OFFICIAL
EXHIBITS

FILED
August 2, 2021
INDIANA UTILITY
REGULATORY COMMISSION

STATE OF INDIANA

INDIANA UTILITY REGULATORY COMMISSION

VERIFIED PETITION OF INDIANAPOLIS POWER & LIGHT COMPANY D/B/A AES INDIANA ("AES INDIANA") FOR (1) ISSUANCE TO AES INDIANA OF A CERTIFICATE OF PUBLIC CONVENIENCE AND NECESSITY FOR THE ACQUISITION AND DEVELOPMENT BY A WHOLLY OWNED AES INDIANA SUBSIDIARY OF A SOLAR POWER GENERATING FACILITY AND BATTERY ENERGY STORAGE SYSTEM PROJECT TO BE KNOWN AS THE PETERSBURG ENERGY CENTER ("THE PETERSBURG PROJECT"); (2) APPROVAL OF THE PETERSBURG 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 PROJECT COMPANY THAT HOLDS AND OPERATES THE SOLAR GENERATION AND STORAGE 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 PETERSBURG PROJECT, INCLUDING AN ALTERNATIVE REGULATORY PLAN UNDER IND. CODE § 8-1-2.5-6 TO FACILITATE AES INDIANA'S INVESTMENT IN THE PETERSBURG 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.	)	IURC PETITIONER'S EXHIBIT NO. 4 10-25-21 AT DATE REPORTER **CAUSE NO.** 45591

PETITIONER'S SUBMISSION OF DIRECT TESTIMONY OF
<u>FRANK J. SALATTO</u>

Indianapolis Power & Light Company d/b/a AES Indiana ("AES Indiana" or "Petitioner"), by counsel, hereby submits the direct testimony and attachments of Frank J. Salatto.

Respectfully submitted,

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D/B/A AES INDIANA

CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing was served this 30th day of July, 2021, by electronic transmission or United States Mail, first class, postage prepaid on:

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ATTORNEYS FOR PETITIONER
INDIANAPOLIS POWER & LIGHT COMPANY
D/B/A AES INDIANA

VERIFIED DIRECT TESTIMONY

OF

FRANK J. SALATTO

ON BEHALF OF

INDIANAPOLIS POWER & LIGHT COMPANY

D/B/A AES INDIANA

SPONSORING AES INDIANA ATTACHMENT FJS-1 AND AES INDIANA CONFIDENTIAL ATTACHMENT FJS-2

VERIFIED DIRECT TESTIMONY OF FRANK J. SALATTO
ON BEHALF OF AES INDIANA

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 ("AES Indiana" or "Company"). My business address is One Monument Circle, Indianapolis, Indiana 46204.

Q2. What is your position with AES Indiana?

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 AES Indiana.

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 AES Indiana. 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

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

Q6. Please summarize your educational and professional qualifications.

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

Q7. Have you previously testified before this Commission?

A7. Yes. I testified for the Company in IURC Cause No. 45029 and Cause No. 45493. Further, I have testified before the utility rate commissions in Ohio, Maryland, the District of Columbia and Delaware in a variety of cases regarding the provision of taxes for The Dayton Power and Light Company, Pepco and Delmarva Power and Light.

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

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

AES Indiana Witness Rogers discusses how AES Indiana proposes its investment in the Petersburg Project be treated for retail ratemaking purposes.

Q9. Are you sponsoring any attachments?

A9. Yes. <u>AES Indiana Attachment FJS-1</u> illustrates the expected transaction step by step from acquisition of the ProjectCo (and the related renewable assets being developed) by a wholly-owned subsidiary of AES Indiana to the investment by one or more Tax Equity Partners ("TEP"). The overall transaction is structured in this manner in order to attain the lowest reasonable cost for AES Indiana's customers.

<u>AES Indiana Confidential Attachment FJS-2</u> provides a draft term sheet the Company anticipates will approximate the final version once TEP signs an agreement to invest in the Project.

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

A10. Yes.

Q11. Did you submit any workpapers?

A11. Yes. I have submitted a workpaper that calculates certain tax impact information contained in my testimony.

Q12. Please describe the Petersburg Project presented in this proceeding.

A12. As discussed by AES Indiana Witness Cooper, AES Indiana plans to invest in the Petersburg Project, which is a solar and storage facility located in Pike County, Indiana. It will contribute 250 MW unforced capacity ("UCAP") and 60 MW three hour DC coupled battery energy storage system that will, in combination with the Hardy Hills Project, cover the capacity shortage identified with the retirements of AES Indiana's Petersburg Units 1 and 2 as described in the Company's 2019 Integrated Resource Plan ("IRP") and further discussed by AES Indiana Witness Miller. Petersburg Energy Center Holdings, LLC, a subsidiary of NextEra Energy Resources, LLC ("NextEra") owns Petersburg Energy Center, LLC ("ProjectCo") which will own the solar and storage assets. Subsequent to regulatory approval, NextEra will sell ProjectCo to AES Indiana Devco Holdings 2, LLC ("AESI DevCo") a limited liability company owned by AES Indiana. ProjectCo will ultimately be owned by a Joint Venture limited liability company ("Joint Venture, LLC") comprised of AES Indiana Sponsor and a TEP. TEP may refer to more than a single tax equity investor as it is possible there may be multiple tax equity partners investing in this project.

2. INVESTMENT TAX CREDITS

Q13. When is the Petersburg Project expected to be completed?

A13. The Petersburg Project is expected to be completed and in commercial operation in May 2024.

Q14. Are you familiar with the ITC available for solar projects?

A14. Yes.

Q15. How does the ITC work?

A15. Federal law currently allows for an ITC based on qualifying capital costs for certain electricity generating equipment that use renewable resources (including solar power) to generate power. The amount of the credit for solar varies from 30% to 10% of the qualified costs depending on when construction begins and when the project is placed in service ("PIS"). In order for the project to qualify for the 30% credit, construction must start before January 1, 2020. To qualify for the 26% credit, construction must have started after

December 31, 2019 and before January 1, 2023 and be placed in service by December 31, 2025. Construction is deemed to have started when either 5% of the total cost of the project has been incurred or physical work of a significant nature begins. Once work begins, it must be continuous (with certain exceptions for items that are outside of the owner's control). However, the Internal Revenue Service ("IRS") has granted a safe harbor that presumes work to be continuous if the project is placed in service by the end of the fourth year after work begins (with certain exceptions for projects that started construction in 2016 through 2020). The cost to acquire solar panels used in a project is included in the 5% calculation even if the project they will be used in was not identified at the time they were acquired. Alternatively, on-site or off-site physical work on important equipment counts, such as driving posts, installing racking or starting work on a transformer, in each case under a binding written contract. If work on a project extends beyond the fourth year (sixth year for projects that started in 2016-2019 and fifth year for projects that started in 2020) and therefore does not meet the safe harbor, an evaluation of the specific facts and circumstances of the project is undertaken to ensure it meets the rules of continuous construction and thereby qualify for the 26% credit.

Q16. Will the Petersburg Project qualify for the 26% ITC?

A16. Yes. construction started in 2020 when a NextEra affiliate placed an order and took delivery of solar panels during 2020. The order was under a binding written contract. The expected completion date is no later than December 31, 2024 which falls within the safe harbor resulting in an ITC credit level of 26%.

Q17. Has AES Indiana considered the risk that the Petersburg Project may not qualify for the full 26% ITC?

A17. Yes. There is a risk of losing [redacted] of the credit brought on by two potential circumstances, which are both partially mitigated by a liquidated damages clause in the Engineering, Procurement and Construction Agreement ("EPC").

First, there is the risk that the project will not reach the Commercial Operation Date ("COD") by December 31, 2025 which is required to meet the continuous work safe harbor. As discussed by AES Indiana Witness Cooper, we consider this risk acceptable for various reasons. If this date is missed and the review of the specific facts and circumstances of the project construction process do not yield a result that the continuous construction requirements were met, the Petersburg Project will qualify only for a 10% credit. To mitigate that risk, included in the EPC between ProjectCo and NextEra Energy Engineering and Constuction, LLC ("EPC Contractor") are liquidated damages in the event there is a delay on the completion of the project limited to [redacted] of the EPC Price.[1]

Second, there is a risk as to whether the project work before 2023 will be sufficient to qualify as the start of physical work of a significant nature. We have received representations from NextEra relating to the work that was performed and a certificate from the vendor about the precise work performed. NextEra is subject to damages if it makes misrepresentations. The Membership Interest Purchase and Project Development Agreement ("MIPA") between NextEra and AESI DevCo contains a Start of Construction Certificate included as Exhibit E which provides the representations made by NextEra. This certificate lays out the details of when and how work was performed in 2020, and the Company has concluded that the work identified in the Form of Start of Construction

[1] AES Indiana Confidential Attachment GAC-2, Section 12.4.

Certificate meets the 5% threshold. In its current form, the details in Exhibit E are blank and will be updated by NextEra shortly before the closing of the contract.

Further, the Company will be requesting a Private Letter Ruling ("PLR") from the IRS to further mitigate its risk. A PLR is a ruling from the IRS based on the facts specific to a transaction and is specific to the taxpayer requesting the ruling. We expect to meet with the IRS in a pre-submission conference in September. A pre-submission conference is a meeting with the IRS where the transaction is described and questions the taxpayer would like to have answered are discussed. During this conference the IRS will ask questions and provide an indication if they will answer all the questions we have; they do not always answer all of questions posed to them in a PLR. An issue that could cause the IRS to withhold responses to our questions is IRS' recently opened, broader tax normalization project which is expected to address many of the tax issues related to transactions similar to the Petersburg Project. Having such a project open does not preclude the IRS from answering specific questions, however, it is not unusual for the IRS to decline a ruling on specific questions until the broader project is completed. If the IRS issues its guidance in the broader project that addresses the questions we expect to ask in the PLR, the Company may decide not to go forward with the PLR. Additionally, if, after the pre-submission conference, AES Indiana determines that the PLR process will not address the questions we wish to have ruled on or provide the desired level of risk mitigation, AES Indiana may decide to withdraw from the process and not submit a formal PLR request.

Q.17. Does the storage component of this project qualify for the 26% ITC?

A.17. Yes. Under current law, if the storage component is charged at least 75% from the related solar field, it qualifies for the ITC (the ITC is reduced pro rata if non solar energy is used to charge the battery up to the 25% limit). In this instance, the battery will only be charged by energy generated from the Petersburg Project solar assets for at least 5 years. Consequently, the storage component will qualify for the 26% credit.

Q18. How much ITCs are generated from the Petersburg Project?

A18. Based on the estimated project costs, construction start dates and PIS, the Petersburg Project is anticipated to generate approximately [redacted] of ITCs. Of this amount, AES Indiana expects to allocate to TEP [redacted] and to retain [redacted].[2]

3. JOINT VENTURE

Q19. Please describe the Joint Venture.

A19. The Joint Venture structure is a limited liability company (Joint Venture, LLC) operating as a partnership for US tax purposes that will own ProjectCo (owner of the solar generation). The Joint Venture, LLC will be jointly owned by a subsidiary of AES Indiana (AES Indiana Sponsor) and by TEP.

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

AES Indiana Sponsor is the generic name for the AES Indiana entity that will own the Class B shares of the Joint Venture, LLC and, in combination with AES Indiana, will manage the day to day operations of the Joint Venture, LLC. AES Indiana Sponsor will be a limited liability company electing to be treated as partnership for tax purposes and will

[2] See also Q/A 27.

be owned in part by AES Indiana directly and in part by an AES Indiana subsidiary, AES Indiana Sub, LLC (which will be a corporation for tax purposes). AES Indiana Sponsor does not exist at this time; we anticipate it will be formed prior to the mechanical completion date. AES Indiana Sponsor will be the managing member of the Joint Venture, LLC and AES Indiana will control AES Indiana Sponsor with respect to this role.

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

Q20. Please explain how the Joint Venture will acquire the Petersburg Project.

A20. As discussed by AES Indiana Witness Cooper, AESI DevCo has entered into a MIPA with NextEra and ProjectCo has entered into an EPC with EPC Contractor for development and construction of the Petersburg Project, through ProjectCo (a special purpose entity) (see Steps 1 and 2 in <u>AES Indiana Attachment FJS-1</u>). Under the MIPA and EPC, AES Indiana expects to incur [redacted] million for the acquisition of ProjectCo and [redacted] million for the project development and construction management. ProjectCo also expects to incur approximately [redacted] million related to interconnection costs and approximately [redacted] million for pre-COD land lease and property tax costs.[3]

[3] See AES Indiana Witness Cooper Q/A 58.

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

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

The TEP contributions will be made in two steps. The initial contributions to Joint Venture, LLC will be made by TEP once mechanical completion is reached. The initial contributions are expected to represent [redacted] of the TEP's contributions towards the Project. No later than commercial operation date ("COD") in 2024, TEP will contribute the remaining [redacted] of the capital contribution to Joint Venture, LLC. The current estimate of TEP contributions is [redacted] million. The contributions from AES Indiana Sponsor are discussed in the response to Q/A 27 below, but, in summary, are made starting on the acquisition the ProjectCo by AESI DevCo and continue over the construction period.

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

Q21. What happens once Joint Venture acquires ProjectCo?

A21. After COD, ProjectCo will generate and sell electricity to MISO on a merchant basis. Its price will be effectively fixed through the use of the Capacity Agreement and Contract for Differences agreement ("CfD") as described by AES Indiana Witness Cooper. AES Indiana will acquire energy for its load from MISO at the market price. If the price at which ProjectCo sells electricity to MISO is above the agreed price set forth in the CfD, ProjectCo will pay the AES Indiana the difference between the proceeds received from the sale price and the CfD price. If the sale price is below the CfD price, AES Indiana will pay ProjectCo, in each case, in accordance with the CfD terms. AES Indiana Witness Cooper further discusses the CfD agreement and operations of the ProjectCo.

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

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

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

Q22. Will the TEP remain a member of the Joint Venture for the life of the Petersburg Project?

A22. That is uncertain at this point. The Flip Date, just discussed, will also trigger an option for AES Indiana Sponsor to purchase TEP's Class A membership interests at the fair market value. The fair market value calculation will be part of the initial negotiations with TEP. However, we anticipate the calculation that will determine this value is based on the discounted future cash flows of the Project for the remaining ownership.

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. The Company 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.

Q23. What is the purpose of the TEP in this transaction?

A23. There are substantial tax credits and deductions resulting from the Petersburg Project including ITCs and accelerated depreciation. A TEP brings efficiency via its ability to utilize the investment tax credit and accelerated depreciation immediately on its tax returns. By incorporating a TEP, these attributes will be monetized on a more efficient basis – immediate realization of the ITCs and the ability to claim bonus depreciation prohibited for a utility and thereby reduce the costs that will be reflected in rates paid by AES Indiana's customers.

Q24. Why is the TEP able to utilize the tax attributes more efficiently than AES Indiana (through its subsidiaries)?

A24. Due to AES Indiana's current and approved construction programs, AES Indiana does not have the tax appetite for the accelerated depreciation and investment tax credits resulting from the Petersburg Project. [redacted] Thus, any tax net operating losses generated from the tax attributes related to the renewable projects would have to be carried forward to use in a subsequent year. TEPs, which typically are not capital-intensive companies, are generally able to avail themselves of certain tax incentives (accelerated depreciation and other fixed asset related accelerated deductions) provided in the Internal Revenue Code ("IRC"). Consequently, TEPs do have the capacity to currently monetize the tax benefits that AES Indiana would have to carry forward. This ability to currently monetize the tax benefits is reflected in the cash investment made by the TEP with the result that AES Indiana's investment in the project is lower with a resulting lower cost to customers. This structure allows AES Indiana to keep all of the non-tax ownership attributes of the Petersburg Project.

Q25. Please identify the key agreements used to create and operate the Joint Venture.

A25. AES Indiana Witness Cooper discusses the MIPA between AESI DevCo (Purchaser) and NextEra (Seller) and EPC between ProjectCo and EPC Contractor which through a special purpose entity, ProjectCo, is developing and constructing the Petersburg Project.

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

- Limited Liability Company Operating Agreement between the TEP and AES Indiana Sponsor ("Joint Venture LLCA").
- Equity Capital Contribution Agreement and Membership Interest Purchase Agreement between AESI DevCo and Joint Venture, LLC transferring the ProjectCo ("TEP MIPA").
- CfD.

I discuss the first two agreements below. I discuss tax considerations relevant to the third agreement. AES Indiana Witness Cooper further discusses the CfD in his testimony.

Q26. Please discuss the Company's experience with negotiating agreements with TEPs?

A26. AES Indiana's parent, AES and its subsidiaries have a history of tax equity transactions. In 2020 alone, it closed [redacted] tax equity transactions. AES U.S. Services supports these transactions. This experience well positions AES Indiana to engage in the transaction here.

Q27. Please describe the Joint Venture LLCA.

A27. The Joint Venture LLCA will control the rights and obligations of members of Joint Venture, LLC and will include the timing and amount of the required contribution. The Joint Venture LLCA will create two membership classes, Class A and Class B, that allocate cash distributions, tax benefits and other ownership attributes.

While this agreement has not yet been drafted, it will provide that a TEP and the AES Indiana Sponsor will partner to own the ProjectCo. As shown in Step 3 of <u>AES Indiana Attachment FJS-1</u>, the AES Indiana Sponsor will contribute cash to Joint Venture, LLC and will receive Class B membership interests in Joint Venture, LLC. The Joint Venture LLCA will be executed in connection with the closing of the sale of ProjectCo to the Joint Venture, LLC.

As further detailed in <u>AES Indiana Confidential Attachment FJS-2</u>, the material terms of the Joint Venture LLCA will include:

- Pricing Parameters and Capital Commitments.
- Conditions precedent.
- The allocation of tax items.
- The distribution of net cash flow by the Joint Venture, LLC.
- Purchase option.

- Relationship to other related transaction and project documents.
- The operation and management of Joint Venture, LLC and ProjectCo.
- Managing member rights and obligations and Major Decision matters.
- Representations, warranties, and covenants of the TEP and AES Indiana Sponsor.
- Governance and reporting.

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

Q28. Please describe the TEP MIPA.

A28. The TEP MIPA will contain the agreement between AES Indiana Sponsor and TEP to contribute capital to acquire the Class A and Class B membership interests in the Joint Venture, LLC. AES Indiana expects the TEP MIPA will be entered into at the time that the Joint Venture LLCA is agreed to by the parties.

The TEP MIPA will set out the requirements for AES Indiana Sponsor to transfer 100% of the Class A and Class B membership interests in the Joint Venture, LLC to TEP and AES Indiana Sponsor, respectively, TEP will own 100% of the Class interests and AES Indiana Sponsor will own 100% of the Class B interests. TEP is expected to contribute [redacted] of its capital contribution no later than the mechanical completion date and the remaining [redacted] at or around the PIS date or commercial operation date. AES Indiana Sponsor will make its contributions over the course of the construction period of the Project. See Steps 3A and 3B of <u>AES Indiana Attachment FJS-1</u>.

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

Q29. Has the Joint Venture limited liability company been formed yet?

A29. No. We anticipate it will be formed prior to the mechanical completion date, when we have identified TEP.

Q30. Will the Joint Venture have any long-term debt?

A30. No.

Q31. What is the general role of the TEP in the Joint Venture?

A31. The TEP's role will be that of an investor. As noted above, AES Indiana, through its subsidiary, will manage the ProjectCo through the life of the Joint Venture.

Q32. Has the Commission previously approved an electric public utility's use of a joint venture structure similar to that proposed herein?

A32. Yes. The Commission has authorized AES Indiana to acquire a renewable energy project through a similar overall joint venture structure for its Hardy Hills Project in Cause No. 45493.

The Commission has also authorized Northern Indiana Public Service Company ("NIPSCO") to acquire renewable energy projects through a similar overall joint venture structure. One difference is that AES Indiana's structure does not include the developer as a member of the Joint Venture as was the case in the first two NIPSCO joint ventures. See e.g., Cause No. 45194 (Rosewater Project), Cause No. 45310 (Crossroads Wind Project); Cause No. 45462 (Dunn's Bridge Solar I & II and Cavalry Solar).

4. CAPACITY AGREEMENT AND CONTRACT FOR DIFFERENCES

Q33. As you stated above, AES Indiana Witness Cooper discusses the CfD. Are there tax considerations relevant to the CfD?

A33. Yes. The CfD was established to mitigate the risk that tax losses between related parties would be disallowed. IRC Sections 267 and 704 provide that losses between related parties are disallowed. 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.

5. IMPACT OF POTENTIAL TAX LAW CHANGES

Q34. If there are changes to tax laws that impact the benefits resulting from the Petersburg Project after Commission approval but before commercial operation, how will they be treated?

A34. In the event of a change in law that would increase the projected TEP contribution, the Company expects it would decrease the amount of the regulatory asset by the increase in the TEP contribution, similar to how a tax law change would impact the regulatory asset for the Hardy Hills Project approved by the Commission in Cause 45493. The Company has taken reasonable steps to address a possible change in tax law and to safeguard the interests of the Company and our customers through the Change in Tax law provisions of the proposed TEP investment terms. This provision addresses a possible change in tax law before and after the TEP funding of the project and reasonably safeguards the interests of the Company and our customers with respect to the value of the ITC, depreciation and project cash flows.

More specifically, if it became likely the corporate income tax rate was to increase but that increase had not become law by the time the agreement with TEP is signed, a provision comparable to the one reflected in AES Indiana Confidential Attachment FJS-2 will address the increase in the corporate income tax rate and its associated value to the TEP. Including this provision in the Joint Venture LLCA reasonably captures an increase in value associated with a change in corporate income tax rates.

[redacted]

6. OTHER MATTERS

Q35. AES Indiana Witness Rogers addresses AES Indiana's proposed accounting and ratemaking. In pertinent part, he explains that AES Indiana asks the Commission to authorize AES Indiana to include its investment in the Petersburg Project in rate base in AES Indiana's basic rate cases and to amortize that investment overtime instead of booking depreciation. If AES Indiana acquires the TEP share of the Joint Venture what will happen to the ownership structure of the Petersburg Project?

A35. We are uncertain whether ProjectCo will continue to exist or whether the solar generating facilities will become utility plant in service. These matters will be decided at the future point in time when AES Indiana decides whether to exercise its option to purchase the TEP share of the Joint Venture, LLC following the Flip Date.

Q36. How will AES Indiana account for its investment in the Joint Venture in its regulated books and records?

A36. With the Commission's approval of this structure, AES Indiana's investment in the Joint Venture, LLC will be recorded as a regulatory asset earning a return on the balance until such time as it is included in rates to reflect the Company's level of investment. Once the Joint Venture, LLC regulatory asset is established in rate base, it will continue to earn a return based on AES Indiana's allowed rate of return and the regulatory asset balance will be amortized over the remaining life of the project reducing the regulatory asset balance.

Q37. Should the Commission be concerned if AES Indiana were to exercise its option to buy out the TEP that any tax depreciation would be duplicated when the solar generation facilities may become utility plant in service?

A37. No. In the pre-flip period, AES Indiana will only deduct tax depreciation properly allocated to it consistent with the rights of Class B membership interests and allowed by the IRC. If the option to acquire TEP's Class A membership interests were to be exercised, AES Indiana would only recognize the depreciation on the incremental costs of acquiring the purchased property along with any remaining depreciation from the pre-flip period.

Further, should the Company exercise this option in the future, the Company commits that it will not seek to recover through rates an amount that exceeds the fair market value of the

TEP interest as determined at the time the option to purchase is exercised. AES Indiana agrees that in a future rate case, the Company will not seek to include in rate base, under a fair value ratemaking argument, an amount that is greater than the Company's actual cost of acquiring the TEP's interest. Subject to the protection of confidential information, and prior to the AES Indiana Sponsor member proceeding to exercise the option to purchase the TEP's membership interest, AES Indiana commits to meet with the OUCC (and Intervenors if interested). The purpose of this meeting will be to discuss the Company's analysis of the purchase with OUCC and Intervenors but will not be to seek OUCC or Intervenor approval of any such decision.

7. CONCLUSION

Q38. What is your recommendation in this proceeding?

A38. I recommend that the Commission approve the proposed acquisition and development of Petersburg Project and the Joint Venture discussed above.

Q39. Does this conclude your prefiled direct testimony?

A39. 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 July 30, 2021.

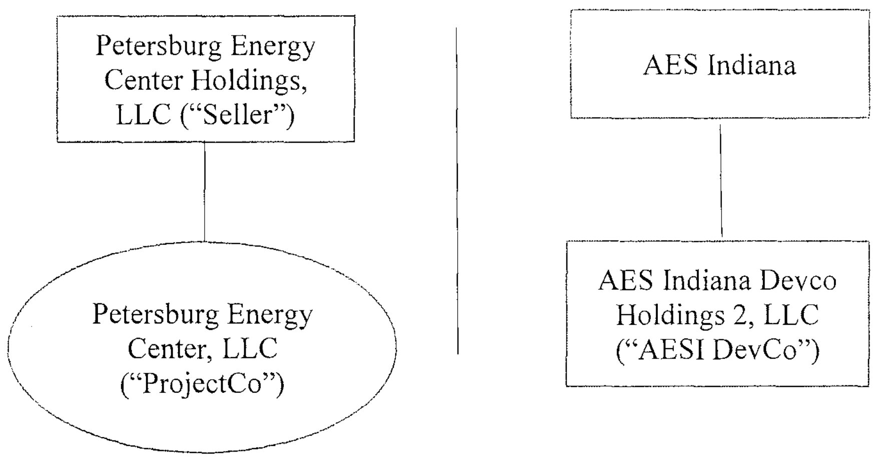
Frank J. Salatto

Petersburg Energy Center –Transactions and Structure

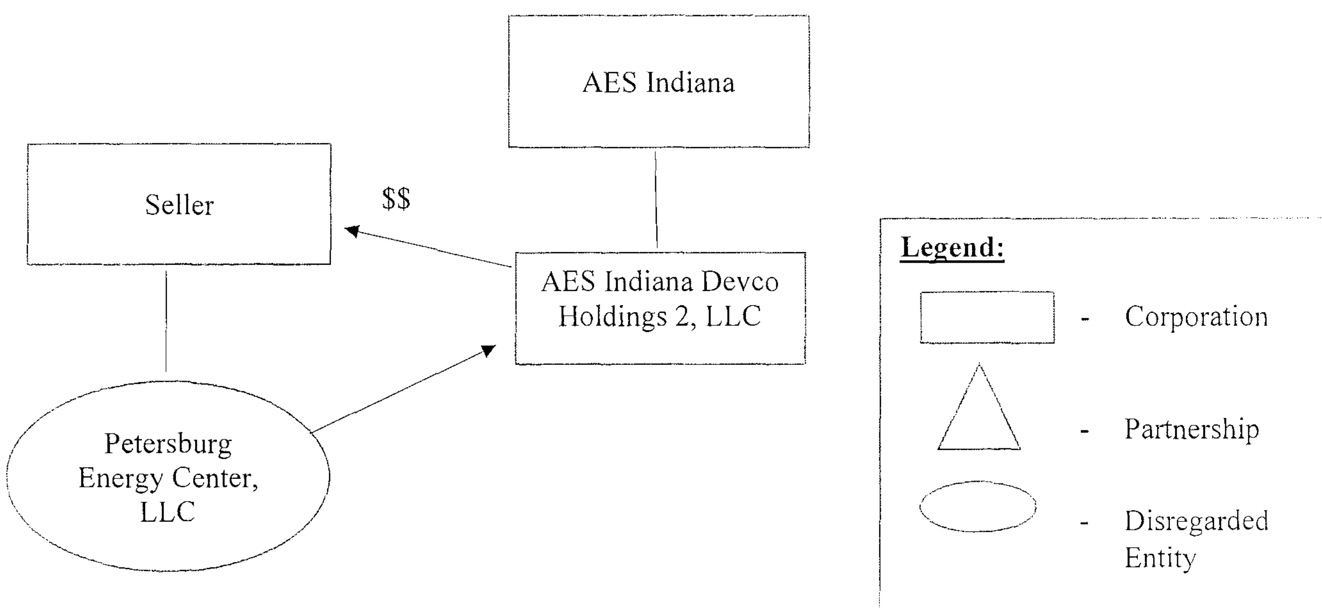
Step 1 – AES Indiana DevCo purchases Project Co

- AES Indiana DevCo purchases Project Co from the Seller (a third party), Project Co becomes a disregarded entity then owned by AES Indiana. 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).

<u>Immediately before the purchase:</u>



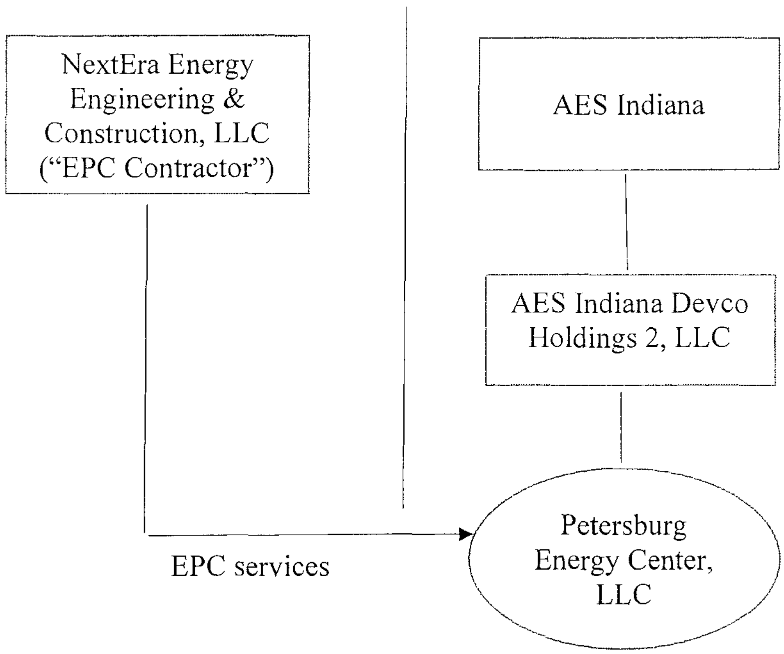
<u>Sale of Project Co:</u>



Step 2 –

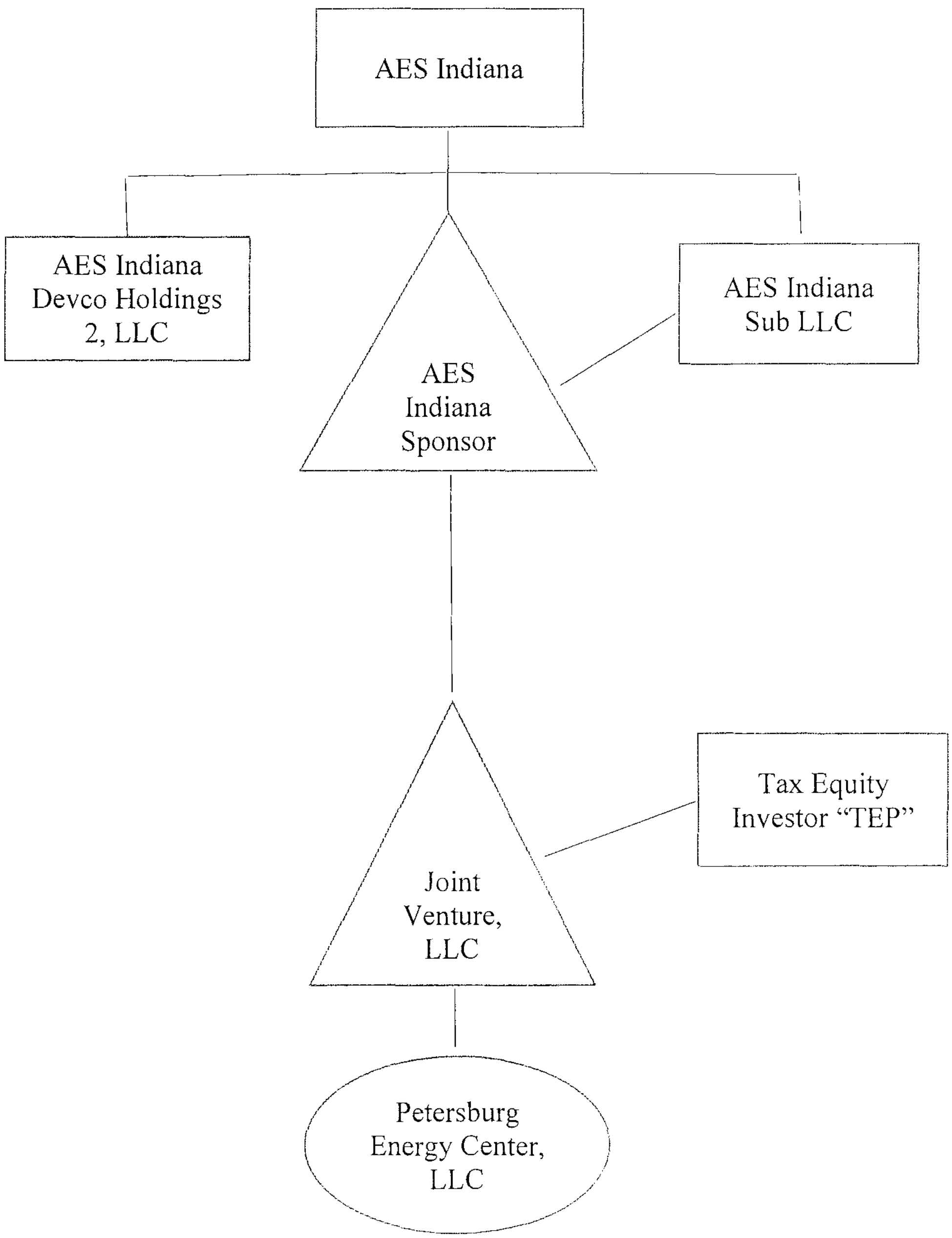
- Petersburg Energy Center Holdings, LLC affiliate, EPC Contractor, constructs Petersburg Project under the control and management of AESI DevCo and AES Indiana.

Structure after acquisition during construction period



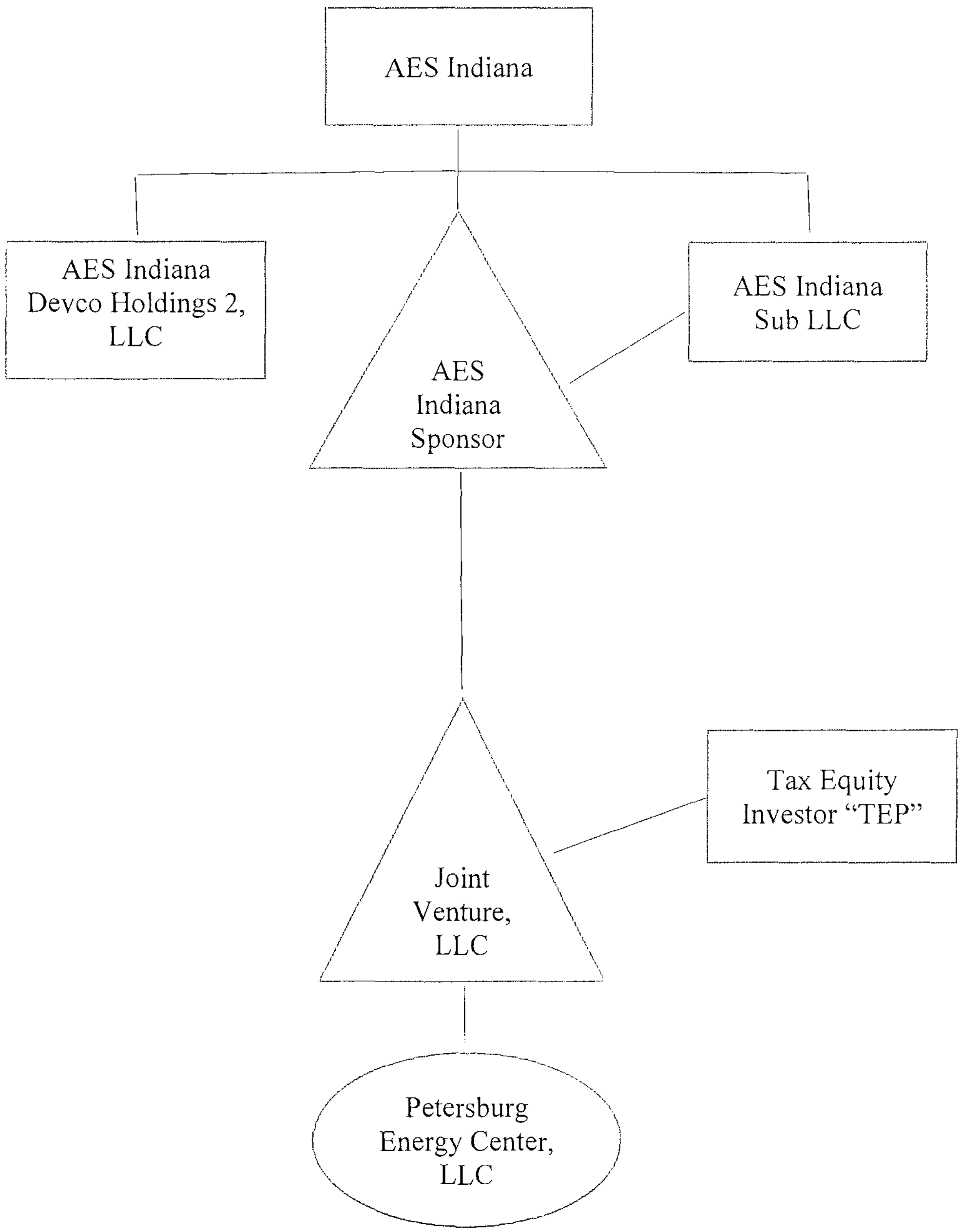
Step 3a – Mechanical Completion

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



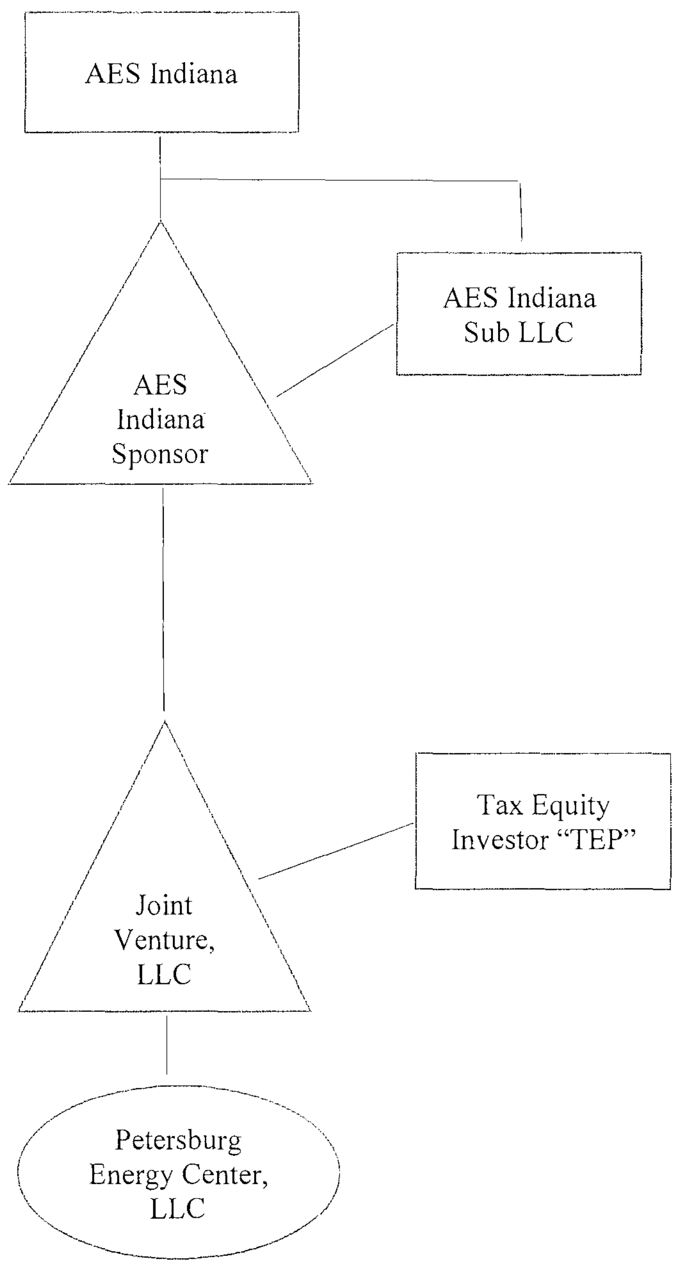
Step 3b – Substantial Completion (COD)

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



Final Structure

- Upon TEP reaching its targeted internal rate of return, AES Indiana Sponsor will have the option to acquire TEP's interest in Project Co. If AES Indiana Sponsor choses 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.



AES Indiana Confidential Attachment FJS-2

(Draft Term Sheet)

[CONFIDENTIAL - NOT REPRODUCED HEREIN]