

**July 29, 2015**

**IOWA UTILITIES BOARD**

**STATE OF IOWA  
DEPARTMENT OF COMMERCE  
UTILITIES DIVISION  
BEFORE THE IOWA UTILITIES BOARD**

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<b>EAGLE POINT SOLAR, LLC,</b>  <b>Complainant,</b>  <b>v.</b>  <b>INTERSTATE POWER AND LIGHT COMPANY,</b>  <b>Respondent.</b>	<b>DOCKET NO. FCU-2015-0009</b>  <b>PETITION FOR INTERVENTION AND RESPONSE TO MOTION TO DISMISS</b>
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The Environmental Law & Policy Center (ELPC), Iowa Environmental Council (IEC), Iowa Solar Energy Trade Association (ISETA), Iowa Interfaith Power & Light (Iowa IPL), Solar Energy Industries Association (SEIA), and Winneshiek Energy District (collectively “Solar Intervenors”) request intervention in this matter pursuant to 199 Iowa Administrative Code § 7.13 and § 2.2(10) and resist Interstate Power & Light’s Motion to Dismiss. In support of their position, intervenors state:

**THE PARTIES**

1. The Environmental Law & Policy Center (ELPC) is a non-profit corporation with an office in Des Moines and members who reside in the State of Iowa. ELPC’s goals include promoting clean energy development and advocating for policies and practices that facilitate the use and development of clean energy such as solar and wind power including the use of third-party power purchase agreements to finance renewable energy systems. ELPC has invested significant time and resources into promoting clean energy development in Iowa and nine other states in the Midwest.

2. The Iowa Environmental Council (IEC) is a non-profit corporation organized under Iowa law. The IEC is a broad-based environmental policy organization with a mission to create a safe, healthy environment and sustainable future for Iowa. The IEC represents a broad coalition of Iowans including over 70 diverse member and cooperator organizations ranging from agricultural, conservation, and public health organizations, to educational institutions, business associations, and churches, along with hundreds of individual members. IEC's work focuses on clean water, clean air, conservation, and clean energy, including the promotion of policies that would facilitate the development of clean energy and clean energy jobs.

3. The Iowa Solar Energy Trade Association (ISETA) is a non-profit corporation organized under Iowa law. ISETA is a professional organization for solar photovoltaic and solar thermal industries in Iowa. ISETA promotes the interests of its members through education and public relations about the economic and environmental benefits of solar and wind. ISETA advocates for policies that will facilitate and promote the development of solar photovoltaic, and solar thermal energy in Iowa.

4. Iowa Interfaith Power & Light (Iowa IPL) is a non-profit organization organized under Iowa law. Iowa IPL is a statewide organization that is mobilizing the religious community to become leaders in the movement for climate action through education, assistance with carbon footprint reductions in homes, businesses, and congregational facilities, and advocacy for sustainable energy policies. Iowa IPL's most prominent program, Cool Congregations, has trained representatives of over 275 congregations statewide to calculate and reduce their household energy use by an average of 10% per year.

5. The Solar Energy Industries Association (SEIA)<sup>1</sup> is the national trade association

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<sup>1</sup> The views represented in this filing are the views of the trade association and not necessarily any of its individual members.

of the United States solar industry. Through advocacy and education SEIA and its 1,100 member companies work to make solar energy a mainstream and significant energy source by expanding markets, removing market barriers, strengthening the industry and educating the public on the benefits of solar energy.

6. Winneshiek Energy District is a non-profit corporation organized under Iowa law. The purpose of this corporation is 1) to reduce the ecological and climate impacts of energy use within Winneshiek County, Iowa, 2) to promote economic health and sustainable development in Winneshiek County through reducing energy costs and promoting local energy sources and related economic activity, and 3) to work towards a more sustainable society in Winneshiek County and its communities. The Energy District has implemented highly successful energy efficiency programs to date reaching hundreds of households and businesses, intends to promote distributed renewable energy production going forward, and serves as a resource and model for other local efforts across Iowa.

**In Response to the Iowa Supreme Court’s Decision in the *Eagle Point* Case, Iowa Utilities Have Unilaterally Prohibited Net Metering for Third-Party Power Purchase Agreement Financed Renewable Systems.**

7. The Solar Intervenors represent a coalition of groups with an interest in renewable energy development. Many members of the coalition were members of the intervenor coalition in the declaratory order proceeding that Eagle Point Solar (Eagle Point) brought before the Board to determine if third-party power purchase agreements (PPAs) were an allowed method for financing behind-the-meter renewable energy installations.

8. The Iowa Supreme Court allowed third-party PPA financing in its *Eagle Point* decision. *SZ Enterprises, LLC d/b/a Eagle Point Solar v. IUB (Eagle Point)* 850 N.W.2d 441, 466 (Iowa 2014). The utilities are unilaterally limiting that decision through tariff interpretations

that are unsupported by the plain language of the tariffs. This continues a pattern of the utilities limiting customers' ability to finance distributed generation in multiple venues. In *Eagle Point*, the Iowa Supreme Court rejected the utilities' arguments in a case that started in 2011, but the utilities are still limiting the use of third-party PPAs. In the meantime, the federal investment tax credit is set to expire at the end of 2016. Further delay will only cause Iowa consumers to potentially lose out on an important federal benefit.

9. Since the *Eagle Point* case, solar developers in Iowa have been exploring projects using third-party PPAs. During the course of developing these projects, the developers and their prospective clients consult with their utility. The utilities have been telling customers that net metering is not allowed with third-party PPA financed systems. The inability to net meter a third-party PPA financed system can significantly and adversely impact the economics of a solar project and typically leads to either a downsizing of the capacity of the project, delay of the project, or abandonment of the project altogether.

10. Eagle Point Solar's complaint describes entering an agreement with the City of Asbury for five separate solar arrays on five different municipal properties. Eagle Point indicated that Interstate Power & Light Company (IPL) is not allowing net metering for any of the properties based on an interpretation of its net metering tariff. Eagle Point indicates that the financial viability of at least one of the projects is at risk and implied that there were impacts on the other projects.

11. The key facts in this case are straight forward:

- a customer of an investor-owned utility wants to install a solar array behind the meter on the customer's property;
- the customer wants to finance the solar array using a third-party PPA;
- the customer's utility tells the customer that net metering is not available for third-party PPA financed systems;

- the customer either abandons the project or significantly scales down the size of the project as a consequence of the utility prohibition of net metering.

12. This same basic fact pattern plays out in many variations throughout the state. We do not have first-hand knowledge of the specific situation for the City of Asbury, but we do not have any reason to doubt the description of the facts as provided by Eagle Point Solar.

13. The City of Asbury is an example of the impacts of utilities prohibiting net metering for third-party PPA financed renewable systems, but it is far from the only example.

14. Another example is the Iowa Falls School District. Iowa Falls Community School District serves 1,084 students and has four school buildings. *See* Affidavit of John Robbins. Iowa Falls is an Alliant Energy customer on the General Service tariff. Iowa Falls explored a PPA contract with Novel Energy. Iowa Falls has preliminarily explored a project for solar arrays on all buildings including Riverbend Middle School, Rock Run Elementary School, Pineview Elementary School, and Iowa Falls-Alden High School. Alliant Energy informed Novel Energy and Iowa Falls CSD that they did not offer net metering for third-party PPA financed systems. As a result, Iowa Falls has delayed further exploration of any solar project.

15. IPL explicitly stated to the Iowa Falls developer that “Any party that enters into a 3rd party PPA (regardless of profit or non-profit) can offset their load but any excess kWh generation received by Alliant Energy is not credited to the customer.” See Nick Smith Email, Feb. 27, 2015 attached as Exhibit 1.

16. This issue is not limited to IPL’s service territory. MidAmerican has also told customers that net metering is prohibited with third-party financed systems. Johnson County entered into a PPA contract with Moxie Solar to develop a 140 kW roof-mounted solar array for the new Secondary Roads campus in Iowa City. NOI-2014-0001, Comments of Johnson County Board of Supervisors (filed June 12, 2015). MidAmerican communicated to Johnson County that

net metering was prohibited for Johnson County's project. *Id.* Johnson County ultimately reduced the size of its system to 87 kW of capacity. *Id.*

17. The legal theories for this case are just as straight forward as the facts of this case.

18. The plain meaning of the utility tariffs as currently written do not provide a basis for prohibiting net metering when a distributed generation system is financed through a third-party PPA. To the extent that the utility tariffs are ambiguous on the issue of net metering for third-party PPA financed systems, the tariffs should be construed against the utility/drafter and in favor of the customer. *See Estate of Pearson v. Interstate Power & Light Co.*, 700 N.W.2d 333, 343 (Iowa 2005) ("We construe a tariff according to the same rules as contracts. . . . If a tariff is ambiguous, we strictly construe the language of a tariff against the drafter, the utility.").

19. Even if the utility tariffs can be interpreted to prohibit net metering for third-party PPA financed systems, such a reading of the tariffs is inconsistent with Iowa's net metering rule that states: "Each utility shall offer to operate in parallel through net metering ... with an AEP facility, provided that the facility complies with any applicable standards established in accordance with these rules." 199 Iowa Administrative Code 15.11(5). The Board's language "shall offer" is a requirement for utilities to net meter and does not include an exception for financing options. When there is "a conflict between a tariff provision and the Board's rules, the rules are generally controlling." Iowa Utilities Board, Docket No. RPU-99-3, Order Rejecting Tariff Pages Requiring Revisions and Approving Remainder of Tariff (June 12, 2000) (concluding that "if [the] tariff purports to limit the definition in a more restrictive manner than the Board's rules, the tariff provision is ineffective in that respect").

20. These legal theories would apply to both IPL and MidAmerican's tariffs although only IPL's tariffs are at issue in this case.

21. These legal theories would also apply to IPL's argued prohibition on net metering for the Large General Service class of customers. Iowa's net metering rule applies to all AEP facilities. The Board has traditionally provided a waiver to the net metering rule for AEP facilities that exceed 500 kW of capacity. This waiver is based on the size of the AEP facility and not the customer class for a utility. Therefore, under the waiver an IPL Large General Service customer can install a system of 500 kW or less. By limiting Large General Service customers from net metering, IPL's tariff takes a limited waiver and greatly expands it to an entire rate class. There is not a limitation on which customers can net meter based on rate class in Iowa's net metering rule. 199 Iowa Administrative Code 15.11(5).

22. The net metering issues raised in Eagle Point Solar's complaint will impact any customer that wants to use third-party PPA financing to install on-site renewables. Therefore, the Solar Intervenors believe that the resolution of the net metering issues in this complaint will have an impact that is significantly broader than this complaint.

23. The Solar Intervenors have an interest in a policy framework that is clear, transparent and supportive of renewable energy development. The ability of consumers to use third-party PPA financing and to net meter while using that financing is an important part of Iowa's regulatory and policy framework to support renewable energy development.

24. The Intervenors support a policy and regulatory framework that facilitates the development of renewable energy in Iowa and throughout the Midwest. The Board's resolution of the net metering issues raised in Eagle Point's complaint will have a direct bearing on the ability of homeowners, small businesses, farmers, and in particular governmental entities, municipalities, schools, and non-profits to finance small scale distributed renewable energy projects in Iowa. The Intervenors will provide a local, regional and national perspective on the

issues at hand and will thus assist in the development of a sound record for the Board through presentation of relevant evidence and argument. As policy, advocacy and solar industry organizations with an interest in renewable energy development throughout the state of Iowa, the Intervenors' interests are not adequately represented by the existing parties to this docket.

25. The Intervenors intend to fully participate in this docket and would reserve the right to submit direct testimony and exhibits, participate in hearings and cross-examination of witnesses and provide any comments and briefs as appropriate.

26. The Intervenors will be represented in this docket by the Environmental Law and Policy Center and communications concerning the petition should be directed to ELPC at its Des Moines office. Joshua T. Mandelbaum is a resident attorney licensed to practice in Iowa and working out of ELPC's Des Moines office.

27. The Iowa Supreme Court allowed third-party PPA financing in its *Eagle Point* decision. The utilities are unilaterally limiting that decision through tariff interpretations that are unsupported by the plain language of the tariffs. Even if the utility tariff interpretations were correct, the utility interpretations would be inconsistent with Iowa's net metering rule. Solar Intervenors have an interest in these issues being resolved on a timely basis in order to allow customers to utilize third-party PPAs.

### **RESPONSE TO IPL'S MOTION TO DISMISS**

28. In its complaint filed on June 26, 2015, Eagle Point Solar raised three issues for the Board to address:

- 1) whether distributed generation systems financed with a third-party PPA can net meter;
- 2) whether IPL's Large General Service (LGS) customers can net meter;
- 3) whether IPL should be required to revise its LGS tariff to allow a customers to move

to the General Service tariff after only one month of usage under 20,000 kWh.

29. On July 15, 2015, IPL filed a motion to dismiss.

30. “[F]or purposes of ruling on a motion to dismiss, the allegations of the complaint are taken as true and relief must be denied if any reasonable grounds exist on which the complainant may be able to justify relief.” *In re: Arti LLC v. MidAmerican Energy Co.*, Docket No. FCU-2015-0003, Order Denying Motion to Dismiss (Apr. 29, 2015). The Board has noted that motions to dismiss “are difficult to sustain given the applicable standard.” *Id.*

31. In its motion to dismiss, IPL requested that the entire complaint be dismissed, but IPL only presented arguments for dismissing the issue related to whether Large General Service customers can net meter and the issue whether IPL should be required to allow customers to switch to the General Service tariff based on only one month of energy use. Even if IPL's arguments were accepted, the issue of whether distributed generation systems financed with a third-party PPA can net meter would remain for the Board to address, and it would be inappropriate to dismiss the complaint.

32. IPL's only argument to dismiss Eagle Point's claim that LGS customers should be able to net meter is that IPL's AEP tariff states that net metering is available for customers "receiving electric service with metered energy only." IPL ignores the fact that its tariff is inconsistent with Iowa's net metering rule that states: "Each utility shall offer to operate in parallel through net metering ... with an AEP facility, provided that the facility complies with any applicable standards established in accordance with these rules." 199 Iowa Administrative Code 15.11(5). The rule requires net metering with any AEP facility that meets board rules and does not limit net metering to AEP facilities that receive metered energy only. When a tariff and a Board rule are in conflict, the Board rule is controlling. The Board should not dismiss Eagle

Point's claim that Large General Service customers should be able to net meter. Instead, the Board should hear the complaint and conclude that IPL should revise its net metering tariff to make it clear that LGS customers can net meter.

33. For the reasons state above, if the allegations of the complaint are taken as true, there are reasonable grounds for providing Eagle Point the requested relief, and the Board should reject IPL's motion to dismiss Eagle Point's complaint.

WHEREFORE, ELPC, IEC, ISETA, Iowa Interfaith Power & Light, SEIA, and Winneshiek Energy District respectfully request that the Board grant their petition to intervene and issue an order determining that Iowa's net metering rule allows entities using a third-party PPA to finance a renewable system to net meter and that any interpretation of a utility tariff to prohibit net metering for third party PPA financed systems is either incorrect or inconsistent with the Board's rule. The Intervenors further request that the Board deny IPL's Motion to Dismiss and proceed with Eagle Point Solar's complaint.

Respectfully submitted July 29, 2015.

/s/ Joshua T. Mandelbaum  
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**ATTORNEY FOR INTERVENORS**

From: **Smith, Nick** <[NickSmith@alliantenergy.com](mailto:NickSmith@alliantenergy.com)>  
Date: Fri, Feb 27, 2015 at 3:18 PM  
Subject: Alliant Energy - Interconnection Status  
To: "[mena.kaehler@novelenergy.biz](mailto:mena.kaehler@novelenergy.biz)" <[mena.kaehler@novelenergy.biz](mailto:mena.kaehler@novelenergy.biz)>  
Cc: "Nack, Daniel" <[DanielNack@alliantenergy.com](mailto:DanielNack@alliantenergy.com)>

Hello Mena,

Regarding our conversation today, and last week on 3<sup>rd</sup> Party PPAs:

Any party that enters into a 3rd party PPA (regardless of profit or non-profit) can offset their load but any excess kWh generation received by Alliant Energy is not credited to the customer. It may benefit Novel Energy to meet with us to discuss rate structures in Iowa versus Minnesota and other items as some assumptions in the news article did not appear to be correct or may have been taken out of context. We can discuss a place and time in the near future.

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*Thank you,*

Nick Smith | Product Manager II

Second Nature | Distributed Generation

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