

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF DUKE ENERGY INDIANA, )  
LLC FOR APPROVAL OF A SOLAR )  
SERVICES PROGRAM TARIFF, RIDER NO. )  
26, AND APPROVAL OF ALTERNATIVE ) CAUSE NO. 45145  
REGULATORY PLAN (“ARP”) AND )  
DECLINATION OF JURISDICTION TO THE )  
EXTENT REQUIRED UNDER IND. CODE 8- )  
1-2.5-1, *ET. SEQ.* )

**REPLY BRIEF OF DUKE ENERGY INDIANA, LLC**

Duke Energy Indiana, LLC. (“Duke Energy Indiana” or “Company”) respectfully submits to the Indiana Utility Regulatory Commission (“Commission”) its response to the exceptions filed by the Indiana Office of Utility Consumer Counselor (“OUCC”) and Walmart, Inc.<sup>1</sup> (“Walmart”) in this proceeding. The Commission should adopt Duke Energy Indiana’s proposed form of order and reject the relief requested in other parties’ exceptions for the following reasons:

1. Duke Energy Indiana’s request for approval of its solar services program is clear, serves the public interest and should be approved by the Commission as a pilot program.
2. The exceptions sought by the Company under its proposed alternative regulatory plan are narrow and limited: a) for Duke Energy Indiana to be able to construct solar facilities for a limited number of participating customers without filing additional proceedings; and b) for Duke Energy Indiana to be able to offer this service to customers at market-based rates, tailored to the size and other needs of each specific

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<sup>1</sup> The Citizens Action Coalition of Indiana joined Walmart’s exceptions.

customer. The solar services tariff and Duke Energy Indiana will otherwise remain under the jurisdiction and regulation of the Commission.

3. Walmart's suggestion that the Commission should take this opportunity to allow third-party leasing arrangements is better raised with the Indiana General Assembly. The Commission need not and should not reach this issue in the absence of a legislative directive.

**A. Duke Energy Indiana's Proposed Solar Services Program**

Contrary to the OUCC's assertions, Duke Energy Indiana's proposed solar services program is clear and understandable. Approval of the Company's proposed program would result in a pilot program under which interested customers could have an additional option for constructing, operating, maintaining and financing onsite solar energy projects. There would be a cap on participation in this initial pilot program of 10 MW in the aggregate, or five years, whichever occurs first. Participating customers could also participate in Duke Energy Indiana's net metering tariff.

Duke Energy Indiana has sought approval of this program under the Alternative Utility Regulation provisions of Indiana law for two specific and limited reasons. First, the Company sought a declination of Commission jurisdiction in order to construct solar facilities up to the program cap without needing separate Commission approvals for each facility under Indiana Code § 8-1-8.5-7(4). Second, Duke Energy Indiana is seeking the ability to charge rates to customers who opt into this voluntary service that will be based on the market prices available for the solar facility each participating customer selects to match their individual needs.

Duke Energy Indiana's limited requests under the Alternative Utility Regulation Act make sense given the structure of the proposed pilot program. First, requiring the Company to

return to the Commission every time an eligible customer voluntarily opts to participate in this program would be an inefficient use of the Commission's resources and would inhibit customer participation because of the inherent delay resultant from obtaining regulatory approvals. By approving the proposed concept of this voluntary program, limiting it in size and scope, and requiring certain reporting requirements and maintaining regulatory oversight, the Commission can retain jurisdiction to resolve potential customer disputes, learn more about which eligible customers are best suited for this offering, and oversee the expansion of distributed solar generation during its earlier phases. All of this benefits the state of Indiana, the Commission, the Company (which will be able to provide a service to those customers interested in participating), and its customers. The Indiana General Assembly – through its recent passage of SEA 309 and continued consideration of legislation impacting distributed generation – and the Commission share an interest in understanding this sector of the energy industry and implementing good public policy to shape and encourage its expansion. Authorizing a regulated public utility to offer a service similar, if not identical, to that already being provided by third-party developers to a portion of its customers, while retaining jurisdiction and oversight, will provide policy makers in Indiana with valuable information to help inform future decisions in this area. The OUCC would rather deny this Commission the opportunity to gain first-hand experience with this portion of the energy industry for no reason other than it is opposed to any expansion of net metering in this state. Instead, this Commission should reject the OUCC's position, find this pilot program serves the public interest and approve the Company's proposed program.

In addition, because each solar facility constructed will be distinct in its size, configuration, location and financing requirements, it makes logical sense that the Company be able to charge market-based prices for each distinct facility. This type of individualized service

is not one that lends itself to a “one price fits all” tariff. Instead, as discussed above, the Commission will retain its jurisdiction over Duke Energy Indiana as a whole and this program, more specifically, to ensure the customers who voluntarily opt to participate in this program are being treated fairly by the Company and are receiving the benefits of participating in this program, as described in the tariff and service agreement. The public interest will be served by the Commission’s approval of this program and the Company’s ability to charge specific rates that will be tailored to meet the wants and needs of each specific participating customer. Customers are not required to participate in this program. Should customers find the benefits of this proposed pilot program unattractive or unfit for their specific needs, they may opt to construct their distributed energy facility with any one of the number of third-party developers who are already in business. The program has support from within the developer community, as it is viewed as a helpful tool for driving solar investment within the state. Duke Energy Indiana respectfully requests that the Commission authorize the Company’s proposal.

**B. Using Duke Energy Indiana’s Proposal as a Forum to Fundamentally Change Indiana Law is Inappropriate**

The Commission is a creature of statute, granted its authority by the Indiana General Assembly.<sup>2</sup> Walmart’s suggestion (absent of any legal support), that nothing prevents the Commission from determining on its own that customers may enter into third-party solar leasing arrangements, is inviting the Commission to make a significant change to Indiana law outside of the traditional forum for such changes: the Indiana General Assembly – or, when authorized by the Indiana General Assembly, the Commission’s rulemaking function.

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<sup>2</sup> “The Public Service Commission, being a creature of statute, could assert only such jurisdiction or authority as was specifically granted by statute.” *Ind. & Mich. Electric Co. v. Pub. Service Comm’n.*, 495 N.E.2d 779, 782 (Ind. Ct. App. 1986).

Under Duke Energy Indiana's proposal, the Commission and interested parties can use the term of the pilot program to obtain useful information about the market for this sort of service in Indiana – while still promoting the growth of distributed solar energy in the state. Duke Energy Indiana has been open about the fact that it already is collaborating with third party developers on their participation in this program, two of which have sent letters of support to the Commission.

In short, Walmart should take its request to the Indiana General Assembly, not this Commission. For, to do as Walmart suggests, the Commission would need to make changes to the Service Territory Act and the definition of a public utility, as well as to assert jurisdiction over the third-party developers operating in the state (that may be interested in owning distributed solar energy facilities and selling the output of those facilities to the customers of other public utilities). These represent significant changes to Indiana law, and as such, need to be discussed and made by the Indiana General Assembly to ensure an appropriate structure is in place for qualified entities to offer these services to customers in the State of Indiana. The creation of this structure would likely be time-consuming, affect numerous entities not party to this proceeding, and is unnecessary for consideration of the narrow request made by the Company in this proceeding.

The Commission does not need to reach these issues to rule on the matter before them: whether Duke Energy Indiana may offer this voluntary tariff to up to 10 MW of its commercial and industrial customers, providing them with another option for financing, operating and maintaining solar facilities should they be interested in constructing them on their premises. As the Company stated and as supported by the letters of support from two solar developers, this proposal provides an additional option for customers in an already competitive market for the

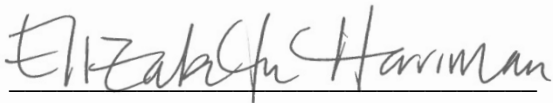
construction of onsite solar facilities. Duke Energy Indiana respectfully suggests that the Commission approve this limited pilot program and review its performance as it proceeds before determining whether any broader changes to Indiana law are warranted.

**C. Conclusion**

For all the reasons stated above, Duke Energy Indiana respectfully requests that the Commission reject the arguments set forth by the other parties to this proceeding and instead issue Duke Energy Indiana's proposed form of order in its entirety.

Respectfully submitted,

**DUKE ENERGY INDIANA, LLC**

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**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that copies of the foregoing response were sent, via electronic mail, this 12<sup>th</sup> day of March, 2019, to the following:

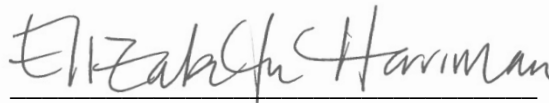
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