

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The)	Case No. 20-1651-EL-AIR
Dayton Power and Light Company for an)	
Increase in Electric Distribution Rates.)	
)	
In the Matter of the Application of The)	Case No. 20-1652-EL-AAM
Dayton Power and Light Company for)	
Accounting Authority.)	
)	
In the Matter of the Application of The)	Case No. 20-1653-EL-ATA
Dayton Power and Light Company for)	
Approval of Revised Tariffs.)	

**POST-HEARING BRIEF
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

Respectfully Submitted,

/s/ Kimberly W. Bojko
Kimberly W. Bojko (0069402) (Counsel of Record)
Thomas V. Donadio (0100027)
Carpenter Lipps & Leland LLP
280 North High Street, Suite 1300
Columbus, Ohio 43215
Telephone: (614) 365-4124
Bojko@carpenterlipps.com
Donadio@carpenterlipps.com
(willing to accept service by email)

*Counsel for the Ohio Manufacturers' Association
Energy Group*

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	LAW AND ARGUMENT.....	3
A.	AES Ohio has failed to meet its burden to demonstrate that the rate increase proposed in its Application is just and reasonable.	3
1.	AES Ohio’s proposed rate of return is unjust and unreasonable.	4
2.	AES Ohio’s proposed revenue requirement is excessive, unjust, and unreasonable and should be rejected.	9
B.	The customer class allocation proposed by AES Ohio and Staff is reasonable.....	17
C.	The Commission should stay the implementation of any authorized rate increase during the pendency of the stipulated rate freeze.....	18
III.	CONCLUSION	25

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton Power and Light Company for an Increase in Electric Distribution Rates.)	Case No. 20-1651-EL-AIR
)	
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority.)	Case No. 20-1652-EL-AAM
)	
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs.)	Case No. 20-1653-EL-ATA
)	

**POST-HEARING BRIEF
OF
THE OHIO MANUFACTURERS' ASSOCIATION ENERGY GROUP**

I. INTRODUCTION

The Dayton Power & Light Company, d/b/a AES Ohio, Inc., (AES Ohio) has failed to meet its burden of proof, and therefore, is not entitled to the unreasonable and unlawful increase in base distribution rates that it requests from the Public Utilities Commission of Ohio (Commission). AES Ohio has failed to present adequate record evidence to satisfy its burden of proof to support the proposed increase in its application filed on November 30, 2020 (Application). Additionally, even if an increase is warranted at a different level, AES Ohio cannot implement the rate freeze at this time. Under the explicit terms of its first Electric Security Plan (as modified) (Modified ESP I), which it voluntarily chose to operate under, AES Ohio is precluded from receiving any increase in base distribution rates because Modified ESP 1 contained a stipulated rate freeze. As such, as a matter of law, until AES Ohio implements a new electric security plan, AES Ohio cannot implement any rate increase. Therefore, the Commission should deny AES Ohio's Application for the increase in electric distribution rates proposed in its Application.

On October 30, 2020, AES Ohio filed its notice of intent to file an application for an increase in its electric distribution rates with the Commission.¹ The Ohio Manufacturers' Association Energy Group (OMAEG) subsequently intervened in these proceedings, which was approved on April 7, 2021.² The Commission granted AES Ohio's request to establish a test period and date certain, and to waive certain filing requirements related to AES Ohio's transmission and generation services, and ordered that the test period be the twelve-month period ending May 31, 2021, and a date certain of June 30, 2020.³ In its Application, AES Ohio requested a significant increase to its base distribution rates, proposing to add \$120,759,887 to its base distribution revenues, which represents an increase of approximately 50.9% over current base distribution revenues.⁴

Commission Staff filed its Staff Report on July 26, 2021, proposing an increase in distribution revenue of \$61,115,418 to \$66,665,151, reducing AES Ohio's proposed rate increase to approximately 25% to 27%.⁵ Staff later revised its recommendation to propose an increase of \$64,273,390 to \$69,823,123, an approximate increase of 26% to 29%.⁶ OMAEG and other parties filed objections to the Staff Report on August 25, 2021. Subsequently, the parties participated in the evidentiary hearing regarding the Application beginning on January 24, 2022 and ending on February 7, 2022. Although AES Ohio has not met its burden of proof in this case, to the extent the Commission believes that a rate increase is warranted at some level, the Commission should

¹ See Notice of the Dayton Power and Light Company's Intent to File an Application to Increase its Rates for Electric Distribution Service (Oct. 30, 2020).

² Entry at ¶¶ 9-10 (Apr. 7, 2021).

³ See Entry at ¶¶ 5-6, 9, 11 (Nov. 18, 2020).

⁴ See Staff Ex. 1. (Staff Report) at 28.

⁵ Staff Ex. 1 (Staff Report), Schedule A-1.

⁶ See Staff Ex. 9 (Lipthrott Testimony), Exhibit A (Revised Schedule A-1).

follow the recommendations set forth herein to ensure that the rates, charges, schedules, and services approved by the Commission are just and reasonable and lawful for consumers. Furthermore, if the Commission determines an increase in rates is warranted, the Commission should order that the rate increase not be put in place until after the termination of Modified ESP I by AES Ohio.

II. LAW AND ARGUMENT

A. AES Ohio has failed to meet its burden to demonstrate that the rate increase proposed in its Application is just and reasonable.

Based upon the evidence in the record, the Commission should exercise its statutory discretion to deny the unreasonably and unjustly high rate increase that was proposed by AES Ohio. The Commission should also find that the rate increase range proposed by Staff is unjust and unreasonable and unsupported by the record. “At any hearing involving rates or charges sought to be increased, the burden of proof to show that the increased rates or charges are just and reasonable shall be on the public utility.”⁷ When the Commission, after a hearing, is of the opinion that any rate, fare, charge, toll, rental, schedule, classification, or service proposed to be rendered, charged, demanded, or exacted, is, or will be, unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, the Commission shall fix and determine the just and reasonable rate, fare, charge, toll, rental, or service to be rendered, charged, demanded, exacted, or collected.⁸

AES Ohio has failed to meet its burden to demonstrate that the rates proposed in its Application are just and reasonable. As such, any potential increase in base distribution rates authorized by the Commission should be significantly lower than that proposed by AES Ohio in

⁷ R.C. 4909.19(C).

⁸ R.C. 4909.15(E).

its Application. AES Ohio proposes an increase to base distribution rates of approximately \$120.8 million.⁹ The proposed increase would result in an estimated increase as high as 9.71 percent for the secondary service single-phase customer class; as high as 17.56 percent for the secondary three-phase customer class; and as high as 13.32 percent for the primary service customer class.¹⁰ AES Ohio has failed to meet its burden to demonstrate these proposed rates are just and reasonable and consistent with Ohio law.

1. AES Ohio's proposed rate of return is unjust and unreasonable.

The Commission, when fixing and determining just and reasonable rates, is to determine a fair and reasonable rate of return to the utility.¹¹ AES Ohio proposes a rate of return of 7.71% (including a 10.5% cost of equity);¹² whereas Staff recommends a rate of return in the range of 7.05% to 7.59% (based on a cost of equity in the range of 9.28% to 10.29%).¹³ Although AES Ohio alleges that its poor financial condition, and resulting low credit ratings warrant a higher return on equity and higher rate of return, at the time AES Ohio filed testimony in this case, Standard & Poor's had upgraded AES Ohio's credit rating to BB+.¹⁴ AES Ohio has not met its burden to demonstrate that its requested rate of return is fair and reasonable. Instead, the Commission should authorize a rate of return based on the low end of Staff's recommended range of 7.05% to 7.59%.¹⁵

⁹ Tr. Vol. I at 113 (Adams).

¹⁰ Tr. Vol. I at 110-11 (Adams).

¹¹ R.C. 4909.15(A)(2).

¹² See Staff Ex. 9 (Lipthrott Testimony), Exhibit A (Revised Schedule A-1); Company Ex. 1 (Application) at 2.

¹³ See Staff Ex. 1 (Staff Report) at 21-22; Staff Ex. 9 (Lipthrott Testimony), Exhibit A (Revised Schedule A-1).

¹⁴ Tr. Vol III at 432 (Illyes).

¹⁵ See Staff Ex. 9 (Lipthrott Testimony), Exhibit A (Revised Schedule A-1).

First, AES Ohio has guaranteed cost recovery. As the sole provider of electric distribution service within its service territory, AES Ohio faces no competition from other electric distribution utilities regulated by the Commission, and therefore, faces a significantly lower financial risk.¹⁶ AES Ohio also is guaranteed to fully and quickly recover many of its costs through various nonbypassable riders.¹⁷ For example, through its Infrastructure and Investment Rider, AES Ohio has guaranteed cost recovery of up to \$259 million for grid modernization.¹⁸ Assuming AES Ohio actually makes these investments, AES Ohio is guaranteed cost recovery of these investments regardless of the outcome of the rate case.¹⁹ Furthermore, AES Ohio continues to collect the RSC, a nonbypassable charge which supports AES Ohio's financial integrity.²⁰ Again, regardless of the outcome of this case, AES Ohio will continue collecting the RSC until the Commission approves AES Ohio's next ESP.²¹

Nor does AES Ohio face any significant financial risks from COVID-19. The Commission granted AES Ohio deferral authority, for any costs associated with the COVID-19 pandemic.²² Accordingly, AES Ohio continues to track savings, foregone revenues, and expenses associated with COVID-19.²³ Since the costs, savings, expenses, and foregone revenue associated with the pandemic are reflected in the Company's regulatory asset, AES Ohio seeks to adjust test year

¹⁶ Tr. Vol. V at 1030 (Buckley).

¹⁷ Tr. Vol. V at 1030-31 (Buckley).

¹⁸ Tr. Vol. II at 235 (Lund).

¹⁹ Tr. Vol. II at 240-41 (Lund); Tr. Vol. III at 511 (McKenzie) ("I understand that there have been riders approved for the Smart Grid investment, for example.").

²⁰ Tr. Vol. III at 498 (McKenzie).

²¹ *Id.*; *In The Matter Of The Application Of The Dayton Power And Light Company For Approval Of Its Plan To Modernize Its Distribution Grid*, Case Nos. 18-1875-EL-GRD, et al., Opinion and Order (June 16, 2021)

²² *See In The Matter Of The Application Of The Dayton Power And Light Company For Approval Of Its Temporary Plan For Addressing The Covid-19 State Of Emergency*, Case Nos. 20-651-EL-UNC, et al., Finding and Order (May 20, 2020) (granting AES Ohio deferral authority for COVID-19 related costs, savings, and foregone revenue).

²³ Tr. Vol. II at 367 (Donlon)

revenue so that the revenue requirement reflects the revenue that would be necessary absent COVID-19.²⁴ Ultimately, “an audit of those costs will be performed if the Company seeks to recover” the regulatory asset.²⁵

But such an audit would *only* occur if AES Ohio eventually seeks to recover those costs.²⁶ Should the associated savings ultimately outweigh the costs, AES Ohio is unlikely to seek recovery.²⁷ In this event, no audit would occur.²⁸ “In that situation, there would not be...an accounting for any savings associated with COVID.”²⁹ Thus, while AES Ohio would seek to benefit from its regulatory asset in the event that COVID-19 costs outweigh savings, in the event that savings outweigh costs, it will not. Therefore, customers will see no benefit from the COVID-19 associated regulated asset.

Instead of facing risks from COVID-19, AES Ohio has essentially passed on these risks to its customers already. Additionally, any so-called risks faced by AES Ohio in regards to COVID-19 are industry-wide. AES Witness McKenzie tries to compare AES Ohio’s rates to other utilities by presenting testimony based on unreliable, unsourced, and outdated utility averages that would also have to be updated and adjusted for any COVID-19-related costs or “risks.”³⁰

Overall, AES Ohio faces very comparable risks to other electric distribution utilities in Ohio and in other states. Contrary to testimony by AES Ohio Witness McKenzie, factors such as

²⁴ Tr. Vol. II at 374-75 (Donlon).

²⁵ Tr. Vol. VI at 1412 (Lipthrott).

²⁶ Tr. Vol. IV at 1417 (Lipthrott).

²⁷ *Id.*

²⁸ *Id.*

²⁹ Tr. Vol. VI at 1417 (Lipthrott).

³⁰ Tr. Vol. III at 504-05 (McKenzie).

the removal of the DMR, Supreme Court of Ohio appeals, potential refunds for significantly excessive earnings, and COVID-19³¹ apply equally to other utilities as well as AES Ohio.

While AES Ohio has never issued a refund for significantly excessive earnings, AES Ohio attempts to highlight this as a unique risk that it faces.³² However, this risk would apply equally to all electric distribution utilities in Ohio.³³ Furthermore, since the Commission uses a 200 basis point safe harbor for its review under R.C. 4928.143(F),³⁴ refunds are unlikely to occur. At any rate, testimony presented by AES Ohio does not include any attempt to quantify the risk purportedly faced by DP&L in regards to potential refunds under R.C. 4928.143(F).³⁵

Similarly, the risk of appeals to the Supreme Court of Ohio apply equally to all electric distribution utilities.³⁶ AES does not face increased risk from the Supreme Court of Ohio or removal of the DMR. In fact, the Commission removed AES Ohio's DMR in response to a Supreme Court of Ohio decision applicable to *another* utility.³⁷ This demonstrates that any risk to AES Ohio from a Supreme Court of Ohio decision is no different than that faced by other Ohio electric distribution utilities. Furthermore, despite pointing to appeals to the Supreme Court of Ohio as a unique risk *compared to utilities in other states*, AES Ohio Witness McKenzie did not perform any analysis to see if these appeals are any lengthier than appeals to reviewing courts in other states.³⁸ At any rate, this risk faced by AES Ohio is not unique to AES Ohio.

³¹ Company Ex. 91 (Corrected McKenzie Testimony) at 15-17, 21-22.

³² Tr. Vol. III at 499-500 (McKenzie); *see also* Tr. Vol. I at 178 (Lund).

³³ *Id.*

³⁴ Tr. Vol. III at 500-01 (McKenzie).

³⁵ *Id.*

³⁶ Tr. Vol. III at 499 (McKenzie).

³⁷ *See In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401.

³⁸ Tr. Vol. III at 499 (McKenzie).

Further, any risks faced by AES Ohio, and AES Ohio's return on equity, are not the primary factor in its ability to obtain capital. AES Ohio relies on common stock issued by its parent company, AES Corp.³⁹ As such, AES Ohio no longer issues common stock of its own, and has no preferred stock outstanding.⁴⁰ Thus, a higher return on equity will not necessarily make it easier for AES Ohio to attract capital, as it is AES Corp. that ultimately needs to attract investors. However, a higher return on equity *will* lead to higher charges for AES Ohio customers.

Testimony by AES Ohio witnesses supports this conclusion. AES Ohio's witness testified that "investors in AES Corp. make decisions on whether they are going to buy or sell the stock of AES Corp. based on their expectations for returns for that corporation as a whole, not based on the return to AES Ohio."⁴¹ And, according to AES Ohio Witness Illyes, the Standard & Poor's upgrade to AES Ohio's credit rating "was predicated upon an upgrade that S&P had made at the AES Corporate level that...drove an upgrade down at the DP&L/AES Ohio level."⁴²

Thus, the rate of return requested by AES Ohio will not have a significant impact on AES Corp.'s ability to attract capital. Nor is it based on an accurate evaluation of the risks faced by AES Ohio. As such, AES Ohio's proposed rate of return is not fair or reasonable, and should be rejected by the Commission.

Instead of AES-Ohio's proposed rate of return, the Commission should adopt a more reasonable cost of equity and rate of return based on the testimony of Staff, Walmart, and OCC.

³⁹ Tr. Vol. III at 431 (Illyes); Tr. Vol. III at 506 (McKenzie).

⁴⁰ Tr. Vol. III at 430-31 (Illyes); Tr. Vol. III at 506 (McKenzie).

⁴¹ Tr. Vol. III at 509 (McKenzie).

⁴² Tr. Vol. III at 433 (Illyes).

Walmart witness Kronauer noted that AES Ohio's current authorized cost of equity is 9.999%.⁴³ He noted that AES Ohio's proposed 10.5% cost of equity would represent an increase in the revenue requirement of \$2.9 million, or approximately 2.4% of the proposed increase to base distribution rates, which would be "unreasonably high."⁴⁴ Additionally, OCC witness Walters estimated AES Ohio's existing "market cost of equity to be in the reasonable range of 8.9% to 9.7% with a midpoint estimate of 9.30%."⁴⁵ Based on this cost of equity, OCC witness Walters recommended a rate of return of 7.01%⁴⁶

Staff witness Buckley recommended a rate of return range of 7.05% to 7.59%, stating that "Staff continues to believe that the [cost of equity] range and resulting rate of return range recommended in the Staff Report are reasonable."⁴⁷ Therefore, based on the record in this case, the low end of Staff's recommended range of 7.05% is more appropriate and should be adopted.⁴⁸

2. AES Ohio's proposed revenue requirement is excessive, unjust, and unreasonable and should be rejected.

In addition to failing to meet its burden to demonstrate that its requested return on equity is fair and reasonable, AES Ohio failed to meet its burden to demonstrate that the revenue requirement proposed in its Application is just and reasonable. The proposed revenue requirement is not just and reasonable because it includes various expenses that are not appropriately recoverable through base distribution rates. The Commission should therefore disallow these expenses and reduce the authorized revenue requirement.

⁴³ Walmart Ex. 1 (Kronauer Testimony) at 7.

⁴⁴ *Id.* at 4, 7.

⁴⁵ OCC Ex. 2 (Walters Testimony) at 41.

⁴⁶ *Id.* at 50.

⁴⁷ Staff Ex. 2 (Buckley Testimony) at 4.

⁴⁸ *See* Staff Ex. 9 (Lipthratt Testimony), Exhibit A (Revised Schedule A-1)

First, AES Ohio seeks to recover \$30 million in expanded vegetation management program costs, which did not occur in the test year, through base distribution rates.⁴⁹ AES Ohio argues that without recovering these elevated costs, it will be forced to defer tree trimming.⁵⁰ According to AES Ohio, deferral of tree trimming would in turn result in vegetation growing to the extent where it ‘jumps classes’ and becomes more expensive to mediate.

Staff reviewed AES Ohio’s rationale for an increase in costs associated with its vegetation management plan and determined that an increase to the level that AES Ohio requested was not warranted. Instead, Staff took a more reasonable approach, and recommended a lower recoverable amount. According to Staff:

[A] vegetation management expense baseline of \$17.5 million [is] prudent and reasonable. The recommended amount is higher than the current baseline of \$15.7 million. Through the course of the Staff Report investigation, Staff’s view is that the Company did not support its claim that \$30 million was necessary.⁵¹

Despite concerns about ‘class jumping,’ AES Ohio had not performed any analysis as to the proportion of vegetation that AES Ohio believes will ‘class jump,’ or identified any specific vegetation that will ‘class jump,’ or quantified how many trees would be involved.⁵² Nor has AES Ohio calculated increased costs of vegetation management would result from this ‘class jumping’ under Staff’s recommendation.⁵³ AES Ohio Witness Vest only offers the conclusory, unsupported statement that “we know it’s out there.”⁵⁴ As such, AES Ohio failed to present sufficient evidence

⁴⁹ See Company Ex. 50 at 8 (Vest).

⁵⁰ Company Ex. 50 at 7-8 (Vest), *see also* Tr. Vol. III at 686 (Vest).

⁵¹ Staff Ex. 9 (Lipthrott Testimony) at 6.

⁵² Tr. Vol. III at 686-87 (Vest).

⁵³ Tr. Vol. III at 687 (Vest).

⁵⁴ *Id.*

demonstrating that its proposed vegetation management expenses are just and reasonable and should be rejected.

Similarly, AES Ohio seeks to include unjust and unreasonable costs associated with labor expenses. As part of its labor expenses, AES Ohio seeks to imbed the costs of both long-term compensation (LTC) and short-term compensation (STC) incentive pay into customers' base distribution rates,⁵⁵ as well as capitalized earnings-based incentive compensation, arguing that the compensation is consistent with market rates.⁵⁶

AES Ohio makes this request despite the fact that the Commission typically does not allow utilities to recover LTC or STC through base rates.⁵⁷ LTC and STC are forms of incentive-based pay which the utility provides to employees in the event the utility meets certain financial benchmarks. Because of this, according to Staff, "the cost for these types of incentives and bonuses should be borne by shareholders, and not the ratepayers because shareholders receive the direct benefit."⁵⁸ Therefore, following this precedent, Staff recommended removing 100% of LTC and 75% of STC from rate base as shareholders, not ratepayers, should fund compensation based on financial metrics.

Under its proposal, AES Ohio would recover the full cost of STC and LTC from its customers through base rates, regardless of whether the applicable metrics are met. In the event AES Ohio does not meet the applicable metrics, then AES Ohio will not pay the full STC or LTC

⁵⁵ Tr. Vol. I at 173 (Buchanan); Staff Ex. 1 (Staff Report) at 10, 15-16; Staff Ex. 4 (Crocker Testimony) at 5.

⁵⁶ Staff Ex. 9 (Lipthrott Testimony) at 5.

⁵⁷ Tr. Vol. I at 174 (Buchanan); Staff Ex. 4 (Crocker Testimony) at 5.

⁵⁸ Staff Ex. 4 (Crocker Testimony) at 5.

to employees, despite collecting the full amount from customers.⁵⁹ AES Ohio would simply pocket the remainder.⁶⁰

Similarly, with regard to capitalized earnings-based incentives, Staff concluded: “AES Ohio’s shareholders and not its customers are the primary beneficiary when the Company meets financial targets resulting in profitability.”⁶¹ As such, Staff also excluded all capitalized earnings-based incentive compensation from rate base as shareholders and not ratepayers should fund earnings-based incentives and.⁶²

Again, AES Ohio seeks an arrangement where risk passes on to customers, but upside remains with AES Ohio. If AES Ohio lowers its expenses, it still collects the same amount of money from customers through base rates.⁶³ AES Ohio would not automatically lower its base rates every year to adjust for actual expenses,⁶⁴ would not file an application to lower its base rates due to lowered expenses, nor has it ever refunded customers through the Ohio significantly excessive earnings provision.⁶⁵ Therefore, if expenses are lowered, triggering bonuses and incentive compensation, AES Ohio benefits from savings that are not passed on to customers.⁶⁶ If expenses are not lowered, AES Ohio still benefits from retaining the collected incentive pay amounts that were paid for by customers but not provided to employees in the form of incentive compensation. Under both of AES Ohio’s scenarios, the customers pay while AES Ohio benefits.

⁵⁹ Tr. Vol. I at 183 (Buchanan).

⁶⁰ *See id.*

⁶¹ Staff Ex. 9 (Lipthrott Testimony) at 5.

⁶² *Id.*

⁶³ Tr. Vol. I at 178 (Buchanan).

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *Id.*

It is also unjust and unreasonable to recover expenses related to the audit of AES Ohio's Distribution Investment Rider (DIR). In its Application, AES Ohio proposed inclusion of audit costs for the DIR even though the rider has been eliminated.⁶⁷ Given that the prior Commission order stated that the expenses could be recovered through the DIR and that DIR was eliminated, Commission Staff recommended that these expenses be disallowed, and that the associated regulatory asset be eliminated.⁶⁸ In response, AES Ohio argues that "these costs were incurred as a direct result of AES Ohio's compliance with the Stipulation in Case No. 16-395-EL-SSO," and should be recovered through base rates.⁶⁹

But, AES Ohio simply ignores the fact that it never had authority to recover DIR audit costs absent the DIR itself. When the Commission initially approved Staff's recommendation that AES Ohio be able to recover these audit costs, Staff also specified that the costs would be recovered through the DIR itself.⁷⁰ However, the DIR, like the DMR, no longer exists, because AES Ohio voluntarily reverted to Modified ESP I, which did not contain the DIR.⁷¹ Absent the DIR, there is no mechanism for AES Ohio to recover these costs.⁷² AES made the business decision to abandon the proper recovery mechanism for these costs when it reverted to Modified ESP I. It cannot avoid the consequences of that decision by trying to collect unjust and unreasonable costs through base rates.

⁶⁷ See Company Ex. 49 (Teuscher Supplemental Testimony) at 5.

⁶⁸ *Id.*; see also Staff Ex. 1 (Staff Report) at 17; Staff Ex. 9 (Lipthrott Testimony) at 19.

⁶⁹ See Company Ex. 49 (Teuscher Supplemental Testimony) at 5.

⁷⁰ Tr. Vol. IV at 721 (Teuscher); Company Ex. 58 at 9 (Staff Report, Case No. 15-1830-EL-AIR) ("The compliance audit would occur with the April 1st filing, and the costs associated with it would be recoverable through the DIR.").

⁷¹ Tr. Vol. IV at 723 (Teuscher); Tr. Vol. IV at 804-05 (Forestal).

⁷² Staff Ex. 9 (Lipthrott Testimony) at 19 ("When the Company voluntarily reverted to ESP I, it lost its ability to recover the DIR audit costs.").

AES Ohio also attempts to refer to various investments unrelated to base distribution rates as a justification for its unreasonable, unjust, and excessive proposed revenue requirement.⁷³ AES Ohio president Kristina Lund refers to future distribution system investments, future grid modernization projects, and future transmission system investments.⁷⁴ None of these future investments have or should have any impact on reasonable and just base rates established in this case based upon the test year and date certain. These are all forward-looking investments, whereas base distribution rates are established based on a backwards-looking analysis of the test year and what was used and useful as of the date certain.⁷⁵ Furthermore, AES Ohio already has guaranteed cost recovery for grid modernization investments through a rider, and recovery of those costs is not contingent on the outcome of this case.⁷⁶ Lastly, any increase in base distribution rates will not go towards transmission system investments.⁷⁷ As such, AES Ohio's attempts to highlight future capital investments do not support or justify any increase in base distribution rates.

Lastly, AES Ohio's proposal to include expenses associated with energy efficiency programs in test year expenses is unjust and unreasonable. AES no longer has any statutorily mandated energy efficiency and demand-side management programs in place, due to the elimination by the Commission after the repeal of the authorizing statute.⁷⁸

House Bill 6 eliminated energy efficiency programs beginning on January 1, 2021. Subsequently, on February 26, 2020, the Commission ordered that the Energy Efficiency Rider be

⁷³ See generally, Company Ex. 36 (Lund Testimony).

⁷⁴ *Id.*

⁷⁵ Tr. Vol. II at 247 (Lund).

⁷⁶ Tr. Vol. II at 240-41 (Lund); Tr. Vol. III at 511 (McKenzie) ("I understand that there have been riders approved for the Smart Grid investment, for example.").

⁷⁷ Tr. Vol. II at 244-45 (Lund).

⁷⁸ Tr. Vol. III at 565 (Tatham).

set to zero effective by that date, and directed AES Ohio to commence a wind-down of those statutorily mandated energy efficiency programs beginning September 30th, 2020.⁷⁹

While it ordered AES Ohio to cease *statutorily mandated* programs, the Commission has not given AES Ohio permission to replace these with *voluntary* programs as AES Ohio now requests.⁸⁰ Nor did the Commission authorize AES Ohio to recover the previous statutorily mandated programs through base rates. Notably, AES Ohio previously recovered costs for these programs through its Energy Efficiency Rider.⁸¹ AES Ohio did not recover these costs through base rates.⁸² As such, it would be unjust and unreasonable to include costs for unauthorized energy efficiency programs in base distribution rates. As Staff witness Liphtratt explained: “. . . the distribution rate case is not the appropriate vehicle to address DSM customer program expenses.”⁸³

Additionally, AES Ohio should not be permitted to defer these costs. Despite arguing deferral is appropriate, AES Ohio did not submit any analysis applying the Commission’s six-part test to determine whether or not the deferral request is appropriate.⁸⁴ On the other hand, Staff did apply the test and concluded that the deferral request was inappropriate as the alternative deferral proposal failed to satisfy the Commission’s six-part test for deferral authority.⁸⁵ AES Ohio’s witness could not or simply chose not to respond to Staff’s application of the test.⁸⁶ Accordingly,

⁷⁹ Tr. Vol. III at 565 (Tatham).

⁸⁰ Tr. Vol. IV at 710 (Teuscher).

⁸¹ Tr. Vol. III at 565 (Tatham).

⁸² Tr. Vol. III at 565-66 (Tatham); Tr. Vol. IV at 709-10 (Teuscher); Tr. Vol. VI at 1420 (Liphtratt).

⁸³ Staff Ex. 9 (Liphtratt Testimony) at 10, 31.

⁸⁴ Tr. Vol. IV at 714-15 (Teuscher).

⁸⁵ Tr. Vol. IV at 716 (Teuscher), *citing* Staff Ex. 1 (Staff Report) at 17-18; *see also* Staff Ex. 9 (Liphtratt Testimony) at 10.

⁸⁶ Staff Ex. 1 (Staff Report) at 17-18; Tr. Vol. IV at 715 (Teuscher).

it is unjust and unreasonable to allow AES Ohio to defer costs for unauthorized energy efficiency programs.

AES Ohio has failed to meet its burden to demonstrate that expenses associated with incentive-based compensation, DIR audits, expanded vegetation management programs, and energy efficiency programs should be included in rate base or test year expenses, and thus, collected through base rates.

AES Ohio has also failed to show that the revenue requirement proposed in its Application is lawful or just and reasonable. As recommended by Staff and others, expenses associated with incentive-based compensation, DIR audits, expanded vegetation management programs, and energy efficiency programs are unjust and unreasonable and should be disallowed and not collected through base distribution rates. Accordingly, the Commission should reject AES Ohio's request to increase its base distribution rates by nearly 50%, and, only approve (if any at all) an increase that is lawful and just and reasonable pursuant to R.C. 4909.15 and 4909.18. As explained herein, the record reflects that certain costs should be excluded from recovery, and, at a maximum, only Staff's lower revenue requirement recommendation of \$309,216,303, which results in a revenue increase of \$64,273,390, should be considered.⁸⁷

Notwithstanding the above, as explained further below in Section C, at this time, the Commission should stay the implementation of any authorized increase in rates until the stipulated rate freeze has ended.

⁸⁷ See Staff Ex. 9 (Lipthrott Testimony), Exhibit A (Revised Schedule A-1).

B. The customer class allocation proposed by AES Ohio and Staff is reasonable.

To the extent the Commission authorizes any increase in AES Ohio's revenue requirement to increase rates, it should do so pursuant to the allocation recommended by AES Ohio and Commission Staff in this case, rather than OCC.

In its Application, AES Ohio proposed to allocate approximately 66.7% of the base revenue requirement to the residential class, approximately 23.93% to the secondary class, and 7.69% to the primary class.⁸⁸ Commission Staff found this allocation to be reasonable, stating that:

The assignment of classified costs to each customer class on an equitable and apportioned basis. This is determined by a combination of the number of customers, class demands, and energy usage.⁸⁹

The Commission generally considers cost-of-service studies when setting utility rates.⁹⁰ In this case, it reviewed the cost-of-service study performed by AES Ohio, and found the study and its conclusions to be "a reasonable indicator of costs and cost responsibility of each customer class."⁹¹ The study demonstrated that the residential rate class is responsible for the largest share of rate base and operating expenses.⁹²

OCC, on the other hand, *did not* perform a cost-of service study, and its conclusions are not based on any a cost-of service study.⁹³ Nevertheless, OCC seeks to argue that this allocation is too high for the residential class.⁹⁴ As an alternative, OCC recommends "allocating no more than 40% of the increase to the residential class."⁹⁵ OCC's witness simply came to that conclusion

⁸⁸ Tr. Vol. IV at 719 (Teuscher), *citing* Company Ex. 10 (Schedule E-3.2).

⁸⁹ Staff Ex. 1 (Staff Report) at 26.

⁹⁰ Tr. Vol. II at 321 (Chapman).

⁹¹ Staff Ex. 1 (Staff Report) at 26.

⁹² Tr. Vol. II at 324-25 (Chapman).

⁹³ Tr. Vol. IV at 823-24 (Fortney).

⁹⁴ OCC Ex. 4 (Fortney Testimony) at 4.

⁹⁵ *Id.* at 6.

based on his own opinion regarding income levels in Dayton during the COVID-19 pandemic.⁹⁶ This conclusion did not involve determining the poverty rate for the entirety of AES Ohio's service territory.⁹⁷

Nonetheless, OCC's witness appeared to agree with the outcome of AES Ohio's a cost-of service study. According to the witness, "from a pure cost-of-service standpoint the Staff recommendations and the Company's proposal in terms of the allocation percentage are reasonable in terms of cost-of-service."⁹⁸

Given that OCC's unsupported proposal is not based on cost-of service principles and the Commission typically considers cost-of service studies when designing rates, OCC's proposal should be rejected. Further, AES Ohio did base its proposed allocations on a cost-of service study, and Staff found both the study and the resulting allocation to be reasonable. As such, the Commission should reject OCC's proposed allocation and adopt AES Ohio's proposal as recommended by Staff when designing rates based upon any authorized rate increase.

Notwithstanding the above, as explained further below, the Commission should stay the implementation of any authorized increase in rates and the collection of any increased revenue until the stipulated rate freeze has ended.

C. The Commission should stay the implementation of any authorized rate increase during the pendency of the stipulated rate freeze.

Even if AES Ohio can demonstrate that it is entitled to a rate increase under R.C. 4909.18, AES Ohio is prohibited from implementing any rate increase until it stops operating under Modified ESP I and/or implements a new electric security plan. AES Ohio's Modified ESP I

⁹⁶ OCC Ex. 4 (Fortney Testimony) at 6.

⁹⁷ *Id.*

⁹⁸ Tr. Vol. IV at 829 (Fortney).

contains a stipulated rate freeze which prohibits AES Ohio from raising its rates during the time that ESP I remains in effect. Allowing AES Ohio to raise its base distribution rates as proposed in the Application while still operating under the terms of Modified ESP I would violate the stipulated rate freeze. The Commission has noted, that even if it approves a rate increase at this time, the “implementation of any rate changes in the case may, subject to the remaining outstanding legal arguments of the parties, be stayed as part of [the Commission’s] determination in this case.”⁹⁹ As such, to the extent that the Commission approves any increase in AES Ohio’s base distribution rates, the Commission should stay implementation of that increase—and any future increases in rates—until such time as AES Ohio ceases to operate under Modified ESP I or establishes a new electric security plan.

ESP I, in its original form, arose from a stipulation signed by the parties on February 24, 2009, in Case Nos. 08-1094-EL-SSO, et al. (ESP I Stipulation).¹⁰⁰ The ESP I Stipulation, signed by OMAEG, AES Ohio, Commission Staff, the Office of the Ohio Consumers’ Counsel (OCC), and other signatory parties, resolved a group of consolidated cases which included AES Ohio’s electric security plan case. The signatory parties resolved these cases as a package, with the stipulation intended to “[represent] a just and reasonable resolution of all issues in [the] proceeding.”¹⁰¹

Since the ESP I Stipulation resolved a number of issues, the Stipulation implemented various terms with an end date of December 31, 2012—the date ESP I, in its original form, was originally scheduled to end. The ESP I Stipulation extended AES Ohio’s rate plan through that

⁹⁹ Entry at ¶ 20 (Oct. 20, 2021).

¹⁰⁰ Company Ex. 69 (ESP I Stipulation).

¹⁰¹ *Id.* at 2.

date.¹⁰² To replace ESP I following its original termination date, AES Ohio agreed to file a new electric security plan and/or market rate offer by March 30, 2012, to go in effect immediately following the termination date.¹⁰³ This new electric security plan or market rate offer would “set [standard service offer] rates to apply for period beginning January 1, 2013.”¹⁰⁴ The Stipulation also allowed AES Ohio to continue collecting the nonbypassable Rate Stabilization Charge (RSC) through the termination date.¹⁰⁵ Lastly, in exchange for allowing AES Ohio to operate under ESP I until December 31, 2012, and to ensure rate stability, the parties agreed to a stipulated rate freeze for the duration of ESP I.¹⁰⁶ By extending each of these provisions until the same end date, the ESP I Stipulation clearly demonstrates that the stipulated rate freeze is to apply for the duration of ESP I.

The Commission approved the ESP I Stipulation, finding that the ESP I Stipulation benefited ratepayers and the public interest “as a package.”¹⁰⁷ The Commission agreed with the parties, including AES Ohio, that freezing rates for the duration of ESP I benefited customers.¹⁰⁸ However, at a later date, the Commission extended the terms of ESP I, including the stipulated rate freeze, beyond the termination date originally set by the ESP I Stipulation.

¹⁰² Company Ex. 69 (ESP I Stipulation) at ¶ 1 (“To assist in maintaining rate certainty, the parties agree to extend DP&L’s current rate plan through December 31, 2012, except as expressly modified herein.”).

¹⁰³ Company Ex. 69 (ESP I Stipulation) at ¶ 9.

¹⁰⁴ Company Ex. 69 (ESP I Stipulation) at ¶ 9.

¹⁰⁵ *Id.* at ¶ 3 (“The current RSS charge will continue as a nonbypassable charge through December 31, 2012.”).

¹⁰⁶ *Id.* at ¶ 18 (“DP&L’s distribution base rates will be frozen through December 31, 2012.”).

¹⁰⁷ *See also In re Application of the Dayton Power & Light Co. for Approval of its Elec. Sec. Plan*, Case Nos. 08-1094-EL-SSO, et al., Opinion & Order at 9 (June 24, 2009).

¹⁰⁸ *See id.* at 7 (“DP&L argues that the Stipulation, as a package, benefits ratepayers and the public interest. DP&L notes that the Stipulation extends its electric security plan through December 31, 2012, and also freezes distribution rates through December 31, 2012.”).

As discussed above, the ESP I Stipulation required AES Ohio to file an application for a new electric security plan or market rate offer by March 30, 2012, to go in effect immediately following the termination date.¹⁰⁹ Although AES Ohio originally complied with this provision, it subsequently withdrew its application for a new market rate offer only a few weeks before the December 31, 2012 termination date, and instead filed an application for a new electric security plan.¹¹⁰ However, this plan could not be approved before the termination date, so the Commission modified ESP I for the first time (Modified ESP I), by allowing AES Ohio to continue operating under a modified version of ESP I past the stipulated termination date, which included the RSC and rate freeze.¹¹¹

Subsequently, several signatory parties challenged the continuation of the ESP I (as modified), including the continuation of the RSC, and filed a joint motion seeking to enforce the December 31, 2012 termination date of the RSC.¹¹² However, the Commission denied this motion on the grounds that all of the terms of ESP I must continue past the termination date specified in ESP I. Although “the effective date of DP&L’s current ESP, as well as the RSC, was to end on December 31, 2012,”¹¹³ since ESP I was continuing beyond the sunset date, the Commission held that the terms of ESP I must continue beyond that date as well.¹¹⁴

¹⁰⁹ Company Ex. 69 (ESP I Stipulation) at ¶ 9.

¹¹⁰ See *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Market Rate Offer*, Case Nos. 12-426-EL-SSO, et al., Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan (Oct. 5, 2012).

¹¹¹ *Id.*, Entry at ¶ 5 (Dec. 19, 2012).

¹¹² *Id.*, Joint Motion Seeking Enforcement of Approved Settlement Agreements and Orders (Sept. 26, 2012).

¹¹³ *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Market Rate Offer*, Case Nos. 12-426-EL-SSO, et al., Entry at ¶ 5 (Dec. 19, 2012).

¹¹⁴ *Id.* (“The Commission finds that the provisions, terms, and conditions of the ESP include the RSC. As one of the provisions, terms, or conditions of the current ESP, the RSC should continue with the ESP until a subsequent standard service offer is authorized.”).

Over the next several years, AES Ohio filed other electric security plans, but withdrew those plans and reverted back to Modified ESP I. Most recently, AES Ohio reverted back to Modified ESP I in 2019. AES Ohio had been operating under its Third Electric Security Plan (ESP III) which contained a nonbypassable financial integrity charge, the Distribution Modernization Rider (DMR).¹¹⁵ However, the Supreme Court of Ohio found that a similar DMR charged by another utility was not authorized by R.C. 4928.143 and constituted an unlawful charge that could not be included in an electric security plan.¹¹⁶

The Commission responded by directing AES Ohio to remove its DMR rider from AES Ohio's then-current ESP III.¹¹⁷ Since AES Ohio had previously withdrawn its Second Electric Security Plan (ESP II) and reverted back to ESP I prior to implementing ESP III, AES Ohio's most recent ESP was Modified ESP I, which included the RSC charge. Thus, if it withdrew from ESP III, by law, it would have to revert back to Modified ESP I. Given that AES Ohio could no longer charge customers the DMR, an unlawful, nonbypassable financial integrity charge, under ESP III, AES Ohio decided to withdraw from ESP III and revert to Modified ESP I where it could still charge the nonbypassable RSC. Ultimately, AES Ohio unilaterally decided to withdraw from its ESP III and revert to Modified ESP I. Although the Commission did not direct AES Ohio to revert back to Modified ESP I,¹¹⁸ AES Ohio did so to increase "the utility's cash flow" following the removal of the DMR.¹¹⁹

¹¹⁵ See *In The Matter Of The Application Of The Dayton Power And Light Company To Establish A Standard Service Offer In The Form Of An Electric Security Plan*, Case Nos. 16-395-EL-SSO, et al., Opinion & Order (Oct. 20, 2017).

¹¹⁶ See *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401.

¹¹⁷ Tr. Vol. III at 493 (McKenzie); *In re Application of the Dayton Power & Light Co. to Establish a Standard Serv. Offer in the Form of an Elec. Sec. Plan*, Case No. 16-395-EL-SSO, Supplemental Opinion & Order (Nov. 21, 2019).

¹¹⁸ Tr. Vol. III at 496-97 (McKenzie); Tr. Vol. IV at 723 (Teuscher); Tr. Vol. IV at 804-05 (Forestal).

¹¹⁹ Tr. Vol. III at 497 (McKenzie) ("I think that decision was forced on the Company by the loss of the DMR under ESP 3, so it was a very significant portion of the utility's cash flow, and the utility had to take steps to address that.").

Several parties, including OMAEG, OCC, and The Kroger Company, opposed allowing AES Ohio to again extend a version of ESP I beyond the stipulated termination date.¹²⁰ Nonetheless, the Commission again allowed AES Ohio to do so.¹²¹ The Commission therefore extended several provisions of ESP I, including the RSC, beyond the original stipulated termination date.

By authorizing the extension of ESP I by extending its duration and continuing the RSC and other terms and conditions, the Commission also extended the applicability of the stipulated rate freeze. When AES Ohio reverted to Modified ESP I by withdrawing ESP III, the Commission, pursuant to Ohio law, issued an order “to continue the provisions, terms, and conditions of the utility's most recent standard service offer...until a subsequent offer is authorized.”¹²² According to the Commission, this necessitates a reimplementation of *all* of the terms of that electric security plan.¹²³ This necessitates that all terms be extended beyond any previously applicable termination dates.¹²⁴

Therefore, when the Commission modified ESP I by allowing AES Ohio to operate under a modified version past December 31, 2012, the Commission, by operation of law, extended all terms of the electric security plan beyond that termination date, which includes the stipulated rate

¹²⁰ *In re Application of the Dayton Power & Light Co. for Approval of its Elec. Sec. Plan*, Case Nos. 08-1094-EL-SSO, et al., Motion to Reject DP&L's Proposed Tariffs to Increase Consumer Rates (Dec. 4, 2019).

¹²¹ *Id.*, Second Finding & Order (Dec. 18, 2019).

¹²² R.C. 4928.143(C)(2)(b).

¹²³ *See In the Matter of the Application of The Dayton Power and Light Company for Approval of its Market Rate Offer*, Case Nos. 12-426-EL-SSO, et al., Entry at ¶ 5 (Dec. 19, 2012) (“Although the General Assembly has not provided specific guidance in the event that an electric distribution utility were to terminate an MRO and file a new ESP, as is the case here, the Commission finds that it would be consistent with both Section 4928.141 and Section 4928.143(C)(2)(b), Revised Code, to order that the terms and conditions of the current ESP should continue until a subsequent offer is authorized.”).

¹²⁴ *Id.* (finding that when the Commission extended the ESP past December 31, 2012, it also extended the RSC past that date).

freeze. The Commission has held that the stipulated rate freeze did not preclude AES Ohio from *applying* for a rate increase, while acknowledging that the stipulated rate freeze, as a matter of law, may preclude AES Ohio from implementing any increase until it implements a new electric security plan.¹²⁵ Implementing any increase in AES Ohio’s base distribution rates in violation of the stipulated rate freeze contained as a term of Modified ESP I, would, therefore, also violate Commission precedent and Ohio statutory law.

Implementing a rate increase would also violate the regulatory framework underpinning the stipulation process. Parties enter into stipulations “for the proposed resolution of some or all of the issues in a proceeding.”¹²⁶ This involves bargaining and concessions by various parties involved on various issues considered. As the signatory parties to the ESP I Stipulation noted:

In arm’s-length bargaining, the Signatory Parties have negotiated terms and conditions that are embodied in this Stipulation. This Agreement involves a variety of difficult, complicated issues that would otherwise be resolved only through expensive, complex protracted litigation. This Stipulation contains the entire Agreement among the Signatory Parties, and embodies a complete settlement of all claims, defenses, issues and objections in these proceedings. The Signatory Parties agree that this Stipulation is in the best interests of the public and of all parties, and urge the Commission to adopt it.¹²⁷

Therefore, the ESP I Stipulation resolved a number of issues and involved concessions from multiple parties. In exchange for being able to continue operating under ESP I and charging the RSC, AES Ohio agreed to freeze its rates during the duration of ESP I. Despite this, AES Ohio now seeks to unilaterally continue benefitting from the favorable aspects of the ESP I Stipulation, while ignoring its own concessions and obligations made under that same framework. This would

¹²⁵ See Entry at ¶¶ 20, 22 (Oct. 20, 2021) (The Commission found that “implementation of any rate changes in the case may, subject to the remaining outstanding legal arguments of the parties, be stayed,” that “DP&L may not be able to implement the rates established in this proceeding during ESP I,” and that the issue is properly determined after an evidentiary hearing rather than on a motion to dismiss.).

¹²⁶ Ohio Adm.Code 4901-1-30(A).

¹²⁷ Company Ex. 69 (ESP I Stipulation) at ¶ 33.

undermine the entire motivation for entering into stipulations—parties will have no incentive to resolve proceedings through bargaining if one party can unilaterally accept only the terms of an agreement most favorable to it.

OCC witness Willis recognized the importance of honoring all of the terms of the ESP Stipulation if the other terms and conditions of ESP I (as modified by previous Commission orders) are authorized to continue: “It would be unjust and unreasonable for AES Ohio to benefit from charging consumers millions for the Rate Stabilization Charge but to simultaneously allow [AES Ohio] to avoid its commitment to a distribution rate freeze.”¹²⁸ The Commission authorized AES Ohio to continue to operate under Modified ESP I, including the collection of the RSC until the Commission approves AES Ohio’s next ESP.¹²⁹ The Commission concluded that under Ohio law it was required to issue an order necessary “to continue the provisions, terms, and conditions of the utility's most recent standard service offer...until a subsequent offer is authorized.”¹³⁰ As such, all terms and conditions of the Modified ESP I must continue, including the stipulated rate freeze.

Therefore, to the extent the Commission authorizes any rate increase in this case, the Commission should stay implementation of the rate increase until AES Ohio ceases to operate under Modified ESP I and/or implements a new electric security plan.

III. CONCLUSION

AES Ohio has failed to present adequate record evidence to satisfy its burden of proof to demonstrate that its proposed rate of return is fair and reasonable, or that its proposed revenue

¹²⁸ OCC Ex. 7 (Ross Willis Rebuttal Testimony) at 5.

¹²⁹ Tr. Vol. III at 498 (McKenzie); *In The Matter Of The Application Of The Dayton Power And Light Company For Approval Of Its Plan To Modernize Its Distribution Grid*, Case Nos. 18-1875-EL-GRD, et al., Opinion and Order (June 16, 2021)

¹³⁰ See *In the Matter of the Application of The Dayton Power and Light Company for Approval of its Market Rate Offer*, Case Nos. 12-426-EL-SSO, et al., Entry at ¶ 5 (Dec. 19, 2012).

requirement and resulting rate increase are just and reasonable. As such, the Commission should reject AES Ohio's request to increase its base distribution rates by nearly 50%, and, only approve an increase that is lawful and just and reasonable. To that end, the Commission should disallow certain expenses, and, at a maximum, only consider approval of the lower end of Staff's recommended revenue requirement range to minimize any rate increase. Moreover, to the extent the Commission authorizes any increase in AES Ohio's revenue requirement to increase rates, it should allocate the revenue requirement in accordance with the allocation methodology recommended by AES Ohio and Commission Staff.

Nonetheless, any rate increase authorized through the rate case process should be stayed until AES Ohio ceases to operate under Modified ESP I and/or implements a new electric security plan. The stipulated rate freeze precludes any increase in base distribution rates for the duration of Modified ESP I, which AES Ohio is currently operating under.

Respectfully submitted,

/s/ Kimberly W. Bojko

Kimberly W. Bojko (0069402) (Counsel of Record)

Thomas V. Donadio (0100027)

Carpenter Lipps & Leland LLP

280 North High Street, Suite 1300

Columbus, Ohio 43215

Telephone: (614) 365-4124

Bojko@carpenterlipps.com

Donadio@carpenterlipps.com

(willing to accept service by email)

*Counsel for the Ohio Manufacturers' Association
Energy Group*

CERTIFICATE OF SERVICE

The Public Utility Commission of Ohio's e-filing system will electronically serve notice of the filing of this document on the parties referenced on the service list of the docket card who have electronically subscribed to the case. In addition, the undersigned hereby certifies that a copy of the foregoing document also is being served via electronic mail on March 4, 2022 upon the parties of record.

/s/ Kimberly W. Bojko
Kimberly W. Bojko

**This foregoing document was electronically filed with the Public Utilities
Commission of Ohio Docketing Information System on**

3/4/2022 5:09:03 PM

in

Case No(s). 20-1651-EL-AIR, 20-1652-EL-AAM, 20-1653-EL-ATA

Summary: Brief Post-Hearing Brief electronically filed by Mrs. Kimberly W. Bojko on
behalf of OMA Energy Group