

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION


PETITION OF INDIANAPOLIS POWER & LIGHT COMPANY,)
D/B/A AES INDIANA, AN INDIANA CORPORATION, FOR)
AUTHORITY TO (1) ISSUE FIXED OR VARIABLE RATE)
SECURED OR UNSECURED LONG-TERM DEBT IN AN)
AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED)
\$740,000,000 (WHICH INCLUDES THAT NEEDED FOR)
REDEMPTION OF EXISTING PREFERRED STOCK); (2))
ENTER INTO CAPITAL LEASE OBLIGATIONS IN AN)
AGGREGATE AMOUNT OUTSTANDING AT ANY ONE TIME)
NOT TO EXCEED \$25,000,000; (3) ENTER INTO AND USE)
LONG-TERM CREDIT AGREEMENTS AND LIQUIDITY)
FACILITIES PROVIDING ACCESS TO BORROWINGS AND)
OTHER FORMS OF LIQUIDITY IN AN AGGREGATE)
AMOUNT OUTSTANDING THEREUNDER AT ANY ONE)
TIME NOT TO EXCEED \$750,000,000; (4) EXECUTE AND)
DELIVER ONE OR MORE SUPPLEMENTAL INDENTURES)
TO ITS MORTGAGE AND DEED OF TRUST DATED AS OF)
MAY 1, 1940 AS SUPPLEMENTED AND AMENDED, FOR THE)
PURPOSE OF CREATING OR SECURING ANY NEW SERIES)
OF FIRST MORTGAGE BONDS; (5) EXECUTE AND DELIVER)
PROMISSORY NOTES, LOAN AGREEMENTS AND OTHER)
DOCUMENTS EVIDENCING THE LONG-TERM DEBT)
AUTHORIZED HEREIN; (6) ENTER INTO INTEREST RATE)
RISK MANAGEMENT TRANSACTIONS IN CONNECTION)
WITH ITS OBLIGATIONS CURRENTLY OUTSTANDING)
AND AS PROPOSED TO BE ISSUED HEREIN, THROUGHOUT)
THE LIFE OF THE UNDERLYING OBLIGATIONS; (7) AS AN)
ALTERNATIVE TO THE SALE OF ALL OR A PORTION OF)
\$65,000,000 IN PRINCIPAL AMOUNT OF LONG-TERM DEBT,)
ISSUE AND SELL NEW PREFERRED STOCK, IN ONE OR)
MORE SERIES, UP TO AN AGGREGATE PAR VALUE OF)
\$65,000,000; (8) APPLY THE NET CASH PROCEEDS FROM)
THE SALE OF SUCH LONG-TERM DEBT OR ISSUANCE OF)
NEW SERIES OF PREFERRED STOCK, AFTER PAYMENT)
OF EXPENSES INCURRED IN CONNECTION THEREWITH,)
TO RETIRE, REFUND OR REDEEM CERTAIN SERIES OF ITS)
OUTSTANDING INDEBTEDNESS, TO REFUND OR REDEEM)
ANY OR ALL SERIES OF EXISTING PREFERRED STOCK,)
TO REIMBURSE ITS TREASURY, REPAY SHORT-TERM)
BORROWINGS, AND FINANCE ITS CONSTRUCTION)
PROGRAM.)

CAUSE NO. 45575

SUBMISSION OF AGREED PROPOSED ORDER

Petitioner, Indianapolis Power & Light Company d/b/a AES Indiana, by counsel, hereby submits the Agreed Proposed Order of Petitioner and the Office of the Utility Consumer Counselor (“OUCC”) in this Cause. Counsel for Petitioner represents that it is authorized to submit this Proposed Order on behalf of the OUCC.

Respectfully submitted,



Teresa Morton Nyhart (No. 14044-49)
Hillary J. Close (Atty. No. 25104-49)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Nyhart Phone: (317) 231-7716
Close Phone: (317) 231-7785
Fax: (317) 231-7433
Nyhart Email: teresa.nyhart@btlaw.com
Close Email: hillary.close@btlaw.com

Attorneys for INDIANAPOLIS POWER & LIGHT
COMPANY D/B/A AES INDIANA

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served this 6th day of October, 2021, by email transmission to:

Scott Franson
Office of Utility Consumer Counselor
115 W. Washington Street, Suite 1500 South
Indianapolis, Indiana 46204
infomgt@oucc.in.gov
sfranson@oucc.in.gov

Hillary J. Close

Hillary J. Close

Teresa Morton Nyhart (No. 14044-49)
Hillary J. Close (Atty. No. 25104-49)
BARNES & THORNBURG LLP
11 South Meridian Street
Indianapolis, Indiana 46204
Nyhart Phone: (317) 231-7716
Close Phone: (317) 231-7785
Fax: (317) 231-7433
Nyhart Email: teresa.nyhart@btlaw.com
Close Email: hillary.close@btlaw.com

Attorneys for INDIANAPOLIS POWER & LIGHT COMPANY D/B/A AES INDIANA

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

PETITION OF INDIANAPOLIS POWER & LIGHT COMPANY)
D/B/A AES INDIANA, AN INDIANA CORPORATION, FOR)
AUTHORITY TO (1) ISSUE FIXED OR VARIABLE RATE)
SECURED OR UNSECURED LONG-TERM DEBT IN AN)
AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED)
\$740,000,000 (WHICH INCLUDES THAT NEEDED FOR)
REDEMPTION OF EXISTING PREFERRED STOCK); (2))
ENTER INTO CAPITAL LEASE OBLIGATIONS IN AN)
AGGREGATE AMOUNT OUTSTANDING AT ANY ONE TIME)
NOT TO EXCEED \$25,000,000; (3) ENTER INTO AND USE)
LONG-TERM CREDIT AGREEMENTS AND LIQUIDITY)
FACILITIES PROVIDING ACCESS TO BORROWINGS AND)
OTHER FORMS OF LIQUIDITY IN AN AGGREGATE)
AMOUNT OUTSTANDING THEREUNDER AT ANY ONE)
TIME NOT TO EXCEED \$750,000,000; (4) EXECUTE AND)
DELIVER ONE OR MORE SUPPLEMENTAL INDENTURES)
TO ITS MORTGAGE AND DEED OF TRUST DATED AS OF)
MAY 1, 1940 AS SUPPLEMENTED AND AMENDED, FOR THE)
PURPOSE OF CREATING OR SECURING ANY NEW SERIES)
OF FIRST MORTGAGE BONDS; (5) EXECUTE AND DELIVER)
PROMISSORY NOTES, LOAN AGREEMENTS AND OTHER)
DOCUMENTS EVIDENCING THE LONG-TERM DEBT)
AUTHORIZED HEREIN; (6) ENTER INTO INTEREST RATE)
RISK MANAGEMENT TRANSACTIONS IN CONNECTION)
WITH ITS OBLIGATIONS CURRENTLY OUTSTANDING)
AND AS PROPOSED TO BE ISSUED HEREIN, THROUGHOUT)
THE LIFE OF THE UNDERLYING OBLIGATIONS; (7) AS AN)
ALTERNATIVE TO THE SALE OF ALL OR A PORTION OF)
\$65,000,000 IN PRINCIPAL AMOUNT OF LONG-TERM DEBT,)
ISSUE AND SELL NEW PREFERRED STOCK, IN ONE OR)
MORE SERIES, UP TO AN AGGREGATE PAR VALUE OF)
\$65,000,000; (8) APPLY THE NET CASH PROCEEDS FROM)
THE SALE OF SUCH LONG-TERM DEBT OR ISSUANCE OF)
NEW SERIES OF PREFERRED STOCK, AFTER PAYMENT)
OF EXPENSES INCURRED IN CONNECTION THEREWITH,)
TO RETIRE, REFUND OR REDEEM CERTAIN SERIES OF ITS)
OUTSTANDING INDEBTEDNESS, TO REFUND OR REDEEM)
ANY OR ALL SERIES OF EXISTING PREFERRED STOCK,)
TO REIMBURSE ITS TREASURY, REPAY SHORT-TERM)
BORROWINGS, AND FINANCE ITS CONSTRUCTION)
PROGRAM.)

CAUSE NO. 45575

APPROVED:

ORDER OF THE COMMISSION

Presiding Officers:

Sarah E. Freeman, Commissioner

Brad Pope, Administrative Law Judge

On June 29, 2021, Indianapolis Power & Light Company d/b/a AES Indiana (“AES Indiana” or “Petitioner”) filed its Verified Petition and supporting testimony in this Cause seeking authority to carry out its financing program (“Proposed Financing Program”) for the period through December 31, 2024. The procedural schedule was subsequently established by Docket Entry dated July 19, 2021. On August 30, 2021, the Indiana Office of Utility Consumer Counselor (“OUCC”) filed its direct testimony. On September 1, 2021, Petitioner filed its notice that it would not be filing rebuttal testimony and it accepted the OUCC’s recommendations.

The Indiana Utility Regulatory Commission (“Commission”) held an evidentiary hearing in this Cause on October 6, 2021, at 9:30 a.m. in Judicial Courtroom 222 of the PNC Center, Indianapolis, Indiana. The Petitioner and the OUCC appeared and participated in the hearing. The testimony and exhibits of Petitioner and the OUCC were admitted into evidence without objection.

Based on the applicable law and the evidence presented, the Commission finds:

1. **Notice and Jurisdiction.** Notice of the time and place of the evidentiary hearing was published as required by law. Petitioner is a “public utility” as defined in Ind. Code § 8-1-2-1(a). Under Indiana Code §§ 8-1-2-76 through 8-1-2-80, the Commission has jurisdiction over a public utility’s issuance of any stocks, certificates of stock, bonds, notes or other evidences of indebtedness payable at period of more than twelve (12) months. Therefore, the Commission has jurisdiction over Petitioner and the subject matter of this proceeding.

2. **Petitioner’s Characteristics.** Petitioner is a corporation organized and existing under the laws of Indiana, with its principal office at One Monument Circle, Indianapolis, Indiana. Petitioner owns and operates electric generating, transmission and distribution plant, property, equipment, and related facilities, which are used and useful for the convenience of the public in the production, transmission, delivery and furnishing of utility service.

3. **Relief Requested.** Petitioner requests a Certificate of Authority to issue long-term debt, promissory notes, Capital Leases, Credit Agreements, Mortgage Bonds, and New Preferred Stock, as set forth in this Order.

4. **Petitioner’s Evidence.** Petitioner presented the following evidence through its Verified Petition and attached appendices, and the direct testimony of Dustin J. Illyes, Assistant Treasurer of AES Indiana.

A. **Petitioner’s Capitalization and Outstanding Securities.** A Balance Sheet of Petitioner as of March 31, 2021, and an Income Statement of Petitioner for the twelve months ended March 31, 2021, were admitted into evidence. Verified Petition, Appendix C and D. At March 31, 2021, the capitalization of Petitioner amounted to \$3,173,497,000 and consisted of long-term debt in the amount of \$1,685,728,000; preferred stock in the amount of \$59,784,000; and common equity

in the amount of \$1,427,985,000. Verified Petition, Appendix E. All of the outstanding bonds, preferred stock and common stock have been duly authorized by Orders of this Commission.

As of March 31, 2021, the long-term debt of Petitioner was represented by fourteen series of First Mortgage Bonds. Verified Petition, Appendix A. The outstanding First Mortgage Bonds have been issued under and pursuant to a Mortgage and Deed of Trust dated as of May 1, 1940, as supplemented and modified by supplemental indentures (hereinafter collectively referred to as the “Mortgage”). Verified Petition ¶2. At March 31, 2021, the First Mortgage Bonds constitute the only long-term debt obligations of Petitioner. *Id.* Petitioner had no other outstanding indebtedness except current liabilities which included the current portion of long-term debt and short-term borrowings under its credit agreement at March 31, 2021. *Id.*

The issued and outstanding capital stock at March 31, 2021 comprised five separate issues of Cumulative Preferred Stock totaling 591,353 shares with a par value of \$100 per share, 17,206,630 shares of Common Stock without par value, Paid-in-Capital and Retained Earnings. Verified Petition ¶3 and Appendix B.

B. Proposed Financing. AES Indiana seeks Commission approval of its Proposed Financing Program for the approximately three-year period ending December 31, 2024. AES Indiana seeks authority to issue fixed or variable rate secured or unsecured long-term debt in an aggregate principal amount not to exceed \$740,000,000 (which includes the amount needed for redemption of existing preferred stock). More specifically, the Proposed Financing Program would permit AES Indiana, from time to time, during this period, in one or more transactions, to (1) issue \$700,000,000 in aggregate principal amount of long-term debt; (2) issue an additional \$40,000,000 in aggregate principal amount of long-term debt to retire, refund, or redeem some or all of one debt issue currently outstanding (“Lawful Refundings”); (3) issue fixed or variable rate secured or unsecured long-term debt in the aggregate principal amount of \$65,000,000 to retire, refund, or redeem any or all of the existing five series of cumulative preferred stock, with this amount included in (1) above; (4) enter into Capital Lease (“Lease”) obligations in an aggregate amount at any time outstanding not to exceed \$25,000,000; (5) enter into and use long-term credit agreements (“Credit Agreements”) and liquidity facilities in the aggregate amount outstanding thereunder at any one time not to exceed \$750,000,000 that provide for, among other things, the issuance of unsecured promissory notes, evidences of indebtedness, letters of credit, and liquidity for variable interest rate obligations; and (6) as an alternative to the sale of all or a portion of \$65,000,000 in principal amount of the long-term debt described in (3) above, issue and sell, from time to time through December 31, 2024, in one or more series, shares of New Preferred Stock (“New Preferred Stock”) with an aggregate par value up to \$65,000,000. Verified Petition ¶4; Pet. Ex. 1 at 6-7.

AES Indiana proposes that the rate of interest at the time of issuance of the debt described in (1) through (3) above (collectively, the “New Debt”) should represent market pricing and shall not exceed rates generally obtainable at the time of pricing or repricing of the New Debt for securities having the same or reasonably similar maturities and having reasonably similar terms, conditions and features issued by utilities of the same or reasonably comparable credit quality. Verified Petition ¶5. The New Debt shall have a term not less than twelve (12) months and not greater than sixty (60) years and may have the benefit of one or more letters of credit or bond insurance policies, or may be issued without the benefit of such letters of credit or insurance policies. *Id.*

C. **Purpose of the Proposed Financing.** The proceeds from Petitioner’s Proposed Financing Program, after payment of relevant expenses incurred, would be used to fund capital expenditures necessary for prudent utility operations, including investments to replace generation, aging or retiring facilities or improve overall performance. These expenditures include generation, improvements and extensions to transmission and distribution lines, substations, power factor and voltage regulating equipment, distribution transformers and street lighting. Petitioner’s capital expenditure program also includes power plant related projects and other miscellaneous equipment. Petitioner will also use the proceeds for (1) the reimbursement of its treasury for monies actually expended in the acquisition of property, material, or working capital; (2) the construction, completion, extension, or improvement of its facilities, plant, or distribution system; (3) improvement of its service; (4) the discharge or lawful refunding of its obligations; (5) the costs associated with Petitioner’s construction program; and (6) other lawful purposes. Verified Petition ¶6; Pet. Ex. 1 at 7.

Proceeds from Petitioner’s Lawful Refundings shall be used to either refund or retire securities that mature within the next three years (“Maturing Series”) as shown in Table 1 below.

TABLE 1

<u>Description</u>	<u>Balance Outstanding (000’s)</u>	<u>Date</u>	<u>Price</u>
<u>Maturing Series</u>			
Indiana Finance Authority Environmental Facilities Refunding Revenue Bonds Series 2016A 3.125% 65 th Supplemental Indenture due 01-Dec-2024	\$40,000	12-1-2024	100%
Total Maturing Series	<u>\$40,000</u>		
Total Lawful Refundings	<u>\$40,000</u>		

Verified Petition ¶5.

AES Witness Illyes testified that AES Indiana may request additional authority from this Commission for a proposed financing program before the authority requested under this Petition expires at the end of 2024, if other environmental mandates or Petitioner’s construction program necessitate financing when such costs are better known and estimable. Pet. Ex. 1 at 7-8.

Mr. Illyes explained that AES Indiana’s request to issue an additional \$40,000,000 in aggregate principal amount of long-term debt would be available to retire, refund, or redeem AES Indiana’s currently outstanding long-term debt. Pet. Ex. 1 at 8. He explained that, as shown in Table 1 of the Petition in this Cause (and also set forth above), AES Indiana has one long-term issue maturing during the period of the Proposed Financing Program: the First Mortgage Bonds,

3.125% Series, due December 1, 2024, in the aggregate principal amount of \$40,000,000 (the “Maturing Series”). *Id.*

Mr. Illyes explained that AES Indiana seeks authority to issue and deliver New Debt for the purposes previously described, in an aggregate principal amount not to exceed \$740,000,000. Pet. Ex. 1 at 9. He testified the New Debt may be issued as secured or unsecured and at fixed or variable interest rates in either the taxable or tax-exempt markets. *Id.*

AES Indiana proposed that the authority requested in this case supersede and replace any remaining unused authority from Cause No. 45115 at the time the Order in this case is issued. Petition ¶28; *see Indianapolis Power & Light Co.*, Cause No. 45115, 2018 WL 6528243 (IURC Dec. 5, 2018).

D. Petitioner’s Request to Execute and Deliver Supplemental Indentures to Its Mortgage. Petitioner requests authority to issue First Mortgage Bonds in order to secure its repayment obligations for the New Debt issued as secured debt and for the ability to enter into liquidity facilities or other similar facilities as credit enhancers on any or all secured or unsecured debt. Verified Petition ¶7. Petitioner seeks authority to issue and sell, for cash, at not less than 95% of the face value thereof, plus accrued interest (if any) to the date of delivery thereof, its First Mortgage Bonds to secure its repayment obligations relating to New Debt issued as secured debt. Verified Petition ¶9. Each series shall have the following characteristics: (1) each series shall be created under a supplemental indenture to the Mortgage, to be executed and issued under and pursuant to the provisions of the Mortgage and supplemental indenture; (2) each series shall be dated as of the date of such supplemental indenture or as of such other date or dates as may be permitted by the Mortgage and such supplemental indenture; (3) each series shall be due and payable not less than twelve months or more than sixty (60) years after the date thereof; (4) each series shall bear interest at fixed or variable rates; and (5) each series shall be issued and sold at such price and to have such other terms and characteristics as hereafter shall be determined by the Board of Directors of the Petitioner within the limitations and in accordance with the terms and provisions of the Mortgage. Verified Petition ¶9.

E. New Debt Instruments and Terms. Mr. Illyes testified that the New Debt may be issued as secured or unsecured debt and at fixed or variable interest rates in either the taxable or tax-exempt markets. He described the types of secured and unsecured debt that would be used. Pet. Ex. 1 at 9-10. He testified each series will be due and payable not less than twelve (12) months and not more than sixty (60) years after the date of issuance. *Id.* at 10. Mr. Illyes explained how the interest rate on the New Debt would be determined. *Id.* He described the major criteria governing AES Indiana’s choice between issuing fixed and variable-rate debt financing. *Id.* at 10-12. He stated that a major consideration is an examination of the type of assets being financed. *Id.* Mr. Illyes testified that variable-rate debt typically is used to finance shorter-lived assets or is used for a particular portion of a longer-lived asset’s life, such as during its construction period. He stated long-lived assets, such as utility plant and equipment, are financed with long-term, fixed-rate debt because that type of financing most closely matches the nature of the assets. *Id.*

Mr. Illyes testified that AES Indiana desires the flexibility to use variable-rate debt because the use of variable-rate debt can dramatically lower the cost of refinancing when compared to fixed-rate securities. *Id.* at 12. He added that market conditions are subject to dramatic changes in

short periods of time. *Id.* He stated that the market conditions existing at the time AES Indiana receives an order in this Cause may be substantially different from the market conditions that existed at the time of filing the Petition. *Id.* Mr. Illyes stated that AES Indiana's Board of Directors will have the ultimate responsibility for determining the terms and conditions of the financing transactions within the Proposed Financing Program subject to the limitations outlined in the Petition and Mr. Illyes's testimony. *Id.* Mr. Illyes pointed to AES Indiana's strong financials and its longstanding tradition as a low-cost provider of electric service as evidence of its prudence in financial management and testified this record justifies AES Indiana's request for discretion and flexibility in determining whether to issue fixed- or variable-rate securities. *Id.*

Mr. Illyes discussed AES Indiana's current exposure to variable-rate debt. *Id.* He stated that at March 31, 2021, none of Petitioner's outstanding long-term debt was variable-rate debt. *Id.* He added that the borrowings on AES Indiana's existing credit agreement, which had a balance of \$90,000,000 at March 31, 2021, are classified as short-term variable rate debt. *Id.*

Mr. Illyes described the use of tax-exempt and taxable fixed rate refinancings, including how they relate to the Lawful Refundings. *Id.* at 12-13. He said the Lawful Refundings are issuances to retire, refund or redeem Maturing Series tax-exempt fixed rate bonds that were issued by the Indiana Finance Authority ("IFA") and secured by AES Indiana's First Mortgage Bonds. *Id.* at 13. He stated the bonds carry interest that is exempt from Federal income tax to bondholders and added that as tax-exempt bonds, they are subject to special rules with respect to refinancing. *Id.* He testified these rules permit the current refinancing of such bonds on a tax-exempt basis. *Id.*

Mr. Illyes discussed how AES Indiana intends to accomplish the refinancing of the Lawful Refundings through the issuance of fixed- or variable-rate secured or unsecured notes in either the taxable or tax-exempt markets. *Id.* at 13. He also described variable-rate debt. *Id.* at 13-14.

F. The Proposed Unsecured Notes. Petitioner proposes to issue, sell, and deliver for cash new promissory notes or other unsecured evidences of indebtedness ("Notes") at such prices and with such other terms and characteristics as shall be determined by Petitioner's Board of Directors; provided that the issuance of the Notes as described in this paragraph in combination with any First Mortgage Bonds as previously described shall not, in aggregate, exceed the maximum aggregate amount of New Debt requested in this Cause. Verified Petition ¶10.

G. The Proposed Capital Lease Obligations. Petitioner also seeks Commission approval to enter into, from time to time over a period ending December 31, 2024, up to \$25,000,000 in Lease obligations outstanding at any one time, for terms not to exceed sixty (60) years. Verified Petition ¶11. Petitioner proposes to utilize Leases to acquire property and equipment to optimize the cost of financing commensurate with the underlying asset's expected life. *Id.* The Leases shall have structures and terms similar to other forms of debt financing, but with the potential, in certain instances, to lower the overall cost associated with financing property and equipment acquisitions. *Id.* At the end of each initial or renewal lease term, it is anticipated Petitioner will have the option to either renew each Lease pursuant to arm's length negotiation with the then existing Lessor or other Lessors, purchase the property, or terminate the Lease. The amount financed under the Leases, excluding transaction and/or add-on service and support costs, is not expected to be more than the net capitalized cost of the appraised value of the underlying property

or equipment, in conformity with accounting principles generally accepted in the United States of America. Verified Petition ¶11.

H. The Proposed Credit Agreements and Liquidity Facilities. Petitioner seeks authority to enter into and use long-term Credit Agreements and liquidity facilities in the aggregate amount outstanding thereunder at any one time not to exceed \$750,000,000 that would, among other things, provide for the issuance of unsecured promissory notes and other evidences of indebtedness, letters of credit, and other forms of liquidity for variable interest rate obligations. Verified Petition ¶12.

The Petitioner's current multi-year credit facility intended for its short-term liquidity needs expires on June 19, 2024. Verified Petition ¶14. Petitioner seeks authority to enter into, at any time on or before December 31, 2024, one or more Credit Agreements having a term not to exceed five (5) years. *Id.*; Pet. Ex. 1 at 19. Petitioner seeks this authority throughout the term of the Order requested in this Cause, through December 31, 2024, with the expiration of any such multi-year credit facility to be on or before December 31, 2029. *Id.* These Credit Agreements could provide for the issuance of letters of credit and liquidity facilities. Verified Petition ¶14. The letters of credit or liquidity facilities may be contained within, or separate from, other Credit Agreements of Petitioner. *Id.*

Mr. Illyes explained that a multi-year credit facility provides AES Indiana with committed capital for its short-term liquidity needs on a long-term basis without the need to renew the facility on an annual basis. Pet. Ex. 1 at 19. He explained that this type of facility also fixes the pricing grid and structure for the term of the agreement. *Id.* He stated the requested authority would maximize AES Indiana's flexibility in the event market conditions change. *Id.* He noted this type of facility is common within the utility industry, and although the capital is committed for multiple years, the credit facility can be reduced or cancelled at any time without any prepayment penalties. *Id.* at 19-20.

Liquidity facilities are also utilized to provide liquidity for variable interest rate obligations currently outstanding and entered into as part of Petitioner's Proposed Financing Program discussed herein. Verified Petition ¶15. Petitioner seeks authority to enter into any such liquidity facilities throughout the life of its outstanding debt and throughout the life of the New Debt in order to provide liquidity for such securities. Such liquidity facilities are often required in order to persuade investors in certain variable interest rate obligations to buy such securities, particularly those securities with mandatory put features that must be remarketed to other investors. Verified Petition ¶15; Pet. Ex. 1 at 20. Petitioner requests authority to enter into any liquidity facilities in connection with the New Debt issued in this Cause which shall not expire with the expiration of the authority to issue the New Debt in this Cause, but shall remain throughout the term of the New Debt. Verified Petition ¶16.

Mr. Illyes explained that AES Indiana seeks authority to enter into liquidity facilities as deemed appropriate by AES Indiana in connection with any variable-rate First Mortgage Bonds or unsecured notes that provide for such a liquidity facility. He testified a liquidity facility may be part of an underlying long-term credit facility, or a stand-alone agreement. He added that AES Indiana seeks authority to enter into liquidity facilities throughout the term of any underlying variable-rate obligation. Pet. Ex. 1 at 20.

Petitioner anticipates that it will normally make borrowings under its Credit Agreements on a short-term revolving basis. However, the accounting treatment of such borrowings as short-term debt or long-term debt is not assured. Therefore, Petitioner requests authority to borrow under its Credit Agreements in the event that the borrowings are classified as long-term debt so long as the aggregate amount of all obligations outstanding under the Credit Agreements at any one time does not exceed \$750,000,000. Petitioner intends to amortize all costs associated with entering into long-term Credit Agreements straight-line over the life of the agreements. Verified Petition ¶17.

I. The Potential Retirement, Refunding, Redemption, or New Issuance of Preferred Stock. As shown in Table 2 of the Verified Petition, AES Indiana has five series of existing preferred stock currently outstanding with an aggregate par value (including any premiums) of \$59,784,000. Verified Petition ¶22; Pet. Ex. 1 at 8. AES Indiana seeks authority to issue fixed or variable rate secured or unsecured long-term debt to retire, refund, or redeem any or all of the existing five series of cumulative preferred stock currently outstanding, which may be issued in combination with other New Debt, as part of Petitioner’s Proposed Financing Program. Mr. Illyes testified that given current low interest rates, AES Indiana may be able to reduce its cost of capital by replacing any or all of the series of preferred stock with lower priced long-term debt, which would be in the best interest of AES Indiana and its customers. Pet. Ex. 1 at 8.

As an alternative to the issuance of long-term debt to retire, refund or redeem any or all of the existing series of preferred stock, Petitioner requests authority to issue and sell from time to time through December 31, 2024, in one or more series, shares of New Preferred Stock with an aggregate par value up to \$65,000,000. Verified Petition ¶19; Pet. Ex. 1 at 20. The terms of the New Preferred Stock will be determined at the time of issuance, and such stock may have dividends that are cumulative or non-cumulative. Verified Petition ¶20. The New Preferred Stock will be sold by competitive bidding or in negotiated transactions with underwriters or agents. *Id.* The dividend rate on the New Preferred Stock will be determined by negotiation with institutional investors or with underwriters for the sale of such stock. *Id.* Mr. Illyes testified that the authority to issue New Preferred Stock in order to retire any or all of the existing series of preferred shares potentially allows AES Indiana to lower the costs of its preferred shares while helping to maintain AES Indiana’s target capital structure. Pet. Ex. 1 at 20. Petitioner may refinance, refund, redeem some or all of the preferred stock through a tender offer, a negotiated transaction, open market purchases, or by any other lawful means. Verified Petition ¶22.

J. The Proposed Promissory Notes and Other Evidences of Indebtedness. As proposed by AES Indiana, the New Debt may be issued as tax-exempt or taxable issues. Verified Petition ¶23. Petitioner may issue the New Debt as a limited obligation of a state or municipal agency (collectively, “Agency”), or as taxable debt, depending upon whether or not the financing qualifies to be issued as tax-exempt debt, and upon market conditions. If issued as tax-exempt debt, Petitioner may provide the Agency with evidence of indebtedness for such issues, either through (a) a First Mortgage Bond, or (b) one or more new Notes, with a corresponding promissory note to the Agency, and/or (c) issuance of letters of credit or revolving credit facilities to the Agency, to evidence such repayment of proceeds from the tax-exempt bonds issued by the Agency. Petitioner may also execute loan agreements and trust indentures in connection with the Lawful Refundings or other New Debt. Verified Petition ¶23.

K. The Proposed Interest Rate Risk Management Transactions. Petitioner seeks authority to enter into interest rate risk management transactions for currently outstanding obligations and the obligations issued as part of the New Debt. Verified Petition ¶24. Petitioner seeks authority to enter into any such interest rate risk management transactions throughout the life of any of these underlying obligations in order to mitigate the interest rate risk associated with such securities. *Id.* Petitioner seeks to utilize, when available and appropriate, interest rate hedging transactions and enter into related interest rate hedging agreements to reduce and manage interest costs. *Id.* The flexibility to enter into such transactions enables Petitioner to select, when and where appropriate, mechanisms in which it can: (1) synthetically convert variable-rate debt to fixed-rate debt; (2) synthetically convert fixed-rate debt to variable-rate debt; (3) limit the impact of changes in interest rates resulting from variable-rate debt; and (4) provide for the ability to enter into interest rate risk management transactions for future issuances of debt securities. Verified Petition ¶24.

Mr. Illyes described in detail AES Indiana's contemplated interest rate risk management transactions, which serve to establish an effective ceiling rate for variable-rate debt for a specified period of time. Pet. Ex. 1 at 16-18. He stated that in order to assure a maximum ceiling interest rate, AES Indiana would pay a premium, much like an insurance policy. *Id.* at 16. The record reflects that the interest rate risk management products commonly used in today's capital markets include: interest rate swaps, caps, collars, floors, forwards, treasury locks, forward starting swaps, or other similar products with the express purpose of managing interest rate risk and costs. Verified Petition ¶25; Pet. Ex. 1 at 16. Mr. Illyes provided illustrations of these types of interest rate risk management transactions. Pet. Ex. 1 at 16-17. Petitioner expects to enter into these agreements with counterparties that are highly-rated institutions. Verified Petition ¶25. Net fees and commissions in connection with interest rate risk management agreement(s) will not exceed those generally obtainable for reasonably similar products with comparable terms and conditions. *Id.* The transactions will be for a fixed period and a stated notional amount, and may be for underlying fixed or variable obligations of the Petitioner. *Id.* Interest rate risk management agreements would be entered into solely to hedge and manage interest rate risk. *Id.* Petitioner will not utilize such instruments for speculative purposes. *Id.* Petitioner requests that the cost of such transactions be included in determining the overall cost of capital in future rate proceedings. Verified Petition ¶25.

Petitioner proposes to enter into interest rate risk management transactions with terms and characteristics as shall be determined by Petitioner's Board of Directors. Verified Petition ¶26. Mr. Illyes testified that because the opportunities in the market for these alternatives are transitory, AES Indiana must have in place approval to enter into any or all of the interest rate risk management transactions described in connection with the Proposed Financing Program during the entire term of the underlying obligations. Pet. Ex. 1 at 17-18. Accordingly, Petitioner requests that the authority to enter into the interest rate risk management transactions shall not expire with the expiration of the authority to issue the New Debt in this Cause, but the authority shall remain throughout the term of the currently outstanding obligations or the New Debt. Verified Petition ¶27.

L. Amortization of Issuance and Discount Expenses, Interest Rate Risk Management Costs and Preferred Stock Recapitalization Costs. Petitioner requests authority to amortize issuance costs and interest rate risk management costs associated with the New Debt over the life of the New Debt (and, in the case of interest rate risk management costs associated with currently outstanding debt, over the remaining life of the debt). Verified Petition ¶8. Petitioner also

requests authority to treat all costs associated with the early redemption of outstanding debt, including any unamortized issuance and discount expenses relating to the redeemed issues as an issuance expense to be amortized over the life of the New Debt issued to refund the outstanding debt. Verified Petition ¶8; Pet. Ex. 1 at 15. For book purposes, AES Indiana proposes to account for all payments or receipts relating to interest rate risk management transactions, including administrative costs, as a decrease or increase in interest expense. Pet. Ex. 1 at 18. For ratemaking purposes, AES Indiana would reflect the net effect of the transaction in its embedded debt cost. This accounting treatment is consistent with the Commission's determination in AES Indiana's latest financing petition in Cause No. 45115, *Indianapolis Power & Light Co.*, 2018 WL 6528243. *Id.* at 18. In the event of a refinancing, refunding, or redemption of any or all of the preferred stock, Petitioner proposes to account for any premiums paid to redeem preferred stock as a stock reacquisition cost to be deferred and amortized on a straight-line basis over the life of the new securities. Verified Petition ¶21; Pet. Ex. 1 at 21.

Mr. Illyes testified that AES Indiana's proposed treatment of premiums and unamortized issuance and discount expenses associated with the New Debt is consistent with that previously authorized by the Commission. Pet. Ex. 1 at 15. Mr. Illyes testified that overall lower capital costs will accrue to the benefit of customers in any subsequent general rate cases. He stated that it is equitable that if AES Indiana incurs costs to lower its cost of capital, it should be able to recover those costs through rates; therefore, the net savings, not the gross savings, of the refinancing should be reflected in rates. Pet. Ex. 1 at 15.

M. Presently Existing Financing Authority. Petitioner's existing financing authority granted in Cause No. 45115 extends through December 31, 2021. *Indianapolis Power & Light Co.*, 2018 WL 6528243, at *15. Petitioner proposes that upon the issuance of this Order, the authority granted herein will supersede and replace any remaining authority from Cause No. 45115 that has not been used. Verified Petition ¶28.

N. Timing of Order. Petitioner requests an order in this proceeding by year-end 2021. Pet. Ex. 1 at 21; *see also* Verified Petition ¶28.

O. Reporting Requirements. Petitioner proposes that within thirty (30) days of each issuance of New Debt or New Preferred Stock authorized herein, AES Indiana shall file with the Commission and serve upon the OUCC a filing that includes: (1) the amount of the issuance, (2) a description of the terms and intended purpose, (3) the type of financing, (4) the estimated effective interest rate (incorporating the effects of issuance expenses on the interest rate) or the rate of dividend (in the case of preferred stock), (5) a pro forma balance sheet reflecting the reported financing by adjusting the most recently available quarterly balance sheet by adding the debt issuance obligation amount to debt outstanding or the preferred stock issuance to preferred stock outstanding and adding the net proceeds from the debt or preferred stock issuance to available cash, and (6) if the purpose of the financing is to refinance existing debt or preferred stock, the filing shall include a description of the characteristics of the debt or preferred stock being refinanced (*e.g.*, amount of debt or preferred stock refinanced, interest or dividend rate, maturity date and any redemption costs involved in refinancing). Verified Petition ¶30; Pet. Ex. 1 at 5-6. Additionally, if requested by the OUCC, AES Indiana will provide an update of current interest rate market pricing conditions. *Id.* Mr. Illyes testified that these reporting requirements are consistent with the reporting requirements recommended by the OUCC and accepted by AES Indiana's last financing case,

Cause No. 45115, which was approved by the Commission in its Order, dated December 5, 2018. Pet. Ex. 1 at 5-6.

5. **OUCC Evidence.** Caleb R. Loveman, Utility Analyst in the OUCC's Electric Division presented the OUCC's review of AES Indiana's request and the OUCC's recommendations. OUCC witness Loveman described AES Indiana's request and discussed AES Indiana's use of the proposed funds. He noted that AES Indiana does not seek approval of specific construction projects in this proceeding and added that the OUCC reserves its right to review and challenge the details of specific construction projects and associated costs in appropriate proceedings. Pub. Ex. 1 at 2-4. He stated that AES Indiana has not determined at this time how much of the authority requested in this Cause will be subject to fixed or variable rates and pointed to Mr. Illyes's discussion of the proposed use of fixed or variable debt. *Id.* at 6. Mr. Loveman discussed AES Indiana's plan to refinance the existing outstanding debt and the term of the New Debt. *Id.* at 4. He also discussed AES Indiana's plan for issuing Preferred Stock and AES Indiana's request to execute and deliver Supplemental Indentures to its Mortgage. *Id.* at 4. Mr. Loveman also addressed AES Indiana's Interest Rate Risk Management Proposal, explaining that the OUCC does not oppose such transactions but would emphasize the need for Petitioner to prudently exercise the authority when transactions are executed. *Id.* at 5. He added that the OUCC does not waive its rights in future rate proceedings to review Petitioner's financing decisions to determine if they were consistent with the authority established in this Order and were reasonable and prudent at the time they were made. *Id.* He testified that the OUCC does not oppose Petitioner's proposed interest rate parameters. He explained that as a general matter the OUCC typically recommends two items regarding interest rate maximums. First, in the case of fixed interest rate debt, the OUCC recommends the rate not exceed by more than 500 basis points the yield to maturity on U.S. Treasury bonds of comparable maturity at the time of pricing. Second, in the case of variable interest rate debt, the OUCC recommends the rate not exceed 8.0% in total (including the appropriate rate and any applicable credit spread) at the time of issuance. *Id.*

Mr. Loveman stated that the OUCC typically recommends not more than a 24-36 month timeframe and that the OUCC does not object to AES Indiana's requested financing term, which requests the financing authority be granted through December 31, 2024. *Id.* at 7.

Mr. Loveman testified the OUCC recommended: (a) Petitioner shall provide a written report to both the OUCC and the Commission within 30 days of incurring debt. The report should include all the terms of the debt, which includes: the amount and use of debt, maturity period, interest rate, premiums/discounts, issuance expenses, collateral details, repayment terms, and any other terms; (b) Petitioner's issuances pursuant to this authority shall be at competitive market rates and interest rates should meet the following criteria: credit spread associated with new fixed debt should not exceed by more than 500 basis points the yield to maturity on U.S. Treasury bonds of comparable maturity at the time of pricing and 8% all-in rate for new variable rate debt; and (c) an expiration date of December 31, 2024, be applied to the requested financing authority. *Id.* at 8.

6. **Commission Discussion and Findings.** Under Indiana Code §§ 8-1-2-76 through 8-1-2-80, the Commission has jurisdiction over a public utility's issuance of any stocks, certificates of stock, bonds, notes, or other evidences of indebtedness, payable at periods of more than twelve (12) months from the execution thereof, or preferred or common stock. The Commission must determine whether the proposed issue is in the public interest in accordance with the laws

addressing the issuance of securities by public utilities. The Commission must also find that the proposed issue is reasonably necessary in the operation and management of the utility's business so that the utility may provide adequate service and facilities.

Based on the Commission's review of the evidence, we find the amount of debt that AES Indiana plans to issue through the Proposed Financing Program does not exceed an amount that is reasonably necessary, and this satisfies the reasonably necessary requirements of Indiana Code § 8-1-2-76. As explained by AES Indiana Witness Illyes and OUCC Witness Loveman, this debt will be used to fund capital expenditures necessary for prudent utility operations, including investments to replace generation, aging or retiring facilities or improve overall performance. These expenditures include generation, improvements and extensions to transmission and distribution lines, substations, power factor and voltage regulating equipment, distribution transformers and street lighting. Petitioner's capital expenditure program also includes power plant related projects and other miscellaneous equipment. Petitioner will also use the proceeds for (1) the reimbursement of its treasury for monies actually expended in the acquisition of property, material, or working capital; (2) the construction, completion, extension, or improvement of its facilities, plant, or distribution system; (3) improvement of its service; (4) the discharge or lawful refunding of its obligations; (5) the costs associated with Petitioner's construction program; and (6) other lawful purposes. Verified Petition ¶6; Pet. Ex. 1 at 7.

Petitioner requests the Commission's authorization for issuance of stock, bonds, notes and other evidences of indebtedness payable at period of more than twelve (12) months. Petitioner described the proposed purposes of and extent required for obtaining funds and the proposed purposes and extent comply with Indiana Code § 8-1-2-78.

The OUCC did not oppose Petitioner's proposal. The OUCC recommended (a) that Petitioner shall provide a written report to both the OUCC and the Commission within 30 days of incurring debt; (b) that the Petitioner's issuances pursuant to this authority shall be at competitive market rates within the parameters set forth in Mr. Loveman's testimony; and (c) an expiration date of December 31, 2024, be applied to the requested financing authority. We note that the OUCC's proposed recommendations are consistent with the Petitioner's direct testimony and the Petitioner filed notice that it accepted the OUCC's recommendations. The Commission has authority to impose conditions upon a public utility issuing securities as the Commission deems reasonable pursuant to Indiana Code § 8-1-2-80(b). We find the OUCC's proposed conditions as provided herein are reasonable, and we approve the OUCC's recommendations. Thus, the Commission's approval is subject to Petitioner's compliance with the OUCC's proposed conditions.

Petitioner filed with the Commission a petition verified by Petitioner's Vice President and Chief Financial Officer and its Secretary. The petition includes the information required by Indiana Code § 8-1-2-79 as it pertains to the issuance of bonds, notes, or other evidences of indebtedness payable more than one year from the execution thereof and the issuance of preferred stock. Based upon our review of the evidence presented, we find that Petitioner complies with the requirements of Indiana Code § 8-1-2-79.

The Commission, having given due consideration to the statutory requirements, the nature of Petitioner's business, its credit, future prospects and earnings and the effect which the proposed

financing may have on the management and efficient operation of Petitioner, finds that the proposed financing authority is reasonable and is hereby granted. We further find that approval of the Proposed Financing Program is in accordance with the provisions of Indiana law relating thereto including, but not limited to, Indiana Code §§ 8-1-2-76 to -80. The Proposed Financing Program is necessary and advantageous to Petitioner and in the best interest of Petitioner, the public it serves and its security holders.

We find that Petitioner's proposed use of fixed- or variable-rate securities is reasonable and is hereby approved. The Commission authorizes Petitioner to issue long-term debt, to issue preferred stock, to enter into Capital Lease obligations and to enter into and use long-term credit facilities and liquidity facilities as described above and in Petitioner's Verified Petition and evidence. The Commission also authorizes Petitioner to enter into interest rate risk management transactions as described above and in Petitioner's Petition and evidence. We find that Petitioner's proposal with respect to the amortization, accounting and ratemaking treatment applicable to issuance and interest rate risk management costs and the premiums and unamortized issuance and discount expenses associated with the redemption of debt issues or preferred stock as described above and in Petitioner's evidence is reasonable and is hereby approved. Where AES Indiana incurs costs to lower its cost of capital, it should be able to recover those costs through rates; therefore, the net savings, not the gross savings, of the refinancing should be reflected in rates. The total outstanding capitalization of Petitioner upon completion of the Proposed Financing Program and each component thereof and the application of the proceeds therefrom, will not be in excess of the fair value of Petitioner's property used and useful for the convenience of the public. Accordingly, the Commission finds that the AES Indiana's Proposed Financing Program is in the public interest and is hereby approved. The Commission further finds that a Certificate of Authority should be and is issued to Petitioner to proceed with the financing program subject to the OUCC recommendations approved above.

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

1. The Commission finds that Petitioner's Proposed Financing Program is in the public interest and is hereby approved.
2. A Certificate of Authority is awarded to Petitioner for the issuance of securities, upon the terms and conditions, of the character, for the consideration, in the manner, and for the purposes, set forth in this Order, including:
 - a. authority to issue from time to time over the period ending December 31, 2024 up to \$740,000,000 in aggregate principal amount of fixed or variable rate secured or unsecured long-term debt in amounts and on terms consistent with Petitioner's Verified Petition and evidence submitted herein;
 - b. authority to execute and deliver promissory notes and other evidence of secured or unsecured indebtedness relating to such long-term debt, including but not limited to, loan agreements entered into in connection with such long-term debt;

- c. authority to issue fixed or variable rate secured or unsecured long-term debt in the aggregate principal amount of \$65,000,000 to retire, refund, or redeem any or all of the existing five series of cumulative preferred stock (which amount is included in the \$740,000,000 of New Debt authorized in Paragraph (1.a) above) and to account for premiums paid in connection with the redemption or reacquisition of the preferred stock as described in Petitioner's Petition and evidence submitted herein;
- d. authority to enter into Capital Lease obligations not to exceed \$25,000,000 outstanding at any one time on terms consistent with Petitioner's Petition and evidence submitted herein;
- e. authority to enter into and use long-term Credit Agreements and liquidity facilities in the aggregate amount outstanding thereunder at any one time not to exceed \$750,000,000, which Credit Agreements and liquidity facilities may provide for, among other things, the issuance of unsecured promissory notes, evidences of indebtedness, letters of credit and liquidity for variable interest rate obligations (which liquidity facilities may be contained within or separate from other credit agreements), on terms consistent with Petitioner's Petition and evidence submitted herein;
- f. authority, to the extent long-term debt issued pursuant to this authority is secured, to execute and deliver Supplemental Indentures supplementing and amending the Mortgage in order to create new series of Mortgage Bonds and to specify the characteristics thereof in accordance with the terms and provisions of the Mortgage;
- g. authority to execute interest rate risk management transactions on terms consistent with Petitioner's Verified Petition and evidence submitted herein;
- h. authority to treat all costs incurred to redeem long-term debt that is refunded pursuant to the authority granted herein, unamortized issuance and discount expenses associated with such redeemed issues and the cost of interest rate risk management transactions as described in Petitioner's Verified Petition and evidence submitted herein;
- i. as an alternative to the sale of all or a portion of \$65,000,000 in principal amount of the New Debt described above, authority for Petitioner to issue and sell, from time to time through December 31, 2024, in one or more series, shares of New Preferred Stock with an aggregate par value up to \$65,000,000; and
- j. authority to use and apply the cash proceeds and account for the related costs arising from the issue and issuance of the long-term debt, the issuance of new series of preferred stock, and Capital Lease obligations for the purposes of and in accordance with the terms set forth in Petitioner's Verified Petition and evidence submitted herein.

3. This Order is the sole evidence of our approval and shall constitute a Certificate of Authority granted to AES Indiana as provided in Indiana Code § 8-1-2-80.

4. Within thirty (30) days after exercising any of the authority to issue New Debt approved in this Cause, Petitioner shall file a report to the Commission under this Cause with a copy to the OUCC, as summarized in Paragraph 4.O above.

5. The authority (other than the accounting treatment authority granted herein) granted in this Order shall expire on December 31, 2024 to the extent it has not been utilized by that date. However, Petitioner's authority to execute interest rate risk management transactions, long-term liquidity facilities or other credit enhancements related to the financing transactions authorized herein shall remain in effect throughout the life of the underlying obligations to mitigate the interest rate risk associated with such securities.

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

7. The authority granted in this Order supersedes and replaces any authority from Cause No. 45115 that has not been used.

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

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

**Dana Kosco
Secretary of the Commission**

DMS 20950385v1