



UNITED STATES  
SECURITIES AND EXCHANGE COMMISSION  
WASHINGTON, D.C. 20549

DIVISION OF  
CORPORATION FINANCE

January 8, 2018

Brian A. Miller  
The AES Corporation  
brian.miller@aes.com

Re: The AES Corporation

Dear Mr. Miller:

This letter is in regard to your correspondence dated January 8, 2018 concerning the shareholder proposal (the "Proposal") submitted to The AES Corporation (the "Company") by the New York State Common Retirement Fund (the "Proponent") for inclusion in the Company's proxy materials for its upcoming annual meeting of security holders. Your letter indicates that the Proponent has withdrawn the Proposal and that the Company therefore withdraws its December 15, 2017 request for a no-action letter from the Division. Because the matter is now moot, we will have no further comment.

Copies of all of the correspondence related to this matter will be made available on our website at <http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml>. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

M. Hughes Bates  
Special Counsel

cc: Eri Yamaguchi  
State of New York  
Office of the State Comptroller  
eyamaguchi@osc.state.ny.us



**Brian A. Miller**  
Executive Vice President, General  
Counsel and Corporate Secretary

**The AES Corporation**  
4300 Wilson Boulevard  
Arlington, VA 22203  
tel 1 703 682 6427  
brian.miller@aes.com  
www.aes.com

January 8, 2018

VIA E-MAIL

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, DC 20549

Re: *The AES Corporation*  
*Stockholder Proposal of the New York State Common Retirement Fund*  
*Rule 14a-8 under the Securities Exchange Act of 1934*

Ladies and Gentlemen:

In a letter dated December 15, 2017, we requested that the staff of the Division of Corporation Finance concur that The AES Corporation (the "Company") could exclude from its proxy statement and form of proxy relating to its 2018 Annual Meeting of Stockholders (the "2018 Proxy Materials") a stockholder proposal and statement in support thereof (the "Proposal") received by the Company from the State of New York, Office of the State Comptroller, as the trustee of the New York State Common Retirement Fund and the administrative head of the New York State and Local Retirement System (the "Proponent").

Enclosed as Exhibit A is a letter received via e-mail from Eri Yamaguchi, dated January 8, 2018, withdrawing the Proposal on behalf of the Proponent. In reliance thereon, we hereby withdraw the December 15, 2017 no-action request to exclude the Proposal from the Company's 2018 Proxy Materials pursuant to Rule 14a-8 under the Securities Exchange Act of 1934.

Please do not hesitate to contact me at brian.miller@aes.com or (703) 682-6427 with any questions regarding this matter.

Sincerely,

Brian A. Miller  
Executive Vice President, General Counsel and  
Corporate Secretary  
The AES Corporation

Enclosure

cc: State of New York, Office of the State Comptroller

**Exhibit A**

## Soehner, Celia A.

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**From:** EYamaguchi@osc.state.ny.us  
**Sent:** Monday, January 08, 2018 12:31 PM  
**To:** brian.miller@aes.com  
**Cc:** Soehner, Celia A.; MMADDEN@osc.state.ny.us; EGordon@osc.state.ny.us; ANeidhardt@osc.state.ny.us  
**Subject:** Re: No-Action Request under Rule 14a-8 for The AES Corporation  
**Attachments:** Withdrawal letter\_NYS\_AES\_20170108\_final.doc

[EXTERNAL EMAIL]

Dear Mr. Miller,

Please find our withdrawal letter attached regarding our resolution on GHG reduction targets.

Investment Officer  
Corporate Governance  
New York State Common Retirement Fund  
Office of the State Comptroller  
Division of Pension Investment & Cash Management  
59 Maiden Lane, 30th floor  
New York, NY, 10038  
212-383-7242 (office)  
917-992-7571 (mobile)  
[eyamaguchi@osc.state.ny.us](mailto:eyamaguchi@osc.state.ny.us)

From: "Soehner, Celia A." <[celia.soehner@morganlewis.com](mailto:celia.soehner@morganlewis.com)>  
To: "shareholderproposals@sec.gov" <[shareholderproposals@sec.gov](mailto:shareholderproposals@sec.gov)>,  
Cc: "[brian.miller@aes.com](mailto:brian.miller@aes.com)" <[brian.miller@aes.com](mailto:brian.miller@aes.com)>, "Megan Campbell" <[megan.campbell@aes.com](mailto:megan.campbell@aes.com)>, "Pandit, Amy I." <[amy.pandit@morganlewis.com](mailto:amy.pandit@morganlewis.com)>  
Date: 12/15/2017 12:49 PM  
Subject: No-Action Request under Rule 14a-8 for The AES Corporation

---

Ladies and Gentlemen:

On behalf of The AES Corporation ("AES"), I am submitting a request for no-action relief pursuant to Rule 14a-8 of the Securities Exchange Act of 1934, as amended, for AES in connection with a stockholder proposal submitted by the Comptroller of the State of New York, as trustee of the New York State Common Retirement Fund (the "Proponent").

Via blind carbon copy to this email, we also are providing the Proponent with a copy of the attached request.

For any questions regarding this correspondence and request, please do not hesitate to contact Brian A. Miller, Executive Vice President, General Counsel and Corporate Secretary, The AES Corporation, at (703) 682-6427 or [brian.miller@aes.com](mailto:brian.miller@aes.com).

Very truly yours,  
Celia Soehner

**Celia A. Soehner**

**Morgan, Lewis & Bockius LLP**

One Oxford Centre, Thirty-Second Floor | Pittsburgh, PA 15219-6401

Direct: +1.412.560.7441 | Main: +1.412.560.3300 | Fax: +1.412.560.7001 | Mobile: +1.585.305.1311

[celia.soehner@morganlewis.com](mailto:celia.soehner@morganlewis.com) | [www.morganlewis.com](http://www.morganlewis.com)

Assistant: Diane Stockey | [diane.stockey@morganlewis.com](mailto:diane.stockey@morganlewis.com) | +1.412.560.7736

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**THOMAS P. DiNAPOLI**  
**STATE COMPTROLLER**



**STATE OF NEW YORK**  
**OFFICE OF THE STATE COMPTROLLER**

**DIVISION of CORPORATE GOVERNANCE**  
59 Maiden Lane-30<sup>st</sup> Floor  
New York, NY 10017  
Tel: (212) 383-7242  
Fax: (212) 383-1331

January 8, 2018

Mr. Brian A. Miller  
Executive Vice President,  
General Counsel and Corporate Secretary  
The AES Corporation  
4300 Wilson Boulevard  
Arlington, VA 22203

Dear Mr. Miller,

I hereby withdraw the resolution on GHG reduction targets filed on November 2, 2017 with your company by the Office of the State Comptroller on behalf of the New York State Common Retirement Fund.

Very truly yours,

Eri Yamaguchi  
Enclosures



RECEIVED  
2017 DEC 19 PM 3:11  
OFFICE OF CHIEF COUNSEL  
CORPORATION FINANCE

Brian A. Miller  
Executive Vice President, General  
Counsel and Corporate Secretary

The AES Corporation  
4300 Wilson Boulevard  
Arlington, VA 22203  
tel 1 703 682 6427  
brian.miller@aes.com  
www.aes.com

December 15, 2017

VIA HAND DELIVERY

U.S. Securities and Exchange Commission  
Division of Corporation Finance  
Office of Chief Counsel  
100 F Street, N.E.  
Washington, DC 20549

Re: *The AES Corporation*  
*Omission of Stockholder Proposal*  
*Rule 14a-8 under the Securities Exchange Act of 1934*

Ladies and Gentlemen:

This letter is to inform you that The AES Corporation (“AES” or the “Company”) intends to omit from its proxy statement and form of proxy for its 2018 Annual Meeting of Stockholders (collectively, the “2018 Proxy Materials”) a stockholder proposal and statement in support thereof (the “Proposal”) received by the Company from the State of New York, Office of the State Comptroller, as the trustee of the New York State Common Retirement Fund and the administrative head of the New York State and Local Retirement System (the “Proponent”).

Pursuant to Rule 14a-8(j) promulgated under the Securities Exchange Act of 1934 (as amended, the “Exchange Act”), we have:

- filed this letter with the U.S. Securities and Exchange Commission (the “Commission”) no later than eighty (80) calendar days before the Company intends to file its definitive 2018 Proxy Materials with the Commission; and
- concurrently sent copies of this correspondence to the Proponent.

Rule 14a-8(k) under the Exchange Act and Staff Legal Bulletin No. 14D (Nov. 7, 2008) (“SLB 14D”) provide that stockholder proponents are required to send companies a copy of any correspondence that the proponents elect to submit to the Commission or the staff of the Division of Corporation Finance (the “Staff”). Accordingly, we are taking this opportunity to inform the Proponent that if the Proponent elects to submit additional correspondence to the Commission or the Staff with respect to the Proposal, a copy of such correspondence should be furnished concurrently to the undersigned, on behalf of the Company, pursuant to Rule 14a-8(k) and SLB 14D.

## THE PROPOSAL

The Proponent submitted the Proposal to the Company on November 2, 2017 (the “Proposal Submission Date”). The Proposal requests that the Company prepare and issue a report by December 2018 that provides quantitative company-wide targets, and any plans to achieve such targets, for the long-term reduction of greenhouse gas (“GHG”) emissions, taking into consideration the global GHG reduction goal specified in the Paris Agreement. The Proposal is re-printed in its entirety below.

RESOLVED: Shareholders request that AES adopt time bound, quantitative, company-wide targets for the long term reduction of greenhouse gas (GHG) emissions, taking into consideration the global GHG reduction needs defined by the Paris Climate Agreement, and issue a report by December 2018, at reasonable cost and omitting proprietary information, on any plans to achieve these targets.

### Supporting Statement

In December 2015, representatives from 195 countries adopted the Paris Climate Agreement, which specifies a goal to limit the increase in global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit temperature increases to 1.5°C. In order to meet the 2°C goal, climate scientists estimate that a 55 percent reduction in GHG emissions globally is needed by 2050 (relative to 2010 levels), entailing a US target reduction of 80 percent.

After the announcement of plans for the United States to withdraw from the Paris Agreement in June 2017, more than 2,500 leaders from America’s businesses, state and local governments, colleges and universities, and investors, representing \$6.2 trillion of the nation’s economy, signed the “We Are Still In” declaration to support America’s continued commitment to meeting the Paris Agreement.<sup>1</sup>

In 2017, the Task Force on Climate-related Financial Disclosures commissioned by the Financial Stability Board issued its recommendations that companies describe metrics and targets used to assess and manage climate risks and opportunities and performance against targets including GHG emissions.

The costs of failing to address climate change are significant and estimated to have an average value at risk of \$4.2 trillion globally (The Economist, Intelligence Unit, 2015). *Risky Business: The Economic Risks of Climate Change in the United States (2014)*, an analysis of climate change impacts from the near-term through the year 2100, found serious economic effects including property damage, shifting agricultural patterns, reduced labor productivity, and increased energy costs. These effects could substantially impact AES’ business operations, revenue, or expenditures. Shareholder value is at risk in the absence of long-term GHG reduction targets.

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<sup>1</sup> <https://www.wearestillin.com/we-are-still-in-declaration>



A growing number of companies are establishing long-term GHG reduction targets consistent with the Paris Agreement's goal. For example, NRG Energy, a leading electric utility company and AES peer, has set GHG targets to reduce emissions by 50% by 2030 and by 90% by 2050 compared to a 2014 baseline.

We are concerned that AES' existing emissions reduction targets are not scaled in magnitude or timeline to meet the global goal. By setting long-term emissions reduction targets, the company can manage future regulatory risk and support the transformation of the company's business model to align with the goal adopted in the Paris Climate Agreement.

A copy of the Proposal is attached to this letter as Exhibit A.

### **BASES FOR EXCLUSION**

As discussed more fully below, the Company believes that it may omit the Proposal from the 2018 Proxy Materials in reliance on Rule 14a-8(i)(3) because the Proposal is vague and indefinite. Alternatively, if the Staff disagrees with the Company that the Proposal may be excluded pursuant to Rule 14a-8(i)(3), the Company requests that the Staff concur with its belief that the Proposal may be omitted from the 2018 Proxy Materials under Rule 14a-8(i)(11) because the Proposal substantially duplicates a stockholder proposal submitted to the Company on October 31, 2017 by Mercy Investment Services, Inc. ("Mercy Investment") and related co-filers (the "Mercy Proposal," and together with the Proposal, the "Stockholder Proposals").

### **ANALYSIS**

#### **I. The Proposal May Be Excluded Under Rule 14a-8(i)(3) Because The Proposal and Supporting Statement Are Impermissibly Vague and Indefinite**

Rule 14a-8(i)(3) permits the exclusion of a stockholder proposal if the proposal or supporting statement is contrary to any of the Commission's proxy rules, including Rule 14a-9, which prohibits materially false or misleading statements in proxy materials. We believe that the Proposal may be excluded under Rule 14a-8(i)(3) and Rule 14a-9 because it is vague and indefinite, so as to be misleading.

The Staff consistently has found that a stockholder proposal may be excluded under Rule 14a-8(i)(3) as misleading if it is "so inherently vague or indefinite that neither the stockholders voting on the proposal, nor the company in implementing the proposal (if adopted), would be able to determine with any reasonable certainty exactly what actions or measures the proposal requires." Staff Legal Bulletin No. 14B (Sept. 15, 2004) at page 5. *See, e.g., Cisco Systems, Inc.* (Oct. 7, 2016); *Alaska Air Group, Inc.* (Mar. 10, 2016); *Verizon Communications Inc.* (Feb. 21, 2008); *Capital One Financial Corporation* (Feb. 7, 2003); *Philadelphia Electric Company* (Jul. 30, 1992); and *Fuqua Industries, Inc.* (Mar. 12, 1991) (which permitted exclusion under Rule 14a-8(c)(3), the predecessor to Rule 14a-8(i)(3)). In *Fuqua*, upon noting that "...the meaning and application of terms and conditions ... in the proposal would have to be made without guidance from the proposal and would be subject to differing interpretations," the Staff indicated that:

the proposal may be vague and indefinite with the result that neither shareholders voting on the proposal nor the Company in implementing the proposal, if adopted, would be able to determine with any reasonable certainty what actions would be taken under the proposal. The staff believes, therefore, that the proposal may be misleading because any action ultimately taken by the Company upon implementation [of the proposal] could be significantly different from the actions envisioned by the shareholders voting on the proposal.

Similarly, the Staff previously has found that a proposal could be excluded under Rule 14a-8(c)(3) (the predecessor to Rule 14a-8(i)(3)) as vague and indefinite because the proposal included undefined terms, as is the case with the Proposal. *See Exxon Corporation* (January 29, 1992). Echoing the Staff's sentiment in *Fuqua* and *Exxon* and the more recent precedent cited above, we believe that the Proposal is so vague and indefinite that neither the Company nor its stockholders would know with any reasonable certainty what actions would need to be taken under the Proposal, chiefly because of the request that the Company develop targets for the reduction of GHG emissions by "...taking into consideration the global GHG reduction needs defined by the Paris Climate Agreement..." Emphasis added.

**A. The Paris Agreement Defines GHG Reduction Needs As (i) Maintaining the Global Average Temperature to "Well Below 2°C Above Pre-Industrial Levels" and (ii) Pursuing Efforts to Limit Global Temperature Increase to "1.5°C Above Pre-Industrial Levels"**

Article 2.1(a) of the Paris Agreement states as follows (emphasis added):<sup>2</sup>

This Agreement, in enhancing the implementation of the [United Nations Framework Convention on Climate Change], including its objective, aims to strengthen the global response to the threat of climate change, in the context of sustainable development and efforts to eradicate poverty, including by:

- (a) Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate change....

The Proposal requests that the Company "adopt time bound, quantitative, company-wide targets for the long term reduction of greenhouse gas (GHG) emissions, taking into consideration the global GHG reduction needs defined by the Paris Climate Agreement, and issue a report...on any plans to achieve these targets." Additionally, Article 2.1(a) of the Paris Agreement refers to an objective of "...[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels."

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<sup>2</sup> The Paris Agreement (2015), available at [http://unfccc.int/files/essential\\_background/convention/application/pdf/english\\_paris\\_agreement.pdf](http://unfccc.int/files/essential_background/convention/application/pdf/english_paris_agreement.pdf), last accessed Dec. 11, 2017

Without doubt, the terms “pre-industrial” and “pre-industrial levels” are central tenets of the Paris Agreement. As the Proposal directly references the Paris Agreement as a mandatory component of its request (i.e., that the Company must consider the goals of the Paris Agreement in addressing GHG reduction targets), the terms “pre-industrial” and “pre-industrial levels” also are central to an understanding of what the Company must do in order to accomplish the goal of the Proposal. However, the Proposal fails to define or describe what is meant by “pre-industrial” and “pre-industrial levels.” The Proponent also fails to address how the Company must interpret these terms in order to understand how it must “consider the global GHG reduction needs defined by the Paris Climate Agreement” and issue a report regarding the same.

Despite the Proposal’s central reference to, and reliance upon, the Paris Agreement (i.e., the Company must consider the goals of the Paris Agreement), the Paris Agreement itself does not define the term “pre-industrial.” Moreover, there are numerous possible interpretations of what this term means. Accordingly, it is unclear what is meant by “pre-industrial” and “pre-industrial levels,” and the Proposal is vague and indefinite since it fails to explain these terms despite relying on the same to communicate its goals.

**B. There Lacks a Defined, Understood Meaning of the Term “Pre-Industrial” in the Scientific Community**

The Oxford Dictionary defines “pre-industrial” as “relating to a time before industrialization.” As the vernacular term fails to lend an understanding of how the Company could publish an assessment consistent with limiting global warming to no more than two degrees Celsius over “a time before industrialization,” the Company has examined several recent reports that have been published following the adoption of the Paris Agreement to determine whether the scientific community has reached a consensus as to what this term means. As described in greater detail below, the answer is “no.” This conclusion clearly underscores the Company’s position that it could not comprehensively “adopt time bound, quantitative, company-wide targets for the long term reduction of greenhouse gas (GHG) emissions, taking into consideration the global GHG reduction needs defined by the Paris Climate Agreement” without understanding what are the “global GHG reduction needs defined by the [Paris Agreement]” and, by extension, what are meant by the terms “pre-industrial” or “pre-industrial levels” as stated in Article 2.1(a) of the Paris Agreement. Moreover, the scientific community is divided as to what these terms mean, further exacerbating the Proposal’s vagueness.

Since the adoption of the Paris Agreement on December 12, 2014, several academic papers have been published that describe and discuss the goals of the Paris Agreement. The Company has examined several such papers, which, taken together, address a clear discrepancy as to what is meant by “pre-industrial levels.” See Exhibit B. For example, the Company notes the following (emphasis added):

From an American Meteorological Society bulletin:

- Better defining (or altogether avoiding) the term “pre-industrial” would aid interpretation of internationally agreed global temperature limits and estimation of the required constraints to avoid reaching those limits.<sup>3</sup>
- **...there is no formal definition of what is meant by “pre-industrial” in the ... Paris Agreement.** Neither did the Fifth Assessment Report (AR5) of the Intergovernmental Panel on Climate Change (IPCC) use the term when discussing when global average temperature might cross various levels **because of the lack of a robust definition.**<sup>4</sup>

From *Nature*, a self-described international weekly journal of science:

- **There are different ways in which a natural<sup>f</sup> baseline climate can be defined.**<sup>6</sup> Here we use the 1901 – 2005 average temperature...**Other analyses have used a late-nineteenth century baseline period.**<sup>7</sup>
- ...two possible baseline periods (that is, **1901 – 2005** in the historicalNat simulations and **1861 – 1900** in the historical simulations...<sup>8</sup>

From an American Geophysical Union publication:

- Global temperature is rapidly approaching the 1.5° C Paris target. In the absence of external cooling influences, such as volcanic eruptions, temperature projections are centered on a breaching of the 1.5° C target, **relative to 1850 – 1900.**<sup>9</sup>
- We use the 1850 – 1900 period as our quasi-preindustrial baseline, as it is the earliest possible 51-year baseline using instrumental data... [t]his baseline was used by the [Intergovernmental Panel on Climate Change] to compare global mean temperature under [Representative Concentration Pathway] scenarios....<sup>10</sup>

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<sup>3</sup> Ed Hawkins, et al., *Estimating Changes in Global Temperature Since the Preindustrial Period*, 98 Bull. Amer. Meteorol. Soc. 1841 (2017), at page 1.

<sup>4</sup> *Id.*

<sup>5</sup> Note that these authors use the terms “pre-industrial” and “natural” interchangeably; e.g., “a pre-industrial, or natural, world without human influences.”

<sup>6</sup> Andrew D. King, et al., *Australian Climate Extremes at 1.5 °C and 2 °C of Global Warming*, 7 Nature Clim. Change 412 (2017). The lead author, Andrew D. King, is the Climate Extremes Research Fellow at the School of Earth Sciences and ARC Centre of Excellence for Climate System Science, University of Melbourne.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.*

<sup>9</sup> Benjamin J. Henley and Andrew D. King, *Trajectories Towards the 1.5°C Paris Target: Modulation by the Interdecadal Pacific Oscillation*, 44 Geophys. Res. Lett. 4256 (2017).

<sup>10</sup> *Id.*

- **We note that there is no ideal preindustrial baseline...and that our results should be interpreted in the context of the selected baseline.**<sup>11</sup>

From a European Geosciences Union publication:

- [Defines “pre-industrial” as **1861-1880**]<sup>12</sup>
- Three core experiences are proposed...1.5° C warmer than pre-industrial (1861-1880) conditions...[and] 2° C warmer than pre-industrial (1861-1880) conditions....<sup>13</sup>

Clearly, there is a lack of scientific consensus as to the benchmark date or period for what “pre-industrial” is for purposes of measuring the goal of a no more than two degrees Celsius rise in global temperature. As stated by King et al, *supra*, even an authority such as the Intergovernmental Panel on Climate Change did not use the term “pre-industrial” when analyzing the point at which the global average temperature might cross various levels (i.e., 1.5° C or 2° C) “...**because of the lack of a robust definition.**” Emphasis added. As the determination of what is meant by pre-industrial levels is unsettled and subject to differing interpretations, and as the Proposal fails to provide any guidance to a stockholder or the Company about how it should take “into consideration the global GHG reduction needs defined by the Paris Climate Agreement,” neither stockholders nor the Company would be able to determine with any reasonable certainty exactly what actions or measures the Proposal requires and/or the timing of implementing such actions or measures. Accordingly, the Proposal is impermissibly vague and indefinite.

**B. The Time Period from Which to Measure Targets for Global GHG Reduction is Critical for AES to Assess the Proposal’s Goals and Implementation of the Same**

Article 2.1(a) of the Paris Agreement indicates it “aims to strengthen the global response to the threat of climate change...including by: [h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.” The Proposal requests that the Company “adopt time bound, quantitative, company-wide targets for the long term reduction of greenhouse gas (GHG) emissions, taking into consideration the global GHG reduction needs defined by the Paris Climate Agreement, and issue a report...on any plans to achieve these targets.” However, because of the undefined nature of the terms “pre-industrial” and “pre-industrial levels,” neither the Proposal, nor the language of the Paris Agreement, provides any guidance as to how the Company should consider developing goals and targets in consideration of “[h]olding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels.” In other words, the Proposal fails to state with sufficient specificity how the Company should benchmark or measure the “time bound, quantitative, company-wide targets” requested by the Proposal. Without further guidance, it

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<sup>11</sup> *Id.*

<sup>12</sup> See Daniel Mitchell, et al., *Half a Degree Additional Warming, Prognosis and Projected Impacts (HAPPI): Background and Experimental Design*, 10 *Geosci. Model Dev.* 571 (2017).

<sup>13</sup> *Id.* at page 574.

would be impossible for the Company to measure, with any reasonable certainty, the time period that should serve as a baseline for any meaningful targets to reduce GHG emissions.

The Staff previously has found that a stockholder proposal may be excluded under Rule 14a-8(i)(3) as vague and indefinite when the time period with which to measure or understand the proponent's request – in this case the Company developing targets to reduce GHG emissions consistent with the Paris Agreement (i.e., targets that would keep global average temperature below two degrees Celsius above “pre-industrial levels” and limit temperature increase to one point five degrees Celsius above “pre-industrial levels”) – is undefined.

In *Verizon Communications Inc.* (Feb. 21, 2008), the Staff permitted the exclusion of a proposal under Rule 14a-8(i)(3) where the proposal requested that Verizon's board of directors “...take the steps necessary to adopt a new policy for the compensation of the senior executives,” which policy “...would incorporate...criteria for future awards,” and where such criteria included references to “maximum target awards.” In its no-action request, Verizon noted that the criteria cited by the proposal was “...not adequately defined and...internally inconsistent” and that, as a result, “the shareholders cannot know with any reasonable certainty what they are being asked to approve.”<sup>14</sup> Specifically, Verizon noted that the requested criterion – that “no award of long term incentive compensation shall be made or paid unless the Company's Total Shareholder Return...exceeds the mean or median TSR of the Industry Peer group selected for the relevant period of time” – was impermissibly vague and indefinite since “[n]either the resolution nor the supporting statement...[gave] any indication as to which companies should be included in the ‘Industry Peer group’ or what ‘relevant period of time’ should be used....”<sup>15</sup> In this regard, Verizon noted that the proposal was “impermissibly vague and indefinite because it fail[ed] to define key terms or otherwise provide guidance on how the [proposal] would be implemented if adopted....”<sup>16</sup>

In *Capital One Financial Corp.* (Feb. 7, 2003), the company noted that a proposal requesting “that a director receiving ‘remuneration...in excess of \$60,000’ be considered an employee” was vague and indefinite, as the proposal failed to specify the time period to which the \$60,000 threshold applied.<sup>17</sup> The company also noted that the proposal's use of the term “director's fees” was impermissibly vague and indefinite because of the myriad reasonable interpretations of such terms (which could include “all compensation received by a director” without qualification, or “director's fees” as such term is used in the rules of the New York Stock Exchange).<sup>18</sup> The Staff agreed, and granted no-action relief in *Capital One* on the basis of Rule 14a-8(i)(3).

The Company respectfully notes that the same analyses used by the companies and considered by the Staff in *Verizon* and *Capital One* should apply equally to the Proposal:

- As in *Verizon*, the Proposal's failure to clarify the relevant baseline period of time renders the entire Proposal vague and indefinite, since the Company could not know “the particular time

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<sup>14</sup> *Verizon Communications Inc.* (Feb. 21, 2008), at page 6.

<sup>15</sup> *Id.*

<sup>16</sup> *Id.*

<sup>17</sup> *Capital One Financial Corp.* (Feb. 7, 2003), at page 4.

<sup>18</sup> *See id.*

period chosen for measuring<sup>19</sup> its assessment. Should the starting point for the Proposal's requested assessment be 1850, 1861, 1901, or some other date?

- Tracking the analysis used in *Capital One*, where both the time period and terms used in the proposal were vague and indefinite, should the Company be required to guess as to what the Proponents mean by the term “pre-industrial”? As there is “no ideal preindustrial baseline”<sup>20</sup> and given that climate scientists must choose their own baseline for their own analyses (“our results should be interpreted in the context of the selected baseline”<sup>21</sup>), how can the Company or stockholders be expected to understand precisely what the Proposal is requesting, in light of the fact that the Proposal is relying so heavily on the goals iterated in the Paris Agreement itself?

The Company also wishes to underscore its dedication to sustainability, noting that AES is a leading sustainable power company, as evidenced by the Company's numerous disclosures and public statements regarding its sustainability efforts. However, it would not be reasonable to ask the Company to guess what the Proposal is seeking (i.e., beyond the Company's previous sustainability disclosures), given that the Proposal has entirely failed to clarify how the Company must develop the requested targets. While the Company is not suggesting that it already has substantially implemented the Proposal (as it is unclear what the Proposal seeks), it wishes to note that it would be grossly unfair to subject the Company to an unknown standard when the Company already has clearly demonstrated its commitment to sustainability. The Company believes that requiring it to include a proposal in its 2018 Proxy Materials that is based upon an undefined key term would be abjectly inappropriate and clearly misaligned with the intent of Rule 14a-8(i)(3).

For these reasons, the Company respectfully requests that the Staff concur in the exclusion of the Proposal under Rule 14a-8(i)(3).

## **II. The Proposal May Be Excluded Under Rule 14a-8(i)(11) Because The Proposal Substantially Duplicates Another Proposal Previously Submitted to AES that AES Intends to Include in its 2018 Proxy Materials if the Mercy No-Action Request is not Granted**

### **A. Background of the Mercy Proposal**

The Mercy Proposal was submitted to the Company by Mercy Investment prior to the Proposal Submission Date. On December 1, 2017, the Company submitted a request for no-action relief to the Staff with respect to the Mercy Proposal pursuant to Rule 14a-8(i)(3) (the “Mercy No-Action Request”). While the Company believes that both Stockholder Proposals are excludable for the reasons described above and in the Mercy No-Action Request, in the event that the Staff does not concur with the Company's belief that the Mercy Proposal may be excluded pursuant to Rule 14a-8(i)(3), as described in the Mercy No-Action Request, the Company intends to include the Mercy Proposal in the 2018 Proxy Materials. As a result, the Proposal may, therefore, be excluded as duplicative of the Mercy Proposal, which was received by the Company before the Proposal.

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<sup>19</sup> *Id.* at page 7.

<sup>20</sup> Henley, *supra*.

<sup>21</sup> *Id.*

The text of the resolution and supporting statement contained in the Mercy Proposal are reprinted below (emphasis added).

RESOLVED: Shareholders request that AES, with board oversight, publish an assessment (at reasonable cost and omitting proprietary information) of the long-term impacts on the company's portfolio consistent with limiting global warming to no more than two degrees Celsius over pre-industrial levels.

Supporting Statement: This report could include:

- How AES could adjust its capital expenditure plans to align with a two degree scenario; and
- Plans to integrate technological, regulatory and business model innovations such as electric vehicle infrastructure, distributed energy sources (storage and generation), demand response, smart grid technologies, and customer energy efficiency as well as corresponding revenue models and rate designs.

Additionally, the Mercy Proposal states, in relevant part (emphasis added):

- "To meet the goal of the Paris Agreement of keeping global temperature rise well below 2 degrees Celsius..."
- "...we would like to understand how AES is planning for the risks and opportunities presented by global efforts to keep global temperatures within acceptable boundaries."
- "In June 2017, the Financial Stability Board's Taskforce on Climate-related Financial Disclosures finalized its guidelines for reporting on climate risk, recommending that companies in the utility sector evaluate the potential impact of different scenarios, including a 2°C scenario, on the organization's businesses, strategy, and financial planning."
- "...we are concerned that AES is not properly accounting for the risk of its current high investment in carbon-intensive generation and, despite its pledge of no new investments in coal generation, lacks an overall goal to reduce current emissions."
- A 2-degree scenario analysis of AES's current generation and future plans will generate a more complete picture of current and future risks and opportunities than business as usual planning. Scenario analysis will help AES identify both vulnerabilities and opportunities for its business, and reassure investors and markets that AES is poised to manage and take advantage of future regulatory, technological and market changes.

A copy of the Mercy Proposal is attached hereto as Exhibit C.



## **B. The Proposal Substantially Duplicates the Mercy Proposal**

Under Rule 14a-8(i)(11), a company may exclude a stockholder proposal if it substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting. The Commission has stated that the purpose of Rule 14a-8(i)(11) is to eliminate the possibility of stockholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other. *See* Exchange Act Release No. 12999 (Nov. 22, 1976). The standard that the Staff has applied for determining whether proposals are substantially duplicative for purposes of Rule 14a-8(i)(11) is whether the proposals present the same "principal thrust" or "principal focus." *Pacific Gas & Electric Co.* (Feb. 1, 1993).

The "principal thrust" or "principal focus" of both the Proposal and the Mercy Proposal is the same, as both are focused on the Company assessing and developing goals for reducing GHG emissions from its business operations, with a view toward limiting global warming to no more than two degrees Celsius over pre-industrial levels as set forth in the Paris Agreement. Specifically, the Company notes the following:

- **The Paris Agreement is Central to the Underlying Purpose of Both Stockholder Proposals.** The Proposal requests that AES adopt "targets for the long term reduction of GHG emissions, taking into consideration the global GHG reduction needs defined by the Paris Climate Agreement." Similarly, the Mercy Proposal requests that the Company "publish an assessment ... of the long-term impacts on the company's portfolio consistent with limiting global warming to no more than two degrees Celsius over pre-industrial levels," while (i) citing the Paris Agreement as a central tenet at the Proposal's outset ("[t]o meet the goal of the Paris Agreement of keeping global temperature rise well below 2 degrees Celsius...") and (ii) addressing GHG emissions ("...goal to reduce current emissions").
- **The Stockholder Proposals Seek the Same Principal Objective.** The Stockholder Proposals share a common objective of ensuring that the Company assess and act on measures to reduce GHG emissions, consistent with the Paris Agreement's stated goal of keeping global temperature rise below two degrees Celsius. The Proposal requests that the Company "adopt ... targets for the long term reduction of greenhouse gas (GHG) emissions, taking into consideration the global GHG reduction needs defined by the Paris Climate Agreement, and issue a report ... on any plans to achieve these targets." The Mercy Proposal states that AES "lacks an overall goal to reduce current emissions" and indicates that the requested assessment "will help AES identify ... opportunities" to reduce GHG emissions. In other words, the portfolio assessment called for by the Mercy Proposal would include the process of developing targets to reduce GHG emissions sought by the Proposal.

The Staff consistently has taken the position that a stockholder proposal substantially duplicates another proposal, and therefore is excludable under Rule 14a-8(i)(11), if the core issues and principles addressed therein are substantially the same as the proposal to be included by the company in its proxy materials, even if the two proposals seek different specific actions or differ in terms or breadth. In *Chevron Corp.*

(Mar. 23, 2009, recon. denied Apr. 6, 2009), the Staff granted no-action relief under Rule 14a-8(i)(11) for a proposal requesting that an independent committee of the board prepare a report on the environmental damage that would result from the company's expanding oil sands operations in the Canadian boreal forest. The Staff found that this proposal was substantially duplicative of another proposal requesting that Chevron's board of directors adopt quantitative goals, based on current technologies, for reducing total GHG emissions from the company's products and operations, and that the company report to stockholders by a certain date on its plans to achieve such quantitative goals. In its no-action request, Chevron noted that although the two proposals were phrased differently, the principal thrust or principal focus of both proposals was to reduce GHG emissions.

As in *Chevron*, the principal thrust or principal focus of both Stockholder Proposals is for the Company to reduce GHG emissions from its operations, consistent with the goal of the Paris Agreement (specifically, keeping global temperature rise below 2 degrees Celsius). As noted above, the Proposal requests that the Company "...adopt time bound, quantitative, company-wide targets for the long term reduction of greenhouse gas (GHG) emissions, taking into consideration the global GHG reduction needs defined by the Paris Climate Agreement, and issue a report ... on any plans to achieve these targets." Similarly, the Mercy Proposal requests that the Company "...publish an assessment...of the long-term impacts on the [Company's] portfolio consistent with limiting global warming to no more than two degrees Celsius over pre-industrial levels," with a stated purpose of "...meet[ing] the goal of the Paris Agreement of keeping global temperature rise well below 2 degrees Celsius..." Both Stockholder Proposals ask the Company to assess GHG emissions from its operations, with the goal of reducing the Company's GHG emissions in a manner consistent with the Paris Agreement's stated objective of reducing global GHG emissions. As in *Chevron*, the Proposal's request for a report that addresses "quantitative, company-wide targets for the long term reduction of greenhouse gas ... emissions" should be viewed as substantially similar to the Mercy Proposal's request for an assessment "of the long-term impacts on the [C]ompany's portfolio consistent with limiting global warming" since, as in *Chevron*, the principal focus of the two Stockholder Proposals is the same.

Subsequent to *Chevron*, the Staff has reiterated its view with respect to Rule 14a-8(i)(11). In *Wells Fargo & Company* (Feb. 27, 2017), a proposal requesting that the board prepare a report "...analyzing...whether compensation and incentives policies relating to low level employees may create pressures exposing the Company to an aggregate of material losses, and [c]ategories of incentives or activities posing greatest risk" was found to substantially duplicate a proposal requesting that the board "...commission a comprehensive report...on the root causes of the fraudulent activity and steps taken to improve risk management and control processes" addressing, in part, "[e]vidence that incentive systems are aligned with customers' best interests." In *Wells Fargo*, although the specific actions requested by the discrete proposals differed, they shared a principal focus, as the company noted in its no-action request, on the company's "efforts to manage risk relating to actual and potential losses arising from specific Company business practices (including employee incentive compensation practices)." The company also noted in *Wells Fargo* that both proposals focused on similar concerns (although the proposals' requests were not identical). See also *Danaher Corporation* (Jan. 19, 2017), in which a proposal substantially identical to the Proposal was excludable under Rule 14a-8(i)(11) as substantially duplicative of a prior-submitted proposal requesting that the company "...adopt time-bound, quantitative, company-wide, science-based goals for reducing total greenhouse gas (GHG) emissions, taking into account the goals of the Paris Climate Agreement..." and *Exxon Mobil Corp.* (Mar. 8, 2017), in which a proposal requesting that the

company issue a report “summarizing strategic options or scenarios for aligning its business operations with a low carbon economy” was excludable under Rule 14a-8(i)(11) because it substantially duplicated a previously-submitted proposal asking that the company “publish an annual assessment of the long-term portfolio impacts of technological advances and global climate change policies....”

Similarly, the Proposal and the Mercy Proposal both are focused on the central issue of the Company’s GHG emissions (and specifically reducing GHG emissions in the Company’s operations). Both Stockholder Proposals cite the same authority for their respective requests – the Financial Stability Board’s Taskforce on Climate-related Financial Disclosures’ guidelines issued in 2017 – and call for the Company to consider further global warming-related risks and opportunities and report on the same, consistent with the goal of the Paris Agreement.

Exclusion of the Proposal pursuant to Rule 14a-8(i)(11) also is appropriate because the content of the information requested by the Proposal would be subsumed by the report called for in the Mercy Proposal. On prior occasions, the Staff has concurred that when the subject of a report proposed in a later proposal would be encompassed within the scope of a report proposed in a prior proposal, exclusion under Rule 14a-8(i)(11) should be permitted. *See Wyeth* (Jan. 21, 2005), in which the Staff permitted the company to exclude a proposal requesting that the board prepare a “report on the effects on the long-term economic stability of the company and on the risks of liability to legal claims that arise from the company’s policy of limiting the availability of the company’s products to Canadian wholesalers or pharmacies that allow purchase of its products by U.S. residents” because it substantially duplicated a prior proposal requesting that the board “prepare a feasibility report on adopting a policy that would require Wyeth not to constrain the reimportation of prescription drugs into the U.S. by limiting the supply of drugs in foreign markets.” *See also Bank of America Corp.* (Feb. 24, 2009), where a proposal that requested a policy requiring “senior executives to retain a significant percentage of shares acquired through equity compensation programs until two years following termination of their employment” was excludable under Rule 14a-8(i)(11) as substantially duplicative of a prior proposal seeking to have the company “implement specified executive compensation reforms that impose limitations on senior executive compensation,” including a “strong equity retention requirement mandating that senior executives hold for the full term of their employment at least 75% of the shares of stock obtained through equity awards.” In *Bank of America*, the prior proposal subsumed the second proposal, which in turn was excludable under Rule 14a-8(i)(11). The quantitative goals and related report requested in the Proposal logically would be part of the Mercy Proposal’s request for an assessment of the long-term impacts on the Company’s portfolio consistent with limiting global warming. In this regard, the Company notes that the Mercy Proposal’s request that the Company report on how it will “adjust its capital expenditure plans to align with a two degree scenario, and [p]lans to integrate technological, regulatory and business model innovations ... as well as corresponding revenue models and rate designs” would necessarily encompass the development of “company-wide targets for the long term reduction of [GHG] emissions, taking into consideration the global GHG reduction needs defined by the Paris Climate Agreement” requested by the Proposal.

Furthermore, the Company respectfully notes that any distinctions between the two Stockholder Proposals are minor and immaterial. The principal difference between the two Stockholder Proposals is simply a matter of differing terminology and slightly different requests – the Proposal asks for a report on the Company’s plans to achieve quantitative targets for the long-term reduction of GHG emissions, while the Mercy Proposal asks for an assessment of the long-term impacts on the Company’s portfolio of limiting

global warming, which necessarily includes a qualitative and quantitative assessment of GHG emissions (note the Mercy Proposal's supporting statement that the requested assessment could "identify both vulnerabilities and opportunities for [the Company's] business").

If both Stockholder Proposals were to be included in the 2018 Proxy Materials, the Company's stockholders would have to consider the substantially same matter twice. As noted above, the purpose of Rule 14a-8(i)(11) "is to eliminate the possibility of shareholders having to consider two or more substantially identical proposals submitted to an issuer by proponents acting independently of each other." Exchange Act Release No. 12999 (Nov. 22, 1976). Therefore, consistent with the Staff's previous interpretations of Rule 14a-8(i)(11), the Company believes that the Proposal may be excluded from the 2018 Proxy Materials as substantially duplicative of the Mercy Proposal, pursuant to Rule 14a-8(i)(11).

### **C. The Proposal Was Submitted to the Company After the Mercy Proposal**

Rule 14a-8(i)(11) provides that a stockholder proposal may be excluded if it "substantially duplicates another proposal previously submitted to the company by another proponent that will be included in the company's proxy materials for the same meeting." Emphasis added. As stated in the text of Rule 14a-8(i)(11), the standard for determining which of two substantially identical proposals may be excluded is based on when each proposal is submitted to the company. As the Staff indicated in Section (B)(2)(C) of Staff Legal Bulletin No. 14G (Oct. 6, 2012) ("SLB 14G"), the Staff "view[s] the proposal's date of submission as the date the proposal is postmarked or transmitted electronically."

The Company intends to include the Mercy Proposal in the 2018 Proxy Materials, and exclude the later-submitted Proposal as substantially duplicative of the Mercy Proposal that was submitted first in time. See *Dorian LPG Ltd.* (June 29, 2017) (a proposal submitted by e-mail at 6:48 p.m. was permitted to be excluded under Rule 14a-8(i)(11) as substantially duplicative of a proposal submitted earlier that same day) and *Motorola, Inc.* (Jan. 9, 2008) (a proposal submitted by facsimile at 5:16 p.m. was permitted to be omitted under Rule 14a-8(i)(11) as substantially duplicative of a proposal submitted earlier that same day). As in *Dorian* and *Motorola*, the Proposal was submitted to the Company subsequent to the date that the Mercy Proposal was submitted to the Company. Therefore, the Proposal is properly excludable under Rule 14a-8(i)(11) as it substantially duplicates the previously-submitted Mercy Proposal.

### **CONCLUSION**

Based on the foregoing analyses, we respectfully request that the Staff concur that it will take no action if the Company excludes the Proposal from its 2018 Proxy Materials pursuant to Rule 14a-8(i)(3).

Alternatively, in the event that the Staff does not concur that the Stockholder Proposals may be excluded under Rule 14a-8(i)(3), as described above and in the Mercy No-Action Request, it is the Company's view that the Proposal may be excluded from the 2018 Proxy Materials pursuant to Rule 14a-8(i)(11).

We would be happy to provide you with any additional information and answer any questions that you may have regarding this subject. Correspondence regarding this letter should be sent to the undersigned at [brian.miller@aes.com](mailto:brian.miller@aes.com). If you have any questions with respect to the foregoing, please contact the undersigned at (703) 682-6427.

Sincerely,



Brian A. Miller  
Executive Vice President, General Counsel and  
Corporate Secretary  
The AES Corporation

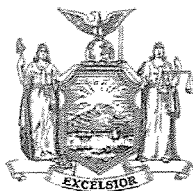
Enclosures

cc: State of New York, Office of the State Comptroller

**Exhibit A**

**The Proposal**

THOMAS P. DINAPOLI  
STATE COMPTROLLER



STATE OF NEW YORK  
OFFICE OF THE STATE COMPTROLLER

DIVISION OF CORPORATE GOVERNANCE  
59 Maiden Lane-30th Floor  
New York, NY 10038  
Tel: (212) 383-3931  
Fax: (212) 681-4468

November 2, 2017

Mr. Brian A. Miller  
Executive Vice President, General Counsel  
and Corporate Secretary  
The AES Corporation  
4300 Wilson Boulevard  
Arlington, Virginia 22203

Dear Mr. Miller:

The Comptroller of the State of New York, Thomas P. DiNapoli, is the trustee of the New York State Common Retirement Fund (the "Fund") and the administrative head of the New York State and Local Retirement System. The Comptroller has authorized me to inform of his intention to sponsor the enclosed shareholder proposal for consideration of stockholders at the next annual meeting.

I submit the enclosed proposal to you in accordance with rule 14a-8 of the Securities Exchange Act of 1934 and ask that it be included in your proxy statement.

A letter from J.P. Morgan Chase, the Fund's custodial bank verifying the Fund's ownership of The AES Corporation shares, continually for over one year, is enclosed. The Fund intends to continue to hold at least \$2,000 worth of these securities through the date of the annual meeting.

We would be happy to discuss this initiative with you. Should The AES Corporation's board decide to endorse its provisions as company policy, the Comptroller will ask that the proposal be withdrawn from consideration at the annual meeting. Please feel free to contact me at (212) 383-7242 or [eyamaguchi@osc.state.ny.us](mailto:eyamaguchi@osc.state.ny.us) should you have any further questions on this matter.

Sincerely,

Eri Yamaguchi  
Investment Officer  
Corporate Governance

Enclosures

RESOLVED: Shareholders request that AES adopt time bound, quantitative, company-wide targets for the long term reduction of greenhouse gas (GHG) emissions, taking into consideration the global GHG reduction needs defined by the Paris Climate Agreement, and issue a report by December 2018, at reasonable cost and omitting proprietary information, on any plans to achieve these targets.

### Supporting Statement

In December 2015, representatives from 195 countries adopted the Paris Climate Agreement, which specifies a goal to limit the increase in global average temperature to well below 2°C above pre-industrial levels and pursue efforts to limit temperature increases to 1.5°C. In order to meet the 2°C goal, climate scientists estimate that a 55 percent reduction in GHG emissions globally is needed by 2050 (relative to 2010 levels), entailing a US target reduction of 80 percent.

After the announcement of plans for the United States to withdraw from the Paris Agreement in June 2017, more than 2,500 leaders from America's businesses, state and local governments, colleges and universities, and investors, representing \$6.2 trillion of the nation's economy, signed the "We Are Still In" declaration to support America's continued commitment to meeting the Paris Agreement.<sup>1</sup>

In 2017, the Task Force on Climate-related Financial Disclosures commissioned by the Financial Stability Board issued its recommendations that companies describe metrics and targets used to assess and manage climate risks and opportunities and performance against targets including GHG emissions.

The costs of failing to address climate change are significant and estimated to have an average value at risk of \$4.2 trillion globally (The Economist, Intelligence Unit, 2015). *Risky Business: The Economic Risks of Climate Change in the United States (2014)*, an analysis of climate change impacts from the near-term through the year 2100, found serious economic effects including property damage, shifting agricultural patterns, reduced labor productivity, and increased energy costs. These effects could substantially impact AES' business operations, revenue, or expenditures. Shareholder value is at risk in the absence of long-term GHG reduction targets.

A growing number of companies are establishing long-term GHG reduction targets consistent with the Paris Agreement's goal. For example, NRG Energy, a leading electric utility company and AES peer, has set GHG targets to reduce emissions by 50% by 2030 and by 90% by 2050 compared to a 2014 baseline.

We are concerned that AES' existing emissions reduction targets are not scaled in magnitude or timeline to meet the global goal. By setting long-term emissions reduction targets, the company can manage future regulatory risk and support the transformation of the company's business model to align with the goal adopted in the Paris Climate Agreement.

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<sup>1</sup> <https://www.wearestillin.com/we-are-still-declaration>



# J.P.Morgan

Richard J. Costantino  
Vice President  
CIB Client Service Americas

November 2, 2017

Mr. Brian A. Miller  
Executive Vice President, General Counsel and Corporate Secretary  
The AES Corporation  
4300 Wilson Boulevard  
Arlington, Virginia 22203

Dear Mr. Miller,

This letter is in response to a request by The Honorable Thomas P. DiNapoli, New York State Comptroller, regarding confirmation from JP Morgan Chase that the New York State Common Retirement Fund has been a beneficial owner of The AES Corporation continuously for at least one year as of and including November 2, 2017.

Please note that J.P. Morgan Chase, as custodian for the New York State Common Retirement Fund, held a total of 2,118,195 shares of common stock as of November 2, 2017 and continues to hold shares in the company. The value of the ownership stake continuously held by the New York State Common Retirement Fund had a market value of at least \$2,000.00 for at least twelve months prior to, and including, said date.

If there are any questions, please contact me or Miriam Awad at (212) 623-8481.

Regards,



Richard Costantino

cc: Patrick Doherty – NYSCRF  
Gianna McCarthy – NYSCRF  
Tana Goldsmith – NYSCRF  
Kyle Seeley - NYSCRF

**Soehner, Celia A.**

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**Subject:** Shareholder Request  
**Attachments:** The AES Corporation Shareholder Proposal.pdf; ATT00001.htm

**From:** <[TGoldsmith@osc.state.ny.us](mailto:TGoldsmith@osc.state.ny.us)>  
**Date:** November 2, 2017 at 4:43:16 PM EDT  
**To:** <[leith.mann@aes.com](mailto:leith.mann@aes.com)>, <[ahmed.pasha@aes.com](mailto:ahmed.pasha@aes.com)>, <[billiejo.mcintire@aes.com](mailto:billiejo.mcintire@aes.com)>  
**Subject:** Shareholder Request

Hello Mr. Miller,

Please find attached a copy of the New York State Common Retirement Fund filing letter and shareholder resolution, which has also been sent to you today via UPS.

If you have any questions, please feel free to contact me.

Kind Regards,

Tana

Tana Goldsmith  
Special Investment Officer  
Pension Investment and Cash Management  
Office of the State Comptroller  
59 Maiden Lane Fl. 30  
New York, NY 10038  
[tgoldsmith@osc.state.ny.us](mailto:tgoldsmith@osc.state.ny.us)  
Direct Line: 212.383.2592  
Receptionist: 212.383.3931  
Facsimile: 212.383.1331

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**Exhibit B**

**Published Articles re: Meaning of "Pre-Industrial"**

Ed Hawkins, et al., *Estimating Changes in Global Temperature Since the Preindustrial Period*,  
98 Bull. Amer. Meterol. Soc. 1841 (2017)



































































































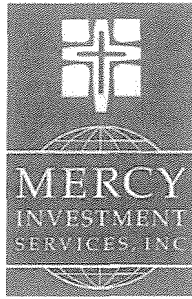












October 30, 2017

AES Corporation  
Attn: Brian A. Miller, Executive Vice President, General Counsel, and Corporate Secretary  
4300 Wilson Boulevard  
Arlington, VA 22203

Dear Mr. Miller:

Mercy Investment Services, Inc. (Mercy), as the investment program of the Sisters of Mercy of the Americas has long been concerned not only with the financial returns of its investments, but also with the social and ethical implications of its investments. We believe that a demonstrated corporate responsibility in matters of the environment, social and governance concerns fosters long-term business success. Mercy Investment Services, Inc., a long-term investor, is currently the beneficial owner of shares of AES Corporation.

Mercy is the lead filer on the resolution, "Two Degree Scenario Analysis," which requests that AES, with board oversight, publish an assessment (at reasonable cost and omitting proprietary information) of the long-term impacts on the company's portfolio consistent with limiting global warming to no more than two degrees Celsius over pre-industrial levels.

Mercy Investment Services, Inc. is filing the enclosed shareholder proposal for inclusion in the 2018 proxy statement, in accordance with Rule 14a-8 of the General Rules and Regulations of the Securities Exchange Act of 1934. Mercy Investment Services, Inc. has been a shareholder continuously for more than one year holding at least \$2,000 in market value, and will continue to invest in at least the requisite number of shares for proxy resolutions through the annual shareholders' meeting. A representative of the filers will attend the Annual Meeting to move the resolution as required by SEC rules. The verification of ownership is being sent to you separately by our custodian, a DTC participant. We respectfully request direct communications from AES Corporation, and to have our supporting statement and organization name included in the proxy statement.

Although we prefer to resolve our concerns through dialogue rather than the formal resolution process, we are filing today to assure our shareholder rights are preserved. We appreciate the ongoing discussion Mercy Investment Services and other investors have had with the company on this issue and look forward to productive conversations with the company in the future. Please direct your responses to me via my contact information below.

Best regards,

A handwritten signature in cursive script that reads "Mary Minette". The signature is written in dark ink and is positioned above the typed name.

Mary Minette  
Director of Shareholder Advocacy  
703-507-9651  
[mminette@mercyinvestments.org](mailto:mminette@mercyinvestments.org)

2039 North Ceyer Road · St. Louis, Missouri 63131-3332 · 314.909.4609 · 314.909.4694 (fax)

[www.mercyinvestmentservices.org](http://www.mercyinvestmentservices.org)

## Two Degree Scenario Analysis

### WHEREAS:

To meet the goal of the Paris Agreement of keeping global temperature rise well below 2 degrees Celsius the International Energy Agency estimates that the global average carbon intensity of electricity production will need to drop by 90 percent. As long-term shareholders in the AES Corporation, we would like to understand how AES is planning for the risks and opportunities presented by global efforts to keep global temperatures within acceptable boundaries.

In June 2016, the credit rating agency Moody's indicated that they would begin to analyze carbon transition risk based on scenarios consistent with the Paris Agreement, and noted the high carbon risk exposure of the power sector. In June 2017, the Financial Stability Board's Taskforce on Climate-related Financial Disclosures finalized its guidelines for reporting on climate risk, recommending that companies in the utility sector evaluate the potential impact of different scenarios, including a 2°C scenario, on the organization's businesses, strategy, and financial planning.

Rapid expansion of low carbon technologies including distributed solar, battery storage, grid modernization, energy efficiency and electric vehicles provide not only challenges for utility business models but also opportunities for growth. Although AES has made investments in renewable energy and in battery storage it still has significant investments in carbon-intensive projects around the globe. According to the 2015 and 2016 10-Ks, AES and its subsidiaries emitted of approximately 67.7 million metric tons of carbon dioxide in both years, with approximately 30.2 million metric tons emitted in the U.S. in 2016 (an increase from 27.4 tons in 2015). As investors, we are concerned that AES is not properly accounting for the risk of its current high investment in carbon-intensive generation and, despite its pledge of no new investments in coal generation, lacks an overall goal to reduce current emissions.

A 2-degree scenario analysis of AES's current generation and future plans will generate a more complete picture of current and future risks and opportunities than business as usual planning. Scenario analysis will help AES identify both vulnerabilities and opportunities for its business, and reassure investors and markets that AES is poised to manage and take advantage of future regulatory, technological and market changes.

RESOLVED: Shareholders request that AES, with board oversight, publish an assessment (at reasonable cost and omitting proprietary information) of the long-term impacts on the company's portfolio consistent with limiting global warming to no more than two degrees

Celsius over pre-industrial levels.

Supporting Statement: This report could include:

- How AES could adjust its capital expenditure plans to align with a two degree scenario; and
- Plans to integrate technological, regulatory and business model innovations such as electric vehicle infrastructure, distributed energy sources (storage and generation), demand response, smart grid technologies, and customer energy efficiency as well as corresponding revenue models and rate designs.