

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED JOINT PETITION OF NORTHERN INDIANA PUBLIC )  
SERVICE COMPANY LLC AND FAIRBANKS SOLAR GENERATION )  
LLC (THE "JOINT VENTURE") FOR (1) ISSUANCE TO NIPSCO OF A )  
CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR )  
THE PURCHASE AND ACQUISITION OF A 250 MW SOLAR PROJECT )  
(THE "FAIRBANKS PROJECT"); (2) APPROVAL OF THE FAIRBANKS )  
PROJECT AS A CLEAN ENERGY PROJECT UNDER IND. CODE § 8-1- )  
8.8-11; (3) APPROVAL OF RATEMAKING AND ACCOUNTING )  
TREATMENT ASSOCIATED WITH THE FAIRBANK PROJECT; (4) )  
AUTHORITY TO ESTABLISH AMORTIZATION RATES FOR )  
NIPSCO'S INVESTMENT IN THE JOINT VENTURE; (5) APPROVAL )  
PURSUANT TO IND. CODE § 8-1-2.5-6 OF AN ALTERNATIVE ) CAUSE NO. 45511  
REGULATORY PLAN INCLUDING ESTABLISHMENT OF JOINT )  
VENTURE THROUGH WHICH THE FAIRBANKS PROJECT WILL )  
SUPPORT NIPSCO'S GENERATION FLEET AND THE REFLECTION )  
IN NIPSCO'S NET ORIGINAL COST RATE BASE OF ITS )  
INVESTMENT IN JOINT VENTURE; (6) APPROVAL OF PURCHASED )  
POWER AGREEMENTS AND CONTRACT FOR DIFFERENCES )  
THROUGH WHICH NIPSCO WILL PAY FOR THE ENERGY )  
GENERATED BY THE FAIRBANKS PROJECT, INCLUDING TIMELY )  
COST RECOVERY PURSUANT TO IND. CODE § 8-1-8.8-11 THROUGH )  
NIPSCO'S FUEL ADJUSTMENT CLAUSE; (7) AUTHORITY TO DEFER )  
AMORTIZATION AND TO ACCRUE POST-IN SERVICE CARRYING )  
CHARGES ON NIPSCO'S INVESTMENT IN JOINT VENTURE; (8) TO )  
THE EXTENT GENERALLY ACCEPTED ACCOUNTING PRINCIPLES )  
WOULD TREAT ANY ASPECT OF JOINT VENTURE AS DEBT ON )  
NIPSCO'S FINANCIAL STATEMENTS, APPROVAL OF FINANCING; )  
(9) APPROVAL OF AN ALTERNATIVE REGULATORY PLAN FOR )  
NIPSCO IN ORDER TO FACILITATE THE IMPLEMENTATION OF )  
THE FAIRBANKS PROJECT; AND (10) TO THE EXTENT NECESSARY, )  
ISSUANCE OF AN ORDER PURSUANT TO IND. CODE § 8-1-2.5-5 )  
DECLINING TO EXERCISE JURISDICTION OVER THE JOINT )  
VENTURE AS A PUBLIC UTILITY. )

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JOINT PETITIONERS' REPLY TO OUCC'S PROPOSED ORDER

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Joint Petitioners, NIPSCO and Fairbanks Solar Generation LLC, by counsel, respectfully reply to the Indiana Office of Utility Consumer Counselor's ("OUCC") Proposed Order, as follows:

**I. Introduction**

In contrast to Cause No. 45462, a proceeding in which the OUCC filed a proposed order that recommended three Solar Projects not be approved, the OUCC joined a "Partially Agreed to Form of Proposed Order" submitted by Joint Petitioners and the Citizen Action Coalition of Indiana, Inc. on May 25, 2021 ("Joint Proposed Order").<sup>1</sup> In this proceeding, the OUCC does not oppose approval of the Fairbanks Project, but did file exceptions to Sections 10.A.ii and 10.E of the Joint Proposed Order addressing two discreet issues. While NIPSCO does not believe the ultimate approval of the Fairbanks Project is in doubt, it takes this opportunity to address these two issues and emphasize the relevant record evidence.

**II. Risk to Customers Has Been Reasonably Addressed by NIPSCO**

Through Ms. Aguilar's testimony and in Section 10.A.ii of the OUCC Proposed Order, the OUCC proposed a 50/50 cost-sharing arrangement that

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<sup>1</sup> Abbreviations used herein are those previously defined and used in the Joint Proposed Order. To the extent this Reply does not address a specific issue in this proceeding, Joint Petitioners rely on their testimony and exhibits, as well as the Joint Proposed Order submitted in this Cause.

would apply to any-and-all cost increases. As discussed in Mr. Campbell's rebuttal testimony and the Joint Proposed Order, the customer protections NIPSCO was able to secure for the Fairbanks Project are consistent with—and in one instance go beyond—the protections that have been secured for other renewable projects coming out of the All-Source RFP and the Phase II RFPs. In each of those proceedings, the Commission has been satisfied with the customer protections presented and approved the terms of the BTAs as reasonable. It should continue to do so here.

The OUCC provided no substantive or evidentiary support for its newly-proposed 50/50 cost-sharing provision or the proposed amount, other than its general assertion that there may be some unknown and unaddressed cost risks associated with the Fairbanks Project. However, record evidence demonstrates that, *in addition to the cost cap provision NIPSCO has consistently proposed*, NIPSCO was able to secure terms in the Fairbanks BTA that remove at least one potential cost increase concern that was not addressed in the BTAs for the recently-approved Solar Projects in Cause No. 45462.<sup>2</sup> In the Joint Proposed Order, NIPSCO also emphasized several general provisions that have been included in each BTA that protect customers, including: (1) the Back-Stop PPA; (2) use of a TEP in the

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<sup>2</sup> See Section 2.6 of the BTA (Confidential Attachment 2-A).

Joint Venture, with the associated, additional due diligence that will be performed by the TEP;<sup>3</sup> and (3) use of an independent engineer.<sup>4</sup> And, as opposed to OUCC's proposed 50/50 cost-sharing cap applicable to any future additional cost related to the Fairbanks Project, NIPSCO has committed in the Joint Proposed Order that project cost increases that are not capped would be reviewed by the Commission. This appropriately allows the necessity of such a theoretical cost to be reviewed for prudence, versus arbitrarily limiting its recovery at this point in time. For all these reasons, the Commission should find that the provisions of the BTA and associated agreements are reasonable and reject the OUCC's proposed 50/50 cost-sharing proposal.

### **III. Allowing Carrying Charges to Accrue at NIPSCO's Weighted Average Cost of Capital Is a Reasonable Financial Incentive**

In Section 10.E of the OUCC Proposed Order and in the testimony of Mr. Loveman, the OUCC proposed a second, new proposal. The OUCC argues that NIPSCO should be authorized to accrue carrying charges (or PISCC) at the lower AFUDC rate, and not at the WACC that has been requested by NIPSCO and repeatedly approved by the Commission. While this argument has not been explicitly raised by the OUCC, and the OUCC is well within its rights to raise the

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<sup>3</sup> See Section 2.7.3 of the BTA.

<sup>4</sup> See Section 15.11.

argument,<sup>5</sup> when asking the Commission to deviate from something it has repeatedly approved in materially similar proceedings, there should be a pressing reason and record evidence supporting such a request. For the Commission to reverse course without supporting rationale and evidence would be arbitrary.

In Section 10.E of the OUCC Proposed Order, the OUCC cited to Cause No. 45462 where the Commission found that it was appropriate to compare the projects proposed in that proceeding “with a scenario where NIPSCO solely developed solar generation resources.” But the citation to the Commission’s order in Cause No. 45462 is not relevant here. First, the portion of that order cited by the OUCC (pp. 68-69) was discussing and addressing the differences in transactional structures and associated risks for the three Solar Projects in Cause No. 45462 and earlier projects in other proceedings. The Commission was not discussing the accounting authority NIPSCO requested as a financial incentive under Ind. Code § 8-1-8.8-11. Second, if NIPSCO were to “solely develop” and then own-and-operate the Fairbanks Project, it would undeniably be much, much more expensive for NIPSCO to do so when compared to NIPSCO investing in a Joint Venture that purchases the project from a Developer (no matter the rate at which carrying

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<sup>5</sup> Again, while the OUCC has a right to raise a new argument, if it were actually the case that AFUDC (and not WACC) were the more appropriate rate to apply to carrying charges, it begs this question: why has the OUCC not raised this argument up to this point? It has had numerous opportunities to do so—including in a case involving capital investments by NIPSCO that are more than triple the proposed investment in this proceeding (Cause No. 45462).

charges are accrued). This is the case because of the significant tax benefits associated with the use of the TEP and Joint Venture—benefits that accrue directly to NIPSCO’s customers but would be lost if NIPSCO developed the Fairbanks Project on its own. Finally, and most importantly, the OUCC completely ignores that in the 45462 Order, the Commission explicitly approved utilization of NIPSCO’s WACC for carrying charges. On page 72, the Commission found “NIPSCO should be authorized to accrue PISCC with respect to each investment at NIPSCO’s WACC until a return on that portion is reflected in NIPSCO’s rates.”

NIPSCO has also explained that from an accounting perspective, utilizing NIPSCO’s WACC is appropriate. The amount to which PISCC will be applied is NIPSCO’s investment in the Joint Venture, which is ultimately the purchase price NIPSCO will pay, and it will only begin to accrue after the time of purchase—when the Fairbanks Project will be ready for operation. At this point in time, NIPSCO is not continuing to invest in a project that is *under construction*; rather, it will have invested in a project that is *used-and-useful*. Thus, applying NIPSCO’s WACC (and not AFUDC) is appropriate for the period between NIPSCO’s investment in the Joint Venture to purchase the generation project and the time the investment is included in NIPSCO’s base rates.

Additionally, assuming *arguendo* that utilizing AFUDC for carrying

charges were more appropriate from an accounting perspective, approval of NIPSCO's WACC is a reasonable financial incentive that the Commission has repeatedly approved and should approve in this proceeding as well. This request had been approved by the Commission in Cause Nos. 45194, 45310, and 45462—including as recently as May 5, 2021. In Cause No. 45462, NIPSCO's overall investment in three joint ventures will be significantly larger than its investment in the Joint Venture that will own the Fairbanks Project, yet the Commission authorized NIPSCO to utilize its WACC in that proceeding.<sup>6</sup> Thus, it would be unreasonable and arbitrary for the Commission to reject NIPSCO's proposal and accept the OUCC's proposal when there is no evidentiary basis for doing so.

#### **IV. Conclusion**

NIPSCO has petitioned the Commission for approval of the Fairbanks Project consistent with Ind. Code § 8-1-8.8-11. As set forth above and discussed more fully in the Joint Proposed Order and NIPSCO's evidence, the record in this Cause is sufficient to allow the Commission to approve the Fairbanks Project and associated BTA as proposed in NIPSCO's case-in-chief, without any additional cost-sharing provision or an adjustment to the previously-approved method of accruing carrying charges.

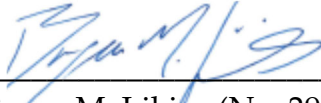
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<sup>6</sup> See 45462 Order at pp. 72-73.

For all the reasons set forth herein and in NIPSCO's evidence, NIPSCO respectfully requests that the Commission reject the OUCC's Proposed Order and adopt the findings in the Joint Proposed Order filed May 25, 2021 in this Cause.

Dated this 7<sup>th</sup> day of June, 2021.

Respectfully submitted,



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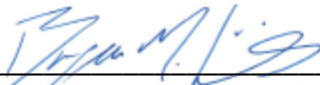
## CERTIFICATE OF SERVICE

The undersigned hereby certifies that the foregoing was served by email transmission upon the following:

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Dated this 7th day of June, 2021.

  
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