STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED JOINT PETITION OF NORTHERN INDIANA PUBLIC SERVICE COMPANY LLC ("NIPSCO") AND FAIRBANKS SOLAR GENERATION LLC FOR AN ORDER MODIFYING PURSUANT TO IND. CODE § 8-1-2-72 THE COMMISSION'S JUNE 29, 2021 ORDER IN CAUSE NO. 45511 TO: (1) APPROVE CHANGES TO THE CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY ("CPCN") GRANTED THEREIN TO REFLECT TERMS OF AN AMENDED BUILD TRANSFER AGREEMENT ("BTA") BY AND BETWEEN FAIRBANKS SOLAR HOLDINGS LLC AND FAIRBANKS SOLAR GENERATION LLC ("AMENDED FAIRBANKS BTA"), AND AUTHORIZE NIPSCO TO DIRECTLY PURCHASE AND OWN THE FAIRBANKS PROJECT; (2) FIND THE REVISED COST OF THE FAIRBANKS PROJECT TO BE THE BEST ESTIMATES; (3) APPROVE NECESSARY CHANGES TO THE RATEMAKING TREATMENT APPROVED FOR THE FAIRBANKS PROJECT; AND (4) APPROVE DEPRECIATION RATES FOR THE FAIRBANKS PROJECT.	)	**CAUSE NO. 46028**

VERIFIED JOINT PETITION

Northern Indiana Public Service Company LLC ("NIPSCO") and Fairbanks Solar Generation LLC ("Fairbanks") (collectively "Joint Petitioners")[1] respectfully petition the Indiana Utility Regulatory Commission ("Commission") to, after notice and hearing, issue an Order modifying pursuant to Ind. Code § 8-1-2-72 its June 29, 2021 Order in Cause No. 45511 (the "45511 Order") to: (1) approve changes to the certificate of public

[1] Fairbanks was referenced as "Joint Venture" in Cause No. 45511.

convenience and necessity ("CPCN") granted therein to reflect terms of an amended Build Transfer Agreement ("BTA") by and between Fairbanks Solar Holdings LLC (as Seller) and Fairbanks Solar Generation LLC (as Purchaser) ("Amended Fairbanks BTA"), and authorize NIPSCO to directly purchase and own the 250 megawatt ("MW") solar project (the "Fairbanks Project"); (2) find the revised cost of the Fairbanks Project to be the best estimate and conduct ongoing review of the Fairbanks Project through its commercial operation date; (3) approve necessary changes to the ratemaking and accounting treatment for the Fairbanks Project as further described herein; and (4) approve depreciation rates for the Fairbanks Project. In accordance with 170 IAC 1-1.1-8 and 1-1.1-9 of the Commission's Rules of Practice and Procedure, Joint Petitioners submit the following information in support of this petition.

1. NIPSCO's Corporate Status. NIPSCO is a limited liability company organized and existing under the laws of the State of Indiana with its principal office and place of business at 801 East 86th Avenue, Merrillville, Indiana.

2. NIPSCO's Regulated Status. NIPSCO is a "public utility" within the meaning of Ind. Code § 8-1-2-1 and is subject to the jurisdiction of this Commission in the manner and to the extent provided by the Public Service Commission Act, as amended, and other pertinent laws of the State of Indiana. NIPSCO is also an "eligible business" as that term is defined in Ind. Code § 8-1-8.8-6. NIPSCO is also subject to the jurisdiction of the Federal Energy Regulatory Commission ("FERC").

3. **<u>NIPSCO's Operations.</u>** NIPSCO is authorized by the Commission to provide electric utility service to the public in all or part of Benton, Carroll, DeKalb, Elkhart, Fulton, Jasper, Kosciusko, LaGrange, Lake, LaPorte, Marshall, Newton, Noble, Porter, Pulaski, Saint Joseph, Starke, Steuben, Warren, and White Counties in northern Indiana. NIPSCO owns, operates, manages, and controls electric generating, transmission and distribution plant and equipment and related facilities ("Utility Property"), which are used and useful for the convenience of the public in the production, transmission, distribution and furnishing of electric energy, heat, light, and power to the public. The NIPSCO generating facilities have an installed capacity of 2,780 net MW and consist of nine (9) separate generation sites, including the R.M. Schahfer Generating Station (Units 16A, 16B, 17 and 18), Michigan City Generating Station (Unit 12), Sugar Creek Generating Station (SC1, SC2, and SS1), Rosewater Wind Farm, Indiana Crossroads I Wind Farm, Dunn's Bridge I Solar Farm, Indiana Crossroads Solar Farm, and two (2) hydroelectric generating sites (Oakdale and Norway). NIPSCO's electric transmission system consists of approximately 21 circuit miles of 765 kV, 453 circuit miles of 345 kV, 810 circuit miles of 138 kV and 1,682 circuit miles of 69 kV transmission lines. NIPSCO is interconnected with seven (7) neighboring electric utilities. Pursuant to the Commission's Order dated September 24, 2003, in Cause No. 42349, NIPSCO has transferred functional control of its transmission facilities to the Midcontinent Independent System Operator, Inc. ("MISO"), a regional transmission

organization operated under the authority of FERC, which controls the use of NIPSCO's transmission system and the dispatching of NIPSCO's generating units. NIPSCO also engages in power purchase transactions through MISO as necessary to meet the demands of its customers.

4. **<u>Fairbanks Corporate and Regulatory Status.</u>** Joint Petitioner, Fairbanks, is a Delaware limited liability company formed by NIPSCO. Fairbanks was designed to be a shell until certain agreements were executed with one or more tax equity partners ("TEP") (a financial investor that would not have any operational rights in the Fairbanks Project). In the 45511 Order (at 48), the Commission declined to exercise its jurisdiction over Fairbanks as a public utility.

5. **<u>The 45511 Order.</u>** In Cause No. 45511, Joint Petitioners requested that the Commission issue NIPSCO a CPCN to purchase and acquire indirectly, through the Joint Venture, the Fairbanks Project. Joint Petitioners requested that the Commission approve the Fairbanks Project as a clean energy project under Ind. Code § 8-1-8.8-11. Joint Petitioners also sought Commission approval of specified ratemaking and accounting treatment, including: (1) establishment of amortization rates for NIPSCO's investment in the Fairbanks Project through Joint Venture; (2) approval pursuant to Ind. Code § 8-1-2.5-6 of an alternative regulatory plan ("ARP") to establish Joint Venture and reflect NIPSCO's investment in Joint Venture in its net original cost rate base; (3) authority for NIPSCO to defer amortization and accrue post-in-service carrying charges ("PISCC") on

NIPSCO's capital investments in Joint Venture; and (4) approval of purchased power agreements and contracts for differences through which NIPSCO would 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 ("FAC").

In their case-in-chief in Cause No. 45511, Joint Petitioners demonstrated NIPSCO's need for capacity and energy produced by the Fairbanks Project. Joint Petitioners further demonstrated that addition of the Fairbanks Project was supported by the conclusions of NIPSCO's Integrated Resource Plan submitted October 31, 2018 (the "2018 IRP") and its Short-Term Action Plan. NIPSCO also provided evidence that Commission approval of the Fairbanks Project is reasonable and in the public interest, would enhance or maintain the reliability and efficiency of service provided by NIPSCO, and otherwise is consistent with Ind. Code § 8-1-8.8-11.

Based on the evidence presented, the Commission found in the 45511 Order (at 41) that "NIPSCO has a need for capacity by 2023." The Commission determined (at 41) that "NIPSCO's 2018 IRP, as supplemented by the 2020 portfolio analysis, demonstrates the acquisition of replacement resources over time, with particular focus on solar and battery storage facilities in the near term to maximize the benefits of the ITC, is a reasonable and appropriate path forward." The Commission also found (at 41-42) "the Fairbanks Project is consistent with that framework" and "[a]s established by the 2018 IRP, obtaining resources needed by 2023 to retire Schahfer's coal-fired units not only diversifies the resources relied upon by NIPSCO, but results in significant economic savings for NIPSCO's customers." Accordingly, in the 45511 Order (at 48-49), the Commission granted NIPSCO a CPCN to acquire the Fairbanks Project through the Joint Venture, found the Fairbanks Project to be a clean energy project, and approved NIPSCO's proposed accounting treatment and authorized NIPSCO to recover costs incurred for energy generated by the Fairbanks Project through the FAC. The Commission also approved an ARP pursuant to which NIPSCO would record its interest in Joint Venture as a regulatory asset in Account 182.3 and amortize the amounts so recorded using the amortization rates for the Fairbanks Project. The Commission likewise found in the 45511 Order (at 37) that NIPSCO "provided the best estimate for the cost of the Fairbanks Project." As part of the ARP, the Commission authorized NIPSCO to defer amortization of the regulatory asset until such time as the recovery of the amortization expense on that portion is reflected in NIPSCO's rates and charges and to accrue PISCC with respect to that investment at NIPSCO's weighted average cost of capital ("WACC") until a return is recovered through NIPSCO's rates and charges. In short, the Commission authorized NIPSCO to reflect in rate base as a regulatory asset its costs to own an interest in the Joint Venture like it would have reflected the costs to build and own the generating assets in Utility Plant in Service had NIPSCO instead been the direct owner of the Fairbanks Project.

6. **Modifications to the 45511 Order.** Following issuance of the 45511 Order, NIPSCO was advised that the cost to construct the Fairbanks Project had increased. As will be further described in Joint Petitioners' case-in-chief, the cost increase is largely driven by escalating commodity and supply chain costs impacting manufacturers worldwide which were outside NIPSCO's control, similar to those discussed by NIPSCO in Cause No. 45936. Accordingly, over the course of several months, NIPSCO worked with the developer to modify the terms of the BTA so the Fairbanks Project would continue to meet the needs identified in the 45511 Order in a manner that remains economically feasible for the contracting parties and customers.[2] Ultimately, those discussions led to NIPSCO and the developer executing the Amended Fairbanks BTA. While those amended agreements largely preserve the terms approved in the 45511 Order, the amended agreements modify the purchase price for the Fairbanks Project to levels consistent with current market conditions.

In addition, after the 45511 Order was issued, the Inflation Reduction Act of 2022 ("IRA") was enacted. The IRA contains significant extensions, expansions, and enhancements of energy-related tax credits for the clean production of electricity. Importantly, the IRA revived the Production Tax Credit ("PTC") for solar energy (which had previously sunset in 2006) for facilities that commence construction before January 1, 2025, providing flexibility to elect either the Investment Tax Credit ("ITC") or the PTC

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[2] Invenergy Renewables Global LLC ("Invenergy") is the developer of the Fairbanks Project.

on the energy produced and sold by the solar energy property depending on economics and customer benefits. In Cause No. 45511, NIPSCO was constrained to claiming the ITC for the Fairbanks Project. Because the ITC normalization rules preclude sharing the benefit of the ITC with customers any faster than over the remaining book life of the property, the joint venture structure was proposed and approved in the 45511 Order to monetize the ITC and allow customers to receive the value of the tax benefits associated with the Fairbanks Project as they were realized.

Following enactment of the IRA and with the availability of the PTC, NIPSCO began evaluating the benefits to customers of the ITC and PTC on a project-by-project basis to determine which ownership structure and tax monetization strategy would drive the best customer value, as well as how the proposed structure and monetization strategy would fit into NIPSCO's overall, diverse portfolio of projects. Based on that evaluation, NIPSCO determined that, in the case of the Fairbanks Project, customers will benefit from NIPSCO wholly owning the Fairbanks Project (rather than forming a joint venture with a TEP as approved in the 45511 Order) and that moving to PTC would also further diversify and balance NIPSCO's tax monetization strategy. As further described in the case-in-chief, the Fairbanks Project expects to claim the PTC on the energy produced and sold by the solar energy property. NIPSCO proposes to pass back the benefits of the PTC on the energy produced at the facility over a 10-year period beginning in 2026, consistent with NIPSCO's request and the Commission's approval in Cause No. 45936.

7. **Requested Changes to the CPCN for the Fairbanks Project.** Pursuant to Ind. Code § 8-1-2-72, Joint Petitioners request that the Commission modify the CPCN granted in the 45511 Order to reflect the terms of the Amended Fairbanks BTA and authorize NIPSCO to directly purchase and own the Fairbanks Project, as opposed to acquiring the project company through the Joint Venture. NIPSCO believes the direct purchase and acquisition of the Fairbanks Project will reduce costs to customers and allow customers to realize the benefit of the PTC. It will also simplify NIPSCO's accounting and recordkeeping, as full ownership will more closely resemble traditional ownership and ratemaking associated with non-renewable generation assets. Joint Petitioners' case-in-chief presents the "best estimate" of the total cost of the Fairbanks Project based on the terms of the Amended Fairbanks BTA.

8. **Modification of Ratemaking and Accounting Treatment.** In accordance with Ind. Code § 8-1-2-72, Joint Petitioners request that the Commission modify the ratemaking relief granted in the 45511 Order to permit NIPSCO to defer for recovery through rates in a subsequent rate proceeding the costs incurred for the acquisition and operation of the Fairbanks Project, as opposed to the acquisition of interests in the Joint Venture approved in the 45511 Order. NIPSCO's requested ratemaking and accounting treatment and the changes from the relief granted in the 45511 Order are described in greater detail by Joint Petitioners Witness Stanley and are consistent with NIPSCO's request and the Commission's approval in Cause No. 45936. The costs NIPSCO proposes

to defer for recovery through rates in a subsequent rate proceeding include costs associated with (1) capital investment recorded as utility plant to complete the purchase of the Fairbanks Project, as opposed to purchasing an interest in the Joint Venture, including allowance for funds used during construction ("AFUDC") development and start-up costs; (2) accrued PISCC on NIPSCO's investments in the Fairbanks Project and deferred depreciation on those investments, as opposed to PISCC on the investment in the Joint Venture and deferred amortization expense; (3) depreciation expense, including cost of removal associated with the Fairbanks Project, as opposed to amortization expense associated with investment in the Joint Venture; and (4) O&M and property tax. NIPSCO proposes to defer such expenses for recovery until they are incorporated in rate base or cost of service in a base rate proceeding. Ongoing O&M expenses, depreciation, and property tax would be included in cost of service in a future rate proceeding.

Consistent with the relief granted in the 45511 Order, Joint Petitioners propose to accrue costs associated with capital investment to complete the purchase of the Fairbanks Project, including AFUDC and PISCC. AFUDC will be accrued under NIPSCO's current AFUDC rate and recorded as additional utility plant while the Fairbanks Project is classified as construction work in progress. The Fairbanks Project will accrue PISCC once the Fairbanks Project goes in service. Although the 45511 Order approved the accrual of PISCC at NIPSCO's pre-tax WACC (beginning with the month after the investments are respectively placed in service until the date the investments are included for recovery in base rates), NIPSCO proposes to modify such carrying costs to be based upon NIPSCO's cost of debt, which will result in lower carrying costs for customers. NIPSCO also proposes to record the accrued PISCC and deferred depreciation expense as regulatory assets until such time as they can be included for recovery in rates along with the unamortized portion included in rate base upon which NIPSCO is authorized to earn a return. NIPSCO also seeks to calculate a debt based carrying charge on the deferred depreciation until NIPSCO begins recovery of the amounts included in the regulatory assets in a future general rate case proceeding. NIPSCO seeks to record deferred O&M and property taxes as a regulatory asset as well with recovery in cost of service. NIPSCO also requests the Commission approve an annual depreciation rate, which does not include cost of removal, of approximately 3.3% for the Fairbanks Project, consistent with the Commission's treatment of depreciation costs for similar solar projects. Consistent with prior Commission orders, including its recent order in Cause No. 45936, NIPSCO proposes to evaluate adjustments to these depreciation rates, including collection of cost of removal, and include proposed depreciation rates for these assets in a future formal depreciation study.

The portions of the ARP approved in the 45511 Order authorizing the establishment of the Joint Venture and granting NIPSCO authority to record its investment in Joint Venture as a regulatory asset will no longer be necessary if the Commission approves the proposed ratemaking treatment described above.

Accordingly, to the extent necessary, NIPSCO requests that those portions of the ARP approved in the 45511 Order be terminated upon approval of the relief requested herein in accordance with Ind. Code § 8-1-2.5-7. Because NIPSCO will purchase and own the Fairbanks Project directly as opposed to indirectly through Joint Venture subject to the ARP, NIPSCO requests ongoing review of the Fairbanks Project.[3] Consistent therewith, in the event the Fairbanks Project assets would not be placed in service, NIPSCO requests authority to defer costs associated with the Fairbanks Project in a regulatory asset for recovery in a future general rate case or to be capitalized as part of an alternative generation project.

9. **Requested Treatment of Tax Credits.** NIPSCO is proposing to pass back tax credits to customers through a rate adjustment mechanism pursuant to Ind. Code § 8-1-2-42(a) to be administered through NIPSCO's FAC proceeding (or successor mechanism) as described in detail by Joint Petitioners Witness Bass. This recovery shall not be subject to any Ind. Code § 8-1-2-42(d) tests. Clean energy projects are specifically encouraged by Ind. Code ch. 8-1-8.8. Indiana Code § 8-1-8.8-11 authorizes the

[3] As detailed in Joint Petitioners Witness d'Entremont's testimony, Invenergy, as the developer for the Fairbanks Project, is already subject to quarterly construction reporting pursuant to Paragraph 6 in Cause No. 45254 (Fairbanks Project) through commercial operation of the solar facility. These quarterly reports include many project and construction details, including, but not limited to, achievement of construction milestones, date of commercial operation, and when commercial operation is achieved, the nameplate capacity of each facility. To satisfy ongoing review, NIPSCO will submit a report in this Cause by July 1, 2025, summarizing information related to the Fairbanks Project, which is expected to be in-service by May 31, 2025, including the actual total purchase price. Joint Petitioners will file a separate request pursuant to Ind. Code § 8-1-2-72 seeking to modify the best estimates approved in this Cause to the extent approval is needed of an increase to the cost of the facilities above the best estimate.

Commission to create financial incentives for the development of alternative resources. Therefore, approval of the relief NIPSCO seeks with respect to passing back tax credits is consistent with Indiana energy and regulatory policy.

10. **<u>The Fairbanks Project Remains Reasonable and Necessary.</u>** The Commission's findings in the 45511 Order with respect to the necessity of the Fairbanks Project and its consistency with the 2018 IRP and Short Term Action Plan remain true, notwithstanding the modifications set forth in the Amended Fairbanks BTA. As discussed within and demonstrated by Joint Petitioners' case-in-chief submitted herewith, and as confirmed by NIPSCO's 2021 IRP, the energy and capacity provided through the Amended Fairbanks BTA continue to be reasonable and necessary additions to NIPSCO's portfolio of generating resources to meet the need for electricity within NIPSCO's service area while also mitigating the risk through the diversification and use of an economic mix of resources that provides flexibility. Additionally, the Amended Fairbanks BTA continues to be a reasonable, economic choice to serve the energy and capacity needs of NIPSCO's customers. Moreover, NIPSCO believes wholly owning the Fairbanks Project and passing the benefit of the PTC (on the energy produced and sold by the solar energy property) to customers through the FAC (or successor mechanism) as proposed herein will mitigate the impact of the price increases on customer rates. Commission approval of the modifications to the CPCN granted in the 45511 Order to reflect the terms of the Amended Fairbanks BTA, is in the public interest, will enhance or maintain the reliability and efficiency of service provided by NIPSCO, and is otherwise consistent with Ind. Code § 8-1-8.8-11.

11. **Rate Impact.** The cost of the Fairbanks Project under the Amended Fairbanks BTA is described in testimony of Joint Petitioners Witness d'Entremont. NIPSCO believes that, in total, the Generation Transition Plan it has proposed will result in lower customer rates as compared to other alternatives. The estimated rate impact from the Amended Fairbanks BTA is discussed in the testimony and attachments of Joint Petitioners Witness d'Entremont. While the ultimate impact of the Fairbanks Project on the average residential customer's bill will be dependent on a number of different factors, Joint Petitioners currently estimate the impact for a residential customer that uses 668 kWh per month resulting from the Amended Fairbanks BTA is $2.76.

12. **Applicable Law.** NIPSCO considers the provisions of the Public Service Commission Act, as amended, including Ind. Code ch. 8-1-8.8, Ind. Code § 8-1-2-42(a) and Ind. Code § 8-1-2-72, among others, to be applicable to the subject matter of this Cause and believes that such statutes provide the Commission authority to approve the requested relief.

13. **Counsel for Joint Petitioners.** The names and addresses of persons authorized to accept service of papers in this proceeding are:

Counsel of Record:

Tiffany Murray (No. 28916-49)
Bryan M. Likins (No. 29996-49)
NiSource Corporate Services - Legal
150 West Market Street, Suite 600
Indianapolis, Indiana 46204
Murray Phone: (317) 649-6424
Likins Phone: (317) 684-4922
Fax: (317) 684-4918
Murray Email: tiffanymurray@nisource.com
Likins Email: blikins@nisource.com

Steven W. Krohne (No. 20969-49)
Jack Petr (No. 37680-49)
Ice Miller LLP
One American Square, Suite 2900
Indianapolis, Indiana 46282-0002
Krohne Phone: (317) 236-2294
Petr Phone: (317) 236-2145
Fax: (317) 236-2219
Krohne Email: steven.krohne@icemiller.com
Petr Email: jack.petr@icemiller.com

With a copy to:

Alison M. Becker
Northern Indiana Public Service Company LLC
150 W. Market Street, Suite 600
Indianapolis, Indiana 46204
Phone: (317) 684-4910
Fax: (317) 684-4918
Email: abecker@nisource.com

Debi McCall
NiSource Corporate Services - Legal
150 West Market Street, Suite 600
Indianapolis, Indiana 46204
Phone: (317) 684-4925
Fax: (317) 684-4918
Email: demccall@nisource.com

14. **Procedural Matters.** In accordance with 170 IAC 1-1.1-15(e), Joint Petitioners have had discussions with the Indiana Office of Utility Consumer Counselor ("OUCC") regarding a procedural schedule and proposes the following schedule to facilitate NIPSCO's ability to purchase energy from the Fairbanks Project in accordance with the timeframe set forth in the Amended Fairbanks BTA:

Joint Petitioners' Filing of Petition and Case in Chief	March 18, 2024
OUCC and Intervenors Filing of Case in Chief	June 3, 2024
Joint Petitioners' Rebuttal, if any, and Cross Answering, if any	June 13, 2024
Hearing	June 24, 2024
Joint Petitioners' Proposed Order	June 25, 2024

OUCC's and Intervenor's Exceptions to Joint Petitioners' Proposed Order	July 2, 2024
Joint Petitioners Reply to OUCC's and Intervenor's Proposed Orders	July 9, 2024
Requested Order Date	August 14, 2024

To facilitate the proposed procedural schedule, which is also necessary to allow sufficient time for NIPSCO to also acquire necessary FERC approvals, NIPSCO and the OUCC have agreed to informal discovery, with any response or objection to a request being made within ten calendar days of the receipt of such request prior to the OUCC and any Intervenors' prefiling date, and three business days after the filing of the OUCC and any Intervenors' cases in chief.

WHEREFORE, Joint Petitioners respectfully request that the Commission promptly publish notice, make such other investigation, and hold such hearings as are necessary or advisable and thereafter, make and enter appropriate orders in this Cause:

(a) approving changes to the CPCN granted in the 45511 Order to reflect the terms of the Amended Fairbanks BTA and authorize NIPSCO to directly purchase and own the Fairbanks Project;

(b) finding the revised cost of the Fairbanks Project to be the best estimate;

(c) approving necessary changes to the ratemaking and accounting treatment approved for the Fairbanks Project described in Paragraph 8 above, and further explained in the testimony of Joint Petitioners Witness Stanley;

(d) authorizing NIPSCO to share tax credits with customers through FAC proceedings (or successor mechanism);

(e) approving depreciation rates for the Fairbanks Project;

(f) terminating, to the extent necessary, those portions of the ARP approved in the 45511 Order authorizing the establishment of the Joint Venture and granting NIPSCO authority to record its investment in Joint Venture as a regulatory asset;

(g) providing for ongoing review of Fairbanks Project based on NIPSCO's intent to acquire the Fairbanks Project in lieu of the Joint Venture and authorizing NIPSCO to defer costs associated with the Fairbanks Project as a regulatory asset, for future recovery through retail electric rates, in the event the Fairbanks Project is not placed in service;

(h) approving the procedural schedule agreed to between Joint Petitioners and the OUCC; and

(i) granting to Joint Petitioners such additional and further relief as may be deemed or appropriate.

Dated this 18th day of March, 2024.

Northern Indiana Public Service Company LLC

Erin A. Whitehead
Vice President, Regulatory Policy and Major Accounts

Verification

I affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge, information, and belief.

Dated: March 18, 2024.

Erin A. Whitehead
Vice President, Regulatory Policy and Major Accounts
Northern Indiana Public Service Company LLC

Verification

I affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge, information, and belief.

Dated: March 18, 2024.

Vincent Parisi
Manager; Interim President and Interim Chief Executive Officer
Fairbanks Solar Generation, LLC

CERTIFICATE OF SERVICE

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

T. Jason Haas
Indiana Office of Utility Consumer Counselor
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
thaas@oucc.in.gov
infomgt@oucc.in.gov

Jennifer A. Washburn
Citizens Action Coalition of Indiana, Inc.
1915 West 18th Street, Suite C
Indianapolis, Indiana 46202
jwashburn@citact.org
rkurtz@citact.org

Dated this 18th day of March, 2024.

Tiffany Murray