

REFINITIV

## DELTA REPORT

10-Q

AES - AES CORP

10-Q - SEPTEMBER 30, 2023 COMPARED TO 10-Q - JUNE 30, 2023

The following comparison report has been automatically generated

TOTAL DELTAS 2006

■ CHANGES	481
■ DELETIONS	881
■ ADDITIONS	644

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UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION

WASHINGTON, D.C. 20549

**FORM 10-Q**

(Mark One)

QUARTERLY REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

For the Quarterly Period Ended **June 30, 2023** **September 30, 2023**  
or

TRANSITION REPORT PURSUANT TO SECTION 13 OR 15(d) OF THE SECURITIES EXCHANGE ACT OF 1934

Commission file number 1-12291  


**THE AES CORPORATION**

(Exact name of registrant as specified in its charter)

**Delaware**

(State or other jurisdiction of incorporation or organization)

**54-1163725**

(I.R.S. Employer Identification No.)

**4300 Wilson Boulevard**

**Arlington, Virginia**

(Address of principal executive offices)

**22203**

(Zip Code)

Registrant's telephone number, including area code: **(703) 522-1315**

Securities registered pursuant to Section 12(b) of the Act:

<u>Title of Each Class</u>	<u>Trading Symbol(s)</u>	<u>Name of Each Exchange on Which Registered</u>
Common Stock, par value \$0.01 per share	AES	New York Stock Exchange
Corporate Units	AESC	New York Stock Exchange

Indicate by check mark whether the registrant (1) has filed all reports required to be filed by Section 13 or 15(d) of the Securities Exchange Act of 1934 during the preceding 12 months (or for such shorter period that the registrant was required to file such reports), and (2) has been subject to such filing requirements for the past 90 days. Yes  No

Indicate by check mark whether the registrant has submitted electronically every Interactive Data File required to be submitted pursuant to Rule 405 of Regulation S-T (§232.405 of this chapter) during the preceding 12 months (or for such shorter period that the registrant was required to submit such files). Yes  No

Indicate by check mark whether the registrant is a large accelerated filer, an accelerated filer, a non-accelerated filer, a smaller reporting company, or an emerging growth company. See the definitions of "large accelerated filer", "accelerated filer", "smaller reporting company", and "emerging growth company" in Rule 12b-2 of the Exchange Act.

Large accelerated filer  Accelerated filer  Smaller reporting company  Emerging growth company  Non-accelerated filer

If an emerging growth company, indicate by check mark if the registrant has elected not to use the extended transition period for complying with any new or revised financial accounting standards provided pursuant to Section 13(a) of the Exchange Act.

Indicate by check mark whether the registrant is a shell company (as defined in Rule 12b-2 of the Exchange Act). Yes  No

The number of shares outstanding of Registrant's Common Stock, par value \$0.01 per share, on **August 1, 2023** **October 31, 2023** was 669,629,035.

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The AES Corporation

Form 10-Q for the Quarterly Period ended **June 30, 2023** **September 30, 2023**

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## Glossary of Terms

The following terms and acronyms appear in the text of this report and have the definitions indicated below:

Adjusted EBITDA	Adjusted earnings before interest income and expense, taxes, depreciation and amortization, a non-GAAP measure of operating performance
Adjusted EBITDA with Tax Attributes	Adjusted earnings before interest income and expense, taxes, depreciation and amortization, adding back the pre-tax effect of Production Tax Credits, Investment Tax Credits and depreciation tax expense allocated to tax equity investors, a non-GAAP measure
Adjusted EPS	Adjusted Earnings Per Share, a non-GAAP measure
Adjusted PTC	Adjusted Pre-tax Contribution, a non-GAAP measure of operating performance
AES	The Parent Company and its subsidiaries and affiliates
AES Andes	AES Andes S.A., formerly AES Gener
AES Brasil	AES Brasil Operações S.A., formerly branded as AES Tietê
AES Clean Energy Development	AES Clean Energy Development, LLC
AES Indiana	Indianapolis Power & Light Company, formerly branded as IPL. AES Indiana is wholly-owned by IPALCO
AES Ohio	The Dayton Power & Light Company, formerly branded as DP&L. AES Ohio is wholly-owned by DPL
AES Renewable Holdings	AES Renewable Holdings, LLC, formerly branded as AES Distributed Energy
AFUDC	Allowance for Funds Used During Construction
<b>AGIC</b>	<b>AES Global Insurance Company, AES' captive insurance company</b>
AOCL	Accumulated Other Comprehensive Loss
ASC	Accounting Standards Codification
ASU	Accounting Standards Update
BESS	Battery Energy Storage System
CAA	United States Clean Air Act
CCR	Coal Combustion Residuals, which includes bottom ash, fly ash, and air pollution control wastes generated at coal-fired generation plant sites
CECL	Current Expected Credit Loss
CO <sub>2</sub>	Carbon Dioxide
CSAPR	Cross-State Air Pollution Rule
CWA	U.S. Clean Water Act
DG Comp	Directorate-General for Competition
DPL	DPL Inc.
EBITDA	Earnings before interest income and expense, taxes, depreciation and amortization, a non-GAAP measure of operating performance
EPA	United States Environmental Protection Agency
EPC	Engineering, Procurement and Construction
ESP	Electric Security Plan
EU	European Union
FASB	Financial Accounting Standards Board
Fluence	Fluence Energy, Inc and its subsidiaries, including Fluence Energy, LLC, which was previously our joint venture with Siemens (NASDAQ: FLNC)
GAAP	Generally Accepted Accounting Principles in the United States
GHG	Greenhouse Gas
GILTI	Global Intangible Low Taxed Income
GW	Gigawatts
GWh	Gigawatt Hours
HLBV	Hypothetical Liquidation at Book Value
IPALCO	IPALCO Enterprises, Inc.
ITC	Investment Tax Credit
IURC	Indiana Utility Regulatory Commission
LNG	Liquid Natural Gas
MMBtu	Million British Thermal Units

MWh	Megawatt Hours
NAAQS	National Ambient Air Quality Standards
NCI	Noncontrolling Interest
NEK	Natsionalna Elektricheska Kompania (state-owned electricity public supplier in Bulgaria)
NM	Not Meaningful
NOV	Notice of Violation
NOx	Nitrogen Oxide
NPDES	National Pollutant Discharge Elimination System
Parent Company	The AES Corporation
Pet Coke	Petroleum Coke
PPA	Power Purchase Agreement
PREPA	Puerto Rico Electric Power Authority
PUCO	The Public Utilities Commission of Ohio
RSU	Restricted Stock Unit

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SBU	Strategic Business Unit
SEC	United States Securities and Exchange Commission

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SO <sub>2</sub>	Sulfur Dioxide
TDSIC	Transmission, Distribution, and Storage System Improvement Charge
TEG	Termoeléctrica del Golfo, S. de R.L. de C.V.
TEP	Termoeléctrica Peñoles, S. de R.L. de C.V.
U.S.	United States
USD	United States Dollar
VIE	Variable Interest Entity

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## PART I: FINANCIAL INFORMATION

### ITEM 1. FINANCIAL STATEMENTS

#### Condensed Consolidated Balance Sheets (Unaudited)

ASSETS	ASSETS	June 30, 2023		December 31, 2022		September 30, 2023		December 31, 2022					
		(in millions, except share and per share amounts)											
								ASSETS					
CURRENT ASSETS	CURRENT ASSETS							CURRENT ASSETS					
Cash and cash equivalents	Cash and cash equivalents	\$ 1,322		\$ 1,374				Cash and cash equivalents	\$ 1,765				
Restricted cash	Restricted cash	517		536				Restricted cash	365				
Short-term investments	Short-term investments	713		730				Short-term investments	538				

Accounts receivable, net of allowance for doubtful accounts of \$8 and \$5, respectively	1,710	1,799	Accounts receivable, net of allowance for doubtful accounts of \$9 and \$5, respectively	1,725	1,799
Accounts receivable, net of allowance for doubtful accounts of \$9 and \$5, respectively			Inventory	798	1,055
Inventory	774	1,055	Prepaid expenses	161	98
Prepaid expenses	218	98	Other current assets	1,472	1,533
Other current assets	1,449	1,533	Current held-for-sale assets	493	518
Current held-for-sale assets	502	518	Total current assets	7,317	7,643
Total current assets	7,205	7,643	NONCURRENT ASSETS		
NONCURRENT ASSETS	NONCURRENT ASSETS		Property, Plant and Equipment:		
Property, Plant and Equipment:			Land	492	470
Land	490	470	Electric generation, distribution assets and other	27,998	26,599
Electric generation, distribution assets and other	27,312	26,599	Accumulated depreciation	(8,602)	(8,651)
Accumulated depreciation	(8,413)	(8,651)	Construction in progress	7,647	4,621
Construction in progress	6,688	4,621	Property, plant and equipment, net	27,535	23,039
Property, plant and equipment, net	26,077	23,039	Other Assets:		
Other Assets:	Other Assets:		Investments in and advances to affiliates	894	952
Investments in and advances to affiliates	858	952	Debt service reserves and other deposits	205	177
Debt service reserves and other deposits	171	177	Goodwill	362	362
Goodwill	362	362	Other intangible assets, net of accumulated amortization of \$475 and \$434, respectively	2,290	1,841
Other intangible assets, net of accumulated amortization of \$486 and \$434, respectively	2,282	1,841	Other intangible assets, net of accumulated amortization of \$486 and \$434, respectively	2,290	1,841
Deferred income taxes	Deferred income taxes	383	Deferred income taxes	428	319
Loan receivable, net of allowance of \$25 and \$26, respectively		1,018	Loan receivable, net of allowance of \$24 and \$26, respectively	990	1,051
Other noncurrent assets, net of allowance of \$21 and \$51, respectively		3,149	Other noncurrent assets, net of allowance of \$16 and \$51, respectively	3,140	2,979
Loan receivable, net of allowance of \$24 and \$26, respectively			Total other assets	8,309	7,681
Other noncurrent assets, net of allowance of \$16 and \$51, respectively			TOTAL ASSETS	\$ 43,161	\$ 38,363
Total other assets	Total other assets	8,223	LIABILITIES AND EQUITY		
TOTAL ASSETS	TOTAL ASSETS	\$ 41,505	CURRENT LIABILITIES		
LIABILITIES AND EQUITY	LIABILITIES AND EQUITY		Accounts payable	\$ 1,641	\$ 1,730
CURRENT LIABILITIES	CURRENT LIABILITIES		Accrued interest	379	249
Accounts payable	Accounts payable	\$ 1,583	Accrued non-income taxes	269	249
Accrued interest	Accrued interest	303	Accrued and other liabilities	2,442	2,151
Accrued non-income taxes	Accrued non-income taxes	228	Recourse debt	700	—
Accrued and other liabilities	Accrued and other liabilities	2,232	Non-recourse debt, including \$896 and \$416, respectively, related to variable interest entities	2,445	1,758

Non-recourse debt, including \$1,015 and \$416, respectively, related to variable interest entities		Non-recourse debt, including \$1,015 and \$416, respectively, related to variable interest entities	3,060	1,758
Current held-for-sale liabilities	Current held-for-sale liabilities	337	354	
Total current liabilities	Total current liabilities	7,628	6,491	
NONCURRENT LIABILITIES	NONCURRENT LIABILITIES			
Recourse debt	Recourse debt	4,976	3,894	
Non-recourse debt, including \$2,032 and \$2,295, respectively, related to variable interest entities		18,622	17,846	
Non-recourse debt, including \$1,781 and \$2,295, respectively, related to variable interest entities				Non-recourse debt, including \$1,781 and \$2,295, respectively, related to variable interest entities
Deferred income taxes	Deferred income taxes	1,104	1,139	
Other noncurrent liabilities	Other noncurrent liabilities	3,128	3,168	
Total noncurrent liabilities	Total noncurrent liabilities	27,830	26,047	
Commitments and Contingencies (see Note 8)	Commitments and Contingencies (see Note 8)			Commitments and Contingencies (see Note 8)
Redeemable stock of subsidiaries	Redeemable stock of subsidiaries	1,289	1,321	
EQUITY	EQUITY			
THE AES CORPORATION	THE AES CORPORATION			THE AES CORPORATION
STOCKHOLDERS' EQUITY	STOCKHOLDERS' EQUITY			STOCKHOLDERS' EQUITY
Preferred stock (without par value, 50,000,000 shares authorized; 1,043,050 issued and outstanding at June 30, 2023 and December 31, 2022)		838	838	
Common stock (\$0.01 par value, 1,200,000,000 shares authorized; 818,808,272 issued and 669,385,716 outstanding at June 30, 2023 and 818,790,001 issued and 668,743,464 outstanding at December 31, 2022)		8	8	
Preferred stock (without par value, 50,000,000 shares authorized; 1,043,050 issued and outstanding at September 30, 2023 and December 31, 2022)				Preferred stock (without par value, 50,000,000 shares authorized; 1,043,050 issued and outstanding at September 30, 2023 and December 31, 2022)
Common stock (\$0.01 par value, 1,200,000,000 shares authorized; 819,051,591 issued and 669,629,035 outstanding at September 30, 2023 and 818,790,001 issued and 668,743,464 outstanding at December 31, 2022)				Common stock (\$0.01 par value, 1,200,000,000 shares authorized; 819,051,591 issued and 669,629,035 outstanding at September 30, 2023 and 818,790,001 issued and 668,743,464 outstanding at December 31, 2022)
Additional paid-in capital	Additional paid-in capital	6,550	6,688	
Accumulated deficit	Accumulated deficit	(1,523)	(1,635)	
Accumulated other comprehensive loss	Accumulated other comprehensive loss	(1,567)	(1,640)	
Treasury stock, at cost (149,422,556 and 150,046,537 shares at June 30, 2023 and December 31, 2022, respectively)		(1,814)	(1,822)	
Treasury stock, at cost (149,422,556 and 150,046,537 shares at September 30, 2023 and December 31, 2022, respectively)				Treasury stock, at cost (149,422,556 and 150,046,537 shares at September 30, 2023 and December 31, 2022, respectively)
Total AES Corporation stockholders' equity	Total AES Corporation stockholders' equity	2,492	2,437	
				Total AES Corporation stockholders' equity
				2,779
				2,437

NONCONTROLLING INTERESTS	NONCONTROLLING INTERESTS	2,266	2,067	NONCONTROLLING INTERESTS	2,477	2,067
Total equity	Total equity	4,758	4,504	Total equity	5,256	4,504
TOTAL LIABILITIES AND EQUITY	TOTAL LIABILITIES AND EQUITY	\$ 41,505	\$ 38,363	TOTAL LIABILITIES AND EQUITY	\$ 43,161	\$ 38,363

See Notes to Condensed Consolidated Financial Statements.

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## Condensed Consolidated Statements of Operations (Unaudited)

	Three Months Ended June 30,				Six Months Ended June 30,				Three Months Ended September 30,				Nine Months Ended September 30,			
	2023		2022		2023		2022		2023		2022		2023		2022	
	(in millions, except share and per share amounts)								(in millions, except share and per share amounts)							
Revenue:	Revenue:								Revenue:							
Non-Regulated	Non-Regulated	\$ 2,193	\$ 2,276	\$ 4,480	\$ 4,293				Non-Regulated	\$ 2,571	\$ 2,651	\$ 7,051	\$ 6,944			
Regulated	Regulated	834	802	1,786	1,637				Regulated	863	976	2,649	2,613			
Total revenue	Total revenue	3,027	3,078	6,266	5,930				Total revenue	3,434	3,627	9,700	9,557			
Cost of Sales:	Cost of Sales:								Cost of Sales:							
Non-Regulated	Non-Regulated	(1,782)	(1,781)	(3,579)	(3,398)				Non-Regulated	(1,813)	(1,839)	(5,392)	(5,237)			
Regulated	Regulated	(747)	(734)	(1,595)	(1,439)				Regulated	(703)	(896)	(2,298)	(2,335)			
Total cost of sales	Total cost of sales	(2,529)	(2,515)	(5,174)	(4,837)				Total cost of sales	(2,516)	(2,735)	(7,690)	(7,572)			
Operating margin	Operating margin	498	563	1,092	1,093				Operating margin	918	892	2,010	1,985			
General and administrative expenses	General and administrative expenses	(72)	(46)	(127)	(98)				General and administrative expenses	(64)	(51)	(191)	(149)			
Interest expense	Interest expense	(310)	(279)	(640)	(537)				Interest expense	(326)	(276)	(966)	(813)			
Interest income	Interest income	131	95	254	170				Interest income	144	100	398	270			
Loss on extinguishment of debt	Loss on extinguishment of debt	—	(1)	(1)	(7)				Loss on extinguishment of debt	—	(1)	(1)	(8)			
Other expense	Other expense	(12)	(29)	(26)	(41)				Other expense	(12)	(10)	(38)	(51)			
Other income	Other income	14	70	24	76				Other income	12	4	36	80			
Loss on disposal and sale of business interests		(4)	(2)	(4)	(1)											
Gain (loss) on disposal and sale of business interests									Gain (loss) on disposal and sale of business interests							
Asset impairment expense	Asset impairment expense	(174)	(482)	(194)	(483)				Asset impairment expense	(158)	(50)	(352)	(533)			
Foreign currency transaction losses		(67)	(49)	(109)	(68)											
Foreign currency transaction gains (losses)									Foreign currency transaction gains (losses)							
INCOME (LOSS) FROM CONTINUING OPERATIONS BEFORE TAXES AND EQUITY IN EARNINGS OF AFFILIATES		4	(160)	269	104											
Income tax benefit (expense)		2	19	(70)	(41)											
Net equity in earnings (losses) of affiliates		(25)	5	(29)	(28)											

INCOME FROM CONTINUING OPERATIONS BEFORE TAXES AND EQUITY IN EARNINGS OF AFFILIATES		INCOME FROM CONTINUING OPERATIONS BEFORE TAXES AND EQUITY IN EARNINGS OF AFFILIATES	414	617	683	721
Income tax expense		Income tax expense	(109)	(145)	(179)	(186)
Net equity in losses of affiliates		Net equity in losses of affiliates	(14)	(26)	(43)	(54)
NET INCOME (LOSS)	(19)	(136)	170	35		
NET INCOME		NET INCOME	291	446	461	481
Less: Net income attributable to noncontrolling interests and redeemable stock of subsidiaries	Less: Net income attributable to noncontrolling interests and redeemable stock of subsidiaries	(20)	(43)	(58)	(99)	Less: Net income attributable to noncontrolling interests and redeemable stock of subsidiaries
NET INCOME (LOSS) ATTRIBUTABLE TO THE AES CORPORATION	\$ (39)	\$ (179)	\$ 112	\$ (64)		
NET INCOME ATTRIBUTABLE TO THE AES CORPORATION		NET INCOME ATTRIBUTABLE TO THE AES CORPORATION	231	421	343	357
BASIC EARNINGS PER SHARE:	BASIC EARNINGS PER SHARE:					BASIC EARNINGS PER SHARE:
NET INCOME (LOSS) ATTRIBUTABLE TO THE AES CORPORATION COMMON STOCKHOLDERS	\$ (0.06)	\$ (0.27)	\$ 0.17	\$ (0.10)		
NET INCOME ATTRIBUTABLE TO THE AES CORPORATION COMMON STOCKHOLDERS		NET INCOME ATTRIBUTABLE TO THE AES CORPORATION COMMON STOCKHOLDERS	0.34	0.63	0.51	0.53
DILUTED EARNINGS PER SHARE:	DILUTED EARNINGS PER SHARE:					DILUTED EARNINGS PER SHARE:
NET INCOME (LOSS) ATTRIBUTABLE TO THE AES CORPORATION COMMON STOCKHOLDERS	\$ (0.06)	\$ (0.27)	\$ 0.16	\$ (0.10)		
NET INCOME ATTRIBUTABLE TO THE AES CORPORATION COMMON STOCKHOLDERS		NET INCOME ATTRIBUTABLE TO THE AES CORPORATION COMMON STOCKHOLDERS	0.32	0.59	0.48	0.50
DILUTED SHARES OUTSTANDING	DILUTED SHARES OUTSTANDING	669	668	712	668	DILUTED SHARES OUTSTANDING
						712
						711
						712
						711

See Notes to Condensed Consolidated Financial Statements.

## Condensed Consolidated Statements of Comprehensive Income (Loss) (Unaudited)

	Three Months Ended June 30,				Six Months Ended June 30,				Three Months Ended September 30,				Nine Months Ended September 30,			
	2023		2022		2023		2022		2023		2022		2023		2022	
	(in millions)								(in millions)							
NET INCOME (LOSS)	\$ (19)	\$ (136)	\$ 170	\$ 35					NET INCOME	\$ 291	\$ 446	\$ 461	\$ 481			
NET INCOME									Foreign currency translation activity:							
Foreign currency translation activity:									Foreign currency translation activity:							
Foreign currency translation adjustments, net of \$0 income tax for all periods	79		(149)		119		(17)		Foreign currency translation adjustments, net of \$0 income tax for all periods	(44)		(80)		75		(97)
Total foreign currency translation adjustments	79		(149)		119		(17)		Total foreign currency translation adjustments	(44)		(80)		75		(97)
Derivative activity:									Derivative activity:							
Change in derivative fair value, net of income tax expense of \$36, \$61, \$5, and \$134, respectively	124		270		2		542		Change in derivative fair value, net of income tax expense of \$73, \$62, \$78, and \$196, respectively	274		189		276		731
Reclassification to earnings, net of income tax benefit (expense) of \$2, \$(3), \$11 and \$(13), respectively	(7)		20		(48)		38		Reclassification to earnings, net of income tax benefit (expense) of \$0, \$1, \$11 and \$(12), respectively	(1)		14		(49)		52
Change in derivative fair value, net of income tax expense of \$73, \$62, \$78, and \$196, respectively									Total change in fair value of derivatives	273		203		227		783
Total change in fair value of derivatives	117		290		(46)		580		Pension activity:							
Pension activity:									Change in pension adjustments due to net actuarial gain for the period, net of \$0 income tax for all periods	—		1		—		—
Change in pension adjustments due to net actuarial gain for the period, net of \$0 income tax for all periods	—		—		1		—		Change in pension adjustments due to net actuarial gain for the period, net of \$0 income tax for all periods	—		—		1		—
Reclassification to earnings, net of \$0 income tax for all periods	—		—		—		1		Reclassification to earnings, net of income tax benefit (expense) of \$0, \$(1), \$0, \$(1), respectively	—		1		—		2
Reclassification to earnings, net of income tax benefit (expense) of \$0, \$(1), \$0, \$(1), respectively									Total pension adjustments	—		1		1		2
Total pension adjustments	—		—		1		1		OTHER							
OTHER									OTHER							
COMPREHENSIVE INCOME	COMPREHENSIVE INCOME	196		141		74		564	COMPREHENSIVE INCOME	229		124		303		688
COMPREHENSIVE INCOME	COMPREHENSIVE INCOME	177		5		244		599	COMPREHENSIVE INCOME	520		570		764		1,169

See Notes to Condensed Consolidated Financial Statements.

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## Condensed Consolidated Statements of Changes in Equity (Unaudited)



Total foreign currency translation adjustment, net of income tax		Total foreign currency translation adjustment, net of income tax	
		tax	—
Total change in derivative fair value, net of income tax		Total change in derivative fair value, net of income tax	
Total other comprehensive income (loss)		Total other comprehensive income (loss)	
Distributions to noncontrolling interests		Distributions to noncontrolling interests	
Acquisitions of noncontrolling interests		Acquisitions of noncontrolling interests	—
Sales to noncontrolling interests		Sales to noncontrolling interests	—
Dividends declared on common stock (\$0.1659/share)		Dividends declared on common stock (\$0.1659/share)	—
Issuance and exercise of stock-based compensation benefit plans, net of income tax		Issuance and exercise of stock-based compensation benefit plans, net of income tax	—
Balance at September 30, 2023	1.0	\$ 838	819.1
			\$ 8
			149.4
			\$(1,814)
			\$ 6,449
			\$ (1,292)
			\$ (1,410)

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Six Months Ended June 30, 2022										Nine Months Ended September 30, 2022									
	Accumulated									Accumulated									
	Preferred Stock		Common Stock		Treasury Stock		Additional			Preferred Stock		Common Stock		Treasury Stock		Additional			
	Shares	Amount	Shares	Amount	Shares	Amount	Paid-In Capital	Accumulated Deficit	Other	Shares	Amount	Shares	Amount	Shares	Amount	Paid-In Capital	Accumulated Deficit	Other	
(in millions)										(in millions)									
Balance at January 1, 2022	Balance at January 1, 2022									Balance at January 1, 2022									
Net income	Net income									Net income	—								
Total foreign currency translation adjustment, net of income tax	Total foreign currency translation adjustment, net of income tax									Total foreign currency translation adjustment, net of income tax	—								
tax	tax									tax	—								
131	131									1	tax								

Total change in derivative fair value, net of income tax	Total change in derivative fair value, net of income tax	—	—	—	—	—	—	—	265	22	Total change in derivative fair value, net of income tax	—	—	—	—	—	—			
Total pension adjustments, net of income tax	Total pension adjustments, net of income tax	—	—	—	—	—	—	—	1	—	Total pension adjustments, net of income tax	—	—	—	—	—	—			
Total other comprehensive income	Total other comprehensive income	—	—	—	—	—	—	—	397	23	Total other comprehensive income	—	—	—	—	—	—			
Distributions to noncontrolling interests	Distributions to noncontrolling interests	—	—	—	—	—	—	—	—	(25)	Distributions to noncontrolling interests	—	—	—	—	—	—			
Acquisitions of noncontrolling interests	Acquisitions of noncontrolling interests	—	—	—	—	—	—	(93)	—	(367)	Acquisitions of noncontrolling interests	—	—	—	—	—	(93)			
Contributions from noncontrolling interests	Contributions from noncontrolling interests	—	—	—	—	—	—	—	—	86	Contributions from noncontrolling interests	—	—	—	—	—	—			
Sales to noncontrolling interests	Sales to noncontrolling interests	—	—	—	—	—	—	7	—	30	Sales to noncontrolling interests	—	—	—	—	—	7			
Issuance of preferred shares in subsidiaries	Issuance of preferred shares in subsidiaries	—	—	—	—	—	—	—	—	60	Issuance of preferred shares in subsidiaries	—	—	—	—	—	—			
Dividends declared on common stock (\$0.1580/share)	Dividends declared on common stock (\$0.1580/share)	—	—	—	—	—	—	(105)	—	—	Dividends declared on common stock (\$0.1580/share)	—	—	—	—	—	(105)			
Issuance and exercise of stock-based compensation benefit plans, net of income tax	Issuance and exercise of stock-based compensation benefit plans, net of income tax	—	—	—	—	—	—	—	—	—	Issuance and exercise of stock-based compensation benefit plans, net of income tax	—	—	—	—	—	—			
Balance at March 31, 2022	Balance at March 31, 2022	1.0	\$ 838	818.7	\$ 8	150.9	\$ (1,832)	\$ 6,903	\$ (974)	\$ (1,899)	1,670	March 31, 2022	1.0	\$ 838	818.7	\$ 8	150.9	\$ (1,832)	\$ 6,903	\$ (974)
Net income (loss)	Net income (loss)	—	—	—	—	—	—	—	(179)	—	50	Net income (loss)	—	—	—	—	—	—	(179)	
Total foreign currency translation adjustment, net of income tax	Total foreign currency translation adjustment, net of income tax	—	—	—	—	—	—	—	(146)	(3)	Total foreign currency translation adjustment, net of income tax	—	—	—	—	—	—	—		
Total change in derivative fair value, net of income tax	Total change in derivative fair value, net of income tax	—	—	—	—	—	—	—	255	15	Total change in derivative fair value, net of income tax	—	—	—	—	—	—	—		
Total other comprehensive income	Total other comprehensive income	—	—	—	—	—	—	—	109	12	Total other comprehensive income	—	—	—	—	—	—	—		
Distributions to noncontrolling interests	Distributions to noncontrolling interests	—	—	—	—	—	—	—	—	(45)	Distributions to noncontrolling interests	—	—	—	—	—	—	—		



Issuance and exercise of stock-based compensation benefit plans, net of income tax		Issuance and exercise of stock-based compensation benefit plans, net of income tax	
Balance at September 30, 2022		Balance at September 30, 2022	

See Notes to Condensed Consolidated Financial Statements.

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## Condensed Consolidated Statements of Cash Flows (Unaudited)

OPERATING ACTIVITIES:	Six Months Ended June 30,		Nine Months Ended September 30,	
	2023		2022	
	(in millions)		(in millions)	
Net income	Net income	\$ 170	\$ 35	Net income
Adjustments to net income:	Adjustments to net income:			Adjustments to net income:
Depreciation and amortization	Depreciation and amortization	550	534	Depreciation and amortization
Loss on disposal and sale of business interests	Loss on disposal and sale of business interests	4	1	Loss on disposal and sale of business interests
Impairment expense	Impairment expense	199	483	Impairment expense
Deferred income taxes	Deferred income taxes	(119)	(43)	Deferred income taxes
Loss on extinguishment of debt		1	7	
Loss of affiliates, net of dividends	Loss of affiliates, net of dividends	29	52	Loss of affiliates, net of dividends
Emissions allowance expense	Emissions allowance expense	139	239	Emissions allowance expense
Loss on realized/unrealized foreign currency	Loss on realized/unrealized foreign currency	71	20	Loss on realized/unrealized foreign currency
Other	Other	99	28	Other
Changes in operating assets and liabilities:	Changes in operating assets and liabilities:			Changes in operating assets and liabilities:
(Increase) decrease in accounts receivable	(Increase) decrease in accounts receivable	60	(262)	(Increase) decrease in accounts receivable
(Increase) decrease in inventory	(Increase) decrease in inventory	276	(227)	(Increase) decrease in inventory
(Increase) decrease in prepaid expenses and other current assets	(Increase) decrease in prepaid expenses and other current assets	71	(187)	(Increase) decrease in prepaid expenses and other current assets
(Increase) decrease in other assets	(Increase) decrease in other assets	74	94	(Increase) decrease in other assets

Increase (decrease) in accounts payable and other current liabilities	Increase (decrease) in accounts payable and other current liabilities	(305)	151	Increase (decrease) in accounts payable and other current liabilities	(187)	108
Increase (decrease) in income tax payables, net and other tax payables	Increase (decrease) in income tax payables, net and other tax payables	(85)	(114)	Increase (decrease) in income tax payables, net and other tax payables	(67)	(131)
Increase (decrease) in deferred income	Increase (decrease) in deferred income	42	59	Increase (decrease) in deferred income	50	48
Increase (decrease) in other liabilities	Increase (decrease) in other liabilities	(89)	(5)	Increase (decrease) in other liabilities	23	4
Net cash provided by operating activities	Net cash provided by operating activities	1,187	865	Net cash provided by operating activities	2,309	1,649
<b>INVESTING ACTIVITIES:</b>	<b>INVESTING ACTIVITIES:</b>			<b>INVESTING ACTIVITIES:</b>		
Capital expenditures	Capital expenditures	(3,396)	(1,659)	Capital expenditures	(5,295)	(2,711)
Acquisitions of business interests, net of cash and restricted cash acquired	Acquisitions of business interests, net of cash and restricted cash acquired	(290)	(107)	Acquisitions of business interests, net of cash and restricted cash acquired	(311)	(114)
Proceeds from the sale of business interests, net of cash and restricted cash sold	Proceeds from the sale of business interests, net of cash and restricted cash sold	98	1	Proceeds from the sale of business interests, net of cash and restricted cash sold	98	1
Sale of short-term investments	Sale of short-term investments	706	345	Sale of short-term investments	1,002	654
Purchase of short-term investments	Purchase of short-term investments	(620)	(694)	Purchase of short-term investments	(764)	(1,091)
Contributions and loans to equity affiliates	Contributions and loans to equity affiliates	(112)	(169)	Contributions and loans to equity affiliates	(147)	(202)
Affiliate repayments and returns of capital				Affiliate repayments and returns of capital	—	71
Purchase of emissions allowances	Purchase of emissions allowances	(115)	(293)	Purchase of emissions allowances	(161)	(415)
Other investing	Other investing	(21)	(7)	Other investing	(95)	(18)
Net cash used in investing activities	Net cash used in investing activities	(3,750)	(2,583)	Net cash used in investing activities	(5,673)	(3,825)
<b>FINANCING ACTIVITIES:</b>	<b>FINANCING ACTIVITIES:</b>			<b>FINANCING ACTIVITIES:</b>		
Borrowings under the revolving credit facilities and commercial paper program	Borrowings under the revolving credit facilities and commercial paper program	16,716	3,100	Borrowings under the revolving credit facilities and commercial paper program	33,981	4,214
Repayments under the revolving credit facilities and commercial paper program	Repayments under the revolving credit facilities and commercial paper program	(15,809)	(2,269)	Repayments under the revolving credit facilities and commercial paper program	(32,168)	(2,782)
Issuance of recourse debt	Issuance of recourse debt	1,400	—	Issuance of recourse debt	1,400	200
Rewards of recourse debt	Rewards of recourse debt	—	(29)	Rewards of recourse debt	—	(29)
Issuance of non-recourse debt	Issuance of non-recourse debt	1,457	3,132	Issuance of non-recourse debt	1,784	3,554
Rewards of non-recourse debt	Rewards of non-recourse debt	(944)	(1,469)	Rewards of non-recourse debt	(1,262)	(1,772)
Payments for financing fees	Payments for financing fees	(67)	(38)	Payments for financing fees	(76)	(83)

Purchases under supplier financing arrangements	Purchases under supplier financing arrangements	818	173	Purchases under supplier financing arrangements	1,307	299
Repayments of obligations under supplier financing arrangements	Repayments of obligations under supplier financing arrangements	(862)	(134)	Repayments of obligations under supplier financing arrangements	(1,099)	(234)
Distributions to noncontrolling interests	Distributions to noncontrolling interests	(147)	(93)	Distributions to noncontrolling interests	(173)	(129)
Acquisitions of noncontrolling interests	Acquisitions of noncontrolling interests	(1)	(540)	Acquisitions of noncontrolling interests	(12)	(541)
Contributions from noncontrolling interests	Contributions from noncontrolling interests	18	28	Contributions from noncontrolling interests	63	122
Sales to noncontrolling interests	Sales to noncontrolling interests	189	229	Sales to noncontrolling interests	371	336
Issuance of preferred shares in subsidiaries	Issuance of preferred shares in subsidiaries	3	60	Issuance of preferred shares in subsidiaries	3	60
Dividends paid on AES common stock	Dividends paid on AES common stock	(222)	(211)	Dividends paid on AES common stock	(333)	(316)
Payments for financed capital expenditures	Payments for financed capital expenditures	(7)	(9)	Payments for financed capital expenditures	(8)	(23)
Other financing	Other financing	(13)	(6)	Other financing	(38)	(13)
Net cash provided by financing activities	Net cash provided by financing activities	2,529	1,924	Net cash provided by financing activities	3,740	2,863
Effect of exchange rate changes on cash, cash equivalents and restricted cash	Effect of exchange rate changes on cash, cash equivalents and restricted cash	(37)	(18)	Effect of exchange rate changes on cash, cash equivalents and restricted cash	(108)	(44)
Increase in cash, cash equivalents and restricted cash of held-for-sale businesses	Increase in cash, cash equivalents and restricted cash of held-for-sale businesses	(6)	(21)	Increase in cash, cash equivalents and restricted cash of held-for-sale businesses	(20)	(93)
Total increase (decrease) in cash, cash equivalents and restricted cash		(77)	167			
Total increase in cash, cash equivalents and restricted cash				Total increase in cash, cash equivalents and restricted cash	248	550
Cash, cash equivalents and restricted cash, beginning	Cash, cash equivalents and restricted cash, beginning	2,087	1,484	Cash, cash equivalents and restricted cash, beginning	2,087	1,484
Cash, cash equivalents and restricted cash, ending	Cash, cash equivalents and restricted cash, ending	\$ 2,010	\$ 1,651	Cash, cash equivalents and restricted cash, ending	\$ 2,335	\$ 2,034
SUPPLEMENTAL DISCLOSURES:	SUPPLEMENTAL DISCLOSURES:			SUPPLEMENTAL DISCLOSURES:		
Cash payments for interest, net of amounts capitalized	Cash payments for interest, net of amounts capitalized	\$ 512	\$ 423	Cash payments for interest, net of amounts capitalized	\$ 735	\$ 654
Cash payments for income taxes, net of refunds	Cash payments for income taxes, net of refunds	200	141	Cash payments for income taxes, net of refunds	267	203
SCHEDULE OF NONCASH INVESTING AND FINANCING ACTIVITIES:	SCHEDULE OF NONCASH INVESTING AND FINANCING ACTIVITIES:			SCHEDULE OF NONCASH INVESTING AND FINANCING ACTIVITIES:		
Initial recognition of contingent consideration for acquisitions (see Note 17)		218	15			

Non-cash contributions from noncontrolling interests	30	—			
Initial recognition of contingent consideration for acquisitions (see Note 18)			Initial recognition of contingent consideration for acquisitions (see Note 18)	215	15
Noncash recognition of new operating and financing leases			Noncash recognition of new operating and financing leases	187	129
Noncash contributions from noncontrolling interests			Noncash contributions from noncontrolling interests	60	—

See Notes to Condensed Consolidated Financial Statements.

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## Notes to Condensed Consolidated Financial Statements

For the Three and Six Nine Months Ended June 30, 2023 September 30, 2023 and 2022  
(Unaudited)

### 1. FINANCIAL STATEMENT PRESENTATION

**Consolidation** — In this Quarterly Report, the terms "AES," "the Company," "us" or "we" refer to the consolidated entity, including its subsidiaries and affiliates. The terms "The AES Corporation" or "the Parent Company" refer only to the publicly held holding company, The AES Corporation, excluding its subsidiaries and affiliates. Furthermore, VIEs in which the Company has a variable interest have been consolidated where the Company is the primary beneficiary. Investments in which the Company has the ability to exercise significant influence, but not control, are accounted for using the equity method of accounting, except for our investment in Alto Maipo, for which we have elected the fair value option as permitted under ASC 825. All intercompany transactions and balances have been eliminated in consolidation.

**Interim Financial Presentation** — The accompanying unaudited condensed consolidated financial statements and footnotes have been prepared in accordance with GAAP, as contained in the FASB ASC, for interim financial information and Article 10 of Regulation S-X issued by the SEC. Accordingly, they do not include all the information and footnotes required by GAAP for annual fiscal reporting periods. In the opinion of management, the interim financial information includes all adjustments of a normal recurring nature necessary for a fair presentation of the results of operations, financial position, comprehensive income, changes in equity, and cash flows. The results of operations for the three and six nine months ended June 30, 2023 September 30, 2023 are not necessarily indicative of expected results for the year ending December 31, 2023. The accompanying condensed consolidated financial statements are unaudited and should be read in conjunction with the 2022 audited consolidated financial statements and notes thereto, which are included in the 2022 Form 10-K filed with the SEC on March 1, 2023 (the "2022 Form 10-K") and in Exhibit 99.1 to the Form 8-K filed with the SEC on May 8, 2023.

**Cash, Cash Equivalents, and Restricted Cash** — The following table provides a summary of cash, cash equivalents, and restricted cash amounts reported on the Condensed Consolidated Balance Sheets that reconcile to the total of such amounts as shown on the Condensed Consolidated Statements of Cash Flows (in millions):

	June 30, 2023	December 31, 2022	September 30, 2023	December 31, 2022		
Cash and cash equivalents	Cash and cash equivalents	\$ 1,322	\$ 1,374	Cash and cash equivalents	\$ 1,765	\$ 1,374
Restricted cash	Restricted cash	517	536	Restricted cash	365	536
Debt service reserves and other deposits	Debt service reserves and other deposits	171	177	Debt service reserves and other deposits	205	177
Cash, Cash Equivalents, and Restricted Cash	Cash, Cash Equivalents, and Restricted Cash	\$ 2,010	\$ 2,087	Cash, Cash Equivalents, and Restricted Cash	\$ 2,335	\$ 2,087

**ASC 326 - Financial Instruments - Credit Losses** — The following table represents the rollforward of the allowance for credit losses for the period indicated (in millions):

Six Months Ended June 30, 2023		Accounts Receivable	Mong Duong Receivables	Argentina Receivables	Lease Receivable (2)	Other	Total	Nine Months Ended September 30, 2023		Accounts Receivable	Mong Duong Receivables	Argentina Receivables	Lease Receivable (2)	Other	Total
Nine Months Ended September 30, 2023								Nine Months Ended September 30, 2023							
CECL reserve	CECL reserve							CECL reserve	CECL reserve						
balance at beginning of period	balance at beginning of period	\$ 3	\$ 29	\$ 30	\$ 20	\$ 2	\$ 84	balance at beginning of period	\$ 4	\$ 28	\$ 31	\$ 20	\$ 1	\$ 84	
Current period provision	Current period provision	10	—	—	—	9	19	Current period provision	14	—	—	—	11	25	
Write-offs charged against allowance	Write-offs charged against allowance	(7)	—	—	(20)	—	(27)	Write-offs charged against allowance	(12)	—	—	(20)	—	(32)	
Recoveries collected	Recoveries collected	2	(1)	—	—	—	1	Recoveries collected	2	(2)	—	—	—	—	
Foreign exchange	Foreign exchange	—	—	(9)	—	(1)	(10)	Foreign exchange	—	—	(15)	—	—	(15)	
CECL reserve	CECL reserve							CECL reserve	CECL reserve						
balance at end of period	balance at end of period	\$ 8	\$ 28	\$ 21	\$ —	\$ 10	\$ 67	balance at end of period	\$ 8	\$ 26	\$ 16	\$ —	\$ 12	\$ 62	
Six Months Ended June 30, 2022		Accounts Receivable (1)	Mong Duong Receivables	Argentina Receivables	Lease Receivable (2)	Other	Total	Nine Months Ended September 30, 2022		Accounts Receivable (1)	Mong Duong Receivables	Argentina Receivables	Lease Receivable (2)	Other	Total
Nine Months Ended September 30, 2022								Nine Months Ended September 30, 2022							
CECL reserve	CECL reserve							CECL reserve	CECL reserve						
balance at beginning of period	balance at beginning of period	\$ 3	\$ 30	\$ 23	\$ —	\$ 7	\$ 63	balance at beginning of period	\$ 3	\$ 30	\$ 23	\$ —	\$ 7	\$ 63	
Current period provision	Current period provision	5	—	3	20	—	28	Current period provision	7	—	22	20	—	49	
Write-offs charged against allowance	Write-offs charged against allowance	(5)	—	—	—	(6)	(11)	Write-offs charged against allowance	(9)	—	—	—	(6)	(15)	
Recoveries collected	Recoveries collected	1	(1)	—	—	—	—	Recoveries collected	2	(1)	—	—	—	1	
Foreign exchange	Foreign exchange	—	—	(5)	—	—	(5)	Foreign exchange	—	—	(8)	—	—	(8)	
CECL reserve	CECL reserve							CECL reserve	CECL reserve						
balance at end of period	balance at end of period	\$ 4	\$ 29	\$ 21	\$ 20	\$ 1	\$ 75	balance at end of period	\$ 3	\$ 29	\$ 37	\$ 20	\$ 1	\$ 90	

(1) Excludes operating lease receivable allowances and contractual dispute allowances of \$2 million as of **June 30, 2022** **September 30, 2022**. These reserves are not in scope under ASC 326.

(2) Lease receivable credit losses allowance at Southland Energy (AES Gilbert).

**ASC 450 - Liabilities - Supplier Finance Programs** — With some purchases, AES enters into supplier financing arrangements. The company generally uses an intermediary entity between the supplier and the Company, but sometimes enters into these agreements directly with the supplier, with the goal of securing improved payment terms. These arrangements are included in *Accrued and other liabilities* on the Condensed Consolidated Balance Sheets as the amounts are all due in less than a year; the related interest expense is recorded on the Condensed Consolidated Statements of Operations within *Interest expense*. The company had 65 supplier financing arrangements with a total outstanding balance of \$617 million as of **June 30, 2023** **September 30, 2023**, and 46 supplier financing arrangements with a total outstanding balance of \$662 million as of December 31, 2022. The agreements ranged from less than \$1 million to \$69 million with a weighted average interest rate of 6.95% 7.37% as of **June 30, 2023** **September 30, 2023**; as of December 31, 2022, the agreements ranged from less than \$1 million to \$88 million with a weighted average interest rate of 4.32%. Of the amounts outstanding under supplier financing arrangements, \$477 million \$607 million and \$296 million were guaranteed by the Parent Company as of **June 30, 2023** **September 30, 2023** and December 31, 2022, respectively.

**New Accounting Pronouncements Adopted in 2023** — The following table provides a brief description of recent accounting pronouncements that had an impact on the Company's **condensed** consolidated financial statements. Accounting pronouncements not listed below were assessed and determined to be either not applicable or did not have a material impact on the Company's **condensed** consolidated financial statements.

New Accounting Standards Adopted		Effect on the financial statements upon adoption	
ASU Number and Name	Description	Date of Adoption	
2021-08, Business Combinations (Topic 805): Accounting for Contract Assets and Contract Liabilities from Contracts with Customers	This update is to improve the accounting for acquired revenue contracts with customers in a business combination by addressing diversity in practice and inconsistency related to the following: (1) recognition of an acquired contract liability, and (2) payment terms and their effect on subsequent revenue recognized by the acquirer. Early adoption of the amendments is permitted, including adoption in an interim period. An entity that early adopts in an interim period should apply the amendments (1) retrospectively to all business combinations for which the acquisition date occurs on or after the beginning of the fiscal year that includes the interim period of early application and (2) prospectively to all business combinations that occur on or after the date of initial application.	January 1, 2023	The Company adopted this standard on a prospective basis, which will be applied to any business combinations that occur in 2023 or after. The adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

2022-02 Financial Instruments - Credit Losses (Topic 326); Troubled Debt Restructurings and Vintage Disclosures	ASU 2022-02 amends ASC 326-20-50-6 to require public business entities to disclose gross write-offs recorded in the current period, on a year-to-date basis, by year of origination in the vintage disclosures. This disclosure should cover each of the previous five annual periods starting with the date of the financial statements and, for the annual periods before that, an aggregate total. However, upon adoption of the ASU, an entity would not provide the previous five annual periods of gross write-offs. The FASB decided that disclosure of gross write-offs would instead be applied on a prospective transition basis so that preparers can "build" the five-annual-period disclosure over time.	January 1, 2023	The Company adopted this standard on a prospective basis and it did not have a material impact on the financial statements.
2022-04 Liabilities - Supplier Finance Programs (Topic 450-50); Disclosure of Supplier Finance Program Obligations	This update is to provide additional information and disclosures about an entity's use of supplier finance programs to see how these programs will affect an entity's working capital, liquidity, and cash flows. Entities that use supplier finance programs as the buyer party should disclose (1) the key terms of the payment terms and assets pledged as security or other forms of guarantees provided and (2) the unpaid amount outstanding, a description of where those obligations are presented on the balance sheet, and a rollforward of those obligations during the annual period.	January 1, 2023, except for the rollforward information, which is effective for fiscal years beginning after December 15, 2023.	The ASU only requires disclosures related to the Company's supplier finance programs and does not affect the recognition, measurement, or presentation of supplier finance program obligations on the balance sheet or cash flow statement. The Company adopted the new disclosure requirements in the first quarter of 2023, except for the annual requirement to disclose rollforward information, which the Company expects to adopt and present prospectively beginning in the 2024 annual financial statements.
2023-03, Presentation of Financial Statements (Topic 205), Income Statement - Reporting Comprehensive Income (Topic 220), Distinguishing Liabilities from Equity (Topic 480), Equity (Topic 505), and Compensation - Stock Compensation (Topic 718)	This Accounting Standards Update amends various SEC paragraphs pursuant to SEC Staff Accounting Bulletin No. 120, SEC Staff Announcement at the March 24, 2022 EITF Meeting, and Staff Accounting Bulletin Topic 6.B, Accounting Series Release 280—General Revision of Regulation S-X: Income or Loss Applicable to Common Stock. The amendments in this Update are effective for all entities upon issuance of this Update.	June 30, 2023	The adoption of this ASU did not have a material impact on the Company's consolidated financial statements.

**New Accounting Pronouncements Issued But Not Yet Effective** — The following table provides a brief description of recent accounting pronouncements that could have a material impact on the Company's **condensed** consolidated financial statements once adopted. Accounting pronouncements not listed below were assessed and determined to be either not applicable or are expected to have no material impact on the Company's **condensed** consolidated financial statements.

12 | Notes to Condensed Consolidated Financial Statements—(Continued) | September 30, 2023 and 2022

ASU Number and Name	Description	Date of Adoption	Effect on the financial statements upon adoption	
			For fiscal years beginning after December 15, 2023, including interim periods within those fiscal years.	The Company is currently evaluating the impact of adopting the standard on its consolidated financial statements.
2023-05 Business Combinations - Joint Venture Formations (Subtopic 805-60): Common Control Arrangements Recognition and Initial Measurement	<p>The amendments in this Update address the accounting for contributions made to a joint venture, upon formation, in a joint venture's separate financial statements. The objectives of the amendments are to (1) provide decision-useful information to investors and other allocators of capital (collectively, investors) in a joint venture's financial statements and (2) reduce diversity in practice. To reduce diversity in practice and provide decision-useful information to a joint venture's investors, the Board decided to require that <b>leasehold improvements associated</b> a joint venture apply a new basis of accounting upon formation. By applying a new basis of accounting, a joint venture, upon formation, will recognize and initially measure its assets and liabilities at fair value (with exceptions to fair value measurement that are consistent with <b>common control leases</b> be: the business combinations guidance). The amendments in this Update do not amend the definition of a joint venture (or a corporate joint venture), the accounting by an equity method investor for its investment in a joint venture, or the accounting by a joint venture for contributions received after its formation.</p> <p><b>1. Amortized</b> The amendments in this Update permit a joint venture to apply the measurement period guidance in Subtopic 805-10 if the initial accounting for a joint venture formation is incomplete by the lessee over the useful life end of the <b>leasehold improvements</b> reporting period in which the formation occurs.</p>	Prospectively for all Joint Venture formations with a formation date on or after January 1, 2025. For Joint Ventures formed before January 1, 2025, entities may elect to apply the common control group (regardless of the lease term) as long as the lessee controls the use of the underlying asset (the leased asset) through a lease. However, amendments retrospectively if the lessor obtained the right to control the use of the underlying asset through a lease with another entity not within the same common control group, the amortization period may not exceed the amortization period of the common control group.	For fiscal years beginning after December 15, 2023, including interim periods within those fiscal years.	The Company is currently evaluating the impact of adopting the standard on its consolidated financial statements.
2023-06 Disclosure Improvements: Codification Amendments in Response to the SEC's Disclosure Update and Simplification Initiative	<p>In U.S. Securities and Exchange Commission (SEC) Release No. 33-10532, Disclosure Update and Simplification, issued August 17, 2018, the SEC referred certain of its disclosure requirements that overlap with, but require incremental information to, generally accepted accounting principles (GAAP) to the FASB for potential incorporation into the Codification. The amendments in this Update are the result of the Board's decision to incorporate into the Codification 14 of the 27 disclosures referred by the SEC.</p> <p>The amendments in this Update represent changes to clarify or improve disclosure and presentation requirements of a variety of Topics. Many of the amendments allow users to more easily compare entities subject to the SEC's existing disclosures with those entities that were not previously subject to the SEC's requirements. Also, the amendments align the requirements in the Codification with the SEC's regulations.</p>	The effective date for each amendment will be the date on which the SEC's removal of that related disclosure becomes effective, with early adoption prohibited. The amendments in this Update should be applied prospectively.	The effective date for each amendment will be the date on which the SEC's removal of that related disclosure becomes effective, with early adoption prohibited. The amendments in this Update should be applied prospectively.	

12 | Notes to Condensed Consolidated Financial Statements—(Continued) | June 30, 2023 and 2022

## 2. INVENTORY

The following table summarizes the Company's inventory balances as of the periods indicated (in millions):

		June 30, 2023		December 31, 2022		September 30, 2023		December 31, 2022	
		Fuel and other raw materials	\$ 483	Fuel and other raw materials	\$ 733	Fuel and other raw materials	\$ 498	Fuel and other raw materials	\$ 733
Spare parts and supplies	Spare parts and supplies		291		322	Spare parts and supplies	300		322
Total	Total	\$ 774		\$ 1,055		Total	\$ 798		\$ 1,055

### 3. FAIR VALUE

The fair value of current financial assets and liabilities, debt service reserves, and other deposits approximate their reported carrying amounts. The estimated fair values of the Company's assets and liabilities have been determined using available market information. Because these amounts are estimates and based on hypothetical transactions to sell assets or transfer liabilities, the use of different market assumptions and/or estimation methodologies may have a material effect on the estimated fair value amounts. For further information on our valuation techniques and policies, see Note 5—*Fair Value* in Item 8.—*Financial Statements and Supplementary Data* of our 2022 Form 10-K.

#### Recurring Measurements

The following table presents, by level within the fair value hierarchy, the Company's financial assets and liabilities that were measured at fair value on a recurring basis as of the dates indicated (in millions). For the Company's investments in marketable debt securities, the security classes presented were determined based on the nature and risk of the security and are consistent with how the Company manages, monitors, and measures its marketable securities:

	June 30, 2023				December 31, 2022											
	Level 1	Level 2	Level 3	Total	Level 1	Level 2	Level 3	Total								
	13   Notes to Condensed Consolidated Financial Statements—(Continued)   September 30, 2023 and 2022				DEBT SECURITIES:											
<b>Assets</b>																
DEBT SECURITIES:																
Available-for-sale:																
Certificates of deposit	\$ —	\$ 677	\$ September 30, 2023	\$ 677	\$ —	\$ 698	\$ December 31, 2022	\$ 698								
Government debt securities	—	3	—	3	—	3	—	3								
Total debt securities	—	680	—	680	—	701	—	701								
<b>Assets</b>																
<b>EQUITY SECURITIES:</b>																
DEBT SECURITIES:																
Mutual funds:	44	—	—	44	38	—	—	38								
Available-for-sale:	—	—	—	—	—	—	—	—								
Total equity securities	44	\$ 495	\$ 50	\$ 495	38	\$ 698	\$ 698	\$ 698								
Certificates of deposit	—	—	—	—	—	—	—	—								
<b>DERIVATIVES:</b>																
Government debt securities	—	—	—	—	—	3	—	3								
Interest rate derivatives	—	273	—	273	—	314	—	314								
Total debt securities	—	493	—	493	—	701	—	701								
Foreign currency derivatives	—	23	63	86	—	22	64	86								
<b>EQUITY SECURITIES:</b>																
Commodity derivatives	—	233	7	240	—	232	13	245								
Mutual funds	43	—	—	43	38	—	—	38								
Total derivatives — assets	43	\$ 529	\$ 70	\$ 599	38	\$ 568	\$ 77	\$ 645								
Total equity securities	—	7	—	50	—	—	—	38								
<b>TOTAL ASSETS</b>																
<b>DERIVATIVES:</b>																
Interest rate derivatives	—	478	—	478	—	314	—	314								
Contingent consideration	\$ —	\$ 22	\$ 274	\$ 274	\$ —	\$ 22	\$ 48	\$ 48								
Foreign currency derivatives	—	—	46	68	—	64	—	66								
<b>DERIVATIVES:</b>																
Commodity derivatives	—	137	4	141	—	232	13	245								
Interest rate derivatives	—	65	50	68	—	568	77	645								
Total derivatives — assets	—	15	50	68	—	—	—	—								
<b>TOTAL ASSETS</b>																
Foreign currency derivatives	—	—	—	—	—	—	—	—								
<b>Liabilities</b>																
Interest rate derivatives	—	478	—	478	—	314	—	314								
Contingent consideration	\$ —	\$ 22	\$ 274	\$ 274	\$ —	\$ 22	\$ 48	\$ 48								
Foreign currency derivatives	—	—	46	68	—	64	—	66								
<b>DERIVATIVES:</b>																
Commodity derivatives	—	137	4	141	—	232	13	245								
Interest rate derivatives	—	65	50	68	—	568	77	645								
Total derivatives — assets	—	15	50	68	—	—	—	—								
<b>TOTAL ASSETS</b>																
Foreign currency derivatives	—	—	—	—	—	—	—	—								
<b>Liabilities</b>																
Commodity derivatives	—	212	85	297	—	346	60	406								
Contingent consideration	\$ —	\$ 325	\$ 86	\$ 411	—	414	60	474								
Total derivatives — liabilities	—	325	86	411	—	414	60	474								
<b>TOTAL LIABILITIES</b>																
Interest rate derivatives	—	325	\$ 360	\$ 685	—	414	\$ 108	\$ 522								
Cross-currency derivatives	—	54	—	54	—	42	—	42								
Foreign currency derivatives	—	26	—	26	—	20	—	20								
Commodity derivatives	—	127	80	207	—	346	60	406								
Total derivatives — liabilities	—	207	80	287	—	414	60	474								
<b>TOTAL LIABILITIES</b>																
Gross proceeds from sale of available-for-sale securities	\$ —	\$ 207	\$ 347	\$ 554	\$ —	\$ 414	\$ 108	\$ 522								

As of **June 30, 2023** **September 30, 2023**, all available-for-sale debt securities had stated maturities within one year. There were no other-than-temporary impairments of marketable securities during the three and **six** nine months ended **June 30, 2023** **September 30, 2023**. The level 3 contingent consideration relates mainly to the acquisition of Bellefield on June 5, 2023. For further information on the acquisition, see Note 17—18—**Acquisitions**. Credit-related impairments are recognized in earnings under ASC 326. Gains and losses on the sale of investments are determined using the specific-identification method. The following table presents gross proceeds from the sale of available-for-sale securities during the periods indicated (in millions):

	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Gross proceeds from sale of available-for-sale securities	\$ 370	\$ 150	\$ 739	\$ 347

	Three Months Ended September 30,			Nine Months Ended September 30,		
	2023		2022	2023		2022
	\$	308	\$	318	\$	665
Gross proceeds from sale of available-for-sale securities						

The following tables present a reconciliation of assets and liabilities measured at fair value on a recurring basis using significant unobservable inputs (Level 3) for the three and six months ended June 30, 2023 September 30, 2023 and 2022 (presented net by type of derivative in millions). Transfers between Level 3 and Level 2 principally result from changes in the significance of unobservable inputs used to calculate the credit valuation adjustment.

	Derivative Assets and Liabilities					
				Contingent Consideration		
	Interest Rate	Foreign Currency	Commodity			Total
<b>Three Months Ended June 30, 2023</b>						
Balance at April 1	\$ (5)	\$ 62	\$ (69)	\$ (55)	\$ (67)	
Total realized and unrealized gains (losses):						
14 Included in earnings		7	(1)	(1)		5
Included in other comprehensive income (loss) — derivative activity	16	3	(10)	—		9
Included in other comprehensive income (loss) — foreign currency translation activity	—	—	—	—		—
Included in regulatory (assets) liabilities			3	—		3
Acquisitions	—	—	—	Contingent (218)		(218)
<b>Three Months Ended September 30, 2023</b>						
Settlements					Total	
Balance at July 1, 2023	\$ (1)	\$ 63	\$ (78)	\$ (274)	\$ (290)	
Transfers of assets (liabilities), net into Level 3						
Total realized and unrealized gains (losses):	(10)	—	1	—		(9)
14 Included in earnings	\$ (71)	\$ (69)	\$ (78)	\$ (271)	\$ (288)	
Included in other comprehensive income (loss) — derivative activity	5	(2)	7	—		10
Total gains (losses) for the period included in earnings attributable to the change in unrealized gains (losses) relating to assets and liabilities held at the end of the period	\$ —	\$ —	\$ (2)	\$ (3)	\$ (3)	
Settlements	—	(9)	(2)	5		(6)
Transfers of assets, net out of Level 3			—	—		(4)
Balance at September 30, 2023	\$ —	\$ 46	\$ (76)	Contingent (267)	\$ (297)	
<b>Three Months Ended June 30, 2022</b>						
Total (losses) for the period included in earnings attributable to the change in unrealized gains (losses) relating to assets and liabilities held at the end of the period	\$ —	\$ (13)	\$ (13)	\$ (59)	\$ (17)	
Balance at April 1	\$ 1	\$ 1	\$ 1	\$ 1	\$ 1	
Total realized and unrealized gains (losses):						
Included in earnings						
Included in other comprehensive income (loss) — derivative activity	1	(32)	(4)	Contingent	—	(35)
<b>Three Months Ended September 30, 2022</b>						
Settlements					Total	
Balance at July 1, 2022	\$ 1	\$ 50	\$ 37	\$ 2	\$ 2	
Included in other comprehensive income (loss) — foreign currency translation activity	—	—	15	—		15
Included in regulatory (assets) liabilities	—	—	—	—		—
Total realized and unrealized gains (losses):	—	—	—	—		—
Acquisitions	—	22	(1)	(15)		(15)
Included in earnings	—	—	—	—		—
Settlements	—	—	—	—		—
Included in other comprehensive income (loss) — derivative activity	(1)	7	(14)	5		(8)
Transfers of assets (liabilities), net into Level 3	—	—	31	—		31
Included in other comprehensive income (loss) — foreign currency translation activity	—	—	—	1		1
Transfers of (assets) liabilities, net out of Level 3	(6)	—	(3)	—		(6)
Included in regulatory (assets) liabilities	—	—	—	—		—
Balance at June 30, 2022	\$ 1	\$ 50	\$ 37	\$ (77)	\$ 11	
Settlements	—	—	—	—		—
Total gains (losses) for the period included in earnings attributable to the change in unrealized gains (losses) relating to assets and liabilities held at the end of the period	\$ —	\$ (32)	\$ (2)	2	\$ (2)	
Transfers of assets, net out of Level 3	\$ (2)	—	(15)	—	\$ (29)	
Balance at September 30, 2022	\$ (1)	\$ 70	\$ 2	\$ (59)	\$ 12	
Total gains (losses) for the period included in earnings attributable to the change in unrealized gains (losses) relating to assets and liabilities held at the end of the period	\$ —	\$ 14	\$ (1)	4	\$ 17	

Derivative Assets and Liabilities	Derivative Assets and Liabilities
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Six Months Ended June 30, 2023		Interest	Foreign	Contingent			Nine Months Ended September 30, 2023					
		Rate	Currency	Commodity	Consideration	Total						
Balance at January 1		\$ —	\$ 64	\$ (47)	\$ (48)	\$ (31)						
<b>Nine Months Ended September 30, 2023</b>												
Balance at January 1, 2023		\$ —	\$ 64	\$ (47)	\$ (48)	\$ (31)	September 30, 2023	Interest Rate	Foreign Currency	Commodity	Contingent Consideration Total	
Total realized and unrealized gains (losses):	Total realized and unrealized gains (losses):						Total realized and unrealized gains (losses):					
Included in earnings	Included in earnings	—	6	(1)	(7)	(2)	Included in earnings	—	—	(3)	(9)	(12)
Included in other	Included in other						Included in other					
comprehensive income (loss) — derivative activity	comprehensive income (loss) — derivative activity	—	2	(27)	—	(25)	comprehensive income (loss) — derivative activity	2	—	(20)	—	(18)
Included in other comprehensive income (loss) — foreign currency translation activity	Included in other comprehensive income (loss) — foreign currency translation activity	—	—	—	(1)	(1)	Included in other comprehensive income (loss) — foreign currency translation activity	—	—	—	—	—
Included in regulatory (assets) liabilities	Included in regulatory (assets) liabilities	—	—	(2)	—	(2)	Included in regulatory (assets) liabilities	—	—	(2)	—	(2)
Acquisitions	Acquisitions	—	—	—	(218)	(218)	Acquisitions	—	—	—	(215)	(215)
Settlements	Settlements	—	(9)	(2)	—	(11)	Settlements	—	(18)	(5)	5	(18)
Transfers of assets (liabilities), net into Level 3	Transfers of assets (liabilities), net into Level 3	(1)	—	—	—	(1)						
Transfers of (assets) liabilities, net out of Level 3	Transfers of (assets) liabilities, net out of Level 3	—	—	1	—	1	Transfers of (assets) liabilities, net out of Level 3	(2)	—	1	—	(1)
Balance at June 30, 2023		\$ (1)	\$ 63	\$ (78)	\$ (274)	\$ (290)	Balance at September 30, 2023	\$ —	\$ 46	\$ (76)	\$ (267)	\$ (297)
Total gains (losses) for the period included in earnings attributable to the change in unrealized gains (losses) relating to assets and liabilities held at the end of the period												
Balance at September 30, 2023		\$ —	\$ (1)	\$ (1)	\$ (8)	\$ (10)	Balance at September 30, 2023	\$ —	\$ 46	\$ (76)	\$ (267)	\$ (297)

Total (losses) for the period included in earnings attributable to the change in unrealized gains (losses) relating to assets and liabilities held at the end of the period		Total (losses) for the period included in earnings attributable to the change in unrealized gains (losses) relating to assets and liabilities held at the end of the period	\$ —	\$ (14)	\$ (4)	\$ (9)	\$ (27)
<b>Derivative Assets and Liabilities</b>							
<b>Derivative Assets and Liabilities</b>							
<b>Six Months Ended June 30, 2022</b>							
Interest	Foreign	<b>Contingent</b>					
Rate	Currency	Commodity	Consideration	Total			
Balance at January 1	\$ (6)	\$ 108	\$ (1)	\$ (64)	\$ 37		
<b>Nine Months Ended September 30, 2022</b>							
Balance at January 1, 2022	\$ (6)	\$ 108	\$ (1)	\$ (67)	\$ 34		
Total realized and unrealized gains (losses):	Total realized and unrealized gains (losses):	Total realized and unrealized gains (losses):					
Included in earnings	Included in earnings	3	(44)	(4)	(1)	(46)	
Included in other comprehensive income (loss) — derivative activity	Included in other comprehensive income (loss) — derivative activity	10	(14)	(8)	—	(12)	
Included in other comprehensive income (loss) — foreign currency translation activity	Included in other comprehensive income (loss) — foreign currency translation activity	—	—	—	(2)	(2)	
Included in regulatory (assets) liabilities	Included in regulatory (assets) liabilities	—	—	15	—	15	
Acquisitions	Acquisitions	—	—	—	(15)	(15)	
Settlements	Settlements	—	—	2	5	7	
Transfers of assets (liabilities), net into Level 3		—	—	31	—	31	
Transfers of (assets) liabilities, net out of Level 3		(6)	—	2	—	(4)	
Balance at June 30, 2022	\$ 1	\$ 50	\$ 37	\$ (77)	\$ 11		
Transfers of assets, net out of Level 3						Transfers of assets, net out of Level 3	
Balance at September 30, 2022						Balance at September 30, 2022	
						(11)	—
						—	—
						—	(11)
						\$ (1)	\$ 70
						\$ 2	\$ (59)
						\$ 12	

Total gains (losses) for the period included in earnings attributable to the change in unrealized gains (losses) relating to assets and liabilities held at the end of the period	Total gains (losses) for the period included in earnings attributable to the change in unrealized gains (losses) relating to assets and liabilities held at the end of the period
\$ 3	\$ (44)
\$ 1	\$ (2)
\$ (42)	\$ 3
	\$ (44)
	\$ 1
	\$ 4
	\$ (36)

The following table summarizes the significant unobservable inputs used for Level 3 derivative assets (liabilities) as of June 30, 2023 September 30, 2023 (in millions, except range amounts):

Type of Derivative	Fair Value	Unobservable Input	Amount or Range (Weighted Average)
	\$ (1)		
Foreign currency:			
Argentine peso	\$ 63	Argentine peso to U.S. dollar currency exchange rate after one year	\$ 576 860 to 957 (854) 1,500 (1,222)
Commodity:			
CAISO Energy Swap	\$ (86) (79)	Forward energy prices per MWh after 2030	\$ 12 to \$ 97 96 (\$ 52)
Other	\$ 83		
Total	\$ (16) (30)		

For interest rate derivatives and foreign currency derivatives, increases (decreases) in the estimates of the Company's own credit spreads would decrease (increase) the value of the derivatives in a liability position. For foreign currency derivatives, increases (decreases) in the estimate of the above exchange rate would increase (decrease) the value of the derivative.

Contingent consideration is primarily related to future milestone payments associated with acquisitions of renewable development projects. The estimated fair value of contingent consideration is determined using probability-weighted discounted cash flows based on internal forecasts, which are considered Level 3 inputs. Changes in Level 3 inputs, particularly changes in the probability of achieving development milestones, could result in material changes to the fair value of the contingent consideration and could materially impact the amount of expense or income recorded each reporting period. Contingent consideration is updated quarterly with any

## 15 | Notes to Condensed Consolidated Financial Statements—(Continued) | June 30, 2023 and 2022

prospective changes in fair value recorded through earnings.

### Nonrecurring Measurements

## 16 | Notes to Condensed Consolidated Financial Statements—(Continued) | September 30, 2023 and 2022

The Company measures fair value using the applicable fair value measurement guidance. Impairment expense, shown as pre-tax loss below, is measured by comparing the fair value at the evaluation date to the then-latest available carrying amount and is included in *Asset impairment expense* or *Other non-operating expense*, as applicable, on the Condensed Consolidated Statements of Operations. The following table summarizes our major categories of asset groups measured at fair value on a nonrecurring basis and their level within the fair value hierarchy (in millions).

Six Months Ended June 30, 2023	Measurement	Carrying	Fair Value			Pre-tax Loss	Measurement	Carrying	Fair Value			Pre-tax Loss
	Date	Amount <sup>(1)</sup>	Level 1	Level 2	Level 3			Amount <sup>(1)</sup>	Level 1	Level 2	Level 3	
Long-lived assets held and used:												
Nine Months Ended September 30, 2023							Nine Months Ended September 30, 2023					

Long-lived asset groups held and used:											Long-lived asset groups held and used:												
Norgener <sup>(2)</sup>	Norgener <sup>(2)</sup>	5/1/2023	\$ 196	\$ —	\$ —	\$ 24	\$ 137				Norgener <sup>(2)</sup>	5/1/2023	\$ 196	\$ —	\$ —	\$ 24	\$ 137						
GAF Projects (AES Renewable Holdings)	GAF Projects (AES Renewable Holdings)										GAF Projects (AES Renewable Holdings)												
TEP											TEP												
TEG											TEG												
Held-for-sale businesses: <sup>(3)</sup>	Held-for-sale businesses: <sup>(3)</sup>										Held-for-sale businesses: <sup>(3)</sup>												
Jordan <sup>(4)</sup>	Jordan <sup>(4)</sup>	3/31/2023	\$ 179	\$ —	\$ 170	\$ —	\$ 14				Jordan <sup>(4)</sup>	3/31/2023	\$ 179	\$ —	\$ 170	\$ —	\$ 14						
Jordan <sup>(4)</sup>	Jordan <sup>(4)</sup>	6/30/2023	179	—	170	—	15				Jordan <sup>(4)</sup>	6/30/2023	179	—	170	—	15						
Jordan <sup>(4)</sup>											Jordan <sup>(4)</sup>	9/30/2023	178	—	170	—	14						
											Fair Value												
Six Months Ended June 30, 2022											Measurement Date	Carrying Amount <sup>(1)</sup>	Level 1	Level 2	Level 3	Pre-tax Loss							
Long-lived assets held and used:																							
Nine Months Ended September 30, 2022																							
Long-lived asset groups held and used:																							
Maritza											Maritza	4/30/2022	\$ 927	\$ —	\$ 452	\$ 475							
Held-for-sale businesses: <sup>(3)</sup>											Held-for-sale businesses: <sup>(3)</sup>												
Jordan <sup>(4)</sup>											Jordan <sup>(4)</sup>	9/30/2022	216	—	170	—	51						

(1) Represents the carrying values of the asset groups at the dates of measurement, before fair value adjustment.

(2) The Norgener asset group includes long-lived assets, inventory, land, and other working capital; however per ASC 360-10, the pre-tax impairment expense is limited to the carrying amount of the long-lived assets. See Note 15—Asset Impairment Expense for further information. The Company evaluated the carrying amount of the assets outside the scope of ASC 360-10 and determined that the carrying value of the other assets should not be reduced.

(3) See Note 16—Hold-for-Sale for further information.

(4) The pre-tax loss recognized was calculated using the \$170 million fair value of the Jordan disposal group less costs to sell of \$5 million for the September 30, 2022 and March 31, 2023 measurement dates and \$6 million for the March 31, 2023 June 30, 2023 and June 30, 2023 September 30, 2023 measurement dates, respectively.

The following table summarizes the significant unobservable inputs used in the Level 3 measurement of long-lived assets held and used measured on a nonrecurring basis during the six nine months ended June 30, 2023 September 30, 2023 (in millions, except range amounts):

Fair Value		Valuation Technique		Unobservable Input		Range (Weighted Average)	
Long-lived assets held and used:							
TEP	\$ 94	Discounted cash flow		Annual revenue growth		(31)% to 6% (-2%)	
				Annual variable margin		22% to 37% (26%)	
				Discount rate		14% to 25% (14%)	
TEG	93	Discounted cash flow		Annual revenue growth		(7)% to 9% (-%)	
				Annual variable margin		14% to 33% (20%)	
				Discount rate		14% to 25% (14%)	
Norgener <sup>(1)</sup>	\$ 24	Discounted cash flow		Annual revenue growth		(90)% to 994% (85%)	
				Annual variable margin		(75)% to 276% (16%)	
GAF Projects (AES Renewable Holdings)	11	Discounted cash flow		Annual revenue growth		(42)% to 44% (1%)	
				Annual variable margin		(194)% to 77% (66%)	
				Discount rate		9%	
Total	\$ 35,222						

(1) The fair value of the Norgener asset group is mainly related to existing coal inventory not subject to impairment under ASC 360-10.

#### Financial Instruments not Measured at Fair Value in the Condensed Consolidated Balance Sheets

The following table presents (in millions) the carrying amount, fair value, and fair value hierarchy of the Company's financial assets and liabilities that are not measured at fair value in the Condensed Consolidated Balance Sheets as of the periods indicated, but for which fair value is disclosed:

										June 30, 2023						
										Fair Value						
										Carrying Amount		Total				
Assets:	Accounts receivable — noncurrent <sup>(1)</sup>									\$	295	\$	338	\$	—	
Liabilities:	Non-recourse debt									20,872		20,540		—	19,084	
	Recourse debt									5,476		5,093		September 30, 2023	5,093	
										December 31, 2022						
										Carrying Amount		Total				
Assets:	Assets:	Accounts receivable — \$	255	\$	294	\$	—	\$	—	\$	294	Assets:	Accounts receivable — \$	117	\$	153
Liabilities:	Liabilities:	Non-recourse debt	19,429		18,527		—	17,089		1,438		Liabilities:	Non-recourse debt	21,618		21,108
		Recourse debt	3,894		3,505		—	3,505		—			Recourse debt	5,564		5,106
										December 31, 2022						
										Fair Value						
Assets:	Accounts receivable — noncurrent <sup>(1)</sup>									\$	301	\$	340	\$	—	
Liabilities:	Non-recourse debt									19,429		18,527		—	17,089	
	Recourse debt									3,894		3,505		—	3,505	

<sup>(1)</sup> These amounts primarily relate to amounts impacted by the Stabilization Funds enacted by the Chilean government, and are included in *Other noncurrent assets* in the accompanying Condensed Consolidated Balance Sheets.

#### 16 | Notes to Condensed Consolidated Financial Statements—(Continued) | June 30, 2023 and 2022

## 4. DERIVATIVE INSTRUMENTS AND HEDGING ACTIVITIES

For further information on the Company's derivative and hedge accounting policies, see Note 1—*General and Summary of Significant Accounting Policies—Derivatives and Hedging Activities* of Item 8.—*Financial Statements and Supplementary Data* in the 2022 Form 10-K.

**Volume of Activity** — The following tables present the Company's maximum notional (in millions) over the remaining contractual period by type of derivative as of **June 30, 2023**, regardless of whether they are in qualifying cash flow hedging relationships, and the dates through which the maturities for each type of derivative range:

Interest Rate and Foreign Currency Derivatives	Interest Rate and Foreign Currency Derivatives	Maximum Notional Translated to USD	Latest Maturity	Interest Rate and Foreign Currency Derivatives	Maximum Notional Translated to USD	Latest Maturity
Interest rate	Interest rate	\$ 7,062	2059	Interest rate	\$ 5,949	2059
Cross-currency swaps (Brazilian real)	Cross-currency swaps (Brazilian real)	404	2026	Cross-currency swaps (Brazilian real)	404	2026
Foreign Currency:	Foreign Currency:			Foreign Currency:		
Chilean peso	Chilean peso	173	2026	Chilean peso	220	2026
Euro	Euro	142	2025	Euro	100	2026
Mexican peso				Mexican peso	73	2024
Colombian peso	Colombian peso	49	2024	Colombian peso	43	2025
Brazilian real	Brazilian real	28	2024	Brazilian real	39	2026
Mexican peso		12	2024			
Argentine peso	Argentine peso	3	2026	Argentine peso	2	2026
Commodity Derivatives	Commodity Derivatives	Maximum Notional	Latest Maturity	Commodity Derivatives	Maximum Notional	Latest Maturity

Natural Gas (in MMBtu)	Natural Gas (in MMBtu)	108	2029	Natural Gas (in MMBtu)	62	2029
Power (in MWhs)	Power (in MWhs)	18	2040	Power (in MWhs)	14	2040
Coal (in Tons or Metric Tons)	Coal (in Tons or Metric Tons)	5	2027	Coal (in Tons or Metric Tons)	5	2025

**Accounting and Reporting — Assets and Liabilities** — The following tables present the fair value of assets and liabilities related to the Company's derivative instruments assets and liabilities as of the periods indicated (in millions):

Fair Value	Fair Value	June 30, 2023			December 31, 2022			Fair Value	September 30, 2023			December 31, 2022		
		Assets	Designated	Not Designated	Total	Designated	Not Designated	Total	Assets	Designated	Not Designated	Total	Designated	Not Designated
Interest rate derivatives	Interest rate derivatives	\$ 273	\$ —	\$ 273	\$ 313	\$ —	\$ 314	Interest rate derivatives	\$ 478	\$ —	\$ 478	\$ 313	\$ —	\$ 314
Foreign currency derivatives	Foreign currency derivatives	29	57	86	27	59	86	Foreign currency derivatives	20	48	68	27	59	86
Commodity derivatives	Commodity derivatives	—	240	240	—	245	245	Commodity derivatives	—	141	141	—	245	245
Total assets	Total assets	\$ 302	\$ 297	\$ 599	\$ 340	\$ 305	\$ 645	Total assets	\$ 498	\$ 189	\$ 687	\$ 340	\$ 305	\$ 645
Liabilities	Liabilities							Liabilities						
Interest rate derivatives	Interest rate derivatives	\$ 16	\$ —	\$ 16	\$ 6	\$ —	\$ 6	Interest rate derivatives	\$ —	\$ —	\$ —	\$ 6	\$ —	\$ 6
Cross-currency derivatives	Cross-currency derivatives	76	—	76	42	—	42	Cross-currency derivatives	54	—	54	42	—	42
Foreign currency derivatives	Foreign currency derivatives	3	19	22	9	11	20	Foreign currency derivatives	11	15	26	9	11	20
Commodity derivatives	Commodity derivatives	86	211	297	59	347	406	Commodity derivatives	79	128	207	59	347	406
Total liabilities	Total liabilities	\$ 181	\$ 230	\$ 411	\$ 116	\$ 358	\$ 474	Total liabilities	\$ 144	\$ 143	\$ 287	\$ 116	\$ 358	\$ 474
		June 30, 2023			December 31, 2022				September 30, 2023			December 31, 2022		
Fair Value	Fair Value	Assets	Liabilities		Assets	Liabilities		Fair Value	Assets	Liabilities		Assets	Liabilities	
Current	Current	\$ 310	\$ 127		\$ 271	\$ 168		Current	\$ 355	\$ 113		\$ 271	\$ 168	
Noncurrent	Noncurrent	289	284		374	306		Noncurrent	332	174		374	306	
Total	Total	\$ 599	\$ 411		\$ 645	\$ 474		Total	\$ 687	\$ 287		\$ 645	\$ 474	

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**Earnings and Other Comprehensive Income (Loss)** — The following table presents the pre-tax gains (losses) recognized in AOCL and earnings related to all on the Company's derivative instruments for the periods indicated (in millions):

Cash flow hedges	Cash flow hedges	Three Months Ended June 30,				Six Months Ended June 30,				Cash flow hedges	Three Months Ended September 30,				Nine Months Ended September 30,				
		2023		2022		2023		2022			2023		2022		2023		2022		
		Gains (losses) recognized in AOCL	Gains (losses) recognized in AOCL	Interest rate derivatives		Gains (losses) recognized in AOCL	Gains (losses) recognized in AOCL	Interest rate derivatives	Interest rate derivatives	Interest rate derivatives	Interest rate derivatives	Interest rate derivatives	Interest rate derivatives						
Cash flow hedges	Cash flow hedges			\$ 160	\$ 323	\$ 22	\$ 627			Cash flow hedges			\$ 358	\$ 238	\$ 380	\$ 865			

Foreign currency derivatives	Foreign currency derivatives	4	(24)	12	(12)	Foreign currency derivatives	(18)	8	(6)	(4)
Commodity derivatives	Commodity derivatives	(4)	32	(27)	61	Commodity derivatives	7	5	(20)	66
Total	Total	\$ 160	\$ 331	\$ 7	\$ 676	Total	\$ 347	\$ 251	\$ 354	\$ 927
Gains (losses) reclassified from AOCL into earnings	Gains (losses) reclassified from AOCL into earnings					Gains (losses) reclassified from AOCL into earnings				
Interest rate derivatives	Interest rate derivatives	\$ 13	\$ (23)	\$ 49	\$ (50)	Interest rate derivatives	\$ (2)	\$ (11)	\$ 47	\$ (61)
Foreign currency derivatives	Foreign currency derivatives	(3)	—	(3)	—	Foreign currency derivatives	(1)	2	(4)	2
Commodity derivatives	Commodity derivatives	(1)	—	13	(1)	Commodity derivatives	4	(4)	17	(5)
Total	Total	\$ 9	\$ (23)	\$ 59	\$ (51)	Total	\$ 1	\$ (13)	\$ 60	\$ (64)
Gains (losses) on fair value hedging relationship	Gains (losses) on fair value hedging relationship					Gains (losses) on fair value hedging relationship				
Cross-currency derivatives	Cross-currency derivatives	\$ (33)	\$ 8	\$ (86)	\$ (35)	Cross-currency derivatives	\$ 29	\$ 6	\$ (57)	\$ (29)
Hedged items	Hedged items	3	(25)	53	22	Hedged items	1	—	54	22
Total	Total	\$ (30)	\$ (17)	\$ (33)	\$ (13)	Total	\$ 30	\$ 6	\$ (3)	\$ (7)
Loss reclassified from AOCL to earnings due to impairment of assets		\$ —	\$ (16)	\$ —	\$ (16)					
Gains (losses) reclassified from AOCL to earnings due to discontinuance of hedge accounting		\$ 13	\$ (15)	14	(15)					
Gains (losses) recognized in earnings related to										
Gains reclassified from AOCL to earnings due to change in forecast						Gains reclassified from AOCL to earnings due to change in forecast	\$ —	\$ 2	\$ 14	\$ 17
Gains recognized in earnings related to						Gains recognized in earnings related to				
Not designated as hedging instruments:	Not designated as hedging instruments:					Not designated as hedging instruments:				
Interest rate derivatives	Interest rate derivatives	\$ —	\$ 1	\$ —	\$ 3	Interest rate derivatives	\$ —	\$ 1	\$ —	\$ 4
Foreign currency derivatives	Foreign currency derivatives	4	4	—	(15)	Foreign currency derivatives	3	35	3	20
Commodity derivatives and other	Commodity derivatives and other	126	30	191	17	Commodity derivatives and other	74	3	265	20
Total	Total	\$ 130	\$ 35	\$ 191	\$ 5	Total	\$ 77	\$ 39	\$ 268	\$ 44

AOCL is reclassifications are expected to increase pre-tax income from continuing operations for the twelve months ended June 30, 2024 September 30, 2024 by \$39 million \$198 million, primarily due to interest rate derivatives.

## 5. FINANCING RECEIVABLES

Receivables with contractual maturities of greater than one year are considered financing receivables. The following table presents financing receivables by country as of the dates indicated (in millions):

	June 30, 2023			December 31, 2022			September 30, 2023			December 31, 2022			
	Gross Receivable			Gross Receivable			Gross Receivable			Gross Receivable			
	Receivable	Allowance	Net Receivable	Receivable	Allowance	Net Receivable	Receivable	Allowance	Net Receivable	Receivable	Allowance	Net Receivable	
U.S.							U.S.	\$ 77	\$ —	\$ 77	\$ 46	\$ —	\$ 46
Chile	Chile	\$ 244	\$ —	\$ 244	\$ 239	\$ —	Chile	29	—	29	239	—	239
U.S.		39	—	39	—	—							
Other	Other	13	—	13	18	—	Other	12	—	12	18	—	18
Total	Total	\$ 296	\$ —	\$ 296	\$ 257	\$ —	Total	\$ 118	\$ —	\$ 118	\$ 303	\$ —	\$ 303

**U.S.** — During this period, AES has recorded non-current receivables pertaining to the sale of the Redondo Beach land and the Warrior Run PPA termination agreement. The anticipated collection period extends beyond September 30, 2024. See Note 13—Revenue for further details regarding the Warrior Run PPA termination agreement.

**Chile** — AES Andes has recorded receivables pertaining to revenues recognized on regulated energy contracts that were impacted by the Stabilization Funds created by the Chilean government in October 2019 and August 2022, in conjunction with the Tariff Stabilization Laws. Historically, the government updated the prices for these contracts every six months to reflect the contracts' indexation to exchange rates and commodities prices. The Tariff Stabilization Laws do not allow the pass-through of these contractual indexation updates to customers beyond the pricing in effect at July 1, 2019, until new lower-cost renewable contracts are incorporated to supply regulated contracts. Consequently, costs incurred in excess of the July 1, 2019 price are accumulated and borne by generators. Through different programs, AES Andes aims to reduce its exposure and has already sold a significant portion of the receivables accumulated as of December 31, 2021 September 30, 2023.

As on August 14, 2023, AES Andes executed an agreement aiming for the sale of June 30, 2023 up to \$227 million of receivables pursuant to the Stabilization Funds, of which \$122 million was sold and collected as of September 30, 2023. Through different agreements and programs, as of September 30, 2023, \$226 million \$16 million of current receivables and \$7 million of noncurrent receivables were recorded in Accounts receivable and Other noncurrent assets pertaining.

19 | Notes to the Stabilization Funds, Condensed Consolidated Financial Statements—(Continued) | September 30, 2023 and 2022

respectively. Additionally, \$18 million \$22 million of payment deferrals granted to mining customers as part of our green blend agreements were recorded as financing receivables included in Other noncurrent assets at June 30, 2023 September 30, 2023.

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## 6. INVESTMENTS IN AND ADVANCES TO AFFILIATES

**Summarized Financial Information** — The following table summarizes financial information of the Company's 50%-or-less-owned affiliates and majority-owned unconsolidated subsidiaries that are accounted for using the equity method (in millions):

	Majority-Owned Unconsolidated						Majority-Owned Unconsolidated					
	50%-or-less Owned Affiliates			Subsidiaries			50%-or-less Owned Affiliates			Subsidiaries		
	Six Months Ended June 30,	2023	2022	2023	2022		Nine Months Ended	2023	2022	2023	2022	
<b>Nine Months Ended</b>							<b>September 30,</b>					
Revenue	Revenue	\$ 1,370	\$ 792	\$ 1	\$ 1		Revenue	\$ 2,089	\$ 1,218	\$ 1	\$ 1	
Operating loss	Operating loss	(34)	(249)	—	—		Operating loss	(21)	(322)	(1)	—	
Net loss	Net loss	(91)	(323)	—	—		Net loss	(129)	(410)	(1)	—	
Net loss attributable to affiliates	Net loss attributable to affiliates	(72)	(275)	—	—		Net loss attributable to affiliates	(111)	(332)	(1)	—	

**Grupo Energía Gas Panamá** — In September 2023, AES Latin America completed the sale of its interest in Grupo Energía Gas Panamá, a joint venture formed for the Gatun combined cycle natural gas development project, to AES Panama, a 49%-owned consolidated subsidiary. As a result of the transaction, the Company's effective ownership in Grupo

Energía Gas Panamá decreased from 49% to approximately 24%. As the Company still does not control the investment after this transaction, it continues to be accounted for as an equity method investment and is reported in the Energy Infrastructure SBU reportable segment.

**sPower** — In December 2022, the Company agreed to sell 49% of its indirect interest in a portfolio of sPower's operating assets ("OpCo B"). On February 28, 2023, sPower closed on the sale for \$196 million. As a result of the transaction, the Company received \$98 million in sales proceeds and recorded a pre-tax gain on sale of \$5 million, recorded in **Loss Gain (loss) on disposal and sale of business interests**. After the sale, the Company's ownership interest in OpCo B decreased from 50% to approximately 26%. As the Company still does not control but has significant influence over sPower after the transaction, it continues to be accounted for as an equity method investment and is reported in the Renewables SBU reportable segment.

**Alto Maipo** — In May 2022, Alto Maipo emerged from bankruptcy in accordance with Chapter 11 of the U.S. Bankruptcy Code. Alto Maipo, as restructured, is considered a VIE. As the Company lacks the power to make significant decisions, it does not meet the criteria to be considered the primary beneficiary of Alto Maipo and therefore does not consolidate the entity. The Company has elected the fair value option to account for its investment in Alto Maipo as management believes this approach will better reflect the economics of its equity interest. As of **June 30, 2023** **September 30, 2023**, the fair value is insignificant. Alto Maipo is reported in the Energy Infrastructure SBU reportable segment.

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## 7. DEBT

### Recourse Debt

**Senior Notes due 2028** — In May 2023, the Company issued \$900 million aggregate principal of 5.45% senior notes due in 2028. The Company used the proceeds from this issuance for general corporate purposes and to fund investments in the Company's Renewables and Utilities SBUs.

**AES Clean Energy Development** — In March 2023, AES Clean Energy Development Holdings, LLC executed a \$500 million bridge loan due in December 2023 and used the proceeds for general corporate purposes. The obligations under the bridge loan are unsecured and are fully guaranteed by the Parent Company.

**Commercial Paper Program** — In March 2023, the Company established a commercial paper program under which the Company may issue unsecured commercial paper notes (the "Notes") up to a maximum aggregate face amount of \$750 million outstanding at any time. The maturities of the Notes may vary but will not exceed 397 days from the date of issuance. The proceeds of the Notes will be used for general corporate purposes. The Notes will be sold on customary terms in the U.S. commercial paper market on a private placement basis. The **Company must have commercial paper program** is backed by the Company's \$1.5 billion revolving credit **facilities in place, facility**, and the Company cannot issue commercial paper in an aggregate amount exceeding the then available capacity under its revolving credit facilities. As of **June 30, 2023** **September 30, 2023**, the Company had **\$517 million** **\$604 million** outstanding borrowings under the commercial paper program with a weighted average interest rate of **6.06%** **6.16%**. The Notes are classified as noncurrent.

**Revolving Credit Facility** — In September 2022, AES executed an amendment to its revolving credit facility. The aggregate commitment under the new agreement is \$1.5 billion and matures in August 2027. The existing credit agreement had an aggregate commitment of \$1.25 billion and matured in September 2026. As of September 30, 2023, AES had no outstanding drawings under its revolving credit facility.

**Term Loan due 2024** — In September 2022, the AES Corporation entered into a term loan agreement, under which AES can obtain term loans in an aggregate principal amount of up to \$200 million, with all term loans to mature no later than September 30, 2024. On September 30, 2022 the AES Corporation borrowed \$200 million under this agreement with a maturity date of September 30, 2024.

### Non-Recourse Debt

During the **six** **nine** months ended **June 30, 2023** **September 30, 2023**, the Company's following subsidiaries had the following significant debt transactions issuances (in millions):

Subsidiary	Transaction Period	Issuances	Repayments	Loss on Extinguishment of Debt
Netherlands and Colon	Q1	\$ 350	\$ (500)	\$ (1)
AES Brasil	Q1	169	—	—
AES Clean Energy	Q2	497	—	—
AES Ohio	Q2	100	—	—
<b>Subsidiary</b>				<b>Issuances (1)</b>
AES Clean Energy		\$ 885		
Netherlands and Colon		350		

(1) These amounts do not include revolving credit facility activity at the Company's subsidiaries.

19.21 | Notes to Condensed Consolidated Financial Statements—(Continued) | **June 30, 2023** **September 30, 2023** and 2022

*Netherlands and Colon* — In March 2022, AES Hispanola Holdings BV, a Netherlands based company, and Colon, as co-borrowers, executed a \$500 million bridge loan due in 2023. The Company allocated \$450 million and \$50 million of the proceeds from the agreement to AES Hispanola Holdings BV and Colon, respectively.

In January 2023, AES Hispanola Holdings BV and Colon, as co-borrowers, executed a \$350 million credit agreement at 8.85%, due in 2028. The Company allocated \$300 million and \$50 million of the proceeds from the agreement to AES Hispanola Holdings BV and Colon, respectively. The net proceeds from the agreement were used to partially repay the \$500 million bridge loan executed in 2022. The remaining principal outstanding of the bridge loan was repaid with proceeds from operating cash flows as well as cash from the Parent Company. As a result of these transactions, the Company recognized a loss on extinguishment of debt of \$1 million for the **six nine** months ended **June 30, 2023** **September 30, 2023**.

*United Kingdom* — On January 6, 2022, Mercury Chile HoldCo LLC (“Mercury Chile”), a UK based company, executed a \$350 million bridge loan, and used the proceeds, as well as an additional capital contribution of \$196 million from the Parent Company, to purchase the minority interest in AES Andes through intermediate holding companies (see Note 11 —*Equity* for further information). On January 24, 2022, Mercury Chile issued \$360 million aggregate principal of 6.5% senior secured notes due in 2027 and used the proceeds from the issuance to fully prepay the \$350 million bridge loan.

*AES Clean Energy* — In December 2022, AES Clean Energy Development, AES Renewable Holdings, and sPower, an equity method investment, collectively referred to as the Issuers, entered into a Master Indenture agreement whereby long-term notes will be issued from time to time to finance or refinance operating wind, solar, and energy storage projects that are owned by the Issuers. On December 13, 2022, the Issuers entered into the Note Purchase Agreement for the issuance of up to \$647 million of 6.55% Senior Notes due in 2047. The notes were sold on December 14, 2022, at par for \$647 million. In 2023, the Issuers sold an additional \$246 million in 6.37% notes, resulting in aggregate principal amount of notes issued of \$893 million. Each of the Issuers is considered a “Co-Issuer” and will be jointly and severally liable with each other Co-Issuer for all obligations under the facility. As a result of the 2023 issuance, AES Clean Energy Development recorded an increase in liabilities of \$215 million, resulting in an aggregate carrying amount of the notes attributable to AES Clean Energy Development and AES Renewable Holdings of \$252 million as of **June 30, 2023** **September 30, 2023**.

In 2021, AES Clean Energy Development, AES Renewable Holdings, and sPower, collectively referred to as the Borrowers, executed two Credit Agreements with aggregate commitments of \$1.2 billion and maturity dates in December 2024 and September 2025. The Borrowers executed amendments to the revolving credit facilities, which resulted in an aggregate increase in the commitments of **\$2.1 billion** **\$2.3 billion**, bringing the total commitments under the new agreements to **\$3.3 billion** **\$3.5 billion**. Under a 2023 amendment, the maturity date of one of the Credit Agreements was extended from December 2024 to May 2026. Each of the Borrowers is considered a “Co-Borrower” and will be jointly and severally liable with each other Co-Borrower for all obligations under the facilities. As a result of increases in commitments used, AES Clean Energy Development and AES Renewable Holdings recorded, in aggregate, an increase in liabilities of **\$641 million** **\$1.4 billion** in 2023, resulting in total commitments used under the revolving credit facilities, as of **June 30, 2023** **September 30, 2023**, of **\$1.9 billion** **\$2.7 billion**. As of **June 30, 2023** **September 30, 2023**, the aggregate commitments used under the revolving credit facilities for the Co-Borrowers was **\$2.5 billion** **\$3.4 billion**.

*Non-Recourse Debt Covenants, Restrictions, and Defaults* — The terms of the Company's non-recourse debt include certain financial and nonfinancial covenants. These covenants are limited to subsidiary activity and vary among the subsidiaries. These covenants may include, but are not limited to, maintenance of certain reserves and financial ratios, minimum levels of working capital, and limitations on incurring additional indebtedness.

As of **June 30, 2023** **September 30, 2023** and December 31, 2022, approximately **\$402 million** **\$369 million** and \$424 million, respectively, of restricted cash was maintained in accordance with certain covenants of the non-recourse debt agreements. These amounts were included within *Restricted cash and Debt service reserves and other deposits* in the accompanying Condensed Consolidated Balance Sheets. As of **September 30, 2023** and December 31, 2022, approximately \$91 million and \$56 million, respectively, of the restricted cash balances were for collateral held to cover potential liability for current and future insurance claims being assumed by AGIC, AES' captive insurance company.

Various lender and governmental provisions restrict the ability of certain of the Company's subsidiaries to transfer their net assets to the Parent Company. Such restricted net assets of subsidiaries amounted to approximately **\$1.8 billion** **\$1.4 billion** at **June 30, 2023** **September 30, 2023**.

The following table summarizes the Company's subsidiary non-recourse debt in default (in millions) as of **June 30, 2023** **September 30, 2023**. Due to the defaults, these amounts are included in the current portion of non-recourse debt unless otherwise indicated:

2022 | Notes to Condensed Consolidated Financial Statements—(Continued) | **June 30, 2023** **September 30, 2023** and 2022

Subsidiary	Subsidiary	Primary Nature of Default	Debt in Default	Net Assets (Liabilities)	Subsidiary	Primary Nature of Default	Debt in Default	Net Assets (Liabilities)
		Covenant	\$ 164	\$ 314				
AES Maritzta <sup>(1)</sup>					AES Mexico			
AES Mexico					Generation Holdings (TEG and TEP) <sup>(1)</sup>			
Generation Holdings (TEG and TEP) <sup>(1)</sup>					Covenant	\$ 157	\$ 50	
AES Puerto Rico	AES Puerto Rico	Covenant/Payment	143	(173)	AES Mexico			
AES Ilumina (Puerto Rico)	AES Ilumina (Puerto Rico)	Covenant	25	28	Generation Holdings (TEG and TEP) <sup>(1)</sup>			
AES Jordan Solar	AES Jordan Solar	Covenant	7	11	Covenant	\$ 143	(169)	
					AES Ilumina (Puerto Rico)			
					Covenant	25	28	
					AES Jordan Solar			
					Covenant	7	11	

Total	Total	\$ 339	Total	\$ 332
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(1) In July 2023, On October 3, 2023, AES Maritzza and Mexico Generation Holdings failed to comply with a covenant on its lenders reached an agreement to waive the potential covenant defaults through late September 2023, debt, resulting in a technical default. The associated non-recourse debt is classified as **noncurrent** current in the accompanying Condensed Consolidated Balance Sheets Sheets.

The amounts in default related to AES Puerto Rico are covenant and payment defaults. In July 2023, AES Puerto Rico signed forbearance and standstill agreements with its noteholders because of the insufficiency of funds to meet the principal and interest obligations on its Series A Bond Loans due and payable on June 1, 2023, and going forward. AES Puerto Rico continues to work with PREPA and its noteholders on these liquidity challenges. These agreements will expire on **October 15, 2023** December 31, 2023.

All other defaults listed are not payment defaults. All other subsidiary non-recourse defaults were triggered by failure to comply with covenants or other requirements contained in the non-recourse debt documents of the applicable subsidiary.

The AES Corporation's recourse debt agreements include cross-default clauses that will trigger if a subsidiary or group of subsidiaries for which the non-recourse debt is in default provides 20% or more of the Parent Company's total cash distributions from businesses for the four most recently completed fiscal quarters. As of **June 30, 2023** September 30, 2023, the Company had no defaults which resulted in, or were at risk of triggering, a cross-default under the recourse debt of the Parent Company. In the event the Parent Company is not in compliance with the financial covenants of its revolving credit facility, restricted payments will be limited to regular quarterly shareholder dividends at the then-prevailing rate. Payment defaults and bankruptcy defaults would preclude the making of any restricted payments.

## 8. COMMITMENTS AND CONTINGENCIES

**Guarantees, Letters of Credit and Commitments** — In connection with certain project financings, acquisitions and dispositions, power purchases and other agreements, the Parent Company has expressly undertaken limited obligations and commitments, most of which will only be effective or will be terminated upon the occurrence of future events. In the normal course of business, the Parent Company has entered into various agreements, mainly guarantees and letters of credit, to provide financial or performance assurance to third parties on behalf of AES businesses. These agreements are entered into primarily to support or enhance the creditworthiness otherwise achieved by a business on a stand-alone basis, thereby facilitating the availability of sufficient credit to accomplish their intended business purposes. Most of the contingent obligations relate to future performance commitments which the Company or its businesses expect to fulfill within the normal course of business. The expiration dates of these guarantees vary from less than one year to no more than **17** 33 years.

The following table summarizes the Parent Company's contingent contractual obligations as of **June 30, 2023** September 30, 2023. Amounts presented in the following table represent the Parent Company's current undiscounted exposure to guarantees and the range of maximum undiscounted potential exposure and excludes guarantees presented on the Condensed Consolidated Balance Sheets within *Recourse debt*. The maximum exposure is not reduced by the amounts, if any, that could be recovered under the recourse or collateralization provisions in the guarantees.

Contingent Contractual Obligations	Contingent Contractual Obligations	Amount (in millions)	Number of Agreements	Maximum Exposure Range for Each Agreement (in millions)	Contingent Contractual Obligations	Amount (in millions)	Number of Agreements	Maximum Exposure Range for Each Agreement (in millions)
Guarantees and commitments	Guarantees and commitments	\$ 2,610	69	<\$1 — 505	Guarantees and commitments	\$ 2,431	81	<\$1 — 484
Letters of credit under bilateral agreements	Letters of credit under bilateral agreements	123	2	\$59 — 64	Letters of credit under bilateral agreements	248	3	\$59 — 125
Letters of credit under the unsecured credit facilities					Letters of credit under the unsecured credit facilities	136	30	<\$1 — 50
Letters of credit under the revolving credit facility	Letters of credit under the revolving credit facility	100	11	<\$1 — 60	Letters of credit under the revolving credit facility	39	6	<\$1 — 30
Letters of credit under the unsecured credit facilities		95	33	<\$1 — 36				
Surety bonds	Surety bonds	2	2	<\$1 — 1	Surety bonds	2	2	<\$1 — 1
Total	Total	\$ 2,930	117		Total	\$ 2,856	122	

During the **six** nine months ended **June 30, 2023** September 30, 2023, the Company paid letter of credit fees ranging from 1% to 3% per annum on the outstanding amounts of letters of credit.

21 23 | Notes to Condensed Consolidated Financial Statements—(Continued) | **June 30, 2023** September 30, 2023 and 2022

### Contingencies

**Environmental** — The Company periodically reviews its obligations as they relate to compliance with environmental laws, including site restoration and remediation. For the periods ended June 30, 2023 September 30, 2023 and December 31, 2022, the Company recognized liabilities of \$10 million for projected environmental remediation costs. Due to the uncertainties associated with environmental assessment and remediation activities, future costs of compliance or remediation could be higher or lower than the amount currently accrued. Moreover, where no liability has been recognized, it is reasonably possible that the Company may be required to incur remediation costs or make expenditures in amounts that could be material but could not be estimated as of June 30, 2023 September 30, 2023. In aggregate, the Company estimates the range of potential losses related to environmental matters, where estimable, to be up to \$13 million \$12 million. The amounts considered reasonably possible do not include amounts accrued as discussed above.

**Litigation** — The Company is involved in certain claims, suits and legal proceedings in the normal course of business. The Company accrues for litigation and claims when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. The Company has recognized aggregate liabilities for all claims of approximately \$26 million and \$22 million as of June 30, 2023 September 30, 2023 and December 31, 2022, respectively. These amounts are reported on the Condensed Consolidated Balance Sheets within *Accrued and other liabilities* and *Other noncurrent liabilities*. A significant portion of these accrued liabilities relate to regulatory matters and commercial disputes in international jurisdictions. There can be no assurance that these accrued liabilities will be adequate to cover all existing and future claims or that we will have the liquidity to pay such claims as they arise.

Where no accrued liability has been recognized, it is reasonably possible that some matters could be decided unfavorably to the Company and could require the Company to pay damages or make expenditures in amounts that could be material but could not be estimated as of June 30, 2023 September 30, 2023. The material contingencies where a loss is reasonably possible primarily include disputes with offtakers, suppliers and EPC contractors; alleged breaches of contract; alleged violation of laws and regulations; income tax and non-income tax matters with tax authorities; and regulatory matters. In aggregate, the Company estimates the range of potential losses, where estimable, related to these reasonably possible material contingencies to be between \$53 million \$182 million and \$89 million \$219 million. The amounts considered reasonably possible do not include the amounts accrued, as discussed above. These material contingencies do not include income tax-related contingencies which are considered part of our uncertain tax positions.

## 9. LEASES

**LESSOR** — The Company has operating leases for certain generation contracts that contain provisions to provide capacity to a customer, which is a stand-ready obligation to deliver energy when required by the customer. Capacity receipts are generally considered lease elements as they cover the majority of available output from a facility. The allocation of contract payments between the lease and non-lease elements is made at the inception of the lease. Lease receipts from such contracts are recognized as lease revenue on a straight-line basis over the lease term, whereas variable lease receipts are recognized when earned.

The following table presents lease revenue from operating leases in which the Company is the lessor, recognized in *Revenue* on the Condensed Consolidated Statements of Operations for the periods indicated (in millions):

Operating Lease	Operating Lease	Three Months Ended June 30,		Six Months Ended June 30,		Three Months Ended September 30,		Nine Months Ended September 30,		
		Revenue	2023	2022	2023	2022	Operating Lease Revenue	2023	2022	2023
Total lease revenue	Total lease revenue	\$ 136	\$ 140	\$ 257	\$ 274	Total lease revenue	\$ 133	\$ 134	\$ 390	\$ 408
Less: Variable lease revenue	Less: Variable lease revenue	(24)	(16)	(32)	(23)	Less: Variable lease revenue	(22)	(14)	(54)	(37)
Total Non-variable lease revenue	Total Non-variable lease revenue	\$ 112	\$ 124	\$ 225	\$ 251	Total Non-variable lease revenue	\$ 111	\$ 120	\$ 336	\$ 371

22 24 | Notes to Condensed Consolidated Financial Statements—(Continued) | June 30, 2023 September 30, 2023 and 2022

The following table presents the underlying gross assets and accumulated depreciation of operating leases included in *Property, plant and equipment* on the Condensed Consolidated Balance Sheets as of the periods indicated (in millions):

Property, Plant and Equipment, Net	Property, Plant and Equipment, Net	June 30, 2023		December 31, 2022		Property, Plant and Equipment, Net		September 30, 2023		December 31, 2022			
		Gross assets	\$ 1,355	Gross assets	\$ 1,319	Less: Accumulated depreciation	(176)	Less: Accumulated depreciation	(139)	Net assets	\$ 1,043	Net assets	\$ 1,180
Gross assets	Gross assets	\$ 1,355	\$ 1,319	Gross assets	\$ 1,223	Less: Accumulated depreciation	(180)	Less: Accumulated depreciation	(139)	Net assets	\$ 1,043	Net assets	\$ 1,180
Less: Accumulated depreciation	Less: Accumulated depreciation	(176)	(139)										
Net assets	Net assets	\$ 1,179	\$ 1,180	Net assets	\$ 1,043					Net assets	\$ 1,043		\$ 1,180

The option to extend or terminate a lease is based on customary early termination provisions in the contract, such as payment defaults, bankruptcy, and lack of performance on energy delivery. The Company has not recognized any early terminations as of June 30, 2023 September 30, 2023. Certain leases may provide for variable lease payments based on usage or index-based (e.g., the U.S. Consumer Price Index) adjustments to lease payments.

The following table shows the future lease receipts as of June 30, 2023 September 30, 2023 for the remainder of 2023 through 2027 and thereafter (in millions):

		Future Cash Receipts for				Future Cash Receipts for				
		Sales-Type Leases		Operating Leases		Sales-Type Leases		Operating Leases		
2023	2023	\$	13	\$	195	2023	\$	7	\$	96
2024	2024		25		391	2024		26		385
2025	2025		25		392	2025		26		386
2026	2026		25		280	2026		26		278
2027	2027		25		203	2027		26		183
Thereafter	Thereafter		361		544	Thereafter		375		544
Total	Total	\$	474	\$	2,005	Total	\$	486	\$	1,872
Less: Imputed interest	Less: Imputed interest		(248)			Less: Imputed interest		(257)		
Present value of total lease receipts	Present value of total lease receipts	\$	226			Present value of total lease receipts	\$	229		

**Battery Storage Lease Arrangements** — The Company constructs and operates projects consisting only of a stand-alone battery energy storage system ("BESS") facility, as well as projects that pair a BESS with solar energy systems. These projects allow more flexibility on when to provide energy to the grid. The Company will enter into PPAs for the full output of the facility that allow customers the ability to determine when to charge and discharge the BESS. These arrangements include both lease and non-lease elements under ASC 842, with the BESS component typically constituting a sales-type lease. The Company recognized lease income on sales-type leases through interest income of \$3 million and \$7 million for the three and six months ended June 30, 2023 September 30, 2023, respectively; and \$13 million \$4 million and \$16 million for the three and six months ended June 30, 2022 September 30, 2022, respectively.

## 10. REDEEMABLE STOCK OF SUBSIDIARIES

The following table summarizes the Company's redeemable stock of subsidiaries balances as of the periods indicated (in millions):

		June 30, 2023	December 31, 2022		September 30, 2023	December 31, 2022
IPALCO common stock	IPALCO common stock	\$ 765	\$ 782	IPALCO common stock	\$ 778	\$ 782
AES Clean Energy Development common stock	AES Clean Energy Development common stock	439	436	AES Clean Energy Development common stock	557	436
AES Clean Energy Development tax equity partnerships		66	86	AES Clean Energy tax equity partnerships	70	86
Potengi common and preferred stock	Potengi common and preferred stock	19	17	Potengi common and preferred stock	18	17
Total redeemable stock of subsidiaries	Total redeemable stock of subsidiaries	\$ 1,289	\$ 1,321	Total redeemable stock of subsidiaries	\$ 1,423	\$ 1,321

**Potengi** — In March 2022, Tucano Holding I ("Tucano"), a subsidiary of AES Brasil, issued new shares in the Potengi wind development project. BRF S.A. ("BRF") acquired shares representing 24% of the equity in the project for \$12 million, reducing the Company's indirect ownership interest in Potengi to 35.5%. As the Company maintained control after the transaction, Potengi continues to be consolidated by the Company. As part of the transaction, BRF was given an option to sell its entire ownership interest at the conclusion of the PPA term. As a result, the minority ownership interest is considered temporary equity, which will be adjusted for earnings or losses allocated to the noncontrolling interest under ASC 810. Any subsequent changes in the redemption value of the exit rights will be recognized in accordance with ASC 480-10-S99, as it is probable that the shares will become redeemable. Potengi is reported in the Renewables SBU reportable segment.

25 | Notes to Condensed Consolidated Financial Statements—(Continued) | June 30, 2023 September 30, 2023 and 2022

## 11. EQUITY

### Equity Units

In March 2021, the Company issued 10,430,500 Equity Units with a total notional value of \$1,043 million. Each Equity Unit has a stated amount of \$100 and was initially issued as a Corporate Unit, consisting of a forward stock purchase contract ("2024 Purchase Contracts") and a 10% undivided beneficial ownership interest in one share of 0% Series A Cumulative Perpetual Convertible Preferred Stock, issued without par and with a liquidation preference of \$1,000 per share ("Series A Preferred Stock").

The Company concluded that the Equity Units should be accounted for as one unit of account based on the economic linkage between the 2024 Purchase Contracts and the Series A Preferred Stock, as well as the Company's assessment of the applicable accounting guidance relating to combining freestanding instruments. The Equity Units represent

mandatorily convertible preferred stock. Accordingly, the shares associated with the combined instrument are reflected in diluted earnings per share using the if-converted method.

In conjunction with the issuance of the Equity Units, the Company received approximately \$1 billion in proceeds, net of underwriting costs and commissions, before offering expenses. The proceeds for the issuance of 1,043,050 shares are attributed to the Series A Preferred Stock for \$838 million and \$205 million for the present value of the quarterly payments due to holders of the 2024 Purchase Contracts ("Contract Adjustment Payments"). The proceeds ~~will be~~ were used for the development of the AES renewable businesses, U.S. utility businesses, LNG infrastructure, and for other developments determined by management.

The Series A Preferred Stock will initially not bear any dividends and the liquidation preference of the convertible preferred stock will not accrete. The Series A Preferred Stock has no maturity date and will remain outstanding unless converted by holders or redeemed by the Company. Holders of the shares of the convertible preferred stock will have limited voting rights.

The Series A Preferred Stock is pledged as collateral to support holders' purchase obligations under the 2024 Purchase Contracts and can be remarketed. In connection with any successful remarketing, the Company may increase the dividend rate, increase the conversion rate, and modify the earliest redemption date for the convertible preferred stock. After any successful remarketing in connection with which the dividend rate on the convertible preferred stock is increased, the Company will pay cumulative dividends on the convertible preferred stock, if declared by the board of directors, quarterly in arrears from the applicable remarketing settlement date.

Holders of Corporate Units may create Treasury Units or Cash Settled Units from their Corporate Units as provided in the Purchase Contract Agreement by substituting Treasury securities or cash, respectively, for the Convertible Preferred Stock comprising a part of the Corporate Units.

The Company may not redeem the Series A Preferred Stock prior to March 22, 2024. At the election of the Company, on or after March 22, 2024, the Company may redeem for cash, all or any portion of the outstanding shares of the Series A Preferred Stock at a redemption price equal to 100% of the liquidation preference, plus any accumulated and unpaid dividends.

The 2024 Purchase Contracts obligate the holders to purchase, on February 15, 2024, for a price of \$100 in cash, a maximum number of ~~57,364,621~~ 57,407,386 shares of the Company's common stock (subject to customary anti-dilution adjustments). The 2024 Purchase Contract holders may elect to settle their obligation early, in cash. The Series A Preferred Stock is pledged as collateral to guarantee the holders' obligations to purchase common stock under the terms of the 2024 Purchase Contracts. The initial settlement rate determining the number of shares that each holder must purchase will not exceed the maximum settlement rate and is determined over a market value averaging period preceding February 15, 2024.

The initial maximum settlement rate of 3.864 was calculated using an initial reference price of \$25.88, equal to the last reported sale price of the Company's common stock on March 4, 2021. As of ~~June 30, 2023~~ September 30, 2023, due to the customary anti-dilution provisions, the maximum settlement rate was ~~3.8739~~ 3.8768, equivalent to a reference price of ~~\$25.81~~ \$25.79. If the applicable market value of the Company's common stock is less than or equal to the reference price, the settlement rate will be the maximum settlement rate; and if the applicable market value of common stock is greater than the reference price, the settlement rate will be a number of shares of the Company's common stock equal to \$100 divided by the applicable market value. Upon successful remarketing of the Series A Preferred Stock ("Remarketed Series A Preferred Stock"), the Company expects to receive additional cash proceeds of \$1 billion and issue shares of Remarketed Series A Preferred Stock.

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**24.26** | Notes to Condensed Consolidated Financial Statements—(Continued) | ~~June 30, 2023~~ September 30, 2023 and 2022

The Company pays Contract Adjustment Payments to the holders of the 2024 Purchase Contracts at a rate of 6.875% per annum, payable quarterly in arrears on February 15, May 15, August 15, and November 15, commencing on May 15, 2021. The \$205 million present value of the Contract Adjustment Payments at inception reduced the Series A Preferred Stock. As each quarterly Contract Adjustment Payment is made, the related liability is reduced and the difference between the cash payment and the present value will accrete to interest expense, approximately \$5 million over the three-year term. As of ~~June 30, 2023~~ September 30, 2023, the present value of the Contract Adjustment Payments was ~~\$54 million~~ \$36 million.

The holders can settle the purchase contracts early, for cash, subject to certain exceptions and conditions in the prospectus supplement. Upon early settlement of any purchase contracts, the Company will deliver the number of shares of its common stock equal to 85% of the number of shares of common stock that would have otherwise been deliverable.

#### **Equity Transactions with Noncontrolling Interests**

**AES Clean Energy Tax Equity Partnerships** — The majority of solar projects under AES Clean Energy have been financed with tax equity structures, in which tax equity investors receive a portion of the economic attributes of the facilities, including tax attributes, that vary over the life of the projects.

During the ~~second quarter of 2023~~ nine months ended September 30, 2023 and 2022, AES Clean Energy Development and AES Renewable Holdings, through multiple transactions, sold noncontrolling interests in project companies to tax equity partners, resulting in increases to NCI of ~~\$208~~ \$292 million and ~~\$98~~ \$210 million, respectively.

In the third quarter of 2023, AES Renewable Holdings completed buyouts of tax equity partners at Buffalo Gap I, Buffalo Gap II and six other project companies, resulting in a decrease to NCI of \$45 million and an increase to additional paid-in capital of \$34 million. AES Clean Energy Development and AES Renewable Holdings are reported in the Renewables SBU reportable segment.

**Chile Renovables** — Under its renewable partnership agreement with Global Infrastructure Management, LLC ("GIP"), AES Andes will contribute a specified pipeline of renewable development projects to Chile Renovables as the projects reach commercial operations, and GIP may make additional contributions to maintain its 49% ownership interest. In ~~January 2022~~, During the nine months ended ~~September 30, 2022~~ and 2023, AES Andes completed the sale of ~~Andes Solar 2a~~ the following projects to Chile Renovables for ~~\$37 million~~, resulting in an ~~in~~ in (in millions): increase to NCI of \$28 million and an increase to additional paid-in capital of \$9 million. In June 2022, the sale of Los Olmos was completed for \$80 million, resulting in an increase to NCI of \$68 million and an increase to additional paid-in capital of \$12 million.

Business	Transaction Period	Sale Price	Increase to Noncontrolling Interests	Increase (Decrease) to Additional Paid-In Capital
Andes Solar 2a	January 2022	\$	37 \$	28 \$

Los Olmos	June 2022	80	68	12
Campo Lindo	September 2023	50	59	(9)

As the Company maintained control after these transactions, Chile Renovables continues to be consolidated by the Company within the Energy Infrastructure SBU reportable segment.

**AES Panama** — In September 2023, AES Latin America completed the sale of its interest in the Grupo Energía Gas Panamá joint venture to AES Panama, a 49%-owned consolidated subsidiary. See Note 6—*Investments in and Advances to Affiliates* for further information. As a result of the transaction, AES Panama received \$42 million from noncontrolling interest holders and the Company reclassified accumulated other comprehensive income from AOCL to NCI of \$23 million. AES Panama is reported in the Renewables SBU reportable segment however the investment in Grupo Energía Gas Panamá is reported in the Energy Infrastructure SBU reportable segment.

**AES Brasil** — In September 2022, AES Brasil commenced a private placement offering for its existing shareholders to subscribe for up to 107 million newly issued shares. AES Holdings Brasil Ltda. subscribed for 54 million shares and noncontrolling interest holders subscribed for 53 million shares, thereby increasing AES' indirect beneficial interest in AES Brasil to 47.4%. AES Brasil received \$77 million from noncontrolling interest holders during the third quarter of 2022, prior to the issuance of the shares in October 2022. Since the consideration received was nonrefundable, the impact was recorded in noncontrolling interests. AES Brasil is reported in the Renewables SBU reportable segment.

**Guimbé Holding** — In January 2022, the Ventus wind complex and AGV solar complex were incorporated by Guimbé Holding. Guimbé Holding issued preferred shares representing 3.5% ownership in the subsidiary for total proceeds of \$63 million. The transaction decreased the Company's indirect ownership interest to 35.8%. As the Company maintained control after these transactions, Guimbé Holding continues to be consolidated by the Company within the Renewables SBU reportable segment.

27 | Notes to Condensed Consolidated Financial Statements—(Continued) | September 30, 2023 and 2022

**AES Andes** — In January 2022, Inversiones Cachagua SpA ("Cachagua") completed a tender offer for the shares of AES Andes held by minority shareholders for \$522 million, net of transaction costs. Upon completion, AES' indirect beneficial interest in AES Andes increased from 67.1% to 98.1%. Through multiple transactions following the tender offer during the first quarter of 2022, Cachagua acquired an additional 0.8% ownership in AES Andes for \$13 million, further increasing AES' indirect beneficial interest to 98.9%. The tender offer and these follow-on transactions resulted in a \$169 million decrease to Parent Company Stockholder's Equity due to a decrease in additional paid-in capital of \$93 million and the reclassification of accumulated other comprehensive losses from NCI to AOCL of \$76 million. AES Andes is reported in the Energy Infrastructure SBU reportable segment.

**Accumulated Other Comprehensive Loss** — The following table summarizes the changes in AOCL by component, net of tax and NCI, for the **six** **nine** months ended **June 30, 2023** September 30, 2023 (in millions):

		Foreign currency translation adjustment, net				Unrealized derivative gains (losses), net			Unfunded pension obligations, net			Foreign currency translation adjustment, net				Unrealized derivative gains (losses), net			Unfunded pension obligations, net			Total
Balance at the beginning of the period	Balance at the beginning of the period	\$	(1,828)	\$	211	\$	(23)	\$	(1,640)	Balance at the beginning of the period	\$	(1,828)	\$	211	\$	(23)	\$	(1,640)				
Other comprehensive income before reclassifications	Other comprehensive income before reclassifications	107		9		—		116	Other comprehensive income before reclassifications	71		227		—		298						
Amount reclassified to earnings	Amount reclassified to earnings	—		(43)		—		(43)	Amount reclassified to earnings	—		(45)		—		(45)						
Other comprehensive income (loss)	Other comprehensive income (loss)	107		(34)		—		73	Other comprehensive income	71		182		—		253						
Reclassification to NCI due to sales	Reclassification to NCI due to sales	—		(23)		—		(23)	Reclassification to NCI due to sales	—		(23)		—		(23)						
Balance at the end of the period	Balance at the end of the period	\$	(1,721)	\$	177	\$	(23)	\$	(1,567)	Balance at the end of the period	\$	(1,757)	\$	370	\$	(23)	\$	(1,410)				

Reclassifications out of AOCL are presented in the following table. Amounts for the periods indicated are in millions and those in parentheses indicate debits to the Condensed Consolidated Statements of Operations:

25 | Notes to Condensed Consolidated Financial Statements—(Continued) | June 30, 2023 and 2022

AOCL Components	Affected Line Item in the Condensed Consolidated Statements of Operations		Three Months Ended June 30, 2023 2022				Affected Line Item in the Condensed Consolidated Statements of Operations		Three Months Ended September 30, 2023 2022				
	AOCL Components	Operations	Three Months Ended June 30, 2023 2022		Six Months Ended June 30, 2023 2022		AOCL Components	Operations	Three Months Ended September 30, 2022		Six Months Ended September 30, 2022		
			2023	2022	2023	2022			2022	2023	2022	2023	
<b>Derivative gains (losses), net</b>	<b>Derivative gains (losses), net</b>				<b>Derivative gains (losses), net</b>								
Non-regulated revenue		\$ (8)	\$ —	\$ (8)	\$ (1)				Non-regulated revenue	\$ —	\$ —	\$ (8)	\$ (1)
Non-regulated cost of sales		—	(1)	(1)	(2)				Non-regulated cost of sales	(1)	(5)	(2)	(7)
Interest expense		13	(10)	16	(33)				Interest expense	(3)	(9)	13	(42)
Loss on disposal and sale of business interests		—	(16)	33	(16)				Gain (loss) on disposal and sale of business interests	—	—	33	—
Asset impairment expense		—	—	—	(16)								
Foreign currency transaction losses		(3)	—	(3)	—				Foreign currency transaction gains (losses)	—	2	(3)	2
Income (loss) from continuing operations before taxes and equity in earnings of affiliates		2	(27)	37	(52)				Income from continuing operations before taxes and equity in earnings of affiliates	(4)	(12)	33	(64)
Income tax benefit (expense)		(2)	3	(11)	13				Income tax expense	—	(1)	(11)	12
Net equity in earnings (losses) of affiliates		7	4	22	1				Net equity in losses of affiliates	5	(1)	27	—
Net income (loss)		7	(20)	48	(38)				Net income	1	(14)	49	(52)
Less: Net income attributable to noncontrolling interests and redeemable stock of subsidiaries		(4)	(3)	(5)	8				Less: Net income attributable to noncontrolling interests and redeemable stock of subsidiaries	1	3	(4)	11
Net income (loss) attributable to The AES Corporation		\$ 3	\$ (23)	\$ 43	\$ (30)				Net income attributable to The AES Corporation	\$ 2	\$ (11)	\$ 45	\$ (41)
<b>Amortization of defined benefit pension actuarial loss, net</b>	<b>Amortization of defined benefit pension actuarial gain</b>				<b>Amortization of defined benefit pension actuarial gain</b>								
Regulated cost of sales		\$ —	\$ (1)	\$ —	\$ (1)				Regulated cost of sales	\$ —	\$ —	\$ —	\$ (1)
Other expense		—	1	—	—				Other expense	—	(2)	—	(2)
Income from continuing operations before taxes and equity in earnings of affiliates		—	(2)	—	(3)								
Income tax expense		—	1	—	1								
Net income		—	(1)	—	(2)								
Less: Net income attributable to noncontrolling interests and redeemable stock of subsidiaries		—	1	—	1								
Net income (loss) attributable to The AES Corporation		\$ —	\$ —	\$ —	\$ (1)				Net income attributable to The AES Corporation	\$ —	\$ —	\$ —	\$ (1)

<b>Total reclassifications for the period, net of income tax and noncontrolling interests</b>	<b>Total reclassifications for the period, net of income tax and noncontrolling interests</b>	<b>Total reclassifications for the period, net of income tax and noncontrolling interests</b>
\$ 3      \$ (23)      \$ 43      \$ (31)		\$ 2      \$ (11)      \$ 45      \$ (42)

**Common Stock Dividends** — The Parent Company paid dividends of \$0.1659 per outstanding share to its common stockholders during the first, second, and second third quarters of 2023 for dividends declared in December 2022, February 2023 and February 2023 July 2023, respectively.

On July 14, 2023 October 6, 2023, the Board of Directors declared a quarterly common stock dividend of \$0.1659 per share payable on August 15, 2023 November 15, 2023, to shareholders of record at the close of business on August 1, 2023 November 1, 2023.

28 | Notes to Condensed Consolidated Financial Statements—(Continued) | September 30, 2023 and 2022

## 12. SEGMENTS

The segment reporting structure uses the Company's management reporting structure as its foundation to reflect how the Company manages the businesses internally. In our 2022 Form 10-K, the management reporting structure and the Company's reportable segments were mainly organized by geographic regions. In March 2023, we announced internal management changes as a part of our ongoing strategy to align our business to meet our customers' needs and deliver on our major strategic objectives. The management reporting structure is now composed of four SBUs, mainly organized by technology, led by our President and Chief Executive Officer. Using the accounting guidance on segment reporting, the Company determined that its four operating segments are aligned with its four reportable segments corresponding to its SBUs. All prior period results have been retrospectively revised to reflect the new segment reporting structure.

- *Renewables* — Solar, wind, energy storage, hydro, biomass, and landfill gas hydro generation facilities;
- *Utilities* — AES Indiana, AES Ohio, and AES El Salvador regulated utilities and their generation facilities;
- *Energy Infrastructure* — Natural gas, LNG, coal, pet coke, diesel and oil generation facilities, and our businesses in Chile, which have a mix of generation sources, including renewables, that are pooled to service our existing PPAs; and
- *New Energy Technologies* — Green hydrogen initiatives and investments in Fluence, Uplight, 5B, and other new and innovative energy technology businesses.

Our Renewables, Utilities and Energy Infrastructure SBUs participate in our generation business line, in which we own and/or operate power plants to generate and sell power to customers, such as utilities, industrial users, and other intermediaries. Our Utilities SBU participates in our utilities business line, in which we own and/or operate utilities to generate or purchase, distribute, transmit, and sell electricity to end-user customers in the residential, commercial, industrial, and governmental sectors within a defined service area. In certain circumstances, our utilities also generate and sell electricity on the wholesale market. Our New Energy Technologies SBU includes investments in new and innovative technologies to support leading-edge greener energy solutions.

Included in "Corporate and Other" are the results of the AES self-insurance company, corporate overhead costs which are not directly associated with the operations of our four reportable segments, and certain intercompany charges such as self-insurance premiums which are fully eliminated in consolidation.

During the first quarter of 2023, management began assessing operational performance and making resource

26 | Notes to Condensed Consolidated Financial Statements—(Continued) | June 30, 2023 and 2022

allocation decisions using Adjusted EBITDA. Therefore, the Company uses Adjusted EBITDA as its primary segment performance measure. Adjusted EBITDA, a non-GAAP measure, is defined by the Company as earnings before interest income and expense, taxes, depreciation and amortization, adjusted for the impact of NCI and interest, taxes, depreciation and amortization of our equity affiliates, and adding back interest income recognized under service concession arrangements; excluding gains or losses of both consolidated entities and entities accounted for under the equity method due to (a) unrealized gains or losses related to derivative transactions and equity securities; (b) unrealized foreign currency gains or losses; (c) gains, losses, benefits and costs associated with dispositions and acquisitions of business interests, including early plant closures, and gains and losses recognized at commencement of sales-type leases; (d) losses due to impairments; (e) gains, losses and costs due to the early retirement of debt; and (f) net gains at Angamos, one of our businesses in the Energy Infrastructure SBU, associated with the early contract terminations with Minera Escondida and Minera Spence.

The Company has concluded Adjusted EBITDA better reflects the underlying business performance of the Company and is the most relevant measure considered in the Company's internal evaluation of the financial performance of its segments. Additionally, given its large number of businesses and overall complexity, the Company concluded that Adjusted EBITDA is a more transparent measure that better assists investors in determining which businesses have the greatest impact on the Company's results.

Revenue and Adjusted EBITDA are presented before inter-segment eliminations, which includes the effect of intercompany transactions with other segments except for charges for certain management fees and the write-off of intercompany balances, as applicable. All intra-segment activity has been eliminated within the segment. Inter-segment activity has been eliminated within the total consolidated results.

The following tables present financial information by segment for the periods indicated (in millions):

Total Revenue	Total Revenue	Three Months Ended June 30,		Six Months Ended June 30,		Total Revenue	Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022		2023	2022	2023	2022
Renewables SBU	Renewables SBU	\$ 541	\$ 455	\$ 1,036	\$ 875	Renewables SBU	\$ 708	\$ 532	\$ 1,744	\$ 1,407
Utilities SBU	Utilities SBU	852	821	1,823	1,680	Utilities SBU	880	994	2,703	2,674
Energy Infrastructure SBU	Energy Infrastructure SBU	1,654	1,820	3,378	3,427	Energy Infrastructure SBU	1,861	2,126	5,239	5,553
New Energy Technologies SBU	New Energy Technologies SBU	1	2	75	2	New Energy Technologies SBU	—	—	75	2
Corporate and Other	Corporate and Other	40	34	67	57	Corporate and Other	29	24	96	81
Eliminations	Eliminations	(61)	(54)	(113)	(111)	Eliminations	(44)	(49)	(157)	(160)
Total Revenue	Total Revenue	\$ 3,027	\$ 3,078	\$ 6,266	\$ 5,930	Total Revenue	\$ 3,434	\$ 3,627	\$ 9,700	\$ 9,557

Reconciliation of Adjusted EBITDA (in millions)	Reconciliation of Adjusted EBITDA (in millions)	Three Months Ended June 30,				Six Months Ended June 30,				Reconciliation of Adjusted EBITDA (in millions)		Three Months Ended September 30, 30,		Nine Months Ended September 30, 30,			
		2023		2022		2023		2022		2023		2022		2023			
		Net income	Net income	\$ (19)	\$ (136)	\$ 170	\$ 35	Net income	\$ 291	\$ 446	\$ 461	\$ 481	Income tax expense	109	145	179	186
Net income	Net income												Interest expense	326	276	966	813
Income tax expense (benefit)	Income tax expense (benefit)	(2)	(19)	70	41								Interest income	(144)	(100)	(398)	(270)
Income tax expense	Income tax expense												Depreciation and amortization	286	266	836	800
Interest expense	Interest expense	310	279	640	537								EBITDA	\$ 868	\$ 1,033	\$ 2,044	\$ 2,010
Interest income	Interest income	(131)	(95)	(254)	(170)								Less: Adjustment for noncontrolling interests and redeemable stock of subsidiaries (1)	(155)	(156)	(325)	(312)
Depreciation and amortization	Depreciation and amortization	277	264	550	534								Less: Adjustment for noncontrolling interests and redeemable stock of subsidiaries (1)	(183)	(174)	(508)	(486)
EBITDA	EBITDA	\$ 435	\$ 293	\$ 1,176	\$ 977								Less: Income taxes expense (benefit), interest expense (income) and depreciation and amortization from equity affiliates	27	36	93	93
Less: Adjustment for noncontrolling interests and redeemable stock of subsidiaries (1)	Less: Adjustment for noncontrolling interests and redeemable stock of subsidiaries (1)	(155)	(156)	(325)	(312)								Interest income recognized under service concession arrangements	18	20	36	58
Less: Income tax expense (benefit), interest expense (income) and depreciation and amortization from equity affiliates	Less: Income tax expense (benefit), interest expense (income) and depreciation and amortization from equity affiliates	27	23	66	57								Unrealized derivative and equity securities losses (gains)	32	(34)	(8)	—
Interest income recognized under service concession arrangements	Interest income recognized under service concession arrangements	18	20	36	39								Unrealized foreign currency losses	32	38	97	23
Unrealized derivative and equity securities losses (gains)	Unrealized derivative and equity securities losses (gains)	32	(34)	(7)	8								Disposition/acquisition losses	16	23	8	36
Unrealized foreign currency losses	Unrealized foreign currency losses	32	38	64	20								Impairment losses	164	479	145	497
Disposition/acquisition losses	Disposition/acquisition losses	16	23	13	32								Impairment losses	173	480	17	318
Impairment losses	Impairment losses	164	479	173	480												

Loss on extinguishment of debt	Loss on extinguishment of debt	—	—	1	6	Loss on extinguishment of debt	—	1	1	7
Adjusted EBITDA	Adjusted EBITDA	\$ 569	\$ 686	\$ 1,197	\$ 1,307	Adjusted EBITDA	\$ 990	\$ 931	\$ 2,187	\$ 2,238

(1) The allocation of earnings to tax equity investors from both consolidated entities and equity affiliates is removed from Adjusted EBITDA.

Adjusted EBITDA	Three Months Ended June 30,				Six Months Ended June 30,			
	2023		2022		2023		2022	
	Renewables SBU	Utilities SBU	Energy Infrastructure SBU	New Energy Technologies SBU	Corporate and Other	Eliminations	Adjusted EBITDA	Adjusted EBITDA
Renewables SBU	\$ 166	\$ 162	\$ 290	\$ 281				
Utilities SBU	148	135	310	319				
Energy Infrastructure SBU	282	379	645	733				
New Energy Technologies SBU	(13)	(26)	(39)	(61)				
Corporate and Other	13	(3)	12	1				
Eliminations	(27)	39	(21)	34				
Adjusted EBITDA	\$ 569	\$ 686	\$ 1,197	\$ 1,307				

## 27 | Notes to Condensed Consolidated Financial Statements—(Continued) | June 30, 2023 and 2022

Adjusted EBITDA	Three Months Ended September 30,				Nine Months Ended September 30,			
	2023		2022		2023		2022	
	Renewables SBU	Utilities SBU	Energy Infrastructure SBU	New Energy Technologies SBU	Corporate and Other	Eliminations	Adjusted EBITDA	Adjusted EBITDA
Renewables SBU	\$ 267	\$ 195	\$ 557	\$ 476				
Utilities SBU	216	137	526	456				
Energy Infrastructure SBU	520	620	1,165	1,353				
New Energy Technologies SBU	(22)	(27)	(61)	(88)				
Corporate and Other	8	9	20	10				
Eliminations	1	(3)	(20)	31				
Adjusted EBITDA	\$ 990	\$ 931	\$ 2,187	\$ 2,238				

The Company uses long-lived assets as its measure of segment assets. Long-lived assets includes amounts recorded in *Property, plant and equipment, net* and right-of-use assets for operating leases recorded in *Other noncurrent assets* on the Condensed Consolidated Balance Sheets.

Long-Lived Assets	Long-Lived Assets	June 30, 2023	December 31, 2022	Long-Lived Assets	September 30, 2023	December 31, 2022
Renewables SBU	Renewables SBU	\$ 12,220	\$ 9,533	Renewables SBU	\$ 13,618	\$ 9,533
Utilities SBU	Utilities SBU	6,602	6,311	Utilities SBU	6,809	6,311
Energy Infrastructure SBU	Energy Infrastructure SBU	7,613	7,532	Energy Infrastructure SBU	7,467	7,532
New Energy Technologies SBU	New Energy Technologies SBU	1	2	New Energy Technologies SBU	8	2
Corporate and Other	Corporate and Other	16	17	Corporate and Other	10	17
Long-Lived Assets	Long-Lived Assets	26,452	23,395	Long-Lived Assets	27,912	23,395
Current assets	Current assets	7,205	7,643	Current assets	7,317	7,643
Investments in and advances to affiliates	Investments in and advances to affiliates	858	952	Investments in and advances to affiliates	894	952
Debt service reserves and other deposits	Debt service reserves and other deposits	171	177	Debt service reserves and other deposits	205	177
Goodwill	Goodwill	362	362	Goodwill	362	362
Other intangible assets	Other intangible assets	2,282	1,841	Other intangible assets	2,290	1,841
Deferred income taxes	Deferred income taxes	383	319	Deferred income taxes	428	319
Loan receivable	Loan receivable	1,018	1,051	Loan receivable	990	1,051

Other noncurrent assets, excluding right-of-use assets for operating leases	Other noncurrent assets, excluding right-of-use assets for operating leases	2,774	2,623	Other noncurrent assets, excluding right-of-use assets for operating leases	2,763	2,623
Total Assets	Total Assets	\$ 41,505	\$ 38,363	Total Assets	\$ 43,161	\$ 38,363

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## 13. REVENUE

The following table presents our revenue from contracts with customers and other revenue for the periods indicated (in millions):

		Three Months Ended June 30, 2023						Three Months Ended September 30, 2023						
Non-Regulated Revenue	Non-Regulated Revenue	Energy			New Energy	Corporate, Technologies	Other and	Non-Regulated Revenue	Energy			New Energy	Corporate, Technologies	Other and
		Renewables	Utilities	Infrastructure	SBU	SBU	SBU		SBU	SBU	SBU	SBU	Eliminations	Total
Revenue from contracts with customers	Revenue from contracts with customers	\$ 505	\$ 18	\$ 1,490	\$ —	\$ (21)	\$ 1,992	Revenue from contracts with customers	\$ 672	\$ 16	\$ 1,655	\$ —	\$ (14)	\$ 2,329
Other non-regulated revenue <sup>(1)</sup>	Other non-regulated revenue <sup>(1)</sup>	36	—	164	1	—	201	Other non-regulated revenue <sup>(1)</sup>	36	1	206	—	(1)	242
Total non-regulated revenue	Total non-regulated revenue	541	18	1,654	1	(21)	2,193	Total non-regulated revenue	708	17	1,861	—	(15)	2,571
Regulated Revenue	Regulated Revenue							Regulated Revenue						
Revenue from contracts with customers	Revenue from contracts with customers	—	825	—	—	—	825	Revenue from contracts with customers	—	855	—	—	—	855
Other regulated revenue	Other regulated revenue	—	9	—	—	—	9	Other regulated revenue	—	8	—	—	—	8
Total regulated revenue	Total regulated revenue	—	834	—	—	—	834	Total regulated revenue	—	863	—	—	—	863
Total revenue	Total revenue	\$ 541	\$ 852	\$ 1,654	\$ 1	\$ (21)	\$ 3,027	Total revenue	\$ 708	\$ 880	\$ 1,861	\$ —	\$ (15)	\$ 3,434
		Three Months Ended June 30, 2022						Three Months Ended September 30, 2022						
Non-Regulated Revenue	Non-Regulated Revenue	Energy			New Energy	Corporate, Technologies	Other and	Non-Regulated Revenue	Energy			New Energy	Corporate, Technologies	Other and
		Renewables	Utilities	Infrastructure	SBU	SBU	SBU		SBU	SBU	SBU	SBU	Eliminations	Total
Revenue from contracts with customers	Revenue from contracts with customers	\$ 406	\$ 18	\$ 1,676	\$ 1	\$ (20)	\$ 2,081	Revenue from contracts with customers	\$ 494	\$ 17	\$ 2,030	\$ —	\$ (25)	\$ 2,516
Other non-regulated revenue <sup>(1)</sup>	Other non-regulated revenue <sup>(1)</sup>	49	1	144	1	—	195	Other non-regulated revenue <sup>(1)</sup>	38	1	96	—	—	135

Total non-regulated revenue	Total non-regulated revenue	455	19	1,820	2	(20)	2,276	Total non-regulated revenue	532	18	2,126	—	(25)	2,651
Regulated Revenue	Regulated Revenue							Regulated Revenue						
Revenue from contracts with customers	Revenue from contracts with customers	—	794	—	—	—	794	Revenue from contracts with customers	—	968	—	—	—	968
Other regulated revenue	Other regulated revenue	—	8	—	—	—	8	Other regulated revenue	—	8	—	—	—	8
Total regulated revenue	Total regulated revenue	—	802	—	—	—	802	Total regulated revenue	—	976	—	—	—	976
Total revenue	Total revenue	\$ 455	\$ 821	\$ 1,820	\$ 2	\$ (20)	\$ 3,078	Total revenue	\$ 532	\$ 994	\$ 2,126	\$ —	\$ (25)	\$ 3,627
	Six Months Ended June 30, 2023							Nine Months Ended September 30, 2023						
		Renewables	Utilities	Infrastructure	Technologies	Corporate, Other and		Renewables	Utilities	Infrastructure	Technologies	Corporate, Other and		
		SBU	SBU	SBU	SBU	Eliminations	Total	SBU	SBU	SBU	SBU	Eliminations	Total	
Non-Regulated Revenue	Non-Regulated Revenue							Non-Regulated Revenue						
Revenue from contracts with customers	Revenue from contracts with customers	\$ 982	\$ 35	\$ 3,062	\$ 74	\$ (46)	\$ 4,107	Revenue from contracts with customers	\$ 1,654	\$ 51	\$ 4,717	\$ 74	\$ (60)	\$ 6,436
Other non-regulated revenue <sup>(1)</sup>	Other non-regulated revenue <sup>(1)</sup>	54	2	316	1	—	373	Other non-regulated revenue <sup>(1)</sup>	90	3	522	1	(1)	615
Total non-regulated revenue	Total non-regulated revenue	1,036	37	3,378	75	(46)	4,480	Total non-regulated revenue	1,744	54	5,239	75	(61)	7,051
Regulated Revenue	Regulated Revenue							Regulated Revenue						
Revenue from contracts with customers	Revenue from contracts with customers	—	1,769	—	—	—	1,769	Revenue from contracts with customers	—	2,624	—	—	—	2,624
Other regulated revenue	Other regulated revenue	—	17	—	—	—	17	Other regulated revenue	—	25	—	—	—	25
Total regulated revenue	Total regulated revenue	—	1,786	—	—	—	1,786	Total regulated revenue	—	2,649	—	—	—	2,649
Total revenue	Total revenue	\$ 1,036	\$ 1,823	\$ 3,378	\$ 75	\$ (46)	\$ 6,266	Total revenue	\$ 1,744	\$ 2,703	\$ 5,239	\$ 75	\$ (61)	\$ 9,700
	Six Months Ended June 30, 2022							Nine Months Ended September 30, 2022						
		Renewables	Utilities	Infrastructure	Technologies	Corporate, Other and		Renewables	Utilities	Infrastructure	Technologies	Corporate, Other and		
		SBU	SBU	SBU	SBU	Eliminations	Total	SBU	SBU	SBU	SBU	Eliminations	Total	
Non-Regulated Revenue	Non-Regulated Revenue							Non-Regulated Revenue						

Revenue from contracts with customers	Revenue from contracts with customers	\$ 831 \$ 41 \$ 3,177 \$ 1 \$ (54) \$ 3,996	Revenue from contracts with customers	\$ 1,325 \$ 58 \$ 5,207 \$ 1 \$ (79) \$ 6,512
Other non-regulated revenue <sup>(1)</sup>	Other non-regulated revenue <sup>(1)</sup>	44 2 250 1 — 297	Other non-regulated revenue <sup>(1)</sup>	82 3 346 1 — 432
Total non-regulated revenue	Total non-regulated revenue	875 43 3,427 2 (54) 4,293	Total non-regulated revenue	1,407 61 5,553 2 (79) 6,944
<b>Regulated Revenue</b>	<b>Regulated Revenue</b>		<b>Regulated Revenue</b>	
Revenue from contracts with customers	Revenue from contracts with customers	— 1,622 — — — 1,622	Revenue from contracts with customers	— 2,590 — — — 2,590
Other regulated revenue	Other regulated revenue	— 15 — — — 15	Other regulated revenue	— 23 — — — 23
Total regulated revenue	Total regulated revenue	— 1,637 — — — 1,637	Total regulated revenue	— 2,613 — — — 2,613
<b>Total revenue</b>	<b>Total revenue</b>	<b>\$ 875 \$ 1,680 \$ 3,427 \$ 2 \$ (54) \$ 5,930</b>	<b>Total revenue</b>	<b>\$ 1,407 \$ 2,674 \$ 5,553 \$ 2 \$ (79) \$ 9,557</b>

<sup>(1)</sup> Other non-regulated revenue primarily includes lease and derivative revenue not accounted for under ASC 606.

**Contract Balances** — The timing of revenue recognition, billings, and cash collections results in accounts receivable and contract liabilities. The contract liabilities from contracts with customers were \$388 million \$379 million and \$337 million as of June 30, 2023 September 30, 2023 and December 31, 2022, respectively.

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During the six nine months ended June 30, 2023 September 30, 2023 and 2022, we recognized revenue of \$13 million \$30 million and \$32 million \$34 million, respectively, that was included in the corresponding contract liability balance at the beginning of the periods.

In June 2023, the Company closed on an agreement to terminate the PPA for the Warrior Run coal-fired power plant for total consideration of \$357 million, to be paid by the offtaker through the end of the previous contract term in January 2030. Under the termination agreement, the plant will continue providing capacity through May 2024. The termination represents a contract modification under which the discounted termination payments, as well as a pre-existing contract liability, will be recognized as revenue on a straight-line basis over the remaining performance obligation period for approximately \$32 million per month. As of September 30, 2023, the corresponding receivable balance was \$77 million, of which \$40 million and \$37 million was recorded in *Other current assets* and *Other noncurrent assets*, respectively, on the Condensed Consolidated Balance Sheet. A significant financing component of \$57 million will be recognized over the life of the payment term as interest income using the effective interest method.

A significant financing arrangement exists for our Mong Duong plant in Vietnam. The plant was constructed under a build, operate, and transfer contract and will be transferred to the Vietnamese government after the completion of a 25 year PPA. The performance obligation to construct the facility was substantially completed in 2015. Contract consideration related to the construction, but not yet collected through the 25 year PPA, was reflected on the Condensed Consolidated Balance Sheet. As of June 30, 2023 September 30, 2023 and December 31, 2022, the Mong Duong loan receivable had a balance of \$1.1 billion, net of CECL reserves of \$27 million \$26 million and \$28 million, respectively. Of the loan receivable balance, \$102 million \$105 million and \$97 million, respectively, was classified as *Other current assets*, and \$990 million and \$1 billion, respectively, was classified as *Loan receivable* on the Condensed Consolidated Balance Sheets.

**Remaining Performance Obligations** — The transaction price allocated to remaining performance obligations represents future consideration for unsatisfied (or partially unsatisfied) performance obligations at the end of the reporting period. As of June 30, 2023 September 30, 2023, the aggregate amount of transaction price allocated to remaining performance obligations was \$9 million \$6 million, primarily consisting of fixed consideration for the sale of renewable energy credits in long-term contracts in the U.S. We expect to recognize revenue of approximately \$1 million per year between 2023 and 2027 and the remainder thereafter.

## 14. OTHER INCOME AND EXPENSE

Other income generally includes gains on insurance recoveries in excess of property damage, gains on asset sales and liability extinguishments, favorable judgments on contingencies, allowance for funds used during construction, and other income from miscellaneous transactions. Other expense generally includes losses on asset sales and dispositions, losses on legal contingencies, and losses from other miscellaneous transactions. The components are summarized as follows (in millions):

Other Income	Other Income	Three Months Ended June 30,				Six Months Ended June 30,				Other Income	Three Months Ended September 30,				Nine Months Ended September 30,			
		2023		2022		2023		2022			2023		2022		2023		2022	
		AFUDC (US Utilities)	\$ 3	\$ 2	\$ 6	\$ 5	AFUDC (US Utilities)	\$ 5	\$ 4	\$ 11	\$ 9							
	Legal settlements	—	6	—	3	6	Legal settlements	—	—	3	6							
	Gain on sale of assets	—	—	—	2	—	Gain on sale of assets	1	—	3	—							
	Gain on remeasurement of investment <sup>(1)</sup>	—	26	—	—	26	Gain on remeasurement of investment <sup>(1)</sup>	—	—	—	26							
	Insurance proceeds <sup>(2)</sup>	—	16	—	—	16	Insurance proceeds <sup>(2)</sup>	—	—	—	16							
	Gain on acquired customer contracts	—	5	—	—	5	Gain on acquired customer contracts	—	—	—	5							
	Gain on remeasurement of contingent consideration	—	3	—	—	3	Gain on remeasurement of contingent consideration	—	—	—	3							
	Other	11	—	12	—	13	15	Other	6	—	19	15						
	Total other income	\$ 14	—	\$ 70	—	\$ 24	\$ 76	Total other income	\$ 12	\$ 4	\$ 36	\$ 80						
Other Expense	Other Expense	Loss on sale and disposal of assets	\$ 7	\$ 5	\$ 9	\$ 9	Other Expense	Loss on sale and disposal of assets	\$ 3	\$ —	\$ 12	\$ 9						
	Loss on remeasurement of contingent consideration	1	—	—	8	—	Non-service pension and other postretirement costs	2	—	9	—							
	Non-service pension and other postretirement costs	3	—	—	7	—	Loss on remeasurement of contingent consideration	1	—	9	—							
	Allowance for lease receivable <sup>(3)</sup>	—	20	—	—	20	Allowance for lease receivable <sup>(3)</sup>	—	—	—	20							
	Other	1	4	2	—	12	Legal contingencies and settlements	—	8	1	8							
	Total other expense	\$ 12	—	\$ 29	—	\$ 26	\$ 41	Other	6	2	7	14						
							Total other expense	\$ 12	\$ 10	\$ 38	\$ 51							

(1) Related to the remeasurement of our existing investment in 5B, accounted for using the measurement alternative.

(2) Primarily related to insurance recoveries associated with property damage at TermoAndes.

(3) Related to a full allowance recognized on a sales-type lease receivable at AES Gilbert due to a fire incident in April 2022.

## 15. ASSET IMPAIRMENT EXPENSE

The following table presents our asset impairment expense for the periods indicated (in millions):

		Three Months Ended June 30,		Six Months Ended June 30,			Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022		2023	2022	2023	2022
Norgener	Norgener	\$ 137	\$ —	\$ 137	\$ —	Norgener	\$ —	\$ —	\$ 137	\$ —
TEG						TEG	77	—	77	—
TEP						TEP	59	—	59	—
Jordan	Jordan	15	—	29	—	Jordan	14	51	43	51
GAF Projects	GAF Projects					GAF Projects				
(AES	(AES					(AES				
Renewable	Renewable	18	—	18	—	Renewable	—	—	18	—
Holdings)	Holdings)					Holdings)				
Maritza	Maritza	—	475	—	475	Maritza	—	—	—	468
Other	Other	4	7	10	8	Other	8	(1)	18	14
Total	Total	\$ 174	\$ 482	\$ 194	\$ 483	Total	\$ 158	\$ 50	\$ 352	\$ 533

30 | Notes TEG and TEP — During the third quarter of 2023, management identified an impairment indicator at the TEG and TEP asset groups due to Condensed Consolidated Financial Statements—(Continued) | June 30, 2023 a reduction in expected cash flows after expiration of the current PPAs. The Company performed an impairment analysis as of July 31, 2023, and 2022

determined that the carrying amounts of the asset groups were not recoverable. The TEG and TEP asset groups were determined to have fair values of \$93 million and \$94 million, respectively, using the income approach. As a result, the Company recognized pre-tax asset impairment expense of \$77 million and \$59 million, respectively. TEG and TEP are reported in the Energy Infrastructure SBU reportable segment.

**Norgener** — In May 2023, AES Andes announced its intention to accelerate the retirement of the Norgener coal-fired plant in Chile in order to further advance its decarbonization strategy. Due to this strategic development and the resulting decrease in useful life of the generation facility, the Company performed an impairment analysis as of May 1, 2023, and determined that the carrying amount of the asset group was not recoverable. The Norgener asset group was determined to have a fair value of \$24 million, using the income approach. As a result, and since pre-tax losses are limited to the carrying amount of the long-lived assets, the Company recognized pre-tax asset impairment expense of \$137 million. Norgener is reported in the Energy Infrastructure SBU reportable segment.

**Jordan** — In November 2020, the Company signed an agreement to sell 26% ownership interest in Amman East and IPP4 for \$58 million and as of June 30, 2023 September 30, 2023, the generation plants were classified as held-for-sale. Due to the delay in closing the transaction, the carrying amount of the asset group in subsequent periods exceeded the agreed-upon sales price, and total pre-tax impairment expense of \$29 million \$43 million and \$51 million was recorded during the six nine months ended June 30, 2023 September 30, 2023 and 2022, respectively. See Note 16 17—Held-for-Sale for further information. Amman East and IPP4 are reported in the Energy Infrastructure SBU reportable segment.

**GAF Projects** — During the second quarter of 2023, management concluded that the carrying value of six project companies at AES Renewable Holdings (the “GAF Projects”) may not be recoverable as the expected purchase price on the buyout of tax equity partners implied a loss on the transaction. The buyout was completed in July 2023. Management performed a recoverability test as of May 31, 2023 and concluded that the undiscounted cash flows of the GAF Projects did not exceed the carrying values of the asset groups for five of the six projects. The asset groups for the GAF Projects were determined to have a fair value of \$11 million, using the income approach. As a result, the Company recognized pre-tax asset impairment expense of \$18 million. AES Renewable Holdings is reported in the Renewables SBU reportable segment.

**Maritza** — In May 2022, the Council for the European Union approved Bulgaria’s National Recovery and Resilience plan, which commits the country to cease generating electricity from coal beyond 2038. As this plan is expected to prohibit the Company from operating the Maritza coal-fired plant through its estimated useful life, it was determined that an indicator of impairment had occurred. The Company reassessed the useful life of the facility and performed an impairment analysis as of April 30, 2022, in which it was determined that the carrying amount of the asset group was not recoverable. The Maritza asset group was determined to have a fair value of \$452 million, using the income approach. As a result, the Company recognized pre-tax asset impairment expense of \$475 million \$468 million. Maritza is reported in the Energy Infrastructure SBU reportable segment.

## 16. INCOME TAXES

The Company's provision for income taxes is based on the estimated annual effective tax rate, plus discrete items. The effective tax rate for both the three and nine months ended September 30, 2023 was 26%. The effective tax rates for the three and nine months ended September 30, 2022 were 24% and 26%, respectively. The difference between the Company's effective tax rates for the 2023 and 2022 periods and the U.S. statutory tax rate of 21%

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related primarily to U.S. taxes on foreign earnings, foreign tax rate differentials, the impacts of foreign currency fluctuations at certain foreign subsidiaries, nondeductible expenses, and valuation allowance.

For the three and nine months ended September 30, 2023, the Company recorded discrete tax benefit of approximately \$15 million and \$31 million, respectively, resulting from foreign currency fluctuations at certain Argentine businesses.

For the nine months ended September 30, 2022, the Company recorded discrete tax benefit of approximately \$19 million resulting from foreign currency fluctuations at certain Argentine businesses.

## 16.17. HELD-FOR-SELL

*Jordan* — In November 2020, the Company signed an agreement to sell 26% ownership interest in Amman East and IPP4 for \$58 million. The sale is expected to close in 2023. After completion of the sale, the Company will retain a 10% ownership interest in Amman East and IPP4, which will be accounted for as an equity method investment. As of **June 30, 2023** **September 30, 2023**, the generation plants were classified as held-for-sale, but did not meet the criteria to be reported as discontinued operations. On a consolidated basis, the carrying value of the plants held-for-sale as of **June 30, 2023** **September 30, 2023** was \$164 million. Amman East and IPP4 are reported in the Energy Infrastructure SBU reportable segment.

Excluding any impairment charges, pre-tax income (loss) attributable to AES of businesses held-for-sale as of **June 30, 2023** **September 30, 2023** was as follows:

(in millions)	Three Months Ended June 30,		Six Months Ended June 30,	
	2023	2022	2023	2022
Jordan	\$ 6	\$ 6	\$ 11	\$ 11
<b>31   Notes to Condensed Consolidated Financial Statements—(Continued)   June 30, 2023 and 2022</b>				
(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
	2023	2022	2023	2022
31   Notes to Condensed Consolidated Financial Statements—(Continued)   June 30, 2023 and 2022	5	\$ (13)	\$ 16	\$ (2)

## 17.18. ACQUISITIONS

*Bellefield* — *Petersburg Solar Project* — On August 31, 2023, the Company entered into agreements for project development and for the purchase of 100% of the membership in Petersburg Energy Center, LLC, a 250 MW solar and BESS project. The transaction was accounted for as an asset acquisition of variable interest entities that did not meet the definition of a business. The assets acquired and liabilities assumed were recorded at their fair values, which equaled the fair value of the consideration paid of approximately \$49 million. Petersburg Solar Project is reported in the Utilities SBU reportable segment.

*Calhoun* — On July 18, 2023, the Company entered into an agreement for the purchase of 100% of the membership interests in Calhoun County Solar Project, LLC, which holds a late development-stage 125 MW solar project. The transaction was accounted for as an asset acquisition of variable interest entities that did not meet the definition of a business. The assets acquired and liabilities assumed were recorded at their fair values, which equaled the fair value of the consideration paid of approximately \$64 million, including contingent consideration of \$42 million. The estimated fair value of the contingent consideration for Calhoun was determined using probability-weighted discounted cash flows based on internal forecasts, which are considered Level 3 inputs. The probability of achieving the milestone payment used to calculate the acquisition date fair value of the contingent consideration was 99%. Payments under the contingent consideration arrangement are largely binary and thus, a single probability of achieving the milestone was applied in the calculation of fair value. The contingent consideration will be updated quarterly with any prospective changes in fair value recorded through earnings. Calhoun is reported in the Renewables SBU reportable segment.

*Bellefield* — On June 5, 2023, the Company entered into an agreement for the purchase of 100% of the membership interests in the Bellefield projects, consisting of two late development-stage solar and BESS projects of 1 GW each. The transaction was accounted for as an asset acquisition of variable interest entities that did not meet the definition of a business. The Company agreed to make total cash payments including reimbursement of development and equipment costs of approximately \$449 million, a portion of which is contingent upon future milestones and price adjustments. In the case that future milestones are not met, the total cash payment will be adjusted accordingly, along with any other purchase price adjustments.

The assets acquired and liabilities assumed were recorded at their fair values, which equaled the fair value of the consideration to be paid of approximately \$402 million, including cash paid of \$164 million, contingent consideration of \$210 million, and deferred payments of \$28 million.

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The estimated fair value of the contingent consideration of Bellefield was determined using probability-weighted discounted cash flows based on internal forecasts, which are considered Level 3 inputs. The weighted average probability of achieving the milestone payments used to calculate the acquisition date fair value of the contingent consideration was 90.4% 91.9%. Payments under the contingent consideration arrangements are largely binary and thus, a single probability of achieving the milestone was applied in the calculation of fair value. The contingent consideration will be updated quarterly with any prospective changes in fair value recorded through earnings. Bellefield is reported in the Renewables SBU reportable segment.

*Bolero Solar Park* — On June 9, 2023, the Company, through its subsidiary AES Andes S.A., acquired 100% of the equity interests in Helio Atacama Tres SpA, owner of the Bolero photovoltaic power plant for consideration of \$114 million. The transaction was accounted for as an asset acquisition that did not meet the definition of a business. As Helio Atacama Tres is not a VIE, any difference between the fair value of the assets and consideration transferred will be allocated to PP&E on a relative fair value basis. Helio Atacama Tres is reported in the Energy Infrastructure SBU reportable segment.

*Agua Clara* — On June 17, 2022, the Company, through its subsidiaries AES Dominicana Renewable Energy and AES Andres DR, S.A., acquired 100% of the equity interests in Agua Clara, S.A.S., a wind project for consideration of \$98 million. The transaction was accounted for as an asset acquisition that did not meet the definition of a business. As Agua Clara is not a VIE, any difference between the fair value of the assets and consideration transferred will be allocated to PP&E on a relative fair value basis. Agua Clara is reported in the Renewables SBU reportable segment.

**Tunica Windpower, LLC** — On June 17, 2022, the Company entered into an agreement for the purchase of 100% of the membership interests in Tunica Windpower, LLC. The transaction was accounted for as an asset acquisition of variable interest entities that did not meet the definition of a business. The assets acquired and liabilities assumed were recorded at their fair values, which equaled the fair value of the consideration paid of approximately \$22 million, including contingent consideration of \$7 million. The contingent consideration will be updated quarterly with any prospective changes in fair value recorded through earnings. Tunica Windpower is reported in the Renewables SBU reportable segment.

*Windsor PV1, LLC* — On May 27, 2022, the Company entered into an agreement for the purchase of 100% of the membership interests in Windsor PV1, LLC, an early development-stage solar project. The transaction was accounted for as an asset acquisition of variable interest entities that did not meet the definition of a business. The assets acquired and liabilities assumed were recorded at their fair values, which equaled the fair value of the consideration paid of approximately \$17 million, including contingent consideration of \$5 million. The contingent consideration will be updated quarterly with any prospective changes in fair value recorded through earnings. Windsor is reported in the Renewables SBU reportable segment.

*Community Energy* — In the first quarter of 2022, the Company finalized the purchase price allocation related to the acquisition of Community Energy, LLC. There were no significant adjustments made to the preliminary purchase price allocation recorded in the fourth quarter of 2021 when the acquisition was completed. Community Energy is reported in the Renewables SBU reportable segment.

**New York Wind** — In the first quarter of 2022, the Company finalized the purchase price allocation related to the acquisition of Cogentrix Valcour Intermediate Holdings, LLC. There were no significant adjustments made to the preliminary purchase price allocation recorded in the fourth quarter of 2021 when the acquisition was completed. New York Wind is reported in the Renewables SBU reportable segment.

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## 18.19. EARNINGS PER SHARE

Basic and diluted earnings per share are based on the weighted average number of shares of common stock and potential common stock outstanding during the period. Potential common stock, for purposes of determining diluted earnings per share, includes the effects of dilutive RSUs, stock options, and equity units. The effect of such potential common stock is computed using the treasury stock method for RSUs and stock options, and is computed using the if-converted method for equity units.

The following table is a reconciliation of the numerator and denominator of the basic and diluted earnings per share computation for income from continuing operations for the three and ~~six~~ nine months ended ~~June 30, 2023~~ September 30, 2023 and 2022, where income represents the numerator and weighted average shares represent the denominator.

Three Months Ended June 30, (in millions, except per share data)		2023				2022							
		Loss	Shares	\$ per Share	Loss	Shares	\$ per Share						
<b>BASIC EARNINGS (LOSS) PER SHARE</b>													
35   Notes to Condensed Consolidated Financial Statements—(Continued)   September 30, 2023 and 2022													
Income from continuing operations attributable to The AES Corporation common stockholders		\$ (39)	669	\$ (0.06)	\$ (179)	668	\$ (0.27)						
<b>EFFECT OF DILUTIVE SECURITIES</b>													
Stock options		—	—	—	—	—	—						
Six Months Ended June 30,		2023		2022		—		—					
Restricted stock units				Three Months		—	—	—	—				
Three Months		Ended September		—		—	—	—	—				
Ended September		—		—		—	—	—	—				
<b>DILUTED EARNINGS (LOSS) PER SHARE</b>		\$ 30,	(39)	669	\$ (0.06)	\$ (179)	668	\$ (0.27)					
(in millions, except per share data)	(in millions, except per share data)			(in millions, except per share data)									
Income	Shares	\$ per Share	Loss	Shares	\$ per Share	Income	Shares	\$ per Share	Income	Shares	\$ per Share		
<b>BASIC EARNINGS (LOSS) PER SHARE</b>													
SHARE													
<b>BASIC EARNINGS PER SHARE</b>													
Income from continuing operations attributable to The AES Corporation common stockholders		Income from continuing operations attributable to The AES Corporation common stockholders		Income from continuing operations attributable to The AES Corporation common stockholders		Income from continuing operations attributable to The AES Corporation common stockholders		Income from continuing operations attributable to The AES Corporation common stockholders		Income from continuing operations attributable to The AES Corporation common stockholders			
Income from continuing operations attributable to The AES Corporation common stockholders	\$ 112	669	\$ 0.17	\$ (64)	668	\$ (0.10)	stockholders	\$ 231	670	\$ 0.34	\$ 421	668	\$ 0.63

EFFECT OF DILUTIVE SECURITIES		EFFECT OF DILUTIVE SECURITIES						
Stock options	Stock options	—	1	—	—	—	—	—
Restricted stock units	Restricted stock units	—	2	—	—	—	—	—
Equity units	Equity units	—	40	(0.01)	—	—	—	—
DILUTED EARNINGS (LOSS) PER SHARE		\$ 112	712	\$ 0.16	\$ (64)	668	\$ (0.10)	
DILUTED EARNINGS PER SHARE				DILUTED EARNINGS PER SHARE	\$ 231	712	\$ 0.32	\$ 421
								711 \$ 0.59

For the three months ended June 30, 2023, the calculation of diluted earnings per share excluded 3 million outstanding stock awards and 40 million shares underlying our March 2021 Equity Units because their impact would be anti-dilutive given the loss from continuing operations. These shares could potentially dilute basic earnings per share in the future. Had the Company generated income, 2 million and 40 million potential shares of common stock related to the stock awards and the Equity Units, respectively, would have been included in diluted weighted-average shares outstanding.

Nine Months Ended September 30, (in millions, except per share data)	2023			2022		
	Income	Shares	\$ per Share	Income	Shares	\$ per Share
BASIC EARNINGS PER SHARE						
Income from continuing operations attributable to The AES Corporation common stockholders	\$ 343	669	\$ 0.51	\$ 357	668	\$ 0.53
EFFECT OF DILUTIVE SECURITIES						
Stock options	—	1	—	—	1	—
Restricted stock units	—	2	—	—	2	—
Equity units	1	40	(0.03)	1	40	(0.03)
DILUTED EARNINGS PER SHARE	\$ 344	712	\$ 0.48	\$ 358	711	\$ 0.50

The calculation of diluted earnings per share excluded 1 million 2 million outstanding stock awards for the six three and nine months ended June 30, 2023 September 30, 2023 and September 30, 2022, which would be anti-dilutive. These stock awards could potentially dilute basic earnings per share in the future.

For the three and six months ended June 30, 2022, the calculation of diluted earnings per share excluded 4 million outstanding stock awards and 40 million shares underlying our March 2021 Equity Units because their impact would be anti-dilutive given the loss from continuing operations. These shares could potentially dilute basic earnings per share in the future. Had the Company generated income, 2 million and 40 million potential shares of common stock related to the stock awards and the Equity Units, respectively, would have been included in diluted weighted-average shares outstanding.

33 | Notes to Condensed Consolidated Financial Statements—(Continued) | June 30, 2023 and 2022

As described in Note 11—Equity, the Company issued 10,430,500 Equity Units in March 2021 with a total notional value of \$1,043 million. Each Equity Unit has a stated amount of \$100 and was initially issued as a Corporate Unit, consisting of a 2024 Purchase Contract and a 10% undivided beneficial ownership interest in one share of Series A Preferred Stock. Prior to February 15, 2024, the Series A Preferred Stock may be converted at the option of the holder only in connection with a fundamental change. On and after February 15, 2024, the Series A Preferred Stock may be converted freely at the option of the holder. Upon conversion, the Company will deliver to the holder with respect to each share of Series A Preferred Stock being converted (i) a share of our Series B Preferred Stock, or, solely with respect to conversions in connection with a redemption, cash and (ii) shares of our common stock, if any, in respect of any conversion value in excess of the liquidation preference of the preferred stock being converted. The conversion rate was initially 31.5428 shares of common stock per one share of Series A Preferred Stock, which was equivalent to an initial conversion price of approximately \$31.70 per share of common stock. As of June 30, 2023 September 30, 2023, due to customary anti-dilution provisions, the conversion rate was 31.6239, 31.6465, equivalent to a conversion price of approximately \$31.62 \$31.60 per share of common stock. The Series A Preferred Stock and the 2024 Purchase Contracts are being accounted for as one unit of account. In calculating diluted EPS, the Company has applied the if-converted method to determine the impact of the forward purchase feature and considered if there are incremental shares that should be included related to the Series A Preferred conversion value.

## 19.20. RISKS AND UNCERTAINTIES

**Puerto Rico** — Earlier this year, AES Puerto Rico took certain measures to address identified liquidity challenges. On July 6, 2023, PREPA agreed to the release of funds in the escrow account guaranteeing AES Puerto Rico's obligations under the Power Purchase and Operating Agreement ("PPOA") in order to provide additional liquidity for the business. Additionally, AES Puerto Rico entered into a standstill and forbearance agreement with its noteholders because of the insufficiency of funds to meet the principal and interest obligations on its Series A Bond Loans due and payable on June 1, 2023, and going forward. AES Puerto Rico continues to work with PREPA and its noteholders on these liquidity challenges.

Despite these challenges and considering the information available as of the filing date, management believes the carrying amount of our long-lived assets at AES Puerto Rico of \$63 million is recoverable as of June 30, 2023 September 30, 2023. However, it is reasonably possible that the estimate of undiscounted cash flows may change in the near term

resulting in the need to write down our long-lived assets in Puerto Rico to fair value.

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34 36 | Notes to Condensed Consolidated Financial Statements—(Continued) | September 30, 2023 and 2022

## 21. SUBSEQUENT EVENTS

**TEG and TEP** — On October 3, 2023, AES Mexico Generation Holdings failed to comply with a covenant on its debt at TEG and TEP, resulting in a technical default. See Note 7—**Debt** for further information. TEG and TEP are reported in the Energy Infrastructure SBU reportable segment.

**AES Clean Energy Development** — On October 2, 2023, the Company completed the acquisition of a construction stage solar and BESS project in Tulare County, CA. The Company agreed to make total cash payments, including reimbursement of development and equipment costs, of approximately \$253 million, a portion of which is contingent upon future milestones and price adjustments. The transaction is expected to be accounted for as an asset acquisition of variable interest entities that did not meet the definition of a business and will be reported in the Renewables SBU reportable segment.

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### ITEM 2. MANAGEMENT'S DISCUSSION AND ANALYSIS OF FINANCIAL CONDITION AND RESULTS OF OPERATIONS

The condensed consolidated financial statements included in Item 1.—*Financial Statements* of this Form 10-Q and the discussions contained herein should be read in conjunction with our 2022 Form 10-K.

#### Forward-Looking Information

The following discussion may contain forward-looking statements regarding us, our business, prospects and our results of operations, that are subject to certain risks and uncertainties posed by many factors and events that could cause our actual business, prospects and results of operations to differ materially from those that may be anticipated by such forward-looking statements. These statements include, but are not limited to, statements regarding management's intents, beliefs, and current expectations and typically contain, but are not limited to, the terms "anticipate," "potential," "expect," "forecast," "target," "will," "would," "intend," "believe," "project," "estimate," "plan," and similar words. Forward-looking statements are not intended to be a guarantee of future results, but instead constitute current expectations based on reasonable assumptions. Factors that could cause or contribute to such differences include, but are not limited to, those described in Item 1A.—*Risk Factors* of this Form 10-Q, Item 1A.—*Risk Factors* and Item 7.—*Management's Discussion and Analysis of Financial Condition and Results of Operations* of our 2022 Form 10-K and subsequent filings with the SEC.

Readers are cautioned not to place undue reliance on these forward-looking statements which speak only as of the date of this report. We undertake no obligation to revise any forward-looking statements in order to reflect events or circumstances that may subsequently arise. If we do update one or more forward-looking statements, no inference should be drawn that we will make additional updates with respect to those or other forward-looking statements. Readers are urged to carefully review and consider the various disclosures made by us in this report and in our other reports filed with the SEC that advise of the risks and factors that may affect our business.

#### Overview of Our Business

We are a diversified power generation and utility company organized into the following four SBUs, mainly organized by technology: **Renewables** (solar, wind, energy storage, hydro, biomass, and landfill gas hydro), **Utilities** (AES Indiana, AES Ohio, and AES El Salvador), **Energy Infrastructure** (natural gas, LNG, coal, pet coke, diesel, and oil), and **New Energy Technologies** (green hydrogen, Fluence, Uplight, and 5B). Our businesses in Chile, which have a mix of generation sources, including renewables, are also included within the Energy Infrastructure SBU, as the generation from all sources is pooled to service our existing PPAs. In our 2022 Form 10-K, the management reporting structure and the Company's reportable segments were mainly organized by geographic regions. In March 2023, we announced internal management changes as a part of our ongoing strategy to align our business to meet our customers' needs and deliver on our major strategic objectives. The results of our operations are now reported along our four newly formed technology-based SBUs. For additional information regarding our business, see Item 1.—*Business* of our 2022 Form 10-K.

We have two lines of business: generation and utilities. Our Renewables, Utilities and Energy Infrastructure SBUs participate in our first business line, generation, in which we own and/or operate power plants to generate and sell power to customers, such as utilities, industrial users, and other intermediaries. Our Utilities SBU participates in our second business line, utilities, in which we own and/or operate utilities to generate or purchase, distribute, transmit, and sell electricity to end-user customers in the residential, commercial, industrial, and governmental sectors within a defined service area. In certain circumstances, our utilities also generate and sell electricity on the wholesale market. Our New Energy Technologies SBU includes investments in new and innovative technologies to support leading-edge greener energy solutions.

#### Executive Summary

Compared with last year, **second** **third** quarter net **loss** **income** decreased **\$117 million** **\$155 million**, from **\$136 million** **\$446 million** to **\$19 million** **\$291 million**. This decrease is the result of **lower** contributions from LNG transactions versus 2022 at the Energy Infrastructure SBU, partially offset by favorable contributions at the Utilities, Renewables, and New Energy Technologies SBUs, partially offset by **lower** contributions at the Energy Infrastructure SBU SBUs.

Adjusted EBITDA, a non-GAAP measure, decreased **\$117 million** increased **\$59 million**, from **\$686 million** **\$931 million** to **\$569 million** **\$990 million**, mainly driven by higher **cost of sales** contributions at the Utilities SBU, favorable weather conditions and **lower** thermal dispatch substituted with renewable sources new businesses at the Renewables SBU, higher

revenues under a PPA termination agreement at the Energy Infrastructure SBU; partially offset by SBU, and lower losses from affiliates at the New Energy Technologies SBU mainly attributable due to improved margins on a new product line, line; partially offset by favorable weather conditions impacting demand and increased rider revenues LNG transactions in the prior year at the Utilities SBU, and new businesses operating in our portfolio and favorable wind and hydrological conditions at the Renewables Energy Infrastructure SBU.

Adjusted EBITDA with Tax Attributes, a non-GAAP measure, increased \$17 million, from \$991 million to \$1,008

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million primarily due to the drivers above, partially offset by lower realized tax attributes driven by fewer projects placed in service.

Compared with last year, third quarter diluted earnings per share from continuing operations decreased \$0.27, from \$0.59 to \$0.32. This decrease is mainly driven by higher long-lived asset impairments in the current year and lower earnings at the Energy Infrastructure SBU mainly due to unrealized foreign currency losses and prior year favorable LNG transactions; partially offset by higher contributions at the Utilities SBU due to the deferral of power purchase costs, and favorable weather conditions and new businesses at the Renewables SBU.

Adjusted EPS, a non-GAAP measure, decreased \$0.03 from \$0.63 to \$0.60, mainly driven by lower contributions from the Energy Infrastructure SBU, higher Parent Company interest, and a higher adjusted tax rate, partially offset by higher contributions at the Utilities SBU.

Compared with last year, net income for the nine months ended September 30, 2023 decreased \$20 million, from \$481 million to \$461 million. This decrease is the result of lower contributions from LNG transactions versus 2022 at the Energy Infrastructure SBU, partially offset by favorable contributions at the Renewables, Utilities, and New Energy Technologies SBUs.

Adjusted EBITDA, a non-GAAP measure, decreased \$51 million, from \$2,238 million to \$2,187 million, mainly driven by favorable LNG transactions in the prior year and higher cost of sales at the Energy Infrastructure SBU; partially offset by favorable weather conditions and new businesses at the Renewables SBU, higher contributions at the Utilities SBU, higher revenues under a PPA termination agreement at the Energy Infrastructure SBU, and lower losses from affiliates at the New Energy Technologies SBU due to improved margins on a new product line.

Adjusted EBITDA with Tax Attributes, a non-GAAP measure, decreased \$115 \$91 million, from \$722 million \$2,347 million to \$607 million primarily due to the drivers above.

Compared with last year, second quarter diluted loss per share from continuing operations decreased \$0.21, from \$0.27 to \$0.06. This decrease is mainly driven by lower long-lived asset impairments in the current year, partially offset by the recognition of unrealized losses due to the termination of a PPA and higher cost of sales at the Energy Infrastructure SBU.

Adjusted EPS, a non-GAAP measure, decreased \$0.13 from \$0.34 to \$0.21, mainly driven by lower contributions from the Energy Infrastructure SBU.

Compared with last year, net income for the six months ended June 30, 2023 increased \$135 million, from \$35 million to \$170 million. This increase is the result of favorable contributions at the New Energy Technologies and Renewables SBUs, partially offset by lower contributions at the Energy Infrastructure and Utilities SBUs.

Adjusted EBITDA, a non-GAAP measure, decreased \$110 million, from \$1,307 million to \$1,197 million, mainly driven by higher cost of sales and lower thermal dispatch substituted with renewable sources at the Energy Infrastructure SBU, and unfavorable weather conditions impacting demand and higher fixed costs at the Utilities SBU; partially offset by lower losses from affiliates at the New Energy Technologies SBU mainly attributable to improved margins on a new product line, and favorable wind and hydrological conditions and new businesses operating in our portfolio at the Renewables SBU.

Adjusted EBITDA with Tax Attributes, a non-GAAP measure, decreased \$108 million, from \$1,356 million to \$1,248 million \$2,256 million, primarily due to the drivers above, above and lower realized tax attributes driven by fewer projects placed in service.

Compared with last year, diluted earnings per share from continuing operations for the six nine months ended June 30, 2023 increased \$0.26, September 30, 2023 decreased \$0.02, from a loss of \$0.10 \$0.50 to earnings of \$0.16 \$0.48. This increase decrease is mainly driven by favorable LNG transactions in the prior year, higher unrealized foreign currency losses and higher cost of sales at the Energy Infrastructure SBU; partially offset by lower long-lived asset impairments in the current year, higher contributions at the Utilities SBU due to the deferral of power purchase costs, and lower losses of affiliates at the New Energy Technologies SBU, partially offset by higher unrealized foreign currency losses, the recognition of unrealized losses due to the termination of a PPA and higher cost of sales at the Energy Infrastructure SBU, and higher costs due to an accelerated growth plan at the Renewables SBU.

Adjusted EPS, a non-GAAP measure, decreased \$0.12 \$0.15 from \$0.55 \$1.18 to \$0.43 \$1.03, mainly driven by lower contributions from the Renewables Energy Infrastructure SBU, higher Parent Company interest, and lower margins due to unfavorable weather conditions a higher adjusted tax rate, partially offset by higher contributions at the Utilities SBU partially offset by and lower losses of affiliates at the New Energy Technologies SBU.

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(1) Non-GAAP measure. See Item 2—Management's Discussion and Analysis of Financial Condition and Results of Operations—SBU Performance Analysis—Non-GAAP Measures for reconciliation and definition.

(2) GWh sold in 2022.

## Overview of Strategic Performance

AES is leading the industry's transition to clean energy by investing in renewables, utilities, and technology businesses.

- As of today, the Company's backlog, which consists of projects with signed contracts, but which are not yet operational, is 13,170 13,138 MW, including 5,389 5,761 MW under construction. This is compared to a 11,932 MW backlog as of the Company's first quarter 2023 earnings call on May 5, 2023.
- In year-to-date 2023, the Company completed 786 the construction or acquisition of 1,314 MW of wind, solar and energy storage and expects to complete a total of 3,435 GW by year-end 2023.
- AES Indiana filed its first rate case since 2018, and expects to receive regulatory approval by In year-to-date 2023, the middle Company has signed 3,740 MW of 2024. During the second quarter of 2023, AES Indiana filed contracts for approval to build a 200 MW, or 800 MWh, energy storage facility at the site of the retiring Petersburg coal plant and expects to receive approval by the end of 2023. The facility is expected to come online by the end of 2024, at which point it will be the largest battery storage project in the State of Indiana. renewables.
- The Company expects to receive approval for AES Ohio's new Electric Security Plan ("ESP4") by the end of August 2023, with new distribution rates effective immediately.
- During the second quarter of In September 2023, the Company continued agreed to make progress toward exiting coal by year-end 2025: minority sell-downs of its businesses in the Dominican Republic and Panama, for a total of \$190 million in asset sale proceeds.
- Retirement of the 415 MW Petersburg Unit 2 in Indiana:
  - Announcement of the expected retirement of the 276 MW Norgener plant in Chile in 2025; and
  - Receipt of final regulatory approval, and subsequent deal closing, for the termination of the PPA for the 205 MW Warrior Run plant in Maryland.

## Review of Consolidated Results of Operations (Unaudited)

(in millions, except per share amounts)	Three Months Ended June 30,					Six Months Ended June 30,					(in millions, except per share amounts)	Three Months Ended September 30,					Nine Months Ended September 30,				
	per share amounts	2023	2022	\$ change	% change	2023	2022	\$ change	% change	2023		2023	2022	\$ change	% change	2023	2022	\$ change	% change		
<b>Revenue:</b>																					
Renewables SBU	Renewables SBU	\$ 541	\$ 455	\$ 86	19 %	\$ 1,036	\$ 875	\$ 161	18 %	Renewables SBU	\$ 708	\$ 532	\$ 176	33 %	\$ 1,744	\$ 1,407	\$ 337	24 %			
Utilities SBU	Utilities SBU	852	821	31	4 %	1,823	1,680	143	9 %	Utilities SBU	880	994	(114)	-11 %	2,703	2,674	29	1 %			
Energy Infrastructure SBU	Energy Infrastructure SBU	1,654	1,820	(166)	-9 %	3,378	3,427	(49)	-1 %	Energy Infrastructure SBU	1,861	2,126	(265)	-12 %	5,239	5,553	(314)	-6 %			
New Energy Technologies SBU	New Energy Technologies SBU	1	2	(1)	-50 %	75	2	73	NM	New Energy Technologies SBU	—	—	—	— %	75	2	73	NM			
Corporate and Other	Corporate and Other	40	34	6	18 %	67	57	10	18 %	Corporate and Other	29	24	5	21 %	96	81	15	19 %			
Eliminations	Eliminations	(61)	(54)	(7)	-13 %	(113)	(111)	(2)	-2 %	Eliminations	(44)	(49)	5	10 %	(157)	(160)	3	2 %			
<b>Total Revenue</b>	<b>Total Revenue</b>	<b>3,027</b>	<b>3,078</b>	<b>(51)</b>	<b>-2 %</b>	<b>6,266</b>	<b>5,930</b>	<b>336</b>	<b>6 %</b>	<b>Total Revenue</b>	<b>3,434</b>	<b>3,627</b>	<b>(193)</b>	<b>-5 %</b>	<b>9,700</b>	<b>9,557</b>	<b>143</b>	<b>1 %</b>			
<b>Operating Margin:</b>																					
Renewables SBU	Renewables SBU	118	146	(28)	-19 %	206	199	7	4 %	Renewables SBU	222	188	34	18 %	428	387	41	11 %			
Utilities SBU	Utilities SBU	86	67	19	28 %	191	201	(10)	-5 %	Utilities SBU	160	79	81	NM	351	280	71	25 %			
Energy Infrastructure SBU	Energy Infrastructure SBU	241	307	(66)	-21 %	616	623	(7)	-1 %	Energy Infrastructure SBU	504	588	(84)	-14 %	1,120	1,211	(91)	-8 %			

New Energy Technologies SBU	New Energy Technologies SBU	(2)	(1)	(1)	100 %	(6)	(3)	(3)	100 %	New Energy Technologies SBU	(2)	(2)	—	— %	(8)	(5)	(3)	60 %
Corporate and Other	Corporate and Other	74	40	34	85 %	131	88	43	49 %	Corporate and Other	58	55	3	5 %	189	143	46	32 %
Eliminations	Eliminations	(19)	4	(23)	NM	(46)	(15)	(31)	NM	Eliminations	(24)	(16)	(8)	-50 %	(70)	(31)	(39)	NM
Total Operating Margin	Total Operating Margin	498	563	(65)	-12 %	1,092	1,093	(1)	— %	Total Operating Margin	918	892	26	3 %	2,010	1,985	25	1 %
General and administrative expenses	General and administrative expenses	(72)	(46)	(26)	57 %	(127)	(98)	(29)	30 %	General and administrative expenses	(64)	(51)	(13)	25 %	(191)	(149)	(42)	28 %
Interest expense	Interest expense	(310)	(279)	(31)	11 %	(640)	(537)	(103)	19 %	Interest expense	(326)	(276)	(50)	18 %	(966)	(813)	(153)	19 %
Interest income	Interest income	131	95	36	38 %	254	170	84	49 %	Interest income	144	100	44	44 %	398	270	128	47 %
Loss on extinguishment of debt	Loss on extinguishment of debt	—	(1)	1	-100 %	(1)	(7)	6	-86 %	Loss on extinguishment of debt	—	(1)	1	-100 %	(1)	(8)	7	-88 %
Other expense	Other expense	(12)	(29)	17	-59 %	(26)	(41)	15	-37 %	Other expense	(12)	(10)	(2)	20 %	(38)	(51)	13	-25 %
Other income	Other income	14	70	(56)	-80 %	24	76	(52)	-68 %	Other income	12	4	8	NM	36	80	(44)	-55 %
Loss on disposal and sale of business interests		(4)	(2)	(2)	100 %	(4)	(1)	(3)	NM									
Gain (loss) on disposal and sale of business interests										Gain (loss) on disposal and sale of business interests	—	1	(1)	-100 %	(4)	—	(4)	NM
Asset impairment expense	Asset impairment expense	(174)	(482)	308	-64 %	(194)	(483)	289	-60 %	Asset impairment expense	(158)	(50)	(108)	NM	(352)	(533)	181	-34 %
Foreign currency transaction losses		(67)	(49)	(18)	37 %	(109)	(68)	(41)	60 %									
Foreign currency transaction gains (losses)										Foreign currency transaction gains (losses)	(100)	8	(108)	NM	(209)	(60)	(149)	NM
Income tax benefit (expense)		2	19	(17)	-89 %	(70)	(41)	(29)	71 %									
Net equity in earnings (losses) of affiliates		(25)	5	(30)	NM	(29)	(28)	(1)	4 %									
Income tax expense										Income tax expense	(109)	(145)	36	-25 %	(179)	(186)	7	-4 %
Net equity in losses of affiliates										Net equity in losses of affiliates	(14)	(26)	12	-46 %	(43)	(54)	11	-20 %
NET INCOME (LOSS)		(19)	(136)	117	-86 %	170	35	135	NM	NET INCOME	291	446	(155)	-35 %	461	481	(20)	-4 %
NET INCOME										NET INCOME	291	446	(155)	-35 %	461	481	(20)	-4 %
Less: Income from continuing operations attributable to noncontrolling interests and redeemable stock of subsidiaries	Less: Income from continuing operations attributable to noncontrolling interests and redeemable stock of subsidiaries	(20)	(43)	23	-53 %	(58)	(99)	41	-41 %	Less: Income from continuing operations attributable to noncontrolling interests and redeemable stock of subsidiaries	(60)	(25)	(35)	NM	(118)	(124)	6	-5 %
NET INCOME (LOSS)																		
ATTRIBUTABLE TO THE AES CORPORATION		\$ (39)	\$ (179)	\$ 140	-78 %	\$ 112	\$ (64)	\$ 176	NM									

NET INCOME ATTRIBUTABLE TO THE AES CORPORATION		NET INCOME ATTRIBUTABLE TO THE AES CORPORATION	
Net cash provided by operating activities	Net cash provided by operating activities	\$ 231	\$ 421
		\$ (190)	-45 %
		\$ 343	\$ 357
		\$ (14)	-4 %
\$ 562	\$ 408	\$ 154	
38 %	\$ 1,187	\$ 865	
	\$ 322	\$ 338	
	37 %	43 %	
		\$ 2,309	\$ 1,649
		\$ 660	40 %

*Components of Revenue, Cost of Sales, and Operating Margin* — Revenue includes revenue earned from the sale of energy from our utilities and the production and sale of energy from our generation plants, which are classified as regulated and non-regulated, respectively, on the Condensed Consolidated Statements of Operations. Revenue also includes the gains or losses on derivatives associated with the sale of electricity.

Cost of sales includes costs incurred directly by the businesses in the ordinary course of business. Examples include electricity and fuel purchases, operations and maintenance costs, depreciation and amortization expenses, bad debt expense and recoveries, and general administrative and support costs (including employee-related costs directly associated with the operations of the business). Cost of sales also includes the gains or losses on

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derivatives (including embedded derivatives other than foreign currency embedded derivatives) associated with the purchase of electricity or fuel.

Operating margin is defined as revenue less cost of sales.

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## Consolidated Revenue and Operating Margin

Three Months Ended **June 30, 2023** **September 30, 2023**

Revenue  
(in millions)  


*Consolidated Revenue* — Revenue decreased **\$51 million** **\$193 million**, or **2% 5%**, for the three months ended **June 30, 2023** **September 30, 2023**, compared to the three months ended **June 30, 2022** **September 30, 2022**, driven by:

- **\$166** 265 million at Energy Infrastructure driven by prior year favorable LNG transactions, lower regulated contract sales and prices, lower CO<sub>2</sub> purchases passed through due to lower production, lower generation, **the recognition of unrealized losses due to termination of a PPA**, and the impact of the depreciation of the Argentine peso; partially offset by **realized and unrealized derivative gains**, and **lower outages**, higher revenues due to a PPA termination agreement; and

**This** **\$114 million** at Utilities mainly driven by lower volumes as a result of lower demand due to **unfavorable impact was weather**, and lower fuel and purchase rider revenues; partially offset by **increases higher TDSIC rider and transmission revenues**.

These unfavorable impacts were partially offset by an increase of:

- **\$81** 176 million at Renewables mainly driven by higher spot sales at higher prices, new projects placed into service, businesses operating in our portfolio, resulting in higher renewable energy generation, and the **impacts impact of better hydrology and wind generation**; the appreciation of the Colombian peso; partially offset by unrealized commodity derivative losses and the impact of the depreciation of the Colombian peso; and losses.
- **\$31 million** at Utilities mainly driven by higher demand due to extreme heat in El Salvador, higher fuel and purchase rider revenues, and higher TDSIC rider and transmission revenues; partially offset by lower retail volumes due to milder weather in Indiana and Ohio.

Operating Margin  
(in millions)  


*Consolidated Operating Margin* — Operating margin decreased **\$65 million** **increased \$26 million**, or **12% 3%**, for the three months ended **June 30, 2023** **September 30, 2023**, compared to the three months ended **June 30, 2022** **September 30, 2022**, driven by:

- **\$681 million** at Energy Infrastructure Utilities mainly driven by **higher cost the deferral of sales**, lower thermal dispatch, power purchase costs in the **recognition of unrealized losses due to termination of current year**, which were recognized in the prior year, associated with the ESP 4 approval, and a PPA regulatory settlement in the prior year; and **lower insurance proceeds**; partially offset by **lower outages**, higher contract energy sales due to higher prices, and unrealized derivative gains; and

- \$2834 million at Renewables mainly driven by better hydrology, new businesses operating in our portfolio, resulting in higher renewable energy generation and the impact of the appreciation of the Colombian peso; partially offset by unrealized derivative losses, higher fixed costs due to an accelerated growth plan, and the impact of the depreciation of the Colombian peso; partially offset by the impact of better hydrology, new businesses operating in our portfolio, and higher wind availability, resulting in higher renewable lower contracted energy generation sales.

These unfavorable favorable impacts were partially offset by increases a decrease of:

- \$19 million at Utilities mainly driven by higher demand due to extreme heat in El Salvador and an increase in transmission and TDSIC rider revenues, partially offset by milder weather and demand in Indiana and Ohio; and
- \$1184 million at Corporate and Other primarily Energy Infrastructure mainly driven by prior year favorable LNG transactions; partially offset by higher charge-outs revenues due to a PPA termination agreement, and realized and unrealized derivative gains as part of people costs and insurance premiums to the businesses, our commercial hedging strategy.

Six Nine Months Ended June 30, 2023 September 30, 2023

Revenue  
(in millions)  
 3376

*Consolidated Revenue* — Revenue increased \$336 million \$143 million, or 6% 1%, for the six nine months ended June 30, 2023 September 30, 2023, compared to the six nine months ended June 30, 2022 September 30, 2022, driven by:

- \$161337 million at Renewables mainly driven by higher spot sales at higher prices and new projects placed into service; partially offset by the impact of the depreciation of the Colombian peso and unrealized derivative losses;
- \$14373 million at New Energy Technologies mainly driven by the sale of the Fallbrook project in March 2023;
- \$29 million at Utilities mainly driven by higher fuel and purchase rider revenues, higher TDSIC rider and transmission revenues, and higher demand due to extreme heat in El Salvador; partially offset by milder lower retail sales volume as a result of lower demand due to unfavorable weather and demand in Indiana and Ohio; and Ohio.
- \$73 million at New Energy Technologies mainly driven by the sale of the Fallbrook project in March 2023.

These favorable impacts were partially offset by a decrease of \$49 million of:

- \$314 million at Energy Infrastructure primarily driven by prior year favorable LNG transactions, lower CO<sub>2</sub> purchases passed through due to lower production, the recognition of unrealized losses due to termination of a PPA, and the impact of the depreciation of the Argentine peso; peso, lower generation, and the recognition of unrealized losses due to a PPA termination agreement; partially offset by higher revenues due to a PPA termination agreement, and realized and unrealized derivative gains and higher contract energy sales due to higher prices, resulting mainly from new derivatives as part of our commercial hedging strategy.

Operating Margin  
(in millions)  
 4451

*Consolidated Operating Margin* — Operating margin decreased \$1 million increased \$25 million, or 1%, for the six nine months ended June 30, 2023,

September 30, 2023, compared to the six nine months ended June 30, 2022 September 30, 2022, driven by:

- \$1071 million at Utilities mainly driven by the impact deferral of milder weather power purchase costs in Indiana and Ohio and higher fixed costs, partially offset by the current year, which were recognized in the prior year, associated with the ESP 4 approval, a regulatory settlement in the prior year, an increase in transmission and TDSIC rider revenues, and higher demand due to extreme heat in El Salvador. Salvador; partially offset by the impact of milder weather in Indiana and Ohio and higher fixed costs; and

- \$741 million at Renewables mainly driven by better hydrology, new projects placed into service, and higher wind availability, resulting in higher renewable energy generation; partially offset by unrealized derivative losses, and higher fixed costs due to an accelerated growth plan.

These favorable impacts were partially offset by a decrease of:

- \$91 million at Energy Infrastructure mainly driven by prior year favorable LNG transactions, higher cost of sales, lower thermal dispatch and the

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recognition of unrealized losses due to termination of a PPA; substituted with renewable sources, and a prior year one-time revenue recognition driven by a reduction in a project's expected completion costs; partially offset by unrealized derivative gains favorable LNG transactions, resulting mainly from new derivatives as part of our commercial hedging strategy, lower outages and lower depreciation expense due to impairments recognized in the prior year.

These unfavorable impacts were partially offset by increases of:

- \$12 million at Corporate and Other mainly driven by higher charge-outs of people costs and insurance premiums to the businesses; and
- \$7 million at Renewables mainly driven by new projects placed into service, higher spot sales at higher prices, and the impact of better hydrology and wind generation; partially offset by unrealized derivative losses, higher fixed costs due to an accelerated growth plan and the impact of the depreciation of the Colombian peso.

See Item 2.—*Management's Discussion and Analysis of Financial Condition and Results of Operations—SBU Performance Analysis* of this Form 10-Q for additional discussion and analysis of operating results for each SBU.

## Consolidated Results of Operations — Other

### General and administrative expenses

General and administrative expenses increased \$26 million \$13 million, or 57% 25%, to \$72 million \$64 million for the three months ended June 30, 2023 September 30, 2023, compared to \$46 million \$51 million for the three months ended June 30, 2022 September 30, 2022, primarily due to increased business development activity.

General and administrative expenses increased \$42 million, or 28%, to \$191 million for the nine months ended September 30, 2023 compared to \$149 million for the nine months ended September 30, 2022, primarily due to increased business development activity and people costs.

General and administrative expenses increased \$29 million, or 30%, to \$127 million for the six months ended June 30, 2023 compared to \$98 million for the six months ended June 30, 2022, primarily due to increased business development activity, people costs, and professional fees.

### Interest expense

Interest expense increased \$31 million \$50 million, or 11% 18%, to \$310 million \$326 million for the three months ended June 30, 2023 September 30, 2023, compared to \$279 million \$276 million for the three months ended June 30, 2022 September 30, 2022. This increase is primarily due to new debt issued at the Renewables Utilities, and Energy Infrastructure SBUs SBU and a higher weighted average interest rate and debt balance at the Parent Company; partially offset by higher capitalized interest at the Energy Infrastructure Renewables SBU and the deferral of carrying costs at the Utilities SBU.

Interest expense increased \$103 million \$153 million, or 19%, to \$640 million \$966 million for the six nine months ended June 30, 2023 September 30, 2023, compared to \$537 million \$813 million for the six nine months ended June 30, 2022 September 30, 2022, primarily due to new debt issued at the drivers above Renewables and Utilities SBUs and a higher weighted average interest rate and debt balance at the Parent Company; partially offset by higher capitalized interest at the Renewables and Energy Infrastructure SBUs and the deferral of carrying costs at the Utilities SBU.

Interest capitalized during development and construction increased \$97 million to \$149 million for the three months ended September 30, 2023, compared to \$52 million for the three months ended September 30, 2022, primarily due to more projects in development at the Renewables SBU and higher interest rates.

Interest capitalized during development and construction increased \$254 million to \$396 million for the nine months ended September 30, 2023, compared to \$142 million for the nine months ended September 30, 2022, primarily due to more projects in development at the Renewables and Energy Infrastructure SBUs and higher interest rates.

### Interest income

Interest income increased \$36 million \$44 million, or 38% 44%, to \$131 million \$144 million for the three months ended June 30, 2023 September 30, 2023, compared to \$95 million \$100 million for the three months ended June 30, 2022 September 30, 2022, primarily due to higher average interest rates and short-term investments at the Energy Infrastructure and Renewables SBUs.

Interest income increased \$128 million, or 47%, to \$398 million for the nine months ended September 30, 2023, compared to \$270 million for the nine months ended September 30, 2022, primarily due to higher average

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interest rates and short-term investments at the Energy Infrastructure and Renewables SBUs, partially offset by the prior year sales-type lease receivable adjustment at the Alamitos Energy Center.

Interest income increased \$84 million, or 49%, to \$254 million for the six months ended June 30, 2023, compared to \$170 million for the six months ended June 30, 2022, primarily due to the drivers above.

#### Other income and expense

Other income decreased \$56 million, or 80%, increased \$8 million to \$14 million \$12 million for the three months ended June 30, 2023 September 30, 2023, compared to \$70 million \$4 million for the three months ended June 30, 2022 September 30, 2022, with no material drivers.

Other income decreased \$44 million, or 55%, to \$36 million for the nine months ended September 30, 2023, compared to \$80 million for the nine months ended September 30, 2022, primarily due to the prior year gain on remeasurement of our existing investment in 5B, which is accounted for using the measurement alternative, and prior year insurance proceeds primarily associated with property damage at TermoAndes.

Other income decreased \$52 million expense increased \$2 million, or 68%, to \$24 million for the six months ended June 30, 2023, compared to \$76 million for the six months ended June 30, 2022, primarily due to the drivers above.

Other expense decreased \$17 million, or 59% 20%, to \$12 million for the three months ended June 30, 2023 September 30, 2023, compared to \$29 million \$10 million for the three months ended June 30, 2022 September 30, 2022, with no material drivers.

Other expense decreased \$13 million, or 25%, to \$38 million for the nine months ended September 30, 2023, compared to \$51 million for the nine months ended September 30, 2022, primarily due to the prior year recognition of an allowance on a sales-type receivable at AES Gilbert due to a fire incident in April 2022.

Other expense decreased \$15 million, or 37%, to \$26 million for the six months ended June 30, 2023, compared to \$41 million for the six months ended June 30, 2022, primarily due to the driver above.

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See Note 14—*Other Income and Expense*, Note 6—*Investments in and Advances to Affiliates*, and Note 17—*Acquisitions* included in Item 1.—*Financial Statements* of this Form 10-Q for further information.

#### Asset impairment expense

Asset impairment expense decreased \$308 increased \$108 million or 64%, to \$174 million \$158 million for the three months ended June 30, 2023 September 30, 2023, compared to \$482 million \$50 million for the three months ended June 30, 2022 September 30, 2022. This increase was due to the \$77 million and \$59 million impairments at TEG and TEP in Mexico due to a reduction in expected cash flows after expiration of the current PPAs, partially offset by higher impairments in the prior year of Amman East and IPP4 in Jordan due to the delay in closing the sale transaction.

Asset impairment expense decreased \$181 million, or 34%, to \$352 million for the nine months ended September 30, 2023, compared to \$533 million for the nine months ended September 30, 2022. This decrease was primarily due to the \$475 million \$468 million prior year impairment of Maritza's coal-fired plant due to Bulgaria's commitment to cease electricity generation using coal as a fuel source beyond 2038, partially offset by the \$137 million impairment associated with the commitment to accelerate the retirement of the Norgener coal-fired plant in Chile, an \$18 million impairment of five project companies and the \$77 million and \$59 million impairments at AES Renewable Holdings associated with the buyout of tax equity partners, TEG and a \$15 million impairment of Amman East and IPP4 in Jordan due to the delay in closing the sale transaction.

Asset impairment expense decreased \$289 million, or 60%, to \$194 million for the six months ended June 30, 2023, compared to \$483 million for the six months ended June 30, 2022. This decrease was primarily due to the \$475 million prior year impairment at Maritza, partially offset by the \$137 million impairment at Norgener, a \$29 million impairment of Amman East and IPP4 in Jordan, and an \$18 million impairment at AES Renewable Holdings, due to the drivers TEP as discussed above.

See Note 15—*Asset Impairment Expense* included in Item 1.—*Financial Statements* of this Form 10-Q for further information.

#### Foreign currency transaction losses/gains (losses)

(in millions)	(in millions)	Three Months Ended June 30,		Six Months Ended June 30,		(in millions)	Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022		2023	2022	2023	2022
Argentina	Argentina	\$ (39)	\$ (42)	\$ (72)	\$ (55)	Argentina	\$ (79)	\$ (7)	\$ (151)	\$ (62)
Chile	Chile	(28)	(1)	(45)	(11)	Chile	(24)	11	(69)	—
Brazil	Brazil	1	(12)	13	(7)	Brazil	(1)	1	12	(6)
Other	Other	(1)	6	(5)	5	Other	4	3	(1)	8
Total (1)	Total (1)	\$ (67)	\$ (49)	\$ (109)	\$ (68)	Total (1)	\$ (100)	\$ 8	\$ (209)	\$ (60)

(1) Includes losses/gains of \$31 million \$15 million and gains of \$7 million \$33 million on foreign currency derivative contracts for the three months ended June 30, 2023 September 30, 2023 and 2022, respectively, and losses of \$39 million \$23 million and \$49 million \$16 million on foreign currency derivative contracts for the six/nine months ended June 30, 2023 September 30, 2023 and 2022, respectively.

The Company recognized net foreign currency transaction losses of \$67 million \$100 million for the three months ended June 30, 2023 September 30, 2023 primarily driven by the depreciation of the Argentine peso and by unrealized losses related to an intercompany loan denominated in the Colombian peso.

The Company recognized net foreign currency transaction losses of \$109 million \$209 million for the six/nine months ended June 30, 2023 September 30, 2023 primarily driven by the depreciation of the Argentine peso and unrealized losses related to an intercompany loan denominated in the Colombian peso; partially offset by unrealized gains on debt in Brazil.

The Company recognized net foreign currency transaction losses/gains of \$49 million \$8 million for the three months ended June 30, 2022 September 30, 2022 primarily due to unrealized losses on foreign currency derivatives related to government receivables in Argentina, unrealized losses due to depreciating receivables denominated in the Argentine

peso, and unrealized losses on debt in Brazil.

The Company recognized net foreign currency transaction losses of \$68 million for the six months ended June 30, 2022 primarily due to unrealized losses on foreign currency derivatives related to government receivables in Argentina, unrealized losses due to depreciating receivables denominated in the Argentine peso, and unrealized realized derivative losses gains on foreign currency derivatives in South America due to the depreciating Colombian peso, partially offset by realized and unrealized losses due to the depreciating Argentine peso.

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**Income tax benefit (expense)** The Company recognized net foreign currency transaction losses of \$60 million for the nine months ended September 30, 2022 primarily due to the depreciating Argentine peso.

#### Income tax benefit expense

Income tax expense decreased \$17 million \$36 million, or 25%, to \$2 million \$109 million for the three months ended June 30, 2023 September 30, 2023, compared to \$19 million \$145 million for the three months ended June 30, 2022 September 30, 2022. The Company's effective tax rates were 26% and 24% for the three months ended June 30, 2023, September 30, 2023 and 2022, respectively. The current and prior year effective tax rates were benefited by inflationary and foreign currency impacts at certain Argentine businesses. Additionally, the current year effective tax rate was impacted by the asset impairment recognition of valuation allowance against certain Argentine deferred tax assets. See Item 2.—*Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Trends and Uncertainties* of this Form 10-Q for further information on our exposure to foreign exchange rate risk related to the Norgener coal-fired plant in Chile, Argentine peso.

Income tax expense decreased \$7 million, or 4%, to \$179 million for the nine months ended September 30, 2023, compared to \$186 million for the nine months ended September 30, 2022. The Company's effective tax rate was 26% for both the nine months ended September 30, 2023 and 2022, respectively. The current and prior year effective tax rates were benefited by the aforementioned inflationary and foreign currency impacts. The current year effective tax rate was also impacted by the recognition of valuation allowance, while the prior year effective tax rate was impacted by favorable LNG transactions at the Energy Infrastructure SBU, offset by the impact of the asset impairment of the Maritza coal-fired plant.

Income tax expense increased \$29 million, or 71%, to \$70 million for the six months ended June 30, 2023, compared to \$41 million for the six months ended June 30, 2022. The Company's effective tax rates were 26% and 39% for the six months ended June 30, 2023 and 2022, respectively. The prior year effective tax rate was impacted by the asset impairment of the Maritza coal-fired plant.

See Note 15—*Asset Impairment Expense* included in Item 1.—*Financial Statements* of this Form 10-Q for details of the Maritza and Norgener asset impairments.

Our effective tax rate reflects the tax effect of significant operations outside the U.S., which are generally taxed at rates different than the U.S. statutory rate of 21%. Furthermore, our foreign earnings may be subjected to incremental U.S. taxation under the GILTI rules. A future proportionate change in the composition of income before income taxes from foreign and domestic tax jurisdictions could impact our periodic effective tax rate.

#### Net equity in earnings (losses) losses of affiliates

Net equity in losses of affiliates increased \$30 million decreased \$12 million, or 46%, to \$25 million \$14 million for the three months ended June 30, 2023 September 30, 2023, compared to earnings of \$5 million \$26 million for the three months ended June 30, 2022 September 30, 2022. This increase decrease was primarily driven by lower earnings from sPower, mainly due to lower earnings from renewable projects that came online, partially offset by an increase in earnings from Mesa La Paz, primarily due to the termination of unrealized derivatives due to a contract amendment, and by a decrease in losses from Fluence, mainly attributable to improved margins on a new product line, offset by a consolidation adjustment line.

Net equity in losses of affiliates increased \$1 million decreased \$11 million, or 20%, to \$29 million \$43 million for the six nine months ended June 30, 2023 September 30, 2023, compared to \$28 million \$54 million for the six nine months ended June 30, 2022 September 30, 2022. This increase decrease was primarily driven by lower earnings from sPower, mainly due to lower earnings from renewable projects that came online. This increase in losses was partially offset by an increase in earnings from Mesa La Paz, primarily due to the termination of unrealized derivatives due to a contract amendment, and by a decrease in losses from Fluence, mainly attributable to improved margins on a new product line and reduced shipping constraints and costs, costs. This decrease in losses was partially offset by a consolidation adjustment lower earnings from sPower, mainly due to lower earnings from renewable projects that came online.

See Note 6—*Investments in and Advances to Affiliates* included in Item 1.—*Financial Statements* of this Form 10-Q for further information.

#### Net income attributable to noncontrolling interests and redeemable stock of subsidiaries

Net income attributable to noncontrolling interests and redeemable stock of subsidiaries decreased \$23 million, or 53%, increased \$35 million to \$20 million \$60 million for the three months ended June 30, 2023 September 30, 2023, compared to \$43 million \$25 million for the three months ended June 30, 2022 September 30, 2022. This decrease increase was primarily due to:

- Higher Lower allocation of losses to tax equity investors and increased costs associated with the growing business at the Renewables SBU; and
- Current year Lower impairments in Jordan at the Energy Infrastructure SBU.

These increases were partially offset by:

- Lower earnings in Panama due to drier hydrology.

Net income attributable to noncontrolling interests and redeemable stock of subsidiaries decreased \$6 million, or 5%, to \$118 million for the nine months ended September 30, 2023, compared to \$124 million for the nine months ended September 30, 2022. This decrease was primarily due to:

- Increased costs associated with growing business at the Renewables SBU; and

- Prior year one-time revenue recognition driven by a reduction in a project's expected completion costs at the Energy Infrastructure SBU.

These decreases were partially offset by:

- Higher earnings from the Renewables SBU due to higher wind availability, favorable weather conditions; and
- Higher allocation of earnings at Southland Energy to noncontrolling interests.

#### Net income attributable to noncontrolling interests and redeemable stock of subsidiaries The AES Corporation

Net income attributable to The AES Corporation decreased \$41 million \$190 million, or 41% 45%, to \$58 million \$231 million for the six three months ended June 30, 2023 September 30, 2023, compared to \$99 million \$421 million for the six three months ended June 30, 2022 September 30, 2022. This decrease was primarily due to:

- Higher allocation of losses to tax equity investors and increased costs associated with long-lived asset impairments in the growing business at the Renewables SBU; current year;
- Prior year one-time revenue recognition driven by a reduction in a project's expected completion costs, and current year impairments in Jordan Higher unrealized foreign currency losses at the Energy Infrastructure SBU; and
- Lower earnings from the Utilities Energy Infrastructure SBU due to unfavorable weather conditions, prior year favorable LNG transactions.

These decreases were partially offset by:

- Higher earnings from the Utilities SBU due to the deferral of previously recognized power purchase costs and a prior year charge resulting from a regulatory settlement; and

- Higher earnings from the Renewables SBU due to favorable weather conditions; conditions and new businesses operating in our portfolio.
- Favorable LNG transactions at the Energy Infrastructure SBU.

#### Net income (loss) attributable to The AES Corporation

Net loss attributable to The AES Corporation decreased \$140 million \$14 million, or 78% 4%, to \$39 million \$343 million for the three nine months ended June 30, 2023 September 30, 2023, compared to \$179 million \$357 million for the three nine months ended June 30, 2022 September 30, 2022. This decrease was primarily due to:

- Lower long-lived asset impairments in the current year; and
- Increase in interest income due to higher average interest rates and short term investments Higher unrealized foreign currency losses at the Energy Infrastructure SBU, SBU;

These decreases were partially offset by:

- Lower earnings from the Energy Infrastructure SBU as a result of the recognition of unrealized losses due to termination of a PPA, prior year favorable LNG transactions, lower thermal dispatch, lower insurance proceeds, and higher cost of sales;
- Prior year gain on remeasurement of our existing investment in SB; and
- Increase in interest expense due to higher interest rates and new debt issued at the Energy Infrastructure SBU and a higher Parent Company weighted average interest rate.

Net income attributable to The AES Corporation increased \$176 million, to \$112 million for the six months ended June 30, 2023, compared to a loss of \$64 million for the six months ended June 30, 2022. This increase was primarily due to: These decreases were partially offset by:

- Lower long-lived asset impairments in the current year;
- Increase in interest income due to higher average interest rates and short term investments at the Energy Infrastructure and Renewables SBUs;
- Higher earnings from the Utilities SBU due to the deferral of previously recognized power purchase costs and a prior year charge resulting from a regulatory settlement; and
- Lower losses from affiliates at the New Energy Technologies SBU.

These increases were partially offset by:

- Higher unrealized foreign currency losses at the Energy Infrastructure SBU;
- Lower earnings from the Renewables SBU due to unrealized derivative losses, higher fixed costs due to an accelerated growth plan, and the impact of the Colombian peso;
- Lower earnings from the Energy Infrastructure SBU as a result of the recognition of unrealized losses due to termination of a PPA, lower thermal dispatch, and higher cost of sales; and
- Increase in interest expense due to higher interest rates and new debt issued at the Energy Infrastructure SBU and a higher Parent weighted average interest rate.

## SBU Performance Analysis

### Non-GAAP Measures

EBITDA, Adjusted EBITDA, Adjusted EBITDA with Tax Attributes, Adjusted PTC, and Adjusted EPS are non-GAAP supplemental measures that are used by management and external users of our condensed consolidated financial statements such as investors, industry analysts, and lenders.

During the first quarter of 2023, management began assessing operational performance and making resource allocation decisions using Adjusted EBITDA. Therefore, the Company uses Adjusted EBITDA as its primary segment performance measure. EBITDA, Adjusted EBITDA, and Adjusted EBITDA with Tax Attributes are new non-GAAP supplemental measures reported beginning in the first quarter of 2023.

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### EBITDA, Adjusted EBITDA and Adjusted EBITDA with Tax Attributes

We define EBITDA as earnings before interest income and expense, taxes, depreciation, and amortization. We define Adjusted EBITDA as EBITDA excluding the impact of NCI and interest, taxes, depreciation, and amortization of our equity affiliates, adding back interest income recognized under service concession arrangements, and excluding gains or losses of both consolidated entities and entities accounted for under the equity method due to (a) unrealized gains or losses related to derivative transactions and equity securities; (b) unrealized foreign currency gains or losses; (c) gains, losses, benefits and costs associated with dispositions and acquisitions of business interests, including early plant closures, and gains and losses recognized at commencement of sales-type leases; (d) losses due to impairments; (e) gains, losses and costs due to the early retirement of debt; and (f) net gains at Angamos, one of our businesses in the Energy Infrastructure SBU, associated with the early contract terminations with Minera Escondida and Minera Spence.

In addition to the revenue and cost of sales reflected in Operating Margin, Adjusted EBITDA includes the other components of our Consolidated Statement of Operations, such as *general and administrative expenses* in Corporate and Other as well as business development costs, *other expense* and *other income*, *realized foreign currency transaction gains and losses*, and *net equity in earnings of affiliates*.

We further define Adjusted EBITDA with Tax Attributes as Adjusted EBITDA, adding back the pre-tax effect of Production Tax Credits ("PTCs"), Investment Tax Credits ("ITCs"), and depreciation tax expense allocated to tax equity investors.

The GAAP measure most comparable to EBITDA, Adjusted EBITDA, and Adjusted EBITDA with Tax Attributes is *Net income*. We believe that EBITDA, Adjusted EBITDA, and Adjusted EBITDA with Tax Attributes better reflect the underlying business performance of the Company. Adjusted EBITDA is the most relevant measure considered in the Company's internal evaluation of the financial performance of its segments. Factors in this determination include the variability due to unrealized gains or losses related to derivative transactions or equity securities remeasurement, unrealized foreign currency gains or losses, losses due to impairments, strategic decisions to dispose of or acquire business interests or retire debt, the non-recurring nature of the impact of the early contract terminations at Angamos, and the variability of allocations of earnings to tax equity investors, which affect results in a given period or periods. In addition, each of these metrics represent the business performance of the Company before the application of statutory income tax rates and tax adjustments, including the effects of tax planning, corresponding to the various jurisdictions in which the Company operates. Given its large number of businesses and overall complexity, the Company concluded that Adjusted EBITDA is a more transparent measure than *Net income* that better assists investors in determining which businesses have the greatest impact on the Company's results.

EBITDA, Adjusted EBITDA, and Adjusted EBITDA with Tax Attributes should not be construed as alternatives to *Net income*, which is determined in accordance with GAAP.

Reconciliation of Adjusted EBITDA and Adjusted EBITDA with Tax Attributes (in millions)	Reconciliation of Adjusted EBITDA and Adjusted EBITDA with Tax Attributes (in millions)	Three Months Ended June 30,		Six Months Ended June 30,		Reconciliation of Adjusted EBITDA and Adjusted EBITDA with Tax Attributes (in millions)		Three Months Ended September 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022	2023	2022	2023	2022	2023	2022
		Net income	Net income	\$ (19)	\$ (136)	\$ 170	\$ 35	Net income	\$ 291	\$ 446	\$ 461
Income tax expense (benefit)											
Interest expense	Interest expense	310	279	640	537	Interest expense	326	276	966	813	
Interest income	Interest income	(131)	(95)	(254)	(170)	Interest income	(144)	(100)	(398)	(270)	
Depreciation and amortization	Depreciation and amortization	277	264	550	534	Depreciation and amortization	286	266	836	800	
EBITDA	EBITDA	\$ 435	\$ 293	\$ 1,176	\$ 977	EBITDA	\$ 868	\$ 1,033	\$ 2,044	\$ 2,010	
Less: Adjustment for noncontrolling interests and redeemable stock of subsidiaries (1)	Less: Adjustment for noncontrolling interests and redeemable stock of subsidiaries (1)	(155)	(156)	(325)	(312)	Less: Adjustment for noncontrolling interests and redeemable stock of subsidiaries (1)	(183)	(174)	(508)	(486)	

Less: Income tax expense (benefit), interest expense (income) and depreciation and amortization from equity affiliates	Less: Income tax expense (benefit), interest expense (income) and depreciation and amortization from equity affiliates	27	23	66	57	Less: Income tax expense (benefit), interest expense (income) and depreciation and amortization from equity affiliates	27	36	93	93
Interest income recognized under service concession arrangements	Interest income recognized under service concession arrangements	18	20	36	39	Interest income recognized under service concession arrangements	18	19	54	58
Unrealized derivative and equity securities losses (gains)	Unrealized derivative and equity securities losses (gains)	32	(34)	(7)	8	Unrealized derivative and equity securities losses (gains)	10	(8)	3	—
Unrealized foreign currency losses	Unrealized foreign currency losses	32	38	64	20	Unrealized foreign currency losses	97	3	161	23
Disposition/acquisition losses	Disposition/acquisition losses	16	23	13	32	Disposition/acquisition losses	8	4	21	36
Impairment losses	Impairment losses	164	479	173	480	Impairment losses	145	17	318	497
Loss on extinguishment of debt	Loss on extinguishment of debt	—	—	1	6	Loss on extinguishment of debt	—	1	1	7
<b>Adjusted EBITDA <sup>(1)</sup></b>	<b>Adjusted EBITDA <sup>(1)</sup></b>	<b>\$ 569</b>	<b>\$ 686</b>	<b>\$ 1,197</b>	<b>\$ 1,307</b>	<b>Adjusted EBITDA <sup>(1)</sup></b>	<b>\$ 990</b>	<b>\$ 931</b>	<b>\$ 2,187</b>	<b>\$ 2,238</b>
Tax attributes allocated to tax equity investors	Tax attributes allocated to tax equity investors	38	36	51	49	Tax attributes allocated to tax equity investors	18	60	69	109
<b>Adjusted EBITDA with Tax Attributes <sup>(2)</sup></b>	<b>Adjusted EBITDA with Tax Attributes <sup>(2)</sup></b>	<b>\$ 607</b>	<b>\$ 722</b>	<b>\$ 1,248</b>	<b>\$ 1,356</b>	<b>Adjusted EBITDA with Tax Attributes <sup>(2)</sup></b>	<b>\$ 1,008</b>	<b>\$ 991</b>	<b>\$ 2,256</b>	<b>\$ 2,347</b>

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<sup>(1)</sup> The allocation of earnings to tax equity investors from both consolidated entities and equity affiliates is removed from Adjusted EBITDA.

<sup>(2)</sup> Adjusted EBITDA with Tax Attributes includes the impact of the share of the ITCs, PTCs, and depreciation expense allocated to tax equity investors under the HLBV accounting method and recognized as *Net loss attributable to noncontrolling interests and redeemable stock of subsidiaries* on the Condensed Consolidated Statements of Operations. All of the tax attributes are related to the Renewables SBU.

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### Adjusted PTC

We define Adjusted PTC as pre-tax income from continuing operations attributable to The AES Corporation excluding gains or losses of the consolidated entity due to (a) unrealized gains or losses related to derivative transactions and equity securities; (b) unrealized foreign currency gains or losses; (c) gains, losses, benefits, and costs associated with dispositions and acquisitions of business interests, including early plant closures, and gains and losses recognized at commencement of sales-type leases; (d) losses due to impairments; (e) gains, losses, and costs due to the early retirement of debt; and (f) net gains at Angamos, one of our businesses in the Energy Infrastructure SBU, associated with the early contract terminations with Minera Escondida and Minera Spence. Adjusted PTC also includes net equity in earnings of affiliates on an after-tax basis adjusted for the same gains or losses excluded from consolidated entities.

Adjusted PTC reflects the impact of NCI and excludes the items specified in the definition above. In addition to the revenue and cost of sales reflected in Operating Margin, Adjusted PTC includes the other components of our Consolidated Statement of Operations, such as *general and administrative expenses* in Corporate and Other as

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well as business development costs, *interest expense* and *interest income*, *other expense* and *other income*, *realized foreign currency transaction gains and losses*, and *net equity in earnings of affiliates*.

The GAAP measure most comparable to Adjusted PTC is *Income from continuing operations attributable to The AES Corporation*. We believe that Adjusted PTC better reflects the underlying business performance of the Company and is a relevant measure considered in the Company's internal evaluation of the financial performance of its segments. Factors in this determination include the variability due to unrealized gains or losses related to derivative transactions or equity securities remeasurement, unrealized foreign currency gains or losses, losses due to impairments, strategic decisions to dispose of or acquire business interests or retire debt, and the non-recurring nature of the impact of the early contract terminations at Angamos, which affect results in a given period or periods. In addition, earnings before tax represents the business performance of the Company before the application of statutory income tax rates and tax adjustments, including the effects of tax planning, corresponding to the various jurisdictions in which the Company operates. Given its large number of businesses and complexity, the Company concluded that Adjusted PTC is a more transparent measure than *Income from continuing operations attributable to The AES Corporation* that better assists investors in determining which businesses have the greatest impact on the Company's results.

Adjusted PTC should not be construed as an alternative to *Income from continuing operations attributable to The AES Corporation*, which is determined in accordance with GAAP.

Reconciliation of Adjusted PTC (in millions)	Reconciliation of Adjusted PTC (in millions)	Three Months Ended June 30,				Six Months Ended June 30,				Three Months Ended September 30,		Nine Months Ended September 30,	
		2023		2022		2023		2022		2023	2022	2023	2022
		Income (loss) from continuing operations, net of tax, attributable to The AES Corporation	\$ (39)	\$ (179)	\$ 112	\$ (64)	Income from continuing operations, net of tax, attributable to The AES Corporation	\$ 231	\$ 421	\$ 343	\$ 357		
Income tax expense (benefit) from continuing operations attributable to The AES Corporation		(16)		(29)		35		21					
Income from continuing operations, net of tax, attributable to The AES Corporation													
Income tax expense from continuing operations attributable to The AES Corporation													
Pre-tax contribution	Pre-tax contribution	(55)		(208)		147		(43)		Pre-tax contribution	332		506
Unrealized derivative and equity securities losses (gains)	Unrealized derivative and equity securities losses (gains)	33		(35)		(6)		6		Unrealized derivative and equity securities losses (gains)	9		(2)
Unrealized foreign currency losses	Unrealized foreign currency losses	33		39		64		20		Unrealized foreign currency losses	96		23
Disposition/acquisition losses	Disposition/acquisition losses	16		23		13		32		Disposition/acquisition losses	8		36
Impairment losses	Impairment losses	164		479		173		480		Impairment losses	145		497
Loss on extinguishment of debt	Loss on extinguishment of debt	—		6		4		16		Loss on extinguishment of debt	3		20
<b>Adjusted PTC</b>	<b>Adjusted PTC</b>	<b>\$ 191</b>		<b>\$ 304</b>		<b>\$ 395</b>		<b>\$ 511</b>		<b>Adjusted PTC</b>	<b>\$ 593</b>		<b>\$ 1,080</b>

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### Adjusted EPS

We define Adjusted EPS as diluted earnings per share from continuing operations excluding gains or losses of both consolidated entities and entities accounted for under the equity method due to (a) unrealized gains or losses related to derivative transactions and equity securities; (b) unrealized foreign currency gains or losses; (c) gains, losses, benefits and costs associated with dispositions and acquisitions of business interests, including early plant closures, and the tax impact from the repatriation of sales proceeds, and gains and losses recognized at commencement of sales-type leases; (d) losses due to impairments; (e) gains, losses and costs due to the early retirement of debt; (f) net gains at Angamos, one of our businesses in the Energy Infrastructure SBU, associated with the early contract terminations with Minera Escondida and Minera Spence; and (g) tax benefit or expense

related to the enactment effects of 2017 U.S. tax law reform and related regulations and any subsequent period adjustments related to enactment effects, including the 2021 tax benefit on reversal of uncertain tax positions effectively settled upon the closure of the Company's U.S. tax return exam.

The GAAP measure most comparable to Adjusted EPS is *Diluted earnings per share from continuing operations*. We believe that Adjusted EPS better reflects the underlying business performance of the Company and is considered in the Company's internal evaluation of financial performance. Factors in this determination include the variability due to unrealized gains or losses related to derivative transactions or equity securities remeasurement, unrealized foreign currency gains or losses, losses due to impairments, strategic decisions to dispose of or acquire business interests or retire debt, the one-time impact of the 2017 U.S. tax law reform and subsequent period adjustments related to enactment effects, and the non-recurring nature of the impact of the early contract terminations at Angamos, which affect results in a given period or periods.

Adjusted EPS should not be construed as an alternative to *Diluted earnings per share from continuing operations*, which is determined in accordance with GAAP.

The Company reported a loss from continuing operations of \$0.06 for the three months ended June 30, 2023 and \$0.27 and \$0.10 for the three and six months ended June 30, 2022, respectively. For purposes of measuring diluted loss per share under GAAP, common stock equivalents were excluded from weighted average shares as their inclusion would be anti-dilutive. However, for purposes of computing Adjusted EPS, the Company has included the impact of dilutive common stock equivalents. The tables below reconcile the weighted average shares used in GAAP diluted loss per share to the weighted average shares used in calculating the non-GAAP measure of Adjusted EPS.

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Reconciliation of Denominator Used For Adjusted EPS (in millions, except per share data)		Three Months Ended June 30, 2023							
		Loss	Shares	\$ per Share		Loss	Shares	\$ per Share	
<b>GAAP DILUTED LOSS PER SHARE</b>									
Loss from continuing operations attributable to The AES Corporation common stockholders		\$ (39)	669	\$	(0.06)				
<b>EFFECT OF DILUTIVE SECURITIES</b>									
Stock options		—	1		—				
Restricted stock units		—	2		—				
Equity units		—	40		0.01				
<b>NON-GAAP DILUTED LOSS PER SHARE</b>		<u>\$ (39)</u>	<u>712</u>	<u>\$ (0.05)</u>					
Reconciliation of Denominator Used For Adjusted EPS (in millions, except per share data)		Three Months Ended June 30, 2022			Six Months Ended June 30, 2022				
		Loss	Shares	\$ per Share	Loss	Shares	\$ per Share		
<b>GAAP DILUTED LOSS PER SHARE</b>									
Loss from continuing operations attributable to The AES Corporation common stockholders	\$ (179)	668	\$ (0.27)	\$ (64)	668	\$ (0.10)			
<b>EFFECT OF DILUTIVE SECURITIES</b>									
Stock options	—	1	—	—	1	—			
Restricted stock units	—	2	—	—	2	—			
Equity units	—	40	0.02	1	40	0.01			
<b>NON-GAAP DILUTED LOSS PER SHARE</b>		<u>\$ (179)</u>	<u>711</u>	<u>\$ (0.25)</u>	<u>\$ (63)</u>	<u>711</u>	<u>\$ (0.09)</u>		
Reconciliation of Adjusted EPS Reconciliation of Adjusted EPS				Three Months Ended September 30,		Nine Months Ended September 30,			
2023	2022	2023	2022	2023	2022				
<b>Diluted earnings (loss) per share from continuing operations</b>				Reconciliation of Adjusted EPS					
Unrealized derivative and equity securities losses (gains)	\$ (0.05)	\$ (0.25)	\$ 0.16	\$ (0.09)	2023	2022	2023	2022	
<b>Diluted earnings per share from continuing operations</b>				Diluted earnings per share from continuing operations	\$ 0.32	\$ 0.59	\$ 0.48	\$ 0.50	
Unrealized derivative and equity securities losses (gains)	0.05	(0.05)	(0.01)	0.01	Unrealized derivative and equity securities losses (gains)	0.01	(0.01)	—	—
Unrealized foreign currency losses	0.04	0.05	0.09	0.03	Unrealized foreign currency losses	0.14	—	0.22	0.03

Disposition/acquisition losses	Disposition/acquisition losses	0.02	0.03	(7)	0.02	0.04	(7)	Disposition/acquisition losses	0.01	0.01	0.03	0.05	(5)					
Impairment losses	Impairment losses	0.23	(8)	0.68	(9)	0.24	(8)	0.68	(9)	Impairment losses	0.21	(9)	0.02	(7)	0.45	(8)	0.70	(9)
Loss on extinguishment of debt	Loss on extinguishment of debt	—	—	0.01	—	0.01	—	0.02	—	Loss on extinguishment of debt	—	—	0.01	0.01	—	0.03		
Less: Net income tax benefit		(0.08)	(10)	(0.13)	(11)	(0.08)	(10)	(0.14)	(11)	Less: Net income tax expense (benefit)	(0.09)	(10)	0.01	(11)	(0.16)	(12)	(0.13)	
<b>Adjusted EPS</b>	<b>Adjusted EPS</b>	<b>\$ 0.21</b>	<b>\$ 0.34</b>	<b>\$ 0.43</b>	<b>\$ 0.55</b>					<b>Adjusted EPS</b>	<b>\$ 0.60</b>	<b>\$ 0.63</b>	<b>\$ 1.03</b>	<b>\$ 1.18</b>				

(1) Amount primarily relates to recognition of unrealized derivative losses due to the termination of a PPA of \$72 million, or \$0.10 per share partially and unrealized derivative losses at AES Clean Energy of \$20 million, or \$0.03 per share, offset by unrealized derivative gains at the Energy Infrastructure SBU of \$37 million \$108 million, or \$0.05 \$0.15 per share.

(2) Amount primarily relates to unrealized foreign currency losses mainly associated with the unrealized gain on remeasurement devaluation of our existing investment long-term receivables denominated in 5B, accounted for using the measurement alternative, Argentine pesos of \$26 million \$60 million, or \$0.04 \$0.08 per share, unrealized foreign currency losses at AES Andes of \$21 million, or \$0.03 per share, and unrealized foreign currency losses on

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debt in Brazil of \$10 million, or \$0.01 per share.

(3) Amount primarily relates to unrealized derivative gains at foreign currency losses mainly associated with the Energy Infrastructure SBU devaluation of \$87 million long-term receivables denominated in Argentine pesos of \$109 million, or \$0.12 \$0.15 per share, partially offset by the recognition and unrealized foreign currency losses at AES Andes of unrealized losses due to the termination of a PPA of \$72 million \$54 million, or \$0.10 \$0.08 per share.

(4) Amount primarily relates to unrealized foreign currency losses mainly associated with the devaluation of long-term receivables denominated in Argentine pesos of \$24 million \$19 million, or \$0.03 per share, and unrealized foreign currency losses at AES Andes due to the depreciating Colombian peso of \$15 million, or \$0.02 per share.

(5) Amount primarily relates to unrealized foreign currency losses on debt in Brazil of \$12 million, or \$0.02 per share, and unrealized foreign currency losses of \$9 million, or \$0.01 per share, mainly associated with the devaluation of long-term receivables denominated in Argentine pesos.

(6) Amount primarily relates to unrealized foreign currency losses mainly associated with the devaluation of long-term receivables denominated in Argentine pesos of \$49 million, or \$0.07 per share, and unrealized foreign currency losses at AES Andes due to the depreciating Colombian peso of \$31 million, or \$0.04 per share.

(7) Amount primarily relates to the recognition of an allowance on the AES Gilbert sales-type lease receivable as a cost of disposition of a business interest of \$20 million, or \$0.03 per share, for the three share.

(8) Amount primarily relates to asset impairments at TEG and six months ended June 30, 2022, TEP of \$76 million and \$58 million, respectively, or \$0.19 per share.

(9) Amount primarily relates to asset impairment at Jordan of \$19 million, or \$0.03 per share.

(10) Amount primarily relates to asset impairments at the Norgener coal-fired plant in Chile of \$136 million, or \$0.19 per share, at TEG and TEP of \$76 million and \$58 million, respectively, or \$0.19 per share, the GAF Projects at AES Renewable Holdings of \$18 million, or \$0.03 per share, for the three and six months ended June 30, 2023, at Jordan of \$16 million, or \$0.02 per share.

(11) Amount primarily relates to asset impairment at Maritza of \$475 million \$468 million, or \$0.67 \$0.66 per share, for the three and six months ended June 30, 2022, at Jordan of \$19 million, or \$0.03 per share.

(12) Amount primarily relates to income tax benefits associated with the asset impairment impairments at TEG and TEP of \$34 million, or \$0.05 per share and income tax benefits associated with unrealized foreign currency losses at AES Andes of \$6 million, or \$0.01 per share.

(13) Amount primarily relates to income tax benefits associated with the asset impairments at the Norgener coal fired plant in Chile of \$33 million \$35 million, or \$0.05 per share and at TEG and TEP of \$34 million, or \$0.05 per share, income tax benefits associated with the recognition of unrealized losses due to the termination of a PPA of \$18 million, or \$0.02 per share, for the three and six months ended June 30, 2023, income tax benefits associated with unrealized foreign currency losses at AES Andes of \$14 million, or \$0.02 per share.

(14) Amount primarily relates to income tax benefits associated with the impairment at Maritza of \$110 million \$73 million, or \$0.15 \$0.10 per share, partially offset by income tax expense associated with the unrealized gain on remeasurement and at Jordan of our existing investment in 5B of \$6 million \$8 million, or \$0.01 per share for the three and six months ended June 30, 2022, share.

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## Renewables SBU

The following table summarizes Operating Margin, Adjusted EBITDA, and Adjusted EBITDA with Tax Attributes (in millions) for the periods indicated:

	Operating Margin	Three Months Ended June 30,				Six Months Ended June 30,				Three Months Ended September 30,				Nine Months Ended September 30,											
		2023		2022		\$ Change		% Change		2023		2022		\$ Change		% Change		2023		2022		\$ Change		% Change	
		2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	2022	2023	
Operating Margin	Operating Margin	\$ 118	\$ 146	\$ (28)	—	-19	%	\$ 206	\$ 199	\$ 7	4	%	Operating Margin	\$ 222	\$ 188	\$ 34	18	%	\$ 428	\$ 387	\$ 41	11	%		
Adjusted EBITDA <sup>(1)</sup>	Adjusted EBITDA <sup>(1)</sup>	166	162	4	2	%	290	281	9	3	%	Adjusted EBITDA <sup>(1)</sup>	267	195	72	37	%	557	476	81	17	%			

Adjusted EBITDA with Tax Attributes (1)	Adjusted EBITDA with Tax Attributes (1)	204	198	6	3 %	341	330	11	3 %	285	255	30	12 %	626	585	41	7 %
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(1) A non-GAAP financial measure. See *SBU Performance Analysis—Non-GAAP Measures* for definition.

Operating Margin for the three months ended **June 30, 2023** decreased **\$28 million** **September 30, 2023** increased **\$34 million** driven primarily by better hydrology, new businesses operating in our portfolio, resulting in higher renewable energy generation, and the impact of the appreciation of the Colombian peso. This increase was partially offset by unrealized derivatives derivative losses, higher fixed costs due to an accelerated growth plan, and the impact of the depreciation of the Colombian peso. This decrease was partially offset by the impact of better hydrology, new businesses operating in our portfolio, and higher wind availability, resulting in higher renewable lower contracted energy generation sales.

Adjusted EBITDA for the three months ended **June 30, 2023** **September 30, 2023** increased **\$4 million** **\$72 million** primarily due to the drivers mentioned above, adjusted for NCI, unrealized derivatives, and depreciation expense.

Adjusted EBITDA with Tax Attributes for the three months ended **June 30, 2023** **September 30, 2023** increased **\$6 million** **\$30 million** primarily due to the increase in Adjusted EBITDA. EBITDA, partially offset by lower realized tax attributes driven by fewer projects being placed into service. During the three months ended **June 30, 2023** **September 30, 2023** and 2022, we realized **\$38 million** **\$18 million** and **\$36 million** **\$60 million**, respectively, from Tax Attributes earned by our U.S. renewables business.

Operating Margin for the **six** **nine** months ended **June 30, 2023** **September 30, 2023** increased **\$7 million** **\$41 million** driven primarily by better hydrology, new businesses operating in our portfolio, and higher wind availability, resulting in higher renewable energy generation. This increase was partially offset by unrealized derivatives losses and higher fixed costs due to an accelerated growth plan, and the impact of the depreciation of the Colombian peso. plan.

Adjusted EBITDA for the **six** **nine** months ended **June 30, 2023** **September 30, 2023** increased **\$9 million** **\$81 million** primarily due to the drivers mentioned above, adjusted for NCI, unrealized derivatives, and depreciation expense.

Adjusted EBITDA with Tax Attributes for the **six** **nine** months ended **June 30, 2023** **September 30, 2023** increased **\$11 million** **\$41 million** primarily due to the increase in Adjusted EBITDA. EBITDA, partially offset by lower realized tax attributes driven by fewer projects being placed into service. During the **six** **nine** months ended **June 30, 2023** **September 30, 2023** and 2022, we realized **\$51 million** **\$69 million** and **\$49 million**, **\$109 million**, respectively, from Tax Attributes earned by our U.S. renewables business.

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## Utilities SBU

The following table summarizes Operating Margin, Adjusted EBITDA, and Adjusted PTC (in millions) for the periods indicated:

	Three Months Ended June 30,				Six Months Ended June 30,				Three Months Ended September 30,				Nine Months Ended September 30,			
	2023	2022	\$ Change	% Change	2023	2022	\$ Change	% Change	2023	2022	\$ Change	% Change	2023	2022	\$ Change	% Change
Operating Margin	Operating Margin	\$ 86	\$ 67	\$ 19	28	%	\$ 191	\$ 201	\$ (10)	-5	%	Operating Margin	\$ 160	\$ 79	\$ 81	NM
Adjusted EBITDA (1)	Adjusted EBITDA (1)	148	135	13	10	%	310	319	(9)	-3	%	Adjusted EBITDA (1)	216	137	79	58 %
Adjusted PTC (1)(2)	Adjusted PTC (1)(2)	21	16	5	31	%	59	85	(26)	-31	%	Adjusted PTC (1)(2)	101	15	86	NM

(1) A non-GAAP financial measure. See *SBU Performance Analysis—Non-GAAP Measures* for definition.

(2) Adjusted PTC remains a key metric used by management for analyzing our businesses in the utilities industry.

Operating Margin for the three months ended **June 30, 2023** **September 30, 2023** increased **\$19 million** **\$81 million** mainly driven by extreme heat the deferral of power purchase costs in El Salvador the current year, which were recognized in the prior year, associated with the ESP 4 approval and an increase a regulatory settlement in transmission and TDSIC rider revenues, partially offset by milder weather and demand in Indiana and Ohio, the prior year.

Adjusted EBITDA for the three months ended **June 30, 2023** **September 30, 2023** increased **\$13 million** **\$79 million** primarily due to the drivers above, adjusted for NCI.

Adjusted PTC for the three months ended **June 30, 2023** **September 30, 2023** increased **\$5 million** **\$86 million** due to the drivers above and higher interest expense due to new debt transactions, the deferral of carrying costs associated with the ESP 4 approval in the current year.

Operating Margin for the **six** **nine** months ended **June 30, 2023** decreased **\$10 million** **September 30, 2023** increased **\$71 million** mainly driven by the deferral of power purchase costs in the current year, which were recognized in the prior year, associated with the ESP 4 approval, a regulatory settlement in the prior year, an increase in transmission and TDSIC rider revenues and higher demand due to extreme heat in El Salvador, partially offset by the impact of milder weather in Indiana and Ohio and higher fixed costs, partially offset by an increase in transmission and TDSIC rider revenues and extreme heat in El Salvador, costs.

Adjusted EBITDA for the **six** **nine** months ended **June 30, 2023** decreased **\$9 million** **September 30, 2023** increased **\$70 million** primarily due to the drivers above, adjusted for NCI.

Adjusted PTC for the **six** nine months ended **June 30, 2023** decreased \$26 million **September 30, 2023** increased \$60 million due to the drivers above and the deferral of carrying costs associated with the ESP 4 approval in the current year, partially offset by higher interest expense due to new debt **transactions**, **transactions** and increases in defined benefit plan costs.

## Energy Infrastructure SBU

The following table summarizes Operating Margin and Adjusted EBITDA (in millions) for the periods indicated:

	Three Months Ended June 30,				Six Months Ended June 30,				Three Months Ended September 30,				Nine Months Ended September 30,																						
	2023		2022		\$ Change		% Change		2023		2022		\$ Change		% Change		2023		2022		\$ Change		% Change												
	Operating Margin	\$ 241	\$ 307	\$ (66)	-21 %	\$ 616	\$ 623	\$ (7)	-1 %	Operating Margin	\$ 504	\$ 588	\$ (84)	-14 %	\$ 1,120	\$ 1,211	\$ (91)	-8 %	Adjusted EBITDA (1)	282	379	(97)	-26 %	645	733	(88)	-12 %	Adjusted EBITDA (1)	520	620	(100)	-16 %	1,165	1,353	(188)

(1) A non-GAAP financial measure. See *SBU Performance Analysis—Non-GAAP Measures* for definition.

Operating Margin for the three months ended **June 30, 2023** **September 30, 2023** decreased **\$66 million** **\$84 million** driven primarily by prior year favorable LNG transactions, lower contract energy sales due to lower prices, and higher cost of sales.

These losses were partially offset by higher revenues due to a PPA termination agreement and realized and unrealized gains resulting mainly from new derivatives as part of our commercial hedging strategy.

Adjusted EBITDA for the three months ended September 30, 2023 decreased \$100 million primarily due to the drivers above, adjusted for NCI, unrealized derivative gains, and depreciation.

Operating Margin for the nine months ended September 30, 2023 decreased \$91 million driven primarily by prior year favorable LNG transactions, higher cost of sales, lower thermal dispatch substituted with renewable sources, the recognition of unrealized losses due to the termination of a PPA and lower insurance proceeds.

These losses were partially offset by lower outages, higher contract energy sales due to higher prices and unrealized gains resulting from derivatives as part of our commercial hedging strategy.

Adjusted EBITDA for the three months ended June 30, 2023 decreased \$97 million primarily due to the drivers above adjusted for NCI and unrealized derivatives losses, higher realized foreign currency losses and lower insurance recovery.

Operating Margin for the six months ended June 30, 2023 decreased \$7 million driven primarily by higher cost of sales, lower thermal dispatch substituted with renewable sources, the recognition of unrealized losses due to the termination of a PPA, agreement, and a prior year's year one-time revenue recognition driven by a reduction in a project's expected completion costs.

These losses were partially offset by unrealized gains resulting mainly from new derivatives as part of our commercial hedging strategy, favorable LNG transactions, higher revenues due to a PPA termination agreement, lower outages, and lower depreciation expense due to impairments recognized in the prior year.

Adjusted EBITDA for the **six** nine months ended **June 30, 2023** **September 30, 2023** decreased **\$88** **\$188 million** primarily due to the

drivers above, adjusted for NCI, unrealized derivatives **losses**, **gains**, depreciation, higher realized foreign currency losses, and lower insurance recovery.

## New Energy Technologies SBU

The following table summarizes Operating Margin and Adjusted EBITDA (in millions) for the periods indicated:

	Three Months Ended June 30,				Six Months Ended June 30,				Three Months Ended September 30,				Nine Months Ended September 30,																						
	2023		2022		\$ Change		% Change		2023		2022		\$ Change		% Change		2023		2022		\$ Change		% Change												
	Operating Margin	\$ (2)	\$ (1)	\$ (1)	100 %	\$ (6)	\$ (3)	\$ (3)	-100 %	Operating Margin	\$ (2)	\$ (2)	\$ —	— %	\$ (8)	\$ (5)	\$ (3)	-60 %	Adjusted EBITDA (1)	(13)	(26)	13	-50 %	(39)	(61)	22	36 %	Adjusted EBITDA (1)	(22)	(27)	5	-19 %	(61)	(88)	27

(1) A non-GAAP financial measure. See *SBU Performance Analysis—Non-GAAP Measures* for definition.

Operating Margin for the three months ended **June 30, 2023** decreased \$1 million, **September 30, 2023** remained flat, with no material drivers.

Adjusted EBITDA for the three months ended **June 30, 2023** **September 30, 2023** increased **\$13 million** **\$5 million** primarily driven by lower losses at Fluence, whose results are reported as *Net equity in losses of affiliates* on our Condensed Consolidated Statements of Operations, mainly attributable to improved margins on a new product line.

Operating Margin for the nine months ended September 30, 2023 decreased \$3 million, with no material drivers.

Adjusted EBITDA for the nine months ended September 30, 2023 increased \$27 million primarily due to improved margins on a new product line, the issuance of price increase change orders during the period, the settlement of contractual claims with a battery module vendor, and incremental costs incurred in the prior year as a result of COVID-19. These increases in operating margin were partially offset by higher costs for research and development, sales and marketing, and general and administrative expenses.

Operating Margin for the six months ended June 30, 2023 decreased \$3 million, with no material drivers.

Adjusted EBITDA for the six months ended June 30, 2023 increased \$22 million primarily due to the same drivers as for the three months ended June 30, 2023.

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## Key Trends and Uncertainties

During 2023 and beyond, we expect to face the following challenges at certain of our businesses. Management expects that improved operating performance at certain businesses, growth from new businesses, and global cost reduction initiatives may lessen or offset their impact. If these favorable effects do not occur, or if the challenges described below and elsewhere in this section impact us more significantly than we currently anticipate, or if volatile foreign currencies and commodities move more unfavorably, then these adverse factors (or other adverse factors unknown to us) may have a material impact on our operating margin, net income attributable to The AES Corporation, and cash flows. We continue to monitor our operations and address challenges as they arise. For the risk factors related to our business, see Item 1.—*Business* and Item 1A.—*Risk Factors* of our 2022 Form 10-K.

### Operational

**Trade Restrictions and Supply Chain** — On March 29, 2022, the U.S. Department of Commerce (“Commerce”) announced the initiation of an investigation into whether imports into the U.S. of solar cells and panels imported from Cambodia, Malaysia, Thailand, and Vietnam are circumventing antidumping and countervailing duty orders on solar cells and panels from China. This investigation resulted in significant systemic disruptions to the import of solar cells and panels from Southeast Asia. On June 6, 2022, President Biden issued a Proclamation waiving any tariffs that result from this investigation for a 24-month period. Since President Biden’s Proclamation, suppliers in Southeast Asia have imported cells and panels again to the U.S.

On December 2, 2022, Commerce issued country-wide affirmative preliminary determinations that circumvention had occurred in each of the four Southeast Asian countries. Commerce also evaluated numerous individual companies and issued preliminary determinations that circumvention had occurred with respect to many but not all of these companies. Additionally, Commerce issued a preliminary determination that circumvention would not be deemed to occur for any solar cells and panels imported from the four countries if the wafers were manufactured outside of China or if no more than two out of six specifically identified components were produced in China. **On August 18, 2023, Commerce issued its final determination on the matter and affirmed its preliminary determinations could be modified and final determinations from findings in most respects.** Additionally, **Commerce are currently expected in August 2023, found that three of the specific companies it investigated were not circumventing.**

We have contracted and secured our expected requirements for solar panels for U.S. projects targeted to achieve commercial operations in 2023 and 2024.

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Additionally, the Uyghur Forced Labor Prevention Act (“UFLPA”) seeks to block the import of products made with forced labor in certain areas of China and may lead to certain suppliers being blocked from importing solar cells and panels to the U.S. While this has impacted the U.S. market, AES has managed this issue without significant impact to our projects. Further disruptions may impact our suppliers’ ability or willingness to meet their contractual agreements or to continue to supply cells or panels into the U.S. market on terms that we deem satisfactory.

The impact of any **additional** adverse Commerce determination, **determinations or other tariff disputes or litigation**, the impact of the UFLPA, **potential future disruptions to the solar panel supply chain and their effect on AES’ U.S. solar project development and construction activities** **are remain** uncertain. AES will continue to monitor developments and take prudent steps towards maintaining a robust supply chain for our renewable projects.

**Operational Sensitivity to Dry Hydrological Conditions** — Our hydroelectric generation facilities are sensitive to changes in the weather, particularly the level of water inflows into generation facilities. In the past, dry hydrological conditions in Panama, Brazil, Colombia and Chile have presented challenges for our businesses in these markets. Low rainfall and water inflows have caused reservoir levels to be below historical levels, reduced generation output, and increased prices for electricity. If our hydroelectric generation facilities cannot generate sufficient energy to meet contractual arrangements, we may need to purchase energy to fulfill our obligations, which could have a material adverse impact on our results of operations. As a mitigation measure, AES has invested in thermal, wind, and solar generation assets, which have a complementary profile to hydroelectric. These plants are expected to have a higher generation in low hydrology scenarios, which allows them to generate additional revenues from the spot market that offset purchases on the hydroelectric side.

According to the National Oceanic and Atmospheric Administration (“NOAA”), El Niño conditions are observed and forecasted through the beginning of **U.S. spring of 2024, with a 60% probability of extending into mid-2024.** In Panama, the El Niño phenomenon typically means drier conditions than average, although local system impacts may vary due to other factors. Lower hydrology may result in increased energy purchases to cover contracted positions, or less energy available to sell in the spot market after fulfilling contract obligations. Consistent with expected El Niño impacts, local hydrological forecasts in Panama indicate below historical average inflows persisting through the

beginning of the rainy season, which could impact our results of operations. AES reduced its total generation exposure in Panama to dry hydrological conditions through investments in such complementary assets as the Colon LNG power facility, which commenced operations

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in 2018, the Penonome Wind Farm, and solar projects, providing a stable and independent diversified energy supply during periods of drought or when hydroelectric generation is limited.

In Brazil, El Niño generally means more rainfall in the southern region of the country, where system reservoir levels are currently high, mitigating El Niño risk. In Colombia, El Niño is characterized by drought and may result in higher spot prices. Lower overall AES Chivor hydrology may result in increased spot price energy purchases exposure to cover contracted positions. However, the The basin where AES Chivor is located typically experiences dry conditions that are less severe than the broader system and could within periods of El Niño from June through September, which can result in additional energy available to sell in the spot market after fulfilling contract obligations. In the case of Chile, a strong El Niño impact during Chilean winter (June to September) suggests wetter hydrology, which the primary driver for AES' hydro assets is snowpack volumes. Lower snowpack, together with reduced rainfall in the system, could reduce increase both spot prices benefiting the cost of and energy purchases. High temperatures and spring rains could cause an accelerated snowmelt, purchase volumes required to meet contracted positions.

The exact behavior pattern and strength of El Niño cannot be definitively known at this time and therefore the impacts could vary from those described above, and may include impacts to our businesses beyond hydrology, including with respect to power generation from other renewable sources of energy and demand. Even if rainfall and water inflows return to historical averages, in some cases high market prices and low generation could persist until reservoir levels are fully recovered. Further, investments made in thermal, wind, and solar power generation may benefit from uncontracted spot sales at higher market prices. Impacts may be material to our results of operations.

## Macroeconomic and Political

During the past few years, some countries where our subsidiaries conduct business have experienced macroeconomic and political changes. In the event these trends continue, there could be an adverse impact on our businesses.

**Inflation Reduction Act and U.S. Renewable Energy Tax Credits** — The Inflation Reduction Act (the "IRA") was signed into law in the United States in 2022. The IRA includes provisions that are expected to benefit the U.S. clean energy industry, including increases, extensions and/or new tax credits for onshore and offshore wind, solar, storage and hydrogen projects. We expect that the extension of the current solar investment tax credits ("ITCs"), as well as higher credits available for projects that satisfy wage and apprenticeship requirements, will increase demand for our renewables products.

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Our U.S. renewables business has a 51 GW pipeline that we intend to utilize to continue to grow our business, and these changes in tax policy are supportive of this strategy. We account for U.S. renewables projects according to U.S. GAAP, which, when partnering with tax-equity investors to monetize tax benefits, utilizes the HLBV method. This method recognizes the tax-credit value that is transferred to tax equity partners at the time of its creation, which for projects utilizing the investment tax credit is in the quarter the project begins commercial operation. For projects utilizing the production tax credit, this value is recognized over 10 years as the facility produces energy. In 2022, we realized \$267 million of earnings from Tax Attributes. In 2023, we expect an increase in Tax Attributes earned by our U.S. renewables business in line with the growth of that business. Based on construction schedules, a significant portion of these earnings will be realized in the fourth quarter.

The implementation of the IRA is expected to require substantial guidance from the U.S. Department of Treasury and other government agencies. While that guidance is pending, there will be uncertainty with respect to the implementation of certain provisions of the IRA.

**Global Tax** — The macroeconomic and political environments in the U.S. and in some countries where our subsidiaries conduct business have changed during 2022 and 2023. This could result in significant impacts to tax law.

In the U.S., the IRA includes a 15% corporate alternative minimum tax based on adjusted financial statement income. Additional guidance is expected to be issued in 2023.

In the fourth quarter of 2022, the European Commission adopted an amended Directive on Pillar 2 establishing a global minimum tax at a 15% rate. The adoption requires EU Member States to transpose the Directive into their respective national laws by December 31, 2023 for the rules to come into effect as of January 1, 2024. We will continue to monitor the issuance of draft legislation in Bulgaria, the Netherlands, and as well as other relevant EU Member States, non-EU countries where the Company operates that are considering Pillar 2 amendments. The impact to the Company remains unknown but may be material.

**Inflation** — In the markets in which we operate, there have been higher rates of inflation recently. While most of our contracts in our international businesses are indexed to inflation, in general, our U.S.-based generation contracts are not indexed to inflation. If inflation continues to increase in our markets, it may increase our expenses that we may not be able to pass through to customers. It may also increase the costs of some of our development

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projects that could negatively impact their competitiveness. Our utility businesses do allow for recovering of operations and maintenance costs through the regulatory process, which may have timing impacts on recovery.

**Interest Rates** — In the U.S. and other markets in which we operate, there has been a rise in interest rates recently. From July 1 to September 30, 2023, the yield on 10-year U.S. Treasury Notes rose from 3.84% to 4.57%.

As discussed in Item 3—*Quantitative and Qualitative Disclosures about Market Risk*, although most of our existing corporate and subsidiary debt is at fixed rates, an increase in interest rates can have several impacts on our business. For any existing debt under floating rate structures and any future debt refinancings, rising interest rates will increase future financing costs. In most cases in which we have floating rate debt, our revenues serving this debt are indexed to inflation which helps mitigate the impact of rising rates. For future debt refinancings, AES actively manages a hedging program to reduce uncertainty and exposure to future interest rates. For new business, higher interest rates increase the financing costs for new projects under development and which have not yet secured financing.

AES typically seeks to incorporate expected financing costs into our new PPA pricing such that we maintain our target investment returns, but higher financing costs may negatively impact our returns or the competitiveness of some of our development projects. Additionally, we typically seek to enter into interest rate hedges shortly after signing PPAs to mitigate the risk of rising interest rates prior to securing long-term financing.

**Puerto Rico** — As discussed in Item 7—*Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Trends and Uncertainties* of the 2022 Form 10-K, our subsidiaries in Puerto Rico have long-term PPAs with state-owned PREPA, which has been facing economic challenges that could result in a material adverse effect on our business in Puerto Rico. Despite the Title III protection, PREPA has been making substantially all of its payments to the generators in line with historical payment patterns.

The Puerto Rico Oversight, Management, and Economic Stability Act ("PROMESA") was enacted to create a structure for exercising federal oversight over the fiscal affairs of U.S. territories and created procedures for adjusting debt accumulated by the Puerto Rico government and, potentially, other territories ("Title III"). PROMESA also expedites the approval of key energy projects and other critical projects in Puerto Rico.

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PROMESA allowed for the establishment of an Oversight Board with broad powers of budgetary and financial control over Puerto Rico. The Oversight Board filed for bankruptcy on behalf of PREPA under Title III in July 2017. As a result of the bankruptcy filing, AES Puerto Rico and AES Ilumina's non-recourse debt of \$143 million and \$25 million, respectively, continue to be in technical default and are classified as current as of **June 30, 2023** September 30, 2023. The non-recourse debt at AES Puerto Rico is also in payment default.

On April 12, 2022, a mediation team was appointed to prepare the plan to resolve the PREPA Title III case and related proceedings. A disclosure statement hearing was held on April 28, 2023. The mediation was extended through August 4, 2023. The judge presiding over the case entered an order setting the confirmation schedule for PREPA's third amended Plan of Adjustment as March 4, 2024 through March 15, 2024. The next hearing on PREPA's disclosure statement is scheduled for November 14, 2023.

Earlier this year, AES Puerto Rico took certain measures to address identified liquidity challenges. On July 6, 2023, PREPA agreed to the release of funds in the escrow account guaranteeing AES Puerto Rico's obligations under the Power Purchase and Operating Agreement ("PPOA") in order to provide additional liquidity for the business. Additionally, AES Puerto Rico entered into a standstill and forbearance agreement with its noteholders because of the insufficiency of funds to meet the principal and interest obligations on its Series A Bond Loans due and payable on June 1, 2023, and going forward. AES Puerto Rico continues to work with PREPA and its noteholders on these liquidity challenges.

Despite these challenges and considering the information available as of the filing date, management believes the carrying amount of our long-lived assets at AES Puerto Rico of \$63 million is recoverable as of **June 30, 2023** September 30, 2023. However, it is reasonably possible that the estimate of undiscounted cash flows may change in the near term resulting in the need to write down our long-lived assets in Puerto Rico to fair value.

## Decarbonization Initiatives

Our strategy involves shifting towards clean energy platforms, including renewable energy, energy storage, LNG, and modernized grids. It is designed to position us for continued growth while reducing our carbon intensity and in support of our mission of accelerating the future of energy, together. In February 2022, We have made significant progress on our exit of coal generation, and we announced our intent to exit the substantial majority of our remaining coal generation facilities by year-end 2025 and intend to exit all of the coal facilities by year-end 2027, subject to necessary approvals.

In addition, initiatives have been announced by regulators, including in Chile, Puerto Rico, and Bulgaria, and offtakers in recent years, with the intention of reducing GHG emissions generated by the energy industry. In parallel, the shift towards renewables has caused certain customers to migrate to other low-carbon energy solutions and this trend may continue.

Although we cannot currently estimate the financial impact of these decarbonization initiatives, new legislative or regulatory programs further restricting carbon emissions or other initiatives to voluntarily exit coal generation could require material capital expenditures, resulting in a reduction of the estimated useful life of certain coal facilities, or have other material adverse effects on our financial results.

For further information about the risks associated with decarbonization initiatives, see Item 1A.—*Risk Factors—Concerns about GHG emissions and the potential risks associated with climate change have led to increased regulation and other actions that could impact our businesses* included in the 2022 Form 10-K.

**AES Warrior Run PPA Termination** — On March 23, 2023, the Company entered into an agreement to terminate the PPA for its 205 MW Warrior Run coal-fired power plant. The agreement was approved by the Maryland Public Service Commission in June and became effective on June 28, 2023. As of the effective date, Warrior Run will no longer sell its electricity to the offtaker, Potomac Edison, but will continue to provide capacity through May 31, 2024 in exchange for total proceeds of \$357 million to be received in equal installments through January 2030. The previous expiration for the Warrior Run PPA was 2030. The Company is currently evaluating possible alternative uses for the facility once the PPA term expires on May 31, 2024. As of the filing date, management believes the carrying amount of our long-lived assets at Warrior Run of \$200 million is recoverable as of September 30, 2023. However, it is reasonably possible that the estimate of undiscounted cash flows may no longer support the carrying value of our long-lived assets at Warrior Run in the near term resulting in the need to write down these assets to fair value.

## Regulatory

**AES Maritza PPA Review** — DG Comp is conducting a preliminary review of whether AES Maritza's PPA with NEK is compliant with the European Union's State Aid rules. No formal investigation has been launched by DG

Comp to date. However, AES Maritza has been engaging in discussions with the DG Comp case team and the Government of Bulgaria ("GoB") to attempt to reach a negotiated resolution of the DG Comp's review ("PPA Discussions"). The PPA Discussions are ongoing and the PPA continues to remain in place. However, there can be no assurance that, in the context of the PPA Discussions, the other parties will not seek a prompt termination of the PPA.

We do not believe termination of the PPA is justified. Nevertheless, the PPA Discussions will involve a range of potential outcomes, including but not limited to the termination of the PPA and payment of some level of compensation to AES Maritza. Any negotiated resolution would be subject to mutually acceptable terms, lender consent, and DG Comp approval. At this time, we cannot predict the outcome of the PPA Discussions or when those discussions will conclude. Nor can we predict how DG Comp might resolve its review if the PPA Discussions fail to result in an agreement concerning the agency's review. AES Maritza believes that its PPA is legal and in compliance with all applicable laws, and it will take all actions necessary to protect its interests, whether through negotiated agreement or otherwise. However, there can be no assurance that this matter will be resolved favorably; if it is not, there could be a material adverse effect on the Company's financial condition, results of operations, and cash flows. As of **June 30, 2023** **September 30, 2023**, the carrying value of our long-lived assets at Maritza is **\$342 million** **\$333 million**.

**AES Ohio Distribution Rate Case** — On December 14, 2022, the PUCO issued an order on AES Ohio's application to increase its base rates for electric distribution service to address, in part, increased costs of materials and labor and substantial investments to improve distribution structures. Among other matters, the order establishes a revenue increase of \$76 million for AES Ohio's base rates for electric distribution service. This increase **will go** **went** **into effect** **when** **on** **September 1, 2023**, following the approval of AES Ohio has a new Ohio's electric security plan in place, which is expected in 2023, on August 9, 2023.

**AES Ohio Electric Security Plan** — On September 26, 2022, AES Ohio filed its latest Electric Security Plan (ESP 4) with the PUCO, which is a comprehensive plan to enhance and upgrade its network and improve service reliability, provide greater safeguards for price stability, and continue investments in local economic development. **ESP 4 also seeks to recover outstanding regulatory assets not currently in rates. AES Ohio did not propose that the Rate Stabilization Charge continue under ESP 4.**

On April 10, 2023, AES Ohio entered into a Stipulation and Recommendation with various intervening the PUCO Staff and seventeen parties (the "Settlement") with respect to AES Ohio's ESP 4 application, and, on August 9, 2023, the PUCO approved the Settlement without modification. The settlement is subject to, and conditioned upon, approval by the PUCO. The settlement would provide Settlement provides for a three-year ESP without a rate stability charge, and, in addition to other items, provides for: for the following:

- A Distribution Investment Rider for the term of the ESP allowing for the timely recovery of distribution investments by AES Ohio based on a 9.999% return on equity, subject to revenue caps;
- The recovery of \$66 million related to past expenditures by AES Ohio plus future carrying costs and the recovery of incremental vegetation management expenses up to certain annual limits during the term of ESP 4. During the third quarter of 2023, AES Ohio deferred \$28 million of previously recognized purchased power costs and an additional \$11 million of carrying costs related to this recovery; and
- Funding of programs for assistance to low-income customers and for economic development.

Upon In addition, with the approval of ESP 4, the settlement, the new distribution rates, that which were approved by the PUCO in December 2022 will become effective. An evidentiary hearing began on May 2, 2023, and AES Ohio expects an order by the PUCO in the third quarter of December 14, 2022 PUCO Order on AES Ohio's distribution rate case application, went into effect in September 2023.

**AES Indiana Regulatory Rate Review** — AES Indiana filed a petition with the IURC on June 28, 2023 for authority to increase its basic rates and charges to cover the rising operational costs and needs associated with continuing to serve its customers safely and reliably. The factors leading to AES Indiana's first base rate increase request in five years include inflationary impacts on operations and maintenance expenses, investments in reliability and resiliency improvements, and enhancements to its customer systems. AES Indiana's proposed revenue increase was \$134 million annually, or 8.9%. We expect to receive an order from the IURC by the end of the second quarter of 2024. Pending approval from the IURC, new rates are anticipated to go into effect in the summer of 2024.

## Foreign Exchange Rates

We operate in multiple countries and as such are subject to volatility in exchange rates at varying degrees at the subsidiary level and between our functional currency, the USD, and currencies of the countries in which we operate.

The overall economic climate in Argentina has deteriorated, resulting in volatility and increased the risk that a further significant devaluation of the Argentine peso against the USD, similar to the devaluations experienced by the country in 2018, 2019, and 2019, 2023, may occur. A continued trend of peso devaluation could result in increased inflation, a deterioration of the country's risk profile, and other adverse macroeconomic effects that could

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significantly impact our results of operations. For additional information, refer to Item 3.—*Quantitative and Qualitative Disclosures About Market Risk*.

## Impairments

**Long-lived Assets and Current Assets Held-for-Sale** — During the **six** **nine** months ended **June 30, 2023** **September 30, 2023**, the Company recognized asset impairment expense of **\$194 million** **\$352 million**. See Note 15—*Asset Impairment Expense* included in Item 1.—*Financial Statements* of this Form 10-Q for further information. After recognizing this impairment expense, the carrying value of long-lived assets and current assets held-for-sale that were assessed for impairment totaled **\$620 million** **\$667 million** at **June 30, 2023** **September 30, 2023**.

Events or changes in circumstances that may necessitate recoverability tests and potential impairments of long-lived assets may include, but are not limited to, adverse changes in the regulatory environment, unfavorable changes in power prices or fuel costs, increased competition due to additional capacity in the grid, technological advancements, declining trends in demand, evolving industry expectations to transition away from fossil fuel sources for generation, or an expectation it is more likely than not the asset will be disposed of before the end of its estimated useful life.

## Environmental

The Company is subject to numerous environmental laws and regulations in the jurisdictions in which it operates. The Company faces certain risks and uncertainties related to these environmental laws and regulations, including existing and potential GHG legislation or regulations, and actual or potential laws and regulations pertaining to water discharges, waste management (including disposal of coal combustion residuals) and certain air emissions, such as SO<sub>2</sub>, NO<sub>x</sub>, particulate matter, mercury, and other hazardous air pollutants. Such risks and uncertainties could result in increased capital expenditures or other compliance costs which could have a material adverse effect on certain of our U.S. or international subsidiaries and our consolidated results of operations. For further information about these risks, see Item 1A.—*Risk Factors*—*Our operations are subject to significant government regulation and could be adversely affected by changes in the law or regulatory schemes; Several of our businesses are subject to potentially significant remediation expenses, enforcement initiatives, private party lawsuits and reputational risk associated with CCR; Our businesses are subject to stringent environmental laws, rules and regulations; and Concerns about GHG emissions and the potential risks associated with climate change have led to increased regulation and other actions that could impact our businesses* included in the 2022 Form 10-K.

**CSAPR** — CSAPR addresses the “good neighbor” provision of the CAA, which prohibits sources within each state from emitting any air pollutant in an amount which will contribute significantly to any other state’s nonattainment, or interference with maintenance of, any NAAQS. The CSAPR required significant reductions in SO<sub>2</sub> and NO<sub>x</sub> emissions from power plants in many states in which subsidiaries of the Company operate. The Company is required to comply with the CSAPR in certain states, including Indiana and Maryland. The CSAPR is implemented, in part, through a market-based program under which compliance may be achievable through the acquisition and use of emissions allowances created by the EPA. The Company complies with CSAPR through operation of existing controls and purchases of allowances on the open market, as needed.

In October 2016, the EPA published a final rule to update the CSAPR to address the 2008 ozone NAAQS (“CSAPR Update Rule”). The CSAPR Update Rule found that NO<sub>x</sub> ozone season emissions in 22 states (including Indiana and Maryland) affected the ability of downwind states to attain and maintain the 2008 ozone NAAQS, and, accordingly, the EPA issued federal implementation plans that both updated existing CSAPR NO<sub>x</sub> ozone season emission budgets for electric generating units within these states and implemented these budgets through modifications to the CSAPR NO<sub>x</sub> ozone season allowance trading program. Implementation started in the 2017 ozone season (May-September 2017). Affected facilities receive fewer ozone season NO<sub>x</sub> allowances in 2017 and later, possibly resulting in the need to purchase additional allowances. Following legal challenges to the CSAPR Update Rule, on April 30, 2021, the EPA issued the Revised CSAPR Update Rule. The Revised CSAPR Update Rule required affected EGUs within certain states (including Indiana and Maryland) to participate in a new trading program, the CSAPR NO<sub>x</sub> Ozone Season Group 3 trading program. These affected EGUs received fewer NO<sub>x</sub> Ozone Season allowances beginning in 2021.

On June 5, 2023, the EPA published a final Federal Implementation Plan to address air quality impacts with

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respect to the 2015 Ozone NAAQS. The rule establishes a revised CSAPR NO<sub>x</sub> Ozone Season Group 3 trading program for 22 states, including Indiana and Maryland, and is expected to become effective during 2023. The FIP also includes enhancements to the revised Group 3 trading program, which include a dynamic budget setting process beginning in 2026, annual recalibration of the allowance bank to reflect changes to affected sources, a daily backstop

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emissions rate limit for certain coal-fired electric generating units beginning in 2024, and a secondary emissions limit prohibiting certain emissions associated with state assurance levels. It is too early to determine the impact of this final rule, but it may result in the need to purchase additional allowances or make operational adjustments.

While the Company's additional CSAPR compliance costs to date have been immaterial, the future availability of and cost to purchase allowances to meet the emission reduction requirements is uncertain at this time, but it could be material.

**Mercury and Air Toxics Standard** — In April 2012, the EPA's rule to establish maximum achievable control technology standards for hazardous air pollutants regulated under the CAA emitted from coal and oil-fired electric utilities, known as "MATS", became effective and AES facilities implemented measures to comply, as applicable. In June 2015, the U.S. Supreme Court remanded MATS to the D.C. Circuit due to the EPA's failure to consider costs before deciding to regulate power plants under Section 112 of the CAA and subsequently remanded MATS to the EPA without vacatur. On May 22, 2020, the EPA published a final finding that it is not "appropriate and necessary" to regulate hazardous air pollutant emissions from coal- and oil-fired electric generating units (EGUs) (reversing its prior 2016 finding), but that the EPA would not remove the source category from the CAA Section 112(c) list of source categories and would not change the MATS requirements. On March 6, 2023, the EPA published a final rule to revoke its May 2020 finding and reaffirm its 2016 finding that it is appropriate and necessary to regulate these emissions. On April 24, 2023, the EPA published a proposed rule to lower certain emissions limits and revise certain other aspects of MATS. It is too early to determine the potential impacts of this proposal rule.

Further rulemakings and/or proceedings are possible; however, in the meantime, MATS remains in effect. We currently cannot predict the outcome of the regulatory or judicial process, or its impact, if any, on our MATS compliance planning or ultimate costs.

**Climate Change Regulation** — On July 8, 2019, the EPA published the final Affordable Clean Energy ("ACE") Rule which would have established CO<sub>2</sub> emission rules for existing power plants under CAA Section 111(d) and would have replaced the EPA's 2015 Clean Power Plan Rule ("CPP"). However, on January 19, 2021, the D.C. Circuit vacated and remanded the ACE Rule. Subsequently, on June 30, 2022, the Supreme Court reversed the judgment of the D.C. Circuit Court and remanded for further proceedings consistent with its opinion holding that the "generation shifting" approach in the CPP exceeded the authority granted to the EPA by Congress under Section 111(d) of the CAA. As a result of the June 30, 2022 Supreme Court decision, on October 27, 2022, the D.C. Circuit issued a partial mandate, holding pending challenges to the ACE Rule in abeyance while the EPA developed a replacement rule. On May 23, 2023, EPA published a proposed rule that would vacate the ACE Rule, establish emissions guidelines in the form of CO<sub>2</sub> emissions limitations for certain existing electric generating units (EGUs) and would require states to develop State Plans that establish standards of performance for such EGUs that are at least as stringent as EPA's emissions guidelines. Depending on various EGU-specific factors, the bases of proposed emissions guidelines range from routine methods of operation to carbon capture and sequestration or co-firing low-GHG hydrogen starting in the 2030s. We are still reviewing the proposed rule and the impact of the proposed rule, the results of further proceedings, and potential future greenhouse gas emissions regulations remain uncertain but could be material.

**Waste Management** — On October 19, 2015, an EPA rule regulating CCR under the Resource Conservation and Recovery Act as nonhazardous solid waste became effective. The rule established nationally applicable minimum criteria for the disposal of CCR in new and currently operating landfills and surface impoundments, including location restrictions, design and operating criteria, groundwater monitoring, corrective action and closure requirements, and post-closure care. The primary enforcement mechanisms under this regulation would be actions commenced by the states and private lawsuits. On December 16, 2016, the Water Infrastructure Improvements for the Nation Act ("WIN Act") was signed into law. This includes provisions to implement the CCR rule through a state permitting program, or if the state chooses not to participate, a possible federal permit program. If this rule is finalized before Indiana or Puerto Rico establishes a state-level CCR permit program, AES CCR units in those locations could eventually be required to apply for a federal CCR permit from the EPA. The EPA has indicated that it will implement a phased approach to amending the CCR Rule, which is ongoing. On August 28, 2020, the EPA published final amendments to the CCR Rule titled "A Holistic Approach to Closure Part A: Deadline to Initiate Closure," that, among other amendments, required certain CCR units to cease waste

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receipt and initiate closure by April 11, 2021. The CCR Part A Rule also allowed for extensions of the April 11, 2021 deadline if the EPA determines certain criteria are met. Facilities seeking such an extension were required to submit a demonstration to the EPA by November 30, 2020. On January 11, 2022, the EPA released the first in a series of proposed determinations regarding CCR Part A Rule demonstrations and compliance-related letters notifying certain other facilities of their compliance obligations under the federal CCR regulations. The determinations and letters

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include interpretations regarding implementation of the CCR Rule. On April 8, 2022, petitions for review were filed challenging these EPA actions. The petitions are consolidated in *Electric Energy, Inc. v. EPA*. It is too early to determine the direct or indirect impact of these letters or any determinations that may be made.

On May 18, 2023, EPA published a proposed rule that would expand the scope of CCR units regulated by the CCR Rule to include inactive surface impoundments at inactive generating facilities as well as additional inactive and closed landfills and certain other accumulations of CCR. We are still reviewing the proposal and it is too early to determine the potential impact.

The CCR rule, current or proposed amendments to or interpretations of the CCR rule, the results of groundwater monitoring data, or the outcome of CCR-related litigation could have a material impact on our business, financial condition, and results of operations. AES Indiana would seek recovery of any resulting expenditures; however, there is no

guarantee we would be successful in this regard.

**Cooling Water Intake** —The Company's facilities are subject to a variety of rules governing water use and discharge. In particular, the Company's U.S. facilities are subject to the CWA Section 316(b) rule issued by the EPA effective in 2014 that seeks to protect fish and other aquatic organisms drawn into cooling water systems at power plants and other facilities. These standards require affected facilities to choose among seven BTA options to reduce fish impingement. In addition, certain facilities must conduct studies to assist permitting authorities to determine whether and what site-specific controls, if any, would be required to reduce entrainment of aquatic organisms. It is possible that this process, which includes permitting and public input, could result in the need to install closed-cycle cooling systems (closed-cycle cooling towers), or other technology. Finally, the standards require that new units added to an existing facility to increase generation capacity are required to reduce both impingement and entrainment. It is not yet possible to predict the total impacts of this final rule at this time, including any challenges to such final rule and the outcome of any such challenges. However, if additional capital expenditures are necessary, they could be material.

AES Southland's current plan is to comply with the SWRCB OTC Policy by shutting down and permanently retiring all existing generating units at AES Alamitos, AES Huntington Beach, and AES Redondo Beach that utilize OTC by the compliance dates included in the OTC Policy. On August 15, 2023, the State Water Board considered the SACCWIS recommendation and adopted an amendment to the OTC Policy that established a final compliance date of December 31, 2026 for the Alamitos and Huntington Beach facilities. This extension is contingent upon the facilities participating in the Strategic Reserve established by AB 205.

The Company's California subsidiaries have signed 20-year term PPAs with Southern California Edison for the new generating capacity, which have been approved by the California Public Utilities Commission. Construction of new generating capacity began in June 2017 at AES Huntington Beach and July 2017 at AES Alamitos. The new air-cooled combined cycle gas turbine generators and battery energy storage systems were constructed at the AES Alamitos and AES Huntington Beach generating stations. The new air-cooled combined cycle gas turbine generators at the AES Alamitos and AES Huntington Beach generating stations began commercial operation in early 2020 and there is currently no plan to replace the OTC generating units at the AES Redondo Beach generating station following the retirement. Certain OTC units were required to be retired in 2019 to provide interconnection capacity and/or emissions credits prior to startup of the new generating units, and the remaining AES OTC generating units in California will be shutdown and permanently retired by the OTC Policy compliance dates for these units. The SWRCB OTC Policy required the shutdown and permanent retirement of all remaining OTC generating units at AES Alamitos, AES Huntington Beach, and AES Redondo Beach by December 31, 2020. The initial amendment extended the deadline for shutdown and retirement of AES Alamitos and AES Huntington Beach's remaining OTC generating units to December 31, 2023 and extended the deadline for shutdown and retirement of AES Redondo Beach's remaining OTC generating units to December 31, 2021 (the "AES Redondo Beach Extension"). In October 2020, the cities of Redondo Beach and Hermosa Beach filed a state court lawsuit challenging the AES Redondo Beach Extension. AES opposed the action and the court granted an order dismissing the matter. The case remains open subject to the resolution of counter claims between parties other than AES. Plaintiffs have initiated an additional challenge to the permit, and the outcome of that lawsuit is unclear. On March 16, 2021 the SACCWIS released their draft 2021 report to SWRCB. The report summarizes the State of California's current electrical grid reliability needs and recommended a two-year extension to the compliance schedule for AES Redondo Beach to address system-wide grid reliability needs. The SWRCB public hearing regarding the final decision on the amendment of the OTC policy was held on October 19, 2021 and the Board voted in favor of extending the compliance date for AES Redondo Beach to December 31, 2023. The AES Redondo Beach NPDES permit has been administratively extended. On September 30, 2022, the Statewide Advisory Committee on Cooling Water Intake Structures approved a recommendation to the SWRCB to consider an extension of the OTC compliance dates for AES Huntington Beach, LLC and AES Alamitos, LLC, to December 31, 2026, in support of grid

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reliability. SWRCB released a draft OTC Policy amendment early in 2023 to be heard by the SWRCB on March 7, 2023. The final decision from SWRCB is expected during the second half of 2023.

Power plants are required to comply with the more stringent of state or federal requirements. At present, the California state requirements are more stringent and have earlier compliance dates than the federal EPA requirements, and are therefore applicable to the Company's California assets.

Challenges to the federal EPA's rule were filed and consolidated in the U.S. Court of Appeals for the Second Circuit, although implementation of the rule was not stayed while the challenges proceeded. On July 23, 2018, the U.S. Court of Appeals for the Second Circuit upheld the rule. The Second Circuit later denied a petition by environmental groups for rehearing. The Company anticipates that compliance with CWA Section 316(b) regulations and associated costs could have a material impact on our consolidated financial condition or results of operations.

**Water Discharges** —In June 2015, the EPA and the U.S. Army Corps of Engineers ("the agencies" Agencies) published a rule defining federal jurisdiction over waters of the U.S., known as the "Waters of the U.S." (WOTUS) ("WOTUS") rule. This rule, which initially became effective in August 2015, could expand or otherwise change WOTUS defines the number geographic reach and types of waters or features subject to CWA permitting. However, after repealing the 2015 WOTUS rule on October 22, 2019, the agencies, on April 21, 2020, issued the final "Navigable Waters Protection" (NWP) rule which again revised the definition of waters authority of the U.S. On August 30, 2021, the U.S. District Court for the District of Arizona issued an order vacating Agencies to regulate streams, wetlands, and remanding the NWP Rule. The agencies again interpreted waters of the U.S. consistent with the pre-2015 regulatory regime. On January 18, 2023, the agencies published a final rule to define the scope of waters regulated other water bodies under the CWA. The rule restored regulations defining WOTUS that were in place prior to 2015, with updates intended to be consistent with relevant There have been multiple Supreme Court decisions, decisions and dueling regulatory definitions over the past several years concerning the proper standard for how to properly determine whether a wetland or stream that is not navigable is considered a WOTUS. On April 12, 2023, the U.S. District Court for the District of North Dakota granted a motion which enjoined the agencies from implementing the 2023 final rule interpretation of the scope of waters of the U.S. resulting in the pre-2015 regulatory regime applying in a group of states.

The scope of waters of the U.S. has also been addressed by the Supreme Court. On January 24, 2022 May 25, 2023, the U.S. Supreme Court granted certiorari on rendered a wetlands decision ("Decision") in the case (of *Sackett v. EPA Environmental Protection Agency*) on, addressing the limited question of: "Whether the Ninth Circuit set forth the proper test for determining whether wetlands are 'waters' definition of the United States' under the Clean Water Act." The Ninth Circuit employed Justice Kennedy's "significant nexus" test from the 2006 *Rapanos v. United States* decision; the plurality opinion in *Rapanos* required a water body WOTUS with regards to have a "continuous surface connection" with a water of the United States in order to be considered a wetland covered by the CWA. On May 25, 2023, U.S. Supreme Court issued This decision provides a decision upholding clear standard that substantially restricts the *Rapanos* "continuous surface connection" Agencies' ability to regulate certain types of wetlands and rejected the "significant nexus"

standard, and determined that only streams. Specifically, under this decision, wetlands that do not have a continuous surface connection to a with traditional interstate navigable water are included not federally jurisdictional.

On September 8, 2023, the Agencies published final rule amendments in the Federal Register to amend the final "Revised Definition of 'Waters of the United States'" rule. This final rule conforms the definition of WOTUS to the definition adopted in the Decision. The Agencies announced plans to issue a new WOTUS rule in light have amended key aspects of the Sackett decision, regulatory text to conform the rule to the Decision. It is too early to determine whether the outcome of litigation or current or future revisions to rules interpreting federal jurisdiction over WOTUS may have a material impact on our business, financial condition, or results of operations.

In November 2015, the EPA published its final ELG rule to reduce toxic pollutants discharged into waters of the U.S. by steam-electric power plants through technology applications. These effluent limitations for existing and new sources include dry handling of fly ash, closed-loop or dry handling of bottom ash, and more stringent effluent limitations for flue gas desulfurization wastewater. AES Indiana Petersburg has installed a dry bottom ash handling system in response to the CCR rule and wastewater treatment systems in response to the NPDES permits in advance of the ELG compliance date. Other U.S. businesses already include dry handling of fly ash and bottom ash and do not generate flue gas desulfurization wastewater. Following the 2019 U.S. Court of Appeals vacature and remand of portions of the 2015 ELG rule related to leachate and legacy water, on March 29, 2023, EPA published a proposed rule revising the 2020 Reconsideration Rule. The proposed rule would establish new best available technology economically achievable effluent limits for flue gas desulfurization wastewater, bottom ash treatment water, and combustion residual leachate. It is too early to determine whether any outcome of litigation or current or future revisions to the ELG rule might have a material impact on our business, financial condition, and results of operations.

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## Capital Resources and Liquidity

### Overview

As of June 30, 2023 September 30, 2023, the Company had unrestricted cash and cash equivalents of \$1.3 billion \$1.8 billion, of which \$35 million \$51 million was held at the Parent Company and qualified holding companies. The Company had \$713 million \$538 million in short-term investments, held primarily at subsidiaries, and restricted cash and debt service reserves of \$688 million \$570 million. The Company also had non-recourse and recourse aggregate principal amounts of debt outstanding of \$20.9 billion \$21.6 billion and \$5.5 billion \$5.6 billion, respectively. Of the \$2.4 billion \$3.1 billion of our current non-recourse debt, \$2.3 billion \$2.7 billion was presented as such because it is due in the next twelve months and \$1.75 million \$32 million relates to debt considered in default. Defaults at AES Puerto Rico are covenant and payment defaults, for which forbearance and standstill agreements have been signed. See Item 2.—*Management's Discussion and Analysis of Financial Condition and Results of Operations—Key Trends and Uncertainties—Macroeconomic and Political—Puerto Rico* for additional detail. All other defaults are not payment defaults but are instead technical defaults triggered by failure to comply with covenants or other requirements contained in the non-recourse debt documents. As of June 30, 2023 September 30, 2023, the Company also had \$617 \$775 million outstanding related to supplier financing arrangements, which are classified as *Accrued and other*

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### liabilities.

We expect current maturities of non-recourse debt, recourse debt, and amounts due under supplier financing arrangements to be repaid from net cash provided by operating activities of the subsidiary to which the liability relates, through opportunistic refinancing activity, or some combination thereof. We have \$500 million \$700 million in recourse debt which matures within the next twelve months, as well as amounts due under supplier financing arrangements, of which \$447 \$607 million has a Parent Company guarantee. From time to time, we may elect to repurchase our outstanding debt through cash purchases, privately negotiated transactions, or otherwise when management believes that such securities are attractively priced. Such repurchases, if any, will depend on prevailing market conditions, our liquidity requirements, and other factors. The amounts involved in any such repurchases may be material.

We rely mainly on long-term debt obligations to fund our construction activities. We have, to the extent available at acceptable terms, utilized non-recourse debt to fund a significant portion of the capital expenditures and investments required to construct and acquire our electric power plants, distribution companies, and related assets. Our non-recourse financing is designed to limit cross-default risk to the Parent Company or other subsidiaries and affiliates. Our non-recourse long-term debt is a combination of fixed and variable interest rate instruments. Debt is typically denominated in the currency that matches the currency of the revenue expected to be generated from the benefiting project, thereby reducing currency risk. In certain cases, the currency is matched through the use of derivative instruments. The majority of our non-recourse debt is funded by international commercial banks, with debt capacity supplemented by multilaterals and local regional banks.

Given our long-term debt obligations, the Company is subject to interest rate risk on debt balances that accrue interest at variable rates. When possible, the Company will borrow funds at fixed interest rates or hedge its variable rate debt to fix its interest costs on such obligations. In addition, the Company has historically tried to maintain at least 70% of its consolidated long-term obligations at fixed interest rates, including fixing the interest rate through the use of interest rate swaps. These efforts apply to the notional amount of the swaps compared to the amount of related underlying debt. Presently, the Parent Company's only material unhedged exposure to variable interest rate debt relates to \$700 million in senior unsecured term loans. Additionally, commercial paper issuances are short term in nature and subject the Parent Company to interest rate risk at the time of refinancing the paper. On a consolidated basis, of the Company's \$26.7 billion \$27.5 billion of total gross debt outstanding as of June 30, 2023 September 30, 2023, approximately \$6.5 billion \$7.2 billion bore interest at variable rates that were not subject to a derivative instrument which fixed the interest rate. Brazil holds \$2.3 billion of our floating rate non-recourse exposure as variable rate instruments act as a natural hedge against inflation in Brazil.

In addition to utilizing non-recourse debt at a subsidiary level when available, the Parent Company provides a portion, or in certain instances all, of the remaining long-term financing or credit required to fund development, construction, or acquisition of a particular project. These investments have generally taken the form of equity investments or intercompany loans, which are subordinated to the project's non-recourse loans. We generally obtain the funds for these investments from our cash flows from operations,

proceeds from the sales of assets and/or the proceeds from our issuances of debt, common stock and other securities. Similarly, in certain of our businesses, the Parent Company may provide financial guarantees or other credit support for the benefit of counterparties who have entered into contracts for the purchase or sale of electricity, equipment, or other services with our subsidiaries or lenders. In such circumstances, if a business defaults on its payment or supply obligation, the Parent Company will be responsible for the business' obligations up to the amount provided for in the relevant guarantee or other credit

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support. As of **June 30, 2023** **September 30, 2023**, the Parent Company had provided outstanding financial and performance-related guarantees or other credit support commitments to or for the benefit of our businesses, which were limited by the terms of the agreements, of approximately **\$2.6 billion** **\$2.4 billion** in aggregate (excluding those collateralized by letters of credit and other obligations discussed below).

Some counterparties may be unwilling to accept our general unsecured commitments to provide credit support. Accordingly, with respect to both new and existing commitments, the Parent Company may be required to provide some other form of assurance, such as a letter of credit, to backstop or replace our credit support. The Parent Company may not be able to provide adequate assurances to such counterparties. To the extent we are required and able to provide letters of credit or other collateral to such counterparties, this will reduce the amount of credit available to us to meet our other liquidity needs. As of **June 30, 2023** **September 30, 2023**, we had **\$123 million** **\$248 million** in letters of credit under bilateral agreements, **\$100 million** **\$136 million** in letters of credit outstanding provided under our unsecured credit facilities, and **\$39 million** in letters of credit outstanding provided under our revolving credit facility, and **\$95 million** in letters of credit outstanding provided under our unsecured credit facilities facility. These letters of credit operate to guarantee performance relating to certain project development and construction activities and business operations. During the quarter ended **June 30, 2023** **September 30, 2023**, the Company paid letter of credit fees ranging from 1% to 3% per annum on the outstanding amounts.

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We expect to continue to seek, where possible, non-recourse debt financing in connection with the assets or businesses that we or our affiliates may develop, construct, or acquire. However, depending on local and global market conditions and the unique characteristics of individual businesses, non-recourse debt may not be available on economically attractive terms or at all. If we decide not to provide any additional funding or credit support to a subsidiary project that is under construction or has near-term debt payment obligations and that subsidiary is unable to obtain additional non-recourse debt, such subsidiary may become insolvent, and we may lose our investment in that subsidiary. Additionally, if any of our subsidiaries lose a significant customer, the subsidiary may need to withdraw from a project or restructure the non-recourse debt financing. If we or the subsidiary choose not to proceed with a project or are unable to successfully complete a restructuring of the non-recourse debt, we may lose our investment in that subsidiary.

Many of our subsidiaries depend on timely and continued access to capital markets to manage their liquidity needs. The inability to raise capital on favorable terms, to refinance existing indebtedness, or to fund operations and other commitments during times of political or economic uncertainty may have material adverse effects on the financial condition and results of operations of those subsidiaries. In addition, changes in the timing of tariff increases or delays in the regulatory determinations under the relevant concessions could affect the cash flows and results of operations of our businesses.

## Long-Term Receivables

As of **June 30, 2023** **September 30, 2023**, the Company had approximately **\$296 million** **\$118 million** of gross accounts receivable classified as *Other noncurrent assets*. These noncurrent receivables mostly consist of accounts receivable in the U.S. and Chile that, pursuant to amended agreements or government resolutions, have collection periods that extend beyond **June 30, 2024** **September 30, 2024**, or one year from the latest balance sheet date. **Noncurrent receivables in the U.S.** pertain to the sale of the Redondo Beach land. Noncurrent receivables in Chile pertain primarily to revenues recognized on regulated energy contracts that were impacted by the Stabilization Funds created by the Chilean government. See Note 5—*Financing Receivables* in Item 1.—*Financial Statements* of this Form 10-Q and Item 7.—*Management's Discussion and Analysis of Financial Condition and Results of Operation—Key Trends and Uncertainties—Macroeconomic and Political—Chile* included in our 2022 Form 10-K for further information.

As of **June 30, 2023** **September 30, 2023**, the Company had approximately \$1.1 billion of loans receivable primarily related to a facility constructed under a build, operate, and transfer contract in Vietnam. This loan receivable represents contract consideration related to the construction of the facility, which was substantially completed in 2015, and will be collected over the 25-year term of the plant's PPA. As of **June 30, 2023** **September 30, 2023**, **\$102 million** **\$105 million** of the loan receivable balance was classified as *Other current assets* and **\$1 billion** **\$990 million** was classified as *Loan receivable* on the Condensed Consolidated Balance Sheets. See Note 13—*Revenue* in Item 1.—*Financial Statements* of this Form 10-Q for further information.

## Cash Sources and Uses

The primary sources of cash for the Company in the **six** **nine** months ended **June 30, 2023** **September 30, 2023** were debt financings, cash flows from operating activities, purchases under supplier financing arrangements, and sales of short-term investments. The primary uses of cash in the **six** **nine** months ended **June 30, 2023** **September 30, 2023** were repayments of debt, capital expenditures, repayments of obligations under supplier financing arrangements, and purchases of short-term investments.

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The primary sources of cash for the Company in the **six** **nine** months ended **June 30, 2022** **September 30, 2022** were debt financings, cash flows from operating activities, and sales of short-term investments. The primary uses of cash in the **six** **nine** months ended **June 30, 2022** **September 30, 2022** were repayments of debt, capital expenditures, purchases of short-term investments, and acquisitions of noncontrolling interests, interests, and purchases of emissions allowances.

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A summary of cash-based activities are as follows (in millions):

Cash Sources:	Cash Sources:	Six Months Ended June 30,		Nine Months Ended September 30,	
		2023	2022	2023	2022
Borrowings under the revolving credit facilities and commercial paper program	Borrowings under the revolving credit facilities and commercial paper program	\$ 16,716	\$ 3,100	\$ 33,981	\$ 4,214
Net cash provided by operating activities				2,309	1,649
Issuance of non-recourse debt	Issuance of non-recourse debt	1,457	3,132	1,784	3,554
Issuance of recourse debt	Issuance of recourse debt	1,400	—	1,400	200
Net cash provided by operating activities		1,187	865		
Purchases under supplier financing arrangements	Purchases under supplier financing arrangements	818	173	1,307	299
Sale of short-term investments	Sale of short-term investments	706	345	1,002	654
Sales to noncontrolling interests	Sales to noncontrolling interests	189	229	371	336
Proceeds from the sale of business interests, net of cash and restricted cash sold		98	1		
Contributions from noncontrolling interests				63	122
Other	Other	21	88	101	132
<b>Total Cash Sources</b>	<b>Total Cash Sources</b>	<b>\$ 22,592</b>	<b>\$ 7,933</b>	<b>\$ 42,318</b>	<b>\$ 11,160</b>
<b>Cash Uses:</b>	<b>Cash Uses:</b>			<b>Cash Uses:</b>	
Repayments under the revolving credit facilities and commercial paper program	Repayments under the revolving credit facilities and commercial paper program	\$ (15,809)	\$ (2,269)	Repayments under the revolving credit facilities and commercial paper program	\$ (32,168)
Capital expenditures	Capital expenditures	(3,396)	(1,659)	Capital expenditures	(5,295)
Repayments of non-recourse debt	Repayments of non-recourse debt	(944)	(1,469)	Repayments of non-recourse debt	(1,262)
Repayments of obligations under supplier financing arrangements	Repayments of obligations under supplier financing arrangements	(862)	(134)	Repayments of obligations under supplier financing arrangements	(1,099)
Purchase of short-term investments	Purchase of short-term investments	(620)	(694)	Purchase of short-term investments	(764)
Dividends paid on AES common stock				Dividends paid on AES common stock	(333)
					(316)

Acquisitions of business interests, net of cash and restricted cash acquired	Acquisitions of business interests, net of cash and restricted cash acquired	(290)	(107)	Acquisitions of business interests, net of cash and restricted cash acquired	(311)	(114)
Dividends paid on AES common stock		(222)	(211)			
Distributions to noncontrolling interests	Distributions to noncontrolling interests	(147)	(93)	Distributions to noncontrolling interests	(173)	(129)
Purchase of emissions allowances	Purchase of emissions allowances	(115)	(293)	Purchase of emissions allowances	(161)	(415)
Contributions and loans to equity affiliates	Contributions and loans to equity affiliates	(112)	(169)	Contributions and loans to equity affiliates	(147)	(202)
Acquisitions of noncontrolling interests	Acquisitions of noncontrolling interests	(1)	(540)	Acquisitions of noncontrolling interests	(12)	(541)
Other	Other	(151)	(128)	Other	(345)	(303)
<b>Total Cash Uses</b>	<b>Total Cash Uses</b>	<b>\$ (22,669)</b>	<b>\$ (7,766)</b>	<b>Total Cash Uses</b>	<b>\$ (42,070)</b>	<b>\$ (10,610)</b>
<b>Net increase (decrease) in Cash, Cash Equivalents, and Restricted Cash</b>		<b>\$ (77)</b>	<b>\$ 167</b>	<b>Net increase in Cash, Cash Equivalents, and Restricted Cash</b>	<b>\$ 248</b>	<b>\$ 550</b>

## Consolidated Cash Flows

The following table reflects the changes in operating, investing, and financing cash flows for the comparative **six** **nine** month period (in millions):

Cash flows provided by (used in):	Cash flows provided by (used in):	Six Months Ended June 30,			Nine Months Ended September 30,			
		2023	2022	\$ Change	2023	2022	\$ Change	
Operating activities	Operating activities	\$ 1,187	\$ 865	\$ 322	Operating activities	\$ 2,309	\$ 1,649	\$ 660
Investing activities	Investing activities	(3,750)	(2,583)	(1,167)	Investing activities	(5,673)	(3,825)	(1,848)
Financing activities	Financing activities	2,529	1,924	605	Financing activities	3,740	2,863	877

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## Operating Activities

Net cash provided by operating activities increased **\$322 million** **\$660 million** for the **six** **nine** months ended **June 30, 2023** **September 30, 2023**, compared to the **six** **nine** months ended **June 30, 2022** **September 30, 2022**.

### Operating Cash Flows (in millions)

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<sup>(1)</sup> The change in adjusted net income is defined as the variance in *net income*, net of the total *adjustments to net income* as shown on the Condensed Consolidated Statements of Cash Flows in Item 1—*Financial Statements* of this Form 10-Q.

<sup>(2)</sup> The change in working capital is defined as the variance in total *changes in operating assets and liabilities* as shown on the Condensed Consolidated Statements of Cash Flows in Item 1—*Financial Statements* of this Form 10-Q.

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- Adjusted net income decreased **\$213 million** **\$106 million** primarily due to lower margins at our Utilities and Energy Infrastructure SBU and increases an increase in interest expense and income tax expense; partially offset by higher margin margins at our Utilities and Renewables SBU and an increase in interest income.
- Working capital requirements decreased **\$535 million** **\$766 million**, primarily due to a decrease in accounts receivable resulting from higher collections, decreases in inventory and accounts payable due to lower inventory purchases at lower prices, and a decrease in prepaid derivative assets; partially offset by the receivables under the Warrior Run PPA termination agreement and other current assets driven by decreases an increase in short-term regulatory assets and VAT receivable, lease incentives.

## Investing Activities

Net cash used in investing activities increased **\$1.2 billion** **\$1.8 billion** for the **six** **nine** months ended **June 30, 2023** **September 30, 2023**, compared to the **six** **nine** months ended **June 30, 2022** **September 30, 2022**.

### Investing Cash Flows

(in millions)

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- Acquisitions of business interests increased **\$183 million** **\$197 million**, primarily due to the acquisitions of Bellefield and Bolero Solar Park at AES Clean Energy Development and AES Andes, respectively, partially offset by the prior year acquisition of Agua Clara in the Dominican Republic.
- Cash used for short-term investing activities decreased **\$435 million** **\$675 million**, primarily as a result of higher short-term investment sales in 2023 to fund the capital expenditures of our renewable projects.
- Purchases of emissions allowances decreased **\$178 million** **\$254 million**, primarily in Bulgaria as a result of lower CO<sub>2</sub> purchases due to lower production.

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- Proceeds from the sales of business interests increased **\$97 million** due to the selldown of sPower OpCo B.
- Capital expenditures increased **\$1.7 billion** **\$2.6 billion**, discussed further below.

### Capital Expenditures

(in millions)

 913

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- (1) Growth expenditures generally include expenditures related to development projects in construction, expenditures that increase capacity of a facility beyond the original design, and investments in general load growth or system modernization.
- (2) Maintenance expenditures generally include expenditures that are necessary to maintain regular operations or net maximum capacity of a facility.
- (3) Environmental expenditures generally include expenditures to comply with environmental laws and regulations, expenditures for safety programs and other expenditures to ensure a facility continues to operate in an environmentally responsible manner.
- Growth expenditures increased **\$1.6 billion** **\$2.3 billion**, primarily driven by an increase in U.S. renewable projects.
- Maintenance expenditures increased **\$91 million** **\$247 million**, primarily due to higher transmission and distribution and renewable project investments at our Utilities SBU and increased expenditures for hydro and wind plants at our Renewables SBU.
- Environmental expenditures increased \$1 million, with no material drivers.

## Financing Activities

Net cash provided by financing activities increased **\$605 million** **\$877 million** for the **six** **nine** months ended **June 30, 2023** **September 30, 2023**, compared to the **six** **nine** months ended **June 30, 2022** **September 30, 2022**.

### Financing Cash Flows

(in millions)

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See Notes 7—Debt and 11—Equity in Item 1—*Financial Statements* of this Form 10-Q for more information regarding significant debt and equity transactions.

- The **\$1.4 billion** **\$1.2 billion** impact from recourse debt is primarily due to the issuance of senior notes due in 2028 by the Parent Company, and the issuance of a bridge loan, fully guaranteed by the Parent Company, at AES Clean Energy.

- The \$539 million \$840 million impact from non-recourse revolvers is primarily due to an increase in borrowings at our Renewables SBU to fund capital expenditures of renewable projects.
- The \$529 million impact from acquisitions of noncontrolling interests is mainly due to the acquisition of an additional 32% ownership interest in AES Andes in 2022.
- The \$330 million \$143 million impact from non-recourse revolvers supplier financing arrangements is primarily due to an increase in higher net borrowings at our the Renewables SBU, to fund capital expenditures of renewable projects, partially offset by higher net repayments at the Energy Infrastructure SBU.

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- The \$1.2 billion \$1.3 billion impact from non-recourse debt transactions is mainly due to higher net repayments at Corporate and lower net borrowings at the Energy Infrastructure SBU.
- The \$254 million \$459 million impact from the Parent Company revolver and commercial paper program is primarily due to higher net repayments in the current period.
- The \$83 million impact from supplier financing arrangements is primarily due to higher net repayments at our Energy Infrastructure and Renewables SBUs.

## Parent Company Liquidity

The following discussion is included as a useful measure of the liquidity available to The AES Corporation, or the Parent Company, given the non-recourse nature of most of our indebtedness. Parent Company Liquidity, as outlined below, is a non-GAAP measure and should not be construed as an alternative to *Cash and cash equivalents*, which is determined in accordance with GAAP. Parent Company Liquidity may differ from similarly titled measures used by other companies. The principal sources of liquidity at the Parent Company level are dividends and other distributions from our subsidiaries, including refinancing proceeds, proceeds, proceeds from debt and equity financings at the Parent Company level, including availability under our revolving credit facility and commercial paper program, program; and proceeds from asset sales. Cash requirements at the Parent Company level are primarily to

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fund interest and principal repayments of debt, construction commitments, other equity commitments, acquisitions, taxes, Parent Company overhead and development costs, and dividends on common stock.

The Company defines Parent Company Liquidity as cash available to the Parent Company, including cash at qualified holding companies, plus available borrowings under our existing credit facility and commercial paper program. The cash held at qualified holding companies represents cash sent to subsidiaries of the Company domiciled outside of the U.S. Such subsidiaries have no contractual restrictions on their ability to send cash to the Parent Company. Parent Company Liquidity is reconciled to its most directly comparable GAAP financial measure, *Cash and cash equivalents*, at the periods indicated as follows (in millions):

		June 30, 2023	December 31, 2022	September 30, 2023	December 31, 2022
Consolidated cash and cash equivalents	Consolidated cash and cash equivalents	\$ 1,322	\$ 1,374	\$ 1,765	\$ 1,374
Less: Cash and cash equivalents at subsidiaries	Less: Cash and cash equivalents at subsidiaries	(1,287)	(1,350)	(1,714)	(1,350)
Parent Company and qualified holding companies' cash and cash equivalents	Parent Company and qualified holding companies' cash and cash equivalents	35	24	51	24
Commitments under the Parent Company credit facility	Commitments under the Parent Company credit facility	1,500	1,500	1,500	1,500
Less: Letters of credit under the credit facility	Less: Letters of credit under the credit facility	(100)	(34)	(39)	(34)
Less: Borrowings under the credit facility	Less: Borrowings under the credit facility	—	(325)	—	(325)

Less: Borrowings under the commercial paper program	Less: Borrowings under the commercial paper program	(517)	—	Less: Borrowings under the commercial paper program	(604)	—
Borrowings available under the Parent Company credit facility	Borrowings available under the Parent Company credit facility	883	1,141	Borrowings available under the Parent Company credit facility	857	1,141
Total Parent Company Liquidity	Total Parent Company Liquidity	\$ 918	\$ 1,165	Total Parent Company Liquidity	\$ 908	\$ 1,165

The Company utilizes its Parent Company credit facility and commercial paper program for short term cash needs to bridge the timing of distributions from its subsidiaries throughout the year.

The Parent Company paid dividends of \$0.1659 per outstanding share to its common stockholders during the first, second, and second third quarters of 2023 for dividends declared in December 2022, February 2023, and February July 2023, respectively. While we intend to continue payment of dividends and believe we will have sufficient liquidity to do so, we can provide no assurance that we will continue to pay dividends, or if continued, the amount of such dividends.

## Recourse Debt

Our total recourse debt was \$5.5 billion \$5.6 billion and \$3.9 billion as of June 30, 2023 September 30, 2023 and December 31, 2022, respectively. See Note 7—Debt in Item 1.—Financial Statements of this Form 10-Q and Note 11—Debt in Item 8.—Financial Statements and Supplementary Data of our 2022 Form 10-K for additional detail.

We believe that our sources of liquidity will be adequate to meet our needs for the foreseeable future. This belief is based on a number of material assumptions, including, without limitation, assumptions about our ability to access the capital markets, the operating and financial performance of our subsidiaries, currency exchange rates, power market pool prices, and the ability of our subsidiaries to pay dividends. In addition, our subsidiaries' ability to declare and pay cash dividends to us (at the Parent Company level) is subject to certain limitations contained in loans, governmental provisions and other agreements. We can provide no assurance that these sources will be available when needed or that the actual cash requirements will not be greater than anticipated. We have met our interim needs for shorter-term and working capital financing at the Parent Company level with our revolving credit facility and commercial paper program. See Item 1A.—Risk Factors—*The AES Corporation's ability to make payments on its outstanding indebtedness is dependent upon the receipt of funds from our subsidiaries* of the Company's 2022 Form 10-K for additional information.

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Various debt instruments at the Parent Company level, including our revolving credit facility and commercial paper program, contain certain restrictive covenants. The covenants provide for, among other items, limitations on other indebtedness, liens, investments and guarantees; limitations on dividends, stock repurchases and other equity transactions; restrictions and limitations on mergers and acquisitions, sales of assets, leases, transactions with affiliates and off-balance sheet and derivative arrangements; maintenance of certain financial ratios; and financial and other reporting requirements. As of June 30, 2023 September 30, 2023, we were in compliance with these covenants at the Parent Company level.

## Non-Recourse Debt

While the lenders under our non-recourse debt financings generally do not have direct recourse to the Parent Company, defaults thereunder can still have important consequences for our results of operations and liquidity, including, without limitation:

- reducing our cash flows as the subsidiary will typically be prohibited from distributing cash to the Parent Company during the time period of any default;
- triggering our obligation to make payments under any financial guarantee, letter of credit, or other credit support we have provided to or on behalf of such subsidiary;

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- causing us to record a loss in the event the lender forecloses on the assets; and
- triggering defaults in our outstanding debt at the Parent Company.

For example, our revolving credit facility and outstanding debt securities at the Parent Company include events of default for certain bankruptcy-related events involving material subsidiaries. In addition, our revolving credit agreement at the Parent Company includes events of default related to payment defaults and accelerations of outstanding debt of material subsidiaries.

Some of our subsidiaries are currently in default with respect to all or a portion of their outstanding indebtedness. The total non-recourse debt classified as current in the accompanying Condensed Consolidated Balance Sheets amounts to \$2.4 billion \$3.1 billion. The portion of current debt related to such defaults was \$175 million \$332 million at June 30, 2023 September 30, 2023, all of which was non-recourse debt related to three four subsidiaries — AES Mexico Generation Holdings, AES Puerto Rico, AES Ilumina, and AES Jordan Solar. Defaults at AES Puerto Rico are covenant and payment defaults, for which forbearance and standstill agreements have been signed. All other defaults are not payment defaults, but are instead technical defaults triggered by failure to comply with other covenants or other conditions contained in the non-recourse debt documents. See Note 7—Debt in Item 1.—Financial Statements of this Form 10-Q for additional detail.

None of the subsidiaries that are currently in default are subsidiaries that met the applicable definition of materiality under the Parent Company's debt agreements as of **June 30, 2023** **September 30, 2023**, in order for such defaults to trigger an event of default or permit acceleration under the Parent Company's indebtedness. However, as a result of additional dispositions of assets, other significant reductions in asset carrying values or other matters in the future that may impact our financial position and results of operations or the financial position of the individual subsidiary, it is possible that one or more of these subsidiaries could fall within the definition of a "material subsidiary" and thereby trigger an event of default and possible acceleration of the indebtedness under the Parent Company's outstanding debt securities. A material subsidiary is defined in the Parent Company's revolving credit facility as any business that contributed 20% or more of the Parent Company's total cash distributions from businesses for the four most recently ended fiscal quarters. As of **June 30, 2023** **September 30, 2023**, none of the defaults listed above, individually or in the aggregate, results in or is at risk of triggering a cross-default under the recourse debt of the Parent Company.

## Critical Accounting Policies and Estimates

The condensed consolidated financial statements of AES are prepared in conformity with U.S. GAAP, which requires the use of estimates, judgments, and assumptions that affect the reported amounts of assets and liabilities at the date of the financial statements and the reported amounts of revenue and expenses during the periods presented.

The Company's significant accounting policies are described in Note 1 — *General and Summary of Significant Accounting Policies* of our 2022 Form 10-K. The Company's critical accounting estimates are described in Item 7.—*Management's Discussion and Analysis of Financial Condition and Results of Operations* in the 2022 Form 10-K. An accounting estimate is considered critical if the estimate requires management to make an assumption about matters that were highly uncertain at the time the estimate was made, different estimates reasonably could have been used, or if changes in the estimate that would have a material impact on the Company's financial condition or results of operations are reasonably likely to occur from period to period. Management believes that the accounting

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estimates employed are appropriate and resulting balances are reasonable; however, actual results could differ from the original estimates, requiring adjustments to these balances in future periods. The Company has reviewed and determined that these remain as critical accounting policies as of and for the **six** **nine** months ended **June 30, 2023** **September 30, 2023**.

### ITEM 3. QUANTITATIVE AND QUALITATIVE DISCLOSURES ABOUT MARKET RISK

#### Overview Regarding Market Risks

Our businesses are exposed to and proactively manage market risk. Our primary market risk exposure is to the price of commodities, particularly electricity, oil, natural gas, coal, and environmental credits. In addition, our businesses are exposed to lower electricity price trends due to increased competition, including from renewable sources such as wind and solar, as a result of lower costs of entry and lower variable costs. We operate in multiple countries and as such, are subject to volatility in exchange rates at varying degrees at the subsidiary level and between our functional currency, the USD, and currencies of the countries in which we operate. We are also exposed to interest rate fluctuations due to our issuance of debt and related financial instruments.

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The disclosures presented in this Item 3 are based upon a number of assumptions; actual effects may differ. The safe harbor provided in Section 27A of the Securities Act of 1933 and Section 21E of the Exchange Act shall apply to the disclosures contained in this Item 3. For further information regarding market risk, see Item 1A.—*Risk Factors, Fluctuations in currency exchange rates may impact our financial results and position; Wholesale power prices may experience significant volatility in our markets which could impact our operations and opportunities for future growth; We may not be adequately hedged against our exposure to changes in commodity prices or interest rates; and Certain of our businesses are sensitive to variations in weather and hydrology* of the 2022 Form 10-K.

#### Commodity Price Risk

Although we prefer to hedge our exposure to the impact of market fluctuations in the price of electricity, fuels, and environmental credits, some of our generation businesses operate under short-term sales, have contracted electricity obligations greater than supply, or operate under contract sales that leave an unhedged exposure on some of our capacity or through imperfect fuel pass-throughs. These businesses subject our operational results to the volatility of prices for electricity, fuels, and environmental credits in competitive markets. We employ risk management strategies to hedge our financial performance against the effects of fluctuations in energy commodity prices. The implementation of these strategies can involve the use of physical and financial commodity contracts, futures, swaps, and options.

The portion of our sales and purchases that are not subject to such agreements, or contracted businesses where indexation is not perfectly matched to business drivers, will be exposed to commodity price risk. When hedging the output of our generation assets, we utilize contract sales that lock in the spread per MWh between variable costs and the price at which the electricity can be sold.

AES businesses will see changes in variable margin performance as global commodity prices shift. As of **June 30, 2023** **September 30, 2023**, we project pre-tax earnings exposure on a 10% (uncorrelated) increase in commodity prices to be less than a \$5 million gain/loss for power, gas and coal and a less than \$5 million loss/gain for oil, oil for the remainder of the year. Our estimates exclude correlation of oil with coal or natural gas effects, including those due to renewable resource availability. For example, a decline in oil or natural gas prices can be accompanied by a decline in coal power price if commodity prices are correlated. In aggregate, the Company's uncontracted downside exposure occurs with lower power, lower oil, higher natural gas, and higher coal prices. Exposures at individual businesses will change as new contracts or financial hedges are executed, and our sensitivity to changes in commodity prices generally increases in later years with reduced hedge levels at some of our businesses.

Commodity prices affect our businesses differently depending on contract terms, the local market characteristics and risk management strategies. Spot power prices, contract indexation provisions, and generation costs can be directly or indirectly affected by movements in the price of natural gas, oil, and coal. We have some natural offsets across our businesses such that low commodity prices may benefit certain businesses and be a cost to others. Exposures are not perfectly linear or symmetric. The sensitivities are affected by a number of local or indirect market factors. Examples of these factors include hydrology, local energy market supply/demand balances, regional fuel supply issues, regional competition, bidding strategies, and regulatory interventions such as price caps. Operational flexibility changes the shape of our sensitivities. For instance, certain power plants may limit downside exposure by reducing dispatch in low market environments. Volume variation also affects our commodity exposure. The volume sold under contracts or retail concessions can vary based on weather and economic conditions, resulting in a higher or lower volume of sales in spot markets. Thermal unit availability and hydrology can affect the generation output available for sale and can affect the marginal unit setting power prices.

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In the Energy Infrastructure SBU, the generation businesses are largely contracted, but may have residual risk to the extent contracts are not perfectly indexed to the business drivers. At In California, our Southland our existing once-through cooling generation units ("Legacy Assets") in California are permitted Long Beach and Huntington Beach have been extended to operate through 2026 under capacity contracts with the State as part of the Strategic Reserve program. The Office of Administrative Law (OAL) is expected to confirm approval by the end of November. Our facility in Redondo Beach has been approved to retire at the end of 2023. These assets have contracts in Our ability to operate the Long Beach facility at full capacity and have seen incremental value in energy revenues through 2023 and signed agreements in April to extend operations for select units through 2026 remains subject to further state level approvals approved Time Schedule Order coverage, which is expected later this year. in late November 2023. Our Southland combined cycle gas turbine (Southland Energy) units benefit from higher power and lower gas prices, depending on the contracted or hedge position.

The AES Andes business in Chile owns assets in the central and northern regions of the country and has a portfolio of contract sales in both. A significant portion of our PPAs through 2024 include mechanisms of indexation that adjust the price of energy based on fluctuations in the price of coal, with an index defined by the specific indices and timing varying by contract, in order National Energy Commission based on the physical coal imports for the energy system. This mechanism mitigates exposures to mitigate from certain changes in the price of fuel. In the Dominican Republic, we own natural gas plants contracted under a portfolio of contract sales, and both contract and spot prices may move with commodity prices. prices through 2024.

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Additionally, the contract levels do not always match our generation availability and our assets may be sellers of spot prices in excess of contract levels or a net buyer in the spot market to satisfy contract obligations. Our assets operating in Vietnam and Bulgaria have minimal exposure to commodity price risk as they have no or minor merchant exposure and fuel is subject to a pass-through mechanism.

In the Renewables SBU, our businesses have commodity exposure on unhedged volumes and resource volatility. volatility and benefit from higher power prices, where generation exceeds contracted levels. In Colombia, we operate under a shorter-term sales strategy with spot market exposure for uncontracted volumes. Because we own hydroelectric assets there, contracts are not indexed to fuel. In Brazil, the majority of the hydroelectric and other renewable generating facilities facility volumes are covered by contract sales. Under normal hydrological volatility, spot price risk is mitigated through a regulated sharing mechanism across all hydroelectric generators in the country. Under drier conditions, the sharing mechanism may not be sufficient to cover the business' contract position, and therefore it may have to purchase power at spot prices driven by the cost of thermal generation. Our Renewables businesses in Panama are highly contracted under financial and load-following PPA type structures, exposing the business to hydrology-based variance. To the extent hydrological inflows are greater than or less than the contract volumes, the business will be sensitive to changes in spot power prices which may be driven by oil and natural gas prices in some time periods.

## Foreign Exchange Rate Risk

In the normal course of business, we are exposed to foreign currency risk and other foreign operations risks that arise from investments in foreign subsidiaries and affiliates. A key component of these risks stems from the fact that some of our foreign subsidiaries and affiliates utilize currencies other than our consolidated reporting currency, the USD. Additionally, certain of our foreign subsidiaries and affiliates have entered into monetary obligations in USD or currencies other than their own functional currencies. Certain of our foreign subsidiaries calculate and pay taxes in currencies other than their own functional currency. We have varying degrees of exposure to changes in the exchange rate between the USD and the following currencies: Argentine peso, Brazilian real, Chilean peso, Colombian peso, Dominican peso, Euro, and Mexican peso. Our exposure to certain of these currencies may be material and economic mechanisms to hedge certain of these risks may not always be available. These subsidiaries and affiliates have attempted to limit potential foreign exchange exposure by entering into revenue contracts that adjust to changes in foreign exchange rates. We also use foreign currency forwards, swaps, and options, where possible, to manage our risk related to certain foreign currency fluctuations.

AES enters into foreign currency hedges to protect economic value of the business and minimize the impact of foreign exchange rate fluctuations to AES' portfolio. While protecting cash flows, the hedging strategy is also designed to reduce forward-looking earnings foreign exchange volatility. Due to variation of timing and amount between cash distributions and earnings exposure, the hedge impact may not fully cover the earnings exposure on a realized basis, which could result in greater volatility in earnings.

AES has unhedged forward-looking earnings foreign exchange deterioration risk from the Argentina peso that could be material. Additionally, as of June 30, 2023 September 30, 2023, assuming a 10% USD appreciation, cash distributions attributable to foreign subsidiaries in the Euro may be exposed to exchange rate movement of less than a \$5 million loss. These numbers have been Sensitivities are produced by applying a one-time 10% USD appreciation to forecasted exposed cash distributions for 2023 coming from the respective subsidiaries exposed to the currencies listed above, net of the impact of outstanding hedges and holding all other variables constant. The numbers presented above are net of any transactional gains or losses. These sensitivities may change in the future as new hedges are executed or existing hedges are unwound. Additionally, updates to the forecasted cash distributions exposed to foreign exchange risk may result in further modification. The sensitivities presented do not capture the impacts of any administrative market restrictions or currency in convertibility.

## Interest Rate Risks

We are exposed to risk resulting from changes in interest rates as a result of our issuance of variable and fixed-rate debt, as well as interest rate swap, cap, floor, and option agreements.

Decisions on the fixed-floating debt mix are made to be consistent with the risk factors faced by individual businesses or plants. Depending on whether a plant's capacity payments or revenue stream is fixed or varies with inflation, we partially hedge against interest rate fluctuations by arranging fixed-rate or variable-rate financing. In certain cases, particularly for non-recourse financing, we execute interest rate swap, cap, and floor agreements to effectively fix or limit the interest rate exposure on the underlying financing. Most of our interest rate risk is related to non-recourse financings at our businesses.

As of **June 30, 2023** **September 30, 2023**, the portfolio's pre-tax earnings exposure to a one-time 100-basis-point increase in interest rates for our Argentine peso, Brazilian real, Chilean peso, Colombian peso, Euro, and USD denominated debt would be approximately **\$25** **\$15** million on interest expense for the debt denominated in these currencies. These amounts represent year to go exposure and do not take into account the historical correlation between these interest rates.

### ITEM 4. CONTROLS AND PROCEDURES

#### Evaluation of Disclosure Controls and Procedures

The Company, under the supervision and with the participation of its management, including the Company's Chief Executive Officer ("CEO") and Chief Financial Officer ("CFO"), evaluated the effectiveness of its "disclosure controls and procedures," as such term is defined in Rule 13a-15(e) under the Exchange Act, as of the end of the period covered by this Quarterly Report on Form 10-Q. Based on that evaluation, our CEO and CFO have concluded that our disclosure controls and procedures were effective as of **June 30, 2023** **September 30, 2023**, to ensure that information required to be disclosed by the Company in reports that we file or submit under the Exchange Act is recorded, processed, summarized, and reported within the time periods specified in SEC rules and forms, and include controls and procedures designed to ensure that information required to be disclosed by us in such reports is accumulated and communicated to our management, including our CEO and CFO, as appropriate, to allow timely decisions regarding required disclosures.

#### Changes in Internal Controls over Financial Reporting

There were no changes that occurred during the fiscal quarter covered by this Quarterly Report on Form 10-Q that have materially affected, or are reasonably likely to materially affect, our internal control over financial reporting.

## PART II: OTHER INFORMATION

### ITEM 1. LEGAL PROCEEDINGS

The Company is involved in certain claims, suits and legal proceedings in the normal course of business. The Company has accrued for litigation and claims when it is probable that a liability has been incurred and the amount of loss can be reasonably estimated. The Company believes, based upon information it currently possesses and taking into account established reserves for estimated liabilities and its insurance coverage, that the ultimate outcome of these proceedings and actions is unlikely to have a material adverse effect on the Company's condensed consolidated financial statements. It is reasonably possible, however, that some matters could be decided unfavorably to the Company and could require the Company to pay damages or make expenditures in amounts that could be material, but cannot be estimated as of **June 30, 2023** **September 30, 2023**. Pursuant to SEC amendments Item 103 of SEC Regulation S-K, AES' policy is to disclose environmental legal proceedings to which a governmental authority is a party if such proceedings are reasonably expected to result in monetary sanctions of greater than or equal to \$1 million.

In December 2001, Grid Corporation of Odisha ("GRIDCO") served a notice to arbitrate pursuant to the Indian Arbitration and Conciliation Act of 1996 on the Company, AES Orissa Distribution Private Limited ("AES ODPL"), and Jyoti Structures ("Jyoti") pursuant to the terms of the shareholders agreement between GRIDCO, the Company, AES ODPL, Jyoti and the Central Electricity Supply Company of Orissa Ltd. ("CESCO"), an affiliate of the Company. In the arbitration, GRIDCO asserted that a comfort letter issued by the Company in connection with the Company's indirect investment in CESCO obligates the Company to provide additional financial support to cover all of CESCO's financial obligations to GRIDCO. GRIDCO appeared to be seeking approximately \$189 million in damages, plus undisclosed penalties and interest, but a detailed alleged damage analysis was not filed by GRIDCO. The Company counterclaimed against GRIDCO for damages. In June 2007, a 2-to-1 majority of the arbitral tribunal rendered its award rejecting GRIDCO's claims and holding that none of the respondents, the Company, AES ODPL, or Jyoti, had any liability to GRIDCO. The respondents' counterclaims were also rejected. A majority of the tribunal later awarded the respondents, including the Company, some of their costs relating to the arbitration. GRIDCO filed challenges of the tribunal's awards with the local Indian court. GRIDCO's challenge of the costs award has been dismissed by the court, but its challenge of the liability award remains pending. A hearing on the liability award has not taken place to date. The Company believes that it has meritorious defenses to the claims asserted against it and will defend itself vigorously in these proceedings; however, there can be no assurances that it will be successful in its efforts.

Pursuant to their environmental audit, AES Sul and AES Florestal discovered 200 barrels of solid creosote waste and other contaminants at a pole factory that AES Florestal had been operating. The conclusion of the audit was that a prior operator of the pole factory, Companhia Estadual de Energia ("CEEE"), had been using those contaminants to treat the poles that were manufactured at the factory. On their initiative, AES Sul and AES Florestal communicated with Brazilian authorities and CEEE about the adoption of containment and remediation measures. In March 2008, the State Attorney of the state of Rio Grande do Sul, Brazil filed a public civil action against AES Sul, AES Florestal and CEEE seeking an order requiring the companies to mitigate the contaminated area located on the grounds of the pole factory and an indemnity payment of approximately R\$6 million (\$1 million). In October 2011, the State Attorney filed a request for an injunction ordering the defendant companies to contain and remove the contamination immediately. The court granted injunctive relief on October 18, 2011, but determined that only CEEE was required to perform the removal work. In May 2012, CEEE began the removal work in compliance with the injunction. The case is now awaiting judgment. The removal and remediation costs are estimated to be approximately R\$15 million to R\$60 million (\$3 million to \$12 million), and there could be additional costs which cannot be estimated at this time. In June 2016, the Company sold AES Sul to CPFL Energia S.A. and as part of the sale, AES Guaiba, a holding company of AES Sul, retained the potential liability relating to this matter. The Company believes that there are meritorious defenses to the claims asserted against it and will defend itself vigorously in these proceedings; however, there can be no assurances that it will be successful in its efforts.

In September 2015, AES Southland Development, LLC and AES Redondo Beach, LLC filed a lawsuit against the California Coastal Commission (the "CCC") over the CCC's determination that the site of AES Redondo Beach included approximately 5.93 acres of CCC-jurisdictional wetlands. The CCC has asserted that AES Redondo Beach has improperly installed and operated water pumps affecting the alleged wetlands in violation of the California Coastal Act and Redondo Beach Local Coastal Program ("LCP"). Potential outcomes of the CCC determination could include an order requiring AES Redondo Beach to perform a restoration and/or pay fines or penalties. AES Redondo Beach believes that it has meritorious arguments concerning the underlying CCC determination, but there can be no assurances that it will be successful. On March 27, 2020, AES Redondo Beach, LLC sold the site to an unaffiliated third-party purchaser that assumed the obligations contained within these proceedings. On May 26, 2020, CCC staff sent AES a NOV directing AES to submit a Coastal Development Permit ("CDP") application for the

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removal of the water pumps within the alleged wetlands. AES has submitted the CDP to the permitting authority, the City of Redondo Beach ("the City"), with respect to AES' plans to disable or remove the pumps. The NOV also directed AES to submit technical analysis regarding additional water pumps located within onsite electrical vaults and a CDP application for their continued operation. AES has responded to the CCC, providing the requested analysis and seeking further discussion with the agency regarding the CDP. On October 14, 2020, the City deemed the CDP application to be complete and indicated a public hearing will be required, at which time AES must present additional information and analysis on the pumps within the alleged wetlands and the onsite electrical vaults. AES will vigorously defend its interests with regard to the NOV, but we cannot predict the outcome of the matter at this time. However, settlements and litigated outcomes of Coastal Act and LCP claims alleged against other companies have required them to pay significant civil penalties and undertake remedial measures.

In October 2015, AES Indiana received an NOV alleging violations of the Clean Air Act ("CAA"), the Indiana State Implementation Plan ("SIP"), and the Title V operating permit related to alleged particulate and opacity violations at Petersburg Station Unit 3. In addition, in February 2016, AES Indiana received an NOV from the EPA alleging violations of New Source Review and other CAA regulations, the Indiana SIP, and the Title V operating permit at Petersburg Station. On August 31, 2020, AES Indiana reached a settlement with the EPA, the DOJ and the Indiana Department of Environmental Management ("IDEM"), resolving these purported violations of the CAA at Petersburg Station. The settlement agreement, in the form of a proposed judicial consent decree, was approved and entered by the U.S. District Court for the Southern District of Indiana on March 23, 2021, and includes, among other items, the following requirements: annual caps on NO<sub>x</sub> and SO<sub>2</sub> emissions and more stringent emissions limits than AES Indiana's current Title V air permit; payment of civil penalties totaling \$1.5 million; a \$5 million environmental mitigation project consisting of the construction and operation of a new, non-emitting source of generation at the site; expenditure of \$0.3 million on a state-only environmentally beneficial project to preserve local, ecologically-significant lands; and retirement of Units 1 and 2 prior to July 1, 2023.

In December 2018, a lawsuit was filed in Dominican Republic civil court against the Company, AES Puerto Rico, and three other AES affiliates. The lawsuit purports to be brought on behalf of over 100 Dominican claimants, living and deceased, and appears to seek relief relating to CCRs that were delivered to the Dominican Republic in 2004. The lawsuit generally alleges that the CCRs caused personal injuries and deaths and demands \$476 million in alleged damages. The lawsuit does not identify, or provide any supporting information concerning, the alleged injuries of the claimants individually. Nor does the lawsuit provide any information supporting the demand for damages or explaining how the quantum was derived. The relevant AES companies believe that they have meritorious defenses to the claims asserted against them and will defend themselves vigorously in this proceeding; however, there can be no assurances that they will be successful in their efforts.

In February 2019, a separate lawsuit was filed in Dominican Republic civil court against the Company, AES Puerto Rico, two other AES affiliates, and an unaffiliated company and its principal. The lawsuit purports to be brought on behalf of over 200 Dominican claimants, living and deceased, and appears to seek relief relating to CCRs that were delivered to the Dominican Republic in 2003 and 2004. The lawsuit generally alleges that the CCRs caused personal injuries and deaths and demands over \$900 million in alleged damages. The lawsuit does not identify or provide any supporting information concerning the alleged injuries of the claimants individually, nor does the lawsuit provide any information supporting the demand for damages or explaining how the quantum was derived. In August 2020, at the request of the relevant AES companies, the case was transferred to a different civil court ("Civil Court"). Preliminary hearings have taken place. The parties are awaiting the Civil Court's ruling on the AES respondents' motions to dismiss the lawsuit. The relevant AES companies believe that they have meritorious defenses to the claims asserted against them and will defend themselves vigorously in this proceeding; however, there can be no assurances that they will be successful in their efforts.

In October 2019, the Superintendency of the Environment (the "SMA") notified AES Andes of certain alleged breaches associated with the environmental permit of the Ventanas Complex, initiating a sanctioning process through Exempt Resolution N° 1 / ROL D-129-2019. The alleged charges include exceeding generation limits, failing to reduce emissions during episodes of poor air quality, exceeding limits on discharges to the sea, and exceeding noise limits. AES Andes has submitted a proposed "Compliance Program" to the SMA for the Ventanas Complex. The latest version of this Compliance Program was submitted on May 26, 2021. On December 30, 2021, the Compliance Program was approved by the SMA. However an ex officio action was brought by the SMA due to alleged exceedances of generation limits, which would require the Company to reduce SO<sub>2</sub>, NO<sub>x</sub> and PM emissions in order to achieve the emissions offset established in the Compliance Program. On January 6, 2022, AES Andes filed a reposition with the SMA seeking modification of the means for compliance with the ex officio action. On January 17, 2023, the SMA approved street paving measures, or alternatively a program providing heaters for community members, as the means to satisfy the air emissions offsets in the approved Compliance Plan. The cost of proposed Compliance Program is approximately \$10.8 million USD. On April 21, 2023, the SMA

notified AES Andes of a resolution alleging an additional "serious" non-compliance of the Ventanas Complex failing to reduce emissions during episodes of poor air quality. On May 24, 2023, AES Andes submitted disclaimers to the SMA in response to this resolution. AES Andes plans to vigorously defend itself through the administrative process,

but there are no guarantees that it will be successful. Fines are possible if AES Andes is unsuccessful in its defense of the April 2023 resolution and/or if the SMA determines there is an unsatisfactory execution of the Compliance Program approved in connection with the October 2019 sanctioning process.

In March 2020, Mexico's Comisión Federal de Electricidad ("CFE") served an arbitration demand upon AES Mérida III. CFE makes made allegations that AES Mérida III is was in breach of its obligations under a power and capacity purchase agreement ("Contract") between the two parties, which allegations related to CFE's own failure to provide fuel within the specifications of the Contract. CFE seeks sought to recover approximately \$200 million in payments made to AES Mérida under the Contract as well as approximately \$480 million in alleged damages for having to acquire power from alternative sources in the Yucatan Peninsula. AES Mérida has filed an answer denying liability to CFE and asserting asserted a counterclaim for damages due to CFE's breach of its obligations. The parties submitted their respective initial briefs and supporting evidence in December 2020. After additional briefing, the evidentiary hearing took place in November 2021. Closing arguments were heard in May 2022. In November 2022, the arbitration Tribunal issued is its decision in the case, rejecting CFE's claims for damages and granting AES Mérida a net amount of damages on AES Mérida's counterclaims ("Award"). There are ongoing proceedings in the Mexican courts concerning AES Mérida's attempt to enforce the Award and CFE's attempt to challenge the Award. AES Mérida believes that it has meritorious defenses and claims and will assert them vigorously in this dispute; however, there can be no assurances that it will be successful in its efforts.

On May 12, 2021, the Mexican Federal Attorney for Environmental Protection (the "Authority") initiated an environmental audit at the Termoelectrica del Peñoles ("TEP") TEP thermal generating facility. On January 20, 2023 TEP was notified of the resolution issued by the Authority, which alleges breaches of air emission regulations, including the failure to submit reports. The resolution imposes a fine of \$27,615,140 pesos (approximately USD \$1.6 million). On March 3, 2023, the facility filed a nullity judgment to challenge such resolution. Because such nullity judgment resolution, which has not yet been admitted by the local judge with an injunction granted against execution of the proposed fine during the course of the underlying proceedings. However, the local tax authority rejected receiving the bond that is required to guarantee the injunction, and as a result, TEP filed an amparo action, which was admitted a complaint on March 28, 2023. The judicial September 18, 2023 seeking to compel the tax authority has not yet ruled on to accept the amparo action, bond and recognize the validity of the injunction. The Company believes that it has meritorious defenses to the claims asserted against it and will defend itself vigorously in these proceedings; however, there can be no assurances that it will be successful in its efforts.

In February 2022, a lawsuit was filed in Dominican Republic civil court against the Company. The lawsuit purports to be brought on behalf of over 425 Dominican claimants, living and deceased, and appears to seek relief relating to CCRs that were delivered to the Dominican Republic in 2003 and 2004. The lawsuit generally alleges that the CCRs caused personal injuries and deaths and demands over \$600 million in alleged damages. The lawsuit does not identify or provide any supporting information concerning the alleged injuries of the claimants individually. Nor does the lawsuit provide any information supporting the demand for damages or explaining how the quantum was derived. The Company believes that it has meritorious defenses to the claims asserted against it and will defend itself vigorously in this proceeding; however, there can be no assurances that it will be successful in its efforts.

On July 25, 2022, AES Puerto Rico, LP ("AES-PR") received from the EPA an NOV alleging certain violations of the CAA at AES-PR's coal-fired power facility in Guayama, Puerto Rico. The NOV alleges AES-PR exceeded an emission limit and did not continuously operate certain monitoring equipment, conduct certain analyses and testing, maintain complete records, and submit certain reports as required by the EPA's Mercury and Air Toxics Standards. The NOV further alleges AES-PR did not comply fully with the facility's Title V operating permit. AES-PR is engaging in discussions with the EPA about the NOV. AES-PR will defend its interests, but we cannot predict the outcome of this matter at this time. However, settlements and litigated outcomes of CAA claims alleged against other coal-fired power plants have required companies to pay civil penalties and undertake remedial measures.

In April 2022, the Superintendency of the Environment (the "SMA") notified AES Andes of certain alleged breaches associated with the construction of the Mesamávida wind project, initiating a sanctioning process. The alleged charges include untimely implementation of road improvement measures and road use schedules and the failure to identify all noise receptors closest to the first construction phases of the project. On June 23, 2022, the SMA addressed the charges to Energía Eólica Mesamávida SpA. On June 28, 2022, Energía Eólica Mesamávida SpA submitted a proposed compliance program, with an estimated cost of \$4.3 million, which was subsequently approved by the SMA. On November 9, 2022, opponents to the project submitted before the Third Environmental Court a judicial action challenging the approval of this compliance program. On March 7, 2023, the Third

Environmental Court rejected the third-party judicial action against the Compliance Program. The deadline to appeal the decision has passed and no appeals were submitted. If the SMA determines there is an unsatisfactory execution of the compliance program, fines are possible.

In June 2020, the Energy Regulatory Commission of Mexico passed resolution RES/894/2020 that may increase the wheeling tariffs that are paid by TEG and TEP to CFE. The increase is currently estimated to be over \$130 million for the relevant period (July 2020 through March 2024). In October 2022, TEG and TEP initiated a challenge of the

constitutionality of the resolution. If that challenge is unsuccessful, TEG and TEP will seek to enforce their respective contractual rights to pass-through the tariff increases to their respective offtakers.

On January 26, 2023, the SMA notified Alto Maipo Spa of four alleged charges relating to the Alto Maipo facility, all which are categorized by the SMA as "serious." The alleged charges include untimely completion of

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intake works and insufficient capture by the provisional works, irrigation water outlet and canal contemplated by an agreement with local communities; non-compliance with the details of the forest management plans and intervention in unauthorized areas; construction of a road in a restricted paleontological area; and unlawful moving of fauna. On February 16, 2023, the Alto Maipo project submitted a compliance program, to which the SMA provided observations. On June 6, 2023, Alto Maipo responded to the SMA's observations by submitting a revised compliance program, which is currently under consideration by the SMA. In late June and early July 2023, third-party opponents submitted observations to the compliance program, claiming that the proposal to address the intake works charges is inadequate. Alto Maipo completed its submission of responses to these third-party observations in August 2023, and subsequently, new, additional observations were submitted by opponents to the project. The costs of any such compliance program are uncertain. If a compliance program is not approved by or executed to the satisfaction of the SMA, fines, revocation of the facility's RCA environmental permit approved by the SMA, or closure are possible outcomes for such alleged serious violations under applicable regulations.

#### **ITEM 1A. RISK FACTORS**

There have been no material changes to the risk factors disclosed in Item 1A.—*Risk Factors* of our 2022 Form 10-K. Additional risks and uncertainties also may adversely affect our business and operations, including those discussed in Item 2.—*Management's Discussion and Analysis of Financial Condition and Results of Operations* in this Form 10-Q.

#### **ITEM 2. UNREGISTERED SALES OF EQUITY SECURITIES AND USE OF PROCEEDS**

The Board has authorized the Company to repurchase stock through a variety of methods, including open market repurchases, purchases by contract (including, without limitation, accelerated stock repurchase programs or 10b5-1 plans), and/or privately negotiated transactions. There can be no assurances as to the amount, timing, or prices of repurchases, which may vary based on market conditions and other factors. The Program does not have an expiration date and can be modified or terminated by the Board of Directors at any time. As of **June 30, 2023** **September 30, 2023**, \$264 million remained available for repurchase under the Program. No repurchases were made by The AES Corporation of its common stock during the **second** **third** quarter of 2023.

#### **ITEM 3. DEFAULTS UPON SENIOR SECURITIES**

None.

#### **ITEM 4. MINE SAFETY DISCLOSURES**

Not applicable.

#### **ITEM 5. OTHER INFORMATION**

##### **Trading Arrangements**

None of the Company's directors or "officers," as defined in Rule 16a-1(f) of the Securities Exchange Act of 1934, as amended (the "Exchange Act"), adopted, modified, or terminated a "Rule 10b5-1 trading arrangement" or a "non-Rule 10b5-1 trading arrangement," as each term is defined in Item 408 of Regulation S-K, during the Company's fiscal quarter ended **June 30, 2023** **September 30, 2023**.

##### **Amended and Restated By-Laws**

On August 1, 2023, the Company's Board of Directors (the "Board") approved the Amended and Restated By-Laws, effective as of such date (the "Amended and Restated By-Laws"). The Amended and Restated By-Laws include certain changes to the procedures by which stockholders may recommend nominees to the Board, among other updates, including to:

- implement certain revisions to conform to recent amendments to the Delaware General Corporation Law (the "DGCL"), including (i) giving the Company the ability to provide the details for an adjourned meeting in any manner permitted by the DGCL and (ii) eliminating the requirement that the Company make a stockholder list available during a meeting of stockholders;
- address matters relating to Rule 14a-19 (the "Universal Proxy Rule") under the Exchange Act, including (i) requiring that any stockholder submitting a nomination notice make a representation as to whether such stockholder intends to solicit proxies in support of director nominees other than the Company's nominees in accordance with the Universal Proxy Rule, and if so, agree in writing that such stockholder will comply with the requirements of the Universal Proxy Rule; (ii) providing the Company a remedy if a stockholder fails to satisfy the Universal Proxy Rule requirements; (iii) requiring that a stockholder inform the Company if such stockholder no longer plans to solicit proxies in accordance with the Universal Proxy Rule; and (iv) requiring stockholders intending to use the Universal Proxy Rule to provide reasonable evidence of the satisfaction of

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the requirements under the Universal Proxy Rule at least five business days before the meeting upon request by the Company;

- revise and enhance the procedures and disclosure requirements set forth in the advance notice bylaw provisions for director nominations made and business proposals submitted by stockholders (other than proposals submitted pursuant to Rule 14a-8 under the Exchange Act), including (i) requiring additional information, representations, and disclosures regarding proposing stockholders, proposed nominees, proposed business, and other persons related to, and acting in concert with, a stockholder and the stockholder's solicitation of proxies; (ii) clarifying that stockholders are not entitled to make additional or substitute nominations or proposals after the submission deadline and may only nominate a number of candidates to the Board of Directors that does not exceed the number of directors to be elected at such meeting; (iii) requiring that if requested by the Secretary of the Company, the Board of Directors or any committee of the Board of Directors, proposed nominees make themselves available for interviews by the Board of Directors and any committee of the Board of Directors within five business days following the date of such request; and (iv) clarifying the authority of the Secretary of the Company, the Board of Directors, or any committee of the Board of Directors to request additional information or written verification to demonstrate the accuracy of previously-provided information with respect to proposing stockholders, proposed nominees, and proposed business;
- require any stockholders directly or indirectly soliciting proxies from other stockholders to use a proxy card color other than white, with the white proxy card being reserved for exclusive use by the Board;
- provide that, unless the Company consents in writing to the selection of an alternative forum, (i) the Court of Chancery in the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware) will be the sole and exclusive forum for any (A) derivative action or proceeding brought on behalf of the Company, (B) action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the Company to the Company or the Company's stockholders, (C) action asserting a claim arising pursuant to any provision of the DGCL, the Company's certificate of incorporation or the By-Laws, or (D) action asserting a claim governed by the internal affairs doctrine and (ii) the federal district courts of the United States of America will be the sole and exclusive forum for any action asserting a claim arising under the Securities Act of 1933, as amended;
- provide that the vote standard applicable to the proposal on the frequency of future advisory votes on executive compensation required by Section 14A(a)(2) of the Exchange Act (to determine whether the advisory vote on executive compensation will occur every one year, two years or three years) is a plurality of the votes cast by the Company's stockholders; and
- incorporate certain administrative, modernizing, and conforming changes to provide clarification and consistency, including regarding meetings of the Board.

The foregoing description of the Amended and Restated By-Laws does not purport to be complete and is qualified in its entirety by reference to the full text of the Amended and Restated By-Laws, which is filed as Exhibit 3.1 to this Quarterly Report on Form 10-Q and incorporated herein by reference.

#### ITEM 6. EXHIBITS

3.2	<a href="#">Amended and Restated Bylaws of The AES Corporation.</a>
4.1	<a href="#">Twenty-Eighth Supplemental Indenture, dated May 17, 2023, between The AES Corporation and Deutsche Bank Trust Company Americas, as Trustee is incorporated herein by reference to Exhibit 4.1 of the Company's Form 8-K filed on May 17, 2023.</a>
31.1	<a href="#">Rule 13a-14(a)/15d-14(a) Certification of Andrés Gluski (filed herewith).</a>
31.2	<a href="#">Rule 13a-14(a)/15d-14(a) Certification of Stephen Coughlin (filed herewith).</a>
32.1	<a href="#">Section 1350 Certification of Andrés Gluski (filed herewith).</a>
32.2	<a href="#">Section 1350 Certification of Stephen Coughlin (filed herewith).</a>
101	The AES Corporation Quarterly Report on Form 10-Q for the quarter ended <a href="#">June 30, 2023</a> <a href="#">September 30, 2023</a> , formatted in Inline XBRL (Inline Extensible Business Reporting Language): (i) the Cover Page, (ii) Condensed Consolidated Balance Sheets, (iii) Condensed Consolidated Statements of Operations, (iv) Condensed Consolidated Statements of Comprehensive Income (Loss), (v) Condensed Consolidated Statements of Changes in Equity, (vi) Condensed Consolidated Statements of Cash Flows, and (vii) Notes to Condensed Consolidated Financial Statements. The instance document does not appear in the Interactive Data File because its XBRL tags are embedded within the Inline XBRL document.
104	Cover Page Interactive Data File (formatted as Inline XBRL and contained in Exhibit 101)

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#### SIGNATURES

Pursuant to the requirements of the Securities Exchange Act of 1934, the registrant has duly caused this report to be signed on its behalf by the undersigned thereunto duly authorized.

THE AES CORPORATION  
(Registrant)

Date: [August 3](#), [November 2, 2023](#)

By: /s/ STEPHEN COUGHLIN

Name: Stephen Coughlin  
Title: *Executive Vice President and Chief Financial Officer (Principal Financial Officer)*

By: /s/ SHERRY L. KOHAN

Name: Sherry L. Kohan  
Title: *Senior Vice President and Chief Accounting Officer (Principal Accounting Officer)*

**AMENDED AND RESTATED BY-LAWS OF  
THE AES CORPORATION**

**ARTICLE I  
OFFICES**

Section 1.01 The registered office of The AES Corporation (the "Corporation") shall be at 251 Little Falls Drive, Wilmington, Delaware, 19808.

Section 1.02 The Corporation may also have offices and places of business at such other places, within or without the State of Delaware, as the Corporation's Board of Directors ("Board" or "Board of Directors") may from time to time determine or the business of the Corporation may require.

**ARTICLE II  
MEETINGS OF STOCKHOLDERS**

Section 2.01 All meetings of stockholders shall be held at such time and place within or without the State of Delaware as may be determined from time to time by the Board of Directors (or the Chairperson in the absence of a designation by the Board of Directors) as shall be stated in the notice of the meeting, or in a duly executed waiver of notice thereof. The Board of Directors may alternatively determine that a meeting of stockholders shall not be held at any place, but shall instead be held solely by means of remote communication as authorized by Section 211(a)(2) of the General Corporation Law of the State of Delaware (as the same exists or may hereafter be amended, "Delaware Law").

Section 2.02 Annual meetings of stockholders shall be held on the first Friday of June of each year, if not a legal holiday, and if a legal holiday, then on the next succeeding business day not a legal holiday, or at such other date and time as shall be designated from time to time by the Board of Directors and stated in the notice of the meeting. At the annual meeting, the stockholders shall elect a Board of Directors, and transact any other business as may properly come before the meeting.

Section 2.03 The Corporation shall prepare, no later than the tenth day before every meeting of stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder. The Corporation shall not be required to include electronic mail addresses or other electronic contact information on such list. Such list shall be open to the examination of any stockholder for any purpose germane to the meeting for a period of at least ten days ending on the day before the meeting date: (i) on a reasonably accessible electronic network, provided that the information required to gain access to such list is provided with the notice of the meeting, or (ii) during ordinary business hours, at the principal executive offices of the Corporation.

Section 2.04 (A) Special meetings of the stockholders, unless otherwise prescribed by Delaware Law or by the Certificate of Incorporation, may be held as may from time to time be designated by the Board of Directors and (1) may be called by the Chairperson of the Board, the Chief Executive Officer or by resolution adopted by a majority of the entire Board of Directors or (2) shall be called by the Chairperson of the Board or the Secretary at the written request of one or more stockholders of record that at the time a request is delivered Own (as defined in Section 2.04(F)) or who are acting on behalf of one or more stockholders or beneficial owners who Own shares

representing at least twenty-five percent (25%) (the "Requisite Percent") of the outstanding shares of the capital stock of the Corporation entitled to vote on the matter or matters to be brought before the proposed special meeting, provided a special meeting called at the request of one or more stockholders (a "Stockholder Requested Special Meeting") shall be called by the Chairperson of the Board or the Secretary only if the stockholder(s) requesting such meeting provide the information regarding such stockholder(s) and the proposed special meeting as provided herein and comply with such procedures set forth in Section 2.04(B).

(B) In order for a Stockholder Requested Special Meeting to be called by the Chairperson of the Board or the Secretary, one or more written requests for a special meeting (individually or collectively, a "Special Meeting Request") signed and dated by the stockholders of record that Own the Requisite Percent of capital stock of the Corporation (or their duly authorized agents), must be delivered to the Secretary at the principal executive offices of the Corporation and must be accompanied by:

(1) in the case of any Stockholder Requested Special Meeting at which director nominations are proposed to be presented, the information, representations and agreements required by Sections 2.16 and 9.01 of these By-Laws; and/or

(2) in the case of any Stockholder Requested Special Meeting at which any business other than nominations of persons for election to the Corporation's Board of Directors is proposed to be presented, the information required by Sections 2.15 and 2.16 of these By-Laws (which shall be in addition to the information required by Section 9.01 if director nominations are also proposed to be considered); and

(3) (a) as to each stockholder of the Corporation signing such request, or if such stockholder is a nominee or custodian, the beneficial owner(s) on whose behalf such request is signed, (i) an affidavit by each such person stating the number of shares of capital stock of the Corporation that it Owns as of the date such request was signed and agreeing to continue to Own such number of shares of capital stock through the date of the Stockholder Requested Special Meeting and an agreement by such person to update and supplement such affidavit as of the record date for the Stockholder Requested Special Meeting, and such update and supplement shall be delivered to the Secretary at the principal executive offices of the Corporation not later than five (5) business days after the record date for the meeting; provided that in the event of any decrease in the number of shares of capital stock of the Corporation Owned by such person at any time before the Stockholder Requested Special Meeting, such person's Special Meeting Request shall be deemed to have been revoked with respect to such shares of capital stock of the Corporation comprising such reduction and shall not be counted towards the calculation of the Requisite Percent, and (ii) a statement stating whether it intends to maintain Ownership of the Requisite Percent of capital stock of the Corporation for at least one year following the Stockholder Requested Special Meeting, and (b) as to the stockholder seeking to call the special meeting (or the person on whose behalf the stockholder is acting, as applicable) or any stockholder or beneficial owner who has solicited other stockholders to request the special meeting, the information required under Sections 2.15 and 2.16 as to such stockholder or beneficial owner.

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(C) One or more written requests for a special meeting delivered to the Secretary shall constitute a valid Special Meeting Request only if each such written request satisfies the requirements set forth above and has been dated and delivered to the Secretary within 60 days of the earliest dated of such requests. If the record holder is not the signatory to the Special Meeting Request, such Special Meeting Request shall not be valid unless documentary evidence is supplied to the Secretary at the time of delivery of such Special Meeting Request (or within five business days thereafter) of such signatory's authority to execute the Special Meeting Request on behalf of the record holder. Any requesting stockholder may revoke his, her or its Special Meeting Request at any time prior to the Request Receipt Date by written revocation delivered to the Secretary at the principal executive offices of the Corporation; provided, however, that if following such revocation, the unrevoked valid Special Meeting Requests represent in the aggregate less than the Requisite Percent, there shall be no requirement to hold a special meeting. The determination of the validity of a Special Meeting Request shall be made in good faith by the Board of Directors, which determination shall be conclusive and binding on the Corporation and the stockholders and the date of such determination is referred to herein as the "Request Receipt Date." A Special Meeting Request shall not be valid if: (1) such Special Meeting Request relates to an item of business that involves a violation of applicable law, is not a proper subject for stockholder action under the Certificate of Incorporation, these By-Laws or applicable law or is expressly reserved for action by the Board of Directors under the

Certificate of Incorporation, these By-Laws or applicable law, or (2) the Request Receipt Date occurs during the period commencing 90 days prior to the first anniversary of the date of the most recent annual meeting of stockholders and ending on the date of the next annual meeting of stockholders, or (3) the purpose specified in the Special Meeting Request relates to an item of business (other than the election of directors) that is the same or substantially similar (as determined in good faith by the Board of Directors, a "Similar Item") to an item of business that was presented at any meeting of stockholders held within the 12 months prior to the Request Receipt Date, or (4) a Similar Item is included in the Corporation's notice as an item of business to be brought before a stockholder meeting that has been called or that is called for a date within 90 days of the Request Receipt Date.

(D) Any special meeting of stockholders shall be held at such date and time as may be fixed by the Board of Directors in accordance with these By-Laws and in compliance with Delaware Law; provided, however that a Stockholder Requested Special Meeting shall be called for a date not more than (1) 90 days after the Request Receipt Date (or, in the case of any litigation related to the validity of the requests for a Stockholder Requested Special Meeting, 90 days after the resolution of such litigation), or (2) 50 days after the date the Corporation files definitive soliciting materials with respect to such meeting pursuant to Schedule 14A under the Securities Exchange Act of 1934, as amended and the rules and regulations promulgated thereunder (the "Exchange Act"), whichever is latest.

(E) Business transacted at any Stockholder Requested Special Meeting shall be limited to (1) the purpose(s) stated in the valid Special Meeting Request(s) received from the Requisite Percent of record holders and (2) any additional matters that the Board of Directors determines to include in the Corporation's notice of the meeting. If none of the stockholders who submitted the Special Meeting Request, or their qualified representatives (as defined in this Section 2.04(E)), attends the Stockholder Requested Special Meeting to present the matters to be presented for consideration that were specified in the Stockholder Meeting Request(s), the Corporation need not present such matters for a vote at such meeting, notwithstanding that proxies in respect of such matter may have been received by the Corporation. For purposes of these By-Laws, to

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be considered a "qualified representative" of a stockholder, a person must be a duly authorized officer, manager or partner of such stockholder or authorized by a writing executed by such stockholder (or a reliable reproduction or electronic transmission of the writing) delivered to the Corporation prior to the meeting stating that such person is authorized to act for such stockholder as proxy at the meeting of stockholders.

(F) For the purposes of this Section 2.04 and Section 9.02, a stockholder or beneficial owner shall be deemed to "Own" only those shares of outstanding capital stock as to which such person possesses both (1) the full voting and investment rights pertaining to the shares and (2) the full economic interest in (including the opportunity for profit and risk of loss on) such shares; provided that the number of shares calculated in accordance with clauses (1) and (2) shall not include any shares (a) sold by such person or any of its affiliates in any transaction that has not been settled or closed, (b) borrowed by such person or any of its affiliates for any purposes or purchased by such person or any of its affiliates pursuant to an agreement to resell or (c) subject to any option, warrant, forward contract, swap, contract of sale, or other Derivative Instrument (as defined in Section 2.16(B)) or similar agreement entered into by such person or any of its affiliates, whether any such instrument or agreement is to be settled with shares or with cash based on the notional amount or value of shares of outstanding capital stock of the Corporation, in any such case which instrument or agreement has, or is intended to have, or if exercised would have the purpose or effect of (i) reducing in any manner, to any extent or at any time in the future, such person's or affiliates' full right to vote or direct the voting of any such shares, and/or (ii) hedging, offsetting or altering to any degree any gain or loss arising from the full economic ownership of such shares by such person or affiliate. A stockholder or beneficial owner shall "Own" shares held in the name of a nominee or other intermediary so long as the person retains the right to instruct how the shares are voted with respect to the election of directors and possesses the full economic interest in the shares. A person shall be deemed to continue to Own shares during any period in which the person has loaned such shares provided that the person has the power to recall such loaned shares on five (or less) business days' notice, and has delegated any voting power by means of a proxy, power of attorney or other instrument or arrangement which is revocable at any time by the person. The determination of the extent to which a stockholder or beneficial owner "Owns" any shares of capital stock for these purposes shall be made in good faith by the Board of Directors, which determination shall be conclusive and binding on the Corporation and the stockholders.

Section 2.05 Written notice of the annual meeting or any special meeting of stockholders stating the place, if any, means of remote communication, if any, date and hour of the meeting shall be given in accordance with Section 4.01 to each stockholder entitled to vote at such meeting not less than ten nor more than sixty days before the date of the meeting.

Section 2.06 Business transacted at any special meeting of stockholders shall be limited to the purposes stated in the notice.

Section 2.07 The holders of a majority of the stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business except as otherwise provided by Delaware Law or by the Certificate of Incorporation. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, or the officer presiding over the meeting, shall have power to adjourn the meeting from time to time until a quorum shall be present or represented. When a stockholders' meeting is

adjourned to another time or place (including an adjournment taken to address a technical failure to convene or continue a meeting using remote communication), notice of the adjourned meeting need not be given if the time, place, if any, thereof and the means of remote communications, if any, by which stockholders and proxy holders may be deemed to be present and vote at such adjournment, are (a) announced at the meeting at which the adjournment is taken, (b) displayed, during the time scheduled for the meeting, on the same electronic network used to enable stockholders and proxy holders to participate in the meeting by means of remote communication or (c) set forth in the notice of the meeting, provided that if the adjournment is for more than 30 days, or after the adjournment, a new record date is fixed for the adjourned meeting, a notice of the adjourned meeting shall be given in accordance with Section 2.01 or 2.05 as the case may be, to each stockholder of record entitled to vote at the meeting. At such adjournment at which a quorum shall be present or represented any business may be transacted which might have been transacted at the meeting as originally notified.

Section 2.08 (A) Unless otherwise provided in the Certificate of Incorporation and subject to Delaware Law, each stockholder shall be entitled to one vote for each outstanding share of capital stock of the Corporation held by such stockholder. Any share of capital stock of the Corporation held by the Corporation shall have no voting rights. Unless otherwise provided by Delaware Law, the Certificate of Incorporation or these By-Laws, the affirmative vote of a majority of the shares of capital stock of the Corporation present, in person or by proxy, at a meeting of stockholders and entitled to vote on the subject matter shall be the act of the stockholders.

(B) At any meeting of stockholders at which directors are to be elected, a nominee for election as a director in an uncontested election shall be elected if the number of votes cast for the nominee's election exceeds the number of votes cast against the nominee's election. In an election of directors other than an uncontested election, the nominees receiving the greatest number of votes shall be elected as directors, up to the number of directors as shall constitute the whole Board as set pursuant to Section 3.02. For purposes of this Section 2.08(B), an "uncontested election" means any meeting of stockholders at which the number of candidates does not exceed the number of directors to be elected and with respect to which (1) no stockholder has submitted notice of an intent to nominate a candidate for election at such meeting in accordance with Section 2.04, 9.01 or 9.02, or (2) such a notice has been submitted, and on or before the tenth day prior to the date that the Corporation files its definitive proxy statement relating to such meeting with the Securities and Exchange Commission (the "SEC") (regardless of whether thereafter revised or supplemented), the notice has been (a) withdrawn in writing to Secretary, (b) determined not to be a valid notice of nomination by the Board of Directors (or a committee thereof) or if challenged in court, by a final court order, or (c) determined by the Board of Directors (or a committee thereof) not to create a *bona fide* election contest.

(C) To the extent required, the non-binding advisory vote pursuant to Section 14A(a)(2) of the Exchange Act with respect to the determination as to whether the advisory vote on executive compensation shall occur every one year, every two years or every three years, shall be decided by a plurality of the votes cast among those three alternatives; provided that for purposes of any vote required pursuant to this sentence, neither abstentions nor broker non-votes shall count as votes cast.

Section 2.09 If a vote is to be taken by ballot, each ballot shall state the number of shares voted and the name of the stockholder or proxy voting.

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Section 2.10 Each meeting of the stockholders, whether annual or special, shall be presided over by the Chairperson of the Board if present, and if he or she is not present or declines to preside, by the Chief Executive Officer if present. If neither person specified in the preceding sentence is present, the meeting shall be presided over by the person designated in writing by the Chairperson of the Board, or if the Chairperson of the Board has made no designation, by the person designated by the Chief Executive Officer, or if the Chief Executive Officer has made no designation, by the person designated by the Board of Directors. The Secretary of the Corporation (or in his or her absence any Assistant Secretary) shall be the Secretary of any such meeting; in the absence of the Secretary and Assistant Secretaries, any person may be designated by the Board of Directors to act as Secretary of the meeting.

Section 2.11 Any voting proxy given by a stockholder must be: in writing, executed by the stockholder, or, in lieu thereof, to the extent permitted by law, may be transmitted in a telegram, cablegram or other means of electronic transmission setting forth or submitted with information from which it can be determined that the telegram, cablegram or other electronic transmission was authorized by the stockholder. A copy, facsimile transmission or other reliable reproduction of a written or electronically-transmitted proxy authorized by this Section 2.11 may be substituted for or used in lieu of the original writing or electronic transmission to the extent permitted by law. Any stockholder directly or indirectly soliciting proxies from other stockholders must use a proxy card color other than white, which shall be reserved for the exclusive use by the Board of Directors.

Section 2.12 The directors shall appoint one or more inspectors of election and of the vote at any time prior to the date of any meeting of stockholders at which an election is to be held or a vote is to be taken. In the event any inspector so appointed is absent from such meeting or for any other reason fails to act as such at the meeting, the person presiding at such meeting pursuant to these By-Laws may appoint a substitute who shall have all the powers and duties of such inspector. The inspector or inspectors so appointed shall act at such meeting, make such reports thereof and take such other action as shall be provided by law and as may be directed by the person presiding over the meeting. Each inspector, before entering upon the discharge of his or her duties, shall take and sign an oath faithfully to execute the duties of inspector with strict impartiality and according to the best of his or her ability.

Section 2.13 The directors may, at any time prior to any annual meeting or special meeting of the stockholders, adopt an order of business for such meeting which shall be the order of business to be followed at such meeting. The date and time of the opening and the closing of the polls for each matter upon which the stockholders will vote at such meeting shall be announced at such meeting by the person presiding over such meeting.

Section 2.14 (A) For purposes of determining the means of conducting the vote at any meeting of stockholders, a stock vote shall be taken by ballot on any resolution or other matter properly presented to the meeting for action in accordance with Section 2.15 or Section 9.01 if so ordered by the person presiding over the meeting.

(B) The Board of Directors may adopt such rules and regulations for the conduct of any meeting of stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the person presiding at such meeting shall have the authority to announce and enforce such rules and regulations for the conduct of any meeting of stockholders and the safety of those in attendance as, in the judgment of such person, are necessary.

appropriate or convenient for the conduct of the meeting. Rules and regulations for the conduct of meetings of stockholders may include without limitation, establishing: (1) an agenda or order of business for the meeting; (2) rules and procedures for maintaining order at the meeting and the safety of those present; (3) limitations on attendance at or participation in the meeting to stockholders entitled to vote at the meeting, their duly authorized and constituted proxies and such other persons as the person presiding at such meeting shall permit; (4) provisions regarding entry to the meeting after the time fixed for the commencement thereof; (5) limitations on the time allotted for consideration of each agenda item and for questions and comments by participants; (6) regulations for the opening and closing of the polls for balloting and matters which are to be voted on by ballot (if any); and (7) procedures (if any) requiring attendees to provide the Corporation advance notice of their intent to attend the meeting. Subject to any rules and regulations adopted by the Board of Directors, the person presiding at such meeting may convene and, for any or no reason, from time to time, adjourn and/or recess any meeting of stockholders.

Section 2.15 (A) Only such business (other than nominations of persons for election to the Board of Directors, which must comply with the provisions of Section 9.01 or Section 9.02) may be transacted at an annual meeting of stockholders as is brought before the meeting (1) pursuant to the Corporation's notice of meeting, (2) by or at the direction of the Board of Directors or (3) by any stockholder of the Corporation present in person (as defined in this Section 2.15(A)) who is a stockholder of record at the time of giving of the notice provided for in this Section 2.15, on the record date(s) for the determination of stockholders entitled to notice of and to vote at the annual meeting and at the time of the annual meeting, is entitled to vote thereon at the meeting and who complies with the notice procedures set forth in this Section 2.15; clause (3) shall be the exclusive means for a stockholder to submit other business (other than matters properly brought under Rule 14a-8 under the Exchange Act and included in the Corporation's notice of meeting) before an annual meeting of stockholders. For purposes of this Section 2.15 and Section 9.01, "present in person" shall mean that the stockholder proposing that the business or nomination to be brought before the meeting of stockholders, or, if the proposing stockholder is not an individual, a qualified representative of such proposing stockholder, is in attendance at such meeting.

(B) For business (other than the nominations of persons for election to the Board of Directors, which must comply with the provisions of Section 9.01 or Section 9.02) to be properly brought before an annual meeting by a stockholder pursuant to Section 2.15(A)(3), the stockholder must have given timely notice thereof in proper written form to the Secretary of the Corporation and such business must be a proper subject for stockholder action under the Certificate of Incorporation, these By-Laws and applicable law and must not be expressly reserved for action by the Board of Directors under the Certificate of Incorporation, these By-Laws or applicable law.

To be timely, a stockholder's notice shall be delivered, either by personal delivery or by United States mail, postage pre-paid, to the Secretary at the principal executive offices of the Corporation by the close of business (as defined in Section 2.15(E)) not less than 90 days nor more than 120 days prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event that the date of the annual meeting is more than 30 days before or more than 60 days after such anniversary date, or if no meeting was held in the preceding year, notice by the stockholder to be timely must be so delivered not earlier than the close of business on the 120th day prior to such annual meeting and not later than the close of business on the later of the 90th day prior to such annual meeting or the 10th day following the day on which public announcement (as defined in Section 2.15(E)) of the date of such meeting is first made by the

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Corporation. In no event shall an adjournment, recess or postponement of an annual meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. For the avoidance of doubt, a stockholder shall not be entitled to make additional or substitute proposals of business following the expiration of the time periods prescribed for delivery of notice in this Section 2.15(B).

To be in proper written form, such stockholder's notice shall set forth (1) a brief description of the business proposed to be brought before the meeting, (2) the text of the proposal or business (including the text of any resolutions proposed for consideration and in the event that such business includes a proposal to amend these By-Laws, the language of the proposed amendment), (3) the reasons for conducting such business at the meeting, (4) the reasons why such stockholder or any other Proposing Person (as defined in this Section 2.15(B)) believes that the taking of the action or actions proposed to be taken would be in the best interests of the Corporation and its stockholders, and (5) any other information relating to such business that would be required to be disclosed in a proxy statement or other filing required

pursuant to Section 14(a) of the Exchange Act to be made in connection with the solicitations of proxies in support of the business proposed to be brought before the meeting. In addition, to be in proper written form, such stockholder's notice shall set forth the information required under Section 2.16.

For purposes of these By-Laws, the term "Proposing Person" shall mean (a) the stockholder providing the notice of business proposed to be brought before an annual meeting, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the business proposed to be brought before the meeting is made, (c) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A, or any successor instructions) with such stockholder or beneficial owner(s) in such solicitation of proxies in respect of any such proposed business, (d) any Affiliate (within the meaning of Rule 12b-2 under the Exchange Act) of such stockholder or beneficial owner(s), (e) any person controlling, controlled by or under common control with such stockholder or beneficial owner(s), and (f) any person acting in concert with such stockholder or beneficial owner(s). For purposes of these By-Laws, a person shall be deemed to be "acting in concert" with another person if such person knowingly acts (whether or not pursuant to an express agreement, arrangement or understanding) in concert with, or towards a common goal relating to the management, governance or control of the Corporation in parallel with, such other person where (i) each person is conscious of the other person's conduct or intent and this awareness is an element in their decision-making processes and (ii) at least one additional factor suggests that such persons intend to act in concert or in parallel, which such additional factors may include, without limitation, exchanging information (whether publicly or privately), attending meetings, conducting discussions or making or soliciting invitations to act in concert or in parallel; provided, however, that a person shall not be deemed to be "acting in concert" with any other person solely as a result of the solicitation or receipt of revocable proxies, or special meeting demands from such other person in response to a solicitation made pursuant to, and in accordance with, Section 14(a) of the Exchange Act by way of a proxy statement filed on Schedule 14A. A person deemed to be "acting in concert" with another person shall be deemed to be "acting in concert" with any third party who is also "acting in concert" with such other person.

(C) A stockholder shall update and supplement its notice to the Corporation of its intent to propose business at an annual meeting, if necessary, so that the information provided or required to be provided in such notice (including any information submitted regarding any Proposing Person) shall be true and correct as of (1) the record date for the determination of persons entitled to receive notice of the meeting and (2) the date

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that is five business days prior to the meeting and, in the event of any adjournment or postponement thereof, five business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (1) above, such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than two business days after the record date for the determination of persons entitled to receive notice of the meeting. In the case of an update and supplement pursuant to clause (2) above, such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than two business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two business days prior to such adjourned or postponed meeting. The obligation to update and supplement as set forth in this paragraph or any other section of these By-Laws shall not cure or limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or under any other provision of the By-Laws or enable or be deemed to permit a stockholder who has previously submitted notice hereunder or under any other provision of the By-Laws to amend or update any proposal or to submit any new proposal, including by changing or adding matters, business and/or resolutions proposed to be brought before a meeting of stockholders.

(D) Only such business (other than nominations of persons for election to the Board of Directors, which must comply with the provisions of Section 9.01 or Section 9.02) shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 2.15, other than business properly brought under Rule 14a-8 under the Exchange Act and included in the Corporation's notice of meeting. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the Board of Directors or the person presiding over a meeting of stockholders shall have the power and duty to determine whether any business proposed by any stockholder to be brought before the meeting was made or proposed in accordance with the procedures set forth in this Section 2.15 and, if any proposed business is not in compliance with this Section 2.15, then except as otherwise provided by law, the person presiding over the meeting of stockholders shall have the power and duty to declare that such defective proposal shall be

disregarded. In addition, business proposed to be brought by a stockholder may not be brought before a meeting of stockholders if such stockholder or any Proposing Person takes action contrary to the representations made in the stockholder notice applicable to such business or if the stockholder notice applicable to such business contains an untrue statement of a material fact or omits to state a material fact necessary to make the statements therein not misleading or, if after being submitted to the Corporation, the stockholder notice applicable to such business was not updated in accordance with these By-Laws to cause the information provided in the stockholder notice to be true, correct and complete in all respects.

(E) For purposes of these By-Laws, the “close of business” shall mean 6:00 p.m. local time at the principal executive offices of the Corporation on any calendar day, whether or not the day is a business day, and “public announcement” shall mean disclosure in a press release reported by the Dow Jones News Service, Associated Press or comparable national news service or in a document publicly filed by the Corporation with the SEC pursuant to Section 13, 14 or 15(d) of the Exchange Act.

(F) In addition to the foregoing provisions of this Section 2.15, a stockholder shall comply with all applicable requirements of the Exchange Act and Delaware Law with respect to the matters set forth in this Section 2.15. A stockholder is not entitled to have its proposal included in the Corporation’s proxy materials solely as a result of such

stockholder’s compliance with the provisions of this Section 2.15. Nothing in this Section 2.15 shall be deemed to affect any rights of stockholders to request inclusion of proposals in the Corporation’s proxy statement pursuant to Rule 14a-8 under the Exchange Act.

Section 2.16 (A) A stockholder’s notice must set forth the following as to the stockholder giving the notice, the beneficial owner(s), if any, on whose behalf the nomination or proposal is made, each Proposing Person and each Nominating Person (as defined in Section 9.01(C)), as the case may be: (1) the name and address of such person (including, if applicable, the name and address that appear on the Corporation’s books) and (2) the class and number of shares of the Corporation which are, directly or indirectly, owned of record by such person as of the date of the notice.

(B) A stockholder’s notice must set forth the following as to the stockholder giving the notice, the beneficial owner(s), if any, on whose behalf the nomination or proposal is made, each Proposing Person and each Nominating Person, as the case may be: (1) the class and number of shares owned beneficially (as defined in this Section 2.16(B)) but not of record by such person as of the date of the notice; (2) whether and the extent to which any Derivative Instrument or Short Interest (as defined in this Section 2.16(B)) has been entered into by or on behalf of such person with respect to stock of the Corporation; (3) a description of all agreements, arrangements or understandings between such person and (a) any other person or persons (including their names) in connection with the proposal of such business (other than nominations) or (b) each proposed nominee and any other person or persons (including their names) pursuant to which the nomination(s) are to be made, as the case may be; (4) a description of any substantial interest (within the meaning of Item 5 of Schedule 14A of the Exchange Act) of such person in such business or nomination, as the case may be, including any anticipated benefit to such person therefrom; (5) all information that would be required to be set forth in a Schedule 13D filed pursuant to Rule 13d-1(a) of the Exchange Act or an amendment pursuant to Rule 13d-2(a) if such a statement were required to be filed under the Exchange Act by such person, if any; (6) any material pending or threatened legal proceeding in which such person is a party or material participant or has an interest (other than an interest that is substantially the same as all stockholders) involving the Corporation or any of its officers or directors, or any affiliate of the Corporation; (7) any other material relationship between such person, on the one hand, and the Corporation, any affiliate of the Corporation or any significant competitor of the Corporation, on the other hand; (8) any performance-related fees (other than an asset-based fee) that such person is entitled to based on any increase or decrease in the value of shares of the Corporation, Derivative Instruments, or Short Interests, if any, as of the date of such notice, including without limitation any such interests held by members of such person’s immediate family sharing the same household; (9) any direct or indirect material interest in any material contract or agreement of such person with the Corporation, any affiliate of the Corporation or any significant competitor of the Corporation (including, in any such case, any employment agreement, collective bargaining agreement or consulting agreement) or any significant equity interests or any Derivative Instruments or Short Interests in any significant competitor of the Corporation held by such person (provided that, solely for purposes of this clause (9), references to the words “the Corporation” within the definitions of “Derivative Instrument” and “Short Interests” shall be replaced with the words “such competitor”); (10) a representation that such stockholder is a

holder of record of stock of the Corporation entitled to vote at the meeting and intends to be present in person at the meeting to bring such business before the meeting or to nominate the persons named in its notice, as the case may be; (11) a representation as to whether any

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person intends or is part of a group which intends (a) to deliver a proxy statement and/or form of proxy to holders of at least the percentage of the Corporation's outstanding capital stock required to approve the proposed business or elect the nominee and/or (b) otherwise engage in or be a participant in a solicitation (within the meaning of Rule 14a-1(1) under the Exchange Act) of proxies in support of such proposed business or nomination; (12) a representation as to whether or not the person will submit any other proposal or nomination at the meeting; and (13) any other information relating to such person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with the solicitation of proxies with respect to business brought at a meeting of stockholders or for an election of directors, as the case may be, pursuant to Section 14 of the Exchange Act. For purposes of these By-Laws, shares shall be treated as "beneficially owned" by a person if the person beneficially owns such shares, directly or indirectly, for purposes of Section 13(d) of the Exchange Act and Regulations 13D and 13G thereunder or has or shares pursuant to any agreement, arrangement or understanding (whether or not in writing) (1) the right to acquire such shares (whether such right is exercisable immediately or only after the passage of time or the fulfillment of a condition or both), (2) the right to vote such shares, alone or in concert with others and/or (3) investment power with respect to such shares, including the power to dispose of, or to direct the disposition of, such shares. "Derivative Instrument" shall mean any "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) that constitutes a "call equivalent position" (as such term is defined in Rule 16a-1(b) under the Exchange Act) and that is, directly or indirectly, held or maintained by such stockholder with respect to any shares of any class or series of shares of the Corporation, including without limitation any option, warrant, convertible security, stock appreciation right or similar right or interest (including any derivative securities, as defined under Rule 16a-1 under the Exchange Act or other synthetic arrangement having characteristics of a long position) which, assuming for purposes of these By-Laws, are presently exercisable, with an exercise or conversion privilege or a settlement or payment mechanism at a price related to any class or series of securities of the Corporation or with a value derived in whole or in part from the price, value, dividend or amount of dividend or volatility of any class or series of securities of the Corporation, whether or not such instrument or right is subject to settlement in whole or in part in the underlying class or series of securities of the Corporation or otherwise, directly or indirectly held of record or owned beneficially by such person and whether or not such person may have entered into transactions that hedge or mitigate the economic effects of such security or instrument and other direct or indirect right or interest that may enable such person to profit or share in any profit derived from, or to manage the risk or benefit from, any increase or decrease in the price, value, dividend or amount of dividend or volatility of the Corporation's securities, in each case regardless of whether (x) such right or interest conveys any voting rights in such security to such person, (y) such right or interest is required to be, or is capable of being, settled through delivery of such security, or (z) such person may have entered into other transactions that hedge the economic effect of any such right or interest; provided, however, that for the purpose of the term "Derivative Instrument," the term "derivative security" shall also include any security or instrument that would not otherwise constitute a "derivative security" (as such term is defined in Rule 16a-1(c) under the Exchange Act) as a result of any feature that would make any conversion, exercise or similar right or privilege of such security or instrument becoming determinable only at some future date or upon the happening of a future occurrence, in which case the determination of the amount of securities into which such security or instrument would be convertible or exercisable shall be made assuming that such security or instrument is immediately convertible or exercisable at the time of such

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determination, or otherwise include rights with an exercise or conversion privilege that is not fixed; and, provided, further, that any stockholder satisfying the requirements of Rule 13d-1(b)(1) under the Exchange Act (other than a stockholder that so satisfies Rule 13d-1(b)(1) under the Exchange Act solely by reason of Rule 13d-1(b)(1)(ii)(E)) shall not be required to disclose a Derivative Instrument held by such stockholder as a hedge with respect to a bona fide derivatives trade or position of such stockholder arising in the ordinary course of such stockholder's business as a derivatives dealer. "Short Interest" shall mean any contract, agreement, arrangement, understanding or relationship including any repurchase or similar so called "stock borrowing" agreement or arrangement (including any short position or any borrowing or lending of shares of stock), the purpose or effect of which is to mitigate loss, reduce economic risk (of ownership or otherwise) or increase or decrease voting power with respect to any capital stock of the Corporation or which provides any party, directly or indirectly, the opportunity to profit from any decrease in the price or value of the capital stock of the Corporation, including without limitation any "put equivalent position" (as such term is defined in Rule 16a-1(h) under the Exchange Act) related to any shares of any class or series of shares of the Corporation.

(C) Notwithstanding the foregoing provisions of this Section 2.16, except as otherwise provided by law, if the stockholder does not provide the information required under Sections 2.16(A) and 2.16(B) to the Corporation within the time frames specified therein, or if the stockholder is not present in person at the meeting of stockholders of the Corporation to present a nomination or other business, such nomination shall be disregarded and such other business shall not be transacted, notwithstanding that proxies in respect of such vote may have been received by the Corporation.

(D) Upon written request by the Secretary of the Corporation, the Board of Directors or any duly authorized committee thereof, a stockholder submitting a notice pursuant to Section 2.15, Section 9.01 or Section 9.02 shall provide, within five business days of delivery of such request (or such other period as may be specified in such request), (A) written verification, satisfactory in the reasonable discretion of the Board of Directors, any duly authorized committee thereof or any duly authorized officer of the Corporation, to demonstrate the accuracy of any information submitted by the stockholder (including any information submitted regarding the submitting stockholder, any Eligible Stockholder (as defined in Section 9.02(B)), Proposing Person, Nominating Person or candidate proposed to be nominated for election as a director) in the notice delivered pursuant to the requirements of these By-Laws (including, if requested, written confirmation by such stockholder that it continues to intend to bring the business or nomination proposed in the notice before the meeting), and (B) such other information reasonably required by the Secretary of the Corporation, the Board of Directors or any duly authorized committee thereof, acting in good faith, to determine compliance with these By-Laws or the accuracy and completeness of any notice or solicitation given or made on behalf of such stockholder or such candidate. If a stockholder fails to provide such written verification or other information within such period, the information as to which written verification or other information was requested may be deemed not to have been provided in accordance with the requirements of these By-Laws.

(E) Upon written request by the Secretary of the Corporation, the Board of Directors or any duly authorized committee thereof, a stockholder submitting a notice pursuant to Section 2.15, Section 9.01 or Section 9.02 shall provide, within five business days of delivery of such request (or such other period as may be specified in such request), a written supplement, satisfactory in the reasonable discretion of the Board of Directors, any duly authorized committee thereof or any duly authorized officer of the

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Corporation, to update the information (including any information submitted regarding any submitting stockholder, Eligible Stockholder, Proposing Person, Nominating Person or candidate proposed to be nominated) contained in any previously submitted stockholder notice and provide the disclosures required by these By-Laws, such that they are current and true, correct and complete as of the date that such supplement is submitted to the Secretary. If a stockholder fails to provide such written supplement within such period, the information as to which a written supplement was requested may be deemed not to have been provided in accordance with the requirements of these By-Laws.

(F) Upon written request by the Secretary of the Corporation, the Board of Directors or any duly authorized committee thereof, each candidate proposed to be nominated for election as a director shall make himself or herself available for interviews with the Board of Directors and any duly authorized committee thereof within five business days of delivery of such request (or such other period as may be specified in such request).

(G) For a notice to comply with the requirements of this Section 2.16, each of the applicable requirements of this Section 2.16 (and, as applicable, Section 2.15, Section 9.01 and Section 9.02) shall be directly and expressly responded to in a manner that clearly indicates and expressly references to which provisions of such Section(s) the information disclosed is intended to be responsive. Information disclosed in one section of the notice in response to one provision of such Sections shall not be deemed responsive to any other provision of such Sections unless it is expressly cross-referenced to such other provision and it is clearly apparent how the information included in one section of the notice is directly and expressly responsive to the information required to be included in another section of the notice. For the avoidance of doubt, statements purporting to provide global cross-references that purport to provide that all information provided shall be deemed to be responsive to all requirements of this Section 2.16 (and, as applicable, Section 2.15, Section 9.01 and Section 9.02) shall not satisfy the requirements thereof and shall be disregarded.

(H) For a notice to comply with the requirements of this Section 2.16 (and, as applicable, Section 2.15, Section 9.01 and Section 9.02), it must set forth in writing directly within the body of the notice (as opposed to being incorporated by reference from any other document or writing not prepared solely in response to the requirements of these By-Laws) all the information required to be included therein as set forth in such Section(s). A notice shall not be deemed to be in compliance with such Section(s) if it attempts to include the required information by incorporating by reference into the body of the notice any other document, writing or part thereof, including, but not limited to, any documents publicly filed with the SEC not prepared solely in response to the requirements of these By-Laws. For the further avoidance of doubt, the body of the notice shall not include any documents that are not prepared solely in response to the requirements of these By-Laws.

(I) A stockholder submitting a notice pursuant to Section 2.15, Section 9.01 or Section 9.02, by its delivery to the Corporation, represents and warrants that all information contained therein (including any information regarding any Proposing Person, Nominating Person, Eligible Stockholder or candidate proposed to be nominated for election as a director), as of the deadline for submitting the notice, is true, accurate and complete in all respects, contains no false or misleading statements and such stockholder acknowledges that it intends for the Corporation and the Board of Directors to rely on such information as (i) being true, accurate and complete in all respects and (ii) not containing any false or misleading statements. If such information shall not be

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true, correct and complete in all respects prior to the deadline for submitting the notice, such information may be deemed not to have been validly provided.

Section 2.17 (A) Any action that may be taken at any annual meeting or special meeting of stockholders may be taken without a meeting and without a vote, if a consent in writing, setting forth the action so taken, is signed by the stockholders having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted. Prompt notice of the taking of such action without a meeting by less than unanimous written consent shall be given to each stockholder who did not consent thereto in writing.

(B) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. Any stockholder of record seeking to have the stockholders authorize or take corporate action by written consent shall, by written notice to the Secretary, request the Board of Directors to fix a record date. The Board of Directors shall promptly, but in all events within ten days after the date on which such a request is received, adopt a resolution fixing the record date. If no record date has been fixed by the Board of Directors within ten days of the date on which such a request is received, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in Delaware, its principal place of business or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the Board of Directors is required by applicable law, the record date for determining

stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business (as defined in Section 2.15(E)) on the day on which the Board of Directors adopts the resolutions taking such prior action.

### **ARTICLE III MATTERS RELATING TO THE BOARD OF DIRECTORS**

#### **Directors**

Section 3.01 The business of the Corporation shall be managed by or under the direction of its Board of Directors, which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute, the Certificate of Incorporation or these By-Laws directed or required to be exercised or done by the stockholders.

Section 3.02 The number of directors of the Corporation which shall constitute the whole Board shall be nine, or such other number as may be determined from time to time by written resolution of the Board of Directors. The directors shall be elected at the annual meeting of the stockholders, except as provided in Section 3.04, and each director elected shall hold office until his or her successor is elected and qualified or

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until his or her earlier resignation or removal. Directors need not be stockholders of the Corporation.

Section 3.03 Any director of the Corporation may resign at any time either by oral tender of resignation at any meeting of the Board of Directors or by delivering written notice thereof to the Secretary of the Corporation. Such resignation shall take effect at the time specified therein, and unless otherwise specified with respect thereto the acceptance of such resignation shall not be necessary to make it effective.

Section 3.04 Any director may be removed, with or without cause, at any time, by the affirmative vote of the holders of record of a majority of all the shares of capital stock entitled to vote at an election of directors. Vacancies in the Board of Directors created by the death, resignation or removal of directors and newly created directorships resulting from any increase in the authorized number of directors may be filled only by the affirmative vote of a majority of the remaining directors then in office, although less than a quorum, or by a sole remaining director. Any director so chosen shall hold office until the next annual election and until his or her successor is duly elected and qualified or until his or her earlier resignation or removal. If there are no directors in office, then an election of directors may be held in the manner provided by Delaware Law.

#### **Meetings of the Board of Directors**

Section 3.05 The Board of Directors of the Corporation may hold meetings, both regular and special, either within or without the State of Delaware.

Section 3.06 The Board of Directors shall meet as soon as practicable after the annual election of directors, for the purpose of organization and the transaction of other business including the election of officers and election of the Chairperson of the Board and, if applicable, a Vice Chairperson of the Board.

Section 3.07 Regular meetings of the Board of Directors may be held without notice at such time and at such place as shall from time to time be determined by the Board. Any business of the Corporation may be transacted at any such regular meeting.

Section 3.08 Special meetings of the Board of Directors shall be called at the request of the Chairperson of the Board, the Chief Executive Officer or a majority of the Board of Directors then in office. The person or persons authorized to call special meetings of the Board of Directors may fix the place, if any, date and time of the meetings.

Section 3.09 At all meetings of the Board of Directors, a majority of the directors then in office shall constitute a quorum for the transaction of business, and the act of a quorum shall be the act of the Board of Directors, except as may be otherwise specifically provided by Delaware Law, the Certificate of Incorporation or these By-Laws. If a quorum shall not be present at any meeting of the Board of Directors,

the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting, until a quorum shall be present.

Section 3.10 Unless otherwise restricted by the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all members of the Board or such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of the proceedings of the Board or such committee.

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Section 3.11 Members of the Board of Directors or any committee designated by the Board pursuant to Section 3.12 may participate in a meeting of such Board or committee by means of conference telephone or similar communications equipment by means of which all persons participating in the meeting can hear each other, and such participation in a meeting shall constitute presence in person at such meeting.

#### **Committees of Directors**

Section 3.12 The Board of Directors may, by resolution passed by the affirmative vote of a majority of the directors, designate one or more committees, each committee to consist of one or more of the directors of the Corporation. The Board may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of the committee. Any such committee, to the extent provided in the adopting resolution, shall have and may exercise the powers of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it, but no such committee shall have the power or authority in reference to the following matter: (A) approving or adopting, or recommending to the stockholders, any action or matter expressly required by Delaware Law to be submitted to the stockholders for approval or (B) adopting, amending or repealing any By-Law of the Corporation. Such committee or committees shall have such name or names as may be determined from time to time by resolution adopted by the Board of Directors.

Section 3.13 Each committee shall keep regular minutes of its meetings and report the same to the Board of Directors when required.

#### **Compensation**

Section 3.14 Directors, and members of any committee of the Board of Directors, shall be entitled to such reasonable compensation for their services as directors and members of each such committee as shall be fixed from time to time by resolution of the Board of Directors (or a committee thereof), and shall also be entitled to reimbursement for any reasonable expenses incurred in attending such meetings. Any directors receiving compensation under these provisions shall not be barred from serving the Corporation in any other capacity and receiving reasonable compensation for such other services.

### **ARTICLE IV NOTICES**

Section 4.01 Whenever notice is required to be given to any director or stockholder under the provisions of the Certificate of Incorporation, these By-Laws, or Delaware Law, it will be given in accordance with the applicable provisions of Delaware Law.

Section 4.02 Whenever any notice is required to be given under the Certificate of Incorporation, these By-Laws, or Delaware Law, a waiver thereof in writing, signed by the person or persons entitled to said notice, or a waiver by electronic transmission by the person entitled to notice, whether before or after the time stated therein, shall be deemed equivalent to such notice. Attendance in person or by proxy of a person at a meeting of stockholders shall constitute a waiver of notice of such meeting, except when the stockholder attends a meeting for the express purpose of objecting and does so object at the beginning of the meeting, to the transaction of any business because the meeting is not lawfully called or convened. Any director attending a meeting of the

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Board of Directors without protesting, prior to the meeting or at its commencement, any lack of notice shall be conclusively deemed to have waived notice of such meeting.

## **ARTICLE V OFFICERS**

**Section 5.01** The principal officers of the Corporation shall be a Chief Executive Officer, President, one or more Vice Presidents, a Treasurer and a Secretary who shall have the duty, among other things, to record the proceedings of the meetings of stockholders and directors in a book kept for that purpose. The Corporation may also have such other principal officers, including one or more Controllers, as the Board may in its discretion appoint. Any number of offices may be held by the same person.

**Section 5.02** The principal officers of the Corporation shall be elected annually by the Board of Directors. Each such officer shall hold office until his successor is elected and qualified, or until his earlier death, resignation or removal. Any vacancy in any office shall be filled in such manner as the Board of Directors shall determine.

**Section 5.03** In addition to the principal officers enumerated in Section 5.01 herein, the Corporation may have one or more Assistant Treasurers, Assistant Secretaries and Assistant Controllers and such other subordinate officers, agents and employees as the Board of Directors may deem necessary, each of whom shall hold office for such period as the Board of Directors may from time to time determine. The Board of Directors may delegate to any principal officer the power to appoint and to remove any such subordinate officers, agents or employees.

**Section 5.04** The compensation of all officers and agents of the Corporation shall be fixed by the Board of Directors except to the extent such power shall be delegated, by resolution of the Board, to a committee of directors, to the Chairperson of the Board or to the Chief Executive Officer.

**Section 5.05** Any officer or agent of the Corporation may be removed at any time, either with or without cause, by the Board of Directors in its sole discretion. Any vacancy occurring in any office of the Corporation may be filled at any time by the Board of Directors.

## **ARTICLE VI MATTERS RELATING TO THE STOCK OF THE CORPORATION**

**Section 6.01** The shares of capital stock of the Corporation may be represented by certificates or may be uncertificated. To the extent that shares are represented by certificates, the certificates shall be in such form as shall be determined by the Board of Directors and shall be numbered consecutively and entered in the books of the Corporation as they are issued. Every holder of shares of capital stock of the Corporation theretofore represented by certificates and, upon request, every holder of uncertificated shares, shall be entitled to have a certificate for shares of capital stock of the Corporation in the form approved by the Board of Directors, signed by, or in the name of the Corporation by, (A) the Chairperson of the Board or the President or a Vice President and (B) the Treasurer or an Assistant Treasurer or the Secretary or an Assistant Secretary, certifying the number of such shares owned by such stockholder in the Corporation. Except as otherwise provided by law, the rights and obligations of the holders of uncertificated stock and the rights and obligations of the holders of certificates representing stock of the same class and series shall be identical.

Section 6.02 Where any such certificate is signed either by a transfer agent or an assistant transfer agent, or by a transfer clerk acting on behalf of the Corporation and by a registrar, the signature of any such Chairperson of the Board, President, Vice President, Treasurer, Assistant Treasurer, Secretary or Assistant Secretary may be facsimile. In case any such officer who has signed, or whose facsimile signature has been affixed on, any such certificate shall cease to be such officer, whether because of resignation, removal or otherwise, before such certificate has been issued or delivered by the Corporation, such certificate may nevertheless be issued and delivered by the Corporation with the same effect as if such officer had not ceased to be such at the date of such delivery.

Section 6.03 In case any certificate of stock shall be lost, stolen or destroyed, the Board of Directors, in its discretion, or any officer or officers thereunto duly authorized by the Board, may authorize the issuance of uncertificated shares or, if requested by the registered owner, a substitute certificate in place of the certificate so lost, stolen or destroyed; provided, however, that in each such case the applicant for uncertificated shares or a substitute certificate shall furnish evidence to the Corporation which the Board of Directors, or any officer or officers authorized as aforesaid, determines is satisfactory, of the loss, theft or destruction of such certificate and of the ownership thereof, and also such security or indemnity as may be required by the Board.

Section 6.04 Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation, and in the case of certificated shares of stock, only by the person named in the certificate or by such person's attorney lawfully constituted in writing, and upon the surrender of the certificate therefor to the Corporation or the transfer agent of the Corporation, properly endorsed for transfer or accompanied by proper evidence of succession, assignment or authority to transfer, or in the case of uncertificated shares of stock, upon receipt of proper transfer instructions from the registered holder of the shares or by such person's attorney lawfully constituted in writing, and in either case upon payment of all necessary transfer taxes; provided, however, that such surrender and endorsement, compliance or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. With respect to certificated shares of stock, every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent of the Corporation. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 6.05 (A) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty nor less than ten days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of stockholders shall be at the close of business (as defined in Section 2.15(E) above) on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of stockholders shall apply to any adjournment of the meeting; providing, however, that the Board of Directors may fix a new record date for the adjourned

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meeting. See Section 2.17(B) with respect to the fixing of a record date to determine the stockholders entitled to consent to corporate action in writing without a meeting.

(B) In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall not be more than sixty days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 6.06 The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the

owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise provided by Delaware Law.

## ARTICLE VII GENERAL PROVISIONS

### Dividends

Section 7.01 Dividends upon the capital stock of the Corporation, subject to the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting, in accordance with Delaware Law. Dividends may be paid in cash, in property, or in shares of capital stock, subject to the applicable provisions, if any, of the Certificate of Incorporation.

Section 7.02 Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the directors from time to time, in their absolute discretion, think proper as a reserve or reserves to meet contingencies, or for equalizing dividends or for repairing or maintaining any property of the Corporation, or for such other purpose as the directors shall think conducive to the interest of the Corporation, and the directors may modify or abolish any such reserve in the manner in which it was created.

### Fiscal Year

Section 7.03 The fiscal year of the Corporation shall be the calendar year unless otherwise fixed by resolution of the Board of Directors.

### Voting Securities Held by the Corporation

Section 7.04 Unless otherwise ordered by the Board of Directors, the Chief Executive Officer shall have full power and authority on behalf of the Corporation to attend and to act and to vote at any meeting of security holders of other corporations in which the Corporation may hold securities. At such meeting the Chief Executive Officer shall possess and may exercise any and all rights and powers incident to the ownership of such securities which the Corporation might have possessed and exercised if it had

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been present. The Board of Directors may, from time to time, confer like powers upon any other person or persons.

Section 7.05 The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware." The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

## ARTICLE VIII INDEMNIFICATION

Section 8.01 (A) Any person (and the heirs, executors or administrators of such person) who was or is a party or is threatened to be made a party to or was or is involved (as a witness or otherwise) in any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than any action or suit by or in the right of the Corporation to procure a judgment in its favor) by reason of the fact that he or she is or was a director, officer or employee of the Corporation, or is or was serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, including service with respect to employee benefit plans, shall be indemnified by the Corporation, to the extent authorized by the laws of the State of Delaware as the same exists or may hereafter be amended (but, in the case of any such amendment, only to the extent that such amendment permits the Corporation to provide broader indemnification rights than such laws permitted prior to such amendment), against all expenses (including, but not limited to, attorneys' fees), judgments, fines, penalties and amounts paid in settlement actually and reasonably incurred by him or her in connection with the action, suit or proceeding. In the event of any action or suit by or in the right of the Corporation to procure a judgment in its favor, such persons shall be indemnified by the Corporation against expenses (including attorneys' fees) under the same conditions and to the same extent as specified above, except that no indemnification is permitted

in respect of any claim, issue or matter as to which such persons shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper. The indemnification expressly provided by statute in a specific case shall not be deemed exclusive of any other rights to which any person indemnified may be entitled under any lawful agreement, vote of stockholders or disinterested directors or otherwise, both as to action in his or her official capacity and as to action in another capacity while holding such office, and shall continue as to a person who has ceased to be a director, officer, employee or agent and shall inure to the benefit of the heirs, executors and administrators of such a person.

(B) The right to indemnification conferred in this Article VIII is and shall be a contract right. The right to indemnification conferred in this Article VIII shall include the right to be paid by the Corporation the expenses (including attorneys' fees and retainers therefor) reasonably incurred in connection with any such proceeding in advance of its final disposition, such advances to be paid by the Corporation within 20 days after the receipt by the Corporation of a statement or statements from a director, officer or employee of the Corporation requesting such advance or advances from time to time; provided, however, the payment of such expenses incurred by a director, officer or employee in his or her capacity as a director, officer or employee in advance of the final disposition of a proceeding shall be made only upon delivery to the Corporation of an

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undertaking by or on behalf of such director, officer or employee to repay all amounts so advanced if it shall ultimately be determined that such director, officer or employee is not entitled to be indemnified under this Article VIII or otherwise.

(C) To obtain indemnification under this Article VIII, an indemnitee shall submit to the Corporation a written request, including therein or therewith such documentation and information as is reasonably available to such person and is reasonably necessary to determine whether and to what extent the indemnitee is entitled to indemnification.

(D) The Corporation may maintain insurance, at its expense, to protect itself and any director, officer, employee or agent of the Corporation or another corporation, partnership, joint venture, trust or other enterprise against any expense, liability or loss incurred by such person in any such capacity or arising out of such person's status as such, whether or not the Corporation would have the power to indemnify such person against such expense, liability or loss under Delaware Law. To the extent that the Corporation maintains any policy or policies providing such insurance, each such director, officer or employee, and each such agent to which rights to indemnification have been granted as provided in paragraph (E) of this Section 8.01, shall be covered by such policy or policies in accordance with its or their terms to the maximum extent of the coverage thereunder for any such director, officer, employee or agent.

(E) The Corporation may, to the extent authorized from time to time by the Board of Directors, grant rights to indemnification, and rights to be paid by the Corporation the expenses incurred in connection with any proceeding in advance of its final disposition, to any agent of the Corporation to the fullest extent of the provisions of this Article VIII with respect to the indemnification and advancement of expenses of directors, officers and employees of the Corporation.

(F) Neither the amendment nor repeal of this Article VIII, nor the adoption of any provision of this Certificate of Incorporation or the By-Laws of the Corporation, nor, to the fullest extent permitted by Delaware Law, any modification of law, shall eliminate or reduce the effect of this Article VIII in respect of any acts or omissions occurring prior to such amendment, repeal, adoption or modification.

## ARTICLE IX

### NOMINATION OF DIRECTORS

Section 9.01 (A) Only persons who are nominated in accordance with the following procedures shall be eligible for election as directors of the Corporation, except as may be otherwise provided in the Certificate of Incorporation with respect to the rights of holders of any preferred stock of the Corporation to nominate and elect a specified number of directors in certain circumstances. Nominations of persons for election to the Board of Directors may be made at any annual meeting of stockholders or at any special meeting of stockholders called for the purpose of electing directors (1) by or at the direction of the Board of Directors, (2) by any stockholder of the Corporation

present in person who is a stockholder of record at the time of giving of the notice provided for in this Section 9.01, on the record date(s) for the determination of stockholders entitled to notice of and to vote at the meeting and at the time of the meeting, is entitled to vote thereon at the meeting, who complies with the notice procedures set forth in this Section 9.01, and who nominates a number of nominees that does not exceed the number of directors that will be elected at the meeting, (3) by any Eligible Stockholder who complies with the procedures set forth in Section 9.02, or (4) in the case of a Stockholder Requested Special Meeting, by any stockholder of the Corporation who complies with the procedures set forth in Section 2.04; clauses (2), (3),

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and (4) shall be the exclusive means for a stockholder to nominate persons for election to the Board of Directors before an annual meeting or special meeting of stockholders (in addition to complying with the other applicable requirements of the Certificate of Incorporation, these By-Laws, Rule 14a-19 promulgated under the Exchange Act and other state and federal law). Notwithstanding any other provision of these By-Laws, in the case of a Stockholder Requested Special Meeting, no stockholder may nominate a person for election to the Board of Directors or propose any other business to be considered at the meeting, except pursuant to the written request(s) delivered for such special meeting pursuant to Section 2.04.

(B) Any stockholder of record may nominate one or more persons for election as director at a meeting (other than a Stockholder Requested Special Meeting) only if the notice required by this Section 9.01 with respect to any nomination or nominations (including the completed and signed questionnaire, representation and agreement required by Section 9.01(D)) has been given, either by personal delivery or by United States mail, postage prepaid, in proper written form to the Secretary of the Corporation at the principal executive offices of the Corporation (1) with respect to an election to be held at an annual meeting of stockholders, in accordance with the time periods prescribed for delivery of notice under Section 2.15(B), and (2) with respect to an election to be held at a special meeting of stockholders for the election of directors (other than a Stockholder Requested Special Meeting), the close of business (as defined in Section 2.15(E)) on the seventh day following the earlier of (a) the date on which notice of such meeting is first given to stockholders and (b) the date on which a public announcement (as defined in Section 2.15(E)) of such meeting is first made. In no event shall an adjournment, recess or postponement of an annual meeting or special meeting commence a new time period (or extend any time period) for the giving of a stockholder's notice as described above. For the avoidance of doubt, a stockholder shall not be entitled to make additional or substitute nominations following the expiration of the time periods prescribed for delivery of notice under Section 2.15(B).

(C) To be in proper written form, each such notice shall include: (1) the class and number of shares of the Corporation which are owned beneficially and of record by each person whom the stockholder proposes to nominate for election as a director; (2) the name and address of the person or persons to be nominated; (3) the written consent of each nominee to be named in proxy materials as a nominee and to serve as a director of the Corporation if so elected; and (4) as to each person whom the stockholder proposes to nominate for election as a director (a) the name of each nominee holder of shares owned beneficially but not of record by such person and the number of shares of stock held by each such nominee holder, (b) whether and the extent to which any Derivative Instrument or Short Interest has been entered into by or on behalf of such person with respect to stock of the Corporation, (c) any other information relating to the person that would be required to be disclosed in a proxy statement or other filings required to be made in connection with solicitations of proxies for election of directors pursuant to Section 14 of the Exchange Act, (d) a reasonably detailed description of all direct and indirect compensation, reimbursement, indemnification, benefits and other agreements, arrangements and understandings (written or oral and formal or informal and whether monetary or non-monetary) during the past three years, and any other relationships, between or among any Nominating Person or Eligible Stockholder, on the one hand, and each proposed nominee, and his or her respective affiliates and associates, or others acting in concert therewith, on the other hand, including, without limitation all information that would be required to be disclosed pursuant to Item 404 or any successor provision promulgated under Regulation S-K if the Nominating Person or Eligible Stockholder were the "registrant" for purposes of such Item and the nominee were a director or executive officer of such

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registrant, (e) a representation regarding whether a Nominating Person intends, or is part of a group that intends, to solicit proxies in support of director nominees other than the Corporation's nominees in accordance with Rule 14a-19 promulgated under the Exchange Act, and, in the event that a Nominating Person so intends, or is part of a group that so intends, a written agreement (in the form provided by the Secretary of the Corporation upon written request), on behalf of such Nominating Person and any group of which it is a member, in which such Nominating Person acknowledges and agrees (A) that it, or the group of which it is a part, intends to solicit the holders of shares representing at least 67% of the voting power of the Corporation's shares entitled to vote on the election of directors in support of such director nominees other than the Corporation's nominees in accordance with Rule 14a-19(a)(3) promulgated under the Exchange Act, (B) that it shall notify the Secretary of the Corporation promptly if any change occurs with respect to the intent of such Nominating Person or the group of which such Nominating Person is a part to solicit the holders of shares representing at least 67% of the voting power of shares entitled to vote on the election of directors in support of director nominees other than the Corporation's nominees or with respect to the names of such Nominating Person's nominees, (C) that if such Nominating Person or the group of which it is a part (i) provides notice pursuant to Rule 14a-19(a)(1) promulgated under the Exchange Act and (ii) subsequently fails to comply with the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) promulgated under the Exchange Act, then the Corporation shall disregard any proxies or votes solicited for such Nominating Person's nominees, and (D) that, upon request by the Corporation, if such Nominating Person or the group of which it is a part provides notice pursuant to Rule 14a-19(a)(1) promulgated under the Exchange Act, such Nominating Person shall deliver to the Corporation, no later than five business days prior to the applicable meeting, reasonable documentary evidence (as determined by the Corporation or one of its representatives, acting in good faith) that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act. Such notice shall be accompanied by a written consent of each such director nominee to being named in the proxy materials as a nominee, and (f) a completed and signed questionnaire, representation and agreements required by Section 9.01(D).

For purposes of these By-Laws, the term "Nominating Person" shall mean: (a) the stockholder providing the notice of the nomination proposed to be made at the meeting, (b) the beneficial owner or beneficial owners, if different, on whose behalf the notice of the nomination proposed to be made at the meeting is made, (c) any participant (as defined in paragraphs (a)(ii)-(vi) of Instruction 3 to Item 4 of Schedule 14A) with such stockholder or beneficial owner(s) in any solicitation of proxies in respect of any such proposed nomination, (d) any Affiliate (within the meaning of Rule 12b-2 under the Exchange Act for purposes of these By-Laws) of such stockholder or beneficial owner(s), (e) any person controlling, controlled by or under common control with such stockholder or beneficial owner(s), and (f) any person acting in concert with such stockholder or beneficial owner(s). In addition, such stockholder's notice shall set forth the information required under Section 2.16 of these By-Laws. Notwithstanding the foregoing provisions of this Section 9.01(C), the Corporation also may require each person to be nominated to furnish such other information as may reasonably be required by the Corporation to determine the eligibility and qualifications of such person to serve as a director of the Corporation, including information relevant to a determination whether such person can be considered an independent director. No person shall be eligible for election as a director of the Corporation unless nominated in accordance with the procedures set forth in this Section 9.01 or in Section 9.02. Only such nominations of persons for election to the Board of Directors shall be conducted at a meeting of stockholders as shall have been brought before the meeting in accordance with the procedures set forth in this Section 9.01 and pursuant to Rule 14a-19 under the

Exchange Act or in Section 9.02. Except as otherwise provided by law, the Certificate of Incorporation or these By-Laws, the Board of Directors or the person presiding over a meeting of stockholders shall have the power and duty to determine whether any nomination proposed by any stockholder to be brought before the meeting was made or proposed in accordance with the procedures set forth in the applicable section and, if any nomination is not in compliance with such section, then except as otherwise provided by law, the person presiding over the meeting of stockholders shall have the power and duty to declare that such defective nomination or other business shall be disregarded. In addition, a nomination proposed to be brought by a stockholder pursuant to this Section 9.01 may not be brought before a meeting if such stockholder or any Nominating Person or Eligible Stockholder takes action contrary to the representations made in the stockholder notice applicable to such nomination or if the stockholder notice applicable to such nomination contains an untrue statement of

a material fact or omits to state a material fact necessary to make the statements therein not misleading or, if after being submitted to the Corporation, the stockholder notice applicable to such nomination was not updated in accordance with these By-Laws to cause the information provided in the stockholder notice to be true, correct and complete in all respects. A stockholder is not entitled to have its nomination included in the Corporation's proxy materials solely as a result of such stockholder's compliance with the provisions of this Section 9.01, except if such nominees are also submitted in accordance and in compliance with Rule 14a-19 under the Exchange Act and other applicable requirements of state and federal law.

(D) For a stockholder nominee to be eligible for election as a director of the Corporation, a person must deliver (in accordance with the time periods prescribed for delivery of notice under Section 2.15(B)) to the Secretary at the principal executive offices of the Corporation a written questionnaire with respect to the background and qualification of such person and the background of any other person or entity on whose behalf the nomination is being made (which questionnaire shall be provided by the Secretary upon written request by a stockholder of record) and a written representation and agreement (in the form provided by the Secretary upon written request by a stockholder of record) that such person (1) is not and will not become a party to (a) any agreement, arrangement or understanding with, and has not given any commitment or assurance to, any person or entity as to how such person, if elected as a director of the Corporation, will act or vote on any issue or question (a "Voting Commitment") that has not been disclosed to the Corporation or (b) any Voting Commitment that could limit or interfere with such person's ability to comply, if elected as a director of the Corporation, with such person's fiduciary duties under applicable law, (2) is not and will not become a party to any agreement, arrangement or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement or indemnification in connection with service or action as a director that has not been disclosed therein, (3) has disclosed to the Corporation any and all potential and actual conflicts of interest of such nominee with the Corporation and (4) in such person's individual capacity and on behalf of any person or entity on whose behalf the nomination is being made, would be in compliance, if elected as a director of the Corporation, and will comply with all applicable corporate governance, conflict of interest, confidentiality and stock ownership and trading policies and guidelines of the Corporation, and any other Corporation policies and guidelines applicable to directors.

(E) A stockholder shall update and supplement its notice to the Corporation of any nomination proposed to be made at a meeting, if necessary, so that the information provided or required to be provided in such notice (including any information submitted regarding any Nominating Person, Eligible Stockholder, or candidate whom a Nominating Person proposes to nominate for election as a director) shall be true and

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correct as of (1) the record date for the determination of persons entitled to receive notice of the meeting and (2) the date that is five business days prior to the meeting and, in the event of any adjournment or postponement thereof, five business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (1) above, such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than two business days after the record date for the determination of persons entitled to receive notice of the meeting. In the case of an update and supplement pursuant to clause (2) above, such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than two business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two business days prior to such adjourned or postponed meeting. The obligation to update and supplement set forth in this paragraph or any other section of these By-Laws shall not cure or limit the Corporation's rights with respect to any deficiencies in any notice provided by a stockholder, extend any applicable deadlines hereunder or under any other provision of the By-Laws or enable or be deemed to permit a stockholder who has previously submitted notice hereunder or under any other provision of the By-Laws to amend or update any nomination or to submit any new nomination, including by changing or adding nominees proposed to be brought before a meeting of stockholders.

(F) In addition to the foregoing provisions of this Section 9.01, a stockholder shall comply with all applicable requirements of the Exchange Act (including Rule 14a-19 promulgated thereunder) and Delaware Law with respect to the matters set forth in this Section 9.01.

(G) Without limiting the other provisions and requirements of this Section 9.01, unless otherwise required by applicable law, if any stockholder (i) provides notice pursuant to Rule 14a-19(a)(1) promulgated under the Exchange Act and (ii) subsequently fails to comply with

the requirements of Rule 14a-19(a)(2) and Rule 14a-19(a)(3) promulgated under the Exchange Act, then the Corporation shall disregard any proxies or votes solicited for such stockholder's nominees. Upon request by the Corporation, if any stockholder provides notice pursuant to Rule 14a-19(a)(1) promulgated under the Exchange Act, such stockholder shall deliver to the Corporation, no later than five business days prior to the applicable meeting, reasonable documentary evidence (as determined by the Corporation or one of its representatives, acting in good faith) that it has met the requirements of Rule 14a-19(a)(3) promulgated under the Exchange Act.

(H) A stockholder is not entitled to have its nominees included in the Corporation's proxy materials as a result of such stockholder's compliance with the provisions of this Section 9.01, except if such nominees are also submitted in accordance and in compliance with Rule 14a-19 promulgated under the Exchange Act and other applicable requirements of state and federal law.

Section 9.02 (A) Subject to the terms and conditions of these By-Laws, in connection with an annual meeting of stockholders at which directors are to be elected, the Corporation will include in its proxy statement and on its form of proxy the name of a nominee for election to the Board of Directors submitted pursuant to this Section 9.02 (a "Stockholder Nominee"), and will include in its proxy statement the "Required Information" (as defined in Section 9.02(D)), if:

- (1) the Stockholder Nominee satisfies the eligibility requirements in this Section 9.02,

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(2) the Stockholder Nominee is identified in a timely notice (the "Stockholder Notice") that satisfies this Section 9.02 and is delivered by a stockholder that qualifies as, or is acting on behalf of, an Eligible Stockholder,

(3) the Eligible Stockholder expressly elects at the time of the delivery of the Stockholder Notice to have the Stockholder Nominee included in the Corporation's proxy materials, and

- (4) the additional requirements of these By-Laws are met.

(B) To qualify as an "Eligible Stockholder," a stockholder or a group as described in this Section 9.02(B) must:

(1) Own and have Owned (as defined in Section 9.02(C)), continuously for at least three years as of the date of the Stockholder Notice, a number of shares (as adjusted for any stock splits, stock dividends, or similar events) that represents at least three percent (3%) of the outstanding shares of the Corporation that are entitled to vote in the election of directors as of the date of the Stockholder Notice (the "Required Shares"), and

- (2) thereafter continue to Own the Required Shares through such annual meeting of stockholders.

For purposes of satisfying the ownership requirements of this Section 9.02(B), a group of no more than twenty stockholders and/or beneficial owners may aggregate the number of shares of capital stock that each group member Owns and has Owned continuously for at least three years as of the date of the Stockholder Notice. No stockholder or beneficial owner, alone or together with any of its affiliates, may individually or as a member of a group qualify as more than one Eligible Stockholder under this Section 9.02. A group of any two or more funds that are (a) under common management and funded primarily by the same employer, or (b) constitute a "group of investment companies," as such term is defined in Section 12(d)(1)(G)(ii) of the Investment Company Act of 1940, as amended, (but without regard to whether such investment companies are registered pursuant to the Investment Company Act of 1940, as amended) shall be treated as one stockholder or beneficial owner for purposes of this Section 9.02. Whenever an Eligible Stockholder consists of a group of stockholders and/or beneficial owners, any and all requirements and obligations for an Eligible Stockholder set forth in this Section 9.02 must be satisfied by and as to each such stockholder or beneficial owner, except that shares may be aggregated as specified in this Section 9.02(B) and except as otherwise provided in this Section 9.02. The term "affiliate" or "affiliates" shall have the meanings ascribed thereto under the rules and regulations promulgated under the Exchange Act.

(C) For purposes of this Section 9.02, the term "Own," when used with respect to a stockholder or beneficial owner, shall have the meaning set forth in Section 2.04(F) and the terms "Owned," "Owning" and other variations of the word "Own" shall have correlative meanings.

(D) For purposes of this Section 9.02, the “Required Information” that the Corporation will include in its proxy statement is:

(1) the information set forth in the Schedule 14N provided with the Stockholder Notice concerning each Stockholder Nominee and the Eligible

Stockholder that is required to be disclosed in the Corporation’s proxy statement by the applicable requirements of the Exchange Act, and

(2) if the Eligible Stockholder so elects, a single written statement of the Eligible Stockholder (or, in the case of a group, a single written statement of the group), not to exceed 500 words, in support of each Stockholder Nominee, which must be provided at the same time as the Stockholder Notice for inclusion in the Corporation’s proxy statement for the annual meeting (the “Statement”).

Notwithstanding anything to the contrary contained in this Section 9.02, the Corporation may omit from its proxy materials any information or Statement that it, in good faith, believes is untrue in any material respect (or omits a material fact necessary in order to make the statements made, in light of the circumstances under which they are made, not misleading) or would violate any applicable law, rule, regulation or listing standard. Nothing in this Section 9.02 shall limit the Corporation’s ability to solicit against and include in its proxy materials its own statements relating to any Eligible Stockholder or Stockholder Nominee.

(E) The Stockholder Notice shall set forth all information, representations and agreements required under Section 2.16 above (and for such purposes, references in Section 2.16 to the “beneficial owner” on whose behalf the nomination is made shall be deemed to refer to “Eligible Stockholder”), other than any such information, representations and agreements to be made relating specifically to the requirements of Rule 14a-19 promulgated under the Exchange Act, and in addition such Stockholder Notice shall include:

(1) a copy of the Schedule 14N that has been or concurrently is filed with the SEC under the Exchange Act,

(2) a statement of the Eligible Stockholder (and in the case of a group, the written agreement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder), which statement(s) shall also be included in the Schedule 14N filed with the SEC: (a) setting forth and certifying to the number of shares of capital stock the Eligible Stockholder Owns and has Owned (as defined in Section 9.02(C) of these By-Laws) continuously for at least three years as of the date of the Stockholder Notice, (b) agreeing to continue to Own such shares through the annual meeting, (c) agreeing that within five business days of being notified that its Stockholder Nominee will be included in the Corporation’s proxy materials for the relevant annual meeting, it will recall any of the Required Shares that have been loaned and continue to hold the Required Shares through the date of the annual meeting, and (d) stating whether it intends to maintain Ownership of the Required Shares for at least one year following the annual meeting,

(3) the written agreement of the Eligible Stockholder (and in the case of a group, the written agreement of each stockholder or beneficial owner whose shares are aggregated for purposes of constituting an Eligible Stockholder) addressed to the Corporation, setting forth the following additional agreements, representations, and warranties:

(a) it will provide (i) the information required under Section 2.16 as of the record date, (ii) written statements from the record holder and intermediaries as required under Section 9.02(G) verifying the Eligible Stockholder’s continuous Ownership of the Required Shares, as of the

record date, and (iii) immediate notice to the Corporation if the Eligible Stockholder ceases to own any of the Required Shares prior to the annual meeting of stockholders;

(b) it (i) acquired the Required Shares in the ordinary course of business and not with the intent to change or influence control at the Corporation, and does not presently have any such intent, (ii) has not nominated and will not nominate for election to the Board of Directors at the annual meeting any person other than the Stockholder Nominee(s) being nominated pursuant to this Section 9.02, (iii) has not engaged and will not engage in, and has not been and will not be a participant (as defined in Item 4 of Exchange Act Schedule 14A) in, a solicitation within the meaning of Exchange Act Rule 14a-1(l), in support of the election of any individual as a director at the annual meeting other than its Stockholder Nominee or a nominee of the Board of Directors, and (iv) will not distribute to any stockholder any form of proxy for the annual meeting other than the form distributed by the Corporation, and

(c) it will (i) assume all liability stemming from any legal or regulatory violation arising out of the Eligible Stockholder's communications with the stockholders of the Corporation or out of the information that the Eligible Stockholder provided to the Corporation, (ii) indemnify and hold harmless the Corporation and each of its directors, officers and employees individually against any liability, loss or damages in connection with any threatened or pending action, suit or proceeding, whether legal, administrative or investigative, against the Corporation or any of its directors, officers or employees arising out of any nomination submitted by the Eligible Stockholder pursuant to this Section 9.02, comply with all laws, rules, regulations and listing standards applicable to any solicitation in connection with the annual meeting, (iv) file all materials described below in Section 9.02(G)(3) with the SEC, regardless of whether any such filing is required under Exchange Act Regulation 14A, or whether any exemption from filing is available for such materials under Exchange Act Regulation 14A, and (v) promptly provide to the Corporation prior to the day of the annual meeting such additional information as reasonably requested by the Corporation, and

(4) in the case of a nomination by a group, the designation by all group members of one group member that is authorized to act on behalf of all members of the nominating stockholder group with respect to the nomination and matters related thereto, including withdrawal of the nomination.

(F) To be timely under this Section 9.02, the Stockholder Notice must be delivered by a stockholder to the Secretary of the Corporation at the principal executive offices of the Corporation not later than the close of business (as defined in Section 2.15(E) above) on the 120<sup>th</sup> day nor earlier than the close of business on the 150<sup>th</sup> day prior to the first anniversary of the preceding year's annual meeting; provided, however, that in the event the annual meeting is more than 30 days before or after such anniversary date, or if no annual meeting was held in the preceding year, to be timely the Stockholder Notice must be so delivered not earlier than the close of business on the 150<sup>th</sup> day prior to such annual meeting and not later than the close of business on the later of the 120<sup>th</sup> day prior to such annual meeting or the 10th day following the day on which public announcement (as defined in Section 2.15(E) above) of the date of such meeting is first made by the Corporation. In no event shall an adjournment or recess of

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an annual meeting, or a postponement of an annual meeting for which notice has been given or with respect to which there has been a public announcement of the date of the meeting, commence a new time period (or extend any time period) for the giving of the Stockholder Notice as described above.

(G) An Eligible Stockholder must:

(1) within five business days after the date of the Stockholder Notice, provide to the Corporation one or more written statements from the record holder(s) of the Required Shares and from each intermediary through which the Required Shares are or have been held, in each case during the requisite three-year holding period, specifying the number of shares that the Eligible Stockholder Owns, and has Owned continuously in compliance with this Section 9.02,

(2) include in the Schedule 14N filed with the SEC a statement by the Eligible Stockholder (and in the case of a group, by each stockholder or beneficial owner whose shares are aggregated for purposes of constituting and Eligible Stockholder) certifying (a) the number of shares of capital stock that it Owns and has Owned continuously for at least three years as of the date of the Stockholder Notice, and (b) that it Owns and has Owned such shares within the meaning of Section 9.02(C),

(3) file with the SEC any solicitation or other communication by or on behalf of the Eligible Stockholder relating to the Corporation's annual meeting of stockholders, one or more of the Corporation's directors or director nominees or any Stockholder Nominee, regardless of whether any such filing is required under Exchange Act Regulation 14A or whether any exemption from filing is available for such solicitation or other communication under Exchange Act Regulation 14A,

(4) in the case of any group, within five business days after the date of the Stockholder Notice, provide to the Corporation documentation reasonably satisfactory to the Corporation demonstrating that the number of stockholders and/or beneficial owners within such group does not exceed twenty, including whether a group of investment companies qualifies as one stockholder or beneficial owner within the meaning of Section 9.02(B), and

(5) update and supplement the Stockholder Notice if necessary, so that the information provided or required to be provided in such notice (including any information submitted regarding any Eligible Stockholder or Stockholder Nominee) shall be true and correct as of (1) the record date for the determination of persons entitled to receive notice of the meeting and (2) the date that is five business days prior to the meeting and, in the event of any adjournment or postponement thereof, five business days prior to such adjourned or postponed meeting. In the case of an update and supplement pursuant to clause (1) above, such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than two business days after the record date for the determination of persons entitled to receive notice of the meeting. In the case of an update and supplement pursuant to clause (2) above, such update and supplement shall be delivered to, or mailed and received by, the Secretary at the principal executive offices of the Corporation not later than two business days prior to the date for the meeting, and, in the event of any adjournment or postponement thereof, two business days prior to such adjourned or postponed meeting. The obligation to update and supplement set forth in this paragraph or any other section of these By-Laws

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shall not cure or limit the Corporation's rights with respect to any deficiencies in any Stockholder Notice, extend any applicable deadlines hereunder or under any other provision of the By-Laws or enable or be deemed to permit a stockholder who has previously submitted a Stockholder Notice or a stockholder notice under any other provision of the By-Laws to amend or update any nomination or to submit any new nomination, including by changing or adding nominees proposed to be brought before a meeting of stockholders.

The information provided pursuant to this Section 9.02(G) shall be deemed part of the Stockholder Notice for purposes of this Section 9.02.

(H) Within the time period for delivery of the Stockholder Notice, a written representation and agreement of each Stockholder Nominee shall be delivered to the Secretary of the Corporation at the principal executive offices of the Corporation, which shall be signed by each Stockholder Nominee and shall represent and agree that such Stockholder Nominee:

(1) consents to being named in proxy materials as a nominee and to serving as a director if elected;

(2) is not and will not become a party to any agreement, arrangement, or understanding with, and has not given any commitment or assurance to, any person or entity as to how such Stockholder Nominee, if elected as a director, will act or vote on any issue or question that has not been disclosed to the Corporation;

(3) is not and will not become a party to any agreement, arrangement, or understanding with any person or entity other than the Corporation with respect to any direct or indirect compensation, reimbursement, or indemnification in connection with service or action as a director that has not been disclosed to the Corporation; and

(4) if elected as a director, will comply with all of the Corporation's corporate governance, conflict of interest, confidentiality, and stock ownership and trading policies and guidelines, and any other Corporation policies and guidelines applicable to directors.

At the time of submission of the Stockholder Notice, the Stockholder Nominee must submit all completed and signed questionnaires required of the Corporation's directors and, at the request of the Corporation, provide to the Corporation such other information as it may reasonably request. The Corporation may request such additional information as necessary to permit the Board of Directors to determine if each Stockholder Nominee satisfies the requirements of this Section 9.02.

(I) In the event that any information or communications provided by the Eligible Stockholder or any Stockholder Nominees to the Corporation or its stockholders is not, when provided, or thereafter ceases to be, true, correct and complete in all material respects (including omitting a material fact necessary to make the statements made, in light of the circumstances under which they were made, not misleading), such Eligible Stockholder or Stockholder Nominee, as the case may be, shall promptly notify the Secretary and provide the information that is required to make such information or communication true, correct, complete and not misleading; it being understood that providing any such notification shall not be deemed to cure any defect or limit the

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Corporation's right to omit a Stockholder Nominee from its proxy materials as provided in this Section 9.02.

(J) Notwithstanding anything to the contrary contained in this Section 9.02, the Corporation may omit from its proxy materials any Stockholder Nominee, and such nomination shall be disregarded and no vote on such Stockholder Nominee will occur, notwithstanding that proxies in respect of such vote may have been received by the Corporation, if:

(1) the Eligible Stockholder or Stockholder Nominee breaches any of its respective agreements, representations, or warranties set forth in the Stockholder Notice (or otherwise submitted pursuant to this Section 9.02), any of the information in the Stockholder Notice (or otherwise submitted pursuant to this Section 9.02) was not, when provided, true, correct and complete, or the requirements of this Section 9.02 have otherwise not been met,

(2) the Stockholder Nominee (a) is not independent under any applicable listing standards, any applicable rules of the SEC, and any publicly disclosed standards used by the Board of Directors in determining and disclosing the independence of the Corporation's Directors, (b) does not qualify as independent under the audit committee independence requirements set forth in the rules of the principal U.S. exchange on which shares of the Corporation are listed, as a "non-employee director" under Exchange Act Rule 16b-3, or as an "outside director" for the purposes of Section 162(m) of the Internal Revenue Code (or any successor provision), (c) is or has been, within the past three years, an officer or director of a competitor, as defined in Section 8 of the Clayton Antitrust Act of 1914, as amended, (d) is a named subject of a pending criminal proceeding (excluding traffic violations and other minor offenses) or has been convicted in a criminal proceeding (excluding traffic violations and other minor offenses) within the past ten years or (e) is subject to any order of the type specified in Rule 506(d) of Regulation D promulgated under the Securities Act of 1933, as amended,

(3) the Corporation has received a notice (whether or not subsequently withdrawn) that a stockholder intends to nominate any candidate for election to the Board of Directors pursuant to the advance notice requirements for stockholder nominees for director in Section 9.01 of this Article IX,

(4) the election of the Stockholder Nominee to the Board of Directors would cause the Corporation to violate the Certificate of Incorporation, these By-Laws, any applicable law, rule, regulation or listing standard, or

(5) the Eligible Stockholder or applicable Stockholder Nominee fails to comply with its obligations pursuant to these By-Laws, including but not limited to its obligations under this Section 9.02.

(K) The maximum number of Stockholder Nominees submitted by all Eligible Stockholders that may be included in the Corporation's proxy materials pursuant to this Section 9.02, shall not exceed twenty percent (20%) of the number of directors in office as of the last day on which a Stockholder Notice may be delivered pursuant to this Section 9.02 with respect to the annual meeting, or if such amount is not a

whole number, the closest whole number (rounding down) below twenty percent (20%) (such resulting number, the "Permitted Number"); provided that the Permitted Number shall be reduced by (1) any nominees who were previously elected to the Board of Directors as

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Stockholder Nominees at any of the preceding two annual meetings and who are nominated for election at such annual meeting by the Board of Directors as a Board of Directors nominee, and (2) any directors in office or director candidates that in either case will be included in the Corporation's proxy materials with respect to such an annual meeting as an unopposed (by the Corporation) nominee pursuant to an agreement, arrangement or other understanding between the Corporation and a stockholder or group of stockholders (other than any such agreement, arrangement or understanding entered into in connection with an acquisition of capital stock, by such stockholder or group of stockholders, from the Corporation). In the event that one or more vacancies for any reason occurs after the date of the Stockholder Notice but before the annual meeting and the Board of Directors resolves to reduce the size of the Board of Directors in connection therewith, the Permitted Number shall be calculated based on the number of directors in office as so reduced. In the event that the number of Stockholder Nominees submitted by Eligible Stockholders pursuant to this Section 9.02 exceeds the Permitted Number, the Corporation shall determine which Stockholder Nominees shall be included in the Corporation's proxy materials in accordance with the following provisions: each Eligible Stockholder will select one Stockholder Nominee for inclusion in the Corporation's proxy materials until the Permitted Number is reached, going in order of the amount (largest to smallest) of shares of the Corporation each Eligible Stockholder disclosed as Owned in its respective Stockholder Notice submitted to the Corporation. If the Permitted Number is not reached after each Eligible Stockholder has selected one Stockholder Nominee, this selection process will continue as many times as necessary, following the same order each time, until the Permitted Number is reached. Following such determination, if any Stockholder Nominee who satisfies the eligibility requirements in this Section 9.02 thereafter is nominated by the Board of Directors, thereafter is not included in the Corporation's proxy materials or thereafter is not submitted for director election for any reason (including the Eligible Stockholder's or Stockholder Nominee's failure to comply with this Section 9.02), no other nominee or nominees shall be included in the Corporation's proxy materials or otherwise submitted for director election in substitution thereof.

(L) Any Stockholder Nominee who is included in the Corporation's proxy materials for a particular annual meeting of stockholders but either (1) withdraws from or becomes ineligible or unavailable for election at the annual meeting for any reason, including for the failure to comply with any provision of these By-Laws (provided that in no event shall any such withdrawal, ineligibility or unavailability commence a new time period (or extend any time period) for the giving of a Stockholder Notice) or (2) does not receive a number of votes cast in favor of his or her election at least equal to twenty-five percent (25%) of the shares present in person or represented by proxy and entitled to vote in the election of directors, will be ineligible to be a Stockholder Nominee pursuant to this Section 9.02 for the next two annual meetings.

(M) The Board of Directors (and any other person or body authorized by the Board of Directors) shall have the power and authority to interpret this Section 9.02 and to make any and all determinations necessary or advisable to apply this Section 9.02 to any persons, facts or circumstances, including the power to determine (1) whether one or more stockholders or beneficial owners qualifies as an Eligible Stockholder, (2) whether a Stockholder Notice complies with this Section 9.02 and has otherwise met the requirements of this Section 9.02, (3) whether a Stockholder Nominee satisfies the qualifications and requirements in this Section 9.02, and (4) whether any and all requirements of this Section 9.02 have been satisfied. Any such interpretation or determination adopted in good faith by the Board of Directors (or any other person or body authorized by the Board of Directors) shall be binding on all persons, including the Corporation and its stockholders (including any beneficial owners). For purposes of

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applying the requirements of this Section 9.02 (including Section 9.02(A)(2)), the number of Required Shares required to be Owned by any person or persons during any time period shall be adjusted, in the manner determined by the Board of Directors (or any authorized committee thereof) to account for any stock dividend, stock split, subdivision, combination, reclassification or recapitalization of capital stock. Notwithstanding the foregoing provisions of this Section 9.02, unless otherwise required by law or otherwise determined by the chairperson of the meeting or the Board of Directors, if the stockholder or a qualified representative of the stockholder (as defined in Section 2.04(E)) does not attend the annual meeting of stockholders of the Corporation to present its Stockholder Nominee or Stockholder Nominees, such nomination or nominations shall be disregarded, notwithstanding that proxies in respect of the election of the Stockholder Nominee or Stockholder Nominees may have been received by the Corporation. This Section 9.02 shall be the exclusive method for stockholders to include nominees for director election in the Corporation's proxy materials (other than with respect to Rule 14a-19 under the Exchange Act to the extent applicable to the Corporation's proxy card).

## ARTICLE X AMENDMENTS

Section 10.01 These By-Laws may be amended or repealed by the affirmative vote of a majority of the stockholders entitled to vote thereon or a majority of the directors then in office at any regular meeting of the stockholders or of the Board of Directors, respectively, or at any special meeting of the stockholders or of the Board of Directors, respectively, if notice of such proposed alteration or repeal be contained in the notice of such meeting. The stockholders may determine by majority vote that any action taken by them with respect to adoption, amendment or repeal of any part of these By-Laws shall not be subject to subsequent amendment or repeal by the Board of Directors, provided that any such determination shall be set forth in the appropriate place in the text of these By-Laws.

## ARTICLE XI FORUM PROVISIONS

Section 11.01 Unless the Corporation consents in writing to the selection of an alternative forum, the sole and exclusive forum for any (a) derivative action or proceeding brought on behalf of the Corporation, (b) action asserting a claim of breach of a fiduciary duty owed by any current or former director, officer or other employee of the Corporation to the Corporation or the Corporation's stockholders, (c) action asserting a claim arising pursuant to any provision of Delaware Law or the Certificate of Incorporation or these By-Laws (as any of the foregoing may be amended from time to time) or (d) action asserting a claim governed by the internal affairs doctrine, shall be the Court of Chancery in the State of Delaware (or, if the Court of Chancery does not have jurisdiction, the federal district court for the District of Delaware). If any action the subject matter of which is within the scope of the preceding sentence is filed in a court other than a court located within the State of Delaware in accordance with the preceding sentence (a "Foreign Action") in the name of any stockholder, such stockholder shall be deemed to have consented to (i) the personal jurisdiction of the state and federal courts located within the State of Delaware in connection with any action brought in any such court to enforce the preceding sentence and (ii) having service of process made upon such holder in any such action by service upon such stockholder's counsel in the Foreign Action as agent for such stockholder.

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Unless the Corporation consents in writing to the selection of an alternative forum, the federal district courts of the United States of America shall be, to the fullest extent permitted by law, the sole and exclusive forum for any action asserting a claim arising under the Securities Act of 1933.

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Exhibit 31.1

## CERTIFICATIONS

I, Andrés Gluski, certify that:

1. I have reviewed this Form 10-Q of The AES Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;
  - b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
  - c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
  - d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.
5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):
  - a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
  - b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: August 3, 2023 November 2, 2023

/s/ ANDRÉS GLUSKI

Name: Andrés Gluski

*President and Chief Executive Officer*

**Exhibit 31.2**

#### **CERTIFICATIONS**

I, Stephen Coughlin, certify that:

1. I have reviewed this Form 10-Q of The AES Corporation;
2. Based on my knowledge, this report does not contain any untrue statement of a material fact or omit to state a material fact necessary to make the statements made, in light of the circumstances under which such statements were made, not misleading with respect to the period covered by this report;
3. Based on my knowledge, the financial statements, and other financial information included in this report, fairly present in all material respects the financial condition, results of operations and cash flows of the registrant as of, and for, the periods presented in this report;
4. The registrant's other certifying officer and I are responsible for establishing and maintaining disclosure controls and procedures (as defined in Exchange Act Rules 13a-15(e) and 15d-15(e)) and internal control over financial reporting (as defined in Exchange Act Rules 13a-15(f) and 15d-15(f)) for the registrant and have:
  - a) Designed such disclosure controls and procedures, or caused such disclosure controls and procedures to be designed under our supervision, to ensure that material information relating to the registrant, including its consolidated subsidiaries, is made known to us by others within those entities, particularly during the period in which this report is being prepared;

- b) Designed such internal control over financial reporting, or caused such internal control over financial reporting to be designed under our supervision, to provide reasonable assurance regarding the reliability of financial reporting and the preparation of financial statements for external purposes in accordance with generally accepted accounting principles;
- c) Evaluated the effectiveness of the registrant's disclosure controls and procedures and presented in this report our conclusions about the effectiveness of the disclosure controls and procedures, as of the end of the period covered by this report based on such evaluation; and
- d) Disclosed in this report any change in the registrant's internal control over financial reporting that occurred during the registrant's most recent fiscal quarter (the registrant's fourth fiscal quarter in the case of an annual report) that has materially affected, or is reasonably likely to materially affect, the registrant's internal control over financial reporting.

5. The registrant's other certifying officer and I have disclosed, based on our most recent evaluation of internal control over financial reporting, to the registrant's auditors and the audit committee of the registrant's board of directors (or persons performing the equivalent functions):

- a) All significant deficiencies and material weaknesses in the design or operation of internal control over financial reporting which are reasonably likely to adversely affect the registrant's ability to record, process, summarize and report financial information; and
- b) Any fraud, whether or not material, that involves management or other employees who have a significant role in the registrant's internal control over financial reporting.

Date: **August 3, 2023** **November 2, 2023**

*/s/ STEPHEN COUGHLIN*

Name: Stephen Coughlin

*Executive Vice President and Chief Financial Officer*

**Exhibit 32.1**

**CERTIFICATION OF PERIODIC FINANCIAL REPORTS**

I, Andrés Gluski, President and Chief Executive Officer of The AES Corporation, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the Form 10-Q for the year ended **June 30, 2023** **September 30, 2023**, (the "Periodic Report") which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of The AES Corporation.

Date: **August 3, 2023** **November 2, 2023**

*/s/ ANDRÉS GLUSKI*

Name: Andrés Gluski

*President and Chief Executive Officer*

**Exhibit 32.2**

**CERTIFICATION OF PERIODIC FINANCIAL REPORTS**

I, Stephen Coughlin, Executive Vice President and Chief Financial Officer of The AES Corporation, certify, pursuant to 18 U.S.C. Section 1350, as adopted pursuant to Section 906 of the Sarbanes-Oxley Act of 2002, that:

- (1) the Form 10-Q for the year ended **June 30, 2023** **September 30, 2023**, (the "Periodic Report") which this statement accompanies fully complies with the requirements of Section 13(a) or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. 78m or 78o(d)); and
- (2) information contained in the Periodic Report fairly presents, in all material respects, the financial condition and results of operations of The AES Corporation.

Date: **August 3, 2023** November 2, 2023

/s/ STEPHEN COUGHLIN

Name: Stephen Coughlin

*Executive Vice President and Chief Financial Officer*

#### DISCLAIMER

THE INFORMATION CONTAINED IN THE REFINITIV CORPORATE DISCLOSURES DELTA REPORT™ IS A COMPARISON OF TWO FINANCIALS PERIODIC REPORTS. THERE MAY BE MATERIAL ERRORS, OMISSIONS, OR INACCURACIES IN THE REPORT INCLUDING THE TEXT AND THE COMPARISON DATA AND TABLES. IN NO WAY DOES REFINITIV OR THE APPLICABLE COMPANY ASSUME ANY RESPONSIBILITY FOR ANY INVESTMENT OR OTHER DECISIONS MADE BASED UPON THE INFORMATION PROVIDED IN THIS REPORT. USERS ARE ADVISED TO REVIEW THE APPLICABLE COMPANY'S ACTUAL SEC FILINGS BEFORE MAKING ANY INVESTMENT OR OTHER DECISIONS.

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