service charge of \$1.359 per kilowatt of backup capacity shall be paid by customers served under demand-metered rate schedules. Whenever backup and maintenance capacity is used and the customer notifies the Company in writing prior to the meter reading date, the backup contract capacity shall be subtracted from the total metered demand during the period specified by the customer for billing demand purposes. After 1,900 hours of use during the contract year, the total metered demand shall be used as the billing demand each month until a new contract year is established. In lieu of the above monthly charge, customers may instead elect to have the monthly billing demand under the demand-metered rate schedules determined each month as the highest of the monthly billing demand for the current and previous two billing periods.

(Cont'd on Sheet No. 27.2)

ISSUED BY  
PAUL CHODAK III  
PRESIDENT  
FORT WAYNE, INDIANA

EFFECTIVE FOR ELECTRIC SERVICE RENDERED  
ON AND AFTER APRIL 30, 2013

ISSUED UNDER AUTHORITY OF THE  
INDIANA UTILITY REGULATORY COMMISSION  
DATED APRIL 3, 2013  
30-DAY FILING NO. 3142



**TARIFF COGEN/SPP  
(Cogeneration and/or Small Power Production Service)**

(Cont'd from Sheet No. 27.1)

Additional Charges.

There shall be additional charges to cover the cost of special metering, safety equipment, and other local facilities installed by the Company due to COGEN/SPP facilities, as follows:

(1) Metering Charges

The additional charge for special metering facilities shall be as follows:

(a) Option 1

Where the customer does not sell electricity to the Company, a detent shall be used on the energy meter to prevent reverse rotation. The cost of such meter alteration shall be paid by the customer as part of the Local Facilities Charge.

(b) Options 2 & 3

Where energy meters are required to measure the excess energy and average on-peak capacity purchased by the Company or the total energy and average on-peak capacity produced by the customer's COGEN/SPP facilities, the cost of the additional metering facilities shall be paid by the customer as part of the Local Facilities Charge. In addition, a monthly metering charge shall be as follows to cover the cost of operation and maintenance of such additional facilities:

	<u>Single Phase</u>	<u>Polyphase</u>	
Standard Measurement	\$1.50	\$1.95	II
TOD Measurement	\$1.65	\$2.00	II

Under Option 3, when metering voltage for COGEN/SPP facilities is the same as the Company's delivery voltage, the customer shall, at his option, either route the COGEN/SPP totalized output leads through the metering point or make available at the metering point for the use of the Company and as specified by the Company metering current leads which will enable the Company to measure adequately the total electrical energy and average on-peak capacity produced by the qualifying COGEN/SPP facilities, as well as to measure the electrical energy consumption and capacity

(Cont'd on Sheet No. 27.3)

ISSUED BY  
TOBY L. THOMAS  
PRESIDENT  
FORT WAYNE, INDIANA

COMMENCING WITH THE FIRST BILLING CYCLE  
IN THE MONTH OF MAY 2017

ISSUED UNDER AUTHORITY OF THE  
INDIANA UTILITY REGULATORY COMMISSION  
DATED APRIL 5, 2017  
30 DAY FILING NO. 50037

**TARIFF COGEN/SPP**  
**(Cogeneration and/or Small Power Production Service)**

(Cont'd from Sheet No. 27.2)

requirements of the customer's total load. When metering voltage for COGEN/SPP facilities is different from the Company's delivery voltage, metering requirements and charges shall be determined specifically for each case.

(2) Local Facilities Charge

Additional charges to cover the cost of special metering facilities, safety equipment, and other local facilities installed by the Company shall be determined by the Company for each case and collected from the customer. The customer shall make a one-time payment for such charges upon completion of the required additional facilities or, at the customer's option, 12 consecutive equal monthly payments reflecting an annual interest charge equal to the maximum rate permitted by law not to exceed the prime rate in effect at the first billing for such installments.

Monthly Credits or Payments for Energy and Capacity Deliveries.

(1) Energy Credit

The following credits or payments from the Company to the customer shall apply for the electrical energy delivered to the Company:

Standard Meter			
All kWh	2.88¢		R
TOD Meter			
On-peak kWh	3.49¢		R
Off-peak kWh	2.45¢		R

(2) Capacity Credit

If the customer contracts to deliver a specified average capacity during the on-peak monthly billing period (on-peak contract capacity), then the first-year monthly capacity credit or payment from the Company to the customer shall be \$7.54/kW times the lowest of:

- (a) monthly on-peak contract capacity, or
- (b) current month on-peak metered average capacity, i.e., on-peak kWh delivered to the Company divided by 303, or

(Cont'd on Sheet No. 27.4)

ISSUED BY  
TOBY L. THOMAS  
PRESIDENT  
FORT WAYNE, INDIANA

COMMENCING WITH THE FIRST BILLING CYCLE  
IN THE MONTH OF MAY 2017

ISSUED UNDER AUTHORITY OF THE  
INDIANA UTILITY REGULATORY COMMISSION  
DATED APRIL 5, 2017  
30-DAY FILING NO. 50037

**TARIFF COGEN/SPP**  
**(Cogeneration and/or Small Power Production Service)**

(Cont'd from Sheet No. 27.3)

- (c) lowest on-peak average capacity metered during the previous two months.

Determination of the monthly capacity credits or payments for subsequent years of the contract term shall be made using the formula contained in 170 IAC 4-4.1.

The above energy and capacity credit rates are subject to annual revision as required by the Commission.

On-Peak and Off-Peak Hours.

The on-peak period shall be defined as starting 7 a.m. and ending at 9 p.m., local time, Monday through Friday.

The off-peak period shall be defined as starting at 9 p.m. and ending at 7 a.m., local time, Monday through Friday, and all hours of Saturday and Sunday.

Charges for Cancellation or Non-Performance of Contract.

In the event the contract is terminated or the contract capacity is reduced prior to the end of the contract term, the qualifying COGEN/SPP facility shall refund to the Company the capacity payments in excess of those capacity payments which would have been made had all or the reduced capacity been subject to a capacity rate based on the actual term of delivery to the Company.

Except in the event of force majeure as defined in the contract, if within any 12-month period during the term of the contract ending on the anniversary date of the date of the qualifying COGEN/SPP facility first provided capacity to the Company under the contract the qualifying COGEN/SPP facility fails to provide the Company with the capacity specified in the contract, the capacity for which the qualifying COGEN/SPP facility shall be entitled to capacity payments during the subsequent 12-month period ("the probationary period") shall be reduced to the capacity provided during the prior 12-month period. If during the probationary period the qualifying COGEN/SPP facility provides the capacity specified in the contract, the Company, within 30 days following the end of the probationary period, shall reinstate the full capacity amount originally specified in the contract. If during the probationary period the qualifying COGEN/SPP facility again fails to provide the capacity specified in the contract, the Company may permanently reduce the capacity purchased from the qualifying COGEN/SPP facility for the remainder of the term of the contract. The Company may also require that the reduction in the capacity be subject to the refund provisions of the above paragraph.

Terms of Contract.

Contracts under this tariff will be made for a period not less than one year nor more than five years.

**ISSUED BY**  
**PAUL CHODAK III**  
**PRESIDENT**  
**FORT WAYNE, INDIANA**

**EFFECTIVE FOR ELECTRIC SERVICE RENDERED**  
**ON AND AFTER FEBRUARY 28, 2013**

**ISSUED UNDER AUTHORITY OF THE**  
**INDIANA UTILITY REGULATORY COMMISSION**  
**DATED FEBRUARY 13, 2013**  
**IN CAUSE NO. 44075**

**From:** [Steinhauer, Jane](#)  
**To:** [kccooper@aep.com](mailto:kccooper@aep.com)  
**Cc:** [Heline, Beth E.](#); [Veneck Jr., Robert](#); [Stevens, George](#); [Jones, Meredith W](#); [Thomas, Dale](#)  
**Subject:** CAC Objection to 30-day Filing No. 50125  
**Date:** Friday, March 23, 2018 3:52:41 PM  
**Attachments:** [ELPC CAC Objection to IM 30-day Filing PURPA - FINAL w attachments.pdf](#)

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Mr. Cooper,

The Citizens Action Coalition (CAC) submitted an objection to the pending 30-day filing identified with the tracking number 50125. The Commission is required to promptly notify the utility of any objection it receives. This email serves as notification of such an objection. Additionally, the objection is attached to this email. Pursuant to 170 IAC 1-6-7(c), the utility may submit, within 10 calendar days following this notification, one or more of the following:

- 1) A response to the objection
- 2) Clarification of the filing
- 3) Additional information
- 4) An amendment to the filing
- 5) A withdrawal of its filing

Here is a link to the guidelines regarding objections to 30-day filings - <http://in.gov/iurc/2519.htm>.

Sincerely,

Jane Steinhauer

Attachment B

Received: April 2, 2018

IURC 30-Day Filing No.: 50125

Indiana Utility Regulatory Commission



An AEP Company

BOUNDLESS ENERGY

Indiana Michigan Power

P.O. Box 60

Fort Wayne, IN 46801

April 2, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street  
Suite 1500 E  
Indianapolis, IN 46204

Re: I&M Thirty Day Administrative Filing No. 50125

Dear Ms. Becerra:

Indiana Michigan Power Company ("I&M") hereby responds to the objection filed by the Citizens Action Coalition of Indiana and the Environmental Law & Policy Center (collectively the "Objectors") to I&M's Thirty Day Administrative Filing for Tariff COGEN/SPP (Cogeneration and/or Small Power Production Service) ("Filing"). The Filing has been assigned the tracking number 50125 by the Indiana Utility Regulatory Commission ("Commission"). The Filing was made by I&M to comply with 170 IAC 4-4.1-10 ("Section 10"), which forms part of the Commission's implementation of the federal Public Utilities Regulatory Policy Act ("PURPA"). Section 10 requires each generating electric utility to annually file updated standard offer rates for the purchase of energy and capacity from a qualified facility. The energy and capacity rates must be derived from the appropriate application of 170 IAC 4-4.1-8(a) and 9(c)-(d).

The Objectors do not claim that I&M's Filing violates Section 10 or that the rates proposed by I&M are inconsistent with Sections 8(a) or 9(c)-(d). Instead, the Objectors contend the filing is "incomplete and violates applicable law" because (a) I&M allegedly does not offer a "long-term, fixed rate standard contract," and (b) I&M's Filing did not include avoided cost information under 18 CFR § 292.302(b). Objection at 4.

The Objectors' contentions misconstrue the applicable law and Commission regulations. I&M offers a standard form contract as required by 170 IAC 4-4.1-11 ("Section 11"), and this standard contract has previously been submitted to the Commission and is publicly available on the Commission's website.<sup>1</sup> Further, I&M complies with IC § 8-1-2.4-4(a) by offering a "long term" standard offer contract of up to

<sup>1</sup> [https://www.in.gov/iurc/files/2524\\_030209.pdf](https://www.in.gov/iurc/files/2524_030209.pdf).

five years, and I&M follows the plain text of Section 10 by updating its standard offer rates annually. Further, Section 10 does not require I&M to fulfil the requirements of 18 CFR § 292.302(b) as part of its annual Section 10 filing. Consequently, I&M's Filing does not violate applicable law and is not incomplete, and there is no permissible basis identified by the Objectors to object to the Filing.

**I. Response to Objection One: I&M Has Fulfilled Section 11 by Offering a Long-Term Standard Form Contract to Qualifying Facilities**

The Objectors claim that I&M's Filing is insufficient because I&M did not include a "long-term contract with fixed rates in I&M's 30-day filing." Objection at 4. This assertion contains three separate claims, each of which is meritless. I&M's 30-day Filing conforms with all applicable requirements.

**A. I&M's Standard Contract Is Publicly Available on the Commission's Website**

The Objectors claim that "I&M's 30-day filing fails to *contain* a standard contract, as required by 170 IAC 4-4.1-11." Objection at 4 (emphasis added). What the Objectors apparently mean is that I&M did not *attach* its standard contract to its 30-day Filing. But there is no such requirement. I&M has previously submitted its standard contract to the Commission, and the contract remains available to the public on the Commission's website.<sup>2</sup> This standard contract is available to any qualifying facility that wishes to sell its power to I&M.

Notably, in claiming that I&M violated a requirement to *attach* its standard contract, the Objectors do not quote or cite Section 10, the rule under which I&M's 30-day filing was made. Nothing in Section 10 requires that a utility attach its standard contract. Section 10 provides:

Sec. 10. Within sixty (60) days of the effective date of this rule and on or before February 28, of each subsequent year, each generating electric utility shall file with the commission a standard offer for purchase of energy and capacity at rates derived from the appropriate application of sections 8(a) and 9(c) through 9(d) of this rule.

170 IAC 4-4.1-10. This language only requires a utility to file a "standard *offer* for purchase of energy and capacity at rates" calculated pursuant to the Commission's rules. 170 IAC 4-4.1-10 (emphasis added). I&M's 30-day Filing fulfilled this requirement by setting forth its proposed standard offer rates. The Objectors do not

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<sup>2</sup> [https://www.in.gov/iurc/files/2524\\_030209.pdf](https://www.in.gov/iurc/files/2524_030209.pdf).

challenge I&M's proposed rates in any way, and thus they have no grounds to claim that I&M's 30-day Filing is insufficient under Section 10.

Rather, the Objectors appear to claim that I&M violated a different rule – 170 IAC 4-4.1-11 (“Section 11”) – by failing to attach its standard contract to this Section 10 Filing. Yet Section 11 contains specific language making clear that a utility is not required to annually submit a standard offer contract with each filing made under Section 10:

Sec. 11(a). Within sixty (60) days of the effective date of this rule each generating electric utility shall submit for approval via the commission's thirty (30) day filing process a standard form contract which it would enter into with a qualifying facility in connection with the generating electric utility's purchase of energy or capacity or both.

170 IAC 4-4.1-11. Thus, the submission of standard offer contracts is a one-time requirement that was required to have been performed within sixty days of the effective date of the rule. Utilities are not required to continue to submit their standard form contract with each Section 10 Filing.

In any event, even if there were a requirement for I&M to *attach* its standard contract to its 30-day filing (there is not), I&M has attached its standard contract to this submission. See Attachment A. Thus, I&M has remedied any concern raised by this formalistic objection.

**B. I&M Offers a “Long Term” Contract as Required by IC § 8-1-2.4-4(a).**

Next, the Objectors claim (Objection at 4-5) that I&M's 30-day filing is deficient because its standard form contract allegedly is not “long-term.” The applicable Indiana statute, IC § 8-1-2.4-4(a), directs the Commission to “require electric utilities and steam utilities to enter into long term contracts.” I&M is in compliance with this statute. As the Objectors acknowledge (Objection at 5), I&M offers a standard form contract for up to five years. See I&M Tariff Cogen/SPP (Cogeneration and/or Small Power Production Service).

A contract for up to five years qualifies as a “long term” contract under IC § 8-1-2.4-4(a), and the Objectors cite no authority suggesting otherwise. The only authority that Objectors cite is a single FERC decision, *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P 61,134 (2016). Obviously, a FERC decision does not – and cannot – shed any light on the meaning of an *Indiana* law, IC § 8-1-2.4-4(a). Moreover, this FERC decision does not in any way suggest that a five-year contract is insufficient. To the contrary, in its decision FERC makes clear that its regulations “do not . . . specify a particular number of years for . . . legally enforceable obligations” under PURPA. *Id.* ¶ 8 n.13 (emphasis added). Rather, FERC's “regulations allow state regulatory authorities to consider a number of factors” in implementing PURPA, “includ[ing],

among others, the availability of capacity, the QF's dispatchability, the QF's reliability, and the value of the QF's energy and capacity." *Id.* ¶ 6.

This Commission has previously exercised its broad discretion in this area to determine that I&M's provision of contracts for up to five years is appropriate, and the Objectors raise no meaningful grounds for the Commission to reverse course. Five-year contracts strike an appropriate balance. Since PURPA was enacted, Indiana and the nation have witnessed rapid progress in electric generation technology and the development of interstate electricity markets. Contracts longer than five years would potentially lock I&M and its customers in to making purchases from qualified facilities that may rapidly become inefficient, uneconomical, or even obsolete. The term of I&M's standard offer contract must be long enough to provide sufficient certainty to qualified facilities but not so long that it impedes the development of technological advancements. A five-year contract strikes this balance.

The Objectors assert that a five-year contract "is too short to encourage development of QFs because it would be prohibitively difficult to obtain QF project financing with only 5-year contracts." Objection at 5. But the Objectors provide no evidentiary support for this claim. Instead, the Objectors carefully state that it "would be" prohibitively difficult to obtain financing with a five-year contract. *Id.* Apparently the Objectors are not aware of any entity that has *actually* attempted to obtain financing with a five-year contract and been unsuccessful.

The Objectors' concerns about financing are not only unsubstantiated; they also fail to withstand scrutiny. Under Indiana law and the Commission's regulations, I&M and other utilities are required to provide a standard offer to qualifying facilities and update it annually. That requirement provides certainty to qualifying facilities irrespective of the length of a contract.

The Objectors' examples from other states, furthermore, are incomplete and inapplicable. The Objectors attempt to compare the number of qualified facility contracts in states with five-year contracts and states with longer contracts. As an initial matter, by acknowledging that there are other states with five-year contracts, the Objectors prove that a five-year contract is an acceptable and proven standard for qualified facility contracts. Indeed, the Objectors note that PacifiCorp has three qualified facility contracts in Washington state, which has five-year contracts. This directly refutes the Objectors' claim that "it would be prohibitively difficult to obtain QF project financing with only 5-year contracts." Objection at 5.

Moreover, the Objectors' comparisons to other states are purely conjecture because they make no effort to show that it is the term of the contracts that has caused the difference in contract numbers. Correlation is not causation. And there are myriad factors that affect the number of qualified facility contracts in a jurisdiction, including, most significantly, the utility's incremental cost that is used to set contract price. It may well be that the utilities in the West Coast jurisdictions the Objectors laude have higher incremental cost than utilities in other jurisdictions, and that price, not contract term,



explains the differences in the number of contracts. Availability of renewable resources is another critical factor. The Objectors note that PacifiCorp has a large number of contracts in Utah, but it takes no leap of logic to conclude that the availability of solar resources in the Utah desert far exceeds the availability of solar in rainy Washington state, to which the Objectors make their comparison.

In short, a five-year contract is sufficiently “long-term” under IC § 8-1-2.4-4(a). The objectors fail to make the case that a longer contract is necessary to encourage development of qualified facilities under IC § 8-1-2.4-1. And a five-year contract strikes a reasonable balance between providing certainty to qualified facilities and not impeding technological progress or locking in I&M and its customers to inappropriate or excessive commitments.

### **C. Under Section 10, I&M Properly Updates Its Standard Offer Rate Annually**

Qualified facilities that accept I&M’s standard offer may select from several options for energy and capacity sales under I&M’s Tariff COGEN/SPP. This Tariff sets forth the prices at which these sales are made. As required by 170 IAC 4-4.1-10, I&M files “on or before February 28, of each . . . year . . . a standard offer for purchase of energy and capacity at rates derived from the appropriate application of sections 8(a) and 9(c) through 9(d) of this rule [(i.e., 170 IAC 4-4.1)].” Therefore, qualified facilities accepting I&M’s standard offer will make sales at Tariff COGEN/SPP rates that are updated annually according to the Commission’s rules.

The Objectors do not claim that I&M has failed to comply with the Commission’s rules in making annual updates to its Tariff COGEN/SPP rates. But they claim that I&M’s standard offer contract is insufficient because “federal law requires that long-term contracts include the ability to obtain fixed rates.” Objection at 4. I&M has been making annual updates of its Tariff COGEN/SPP rates for many years, and to I&M’s knowledge the Objectors (which have been regular participants in other proceedings before this Commission) have never before raised this argument. If the Objectors believe that the Commission’s rules violate federal law, I&M’s 30-day filing is not the appropriate forum to make this argument, and the time to make the argument has long since passed.

### **II. Response to Objection Two: I&M’s Section 10 Filing Need Not Comply With 18 CFR § 292.302(b)**

The Objectors contend that I&M’s 30-day Filing does not include avoided cost information required by 18 CFR § 292.302(b). But this argument provides no legitimate basis to object to the Filing. I&M is not submitting the Filing to comply with 18 CFR § 292.302(b) but to comply with Section 10. The Objectors do not contend that the Filing fails to comply with Section 10 in any respect. No provision in Section 10 requires a generating electric utility to submit the information required by 18 CFR § 292.302 as part of its annual standard offer update. I&M’s Filing cannot reasonably be held to

violate Section 10 or be incomplete because it fails to include information not required by Section 10.

While not relevant to the legitimacy of the Objectors' objections, I&M complies with many of the requirements of 18 CFR § 292.302(b) through its Integrated Resource Plan ("IRP"). The IRP evaluates I&M's planned capacity additions over at least 10 years and establishes an estimated cost of capacity additions.

The Objectors' claims are meritless. I&M's filing is neither incomplete nor in violation of applicable law. For these reasons, I&M's 30-day filing should be presented to the Commission for consideration.

### **III. Initiation of a Statewide Docket To Investigate PURPA Implementation Is Not Appropriate at This Time**

Objectors' true purpose for their objections appears to be the initiation of a statewide docket to investigate Indiana's implementation of PURPA. Objection at 6. This is not a legitimate basis for objecting to I&M's filing, since Section 10 contemplates submission of energy and capacity rates pursuant to the Commission's 30-day filing procedures to avoid lengthy proceedings.

Apart from the Objectors' misuse of the objection provision of the 30-day filing procedure, there is no need to initiate a statewide docket to investigate PURPA implementation. The Objectors offer scant details supporting their request for an investigation, except to say that an investigation "could" further consider the arguments they raise in their Objection or "any other issues the Commission deems desirable." Objection at 6. As discussed above, the Objectors' arguments are meritless and do not warrant further consideration. Nor have the Objectors established the need to conduct an amorphous general inquiry to PURPA implementation. The Objectors fail to demonstrate that there is any problem that the Commission needs to address. Statewide investigations can be lengthy and costly for the Commission and all parties; they should not be initiated without far more tangible evidence of need.

In addition, the regulations cited by Objectors are being reviewed by FERC in Docket No. AD16-16. See Notice Inviting Post-Technical Conference Comments, Docket No. AD16-16 (FERC Sept. 6, 2016).<sup>3</sup> FERC's Chairman, Neil Chatterjee, has explained the purpose of this investigation:

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe the Commission should consider whether changes in its

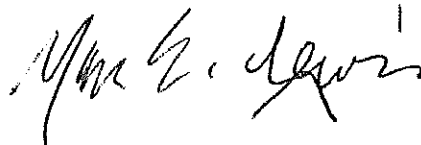
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<sup>3</sup> Available at <https://www.ferc.gov/CalendarFiles/20160906164926-AD16-16-000%20TC2.pdf>.

existing regulations and policies could better align PURPA implementation and modern realities.

Letter from Chairman Neil Chatterjee to Representative Tim Walberg (Nov. 29, 2017).<sup>4</sup> Moreover, Congress is considering changes that may be necessary to PURPA. The Energy and Commerce Subcommittees of the House of Representatives held a hearing on September 6, 2017 to hear testimony on the need for revisions to PURPA. See *Powering America: Reevaluating PURPA's Objectives and Its Effects on Today's Consumers Before the H. Energy and Commerce S. Comm.*<sup>5</sup> Legislation has been introduced in the House of Representatives to modernize PURPA. See H.R. 4476, 115th Congress (2015).<sup>6</sup> Therefore, an investigation by this Commission is inappropriate because the pending investigations at the federal level may substantially change the current legal and regulatory landscape.

Sincerely,



Marc E. Lewis  
Vice President – Regulatory & External Affairs  
Indiana Michigan Power Company

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<sup>4</sup> Available at [https://elibrary.ferc.gov/idmws/file\\_list.asp?document\\_id=14624205](https://elibrary.ferc.gov/idmws/file_list.asp?document_id=14624205).

<sup>5</sup> Available at <https://energycommerce.house.gov/hearings/powering-america-reevaluating-purpas-objectives-effects-todays-consumers/>.

<sup>6</sup> Available at <https://www.congress.gov/bill/115th-congress/house-bill/4476/text>.

This Contract, entered into this \_\_\_\_\_ day of \_\_\_\_\_, by and between Indiana Michigan Power Company, hereafter called the Company, and **RECEIVED** \_\_\_\_\_, or his or its heirs, successors or assigns, hereafter called the Customer,

MAR 02 2009

**Witnesseth:**

For and in consideration of the mutual covenants and agreements hereinafter contained, the parties hereto agree with each other as follows:

The Company agrees to furnish to the Customer, during the term of this Contract, and the Customer agrees to take from the Company, subject to Company's standard Terms and Conditions of Service as regularly filed with the Indiana Utility Regulatory Commission, all the electric energy of the character specified herein that shall be purchased by the Customer in the premises located at \_\_\_\_\_.

The Company is to furnish and the Customer is to take electric energy under the terms of this Contract for an initial period of \_\_\_\_\_ month(s) from the time such service is commenced, and continuing thereafter until terminated upon \_\_\_\_\_ months' written notice given by either party of its intention to terminate the Contract. The date that service shall be deemed to have commenced under this Contract shall be \_\_\_\_\_.

The electric energy delivered hereunder shall be alternating current at approximately \_\_\_\_\_ volts, \_\_\_\_\_-wire, \_\_\_\_\_-phase, and it shall be delivered \_\_\_\_\_, which shall constitute the point of delivery under this Contract. The said electric energy shall be delivered at reasonably close maintenance to constant potential and frequency, and it shall be measured by a meter or meters owned and installed by the Company and located \_\_\_\_\_.

The Customer acknowledges that the Customer may be eligible to receive service under more than one of the Company's schedules and that such options have been explained to the Customer. The Customer and Company agree that the Customer has chosen to receive service under the provisions of the Company's Tariff \_\_\_\_\_. The Customer agrees to pay the Company monthly for electric energy delivered hereunder at the rates and under the provisions of the Company's Tariff \_\_\_\_\_, as regularly filed with the Indiana Utility Regulatory Commission, as long as that schedule is in effect. In the event that the tariff chosen by the Customer is replaced by a new or revised tariff incorporating different rates or provisions, or both, the Company and Customer understand and agree that the Company will continue to provide service, and the Customer will continue to take service, under this Contract, subject to such changed provisions, and that the Customer will pay for such service at the new rates on and after the date such rates become effective.

The Customer's contract capacity under the tariff named herein is hereby fixed at \_\_\_\_\_. If a time-of-day demand is available under the tariff and is selected by the Customer, the reservation of capacity aforementioned shall be the peak period reservation of capacity and shall determine the tariff's minimum monthly billing demand.

There are no unwritten understandings or agreements relating to the service hereinabove provided. This Contract cancels and supersedes all previous agreements, relating to the purchase by Customer and sale by Company of electric energy at Customer's premises as referred to above, on the date that service under this Contract commences. This Contract shall be in full force and effect when signed by the authorized representatives of the parties hereto.

Indiana Michigan Power Company

(customer's name)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

MAR 02 2009

INDIANA UTILITY  
REGULATORY COMMISSION

The INDIANA MICHIGAN POWER COMPANY consents to the operation by \_\_\_\_\_ (Customer) of the following qualifying electric power production facilities consisting of \_\_\_\_\_ in parallel with the Company's system at the location shown on the Service Agreement. Company's consent is on the condition that the Customer installs, operates and maintains suitable and sufficient equipment, as specified by the Company, to protect the Customer's facilities, the Company's system and personnel, and other customers' electrical facilities served by the Company from the same local source as the Customer from damages resulting from such parallel operation, and upon the further condition that the Company shall not be liable to the Customer for any loss, cost, damage or expense which the Customer may suffer by reason of damage to or destruction of any property, including the loss of use thereof, arising out of or in any manner connected with such parallel operation, unless such loss, cost, damage or expense is caused by the negligence of the Company, its agents, or employees and upon further condition that the Customer shall not be liable to the Company for any loss, cost, damage or expense which the Company may suffer by reason of damage to or destruction of any property, including the loss of use thereof, arising out of, or in any manner connected with such parallel operation, unless such loss, cost, damage or expense is caused by the negligence of the Customer, its agents or employees.

"Force Majeure" events include acts of God; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the state of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; droughts; wars; civil disturbances; explosions, sabotage; injunctions; blights; famines; blockades; or quarantines. If either party is rendered wholly or partly unable to perform its obligations because of Force Majeure, both parties shall be excused from whatever obligations are affected by the Force Majeure and shall not be liable or responsible for any delay in the performance of, or the inability to perform, any such obligations for so long as the Force Majeure continues. The party suffering an occurrence of Force Majeure shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy its inability to perform, provided, however, that the settlement of any strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

This Addendum is subject to and is intended to comply with all applicable statutes, and regulations and orders of the Federal Energy Regulatory Commission and any State Commission having jurisdiction over sales of power and energy from qualifying facilities, in effect at the date hereof.

MAR 02 2009

SAMPLE

30-Day Filing No. 2524

INDIANA UTILITY  
REGULATORY COMMISSION

OPTION #1

It is further agreed the Customer elects Option 1 under Tariff COGEN/SPP and does not wish to sell nor the Company to purchase any energy or capacity; therefore, neither energy nor capacity credits will apply. The Customer will purchase from the Company the net load requirements under the provisions of the Service Agreement.

Cancellation of this Addendum during the term shown in the Service Agreement shall be under the provisions for cancellation stated in the Tariff shown in the Service Agreement. All other provisions of Option 1 of Tariff COGEN/SPP shall be in effect.

This Addendum shall be in full force and effect when last signed by the assigned representatives of the parties hereto.

INDIANA MICHIGAN POWER COMPANY

(CUSTOMER NAME)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

INDIANA UTILITY  
REGULATORY COMMISSION

OPTION #2 (Energy Purchase Only)

It is further agreed that the Company will purchase and the Customer will sell electric energy produced by the Customer's qualifying facility under Option 2 of the terms of Tariff COGEN/SPP as filed with the Indiana Utility Regulatory Commission. For the term shown in the Service Agreement the Customer does not contract to sell capacity to the Company under this Addendum; therefore, capacity credits do not apply. The Customer will purchase from the Company the net load requirements under the provisions of the Service Agreement.

The electric energy delivery under this Addendum shall be alternating current at approximately \_\_\_\_\_ volts, four (4) wire, three (3) phase, 60-hertz. The said electric energy shall be delivered at reasonably close maintenance to constant potential, shall be metered by (Insert: Standard or Time-of-day) meters owned and installed by the Company as required under Tariff COGEN/SPP, and located as indicated in the Service Agreement.

Cancellation of this Addendum during the term shown in the Service Agreement shall be under the provisions for cancellation stated in the Tariff shown in the Service Agreement. All other provisions of Option 2 of Tariff COGEN/SPP shall be in effect.

This Addendum shall be in full force and effect when last signed by the assigned representatives of the parties hereto.

INDIANA MICHIGAN POWER COMPANY

(CUSTOMER NAME)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

MAR 02 2009

SAMPLE

30-Day Filing No. 2524

INDIANA UTILITY  
REGULATORY COMMISSION

OPTION #2 (Energy and Capacity Purchase)

It is further agreed that the Company will purchase and the Customer will sell electric energy and average capacity produced by the Customer's qualifying facility under Option 2 of the terms of Tariff COGEN/SPP as filed with the Indiana Utility Regulatory Commission. The Customer will purchase from the Company the net load requirements under the provisions of the Service Agreement.

The electric energy and average capacity delivered under this Addendum shall be alternating current at approximately \_\_\_\_\_ volts, four (4) wire, three (3) phase, 60-hertz. The said electric energy and average capacity shall be delivered at reasonably close maintenance to constant potential, shall be metered by time-of-day meters owned and installed by the Company as required under Tariff COGEN/SPP, and located as indicated in the Service Agreement.

For the purpose of this Agreement, the contract term is established as \_\_\_\_\_ years and the monthly on-peak contract capacity is established as \_\_\_\_\_ kW.

Cancellation of this Addendum during the term stated above shall be under the provisions for cancellation stated in Tariff COGEN/SPP.

This Addendum shall be in full force and effect when last signed by the assigned representatives of the parties hereto.

INDIANA MICHIGAN POWER COMPANY

(CUSTOMER NAME)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_



MAR 02 2009

OPTION #3 (Total Purchase and Total Sale)

INDIANA UTILITY  
REGULATORY COMMISSION

It is further agreed that the Company will purchase and the Customer will sell the total output of electric energy and average capacity produced by the Customer's qualifying facility under Option 3 of the terms of Tariff COGEN/SPP as filed with the Indiana Utility Regulatory Commission. The Customer will purchase from the Company the total load requirements under the provisions of the Service Agreement.

The electric energy and average capacity delivered under this Addendum shall be alternating current at approximately \_\_\_\_\_ volts, four (4) wire, three (3) phase, 60-hertz. The said electric energy and average capacity shall be delivered at reasonably close maintenance to constant potential, shall be metered by time-of-day meters owned and installed by the Company as required under Tariff COGEN/SPP, and located as indicated in the Service Agreement.

For the purpose of this Agreement, the contract term is established as \_\_\_\_\_ years and the monthly on-peak contract capacity is established as \_\_\_\_\_ kW.

Cancellation of this Addendum during the term stated above shall be under the provisions for cancellation stated in Tariff COGEN/SPP.

This Addendum shall be in full force and effect when last signed by the assigned representatives of the parties hereto.

INDIANA MICHIGAN POWER COMPANY

(CUSTOMER NAME)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

INDIANA UTILITY  
REGULATORY COMMISSION

In the event that the October 5, 1984 and December 6, 1984, Orders of the Indiana Utility Regulatory Commission in Cause No. 37494 adopting IAC 4-4.1-1 through 4-4.1-13 are reversed in whole or in part on appeal or those sections are otherwise determined to be unlawful by the Commission or a court of competent jurisdiction, this Agreement shall be terminated and rendered null and void, relieving the Company and the Customer of all future obligations under this Agreement except that the Company and the Customer will remain liable for the payment for any electric energy or capacity which had been provided to the other prior to said reversal.

In the event that either of the above referenced Orders are stayed either by the Indiana Utility Regulatory Commission or a court, the obligations of the parties under this Agreement shall be stayed for the period of time during which the stay is in effect.

INDIANA MICHIGAN POWER COMPANY

(CUSTOMER NAME)

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

ADDENDUM - 3

MAR 02 2009

INDIANA UTILITY  
REGULATORY COMMISSION

The Company will negotiate transmission service provisions, where technically feasible, on a case-by-case basis in order to evaluate the multiple and varying factors which affect such provisions. Transmission service will be a separate service contract which will supplement this Agreement. The transmission service charges and associated provisions are subject to approval by the Federal Energy Regulatory Commission (FERC).

April 6, 2018

Mary Becerra  
Secretary of the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street, Suite 1500 E  
Indianapolis, Indiana 46204  
mbecerra@urc.in.gov  
*Electronically delivered*

RE: Reply to I&M's Response to CAC and ELPC Objection

**Reply to I&M's Response to Objection on behalf of  
Citizens Action Coalition and the Environmental Law & Policy Center**

Pursuant to Rule 170 IAC 1-6-7(d)(1), which states that 30-Day filings that have not been resolved to the satisfaction of the objector shall not be presented for Commission approval, Citizens Action Coalition ("CAC") and the Environmental Law & Policy Center ("ELPC") respectfully submit this Reply to express their lack of satisfaction with I&M's Response, filed on April 2, 2018, to CAC and ELPC's Objections filed on March 23, 2018. The Commission's procedures allow a party to reply to a response in similar contexts. *See, e.g.* 170 IAC 1-1.1-12(f). The Objections and Response at issue concerns I&M's 30-day filing, filed on March 1, 2018, IURC 30-Day Filing No. 50125.

I&M's response failed to satisfy ELPC and CAC's objection, as required by 170 IAC 1-6-7(d)(1), and the response raised a number of issues demonstrating why the Commission should open an investigation into Indiana's implementation of PURPA. There are three key reasons why the Commission should deny I&M's 30-day filing and open an investigation into Indiana's PURPA implementation.

**1. I&M's Standard Contract Is Not "Long Term," as Required by Indiana Law.**

Indiana law requires standard contracts be "long term." Burns Ind. Code Ann. § 8-1-2.4-4(a). Furthermore, FERC has stated that standard contracts must be "long enough to allow QFs reasonable opportunities to attract capital from potential investors." *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 8 (2016).

I&M's five-year standard contracts are not "long term" and do not "allow QFs reasonable opportunities to attract capital from potential investors." The Commission has never issued any order interpreting the "long term" requirement, as evidenced by the fact that I&M does not cite any Commission order when it alleges "[t]his Commission has previously exercised its broad discretion in this area to determine that I&M's provision of contracts for up to five years is appropriate. . ." I&M Response at 4. I&M also alleges that contracts longer than five years would harm ratepayers, but provides no evidentiary support.

In its objections to Duke Energy Indiana's 30-day filing, IURC 30-Day Filing No. 50119,

ELPC and CAC submitted an affidavit from a potential QF developer that explained contract term lengths must be at least 15- to 20-years in order to allow QFs reasonable opportunities to obtain financing. *See* Affidavit of Sam Kliever at ¶ 3.<sup>1</sup> According to this potential QF developer, I&M's 5-year standard contract would not "long enough to allow QFs reasonable opportunities to attract capital from potential investors." *Windham Solar LLC and Allco Finance Limited*, 157 F.E.R.C. P61,134, at ¶ 8 (2016). This evidence conflicts with I&M's own opinions of what is reasonable to obtain QF financing.

In addition, a review of EIA data containing a list of all generators shows that I&M currently has no small power production QFs in its Indiana service territory,<sup>2</sup> and ELPC and CAC are not aware of any small power production QFs in I&M's Indiana service territory. The lack of any QF activity in I&M's Indiana service territory is evidence that its five year standard contract and SPP tariff are not "encourage[ing] the development of alternate energy production facilities." Burns Ind. Code Ann. § 8-1-2.4-1.

The Commission should open an investigation into adequate contract term lengths because this is an issue of first impression in Indiana and because there is a drastic difference between the beliefs of I&M and potential QF developers on adequate term lengths. The lack of any QF development in I&M's Indiana service territory, according to EIA data cited above, to show that I&M's current framework is not adequate to encourage development of QFs.

## **2. I&M Has Not Complied With All Requirements of 18 C.F.R. § 292.302(b).**

As CAC and ELPC noted in their Objection, I&M does provide the information required by 18 C.F.R. § 292.302(b)(1) on an annual basis.

In its response, I&M stated that its November 2015 IRP also contains the information required by 18 C.F.R. § 292.302(b)(2)-(3) (capacity additions over 10 years and their costs). I&M Response at 6. However, because 18 C.F.R. § 292.302(b) requires this information to be filed at least every two years, I&M is not in compliance because it has not filed the information required by § 292.302(b)(2)-(3) in the last two years.

In addition, although I&M's November 2015 IRP does show its planned capacity additions over the next ten years,<sup>3</sup> as required by 18 C.F.R. § 292.302(b)(2), nowhere in the IRP does it contain the "estimated capacity costs at completion of the planned capacity additions and planned capacity firm purchases, on the basis of dollars per kilowatt, and the associated energy costs of each unit, expressed in cents per kilowatt hour." 18 C.F.R. § 292.302(b)(3).

Perhaps these estimated capacity costs are available in the non-public version of the IRP, but that too fails to comply with the regulation. The regulation states that utilities "shall maintain for public inspection" these "estimated capacity costs." 18 C.F.R. §§ 292.302(b), 292.302(b)(3). The "public inspection" requirement preempts application of trade secret or confidential

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<sup>1</sup> This affidavit was filed with ELPC and CAC's Objection to Duke Energy Indiana's 30-day filing.

<sup>2</sup> <https://www.eia.gov/electricity/data/eia860/> (last updated Nov. 2017).

<sup>3</sup> I&M, 2016 INTEGRATED RESOURCE PLAN at 118 (Nov. 2015), available at <https://perma.cc/9RHR-QZ46>.

treatment of the information required to comply with this regulation.<sup>4</sup> If I&M wants to use its IRP to comply with 18 C.F.R. §§ 292.302(b)(3), then it cannot shield those estimated capacity costs from public view.

I&M's lack of compliance with 18 C.F.R. § 292.302(b) undermines the purpose of these avoided cost informational filings and this lack of compliance demonstrates the need for Indiana to investigate the issue further.

**3. There Are Currently No Federal Investigations or Rulemakings into PURPA, and Even If There Were, It Should Not Stop the Commission from Exercising its Duly-delegated Authority to Implement PURPA and State Law.**

I&M believes an investigation of PURPA implementation is not warranted in Indiana because there are already federal investigations into PURPA ongoing and therefore the State should allow the federal government to dictate what Indiana should do. I&M Response at 4-5. However, contrary to I&M's assertions, there are no active FERC investigations or rulemakings related to PURPA. I&M cited to a FERC order soliciting comments in Docket AD16-16, but FERC created that docket solely for its 2016 PURPA technical conference.<sup>5</sup> Conference participants filed their comments in Fall 2016, and FERC has taken no action and conducted no investigation or rulemaking following those comments.

I&M misrepresented statements made by FERC's Chairman Neil Chatterjee. On October 30, 2017, Representative Tim Walberg sent a letter to FERC asking FERC to update its PURPA regulations. *See Exhibit C.* On November 29, 2017, FERC Chairman Neil Chatterjee responded with a two-paragraph letter and did not initiate an investigation or rulemaking in response to Walberg's letter. *See Exhibit D.* Nevertheless, I&M attempts to use an excerpt of Neil Chatterjee's letter to explain "the purpose of this investigation," I&M Response at 4, even though no such investigation exists and the Chairman's letter does not reference an active investigation or rulemaking.

I&M also cited to a recent bill introduced in Congress as evidence of another federal investigation. That bill, titled the PURPA Modernization Act, H.R. 4476, has sat in a House of Representative subcommittee since December 1, 2017 and has yet to be offered up for a vote.<sup>6</sup>

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<sup>4</sup> *See In Re Investigation of Central Maine Power Company's Resource Planning, Rate Structures, and Long-Term Avoided Costs (Rate Design Phase)*, Docket No. 92-315, 1995 Me. PUC LEXIS 11 at \*13-14 (Jan. 27, 1995 Me. Pub. Util. Comm'n). The Maine Public Utilities Commission stated:

Plainly, under this federal regulation, the specified avoided cost information must be filed with state regulatory agencies and the information must be publicly available. The federal regulation expressly regulates state activities and, under the supremacy clause, undoubtedly precludes any state action that would make the specified information not publicly available, e.g., pursuant to state trade secret protection law.

*Id.* at \*13.

<sup>5</sup> *See Notice of technical conference re Implementation Issues under the Public Utility Regulatory Policies Act of 1978*, Docket No. AD16-16 (F.E.R.C. Feb. 9, 2016) available at <https://perma.cc/TKU5-CBW9>; *see also Supplemental Notice Concerning Technical Conference*, Docket No. AD16-16 (F.E.R.C. Mar. 4, 2016) available at <https://perma.cc/A9TV-DLZW>.

<sup>6</sup> *See* <https://www.congress.gov/bill/115th-congress/house-bill/4476/all-actions>

Even if it passes the committee stage, it is unlikely to pass the full House of Representatives or the Senate. In addition, the legislation only effects the size of QFs and how PURPA could interact with integrated resource plans—it has nothing to do with adequate contract term lengths under Indiana law or compliance with 18 C.F.R. 292.302(b).

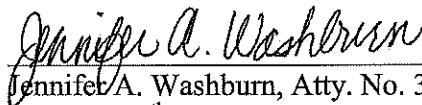
I&M's reliance on federal activity as a reason for why the Commission should not open an investigation rings hollow. PURPA operates under a cooperative federalism framework whereby FERC issued the primary regulations but the State of Indiana is delegated authority to implement those regulations at the state level. *See* 16 U.S.C. § 824a-3(f). Indiana has adopted state laws and regulations to implement these requirements, including a state law that directs the commission to require electric utilities to enter into long-term contracts with alternate energy production facilities. Burns Ind. Code Ann. § 8-1-2.4-4(a). The existence, or not, of federal proceedings related to PURPA in no way negates the Commission's responsibility to implement and enforce existing state law. Finally, PURPA provides the Commission with the discretion to determine issues like contract term lengths, and, therefore, Indiana's discretion and authority to investigate such issues is unaffected by the hypothetical existence of federal investigations into matters unrelated to Indiana's requirement for "long term" contracts. Burns Ind. Code Ann. § 8-1-2.4-4(a).

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Indiana should use its considerable discretion under PURPA to deny approval of I&M's 30-day filing and open an investigation into PURPA implementation in the State. Issues for investigation should be adequate contract term lengths, compliance with 18 C.F.R. 292.302(b)'s biennial avoided cost information requirements, and other issues that the Commission determines are relevant. Other relevant issues could be how utilities calculate their avoided energy cost rates and whether the standard offer tariff and standard contracts should be available to QFs larger than 100 kW.

Dated April 6, 2018

Respectfully submitted,



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Jeffrey Hammons  
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AD No-16

**Congress of the United States**  
Washington, DC 20515

OFFICE OF  
EXTERNAL AFFAIRS

2017 OCT 31 P 2:45

October 30, 2017

FEDERAL ENERGY  
REGULATORY COMMISSION

The Honorable Neil Chatterjee  
Chairman  
Federal Energy Regulatory Commission  
888 First Street, NE  
Washington, DC 20426

Dear Mr. Chairman:

We are writing to urge the Federal Energy Regulatory Commission (FERC) to update its implementing regulations for the Public Utility Regulatory Policies Act (PURPA). As you know, PURPA was enacted in 1978 in response to an oil crisis. Over the last 40 years, we have seen dramatic changes in energy markets that have resulted in an abundance of domestic energy supplies. Two of the most significant changes have been the development of competitive wholesale electricity markets, which enable qualifying facilities (QFs) under PURPA to reach more willing buyers, and the declining costs for natural gas and renewable energy resources. These developments, along with others, have changed both the economics of QF development, as well as the impact of an increasing amount of QF output being placed on the transmission grid.

While there are aspects of the reform of PURPA that will require congressional action, there are also regulatory changes that FERC can make to ensure that its implementing regulations reflect the changes occurring in electricity markets. Many of these changes are already familiar to FERC and were addressed at the technical conference that your agency held on June 29, 2016, in Docket No. AD16-16-000. Among the issues addressed at the conference was the purported gaming of FERC's "one-mile rule" (*see* 18 CFR § 292.204(a)(2)) by certain QF developers. More than a year later, the House Energy and Commerce Subcommittee on Energy heard testimony during its September 6, 2017, hearing on PURPA, that some QFs are continuing to take advantage of FERC's regulations to effectively build projects that exceed the various size thresholds in the wholesale electricity markets regulated by FERC. However, since FERC has made clear in its decisions that its one-mile rule is irrebuttable, parties involved cannot challenge the lawfulness of these projects.

Eliminating the opportunity for certain QF developers to game FERC's one-mile rule will directly benefit electricity customers, who are paying billions of dollars in above-market prices for QF power sold under mandatory PURPA contracts. While the Energy and Commerce Committee considers additional reforms to PURPA, we encourage FERC to address the concerns raised at its 2016 technical conference and to use its authority to undertake needed modernization to the Commission's PURPA one-mile rule regulations while taking into consideration non-geographic factors as well.


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As Congress continues its review of PURPA, we request the list of changes and reforms the Commission believes it can make under its existing authority.

We look forward to working with the Commission to ensure our constituents can benefit from lower cost electricity, more competitive markets and advancements made in renewable generation.

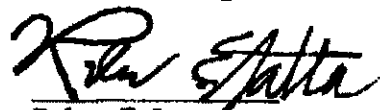
Sincerely,

  
Tim Walberg  
Member of Congress


  
Fred Upton  
Member of Congress

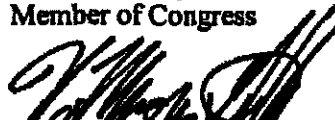
  
Joe Barton  
Member of Congress

  
Marsha Blackburn  
Member of Congress

  
Robert E. Latta  
Member of Congress

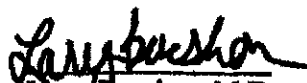
  
Gregg Harper  
Member of Congress

  
David B. McKinley, P.E.  
Member of Congress


  
Morgan Griffith  
Member of Congress

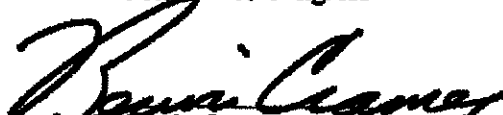
  
Bill Johnson  
Member of Congress

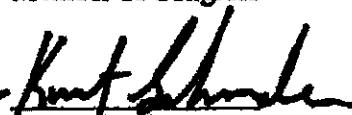
  
Dave Loebsack  
Member of Congress

  
Larry Bucshon, M.D.  
Member of Congress

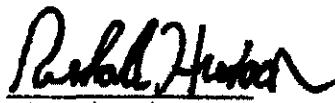
  
Bill Flores  
Member of Congress

  
Markwayne Mullin  
Member of Congress

  
Kevin Cramer  
Member of Congress

  
Kurt Schrader  
Member of Congress

  
Billy Long  
Member of Congress

  
Richard Hudson  
Member of Congress

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**FEDERAL ENERGY REGULATORY COMMISSION**

WASHINGTON, DC 20426

November 29, 2017

**FORWARDED  
NOV 29 2017**

**OFFICE OF THE CHAIRMAN**

The Honorable Tim Walberg  
U. S. House of Representatives  
Washington, D.C. 20515

Dear Congressman Walberg:

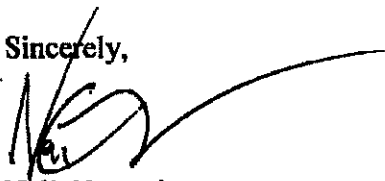
Thank you for your October 30, 2017, letter regarding the Public Utility Regulatory Policies Act of 1978 (PURPA).

The energy landscape that existed when PURPA was conceived was fundamentally different than it is today; solar and wind power were fledgling technologies, there was no open access to wholesale electricity markets, and natural gas was in scarce supply. None of those things are true today. In light of such changes, I believe that the Commission should consider whether changes in its existing regulations and policies could better align PURPA implementation with modern realities.

As you know, the Commission held a technical conference on June 29, 2016, in Docket No. AD16-16-000, to examine issues related to PURPA. Subsequently, the Commission solicited written comments from interested parties, which were submitted by November 7, 2016. One particular area where many parties have indicated a need for a different approach is the "one-mile rule" for qualifying facilities. Of course, other such areas may exist, too, and we owe it to stakeholders to continue taking a hard look at our regulations to identify those opportunities for improvement. Please be assured that I will keep your concerns in mind as the Commission explores these important issues. Your letter and this reply will be placed in the public record of Docket No. AD16-16-000.

If I can be of any further assistance, please do not hesitate to contact me.

Sincerely,



Neil Chatterjee  
Chairman

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