

November 21, 2011

**Via Electronic Filing – 30 Day Filings - Electric**

Brenda A. Howe  
Secretary to the Commission  
Indiana Utility Regulatory Commission  
101 West Washington Street  
Suite 1500 East  
Indianapolis, Indiana 46204

***RE: NIPSCO 30 Day Filing Pursuant to 170 IAC 1-6-1 et seq.***

Dear Ms. Howe:

In accordance with 170 IAC 1-6-1, enclosed please find a revised Original Sheet No. 18.8 of Experimental Rate 850, Renewable Feed-In Tariff and associated Renewable Power Purchase Agreement. The referenced filing will consist of NIPSCO's proposed amendment to slightly modify its Renewable Feed-In Tariff and to revise the standard form of Power Purchase Agreement ("PPA"), both of which were approved in Cause No. 43922. The revisions are shown in the attached redlined sheet and PPA. The revisions potentially impact any Customer operating a Qualifying Renewable Energy Power Production Facility, such as wind, solar, biomass or new hydro that participate in NIPSCO's approved Feed-In Tariff.

The proposed amendments to the Renewable Feed-In Tariff are intended to clarify the applicable facility capacity related to the purchase rates to conform to the parties' intentions under the Stipulation and Settlement Agreement approved in Cause No. 43922 ("43922 Order") and do not modify the rates to be charged under the Renewable Feed-In Tariff. The proposed amendments to the standard form PPA are intended to (a) clarify the Invoicing and Payment provisions and (b) modify the Interconnection Term and Conditions provisions and Exhibit B, to conform to the parties' intentions in Cause No. 43922. 170 IAC 1-6-3(5) states that changes to rates and charges within a specific rate schedule are an allowable type of filing so long as the change is revenue neutral.. Thus, this filing is an allowable request under 170 IAC 1-6-3. This filing does not require confidential treatment nor does it seek any other relief identified in 170 IAC 1-6-4, so it is not prohibited under the Commission's Rule.

Indiana Utility Regulatory Commission  
November 21, 2011  
Page 2

In accordance with 170 IAC 1-6-5(2), contact information for the utility regarding this filing is:

Timothy R. Caister  
Director, Electric Regulatory Policy  
Northern Indiana Public Service Company  
101 West Ohio Street, Suite 1707  
Indianapolis, Indiana 46204  
317-684-4908  
317-684-4918 (Fax)  
[tcaister@nisource.com](mailto:tcaister@nisource.com)

Since the proposed amendments do not modify the rates to be charged under the Renewable Feed-In Tariff, there are no proposed tariff sheets or workpapers supporting the filing as required in 170 IAC 1-6-5(3) and (4).

In accordance with 170 IAC 1-6-5(5), Timothy R. Caister has verified this letter as to these representations in compliance with 170 IAC 1-6-5(5). A copy of this filing is being provided via electronic mail to the Indiana Office of Utility Consumer Counselor.

In accordance with 170 IAC 1-6-6, NIPSCO provided notice to its customers in Lake County on November 21, 2011. A copy of the notice that was published is attached hereto. A copy of the proof of publication will be provided upon its receipt. NIPSCO has posted notice of this change in its local customer service office at 3229 Broadway, Gary, Indiana and has placed the notice on its website under pending tariffs (see <http://www.nipsco.com/About-us/Rates-Tariffs/30-Day-Filings.aspx>).

Please let me know if the Commission Staff has any questions or concerns about this submission.

Sincerely,



Timothy R. Caister  
Director, Electric Regulatory Policy

Encl.

cc (w/ encl. – via email transmission)

Karol Krohn and Ron Keen, Indiana Office of Utility Consumer Counselor  
([kkrohn@oucc.in.gov](mailto:kkrohn@oucc.in.gov), [rkeen@oucc.in.gov](mailto:rkeen@oucc.in.gov), [infomgt@oucc.in.gov](mailto:infomgt@oucc.in.gov))  
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Stuart R. Gutwein ([srg@bennettlaw.com](mailto:srg@bennettlaw.com))

Received On: November 21, 2011  
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Indiana Utility Regulatory Commission

**EXPERIMENTAL RATE 850  
RENEWABLE FEED-IN TARIFF**

No. 3 of 5 Sheets

**PURCHASE RATE - Energy**

The Rate the Company will pay for energy purchased from the Facility inclusive of all environmental attributes, including Renewable Energy Credits (REC), carbon credits, greenhouse gas offsets, or any other environmental credit that may be associated with the production of renewable energy from the Facility shall be as follows:

**Wind**

For Facility Capacities less than or equal to 100 kW	\$0.17 per kWh
For Facility Capacities greater than 100 kW and less than or equal to 2 MW	\$0.10 per kWh

**Solar**

For Facility Capacities less than or equal to 10 kW	\$0.30 per kWh
For Facility Capacities greater than 10 kW and less than or equal to 2 MW	\$0.26 per kWh

**Biomass**

For Facilities of all Capacities up to and including 5 MW	\$0.106 per kWh
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**New Hydro**

For New Facility Capacities less than or equal to 1 MW	\$0.12 per kWh
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With the exception of Biomass, for a Facility with a capacity greater than 2 MW and less than or equal to 5 MW or an Energy from Waste or Dedicated Crop Facility, a formula rate shall apply based upon Appendix A to this rate and subject to the company's reasonable discretion in review of the customer's information necessary to calculate the applicable purchase rate. In no event shall the purchase rate calculated under Appendix A be in excess of those stated above by technology; in addition, the purchase rate for an Energy from Waste or Dedicated Crop Facility shall in no event be in excess of the stated rate for Biomass. Customer shall provide information to Company to calculate the applicable purchase rate based upon such formula application. The purchase rate shall be in per kWh units.

For all Facility agreements, the purchase rate for energy shall also be subject to a 2% per year escalator.

Issued Date

July 13, 2011

Effective Date

Pending, 2011

NORTHERN INDIANA PUBLIC SERVICE COMPANY  
IURC Electric Service Tariff  
Original Volume No. 10

Original Sheet No. 18.8

**EXPERIMENTAL RATE 850  
RENEWABLE FEED-IN TARIFF**

No. 3 of 5 Sheets

**PURCHASE RATE - Energy**

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For Facilities of all Capacities up to and including 5 MW \_\_\_\_\_ \$0.106 per kWh

**New Hydro**

For New Facility Capacities less than or equal to 1 MW \_\_\_\_\_ \$0.12 per kWh

With the exception of Biomass, for a Facility with a capacity greater than 2 MW and less than or equal to 5 MW or an Energy from Waste or Dedicated Crop Facility, a formula rate shall apply based upon Appendix A to this rate and subject to the company's reasonable discretion in review of the customer's information necessary to calculate the applicable purchase rate. In no event shall the purchase rate calculated under Appendix A be in excess of those stated above by technology; in addition, the purchase rate for an Energy from Waste or Dedicated Crop Facility shall in no event be in excess of the stated rate for Biomass. Customer shall provide information to Company to calculate the applicable purchase rate based upon such formula application. The purchase rate shall be in per kWh units.

For all Facility agreements, the purchase rate for energy shall also be subject to a 2% per year escalator.

Issued Date

July 13, 2011

Effective Date

Pending, 2011

Deleted: July 13

## RENEWABLE POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this “**Agreement**”), dated as of \_\_\_\_\_, 201\_\_\_\_, (“Date of Execution”) is between \_\_\_\_\_, a/an \_\_\_\_\_ (“**Seller**”), and NORTHERN INDIANA PUBLIC SERVICE COMPANY, an Indiana corporation (“**Company**”).

**WHEREAS**, Company is a corporation organized and existing under the laws of the State of Indiana with its principal place of business at Merrillville, Indiana, and Company owns and operates facilities for the generation, transmission and distribution of electric power and energy in the State of Indiana; and

**WHEREAS**, Seller owns a renewable power production facility currently consisting of \_\_\_\_\_ ( ) \_\_\_\_\_ powered generating units located at \_\_\_\_\_, Indiana (“**Seller’s Facility**”); and

**WHEREAS**, the character of the energy to be sold by Seller shall satisfy the requirements set forth in Section 4.1 of this Agreement; and

**WHEREAS**, Seller desires to operate Seller’s Facility in parallel with Company’s electric system, and to engage in electric energy transactions with Company; and

**WHEREAS**, Seller desires to sell electricity generated by Seller’s Facility to Company and Company desires to purchase electricity generated by the Seller’s Facility; and

**WHEREAS**, Company’s purchase of electricity from Seller shall be in accordance with Company’s Electric Renewable Feed In Rate approved in Cause No. 43922 (the “**Renewable Tariff**”) by the Indiana Utility Regulatory Commission (the “**Commission**”), as set forth in Section 2 of this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants of the Parties and subject to the terms and conditions in this Agreement, the Parties hereby agree as follows:

### **1. SALE OF ELECTRICITY**

#### **1.1. Sale of Electricity, Capacity and Environmental Attributes to Company**

Subject to the terms and conditions contained in this Agreement, Seller agrees to sell and deliver and Company agrees to purchase and accept delivery, at the Delivery Point, Qualifying Electricity (as defined in Section 4.1) and associated Environmental Attributes from the Seller’s Facility.

##### **1.1.1. Energy**

During the term of this Agreement, Seller agrees to sell, and Company agrees to purchase those amounts of Qualifying Electricity associated with the generator size set forth in the Interconnection Agreement executed by the Parties dated \_\_\_\_\_ (“**Interconnection Agreement**”) that are delivered by Seller to the Delivery Point as measured by Company’s Meter in accordance with Section 4.3.1 of this Agreement according to the terms and conditions set forth in the Renewable Tariff.

Seller's Facility shall only include the current generators or any replacements thereof, and will exclude any additional generating units that Seller adds to Seller's Facility after the commencement of the term of this Agreement. In the event that the Seller increases the Qualifying Electricity output of the Seller's Facility by adding additional generating units to Seller's Facility during the term of this Agreement and Seller desires to sell to Company such additional Qualifying Electricity output, an amendment to the Interconnection Agreement will be required prior to the purchase of any additional quantities of Qualifying Electricity.

#### 1.1.2. Capacity

During the term of this Agreement, Company agrees to purchase and Seller agrees to sell Qualifying Capacity as that term is defined in Section 4.2 of this Agreement.

#### 1.1.3. Environmental Attributes

During the term of this Agreement, Seller shall transfer and convey to Company, and Company shall acquire from Seller, all right, title and interest in and to all Environmental Attributes, if any, attributable to Qualifying Electricity. Consideration for the Environmental Attributes (as defined below) is included in the purchase price set forth in Section 2 of this Agreement. The Parties shall cooperate to ensure that all Renewable Energy Certificate Reporting Rights (as defined below) are available to Company, and shall assist in such filings, execute such periodic documentation and take such actions as are reasonably required to deliver documentation of Company's Renewable Energy Certificate Reporting Rights associated with its purchase of Qualifying Electricity from Seller's Facility. Seller further covenants that it shall promptly and timely undertake all actions necessary to transfer and convey to the Company title and ownership of the Environmental Attributes acquired by Company under this Agreement.

As used in this Agreement, the term "Environmental Attributes" means (1) any and all current or future credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, offsets and allowances attributable to Seller's production of Qualifying Electricity at Seller's Facility during the term of this Agreement, or otherwise attributable to the generation, purchase, sale or use of electricity from or by Seller's Facility during the term of this Agreement, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including, without limitation, any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or any successor treaty, or crediting "early action" emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the U.S. Environmental Protection Agency, or any successor or other agency having jurisdiction over a program involving transferability of Environmental Attributes, and (2) any Renewable Energy Certificate Reporting Rights (as defined below) attributable to such Environmental Attributes. For

purposes of this Agreement, one (1) kWh of electrical energy from Seller's Facility corresponds to one (1) kWh of Environmental Attributes.

Environmental Attributes shall not include any other benefits resulting from: (a) any investment tax credits and any other income tax credits associated with Seller's Facility, (b) any state, federal or private cash payments or grants relating in any way to Seller's Facility or the the output thereof; (c) other power attributes from the Seller's Facility; (d) Production Tax Credits (as defined below) associated with the construction or operation of the Seller's Facility and other financial incentives in the form of credits, reductions or allowances associated with the Seller's Facility that are applicable to a state, provincial or federal income taxation obligation; (e) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits (the "Excluded Attributes").

As used herein, the term "Renewable Energy Certificate Reporting Rights" means the right of the purchaser of Environmental Attributes to report the exclusive ownership of the accumulated Renewable Energy Certificate ("REC") to any agency, authority, or other party in compliance with applicable law, including rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program, renewable portfolio standard, or emissions trading program (including, if applicable, pursuant to the Midwest Renewable Energy Tracking System). As used herein, the term "Production Tax Credits" means production tax credits under Section 45 of the Internal Revenue Code or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Seller's Facility is eligible.

#### 1.1.4. Electric Utility Service to Seller's Facility.

Electric service to Seller's Facility shall be separately metered and shall be provided by the Company pursuant to the appropriate tariff rate(s), and shall not be netted against any purchases made by Company pursuant to this Agreement except as provided for in the Renewable Tariff. Seller shall not be obligated to sell any Qualifying Electricity to Company that Seller uses to power the Seller's Facility or any other facilities operated by Seller consistent with the provisions of the Renewable tariff.

#### 1.1.5. Cooperation for Reporting Purposes.

Seller shall cooperate with Company to provide information to Company for purposes of reporting to all applicable government agencies, including, but not limited to, information concerning Seller's Facility characteristics, production totals, matters pertaining to interconnection, environmental violations (if any are known), and other issues related to the purchases under this Agreement. Unless otherwise agreed to by Seller or as otherwise required by order of any body with jurisdiction over this Agreement, Company agrees to treat Seller-specific information as confidential; provided, however, that Company shall be permitted

to combine Seller's information with other customers' information as publicly-available information submitted to applicable government agencies.

## 2. PRICING

### 2.1. Sale of Qualifying Electricity and Capacity to Company

#### 2.1.1. Energy.

The Company shall pay Seller for all Qualifying Electricity delivered into the Company system according to the pricing provisions of the Renewable Tariff. The price paid for Qualifying Electricity shall be increased by two percent (2%) per year. Such adjustment in price shall occur one year after the date on which Seller begins to supply Company with Qualifying Electricity and/or Qualifying Capacity under this Agreement ("Anniversary Date"), and year after year on the Anniversary Date until the expiration or termination of this Agreement.

#### 2.1.2. Capacity.

The Company shall pay Seller for all Qualifying Capacity according to the Renewable Tariff.

#### 2.1.3. Other Charges.

Company shall invoice and Seller shall pay any charges or costs associated with Seller's failure to operate Seller's Facility in compliance with the rules and regulations of the North American Electric Reliability Council and/or the Reliability First Corporation, regional reliability council, and/or Midwest ISO. Seller will be obligated to pay and agrees to reimburse Company for any LMP charges and related charges assessed to, and incurred by Company resulting from excess power flowing into Company's distribution system from Seller's Facility, or from Seller's failure to deliver volumes of Qualifying Electricity into Company's distribution system in accordance with Seller's nominations; provided, however, that in the event such LMP charges and related charges incurred as a result of Seller's failure to deliver volumes in accordance with nominations, then Seller shall not be liable for such charges if the failure to deliver is due to, in the exercise of prudent and reasonable engineering judgment, Seller's decision to temporarily cease operations of Seller's Facility in order to protect Seller's Facility or Company's electrical system from damage or harm. Seller reserves the right to interrupt the sale of Qualifying Electricity at any time when, in the exercise of prudent and reasonable engineering judgment, Seller deems it necessary to make emergency repairs to Seller's Facility in order to protect Seller's Facility or Company's electrical system from damage or harm. Company shall invoice Seller separately for such charges and the Seller shall pay or dispute such invoiced amount within 15 business days after receipt of such invoice. In the event Seller disputes such amounts, the dispute shall be governed by Section 14.12.

## 3. INVOICING AND PAYMENT

### 3.1. Billing Period



- 3.1.1. The Seller may elect a monthly billing period of either the calendar month or the billing cycle for retail electric service provided by Company. To the extent Seller elects a calendar month billing period, Seller may alternatively elect to read the Company Meter for determination of payment due to Seller pursuant to Section 3.3, in which case the Seller will read the Company Meter no sooner than the last business day of each calendar month and no later than the second business day after the end of the month.
- 3.1.2. The Seller may elect to have the Company read the Company Meter at approximately monthly intervals for determination of payment due to Seller pursuant to Section 3.3 at no extra charge.

3.2. Invoice

To the extent Seller does not elect to have the Company read the Company Meter under Section 3.1.2., the Company Meter information will be used by the Seller to prepare and issue either a paper or electronic invoice to Company within two (2) business days of the meter reading. The invoice shall be submitted to NIPSCO at either the mailing or electronic address reflected in Section 12, Notices.

3.3. Payment

The Seller may elect to have the Company pay Seller by electronic funds transfer or check within seventeen (17) days from either (i) the date of the invoice issued by Seller under Section 3.2 or (ii) the date on which the meter is read by the the Company at approximately monthly intervals under Section 3.1.2., for Qualifying Electricity and Environmental Attributes sold hereunder in accordance with the pricing set forth in Section 2 of this Agreement. Any uncontested portions of invoiced amounts shall be paid on or before the due date. Any uncontested portion of an invoice not paid within seventeen (17) days from the date of invoice shall bear an interest rate of one and one-half percent (1.5%) per month. Prior to instituting an action for default of this Agreement, the Parties shall attempt to resolve any invoicing or payment disputes pursuant to section 14.12.

4. **INTERCONNECTION TERM AND CONDITIONS**

4.1. Qualifying Electricity

For Seller's electricity to be considered Qualifying Electricity for purchase under this Agreement, the Seller's Facility must satisfy all of the following standards ("**Qualifying Standards**").

- 4.1.1. The electricity must be:
  - 4.1.1.1. three phase, 60 Hertz, alternating current at a voltage of approximately 12,500 volts or 34,500 volts, or,
  - 4.1.1.2. single phase, 60 Hertz, alternating current connected at the transformer secondary voltage for wind or solar generating facilities from 5 kW through 10 kW upon approval of an interconnection application consistent with the Company's General Rules and Regulations;

provided that the Company, on a case-by-case basis, may authorize either (a) a three phase 60 Hertz, alternating current connection at the primary voltage, or (b) a single phase, 60 Hertz, alternating current connection at the transformer secondary voltage available at the customer's service location upon approval of an interconnection application consistent with the Company's General Rules and Regulations.

- 4.1.2. The electricity must comply with all applicable rules and regulations imposed by ReliabilityFirst Corp., Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"), and/or any applicable governing body or agency.
- 4.1.3. The electricity must be generated from a Facility eligible for the Renewable Feed-In Tariff under Experimental Rate 850 of NIPSCO's electric tariff.

#### 4.2. Qualifying Capacity

For Seller's capacity to be considered Qualifying Capacity for purchase under this Agreement, the Seller's Facility must satisfy all of the following standards ("**Qualifying Capacity**").

- 4.2.1. The ability to provide electric energy in a period of time, expressed in kilowatts, and
- 4.2.2. Compliance with all applicable rules and regulations of Midwest Independent Transmission System Operator, Inc., ReliabilityFirst Corp., and/or any applicable governing body or agency.

#### 4.3. Interconnection Standards

##### 4.3.1. Company Equipment and Meter

To connect Seller's Facility to Company's electrical system and in a manner consistent with the provisions of and options available under the Company's Renewable Tariff and this Agreement, Company will obtain, install and maintain, at Seller's expense, all equipment ("Company Equipment") that begins at the connection to Company's system through and including a meter ("Company Meter") to measure the electricity generated by Seller's Facility. Company will exercise reasonable care and comply with good engineering practices while performing its duties with respect to Company Equipment. Seller may purchase and install hardware and software to audit the Company Meter at Seller's sole costs. Company shall cooperate with Seller in installing such hardware and software and ensuring it interacts with Company's Meter. Any costs incurred by Company related to such auditing hardware and software incurred by Company shall be reimbursed by Seller.

##### 4.3.2. Seller Meter

Seller may also obtain, install and maintain, at Seller's expense, a meter ("Seller Meter") to measure the electricity generated by Seller's facility. To the extent the Company is satisfied and agrees that Seller's Meter is accurately reading the

flow of Qualifying Electricity, Seller's Meter may be used as the basis for invoicing in the event that the Company Meter is shown to not be reading accurately or reliably pursuant to Section 4.3.1 and 4.3.5.

#### 4.3.3. Seller's Connection Equipment

Seller must provide, install and maintain, at its expense, all wiring and other electrical equipment between Company Meter and Seller's Facility equipment ("Seller's Connection Equipment"). Seller will maintain Seller's Connection Equipment in accordance with the applicable requirements of the National Board of Fire Underwriters, the National Electrical Code, the provisions of 170 IAC 4-4.3-1 *et seq.*, and any other governing body as they may be in effect from time to time. Seller will exercise reasonable care and comply with good engineering practices while performing its duties with respect to Seller's Connection Equipment. The entire interconnection from Company's system to Seller's Facility must comply with Company's Electric Standard ER 4-300. A copy of current standard is attached to this Agreement as Exhibit A.

All wiring and other electric equipment installed by Seller shall be maintained by Seller at all times in conformity with the requirements of the National Board of Fire Underwriters and other authorities having jurisdiction, and an inspector from Company shall be permitted to inspect Seller's wiring and apparatus and Company may transmit its recommendations in connection with any such inspection to Seller, but nothing herein contained shall mean, or be construed to mean, that Company shall be required to inspect or examine, or in any way be responsible for the condition of the conduits, pipes, wires or appliances on Seller's premises.

Seller will provide Company with ten (10) days notice of any changes that it intends to make to Seller's Connection Equipment or Seller's Facility that may affect Company's Equipment or Company's electrical system. Whenever Seller becomes aware that Seller may be violating the Qualifying Standards, Seller shall promptly telephone Company with whatever information Seller may have and shall confirm such information in writing within three (3) business days after telephone notification is provided.

#### 4.3.4. Point of Interconnection

Company will connect its power supply lines to the terminals of a service entrance connection which shall be provided by Seller and located on an outside wall of the Seller's Facility building or at a point satisfactory to Company. Seller shall install, operate, and maintain in good order such relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as shall be designated by Company for safe, efficient and reliable operation in parallel to Company's system. Seller shall bear full responsibility for the installation and safe operation of this equipment. Breakers capable of isolating Seller's Facility from Company shall at all times be immediately accessible to Company. Company may isolate Seller's Facility at its sole discretion if Company believes continued parallel operation with Seller's Facility creates or contributes to a system emergency.

#### 4.3.5. Company Access and Inspection

In order to allow Company to carry out its obligations under this Agreement, Seller will grant Company access to Seller's property, at all reasonable times upon 24 hour prior notice to Seller, except that in the case of an emergency Company shall have the right to have immediate access to Seller's property without notice.

Company shall at all times have the right to inspect and test the Company Meter and, if found defective, to repair, or replace it, at the Company's option. Company Meter shall be tested periodically in accordance with the Rules and Standards of Service prescribed by the Commission. Company shall inspect and test Company Meter at Seller's request but no more frequently than once a year unless Seller provides Company sufficient evidence that Company's Meter is not providing reliable or accurate metering information. To the extent Seller requests that Company inspect and test Company's Meter and Company's Meter is accurate to within a range of plus or minus one percent (1%), the Seller shall reimburse Company for all costs incurred to inspect and test the Company Meter.

Upon notice from Seller or upon discovery by Company or otherwise, Company shall repair and re-test or replace a defective Company Meter within a reasonable time. During the time there is no accurate Company Meter in service, the Parties may agree to use Seller's Meter to prepare and issue invoices.

In case of impaired or defective service, Seller shall immediately give notice to Company by telephone, confirming such notice in writing on the same day the telephone notice is given.

#### 4.3.6. Interconnection Agreement

Seller shall execute an interconnection agreement in the form attached as Appendix D to Rule 51 of Company's General Rules and Regulations Applicable to Electric Service (the "Interconnection Agreement") and shall comply with all applicable requirements of Rule 51 of Company's General Rules and Regulations Applicable to Electric Service ("Rule 51"). Seller shall make no modification to Seller's Facility or control equipment without prior review and approval of Company.

#### 4.4. Delivery Point

The delivery point for the electricity delivered from the Seller's Facility to Company shall be the first cut-off point on Company's side of Company Meter (herein "**Delivery Point**"). Seller will transfer title to the Qualifying Capacity, the Qualifying Electricity and the Environmental Attributes, free and clear of all liens and encumbrances, to Company at the Delivery Point. Seller shall take all actions, including the timely completion of any necessary documentation and paperwork to promptly transfer title and ownership of the Environmental Attributes from Seller to Company.

#### 4.5. Interconnection Costs

Seller will pay any expenses it incurs to satisfy the Qualifying Standards and interconnect Seller's Facility to Company's electrical system. Seller shall reimburse Company for all interconnection costs Company has reasonably incurred.

5. **WHEELING**

Wheeling is not available for Qualifying Electricity generated by Seller's Facility.

6. **TERM**

6.1. Term

The term of this Agreement shall be fifteen (15) years beginning on the earlier of (a) the Anniversary Date, which shall be agreed to by the parties by execution of the commencement date memorandum attached as Exhibit B, or (b) one year from the Date of Execution. Pursuant to the terms of the Experimental Rate 850 Renewable Feed-In Tariff, in the event that Seller's Facility forfeits its position in the interconnection queue prior to the date on which Seller begins to supply Qualifying Electricity and/or Qualifying Capacity, this Agreement shall be terminated and deemed null and void.

7. **REPRESENTATIONS AND WARRANTIES**

7.1. Seller's Representations and Warranties

Seller represents and warrants that:

7.1.1. Seller's Facility is capable of generating the quantity of Qualifying Electricity and Qualifying Capacity set forth in the Interconnection Agreement; and

7.1.2. Seller has good and marketable title, free and clear of any and all liens, encumbrances or any other impairments, to all energy, capacity and Environmental Attributes sold or transferred to Company under this Agreement; and

7.1.3. Seller has full power and authority to enter into and perform this Agreement; and

7.1.4. the execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary actions of Seller; and

7.1.5. this Agreement constitutes the legal, valid and binding obligations of Seller, is fully enforceable against Seller in accordance with its terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally or by general principals of equity, and it will not violate any judgment, law or regulation or agreement binding on or affecting Seller, and will not cause or constitute a default under any existing lien, charge, encumbrance or security interest upon any assets of Seller.

7.2. Company's Representations and Warranties

Company represents and warrants that:

7.2.1. Subject to Section 14.1, the execution and delivery of this Agreement and the performance of this Agreement and of Company's obligations hereunder have been duly authorized by all necessary Company actions and no other authorization is necessary; and

7.2.2. Subject to Section 14.1, this Agreement is a valid and binding obligation of Company.

**8. SYSTEM EMERGENCY**

Company shall not be required to purchase Qualifying Electricity from Seller at the time of an emergency on either Company's or Seller's electric system. Seller shall not be required to sell Qualifying Electricity to Company at the time of an emergency on either Company's or Seller's electric system. System emergencies causing discontinuance of parallel operation are subject to verification by the Commission. The parties may interrupt purchase when necessary to make emergency repairs. Company shall immediately reestablish purchase and Seller shall immediately reestablish sale once the emergency repairs are sufficient to allow for reconnection and purchase and sale of Qualifying Electricity from Seller.

**9. INTERRUPTION OR CURTAILMENT FOR MAINTENANCE**

9.1. By Company

For the purpose of making repairs other than emergency repairs, Company reserves the right to disconnect the Seller's electric system for four (4) consecutive hours on any Sunday, or such other day or days as may be agreed to by Seller and Company, provided that notification of Company's intention to interrupt purchases is given to Seller at least forty-eight (48) hours prior to the hour of interruption of purchase.

9.2. By Seller

For the purpose of making repairs other than emergency repairs, Seller reserves the right to disconnect the Seller's electric system for four (4) consecutive hours on any Sunday, or such other day or days as may be agreed to by Seller and Company, provided that notification of Seller's intention to interrupt purchases is given to Seller at least forty-eight (48) hours prior to the hour of interruption of sale.

**10. INDEMNIFICATION**

10.1. By Seller to Company

Seller shall indemnify and hold harmless Company from and against any and all claims, liability, damages and expenses, including reasonable attorneys' fees and court costs, based upon or arising out of any personal injury, death or damage to any property, including loss of use thereof, which arises out of or results from any act or omission by Seller, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of Seller's Facility or Seller's Connection Equipment, except to the extent caused by the negligence of Company, its employees,

agents, or representatives. Upon the written request of Company seeking indemnification under this provision, Seller shall defend any suit asserting a claim covered by this provision. If Company is required to file an action or proceeding to enforce its indemnification rights under this provision and said indemnification rights are upheld by a court or arbitrator having valid jurisdiction, Seller shall reimburse Company for all expenses, including reasonable attorneys' fees and court costs, incurred in connection with such action.

#### 10.2. By Company to Seller

Company shall indemnify and hold harmless Seller from and against any and all claims, liability, damages and expenses, including reasonable attorneys' fees and court costs, based upon or arising out of any personal injury, death or damage to any property, including loss of use thereof, which arises out of or results from any act or omission by Company, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of Company's facilities used in connection with this Agreement, except to the extent caused by the negligence of Seller, its employees, agents, or representatives. Upon the written request of Seller seeking indemnification under this provision, Company shall defend any suit which asserts a claim covered by this provision. If Seller is required to file an action or proceeding to enforce its indemnification rights under this provision and said indemnification rights are upheld by a court or arbitrator having valid jurisdiction, Company shall reimburse Seller for all expenses, including reasonable attorneys' fees and court costs, incurred in connection with such action.

### 11. FORCE MAJEURE

Neither Company nor Seller shall be liable to the other for damages caused by the interruption, suspension, reduction or curtailment of the delivery of electric energy, capacity or Environmental Attributes hereunder, or the failure to perform any other obligation hereunder (other than an obligation to pay money), due to, occasioned by or in consequence of, any of the following causes or contingencies (each a "**Force Majeure Event**"): acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; unavailability of a fuel or resource used in connection with the generation of electricity; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractors; laborer or materialman; sabotage; injunction blight; famine; blockage, or quarantine. The party suffering an occurrence of Force Majeure Event shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy or mitigate its inability to perform its obligations, provided, however, that the settlement of any strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

### 12. NOTICES

Any notices required by this Agreement or by law shall be in writing and addressed as identified below and shall be properly served when sent via certified mail, postage prepaid return receipt requested, or via overnight courier, postage prepaid, or when received by facsimile at the facsimile number set forth in this Section or when received via email at the email set forth below. Notices sent via overnight mail shall be effective the next business day after transmission. Notices sent via certified mail or overnight courier shall be effective upon receipt or refusal to accept. Notices sent via facsimile or email shall be effective upon confirmation of successful transmission unless such transmission is after normal business hours in which case such transmission shall be effective the next business day. Either party may change its address for the purpose of this Agreement by giving written notice of such change to the other party in the manner set forth herein.

To Seller:

Facsimile No. \_\_\_\_\_  
Email: \_\_\_\_\_

To Company:

NIPSCO  
c/o \_\_\_\_\_  
801 East 86<sup>th</sup> Avenue  
Merrillville, Indiana 46410  
Facsimile No. \_\_\_\_\_  
Email: \_\_\_\_\_

### 13. DEFAULT AND REMEDIES

#### 13.1 Default.

The occurrence of any of the following events shall constitute a “**Default**” by the affected party (the “**Defaulting Party**”):

- 13.1.1. Such party files a voluntary petition in bankruptcy or reorganization or fails to have such a petition which is filed against it dismissed within sixty (60) days, or admits in writing its insolvency or inability to pay its liabilities as they come due, or assigns its assets or this Agreement for the benefit of creditors, or suffers a receiver to be appointed for its assets, or suspends its business
- 13.1.2. Such party commits fraud or other material intentional misconduct in connection with this Agreement or the operation of the Seller’s Facility, with respect to Seller, or the operation of the Company Equipment, with respect to Company.
- 13.1.3. Any material representation or warranty made by such party pursuant to this Agreement is false or misleading when made or ceases to remain true during the term of this Agreement.



13.1.4. Either party's failure to make any payment when due which is not the subject of a good faith dispute if such failure continues for a period of five (5) days after written notice thereof by other party.

13.1.5. Any failure by a party to this Agreement to perform its obligations under the Interconnection Agreement which would entitle the other party to terminate or suspend the Interconnection Agreement if such failure remains uncured for more than thirty (30) days after Seller's receipt of written notice thereof from Company.

13.1.6. Any other failure by such party to perform any material obligation it is required to perform under this Agreement if such failure remains uncured for more than thirty (30) days after Seller's receipt of written notice thereof from Company.

## 13.2 Remedies for Default.

If a Default has occurred and is continuing, the party not in Default (the "**Non-Defaulting Party**"), upon written notice to the Defaulting Party, shall have the right (but not the duty) to exercise any or all of the following remedies: (a) to suspend performance under this Agreement; (b) to terminate this Agreement after the expiration of any applicable cure period; and (c) subject to Sections 14.8, 14.9 and 14.10 hereof, to exercise any remedy available under this Agreement or at law or in equity.

For any and all Defaults, the Non-Defaulting Party shall, subject to Sections 14.8, 14.9 and 14.10 hereof, be entitled to receive from the Defaulting Party all of the direct, actual damages incurred by the Non-Defaulting Party in connection with such event. Each party agrees that it has a duty to mitigate damages and covenants that it shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement, *provided, however*, that in no event shall the mitigating party owe any payment to the non-performing party in connection with such mitigation. Seller shall be entitled to reduce the amount of monetary damages payable by Seller pursuant to this Section 13.2 as and to the extent Seller provides Company with replacement energy or Environmental Attributes (which replacement shall be subject to the consent of Company and which consent shall not be unreasonably withheld or delayed) in substitution for any monetary damages that would otherwise have been due under this Section 13.2.

## 14. MISCELLANEOUS

### 14.1 Regulatory Approvals

Any and all obligations by Company to purchase Qualifying Electricity or Environmental Attributes from Seller are expressly conditioned on the approval of this Agreement by the Commission.

### 14.2 Cost Recovery and Early Termination Rights

If at any time during the Term of this Agreement (a) the Commission approves a final, non-appealable order that denies the Company recovery of some or all payments made pursuant to Sections 2 and 3 of this Agreement, or (b) legislation is enacted into law that has the same effect, the Company shall have the option at its sole discretion to terminate

this Agreement upon the provision of at least thirty (30) days written notice to Seller after the date of the approval of such final non-appealable Order or the effective date of such legislation, provided that the obligation to purchase Qualifying Electricity and Qualifying Capacity shall be severable and separately construed for purposes of this Section.

Company covenants and agrees to not propose or support any cancellation of this Agreement or a change in any law or rule or any other mechanism that would disallow the recovery of any costs associated with the Company's purchase of Qualifying Electricity, Qualifying Capacity or Environmental Attributes under this Agreement. Company covenants and agrees to defend the recovery of all costs under this Agreement, which may also include seeking the ability to grandfather the recovery of all costs associated with the purchase of Qualifying Electricity, Qualifying Capacity or Environmental Attributes under this Agreement and all other similar agreements entered by the Company. Notwithstanding anything to the contrary in this paragraph, nothing herein shall prohibit Company from pursuing its remedies for default under this Agreement, including the right to terminate this Agreement after the expiration of any applicable cure period.

#### 14.3 Change in Applicable Law

In the event that any part of this Agreement or any Commission Order approving this Agreement or any tariff applicable thereto, or any rules and regulations applicable thereto is finally adjudged by a court of competent jurisdiction to be invalid, then either Company or Seller may, at its sole option, terminate this Agreement at any time within one hundred eighty (180) days of the date such determination becomes final by giving sixty (60) days' written notice to the other party stating an intention to terminate this Agreement at the expiration of such sixty (60) day period

#### 14.4 Interpretation

If the Commission or a court determines that any provision of this Agreement is unenforceable or invalid, the parties intend for the remainder of this Agreement to be enforced to the fullest extent permitted by applicable law.

#### 14.5 Reservation of Rights

The parties do not intend the rights and remedies specified in this Agreement to be exclusive and preserve all other rights and remedies available to them at law or in equity.

#### 14.6 Choice of Law

This Agreement is to be construed and enforced in accordance with the laws of the State of Indiana, exclusive of Indiana's conflicts of law principles.

#### 14.7 Rules and Regulations

Company's General Rules and Regulations Applicable to Electric Service, on file with the Commission, are incorporated into this Agreement. Seller acknowledges receipt of the current General Rules and Regulations Applicable to Electric Service ("**General Rules and Regulations**"). If any provision of the General Rules and Regulations conflict with the

provisions of this Agreement, the provisions of the General Rules and Regulations will control.

14.8 Entire Agreement; Waiver

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and no promises, representations or agreements made by Company's officers, employees or agents prior to the execution of this Agreement shall be binding on Company unless expressly set forth herein. This Agreement shall not be amended or modified except by written instrument duly executed by Company and Seller. Any waiver by a party of any provision or condition of this Agreement shall only be effective if contained in a written instrument executed by the party against whom such waiver is sought to be enforced and such waiver shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, whether such breach is of the same or a different nature as the prior breach.

14.9 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns. Neither party shall assign this Agreement without the express written consent of the other party which shall not be unreasonably withheld, provided, however, that Seller may assign this Agreement without consent in the event: 1) Seller sells its Facility to a purchaser; or 2) Seller seeks to secure financing of the Seller's Facility. Company shall cooperate with Seller in any assignment by Seller to secure financing of the Seller's Facility.

14.10 Limitation on Damages.

Each party acknowledges and agrees that in no event will any partner, shareholder, member, manager, owner, officer, director, employee or affiliate of either party be personally liable to the other party for any payments, obligations or performance due under this Agreement or any breach or failures of performance of either party, and the sole recourse for payment or performance of the obligations under this Agreement will be against Seller or Company and each of their respective assets and not against any other individual, corporation, limited liability company, partnership or association not a party to this Agreement ("**Third Party**"), except for such liability as expressly assumed by an assignee pursuant to any assignment of this Agreement in accordance with the terms hereof or such liability expressly assumed pursuant to any written instrument executed by such individual or entity.

14.11 No Consequential Damages.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOST REVENUES OR OTHER BUSINESS INTERRUPTION DAMAGES; PROVIDED, HOWEVER, THAT ANY AMOUNTS WHICH ARE EXPRESSLY PROVIDED HEREIN SHALL NOT BE CONSTRUED AS LOST PROFITS OR CONSEQUENTIAL DAMAGES, BY

STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, *PROVIDED, HOWEVER*, THAT IF EITHER PARTY IS HELD LIABLE TO ANY THIRD PARTY FOR SUCH DAMAGES AND THE PARTY HELD LIABLE FOR SUCH DAMAGES IS ENTITLED TO INDEMNIFICATION THEREFOR FROM THE OTHER PARTY HERETO, THEN THE INDEMNIFYING PARTY SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY FOR, SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

14.12 Dispute Resolution

Prior to declaring a party in breach of this Agreement pursuant to Section 13, any dispute, claim or controversy among the parties arising out of or related to Sections 2 or 3 of this Agreement, the party disputing a matter shall give the other written notice of the dispute. The parties shall negotiate in good faith for thirty (30) days to resolve such dispute. In the event the parties are unable to resolve such dispute the dispute shall be mediated in Marion County, Indiana. The mediation shall be conducted by a single mediator within thirty (30) days of the expiration of the thirty (30) day period during which the parties were to attempt to negotiate a resolution to the dispute. If the mediation fails to bring resolution to the dispute, the parties may pursue their remedies under this Agreement; provided, however, that failing to reach an agreement shall not be evidence that there has been an actual default under this Agreement. Each party shall be responsible for its own attorney's fees and one-half the cost of any mediator. During the period that the parties are attempting to resolve a dispute under this Agreement, the parties shall continue performance under this Agreement, unless to do so would be impossible or impracticable.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be duly executed in duplicate originals effective as of the day and year first above written.

<p>"Seller"</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>	<p>NORTHERN INDIANA PUBLIC SERVICE COMPANY "Company"</p> <p>By: _____</p> <p>Name: _____</p> <p>Title: _____</p>
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Received On: November 21, 2011  
IURC 30-Day Filing No: 2928  
Indiana Utility Regulatory Commission

**Exhibit A**  
**(Interconnection Standards)**

Received On: November 21, 2011  
IURC 30-Day Filing No: 2928  
Indiana Utility Regulatory Commission

**Exhibit B**  
**(Commencement Date Memorandum)**

**COMMENCEMENT DATE MEMORANDUM**  
**Exhibit B attached to and made a part of the Renewable Power Purchase Agreement**  
**between**  
**Northern Indiana Public Service Company, as Company and**  
 \_\_\_\_\_, **as Seller**

**COMMENCEMENT DATE MEMORANDUM**  
**designating the “Anniversary Date”**

THIS MEMORANDUM, made as of \_\_\_\_\_, 20\_\_\_\_, by and between Northern Indiana Public Service Company (“Company”) and \_\_\_\_\_ (“Seller”).

Recitals:

- A. Company and Seller are parties to that certain Renewable Power Purchase Agreement, dated for reference \_\_\_\_\_, 20\_\_\_\_ (the “PPA”) for the sale and purchase of Qualifying Electricity, Qualifying Capacity and Environmental Attributes (the “Power”).
- B. Seller has commissioned its Facility and has begun to supply the Power to Company.
- C. Seller and Company desire to enter into this Memorandum confirming the Anniversary Date under the PPA.

NOW, THEREFORE, Seller and Company agree as follows:

- 1. The actual Anniversary Date is \_\_\_\_\_.
- 2. The price for the Qualifying Electricity each year of the Term is as set forth in the table below:

\_\_\_\_\_  
 Seller Initials

Year*	Price for Qualifying Electricity
1	\$_____ per kWh
2	\$_____ per kWh
3	\$_____ per kWh
4	\$_____ per kWh
5	\$_____ per kWh
6	\$_____ per kWh
7	\$_____ per kWh
8	\$_____ per kWh
9	\$_____ per kWh
10	\$_____ per kWh
11	\$_____ per kWh
12	\$_____ per kWh
13	\$_____ per kWh
14	\$_____ per kWh
15	\$_____ per kWh

\*rows for years in excess of contract term to be removed or crossed out

\_\_\_\_\_  
 Seller Initials

3. In the alternative, Seller elects to receive the tariff rate as it is in effect during each year of the contract term.
4. [Optional Section for Biomass PPA's only.] The price for Qualifying Capacity shall be paid according to component terms and conditions of the Company's Cogeneration and Small Power Production Rate as may be in effect from time-to-time.
5. Capitalized terms not defined herein shall have the same meaning as set forth in the PPA.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be duly executed in duplicate originals effective as of the day and year first above written.

"Seller"	NORTHERN INDIANA PUBLIC SERVICE COMPANY "Company"
By: _____	By: _____
Name: _____	Name: _____
Title: _____	Title: _____



## RENEWABLE POWER PURCHASE AGREEMENT

This Power Purchase Agreement (this “**Agreement**”), dated as of \_\_\_\_\_, 201\_\_\_\_, (“Date of Execution”) is between \_\_\_\_\_, a/an \_\_\_\_\_ (“**Seller**”), and NORTHERN INDIANA PUBLIC SERVICE COMPANY, an Indiana corporation (“**Company**”).

**WHEREAS**, Company is a corporation organized and existing under the laws of the State of Indiana with its principal place of business at Merrillville, Indiana, and Company owns and operates facilities for the generation, transmission and distribution of electric power and energy in the State of Indiana; and

**WHEREAS**, Seller owns a renewable power production facility currently consisting of \_\_\_\_\_ ( ) \_\_\_\_\_ powered generating units located at \_\_\_\_\_, Indiana (“**Seller’s Facility**”); and

**WHEREAS**, the character of the energy to be sold by Seller shall satisfy the requirements set forth in Section 4.1 of this Agreement; and

**WHEREAS**, Seller desires to operate Seller’s Facility in parallel with Company’s electric system, and to engage in electric energy transactions with Company; and

**WHEREAS**, Seller desires to sell electricity generated by Seller’s Facility to Company and Company desires to purchase electricity generated by the Seller’s Facility; and

**WHEREAS**, Company’s purchase of electricity from Seller shall be in accordance with Company’s Electric Renewable Feed In Rate approved in Cause No. 43922 (the “**Renewable Tariff**”) by the Indiana Utility Regulatory Commission (the “**Commission**”), as set forth in Section 2 of this Agreement.

**NOW THEREFORE**, in consideration of the mutual covenants of the Parties and subject to the terms and conditions in this Agreement, the Parties hereby agree as follows:

### **1. SALE OF ELECTRICITY**

#### **1.1. Sale of Electricity, Capacity and Environmental Attributes to Company**

Subject to the terms and conditions contained in this Agreement, Seller agrees to sell and deliver and Company agrees to purchase and accept delivery, at the Delivery Point, Qualifying Electricity (as defined in Section 4.1) and associated Environmental Attributes from the Seller’s Facility.

##### **1.0.1. Energy**

During the term of this Agreement, Seller agrees to sell, and Company agrees to purchase those amounts of Qualifying Electricity associated with the generator size set forth in the Interconnection Agreement executed by the Parties dated \_\_\_\_\_ (“**Interconnection Agreement**”) that are delivered by Seller to the Delivery Point as measured by Company’s Meter in accordance with Section 4.3.1 of this Agreement according to the terms and conditions set forth in the Renewable Tariff.

Seller's Facility shall only include the current generators or any replacements thereof, and will exclude any additional generating units that Seller adds to Seller's Facility after the commencement of the term of this Agreement. In the event that the Seller increases the Qualifying Electricity output of the Seller's Facility by adding additional generating units to Seller's Facility during the term of this Agreement and Seller desires to sell to Company such additional Qualifying Electricity output, an amendment to the Interconnection Agreement will be required prior to the purchase of any additional quantities of Qualifying Electricity.

1.0.2. Capacity

During the term of this Agreement, Company agrees to purchase and Seller agrees to sell Qualifying Capacity as that term is defined in Section 4.2 of this Agreement.

1.0.3. Environmental Attributes

During the term of this Agreement, Seller shall transfer and convey to Company, and Company shall acquire from Seller, all right, title and interest in and to all Environmental Attributes, if any, attributable to Qualifying Electricity. Consideration for the Environmental Attributes (as defined below) is included in the purchase price set forth in Section 2 of this Agreement. The Parties shall cooperate to ensure that all Renewable Energy Certificate Reporting Rights (as defined below) are available to Company, and shall assist in such filings, execute such periodic documentation and take such actions as are reasonably required to deliver documentation of Company's Renewable Energy Certificate Reporting Rights associated with its purchase of Qualifying Electricity from Seller's Facility. Seller further covenants that it shall promptly and timely undertake all actions necessary to transfer and convey to the Company title and ownership of the Environmental Attributes acquired by Company under this Agreement.

As used in this Agreement, the term "Environmental Attributes" means (1) any and all current or future credits, benefits, emissions reductions, environmental air quality credits, emissions reduction credits, offsets and allowances attributable to Seller's production of Qualifying Electricity at Seller's Facility during the term of this Agreement, or otherwise attributable to the generation, purchase, sale or use of electricity from or by Seller's Facility during the term of this Agreement, howsoever entitled or named, resulting from the avoidance, reduction, displacement or offset of the emission of any gas, chemical or other substance, including, without limitation, any of the same arising out of legislation or regulation concerned with oxides of nitrogen, sulfur or carbon, with particulate matter, soot or mercury, or implementing the United Nations Framework Convention on Climate Change (the "UNFCCC") or the Kyoto Protocol to the UNFCCC or any successor treaty, or crediting "early action" emissions reduction, or laws or regulations involving or administered by the Clean Air Markets Division of the U.S. Environmental Protection Agency, or any successor or other agency having jurisdiction over a program involving transferability of Environmental Attributes, and (2) any Renewable Energy Certificate Reporting Rights (as defined below) attributable to such Environmental Attributes. For

purposes of this Agreement, one (1) kWh of electrical energy from Seller's Facility corresponds to one (1) kWh of Environmental Attributes.

Environmental Attributes shall not include any other benefits resulting from: (a) any investment tax credits and any other income tax credits associated with Seller's Facility, (b) any state, federal or private cash payments or grants relating in any way to Seller's Facility or the the output thereof; (c) other power attributes from the Seller's Facility; (d) Production Tax Credits (as defined below) associated with the construction or operation of the Seller's Facility and other financial incentives in the form of credits, reductions or allowances associated with the Seller's Facility that are applicable to a state, provincial or federal income taxation obligation; (e) fuel-related subsidies or "tipping fees" that may be paid to Seller to accept certain fuels, or local subsidies received by the generator for the destruction of particular preexisting pollutants or the promotion of local environmental benefits (the "Excluded Attributes").

As used herein, the term "Renewable Energy Certificate Reporting Rights" means the right of the purchaser of Environmental Attributes to report the exclusive ownership of the accumulated Renewable Energy Certificate ("REC") to any agency, authority, or other party in compliance with applicable law, including rights under Section 1605(b) of the Energy Policy Act of 1992, and any present or future federal, state or local certification program, renewable portfolio standard, or emissions trading program (including, if applicable, pursuant to the Midwest Renewable Energy Tracking System). As used herein, the term "Production Tax Credits" means production tax credits under Section 45 of the Internal Revenue Code or any successor or other provision providing for a federal tax credit determined by reference to renewable electric energy produced from wind resources and any correlative state tax credit determined by reference to renewable electric energy produced from wind resources for which the Seller's Facility is eligible.

1.0.4. Electric Utility Service to Seller's Facility.

Electric service to Seller's Facility shall be separately metered and shall be provided by the Company pursuant to the appropriate tariff rate(s), and shall not be netted against any purchases made by Company pursuant to this Agreement except as provided for in the Renewable Tariff. Seller shall not be obligated to sell any Qualifying Electricity to Company that Seller uses to power the Seller's Facility or any other facilities operated by Seller consistent with the provisions of the Renewable tariff.

1.1.5. Cooperation for Reporting Purposes.

Seller shall cooperate with Company to provide information to Company for purposes of reporting to all applicable government agencies, including, but not limited to, information concerning Seller's Facility characteristics, production totals, matters pertaining to interconnection, environmental violations ( if any are known), and other issues related to the purchases under this Agreement. Unless otherwise agreed to by Seller or as otherwise required by order of any body with jurisdiction over this Agreement, Company agrees to treat Seller-specific information as confidential; provided, however, that Company shall be permitted

to combine Seller's information with other customers' information as publicly-available information submitted to applicable government agencies.

## **2. PRICING**

### **2.1. Sale of Qualifying Electricity and Capacity to Company**

#### **2.1.1. Energy.**

The Company shall pay Seller for all Qualifying Electricity delivered into the Company system according to the pricing provisions of the Renewable Tariff. The price paid for Qualifying Electricity shall be increased by two percent (2%) per year. Such adjustment in price shall occur one year after the date on which Seller begins to supply Company with Qualifying Electricity and/or Qualifying Capacity under this Agreement ("Anniversary Date"), and year after year on the Anniversary Date until the expiration or termination of this Agreement.

#### **2.1.2. Capacity.**

The Company shall pay Seller for all Qualifying Capacity according to the Renewable Tariff.

#### **2.1.3. Other Charges.**

Company shall invoice and Seller shall pay any charges or costs associated with Seller's failure to operate Seller's Facility in compliance with the rules and regulations of the North American Electric Reliability Council and/or the Reliability First Corporation, regional reliability council, and/or Midwest ISO. Seller will be obligated to pay and agrees to reimburse Company for any LMP charges and related charges assessed to, and incurred by Company resulting from excess power flowing into Company's distribution system from Seller's Facility, or from Seller's failure to deliver volumes of Qualifying Electricity into Company's distribution system in accordance with Seller's nominations; provided, however, that in the event such LMP charges and related charges incurred as a result of Seller's failure to deliver volumes in accordance with nominations, then Seller shall not be liable for such charges if the failure to deliver is due to, in the exercise of prudent and reasonable engineering judgment, Seller's decision to temporarily cease operations of Seller's Facility in order to protect Seller's Facility or Company's electrical system from damage or harm. Seller reserves the right to interrupt the sale of Qualifying Electricity at any time when, in the exercise of prudent and reasonable engineering judgment, Seller deems it necessary to make emergency repairs to Seller's Facility in order to protect Seller's Facility or Company's electrical system from damage or harm. Company shall invoice Seller separately for such charges and the Seller shall pay or dispute such invoiced amount within 15 business days after receipt of such invoice. In the event Seller disputes such amounts, the dispute shall be governed by Section 14.12.

## **3. INVOICING AND PAYMENT**

### **3.1. Billing Period**

3.1.1. The Seller may elect a monthly billing period ~~shall be of either~~ the calendar month ~~— or the billing cycle for retail electric service provided by Company.~~ To the extent Seller elects a calendar month billing period, Seller may alternatively elect to read the Company Meter for determination of payment due to Seller pursuant to Section 3.3, in which case the Seller will read the Company Meter no sooner than the last business day of each calendar month and no later than the second business day after the end of the month.

3.1.2. The Seller may elect to have the Company read the Company Meter at approximately monthly intervals for determination of payment due to Seller pursuant to Section 3.3 at no extra charge.

### 3.2. Invoice

~~The~~To the extent Seller does not elect to have the Company read the Company Meter under Section 3.1.2., the Company Meter information will be used by ~~the~~ Seller to prepare and issue ~~an~~either a paper or electronic invoice to Company within two (2) business days of the meter reading. The invoice shall ~~also be mailed~~submitted to NIPSCO at ~~either~~ the ~~following mailing or electronic~~ address: reflected in Section 12, Notices.

~~Northern Indiana Public Service Company  
Attn: \_\_\_\_\_  
801 E 86th Ave, Merrillville, IN 46410.~~

### 3.3. Payment

The Seller may elect to have the Company ~~agrees to~~ pay Seller by electronic funds transfer or check within seventeen (17) days from ~~either (i)~~ the date of the invoice issued by Seller under Section 3.2 or (ii) the date on which the meter is read by the the Company at approximately monthly intervals under Section 3.1.2., for Qualifying Electricity and Environmental Attributes sold hereunder in accordance with the pricing set forth in Section 2 of this Agreement. Any uncontested portions of invoiced amounts shall be paid on or before the due date. Any uncontested portion of an invoice not paid within seventeen (17) days from the date of invoice shall bear an interest rate of one and one-half percent (1.5%) per month. Prior to instituting an action for default of this Agreement, the Parties shall attempt to resolve any invoicing or payment disputes pursuant to section 14.12.

## 4. **INTERCONNECTION TERM AND CONDITIONS**

### 4.1. Qualifying Electricity

For Seller's electricity to be considered Qualifying Electricity for purchase under this Agreement, the Seller's Facility must satisfy all of the following standards ("**Qualifying Standards**").

~~4.1.1.~~4.1.1. The electricity must be:  
4.1.1.1. three phase, 60 Hertz, alternating current at a voltage of approximately 12,500 volts or 34,500 volts, or.

4.1.1.2. single phase, 60 Hertz, alternating current connected at the transformer secondary voltage for wind or solar generating facilities from 5 kW through 10 kW upon approval of an interconnection application consistent with the Company's General Rules and Regulations;

provided that the Company, on a case-by-case basis, may authorize either (a) a three phase 60 Hertz, alternating current connection at the primary voltage, or (b) a single phase, 60 Hertz, alternating current connection at the transformer secondary voltage available at the customer's service location upon approval of an interconnection application consistent with the Company's General Rules and Regulations.

~~4.1.2.~~ 4.1.2. The electricity must comply with all applicable rules and regulations imposed by ReliabilityFirst Corp., Midwest Independent Transmission System Operator, Inc. ("Midwest ISO"), and/or any applicable governing body or agency.

4.1.3. The electricity must be generated from a Facility eligible for the Renewable Feed-In Tariff under Experimental Rate 850 of NIPSCO's electric tariff.

#### 4.2. Qualifying Capacity

For Seller's capacity to be considered Qualifying Capacity for purchase under this Agreement, the Seller's Facility must satisfy all of the following standards ("**Qualifying Capacity**").

4.2.1. The ability to provide electric energy in a period of time, expressed in kilowatts, and

4.2.2. Compliance with all applicable rules and regulations of Midwest Independent Transmission System Operator, Inc., ReliabilityFirst Corp., and/or any applicable governing body or agency.

#### 4.3. Interconnection Standards

##### 4.3.1. Company Equipment and Meter

To connect Seller's Facility to Company's electrical system and in a manner consistent with the provisions of and options available under the Company's Renewable Tariff and this Agreement, Company will obtain, install and maintain, at Seller's expense, all equipment ("Company Equipment") that begins at the connection to Company's system through and including a meter ("Company Meter") to measure the electricity generated by Seller's Facility. Company will exercise reasonable care and comply with good engineering practices while performing its duties with respect to Company Equipment. Seller may purchase and install hardware and software to audit the Company Meter at Seller's sole costs. Company shall cooperate with Seller in installing such hardware and software and ensuring it interacts with Company's Meter. Any costs incurred by Company related to such auditing hardware and software incurred by Company shall be reimbursed by Seller.

#### 4.3.2. Seller Meter

Seller ~~will~~may also obtain, install and maintain, at Seller's expense, a meter ("Seller Meter") to measure the electricity generated by Seller's facility. To the extent the Company is satisfied and agrees that Seller's Meter is accurately reading the flow of Qualifying Electricity, Seller's Meter may be used as the basis for invoicing in the event ~~of that the~~ Company Meter's is shown to not be reading accurately or reliably pursuant to Section 4.3.1 and 4.3.5.

#### 4.3.3. Seller's Connection Equipment

Seller must provide, install and maintain, at its expense, all wiring and other electrical equipment between Company Meter and Seller's Facility equipment ("Seller's Connection Equipment"). Seller will maintain Seller's Connection Equipment in accordance with the applicable requirements of the National Board of Fire Underwriters, the National Electrical Code, the provisions of 170 IAC 4-4.3-1 *et seq.*, and any other governing body as they may be in effect from time to time. Seller will exercise reasonable care and comply with good engineering practices while performing its duties with respect to Seller's Connection Equipment. The entire interconnection from Company's system to Seller's Facility must comply with Company's Electric Standard ER 4-300. A copy of current standard is attached to this Agreement as Exhibit A.

All wiring and other electric equipment installed by Seller shall be maintained by Seller at all times in conformity with the requirements of the National Board of Fire Underwriters and other authorities having jurisdiction, and an inspector from Company shall be permitted to inspect Seller's wiring and apparatus and Company may transmit its recommendations in connection with any such inspection to Seller, but nothing herein contained shall mean, or be construed to mean, that Company shall be required to inspect or examine, or in any way be responsible for the condition of the conduits, pipes, wires or appliances on Seller's premises.

Seller will provide Company with ten (10) days notice of any changes that it intends to make to Seller's Connection Equipment or Seller's Facility that may affect Company's Equipment or Company's electrical system. Whenever Seller becomes aware that Seller may be violating the Qualifying Standards, Seller shall promptly telephone Company with whatever information Seller may have and shall confirm such information in writing within three (3) business days after telephone notification is provided.

#### 4.3.4. Point of Interconnection

Company will connect its power supply lines to the terminals of a service entrance connection which shall be provided by Seller and located on an outside wall of the Seller's Facility building or at a point satisfactory to Company. Seller shall install, operate, and maintain in good order such relays, locks and seals, breakers, automatic synchronizers, and other control and protective apparatus as shall be designated by Company for safe, efficient and reliable operation in parallel to Company's system. Seller shall bear full responsibility for the

installation and safe operation of this equipment. Breakers capable of isolating Seller's Facility from Company shall at all times be immediately accessible to Company. Company may isolate Seller's Facility at its sole discretion if Company believes continued parallel operation with Seller's Facility creates or contributes to a system emergency.

#### 4.3.5. Company Access and Inspection

In order to allow Company to carry out its obligations under this Agreement, Seller will grant Company access to Seller's property, at all reasonable times upon 24 hour prior notice to Seller, except that in the case of an emergency Company shall have the right to have immediate access to Seller's property without notice.

Company shall at all times have the right to inspect and test the Company Meter and, if found defective, to repair, or replace it, at the Company's option. Company Meter shall be tested periodically in accordance with the Rules and Standards of Service prescribed by the Commission. Company shall inspect and test Company Meter at Seller's request but no more frequently than once a year unless Seller provides Company sufficient evidence that Company's Meter is not providing reliable or accurate metering information. To the extent Seller requests that Company inspect and test Company's Meter and Company's Meter is accurate to within a range of plus or minus one percent (1%), the Seller shall reimburse Company for all costs incurred to inspect and test the Company Meter.

Upon notice from Seller or upon discovery by Company or otherwise, Company shall repair and re-test or replace a defective Company Meter within a reasonable time. During the time there is no accurate Company Meter in service, the Parties may agree to use Seller's Meter to prepare and issue invoices.

In case of impaired or defective service, Seller shall immediately give notice to Company by telephone, confirming such notice in writing on the same day the telephone notice is given.

#### 4.3.6. Interconnection Agreement

Seller shall execute an interconnection agreement in the form attached as Appendix D to Rule 51 of Company's General Rules and Regulations Applicable to Electric Service (the "Interconnection Agreement") and shall comply with all applicable requirements of Rule 51 of Company's General Rules and Regulations Applicable to Electric Service ("Rule 51"). Seller shall make no modification to Seller's Facility or control equipment without prior review and approval of Company.

#### 4.4. Delivery Point

The delivery point for the electricity delivered from the Seller's Facility to Company shall be the first cut-off point on Company's side of Company Meter (herein "**Delivery Point**"). Seller will transfer title to the Qualifying Capacity, the Qualifying Electricity and the Environmental Attributes, free and clear of all liens and encumbrances, to Company at the Delivery Point. Seller shall take all actions, including the timely



completion of any necessary documentation and paperwork to promptly transfer title and ownership of the Environmental Attributes from Seller to Company.

4.5. Interconnection Costs

Seller will pay any expenses it incurs to satisfy the Qualifying Standards and interconnect Seller's Facility to Company's electrical system. Seller shall reimburse Company for all interconnection costs Company has reasonably incurred.

5. WHEELING

Wheeling is not available for Qualifying Electricity generated by Seller's Facility.

6. TERM

6.1. Term

The term of this Agreement shall be fifteen (15) years beginning on the earlier of (a) the Anniversary Date, which shall be agreed to by the parties by execution of the commencement date memorandum attached as Exhibit B, or (b) one year from the Date of Execution. Pursuant to the terms of the Experimental Rate 850 Renewable Feed-In Tariff, in the event that Seller's Facility forfeits its position in the interconnection queue prior to the date on which Seller begins to supply Qualifying Electricity and/or Qualifying Capacity, this Agreement shall be terminated and deemed null and void.

7. REPRESENTATIONS AND WARRANTIES

7.1. Seller's Representations and Warranties

Seller represents and warrants that:

- 7.1.1. Seller's Facility is capable of generating the quantity of Qualifying Electricity and Qualifying Capacity set forth in the Interconnection Agreement; and
- 7.1.2. Seller has good and marketable title, free and clear of any and all liens, encumbrances or any other impairments, to all energy, capacity and Environmental Attributes sold or transferred to Company under this Agreement; and
- 7.1.3. Seller has full power and authority to enter into and perform this Agreement; and
- 7.1.4. the execution, delivery and performance by Seller of this Agreement have been duly authorized by all necessary actions of Seller; and
- 7.1.5. this Agreement constitutes the legal, valid and binding obligations of Seller, is fully enforceable against Seller in accordance with its terms, except as such enforceability may be limited by any applicable bankruptcy, insolvency, reorganization, moratorium or similar law affecting creditors' rights generally or by general principals of equity, and it will not violate any judgment, law or

regulation or agreement binding on or affecting Seller, and will not cause or constitute a default under any existing lien, charge, encumbrance or security interest upon any assets of Seller.

7.2. Company's Representations and Warranties

Company represents and warrants that:

7.2.1. Subject to Section 14.1, the execution and delivery of this Agreement and the performance of this Agreement and of Company's obligations hereunder have been duly authorized by all necessary Company actions and no other authorization is necessary; and

7.2.2. Subject to Section 14.1, this Agreement is a valid and binding obligation of Company.

**8. SYSTEM EMERGENCY**

Company shall not be required to purchase Qualifying Electricity from Seller at the time of an emergency on either Company's or Seller's electric system. Seller shall not be required to sell Qualifying Electricity to Company at the time of an emergency on either Company's or Seller's electric system. System emergencies causing discontinuance of parallel operation are subject to verification by the Commission. The parties may interrupt purchase when necessary to make emergency repairs. Company shall immediately reestablish purchase and Seller shall immediately reestablish sale once the emergency repairs are sufficient to allow for reconnection and purchase and sale of Qualifying Electricity from Seller.

**9. INTERRUPTION OR CURTAILMENT FOR MAINTENANCE**

9.1. By Company

For the purpose of making repairs other than emergency repairs, Company reserves the right to disconnect the Seller's electric system for four (4) consecutive hours on any Sunday, or such other day or days as may be agreed to by Seller and Company, provided that notification of Company's intention to interrupt purchases is given to Seller at least forty-eight (48) hours prior to the hour of interruption of purchase.

9.2. By Seller

For the purpose of making repairs other than emergency repairs, Seller reserves the right to disconnect the Seller's electric system for four (4) consecutive hours on any Sunday, or such other day or days as may be agreed to by Seller and Company, provided that notification of Seller's intention to interrupt purchases is given to Seller at least forty-eight (48) hours prior to the hour of interruption of sale.

**10. INDEMNIFICATION**

10.1. By Seller to Company

Seller shall indemnify and hold harmless Company from and against any and all claims, liability, damages and expenses, including reasonable attorneys' fees and court costs,

based upon or arising out of any personal injury, death or damage to any property, including loss of use thereof, which arises out of or results from any act or omission by Seller, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of Seller's Facility or Seller's Connection Equipment, except to the extent caused by the negligence of Company, its employees, agents, or representatives. Upon the written request of Company seeking indemnification under this provision, Seller shall defend any suit asserting a claim covered by this provision. If Company is required to file an action or proceeding to enforce its indemnification rights under this provision and said indemnification rights are upheld by a court or arbitrator having valid jurisdiction, Seller shall reimburse Company for all expenses, including reasonable attorneys' fees and court costs, incurred in connection with such action.

#### 10.2. By Company to Seller

Company shall indemnify and hold harmless Seller from and against any and all claims, liability, damages and expenses, including reasonable attorneys' fees and court costs, based upon or arising out of any personal injury, death or damage to any property, including loss of use thereof, which arises out of or results from any act or omission by Company, its employees, agents, representatives, successors or assigns in the construction, ownership, operation or maintenance of Company's facilities used in connection with this Agreement, except to the extent caused by the negligence of Seller, its employees, agents, or representatives. Upon the written request of Seller seeking indemnification under this provision, Company shall defend any suit which asserts a claim covered by this provision. If Seller is required to file an action or proceeding to enforce its indemnification rights under this provision and said indemnification rights are upheld by a court or arbitrator having valid jurisdiction, Company shall reimburse Seller for all expenses, including reasonable attorneys' fees and court costs, incurred in connection with such action.

### **11. FORCE MAJEURE**

Neither Company nor Seller shall be liable to the other for damages caused by the interruption, suspension, reduction or curtailment of the delivery of electric energy, capacity or Environmental Attributes hereunder, or the failure to perform any other obligation hereunder (other than an obligation to pay money), due to, occasioned by or in consequence of, any of the following causes or contingencies (each a "**Force Majeure Event**"): acts of God, strikes, lockouts, or other industrial disturbances; acts of public enemies; orders or permits or the absence of the necessary orders or permits of any kind which have been properly applied for from the government of the United States, the State of Indiana, any political subdivision or municipal subdivision or any of their departments, agencies or officials, or any civil or military authority; unavailability of a fuel or resource used in connection with the generation of electricity; extraordinary delay in transportation; unforeseen soil conditions; equipment, material, supplies, labor or machinery shortages; epidemics; landslides; lightning; earthquakes; fires; hurricanes; tornadoes; storms; floods; washouts; drought; arrest; war; civil disturbances; explosions; breakage or accident to machinery, transmission lines, pipes or canals; partial or entire failure of utilities; breach of contract by any supplier, contractor, subcontractors; laborer or materialman; sabotage; injunction blight; famine; blockage, or quarantine. The party suffering an occurrence of Force Majeure Event shall, as soon as is reasonably possible after such occurrence, give the other party written notice describing the particulars of the occurrence and shall use its best efforts to remedy or mitigate its inability to perform its obligations, provided, however, that the settlement of any

strike, walkout, lockout or other labor dispute shall be entirely within the discretion of the party involved in such labor dispute.

**12. NOTICES**

Any notices required by this Agreement or by law shall be in writing and addressed as identified below and shall be properly served when sent via certified mail, postage prepaid return receipt requested, or via overnight courier, postage prepaid, or when received by facsimile at the facsimile number set forth in this Section or when received via email at the email set forth below. Notices sent via overnight mail shall be effective the next business day after transmission. Notices sent via certified mail or overnight courier shall be effective upon receipt or refusal to accept. Notices sent via facsimile or email shall be effective upon confirmation of successful transmission unless such transmission is after normal business hours in which case such transmission shall be effective the next business day. Either party may change its address for the purpose of this Agreement by giving written notice of such change to the other party in the manner set forth herein.

To Seller:

Facsimile No. \_\_\_\_\_  
Email: \_\_\_\_\_

To Company:

NIPSCO  
c/o \_\_\_\_\_  
801 East 86<sup>th</sup> Avenue  
Merrillville, Indiana 46410  
Facsimile No. \_\_\_\_\_  
Email: \_\_\_\_\_

**13. DEFAULT AND REMEDIES**

13.1 Default.

The occurrence of any of the following events shall constitute a “**Default**” by the affected party (the “**Defaulting Party**”):

- 13.0.1. Such party files a voluntary petition in bankruptcy or reorganization or fails to have such a petition which is filed against it dismissed within sixty (60) days, or admits in writing its insolvency or inability to pay its liabilities as they come due, or assigns its assets or this Agreement for the benefit of creditors, or suffers a receiver to be appointed for its assets, or suspends its business
- 13.0.2. Such party commits fraud or other material intentional misconduct in connection with this Agreement or the operation of the Seller’s Facility, with respect to Seller, or the operation of the Company Equipment, with respect to Company.

- 13.0.3. Any material representation or warranty made by such party pursuant to this Agreement is false or misleading when made or ceases to remain true during the term of this Agreement.
- 13.0.4. Either party's failure to make any payment when due which is not the subject of a good faith dispute if such failure continues for a period of five (5) days after written notice thereof by other party.
- 13.0.5. Any failure by a party to this Agreement to perform its obligations under the Interconnection Agreement which would entitle the other party to terminate or suspend the Interconnection Agreement if such failure remains uncured for more than thirty (30) days after Seller's receipt of written notice thereof from Company.
- 13.0.6. Any other failure by such party to perform any material obligation it is required to perform under this Agreement if such failure remains uncured for more than thirty (30) days after Seller's receipt of written notice thereof from Company.

### 13.2 Remedies for Default.

If a Default has occurred and is continuing, the party not in Default (the "**Non-Defaulting Party**"), upon written notice to the Defaulting Party, shall have the right (but not the duty) to exercise any or all of the following remedies: (a) to suspend performance under this Agreement; (b) to terminate this Agreement after the expiration of any applicable cure period; and (c) subject to Sections 14.8, 14.9 and 14.10 hereof, to exercise any remedy available under this Agreement or at law or in equity.

For any and all Defaults, the Non-Defaulting Party shall, subject to Sections 14.8, 14.9 and 14.10 hereof, be entitled to receive from the Defaulting Party all of the direct, actual damages incurred by the Non-Defaulting Party in connection with such event. Each party agrees that it has a duty to mitigate damages and covenants that it shall use commercially reasonable efforts to minimize any damages it may incur as a result of the other Party's performance or non-performance of this Agreement, *provided, however*, that in no event shall the mitigating party owe any payment to the non-performing party in connection with such mitigation. Seller shall be entitled to reduce the amount of monetary damages payable by Seller pursuant to this Section 13.2 as and to the extent Seller provides Company with replacement energy or Environmental Attributes (which replacement shall be subject to the consent of Company and which consent shall not be unreasonably withheld or delayed) in substitution for any monetary damages that would otherwise have been due under this Section 13.2.

## **14. MISCELLANEOUS**

### 14.1 Regulatory Approvals

Any and all obligations by Company to purchase Qualifying Electricity or Environmental Attributes from Seller are expressly conditioned on the approval of this Agreement by the Commission.

#### 14.2 Cost Recovery and Early Termination Rights

If at any time during the Term of this Agreement (a) the Commission approves a final, non-appealable order that denies the Company recovery of some or all payments made pursuant to Sections 2 and 3 of this Agreement, or (b) legislation is enacted into law that has the same effect, the Company shall have the option at its sole discretion to terminate this Agreement upon the provision of at least thirty (30) days written notice to Seller after the date of the approval of such final non-appealable Order or the effective date of such legislation, provided that the obligation to purchase Qualifying Electricity and Qualifying Capacity shall be severable and separately construed for purposes of this Section.

Company covenants and agrees to not propose or support any cancellation of this Agreement or a change in any law or rule or any other mechanism that would disallow the recovery of any costs associated with the Company's purchase of Qualifying Electricity, Qualifying Capacity or Environmental Attributes under this Agreement. Company covenants and agrees to defend the recovery of all costs under this Agreement, which may also include seeking the ability to grandfather the recovery of all costs associated with the purchase of Qualifying Electricity, Qualifying Capacity or Environmental Attributes under this Agreement and all other similar agreements entered by the Company. Notwithstanding anything to the contrary in this paragraph, nothing herein shall prohibit Company from pursuing its remedies for default under this Agreement, including the right to terminate this Agreement after the expiration of any applicable cure period.

#### 14.3 Change in Applicable Law

In the event that any part of this Agreement or any Commission Order approving this Agreement or any tariff applicable thereto, or any rules and regulations applicable thereto is finally adjudged by a court of competent jurisdiction to be invalid, then either Company or Seller may, at its sole option, terminate this Agreement at any time within one hundred eighty (180) days of the date such determination becomes final by giving sixty (60) days' written notice to the other party stating an intention to terminate this Agreement at the expiration of such sixty (60) day period

#### 14.4 Interpretation

If the Commission or a court determines that any provision of this Agreement is unenforceable or invalid, the parties intend for the remainder of this Agreement to be enforced to the fullest extent permitted by applicable law.

#### 14.5 Reservation of Rights

The parties do not intend the rights and remedies specified in this Agreement to be exclusive and preserve all other rights and remedies available to them at law or in equity.

#### 14.6 Choice of Law

This Agreement is to be construed and enforced in accordance with the laws of the State of Indiana, exclusive of Indiana's conflicts of law principles.

14.7 Rules and Regulations

Company's General Rules and Regulations Applicable to Electric Service, on file with the Commission, are incorporated into this Agreement. Seller acknowledges receipt of the current General Rules and Regulations Applicable to Electric Service (“**General Rules and Regulations**”). If any provision of the General Rules and Regulations conflict with the provisions of this Agreement, the provisions of the General Rules and Regulations will control.

14.8 Entire Agreement; Waiver

This Agreement constitutes the entire agreement between the parties with respect to the subject matter hereof and no promises, representations or agreements made by Company's officers, employees or agents prior to the execution of this Agreement shall be binding on Company unless expressly set forth herein. This Agreement shall not be amended or modified except by written instrument duly executed by Company and Seller. Any waiver by a party of any provision or condition of this Agreement shall only be effective if contained in a written instrument executed by the party against whom such waiver is sought to be enforced and such waiver shall not be construed or deemed to be a waiver of any other provision or condition of this Agreement, nor a waiver of a subsequent breach of the same provision or condition, whether such breach is of the same or a different nature as the prior breach.

14.9 Successors and Assigns

This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors or assigns. Neither party shall assign this Agreement without the express written consent of the other party which shall not be unreasonably withheld, provided, however, that Seller may assign this Agreement without consent in the event: 1) Seller sells its Facility to a purchaser; or 2) Seller seeks to secure financing of the Seller's Facility. Company shall cooperate with Seller in any assignment by Seller to secure financing of the Seller's Facility.

14.10 Limitation on Damages.

Each party acknowledges and agrees that in no event will any partner, shareholder, member, manager, owner, officer, director, employee or affiliate of either party be personally liable to the other party for any payments, obligations or performance due under this Agreement or any breach or failures of performance of either party, and the sole recourse for payment or performance of the obligations under this Agreement will be against Seller or Company and each of their respective assets and not against any other individual, corporation, limited liability company, partnership or association not a party to this Agreement (“**Third Party**”), except for such liability as expressly assumed by an assignee pursuant to any assignment of this Agreement in accordance with the terms hereof or such liability expressly assumed pursuant to any written instrument executed by such individual or entity.

14.11 No Consequential Damages.

EXCEPT AS OTHERWISE EXPRESSLY PROVIDED IN THIS AGREEMENT, EACH PARTY'S LIABILITY UNDER THIS AGREEMENT SHALL BE LIMITED TO DIRECT, ACTUAL DAMAGES ONLY. NEITHER PARTY SHALL BE LIABLE TO THE OTHER PARTY FOR CONSEQUENTIAL, INCIDENTAL, PUNITIVE, EXEMPLARY OR INDIRECT DAMAGES, LOST PROFITS, LOST REVENUES OR OTHER BUSINESS INTERRUPTION DAMAGES; PROVIDED, HOWEVER, THAT ANY AMOUNTS WHICH ARE EXPRESSLY PROVIDED HEREIN SHALL NOT BE CONSTRUED AS LOST PROFITS OR CONSEQUENTIAL DAMAGES, BY STATUTE, IN TORT OR CONTRACT, UNDER ANY INDEMNITY PROVISION OR OTHERWISE, *PROVIDED, HOWEVER*, THAT IF EITHER PARTY IS HELD LIABLE TO ANY THIRD PARTY FOR SUCH DAMAGES AND THE PARTY HELD LIABLE FOR SUCH DAMAGES IS ENTITLED TO INDEMNIFICATION THEREFOR FROM THE OTHER PARTY HERETO, THEN THE INDEMNIFYING PARTY SHALL BE LIABLE FOR, AND OBLIGATED TO REIMBURSE THE INDEMNIFIED PARTY FOR, SUCH DAMAGES. TO THE EXTENT ANY DAMAGES REQUIRED TO BE PAID HEREUNDER ARE LIQUIDATED, THE PARTIES ACKNOWLEDGE THAT THE DAMAGES ARE DIFFICULT OR IMPOSSIBLE TO DETERMINE, THAT OTHERWISE OBTAINING AN ADEQUATE REMEDY IS INCONVENIENT, AND THAT THE LIQUIDATED DAMAGES CONSTITUTE A REASONABLE APPROXIMATION OF THE HARM OR LOSS. IT IS THE INTENT OF THE PARTIES THAT THE LIMITATIONS HEREIN IMPOSED ON REMEDIES AND THE MEASURE OF DAMAGES BE WITHOUT REGARD TO THE CAUSE OR CAUSES RELATED THERETO, INCLUDING, WITHOUT LIMITATION, THE NEGLIGENCE OF ANY PARTY, WHETHER SUCH NEGLIGENCE IS SOLE, JOINT OR CONCURRENT, OR ACTIVE OR PASSIVE.

14.12 Dispute Resolution

Prior to declaring a party in breach of this Agreement pursuant to Section 13, any dispute, claim or controversy among the parties arising out of or related to Sections 2 or 3 of this Agreement, the party disputing a matter shall give the other written notice of the dispute. The parties shall negotiate in good faith for thirty (30) days to resolve such dispute. In the event the parties are unable to resolve such dispute the dispute shall be mediated in Marion County, Indiana. The mediation shall be conducted by a single mediator within thirty (30) days of the expiration of the thirty (30) day period during which the parties were to attempt to negotiate a resolution to the dispute. If the mediation fails to bring resolution to the dispute, the parties may pursue their remedies under this Agreement; provided, however, that failing to reach an agreement shall not be evidence that there has been an actual default under this Agreement. Each party shall be responsible for its own attorney's fees and one-half the cost of any mediator. During the period that the parties are attempting to resolve a dispute under this Agreement, the parties shall continue performance under this Agreement, unless to do so would be impossible or impracticable.

**IN WITNESS WHEREOF**, the parties hereto have caused this instrument to be duly executed in duplicate originals effective as of the day and year first above written.



Received On: November 21, 2011  
IURC 30-Day Filing No: 2928  
Indiana Utility Regulatory Commission

"Seller"

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

NORTHERN INDIANA PUBLIC SERVICE COMPANY  
"Company"

By: \_\_\_\_\_

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Received On: November 21, 2011  
IURC 30-Day Filing No: 2928  
Indiana Utility Regulatory Commission

**Exhibit A**  
**(Interconnection Standards)**

Received On: November 21, 2011  
IURC 30-Day Filing No: 2928  
Indiana Utility Regulatory Commission

**Exhibit B**  
**(Commencement Date Memorandum)**

**COMMENCEMENT DATE MEMORANDUM**  
**Exhibit B attached to and made a part of the Renewable Power Purchase Agreement**  
**between**  
**Northern Indiana Public Service Company, as Company and**  
 \_\_\_\_\_, **as Seller**

**COMMENCEMENT DATE MEMORANDUM**  
**designating the “Anniversary Date”**

THIS MEMORANDUM, made as of \_\_\_\_\_, 20\_\_\_\_, by and between Northern Indiana Public Service Company (“Company”) and \_\_\_\_\_ (“Seller”).

Recitals:

- A. Company and Seller are parties to that certain Renewable Power Purchase Agreement, dated for reference \_\_\_\_\_, 20\_\_\_\_ (the “PPA”) for the sale and purchase of Qualifying Electricity, Qualifying Capacity and Environmental Attributes (the “Power”).
- B. Seller has commissioned its Facility and has begun to supply the Power to Company.
- C. Seller and Company desire to enter into this Memorandum confirming the Anniversary Date under the PPA.

NOW, THEREFORE, Seller and Company agree as follows:

- 1. The actual Anniversary Date is \_\_\_\_\_.
- 2. The price for the Qualifying Electricity each year of the Term is as set forth in the table below:

Seller Initials

<u>Year*</u>	<u>Price for Qualifying Electricity</u>
<u>1</u>	<u>\$_____ per kWh</u>
<u>2</u>	<u>\$_____ per kWh</u>
<u>3</u>	<u>\$_____ per kWh</u>
<u>4</u>	<u>\$_____ per kWh</u>
<u>5</u>	<u>\$_____ per kWh</u>
<u>6</u>	<u>\$_____ per kWh</u>
<u>7</u>	<u>\$_____ per kWh</u>
<u>8</u>	<u>\$_____ per kWh</u>
<u>9</u>	<u>\$_____ per kWh</u>
<u>10</u>	<u>\$_____ per kWh</u>
<u>11</u>	<u>\$_____ per kWh</u>
<u>12</u>	<u>\$_____ per kWh</u>
<u>13</u>	<u>\$_____ per kWh</u>
<u>14</u>	<u>\$_____ per kWh</u>
<u>15</u>	<u>\$_____ per kWh</u>

\*rows for years in excess of contract term to be removed or crossed out

Seller Initials



Document comparison by Workshare Professional on Monday, November 21, 2011  
 2:28:24 PM

Input:	
Document 1 ID	file://C:/Documents and Settings/u124989/Desktop/Feed In Tariff 30-Day Filing/Renewable Power Purchase Agreement approved in 43922.doc
Description	Renewable Power Purchase Agreement approved in 43922
Document 2 ID	file://C:\Documents and Settings\u124989\Desktop\Feed In Tariff 30-Day Filing\Final Renewable Power Purchase Agreement.doc
Description	Final Renewable Power Purchase Agreement
Rendering set	standard

Legend:	
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<del>Moved from</del>	
<a href="#">Moved to</a>	
Style change	
Format change	
<del>Moved deletion</del>	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

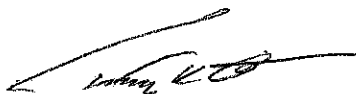
Statistics:	
	Count
Insertions	69
Deletions	19
Moved from	0
Moved to	0
Style change	0
Format changed	0
Total changes	88

**Verified Statement of Northern Indiana Public Service Company  
Concerning Notification of Customers Affected by November 21, 2011 30-Day Filing**

Northern Indiana Public Service Company complied with the Notice Requirements under 170 IAC 1-6-6 in the following manner:

- The attached notice was posted in a public place at NIPSCO's customer service office at 3229 Broadway, Gary, Indiana;
- The same notice was posted on NIPSCO's website under 30-Day Filings (see <http://www.nipsco.com/About-us/Rates-Tariffs/30-Day-Filings.aspx>).
- A legal notice was published in the Post Tribune, a newspaper of general circulation that has a circulation encompassing the highest number of the utility's customers affected by the filing, on November 21, 2011. A copy of the Publisher's Affidavit will be submitted promptly upon receipt; and
- I affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge, information and belief.

Dated this 21<sup>st</sup> day of November, 2011.



---

Timothy R. Caister  
Director, Electric Regulatory Policy

## NOTICE OF 30-DAY FILING

On or about November 21, 2011, Northern Indiana Public Service Company (“NIPSCO”) will submit to the Indiana Utility Regulatory Commission for approval under its 30 -Day Filing procedures, 170 IAC 1-6-1, *et seq.* a revised Renewable Feed-In Tariff and associated Renewable Power Purchase Agreement. The referenced filing will consist of NIPSCO’s proposed amendment to slightly modify its Renewable Feed-In Tariff and to revise the standard form of Power Purchase Agreement, both of which were approved in Cause No. 43922. The revisions are expected to impact all Customers that operate a Qualifying Renewable Energy Power Production Facility, such as wind, solar, biomass or new hydro that participate in NIPSCO’s Feed-In Tariff. A decision on the 30-Day Filing is anticipated at least thirty days after the November 21, 2011 filing date. Any objection to the filing should be directed to (a) the Secretary of the Indiana Utility Regulatory Commission, PNC Center, 101 West Washington Street, Suite 1500 East, Indianapolis, IN 46204 or (b) the Indiana Office of Utility Consumer Counselor, PNC Center, 101 West Washington Street, Suite 1500 South, Indianapolis, IN 46204.