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*Thomas M. Melone
President and
Chief Executive Officer*

July 12, 2011

Public Utilities Commission of Ohio
Docketing Division
180 E. Broad Street, 10th Floor
Columbus, Ohio 43215-3793

Case No. 11-3002-EL-MER

Dear Sir/Madam,

Please find enclosed an original and twenty copies of the Comments of Ecos Energy LLC in the above-captioned matter. Also enclosed is a disc that contains an electronic copy of the filing.

Sincerely yours,

Thomas Melone

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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In The Matter of Application of The AES)
Corporation, Dolphin Sub., Inc., DPL Inc.)
and The Dayton Power and Light Company)
for Consent and Approval for a Change of)
Control of The Dayton Power and Light)
Company) **Case No. 11-3002-EL-MER**
)

COMMENTS OF ECOS ENERGY LLC

Ecoss Energy LLC, a Minnesota limited liability company (“Ecoss”), pursuant to the Order entered on June 1, 2011, in the above-captioned Case now pending before The Public Utilities Commission of Ohio (“Commission”) files these comments.

1. On May 18, 2011, The AES Corporation (“AES”) filed an application (the “Application”) with the Commission for approval of the change in control of The Dayton Power and Light Company.

2. In order to approve the change in control, Section 4905.402(B), Ohio Revised Code, requires that “the acquisition will promote public convenience and result in the provision of adequate service for a reasonable rate.”

3. In the Application AES states that it: “is a global power company headquartered in Arlington, Virginia, that through its subsidiaries and affiliates, owns a portfolio of generation and distribution businesses throughout the world.”¹

4. The Application further states: “In today’s electricity marketplace, utilities require scale and a broad set of skills in all types of generation and energy delivery to operate in a manner that benefits customers. To meet the challenges of the changing dynamics of the energy industry and of the economy, a scale larger than that of DP&L is

¹ See, Application at p. 1.

required, as evidenced by recent transactions such as FirstEnergy/Allegheny Energy, Duke/Cinergy, Duke/Progress Energy, PPL/LG&E and Kentucky Utilities, and Exelon/Constellation. Being a part of the AES group will make available to DP&L and its customers an extensive global network of technical expertise and resources, which will enhance DP&L's ability to compete with the substantially larger Ohio utilities. For example, globally AES operates 14 utilities distributing power to approximately 11.5 million customers, and it employs 29,000 people. AES also has extensive expertise in the development and operation of renewable energy resources." AES lists the "Key elements and benefits of the merger" as including:

“1. AES is committed to preserving DP&L's local decision making authority, including its commitment to maintain DP&L's operating headquarters in Dayton, Ohio and DP&L's name, for at least two years following the merger.

2. Customers will continue to receive the same high-quality service at reasonable rates that they received before the merger. DP&L's rates are currently fixed through 2012 and were approved by the Commission. Post 2012 rates will also be subject to approval by the Commission.

3. AES is committed to meeting customers' energy demands, and it contributes to communities' capability to grow by providing reliable and responsible electric power. Customers will benefit from the extensive technical expertise and resources of the AES group. The merger will allow DP&L to build on what has made it a reliable, efficient utility while receiving the benefits of being a part of a larger global company. AES owns Indianapolis Power & Light Company ("IPL"), and IPL's close proximity to OP&L will allow each company to provide better emergency response services.

4. The merger will not result in further consolidation among Ohio utilities.

5. Following the merger through December 31, 2013, AES has committed to cause DPL Inc. and DP&L not to implement any involuntary workforce reductions that would result in DPL Inc. and DP&L employing substantially fewer individuals in the aggregate than are employed immediately before the merger.

6. For at least two years following the merger, DP&L will continue to provide corporate contributions and community support in the Dayton, Ohio area at levels substantially consistent with its current levels of charitable contributions and community support. In addition, because The DP&L Foundation is an independent entity, it will not be affected by the merger. It will continue its community focus, as it has for over 25 years.

7. Upon consummation of the merger, DP&L's credit rating will remain investment grade."²

5. The Application then concludes that: "The merger thus provides significant benefits to DP&L's customers and its other stakeholders, while ensuring that those customers continue to receive reliable service at reasonable rates. The Commission should conclude that the merger promotes the public convenience, and it should approve the merger."

6. With respect to renewable energy the Application states:

"AES has extensive experience developing and operating renewable energy projects, with over 1.8 GW of wind and AES Solar has over 100MWs of solar photovoltaic projects under construction or in operation. AES and AES Solar also have a significant pipeline of wind and solar projects, respectively, under development in the U.S. AES's 100MW Armenia Mountain wind project, located in Pennsylvania, began operations in 2009. AES is currently constructing the 98MW Laurel Mountain wind farm in Pennsylvania, which includes 32MW of energy storage. A third wind project being developed by AES, New Creek, located in West Virginia, is presently in advanced development and is set to have a capability of 127MW."³

7. Section 4905.402(B), Ohio Revised Code, requires that "the acquisition will *promote public convenience.*"

² See Application at pp.3-4.

³ See Application at p.8.

8. In order to promote the public convenience, the merger must do more than hold the public harmless or simply maintain the status quo. In order to *promote* the public convenience, the public must be better off after the merger than before the merger.

9. Ohio law (Revised Code Section 4928.64) requires electric distribution utilities and electric services companies to secure a portion of their electricity supplies from alternative energy resources. By the year 2025, 25 percent of the electricity sold by each utility or electric services company within Ohio must be generated from alternative energy sources. At least 12.5 percent must be generated from renewable energy resources, including wind, hydro, biomass and at least 0.5 percent solar. The remainder can be generated from advanced energy resources, including nuclear, clean coal and certain types of fuel cells. In addition, at least one half of the renewable energy used must be generated at facilities located in Ohio. All companies must meet annual renewable and solar energy benchmarks that increase as a percentage of electric supply each year.

10. The Application provides no real evidence that the public will be better off after the merger than before.

11. The Application fails to even mention how the change in control will *promote* the achievement of the State's renewable energy goals.

12. Ohio has adopted one of the Nation's leading renewable energy standards.

13. AES currently owns only one retail utility company within the United States, which is IPL.

14. Although AES states in its Application that it has developed over 100MWs of solar projects and 1.8GWs of wind projects, it fails to note that those projects are by and large related to the unregulated side of AES' business.

15. That fact is significant because in neighboring Indiana, AES-owner IPL is attempting to rescind the renewable energy feed-in tariff that was approved by the Indiana Utility Regulatory Commission (“IURC”).

16. That situation is highly relevant for a few reasons. First, IPL has refused, without IURC approval, to continue to implement the tariff. Second, it raises the issue of whether the AES corporate culture indeed intends to promote the development of renewable energy. Third, IPL is attempting to rescind the tariff by making a collateral attack on the authority of the IURC.

17. If AES’ only U.S.-owned regulated utility, IPL, is attempting to escape a renewable energy commitment of only 1% of its load, how will an AES subsidiary react to Ohio’s 25% goal?

18. The current circumstance with AES-owner IPL in Indiana is quite unusual. To our knowledge no other utility in the United States has attempted to disavow *on a retroactive basis* a renewable energy tariff that the utility received approval to implement. IPL being the first to do so is even more surprising in light of its parent company’s (AES’) worldwide solar development business based upon feed-in tariffs, and its stated commitment to reduce its level of CO2 emissions on a company-wide basis.⁴

⁴ On November 19, 2009, the AES Corporation entered into an agreement with the New York State Attorney General requiring the disclosures of the financial risks of the production of global warming pollution. The announcement from the New York Attorney General states:

“These required disclosures include an analysis of material financial risks from climate change related to:

Present and probable future climate change regulation and legislation

Climate-change related litigation

Physical impacts of climate change

Through the agreement, AES has committed to a broad array of additional climate change disclosures including:

Current carbon emissions

Projected increases in carbon emissions from planned coal-fired power plants

Company strategies for reducing, offsetting, limiting, or otherwise managing its global warming pollution emissions and expected global warming emissions reductions from these actions

Corporate governance actions related to climate change, including if environmental performance is incorporated into officer compensation.”

19. The stance that AES-owned IPL has taken in Indiana, which will result in fewer jobs in Indiana, raises serious concerns with AES' commitment to the environment. It is an issue that should be carefully reviewed by the Commission.

20. Because of the significance of the issues that are being contested and raised in Indiana in IPL's attempt to rescind its commitment to the renewable energy program, I have attached as Attachment I the verified per-filed testimony that I have filed in that matter. The testimony discusses various issues that the Commission may find relevant to this Case.

WHEREFORE, Ecos respectfully submits these Comments, requests that it be added to the service list in the above-captioned Case, and requests that it be allowed to file a motion to intervene once the schedule is established by the Commission.

Respectfully submitted,



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July 12, 2011

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF)
INDIANAPOLIS POWER & LIGHT)
COMPANY REQUESTING THE)
INDIANA UTILITY REGULATORY)
COMMISSION TO ISSUE AN ORDER)
PURSUANT TO INDIANA CODE § 8-1-)
2-72 REVISING RATE REP TO (1))
REDEFINE THE TERM QUALIFYING)
RENEWABLE ENERGY POWER)
PRODUCTION FACILITY; (2))
ELIMINATE LANGUAGE IN RATE)
REP SUGGESTING IT INCLUDES A)
COMMISSION APPROVED)
WHOLESALE POWER RATE; (3))
EXTEND THE MAXIMUM TERM OF)
RATE REP AGREEMENTS FROM)
TEN TO FIFTEEN YEARS; (4))
INCORPORATE LANGUAGE)
REQUIRING PARTICIPANTS TO)
HAVE NECESSARY AUTHORITY TO)
MAKE WHOLESALE POWER SALES)
AND (5) CLARIFY RATE REP)
ENERGY PURCHASES CONSTITUTE)
ENERGY SAVINGS.)

CAUSE NO. 44018

VERIFIED DIRECT TESTIMONY

OF

THOMAS MELONE

ON BEHALF OF

ECOS ENERGY LLC

JUNE 30, 2011

1 **I. INTRODUCTION**

2 **Q1. PLEASE STATE YOUR NAME, TITLE, AND BUSINESS ADDRESS.**

3

4 A1. My name is Thomas Melone. I am the Chief Executive Officer of Ecos Energy LLC
5 (“Ecos”). Ecos develops renewable energy projects. I am also President of Allco
6 Renewable Energy Limited. Allco develops, invests in, and arranges financing for,
7 renewable energy projects and companies throughout the United States. My business
8 address is Allco Renewable Energy Limited, 14 Wall Street, 20th floor, New York, New
9 York 10005. I am also the Vice Chairman of Outland Energy Services, LLC, a
10 Minnesota-based provider of field services to the wind industry.

11 **Q2. PLEASE DESCRIBE YOUR EDUCATIONAL BACKGROUND.**

12

13 A2. I received a Masters of Law (Taxation) from New York University School of Law. I
14 have a Juris Doctor degree (High Honors) from Rutgers University School of Law
15 (Newark) and a Bachelor of Science degree (magna cum laude) in Business Management
16 and Accounting from Fairleigh Dickinson University. I also am a licensed Certified
17 Public Accountant.

18 **Q3. PLEASE DESCRIBE YOUR PROFESSIONAL EXPERIENCE.**

19

20 A3. I joined the Internal Revenue Service as a Revenue Agent in 1978. In 1982 I joined the
21 law firm of Cravath, Swaine & Moore in New York as an associate. From 1982 to 1989
22 my practice at Cravath involved primarily project finance and lease finance transactions.
23 In 1990 I joined Chase Investment Bank in London as a Vice President. In 1991 I joined

1 the New York office of the law firm of Hunton & Williams as a tax partner in its project
2 finance practice, which I left in 1994 to join the New York office of the Australian-based
3 Allco Finance Group Limited. In 1996 the New York office became separately owned.
4 From 1994 to the present, I have been personally involved in approximately \$25 billion
5 of structured lease and project financings for various entities in the United States,
6 Canada, Europe, Australia and Asia. In 2006, the company decided to focus almost
7 exclusively on financing, developing and investing in renewable energy projects and
8 renewable energy companies, and Allco Renewable Energy Limited was formed.

9 **Q4. MR. MELONE, WHAT IS THE REASON FOR YOUR TESTIMONY?**

10
11 A4. In Cause No. 43623 the IURC approved a new standard offer feed-in tariff (the “Rate
12 REP”) applicable to Indianapolis Power & Light Company (“IPL”) that would apply to
13 certain renewable energy projects. After discussions with IPL, in good faith reliance on
14 the approved Rate REP, Ecos Energy expended time and resources developing projects
15 that would sell energy to IPL pursuant to the standard offer embodied in the Rate REP.
16 As a result of that effort, Ecos Energy has filed level 3 and level 2 interconnection
17 applications to IPL for projects under Rate REP. IPL however has informed Ecos that
18 was repudiating Rate REP, and has instituted the current proceeding to retroactively
19 eliminate the Rate REP for projects other than a net metering situation.

20 **Q5. IS IT UNUSUAL FOR A UTILITY THAT HAS REQUESTED A CERTAIN**
21 **TARIFF TO THEN ATTEMPT TO RENOUNCE IT?**

22 A5. The current circumstance is quite unusual. To our knowledge no other utility in the
23 United States has attempted to disavow *on a retroactive basis* a renewable energy tariff

1 that the utility received approval to implement. IPL being the first to do so is even more
2 surprising in light of its parent company's (AES') worldwide solar development business
3 based upon feed-in tariffs, and its stated commitment to reduce its level of CO2
4 emissions on a company-wide basis. It is difficult to reconcile IPL's contentions
5 regarding developers while, its parent company, concurrently has in excess of 100MW of
6 solar projects *as a developer* based upon feed-in tariffs throughout the world.¹ It is also
7 surprising, in light of AES' experience and discussion in its 10-K regarding feed-in
8 tariffs, that the changes are being proposed on a retroactive basis. As discussed in the
9 AES 10-K, when feed-in tariffs become oversubscribed, any changes are made on a
10 prospective basis.

11 **Q6. MR. MELONE, IPL HAS STATED THAT THE CHANGES TO RATE REP**
12 **THAT IT IS REQUESTING ARE INTENDED TO REFLECT THE ORIGINAL**
13 **INTENTION OF THE PROGRAM. WHAT IS YOUR VIEW ON THAT**
14 **POSITION?**

15
16 A6. Ecos started discussions with IPL with respect to the Rate REP in April 2010. It was
17 clear that Ecos was a developer. Until late 2010 there was never any indication or
18 concern expressed by Mr. Haselden regarding developers, such as Ecos, selling power
19 under the Rate REP. Based upon those discussions with IPL and the clear terms of the
20 Rate REP, Ecos proceeded in good faith to develop projects. Substantial resources in

¹ See, http://www.aes-solar.com/global/index?page=projects_solar&locale=en&view=AES_SOLAR; also see, AES 10-K for 2011 describing various feed-in tariffs that it participates in as a developer. http://investor.aes.com/phoenix.zhtml?c=76149&p=irol-sec&control_selectgroup=Annual%20Filings. It is clear from the AES' 10-K that AES is well aware of IPL's proceedings before the IURC, which makes it that much more difficult to believe that IPL did not expect stand-alone developers to play a major role in its feed-in tariff.

1 terms of people, time and costs have been directed toward developing projects for Rate
2 REP. Although the level of response from developers to Rate REP is not unusual when
3 compared to the response to other feed-in tariffs, my view of what occurred is that IPL
4 was not expecting the Rate REP program to potentially be fully subscribed so quickly.

5 **Q7. MR. MELONE, IPL HAS STATED THAT WITHOUT THE CHANGES TO RATE**
6 **REP THAT IT IS REQUESTING ITS LONG-TIME EXISTING CUSTOMERS**
7 **MAY NOT BE ABLE TO PARTICIPATE IN RATE REP. ARE THE CHANGES**
8 **REQUESTED BY IPL NEEDED TO ACHIEVE THAT GOAL?**

9
10 **A7.** No. IPL can achieve its stated goal of reserving capacity for its long-time existing
11 customers by merely changing the rate on its net metering tariff. Except in the case of
12 biomass, the changes requested by IPL would turn Rate REP into a net metering tariff
13 only. As a result IPL can easily achieve its goal by changing its net metering rate. In the
14 case of biomass, IPL would not be able to exclude developers as that would be unlawful
15 discrimination under the Federal Power Act.

16 **Q8. MR. MELONE, AS YOU JUST MENTIONED, IPL IS SEEKING TO ADD A**
17 **HOST FACILITY LIMITATION TO THE RATE REP. WOULD THAT HAVE**
18 **AN ADVERSE EFFECT ON THE RATE REP PROGRAM?**

19
20 **A8.** Yes. Except in the case of biomass, the proposed changes to Rate REP seek to turn the
21 program into a net metering program from a regulatory standpoint. IPL must know from
22 their research of other solar programs throughout the United States that restricting the
23 size of a facility to the “annual consumption of the Host Facility” would likely result in a
24 program only a small fraction of the 100MW program that the Commission approved.

1 For example, the annual consumption of the host facility is a limitation in the New Jersey
2 PSE&G solar program. That program is significantly undersubscribed in both the
3 residential and small commercial category, and only somewhat oversubscribed in the
4 larger commercial category. For the current period out of a total available capacity of
5 2.4MW in the residential area only 119kw has been subscribed. Out of the total available
6 capacity of 3.5MW in the small commercial area only 436kw has been subscribed.² That
7 level of lack of participation is even more surprising when you recognize that New Jersey
8 pays a guaranteed minimum of approximately \$0.60/kwh for a minimum of 10-15 years.
9 That rate is three times IPL's Rate REP.

10
11 **Q9. IPL HAS ASSERTED SEVERAL BASES AS TO WHY RATE REP MUST**
12 **CHANGE. IPL HAS STATED THAT THE RATE REP AS CURRENTLY IN**
13 **EFFECT VIOLATES FEDERAL LAW. DO YOU AGREE?**

14
15 **A9.** No. The testimony filed by Mr. Haselden in Cause 44018 asserts several bases as to why
16 IPL believes it does not have to honor the terms of the Rate REP approved tariff that is
17 currently in effect. As I discuss below, each of its bases is unsupported by law and not in
18 the long-term interests of Indiana ratepayers.

19 **The Pre-emption/FERC Question**

20 IPL's central legal argument as to why it can fail to honor the current Rate REP is based
21 upon its assertion that the current Rate REP is somehow preempted by the Federal Power
22 Act (the "FPA"). The threshold question is "What does the Rate REP represent?". In

² See, <http://www.pseg.com/home/save/solar/forecast.jsp>

1 Q&A 26³, Mr. Haselden states: “Certain language in the existing tariff suggests that the
2 Commission, in approving Rate REP, established a purchase price for these wholesale
3 rates. For example, the current tariff provides that “[u]nless otherwise agreed, the RATE
4 REP PURCHASE RATES shall be’ the rates set forth in the tariff.” (emphasis added).

5 Mr. Haselden is correct. The Rate REP tariff did set the rates. That was exactly the
6 purpose of the approval received from the IURC. Indeed, that is exactly the purpose of a
7 feed-in tariff. By definition, a tariff is not a feed-in tariff without the rates being fixed.
8 IPL and its affiliates are well aware of that from their broad experience in dealing with,
9 and being on the developer side, of feed-in tariffs.

10 Mr. Haselden’s testimony attempts to distract from the clear and unambiguous language
11 of the tariff when he then states: “The Commission, however, did not approve rates for
12 wholesale purchase but instead found that IPL could recover purchase power costs
13 consistent with the terms of Rate REP through retail rates.” That statement is only one-
14 half correct. The Commission did both. It approved wholesale power rates under Rate
15 REP that IPL voluntarily set and it approved the IPL recovery of those rates. The
16 proceedings make that clear. The approval given to the rates requested by IPL is no
17 different than the approval the Commission provided for the wind energy PPAs of IPL
18 approved in prior proceedings.

³ Testimony of John Haselden, Cause 44018, May 1, 2011, p.9.

1 The federal law question raised by IPL is whether the Commission's approval of the
2 fixed wholesale power rates was a valid exercise of its authority under Public Utilities
3 Regulatory Policy Act ("PURPA").⁴ While PURPA is relevant to the setting of
4 wholesale rates by state commissions, as I discuss below it should not be relevant to the
5 threshold issue here.

6 Mr. Haselden's testimony states that the Rate REP was not a valid implementation of
7 PURPA, and as a result, the changes proposed by IPL are needed to address any potential
8 argument that Rate REP is preempted by FERC. In Q&A 26, Mr. Haselden states:
9 "PURPA sales must be made at the utility's avoided cost. The rates IPL pays for energy
10 under Rate REP are not based on avoided cost. The changes proposed by IPL address any
11 potential arguments that Rate REP is preempted by FERC." The unsaid theory of Mr.
12 Haselden's argument is that both IPL and the IURC forgot about the FPA and PURPA
13 when approving the Rate REP. It should be assumed, however, that both IPL and the
14 IURC acted with knowledge of the existing state and federal energy regulatory scheme in
15 which they function.

16 Mr. Haselden cites the recent decision by the Federal Energy Regulatory Commission
17 ("FERC") in *California Public Utilities Commission*⁵ to support his assertions that the

⁴ In 1978 Congress enacted PURPA, which "seeks to encourage the development of cogeneration and small power production facilities. Congress believed that increased use of these sources of energy would reduce the demand for traditional fossil fuels." *Federal Energy Regulatory Comm'n v. Mississippi*, 456 U.S. 742, 750 (1982).

⁵ See, *California Public Utilities Commission*, 132 FERC ¶61,047 (2010) as clarified by *California Public Utilities Commission*, 133 FERC ¶61,059 (2010) and *California Public Utilities Commission*, EL10-64-002 & EL10-66-002, *Order denying reh'g* (January 20, 2011).

1 Rate REP is not a valid under PURPA. Mr. Haselden's view reflects an erroneous
2 interpretation and application of the FPA and the FERC's decisions in *California Public*
3 *Utilities Commission*, and, most importantly, fails to take into account the *Mobile-Sierra*
4 doctrine⁶, which is controlling here.

5 Turning back to Mr. Haselden's PURPA contention, he is correct that under 18 C.F.R.
6 §292.304(a)(4) the rate for purchases from new facilities must be at full avoided costs
7 when PURPA is applicable. As discussed below, in the context of PURPA the FERC has
8 made clear that the question is what likely costs is the utility avoiding by interconnection
9 of the renewable energy generator.

10 Assuming PURPA would be the correct context in which to review the Rate REP, the
11 Rate REP contains two components. First is the payment by IPL to the renewable energy
12 generator of an amount equal to IPL's full avoided costs. Second is the payment by IPL
13 to the renewable energy generator for the renewable energy certificates ("RECs"), or
14 solar renewable energy certificates ("SRECs") that IPL receives. It is only if the sum of
15 those components exceeds the Rate REP that there should be an issue under PURPA.

16 However, the issue of whether a state commission must separately assign values to each
17 of those components was not addressed in the FERC's decision in *California Public*
18 *Utilities Commission*. Additionally the factual circumstance in the *California Public*

⁶ *United Gas Pipe Line Co. v. Mobile Gas Serv. Corp.*, 350 U.S. 332 (1956)(*Mobile*); *FPC Sierra Pac. Power Co.*, 350 U.S. 348 (1956)(*Sierra*). For recent decisions, see, *Devon Power LLC*, 134 FERC ¶61208 (2011); *Me. Pub. Utils. Comm'n v. FERC*, 625 F.3d 754 (D.C. Cir. 2010), *NRG Power Marketing v. Maine Public Utilities Commission*, 130 S. Ct. 693 (2010).

1 *Utilities Commission* case was different in that there the utilities were not voluntarily
2 requesting approval of a feed-in tariff rate, but the feed-in tariff rate was being imposed
3 upon them by the California Public Utilities Commission. Here IPL voluntarily sought
4 approval of a wholesale rate for a limited amount of power in the same manner as it
5 received approval for its wind energy PPAs and as a result the avoided cost test is not the
6 proper standard.

7 Nevertheless IPL raises valid issues under the FPA that can be stated as follows:

8 Issue 1—Is PURPA implicated at all by Rate REP?

9 When a utility *voluntarily* seeks approval of a fixed wholesale rate and the state
10 commission approves that rate *for a limited and fixed amount of nameplate capacity from*
11 *qualifying facilities*, is PURPA implicated or is it the equivalent of a utility voluntarily
12 requesting approval of a PPA?

13 Because the Rate REP is limited to a prefixed 100MW at rates voluntarily set by IPL, it is
14 no different from a FPA and PURPA standpoint than a 100MW PPA at the Rate REP
15 rate. The FPA and PURPA do not prohibit a utility from creating a standard offer at a
16 rate above its avoided costs. PURPA is simply not implicated. Here under the FPA, the
17 standard of review is dictated by the *Mobile-Sierra* doctrine and not PURPA. The test to
18 review any challenge to the rates set in Rate REP would therefore be subject to the
19 rigorous “public interest” standard.

1 The fact that IPL is prohibited from amending its standard offer under state law without
2 further approval of the IURC does not result in PURPA being implicated. Rather the
3 procedure for amendment of the Rate REP is a function of state contract and regulatory
4 law, just as an amendment of a PPA would be.

5 Under *Mobile-Sierra*, as interpreted by the Supreme Court in *Morgan Stanley*⁷, the
6 Federal Energy Regulatory Commission (the “FERC”) must presume that rates set by
7 contracts that are freely negotiated at arm’s-length between willing buyers and sellers
8 meet the statutory “just and reasonable” standard of review. The fact that the “buyers”
9 were not identified at the time of the approval of the binding tariff does not diminish the
10 fact that the rates were voluntarily set from a contractual standpoint. The Rate REP rates
11 clearly satisfy the *Mobile-Sierra* public interest standard and as a result, the Rate REP in
12 its current form would not be subject to any challenge under the FPA or PURPA.

13 Issue 2—If PURPA is implicated is it necessary that the avoided cost and SREC/REC
14 component be separated, or is the state commission permitted to accept the rate proposed
15 by the utility?

16 When a utility voluntarily seeks approval of a standard offer wholesale rate for a limited
17 duration does PURPA require that the state commission separate the feed-in tariff rate
18 into its avoided cost and SREC/REC component? Alternatively, is PURPA satisfied if
19 the state commission assumes the utility is acting in accordance with law and has no

⁷ *Morgan Stanley Capital Group, Inc. v. Pub. Util. Dist. No. 1 of Snohomish County, Washington*, 554 U.S. 527, 530 (2008)

1 reason to doubt that within some reasonable range of assumptions that the feed-in tariff
2 price does not exceed the range of likely avoided costs plus the reasonably expected
3 value from SRECs/RECs?

4 Issue 3—In determining avoided costs when a utility voluntarily seeks approval of a
5 wholesale standard offer rate, does the utility or state commission need to use the lowest
6 possible alternative generating source or do they have the flexibility to use a reasonable
7 alternative?

8 Issue 4—To the extent that avoided costs must be determined, what procedure should be
9 followed in this Cause to determine the range of likely avoided costs?

10 In order to make the determinations that may be relevant under PURPA, the IURC should
11 determine the dollar amount to assign to each component of the Rate REP. As to the first
12 component—avoided costs—Mr. Haselden's bare assertion as to what IPL's avoided
13 costs would be from the interconnection of a renewable energy generator should not be
14 accorded any weight. Rather, IPL should be required to present evidence so that the
15 IURC may determine what IPL's current avoided costs would be from the
16 interconnection of each specific category of renewable energy generators covered by the
17 Rate REP. As discussed in more detail below, the FERC's decision in *California Public*
18 *Utilities Commission* details what is appropriate to include in that determination.

19 As to the second component, IPL should need to present evidence as to the current
20 projected value of the RECs and/or SRECs that it would receive. Specifically with

1 respect to SRECs it is noteworthy that the SRECs received by IPL from the Rate REP
2 could be sold by IPL to Ohio utilities.⁸

3 **Q10. MR. MELONE, IS THERE A PROCESS IN WHICH THE FPA AND PURPA**
4 **ISSUES CAN BE CLARIFIED?**

5
6 A10. Yes. Because we believe that PURPA is not implicated by Rate REP as currently in
7 effect, and that the standard applicable to any challenge is the rigorous *Mobile-Sierra*
8 “public interest” standard, we have decided that it would be beneficial for all parties if
9 Ecos filed with the FERC a request for a declaratory judgment. We are in the process of
10 drafting those papers for filing.

11 **Q11. CAN YOU DISCUSS THE FERC’S DECISION IN CALIFORNIA PUBLIC**
12 **UTILITIES COMMISSION?**

13
14 A11. **The Factors to Include in Avoided Cost: FERC’s Ruling in *California Public Utilities***
15 ***Commission***

16 Until recently there may have been some uncertainty as to how the FERC would address
17 the issue of avoided costs under PURPA in light of state renewable energy programs,
18 potential greenhouse gas (“GHG”) emissions limits, the benefits of interconnecting
19 renewable energy generators, and other environmental externalities. In *California Public*
20 *Utilities Commission*, the FERC has provided a roadmap for state commissions
21 explaining how avoided costs should be determined under PURPA in light of various
22 categories of costs that would likely be avoided in the future by the interconnection of

⁸ See, for example, IPL’s response to IDEA’s data Request 2-5 in Cause 43960: “It is IPL’s understanding that a short-term spot market price for solar RECs sold to the Ohio market can range up to the equivalent of \$.325/kWh.”

1 certain renewable energy qualifying facilities (“QFs”) as defined in 18 C.F.R.
2 §292.203(a) without being preempted under the FPA.

3 The FERC approved “a multi-tiered avoided cost rate structure [as being] consistent with
4 the avoided cost rate requirements set forth in PURPA and [FERC] regulations”.
5 *California Public Utilities Commission*, 133 FERC ¶61,059 (2010) at 12. The FERC
6 reaffirmed that “[b]oth section 210 of PURPA and our regulations define avoided costs in
7 terms of costs that the electric utility avoids by virtue of purchasing from the QF. The
8 question, then, is what costs the electric utility is avoiding.” *Id.*

9 The FERC stated that “just as a state may take into account the cost of the next marginal
10 unit of generation, so as well the state may take into account obligations imposed by the
11 state that, for example, utilities purchase energy from particular sources of energy or for a
12 long duration. Therefore, the [public utility commission] may take into account actual
13 procurement requirements, and resulting costs, imposed on utilities.” *Id.* at 13.

14 While the avoided cost rate may not contain a bonus or adder for *all* environmental
15 externalities, it could include environmental costs that are costs that would likely be
16 incurred by utilities in the future, such as GHG, renewable portfolio or other type
17 compliance costs.⁹ With respect to the costs of all environmental externalities in excess
18 of environmental compliance costs, a state “may separately provide additional

⁹ As a result the blanket 10% “transmission” bonus at issue in the case was not permissible unless it was based on an analysis of “the expected costs of upgrades to the distribution or transmission system that the QFs will permit the purchasing utility to avoid.” In such a case the adder would constitute an actual avoided cost determination consistent with PURPA. *Id.* At 15-16.

1 compensation . . . *outside the confines of, and, in addition to the PURPA avoided cost*
2 *rate, through the creation of renewable energy credits (RECs).” Id. at 16.¹⁰*

3 As a result, by purchasing energy from renewable energy facilities, the purchasing utility
4 is avoiding potential future GHG, compliance and other costs. Those costs are properly
5 included in a long-run PURPA avoided cost rate.

6 Outside the context of PURPA, the FERC agreed with the California utilities that the
7 establishment of a fixed price would constitute “impermissible wholesale-rate setting by
8 the CPUC” which was preempted by the FPA. In the context of PURPA, however, the
9 FERC ruled that to the extent the projects were QFs, *the fixing of a long-term run rate*
10 *by the public utility commission would be considered an implementation of PURPA*
11 *and thus not be preempted if the rate established did not exceed the likely avoided cost*
12 *of the purchasing utility. California Public Utilities Commission, 132 FERC ¶61,047*
13 *(2010) at 27.*

14 **Q12. CAN YOU DISCUSS THE RATE REP IN THE CONTEXT OF PURPA AND**
15 **IPL’S TESTIMONY?**

16
17 A12. The Rate REP by its terms only involves QFs, and as a result (assuming PURPA applies)
18 it would be wholly within the confines of PURPA.

¹⁰ The FERC has held that the avoided cost regulations under PURPA did not contemplate the existence of RECs and therefore the determination concerning state-created RECs must be based upon state law, and most importantly is not preempted by the FERC’s jurisdiction under the FPA: “States, in creating RECs, have the power to determine who owns the REC in the initial instance, and how they may be sold or traded; it is not an issue controlled by PURPA.” *Id.* at 16 citing *American Ref-Fuel Co.*, 105 FERC 61,004 (2003) at p.23. Also see, *Wheelabrator Lisbon v. Connecticut Dept. of Pub. Util. Control*, 531 F.3d 183 (2d Cir. 2008). As a result, a state public utility commission could fix the price of RECs that would be includable in a long-run rate.

1 Here, to the extent that FERC rules in the affirmative on Issue 1, IPL's testimony in the
2 original proceeding makes it clear that the Rate REP was a valid exercise of the
3 Commission's authority under PURPA and that there was no reason to doubt (1) IPL's
4 own analysis (*which was unchallenged*) as to likely avoided costs¹¹, and (2) IPL's
5 voluntary agreement (*which was unchallenged*) as to the value of RECs¹².

6 Mr. Haselden's testimony in Cause 43623 focused throughout on one underlying issue—
7 "avoided costs". For example, in Q&A9¹³, Mr. Haselden stated:

8 "Q. What is the purpose of your testimony in this proceeding?

9 "A. The purpose of my testimony is to support IPL's proposal to implement several new
10 Demand Side Management ("DSM") programs¹⁴ within its service territory through a
11 discussion of (1) DSM's role in the Integrated Resource Planning ("IRP") process; (2) the
12 "avoided cost" calculation utilized by IPL in its analysis of proposed DSM programs and
13 performance incentives; (3) the calculation of the DSM incentive mechanism; (4) the
14 proposed changes to IPL's Standard Contract Rider No.9 (Net Metering for Customers

¹¹ See, for example, the Appendix to Mr. Haselden's presentation entitled "Renewable Energy Incentive Programs at IPL, Techpoint Innovation Summit 2010", dated October 27, 2010, which notes the effective per kwh cost of a combustion turbine is \$0.34.

¹² See footnote 8 above.

¹³ Testimony of John Haselden, Cause 43623, February 2, 2009, p.3.

¹⁴ IPL has urged the IURC to consider the Rate REP as counting toward IPL's demand side management goals.

1 with Solar Photovoltaic, Wind, or Hydroelectric Systems); and (5) the details of IPL's
2 new renewable energy feed-in tariff, Rate REP (Renewable Energy Production)."¹⁵

3 Mr. Haselden testified that: "Indiana's definition of 'avoided cost' [was] consistent with
4 the term's use in other states." (Q&A25, page 8, lines 23-25). Mr. Haselden specifically
5 cited Indiana's approach as consistent with that of California which

6 "adopted a methodology that computes total avoided costs from a societal
7 perspective that includes both direct savings and externality values of
8 unpriced emissions (e.g., CO2). For electric avoided costs, the calculation
9 also includes (1) avoided generation costs, (2) avoided transmission and
10 distribution costs, and (3) environmental externalities. Avoided generation
11 costs assume the cost of a new combined-cycle gas turbine power plant,
12 transmission and distribution costs are determined on a case-by-case basis,
13 and the environmental externalities are calculated based on the market
14 price for various emissions." Pages 8-9.

15 Mr. Haselden's testimony also referred to Massachusetts in connection with avoided
16 costs. In Massachusetts, in order for a power purchase agreement to be found to be in the
17 public interest, the rate must not be in excess of the utility's likely avoided costs from
18 interconnecting the renewable energy generator. The Massachusetts Department of Public
19 Utilities recently detailed several categories of likely costs avoided by utilities by
20 interconnecting renewable energy generators, including the likely GHG, environmental

¹⁵ Also see: Q&A19, p.6: "all customers will realize savings, based upon avoided costs, including not only energy and capacity, but also required additional investment in transmission and distribution facilities and environmental compliance costs."

1 compliance, market price suppression, long-term price stability, enhanced reliability,
2 moderation of peak load, and other costs.¹⁶

3 Mr. Haselden's testimony makes it clear that the Rate REP was a tariff change
4 incorporated into the DSM proceeding. In Q&A-48, Mr. Haselden is asked: "Is IPL
5 proposing any changes to its tariff as it relates to this DSM proceeding?"

6 A48. "Yes. IPL is proposing changes to its Standard Contract Rider No.9 (Net Metering
7 for Customers with Solar Photovoltaic, Wind, or Hydroelectric Systems), a new Standard
8 Contract Rider No. 22 (Core and Advanced Demand-Side Management Adjustment), and
9 a new Rate REP (Renewable Energy Production)."

10 Mr. Haselden's testimony also noted in Q&A 49 that the IPL Rate REP determination
11 included not only IPL's unchallenged determination of likely avoided costs but also
12 consideration for RECs and SRECs (for which compensation is outside the scope of
13 FERC jurisdiction as noted above):

14 "As part of the agreement and in consideration of the compensation which
15 is in excess of avoided costs of traditional generation alternatives, IPL will
16 retain all environmental attributes of the power produced. The customer
17 can purchase green power through IPL's Standard Contract Rider No 21
18 (Green Power Initiative) if they wish. The environmental attributes will be

¹⁶ See, *Petition of Massachusetts Electric Company and Nantucket Electric Company each d/b/a National Grid for Approval of Proposed Long-Term Contracts for Renewable Energy with Cape Wind Associates, LLC Pursuant to St.2008, c. 169, § 83, Docket 10-54 (November 22, 2010)* in which Massachusetts Department of Public Utilities ("MDPU") concluded that the net GHG avoided costs on a present value basis that would be realized by the utility from the interconnection of the renewable energy generator in that case were between \$1.79 per watt (\$1,795,000 per MW) and \$2.97 per watt (\$2,974,000 per MW). With respect to market price suppression, in present value terms the MDPU concluded that the price suppression effect for the utility's customers alone was approximately between \$0.37-\$0.53 per watt of nameplate capacity, or \$370,000-\$530,000 per MW. *Id.* at 131.

1 sold to the market for such commodities with the proceeds applied as a
2 credit for all customers against the costs of the purchase of renewable
3 energy in the same manner and timing as that outlined in the
4 Commission's order in Cause No. 43485 approving the long term power
5 purchase agreement for wind energy."

6 **Q13. ASSUMING THE FERC ANSWERS IN THE AFFIRMATIVE ON ISSUE 1,**
7 **WHAT BURDEN WOULD IPL HAVE TO DEFEAT RATE REP UNDER**
8 **PURPA?**

9 A13. The answer will depend on how the FERC answers Issues 2 and 3. Unless the FERC
10 requires that voluntary wholesale PPA rates be separated into components (which it has
11 not done to date), any challenge to IPL's current Rate REP rates would have an
12 impossible burden. Such a challenge would be required to prove that the sum of (i) the
13 maximum likely avoided costs using the approach described above, plus (ii) the voluntary
14 value that IPL attributed to the RECs that it would receive, were in excess of the Rate
15 REP rates. It is an impossible burden because IPL itself voluntarily set the price for the
16 RECs that it would receive as being equal to the excess, if any, of the Rate REP over its
17 likely avoided costs. The impossible burden is made even clearer when one notes that
18 SRECs for sale to Ohio utilities from neighboring states, such as Indiana, have traded
19 since 2010 in the range of \$0.34-\$0.15/kwh, in some cases more than the Rate REP
20 itself.¹⁷

21 **Q14. HOW SHOULD THE IURC REVIEW WHAT IPLS AVOIDED COSTS ARE?**

22 A14. Any discussion of avoided costs in Cause 44018 must necessarily be informed by IPL's
23 and AES' business view of the possible long-term avoided costs realized by the
24 interconnection of a renewable energy generator and the Commission's view of the likely

¹⁷. See, www.srectrade.com. Also see, footnote 8 above.

1 future procurement of generation resources. In that connection we can draw on the
2 experience of both California and Massachusetts which Mr. Haselden noted in his
3 testimony in Cause 43623. A review of the categories noted above should be reviewed
4 but also those that are material to IPL and AES.¹⁸ In that connection, in calculating IPL's
5 true long-term likely avoided costs it will be important to review various categories of
6 avoided costs such as:

- 7 a. market price suppression¹⁹,
- 8 b. long-term price stability,
- 9 c. compliance with likely renewable energy goals,
- 10 d. limitations on GHG emissions,

¹⁸ On November 19, 2009, the AES Corporation entered into an agreement with the New York State Attorney General requiring the disclosures of the financial risks of the production of global warming pollution. The announcement from the New York Attorney General states:

“These required disclosures include an analysis of material financial risks from climate change related to:

Present and probable future climate change regulation and legislation
Climate-change related litigation
Physical impacts of climate change

Through the agreement, AES has committed to a broad array of additional climate change disclosures including:

Current carbon emissions
Projected increases in carbon emissions from planned coal-fired power plants
Company strategies for reducing, offsetting, limiting, or otherwise managing its global warming pollution emissions and expected global warming emissions reductions from these actions
Corporate governance actions related to climate change, including if environmental performance is incorporated into officer compensation.”

¹⁹ See, for example, a New York State Energy Research and Development Authority (NYSERDA) analysis of New York's Renewable Portfolio Standard (the “NYSERDA Report”) which reported savings of between \$33/MWh and \$100/MWh in the early stages of the deployment of renewable generation.

- 1 e. enhanced reliability,
- 2 f. moderation of peak load,
- 3 g. avoided transmission improvements,
- 4 h. capacity,
- 5 i. costs of compliance with any additional state and/or federal present or reasonably
6 expected GHG emissions limits, and
- 7 j. the avoidance of tort or other potential liability that may be imposed upon utilities as
8 a result of their using generation that contributes to climate change.²⁰

9 **Q15. SHOULD THE COMMISSION REVIEW THE AVOIDED COST**
10 **CALCULATION REGARDLESS OF HOW THE FERC RULES ON ISSUE 1?**

11 **A15.** Yes. The discussion of avoided costs raised in this Cause and in Cause 43623 makes one
12 thing clear. The avoided cost rate that is specified in the IPL Rate CGS does not reflect
13 the avoided costs likely to be realized by IPL from the interconnection of a renewable
14 energy generator. For that reason alone, a review of IPL's avoided costs should be

²⁰ For a general discussion of the prospect of derivative suits against executives for wasting corporate assets, see Bradley Cosman, Comment, *Green Derivatives: Extorting Reductions in Greenhouse Gas Emissions via Shareholder Derivative Suits*, 40 Ariz. St. L.J. 743 (2008). An interesting question is whether IPL executives would risk exposure to derivative suits as a result of their refusal to honor the terms of the Rate REP tariff as currently in effect. Also see, *Restatement (Second) of Torts*, §821C (tort liability based upon public nuisance). Also see, *Restatement (Second) Torts* §520. (Does the liability of a utility (or an executive with that utility) increase when it now knows of the risks, has a clear path available from state authorities to reduce the risk, but yet does not use that path? Is the failure to actively abate CO2 emissions when all indications are that state commissions would approve PPAs designed to alleviate CO2 emissions a separate cause for tort liability?—"If the utility of the activity does not justify the risk it creates, it may be negligence merely to carry it on." *Restatement (Second) Torts, Comment* §520.) While the United States Supreme Court has recently indicated that the Federal common law of nuisance would not be available as a cause of action to prospective plaintiffs, it did not rule out the possibility of State nuisance actions.

1 undertaken in this Cause. As noted above, such a review should also be informed by the
2 Commission's view of the likely future procurement of generation resources. In
3 determining a base case for avoided costs, it may or may not be reasonable to use the
4 cheapest type of possible future generator. If it would be reasonably likely that IPL might
5 meet future generation resource needs in some other manner, such as a nuclear plant, an
6 IGCC plant, or a renewable energy facility, then it would be reasonable to use a range of
7 capital costs in determining the avoided cost base case. See, for example, the Appendix to
8 Mr. Haselden's presentation entitled "Renewable Energy Incentive Programs at IPL,
9 Techpoint Innovation Summit 2010", dated October 27, 2010, which notes the effective
10 per kwh cost of a combustion turbine is \$0.34.

11 **Q16. IPL HAS ASSERTED THAT ALLOWING DEVELOPERS TO PARTICPATE IN**
12 **A FEED-IN TARIFF SUCH AS RATE REP WOULD HARM IPL'S**
13 **CUSTOMERS. DO YOU AGREE?**

14 A16. No. In Mr. Haselden's testimony in Cause 44018, Q&A30, he states that there are "at
15 least two potential harms" from allowing developers to develop projects for Rate REP.

16 a. *"First, securing renewable energy from stand-alone generators through Rate REP is an*
17 *inefficient way to induce stand-alone generators to offer this level of power to IPL for the*
18 *benefit of its customers."*

19 Mr. Haselden's contention is contrary to the fundamental premise of a feed-in tariff. As
20 an AES company, IPL should be well aware of that. Certainly IPL could have issued an
21 RFP for renewable energy. If it did, it may or may not have received any significant
22 interest from renewable energy developers. The reasons are many. First, Rate REP

1 projects are small—10MW or less. In a state that does not have an SREC program or a
2 mandatory renewable energy program, there would be a serious question as to whether
3 developers would expend both the time and money looking for potential small projects
4 that IPL might or might not sign a PPA for (at an unknown price), and that the IURC
5 might or might not approve. Those uncertainties would drive most, if not all, renewable
6 energy developers away.

7 Moreover, an RFP has other shortcomings. RFPs result in utilities receiving proposals
8 that may or may not be economically feasible, which results in an increased failure rate.
9 Costs incurred by IPL with respect to failed projects increase the transaction costs
10 overall. RFPs themselves result in additional transaction costs for all parties. RFPs can
11 also increase ratepayer costs because of the business risk perceived by market
12 participants and the commensurate profit demands from those participants. Moreover, an
13 RFP can significantly increase transaction costs for IPL as well as the successful parties.
14 Those costs, particularly those related to approvals, may eventually find their way to
15 ratepayers.

16 The attractiveness of a feed-in tariff as IPL initially recognized is to allow “financing a
17 project . . . in a transparent manner that is subject to the approval of the Commission.”²¹

18 That “transparent manner” is ever more important now that IPL is arguing, among other
19 things, that it can pick and choose in an arbitrary and discriminatory manner those
20 customers with which it signs a Rate REP agreement.

²¹ Q&A49.

1 Rate REP projects in IPL's service territory will generate jobs in Indiana, will establish a
2 certain level of generation that is not subject to fuel price fluctuations, and will minimize
3 transmission upgrades.

4 Furthermore, the SRECs generated from projects in Indiana can be sold, as IPL knows, to
5 Ohio utilities. SREC pricing for Ohio SRECs has traded since 2010 in the range of \$0.34-
6 \$0.15/kwh, in some cases more than the Rate REP itself.²² At that Ohio SREC pricing,
7 Rate REP might result in a reduction in ratepayers monthly bills, while creating jobs in
8 Indiana, and starting on the road to creating long-term energy security and achieving
9 environmental goals.

10 b. *Second, IPL argues that developers would use almost all the capacity under Rate REP.*

11 In light of AES' 100MW-plus portfolio of solar projects built on feed-in tariffs, the
12 objection stated by IPL is difficult to comprehend. Yet Mr. Haselden's stated objection is
13 set forth so as to imply that the Rate REP rate is set too high, otherwise developers
14 wouldn't be interested. However, it is the fact that developers can bring economies of
15 scale that results in the Rate REP being able to potentially result in projects that are
16 financeable. Undoubtedly, in setting the Rate REP, IPL has also reviewed other similar
17 tariffs. For example, a recent Vermont solar feed-in tariff rate was \$0.24c/kwh, however
18 that was fixed for 25 years. In New Jersey (with the host facility limit) the PSE&G rate
19 is set at a minimum of approximately \$0.60/kwh for 10-15 years.

²² See, www.srectrade.com.

1 **Q17. IPL HAS STATED THAT IT DESIRES TO SET ASIDE A CERTAIN AMOUNT**
2 **OF CAPACITY FOR ITS EXISTING CUSTOMERS. HOW SHOULD IPL**
3 **ACHIEVE THAT GOAL?**

4 *A17. IPL desires to set aside capacity for a certain category of customers, such as the airport*
5 *authority. Because a host facility consumption limit is a net metering project from an*
6 *FPA standpoint, the airport authority project would not need to become a qualifying*
7 *facility if the current net metering cap in Indiana is increased. As a result, IPL would be*
8 *best served by amending its net metering tariff to provide for a higher fixed rate and a*
9 *higher cap. In that way, IPL would also be able to manage the limits for that type of*
10 *facility, and easily address its stated desire.*

11 *Alternatively, as Mr. Haselden discusses in Q&A32, IPL could increase the capacity*
12 *available under the Rate REP program. If IPL considers such an increase I would suggest*
13 *that the term of the PPA be longer so as to coincide better with a project's expected*
14 *useful life, which would result in a lower impact for Indiana ratepayers. For example, in*
15 *the case of a solar project, a 25-year PPA would coincide with the 25-year warranty*
16 *provided by solar panel manufacturers. The rate during the first 10-15 years would be*
17 *lower than under Rate REP (as currently in effect and as proposed under a 15-year term).*
18 *The rate would probably be so much lower that the overall program capacity should be*
19 *able to be raised by approximately 50% (to 150MW) without any potential increase in the*
20 *cost of the program during the first fifteen years.*

1 **Q18. HOW WILL IPL'S PROPOSED CHANGES AFFECT THE RATE REP**
2 **PROGRAM?**

3 A18. Eliminating stand-alone developers will result in a failed program, a loss of jobs and tax
4 revenues for Indiana, and a narrower distribution of the economic effect of Rate REP. In
5 Q&As 35-36 of his testimony, Mr. Haselden raises the right issues, but is wrong on the
6 message conveyed. The revisions to Rate REP will result in an amount of volume no
7 more than a small fraction of the 100MW program approved by the Commission. Jobs
8 and tax revenue will be lost, and the benefit of current Federal tax incentives may be lost
9 as well.

10 Moreover, IPL's changes would effectively limit substantially all the program's
11 economic benefit to a small group of existing large commercial customers. By
12 eliminating developers, the average IPL customer who would benefit from the installation
13 of solar PV on land that may be unused would be excluded. In addition, I believe that a
14 close look at the local property tax effect will show that projects proposed by stand-alone
15 developers would likely produce more local tax revenue, which benefit goes to all
16 residents in the local taxing jurisdiction. That is in contrast to a couple of the large
17 projects mentioned by IPL, the GSA and the airport, which may result in no increase in
18 local taxes, and hence no widespread benefit.

19 **Q19. IPL HAS EMPHASIZED THAT THE RATE REP IS VOLUNTARY. SHOULD**
20 **THAT MEAN THAT IPL CAN IMPLEMENT CHANGES AS IT SEES FIT?**

21 A19. The voluntary nature of the IPL program has two results for IPL. First just like any
22 business entity that makes a commitment it should honor the terms of that commitment

1 when parties accept it or rely upon it. The very essence of a utility tariff is that it is a
2 contractual commitment of the utility and that it may only be amended or changed
3 prospectively with the approval of the Commission, and not with respect to parties that
4 have accepted or acted in reliance on the tariff. Moreover, a tariff insures that a utility
5 cannot act in a discriminatory manner.

6 IPL should not be allowed to mount a collateral attack on the validity of the tariff by
7 raising unsupported PURPA issues. As discussed above, the *Mobile-Sierra* doctrine is
8 the proper standard and PURPA is not implicated.

9 Second, the voluntary nature of the program enables IPL to request IURC approval to
10 change the Rate REP on a prospective basis with respect to yet to be filed interconnection
11 requests. In order to accurately assess IPL's request, however, a full review and
12 discovery should occur on the various categories of likely avoided costs and long-term
13 projections of rates for energy, capacity and renewable energy credits. Once the range of
14 likely long-term avoided costs is established, then an amount would need to be
15 determined for the value of the RECs or SRECs. It is those two components that should
16 form the basis for any future, prospective, changes to Rate REP and Rate CGS.

17 **Q20. ARE THERE ANY OTHER ISSUES THAT YOU BELIEVE ARE RAISED BY**
18 **IPL'S PROPOSED CHANGES?**

19
20 A20. Yes. IPL intends to turn the Rate REP into a net metering tariff. However, my
21 understanding is that the net metering cap in Indiana is 1MW. In order to allow the larger
22 "host facility" limitation projects desired by IPL, the net metering cap would need to be

1 raised. If it is not, the generator might indeed be viewed as suggested by IPL as selling at
2 wholesale under the FPA. In such a case, IPL would not be able to discriminate against
3 (i.e., exclude) stand-alone developers. Such discrimination would be prohibited by the
4 FPA. As a result, it would appear that even the GSA contract is subject to potential
5 challenge under the FPA if IPL's proposed changes are adopted.

6 It should also be noted that IPL would not have been able to limit the Rate REP as a
7 wholesale (as opposed to a net metering) tariff to then existing customers. Such a
8 limitation would have been unlawful discrimination.

9 **Q21. ARE THERE ANY OTHER CHANGES, CLARIFICATIONS OR ISSUES THAT**
10 **YOU WOULD SUGGEST THE COMMISSION CONSIDER IN THIS CAUSE**
11 **THAT WOULD IMPROVE THE RATE REP?**
12

13 **A21.** Yes. The first is a developer limitation. I would suggest that a 20% developer limitation
14 be provided. The second limitation would prohibit IPL affiliates from participating in the
15 initial 100MW of Rate REP. Third, the Commission should concur with, or modify, the
16 clarification of the queue processing for Rate REP provided by IPL. Currently, there are
17 no rules approved by the Commission as to when the standard offer can be accepted. As a
18 result the standard offer could be accepted subject to the execution of an interconnection
19 agreement. I would suggest however that the Rate REP queue be based as IPL has
20 suggested upon when projects conclude the interconnection process and execute an
21 interconnection agreement. As a result, because smaller projects would make it through
22 the queue much faster than larger projects, the smaller projects (Level 1 and Level 2) that
23 IPL wants to encourage would likely have first access to the Rate REP. I would also

1 suggest that at least for Level 3 interconnection requests, that queue processing initially
2 be based upon the later of interconnection request filing date and the date the
3 interconnection applicant achieved site control. This later requirement would reduce
4 speculation. Fourth, an overall project limitation should be considered below 10MW,
5 which would result in more distributed projects, and by definition, provide a wider
6 distribution of the local benefits. Fifth, if the Rate REP is expanded in size, I would
7 suggest that, at least in the case of solar, consideration be given to a longer term PPA
8 such as 25 years, which would result in a much lower initial PPA rate in the early years,
9 and result in IPL's ratepayers enjoying the economic benefit of the projects for much
10 longer without any increase in the cost on a present value basis. In addition, in the case
11 of expansion of the Rate REP program, consideration should be given to reserving a
12 minimum portion to smaller projects to encourage a wider participation.

13 One final consideration that I would like to note is the clear need for Rate REP to provide
14 IPL with the experience it needs for the long-term. IPL needs to gain experience in
15 interconnecting non-net metered larger renewable projects to its distribution system. The
16 Rate REP with stand-alone developers will provide that experience so that IPL can react
17 more quickly in the future to potential mandates and in doing so save IPL ratepayers over
18 the long-term.

19 **Q22. DOES THIS CONCLUDE YOUR TESTIMONY?**

20

21 **A22.** Yes, it does.

VERIFICATION

I, Thomas Melone, Chief Executive Officer of Ecos Energy, LLC ("Ecos") state that I am the same Thomas Melone who submitted Direct Testimony in this Cause on June 30, 2011 on behalf of Ecos. I affirm under penalties of perjury that the representations contained in the Direct Testimony are true and correct to the best of my knowledge, information and belief.

Date: June 30, 2011



Thomas Melone

si-366714_1

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing comments of Ecos Energy LLC have been served via electronic mail upon the following this 12th day of July, 2011:

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A handwritten signature in black ink, appearing to read "T. Melone", written over a horizontal line.

Thomas Melone