

BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of	:	Case No. 22-0900-EL-SSO
The Dayton Power and Light Company d/b/a		
AES Ohio for Approval of Its Electric	:	
Security Plan		
	:	
In the Matter of the Application of The		Case No. 22-0901-EL-ATA
Dayton Power and Light Company d/b/a	:	
AES Ohio for Approval of Revised Tariffs		
	:	
In the Matter of the Application of		Case No. 22-0902-EL-AAM
The Dayton Power and Light Company d/b/a	:	
AES Ohio for Approval of Accounting		
Authority Pursuant to Ohio Rev. Code	:	
§ 4905.13		

AES OHIO'S INITIAL POST HEARING BRIEF

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I. INTRODUCTION AND SUMMARY

The April 10, 2023 Stipulation and Recommendation ("Stipulation") in this case recommends approval of AES Ohio's fourth Electric Security Plan ("ESP 4"). The Stipulation, which was negotiated and joined by a diverse coalition of parties, includes significant customer benefits; among them:

1. The Stipulation will position AES Ohio to make needed investments in its infrastructure and vegetation management expenditure, which will improve its ability to provide reliable service.
2. The Stipulation will provide many specific benefits to customers.
3. Upon approval of the Stipulation, the Rate Stabilization Charge ("RSC") will be terminated.
4. Upon implementation of ESP 4 and distribution rates previously approved by the Commission in Case No. 20-1651-EL-AIR, AES Ohio will have the lowest distribution and transmission rates in the State.

AES Ohio, the Commission's Staff (which must balance the interests of all parties), representatives of residential, commercial, and industrial customers, and other capable, knowledgeable parties signed the Stipulation.

The only party to oppose the Stipulation is the Ohio Consumer's Counsel ("OCC"). At hearing, OCC's principal argument was that the Regulatory Compliance Rider ("RCR") is not lawful. However, as demonstrated below, that rider is lawful under either R.C. 4928.143(B)(2)(d) or (B)(2)(h). In fact, OCC witness Morgan admitted that the RCR satisfies the elements of both statutes.

In addition, OCC claimed at hearing that the Stipulation fails the ESP v. Market Rate Offer ("MRO") test in R.C. 4928.143(C)(2)(a). OCC witness Fortney principally asserted that accelerated recovery of costs made the ESP worse for customers. However, he admitted that

when he was a member of the Commission's Staff, he testified that accelerated recovery of those costs under an ESP was a "wash" under the ESP v. MRO test, since those costs could eventually be recovered through a distribution rate case if a utility was operating under an MRO. He further admitted that the Commission's Staff must act in the best interest of all parties.

In evaluating a Stipulation, "the ultimate issue for the Commission's consideration is whether the agreement, which embodies considerable time and effort by the Signatory Parties, is reasonable and should be adopted." *In the Matter of the Application of The Dayton Power and Light Co.*, Case No. 18-1875-EL-GRD, *et al.*, Opinion and Order (June 16, 2021), ¶ 44. In considering the reasonableness of a Stipulation, the Commission examines: (1) whether the settlement is a product of serious bargaining among capable, knowledgeable parties, (2) whether the settlement, as a package, benefits ratepayers and the public interest, and (3) whether the settlement violates any important regulatory principle or practice. *Id.*

The Commission should conclude that the Stipulation satisfies that three-prong test and should approve it without modification.

II. THE STIPULATION IS THE RESULT OF SERIOUS BARGAINING

The testimonies of Staff witness Messenger and AES Ohio witness Schroder establish that the Stipulation is the product of serious bargaining among capable, knowledgeable parties. Staff Ex. 6, pp. 3-4 (Messenger); AES Ohio Ex. 1, pp. 4-7 (Schroder). AES Ohio witness Schroder's testimony demonstrates that the Stipulation was signed by a large group of diverse parties:

"Q. Can you identify the Signatory Parties to the Stipulation, and their interests?

- A. Yes. The Signatory Parties to the Stipulation and their interests are:

<u>Party</u>	<u>Interest</u>
AES Ohio	Utility
Staff	All customers and parties
Ohio Partners for Affordable Energy	Low-income residential customers
City of Dayton	Municipality and its residents
Ohio Energy Leadership Council	Industrial customers
Ohio Energy Group	Industrial customers
Ohio Manufacturers' Association Energy Group	Manufacturing customers
Ohio Hospital Association	Hospitals that are customers
University of Dayton	University that is a customer
The Kroger Company	Retail customer
Walmart Inc.	Retail customer
The Retail Energy Supply Association	CRES providers
IGS Energy	CRES provider
Constellation Energy Generation, LLC and Constellation NewEnergy, Inc.	CRES provider
ChargePoint, Inc.	Market participant
Armada Power, LLC	Market participant

- Q. Are there any other Signatory Parties to the Stipulation, that are identified as non-opposing?

- A. Yes. The Parties that have signed the Stipulation as Non-Opposing Parties to the Stipulation and their interests are:

<u>Party</u>	<u>Interest</u>
Citizens' Utility Board of Ohio	Residential and small business customers
Ohio Environmental Council	Environmental
One Energy Enterprises, Inc.	Market participant

AES Ohio Ex. 1, pp. 4-5.

None of OCC's witnesses addressed whether the Stipulation was the product of serious bargaining among knowledgeable parties, and two of OCC's witnesses admitted that they do not contest that point. Tr. 307 (Fortney); Tr. 669 (Morgan).

The undisputed evidence thus establishes that the Stipulation is the product of serious bargaining among capable, knowledgeable parties.

III. THE STIPULATION BENEFITS CUSTOMERS

As demonstrated below, the Stipulation provides significant benefits to customers that fall into four categories:

- a. The Stipulation positions AES Ohio to make needed reliability expenditures.
- b. The Stipulation provides specific customer benefits.
- c. The Stipulation will eliminate the RSC.
- d. AES Ohio will have the lowest distribution and transmission rates in the state.

A. The Stipulation Will Lead to Greater Reliability

The testimony of Staff witness Messenger demonstrates that the Stipulation will allow AES Ohio to improve its reliability:

"Q. Does the Stipulation, as a package, benefit ratepayers and the public interest?

A. Yes, the Stipulation provides many benefits for ratepayers and the public interest. In particular, the Stipulation contains provisions that, among other things, focus on reliability improvements, low-income programs, and economic development.

Q. Please describe the benefits you listed.

A. The Stipulation contains provisions that benefit ratepayers, and the public interest by focusing on improving reliability. For example, the Stipulation includes a Distribution Investment Rider (DIR) that encourages the Company to make incremental investments in its distribution system. As stated by Staff Witness Nicodemus, the Company is required under the Stipulation to provide an annual work plan that focuses investments toward improving the reliability and resiliency of its distribution system. The

Stipulation also imposes annual caps on the revenue requirement, protecting ratepayers from charges escalating unreasonably, and includes a penalty provision that lowers the annual cap increase if the Company fails to meet the specified reliability benchmarks. Additionally, the Stipulation includes a Proactive Reliability Optimization (PRO) Rider, which will incentivize AES Ohio to focus on increasing its vegetation management activity. Ratepayers will benefit from the reliability improvements that are expected from these increased investments."

Staff Ex. 6, pp. 4-6.

Similarly, the testimony of AES Ohio witness Schroder explains that the Stipulation will allow AES Ohio to make expenditures that are needed to achieve greater reliability:

- "Q. Can you describe the first benefit that you identified, i.e., necessary investments and vegetation management expenditures?
- A. As the Commission has recognized, AES Ohio has been operating under financial stress for years. *In the Matter of the Application of The Dayton Power and Light Co.*, Case No. 18-1875-EL-GRD, *et al.*, Opinion and Order (June 16, 2021), ¶ 58 (AES Ohio's financial conditional is "fragile."). Due to that financial stress, AES Ohio has not had the funds to allow it to make needed investments in its distribution infrastructure, and has not been able to manage vegetation on its distribution lines consistent with its vegetation management plan. AES Ohio has missed its CAIDI targets for 2019-2022.

The Stipulation has four terms that are designed to allow AES Ohio to improve its reliability. First, the Stipulation includes a Distribution Investment Rider ("DIR"), which will allow AES Ohio to timely recover certain distribution investments. Stipulation, § IV.

Second, the Stipulation includes a Proactive Reliability Optimization Rider ("PRO"), which will allow AES Ohio to recover vegetation management expenses that the Commission authorized AES Ohio to defer in Case No. 20-1651-EL-AIR, *et al.* Stipulation § V.

Third, the Stipulation continues AES Ohio's existing Infrastructure Investment Rider ("IIR"), which allows AES Ohio to recover smart grid investments. Stipulation § XI.

Fourth, the Stipulation continues a Storm Cost Recovery Rider ("SCRR"), which will allow AES Ohio to recover costs of responding to major storms. Stipulation § VII.

As explained by AES Ohio Witness Malinak, each of those riders allows AES Ohio to recover its expenditures on an accelerated basis benefits customers because AES Ohio can reinvest those funds in other projects to enhance reliability. Improved reliability will also result from AES Ohio's plans to invest in its distribution and transmission systems during the term of the ESP. These much-needed investments will be funded from multiple sources, including a projected infusion of equity from The AES Corporation and debt issuances by AES Ohio. The AES Corporation's projected equity infusion into AES Ohio is in addition to the \$300 million that The AES Corporation invested in AES Ohio in 2020-2021. These equity investments will not only provide significant benefits to our customers by allowing AES Ohio to improve its reliability and service to its customers, but they will also help AES Ohio to improve its credit rating, which will allow it to raise debt at better rates for customers."

AES Ohio Ex. 1, pp. 7-9.

OCC's witness Morgan agreed that reliability improvements were good for residential customers. Tr. 654-55 (Morgan).

OCC witness Fortney asserts that an exhibit to his testimony demonstrates that increased spending on reliability will not lead to greater reliability. OCC Ex. 2, Ex. RBF-1. However, he admitted that as compared to the six other Ohio utilities, AES Ohio spent the second lowest amount on reliability, and failed to achieve the Commission's reliability targets more than other Ohio utilities:

"Q. So AES Ohio is missing its reliability metrics more than every other Ohio utility and has been spending less on reliability than all but one Ohio utility, correct?

A. That's correct."

Tr. 287-88 (Fortney).

The Commission should thus conclude that improved reliability is an important benefit of the Stipulation.

B. The Stipulation Provides Many Specific Benefits to Customers

The testimony of AES Ohio witness Schroder demonstrates that the Stipulation provides significant customer benefits:

"Q. Can you describe the second benefit that you identified, i.e., specific terms that benefit customers?

A. Yes. In addition to the [reliability] benefits described above, the principal terms and benefits of the Stipulation include:

1. AES Ohio will provide a Standard Service Offer via a competitive bidding process. Stipulation § III. AES Ohio has implemented two changes to its competitive bidding process that are designed to mitigate price volatility. First, AES Ohio will conduct two auctions per year, which will lower the risk that an auction will be conducted during a price spike. Second, AES Ohio will reinstate laddering (i.e., each bidding session will include multiple years), which will also lower the risk that auction prices will be set during a price spike. In addition, the Stipulation preserves the right of Signatory Parties to advocate for what they believe to be improvements to the competitive bidding process.
2. AES Ohio will meet with the members of the Grid Mod Implementation Update Group to discuss converting the results of the SSO auction into retail rates that include on-peak and off-peak pricing. Stipulation § III.D.
3. AES Ohio will solicit input from Signatory Parties to develop a proactive distribution maintenance plan to improve AES Ohio's reliability, including a focus on

spending where it will have the greatest impact on maintaining and improving service reliability and resiliency, and promoting equity for low-income communities. Stipulation §IV.L. and Exhibit 2 to the Stipulation.

4. AES Ohio will implement a Regulatory Compliance Rider ("RCR") to recover deferred costs. Stipulation § VI. Recovery of those deferred costs is critical to AES Ohio's ability to maintain its financial integrity and improve its reliability.
5. AES Ohio will withdraw its request in Case No. 20-140-EL-AAM to defer the Decoupling Amounts, and will not seek to recover those amounts in a future proceeding. Stipulation § VI.C.
6. AES Ohio shall implement a Low-Income Assistance Program, which will provide \$5.7 million annually to fund (a) weatherization and bill payment assistance programs for low-income customers, and (b) a Disadvantaged Communities Energy Initiative, which will provide funds for energy-related purposes in Qualified Census Tracts. Stipulation § IX.E.
7. AES Ohio will implement a Residential Off-Peak Incentive Program, which is expected to benefit the overall distribution system by encouraging off-peak electric vehicle charging. Stipulation § IX.F.
8. AES Ohio will implement a Green Energy Alternative Tariff to offer customer-sited renewable energy resources for mercantile customers pursuant to R.C. 4928.47. Stipulation § X.
9. AES Ohio shall continue its Tax Savings Credit Rider, which returns to customers certain amounts associated with tax-law changes in the Tax Cuts and Jobs Act. Stipulation § XI.A.
10. In AES Ohio's next distribution rate case, it will evaluate costs to serve customers with large, distributed generation facilities. Stipulation § XII.
11. In an effort to reduce disconnections, AES Ohio will conduct educational outreach and marketing of utility assistance programs and low-income energy efficiency programs. Stipulation § XIII.A.

12. Upon receiving customer consent, AES Ohio will provide customer data to CRES providers and third-party aggregators so that customers can participate in the PJM ancillary services market. Stipulation § XIII.B. Customers may be able to save money by participating in such programs.
13. AES Ohio will eliminate a \$25 fee to reconnect a customer when the customer can be reconnected remotely. Stipulation § XIV.
14. For any distribution rate case filed during the term of the ESP, AES Ohio's equity component shall be capped at the amount approved in Case No. 20-1651-EL-AIR. Stipulation § XV. Equity is a higher cost of capital than debt, and capping the equity component will limit the cost of capital in a rate case.
15. AES Ohio will bill transmission costs to non-residential customers based upon their contribution to AES Ohio's Network Service Peak Load ("NSPL"), starting in 2025. Stipulation § XVI. By billing customers on their NSPL contribution, AES Ohio will allow customers to manage their transmission bills by shifting their usage to off-peak hours. Further, PJM bills AES Ohio based upon its system peak, and to the extent non-residential customers in AES Ohio's service territory shift their loads to off-peak hours, PJM would be expected to allocate fewer costs to AES Ohio, which will benefit all customers.
16. AES Ohio will offer Economic Development Incentives to support new or expanding businesses in its service territory. Those incentives will encourage investments in AES Ohio's service territory and will create more jobs. In addition, recovery of those incentives from customers is capped in the Stipulation. Stipulation § XVII.
17. AES Ohio will meet with Ohio Hospital Association ("OHA") at least annually to discuss reliability and resiliency. Stipulation § XVIII. Hospitals provide critical services to members of the community, and efforts to improve reliability and resiliency for hospitals benefit all members of the community.
18. AES Ohio will continue to waive the redundant service charge for the City of Dayton and OHA for a specified period. Stipulation § XIX. The City of Dayton and area

hospitals provide critical benefits to the community, and allowing them to have redundant service at a low cost benefits all members of the community.

19. AES Ohio agreed to a SEET threshold of 13% during the term of the ESP. Additionally, if AES Ohio agrees to credit any significantly excessive earnings in those years to consumers. Stipulation § XX.
20. AES Ohio agreed to contribute \$150,000 of shareholder funds to the AES Ohio Gift of Power program to assist with consumer hardship bill payment assistance. Stipulation § XXI.
21. Before AES Ohio's next rate case, AES Ohio will meet with interested Signatory Parties to discuss potential rate structure for non-residential customers with low energy utilization, including but not limited to EV charging stations. Stipulation § XXII.
22. Staff will issue a Request for Proposals to review data associated with the recovery of uncollectible expenses. Stipulation § XXIII.
23. AES Ohio will work with the City of Dayton to support the interconnection of a solar project at a local Superfund site. Stipulation § XXIV.
24. AES Ohio agreed to eliminate fees for customers to switch to/from CRES providers. Stipulation § XXVI.
25. AES Ohio agreed to phase-in its proposal to adjust its Low-Load Factor protection to gradually target customers with approximately 10% load factors. Stipulation § XXVI. This will limit subsidization by other customers within their class, but evenly phase-in rates to manage bill impacts."

AES Ohio Ex. 1, pp. 10-15.

OCC witness Fortney admitted that many of the listed items were customer benefits. Tr. 310-14.

While all of the benefits listed above are significant, AES Ohio's agreement not to seek recovery of the post-ESP III Decoupling Amounts at issue in Case No. 20-140-EL-AAM is

particularly significant. Signatory Parties Ex. 1, pp. 16. Indeed, Staff witness Messenger testified that it was a \$51 million customer benefit. Staff Ex. 6, p. 8.

Significantly, recovery of that \$51 million in Decoupling Amounts would have been both lawful and consistent with Commission precedent.

Specifically, recovery of those Decoupling Amounts would have been lawful under R.C. 4928.143(B)(2)(h), since they were distribution related, and recovery of those amounts would constitute "revenue decoupling" and single-issue ratemaking under that subsection.

In Case No. 20-140-EL-AAM, several parties argued that AES Ohio forfeited its right to recover the Decoupling Amounts when AES Ohio exercised its right under R.C. 4928.143(C)(2)(a) to terminate ESP III. That argument ignores the fact that subsection (B)(2)(h) has a "notwithstanding" clause. Pursuant to that clause, if the post-2019 Decoupling Amounts satisfy the (B)(2)(h) elements (which they easily do—they are distribution related and recovery of those amounts would constitute "revenue decoupling" and single issue ratemaking), then recovery of those amounts would have been lawful regardless of any other provision in Title 49. *In re Application Seeking Approval of Ohio Power Co.'s Proposal to Enter into an Affiliate Power Purchase Agreement*, 155 Ohio St.3d 326, 2018-Ohio-4698, 121 N.E.3d 320, ¶ 19.

Further, the procedural history for the deferred Decoupling Amounts is identical to the procedural history for deferred Uncollectible Amounts that the Commission authorized AES Ohio to recover in AES Ohio's 2020 rate case. Specifically:

1. The ESP III Stipulation created riders authorizing the recovery of both items. AES Ohio Ex. 12, pp. 14, 19.

2. The 2015 rate case authorized AES Ohio to defer amounts associated with both items. *In the Matter of the Application of The Dayton Power and Light Co.*, Case No. 15-1830-EL-AIR, Opinion & Order (Sept. 26, 2018), p. 28 (listing Decoupling deferral as element of Stipulation); *In the Matter of the Application of The Dayton Power and Light Co.*, Case No. 20-1651-EL-AIR, Opinion & Order (Dec. 14, 2022), ¶ 132 (discussing fact that 2015 rate case granted authority to defer uncollectible expenses).
3. The riders recovering both items were terminated when ESP III was terminated. *In re Dayton Power and Light Co.*, Case No. 08-1094-EL-SSO, *et al.*, Second Finding & Order (Dec. 18, 2019), ¶ 36.

In AES Ohio's 2020 rate case, the Commission allowed AES Ohio to recover the deferred Uncollectible Amounts because "nothing in the *2015 Rate Case* bound the Commission to approve the [Uncollectible] Rider in the ESP III case" and "nothing in ESP III required that the deferral authority in *2015 Rate Case* cease to exist in the event that ESP III was terminated." *In the Matter of the Application of The Dayton Power and Light Co.*, Case No. 20-1651-EL-AIR, Opinion & Order (Dec. 14, 2022), ¶ 135. It is undisputed that those same points are true for the Decoupling Amounts. Tr. 649 (Morgan).

AES Ohio's agreement not to seek recovery of those amounts is, therefore, a particularly significant customer benefit.

C. The Stipulation Does Not Contain a Financial Integrity or POLR Charge

AES Ohio witness Schroder explained that another benefit of the ESP 4 Stipulation is that it does not include a financial integrity or POLR charge:

- "Q. Can you describe the third benefit of the Stipulation that you identified, i.e., elimination of the RSC?
- A. Yes. The RSC was created as a provider-of-last-resort charge, and AES Ohio has collected approximately \$75 million per year under it during the years that it has been in effect. The RSC was first charged to customers in 2005. It

was continued as a term of AES Ohio's first ESP in Case No. 08-1094-EL-SSO, and was reinstated when AES Ohio terminated its second ESP (Case No. 12-426-EL-SSO) and its third ESP (Case No. 16-395-EL-SSO). Over that period of time, the legality of the RSC has been challenged in five appeals to the Supreme Court of Ohio. Sup. Ct. Case Nos. 2003-2159, 2006-788, 17-204, 21-1473, and 23-111/23-130.

While the RSC has been critical to allowing AES Ohio to provide safe and reliable service to its customers, AES Ohio has committed to terminating the RSC upon the implementation of ESP 4."

AES Ohio Ex. 1, pp. 15-16. *Accord*: Tr. 103-04 (Schroder) (due to ESP 4 Application, the RSC will be terminated one year early).

D. AES Ohio Will Have the Lowest Transmission and Distribution Rates in the State

AES Ohio witness Schroder explained the rate impacts that the Stipulation will have, including that AES Ohio will have the lowest transmission and distribution rates in the state even after ESP 4 is approved and AES Ohio's new distribution rates go into effect:

- "Q. Can you describe the rate impacts that the Stipulation will have on AES Ohio's customers?
- A. Yes. The initial impact of ESP 4 on a typical Residential customer with 1,000 kWh usage per month will be a decrease of \$1.49/month.
- Q. How do the AES Ohio's transmission & distribution (T&D) rates compare to distribution rates paid by customers of other electric distribution utilities in the State of Ohio?
- A. AES Ohio's T&D rates are the lowest in the state. Even with the projected increase in distribution rates approved in December, 2022 that will take effect along with the ESP4, AES Ohio's T&D rates will remain the lowest in the state.
- Q. How does the projected return on equity ("ROE") during ESP 4 compare to the ROE approved by the Commission in its most recent distribution rate case?

- A. During ESP 4, AES Ohio is projected to earn well under the 9.999% ROE approved by the Commission in Case No. 20-1651-EL-AIR."

AES Ohio Ex. 1, pp. 18-19; Tr. 65 (correcting amount of decrease to be \$1.49, not \$1.37 in as-filed testimony).

IV. THE STIPULATION DOES NOT VIOLATE ANY IMPORTANT REGULATORY PRINCIPLE

A. The RCR is Authorized by R.C. 4928.143(B)(2)(d) and (B)(2)(h)

This section will demonstrate two points:

1. R.C. 4928.143(B)(2)(d) authorizes the recovery of the OVEC, Decoupling, and Prior RCR Amounts through the RCR.
2. R.C. 4928.143(B)(2)(h) authorizes the recovery of the Decoupling and Prior RCR Amounts through the RCR.

1. The RCR is Lawful Under R.C. 4928.143(B)(2)(d)

R.C. 4928.143(B)(2)(d) allows the Commission to approve:

"Terms, conditions, or charges relating to limitations on customer shopping for retail electric generation service, bypassability, standby, back-up, or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of such deferrals, as would have the effect of stabilizing or providing certainty regarding retail electric service."

The Supreme Court of Ohio has held that R.C. 4928.143(B)(2)(d) has three elements:

"if a proposed item in an ESP meets the following three criteria, it is lawful: (1) it is a term, condition, or charge, (2) it relates to one of the limited set of listed items (e.g., limitations on customer shopping, bypassability, or carrying costs), and (3) it has the effect of stabilizing or providing certainty regarding retail electric service."

In re Application Seeking Approval of Ohio Power Co., 2018-Ohio-4698 at ¶ 26 (holding that subsection (B)(2)(d) authorized recovery of AEP's net OVEC costs).

As demonstrated below, that section authorizes the recovery of the OVEC, Decoupling, and Prior RCR components of the RCR.

a. A "Charge"

There is no dispute that the RCR is a charge. AES Ohio Ex. 1, p. 20 (Schroder); Tr. 632 (Morgan).

b. "Relating to"

1) Limitation on Customer Shopping

The Supreme Court of Ohio has held that recovery of net OVEC costs related to a "limitation on customer shopping" under subsection (B)(2)(d), since the costs were to be recovered on a non-bypass-able basis. *In re Application Seeking Approval of Ohio Power Co.*, 2018-Ohio-4698 at ¶¶ 28-31. The Decoupling and Prior RCR Amounts will also be recovered on a nonbypassable basis, and relate to a limitation on customer shopping for the same reason.

2) Deferrals

The "relating to" element is satisfied if a charge relates to "deferrals, including future recovery of such deferrals." R.C. 4928.143(B)(2)(d). There is no dispute that the Decoupling Amounts and Prior RCR Amounts are deferred on AES Ohio's accounting records. AES Ohio Ex. 2, pp. 5-6 (Donlon). Recovery of those amounts through the RCR thus satisfies the "relating to" element.

As to the \$28.9 million OVEC Amounts (Signatory Parties Ex. 1, p. 15), the Commission authorized AES Ohio to defer them in AES Ohio's generation separation case. *In*

the Matter of the Application of The Dayton Power and Light Co., Case No. 13-2420-EL-UNC, Finding & Order (Sept. 17, 2014), pp. 14, 22-23 (describing AES Ohio's application as seeking to defer its net OVEC costs, and granting the application). AES Ohio began recording them as a deferral in 2014. OCC Ex. 4, pp. 1-2.

In 2022, AES Ohio took a reserve against that deferral. *Id.* at 2-3. As reflected in AES Ohio's FERC Form 1, the fact that AES Ohio took a reserve against the asset—instead of taking a write off—means that AES Ohio maintains a \$28.9 million regulatory asset, and has an offsetting \$28.9 million reserve against that asset. AES Ohio Ex. 6, pp. 1-2. AES Ohio witness Donlon explained:

"Q. And if you would turn to the second page of [AES Ohio Ex. 6], there are, on lines 2 and 3, two entries regarding OVEC. Can you describe what those entries shows?

A. Yes. This is a list as required by the FERC Form 1 to list out all our regulatory assets on your books, and this is showing the OVEC deferral at 28.9 million, and then a reserve against that deferral as a credit of 28.9 million.

Q. So does that mean that the OVEC amounts are recorded as AES -- as a deferral or regulatory asset on the Company's FERC books?

A. Yes. There is a deferral and a reserve against that deferral."

Tr. 49-50.

Similarly, AES Ohio witness Schroder explained:

"Q. I have one question before you -- before we move on to recross -- redirect.

Turning to the e-mail that you sent to Ms. Coklow on October 4, 2022, assuming that I know nothing about accounting, can you explain what a reserve against the full amount of the deferral asset means?

A. Yes. My understanding is that we distinguish between

things like a writeoff, for example, taking something off the books. We distinguish that from setting aside a reserve against something.

* * *

On the OVEC entry what we asked to do was to set aside a reserve because we knew we planned to ask and, in fact, had asked and those costs were prudent and they were prudently incurred and they provide benefits to customers and they have provided benefits to customers, so they think -- we think that the recovery is appropriate, although at that time not probable."

Tr. 174-176. *Accord*: Tr. 244-45 (Schroder).¹

Significantly, AES Ohio's outside auditor (Ernst & Young) concluded that AES Ohio's FERC Form 1—including the recording of a reserve for the OVEC Amounts—was prepared in accordance with generally accepted accounting standards. AES Ohio Ex. 7, p. 1; Tr. 57-59 (Donlon). OCC witness Morgan conceded that he had no reason to doubt Ernst & Young's competence or independence. Tr. 642.

The evidence thus establishes that AES Ohio continues to have a deferral of the \$28.9 million OVEC Amounts recorded on its regulatory books, and recovery of the OVEC amounts thus satisfies the "deferrals, including recovery of deferrals" criterion in the "relating to" prong.

¹ It is undisputed that a utility can record a cost as a regulatory asset on its GAAP books only if it is "probable" that the utility will recover that asset in the future, and it is generally understood that "probable" means a 75% or higher likelihood of recovery. Tr. 46 (Donlon), 246 (Schroder), 359 (Borer), 666 (Morgan). If future recovery of a cost is not probable (i.e., the likelihood of recovery falls below 75%), then the utility should not record the cost as a regulatory asset. Of course, a utility can still seek to recover a cost in the future even if the likelihood of recovery falls below 75%, and the cost thus was not recorded as a regulatory asset.

3) Standby Service

The testimony of AES Ohio witness Schroder demonstrates that the OVEC amounts also relate to "standby . . . default service" under subsection (B)(2)(d):

"In addition, the OVEC deferral "relat[es] to . . . standby, back-up, or supplemental power service, default service . . . and accounting or deferrals including future recovery of such deferrals." As background, although AES Ohio has divested its generation assets, due to contractual commitments, AES Ohio has not been able to divest its small ownership interest in OVEC. AES Ohio continues to receive costs and revenues from its ownership share of generation from OVEC, which is sold at wholesale into PJM. A Commission order in Case No. 13-2420-EL-UNC authorized AES Ohio to defer any net OVEC costs that it did not recover through its fuel rider.

While AES Ohio currently provides 100% of the generation for the SSO load through a competitive bidding process, if one of the winning bidders in the SSO auction were to default, then AES Ohio could use the OVEC generation to supply the SSO load. The OVEC deferral thus relates to "standby, back-up, or supplemental power service, default service."

AES Ohio Ex. 1, p. 20.

OCC witness Morgan offered similar testimony:

"Q. (By Mr. Sharkey) Mr. Morgan, do you know whether AES Ohio has an obligation to provide generation service to its distribution customers?

A. I believe under the Standard Service Offer, yes.

Q. . . . You understand that AES Ohio acquires that generation via an auction, right?

A. Yes.

Q. . . . If one of the winning bidders in that auction were to default, you agree that AES Ohio could use generation from OVEC to provide standby service to its customers, correct?

A. It's possible."

Tr. 644-45.

4) Carrying Costs

The Stipulation authorizes AES Ohio to recover certain carrying costs on the RCR amounts. Signatory Parties Ex. 1, pp. 15, 17. Those carrying costs relate to "carrying costs" under subsection (B)(2)(d), so recovery of those costs also satisfies the "relating to" prong.

c. Stable Service

The testimony of AES Ohio witness Schroder demonstrates that the RCR would allow AES Ohio to provide stable service:

"[A]s explained in the testimony of AES Ohio Witness Malinak, AES Ohio is currently operating under financial stress. Further, during the ESP 4 period, AES Ohio is projected to earn an ROE well below its approved ROE of 9.999% in Case No. 20-1651-EL-AIR.

Due to that financial stress and low return, AES Ohio has struggled to make necessary distribution investments. AES Ohio has not achieved its CAIDI reliability target in recent years. Without the recovery of the RCR, during ESP 4, it would make it very difficult for AES Ohio to provide reliable service.

Recovering the deferrals would thus 'have the effect of stabilizing or providing certainty regarding retail electric service.'"

AES Ohio Ex. 1, pp. 20-21.

OCC witness Morgan reached a similar conclusion:

"Q. Let's go back to talking about the RCR. You agree that there is a distinction between revenue and cash, correct?

A. That's correct.

Q. And if the RCR in a Stipulation was improved -- was approved, that would increase AES Ohio's revenue and

cash, correct?

A. If approved?

Q. Yes.

A. Yes.

Q. Okay. And you would agree that AES Ohio could use that increased revenue and cash to provide more stable and reliable distribution service to customers, correct?

A. That is one of the things that they can do with the additional revenue. It doesn't -- it doesn't necessarily mean that it is automatically -- that it will automatically occur in that manner.

Q. And if it does, you believe that would be good, right?

A. If it does, as you describe, it would be good."

Tr. 654-55.

The Commission should thus conclude that the RCR and the amounts that it recovers satisfy the three criteria under subsection (B)(2)(d) (a charge, relating to, stabilizing service), and that the RCR is thus lawful.

2. The RCR is Lawful Under R.C. 4928.143(B)(2)(h)

R.C. 4928.143(B)(2)(h) allows the Commission to approve:

"Provisions regarding the utility's distribution service, including, without limitation and notwithstanding any provision of Title XLIX of the Revised Code to the contrary, provisions regarding single issue ratemaking, a revenue decoupling mechanism or any other incentive ratemaking, and provisions regarding distribution infrastructure and modernization incentives for the electric distribution utility. The latter may include a long-term energy delivery infrastructure modernization plan for that utility or any plan providing for the utility's recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. As part of its determination as to whether to allow in an electric

distribution utility's electric security plan inclusion of any provision described in division (B)(2)(h) of this section, the commission shall examine the reliability of the electric distribution utility's distribution system and ensure that customers' and the electric distribution utility's expectations are aligned and that the electric distribution utility is placing sufficient emphasis on and dedicating sufficient resources to the reliability of its distribution system." (Emphasis added).

There is no dispute that the Decoupling Amounts and Prior RCR amounts relate to distribution service. AES Ohio Ex. 2, pp. 5-6 (Donlon); AES Ohio Ex. 9, Ex. A, pp. 3-4.

Further, recovery of both the Decoupling Amounts and the Prior RCR Amounts would be "single issue ratemaking" under subsection (B)(2)(h). Tr. 657 (Morgan) (agreeing that single issue ratemaking means "that when setting rates, you take an item and single it out for special treatment").

In addition, recovery of the Decoupling Amounts would constitute "revenue decoupling" under subsection (B)(2)(h). Tr. 361-62 (Borer); Tr. 655-56 (Morgan).

Finally, the testimonies of Staff witness Nicodemus and AES Ohio witness Schroder demonstrate that AES Ohio and its customer expectations regarding reliability are "aligned" and that AES Ohio is placing "sufficient emphasis" on reliability under subsection (B)(2)(h). Staff Ex. 7, pp. 3-6; AES Ohio Ex. 1, pp. 21-23. No contrary evidence was offered.

The Commission should thus conclude that recovery of the Decoupling Amounts and Prior RCR Amounts through the RCR would be lawful under R.C. 4928.143(B)(2)(h).

B. ESP 4 is More Favorable Than a Hypothetical MRO

AES Ohio witness Malinak testified that the Commission should conduct the more favorable in the aggregate ("MFA") test in R.C. 4928.143(C)(2)(a), as follows:

"In prior rulings in which the Commission has decided that ESPs met the 'more favorable in the aggregate' test, the Commission has taken a broad view of the expected effects of the different rate regimes to consider when performing this test, including (a) quantifiable differences in the prices to be charged to customers for electric generation service under each rate regime (Aggregate Price Test), (b) other quantifiable differences in customer charges, and (c) non-quantifiable or difficult-to-quantify differences. This last category includes a wide range of impacts, including expected short- and long-run effects on service quality, reliability, rates, and the range of product offerings. Reflecting this broad perspective, my application of the MFA Test considers quantifiable and non-quantifiable or difficult-to-quantify characteristics of the proposed ESP 4 versus those of a hypothetical MRO."

AES Ohio Ex. 3, p. 4. *Accord*: Tr. 266 (Fortney) (agreeing with structure for MFA test described by Mr. Malinak).

1. Aggregate Price Test

Every witness who addressed the MFA test agreed that generation would be priced the same under either an ESP or MRO. Staff Ex. 6, p. 7 (Messenger); AES Ohio Ex. 3, p. 16 (Malinak); OCC Ex. 2, p. 11 (Fortney).

2. Other Quantitative Differences

Staff witness Messenger identified quantitative benefits that the Stipulation had that an MRO would not necessarily have:

"Q. What are the quantitative factors you considered in your analysis?

A. . . .

One quantitative benefit of the ESP includes a provision withdrawing Case No. 20-140-EL-AAM, resulting in the elimination of the risk of ratepayers paying more than \$51 million for past decoupling amounts. The stipulated ESP also includes \$150,000 funding for the AES Ohio Gift of Power program. Those benefits would not be present in an MRO."

Staff Ex. 6, p. 7.

The Stipulation includes a number of riders that allow AES Ohio to recover certain costs on an accelerated basis. Signatory Parties Ex. 1, pp. 6-14, 17-18. AES Ohio witness Malinak testified that while the MRO statute does not generally allow for riders, AES Ohio could recover those costs through a distribution rate case if AES Ohio was operating under an MRO. AES Ohio Ex. 3, pp. 7-8. Mr. Malinak further testified that recovery of those costs on an accelerated basis under an ESP would benefit customers, since it would allow the customer to receive reliability benefits earlier. *Id.*

OCC witness Fortney claimed in his prefiled testimony that recovery of those items on an accelerated basis was not a benefit, because accelerated recovery was bad for customers. OCC Ex. 2, p. 16. However, Mr. Fortney admitted that when he was a member of Staff, he testified that under the MFA test, accelerated recovery of those costs was a "wash" under the ESP v. MRO test, since the same costs could later be recovered through distribution rates if a utility was operating under an MRO. Tr. 276. Mr. Fortney also conceded that over the long term, recovery of those costs was a "wash" in the ESP v. MRO test. Tr. 276-77.

On another point, the testimony of OCC witness Fortney at the hearing established that ESPs actually have financial benefits over MROs, due to how regulatory assets are recovered under each. Specifically, under an ESP, regulatory assets can be recovered through a rider; that rider will terminate when the regulatory asset is fully recovered. Tr. 273.

In contrast, under an MRO, those regulatory assets would be recovered through base rates that were established in a distribution rate case. Tr. 274. In such a rate case, those regulatory assets would be recovered during an amortization period, which is an estimate of how

long it will be until the utility's next rate case. Tr. 275. However, a utility will continue to recover its approved distribution rates until its next rate case. *Id.* A utility could over recover its regulatory assets if it does not file a rate case within the assumed amortization period. *Id.*

3. Qualitative Differences

Staff witness Messenger identified the following qualitative benefits of the Stipulation:

- "Q. What are the qualitative factors you considered in your analysis?
- A. As I have stated above, the Stipulation provides several important benefits to ratepayers, including investments focused on reliability improvements, low-income assistance programs, and economic development to the service territory. To the extent that the different provisions contained in the ESP provide added costs, they are outweighed by the benefits provided."

Staff Ex. 6, pp. 7-8.

The Commission has held that "reliability improvements, low-income assistance programs and economic development" benefits that witness Messenger identified in AES Ohio's ESP 4 Stipulation are factors showing that an ESP established by a Stipulation passes the ESP v. MRO test. *In the Matter of the Application of Duke Energy Ohio, Inc.*, Case No. 17-32-EL-AIR, *et al.*, Opinion and Order (Dec. 19, 2018), p. 107 (holding that ESP passed ESP v. MRO test, in part due to riders that would allow accelerated recovery of distribution expenditures; "This focus on reliability is an asset to ratepayers, and thus a benefit of the ESP."); *In the Matter of the Application of The Ohio Power Co.*, Case No. 16-1852-EL-SSO, Opinion and Order (April 25, 2018), p. 124 (citing provisions in ESP Stipulation that provided for charitable contributions and

economic development incentives as factors establishing that ESP was more favorable than an MRO).

Similarly, AES Ohio witness Malinak testified that customers would receive reliability benefits sooner under an ESP:

"Q. Assuming the Commission finds that expenditures under these programs covered by the ACR riders will provide net benefits to customers and, therefore, would approve these programs under either ESP 4 or a hypothetical MRO, under which rate regime would customers be better off?

A. They would be better off under ESP 4.

Q. Why?

A. First, AES Ohio will be better able to make more robust and timely investments in the valuable programs covered by the ACR Riders under ESP 4 as compared to an MRO. Specifically, under an MRO, in theory, expenditures associated with those riders could be recovered through periodic distribution rate cases. However, during the period between cases, AES Ohio would incur capital and O&M costs that I understand that it likely would not be able to recover for between 18 months and 5 years, approximately, with a midpoint of approximately 3 years (leaving aside possible reimbursements, if any, for funds used during construction, or AFUDC). In the absence of some form of accelerated cost recovery under an MRO, these expenditures and associated lags in recovery would put downward pressure on AES Ohio's cash flows and earnings. In contrast, under ESP 4, I understand that AES Ohio would be able to begin recovering its expenditures under the ACR riders within approximately 15 months or sooner after they are incurred. While the costs incurred under ESP 4 would still be subject to periodic Commission reviews, thereby protecting customers against paying for any imprudently incurred costs, AES Ohio's cash flows and earnings would not be depressed by as much as they would be under an MRO. In addition, accelerated cost recovery, which has been referred to by some researchers as "interim rate relief," has been found by researchers to reduce the systematic risk of a utility's securities, thereby reducing its cost of capital. Thus, the faster cost recovery under ESP 4 will reduce the risk that AES Ohio's financial stress will

deepen, and it also likely will reduce its systematic risk relative to an MRO. These reduced risks will, in turn, keep AES Ohio's cost of capital from rising further. As I have testified in the past, AES Ohio's credit ratings are lower and, therefore, its cost of debt capital is already higher than what is optimal for a regulated utility, which, all else equal, should lead to lower-than-optimal capital and other expenditures. Under an MRO, the utility's level of financial stress would be higher than under ESP 4, thereby reducing AES Ohio's ability to make the needed investments in the proposed beneficial programs. Therefore, a significant benefit of ESP 4 over an MRO is that AES Ohio will be better able to make the appropriate level of investments and O&M expenditures on the proposed programs to provide safe and reliable services to its customers.

- Q. Is there any other beneficial effect of the accelerated cost recovery under the proposed ACR Riders in ESP 4 relative to an MRO?
- A. Yes. Economic theory and research have shown that, all else equal, long regulatory lags without rate relief in the interim can distort a regulated firm's incentives to invest in a timely fashion. ESP 4 allows for such interim recovery while the hypothetical MRO does not, thereby improving AES Ohio's incentives to invest in these beneficial programs in a timelier fashion. This result is better for customers because they will receive the benefits (*e.g.*, higher reliability, higher quality services from Smart Grid) of these investments sooner than under an MRO."

AES Ohio Ex. 3, pp. 18-20. *Accord*: Tr. 83-86 (Schroder).

Significantly, OCC witness Fortney admitted:

- Q. And as we've discussed, the Stipulation in this case includes riders that will allow AES Ohio to recover its reliability expenditures on an accelerated basis, right?
- A. Yes.
- Q. Okay. And MROs don't include that type of rider so that under an MRO those costs could only be recovered through a distribution rate case, right?

- A. A distribution rate case or an emergency filing.
- Q. And you would expect reliability improvements that would happen under an ESP to occur faster than they would under an MRO due to the accelerated recovery under an MRO -- under an ESP, correct?
- A. Well, that's -- I have said I'm not sure there's a real relevance between spending and improving the safety and reliability standards. As I said, one would hope that they would.
- Q. And to the extent they do, those benefits would come faster under an ESP than they would under an MRO, right?
- A. In theory."

Tr. 288-89.

In addition to reliability benefits, AES Ohio witness Malinak explained that an ESP would have other qualitative benefits over an MRO:

" Q. Are there any non-quantifiable or difficult-to-quantify benefits of ESP 4 relative to an MRO in addition to encouraging more timely and robust capital investment and O&M expenditures?

A. Yes. A second benefit is that under an ESP with accelerated cost recovery, I would expect AES Ohio's borrowing costs to improve as compared to a hypothetical MRO and, potentially, contribute to an upgrade in credit ratings. Lower borrowing costs will benefit customers to the extent that the lower costs are passed along to customers through lower rates.

A third benefit is that the ESP statute requires evaluations of AES Ohio's actual return on equity to determine if it was significantly excessive under the Significantly Excessive Earnings Test ("SEET"). In contrast, there is no such test and customer protection under an MRO. Customers under an MRO, thus, would lose the benefit afforded by that protection.

A fourth benefit of the ESP relates to the fact that, as I understand it, once the Commission has approved an MRO for a utility, that utility will never be able to implement an

ESP in the future. The Commission and customers would, thus, lose the valuable option of approving future beneficial ESPs if the Commission were to approve an MRO for AES Ohio. In addition, I understand that the Commission has greater regulatory authority and control under an ESP than under an MRO. Perhaps in part for these reasons, I understand that the Commission has repeatedly found that ESPs are more favorable in the aggregate than MROs."

AES Ohio Ex. 3, pp. 21-22.

C. Ohio Policies

The testimony of AES Ohio witness Schroder demonstrated that the Stipulation would promote numerous policies of the State of Ohio. AES Ohio Ex. 1, pp. 23-26. No contrary evidence was offered.

V. SSO STRUCTURE

Staff, OCC, and Constellation offered evidence regarding proposed modifications to how the Standard Service Offer ("SSO") auction would be conducted. AES Ohio agrees with those parties that the SSO should be structured to achieve the lowest prices possible for customers. However, the Commission is also exploring possible modifications to the SSO procurement process on a statewide basis in Case No. 17-957-EL-UNC, et al., which has a broad number of parties participating. AES Ohio believes that any significant changes to the SSO procurement process would be better addressed in that proceeding.

VI. CONCLUSION

The Commission should approve the Stipulation in this case without modification.

Respectfully submitted,

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