IN THE

INDIANA SUPREME COURT

No. _____

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR, *et al.*,	**Court of Appeals No. 21A-EX-821**
Appellants (Statutory Party and Intervenors Below),	**Appeal from the Indiana Utility Regulatory Commission**
	IURC No. 45378
v.	
	The Hon. James F. Huston, Chair
	The Hon. Sarah E. Freeman,
SOUTHERN INDIANA GAS AND ELECTRIC COMPANY and INDIANA UTILITY REGULATORY COMMISSION,	**The Hon. Stefanie N. Krevda, The Hon. David L. Ober and The Hon. David E. Ziegner, Commissioners**
Appellees (Petitioner and Administrative Agency Below).	**The Hon. Carol Sparks Drake, Senior Administrative Law Judge**

PETITION TO TRANSFER OF APPELLEE SOUTHERN INDIANA GAS AND ELECTRIC COMPANY

Steven W. Krohne [# 20969-49]
Jenny R. Buchheit [# 26653-49]
ICE MILLER LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282
Telephone: (317) 236-2100

P. Jason Stephenson [# 21839-49]
Heather Watts [# 35482-82]
CENTERPOINT ENERGY
211 NW Riverside Drive
Evansville, Indiana 47708
Telephone: (812) 491-5119

Peter J. Rusthoven [# 6247-98]
Nicholas K. Kile [# 15203-53]
Hillary J. Close [# 25104-49]
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Telephone: (317) 236-1313

Counsel for Appellee
Southern Indiana Gas and Electric Company

QUESTIONS PRESENTED ON TRANSFER

The questions presented arise from disagreement between an appellate panel and the Indiana Utility Regulatory Commission on implementing highly technical legislation with major impact on Hoosier electric utilities and their customers.

The 2017 Distributed Generation Statute changes how electric utilities credit customers with "distributed generation" or DG resources (*e.g.,* solar panels) for "excess" distributed generation or EDG (self-generated electricity customers don't use). "Net metering," created by IURC rule, measured EDG once a month and credited it at retail rates. The DG Statute sunsets net metering, replacing retail credit with one based on utility wholesale electricity cost, and no rule on when EDG is measured.

Appellee Vectren petitioned the IURC (as have other utilities) for a wholesale-based EDG credit, with EDG measured by meters that "instantaneously" net the difference between electricity "supplied" by Vectren and "supplied back" by DG customers. The IURC found this fit the statutory EDG definition.

The panel below rejected the IURC's finding, believing instantaneous netting doesn't measure EDG as statutorily defined. It also held EDG must still be determined monthly, as it was under the old net metering system, saying "we defer to the monthly billing [measuring] period previously selected by our Legislature" (which in fact was set by IURC rule). *Ind. Office of Util. Consumer Counselor v. S. Ind. Gas & Elec. Co.*, — N.E.3d —, 2022 WL 260015 (Ind. Ct. App. Jan. 28, 2022) [Decision]. The Decision's effect is that EDG is credited at retail rates, just as under net metering, despite the Legislature's replacing that system with a wholesale-based credit.

The questions presented are:

(1) In finding that instantaneous netting doesn't measure EDG as defined by the DG Statute, did the Decision conflict with this Court's decisions (*e.g.*, *Ind. Office of Util. Consumer Counselor v. Duke Energy Ind., LLC*, — N.E.3d —, 2022 WL 713351 (Ind. Mar. 10, 2022)), by (a) disregarding substantial evidence supporting the IURC's contrary finding, and (b) substituting the panel's judgment for the agency's on a technical subject within the Commission's expertise?

(2) Did the Decision's reading of the DG Statute conflict with this Court's decisions (*e.g.*, *Anderson v. Gaudin*, 42 N.E.3d 82 (Ind. 2015)), by (a) rendering the Statute's new, wholesale-based EDG credit all-but meaningless, and (b) yielding the illogical result that the Statute, which sunsets net metering, requires EDG to be measured and credited just as it was under net metering?

(3) Even if the panel's view were a possible reading of the DG Statute, did the Decision conflict with this Court's decisions (*e.g.*, *Moriarity v. Ind. Dep't of Nat. Res.*, 113 N.E.3d 614 (Ind. 2019)), by holding that the different reading by the expert agency charged with administering the Statute was not even reasonable?

(4) Did the Decision—which also has major impact on other electric utilities and their millions of Hoosier customers—decide an important question of law, in a case of great importance, that should be decided by this Court?

TABLE OF CONTENTS

Page

TABLE OF AUTHORITIES

Page(s)

Cases

Statutes

Page(s)

Statutes (cont'd)

Regulations

Rule of Procedure

Administrative Agency Case

BACKGROUND AND PRIOR TREATMENT OF ISSUES ON TRANSFER

This disagreement between the Indiana Utility Regulatory Commission and the panel below involves the 2017 Distributed Generation Statute, IND. CODE §§ 8-1-40-1 *et seq.* (DG Statute). The DG Statute changes how electric utilities "credit" customers for "excess" distributed generation or EDG (self-generated electricity customers don't use). It specifically sunsets the prior retail-rate EDG credit, created by a 2004 IURC rule, replacing it with a lower, wholesale-based credit.

Petitioner here—Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. (Vectren)—asked the IURC to approve a wholesale-based EDG credit. The IURC did so, finding that Vectren's modern, "instantaneous" meters measure EDG as defined by the DG Statute.

The Decision disagreed. It believed IURC's findings on instantaneous metering technology didn't comport with the panel's view of the statutory EDG definition.

The Decision's effect is that customer EDG remains credited at retail rates—just as under the 2004 IURC rule—despite the DG Statute replacing this with wholesale-based crediting. This has huge impact on Indiana's five investor-owned electric utilities and their millions of Hoosier customers.[1]

---

[1] IURC orders approving DG Statute EDG credits for three other public utilities are on appeal. *Ind. Office of Util. Consumer Counselor v. N. Ind. Pub. Serv. Co.,* No. 22A-EX-115 (Ind. Ct. App.) (filed Jan. 14, 2022); *Ind. Office of Util. Consumer Counselor v. Ind. Mich. Power Co.,* No. 22A-EX-389 (Ind. Ct. App.) (filed Feb. 22, 2022); *Ind. Office of Util. Consumer Counselor v. Indianapolis Power & Light Co.,* No. 22A-EX-378 (Ind. Ct. App.) (filed Feb. 22, 2022). The remaining utility's EDG credit request is pending before the IURC. *Petition of Duke Energy Ind., LLC*, No. 45508 (Ind. Util. Regulatory Comm'n) (filed Mar. 1, 2021).

Underlying Policy Issues

The background starts with use of distributed generation or DG resources, typically solar panels, by customers who can afford them. When solar panels produce little or no energy (*e.g.*, overcast days, nighttime), such customers get most or all their electricity from the utility. But on sunny days, these customers may not use all solar-panel electricity, yielding "excess" distributed generation or EDG.

The policy issues are whether and, if so, how customers should get credit for EDG sent to utilities. Customers with solar panels want higher credit. So do others who favor subsidizing "green" energy, which incentivizes solar-panel purchases by those with money for it.

"Subsidizing" is the right word for two reasons. First, EDG may have no value to utilities required to credit it. Electric utilities must plan for anticipated demand, including *via* advance purchases from wholesale grids. Utilities often have no use for solar-panel EDG. *See* Exhibits Vol. I 93-96; Ind. Elec. Ass'n Trans. *Amicus* Br. 5.

"Subsidizing" is also correct because costs of crediting EDG customers are borne by someone else. But that "someone" isn't the utility. Utility costs for crediting EDG that isn't needed factor into rates for *all* customers, including many without money for solar panels. In urging higher EDG crediting, appellants support interests of some ratepayers—those who can afford solar panels—in being subsidized by those who cannot. *See* Appellant's Appendix Vol. II (App. II) 25, 38, 40, 53. This includes the appellant Indiana Office of Utility Consumer Counselor, charged with representing interests of all "ratepayers and consumers." I.C. § 8-1-1.1-5.1(e).

The "Net Metering" Retail Credit

In Indiana, EDG crediting started with the IURC's 2004 Net Metering Rule, 170 IND. ADMIN. CODE 4-4.2-1 *et seq*. Under net metering, customer EDG was subtracted from utility-supplied retail service electricity, with customers billed for the net difference over the monthly billing period. 170 I.A.C. 4-4.2-7. The difference was measured *via* meters that spun "forward" to record utility-supplied electricity, and "backward" to subtract EDG. If monthly EDG exceeded utility-supplied electricity, the customer owed nothing, and the excess carried over for credit on future bills. *Id.*

Thus, net metering credited EDG at utility retail rates. Utilities had to "buy" EDG at retail—higher than wholesale cost—even if they couldn't use it. Customers without solar panels bore costs for retail-rate crediting of DG customers. App. II 53; *see* IURC Trans. Pet. 10.

The Legislature's New Wholesale-Based Credit

Over time, solar panel costs declined and solar power use increased. Also, modern "smart" meters were developed that continuously net, over fractional-second intervals, the difference between electricity being supplied by utilities and supplied back by DG customers. When utility-supplied electricity exceeds customer-supplied electricity, bidirectional smart meters record "inflow"; when the opposite is true, smart meters record "outflow." *See, e.g.*, App. II 24.

The Legislature responded with the 2017 DG Statute. This replaced net metering's retail credit with a lower EDG credit of 125% of a utility's wholesale electricity cost. I.C. § 8-1-40-17.

The DG Statute sunsets net metering; grandfathers its use during sunset; and details how and when utilities petition the IURC to implement wholesale-based EDG credit. *See* I.C. §§ 8-1-40-10 to -19. Here, the dispute involves how EDG is measured under Section 5 of the Statute (I.C. § 8-1-40-5), which defines "excess distributed generation" as "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."

One issue is whether instantaneous netting *via* smart meters measures the Section 5 "difference." A related issue—on which the Statute is silent—is how frequently the difference is measured. The superseded net metering rule (170 I.A.C. 4-4.2-7) measured EDG "during the [monthly] billing period" and in accordance with then "normal metering practices"—*i.e.*, meters that spun "forward" to record utility-supplied electricity, and "backward" to subtract EDG, yielding retail-rate credit. But as the IURC found, that's not what today's instantaneous meters do.

The IURC Findings

Modern, bidirectional smart meters constantly net the difference between utility- and customer-supplied electricity, recording the difference as "inflow" when utility-supplied electricity is greater and "outflow" when customer-supplied electricity is greater. The "outflow" reading *is* the "difference" between electricity "supplied by" the utility [Section 5(1)] and "supplied back" by the customer [Section 5(2)], whenever the latter exceeds the former.

Ergo, the IURC found that netting "the difference between the electricity [Vectren] is supplying and the electricity the customer is supplying to [Vectren]"—which is what Vectren's smart meters do—"properly measures EDG under Section 5." App. II 50. The IURC credited "substantial evidence" supporting its finding, including:

- "'The net of the electricity supplied by [Vectren] to the customer and the electricity supplied back to [Vectren] is captured as "Outflow" on the customer's meter.'" App. II 49 (quoting Vectren witness Matthew Rice).
- "Rice was unequivocal in explaining that the meter registers as outflow the net of both components of EDG in accordance with Section 5." *Id.* 50.
- "'*The "difference" as specified in IC § 8-2-40-5 is the Outflow measurement on the meter.*'" *Id.* (quoting evidence; IURC emphasis).

The IURC rejected OUCC's theory that since "electricity only flows one way," the "outflow, as registered on the meter, is not actually the difference between electricity supplied to the customer by [Vectren] and electricity supplied to [Vectren] by the customer." *Id.* 51. In fact, as the IURC found, it's "*because* [electricity] can only flow one way" that "to become outflow, *both* components of Section 5 are *netted* at the meter to arrive at EDG." *Id.* (emphasis added).

The IURC also rejected appellants' view that the Statute required "monthly" rather than "instantaneous" netting to calculate EDG. "[M]onthly or billing period netting" would over-value "EDG beyond what the statute directs." *Id.* "The result would, essentially, be a continuation of net metering," by "continuing to provide" customers EDG credit at "the retail rate." *Id.* "Only at the end of the monthly netting

period would excess energy returned to the grid by the distributed generator be valued at the [Statute's wholesale-based] EDG rate." *Id.*

In the Commission's cogent summary: "We do not believe the General Assembly enacted the Distributed Generation Statute to sunset net metering and replace it with a construct that achieves a similar outcome." *Id.*

The Decision's Contrary Analysis

The Decision said it didn't question IURC "factual findings," but was reviewing "a question of law" on whether calculating EDG *via* instantaneous netting fits Section 5's definition. 2022 WL 260015, *3. But the Decision's holding that the IURC erred didn't address the supporting evidence and IURC analysis just summarized.

The panel instead focused on parts of Rice's testimony that conceptualized netting as "'consumption and production of energy being balanced behind the meter at any given instant,'" yielding "'either an inflow of power or an outflow of power.'" *Id.,* *4. Viewing this "behind the meter" imagery through the lens of its own understanding of electrical science and technology, the panel found the picture didn't fit with its perception of when electricity is "supplied." In the panel's view, "[r]econciliation of competing energies" behind the meter "to determine which direction energy will flow is not a measure of energy 'supplied' from or to the electrical supplier," but only "a predicate step." *Id.* "Neither component can be energy 'supplied' [under Section 5] when it is yet to be determined which direction energy will flow." *Id.*

The panel also faulted the IURC for viewing only "outflow" as EDG. Because Section 5 defines EDG as the "difference" between utility- and customer-supplied

electricity, the panel believed the "difference" had to be EDG even when the utility was supplying *more* electricity than the customer. In the panel's view, because Vectren's EDG credit "is tied only to outflow" (*i.e.*, when customer-supplied electricity exceeds utility-supplied electricity), the "result of comparing competing forces 'behind the meter' is simply ignored in a determination of credit if those forces result in inflow" (*i.e.*, when utility-supplied electricity exceeds customer-supplied electricity). *Id.*, *5. This, said the panel, "render[s] one portion of [Section 5] superfluous." *Id.*

The panel then directed that EDG must still be measured on a monthly basis, as it was under the sunsetted, retail-credit net metering system. While saying "our Legislature clearly expressed its intent to end" net metering, the panel believed "there is no clearly expressed intent to end every definitional and procedural vestige of net metering." *Id.* "Absent enactment of a new regulation to determine the period to which credit calculation will apply, we defer to the monthly billing [measuring] period previously selected by our Legislature." *Id.*

As shown *supra*, monthly measurement was actually selected by the IURC in its Net Metering Rule. As shown *infra*, the panel's view of the DG Statute leaves net metering's retail-rate EDG credit in place despite the Statute's sunset of net metering—rendering the Statute's new wholesale-based credit all-but meaningless.

ARGUMENT

Standards for Judicial Review of IURC Orders

Review of IURC orders is deferential. This is especially so on matters within the agency's "technical expertise," the reason the General Assembly created the Commission "to administer the regulatory scheme devised by the legislature." *N. Ind. Pub. Serv. Co. v. U.S. Steel Corp.*, 907 N.E.2d 1012, 1015 (Ind. 2009) [*NIPSCO*].

Courts "apply three levels of review to an administrative ruling." *Ind. Office of Util. Consumer Counselor v. Duke Energy Ind., LLC*, — N.E.3d —, 2022 WL 713351, *2 (Ind. Mar. 10, 2022). "First, we uphold findings of fact supported by substantial evidence, which the court does not reweigh." *Id.* An order stands "unless no substantial evidence supports it"; and a court "considers only the evidence most favorable to the [agency]'s findings.'" *NIPSCO*, 907 N.E.2d at 1016 (citation omitted).

"Second, we 'review the conclusions of ultimate facts, or mixed questions of fact and law, for their reasonableness, with greater deference to matters within the [commission]'s expertise and jurisdiction.'" *Duke Energy*, 2022 WL 713351, *2 (quoting *Ind. Gas Co. v. Ind. Fin. Auth.*, 999 N.E.2d 63, 66 (Ind. 2013)). "When it comes to technical expertise, the commission is entitled to great deference, and we will not substitute our judgment for its." *Id.*, *3.

"Third, we determine whether the commission's decision is contrary to law." *Id.*, *2. This "asks 'whether the Commission stayed within its jurisdiction and conformed to the statutory standards and legal principles involved in producing its decision, ruling, or order.'" *Id.* (quoting *Indiana Gas*, 999 N.E.2d at 66).

Deference may extend to IURC reading of utility statutes. Courts ordinarily review "statutory construction *de novo*"; but they "defer to an agency's reasonable interpretation" of statutes it enforces "even over an equally reasonable [alternative] interpretation." *Chrysler Grp., LLC v. Review Bd. of Ind. Dep't of Workforce Dev.*, 960 N.E.2d 118, 124 (Ind. 2012). "If the agency's interpretation is reasonable, we stop our analysis and need not move forward with any other proposed interpretation." *Moriarity v. Ind. Dep't of Nat. Res.*, 113 N.E.3d 614, 619 (Ind. 2019) (cleaned up).

Familiar statutory interpretation rules apply. If a statute permits different readings, the "primary goal is to determine, give effect to, and implement the intent of the Legislature with well-established rules of statutory construction." *Anderson v. Gaudin*, 42 N.E.3d 82, 85 (Ind. 2015). One rule is that the Legislature didn't intend its language "'to be applied illogically or to bring about an unjust or absurd result.'" *Id.* (citation omitted). If literal reading "imposes an outcome that no reasonable person could intend," the court will "give a statute 'its obvious intended effect despite its plain text.'" *Estabrook v. Mazar Corp.*, 140 N.E.3d 830, 836 (Ind. 2020) (quoting *R.R. v. State*, 106 N.E.3d 1037, 1042 (Ind. 2018)). Courts "'avoid an interpretation that renders any part of the statute meaningless or superfluous.'" *ESPN, Inc. v. Univ. of Notre Dame Police Dep't*, 62 N.E.3d 1192, 1199 (Ind. 2016) (citation omitted).

The Decision didn't follow this Court's directions on judicial review. The panel outcome displaces the IURC's expertise on the technical issues involved. It also yields the opposite of the Legislature's plain intent.

I. The Decision Disregards Supporting Evidence And IURC Expertise.

While saying it didn't question IURC "factual findings," the panel's analysis of what it called a "question of law" rested on its own perceptions of electrical science and metering technology, which differed from the expert agency's.

This was wrong,

(1) Calling EDG calculation merely a "question of law" is mistaken and misleading. One can't answer whether calculating EDG *via in*stantaneous metering fits the statutory definition without understanding what smart meters in fact *do*. On that inherently factual, highly technical inquiry, a reviewing court "considers only the evidence most favorable" to IURC findings, which it upholds unless "no substantial evidence supports" them. *NIPSCO*, 907 N.E.2d at 1016

The IURC found that measuring the difference between electricity "supplied by" a utility and "supplied back" by a customer—the statutory EDG factors—is indeed what Vectren's meters do, with net difference shown as the meter's "outflow" reading. The agency order included detailed technical explanation, supporting evidence, and refutation of appellants' contrary view. *See supra* at 10-12; App. II 49-51. The IURC's findings are supported by the evidence "most favorable" to them—the "only" evidence a reviewing court considers.

(2) The Decision focused instead on testimony it believed didn't support the findings—to wit, locution conceptualizing net metering as "behind the meter" balancing of "competing energies" or "forces." The panel viewed this imagery through the prism of its perception of the pertinent science, and concluded that it understood—

and the IURC did not—whether smart meters measure the "difference" between electricity "supplied" and "supplied back." In the panel's understanding, electricity isn't "supplied" by a utility or a customer until after different electrical forces are "netted" and one knows the "direction" of "flow" of the greater force. To the panel, this meant a bidirectional meter's "outflow" reading couldn't be the "difference" between utility- and customer-supplied electricity under Section 5, but only a "predicate step" showing one of EDG's two statutory components. Decision, 2022 WL 260015, *4,

Well. Perhaps that's one way to visualize things. But the agency with the special competence and expertise to administer the DG Statute saw the science and technology differently. The IURC understood that utilities and customers were each "supplying" electricity, with bidirectional meters continuously netting the "difference" and registering it as "inflow" or "outflow." This comports with Section 5's EDG definition. As shown *infra* in Part II it also furthers the DG Statue's plain intent.

Few people reading the order, evidence, and literature on technologies to calculate and credit EDG would call these easy concepts to wrap one's head around. One can't fault those who aren't experts for finding some concepts—including how smart meters function—difficult to follow, possibly striking some as counter-intuitive.

But that's *why* this Court requires limited, deferential review of IURC findings on matters committed to agency expertise. Science and technology are often counter-intuitive. Light is massless but bent by gravity; time itself is relative. The issues here aren't nearly as mind-numbing as relativity. But they're plenty hard enough for non-experts to grasp. "When it comes to technical expertise," this Court "will not

substitute our judgment for [the Commission's]." *Duke Energy* 2022 WL 713351, *3. The Court of Appeals shouldn't have done so here.

II. The Decision's Reading Defeats The DG Statute's Plain Intent.

If statutory language can be read in different ways, the "primary goal is to determine, give effect to, and implement the intent of the Legislature with well-established rules of statutory construction." *Anderson*, 42 N.E.3d at 85. The technology here may easily elude a non-expert's grasp. But the DG Statute's intent is clear—replacing net metering's retail-rate EDG credit with wholesale-based credit. The IURC reading furthers that plain intent. The Decision's reading defeats it.

(1) After rejecting the IURC's instantaneous meter findings, the panel directed that EDG must still be measured on a monthly basis, as under net metering. Though the "Legislature clearly expressed its intent to end" net metering, the Decision found "no clearly expressed intent to end every definitional and procedural vestige of net metering." 2022 WL 260015, *5. The panel said it would "defer to the monthly billing [measuring] period previously selected by our Legislature." *Id.*

This is incorrect. The Legislature never "selected" monthly measurement. The IURC did, in its former Net Metering Rule. 170 I.A.C. 4-4.2-7. The DG Statute says nothing on how frequently EDG should be measured. It's the Decision, not the Statute, that directs continued use of net metering's monthly measurement— despite the IURC's finding that continuous, instantaneous netting is appropriate in implementing the Statute's new wholesale-based credit.

(2) This also defeats the DG Statute's plain intent. Monthly measurement isn't a net-metering "procedural vestige." It's a centerpiece of retail-rate crediting, which subtracted a customer's monthly EDG from that month's utility-supplied electricity, and billed the customer for the difference (or, if EDG exceeded utility-supplied electricity, gave customers carry-forward retail credit for future bills).

The DG Statute replaces retail-rate EDG credit with wholesale-based credit. Instantaneous netting implements that plain intent. If EDG is computed instantaneously, then (a) the sum of all amounts during instants when utility-supplied electricity exceeds customer-supplied electricity ("inflow") is billed at retail; and (b) the sum of all amounts during instants when customer-supplied electricity exceeds utility-supplied electricity ("outflow') is credited at wholesale-plus-25%.

Reverting to net metering's monthly measurement defeats this. Measuring the difference between utility- and customer-supplied electricity once monthly—rather than at fractional-second intervals over the course of the month—effectively credits EDG at retail rates, just as under net metering. As the IURC found, the result would be "continuation of net metering," providing customers EDG credit at "the retail rate." App. II 51; *see* Ind. Elec. Ass'n Trans. *Amicus* Br. 11-13.

The Decision renders the new wholesale-based credit a mere "vestige" of the DG Statute. As the IURC found, "monthly netting" means the Statute's wholesale credit will apply only to whatever "extra" EDG may remain when retail crediting has wiped out a customer's monthly bill. App. II 51. The IURC didn't think the elephantine DG Statute hid only this mouse. In the agency's more formal phrasing: "We do

not believe the General Assembly enacted the [DG] Statute to sunset net metering and replace it with a construct that achieves a similar outcome." *Id.*

The Decision called this a "response to policy arguments" or "policy considerations" that the IURC can't take into account. 2022 WL 260015, *3, *5. Not so. The IURC simply read the Statute to implement the Legislature's plain intent, just as this Court directs. The panel reading "imposes an outcome that no reasonable person could intend" (*Estabrook*, 140 N.E.3d at 836), rendering the Statute's new wholesale-based EDG credit all-but "meaningless" (*ESPN,* 62 N.E.3d at 1199).

(3) The Decision thought the *IURC's* reading renders part of the statutory EDG definition "meaningless," because it doesn't provide "EDG credit" when utility-supplied electricity *exceeds* customer-supplied electricity. 2022 WL 260015, *4.

This bears no scrutiny. "*Distributed* generation" *means* electricity generated by customer resources like solar panels. "Excess" *distributed* generation *means* customer-generated electricity customers don't use. No one thinks "*distributed* generation" means *utility*-supplied electricity, or that the amount by which utility-supplied electricity exceeds customer-generated electricity is "excess" *distributed* generation.

Yes, the DG Statute literally defines EDG as the "difference" between utility- and customer-supplied electricity. Yes, sometimes the former exceeds the latter. But it's literally absurd to think the Legislature saw that as yielding "utility EDG" and "utility EDG credit," which are nonsensical concepts. Statutes aren't read to yield an "absurd result" (*Anderson*, 42 N.E.3d at 85), even if literal reading of the "plain text" might encompass the absurdity (*Estabrook*, 140 N.E.3d at 836).

III. The IURC's Reading Of The DG Statute Is Reasonable.

The IURC statutory reading is correct. But at a minimum, it is reasonable. "If the agency's interpretation is reasonable, we stop our analysis and need not move forward with any other proposed interpretation." *Moriarity,* 113 N.E.3d at 619.

IV. The Issues Presented Should Be Decided By This Court.

The DG Statute is important legislation with significant impact on Indiana's investor-owned electric utilities and the millions of Hoosiers they serve. The Decision resolved "important question[s] of law [in] a case of great public importance," which this Court should decide. IND. APPELLATE RULE 57(H)(4).

CONCLUSION

The Court should grant transfer and affirm the Commission,

Respectfully submitted,

/s/ *Peter J. Rusthoven*

Steven W. Krohne [# 20969-49]
Jenny R. Buchheit [# 26653-49]
ICE MILLER LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282
Telephone: (317) 236-2100

P. Jason Stephenson [# 21839-49]
Heather Watts [# 35482-82]
CENTERPOINT ENERGY
211 NW Riverside Drive
Evansville, Indiana 47708
Telephone: (812) 491-5119

Peter J. Rusthoven [# 6247-98]
Nicholas K. Kile [# 15203-53]
Hillary J. Close [# 25104-49]
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Telephone: (317) 236-1313

Counsel for Appellee
Southern Indiana Gas and Electric Company

WORD COUNT CERTIFICATE

In compliance with Appellate Rule 44(E) & (F), I verify that this Petition to Transfer (exclusive of Appellate Rule 44(C) items) contains no more than 4,200 words, as determined by the word processing system used to prepare the Petition (Microsoft Word 2016).

/s/ Peter J. Rusthoven
Peter J. Rusthoven [# 6247-98]

CERTIFICATE OF SERVICE

In compliance with Appellate Rules 24 & 68, I certify that on March 14, 2022 copies of this Petition were served on the following electronically, *via* the Indiana Electronic Filing System:

William I. Fine, Esquire
Randall C. Helmen, Esquire
Thomas J. Haas, Esquire
INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR
wfine@oucc.in.gov
rhelmen@oucc.in.gov
thaas@oucc.in.gov

Jennifer A. Washburn, Esquire
CITIZENS ACTION COALITION OF INDIANA, INC.
jwashburn@citact.org

Bradley Klein, Esquire
ENVIRONMENTAL LAW & POLICY CENTER.
bklein@elpc.org

Joseph P. Rompala, Esquire
LEWIS & KAPPES, P.C.
jrompala@lewis-kappes.com

Robert M. Glennon, Esquire
ROBERT M. GLENNON & ASSOCS., P.C.
robertglennonlaw@gmail.com

Russell L. Ellis, Esquire
russell_ellis@sbcglobal.net

Beth E. Heline, Esquire
Jeremy R. Comeau, Esquire
Steven L. Davies, Esquire
INDIANA UTILITY REGULATORY COMMISSION
bheline@urc.in.gov
jcomeau@urc.in.gov
sdavies@urc.in.gov

The Honorable Theodore J. Rokita
Thomas M. Fisher, Esquire
Angela N. Sanchez, Esquire
Aaron T. Craft, Esquire
Benjamin Jones, Esquire
Julia C. Payne, Esquire
Melinda R. Holmes, Esquire
OFFICE OF THE INDIANA ATTORNEY GENERAL
efile@atg.in.gov
tom.fisher@atg.in.gov
angela.sanchez@atg.in.gov
aaron.craft@atg.in.gov
benjamin.jones@atg.in.gov
julia.payne@atg.in.gov
melinda.holmes@atg.in.gov

Brian J. Paul, Esquire
FAEGRE DRINKER BIDDLE & REATH LLP
brian.paul@faegredrinker.com

/s/ Peter J. Rusthoven
Peter J. Rusthoven [# 6247-98]