

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston			√
Bennett	√		
Freeman	√		
Veleta	√		
Ziegner	√		

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

APPROVED: AUG 14 2024

ORDER OF THE COMMISSION

**Presiding Officers:
Sarah E. Freeman, Commissioner
Jennifer L. Schuster, Senior Administrative Law Judge**

On March 18, 2024, Joint Petitioners Northern Indiana Public Service Company LLC (“NIPSCO”) and Fairbanks Solar Generation LLC (“Fairbanks”) (collectively “Joint Petitioners”) filed their Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) initiating this Cause and their prepared testimony and exhibits constituting their case-in-chief. The Indiana Office of Utility Consumer Counselor (“OUCC”) filed testimony and exhibits constituting its case-in-chief on June 3, 2024. Joint Petitioners filed rebuttal testimony on June 13, 2024.

On June 24, 2024, the Presiding Officers issued a Docket Entry requesting that Petitioner respond to one question. Petitioner filed its response on June 24, 2024.

The Commission held an evidentiary hearing in this matter on July 2, 2024, at 9:30 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. NIPSCO and the OUCC, by counsel, appeared and participated in the evidentiary hearing, and the evidence of both parties was admitted into the record without objection.

Having considered the evidence presented and the applicable law, the Commission finds:

1. Notice and Commission Jurisdiction. Notice of the evidentiary hearing in this Cause was given and published by the Commission as required by law. NIPSCO is a public utility within the meaning of that term as used in Ind. Code § 8-1-2-1 and is subject to the jurisdiction of the Commission in the manner and to the extent provided by Indiana law. NIPSCO is also an “eligible business” as that term is defined in Ind. Code § 8-1-8.8-6. NIPSCO also is subject to the jurisdiction of the Federal Energy Regulatory Commission (“FERC”). The Commission has jurisdiction to approve NIPSCO’s requested relief as provided under the Public Service Commission Act, including Ind. Code chs. 8-1-8.5 and 8-1-8.8 and Ind. Code § 8-1-2-72.

2. NIPSCO’s Characteristics. NIPSCO is a limited liability company organized and existing under Indiana law with its principal office and place of business at 801 East 86th Avenue, Merrillville, Indiana. 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, which are used and useful in the production, transmission, distribution, and furnishing of electric energy, heat, light, and power to the public. 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 administers the use of NIPSCO’s transmission system and the economic dispatching of NIPSCO’s generating units pursuant to MISO’s FERC approved tariff provisions. NIPSCO also engages in power purchase transactions through MISO as necessary to meet the demands of its customers.

3. Fairbanks’s Characteristics. 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 (a financial investor that would not have operational rights in the Fairbanks Project). In Cause No. 45511, the Commission declined to exercise its jurisdiction over Fairbanks as a public utility.

4. Relief Requested. In Cause No. 45511, Joint Petitioners requested that the Commission issue NIPSCO a CPCN to purchase and acquire indirectly, through a Joint Venture, the Fairbanks Project. The Commission granted this request in its order in Cause No. 45511 (“45511 Order”).

In this Cause, Joint Petitioners request the Commission enter an order: (1) 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; (2) finding the revised cost of the Fairbanks Project to be the best estimate; (3) approving certain changes to the ratemaking and accounting treatment approved for the Fairbanks Project; (4) authorizing NIPSCO to share tax credits with customers through its fuel adjustment clause (“FAC”) proceedings (or a successor mechanism); (5) approving depreciation rates for the Fairbanks Project; (6) terminating, to the extent necessary, those portions of the Alternative Regulatory Plan (“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; (7) providing for ongoing review of the 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; and (8) granting to Joint Petitioners such additional and further relief as may be deemed necessary or appropriate.

5. Joint Petitioners' Case-in-Chief. Joint Petitioners presented the testimony of four witnesses in their case-in-chief: Patrick M. d'Entremont, Manager of Planning and Commercial Support for NiSource Corporate Services Company ("NCSC"); Patrick N. Augustine, Vice President of CRA International d/b/a Charles River Associates, Inc. ("CRA"); Kevin Stanley, Controller for NIPSCO and Director of Fixed Assets for NCSC; and Jonathan Bass, Director of Income Tax Planning & Controversy for NCSC.

A. d'Entremont Direct Testimony. Mr. d'Entremont described the modifications to the 45511 Order Joint Petitioners propose in this filing. He stated that, following issuance of the 45511 Order, NIPSCO was advised that the cost to construct the Fairbanks Project had increased. He testified that the cost increase was largely driven by escalating commodity and supply chain costs impacting manufacturers worldwide which are outside NIPSCO's control. Over the course of several months, NIPSCO worked with the developer to modify the terms of the Fairbanks 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 NIPSCO's customers. He stated those discussions led to NIPSCO and the developer executing the Amended Fairbanks BTA. He testified that, while the 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 the prevailing market conditions to maintain the viability of the project. He stated the Fairbanks Project remains more economic than other available projects, both in time and costs.

Mr. d'Entremont provided an overview of the major developments in federal policy that occurred since the Fairbanks Project was approved in the 45511 Order, including the Inflation Reduction Act of 2022 ("IRA"). Mr. d'Entremont stated the IRA includes significant extensions, expansions, and enhancements of energy-related tax credits for the clean production of electricity. Mr. d'Entremont stated that following the enactment of the IRA, which extends the Production Tax Credit ("PTC") and Investment Tax Credit ("ITC") for renewable and clean energy resources for an additional decade, and with the availability of the PTC, NIPSCO began evaluating the benefits to customers of the ITC and PTC both on a project-by-project and portfolio basis to determine which ownership structure and tax monetization strategy drives the best customer value. 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 tax equity partner as approved in the 45511 Order.

Mr. d'Entremont also provided a high-level overview of other drivers of the increased cost to construct the Fairbanks Project, including a United States Department of Commerce ("DoC") Investigation ("DoC Investigation") into anti-dumping and anti-circumvention of imported solar panels from Malaysia, Thailand, and Vietnam. Mr. d'Entremont stated the DoC Investigation resulted in uncertainty, increased costs, and importation delays in the solar module market, directly impacting NIPSCO's renewable generation developer partners and related solar projects. Mr. d'Entremont testified that, in addition to the DoC Investigation, a review of compliance with new

forced labor prevention rules as well as general global supply chain and labor availability due to the COVID-19 pandemic also contributed to delays and cost impacts.

Mr. d'Entremont stated that NIPSCO considered other alternatives rather than amending the 45511 Order, including extending the life of Schahfer Units 17 and 18, purchasing capacity and energy from the market, and negotiating a contract for a different solar project. However, Mr. d'Entremont testified that amending the approved Fairbanks BTA supported a lower cost and nearer-term solution to meeting capacity needs, while maintaining NIPSCO's plan to retire Schahfer Units 17 and 18 by the end of 2025. Mr. d'Entremont explained that direct purchase and ownership of the Fairbanks Project will reduce costs to customers through realization of the PTC benefits. He testified that NIPSCO determined a direct ownership structure for the Fairbanks Project is appropriate and reasonable and discussed the reasons NIPSCO is not currently pursuing a tax equity partner for the Fairbanks Project.

Mr. d'Entremont discussed how several of NIPSCO's solar projects have been delayed, which led NIPSCO to evaluate the appropriate retirement timing of Schahfer. Mr. d'Entremont stated that the challenges described above led NIPSCO to revise its retirement timeline, with an expectation to retire Schahfer's remaining two coal units (Units 17 and 18) by the end of 2025 rather than May of 2023. In addition, Mr. d'Entremont testified that it became necessary for NIPSCO to proactively work with its renewable developers to amend agreements, mitigate potential impacts, and add additional flexibility and protections into its existing agreements to maintain the viability of its projects, if possible, the costs of which are substantially less than other available market options.

Mr. d'Entremont testified that, for the Fairbanks Project, the updated levelized cost of energy ("LCOE") with NIPSCO self-monetization of the tax credits has a lower cost than the alternative tax equity partnership construct and the equivalent market purchase cost. He noted that the LCOE with NIPSCO self-monetization of the tax credits is higher than the original project LCOE from Cause No. 45511, but the ability for NIPSCO to directly own the project and monetize the tax credits available under the IRA partially offsets this cost increase to the benefit of customers.

According to Mr. d'Entremont, NIPSCO executed the Amended Fairbanks BTA before receiving Commission approval in order to advance the construction schedule and targeted commercial operation dates. Mr. d'Entremont stated that the Fairbanks Project is actively under construction and expected to meet the new targeted commercial operation dates. He testified that delaying development and construction would have resulted in even greater cost increases to customers and further delays in the projects.

Mr. d'Entremont provided an overview of the Amended Fairbanks BTA, explaining that the Amended Fairbanks BTA includes certain interconnection and permitting requirements, pricing and material non-pricing terms that were impacted by the DoC Investigation, supply chain, and forced labor prevention laws, and terms related to assurance and insurance if the Fairbanks Project does not advance or is further delayed. Mr. d'Entremont noted that Amendment No. 5 to the Fairbanks BTA addresses the pricing and material non-pricing terms that were impacted by the DoC Investigation, supply chain disruptions, and forced labor prevention laws. He testified that the estimated monthly bill impact as a result of the Amended Fairbanks BTA for a residential

customer that uses 668 kWh per month is a \$2.76 increase. This amount does not include offsets such as renewable energy credit sales or any other savings/credits such as off-system sales, which are expected to lower customer bills or provide other savings associated with NIPSCO's generation transition strategy.

Mr. d'Entremont explained that NIPSCO has not yet amended the approved Fairbanks BTA to reflect a direct ownership structure, as the Amended Fairbanks BTA governs the relationship between the Seller and Purchaser (the Fairbanks LLC) until the Fairbanks Project reaches Mechanical Completion. Mr. d'Entremont stated that NIPSCO will submit the updated Amended Fairbanks BTA as a compliance filing in this Cause after NIPSCO works with Invenenergy Services LLC ("Invenenergy"), the developer of the Fairbanks Project, to modify the Amended Fairbanks BTA to remove any terms that do not apply to a direct ownership structure and incorporate any other ministerial changes to facilitate that transaction path.

Mr. d'Entremont testified that the Fairbanks Project is well positioned to provide customers the benefit of realization of PTCs over a ten-year period. He stated that the expected capacity factor for the Fairbanks Project is 26.3% (with a potential variance of 1-3% per year under normal conditions). Mr. d'Entremont opined that this range of expected capacity factors is a reasonable assumption when considering ten years' worth of production and is consistent with how tax equity partners assess production risk within NIPSCO's joint venture transactions. He noted that the value of PTCs is expected to grow each year due to the annual inflation adjustment factor, and NIPSCO proposes to flow the PTC benefits to customers over a ten-year period.

Mr. d'Entremont opined that the Fairbanks Project is consistent with NIPSCO's 2021 Integrated Resource Plan ("IRP"). He stated that 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 its service area while also mitigating risk through diversification and use of an economic mix of resources that provides flexibility. He also testified that, as compared to the average price for a solar facility submitted into NIPSCO's 2022 Request for Proposals ("RFP"), the Amended Fairbanks BTA continues to be a reasonable, highly economic choice to serve the energy and capacity needs of NIPSCO's customers.

Mr. d'Entremont stated that NIPSCO has provided the best estimate for the cost of the Fairbanks Project as required in Ind. Code § 8-1-8.5-5(b)(1).

B. Augustine Direct Testimony. Mr. Augustine provided an overview of NIPSCO's resource planning activities over the last several years, including its 2018 IRP and the 2021 IRP, and described how the Amended Fairbanks BTA fits into NIPSCO's preferred plan. He compared the updated purchase prices of the Amended Fairbanks BTA to other potential portfolio alternatives and assessed how the costs of NIPSCO's revised ownership structure for the Amended Fairbanks BTA compare with the costs of the original project structure. Based on an LCOE analysis, Mr. Augustine concluded that the Fairbanks Project, under direct NIPSCO ownership with self-monetization of tax credits, is lower cost than the alternative tax equity partnership construct and an equivalent market purchase cost.

Mr. Augustine explained that NIPSCO also compared the updated purchase price of the Fairbanks Project with potential alternative replacement solar projects. He stated that NIPSCO obtained recent market data on the cost of new solar and solar-plus-storage projects through its 2022 RFPs. Mr. Augustine stated that results from the RFP indicate that the average cost of a new solar project was \$2,129/kW. Mr. Augustine testified that this cost is significantly higher than the revised costs of the Fairbanks Project, suggesting that pursuit of a new replacement project would not be a viable alternative.

Mr. Augustine testified that the LCOE of equivalent market purchases was found to be higher than the updated LCOE estimates for the Fairbanks Project itself. While the costs for the Fairbanks Project have increased, the IRA provides NIPSCO with a new set of tax credit opportunities that were not available at the time of the original application as well as a bonus credit for projects located in newly defined “energy communities.” The Fairbanks Project is located in an energy community due to its proximity to the retired Hutsonville coal plant in Illinois and retired coal mines in Southern Indiana. Mr. Augustine described the key input parameters used to develop updated LCOE projections and stated the expected difference between the nodal price at the project and NIPSCO’s load node also was used to quantify the expected congestion risk over time.

Mr. Augustine testified that the Fairbanks Project continues to fit within NIPSCO’s preferred plan from its last two IRPs, which calls for replacement of coal capacity with a diverse set of new resource types, predominantly renewables. Mr. Augustine noted that NIPSCO has consistently shown that retirement of coal capacity and replacement with renewables is lower cost for customers over the long-term, and upon the retirement of the last two units at Schahfer, NIPSCO will require new capacity. He stated that although the underlying capital costs of the Fairbanks Project have increased, the IRA now allows NIPSCO to adjust its ownership structure and tax monetization strategy to offset a portion of these cost increases for the benefit of customers.

C. Stanley Direct Testimony. In the 45511 Order, NIPSCO received approval of the following four alternative practices, procedures, and mechanism in connection with the Joint Venture structure approved in that Cause:

- (a) Since the Fairbanks Project arose out of the Phase II RFPs, NIPSCO sought to be relieved of or otherwise found to have complied with the CPCN obligations established by Ind. Code § 8-1-8.5-5(e).
- (b) Because NIPSCO would own an interest in the Joint Venture, NIPSCO sought approval of the Joint Venture and Joint Venture structure, as well as authority to record its interest in the Joint Venture as a regulatory asset in Account 182.3 and to amortize the amounts so recorded using the amortization rates approved for the Fairbanks Project.
- (c) NIPSCO sought to recover its payments made to the Fairbanks ProjectCo pursuant to the Solar Offtake Agreements, through the FAC, without regard to Ind. Code § 8-1-2-42(d)(1) through (4).
- (d) To the extent necessary, NIPSCO sought certain financing approvals relating to the Joint Venture structure.

Mr. Stanley testified that NIPSCO proposes to wholly own the Fairbanks Project rather than form a joint venture with a tax equity partner as approved in the 45511 Order. Mr. Stanley explained that, due to the proposed change in ownership structure, ARP items (b) through (d) above are no longer needed and NIPSCO proposes to modify the accounting treatment described above, resulting in NIPSCO's investment in the Fairbanks Project being accounted for in the more traditional manner.

Mr. Stanley stated that the change in ownership structure results in a change in how NIPSCO's investment in the Fairbanks Project will be reflected for accounting purposes, but ultimately has minimal impact on the ratemaking treatment approved in the 45511 Order because, in that case, NIPSCO sought 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 had NIPSCO instead been the direct owner of the Fairbanks Project.

Mr. Stanley testified that the approvals to treat the Fairbanks Project as non-utility plant and to reflect in its net original cost rate base for ratemaking purposes the net balance of its investment in the Joint Venture are no longer needed under a wholly owned structure. Mr. Stanley explained that NIPSCO now proposes to include the Fairbanks Project in original cost rate base, earn a return on the rate base, and recover the cost of the Fairbanks Project, including cost of removal, in depreciation rates. He further stated that, under the proposed wholly owned structure, the accounting treatment for the Fairbanks Project will be similar to that for traditional utility plant, and NIPSCO will record the entire cost of the Fairbanks Project as traditional utility plant and rate base. Furthermore, Mr. Stanley indicated that the net book value of the plant will be included in rate base, and the costs of owning and maintaining the plant will be included in cost of service. Mr. Stanley testified that accumulated deferred income taxes related to accelerated tax depreciation of the facilities would be included in NIPSCO's weighted average cost of capital ("WACC"). Mr. Stanley stated NIPSCO will recover any related AFUDC, carrying charges, and start-up costs recorded as capitalized project costs, which is consistent with other investments in new utility plant.

Mr. Stanley stated NIPSCO is seeking ratemaking and accounting treatment for development costs and start-up costs for the Fairbanks Project. He opined that NIPSCO incurred reasonable and necessary costs related to the development of the Fairbanks Project and stated that these costs are not ongoing in nature and not otherwise captured by the ratemaking process and would typically be recorded on NIPSCO's books as Preliminary Survey and Investigation (FERC account 183) or CWIP. Mr. Stanley testified that these costs will be included as part of the cost of the Fairbanks Project that will be included in utility plant in NIPSCO's next base rate proceeding.

Mr. Stanley stated that NIPSCO will recover the cost of operating and maintaining the Fairbanks Project through traditional ratemaking instead of recovering the cost of the joint venture structure through the ARP as approved in the 45511 Order. While there are no fuel or chemical costs related to solar generation, he identified ongoing O&M-related expenses that would have been incorporated in the contract-for-difference price under the previously approved joint venture structure such as landowner payments, property taxes, and other maintenance expenses. Under the wholly owned structure, Mr. Stanley stated the O&M costs of the Fairbanks Project will be included in NIPSCO's cost of service in future rate case proceedings.

Mr. Stanley testified that, in the event the Fairbanks Project assets would not be placed in service, NIPSCO requests authority to defer costs associated with the Fairbanks Project, including the previously mentioned start-up and development costs, in a regulatory asset for recovery in a future general rate case or to be capitalized as part of an alternative generation project.

Mr. Stanley also stated that NIPSCO is seeking approval of AFUDC treatment while the project is under construction and the Fairbanks Project will earn returns during construction, post-in service, and when placed into rate base. Under the proposed wholly owned structure, NIPSCO will record AFUDC while the Fairbanks Project is under construction. Once in service, the Fairbanks Project will earn carrying charges until recovery begins. Finally, once recovery begins through a base rate case proceeding, AFUDC or carrying charges will cease. Mr. Stanley stated that at no time will any project dollar earn multiple returns.

Once in service, Mr. Stanley explained that NIPSCO seeks to stop accruing AFUDC and begin accruing PISCC and proposes to do so at the cost of debt included in its capital structure instead of its full WACC. He opined that using the cost of debt instead of the full WACC will benefit customers through lower carrying costs for the Fairbanks Project.

Mr. Stanley stated that, for utility ratemaking purposes, NIPSCO does not currently have a Commission-approved depreciation rate for solar assets such as those contemplated by the Fairbanks Project. He suggested that the investments made in the Fairbanks Project be initially depreciated over the expected life of the assets of 30 years, using an annual depreciation rate of approximately 3.3%, which is consistent with the amortization rate approved in the 45511 Order and does not include cost of removal. NIPSCO also 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. He stated NIPSCO will record a regulatory liability representing the amount to pass back to customers through NIPSCO's FAC proceeding (or successor mechanism).

Mr. Stanley noted that the Commission approved identical ratemaking relief in its January 17, 2024, Order in Cause No. 45936 relating to NIPSCO's Bridge II and Cavalry Projects.

D. Bass Direct Testimony. Mr. Bass described NIPSCO's proposal to directly purchase and own the Fairbanks Project and how that ownership structure provides value to NIPSCO's customers through the pass back of tax credits, which NIPSCO proposes to conduct through its FAC beginning in 2026.

Mr. Bass explained that NIPSCO anticipates using the entity formed in contemplation of the joint venture structure (the Fairbanks LLC) to wholly own the Fairbanks Project. He stated that this entity will be disregarded for federal income tax purposes because NIPSCO will be the sole owner of the single-member limited liability company, and that tax treatment would continue. He indicated that NIPSCO may modify or amend the agreements to effectuate a direct purchase of these facilities instead of using the Fairbanks LLC, further stating that these modifications or amendments would provide legal entity simplification but would not impact NIPSCO's ownership of the Fairbanks Project.

Mr. Bass explained that under the IRA, both the solar ITC and PTC have two-tiered incentives that include a “base rate” and a “bonus rate.” The bonus rate can be five times the base rate and applied to projects that meet certain wage and apprenticeship requirements. He stated that a taxpayer such as NIPSCO must satisfy both the wage and apprenticeship requirements to receive the bonus credit rate; otherwise, the taxpayer may claim the relevant credit at the base rate. Mr. Bass explained that the IRA provides additional bonus credits for projects using domestic content (+10%) and/or those projects located in an “energy community” (+10%).

Mr. Bass stated that solar projects are eligible for either an ITC or a PTC, both of which provide a dollar-for-dollar reduction in the federal income taxes that a company claiming the credit would otherwise pay. He testified that NIPSCO has estimated the amount of PTC it expects the Fairbanks Project will qualify for, as the Fairbanks Project is expected to qualify for the full \$27.50/MWh PTC (using 2023 as an example), because NIPSCO expects to meet the wage and apprenticeship requirements. He stated that the Fairbanks Project is also expected to qualify for a 10% energy communities bonus credit based on its location that would increase the PTC to \$30.25/MWh (using 2023 as an example) on the energy produced and sold by the solar energy property.

Mr. Bass stated that NIPSCO proposes to pass the benefit of these credits to customer 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). He proposed that this recovery not be subject to any Ind. Code § 8-1-2-42(d) tests.

Mr. Bass testified that NIPSCO is proposing to pass back the PTCs generated by the facility to customers over a 10-year period, beginning the year after the facility is placed in service. He stated the one-year lag allows NIPSCO to accurately compute the PTC based on energy produced and sold throughout the prior year to pass the benefit to customers. Mr. Bass explained that NIPSCO would defer the recognition of the PTC generated for that year and reflect the benefit ratably throughout the four quarterly adjustment periods in NIPSCO’s FAC proceeding (or successor mechanism), grossed up for taxes, the following year. He noted that this is consistent with the pass-back period NIPSCO requested and the Commission approved in Cause No. 45936. Mr. Bass clarified that, while NIPSCO has not decided whether to sell the credits or carry forward the credits to offset its future tax liability, the benefits of these credits will be passed to customers in the manner described above.

6. OUCG’s Testimony. Brian R. Latham, Utility Analyst in the Electric Division of the OUCG, testified that the OUCG does not oppose NIPSCO’s request to purchase and own the Fairbanks Project, subject to two conditions: 1) if NIPSCO fails to qualify for the wage and apprenticeship tax credits, it should reimburse ratepayers for the lost benefit, and; 2) NIPSCO should be required to diligently pursue recovery of any reductions in the added costs related to the increase in import tariffs since the increase went into effect, and any recovered cost should be recorded as a regulatory liability and incur a carrying cost equal to Petitioner’s cost of capital until it is included in base rates.

Mr. Latham suggested that, if NIPSCO fails to qualify for the PTC prevailing wage and apprenticeship (“PWA”) bonus rate, ratepayers should be made whole on the missed credit. He testified that because the wage and apprenticeship bonus rate is a significant benefit to ratepayers,

ratepayers should be reimbursed for any missed wage and apprenticeship credit. He stated the missed credit amount (five times the PTC) should be set up in a regulatory liability (earning carrying costs based on NIPSCO's cost of capital) and debited to accumulated depreciation upon issuance of NIPSCO's next rate case order. Mr. Latham noted this proposed ratemaking treatment should not impact NIPSCO as it expects to qualify for the wage and apprenticeship credit.

Mr. Latham proposed other costs that should be reimbursed to ratepayers. He stated that, if the solar panels used at this facility are subject to import duties, some of these costs may be recoverable by the importer of record and if import duties or other import-related costs are recovered and refunded to NIPSCO, these costs should also flow back to ratepayers. Mr. Latham testified that NIPSCO should be required to record any recovered cost as a regulatory liability and incur a carrying cost equal to the Petitioner's cost of capital until it is included in base rates.

7. NIPSCO's Rebuttal Testimony. Mr. Bass testified that the two conditions proposed by the OUCC are inconsistent with prior Commission orders and could have unintended consequences. He stated that NIPSCO requests the Commission reject the conditions.

Mr. Bass stated Mr. Latham's recommendation related to the PWA requirements appears to be intended to hold NIPSCO to the amount of the PWA tax credit, even in the event the Fairbanks Project does not qualify for it. He opined that this request is inconsistent with the Commission's order in Cause No. 45936 and could result in a normalization violation. He also stated that Mr. Latham's recommendation related to potential future recovery of import duties on solar modules conflicts with standard ratemaking procedures, which have been applied to all NIPSCO capital projects, including the Commission-approved wholly owned solar projects in Cause No. 45936.

Mr. Bass provided a brief description of the PWA requirements and noted the ITC and PTC's structure are two-tiered incentives with a "base rate" and a bonus rate." He pointed out a taxpayer (such as NIPSCO) must satisfy both criteria to receive the bonus credit rate; otherwise, the taxpayer may claim the relevant credit only at the base rate. Mr. Bass additionally stated that a taxpayer that has failed to pay prevailing wages to laborers and mechanics may still be eligible for the PWA bonus by making correction payments to the workers and calculating and paying penalties to the Secretary of the Treasury, but only within a very short time period. He further noted there are limited exceptions where taxpayers may be eligible to claim the fivefold increase without meeting prevailing wage and apprenticeship requirements, including an exception for facilities that began construction before January 29, 2023.

Mr. Bass testified that based upon due diligence by NIPSCO and its lawyers, current Internal Revenue Service ("IRS") guidance, and the representations provided by Invenergy, NIPSCO expects the Fairbanks Project will qualify as having begun construction prior to January 29, 2023. Mr. Bass added that the Amended Fairbanks BTA contains provisions designed to ensure the Project meets the PWA requirement and that NIPSCO's purchase and direct ownership of the Fairbanks Project does not affect the PWA requirements or terms related thereto in the Amended Fairbanks BTA.

Mr. Bass further stated that imposing a reimbursement requirement as requested by the OUCC could create a violation of the normalization rules. Mr. Bass stated that normalization rules are set forth in the Internal Revenue Code and apply to regulated public utilities, meant to offer a method of ensuring that regulated public utilities benefit from the various tax law provisions designed to encourage capital expenditures such as accelerated depreciation and ITCs. Mr. Bass explained the OUCC is essentially asking NIPSCO to “guarantee” customers receive the benefit of the PWA bonus credit regardless of whether NIPSCO actually receives that credit. Mr. Bass testified that if NIPSCO’s retail rates reflect the benefit of tax credits it is not receiving (assuming the full credit were to be disallowed on audit and unable to be cured), then NIPSCO is not being allowed to earn a return on its full investment in the Fairbanks Project. As such, he stated this “guarantee” is akin to a plant disallowance. Mr. Bass explained a normalization violation could exist because the value of NIPSCO’s deferred taxes must be measured based on the value of the plant that is allowed to be recovered in rates. Mr. Bass testified that if NIPSCO is required to return a benefit to customers that it did not actually receive, NIPSCO would not be earning a return on the value of the plant constructed and therefore could not include the full deferred tax liability on that plant in order to comply with the consistency rule related to rate base, depreciation expense, tax expense and the reserve for deferred taxes included in ratemaking.

Mr. Bass testified that violation of IRS normalization rules could have adverse consequences. He stated that, if a regulated utility fails to normalize its accelerated depreciation deductions when required pursuant to the Internal Revenue Code, it could result in the loss of the ability to claim accelerated tax depreciation. Mr. Bass pointed out this potential consequence would not come into play if the OUCC’s first recommendation is rejected.

Mr. Bass then responded to the OUCC’s second recommendation. First, Mr. Bass noted it is his understanding that most of the components of the Fairbanks Project have already been imported without a tariff impact to the cost of the Fairbanks Project, making Mr. Latham’s hypothetical scenario of additional import tariffs affecting the Fairbanks Project unlikely. Second, Mr. Bass stated that, even in this unlikely instance where import tariffs affect the cost of the Fairbanks Project and then those additional tariffs are ultimately reduced, he asserted that Mr. Latham’s proposed regulatory liability treatment is inconsistent with how taxes (import tariffs) on construction are treated. Mr. Bass explained taxes on construction are capitalized to utility plant in accordance with FERC and generally accepted accounting principles (“GAAP”) guidance, as well as the Internal Revenue Code. He stated that refunds that are remitted for costs incurred, including import duties, would be applied or traced to where the costs were originally recognized according to NIPSCO’s accounting procedures. He testified that, if import duties incurred for construction were subsequently refunded, the refund would properly be accounted for as a reduction in the cost basis of utility plant. Mr. Bass testified the accounting approach he described is consistent with the manner in which NIPSCO would treat refunds associated with its other renewable projects. He stated that this approach is also consistent with NIPSCO’s policy for all capital projects and that NIPSCO intends to follow this approach, as needed, for any refunded import duties related to the Fairbanks Project.

8. Commission Discussion and Findings.

A. Commission Authority to Amend Prior Orders. Ind. Code § 8-1-2-72 grants the Commission the authority to “rescind, alter, or amend any order fixing any rate or rates, tolls, charges, or schedules, or any other order made by the commission[.]” In this Cause, Joint Petitioners have requested that we amend the 45511 Order to authorize NIPSCO to enter into the Amended Fairbanks BTA and to amend the CPCN granted therein accordingly. NIPSCO further seeks authority to directly purchase and own the Fairbanks Project, as opposed to acquiring the project company through the Joint Venture. NIPSCO presented evidence that its direct purchase and acquisition of the Fairbanks Project will allow customers to realize the benefit of the PTC.

As set forth in greater detail below, NIPSCO has shown in this Cause that the need to enter into the transaction contemplated by the Amended Fairbanks BTA was driven by circumstances outside of the control of Joint Petitioners. NIPSCO has further shown that the transaction contemplated under the Amended Fairbanks BTA is reasonable, and the transaction is in the best interest of NIPSCO’s customers. The OUCC did not oppose the requested changes to the CPCN to reflect the revised terms of the Amended Fairbanks BTA or the revisions to the ownership or rate structure to more traditional ratemaking.

The only disputes between the parties relate to the two conditions proposed by the OUCC: 1) if NIPSCO fails to qualify for the wage and apprenticeship tax credits, it should reimburse ratepayers for the lost benefit; and 2) NIPSCO should be required to diligently pursue recovery of any reductions in the added costs related to the increase in import tariffs since the increase went into effect, and any recovered cost should be recorded as a regulatory liability and incur a carrying cost equal to the Petitioner’s cost of capital until it is included in base rates.

B. CPCN for the Fairbanks Project. In granting a CPCN, the Commission must consider the items set forth in Ind. Code § 8-1-8.5-5, which provides that a CPCN shall be granted only if the Commission has:

- (1) made a finding as to the best estimate of construction, purchase, or lease costs based on the evidence of record;
- (2) made a finding that either:
 - (A) the construction, purchase, or lease will be consistent with the commission’s analysis (or such part of the analysis as may then be developed, if any) for expansion of electric generating capacity; or
 - (B) the construction, purchase, or lease is consistent with a utility specific proposal submitted under section 3(e)(1) of this chapter and approved under subsection (d) . . . ;
- (3) made a finding that the public convenience and necessity require or will require the construction, purchase, or lease of the facility;

- (4) made a finding that the facility, if it is a coal-consuming facility, utilizes Indiana coal or is justified, because of economic considerations or governmental requirements, in using non-Indiana coal.”

The Commission must also consider the items set forth in Ind. Code § 8-1-8.5-4.

Ind. Code § 8-1-8.8-11(a) provides that the Commission “shall encourage clean energy projects” by creating financial incentives for such projects. For reasons discussed in detail below, the Commission finds each applicable factor in Ind. Code § 8-1-8.5-5 supports a finding that NIPSCO should be granted a CPCN to acquire the Fairbanks Project pursuant to the Amended Fairbanks BTA.

i. **Best Cost Estimate.** The revised cost of the Fairbanks Project under the Amended Fairbanks BTA is confidential and is set forth on page 29 of Mr. d’Entremont’s direct testimony. He testified that the costs to construct the Fairbanks Project increased from the amounts approved in Cause No. 45511, largely due to escalating commodity and supply chain costs impacting manufacturers worldwide. NIPSCO worked with Invenergy, the developer of the Fairbanks Project, to modify the terms of the BTA approved in Cause No. 45511 so the Fairbanks Project would continue to meet the needs identified in the 45511 Order.

The cost estimate for the Fairbanks Project originated with the competitive Phase II RFP conducted at the direction of NIPSCO in 2019 with the review of the responses performed by CRA, an experienced third party. The negotiations that led to changes to material contract terms in the Amended Fairbanks BTA were held at arms-length. The evidence reflects that the updated contract terms are consistent with findings from NIPSCO’s 2023 portfolio analysis. The evidence further reflects that the negotiated cost of the Amended Fairbanks BTA compares favorably to pricing observed in NIPSCO’s 2022 RFPs and provides greater overall timing certainty. Mr. Augustine testified that the LCOE of the Fairbanks Project is lower than the cost of alternative owned solar projects identified in the 2022 RFPs. Mr. Augustine also testified that the Fairbanks Project, under direct NIPSCO ownership with self-monetization of tax credits, is a lower cost source of energy for customers than an alternative tax equity partnership construct or an equivalent market purchase. The OUCC did not contest Joint Petitioners’ evidence regarding the reasonableness of the prices set forth in the Amended Fairbanks BTA. The OUCC also did not oppose the direct ownership structure for the Fairbanks Project.

Based upon the evidence of record, the Commission finds that NIPSCO has provided the best estimate of the Fairbanks Project in this proceeding.

ii. **NIPSCO’s IRP and the Public Convenience and Necessity.** Ind. Code § 8-1-8.5-5(b)(2) requires that the proposed construction, purchase, or lease be consistent with either the Commission’s analysis for expansion of electric generating capacity or with a utility-specific proposal. The Commission previously found in the 45511 Order that the Fairbanks Project was consistent with NIPSCO’s 2018 IRP, as supplemented by the 2020 portfolio analysis.

Since the 45511 Order, NIPSCO has completed its 2021 IRP, which indicated that earlier retirement of coal capacity results in lower costs for NIPSCO’s customers and that a diverse mix of new resources, including the renewable projects from the 2018 IRP’s Short-Term Action Plan,

are needed as replacements for retiring energy and capacity. Mr. Augustine noted that this conclusion was affirmed in NIPSCO's 2023 portfolio analysis, which evaluated alternative portfolio options using updated market and policy assumptions. The uncontroverted evidence of record demonstrates that the Amended Fairbanks BTA is consistent with and supported by the 2021 IRP and 2023 portfolio analysis, and remains consistent with the 2018 IRP, as we found in the 45511 Order.

The evidence also reflects that the Fairbanks Project remains consistent with the public convenience and necessity. In Cause No. 45511, we found that the evidence of record demonstrated that

NIPSCO has a need for capacity by 2023. 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.

45511 Order at 41.

The continued need for the Fairbanks Project was supported by the testimony of Joint Petitioners' witnesses d'Entremont and Augustine in this Cause.

The Commission is also required, in acting on a petition for the construction, purchase, or lease of any facility for the generation of electricity, to take the following into account:

(1) The applicant's current and potential arrangement with other electric utilities for:

- (A) the interchange of power;
- (B) the pooling of facilities;
- (C) the purchase of power; and
- (D) joint ownership of facilities.

(2) Other methods for providing reliable, efficient, and economical electric service, including the refurbishment of existing facilities, conservation, load management, cogeneration, and renewable energy sources.

Ind. Code § 8-1-8.5-4(b). Ind. Code § 8-1-8.5-4(b)(1)(A) through (C) are covered by NIPSCO's participation in MISO. The evidence of record reflects that the other factors, including joint ownership of facilities, other methods for providing reliable, efficient, and economical electric service, and the refurbishment of existing facilities, conservation, load management, cogeneration, and renewable energy sources, were all considerations in NIPSCO's two most recent IRPs and therefore are included in the planning that led to the preferred plan with which the Fairbanks Project is consistent. The OUCC presented no evidence that NIPSCO had not considered other alternatives.

Messrs. d'Entremont and Augustine both discussed how the Fairbanks Project compares favorably to other potential options. Mr. d'Entremont testified that NIPSCO considered other alternatives rather than amending the 45511 Order, including extending the life of Schahfer Units 17 and 18, purchasing capacity and energy from the market, and negotiating a contract for a different solar project. However, Mr. d'Entremont testified that amending the approved Fairbanks BTA supported a lower cost and nearer-term solution to meeting capacity needs, while maintaining NIPSCO's plan to retire Schahfer Units 17 and 18 by the end of 2025. Mr. Augustine compared the updated purchase prices of the Amended Fairbanks BTA to other potential portfolio alternatives and assessed how the costs of NIPSCO's revised ownership structure for the Amended Fairbanks BTA compare with the costs of the original project structure. Based on an LCOE analysis, Mr. Augustine concluded that the Fairbanks Project, under direct NIPSCO ownership with self-monetization of tax credits, is lower cost than the alternative tax equity partnership construct and an equivalent market purchase cost. Thus, we find that NIPSCO reasonably considered alternatives in its decision to pursue the Fairbanks Project.

Based on the evidence of record and for the reasons explained above, we find that approval of the Amended Fairbanks BTA is supported by the public convenience and necessity.

iii. Five Pillars. Ind. Code § 8-1-8.5-4(b)(4) requires the Commission to consider whether the proposed purchase will result in the provision of each of the five pillars enumerated in Ind. Code § 8-1-2-0.6, which are reliability, affordability, resiliency, stability, and environmental sustainability. The overall cumulative effect of NIPSCO's resource planning decisions is assessed through the IRP process, and the testimony of Messrs. d'Entremont and Augustine in this Cause reflects that NIPSCO reasonably considered the five pillars in the development its two most recent IRPs, which identified a need for capacity. NIPSCO's proposal in this case seeks to develop the Fairbanks Project to meet this identified need.

As discussed above, the evidence of record reflects that the Fairbanks Project, even with the amendments to the BTA proposed in this Cause, continues to fit within NIPSCO's preferred plan from its last two IRPs and supports the ability of NIPSCO's system to reliably supply the demand and energy requirements of its customers.

The Commission has considered the five pillars enumerated in Ind. Code § 8-1-2-0.6 in reaching our decision in this proceeding. The Fairbanks Project and its corresponding accounting and ratemaking proposals support affordability for NIPSCO's customers while allowing the utility to transition its resources in a way that supports environmental sustainability, reliability, resilience, and stability for customers. Therefore, the Commission finds NIPSCO's proposal is consistent with the legislative directives in Ind. Code § 8-1-2-0.6.

iv. Conclusion. Based upon the evidence of record, the Commission finds that NIPSCO has met the requirements of Ind. Code §§ 8-1-8.5-4 and -5 and approves a CPCN for NIPSCO's acquisition of the Fairbanks Project under the revised terms set forth in the Amended Fairbanks BTA.

C. Accounting and Ratemaking Authority. Ind. Code § 8-1-8.8-11(b) provides that "[a]n eligible business must file an application to the commission for approval of a clean energy project under this section" and directs the Commission to encourage clean energy

projects by creating certain financial incentives if the clean energy projects are found to be just and reasonable. An eligible business includes an energy utility that “undertakes a project to develop alternative energy sources, including renewable energy projects[.]” Ind. Code § 8-1-8.8-6(3). As a public utility rendering electric service within Indiana, NIPSCO is an energy utility. A clean energy project includes “[p]rojects to develop alternative energy sources, including renewable energy projects[.]” Ind. Code § 8-1-8.8-2(2). Solar energy is specifically identified as a clean energy resource in Ind. Code § 8-1-37-4(a)(2), making it a renewable energy resource under Ind. Code § 8-1-8.8-10.

In the 45511 Order, we approved the Fairbanks Project as a “clean energy project.” Specifically, we found:

Therefore, we find the Fairbanks Project is a clean energy project under Ind. Code § 8-1-8.8-11. The evidence demonstrates the energy and capacity provided through the Fairbanks Project and Solar Offtake Agreements is a reasonable and necessary addition 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.

45511 Order at 44. The Amended Fairbanks BTA does not change that finding, and therefore we find that the Fairbanks Project is a “clean energy project” and NIPSCO is an “eligible business” for purposes of reviewing its request for related financial incentives under Ind. Code § 8-1-8.8-11.

Ind. Code ch. 8-1-8.8 does not set forth specific factors the Commission must consider in determining whether a clean energy project is just and reasonable; however, the Commission has, in analogous cases, considered some of the factors in Ind. Code chs. 8-1-8.5 and 8-1-8.7, such as the cost of the project, consistency with the IRP, need, and competitive solicitation. Accordingly, based on these factors as discussed above, the Commission also finds the Fairbanks Project is a just and reasonable clean energy project. Specifically, we find that the energy and capacity the Amended Fairbanks BTA will provide are reasonable additions to NIPSCO’s portfolio of generating resources to meet the need for electricity within NIPSCO’s service area.

Under Ind. Code § 8-1-8.8-11, the Commission shall encourage clean energy projects by creating financial incentives for such projects if they are found to be just and reasonable. In this case, NIPSCO requests that the Commission modify the ratemaking relief granted in the 45511 Order, which contemplated a joint venture structure, to permit NIPSCO, as the direct owner of the Fairbanks Project, to timely recover through rates the costs incurred for the construction and operation of the Fairbanks Project. The costs NIPSCO proposes to include for timely recovery include costs associated with: 1) capital investment to be recorded as utility plant to complete the purchase of the Fairbanks Project, including AFUDC, development and start-up costs, which will be included in rate base; 2) accrued PISCC on NIPSCO’s investments in the Fairbanks Project and deferred depreciation, which will be included in rate base; 3) deferred depreciation expense on NIPSCO’s investments in the Fairbanks Project, which will be included in rate base; 4) deferred operating expenses, which will be included in cost of service; and 5) ongoing O&M expenses, property tax and depreciation expense including cost of removal associated with the Fairbanks Project, which will also be included in cost of service.

The Commission approves the proposed ratemaking and accounting treatment for the Fairbanks Project pursuant to Ind. Code ch. 8-1-8.5 and § 8-1-8.8-11 as requested by NIPSCO and further discussed below.

In the 45511 Order, we granted NIPSCO a CPCN to acquire the Fairbanks Project through the Joint Venture and approved associated accounting and ratemaking treatment. Specifically, we authorized NIPSCO to reflect in rate base as a regulatory asset its cost 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.

NIPSCO is now proposing to wholly own the Fairbanks Project rather than form a Joint Venture with a tax equity partner as approved in the 45511 Order. NIPSCO also now proposes to defer for recovery through rates in a subsequent rate proceeding the costs incurred for the acquisition and operation of the Fairbanks Project. Under the proposed wholly owned structure, the accounting treatment for the Fairbanks Project will be similar to that for traditional utility plant. The costs NIPSCO proposes to defer for recovery through rates in a subsequent rate proceeding are the five items noted above.

Specifically, NIPSCO proposes 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 it goes into service. Although the 45511 Order approved the accrual of PISCC at NIPSCO's pre-tax WACC (beginning with the month after the investment is placed in service until the date the investment is included for recovery in base rates), in this case, NIPSCO proposes to modify such carrying costs to be based upon NIPSCO's cost of debt included in the pre-tax WACC, 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 and the unamortized portion of these regulatory assets will be 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 proposes 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. Ongoing O&M expenses, depreciation, cost of removal, and property tax would be included in the cost of service in a future rate proceeding.

NIPSCO will record the entire cost of the Fairbanks Project, including AFUDC, as traditional utility plant and rate base. In other words, as reflected above, the net book value of the plant will be included in rate base, and the costs of owning and maintaining the plant will be included in cost-of-service. NIPSCO also proposes 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).

Based on the evidence of record, we find that NIPSCO should be authorized to recover, as appropriate, financial incentives under Ind. Code § 8-1-8.8-11, the revenue requirement amounts associated with the Fairbanks Project as set forth above and described in detail by Joint Petitioners' witness Stanley. NIPSCO's investment in the wholly owned Fairbanks Project should be included in its rate base and cost of service in a subsequent rate case proceeding in the manner described above. We further find that NIPSCO should use the FAC to reflect the tax credits generated by the Fairbanks Project in the manner set forth in the testimony of Joint Petitioners' witness Bass. This recovery shall not be subject to any Ind. Code § 8-1-2-42(d) tests. We note that the foregoing ratemaking treatment is similar to approvals granted for similar renewable projects. *See, e.g., NIPSCO*, Cause No. 45936, at 25-27 (Jan. 17, 2024) (approving identical ratemaking treatment to the treatment requested in this Cause); *S. Ind. Gas and Elec. Co.*, Cause No. 45847, at 34-35 (Sept. 6, 2023).

We further find that, in the event the Fairbanks Project assets are otherwise not placed in service, NIPSCO should be authorized 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.

Consistent with our findings above, we find the initial annual depreciation rate for the Fairbanks Project should be 3.3% based on the 30-year expected life of the Fairbanks Project, which is consistent with the amortization rate approved in the 45511 Order. In accordance with our findings above regarding the best estimate of the Fairbanks Project, NIPSCO will include decommissioning and depreciation updates for the Fairbanks Project in future base rate case proceedings.

Clean energy projects are specifically encouraged by Ind. Code ch. 8-1-8.8. Ind. Code § 8-1-8.8-11 authorizes the Commission to create financial incentives for the development of alternative resources. Therefore, our approval of the relief NIPSCO seeks is consistent with Indiana energy and regulatory policy.

D. PWA Bonus Credit and Accounting for Reductions in Tariff Costs. In this proceeding and Cause No. 45511, Petitioner indicated that the Fairbanks Project is expected to qualify for the PWA Bonus Credit. As discussed above, in this proceeding the OUCC proposed that the Commission require that, if NIPSCO fails to qualify for the PWA bonus credit, it reimburse ratepayers for the lost benefit. We decline to adopt the OUCC's recommendation. Joint Petitioners' witness Bass noted that adoption of such a reimbursement requirement could result in a normalization violation, which would have adverse consequences, including loss of the ability to claim accelerated tax depreciation.

The evidence of record supports a finding that NIPSCO included provisions and precautions in the Amended Fairbanks BTA to ensure the Fairbanks Project meets the PWA requirements. Therefore, we reject the OUCC's recommendation that a reimbursement requirement be imposed for any lost PTC benefit should NIPSCO fail to qualify for the wage and apprenticeship tax credit.

We also decline to adopt the OUCC's recommendation that NIPSCO record any reductions in the added costs related to the increase in import tariffs as a regulatory liability and incur a carrying cost equal to its cost of capital until it is included in rates. Joint Petitioners' witness Bass testified that such treatment is inconsistent with how import tariffs on construction are treated. He also noted that most of the components of the Fairbanks Project have already been imported without a tariff impact to the cost of the Fairbanks Project, meaning the OUCC's hypothetical scenario of additional import tariffs affecting the Fairbanks Project is unlikely. Taxes on construction are capitalized to utility plant in accordance with FERC and GAAP guidance, as well as the Internal Revenue Code. Accordingly, any refunds that might be remitted for costs incurred, including import duties, would be applied or traced to where the costs were originally recognized according to NIPSCO's accounting procedures. The foregoing approach is consistent with NIPSCO's policy for all capital projects.

E. Reporting and Ongoing Review of the Fairbanks Project. Ind. Code § 8-1-8.5-6(a) provides:

In addition to the review of the continuing need for the facility under construction prescribed in [Ind. Code § 8-1-8.5-5.5], the commission shall, at the request of the public utility, maintain an ongoing review of such construction as it proceeds. The applicant shall submit each year during construction, or at such other periods as the commission and the public utility mutually agree, a progress report and any revisions in the cost estimates for the construction.

NIPSCO requested that the Commission conduct an ongoing review of the Fairbanks Project. Invenergy, as the developer of the Fairbanks Project, already is subject to quarterly construction reporting pursuant to the Commission's order in Cause No. 45254 through commercial operation of the solar facility. These 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. In addition to the foregoing, NIPSCO proposed to submit a report in this Cause by July 1, 2025, summarizing information, including the actual total purchase price, related to the Fairbanks Project, which is expected to be placed in service in 2025.

We find that NIPSCO's proposed reporting timeline and the information to be provided should be approved. We further find that, should the best estimate exceed the amount approved in this Cause, NIPSCO should file a petition with the Commission seeking approval of the increased best estimate.

F. Conclusion. We find that the evidence of record supports granting NIPSCO a CPCN to purchase and acquire the Fairbanks Project as contemplated in the Amended Fairbanks BTA and approving NIPSCO's proposed method of cost recovery. The Fairbanks Project will provide necessary energy and capacity. We also find that NIPSCO has provided the best estimate of the total costs of the Fairbanks Project under the Amended Fairbanks BTA. In addition, for the reasons discussed above and consistent with our order in Cause No. 45936, we decline to adopt the two conditions on accounting and ratemaking treatment requested by the OUCC in this Cause. Further, we grant NIPSCO's request for ongoing review under Ind. Code § 8-1-8.5-6 and the ratemaking treatment proposed by NIPSCO.

9. Confidentiality. On March 18, 2024, NIPSCO filed a Motion for Protection and Nondisclosure of Confidential and Proprietary Information (“Motion”) seeking a determination that designated confidential information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. The request was supported by the affidavit of Patrick M. d’Entremont, showing documents offered into evidence at the evidentiary hearing were trade secret information within the scope of Ind. Code § 5-14-3-4(a)(4) and Ind. Code § 24-2-3-2. On April 3, 2024, the Presiding Officers issued a docket entry finding the information confidential on a preliminary basis. NIPSCO submitted its designated confidential information on April 19, 2024.

After reviewing the designated confidential information, we find all such information qualifies as confidential trade secret information pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. NIPSCO takes reasonable steps to maintain the secrecy of the information and disclosure of such information would cause harm to NIPSCO. Therefore, we affirm the preliminary ruling on NIPSCO’s Motion and find this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29 and held confidential and protected from public disclosure by this Commission.

IT IS THEREFORE ORDERED BY THE INDIANA UTILITY REGULATORY COMMISSION that:

1. NIPSCO is granted a Certificate of Public Convenience and Necessity for Petitioner’s proposed acquisition of the Fairbanks Project as contemplated in the Amended Fairbanks BTA. This order constitutes the certificate. The Commission’s June 29, 2021 order in Cause No. 45511 is hereby amended pursuant to Ind. Code § 8-1-2-72 to authorize NIPSCO to undertake the transaction as contemplated by the Amended Fairbanks BTA.

2. NIPSCO’s cost estimate for the Fairbanks Project is approved as the best estimate.

3. The Fairbanks Project is determined to be a just and reasonable clean energy project under Ind. Code § 8-1-8.8-11.

4. Petitioner’s proposed ratemaking and accounting treatment for the Fairbanks Project, as described in Section 8.D above, is approved pursuant to Ind. Code § 8-1-8.8-11.

5. The financial incentives pursuant to Ind. Code § 8-1-8.8-11 discussed in this order are approved. NIPSCO is authorized to include the eligible revenue requirement amounts associated with the Fairbanks Project in base rates in NIPSCO’s next general rate case, as outlined above. NIPSCO is further authorized to use its FAC or a successor mechanism to allocate tax credits with customers.

6. An annual depreciation rate for the Fairbanks Project assets of 3.3%, based on the anticipated 30-year life of the Fairbanks Project, is approved.

7. In the event the Fairbanks Project's assets are not placed in service, NIPSCO is authorized 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.

8. Petitioner's request for ongoing review is approved, and Petitioner shall provide a report as outlined in section 8.F above. To the extent Petitioner seeks approval of an increase to the cost of the Fairbanks Project above the best estimate approved herein, Petitioner shall initiate a subsequent proceeding as described above.

9. The information submitted under seal in this Cause pursuant to NIPSCO's Motion is determined to be confidential trade secret information pursuant to Ind. Code §§ 5-14-3-4 and 24-2-3-2 and shall continue to be held as confidential and exempt from public access and disclosure pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29.

10. This order shall be effective on and after the date of its approval.

BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR; HUSTON ABSENT:

APPROVED: AUG 14 2024

**I hereby certify that the above is a true
and correct copy of the order as approved.**

Dana Kosco
Secretary of the Commission