

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

**VERIFIED PETITION OF NORTHERN INDIANA)
PUBLIC SERVICE COMPANY LLC FOR APPROVAL)
PURSUANT TO IND. CODE §§ 8-1-2-42(a), 8-1-8.8-11) CAUSE NO. 45887
OF A (1) SOLAR ENERGY POWER PURCHASE)
AGREEMENT, AND (2) WIND ENERGY POWER)
PURCHASE AGREEMENT, INCLUDING TIMELY)
COST RECOVERY.)**

**PETITIONER’S MOTION FOR PROTECTION AND NONDISCLOSURE OF
CONFIDENTIAL AND PROPRIETARY INFORMATION**

Northern Indiana Public Service Company LLC (“NIPSCO”), pursuant to 170 IAC 1-1.1-4, Ind. Code § 5-14-3-4, and Ind. Code § 8-1-2-29, respectfully requests that the Indiana Utility Regulatory Commission (“Commission”) enter a protective order prohibiting dissemination outside of the Commission and adopting safeguards for the handling of certain documents to be submitted under seal to the Commission by NIPSCO that contain trade secrets and which NIPSCO deems confidential, proprietary, and competitively sensitive (the “Confidential Information”). In support of this motion, NIPSCO represents the following:

1. NIPSCO proposes to include the Confidential Information in the Verified Direct Testimony and attachments filed in this Cause on May 15, 2023. The Confidential Information may also be used as part of Verified Rebuttal Testimony and attachments, at

the Evidentiary Hearing and/or discussed in the post-hearing pleadings to be made in this Cause. A Commission protective order will allow NIPSCO to safely submit the Confidential Information to the Commission.

2. The Confidential Information specifically includes the pricing and other negotiated commercial terms set forth in NIPSCO's testimony and attachments in this Cause that are confidential, proprietary, competitively sensitive and/or trade secrets, as follows:

(a) Portions of NIPSCO's Confidential Exhibit No. 1 (Verified Direct Testimony of Rosalva Robles), including Confidential Attachment 1-B (the Solar Energy Purchase Agreement between NIPSCO and Appleseed Solar, LLC) and Confidential Attachment 1-C (the Wind Energy Purchase Agreement between NIPSCO and Templeton Wind Energy Center, LLC).

(b) Portions of NIPSCO's Confidential Exhibit No. 2 (Verified Direct Testimony of Patrick N. Augustine), including Confidential Attachment 2-B (summary of key inputs and output associated with a 2023 portfolio analysis), Confidential Attachment 2-C (summary of the levelized cost of electricity for Appleseed), and Confidential Attachment 2-D (summary of the levelized cost of electricity for Templeton).

(c) Confidential Attachment 3-B to NIPSCO's Confidential Exhibit No. 3 (Verified Direct Testimony of Robert Lee) (opinion letter from Charles Rivers Associates ("CRA") to NIPSCO following two 2022 requests for proposals) and Confidential Attachment 3-C (a detailed table of how each proposal was calculated and scored during the RFP process).

3. Hereinafter the confidential information designated in Paragraph 2 and in NIPSCO's evidence to be submitted in this Cause is referred to as the "Confidential Information." NIPSCO requests that the Confidential Information be exempted from public disclosure.

4. The Confidential Information which NIPSCO requests to be protected in this proceeding includes pricing and other proprietary and competitive sensitive provisions. The Confidential Information also contains pricing analysis of options included in NIPSCO's Confidential Exhibit No. 1, including attachments thereto, NIPSCO's Confidential Exhibit No. 2, including the confidential attachments thereto, and NIPSCO's Confidential Exhibit No. 3, including attachments thereto.

5. The Confidential Information may also be discussed in the evidence, pleadings and other submissions in this Cause. A Commission protective order will allow NIPSCO to safely file the Confidential Information with the Commission.

6. As explained and confirmed in the Affidavit of Andrew S. Campbell,

attached hereto as Exhibit A, the Confidential Information includes existing and future estimates of negotiated pricing and other negotiated commercial terms, and cost estimates and analysis. The Confidential Information: (i) is such that it may derive actual and potential independent economic value from being either generally known to, nor readily ascertainable by proper means by, other persons who could obtain economic value from its disclosure or use; and (ii) is the subject of efforts that are reasonable under the circumstances to maintain its secrecy. The Confidential Information therefore constitutes a trade secret in accordance with Ind. Code § 8-1-2-2 and is entitled to protection from disclosure by the Commission. In support of this motion, NIPSCO represents the following:

7. As explained and confirmed in the Affidavit of Andrew S. Campbell, attached hereto as Exhibit A, public disclosure of this cost information and commercial terms would be harmful to NIPSCO as it would provide third parties with insight into NIPSCO's expectations regarding future activities and costs. This information would be of economic value to vendors with whom NIPSCO may be negotiating currently or in the future, and the disclosure of NIPSCO's cost estimates would provide NIPSCO's competitors and vendors with an unfair advantage over NIPSCO in the marketplace, to the detriment of NIPSCO and its customers.

8. Specifically, the Confidential Information would be of economic value to

vendors with whom NIPSCO is negotiating currently and will be in the future, as negotiations with projects coming out of the 2022 RFPs are ongoing. Knowledge of the pricing and terms included in the power purchase agreement would provide suppliers and contractors with an unfair advantage during these negotiations, to the detriment of NIPSCO and its customers.

9. As further explained and confirmed in the Affidavit of Andrew S. Campbell, attached hereto as Exhibit A, Confidential Attachment 2-B, Confidential Attachment 2-C, and Confidential Attachment 2-D include detailed operational and financial reports associated with NIPSCO's retirement and replacement analyses, which include detailed cost of service projections at the station level, detailed forward estimates of generation spending by unit by year, detailed estimates for potential environmental costs, and similar information, disclosure of which would provide suppliers and competitors an unfair competitive advantage. It also includes the pricing information for current energy and capacity contracts and a summary of the 2022 RFPs pricing results that includes disaggregated offer data specific to individual bidders in the RFP. The disclosure of this would have the effect of disclosing individual pricing data and contract offers and compromise NIPSCO's confidential assessment and analysis of this information.

10. Confidential Attachment 3-D includes the pricing information for current

energy and capacity contracts and a summary of the RFP pricing results that includes disaggregated offer data specific to individual bidders in the RFP. The disclosure of this would have the effect of disclosing individual pricing data and contract offers and compromise NIPSCO's confidential assessment and analysis of this information.

11. As explained and confirmed in the Affidavit of Andrew S. Campbell, attached hereto as Exhibit A, the Confidential Information should be treated confidentially because (1) the Confidential Information is not available or ascertainable by third parties through normal or proper means; (2) NIPSCO and CRA have taken reasonable steps to protect the Confidential Information, including sharing such information internally on a need to know basis and only providing the Confidential Information to external stakeholders who have executed confidentiality agreements with NIPSCO; (3) the Confidential Information derives actual and potential independent economic value from being neither generally known to nor readily ascertainable by persons who could obtain economic value from its disclosure or use; and (4) public disclosure of the Confidential Information would cause substantial detriment to NIPSCO and its customers.

12. The Confidential Information is similar to confidential trade secret information previously found to be exempt from public disclosure by the Commission. See, e.g., *Northern Indiana Public Service Company*, Cause No. 45541 (IURC 09/01/2021),

Northern Indiana Public Service Company, Cause No. 45489 (IURC 06/29/2021), *Northern Indiana Public Service Company*, Cause No. 45403 (IURC 01/27/2021), p. 30; *Northern Indiana Public Service Company*, Cause No. 45195 (IURC 06/05/2019), p. 11; *Northern Indiana Public Service Company*, Cause No. 45196 (IURC 06/05/2019), pp. 12; *Northern Indiana Public Service Company*, Cause No. 44688 (IURC 7/18/2016), pp. 94-95; *Northern Indiana Public Service Company*, Cause No. 44988 (IURC 9/19/2018), pp. 104-105 (customer specific usage information, proposals for and bids on work to be performed on NIPSCO's behalf); *Northern Indiana Public Service Company*, Cause No. 44554 (IURC 1/21/2015) (forecasted fuel and operating costs and forecasted generation output and dispatch profiles contained in NIPSCO's 2014 IRP exempt from public disclosure); *Duke Energy Indiana, Inc.*, Cause No. 38707 FAC 100 (IURC 6/30/2014) (fuel, storage and transportation pricing and pricing projections exempt from public disclosure); *Re Indianapolis Power & Light Company*, Cause No. 44339 (IURC 5/14/2014) (price spread information obtained from third parties and capacity and power forecast information exempt from public disclosure); *Northern Indiana Public Service Company*, Cause No. 44311 (10/10/13) (cost estimates for environmental investments exempt from public disclosure); *Re Indianapolis Power & Light Company*, Cause No. 44242 (IURC 8/14/2013) (estimated coal and transportation prices, price spread information obtained from third parties and capacity and power forecast information exempt from public disclosure); *Indiana Michigan Power Company*, Cause No. 44075 (IURC 2/13/2013) (projected fuel prices and detailed coal

inventory information exempt from public disclosure); *Re Northern Indiana Public Service Company*, Cause No. 44012 (IURC 9/5/2012) (confidential commodity price forecasts obtained from third parties and cost estimates for environmental investments exempt from public disclosure); *Northern Indiana Public Service Company, Re Indianapolis Power & Light Company*, Cause No. 43740 (IURC 11/27/10) (pricing and other negotiated commercial terms exempt from public disclosure as trade secret).

13. In addition, NIPSCO's request is consistent with Indiana cases in which courts have interpreted Indiana's trade secret statutes. In *Star Scientific, Inc. v. Carter*, 204 F.R.D. 410, 414-415 (S.D. Ind. 2001), the court held that a protectable trade secret includes any information or compilation which is used in a business and which gives the business an opportunity to obtain an advantage over competitors who do not have the information. The Indiana Supreme Court has also held that although a trade secret may include elements that are readily ascertainable in the public domain, the unique compilation of the information may afford a competitive advantage and constitute a protectable trade secret. *Amoco Production Co. v. Laird*, 622 N.E.2d 912, 919 (Ind. 1993). The Confidential Information discussed herein meets the statutory definition of trade secret as that term has been interpreted in Indiana. See *Hydraulic Exchange and Repair, Inc. v. KM Specialty Pumps, Inc.*, 690 N.E.2d 782, 785-86 (Ind. Ct. App. 1998); *Bridgestone/Firestone, Inc. v. Lockhart*, 5 F. Supp. 2d. 667, 681 (S.D. Ind. 1997).

14. Based upon the above description of material for which NIPSCO seeks protection and the attached affidavit, NIPSCO requests the Commission enter a preliminary determination that the Confidential Information appears to be confidential and trade secret within the meaning of Ind. Code § 5-14-3-4(a) as defined by Ind. Code § 24-2-3-2, for the limited purpose of allowing NIPSCO to safely submit or otherwise make available the Confidential Information under seal for an in camera inspection by the presiding Administrative Law Judge and Commission for a final determination of the appropriateness of NIPSCO's request for protection. Subject to Paragraph 17 below, once a preliminary determination is made that the Confidential Information is exempt from public disclosure, NIPSCO will make available or submit a single copy of the material for which protection is sought to the Commission either via the Electronic Filing Database or in hard copy on light green paper and in a sealed envelope, designating that the contents are confidential and proprietary material submitted by NIPSCO, under a preliminary order of confidentiality, and which is marked to the attention of the presiding Administrative Law Judge. NIPSCO will notify the Commission when, and if, the information is no longer confidential.

15. Upon a preliminary determination that the Confidential Information is confidential and/or trade secret, NIPSCO proposes that the Commission issue a Docket Entry adopting the following procedures to assure the protection of the information provided by NIPSCO, which NIPSCO believes to be consistent with procedures followed

by the Commission in similar situations:

a. That the Confidential Information will be made available solely for inspection by certain designated employees of the Commission and its Staff for the purposes of their analysis.

b. That the Confidential Information will be specifically filed with, secured by and under the control of a responsible person.

c. That any Commission employee or Staff member receiving access to such Confidential Information be under an obligation to secure and maintain exclusive control of documents, to refrain from directly or indirectly allowing public disclosure of such Confidential Information and to refrain and prohibit the copying and reproduction of the Confidential Information.

d. That any documents, materials or reports prepared by Commission employees or Staff members not have the effect of disclosing the Confidential Information.

e. That no Commission employee or Staff member should have access to the Confidential Information without first acknowledging in writing prior to access, the existence of an order providing for confidential treatment, the need to treat the Confidential Information in accordance with the provisions thereof, and the sanctions

which may be imposed for unauthorized disclosure of such Confidential Information.

16. NIPSCO will provide the Confidential Information to the Office of Utility Consumer Counselor ("OUCC") pursuant to a standard non-disclosure agreement between NIPSCO and the OUCC. Should a subsequently filed petition to intervene be granted, NIPSCO will provide the Confidential Information to any intervenor pursuant to an appropriate confidentiality agreement that is acceptable to NIPSCO. If necessary, NIPSCO will request that the Commission enter a protective order safeguarding the dissemination of the Confidential Information.

17. Once a preliminary determination of confidentiality has been made, NIPSCO will provide the Confidential Information subject to and contingent upon the right to retrieve the Confidential Information before it can be disclosed to any members of the public should the Commission, upon a final determination, find that the material submitted under seal should not be protected.

WHEREFORE, NIPSCO respectfully request that the Commission make and enter appropriate orders in this Cause:

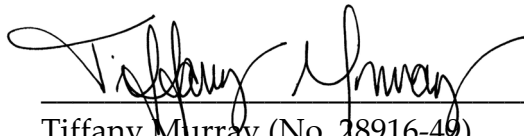
(i) Finding the Confidential Information to be preliminarily confidential for the limited purpose of allowing NIPSCO to safely file the Confidential Information with the Commission under seal;

(ii) Thereafter make a final determination that the Confidential Information is exempt from public disclosure under Ind. Code § 8-1-2-29 and § 5-14-3-4;

(iii) Adopting the procedures set forth herein to insure that the Confidential Information is appropriately secured and made available only to the appropriate Commission employees of the Commission's Staff on a need-to-know basis, and who are under an obligation not to disclose such confidential information to any third party; and

(iii) Granting to NIPSCO such other relief as may be appropriate.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Tiffany Murray", is written over a horizontal line.

Tiffany Murray (No. 28916-49)
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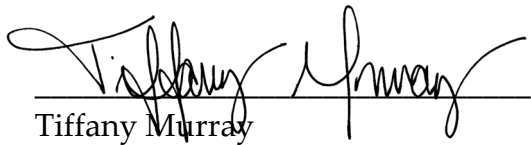
Attorney for
Northern Indiana Public Service Company LLC

CERTIFICATE OF SERVICE

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

William I. Fine
Randall C. Helmen
T. Jason Haas
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Dated this 16th of May, 2023.



Tiffany Murray

STATE OF INDIANA)
)
COUNTY OF LAKE)

AFFIDAVIT OF ANDREW S. CAMPBELL

Affiant, upon being first duly sworn, subject to the penalties for perjury, states that:

1. I am the Director of Portfolio Planning & Origination for Northern Indiana Public Service Company LLC ("NIPSCO"). My business address is 801 E. 86th Avenue, Merrillville, Indiana 46410.

2. I am responsible for leading the regulatory support and financial planning functions for the Energy Supply & Optimization department within NIPSCO, whereby my team supports NIPSCO's operations within the electric and natural gas markets. I am leading the commercial execution of NIPSCO's generation strategy outlined within its 2021 Integrated Resource Plan ("2021 IRP").

3. I am supplying this affidavit to support NIPSCO's Motion for Protection and Nondisclosure of Confidential Information for determination that certain information that contains trade secrets is confidential and exempt from public disclosure, pursuant to 170 IAC 1-1.1-4, Ind. Code § 5-14-3 and Ind. Code § 8-1-2-29 ("Confidential Information").

4. I understand NIPSCO is requesting that certain information contained in NIPSCO's testimony and attachments in this Cause are confidential, proprietary, competitively sensitive and/or trade secrets. This information includes pricing, commercial, and proprietary terms which constitute competitively sensitive information and information about agreements which have been and are being negotiated, both of which constitute competitive sensitive information ("Confidential Information").

5. Public disclosure of the following negotiated agreement which contains Confidential Information could harm NIPSCO and NIPSCO's customers: Confidential Attachment 1-B (the Solar Energy Purchase Agreement between NIPSCO and Appleseed Solar, LLC) and Confidential Attachment 1-C (the Wind Energy Purchase Agreement between NIPSCO and Templeton Wind Energy Center, LLC) were the product of arms-length, confidential negotiations, and the Confidential Information contains competitively sensitive information.

6. Confidential Attachment 2-B, which is a summary of the key inputs and outputs associated with the 2023 portfolio analysis performed to support near-term resource decisions using the latest market information, to evaluate portfolio options with the benefit of the latest technology cost information from the 2022 RFPS and using updated market and policy assumptions.

7. Confidential Attachment 2-C and Confidential Attachment 2-D, which are the levelized cost of electricity (“LCOE”) analyses provided by Charles River Associates (“CRA”), contains Confidential Information, including all-in resource costs over a certain time period resulting in a single dollar per MWh number.

8. Confidential Attachment 3-B, which is the opinion letter provided by Charles River Associates (“CRA”) to NIPSCO following the 2022 requests for proposals (“RFPs”), and Confidential Attachment 3-C, which is a detailed table of how each proposal was calculated and scored during the RFP, contain Confidential Information, which includes the pricing information for current energy and capacity contracts and a summary of the RFP pricing results that includes disaggregated offer data specific to individual bidders in the RFP. The public disclosure of this Confidential Information could harm CRA, Petitioners, and NIPSCO’s customers.

9. As set forth in Petitioner’s Motion for Protection and Nondisclosure of Confidential and Proprietary Information, the Confidential Information includes detailed operational and financial reports associated with NIPSCO’s retirement and replacement analyses, which include detailed cost of service projections at the station level, detailed forward estimates of generation spending by unit by year, detailed estimates for potential environmental costs, and similar information, including accruals, disclosure of which would provide suppliers and competitors an unfair competitive advantage. It also

includes the pricing information for current energy and capacity contracts and a summary of the 2022 RFP pricing results that includes disaggregated offer data specific to individual bidders in the RFP. The disclosure of this would have the effect of disclosing individual pricing data and contract offers and compromise NIPSCO's confidential assessment and analysis of this information.

10. Specifically, Confidential Information would be of economic value to vendors with whom NIPSCO is negotiating currently and will be in the future. Knowledge of the pricing and terms included in the agreements would provide suppliers and contractors with an unfair advantage during these negotiations. Public disclosure of portions of Petitioner's Confidential Exhibit No. 1 (Verified Direct Testimony of Rosalva Robles), Confidential Exhibit No. 2 (Verified Direct Testimony of Patrick N. Augustine), and Confidential Exhibit No. 3 (Verified Direct Testimony of Robert Lee) contain Confidential Information which could harm NIPSCO and its customers.

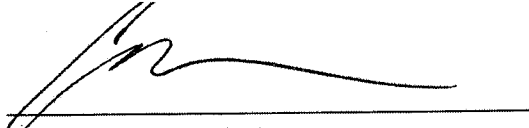
11. To my knowledge, the Confidential Information is not available or ascertainable on a non-confidential basis by parties through normal or proper means.

12. The Confidential Information has been the subject of efforts that are reasonable under the circumstances to maintain its secrecy. A confidentiality agreement has been signed between CRA and NIPSCO to restrict the access of information to only those employees, officers and representatives who have a need to know about such

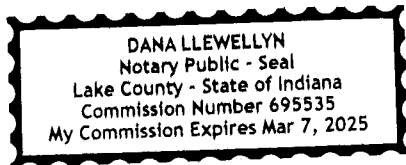
information due to their job and management responsibilities. NIPSCO and CRA have taken and will continue to take all reasonable steps in order to protect the Confidential Information, including, but not limited to, only sharing such information internally with employees, offices and representatives on a need to know basis. Outside of these companies, this information is only provided to certain persons who have a legitimate need to review the information to participate in this Cause and who sign a confidentiality agreement, or to certain governmental agencies as may be required by applicable law.

13. For all the foregoing reasons, the Confidential Information should be protected from public disclosure.

14. Further, Affiant sayeth not.


Andrew S. Campbell

The preceding Affidavit of Andrew S. Campbell was subscribed and sworn before
me this 16th day of May, 2023.




Notary Public

My Commission Expires: 3/7/2025

My County of Residence: LAKE