**Questions and Comments to the IURC regarding GAO 2017-2**
**August 24, 2017**

Below are comments and questions related to the guidance provided in GAO 2017-2 which relate to the implementation of SEA309. The following comments and questions are jointly submitted from Carmel Green Initiative, Citizens Action Coalition of Indiana, Columbus Community Solar Initiative, Earth Charter Indiana, Hoosier Environmental Council, Hoosier Solar Initiative, IndianaDG, Hoosier Interfaith Power and Light, OFA Indiana, Prosperity Indiana, Sierra Club – Hoosier Chapter, Solar Indiana Renewable Energy Network, Solarize East Central Indiana, Solarize Evansville, Solarize Ft. Wayne, Solarize Indianapolis, Solarize Kokomo, Solarize Northern Indiana, Solarize South Central Indiana, Solarize the Sunny Side (Jeffersonville, Clarksville, New Albany area), Sr. Claire Whalen - team leader of Solarize Batesville/Oldenburg, and Valley Watch.

1) **Section I (B)** mentions "the Commission's net metering and interconnection rules" and the "investor owned utility interconnection applications and agreements" and "the specific information and documents that may be needed from a customer" We would note that these documents are not easily found on the Commission website or on the investor-owned utilities websites.

   Because of the significant interest in distributed generation across the State and the tight timelines imposed by the legislation, we would suggest that the Commission create a central repository on an easily found FAQ page where consumers can easily and quickly find the necessary documents and information.

   Examples can be found on the websites of the Ohio PUC and the Michigan PSC.

   Ohio PUC, Interconnection checklist: https://www.puco.ohio.gov/be-informed/consumer-topics/interconnection-checklist/

   Michigan PUC, Michigan's net metering program: http://www.michigan.gov/mpsc/0,4639,7-159-16393_48212_58124---,00.html

2) **Section I (D) states that** "The Commission notes that the Indiana Energy Association, on behalf of its members, **volunteered to toll** the grandfathering deadline if a member utility causes a delay exceeding the timelines allowed in the interconnection rule." While we appreciate the IEA's willingness to hold their member utilities accountable, we would express concern regarding the mechanics of such an offer. The IEA is not the IURC nor another instrumentality of the State of Indiana. Consumers should not be required to reach out to the IEA to log a complaint or request documentation that an extension of time has been granted and recorded because a member utility failed to follow timelines imposed by Commission rules.

   We would suggest that the Commission Consumer Affairs Division play the role of intermediary between consumers and their utilities, and not the Indiana Energy Association. Consumers who have reached out to our organizations have no confidence in the IEA working to protect their interests and should be able to rely on

their state government to perform that critical function regarding the implementation of SEA 309.

3) **Section II (B)(1)** states that in order for a customer to receive grandfathering until July 1, 2047, they must "Have the net metering facility installed" on or before December 31, 2017. Additionally, the GAO states in Section II (D)(1) that "a customer's net metering facility must be set up and ready to operate prior to January 1, 2018". We would add that this section also contemplates that the utility may not have completed the inspection yet, and states that the inspection need not be complete in order for the customer to satisfy the definition of installs**.**

   How does the Commission contemplate these facts being established? Who will document this and where will this information be retained? How will customers be assured that if they satisfy the Commission's definition, they will indeed be grandfathered until July 1, 2047?

4) **Section II (D)(2)** states that "the utility has received the signed document from the customer." What does "utility has received" mean and how will this be documented and recorded? This is not clear. Since there is a significant chance for bureaucratic delays by the utility as well as potential U.S. mail delays, we would note that we are recommending that customers scan the document(s) and submit by email to get a time-stamp upon submittal. We also recommend that the Commission be copied when the executed document is submitted by email. Further, we recommend that the Commission identify a dedicated staff person and/or email address for such submittals.

   The goal with these recommendations is to streamline the process as much as possible, to provide some confidence to customers, and to try to avoid future misunderstandings and complaints. If necessary, the actual documents could also be submitted by U.S. mail later.

   We would note that the section also states that "An interconnection agreement that has been signed by both the utility and the customer is the affirmative evidence". Therefore, an alternative solution would be to amend the GAO. We recommend that where the GAO states "utility has received" be amended to state "the customer has received the signed document from the utility". This recommendation would erase the ambiguity and uncertainty regarding "utility has received". The fact that both parties have signed the document should be enough.

5) **Section II (D)(2)** states "Both the customer and the utility **need to agree on the relevant and appropriate terms and conditions** for the customer's net metering facility and the customer's participation in the utility's net metering tariff." We don't know what this means. What are the "relevant and appropriate terms" which are eligible for discussion and negotiation? What was the Commission contemplating with this language?

6) **Section II (D)(4)** which discusses the successor in interest provisions contained in SEA309 states "The executed interconnection agreement contains the necessary information, including the nameplate capacity. The customer has the responsibility to retain this documentation and/or have the document recorded with the appropriate government agency, in order for future successors in interest to have this information."

   This section is causing much anxiety and concern among our organizations and among consumers not affiliated with our organizations. Furthermore, we find this section to be fundamentally unfair. All of the existing and pending interconnection agreements contain no language indicating the grandfathering status of the existing or pending net metering facilities. How can customers retain and record documentation that is not in their possession and more importantly, does not exist?

   At a minimum, it should be the utilities' responsibility to provide documentation to the customer indicating the grandfathering status of the net metering facility, and that the interconnection agreement is transferrable. This could be achieved by the Commission requiring an addendum to all of the existing interconnection agreements, and by the Commission requiring that the utilities immediately update their interconnection agreements for pending and future net metering facilities to clearly state their respective grandfathering status, and that the interconnection agreement is transferrable. We would also recommend that the Commission create a central repository containing all of the addresses with installed and operational net metering facilities in Indiana and the related grandfathering status of those facilities. This would help to ease the anxieties and concerns of those customers who currently have made investments, or plan to invest, significant capital on their properties. This was the intent of the addition of the grandfathering provisions when they were added to the legislation. We feel strongly that the Commission should honor that legislative intent and provide customers with as much assurance as it can and that they deserve that their investments are protected. Otherwise, protracted litigation -- expensive and time-consuming to all concerned -- is inevitable over the next thirty years.

   Moreover, additional concerns have arisen regarding the GAO's language that "[t]he customer has the responsibility to . . .have the document recorded with the appropriate government agency, in order for future successors in interest to have this information." In particular, this language plainly says that, to have the protection they expect -- and SEA 309's authors have publicly stated they intended for the grandfathered net metering status of successors in interest to their solar facilities -- customers must record documentation of that status with "the appropriate government agency" without specifying the documentation to be recorded, the appropriate government agency with which it should be recorded, or the statutory basis or procedures for such recordation.

7) The GAO also did not address or provide clarity regarding the issue of current net metering customers who expand their systems after December 31, 2017 using a new inverter, or a series of micro-inverters, with the energy going through one meter.

Solarize programs across the state are reaching the capacity limit of Indiana-based solar installers, and solar installers from other states are being recruited. However, many current solar owners who want to add panels will be delayed until 2018 as a result of the high demand for solar panels.

This issue was discussed at the technical conference. Mr. Massell on behalf of the IEA responded, "In our mind, the answer is the portion that's installed this year is eligible for net metering underneath this year's program; in other words, we'd grandfather it through 2047. The new addition would not be; it would be eligible under whatever that program is that's in place at that point in time. You suggested 2018 or '19, in which case it would be grandfathered through 2032."[1]

Chairman Atterholt asked a follow-up question to Mr. Massell. "Would you have a separate meter? How would you handle that?"[2]

Mr. Massell responded with, "Yeah, I'll tell you, it's a marvelous question, and what we're talking about, of course, is installations that could potentially be under a pricing regime from now until 2047. As the Commission is fully aware, the utilities are looking at and beginning to install what's kind of generically called smart metering, very sophisticated kinds of meters that have remarkable capabilities for what they're able to do. As that technology is installed and as that technology unfolds, the answer of the metering may become a lot clearer than what it might be today."[3]

However, no Indiana investor-owned utility has fully deployed smart meters, with one Indiana investor-owned utility, NIPSCO, not having indicated any plans as of yet to install smart meters. With the exception of Duke Energy Indiana, it is unclear when smart meters will be fully deployed throughout the service territories of the utilities represented by the IEA. Furthermore, it's unclear that smart meters have the capability to separately measure the energy from two separate net metering installations using separate inverters.

It's unclear to us how it will work if one system is grandfathered through July 1, 2047, and the other system is grandfathered through July 1, 2032. This question was posed over two weeks ago to a member utility of the IEA, but that utility has yet to respond. Clarity and guidance on this issue from the Commission is necessary.

8) We appreciate the clarity regarding battery systems. Specifically, the GAO states, "The addition of an appropriately sized battery to an otherwise qualifying net metering facility, subject to this capacity condition, is to be considered a component of the net metering facility system." However, it's unclear how this condition relates to hybrid systems where the battery serves in a dual capacity of providing back-up energy, and also functions as a tool for reducing peak demand and shaving peak load. It should be noted that the batteries in a hybrid system may import energy from the

[1] Transcript of July 20, 2017 technical conference, Volume B, B-33, lines 18-25
[2] Id. at B-34, lines 23-24
[3] Id. At B-34, lines 25 thru B-35, lines 1-11

grid, but do not export energy to the grid. Only the PV panels export energy when over-producing above the real-time load of the property. Since the discussion at the technical conference centered on batteries serving as back-up only and peak-shaving and demand reductions were not discussed, clarity and guidance from the Commission regarding this issue would be appreciated.

9) The GAO generally addresses and clarifies only issues associated with the grandfathered net metering status of solar facilities completed on or before December 31, 2017. We appreciate the efforts which the Commission has made to offer the clarifications which the GAO addresses, subject to the further clarifications discussed above which we believe are also required. However, we believe that there is a more fundamental ambiguity in SEA 309 which is not addressed or clarified by the GAO which will be of increasing concern to solar system customers and vendors as the deadlines and steps to achieve completed facilities on or before December 31, 2017 pass and become moot. Notably, the GAO does not clarify the fundamental ambiguity in SEA 309 as to whether customers of Indiana investor-owned utilities retain their rights to install solar (and other renewable generation) systems which would be "qualifying facilities" under the Public Utilities Regulatory Policy Act notwithstanding that they would also be "distributed generation" facilities under SEA 309. The GAO is also silent with respect to the responsibilities and procedures which the investor-owned utilities subject to SEA 309 would be obligated to discharge and follow with respect to informing customers regarding the existence and exercise of these rights.

   Chapter 2.4 of the Indiana Code and Rule 4.1 of the Indiana Administrative Code implement the requirements of PURPA for Indiana customers. As described in the statute, "it 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." IC 8-1-2.4-1. To further this legislative purpose, the law directs the commission to require electric utilities "to enter into long-term contracts" to purchase energy and capacity at avoided cost rates from all "qualifying facilities," which include "cogeneration or alternate energy production facilities of eighty (80) megawatts capacity or less." IC 8-1-2.4-4(a); 170 IAC 4-4.1-1(q); 170 IAC 4-4.1-5. These rates must be established "at levels sufficient to stimulate the development of alternate energy production, cogeneration, and small hydro facilities in Indiana." IC 8-1-2.4-4(b). The commission's administrative rules provide formulas for calculating these QF rates, and utilities must annually "file with the commission a standard offer for purchase of energy and capacity" derived from these formulas. 170 IAC 4-4.1-8 (rates for energy purchase); 170 IAC 4-4.1-9 (rates for capacity purchase); 170 IAC 4-4.1-10 (filing of standard offer).

   As described above, the avoided cost rates derived pursuant to Indiana's PURPA rules are different than the rate applicable to "excess distributed generation" under Section 17 of SEA 309 (IC 8-1-40-17). SEA 309 does not provide any guidance as to whether or not the Indiana legislature intended to displace a QF's ability to obtain a

long-term contract at full avoided cost rates. However, because PURPA is a federal law, the Indiana legislature cannot legally prevent QFs from selling energy and capacity to Indiana utilities at a full avoided cost rate. See, e.g., Independent Energy Producers Ass'n v. California Pub. Utils. Comm'n, 36 F.3d 848, 859 (9th Cir. 1994) (holding that a California program is preempted by PURPA insofar as it imposes a QF rate that is lower than the utility's full avoided costs").

From the feedback we are receiving from customers, we expect this matter to become a "live" concern with many of those seeking to "Go Solar" or install other renewable generation as soon as it becomes certain that 30-year net metering grandfathering will no longer be a realistic option for them (i.e., they have not been offered and executed final contracts with vendors by September 30, 2017, to install their facilities on or before December 31, 2017).

We would note that Commissions and utilities in other jurisdictions (e.g. Illinois) already have addressed this important matter to assure that their customers are fully informed of their respective rights and responsibilities under overlapping state and federal law regarding small solar and other renewable generation facilities. See, e.g., https://azstg.comed.com/MyAccount/MyBillUsage/Pages/ElectionForms.aspx (Commonwealth Edison webpage providing its retail customers with forms by which they elect one of their several options for the terms and conditions applicable to their interconnected distributed generation facilities given the overlap of Illinois and federal law).

Thank you for your careful consideration of all of the above questions and comments, which reflect the views of organizations that represent tens of thousands of residents all across Indiana.