

**STATE OF INDIANA**

**INDIANA UTILITY REGULATORY COMMISSION**

**SUBDOCKET FOR REVIEW OF )  
INDIANAPOLIS POWER & LIGHT )  
COMPANY D/B/A AES INDIANA'S 2021 ) CAUSE NO. 38703 FAC 133 S1  
EXTENDED FORCED OUTAGE AT EAGLE )  
VALLEY AND ITS RELATED IMPACT ON )  
FUEL PROCUREMENT AND FUEL COSTS. )**

**AES INDIANA NOTICE TO COMMISSION  
PER DOCKET ENTRY DATED APRIL 11, 2022**

Indianapolis Power & Light Company d/b/a AES Indiana ("AES Indiana", "IPL", "Company"), by counsel, respectfully provides the following notice in compliance with the Docket Entry dated April 11, 2022, as follows:

As previously reported to the Commission, the Root Cause Analysis ("RCA") of the STG1 Failure to Start Up after Generator Repairs on November 10, 2021 is underway. This hindsight review is undertaken to document what happened and why so that actions can be developed for preventing a reoccurrence. The Company is working to complete a confidential version of the written report by the end of April 2022.

The Company plans to include the RCA with its written testimony to be filed in this Cause on or before May 31, 2022. This will allow the Commission to receive the hindsight RCA review contemporaneous with the Company's testimony addressed to the pending prudence inquiry. This timing will also allow the Company to review the document for confidential information, such as critical energy infrastructure information, and then take appropriate steps as necessary to protect such information from public disclosure.

The Company is presenting the hindsight root cause analysis for transparency and to show the actions taken by the Company on a going forward basis to safeguard against a recurrence are

reasonable and appropriate. The purpose of the root cause analysis is not to assess whether the fuel costs incurred as a result of the Eagle Valley forced outage are the result of malfeasance, nonfeasance or other imprudence by the Company.<sup>1</sup> It is well established that in reviewing the prudence of a utility's actions, the Commission does not "engage in a hindsight analysis." *Re Duke Energy Ind., Inc.*, Cause No. 38707 FAC 76 S1 at 16, 2009 WL 3455937 at \*17 (IURC Oct. 21, 2009); *Re Ind. Mich. Power Co.*, Cause No. 43827 DSM 8 at 10, 2019 WL 2250497 at \*11 (IURC May 22, 2019) (quoting *Re Duke Energy*, Cause No. 38707 FAC 76 S1 at 16).

The Company has prudently focused its efforts on returning the Eagle Valley CCGT to service. The Company is now working to complete the written RCA report, compile costs and data (some of which is not available until late April and early May) and otherwise prepare its written case-in-chief testimony and attachments by May 31<sup>st</sup> (just over two months after the unit returned to service).

Filing the RCA on May 31<sup>st</sup> as part of the Company's prefiling comports with due process principles and mitigates the risk of bias that can be unavoidable when hindsight analysis is received in isolation or other manner that might cloud the question of imprudence pending in this subdocket. This approach is consistent with Ind. Code §8-1-1-5(a) which requires the Commission to "be an impartial fact-finding body." It is also consistent with Indiana Rule of Evidence 407 (Subsequent Remedial Measures) which establishes that subsequent measures that would have made the event less likely if they had been taken before the incident are not admissible as evidence of negligence. *Strack & Van Til, Inc. v. Carter*, 803 N.E.2d 666, 670 (Ind. Ct. App. 2004) (discussing principal

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<sup>1</sup> See *Re Joint Petition of Indianapolis Power & Light et al*, Cause No. 43414 Settlement, p. 2 (¶3), 2008 WL 9832695 at \*7-\*8 (IURC 4/23/2008).

reasons for Rule 407).<sup>2</sup>

Therefore, this notification should be accepted as reasonable.

Respectfully submitted,



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<sup>2</sup> Rule 407 provides: “When measures are taken that would have made an earlier injury or harm less likely to occur, evidence of the subsequent measures is not admissible to prove: negligence; culpable conduct; a defect in a product or its design; or a need for a warning or instruction. But the court may admit this evidence for another purpose, such as impeachment or-if disputed-proving ownership, control, or the feasibility of precautionary measures.

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 14th day of April, 2022, by email transmission, hand delivery or United States Mail, first class, postage prepaid to:

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