IN THE
INDIANA COURT OF APPEALS

CAUSE NO. 20A-EX-01384

SOLARIZE INDIANA, INC.,	)	**Appeal from Indiana Utility Regulatory Commission**
Appellant (Objector below),	)	
v.	)	**30-Day Filing Nos. 50331 & 50332**
SOUTHERN INDIANA GAS AND ELECTRIC COMPANY, dba VECTREN ENERGY DELIVERY OF INDIANA, INC., INDIANA UTILITY REGULATORY COMMISSION and INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR,	)	**Hon. James F. Huston, Chairman** **Hon. Sara E. Freeman,** **Hon. Stefanie Krevda,** **Hon. David Ober,** **Hon. David E. Ziegner, Commissioners**
Appellees (Petitioner, Administrative Agency & Statutory Party below).	)	

BRIEF OF APPELLANT SOLARIZE INDIANA, INC.

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TABLE OF CONTENTS

TABLE OF CONTENTS 2

TABLE OF AUTHORITIES 3

I. STATEMENT OF THE ISSUES 8

II. STATEMENT OF THE CASE 9

III. STATEMENT OF THE FACTS 13

A. Federal Law on Customer-Owned Generation Facilities 13

B. Indiana Law on Customer-Owned Generation Facilities 15

IV. SUMMARY OF ARGUMENT 18

V. ARGUMENT 21

A. The Commission Erroneously Treated the Vectren Filings as Noncontroversial Despite Valid Objections under Applicable Federal Law 22

1. PURPA is applicable law 23

2. Indiana law does not render PURPA inapplicable 26

3. Solarize Indiana raised valid PURPA objections 29

B. The Objections Asserting PURPA Violations Cannot Be Deflected as a Request for Rulemaking 32

C. The Objections to the Vectren Filings Cannot Be Shifted to a Different Proceeding on a Distinct Rate Proposal 34

D. The Reply Submitted by Solarize Indiana Properly Supported the PURPA Objections 36

VI. CONCLUSION 40

WORD COUNT CERTIFICATE

CERTIFICATE OF SERVICE

TABLE OF AUTHORITIES

Cases

Blinzinger v. Americana Healthcare Corp.,
466 N.E. 1371 (Ind. App. 1984) 32

Federal Energy Regulatory Commission v. Mississippi,
456 U.S. 742 (1982) 24-25, 27

Hamilton Southeastern Utilities, Inc. v. Indiana Utility Regulatory Commission,
135 N.E.3d 902 (Ind. App. 2019), transfer denied,
143 N.E.3d 952 (Ind. 2020) 28

Indiana & Michigan Electric Co. v. Public Service Commission,
492 N.E.2d 323 (Ind. App. 1986) 33

McClain v. Review Board,
693 N.E.2d 1314 (Ind. 1998) 21

NIPSCO Industrial Group v. Northern Indiana Public Service Co.,
100 N.E.3d 234 (Ind. 2018) 22

Northern Indiana Public Service Co. v. United States Steel Co.,
907 N.E.2d 1012 (Ind. 2009) 21

Vote Solar v. Montana Dept. of Public Service Regulation,
-- P.3d --, 2020 WL 4931491 (Mont. 2020) 25-26, 27
30, 31

Administrative Decisions and Proceedings

New York State Elec. & Gas Corp.,
1995 WL 216871 (FERC 1995) 30

Windham Solar LLC and Allco Fin. Ltd.,
2016 WL 6921612 (FERC 2016) 30

Complaint of United States Steel Corp., 2010 WL 1502637
(Ind. U.R.C. April 7, 2010) 28

In re Adoption and Promulgation of Rules and Regulations, 1984 WL 994597
(Ind. U.R.C. Oct. 5, 1984) 15, 25

In RE SIGEGO, 30-Day Filing Cause Nos. 50331 & 50332
(Ind. U.R.C. June 24, 2020) . . . . *passim*

Petition of Whiting Clean Energy, Inc., 2019 WL 919187
(Ind. U.R.C. Feb. 20, 2019) 27-28

In Re SIGECO, Cause No. 45378
(Ind. U.R.C. Pending) 17, 20, 34

Constitution, Statutes and Administrative Materials

U.S. CONST. art. VI, cl. 2 . . . . 18, 26

Public Utility Regulatory Policies Act of 1978 (PURPA)
(Codified as amended in Sections of 16 U.S.C.) . . . . *passim*

16 U.S.C. §796(17) 13, 23, 29

16 U.S.C. §§796(17)(C) 13

16 U.S.C. §796(18)(B) 13

16 U.S.C. §824a-3 13

16 U.S.C. §824a-3(a) 13-14, 23

16 U.S.C. §824a-3(a)(2) 23

16 U.S.C. §§824a-3(b) 14, 15, 23

16 U.S.C. §824a-3(b)(2) 31

16 U.S.C. §§824a-3(d) 14, 15, 23
30

16 U.S.C. §824a-3(f) 24

16 U.S.C. §824a-3(f)(1) 14, 24

16 U.S.C. §2611 13

Ind. Code §4-22-2-23(d) 33

Ind. Code §8-1-1.1-1 et seq. 10

Ind. Code §8-1-2-54 . . . . 9, 22

Ind. Code §8-1-2-55 . . . . 9, 22

Ind. Code §8-1-2-56 . . . . 9, 22

Ind. Code §8-1-2-57 . . . . 9, 22

Ind. Code §8-1-2-58 . . . . 9, 22

Ind. Code §8-1-2-59 . . . . 9, 22

Ind. Code §8-1-2-60 . . . . 9, 22

Ind. Code §8-1-2-61 . . . . 9, 22

Ind. Code §8-1-2-115 . . . . 9, 26

Ind. Code ch. 8-1-2.4 . . . . *passim*

Ind. Code §8-1-2.4-1 . . . . 15, 27

Ind. Code §8-1-2.4-2(b)(1) 15

Ind. Code §8-1-2.4-4 15

Ind. Code §8-1-2.4-5 15

Ind. Code §8-1-2.4-6 15

Ind. Code ch. 8-1-40 17

Ind. Code §8-1-40-1 <u>et seq.</u> 35, 36

Ind. Code §8-1-40-3(a)(3)(A) 36

Ind. Code §8-1-40-10 17

Ind. Code §8-1-40-11(b) 17

Ind. Code §8-1-40-15 17

Ind. Code §8-1-40-16 . . . . 17, 35

Ind. Code §8-1-40-17 . . . . 17, 35

18 C.F.R. §292.101(b)(6) 30

18 C.F.R. §292.204 29

18 C.F.R. §292.302(b) 24

18 C.F.R. §292.302(c)(2) 24

18 C.F.R. §292.302(d) 24

18 C.F.R. §292.302(e) 24

18 C.F.R. §292.304 . . . . *passim*

18 C.F.R. §292.304(a)(1)(ii) 31

18 C.F.R. §292.304(b)(3) 24

18 C.F.R. §292.304(d)(1) 30

18 C.F.R. §292.304(d)(2)(i) 30

18 C.F.R. §292.304(d)(2)(ii) 30

18 C.F.R. §292.304(e)(3) 31

18 C.F.R. §292.304(e)(4) 31

18 C.F.R. §292.304(f)(4) 24

18 C.F.R. §292.602(c)(2) 14, 24

170 Ind. Admin. Code §1-1.1-26 9

170 Ind. Admin. Code §1-6-1 et seq. 9

170 Ind. Admin. Code §1-6-1(a) 22

170 Ind. Admin. Code §1-6-1(b) 9, 28, 38

170 Ind. Admin. Code §1-6-1(d) 38

170 Ind. Admin. Code §1-6-1(e) 9, 22, 38

170 Ind. Admin. Code §1-6-1(f) 11

170 Ind. Admin. Code §1-6-7 . . . . 9, 12, 22 37

170 Ind. Admin. Code §1-6-7(b) 9

170 Ind. Admin. Code §1-6-7(b)(2) 29

170 Ind. Admin. Code §1-6-7(b)(2)(A) 27

170 Ind. Admin. Code §1-6-7(b)(2)(A)(i) 22, 26, 28

170 Ind. Admin. Code §1-6-7(c) 9, 37

170 Ind. Admin. Code §1-6-7(d) 9, 22, 37

170 Ind. Admin. Code §1-6-7(e) 37

170 Ind. Admin. Code §1-6-8 11

170 Ind. Admin. Code §1-6-8(c) 38

170 Ind. Admin. Code §4-4-1 15

170 Ind. Admin. Code §4-4.1-1 et seq. . . . . . *passim*

170 Ind. Admin. Code §4-4.1-1 24

170 Ind. Admin. Code §4-4.1-1(q) 16

170 Ind. Admin. Code §4-4.1-4 16

170 Ind. Admin. Code §4-4.1-5 16

170 Ind. Admin. Code §4-4.1-8 16

170 Ind. Admin. Code §4-4.1-9 16

170 Ind. Admin. Code §4-4.1-10 16

170 Ind. Admin. Code §4-4.1-11 16

170 Ind. Admin. Code §4-4.2-1 et seq. 16, 35

170 Ind. Admin. Code §4-4.2-1 16

170 Ind. Admin. Code §4-4.2-1(i) 16

170 Ind. Admin. Code §4-4.2-7 16

FERC Order 69, Regulations Implementing Section 210,
45 Fed. Reg. 12,214 (Feb. 25, 1980) 30

FERC Order 872, Qualifying Facilities Rates and Requirements Implementation Issues,
85 Fed. Reg. 54,638 (Sept. 2, 2020) 14

6 Ind. Reg. 766 (1985) 15

I. STATEMENT OF THE ISSUES

The Indiana Utility Regulatory Commission ("Commission") uses a "30-day filing" process to approve certain utility rate submissions that are noncontroversial. The process includes a step to determine if the filing is actually noncontroversial, by which an interested party may submit an objection asserting a violation of "applicable law," in which case the utility submission is not eligible for summary approval. Here, the utility made two related submissions under the 30-day filing procedure, and an interested party submitted objections alleging violations of federal law. The Commission then granted summary approval, without a hearing, notwithstanding the objections. This appeal raises the following questions:

1. Whether a federal statute and federal regulations governing the rate an electric utility must pay for power produced by a customer using its own generation facilities is "applicable law" for purposes of determining whether a utility filing that seeks approval of such a rate is noncontroversial.

2. Whether a utility rate proposal is subject to summary approval without a hearing, despite objections alleging violations of federal law, on the ground that the objector could instead request a rulemaking that would not remedy the challenged utility filing and that the Commission would not be obligated to undertake.

3. Whether the Commission erred by disregarding objections to a utility rate filing on the ground that some of the asserted concerns could be better addressed in a different proceeding, even though the particular rate filing targeted by the objections would no longer be subject to challenge in the other proceeding.

II. STATEMENT OF THE CASE

The Commission is the agency that regulates public utilities and sets their rates and charges in Indiana. See Ind. Code §8-1-2-115 (providing that Commission "shall have the power, and it shall be its duty, to enforce this chapter, as well as all other laws, relating to public utilities"). In many instances, the Commission adjudicates utility rate disputes in formally docketed proceedings, through an adversarial process similar to civil litigation. See Ind. Code §§8-1-2-54 to -61; 170 Ind. Admin. Code §1-1.1-26. For certain routine or noncontroversial utility rate submissions, however, the Commission utilizes a "30-day filing" process that allows for summary approval without formal proceedings. The 30-day filing process is governed by a Commission regulation, set forth at 170 Ind. Admin. Code §1-6-1 et seq.

The 30-day filing regulation provides that "only noncontroversial filings may be approved under this rule." See 170 Ind. Admin. Code §1-6-1(b). See also id. §1(e) ("The regulatory framework contained in this rule is intended to facilitate expedited consideration of administrative filings that do not require a hearing."). In order to determine whether a utility filing is actually noncontroversial and does not require a hearing, the regulation includes a procedure by which any person or entity may submit a written objection to the 30-day filing prior to approval. Id. §7. The grounds for such an objection may be that the filing violates "applicable law" or a Commission order or rule, that information in the filing is inaccurate, or that the filing is otherwise incomplete or prohibited. Id. §7(b). The utility may submit a response to the objection (id. §7(c)), but if the dispute is unresolved and the filing is not withdrawn by the utility, the filing "shall not be presented to the commission for consideration upon an objection that complies with this section." Id. §7(d). In other words, in the face of an unresolved objection, a

filing is not eligible for summary approval without a hearing through the 30-day filing process, and instead any approval must be sought through a formal proceeding.

This appeal concerns two 30-day filings submitted concurrently by the same utility on related subjects. The utility is Southern Indiana Gas and Electric Company, d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren"), which provides gas and electric service in southwestern Indiana. In the first filing, submitted on February 28, 2020, Vectren sought approval of updated rates for its Rate CSP tariff, specifically establishing the standard prices at which Vectren would purchase electric energy and capacity from eligible cogeneration and alternative energy production facilities. See App. vol. II at 30-55. That filing included proposed revisions to the applicable rates in Vectren's current tariff, as well as documents showing how the proposed rates were calculated. Id.

In the second filing, submitted on March 2, 2020, Vectren sought approval of an alternative Standard Offer and Contract Form, also relating to terms for purchase of energy and capacity under Rate CSP. See App. vol. II at 56-69. The alternative contract arose from a request from a particular customer that was installing solar generation facilities. Id. at 56. A copy of the proposed contract was included with the filing. Id. at 59-65.

Several entities filed objections to both of the Vectren 30-day filings, including both the Office of Utility Consumer Counselor ("OUCC"), which is a state agency that represents the interests of ratepayers in utility proceedings (see Ind. Code §8-1-1.1-1 et seq.), as well as Solarize Indiana, Inc. ("Solarize Indiana"), a not-for-profit organization promoting use of solar power in Indiana. See App. vol. II at 72-74, 80-82, 84-87, 91-113, 147-53. The Solarize Indiana objection, submitted on April 24, 2020, addressed both of

the Vectren filings in the same document. Id. at 91-95. Among other things, Solarize Indiana asserted the Vectren rate proposals failed in multiple respects to comply with the requirements of a federal statute, the Public Utilities Regulatory Policies Act ("PURPA"). Id. at 92 ("Generally speaking, it is SI's position that Vectren's filings are insufficient and incomplete with respect to PURPA compliance in multiple respects."). Solarize Indiana also joined in a specified objection raised by the OUCC as applied to the Vectren filing. Id. at 94 ¶8.

On May 5, 2020, Vectren submitted its response to the objections of Solarize Indiana and two other objectors, addressing both of the 30-day filings in the same document. See App. vol. II at 142-46. Vectren acknowledged (id. at 142) that Solarize Indiana asserted both filings were inconsistent with the requirements of federal law, specifically PURPA, but Vectren argued that there was no showing of a violation of "Indiana law" and that PURPA was inapplicable. Id. at 143-44. Vectren's response to the Solarize Indiana objection also incorporated its earlier separate response to the OUCC objection. Id. at 142 n.1, 76-78.

Solarize Indiana then submitted a reply to Vectren's submission on May 8, 2020. See App. vol. II at 147-53. That reply, again addressing both of the Vectren filings, provided greater detail regarding the requirements of federal law and the respects in which the Vectren rate proposals failed to comply with PURPA. Id.

Pursuant to the regulation governing 30-day filings, the initial review of filings and objections is conducted by one of the Commission's technical divisions, in this case the Energy Division. See 170 Ind. Admin. Code §1-6-1(f). The division summarizes the submissions and recommends approval or disapproval through "utility articles" that are presented to the Commission. Id. §8. In this case, the Technical Divisions submitted

Utility Articles on June 19, 2020, addressing seven distinct 30-day filings, including the two Vectren filings. See App. vol. II at 10-29. The Vectren filings were addressed in Attachments 4 and 5 to that submission. Id. at 21-27.

In both instances, the submission summarized the filings and objections, and included "General Counsel Analysis and Findings" addressing the asserted objections. See App. vol. II at 21-27. In every instance, with respect to Solarize Indiana and all other objectors, the General Counsel comments concluded that the objection was not compliant with §7 of the 30-day filing regulation. Id. at 22-24, 26-27. With regard to Solarize Indiana's assertion of PURPA violations in particular, the General Counsel analysis noted the filings were made pursuant to 170 Ind. Admin. Code 4-4.1 ("Rule 4.1"), which implemented Ind. Code ch. 8-1-2.4, which implemented PURPA, and concluded that absent an alleged violation of Rule 4.1 the objection was not compliant. Id. at 23-24, 26. Both of the Attachments relating to the Vectren filings ended with a Staff Recommendation endorsing the General Counsel analysis and recommending approval of the 30-day filings. Id. at 24, 27.

At a duly noticed Conference on June 24, 2020, the Commission formally issued an Order approving the Utility Articles as submitted. See App. vol. II at 9-29. The June 19, 2020 Utility Articles, including Attachments 4 and 5 relating to the two Vectren filings, were attached to the Order. Id. The Order stated: "There are no controversial filings in the Utility Articles approved today." Id. at 9. The Order approving the Utility Articles, including Attachments 4 and 5, was adopted by formal vote of the five Commissioners, as certified by the Secretary of the Commission. Id.

III. STATEMENT OF THE FACTS

The question presented here is whether the Commission erred by finding the two Vectren 30-day filings were noncontroversial and hence eligible for summary approval without a hearing, and in particular concluding Solarize Indiana's objections based on PURPA did not assert violations of "applicable law." The subject matter of the two filings involved the rates and terms at which Vectren proposed to purchase power from customers using their own generation facilities, such as solar installations. The relevant factual context, accordingly, concerns the regulatory structure applicable to dealings between electric utilities and customers with their own generation facilities.

A. Federal Law on Customer-Owned Generation Facilities

The governing federal statute, PURPA, was enacted in 1978. Its purpose is to encourage conservation of energy supplied by electric utilities, optimal efficiency of facilities and resources used by electric utilities, and equitable rates to consumers. See 16 U.S.C. §2611. A key provision of PURPA promotes development of cogeneration and small power production facilities, which are privately owned generation resources used for self-supply by consumers as an alternative to purchases from electric utilities. See 16 U.S.C. §824a-3. Small power production facilities include solar, wind, waste, or geothermal facilities with a capacity of no more than 80 megawatts (MW). See 16 U.S.C. §796(17). Together with cogeneration facilities that produce both power and thermal output such as steam, the small power production facilities covered by PURPA are referred to as "qualifying facilities" or "QFs." Id. §§796(17)(C), (18)(B).

In order to support such QFs, PURPA imposes affirmative obligations on electric utilities, both to provide electric service needed by the customer to supplement its own generation and to purchase excess power produced but not used by the customer. See

16 U.S.C. §824a-3(a). PURPA authorized the Federal Energy Regulatory Commission ("FERC") to establish rules for those sales and purchases, in consultation with Federal and State regulatory agencies. Id. For purchases of QF power by electric utilities, PURPA requires just and reasonable rates that are non-discriminatory and do not exceed the utility's incremental costs for alternative energy, referred to as the utility's "avoided costs." Id. §§824a-3(b), (d). The applicable FERC regulation governing rates for such purchases is set forth at 18 C.F.R. §292.304.[1]

Insofar as public utilities providing electric service to consumers are generally regulated by state agencies such as the Commission in Indiana, PURPA calls for implementation by the regulatory authorities in each state. Pursuant to 16 U.S.C. §824a-3(f)(1), "each State regulatory authority" was required to implement rules consistent with PURPA "for each electric utility for which it has ratemaking authority." Under PURPA, QFs are generally exempt from regulation under laws applicable to electric utilities, but the FERC regulation defining that exemption specifies that a QF "may not be exempted from State laws and regulations implementing subpart C." See 18 C.F.R. §292.602(c)(2). The referenced subpart C includes §292.304, establishing the requirements for purchases by electric utilities of power produced by QFs. State

[1] After the Commission entered the Order under review, FERC issued an order revising, in certain respects, the standards for utility purchases of QF power. See FERC Order 872, Qualifying Facilities Rates and Requirements Implementation Issues, 85 Fed. Reg. 54,638 (Sept. 2, 2020). That subsequent development while this appeal was pending does not affect the analysis here, because it was not effective while the proceeding below was being decided and formed no part of the Commission's rationale. Nothing in FERC Order 872, in any event, alters the conclusion that PURPA is "applicable law" in this context. Nothing in FERC Order 872, moreover, rehabilitates the Vectren filings, which remain non-compliant with PURPA requirements.

regulatory authorities, in other words, retain responsibility for implementing PURPA requirements with respect to utility purchases of QF power.

B. Indiana Law on Customer-Owned Generation Facilities

As required by PURPA, the Commission established regulations implementing PURPA requirements in 1981. See In re Adoption and Promulgation of Rules and Regulations, 1984 WL 994597 (Ind. U.R.C. Oct. 5, 1984) at *4-5 (reciting history). In 1982, the General Assembly enacted Ind. Code ch. 8-1-2.4 ("Chapter 2.4"), addressing Alternate Energy Production, Cogeneration, and Small Hydro Facilities. The Commission then, in 1984, adopted distinct regulations implementing Chapter 2.4. See 1984 WL 994597 at *5. The regulations implementing Chapter 2.4 are set forth at Rule 4.1. See 170 Ind. Admin. Code §4-4.1-1 et seq. The earlier regulations implementing PURPA, as adopted by the Commission in 1981, were later repealed in 1985. See 6 Ind. Reg. 766 (1985) (repealing 170 Ind. Admin. Code §4-4-1 et seq.).

In Chapter 2.4, the General Assembly adopted an Indiana policy that paralleled PURPA, by encouraging the development of alternate energy production facilities, cogeneration facilities, and small hydro facilities. See Ind. Code §8-1-2.4-1. The categories of encouraged facilities under Chapter 2.4 largely correlate to QFs under PURPA, and explicitly include solar facilities. See Ind. Code §8-1-2.4-2(b)(1). Like PURPA, Chapter 2.4 requires electric utilities in Indiana both to provide back-up or supplemental power and to purchase electricity from facilities within the scope of the statute. See Ind. Code §§8-1-2.4-4 to -6. The provisions addressing the utility's purchase obligation are similar but not identical to the corresponding federal provisions under PURPA. Compare Ind. Code §§8-1-2.4-4 & -6 with 16 U.S.C. §§824a-3(b), (d); 18 C.F.R. §292.304. Chapter 2.4 does not cite PURPA on its face, does not express any

intent to deviate from the requirements of PURPA, and does not purport to supersede any requirements of federal law, including PURPA.

Rule 4.1, the Commission regulation implementing Chapter 2.4, uses the PURPA term "qualifying facilities" to define the eligible facilities. See 170 Ind. Admin. Code §4-4.1-1(q). Rule 4.1 restates the obligation of electric utilities to purchase power from QFs and to sell back-up power and related services to support QFs. Id. §5. The provisions addressing the rates for utility purchases of energy and capacity include specified formulae for computing the purchase rates. Id. §§8, 9. Each electric utility is required to file with the Commission a standard offer for purchase of energy and capacity, along with supporting data, and to update that standard offer with revised computations each year. Id. §§4, 10. Rule 4.1 also requires electric utilities to file standard form contracts relating to the purchase of energy and capacity from QFs. Id. §11.

The Vectren 30-day filing on February 28, 2020 was an update to the standard offer, seeking approval of revised purchase rates. See App. vol. II at 30-55. The other Vectren 30-day filing, submitted on March 2, 2020, was a proposed alternative standard contract. See App. vol. II at 56-69.

A distinct but related regulatory framework under Indiana law involves "net metering" pursuant to Commission regulations adopted in 2004. See 170 Ind. Admin. Code §4-4.2-1 et seq. Those regulations apply to small renewable energy resources, such as solar installations, with a capacity of 1 MW or less that are owned or operated by consumers. Id. §1. Under net metering provisions, the customer is billed by the utility only for the difference between the utility-supplied electricity and the electricity supplied by the customer to the utility. Id. §§1(i), 7. For example, if a customer with a rooftop solar installation delivers excess power to the utility during the day but receives

power from the utility at night, the customer is billed only for the "net" consumption. The effect is to set the price for power purchased by the utility at the same rate as power sold by the utility to the customer.

In 2017, the General Assembly provided for the phase-out of net metering tariffs by enacting Ind. Code ch. 8-1-40. Under that statute, net metering tariffs remain available to customers until July 1, 2022, or the point where the affected load reaches 1.5% of the utility's summer peak, whichever comes first. Id. §10. Except for facilities installed prior to the cut-off, net metering is no longer available after June 30, 2022. Id. §11(b). In lieu of net metering, the statute requires the utility to procure "excess distributed generation" at rates approved by the Commission. Id. §15. A utility petition to establish an initial purchase rate must be filed by March 1, 2021, and then updated annually. Id. §16. The purchase rate prescribed by the statute is based on "the average marginal price of electricity paid by the electricity supplier during the most recent calendar year," multiplied by 1.25. Id. §17. In contrast to net metering, the revised structure establishes a distinct price for utility purchases that is different from the price for utility sales to the customer.

Cause No. 45378, as referenced in the Utility Articles approved in the Order under review here (see App. vol. II at 24, 26), is a pending proceeding in which Vectren is seeking approval of an initial purchase rate for excess distributed generation, pursuant to Ind. Code §§8-1-40-16 & 17. At the time Solarize Indiana submitted its initial objection, the Vectren petition for that proceeding was anticipated but had not yet been filed. Id. at 92 ¶¶4-6. As noted in the Utility Articles, Vectren subsequently did file its petition and Solarize Indiana intervened in that proceeding. Id. at 24, 26.

IV. SUMMARY OF ARGUMENT

This appeal revolves on a central question of law: whether federal law, specifically PURPA, is applicable to the two Vectren rate filings at issue. The ultimate merits of the federal law violations raised by Solarize Indiana are not presented for review at this juncture, because the Commission declined at a threshold stage even to entertain the federal law challenges. Instead, the issue is whether the Commission erred by treating the Vectren filings as noncontroversial on the ground that PURPA is not "applicable law." The applicability of PURPA is a purely legal determination that is subject to independent review by this Court, without deference to the Commission's views.

The 30-day filing process is strictly limited to noncontroversial rate submissions that are appropriate for summary approval without a hearing. A timely objection raising a violation of "applicable law" precludes summary approval under that procedure. Here, PURPA is applicable law. As an act of Congress, PURPA is binding on the states. By its terms, PURPA was designed to be implemented by state regulatory authorities. The subject of the two Vectren filings –the rates and terms for utility purchases of power produced by QFs – falls squarely within the scope of PURPA. The Commission erred as a matter of law by concluding that PURPA was not "applicable" to the question of whether or not Vectren's proposed terms for purchase of QF power are lawful.

The existence of Indiana law relating to the same subject does not render PURPA inapplicable. There is no reverse Supremacy Clause that allows states to displace federal law. PURPA authorizes states to implement its terms through regulation consistent with its provisions, not to amend the requirements of federal law. Nothing in the Indiana statutes purports to negate the standards and mandates of federal law under PURPA, nor could they consistent with principles of federalism. Indeed, the

Commission has recognized the continued applicability of PURPA in other proceedings. It is a false syllogism to suggest that Chapter 2.4 implements PURPA, Rule 4.1 implements Chapter 2.4, hence the absence of a challenge under Rule 4.1 conclusively establishes compliance with PURPA. Solarize Indiana properly raised objections under PURPA, which is applicable law, and therefore the Commission could not treat the Vectren filings as noncontroversial for purposes of summary approval.

While this appeal does not require the Court to decide if the Vectren filings did or did not violate PURPA, Solarize Indiana undeniably raised serious questions of PURPA compliance. PURPA requirements apply to small power production facilities having a capacity of both above and below 1 MW, but Vectren's alternative standard contract sets a minimum threshold of 1 MW. PURPA requires utilities to offer long-term contracts at predetermined prices, but that option was not part of Vectren's standard offer. PURPA requires utilities to purchase QF power at avoided costs, but Vectren failed to include significant cost elements in its computation. PURPA requires non-discriminatory rates, but Vectren's standard offer is far below what it is paying an affiliate for power supplies, and Vectren's alternative proposed contract is preferential and discriminates against facilities having a capacity of less than 1 MW. The Commission, while finding PURPA to be irrelevant, did not suggest the asserted PURPA violations lacked substance.

In addition to erroneously finding PURPA inapplicable, the Commission's Order suggested that Solarize Indiana request a rulemaking instead of objecting to Vectren's filings. The Vectren filings, however, have now been summarily approved despite valid objections; a subsequent rulemaking would not cure those improper approvals. The purpose of the screening process is to limit summary treatment only to 30-day filings that are noncontroversial. If a rate filing requires approval and a valid objection is

raised, the remedy is not a rulemaking. In any event, an objector cannot compel the Commission to conduct a rulemaking, and consequently requiring such a request is an avenue to avoid addressing an asserted violation of law altogether.

Similarly, the Commission's Order suggested that most of Solarize Indiana's underlying concerns could be better addressed in a different proceeding, Cause No. 45378. Again, the contested Vectren filings have now been approved, and those improper approvals would not be subject to relitigation in a subsequent proceeding. Moreover, the effort to shift the debate to another docket by suggesting "[m]ost" of underlying concerns could be addressed there amounts to the Commission looking behind the Solarize Indiana objection to draw inferences about its priorities. The objection asserted violations of PURPA, which is applicable law, and therefore the Vectren filings were not eligible for summary approval as noncontroversial.

Finally, on a procedural point, the Commission's Order suggested the applicable rule did not provide for a reply to be submitted by the objector. In this case Solarize Indiana's initial objection duly asserted non-compliance with PURPA, Vectren's response recognized that PURPA violations were alleged, and the Solarize Indiana reply simply provided additional detail supporting the PURPA challenges already raised. Notably, the Solarize Indiana reply was submitted more than six weeks before the Commission issued its order, contrary to the implication that the expedited process did not accommodate its consideration. Vectren did not object to the reply, the applicable rule does not prohibit a reply, and the comment in the Commission order did not direct it to be stricken. The document is properly part of the record supporting the conclusion that the Commission erred by finding the Vectren filings to be noncontroversial. In any event, the error of law at issue here does not turn on the Solarize Indiana reply. The

initial objection alleged that Vectren's filing violated PURPA and was therefore ineligible for approval as a 30-day filing.

V. ARGUMENT

This appeal raises an issue of law: whether PURPA is "applicable law" in relation to the two Vectren 30-day filings. If PURPA is applicable law, the Commission erred by concluding the Vectren filings were noncontroversial despite the PURPA objections. On appeal, the Court should independently determine that federal requirements governing utility purchases of QF power are indeed applicable to Vectren's proposed rates and terms for purchases of QF power. The applicable standard of review is de novo.

The established framework for judicial review of Commission orders was explained in Northern Indiana Public Service Co. v. United States Steel Co., 907 N.E.2d 1012 (Ind. 2009). At the first level of review, there must be substantial evidence in light of the entire record to support the findings of basic fact. Id. at 1016. At the second level, "the order must contain specific findings on all the factual determinations material to its ultimate conclusions." Id. Ultimate facts are reviewed on a sliding scale of deference, depending on the degree of administrative expertise utilized. Id. Finally, an order is subject to review as "contrary to law," which addresses questions of jurisdiction and conformance with statutory standards and legal principles. Id. "[L]egal propositions are reviewed for their correctness." Id. at 1018 (quoting McClain v. Review Board, 693 N.E.2d 1314, 1318 (Ind. 1998)).

Here, the issue on appeal is a pure question of law. There was no evidence presented below, because the contested ruling in this case concerns the Commission's decision to grant summary approval of the Vectren filings without any hearing. Consequently, the Commission did not engage in any fact-finding, did not make any

evidentiary determinations, and did not exercise any administrative expertise in resolving any factual disputes. Whether federal law is binding in this context, moreover, is not a matter of regulatory discretion or ratemaking policy. The Commission cannot choose whether or not to apply the law. As the Supreme Court explained in NIPSCO Industrial Group v. Northern Indiana Public Service Co., 100 N.E.3d 234 (Ind. 2018), "We review questions of law *de novo*, . . . and accord the administrative tribunal below no deference." Id. at 241 (citation omitted).

A. The Commission Erroneously Treated the Vectren Filings as Noncontroversial Despite Valid Objections under Applicable Federal Law

For utility rate proposals that require regulatory approval, the statutory process for formal Commission proceedings is the authorized mechanism to resolve contested issues. See Ind. Code §§8-1-2-54 to -61. By contrast, the 30-day filing process is reserved for "only noncontroversial filings" that "do not require a hearing." See 170 Ind. Admin. Code §§1-6-1(a), 1(e). The critical threshold determination, then, is whether a 30-day filing is actually "noncontroversial." That is the purpose of the screening process by which interested entities may submit written objections to a 30-day filing, before it is approved. Id. §7. One of the specified grounds for objection is that the filing violates "applicable law." Id. §7(b)(2)(A)(i). If an unresolved objection is raised in compliance with the rule, and the filing is not withdrawn by the utility, the filing "shall not be presented to the commission for consideration." Id. §7(d).

Here, Solarize Indiana submitted written objections asserting violations of federal law, specifically PURPA. See App. vol. II at 91-95, 147-53. The Commission nevertheless granted summary approval of both Vectren filings, stating "[t]here are no

controversial filings in the Utility Articles approved today." Id. at 9. That determination is an error of law and requires reversal.

1. PURPA is applicable law

One of the express purposes of PURPA is to "encourage" the development of non-utility small power production facilities using renewable resources, such as private solar installations. See 16 U.S.C. §§796(17), 824a-3(a). A principal measure to advance that purpose is the "must-buy" obligation, which requires electric utilities like Vectren to purchase power produced by qualifying facilities, or QFs. Id. §824a-3(a)(2). PURPA requires that purchase rates must be just and reasonable, must be non-discriminatory, and must not exceed the utility's avoided costs, which are the incremental costs for alternative energy supplies. Id. §824a-3(b), (d). PURPA authorized FERC to establish rules to govern the required purchase of QF power. Id. §824a-3(a). The FERC standard governing rates for such purchases is set forth at 18 C.F.R. §292.304.

Vectren's two 30-day filings addressed the rates and terms for purchases of QF power. See App. vol. II at 30-55, 56-69. One was a proposed update to the rates under Vectren's Rate CSP, setting the standard prices for purchases by Vectren from eligible cogeneration and alternate energy production facilities, identified in the Vectren tariff as "qualifying facilities," the statutory term used in PURPA. Id. at 30-55; see id. at 33. The other filing was a proposed alternative to Vectren's standard form contract for purchases of QF power, reflecting terms relating to a particular customer installing solar generation facilities. Id. at 56-69; see id. at 56. A provision in that form contract specifies the facility must meet qualifying facility standards under the Commission rules implementing PURPA. Id. at 60 ¶5 (warranting that facility "shall meet the qualifying facility requirements established as of the effective date of this Contract by the

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"). In short, the two Vectren filings sought approval of proposed rates and terms for purchases of QF power, a subject explicitly governed by PURPA.

Under the framework established by PURPA, state regulatory authorities such as the Commission have responsibility to implement the requirements of federal law regarding the utility obligation to purchase QF power. Pursuant to 16 U.S.C. §824a-3(f)(1), "each State regulatory authority" is required to establish rules implementing PURPA "for each electric utility for which it has ratemaking authority." The FERC regulation governing rates for utility purchases of QF power explicitly contemplates certain determinations by a "State regulatory authority." See 18 C.F.R. §§292.304(b)(3), (f)(4). See also id. §§292.302(b), (c)(2), (d), (e) (requiring utilities to submit data relevant to determining avoided costs to the "State regulatory authority"). Pursuant to another FERC regulation (id. §292.602(c)(2)), QFs remain subject to "State laws and regulations implementing subpart C," which includes §292.304 governing rates for utility purchases of QF power.

In Federal Energy Regulatory Commission v. Mississippi, 456 U.S. 742 (1982), the Court rejected a challenge to PURPA as infringing state regulatory authority, and explained the role of state agencies in implementing the federal requirements. The Court stated that 16 U.S.C. §824a-3(f) "requires each state regulatory authority and nonregulated utility to implement FERC's rules." See 456 U.S. at 751. See also id. at 759 (QF provision "has the States enforce standards promulgated by FERC"). PURPA afforded latitude to states only with respect to the process for implementing its terms: "Thus, a state commission may comply with the statutory requirements by issuing

regulations, by resolving disputes on a case-by-case basis, or by taking any other action reasonably designed to give effect to FERC's rules." Id. at 751 (footnote omitted). Noting the Mississippi Commission, like the Commission here, has jurisdiction to entertain claims, the Court found it could satisfy PURPA requirements "simply by opening its doors to claimants." Id. at 760. "Any other conclusion would allow the States to disregard both the preeminent position held by federal law throughout the Nation, . . . and the congressional determination that the federal rights granted by PURPA can appropriately be enforced through state adjudicatory machinery." Id. at 760-61 (citation omitted).

Unquestionably, then, the provisions of PURPA impose responsibility on state agencies regulating electric utilities, such as the Commission in Indiana, to implement the federal law requirements associated with the must-buy obligation. The Commission clearly recognized that role when it established regulations implementing PURPA in 1981 and 1984. See In re Adoption and Promulgation of Rules and Regulations, 1984 WL 994597 (Ind. U.R.C. Oct. 5, 1984) at *2 ("The State of Indiana is not acting to the contrary of the federal law but rather is attempting to comply with the FERC rules for State implementation of PURPA."); id. at *4 ("Congress clearly called upon the states to play a crucial role in implementing the policy embodied in PURPA encouraging the development of cogeneration and small power production."); id. at *5 ("This Commission, in order to comply with PURPA and the regulations adopted by the FERC, adopted and promulgated rules and regulations concerning cogeneration and small power production facilities."). See also Vote Solar v. Montana Dept. of Public Service Regulation, -- P.3d --, 2020 WL 4931491 (Mont. 2020) at *1-3 (describing framework of

PURPA and implementation by State regulatory agencies of the mandatory utility purchases from QFs).

The requirements of federal law, where applicable as in this case, are controlling in state proceedings. See U.S. CONST. art. VI, cl. 2 (federal law is the "supreme Law of the Land"). Under Indiana law, the Commission has authority and the responsibility to apply *all* laws governing the regulation of public utilities. See Ind. Code §8-1-2-115 (Commission "shall have the power, and it shall be its duty, to enforce this chapter, *as well as all other laws*, relating to public utilities") (emphasis added). The requirements of PURPA governing utility purchases of QF power are binding in Indiana, are subject to implementation and enforcement by the Commission, and therefore are "applicable law" for purposes of determining whether a 30-day filing is actually noncontroversial. The Commission, accordingly, erred by treating the PURPA objections raised by Solarize Indiana as immaterial.

2. Indiana law does not render PURPA inapplicable

The regulation on 30-day filings states an objection may be based on a violation of "applicable law," as distinct from "Indiana law." See 170 Ind. Admin. Code §1-6-7(b)(2)(A)(i). In response to Solarize Indiana's objections based on PURPA, however, Vectren argued the objections were deficient because Solarize Indiana did not allege a violation of "Indiana law." See App. vol. II at 143. The Utility Articles approved by the Commission, similarly, stated Solarize Indiana's objection was non-compliant because it did not assert a violation of Rule 4.1, the Commission regulation implementing Chapter 2.4, the Indiana statute implementing PURPA. Id. at 23-24, 26. The theory that only a Rule 4.1 violation could support an objection is contradicted by the grammar of the applicable provision, which clearly states in the disjunctive that an objection may be

based on a violation of "applicable law" *or* "a commission rule." See 170 Ind. Admin. Code §1-6-7(b)(2)(A). The suggestion by both Vectren and the Commission that only a violation of Indiana law or Rule 4.1 in particular can support a valid objection defies the language of the applicable provision.

The existence of Indiana law addressing the same subject as PURPA does not have the effect of displacing or superseding the requirements of federal law. Obviously, there is no reverse Supremacy Clause, permitting individual states to override acts of Congress with their own independent enactments. See FERC v. Mississippi, 456 U.S. at 760-61 (construing PURPA and holding States cannot disregard "the preeminent position held by federal law throughout the Nation"). That is not to say, of course, that Indiana law is ineffective or superfluous, as the General Assembly properly effectuates Indiana policy with state-specific provisions that may complement or add to the coverage of federal law. Indeed, the policy expressed in Chapter 2.4 (see Ind. Code §8-1-2.4-1) is entirely consistent with the objectives of PURPA, and there is no language in the Indiana statute hinting at any intent to modify or abrogate any PURPA requirement. By its plain terms, Chapter 2.4 establishes Indiana law effectuating the same policy advanced by PURPA, without purporting to nullify or revise the federal requirements. Compare Vote Solar, 2020 WL 4931491 at *3, *11-18 (noting State's "mini-PURPA" statute, but reversing State commission decision setting rate for utility purchases from QFs as non-compliant under federal PURPA standards).

Contrary to the rationale here that PURPA is inapplicable, the Commission has recognized the continuing materiality of PURPA in past cases involving QFs. In Petition of Whiting Clean Energy, Inc., 2019 WL 919187 (Ind. U.R.C. Feb. 20, 2019), for example, the Commission cited PURPA and its legislative history as well as Indiana law

to support the conclusion that a QF, notwithstanding sales of power, is not itself subject to regulation as a public utility. See id. at *11-14. In Complaint of United States Steel Corp., 2010 WL 1502637 (Ind. U.R.C. April 7, 2010), similarly, the Commission applied FERC and federal appellate decisions under PURPA, as well as Indiana law, in concluding that a host industrial operation is entitled to receive back-up service even though the QF was owned and operated by a third party. See id. at ¶4(a). The current decision treating PURPA as immaterial or somehow "inapplicable" thus constitutes an unexplained departure from prior Commission orders. See Hamilton Southeastern Utilities, Inc. v. Indiana Utility Regulatory Commission, 135 N.E.3d 902, 908 (Ind. App. 2019), transfer denied, 143 N.E.3d 952 (Ind. 2020) (holding an agency can alter an established standard or policy only if it acknowledges the shift and articulates the reasons for the change).

It is faulty reasoning to suggest, as the Commission did here, that Rule 4.1 implements Chapter 2.4 and Chapter 2.4 implements PURPA, hence the absence of a claimed violation of Rule 4.1 automatically establishes PURPA compliance. See App. vol. II at 23-24, 26. In the face of an asserted violation of federal law, a Commission regulation cannot insulate a utility filing from legal challenge. Solarize Indiana was only required to assert a violation of "applicable law," not to prove that a violation of federal law also violated a Commission rule. See 170 Ind. Admin. Code §1-6-7(b)(2)(A)(i). A 30-day filing is eligible for summary approval only if it is noncontroversial. Id. §1-6-1(b). The Commission cannot disregard an objection based on federal law and find a filing to be noncontroversial, merely because the objector did not also allege the violation of a Commission regulation.

3. **Solarize Indiana raised valid PURPA objections**

The applicable regulation requires only a written "objection" that is "[b]ased on" a violation of "applicable law." See 170 Ind. Admin. Code §1-6-7(b)(2). The objector is not required to establish the merits of the legal challenge conclusively. After all, the purpose of the objection process is to determine whether the 30-day filing is noncontroversial, not to adjudicate the substance of the asserted violations. The relevant question is whether the utility filing is subject to approval without a hearing, not what the outcome would be if a hearing is held. Although Solarize Indiana is not required, at this stage, to demonstrate the violations of PURPA as a matter of law, it is apparent that the objections that were disregarded below did raise valid challenges with substantial support in the law.

First, a small power production facility is a QF within the scope of PURPA so long as it has a capacity of no more than 80 MW, without any minimum threshold. See 16 U.S.C. §796(17); 18 C.F.R. §292.204. The alternative standard contract proposed by Vectren, however, purports to establish a minimum threshold of eligibility at 1 MW. See App. vol. II at 59 (stating facility must have "nameplate production in excess of 1 MW"). The Vectren proposal, therefore, would establish a set of available terms and conditions applicable to one set of QFs, those with a capacity greater than 1 MW, while denying the same terms and conditions to another set of QFs, those with a capacity of less than 1 MW. See id. at 92 ¶¶3-4, 152. That distinction is not consistent with the structure and requirements of PURPA.

Second, the controlling FERC regulation requires that the QF be provided with three alternative pricing structures: (1) energy sold on an "as available" basis at the utility's avoided costs at the time of delivery; (2) sales over a specified period at prices

based on avoided costs at the time of delivery; or (3) sales over a specified period based on predetermined prices that are established at the time of the contract. See 18 C.F.R. §§292.304(d)(1), (d)(2)(i), (d)(2)(ii). The choice of pricing structure is at the option of the QF. Id. As Solarize Indiana noted below, the third option, with predetermined prices established at the outset of the contractual period, provides price certainty over the life of an investment and thus has particular significance in supporting potential financing for renewable generation projects. See App. vol. II at 151.[2] The Vectren standard offer, however, did not include the third option of long-term contracts with predetermined prices. See App. vol. II at 33-51. See also Vote Solar, 2020 WL 4931491 at *17-18 (reversing decision of State commission limiting contracts to 15-year terms due to insufficient evidence of sufficiency to support financing and the economic feasibility of QFs). Solarize Indiana had substantial basis to object, accordingly, that Vectren failed to provide a pricing option required under federal law.

Third, PURPA requires purchase rates set by reference to the utility's avoided costs, defined as the utility's incremental costs for energy "which, but for the purchase from such cogenerator or small power producer, such utility would generate or purchase from another source." See 16 U.S.C. §824a-3(d); 18 C.F.R. §292.101(b)(6). As Solarize

[2] As Solarize Indiana explained, FERC has repeatedly recognized that the availability of long-term sales at predetermined prices is an important option to provide certainty and support for investment. See FERC Order 69, Regulations Implementing Section 210, 45 Fed. Reg. 12,214, 12,224 (Feb. 25, 1980) (explaining the basis for the mandate to offer the option of a long-term contract with prices determined at contract formation); Windham Solar LLC and Allco Fin. Ltd., 2016 WL 6921612 (FERC 2016) at *3 n.11 (adhering to Order 69 and recognizing that price certainty is needed for new investment); New York State Elec. & Gas Corp., 1995 WL 216871 (FERC 1995) at *15 n.39 (citing Order 69 and finding the right to prices set at contract formation is intended to provide developers with needed "certainty with regard to return on investment in new technologies").

Indiana pointed out, however, Vectren did not include significant costs in its calculation, in particular transmission, line loss and emissions costs. See App. vol. II at 93-94, 152. Compare 18 C.F.R. §292.304(e)(3) (computation should reflect the extent to which QF power affects "the ability of the electric utility to avoid costs"); id. (avoided costs may arise from "reduction of fossil fuel use"); id. §(e)(4) ("costs or savings resulting from variations in line losses"). See also Vote Solar, 2020 WL 4931491 at *11-15 (reversing State commission decision setting price for utility purchases for failure to account for carbon costs and inconsistencies in computing avoided costs). Solarize Indiana thus raised a valid objection concerning Vectren's proposed computation of avoided costs.

Fourth, a fundamental PURPA requirement is that purchase rates must be non-discriminatory. See 16 U.S.C. §824a-3(b)(2); 18 C.F.R. §292.304(a)(1)(ii). Here, Solarize Indiana challenged Vectren's proposed prices based on its computation of avoided costs as falling far below the rates currently being paid by Vectren for alternative supplies provided by an affiliated supplier, and hence discriminatory against QFs. See App. vol. II at 94, 152. In addition, Solarize Indiana asserted that the alternative contract form submitted by Vectren for a particular customer with a solar installation was preferential and discriminatory, where comparable terms were not available to other QFs. Id. In that respect as well, the Solarize Indiana objection was firmly supported by federal law requirements.

The Commission, notably, did not make any determination to the effect that the objections raised by Solarize Indiana were lacking in substance, or failed to reflect PURPA requirements. Instead, the Commission concluded the PURPA objections were inapplicable and insufficient to render the Vectren filings controversial. Reversal is required, therefore, because PURPA requirements are applicable to the Vectren filings.

The reversible error cannot be avoided on the theory that Vectren may dispute the substance of the objections raised by Solarize Indiana.

B. The Objections Asserting PURPA Violations Cannot Be Deflected as a Request for Rulemaking

In addition to suggesting that federal law was inapplicable, the Utility Articles approved by the Commission also construed the Solarize Indiana objection as being "about Rule 4.1 itself" and suggested: "SI has the option of submitting a request to the Commission asking for a rulemaking to amend Rule 4.1." See App. vol. II at 24, 26. The effort to divert Solarize Indiana into seeking a rulemaking, however, cannot make the Vectren filings noncontroversial in the face of the PURPA objections.

The status is that the two Vectren filings were approved by the Commission, without a hearing, based on a finding that the filings were noncontroversial, even though Solarize Indiana objected and asserted violations of federal law. Even if the Commission were to undertake a review of Rule 4.1 and consider potential revisions to its regulations concerning QFs, a prospective rulemaking would not provide any remedy for the approvals already granted to the filings that Solarize Indiana challenged as unlawful. The unlawful rates and terms proposed by Vectren would remain in place. See Blinzinger v. Americana Healthcare Corp., 466 N.E. 1371, 1375 (Ind. App. 1984) ("the exercise of administrative rulemaking power looks to the future, whereas an adjudication operates retrospectively upon events which occurred in the past"). The 30-day filing process provides for the assertion of objections to ensure that only noncontroversial submissions are subject to summary approval without a hearing. If a rate filing requires approval and a valid objection is raised, the procedure is not to require a rulemaking while approving the challenged filings anyway.

A request to update Rule 4.1, moreover, would be a matter of discretion for the Commission to consider, not a mechanism to adjudicate legal objections to pending utility rate proposals. The administrative process does not provide interested parties with the right to compel a rulemaking. See Ind. Code §4-22-2-23(d) ("an agency *may* solicit comments from the public on the need for a rule, the drafting of a rule, or any other subject related to a rulemaking action") (emphasis added). Unlike the approval of Vectren's two 30-day filings here, the disposition of a rulemaking request would not be subject to judicial review. See Indiana & Michigan Electric Co. v. Public Service Commission, 492 N.E.2d 323, 327 (Ind. App. 1986) (dismissing appeal from two Commission orders addressing challenges to promulgated rules; "a party who is dissatisfied by the promulgation of particular rules may not seek direct, judicial review of the Commission's exercise of its quasi-legislative function"). Redirecting Solarize Indiana to request a rulemaking, therefore, is effectively an avenue to avoid addressing the legal objections to Vectren's filings altogether.

The Commission correctly understood that Solarize Indiana believes the existing rules relating to QFs are outdated and long overdue for revision. See App. vol. II at 94 ¶7(F). Rule 4.1 remains largely in the form adopted in 1985, without any substantive changes since 1995, notwithstanding important technological advances and major reformation to the electric industry and energy markets since that time. Id. at 93-94. A recognition that Rule 4.1 is in need of an update, however, is not a rationale for refusing to consider the legal objections raised by Solarize Indiana against the Vectren filings. Unambiguously, Solarize Indiana asserted *both* that Rule 4.1 was outdated and in need of revision *and* that the Vectren filings violated PURPA and should not be approved without a hearing. Id. at 91-95, 147-53. Even if the Commission agreed a rulemaking is

appropriate to update Rule 4.1, the Vectren filings could not be summarily approved as noncontroversial in the face of objections asserting violations of applicable law.

C. The Objections to the Vectren Filings Cannot Be Shifted to a Different Proceeding on a Distinct Rate Proposal

The Commission, in the adopted attachments to the Order, stated that "[m]ost of SI's comments and assertions" related to a distinct Vectren proceeding seeking approval of a proposed excess distributed generation ("EDG") rate. See App. vol. II at 24, 26. The Commission noted the Vectren EDG rate proposal had been separately docketed in a proceeding in which Solarize Indiana had intervened, and concluded "that is the appropriate proceeding in which to provide its arguments and supporting evidence for those arguments." Id.[3] As with the rulemaking suggestion, however, the effort to relocate the contested issues to a different proceeding cannot validate the decision to approve the two Vectren 30-day filings as noncontroversial, despite the objections.

In the first place, any potential resolution of PURPA issues in the distinct EDG proceeding would not cure the improper approval of the Vectren 30-day filings on the

[3] In proceedings in the distinct docketed case, a Docket Entry granted Solarize Indiana's request to intervene, but noted "Solarize has also raised PURPA related matters that were not shown to be within the scope of this matter" and admonished that "Solarize shall not unduly broaden the issues." See May 29, 2020 Docket Entry in Cause No. 45378, posted at https://iurc.portal.in.gov. That Docket Entry was later affirmed by the full Commission, with commentary that Solarize Indiana had not yet substantiated the link between Vectren's petition in that case and PURPA. See June 29, 2020 Docket Entry. A separate request by Solarize Indiana to consolidate the EDG proceeding with the two 30-day filings at issue here was also denied, after Vectren argued the legal issues in the 30-day filings had no impact or bearing on the legal issues underlying the EDG proceeding. See June 26, 2020 Docket Entry. That Docket Entry also noted the 30-day filings had already been approved and were no longer pending. Id. Those Docket Entries in the distinct EDG proceeding are not part of the appeal record in this case, but have material significance in connection with the Commission determination here that the EDG proceeding "is the appropriate proceeding in which to provide [Solarize Indiana's] arguments and supporting evidence for those arguments." See App. vol. II at 24, 26.

fiction that they were noncontroversial. The other proceeding involves a rate proposal under Ind. Code §§8-1-40-16 & 17, which addresses the phase-out of net metering under 170 Ind. Admin. Code §4-4.2-1 et seq. The lawfulness of Vectren's 30-day filings under Rule 4.1 are not the subject of that proceeding, and consequently the disposition of that distinct cause would not remedy the summary approval already granted in the Order at issue here. The suggestion that Solarize Indiana raise objections in the EDG proceeding cannot justify a refusal to address the objections raised to the 30-day filings.

Furthermore, the perception that "[m]ost" of Solarize Indiana's assertions relate to Vectren's EDG rate proposal (see App. vol. II at 24, 26) amounts, in essence, to an attempt to look behind the written objections and make inferences about Solarize Indiana's primary concerns. Solarize Indiana certainly did have concerns about Vectren's EDG rate proposal and intervened in the docketed case to assert its interests, but the written objections here also challenged the two 30-day filings as non-compliant with PURPA requirements. Id. at 91-95, 147-53. Suggesting that Solarize Indiana litigate legal challenges in a different proceeding does not make the 30-day filings noncontroversial for purposes of summary approval.

To be clear, the two Vectren 30-day filings were made pursuant to Rule 4.1, the Commission regulations implementing Chapter 2.4. See App. vol. II at 30, 56; id. at 33-51, 59-65. The subject matter relates to proposed rates and terms for Vectren purchases of QF power under an existing schedule in its electric tariff, Rate CSP. Id. By contrast, the EDG proceeding concerns the proposed creation of a new tariff schedule, Rider EDG. Id. at 110-13. That proposal relates to a distinct statutory framework, Ind. Code §8-1-40-1 et seq., which supersedes the Commission's net metering rules at 170 Ind. Admin Code §4-4.2-1 et seq. The phase-out of net metering under that distinct statute is

specific to small renewable energy resources with a capacity of 1 MW or less. See Ind. Code §8-1-40-3(a)(3)(A). Vectren's existing Rate CSP, on the other hand, applies to QFs with a capacity of more than 1 MW. Both categories are QFs under PURPA, but proposed Rider EDG is limited to small facilities with a capacity of 1 MW or less while existing Rate CSP applies to larger facilities. See App. vol. II at 92-93. In short, the PURPA objections are applicable in both contexts, but the EDG proceeding under Ind. Code §8-1-40-1 et seq. is not an effective vehicle to resolve the legal challenges to the Vectren 30-day filings under Rule 4.1 and Chapter 2.4.

D. The Reply Submitted by Solarize Indiana Properly Supported the PURPA Objections

On a final procedural point, the Utility Articles concerning the Vectren filings, as approved by the Commission, included a comment to the effect that the rule on 30-day filings does not provide for the submission of a reply by an objector. See App. vol. II at 23, 26. The comment further noted the 30-day filing rule provides for a shortened administrative process with a shorter timeframe, and therefore an objector should provide a statement articulating the basis for the objection in the initial submission. Id. After Vectren responded to the Solarize Indiana objection, recognizing that PURPA violations were being asserted (id. at 142-44), Solarize Indiana submitted a reply addressing Vectren's arguments and providing additional support for the PURPA objections. Id. at 147-53. That reply was submitted below on a timely basis, supported the objections raised in the initial submission, is properly part of the appeal record, and substantiates the Commission's error in finding the Vectren filings noncontroversial for purposes of summary approval.

While the comment noted that the rule on objections to 30-day filings does not expressly provide for submission of a reply (see App. vol. II at 23, 26), it does not follow that replies are prohibited. The rule does not state that no reply may be submitted, or that no further communications are allowed once an objection has been asserted. See 170 Ind. Admin. Code §1-6-7. To the contrary, the rule contemplates continued efforts to address an objection, by providing that a 30-day filing can be withdrawn at any point before it is presented to the Commission for approval (id. §7(c)) and that presentation to the Commission should occur only if the objection is not "resolved to the satisfaction of" the "objector" as well as the utility, the OUCC and the Commission division (id. §7(d)). When Vectren offered its views in a written response, then, Solarize Indiana properly explained why Vectren's arguments did not resolve the objections to the satisfaction of the objector, for purposes of §7(d). The reply could have persuaded Vectren to withdraw the filings in accordance with §7(c), though Vectren chose not to do so.

The reference in the comment to the shortened timeframe for review of 30-day filings, moreover, does not suggest the expedited process did not accommodate consideration of the Solarize Indiana reply here. Solarize Indiana made that submission on May 8, 2020, three days after Vectren submitted its response. See App. vol. II at 142-46, 147-53. The Utility Articles addressing the Vectren filings were not presented to the Commission until June 19, 2020, and were not approved by the Commission until June 24, 2020. Id. at 10, 9. The Vectren filings, in other words were not considered by the Commission until a full six weeks had passed after Solarize Indiana made its May 8th submission. The 30-day filing rule provides that a timely objection may be made at any point up to three days before Commission approval. 170 Ind. Admin. Code §1-6-7(e). In this case, not counting weekend days, that deadline was June 19th. Whether treated as a

reply or a clarified objection, the Solarize Indiana submission on May 8th was made on a timely basis and the Commission had ample time in the subsequent six weeks to consider it within the framework of the 30-day filing process. [4]

In the proceedings below, notably, Vectren did not make any objection to Solarize Indiana's May 8th submission, did not argue the reply was untimely or impermissible, and did not request that the submission be stricken or disregarded. While commenting that the rule did not provide for submission of a reply, the Utility Articles approved by the Commission did not strike the May 8th submission or state that it could not be considered. On its face, the comment is tantamount to an admonition that an objector should articulate the basis for an objection in the initial submission. In any event, the May 8th submission is unquestionably a part of the record for purposes of this appeal and is properly considered by this Court in determining whether the Commission erred by finding the Vectren filings to be noncontroversial.

Finally, the erection of procedural perils in asserting objections to 30-day filings undermines the function of that process: to determine whether or not a filing is actually noncontroversial and subject to summary approval without a hearing. See 170 Ind. Admin. Code §1-6-1(b) ("only noncontroversial filings may be approved under this rule"); id. §1(e) ("this rule is intended to facilitate expedited consideration of administrative filings that do not require a hearing"). The initial Solarize Indiana objection was clear in asserting the Vectren filings did not comply with PURPA

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[4] A 30-day filing, as the name indicates, may be presented for Commission approval at any point starting 30 days after the date of submission. See 170 Ind. Admin. Code §§1-6-1(d), 8(c). The 42 days that elapsed between Solarize Indiana's May 8th submission and the presentation to the Commission on June 19th, therefore, exceeded the total period contemplated by the rule for the entire 30-day filing process.

requirements. See App. vol. II at 92 ("Generally speaking, it is SI's position that Vectren's filings are insufficient and incomplete with respect to PURPA compliance in multiple respects."); id. at 93-94 ¶¶7(E)(2), 7(E)(3), 7(G) (noting instances of non-compliance with PURPA). The May 8th submission should not have been needed to find the Vectren filings controversial. The Solarize Indiana reply properly substantiated the objections already raised.

The Commission nevertheless granted summary approval to the Vectren filings, without a hearing, notwithstanding the objections, based on a finding that the relief sought by Vectren was noncontroversial. The purpose of the objection process is to identify disputes, not to adjudicate the merits. The perspective that an objection must support a legal challenge with a high standard of particularity, and must do so in the initial submission without opportunity to address the utility's responsive arguments and with any further support for the objection being prohibited, cannot be squared with the fundamental principle that summary approval without a hearing is only available to filings that are noncontroversial. On this record, the Commission could not pretend the Vectren filings were eligible for summary approval as noncontroversial.

VI. CONCLUSION

The Commission erred by granting summary approval to the two Vectren 30-day filings, without a hearing, based on a finding that the filings were noncontroversial. The Solarize Indiana objection based on PURPA requirements properly asserted violations of applicable law. The portion of the Order approving the two Vectren filings, therefore, should be reversed.

Respectfully submitted,

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WORD COUNT CERTIFICATE

The undersigned counsel hereby verifies, in accordance with Ind. Appellate Rules 44 and 46, that except for those portions of the brief excluded from the word count, the foregoing *Brief of Appellant Solarize Indiana, Inc.* contains 9,688 words as calculated by the word count function of the word processing software used to prepare the Brief.

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CERTIFICATE OF SERVICE

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