

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANAPOLIS)
POWER & LIGHT COMPANY D/B/A/ AES)
INDIANA FOR APPROVALS AND COST)
RECOVERY ASSOCIATED WITH THE)
RETIREMENT OF PETERSBURG UNITS 1 AND)
2, INCLUDING: (1) APPROVAL OF IPL'S)
CREATION OF REGULATORY ASSETS FOR)
THE NET BOOK VALUE OF PETERSBURG)
UNITS 1 AND 2 UPON RETIREMENT; (2))
AMORTIZATION OF THE REGULATORY)
ASSETS BASED UPON THE COMPANY'S)
DEPRECIATION RATES; AND (3) RECOVERY)
OF THE REGULATORY ASSETS THROUGH)
INCLUSION IN AES INDIANA'S RATE BASE)
AND ONGOING AMORTIZATION IN AES)
INDIANA'S FUTURE RATE CASES.)


CAUSE NO. 45502

FILED
July 20, 2021
INDIANA UTILITY
REGULATORY COMMISSION

PETITIONER'S SUBMISSION OF REBUTTAL TESTIMONY OF
ANGELIQUE COLLIER

Indianapolis Power & Light Company d/b/a AES Indiana ("Petitioner"), by counsel,
hereby submits the rebuttal testimony of Angelique Collier.

Respectfully submitted,


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The undersigned certifies that the foregoing was served this 20th day of July, 2021 upon the following via electronic email, or First Class United States Mail, postage prepaid on:

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VERIFIED REBUTTAL TESTIMONY

OF

ANGELIQUE COLLIER

ON BEHALF OF

INDIANAPOLIS POWER & LIGHT COMPANY

D/B/A AES INDIANA

CAUSE NO. 45502

**VERIFIED REBUTTAL TESTIMONY OF ANGELIQUE COLLIER
ON BEHALF OF AES INDIANA**

1 **Q1. Please state your name, employer, and business address.**

2 A1. My name is Angelique Collier. I am employed by AES US Services, LLC (“AES”), One
3 Monument Circle, Indianapolis, Indiana 46204.

4 **Q2. What is your position with AES Indiana?**

5 A2. I am Director of Environmental Affairs.

6 **Q3. Please describe your duties as Director of Environmental Affairs for AES.**

7 A3. As Director of Global Environmental Affairs, I am responsible for ensuring compliance
8 with all environmental regulatory programs at AES’s US generating plants and within
9 AES’s power delivery operations. In this capacity, I monitor and participate in the
10 development of regulations at the federal, state, and local levels. Further, I provide
11 environmental support by applying for and obtaining environmental permits for new and
12 existing operations or overseeing these processes. I also provide support to and promote
13 collaboration on environmental matters among the global businesses. Finally, I participate
14 in and oversee the processes associated with developing written procedures and policies,
15 conducting employee training, and conducting audits to help ensure compliance with
16 permit requirements and environmental regulations.

17 **Q4. Please summarize your previous work experience with AES Indiana and AES.**

18 A4. Prior to accepting my current position in February of 2018, I began employment with
19 Indianapolis Power & Light Company d/b/a AES Indiana (“AES Indiana”, “IPL”, or the
20 “Company”) on May 5, 2008. During my tenure with AES Indiana, I worked as an
21 Environmental Coordinator and as a Senior Environmental Coordinator within AES

1 Indiana's corporate offices, and the Director of Environmental Policy for the US Strategic
2 Business Unit (SBU).

3 **Q5. Please summarize your education, professional qualifications, and prior work**
4 **experience.**

5 A5. I obtained a Bachelor of Science Degree in Physics, with a specialty in Atmospheric
6 Science from Purdue University in West Lafayette, Indiana in 2001. In addition, I obtained
7 a Master of Science Degree in Environmental Pollution Control from the Pennsylvania
8 State University in State College, Pennsylvania in 2002. Prior to joining AES Indiana, I
9 worked for four years with the air permitting agencies in Indiana. I worked for two years
10 at the Indianapolis Office of Environmental Services as an air permit writer, where I
11 drafted, amended, modified, and renewed air permits for industries in Marion County. I
12 then worked for two years at the Indiana Department of Environmental Management
13 ("IDEM") as a Senior Environmental Manager, providing guidance and assistance as a
14 mentor to permit writers, including review of permits for industries in Indiana. Finally, I
15 worked for a local environmental consulting firm, Keramida, where I assisted clients in
16 various industry sectors in obtaining environmental permits and complying with permit
17 requirements and environmental regulations.

18 **Q6. Have you previously testified before this Commission?**

19 A6. Yes, I testified in IURC Cause No. 44242 regarding AES Indiana's Environmental
20 Compliance Project, in Cause IURC No. 44399 regarding AES Indiana's Eagle Valley
21 ("EV") Combined Cycle Gas Turbine and Harding Street Unit 5 & 6 Refueling Project, in
22 IURC Cause No. 44540 regarding AES Indiana's National Pollutant Discharge Elimination
23 System ("NPDES") compliance filing, and in IURC Cause No. 44794 regarding AES

1 Indiana's NAAQS and Coal Combustion Residuals compliance filing. I have also
2 submitted testimony in AES Indiana's semi-annual Environmental Compliance Cost
3 Recovery Adjustment ("ECCRA") proceedings, beginning with IURC Cause No. 42170
4 ECR-20.

5 **Q7. What is the purpose of your rebuttal testimony?**

6 A7. The purpose of my testimony is to address certain statements in OUCC Witness
7 Armstrong's testimony regarding the Consent Decree AES Indiana entered into with the
8 U.S. Department of Justice ("DOJ"), U.S. Environmental Protection Agency ("EPA"), and
9 IDEM to settle alleged New Source Review ("NSR") and alleged emission violations
10 occurring at the Petersburg Generating Station.¹

11 **Q8. Are you sponsoring any attachments?**

12 A8. No.

13 **Q9. Are you sponsoring any workpapers?**

14 A9. No.

15 **Q10. Ms. Armstrong (pp. 6-7) indicates that EPA took action against other electric utilities**
16 **for alleged NSR violations. Can you please clarify the EPA focus on enforcement of**
17 **alleged violations of Clean Air Act ("CAA") NSR requirements at coal-fired power**
18 **plants?**

19 A10. Since 1999, EPA has prioritized enforcement efforts toward coal-fired power plants. In
20 late 1999, the DOJ and EPA filed civil complaints against several electric utility companies

¹ Absence of a response to every issue raised in the OUCC's testimony does not mean I agree with the OUCC on those issues.

1 operating coal-fired power plants in the Midwest and Southeast, alleging violations of the
2 CAA NSR requirements. At the time, EPA issued NOV's to companies including American
3 Electric Power Company, Cinergy, FirstEnergy, Illinois Power, Southern Indiana Gas &
4 Electric Company, Southern Company and Tampa Electric Company in addition to an
5 administrative order against the Tennessee Valley Authority. According to EPA, the
6 initiative is "perhaps the most comprehensive, coordinated enforcement effort under the
7 Clean Air Act to date," and "the complaints, Notices of Violation and administrative order
8 cover 32 plants located in 10 states."²

9 **Q11. Please elaborate on the AES Indiana Petersburg's CAA NOV's and recent Consent**
10 **Decree mentioned in Ms. Armstrong's testimony (pp. 6-8).**

11 A11. In October 2009, AES Indiana received an NOV and Finding of Violation ("FOV") from
12 the EPA pursuant to Section 113(a) of the CAA. The NOV alleged violations of the CAA
13 at AES Indiana's Eagle Valley, Harding Street, and Petersburg electric generating facilities,
14 dating back to 1986. The alleged violations primarily pertained to the Prevention of
15 Significant Deterioration ("PSD") and nonattainment NSR requirements under the CAA.
16 Since receiving the letter, AES Indiana has retired or converted seven of the eleven coal-
17 fired generating units at these generating facilities and installed additional pollution
18 controls on the remaining coal-fired units in response to environmental regulations. In
19 October 2015, AES Indiana received an NOV and FOV from the EPA pursuant to Section
20 113(a) of the CAA alleging violations of opacity limitations on Pete-3. In February 2016,
21 AES Indiana Petersburg received an NOV and FOV from EPA pursuant to Section 113(a)

² <https://www.epa.gov/enforcement/coal-fired-power-plant-enforcement>

1 of the CAA alleging violations of NSR and other CAA regulations, the Indiana SIP, and
2 the Title V Operating Permit.

3 AES Indiana commenced negotiations with EPA, IDEM, and the DOJ following the 2009
4 NOV, which continued until a settlement agreement was reached and resolution achieved
5 through a Consent Decree lodged with the United States District Court for the Southern
6 District of Indiana on August 31, 2020, and entered by the Court on March 23, 2021.

7 **Q12. Witness Armstrong asserts in her testimony (pp. 2, 12-13) that AES Indiana's**
8 **management decisions in operating the Petersburg Generating Station opened it to**
9 **litigation with environmental regulatory bodies. Do you agree with this conclusion?**

10 A12. No, I do not. AES Indiana has and continues to operate its generating stations, including
11 Petersburg in good faith and takes every effort to ensure compliance with environmental
12 regulations.

13 The fact that AES Indiana entered into a Consent Decree with EPA and DOJ is not
14 indicative of wrongdoing or that management decisions prompted litigation. On the
15 contrary, as indicated in the Consent Decree itself, 1) AES Indiana maintains that it has
16 been and remains in compliance with the Clean Air Act and Indiana air regulations; and 2)
17 AES Indiana agreed to the obligations imposed by the Decree solely to avoid the costs and
18 uncertainties of litigation and to improve the environment.

19 **Q13. Witness Armstrong (p. 7) points to certain pre-project notification letters as support**
20 **for the alleged CAA violations and Consent Decree. Please respond.**

21 A13. As stated above, the Consent Decree is not evidence of AES Indiana wrong-doing. AES
22 Indiana voluntarily submitted the pre-notification letters prior to planned maintenance

1 outages for projects that were routine maintenance, repair or replacement, and therefore
2 excluded from the definition of major modification under the NSR rules, irrespective of
3 their impact on emissions.³ AES Indiana has submitted these notifications since 2005 for
4 these types of activities out of an abundance of caution because of the uncertainty around
5 the NSR regulatory program.⁴

6 **Q14. Witness Armstrong indicates (pp. 7-8, 13) that the pre-project notification letters did**
7 **not allow sufficient time for a response from IDEM on the matter. Is IDEM obliged**
8 **to respond to such letters?**

9 A14. No. The intent of the notification is not to obtain a determination from IDEM before
10 beginning actual construction. In fact, the underlying regulation at 326 IAC 2-2-8(b)(2)
11 clearly states: “Nothing in this subdivision shall be construed to require the owner or
12 operator of the unit to obtain any determination from the department before beginning
13 actual construction.” The notion from Witness Armstrong’s testimony that the timing of
14 the notifications caused risk that the project could later be found to be the subject of
15 enforcement actions has no basis in the underlying regulations. AES Indiana submitted the
16 pre-project notification letters as a voluntary measure. Even when there is an obligation to
17 submit such a notification, the deadline for such submittal is “before beginning actual
18 construction.”⁵

³ 326 IAC 2-2-1(dd).

⁴ This uncertainty concerns not only the scope of the routine maintenance, repair and replacement exclusion, but also the applicable emissions test and the meaning of the “no reasonable possibility” standard under the NSR regulations.

⁵ 326 IAC 2-2-8(b)(2)

1 **Q15. Witness Armstrong states (p. 8) that it is doubtful that AES Indiana could have**
2 **successfully defended against claims given the requirements to install and operate**
3 **emissions monitors. Do you agree with this assertion?**

4 A15. No, this is an oversimplification of the allegations identified in the NOV's that related to
5 the applicability of NSR requirements to projects completed by AES Indiana. Applicability
6 of NSR cannot be determined based on monitored emissions data alone. First, projects that
7 are routine maintenance, repair, or replacement are not major modifications subject to
8 NSR⁶ independent of monitored emissions data. The AES Indiana projects identified in
9 the NOV's fell into this category. For projects that do not fall into this category, the
10 applicability of NSR is based on whether the project is predicted to be a "major
11 modification" which, by definition, is a project that "would result in a significant net
12 emissions increase and a significant net emissions increase of a regulated NSR pollutant."⁷
13 The implementing regulations also define "significant," "net emissions increase," and
14 "significant emissions increase,"⁸ along with establishing procedures for performing
15 calculations required to determine whether a significant net emissions increase and a
16 significant net emission increase would occur.⁹ Thus, for projects that could be subject to
17 NSR, monitored emissions data alone cannot be used to determine applicability. Rather,
18 complex calculations are required to make such a determination.

19 As Witness Armstrong concedes (p. 6), compliance with the NSR regulatory program is
20 complex. This is evidenced in the fact that EPA has issued over 600 policy and guidance

⁶ 326 IAC 2-2-1(dd)(2)(A).

⁷ 326 IAC 2-2-1(dd)

⁸ 326 IAC 2-2-1

⁹ 326 IAC 2-2-2(d)

documents on New Source Review,¹⁰ along with many final rule revisions since EPA first implemented the NSR program and numerous proposed revisions that were not finalized. Several of these regulatory actions have had the stated purpose of trying to clarify the NSR program¹¹, which only serves to highlight and confirm the longstanding uncertainty around its implementation.

Q16. Witness Armstrong (pp. 9, 13) contends that AES Indiana failed to inform the Commission, the OUCC, and intervening parties about the NOV's when the Commission was considering the Company's CPCN requests for pollution controls on certain Petersburg units. Do you agree?

A16. I do not. AES Indiana informed the Commission and intervening parties of the NOV's and potential impacts in CPCN requests related to environmental controls.¹²

In Cause No. 44242, the Company's initial economic analysis and the production cost modeling presented on rebuttal included the estimated cost of future non-MATS Other Environmental Requirements, including the installation of a SCR for Pete 4 for NAAQS compliance. See Witness Ayers Petitioner's Ex. JMA-2; Petitioner's Exhibit AO-R2 ("IPL may be required to install an SCR on the largest Unit, which is not currently equipped with one, Petersburg Unit 4.").¹³ The high cost analysis of other environmental costs included \$90M for the SCR, Petitioner's Exhibit AO-R2, p. 4. This was a reasonable assumption for the potential impact of the 2009 NOV (the only NOV that had been issued at the time

¹⁰ <https://www.epa.gov/nsr/new-source-review-policy-and-guidance-document-index>

¹¹ <https://www.epa.gov/nsr/nsr-regulatory-actions>

¹² AES Indiana has also disclosed the NOV's in its public financial filings beginning with the IPALCO 2009 10-K filed with the SEC on February 25, 2010.

¹³ My name at the time of this case was Angelique Oligier.

1 of Cause No. 44242). Discovery from that proceeding shows the parties were aware the
2 Company was engaged in ongoing settlement discussions with the DOJ and EPA.¹⁴

3 In Cause No. 44540, I described the 2009 EPA NOV (the only NOV which had been issued
4 at that time) in detail in QA 29 of my direct testimony. I went on to state the following
5 regarding the NOV:

6 At this time, we cannot predict the ultimate resolution of this matter.
7 Existing controls and those required by proposed rules could satisfy any
8 NSR requirements. It is also possible that IPL would be required to install
9 additional pollution control technology, improve the efficiency of existing
10 pollution control technology, and/or take other compliance actions. For
11 example, it is possible that in addition to potential compliance measures
12 required for NAAQS SIPs, IPL would be required to install Selective Non-
13 Catalytic Reduction ("SNCR") on Pete-4.

14 The high case cost assumptions included in the economic modeling included an SNCR at
15 Petersburg Unit 4 for additional NOx controls (See Attachment AO-6).¹⁵ In addition, the
16 high case assumptions included \$7.63M on Petersburg Unit 1 specific to potential
17 resolution of New Source Review. This was reasonable and reflected our reasonable
18 expectations at the time, gave notice to the Commission and other stakeholders of this
19 potential cost impact and afforded an opportunity for this potential cost expectation to be
20 investigated, even challenged.

21 In my direct testimony in Cause No. 44794 (pp. 16-17), I again described the 2009 NOV,
22 as well as the 2015 NOV, and the 2016 NOV from EPA and stated that AES Indiana may
23 be "required to install additional pollution control technology, improve the efficiency of

¹⁴ CN 44242 AES Indiana response to CAC/SC DR 1-15 (soliciting communications and documents with US EPA, DOJ and IDEM); CAC SC DR 1-16 (providing privilege log for communications with US EPA, DOJ, and IDEM); also CAC/SC DR 1-10, Confidential Attachments 14 and 26 (identifying on-going NSR negotiations with EPA as other potential environmental regulations).

¹⁵ See also AES Witness Ayers Direct Testimony, QA 43 and QA 45.

1 existing pollution control technology, and/or take other compliance actions.” I then
2 proceeded to state, “For example, it is possible that in addition to potential compliance
3 measures required for NAAQS or associated requirements, IPL would be required to install
4 a Selective Non-Catalytic Reduction (“SNCR”) on Pete-1.”

5 AES Indiana Witness Soller also identified possible NSR risk in her direct testimony, (p.
6 9) stating:

7 The future environmental regulations identified by IPL Witness Collier
8 include the Cooling Water Intake Structures Rule (“316(b)”), National
9 Ambient Air Quality Standards for ozone (“NAAQS - Ozone”), Office of
10 Surface Mining (“OSM”) Rules, Effluent Limitations Guidelines (“ELG”),
11 and **possible New Source Review (“NSR”) risks**. IPL Witness Collier
12 discusses these regulations and requirements in detail including potential
13 compliance requirements, costs, and timing.

14 In Cause No. 44794, AES Indiana high case modeling evaluated additional NOx controls
15 in the form of an SCR on Unit 4 and an SNCR on Unit 1. This, again, was a reasonable
16 assumption for the potential impact of the NOV.

17 **Q17. Witness Armstrong (p. 9) indicates that there was a “risk of a sudden shutdown due**
18 **to litigation” resulting from the NOVs. Do you agree with this assertion?**

19 A17. No. In fact, in the dozens of enforcement actions taken by EPA in what EPA has described
20 as “perhaps the most comprehensive, coordinated enforcement effort under the Clean Air
21 Act to date”,¹⁶ AES Indiana is not aware of a single case in which a company owning or
22 operating a coal-fired generating unit subject to litigation was ultimately ordered to shut
23 down an operating unit, except by agreement in a consent decree.¹⁷

¹⁶ <https://www.epa.gov/enforcement/coal-fired-power-plant-enforcement>

¹⁷ As noted by Witness Armstrong, the single court decision referenced by Witness Armstrong (where, after trial, the court ordered three units to be retired sooner than the owner/operator had proposed) was later reversed by an appellate court.

1 **Q18. Witness Armstrong (p. 11) states that it is unclear if the OUCC would have supported**
2 **AES Indiana's Compliance Plans in Cause No. 44540 if it had been aware of the**
3 **NOVs. Was the OUCC aware of the NOVs in Cause No. 44540?**

4 A18. The record in Cause No. 44540 demonstrates the OUCC was aware of the 2009 NOV (the
5 only NOV that had been received at that time). OUCC Witness Susann Brown testified:

6 IPL may be subject to additional environmental regulations such as the
7 Cross State Air Pollution Rule ("CSAPR") and National Ambient Air
8 Quality Standards ("NAAQS"). There could also be additional
9 requirements from the Notice of Violation ("NOV") and requirements as a
10 result of the alleged violations of the New Source Review ("NSR").

11 Cause No. 44540, Pub. Ex. 2, p. 19 (footnotes omitted).

12 Ms. Brown referenced p. 13 of my direct testimony in that Cause, wherein I stated:

13 Additional requirements could also result from the Notice of Violation
14 ("NOV") and Finding of Violation from EPA received in October 2009
15 related to alleged violations of the New Source Review ("NSR"). These
16 regulations and requirements could potentially require IPL to incur
17 additional expenses for compliance in the future.

18 Cause No. 44540, Pet. Ex. 2, p.13.

19 The 2015 and 2016 NOVs had not yet been issued at the time of Cause No. 44540.

20 **Q19. Witness Armstrong (p. 11) also states that it is unclear if the OUCC would have**
21 **supported AES Indiana's Compliance Plans in Cause No. 44540 if it had been aware**
22 **that the NOVs could result in the earlier retirement of Petersburg Units 1 or 2. Does**
23 **the Consent Decree require retirement of Petersburg Units 1 or 2?**

24 A19. No, the Consent Decree does not require AES Indiana to retire Petersburg Units 1 and 2.
25 Rather, it provides the alternative option for AES Indiana to retire Units 1 and 2 in lieu of
26 the requirement to install additional NOx controls (SNCR) on Petersburg Unit 4.

1 **Q20. Witness Armstrong (p. 11) states that in Cause No. 44794, AES Indiana assured the**
2 **Commission and the OUCC it did not anticipate being required to install additional**
3 **controls for NAAQS or NSR beyond those already included in its economic analysis.**
4 **Is AES Indiana now required to install additional controls for NAAQS or NSR**
5 **beyond those included in its analysis in Cause No. 44794?**

6 A20. No, the Consent Decree requires installation of an SNCR on Petersburg Unit 4, an outcome
7 which is within in the range of the outcomes evaluated not only in Cause No. 44794, but
8 in each of Cause Nos. 44242, 44540, and 44794. The estimated cost of an SNCR on
9 Petersburg Unit 4 is \$18M. The range of costs evaluated for NOx controls in Cause No.
10 44242 was \$0 - \$90M (Oliger Rebuttal, Petitioner's Exhibit AO-R2). The range of costs
11 for NOx controls evaluated in Cause Nos. 44540 and 44794 was \$0-\$154M (Oliger Direct
12 Testimony 44540, Attachment AO-6 and Collier Direct Testimony 44794 Attachment AC-
13 2). The actual cost of the NOx control required in the Consent Decree is within the lower
14 end of the range of the NOx control costs evaluated in Cause Nos. 44242, 44540, and
15 44794.

16 AES Indiana reasonably represented potential impacts of resolution to the CAA NOV(s)
17 in its CPCNs. The fact that the eventual final Consent Decree allows an alternative to the
18 installation of additional NOx controls (retirement of Units 1 and 2), which may be a more
19 favorable alternate option, only confirms that Company conservatively evaluated potential
20 outcomes amidst the uncertainty of the NOV(s). This is demonstrated by the fact that the
21 resulting Consent Decree provided more flexibility than assumed in the scenarios that were
22 evaluated.


23 **Q21. Does this conclude your pre-filed rebuttal testimony?**

1 A21. Yes.

VERIFICATION

I, Angelique Collier, Director of Environmental Policy, AES US Services, LLC, affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information and belief.

Dated: July 20, 2021



Angelique Collier