

ORIGINAL

Commissioner	Yes	No	Not Participating
Huston	√		
Freeman	√		
Krevda	√		
Ober	√		
Ziegner	√		

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

APPROVED: NOV 17 2021

ORDER OF THE COMMISSION

Presiding Officers:

David Ober, Commissioner

David E. Veleta, Senior Administrative Law Judge

On February 26, 2021, Indianapolis Power & Light Company d/b/a AES Indiana (“AES Indiana”, “IPL”, “Company” or “Petitioner”) filed its Verified Petition with the Indiana Utility Regulatory Commission (“Commission”) for approvals and cost recovery associated with the retirement of Petersburg Units 1 and 2. On February 26, 2021, AES Indiana also filed its case-in-chief.

A Stipulation and Agreement as to the Procedural Schedule was filed on March 9, 2021, and a docket entry establishing the procedural schedule was issued on March 11, 2021.

Petitions to Intervene were filed by Citizens Action Coalition of Indiana, Inc. (“CAC”) on March 16, 2021, and by the AESI Industrial Group (“Industrial Group”) on March 23, 2021, which petitions were granted by docket entries dated March 30 and 31, 2021, respectively.

On June 28, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) and the Industrial Group filed their respective cases-in-chief. On June 30, 2021, the Industrial Group filed its workpapers. On July 20, 2021, Petitioner filed its rebuttal testimony.

On August 6, 2021, AES Indiana, the OUCC, and the Industrial Group filed an Unopposed Joint Motion for Leave to File Settlement Agreement and Request for Settlement Hearing (“August

6 Joint Motion”). The August 6 Joint Motion informed the Commission the above parties had reached settlement. The August 6 Joint Motion also advised that CAC did not oppose the Settlement Agreement and did not request an opportunity to file testimony regarding the Settlement Agreement. The formal written Stipulation and Settlement Agreement (“Settlement Agreement”), was filed on August 6, 2021.

By docket entry dated August 9, 2021, the Presiding Officers granted the August 6 Joint Motion and revised the procedural schedule.

On August 12, 2021, AES Indiana and the OUCC filed settlement testimony supporting the Settlement Agreement.

An evidentiary hearing was held on August 31, 2021, at 11:00 a.m. in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. At the hearing, Petitioner, OUCC, Industrial Group, and CAC participated by counsel and all the parties’ evidence was admitted into the record without objection.

Based upon applicable law and the evidence of record, the Commission now finds as follows:

1. Notice and Jurisdiction. Notice of the hearing was given and published by the Commission as required by law. Petitioner is a public utility as that term is defined by Ind. Code § 8-1-2-1(a). Pursuant to Ind. Code §§ 8-1-2-10 and -14, the Commission has jurisdiction over the manner and form of a public utility’s accounts of business transacted. Therefore, the Commission has jurisdiction over AES Indiana and the subject matter of this proceeding.

2. Petitioner’s Characteristics. AES Indiana is a corporation organized and existing under the laws of the state of Indiana, with its principal offices at One Monument Circle, Indianapolis Indiana. AES Indiana is engaged in rendering electric service in the state of Indiana.

3. Relief Requested. Petitioner seeks authorization to create two regulatory assets, one for the net book value at retirement of Petersburg Unit 1 (recorded as of December 31, 2020), and the second for Petersburg Unit 2 at such time as the retirement becomes probable. Petition, p. 6. Petitioner also seeks approval of the amortization of each regulatory asset beginning at each unit’s retirement based upon the depreciation rates approved in AES Indiana’s most recent rate case, Cause No. 45029 (Order 10/31/2018). *Id.* at 6-7. Petitioner seeks authorization of an ongoing annual amortization expense to be recovered through rates in AES Indiana’s future base rate cases. *Id.* at 7. Petitioner seeks approval of the inclusion of the regulatory assets in AES Indiana’s net original cost rate base upon which a full return should be authorized for ratemaking purposes. *Id.*

4. Evidence Presented.

A. Petitioner’s Case-in-Chief. Ms. Karin M. Nyhuis, AES US Services Controller, presented Petitioner’s request to create regulatory assets for Petersburg Units 1 and 2, along with associated ratemaking treatment to ensure the remaining book value at the time of retirement for each unit is a recoverable cost for ratemaking purposes.

Ms. Nyhuis described Petitioner's Petersburg Units 1 and 2 as two of four coal-fired generating units at Petitioner's Petersburg Station located in Petersburg, Indiana. She stated the 220 MW Petersburg Unit 1 was placed in service in 1967 and the 410 MW Petersburg Unit 2 was placed in service in 1969. Pet. Ex. 1 (Nyhuis Direct) at 3.

Ms. Nyhuis testified to the normal accounting treatment for a retirement under the composite depreciation method when the asset has reached the end of its useful life. *Id.* at 5. She said the depreciation study performed in Petitioner's last rate case, Cause No. 45029 (Final Order issued October 21, 2018), listed the estimated end of useful life for the Petersburg station as June 2042. *Id.* at 6.

Ms. Nyhuis summarized the results of Petitioner's 2019 Integrated Resource Plan ("IRP"). She said the 2019 IRP identified Petersburg Unit 1 for retirement in 2021 and Petersburg Unit 2 for retirement in 2023. *Id.* at 6. Ms. Nyhuis testified that from an accounting perspective, these retirements are subject to abandonment accounting because they are retired significantly sooner than the end of useful life incorporated in the depreciation study performed as part of Petitioner's last rate case. *Id.* at 4. She stated upon retirement the remaining net book value would be charged to earnings unless regulatory assets for the remaining net book values are established. *Id.* at 5-6.

Ms. Nyhuis explained under the applicable U.S. Generally Accepted Accounting Principles ("GAAP"), ASC 980-360, it is appropriate to transfer the estimated remaining net book value of Petersburg Units 1 and 2, as of the date of retirement, from the property accounts to a regulatory asset account at the time the abandonment or abnormal retirement becomes probable. *Id.* at 4-5. She explained Petersburg Unit 1 has reached the threshold of probable as it has reached the year of retirement identified in the 2019 IRP and will not create a capacity shortfall upon retirement requiring replacement capacity. She stated in accordance with GAAP, Petitioner applied a credit to Accumulated Depreciation equal to the expected net book value of Petersburg Unit 1 upon retirement and moved the value to a regulatory asset. She said the original cost remains in Utility Plant in Service and depreciation expense will continue to be recorded until it is removed from service upon retirement. *Id.* at 7. Ms. Nyhuis testified Petersburg Unit 2's retirement was not yet probable for accounting purposes but would reach the probable threshold when the expected retirement date of June 1, 2023, was closer and Petitioner received regulatory approval for replacement capacity. *Id.* at 7-8. She stated Petitioner's commitment to timely notify the Commission through a compliance notice filed in this docket of the application of the approved accounting and ratemaking treatment to Petersburg Unit 2 once the retirement is determined to be "probable." *Id.* at 13.

Ms. Nyhuis testified it is appropriate to amortize the regulatory assets at the same depreciation rates approved in Petitioner's last rate case. The annualized depreciation expense forecasted upon retirement for Petersburg Unit 1 is \$5.2 million for 2021. The forecasted annualized amount for Petersburg Unit 2 is \$20.7 million for 2023. *Id.* at 11.

She explained that Commission approval of the creation of the regulatory assets and authorization to amortize at the current depreciation rates will have no effect on existing retail

rates. Amortizing the regulatory assets will reduce the remaining balances of the regulatory assets reflected in rate base in Petitioner's next rate case. *Id.* at 13.

B. OUCC's Case-in-Chief. Mr. Wes. R. Blakley, Senior Utility Analyst in the OUCC's Electric Division, recommended the Commission approve Petitioner's request to create regulatory assets for Petersburg Units 1 and 2 and to approve Petitioner's request for a return "of" the remaining net book value upon the abnormal retirement of each unit through amortization of the regulatory assets. He recommended the Commission deny Petitioner's request for a return "on" the regulatory assets. Pub. Ex. 1, (Blakley Direct) at 1-2; 7. In addition, he recommended the Commission require operation and maintenance ("O&M") costs included in Petitioner's current base rates be applied as a reduction to rates through the ECR tracker proceedings upon retirement of Petersburg Units 1 and 2 since, in his opinion, those amounts no longer need to be included in base rates. *Id.* at 6.

Ms. Cynthia M. Armstrong, Senior Utility Analyst in OUCC Electric Division, testified in support of Mr. Blakely's recommended accounting treatment for the early retirement of Petersburg Units 1 and 2 and believes Petitioner should not be entitled to its full requested recovery. Ms. Armstrong testified the past operation of the Petersburg generating station caused environmental compliance issues and supports limiting recovery. Pub. Ex. 2, (Armstrong Direct) at 12-13.

C. Industrial Group's Case-in-Chief. Michael P. Gorman, Managing Principal, Brubaker & Associates Inc., took issue with Petitioner's proposal to record a regulatory asset for the abandoned plant costs of Petersburg Units 1 and 2 upon retirement. He testified that upon retirement the units are no longer used and useful, and the Company should have no expectation to earn a return of or on plant that is not used for service. Industrial Group's Ex. 1, (Gorman Direct) at 4-5. To the extent the Commission decided to approve the creation of a regulatory asset, Mr. Gorman also took issue with Petitioner's request to amortize the regulatory asset from its retirement date to Petitioner's next base rate case using only depreciation expense embedded in base rates for the amortization. Mr. Gorman testified that the Company should increase the amount of amortization expense to reflect the amount of fixed costs and expenses included in current base rates as well as the difference between the return on the units embedded in base rates and the amount associated with carrying charges on any approved regulatory asset. Mr. Gorman presented his calculation for amortization in Industrial Group Attachment MPG-1. Mr. Gorman stated that the ratemaking treatment of any approved regulatory asset should be decided in Petitioner's next base rate case. *Id.* at 12-14.

D. Petitioner's Rebuttal. Mr. Chad A. Rogers, Senior Manager, Regulatory and RTO Policy, testified in response to the ratemaking topics raised by Mr. Blakley and Mr. Gorman. Mr. Rogers testified that denying Petitioner's request to earn a return "on" the Petersburg Units 1 and 2's remaining investment is a penalty to Petitioner. Mr. Rogers stated generally, when a public utility incurs a cost to produce a cost reduction or other benefit for customers, it is reasonable for the public utility to recover this cost in the ratemaking process. Mr. Rogers explained rather than continue to run Petersburg Units 1 and 2 where Petitioner could continue depreciating the asset, Petitioner chose to follow the IRP analysis that shows retiring the units early lowers long run revenue requirements and provides benefits for customers. Pet. Ex. 4 (Rogers Rebuttal) at 5. He explained that denying Petitioner's request might incentivize utilities to avoid

retiring uneconomic generating units to continue to recover and earn a return “on” the undepreciated plant balances. *Id.* at 14. In response to the isolated adjustments proposed by Mr. Blakley and Mr. Gorman, Mr. Rogers emphasized that this accounting filing is to request a regulatory asset and continue amortization of the net book value; it is not a comprehensive rate case and should not be an attempt to revisit the Company’s current rate base amount. *Id.* at 23.

Mr. Rogers testified Petitioner’s proposal is designed to prevent an earnings increase. He said under normal retirement depreciation expense would stop but there would be no change in retail rates until the next rate case; this results in a potential earnings increase to the Petitioner. *Id.* at 7-8. He said the amortization of the regulatory assets prevents an impact on earnings and continues to reduce the unamortized value to be included in rate base in a future rate case. *Id.* at 8-9.

Mr. Rogers testified that it is inappropriate to deny Petitioner a return “on” because the units are no longer used and useful. He stated there is a difference between property that was never used and useful and property that was once used and useful. *Id.* at 12. Mr. Rogers explained Petitioner is making a prudent decision based on the 2019 IRP, more specifically, Petersburg Units 1 and 2 continue to be “useful” in abandonment because the undepreciated balance resulting from the retirement represents a cost incurred to provide the benefit of more economic and renewable replacement generation as reflected in the Petitioner’s IRP results. *Id.* at 13.

Mr. Rogers stated his disagreement with Mr. Gorman’s isolation of potential avoided costs. Mr. Rogers said the isolation ignores any cost increases that have occurred since the test year used to set rates from Petitioner’s last rate case. *Id.* at 17. Further, Mr. Rogers testified the existing Fuel Adjustment Charge Ind. Code § 8-1-2-42(d)(3) test is a regulatory mechanism designed to address changes in operating conditions. *Id.* at 18.

Mr. Rogers testified that the OUCC’s proposal for a credit through the ECR gives a refund to current customers and pushes recovery of the remaining book cost into future rates to be paid by future customers. Mr. Rogers said this is why Petitioner’s proposal is preferable, as it does not affect current rates, but reduces the book cost, through amortization, to be included in future rates. *Id.* at 20.

Karin M. Nyhuis, testified with specific responses to cost components contained in Attachment MPG-1 of Mr. Gorman’s proposal to increase the amortization rates from what Petitioner proposed. Pet. Ex. 2 (Nyhuis Rebuttal) at 4-6.

Ms. Nyhuis provided updated abandoned plant costs for Petersburg Unit 1 to \$65.9 million as of June 30, 2021, a decrease from the \$74.5 million provided in direct testimony. Ms. Nyhuis updated the Petersburg Unit 2 estimate from \$209.7 million originally presented in her direct testimony to \$210.8 million. *Id.* at 9. Ms. Nyhuis said the abandoned plant costs for Petersburg Unit 2 is an estimate, as it has not retired, so the estimate may change as the unit continues to operate. *Id.* Ms. Nyhuis said the depreciation for Petersburg Unit 1 has decreased to \$5.0 million compared to the initial estimate of \$5.2 million. She said Petersburg Unit 2 is now estimated to be \$18.4 million, and this will be updated closer to actual retirement. *Id.*

Ms. Angelique Collier, Director of Global Environmental Affairs, opined that Ms. Armstrong's testimony concerning environmental compliance contained inaccuracies and oversimplifications. Pet. Ex. 3 (Collier Rebuttal) at 7-12. Ms. Collier testified AES Indiana maintains that it has been and remains in environmental compliance. *Id.* at 5.

5. Settlement Agreement and Supporting Testimony. The Settlement Agreement, which was executed by Petitioner, the OUCC, and the Industrial Group, resolves all of the issues before the Commission in this Cause, is attached and incorporated by reference. The Settlement Agreement was supported by the testimony of AES Indiana witness Mr. Rogers and OUCC witness Mr. Blakely. Intervenor CAC filed no testimony in this Cause; however, CAC authorized AES Indiana to represent CAC does not oppose the Settlement Agreement. All witnesses offering settlement testimony discussed the arm's-length nature of the negotiations and efforts undertaken to reach an uncontested and balanced settlement that fairly resolves all issues in the case.

Mr. Rogers described the Settlement Agreement. He explained, in summary, the Settlement Agreement permits AES Indiana to record regulatory assets for Petersburg Units 1 and 2 (avoiding a potential write-off under GAAP), sets amortization expense at a negotiated amount agreeable to all Settling Parties, gives assurances to AES Indiana's ability to recover the unamortized balance, and preserves the Settling Parties rights with respect to ratemaking treatment of the regulatory assets.

Mr. Rogers testified Section A.1. of the Settlement Agreement set the remaining unrecovered net plant balance of Petersburg Unit 1 as of the retirement date at \$65,913,231. Pet. Ex. 5 (Rogers Settlement) at 4-5. He explained Petersburg Unit 2 is not yet retired but the Settlement Agreement provides that upon its retirement AES Indiana is permitted to record a regulatory asset for the then-unrecovered net plant balance. *Id.* at 5. He further stated any shared value between Units 1 and 2 will be included in the Petersburg Unit 2 regulatory asset. *Id.*

Mr. Rogers stated Section A.2. provides for the amortization expense of each unit. Petersburg Units 1 and 2 will be amortized at 100% depreciation expense as presented by AES Indiana plus a negotiated additional amount. He explained the Settling Parties negotiated an additional \$6.9 million annually for Petersburg Unit 1 and \$10.3 million annually for Petersburg Unit 2 (with any shared Units 1 and 2 amounts reflected in the Petersburg Unit 2). *Id.*

He explained Section A.3. sets forth the timing of the amortization of each regulatory asset. Mr. Rogers stated amortization has been recorded to the Petersburg Unit 1 regulatory asset as of May 31, 2021 and will continue at the depreciation rates approved in AES Indiana's most recent base rate case. Mr. Rogers explained the additional amortization expense negotiated as part of the Settlement Agreement would begin in August 2021 upon Commission approval. *Id.* at 6. He said for Petersburg Unit 2, amortization will be recorded from the date the unit is retired. *Id.*

Mr. Rogers stated Section A.4. sets forth the treatment of Petersburg Unit 2 should AES Indiana file a base rate case prior to retirement. *Id.*

Mr. Rogers testified Section A.5. of the Settlement Agreement permits AES Indiana to recover the unamortized balance of the regulatory assets at AES Indiana's next base rate case. He

explained further the Settlement Agreement provides that all parties reserve all rights with respect to the ratemaking treatment related to the regulatory assets, including the proper rate of return and mechanisms for recovery. *Id.* at 7.

Mr. Rogers testified that in his opinion Commission approval of the Settlement Agreement is in the public interest. *Id.* at 8. He stated the Settlement Agreement reasonably addresses the concerns raised in this proceeding and provides a balanced outcome of the issues acceptable to all parties involved. He said the Settlement Agreement provides an uncontested path forward for the Commission to grant AES Indiana's request for accounting authority to avoid a potential write-off under GAAP. *Id.* The negotiated additional amortization reasonably addresses the OUCC and Industrial Group's claim of potential operating savings. *Id.*

Mr. Blakley also testified in support of the Settlement Agreement. He testified the OUCC supports the Settlement Agreement and believes it is in the public interest. Mr. Blakley discussed the regulatory asset treatment of Petersburg Units 1 and 2. He stated the additional amortization expense negotiated for Petersburg Units 1 and 2 reasonably resolves the contested issues associated with the O&M and other costs for Petersburg Units 1 and 2 embedded in base rates. Pub. Ex. 3 (Blakley Settlement) at 2-3. He described the Settlement Agreement terms that address treatment of the regulatory asset associated with Petersburg Unit 2 if new base rates are approved and placed into effect prior to the retirement of Unit 2. *Id.* at 3.

Mr. Blakley testified the Settlement provides a savings to ratepayers by reducing the value of the assets and thus reducing the rate impact for customers when the Petersburg Units 1 and 2 regulatory assets are recovered in AES Indiana's next base rate case. *Id.* at 4. Mr. Blakley testified the Settlement Agreement is in the public interest, as it provides to AES Indiana's customers an approximate \$42.9 million annual reduction in Petersburg Units 1 and 2 regulatory assets. He stated the Settlement Agreement reflects compromises made by the Settling Parties and creates a reasonable balance of the interests of ratepayers and those of AES Indiana and its shareholders.

6. Commission Discussion and Findings. Settlement agreements presented to the Commission are not ordinary contracts between private parties. *United States Gypsum, Inc. v. Indiana Gas Co.*, 735 N.E.2d 790, 803 (Ind. 2000). When the Commission approves a settlement, that settlement "loses its status as a strictly private contract and takes on a public interest gloss." *Id.* (quoting *Citizens Action Coalition v. PSI Energy, Inc.*, 664 N.E.2d 401, 406 (Ind. Ct. App. 1996)). Thus, the Commission "may not accept a settlement merely because the private parties are satisfied; rather [the Commission] must consider whether the public interest will be served by accepting the settlement." *Citizens Action Coalition*, 664 N.E.2d at 406 (citation omitted).

Furthermore, any Commission decision, ruling or order – including approval of a settlement agreement – must be supported by specific findings of fact and sufficient evidence. *United States Gypsum*, 735 N.E.2d at 795 (citing *Citizens Action Coalition v. Public Service Co.*, 582 N.E.2d 330 (Ind. 1991)). The Commission's procedural rules require that settlements be supported by probative evidence. 170 Ind. Admin. Code 1-1.1-17(d). Before the Commission can approve the Settlement Agreement, the Commission must determine whether the evidence in this Cause sufficiently supports the conclusion that the Settlement Agreement is reasonable, just, and

consistent with the purpose of Ind. Code ch. 8-1-2, and that such Settlement Agreement serves the public interest.

The Commission has before it substantial evidence from which to judge the reasonableness of the terms of the Settlement Agreement. The Company's initial case-in-chief filed February 26, 2021, requested authority to record regulatory assets for the remaining net book value of Petersburg Units 1 and 2 for their abnormal retirement and to amortize the regulatory assets at the depreciation rates currently in effect until AES Indiana's next base rate case at which time, the remaining unamortized balance of each regulatory asset would be included in rate base and amortized through retail rates. The OUCC and the Industrial Group took specific issues with the requested ratemaking treatment of the requested regulatory assets and amortization amounts and recommended the Commission recognize, among other things, potential operating savings resulting from the retirement of the units either by increasing amortization expense or by adjusting rates through a tracking mechanism.

AES Indiana and the OUCC presented evidence supporting the Settlement Agreement as a reasonable and balanced resolution to the issues described above. The Settlement Agreement resolves all pending issues. While recovery and amortization expense was in dispute, the record shows the negotiated provisions for treatment of the regulatory assets, including amortization, in the Settlement Agreement are reasonable and within the range of evidence presented by the parties. The negotiated resolution of the issues balances AES Indiana's request for accounting authority to avoid a potential write-off under GAAP with the contested evidence regarding the potential for operating savings to occur because of the unit retirements. The Settlement Agreement results in an additional \$17.2 million amortization expense to be deducted from the Petersburg Units 1 and 2 regulatory assets in addition to the \$25.7 million AES Indiana initially proposed. The Settlement Agreement reflects a compromise of the OUCC's and Industrial Group's concerns and will ultimately reduce the regulatory asset balance associated with the retirement of Unit 1 (and the balance after retirement of Unit 2) to be included for recovery in Petitioner's next base rate case.

The record further shows the remaining provisions of the Settlement Agreement, including the timing of recording amortization, the treatment of Petersburg Unit 2 if AES Indiana files a base rate case before retiring the unit, and the parties' rights with respect to the ratemaking treatment related to the regulatory assets at the time of Petitioner's next base rate case, are also reasonable and in the public interest.

7. **Conclusion.** The testimony supporting the Settlement Agreement explains why the Settlement Agreement is reasonable and in the public interest. Based upon our review of the record as a whole, and consideration of the Settlement Agreement terms and supporting testimony and exhibits, the Commission finds the Settlement Agreement is within the range of potential overall outcomes and represents a just and reasonable resolution of the issues. We therefore, approve the Settlement Agreement without change or condition and grant AES Indiana the accounting authority to record and amortize the regulatory assets for Petersburg Units 1 and 2 in accordance with the Settlement Agreement.

8. **Effect of Settlement Agreement.** With regard to future citation of this Order, the Commission finds our approval herein should be construed in a manner consistent with our finding

in *Richmond Power & Light*, Cause No. 40434, 1997 WL 34880849 at *7-8 (Ind. Util. Regul. Comm'n Mar. 19, 1997).

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

1. The Settlement Agreement, a copy of which is attached to this Order, is approved in its entirety, without change or condition.

2. AES Indiana is granted accounting authority to implement the Settlement Agreement including authority to record regulatory assets for Petersburg Unit 1 and Petersburg Unit 2 in accordance with the Settlement Agreement. The regulatory assets shall be amortized as provided in the Settlement Agreement.

3. The remaining unamortized balance of the regulatory assets shall be recovered in AES Indiana's next base rate case in accordance with the Settlement Agreement.

4. AES Indiana shall make a compliance filing in this docket of the application of the approved accounting and ratemaking treatment to Petersburg Unit 2 upon retirement.

5. This Order shall be effective on and after the date of its approval.

HUSTON, FREEMAN, KREVDA, OBER, AND ZIEGNER CONCUR:

APPROVED: NOV 17 2021

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

Dana Kosco
Secretary of the Commission

STATE OF INDIANA

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STIPULATION AND SETTLEMENT AGREEMENT

Indianapolis Power & Light Company d/b/a AES Indiana (“AES Indiana”, “IPL” or “Company”), the Indiana Office of Utility Consumer Counselor (“OUCC”), and AES Indiana Industrial Group (“IG”), (collectively the “Settling Parties” and individually “Settling Party”), solely for purposes of compromise and settlement and having been duly advised by their respective staff, experts and counsel, stipulate and agree that the relief sought by AES Indiana shall be approved as modified below and the terms and conditions set forth below represent a fair, just and reasonable resolution of the matters pending in this Cause, subject to their incorporation by the Indiana Utility Regulatory Commission (“Commission”) into a final, non-appealable order (“Final Order”)¹ without modification or further condition that may be unacceptable to any Settling Party.

¹“Final Order” as used herein means an order issued by the Commission as to which no person has filed a Notice of Appeal within the thirty-day period after the date of the Commission order.

If the Commission does not approve this Stipulation and Settlement Agreement (“Settlement Agreement”), in its entirety, the entire Settlement Agreement shall be null and void and deemed withdrawn, unless otherwise agreed to in writing by the Settling Parties.

A. TERMS AND CONDITIONS. The Settling Parties agree to Commission approval of the Company’s proposed relief modified as follows:

1. AES Indiana will be permitted to record a regulatory asset for Petersburg Unit 1 of \$65,913,231, representing the unrecovered net plant balance as of the May 31, 2021 retirement date. Upon retirement of Petersburg Unit 2, AES Indiana will be permitted to record a regulatory asset for Petersburg Unit 2, including any Shared (Units 1 & 2) value, at the then current unrecovered net plant balance.
2. On a monthly basis, AES Indiana will reduce the size of the regulatory asset by amortizing the regulatory assets for Petersburg Units 1 & 2 by an amount equal to 100% of depreciation expense and agreed upon additional amortization expense (amounts below are annual amounts):
 - a. For purposes of settlement, the agreed amount of depreciation expense for Unit 1 is \$5.0 million and for Unit 2 is \$20.7 million as shown in Table 1 of AES Indiana Witness Nyhuis rebuttal testimony.
 - b. For purposes of settlement, the agreed amount of additional amortization expense for Unit 1 is \$6.9 million and for Unit 2 is \$10.3 million.
 - c. With respect to Unit 2, the figures in Paragraphs 2(a) and (b) are agreed to reflect any Shared (Units 1 & 2) amounts.
3. With respect to Petersburg Unit 1, amortization representing the depreciation expense (Item 2a. above) began to be recorded upon retirement of the unit and will continue to be so recorded. The amortization representing other costs for Petersburg Unit 1 (Items 2b. above) will be recorded beginning with the month in which this Settlement Agreement is executed, upon Commission approval of the terms of the settlement in this Cause without modification. For Petersburg Unit 2, amortization as set forth in Items 2(a), (b), and (c) will be recorded from the date the Unit is retired.
4. If a base rate case is filed and new rates are approved and placed into effect prior to the retirement of Petersburg Unit 2, 100% of all approved costs and expenses including any remaining shared/common costs and expenses, as well as an amount equal to the difference

between the pre-tax rate of return authorized in that case times the net rate base approved in that case and the pre-tax rate or return authorized in that case times the unamortized net plant amount at the time of retirement, will be amortized on a monthly basis after the date of retirement until new rates are put into effect following a subsequent rate case.

5. AES Indiana will be permitted to recover the remaining unamortized balance of the regulatory assets in its next rate case following the respective unit retirements. All parties reserve all rights with respect to the ratemaking treatment related to the regulatory assets, including the proper rate of return and mechanisms for recovery.

B. PRESENTATION OF THE SETTLEMENT AGREEMENT TO THE COMMISSION.

1. The Settling Parties shall support this Settlement Agreement before the Commission and request that the Commission expeditiously accept and approve the Settlement Agreement.

2. The Settling Parties may file testimony specifically supporting the Settlement Agreement. The Settling Parties agree to provide each other with an opportunity to review drafts of testimony supporting the Settlement Agreement and to consider the input of the other Settling Parties. Such evidence, together with the evidence previously prefiled in this Cause, will be offered into evidence without objection and the Settling Parties hereby waive cross-examination of each other's witnesses. The Settling Parties propose to submit this Settlement Agreement and evidence conditionally, and that, if the Commission fails to approve this Settlement Agreement in its entirety without any change or with condition(s) unacceptable to any Settling Party, the Settlement and supporting evidence shall be withdrawn and the Commission will continue to hear the matters pending in this Cause with the proceedings resuming at the point they were suspended by the filing of this Settlement Agreement.

3. A Commission Order approving this Settlement Agreement shall be effective immediately, and the agreements contained herein shall be unconditional, effective and binding on all Settling Parties as an Order of the Commission.

C. EFFECT AND USE OF SETTLEMENT AGREEMENT.

1. It is understood that this Settlement Agreement is reflective of a negotiated settlement and neither the making of this Settlement Agreement nor any of its provisions shall constitute an admission by any Settling Party in this or any other litigation or proceeding except to the extent necessary to implement and enforce its terms. It is also understood that each and every term of this Settlement Agreement is in consideration and support of each and every other term.

2. Neither the making of this Settlement Agreement (nor the execution of any of the other documents or pleadings required to effectuate the provisions of this Settlement Agreement), nor the provisions thereof, nor the entry by the Commission of a Final Order approving this Settlement Agreement, shall establish any principles or legal precedent applicable to Commission proceedings other than those resolved herein.

3. This Settlement Agreement shall not constitute and shall not be used as precedent by any person or entity in any other proceeding or for any other purpose, except to the extent necessary to implement or enforce this Settlement Agreement.

4. This Settlement Agreement is solely the result of compromise in the settlement process and except as provided herein, is without prejudice to and shall not constitute a waiver of any position that any Settling Party may take with respect to any or all of the items resolved here and in any future regulatory or other proceedings.

5. The evidence in support of this Settlement Agreement constitutes substantial evidence sufficient to support this Settlement Agreement and provides an adequate evidentiary basis upon which the Commission can make any findings of fact and conclusions of law necessary for the approval of this Settlement Agreement, as filed. The Settling Parties shall prepare and file

an agreed proposed order with the Commission as soon as reasonably possible after the filing of this Settlement Agreement and the final evidentiary hearing.

6. The communications and discussions during the negotiations and conferences and any materials produced and exchanged concerning this Settlement Agreement all relate to offers of settlement and shall be confidential, without prejudice to the position of any Settling Party, and are not to be used in any manner in connection with any other proceeding or otherwise.

7. The undersigned Settling Parties have represented and agreed that they are fully authorized to execute the Settlement Agreement on behalf of their respective clients, and their successor and assigns, which will be bound thereby.

8. The Settling Parties shall not appeal or seek rehearing, reconsideration or a stay of the Commission Order approving this Settlement Agreement in its entirety and without change or condition(s) unacceptable to any Settling Party (or related orders to the extent such orders are specifically implementing the provisions of this Settlement Agreement).

9. The provisions of this Settlement Agreement shall be enforceable by any Settling Party first before the Commission and thereafter in any state court of competent jurisdiction as necessary.

10. This Settlement Agreement may be executed in two or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

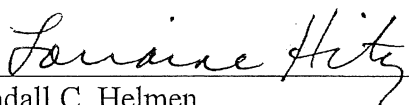
ACCEPTED and AGREED as of the 5th day of August, 2021.

INDIANAPOLIS POWER & LIGHT COMPANY d/b/a AES Indiana



Chad A. Rogers, Senior Manager, AES Indiana Regulatory and RTO Policy
Indianapolis Power & Light Company d/b/a AES Indiana
One Monument Circle
Indianapolis, Indiana 46204

INDIANA OFFICE OF UTILITY CONSUMER COUNSELOR



Randall C. Helmen
Lorraine Hitz
Indiana Office of Utility Consumer Counselor
115 West Washington Street
Suite 1500 South
Indianapolis, Indiana 46204

AES Indiana INDUSTRIAL GROUP

Joseph P. Rompala
Aaron A. Schmoll
LEWIS & KAPPES, P.C.
One American Square, Suite 2500
Indianapolis, Indiana 46282-0003

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