

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of The Dayton : CASE NO. 20-0140-EL-AAM
Power and Light Company for Approval to :
Defer Distribution Decoupling Costs. :

**INITIAL POST-HEARING BRIEF OF THE DAYTON POWER
AND LIGHT COMPANY (d/b/a "AES OHIO")**

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I. INTRODUCTION AND SUMMARY

This brief demonstrates two principal points.

First, The Dayton Power and Light Company (d/b/a "AES Ohio") should be allowed to defer (and later seek recovery of) the Decoupling Amounts¹ because the parties to the Stipulation and Recommendation ("Stipulation") from AES Ohio's distribution rate case (Case No. 15-1830-EL-AIR) agreed that AES Ohio was entitled to "Revenue Decoupling."²

Specifically, AES Ohio's Application in that rate case proposed a new rate design based upon the principles of a straight-fixed variable ("SFV") rate structure, which included an increased fixed customer charge to more accurately collect the fixed costs of providing distribution service. Staff and The Office of the Ohio Consumers' Counsel ("OCC") opposed AES Ohio's rate structure and advocated for a much lower customer charge. As a concession in the rate case Stipulation, AES Ohio agreed to abandon the rate structure based upon SFV rate principles and to implement a rate design that included a much lower customer charge. In exchange for AES Ohio's agreement to implement the lower customer charge, the parties to that Stipulation (including all of the parties to this case)³ agreed that AES Ohio would implement a Revenue Decoupling rate design to collect the costs associated with providing distribution

¹ The Decoupling Amounts are the amounts that AES Ohio would have recovered under the Decoupling Rider approved in *In re The Dayton Power and Light Company*, Case No. 16-0395-EL-SSO ("ESP III"), Stipulation and Recommendation (Mar. 14, 2017), from the date that ESP III was terminated (Dec. 18, 2019) until AES Ohio's pending rate case (Case No. 20-1651-EL-AIR) is approved.

² The Revenue Decoupling here refers to the description in the rate case stipulation that "Revenue Decoupling shall employ a revenue per customer ("RPC") methodology and is applicable to tariff classes D17, D18, and D19 only. The calculation of the allowed RPC allocates the Stipulated Revenue Requirement to each tariff class based on the revenue allocations in the Staff Report and divides the result by the test year number of customers as filed in DP&L's Application." Stipulation, p. 10.

³ OMAEG was a "Non-Opposing" Signatory Party to the Distribution Rate Case Stipulation.

service. Direct Testimony of Tyler A. Teuscher ("AES Ohio Ex. 2"), pp. 6-7; May 4, 2021 Transcript of Hearing ("Tr.") 96, 98, 123 (Teuscher); Tr. 185-86 (Willis).

AES Ohio would not recover its allowed revenue requirement from the approved rate case Stipulation without the Decoupling Amounts. Tr. 32 (Nyhuis); Tr. 136-37 (Teuscher). AES Ohio should receive the benefit of its bargain, and should have the opportunity to recover the Decoupling Amounts in the future. The Commission should thus grant AES Ohio's request to defer those amounts until a new rate design is approved and effective.

Second, the parties to this case have asserted that AES Ohio's request for a deferral should be denied because the Decoupling Rider was terminated when AES Ohio terminated its third Electric Security Plan ("ESP III"), and AES Ohio's present ESP does not include a Decoupling Rider. That argument confuses the question of why AES Ohio should have the opportunity to recover the Decoupling Amounts with how AES Ohio should be permitted to recover the Decoupling Amounts.

Specifically, as to why recovery should occur, as discussed above, AES Ohio should have the opportunity to recover the Decoupling Amounts in the future because the parties to the rate case Stipulation agreed that AES Ohio was entitled to recover those amounts. That rate case Stipulation was approved by this Commission and nothing has modified that order.

As to how the Decoupling Amounts should be recovered, the parties to the rate case Stipulation and the ESP III Stipulation originally agreed that recovery could occur through the then-existing Decoupling Rider. Now that that recovery mechanism is not available, the Commission should allow AES Ohio to defer those amounts for future recovery using a different

recovery mechanism (which could include a rider established in a future ESP or as a regulatory asset in a future rate case).

Significantly, the parties to this case would not be prejudiced if the Decoupling Amounts were recovered through the Decoupling Rider (as they originally agreed) or through some other recovery mechanism (as AES Ohio expects to propose in the future, once the deferral proposed here is approved). In either event, the amounts they would pay would be the amounts that they agreed to pay as Revenue Decoupling in the rate case Stipulation. There is no reason that the events in the ESP cases (which lowered customer rates) should relieve customers of the agreement in the rate case to pay the Decoupling Amounts.

This brief also demonstrates the following points:

1. While not necessary to grant deferral, deferral of the Decoupling Amounts would be permitted under the Staff's six-factor test.
2. Whether the Decoupling Amounts are revenues or costs is not material in this case, since the revenues are equal to the costs. In any event, the Commission has allowed the deferral of similar unrecovered revenues in the past.
3. Decoupling is not limited to energy efficiency, so the expiration of energy efficiency mandates in Ohio does not bar AES Ohio's request here. In any event, the energy efficiency programs continued through 2020, so under this logic advocated by other parties, a deferral should be authorized at least through 2020.

II. BACKGROUND FACTS – AES OHIO AGREED TO A RATE DESIGN WITH A LOWER FIXED CUSTOMER CHARGE AND REVENUE DECOUPLING

A utility's costs to provide distribution service to its customers are largely fixed (i.e., the costs do not vary based upon a customer's usage). Tr. 150 (Willis); Tr. 212 (Lipthratt). However, in Ohio, rates for distribution service for certain customer classes have traditionally

included an energy component. In re Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation, Case No. 10-3126-EL-UNC, Entry (Dec. 29, 2010) ("AES Ohio Ex. 10"), p. 1; Tr. 150 (Willis); Tr. 212 (Lipthrott).

As a result of including an energy component in distribution rates, the revenues that a utility actually recovers may not equal the utility's fixed costs due to a variety of factors, including:

1. changes in weather
2. new energy efficiency measures implemented by customers
3. changes in customer usage patterns.

AES Ohio Ex. 2, p. 5; Tr. 150-51 (Willis); Tr. 212-13 (Lipthrott).

In 2010, the Commission solicited comments regarding "[d]ecoupling rate designs" that would "break or weaken the link between volume and revenue." AES Ohio Ex. 10, pp. 1, 5. The Commission identified three potential decoupling mechanisms:

1. "'[S]traight fixed variable' (SFV) rate design" – under that rate design, a customer pays a single fixed charge for distribution service. Id. at 1-2.
2. "'[D]ecoupling' adjustment" – that mechanism would include recovery of revenue on a "revenue per customer" basis. Id. at 2.
3. "'Lost revenue'" – allows for the recovery of revenue lost due to energy efficiency measures. Id.

After receiving comments in that docket, the Commission issued a Finding and Order. In re Aligning Electric Distribution Utility Rate Structure with Ohio's Public Policies to Promote Competition, Energy Efficiency, and Distributed Generation, Case No. 10-3126-EL-UNC, Finding and Order (Aug. 21, 2013) ("AES Ohio Ex. 13"). The Commission noted that

OCC opposed an SFV methodology and supported a decoupling adjustment mechanism. Id. at 4, 6 (OCC filed joint comments as a member of OCEA).

The Commission concluded that "aligning cost causation with cost recovery" was important and that "the rate structure that may best accomplishes these policy goals is the SFV rate design." Id. at 19. The Commission further stated that "the appropriate time to implement an SFV rate design is during an electric utility's rate case." Id. at 20. The Commission thus "encourage[d] electric utilities to file their next base rate cases utilizing the SFV rate design." Id.

In 2015, AES Ohio filed an Application to increase its distribution rates. The Dayton Power and Light Company's Proposed Tariffs, Case No. 15-1830-EL-AIR ("AES Ohio Ex. 14"). Consistent with the Commission's Finding and Order from the 2010 case, AES Ohio proposed an SFV rate design that included a \$13.73 customer charge (roughly triple the prior customer charge) and lowered the energy charge. AES Ohio Ex. 14, p. 65; Tr. 172-73 (Willis).

In 2016, while the rate case was pending, AES Ohio filed an Application for approval of its ESP III. In re The Dayton Power and Light Company, Case No. 16-0395-EL-SSO, et al. ("ESP III"), Application ("AES Ohio Ex. 20"). In that Application, AES Ohio sought approval of a "Decoupling Rider" that would recover lost revenues associated with energy efficiency programs. Id. ¶ 21; Tr. 173-74 (Willis). The Decoupling Rider as proposed in that Application was thus limited in scope, and did not affect AES Ohio's plan to implement an SFV methodology in its rate case; the two proposals were conceptually distinct.

In 2017, in the ESP III case, various parties filed a Stipulation and Recommendation ("ESP III Stipulation"). ESP III, Amended Stipulation and Recommendation (Mar. 13, 2017) ("AES Ohio Ex. 19"). That Stipulation established a Decoupling Rider. Id. at

14. The Decoupling Rider was to recover amounts associated with energy efficiency, and "[a]ll other matters related to the Decoupling Rider," were to be resolved in the rate case. Id. The Decoupling Rider thus remained limited in scope, and did not affect AES Ohio's plan to implement an SFV rate design in the rate case.

In 2018, the Staff issued a Staff Report in the rate case. Staff recommended against implementing the SFV rate design that AES Ohio had proposed. In re The Dayton Power and Light Company, Case No. 15-1830-EL-AIR, et al., Staff Report (Mar. 12, 2018) ("AES Ohio Ex. 15"), p. 36. Staff explained:

"The Applicant has proposed to shift a significant portion of the fixed demand costs into the customer charge and away from the volumetric charge that currently serves as a proxy for demand charges. However, Staff recommends that the current rate design methodology be maintained until sufficient customer demand data is available and collected through the smart grid initiative in Ohio. Once the data is collected and evaluated, Staff believes an appropriate rate design should be developed based on this data."

Id. Staff proposed a customer charge of \$7.88. Id.

In objections that OCC filed to the Staff Report, OCC stated that the "Staff Report properly rejected [AES Ohio's] proposal for straight fixed variable rate design, but the Staff Report's proposed \$7.88 customer charge is too high." In re The Dayton Power and Light Company, Case No. 15-1830-EL-AIR, et al., Objections to the PUCO Staff's Report of Investigation by The Office of the Ohio Consumers' Counsel (Apr. 11, 2018) ("AES Ohio Ex. 16"), p. 10. OCC recommended a customer charge of \$6.60. Id.

Most of the parties to that rate case – including all of the parties in this case – signed the rate case Stipulation.⁴ In re The Dayton Power and Light Company, Case No. 15-1830-EL-AIR, et al., Stipulation and Recommendation (June 18, 2018) ("AES Ohio Ex. 17"), pp. 17-18. That Stipulation included a \$7.00 customer charge (p. 14) and an energy charge that was higher than what AES Ohio had proposed (compare AES Ohio Ex. 17, Exhibit 5 with AES Ohio Ex. 14, p. 65). AES Ohio thus agreed to adopt the rate design position advocated for by Staff and OCC – i.e., AES Ohio abandoned its SFV rate design that included a proposal for a higher customer charge and lower energy charge. Tr. 180 (Willis); Tr. 217 (Lipthrott).

Critically, instead of a higher customer charge, the Stipulation provided that the Decoupling Rider would be reset to zero and that AES Ohio would then implement a "Revenue Decoupling" rate design that created an Allowable Revenue Requirement based upon a "revenue per customer" methodology. AES Ohio Ex. 17, p. 10. Using that methodology, the Revenue Decoupling amount could be a debit or a credit, i.e., the Revenue Decoupling amount would increase or decrease in response to the Allowable Revenue Requirement as well as increased or decreased customer usage due to things like changes in weather, changes in energy efficiency or changes in customer usage patterns. AES Ohio Ex. 2, p. 5; Tr. 185 (Willis); Tr. 218-19 (Lipthrott). The Decoupling Rider as implemented was thus broader than how it was originally proposed by AES Ohio in ESP III. AES Ohio Ex. 20, ¶ 21.

This bargain benefitted the Signatory Parties as well, because as OCC's witness explained "straight fixed variable rate design, that would place pretty significantly higher bills,

⁴ As previously mentioned, OMAEG was a "Non-Opposing" Signatory Party to the Distribution Rate Case Stipulation.

fixed portion of the bills on -- on low use customers who could cause significant rate shock," as opposed to "a decoupling mechanism which was supposed to be symmetrical where not only could there possibly be charges to customers but there could be refunds." Tr. 161 (Willis). AES Ohio was further afforded the opportunity to get immediate recovery of the Revenue Decoupling through the Decoupling Rider.

AES Ohio witness Teuscher explained that AES Ohio agreed to a rate design with a lower customer charge in exchange for a Revenue Decoupling rate design:

"Q. Is the rate design concession. . . related to the Decoupling Amounts?

A. Yes. [AES Ohio]'s 2015 rate case application proposed a larger fixed customer charge than [AES Ohio] was charging at the time, to allow [AES Ohio] to recover more of its fixed costs to provide service despite variations in customer usage. As a concession in the Rate Case Stipulation, [AES Ohio] agreed to a different rate design that included a much lower customer charge. The principal reason that [AES Ohio] was willing to abandon its customer charge proposal was that the Stipulation established the Decoupling methodology, which was a different method to allow [AES Ohio] to maintain the authorized revenue requirement. Allowing [AES Ohio] to defer the Decoupling Amounts is thus consistent with the bargain struck in that Stipulation."

AES Ohio Ex. 2, pp. 6-7. Accord: Tr. 123 ("as a concession to reducing the customer charge, [AES Ohio] included . . . decoupling as part of its mechanism to recover its . . . base rate revenue requirement") (Teuscher); Tr. 185-86 ("Q. Okay. And you understand that part of the exchange in this Stipulation to which [AES Ohio], OCC and others agreed was that there would be a significantly lower customer charge and that [AES Ohio] would be able to implement a revenue per customer decoupling methodology? A. Yes . . .") (Willis).

In response to the November 21, 2019 Commission Order in the ESP III case in which the Commission invalidated the DMR, AES Ohio filed a notice in which it exercised its right to terminate ESP III and revert to ESP I, pursuant to R.C. 4928.143(C)(2)(a) & (b). In re The Dayton Power and Light Company, Case No. 08-1094-EL-SSO, et al., Second Finding and Order (Dec. 18, 2019), ¶ 9. AES Ohio asked the Commission to maintain the Decoupling Rider as a component of ESP I. Id. ¶ 24. However, because the Decoupling Rider was created in ESP III and ESP I did not include that rider, the Commission rejected that request. Id. ¶ 36.

As shown below, although the Company no longer has a Decoupling Rider to recover the Decoupling Amounts, the benefit of the rate case rate design bargain should remain while the other rate components approved in that same rate case settlement are in effect.

III. AES OHIO SHOULD RECEIVE THE BENEFIT OF ITS BARGAIN

As demonstrated above, the rate case Stipulation reflects that AES Ohio agreed to "Revenue Decoupling" with the opportunity to collect the Decoupling Amounts through the Decoupling Rider. Indeed, AES Ohio agreed to abandon its request to implement a higher customer charge, and in exchange, AES Ohio was authorized to implement decoupling on a revenue per customer basis. AES Ohio Ex. 2, pp. 6-7; Tr. 123 (Teuscher); Tr. 185-86 (Willis). AES Ohio should receive the benefit of its bargain and should have an opportunity to recover the Decoupling Amounts in a future period. The Commission should thus grant AES Ohio's request to defer those amounts in this case.

The principle argument made by the other parties to this case is that AES Ohio's deferral request should be rejected because the Decoupling Rider was terminated when AES

Ohio terminated ESP III. The Commission should reject that argument for the following reasons.

First, that argument ignores the fact that the parties to the rate case Stipulation – including all of the parties to this case – agreed that AES Ohio is entitled to "Revenue Decoupling," which is the ability to recognize and recover the Decoupling Amounts. That Stipulation, along with all other rate components and provisions, were NOT terminated and are still in effect today.

Second, there is no prejudice to any party if the Decoupling Amounts are recovered through the Decoupling Rider (as originally agreed) or through a deferral and subsequent recovery through another method (as AES Ohio now expects once the deferral proposed here is approved). In either case, customers would pay the same amount. The only change would be how/when those amounts are recovered.

Third, it is undisputed that a "prerequisite" to a deferral being authorized is that the amounts at issue are not being recovered elsewhere in a utility's rates. Tr. 192 (Willis); Tr. 225 (Lipthrott). For example, if a utility sought a deferral of expenses associated with extraordinary storms, the deferral should not include any storm expenses that are being recovered in the utility's base rates. Tr. 191-92 (Willis); Tr. 224-25 (Lipthrott). The elimination of the Decoupling Rider thus does not bar AES Ohio's request to defer the Decoupling Amounts – instead, the fact that those amounts are not being recovered by AES Ohio is a "prerequisite" to granting the deferral.

Fourth, the fact that AES Ohio voluntarily terminated ESP III is irrelevant here.

The evidence at this hearing established that AES Ohio's decision to terminate ESP III was "best for the Company and its customers." Tr. 90 (Teuscher).

Fifth, Revenue Decoupling, for which AES Ohio seeks deferral, is separate and distinct from cost recovery through the Decoupling Rider. Immediate cost recovery of Revenue Decoupling through the Decoupling Rider was a benefit that AES Ohio no longer enjoys as a result of the withdrawal of ESP III.

In short, the Commission should grant AES Ohio's request to defer the Decoupling Amounts so that AES Ohio can receive the benefit of its bargain from the rate case. The events that occurred in the ESP cases should not relieve customers of complying with agreements reached in the rate case.

IV. THE SIX-FACTOR TEST FOR DEFERRALS IS NOT APPLICABLE HERE

Staff witness Liphtratt testified (pp. 3-6) that AES Ohio's deferral request does not satisfy a six-factor test. While the Staff's six-factor test can assist the Commission to determine whether the amounts at issue should be recovered in the future, there is no legal requirement that those factors be considered, and the Commission has repeatedly granted deferrals without making a finding on the six factor test. E.g., In the Matter of the Commission's Investigation into the Impacts of Demand-Side Management Programs and Power Purchases on the Profitability of Electric Utilities, Case No. 90-723-EL-COI, 1992 Ohio PUC LEXIS 873 (Oct. 1, 1992) ("AES Ohio Ex. 3"), In re Cincinnati Gas & Electric Company, Case No. 01-3229-EL-AAM, Entry (July 8, 2003) ("AES Ohio Ex. 6"). Much less is there a requirement for a positive finding on all six factors is necessary for a deferral to be granted. As demonstrated above, AES Ohio should

have the opportunity to recover the Decoupling Amounts in the future, so there is no need to require the six-factor test be met.

Nevertheless, if the Commission ultimately considers the six factors, the Commission should conclude that AES Ohio's request for a deferral passes that six-factor test, for the following reasons:

1. "Whether the utility's current rates or revenues are sufficient to cover the costs associated with the related deferrals."

The Decoupling Amounts that AES Ohio seeks to defer in this case are equal to the costs that it incurs to serve customers. Tr. 22, 59-60 (Nyhuis); Tr. 96 (Teuscher). Accord: Tr. 192-93 (revenue requirement equals costs) (Willis); Tr. 225-26 (same) (Lipthratt). AES Ohio witness Teuscher explains that AES Ohio needed to recover the Decoupling Amounts to recover its approved costs for the rate case:

"Q. (By Mr. Sharkey) For [AES Ohio] to recover its authorized costs from the distribution rate case, can you identify for me what would need to happen in this case?

A. The result of this case would need to be an approval of the deferral costs because, again, the customer charge was reduced, and in order for [AES Ohio] to recover its full revenue requirement, it needs both that customer charge and the rates from the stipulation and the decoupling mechanism that was approved in that stipulation."

Tr. 136. Accord: Tr. 32 ("The decoupling mechanism was designed to . . . recover the revenue requirement approved in the rate case . . .") (Nyhuis). Without the deferral, AES Ohio thus will not recover its approved costs.

2. "Whether the costs requested to be deferred are material in nature."

The amount of the Decoupling Amounts is approximately \$17 million as of 2020. Tr. 232 (Lipthrott). There is no dispute that that amount is material. Staff Ex. 1, p. 6.

3. "Whether the problem was outside the Company's control."

In November 2019, the Commission issued a decision that directed AES Ohio to terminate the Distribution Modernization Rider ("DMR") within seven days. AES Ohio would not have been able to provide safe and reliable service to its customers if it had continued to operate under ESP III without the DMR. In re Dayton Power and Light Company, Case No. 18-1875-EL-GRD, et al. Opinion and Order (June 16, 2021), ¶ 58 (finding that AES Ohio would not be able to "maintain safe and reliable service" without a financial integrity charge). Therefore, AES Ohio's decision to terminate ESP III and revert to ESP I was out of necessity in response to the November 2019 Supplemental Opinion and Order that was not within AES Ohio's control.

4. "Whether the expenditures are atypical and infrequent."

While the nature of the costs at issue are typical and frequent (i.e., the fixed costs to provide service), the events giving rise to this matter are highly unusual. Whether the events at issue are unusual should be considered under this factor. For example, Staff recommended that a utility be permitted to defer "foregone revenues" because "the COVID-19 pandemic is an exceedingly rare occurrence." In re Ohio Power Company, Case No. 20-602-EL-UNC, et al., Finding and Order (May 6, 2020) ("AES Ohio Ex. 21"), p. 19.

The unusual circumstances that led to AES Ohio's request for a deferral include:

1. A decision by this Commission invalidating a rider that it had previously approved.

2. A decision by a utility to terminate its ESP and revert to a prior ESP.
3. The invalidated ESP had a place holder rider that the prior ESP to which the utility reverted did not have.
4. The support and agreement regarding the calculation of the at issue were not established in the terminated ESP, but was instead established in another case.

All of those factors had to occur to give rise to this situation. Each of those factors is unusual, and the confluence of all four is unlikely to ever occur again.

5. "Whether the financial integrity of the utility will be significantly and adversely affected."

The amount of the deferral at issue is \$17 million through 2020. Tr. 232 (Lipthratt). There is no dispute that that amount is material and therefore would adversely affect the financial integrity of the utility. Staff Ex. 1, p. 6.

6. "Whether the Commission could encourage the utility to do something it would not otherwise do through the granting of the deferral authority."

As demonstrated above, AES Ohio's request for a deferral in this case is a result of a highly unusual series of circumstances that is not likely to occur again. A decision granting AES Ohio's request for a deferral in this case is thus not likely to "encourage" any future conduct by any Ohio utility.

The Commission should thus conclude that the requested deferral is consistent with the six-factor test.

V. THE DISTINCTION BETWEEN REVENUE AND COSTS IS IRRELEVANT TO THIS PROCEEDING

Staff witness Lipthratt testified (Staff Ex. 1, p. 6) that the Commission should deny AES Ohio's request for a deferral because the decoupling amounts are revenues and "[g]enerally, Staff does not support deferral of revenues." As demonstrated below, the Commission should conclude that: (a) the revenues that AES Ohio was to recover through the decoupling rider are equal to its cost, so the distinction between revenues and costs is irrelevant here; and (b) the Commission has allowed the deferral of revenue by utilities under similar circumstances.

A. AES Ohio's Costs and Revenues Are Exactly Equal

AES Ohio witness Nyhuis explained that the distinction between costs and revenues was not material in this case:

"Q. So your contention here today is that you're requesting to defer costs, not revenue?

A. Yes. But I would say the distinction between revenues and costs is not significant. The amount is going to be the same whether it's presented as revenue or whether it's presented as costs. It goes back to the – the Stipulation and Settlement Agreement that was agreed to in the distribution rate case so that a – so that AES Ohio would be able to achieve its authorized revenue requirement which is really recovery of costs and service including costs of capital. So the distinction between revenue and costs is in my mind not significant."

* * *

"Q. Ms. Nyhuis, you testified earlier that you didn't see a distinction or a significant distinction between costs and revenue in this case?

A. Yes.

- Q. Can you explain why – why you don't see a significant distinction in that regard?
- A. Yes. Because the deferral amounts, regardless of whether it's classified as a cost or revenue, would be the same and we would have some of the revenue requirement in the distribution rate case stipulation that encompasses the cost of service of AES Ohio, and so the amounts will be the same."

Tr. 22, 59-60. Accord: Tr. 96 (Decoupling Amounts "are buildup of costs incurred by the company to serve its customers") (Teuscher); Tr. 192-93 (agreeing that "the revenue requirement when it's set is intended to allow the utility to recover its costs including the costs of capital") (Willis); Tr. 225-26 (agreeing that "[the] utility's revenue requirement should equal the utility's costs including its costs of capital") (Lipthrott).

The Decoupling Rider was thus intended to recover the actual fixed costs that AES Ohio would incur to serve its customers. It is thus not material whether the Decoupling Amounts are considered revenues or costs, because the revenues are intended to equal the costs.

B. The Commission Has Allowed the Deferral of Revenue Under Similar Circumstances

It is undisputed that the Decoupling Amounts were caused by changes in (1) weather, (2) energy efficiency measures, and (3) customer behavior (due to COVID-19 or other factors). AES Ohio Ex. 2, p. 5. Accord: Tr. 150-51; 185 (Willis); Tr. 212-13, 218-19 (Lipthrott).

Significantly, the Commission has allowed utilities to defer unrecovered revenue associated with weather, energy efficiency measures and COVID-19:

1. Deferrals of Revenue Due to Weather: In In re Application of the Cincinnati Gas & Electric Company for Authority to Modify Current Accounting Procedures, due to extreme weather, the Commission declared a moratorium on disconnecting residential gas or electric customers. AES Ohio Ex. 6. The utility sought Commission approval to defer the incremental residential bad debt that resulted from the unusual weather and the moratorium on service disconnections, which the Commission granted. Id. ¶ 1, 8.

Similarly, in In re Application of The East Ohio Gas Company for Approval of a Payment Matching Program and Other Matters, Case No. 01-2592-GA-UNC, Entry on Rehearing (Nov. 29, 2001), ¶ 14, the Commission allowed the utility to defer uncollectible amounts resulting from a Commission moratorium on disconnections that was at issue due to a weather event.

OCC witness Willis agreed that "bad debt is revenue that a utility could not recover." Tr. 194 (Willis). Those cases are thus examples of the Commission allowing deferrals of unrecovered revenue due to changes in weather.

2. Deferral of Revenue Due to Energy Efficiency Measures: Predating the energy efficiency requirements of R.C. 4928.66, the Commission allowed utilities to defer unrecovered revenues associated with energy efficiency programs. Specifically, in 1991, the Commission "recognized that cost-effective demand side management (DSM) programs . . . may have adverse impacts on the profitability of electric utilities."⁵ The Commission thus concluded

⁵ In the Matter of the Commission's Investigation into the Impacts of Demand-Side Management Programs and Power Purchases on the Profitability of Electric Utilities, Case No. 90-723-EL-COI, 1991 Ohio PUC LEXIS 182, *1 (Feb. 7, 1991).

that "deferral of lost revenues should . . . be permitted for pilot DSM programs."⁶ The Commission repeatedly allowed utilities to defer lost revenues associated with DSM projects.⁷

The Commission has thus permitted utilities to defer unrecovered revenue associated with energy efficiency programs outside Chapter 4928.

3. Deferral of Revenue Due to COVID-19: As the Commission knows, the recent COVID-19 pandemic caused significant changes in customer usage patterns. As the Commission also knows, it authorized Ohio utilities to defer unrecovered revenue due to COVID-19. AES Ohio Ex. 21, ¶ 61.

In short, the principle factors leading to the Decoupling Amounts are changes in weather, new energy efficiency measures and COVID-19, and the Commission has allowed utilities to defer revenues that could not be recovered for similar reasons. Therefore, even if the Commission considers the Decoupling Amounts to be unrecovered revenue, the Commission should authorize the deferral of those amounts because it has authorized similar deferrals of revenue in the past.

⁶ In the Matter of the Commission's Investigation into the Impacts of Demand-Side Management Programs and Power Purchase on the Profitability of Electric Utilities, Case No. 90-723-EL-COI, 1992 Ohio PUC LEXIS 873, ¶ 14(a) (Oct. 1, 1992).

⁷ In re Cleveland Electric Illuminating Company, Case No. 92-391-EL-AAM, et al., 1992 Ohio PUC LEXIS 959, *9 (Oct. 29, 1992). In re The Dayton Power and Light Company, Case No. 93-1738-EL-AAM, et al., 1994 Ohio PUC LEXIS 140, *7-11 (Feb. 24, 1994). In re Columbus Southern Power Company, Case No. 94-1812-EL-AAM, et al., 1995 Ohio PUC LEXIS 294, *6-12 (April 13, 1995). In re Ohio Power Company, Case No. 92-777-EL-AAM, 1992 Ohio PUC LEXIS 1135, *3-5 (Dec. 17, 1992). In re Ohio Power Company, Case No. 93-2110-EL-AAM et al., 1994 Ohio PUC LEXIS 358, *6-9, 13 (May 11, 1994).

VI. DECOUPLING IS NOT LIMITED TO ENERGY EFFICIENCY

OCC witness Willis testified (Direct Testimony of Wm. Ross Willis (OCC Ex. 13), p. 7) that AES Ohio's request for a deferral should be rejected because decoupling is associated with energy efficiency programs, and the energy efficiency mandates have been repealed. The Commission should reject that argument for the following reasons.

First, Mr. Willis concedes that the Decoupling Amounts would change based upon changes in weather, energy efficiency or customer usage patterns. Tr. 150-51, 185 (Willis). The Decoupling Amounts are thus not limited to energy efficiency.

Second, customers remain free to implement their own energy efficiency programs that are not tied in any way to mandates.

Third, even if the Commission were to conclude that the termination of energy efficiency programs in Ohio barred AES Ohio's request to defer the Decoupling Amounts, the Commission should authorize AES Ohio to defer the Decoupling Amounts that occurred through December 31, 2020. The energy efficiency programs were not terminated until that date, and therefore, at a minimum, AES Ohio should be permitted to defer Decoupling Amounts that arose before that date.

Indeed, Staff Witness Liphtratt testified:

"I am familiar – familiar enough with energy efficiency demand-side management to point out that, you know, that is something that the Commission would likely want to incentivize which, again, is a criteria within the six-part test, a very important one. And so I could see a situation where the Company wants to, you know, just that, push or – or emphasize the need for energy efficiency and, therefore, in order to get the Company to kind of be accepted to it, to allow for, you know, a deferral perhaps, again,

that would kind of – thinking through it I can see where that would very much be considered in the analysis when it comes to I believe it's No. 6 of the criteria."

Tr. 230 (Lipthrott).

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that a copy of the foregoing Initial Post-Hearing Brief of The Dayton Power and Light Company (d/b/a "AES Ohio") has been served via electronic mail upon the following counsel of record, this 18th day of June, 2021.

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