BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Dayton Power and Light Company to Increase Its Rates for Electric Distribution	)))	20-1651-EL-AIR
In the Matter of the Application of The Dayton Power and Light Company for Accounting Authority	)))	20-1652-EL-AAM
In the Matter of the Application of The Dayton Power and Light Company for Approval of Revised Tariffs	)))	20-1653-EL-ATA

REPLY BRIEF SUBMITTED ON BEHALF OF THE STAFF OF THE PUBLIC UTILITIES COMMISSION OF OHIO

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INTRODUCTION

AES Ohio (AES Ohio or Company) filed a request for authorization to increase its rates for electric distribution service. The Staff of the Public Utilities Commission of Ohio (Commission) produced a Staff Report that evaluated the Company's request. The initial hearing lasted six days, concluding with rebuttal testimony on February 7, 2022. Eight Staff witnesses testified in support of the Staff Report. The Staff Report, with the adoption of minor modifications that were set forth in Staff testimony, should be adopted by this Commission. On March 4, 2022, twelve parties and Staff filed initial briefs in this case. Through this Reply Brief, Staff responds to the issues raised in those briefs and Staff also maintains the positions taken in its Initial Brief.

ARGUMENT

I. RATE FREEZE

Staff agrees with intervening parties who argued that AES Ohio is operating under the terms and conditions of ESP I and that the distribution rate freeze is a term and provision of ESP I (and thus a rate freeze is in place).

Parties filed Initial Briefs for this proceeding on March 4, 2022. The legal issue, whether or not AES Ohio is operating under a rate freeze per the terms and conditions of ESP I, was carved out and left for the parties to address on legal brief. Staff's position on this issue is that the distribution rate freeze was a term and condition of ESP I.[1] Since AES Ohio filed its application to increase distribution rates for this proceeding while operating under the terms of and conditions of ESP I, the Commission should not implement new distribution rates until such time that AES Ohio is no longer operating under ESP I. ESP I was resolved through a Stipulation. The Stipulation was approved by the Commission. As a Stipulation represents a package and is a compromise between the signatory parties, it would be unfair to determine only some of the terms and conditions of ESP I are applicable, while others are not.

Several intervening parties shared similar opinions to Staff's on this legal issue:

- ***"the stipulated rate freeze remains in effect, and bars present implementation of AES Ohio's request for an increase in its base distribution rates."*** Kroger Initial Brief at 3.

- ***"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."*** OMA Energy Group Initial Brief at 18.

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[1] Staff Initial Brief at 3-9.

- ***"To protect consumers, if the PUCO does not dismiss DP&L's Application (which it should), then the PUCO should enforce the distribution rate freeze (no rate increase) that DP&L agreed to as part of a settlement in its ESP I case."*** OCC Initial Brief at 13

- ***"OHA agrees with OCC that the ESP I Stipulation required that base distribution rates remain frozen during the term of ESP I."*** OHA Initial Brief at 2.

- ***"The Commission should uphold the distribution rate freeze agreed to by AES Ohio in the ESP I settlement until new SSO rates are established by the Commission."*** IEU Ohio Initial Brief at 1.

The intervening parties who took a position on the rate freeze in Initial Briefs all agree that: 1) the rate freeze is a term and condition of ESP I, 2) that AES Ohio is operating under ESP I, and 3) a rate freeze is therefore in effect. The argument is one of logic and is rather easy to follow. AES Ohio made multiple arguments as to why the rate freeze is not in place, which Staff will address below.

A. THE RATE FREEZE IS NOT UNLAWFUL.

AES Ohio argues that a rate freeze is unlawful.[2] Primarily, AES Ohio contends that "[t]here is no provision in the ESP statute that authorizes the Commission to implement a rate freeze. Indeed, to date, none of the intervenors have even claimed that any specific provision in the ESP statute would authorize the Commission to implement a distribution rate freeze."[3] First, the counter-rationale of this argument can also be stated: there is no provision in the ESP statute that *prohibits* a rate freeze.

[2] AES Ohio Initial Brief at 1.
[3] *Id.*, at 2.

Second, why would the rate freeze be unlawful now, but it was lawful as a term of the ESP I Stipulation? Terms of Stipulations are not permitted to be "unlawful" simply because they are part of a settlement package. In fact, the opposite is true – Stipulations (including the ESP I Stipulation) cannot violate any regulatory principle or practice. Thus, the ESP I Stipulation could not have been approved by the Commission if rate freezes were, in fact, unlawful as AES Ohio argues. AES Ohio does not explain how a rate freeze, which it now considers unlawful, was not also unlawful at the time that it settled in the ESP I case.

Third, as mentioned above, AES Ohio's ESP I was negotiated and ultimately settled through a Stipulation and Recommendation. That Stipulation clearly states that it "was negotiated among all parties to the proceedings and no party was excluded from negotiations. This Stipulation is supported by adequate data and information; as a package, the Stipulation benefits customers and the public interest; promotes effective competition and the development of a competitive marketplace; represents a just and reasonable resolution of all issues in this proceeding; violates no regulatory principle or practice; and complies with and promotes the policies and requirements of Chapter 4928, Revised Code."[4] The Stipulation does not say that some of these provisions are not intended to be actually be terms and conditions of AES Ohio's ESP I, and some of them are. Instead, the settlement is to be taken as a ***package*** to resolve all issues. If the distribution rate freeze was not intended to be a term and condition of ESP I, then what

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[4] *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case Nos. 08-1094-EL-SSO, et al., ESP I, Stipulation at 2 (February 24, 2009).

was it intended to be? As has been discussed in this proceeding, and other proceedings, AES Ohio continues to charge customers for a Rate Stability Rider (which was also a term that resulted from settlement of the ESP I case).[5] AES Ohio highlights that parties (such as OCC) agreed to the Rate Stabilization Charge in exchange for the rate freeze provision.[6] OCC argues "[b]ut if the PUCO is going to allow DP&L to continue to charge consumers under the Rate Stabilization Charge because it was included in the ESP I settlement, then the PUCO should also enforce the other terms of the ESP I settlement, including the distribution rate freeze."[7] Staff agrees if one provision and term of the ESP I is enforced, the others should be as well – this is both logical and lawful. Neither the Company (nor any other party) should be permitted to pick and choose what was a term and condition of the ESP I Stipulation while leaving other terms and conditions out.

Finally, AES Ohio claims the rate freeze is unconstitutional. Specifically, the Company states: "[e]ven if there were some ambiguity in the ESP statute (there is not), the Commission "is bound to give a constitutional rather than an unconstitutional construction to a statute." A utility has a constitutional right to compensatory rates, and it would thus be unconstitutional for the ESP statute to authorize the Commission to impose a rate freeze. Therefore, even if there were ambiguity in the ESP statute, the Commission must interpret it in a constitutional way, i.e., as not authorizing the Commission to implement a distribution rate freeze."[8] Again, this argument is illogical. If AES Ohio

5 *See*, AES Ohio Initial Brief at 13 where it references this argument.
6 AES Ohio Initial Brief at 13.
7 OCC Initial Brief at 15-16.
8 AES Ohio Initial Brief at 2-3 (internal citations omitted).

believes a rate freeze is unconstitutional, why did it agree to a freeze as a term of the ESP I Stipulation? And if it is unconstitutional now, it would have been unconstitutional when they signed the agreement. If it was unconstitutional then, the Commission could not have approved the Stipulation in the ESP I case. The question is not one of Constitutionality – it is whether or not the rate freeze was a term and condition of ESP I, which the Company has chosen to operate under.

B. THERE WAS NO "WAIVER" OF A RATE FREEZE ARGUMENT.

AES Ohio contends that "the intervenors waived any argument they might have had to enforce a rate freeze."[9] The Company then lists five reasons to support this argument:

- None of the intervenors asked that the rate freeze be extended when ESP I was extended in 2012, and none of them sought rehearing from the Commission's order.
- None of the intervenors asked that the rate freeze be reinstated when ESP II was terminated and ESP I was reinstated in 2016, and none of them sought rehearing from the Commission's order.
- The intervenors failed to assert that the rate freeze barred AES Ohio's 2015 rate case.
- The Stipulation in AES Ohio's 2015 distribution rate case authorized AES Ohio to file this case; none of the intervenors sought rehearing from the Commission's order approving that Stipulation.

[9] AES Ohio Initial Brief at 13.

- None of the intervenors asked that the rate freeze be reinstated when AES Ohio terminated ESP III in 2019.[10]

The issue with each of these arguments is that each argument ignores the timing and circumstances of ***this*** particular Distribution Rate Case. As Staff pointed out in its Initial Brief, AES Ohio filed this Distribution Rate Case while operating under the terms and conditions of ESP I. This is undisputable.[11]

As to the first two points made by AES Ohio, it is unclear why parties would have asked that the rate freeze be extended when ESP I was continued in 2012, if the parties: 1) understood the rate freeze to be a term and condition of ESP I, and 2) there was no application by AES Ohio at that time to increase distribution rates.

Similarly, as to AES Ohio's point two (i.e., none of the intervenors asked that the rate freeze be reinstated when ESP II was terminated and ESP I was reinstated in 2016, and none of them sought rehearing from the Commission's order) it is nonsensical that the parties would have asked for the rate freeze to be "reinstated" if they believed it to be a term and condition of ESP I. If it was (and the parties believed that it was), there would be no need to request reinstatement.

As to point three (the intervenors failed to assert that the rate freeze barred AES Ohio's 2015 rate case), Staff is of the opinion that the 2015 distribution rate case does not have any bearing on this present case. The circumstances around Case No. 15-1830-EL-

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[10] AES Ohio Initial Brief at 14.

[11] *See* the Timeline included in Staff's Initial Brief at 5.

AIR are entirely different. On November 30, 2015, AES Ohio filed a Distribution Rate Case.[12] The Distribution Rate Case was filed while AES Ohio was operating under ESP II.[13] The Distribution Rate Case was resolved through a Stipulation and Recommendation. The Commission approved the settlement on September 26, 2018. When the Commission adopted the Stipulation, AES Ohio was under the terms and conditions of ESP III. Thus, when Case No. 15-1830-EL-AIR was filed – AES Ohio was not under ESP I, and when it was settled – the Company was not operating under the terms and conditions of ESP I. The present case is distinguishable because the Company has been operating under the terms and conditions of ESP I the entire duration.

AES Ohio also contends "[t]he Commission effectively eliminated the rate freeze provision when the Commission approved the Stipulation and Recommendation in the 2015 Distribution Rate Case. Specifically, that Stipulation provides that AES Ohio may file a distribution rate case "on or before October 31, 2022" to maintain its Distribution Investment Rider. 2015 Distribution Rate Case, Case No. 15-1830-EL-AIR, et al., Stipulation and Recommendation, 7 (June 18, 2018)."[14] This argument confuses the actual facts. The Distribution Investment Rider ("DIR") was a term and condition of ESP III. There is no DIR to maintain, as there is no ESP III. AES Ohio seems to suggest that it

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[12] *In the Matter of the Application of the Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case No. 15-1830-EL-AIR, et al., Application of Dayton Power and Light Company to Increase its Rates for Electric Distribution (Nov. 30, 2015).

[13] ESP III Case, Entry (Nov. 15, 2018).

[14] AES Ohio Initial Brief at 14.

had some sort of obligation to file this current rate case. But that is not the case, especially since it is not operating under the terms and conditions of ESP III.

In argument four, AES Ohio states that "[t]he Stipulation in AES Ohio's 2015 distribution rate case authorized AES Ohio to file this case; none of the intervenors sought rehearing from the Commission's order approving that Stipulation."[15] Again, this argument does not make sense when looking at the actual facts. Case No. 15-1830-EL-AIR was settled through a Stipulation. Parties would not typically seek rehearing regarding a term and condition of a settlement they signed. And, more significantly, the 2015 Distribution Rate Case was settled while the Company was operating under ESP II and ESP III. AES Ohio is therefore making the argument that parties should have somehow been able to know that AES Ohio would as at some future point in time revert back to the terms and conditions of ESP I? This argument simply does not make sense.

As to AES Ohio's fifth point (none of the intervenors asked that the rate freeze be reinstated when AES Ohio terminated ESP III in 2019) it is unclear why parties would have asked that the rate freeze be reinstated when AES Ohio terminated ESP III in 2019 if the parties all understood the rate freeze to be a term and condition of ESP I. It would not have needed to be "reinstated."

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[15] AES Ohio Initial Brief at 14.

C. AES OHIO'S RELIABILITY AND FRAGILE FINANCIAL CONDITION ARGUMENTS.

AES Ohio asserts it is barely able to provide reliable service, and that a rate freeze would make providing reliable service nearly impossible.[16] AES Ohio then has several pages of argument about its "fragile financial condition." Staff does not think the Commission should discount these points, as providing reliable service to customers is critical. But AES Ohio is *required* to provide safe, adequate, and reliable service to consumers. And this requirement stands regardless of whether AES Ohio receives rate increases. *See* R.C. 4905.22 ("every public utility shall furnish necessary and adequate service and facilities***.") And, the ESP I Stipulation actually provided a remedy for emergency financial situations: "DP&L's distribution base rates will be frozen through December 31,2012. **This distribution rate freeze does not limit DP&L's right to seek emergency rate relief pursuant to Section 4909.16**, Revised Code…"[17] (Emphasis added). Thus, the Company was never precluded from seeking emergency rate relief pursuant to R.C. 4909.16. Interestingly, AES Ohio makes no mention of R.C. 4909.16. Staff would presume that given AES Ohio's "fragile financial condition" and the fact that AES Ohio's reliability metrics are getting worse,[18] it would have considered emergency rate relief. Staff is not arguing for purposes of this proceeding if emergency rate relief is appropriate, but instead, that the ESP I never prohibited AES Ohio from seeking

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[16] AES Ohio Initial Brief 22-24.
[17] ESP I Stipulation at 10.
[18] AES Ohio Initial Brief at 23.

emergency rate relief, and that AES Ohio has not explained why it is not seeking emergency rate relief, given its “fragile financial condition”.

II. OBJECTIONS TO THE STAFF REPORT

A. OPERATING INCOME REVENUES

i. Rider Revenue

OCC suggests that Staff erred by decreasing the test year operating revenues by $5,019,523.[19] In order to determine accurate operating revenues, all rider revenue must be removed from the unadjusted test year.[20] In the Staff Report, Staff inaccurately removed all rider revenue and expenses when Staff updated Schedule C-3.4 to reflect 7 months of actual and 5 months of forecasted revenues and expenses.[21] Some rider revenues and expenses remained in the test year; therefore, additional adjustments must be made in order to accurately reflect the test year.[22] Staff correctly adjusted the revenues on Schedule C-3.24. but Staff did not make a corresponding adjustment to remove the remaining storm rider expenses reflected in Schedule C-3.4. That inadvertently left $1,290,486 in expenses in the test year in the Staff Report.[23]

While testifying in the rebuttal portion of the hearing, OCC Witness Willis agreed that if the Commission adopted the Company’s recommendation to exclude the rider revenue and expenses as contained in Schedule C-3.4, Storm Cost Recovery Rider,

[19] OCC Initial Brief at 23.
[20] Tr. Vol. VII at 1621.
[21] OCC Ex. 7, Willis Rebuttal Testimony at 2.
[22] *Id.*
[23] Tr. Vol. VII, 1606 – 1607, 1610-1613.

instead of the Staff's recommendation, this would correct the miscalculation and satisfy OCC's objection.[24] If the Commission adopted this recommendation, correcting this error, a corresponding flow through adjustment must be made to Staff's Schedule C-3.24 to reflect that all storm rider revenues have been removed on Staff's Schedule C-3.24. Staff's Schedule C-3.24 would need to decrease test year revenue by $3,547,859 to equal the amount calculated on Schedule E-4, instead of $5,019,523 as proposed in the Staff Report.[25]

ii. Redundant Service

The City of Dayton argues that the Staff Report should have updated the charge for redundant service based on the cost of service study and because no cost of service study was completed, the City of Dayton should not be subject to the tariff charge for redundant service.[26] Despite the fact that AES Ohio failed to provide a cost of service study for the redundant service charge agreed to in Case No. 15-1830-EL-AIR, the second (redundant) line incurs the same costs (demand and customer service charge plus any energy used) as the primary and it is appropriate that the cost causer pay for this service.[27]

When cross examined by the City of Dayton, Staff Witness Smith testified that the costs associated with providing redundant service are not zero.[28] Mr. Smith believes that

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24 *Id*. at 1621.
25 *Id*. at 1621 – 1622.
26 City of Dayton Initial Brief at 14.
27 Staff Ex. 8, Smith Testimony at 12.
28 Tr. Vol. VI at 1277.

the costs associated with providing redundant service are closer to 100 percent than 0.[29] And Mr. Smith pointed out that if "you have to run – if you are running two lines, you are going to have costs associated with that."[30] The evidence in the record shows that there are costs associated with providing a redundant service and the Company should be compensated for that provision of service.

iii. AES Annualized Payroll Tax Expense

AES reiterated its complaint regarding annualized payroll tax expense in its brief, claiming that Staff used a 10-month average of FICA.[31] Staff excluded March FICA tax in calculating the annualized FICA tax because the payment of short-term incentive compensation (STC) caused March FICA taxes to be abnormally high.[32] Including the month of March in the calculation would cause the annualized expense to be overstated.[33] The May pay increase was not included at the time of the Staff Report because the pay increase could not be confirmed or verified due to timing of filing the Staff Report. The May increase was not included.[34] But Staff agrees with the AES Ohio's calculation of 1.8 percent pay increase resulting in an increase to AES payroll tax expense of $122,447.[35] The Commission should accept Staff's recommendations on annualized payroll tax expense.

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29 Tr. Vol. VI at 1271 – 1272.
30 Tr. Vol. VI at 1271 - 1272.
31 AES Ohio Initial Brief at 42 – 43.
32 Staff Ex. 4, Crocker Testimony at 3.
33 *Id.*
34 *Id.*
35 *See* Supplemental Direct Testimony of Craig A. Forestal at Exhibit CF1 (August 25, 2021) (adjusted to 25 percent of STC).

iv. AES Ohio Employees' Salaries and Wage Expense

AES Ohio claims that Staff erroneously reduced labor expense for non-jurisdictional and non-operation and maintenance (O&M) expenses twice and utilized the wrong number of hours to annualize expense.[36] Staff does not agree with this argument. Staff used AES Ohio's distribution labor to calculate employee numbers and used a fully loaded wage to calculate the annual wage.[37] The fully loaded wage included both capital expenditure and O&M dollars, as well as all jurisdictional dollars.[38] And Staff correctly used 2,080 hours per year, consistent with Staff's past practice in staff report labor calculations.[39]

v. AES Ohio Union Employee Pay Increase

AES disagrees with Staff not annualizing a 2.75% union employee pay increase.[40] Staff disagrees with AES Ohio's position. The union employee pay was calculated based on April 2021 wages. That number included all test year pay increases, accordingly, Staff appropriately considered *test year* expenses and that is the accurate expense to be part of the rate case.[41]

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36 AES Ohio Initial Brief at 44.
37 Staff Ex. 4, Crocker Testimony at 3.
38 *Id.*
39 *Id.*
40 AES Ohio Brief at 45.
41 Staff Ex. 4, Crocker Testimony at 4.

vi. AES Ohio Service Company Employees' Salaries and Wage Expense

AES Ohio addresses the issue that Staff did not annualize a 1.8 percent overall pay increase.[42] During the investigation of the Company's increase application, this 1.8 percent could not be verified due to timing of filing the Staff Report.[43] But, as testified to by Staff Witness Crocker, that pay increase is reasonable and results in an increase to AES Ohio's labor of $148,308.[44]

vii. Short-Term Compensation (STC) and Long-Term Compensation (LTC) Expense and Annualize Pay Increases into STC and LTC

In its Initial Brief, AES Ohio addresses Staff's recommendation (Staff Report, pp. 15-16, 96) that 75% of short-term bonuses ("STC") and 100% of long-term bonuses ("LTC") be eliminated from base rates.[45] AES Ohio argues that the Commission should reject that recommendation because, "as demonstrated in Objection No. 3 above, the total amount of compensation that AES Ohio pays to its employees is consistent with market rates, the costs were incurred to provide service to customers and the bonuses provide incentives to AES Ohio's employees to provide excellent service at a low cost, which benefits customers."[46]

AES Ohio goes on to say that

> [i]f the Commission disagrees with AES Ohio and concludes that financial bonuses should not be recovered, then the Commission should find that Staff erred in concluding that 75% of short-term bonuses were

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42 AES Ohio Initial Brief at 45.

43 Staff Ex. 4, Crocker Testimony at 3 - 4.

44 *Id*. at 4.

45 AES Ohio Initial Brief at 46.

46 *Id*.

> financial in nature. Staff calculated that 75% figure by summing the 45% figure and the 30% figure. Tr. Vol. V 1073 (Crocker). The Staff erred because the 30% figure in that exhibit was not based on AES Ohio's financial metrics, and thus was not a financial bonus. AES Ohio Ex. 25, p. 5 (Buchanan).[47]

Staff disagrees with AES Ohio's argument. Staff considers the content of the 30% metric to be a financial metric. It is similar in nature to the 45% figure which the Company calls "financial." Therefore, the total adjustment is accurately 75%, as recommended by Staff.

viii. AES Ohio Employee Pensions and Benefits Expense

AES notes that Staff did not update pension and other post-employment expenses.[48] Staff agrees that the updated calculation increasing pension and other post-employment benefits expense by $932,478 provided within supplemental testimony is reasonable.[49]

B. DEPRECIATION

AES Ohio claims that Staff misapplies the whole-life depreciation technique.[50] Staff did not misapply this technique. The Company confuses the concept of whole life depreciation in the context of this rate case and determining the revenue requirement with an accounting bookkeeping context. The questioning centered on the Company's accounting treatment for the charging of depreciation expense for a hypothetical situation involving a single asset that is retired before reaching its estimated service life. In the

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47 *Id.*

48 AES Ohio Initial Brief at 47.

49 Staff Ex. 4, Crocker Testimony at 6.

50 AES Ohio Initial Brief at 30.

given scenario, for book purposes, the utility would not "fully recover" the "amounts it expended to acquire the asset.", and that was what Staff testified to. The utility does continue to recover an amount of depreciation expense through the revenue requirement for the subject asset until it files its next rate case, and even though the asset has been retired and is no longer used and useful.

AES claims that the Staff's depreciation method is inconsistent with the NARUC manual.[51]AES Ohio incorrectly interprets the NARUC depreciation manual (AES Ohio Ex. 89, p. 63).[52] The cited passage in the NARUC manual refers to an over or under accrual in an account and as determined by a theoretical or calculated reserve analysis with the utilities book reserves, not necessarily an over or under accrual on a single asset. The NARUC manual at page 63 speaks to "the estimated average service life of the plant category."[53] PUCO Staff's analysis of utility book depreciation reserves routinely results in over and under accruals, and if determined to be material in nature, Staff recommends an amortization of the difference over a specified length of time (e.g., 3, 5, 10 years). This is not the case with the accounts in question for AES Ohio.

AES Ohio also argues that Staff's use of the square curves should not be used and instead, L3 should be used.[54] Staff witness Mumma stated that changing the curve type does not impact Staff's recommended accrual rates for the accounts. In the Company's

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51 AES Ohio Initial Brief at 32.
52 AES Ex. 89 at 63.
53 *Id.*
54 AES Ohio Initial Brief at 33.

most recent rate case, it used, and the Commission approved, for these same accounts (362.20 and 396), square curves.[55] In fact, AES Ohio Witness Spanos admitted that the Company, in its last rate case used the square curve for the Accounts 362.60, 362.71, and 396.[56] Mr. Spanos had no justification why the use of the square curve is now unlawful and he acknowledged that AES used the square curve in its last rate case. Staff's use of the square curve is lawful.[57] Staff's methodology produced just results for the depreciation studies and should be adopted by the Commission.

C. RATE OF RETURN

i. Rate of Return Range

AES Ohio's argument regarding the Staff's recommended rate of return is that Staff did not address the recommendations made in the testimony of AES's witness McKenzie.[58] Staff did address the Company's position of rate of return and disagreed with that position. If fact, Staff Witness Buckley acknowledged that Mr. McKenzie's methods were sound.[59] By admitting to having reviewed Mr. McKenzie's methodologies, Staff Witness Buckley clearly addressed AES Witness McKenzie's recommendations, but, through Mr. Buckley's own analysis, disagreed with Mr. McKenzie and made an independent Staff recommendation. In its Initial Brief, AES simply reiterated Mr. McKenzie's testimony and concluded that the "Commission should conclude that Mr.

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55 Tr. Vol. III at 558 – 559.

56 AES Ohio Exhibit 7, Application Schedule B-3.2

57 Tr. Vol. III at 556, AES OHIO Ex. 47 at 1.

58 AES Ohio Initial Brief at 34.

59 Tr. Vol. V at 987.

McKenzie's testimony is sound, and should approve a 10.5% ROE for AES Ohio."[60] AES is wrong and the Staff Report and testimony support the Staff's recommended ROE range is appropriate.

AES disagrees with Staff's use of a resource entitled *Fairness Finance*, which is used by the Staff in developing its rate of return analysis.[61] AES says that no investors rely upon *Fairness Finance* and therefore it is a bad resource. But AES put nothing in the record showing that this resource was unsound. AES does not like the *Fairness Finance* because it produces a lower market risk premium than AES's preferred resource.[62]

AES argues that the Staff's recommended return on equity is inappropriate because Staff did not utilize a comparable/expected earning approach.[63] However, the Company's argument is totally unsupported and only provides that the testimony of AES Ohio witness McKenzie demonstrates that the comparable earnings approach is sound.[64] In addition, AES Ohio argues that the Staff Report did not consider the risk premium approach.[65] The only rationale that AES Ohio cites in supporting a risk premium approach is that "method is a widely accepted method for estimating cost of equity."[66] There is no evidence that the Staff is required to use the risk premium and the Staff's methodology produced a reasonable and acceptable return on equity and should be adopted by the Commission.

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60 AES Ohio Initial Brief at 34.
61 *Id.*, at 36.
62 *Id.*
63 *Id.*, at 37.
64 *Id.*
65 AES Ohio Initial Brief at 37.
66 *Id.*.

ii. Below Investment Grade Bond Rating

AES Ohio claims that Staff did not recognize the Company's rating as below investment grade and there is an increased risk with such a rating.[67] However, Staff did address this specific issue in the Staff Report. The Report states, "[t]o create the comparable companies Staff selected companies with a Standard & Poor's Bond Rating of BBB+ and below as well as a Value Line financial strength rating of B+."[68] Staff witness Buckley testified that "both these criteria should capture higher risked utilities. While there are not enough utilities with below investment grade bond ratings to use that metric exclusively, Staff's analysis nonetheless took into account that added risk."[69]

iii. Financial Risk

IEU and OCC argue that Staff's calculated 15-year average of 10-year and 30-year yields is not based on investor expectations and ignores the current state of the market.[70] Due to the economic factors associated with the pandemic, Staff has seen conflicting forecasts and believes because of these conflicting factors, a larger sample of previous interest rates is more applicable at this time.[71] It is reasonable for Staff to have utilized this larger sample and more accurately reflects the Company's financial risk.

IEU-Ohio, Kroger, and OMAEG claim that Staff did not take into account AES Ohio's lower financial risk due to its guaranteed recovery from distribution riders

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67 *Id*. at 34.
68 Staff Ex. 1, Staff Report at 21.
69 Staff Ex. 2, Buckley Testimony at 6 – 7.
70 IEU Initial Brief at 6, OCC Initial Brief at 40.
71 Staff Ex. 2, Buckley Testimony at 7.

because the Company is the sole provider of electricity within its service territory.[72] However, the use of riders by a company is just one factor that forms the overall risk for the company. Staff Witness Buckley states that there are unique factors that make an investment in a utility riskier, such as the increased focus on environmental, societal, and governance investing.[73] Staff did not add basis points for this because Staff believes that it is more appropriate to look at the overall rankings.

iv. Proxy Group

The Company also argues that the Staff's proxy group used to calculate the Company's cost of common equity was too small and could lead to distortions.[74] Staff witness Buckley testified that the number of potential comparable companies had declined over the last few years and the pool of publicly traded companies that pay a dividend is down to approximately 37.[75] Because AES Ohio has been below investment grade bond ratings, the pool of comparable companies shrinks.[76] As explained in the Staff Report, "Staff selected companies with a Standard & Poor's Bond Rating of BBB+ and below as well as a Value Line financial strength rating of B+." [77] Staff originally had 6 companies in the group, but through a careful review of these companies, Staff decided to drop one because there were no growth projections for that company.[78] These considerations and analysis demonstrate the appropriateness of Staff comparable group.

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72 IEU Initial Brief at 8, OMA initial Brief at 6, and Kroger Initial Brief at 6.
73 Staff Ex. 2, Buckley Testimony at 8.
74 AES Ohio Initial Brief at 35.
75 Staff Ex. 2,, Buckley Testimony at 5.
76 *Id*. at 5.
77 Staff Ex. 1, Staff Report at 21.
78 *Id.*

v. Adjustment to Baseline Cost of Equity

OCC recommends that the Commission not adopt the Staff's recommended cost of equity due to the Staff's reliance on *Value Line.* OCC claims that this reliance causes Staff's estimates to be abnormally high.[79] *Value Line* is and continues to be a reliable source for beta estimations, and Staff checked the validity of the *Value Line* estimation with other sources and found that the *Value Line* estimates were reasonable.[80]

In addition, OCC argues that Staff inappropriately increased the return on equity by allowing an adjustment for equity issuance and other costs, arguing that the Staff's recommended rate of return rage of 7.05% to 7.59% is too high.[81] OCC ignores the fact that "[i]ssuance costs include expenditures made directly by the company issuing stock, for the purpose of issuing stock. Some of these expenditures would be for filing with the SEC, accounting, legal representation, printing, and exchange listing. Issuance costs also include the underwriting spread, which is not an expenditure for the issuing company. Basically, the underwriting spread is the difference between the proceeds to the company and the price paid by the primary purchasers of an issue. Issuance costs are the difference between the amount paid by the primary purchasers, and the net proceeds, which is the amount available for investment by the company."[82] Further explanation for the necessity of an adjustment for equity issuance demonstrates that Staff's adjustment to the baseline cost of equity is reasonable. Mr. Buckley explained that the equity cost of issuance must

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79 OCC Initial Brief at 36 – 44.
80 Staff Ex. 2, Buckley Testimony at 9.
81 OCC Initial Brief at 49.
82 Staff Ex. 2, Buckley Testimony at 9 – 10.

be spread over the life of the stock issue, and if stock has been issued, an equity adjustment is necessary.[83] If the investor owns stock, the investor requires a full return. What the future financing plans are does not matter. The company issuing new equity initially receives funds in the amount of the equity issued.[84] Then the amount of equity issued less the issuance cost is the amount available to the company for investment; however, the investor must be paid a return on the full amount of the investment. Staff's adjustment to the baseline cost of equity is reasonable.[85]

D. REVENUE REQUIREMENT

i. Updated Revenue Requirement

AES Ohio objects to the Staff's recommended revenue increase range of $64,273,390 to $69,823,123 as being insufficient to provide the Company with the appropriate compensation, and that it does not allow the Company an opportunity to earn an adequate return. In addition, OCC, IEU-Ohio, OMAEG, and OPAE object that the Staff's recommended rate increase is too high for consumers.[86] Staff Witness Lipthratt, after reviewing all of the parties' objections, updated the revenue increase range to $64,273,390 to $69,823,123.[87]

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83 *Id*. at 10.
84 *Id*.
85 *Id*.
86 OCC Objection 1, OPAE Objection 1, IEU-Ohio Objection 1, OMAEG Objection 1.
87 Staff Ex. 9, Lipthratt Testimony at 3.

ii. Working Capital

On brief, AES argues that the Commission should reject the Staff's recommendation regarding working capital because there is no such requirement in the Commission rules.[88] The Company did not make a request for working capital.[89] Mr. Lipthratt states that Staff's recommendation to disallow the non-cash working capital balance is because the Company did not request cash working capital. Working capital is a single allowance, consisting of multiple components, including working capital. Due to the Company's failure to request working capital, AES Ohio's requested allowance for working capital was deficient and does not accurately represent the working capital needs of the Company.[90] Commission precedent holds that materials and supplies and cash working capital are components of a total allowance for working capital that may be included in a utility's rate base.[91] The deficiency is because cash working capital can be negative and excluding it causes the allowance for working capital to be overstated.[92]

iii. Incentive Compensation

In its Initial Brief, AES Ohio addresses the Staff's recommendation (Staff Report, p. 10) regarding exclusion of financial bonuses from future base rate additions.[93] AES

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88 AES Ohio Initial Brief at 27.

89 Staff Ex. 9, Lipthratt Testimony at 4.

90 *Id*. at 4.

91 *In the Matter of the Application of Duke Energy Ohio Inc., for an Increase in Electric Distribution Rates*, Case Nos. 12-1682-EL-AIR, et al. (Testimony of Kerry Adkins) (March 20, 2013) at 3 -4; citing *Cincinnati Gas & Electric Co*., Case No. 91-410-EL-AIR (May 13, 1992), *Ohio Edison Co*., Case No. 89-1001-EL-AIR (August 16, 1990), *Columbia Gas of Ohio*, Case No. 89-516-AIR (April 5, 1990), *Ohio Edison Co*., Case No. 87-689-EL-AIR (January 26, 1988), *Cleveland Electric Illuminating*, Case No. 86-2025-EL-AIR (December 16, 1987).

92 Staff Ex. 9, Lipthratt Testimony at 3. *Id*.

93 AES Ohio Initial Brief at 29.

Ohio notes that it "is aware that the Commission has ruled in the past that financial bonuses should not be recoverable, since they benefit shareholders, not customers."[94] However, AES Ohio "asks the Commission to reconsider that ruling and allow recovery of financial bonuses."[95]

Staff agrees compensating employees is appropriate, and recovery for compensation is allowable. However, a company chooses how it will compensate employees. Staff does not dictate how companies must compensate employees. AES Ohio has chosen to use financial bonuses, in part, to compensate employees which, in part, provide exclusive benefits to shareholders. In the test year, which is being reviewed in this case, ratepayers do not realize direct benefits from programs that encourage employees to save money in the future, find new customers for future growth, and increase earnings per share, etc. Staff believes the burden for these benefits should be borne by shareholders, or shared between ratepayers and shareholders. Staff has recommended what it believes is the best option for sharing these costs.

iv. Vegetation Management

Staff recommends that AES Ohio have a $17,500.00 per year baseline for vegetation management and a deferral for vegetation management of up to $5,000.00 per year, which adds up to $22,500.00 annual total.[96] However, AES Ohio complains that this is not enough and proposes that its annual baseline be $30,000,000.[97] The Company's

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94 *Id.*
95 *Id.*
96 Staff Ex. 1, Staff Report at 15
97 AES Ohio Initial Brief at 39.

current baseline is $15.7 million and the current deferral cap is $4.5 million. AES admits that it has been unable to trim vegetation on its distribution lines in accordance with its commission-approved plan and that the Company's reliability metrics have grown worse.[98] However, OCC complains that Staff's recommended increase of $1.8 million to the baseline expense for vegetation management is too much.[99] Staff recognized the need to raise the vegetation baseline and recommended an increase to $17.5 million. The Company argues for a cap of no less than $12.5 million annually.[100] Staff recommends that AES Ohio continue to defer its incremental vegetation management expenses in excess of $17,500,000, subject to a $5,000,000 annual cap. Staff did not find that AES Ohio supported its claim that $30 million was warranted.[101]

AES Ohio also criticizes Staff's recommendation to amortize its current regulatory asset relating to deferred vegetation management expense over five years, instead of three years.[102] Staff's rationale for recommending the three-year amortization is that the Company's last three rate cases were filed in April 1991,[103] November 2015,[104] and this case was filed in November 2020. The timing of the Company's case filings demonstrate that the five-year amortization period is reasonable. And if there is an unamortized regulatory asset due to the timing of the filing of the Company's next base rate case, the

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98 AES Ohio Ex. 95 at 6 – 8.

99 OCC Initial Brief at 26.

100 AES Ohio Initial Brief at 40.

101 Staff Ex. 9, Lipthratt Testimony at 6.

102 AES Ohio Initial Brief 40.

103 *In the Matter of the Application of The Dayton Power and Light Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service*, Case No. 19-0418-EL-AIR.

104 *In the Matter of the Application of The Dayton Power and Light Company for an Increase in Electric Distribution Rates*, Case No. 15-1830-EL-AIR.

regulatory assets can remain on the books and would be eligible for recovery in the next base rate case.[105] But if the amortization period is too short and AES Ohio files for a new base rate case after the conclusion of the amortization period, the Company would over-collect on the regulatory asset. The five-year amortization period is reasonable and should be adopted by the Commission.

v. Taxes

Staff adjusted property tax expenses and AES argues that Staff should have included a 1.5% inflation factor because there is a pattern of increasing property taxes over the last five years.[106] Staff used the latest known property tax rate in calculating tax expense and does not recommend any increases for inflation.[107]

In addition, the Company asks the Commission to recognize that with any adjustments that Staff makes, there will be income tax flow-through effects.[108] Staff Witness Lipthratt understood that consequence and included these[109] flow through effects are updated ion Exhibit C, which is an attachment to Mr. Lipthratt's testimony.

The Staff Report recommends that AES Ohio amortize its current regulatory asset relating to a deficiency in deferred municipal income tax expense over a five-year period. The Company believes that it should be amortized over a three-year time period.[110]As in an earlier section of this brief, AES Ohio filed its rate cases in 1991, 2015, and 2020. The

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105 Staff Ex. 9, Lipthratt Testimony at 7.
106 AES Ohio Initial Brief at 41.
107 Staff Ex. 9, Lipthratt Testimony at 8.
108 AES Ohio Initial Brief at 41.
109 Staff Ex. 9, Lipthratt Testimony at 8.
110 AES Ohio Initial Brief at 41 – 42.

timing of these cases if well over a five-year period, thus the five-year amortization period is reasonable. And any unamortized regulatory asset may be eligible for recovery in the Company's next base rate case.

vi. Energy Efficiency Labor

AES stated that the Staff should not recommend removal of $773,286 in labor and labor-related expenses related to the Energy Efficiency Rider from the test year because it is duplicative of what was already removed on pages 86 and 97 of the Staff Report.[111] Staff recognizes its error in removing the Energy Efficiency labor twice and Staff Witness Lipthratt corrected this error in Exhibit D attached to his testimony.[112]

vii. Demand Side Management

The Company maintains that the Staff Report erred when it excluded Demand Side Management (DSM) expenses.[113] Staff testified that a distribution case in not the appropriate method to handle the Company's DSM program.[114] Staff did not recommend complete denial of the program at this time. The Company should seek approval of its demand side management program outside of a rate case.

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111 AES Ohio Initial Brief at 42, Staff Ex. 1 at 96 -97.
112 Staff Ex. 9, Lipthratt Testimony at 9 – 10.
113 AES Ohio Initial Brief at 47.
114 Staff Ex. 9, Lipthratt Testimony at 10.

viii. Test Year Expenses

Ohio law dictates that the revenues and expenses shall be determined during a twelve-month test period.[115] As explained by Staff witness Lipthratt, Staff correctly disallowed $1,384,139 of expenses for services that were performed outside the test year. AES argues (yet its own Company Witness Donlon admitted that expenses were incurred in months *before* the test year)[116] that these expenses should have been included in the test year. Mr. Lipthratt testified that "[c]osts are measured based on the period in which they are incurred, regardless of when the cash transaction takes place." [117] The test year must measure the cost of rendering utility service during that specific time period. If a cash payment occurs during the test period, but the expense incurred prior to the test year does not measure the cost of rendering utility service during the test period. This is Ohio law and eliminates the possibility that a utility could delay payment of invoices until the beginning of the test year; thereby, increasing test year expense because the case payment would take place during the test year.[118]

As discussed in Mr. Lipthratt's testimony, Staff maintains that the Company failed to provide data to support the claim that the $916,283.55 was properly accrued and reversed, ensuring that no out-of-period expenses were included in the revenue requirement. Using only the information provided to Staff during its investigation, Staff

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115 R.C. 4909.15(C)(1).
116 AES Ohio Ex. 30 at 6 – 12.
117 Staff Ex. 9, Lipthratt Testimony at 11.
118 *Id*. at 12.

could not determine that reversals of accruals associated with the $916,283.55 were accounted for in the test year. Therefore, this expense was not included in the test year.

The Company claims that the $1,384,139 includes the $467,855.29 amount that should be included.[119] but stated in its Initial Brief that the theses expenses were performed before the test year.[120] The Company contends that there were offsetting expenses that occurred at the end of the test year that are not included in test year expense because they were recorded after the test year concluded.[121] The final nine months of the test year were based on forecasted amounts, not actuals; therefore, the offsetting entries would not be automatically reflected in the test year unless they were contained in the Company's forecasted data.[122] Staff did not update the test year to actuals and Staff accepted AES Ohio's forecasted amount for O&M expenses, any offsetting entries would not be reflected in the test year. Consequently, there is the potential that expenses at the end of the test year are based solely on the Company's forecasting methodology. Staff further investigated the issue to determine what was in the forecast and the Company states that "the forecast in the rate case is based on the assumption that we will continue to pay these leases."[123] This response from the Company does not show that the forecast was not adjusted or developed to ensure that the expenses were excluded from the test year. "The fact that the Company's forecast did not account for and offset predictable,

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119 AES Ohio Initial Brief at 50.

120 *Id.*.

121 Staff Ex. 9, Lipthratt Testimony at 15.

122 *Id.*

123 *Id.*, at 16.

periodic expenses such as the annual leases certainly raises significant doubt that the Company's forecast accounted for and offset the unpredictable, one-time expenses, which make up the bulk of Staff's adjustments to pre-test year expenses.[124] This lack of evidence demonstrates the Company's inability to support its objection regarding the inclusion of $467,855.29.

ix. Miscellaneous Expense

Staff Report recommended disallowance of expenses for attorneys for the rate case, ice for linemen, and cable and satellite expenses.[125] Staff acknowledged that some corrections needed to be made related to the rate case expense and the ice for the linemen. Mr. Lipthratt made these corrections in Exhibit F, attached to his testimony.[126] But Staff disagrees with the expense associated with cable and satellite, as Staff investigated these costs and found no indication that these expenses were associated with AES Ohio phones.[127]

x. Uncollectible Expense

AES Ohio objects to the recommendation in the Staff Report to eliminate its current regulatory asset relating to uncollectible expense[128]. The Commission granted the Company's right to do this in Case Nos. 15-1830-EL-AIR, et al.[129] Staff witness Lipthratt correctly testified that the Company was not granted a regulatory asset that would remain

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124 *Id.* at 16 – 17.
125 Staff Ex. 1, Staff Report at 19.
126 Staff Ex. 9, Lipthratt Testimony at 17.
127 *Id.*
128 AES Ohio Initial Brief at 51.
129 Staff Ex. 9, Lipthratt Testimony at 18.

on the Company's balance sheet indefinitely. Rather, Staff's understanding is that the deferral authority received by the Company in its previous rate case, Case No. 15-1830-EL-AIR, was limited to typical over/under-collections required for true-up purposes. And AES Ohio voluntarily reverted back to ESP 1, therefore, the uncollectible rider is no longer authorized. Additionally, AES Ohio now wants to defer the entire amount of uncollectible expense in prior years rather than the simple deferral of over or under recoveries on an annual basis.[130] The Company has no such authority to seek this and should not be permitted to do so.

xi. Distribution Investment Rider Audit Costs

The Company objects to the Staff's recommendation to disallow recovery of these costs that were approved for recovery in the Company's last rate case, Case No. 15-1830-EL-AIR.[131] The Staff Report in Case No. 15-1830-EL-AIR specifically states that the audit costs are to be recovered in the Distribution Investment Rider (DIR). The Commission did not modify this requirement. When the Company voluntarily reverted back to ESP I, it lost its authority to recover the DIR audit costs.

xii. Storm Costs

OCC objects that Staff did not make a recommendation to make a plant-in-service adjustment to exclude $16.8 million in improper capitalized storm costs.[132] Staff's

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130 *Id*.
131 AES Ohio Initial Brief at 19.
132 OCC Initial Brief at 18.

investigation into the plant-in-service in this case was extensive. The Staff's analysis included examination of financial transactions and physical inspections.[133] OCC's Witness Willis recommended removing operation and maintenance expenses, case bonuses, meals, picnics, and parties, but Staff's investigation did not reveal that these types of expenses were being capitalized.[134]

xiii. Dues and Memberships

OCC argues that $241,572 associated with dues and memberships should be removed from test year O&M expenses instead of Staff's recommended removal of $14,534.[135] OCC complains that Staff did not go far enough in its recommendation.[136] If dues and memberships are not related to AES Ohio's provision of electric distribution services, Staff does not recommend inclusion of those costs in rates.[137] Through its investigation and further evidenced by Staff witness Lipthratt's testimony, the remaining dues and membership expenses that remain in the test year expenses were related to the provision of distribution service and appropriate for recovery and OCC has provided no evidence to demonstrate otherwise.[138]

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133 Staff Ex. 9, Lipthratt Testimony at 21.
134 *Id*.
135 OCC Initial Brief at 22.
136 *Id*.
137 Staff Ex. 9, Lipthratt Testimony at 21.
138 *Id*. at 22.

xiv. Pandemic Expenses and Savings

AES Ohio deferred the costs and savings related to the coronavirus. Staff, as part of its investigation in this case, examined and verified that the costs ($952,488) were not included in the Company's test year expenses.[139] OCC, Kroger, and OMA argue that to the extent that savings outweigh savings, customers will see no benefit.[140] In this proceeding, OCC seeks an adjustment to the unadjusted test year expenses for the removal of $952,488 in travel and entertainment savings associated with the coronavirus.[141]

However, as shown in the cross examination of Staff Witness Lipthratt, and recognized by Kroger in its Initial Brief, if the Company seeks to recover these pandemic costs, an audit of those costs will be performed.[142] Furthermore, when asked about savings associated with the coronavirus deferral, Lipthratt stated, "in that situation, there would be … an accounting for any savings associated with COVID."[143]

AES did not seek recovery of the pandemic associated expenses and when that issue arises in the future, Staff will perform an audit and both costs and savings will be analyzed. There is no need for the Commission to disallow the deferral at this point.

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139 Staff Ex. 9, Lipthratt Testimony at 23.
140 Kroger Initial Brief at 7, OMA Initial Brief at 6, OCC Initial Brief at 25.
141 OCC Initial Brief at 25.
142 Tr. Vol. VI at 1412.
143 *Id*. at 1417.

E. RATE DESIGN

i. Low Load Factor

Kroger, OEG, and Walmart recommend that the Commission adopt the Company's low load factor proposal.[144] The Company's proposal, however, would increase the secondary max charge by 619% and the primary charge by 1,162%.[145] Whereas, the Staff's recommendation would have increases of 158% and 285% respectively.[146] Staff's proposal would mitigate the significant bill increases of the max charge. In the Staff Report, at Table 8, there is a summary of the rates proposed by Staff's rate design.[147] Several parties disagree with Staff's recommendation, claiming that it transfers cost responsibility from low load factor customers to non-low load factor customers.[148] And OEG, in its Initial Brief, noted that "it is reasonable for Staff to seek to mitigate large rate increases[.]"[149] That is what Staff's proposal does – mitigates the significant increases that would occur under AES Ohio's proposal by Staff's recommendation to increase the max rate charges gradually. The Commission should adopt Staff's position in order to avoid rate shock for the low load factor customers.

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144 Kroger Initial Brief at 16, OEG Initial Brief at 3, Walmart Initial Brief at 7.
145 Staff Ex. 7, Bremer Testimony at 4.
146 *Id.*
147 Staff Ex. 1, Staff Report at 32 – 33.
148 Kroger Initial Brief at 16, OEG Initial Brief at 3, OMAEG Objection E, Walmart Objection B, Ohio Energy Group Objection 1, Kroger Objection F, and AES OHIO Objection 38.
149 OEG Initial Brief at 4.

ii. Residential Customer Charge

OCC argues that the Staff's recommended monthly charge of $9.75 is too high; whereas, the Company argues that Staff's recommendation is too low.[150] The Company proposes an alternative methodology for calculating a residential customer charge while OCC supports Staff's recommended methodology with modifications. As explained by Staff witness Bremer, Staff used "the traditional methodology used in previous rate cases, the minimum compensatory method."[151] Pursuant to this methodology, the customer charge recovers costs that vary directly with the number of customers, such as meter cost, service drop, line transformer and customer billing.[152] This calculation has been consistently used in prior rate cases, been approved by the Commission, and, most importantly, results in a reasonable increase to the residential customer charges. The Commission should adopt Staff's recommended monthly customer service charge of $9.75 as reasonable.[153]

iii. Revenue Allocation

OCC argues that the Staff's recommendation to allocate 66.70% of base distribution charges to residential consumers is higher than what residential consumers should pay.[154] OCC proposes only 40% of increase be paid by residential customers and fails to identify what class of customers will pay the other 60%. OCC's rationale for this

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150 AES Ohio Initial Brief at 57; OCC Initial Brief at 66.
151 Staff Ex. 7, Bremer Testimony at 7.
152 *Id*.
153 See Staff Ex. 1, Staff Report at 28 – 29.
154 OCC Initial Brief at 64.

argument is that residential consumers are still economically struggling due to prolonged effects of the coronavirus pandemic.[155] The Company; however, must be compensated for providing electric distribution service to its customers. The Company's application requested an annual revenue increase of $119.6 million; whereas, Staff recommended an annual revenue increase of approximately $64.1 million, of which, according to Staff's recommended allocation, $36.4 million would be paid for by residential customers.[156]

iv. Distributed Energy Resources Tariff

IGS argues that by not having a tariff that allows customers to better align their demand charge with their demand during system peak times, customers could get high demand charges based on usage in the middle of the night.[157] IGS would like the Company to offer a new tariff for commercial to industrial customers to promote the deployment of distributed generation in its territory.[158] Staff does not agree with IGS. Staff Witness Schaefer testified that the Company has a cogeneration and small power production tariff, which allows eligible Qualifying Facilities (QF) to sell energy to the Company "based on the location marginal price in PJM's day-ahead energy market at PJM's pricing node that is closest to the QF point of injection, or at a relevant trading hub or zone."[159] In addition, the AES Ohio tariffs for interconnection services and billing and

155 OCC Initial Brief at 65.
156 *Id*. at 63.
157 IGS Initial Brief at 16.
158 *Id*., at 17.
159 Tr. Vol. V at 1095.

payment for net metering services allow customer to offset the cost of generation service by producing their own electricity.[160]

IGS argues that increasing "the fixed customer charge subverts state policy be reducing the innate benefits of installing distribution.".[161] IGS goes on to state that Staff's recommendation is to unevenly increase the fixed customer charge when compared to the variable energy charge and that this does not comport with the state policy of Ohio in promoting distributed generation projects.[162] Staff believes that there are incentives outside of the demand charge rate to encourage the deployment of distributed energy resources in accordance with state policy, as defined in R.C. 4928.02.[163] The Company's Application maintains the tariffs for the AES interconnection services and billing and payment for net metering services. This allows customers to offset the cost of generation service by producing their own electricity.[164] The Company's cogeneration and small power production tariff provides that eligible QF can sell energy to the Company "based on the location marginal price in PJM's day-ahead energy market at PJM's pricing node that is closest to the QF point of injection, or at a relevant trading hub or zone."[165] Staff

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160 Staff Ex. 5, Schaefer Testimony at 5.
161 IGS Initial Brief at 17.
162 *Id*., at 17 – 18.
163 Staff Ex. 5, Schaefer Testimony at 5; referencing: "It is the policy of this state to do the following throughout this state: (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities; (F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces; (K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering."
164 Staff Ex. 5, Schaefer Testimony at 5.
165 Staff Ex. 5, Schaefer Testimony at 5; *citing to* The Dayton Power and Light Company, PUCO No. 17 Electric Generation Service Cogeneration and Small Power Production Tariff (Original Sheet No. G11).

believes that there are incentives in the AES Ohio proposed tariffs that fulfill the state policy to promote distributed generation projects.

F. CUSTOMER PAYMENT PLANS AND CRES ISSUES

i. Switching Fees

Direct and IGS do not believe that Staff's recommendation of a $5.00 switching fee is appropriate.[166] IGS states that the Staff did not investigate if CRES fees are just and reasonable.[167] When reviewing the CRES provider fees relating to AES Ohio's distribution service, Staff limited its scope to CRES provider fees that reduce the revenue requirement as a cost to serve. Staff witness Smith supported the $5.00 switching fee, recognizing that there is a cost associated with the switching process including mailing a rescission letter and cancelation notices when AES Ohio receives a notification for a CRES to switch a customer's generation provider.[168]

IGS also claims that the lack of fees for SSO customers, and particularly the switching fee, is discriminatory because the CRES must pay it.[169] Mr. Smith testified that the process and cost of switching to and from CRES providers compared to customers who defaulted to the SSO are not comparable situations. The Commission recently decided this precise issue in the AEP rate case, citing Mr. Smith's testimony that a switch in service from the SSO or CRES provider is not comparable and furthermore that IGS in

166 Direct Initial Brief at 2 – 6, IGS Initial Brief at 13.
167 IGS Initial Brief at 12 – 13.
168 Staff Ex. 10, Smith Testimony at 6.
169 IGS Initial Brief at 3, 13.

the AEP case did not adequately support their objections regarding the fee being unreasonable.[170] The same is true here.

Customers who default to the SSO are usually dropped by a CRES provider for service and the drop does not have to be initiated by the customer. This may happen when a government aggregation ends, or when a CRES contract is not renewed.[171] In addition, AES is required to provide notice to customers when a customer is returned to the SSO as a result of a CRES provider action according to Ohio Adm.Code 4901:1-10-29, however, no notice is required when a customer requests a return to the SSO. When a customer returns, AES Ohio is not provided a reason for the customer's return. Also, provider fees, such as historical data or interval meter data, are not necessary for SSO service. In a recent case, Case No. 18-1875-EL-GRD, according to AES Ohio's G8 tariff no fees are charged to CRES for accessing or requesting historic usage and electronic interval meter data.[172]

ii. PUCO and OCC Assessments

IGS argues that the PUCO and OCC assessments should be paid through a bypassable rider.[173] IGS also claims that Staff has reversed its position on this issue because Staff had recommended in an earlier AES Ohio case that these assessments be

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170 *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 20-585-EL-AIR, et al., Opinion and Order at 80, (Nov. 17, 2021).

171 Staff Ex. 8, Smith Testimony at 7.

172 *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 at 40, (June 2, 2021).

173 IGS Initial Brief at 12.

partially put into a bypassable rider.[174] However, in the case referenced by IGS, the Commission specifically stated that "our treatment of this issue in this case results from the specific procedural circumstances discussed above and should not bind Staff or the Commission to the same result in future proceedings."[175] It is clear from the Commission's Opinion and Order that a Staff error to withdraw a recommendation in the Staff Report and Stipulation does not bind the Staff or the Commission in future proceedings. IGS's recommendation that AES Ohio allocate a portion of the OCC and PUCO assessments through a bypassable rider based on past proceedings is misleading and should be rejected.[176]

In AEP Ohio's recent electric distribution rate case, Staff made the same recommendation that it made in this case. Staff did not recommend that the OCC and PUCO assessment fees be paid through a bypassable rider.[177] Staff recognized that AEP Ohio had PUCO and OCC assessments embedded into base distribution rates.[178] Furthermore, both Staff and the Commission have included OCC and PUCO assessments as part of nonbypassable distribution rates in subsequent proceedings since the last AES Ohio rate case that IGS is relying upon.[179] The Commission, contrary to IGS's assertions,

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174 *Id.*

175 *In the Matter of the Application of The Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case Nos. 15-1830-EL-AIR, et al. Opinion and Order at 12 (September 26, 2018).

176 IGS Initial Brief at 10.

177 *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 20-585-EL-AIR, et al., Staff Report at 9 (Nov. 25, 2020).

178 *Id.*

179 *In the Matter of the Application of Duke Energy Ohio, Inc., for an Increase in Electric Distribution Rates*, Opinion and Order Case No. 17-32-EL-AIR, et al, Opinion and Order at 80- 82 (December 19, 2018), *In the Matter of the Application of Ohio Power Company for an Increase in Electric Distribution Rates*, Case Nos. 20-585-EL-AIR, et al., Opinion and Order at 74 – 80 (Nov. 17, 2021).

would not reverse course by including the OCC and PUCO assessments as nonbypassable, but would be remaining consistent with prior decisions including the prior AES Ohio rate case.

iii. Uncollectible Expense Recovery

IGS would like the uncollectible expenses recovered through a bypassable rider.[180] However, it is Staff's position that AES Ohio, as a "provider of last resort for default service, the Company's inclusion of SSO generation uncollectible expense is consistent with established practices. These costs are distribution costs and thus recoverable in distribution rates."[181]

IGS tried to make an argument that cost causation will show that the uncollectible expense from the non-paying SSO customers should only be recovered from the remaining SSO customers because the CRES customers did not cause the expense.[182] However when asked if it is the SSO customers that caused the uncollectible expense, IGS witness White admitted that the individual SSO customers were not the direct cause of the cost.[183] Therefore, it is not the SSO customers that did anything to cause the non-the nonpayment. Including the uncollectible expense in base rates is fair and should be adopted by the Commission in this case.

180 IGS Initial Brief at 10.
181 Staff Ex. 8, Smith Testimony at 8.
182 Tr. Vol. VI at 1296.
183 *Id*. at 1297.

iv. Small Unmetered Service

AES Ohio asks the Commission to reject Staff's recommendation regarding small unmetered service and adopt the Company's tariff for Small Constant Unmetered Service.[184] The Company also complains that if there were a Small Unmetered tariff, it would "alleviate the need for installation of unnecessary and excessive meter infrastructure such as meter bases[,]"[185] However; that is not what is recommended by Staff. Staff does not recommend adding meters and other costs to the service. In fact, there is only one customer that has this service and therefore, Staff recommends that other rate structures, such as pole attachment rates are a more appropriates place to address the needs of this one customer.[186] This is the most efficient recommendation for this service with one customer.

v. Customer Deposits

There has been an increase in the number of customer complaints regarding AES's unusually high customer deposits.[187] AES Ohio argues that because Ohio law does not mandate that a customer be allowed to pay a deposit in installments, AES Ohio is not required to do so.[188] Staff recommends that customers be permitted to pay their deposits in three installments, as other Ohio utilities allow. Staff agrees that Ohio law does not require that a customer deposit be made in installments, nor does Ohio law *prohibit*

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184 AES Ohio Initial Brief at 55.
185 *Id.*
186 *Id.*
187 Staff Ex. 8, Smith Testimony at 13.
188 AES Ohio Initial Brief at 56.

installment payments. Columbia Gas of Ohio and Dominion East Ohio allow customers to pay deposits in three installments.[189] Staff recommends that the Commission require AES offer customers the option of making their deposit payments in three installments. This will ease the economic burden for those who need it and provide the ability for those customers to obtain electric service earlier.

CONCLUSION

AES Ohio filed a request for authorization to increase its rates for electric distribution service and the Staff of the Public Utilities Commission of Ohio produced a Report that evaluated the Company's request. Eight Staff witnesses testified in support of the Report, providing additional support for Staff's recommendations contained in the Report. In Staff testimony and discussed in this brief, Staff agrees with some of the parties' objections and refuted other objections. The Staff Report, with the adoption of minor modifications that were set forth in Staff testimony and this brief, should be adopted by this Commission.

[189] Columbia Gas of Ohio, Tariff, Third Revised Sheet No.4, Case No 10-2477, East Ohio Gas DBA Dominion East Ohio, Fifth Revised Sheet No. K1.

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PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Reply Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via regular U.S. or electronic mail upon the below parties of record, this 30th day of March 2022.

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