**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.  In the Matter of the Application of the Dayton Power and Light Company for Accounting Authority.  In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs. | )  )  )  )  )  )  )  )  ) | Case No. 20-1651-EL-AIR  Case No. 20-1652-EL-AAM  Case No. 20-1653-EL-ATA |

**CONSUMER PROTECTION BRIEF**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

Bruce Weston (0016973)   
Ohio Consumers’ Counsel

John Finnigan (0018689)   
Counsel of Record   
Ambrosia E. Wilson (0096598)   
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700   
Columbus, Ohio 43215   
Telephone [Finnigan]: (614) 466-9585

Telephone [Wilson]: (614) 466-1292 [john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov) [ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)

March 4, 2022 (willing to accept service by e-mail)

**TABLE OF CONTENTS**

**PAGE**

[I. INTRODUCTION 1](#_Toc97298187)

[II. BACKGROUND 2](#_Toc97298188)

[A. The ESP I Settlement. 2](#_Toc97298189)

[B. The ESP I Extension allowed DP&L to continue charging consumers for “stability.” 3](#_Toc97298190)

[C. ESP II, Withdrawal of ESP II, and Return to ESP I, with the Stability Charge to Consumers Continuing. 5](#_Toc97298191)

[D. ESP III, Withdrawal of ESP III, and Second Return to ESP I, with the Stability Charge to Consumers Continuing. 6](#_Toc97298192)

[E. The 2020 Rate Case, where DP&L’s Commitment to Consumers to   
Freeze Rates is Broken. 8](#_Toc97298193)

[III. DP&L’s APPLICATION TO INCREASE RATES SHOULD BE DISMISSED OR STAYED UNTIL ESP I EXPIRES. 9](#_Toc97298194)

[A. DP&L’s application is unlawful under R.C. 4928.143(C)(2)(b), as interpreted by the PUCO. The PUCO must enforce the terms of ESP I in their entirety, including the Rate Freeze (of DP&L’s base rates at the level approved in the 2015 base rate case), which is an agreed-upon consumer protection. 9](#_Toc97298195)

[IV. RATE FREEZE AND REVENUE REQUIREMENT 12](#_Toc97298196)

[A. 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. But if the PUCO grants an increase, it should be capped at $43.3 and stayed until the expiration of ESP I. 13](#_Toc97298197)

[V. OCC’s RECOMMENDED CHANGES TO RATE BASE 18](#_Toc97298198)

[A. To protect consumers from paying higher rates that are not just and reasonable, the PUCO should require DP&L to remove capitalized incentive compensation from Plant in Service. 18](#_Toc97298199)

[B. To protect consumers from paying higher rates, the PUCO should make a plant in service adjustment to exclude $16.8 million in improper capitalized storm costs from rate base and should make depreciation reserve adjustments based on OCC’s recommended storm cost and capitalized incentive adjustments. 20](#_Toc97298200)

[VI. OCC’s RECOMMENDED CHANGES TO OPERATING INCOME 22](#_Toc97298201)

[A. To protect consumers, the PUCO should reject PUCO Staff’s recommendation that only the $14,534 associated with dues and memberships be removed from test year expenses, when instead, at least $241,572 should be removed from test year operations and management (“O&M”) expenses. 22](#_Toc97298202)

[B. To protect consumers from paying higher rates, the PUCO should require DP&L to make depreciation expense adjustments based on OCC’s recommended storm cost and capitalized incentive adjustments. 23](#_Toc97298203)

[C. To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s adjustment to decrease test year operating income revenues. 23](#_Toc97298204)

[D. To protect consumers from paying higher rates, the PUCO should require DP&L to adjust the unadjusted test year expenses to remove $952,488   
in travel and entertainment savings arising from the coronavirus   
pandemic. 25](#_Toc97298205)

[E. To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s recommended $1.8 million increase in the baseline expense for vegetation management without any analysis or support and without any requirement for DP&L to improve reliability. 26](#_Toc97298206)

[F. To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s recommendation that consumers pay $2.75 million   
per year for DP&L’s deferred vegetation management expenses. 31](#_Toc97298207)

[G. To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s recommendation that DP&L be allowed to defer up to $5 million in vegetation management expenses, which could be charged   
to consumers later. 32](#_Toc97298208)

[VII. OCC’s RECOMMENDED CHANGES TO RATE OF RETURN 34](#_Toc97298209)

[A. To protect consumers from paying higher rates, the PUCO should reject DP&L’s and the PUCO Staff’s recommended capital structure. 34](#_Toc97298210)

[B. To protect consumers from paying higher rates, the PUCO should reject PUCO Staff’s and DP&L’s reliance on *Value Line* as a source for beta estimates to use in its CAPM without consideration of other sources as a check on the reasonableness of *Value Line’s* betas. The PUCO Staff’s and DP&L’s beta estimates are abnormally high, are being heavily influenced by market volatility experienced in 2020 as a result of the anomalous event of the pandemic caused by COVID-19, and do not necessarily capture investor expectations. 36](#_Toc97298211)

[C. To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s and DP&L’s flawed DCF analyses. 45](#_Toc97298212)

[D. To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s and DP&L’s inappropriate increase to the ROE by allowing an adjustment for equity issuance and other costs. 49](#_Toc97298213)

[E. To protect consumers from paying higher rates, the PUCO should reject DP&L’s flotation cost adjustment in its requested return. 55](#_Toc97298214)

[F. To protect consumers from paying higher rates, an expected earnings analysis is not a reasonable method for estimating a fair ROE for   
DP&L. 56](#_Toc97298215)

[G. To protect consumers from paying higher rates, the PUCO should reject DP&L’s utility equity risk premium. 61](#_Toc97298216)

[H. To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s recommended rate of return range of 7.05% to 7.59% because it is too high and would result in unjust and unreasonable rates   
for consumers. 62](#_Toc97298217)

[VIII. OCC’s RECOMMENDED CHANGES TO DP&L’s RATES AND TARIFFS 63](#_Toc97298218)

[A. To protect consumers from paying higher rates that are unjust and unreasonable, the PUCO should reject the PUCO Staff’s recommendation to allocate 66.70% of base distribution charges to residential   
consumers. 63](#_Toc97298219)

[B. To protect consumers from paying higher rates that are unjust and unreasonable, the PUCO should reject the PUCO Staff’s too high recommended customer charge of $9.75 because it includes charges for line transformers, uses an unreasonably high carrying cost of 26.35%,   
and violates the regulatory principle of gradualism. A more reasonable customer charge would be no greater than $8.25. 66](#_Toc97298220)

[IX. OCC’s RECOMMENDATIONS TO SERVICE MONITORING AND ENFORCEMENT 69](#_Toc97298221)

[A. To protect consumers from inadequate service quality, the PUCO should apply financial penalties for DP&L’s failure to comply with the minimum PUCO distribution reliability standards in 2019 and 2020 enumerated in O.A.C. 4901:1-10-10(E). 69](#_Toc97298222)

[X. SUMMARY OF OCC’S RECOMMENDED ADJUSTMENTS 74](#_Toc97298223)

[XI. CONCLUSION 75](#_Toc97298224)

**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.  In the Matter of the Application of the Dayton Power and Light Company for Accounting Authority.  In the Matter of the Application of Dayton Power and Light Company for Approval of Revised Tariffs. | )  )  )  )  )  )  )  )  ) | Case No. 20-1651-EL-AIR  Case No. 20-1652-EL-AAM  Case No. 20-1653-EL-ATA |

**CONSUMER PROTECTION BRIEF**

**BY**

**OFFICE OF THE OHIO CONSUMERS’ COUNSEL**

# **INTRODUCTION**

Dayton Power and Light Company (“DP&L” or “AES”) seeks to charge its consumers an additional $120.8 million per year for electric distribution service.[[1]](#footnote-2) The PUCO Staff would give DP&L about half of that rate increase. But Dayton-area consumers should not be charged a penny more for their electric service. That’s because DP&L agreed, in a 2009 settlement, to freeze electric rates while it is charging consumers ($79 million annually) for so-called “stability.” For consumer protection and justice, the PUCO should make DP&L keep its word and freeze rates. There should be no electric rate increase in the Dayton area.

In this regard the PUCO should have already granted the Ohio Consumers’ Counsel motion to dismiss DP&L’s rate increase case.[[2]](#footnote-3) That would have spared the PUCO and parties, including OCC, from expending considerable resources over the last year to processing DP&L’s application.

If the PUCO fails to make DP&L comply with its 2009 settlement agreement, by dismissing this case or ordering a rate freeze, then OCC makes the following recommendation (without waiving any rights). The PUCO should limit any rate increase for Dayton-area consumers to $43.3 million or less.

# **BACKGROUND**

## The ESP I Settlement.

In the first Dayton-area electric security plan case, DP&L, OCC, the PUCO Staff, and other intervenors signed a settlement.[[3]](#footnote-4) Under this ESP I Settlement, DP&L’s first electric security plan (ESP I) was to be in effect until December 31, 2012.[[4]](#footnote-5) The ESP I Settlement likewise provided that certain rates and terms would continue through December 31, 2012. Two of these provisions are relevant to the current case.

First, under the ESP I Settlement, DP&L was allowed to continue charging consumers under its Rate Stabilization Charge or “RSC” through December 31, 2012.[[5]](#footnote-6) DP&L consumers are paying that Rate Stabilization Charge today under DP&L’s ESP I, which was reinitiated December 19, 2019. To date, DP&L consumers have paid more than a half billion dollars in so-called “stability” charges under ESP I. With the recent PUCO-approved settlement (opposed by OCC), DP&L customers can be expected to pay $79 million per year in stabilization charges through 2024 (the supposed end to ESP I).

Second, the ESP I Settlement provides that “DP&L’s distribution base rates will be frozen through December 31, 2012.”[[6]](#footnote-7) The only exceptions to the rate freeze (the “Rate Freeze”) are (i) DP&L could seek emergency rate relief under R.C. 4909.16, (ii) DP&L could seek PUCO approval of a rider for the “cost of complying with changes in tax or regulatory laws and regulations effective after the date” of the settlement, and (iii) DP&L could seek approval of a rider for storm damage costs.[[7]](#footnote-8)

The PUCO approved the ESP I Settlement without modification.[[8]](#footnote-9)

## The ESP I Extension allowed DP&L to continue charging consumers for “stability.”

As required by the ESP I Settlement, on March 30, 2012, DP&L filed an application for a market rate offer (“MRO”) to replace ESP I.[[9]](#footnote-10) Before the PUCO could rule on that application, however, DP&L withdrew it.[[10]](#footnote-11) At the same time, DP&L notified the PUCO and parties that it intended to file an application for an electric security plan by October 8, 2012.[[11]](#footnote-12)

DP&L’s withdrawal of its MRO application occurred on September 7, 2012, less than four months before the December 31, 2012, expiration of ESP I. At this point, it became clear that the PUCO would not be able to approve an MRO or ESP to replace ESP I before ESP I expired.

Recognizing this, OCC and other intervenors filed a joint motion to enforce the terms of ESP I.[[12]](#footnote-13) In that motion, intervenors noted that under the plain language of the ESP I Settlement, the RSC was to expire on December 31, 2012. (Same for the rate freeze.) Accordingly, the intervenors argued that if ESP I were to continue beyond that date (as a result of there not being a new ESP or MRO to replace it), the PUCO “should promptly identify the provisions of ESP I that cease as of December 31, 2012 and thereafter no longer apply to determine electric bills of ... customers.”[[13]](#footnote-14) More specifically, the parties argued that the PUCO, consistent with the terms of the ESP I Settlement, should “direct DP&L to refile its ESP I tariffs to remove the RSC effective for service rendered on or after January 1, 2013.”[[14]](#footnote-15)

DP&L opposed the Joint Motion.[[15]](#footnote-16) DP&L argued that under the ESP I Settlement, ESP I was to continue through December 31, 2012, and the RSC was to continue through December 31, 2012, so any extension of ESP I necessarily meant that the RSC would continue as well.[[16]](#footnote-17)

The PUCO agreed with DP&L and denied the Joint Motion.[[17]](#footnote-18) The PUCO was not convinced by the joint movants’ argument that the RSC was required to end because the ESP I Settlement specifically referenced a December 31, 2012, termination date. Instead, it ruled, “As one of the provisions, terms, or conditions of the current ESP, the RSC should continue with the ESP until a subsequent standard service offer is authorized.”[[18]](#footnote-19) As the PUCO itself had previously ruled, when a utility withdraws from an electric security plan and reverts to its previous one, “The Commission cannot arbitrarily choose some of the various provisions of the ESP to continue after the termination date of the ESP and choose other provisions of the ESP not to continue.”[[19]](#footnote-20)

## ESP II, Withdrawal of ESP II, and Return to ESP I, with the Stability Charge to Consumers Continuing.

Following the extension of ESP I beyond its original December 31, 2012, end date, the PUCO approved DP&L’s ESP II on September 4, 2013.[[20]](#footnote-21) ESP II included charges to consumers to subsidize DP&L called the “Service Stability Rider,” similar to the Rate Stabilization Charge that parties had agreed to under ESP I. OCC applied for rehearing and ultimately appealed that ruling to the Ohio Supreme Court.[[21]](#footnote-22) OCC’s primary challenge was that the Service Stability Rider was unlawful.[[22]](#footnote-23)

OCC’s appeal succeeded, with the Supreme Court reversing the PUCO’s ruling.[[23]](#footnote-24) In response to the Supreme Court ruling stopping the stability charge, DP&L moved to withdraw from ESP II and revert to ESP I.[[24]](#footnote-25) The PUCO granted DP&L’s request on August 26, 2016, over OCC’s objections, and allowed DP&L to again charge consumers under the terms of ESP I, including reviving the Rate Stabilization Charge.[[25]](#footnote-26)

## ESP III, Withdrawal of ESP III, and Second Return to ESP I, with the Stability Charge to Consumers Continuing.

In early 2016, DP&L filed an application for a new electric security plan (ESP III).[[26]](#footnote-27) Over the objection of numerous parties, including OCC, the PUCO approved ESP III.[[27]](#footnote-28) Like ESP I and ESP II, ESP III included a subsidy charge to consumers, this time called the “Distribution Modernization Rider” or “DMR.”[[28]](#footnote-29)

Before approving DP&L’s DMR, the PUCO had approved a substantially identical DMR for FirstEnergy in its electric security plan proceeding.[[29]](#footnote-30) OCC and other parties appealed that ruling and the Ohio Supreme Court ruled that FirstEnergy’s DMR was unlawful.[[30]](#footnote-31)

Citing this Ohio Supreme Court precedent and the substantial similarity between FirstEnergy’s and DP&L’s Distribution Modernization Riders, the PUCO modified DP&L’s ESP III, removing charges to consumers under DP&L’s DMR.[[31]](#footnote-32)

In response, DP&L almost immediately filed a notice of withdrawal of ESP III, seeking PUCO approval to again revert to ESP I (a second time in three years), including charges to consumers for the Rate Stabilization Charge.[[32]](#footnote-33) OCC and others opposed DP&L’s attempt to again revert to ESP I.[[33]](#footnote-34)

The PUCO granted DP&L’s request to revert to ESP I.[[34]](#footnote-35) Thus, as of December 19, 2019, DP&L once again began charging consumers for the Rate Stabilization Charge—that very same charge that DP&L and OCC agreed would expire December 31, 2012.

OCC and others applied for rehearing, challenging the PUCO’s ruling that DP&L could revert to ESP I and again charge consumers under the Rate Stabilization Charge.[[35]](#footnote-36) Among other things, OCC argued in its application for rehearing that the PUCO erred by failing to continue the rate freeze that was part of ESP I.[[36]](#footnote-37) As the PUCO itself had previously ruled, when a utility withdraws from an electric security plan and reverts to its previous one, “The Commission cannot arbitrarily choose some of the various provisions of the ESP to continue after the termination date of the ESP and choose other provisions of the ESP not to continue.”[[37]](#footnote-38)

The PUCO denied OCC’s application for rehearing.[[38]](#footnote-39) According to the PUCO, OCC should have raised the issue of the rate freeze in DP&L’s 2015 base distribution rate case, Case No. 15-1830-EL-SSO.[[39]](#footnote-40) ESP I was in effect from September 1, 2016 (when DP&L withdrew from ESP II) to October 31, 2017 (when ESP III became effective), and during that time, DP&L’s 2015 rate case was pending.[[40]](#footnote-41) The PUCO further reasoned that, having approved new base rates in the 2015 rate case, it would not be possible to revert to base rates that were in effect at the time ESP I was approved.[[41]](#footnote-42)

## The 2020 Rate Case, where DP&L’s Commitment to Consumers to Freeze Rates is Broken.

DP&L initiated the above-captioned rate case with a notice of intent on October 30, 2020, and its application on November 30, 2020. DP&L seeks to charge its consumers an additional $121 million annually. Since the time of its application, and continuing through today, DP&L has been operating under the terms of ESP I. Consistent with the PUCO’s instruction in Case No. 08-1094-EL-SSO that the proper place to enforce the rate freeze is a base rate case, OCC now seeks to enforce the Rate Freeze in this base rate case. ESP I is currently in effect. ESP I says that for the duration of ESP I, a distribution rate freeze shall be in effect. Enforcing the Rate Freeze means that DP&L’s rates should remain at the level established in the 2015 rate case. DP&L is not entitled to a $121 million rate increase, or a rate increase of any other amount while ESP I is in effect. The PUCO should deny DP&L any rate increase for as long as ESP I remains effective.

# **DP&L’s APPLICATION TO INCREASE RATES SHOULD BE DISMISSED OR STAYED UNTIL ESP I EXPIRES.**

## DP&L’s application is unlawful under R.C. 4928.143(C)(2)(b), as interpreted by the PUCO. The PUCO must enforce the terms of ESP I in their entirety, including the Rate Freeze (of DP&L’s base rates at the level approved in the 2015 base rate case), which is an agreed-upon consumer protection.

To protect consumers, the PUCO should enforce the terms of ESP I in their entirely, including the Rate Freeze, which is an agreed-upon consumer protection. The PUCO should deny or dismiss DP&L’s application for an increase until the expiration of ESP I. At a minimum, any increase granted by the PUCO should be stayed until ESP I expires. To do otherwise violates the settlement agreement in ESP I, the PUCO’s rulings on the continuation of DP&L ESP I, and the PUCO’s interpretation of 4928.143(C)(2)(b).

OCC incorporates all arguments made in its Motion to Dismiss and Reply in Support of its Motion to Dismiss DP&L’s Application for a Rate Increase to the extent they are not specifically included herein.[[42]](#footnote-43) And specifically, as discussed, the ESP I Settlement (which the PUCO approved) states that “DP&L’s distribution base rates will be frozen” throughout the term of ESP I.[[43]](#footnote-44) DP&L’s base rates were increased in 2018 at a time when ESP III, as opposed to ESP I, was in effect. OCC concedes that it would be impractical (and potentially unlawful) to undo the 2018 rate increase. But it is neither impractical nor unlawful to enforce the Rate Freeze by prohibiting DP&L from increasing its base rates above the level approved in 2018 at this time. To the contrary, the PUCO’s interpretation of R.C. 4928.143(C)(2)(b)—that a utility reverts to its most recent ESP in its entirety—compels such a conclusion. The PUCO must freeze DP&L’s base rates at whatever level they were set at the time DP&L reverted to ESP I. As discussed, DP&L reverted to ESP I in December 2019. At that time, the base rates approved in 2018 were in effect. Thus, the PUCO is required to enforce the Rate Freeze by keeping base rates at 2018 levels for as long as ESP I remains in effect.

Under R.C. 4928.143(C)(2)(b), if a utility withdraws from its electric security plan, the PUCO “shall issue such order as is necessary to continue the provisions, terms, and conditions of the utility’s most recent standard service offer...until a subsequent offer is authorized pursuant to this section of section 4928.142 of the Revised Code.” The PUCO has interpreted this statute to mean that when a utility withdraws from its current ESP, it reverts to its previous ESP in its entirety.[[44]](#footnote-45)

When DP&L withdrew from ESP II and reverted to ESP I, the PUCO found that DP&L was required to continue charges to consumers (which included the Rate Stabilization Charge) because those charges were part of ESP I: “The Commission cannot arbitrarily choose some of the various provisions of the ESP to continue after the termination date of the ESP and choose other provisions of the ESP not to continue.”[[45]](#footnote-46)

When DP&L withdrew from ESP III and reverted to ESP I, the PUCO again found that it was required to continue ESP I without modification. The PUCO rejected arguments that the RSC should not continue.[[46]](#footnote-47) The PUCO rejected arguments that DP&L should be allowed to continue charging consumers under various riders because they were approved in ESP III and thus were not part of ESP I.[[47]](#footnote-48) And the PUCO rejected arguments that certain “economic development” payments to signatory parties in ESP III should continue because they were not part of ESP I either.[[48]](#footnote-49)

There can be no dispute that the Rate Freeze was part of ESP I. The ESP I Settlement states, “DP&L’s distribution rates will be frozen through December 31, 2012,” which was the original termination date for ESP I.[[49]](#footnote-50) And the PUCO has already ruled that when ESP I was extended beyond December 31, 2012, its provisions were extended,[[50]](#footnote-51) so that would include the Rate Freeze.

The PUCO acknowledged in its Entry denying OCC’s Motion to Dismiss that although DP&L is not precluded from filing an application for an increase in rates, implementation of any rate changes in the case may, subject to the remaining outstanding legal arguments of the parties, be stayed as part of our determination in this case.[[51]](#footnote-52) Therefore, if the PUCO grants DP&L’s application to increase rates (which it shouldn’t), then the rate increase should be stayed until the expiration of ESP I.

# **RATE FREEZE AND REVENUE REQUIREMENT**

The PUCO should not approve DP&L’s application to increase rates while ESP I is in effect (and if it does, then any increase to base rates should be stayed until ESP I expires). Additionally, if a base rate increase is approved by the PUCO, then the PUCO should adopt OCC’s proposed changes to rate base, operating income, and rate of return. OCC’s recommended base rate increase is $43.3 million, and that increase should be stayed until DP&L’s ESP I expires.

The PUCO should find the PUCO Staff’s recommended rate increase of $61,115,418 to $66,665,151 is too high for consumers and would result in consumers paying unjust and unreasonable rates under R.C. 4905.22, 4909.15, 4909.154, 4909.17, and 4909.18. Again, if any increase is approved, it should be stayed until the expiration of ESP I and should not exceed $43.3 million as calculated by OCC’s expert witness Mr. Ross Willis.[[52]](#footnote-53)

## 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. But if the PUCO grants an increase, it should be capped at $43.3 and stayed until the expiration of ESP I.

The PUCO should enforce this ESP I rate freeze for Dayton-area consumers—meaning no rate increase to consumers while DP&L is under ESP I and is collecting a stability charge—just as it has enforced the other provisions of the settlement reached in DP&L’s ESP I that DP&L agreed to as part of a settlement with OCC, the PUCO Staff, and others in its ESP I case.[[53]](#footnote-54) ESP I is currently in effect because DP&L unilaterally chose to revert back to ESP I after the PUCO stopped charging DP&L consumers for DP&L’s so called distribution modernization rider,[[54]](#footnote-55) and the settlement requires a base distribution rate freeze for the duration of ESP I. Allowing a distribution rate increase when DP&L committed to a rate freeze during ESP I violates the settlement agreement, the PUCO’s rulings on the continuation of DP&L ESP I, and the PUCO’s interpretation of 4928.143(C)(2)(b).

DP&L wants to charge consumers an additional $121 million per year for base distribution service.[[55]](#footnote-56) But DP&L is prohibited from increasing base rates to its consumers by $121 million—or any other amount—because it agreed to freeze base distribution rates in a 2009 PUCO-approved settlement that DP&L agreed to as part of a settlement with OCC, the PUCO Staff and others in its ESP I case.[[56]](#footnote-57) DP&L is currently operating under that settlement, which sets the terms for DP&L’s ESP I. DP&L unilaterally decided to revert to ESP I. ESP I is currently in effect and expected to be in effect for at least three more years.

The PUCO Staff, however, recommends a revenue increase to DP&L consumers. The lower bound increase that the PUCO Staff recommends is $61,115,418 and the upper bound increase is $66,665,151.[[57]](#footnote-58) The PUCO Staff recommendation of a revenue increase for DP&L’s consumers now while DP&L is under ESP I should be rejected. Instead, to protect consumers, the PUCO should adopt the recommendation of OCC’s expert witness, Mr. Ross Willis.

Mr. Willis recommends that rates to DP&L residential consumers be frozen at the current levels as supported in OCC’s August 5, 2021, Motion to Dismiss DP&L’s Application for a Rate Increase.[[58]](#footnote-59) This recommendation is consistent with the settlement that DP&L previously agreed to as part of ESP I.[[59]](#footnote-60) And it is consistent with the PUCO rulings that “the Commission cannot arbitrarily choose some of the various provisions of the ESP to continue after the termination date of the ESP and choose other provisions of the ESP not to continue.” *In re Application of Dayton Power & Light Co. for Approval of its Market Rate offer,* Case No. 12-426-EL-SS), Entry on Rehearing at ¶10 (Feb. 19, 2013).

However, if any increase is approved, it should be stayed until the expiration of ESP I and should not exceed $43.3 million as calculated by OCC’s expert witness Mr. Ross Willis.[[60]](#footnote-61) Mr. Willis’s calculations are shown in the table below—which was attached to his testimony as WRW Schedule A-1.



When DP&L reverted to ESP I in late 2019, the PUCO allowed DP&L to begin charging consumers, for the third time, more than $75 million per year under its so-called “Rate Stabilization Charge” or “RSC.”[[61]](#footnote-62) OCC opposed (and continues to oppose) the Rate Stabilization Charge as an unlawful charge to consumers. But 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.[[62]](#footnote-63) It would be unjust and unreasonable for DP&L to benefit from charging consumers millions for the Rate Stabilization Charge but to simultaneously allow DP&L to avoid its commitment to a distribution rate freeze.[[63]](#footnote-64)

After the hearing in this case, DP&L filed rebuttal testimony to attempt to rebut OCC’s witness Mr. Willis’s recommendation that the PUCO should freeze DP&L’s distribution rates at their current level.[[64]](#footnote-65) DP&L witness Ms. Storm indicated that “freezing AES Ohio's distribution rates at their current level would have a negative effect on AES Ohio's ability to provide service by forcing the Company to reduce spending to levels that may not maintain compliance, proactive maintenance, or line clearance.”[[65]](#footnote-66) But Ms. Storm misses the point. DP&L is *required* to provide safe, adequate, and reliable service to consumers. And this requirement stands regardless of whether DP&L receives rate increases. *See* R.C. 4905.22 (“every public utility shall furnish necessary and adequate service and facilities\*\*\*.”). And Ms. Storm admitted in her testimony that this is entirely within the control of DP&L. In her testimony, she claimed this would require DP&L to reduce operation and maintenance ("O&M") expenses by over $25 million for 2022-2024 and reduce capital spending by more than $120 million for the same period.[[66]](#footnote-67) At hearing, however, she admitted that DP&L would need to revise its budget if the PUCO rejects the rate increase, and there could be other available sources of funding for O&M expenses.[[67]](#footnote-68)

DP&L’s desire to make more profits should not result in a rate increase for consumers. DP&L controls its spending. DP&L controls when it comes in for a rate case. DP&L controls the fact that it withdrew from ESP III and reverted to ESP I. ESP I contains a rate freeze. The PUCO should not permit DP&L to cherry-pick provisions of ESP I because it does not like the rate freeze. And DP&L is far from broke. DP&L is collecting a $79 million per year non-cost based stability/provider of last resort (“POLR”) charge from Dayton-area consumers until its next electric security plan is in place. And DP&L has produced no evidence, in this case (or others) that justifies that revenue collection from consumers. DP&L is not the only party suffering financial difficulties. Consumers are suffering as well resulting from the ongoing coronavirus pandemic. Consumers that cannot afford their service will be disconnected, and DP&L will lose even more revenue. It is mutually beneficial for DP&L to work with the money they have to maintain service than to raise rates to the extent that disconnections increase.

For consumer protection, the PUCO should not adopt the PUCO Staff’s recommended rate increase, and should instead, enforce the distribution rate freeze that DP&L agreed to in ESP I as recommended by OCC’s expert, Mr. Willis. But, if the PUCO does approve an increase, it should be stayed until the expiration of ESP I and should not exceed $43.3 million.

# **OCC’s RECOMMENDED CHANGES TO RATE BASE**

## To protect consumers from paying higher rates that are not just and reasonable, the PUCO should require DP&L to remove capitalized incentive compensation from Plant in Service.

OCC is opposed to consumer charges for earnings based incentive compensation. The PUCO Staff recommended that starting with the PUCO’s Opinion and Order in this case and going forward, that DP&L exclude from base rates all capitalized earnings-based incentive compensation.[[68]](#footnote-69) And at the hearing, Staff witness Mr. Lipthratt confirmed that earnings based incentive compensation tends to benefit shareholders more than consumers.[[69]](#footnote-70) But OCC’s expert Mr. Ross Willis testified that Staff did not exclude any such capitalized earnings-based incentive compensation from rate base in this case.[[70]](#footnote-71) If this is not removed from rate base, then consumers will be paying for shareholder costs charged to rate base, which would be unjust and unreasonable.[[71]](#footnote-72)

Unfortunately for consumers, it has not been possible to determine the amount of capitalized earnings-based incentive compensation included in rate base that consumer pay for.[[72]](#footnote-73) OCC’s expert witness Mr. Willis could only determine that some cash bonus’ that were part of capitalized storm costs.[[73]](#footnote-74) Mr. Willis attempted through discovery to obtain the information necessary to determine the amount of earning-based capitalized incentive compensation in rate base since the date certain (September 30, 2015) in the last rate case (Case No. 15-1830-EL-AIR), but DP&L was either unwilling or unable to provide it.[[74]](#footnote-75)

DP&L has both short-term and long-term incentive compensation plans that includes cash bonuses, stock-based awards, and restricted stock awards.[[75]](#footnote-76) OCC recommends the PUCO require DP&L to identify the amount of earning-based capitalized incentive compensation for its employees included in rate base since the date certain in the last rate case and exclude it from the revenue requirement. DP&L has capitalized approximately $156 million since the last rate case and should be required to identify the total amount of financial incentives it is asking consumers to pay for.[[76]](#footnote-77) Mr. Willis recommends that based on PUCO precedent, financial incentive compensation is not necessary in the provision of electric service to consumers and, if awarded to employees, should be paid for by shareholders, not consumers.[[77]](#footnote-78)

In its Opinion and Order in Case Numbers 17-38-EL-RDR and 18-230-EL-RDR, the PUCO concluded that, “the Commission has previously addressed the issue of incentive compensation in a number of rate cases and rider proceedings.[[78]](#footnote-79) In these prior cases, the PUCO has concluded that, to the extent that a public utility awards financial incentives to its employees for achieving financial goals, shareholders are the primary beneficiary and, therefore, that portion of the incentive compensation should not be collected from consumers.[[79]](#footnote-80) In the present case, the PUCO should follow this established precedent and exclude this item from base rates.

To protect consumers from paying higher rates that are not just and reasonable, the PUCO should stay consistent with its precedent in this case (and others) and disallow any performance-based incentive compensation charges to consumers. This cost should be borne by the shareholders who directly benefit from incentive compensation, not consumers.

## To protect consumers from paying higher rates, the PUCO should make a plant in service adjustment to exclude $16.8 million in improper capitalized storm costs from rate base and should make depreciation reserve adjustments based on OCC’s recommended storm cost and capitalized incentive adjustments.

Consumers should not pay for capitalized storm costs. The PUCO Staff failed to address capitalized storm costs that are either inappropriate for collection from consumers altogether or inappropriate for inclusion in rate base.[[80]](#footnote-81) Since date certain in the last rate case, DP&L recorded 19 major storms and booked to plant in service $28.9 million in storm costs.[[81]](#footnote-82) OCC’s expert, Mr. Willis recommends an adjustment of $16.8 million to remove administrative and general overheads, operation and maintenance expenses, cash bonuses, meals, picnics and parties, travel, and office supplies that do not qualify for rate base, rate of return recovery.[[82]](#footnote-83)

Capitalized costs such as cash bonuses and picnics and parties should be excluded from the revenue requirement altogether as they are not necessary in the provision of electric service to consumers and should be paid for by shareholders, not consumers.[[83]](#footnote-84) The other items identified above would be more appropriate for recovery in the Storm Cost Rider (if at all) as an operating expense and not included in rate base and collected through a return on and return of capital.[[84]](#footnote-85)

The PUCO should also adjust DP&L’s depreciation reserve and depreciation expenses. According to Mr. Willis, DP&L’s depreciation reserve should be reduced by ($485,717) resulting from the plant in service adjustment to exclude the capitalized storm costs he recommended. Depreciation reserve will also need to be further reduced once the capitalized incentives are identified and removed from plant-in-service.[[85]](#footnote-86)

To protect consumers from paying higher rates the PUCO should remove $16.8 million in improperly capitalized storm costs from rate base.

# **OCC’s RECOMMENDED CHANGES TO OPERATING INCOME**

## To protect consumers, the PUCO should reject PUCO Staff’s recommendation that only the $14,534 associated with dues and memberships be removed from test year expenses, when instead, at least $241,572 should be removed from test year operations and management (“O&M”) expenses.

Consumers should not be forced to pay for DP&L’s trade association dues and memberships. OCC’s expert Mr. Willis testified that the PUCO Staff excluded $14,535 associated with trade association dues and memberships from DP&L’s test year expenses because they were not proper to collect from consumers.[[86]](#footnote-87) Mr. Willis also testified that the PUCO Staff indicated that consumers should not be required to pay for them, and recovery in rates is inappropriate.[[87]](#footnote-88) And more concerning, Mr. Willis noted that the PUCO Staff Report identified a portion of the Edison Electric Institute (EEI) dues attributable to lobbying expense.[[88]](#footnote-89)

While OCC agrees with the PUCO Staff’s rationale for excluding these expenses, the PUCO Staff did not go far enough. OCC recommends reducing test year operating expenses by $241,572, as DP&L has failed to meet its burden of proof that these expenses are ordinary and necessary in the provision of electric service to consumers.[[89]](#footnote-90)

## To protect consumers from paying higher rates, the PUCO should require DP&L to make depreciation expense adjustments based on OCC’s recommended storm cost and capitalized incentive adjustments.

The PUCO should require DP&L to adjust depreciation expense based on OCC’s recommended storm cost and capitalized incentive adjustments. OCC recommends an adjustment to reduce depreciation expense by ($218,428) associated with the capitalized storm cost adjustment as discussed above.[[90]](#footnote-91) Additionally, depreciation expense will need to be further reduced once capitalized incentive compensation are identified and removed from plant-in-service.

These adjustments are necessary to protect consumers from paying higher rates for storm costs and capitalized incentives.

## To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s adjustment to decrease test year operating income revenues.

The PUCO Staff recommended an adjustment to decrease test year operating income revenue by $5,019,523 but failed to provide any explanation or justification in its initial Staff Report.[[91]](#footnote-92) And as OCC discussed in its Objections to the Staff Report, this is even greater than a similar adjustment made by DP&L of $2,426,956.[[92]](#footnote-93) And DP&L’s adjustment, like the PUCO Staff’s, has no justification. But in Staff witness Mr. Snider’s testimony, he recommended an adjustment to reduce test year Storm Cost Rider Revenue by $1,471,664 and to decrease Storm Cost Expense by $1,290,486.[[93]](#footnote-94)

OCC’s expert, Mr. Ross Willis, however, rebuts this testimony.[[94]](#footnote-95) Mr. Snider’s adjustment unreasonably increases the base distribution revenue requirement that DP&L will collect from Dayton-area consumers by $2,762,150.[[95]](#footnote-96) Upon cross-examination by OCC at the hearing, Mr. Snider indicated he thought the Storm Cost Rider Revenue was updated to twelve-months actual.[[96]](#footnote-97) However, Mr. Snider then stated he was unsure of the time period used.[[97]](#footnote-98) Mr. Snider also testified that he did not make the adjustment himself but was sponsoring the adjustment for someone else who left the department.[[98]](#footnote-99)

In his rebuttal testimony, Mr. Willis explained that the PUCO Staff adjusted the test year revenue and expense to reflect an amount based on seven-months of actual data and five-months of budget estimates.[[99]](#footnote-100) For the remaining riders in the test year, the PUCO Staff left the three-months of actual data and nine-months of budget estimates unchanged, as filed by DP&L in its application.[[100]](#footnote-101) Mr. Willis further explained that riders are removed from the test year so the base distribution revenue requirement can be determined on a stand-alone basis.[[101]](#footnote-102) Most electric riders result from electric security plans and are not generally authorized in rate cases such as this case.[[102]](#footnote-103)

The test year should be representative of conditions reasonably anticipated to exist during the time frame that the utility’s rates to be charged to consumers are in effect.[[103]](#footnote-104) Adjustments to the test year are supposed to be limited to those necessary to reflect normal ongoing utility operations.[[104]](#footnote-105) The purpose of adjustments to the test year are to smooth out abnormalities that tend to make test year data unrepresentative of the time when rates are in effect.[[105]](#footnote-106) The utility has an advantage in ratemaking as it chooses the test year, subject to PUCO approval.[[106]](#footnote-107) The PUCO Staff adjusted the test year operating revenue and expense without justifying why the adjustment is necessary and without showing that the adjustment is needed other than to enable DP&L to annually charge consumers $2.7 million more in rates.[[107]](#footnote-108)

The PUCO should reject the PUCO Staff Report adjustment to the Storm Cost Rider shown on PUCO Staff Schedule C-3.4 that carries forward to Staff Schedule C-3.24. Rejecting this PUCO Staff adjustment will protect Dayton-area consumers from unjustified higher charges.

## To protect consumers from paying higher rates, the PUCO should require DP&L to adjust the unadjusted test year expenses to remove $952,488 in travel and entertainment savings arising from the coronavirus pandemic.

Consumers should not be required to pay for DP&L’s travel and entertainment savings arising from the coronavirus pandemic. OCC’s expert witness, Mr. Willis recommends an adjustment to the unadjusted test year operating expenses to remove travel and entertainment savings arising from the COVID-19 pandemic.[[108]](#footnote-109) OCC’s recommendation would reduce test year operating income by ($952,488) as the amounts were not spent.

The PUCO should adopt OCC’s recommendation to require DP&L to adjust test year expenses to remove $952,488 in travel and entertainment savings arising from the coronavirus pandemic to protect consumers from paying higher rates.

## To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s recommended $1.8 million increase in the baseline expense for vegetation management without any analysis or support and without any requirement for DP&L to improve reliability.

The PUCO should reject the PUCO Staff’s recommendation to increase DP&L’s baseline expenses for vegetation management by $1.8 million. OCC’s expert witness, Mr. Williams, testified that DP&L proposed a hybrid cyclical tree-trimming cycle of four to five years for distribution circuits to manage vegetation within and outside of the right of way (“ROW”).[[109]](#footnote-110) Furthermore, the Utility has proposed expanding the costs for the vegetation management program to $30 million annually.[[110]](#footnote-111) This consists of proposed spending of $25 million annually on maintenance of circuits inside the ROW, $1.5 million for intra-cycle hot-spot tree-trimming, and $3.5 million annually for Danger/Hazard tree removal outside the ROW.[[111]](#footnote-112) Mr. Williams also testified that DP&L provided a copy of the proposed long term strategy for vegetation management that includes a significant and expensive expansion over the current vegetation management plan.

Mr. Williams explained that the PUCO Staff Report made three recommendations regarding vegetation management expense.[[112]](#footnote-113) First, that the baseline expense for vegetation management be increased from $15,700,000 to $17,500,000.[[113]](#footnote-114) Second, that the collection of deferred vegetation management expenses of approximately $13.7 million be amortized over a five-year period rather than three years as proposed by DP&L.[[114]](#footnote-115) And the test year expense was adjusted to $20,248,050 to reflect collection of the deferral.[[115]](#footnote-116) Finally, the PUCO Staff recommended that PUCO authorize DP&L to continue deferring incremental vegetation management expense beyond the $17,500,000 baseline amount subject to a $5,000,000 annual cap.[[116]](#footnote-117)

But, as Mr. Williams explained in his testimony, the PUCO Staff Report provided no recommendations regarding the DP&L proposed amendments to the vegetation management program.[[117]](#footnote-118) The PUCO Staff Report failed to address DP&L’s non-compliance with its PUCO approved vegetation management plan. Also, the PUCO Staff Report failed to assess the impact that DP&L’s failure to comply with its vegetation management plan on reliability performance.

The PUCO Staff Report contained no analysis or support from the PUCO Staff for its recommendation to increase the baseline expenses for vegetation management from the current $15.7 million to $17.5 million, annually. The PUCO Staff did not perform an analysis of the underlying factors that DP&L claims caused the proposed increase in tree-trimming expenses.[[118]](#footnote-119)

Additionally, the PUCO Staff did not analyze the impact that DP&L’s failure to comply with its vegetation management plan and how this contributed to DP&L failure to meet the minimum distribution reliability performance standards.[[119]](#footnote-120) The PUCO Staff Report contained no analysis of the recommendations and costs proposed by DP&L for modifying the cycle duration to 4-5 years, initiating hot spot tree-trimming, or expanding the vegetation management program to include tree-trimming and removals outside the right of way.[[120]](#footnote-121)

Mr. Williams explained that according to the PUCO approved DP&L Inspection, Maintenance, Repair, and Replacement Program, DP&L is required to complete tree-trimming of all circuits within the right of way under a five-year cycle-based program.[[121]](#footnote-122) But even though DP&L is required to trim trees within the right of way on five-year cycle, the Utility is not doing so.[[122]](#footnote-123) And even though customer interruptions associated with trees inside the right of way are increasing, DP&L has chosen to selectively defer the cycle-based tree-trimming program due to the alleged costs.[[123]](#footnote-124) And DP&L even acknowledged that the deferral in tree-trimming work allows additional growth and leads to additional system impacts.[[124]](#footnote-125) In fact, between 2018 and 2020, the Utility has failed to meet the five-year cycle-based tree-trimming requirements.[[125]](#footnote-126) This is particularly unreasonable considering the significant increases in baseline vegetation management expense ($15.7 million plus deferral expenses of up to $4.6 million) that DP&L received in its last base last rate case.[[126]](#footnote-127)

OCC’s expert witness Mr. Williams explained in his testimony that in 2019, DP&L reported only completing tree-trimming on 71 of the 108 circuits in in 2018 that it should have completed for the year.[[127]](#footnote-128) In 2020, DP&L reported completing tree-trimming on 91 of the 108 circuits in in 2019 that it should have completed for the year.[[128]](#footnote-129) In 2021, DP&L reported completing tree-trimming on 89 of the 108 circuits in 2020 that it should have completed for the year.[[129]](#footnote-130)

According to Mr. Williams, DP&L’s explanation for not meeting the PUCO approved vegetation management requirements was “Challenging labor market conditions…”.[[130]](#footnote-131) And more specifically, the Utility has provided the following statement as their explanation in its Rule 26 filings for not meeting tree-trimming requirements:

Challenging labor market conditions affecting the entire vegetation management industry have led to widespread price increases and schedule completion shortfalls for many utilities. Currently there is not enough qualified labor in the utility vegetation management industry to effectively meet the increasing needs of electricity providers. As a result, DP&L Ohio has faced significant challenges in trying to overcome the labor shortages and the related price increases. To the best of its ability, DP&L Ohio made strategic decisions to focus its vegetation management efforts in such a way as to maximize the potential benefit to [consumers] by prioritizing circuits based on safety, reliability and vegetation risk.[[131]](#footnote-132)

Identical statements are found in each of the system improvement plan reports for 2018 through 2020.[[132]](#footnote-133) Mr. Williams explained in his testimony that in comparing the number of tree-caused outages between 2015 and 2020, there is a significant increase in outages associated with tree-trimming that are contributing to declines in DP&L’s reliability performance as shown in the table below.[[133]](#footnote-134)

**Inside Row Tree Caused Outages 2015 – 2020 (Excludes Major Events and Transmission Outages)**[[134]](#footnote-135)

|  |  |  |  |
| --- | --- | --- | --- |
| **Year** | **Events** | **Consumers Interrupted** | **Consumer Minutes Interrupted** |
| 2015 | 145 | 7,007 | 1,393,088 |
| 2016 | 116 | 6,112 | 2,006,194 |
| 2017 | 318 | 17,128 | 3,265,144 |
| 2018 | 310 | 16,973 | 3,366,969 |
| 2019 | 368 | 22,079 | 4,318,048 |
| 2020 | 162 | 16,135 | 2,652,857 |
| Average 2015-2017 | 193 | 10,082 | 2,221,475 |
| Average 2018-2020 | 280 | 18,396 | 3,459,281 |
| Percentage Change | 45.1% | 82.5% | 55.7% |

DP&L’s tree-caused outages within the ROW have increased significantly despite the increase in base rates and deferrals of vegetation management expenses that were authorized in the last DP&L base rate case.[[135]](#footnote-136) There was a 45.1% increase in the average number of in ROW tree-caused outages for the period 2018 through 2020 compared with the average number of outages between 2015 and 2017 and before rate increases went into effect after the last base rate case.[[136]](#footnote-137) There is an 82.5% increase in the number of consumers interrupted on average between 2018 and 2020 compared with the average number of consumers interrupted due to in ROW tree-caused outages between 2015 and 2017.[[137]](#footnote-138) And there is a 55.7% increase in the number of consumer minutes interrupted during in ROW tree-caused outages during the period 2018 through 2020 compared with the average number of consumer minutes interrupted between 2015 and 2017.[[138]](#footnote-139)

DP&L’s reliability is getting worse, not better—despite DP&L’s increased spending. To protect consumers from paying more for worsening service, the PUCO should require DP&L to improve reliability before throwing more money at the problem. The PUCO should reject PUCO Staff’s recommendation of a $1.8 million increase in the baseline expense for vegetation management.

## To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s recommendation that consumers pay $2.75 million per year for DP&L’s deferred vegetation management expenses.

The PUCO Staff recommended that consumers pay an additional $2.75 million per year for DP&L’s deferred vegetation management expenses. But the PUCO Staff Report does not contain any analysis of the supposed approximate $13.7 million collection of deferred vegetation management expense from customers.[[139]](#footnote-140) The PUCO Staff merely recommended that the collection be amortized over five years instead of three as proposed by DP&L.[[140]](#footnote-141) The PUCO Staff should have examined these alleged expenses to determine if they are just and reasonable before recommending that the charges be imposed onto consumers. OCC’s expert Mr. Williams explained that this is especially true given DP&L’s failure to use the additional funds to adequately perform tree-trimming since at least 2018.[[141]](#footnote-142) DP&L has failed to comply with its Inspection, Maintenance, Repair and Replacement Program regarding vegetation management within the right of way and DP&L has failed to meet the minimum PUCO performance standards for distribution reliability.[[142]](#footnote-143)

The PUCO should not give DP&L more consumer money until it comes into compliance with its Inspection, Maintenance, Repair, and Replacement Program—and until it meets the minimum PUCO performance standards for distribution reliability. The PUCO should reject PUCO Staff’s recommendation that consumer pays an additional $2.75 million per year for DP&L to continue to provide worsening service.

## To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s recommendation that DP&L be allowed to defer up to $5 million in vegetation management expenses, which could be charged to consumers later.

DP&L proposed expanding its vegetation management program to include intra-cycle hot-spot tree-trimming and vegetation removal outside of the right of way. The PUCO Staff did not provide any recommendations regarding DP&L’s proposal. OCC’s expert Mr. Williams explained that tree-trimming within the right of way on a prescribed cycle should help reduce outages and avoid the need for an expensive expansion of the vegetation management program.[[143]](#footnote-144) But DP&L should not be authorized to defer an additional $5 million annually in tree-trimming expenses.[[144]](#footnote-145) No additional deferral in vegetation management expense should be authorized until and unless the PUCO approves an updated vegetation management plan that prescribes DP&L’s responsibilities, and the standards that must be met for future collection of any additional money from customers.[[145]](#footnote-146) And the collection of any deferred vegetation management costs must be subject to a PUCO Staff audit before the costs are passed on to consumers.[[146]](#footnote-147)

The PUCO Staff did not examine an underlying causes for the increases in tree-caused consumer outages before recommending further increases in baseline vegetation management expenses.[[147]](#footnote-148) Additionally, the PUCO Staff should have also recommended that the PUCO enforce the DP&L Inspection, Maintenance, Repair, and Replacement Program Plan and DP&L’s failure to adequately perform tree-trimming on its distribution circuits since 2018.[[148]](#footnote-149) The PUCO Staff should have examined alleged increases in tree-trimming costs before recommending an increase in the baseline vegetation management expense from $15.7 million to $17.5 million.[[149]](#footnote-150)

The PUCO should not approve this increase without a PUCO Staff examination of the just and reasonableness of the proposed increase. The PUCO Staff should examine the deferral expenses prior to recommending that these costs be passed along to consumers.[[150]](#footnote-151) The PUCO should not approve its Staff’s recommended on-going deferral of vegetation management expense without an updated vegetation management plan and protections including audits before the costs are passed on to consumers.[[151]](#footnote-152) And the PUCO should not require consumers to pay more in vegetation management expense when DP&L has already demonstrated that it is unwilling to comply with its current PUCO approved vegetation management plan.

To protect consumers, the PUCO should require PUCO Staff to enforce DP&L’s vegetation management plan. The PUCO should further deny its Staff’s recommendation to defer up to $5 million in vegetation management expenses, which could be charged to consumers later.

# **OCC’s RECOMMENDED CHANGES TO RATE OF RETURN**

## To protect consumers from paying higher rates, the PUCO should reject DP&L’s and the PUCO Staff’s recommended capital structure.

The PUCO should reject the PUCO Staff’s and DP&L’s recommended capital structure. OCC’s expert witness, Mr. Chris Walters, explained in his testimony that the PUCO Staff failed to consider the proxy group’s book value capital structure or other benchmarks such as the common equity ratio being awarded to electric utilities around the United States recently.[[152]](#footnote-153) And the proxy group’s capital structure cannot be ignored since it is used to estimate DP&L’s cost of equity.[[153]](#footnote-154) A more appropriate capital structure recommended by Mr. Walters is 52.89% common equity.[[154]](#footnote-155)

DP&L’s witness Mr. McKenzie also performed a DCF model on a non-utility proxy group, which he found to be a reasonable risk proxy for DP&L.[[155]](#footnote-156) The average adjusted DCF results fall within the range of 9.3% to 10.4% as summarized on Table AMM-8 of his corrected direct testimony.[[156]](#footnote-157) While Mr. McKenzie did not rely on the results of his non-utility DCF analysis in arriving at his recommended range of reasonableness,[[157]](#footnote-158) he did opine that the analysis is relevant in evaluating a fair ROE for DP&L.[[158]](#footnote-159) OCC’s witness Mr. Walters disagrees with Mr. McKenzie’s assessment.[[159]](#footnote-160)

The PUCO Staff accepted DP&L’s proposed capital structure consisting of common equity of 53.87% and long-term debt of 46.13%.[[160]](#footnote-161) But as discussed above, the proposed common equity ratio of 53.87% is excessive because it is not consistent with the common equity ratio approved by other regulatory jurisdictions and will place additional burden on ratepayers. Mr. Walters therefore recommends that the PUCO reject DP&L’s and Staff’s proposed common equity ratio of 53.87% and approve a capital structure with a common equity ratio of 52.89%, which is more consistent with the common equity ratio of the peer group companies and which will balance the interests of all stakeholders, while allowing DP&L to maintain its financial integrity and access to capital at reasonable terms.

To protect consumers from paying a too high capital structure, the PUCO should reject its Staff’s and DP&L’s recommended capital structure and instead adopt OCC’s recommended capital structure of common equity ratio of 52.89%.

## To protect consumers from paying higher rates, the PUCO should reject PUCO Staff’s and DP&L’s reliance on *Value Line* as a source for beta estimates to use in its CAPM without consideration of other sources as a check on the reasonableness of *Value Line’s* betas. The PUCO Staff’s and DP&L’s beta estimates are abnormally high, are being heavily influenced by market volatility experienced in 2020 as a result of the anomalous event of the pandemic caused by COVID-19, and do not necessarily capture investor expectations.

The PUCO should reject its Staff’s and DP&L’s reliance on *Value Line* to use in its CAPM without consideration of other sources to confirm the reasonableness of *Value Line’s* betas. Additionally, the PUCO should reject its Staff’s and DP&L’s beta estimates because they are abnormally high and are heavily influenced by the market volatility from 2020 resulting from the coronavirus pandemic.

OCC’s expert, Mr. Chris Walters evaluated the PUCO Staff’s and DP&L’s witness McKenzie’s CAPM analyses.[[161]](#footnote-162) Mr. Walters found that the PUCO Staff develops a traditional CAPM analysis based on the composite average of the 10- and 30-year Treasury bond yields of 3.05% for the period January 2006 to January 2021.[[162]](#footnote-163) And Staff relies on the *Value Line* proxy group average beta of 0.97 and a market risk premium of 6.57%.[[163]](#footnote-164)

Mr. Walters determined that Staff’s CAPM analysis is unreasonable.[[164]](#footnote-165) Specifically, Staff fails to consider other sources to check the reasonableness of its *Value Line* beta estimates.[[165]](#footnote-166) Further, Staff relies on an arbitrary risk-free rate of 3.05% that is not based on investors’ expectations.[[166]](#footnote-167) Additionally, Mr. Walters found that Staff’s sole reliance on *Value Line* betas in its CAPM analysis is inappropriate.[[167]](#footnote-168) Mr. Walters explained that this is because the current beta estimates from *Value Line* are significantly higher relative to their historical levels near 0.70 and are currently at levels not seen since the Great Recession caused by the financial crisis in 2008.[[168]](#footnote-169) The current increase in beta estimates was solely triggered by the COVID-19 pandemic and is not representative of investors’ expectations.[[169]](#footnote-170) Therefore, it is important to consider other beta estimates as Mr. Walters has done using the S&P Global Market Intelligence’s Beta Generator model. Using the Beta Generator model produces a beta estimate of 0.80 for Staff’s proxy group and is more appropriate.[[170]](#footnote-171)

Mr. Walters also found DP&L witness McKenzie’s CAPM analysis to be unreasonable.[[171]](#footnote-172) There are several concerns with Mr. McKenzie’s CAPM analysis. Mr. McKenzie’s CAPM analysis is overstated for at least three reasons: (1) his expected return on the market of 11.4% is based on an unsustainable growth rate of 8.9%, causing a bias and does not include any consideration of the long-run average return on the market; (2) his sole reliance on *Value Line* betas is at odds with his use of the S&P 500 as the benchmark for the overall market; and (3) his size adjustment is not reasonable.[[172]](#footnote-173) Mr. McKenzie also relied on a projected risk-free rate of 2.2% for the period 2021-2025.[[173]](#footnote-174) Mr. Walters testified that while he disagrees with the use of long-term projected yields five years into the future, to limit the issues in this regulatory proceeding he does not take issue with Mr. McKenzie’s projected risk-free rate of 2.2%.[[174]](#footnote-175)

An additional issue that Mr. Walters has with Mr. McKenzie’s expected return on the market is that Mr. McKenzie’s expected return on the market of 11.4% is based on a dividend yield of 2.5% and an expected growth rate of 8.9%.[[175]](#footnote-176) The expected growth rate of 8.9% incorporated in his expected market return is more than twice the expected growth rate of the economy of 4.35%.[[176]](#footnote-177)

Mr. Walters testified that Mr. McKenzie obtained growth rates for the dividend paying S&P 500 companies from three sources including Zacks, *Value Line*, and IBES.[[177]](#footnote-178) He uses these growth rates to perform three DCF analyses on the market.[[178]](#footnote-179) The growth rates Mr. McKenzie relies on include numbers that do not make logical sense from an economic perspective.[[179]](#footnote-180) For example, Mr. McKenzie’s expected growth of the market of 8.8% included companies with expected growth rates more than 4.0x higher than that of the overall economy.[[180]](#footnote-181) Mr. Walters explained that growth rates of this magnitude cannot be reasonably expected to continue into perpetuity, which is the time period for which the DCF is based on.[[181]](#footnote-182) Because of the abnormally high growth rates assumed in his DCF for the return on the market, Mr. McKenzie should have implemented alternative measures of the expected market return and market risk premium.[[182]](#footnote-183) As such, Mr. McKenzie should have incorporated other measures of the expected return on the market.[[183]](#footnote-184) Mr. Walters refers to Dr. Morin’s notes in his book, *New Regulatory Finance,*

Although realized returns for a particular time period can deviate substantially from what was expected, it is reasonable to believe that long-run average realized returns provide an unbiased estimate of what were expected returns. This is the fundamental rationale behind the historical risk premium approach. Analysts and regulators often assume that the average historical risk premium over long periods is the best proxy for the future risk premium.[[184]](#footnote-185)

Dr. Morin’s book concludes that “[t]here are two broad approaches to estimating the risk premium: retrospective and prospective. Each has its own strengths and weaknesses, hence the need to utilize both methods.”[[185]](#footnote-186) As such, Mr. Walters concludes that Mr. McKenzie should have considered the results of multiple estimates of the expected market return from multiple methods.[[186]](#footnote-187)

The PUCO should also reject the PUCO Staff’s reliance on the average of 10- and 30-year treasury yields over a 15-year historical period ending January 2021 as a proxy for the risk-free rate in its CAPM. Mr. Walters explained in his testimony that this method of estimating the risk-free rate is arbitrary and not shown to be based on investor expectations.[[187]](#footnote-188) In order to reflect investors’ expectation, it is more appropriate to rely on the current or the near-term projected risk-free rate consistent with the period rates determined in this proceeding will be in effect.[[188]](#footnote-189) Therefore, applying the near-term risk-free rate of 2.7%[[189]](#footnote-190) will more accurately capture investors’ expectations.[[190]](#footnote-191) Mr. Walters testified that the PUCO Staff’s CAPM analysis can be adjusted to produce an alternative CAPM for DP&L by applying the average beta of 0.80 produced by the Beta Generator Model and the near-term projected risk-free rate of 2.7% will produce a CAPM return of 7.95%.[[191]](#footnote-192)

Mr. Walters explained in his testimony why DP&L witness McKenzie’s sole reliance on *Value Line* betas in his CAPM analysis is inappropriate.[[192]](#footnote-193) OCC witness Mr. Walter’s explained that his CAPM analysis relies on beta estimates from *Value Line* and S&P Global Market Intelligence’s Beta Generator model.[[193]](#footnote-194) There are two distinct differences between the MI Beta I relied on and the *Value Line* Beta: (1) the benchmark index used as the proxy for the market in the MI Beta estimates is the S&P 500 whereas *Value Line* relies on the New York Stock Exchange (“NYSE”); and (2) the MI Betas I used are adjusted using the Vasicek method whereas the *Value Line* Betas are adjusted using a modified form of the Blume adjustment.[[194]](#footnote-195)

Because Mr. McKenzie is not presenting a CAPM analysis that relies on the NYSE as a proxy for the market, or the expected market return, which the market risk premium is calculated from, this alone makes the *Value Line* Betas less preferable.[[195]](#footnote-196) Betas employed in a CAPM should be calculated using the benchmark index that is also used as a proxy for the overall market.[[196]](#footnote-197) Mr. Walters explained that both he and Mr. McKenzie relied on the S&P 500 as the proxy for the overall market in estimating our market risk premium.[[197]](#footnote-198) But while *Value Line* Betas are commonly used in CAPM analyses presented in regulatory proceedings such as this one, it is theoretically incorrect to do so unless the NYSE is used as the proxy for the overall market used to calculate the market risk premium.[[198]](#footnote-199)

Mr. McKenzie’s size adjustment ROE adder is inappropriate because it is based on estimates made by Duff & Phelps’s Cost of Capital Navigator.[[199]](#footnote-200) Duff & Phelps estimates various size adjustments based on differentials in beta estimates tied to the size of a company.[[200]](#footnote-201) The main concern with these size adjustments as applied by Mr. McKenzie, is that they are not based on risk comparable companies relative to the electric utility industry or DP&L.[[201]](#footnote-202)

 Mr. Walters concluded that Mr. McKenzie’s size adjustment to his CAPM return is not risk comparable to DP&L because his size adjustment is based on companies that have significantly more systematic risks that are not reflective of the electric utility industry, his proxy group, or DP&L.[[202]](#footnote-203) The size adjustments relied on by Mr. McKenzie reflects companies that have unadjusted beta estimates well in excess of 1.00.[[203]](#footnote-204) Mr. Walters provided the beta estimates, as calculated by Duff & Phelps for each decile reproduced below in Table CCW-14.

Mr. Walters explained that these unadjusted beta estimates are substantially higher than the average adjusted beta of 0.88 for the utility group used by Mr. McKenzie as comparable risk proxy of DP&L’s investment risk.[[204]](#footnote-205) To put this into a more of an apple-to-apples comparison, Mr. Walters also provided the average unadjusted Ordinary Least Squares (“OLS”) regression beta for Mr. McKenzie’s proxy group (0.79). As shown above in the Table, every decile measured by Duff & Phelps has a much higher OLS beta than Mr. McKenzie’s utility group.[[205]](#footnote-206) The typical company in each decile is much riskier than the typical utility Mr. McKenzie relied on as a proxy of comparable risk to DP&L.[[206]](#footnote-207) And because of this significant disparity in risk, as measured by beta, Mr. McKenzie’s size adjustment produces a CAPM return estimate that does not produce a risk appropriate return for DP&L and therefore, is not a reasonable and fair return for DP&L.[[207]](#footnote-208)

OCC witness Mr. Walters also explained how beta corresponds with the level of investment risk for DP&L and therefore produces an appropriate risk-adjusted return for DP&L.[[208]](#footnote-209) Beta represents a measure of systematic or non-diversifiable, market-related risk.[[209]](#footnote-210) And all of Mr. McKenzie’s proxy company betas are measured relative to that of the overall market (proxied by the NYSE) and adjusted upward by *Value Line*.[[210]](#footnote-211) The market beta is considered to be 1.0.[[211]](#footnote-212) For companies that have betas greater than 1, they are regarded as having more risk than the overall market.[[212]](#footnote-213) For companies that have betas less than 1, they are regarded to have risk less than the overall market.[[213]](#footnote-214) Mr. McKenzie’s CAPM analysis can be adjusted to produce more reasonable results.[[214]](#footnote-215) But multiple corrections are required. Such corrections are 1) including an expected return on the market that is based in part on the long-run average realized return; (2) eliminating his size adjustments; (3) incorporating beta estimates that are calculated relative to the S&P 500 such as those presented in Mr. Walter’s CAPM analysis; and (4) removing Algonquin Power from the proxy group.[[215]](#footnote-216) Correcting Mr. McKenzie’s CAPM for the material flaws in his analysis would produce a reasonable return on equity no higher than 9.2%.[[216]](#footnote-217)

Accordingly, to protect consumers from paying higher rates based on PUCO Staff’s CAPM analysis, the PUCO should reject its Staff’s and DP&L’s reliance on *Value Line* to use in its CAPM without consideration of other sources to confirm the reasonableness of *Value Line*’s betas. The PUCO should also reject the PUCO Staff’s and DP&L’s reliance on historical treasury yields as a proxy for the risk-free rate in its CAPM and should instead apply Mr. Walters recommended average beta of 0.80 to produce a CAPM return of 7.95%

## To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s and DP&L’s flawed DCF analyses.

The average and median of the PUCO Staff’s constant growth DCF analysis are 8.93% and 9.10%, respectively. Additionally, there are multiple sources of projected economic growth which reflect investor’s expectations. Mr. Walters testified that Staff relied on a non-constant or multi-stage DCF model applied to its utility proxy group.[[217]](#footnote-218) The DCF model was based on the last four quarterly dividends and the daily closing price for the one-year period, ending January 27, 2021.[[218]](#footnote-219) The PUCO Staff relied on the analysts’ growth rate projections from Zacks and *Value Line* for the first five years of its model.[[219]](#footnote-220) The average analysts’ growth rate for the proxy group is 4.82%.[[220]](#footnote-221) For its terminal stage, beginning in year 26 to perpetuity, Staff relied on the historical GNP growth rate of 6.32% for the period 1929 to 2019 obtained from the U.S. Department of Commerce.[[221]](#footnote-222) The average result produced by Staff’s non-constant DCF model for its proxy group is 9.896%.[[222]](#footnote-223)

The PUCO Staff’s proposal to rely on a historical GNP growth rate of 6.32% significantly exceeds the consensus analysts’ market growth projections for the U.S. economy of 4.35% as Mr. Walters discuss in regard to his own multi-stage DCF model.[[223]](#footnote-224) Further, the PUCO Staff has not shown that its terminal growth rate of 6.32% based on the period 1929 – 2019 reflects the current market expectations.[[224]](#footnote-225) As described in Mr. Walters’ Technical Appendix, the consensus GDP growth rate from the *Blue Chip Financial Forecasts* is consistent with various credible sources.[[225]](#footnote-226) This projection reflects current outlooks for GDP growth and is likely to be influential on investors’ expectations of future growth outlooks.[[226]](#footnote-227) Therefore, Mr. Walters concludes that the PUCO Staff’s DCF return produces an unreliable and excessive ROE and should be rejected.[[227]](#footnote-228)

Staff’s non-constant DCF analysis can be adjusted to produce a reasonable return on equity for DP&L, however. Mr. Walters explained that this can be done because revising Staff’s terminal growth rate to reflect the consensus analysts’ growth projections of 4.35% produces an average DCF return for the proxy group of 8.66%.[[228]](#footnote-229) Additionally, Staff also developed constant growth DCF model that was completely disregarded in its consideration of a reasonable ROE for DP&L.[[229]](#footnote-230) As shown on Staff Schedule 1.4 through 1.8, the average DCF return produced by Staff’s constant growth model is 8.93%.[[230]](#footnote-231) Mr. Walters summarized Staff’s constant growth DCF return estimates in the Table below.[[231]](#footnote-232) Mr. Walters correction to Staff’s non-constant DCF analysis and constant DCF analysis produces a DCF return on equity for DP&L no higher than 9.0%, which is consistent with his DCF return.

DP&L’s witness Mr. McKenzie also provided a flawed DCF analysis, which OCC witness Mr. Walters rebutted.[[232]](#footnote-233) In developing his recommended DCF range, Mr. McKenzie excluded what he found to be outlier results.[[233]](#footnote-234) Mr. McKenzie removed 14 low-end outliers and zero high‑end outliers from his DCF results for his proxy group.[[234]](#footnote-235) Mr. McKenzie’s proposal to selectively remove what he believes to be low-end outliers from the proxy group has the effect of manipulating the results of the proxy group study.[[235]](#footnote-236) Mr. McKenzie simply narrows the range of the proxy group results to produce a result which he finds to be reasonable. This is not a reasonable assessment of what the current market cost of equity is for DP&L. Mr. Walters further explained that relying on the midpoint as Mr. McKenzie has done is not a well-accepted method of measuring the central tendency.[[236]](#footnote-237) The midpoint methodology employed by Mr. McKenzie ignores all but two results, the highest and the lowest.[[237]](#footnote-238)

OCC’s expert Mr. Walters testified that a better methodology would be to rely on all the results of the proxy group, by assessing the central tendency of the proxy group results.[[238]](#footnote-239) In the presence of outliers, a more accurate method of measuring the central tendency of the proxy group’s results would be to measure the median of all the DCF return estimates.[[239]](#footnote-240)

The median DCF results for Mr. McKenzie’s proxy group is no higher than 9.0% as shown on Mr. Walter’s Exhibit CCW-20.[[240]](#footnote-241) Mr. Walters correctly recommends that Mr. McKenzie’s lopsided outlier test unreasonably biases the results of his analyses upwards and should be rejected.[[241]](#footnote-242) This bias is exacerbated with the use of his midpoint methodology. [[242]](#footnote-243)As such, they should be both be rejected, and the median results should be relied on.[[243]](#footnote-244)

Therefore, to protect consumers for paying higher rates, the PUCO should reject the PUCO Staff’s and DP&L witness McKenzie’s DCF analyses and should instead adopt OCC’s witness recommendation of a DCF return on equity no higher than 9.0%.

|  |  |  |  |  |
| --- | --- | --- | --- | --- |
|  |  |  |  |  |
|  | **TABLE CCW-12** | | |  |
|  | **Staff’s Constant DCF Return** | | |  |
|  | **DP&L** |  | **Result** |  |
|  | CenterPoint Energy |  | 7.90% |  |
|  | Edison International |  | 10.26% |  |
|  | Exelon Corp. |  | 7.38% |  |
|  | FirstEnergy Corp. |  | 10.00% |  |
|  | PNM Resources |  | 9.10% |  |
|  | **Average** |  | **8.93%** |  |
|  | Source: Staff Schedule D-1.4 to D-1.8. | | |  |
|  |  |  |  |  |

## To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s and DP&L’s inappropriate increase to the ROE by allowing an adjustment for equity issuance and other costs.

OCC witness Mr. Walters testified that the PUCO should reject the PUCO Staff’s recommended increase to the ROE by including an upward adjustment of approximately 13 basis points to compensation for issuance and other costs to its ROE recommendation because it is unreasonable.[[244]](#footnote-245) Mr. Walters testified that the PUCO Staff’s issuance cost ROE adder is not reasonable or justified because it is not based on the recovery of prudent and verifiable actual issuance costs incurred by DP&L.[[245]](#footnote-246) And as shown on Staff Schedule D-1.1, the PUCO Staff uses a generic issuance cost of 3.5% applied to the ratio of retained earnings to common equity.[[246]](#footnote-247) Mr. Walters is correct to point out that, importantly, the PUCO Staff does not show that this adjustment is based on DP&L’s actual and verifiable issuance expenses.[[247]](#footnote-248) Therefore, there is no means of verifying whether Staff’s proposal is reasonable or appropriate.[[248]](#footnote-249) Stated differently, the PUCO Staff’s issuance cost ROE adder is not based on known and measurable costs.[[249]](#footnote-250) Therefore, the PUCO should reject it.

Mr. Walters also addressed DP&L’s similarly unreasonable return on equity.[[250]](#footnote-251) Mr. Walters rebutted DP&L witness McKenzie recommends flotation-cost adjusted return on equity range of 9.5% to 10.8% with a point estimate of 10.5%.[[251]](#footnote-252) Mr. McKenzie included a 0.10% upward adjustment to account for flotation costs.[[252]](#footnote-253) And his recommended return on equity is 35 basis points above the midpoint (10.15%) of his range after accounting for flotation costs.[[253]](#footnote-254) Mr. Walters testified that Mr. McKenzie developed his ROE recommendation based on the results of his DCF, traditional CAPM, Empirical CAPM (“ECAPM”), and a Risk Premium model.[[254]](#footnote-255) Mr. McKenzie apparently relies on the results of an Expected Earnings analysis and a non-utility DCF analysis as an attempt to corroborate his results.[[255]](#footnote-256)

As shown below in Table 13, below, Mr. Walters provided the average results of Mr. McKenzie’s analyses which he relies on to conclude that a ROE in the range of 9.5% to 10.8%, with a midpoint of 10.5%, is reasonable for DP&L.[[256]](#footnote-257) However, reasonable adjustments to Mr. McKenzie’s analysis reduces his ROE estimate for DP&L to no higher than Mr. Walters’ recommended ROE of 9.30%.

|  |  |  |
| --- | --- | --- |
| **TABLE 13**  **Mr. McKenzie’s ROE Analysis** | | |
| **Model** | **Average** | **Corrected** |
| DCF | 8.7% - 9.6% | 9.0% |
| CAPM | 10.8% - 10.9% | 9.2% |
| ECAPM | 11.1% - 11.2% | Reject |
| Risk Premium |  |  |
| Current Yield | 9.4% | 9.4% |
| Projected Yield | 10.3% | Reject% |
| Expected Earnings | 10.3% - 10.8% | Reject |
| Range | 9.4% - 10.7% |  |
| Flotation Cost Adj. | 0.10% | Reject |
| Adjusted Range | 9.5% - 10.8% |  |
| **Recommended ROE** | **10.5%** | **9.30%** |
| Source: Exhibit AMM-2 (Corrected). |  |  |

Mr. Walters also testified that Mr. McKenzie’s current and project ECAPM analyses are not reasonable.[[257]](#footnote-258) Mr. Walters explained that Mr. McKenzie’s ECAPM analyses share all of the same flaws as his traditional CAPM analyses.[[258]](#footnote-259) More importantly, Mr. McKenzie’s proposal to apply an ECAPM while using adjusted betas published by *Value Line*, as well as the long-term risk-free rate further inflates his results. Mr. McKenzie’s analysis and results should be disregarded.[[259]](#footnote-260)

Mr. McKenzie’s ECAPM analysis is flawed because his model was developed using adjusted utility betas.[[260]](#footnote-261) An ECAPM analysis flattens the security market line, and is designed for raw beta estimates, not adjusted betas such as the ones published by *Value Line*.[[261]](#footnote-262) Beta adjustments, on their own, accomplish virtually the same thing as an ECAPM analysis.[[262]](#footnote-263) They flatten the security market line and increase the intercept at the risk-free rate.[[263]](#footnote-264) ECAPM analysis is not designed to be used with adjusted betas, but rather is designed to be used with unadjusted betas.[[264]](#footnote-265) OCC’s witness Mr. Walters explained that Mr. McKenzie’s proposal to use adjusted betas within an ECAPM analysis is unreasonable and double counts the attempt to flatten the security market line and increase CAPM return estimates for companies with betas below 1 and decrease CAPM return estimates for companies with betas greater than 1.[[265]](#footnote-266)

Mr. Walters also testified that the notion that an adjustment to beta is only a horizontal axis adjustment is not true.[[266]](#footnote-267) The *Value Line* beta adjustment alters the CAPM return at both the vertical axis (the intercept point) and the horizontal axis, the slope of the CAPM return line (along the horizontal axis).[[267]](#footnote-268) This is depicted in Figure 4 below.

As shown in Figure 4, Mr. Walters modeled the expected returns at various levels of raw beta using both the traditional CAPM and ECAPM methodologies assuming a risk‑free rate of 3.50%, and a market risk premium of 7.50%.[[268]](#footnote-269) Mr. Walters also shows the expected CAPM and ECAPM returns using the associated adjusted (*Value Line*) beta estimates for each raw beta estimate.[[269]](#footnote-270) As shown in Figure 4 below, the impact on the traditional CAPM return using a raw beta and a traditional CAPM using an adjusted beta has the effect of increasing the intercept point at a zero raw beta (y axis) from: (1) risk-free rate to (2) the combination of the risk-free rate plus 35% of the market risk premium.[[270]](#footnote-271) Further, as the unadjusted beta is increased above zero, the adjusted beta increases the CAPM return when the raw beta is less than one and decreases the CAPM return when the raw beta is greater than one.[[271]](#footnote-272) In other words, the beta adjustment raises the CAPM return at the vertical axis point and flattens the security market across the horizontal axis as the raw beta increases above zero.[[272]](#footnote-273)

The ECAPM using raw betas has the same impact on the traditional CAPM using an adjusted beta: the ECAPM increases the CAPM return at a zero raw beta from: (1) the risk-free rate, to (2) the risk-free rate plus 25% of the market risk premium.[[273]](#footnote-274) Further, the ECAPM using raw betas flattens the traditional CAPM return line across the horizontal axis as the raw betas increase above zero.[[274]](#footnote-275)

**FIGURE 4**



As shown in the graph above (Figure 4), compared to the traditional CAPM using a raw beta, the traditional CAPM using an adjusted beta raises the intercept point (a y axis impact) and flattens the slope of the security market line (an x axis impact).[[275]](#footnote-276) Similarly, using a raw beta estimate, the ECAPM raises the intercept point at the y axis and flattens the CAPM return for all raw beta estimates.[[276]](#footnote-277)

Significantly, Mr. Walters testified, if an adjusted beta is used in an ECAPM return model, the CAPM return at the y axis increases from: (1) the risk-free rate, up to (2) the risk-free rate plus approximately 51% of the market risk premium.[[277]](#footnote-278) Further, the CAPM return for betas less than one starts at an inflated y axis intercept point and increases as the raw beta increases above zero.[[278]](#footnote-279)

Mathematically, *Value Line*’s beta adjustments produce nearly the same effect on the estimated CAPM return as does an ECAPM using a raw beta.[[279]](#footnote-280) Using an adjusted beta in an ECAPM model, as Mr. McKenzie has proposed, produces a flawed and inflated CAPM return estimate.[[280]](#footnote-281)

The PUCO should reject the PUCO Staff’s and DP&L’s inappropriate increase to the return on equity by allowing an adjustment for equity issuance and other costs.

## To protect consumers from paying higher rates, the PUCO should reject DP&L’s flotation cost adjustment in its requested return.

OCC expert Mr. Walters testified that DP&L witness Mr. McKenzie included an upward adjustment of 10 basis points to compensate for flotation costs to his return on equity recommendation.[[281]](#footnote-282) Mr. Walters notes that Mr. McKenzie acknowledges there is no standard method for reflecting flotation costs in return on equity methodology.[[282]](#footnote-283)

Specifically, Mr. McKenzie states that “[t]he most common method used to account for flotation costs in regulatory proceedings is to apply an average flotation-cost percentage to a utility’s dividend yield.[[283]](#footnote-284) Mr. McKenzie calculates the average flotation cost percentage of the most recent share issuances by the electric and gas utility industries as categorized by *Value Line*. He calculates the average flotation cost percentages for the electric and gas utility industry as 2.9%. He then applies the average flotation cost adjustment of 2.9% to his proxy group’s average dividend yield of 3.9%. This method produces a flotation cost adjustment of 10 basis points for his proxy group.

Mr. Walters explained that Mr. McKenzie’s flotation cost return on equity adder is not reasonable or justified for several reasons.[[284]](#footnote-285) First, the adder is not based on the recovery of prudent and verifiable actual flotation costs incurred by DP&L.[[285]](#footnote-286) Mr. McKenzie derived a flotation cost adder based on cost information of other publicly traded utility holding companies.[[286]](#footnote-287) But because he does not show that his adjustment is based on DP&L’s actual and verifiable flotation expenses, there are no means of verifying whether Mr. McKenzie’s proposal is reasonable or appropriate.[[287]](#footnote-288) Stated differently, Mr. McKenzie’s flotation cost return on equity adder is not based on known and measurable costs.[[288]](#footnote-289)

Therefore, OCC recommends that the PUCO should reject a flotation cost return on equity adder for DP&L.

## To protect consumers from paying higher rates, an expected earnings analysis is not a reasonable method for estimating a fair ROE for DP&L.

OCC’s expert Mr. Walters explained in his testimony that an Expected Earnings analysis does not measure the return an investor requires in order to make an investment.[[289]](#footnote-290) In other words, the accounting measure of the earned ROE does not measure the opportunity cost of capital.[[290]](#footnote-291) Rather, it measures the earned return on book equity that companies have experienced in the past or are projected to achieve in the future.[[291]](#footnote-292) The returns investors require in order to assume the risk of an investment are measured from prevailing stock market prices.[[292]](#footnote-293)

In general, determining a fair cost of common equity for a regulated utility has been framed by two hallmark decisions of the U.S. Supreme Court: *Bluefield Water Works & Improvement Co. v. Pub. Serv. Comm’n of W. Va*., 262 U.S. 679 (1923) and *Fed. Power Comm’n v. Hope Natural Gas Co*., 320 U.S. 591 (1944).[[293]](#footnote-294) In these decisions, the Supreme Court found that just compensation depends on many circumstances and must be determined by fair and enlightened judgments based on relevant facts.[[294]](#footnote-295) The Court found that a utility is entitled to such rates as were permitted to earn a return on a property devoted to the convenience of the public that is generally consistent with the same returns available in other investments of corresponding risk.[[295]](#footnote-296) The Court continued that the utility has “no constitutional rights to profits” such as those realized or anticipated in highly profitable enterprises or speculative ventures, and defined the ratepayer/investor balance as follows:

The return should be reasonably sufficient to assure confidence in the financial soundness of the utility and should be adequate, under efficient and economical management, to maintain and support its credit and enable it to raise the money necessary for the proper discharge of its public duties.[[296]](#footnote-297)

As such, a fair rate of return is based on the expectation that the utility costs reflect efficient and economical management, and the return will support its credit standing and access to capital, but the return will not be in excess of this level.[[297]](#footnote-298) From these standards, rates to customers will be just and reasonable, and compensation to the utility will be fair and support financial integrity and credit standing, under economic management of the utility, and just and reasonable rates.[[298]](#footnote-299)

In addition, Mr. Walters explained, the FERC has recently found that the Expected Earnings model does not satisfy the requirements of *Hope*.[[299]](#footnote-300) In part, the FERC states as follows:

As a result, the expected return on a utility’s book value does not reflect “returns on investments in other enterprises” because book value does not reflect the value of any investment that is available to an investor in the market, outside of the unlikely situation in which market value and book value are exactly equal. Accordingly, we find that relying on the Expected Earnings model would not satisfy the requirements of *Hope*.

The return on book value is also not indicative of what return an investor requires to invest in the utility’s equity or what return an investor receives on the equity investment, because those returns are determined with respect to the current market price that an investor must pay in order to invest in the equity.[[300]](#footnote-301)

Later in the same Opinion, FERC observes that Expected Earnings model does not identify investments of comparable risk.[[301]](#footnote-302) It states as follows:

Moreover, we find that the record demonstrates that the Expected Earnings model does not identify investments of comparable risk and which alternatives will have a higher expected return as MISO TOs’ witness Mr. McKenzie indicates. In particular, because the Expected Earnings model measures returns on book value, without consideration of what market price an investor would have to pay to invest in the relevant company, it does not accurately measure the investor’s expected returns on its investment.[[302]](#footnote-303)

Additionally, the historical and projected earned ROE for these holding companies can be significantly influenced by the financial performance of non-regulated operations.[[303]](#footnote-304)

OCC’s witness Mr. Walters explained that Mr. McKenzie relied, in part, on the significant rise in the Chicago board options exchange volatility index (“VIX”) during the period of February and March 2020 as support for his assertion that investors have dramatically revised their risk perceptions.[[304]](#footnote-305) Mr. McKenzie observed that between February 19 and March 23, 2020, the VIX rose to levels not seen since the 2008-2009 financial crisis.[[305]](#footnote-306) As he stated, the VIX is a measure of “near-term volatility” expectations.[[306]](#footnote-307) The VIX is calculated based on prices of out-of-the-money call and put options for the S&P 500 and is an estimate of the expected volatility in the overall market for approximately the next 30 days at any given time.[[307]](#footnote-308) Mr. Walters recommends that Mr. McKenzie’s reliance on the VIX to support his assertion with regard to investors’ risk should be disregarded when assessing a fair ROE for DP&L for at least two reasons.[[308]](#footnote-309)

First, as discussed above, the VIX is a measure of expected volatility in the S&P 500 for approximately the next 30 days at any point in time.[[309]](#footnote-310) Establishing a rate of return that can be expected to last several months, if not years, based on the levels of something that represents such a short-term outlook does not make sense and should not be implemented now.[[310]](#footnote-311) If Mr. McKenzie believes that the sharp increase in the VIX levels experienced in early 2020 are somehow relevant to today’s cost of equity, then he cannot ignore the subsequent and immediate falls in expected volatility.[[311]](#footnote-312) In other words, spikes in expected short-term volatility are short-lived and should not be relied on in assessing the long-term cost of capital.[[312]](#footnote-313)

Second, the paradigm appears to be shifting as the world transitions toward normalcy given the massive vaccine rollouts are implemented.[[313]](#footnote-314) It is reasonable to expect a recovery in many sectors throughout our economy, especially those that were most harshly hit during the pandemic.[[314]](#footnote-315) Such a recovery would likely quell investor fears as it relates to COVID-19 and its going-forward impact on the market.[[315]](#footnote-316)

For these reasons, Mr. McKenzie’s Expected Earnings analysis should be disregarded.

## To protect consumers from paying higher rates, the PUCO should reject DP&L’s utility equity risk premium.

OCC’s expert Mr. Walters testified that DP&L’s witness Mr. McKenzie projected a utility bond yield of 4.84%.[[316]](#footnote-317) Mr. McKenzie used a projected Aa-rated utility bond yield for the period 2021 through 2025 of 4.12%.[[317]](#footnote-318) He then measured the current yield spread of Baa-utility bond yields over Aa utility bond yields of 0.72%, which he adds to the projected AA-utility bond yield of 4.12% to produce his projected yield of 4.84%.[[318]](#footnote-319) This projected yield is based on irrational data in today’s market.[[319]](#footnote-320) Mr. McKenzie’s current Baa‑rated utility bond yield is 3.63% as shown on page 1 of his Exhibit AMM-8.[[320]](#footnote-321) Mr. McKenzie’s projected increase of 121 basis points[[321]](#footnote-322) in Baa-rated utility bond yields is not reflective of current market conditions or near-term expectations.[[322]](#footnote-323) A near‑term forecasted spread of that magnitude is unreasonable and should not be relied upon.[[323]](#footnote-324)

Mr. Walters explained that although he disagrees with Mr. McKenzie’s use of a simple linear regression analysis to estimate the risk premium, his analysis can be corrected to produce more reasonable results.[[324]](#footnote-325) Mr. McKenzie’s analysis, when coupled with current yields, produces a risk premium result of 9.44%, which is consistent with Mr. Walter’s recommendations.[[325]](#footnote-326) Using Mr. McKenzie’s Baa-rated yield of 3.63%, which is comparable to the recent Baa-utility yields and his 2019 risk premium of 5.78% would produce a similar ROE of 9.41%.[[326]](#footnote-327)

The PUCO should reject Mr. McKenzie’s long-term projected Baa-rated utility bond yield of 4.84% and the risk premium results derived from it. The PUCO should, instead, adopt OCC’s expert, Mr. Walters’s recommendations above.

## To protect consumers from paying higher rates, the PUCO should reject the PUCO Staff’s recommended rate of return range of 7.05% to 7.59% because it is too high and would result in unjust and unreasonable rates for consumers.

Staff witness Mr. Joseph Buckley supported the recommendation of a 7.05% to 7.59% rate of return contained in the Staff Report.[[327]](#footnote-328) The PUCO should reject the PUCO Staff’s recommended rate of return range of 7.05% to 7.59% because it is too high and will result in unjust and unreasonable rates. Instead, the PUCO should adopt Mr. Walters more reasonable rate of return for DP&L of 7.01%.[[328]](#footnote-329) Otherwise, consumers will pay higher rates that are unjust and unreasonable.

At hearing, Mr. Buckley acknowledged that DP&L’s management was responsible for its current predicament and that the PUCO should not award DP&L for its own mis-management by awarding it the high end of Staff’s recommend return.[[329]](#footnote-330) For example, Mr. Buckley cited the fact that DP&L created a substantial amount of risk by holding onto its generating plants after other Ohio electric distribution utilities sold theirs.[[330]](#footnote-331) He also testified that the PUCO should not reward DP&L with a high recommended return where the Company has failed to deliver adequate service quality.[[331]](#footnote-332)

# **OCC’s RECOMMENDED CHANGES TO DP&L’s RATES AND TARIFFS**

## To protect consumers from paying higher rates that are unjust and unreasonable, the PUCO should reject the PUCO Staff’s recommendation to allocate 66.70% of base distribution charges to residential consumers.

The PUCO should reject both DP&L’s and the PUCO Staff’s proposed revenue increases to protect consumers from paying higher rates. OCC’s expert witness Mr. Robert Fortney testified that residential consumers should pay no more than 63.10% of base distribution charges.[[332]](#footnote-333) But DP&L has proposed a revenue increase of $119.6 million in base distribution rates.[[333]](#footnote-334) And the PUCO Staff has proposed an increase of $64.1 million in base distribution rates.[[334]](#footnote-335) Additionally, the PUCO Staff recommends that the PUCO grant an increase of $36.4 million to the residential consumer class.[[335]](#footnote-336) This represents 56.8% of the total increase recommended by PUCO Staff.[[336]](#footnote-337) With that increase, the proposed allocation of the base distribution costs to residential consumers is 66.7%.[[337]](#footnote-338) This is much higher than what residential consumers should be required to pay. In fact, Mr. Fortney recommends that the residential class should not be allocated more that 40% of the increase.[[338]](#footnote-339)

As the PUCO knows, the coronavirus pandemic and financial emergency has been devastating for Ohioans. And even before the pandemic, Dayton-area consumers were suffering, facing some of the worst poverty in the state, with more than 32% of residential consumers in the City of Dayton living in poverty—more than twice the state average.[[339]](#footnote-340) Many more Ohioans in Montgomery County live just above the poverty line.[[340]](#footnote-341) And before the pandemic, more than 14% of Ohioans in Montgomery had inadequate access to food.[[341]](#footnote-342) Unfortunately, food insecurity affects children even more, with over 20% of Montgomery County children lacking adequate access to food.[[342]](#footnote-343)

These types of problems—and others—have only been made worse by the coronavirus pandemic and financial emergency. Unemployment reached 10% or more in the Dayton region during the pandemic, and although employment rates have improved since then, a recent report shows that Dayton’s unemployment rate is still higher than both the state and national average.[[343]](#footnote-344)

Residential consumers are still economically struggling due to horrific and prolonged global effects of the coronavirus pandemic. The pandemic continues. The cases related to the delta variant of the coronavirus are escalating. Just recently, Ohio recorded the highest number of daily infections since February 2021.[[344]](#footnote-345) The rate increase proposed by the PUCO Staff does not address these important concerns for residential consumers.

OCC’s expert witness, Mr. Fortney recommended allocating no more than 40% of the increase to residential consumers.[[345]](#footnote-346) Because at the Staff recommended increase of $64.1 million, this would result in a $25.7 million increase to residential consumers.[[346]](#footnote-347) The resulting allocation of base distribution revenue to the Residential class would be $190.3 million, or 63.1% of the total proposed revenue.[[347]](#footnote-348) Mr. Fortney concluded that, ultimately, residential consumers should pay no higher than 63.1% of the total proposed base distribution revenue.[[348]](#footnote-349)

The PUCO should reject the PUCO Staff’s and DP&L’s allocation of base distribution revenue because it is too high. To protect consumers from paying higher rates that are unjust and unreasonable, the PUCO should adopt OCC’s expert witness, Mr. Fortney’s recommended allocation of no more than 40% of the increase to residential consumers and no more than 63.1% of base distribution revenue to consumers.

## To protect consumers from paying higher rates that are unjust and unreasonable, the PUCO should reject the PUCO Staff’s too high recommended customer charge of $9.75 because it includes charges for line transformers, uses an unreasonably high carrying cost of 26.35%, and violates the regulatory principle of gradualism. A more reasonable customer charge would be no greater than $8.25.

OCC objects to the PUCO Staff’s recommended $9.75 and AES Ohio’s recommended $15.66 customer charge for residential consumers. Although OCC’s expert, Mr. Fortney, agrees with the PUCO Staff’s use of the minimally compensatory method of determining the residential customer charge, he objects to the amount of $9.75.[[349]](#footnote-350)

Mr. Fortney testified that he objects to this amount because Staff has included Account 368, Line Transformers, in its minimally compensatory calculation, which it should not have.[[350]](#footnote-351) Mr. Fortney explained in his testimony that the customer charge should recover only those costs that are directly attributable to serving an individual consumer, independent of his or her demand.[[351]](#footnote-352) Mr. Fortney also testified that according to the 1992 NARUC Electric Cost Allocation Manual, “Primary voltages are reduced to more usable secondary voltages by smaller line transformers installed at customer locations along the primary distribution circuit. In some cases, the utility may choose to install transformers for the exclusive use of a single commercial or industrial customer. On the other hand, in service areas with high customer density, such as housing tracts, a line transformer will be installed to serve many customers. In this case, secondary voltage lines will run from pole to pole or from hand hole to hand hole, and each customer is served by a drop tapped off the secondary line leading directly to the customers premise.”[[352]](#footnote-353) It goes on to say, “Analysts should be aware that minimum-sized distribution equipment (FERC accounts 364-368) has a certain load-carrying capability, which can be viewed as a demand-related cost.”[[353]](#footnote-354)

Mr. Fortney argues that Line Transformers should not be viewed as customer-related plant and should not be included in a minimally compensatory calculation to determine the customer charge.[[354]](#footnote-355) Additionally, the customer charge should provide a price signal to the consumer that there are costs associated with serving the consumers that are independent of the customer demand for the consumption of energy.[[355]](#footnote-356) The demand or energy charge should recover the remaining capital operating costs the company incurs while providing sufficient operating capacity to meet the consumer’s maximum demand.[[356]](#footnote-357) And in the past, the Staff has not generally included Line Transformers when calculating the customer charge.[[357]](#footnote-358) For example, in AEP Ohio’s recent base rate case, the Staff’s minimally compensatory customer charge calculation in its Staff Report did not include Account 368.[[358]](#footnote-359)

OCC also disagrees with the PUCO Staff that there should be a 26.35% carrying charge to the net plant accounts. The PUCO Staff provided no justification or explanation as to how the charge was determined.[[359]](#footnote-360) According to Mr. Fortney, AES Ohio utilized a 25.00% carrying charge.[[360]](#footnote-361) But the PUCO Staff did not explain why it adopted a higher carrying charge, and there was no justification provided for the higher charge.[[361]](#footnote-362)

Mr. Fortney also recommended a residential consumer charge of not more than $8.25.[[362]](#footnote-363) And he arrived at this amount by correcting the two errors in the Staff Report.[[363]](#footnote-364) Specifically, he excluded Account 368 (Line Transformers) and used a 25.00% carrying charge instead of Staff’s higher 26.35%.[[364]](#footnote-365) Mr. Fortney concluded that the PUCO Staff’s minimally compensatory methodology, absent the inclusion of Account 368 and including rationale regarding the derivation of the carrying charge, should be adopted in this case and in the future to protect residential consumers from unnecessary customer charge rate increases.[[365]](#footnote-366) An increase from the current customer charge of $7.00 to Mr. Fortney’s proposed $8.25 is also consistent with the regulatory principle of gradualism, which the PUCO has described as a “longstanding and important regulatory principle [that] seeks to minimize the impact of rate changes on customers.”[[366]](#footnote-367) Minimizing the increase to the customer charge helps avoid rate shock, especially for low-use customers whose bills are more disproportionately impacted by an increase to the fixed charges on their bills.[[367]](#footnote-368)

Therefore, to protect consumers from paying unjust and unreasonable rates, the PUCO should adopt a 25.00% carrying charge and a consumer charge of no more than $8.25.

# **OCC’s RECOMMENDATIONS TO SERVICE MONITORING AND ENFORCEMENT**

## To protect consumers from inadequate service quality, the PUCO should apply financial penalties for DP&L’s failure to comply with the minimum PUCO distribution reliability standards in 2019 and 2020 enumerated in O.A.C. 4901:1-10-10(E).

The PUCO should fine DP&L for its failure to comply with the minimum PUCO distribution reliability standards, O.A.C. 4901:1-10-10(E), in 2019 and 2020. OCC’s expert witness Mr. Jim Williams testified that the PUCO Staff report described that AES Ohio missed its Customer Average Interruption Duration Index (“CAIDI”) reliability standard in both 2019 and 2020 and was in violation of Ohio Adm. Code 4901:1-10-10(E).[[368]](#footnote-369) The PUCO Staff Report also mentioned that a letter of probable non-compliance was issued by the PUCO Staff.[[369]](#footnote-370) And according to DP&L’s response to OCC’s discovery, an action plan was submitted to the PUCO Staff for failure to meet the 2019 and 2020 minimum reliability standards.[[370]](#footnote-371)

The PUCO rules require that action plans include a proposal for improving performance to a level that meets or exceeds the minimum performance standards established by the PUCO.[[371]](#footnote-372) Mr. Williams also testified that between 2018 and 2020, DP&L had seven circuits on the worst performing circuits report for three consecutive years.[[372]](#footnote-373) This creates a rebuttable presumption of a violation of Ohio Adm. Code 4901:1-10-11(F). But no specific compliance recommendations were made in the PUCO Staff Report regarding repeat circuits being on the worst performing circuits report for more than 3 years for 2018, 2019, and 2020.

The PUCO rules, O.A.C. 4901:1-11(F), requires utilities to take sufficient remedial action to make sure that no circuit is listed on three consecutive reports. Furthermore, the minimum PUCO standard establishes a rebuttable presumption of a violation of the rule if a circuit is listed for three consecutive years. But despite this, the PUCO Staff Report did not examine the reliability of the DP&L distribution system. Nor did the PUCO Staff provide an analysis of whether DP&L complied with 2019 and 2020 Action Plans that were submitted to the PUCO Staff.[[373]](#footnote-374) The PUCO Staff Report also failed to make recommendations regarding enforcement of the minimum electric reliability performance standards including fines and forfeitures, or consequences for repeat circuits on the eight percent worst performing circuits report.

The PUCO required minimum electric reliability standards consist of a system average interruption frequency index (“SAIFI”) and CAIDI.[[374]](#footnote-375) SAIFI is a measure of the average number of interruptions consumers experience on an annual basis and is calculated by dividing the total number of consumers interrupted by the total number of consumers. CAIDI is a measure of the average duration of outages (or time to restore service) following an outage. CAIDI is calculated by dividing the total minutes of consumer interruptions by the total number of consumers interrupted. The following table provides a comparison of the DP&L reliability standards with actual performance between 2016 through 2020.

**Comparison DP&L Reliability Standards with Actual Performance (2016 – 2020)[[375]](#footnote-376)**

|  |  |  |  |  |  |
| --- | --- | --- | --- | --- | --- |
| **Metric(s)** | **2016** | **2017** | **2018** | **2019** | **2020** |
|  |  |  |  |  |  |
| CAIDI Standard | 125.04 | 125.04 | 125.04 | 125.04 | 125.04 |
| CAIDI After Exclusions | 119.08 | **133.07** | 118.41 | **133.29** | **132.17** |
| CAIDI Before Exclusions | 164.16 | 185.56 | 170.86 | 437.03 | 157.88 |
|  |  |  |  |  |  |
| SAIFI Performance Standard | 0.88 | 0.88 | 0.88 | 0.88 | 0.88 |
| SAIFI After Exclusions | 0.69 | 0.68 | 0.83 | 0.88 | 0.88 |
| SAIFI Before Exclusions | 0.92 | 1.06 | 1.14 | 1.39 | 1.10 |
| Consumers | 580,592 | 584,044 | 587,473 | 591,607 | 594,965 |

The Ohio minimum distribution reliability performance standards are often referred to as blue sky standards since they exclude outage events that occur during major events and transmission outages. As shown above, DP&L failed to meet the minimum CAIDI performance standard in three of the last five years (2017, 2019, and 2020). And while DP&L met its SAIFI standard in each of the last five years, the SAIFI performance has declined from 0.69 in 2016 to 0.88 in both 2019 and 2020. This means that not only are DP&L consumers experiencing unacceptably longer duration outages, but consumers are also experiencing more frequent outages that just barely meets the minimum PUCO standard.

The single largest contributor to the number of annual outage events, customer interruptions, and customer minutes interrupted is equipment/hardware outages. In 2019, equipment/hardware failures constituted approximately 27% of all customer interruptions and 31 percent of all customer minutes interrupted. In 2020, equipment/hardware failures constituted approximately 24% of all customer interruptions and approximately 26% of all customer minutes interrupted. Outages caused by animals/birds consistently represent one of the highest causes for outage events. Tree-caused outages inside and outside the right of way represent a high number of outage events, customer interruptions, and customer minutes interrupted.

As part of the last distribution rate case, DP&L committed to a process that included funding levels for the Distribution Investment Rider (“DIR”) that was approved under the DP&L ESP III.[[376]](#footnote-377) DP&L committed to work with the PUCO Staff and OCC to develop an annual plan for the DIR that emphasized proactive distribution maintenance and that focused spending on where it would have the greatest impact on maintaining or improving reliability for consumers.[[377]](#footnote-378)

Infrastructure modernization under the DIR would include replacement of equipment and hardware that contribute to equipment/hardware failures and other outage causes.[[378]](#footnote-379) This is a common use of similar capital investment riders that are used by other Ohio Electric Distribution Utilities (EDUs).[[379]](#footnote-380) But capital recovery riders are not a prerequisite for EDUs to invest in its distribution system and to replace equipment as necessary.[[380]](#footnote-381) But the DIR no longer exists. It terminated when DP&L terminated ESP III and reverted to the previously approved ESP I. However, AES Ohio continues to have a responsibility to provide adequate service under R.C. 4905.22 regardless of whether there is a capital recovery mechanism like the DIR.

Mr. Williams testified that DP&L’s failure to comply with the minimum distribution reliability standards, the number of repeat circuits on the worst performing circuits report, and failure to comply with its vegetation management plan constitutes inadequate service to consumers.[[381]](#footnote-382) As a result, Mr. Williams recommends that DP&L should be held financially accountable for providing inadequate and unreliable service to consumers as the PUCO has ruled in other cases.[[382]](#footnote-383) Under the PUCO rules Ohio Adm. Code 4901:1-10-30, failure to comply with PUCO rules and orders should result in a forfeiture of ten thousand dollar per violation per day.

DP&L is in non-compliance with its Inspection, Maintenance, Repair, and Replacement Program pertaining to its cycle-based tree-trimming plan. DP&L failed to comply with Ohio Adm. Code 4901:1-10-11 regarding repeat failing circuits on its eight percent worst performing circuits report. DP&L has failed to comply with Ohio Adm. Code 4901:1-10-10(E) by missing its CAIDI reliability standard in 2019 and 2020.

At a minimum, Mr. Williams’ recommendation is that the PUCO order DP&L to invest a minimum of $20 million in shareholder funds (not to be collected from consumers). This seems highly appropriate given that DP&L had more than $60 million in significantly excessive profits, but the PUCO did not require that money to be refunded to consumers, and that the PUCO has allowed DP&L to continue charging consumers more than $75 million per year under its so-called “Rate Stabilization Charge.”[[383]](#footnote-384) The $20 million should be allocated between vegetation management and equipment replacements. DP&L should be required to file a plan in this docket within 90 days of an Order identifying how the funds will be allocated and the specific equipment and/or circuits that will benefit the most from infusion of the additional funds.

# **SUMMARY OF OCC’S RECOMMENDED ADJUSTMENTS**

As discussed previously, OCC does not recommend a rate increase for consumers. No increase should be permitted while ESP I remains in effect. However, if the PUCO grants an increase to DP&L, it should be limited to $43.3 million, as represented on the chart above. And this increase should be stayed until after the expiration of ESP I.

# **CONCLUSION**

The PUCO should deny DP&L’s request to increase rates while ESP I is in place. It should have granted OCC’s Motion to Dismiss, but unfortunately for consumers, it did not. But if the PUCO does not deny this application (it should), then the PUCO must freeze DP&L’s base rates at the level they were set at the time DP&L reverted to ESP I.[[384]](#footnote-385) As discussed, DP&L reverted to ESP I in December 2019. At that time, the base rates approved in 2018 were in effect. Thus, the PUCO is required to enforce the Rate Freeze by keeping base rates at 2018 levels for as long as ESP I remains in effect.

DP&L signed a settlement agreeing to many terms and conditions, including a Rate Stabilization Charge and a rate freeze for the duration of its ESP 1. Now, almost a decade later, consumers are still bailing DP&L out by paying the 2009 Rate Stabilization Charge. DP&L has gotten far more from consumers than it ever bargained for. Now, for once, it is time for consumers to get what they bargained for under the DP&L settlement: a freeze on DP&L’s base rates while ESP I is in effect. The PUCO should enforce the Rate Freeze. However, after ESP I and the rate freeze expires, if the PUCO grants DP&L an increase (which it should not), it should not be greater than $43.3 million. Any increase should also be stayed until the expiration of ESP I, as the PUCO noted in its Entry denying OCC’s Motion to Dismiss.

To protect consumers, the PUCO should also adopt OCC’s proposed changes to rate base, operating income, and rate of return.

Respectfully submitted,

Bruce Weston (0016973)   
Ohio Consumers’ Counsel

/s/ *Ambrosia E. Wilson*   
John Finnigan (0018689)   
Counsel of Record   
Ambrosia E. Wilson (0096598)   
Assistant Consumers' Counsel

**Office of the Ohio Consumers' Counsel**

65 East State Street, Suite 700   
Columbus, Ohio 43215   
Telephone [Finnigan]: (614) 466-9585

Telephone [Wilson]: (614) 466-1292 [john.finnigan@occ.ohio.gov](mailto:john.finnigan@occ.ohio.gov) [ambrosia.wilson@occ.ohio.gov](mailto:ambrosia.wilson@occ.ohio.gov)

(willing to accept service by e-mail)

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of this Consumer Protection Brief was served on the persons stated below *via* electronic transmission, this 4th day of March 2022.

*/s/ Ambrosia E. Wilson*

Ambrosia E. Wilson

Assistant Consumers’ Counsel

The PUCO’s e-filing system will electronically serve notice of the filing of this document on the following parties:

**SERVICE LIST**

|  |  |  |
| --- | --- | --- |
| [jodi.bair@ohioAGO.gov](mailto:jodi.bair@ohioAGO.gov)  [kyle.kern@ohioAGO.gov](mailto:kyle.kern@ohioAGO.gov)  werner.margard@ohioAGO.gov  [chelsea.fletcher@ohioAGO.gov](mailto:chelsea.fletcher@ohioAGO.gov)  [bmckenney@mcneeslaw.com](mailto:bmckenney@mcneeslaw.com)  [mjsettineri@vorys.com](mailto:mjsettineri@vorys.com)  [glpetrucci@vorys.com](mailto:glpetrucci@vorys.com)  [dromig@armadapower.com](mailto:dromig@armadapower.com)  [dparram@bricker.com](mailto:dparram@bricker.com)  [rmains@bricker.com](mailto:rmains@bricker.com)  [ccox@elpc.org](mailto:ccox@elpc.org)  [khernstein@bricker.com](mailto:khernstein@bricker.com)  [mwarnock@bricker.com](mailto:mwarnock@bricker.com)  dborchers@bricker.com  [little@litohio.com](mailto:little@litohio.com)  [hogan@litohio.com](mailto:hogan@litohio.com)  [ktreadway@oneenergyllc.com](mailto:ktreadway@oneenergyllc.com)  [jdunn@oneenergyllc.com](mailto:jdunn@oneenergyllc.com)  [whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  [fykes@whitt-sturtevant.com](mailto:fykes@whitt-sturtevant.com)  [rhartley@fbtlaw.com](mailto:rhartley@fbtlaw.com)  [cwieg@fbtlaw.com](mailto:cwieg@fbtlaw.com)  [talexander@beneschlaw.com](mailto:talexander@beneschlaw.com)  [khehmeyer@beneschlaw.com](mailto:khehmeyer@beneschlaw.com)  [ssiewe@beneschlaw.com](mailto:ssiewe@beneschlaw.com)  Attorney Examiners:  [patricia.schabo@puco.ohio.gov](mailto:patricia.schabo@puco.ohio.gov)  Michael.williams@puco.ohio.gov | [bojko@carpenterlipps.com](mailto:bojko@carpenterlipps.com)  [paul@carpenterlipps.com](mailto:paul@carpenterlipps.com)  [donadio@carpenterlipps.com](mailto:donadio@carpenterlipps.com)  wygonski@carpenterlipps.com  [michael.schuler@aes.com](mailto:michael.schuler@aes.com)  jsharkey@ficlaw.com  [djireland@ficlaw.com](mailto:djireland@ficlaw.com)  [mwatt@ficlaw.com](mailto:mwatt@ficlaw.com)  [jweber@elpc.org](mailto:jweber@elpc.org)  christopher.hollon@aes.com  mkurtz@BKLlawfirm.com  kboehm@BKLlawfirm.com  [jkylercohn@BKLlawfirm.com](mailto:jkylercohn@BKLlawfirm.com)  [bethany.allen@igs.com](mailto:bethany.allen@igs.com)  [Joe.oliker@igs.com](mailto:Joe.oliker@igs.com)  [Michael.nugent@igs.com](mailto:Michael.nugent@igs.com)  [Evan.betterton@igs.com](mailto:Evan.betterton@igs.com)  [Stephanie.chmiel@thompsonhine.com](mailto:Stephanie.chmiel@thompsonhine.com)  [Kevin.oles@thompsonhine.com](mailto:Kevin.oles@thompsonhine.com)  [Fdarr2019@gmail.com](mailto:Fdarr2019@gmail.com)  [rdove@keglerbrown.com](mailto:rdove@keglerbrown.com)  [cgrundmann@spilmanlaw.com](mailto:cgrundmann@spilmanlaw.com)  [dwilliamson@spilmanlaw.com](mailto:dwilliamson@spilmanlaw.com)  [mpritchard@mcneeslaw.com](mailto:mpritchard@mcneeslaw.com)  [rglover@mcneeslaw.com](mailto:rglover@mcneeslaw.com)  [mleppla@theOEC.org](mailto:mleppla@theOEC.org)  [tdougherty@theOEC.org](mailto:tdougherty@theOEC.org)  [ctavenor@theOEC.org](mailto:ctavenor@theOEC.org) |  |

1. Application, Schedule A-1 (November 30, 2020). [↑](#footnote-ref-2)
2. Motion to Dismiss DP&L’s Application for a Rate Increase (August 5, 2021). [↑](#footnote-ref-3)
3. *See* ESP I Settlement. [↑](#footnote-ref-4)
4. ESP I 2009 Opinion at 7 (“DP&L notes that the Stipulation extends its electric security plan through December 31, 2012...”); ESP I Settlement at 3 (“the parties agree to extend DP&L’s current rate plan through December 31, 2012, except as modified herein”), at 7 (“DP&L will file a new ESP and/or MRO case by March 31, 2012 to set SSO rates to apply for [the] period beginning January 1, 2013.”). [↑](#footnote-ref-5)
5. *Id.* at 5 (“The current RSC will continue as an unavoidable charge through 2012.”); ESP 1 Settlement at 4 (“The current [RSC] charge will continue as a non-bypassable charge through December 31, 2012.”). (The ESP I Settlement has a typo, referring to the RSC as the “RSS.” *See* ESP I 2009 Opinion at 5, footnote 2.). [↑](#footnote-ref-6)
6. ESP I Settlement at 10. [↑](#footnote-ref-7)
7. *Id.* at 10-11. [↑](#footnote-ref-8)
8. ESP I 2009 Opinion at 13. [↑](#footnote-ref-9)
9. *In re Application of the Dayton Power & Light Co. for Approval of its Market Rate Offer*, Case No. 12-426-ELSSO, Application (March 30, 2012). [↑](#footnote-ref-10)
10. Case No. 12-426-EL-SSO, Notice of Withdrawal of Market Rate Offer Application (September 7, 2012). [↑](#footnote-ref-11)
11. Case No. 12-426-EL-SSO, Motion of Application the Dayton Power & Light Co. to Set Procedural Schedule for its Elec. Sec. Plan Filing (September 7, 2012). [↑](#footnote-ref-12)
12. Case No. 12-426-EL-SSO, Joint Motion Seeking Enforcement of Approved Settlement Agreements and Orders Issued by the Public Utilities Commission of Ohio (September 26, 2012) (the “Joint Motion”). [↑](#footnote-ref-13)
13. *Id*. at 13-14. [↑](#footnote-ref-14)
14. *Id.* at 14. [↑](#footnote-ref-15)
15. Case No. 12-426-EL-SSO, Memorandum of the Dayton Power & Light Co. in Opposition to Joint Motion Seeking Enforcement of Approved Settlement Agreements and Orders Issued by the Public Utilities Commission of Ohio (October 11, 2012). [↑](#footnote-ref-16)
16. *Id*. at 10. [↑](#footnote-ref-17)
17. Case No. 12-426-EL-SSO, Entry (December 19, 2012). [↑](#footnote-ref-18)
18. *Id*. at 4. [↑](#footnote-ref-19)
19. *In re Application of the Dayton Power & Light Co. for Approval of its Market Rate Offer*, Case No. 12-426-ELSSO, Entry on Rehearing ¶ 10 (February 19, 2013). [↑](#footnote-ref-20)
20. Case No. 12-426-EL-SSO, Opinion & Order (September 4, 2013). [↑](#footnote-ref-21)
21. Ohio Supreme Court Case No. 2014-1505. [↑](#footnote-ref-22)
22. Ohio Supreme Court Case No. 2014-1505, Merit Brief by Appellant the Office of the Ohio Consumers’ Counsel (December 1, 2014). [↑](#footnote-ref-23)
23. *In re Dayton Power & Light Co*., 2016-Ohio-3490 (following the Court’s ruling in *In re Columbus S. Power Co*., 2016-Ohio-1608, where the Court ruled that a similar charge for AEP Ohio consumers was unlawful). [↑](#footnote-ref-24)
24. Case No. 12-426-EL-SSO, Motion of the Dayton Power & Light Co. to Withdraw its Applications in this Matter (July 27, 2016). [↑](#footnote-ref-25)
25. Case No. 12-426-EL-SSO. [↑](#footnote-ref-26)
26. *In re Application of the Dayton Power & Light Co. for Approval of its Elec. Sec. Plan*, Case No. 16-395-EL-SSO, Application (February 22, 2016). [↑](#footnote-ref-27)
27. Case No. 16-395-EL-SSO, Opinion & Order (October 20, 2017). [↑](#footnote-ref-28)
28. *Id*. ¶ 13. [↑](#footnote-ref-29)
29. *In re Application of [FirstEnergy] for Authority to Provide for a Standard Serv. Offer*, Case No. 14-1297-ELSSO, Fifth Entry on Rehearing (October 12, 2016). [↑](#footnote-ref-30)
30. *In re Application of Ohio Edison Co*., 2019-Ohio-2401. [↑](#footnote-ref-31)
31. *In re Application of the Dayton Power & Light Co. to Establish a Standard Serv. Offer in the Form of an Elec. Sec. Plan*, Case No. 16-395-EL-SSO, Supplemental Opinion & Order (November 21, 2019). [↑](#footnote-ref-32)
32. Case No. 16-395-EL-SSO, The Dayton Power & Light Co.’s Notice of Withdrawal of its Application in Case No. 16-395-EL-SSO Pursuant to R.C. 4928.143(C)(2)(a) (November 25, 2019). [↑](#footnote-ref-33)
33. Case No. 16-395-EL-SSO, Memorandum Contra DP&L’s Motions to Withdraw its Application & Implement Previously Authorized Rates (to Increase Charges to Consumers) by the Office of the Ohio Consumers’ Counsel, the Ohio Manufacturers’ Association Energy Group, the Kroger Company, and IGS Energy (December 4, 2019). [↑](#footnote-ref-34)
34. Case No. 16-395-EL-SSO, Finding & Order (December 18, 2019) (approving withdrawal); Case No. 08-1094-ELSSO, Second Finding & Order (approving revised tariffs with modifications by the PUCO). [↑](#footnote-ref-35)
35. Case No. 16-395-EL-SSO, Application for Rehearing from the Supplemental Opinion & Order by the Office of the Ohio Consumers’ Counsel (December 23, 2019); Case No. 08-1094-EL-SSO, Application for Rehearing of the Office of the Ohio Consumers’ Counsel (January 17, 2020). [↑](#footnote-ref-36)
36. Case No. 08-1094-EL-SSO, Application for Rehearing of the Office of the Ohio Consumers’ Counsel at 6-10 (January 17, 2020). [↑](#footnote-ref-37)
37. *In re Application of the Dayton Power & Light Co. for Approval of its Market Rate Offer*, Case No. 12-426-ELSSO, Entry on Rehearing ¶ 10 (February 19, 2013). [↑](#footnote-ref-38)
38. Case No. 08-1094-EL-SSO, Fifth Entry on Rehearing (June 16, 2021). [↑](#footnote-ref-39)
39. *Id*. ¶ 19. [↑](#footnote-ref-40)
40. *Id.* [↑](#footnote-ref-41)
41. *Id.* [↑](#footnote-ref-42)
42. Motion to Dismiss DP&L’s Application for a Rate Increase (August 5, 2021); *see* Reply in Support of Motion to Dismiss DP&L’s Application for a Rate Increase (August 27, 2021). [↑](#footnote-ref-43)
43. ESP 1 Settlement at 10. [↑](#footnote-ref-44)
44. OCC does not concede that this is the correct legal interpretation, as OCC has argued that the law only requires the utility to revert to its most recent standard service offer, not its entire electric security plan. It remains an open issue in Case No. 08-1094-EL-SSO, and OCC reserves all rights on that issue in that case and any related cases, including appeals. [↑](#footnote-ref-45)
45. Case No. 12-426-EL-SSO, Entry on Rehearing at 5 (February 13, 2013). [↑](#footnote-ref-46)
46. Case No. 08-1094-EL-SSO, Second Finding & Order ¶¶ 29-35 (December 18, 2019). [↑](#footnote-ref-47)
47. *Id*. ¶¶ 36-38. [↑](#footnote-ref-48)
48. *Id*. ¶ 40. [↑](#footnote-ref-49)
49. ESP 1 Settlement at 10. [↑](#footnote-ref-50)
50. Case No. 12-426-EL-SSO, Entry (December 19, 2012). [↑](#footnote-ref-51)
51. Entry at 5-6 (October 20, 2021) (“Entry Denying Motion to Dismiss”). [↑](#footnote-ref-52)
52. OCC Ex. 3 at Schedule A-1. [↑](#footnote-ref-53)
53. *In re Application of the Dayton Power & Light Co. for Approval of its Elec. Sec. Plan*, Case No. 08-1094-EL-SSO, Stipulation & Recommendation at 10 (February 24, 2009) (the “ESP 1 Settlement”); Opinion & Order at 5, 9 (June 24, 2009) (“ESP 1 2009 Opinion”). [↑](#footnote-ref-54)
54. *Id*., Second Finding & Order (December 18, 2019). [↑](#footnote-ref-55)
55. Application at 2. [↑](#footnote-ref-56)
56. Willis Direct at 4. [↑](#footnote-ref-57)
57. Case No. 20-1651-EL-AIR, et al, Staff Report of Investigation (July 26, 2021) (“Staff Report”). [↑](#footnote-ref-58)
58. OCC Ex. 3 at 4. [↑](#footnote-ref-59)
59. ESP I 2009 Opinion at 5, 9. [↑](#footnote-ref-60)
60. OCC Ex. 3 at Schedule A-1. [↑](#footnote-ref-61)
61. OCC Ex. 3 at 4-5. [↑](#footnote-ref-62)
62. *Id.* [↑](#footnote-ref-63)
63. *Id.* [↑](#footnote-ref-64)
64. Rebuttal Testimony of Kathryn Storm at 1 (February 2, 2022) (“Storm Rebuttal”). [↑](#footnote-ref-65)
65. Storm Rebuttal at 3. [↑](#footnote-ref-66)
66. *Id*. at 4. [↑](#footnote-ref-67)
67. Tr. Vol. VII at 1489-1537 (Cross-Examination of Kathryn Storm by Mr. Finnigan) (February 7, 2022). [↑](#footnote-ref-68)
68. Tr. Vol. VI, 1358:21-25, 1359:1 (February 1, 2022). [↑](#footnote-ref-69)
69. *Id.*, 1360:22-25, 1361:1-2, 1361:7. [↑](#footnote-ref-70)
70. OCC Ex. 3 at 7. [↑](#footnote-ref-71)
71. *Id.*  [↑](#footnote-ref-72)
72. *Id.* [↑](#footnote-ref-73)
73. *Id.*  [↑](#footnote-ref-74)
74. *Id.* [↑](#footnote-ref-75)
75. *Id.* at 8. [↑](#footnote-ref-76)
76. *Id.*  [↑](#footnote-ref-77)
77. *Id.*  [↑](#footnote-ref-78)
78. *Id.*  [↑](#footnote-ref-79)
79. June 17, 2020, Opinion and Order at 28, Case Nos. 17-38-EL-RDR, 18-230-EL-RDR; *In re Duke Energy Ohio*, Inc., Case No. 18-397-EL-RDR, Finding and Order (July 31, 2019) at ¶ 17*; In re Duke Energy Ohio, Inc*., Case No. 16-664-EL-RDR, Finding and Order (May 15, 2019) at ¶ 16; *In re Duke Energy Ohio, Inc*., Case No. 15- 534-EL-RDR, Opinion and Order (October 26, 2016) at ¶¶ 20, 44*; In re Ohio American Water Co*., Case No. 09-391-WS-AIR, Opinion and Order (May 5, 2010) at 20-22, Entry on Rehearing (June 23, 2010) at 11-12; *In re Ohio Edison Co., The Cleveland Electric Illuminating Co., and The Toledo Edison Co*., Case No. 07-551-EL-AIR, et al., Opinion and Order (January 21, 2009) at 17, Entry on Rehearing (February 2, 2011) at 4-5. [↑](#footnote-ref-80)
80. OCC Ex. 3 at 9. [↑](#footnote-ref-81)
81. *Id.* [↑](#footnote-ref-82)
82. *Id.* [↑](#footnote-ref-83)
83. *Id.* [↑](#footnote-ref-84)
84. *Id.* [↑](#footnote-ref-85)
85. *Id.* [↑](#footnote-ref-86)
86. OCC Ex. 3 at 10. [↑](#footnote-ref-87)
87. *Id.* at 11. [↑](#footnote-ref-88)
88. *Id.* [↑](#footnote-ref-89)
89. *Id.* at 12. [↑](#footnote-ref-90)
90. *Id.* [↑](#footnote-ref-91)
91. *Id.* [↑](#footnote-ref-92)
92. *Id.* [↑](#footnote-ref-93)
93. Staff Ex. 6 at (Pre-filed Testimony of Matthew Snider) (January 18, 2022). [↑](#footnote-ref-94)
94. Rebuttal Testimony of WM. Ross Willis at 1 (February 2, 2022) (“Willis Rebuttal”). [↑](#footnote-ref-95)
95. *Id.* [↑](#footnote-ref-96)
96. Tr. Vol. V, at 221:1-16 (January 28, 2022). [↑](#footnote-ref-97)
97. *Id.* at 223:10-16. [↑](#footnote-ref-98)
98. *Id.* [↑](#footnote-ref-99)
99. Willis Rebuttal at 2. [↑](#footnote-ref-100)
100. *Id.* [↑](#footnote-ref-101)
101. *Id.* at 3. [↑](#footnote-ref-102)
102. *Id.* [↑](#footnote-ref-103)
103. *Id.* [↑](#footnote-ref-104)
104. *Id.* [↑](#footnote-ref-105)
105. *Id.* [↑](#footnote-ref-106)
106. *Id.* [↑](#footnote-ref-107)
107. *Id.* [↑](#footnote-ref-108)
108. *Id.* [↑](#footnote-ref-109)
109. OCC Ex. 1 at 15. [↑](#footnote-ref-110)
110. *Id.* [↑](#footnote-ref-111)
111. *Id.* at 15-16. [↑](#footnote-ref-112)
112. *Id.* at 16. [↑](#footnote-ref-113)
113. *Id.* [↑](#footnote-ref-114)
114. *Id.* [↑](#footnote-ref-115)
115. *Id.* [↑](#footnote-ref-116)
116. *Id.* at 17. [↑](#footnote-ref-117)
117. *Id.* [↑](#footnote-ref-118)
118. *Id.* [↑](#footnote-ref-119)
119. *Id.* at 17-18. [↑](#footnote-ref-120)
120. *Id.* at 18. [↑](#footnote-ref-121)
121. *Id.* [↑](#footnote-ref-122)
122. *Id.* [↑](#footnote-ref-123)
123. *Id.* [↑](#footnote-ref-124)
124. *Id.* [↑](#footnote-ref-125)
125. *Id.* [↑](#footnote-ref-126)
126. *Id.* [↑](#footnote-ref-127)
127. *Id.* at 19. [↑](#footnote-ref-128)
128. *Id.* [↑](#footnote-ref-129)
129. *Id.* [↑](#footnote-ref-130)
130. *Id.* [↑](#footnote-ref-131)
131. *Id.* at 19-20. [↑](#footnote-ref-132)
132. *Id.* at 20. [↑](#footnote-ref-133)
133. *Id.* [↑](#footnote-ref-134)
134. *Id.* [↑](#footnote-ref-135)
135. *Id.* at 20-21. [↑](#footnote-ref-136)
136. *Id.* at 21. [↑](#footnote-ref-137)
137. *Id.* [↑](#footnote-ref-138)
138. *Id.* [↑](#footnote-ref-139)
139. *Id.* [↑](#footnote-ref-140)
140. *Id.* at 21. [↑](#footnote-ref-141)
141. *Id.* [↑](#footnote-ref-142)
142. *Id.* at 21-22. [↑](#footnote-ref-143)
143. *Id.* at 22. [↑](#footnote-ref-144)
144. *Id.* [↑](#footnote-ref-145)
145. *Id.* [↑](#footnote-ref-146)
146. *Id.* [↑](#footnote-ref-147)
147. *Id.* [↑](#footnote-ref-148)
148. *Id.* at 22-23. [↑](#footnote-ref-149)
149. *Id.* at 23. [↑](#footnote-ref-150)
150. *Id.*  [↑](#footnote-ref-151)
151. *Id.* [↑](#footnote-ref-152)
152. OCC Ex. 2 at 43-44 (Direct Testimony and Exhibits of Christopher C. Walters) (August 25, 2021). [↑](#footnote-ref-153)
153. *Id.* at 44. [↑](#footnote-ref-154)
154. *Id.* [↑](#footnote-ref-155)
155. *Id.* at 65. [↑](#footnote-ref-156)
156. *Id.* [↑](#footnote-ref-157)
157. McKenzie Corrected Direct Testimony at 72. [↑](#footnote-ref-158)
158. OCC Ex. 2 at 65. [↑](#footnote-ref-159)
159. *Id.* [↑](#footnote-ref-160)
160. Staff Report at 21. [↑](#footnote-ref-161)
161. OCC Ex. 2 at 44 and 54. [↑](#footnote-ref-162)
162. *Id.* [↑](#footnote-ref-163)
163. *Id.* [↑](#footnote-ref-164)
164. *Id.* [↑](#footnote-ref-165)
165. *Id.* at 45. [↑](#footnote-ref-166)
166. *Id.* [↑](#footnote-ref-167)
167. *Id.* [↑](#footnote-ref-168)
168. *Id.* [↑](#footnote-ref-169)
169. *Id.* [↑](#footnote-ref-170)
170. *Id.* [↑](#footnote-ref-171)
171. *Id.* at 54. [↑](#footnote-ref-172)
172. *Id.* [↑](#footnote-ref-173)
173. *Id.* [↑](#footnote-ref-174)
174. *Id.* [↑](#footnote-ref-175)
175. *Id.* [↑](#footnote-ref-176)
176. *Id.* [↑](#footnote-ref-177)
177. *Id.* at 55. [↑](#footnote-ref-178)
178. *Id.* [↑](#footnote-ref-179)
179. *Id.* [↑](#footnote-ref-180)
180. *Id.* [↑](#footnote-ref-181)
181. *Id.* [↑](#footnote-ref-182)
182. *Id.* [↑](#footnote-ref-183)
183. *Id.* [↑](#footnote-ref-184)
184. *Id.*;Morin, Dr. Roger A, “New Regulatory Finance,” at p. 156. [↑](#footnote-ref-185)
185. *Id.* at p. 162. [↑](#footnote-ref-186)
186. OCC Ex. 2 at 55. [↑](#footnote-ref-187)
187. *Id.* at 45-46, 54. [↑](#footnote-ref-188)
188. *Id.* at 46, 54. [↑](#footnote-ref-189)
189. *Blue Chip Financial Forecasts*, July 1, 2021, at 2. [↑](#footnote-ref-190)
190. OCC Ex. 2 at 46. [↑](#footnote-ref-191)
191. *Id.* (2.7% + 0.80 x 6.57% = 7.95%). [↑](#footnote-ref-192)
192. *Id.* at 56. [↑](#footnote-ref-193)
193. *Id.* [↑](#footnote-ref-194)
194. *Id.* [↑](#footnote-ref-195)
195. *Id.* [↑](#footnote-ref-196)
196. *Id.* [↑](#footnote-ref-197)
197. *Id.* [↑](#footnote-ref-198)
198. *Id.* at 56-57. [↑](#footnote-ref-199)
199. *Id.* at 57. [↑](#footnote-ref-200)
200. *Id.* [↑](#footnote-ref-201)
201. *Id.* [↑](#footnote-ref-202)
202. *Id.* at 58. [↑](#footnote-ref-203)
203. *Duff & Phelps Cost of Capital Navigator 2021, CRSP Deciles Size Study*. [↑](#footnote-ref-204)
204. OCC Ex. 2 at 58. [↑](#footnote-ref-205)
205. *Id.* [↑](#footnote-ref-206)
206. *Id.* [↑](#footnote-ref-207)
207. *Id.* [↑](#footnote-ref-208)
208. *Id.* at 59. [↑](#footnote-ref-209)
209. *Id.* [↑](#footnote-ref-210)
210. *Id.* [↑](#footnote-ref-211)
211. *Id.* [↑](#footnote-ref-212)
212. *Id.* [↑](#footnote-ref-213)
213. *Id.* [↑](#footnote-ref-214)
214. *Id.* [↑](#footnote-ref-215)
215. *Id.* [↑](#footnote-ref-216)
216. *Id.* at 59-60 (1.5% + 0.88 x 8.80% = 9.2%). [↑](#footnote-ref-217)
217. OCC Ex. 2 at 46. [↑](#footnote-ref-218)
218. *Id.* [↑](#footnote-ref-219)
219. *Id.* [↑](#footnote-ref-220)
220. Staff Report at 131. [↑](#footnote-ref-221)
221. OCC Ex. 2 at 46. [↑](#footnote-ref-222)
222. *Id.* at 47. [↑](#footnote-ref-223)
223. *Id.* [↑](#footnote-ref-224)
224. *Id.* [↑](#footnote-ref-225)
225. *Id.* [↑](#footnote-ref-226)
226. *Id.* [↑](#footnote-ref-227)
227. *Id.* [↑](#footnote-ref-228)
228. *Id.* [↑](#footnote-ref-229)
229. *Id.* at 48. [↑](#footnote-ref-230)
230. *Id.* [↑](#footnote-ref-231)
231. *Id.* [↑](#footnote-ref-232)
232. *Id.* at 52. [↑](#footnote-ref-233)
233. *Id.* at 52-53. [↑](#footnote-ref-234)
234. Exhibit AMM-4 (Corrected), page 3. [↑](#footnote-ref-235)
235. OCC Ex. 2 at 52-53. [↑](#footnote-ref-236)
236. *Id.* at 53. [↑](#footnote-ref-237)
237. *Id.* [↑](#footnote-ref-238)
238. *Id.* [↑](#footnote-ref-239)
239. *Id.* [↑](#footnote-ref-240)
240. *Id.* [↑](#footnote-ref-241)
241. *Id.* [↑](#footnote-ref-242)
242. *Id.* [↑](#footnote-ref-243)
243. *Id.* [↑](#footnote-ref-244)
244. OCC Ex. 2 at 49. [↑](#footnote-ref-245)
245. *Id.* [↑](#footnote-ref-246)
246. *Id.* [↑](#footnote-ref-247)
247. *Id.* [↑](#footnote-ref-248)
248. *Id.* [↑](#footnote-ref-249)
249. *Id.* [↑](#footnote-ref-250)
250. *Id.* at 50. [↑](#footnote-ref-251)
251. *Id.* [↑](#footnote-ref-252)
252. *Id.* [↑](#footnote-ref-253)
253. *Id.* at 50; McKenzie Corrected Direct Testimony at 17-19. [↑](#footnote-ref-254)
254. OCC Ex. 2 at 51. [↑](#footnote-ref-255)
255. *Id.* [↑](#footnote-ref-256)
256. *Id.* [↑](#footnote-ref-257)
257. *Id.* at 60. [↑](#footnote-ref-258)
258. *Id.* [↑](#footnote-ref-259)
259. *Id.* [↑](#footnote-ref-260)
260. *Id.* [↑](#footnote-ref-261)
261. *Id.* [↑](#footnote-ref-262)
262. *Id.* [↑](#footnote-ref-263)
263. *Id.* [↑](#footnote-ref-264)
264. *Id.* [↑](#footnote-ref-265)
265. *Id.* at 60-61. [↑](#footnote-ref-266)
266. *Id.* at 61. [↑](#footnote-ref-267)
267. *Id.* [↑](#footnote-ref-268)
268. *Id.* at 61. [↑](#footnote-ref-269)
269. *Id.* [↑](#footnote-ref-270)
270. *Id.* [↑](#footnote-ref-271)
271. *Id.* [↑](#footnote-ref-272)
272. *Id.* at 61-62. [↑](#footnote-ref-273)
273. *Id.* at 62. [↑](#footnote-ref-274)
274. *Id.* [↑](#footnote-ref-275)
275. *Id.* [↑](#footnote-ref-276)
276. *Id.* at 63. [↑](#footnote-ref-277)
277. *Id.* [↑](#footnote-ref-278)
278. *Id.* [↑](#footnote-ref-279)
279. *Id.* [↑](#footnote-ref-280)
280. *Id.* [↑](#footnote-ref-281)
281. *Id.* at 67. [↑](#footnote-ref-282)
282. *Id.* [↑](#footnote-ref-283)
283. *Id.* [↑](#footnote-ref-284)
284. OCC Ex. 2 at 68. [↑](#footnote-ref-285)
285. *Id.* [↑](#footnote-ref-286)
286. *Id.* [↑](#footnote-ref-287)
287. *Id.* [↑](#footnote-ref-288)
288. *Id.* [↑](#footnote-ref-289)
289. *Id.* [↑](#footnote-ref-290)
290. *Id.* at 65. [↑](#footnote-ref-291)
291. *Id.* [↑](#footnote-ref-292)
292. *Id.* [↑](#footnote-ref-293)
293. *Id.* at 24-26. [↑](#footnote-ref-294)
294. *Id.* [↑](#footnote-ref-295)
295. *Id.* [↑](#footnote-ref-296)
296. *Bluefield*, 262 U.S. 679, 693 (1923) (emphasis added). [↑](#footnote-ref-297)
297. OCC Ex. 2 at 24-26. [↑](#footnote-ref-298)
298. *Id.* [↑](#footnote-ref-299)
299. *Fed. Power Comm’n v. Hope Natural Gas Co*., 320 U.S. 591 (1944). [↑](#footnote-ref-300)
300. Opinion No. 569, 169 FERC ¶ 61,129 at P. 201-202. [↑](#footnote-ref-301)
301. OCC Ex. 2 at 66. [↑](#footnote-ref-302)
302. Opinion No. 569, 169 FERC ¶ 61,129 at P. 205 (citations omitted). [↑](#footnote-ref-303)
303. OCC Ex. 2 at 67. [↑](#footnote-ref-304)
304. *Id.* at 68. [↑](#footnote-ref-305)
305. *Id.* [↑](#footnote-ref-306)
306. *Id.* [↑](#footnote-ref-307)
307. *Id.* [↑](#footnote-ref-308)
308. *Id.* at 69. [↑](#footnote-ref-309)
309. *Id.* [↑](#footnote-ref-310)
310. *Id.* [↑](#footnote-ref-311)
311. *Id.* [↑](#footnote-ref-312)
312. *Id.* [↑](#footnote-ref-313)
313. *Id.* [↑](#footnote-ref-314)
314. *Id.* [↑](#footnote-ref-315)
315. *Id.* [↑](#footnote-ref-316)
316. *Id.* at 64. [↑](#footnote-ref-317)
317. *Id.* [↑](#footnote-ref-318)
318. McKenzie Corrected Direct Testimony at 50. [↑](#footnote-ref-319)
319. OCC Ex. 2 at 64. [↑](#footnote-ref-320)
320. *Id.* [↑](#footnote-ref-321)
321. *Id.* (4.84% - 3.63% = 1.21% or 121 basis points). [↑](#footnote-ref-322)
322. *Id.* [↑](#footnote-ref-323)
323. *Id.* [↑](#footnote-ref-324)
324. *Id.* [↑](#footnote-ref-325)
325. *Id.* [↑](#footnote-ref-326)
326. *Id.* [↑](#footnote-ref-327)
327. Pre Filed Testimony of Joseph Buckley at 9 (January 18, 2022). [↑](#footnote-ref-328)
328. *Id.* at 50. [↑](#footnote-ref-329)
329. Tr. Vol. V. at 998-999 (January 28, 2022). [↑](#footnote-ref-330)
330. *Id.* [↑](#footnote-ref-331)
331. *Id.* at 993-995. [↑](#footnote-ref-332)
332. OCC Ex. 4 at 4 (Direct Testimony of Robert Fortney) (August 25, 2021). [↑](#footnote-ref-333)
333. *Id.* at 4. [↑](#footnote-ref-334)
334. *Id.* [↑](#footnote-ref-335)
335. *Id.* [↑](#footnote-ref-336)
336. *Id.* [↑](#footnote-ref-337)
337. *Id.* [↑](#footnote-ref-338)
338. *Id.* at 6. [↑](#footnote-ref-339)
339. *Id.* at 5. [↑](#footnote-ref-340)
340. *Id.* [↑](#footnote-ref-341)
341. *Id.* [↑](#footnote-ref-342)
342. *Id.* [↑](#footnote-ref-343)
343. *Id.* at 6. [↑](#footnote-ref-344)
344. *Id.* [↑](#footnote-ref-345)
345. *Id.* [↑](#footnote-ref-346)
346. *Id.* [↑](#footnote-ref-347)
347. *Id.* [↑](#footnote-ref-348)
348. *Id.* [↑](#footnote-ref-349)
349. *Id.* at 8. [↑](#footnote-ref-350)
350. *Id.* [↑](#footnote-ref-351)
351. *Id.* [↑](#footnote-ref-352)
352. *Id.* [↑](#footnote-ref-353)
353. *Id.* [↑](#footnote-ref-354)
354. *Id.* at 9. [↑](#footnote-ref-355)
355. *Id.* [↑](#footnote-ref-356)
356. *Id.* [↑](#footnote-ref-357)
357. *Id.* [↑](#footnote-ref-358)
358. *Id.* [↑](#footnote-ref-359)
359. *Id.* at 10. [↑](#footnote-ref-360)
360. *Id.* [↑](#footnote-ref-361)
361. *Id.* [↑](#footnote-ref-362)
362. *Id.* [↑](#footnote-ref-363)
363. *Id.* [↑](#footnote-ref-364)
364. *Id.* [↑](#footnote-ref-365)
365. *Id.* [↑](#footnote-ref-366)
366. *Id.* at 10-11. [↑](#footnote-ref-367)
367. *Id.* at 11. [↑](#footnote-ref-368)
368. OCC Ex. 1 at 24. [↑](#footnote-ref-369)
369. *Id.* [↑](#footnote-ref-370)
370. *Id.* [↑](#footnote-ref-371)
371. O.A.C. 4901:1-10-10(D). [↑](#footnote-ref-372)
372. OCC Ex. 1 at 24-25. [↑](#footnote-ref-373)
373. DP&L specifically committed in the 2019 Action Plan to meet its CAIDI standard going forward. [↑](#footnote-ref-374)
374. O.A.C. 4901:1-10-10(B). [↑](#footnote-ref-375)
375. Annual Report of Electric System Reliability Pursuant to Ohio Adm. Code 4901:1-10-10; Case No. 17-0229-EL-ESS (March 31, 2017); Case No. 18-0995-EL-ESS (March 30, 2018); Case No. 19-0995-EL-ESS (April 1, 2019); Case No. 20-0995-EL-ESS (March 31, 2020); Case No. 21-0995-EL-ESS (March 31, 2021). [↑](#footnote-ref-376)
376. Case 15-1830-EL-AIR, Stipulation and Recommendation (June 18, 2018) at 6. [↑](#footnote-ref-377)
377. *Id*. at 9. [↑](#footnote-ref-378)
378. OCC Ex. 1 at 29. [↑](#footnote-ref-379)
379. *Id.* [↑](#footnote-ref-380)
380. *Id.* [↑](#footnote-ref-381)
381. *Id.* at 30. [↑](#footnote-ref-382)
382. In Case No. 06-0222-EL-SLF, the PUCO ordered AEP Ohio to expend $10 million in shareholder funds to implement its vegetation management plan. [↑](#footnote-ref-383)
383. *See In re Application of the Dayton Power & Light Co. for Approval of its Plan to Modernize its Distribution Grid*, Case No. 18-1875-EL-GRD, Opinion & Order ¶¶ 61-69, 76-78 (June 16, 2021). [↑](#footnote-ref-384)
384. *See* Case No. 12-426-EL-SSO, Entry on Rehearing at 5 (February 13, 2013) (interpreting R.C. 4928.143(C)(2)(b) to mean that when a utility withdraws from its electric security plan, it must revert to the previous electric security plan in its entirety). [↑](#footnote-ref-385)