

# ORIGINAL

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

## STATE OF INDIANA

### INDIANA UTILITY REGULATORY COMMISSION

**VERIFIED PETITION OF NORTHERN INDIANA )  
PUBLIC SERVICE COMPANY LLC FOR ) CAUSE NO. 46042  
APPROVAL OF A SPECIAL CONTRACT WITH )  
STARPLUS ENERGY LLC. ) APPROVED: JUL 24 2024**

### ORDER OF THE COMMISSION

#### **Presiding Officers:**

**Sarah E. Freeman, Commissioner**

**Kehinde Akinro, Administrative Law Judge**

On April 8, 2024, Northern Indiana Public Service Company LLC (“NIPSCO”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) seeking approval of a Special Contract dated February 20, 2024 (the “StarPlus Contract”) by and between NIPSCO and StarPlus Energy LLC (“StarPlus”) (collectively the “Parties”). Also on April 8, 2024, NIPSCO filed the direct testimony and attachments of Erin E. Whitehead, Vice President of Regulatory Policy and Major Accounts, for NIPSCO, and a Motion for Protection of Confidential and Proprietary Information with supporting affidavit 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.

On April 22, 2024, StarPlus filed its petition to intervene, which was granted by docket entry dated May 1, 2024.

On June 7, 2024, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed the testimony of LaCresha N. Vaultx, Utility Analyst for the OUCC.

The Commission held an evidentiary hearing in this Cause commencing at 1:00 p.m. on July 1, 2024, in Room 224 of the PNC Center, 101 W. Washington Street, Indianapolis, Indiana. NIPSCO, the OUCC, and StarPlus, by counsel, appeared and participated at the hearing. NIPSCO and the OUCC presented their respective prefiled evidence, all of which was admitted into evidence without objection.

Based upon the applicable law and evidence presented, the Commission finds:

**1. Notice and Jurisdiction.** Notice of the evidentiary hearing in this Cause was given and published as required by law. NIPSCO is a “public utility” as defined in Ind. Code § 8-1-2-1(a). Under Ind. Code §§ 8-1-2-24 and -25, the Commission has jurisdiction over customer-specific contracts. Therefore, the Commission has jurisdiction over NIPSCO and the subject matter of this proceeding.

**2. NIPSCO’s Characteristics.** NIPSCO is a limited liability company organized and existing under the laws of the State of Indiana with its principal office and place of business at 801 East 86th Avenue, Merrillville, Indiana. NIPSCO renders electric and gas public utility service in

the State of Indiana and owns, operates, manages and controls, among other things, plant and equipment within the State of Indiana used for the generation, transmission, distribution and furnishing of such service to the public.

**3. Background and Relief Requested.** In its October 26, 2022 Order in Cause No. 45330 TDSIC 5 S1, the Commission approved NIPSCO's proposed targeted economic development project in Kokomo, Indiana (the "Kokomo Economic Development Project"). The Kokomo Economic Development Project was the project to extend NIPSCO's gas main to the location of a planned investment of approximately \$2.7 billion by StarPlus, comprised of the Stellantis and Samsung SDI companies, for a lithium-ion battery manufacturing plant to supply battery modules for a range of new electric vehicles (the "Plant"). NIPSCO worked with the Indiana Economic Development Corporation, the Governor's Office, the City of Kokomo, and StarPlus to ensure that the necessary resources and infrastructure would be in place to provide gas service to the new facility, which required a new transmission facilities expansion from north of Kokomo. The battery manufacturing facility is projected to create approximately 1,400 new, full-time jobs by 2027. The Parties executed an Agreement for the Extension of Facilities dated September 30, 2022, as amended on May 3, 2023, ("Facilities Extension Agreement") to provide for the extension of NIPSCO natural gas facilities ("Facilities") and enable natural gas service to StarPlus at the Plant in Kokomo, Indiana, which natural gas service commenced in November 2023. The Facilities Extension Agreement includes the sources and mechanisms that provide the funding for the construction of the Facilities necessary to provide natural gas to the Plant.

As part of the Facilities Extension Agreement, StarPlus and parties associated therewith agreed to pay for the then-estimated costs to construct the Facilities up to the 12-inch diameter pipe size and a portion of any difference between the Total Estimated Project Costs and the actual Project Costs. During the negotiation of the terms of the Facilities Extension Agreement, StarPlus indicated that NIPSCO and other customers might benefit from the investment made by StarPlus and on its behalf in the Facilities, which may be associated with StarPlus's initial project or may arise from unrelated third parties. Due to the need to proceed with execution of the Facilities Extension Agreement and construction planning, NIPSCO and StarPlus agreed to defer negotiation and agreement on terms that would provide StarPlus with the opportunity to collect a refund of some of the Facilities' costs initially paid by or on behalf of StarPlus, so long as the refund would be generally consistent with the principles of Rule 6 (Service Extensions and Modifications) of the General Rules and Regulations of NIPSCO's IURC Gas Service Tariff ("NIPSCO Tariff"). NIPSCO seeks Commission approval of the StarPlus Contract, which provides StarPlus with the opportunity to receive refunds based on a modification to Rule 6.

**4. Evidence.** NIPSCO witness Ms. Whitehead testified that Rule 6 of the NIPSCO Tariff has standard terms related to extension cost refunds or offsets due to the addition of other new customers, but these standard terms may not adequately account for the magnitude of the project costs and revenue opportunities associated with the extension to StarPlus. StarPlus sought an agreement as to future refunds in excess of that otherwise provided pursuant to Rule 6 of the NIPSCO Tariff for the costs incurred by StarPlus and associated parties with respect to the construction of the Facilities pursuant to the Facilities Extension Agreement. The StarPlus Contract provides that StarPlus shall be entitled to refunds arising from natural gas and/or transportation and distribution service sales by NIPSCO to subsequent connectors, whether taking bundled or unbundled commodity or transportation service from time to time in amounts as

calculated in the StarPlus Contract to the extent there are associated excess margins. However, the total refunds StarPlus may receive under the StarPlus Contract may not exceed the original cost paid by or on behalf of StarPlus to extend the Facilities under the Facilities Extension Agreement, and protections are included for NIPSCO to recoup a portion of any refund paid to StarPlus upon the occurrence of early service cessation of subsequent connectors, as more particularly set out in the StarPlus Contract.

Ms. Whitehead testified that the StarPlus Contract does not provide StarPlus with any rate discounts. StarPlus is taking transportation service under the NIPSCO Tariff at the Commission-approved rates for such service and is not receiving any discount. The StarPlus Contract provides the terms and conditions under which refunds of the Facilities' cost paid pursuant to the Facilities Extension Agreement will be made with provisions providing for refunds beyond what is provided for under Rule 6 of the General Rules and Regulations of the NIPSCO Tariff. Thus, Commission approval of the StarPlus Contract is not anticipated to have any rate impact on other NIPSCO customers.

Ms. Whitehead further testified that NIPSCO can fulfill its obligations under the StarPlus Contract without adversely affecting the provision and reliability of service to other retail customers, and in fact, the facilities extension has enhanced NIPSCO's ability to provide gas service to this area of its system to accommodate economic growth in this region. NIPSCO and StarPlus have worked in good faith to negotiate the terms of the StarPlus Contract which are just and reasonable and in the public interest. She explained that modifying the terms of Rule 6 of the NIPSCO Tariff helped secure the Facilities Extension Agreement and provides for the impetus for further growth and development in the region by "upsizing" the pipe to allow service of additional, incremental load beyond that being added by StarPlus. This was done at a reduced cost as compared to independently running new gas main into the area. Protections are also built into the StarPlus Contract to prevent "over-refunding" to StarPlus as explained above.

Furthermore, Ms. Whitehead sponsored the Affidavit of Yunjae Kim, Chief Executive Officer of StarPlus, as Attachment 1-C. Mr. Kim describes the significance of the StarPlus Contract to the Parties and the public, and how it derives from and supports StarPlus's investment in Kokomo. In support of the public interest of the StarPlus Contract, Mr. Kim explains that the refunds sought by StarPlus are expected to help support future development in the area, and that StarPlus has announced a potential second plant of similar size that is anticipated to provide the same or similar economic impact and job creation as estimated in the Plant construction.

OUCC witness Ms. Vault testified that the StarPlus Contract has no impact on other customers and is in the public's interest. She confirmed the subject matter of the special contract concerning the margin test calculations and refunds applies specifically to Rule 6 of the NIPSCO Tariff and will not impact rates and charges. She testified further that StarPlus is not receiving any discount for the service NIPSCO provides and that modifying Rule 6 is intended to serve as an impetus for further growth and development, and due to this potential growth and development, and having no impact to other customers, the StarPlus Contract is in the public interest.

**5. Discussion and Commission Findings.** NIPSCO seeks approval of the StarPlus Contract under Ind. Code § 8-1-2-24 ("Section 24") and § 8-1-2-25 ("Section 25"). Section 24(a) provides in pertinent part that:

Nothing in this chapter shall be taken to prohibit a public utility from entering into any reasonable arrangement with its customers or consumers, or with its employees, or with any municipality in which any of its property is located, for the division or distribution of its surplus profits, or providing for a sliding scale of charges or other financial device that may be practicable and advantageous to the parties interested. No such arrangement or device shall be lawful until it shall be found by the commission, after investigation, to be reasonable and just and not inconsistent with the purpose of this chapter.

Section 25 provides as follows:

The commission shall ascertain, determine and order such rates, charges and regulations as may be necessary to give effect to such arrangement, but the right and power to make such other and further changes in rates, charges and regulations as the commission may ascertain and determine to be necessary and reasonable, and the right to revoke its approval and amend or rescind all orders relative thereto, is reserved and vested in the commission, notwithstanding any such arrangement and mutual agreement.

Thus, customer-specific contracts, including those that modify tariff provisions, such as the StarPlus Contract, are lawful if the Commission finds their provisions to be reasonable and just, practicable and advantageous to the Parties, and not inconsistent with the purposes of the Public Service Commission Act.

The Commission reviewed the testimony and evidence of NIPSCO and the testimony and evidence of the OUCC recommending approval, and enters its findings based thereon. The record reflects that the StarPlus Contract is the result of arms-length negotiations and advantageous to the Parties and the public and practicable because it provides the impetus for significant investment, growth and economic development in the Kokomo area. The terms and conditions of the StarPlus Contract relate to Rule 6 of the NIPSCO Tariff and do not impact NIPSCO's rates and charges. Further, NIPSCO's other retail customers will not be harmed by the Commission's approval of the special contract. NIPSCO can fulfill its obligations under the StarPlus Contract without adversely affecting the provision and reliability of service to other retail customers, and in fact, the Facilities extension has enhanced NIPSCO's ability to provide gas service to this area of its system to accommodate economic growth in this region.

Based on the evidence presented, we find the special contract between NIPSCO and StarPlus satisfies the legal requirements under Ind. Code §§ 8-1-2-24 and -25. We find and conclude that the terms and conditions contemplated in the StarPlus Contract are just and reasonable, practicable and advantageous to the Parties, and are consistent with the purposes of the Public Service Commission Act. Accordingly, we find the StarPlus Contract is in the public interest and is, therefore, approved.

**6. Confidential Treatment.** NIPSCO filed a Motion for Protection of Confidential and Proprietary Information on April 8, 2024, with a supporting affidavit 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 Presiding Officers granted

the motion, on a preliminary basis, by docket entry dated June 12, 2024, after which NIPSCO submitted such information under seal. We find this information is trade secret information, is exempt from public access pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, and shall be protected from the public disclosure.

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

1. Pursuant to Ind. Code §§ 8-1-2-24 and 8-1-2-25, the StarPlus Contract is approved.
2. The information filed by NIPSCO in this Cause pursuant to its Motion for Protective Order is deemed confidential pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 8-1-2-29, is exempt from public access and disclosure by Indiana law and shall be held confidential and protected from public access and disclosure by the Commission.
3. This Order shall be effective on and after the date of its approval.

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

**APPROVED: JUL 24 2024**

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

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**Dana Kosco  
Secretary of the Commission**