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IN THE
COURT OF APPEALS OF INDIANA

Solarize Indiana, Inc.,
Appellant-Objector,

v.

Southern Indiana Gas and Electric Company, d/b/a Vectren Energy Delivery of Indiana, Inc., Indiana Utility Regulatory Commission, and Indiana Office of Utility Consumer Counselor,
Appellees-Petitioner/Administrative Agency/Statutory Party.

January 29, 2021

Court of Appeals Case No. 20A-EX-1384

Appeal from the Indiana Utility Regulatory Commission

The Honorable James F. Huston, Chairman
The Honorable Sarah E. Freeman, Commissioner
The Honorable Stefanie Krevda, Commissioner
The Honorable David Ober, Commissioner
The Honorable David E. Ziegner, Commissioner

30-Day Filing Nos. 50331 and 50332

Bradford, Chief Judge.

Case Summary

[1] The Indiana Administrative Code ("I.A.C.") establishes an informal filing procedure (the "Thirty-Day Rule") for certain filings submitted to the Indiana Utility Regulatory Commission ("IURC"). Southern Indiana Gas and Electric Company d/b/a Vectren Energy Delivery of Indiana, Inc. ("Vectren") filed two requests under the IURC's Thirty-Day Rule. Solarize Indiana, Inc. ("SI") filed objections to both requests. After finding that neither of SI's objections were compliant with the applicable commission rules, the IURC approved both of Vectren's filings. SI challenges these approvals on appeal. We affirm.

Facts and Procedural History

I. General Information Relating to the IURC's Thirty-Day Rule

[2] 170 I.A.C. 1-6-1 through -9 establishes informal filing procedures (the "Thirty-Day Rule"). The Thirty-Day Rule applies to

> certain requests by a utility for changes in:
> (1) its rates;
> (2) its charges;
> (3) its rules;
> (4) its regulations; or
> (5) any combination of subdivisions (1) through (4);
> that are outside the context of a general rate case and that are not subject to other commission rules establishing specific filing requirements for the subject matter of the filing.

170 Ind. Admin. Code 1-6-1(a). Each filing under the Thirty-Day Rule shall include a cover letter clearing stating the following: "(A) that the filing is being made under this rule; (B) the purpose of the filing; (C) the need for what is being requested; and (D) why the filing is an allowable request under section 3 of this rule." 170 I.A.C. 1-6-5(1).

[3] "Under [Indiana Code section] 8-1-1-5 and as defined in this rule, only noncontroversial filings may be approved under this rule." 170 I.A.C. 1-6-1(b). "'Noncontroversial filing' means any filing regarding which no person or entity has filed an objection as provided under section 7 of this rule." 170 I.A.C. 1-6-2(10). Section 7 provides that "[i]f any person or entity has an objection to a

filing made under this rule, the objection shall be submitted to the secretary of the commission." 170 I.A.C. 1-6-7(a). The objection must be as follows:

> (1) In writing in:
> (A) paper; or
> (B) electronic format.
> (2) Based on a statement that at least one (1) of the following applies to the filing:
> (A) It is a violation of:
> (i) applicable law;
> (ii) a prior commission order; or
> (iii) a commission rule.
> (B) Information in the filing is inaccurate.
> (C) The filing is:
> (i) incomplete; or
> (ii) prohibited under section 4 of this rule.

170 I.A.C. 1-6-7(b). Pursuant to Indiana Code section 8-1-1-5, the filing "shall not be presented to the commission for consideration upon an objection that complies with this section." 170 I.A.C. 1-6-7(d).

II. Vectren's Filing Number 50331 ("No. 50331")

[4] On February 28, 2020, Vectren filed a request under the IURC's Thirty-Day Rule for "New Rate Schedules for Cogeneration and Alternate Energy

Production Facilities" under No. 50331.[1] In this request, Vectren indicated that the customer impact would be as follows:

On-Peak: Decrease $0.00529 kWh
Off-Peak: Decrease $0.00257 kWh
Capacity: Increase $0.18 kW per month

RATE CSP Cogeneration and Small Power Production		
Time Period	***Energy Payment to a Qualifying Facility ($/kWh)***	***Capacity Payment to a Qualifying Facility ($/kW/per month)***
Annual On-Peak	$0.03016	$6.08
Annual Off-Peak	$0.02413	$6.08

[1] The term "cogeneration facility" means:

(1) a facility that:

(A) simultaneously generates electricity and useful thermal energy; and

(B) meets the energy efficiency standards established for cogeneration facilities by the Federal Energy Regulatory Commission under 16 U.S.C. 824a-3;

(2) any land, system, building, or improvement that is located at the project site and is necessary or convenient to the construction, completion, or operation of the facility; and

(3) the transmission or distribution facilities necessary to conduct the energy produced by the facility to users located at or near the project site.

Ind. Code § 8-1-2.4-2(c).

Appellant's App. Vol. II p. 21.[2] On April 24, 2020, SI filed an objection to No. 50331, claiming that Vectren's filing was not compliant with the Public Utilities Regulatory Policies Act ("PURPA").

[5] Vectren filed a response on May 5, 2020, in which it asserted that No. 50331 was not in violation of any applicable law, commission order, or commission rule; information in both is accurate; and the filing is complete and not prohibited under section 4 of the rule. Specifically, Vectren asserted that (1) SI did not "provide any grounds, specific or otherwise," for its objection but rather merely states its intention to join in the Objection submitted by the Office of Utility Consumer Counselor ("OUCC"); (2) SI's claims that No. 50331 is not consistent with the requirements of PURPA lack specificity; (3) SI's objection is not based on appropriate grounds under 170 I.A.C. 1-6-7 as it fails "to cite or provide any specific basis to support a claim" that the filing "in any manner violate[s] Indiana law; a commission order, or a commission rule as required for a valid objection under 170 IAC 1-6-7[;]" (4) SI's objection does not claim that the information included in the filing is inaccurate, incomplete, or prohibited under section 4 of the rule; and (5) 170 I.A.C. 1-6-7 does not allow an objector to reserve the basis of its objections for some later time but rather clearly provides only four grounds to object, which must be stated in the filing.

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[2] The quoted language represents the IURC's concise and accurate summary of Vectren's lengthy submission relating to customer impact. *See* Appellant's App. Vol. II pp. 33–51.

Appellant's App. Vol. II pp. 142, 143. Vectren also claimed that SI's objection was not timely filed.

[6] SI filed a Reply on May 8, 2020, presenting the following six assertions:

- PURPA and [Federal Energy Regulatory Commission's ('FERC')] regulations implementing PURPA are both 'applicable law' within the meaning of the Commission's own rule defining permissible objections to 30-day filings relating to Cogeneration and Renewable Generation Tariffs such as Vectren's proposed CSP Tariff, and Objectors have raised the issue of whether Vectren's filings comply with that statute and those regulations.

- PURPA requires that each qualifying renewable generator be offered three options for selling electricity to the utility, but Objectors have fairly raised the issue of whether Vectren is doing that.

- PURPA requires that a utility pay a qualifying renewable generator an "Avoided Cost" price based on the electricity that the utility would have purchased "but for" the PURPA purchase, but Objectors have fairly raised the issue of whether Vectren is doing that.

- PURPA requires that the interconnecting utility offer each qualifying renewable generator the opportunity to sell generation on terms otherwise compliant with the statute and its implementing regulations without preference or discrimination, but Objectors have fairly raised the issue of whether Vectren is doing that.

- Under the Commission's rules, Objectors have raised issues regarding the Vectren 30-day filings nos. 50331 and 50332

sufficient to render them "controversial" under 170 I.A.C. 1-6 and thus to require its review by the Commission in a docketed proceeding.

- As Vectren expressly concedes, there is no specific number of days following a 30-day filing set by the Commission rules after which an objection to the filing cannot be considered by the Commission prior to either summarily approving or requiring the docketing of the filing.

Appellant's App. Vol. II pp. 147–53.

[7] After reviewing the documents submitted by the parties, the IURC's General Counsel summarized SI's objection as that Vectren "may not be complying with PURPA" and opined as follows:

- 170 IAC 1-6-7 does not provide for a reply being submitted to the utility's response to the objection or for multiple filings providing additional explanation. 170 IAC 1-6 provides for a shortened administrative process and, given the shorter timeframe, persons submitting an objection should provide a statement on which the objection is based and that accurately articulates the basis for the objection pursuant to 170 IAC 1-6-7(b)(2).

- While SI states that Vectren's filing is "incomplete", this allegation is with regards to [PURPA], enacted in 1978. The IURC adopted rules in 1981 to implement PURPA. The Indiana General Assembly enacted Ind. Code chapter 8-1-2.4 in 1982 to express the State of Indiana's policy and implementation of PURPA, which gives authority to the states to implement PURPA under rules that have been and may be established by the [FERC]. The IURC adopted Rule 4.1 in 1985 to implement Ind. code chapter 8-1-2.4 and,

therefore, also to implement PURPA. SI does not provide any statement that Vectren's filing, which was made under Rule 4.1, violates Rule 4.1; as a result, SI's objection does not comply with 170 IAC 1-6-7(b)(2). SI's objection appears to be about Rule 4.1 itself and SI's assertion that the rule should be updated; this is not a compliant objection under 170 IAC 1-6-7. SI has the option of submitting a request to the Commission asking for a rulemaking to amend Rule 4.1.

- Most of SI's comments and assertions are regarding Vectren's filing of a proposed excess distributed generation ("EDG") rate, now docketed as IURC Cause No. 45378, and its concerns regarding EDG and the relevant statute, Ind. Code chapter 8-1-40. SI has intervened in 45378 and that is the appropriate proceeding in which to provide its arguments and supporting evidence for those arguments.

- The SI objection is not compliant with 170 IAC 1-6-7.[3]

Appellant's App. Vol. II pp. 23–24. IURC staff reviewed the General Counsel's analysis and findings and provided the following recommendation to the IURC Commissioners: "Staff agrees with General Counsel's analysis and findings that [SI's objection] to [No. 50331 is] not compliant with Commission rules. Filing requirements have been met. Recommend approval." Appellant's App. Vol. II p. 24. The Commissioners followed the staff recommendation and, on June 24, 2020, approved No. 50331.

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[3] IURC's General Counsel also opined that the OUCC's objection was not compliant with 170 I.A.C. 1-6-7.

III. Vectren's Filing Number 50332 ("No. 50332")

[8] On March 2, 2020, Vectren filed a request under the IURC's Thirty-Day Rule for "Additional Contract Form Pursuant to Rate CSP for Qualifying Facilities That Elect to Sell Net Generation Output Under 170 I.A.C. 4-4.1.5(c)" under No. 50332. In this request, Vectren indicated that its previously-approved contract form "will remain available in its current form for those qualifying facilities." Appellant's App. Vol. II p. 56. However,

> [b]ased on a recent request from an existing customer that is installing solar generation facilities that constitute a qualifying facility, [Vectren] now has a need to create a new and separate Standard Offer and Contract Form for those qualifying facilities that elect to sell only their generation output that is net of their own use of electric service provided by the Company.

Appellant's App. Vol. II p. 56. On April 24, 2020, SI filed an objection to No. 50332, claiming that Vectren's filing was not compliant with PURPA and asserting that the OUCC's Amended Objection to No. 50331 should be read to apply to No. 50332 "as well because the two Filings are inextricably intertwined with respect to the substance of the OUCC's Objection."[4] Appellant's App. Vol. II p. 95.

[4] The OUCC's amended objection to No. 50331 is summarized as a claim that No. 50331 "does not comply with the requirements of 170 I.A.C. 4-4.1-9, which establishes the calculation of capacity purchases." Appellant's App. Vol. II p. 80.

[9] Vectren filed a response on May 5, 2020, in which it asserted that No. 50332 was not in violation of any applicable law, commission order, or commission rule; the information contained therein was accurate; and the filing was complete and not prohibited under section 4 of the rule. Specifically, Vectren asserted, *inter alia*, that (1) SI's claim that the filing was not consistent with the requirements of PURPA lack specificity, (2) SI's objection was not based on appropriate grounds under 170 I.A.C. 1-6-7 as it fails "to cite or provide any specific basis to support a claim" that the filing "in any manner violate[s] Indiana law; a commission order, or a commission rule as required for a valid objection under 170 IAC 1-6-7[;]" and (3) SI's objection did not claim that the information included in the filing was inaccurate, incomplete, or prohibited under section 4 of the rule. Appellant's App. Vol. II p. 143. Vectren also rejected SI's suggestion that the OUCC's objection to 50331 should be read to apply to 50332 "because it believes the two distinct Filings are 'intertwined'" and stated that "joining in an objection by another party to a wholly separate filing in no way satisfies the requirement that a violation of Indiana law or commission order or commission rule be alleged." Appellant's App. Vol. II pp. 142, 143. On May 8, 2020, SI filed a Reply containing six assertions, which are quoted in the preceding section.

[10] After reviewing the documents submitted by the parties, the IURC's General Counsel summarized SI's objection as that Vectren "may not be complying with PURPA" and opined as follows:

- Vectren's filing in 50332 is regarding an additional standard offer contract under 170 IAC 4-4.1-11; [SI] does not base its objection on a statement that the filing is a violation of the rule under which it was filed or that that the filing is inaccurate, incomplete under 170 IAC 4-4.1-11, or prohibited, as required by 170 IAC 1-6-7(b).

- 170 IAC 1-6-7 does not provide for a reply being submitted to the utility's response to the objection or for multiple filings providing additional explanation. 170 IAC 1-6 provides for a shortened administrative process and, given the shorter timeframe, persons submitting an objection should provide a statement on which the objection is based and that accurately articulates the basis for the objection pursuant to 170 IAC 1-6-7(b)(2).

- While SI states that Vectren's filing is "incomplete," this allegation is with regards to [PURPA], enacted in 1978; SI also expresses concerns that the filing may be in violation of PURPA. However, these allegations and concerns are without foundation because Rule 4.1 was adopted as part of the State of Indiana's implementation of PURPA. The IURC initially adopted rules in 1981 to implement PURPA. The Indiana General Assembly enacted Ind. Code chapter 8-1-2.4 in 1982 to express the State of Indiana's policy and implementation of PURPA, which gives authority to the states to implement PURPA under rules that have been and may be established by the [FERC]. The IURC adopted Rule 4.1 in 1985 to implement Ind. code chapter 8-1-2.4 and, therefore, also to implement PURPA. SI does not provide any statement that Vectren's filing, which was made under Rule 4.1, violates Rule 4.1; as a result, SI's objection does not comply with 170 IAC 1-6-7(b)(2). SI's objection appears to be about Rule 4.1 itself and SI's assertion that the rule should be updated; this is not a compliant objection under 170 IAC 1-6-

7. SI has the option of submitting a request to the Commission asking for a rulemaking to amend Rule 4.1.

- Most of SI's comments and assertions are regarding Vectren's filing of a proposed excess distributed generation ("EDG") rate, now docketed as IURC Cause No. 45378, and its concerns regarding EDG and the relevant statute, Ind. Code chapter 8-1-40. SI has intervened in 45378 and that is the appropriate proceeding in which to provide its arguments and supporting evidence for those arguments.

- The SI objection is not compliant with 170 IAC 1-6-7.

Appellant's App. Vol. II p. 26. IURC staff reviewed the General Counsel's analysis and findings and provided the following recommendation to the IURC Commissioners: "Staff agrees with General Counsel's analysis and findings that [SI's objection] to [No. 50332 is] not compliant with Commission rules. Filing requirements have been met. Recommend approval." Appellant's App. Vol. II p. 27. The Commissioners followed the staff recommendation and, on June 24, 2020, approved No. 50332.

Discussion and Decision

I. Standard of Review

[11] "The General Assembly created the IURC primarily as a fact-finding body with the technical expertise to administer the regulatory scheme devised by the legislature." *Citizens Action Coal. of Ind., Inc. v. N. Ind. Pub. Serv. Co.*, 76 N.E.3d 144, 151 (Ind. Ct. App. 2017) (internal quotation omitted). "The purpose of

that agency is to ensure that public utilities provide constant, reliable, and efficient service to the citizens of this State." *Ind. Bell Tel. Co. v. Ind. Util. Regul. Comm'n*, 810 N.E.2d 1179, 1184 (Ind. Ct. App. 2004). "Moreover, the broad grant of regulatory authority given the IURC by the legislature includes implicit powers necessary to effectuate the statutory regulatory scheme." *Id.*

[12] "Because the complicated process of ratemaking is a legislative rather than judicial function, it is more properly left to the experienced and expert opinion present in the [IURC]." *Citizens Action Coal.,* 76 N.E.3d at 151 (internal quotation omitted).

> An order from the IURC is presumed valid unless the contrary is clearly apparent. More specifically, on matters within its jurisdiction, the IURC enjoys wide discretion and its findings and decision will not be lightly overridden simply because we might reach a different decision on the same evidence. Essentially, so long as there is any substantial evidence to support the rates as fixed by the [IURC] as reasonable, the judicial branch of the government will not interfere with such legislative functions and has no power or authority to substitute its personal judgment for what it might think is fair or reasonable in lieu of the IURC's administrative judgment.

Id. (internal brackets, citations, and quotations omitted).

[13] > An order of the IURC is subject to appellate review to determine whether it is supported by specific findings of fact and by sufficient evidence, as well as to determine whether the order is contrary to law. On matters within its discretion, the IURC enjoys wide discretion. Its findings and decision will not be lightly overridden just because this Court might reach a contrary opinion on the same evidence.

Ind. Bell Tel. Co., 810 N.E.2d at 1184 (internal citations omitted). "In conducting our review, we neither reweigh the evidence nor assess witness credibility and will focus solely on the evidence most favorable to the IURC's findings." *Citizen's Action Coal.*, 76 N.E.3d at 152.

II. PURPA and the Implementation of PURPA to Indiana Law

A. PURPA

[14] Congress enacted PURPA in 1978. *F.E.R.C. v. Mississippi*, 456 U.S. 742, 745 (1982). "Pursuant to PURPA, the state regulatory agencies for utilities were required to consider and adopt or reject various standards…, which standards were to conserve energy, promote efficient use of facilities and resources by the utility and to promote equitable rates to consumers of electricity." *Greenwood Prof'l Park v. Pub. Serv. Comm'n of Ind.*, 487 N.E.2d 472, 473 (Ind. Ct. App. 1986).

[15] "Section 210 of PURPA was designed to encourage the development of cogeneration and small power production facilities." *Am. Paper Inst., Inc. v. Am. Elec. Power Serv. Corp.*, 461 U.S. 402, 404 (1983). With respect to the purchase of electricity from cogeneration and small power production facilities, Congress provided that the rate to be set by the Commission

> shall insure that, in requiring any electric utility to offer to purchase electric energy from any qualifying cogeneration facility or qualifying small power production facility, the rates for such purchase--

> (1) shall be just and reasonable to the electric consumers of the electric utility and in the public interest, and
> (2) shall not discriminate against qualifying cogenerators or qualifying small power producers.
>
> No such rule prescribed under subsection (a) shall provide for a rate which exceeds the incremental cost to the electric utility of alternative electric energy.

16 U.S.C.A. § 824a-3(b).

B. Implementation of PURPA to Indiana Law

[16] The Indiana General Assembly has indicated that "[i]t is the policy of this state to encourage the development of alternate energy production facilities, cogeneration facilities, and small hydro facilities in order to conserve our finite and expensive energy resources and to provide for their most efficient utilization." Ind. Code § 8-1-2.4-1. Thus, Indiana has adopted the relevant portions of PURPA and codified provisions that are consistent therewith. Specifically, consistent with 16 U.S.C.A. § 824a-3(b), the IURC shall require electric utilities to enter into long term contracts to:

> (1) purchase or wheel electricity or useful thermal energy from alternate energy production facilities, cogeneration facilities, or small hydro facilities located in the utility's service territory, under the terms and conditions that the commission finds:
> (A) are just and economically reasonable to the corporation's ratepayers;
> (B) are nondiscriminatory to alternate energy producers, cogenerators, and small hydro producers; and

(C) will further the policy stated in section 1 of this chapter; and

(2) provide for the availability of supplemental or backup power to alternate energy production facilities, cogeneration facilities, or small hydro facilities on a nondiscriminatory basis and at just and reasonable rates.

Ind. Code § 8-1-2.4-4(a).

[17] Upon application by the owner or operator of any alternate energy production facility, cogeneration facility, or small hydro facility or any interested party, the commission shall establish for the affected utility just and economically reasonable rates for electricity purchased under subsection (a)(1). The rates shall be established at levels sufficient to stimulate the development of alternate energy production, cogeneration, and small hydro facilities in Indiana, and to encourage the continuation of existing capacity from those facilities.

Ind. Code § 8-1-2.4-4(b).

The commission shall base the rates for new facilities or new capacity from existing facilities on the following factors:

(1) The estimated capital cost of the next generating plant, including related transmission facilities, to be placed in service by the utility.

(2) The term of the contract between the utility and the seller.

(3) A levelized annual carrying charge based upon the term of the contract and determined in a manner consistent with both the methods and the current interest or return requirements associated with the utility's new construction program.

(4) The utility's annual energy costs, including current fuel costs, related operation and maintenance

> costs, and any other energy-related costs considered appropriate by the commission.

Ind. Code § 8-1-2.4-4(c). "The commission shall base the rates for existing facilities on the factors listed in subsection (c)." Ind. Code § 8-1-2.4-4(d). "However, the commission shall also consider the original cost less depreciation of existing facilities and may establish a rate for existing facilities that is less than the rate established for new facilities." Ind. Code § 8-1-2.4-4(d). The IURC implemented the requirements in PURPA and Indiana Code chapter 8-1-2.4 in 170 I.A.C. 4-4.1-1 *et seq*.

III. Agency Rule Formulation and Application

[18] Agencies, such as the IURC, "have implicit powers to regulate to effectuate their respective regulatory schemes outlined by statute." *Charles A. Beard Classroom Teachers Ass'n v. Bd. of Sch. Trustees of Charles A. Beard Mem'l Sch. Corp.*, 668 N.E.2d 1222, 1225 (Ind. 1996). In doing so, the IURC is required to "formulate rules necessary or appropriate to carry out" its responsibilities, and "shall perform the duties imposed by law upon it." Ind. Code § 8-1-1-3(g); *see also Charles A. Beard Classroom Teachers Ass'n*, 668 N.E.2d at 1226 ("agencies have implicit powers to regulate to effectuate their duties.").

[19] As was stated at the outset, the IURC has established the Thirty-Day rule to provide informal filing procedures for certain requests by a utility for changes in

> (1) its rates;
> (2) its charges;
> (3) its rules;

(4) its regulations; or
(5) any combination of subdivisions (1) through (4);
that are outside the context of a general rate case and that are not subject to other commission rules establishing specific filing requirements for the subject matter of the filing.

170 I.A.C. 1-6-1(a). Given that the Thirty-Day Rule provides for informal review of a request without the need for a full evidentiary hearing, only noncontroversial filings may be approved under the Thirty-Day Rule. 170 I.A.C. 1-6-1(b). Any objection to a filing made pursuant to the Thirty-Day Rule must be submitted to the IURC in writing and must be

[b]ased on a statement that at least one (1) of the following applies to the filing:
(A) It is a violation of:
(i) applicable law;
(ii) a prior commission order; or
(iii) a commission rule.
(B) Information in the filing is inaccurate.
(C) The filing is:
(i) incomplete; or
(ii) prohibited under section 4 of this rule.

170 I.A.C. 1-6-7(b)(2).

IV. Analysis

[20] On appeal, SI challenges the IURC's approval of the requests filed in both Nos. 50331 and 50332, claiming that the IURC erred in approving the requests because it filed valid objections to both No. 50331 and No. 50332. Vectren

argues that SI's objection "failed to articulate a proper basis under the 30-Day Filing Rule for rejecting Vectren's 30-day filings." Vectren's Br. p. 21. For its part, IURC argues that SI "has not asserted that Vectren's filings violate Rule 4.1 or that Rule 4.1 violates PURPA. And so it logically follows that if Vectren's filings are compliant with Rule 4.1, then they are also compliant with PURPA." IURC's Br. p. 37.

[21] We note that SI spends a significant portion of its appellate brief arguing that PURPA is applicable law that should have been considered in relation to its arguments. As is stated above, both the General Assembly and the IURC specifically implemented the requirements of PURPA into Indiana law at Indiana Code chapter 8-1-2.4 and 170 I.A.C. 4-4.1-1 *et seq.*, respectively. In response to SI's argument, the IURC stated that

> Commission staff never stated that PURPA was not applicable law; only that Rule 4.1 was the implementation of PURPA in Indiana and that [SI] had not alleged that Vectren's filings violated that rule. PURPA is applicable as the foundational law for Rule 4.1, but not as a basis for an objection separate from asserting a Violation of Rule 4.1, especially when the objection makes no effort to identify a conflict between Rule 4.1 and PURPA and instead concedes that the rule complies with its foundational law.

IURC's Br. pp. 33–34. We agree with the IURC's assertion that PURPA, as it has been implemented in Indiana, was appropriately applied to SI's objections and that SI has identified no conflict between the cited Indiana authorities and PURPA.

[22] SI filed its objections to Nos. 50331 and 50332 in a single document filed on April 24, 2020. In this document, SI stated that "[g]enerally speaking, it is SI's position that Vectren's filings are insufficient and incomplete with respect to PURPA compliance in multiple respects." Appellant's App. Vol. II p. 92. In raising its objections, SI specifically (1) requested that the IURC consolidate Nos. 50331 and 50332 with Vectren's separate Rate EDG filing, (2) requested that the IURC consider revising its rules implementing PURPA, and (3) asserted its belief that the OUCC's Amended Objection to No. 50331 "should be read to apply to [No.] 50332 as well because the two filings are inextricably intertwined with respect to the substance of the OUCC Objection." Appellant's App. Vol. II p. 94. SI also indicated that it intended to join "the specific Objection of the OUCC to Vectren's 50331 30-Day Filing for its failure to comply with one aspect of the Commission's current, outdated rules." Appellant's App. Vol. II p. 94.

[23] Upon review we conclude that the IURC properly found that neither SI's request that Nos. 50331 and 50332 be consolidated with a separate Vectren filing nor its request that the IURC consider revising its rules implementing PURPA are valid grounds for objecting under 170 I.A.C. 1-6-7(b)(2). Neither request asserts that Nos. 50331 and 50332 violate applicable law, a prior commission order, or a commission rule. Furthermore, neither request asserts that the information contained in Nos. 50331 and 50332 is inaccurate or that either No. 50331 or 50332 is incomplete or a prohibited filing. We agree with the IURC that "[a] 30-day filing is not the place to urge the Commission to

adopt sweeping policy changes, especially when those changes seek to roll back policies implemented by the legislature." IURC's Br. p. 35.

[24] As for SI's intention to join the OUCC's objection, review of the record reveals that the OUCC's objection was also found to be noncompliant with 170 I.A.C. 1-6-7 as it did not assert that the filing was (1) a violation of applicable law or (2) inaccurate, incomplete, or prohibited. In its objection, the OUCC claimed that No. 50331 should not have been approved because it did not include a calculation as required by 170 I.A.C. 4-4.1.9(b). However, 170 I.A.C. 4-4.1-10 provides that

> [w]ithin sixty (60) days of the effective date of this rule and on or before February 28, of each subsequent year, each generating electric utility shall file with the commission a standard offer for purchase of energy and capacity at rates derived from the appropriate application of sections 8(a) and 9(c) through 9(d) of this rule. Within sixty (60) days of the effective date of this rule and within sixty (60) days of the effective date of any subsequent wholesale rate schedule, tariff, or contract, each nongenerating utility shall file with the commission a standard offer for the purchase of energy and capacity at rates derived from the appropriate application of sections 8(b) and 9(e) through 9(f) of this rule.

Pursuant to this language, contrary to the OUCC's claim, Vectren's filing was not required to include the calculation required by 170 I.A.C. 4-4.1.9(b) and was therefore not in violation of the IURC's rules for excluding such a calculation. Thus, to the extent that SI joined in the OUCC's objection, the

objection was noncompliant with 170 I.A.C. 1-6-7 as it was not based on any of the applicable grounds for objection set forth in 170 I.A.C. 1-6-7.

[25] As for SI's asserted belief that the OUCC's Amended Objection to No. 50331 should be read to apply to No. 50332, we agree with Vectren that "joining in an objection by another party to a wholly separate filing in no way satisfies the requirement that a violation of Indiana law or commission order or commission rule be alleged." Appellant's App. Vol. II p. 143. It also follows that the OUCC's amended objection to No. 50331, which raised the same objection regarding 170 I.A.C. 4-4.1-9(b), could not form a proper objection under 170 I.A.C. 1-6-7 with regard to No. 50332 if did not form a proper objection with regard to No. 50331. Thus, given that the objection was found to be noncompliant in No. 50331, it would, for the same reasons, likewise be noncompliant in No. 50332.

[26] Furthermore, after Vectren responded to SI's objections, SI filed a reply in which it asserted, for the first time, expanded arguments in favor of its objections to Nos. 50331 and 50332. The plain language of 170 I.A.C. 1-6-7, however, does not provide for a reply being submitted to the utility's response to an objection. The IURC's General Counsel noted this fact, finding as follows:

> 170 IAC 1-6-7 does not provide for a reply brief being submitted to the utility's response to the objection or for multiple filings providing additional explanation. 170 IAC 1-6 provides for a shortened administrative process and, given the shorter timeframe, persons submitting an objection should provide a

> statement on which the objection is based and that accurately articulates the basis for the objection pursuant to 170 IAC 1-6-7(b)(2).

Appellant's App. Vol. II pp. 23, 26. We agree with the IURC's General Counsel.

[27] Furthermore still, even if 170 I.A.C. 1-6-7 did allow for a reply to be submitted, we conclude that such a filing would be akin to a reply brief filed in this court. It is well-settled that "grounds for error may only be framed in an appellant's initial brief and if addressed for the first time in the reply brief, they are waived." *Monroe Guar. Ins. Co. v. Magwerks Corp.*, 829 N.E.2d 968, 977 (Ind. 2005)); *see also Chupp v. State*, 830 N.E.2d 119, 126 (Ind. Ct. App. 2005) ("An issue not raised in an appellant's brief may not be raised for the first time in a reply brief."); *Osmulski v. Becze*, 638 N.E.2d 828, 836 (Ind. Ct. App. 1994) ("[W]e have repeatedly held that new arguments made in a reply brief are inappropriate and will not be considered on appeal."); *Saloom v. Holder*, 158 Ind. App. 177, 186, 307 N.E.2d 890, 891 (1974) ("Issues not argued are waived (Rule AP. 8.3(A)(7)) and they may not be raised for the first time in the reply brief."); Ind. R. App. P. 46 ("No new issues shall be raised in the reply brief."). Applying this well-settled rule to the instant matter, it follows that the arguments raised for the first time in SI's reply were waived and therefore could not form a valid basis for SI's objections.

Conclusion

[28] In sum, we conclude that the IURC (1) did not err in approving Nos. 50331 and 50332 and (2) acted within its discretion by finding that SI's objections were not compliant with 170 I.A.C. 1-6-7.

[29] The judgment of the IURC is affirmed.

Kirsch, J., and May, J., concur.