

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IN THE MATTER OF THE APPEAL TO)
THE INDIANA UTILITY REGULATORY)
COMMISSION FROM THE CONSUMER)
AFFAIRS DIVISION OF THE RULING ON) CAUSE NO. 44344
COMPLAINT BY MORTON SOLAR &)
WIND, LLC AGAINST VECTREN UTILITY)
HOLDINGS, INC. d/b/a VECTREN ENERGY)
DELIVERY OF INDIANA – SOUTH)

VERIFIED COMPLAINT AND APPEAL
FROM CONSUMER AFFAIRS DECISION

Comes now Complainant, Morton Solar & Wind, LLC (“Morton Solar”), for its Complaint against Vectren Utility Holdings, Inc. d/b/a Vectren Energy Delivery of Indiana – South (“Vectren South”), and states:

1. This matter comes to the Indiana Utility Regulatory Commission (“IURC”) upon request of the IURC’s Consumer Affairs Division, which referred Complaint #104375 for formal review by the IURC pursuant to 170 IAC 16-1-5(e). Complaint #104375 is actually a consolidation of three informal complaints filed against Vectren by Morton Solar with the IURC Consumer Affairs Division, as follows:

- a. On June 29, 2010, Morton Solar submitted a letter to the Executive Director of the IURC alleging six instances in which Vectren had imposed unreasonable impediments to customers of Vectren that were seeking to hire Morton Solar to commission cogeneration projects. Morton Solar alleged Vectren’s actions violated Vectren’s duty to provide nondiscriminatory service to customers. (These cases of allegedly discriminatory treatment are described more fully in Count II, paragraphs 17.a. through e., below.)
- b. On April 11, 2013, Morton Solar filed a complaint online requesting that the current Interconnection Rules, (specifically 170 IAC 4-4.3-4 “General Interconnection Provisions”) be revised to fit the new Indiana net-metering policy revised July 2011 to allow customers to generate up to 1MW of renewable energy. In addition, Morton

Solar identified a seventh example of unreasonably discriminatory treatment of Morton Solar's customers. (This case of allegedly discriminatory treatment is described more fully in Count II, paragraph 17.f., below.)

- c. On April 16, 2013, Morton Solar submitted a written complaint to the IURC's Consumer Affairs Division alleging additional improper conduct directed at Vectren customers that had sought cogeneration projects from Morton Solar. Specifically, Morton Solar alleged Vectren had violated IURC rules by delaying execution of interconnection agreements with Morton Solar's customers. (These alleged violations are described more fully in Count I, below.)

2. Complainant, Morton Solar, is an Indiana limited liability company whose principal offices are located at 4620 Weaver Road, Evansville, Indiana 47711.

3. Morton Solar is a solar and small wind energy contractor who provides eligible customer classes the use of renewable energy. Specifically, Morton Solar provides grid-tied, grid-interactive, and off-grid photovoltaic systems, and solar hot water systems to residential, commercial, municipal, governmental, and utility clients. Morton Solar's eligible customer classes are primarily residential and K-12 school customers with investor-owned utilities. Morton Solar has been providing renewable energy to eligible customer classes in the current net-metering program in the City of Evansville, County of Vanderburgh, Indiana, since March 19, 2003.

4. Respondent, Vectren South ("Vectren"), is a subsidiary of Vectren Utility Holdings, Inc., an Indiana corporation whose principal offices are located at One Vectren Square, Evansville, Indiana 47708 and whose registered agent for service at that address is Ronald E. Christian.

5. Vectren provides energy delivery services to electric and gas customers located in southwestern Indiana, including the city of Evansville, Indiana. Vectren also owns and operates electric generation to serve its electric customers and optimizes those assets in the wholesale power market.

6. Vectren is a “public utility” as defined in Ind. Code § 8-1-2-1, and its rates and rules for service are subject to the jurisdiction of this Commission under I.C. § 8-1-2-1, *et seq.*

7. The Indiana Utility Regulatory Commission (“IURC”) has jurisdiction over this matter pursuant to I.C. § 8-1-2-1, I.C. § 8-1-2-5, I.C. § 8-1-2-34.5, I.C. § 8-1-2-54, I.C. § 8-1-2.4, and I.C. § 8-1-37-4.

FACTS

COUNT I

Failure to Timely Issue Executed Interconnection Agreements Under 170 IAC 4-4.2

8. Under the IURC’s certification procedures for customer-generator facilities set out in 170 IAC 4-4.3, Vectren has a limited amount of time to notify customers whether a specific cogeneration project has been approved. Once a project is approved, Vectren then has a limited amount of time to supply the customer with an executed interconnection agreement for the project.

9. Specifically, for projects with a capacity of ten (10) kilowatts or less, Vectren is obligated to approve or deny an application within 15 business days after notifying the customer that the application is complete. Once the project is approved, Vectren is required to provide a signed interconnection agreement within 10 business days. 170 IAC 4-4.3-6. Similarly, for projects with a capacity of up to two (2) megawatts, Vectren is required to provide an executable interconnection agreement within 10 business days after completing an initial review of the project and concluding that the project will be approved. 170 IAC 4-4.3-7.

~~10. Vectren failed to comply with these IURC-mandated deadlines for the following~~
customers (“Affected Customers”), each of whom had contracted with Morton Solar to install the facilities and to secure project approval from Vectren:

Project or Vectren Customer Name	Commissioning Date	Status of Interconnection Agreement	# of Days Past Deadline
Ohio Township Public Library – Bell Road	12/20/2006	No interconnection agreement yet provided	2361
Lincoln Heritage Public Library – Chrisney, IN	1/31/2009	No interconnection agreement yet provided	1586
VPS Architecture	4/21/2009	No interconnection agreement yet provided	1508
Erik & Laura Arneberg	6/7/2009	No interconnection agreement yet provided	1460
Evansville-Vanderburgh Central Library	4/26/2010	No interconnection agreement yet provided	1138
Don Jost	4/16/2010	No interconnection agreement yet provided	1148
Chanda Banner	6/26/2011	No interconnection agreement yet provided	711
Gary Weiss	7/12/2012	No interconnection agreement yet provided	330
Sharis Goines-Pitt	10/24/2011	No interconnection agreement yet provided	592
Bob Martin	1/10/2012	No interconnection agreement yet provided	514
Roy Perry	12/28/2011	No interconnection agreement yet provided	526
Denise Vaal	7/10/2012	No interconnection agreement yet provided	332
Randy Ellis	11/27/2012	Interconnection agreement provided on 5/8/13	148
Norm Miller	10/26/2012	Interconnection agreement provided on 5/2/13	174
James Purviance	3/13/2013	Interconnection agreement provided on 5/2/13	36

Total Days of Delay

12,564

11. For each of these projects, the commissioning date occurred after Vectren had already notified Morton Solar that there were no technical impediments to commissioning each project and that each project could, therefore, be approved. Therefore, under the IURC's rules,

Vectren was obligated to supply an executed/executable interconnection agreement not later than 10 business days after the listed Commissioning Date – and, in many cases, much earlier.

12. Despite repeated requests by Morton Solar, Vectren has repeatedly refused to timely return executed interconnection agreements to Morton Solar for the Affected Customers.

13. As a result of Vectren's delays in returning executed interconnection agreements, Morton Solar's Affected Customers have been unable to sell their generated Solar Renewable Energy Credits ("SREC"). This has caused significant financial harm to both Morton Solar and the Affected Customers.

14. Pursuant to I.C. § 8-1-2-107, Morton Solar is entitled to recover damages for financial injuries resulting from these violations.

15. Pursuant to I.C. § 8-1-2-107, Morton Solar's customers may also be entitled to recover damages for financial injuries resulting from these violations.

16. Pursuant to I.C. § 8-1-2-109 and I.C. § 8-1-2-112, Vectren committed a Class B Infraction for each violation and is subject to civil penalties of up to \$1,000 per day, per customer. This equals a maximum total civil penalty of **\$12,564,000.00**.

COUNT II
Unreasonable Discrimination Against
Net Metering Customers In Violation of Ind. Code § 8-1-2-4

17. In addition to the specific delays in issuing signed interconnection agreements listed above, Vectren South has demonstrated malicious intent to harm Morton Solar by unnecessarily delaying implementation of its projects and refusing to return executed documentation. These unnecessary impediments to project completion include the following:

- a. In 2005, Ohio Township Public Library, Newburgh, Indiana, executed a net-metering agreement with Vectren. The building was designed with solar energy in mind and includes various sections of south-facing elevated roofs. In 2007, the library decided

to double the capacity of the photovoltaic system from 5.5 kW to 11 kW. Since the 11 kW capacity exceeded the 10 kW limit under IURC-mandated review process under which the original agreement had been executed, Vectren simply denied adding the expansion under the net-metering agreement.

- b. A Morton Solar customer submitted an application to Vectren for Net-Metering for residential wind turbine installation in Gibson County on July 22, 2008. Wind turbine installation was completed on September 12, 2008. However, Vectren refused to install a bidirectional meter. Ultimately, Vectren relented after Morton Solar contacted Senator Lugar's office. A meter was finally installed on October 4, 2008, two and one-half months after the net-metering application was submitted.
- c. In 2008, Chrisney Public Library, Chrisney, Indiana, built a new, energy efficient library. The original quote from Vectren to install electrical service to the new building was "free." However, after Vectren was advised that the building would have a grid-tied photovoltaic system, Vectren reversed its position and stated that the price to install electrical service to the building would be \$7,900.00. In exchange for this installation, Vectren demanded, as a condition, that the Town of Chrisney sign a "Minimum Use" contract which required the library to purchase a minimum amount of kWh per month from Vectren before Vectren would install the service. If, at the end of the two year period, the minimum use was not met, the Town of Chrisney would be obligated to pay Vectren the full \$7,900.00 installation cost.
- d. In 2010 Haubstadt Elementary School raised money and received grants to install a 2.4 kW grid-tied wind turbine. The wind turbine is a 208V model producing 11Amps and is designed to be connected to two phases of a three phase system, which the building already had. Vectren claimed that because their tariff only covered "Single Phase Service" and the school was "Three Phase" that Morton Solar could not connect directly to the school, even though the Indiana Net-Metering Law specifically includes K-12 schools.

Vectren engineers claimed that the wind turbine would "unbalance" Vectren's load on three phase service. Therefore, Vectren attempted to require the installation of a \$12,000.00 power supply line and transformer which would have increased the cost of the project by fifty percent (50%) and delayed the financial benefit to the school. However, during maximum wind speeds, the wind generator would only generate enough energy to power one hand dryer in a bathroom – obviously an insubstantial amount of power and insufficient to unbalance a load of such magnitude.

Morton Solar requested the IURC's Consumer Affairs Division review Vectren's claim. The Consumer Affairs Division concluded that Vectren's tariff violated Indiana state law.

- e. In 2013, another of Morton Solar's customers reported to Morton Solar that Vectren had been demanding \$16,000.00 for the installation of service to the customer's residence. However, when the customer threatened to install a solar energy system

that was entirely "off grid," Vectren cut the cost of installation in half to \$8,000.00 to avoid losing the customer.

- f. Morton Solar is currently connecting a 25 kW solar photovoltaic system to the home of a Vectren customer. Vectren has claimed that the existing 50 kVA transformer is inadequate and that a new transformer will need to be purchased. However, the proposed project will actually reduce the load on the transformer, making the purchase of a new transformer unnecessary.

18. Under I.C. § 8-1-2-4, public utilities are prohibited from engaging in unjust discrimination between classes of customers in the provision of service. *See e.g., La Rowe v. Kokomo Gas & Fuel Co.*, 179 Ind. App. 563, 578 (Ind. Ct. App. 1979) ("Rates and classifications among customers cannot be arbitrary nor discriminatory in the sense of imposing a burden or creating a class in a manner not rationally related to the purposes of regulations.") In addition, I.C. § 8-1-2.4-1 states, "It is the policy of this state to encourage the development of alternate energy production facilities, cogeneration facilities, and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient utilization."

19. By its conduct, Vectren has violated both its duty to provide non-discriminatory service under I.C. § 8-1-2-4 and the Indiana energy policy codified at I.C. § 8-1-2.4-1.

20. Pursuant to I.C. § 8-1-2-107, Morton Solar is entitled to recover damages for financial injuries resulting from these violations.

21. Pursuant to I.C. § 8-1-2-107, Morton Solar's customers may be entitled to recover damages for financial injuries resulting from these violations.

22. Morton Solar requests Vectren be sanctioned with the maximum penalty allowed under I.C. § 8-1-2-109 and I.C. § 8-1-2-112 for each violation.

COUNT III
Tortious Interference with Business Relationships

23. At the time of the above described conduct, Morton Solar had a valid business relationship with the customers identified in Counts I and II, above – relationships of which Vectren was aware. By its above conduct, Vectren intentionally interfered with these business relationships, without justification, and Morton Solar was damaged thereby.

24. By its conduct, Vectren committed the tort of tortious interference of business relationships.

25. Vectren's conduct was willful, wanton, and malicious. To the extent it has jurisdiction, Morton Solar requests the IURC therefore award Morton Solar punitive damages and attorneys' fees.

COUNT IV
Request for Rulemaking or Commission Investigation

26. Upon information and belief, many Indiana electric utilities routinely require customers interested in cogeneration/net metering to purchase technically unnecessary equipment such as a new transformer as a condition of approving a given project. The purpose of cogeneration is to *decrease* – not increase – the customer's demand for electricity. Therefore, in the overwhelming majority of cases, existing transformers are more than adequate.

27. This routine practice in Indiana of utilities requiring the purchase of unnecessary equipment to accommodate cogeneration projects is unreasonably discriminatory in violation of I.C. § 8-1-2-4.

28. Moreover, as noted above, it is the official policy of the State of Indiana to encourage the development of alternative energy and cogeneration facilities. I.C. § 8-1-2.4-1.

While Indiana's renewable energy portfolio standards are voluntary, *see* I.C. § 8-1-37, the IURC has jurisdiction and authority to set terms for interconnection of facilities – including the terms for interconnection of cogeneration facilities.

29. Consequently, Morton Solar requests this Commission initiate an investigation into the practices of Indiana electric utilities in handling customer generation interconnection and/or initiate a rulemaking to revise the customer generation interconnection rules set out in 170 IAC 4-4.3.

PETITIONER'S COUNSEL

30. Counsel for Complainant who are duly authorized to accept service of pleadings and other papers are:

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PRAYER FOR RELIEF

WHEREFORE, Complainant respectfully requests that the Commission issue an order as follows:

A. Finding that Vectren improperly delayed the execution of interconnection agreements with Morton Solar's customers;

B. Finding that Vectren violated its duty under I.C. § 8-1-2-4 to provide nondiscriminatory service and violated the policy prescriptions of I.C. § 8-1-2.4-1;

C. Finding that Vectren tortiously interfered with Morton Solar's business relationships and did so in a wanton, willful, or malicious manner;

D. Awarding compensatory damages to Morton Solar for any financial harm, including pre-judgment interest;

E. Awarding compensatory damages to Morton Solar's customers for any fee or charge found to have been imposed improperly;

F. Awarding Morton Solar punitive damages for Vectren's willful, wanton, and malicious conduct;


G. Awarding Morton Solar its attorneys' fees from any common fund established on behalf of Morton Solar's customers;

H. Initiating an investigation into the practices of Indiana electric utilities in handling customer generation interconnection and/or initiating a rulemaking to revise the customer generation interconnection rules set out in 170 IAC 4-4.3; and

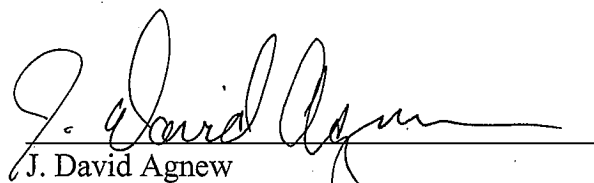
I. For all other appropriate relief.

Dated this 21st day of June, 2013.

Morton Solar & Wind, LLC

By: 
Brad Morton

Respectfully submitted,



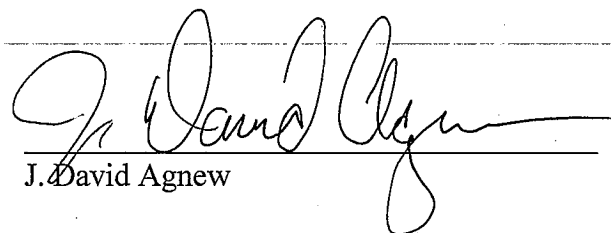
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CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing motion was served by electronic mail or U.S. Mail, first class postage prepaid, this 21st day of June, 2013, to the following:

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