

ORIGINAL

| Commissioner | Yes | No | Not Participating |
|--------------|-----|----|-------------------|
| Huston | √ | | |
| Bennett | √ | | |
| Freeman | √ | | |
| Veleta | √ | | |
| Ziegner | √ | | |

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANAPOLIS POWER &)
LIGHT COMPANY D/B/A AES INDIANA (“AES)
INDIANA”) AND AES PIKE COUNTY ENERGY)
STORAGE, LLC FOR (1) APPROVAL OF A STAND-)
ALONE BATTERY ENERGY STORAGE SYSTEM)
PROJECT AT PETERSBURG STATION (“PIKE COUNTY)
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 AES SUBSIDIARY PROJECT)
COMPANY THAT HOLDS THE PIKE COUNTY)
PROJECT, AS A CLEAN ENERGY PROJECT AND)
ASSOCIATED TIMELY COST RECOVERY UNDER IND.)
CODE § 8-1-8.8-11; (2) APPROVAL OF ACCOUNTING)
AND RATEMAKING FOR THE PIKE COUNTY)
PROJECT, INCLUDING AN ALTERNATIVE)
REGULATORY PLAN UNDER IND. CODE § 8-1-2.5-6 TO)
FACILITATE AES INDIANA’S INVESTMENT IN THE)
PROJECT THROUGH A JOINT VENTURE; (3))
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 AND)
DECLINING TO EXERCISE JURISDICTION UNDER TO)
IND. CODE § 8-1-8.5-2; AND (4) TO THE EXTENT)
NECESSARY, ISSUANCE OF A CERTIFICATE OF)
PUBLIC CONVENIENCE AND NECESSITY PURSUANT)
TO IND. CODE § 8-1-8.5-2 FOR THE DEVELOPMENT OF)
THE PIKE COUNTY PROJECT BY A WHOLLY OWNED)
AES INDIANA SUBSIDIARY)

CAUSE NO. 45920

APPROVED: JAN 17 2024

ORDER OF THE COMMISSION

Presiding Officers:

Wesley R. Bennett, Commissioner

Jennifer L. Schuster, Senior Administrative Law Judge

On July 19, 2023, Indianapolis Power & Light Company d/b/a AES Indiana (“AES Indiana”) and AES Pike County Energy Storage, LLC (“Pike County Energy Storage,” or “Owner”) (collectively with AES Indiana, “Petitioners”) filed a Verified Petition and the direct

testimony and attachments of the following witnesses with the Indiana Utility Regulatory Commission (“Commission”):

- G. Aaron Cooper, Chief Commercial Officer, AES US Utilities;
- Frank J. Salatto, Director, AES US Tax Reporting;
- Patrick S. Daou, Senior Principal Energy Consultant at Sargent & Lundy (“S&L”);
- Erik K. Miller, AES Indiana Director, Resource Planning;
- Danielle S. Powers, Executive Vice President with Concentric Energy Advisors, Inc. (“Concentric”);
- Chad A. Rogers, AES Indiana Director Regulatory Affairs.

On September 15, 2023, the Indiana Office of Utility Consumer Counselor (“OUCC”) prefiled the testimony of John W. Hanks, Brittany L. Baker, and Roopali Sanka, Utility Analysts in the OUCC’s Electric Division.

On September 27, 2023, Petitioners filed the rebuttal testimony and attachments of Mr. Cooper, Ms. Powers, Mr. Rogers, and Dustin J. Illyes, Treasurer of AES US Utilities and Conventional Generation businesses.

The Commission held an evidentiary hearing at 10:30 a.m. on October 18, 2023 in Room 222 of the PNC Center, 101 West Washington Street, Indianapolis, Indiana. AES Indiana and the OUCC participated in the evidentiary hearing by counsel. The testimony and exhibits of Petitioners and the OUCC were admitted into the record without objection.

Based on the applicable law and the evidence of record, the Commission now finds:

1. Commission Jurisdiction and Notice. Notice of the hearing in this Cause was given and published by the Commission as required by law. AES Indiana is a public utility as that term is defined in Ind. Code § 8-1-2-1. AES Indiana is also an “energy utility” as defined in Ind. Code § 8-1-2.5-2 and an “eligible business” as that term is defined in Ind. Code § 8-1-8.8-6. As discussed below, Pike County Energy Storage is also a public utility. Petitioners are subject to the jurisdiction of this Commission in the manner and to the extent provided by Indiana law. Therefore, the Commission has jurisdiction over Petitioners and the subject matter of this Cause.

2. Petitioners’ Characteristics. AES Indiana is a corporation organized and existing under Indiana law, with its principal office at One Monument Circle, Indianapolis, Indiana. AES Indiana renders electric public utility service in Indiana and owns and operates plant and equipment in Indiana used for the production, transmission, delivery, and furnishing of such service to the public. Pike County Energy Storage is a wholly owned subsidiary of AES Indiana and is the entity that entered into the Engineering, Procurement, and Construction (“EPC”) Agreement and will own the battery energy storage system (“BESS”) assets.

3. Relief Requested. AES Indiana requests: 1) approval of the Pike County Battery Energy Storage System Project (“Pike County Project” or “Project”), including the EPC Agreement and a joint venture structure between an AES Indiana subsidiary that owns the Project, and one or more tax equity partners (“TEP”), as a Clean Energy Project; 2) approval of a capacity agreement and contract for differences (“CfD”) between AES Indiana and Pike County Energy

Storage; 3) approval of associated timely cost recovery, under Ind. Code § 8-1-8.8-11; and, 4) approval of accounting and ratemaking for the Pike County Project, including an alternative regulatory plan (“ARP”) under Ind. Code § 8-1-2.5-6 to facilitate AES Indiana’s investment in the Project through a joint venture, and deferral and subsequent recovery of Project Development Costs consistent with Ind. Code § 8-1-2.5-6 and Ind. Code § 8-1-8.8-11. AES Indiana and Pike County Energy Storage also request the Commission issue an order pursuant to Ind. Code § 8-1-2.5-5 declining to exercise jurisdiction over the joint venture, including Pike County Energy Storage, as a public utility. Petitioners assert the Pike County Project will not “generate” or “originate” electricity. While Petitioners argue that Ind. Code § 8-1-8.5-2 (“CPCN Statute”) does not apply to the Project, if the Commission disagrees, Petitioners request, in the alternative, the Commission issue a certificate of public convenience and necessity (“CPCN”) pursuant to Ind. Code § 8-1-8.5-2 for the development of the Pike County Project as proposed by AES Indiana.

4. Evidence Presented.

A. AES Indiana’s Evidence. Mr. Cooper provided an overview of the Project and testified that the Project is a standalone project that will be connected to two 34.5/345 kV transformers included in a single collector substation. He said the batteries will be distributed via independent enclosures that feed separate inverters that interconnect on medium voltage level (34.5 kV). The Project will be built on a 26 acre footprint, on the existing Petersburg Generating Station (“Petersburg Station”) property already owned by AES Indiana. He said the Commercial Operation Date (“COD”) is expected by December 1, 2024. The Project is expected to be eligible for 40% investment tax credit (“ITC”) as it is located in an Energy Community as defined in the Inflation Reduction Act (“IRA”).

Mr. Cooper explained that the Petition in this proceeding stems from AES Indiana’s 2022 Integrated Resource Plan (“IRP”), the planning tool used by AES Indiana to determine how to meet the ongoing need for reliable and economic electricity in its service area.

AES Indiana witness Miller described the 2022 IRP and its Preferred Resource Portfolio and Short Term Action Plan. He also explained that the 2022 IRP analysis identified a need for approximately 240 MW installed capacity (“ICAP”) BESS to fill the winter capacity position in 2025. Mr. Cooper testified that the Pike County Project helps meet this need with 200 MW ICAP of BESS capacity identified in the 2022 IRP and with the lowest present value revenue requirement (“PVR”) per MW unforced capacity (“UCAP”) as compared to offers received in the All-Source Request for Proposals (“RFP”) that include BESS resources.

Mr. Cooper also provided further information regarding the Project’s interconnection status, explaining that it will utilize interconnection rights from the retiring Unit 2 coal-fired generator. He stated that AES Indiana engaged a third-party vendor to support development of the design and completion of the resource interconnection approval process to utilize the Petersburg Unit 2 interconnection. He said the Project will interconnect through a 0.6 mile long 345 kV transmission line to the Petersburg Substation, where the point of interconnection has been defined, qualifying as a replacement capacity resource for Petersburg Unit 2. Mr. Cooper testified that the ability to use the Unit 2 injection rights lowers a Project interconnection risk because the Project is not reliant on the Midcontinent Independent System Operator (“MISO”) queue process and does not require execution by third-party transmission owners to complete the interconnection, both of

which create the possibility for delay. He said this gives control over the timing of the interconnection to AES Indiana and the EPC Contractor and added that one can also reasonably expect that using an existing interconnection results in lower cost, avoiding the prospect of network upgrades that can drive up interconnection costs and contribute to potential delays.

Mr. Cooper opined that the Project is a reasonable and necessary Clean Energy Project. He said energy storage systems or technologies are specifically listed as a clean energy resource, making the Pike County Project a resource the Clean Energy Project statute (Ind. Code § 8-1-8.8-11) was designed to encourage. He said AES Indiana is an energy utility, and, through both the EPC Agreement and the joint venture, AES Indiana is proposing to undertake a Clean Energy Project (a BESS project). He concluded that AES Indiana is eligible for relief under Ind. Code ch. 8-1-8.8.

Mr. Cooper explained the 2022 All Source RFP process and said that the Pike County Project performed best in the Ranking Analysis, with the lowest PVRR per MW UCAP result among the candidate proposals. He stated that the Project was selected based on the results of the Phase 2 and Phase 3 Ranking Analyses and its relative superiority compared to the proposals in Phase 3 across the critical metrics: the Project provides material winter capacity under the recently implemented MISO seasonal capacity construct; it qualifies to receive Zonal Resource Credits for MISO Local Resource Zone (“LRZ”) 6; and it achieves COD by 2024-25 MISO winter season. He said the Pike County Project was the reasonably least cost resource to provide the needed winter capacity identified in the 2022 IRP.

Mr. Cooper testified that, the Pike County Project has a low interconnection cost since the Project will utilize the replacement capacity provisions of the MISO tariff and is interconnecting at the existing AES Indiana Petersburg Generating Station 345 kV switchyard via a tie-line from the Project collector substation. In addition to the low interconnection cost, the Project is not reliant upon the MISO queue process nor does it require execution by third-party transmission owners to complete the interconnection, both of which create the possibility for delay. He said this gives control over the timing of the interconnection to AES Indiana and the EPC Contractor.

Mr. Cooper said the Project benefits from utilizing acreage at the AES Indiana Petersburg Generating Station because there are no land acquisition or right-of-way acquisition costs or issues. He said qualitative factors also support the Pike County Project; the AES Indiana All-Source RFP expressed a preference for Indiana resources and stated that this preference reasonably reflects consideration of deliverability, reliability, resiliency, and Indiana energy security. Mr. Cooper added that the Project is located in Pike County, which is impacted by the retirement of Petersburg Generating Stations Units 1 and 2, and said the Project will bring construction jobs and tax base to the county. Mr. Cooper said the Project location facilitates AES Indiana’s ability, through the AES Indiana Sponsor member of the joint venture, to manage operations and maintenance at the Project.

Mr. Cooper said the Pike County Project’s 190 MW UCAP (200 MW ICAP) and corresponding MISO Seasonal Accredited Capacity (“SAC”) helps meet the 240 MW (ICAP) BESS need identified in the 2022 IRP. Mr. Cooper said BESS is very different from intermittent resources like solar and wind because it provides dispatchable capacity regardless of the season.

Solar, for example, receives approximately 1% SAC compared to its ICAP for the winter season and wind resources can get up to 35% for the winter season.

Mr. Cooper explained the process followed to select the contractor for Pike County Project and described the EPC Contractor (Fluence Energy LLC) and its experience. Mr. Cooper testified that The AES Corporation, AES Indiana's parent company, owns a minority economic share of Fluence, and said the EPC bids were evaluated on a blind basis, meaning that AES Indiana was not aware of the bidder identity during the initial bid evaluation. He said the competitive solicitation demonstrates the EPC contract price and terms reflect the market. He said the EPC Agreement was submitted to the Commission pursuant to the affiliate transaction General Administrative Order ("GAO") and included with his testimony. Mr. Cooper discussed Fluence's creditworthiness and the Project's ability to reach commercial operation.

Mr. Cooper described the CfD and stated that, at settlement, if the market price is higher than the CfD fixed price, the seller pays the difference to the buyer; if the market price is lower than the CfD fixed price, the buyer pays the difference to the seller. In energy markets, a CfD provides one party a fixed price for electric energy when a party is not physically transacting in the underlying commodity. Mr. Cooper described the terms of AES Indiana's proposed CfD, explaining that the CfD is effectively a fixed-price capacity resource hedge equivalent to that provided by existing AES Indiana-owned generation. Mr. Cooper said AES Indiana expects to negotiate and complete the CfD once the TEP is known and added that AES Indiana will file the executed CfD in this docket as a compliance filing subject to the protection of confidential information. Mr. Cooper testified that the CfD is a "financial" rather than a "physical" contract, and said AES Indiana and TEP as partners in the Joint Venture, LLC, are able to avoid the potential negative tax implications that would exist if a Purchase Power Agreement ("PPA") were used, and this in turn allows AES Indiana to utilize the tax benefits of the Pike County Project for the benefit of AES Indiana's customers.

Mr. Cooper discussed the pricing for the CfD, explaining that the price is the result of a computation designed to achieve a targeted return on investment of the acquired Project based on each party's underlying investment profile and characteristics. He said the final CfD price is subject to negotiation with the tax equity investor. Mr. Cooper testified that, once the TEP has attained an internal rate of return ("IRR") as specified in the Joint Venture, LLC Limited Liability Company Operating Agreement ("Joint Venture LLCA"), the allocation of taxable income, loss, gain, and deductions changes as between AES Indiana Sponsor and TEP and the allocation of such taxable income, loss, gain, and deductions to the TEP drops. At this point, the AES Indiana Sponsor member of the Joint Venture, LLC will have the option to acquire the TEP interest for fair market value as defined in the Joint Venture LLCA and added that if AES Indiana Sponsor acquires the TEP interest, AES Indiana can consolidate the Project and eliminate the need for the CfD.

Mr. Cooper testified that the CfD price is considered to be market-based at a level in which the transaction will attract TEP investment. He said attracting the TEP investment is a key component of all renewable and storage projects, whether the project is a build transfer or a PPA. Mr. Cooper also discussed why AES Indiana chose not to execute the CfD at this point, stating that it is too early to execute a CfD for this Project. He said waiting to execute an agreement

provides flexibility should facts or circumstances (including changes in tax laws) arise that could enable AES Indiana to better optimize the CfD for customers.

Mr. Cooper discussed the cash flow for the settlements and earnings distributions under the CfD and use of the Fuel Adjustment Clause (“FAC”) for timely recovery or crediting to AES Indiana customers. He said AES Indiana’s proposal is consistent with the treatment approved for the Hardy Hills Project in Cause No. 45493 and the Petersburg Energy Center Project in Cause No. 45591.

Mr. Cooper said the AES Indiana Sponsor of the joint venture will be responsible for operations and operating decisions. Operations will be funded by revenue from a CfD between the ProjectCo and AES Indiana. He said it is anticipated that operations and maintenance (“O&M”) will be performed by AES Indiana and added that this approach leverages AES Indiana’s existing facility and resources efficiently for the benefit of this Project and customers.

Mr. Cooper explained why the joint venture documents cannot be executed now, stating that until it is clear the Project will be built and proceed, TEP investors will not engage in detailed diligence/negotiations as they have finite resources. He said this will not occur until the final regulatory approval is secured, which is the initial major milestone for the Project to move forward. The proposed term sheet is attached to Mr. Salatto’s testimony. Mr. Cooper said that TEPs are typically unable to provide commitments far in advance for a 2024 project as they do not yet know what their tax positions will be for 2024. Mr. Cooper testified that, once executed, AES Indiana will file the CfD, Joint Venture LLCA, and TEP Membership Interest Purchase Agreement, as described by Mr. Salatto, as a compliance filing in this docket subject to the protection of confidential information.

Mr. Cooper opined that the Best Estimate of the Project cost is reasonable and results from the competitively bid and negotiated EPC Agreement. He presented the Project Best Estimate by component in confidential Table 2 of his testimony and discussed how each component of the cost estimate was developed. . Cooper testified that AES Indiana does not anticipate a need for additional investment beyond the Best Estimate of the investment discussed above. However, situations such as force majeure, excused events, or AES Indiana-initiated change orders could result in a need for additional investment. He said the costs of any such additional investment in excess of the contingency included in the Best Estimate would be presented by AES Indiana to the Commission for review and approval prior to recovery through rates.

Mr. Cooper said the Pike County Project cost compares favorably to the proposals received in the 2022 All-Source RFP. He said the Pike County Project Best Estimate is the result of the competitive RFP process for the EPC and direct negotiation. He said respondents to the RFP were motivated to reply with competitive bids in order to be considered for review and negotiation of an agreement. He said it was commercially practicable to secure the estimated costs of the Projects in this manner, and, given that quotes received are recent, they reflect current market conditions. Mr. Cooper opined that this process ensures that the actual costs incurred are reasonably based on timely, competitive procurement.

Mr. Cooper also discussed the contractual protections included in the EPC Agreement to limit the possibility of project cost increases, including protections in the form of liquidated damages. Mr. Cooper explained that the EPC Agreement includes “commissioning by block” language that allows flexibility to mitigate delays and adds flexibility to the commissioning process, therefore limiting cost increases due to extended schedule. Mr. Cooper also discussed guarantees for the development of the Pike County Project facilities to assure the Project’s major facilities’ operations will align with reasonable expectations of performance, and the major equipment suppliers will honor all warranties, guarantees, and commitments to the Project.

Mr. Cooper discussed how AES Indiana will manage the development and construction of the Pike County Project. He stated that the Project’s execution timeline is rigorous for a project of this size. He said the standard construction time to reach mechanical completion and start testing is at least 12 months, which requires that the Project begins site work by November 2023 in order to reach commercial operation by December 2024. Mr. Cooper testified that AES Indiana and its customers will not receive 2024-25 winter capacity if the Project is delayed and will be short the corresponding 200 MW. Mr. Cooper added that AES Indiana customers and the state of Indiana will benefit from the addition of a 200 MW dispatchable resource in the 2024-25 winter months, which bolsters reliability during those winter months.

Mr. Cooper explained his view that the stand-alone BESS is not a facility for the generation of electricity but added that he compiled the information sought in the Commission’s GAO 2022-01 regarding certain regional transmission organization (“RTO”) related information. Mr. Cooper testified that, should the Commission find the proposed stand-alone BESS Project is subject to the CPCN Statute and the Commission chooses to exercise jurisdiction under the CPCN Statute, he believes a CPCN should be issued for the Pike County Project. He explained why the Commission should find that AES Indiana has satisfied the statutory requirements of Ind. Code § 8-1-8.5-5(e) or decline to exercise it.

Mr. Cooper opined that the proposed Project and associated requests for relief are consistent with Indiana energy policy and reasonably considers each of Five Pillars of electric utility service (reliability, affordability, resiliency, stability, and environmental sustainability) enumerated in House Enrolled Act (“HEA”) 1007, effective July 1, 2023 and codified at Ind. Code § 8-1-2-0.6.

Mr. Miller discussed AES Indiana’s IRP and testified the Pike County Project is consistent with AES Indiana’s Preferred Resource Portfolio but added it is not dependent on this one strategy. He explained that AES Indiana has confirmed that its 2025 UCAP need remains consistent with the 2022 IRP results. Mr. Miller also described the Resource Planning Production Cost analysis used in the RFP evaluation. He added that the cost of the Pike County Project falls well within the replacement resource cost sensitivities included in the IRP for battery energy storage. He opined that, if the actual costs of the Pike County Project were included in place of the cost assumptions included in the 2022 IRP for battery energy storage, the Encompass planning model would select the Pike County Project as a viable and reasonable capacity resource in AES Indiana’s Preferred Resource Portfolio and Short Term Action Plan. Mr. Miller said this conclusion identifies the Pike County Project as the most affordable option for customers to fill AES Indiana’s winter capacity need.

Mr. Miller stated that the Pike County Project provides reliability for AES Indiana customers by providing a firm dispatchable capacity resource in all seasons and said this is supported by the findings of AES Indiana's Reliability analysis in the 2022 IRP, where AES Indiana's consultant, Quanta Technology, found that portfolios with higher amounts of firm dispatchable capacity scored higher in terms of reliability in the analysis. In the 2022 IRP Reliability Analysis, battery energy storage was included as a mitigation measure to help low-scoring portfolios achieve greater levels of reliability, resiliency, and stability by providing improved frequency response and instantaneous dispatch capability. He stated that, when paired with clean energy, the Project paves the way to an environmentally sustainable future.

Mr. Miller explained how AES Indiana considered other resource options consistent with Ind. Code § 8-1-8.5-4 and discussed AES Indiana's consideration of the State Utility Forecasting Group Electricity Projections.

Mr. Daou addressed S&P's role in the 2022 All-Source RFP process and selection of the Project.

Ms. Powers further discussed the All-Source RFP and stated that numerous proposals were considered, including wind, solar, solar plus storage, and battery storage resources under a mix of build-transfer structures and PPAs. Ms. Powers also presented the quantitative Ranking Analysis model results.

Mr. Salatto discussed how the ITC works and how it will acquire the Pike County Project and what happens thereafter. He stated that, once the TEP's internal rate of return is reached, the partnership allocation of taxable income and cash will flip, and the date that occurs is known as the "Flip Date." The Flip Date will trigger an option for AES Indiana Sponsor to purchase the TEP's Class A membership interests at the negotiated fair market value. He stated that, in this proceeding, AES Indiana does not seek approval of any amounts related to the purchase of the TEP's membership interests in the Joint Venture, LLC should AES Indiana exercise this option following the Flip Date. He added that AES Indiana will keep the Commission apprised of AES Indiana Sponsor's plans regarding the exercise of this option as the time nears and will request Commission approval and cost recovery as necessary or appropriate in a separately docketed proceeding.

Mr. Salatto also testified that the IRA provides new alternatives for monetizing the tax credits resulting from the Pike County Project and said AES Indiana believes that tax equity continues to provide the highest benefit to customers.

He also discussed certain tax considerations relevant to the CfD. He said the CfD was established to mitigate the risk that tax losses between related parties would be disallowed. He said IRC Sections 267 and 704 provide that losses between related parties are disallowed, and without the CfD, the losses allocated between TEP and AES Indiana Sponsor may be subject to that disallowance if the energy was sold directly from ProjectCo to AES Indiana. He also discussed the treatment of any tax law changes after Commission approval but before commercial operation and explained the accounting AES Indiana will use for tax equity financing.

Mr. Rogers discussed the accounting and ratemaking treatment for the Pike County Project, including AES Indiana's request for approval, pursuant to Ind. Code § 8-1-2.5-6, of the ARP to facilitate the establishment of the Pike County Project joint venture structure and the reflection in AES Indiana's net original cost rate base of its investment in the Project. He said the joint venture structure ultimately reduces the overall cost of the Project for the benefit of AES Indiana customers. Mr. Rogers discussed the details of AES Indiana's proposals, including the proposals regarding carrying charges.

Mr. Rogers explained the proposed ARP includes approval to record AES Indiana's investment in the Pike County Project as a regulatory asset and approval to record Project Development Costs as a regulatory asset. He said AES Indiana will begin to amortize the regulatory asset once the regulatory asset is reflected in customer rates (proposed to be in AES Indiana's ECR filings) after the Pike County Project COD. He said AES Indiana seeks authority to record carrying charges on the regulatory asset balance beginning with AES Indiana's cash investment contribution until the regulatory asset is reflected in customer rates (proposed to be in AES Indiana's ECR filings). He said AES Indiana also seeks authority to recover carrying charges on and amortization of the regulatory asset in AES Indiana's annual ECR filings to reduce the amount of carrying charges that would otherwise accrue on the investment. AES Indiana also seeks approval to include, in its next basic rate case following the Project COD, the balance of the regulatory asset in net original cost rate base and in the value of its rate base for purposes of Ind. Code § 8-1-2-6.

Mr. Rogers testified that AES Indiana also seeks approval to record approximately \$2.8 million of project development costs as a regulatory asset in Federal Energy Regulatory Commission ("FERC") Account 182. He said these costs reflect the analysis, evaluation, and development of the Pike County Project and explained that AES Indiana will begin to amortize the regulatory asset once the regulatory asset is reflected in customer rates in a future basic rate case. Mr. Rogers clarified that AES Indiana is not requesting carrying charges on project development costs. He said AES Indiana seeks approval to include, in a future basic rate case, the balance of the regulatory asset AES Indiana has recorded for these project development costs in net original cost rate base and in the value of its rate base for purposes of Ind. Code § 8-1-2-6. Mr. Rogers added that AES Indiana proposes to begin to amortize the regulatory asset through the ECR over approximately 20 years commencing at the time the Project is reflected in ECR rates.

Mr. Rogers discussed the public interest as considered in Ind. Code § 8-1-2.5-5 and Ind. Code § 8-1-2.5-6. He said the ARP allows AES Indiana to invest in energy storage in a way that reduces overall costs of the Project for the benefit of AES Indiana's customers and promotes energy utility efficiency. He said the Pike County Project also promotes utility efficiency by diversifying AES Indiana's resource portfolio and providing an energy storage investment whose resource profile differs from AES Indiana's existing resources. Mr. Rogers testified that the requested ARP serves the public interest by being beneficial to AES Indiana, AES Indiana's customers, and Indiana. He said approval of the ARP will allow AES Indiana to move forward with the development of this Indiana-located new energy storage facility.

Mr. Rogers testified that investing in energy storage and maximizing the tax benefits enhances the value of AES Indiana's retail services for customers and added that if AES Indiana were not to make use of the joint venture structure, the investment required by AES Indiana would

be much greater due to reduced tax benefits. The managing member of the joint venture, a wholly owned subsidiary of AES Indiana, will have operational control of the Project. Mr. Rogers stated that the proposed structure provided by the ARP facilitates AES Indiana's economic investment in energy storage for the benefit of customers, while maintaining operational control of the BESS through the AES Indiana Sponsor of the joint venture. Mr. Rogers said having energy storage in AES Indiana's portfolio used to serve customers at a desirable physical location is an enhancement of AES Indiana's retail electric services and property.

Mr. Rogers testified that it is only through inclusion in rate base that AES Indiana will be provided the opportunity to earn a full return on its investment in the Pike County Project. He stated it is in the public interest for AES Indiana to make the investment under this structure to make use of attractive capital provided by a TEP that can take full advantage of the tax benefits offered to energy storage projects. He said that this structure and the requested accounting and ratemaking treatment will allow AES Indiana to fill the winter capacity position in 2025.

Mr. Rogers also discussed the request that the Commission (to the extent necessary and pursuant to Ind. Code § 8-1-2.5-5) decline to exercise its jurisdiction over the joint venture and the ProjectCo that owns the battery energy storage assets as public utilities. He explained why the Commission should find that the joint venture and Pike County ProjectCo (AES Pike County Energy Storage, LLC) are not "public utilities" subject to Commission regulation. He said the joint venture will own Pike County ProjectCo, which will own the facilities and financially contract with AES Indiana through the CfD. He added that Pike County ProjectCo will sell the energy it discharges at wholesale through the MISO market. He concluded that the Pike County ProjectCo will be regulated by FERC and will need to obtain market-based rate authority pursuant to Section 205 of the Federal Power Act from FERC.

Mr. Rogers opined that, under the circumstances of this arrangement, the Commission's ongoing exercise of jurisdiction over AES Indiana, and FERC's jurisdiction over the Pike County ProjectCo's sales into the MISO market, render the exercise of jurisdiction by the Commission over the joint venture, including Pike County ProjectCo, as a public utility unnecessary or wasteful. He testified that declining to exercise jurisdiction will promote energy utility efficiency by avoiding this unnecessary regulation and by allowing AES Indiana to invest in economic energy storage and will be beneficial to the joint venture, AES Indiana, AES Indiana's customers, and the State of Indiana. Finally, Mr. Rogers stated the exercise of the Commission's jurisdiction over the Pike County ProjectCo as a public utility would increase the regulation of this entity unnecessarily, which would burden AES Indiana's implementation of the Pike County Project. Mr. Rogers said to the extent necessary, the Commission should decline to exercise its jurisdiction over the joint venture, including Pike County ProjectCo, as a public utility.

Mr. Rogers discussed the proposed timely cost recovery to be administered in AES Indiana's FAC proceedings and how AES Indiana proposes to treat cash distributions from the joint venture. He also addressed the proposed deferral of AES Indiana's investment in the Pike County Project and timely cost recovery of amortization of the regulatory asset and carrying charges on the regulatory asset in AES Indiana's annual ECR.

Mr. Rogers discussed the estimated customer rate impact of the proposed ratemaking treatment, concluding that the estimated revenue requirement impact equates to approximately \$2.60 per month for a residential customer using 1,000 kWh each month, an increase over current base rates of approximately 2.3%.

Mr. Rogers testified that AES Indiana will continue to sell and purchase capacity related to its MISO capacity requirement. He stated that, even with the capacity from the Pike County Project, AES Indiana may need to purchase capacity on a seasonal basis to meet its MISO capacity obligation; it may also have the opportunity to sell capacity on a seasonal basis. He said those capacity purchases or sales will be subject to AES Indiana's capacity adjustment mechanism. Mr. Rogers testified that the Pike County Project will not impact AES Indiana's off-system sales margins. He also stated that, per Ind. Code § 8-1-8.8-11, the construction and operation of the Project is just and reasonable. In the case of construction financing costs, he testified that AES Indiana's proposed accounting and ratemaking will result in a gross financing costs savings over the life of the Project.

Finally, Mr. Rogers testified that the proposed accounting and ratemaking reasonably considers affordability and is consistent with Ind. Code § 8-1-2-0.6. He said the Pike County Project performs best in the Ranking Analysis, with the lowest PVRR per MW/UCAP among the candidate proposals. He said PVRR considers the economic impact of a project on customers. He said the PVRR analysis and rate impact calculation both reflect the cost-mitigating impacts of the ITC. He opined that the PVRR analysis and rate impact calculation demonstrate that the proposed accounting and ratemaking treatment reasonably considers affordability.

B. OUCC's Evidence. Mr. Hanks testified that the OUCC does not oppose approval of the Pike County Project if certain recommendations are adopted, including a cost cap on the project, a decommissioning plan, and project augmentations to address safety issues and long-term value.

Mr. Hanks discussed the cost of the Pike County Project relative to resources that generate electricity and compared the cost of the Pike County Project to battery resources modeled in AES Indiana's 2022 IRP. He noted that the OUCC recommends Petitioner show the levelized costs for all projects presented to the Commission so that the term lengths and cost recovery periods are equivalent.

Mr. Hanks discussed the CfD in this Cause compared to the CfD previously approved in Cause No. 45591. He also compared the cost of the Pike County Project capacity to recent MISO capacity prices, recommending that the Commission consider the uncertainty within the MISO capacity auction and the associated difficulty with estimating future capacity prices when reviewing proposals including a capacity resource. He opined that this is especially important for projects like the Pike County Project where the principal value for the resource is providing dispatchable capacity to meet customers' needs.

Mr. Hanks stated that Ind. Code § 8-1-8.5-13(g)(2)(B)(ii) stipulates a public utility can reasonably acquire not more than 15% of its total winter UCAP from capacity markets. He noted that accredited capacity is a pressing need for AES Indiana and said that in terms of the PVRR per MW UCAP, the Pike County Project was the lowest-cost project proposal received. Mr. Hanks

said given the short-term need for capacity Petitioner has identified and the Project's favorable PVRR per MW UCAP compared to other projects received in the RFPs, he does not oppose the Pike County Project, provided the OUCC's other recommendations are adopted.

Mr. Hanks recommended a firm cost cap on the Project set to AES Indiana's investment in the Pike County Project, including carrying charges, after the TEP has made its contribution. He said the capacity payment for the Pike County Project is already greater than the maximum price at which a seller can offer capacity into the market and added that, in order to ensure ratepayers benefit from a capacity resource that won't generate electricity, cost recovery should be restricted to the already high project costs estimated in this Cause. Mr. Hanks said a decommissioning plan and the estimated associated costs must be included and supported by a financial instrument to be posted when the Pike County Project begins commercial operation. Finally, he said battery augmentation must be guaranteed to maintain capacity at a minimum of 190 MW x 4 hours for the 20-year term of the CfD to ensure the battery retains its value as a capacity resource.

Ms. Baker also recommended a Project cost cap at the total amount AES Indiana invests in the Project, including carrying costs, to address affordability concerns for customers and mitigate potential future rate increases due to the Pike County Project. She opined that it is important that AES Indiana's investment in the joint venture remain as a regulatory asset. She stated that, if AES Indiana's investment is transferred to plant accounts, it will be depreciated, and depreciation expenses will then be included as a deduction in AES Indiana's tax returns. She said AES Indiana should not be permitted to transfer the joint venture investment to plant investment because depreciation on the Project will already have been included as a deduction on the TEP's tax returns. Ms. Baker concluded that the OUCC does not oppose AES Indiana's proposed accounting and ratemaking treatment, which she views as consistent with similar cases.

Ms. Baker also discussed the estimated monthly bill impact on AES Indiana ratepayers, which is estimated to be \$2.60 per month for residential consumers. Ms. Baker stated that she has concerns about affordability and said her concerns are consistent with the General Assembly's policy declared through Ind. Code §§ 8-1-2-0.5 and 8-1-2-0.6. She opined that the Commission should carefully scrutinize utility requests to approve only what is justifiable as reasonably necessary and at a prudent cost and factor customer affordability into the accounting treatment a petitioner utility may seek, and into the timing of project requests and prioritization. Ms. Baker said AES Indiana is requesting recovery of its investment in the Project through its annual ECR filings as a regulatory asset to earn a return "on" and a return "of" its investment by amortizing the cost over approximately 20 years. She said the total estimated annual revenue requirement AES Indiana anticipates is \$33,267,773.

She said the OUCC's proposed cost cap would support and protect affordability for AES Indiana customers and prohibit AES Indiana from seeking recovery of any increased costs in future rate proceedings. She stated that, due to the rate increase from this Project, as well as other additional and potential rate increases due to approved and pending Causes, the OUCC is concerned about the continuing effects on customers' ability to afford these costs.

Ms. Sanka addressed the operation of the battery system and the EPC agreement for the Pike County Project's development. She opined that, if the Commission approves Petitioner's request, it should require a decommissioning plan for the proposed facility, proper insurance to protect ratepayers and nearby landowners, regular safety training, and a specific capacity level.

Ms. Sanka testified that, to ensure that ratepayers are receiving the greatest benefits throughout the life of the BESS, the OUCC recommends guaranteed battery augmentation to maintain capacity at a minimum of 190 MW x 4 hours for the 20-year term of the CfD to maintain reliability and resilience. She also proposed that AES Indiana provide progress reports to the Commission and the OUCC regarding this Project and its battery augmentation updates on a regular basis.

Ms. Sanka discussed how the capacity accreditation for battery energy storage systems will evolve in response to the anticipated growth of BESS and changing grid dynamics in the coming years. She noted that, as more BESS are added to the grid, MISO may review and adjust its capacity requirements to account for the increased contribution of these resources.

Ms. Sanka testified that, because the BESS will be constructed on land owned by AES Indiana, the joint venture will not enter into a decommissioning agreement with any county, township, or municipality. She opined that, before the joint venture is approved, AES Indiana customers and landowners near the project site need assurances as to how Petitioner will address any cleanup requirements in the case of an emergency or at the end of the Project's life.

Ms. Sanka also discussed BESS fire risks and the requirements of Ind. Code ch. 22-4-8 to comply with the National Fire Protection Association's standards for energy storage systems and to submit an emergency response plan to the local fire department. She said AES Indiana expects to deliver information in compliance with these requirements by the fourth quarter of 2023. Ms. Sanka testified that the OUCC recommends AES Indiana conduct BESS safety and fire training not only in the construction phase, but also annually with the local fire department and Pike County Emergency Management for the term of the CfD. She added that proper insurance coverage must be in place for the protection of the utility, its customers, and those who own property near the Project site. She said Petitioner should demonstrate that it has obtained necessary insurance for the life of the CfD that will pay for the replacement of the battery to its initial capacity and clean-up in the event of a thermal accident.

Ms. Sanka stated that, if the TEP sells its portion of the BESS to AES Indiana, then AES Indiana, and by extension its ratepayers, will take on all financial responsibility for the decommissioning of the BESS. She testified that, without a decommissioning plan in place and/or final language laying out how cleanup and closure costs will be addressed by the joint venture, the BESS could become a major environmental liability in case of a disaster or final decommissioning of the BESS for the period when the Pike County Project is owned by the joint venture and before it is put into rate base. She opined that financial liability for cleanup will not be properly addressed until after AES Indiana has fully acquired the BESS and placed it in rate base without a decommissioning plan. Ms. Sanka recommended the final CfD include a decommissioning plan with supporting financial instruments and calculate a portion of the salvage value in depreciation. She said this ensures proper environmental and financial planning in case of disaster or closure of the BESS before AES Indiana assumes full ownership.

Ms. Sanka addressed some of the efficiency challenges of a BESS, including degradation. She said that proper enclosure design and temperature monitoring can greatly reduce the probability of a thermal event, and adding training and first responder awareness will limit safety risks. Ms. Sanka concluded that, given how new BESS technology is, the OUCC recommends the Commission include a number of consumer safeguards in its order. She said the OUCC recommends augmentation be required to maintain capacity at a minimum of 190 MW x 4 hours for the term of the CfD and reporting on a periodic basis. She said the OUCC also recommends the final CfD include language holding the TEP responsible for a portion of the final decommissioning costs and cleanup costs equal to the share of ownership in the BESS held by the TEP, in case of emergency. She added that the TEP's portion of the decommissioning costs should be deducted from the final agreed sale price if AES Indiana acquires the TEP interest in the project. She stated that, to address the safety risk of the BESS, the OUCC recommends AES Indiana conduct a BESS safety and fire training annually, in addition to the initial training, for the term of the CfD. Finally, she said the OUCC recommends evidence of insurance be required that will pay for the replacement of the battery to its initial capacity and clean-up for the life of the CfD in the event of a thermal accident.

C. AES Indiana Rebuttal.

i. **OUCC's Proposed Cost Cap.** Mr. Cooper and Mr. Rogers responded to the OUCC recommendation for a firm cost cap on the Project set to AES Indiana's investment in the Pike County Project, including carrying charges. Mr. Rogers opined that capping the recovery of project costs presumes the imprudence of utility expenditures and disallows costs that have yet to even occur. He stated that a cost cap could chill consideration of project scope changes that increase cost but create value for customers. He noted that AES Indiana is not in control of all circumstances that might cause a cost increase, such as a force majeure event or change in law, and opined that, should such events occur, it is reasonable to present any resulting cost impact to the Commission for a decision regarding cost recovery.

Mr. Rogers stated that the Pike County Project has a favorable PVRR and noted that, even if project cost changes would cause this benefit to decrease, customers would not be adversely affected until this benefit becomes a cost to the consumer. He added that, even then, qualitative factors could support the conclusion that the project remains beneficial to customers, such as battery storage, will play an important role in improving grid reliability and resilience, as acknowledged by OUCC witness Ms. Sanka. Mr. Rogers noted that not all project cost increases may impact rates due to the ITC and TEP contribution. He also testified that the cap proposed by the OUCC is ambiguous because it appears to seek a disallowance of future capital investment and future O&M costs.

Mr. Rogers observed that the OUCC did not challenge AES Indiana's proposed means to address bill impact, including a 20-year amortization period for the regulatory assets and the use of a rate adjustment mechanism to reduce carrying charges. He also responded to OUCC witness Baker's assertion that adoption of a cost recovery cap would be an incentive for AES Indiana to avoid cost overruns, noting again the possibility of unforeseen events increasing the costs. He also noted that if AES Indiana incurs costs that exceed the previously approved Best Estimate, such additional costs must be reviewed and approved by the Commission before they can be reflected in rates. He opined that this regulatory framework serves as a reasonable incentive to control costs.

ii. **Augmentation and Reporting.** Mr. Cooper also responded to the OUCC's recommendation that battery augmentation of the BESS be guaranteed to maintain capacity at a minimum of 190 MW x 4 hours for the 20-year term of the CfD. He explained that AES Indiana already plans to complete battery augmentation throughout the life of the Project to maintain 200 MW/four hours of capacity at 80% depth of discharge, which is 190 MW/four hours of MISO accredited capacity in all four seasons. He discussed the expected timing of the augmentation and said the exact timing of these events will depend on the operational characteristics of the BESS, such as the degradation levels of the batteries. He opined that for these reasons, the Commission does not need to order AES Indiana to perform periodic augmentation.

With respect to reporting, Mr. Cooper stated that AES Indiana has already provided the expected augmentation schedule and that the OUCC's testimony does not explain what additional information it wants from AES Indiana on this matter. He noted that if the Commission desires additional information on this subject, it could solicit it during the ongoing operation of the Project. He added that the capacity value of the Project will be reflected annually in the annual report that AES Indiana is required to file with the Commission pursuant to Ind. Code § 8-1-8.5-13(l).

iii. **Insurance and Safety Training.** Mr. Cooper disagreed with the OUCC's recommendation that the final CfD should include a decommissioning plan and that estimated associated costs must be included and supported by a financial instrument to be posted when the Pike County Project begins commercial operation. He noted that, as the managing member of the Project, AES Indiana will be responsible for the decommissioning activities associated with the Project. Mr. Illyes noted that the TEP is a financial investor looking to take advantage of the tax attributes of the project and is not involved in the operations of the plant beyond certain major decisions designed to protect its investment. He said the TEP's role will be that of an investor and added that AES Indiana, through its subsidiary, will manage the ProjectCo through the life of the joint venture. Mr. Illyes stated that this means that AES Indiana, through its subsidiary, will be responsible for the decommissioning activities associated with the Project as the managing member of the Project. He said that, as a fully regulated Indiana public utility, AES Indiana is well positioned to be responsible for the decommissioning at Petersburg Station and that the OUCC suggestion that this responsibility should be shared with the tax equity investor fails to recognize that this is not the role of the TEP.

Mr. Illyes testified that offtake agreements, like CfDs, do not customarily contain decommissioning provisions. He said the presence of the OUCC's proposed provisions within the CfD would make the contract less attractive from a financing perspective due to the additional burden created, and this would hinder AES Indiana's ability to raise the TEP financing. He added that, should such a provision be required, the associated cost would be added as a cost of the Project in the financial projection, negatively impacting either the amount of the TEP investment and/or the price of the CfD to the detriment of AES Indiana and its customers. He noted that the primary purpose of the CfD is to create a contracted revenue stream for the Project Company that can be used to attract and secure an investment from a tax-equity partner that will be used to reduce the cost of the Project to the benefit of AES Indiana's customers. He said the potential inclusion of a decommissioning requirement within the CfD puts this fundamental point at risk.

Mr. Cooper also testified that AES Indiana, through its subsidiaries, already plans to obtain insurance to protect its customers in the event of a thermal incident. The expected cost of such insurance was reflected in the PVRR analysis of the Project presented in AES Indiana witness Powers' direct testimony.

Mr. Cooper also discussed the OUCC recommendation that AES Indiana conduct BESS safety and fire training annually with the local fire department and Pike County Emergency Management for the term of the CfD. He noted that the Project will comply with HEA 1173 and provided details on the Project's expected compliance plan, including compliance with the National Fire Protection Association's standards for energy storage systems, submission of an emergency response plan to the local fire department in or around the fourth quarter of 2023, and training to the local fire department in or around the second quarter of 2024 during the construction stage of the Project before starting commissioning activities. Mr. Cooper said AES Indiana expects to continue to engage on an as-needed basis with the local fire department to keep the emergency response plan, including training, updated.

Mr. Illyes also disputed the OUCC's recommendation that the TEP's portion of the decommissioning costs should be deducted from the final agreed sale price if AES Indiana acquires the TEP interest in the Project. He explained that, should AES Indiana acquire the TEP interest in the Project following the Flip Date, it would occur well before the end of the useful life of the Project when any decommissioning work would take place. He said the procedure for acquiring a TEP's interest in a project is a well-established industry standard based on valuing the remaining economic interest of the TEP over the remaining life of the project. He said the TEP's economic interest following the realization of the Flip Date is reduced to a percentage of the remaining tax and cash benefits. Given the low amount of the TEP's economic interest following the realization of the Flip Date, and since the decommissioning is set to occur so far after the timing of when a buyout could occur, these types of costs are not included in the valuation. Mr. Illyes said the presence of the OUCC's proposed provisions would make the Pike County Project less attractive to potential TEP investors in comparison to competing opportunities they have on other projects in the market that would not have this type of provision. He testified that the presence of this provision would severely limit, if not eliminate, the ability of AES Indiana to find a TEP investor for the Project and secure the necessary investment for the benefit of customers.

Mr. Rogers testified that Pike County does not require a decommissioning plan because the BESS will be constructed on land owned by AES Indiana (Petersburg Station) and that the ultimate decommissioning of all facilities at Petersburg Station is part of AES Indiana's ongoing cost of providing service. He said this cost can and should be addressed during the life of the Pike County Project but not in the way the OUCC recommends. He stated that the cost of demolition of AES Indiana's other facilities at Petersburg Station (net of salvage) is already recognized in AES Indiana's retail rates as part of depreciation. He stated that the decommissioning cost, as well as the safety training, insurance and other cost concerns identified by the OUCC, were included in the PVRR analysis, which shows the Pike County Project compares favorably to other alternatives.

Mr. Rogers testified that AES Indiana is planning to include the Pike County Project facilities at Petersburg Station in a future demolition study. He said that such studies are often conducted as part of AES Indiana's basic rate cases and added that AES Indiana's ongoing ECR proceedings may provide another opportunity to address decommissioning costs and the associated

ratemaking. He testified that, if additional information on the cost of decommissioning is desired by the Commission, he requests that AES Indiana be allowed to provide that information and its proposed accounting and ratemaking as part of its next basic rate proceeding or as part of the ongoing ECR process. He added that to allow the Pike County Project to become operational, any such filing should be required no earlier than four years into the Project's operation and no later than one year after the Flip Date.

iv. **Project Cost Comparison and Levelized Costs.** Ms. Powers responded to OUCC witness Hanks's recommendation that AES Indiana show the levelized costs for all projects presented to the Commission so that the term lengths and cost recovery periods are equivalent. Ms. Powers interpreted this recommendation to mean that, instead of presenting the results of the analysis of responses to AES Indiana's RFP on a PVRR basis, the results should be presented on a Levelized Cost of Energy ("LCOE") or Levelized Cost of Storage ("LCOS") basis over a constant time horizon and recovery period to allow for comparison to the LCOEs contained in AES Indiana's IRP.

Ms. Powers testified that the PVRR analysis is an economic decision-making tool used to estimate each proposal's impact relative to other proposals, regardless of AES Indiana's portfolio, and considers the ultimate net cost or benefit of each proposal. She said the PVRR analysis used to evaluate responses to the RFP calculates the present value of all future revenue requirements needed to cover operating expenses and return on and of capital, less revenues over a specified time period. The PVRR analysis also reflects the net costs that a utility needs to recover from customers across various proposals. She stated that, in this case, since operating lives varied across proposals, AES Indiana normalized the term of the analysis by "filling in" for market purchases of energy and capacity.

Ms. Powers also noted that the LCOE/LCOS metric is primarily used to evaluate and compare the lifetime cost of generating electricity from different sources or technologies and considers both the capital costs (e.g., construction, equipment) and the operating costs (e.g., fuel, maintenance) of the resource spread over the asset's lifespan. She said the LCOE calculation does not consider revenues. For the purposes of the analysis of RFP results, she opined that using an LCOE to compare across proposals would omit revenues that these projects would earn or otherwise credit to customers, and therefore would not provide an appropriate basis on which to assess the net cost to customers across various proposals.

Ms. Powers explained that, in assessing the responses to the RFP, proposals with varying term lengths had to be evaluated over a common term in order for results to be comparable. Proposals were "filled in" with replacement expenses and revenues in the remaining years after the contracts or useful lives expired. Thus, the PVRR analysis evaluates each proposal over standardized lengths of time (analysis terms) and units of measurement. Ms. Powers opined that the use of a PVRR metric over a normalized time horizon, as was done when evaluating responses to AES Indiana's RFP, is an appropriate metric to use to assess the ultimate net cost to customers across different proposals.

5. Commission Discussion and Findings.

A. **Clean Energy Project.** Ind. Code § 8-1-8.8-11(a) provides that “[t]he commission shall encourage clean energy projects by creating . . . financial incentives for clean energy projects, if the projects are found to be just and reasonable[.]” An “eligible business” is an energy utility that “undertakes a project to develop alternative energy sources, including renewable energy resource projects[.]” Ind. Code § 8-1-8.8-6(3). We have already found that AES Indiana is an “energy utility.”

A “Clean Energy Project” includes “[p]rojects to develop alternative energy sources, including renewable energy projects[.]” Ind. Code § 8-1-8.8-2(2). “Energy storage systems or technologies” are specifically identified as clean energy resources in Ind. Code § 8-1-37-4(a)(10) thus making battery energy storage a “renewable energy resource” under Ind. Code § 8-1-8.8-10. The Pike County Project is therefore a renewable energy resource under Ind. Code § 8-1-8.8-10. Through the proposed EPC Agreement and joint venture and the associated CfD, AES Indiana is undertaking a project to develop a battery energy storage resource; therefore AES Indiana is eligible to seek the relief provided in Ind. Code § 8-1-8.8-11.

According to Ind. Code § 8-1-8.8-11(a), the Commission shall encourage Clean Energy Projects by *creating* financial incentives for such projects, if the projects are found to be just and reasonable. *Id.* (emphasis added). One of the financial incentives that the Commission is authorized to create is the timely recovery of costs and expenses incurred during construction and operation of the project. Ind. Code § 8-1-8.8-11(a)(1). However, the Commission is prohibited from *approving* timely cost recovery unless the eligible business demonstrates that the timely recovery of costs incurred to construct and operate the project is just and reasonable. *Id.* Thus, if the Commission creates the financial incentive of timely cost recovery for a project it has determined to be just and reasonable, the Commission may only approve the timely recovery of the costs incurred to construct and operate the project if the Commission finds the costs incurred are just and reasonable. Accordingly, a just and reasonable finding creating the incentive presents an upper bound on the just and reasonable costs to be recovered via the incentive absent further consideration of evidence to support the reasonableness of costs above that amount.¹

While Ind. Code ch. 8-1-8.8 does not set forth specific factors the Commission should consider in determining whether a Clean Energy Project is just and reasonable, the Commission finds it appropriate to consider some of the factors outlined in Ind. Code chs. 8-1-8.5 and 8-1-8.7, which governs the approval of other similar capital projects. Therefore, in determining whether the Pike County Project is just and reasonable for purposes of creating financial incentives, we find it appropriate to consider: (1) the cost of the project; (2) the consistency of the project with Petitioner’s IRP; (3) the need for the project; and (4) competitive solicitation of the project.

i. **Best Estimate of Project Cost.** The Project Best Estimate is presented by component in Table 2 (confidential) of Mr. Cooper’s direct testimony. The evidence reflects that the Pike County Project cost compares favorably to the proposals received in Petitioner’s 2022 All-Source RFP and also shows that the proposed joint venture with a TEP

¹ We note this process is consistent with other capital investment preapproval statutes, such as Ind. Code §§ 8-1-8.5-6.5, 8-1-8.4-7(c)(3), and 8-1-39-9(g).

enables the effective use of the ITC to reduce the overall cost of the Project for the benefit of AES Indiana's customers.

The Project compares slightly favorably to the generic battery energy storage project estimated in the IRP, and the Project will contribute to AES Indiana's urgent need for 2025 winter capacity. The Project has a favorable PVRR per MW UCAP compared to other projects received in the RFPs. The O&M and potential future capital costs associated with the issues raised by the OUCC have been reasonably included in AES Indiana's PVRR analysis.

Indiana encourages the development of Clean Energy Projects. In a docket such as this one, the Commission authorizes a project based on a best estimate of the project cost. Commission approval of a project provides assurance of cost recovery up to the approved best estimate; any costs above this amount must be reviewed and approved by the Commission before they can be recovered through rates. This regulatory framework serves as an incentive to AES Indiana to control costs. The evidence of record demonstrates that AES Indiana has reasonably used competitive bidding and negotiations with the EPC Contractor to control costs and has taken reasonable steps to limit risk and the potential for cost increases. The OUCC witnesses do not contend otherwise.

Therefore, the Commission rejects the OUCC's proposed cost cap and approves AES Indiana's Best Estimate of the Project cost.

ii. Consistency with AES Indiana's IRP. There is no evidence in the record that questions the consistency of the Project with AES Indiana's 2022 IRP. The 2022 IRP analysis identified a need for approximately 240 MW (ICAP) BESS to fill AES Indiana's winter capacity need that has arisen due to MISO's seasonal resource adequacy construct. The Pike County Project helps meet this need with 200 MW ICAP of the BESS capacity identified in the 2022 IRP and with the lowest PVRR per MW/UCAP as compared to offers received in the All-Source RFP that include BESS resources. As noted above, the OUCC recognizes the Project is consistent with AES Indiana's IRP from both a cost and need perspective. Based on the evidence of record, the Commission finds the Pike BESS Project is consistent with AES Indiana's 2022 IRP.

iii. Need. As noted in the preceding sections, substantial evidence from both parties demonstrates there is a need for the Pike County Project to fulfill future capacity needs reflected in AES Indiana's 2022 IRP. The Commission has recognized that fuel diversity may help mitigate risk and that there are benefits of adding additional energy and capacity from diverse resources located in Indiana to a utility's portfolio. We have previously noted that "[a] key consideration in long-term resource planning is the need to retain maximum flexibility in utility resource decisions to minimize risks." *S. Ind. Gas & Elec. Co.*, Cause No. 45052, at 24 (Apr. 24, 2019) (citation omitted). Therefore, the Commission finds the evidence of record shows that the Pike County Project is needed by AES Indiana.

iv. Competitive Solicitation. The evidence of record also demonstrates that the Pike County Project cost compares favorably to the proposals received in Petitioner's 2022 All-Source RFP. The evidence also supports a conclusion that the Pike County Project Best Estimate is the result of the competitive RFP process for the EPC and direct negotiation. Other

significant cost estimates, such as equipment procurement, are supported by direct quotes from the suppliers. The RFP processes confirm the reasonableness and reliability of the cost estimates that form the basis for the Best Estimate, and the Commission finds it was commercially practicable to secure the estimated costs of the Projects in this manner.

v. **Conclusion.** Based on the evidence of record, we find that the Pike County Project is a reasonable addition at the Best Estimate approved above to AES Indiana's portfolio of resources necessary to meet the need for electricity within AES Indiana's service area. The proposed Clean Energy Project is consistent with AES Indiana's 2022 IRP Preferred Resource Portfolio and Short-Term Action Plan. The Best Estimate of the cost of the Project stems from a competitive RFP and negotiation process. The proposed joint venture with a TEP enables the effective use of the ITC to reduce the overall cost of the Project for the benefit of AES Indiana's customers. Therefore, we find that the Pike County Project, including the associated EPC, joint venture structure, and CfD should be approved.

B. **ARP and Financial Incentives.** AES Indiana requests approval pursuant to Ind. Code § 8-1-2.5-6 of an ARP to facilitate the establishment of the Pike County Project joint venture structure and the reflection in AES Indiana's net original cost rate base of its investment in the Project. The record shows the joint venture structure would reduce the overall cost of the Project for the benefit of AES Indiana customers. The ARP includes seeking approval to record its investment in the Pike County Project and Project Development Costs (estimated to be approximately \$2.8 million) as regulatory assets. AES Indiana does not request carrying charges on the Project Development Costs regulatory asset. With respect to the Project investment, AES Indiana seeks authority to record carrying charges on the regulatory asset balance, beginning with AES Indiana's cash investment contribution until the regulatory asset is reflected in customer rates (proposed to be in AES Indiana's ECR filings).

AES Indiana will begin to amortize the regulatory asset once the regulatory asset is reflected in customer rates after the Pike County Project COD. AES Indiana seeks authority to recover carrying charges on and amortization of the regulatory asset in AES Indiana's annual ECR filings to reduce the amount of carrying charges that would otherwise accrue on the investment. AES Indiana also seeks approval to include, in its next basic rate case following the BESS COD, the balance of the regulatory asset (which would be included in AES Indiana's annual ECR filings) in net original cost rate base and in the value of its rate base pursuant to Ind. Code § 8-1-2-6. The request to record regulatory assets for these costs would allow AES Indiana to recover the costs associated with making the investment and is consistent with Ind. Code § 8-1-8.8-11, which provides for other financial incentives the Commission considers appropriate to encourage clean energy projects. If the requirements of Ind. Code § 8-1-2-6 would deny AES Indiana the opportunity to earn a return on its Pike County Project investments, the investment required by AES Indiana would be much greater due to reduced tax benefits. We find this result would be wasteful and unnecessary. Ind. Code § 8-1-2.5-5(b).

Ind. Code § 8-1-2.5-6 authorizes the adoption of alternative regulatory practices, procedures, and mechanisms found by the Commission to be in the public interest and to enhance or maintain the value of the energy utility's retail energy services or property. The proposed accounting and ratemaking allows AES Indiana to invest in the Project in a way that reduces overall costs of the Project for the benefit of its customers. As the managing member of the joint

venture, AES Indiana Sponsor will have operational control of the Project. Investing in energy storage and maximizing the tax benefits enhances the value of AES Indiana's retail services for customers. By reducing the overall cost of the investment while recognizing AES Indiana's need to earn a return of and on its investments, the ARP promotes energy utility efficiency. Commission approval of the ARP will benefit AES Indiana, its customers, and the state of Indiana. The Project also benefits customers by providing needed capacity. The Project promotes utility efficiency by further diversifying AES Indiana's resource portfolio and providing an energy storage investment whose resource profile differs from AES Indiana's existing resources.

After considering the factors set forth in Ind. Code §§ 8-1-2.5-5 and 8-1-2.5-6, we find that the joint venture structure and each element of the requested ARP as proposed by AES Indiana are in the public interest. Approval of the ARP, including the joint venture structure and AES Indiana's proposed cost recovery plan, advances the development of the Project. The Commission finds that the Project's ownership structure, as well as the requested accounting and ratemaking treatment reasonably facilitates AES Indiana's ability to carry out its 2022 IRP Preferred Resource Portfolio and Short-Term Action Plan while mitigating the ratemaking impact on AES Indiana's customers. Therefore, the Commission finds the ARP, including the proposed associated accounting and ratemaking, serves the public interest and should be approved.

The OUCC made additional recommendations regarding decommissioning, insurance, and safety training and associated costs. As the managing member of the Project, AES Indiana will be responsible for the decommissioning activities associated with the Project and already plans to procure insurance to protect its customers in the event of a thermal incident. Pike County does not require a decommissioning plan because the BESS will be constructed on land owned by AES Indiana. The ultimate decommissioning of all facilities at Petersburg Station is part of AES Indiana's ongoing cost of providing service.

The record shows that the Project will comply with HEA 1173 and includes details on the Project's expected compliance plan, including compliance with the National Fire Protection Association's standards for energy storage systems, submission of an emergency response plan to the local fire department in or around the fourth quarter of 2023, and training to the local fire department in or around the second quarter of 2024 during the construction stage of the Project before starting commissioning activities. AES Indiana expects to continue to engage on an as needed basis with the local fire department to keep the emergency response plan, including training, updated.

The record also shows the decommissioning cost as well as the safety training, insurance, and other cost concerns identified by the OUCC were reasonably included in the PVRR analysis, which analysis shows the Pike County Project compares favorably to other alternatives.

After reviewing the evidence of record, we decline to impose on Petitioner the OUCC's recommendations on these matters.

The OUCC has not justified an additional Commission effort to alter the structure so recently adopted by the General Assembly in HEA 1173 or to impose a decommissioning plan requirement where the county has not done so. As a fully regulated Indiana public utility, AES Indiana is well positioned to be responsible for the decommissioning at Petersburg Station. The

Commission declines to require AES Indiana to share these responsibilities with the tax equity investor.

We agree with Mr. Cooper that the value of ongoing reporting requirements should be balanced with the cost of compiling the information. The record shows augmentation will be performed in the future and includes the expected augmentation schedule. The OUCC's testimony does not explain what additional information it expects AES Indiana to report on. If the Commission desires additional information on this subject, we can solicit it during the ongoing operation of the Project. Also, the capacity value of the Project will be reflected annually in the annual report that AES Indiana is required to file with the Commission pursuant to Ind. Code § 8-1-8.5-13(1). Therefore, the Commission finds it is unnecessary to impose additional reporting requirements urged by the OUCC.

Finally, the Commission finds that recovery of the CfD costs through a rate adjustment mechanism under Ind. Code. §§ 8-1-8.8-11 and 8-1-2-42(a) should be administered through AES Indiana's FAC proceeding (or successor mechanism). Based upon the evidence of record, we further find that AES Indiana's recovery of its CfD costs should not be subject to the Ind. Code § 8-1-2-42(d) tests or any other FAC benchmarks. These requirements do not apply to rate adjustment mechanisms authorized under Ind. Code. §§ 8-1-8.8-11 and 8-1-2-42(a). We have provided for the administration of this mechanism through the FAC filings because doing so is administratively efficient and consistent with Commission practice. We also find that attempting to apply the requirements set forth in Ind. Code § 8-1-2-42(d) to this cost recovery would be wasteful and our declining to apply those requirements will be beneficial to AES Indiana and its customers and will promote energy utility efficiency. Ind. Code § 8-1-2.5-5(b).

C. Requirement to Obtain CPCN Under Ind. Code § 8-1-8.5-2. Petitioners assert the Pike County Project does not fall within the plain language of the CPCN Statute and thus this statute should not apply. Should the Commission conclude otherwise, the Commission is requested, pursuant to Ind. Code § 8-1-2.5-5, to decline to exercise jurisdiction under Ind. Code § 8-1-8.5-2, or in the alternative, to issue a CPCN pursuant to Ind. Code § 8-1-8.5-2 for the development of the Pike County Project as proposed by AES Indiana. The OUCC filed no testimony addressing this issue.

Ind. Code § 8-1-8.5-2 requires a pre-construction certificate for facilities that are “for the generation of electricity.” Although “generation” is not a defined term in the Indiana Code, the *Merriam-Webster* dictionary defines generation as “origination by a generating process.”² FERC has found that batteries do not generate electricity.³ Other Indiana rules and statutes addressing resource interconnections and incentives, which can apply in addition to the generation cost recovery assurance of Ind. Code ch. 8-1-8.5, and include implicitly or even explicitly batteries, do not constrain themselves to the term generation. As an example, the Commission's customer-generator interconnection rules define applicable facilities as “an arrangement of equipment for

² <https://www.merriam-webster.com/dictionary/generation>

³ “Battery storage technology by its very nature does not generate electricity, but rather withdraws energy at one point in time and discharges energy at a later point.” *N.C. Eastern Municipal Power Agency*, 172 FERC ¶ 61,249, at P 33 (2020); *see also Blue Ridge Power Agency*, 181 FERC ¶ 61,048, at P 29 & n.48 (2022), *reh'g pending*, 181 FERC ¶ 62,199 (2022) (“[b]attery storage does not in any way originate electricity”).

the production of electricity.” 170 IAC 4-4.3-1(d). The use of the term “production” reflects a focus on the injection of electricity to the public utility system rather than how the electricity is originated or generated. In addition, Indiana statutes that explicitly include energy and storage systems or technologies as clean energy resources also define the related energy which flows in terms of “electricity that is produced.” Ind. Code §§ 8-1-37-4(a)(10) and 8-1-37-2.

Based on this analysis, we conclude that generation of electricity and production of electricity do not invoke the same statutory meaning in Indiana, that is, facilities or resources other than generators can produce electricity for injection into the grid. Thus, based on the evidence of record, while we conclude that the Pike County Project may provide electricity to be injected into the grid, we find that the Project is not a generator and therefore is not a facility which requires a CPCN pursuant to Ind. Code § 8-1-8.5-2.

D. Jurisdiction over Joint Venture. Petitioners also request the Commission decline to exercise jurisdiction over the joint venture, including AES Pike County Energy Storage, LLC, as a public utility pursuant to Ind. Code § 8-1-2.5-5. Since the joint venture will not be the title owner of the Project, the joint venture will not own battery energy storage facilities. As such, we find the joint venture is not a “public utility.” ProjectCo, which the joint venture will own, is the MISO market participant and is subject to FERC regulation. The circumstances of this arrangement, the Commission’s exercise of jurisdiction over AES Indiana, and the regulation by FERC render the exercise of jurisdiction by the Commission over ProjectCo as a public utility unnecessary or wasteful. Declining to exercise jurisdiction promotes energy utility efficiency by avoiding this unnecessary regulation and allowing AES Indiana to invest in economic battery energy storage. Declining to exercise jurisdiction is beneficial to the joint venture, AES Indiana, its customers, and the state of Indiana. Finally, the exercise of the Commission’s jurisdiction over ProjectCo as a public utility would increase the regulation of this entity unnecessarily, and this in turn would burden AES Indiana’s implementation of the Pike County Project. For these reasons, the Commission declines to exercise its jurisdiction over Joint Venture, including ProjectCo, as a public utility.

E. Ind. Code. §§ 8-1-2-0.5 and -0.6. Through Ind. Code § 8-1-2-0.5, the Indiana General Assembly established the state’s policy recognizing utility service affordability for present and future generations. This legislative policy states affordability should be protected when utilities invest in infrastructure necessary for system operation and maintenance. In HEA 1007 (codified at Ind. Code § 8-1-2-0.6), effective July 1, 2023, the Indiana General Assembly declared it is the continuing policy of the state that decisions concerning Indiana’s electric generation resource mix, energy infrastructure, and electric service ratemaking constructs must consider each of five pillars of electric utility service enumerated in the statute: reliability, affordability, resiliency, stability; and environmental sustainability (collectively, the “Five Pillars”).

The overall cumulative effect of AES Indiana’s resource planning decisions is assessed through the IRP process, and AES Indiana reasonably considered the Five Pillars in the development of AES Indiana’s IRP, which identified a need for capacity and a BESS at Petersburg as part of the short-term action plan. AES Indiana’s proposal in this case seeks to develop the Pike County Project to meet this identified need. The evidence demonstrates the Pike County Project would support the ability of the system to reliably supply the demand and energy requirements of

its customers. The ability for AES Indiana to use the remaining Petersburg Unit 2 MISO injection rights reduces the cost and risk of interconnection. This in turn facilitates AES Indiana's ability to meet its capacity need and in doing so safeguards system reliability and avoids the need to purchase capacity.

IRP modeling and the competitive bidding process are designed to identify the reasonable least cost solution(s) for customers and are consistent with the affordability pillar. Locating the Project at Petersburg Generating Station allows AES Indiana to maximize the ITC benefit, as Petersburg is in an Energy Community as defined in the IRA. As shown by the Best Estimate approved above, the joint venture structure reduces the cost of the Project for customers. AES Indiana's accounting and ratemaking proposals are also reasonably designed to address affordability of service. Resiliency and stability were considered in the IRP. The proposed Project supports both considerations based on its attributes as a dispatchable resource. The Project provides reliability benefits that are critically needed by Indiana's growing intermittent, inverter-based renewable generation resources.

AES Indiana's 2022 IRP Scorecard evaluation demonstrated that the Preferred Resource Portfolio, which includes the Pike County Project, provides the lowest SO₂, NO_X, water use, and coal production product emissions and the second lowest CO₂ emissions over the 20-year planning period making it the best performing strategy in the sustainability category. The Commission recognizes that generation from intermittent solar and wind resources is not always aligned with electricity demand and batteries can act as a buffer between energy supply and demand, providing flexibility to the grid by storing energy and releasing it when demand is high, or supply is low.

The PVRR analysis and rate impact calculation demonstrate that the proposed accounting and ratemaking reasonably consider affordability. AES Indiana proposes timely cost recovery through the ECR filing which utilizes the Commission approved customer allocation factors from AES Indiana's most recent approved rate case. This approach is consistent with the affordability pillar.

The Commission has considered the Five Pillars enumerated in Ind. Code § 8-1-2-0.6 in reaching our decision in this proceeding. The Clean Energy Project and AES Indiana's corresponding accounting and ratemaking proposals support affordability for customers while allowing AES Indiana to transition its resources in a way that supports environmental sustainability, reliability, resilience, and stability for customers. The Commission finds AES Indiana's proposals are consistent with the legislative directives.

F. Conclusion. AES Indiana has clearly established a need for capacity. The Clean Energy Project proposed in this proceeding is the result of a robust IRP and competitive procurement process and represents a reasonable, least cost resource for AES Indiana to utilize in meeting its ongoing obligation to provide adequate and reliable service and facilities consistent with Indiana energy policy, as articulated in Ind. Code §§ 8-1-2-0.5 and 0.6, Ind. Code ch. 8-1-8.5, and Ind. Code § 8-1-8.8-11. We find the evidence of record supports approval of the Pike County Project, including the associated agreements and cost recovery proposed by AES Indiana. The Projects will provide needed capacity, will diversify AES Indiana's supply portfolio, will support reliability, and will provide environmental benefits while also reasonably balancing affordability of service. We therefore approve the Pike County Project as a Clean Energy Project.

We also approve AES Indiana's proposed accounting and ratemaking and requests for Commission approval of the ARP and declination of jurisdiction.

6. Confidential Information. On July 19, 2023, AES Indiana filed a motion seeking a determination that designated confidential information involved in this proceeding be exempt from public disclosure under Ind. Code § 8-1-2-29 and Ind. Code ch. 5-14-3. The request was supported by an affidavit showing certain documents to be admitted into evidence contained trade secret information within the scope of Ind. Code § 5-14-3-4(a)(4) and Ind. Code § 24-2-3-2. On August 3, 2023, the Presiding Officers issued a docket entry finding such information confidential on a preliminary basis. On August 11, September 1, and September 27, 2023, AES Indiana submitted its designated confidential information. On October 5, 2023, the OUCC submitted designated confidential information.

After reviewing the designated confidential information, the Commission finds all such information qualifies as confidential trade secret information pursuant to Ind. Code § 5-14-3-4 and Ind. Code § 24-2-3-2. This information has independent economic value from not being generally known or readily ascertainable by proper means. AES Indiana takes reasonable steps to maintain the secrecy of the information, and disclosure of such information would cause harm to AES Indiana. Therefore, we find that this information should be exempted from the public access requirements contained in Ind. Code ch. 5-14-3 and Ind. Code § 8-1-2-29 and held confidential and protected from public disclosure by this Commission.

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

1. The Pike County Project, including the EPC Agreement, the proposal to enter into a Capacity Agreement and CfD, and the Joint Venture structure, is approved as a Clean Energy Project under Ind. Code § 8-1-8.8-2, and is just and reasonable under Ind. Code § 8-1-8.8-11.

2. The Best Estimate for the Pike County Project is approved.

3. The EPC Agreement is approved.

4. AES Indiana's proposed accounting and ratemaking for the Project is approved.

5. AES Indiana's request to defer and recover Project Development Costs through rates is approved.

6. AES Indiana is authorized to recover costs incurred pursuant to the CfD through a rate adjustment mechanism to be administered through AES Indiana's FAC proceeding (or successor mechanism). This recovery shall not be subject to any Ind. Code § 8-1-2-42(d) tests or FAC benchmarks.

7. AES Indiana's ARP is approved.

8. AES Indiana is authorized to recover the Project costs through its ECR as summarized herein and in Petitioner's evidence.

9. The Commission declines to exercise jurisdiction over the joint venture and ProjectCo (AES Pike County Energy Storage, LLC).

10. A CPCN is not required for this Project.

11. The information filed in this Cause pursuant to the motion for protection and nondisclosure of confidential and proprietary information is deemed confidential pursuant to Ind. Code §§ 5-14-3-4 and 8-1-2-29, is exempt from public access and disclosure by Indiana law, and shall be held confidential and protected from public access and disclosure by the Commission.

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

HUSTON, BENNETT, FREEMAN, VELETA, AND ZIEGNER CONCUR:

APPROVED: JAN 17 2024

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

Dana Kosco
Secretary of the Commission