

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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**March 4, 2022**

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**INTRODUCTION**

AES Ohio (AES or Company) filed a request for authorization to increase its rates for electric distribution service. The Staff of the Public Utilities Commission of Ohio (Commission) produced a Report<sup>1</sup> that evaluated the Company's request. In addition, eight Staff witnesses testified in support of the Report. The Staff Report, with the adoption of minor modifications that were set forth in Staff testimony, should be adopted by this Commission.

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<sup>1</sup> Staff Report, Case Nos. 20-1651-EL-AIR, et al. (July 26, 2021).

## **STATEMENT OF THE CASE**

On October 30, 2020, in Case No. 20-1651-EL-AIR, the Applicant filed a notice of intent for an increase in its electric distribution case. The Applicant requested that its test period begin June 1, 2020 and end May 31, 2021, and that the date certain for property valuation be June 30, 2020. The rates proposed by the Applicant, when applied to the test year, would increase revenues by approximately 49 percent.

The Commission approved the requested test period and date certain in its November 18, 2020 Entry. On November 30, 2020, the Applicant filed its application for an increase in rates. By Entry dated April 7, 2021, the Commission ordered that the application be accepted as of November 30, 2020.

The Commission Staff investigated the application and issued its Report of Investigation (Staff Report) on July 26, 2021. In its Report, the Staff recommended a revenue increase in the ranges of \$61,115,418 to \$66,665,151, and increase of 25 percent to 27 percent over test year operating revenue. Objections to the Staff Report were filed by numerous parties, including the Company, on August 25, 2021. Staff considered party objections and altered its recommended increase resulting in a range of 64,273,390 to \$69,823,123, as explained in Staff Witness Lipthrott's Testimony filed on January 18, 2022.

A procedural schedule was issued on July 30, 2021 that established an evidentiary hearing date of October 4, 2021. The procedural schedule also included two local public hearings. Through several motions filed in the docket, continuances were granted to allow the parties additional time to engage in settlement discussions. No settlement was

reached and the hearing commenced on January 24, 2022. The initial hearing lasted six days, concluding with rebuttal testimony on February 7, 2022.

## **ARGUMENT**

### **I. RATE FREEZE**

**AES Ohio is operating under the terms and conditions of ESP I. The distribution rate freeze is a term and provision of ESP I, and thus, the Commission should not permit the implementation of new distribution rates until such time that AES Ohio is not operating under ESP I.**

On August 5, 2021, OCC filed a Motion to Dismiss AES Ohio's application for a rate increase.<sup>2</sup> In its Motion, OCC argued that this case lacks a justiciable issue because AES Ohio is committed to a freeze of its base rates for the duration of its operation pursuant to its first Electric Security Plan (ESP I). By Entry, the Commission denied OCC's Motion to Dismiss, finding that AES Ohio's application to increase rates presents a justiciable issue. The Commission further found that the arguments raised in OCC's Motion to Dismiss relating to AES Ohio's ability to implement any rate increase should be adjudicated, rather than dismissed, in this case. Accordingly, the legal issue, whether or not AES Ohio is operating under a rate freeze per the terms and conditions of ESP I, was carved out and left for the parties to address on legal brief.<sup>3</sup>

Staff's position on this issue is that the distribution rate freeze was a term and condition of ESP I. Since AES Ohio filed its application to increase distribution rates for this proceeding while operating under the terms of and conditions of ESP I, the

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<sup>2</sup> See Case No. 20-1651-EL-AIR, OCC Motion to Dismiss (August 5, 2021).

<sup>3</sup> See Case No. 20-1651-EL-AIR, Entry Denying the Motion to Dismiss Filed by Ohio Consumers' Counsel (October 20, 2021).

Commission should not implement new distribution rates until such time that AES Ohio is no longer operating under ESP I. ESP I was resolved through a Stipulation. The Stipulation was approved by the Commission. As a Stipulation represents a package and is a compromise between the signatory parties, it would be unfair to determine only *some* of the terms and conditions of ESP I are applicable, while others are not.

**A. THE HISTORY OF THE DISTRIBUTION RATE FREEZE PROVISION.**

The history behind this legal issue – whether a base distribution rate freeze is in effect - is long, spanning over ten years, includes three separate ESPs, and two reversions back to the provisions, terms, and conditions of AES’s ESP I. First, it is undisputable that AES Ohio is currently operating under ESP I. It is also unquestionable that AES Ohio filed its application for a distribution rate increase for this proceeding while operating under ESP I.

For ease of following the timeline of events, Staff created a chart to demonstrate the timing of events:<sup>4</sup>

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<sup>4</sup> See “AES’s ESP Timeline” Chart on page 5.



**ESP I**

**June 24, 2009** - in Case No. 08-1094-EL-SSO, the Commission adopted a stipulation and recommendation of the parties (“ESP I Stipulation”) to establish AES Ohio’s first ESP (“ESP I”), which includes the rate stabilization charge (RSC).

**December 19, 2012** - the Commission extended ESP I, including the RSC, until a subsequent SSO could be authorized. Case No. 08-1094-EL-SSO.

**ESP II**

**September 4, 2013** - the Commission modified and approved AES Ohio’s application for a second ESP (ESP II). (Case No. 12-426-EL-SSO).

**Oct. 30, 2015** - AES Ohio files Distribution Rate Case – Case No. 15-1830-EL-AIR.

**June 20, 2016** - the Supreme Court of Ohio issued an opinion reversing the decision of the Commission approving ESP II and disposing of all pending appeals. *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179.

**Revert to  
ESP I**

**August 26, 2016** - The Commission grants AES Ohio’s Motion to Withdrawal from ESP II. Case No. 12-426-EL-SSO. The Commission granted AES Ohio’s application to reinstate the provisions, terms and conditions of ESP I until a subsequent SSO could be authorized. Case No. 08-1094-EL-SSO.

**ESP III**

**Oct 20, 2017** - Commission modifies and approves an amended stipulation establishing AES Ohio’s third electric security plan (ESP III), effective November 1, 2017  
Case No. 16-395-EL-SSO, et al.

**Sept. 26, 2018** - Commission approves Stipulation in Distribution Rate Case (OCC Signatory Party).  
Case No. 15-1830-EL-AIR

**Revert to  
ESP I**

**December 18, 2019** - The Commission accepted the withdrawal of ESP III in Case No. 16-395-EL-SSO. The Commission authorized reinstatement of ESP I Case No. 08-1094-EL-SSO.

**October 30, 2020** – DP&L files an application to increase its distribution rates in Case No. **20-1651-EL-AIR**.

By Opinion and Order issued on June 24, 2009, in Case No. 08-1094-EL-SSO, the Commission adopted a stipulation and recommendation of the parties (ESP I Stipulation) to establish AES Ohio 's first ESP (ESP I Case).<sup>5</sup> Included among the provisions, terms, and conditions in ESP I was a distribution rate freeze.<sup>6</sup> Specifically, the ESP 1 Settlement (which was approved by the Commission) states that “DP&L’s distribution base rates will be frozen” throughout the term of ESP 1.<sup>7</sup> The Stipulation did not limit AES Ohio’s right to seek emergency rate relief pursuant to Section 4909.16, Revised Code (but that is not what AES Ohio is seeking in this proceeding).

On December 19, 2012, the Commission extended ESP I, until a subsequent SSO could be authorized.<sup>8</sup> On September 4, 2013, the Commission modified and approved AES’s application for a second ESP (ESP II).<sup>9</sup> But, on June 20, 2016, the Supreme Court of Ohio issued an opinion reversing the decision of the Commission approving ESP II and disposing of all pending appeals.<sup>10</sup>

On August 26, 2016, in the *ESP II Case*, the Commission modified ESP II as directed by the Ohio Supreme Court and then granted AES’s application to withdraw ESP II, thereby terminating it. *ESP II Case*, Finding and Order (Aug. 26, 2016). Because

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<sup>5</sup> *In the Matter of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case Nos. 08-1094-EL-SSO, et. al. (*ESP I Case*), Opinion and Order (June 24, 2009), App. at 1.

<sup>6</sup> *ESP I Case*, Opinion and Order (June 24, 2009) at 5.

<sup>7</sup> *ESP 1 Settlement* at 10.

<sup>8</sup> *ESP I Case*, Entry (Dec. 19, 2012) at 3-5.

<sup>9</sup> *In the Matter of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case Nos. 12-426-EL-SSO, et al. (*ESP II Case*), Opinion and Order (Sept. 4, 2013).

<sup>10</sup> *In re Application of Dayton Power & Light Co.*, 147 Ohio St.3d 166, 2016-Ohio-3490, 62 N.E.3d 179.

AES withdrew from ESP II, the Commission, pursuant to R.C. 4928.143(C)(2)(b) (OCC App. at 92), granted AES's application to implement the provisions, terms, and conditions of ESP I – its most recent SSO – until a subsequent SSO could be authorized.<sup>11</sup>

The provisions, terms, and conditions of ESP I remained in effect until the Commission modified and approved an amended stipulation establishing AES's third electric security plan (ESP III), effective November 1, 2017.<sup>12</sup> The Supreme Court of Ohio then dismissed as moot the appeals of the August 26, 2016 Finding and Order which reinstated ESP I, including the RSC.<sup>13</sup>

On November 30, 2015, AES Ohio filed a Distribution Rate Case.<sup>14</sup> The Distribution Rate Case was filed while AES Ohio was operating under ESP II. The Distribution Rate Case was resolved through a Stipulation and Recommendation. The Commission approved the settlement on September 26, 2018. When the Commission adopted the Stipulation, AES was under the terms and conditions of ESP III.

Subsequently, pursuant to the terms of the Stipulation, Interstate Gas Supply (IGS) withdrew from the amended stipulation in the *ESP III Case*, necessitating an additional evidentiary hearing in that proceeding.<sup>15</sup> Following the additional evidentiary hearing, the

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<sup>11</sup> *ESP II Case*, Finding and Order (Aug. 26, 2016), Third Entry on Rehearing (Dec. 14, 2016).).

<sup>12</sup> *In the Matter of The Dayton Power and Light Company for Approval of Its Electric Security Plan*, Case Nos. 16-395-EL-SSO, et. al. (*ESP III Case*), Opinion and Order (Oct. 20, 2017) at ¶ 131.20.

<sup>13</sup> *In re Application of Dayton Power & Light Co.*, 154 Ohio St.3d 237, 2018-Ohio-4009, 113 N.E.3d 507, reconsideration denied, 154 Ohio St.3d 1446, 2018-Ohio-4962, 113 N.E.3d 545.

<sup>14</sup> *In the Matter of the Application of the Dayton Power and Light Company for an Increase in its Electric Distribution Rates*, Case No. 15-1830-EL-AIR, et al., Application of Dayton Power and Light Company to Increase its Rates for Electric Distribution (Nov. 30, 2015).

<sup>15</sup> *ESP III Case*, Entry (Nov. 15, 2018).

Commission issued a Supplemental Opinion and Order in the *ESP III Case*.<sup>16</sup> In the Supplemental Opinion and Order, the Commission further modified and approved the amended stipulation filed in the *ESP III Case*, eliminating AES's distribution modernization rider, in light of the Supreme Court of Ohio's decision in *In re Application of Ohio Edison Co.*, 157 Ohio St.3d 73, 2019-Ohio-2401, 131 N.E.3d 906, reconsideration denied, 156 Ohio St.3d, 2019-Ohio-3331, 129 N.E.3d 454, and reconsideration denied, 156 Ohio St.3d 1487, 2019-Ohio-3331, 129 N.E.3d 458. *ESP III Case*, Supplemental Opinion and Order (Nov. 21, 2019) at ¶ 1, 102-110, 134.

On November 26, 2019, AES Ohio filed a notice of withdrawal of its application and amended application filed in the *ESP III Case*, pursuant to R.C. 4928.143(C)(2)(a). AES Ohio also filed on November 26, 2019, proposed tariffs to implement the provisions, terms, and conditions of ESP I (which remained as its most recent ESP prior to ESP III). The Commission accepted the withdrawal of ESP III in the *ESP III Case* on December 18, 2019.<sup>17</sup> On December 18, 2019, the Commission also approved AES Ohio's proposed tariffs, implementing the provisions, terms, and conditions of ESP I, subject to the modifications directed by the Commission.<sup>18</sup>

The history of AES Ohio's ESPs is important because AES Ohio has been in control of when it filed ESPs and has also made the decision to withdrawal from ESPs II and III and revert back to the terms and conditions of ESP I. The Commission had the

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<sup>16</sup> Supplemental Opinion and Order (Nov. 21, 2019).

<sup>17</sup> *ESP III Case*, Finding and Order (Dec. 18, 2019).

<sup>18</sup> *ESP I Case*, Second Finding and Order (Dec. 18, 2019).

authority – and the obligation – to implement the provisions, terms, and conditions of AES’s most recently approved ESP (i.e., ESP I) upon AES’s withdrawal from ESP III.<sup>19</sup> R.C. 4928.143(C)(2)(b). The distribution rate freeze is a term and condition of AES’s ESP I. The Commission should not continue certain terms and conditions of ESP I (such as the Rate Stability Charge AES Ohio is currently charging customers) but exclude other terms (such as the distribution rate freeze). If AES Ohio is operating under the terms and conditions of ESP I, the distribution rate freeze provision should apply.

## **II. OBJECTIONS TO THE STAFF REPORT**

### **A. OPERATING INCOME REVENUES**

#### **i. Rider Revenue**

OCC suggests that Staff erred by decreasing the test year operating revenues by \$5,019,523. This miscalculation in the Staff Report was best demonstrated through cross examination of the rebuttal testimony of Ross Willis. In order to obtain the correct operating revenues, all rider revenue must be removed from the unadjusted test year.<sup>20</sup> In the Staff Report, Staff inaccurately removed all rider revenue and expenses when Staff updated Schedule C-3.4 to reflect 7 months of actual and 5 months of forecasted revenues and expenses<sup>21</sup>. Therefore, without an additional adjustment some rider revenues and expenses remained in the test year.<sup>22</sup> In the Staff Report, Staff correctly adjusted the

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<sup>19</sup> R.C. 4928.143(C)(2)(b).

<sup>20</sup> Tr. Vol. VII at 1621.

<sup>21</sup> OCC Ex. 7, Willis Rebuttal Testimony at 2.

<sup>22</sup> *Id.*

revenues on Schedule C-3.24. However, Staff failed to make a corresponding adjustment to remove the remaining storm cost expenses, not reflected in Schedule C-3.4. In filing to do so, Staff inadvertently left \$1,290,486 in expenses in the test year.<sup>23</sup> But through cross examination, OCC Witness Willis agreed that if the Commission would adopt the Company's recommendation to exclude the rider revenue and expenses as contained in Schedule C-3.4, Storm cost recover rider, instead of the Staff's recommendation, this would correct the miscalculation and satisfy OCC's objection.<sup>24</sup> If the Commission were to adopt this recommendation, this being the accurate to correct this error; a corresponding flow through adjustment must be made to Staff's Schedule C-3.24 to reflect that all storm cost revenues have been removed on Staff's Schedule C-3.24. Staff's Schedule C-3.24 would need to decrease test year revenue by \$3,547,859 to equal the amount calculated on Schedule E-4, instead of \$5,019,523 as proposed in the Staff Report. Ross.<sup>25</sup>

## **ii. Customer Deposits**

AES Ohio objects that the Staff's recommendation reduced the average customer deposit interest expense by \$128,774., whereas, the Company believes that the average should have been \$77,857.<sup>26</sup> Staff does not agree with this objection and points out that the Company's calculation is based on only including customer deposits that were held

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<sup>23</sup> Tr. VII, 1606 – 1607, 1610-1613

<sup>24</sup> *Id.* at 1621.

<sup>25</sup> *Id.* at 1621 - 1622

<sup>26</sup> AES Ohio Objection IV. 33.

greater than six months, as opposed to Staff's calculation that includes not only customer depositions held greater than six months, but also excludes customer deposits that the Company paid no associated interest on.<sup>27</sup> The Staff calculation reducing the average customer deposit interest expense by \$128,774 is correct and should be adopted by the Commission.

Other customer deposit objections made by the Company relate to the Staff's recommendation to adjust FERC Account 235 balances using a thirteen-month average and Staff did not carry forward the updated customer deposit balance to calculate interest expense in the Staff Report.<sup>28</sup> Staff recognizes that it should have used a thirteen-month average for both the reduction to rate base associated with customer deposits and the amount of interest paid on customer deposits.<sup>29</sup> Staff witness Snider provided the revised calculation on attachment MS-1 to his testimony.<sup>30</sup>

### **iii. CRES Fees**

Direct objects to the Staff's adjustment increasing test year operating income to reflect revenue received from competitive retail electric service (CRES) provider fees and is shown on Schedule C-3.28 of the Staff Report.<sup>31</sup> Direct's argument is that because the Staff Report does not identify which specific charges are included in the adjustment, it is not possible to determine whether Staff accurately accounted for all CRES provider fees.

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<sup>27</sup> Staff Ex. 6, Snider Testimony at 4 – 5.

<sup>28</sup> AES Ohio Objection IV. 34.

<sup>29</sup> Staff Ex. 6, Snider Testimony at 5.

<sup>30</sup> *Id.* at 6.

<sup>31</sup> Direct Objection 2a.

Staff witness Snider testified that Staff made its adjustment based upon reviewing the historical amount collected in FERC Account 456.<sup>32</sup> All CRES provider fees are accounted for in FERC Account 456. In addition, Direct argues that Staff's adjustment to increase test year operating income to reflect revenue received from CRES provider fees is an error because Direct believes that there is a lack of evidence that CRES provider fees are necessary to cover incremental, identifiable costs presumes that the test year revenue generated by base rates (including the monthly customer charge) is sufficient to recover all costs incurred by AES Ohio to provide services associated with the proposed CRES provider fees.<sup>33</sup> Staff disagrees with Direct and states that Staff does not comment on the necessity of, or the policy associated with, CRES provider fees. Schedule C-3.28 of the Staff Report identifies other sources of revenue collected by AES Ohio and recognizes that source of revenue within the revenue requirement.<sup>34</sup>

Mr. Snider also noted that Schedule C-3.28 of the Staff Report has been updated to reflect the Company's December 16, 2021 filing of updated G8 tariffs. With this update, the fees associated with manual historical energy usage data and electronic interval meter data were eliminated. This updated schedule is attached to Staff witness Snider's testimony and labeled as MS-2. This revised Schedule C-3.28 removes estimated data access fees and recognizes additional revenue that the Company will receive from CRES providers.<sup>35</sup>

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<sup>32</sup> Staff Ex. 6, Snider Testimony at 6.

<sup>33</sup> Direct Objection 2d.

<sup>34</sup> Staff Ex. 6, Snider Testimony at 7.

<sup>35</sup> *Id.* at 8.



#### **iv. Redundant Service**

The City of Dayton objected that the Staff did not properly identify all revenue sources for the company, including any new revenue AES Ohio would receive from assessing redundant service charges on customers.<sup>36</sup> Staff agrees with the City of Dayton as Staff testified that it did not attempt to recognize any additional revenue AES Ohio would receive from assessing redundant service charges on customers.<sup>37</sup>

The City of Dayton argues that the Staff Report should have updated the customer charge based on the cost of service study and the charge should be zero.<sup>38</sup> But Staff believes that despite the fact that AES Ohio failed to provide a cost of service study for the redundant service charge agreed to in Case No. 15-1830-EL-AIR, the second (redundant) line incurs the same costs (demand and customer service charge plus any energy used) as the primary and it is appropriate that the cost causer pay for this service.<sup>39</sup>

#### **v. AES Annualized Payroll Tax Expense**

AES objected to the methodology by which Staff annualized test year Federal Insurance Contributions Act (FICA) tax expense.<sup>40</sup> But, as explained by Staff witness Crocker, Staff excluded March FICA tax in calculating the annualized FICA tax because the payment of short-term incentive compensation (STC) caused March FICA taxes to be

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<sup>36</sup> *Id.*  
<sup>37</sup> *Id.*  
<sup>38</sup> *Id.* at 12.  
<sup>39</sup> *Id.*  
<sup>40</sup> *See* AES Ohio Objection 20.

abnormally high.<sup>41</sup> Staff concluded that including the month of March in the calculation would cause the annualized expense to be overstated.<sup>42</sup> Additionally, the May pay increase was not included at the time of the Staff Report because the pay increase could not be confirmed or verified due to timing of filing the Staff Report.<sup>43</sup> However, Staff believes that including the pay increase is reasonable. Staff agrees with the AES Ohio's calculation of 1.8 percent pay increase resulting in an increase to AES payroll tax expense of \$122,447.<sup>44</sup> The Commission should accept Staff's recommendations on annualized payroll tax expense.

**vi. AES Ohio Employees' Salaries and Wage Expense**

AES Ohio objected to the methodology by which Staff calculated labor expense because AES Ohio claimed that Staff erroneously reduced labor expense for non-jurisdictional and non-operation and maintenance (O&M) expenses twice and utilized the wrong number of hours to annualize expense.<sup>45</sup>

Staff disagrees with AES Ohio. Staff used AES Ohio's distribution labor to calculate employee numbers and used a fully loaded wage to calculate the annual wage.<sup>46</sup> The fully loaded wage included both capital expenditure and O&M dollars, as well as all

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<sup>41</sup> Staff Ex. 4, Crocker Testimony at 3.

<sup>42</sup> *Id.*

<sup>43</sup> *Id.*

<sup>44</sup> See Supplemental Direct Testimony of Craig A. Forestal at Exhibit CF1 (August 25, 2021) (adjusted to 25 percent of STC).

<sup>45</sup> AES Ohio Objection 21.

<sup>46</sup> Staff Ex. 4, Crocker Testimony at 3.

jurisdictional dollars.<sup>47</sup> And Staff correctly used 2,080 hours per year, consistent with Staff's past practice in staff report labor calculations.<sup>48</sup>

**vii. AES Ohio Union Employee Pay Increase**

AES Ohio objected to Staff's 'failure' to annualize a 2.75 percent AES Ohio union employee pay increase. Staff disagrees with AES Ohio's position. As Staff witness Crocker explained, pay was calculated based on April 2021 wages, which included all test year pay increases, therefore no pay increase is required.<sup>49</sup>

**viii. AES Ohio Service Company Employees' Salaries and Wage Expense**

AES Ohio objected<sup>50</sup> to the methodology by which Staff annualized labor expense because Staff failed to annualize a 1.8 percent overall pay increase. Staff witness Crocker explained that the pay increase was not included at the time of the Staff Report because the pay increase could not be confirmed or verified due to timing of filing the Staff Report.<sup>51</sup> However, Staff believes that including the pay increase is reasonable. Based on Staff's calculation, application of 1.8 percent pay increase results in an increase to AES Ohio's labor of \$148,308.<sup>52</sup>

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<sup>47</sup> Staff Ex. 4 Crocker Testimony at 3.

<sup>48</sup> *Id.*

<sup>49</sup> *Id.* at 4.

<sup>50</sup> See AES Ohio Objection 22.

<sup>51</sup> Staff Ex. 4, Crocker Testimony at 3 - 4.

<sup>52</sup> *Id.* at 4.

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

AES Ohio objected<sup>53</sup> to the recommendation in the Staff Report to remove 75 percent of STC and eliminate 100 percent of LTC for both AES Ohio and AES Services employees. However, consistent with Staff practices and Commission rulings in prior rate cases, Staff removed bonuses and incentive pay related to financial metrics.<sup>54</sup> Data request 9, in this case identified that 100 percent of long-term compensation (LTC) is based on financial metrics and data request 7, attachment 7 and attachment 9 identified that 75 percent of short-term compensation is based on financial metrics.<sup>55</sup> Therefore, Staff removed all LTC and 75 percent of short-term bonuses. In Staff's opinion, the cost for these types of incentives and bonuses should be borne by shareholders, and not the ratepayers because shareholders receive the direct benefit.<sup>56</sup> In addition, Staff witness Crocker testified that all STC and LTC bonuses that were permitted in the calculation included all appropriate pay increases.<sup>57</sup>

**x. AES Ohio Employee Pensions and Benefits Expense**

AES Ohio objected to the failure of the Staff Report to update pension and other post-employment benefits expense to reflect updated actuarial data.<sup>58</sup> Staff disagrees because the Company did not make an estimated adjustment to the pension and other

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<sup>53</sup> See AES Ohio Objection 23 and 24.

<sup>54</sup> Staff Ex. 4, Crocker Testimony at 5.

<sup>55</sup> *Id.*

<sup>56</sup> *Id.*

<sup>57</sup> *Id.*

<sup>58</sup> See AES Ohio Objection 25.

post-employment benefits expense within the application. Staff accepted the Company's amount within the application.<sup>59</sup> However, as Staff witness Crocker testified, Staff agrees that the updated calculation increasing pension and other post-employment benefits expense by \$932,478 provided within supplemental testimony is reasonable.<sup>60</sup>

## **B. DEPRECIATION**

AES Ohio alleges that Staff recommended square curves for assets in Account 362.20 and Account 396 and this results in an accrual rate and expense that is not consistent with the life characteristics of the vehicles or power operated equipment being carried in the accounts.<sup>61</sup> Staff testified that it is not opposed to the Company's use of L3 curves for the subject accounts instead of the square curves recommended in the Staff Report.<sup>62</sup> Staff witness Mumma stated that changing the curve type does not impact Staff's recommended accrual rates for the accounts. In the Company's last rate case, the Company used, and the Commission approved, for these same accounts, square curves.<sup>63</sup> On cross examination, AES Ohio Witness Spanos admitted that the Company, in its last rate case used the square curve for the Accounts 362.60, 362.71, and 396.<sup>64</sup> Mr. Spanos offered no rational why he testified that the use of the square curve is now unlawful; however, the Company used the square curve in its last rate case. Staff's use of the square

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<sup>59</sup> Staff Ex. 4, Crocker Testimony at 6.

<sup>60</sup> *Id.*

<sup>61</sup> AES Objection 5.

<sup>62</sup> Staff Ex. 3, Mumma Testimony at 5.

<sup>63</sup> Tr. Vol. III at 558 – 559.

<sup>64</sup> AES Ohio Exhibit 7, Application Schedule B-3.2.

curve is lawful<sup>65</sup> and produces just results for the depreciation studies and should be adopted by the Commission.

The Company also objects to the Staff's recommended zero-depreciation accrual for certain accounts (Accounts 362.60, 362.71, and 396).<sup>66</sup> Staff does not agree with this objection and testified that even "though these accounts are fully reserved and currently have no remaining depreciable balance as of date certain, the following depreciation accrual rates are recommended based on Staff's analysis of the accounts: Account 362.20 has a 5.0% accrual rate; Account 362.71 has a 5.0% accrual rate; and Account 396 has a 5.88% accrual rate."<sup>67</sup>

### **C. RATE OF RETURN**

#### **i. Rate of Return Range**

AES Ohio made many objections to the Staff rate of return range. Initially AES objected that the Staff rejected the Company's recommended cost of common equity of 10.50% and instead recommended a range of 9.28% to 10.28%. Staff, as evidenced in the Staff Report, continued to testify in support of the Staff recommended range.<sup>68</sup> The Company also argued that the Staff's proxy group used to calculate the Company's cost of common equity was very constrained, increasing the chance for error. One Energy also objected about the Staff's selection of comparative entities for its cost of common equity

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<sup>65</sup> Tr. Vol. III at 556, AES Ohio Ex. 47 at 1.

<sup>66</sup> AES Ohio Objection 4.

<sup>67</sup> Staff Ex. 3, Mumma Testimony at 4, Staff Ex. 1 at Sch. B-3.2.

<sup>68</sup> Staff Ex. 1 at Schedule A-1, Staff Ex. 9, Lipthrott Testimony at Exhibit A.

analysis.<sup>69</sup> Staff witness Buckley opines that the number of potential comparable companies had declined over the last few years and the pool of publicly traded companies that pay a dividend is down to approximately 37.<sup>70</sup> Mr. Buckley also states that the fact that AES Ohio has been below investment grade bond rating shrinks the pool of comparable companies.<sup>71</sup> Therefore, Staff's selection of comparable companies is appropriate for the AES Ohio rate case.

AES Ohio does not like the internet source *Fairness Finance*, which is used by the Staff in developing its rate of return analysis.<sup>72</sup> Though Staff does not have access to many of the subscription services utilized by the Company and other parties, Staff believes that *Fairness Finance* is a reliable source and that its results were reasonable.

In AES Ohio's Objections 18 and 19, AES Ohio argues that the Staff Report did not consider the comparable earnings approach or risk premium approach based on earned rates of return.<sup>73</sup> AES Ohio also complains (Objections 18 and 19) that the Staff Report's sole reliance on non-constant growth DCF while ignoring constant growth DCF results it had produced, and the use of purely historical measure of U.S. Gross National Product of 6.32% for the terminal growth rate used in its con-constant growth DCF when there are multiple sources of projected growth which reflect investors' expectations.<sup>74</sup>

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<sup>69</sup> Staff Ex. 2, Buckley Testimony at 4.

<sup>70</sup> *Id.* at 3 – 4.

<sup>71</sup> *Id.* at 5.

<sup>72</sup> *Id.*

<sup>73</sup> *Id.*

<sup>74</sup> *Id.* at 6.

Staff testified that its methods that have been used in previous cases have produced results that are reasonable and have been adopted by the Commission.

**ii. Below Investment Grade Bond Rating**

AES Ohio claims that the Staff Report did not consider the implications of the Company's below investment grade bond rating from S&P Global Ratings because the Company's bond rating implies greater risks and higher cost of equity than reflected in the Staff's proxy group on average.<sup>75</sup> However, Staff did address this specific issue in the Staff Report. The Report states, "[t]o create the comparable companies Staff selected companies with a Standard & Poor's Bond Rating of BBB+ and below as well as a Value Line financial strength rating of B+."<sup>76</sup> As further explained by Mr. Buckley in his testimony, "both these criteria should capture higher risk utilities. While there are not enough utilities with below investment grade bond ratings to use that metric exclusively, Staff's analysis too into account that added risk."<sup>77</sup>

**iii. Financial Risk**

IEU and OCC argue that Staff's calculated 15-year average of 10-year and 30-year yields, is not based on investor expectations and ignores the current state of the market.<sup>78</sup> Due to the challenge of the pandemic, Staff recognizes the difficulty in estimating the

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<sup>75</sup>

*Id.*

<sup>76</sup>

Staff Ex. 1 at 21.

<sup>77</sup>

Staff Ex. 2, Buckley Testimony at 6 – 7.

<sup>78</sup>

IEU-Ohio Objections 2, OCC Objection 17.



future movements of interest rates. Staff has seen conflicting forecasts and therefore, believes that a larger sample of previous interest rates is more applicable at this time.<sup>79</sup>

IEU-Ohio, Kroger, and OMAEG allege that Staff did not consider factors that reduce the financial risk faced by AEP Ohio, such as guaranteed recovery from distribution riders and AES Ohio's status as sole provider of electric distribution service within its service territory.<sup>80</sup> As testified to by Staff, the overall risk of a company is examined. And the use of riders by a company is just one factor that forms the overall risk for the company. Staff Witness Buckley states that there are unique factors that make an investment in a utility riskier, such as the increased focus on Environmental, Societal, and Governance investing.<sup>81</sup> Staff did not add basis points for this because Staff believes that it is more appropriate to look at the overall rankings.

#### **iv. Proxy Group**

OCC claims that AEP Ohio's capital structure must be analyzed by considering the proxy group's book value capital structure or other benchmarks such as common equity ratio awarded to electric utilities around the United States.<sup>82</sup> Additionally, One Energy objects that the Company is under leveraged or receiving equity premium and therefore, should have a lower cost of common equity.<sup>83</sup> Mr. Buckley refuted these

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<sup>79</sup> Staff Ex. 2, Buckley Testimony at 7.

<sup>80</sup> IEU-Ohio Objection 3, Kroger Objection C, OMAEG Objection B.

<sup>81</sup> Staff Ex. 2, Buckley Testimony at 8.

<sup>82</sup> OCC Objection 15.

<sup>83</sup> One Energy Objection 1.

arguments, stating that “[f]ew companies have the exact same capital structure and if an imputed capital structure is used it removes the unique nature and risks of an entity.”<sup>84</sup>

**v. Adjustment to Baseline Cost of Equity**

OCC objects to the Staff’s use of Value Line as a reliable source for beta estimations, claiming that it causes Staff’s estimates to be abnormally high.<sup>85</sup> Staff believes that Value Line is and continues to be a reliable source for beta estimations, and, Staff checked the validity of the Value Line estimation with other sources and found that the Value Line estimates were reasonable.<sup>86</sup> OCC’s objections regarding the rate of return also include a complaint that Staff inappropriately increased the return on equity by allowing an adjustment for equity issuance and other costs, arguing that the Staff’s recommended rate of return range of 7.05% to 7.59% is too high.<sup>87</sup> OCC ignores that fact that “[i]ssuance costs include expenditures made directly by the company issuing stock, for the purpose of issuing stock. Some of these expenditures would be for filing with the SEC, accounting, legal representation, printing, and exchange listing. Issuance costs also include the underwriting spread, which is not an expenditure for the issuing company. Basically, the underwriting spread is the difference between the proceeds to the company and the price paid by the primary purchasers of an issue. Issuance costs are the difference between the amount paid by the primary purchasers, and the net proceeds, which is the

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<sup>84</sup> Staff Ex. 2, Buckley Testimony at 8.

<sup>85</sup> OCC Objection 16.

<sup>86</sup> Staff Ex. 2, Buckley Testimony at 9.

<sup>87</sup> OCC Objection 20.

amount available for investment by the company.”<sup>88</sup> Further explanation for the necessity of an adjustment for equity issuance demonstrates that Staff’s adjustment to the baseline cost of equity is reasonable. Mr. Buckley explained that the equity cost of issuance must be spread over the life of the stock issue, and if stock, and if stock has been issued, and equity adjustment is necessary.<sup>89</sup> The investor requires a full return if the investor owns the stock so it does not matter what future financing plans have been prepared. The company issuing new equity initially receives funds in the amount of the equity issued.<sup>90</sup> Then the amount of equity issues less the issuance cost is the amount available to the company for investment; however, the investor must be paid a return on the full amount of the investment; therefore, Staff’s adjustment to the baseline cost of equity is reasonable.<sup>91</sup>

## **D. REVENUE REQUIREMENT**

### **i. Updated Revenue Requirement**

AES Ohio objects to the Staff’s recommended revenue increase range of \$64,273,390 to \$69,823,123 as being insufficient to provide the Company with the appropriate compensation, and that it does not allow the Company an opportunity to earn an adequate return. In addition, OCC, IEU-Ohio, OMAEG, and OPAE object that the Staff’s recommended rate increase is too high for consumers.<sup>92</sup> Staff Witness Lipthrott,

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<sup>88</sup> Staff Ex. 2, Buckley Testimony at 9 – 10.

<sup>89</sup> *Id.* at 10.

<sup>90</sup> *Id.*

<sup>91</sup> *Id.*

<sup>92</sup> OCC Objection 1, OPAE Objection 1, IEU-Ohio Objection 1, OMAEG Objection 1.

after reviewing all of the parties' objections, updated the revenue increase range to \$64,273,390 to \$69,823,123.<sup>93</sup>

## **ii. Working Capital**

AES did not include an allowance for cash working capital, yet argues that it is entitled to a working capital allowance. Staff Witness Liphtratt notes that the Company failed to request an allowance for cash working capital.<sup>94</sup> Mr. Liphtratt states that Staff's recommendation to disallow the non-cash working capital balance is because the Company did not request cash working capital. Mr. Liphtratt provides an explanation that working capital is a single allowance, consisting of multiple components, including working capital. By not requesting cash working capital, AES Ohio's requested allowance for working capital was deficient and does not accurately represent the working capital needs of the Company.<sup>95</sup> The Commission has long determined that materials and supplies and cash working capital are components of a total allowance for working capital that may be included in a utility's rate base.<sup>96</sup> The deficiency is because cash working capital can be negative and excluding it causes the allowance for working capital to be overstated.<sup>97</sup>

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<sup>93</sup> Staff Ex. 9, Liphtratt Testimony at 3.

<sup>94</sup> *Id.* at 4.

<sup>95</sup> *Id.* at 4.

<sup>96</sup> *In the Matter of the Application of Duke Energy Ohio Inc., for an Increase in Electric Distribution Rates*, Case Nos. 12-1682-EL-AIR, et al. (Testimony of Kerry Adkins) (March 20, 2013) at 3 -4; citing *Cincinnati Gas & Electric Co.*, Case No. 91-410-EL-AIR (May 13, 1992), *Ohio Edison Co.*, Case No. 89-1001-EL-AIR (August 16, 1990), *Columbia Gas of Ohio*, Case No. 89-516-AIR (April 5, 1990), *Ohio Edison Co.*, Case No. 87-689-EL-AIR (January 26, 1988), *Cleveland Electric Illuminating*, Case No. 86-2025-EL-AIR (December 16, 1987).

<sup>97</sup> Staff Ex. 9, Liphtratt Testimony at 3. *Id.*

### **iii. Incentive Compensation**

AES Ohio objects to the Staff's exclusion from rate base all capitalized earnings-based incentive compensation. AES Ohio claims that this compensation must be included in rate base because this makes-the pay for AES Ohio employees consistent with market rates. However, it is the shareholders of AES Ohio that are the primary beneficiaries when the company attains its financial targets that result in profitability.<sup>98</sup> Staff's position is that while incentive compensation for reliability and safety are reasonable, it is unreasonable for financial metrics in which the shareholders are the primary beneficiaries.

### **iv. Vegetation Management**

Another objection by AES Ohio is that Staff did not include an annual baseline of \$30,000,000 associated with vegetation management expenses and instead recommended an annual baseline of \$17,500,000.<sup>99</sup> Whereas, OCC objects to the Staff's recommended increase of \$1.8 million to the baseline expense for vegetation management.<sup>100</sup> The Company's current baseline is \$15.7 million and through the investigation, Staff did not find that AES Ohio supported its claim that \$30 million was warranted.<sup>101</sup> Staff recognized the need to raise the vegetation baseline and recommended an increase to \$17.5 million. The Company also argued that there should be no annual cap on the

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<sup>98</sup> *Id.* at 5.

<sup>99</sup> AES Objection 13, Staff Ex. 9, Lipthrott Testimony at 5.

<sup>100</sup> OCC Objection 12.

<sup>101</sup> Staff Ex. 9, Lipthrott Testimony at 6.

deferral of incremental vegetation management expense, or at a minimum, a cap of no less than \$12.5 million annually.<sup>102</sup> Staff recommends that AES Ohio continue to defer its incremental vegetation management expenses in excess of \$17,500,000, subject to a \$5,000,000 annual cap. The Company is currently authorized to defer \$4.6 million in incremental vegetation management expense and Staff's recommendation is to raise that annual cap to \$5 million.<sup>103</sup> AES Ohio also finds fault with the Staff's recommendation to amortize its current regulatory asset relating to deferred vegetation management expense over five years, instead of three years, which is what AES Ohio believes is more appropriate.<sup>104</sup> Staff's rationale is that the Company's last three rate cases were filed in April 1991,<sup>105</sup> November 2015,<sup>106</sup> and this case, which was filed in November 2020. The timing of the Company's case filings demonstrate that the five-year amortization period is reasonable. And furthermore, if there is an unamortized regulatory asset due to the timing of the filing of the Company's next base rate case, the regulatory assets would remain on the books of AES Ohio and would be eligible for recovery in the next base rate case.<sup>107</sup> However, if the amortization period is too short and AES Ohio files for a new base rate case after the conclusion of the amortization period, the Company would over-

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<sup>102</sup> *Id.*

<sup>103</sup> *Id.*

<sup>104</sup> AES Objection 14.

<sup>105</sup> *In the Matter of the Application of The Dayton Power and Light Company for Authority to Amend its Filed Tariffs to Increase the Rates and Charges for Electric Service*, Case No. 19-0418-EL-AIR.

<sup>106</sup> *In the Matter of the Application of The Dayton Power and Light Company for an Increase in Electric Distribution Rates*, Case No. 15-1830-EL-AIR.

<sup>107</sup> Staff Ex. 9, Lipthratt Testimony at 7.

collect on the regulatory asset. The five-year amortization period is reasonable and should be adopted by the Commission.

**v. Taxes**

Regarding taxes in the rate case, AES argues that Staff adjusted property tax expense failing to account for the historical average increase of 1.5 percent in such expense.<sup>108</sup> Staff Witness Lipthratt stated that he used the latest know property tax rate in calculating tax expense and does not recommend adders for inflation.<sup>109</sup> The Company also objects to the Staff's recommendation to adjust federal and state income tax expense to reflect the flow-through effects of Staff's adjustments to test year revenue, expenses, and rate base.<sup>110</sup> Staff recognized that there is a corresponding effect on tax expense as test year revenues and rate base changes from amounts included in the Staff Report and these<sup>111</sup> flow through effects are updated ion Exhibit C, which is an attachment to Mr. Lipthratt's testimony.

AES Ohio disagrees with the Staff Report recommendation for AES Ohio to amortize its current regulatory asset relating to a deficiency in deferred municipal income tax expense over a five-year period; whereas, the Company believes that it should be amortized over a three-year time period.<sup>112</sup>As stated earlier in the brief, AES Ohio has filed its rate cases in 1991, 2015, and 2020. The timing of these cases if well over a five-

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<sup>108</sup> AES Ohio Objection 15.

<sup>109</sup> Staff Ex. 9, Lipthratt Testimony at 8.

<sup>110</sup> AES Ohio Objection 16.

<sup>111</sup> Staff Ex. 9, Lipthratt Testimony at 8.

<sup>112</sup> AES Objection 17.

year period, thus the five-year amortization period is reasonable. And furthermore, any unamortized regulatory asset would be recovered in the Company's next base rate case.

**vi. Energy Efficiency Labor**

In the Company's Objection 18, AES Ohio argues that the Staff should not recommend removal of \$773,286 in labor and labor-related expenses associated with the Energy Efficiency Rider from the test year because it removes expenses that were also removed on pages 86 and 97 of the Staff Report.<sup>113</sup> Staff recognizes its error in removing the Energy Efficiency labor twice and Staff Witness Liphtratt corrected this error in Exhibit D attached to his testimony.<sup>114</sup>

**vii. Demand Side Management**

In AES Ohio Objections 26 and 27, the Company maintains that the Staff Report erred when it rejected Demand Side Management (DSM) expenses and deferral of DSM customer program expenses. OPAE and OEC also objected that the Staff did not endorse AES Ohio's DSM program.<sup>115</sup> Staff testified that a distribution case is not the appropriate method to handle the Company's DSM program.<sup>116</sup>

**viii. Test Year Expenses**

AES Ohio claims that the Staff incorrectly disallowed \$1,384,139 of expenses for services that were performed before the test year because \$916,283.55 of those expenses

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<sup>113</sup> Staff Ex. 1 at 96 -97.

<sup>114</sup> Staff Ex. 9, Liphtratt Testimony at 9 – 10.

<sup>115</sup> OPAE Objection 5, OEC Objection 1, 2.

<sup>116</sup> Staff Ex. 9, Liphtratt Testimony at 10.



were properly accrued, and \$467,855.29 of those expense were offsetting expenses because they were recorded after the test year concluded.<sup>117</sup> Mr. Liphtratt testified that “[c]osts are measured based on the period in which they are incurred, regardless of when the cash transaction takes place.”<sup>118</sup> The purpose of the test year is to measure the cost of rendering utility service during that specific time period – not months before the test year nor months after. Therefore, even if the cash payment occurs during the test period, but the expense incurred prior to the test year does not measure the cost of rendering utility service during the test period. This sound methodology eliminates the possibility that a utility could delay payment of invoices until the beginning of the test year; thereby, increasing test year expense because the case payment would take place during the test year.<sup>119</sup>

As discussed in Mr. Liphtratt’s testimony, Staff maintains that the Company failed to provide data to support the claim that the \$916,283.55 was properly accrued and reversed, ensuring that no out-of-period expenses were included in the revenue requirement. Using only the information provided to Staff during its investigation, Staff could not confirm with a reasonable degree of certainty that reversals of accruals associated with the \$916,283.55 were accounted for in the test year.

The Company claims there are offsetting expenses that occurred at the end of the test year that were not included in the test year expenses because they were recorded after

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<sup>117</sup> AES Ohio Objection 29.

<sup>118</sup> Staff Ex. 9, Liphtratt Testimony at 11.

<sup>119</sup> *Id.* at 12.

the test year. The Company claim that this \$467,855.29 amount should be included.<sup>120</sup>

The Company contends that there were offsetting expenses that occurred at the end of the test year that are not included in test year expense because they were recorded after the test year concluded.<sup>121</sup> The final nine months of the test year were based on forecasted amounts, not actuals; therefore, the offsetting entries would not be automatically reflected in the test year unless they were contained in the Company's forecasted data.<sup>122</sup> Staff did not update the test year to actuals and Staff accepted AES Ohio's forecasted amount for O&M expenses, any offsetting entries would not be reflected in the test year.

Consequently, there is the potential that expenses at the end of the test year are based solely on the Company's forecasting methodology. Staff further investigated the issue to determine what was in the forecast and the Company states that "the forecast in the rate case is based on the assumption that we will continue to pay these leases."<sup>123</sup> This response from the Company does not show that the forecast was not adjusted or developed to ensure that the expenses were excluded from the test year. "The fact that the Company's forecast did not account for and offset predictable, periodic expenses such as the annual leases certainly raises significant doubt that the Company's forecast accounted for and offset the unpredictable, one-time expenses, which make up the bulk of Staff's adjustments to pre-test year expenses."<sup>124</sup> This lack of evidence demonstrates the Company's inability to support its objection regarding the inclusion of \$467,855.29.

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<sup>120</sup> AES Ohio Objection 29.

<sup>121</sup> Staff Ex. 9, Lipthrott Testimony at 15.

<sup>122</sup> *Id.*

<sup>123</sup> Staff Ex. 9, Lipthrott Testimony at 16.

<sup>124</sup> *Id.* at 16 – 17.

**ix. Miscellaneous Expense**

AES Ohio's Objection 30 complains that the Staff Report recommended disallowance of expenses for attorneys for the rate case, ice for linemen, and cable and satellite expenses. Staff acknowledged that some corrections needed to be made related to the rate case expense and the ice for the linemen. Mr. Lipthratt made these corrections in Exhibit F, attached to his testimony.<sup>125</sup> But Staff disagrees with the expense associated with cable and satellite, as Staff investigated these costs and found no indication that these expenses were associated with AES phones.<sup>126</sup>

**x. Uncollectible Expense**

AES Ohio disagrees with the Staff's recommendation to eliminate the Company's current regulatory asset relating to the uncollectible expense because the Commission granted the Company's right to do this in Case Nos. 15-1830-EL-AIR, et al.<sup>127</sup> As discussed in Mr. Lipthratt's testimony, the Company was not granted to have a regulatory asset that would remain on the Company's balance sheet indefinitely. Rather, Staff's understanding is that the deferral authority sought and received by the Company in its previous rate case, Case No. 15-1830-EL-AIR, was limited to typical over/under-collections required for true-up purposes. And AES Ohio voluntarily reverted back to ESP 1, therefore, the uncollectible rider is no longer authorized. AES Ohio is attempting

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<sup>125</sup> *Id* at 17.

<sup>126</sup> *Id.*

<sup>127</sup> AES Ohio Objection 31.

to defer the entire amount of uncollectible expense in prior years rather than the simple deferral of over or under recoveries on an annual basis.<sup>128</sup>

**xi. Distribution Infrastructure Rider Audit Costs**

The Company objects to the Staff's recommendation to disallow recovery of these costs that were approved for recovery in the Company's last rate case, Case No. 15-1830-EL-AIR. The Staff Report in Case No. 15-1830-EL-AIR specifically states that the audit costs are to be recovered in the Distribution Infrastructure Rider (DIR). The Commission did not modify this requirement. When the Company reverted back to operating under the Order issued in the DIR audit costs.

**xii. Storm Costs**

OCC objects that Staff did not make a recommendation to make a plant-in-service adjustment to exclude \$16.8 million in improper capitalized storm costs.<sup>129</sup> Staff's investigation into the plant-in-service in this case was extensive. The Staff's analysis included examination of financial transactions and physical inspections.<sup>130</sup> OCC's witness Willis recommended removing operation and maintenance expenses, case bonuses, meals, picnics, and parties, but Staff's investigation did not reveal that these types of expenses were being capitalized.<sup>131</sup>

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<sup>128</sup> Staff Ex. 9, Liphtratt Testimony at 18.

<sup>129</sup> OCC Objection 5.

<sup>130</sup> Staff Ex. 9, Liphtratt Testimony at 21.

<sup>131</sup> *Id.*

**xiii. Dues and Memberships**

OCC argues that \$241,572 associated with dues and memberships should be removed from test year O&M expenses instead of Staff's recommended removal of \$14,534. Staff does not recommend inclusion of dues and memberships that are not associated with the Company's provision of electric distribution service.<sup>132</sup> Staff witness Lipthrott testified that the Staff investigation determined that the remaining dues and membership expenses that remains in the test year expenses were related to the provision of distribution service and appropriate for recovery.<sup>133</sup>

**xiv. Pandemic Expenses and Savings**

AES Ohio has deferred the cost and savings related to the coronavirus and when the Company seeks to recover these costs, the Staff will audit those costs to ensure that those costs are prudent and that the savings are accounted for.<sup>134</sup> In this proceeding, OCC seeks an adjustment to the unadjusted test year expenses for the removal of \$952,488 in travel and entertainment savings associated with the coronavirus. One Energy, Kroger, and OMAEG also complain that the Staff did not examine the effects of the coronavirus.<sup>135</sup> Staff witness Lipthrott testified that Staff verified that the test year expenses were not associated with the coronavirus.<sup>136</sup> Staff does not recommend OCC's Objection 11 adjustment.

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<sup>132</sup>

*Id.*

<sup>133</sup>

*Id.* at 22.

<sup>134</sup>

*Id.* at 23 -24.

<sup>135</sup>

One Energy Objection 2, OMAEG Objection C, Kroger Objection D.

<sup>136</sup>

Staff Ex. 9, Lipthrott Testimony at 23 -24.

## **E. RATE DESIGN**

### **i. Low Load Factor**

The Max Charge provision mitigates bills for customers with demand relative to their usage. According to this provision, AES Ohio “must calculate and compare a customer’s total charges for three components under normal rates and max charge rates. The three components are 1) Base Distribution, 2) Rate Stabilization Charge (RSC) and 3) Transmission Cost Recovery rider – Non-bypassable (TCRR-N). If the total charges for the three components under normal rates exceed the total under max charge rates, then the Company will bill the customer under the max charge rates for each component.”<sup>137</sup> As explained by Staff witness Bremer, AES Ohio proposed in its application to rename the current maximum charge rate provisions for Secondary and Primary customer to the Low Load Factor Provision and increase the rates to limit eligibility to customers with load factors of 10 %.<sup>138</sup> Staff proposes to mitigate the significant bill increases that would occur under AES Ohio’s proposal by increasing the max charge rates gradually. In the Staff Report, at Table 8, there is a summary of the rates as proposed by Staff’s rate design.<sup>139</sup> The Company’s recommendation would increase the secondary max charge by 619% and the primary charge by 1,162%. Whereas, Staff’s recommendation would have increases of 158% and 285%, respectively. These

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<sup>137</sup> Staff Ex. 7, Bremer Testimony at 3.

<sup>138</sup> *Id.* at 4.

<sup>139</sup> *Id.* at 4.

Staff suggested increases were calculated at the mid-point of the Staff's recommended revenue requirement.

Several parties disagree with Staff's recommendation, claiming that it transfers cost responsibility from low load factor customers to non-low load factor customers.<sup>140</sup> Staff understands that the Max Charge Provision caps the bills of secondary and primary customers with low load factors; thereby, resulting in less revenues from these customers to offset the class revenue requirement used to calculate the class demand rate in a rate case, thus increasing it.<sup>141</sup> Staff's proposal follows a long-standing principle in rate-making – gradualism. Staff recommends increasing the max charge rates; this lowers the load factor eligibility threshold and limits the increase to the class demand rate.<sup>142</sup>

## **ii. Customer Charge**

A number of parties objected to the Staff's recommended residential customer charge of \$9.75.<sup>143</sup> Staff has a long history of using the minimum compensatory method and that is what was used in this case. According to this methodology, the customer charge recovers costs that vary directly with the number of customers, such as meter cost, service drop, line transformer and customer billing.<sup>144</sup> This calculation has been

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<sup>140</sup> OMAEG Objection E, Walmart Objection B, Ohio Energy Group Objection 1, Kroger Objection F, and AES Ohio Objection 38.

<sup>141</sup> Staff Ex. 7, Bremer Testimony at 5.

<sup>142</sup> *Id.*

<sup>143</sup> OCC Objection 23, OPAC Objection 3, IGS Objection F and AES Ohio Objection 37.

<sup>144</sup> Staff Ex. 7, Bremer Testimony at 7.

consistently used in prior rate cases and results in a reasonable increase to the residential customer charges.

### **iii. Revenue Allocation**

OCC objected to the Staff's recommendation to allocate 66.70% of base distribution charges to residential consumers.<sup>145</sup> As analyzed by Staff, the Cost of Service Study filed by the Company is a reasonable indicator of the cost responsibility of each customer class.<sup>146</sup> OEE further argues that the Staff's acceptance of the Company's cost of service study should not be used because it differs from billing practices. The methodology uses a non-coincident peak, which is an accepted methodology to allocate costs for a distribution system.<sup>147</sup> The Company's cost of service study analyzed the utility's total costs to serve and the results were utilized to determine the cost to serve each class and determine the individual class revenue requirement.

### **iv. Time of Use Rate for Residential and Small Commercial Customers**

Ohio Environmental Council (OEC) objected to Staff's failure to include a recommendation for the AES Ohio to propose a time-of-use rate for residential and small commercial customers as part of the Staff Report.<sup>148</sup> Staff disagrees with this objection believes that this matter is better resolved in a separate proceeding.<sup>149</sup> To this end, Staff

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<sup>145</sup> OCC Objection 22.

<sup>146</sup> Staff Ex. 7, Bremer Testimony at 7.

<sup>147</sup> *Id.* at 8.

<sup>148</sup> See OEC Objection 3.

<sup>149</sup> Staff Exhibit 5, Schaefer Testimony at 3.



witness Krystina Schaefer explained that following the filing of AES Ohio's Application in the current case, a Stipulation and Recommendation was approved by the Commission in a different proceeding, which authorized the Company to deploy advanced metering infrastructure (AMI) throughout its service territory for nearly all customers.<sup>150</sup> The Stipulation requires the Company to propose a time-of-use rate through an application for tariff 9 approval during Phase 1 of the Company's Smart Grid Plan (i.e., the phase of the approved AMI deployment).<sup>151</sup> Because this directive was issued after the Application was submitted and shortly before the Staff Report was filed in this proceeding, Staff believes that a time-of-use rate for residential and small commercial customers is better considered in the Company's future application for tariff approval.<sup>152</sup>

**v. Distributed Energy Resources Tariff**

Interstate Gas Supply (IGS) objected to Staff's failure to recommend a new tariff for commercial and industrial customers to encourage the deployment of distributed energy resources and specifically recommends an alternative for the Company's calculation of monthly demand charges.<sup>153</sup> Staff does not agree with IGS. Staff believes that there are incentives outside of the demand charge rate to encourage the deployment of distributed energy resources in accordance with state policy, as defined in R.C.

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<sup>150</sup> Staff Exhibit 5, Schaefer Testimony at 4; *see also*; *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, Case No. 18-1875-EL-GRD, Opinion and Order at 13 (June 16, 2021).

<sup>151</sup> Staff Exhibit 5, Schaefer Testimony at 4; *see also*; *In the Matter of the Application of The Dayton Power and Light Company for Approval of Its Plan to Modernize Its Distribution Grid*, Case No. 18-1875-EL-GRD, Opinion and Order at 25-26 (June 16, 2021).

<sup>152</sup> Staff Exhibit 5, Schaefer Testimony at 4.

<sup>153</sup> *See* IGS Objection E.

4928.02.<sup>154</sup> To this end, Staff witness Schaefer explained that the Application maintains the tariffs for the Company's interconnection services and billing and payment for net metering services, which allows customers to offset the cost of generation service by producing their own electricity.<sup>155</sup> The Company also has a cogeneration and small power production tariff, which allows eligible Qualifying Facilities (QF) to sell energy to the Company "based on the location marginal price in PJM's day-ahead energy market at PJM's pricing node that is closest to the QF point of injection, or at a relevant trading hub or zone."<sup>156</sup>

## **F. CUSTOMER PAYMENT PLANS AND CRES ISSUES**

### **i. Extended Payment Plan Enrollment**

OPAE and OCC object that the Staff report does not recommend consistency in enrolling customers in extended payment plans following the submission of a medical certificate.<sup>157</sup> OPAE and OCC argue that upon submission of a medical certificate, a customer should be enrolled in a payment plan in order to be in compliance with Ohio

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<sup>154</sup> Staff Ex. 5, Schaefer Testimony at 5; referencing: "It is the policy of this state to do the following throughout this state: (C) Ensure diversity of electricity supplies and suppliers, by giving consumers effective choices over the selection of those supplies and suppliers and by encouraging the development of distributed and small generation facilities; (F) Ensure that an electric utility's transmission and distribution systems are available to a customer-generator or owner of distributed generation, so that the customer-generator or owner can market and deliver the electricity it produces; (K) Encourage implementation of distributed generation across customer classes through regular review and updating of administrative rules governing critical issues such as, but not limited to, interconnection standards, standby charges, and net metering."

<sup>155</sup> Staff Ex. 5, Schaefer Testimony at 5.

<sup>156</sup> Staff Ex. 5, Schaefer Testimony at 5; *citing to* The Dayton Power and Light Company, PUCO No. 17 Electric Generation Service Cogeneration and Small Power Production Tariff (Original Sheet No. G11).

<sup>157</sup> Staff Ex. 8, Smith Testimony at 4, 5, 11.

Adm.Code 4901:1-18-06(C)(3)(e).<sup>158</sup> The Company does not enter customers into payment arrangements at the time a customer uses a medical certificate because the payment arrangement requires a conditional payment; whereas, the medical certificate provides 30 days of service without payment.<sup>159</sup> As pointed out by Staff witness Smith, the Company does enter customers into payment arrangements during the use of a medical certificates, however, the priority is to avoid disconnection. This practice complies with the intent of the administrative code because the result of the delay in payment arrangements benefits customers.

## **ii. CRES Provider Fees**

Direct opposes the inclusion of \$770,254 in CRES provider fees in the calculation of operating income and its impact on the revenue requirement.<sup>160</sup> Staff disagrees with Direct and appropriately points out that provider fees include switching fees, technical support and assistance charges, manual historical customer energy usage data charges, and electronic interval meter data charges,<sup>161</sup> are charged to CRES and the revenue is then deducted from the cost of service, thus, reducing the revenue requirement.

In Direct's Objections 1 and 2, Direct states that Staff failed to identify specific charges as CRES fees, failed to identify costs of services subject to CRES provider fees, and failed to investigate if CRES fees are just and reasonable.<sup>162</sup> Some of the fees that

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<sup>158</sup> *Id.* at 5.

<sup>159</sup> *Id.*

<sup>160</sup> *Id.* 5.

<sup>161</sup> *Id.*

<sup>162</sup> *Id.* at 6.

Direct complains of are generation fees and because this case relates to distribution rates, it is inappropriate to examine generation costs. When reviewing the CRES provider fees relating to AES Ohio's distribution service, Staff limited its scope to CRES provider fees that reduce the revenue requirement as a cost to serve. Staff witness Smith supported the \$5.00 switching fee, recognizing that there is a cost associated with the switching process including mailing a rescission letter and a cancelation notices when AES Ohio receives a notification for a CRES to switch a customer's generation provider.<sup>163</sup>

Direct and IGS also claim that the lack of fees for SSO customers, and particularly the switching fee, is discriminatory because the CRES must pay it.<sup>164</sup> Mr. Smith testified that the process and cost of switching to and from CRES providers compare to customers who defaulted to the SSO are not comparable situations. Customers who default to the SSO are usually dropped by a CRES provider for service and does not have to be initiated by the customer. This can occur when a government aggregation ends, or when a CRES contract is not renewed.<sup>165</sup> In addition, AES is required to provide notice to customers when a customer is returned to the SSO as a result of a CRES provider action per 4901:1-10-29, however, no notice is required when a customer request a return to the SSO. When this occurs, AES Ohio is not provided a reason for the customer's return. In addition, provider fees such as historical data or interval meter data are not necessary for SSO service. Also, in a recent case, Case No. 18-1875-EL-GRD, according to AES Ohio's G8

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<sup>163</sup> *Id.* at 6.

<sup>164</sup> *Id.* at 6, 9.

<sup>165</sup> *Id.* 7.

tariff no fees are charged to CRES for accessing or requesting historic usage and electronic interval meter data.

**iii. PUCO and OCC Assessments**

Direct and IGS complain that PUCO and OCC assessments should not only be recovered through base rates and included in the SSO cost.<sup>166</sup> However Staff recommends that the assessment be included in base rates because it is a cost to the electric distribution utility as a provider of last resort.<sup>167</sup>

**iv. Uncollectible Expense Recovery**

IGS objects that the generation-related uncollectible expense should not be recovered in distribution rates. Because AES Ohio is a provider of last resort, these costs are distribution related and should be recovered through distribution rates.<sup>168</sup>

**v. At-Risk Customers**

OCC objects that the Staff did not recommend a way to mitigate rate increases on at risk customers. Though at-risk customers will see increases in their bills, recent changes in the percentage of income payment plan (PIPP) rules will provide some relief for at risk communities. Ohio Adm.Code 4901:1-18. The Special Reconnect Order issued on September 8, 2021 in Case No. 21-750-GE-UNC also offers relief to these customers.

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<sup>166</sup> Staff Ex. 8, Smith Testimony at 7 - 8, 9.

<sup>167</sup> *Id.* at 7.

<sup>168</sup> *Id.* at 8.

**vi. Small Unmetered Service**

AES Ohio objects to the Staff's recommendation to disallow the proposed rate for small constant unmetered service. There is only one customer that wants this service and therefore, Staff recommends that other rate structures, such as pole attachment rates are a more appropriate place to address the needs of this one customer.<sup>169</sup>

**vii. Customer Deposits**

AES complains that Staff's recommendation to allow customer deposits in three installments is not required by Ohio law. Ohio law does not require that a customer deposit be made in installments, nor does Ohio law prohibit installment payments. Staff recommends that AES Ohio offer the customer deposit be made by installments in light of the consumer complaints and the fact that the current AES Ohio deposit is unusually high.<sup>170</sup> Columbia Gas of Ohio and Dominion East Ohio allow customers to pay deposits in three installments. CITE Tariffs.

**viii. Choice of Services Availability Online**

One Energy claims that the Staff Report failed to require that choice of service option be available online. One Energy filed to investigate its objection because AES Ohio currently has a bill calculator online. This online calculator allows customers to recalculate their bills. And all of AES Ohio's tariffs are also available online. In addition, a new rule that became effective November 1, 2021 will require an online calculator for

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<sup>169</sup> *Id.*

<sup>170</sup> *Id.* at 13.

every rate or charge and allow the customer to calculate their bills. Ohio Adm.Code 4901:1-10.<sup>171</sup>

**ix. Fraud Charge**

One Energy also recommends that AES Ohio eliminate its investigation fee for fraud. However, the Staff disagrees and states that there are costs associated with investigating fraud and it is appropriate that the Company recover these fees.<sup>172</sup> Another objection of One Energy's is that Staff should have recommended limits on the Company's discretion in determining the location, number, and type of metering equipment to use for customers. Staff disagrees and recommends that the number of meters and delivery points should remain a company decision and must meet the requirements in Ohio Adm.Code 4901:1-10-05.<sup>173</sup>

**G. APPLICATION AND AUDIT**

One Energy raised the issue that Staff's Report should have rejected AES Ohio's application for an increase in rates in its entirety because the application was materially insufficient,<sup>174</sup> Staff disagrees with this characterization of the Company's application, and to the contrary, the Commission found the application to be compliant with the Standard Filing Requirements and noted this with an Entry docketed in the case on April 7, 2021.

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<sup>171</sup> Staff Ex. 8, Smith Testimony at 15.

<sup>172</sup> *Id.* at 16.

<sup>173</sup> *Id.* at 17.

<sup>174</sup> One Energy Objection 1.

## CONCLUSION

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

Respectfully submitted,

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## PROOF OF SERVICE

I hereby certify that a true copy of the foregoing **Brief**, submitted on behalf of the Staff of the Public Utilities Commission of Ohio, was served via regular U.S. or electronic mail upon the below parties of record, this 4<sup>th</sup> day of March 2022.

*/s/ Jodi Bair*

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Summary: Brief Submitted on Behalf of the Staff of the Public Utilities Commission  
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