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	:	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

AES OHIO'S REPLY BRIEF

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I. <u>INTRODUCTION AND SUMMARY</u>

In its Initial Post-Hearing Brief, The Dayton Power and Light Company d/b/a AES Ohio demonstrated that its current base distribution rates are insufficient to enable it to provide adequate service under R.C. 4909.19. Staff's comprehensive investigation of AES Ohio's Application pursuant to R.C. 4909.19(C) recognized that AES Ohio has a significant revenue deficiency. Staff Ex. 1.

Staff and several intervenors nevertheless assert that a rate freeze from a 2009 Stipulation and Recommendation[1] is a term of AES Ohio's first Electric Security Plan ("ESP I"). They thus assert that when ESP I was reinstated, the rate freeze was also reinstated.

However, none of those parties cite to any section in the ESP statute (R.C. 4928.143) that authorizes the Commission to implement a rate freeze. Their failure to identify any section in the ESP statute that would authorize a rate freeze dooms their argument because the Supreme Court of Ohio has held that the "Commission erred in determining that ESPs may include items not *specifically authorized* by statute." *In re Columbus S. Power*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 31 (agreeing with OCC's proposition of law) (emphasis added). The Court specifically held that an ESP could not include "unlisted items." *Id*. at ¶ 35.

The Commission should thus conclude that the ESP statute does not authorize a rate freeze, and when ESP I was reinstated, the rate freeze was not an ESP term and was not reinstated.

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[1] AES Ohio Ex. 69.

The Commission should further conclude that Staff made several errors in the Staff Report, and should agree with the objections filed by AES Ohio.

II. A RATE FREEZE IS NOT AN ESP TERM

A. An ESP Can Include Only Items "Specifically Authorized" by the ESP Statute

Staff's witnesses at the hearing never took a position on whether the rate freeze in the 2009 Stipulation was enforceable.[2] It was only in the Staff's post-hearing brief that Staff first took a position on whether a rate freeze should apply. Staff and several intervenors assert that a distribution rate freeze is an ESP term, and that the rate freeze was thus reinstated when ESP I was reinstated.[3]

However, none of those parties -- not a single one -- cite any provision in the ESP statute (R.C. 4928.143) that they claim would authorize the Commission to implement a rate freeze. Their failure to identify any such provision in the ESP statute dooms their argument.

Specifically, the Supreme Court of Ohio has held that the "Commission erred in determining that ESPs may include items not *specifically authorized* by statute." *In re Columbus S. Power*, 128 Ohio St.3d 512, 2011-Ohio-1788, 947 N.E.2d 655, ¶ 31 (agreeing with OCC's proposition of law) (emphasis added). In that case, the Court rejected the Commission's

[2] Staff Ex. 9, p. 19; Tr. 1426 (Lipthratt).

[3] Staff Brief, p. 3 ("[T]he distribution rate freeze was a term and condition of ESP I."); OCC Brief, p. 9 ("[T]he PUCO should enforce the terms of ESP I in their entirety including the Rate Freeze."); Kroger Brief, p. 12 ("Under the terms of ESP I, . . . the stipulated rate freeze remains effective . . . ."); OMAEG Brief, p. 23 ("By authorizing the extension of ESP I . . . the Commission also extended the applicability of the stipulated rate freeze."); OHA Brief, p. 3 ("[T]he [rate freeze] condition in ESP I stipulation . . . still applies.").

argument that the items listed under R.C. 4928.143(B)(2) were "illustrative . . . not exhaustive" of what an ESP could include. *Id*. at ¶ 33.

The Court held that "[t]he plain language of the statute controls." *Id*. ¶ at 34. The Court explained that the ESP statute "does not allow [ESPs] to include 'any provision'" and that "if a given provision does not fit within one of the categories . . . it is not authorized by [the ESP] statute." *Id*. at ¶ 32. The Court thus "reverse[d]" the Commission and held that an ESP cannot include "unlisted items." *Id*. at ¶ 35.

The Court's decision in *In re Columbus S. Power* is controlling here. A distribution rate freeze is not "specifically authorized" by the ESP statute, and thus is not an ESP term. Therefore, when ESP I was reinstated, the rate freeze was not an ESP term and was not reinstated.

Indeed, the power to order a rate freeze would be an extraordinary power for the General Assembly to grant to the Commission. If the General Assembly intended to grant to the Commission that extraordinary power, then it would have done so expressly. *Util. Air Regulatory Group v. EPA*, 573 U.S. 302, 324, 134 S.Ct. 2427 (2014) ("We expect Congress to speak clearly if it wishes to assign to an agency decisions of vast economic . . . significance.") (internal quotation and citation omitted).

In addition, to the extent that there is any ambiguity in the ESP statute (there is not), the Commission "is bound to give a constitutional rather than unconstitutional construction to a statute."[4] A rate freeze would violate the United States and the Ohio Constitutions because "[r]ates that are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable, and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment."[5]

Therefore, if the Commission were to conclude that the ESP statute is ambiguous, then the Commission is required to construe it to comply with the Constitution. Since a rate freeze would be unconstitutional, the Commission should conclude that the ESP statute does not purport to authorize one.

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[4] *Buchman v. Bd. of Edn.*, 73 Ohio St.3d 260, 269, 652 N.E.2d 952 (1995). *Accord*: *State v. Keenan*, 81 Ohio St.3d 133, 150, 689 N.E.2d 929 (1998) (declining to adopt the challenger's interpretation of a statute "when an equally plausible alternative reading of the statute would avoid any constitutional problems."); *McFee v. Nursing Care Mgt. of Am., Inc.*, 126 Ohio St.3d 183, 2010-Ohio-2744, 931 N.E.2d 1069, ¶ 27 ("[I]f an ambiguous statute is susceptible of two interpretations and one of the interpretations comports with the Constitution, then that reading of the statute will prevail[.]") (citation omitted); *State ex rel. Dickman v. Defenbacher*, 164 Ohio St. 142, 149, 128 N.E.2d 59 (1955) ("[W]here the validity of an act is assailed, and there are two possible interpretations, one of which would render it valid, and the other invalid, the court should adopt the former so as to bring the act into harmony with the Constitution.") (citation omitted).

[5] *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm.*, 262 U.S. 679, 690, 43 S.Ct. 675 (1923). *Accord*: *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307-308, 109 S.Ct. 609 (1989) ("If the rate does not afford sufficient compensation, the State has taken the use of utility property without paying just compensation and so violated the Fifth and Fourteenth Amendments."); *Covington & Lexington Turnpike Road Co. v. Sandford*, 164 U.S. 578, 597, 17 S.Ct. 198 (1896) (a rate is too low if it is "so unjust as to destroy the value of [the] property for all the purposes for which it was acquired," and in so doing "practically deprive[s] the owner of property without due process of law."); *Transcontinental Gas Pipe Line Corp. v. Fed. Power Com.*, 518 F.2d 459, 464 (D.C.Cir.1975) ("It is well settled that to deprive public utility investors of a return on capital currently dedicated to public use constitutes an unconstitutional confiscation of property."); Ohio Constitution, Article I, Section 19; *City of Norwood v. Horney*, 110 Ohio St.3d 353, 2006-Ohio-3799, 853 N.E.2d 1115, ¶ 66 (interpreting the Ohio Constitution's protection against takings as stronger than the Federal Constitution).

B. Not Every Term Listed in the 2009 Stipulation is an ESP Term

Staff and intervenors argue that the distribution rate freeze is an ESP term because the rate freeze was a term of the 2009 Stipulation[6] that established ESP I. The Commission should reject that argument for two reasons.

First, as demonstrated above, the Court's decision in *In re Columbus S. Power* establishes that a term is an ESP term only if it is "specifically authorized" by the ESP statute. A rate freeze is not "specifically authorized" by the ESP statute and thus is not an ESP term.

Second, many of the terms in that 2009 Stipulation have nothing to do with the ESP statute. Specifically, as the following chart shows, many of the terms of the 2009 Stipulation are not ESP terms:

	Term	**Applicable Statute**
1.	AES Ohio shall implement various energy efficiency terms. 2009 Stipulation, ¶¶ 5, 11, 12.	R.C. 4928.66 (before repeal)
2.	AES Ohio shall implement an Alternative Energy Rider. 2009 Stipulation, ¶ 6.	R.C. 4928.64
3.	AES Ohio shall recover carrying charges. 2009 Stipulation, ¶ 7.	R.C. 4905.13
4.	AES Ohio shall meet with CRES providers. 2009 Stipulation, ¶ 14.	None
5.	Reasonable arrangements must be filed with the Commission. 2009 Stipulation, ¶ 15.	R.C. 4905.31

[6] AES Ohio Ex. 69.

6.	AES Ohio must seek Commission approval to transfer its interests in OVEC. 2009 Stipulation, ¶ 16.	R.C. 4928.17
7.	AES Ohio may apply to provide behind-the-meter services. 2009 Stipulation, ¶ 17.	R.C. 4928.17
8.	AES Ohio may recover transmission costs. 2009 Stipulation, ¶¶ 19.c. and 19.d.	R.C. 4928.05(A)(2)

The Commission should thus conclude that a term is not an ESP term simply because it was included in the 2009 Stipulation.[7]

C. Intervenors Waived the Rate Freeze; a Rate Freeze is Barred by R.C. 4909.15(E)

When parties filed objections to the Staff Report, only OCC argued that the Commission should invoke a distribution rate freeze that -- by its own terms -- expired nearly a decade ago (*i.e.*, well before the Company's last distribution rate increase in 2018). Now, following a seven-day evidentiary hearing, several parties have argued that AES Ohio's rates are frozen. However, only OCC asked that AES Ohio's rates be frozen in its objections.[8] The Commission should conclude that the other parties thus waived the issue. R.C. 4909.19(C).

In addition, as demonstrated in AES Ohio's initial brief (pp. 13-22), even if the Commission were to conclude that a rate freeze is an ESP term, the Commission should conclude that the rate freeze is no longer enforceable for two reasons.

First, the intervenors waived the argument because:

[7] *Accord*: *In re Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, *et al.*, Stipulation and Recommendation (Apr. 13, 2018) (stipulation resolving ten proceedings, including both an ESP and a distribution rate case).

[8] Kroger and OMAEG mentioned the rate freeze issue in their briefs, but did not ask that AES Ohio's rates be frozen.

1. 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.
2. 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 as to that issue.
3. The intervenors failed to assert that the rate freeze barred AES Ohio's 2015 rate case.[9]
4. 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.
5. None of the intervenors asked that the rate freeze be reinstated when AES Ohio terminated ESP III in 2019 until on rehearing.

<u>Second</u>, R.C. 4909.15(E) establishes that if the utility's rates are "insufficient," then the Commission "shall" implement new rates. The Staff Report establishes that current rates are not sufficient. Staff Ex. 1, p. 44. The Commission is thus required by R.C. 4909.15(E) to implement new rates.

D. The 2009 Stipulation Requires the Commission to "Compl[y] With . . . Chapter 4928"

Staff (p. 4) argues that it would be "unfair" to enforce "only *some* of the terms and conditions of ESP I." (Emphasis in original). Staff thus asserts that the Commission should

[9] *Accord*: *In re AES Ohio*, Case No. 08-1094-EL-SSO, *et al.*, Fifth Entry on Rehearing, ¶ 19 (June 16, 2021) (OCC forfeited rate freeze issue by not raising it in the 2015 rate case).

implement the rate freeze contained in the 2009 Stipulation. The Commission should reject Staff's argument for the following reasons.

First, AES Ohio *agrees* with Staff (p. 9) that the Commission has the "obligation . . . to implement . . . ESP I." That is *exactly* right. However, as demonstrated above, the rate freeze was not a term of ESP I.

Second, the 2009 Stipulation expressly states that the rate freeze lasts "through December 31, 2012." AES Ohio Ex. 69, ¶ 18. The rate freeze has thus long expired by the express "terms and conditions" of the 2009 Stipulation.

Third, the 2009 Stipulation provides that the Stipulation "violates no regulatory principle" and "complies with . . . Chapter 4928." AES Ohio Ex. 69, p. 2. The Signatory Parties thus agreed that the 2009 Stipulation would be implemented in a manner that complied with Chapter 4928. And again, a rate freeze is not an ESP term under R.C. 4928.143.

Fourth, Staff ignores the fact that the 2009 Stipulation included (a) generation rates at which AES Ohio would provide SSO service,[10] which rates are now well above market rates; and (b) AES Ohio would recover an Environmental Investment Rider.[11] The bargain struck in the 2009 Stipulation contemplated AES Ohio recovering those items. The Commission invalidated those two items when the Company reverted to ESP I in 2016,[12] and AES Ohio has

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[10] AES Ohio Ex. 69, Att. A and B.

[11] Paragraph 1 of the 2009 Stipulation provided that AES Ohio's then-current rate plan would be extended. AES Ohio Ex. 69. "[T]he EIR [was] a provision, term, or condition of *ESP I*." *ESP I Case*, Finding and Order, ¶ 22 (Aug. 26, 2016).

[12] *Id*. at ¶¶ 21-22.

not been and currently is not receiving the full benefit of its bargain; therefore, the rate freeze cannot and should not be reinstated.

E. A Rate Freeze Would Make it Difficult, if Not Impossible, for AES Ohio to Provide Reliable Service

Staff and Intervenors also ignore the fact that a rate freeze would make it difficult, if not impossible, for AES Ohio to provide reliable service.

Specifically, AES Ohio currently has the lowest rates in the state (and would continue to do so even if its application in this matter were approved today).[13] AES Ohio's current rates were set based upon a 2015 test year, and costs have increased significantly since then.[14] For example, the cost to trim vegetation on a mile of AES Ohio's distribution lines has increased by 170% since 2015.[15]

Due to its "fragile" financial condition,[16] low rates, and rising costs, AES Ohio has been struggling to provide reliable service to its customers.[17] In fact, AES Ohio has failed to achieve its Commission-approved reliability metrics for 2017, 2019 and 2020 (2021 data is not yet finalized).[18]

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[13] AES Ohio Ex. 19, pp. 6-7 and Ex. RJA-1; Tr. 114-17 (Adams).

[14] AES Ohio Ex. 95, p. 8 (Storm).

[15] *Id*.

[16] *In re AES Ohio's Application to Modernize Its Distribution Grid*, Case No. 18-1875-EL-GRD, *et al*., Opinion and Order ¶ 58 (June 16, 2021).

[17] AES Ohio Ex. 95, pp. 5-9 (Storm).

[18] *Id*. at 7.

AES Ohio has been operating under the assumption that a rate increase would be implemented in this case, and has been spending more money than it is recovering in rates.[19] If a rate freeze were imposed in this case, AES Ohio would be forced to make drastic cuts to its reliability-related expenditures, which will create significant new and additional challenges to AES Ohio's ability to provide reliable service.[20]

As but one example, the majority of AES Ohio's line maintenance and vegetation management work is done by 364 contractors.[21] When a significant storm hits AES Ohio's service territory, AES Ohio redirects those contractors to storm restoration, so those persons are vital to AES Ohio's storm restoration efforts.[22] If a rate freeze were to be implemented, then AES Ohio would be forced to cut 170 of those contractors, a 47% cut.[23] That reduction would significantly impair AES Ohio's ability not only to perform routine line maintenance but also to respond to storms.[24]

In addition, AES Ohio would have to make significant cuts to its maintenance and capital investment expenditures, which will further impair AES Ohio's ability to provide reliable service.[25]

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[19] *Id*. at 10.

[20] *Id*.

[21] *Id*. at 11. Those 364 contractors consist of 179 line contractors and 185 line clearance contractors. *Id*.

[22] *Id*.

[23] *Id*.

[24] *Id*.

[25] *Id*. at 12-18.

A decision by this Commission to freeze AES Ohio's rates would thus make it difficult, if not impossible, for AES Ohio to provide reliable service.

III. REVENUE REQUIREMENT

A. AES Ohio Objection No. 1. Revenue Requirement

Turning to the substance of the Staff Report, AES Ohio Objection No. 1 is that the revenue requirement in the Staff Report would need to be adjusted if the Commission agrees with AES Ohio's objections. Staff did agree with several of AES Ohio's objections and made corresponding revisions to its recommended revenue requirement. Staff Ex. 9, Ex. A (Lipthratt).

IV. RATE BASE

A. AES Ohio Objection No. 2. Working Capital

AES Ohio's initial brief (p. 27) demonstrated that the Commission's standard filing requirements do not require a lead-lag study for a utility to include miscellaneous working capital in rate base. Ohio Adm.Code 4901-7-01, Section (B)(E)(1) and (2) (p. 37). Further, a lead-lag study is not necessary to determine the amount of miscellaneous working capital. AES Ohio Ex. 32, p. 5 (Forestal).

Staff (p. 24) argues that AES Ohio should not be permitted to include miscellaneous working capital in rate base because AES Ohio did not request an allowance for cash working capital. However, an allowance for cash working capital is calculated using a lead-lag study, and the Commission's rules clearly establish that while a lead-lag study is required if a utility requests cash working capital, one is not required if a utility requests miscellaneous working capital. AES Ohio's request for miscellaneous working capital is thus consistent with the Commission's rules and should be approved.

B. AES Ohio Objection No. 3. Capitalization of Earnings

AES Ohio's initial brief (pp. 28-30) demonstrated that the financial component of bonuses provided to employees should not be excluded from future rate base additions. In particular, it is undisputed that (1) the total amount that AES Ohio pays to its employees -- including the bonus -- is consistent with market rates; and (2) the financial bonuses are a cost that AES Ohio incurs to provide service to customers.

Staff (p. 25) asserts that AES Ohio's shareholders are the "primary beneficiaries" of the financial component of the bonuses, and that component should thus be excluded from future rate base additions. The Commission should reject that argument for the following reasons.

First, Staff's argument is inconsistent with R.C. 4909.15. That section very clearly establishes how the Commission must establish rates. Nowhere does that section allow the Commission to deny recovery of expenditures that were consistent with market rates and that were made to provide service to customers. That section does not authorize the Commission to engage in a balancing test to determine who was the "primary beneficiary" of particular expenditures. Instead, that section states that the Commission "shall" follow the formula in the statute. R.C. 4909.05(E). The Commission thus does not have discretion to deny recovery of the financial component of bonuses paid.

Second, Staff's claim that shareholders are the primary beneficiaries of the expenditures is not accurate. AES Ohio needs to pay its employees a market rate to attract and retain necessary employees. Tr. 868-69 (Willis). Since there is no dispute that the total compensation (including bonuses) that AES Ohio pays to its employees is consistent with market rates,[26] and AES Ohio needs to pay market rates to get its employees to show up to work, the Commission should conclude that the financial component of bonuses benefits customers just like any other component of employee pay.

Third, the financial component of bonuses incentivizes employees to lower costs, which benefits customers in the long run. AES Ohio Ex. 24, pp. 12-13 (Buchanan); Tr. 1324 (Lipthratt); AES Ohio Ex. 25, pp. 4-5 (Buchanan); Tr. 177-78 (Buchanan); Tr. 871 (Willis).

In short, AES Ohio compensates its employees at market rates so that AES Ohio can provide service to its customers. The Commission should not disallow recovery of those legitimate expenditures.

C. AES Ohio Objection Nos. 4 and 5. Depreciation

AES Ohio's initial brief (pp. 30-33) demonstrated that Staff erred in its application of the whole life depreciation technique. Neither Staff nor any intervenors address that issue.

V. RATE OF RETURN

A. AES Ohio Objection Nos. 6-11

As demonstrated in AES Ohio's initial brief (pp. 34-38) the Commission should conclude that the Staff understated AES Ohio's required ROE for the following reasons:

1. Staff failed to address AES Ohio's ROE recommendations.
2. Staff used a proxy group that was too small.
3. Staff erred in how it implemented CAPM.
4. Staff should have used a comparable earnings approach.

[26] AES Ohio Ex. 24, pp. 4-11 (Buchanan); AES Ohio Ex. 25, p. 3 (Buchanan); Tr. 1065 (Crocker) (Staff did not analyze the issue); Tr. 1322 (Lipthratt) (same); Tr. 868-70 (Willis).

5. Staff should have used a risk premium approach.

6. Staff failed to consider the implications of AES Ohio's bond rating.

The testimony of AES Ohio witness McKenzie explained that the Commission should establish an ROE for AES Ohio of 10.5%. AES Ohio Ex. 37, Ex. AMM-2.

B. <u>The Commission Should Use the High End of the Staff Range</u>

If the Commission were to use the Staff's ROE range of 9.28% to 10.29% (Staff Ex. 1, p. 117), the Commission should select an ROE at the high end of that range to reflect that AES Ohio is one of the riskiest utilities in the country.

Specifically, it is undisputed that riskier utilities should have higher ROEs. Tr. 928 (Walters). The reason that riskier utilities require higher ROEs is that investors require a higher expected return to make riskier investments. *Id*.

It is also undisputed that credit ratings are a good measure of how risky a utility is. *Id*.

Here, AES Ohio's credit ratings are among the lowest of any utility in the country, and AES Ohio's credit rating from S&P is below investment grade. OCC Ex. 2, p. 10; Tr. 930 (Walters). It is undisputed that there is a material difference between being an investment grade utility and being below investment grade. Tr. 929 (Walters); AES Ohio Ex. 38, p. 21 (McKenzie).

In addition, as demonstrated in AES Ohio's initial brief (p. 33), the testimony of OCC witness Walters shows that AES Ohio's ROE should be greater than 9.7%. Specifically, his testimony shows that only 10% of utilities in this country (including AES Ohio) have a credit rating from S&P below investment grade. OCC Ex. 2, p. 10; Tr. 930. His testimony further shows that in 2021, 10% of utilities had an ROE greater than 9.7%. OCC Ex. 2, p. 7; Tr. 932. Since AES Ohio is among the 10% riskiest utilities (as measured by credit ratings), its ROE should be set in the top 10% for utilities, *i.e.*, greater than 9.7%.

C. The Commission Should Reject the Intervenors' ROE Arguments

IEU (pp. 7-8), Kroger (p. 6), and OMAEG (p. 5) assert that AES Ohio is a low risk utility because it has riders that provide for recovery of specific items. The Commission should reject that argument for two reasons. First, the credit rating agencies are well aware of the riders that AES Ohio has, and nevertheless rate it as one of the riskiest utilities in the country. Second, the testimony of AES Ohio witness McKenzie demonstrates that it is now very common for utilities to have riders. AES Ohio Ex. 37, p. 15 and Ex. AAM-3, pp. 2-3. The fact that AES Ohio has such riders thus does not make AES Ohio less risky than other utilities. *Id*.

Kroger (p. 4) and OMAEG (p. 4) argue that S&P upgraded AES Ohio's credit rating to BB+, and that AES Ohio failed to reflect that upgraded credit rating in its ROE analysis. The Commission should reject that argument for two reasons. First, AES Ohio witness McKenzie testified that he did consider that upgrade, and it did not affect his analysis. AES Ohio Ex. 37, p. 9 n. 10; Tr. 541. In particular, a BB+ rating is still below investment grade, and there is a significant difference between being investment grade and being below investment grade. Tr. 929 (Walters); AES Ohio Ex. 38, p. 21 (McKenzie). Second, the reason for the upgrade related to an upgrade to AES Ohio's corporate parent. Tr. 432-33 (Illyes). The upgrade thus was not a result of any improvement to AES Ohio's risk profile. Tr. 541 (McKenzie).

Kroger (pp. 5-6) and OMAEG (pp. 6-7) argue that AES Ohio is as risky as other Ohio utilities because AES Ohio and the other Ohio utilities are subject to the same laws and regulations. Again, AES Ohio's credit ratings are prepared by unbiased third parties, and show that AES Ohio is one of the riskiest utilities in the country.

Kroger (p. 5) and OMAEG (pp. 5-6) also argue that the fact that AES Ohio may be able to recover a COVID-19 deferral in the future shows that AES Ohio is a low risk utility. The Commission should reject that argument for several reasons. First, again, that risk is known to and is considered by credit rating agencies. Second, Kroger and OMAEG have not shown that AES Ohio is materially different from other utilities as to COVID-19 cost recovery. Absent evidence showing that AES Ohio is somehow treated differently than other utilities, Kroger and OMAEG have not shown that COVID-19 cost recovery affects AES Ohio's risk profile.

Kroger (p. 5) and OMAEG (p. 8) argue that risks faced by AES Ohio are immaterial, since it is AES Ohio's corporate parent that raises capital in the market. The Commission should reject that argument for the following reasons. First, the Commission is required to set an ROE for AES Ohio. The fact that AES Ohio has a corporate parent does not change the Commission's task. Second, to attract equity capital, AES Ohio needs its corporate parent to invest in it. And for AES Ohio's corporate parent to attract capital, that parent needs to demonstrate that it will invest those proceeds wisely. The ROE set by this Commission will thus affect AES Ohio's ability to attract capital.

Walmart (p. 4) argues that AES Ohio's requested ROE is inconsistent with recent ROE trends. The defect in Walmart's analysis is that its own witness admitted that he did no analysis of AES Ohio's risks relative to other utilities. Tr. 977-78 (Kronauer). ROEs awarded to low-risk utilities simply show that AES Ohio's ROE needs to be significantly higher than those ROEs.

OCC (pp. 36-48, 51-52) asserts that it was unreasonable for Staff and AES Ohio to use Value Line in their CAPM and DCF analyses. However, the evidence shows that "Value Line is a reliable source for beta estimations." Staff Ex. 2, p. 9 (Buckley). Further, "Staff did check the validity of the Value Line estimation with other sources and believe that the Value Line estimates were and are reasonable." *Id*. *Accord*: AES Ohio Ex. 38, p. 11 (McKenzie) ("Value Line is recognized as being one of the most widely available source of investment information, and there are many citations to textbooks and other sources supporting its usefulness as a guide to investors' expectations.").

OCC (pp. 49, 55-56) argues that it was unreasonable for Staff and AES Ohio to include issuance costs in their ROE calculations. However, the evidence shows that issuance costs must be included in the calculation. Staff Ex. 2, p. 10 (Buckley) ("The equity cost of issuance is properly spread over the life of the stock issue."); AES Ohio Ex. 37, pp. 70-75 (McKenzie).

IEU (pp. 4-7) claims that the Commission Staff "improperly calculated" an ROE range. The Commission should reject IEU's argument because IEU has no evidentiary support for its claim that the method used by Staff was flawed. IEU did not sponsor an ROE witness. IEU does not cite to evidence that supports its arguments. Nor does IEU cite to third-party sources that support its arguments. The unsupported assertions by IEU's counsel are an insufficient basis to establish that Staff erred.

OCC (pp. 34-36) asserts that the Commission should use a capital structure "which is more consistent with the common equity ratio of the peer group." The Commission should reject that argument for two reasons.

First, under R.C. 4909.15(E), the Commission is required to use "a cost of debt equal to the actual embedded cost of debt of such public utility." The Commission has held that the use of a hypothetical capital structure would be in conflict with the requirement under R.C. 4909.15(E) that it use the actual embedded cost of debt. *In the Matter of the Application of GTE North Incorporated for Authority to Adjust Its Rates and Charges and to Change Its Tariffs, et al.*, Pub. Util. Comm. No. 87-1307-TP-AIR, *et al.*, 1988 Ohio PUC LEXIS 998, at *78 (Oct. 28, 1988) (the "Commission has consistently rejected the use of a hypothetical capital structure in determining cost of capital"); *In re Columbus S. Power Co.*, Case No. 11-4920-EL-RDR, *et al.* Fifth Entry on Rehearing, ¶ 36 (Oct. 3, 2012) ("We also agree with IEU-Ohio that there is no reason to adjust AEP-Ohio's actual capital structure, as the Company contends, in response to the modification of its phase-in plan. The Commission has consistently rejected the use of a hypothetical capital structure in cost of capital determinations." (Footnote omitted)); *In the Matter of The Dayton Power and Light Company for Authority to Modify and Increase Its Rates for Electric Service to All Jurisdictional Customers*, Pub. Util. Comm. No. 81-1256-EL-AIR, 1982 Ohio PUC LEXIS 1, at *62 (Opinion & Order, Dec. 22, 1982) ("As the Commission has pointed out on various occasions, reliance on a hypothetical capital structure may produce distorted results because the costs associated with the various components of the capital structure are a function of the existing capitalization. *E.g.*, *Ohio Bell Telephone Company*, Case No. 81-436-TP-AIR (April 21, 1982) at p. 36. In addition, because a potential investor considers actual capital structure in making his or her investment decisions . . . , the use of a hypothetical capital structure, which does not necessarily correspond to the Applicant's capital structure at any point in time, is inappropriate.").

Second, the testimony of OCC's own witness shows that the average amount of equity in a utility's capital structure has been rising and was 52.07% in 2021. OCC Ex. 2, p. 9. AES Ohio's 53.87% equity ratio is not out of line with that figure.

VI. OPERATING INCOME

A. AES Objection No. 12. Vegetation Management Expense

AES Ohio's initial brief (pp. 39-40) demonstrated that the Commission should approve a $30 million budget for AES Ohio to perform vegetation management. That budget was based upon "bids" from contractors. AES Ohio Ex. 50, p. 7 (Vest). AES Ohio's cost to perform vegetation management on a mile of line has increased 170% since 2015 (the test year for AES Ohio's most recent rate case). AES Ohio Ex. 95, p. 8 (Storm).

Staff (pp. 25-26) asserts that AES Ohio should have a $17,500,000 baseline per year, and a deferral capped at $5,000,000 per year. Staff Ex. 1, p. 15. That is an 11% increase over the rates established in AES Ohio's 2015 rate case. AES Ohio Ex. 59, p. 12 (establishing a $15.7 million baseline and deferral cap of $4.6 million).

The Commission should conclude that an 11% increase is inadequate, particularly when costs have increased by 170%. AES Ohio Ex. 95, p. 8 (Storm). Given that AES Ohio has declining reliability metrics and has failed Commission reliability tests, it is particularly important that the Commission approve AES Ohio's request for a $30 million budget, which is supported by actual contractor bids.

B. AES Ohio Objection No. 13. Deferral of Vegetation Management Expense

If the Commission were to approve a $17,500,000 baseline as recommended by Staff, the Commission should set the deferral cap at $12,500,000. AES Ohio Ex. 92, p. 5 (Vest).

C. AES Ohio Objection No. 14. Amortization of Regulatory Assets

Staff (p. 26) recommends that AES Ohio's regulatory asset for vegetation management should be amortized over five years. AES Ohio's initial brief (pp. 40-41) demonstrated that that Commission should allow AES Ohio to amortize that asset over three years for three reasons: (1) AES Ohio filed this case within two years of the Commission's order approving AES Ohio's current rates; (2) to continue the Infrastructure Investment Rider, AES Ohio must file a rate case by January 1, 2025, which is less than three years away; and (3) AES Ohio must implement a new CIS by January 16, 2024, which is less than three years away, and a rate case is the only way for AES Ohio to recover that investment.

The Commission should thus conclude that AES Ohio will likely file a new rate case within three years, and that a three-year amortization period is reasonable.

D. AES Ohio Objection No. 15. Property Tax Expense

Staff (pp. 27-28) argues that the Commission should not include an inflation factor in AES Ohio's property tax expenses. As demonstrated in AES Ohio's initial brief (p. 41), the Commission should reject that argument because a 1.5% inflation factor is consistent with historic averages. AES Ohio Ex. 45, p. 2 (Salatto).

E. AES Ohio Objection No. 16. Income Tax Expense

There is no dispute that income tax expense needs to be adjusted if the Commission makes adjustments to the Staff's recommendations. AES Ohio Ex. 45, pp. 2-3 (Salatto); Staff Ex. 9, p. 8) (Lipthratt).

F. AES Ohio Objection No. 17. Deferred Municipal Income Tax Deficiency

AES Ohio Objection No. 17 raises the same amortization period issue as AES Ohio Objection No. 14 above.

G. AES Ohio Objection No. 18. Energy Efficiency Rider Recovery and Expense

Staff agreed with AES Ohio Objection No. 18. AES Ohio Ex. 33, pp. 6-8 (Forestal); Staff Ex. 9, pp. 9-10 (Lipthratt).

H. AES Ohio Objection No. 19. Annualized Payroll Tax Expense

In calculating FICA expenses, Staff excluded March and May and used a 10-month average. AES Ohio Ex. 33, pp. 8-9. Staff excluded March because FICA tax expense was unusually high during that month because bonuses (including their financial component) were paid that month. Staff Ex. 1, p. 15. AES Ohio's initial brief (pp. 42-43) demonstrates that it was unreasonable for Staff to exclude March and May for three reasons:

1. The financial component of bonuses should be recoverable, as addressed above;

2. FICA expenses are front loaded during the year because there is an annual cap on those taxes. Excluding March and May from the average thus gives greater weight to later months when that expense is significantly lower; and

3. AES Ohio trues up pay increases in March to be effective as of January, so that month has higher expenses for that reason also.

I. **AES Ohio Objection No. 20. Employee Salaries**

AES Ohio's initial brief (pp. 43-44) demonstrates that when calculating AES Ohio's recoverable labor expenses, Staff erroneously removed non-jurisdictional and non-O&M expenditures twice from AES Ohio's labor expenditures. Specifically, Staff first removed those items when it selected "DPL Distrib" and "O&M" in its calculation that is shown at AES Ohio Ex. 33, pdf p. 42. *See also id*. p. 15; Tr. 1056-59 (Crocker). Staff erred by removing those items again in the Staff Report. Staff Ex. 1, p. 96; Tr. 1054-56 (Crocker).

Staff is mistaken in its claim that it removed those items only once. Specifically, AES Ohio Ex. 33, pdf page 48 shows that *after* non-jurisdictional and non-O&M expenditures were removed from AES Ohio's labor expenditures, those labor expenditures totaled $32,999,159. That is the same figure that Staff *starts* with on Staff Report, p. 96, line 5, and Staff then removed non-jurisdictional and non-O&M expenditures a second time. *Id*.

J. **AES Ohio Objection No. 21. Union Pay Increases**

AES Ohio's initial brief (p. 45) demonstrates that the Commission should include a 2.75% union pay increase that became effective November 1, 2020 (*i.e.*, during the test year). Staff did not address that issue in its brief.

K. **AES Ohio Objection No. 22. Service Employees Salaries and Wages**

Staff agreed that including a 1.8% raise to non-union employees was reasonable. Staff Ex. 4, p. 4 (Crocker).

L. **<u>AES Ohio Objection No. 23. Short-Term and Long-Term Compensation</u>**

As demonstrated above in AES Ohio Objection No. 3, the financial component of bonuses should be included in rate base going forward. For those same reasons, that component should be recoverable as an expense.

AES Ohio's initial brief (p. 46) demonstrates that if the Commission were to reject AES Ohio's arguments on that issue, then the Staff erred by excluding 75% of the short-term bonuses because only 45% of the short-term bonus was based on achieving financial metrics. AES Ohio Confidential Ex. 88; AES Ohio Ex. 25, p. 5 (Buchanan).

M. **<u>AES Ohio Objection No. 24. Annualize Pay Increases into STC and LTC</u>**

AES Ohio Objection No. 24 addresses the manner in which the Staff (Staff Report, pp. 16, 97) annualizes expenses for short term and long term compensation. As demonstrated in Objection No. 3, financial bonuses should be recoverable in rates. Those bonuses will need to be adjusted to reflect the effect of pay increases. AES Ohio Ex. 33, pp. 20-22 (Forestal).

N. **<u>AES Ohio Objection No. 25. Annualized Payroll Expenses</u>**

Staff agreed with AES Ohio Objection No. 25. Staff Ex. 4, p. 6 (Crocker).

O. **<u>AES Ohio Objection Nos. 26 and 27. Customer Programs/Deferral</u>**

Staff (p. 28), IEU (pp. 8-13), Kroger (pp. 8-9) and OMAEG (pp. 14-15) assert that the Commission should reject AES Ohio's proposed customer programs. However, those parties entirely ignore the fact that R.C. 4905.70 provides that the "Commission *shall* initiate programs that will promote and encourage conservation of energy and a reduction in the growth of energy consumption." (Emphasis added.) The word "shall" is mandatory. The Commission is thus required to "initiate" DSM programs. Since those parties do not contest the specifics of AES Ohio's proposed programs, the Commission should approve them.

IEU (pp. 13-14) also asserts that the Commission should give no weight to the testimony of AES Ohio's witness regarding the DSM programs since that witness did not conduct the cost/benefit analysis. However, IEU does not dispute that witness Tatham is a well-qualified expert on the subject. Evid.R. 703 provides that "[t]he facts or data in the particular case upon which an expert bases an opinion or inference may be those perceived by the expert or admitted in evidence at the hearing." IEU does not dispute that witness Tatham "perceived" the data upon which he relies, so his testimony is thus appropriate under the rule. Note also that IEU does not dispute that Caymus Group and Wood McKenzie (upon which witness Tatum relies) are well qualified. Nor does IEU dispute the conclusion that they reach, *i.e.*, that AES Ohio's programs are costs effective.

P. AES Ohio Objection No. 28. Duplicative Expenses

Staff agreed with AES Ohio Objection No. 28. Staff Ex. 9, p. 11 (Lipthratt).

Q. AES Ohio Objection No. 29. Out of Test Year Services Expenses

AES Ohio's initial brief (pp. 49-51) demonstrated that Staff erred in excluding $1,384,139 of expenses as having occurred outside the test year. Staff had recommended excluding those expenses because they occurred before the test year, and since they were below the $10,000 threshold, they were not accrued during the test year. Staff Ex. 1, p. 19.

The Commission should reject Staff's (pp. 28-30) arguments for two reasons.

First, $916,283.55 of those expenses were for amounts over $10,000 that were properly accrued. AES Ohio Ex. 30, pp. 6-7 (Donlon). The Staff Report thus incorrectly included those amounts in the $1,384,139 figure. *Id*. The Staff audited AES Ohio's accrual policy, and none of the invoices that the Staff audited are included in that $916,283.55. *Id*.

Second, $467,855.29 of those expenses were for services performed before the test year for invoices below the $10,000 threshold. AES Ohio Ex. 29, p. 9. Those expenses should be included in the test year because GAAP allows those costs to be treated as a cash basis (i.e., not accrued). Tr. 1342 (Lipthratt). They are thus a cost paid during the test year and should be recoverable. R.C. 4909.15(A)(4).

R. AES Ohio Objection No. 30. Miscellaneous Expense

AES Ohio Objection No. 30 asserts that Staff's recommendation to disallow various miscellaneous expenses was unreasonable. AES Ohio Ex. 30, pp. 4-6 (Donlon); Tr. 353 (correcting Objection No.). Staff agreed with most of the items on AES Ohio's list, but disagreed about cable and satellite expense. Staff Ex. 9, p. 17 (Lipthratt).

Staff (p. 31) argues that those expenses should not be recoverable because Staff saw no evidence that they were related to phones. However, AES Ohio witness Donlon struck the reference to phones from his supplemental testimony. Tr. 354. The Commission should allow AES Ohio to recover those expenses because they allow AES Ohio to monitor weather, traffic and other news that may affect reliable service. AES Ohio Ex. 30, p. 5 (Donlon).

S. <u>AES Ohio Objection No. 31. Deferred Uncollectible Expenses</u>

As demonstrated in AES Ohio's initial brief (pp. 52-54), the Commission authorized AES Ohio to defer its uncollectible expense in AES Ohio's last rate case (Case No. 15-1830-EL-AIR).

Staff (pp. 31-32) states that "Staff's understanding is that the deferral authority sought and received by the Company in its previous rate case . . . was limited to typical over/under-collections required for true-up purposes." Staff further asserts that the uncollectible rider was terminated when AES Ohio terminated ESP III and reverted to ESP I, and deferral authority thus no longer exists. The Commission should reject Staff's arguments because they are inconsistent with what happened in the 2015 rate case.

Specifically, in the 2015 rate case, AES Ohio removed all of its uncollectible expense from its operating expenses. AES Ohio Ex. 49, pp. 3-4 (Teuscher); AES Ohio Ex. 58, p. 15. AES Ohio instead proposed to recover those expenses through a to-be-established uncollectible rider in AES Ohio's to-be-filed 2016 ESP III application (Case No. 16-395-EL-SSO).

In the 2015 rate case, AES Ohio requested and received Commission authority to defer uncollectible expenses. *See* AES Ohio's initial brief, pp. 52-53. The Commission should reject Staff's argument (pp. 31-32) that the deferral was limited to typical over/under recovery associated with a rider, for three reasons.

<u>First</u>, Staff's assertion is directly contrary to the plain language of AES Ohio's deferral request in the 2015 rate case, which was prior to the Company having an uncollectible rider. Specifically, AES Ohio witness Parke explained in the 2015 case that "The actual

expenses in these riders will vary from the amounts collected. Therefore, the Company *needs authority to defer these variances* and create a regulatory asset or liability to recognize the amounts due to or from customers." AES Ohio Ex. 49, pp. 3-4 (emphasis added).

Thus, AES Ohio proposed to defer the difference between (the actual amount of uncollectible expense) and (the amount of the uncollectible expense collected through a to-be-approved rider). *Id*. If the uncollectible rider was approved, the difference between those amounts would be expected to be small. However, if the uncollectible rider was not approved, the deferral would be larger, because the amount of uncollectible expense collected would be zero.

It is true that AES Ohio expected in 2015 that an uncollectible rider would be approved, and that the deferral would likely be limited to a smaller, reconciliation amount. However, AES Ohio sought authority to defer the difference between its actual uncollectible expense and the amount collected through the rider. That amount would be significantly larger if there were no uncollectible rider.

Therefore, when AES Ohio terminated ESP III, that had no effect on the deferral authority since the deferral was approved in the 2015 rate case. The termination of ESP III simply meant that the uncollectible rider was terminated, and AES Ohio would thus defer its entire uncollectible expense.

<u>Second</u>, in 2015 when AES Ohio proposed to defer its uncollectible expenses, AES Ohio did not know whether the to-be-requested uncollectible rider would be approved in the to-be-filed 2016 ESP III case. There was certainly a possibility that the uncollectible rider would be rejected in that case.

There is no dispute that uncollectible expenses are ordinarily recovered in rates. It would make no sense for AES Ohio to remove 100% of that expense from its operating expenses in the 2015 rate case, and then propose a deferral/rider mechanism that created a significant risk that AES Ohio would never recover its uncollectible expense.

The most logical conclusion (which is consistent with the plain language of AES Ohio's request) is that AES Ohio asked to recover *all* of its uncollectible expenses eventually.

Third, AES Ohio's expectation in 2015 was that the 2015 rate case would be decided before the 2016 ESP III case. There was thus expected to be a gap in time between when the 2015 deferral request was approved and when the 2016 uncollectible rider request was approved.

AES Ohio's expectation in 2015 thus had to be that it could defer *all* of its uncollectible expenses during the expected gap in time between when the 2015 deferral was approved and the 2016 uncollectible rider was approved. The fact that the 2016 ESP III case was actually decided before the 2015 rate case does not change the fact that in 2015, the expectation was that the 2015 rate case would be decided first. That point demonstrates that AES Ohio intended to and did ask to defer its entire uncollectible expense for a period of time, and the deferral was not intended to be limited to over/under recovery amounts.

It is also important for the Commission to understand that a ruling that AES Ohio cannot continue to defer the uncollectible expense would require an immediate write-off of the $8.1 million deferral (as of March 4, 2022). That would do significant harm to AES Ohio's already fragile financial condition.

T. AES Ohio Objection No. 32. DIR Audit Expense

As demonstrated in AES Ohio's initial brief (p. 54), the Commission should allow AES Ohio to recover expenditures associated with auditing the DIR because the investments that were audited are being added to rate base in this case.

U. AES Ohio Objection No. 33. Customer Deposit Interest Expense

AES Ohio Objection No. 33 addresses the Staff's recommendation (Staff Report, p. 99) to reduce certain deposit interest expense by $128,774. The testimony of AES Ohio witness Whitehead explains that only $77,857 should have been excluded. AES Ohio Ex. 94, pp. 2-3.

V. AES Ohio Objection No. 34. Customer Deposit Interest Expense Adjustment Regarding FERC 235 Balances

Staff agreed with AES Ohio Objection No. 34. Staff Ex. 6, pp. 5-6 (Snider).

VII. RATES AND TARIFFS

IGS (pp. 5-15) makes arguments regarding uncollectible expense, PUCO and OCC assessments and switching fees. The Commission should reject those arguments for the reasons set forth in AES Ohio's initial brief, pp. 67-68.

IGS (pp. 16-17) argues that the Commission should propose a tariff design for commercial and industrial customers that "better aligns" with the costs and benefits of renewable generation. The Commission should reject that argument for two reasons. First, IGS has not proposed a tariff for the Commission to consider. Second, IGS has not established that AES Ohio's cost of service study or rate design were unreasonable.

IGS (pp. 17-18) also argues that the Commission should lower the customer charge to promote distributed generation. The Commission should reject that argument because the costs to serve distribution customers are the same, regardless of their usage. Tr. 1168 (Bremer). It is thus reasonable to collect those costs through a customer charge.

The City of Dayton (pp. 6-14) argues that AES Ohio should have conducted a separate study as to costs to provide redundant service, and that AES Ohio's failure to do so demonstrates that customers should receive redundant service for free. The Commission should conclude that AES Ohio's failure to conduct a study as to redundant service costs was harmless since "a second line incurs the same costs as the primary line." Staff Ex. 8, p. 12 (Smith).

VIII. THE COMMISSION SHOULD REJECT MOST OF THE ARGUMENTS BY ONE ENERGY

A. Cost Allocation

The principal issue for One Energy in this case is cost of service. One Energy (p. 2) claims to be "the largest installer and owner of behind-the-meter wind energy in the United States." Distributed generation is more economical if a utility's rates include an energy component, because a distributed generation customer can avoid paying that component when the distributed generation installation is in operation. As the largest installer and owner of behind-the-meter wind energy in the country, it is thus in One Energy's direct financial interest that AES Ohio's rates be based upon an energy component.

It is also significant that One Energy is not a customer of AES Ohio. One Energy is critical of the cost allocation methods used by AES Ohio, and advocates that a different method should be used. It is significant that *none* of AES Ohio's customers raised a similar argument in this case.

One Energy (pp. 1-2, 6) quotes John F. Kennedy, Bill Clinton and Martin Luther King, Jr. for the general proposition that change is good. A quote that is more applicable here comes from former Director of the Office of Management and Budget Bert Lance: "if it ain't broke, don't fix it." The problem for One Energy is that it cannot establish that AES Ohio's cost of service methodology is broken.

Specifically, the Commission has acknowledged that a distribution utility's costs are "principally fixed." *In the Matter of Aligmy Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distribution Generation*, Case No. 10-3126-EL-UNC, Entry, p. 1 (Dec. 29, 2010). Staff witness Bremer agreed that "the costs the utility incurs to serve customers, are largely fixed." Tr. 1168. Witness Bremer further agreed that if two customers had the same peak load, then it would cost the utility the same amount to serve those customers even if their usage was different. *Id*.

One Energy (pp. 6-10) advocates against using the 1992 NARUC cost allocation manual, and advocates for using a recent manual from the Regulatory Assistance Project that asserts that costs should be allocated using energy as the basis. The Commission should reject that argument for two reasons.

<u>First</u>, One Energy does not cite to any evidence suggesting that the method that the Regulatory Assistance Project uses to allocate costs is better than the method used by the 1992 NARUC Manual. While the method used by the Regulatory Assistance Project would be good for One Energy since that method would encourage distributed generation, One Energy does not claim (much less cite evidence to prove) that the method used by the Regulatory

Assistance Project more accurately assigns costs. The evidence at the hearing showed that the 1992 NARUC Manual more accurately allocates costs. Tr. 333-35 (Chapman).

Second, if AES Ohio's costs varied based upon volumetric use, One Energy should be able to cite examples of such costs. One Energy does not identify any such costs. The reason One Energy does not do so is that AES Ohio's distribution costs are fixed and do not vary based upon usage.

B. The Evidence Shows that AES Ohio Has Achieved Gender and Race Parity

One Energy (pp. 4-6) asserts that AES Ohio should conduct an analysis of whether it has achieved gender and race wage parity, and that "[a]s a part of this case, the Company acknowledged that it did not consider whether a wage gap exists in preparing its application." One Energy entirely ignores the testimony by an AES Ohio witness that AES Ohio evaluates gender and race pay equity on an annual basis as a part of its compensation review, and that review has not identified any inequities. Tr. 152-54 (Buchanan).

C. AES Ohio's Cost of Long-Term Debt is Not Inflated

One Energy (p. 12) states (correctly) that AES Ohio's loan documents permit it to have a leverage ratio of up to 67% and further states (falsely) that "[t]he Company acknowledges that this inflated leverage ratio makes the cost of its debt more expensive than it would otherwise be."

The AES Ohio witness whose testimony One Energy cites agreed that "a company with a leverage ratio of 67 percent [would] pay more for its debt than a company with a leverage ratio of 46 percent." Tr. 427 (Illyes). However, that witness did not testify that AES

Ohio had a leverage ratio of 67% or that AES Ohio's cost of debt was higher due to such a ratio. In fact, the evidence in the case shows that AES Ohio had a lower leverage ratio than an average utility in this country. OCC Ex. 2, p. 9 (Walters).

D. The Net Metering Issue Has Been Fixed

One Energy's arguments (pp. 14-15) about AES Ohio's net meter tariff are puzzling for two reasons. First, One Energy admits that AES Ohio has made a filing to correct the issue. Second, AES Ohio's tariff was more favorable to customers than was required by Commission rules. Tr. 1249-50 (Smith).

E. One Energy's Other Tariff Arguments

One Energy (pp. 15-19) advocates for changes to AES Ohio's tariffs regarding the placement and number of meters, references to the NESC, references to ECAR, and the Supplier Tariff. The Commission should reject those arguments for the following reasons.

First, One Energy does not claim that AES Ohio's tariffs violate the Revised Code or the Commission's rules.

Second, One Energy does not cite to any evidence suggesting that AES Ohio's tariffs are unreasonable.

Third, none of AES Ohio's actual customers have raised these issues about AES Ohio's tariffs, and One Energy does not claim (much less offer evidence to prove) that any customers would be better off with its proposed changes.

Respectfully submitted,

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