

OFFICIAL
EXHIBITS

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANAPOLIS)
POWER & LIGHT COMPANY D/B/A AES)
INDIANA ("AES INDIANA") FOR (1) ISSUANCE)
TO AES INDIANA OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY FOR)
THE ACQUISITION AND DEVELOPMENT BY A)
WHOLLY OWNED AES INDIANA SUBSIDIARY)
OF A SOLAR POWER GENERATING FACILITY)
AND BATTERY ENERGY STORAGE SYSTEM)
PROJECT TO BE KNOWN AS THE PETERSBURG)
ENERGY CENTER ("THE PETERSBURG)
PROJECT"); (2) APPROVAL OF THE)
PETERSBURG PROJECT, INCLUDING A JOINT)
VENTURE STRUCTURE BETWEEN AN AES)
INDIANA SUBSIDIARY AND ONE OR MORE TAX)
EQUITY PARTNERS AND A CAPACITY)
AGREEMENT AND CONTRACT FOR)
DIFFERENCES BETWEEN AES INDIANA AND)
THE PROJECT COMPANY THAT HOLDS AND)
OPERATES THE SOLAR GENERATION AND)
STORAGE ASSETS, AS A CLEAN ENERGY)
PROJECT AND ASSOCIATED TIMELY COST)
RECOVERY UNDER IND. CODE § 8-1-8.8-11; (3))
APPROVAL OF ACCOUNTING AND)
RATEMAKING FOR THE PETERSBURG)
PROJECT, INCLUDING AN ALTERNATIVE)
REGULATORY PLAN UNDER IND. CODE § 8-1-)
2.5-6 TO FACILITATE AES INDIANA'S)
INVESTMENT IN THE PETERSBURG PROJECT)
THROUGH A JOINT VENTURE; AND (4) TO THE)
EXTENT NECESSARY, ISSUANCE OF AN)
ORDER PURSUANT TO IND. CODE § 8-1-2.5-5)
DECLINING TO EXERCISE JURISDICTION)
OVER THE JOINT VENTURE, INCLUDING THE)
PROJECT COMPANY, AS A PUBLIC UTILITY.)

FILED
October 8, 2021
INDIANA UTILITY
REGULATORY COMMISSION

IURC
PETITIONER'S
EXHIBIT NO. 3
10-25-21 DATE REPORTER

CAUSE NO. 45591

PETITIONER'S SUBMISSION OF REBUTTAL TESTIMONY OF
G. AARON COOPER

Indianapolis Power & Light Company d/b/a AES Indiana ("AES Indiana" or "Petitioner"),

by counsel, hereby submits the rebuttal testimony of G. Aaron Cooper.

Respectfully submitted,



Teresa Morton Nyhart (No. 14044-49)
Jeffrey M. Peabody (No. 28000-53)
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Nyhart Phone: (317) 231-7716
Peabody Phone: (317) 231-6465
Nyhart Email: tnyhart@btlaw.com
Peabody Email: jpeabody@btlaw.com

ATTORNEYS FOR PETITIONER
INDIANAPOLIS POWER & LIGHT COMPANY
D/B/A AES INDIANA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 8th day of October, 2021, by email transmission, or United States Mail, first class, postage prepaid to:

Lorraine Hitz
Office of Utility Consumer Counselor
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
LHitz@oucc.IN.gov
infomgt@oucc.in.gov

Jennifer A. Washburn
Citizens Action Coalition
1915 West 18th Street, Suite C
Indianapolis, Indiana 46202
jwashburn@citact.org

Courtesy Copy to:

Reagan Kurtz
rkurtz@citact.org



Jeffrey M. Peabody

Teresa Morton Nyhart (No. 14044-49)
Jeffrey M. Peabody (No. 28000-53)
Barnes & Thornburg LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Nyhart Phone: (317) 231-7716
Peabody Phone: (317) 231-6465
Nyhart Email: tnyhart@btlaw.com
Peabody Email: jpeabody@btlaw.com

ATTORNEYS FOR PETITIONER
INDIANAPOLIS POWER & LIGHT COMPANY
D/B/A AES INDIANA
DMS 21109150v1

VERIFIED REBUTTAL TESTIMONY

OF

G. AARON COOPER

ON BEHALF OF

INDIANAPOLIS POWER & LIGHT COMPANY

D/B/A AES INDIANA

CAUSE NO. 45591

**VERIFIED REBUTTAL TESTIMONY OF G. AARON COOPER
ON BEHALF OF AES INDIANA**

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

2 A1. My name is G. Aaron Cooper. I am employed by AES U.S. Services, LLC, the service
3 company of Indianapolis Power & Light Company d/b/a AES Indiana (“IPL,” “AES
4 Indiana,” or “Company”). My business address is One Monument Circle, Indianapolis,
5 Indiana 46204.

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

7 A2. I am Chief Commercial Officer, US Utilities.

8 **Q3. Are you the same Aaron Cooper that filed direct testimony on behalf of AES Indiana
9 in this Cause?**

10 A3. Yes.

11 **Q4. Are you sponsoring any attachments?**

12 A4. No.

13 **Q5. What is the purpose of your rebuttal testimony?**

14 A5. My testimony focuses on certain matters raised in the testimony of Cynthia Armstrong
15 filed on behalf of the OUCC.¹

16 **Q6. Please summarize the OUCC positions you respond to in your testimony.**

17 A6. I respond to OUCC Witness Armstrong’s testimony that the OUCC is willing to support
18 AES Indiana’s requested relief if the Commission imposes a cost sharing risk management
19 strategy and disallows any collection from ratepayers beyond the OUCC’s proposed cap.

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 **Q7. Before addressing OUCC Witness Armstrong's recommendation, do you have any**
2 **general response to the OUCC's position?**

3 A7. Yes. The OUCC has not challenged the need for the Petersburg Energy Center, the best
4 estimate of the cost of this Project, the associated agreements, or the proposed joint venture
5 structure and associated accounting and ratemaking relief, including the proposed reporting
6 and associated meeting commitments included in the Company's case-in-chief. AES
7 Indiana appreciates the work undertaken by the OUCC to reach this position. As discussed
8 below, the OUCC's recommendation rests on general assertions that unknown and
9 unaddressed cost risks associated with the proposed Projects warrant the adoption of the
10 OUCC's proposed cap and cost sharing. I disagree with the premise underlying the
11 OUCC's recommendation that the Indiana regulatory framework does not already
12 safeguard the interests of customers with respect to potential project cost increases and
13 their associated impact on rates. As discussed below, my understanding is that issuance of
14 a CPCN provides assurance of cost recovery up to the approved best estimate; any costs
15 above this amount must be reviewed and approved by the Commission before they can be
16 recovered through rates. A "hard cap" on an approved best estimate disallows potential
17 costs before the Commission even knows what they are.

18 **Q8. OUCC Witness Armstrong (p. 4) states that there are three unexecuted agreements –**
19 **the Joint Venture LLC Agreement, the TEP MIPA, and the CfD – and this raises a**
20 **concern about ratepayer risk.² Are these the agreements that provide for the**
21 **acquisition and development of the Petersburg Energy Center?**

² OUCC Witness Armstrong's reference to unexecuted agreements are, for reference and in corresponding order, to the Limited Liability Company Operating Agreement ("Joint Venture LLCA") between TEP and AES Indiana Sponsor, the Equity Capital Contribution Agreement and Membership Interest Purchase Agreement ("TEP MIPA")

1 A8. No. The contracts for the acquisition and development of Petersburg Energy Center are
2 the Membership Interest Purchase and Project Development Agreement (“MIPA”),
3 included with my direct testimony as AES Indiana Confidential Attachment GAC-1, and
4 the Engineering, Procurement and Construction Agreement (“EPC”), included with my
5 direct testimony as AES Indiana Confidential Attachment GAC 2. Both of these
6 agreements are executed and have been approved through NextEra’s formal final
7 management approval process. As discussed in my direct testimony (Q/As 38, 40, and 62)
8 the Project is at a relatively advanced stage of development and permitting and both
9 agreements include negotiated provisions to safeguard against the impact of potential
10 project cost increases. We also expect NextEra’s experience in constructing utility-scale
11 solar facilities, the Independent Engineer, and AES Indiana’s oversight of the project
12 construction will help minimize cost overruns.

13 **Q9. OUCC Witness Armstrong (p. 5) contends the OUCC and the Commission will lose**
14 **the opportunity to evaluate the final terms of the three agreements she identified and**
15 **the effects on ratepayers. Please respond.**

16 A9. The regulatory process has not previously required all contracts to be executed before the
17 CPCN is issued. The pre-approval process necessarily requires a balancing of the need for
18 a proposed project to be developed to a point that will allow it to be assessed with the risk
19 that the cost incurred to do so may not be recoverable if the project is not approved. Project
20 costs are assessed based on a best estimate and the other criteria set forth in the CPCN
21 statute and the Clean Energy Project statute. AES Indiana has endeavored to solidify

between AESI DevCo and Joint Venture, LLC transferring the ProjectCo, and Capacity Agreement and Contract for Differences (“CfD”).

1 details and move the Project forward in a reasonable manner so as to allow for Commission
2 review consistent with the statutory framework.^{3,4} Furthermore, as discussed in my direct
3 testimony (Q/As 62 and 64) the best estimate is the result of a competitive solicitation and
4 negotiation process and the Company has taken reasonable steps to limit risk and the
5 potential for cost increases.

6 **Q10. Do you agree with OUCC Witness Armstrong that the Joint Venture LLC**
7 **Agreement, the TEP MIPA, and the CfD are cause for concern because they are not**
8 **executed?**

9 A10. No. The Company has presented the proposed CfD and terms for the Joint Venture LLCA
10 and TEP MIPA. AES Indiana Confidential Attachment GAC-3 provides a copy of the
11 proposed CfD agreement. AES Indiana Confidential Attachment FJS-2 is a detailed term
12 sheet that describes the terms expected to be contained in the Joint Venture LLCA and TEP
13 MIPA.

14 As stated in my direct testimony (Q/A 65), AES Indiana's proposed ongoing review
15 process includes confidential briefings to update the OUCC as these agreements progress
16 towards execution. The Commission may also participate in this briefing process or
17 otherwise receive updates via the ongoing review reporting process. As also stated in my

³ See the direct testimony of AES Indiana Witness Cooper Q/As 20, 23, and 59 (explaining the Company has firmed up the project cost estimate by negotiating the MIPA based on a competitive solicitation and by having 1898 & Co. analyze the interconnection and network upgrade cost).

⁴ The Commission's CPCN Order for the Company's Eagle Valley CCGT recognized that that the EPC solicitation and contract award would follow the order. *Indianapolis Power & Light Company*, Cause No. 44339 (IURC 514/2014), pp. 6-7 (this decision also approved the Harding Street Refueling with procurement of major contracts through a competitive bidding process to follow); see also *Duke Energy Indiana*, Cause No. 45002 (IURC 5/30/2018), p. 5 (following a competitive procurement process, Duke Energy Indiana intends to contract with EPC firm and procure the major solar and battery equipment directly from suppliers.), p. 10 (noting petitioner's intent to contract with an EPC firm). In Cause No. 44242, where circumstances were such that the Company was able to execute a firm price EPC contract prior to project approval, the Company was accused by an intervenor of treating the Commission as a mere "rubber stamp." See *Indianapolis Power & Light Company*, Cause No. 44242 Post-Hearing Brief of Joint Intervenors, p. 2.

1 direct testimony (Q/A 65), AES Indiana will file the executed CfD and the Joint Venture
2 LLCA and TEP MIPA in the ongoing review process (subject to protection of confidential
3 information). This will allow the Commission and the OUCC to be informed of the final
4 agreements and to understand the extent to which, if any, the agreements change the Project
5 cost.

6 **Q11. Please explain why the Joint Venture documents cannot be executed now.**

7 A11. Until it is clear the Project will be built and proceed, Tax Equity Partnership (“TEP”)
8 investors will not engage in detailed diligence/negotiations as they have finite
9 resources. This will not occur until the final regulatory approval is secured, which is the
10 initial major milestone for the Project to move forward.

11 Prior to the Joint Venture LLCA and TEP MIPA being negotiated and executed, the parties
12 will agree on major items through term sheet negotiations. The term sheet that AES
13 Indiana is proposing to use, is attached to AES Indiana Witness Salatto’s testimony as AES
14 Indiana Confidential Attachment FJS-2. Once the term sheet is agreed, documentation of
15 Joint Venture LLCA will proceed.

16 The Investment Tax Credit (“ITC”) tax benefits flow to the TEP in the year the project
17 comes on-line. For the Petersburg Energy Center this is 2024. TEP’s are unable to provide
18 commitments this far in advance for a 2024 project such as Petersburg Energy Center as
19 they do not yet know what their respective tax positions will be for 2024 and how much
20 tax-equity appetite they will have.

21 **Q12. OUCC Witness Armstrong (p. 5) contends that it is important to know the TEP's**
22 **standing within the Joint Venture LLC to understand what controlling authority, or**
23 **lack thereof, the TEP has over the Petersburg Project operations. She adds that AES**

1 **Indiana states in testimony it will be the controlling member, but asserts that without**
2 **a fully executed agreement, neither the OUCC nor the Commission can be certain.**
3 **Please respond.**

4 A12. As Ms. Armstrong acknowledges (p. 5), the Company has already committed that AES
5 Indiana Sponsor will be the managing member of the Joint Venture, LLC and AES Indiana
6 will control AES Indiana Sponsor with respect to this role. AES Indiana Witness Salatto
7 Direct, pp. 8-9. Put another way, this structure is part of the Company's proposed Joint
8 Venture LLC and not something that is subject to negotiation with the TEP. While the
9 suggestion that the Company should not be trusted to adhere to this commitment is
10 erroneous, it is also beside the point, as this is part of the terms of the order the Company
11 has requested.

12 **Q13. Why did AES Indiana choose not to execute the CfD at this point?**

13 A13. While we have a CfD that is ready to be executed including pricing, we view it as too early
14 to execute it. Waiting to execute this agreement provides flexibility should facts or
15 circumstances arise that could enable us to better optimize the CfD for our
16 customers. While none are anticipated at this time, we are primarily thinking of changes
17 in tax laws that could occur between now and when the project comes on-line.

18 **Q14. What steps did AES Indiana take to reduce the probability that there will be material**
19 **changes to the CfD?**

20 A14. The proposed contract is based on industry standard terms that was prepared by an
21 experienced, nationally recognized law firm, with review and input by AES Indiana and
22 AES and other industry subject matter experts. The major TEP financial assumptions –
23 TEP return percentage, cash and tax splits, depreciation – used in our modeling were based

1 on what is currently being transacted upon in the market. These actions provide an
2 increased level of confidence that the terms of the proposed contract reasonably reflect the
3 market.

4 **Q15. Please respond to the OUCC's proposed cost cap and 50/50 cost increase sharing.**

5 A15. This proposal raises some concerns from my perspective. Not all project cost increases
6 may impact rates. For example, if there were a capital cost increase under the MIPA
7 included with my direct testimony (AES Indiana Confidential Attachment GAC-1) and that
8 cost increase related to ITC eligible investment, that circumstance could result in an
9 increase in the TEP contribution (beyond that reflected in this case) and no increase in AES
10 Indiana's investment (which is net of the TEP contribution). If there were no increase in
11 AES Indiana's investment, then the AES Indiana capital investment that would be reflected
12 in rates would not increase.

13 The Company's analysis shows the Petersburg Energy Center has a favorable PVRR.⁵ As
14 discussed below, from a revenue requirements perspective, even if project cost changes
15 would cause this benefit to decrease, customers are not adversely affected until this benefit
16 becomes a cost to the consumer.

17 The Company has taken reasonable steps to limit risk and the potential for cost increases.
18 Capping the recovery of project costs improperly presumes the imprudence of utility
19 expenditures that have yet to even occur. It can also chill consideration of project scope
20 changes that increase cost but are a good idea, creating value for customers.

⁵ See AES Indiana Witness Powers Direct, Q/A 63, Figure 3.

1 For example, the COVID-19 pandemic and associated economic recession have caused
2 delays in the procurement of materials and equipment. Should these conditions continue,
3 they might warrant the purchase of additional spare parts to safeguard against the risk that
4 parts would not be available when needed. While global supply chain issues can impact
5 the cost of project materials, they also have the potential to delay the project schedule.
6 There may be circumstances where it may be reasonable to pay an additional cost to keep
7 the project on schedule. While such actions would change the scope of the original project,
8 a cap on costs would serve as a disincentive to prudent decision-making as circumstances
9 evolve during the project development.

10 Additionally, AES Indiana is not in control of all circumstances that might cause a cost
11 increase, such as a force majeure event, unforeseeable conditions at the site, supply chain
12 issues, and change in law or regulation, including potential changes in tax law.

13 Should such events occur, it is reasonable to present any resulting cost impact to the
14 Commission for a decision regarding cost recovery. This approach preserves optionality
15 and better positions the Company to address circumstances as they develop, and it allows
16 the Commission to assess the prudence of such decisions before any associated cost
17 increases are recovered through the ratemaking process. It preserves the opportunity for
18 the OUCC to make arguments regarding a cost disallowance it believes is appropriate at
19 the time.

20 **Q16. Ms. Armstrong (p. 7) states that cost deviations from the final Project amount could**
21 **change the reasonableness of selecting that resource option to meet customers' needs.**
22 **She explains that if the true project costs are not known upfront, AES Indiana may**

1 **have foregone another resource option or project that would have provided greater**
2 **customer benefits. Please respond.**

3 A16. As stated above, the Company's analysis shows the Petersburg Energy Center has a
4 favorable PVRR. The Ranking Analysis, presented by AES Indiana Witness Powers,
5 shows the extent of this PVRR favorability. Based on the Phase 3 Ranking Analysis shown
6 in AES Indiana Witness Powers' testimony, Figure 3, from a PVRR perspective, there is a
7 range of acceptability with respect to the potential for cost increases as compared to
8 alternatives. Even then, qualitative factors could support the conclusion that the project
9 remains beneficial to customers. Finally, many factors that cause one project's cost to
10 increase may also affect the cost of alternatives.

11 **Q17. Please respond to Ms. Armstrong's (p. 6) assessment of the risk of the proposed**
12 **Project as compared to a traditional purchase power agreement?**

13 A17. While the two structures are different, a PPA is not risk-free. As discussed in the direct
14 testimony of AES Indiana Witness Reed (p. 6), when entering into a PPA, the utility is
15 relying on a counterparty for specified amounts of power at pre-determined prices. If the
16 entity does not fulfill its obligations to the utility, the result can be very costly to both the
17 utility and to customers, especially if this failure occurs during a period of system stress
18 when prices would be expected to be significantly higher than those specified in the
19 contract.

20 As I discussed in my direct testimony (Q/A 18), the expected useful lives for the solar
21 assets evaluated is 30 years. Proposals for build transfer provide predictable rates for
22 customers over that same 30-year period. However, the PPA proposals received in

1 response to the RFP had terms of 20 years or less, leaving the customer energy price
2 unhedged for one-third of that 30-year period.

3 The operational control that comes with ownership allows the utility to protect the interests of
4 its customers through accountability for, and direct control over, the performance of the asset.
5 Thus, a build transfer project better positions AES Indiana to manage and control the
6 operation of the facility, which also ensures that future cost savings resulting from lower
7 operation and maintenance expenses can be reflected in rates for retail electric service.

8 **Q18. Ms. Armstrong states (p. 6) that with the proposed Project there is a risk posed to**
9 **customers for loss of optionality versus a traditional PPA. She explains (p. 6) that**
10 **“[u]nder a traditional PPA, at the end of the agreement’s term the energy buyer has**
11 **the option to pursue a variety of replacement options or to do nothing.” Please**
12 **respond.**

13 **A18.** OUCC Witness Armstrong suggests that a PPA will better position the Company to reduce
14 costs in the future. Yet, it could also turn out entering into a PPA leaves Company open to
15 higher costs in the future when the PPA expires. The suggestion that a PPA would better
16 position the Company to take advantage of a variety of replacement options is
17 speculation. It is also the case that facility ownership may facilitate the Company’s ability
18 to take advantage of new or existing generation technologies when economically
19 beneficial. Facility ownership will give the Company control over operations over the life
20 of the facility and position the Company to be able to respond to market changes, which
21 may not be possible under a PPA. Facility ownership will give the Company control over
22 determining whether the facility’s expected useful life could be extended or the site
23 repowered.

1 As discussed in the direct testimony of AES Indiana Witness Reed (p. 5), the proposed
2 Petersburg Energy Center allows for a cost-effective and environmentally responsible
3 fulfillment of the identified capacity need. It will utilize modern technology to provide an
4 efficient, reliable generating facility at reasonable cost. The overall transaction structure
5 minimizes risk by allocating development, ownership, and operational responsibilities to
6 parties that are best suited to these roles and produces projected long-term customer savings
7 relative to alternative generation expansion options, including PPA options, and substantial
8 anticipated economic benefits to Indiana.

9 **Q19. What is AES Indiana's recommendation on the OUCC's recommended cost cap and**
10 **50/50 sharing?**

11 A19. While the Company's rebuttal testimony explains why it disagrees with the position of the
12 OUCC, the Company also recognizes that compromise is a reasonable means of resolving
13 controversy. To reduce controversy, AES Indiana recommends this issue be resolved by
14 the modification presented in the rebuttal testimony of AES Indiana Witness Rogers.

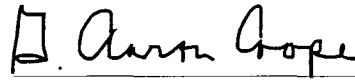
15 **Q20. Does this conclude your pre-filed rebuttal testimony?**

16 A20. Yes.

VERIFICATION

I, G. Aaron Cooper, AES US Services, LLC, Chief Commercial Officer, US Utilities, affirm under penalties of perjury that the foregoing representations are true and correct to the best of my knowledge, information, and belief.

Dated October 8, 2021.

A handwritten signature in black ink, appearing to read "G. Aaron Cooper", written over a horizontal line.

G. Aaron Cooper