

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF SOUTHERN INDIANA GAS AND)
ELECTRIC COMPANY D/B/A VECTREN)
ENERGY DELIVERY OF INDIANA, INC. FOR)
APPROVAL OF A TARIFF RATE FOR THE)
PROCUREMENT OF EXCESS DISTRIBUTED)
GENERATION PURSUANT TO IND. CODE § 8-)
1-40 ET SEQ.)

CAUSE NO. 45378

**JOINT MOVANTS' MOTION FOR SUMMARY JUDGMENT AND BRIEF IN
SUPPORT OF MOTION**

The Office of the Utility Consumer Counselor (“OUCC”), by counsel, and the Indiana Distributed Energy Alliance, Joint Intervenors, Solarize Indiana, Inc., and Performance Services, Inc. (collectively “Joint Movants”), respectfully move for summary judgment pursuant to 170 IAC 1-1.1-12, 170 IAC 1-1.1-26, and Indiana Rules of Trial Procedure 56. The OUCC is authorized to represent that the other Joint Movants join in this motion.

I. INTRODUCTION

The proposal by Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. (“Vectren”) in this proceeding for an Excess Distributed Generation Tariff does not comply with the statutory requirements of Ind. Code ch. 8-1-40 *et seq.* Specifically, Vectren does not determine “excess distributed generation” (“EDG”) in accordance with Ind. Code § 8-1-40-5, which defines the term as used in that chapter, and therefore, Vectren’s proposal cannot be approved as a matter of law.

II. STANDARD OF REVIEW

Pursuant to 170 IAC 1-1.1-12, 170 IAC 1-1.1-26, and Indiana Rules of Trial Procedure 56, summary judgment is appropriate if the designated evidence shows that there is no genuine issue as to any material fact and the moving party is entitled to judgment as a matter of law. *Gresk for Estate of VanWinkle v. Demetris*, 96 N.E.3d 564, 567 (Ind. 2017). The purpose of summary judgment is to terminate litigation about which there can be no factual dispute and which may be determined as a matter of law. *Sheehan Construction Co. v. Continental Casualty Co.*, 938 N.E.2d 685, 689 (Ind. 2010).

The initial burden is on the moving party to prove the absence of a genuine issue of material fact and the appropriateness of judgment as a matter of law. *Stephenson v. Ledbetter*, 596 N.E.2d 1369, 1371 (Ind. 1992). Once the moving party has met this burden, the party opposing summary judgment must respond by designating specific facts establishing a genuine issue for trial. *Id.* If the opposing party fails to meet its responsive burden, the court shall render summary judgment. *Id.*

III. STATEMENT OF FACTS NOT IN DISPUTE AND EVIDENCE IN SUPPORT OF MOTION

The basis of this proceeding is Vectren's proposed EDG Tariff. The Joint Movants have no factual dispute with the content of the proposed tariff. Rather, the Joint Movants dispute the application of the relevant statutes in the tariff. Therefore, in support of this motion, the Joint Movants present:

Exhibit 1: Petitioner's Exhibit No. 2, Attachment JCS-2, "RIDER EDG EXCESS DISTRIBUTED GENERATION".

Exhibit 2: Vectren's Response to OUCC DR 2-011.

IV. FAILURE OF VECTREN TO FOLLOW IND. CODE CH. 8-1-40 *ET SEQ.*

There is no factual dispute regarding the substance of Vectren's proposed tariff. Therefore, the basis of this motion reflects Vectren incorrectly applying the requirements of Ind. Code 8-1-40 *et seq.* to its proposed tariff. Essentially, Vectren fails to correctly apply the definition of "excess distributed generation" ("EDG"), as set out in Ind. Code § 8-1-40-5. If allowed, this would lead Vectren to incorrectly determining the amount of EDG for customers and the amount of electricity to which Vectren would apply the EDG rate under Ind. Code § 8-1-40-15.

Vectren's proposed tariff incorrectly calculates "excess distributed generation" under Ind. Code § 8-1-40-5 which states as follows:

As used in this chapter, "excess distributed generation" means the difference between:

- (1) the electricity that is supplied by an electricity supplier to a customer that produces distributed generation; and
- (2) the electricity that is supplied back to the electricity supplier by the customer.

The plain language of the statute defines EDG as the difference between (1) electricity supplied to a customer ("inflow"), and (2) electricity supplied back to the electricity supplier by the customer ("outflow"). However, Vectren does not calculate EDG as defined in the statute. Rather, during the billing period, Vectren separately measures the accumulated amount of electricity provided from the supplier and separately measures the amount from the customer.¹ Vectren describes this measurement as "instantaneously" calculated.² Vectren then only considers the electricity

¹ Petitioner's Exhibit No. 2, Direct Testimony of J. Cas Swiz, page 12, lines 13-14, "[T]he electricity supplied by the customer to Vectren is defined as 'outflow'."

² Swiz Direct, page 12, lines 11-12.

supplied by the customer as EDG and applies the EDG rate to this amount.³ By only using the “outflow” to measure EDG, Vectren does not follow the plain language of Ind. Code § 8-1-40-5, which requires that EDG is the difference between both inflow and outflow. In order to properly conform with the requirements of the statute, Vectren must measure inflow and outflow and take the difference between these amounts to determine EDG.

Vectren attempts to explain its use of “outflow” as EDG:

The measurement of outflow in the standard customer meter reflects the difference between what the distributed generation resource produced and what the customer used behind the meter, with the excess (“excess distributed generation”) flowing through the meter to Vectren South’s distribution system, and priced at the Rider EDG Marginal DG Price in accordance with IC 8-1-40-17.⁴

This explanation points to the customer’s electric use and the distributed generation production and attempts to explain that the “difference” of these two amounts is the “excess” that should be priced at the EDG rate. However, these amounts are not described in Ind. Code § 8-1-40-5 as the components of EDG, and Vectren’s attempt to use these amounts to calculate the “difference” unambiguously goes against the plain language of the statute. Simply arguing that the distributed generation “excess” over consumption does not make this the EDG amount if it goes against the statutory definition. Ind. Code § 8-1-40-5 clearly states that EDG is the difference between inflow and outflow. No other components are mentioned in the statute or should be considered for the EDG calculation; therefore, no other determination or explanation is needed.

Vectren further attempts to clarify this explanation:

The net of the electricity supplied by Vectren South to the customer and the electricity that is supplied back to Vectren South is specifically captured as

³ Swiz Direct, page 12, lines 23-25, “The total outflow amount for the billing period will be priced at the Rider EDG credit rate, as it represents excess distributed generation from the customer to the Company.” *See also*, Attachment JCS-2, page 1 of 5, “**Outflow** – (kWh) the measurement of energy delivered by Customer to Company,” and “**Rider EDG Billing Credit** – in accordance with IC 8-1-40-17 and 8-1-40-18, the credit determined by taking the Outflow multiplied by the Marginal DG Price.”

⁴ Vectren’s Response to OUCC DR 2-011.

“Outflow” on the customer’s meter. In other words, the meter registers as “Outflow” the net of both components of “excess distributed generation” as set forth in IC § 8-1-40-5, not just a single component as OUCC Witness Alvarez believes.⁵

This explanation contradicts Mr. Swiz’ initial testimony where he states the “meter can only register the instantaneous measurement of electricity in either direction, each unit of power can only be either inflow and outflow (or net zero in the case of perfect matching of generation to consumption).”[emphasis added]⁶ As the meter can only measure either inflow or outflow at any given moment, not both, any outflow is not “net” of both components, because the measure would only be the outflow component and there would be no inflow to “net” against. Vectren’s argument again fails to comply with the statutory requirement to determine EDG.

Vectren continues to support its faulty argument of the components of EDG by stating:

[T]he existence of the DG resource behind the meter dictates that the customer’s requirements and the DG resource production are *netted before passing through the meter*. The “Outflow” recorded on the meter then is the EDG. The “Inflow” recorded on the meter is the measurement of the requirements of the customer in excess of what is produced by the DG resource. [emphasis in original]⁷

Vectren persists in incorrectly relying on distributed generation production and customer load as the components of EDG. However, as stated above, these components should not be considered as they are not included in the definition for EDG under Ind. Code § 8-1-40-5, which clearly states that EDG is the difference between inflow and outflow, not between distributed generation production and customer load. Continued reliance by Vectren on this method to determine EDG is inappropriate considering the plain language of Ind. Code § 8-1-40-5.

⁵ Petitioner’s Exhibit No. 3, Rebuttal Testimony of J. Cas Swiz, page 6, lines 13-18.

⁶ Swiz Direct, page 12, lines 14-17.

⁷ Swiz Rebuttal, page 7, lines 20-25.

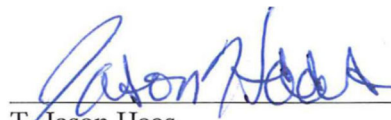
The determination of EDG in Vectren's proposed tariff fails to properly apply Ind. Code § 8-1-40-5 by using components not stated in the statute, and not following the plain language of the statute by taking the difference between inflow and outflow. This application is inconsistent with the definition of EDG under Ind. Code § 8-1-40-5. Therefore, as a matter of law, Vectren's process to calculate EDG is incorrect and should be rejected.

V. CONCLUSION

The Commission should not proceed with a case wherein approval would contradict law. As explained above, Vectren incorrectly applies Ind. Code § 8-1-40-5 and fails to appropriately determine the amount of "excess distributed generation." As there are no disputed facts regarding Vectren's proposed tariff, summary judgment should be granted and Vectren's request should be dismissed as a matter of law.

Respectfully submitted,

Indiana Office of Utility Consumer Counselor



T. Jason Haas
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Exhibit 1

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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RIDER EDG **EXCESS DISTRIBUTED GENERATION**

AVAILABILITY

This Rider shall be available throughout Company's Service Area subject to the terms of Indiana Code ("IC") 8-1-40 and subject to the availability of adequate facilities and power supplies, which determinations shall be within Company's reasonable discretion.

APPLICABILITY

This Rider is applicable to any Customer receiving Electric Service electing service hereunder who has installed on its Premises an eligible distributed generation energy resource ("DG" resource) or other renewable energy technologies determined appropriate by the Commission. Customer must meet the Metering, Generator System Requirements, and Interconnection Requirements specified below. Customer must not be eligible for Rider NM.

DEFINITIONS

The following definitions are applicable to Customers under Rider EDG:

Inflow – (kWh) the measurement of energy supplied by Company to Customer.

Outflow – (kWh) the measurement of energy delivered by Customer to Company.

Rider EDG Billing Credit – in accordance with IC 8-1-40-17 and 8-1-40-18, the credit determined by taking the Outflow multiplied by the Marginal DG Price.

Rider EDG Billing Credit Balance – in accordance with IC 8-1-40-18, the cumulative amount of Rider EDG Billing Credits not applied to a customer's bill due to Minimum Monthly Charge requirements.

Net Metering Queue – in accordance with IURC General Administrative Order ("GAO") 2019-2, a prioritized list for each of the three customer-generator types (residential, biomass, and non-reserved) by date of operation of distributed generation energy resource, date of application approval by the Company, and date of completed application by the Customer to the Company.

Net Metering Operating Participant – in accordance with GAO 2019-2, those customers who have completed installation and have a fully operating (or energized) DG resource.

Net Metering Approved Participant – in accordance with GAO 2019-2, those customers who have applied and received approval from the utility, and who have signed an interconnection agreement with the utility.

Net Metering Queue Participant – in accordance with GAO 2019-2, those customers who have applied but not yet received approval from the utility to complete an interconnection agreement.

Rider NM Participation Cap – in accordance with IC 8-1-40, participation in Rider NM is limited to one and one-half percent (1.5%) of Company's most recent aggregate summer peak load.

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RIDER EDG
EXCESS DISTRIBUTED GENERATION
(Continued)

BILLING

During the Month, Company shall measure the total kWh amount of Inflow and the total kWh amount of Outflow.

The Inflow kWh for the Month shall be billed in accordance with the Customer's standard Rate Schedule, with all applicable rates and charges (heretofore defined as *Standard Charges*).

The Excess DG kWh (Outflow) for the Month shall be multiplied by the Marginal DG Price to determine the Rider EDG Billing Credit.

For each Month, the Customer will be billed the Minimum Monthly Charge as defined in the Customer's applicable Rate Schedule. If the portion of the Customer's bill for the Month attributed to the Rider EDG Billing Credit is in excess of the amount attributed to Standard Charges less the Minimum Monthly Charge, the amount in excess will be accumulated in a Rider EDG Billing Credit Balance for use in a subsequent period.

If the portion of the Customer's bill for the Month attributed to the Standard Charges is in excess of the Rider EDG Billing Credit, any remaining Rider EDG Billing Credit Balance will be applied until the bill becomes the Minimum Monthly Charge or until the Rider EDG Billing Credit Balance becomes zero.

In accordance with IC 8-1-40-18, when Customer discontinues Rider EDG service and no longer receives retail electric service from the Company at the Premises, any unused and remaining Rider EDG Billing Credit Balance will revert to Company.

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MARGINAL DG PRICE

Marginal DG Price is the average marginal price of energy paid by the Company during the most recent calendar year, multiplied by one and twenty-five hundredths (1.25), in accordance with IC 8-1-40-17.

Marginal DG Price:

\$0.03183 for all Outflow kWh

METERING

Customer's eligible for Rider EDG will be required to have a meter installed which can separately measure Inflow and Outflow. If Customer's standard meter is not capable of measuring Inflow and Outflow separately, Company will at its expense install a meter to meet the requirements of Rider EDG.

For Customers receiving three-phase service Company will install, at Customer's expense, a meter to meet the requirements of Rider EDG.

Company's General Terms and Conditions Applicable to Electric Service will govern meter testing procedures.

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RIDER EDG
EXCESS DISTRIBUTED GENERATION
(Continued)

ELIGIBILITY

Customers eligible for Rider EDG must not be eligible for Rider NM. Eligibility for Rider EDG and Rider NM will be determined based upon the Company's Net Metering Queue, maintained on the Company's website in accordance with GAO 2019-2.

1. For all Net Metering Queue Participants, eligibility will be determined once the customer (Net Metering Queue Participant) becomes a Net Metering Approved Participant.
2. Those customers that become a Net Metering Approved Participant before the Rider NM Participation Cap is met, will be eligible for Rider NM once operational in accordance with the requirements of IC 8-1-40 et seq.
3. Those customers that become a Net Metering Approved Participant after the Rider NM Participation Cap is met, will be eligible for Rider NM once operational in accordance with the requirements of IC 8-1-40 et seq., provided that the customer:
 - a. has not been a Net Metering Approved Participant for greater than one year without becoming operational; and
 - b. was a Net Metering Approved Participant prior to January 1, 2021.

If these conditions are not met, then the Net Metering Approved Participant will not be eligible for Rider NM and will become eligible for Rider EDG.

4. Net Metering Operating Participants prior to January 1, 2021 will remain eligible for Rider NM in accordance with IC 8-1-40 guidelines.
5. The eligibility of Net Metering Operating Participants after January 1, 2021 will be determined upon their status as Net Metering Approved Participants in accordance with the specifications listed above.

DISTRIBUTED GENERATOR SYSTEM REQUIREMENTS

Customer's distributed generator system must initially and continuously meet the following requirements in accordance with IC 8-1-40-3. The Company retains the right to periodically verify adherence to these requirements. Lack of adherence to the requirements revokes the applicability of this Rider.

1. The nameplate rating of Customer's generator system must not exceed 1 megawatt ("MW");
2. The generator system must be owned and operated by Customer and must be located on Customer's Premises;
3. Customer's generator system installed kW nameplate rating shall not represent an intent to exceed a Customer's on-going twelve-month kWh usage;
4. The generator system must operate in parallel with Company's distribution facilities;
5. The generator system must satisfy the Interconnection Requirements specified below;
6. The generator system cannot be used primarily for emergency back-up purposes; and
7. The generator system must not be operating under the NM Rider.

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RIDER DG
DISTRIBUTED GENERATION
(Continued)

INTERCONNECTION REQUIREMENTS

1. Customer shall comply and maintain compliance with Company's interconnection requirements and Interconnection Guidelines for Customer Owned Generation (VEC-006). A generator system shall be deemed in compliance with Company's interconnection requirements if such generator system conforms to the most current Indiana Electrical Code, IEEE Standard 1547, has UL or CSA certification that it has satisfied the testing requirements of UL 1741 dated January 28, 2010, or IEEE 1547.1, or any IEEE or UL Standards that supersede these. The distributed generation facility shall comply with the applicable requirements of 170 IAC 4-4.3.
2. Customer owning and operating a generator system shall provide proof of liability insurance providing coverage for claims resulting from Bodily Injury and/or Property Damage in the amount of at least one hundred thousand dollars (\$100,000) for the liability of the insured against loss arising out of the use of a distributed generation metering facility, as provided in 170 IAC 4-4.2-8. This coverage must be maintained as long as Customer is interconnected with Company's distribution system.
3. Conformance with these requirements does not convey any liability to Company for injuries or damages arising from the installation or operation of the generator system.
4. Customer shall execute Company's standard Distributed Generation Interconnection Application form and provide other information reasonably requested by Company for service under this Rider. Company shall require proof of qualified installation, including but not limited to proper configuration of service transformers and grounding requirements, prior to acceptance and completion of the interconnection agreement. Certification by a licensed electrician shall constitute one form of acceptable proof.

TERMS AND CONDITIONS OF SERVICE

1. Any characteristic of Customer's generator that degrades or otherwise compromises the quality of service provided to other Company Customers will not be permitted. In Company's determination, all generators shall be installed in compliance with corresponding service connection and IEEE Standard 519.
2. Customer shall agree that Company shall at all times have immediate access to Customer's metering, control, and protective equipment.
3. Customer shall install, operate and maintain the distributed generation facility in accordance with the manufacturer's suggested practices for safe, efficient and reliable operation in parallel with Company's system.
4. Company may, at its own discretion, isolate any distributed generation facility if Company has reason to believe that continued interconnection with the distributed generation facility creates or contributes to a system emergency. System emergencies causing discontinuance of interconnection shall be subject to verification at the Commission's discretion.

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RIDER DG
DISTRIBUTED GENERATION
(Continued)

5. A disconnecting device must be located at the point of common coupling for all Level 3 interconnections and applicable Level 2 interconnections as determined by Company. For three-phase interconnections, the disconnecting device must be gang operated. The disconnecting device must be accessible to Company personnel at all times and be suitable for use by Company as a protective tagging location. The disconnecting device shall have a visible open gap when in the open position and be capable of being locked in the open position. The cost and ownership of the main disconnect switch shall reside with Customer.
6. Customer is responsible for operating the proposed distributed generation facility such that voltage imbalance attributable to the distributed generation facility shall not exceed 1% at the point of common coupling. If voltage imbalance is more than 1% without the generator operating, the generator shall be installed and operated so as not contribute to a further imbalance. Voltage imbalance is the maximum phase deviation from average as specified in ANSI C84.1.
7. Company reserves the right to witness compliance testing at the time of installation and maintenance testing of the interconnection system for compliance with these conditions of service.
8. Customer is responsible for establishing a program for and performing periodic scheduled maintenance on the distributed generation facility's interconnection system (relays, interrupting devices, control schemes and batteries that involve the protection of Company's distribution system). A periodic maintenance program is to be established in accordance with the requirements of IEEE 1547. Company may examine copies of the periodic test reports or inspection logs associated with the periodic maintenance program. Upon Company's request, Company shall be informed of the next scheduled maintenance and be able to witness the maintenance performed and any associated testing.
9. The interconnection system hardware and software design requirements included in these terms and conditions of service are intended to ensure protection of Company's distribution system. Customer is solely responsible to determine, design and apply any additional hardware and software necessary to protect equipment at the distributed generation facility.
10. Customer agrees that Company shall not be liable for any damage to or breakdown of Customer's equipment operated in parallel with Company's electric system.
11. 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-owned equipment and/or generators.
12. The supplying of, and billing for service under this Rider shall be governed by Company's General Terms and Conditions Applicable to Electric Service under the jurisdiction of the Commission.

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Q 2.11: If the “total inflow amount” or inflow reading or inflow kilowatt hours (“kWh”) exceed the “total outflow amount” or outflow reading or outflow kWh of the distributed generation customer during the billing period, please explain why Vectren is not billing or charging the distributed generation customer for the kWh difference between the “total inflow amount” and the “total outflow amount.”

Response:

Please reference the responses to OUCC Q 2.9 and Q 2.10.

IC 8-1-40 caps net metering and replaces the provisions of net metering. What is described in the request reflects the continuation of the current net metering structure. The measurement of outflow in the standard customer meter reflects the difference between what the distributed generation resource produced and what the customer used behind the meter, with the excess (“excess distributed generation”) flowing through the meter to Vectren South’s distribution system, and priced at the Rider EDG Marginal DG Price in accordance with IC 8-1-40-17.

CERTIFICATE OF SERVICE

This is to certify that a copy of the foregoing *Joint Movants' Motion for Summary Judgment and Brief in Support of Motion* has been served upon the following counsel of record in the captioned proceeding by electronic service on September 17, 2020.

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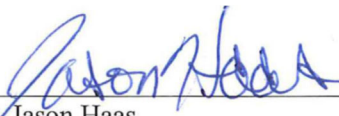
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