



IN THE
Indiana Supreme Court

Supreme Court Case No. 22S-EX-00166

Indiana Office of Utility Consumer Counselor,
Citizens Action Coalition of Indiana, Inc., Vote Solar,
Environmental Law & Policy Center, Solarize Indiana,
Inc., Solar United Neighbors, and Indiana Distributed
Energy Alliance

Appellants (Statutory Representative and Intervenors Below)

–v–

Southern Indiana Gas and Electric Company and
Indiana Utility Regulatory Commission

Appellees (Petitioner and Administrative Agency Below)

Argued: September 15, 2022 | Decided: January 4, 2023

Appeal from the Indiana Utility Regulatory Commission

No. 45378

The Honorable James F. Huston, Chairman, The Honorables David L. Ober,
Sarah E. Freeman, Stefanie N. Krevda, and David E. Ziegner, Commissioners,
and The Honorable Carol Sparks Drake, Senior Administrative Judge

On Petition to Transfer from the Indiana Court of Appeals
No. 21A-EX-821

Opinion by Justice Massa

Chief Justice Rush and Justice Slaughter concur.

Justice Goff concurs in result.

Justice Molter not participating.

Massa, Justice.

Southern Indiana Gas and Electric Company (Vectren) petitioned the Indiana Utility Regulatory Commission (Commission) for approval of its new instantaneous netting method determining the amount of credit its customers receive for their excess distributed generation of electricity. Acting within its expertise and delegated authority, the Commission approved Vectren's petition. The Indiana Office of Utility Consumer Counselor (OUCC) appealed. The Court of Appeals reversed, holding the instantaneous netting method was not compliant with Indiana Code § 8-1-40-5 (2017). We affirm the Commission's findings and hold Vectren's instantaneous netting consistent with Indiana Code § 8-1-40-5.

Facts and Procedural History

Hoosiers rely on utility companies across the state to receive electricity. Some citizens generate their own electricity by using distributed generation devices, such as solar panels or windmills. These Hoosiers are known as **distributed generation customers** ("DG" hereinafter). However, these solar panels or windmills sometimes fail to generate enough electricity. In those moments, DG customers must receive electricity from a public utility, such as Vectren. Conversely, when the DG customers produce more than enough electricity for personal use, the excess is exported back to the utility company to be distributed to other customers. In order to compensate DG customers for their excess exports, utility companies measure the difference of a DG customer's inflow and outflow of electricity through meters.

Normally, utilities buy electricity at a wholesale rate and sell it to customers at a retail rate to cover the costs of the wholesale price and other expenses. In 2004, solar panels increased in popularity but carried a high price. To encourage wider deployment of solar panels and the like and to help subsidize their costs, the Commission created the "net metering" rule, under which the utility would apply a one-for-one retail credit on a DG customer's monthly bill for the net difference of energy imported and exported during a monthly billing period. 170 Ind. Admin.

Code 4-4.2-7. If a customer’s export of electricity was greater than the amount imported, the export excess electricity credit rolled over to the next month’s bill. This one-for-one retail credit caused utilities to pay for exported excess generation at a retail price, rather than a wholesale price. Since relatively few Hoosiers generate some of their own electricity, the overall cost of this one-for-one retail credit was borne by the vast majority of ratepayers who do not have windmills or solar panels. Br. for Indiana Energy Ass’n as *Amicus Curiae*, p. 6 (stating the one-for-one retail credit “was very generous to solar-panel owners—a generosity that came at the expense of regular electric customers”). So, in 2017, to offset the subsidizing cost placed upon the non-DG customers, the General Assembly enacted the Distributed Generation Statutes, Ind. Code § 8-1-40 *et seq.*, amending the regulations of public electric utility purchases of excess distributed generation. Under these current statutes, utilities compensate DG customers 125% of the wholesale price of their excess distributed generation. Ind. Code § 8-1-40-17. The statutes sunset net metering, grandfather the use of net metering during the sunset period, and detail how and when utilities petition the Commission to implement the wholesale-based excess distributed generation credit. *See* I.C. §§ 8-1-40-10 to -19. The net effect of the legislative reforms is that DG customers now get a fraction of the credit they enjoyed under the old net metering rules.

On May 8, 2020, Vectren filed a petition with the Commission seeking approval of a tariff rate, known as the **Rider EDG**, for the procurement of excess distributed generation under I.C. § 8-1-40. The Rider EDG measures the difference between the electricity supplied to Vectren by the customer and the electricity the customer supplies to Vectren within a fraction of a second. The OUCC and intervenors challenged Vectren’s instantaneous calculations, alleging Vectren does not measure excess distributed generation in compliance with I.C. § 8-1-40-5. Section 5 defines “excess distributed generation” as the difference between the electricity supplied to a DG customer from a utility (the inflow) and the electricity the DG customer supplies back to a utility (the outflow). *See* I.C. § 8-1-40-5. The Distributed Generation Statutes do not reference when a utility must calculate the difference. *See* I.C. § 8-1-40-17.

The Commission investigated whether Vectren’s Rider EDG satisfied the Distributed Generation Statutes, which involved a public evidentiary hearing, reviewing evidence, and hearing testimony from Vectren and OUCC representatives. After consideration of the parties’ presentations, the Commission approved Vectren’s Rider EDG, finding the instantaneous netting method consistent with I.C. § 8-1-40-5. Vectren’s instantaneous netting method measured the difference between electricity flowing to and from DG customers in accordance with the statute in an instantaneous timeframe.

The OUCC and Intervenors¹ appealed, arguing the Commission erred in holding Vectren’s instantaneous netting in accordance with I.C. § 8-1-40-5. In a published, unanimous opinion, the Court of Appeals reversed the Commission’s findings, rejecting Vectren’s instantaneous netting method because it focuses and assigns credit based only on the outflow of electricity from the customer to the utility rather than the specified difference between inflow and outflow proscribed by the statute. *Ind. Off. of Util. Consumer Couns., et al. v. S. Ind. Gas & Elec. Co.*, 183 N.E.3d 1089, 1096 (Ind. Ct. App. 2022). The Court of Appeals deferred to the monthly billing period, reasoning a longer period to find the difference between inflow and outflow was more beneficial to the DG customer. *Id.* at 1094.

The Commission and Vectren sought transfer, which we granted, thus vacating the appellate opinion. *See* Ind. Appellate Rule 58(A).

Standard of Review

The General Assembly established the Indiana Utility Regulatory Commission “as a fact-finding body with technical expertise 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).

¹ Even though Intervenors were parties in the proceedings below, that alone does not confer standing, and thus, parties do not have standing to seek review in this court. *See Solarize Ind., Inc. v. S. Ind. Gas & Elec. Co.*, 182 N.E.3d 212, 218 (Ind. 2022); I.C. § 8-1-3-1.

We conduct three stages of review to an administrative ruling by the Commission. *Ind. Off. of Util. Consumer Couns. v. Duke Energy Ind., LLC*, 183 N.E.3d 266, 268 (Ind. 2022). For questions of fact, we uphold a trial court’s finding if they are supported by substantial evidence. *Id.* The court does not reweigh the evidence. *Id.* For mixed questions of law and fact, we review the conclusions for their reasonableness. *Id.* (quoting *Ind. Gas Co. v. Ind. Fin. Auth.*, 999 N.E.2d 63, 66 (Ind. 2013)). For pure questions of law, we determine whether the Commission’s action contradicts law and determine “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.*

Here, because the Commission’s findings of fact are conceded and not in dispute, we turn to the legal question governing this case: whether the Commission’s approval of Vectren’s instantaneous netting satisfies Indiana Code § 8-1-40-5. In reviewing the Commission’s decision, we hold that it does.²

Discussion and Decision

The Commission’s findings are not contrary to law and satisfy the statute’s plain intent.

The controlling question at issue is one of law, on which we owe the Commission no deference. *Duke Energy*, 183 N.E.3d at 268. When interpreting an unambiguous statute, we accord words their plain meaning. *Anderson v. Gaudin*, 42 N.E.3d 82, 85 (Ind. 2015). When reviewing

² The OUCC raised an argument concerning I.C. § 8-1-40-21, which the OUCC conceded at oral argument. *See* Oral Argument at 3:50-4:01, *Ind. Off. of Util. Consumer, et al. v. S. Ind. Gas & Elec. Co.*, 188 N.E.3d 854 (Ind. 2022) (22S-EX-00166), <https://mycourts.in.gov/arguments/default.aspx?&id=2670&view=detail&yr=&when=&page=2&court=&search=&direction=%20ASC&future=False&sort=&judge=&county=&admin=False&pageSize=20>, archived at <https://perma.cc/FFM3-KCT2>.

an ambiguous provision in a statute, the “primary goal is to determine, give effect to, and implement the intent of the Legislature with well-established rules of statutory construction.” *Id.* at 85. “[W]e do not presume that the Legislature intended language to be used in a statute to be applied illogically or to bring about an unjust or absurd result.” *Id.*

Turning thus to the statute: **First**, “[a]n electricity supplier shall procure the excess distributed generation produced by a customer at a rate approved by the Commission under Section 17 of this chapter.” I.C. § 8-1-40-15. **Second**, after reviewing the utility’s petition and after notice and public hearing, the Commission will approve the rate credited to DG customers for their excess distributed generation “if the [C]ommission finds that the rate requested by the electricity supplier was accurately calculated and equals the product of: (1) the average marginal price of electricity paid by the electricity supplier during the most recent calendar year; multiplied by (2) one and twenty-five hundredths.” I.C. § 8-1-40-17. **Lastly**, looking to I.C. § 8-1-40-5, excess distributed generation is defined 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.”³ I.C. § 8-1-40-5 (emphasis added). Here, the parties disagree over **how** and **when** to calculate the difference between inflow and outflow of distributed generation.

Under the former rule, a customer who produced excess distributed generation was credited with a one-for-one retail credit rate at the end of the billing cycle. *See* 170 I.A.C. 4-4.2-7. The 1:1 retail credit resulted in non-DG customers subsidizing the cost for DG customers. When the General Assembly overhauled the system to a new excess distributed generation scheme, it did not direct utilities on how often excess distributed generation must be measured. *See* I.C. § 8-1-40-5. The statute requires a utility to calculate “the difference between” a customer’s imported

³ Parties agreed that subsection (1) refers to “inflow” and subsection (2) refers to “outflow.” *Ind. Off. of Utility Consumer Couns.*, 183 N.E.3d at 1094.

electricity and a customer's exported electricity. I.C. § 8-1-40-5. Then, utility companies, such as Vectren, are to compensate DG customers 125% of the wholesale price of their excess distributed generation. *See* I.C. § 8-1-40-17. It is unlikely the Legislature would have overhauled the distributed generation statutes to offset the burden placed on non-DG customers by the old scheme only to produce the same result. I.C. § 8-1-40; *see also Anderson*, 42 N.E.3d at 85.

The Court of Appeals committed two errors in its underlying analysis. First, it viewed Vectren's instantaneous netting method as "competing energies behind the meter, and the dominant force is subject to one allocation." *Ind. Off. of Util. Consumer Couns.*, 183 N.E.3d at 1095. Yet, Vectren's meters compute the difference of the inflow and outflow at an instant in time, thus providing the most accurate reading possible while complying with the plain language of the statute. While the instantaneous meters can measure electricity in either direction, electricity only flows in one direction through the meter and is measured on an instantaneous basis. In other words, there is either an inflow of power to the DG customer or an outflow of power to the utility company, unless the meter measures at zero, which reflects a customer's outflow matching its inflow of distributed generation. Thus, Vectren's meters are perpetually and instantaneously finding the difference between the inflow of power to the customer and outflow of power to the utility company, satisfying the two components of Section 5.

Second, the Court of Appeals incorrectly deferred to the monthly billing period "previously selected by our Legislature." *Ind. Office of Util. Consumer Couns.*, 183 N.E.3d at 1096. But the current Distributed Generation Statutes do not direct utilities on how often excess distributed generation must be measured. The statute does not mandate a specific time when the difference between inflow and outflow must be measured. As a result, the Commission, acting within its legal authority and technical expertise, recognized technology has changed and so too can the timing of when the difference between inflow and outflow of energy be calculated.

Conclusion

Accordingly, the Commission properly held Vectren's instantaneous netting method is not contrary to law and satisfies the requirements in I.C. § 8-1-40-5.

Rush, C.J., and Slaughter, J., concur.

Goff, J., concurs in the result.

Molter, J., not participating.

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