

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

IURC  
PETITIONER'S  
EXHIBIT NO. 5-12-21  
DATE 12 LR  
REPORTER

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

FILED  
February 12, 2021  
INDIANA UTILITY  
REGULATORY COMMISSION

CAUSE NO. 45493

PETITIONER'S SUBMISSION OF DIRECT TESTIMONY OF  
FRANK J. SALATTO

Indianapolis Power & Light Company ("IPL" or "Petitioner"), by counsel, hereby  
submits the direct testimony and attachments of Frank J. Salatto.

Respectfully submitted,



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**CERTIFICATE OF SERVICE**

The undersigned certifies that a copy of the foregoing was served this 12th day of February, 2021, by electronic transmission or United States Mail, first class, postage prepaid on:

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ATTORNEYS FOR PETITIONER  
INDIANAPOLIS POWER & LIGHT COMPANY

**VERIFIED DIRECT TESTIMONY**

**OF**

**FRANK J. SALATTO**

**ON BEHALF OF**

**INDIANAPOLIS POWER & LIGHT COMPANY**

**SPONSORING IPL ATTACHMENT FJS-1 AND IPL CONFIDENTIAL ATTACHMENT**  
**FJS-2**

**VERIFIED DIRECT TESTIMONY OF FRANK J. SALATTO  
ON BEHALF OF  
INDIANAPOLIS POWER & LIGHT COMPANY**

**1. INTRODUCTION**

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

A1. My name is Frank J. Salatto. I am employed by AES U.S. Services, LLC, the service company of Indianapolis Power & Light Company (“IPL” or “Company”). My business address is One Monument Circle, Indianapolis, Indiana 46204.

**Q2. What is your position with IPL?**

A2. My title is Director, US Tax Reporting. My primary responsibilities are related to the regulated utilities.

**Q3. On whose behalf are you submitting this direct testimony?**

A3. I am submitting this testimony on behalf of IPL.

**Q4. Please describe your duties as Director, US Tax Reporting.**

A4. I direct all aspects of federal and state income, property and sales and use tax for the regulated businesses that are part of the US Strategic Business Unit (“US SBU”), including IPL. I work closely with the US SBU accounting, finance, legal, operations, and development teams. I also partner with the Arlington, Virginia AES tax group on a variety of US federal, state, and local tax matters.

**Q5. Please summarize your prior work experience.**

A5. I have over 25 years of experience in income taxes and tax accounting, primarily with regulated electric utilities. I previously worked for Pepco Holdings, Inc. (PHI) and its predecessors in various levels of responsibility including as Manager of Income and

1 Regulatory Tax Accounting and Reporting. My particular area of focus was in PHI's  
2 regulated utilities – Pepco, Delmarva Power and Light and Atlantic City Electric. In that  
3 role I was responsible for the tax accounting, filing of tax returns and the development and  
4 defense of PHI's tax positions before the IRS and state.

5 **Q6. Please summarize your educational and professional qualifications.**

6 A6. I hold a Bachelor of Science degree in Accounting from the University of Maryland and  
7 have passed the Certified Public Accountant exam.

8 **Q7. Have you previously testified before this Commission?**

9 A7. Yes. I testified in IURC Cause No. 45029 for the Company. Further, I have testified before  
10 the utility rate commissions in Ohio, Maryland, the District of Columbia and Delaware in  
11 a variety of cases regarding the provision of taxes for The Dayton Power and Light  
12 Company, Pepco and Delmarva Power and Light.

13 **Q8. What is the purpose of your testimony in this proceeding?**

14 A8. The purpose of my direct testimony is to describe the structure and timing of IPL's  
15 investment in a proposed solar power electric generating facility to be known as Hardy  
16 Hills Solar ("Hardy Hills Project", "Hardy Hills" or "Project"), including the tax benefits  
17 and joint venture structure that will play a role in reducing the overall costs to IPL's  
18 customers. I discuss certain tax considerations relevant to the Capacity Agreement and  
19 Contract for Differences ("CfD"). Finally, I explain the accounting IPL will use for the  
20 tax equity financing.

21 IPL Witness Rogers discusses how IPL proposes its investment in the Hardy Hills Project  
22 be treated for retail ratemaking purposes.

1   **Q9.   Are you sponsoring any attachments?**

2   A9.   Yes. IPL Attachment FJS-1 illustrates the expected transaction step by step from  
3       acquisition by a wholly-owned subsidiary of IPL of the ProjectCo (and the related  
4       renewable assets being developed) to the investment by one or more Tax Equity Partners  
5       (“TEP”). The overall transaction is structured in this manner in order to attain the lowest  
6       reasonable cost for IPL’s customers.

7       IPL Confidential Attachment FJS-2 provides a draft term sheet the Company anticipates  
8       will approximate the final version once TEP signs an agreement to invest in the Project.

9   **Q10.   Were these attachments prepared or assembled by you or under your direction and**  
10       **supervision?**

11   A10.   Yes.

12   **Q11.   Please describe the Hardy Hills Project presented in this proceeding.**

13   A11.   As discussed by IPL Witness Cooper, IPL plans to invest in the Hardy Hills Project, which  
14       is a solar facility located in Clinton County, Indiana. It will contribute 97.5 MW unforced  
15       capacity (“UCAP”) to cover part of the capacity shortage identified with the retirements of  
16       IPL’s Petersburg Units 1 and 2 as described in the Company’s 2019 Integrated Resource  
17       Plan (“IRP”) and further discussed by IPL Witness Miller. Invenergy Solar Development  
18       North America LLC (“Invenergy”) which owns Hardy Hills Solar Energy Holdings LLC,  
19       which in turn owns Hardy Hills Solar Energy LLC (“ProjectCo”) is the project developer.  
20       ProjectCo will own the solar assets. Subsequent to regulatory approval, Invenergy will sell  
21       ProjectCo to AES Indiana Devco Holdings 1, LLC (“IPL DevCo”) a limited liability  
22       company owned by IPL. ProjectCo will ultimately be owned by Joint Venture, LLC

1 comprised of IPL Sponsor and a TEP. TEP may refer to more than a single tax equity  
2 investor as it is possible there may be multiple tax equity partners investing in this project.

3 **2. INVESTMENT TAX CREDITS**

4 **Q12. When is the Hardy Hills Project expected to be completed?**

5 A12. The Hardy Hills Project is expected to be completed and in commercial operation in May  
6 2023 and in no event later than December 2023 (which allows the project to qualify for the  
7 relevant Investment Tax Credit ("ITC") as discussed below).

8 **Q13. Are you familiar with the ITC available for solar projects?**

9 A13. Yes.

10 **Q14. How does the ITC work?**

11 A14. Federal law currently allows for an ITC based on qualifying capital costs for certain  
12 electricity generating equipment that use renewable resources (including solar power) to  
13 generate power. The amount of the credit for solar varies from 30% to 10% of the qualified  
14 costs depending on when construction begins and when the project is placed in service  
15 ("PIS"). To qualify for the 30% credit, construction must have started before January 1,  
16 2020 and be placed in service by December 31, 2026. Construction is deemed to have  
17 started when either 5% of the total cost of the project has been incurred or physical work  
18 of a significant nature begins. Once work begins, it must be continuous (with certain  
19 exceptions for items that are outside of the owner's control). However, the Internal  
20 Revenue Service ("IRS") has granted a safe harbor that presumes work to be continuous if  
21 the project is placed in service by the end of the fourth year after work begins. The cost to  
22 acquire solar panels used in a project is included in the 5% calculation even if the project



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1 they will be used in was not identified at the time they were acquired. Alternatively, on-  
2 site or off-site physical work on important equipment counts, such as driving posts,  
3 installing racking or starting work on a transformer, in each case under a binding written  
4 contract. If work on a project extends beyond the fourth year and therefore does not meet  
5 the safe harbor, an evaluation of the specific facts and circumstances of the project is  
6 undertaken to ensure it meets the rules of continuous construction and thereby qualify for  
7 the 30% credit.

8 **Q15. Will the Hardy Hills Project qualify for the 30% ITC?**

9 A15. Yes. Physical work of a significant nature started in 2019 when an Invenergy affiliate  
10 placed an order for a specially made transformer and the vendor began material amounts  
11 of the work on the transformer. The order was under a binding written contract. The  
12 expected completion date is no later than December 31, 2023 which falls within the safe  
13 harbor resulting in an ITC credit level of 30%.

14 **Q16. Has IPL considered the risk that the Hardy Hills Project may not qualify for the full**  
15 **30% ITC?**

16 A16. Yes. There is a risk of losing [REDACTED] of the credit brought on by two  
17 potential circumstances, which are both partially mitigated by a liquidated damages clause  
18 in the Membership Interest Purchase Project Development and Construction Management  
19 Agreement ("MIPA").

20 First, there is the risk that the project will not reach the Commercial Operation Date  
21 ("COD") by December 31, 2023 which is required to meet the continuous work safe harbor.  
22 As discussed by IPL Witness Cooper, we consider this risk acceptable for various reasons.

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1 If this date is missed and the review of the specific facts and circumstances of the project  
2 construction process do not yield a result that the continuous construction requirements  
3 were met, the Hardy Hills Project will qualify only for a 10% credit. To mitigate that risk,  
4 included in the MIPA between IPL DevCo (Purchaser) and the Invenergy (Seller) are  
5 liquidated damages in the event there is a delay on the completion of the project limited to  
6 [REDACTED] of the base contract price.<sup>1</sup>

7 Second, there is a risk as to whether the project work in 2019 was sufficient to qualify as  
8 the start of physical work of a significant nature. We have received representations from  
9 Invenergy relating to the work that was performed and a certificate from the vendor about  
10 the precise work performed. Invenergy is subject to damages if it makes  
11 misrepresentations. The MIPA contains a Form of Start of Construction Certificate  
12 included as Exhibit N which provides the representations made by Invenergy. This  
13 certificate lays out the details of when and how work was performed in 2019, and the  
14 Company has concluded that the work identified in the Form of Start of Construction  
15 Certificate meets the 5% threshold.

16 Further, the Company has decided to request a Private Letter Ruling (“PLR”) from the IRS  
17 to further mitigate its risk. A PLR is a ruling from the IRS based on the facts specific to a  
18 transaction is specific to the taxpayer requesting the ruling. We expect to meet with the  
19 IRS in a pre-submission conference with the IRS in March. A pre-submission conference  
20 is a meeting with the IRS where the transaction is described and questions the taxpayer  
21 would like to have answered are discussed. During this conference the IRS will ask

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<sup>1</sup> MIPA, Section 16.1.

1 questions and provide an indication if they will answer all the questions we have; they do  
2 not always answer all of questions posed to them in a PLR. An issue that could cause the  
3 IRS to withhold responses to our questions is IRS' recently opened, broader tax  
4 normalization project which expected to address many of the tax issues related to  
5 transactions similar to the Hardy Hills Project. Having such a project open does not  
6 preclude the IRS from answering specific questions, however, it is not unusual for the IRS  
7 decline a ruling on specific questions until the broader project is completed.

8 If, after the pre-submission conference, IPL determines that the PLR process will not  
9 address the questions we wish to have ruled on or provide the desired level of risk  
10 mitigation, IPL may decide to withdraw from the process and not submit a formal PLR  
11 request.

12 **Q17. How much ITCs are generated from the Hardy Hills Project?**

13 A17. Based on the estimated project costs, construction start dates and PIS, the Hardy Hills  
14 Project is anticipated to generate approximately [REDACTED] of ITCs. Of this amount,  
15 IPL expects to allocate to TEP [REDACTED] and to retain [REDACTED].<sup>2</sup>

16 **3. JOINT VENTURE**

17 **Q18. Please describe the Joint Venture.**

18 A18. The Joint Venture structure is a limited liability company (Joint Venture, LLC) operating  
19 as a partnership for US tax purposes that owns ProjectCo (owner of the solar generation).  
20 The Joint Venture, LLC will be jointly owned by a subsidiary of IPL (IPL Sponsor) and by  
21 TEP.

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<sup>2</sup> See also Q/A 27.

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1 Initially, the ProjectCo will be acquired from Invenergy by a wholly-owned subsidiary of  
2 IPL (IPL DevCo) prior to commencing any on site construction. IPL DevCo is a  
3 corporation for federal income tax purposes. At mechanical completion, IPL DevCo will  
4 sell the ProjectCo (along with the generating equipment) to Joint Venture, LLC.

5 IPL Sponsor is the generic name for the IPL entity that will own the Class B shares of the  
6 Joint Venture, LLC and, in combination with IPL, will manage the day to day operations  
7 of the Joint Venture, LLC. IPL Sponsor will be a limited liability company electing to be  
8 treated as partnership for tax purposes and will be owned in part by IPL directly and in part  
9 by an IPL subsidiary, IPL Sub, LLC (which will be a corporation for tax purposes). IPL  
10 Sponsor does not exist at this time; we anticipate it will be formed prior to the mechanical  
11 completion date. IPL Sponsor will be the managing member of the Joint Venture, LLC  
12 and IPL will control IPL Sponsor with respect to this role.

13 The TEP is a financial investor looking to take advantage of tax attributes of the project  
14 and is not involved in the operations of the plant beyond certain major decisions designed  
15 to protect its investment (for example, bringing in new partners, selling the project or  
16 shutting the project down). The TEP is not currently known; the transaction will be  
17 completed before the project's mechanical completion date. While the TEP member of the  
18 Joint Venture, LLC may consist of more than one tax equity partner, for simplicity, I use  
19 the singular tense.

20 **Q19. Please explain how the Joint Venture will acquire the Hardy Hills Project.**

21 A19. As discussed by IPL Witness Cooper, IPL DevCo has entered into a MIPA with Invenergy  
22 for development of the Hardy Hills Project, through ProjectCo (a special purpose entity)  
23 (see Step 1 in IPL Attachment FJS-1). Under the MIPA, IPL expects to incur [REDACTED]

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1 million for the acquisition of ProjectCo, project development and construction  
2 management. IPL also expects to incur approximately [REDACTED] million related to  
3 interconnection costs to be paid to Duke Energy Indiana, approximately [REDACTED] million for  
4 pre-COD land lease and property tax costs, and [REDACTED] million for substation land purchase.<sup>3</sup>

5 Joint Venture, LLC will purchase ProjectCo from IPL DevCo in exchange for cash equal  
6 to the full fair market value of the solar project (see Step 3 in IPL Attachment FJS-1).

7 More specifically, before the project reaches mechanical completion, IPL will come to an  
8 agreement with a TEP regarding the formation and operation of Joint Venture, LLC. IPL  
9 Sponsor will contribute cash to Joint Venture, LLC and will receive Class B membership  
10 interests in Joint Venture, LLC. The TEP will also make a cash investment to the Joint  
11 Venture, LLC. The TEP will receive Class A membership interests in the Joint Venture,  
12 LLC and receive up to [REDACTED] of the tax benefits (ITC and depreciation) generated by the  
13 project along with cash distributions. The cash received from IPL and the TEP will be  
14 used to acquire the ProjectCo.

15 The TEP contributions will be made in two steps. The initial contributions to Joint Venture,  
16 LLC will be made by TEP once mechanical completion is reached. The initial  
17 contributions are expected to represent [REDACTED] of the TEP's contributions towards the Project.  
18 No later than commercial operation date ("COD") in 2023, TEP will contribute the  
19 remaining [REDACTED] of the capital contribution to Joint Venture, LLC. The current estimate of  
20 TEP contributions is [REDACTED] million. The contributions from IPL Sponsor are discussed in

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<sup>3</sup> See IPL Witness Cooper Q/A 52.

1 the response to Q/A 27 below, but, in summary, are made starting on the acquisition the  
2 ProjectCo by IPL DevCo and continue over the construction period.

3 As stated above, those funds will subsequently be paid to IPL DevCo (see Step 3A in IPL  
4 Attachment FJS-1) and ultimately Joint Venture, LLC will own ProjectCo.

5 **Q20. What happens once Joint Venture acquires ProjectCo?**

6 A20. After COD, ProjectCo will generate and sell electricity to MISO on a merchant basis. Its  
7 price will be effectively fixed through the use of the Capacity Agreement and Contract for  
8 Differences agreement ("CfD"). IPL will acquire energy for its load from MISO at the  
9 market price. If the price at which ProjectCo sells electricity to MISO is above an agreed  
10 price, ProjectCo will pay the IPL the difference between the proceeds received from the  
11 sale and the stated price. If the price is below the stated price, IPL will pay ProjectCo, in  
12 each case, through the CfD terms. IPL Witness Cooper further discusses the CfD  
13 agreement and operations of the ProjectCo.

14 ProjectCo will pay for all operations and maintenance costs out of the funds from the sale  
15 of energy into MISO and any proceeds from the CfD.

16 Any residual cash is expected to be distributed to TEP and IPL under the to be agreed Joint  
17 Venture, LLC operating agreement. TEP is expected to receive a minority share of the  
18 cash flow (e.g., approximately [REDACTED] of the net cash flow), but the precise amount is yet  
19 to be agreed.

20 Once the TEP's internal rate of return is reached, around year [REDACTED], the partnership  
21 allocation of taxable income and cash will flip ("Flip Date"). At that point, the TEP's  
22 allocation of taxable income and cash is expected to be reduced to approximately [REDACTED]

1 **Q21. Will the TEP remain a member of the Joint Venture for the life of the Hardy Hills**  
2 **Project?**

3 A21. That is uncertain at this point. The Flip Date, just discussed, will also trigger an option for  
4 IPL Sponsor to purchase TEP's Class A membership interests at the fair market value. The  
5 fair market value calculation will be part of the initial negotiations with TEP. However,  
6 we anticipate the calculation that will determine this value is based on the discounted future  
7 cash flows of the Project for the remaining ownership.

8 In this proceeding, IPL does not seek approval of any amounts related to the purchase of  
9 the TEP's membership interests in the Joint Venture, LLC should IPL exercise this option  
10 following the Flip Date. The Company will keep the Commission apprised of IPL  
11 Sponsor's plans regarding the exercise of this option as the time nears and will request  
12 Commission approval and cost recovery as necessary or appropriate in a separately  
13 docketed proceeding.

14 **Q22. What is the purpose of the TEP in this transaction?**

15 A22. There are substantial tax credits and deductions (up to [REDACTED] of a project's value can be  
16 based on its tax attributes) resulting from the Hardy Hills Project including ITCs and  
17 accelerated depreciation. A TEP brings efficiency via its ability to utilize the investment  
18 tax credit and accelerated depreciation immediately on its tax returns. By incorporating a  
19 TEP, these attributes will be monetized on a more efficient basis – immediate realization  
20 of the ITCs and the ability to claim bonus depreciation prohibited for a utility and thereby  
21 reduce the costs that will be reflected in rates paid by IPL's customers.

1 **Q23. Why is the TEP able to utilize the tax attributes more efficiently than IPL (through**  
2 **its subsidiaries)?**

3 A23. Due to IPL's current and approved construction programs, IPL does not have the tax  
4 appetite for the accelerated depreciation and investment tax credits resulting from the  
5 Hardy Hills Project. Thus, any tax net operating losses generated from the tax attributes  
6 related to the renewable projects would have to be carried forward to use in a subsequent  
7 year. TEPs, which typically are not capital-intensive companies, are generally able to avail  
8 themselves of certain tax incentives (accelerated depreciation and other fixed asset related  
9 accelerated deductions) provided in the Internal Revenue Code ("IRC"). Consequently,  
10 TEPs do have the capacity to currently monetize the tax benefits that IPL would have to  
11 carry forward. This ability to currently monetize the tax benefits is reflected in the cash  
12 investment made by the TEP with the result that IPL's investment in the project is lower  
13 with a resulting lower cost to customers. This structure allows IPL to keep all of the non-  
14 tax ownership attributes of the Hardy Hills Project.

15 **Q24. Please identify the key agreements used to create and operate the Joint Venture.**

16 A24. IPL Witness Cooper discusses the Membership Interest Purchase Project Development and  
17 Construction Management Agreement ("MIPA") between IPL DevCo (Purchaser) and  
18 Invenergy (Seller) which through a special purpose entity, ProjectCo, is developing the  
19 Hardy Hills Project.

20 The key agreements that will be used to create and operate the Joint Venture, LLC are as  
21 follows:

- 22 • Limited Liability Company Operating Agreement between the TEP and IPL  
23 Sponsor ("Joint Venture LLCA").



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- 1 • Equity Capital Contribution Agreement and Membership Interest Purchase
- 2 Agreement between IPL DevCo and Joint Venture, LLC transferring the ProjectCo
- 3 (“TEP MIPA”).
- 4 • CfD.

5 I discuss the first two agreements below. I discuss tax considerations relevant to the third

6 agreement. IPL Witness Cooper further discusses the CfD in his testimony.

7 **Q25. Please discuss the Company’s experience with negotiating agreements with TEPs?**

8 A25. IPL’s parent, AES and its subsidiaries have a history of tax equity transactions. In 2020

9 alone, it closed [REDACTED] tax equity transactions. AES U.S. Services supports these transactions.

10 This experience well positions IPL to engage in the transaction here.

11 **Q26. Please describe the Joint Venture LLCA.**

12 A26. The Joint Venture LLCA will control the rights and obligations of members of Joint

13 Venture, LLC and will include the timing and amount of the required contribution. The

14 Joint Venture LLCA will create two membership classes, Class A and Class B, that allocate

15 cash distributions, tax benefits and other ownership attributes.

16 While this agreement has not yet been drafted, it will provide that a TEP and the IPL

17 Sponsor will partner to own the ProjectCo. As shown in Step 3 of IPL Attachment FJS-1,

18 the IPL Sponsor will contribute cash to Joint Venture, LLC and will receive Class B

19 membership interests in Joint Venture, LLC. The Joint Venture LLCA will be executed in

20 connection with the closing of the sale of ProjectCo to the Joint Venture, LLC.

21 As further detailed in IPL Confidential Attachment FJS-2, the material terms of the Joint

22 Venture LLCA will include:

- 1           • Pricing Parameters and Capital Commitments.
- 2           • Conditions precedent.
- 3           • The allocation of tax items.
- 4           • The distribution of net cash flow by the Joint Venture, LLC.
- 5           • Purchase option.
- 6           • Relationship to other related transaction and project documents.
- 7           • The operation and management of Joint Venture, LLC and ProjectCo.
- 8           • Managing member rights and obligations and Major Decision matters.
- 9           • Representations, warranties, and covenants of the TEP and IPL Sponsor.
- 10          • Governance and reporting.

11          When the Joint Venture LLCA is finalized, a copy will be filed with the Commission as a  
12          post order compliance filing in this docket and shared with the other parties subject to the  
13          protection of confidential information.

14      **Q27. Please describe the TEP MIPA.**

15      A27. The TEP MIPA will contain the agreement between IPL Sponsor and TEP to contribute  
16          capital to acquire the Class A and Class B membership interests in the Joint Venture, LLC.  
17          IPL expects the TEP MIPA will be entered into at the time that the Joint Venture LLCA is  
18          agreed to by the parties.

19          The TEP MIPA will set out the requirements for IPL Sponsor to transfer 100% of the Class  
20          A and Class B membership interests in the Joint Venture, LLC to TEP and IPL Sponsor,

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1 respectively, TEP will own 100% of the Class interests and IPL Sponsor will own 100%  
2 of the Class B interests. TEP is expected to contribute [REDACTED] of its capital contribution no  
3 later than the mechanical completion date and the remaining [REDACTED] at or around the PIS date  
4 or commercial operation date. IPL Sponsor will make its contributions of over the course  
5 of the construction period of the Project. See Steps 3A and 3B of IPL Attachment FJS-1.

6 At this time, the TEP is estimated to provide cash equal to approximately [REDACTED] million  
7 and IPL will provide the remaining cash required to make up the purchase price. The  
8 estimated amount of the TEP contribution is being calculated based on inputs such as the  
9 available ITC, tax depreciation to be allocated to TEP, TEP's assumed required internal  
10 rate of return, and projected cash flows from Joint Venture LLC to TEP.

11 **Q28. Has the Joint Venture limited liability company been formed yet?**

12 A28. No. We anticipate it will be formed prior to the mechanical completion date, when we  
13 have identified TEP.

14 **Q29. Will the Joint Venture have any long-term debt?**

15 A29. No.

16 **Q30. What is the general role of the TEP in the Joint Venture?**

17 A30. The TEP's role will be that of an investor. As noted above, IPL, through its subsidiary,  
18 will manage the ProjectCo through the life of the Joint Venture.

19 **Q31. Has the Commission previously approved an electric public utility's use of a joint  
20 venture structure similar to that proposed herein?**

21 A31. Yes. The Commission has authorized Northern Indiana Public Service Company  
22 ("NIPSCO") to acquire renewable energy projects through a similar overall joint venture

1 structure. One difference is that IPL's structure does not include the developer as a member  
2 of the Joint Venture as was the case in the first two NIPSCO joint ventures. See Cause No.  
3 45194 (Rosewater Project), Cause No. 45310 (Crossroads Project); see also Cause No.  
4 45462 (Dunn's Bridge Solar I & II and Cavalry Solar) (pending).

5 **4. CAPACITY AGREEMENT AND CONTRACT FOR DIFFERENCES**

6 **Q32. As you stated above, IPL Witness Cooper discusses the CfD. Are there tax**  
7 **considerations relevant to the CfD?**

8 A32. Yes. The CfD was established to mitigate the risk that tax losses between related parties  
9 would be disallowed. IRC Sections 267 and 704 provide that losses between related parties  
10 are disallowed. Without the CfD, the losses allocated between TEP and IPL Sponsor may  
11 be subject to that disallowance if the energy was sold directly from ProjectCo to IPL.

12 **5. OTHER MATTERS**

13 **Q33. IPL Witness Rogers addresses IPL's proposed accounting and ratemaking. In**  
14 **pertinent part, he explains that IPL asks the Commission to authorize IPL to include**  
15 **its investment in the Hardy Hills Project in rate base in IPL's basic rate cases and to**  
16 **amortize that investment overtime instead of booking depreciation. If IPL acquires**  
17 **the TEP share of the Joint Venture what will happen to the ownership structure of**  
18 **Hardy Hills Solar?**

19 A33. We are uncertain whether ProjectCo will continue to exist or whether the solar generating  
20 facilities will become utility plant in service. These matters will be decided at the future  
21 point in time when IPL decides whether to exercise its option to purchase the TEP share of  
22 the Joint Venture, LLC following the Flip Date.

1 **Q34. How will IPL account for its investment in the Joint Venture in its regulated books**  
2 **and records?**

3 A34. With the Commission's approval of this structure, IPL's investment in the Joint Venture,  
4 LLC will be recorded as a regulatory asset earning a return on the balance until such time  
5 as it is included in rates to reflect the Company's level of investment. Once the Joint  
6 Venture, LLC regulatory asset is established in rate base, it will continue to earn a return  
7 based on IPL's allowed rate of return and the regulatory asset balance will be amortized  
8 over the remaining life of the project reducing the regulatory asset balance.

9 **Q35. Should the Commission be concerned if IPL were to exercise its option to buy out the**  
10 **TEP that any tax depreciation would be duplicated when the solar generation**  
11 **facilities may become utility plant in service?**

12 A35. No. In the pre-flip period, IPL will only deduct tax depreciation properly allocated to it  
13 consistent with the rights of Class B membership interests and allowed by the IRC. If the  
14 option to acquire TEP's Class A membership interests were to be exercised, IPL would  
15 only recognize the depreciation on the incremental costs of acquiring the purchased  
16 property along with any remaining depreciation from the pre-flip period.

17 **6. CONCLUSION**

18 **Q36. What is your recommendation in this proceeding?**

19 A36. I recommend that the Commission approve the proposed acquisition and development of  
20 Hardy Hills Solar and the Joint Venture discussed above.

21 **Q37. Does this conclude your prefiled direct testimony?**

22 A37. Yes.

### VERIFICATION

I, Frank J. Salatto, Director, US Tax Reporting, affirm under penalties for perjury that the foregoing representations are true to the best of my knowledge, information, and belief.

Dated February 10, 2021.

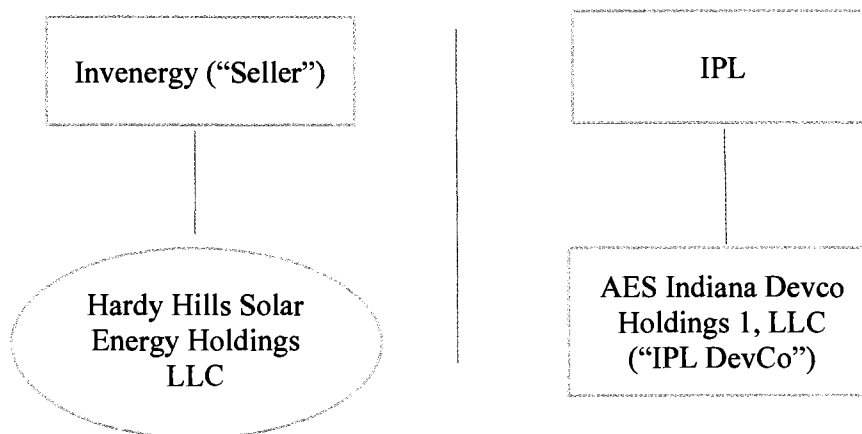
  
\_\_\_\_\_  
Frank J. Salatto

## Hardy Hills Project –Transactions and Structure

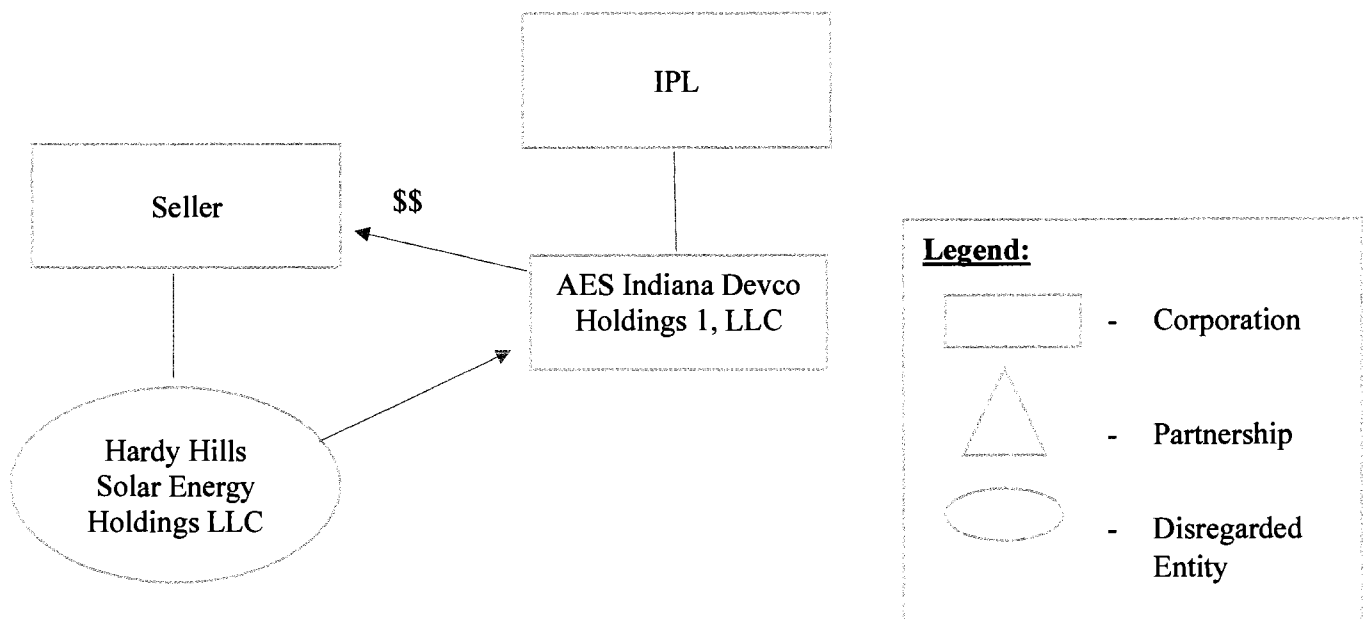
### Step 1 – IPL DevCo purchases Project Co

- IPL DevCo purchases Project Co from the Seller (a third party), Project Co becomes a disregarded entity then owned by IPL. A disregarded entity is a company that is disregarded in its form by the IRS and is taxed as if it were a component part of its parent).

### Immediately before the purchase:



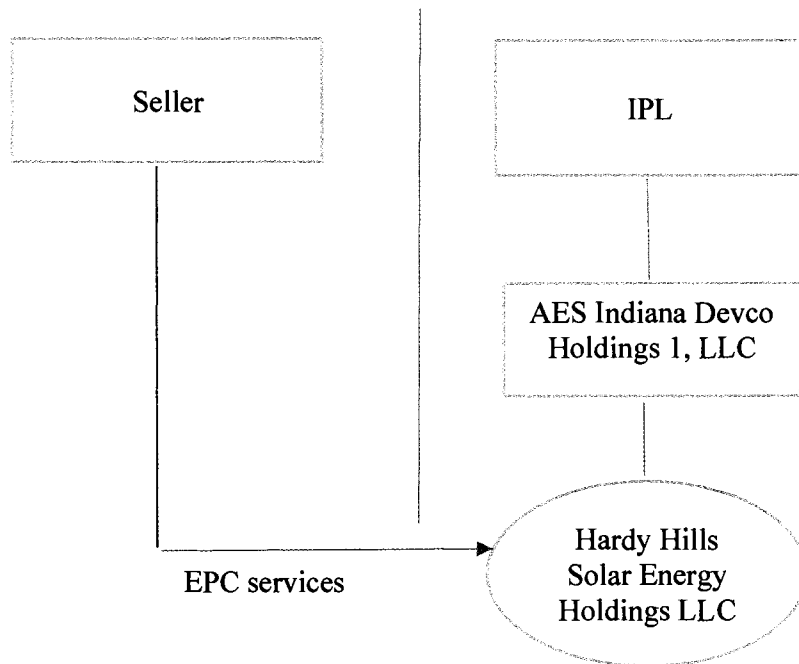
### Sale of Project Co:



**Step 2 –**

- Invenergy affiliate constructs Hardy Hills Project under the control and management of IPLDevCo and IPL.

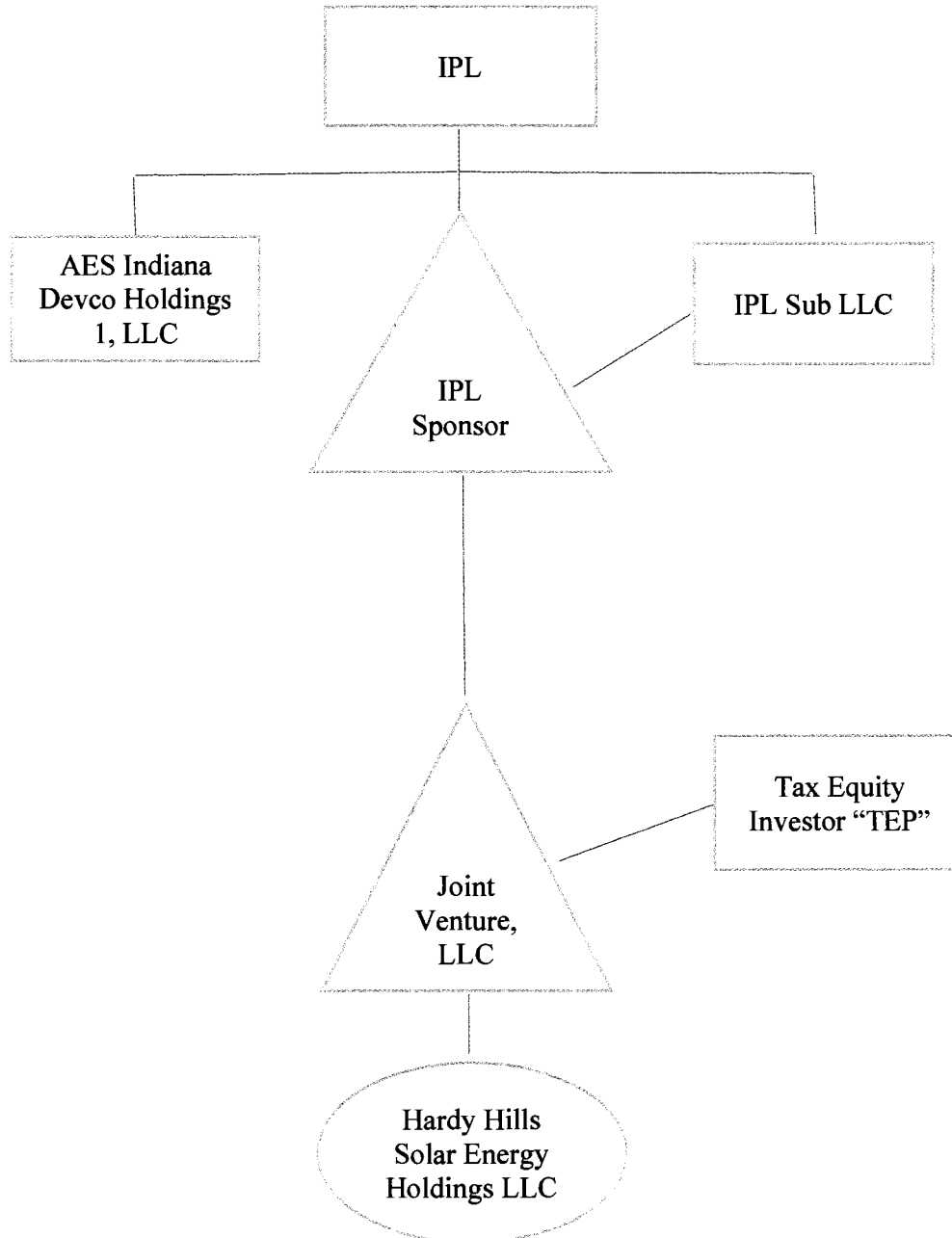
**Structure after acquisition during construction period**





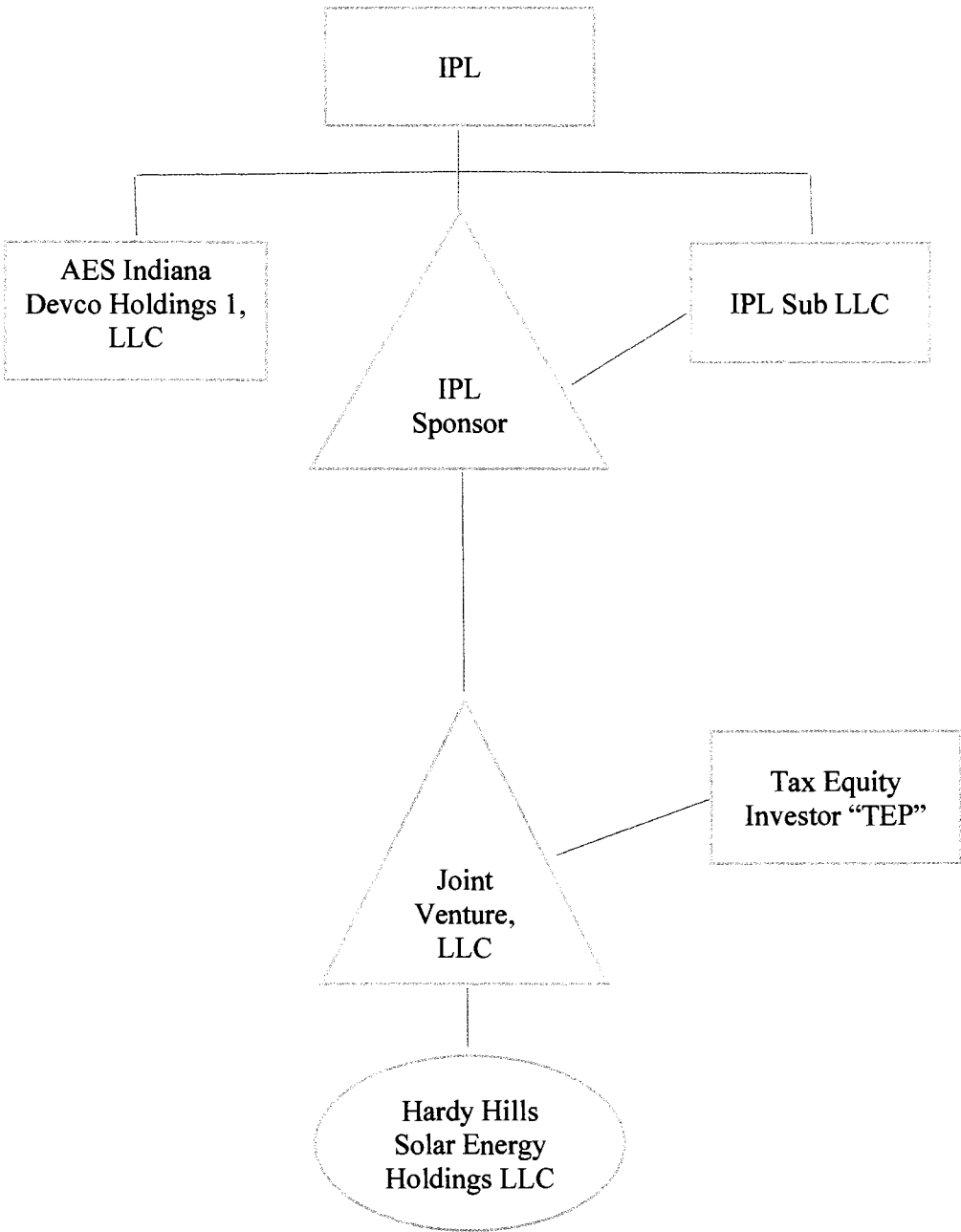
**Step 3a – Mechanical Completion**

- No later than mechanical completion, the following occurs: 1) IPL contributes cash to IPL Sponsor and IPL Sub, LLC who then contributes the funds to IPL Sponsor; 2) IPL Sponsor and TEP contribute cash to Joint Venture, LLC; and 3) Joint Venture, LLC purchases Project Co from IPL DevCo for cash



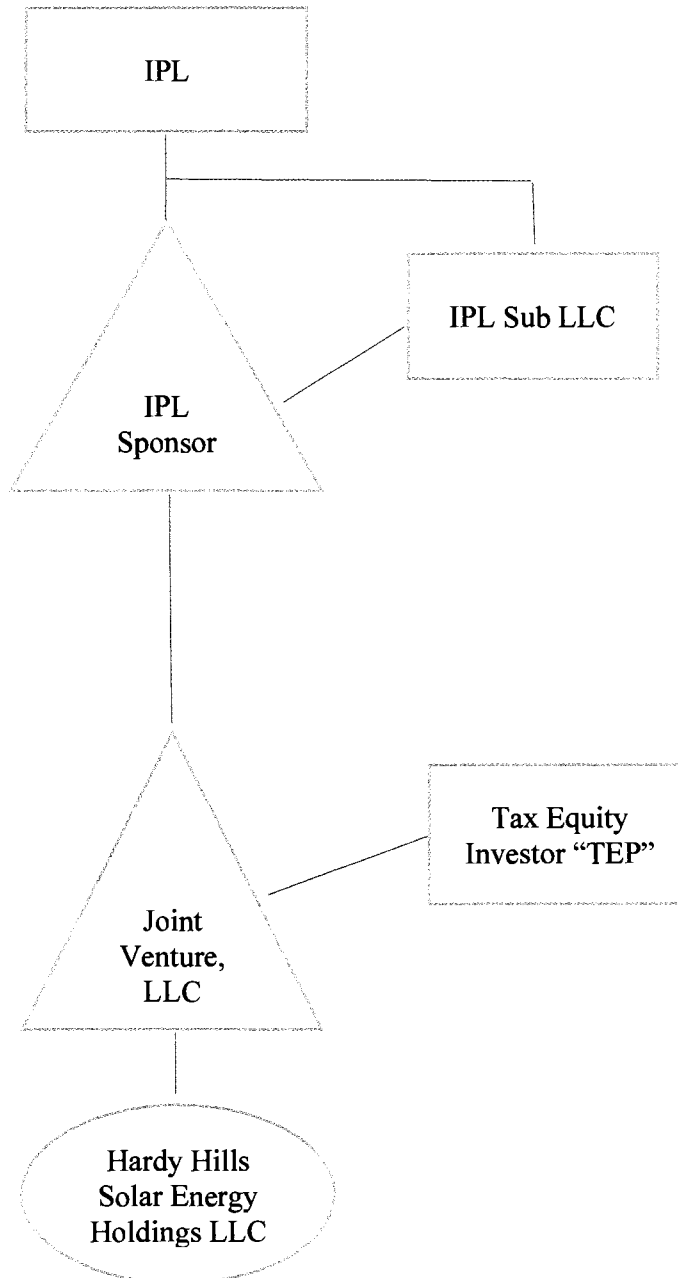
**Step 3b – Substantial Completion (COD)**

- Balance of purchase price paid by Joint Venture, LLC to IPL DevCo. Operations commence.



### Final Structure

- Upon TEP reaching its targeted internal rate of return, IPL Sponsor will have the option to acquire TEP's interest in Project Co. If IPL Sponsor chooses to exercise this option and receives Commission approval, it will own 100% of Project Co. In the event the option is exercised, the box for TEP would be removed.



IPL Confidential Attachment FJS-2  
(Draft Term Sheet)

[CONFIDENTIAL - NOT REPRODUCED HEREIN]