IN THE SUPREME COURT OF OHIO

In re Application of Suburban Natural Gas Company for an Increase in Gas Distribution Rates, for Tariff Approval, and for Approval of Certain Accounting Authority.	)	Case No. 2020-781
	)	Appeal from the Public Utilities Commission of Ohio
	)	Public Utilities Commission of Ohio Case Nos. 18-1205-GA-AIR, 18-1206-GA-ATA, 18-1207-GA-AAM

APPENDIX OF INTERVENING APPELLEE SUBURBAN NATURAL GAS COMPANY

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APPENDIX: **APPX. PAGE No.**

Baldwin's Ohio Revised Code Annotated
Title XLIX. Public Utilities (Refs & Annos)
Chapter 4905. Public Utilities Commission--General Powers (Refs & Annos)
Definitions

R.C. § 4905.02

4905.02 “Public utility” defined; exceptions

Effective: September 29, 2017
Currentness

(A) As used in this chapter, “public utility” includes every corporation, company, copartnership, person, or association, the lessees, trustees, or receivers of the foregoing, defined in section 4905.03 of the Revised Code, including any public utility that operates its utility not for profit, except the following:

(1) An electric light company that operates its utility not for profit;

(2) A public utility, other than a telephone company, that is owned and operated exclusively by and solely for the utility's customers, including any consumer or group of consumers purchasing, delivering, storing, or transporting, or seeking to purchase, deliver, store, or transport, natural gas exclusively by and solely for the consumer's or consumers' own intended use as the end user or end users and not for profit;

(3) A public utility that is owned or operated by any municipal corporation;

(4) A railroad as defined in sections 4907.02 and 4907.03 of the Revised Code;

(5) Any provider, including a telephone company, with respect to its provision of any of the following:

(a) Advanced services as defined in 47 C.F.R. 51.5;

(b) Broadband service, however defined or classified by the federal communications commission;

(c) Information service as defined in the “Telecommunications Act of 1996,” 110 Stat. 59, 47 U.S.C. 153(20);

(d) Subject to division (A) of section 4927.03 of the Revised Code, internet protocol-enabled services as defined in section 4927.01 of the Revised Code;

(e) Subject to division (A) of section 4927.03 of the Revised Code, any telecommunications service as defined in section 4927.01 of the Revised Code to which both of the following apply:

(i) The service was not commercially available on September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(ii) The service employs technology that became available for commercial use only after September 13, 2010, the effective date of the amendment of this section by S.B. 162 of the 128th general assembly.

(B)(1) “Public utility” includes a for-hire motor carrier even if the carrier is operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section.

(2) Division (A) of this section shall not be construed to relieve a private motor carrier, operated in connection with an entity described in division (A)(1), (2), (4), or (5) of this section, from compliance with either of the following:

(a) Chapter 4923. of the Revised Code;

(b) Rules governing unified carrier registration adopted under section 4921.11 of the Revised Code.

CREDIT(S)

(2017 H 49, eff. 9-29-17; 2012 H 487, eff. 6-11-12; 2010 S 162, eff. 9-13-10; 1996 H 476, eff. 9-17-96; 1988 S 337, eff. 3-29-88; 1980 H 21; 1975 H 579; 1953 H 1; GC 614-2a)

R.C. § 4905.02, OH ST § 4905.02
Current through File 48, 2020 H 160, and 2020 H 669 of the 133rd General Assembly (2019-2020)

End of Document

Baldwin's Ohio Revised Code Annotated
Title XLIX. Public Utilities (Refs & Annos)
Chapter 4905. Public Utilities Commission--General Powers (Refs & Annos)
Definitions

R.C. § 4905.03

4905.03 Companies subject to the public utilities commission

Effective: September 10, 2012
Currentness

As used in this chapter, any person, firm, copartnership, voluntary association, joint-stock association, company, or corporation, wherever organized or incorporated, is:

(A) A telephone company, when engaged in the business of transmitting telephonic messages to, from, through, or in this state;

(B) A for-hire motor carrier, when engaged in the business of transporting persons or property by motor vehicle for compensation, except when engaged in any of the operations in intrastate commerce described in divisions (B)(1) to (9) of section 4921.01 of the Revised Code, but including the carrier's agents, officers, and representatives, as well as employees responsible for hiring, supervising, training, assigning, or dispatching drivers and employees concerned with the installation, inspection, and maintenance of motor-vehicle equipment and accessories;

(C) An electric light company, when engaged in the business of supplying electricity for light, heat, or power purposes to consumers within this state, including supplying electric transmission service for electricity delivered to consumers in this state, but excluding a regional transmission organization approved by the federal energy regulatory commission;

(D) A gas company, when engaged in the business of supplying artificial gas for lighting, power, or heating purposes to consumers within this state or when engaged in the business of supplying artificial gas to gas companies or to natural gas companies within this state, but a producer engaged in supplying to one or more gas or natural gas companies, only such artificial gas as is manufactured by that producer as a by-product of some other process in which the producer is primarily engaged within this state is not thereby a gas company. All rates, rentals, tolls, schedules, charges of any kind, or agreements between any gas company and any other gas company or any natural gas company providing for the supplying of artificial gas and for compensation for the same are subject to the jurisdiction of the public utilities commission.

(E) A natural gas company, when engaged in the business of supplying natural gas for lighting, power, or heating purposes to consumers within this state. Notwithstanding the above, neither the delivery nor sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer under a public utilities commission-ordered exemption, adopted before, as to producers, or after, as to producers or gatherers, January 1, 1996, or the delivery or sale of Ohio-produced natural gas or Ohio-produced raw natural gas liquids by a producer or gatherer of Ohio-produced natural gas or Ohio-produced raw natural gas liquids, either to a lessor under an oil and gas lease of the land on which the producer's drilling unit is located, or the grantor incident to a right-of-way or easement to the producer or gatherer, shall cause the producer or gatherer to be a natural gas company for the purposes of this section.

All rates, rentals, tolls, schedules, charges of any kind, or agreements between a natural gas company and other natural gas companies or gas companies providing for the supply of natural gas and for compensation for the same are subject to the jurisdiction of the public utilities commission. The commission, upon application made to it, may relieve any producer or gatherer of natural gas, defined in this section as a gas company or a natural gas company, of compliance with the obligations imposed by this chapter and Chapters 4901., 4903., 4907., 4909., 4921., and 4923. of the Revised Code, so long as the producer or gatherer is not affiliated with or under the control of a gas company or a natural gas company engaged in the transportation or distribution of natural gas, or so long as the producer or gatherer does not engage in the distribution of natural gas to consumers.

Nothing in division (E) of this section limits the authority of the commission to enforce sections 4905.90 to 4905.96 of the Revised Code.

(F) A pipe-line company, when engaged in the business of transporting natural gas, oil, or coal or its derivatives through pipes or tubing, either wholly or partly within this state, but not when engaged in the business of the transport associated with gathering lines, raw natural gas liquids, or finished product natural gas liquids;

(G) A water-works company, when engaged in the business of supplying water through pipes or tubing, or in a similar manner, to consumers within this state;

(H) A heating or cooling company, when engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating or cooling purposes;

(I) A messenger company, when engaged in the business of supplying messengers for any purpose;

(J) A street railway company, when engaged in the business of operating as a common carrier, a railway, wholly or partly within this state, with one or more tracks upon, along, above, or below any public road, street, alleyway, or ground, within any municipal corporation, operated by any motive power other than steam and not a part of an interurban railroad, whether the railway is termed street, inclined-plane, elevated, or underground railway;

(K) A suburban railroad company, when engaged in the business of operating as a common carrier, whether wholly or partially within this state, a part of a street railway constructed or extended beyond the limits of a municipal corporation, and not a part of an interurban railroad;

(L) An interurban railroad company, when engaged in the business of operating a railroad, wholly or partially within this state, with one or more tracks from one municipal corporation or point in this state to another municipal corporation or point in this state, whether constructed upon the public highways or upon private rights-of-way, outside of municipal corporations, using electricity or other motive power than steam power for the transportation of passengers, packages, express matter, United States mail, baggage, and freight. Such an interurban railroad company is included in the term "railroad" as used in section 4907.02 of the Revised Code.

(M) A sewage disposal system company, when engaged in the business of sewage disposal services through pipes or tubing, and treatment works, or in a similar manner, within this state.

As used in this section, "gathering lines" has the same meaning as in section 4905.90 of the Revised Code, and "raw natural gas liquids" and "finished product natural gas liquids" have the same meanings as in section 4906.01 of the Revised Code.

CREDIT(S)

(2012 S 315, eff. 9-10-12; 2012 H 487, eff. 6-11-12; 2010 S 162, eff. 9-13-10; 1999 S 3, eff. 1-1-01; 1998 S 187, eff. 3-18-99; 1988 S 337, eff. 3-29-88; 1980 H 21; 1975 H 579; 130 v H 1; 129 v 501; 1953 H 1; GC 614-2)

Notes of Decisions (50)

R.C. § 4905.03, OH ST § 4905.03
Current through File 48, 2020 H 160, and 2020 H 669 of the 133rd General Assembly (2019-2020)

Baldwin's Ohio Revised Code Annotated
Title XLIX. Public Utilities (Refs & Annos)
Chapter 4905. Public Utilities Commission--General Powers (Refs & Annos)
Facilities and Services

R.C. § 4905.22

4905.22 Service and facilities required; unreasonable charge prohibited

Currentness

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

CREDIT(S)

(1953 H 1, eff. 10-1-53; GC 614-12, 614-13)

R.C. § 4905.22, OH ST § 4905.22
Current through File 48, 2020 H 160, and 2020 H 669 of the 133rd General Assembly (2019-2020)

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of The Toledo Edison Company for an increase in the rates and charges to be collected for electric service.	) Case No. 79-143-EL-AIR

OPINION AND ORDER

The Commission, coming now to consider the above-entitled application, filed pursuant to Section 4909.18 of the Revised Code; the Staff Report of Investigation, issued pursuant to Section 4909.19 of the Revised Code, the testimony and exhibits introduced into evidence at the public hearings commencing on December 10, 1979 and concluding on January 15, 1980; having appointed its Attorney Examiner, Kenneth W. Christman, pursuant to Section 4901.18 of the Revised Code, to conduct the public hearings in this case and to certify the record directly to the Commission; and being otherwise fully advised in the premises, hereby issues its opinion and order, in compliance with Section 4903.09 of the Revised Code.

HISTORY OF THE PROCEEDINGS:

The Toledo Edison Company, the Applicant herein, is an Ohio corporation engaged in the generation, transmission, and distribution of electric energy to retail customers within this state. Applicant is therefore an electric light company and a public utility within the definitions set forth in Sections 4905.02 and 4905.03(A)(4) of the Revised Code, and as such, is subject to the jurisdiction of the Commission under Sections 4905.04, 4905.05, and 4905.06 of the Revised Code. The Applicant currently provides service to customers located in the City of Toledo and all or part of ten northwestern Ohio counties. Applicant's current rates for jurisdictional electric service were first established in Toledo Edison Co., Case Nos. 76-1174-EL-AIR and 76-1061-EL-CMR (June 9, 1978) and were subsequently modified in the Opinion and Order on Remand issued on December 19, 1979, as a result of the Supreme Court's decision in Consumers' Counsel v. Pub. Util. Comm., 58 Ohio St. 2d 449, 391 N.E.2d 311 (1979).

On February 21, 1979, the Applicant submitted a notice of its intent to file a permanent rate application under Section 4909.18 of the Revised Code, as required by Rule 4901-1-36 of the Administrative Code. The Applicant requested that the twelve months ending September 30, 1979, be designated as the test period, and that April 1, 1979, be established as the date certain. On March 7, 1979, the Commission issued an entry approving the test period and date certain proposed by the Applicant. On April 18, 1979, the Commission granted certain waivers of the Standard Filing Requirements.

The instant application was submitted on May 22, 1979. On June 20, 1979, the Commission issued an entry accepting the application for filing as of the date it was submitted. The Commission also approved the Applicant's proposed form of legal notice.

In accordance with Section 4909.19 of the Revised Code, the Staff of the Commission conducted an investigation of the matters set forth in the application and subsequent filings. A written report of the results of the Staff's investigation was filed with the Commission on November 9, 1979, and was served as provided by law. Objections to the Staff Report were timely filed by the Applicant, and by the Office of Consumers' Counsel and General Motors Corporation, who had previously been granted leave to intervene. The City of Toledo and the Ohio Association of Community Action Agencies were also granted leave to intervene, but the association later formally withdrew from the case.

Public hearings commenced in Toledo on December 10, 1979, in accordance with the Commission's entry of November 21, 1979. The first day of hearing was primarily devoted to the taking of testimony from interested members of the public. The hearings reconvened in Columbus on December 13, 1979, and concluded on January 15, 1980. The proceeding encompassed fourteen hearing days, during which fifteen expert witnesses presented testimony. The recorded transcript of the proceeding and the exhibits admitted into evidence have now been certified to the Commission by the Attorney Examiner.

APPEARANCES:

Messrs. Fuller, Henry, Hodge & Snyder, by Mr. Paul M. Smart and Mr. Fred J. Lange, Jr., P.O. Box 2088, 300 Madison Avenue, Toledo, Ohio 43603, and Mr. Thomas R. Sheets, The Toledo Edison Company, 300 Madison Avenue, Toledo, Ohio 43652, on behalf of the Applicant.

Mr. William J. Brown, Attorney General, by Mr. Thomas L. Mumaw and Mr. James R. Bacha, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43215, on behalf of the Staff of the Public Utilities Commission.

Mr. William A. Spratley, Consumers' Counsel, by Ms. Margaret Ann Samuels and Mr. Michael A. Byers, Associate Consumers' Counsel, 137 East State Street, Columbus, Ohio 43215, on behalf of the residential consumers of Toledo Edison Company.

Bell & Clevenger Co., L.P.A., by Mr. Langdon D. Bell, Mr. Mark C. Sholander, and Mr. Samuel C. Randazzo, 21 East State Street, Columbus, Ohio 43215, on behalf of General Motors Corporation.

Mr. Joseph Goldberg, Assistant Director of Law, Regional Justice Center, 555 North Erie Street, Toledo, Ohio 43624, on behalf of the City of Toledo.

COMMISSION REVIEW AND DISCUSSION:

This case comes before the Commission upon application of the Toledo Edison Company, filed under Section 4909.18 of the Revised Code, for authority to increase its rates and charges for electric service to jurisdictional customers. Applicant alleges that its existing rates are insufficient to afford it reasonable compensation for the service it renders, and seeks Commission approval of permanent rates which would yield approximately $38,318,000 in additional gross annual revenues, based on test year operations as analyzed herein. It now falls to the Commission to examine the evidence of record in order to determine whether the existing rates are inadequate, and in the event of such a finding, to establish rates which will afford the Applicant a reasonable opportunity to earn a fair rate of return.

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RATE BASE

The Applicant, the Commission Staff, and the Office of Consumers' Counsel each offered testimony in support of their respective rate base proposals in this proceeding. The following table compares the Company and Staff estimates of the value of the Applicant's property used and useful in providing the service affected by this application, as of the date certain, April 1, 1979. The adjustments to these items recommended by the Office of Consumers' Counsel will be discussed on an item by item basis below. The treatment of the net operating expenses associated with various plant items will be discussed in the Operating Revenues and Expenses section, *infra*.

Jurisdictional Rate Base
(000's Omitted)

	Applicant[1]	Staff[2]
Plant in Service	$876,134	$861,358
Depreciation Reserve	(162,781)	(165,227)
Net Plant in Service	713,353	696,131
CWIP	6,207	1,696
Working Capital	36,661	19,372
Customer Advances for Construction	(109)	(109)
Accumulated Deferred Taxes and Tax Credits	(24,183)	(33,446)
Jurisdictional Rate Base	$731,929	$683,644

[1] Applicant's Ex. 5, Schedule B-1.

[2] Staff Ex. 1, Schedule 7, p. 119; Staff Ex. 14, as revised during the hearings.

Beaver Valley Common Facilities

The Staff recommends the exclusion from rate base of $5,830,043, which represents the Applicant's share of the common facilities at the Beaver Valley nuclear generating plant (Staff Ex. 1, p. 14, Schedule 8.2, p. 122). Since the Applicant's ownership interest in Beaver Valley relates to Unit No. 2, which is not expected to come on line until 1982, the Staff believes that the common facilities are not currently used and useful in providing service to the Applicant's customers (Staff Ex. 1, p. 14; Staff Ex. 2, p. 6). The Applicant objects to the exclusion, and argues that the Staff's proposed treatment should be rejected.

This issue has been litigated in a number of recent cases, including the Applicant's last general rate proceeding, and an extensive discussion here is obviously unnecessary. The Commission has consistently held that common facilities owned by an applicant, but not currently being used in conjunction with a generating unit in which the applicant has an ownership interest, are not "used and useful" within the meaning of Section 4909.15 of the Revised Code. See, e.g.,

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Cleveland Electric Illuminating Co., Case No. 78-677-EL-AIR (May 2, 1979); Ohio Edison Co., Case No. 77-1249-EL-AIR (November 17, 1978); Toledo Edison Co., Case No. 76-1174-EL-AIR (June 9, 1978). The Company has presented no compelling arguments which persuade us that our prior decisions in this area were erroneous or should be disregarded. It is true, as the Company claims, that it has utilized available capacity from Beaver Valley Unit No. 1 (Applicant's Ex. 6A, p. 6), and it is fair to infer that the common facilities have been useful in supplying that capacity, but the Company could purchase power from that unit even if it had no ownership interest in the common facilities (Tr. II, p. 51), and there has been no showing that the Applicant's customers derive any greater benefit from the common facilities than the benefits provided to other purchasing utilities who have no ownership interest in either of the Beaver Valley generating units.

The Company then contends that the cost of the common facilities should be included in the allowance for working capital. That contention is clearly without merit. As we said in Columbus & Southern Ohio Electric Co., Case No. 77-545-EL-AIR (March 31, 1978):

> The purpose of the allowance for materials and supplies and cash working capital is to recognize that investors in a utility are required to provide certain funds which, although they do not represent plant in service, are permanently needed in the ongoing operations of the company to take into account the fact that a gap exists between the time service is rendered and payment is received for such service.

There has been no showing that the Applicant's investment in the common facilities is permanently needed in its ongoing operations, or that the investment is even remotely related to the lag between the time service is rendered and the time payment is received. It is therefore apparent that the common facilities do not fall within the traditional definition of working capital. Moreover, the inclusion in the working capital allowance of property which is completed but not yet used in providing electric service would clearly contravene the statutes requiring that rate base property be used and useful. See, City of Cincinnati v. Pub. Util. Comm., 161 Ohio St. 395, 119 N.E.2d 619 (1954). The Company's arguments on this point must therefore be rejected.

Finally, the Company argues that the Commission should adopt the Staff's suggestion that it waive, for Ohio ratemaking purposes, the FERC accounting requirement that the common facilities be treated as plant in service, and that it direct the Company to reclassify those facilities as plant held for future use, for purposes of future rate proceedings. Although such a reclassification would not affect the rates to be approved in this proceeding, it would allow the Company to stop accruing depreciation on the common facilities until the Beaver Valley Unit No. 2 is transferred to plant in service. None of the parties have opposed the Company's recommendation, and the Commission is of the opinion that it is reasonable and should be adopted. We would note, however, that it is not the province of this Commission to predetermine the future ratemaking treatment of property which is not yet used and useful, and that the reclassification of the common facilities should not be considered binding on the Commission for purposes of determining either depreciation expense or depreciation reserve in future rate proceedings.

Edison Plaza

The Applicant currently leases approximately eight of the sixteen floors in its Edison Plaza office building to other tenants. Although the leased portion of the Plaza is not used in the Company's operations (Tr. XIV, pp. 100-101), it was included in the rate base in the Applicant's last general rate proceeding, under the theory that such an inclusion would not place an undue burden on the Company's ratepayers. Toledo Edison Co., Case No. 76-1174-EL-AIR (June 9, 1978). As a result, the Staff conducted an analysis in this proceeding to determine the rate of return actually earned on the leased portion of the building. Finding that the return earned during the test year was only 4.31% (Staff Ex. 3, p. 4), the Staff concluded that the inclusion of the leased portion would constitute an undue burden on the ratepayers, and recommended that it be excluded from rate base for purposes of this proceeding (Staff Ex. 1, p. 15).

The Company countered with an analysis of its own, based on incremental costs rather than the square footage allocation used by the Staff, which purported to show that the return earned on the leased portion of the building was actually 7.87% (Company Ex. 11, pp. 3-5). Even that figure is significantly less than the Company would consider reasonable for purposes of this case, but it is slightly higher than the overall rate of return actually earned by the Company during the test year, and the revenue from the leased portion can be expected to increase in the future, because the tenants' leases contain escalation clauses (Tr. XIV, pp. 97-98).

Both of these analyses, however, have largely missed the point. The relevant question, from a legal standpoint, is not whether the inclusion of the leased portion would unduly burden the ratepayers, but whether the leased portion is "used and useful" in providing service to the Applicant's customers. There is no evidence indicating that the leased portion is used and useful; in fact, the record clearly shows just the opposite (Tr. XIV, pp. 100-101). The explicit language of Section 4909.15 of the Revised Code therefore requires that the leased portion be excluded from the Applicant's rate base for purposes of this proceeding. To the extent that this conclusion differs from the result reached in Toledo Edison Co., supra, that decision was simply erroneous and cannot be considered controlling.

The Company then argues that any exclusion should be based on the incremental, rather than average, cost of the leased portion of the building. The Staff disagrees, noting that any allocation of incremental costs is wholly dependent upon which of the parties is deemed to be incremental. The Staff's arguments are not without merit, but it is obvious that the principal function of the Edison Plaza is to provide office space for Toledo Edison, and for that reason, we might agree that the tenants should be treated as the incremental parties, were it not for certain deficiencies in the Company's analysis of incremental costs.

In developing its incremental cost figures, the Company asked the architectural engineering firm that designed the building to estimate the cost, in 1969 dollars, of building both an eight story building and a sixteen story building, in order to determine the cost differential betweeen the two (Company Ex. 11, p. 4, TECo. R-3; Tr. XIV, pp. 94-95). Using the ratio of the resulting figures, the Company concluded that only 27.20% of the cost of the building should be allocated to the portion occupied by the tenants (Company Ex. 11, TECo R-3). Although that methodology is theoretically sound, the

Company's ratio was based on the architectural engineering firm's estimate that a sixteen story building would have cost $10,422,900 in 1969 dollars (Company Ex. 11, TECo R-3; Tr. XIV, p. 95). The actual cost of the building, by contrast, was $15,878,454, an increase of more than 50% over the estimate, and Company witness Busby, who sponsored the incremental cost calculations, was unable to explain what caused the cost overrun (Company Ex. 11, TECo R-3; Tr. XIV, p. 95). It is certainly possible that the overrun was fully or partially attributable to the portion of the building now occupied by the tenants, and if that were the case, the Company's suggested rate base exclusion is at least arguably understated. In any event, the discrepancy between the actual and estimated costs of the building casts considerable doubt on the validity of the Company's analysis, and the Commission is therefore of the opinion that the Staff's proposal, which is based on a square footage allocation rather than incremental costs, is preferable to the Company's approach and should be adopted. One change is necessary, however; the record shows that the Staff inappropriately excluded a portion of the Company's office furniture and equipment (Company Ex. 11, p. 5; Tr. XIV, pp. 98-99), and the Staff's figures should be adjusted accordingly.

The Consumers' Counsel specifically notes that the portion of the Edison Plaza to be excluded from the rate base should include a portion of the Company's garage, since some of the parking spaces in the garage are rented to the general public. It is not entirely clear whether OCC is supporting the Staff's proposed adjustment, or suggesting that a separate exclusion is necessary. In any event, the record shows that the Staff did exclude portions of the subaccounts contained within Account 390 (Structures and Improvements), which presumably includes the garage (Staff Ex. 1, Schedule 8.7, p. 127; <u>See</u>, Tr. XIV, p. 94; <u>See also</u>, Staff Ex. 1, Schedule 9.2, p. 131), and there is nothing in the record suggesting that any further exclusion is either necessary or appropriate.

<u>Employee Centers</u>

The Staff recommends the exclusion from rate base of the land, buildings, office furniture, and general equipment associated with the Applicant's three employee centers (Staff Ex. 1, p. 14, Schedule 8.4, p. 124). The Staff argues that these facilities are not used and useful in providing service to the Applicant's customers (Staff Ex. 2, p. 4). The Applicant disagrees, and objects to the Staff's recommended exclusion.

Our prior decisions firmly establish that property held for the recreational use of employees is not used and useful in providing public utility service. <u>Toledo Edison Co.</u>, Case No. 76-1174-EL-AIR (June 9, 1978); <u>Dayton Power & Light Co.</u>, Case No. 76-823-EL-AIR (July 22, 1977). To the extent that the employee centers are used for such purposes, the Staff's exclusions are obviously correct and must be upheld. But the record in this case shows that at least one of the employee centers, the Edison Club, is also used for a variety of business purposes, such as management meetings, meetings of professional organizations, and energy seminars (Company Ex. 6A, p. 2; Company Ex. 11, p. 1). According to Company witness Busby, 49% of the events held at the Edison Club between January 1, 1979, and September 30, 1979, involved a business-related purpose (Company Ex. 11, p. 1). To that extent, the facility is clearly used and useful in the Company's operations, and while a more precise method of allocation might be desirable, the Commission would agree that 49% of the cost of the Edison Club should be included in the Company's rate base.

The Company also claims that the other two employee centers are used for business purposes (Company Ex. 6A, p. 2), but it was unable to present any data which would enable the Commission to develop a reasonable allocation ratio (Company Ex. 11, pp. 1-2). Since the Company bears the burden of proof on this issue, Mount Vernon Telephone Co. v. Pub. Util. Comm., 163 Ohio St. 381, 127 N.E.2d 14 (1955), the Commission is of the opinion that the Staff's recommendation should be adopted, and that both of those facilities should be excluded from the Company's rate base.

Land and Land Rights

After conducting a selective sampling of land parcels owned by the Applicant, the Staff recommends the exclusion from rate base of $37,144, which represents the cost of certain portions of various parcels, which, in the opinion of the Staff, are not used and useful in providing service to the Applicant's customers (Staff Ex. 1, p. 14, Schedule 8.3, p. 123). The parcels in question are located at the West Fremont Substation, the Frey Substation, the Silica Substation, and the Woodville Substation No. 2 (Company Ex. 6A, p. 3). The Applicant objects to the exclusion, and argues that all four parcels should be included in their entirety.

Company witness Johnson cited a number of factors which led the Company to purchase the land in question (Company Ex. 6A, pp. 3-6), and the Company argues that these factors support the conclusion that all four parcels constitute used and useful property. The majority of the factors cited, however, such as aesthetic considerations (Id., pp. 3, 4), the ability to purchase land at fair and reasonable prices (Id., pp. 4, 6), prudence of investment (Id., p. 4), and the economies of present planning for future needs (Id., pp. 4-5), are basically irrelevant in deciding whether utility property is used and useful in providing service as of the date certain.

The Company also contends that our recent decision to include the land associated with the Aetna Substation in Ohio Edison's rate base (Ohio Edison Co., Case No. 78-1567-EL-AIR (January 30, 1980)) supports the inclusion of the land parcels involved in this proceeding. In that case, however, the applicant showed that a portion of the land in question was needed for security purposes, and that another part was actually used for the storage of equipment. Neither of those considerations is present in this proceeding.

Witness Johnson further explained that some of the Company's land purchases were affected by the requirements of good engineering practice, and that transmission lines and underground distribution feeders at two of the locations would have necessitated the purchase of certain easements, had the Company not purchased the land parcels in question (Company Ex. 6A, pp. 3-5). That testimony does suggest that a portion of the land excluded by the Staff is actually used in the Company's operations, but it does not support the inclusion of any of the parcels in their entirety, and the Company's testimony fails to quantify the portion which is actually used and useful. In short, the Applicant has failed to sustain its evidentiary burden attendant to this objection. The objection is therefore overruled.

Unused or Missing Items

The Staff recommends the exclusion from rate base of $9,471, which represents the cost of various items which were not being used, were missing, or were retired but not recorded (Staff Ex. 1, p. 15, Schedule 8.6, p. 126). The Applicant did not object to this exclusion, and the Commission is of the opinion that the Staff's recommendation should be adopted.

Depreciation Reserve

Section 4909.05(H) of the Revised Code requires that the Commission determine a proper and adequate reserve for depreciation, to be deducted from the original cost of the Applicant's used and useful property. Two significant issues have been raised in this proceeding involving the depreciation reserve. The first relates to the Davis-Besse Unit No. 1, and the second involves the Bruce Mansfield Unit No. 2.

The Davis-Besse Unit was first brought on line in late 1977. From that time forward, the Company has employed the unit of production method of determining depreciation for the unit. In Determination of Depreciation Charges, Case No. 77-1369-EL-UNC (December 12, 1979), the Commission explicitly approved the Company's use of the unit of production method, and the Company now argues that that method should be used to determine the depreciation reserve for purposes of this case.

Both the Staff and the Consumers' Counsel disagree, arguing that the reserve should be determined using the straight line method of depreciation. The Staff's argument is based on its contention that the Company's use of the unit of production method violated the directives set forth in Toledo Edison Co., Case Nos. 76-1174-EL-AIR and 76-1061-EL-CMR (June 9, 1978), and was therefore improper. The Staff reasons that the Company should have employed the straight line method all along, and that its depreciation reserve should accordingly be based upon that method. The Commission disagrees. Whether or not the Company's initial decision to use the unit of production method was erroneous, the Commission's order on rehearing in Case No. 77-1369-EL-UNC has effectively ratified that decision, and as a result, the Company's failure to employ the straight line method should not now serve as a basis for adjusting its booked reserve. The Staff's arguments on this point should therefore be rejected.

The Consumers' Counsel argues that the straight line method should be used to determine the reserve, because the rates approved in the Applicant's last general rate proceeding were based upon that method. OCC believes that a failure to base the reserve on the straight line expense used in the last rate case will enable the Company to collect through future rates a portion of the plant balance "which has already been depreciated for ratemaking purposes" (Brief for OCC, p. 9).

That argument is also unpersuasive. We have twice held that the amount of depreciation expense which has or has not been recovered through prior rates is irrelevant for purposes of determining a proper depreciation reserve. Oxford Natural Gas Co., Case Nos. 78-1404-GA-AIR and 79-292-GA-CMR (January 28, 1980); Pike Natural Gas Co., Case No. 77-615-GA-CMR (July 6, 1978). Our concern here is to afford the Company a reasonable future earnings opportunity, and "...not to second guess past judgments." Oxford Natural Gas Co., supra, at 3. Furthermore, as Company witness Price explained, it is doubtful that the use of the unit of production method to determine depreciation expense in the last case would have made any difference at all in the level of rates ultimately authorized (Company Ex. 9, pp. 3-4). For these reasons, our prior ratemaking treatment of depreciation expense should not dictate the use of the straight line method for purposes of determining the reserve*. Having previously found that the unit of production method constitutes the most appropriate method for determining the depreciation charges for Davis-Besse, Determination of Depreciation Charges, supra, the Commission believes that the reserve to be determined in this case should also be based upon that method.

The Bruce Mansfield Unit No. 2 presents a somewhat different situation. Section 4905.18 of the Revised Code states that the Commission "shall ascertain, determine, and prescribe what are proper and adequate charges for depreciation of the several classes of property for each public utility." Toledo Edison's depreciation rates (other than for the Davis-Besse unit) were last established by the Commission in Toledo Edison Co., Case No. 75-758-EL-AIR (November 30, 1976). In that case, the Commission approved accrual rates ranging from 2.21% to 2.71% for the Company steam production plant accounts. (See, Staff Ex. 1, p. 130). Those accounts are presently accruing depreciation at a composite rate of 2.53% (Staff Ex. 1, p. 16).

Nevertheless, the Company freely admits that it has employed a higher rate of 3.15% in determining depreciation for the Bruce Mansfield Unit No. 2. The Company did not obtain prior Commission approval of the higher accrual rate, and unlike the situation involving the Davis-Besse unit, the use of the higher rate was not subsequently ratified by the Commission. Furthermore, for the reasons set forth in the Depreciation Expense section, infra, we do not believe it appropriate to approve the higher rate for purposes of this proceeding. Consequently, the Staff recommends, and the Commission agrees, that the reserve for the Bruce Mansfield Unit No. 2 should be recalculated, using the accrual rates previously approved for the Company's steam production plant accounts.

After making the necessary adjustments for the Davis-Besse and Bruce Mansfield units, as well as other adjustments necessary to reflect the Commission's determination with respect to other rate base issues, the Commission is of the opinion that a depreciation reserve of $159,933,000 is proper and adequate. Deducting this amount from the original cost of includable property results in a finding of jurisdictional net plant in service of $702,606,000.

Construction Work in Progress

Section 4909.15(A)(1) of the Revised Code provides that the Commission may, in its discretion, include in its rate

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* Even if it were proper to speculate on the amount of depreciation expense which has been recovered through rates, there has been no showing in this case that the Company even had a reasonable opportunity to recover depreciation expense in excess of its booked reserve. In the Company's last rate proceeding, the Commission allowed $10,355,852 in depreciation expense for the Davis-Besse unit (Staff Ex. R-1, p. 4, Case No. 76-1174-EL-AIR). The rates approved in that case were in effect for 253 days, or 69.3% of a year, prior to the date certain in this case. Assuming, only for purposes of this example, that those rates afforded the Company an opportunity to recover depreciation expense on a uniform basis throughout the year, the Company would only have had the opportunity to recover $7,176,605, which is considerably less than its booked reserve of $8,969,170.

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base determination a reasonable allowance for construction work in progress. The statute limits eligibility for the allowance to projects which are at least 75% complete, and further provides that the allowance may not exceed 20% of the remainder of the rate base. In the instant case, the Applicant originally requested an allowance of $6,938,909, representing some twenty-one different projects (Company Ex. 1, Schedule B-4.1). The Staff found that nine of those projects were eligible for inclusion, and recommended that the remaining twelve be excluded (Staff Ex. 1, pp. 18-19, Schedules 10 and 10.1, pp. 133-34). The Company subsequently agreed that two of the projects excluded by the Staff were non-jurisdictional in nature (Company Ex. 6A, pp. 10-11), and the Staff later concluded that one additional project (Project No. 567-7050) was eligible for inclusion (Tr. IX, pp. 31-33). The dispute thus centers on the includability of the remaining nine projects.

The Staff recommends the exclusion of three items on the grounds that they constitute replacement projects. That recommendation is consistent with prior Commission decisions on this point. See, e.g., Cincinnati Gas & Electric Co., Case No. 79-11-EL-AIR (January 7, 1980); Ohio Edison Co., Case No. 77-1249-EL-AIR (November 17, 1978). On cross examination, however, Staff witness Hefner indicated that his only personal objection to the inclusion of replacement projects was premised on the fact that such an inclusion, without any corresponding adjustment to plant in service, would result in a duplication of charges to the customers (Tr. VII, pp. 11-12, 14, 24, 27-28). As a result, the Applicant argues that the Commission should first remove the undepreciated portion of the items being replaced, and then include all three of the items characterized as replacement projects in the allowance for CWIP.

The Commission's objections to the inclusion of replacement projects, however, are somewhat broader than those enunciated by witness Hefner. Our concerns are based, not on the possibility that such an inclusion might result in a duplication of charges, but on what we perceive to be the underlying purpose of the statute authorizing the inclusion of CWIP. As we explained in Columbus & Southern Ohio Electric Co., Case No. 77-545-EL-AIR (March 31, 1978), and recently reiterated in Ohio Edison Co., Case No. 78-1567-EL-AIR (January 30, 1980), that statute was intended to recognize that extremely expensive plant necessary to assure continuity of service does not spring into existence overnight, and that in some instances, a utility's authorized revenues should take that into account. In light of that purpose, we have consistently held that certain items, such as replacement projects or routine maintenance work, should not be included in the CWIP allowance. This is not to say that replacement items are not construction projects, or that their inclusion is automatically barred by the statute. Indeed, there may well be instances in which the inclusion of such items would be appropriate. But under ordinary circumstances, we do not believe that the Commission should exercise its discretion in favor of including replacement projects in the CWIP allowance, and the Applicant has presented no compelling arguments which persuade us to depart from our past practice on this issue.

The Company further argues that the items in question are not properly considered replacement projects. With respect to two of the projects, we disagree. Project 569-6016 clearly involves the replacement of a transmission line, and Project No. 567-7059 clearly involves the replacement of a switchgear (Company Ex. 6A, pp. 18-19). It is true, as Company witness Johnson explained, that neither of these projects represents a "true one for one" replacement, where one item is being replaced with another identical, or even substantially identical, piece of equipment (Company Ex. 6A, p. 18). But that factor is not necessarily dispositive of the issue. Past experience has shown the Commission that "true" replacement projects are rare indeed, and we have never limited our définition of replacement projects to such items. Although the record shows that the new switchgear will be able to handle increased load, and that the new transmission line will provide additional capacity, as well as greater service reliability (Company Ex. 6A, pp. 18-19), there has been no showing that the basic function of either piece of equipment has been altered. For this reason, we see nothing improper about characterizing these items as replacement projects.

The third item, Project No. 651-6022, presents a somewhat different situation. Technically, that project involves the replacement of a rotor at the Acme generating station, but the installation of the new rotor was only part of a much more extensive project (Company Ex. 6A, p. 19). When the Company's Acme Unit No. 5 was first installed, it was designed to serve as a base load unit (Id.). The unit has since been reduced to cycling operations, as a result of changes in the make-up of the Company's generating system (Id.). However, the unit was not designed to handle the thermal stress involved in cycling and peaking operations, and that stress was the primary cause of the extensive cracking which necessitated the removal of the old rotor (Id.). Although the Company could have simply replaced the rotor, it chose instead to undertake an extensive modification of the unit, including the installation of a newly designed rotor and a new high pressure cylinder, as well as an upgrading of the unit's turbine blading (Id., pp. 19-20). In effect, the unit was redesigned to operate as a cycling unit (Id.). Since these modifications have obviously produced a basic change in the function of the unit, the Commission believes it inappropriate to characterize this item as a replacement project. The record clearly shows that this project is more than 75% complete, both in terms of elapsed time and dollars expended (Company Ex. 5, Schedule B-4.1), and the Commission is therefore of the opinion that this item is properly includable in the Company's allowance for CWIP.

The Staff recommends the exclusion of Project 565-5529, which involves the installation of a load dispatch computer system, for a variety of reasons. Staff witness Hefner indicated that the project was not 75% complete under the elapsed time test (Tr. VII, p. 31; Staff Ex. 1, Schedule 10.1, p. 134), and Staff witness Fox added that the bulk of the project was actually a purchase of computer equipment, and not a construction project (Tr. IX, p. 37). He also suggested that the project would benefit other CAPCO companies, and that those companies should accordingly share in the cost (Tr. IX, p. 38).

In rebuttal testimony, Company witness Johnson explained that the Company had considered the purchase of a package computer system, which would require only set up and wiring, and had rejected that alternative (Company Ex. 10, pp. 2-3). Instead, the Company chose to design the system itself (Id., p. 2). Large commitments of engineering and technical manpower were required to determine the system's hardware and software needs, and to assemble the necessary components into a reliable and workable unit (Id., p. 3). He also testified that the system will not directly provide any information to CAPCO (Id., p. 6). For these reasons, the Commission believes it inappropriate to characterize this item as a purchase, rather than a construction project, or to assume that other CAPCO companies should share in the cost of the project.

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Witness Johnson further explained that the project in question actually consists of two separate projects, the first involving the construction of a system allowing for the dispatch of generation owned by Toledo Edison, and the second involving the design and installation of software components needed to evaluate the cost of transactions with other utilities (Company Ex. 6A, p. 4). Although Staff witness Fox characterized both elements as one project (Tr. IX, p. 36), the Staff concedes on brief that it is not unreasonable to make that distinction, since the two items are functionally independent of each other (Staff's Reply Brief, p. 2). In light of the testimony of witness Johnson, the Commission believes that the two elements should be treated as two separate projects for purposes of this case.

The former project, which involves the dispatch of Toledo Edison's generation, plainly meets requisite criteria for inclusion as CWIP. It was clearly 75% complete as of the date c rtain, in terms of both elapsed time and dollars expended (Company Ex. 10, pp. 4, 5; Tr. XIV, pp. 78-80). Furthermore, the project was in operation at the time of the Staff's inspection (Company Ex. 10, p. 4). Nevertheless, the Staff suggests that the Commission should weigh two additional, competing considerations in deciding whether to include the project. On the one hand, the Staff argues, and we agree, that the Company should not be discouraged from converting to newer computer technology, as it has done with the construction of this project. On the other hand, however, the Staff asserts that the load dispatch computer offers the Company the potential for tremendous cost savings. The Staff then suggests that the inclusion of the project, without any consideration of the potential savings, might result in some type of mismatching problem. In our opinion, the latter consideration does not support the exclusion of the project in question. In the first place, there is nothing in the record that either quantifies any anticipated level of savings, or demonstrates that a significant mismatching problem is likely to occur. But more importantly, we would assume that the most significant savings resulting from improved load dispatching would involve fuel and purchased power expenses, and the bulk of any savings in that area will be flowed through to the Company's customers through reduced fuel adjustment charges. The Commission is therefore of the opinion that the computer project involving the dispatch of Toledo Edison's generation should be included in the Company's allowance for CWIP.

The other computer project, involving the evaluation of the cost of transactions with other utilities, was clearly not 75% complete under the elapsed time test, even if we were to ignore our recent decision in Cincinnati Gas & Electric Co., Case No. 79-11-EL-AIR (January 7, 1980), and compute elapsed time using the date the design specifications were complete, instead of the date physical construction commenced (Company Ex. 10, pp. 5-6). An elapsed time computation using the latter date shows that the project was only 62.5% complete as of the date certain (Id., p. 5). As a result, this project should not be considered eligible for inclusion as CWIP.

The Staff recommends the exclusion of Project No. 721-6462 on the grounds that it was not 75% complete in terms of either elapsed time or dollars expended (Staff Ex. 1, Schedule 10.1, p. 134). The Company first argues that the elapsed time test should be applied more flexibly, because the project would have been 75% complete had the Staff calculated elapsed time using days rather than months (Company Ex. 6A, pp. 15-16). Although the Staff's application of the elapsed time test does appear to have been somewhat rigid, the fact remains that the project also fails to meet the dollars expended test. The

Company then argues that the Project would have met the dollars expended test, had the Company been required to spend an additional $92,000 for two new transformers for the project, instead of using two transformers it already owned (Id., p. 16). The only relevant figure, however, is the amount that the Company actually spent on the project, and while it might be proper to consider the original cost of the transformers in computing dollars expended, See, Ohio Edison Co., Case No. 78-1567-EL-AIR (January 30, 1980), their replacement cost should have no bearing whatsoever on the calculation. This project is clearly not eligible for inclusion.

Finally, the Staff recommends the exclusion of the four remaining projects because of their failure to meet the elapsed time test. The Company argues that it is inappropriate to exclude a project for failure to meet a single test, citing our decision in Ohio Edison Co., Case No. 78-1567-EL-AIR (January 30, 1980). It is true, as we said in that case, that a project need not meet "every conceivable test that might be formulated for determining 75% completion," but we have consistently required that CWIP projects meet the elapsed time standard, unless there are special circumstances which warrant a relaxation of that test. See, Ohio Edison, supra. There are no such circumstances present here, and the Commission is therefore of the opinion that the remaining projects should not be considered eligible for inclusion as CWIP.

In light of the foregoing consideration, and in view of all of the relevant evidence presented, the Commission finds the proper allowance for construction work in progress in this case to be $4,551,287.

Working Capital

The Applicant, the Staff, and the Consumers' Counsel have each proposed an allowance for working capital to be included in the rate base valuation in accordance with the provisions of Section 4909.15(A)(1) of the Revised Code. The Company requests an allowance for $36,661,250, based on its version of the formula method (Company Ex. 5, Schedule B-5). The Staff recommends an allowance of $19,206,078, also based on the formula method, but calculated in a manner more consistent with the Commission's recent decisions than that of the Applicant (Staff Ex. 1, p. 19, Schedule 11, p. 135). The Consumers' Counsel basically supports the calculation sponsored by the Staff, but argues that one additional item should be included in the tax offset.

The principal differences between the Applicant's and the Staff's methods lie in the following areas. The Company requests an allowance of $6,889,788 for what it categorizes as "prepayments" (Company Ex. 5, Schedule B-5). Approximately 10% of that amount represents prepaid insurance, and the remainder represents the Applicant's payments of the state excise tax (Tr. III, pp. 69-70; Staff Ex. 4, p. 8). The Applicant's contention that the state excise tax is prepaid is apparently based on the fact that the tax is paid in one year for the privilege of doing business in the future. However, as Staff witness Hanna explained, the excise tax actually paid represents the prior year's liability (Staff Ex. 4, p. 8). In fact, there is a significant lag between the beginning of the annual period covered by the Company's excise tax return and the time the first payment is made, and an even greater lag between the beginning of that period and the time the final, reconciling payment is due (OCC Ex. 1). The Commission is therefore of the opinion that the excise tax should be treated, not as a prepayment, but as part of the offset for accrued taxes required by Cleveland Electric Illuminating Co., 42 Ohio St. 2d 403, 330 N.E.2d 1 (1975).

The insurance payments, by contrast, do constitute a prepaid expense, and in some past cases, including the Applicant's last general rate proceeding, the Commission has permitted a separate allowance for items of that nature. See, e.g., Ohio Edison Co., Case No. 77-1249-EL-AIR (November 17, 1978); Toledo Edison Co., Case No. 76-1174-EL-AIR (June 9, 1978). More recently, however, the Commission has accepted the Staff's contention that a separate allowance for prepayments should not be permitted. See, e.g., Ohio Edison Co., Case No. 78-1567-EL-AIR (January 30, 1980), Cleveland Electric Illuminating Co., Case No. 78-677-EL-AIR (May 2, 1979). As Staff witness Hanna explained in this proceeding, there are many factors that affect a company's working capital needs, and in the absence of a detailed study encompassing all of those factors, selective adjustments to the formula are unjustified (Staff Ex. 4, p. 6). The formula approach necessarily provides an approximation of the working capital requirement, and any artificial "tacking on" of individual items ascribes a precision to the formula method which does not exist (Id.). In any event, it would be improper to allow companies to deviate from the formula only with respect to items requiring cash, such as prepayments, while ignoring other items such as accounts payable, which constitute non-investor sources of funds (Id., p. 7). For these reasons, the Commission believes that a separate allowance for prepayments should not be permitted in this proceeding.

The Applicant also requests a separate allowance for compensating and minimum bank balances (Company Ex. 5, Schdule B-5). The Staff opposes this request for the same reasons it opposed a separate allowance for prepayments (Staff Ex. 4, p. 9). In addition, Staff witness Hanna notes that compensating bank balances are not part of the cash flow requirements needed for day to day operations; they are required to compensate banks for extending lines of credit necessary for short term loans (Id.). To the extent that the Company is required to maintain such balances under the terms of a written agreement, the cost of maintaining the balances might properly be considered in determining the Company's authorized rate of return, or more appropriately, in fixing the proper accrual rate for AFUDC (Id.), but we see no need, in this proceeding, to permit a selective adjustment to the working capital formula for compensating bank balances.

The Applicant also objects to the Staff's deduction of customer deposits in determining the working capital allowance. However, the Supreme Court's decision in Consumers' Counsel v. Pub. Util. Comm., 58 Ohio St. 2d 108, 388 N.E.2d 1370 (1979), clearly requires that customer deposits either be used as an offset to working capital or deducted directly from rate base, and the Staff's recommended treatment is fully consistent with the Commission's recent decisions on this point. See, e.g., Ohio Edison Co., Case No. 78-1567-EL-AIR (January 30, 1980); Columbus & Southern Ohio Electric Company, Case No. 78-1438-EL-AIR (December 12, 1979). The Applicant's objection is therefore overruled.

The Applicant further objects to the Staff's failure to provide an allowance for materials and supplies held for construction. It is clear, however, that such an allowance is not permitted under Ohio law. City of Cincinnati v. Pub. Util. Comm., 161 Ohio St. 395, 119 N.E.2d 619 (1954). This objection is also overruled.

The final difference between the Applicant's and the Staff's proposals relates to the determination of an appropriate allowance for fuel inventory. The Applicant's recommended allowance is based on a thirteen month average of month end balances, which represents about an 80 to 85 day supply (Company Ex. 6C, p. 7; Tr. III, p. 40). That method is similar to the method recently approved in Ohio Edison Co., Case No. 78-1567-EL-AIR (January 30, 1980). The Staff's proposal, by contrast, approximates a 75 day supply, which the Staff believes to be representative of a normal level for the Applicant (Staff Ex. 2, p. 7). The Applicant, however, through the testimony of witness Busby, has shown that a normal level of fuel supplies is slightly higher than the allowance proposed by the Staff.

The Applicant is currently operating with two distinct coal piles, as a result of environmental requirements (Company Ex. 6C, p. 7). That situation has limited the Applicant's storage space to approximately 75% to 80% of what it would normally have, and has kept its inventory levels down (Id.). In addition, the Applicant's generating facilities are located farther from the coal mines than those of any other electric utility in the state, and environmental requirements have forced the Company to purchase low sulfur coal from mines which are even farther away than the sources it previously used (Id.). As a result, the time needed to transport coal from the mines to the Company's plants has increased significantly (Id.). These and other factors cited by witness Busby demonstrate that an 80 to 85 day supply is reasonably representative of a normal level of fuel inventory for the Applicant (Id., p. 8). The Commission therefore sustains the Applicant's objection on this point, and will adopt the Applicant's recommended allowance for fuel inventory.

Finally, OCC objects to the Staff's failure to treat taxes withheld from employees as a part of the tax offset. Witness Effron argues that the Company has the use of these funds until the withholdings are actually disbursed (OCC Ex. 7, p. 10). Both the Company and the Staff contend that this adjustment should be rejected.

The Staff believes that the use of the formula method eliminates the need to seek out specific balance sheet items, such as taxes withheld, for use as additional offsets to the working capital allowance (Staff Ex. 4, pp. 24-25). Although we fully agree with the Staff's analysis, we believe the OCC proposal should be rejected for another reason. Taxes withheld from employees are "... held to be a special fund in trust for the United States." 26 U.S.C. Sec. 7501 (emphasis supplied). For this reason, it would be inappropriate for the Commission to assume that these funds are available to the Applicant for use as working capital. OCC's objection on this point should therefore be overruled.

The following schedule presents in summary form the Commission's determination of the allowance for working capital to be included in the rate base for purposes of this proceeding. These figures take into account revisions necessary to reflect the disposition of other issues which affect the allowance.

Jurisdictional Working Capital Allowance
(000's Omitted)

Materials and Supplies	$ 5,332
1/8 of Adjusted Operation and Maintenance Expense, excluding Fuel and Purchased Power	7,210
Fuel Inventory	17,556
Customer Deposits	(375)
1/4 of Operating Taxes excluding F.I.C.A. and Deferred Taxes	8,382
Jurisdictional Working Capital Allowance	$21,341

Accumulated Deferred Taxes and Tax Credits

The Staff recommends that the Applicant's rate base be reduced by $33,468,0[illegible]3, which represents the jurisdictional portion of accumulated deferred taxes resulting from accelerated depreciation and accelerated amortization associated with emergency and pollution control facilities, as well as the investment tax credit associated with the 1962, 1964 and 1971 Revenue Acts, and the 4% portion of the 1975 Act (Staff Ex. 1, p. 19; Staff Ex. 14). The recommended deduction should be revised to $33,494,208, to reflect changes in the allocation factor resulting from the Commission's decisions with respect to various rate base items.

The Company originally objected to the Staff's calculation of the adjustment for accelerated depreciation, arguing that the adjustment should be based on the balance existing as of the date certain, and not an amount computed in accordance with Treasury Regulation 1.167(l)-1(h)(Company Ex. 6B, p. 13). The Staff agreed, and revised its calculations accordingly (Staff Ex. 4, pp. 19-21; Staff Ex. 14).

The Company also objects to any rate base deduction for the investment tax credit. In essence, the Company argues that a rate base deduction, in addition to the ratable flow through recommended by the Staff, would effectively deny the Company the benefits of the credit, thereby frustrating the intent of Congress. This argument is without merit. In the first place, it is by no means clear that the Staff's recommended treatment would effectively deny the Company all or even most of the benefits of the tax credit. As Staff witness Hanna explained, the Commission has permitted the Company to normalize the credit when it could have required an immediate flow through, and that normalization will clearly benfit the Company's cash flow (Tr. IX, pp. 4-5). Furthermore, the arguments relating to Congressional intent are largely unconvincing, in view of the fact that Congress provided no specific restrictions on the ratemaking treatment of these items, even though it has provided such restrictions in other instances. Finally, it is obvious that the investment tax credits are associated with specific items of depreciable plant, and therefore constitute sums received in partial defrayal of the cost of that property (See, Company Ex. 6B, p. 10; See also, Tr. IX, p. 3). As a result, the tax credits are clearly proper rate base deductions under Section 4909.05(I) of the Revised Code. The Company's objection is therefore overruled.

Other Rate Base Deductions

The Consumers' Counsel recommends the deduction from rate base of the Applicant's injuries and damages reserve, the accrued Ohio Coal Consumption Tax, the accrued Pennsylvania Gross Receipts Tax, and the pro-forma accrued nuclear fuel disposal costs (OCC Ex. 7, p. 9). OCC witness Effron argues that these items constitute "non-investor" sources of funds, which are available for use by the Company until they are actually paid out (OCC Ex. 7, pp. 11-15). OCC also objects to the Staff's failure to deduct from rate base the accrual for the expenses associated with the Davis-Besse refueling outage.

Both the Company and the Staff argue that such deductions would be improper. As Staff witness Hanna explained, OCC has identified a number of items which represent non-investor sources of funds, while ignoring numerous other items which create significant demands on capital, such as cash, working funds, and prepayments (Staff Ex. 4, pp. 25-26). The aggregate amounts of the accruals for the Ohio Coal Consumption Tax, the Pennsylvania Gross Receipts Tax, and the injuries and damages reserve should be more than offset by other items from the asset side of the balance sheet (Tr. IX, pp. 26-27). Furthermore, the items identified by OCC are essentially working capital items, and there is no need, in determining the working capital allowance, to make selective balance sheet deductions, because the formula method employed by the Commission already provides a reasonable approximation of the working capital requirement (Tr. IX, pp. 26-27). It is difficult to see how OCC can oppose an adjustment to the formula to permit a separate allowance for prepayments, while failing to recognize that its proposed rate base deductions involve precisely the same principle. For these reasons, the Commission would agree that the accrued Ohio Coal Consumption Tax, the accrued Pennsylvania Gross Receipts Tax, and the injuries and damages should not be deducted from the Applicant's rate base.

The same considerations apply with equal force to the accruals for nuclear fuel disposal expense and the refueling outage expense, but there are other, more compelling, reasons why those items should not be deducted from rate base. The refueling outage is currently scheduled to begin on March 15, 1980, which is only a short time after the rates approved in this proceeding will go into effect (Staff Ex. 4, p. 27). As a result, the Company will collect only a small fraction of the refueling outage expense before the expense is actually incurred (Staff Ex. 4, p. 27), and it will have the use of those funds for only a brief period of time. Under these circumstances, a rate base deduction would obviously be inappropriate.

The accrual for nuclear fuel disposal, unlike the refueling outage expense, will begin to be collected long before the expense is actually incurred, but virtually all of the parties agree that that accrual should be based on the figures contained in the DOE study, which are expressed in 1978 dollars. Staff witness Hanna and Company witness Busby recommended that the DOE figures be restated in 1979 dollars, but none of the parties have recommended the approval of an inflation factor to account for any increase in costs which occurs between now and 1987, when the first disposal costs are expected to be incurred. The underlying theory, at least from the viewpoint of the Staff, is that the return which the Company can earn on the revenues it will ultimately collect will hopefully be sufficient to offset the effects of future inflation (Staff Ex. 4, pp. 26-27). A rate base deduction would obviously be inconsistent with that theory, and would effectively deny the Company the opportunity to earn such a return (Id.).

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It is possible, as OCC suggests, that the ultimate cost of nuclear fuel disposal will be less than the estimate contained in the DOE study. There is obviously a great deal of uncertainty in this area. Nevertheless, the DOE study clearly represents the best estimate which is currently available, and the testimony of Staff economist Wissman indicates that double digit inflation is likely to continue in the near term future (Tr. XI, p. 13). Even OCC witness Effron appeared to concede that the ultimate cost of nuclear fuel disposal is "more likely" to be higher rather than lower (Tr. XII, pp. 120-21). For these reasons, we deem it inappropriate to deny the Company a reasonable opportunity to earn a return which could offset the effects of future inflation.

Finally, OCC suggests that the accrued nuclear fuel disposal costs should be deducted from the rate base because they are analogous to the decommissioning costs associated with the Davis-Besse nuclear generating facility. The Commission frankly fails to see the relevance of this analogy. It is true, of course, that the accrued decommissioning costs are ultimately deducted from the rate base, since those costs are treated as a part of the Company's depreciation expense, which is periodically added to the depreciation reserve. It does not follow, however, that the nuclear fuel disposal costs, which have nothing to do with the recovery of invested capital or the depreciation of a physical asset, should effectively be treated as a depreciation expense. Admittedly, there may be a theoretical inconsistency between the treatment of these two items, but if anything, this suggests that we should reconsider the treatment of decommissioning costs, and not that nuclear fuel disposal costs should be deducted from the Applicant's rate base.* OCC's arguments on this point should therefore be rejected.

Rate Base Summary

In light of the foregoing, the Commission finds the jurisdictional statutory rate base, as of the date certain, April 1, 1979, to be as follows:

(000's Omitted)

Plant in Service	$862,539
Depreciation Reserve	(159,933)
Net Plant in Service	702,606
CWIP	4,551
Working Capital	21,341
Customer Advances for Construction	(108)
Accumulated Deferred Taxes and Tax Credits	(33,494)
Jurisdictional Rate Base	$694,896

OPERATING REVENUES AND EXPENSES

The Applicant and the Staff each submitted an analysis of test year accounts, reflecting the results of the Company's operations under the permanent rates in effect at the time the

* The appropriate treatment of the decommissioning costs is not properly before the Commission in this proceeding. Consequently, there is no need to address that issue at the present time.

case was filed. These analyses were primarily based upon six months of actual data and six months of forecasted, or budget, data. The adjustments to test year expenses recommended by the Staff and the Consumers' Counsel are discussed on an item by item basis in the following sections.

Annualization of Fuel Costs and Revenues

Both the Applicant and the Staff have recommended the annualization of fuel costs and revenues, and none of the parties have objected to that recommendation. The Applicant should therefore be directed to file base (or non-fuel) rates sufficient to compensate the Company for test year operating expenses, exclusive of fuel costs includable under Rule 26, and yield the authorized return on rate base, based on test year operations as analyzed herein. Dayton Power & Light Co., Case No. 78-92-EL-AIR (March 9, 1979).

Purchased Power Expense

The Consumers' Counsel argues that the Applicant incurred abnormally high purchased power expenses during the test year, which should be reduced through the use of a normalization adjustment. The Applicant and the Staff both contend that such an adjustment is unnecessary, and should be rejected.

At the outset, it should probably be noted that it is difficult to determine what, if anything, constitutes a "normal" level of purchased power expense, since the level fluctuates from month to month and from year to year, and since the expense level depends upon a number of different factors, including current cost levels and the occurrence of unit outages (Tr. III, p. 76). Nevertheless, an analysis of the need for a normalization adjustment would ordinarily begin with a comparison of test year expense levels with those experienced in the past. Witness Effron made such a comparison, and found that the level of purchased power expense incurred during the test year was not greater than level experienced during prior years (Tr. XII, p. 143-44). Such a conclusion would ordinarily bring the inquiry to an end. However, witness Effron suggests that the comparison is not particularly relevant, because the Davis-Besse unit was not on line for all or part of the years he examined (Tr. XII, p. 144). Instead, OCC cites a number of occurrences during the test year which assertedly resulted in abnormally high purchased power expenses.

The first factor cited by witness Effron is the "low capacity factor" for the Davis-Besse unit for three months during the first part of the test year (OCC Ex. 7, p. 17). The relevant factor, however, is the overall level of purchased power expense for the test year, and in determining that level, the Applicant used a capacity factor of approximately 60% for the DavisBesse unit (Tr. V, p. 5). There is no basis in the record for assuming that that factor was abnormally low.

OCC also cites the 74 day outage at the Applicant's Bay Shore unit, and suggests that that outage led to abnormal purchased power expenses (See, OCC Ex. 7, p. 17). However, the Staff has proposed an adjustment to test year revenues and expenses to reflect the anticipated insurance recovery of the costs occasioned by last fourteen days of that outage (Staff Ex. 10; Staff Ex. 3, p. 11; Tr. VIII, p. 75). Although the Applicant originally opposed that adjustment, it has all but abandoned that argument on brief, and even cites the Staff's adjustment as a reason for rejecting OCC's proposed normalization. The Commission believes that the Staff's adjustment should be adopted, and that adjustment effectively reduces the

Bay Shore outage from 74 days to 60 days (Tr. VIII, pp. 75-77a). Furthermore, the Staff witness Hefner testified that the Bay Shore outages during the test year were less than would be statistically expected in the average four unit plant (Staff Ex. 9, p. 3). The record clearly fails to shows that the Bay Shore outage should be treated as an abnormal event.

OCC further cites the 31% capacity factor for the Bruce Mansfield Unit No. 2 during the first six months of the test year. Here again, however, the relevant factor is the capacity factor for the entire year, since it is the overall level of purchased power expense which must be examined. Moreover, as Staff witness Hefner explained, the Bruce Mansfield unit could be expected to have a lower capacity factor than the Applicant's other base load units, since it has the highest operating cost, and would therefore be loaded last (Tr. XIV, p. 47).

OCC also cites certain other factors in support of its proposed adjustment, but the record similarly fails to show that those items should be considered abnormal, or that those factors produced an overall level of purchased power expense which should be reduced through the use of a normalization adjustment. Furthermore, OCC's reliance on the Applicant's Energy Supply Model to determine a normalized level of purchased power expense (OCC Ex. 7, p. 18) was clearly improper, since the model basically assumes that there will be no forced outages (Tr. XIV, p. 43). A party proposing departure from strict application of the test year has the burden of demonstrating the propriety of that departure, Columbia Gas of Ohio, Case No. 76-704-GA-CMR (June 29, 1977), and the Commission is of the opinion that OCC has failed to sustain that burden with respect to test year purchased power expenses. The proposed normalization adjustment must therefore be refjected.

The Applicant objects to the Staff's failure to annualize purchased power costs to test year end levels. The same considerations which make it difficult to normalize purchased power costs also make it inappropriate to annualize these expenses. Specifically, these expenses fluctuate significantly from month to month and from year to year for a variety of reasons (Staff Ex. 3, p. 3; Tr. III, p. 76). The Applicant's objection is therefore overruled.

Depreciation Expense

The Applicant argues that depreciation expense for the Davis-Besse unit should be based on the unit of production method. The Staff agrees, but its calculation differs slightly from that proposed by the Applicant. OCC argues that this expense should be based on the straight line method of depreciation.

In Determination of Depreciation Charges, Case No. 77-1369-ELUNC (December 12, 1979), the Commission found that the unit of production method constitutes the most appropriate method of determining depreciation charges for Davis-Besse. Although we expressly indicated that that decision would not be binding for ratemaking purposes, consistency would seem to require the use of the same method, in the absence of sound reasons for doing otherwise.

Witness Effron argues that the straight line method should be used, on the grounds that that method would eliminate the under or over-recovery of depreciation expense which might result from the unit of production method (OCC Ex. 8, p. 1). As an example, he noted that if the plant were to operate at an average capacity factor of 59% over the next ten years, and if a capacity factor of 63% were used in each rate proceeding

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during that period of time, the Applicant's rates would reflect approximately $910,000 per year more than the amount actually charged to depreciation expense (OCC Ex. 8, pp. 1-2). He conceded, however, that if the plant were to operate at an average capacity factor of 67%, the opposite would be true (Tr. XII, pp. 64-65). Moreover, this argument largely overlooks the fact that intervening rate cases would provide the Commission with an opportunity to adjust the capacity factor to a level which more reasonably represents the unit's normal operations. Finally, the periodic addition and retirement of various plant items makes it impossible to achieve a precise matching between the level of depreciation expense reflected in rates and the amounts actually charged to depreciation expense. In short, we are not persuaded that the straight line method should be used to determine depreciation expense for the Davis-Besse unit.

The only difference between the depreciation expense calculations submitted by the Applicant and the Staff relates to the capacity factor. The Staff used the generation level contained in Applicant's six and six filing, which represents a capacity factor of approximately 60% (Staff Ex. 5, p. Tr. IV, p. 134), while the Applicant used a normalized capacity factor of approximately 63%, even though it used the 60% factor in determining test year purchased power expense (Tr. IV, p. 134; Tr. V, p. 5). Although the Applicant suggests that this is not inconsistent, we disagree. Having rejected OCC's contention that test year purchased power expense should be normalized, it would be somewhat incongruous to approve an allowance for depreciation expense which assumes an increase in future generation from Davis-Besse. The Staff's proposal should therefore be adopted.

The Applicant objects to the Staff's recommendation that the existing accrual rates for its steam production accounts be applied to the Bruce Mansfield Unit No. 2. The Applicant presented a great deal of testimony attempting to show that a 3.15% accrual rate should be applied to that unit (Company Ex. 6B, p. 3; Company Ex. 8, pp. 3-6).

The Applicant's testimony on this issue has largely missed the point of the Staff's argument. The Staff is not really arguing that a higher rate would be inappropriate for the Bruce Mansfield Unit; the Staff is simply suggesting that the Commission should approve no changes in the existing steam production accrual rates without considering all of the plant items affected by those rates. The Commission agrees with the Staff on this point, since an examination of all of the plant items in question might show that the existing rates should be decreased rather than increased. Furthermore, despite requests dating back to the summer of 1979 (Staff Ex. 5, pp. 10-11, Attachment 1), the Applicant did not supply the Staff with its most recent depreciation study, which was essentially completed on October 1, 1979 (Tr. XIII, pp. 6-7), until January 3, 1980 (Tr. VII, p. 65), midway through the hearings in this proceeding. It is therefore obvious that the Staff has not had an opportunity to adequately review that study (Staff Ex. 5, p. 11). Under these circumstances, the Commission believes that it would be inappropriate to approve a new, higher accrual rate for the Bruce Mansfield unit. The Applicant's objection is therefore overruled.

Finally, the Applicant argues that it should be permitted to depreciate land rights over a period of seventy-five years. The Staff basically contends that depreciation of land rights should be permitted only when a term of years is specified in the instrument conveying the interest (See, Staff Ex. 2, p. 8). The Commission believes the Staff position on this issue is reasonable, and in any event, the record fails to justify the seventy-five year depreciable life recommended by the Applicant. The Applicant's argument should therefore be rejected.

Edison Plaza and Employee Centers

In the Rate Base section, supra, we concluded that a portion of the Edison Plaza should be excluded from the Applicant's rate base. Since the excluded portion is not used and useful in providing electric service to the public, the expenses associated with that portion should also be excluded from the Applicant's test year expenses. The Applicant and the Staff have presented alternative methods of determining the proper amount to be excluded.

The Staff's analysis was based on a square footage allocation, except in instances where direct assignments were possible (Tr. VIII, pp. 5-6). The Company's proposal, by contrast, was based on incremental costs; expenses which would have been incurred regardless of tenant occupancy were allocated solely to the Company's portion of the building (Company Ex. 11, pp. 4-5). For example, the Company allocated none of the garage cleaning expenses to the tenants' portion, under the theory that it would have to clean the garage whether or not it was used by anyone outside the Company (Tr. XIV, pp. 91-92). Similarly, the Company allocated none of its property protection expenses to the tenants' portion (Company Ex. 11, TECo R-3), apparently under the theory that it would have to employ a security guard even if it had no tenants (See, Tr. VIII, p. 5). This reasoning is unpersuasive. The point is that the Company does have tenants, and the Company has not suggested that the tenants derive no benefit from the expenses in question. Under these circumstances, we see nothing unfair or unreasonable about allocating a proportionate share of those expenses to the tenants' portion of the building. The Staff's proposal should therefore be adopted.

We also concluded that a portion of the Applicant's investment in its employee centers should be excluded from the rate base for purposes of this proceeding. Under these circumstances, our prior decisions would suggest that a proportionate share of the revenues and expenses associated with those facilities should also be excluded. Dayton Power & Light Co., Case No. 76-823-EL-AIR (July 22, 1977). However, the testimony of witness Busby in this proceeding clearly indicates that the use of the employee centers is regarded as a fringe benefit for the employees (Company Ex. 6C, p. 4), and we see no reason why these expenses should be treated any differently than health insurance or any other fringe benefit. The net operating expenses associated with the three employee centers should therefore be included in the Applicant's test year expenses.

Payroll Expense, Employee Benefits, and F.I.C.A.

Three significant issues have been raised in this proceeding involving the determination of test year payroll expense. The first involves the number of employees used in calculating that expense, and the other two involve the annualization of nonunion wages and overtime expense. The allowance for employee benefits and F.I.C.A. should obviously track our decisions with respect to these three issues.

The Consumers' Counsel, noting that the Applicant overestimated the number of employees it would have during the forecasted portion of the test year, argues that test year payroll expenses should be adjusted downward. The Applicant disagrees, arguing that such an adjustment would be inappropriate. The Applicant does not deny that it overestimated the number of test year employees, but it suggests that there may be a number of instances in which the six and six figures (six months of actual data and six months of forecasted, or budget, data) differ from actual experience, and argues that the Commission should not adopt OCC's adjustment unless it is prepared to decide the entire case on the basis of actual data.

We would agree that the six and six figures should not be lightly discarded. Most cases are decided on the basis of six and six figures because time constraints make it impractical to use twelve months of actual data, and it is certainly not our intent to encourage an endless flow of requests for minute adjustments to eliminate every minor discrepancy between the two sets of figures. That would defeat the whole purpose of using the six and six figures in the first place.

We cannot agree, however, that we must either accept the six and six figures in their entirety, no matter how inaccurate the forecasted data may be, or rely soley on actual data, which would be impractical in most major cases. Where the record shows that a specific item contained in the six and six figures is not reasonably representative of a utility's normal operations, there is no sound reason why an appropriate adjustment should not be made.

The record shows that the Applicant's actual level of employees was relatively constant throughout the first half of the test year, but that it projected an unexplained increase of more than one hundred employees for the second, or forecasted, half of the year (OCC Ex. 4). For whatever reasons, it is apparent that most of the additional employees were not actually hired (Tr. III, pp. 98-99). The total number of employees the Company actually had at the end of the test year was 124 less than the number it had projected (Tr. III, p. 99). Furthermore, unlike the situation present in Columbus & Southern Ohio Electric Co., Case No. 78-1438-EL-AIR (December 12, 1979), the Applicant does not contend that its test year labor force was reduced as a result of its financial position, or even that it intends to hire the additional employees in the near term future. It would therefore appear that the test year employee figure is not reasonably representative of the Applicant's normal operations, and since that figure was used to develop test year payroll expense (Tr. III, p. 90), it is obvious that some adjustment would be appropriate.

The Applicant argues that its proposed allowance is nonetheless reasonable, because the annualized increase in payroll expense between 1978 and the test year is only 2.51%, compared with a compound growth rate of 12.20% from 1972 to the test year (Company Ex. 11, p. 6). However, the Applicant has presented no detailed explanation of the factors which produced the growth which occurred between 1972 and the test year, and in light of the Applicant's actual experience during the test year, we are not persuaded that its payroll expense figure is reasonably representative.

OCC witness Effron proposes an adjustment of $969,000, to eliminate the effect of overestimating the number of test year employees (Tr. XIV, pp. 120-121a; OCC Ex. 11B). That adjustment was calculated by applying an adjustment factor, based on the actual number of employees at the end of the test year, to the actual 1978 direct payroll costs (Tr. XIV, pp. 121-121a). Admittedly, that adjustment does not present a perfect solution to the problem. It assumes that the difference between the projected and actual level of employees was constant throughout the latter six months of the test year (Tr. XIV, pp. 123-4), and as the Applicant points out, the record fails to substantiate that assumption. However, the Applicant has not shown that assumption to be unreasonable, nor has it presented a reasonable alternative of its own. Furthermore, the general accuracy of witness Effron's adjustment was confirmed by an alternative calculation he used as a "reasonability" check (OCC Ex. 11A; Tr. XIV, pp. 122, 124). Finally, the Applicant's complaints about the imprecision of OCC's proposed adjustment must be viewed in light of the fact that the nature of the Applicant's budgeting process makes it impossible to identify the precise number of payroll dollars included in test year expenses (Tr. III, p. 91). The figures contained in revised Schedule C-10 are only estimates (Tr. III, p. 91; Applicant's Ex. 11, p. 6). The Commission is therefore of the opinion that OCC's proposed adjustment represents the most reasonable disposition of this issue, and should accordingly be adopted. The corresponding adjustments to employee benefits and F.I.C.A. expense should also be approved (See, OCC Ex. 11B).

OCC objects to the Staff's annualization of non-union wages, citing a number of past decisions indicating that such annualizations would not be permitted. See, e.g. Cleveland Electric Illuminating Co., Case No. 78-677-EL-AIR (May 2, 1979), Dayton Power & Light Co., Case No. 78-92-EL-AIR (March 9, 1979). The Applicant and the Staff argue that the annualization of non-union wages should be allowed. In view of the arguments presented in this proceeding, we believe that a reexamination of our prior decisions on this point is warranted.

As a general rule, the Commission will only permit the annualization of expenses which are known, measurable, and beyond the control of the company. According to the uncontradicted testimony of Staff witness Montgomery, increases in non-union wages meet this test (Staff Ex. 3, p. 13). It is true, of course, that such increases are not normally governed by the terms of a signed contract which imposes a fixed legal obligation, and a number of our past decisions have indicated that that distinction should be considered controlling. See, e.g., Cleveland Electric Illuminating Co., supra. Moreover, the Supreme Court recently held that it was not unreasonable for the Commission to deny the annualization of labor increases which were not contractually required. Dayton Power & Light Co. v. Pub. Util. Comm., 61 Ohio St. 2d 215, 217-218 (1980). Upon reconsideration, however, we are not persuaded that the absence of a signed, union contract should be considered determinative of this issue.

The purpose of annualizing expenses is to create a representative picture of the costs which the utility will incur in the near term future. Once a wage increase has been granted, whether it relates to union or nonunion employees, it is highly unrealistic to assume that the higher wage rate will not be incurred in the future, simply because it is not governed by a fixed legal obligation. The failure to recognize such increases in costs will simply make it more difficult for the utility to attain its authorized rate of return. Furthermore, none of the accounting witnesses testifying in this proceeding have even suggested that the annualization of non-union wages cannot be readily reconciled to the test year analysis of accounts, or that such an adjustment would result in a serious mismatching of revenues and expenses. In fact, none of the experts testifying in this proceeding have presented any sound reasons why the annualization of non-union wages should not be allowed. The Commission is therefore of the opinion that the Staff's recommendation on this issue should be adopted, and that the annualization of non-union wages should be permitted in this proceeding.

Finally, the Applicant objects to the Staff's failure to annualize overtime expense. The Staff did not eliminate the actual overtime costs incurred during the test year, but it argues that these expenses should not be annualized to year end levels. As Staff witness Montgomery explained, the amount of overtime hours allowed is, to a certain degree, subject to the discretion and control of the Applicant (Staff Ex. 3, p. 5). Furthermore, the amount of overtime tends to fluctuate from year to year (Applicant's Ex. 11, TECo R-1), and the Staff believes that increases in overtime costs are not known and measurable (Staff Ex. 3, p. 5). Finally, the Applicant was unable to supply a breakdown between time and a half and double time hours for the test year (Tr. III, p. 27). That information would certainly be essential in determining a proper annualization adjustment. The Applicant's objection on this issue is therefore overruled.

<u>Nuclear Fuel Disposal Expense</u>

The Applicant has proposed an adjustment to account for the costs which will eventually be incurred in connection with the disposal of spent nuclear fuel (Company Ex. 5, Schedule C-3.5). The adjustment is based on the $232 per kilogram estimate contained in a 1978 study by the Department of Energy (OCC Ex. 3). Although these costs are not expected to be incurred for a number of years, the Applicant argues that they should be included in current rates under the theory that the customers who receive the benefits of nuclear generation should be required to pay the costs associated with that generation (Company Ex. 3C, p. 14). The Staff agrees that such an adjustment should be permitted (Staff Ex. 1, pp. 8-9).

There is, however, one significant difference between the proposals submitted by the Applicant and the Staff. The Staff recommends that the Commission disallow that portion of the adjustment which relates to the disposal costs of fuel which has already been consumed (Staff Ex. 1, p. 9; Company Ex. 6C, p. 1). The Staff contends that the Applicant's proposal would permit a retroactive recovery of those expenses (Staff Ex. 3, p. 4). The Applicant objects to this recommendation, and has offered a number of arguments in favor of its own proposal.

The Applicant first suggests that its proposal would not really result in a retroactive recovery, because the expenses in question will be incurred at some time in the future. That argument ignores the fact that these expenses are properly attributable to service rendered in the past, irrespective of when they are incurred. The Applicant next contends that the expenses should be allowed, because the uncertainties regarding these items which existed at the time of its last rate case made it impossible to request their inclusion in that proceeding. In our opinion, that consideration is insufficient to require that future rates reflect what is essentially an unrecovered past expense. Finally, the Company argues that the denial of the retroactive portion of the expense in this proceeding may result in future customers being required to pay those costs. That contention is too speculative to warrant consideration. The Company's objection is therefore overruled.

Staff witness Hanna and Company witness Busby recommended that the estimates contained the 1978 DOE study be restated in 1979 dollars, using an index supplied by the Federal Reserve Bank (Tr. IX, pp. 9-9a, 21-22; Applicant's Ex. 11, p. 3). Although OCC objects to the use of a general inflation factor in connection with this particular expense, witness Busby explained that the Company had been unable to locate any index which would more closely track the costs of nuclear fuel disposal (Tr. XIV, p. 103). It is undisputed that significant inflation has occurred since 1978 (Tr. IX, p. 9), and the Commission believes that the adjustment proposed by witnesses Hanna and Busby represents a reasonable step toward recognition of the actual cost of nuclear fuel disposal, and should therefore be adopted. The Applicant will, however, be required to accurately maintain accruals on its books for this item, in order to facilitate any adjustment which may become necessary in future proceedings.

Charitable Contributions

The Applicant originally requested an allowance of $193,581 for charitable contributions (Company Ex. 5, Schedule C-7). The Staff recommended an allowance of $187,883, which was based on a different jurisdictional allocation factor than that employed by the Applicant (Staff Ex. 1, p. 91), and the Applicant did not object to the Staff's recommendation. OCC reiterates its familiar objection to any allowance for this item. That objection requires only brief discussion.

It is now well established that a utility's operating expenses may include a reasonable amount for charitable contributions, City of Cincinnati v. Pub. Util. Comm., 55 Ohio St. 2d 168, 378 N.E.2d 729 (1978), and the Commission has consistently permitted a reasonable allowance for such contributions, provided that the allowance does not exceed .1% of the utility's total gross revenues. Cleveland Electric Illuminating Co., Case No. 71-634-Y (November 28, 1973). There is nothing in the record which persuades us to depart from our established policy.

OCC specifically objects to a contribution to the Americans for Energy Independence, on the grounds that it provided no benefit to Toledo Edison's ratepayers or their community. However, the record indicates that this is a national organization which provides information on nuclear energy to the public at large, including residents of the Applicant's service territory (Tr. III, pp. 100-101; Tr. VIII, p. 115-16). The Staff believes that this item constitutes an appropriate charitable contribution (Tr. VIII, p. 116) and the Commission sees no reason to disagree. OCC's objection on this issue is therefore overruled.

Advertising Expense

The Applicant's proposed test year expenses include an allowance of $276,000 for advertising (Company Ex. 5, Schedule C-8). OCC objects to the inclusion of any allowance for this item.

The Commission has consistently permitted a reasonable allowance for non-promotional advertising, and sees no need to depart from that practice in this case. The allowance proposed by the Applicant falls within the guidelines established by the Commission in Cleveland Electric Illuminating Co., Case 78-677-EL-AIR (May 2, 1979)(Staff Ex. 3, p. 14).

OCC specifically objects to an advertisement entitled "Three Mile Island, Davis-Besse, and you," on the grounds that it is promotional in nature. However, Company witness Busby described the advertisement as "informational" (Tr. III, p. 104), and an examination of the ad (which was offered as Toledo Coalition for Safe Energy Ex. 1 during the public statements in Toledo) leads us to the same conclusion. OCC's objection is therefore overruled.

Area Development Expenses

The Staff recommends the exclusion of a portion of the Applicant's Area Development expenses, on the grounds that they relate to promotional, demonstrating, and selling activities (Staff Ex. 1, p. 11; Staff Ex. 3, p. 8). The Applicant objects to this exclusion, and argues that these costs are properly included in its test year cost of service (Company Ex. 6C, p. 6).

According to Company witness Busby, the Area Development activities are designed to encourage new businesses to come into the Company's service territory, to encourage existing businesses to expand, and also to encourage existing businesses to remain in the area (Company Ex. 6C, p. 6). He further explained that historically and traditionally, utility companies have been a prime source of contact for prospective new industry, since most industries prefer to work with one group that can show them an entire region, instead of working with several organizations and individuals during the early stages of their search for an appropriate site (Id.). The area developement activity thus helps to improve the economic climate of the service territory for the ratepayers by providing jobs, increasing the tax base, and providing stability for the area's overall economic well being (Id.). The Commission is therefore of the opinion that the expenses in question are reasonable, and are properly included in the Applicant's test year cost of service. See, Cincinnati Gas & Electric Co., Case No. 79-11-EL-AIR (January 7, 1980).

Rate Case Expense

The Applicant proposes an allowance of $146,000 for rate case expense, to be amortized over a period of two years (Company Ex. 5, Schedule C-9). The Staff concurs in that recommendation (Staff Ex. 1, Schedule 3.10, p 92). OCC raises its now familiar objection to any allowance for this item.

The Commission has consistently held that the preparation, filing, and prosecution of rate cases consitute a normal and necessary part of a utility's operations, and must therefore be reflected in the cost of service. Cleveland Electric Illuminating Co., Case No. 78-677-EL-AIR (May 2, 1979). There is nothing in the record which indicates that the Applicant's proposal is unreasonable. OCC's objection is therefore overruled.

Federal Income Tax

The Applicant has raised a number of objections to the Staff's calculation of federal income tax expense. The Staff's recommendations, however, are consistent with the Commission's recent decisions in this area, and for the most part, the Applicant's objections require only brief discussion.

The Applicant first objects to the Staff's method of determining interest expense. That method consists of applying the weighted cost of debt used in the rate of return determination to the Applicant's jurisdictional rate base. The Applicant argues that the Commission should instead use test year interest expense, less the amount of interest which was attributable to CWIP and non-electric operations (Company Ex. 6B, p. 6). However, as Staff witness Hanna explained, interest costs provide a tax benefit, and for that reason, test year operating expenses, in order to be consistent with capital structure, should reflect the tax benefits associated with the interest costs used in determining the cost of debt included in the overall rate of return calculation (Staff Ex. 4, p. 14). Since the ratepayers are required to provide a rate of return which reflects the interest costs associated with the debt portion of the capital structure, they should also receive the tax benefits associated with those costs (Id.). Furthermore, the Staff's methodology achieves the desired matching and consistency between operating income and capital structure, and between operating income and rate base (Id., pp. 14-15). The Applicant's objection on this point is therefore overruled.

The Applicant also contends that straight line depreciation for deferred tax purposes should be calculated using book lives, rather than guidelines lives. The Staff recommends the use of guideline lives, because the guideline life represents the maximum period over which the depreciation deduction is available (Staff Ex. 4, p. 16). The use of guideline lives therefore assures that all of the benefits are recognized during that period (Id.). Moreover, that method of calculation is consistent with the method specified in Treasury Regulations 1.167(l)-1 and 1.167(l)-1(h) (Id.). The Commission believes the Staff's methodology is appropriate and should be approved.

In the alternative, the Applicant argues that the Commission should approve comprehensive interperiod tax allocation. The Staff recommends the continuation of partial interperiod tax allocation, including (1) normalization of accelerated depreciation on an additions forward basis, (2) normalization of interest costs associated with construction not included in the rate base, and (3) normalization of investment tax credits based on ratable flow-through (Staff Ex. 4, pp. 17-18). The Staff's recommendation is consistent with a number of recent Commission decisions, and the Commission continues to believe that it strikes the fairest balance between the interests of the Applicant and those of its customers. The Applicant's arguments on these issues should therefore be rejected.

The Applicant further objects to the Staff's treatment of the excess of property tax deductible over book. As witness Hanna explained, a timing difference normally exists for this item, because the book accruals for property tax are based on a prior period's liability, while the tax deduction is based on year-end property valuation (Staff Ex. 4, pp. 15-16). This timing difference is of short duration and non-cumulative, but it does result in the property tax deductible for income tax purposes in a given period being higher than the property taxes accrued for book purposes during the same period (Id., p. 15). Under the Staff's proposal, the excess of property tax deductible over the adjusted test year property taxes is taken as a tax deduction for purposes of calculating federal income tax expense (Id., pp. 15-16). This treatment results in a flow through of the timing difference, and is consistent with the Commission's position on normalization (Id., p. 16). The Commission believes that the Staff's proposal on this point is reasonable and should be adopted. This objection is therefore overruled.

Finally, the Applicant objected to the Staff's inclusion of tax depreciation associated with CWIP in the calculation of federal income tax. The Staff agreed with this objection (Staff Ex. 4, p. 16) and revised its calculations accordingly (Staff Ex. 12).

Ohio Coal Consumption Tax and PURTA Surcharge

In the Applicant's last rate proceeding, the Commission included an allowance for the Ohio Coal Consumption Tax. The Tax was subsequently declared unconstitutional in Dayton Power & Light Co. v. Lindley, 58 Ohio St. 2d 465, 391 N.E.2d 716

(1979), and as a result, the Applicant never actually had to pay the tax.

Both the Staff and the Consumers' Counsel argue that the Commission should order the Applicant to refund the Coal Consumption Tax to its customers. The Applicant argues that such an order would be improper. After carefully reviewing the testimony and arguments on this point, the Commission finds itself in agreement with the Applicant.

In the first place, the inclusion of the Coal Consumption Tax had absolutely no impact on the rates approved in the last proceeding, since the rate of return authorized by the Commission would have produced authorized revenues substantially in excess of the amount actually requested by Applicant. In other words, the same level of rate relief would have been granted even if the Coal Consumption Tax had been excluded (Tr. IX, p. 15). But more importantly, that order, unlike the orders in other cases involving the same issue, did not require the Applicant to create a reserve, the disposition of which was subject to Commission approval. As a result, the Coal Consumption Tax can be treated no differently than any other expense included in the Applicant's last rate proceeding.

It is well established that the Commission's ratemaking powers are prospective in nature. The Commission establishes rates on the basis of expense levels that are reasonably representative of the utility's normal operations at the time the rates are approved. But unless a special provision is included in the order approving the rates, the Commission cannot subsequently order the refund of rates collected from customers simply because an anticipated expense is not actually incurred. This would clearly constitute retroactive ratemaking, and would be improper on that basis alone. The Applicant's position on this issue must therefore be sustained.

The arguments against retroactive ratemaking cut both ways, and the PURTA surcharge represents the other side of the same coin. The Commonwealth of Pennsylvania levied a one-time property tax surcharge on the Applicant, by virtue of its ownership interest in the Bruce Mansfield Unit No. 2 (Company Ex. 6B, p. 5). This item was not included in the Applicant's last rate proceeding, and the Applicant proposes to amortize the surcharge over a period of two years (Id.). The fact remains, however, that this item represents a one-time charge which cannot properly be reflected in future rates. Ohio Edison Co., Case No. 78-1567-EL-AIR (January 30, 1980). Just as the Commission will not order the refund of anticipated expenses which are not actually incurred, it will not increase future rates to reflect unanticipated expenses which have been incurred in the past. The Applicant's arguments on this point must therefore be rejected.

Pennsylvania Gross Receipts Tax

The Consumers' Counsel objects to any allowance for the Pennsylvania Gross Receipts Tax, and the Staff agrees that this item should be eliminated, since the tax has recently been repealed (Staff Ex. 3, p. 14). Since this item will not represent an ongoing charge in the future, the Commission agrees that it should be eliminated from test year expenses.

PUCO Maintenance Tax and Consumers' Counsel Assessment

The Applicant objects to the Staff's calculations of the PUCO Maintenance Tax and the Consumers' Counsel Assessment, arguing that 100% of these expenses should be allocated to this proceeding. The basis of this argument is that only the jurisdictional customers derive a benefit from either of these two assessments.

We have consistently rejected this argument in the past, and we do so again in the context of this proceeding. As we said in Cleveland Electric Illuminating Co., Case No. 78-677-EL-AIR (May 2, 1979), these two assessments are in the form of a tax, and should be allocated as such. The jurisdictional portion of these items should therefore be determined in accordance with the taxing basis on which the assessments are determined, and not the benefits which the two agencies provide (Staff Ex. 3, p. 11). A review of the record indicates that this is precisely what the Staff has done (Staff Ex. 3, pp. 10-11).

The Applicant's proposal, by contrast, would require the jurisdictional electric customers to pay that portion of the two assessments which is occasioned by the revenues derived from other facets of the Company's business, such as its gas and steam operations (See, Applicant's Ex. 6E, p. 11, Tr. VIII, p. 46). This would obviously be improper. The Applicant's objection is therefore overruled.

Property Tax

The Applicant originally objected to the Staff's failure to use the 1979 property tax rates, and the Staff subsequently agreed that the latest known rates should be used (Staff Ex. 3, p. 9). During the hearings, the Company supplied the latest property tax rates available as of January 8, 1980 (Company Ex. 12), and the Commission would agree that those rates should be used in determining test year expenses.

Gain on the Sale of Property

OCC witness Effron proposed an $18,000 adjustment to operating income to reflect a normalized (5 year average) gain on the sale of property (OCC Ex. 7, p. 32). However, as Staff witness Hanna explained, there were no gains from the disposition of utility property during the test period (Staff Ex. 4, p. 28). For this reason, the Commission believes that OCC's recommended adjustment should be rejected.

Summary of Revenues and Expenses

Upon review of the record, and consistent with the foregoing discussion, the Commission finds the Applicant's adjusted revenues and expenses for the test year to be as follows:

(000's Omitted)

Operating Revenues	$329,108
Operating Expenses	
Operation and Maintenance	181,923
Depreciation	28,258
Taxes other than Income Taxes	28,258
Federal Income Taxes	28,780
Total Operating Expenses	267,219
Net Operating Income	$ 61,889

PROPOSED INCREASE

A comparison of jurisdictional test year operating revenues of $329,108,000 with allowable jurisdictional expenses of $267,219,000 indicates that under the permanent rates in effect when this case was filed, the Applicant realized income available for fixed charges in the amount of $61,889, based on adjusted test year operations. Applying this dollar return to the jurisdictional rate base of $694,896,000 results in a rate of return of 8.91%. This rate of return is below that recommended as reasonable by any of the expert witnesses testifying on this subject, and the Commission therefore finds that the rates in effect at the time the case was filed (and hence the present permanent rates, which are lower than the rates in effect when the case was filed) are insufficient to provide the Applicant reasonable compensation and return for the electric service it renders to customers affected by this application. Rate relief is clearly required.

Under the rates proposed by the Applicant, additional gross annual revenues of $38,318,000 would have been realized based on test year operations as analyzed herein. On a proforma basis, which assumes necessary expense adjustments calculated in a manner consistent with the Commission's findings, this increase in gross revenues would have yielded an increase in net operating income of $19,827,000, resulting in income available for fixed charges of $81,716,000. Applying this dollar return to the jurisdictional rate base results in a rate of return of 11.76%. Although it is apparent that the present rates are inadequate, the increase proposed by the Applicant results in a rate of return higher than that recommended by any of the expert witnesses testifying on the subject. The Commission must therefore examine the various rate of return proposals submitted in this proceeding in order to determine a fair rate of return for the purpose of establishing just and reasonable rates.

RATE OF RETURN

Four witnesses presented testimony to assist the Commission in its rate of return determination, and each recommendation was based on a cost of capital analysis. Applicant's witness Nicholson recommended a rate of return of 10.94% (Company Ex. 6D, pp. 2-3). Witness Mount, also testifying on behalf of the Applicant, recommended a cost of equity of 15% to 15.5% (Company Ex. 4, p. 39), which would yield an overall rate of return in the range of 10.85% to 11.03%, when applied to the cost of capital analysis presented by witness Nicholson. Staff witness Wissman found the cost of capital to be in the range of 10.45% to 10.77% (Staff Ex. 8, p. 2), and OCC witness Parcell recommended a rate of return in the range of 9.79% to 10.31% (OCC Ex. 6, p. 46).

Capital Structure

The first step in a cost of capital analysis is to determine the appropriate capital structure to be employed. The Staff recommends the use of the Company's capital structure as of the end of the test year, and none of the parties have taken issue with that recommendation. The Commission therefore finds that a capitalization ratio of 49.93% long term debt, 14.94% preferred stock, and 35.13% common equity should be used for purposes of the cost of capital analysis (Staff Ex. 8, p. 2).

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Cost of Debt and Preferred Stock

Having adopted the Staff's recommended capital structure for purposes of this proceeding, the Commission finds the embedded cost of debt to be 8.69%, and the embedded cost of preferred stock to be 8.30% (Staff Ex. 8, p. 2).

Cost of Equity

Unlike the cost of debt and preferred stock, which can be readily computed, the cost of common equity can only be estimated. There are a variety of methods of determining the cost of common equity, and several different approaches have been advanced in this proceeding. Applicant's witness Nicholson, using a discounted cash flow (DCF) analysis, a comparison of earnings/price ratios and bond yields, and an analysis of earnings to net proceeds of past stock issuances, recommended a cost of equity of 15.25% (Company Ex. 6D, p. 3). Applicant's witness Mount, using a comparable earnings approach, a DCF analysis, and a risk spread analysis, found the cost of equity to be in the range of 15% to 15.5% (Company Ex. 4, p. 39). Staff witness Wissman, using the DCF approach familiar to the Commission and approved in most past cases, recommended a range of 13.86% to 14.77% (Staff Ex. 8, p. 2). OCC witness Parcell, using a comparable earnings approach, a DCF analysis, and a Capital Asset Pricing Model, which was used primarily as a check on the comparable earnings analysis, proposed a cost of equity in the range of 12% to 13.5% (OCC Ex. 6, pp. 38, 45).

As we have noted in the past, the comparable earnings approach, used by witnesses Mount and Parcell, contains significant shortcomings. The fundamental problem with that approach is determining whether the companies included in the comprison are in fact truly comparable. Cleveland Electric Illuminating Co., Case No. 78-677-EL-AIR (May 2, 1979). Witness Mount's analysis was based on Standard & Poor's 400 Industrials, and on two specific groups of electric utilities (one group of eleven, and a second group of seven) selected from an overall universe of ninety-one companies (Company Ex. 4, pp. 24-28). The first group was limited to companies who had achieved a positive compound growth of 2% or more in earnings per share in each of two five year periods, and had year end common stock prices which averaged at least 90% of book value from 1974 through 1978 (Company Ex. 4, p. 24). The second group was limited to companies who had achieved a 5% annual sustainable growth in earnings per share for the years 1974 through 1978 (Company Ex. 4, pp. 25-26). He admitted, however, that Toledo Edison would not qualify for inclusion in either group (Tr. IV, pp. 13-14). Although witness Mount argues that most utilities are not earning adequate returns under today's economic conditions, and that equity investors now believe that electric utilities have greater investment risk that industrial concerns (Company Ex. 4, pp. 18, 23), it is difficult to see how the companies used in his analysis can be considered comparable to Toledo Edison.

Witness Parcell also considered the experience of a large number of industrial concerns and public utilities, but he did not contend that these firms were comparable to Toledo Edison (OCC Ex. 6, pp. 14-19). The purpose of that comparison was to show the risk differential between industrial concerns and utilities, and among the various classes of utilities (OCC Ex. 6, p. 19). His comparable earnings analysis was primarily based on a group of twelve combination gas and electric utilities, which were roughly similar to Toledo Edison in terms of electric operating revenues, net utility plant, percentage of equity capital, electric revenues as a percentage of total revenues, and Standard & Poor's stock rankings (OCC Ex. 6, p. 23). Although that sample is arguably more appropriate that that employed by witness Mount, since Tolèdo Edison meets the criteria necessary for inclusion in the sample, it is obvious that that analysis fails to consider a number of factors, such as generation mix and geographic location, which are clearly relevant to a determination of risk. Here again, we are not persuaded that the companies included in the sample are truly comparable to Toledo Edison, or that any significant differences have effectively been eliminated. Furthermore, Staff witness Wissman argues that the comparable earnings approach, which is based on historic returns, fails to equate the cost of capital with the return which can be earned on new, additional investments, and is therefore inconsistent with the principles of economic efficiency (Staff Ex. 8, p. 7). In view of these considerations, the Commission believes that the comparable earnings analyses presented by witnesses Mount and Parcell provide an inappropriate basis for determining the cost of equity in this proceeding.

All four rate of return witnesses presented DCF calculations. The DCF method is a market measure, which assumes that the cost of equity equals the sum of the current dividend yield and the expected rate of growth in dividends (Staff Ex. 1, p. 39; Staff Ex. 8, p. 4). In applying that method, however, it is important to use market data relating to the specific firm whose cost of equity is being determined. As a result, witness Mount's DCF analysis, which employed market data relating to his sample of eleven electric companies, and not Toledo Edison, is clearly improper and must therefore be rejected (Staff Ex. 8, pp. 15-16).

Witness Mount also offered certain criticisms of the DCF method. For example, he argues that the formula is mathematically consistent only when market value is equal to book value, and that it assumes that the growth rate will be "constant to perpetuity" (Company Ex. 4, p. 32). However, as Staff witness Wissman explained, the validity of the DCF methodology is simply not dependent upon the market to book ratio, although the resulting cost of equity will be greater than the expected return when that ratio is less than one (Staff Ex. 8, pp. 14-15). Furthermore, the DCF calculation assumes a stable, not a constant, rate of growth, and short term fluctuations do not destroy the assumption of long-run stability (Staff Ex. 8, p. 15). Consequently, these criticisms provide no basis for rejecting the DCF methdology in this proceeding.

The remaining three witness have presented three different recommendations concerning the dividend yield portion of the DCF calculation. Witness Nicholson recommends a yield of 10.93%, which is based on the current dividend of $2.20 and the average stock price during the third quarter of 1979 (Company Ex. 6D, DGN-3, p. 2 of 2). Witness Wissman's recommended yield of 10.43% was also based on the current dividend, but his calculation used the average stock price for the twelve month period ending September 30, 1979 (Staff Ex. 1, p. 25; Tr. XI, p. 14). Witness Parcell's proposed yield of 9% to 10% was based on the past experience of Toledo Edison and Moody's twenty-four utilities (OCC Ex. 6, pp. 32-33).

It would appear that witness Parcell's recommendation fails to adequately consider relatively recent market conditions (See, OCC Ex. 6, p. 33, See also, Schedule 25). Furthermore, to the extent that his proposal is based on market data for utilities other than Toledo Edison (OCC Ex. 6, pp. 32-33), it suffers from the same infirmities contained in witness Mount's analysis. The question, then, is whether the dividend yield should be based on stock prices for one quarter, as the Company recommends, or prices for an entire year, as the Staff proposes. The Company suggests that the Commission should use prices from a recent quarter in order to adequately reflect current economic data. However, Staff witness Wissman explained that the use of twelve month period would be much more representative, because it would eliminate the effects of short term fluctuations (Tr. XI, pp. 18, 23). The Company further implies that the Commission should use more recent stock prices in order to give some consideration to the recent actions of the Federal Reserve Board, which significantly restricted the money supply. In Cincinnati Gas & Electric Co., Case No. 79-11-EL-AIR (January 7, 1980), the Commission approved the use of a dividend yield based on stock prices from one recent quarter in order to give adequate effect to the Federal Reserve's action, and we continue to believe that those actions constitute a significant financial event. However, the arguments of witness Wissman in this proceeding persuade us that it is unnecessary, in determining a fair cost of equity for Toledo Edison, to rely solely on market data from a recent three month period. As Mr. Wissman explained, if the Staff's recommended yield were increased to reflect the recent actions of the Federal Reserve, it would also be appropriate to lower the expected growth rate to reflect lower dividend expectations resulting from the Board's actions (Tr. XI, pp. 15-17a). The Commission therefore believes that the use of the Staff's recommended dividend yield is appropriate for purposes of this case.

The three witnesses also differed on the other major component of the DCF calculation: the expected growth rate. Witness Nicholson recommended a growth rate of 3.73%, which is based on the Company's average growth rate since 1970 (Company Ex. 6D, DGN-3, p. 1 of 2). There has been no showing, however, that that growth rate is likely to continue in the future. Witness Parcell proposed a growth rate of 2% to 3%, which was based on variety of data involving Toledo Edison and Moody's 24 utilities (OCC Ex. 6, pp. 33-35). Staff witness Wissman recommended a growth rate of 3%, which he developed on the basis of judgment, after considering the b x r calculation, the growth in dividends per share, and the growth in earnings per share (Tr. XI, pp. 5-6).

The Company argues that the Commission should at least use a growth rate of 3.42%, which results from the b x r calculation, without consideration of the other two factors. However, witness Wissman's recommendation appears more reasonable in light of the other two factors: the growth rate in dividends per share of 2.24%, and the growth rate in earnings per share of negative 2.13% (Staff Ex. 8, p. 9). Furthermore, that recommendation is consistent with the upper end of the range proposed by witness Parcell. The Commission therefore concludes that the Staff's recommended growth rate is reasonable for purposes of this case.

The Staff further recommends that its baseline cost of equity be multiplied by factors of 1.032 and 1.1, in order to reflect issuance costs and dilution due to market pressure, and to allow general flexibility in future financings (Staff Ex. 8, p. 10). Witness Mount suggested using similar factors of 1.05 and 1.1 (Company Ex. 4, p. 37), and Company witness Nicholson advocated factors of 1.0419 and 1.1 (Company Ex. 6D, DGN-3, p. 2 of 2). Witness Parcell argues that a case could be made for applying no adjustment, but that if such an adjustment is to be made, it should be limited to a maximum factor of 1.02 (OCC Ex. 6, pp. 35-36).

Witness Parcell argues that an adjustment for issuance costs should apply only to new stock issues, and not to all of the Company's existing common equity (OCC Ex. 6, pp. 35-36). However, as witness Wissman explained, the Company has incurred issuance costs in connection with all past issues at the time they were made (Tr. XI, pp. 51-52). Witness Parcell further challenges the assumption that new issuances result in market pressure on the selling company (OCC Ex. 6, pp. 36-37). Although he performed a study which tends to support that conclusion (OCC Ex. 6, pp. 36-37), Staff witness Wissman cited other studies which indicate that the Staff's adjustment factors are reasonable (Staff Ex. 12, pp. 1012). The Commission therefore believes that the use of those factors in determining the cost of equity is appropriate.

In view of the foregoing considerations, the Commission believes that the Staff's recommended cost of equity is reasonable and should be adopted. However, in view of a number of factors, including the magnitude of the Company's construction program (anticipated expenditures of $973 million between 1979 and 1983) (Company Ex. 3D, p. 4), the Company's ongoing need to issue additional equity capital (Company Ex. 3D, p. 24), the Company's cash flow position, including its negative internal generation of funds in recent years (Staff Ex. 1, p. 26), the recent drop in the price of the Company's common stock (Tr. IV, pp. 59-60; Tr. XI, p. 19), the anticipated rate of inflation in the near term future (Tr. XI, p. 13), and current market conditions, including the fact that risk free treasury bills are now yielding 12.3% (Staff Ex. 8, p. 13, as corrected at Tr. XI, p. 4), the Commission believes that the upper bound of the Staff's recommended range should be approved. Applying a cost of equity of 14.77% to our findings concerning the cost fo debt and preferred stock yields a weighted cost of capital of 10.77%. We conclude that a rate of return of 10.77% is sufficient to provide the Applicant reasonable compensation for the electric service it renders to the customers affected by this application.

Attrition Adjustment

Company witness Nicholson recommends that the return on equity be increased by .5% to offset earnings erosion caused by rising costs (Company Ex. 6D, pp. 30-31). The Staff argues that this adjustment should be denied, and after reviewing the record in this case, the Commission finds itself in agreement with the Staff.

The Commission has already permitted the annualization of certain known cost increases which occurred during the test year, and these adjustments should partially offset the effects of earnings erosion. Furthermore, although the Company has had to seek emergency rate relief on various occasions in recent years, it is not now operating under emergency rates. Finally, the Commission has approved the upper bound of the Staff's recommended rate of return. In view of these considerations, we do not believe it necessary to approve a specific adjustment to offset the effects of earnings erosion.

AUTHORIZED INCREASE

A rate of return of 10.77% applied to the jurisdictional rate base of $694,896,000 approved for purposes of this proceeding results in an allowable return of $74,840,000. Certain expenses must be adjusted if the gross revenues authorized are to produce this dollar return. These adjustments, which have been calculated in a manner consistent with the findings herein, result in an increase in federal income tax of $11,033,000, in state excise tax of $996,000, and in the allowance for uncollectibles of $50,000. The net effect of these adjustments is to increase allowable expenses to $279,298,000. Adding the approved dollar return to these allowable expenses results in a finding that the Applicant is entitled to place rates in effect which will generate $354,138,000 in gross annual operating revenue. This represents an increase of $25,030,000 over the rates in effect when the application was filed, and an increase of $30,738,000 over the rates which are presently in effect.

On January 17, 1980, the Applicant submitted calculations showing that the proposed increase, which was somewhat larger than the authorized increase, would comply with the anti-inflation guidelines adopted by the Council on Wage and Price Stability. We reiterate, however, that these guidelines cannot relieve the Commission of its statutory duty to decide each case in accordance with the applicable provisions of state law.

POWERPLANT PRODUCTIVITY

The Staff has entered into a cooperative agreement with the United States Department of Energy to investigate the costs and benefits associated with approving powerplant productivity (Staff Ex. 1, p. 30). Preliminary results of this investigation have led the Staff to conclude that this issue merits further study (Id.). As Staff witness Hunt explained, improved powerplant productivity could result in significant benefits for the company and its consumers, including (1) a more reliable generating system, (2) reduced fuel and purchased power expenses, (3) better control of operations and maintenance expenses, and (4) a possible reduction or deferral in the need for new capacity (Staff Ex. 7, p. 11). She recommends that the Applicant be required to submit quarterly reports, in a form agreed upon by the Applicant and the Staff, detailing the immediate past performance of its generating units, beginning with the base-loaded units 40 days after the end of the fourth quarter of 1980, and the entire Toledo Edison system 40 days after the end of the first quarter of 1981 (Id., p. 12). The Commission will require the Company to submit such reports.

RATES AND TARIFFS

Certain questions remain for the Commission's determination relating to the appropriate assignment of revenue responsibility, the design of specific rates, and certain other tariff provisions. These issues will be discussed under appropriate subheadings below.

Revenue Responsibility and Rate Design

The Applicant, the Staff, the Consumers' Counsel, and General Motors Corporation have entered into a stipulation, recommending that the Commission adopt the allocation of revenue responsibility and the rate structures proposed by the Applicant, including the consolidation of the PV-43 and PV-45 schedules into a new PV-44 schedule (Tr. VI, pp. 3-7). The stipulation further recommends that if the Commission should (as it has) authorize revenues which are less than those requested by the Applicant, class revenue responsibility should be assigned proportionately, and the Applicant's proposed rate structures should be approved, except that the tail block energy charge for each schedule should not be reduced, and any reduction in authorized revenues should be reflected primarily in the demand component, where applicable (Tr. VI, pp. 34). The stipulation does not deal with the proper amount of the customer charge or the proposed account activation charge, or the issue of whether any account activation charge should be

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approved (Tr. VI, pp. 5-7). Applicant's witness Huepenbecker testified that the proposed rates and allocation of revenue responsibility contained in the stipulation are based on the embedded costs reflected in a cost of service study conducted by the Applicant (Tr. VI, p. 30). He added that the proposed PV-44 schedule is more reflective of cost incurrence than the PV-43 and PV-45 schedules originally filed by the Applicant (Tr. VI, pp. 30-31). The Commission is of the opinion that the stipulation is reasonable and should be approved.

On brief, OCC argues that the effect of the Applicant's employee discounts should be assigned to all classes of customers, and not just to the residential class, as the Applicant proposes. Despite OCC's assertions to the contrary, we belive this issue was clearly resolved by the stipulation, as OCC's own witness appeared to recognize (Tr. XII, pp. 5-6). This argument must therefore be rejected.

Customer Charge and Account Activation Charge

All of the Applicant's proposed rate schedules except Schedule GS-18 (Outdoor Security Lighting) contain a separate customer charge (Staff Ex. 1, p. 47). The proposed monthly customer charge for the residential rate schedule (R-01) is $4.00 (Company Ex. 1, Schedule E-1, p. 1 of 39). None of the parties have specifically objected to that charge, and the Staff's analysis shows that the Company's proposal is cost justified (Staff Ex. 1, p. 61). In fact, the Staff specifically argues that the proposed customer charge should not be reduced, because such charges are not only based on costs; they also provide an element of revenue stability (Staff Ex. 1, p. 60).

The Consumers' Counsel, however, suggests that such charges are inappropriate, because they reduce the incentive to conserve. The Commission disagrees. The purpose of such a charge is to identify the costs associated with having customers on the system, irrespective of the level of consumption, and to require each customer to pay an appropriate share of those costs (See, Staff Ex. 6, p. 9). The need for conservation must be weighed against other considerations, such as the desirability of charging cost-based rates, and that need clearly fails to justify rejection of the customer charge proposed in this proceeding.

The Applicant also proposes an account activation charge of $6.00 for its residential and "widely used" small general service rates (Company Ex. 1, Schedule E-3, p. 1 of 7). The charge would apply to the first bill rendered to a new customer or a customer at a new location (Company Ex. 1, Schedule E-1, p. 1 of 39). The underlying rationale is that the "substantial expenses" incurred in establishing new accounts should be charged directly to the customer creating those costs (Company Ex. 1, Schedule E-3, p. 1 of 7).

The Staff agreed with this proposal in principle, but argued in the Staff Report that the Applicant should "fully justify" the magnitude of the proposed charge in the context of the hearing process (Staff Ex. 1, p. 48). Company witness Huepenbecker testified that only the administrative costs (office, labor, and equipment) of "customer contact involvement" would justify a charge of nearly $7.00 for account activation (Company Ex. 6E, p. 10). He was unable, however, to identify the account numbers for those expenses, and he further indicated that the derivation of those costs was essentially based on the judgment of the supervisors in the customer service area (Tr. VI, pp. 23-24). Furthermore, the Staff suggests on brief that some of the costs included in the Company's proposed account activation charge may have been included in the Staff's calculation of the customer charge (Staff's Brief, p. 24). Although the Staff maintains that any duplication of costs would be relatively insignificant, the record is not really conclusive on this point. We are cognizant, of course, that any cost of service study is necessarily dependent upon a certain degree of judgment, but upon review of the evidence relating to this issue, we are not convinced that the record justifies the approval of a $6.00 account activation charge at this time. This provision should therefore be rejected.

Terms of Payment

Under the Applicant's existing rate schedules, customers are subject to a 5% late payment charge if their bills are not paid within fourteen days after they are rendered (Staff Ex. 1, p. 46). The Staff recommends that that period be extended to twenty days. OCC supports the Staff proposal, and the Applicant opposes any extension of the current payment period.

In theory, the Staff's proposal appears to be reasonable, but the Applicant argues that the proposed extension would create significant problems for the Company. According to Company witness Huepenbecker, the Company has determined that it cannot lengthen the current payment period at all without extensive revision of its billing and collection procedures (Company Ex. 6E, p. 5; Tr. VI, p. 14). He also argues that an extension of the payment period would increase the Company's accounts receivable and adversely affect its cash flow (Id., p. 3).

The considerations cited by the Company would not, in and of themselves, necessarily require the rejection of the Staff's proposal, but the record in this case fails to demonstrate any compelling need for such an extension. Of the twenty-one public witnesses who testified at the hearings in Toledo, only two suggested that an extension of the payment period would provide any personal benefit (Tr. I, pp. 11-12, 24), and two others indicated that it would not (Tr. I, pp. 27-8, 33). Perhaps this is not surprising; during the twelve month period ending in March, 1978, 66.5% of the Company's residential customers were not assessed any late payment charges, and 7.7% were assessed a late payment charge only once (Tr. VI, p. 35). It is true that a customer might technically become subject to the late payment charge as a result of being away from home on a two week vacation, but the Company's present policy is not to assess the penalty the first time a customer makes a late payment each year (Tr. VI, p. 35). As a result, we are not persuaded that the record justifies an extension of the payment period in this proceeding. We do believe, however, that the Company's unwritten policies of allowing customers one additional day before imposing the late payment charge (Tr. VI, p. 14) and imposing the charge only upon the second instance of late payment within a twelve month period (Tr. VI, p. 35) should be incorporated in the Company's tariffs to be filed as a result of this proceeding. We would also note that our decision on this issue should not be considered binding in any future generic proceedings in which this issue is considered.

Both the Staff and the Consumers' Counsel argue that if the payment period is not to be extended, the current 5% late payment charge should be eliminated for residential customers. That proposal is not supported by the record, and must therefore be rejected.

The Public Utility Regulatory Policies Act (PURPA)

In November, 1978, Congress enacted, and the President signed into law, The Public Utility Regulatory Policies Act

(PURPA) as one of five pieces of legislation which comprised the National Energy Act. PURPA requires that each state utility regulatory agency review and consider certain electric and natural gas utility rate and regulation standards which are intended to encourage conservation of energy, efficient use of utility resources, and equitable rates and charges to customers.

The Commission must consider, for each regulated electric utility covered under PURPA, the cost of providing service to each class of customers, and determine rates which are, as nearly as practicable, commensurate with those costs. The adoption of specific rates will include determining the appropriateness of declining block, time of use rates, seasonal rates, interruptible rates, load management techniques, and a review of lifeline type schedules. In addition, consideration must be given to the restriction of master metering service, automatic adjustment clauses, information which is to be provided by the utility to its customers, service termination procedures, and review of advertising expenses.

The specific standards to be considered under PURPA have been segregated into two procedural categories: generic and case specific. Prohibitions on master metering, procedures for providing adequate information to consumers, procedures to protect ratepayers from abrupt termination, and lifeline rates will be generic in nature. Various proceedings have been initiated to address the propriety of those standards. The remaining standards of advertising expenses, cost of service, declining block rates, time-of-day rates, seasonal rates, interruptible rates, and load management techniques, have been addressed and reviewed in this proceeding. (See, Company Ex. 3E, pp. 21-23; Staff Ex. 6, pp. 2-4). The discussions contained in this Opinion and Order and the rate schedules approved herein reflect the extent to which the Commission has determined these standards to be appropriate.

Effective Date:

It has been the customary practice of the Commission to provide in its rate orders that tariffs filed pursuant to such orders shall be applicable to service rendered 30 days following the issuance of the entry accepting those tariffs for filing. The purpose of delaying the effective date of the tariffs has been to afford the customers affected by the rate case notice of the increase authorized, prior to the time those rates go into effect. The Commission continues to believes that this is a reasonable practice, but finds that there are circumstances presented by the instant case which compel a departure from this policy.

Section 4909.42 of the Revised Code provides that if the Commission has not acted upon a rate application within 275 days of the filing, the applicant utility, upon the filing of an undertaking in an amount determined by the Commission, may place the proposed rates in effect, subject to the condition that amounts charged and collected in excess of those finally determined to be reasonable by the Commission shall be refunded. The Commission makes every effort to issues its rate orders in advance of the expiration of the 275 day time period, in order to avoid the customer confusion which might result under the refund provision. This was not possible in the instant case, due to the number and complexity of the issues involved. However, the Applicant has made no attempt to place its proposed rates in effect, and the Commission believes that basic principles of fairness dictate that the Applicant should not be penalized for its forebearance. The Commission therefore finds that the appropriate course in this case is to establish the effective date of the tariffs filed pursuant to this order as the date they are approved by Commisson entry. The customary notification requirement will of course, be retained, and such notice should be mailed to customers upon approval of its form by the Commission.

<u>FINDINGS OF FACT</u>:

From the evidence of record in this proceeding, the Commission now makes the following findings:

1) The value of all of Applicant's property used and useful for the rendition of electric service to the customers affected by this application, determined in accordance with Sections 4909.05 and 4909.15 of the Revised Code, as of the date certain of April 1, 1979, is not less than $694,896,000.

2) For the twelve month period ending September 30, 1979, the test period in this proceeding, the revenues, expenses, and income available for fixed charges realized by Applicant under the permanent rate schedules in effect when the case was filed were $329,108,000, $267,219,000, and $61,889,000, respectively.

3) This net annual compensation of $61,889,000 represents a rate of return of 8.91% percent on the jurisdictional rate base of $694,896,000.

4) A rate of return of 8.91 percent is insufficient to provide Applicant reasonable compensation for the electric service rendered to customers affected by this application.

5) A rate of return of 10.77 percent is fair and reasonable under the circumstances presented by this case and is sufficient to provide Applicant just compensation and return on the value of its property used and useful in furnishing the service described in the application.

6) A rate of return of 10.77 percent applied to the rate base of $694,896,000 will result in income available for fixed charges in the amount of $74,840,000.

7) The allowable annual expenses of applicant for purposes of this proceeding are $279,298,000.

8) The allowable gross annual revenue to which Applicant is entitled for purposes of this proceeding is the sum of the amounts stated in Findings 6 and 7, or $354,138,000.

9) Applicant's present permanent tariffs should be withdrawn and cancelled and Applicant should submit new tariffs consistent in all respects with the discussion and findings set forth above.

10) The tariffs submitted by Applicant shall contain base (or non-fuel) rates and charges sufficient to yield gross revenues which will compensate the Company for allowable test period operating expenses, exclusive of fuel costs includable in its fuel adjustment clause calculation, and yield a 10.77 percent rate of return on its rate base of $694,896,000.

11) The Beaver Valley common facilities should be reclassified for ratemaking purposes as plant held for future use.

12) Applicant should be required to submit quarterly reports, in a form to be agreed upon by the Applicant and the Staff, detailing the immediate past performance of its generating units.

CONCLUSIONS OF LAW:

1) The application herein is filed pursuant to, and this Commission has jurisdiction thereof, under the provisions of Sections 4909.17, 4909.18, and 4909.19 of the Revised Code; further, Applicant has complied with the requirements of the aforesaid statutes.

2) A staff investigation has been conducted and a report duly filed and mailed and public hearings have been held herein, the written notice thereof having complied with the requirements of Section 4909.19 of the Revised Code.

3) The existing rates and charges as set forth in Applicant's permanent tariffs governing service to customers affected by this application are insufficient to provide the Company with adequate net annual compensation and return on its property used and useful in the rendition of electric service.

4) A rate of return of 10.77 percent is fair and reasonable under the circumstances of this case and is sufficient to provide Applicant just compensation and return on its property used and useful in the rendition of electric service to its customers.

5) Applicant should be authorized to cancel and withdraw its present permanent tariffs on file with the Commission and to file tariffs consistent in all respects with the discussion and findings set forth above.

It is, therefore,

ORDERED, That the application of the Toledo Edison Company for authority to increase its rates and charges for electric service be granted to the extent provided in this Opinion and Order. It is, further,

ORDERED, That the Applicant be, and hereby is, authorized to file new tariffs consistent with the discussion and findings set forth above. Upon receipt of three (3) complete copies of tariffs comforming to this Opinion and Order, the Commission will review and approve those tariffs by entry. It is, further,

ORDERED, That the effective date of the new tariffs shall be the date those tariffs are accepted for filing. The rates included therein shall be applicable to all service rendered on or after the effective date. Applicant shall immediately commence notification of customers of the increase in rates authorized herein by insert or attachment to its billings, by special mailing, or by a combination of the above. Applicant shall submit a proposed form of notice to the Commission when it files its tariffs for approval and the Commission will review that notice, and if proper, approve it by entry. It is, further, ORDERED, That the Beaver Valley common facilities be reclassified for ratemaking purposes as plant held for future use. It is, further,

ORDERED, That the Applicant submit quarterly reports in a form agreed upon by the Applicant and the Staff, detailing the immediate past performance of its generating units, beginning with the base-loaded units forty (40) days after the end of the fourth quarter of 1980, and the entire Toledo Edison system forty (40) days after the end of the first quarter of 1981. It is, further,

ORDERED, That all objections and motions not specifically discussed in this Opinion and Order or rendered moot thereby be, and hereby are, overruled and denied. It is, further,

ORDERED, That a copy of this Opinion and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

C. Luther Heckman
Chairman

Michael Del Bane

Commissioners

Entered in the Journal
FEB 29 1980

A True Copy
David M. Polk

David M. Polk
Secretary

KWC/los

SUMMARY OF
THE COMMISSION'S OPINION AND ORDER OF AUGUST 16, 1990
IN THE OHIO EDISON COMPANY'S RATE CASE
CASE NO. 89-1001-EL-AIR

On August 1, 1989, the Ohio Edison Company filed an application to increase by $216,346,022 the rates that it charges for electric service. The company proposed to reduce the first year's increase by a credit of $93,687,164, if its full rate request was granted by the Commission. Thus, under the company's proposal, the rate increase in the first year would be $122,658,858, or 7.41 percent. Near the conclusion of the hearings, the company and the Commission's staff entered into an agreement whereby those parties recommended that, should the Commission authorize a rate increase of at least $198.5 million, the Commission should adopt a specified three-year phase-in of the established rate increase.

The Commission has determined that the company is entitled to an increase of approximately $142,376,000, which represents an increase of approximately 8.5 percent over current total operating revenues. Since the authorized revenue increase is less than the amount which would trigger the recommended phase-in treatment under the terms of the company and staff's agreement, the Commission will not adopt the stipulation, and no phase-in of rates will be required. The company had requested an overall rate of return of 11.68 percent. The Commission authorized a return of 11.20 percent including a return on equity of 13.21 percent.

In its Opinion and Order, the Commission authorized, for the first time, inclusion of the Beaver Valley 2 nuclear plant in the company's plant-in-service. Beaver Valley 2 began commercial operation in November 1987. The Commission concluded that, while Ohio Edison's reserve margin in 1989 through 1991 slightly exceeded the 20 percent standard established in the Commission's generic investigation of excess capacity, no excess capacity adjustment was warranted in this proceeding primarily because the deviation from the 20 percent benchmark is extremely small and the reserve margin falls below the benchmark after 1991. The Commission also considered the likely impact of acid rain legislation in the near future; the company's efforts and long-term ratepayer benefits resulting from the PEPCO sale; and the capacity used for experimental programs such as coal research and development.

This summary was prepared to provide a brief statement of the Commission's action. It is not a part of the Commission's decision and does not supersede the full text of the Commission's Opinion and Order.

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CASE NO. 89-1001-EL-AIR

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company for Authority to Change Certain of Its Filed Schedules Fixing Rates and Charges for Electric Service.	)	Case No. 89-1001-EL-AIR

OPINION AND ORDER

The Commission, coming now to consider the above-entitled matter, specifically the application of Ohio Edison Company filed pursuant to Section 4909.18, Revised Code; the Staff Report of Investigation issued pursuant to Section 4909.19, Revised Code; having appointed its attorney examiners, Ann K. Reinhard and Dwight D. Nodes, pursuant to Section 4901.18, Revised Code, to conduct the public hearings and to certify the record directly to the Commission; having reviewed the testimony and exhibits introduced into evidence at the public hearings; and being otherwise fully advised of the facts and issues in this case, hereby issues its opinion and order.

APPEARANCES:

Michael R. Beiting, Leila L. Vespoli, and Kathy J. Kolich, 76 South Main Street, Akron, Ohio 44308, and Porter, Wright, Morris & Arthur, by Samuel H. Porter, Daniel R. Conway, and Kathleen McManus Trafford, 41 South High Street, Columbus, Ohio 43215, on behalf of Ohio Edison Company.

Anthony J. Celebrezze, Jr., Attorney General of Ohio, by Robert S. Tongren, Section Chief, and James B. Gainer, Ralph D. Clark, William L. Wright, Thomas W. McNamee, and Michael C. Regulinski, Assistant Attorneys General, 180 East Broad Street, Columbus, Ohio 43266-0573, on behalf of the staff of the Public Utilities Commission of Ohio.

William A. Spratley, Consumers' Counsel, by Maureen R. Grady, Colleen L. Mooney, James A. Pepper, Richard W. Pace, and Thomas W. Atzberger, Associate Consumers' Counsel, 77 South High Street, Columbus, Ohio 43266-0550, on behalf of the residential customers of Ohio Edison Company.

Bricker & Eckler, by Kirk N. Guy and Mary R. Brandt, 100 South Third Street, Columbus, Ohio 43215, on behalf of RMI Company and Ohio Cable Television Association.

Ritts, Brickfield & Kaufman, by Jill M. Barker and Elizabeth L. Taylor, Watergate 600 Building, Suite 915, Washington, D. C. 20037-2474, on behalf of North Star Steel Ohio.

Bell & Bentine Co., LPA, by Langdon D. Bell, Judith B. Sanders, and Barth E. Royer, 33 South Grant Avenue, Columbus, Ohio 43215, on behalf of the Industrial Energy Consumers.

HISTORY OF THE PROCEEDINGS:

Ohio Edison Company (Ohio Edison, the applicant, or the company) is an Ohio corporation engaged in the business of supplying electric service in this state. Applicant is a public utility and an electric light company within the definitions of Sections 4905.02 and 4905.03(A)(4), Revised Code, and, as such, is subject to the jurisdiction of this Commission pursuant to Sections 4905.04, 4905.05, and 4905.06, Revised Code. The company provides retail electric service to approximately 859,000 customers. Its service territory covers approximately 7,500 square miles and encompasses all or a part of 35 Ohio counties. This service territory ranges generally from the Pennsylvania border on the east through north-central Ohio, and also includes a non-contiguous area in the west-central portion of the state. The company also provides service to approximately 128,000 customers in western Pennsylvania through its wholly-owned subsidiary, the Pennsylvania Power Company. Applicant's present rates and charges for electric service were established by order of this Commission in Ohio Edison Company, Case No. 87-689-EL-AIR (January 26, 1988).

On June 30, 1989, Ohio Edison served and filed a notice of its intent to submit a permanent electric rate increase application pursuant to Section 4909.18, Revised Code, as required by Section 4909.43(B), Revised Code, and Rule 4901-7-01, Ohio Administrative Code (O.A.C.). As a part of this prefiling notification, the company requested that June 30, 1989, be fixed as the date certain for the valuation of property and that the 12 months ending December 31, 1989, be established as the test period for the analysis of accounts. By entry dated August 1, 1989, the Commission approved the date certain and test year proposed by the company. Ohio Edison's application was submitted on August 1, 1989, and was accepted for filing as of that date by entry of October 31, 1989. The form of legal notice proposed by the company was also approved by this entry. Updated information for the test year was provided by Ohio Edison on September 29, 1989.

In accordance with the provisions of Section 4909.19, Revised Code, the staff of the Commission conducted an investigation of the matters set forth in the application and the related filings. A written report of the results of the staff investigation was filed on February 9, 1990, and was served as provided by law. Objections to the Staff Report of Investigation (S.R.) were timely filed by the applicant and by intervenors Office of Consumers'

Counsel (OCC), the Industrial Energy Consumers (IEC), North Star Steel Ohio (North Star), RMI Company, and Ohio Cable Television Association. Intervenor city of Massillon filed no objections and did not participate in the hearings.

Pursuant to entry dated February 15, 1990, the public hearing in this matter commenced on April 3, 1990, at the offices of the Commission, 180 East Broad Street, Columbus, Ohio. The Columbus hearing concluded on May 14, 1990. Pursuant to entry dated April 17, 1990, local sessions of the hearing were conducted on May 14, 1990, in Akron, Ohio; May 15, 1990, in Massillon and Salem, Ohio; May 17, 1990, in Marion, Ohio; May 21, 1990, in Sandusky and Elyria, Ohio; May 24, 1990, in Mansfield, Ohio; May 25, 1990, in Springfield, Ohio; and May 29, 1990, in Warren and Youngstown, Ohio, to afford members of the public affected by this application the opportunity to present statements concerning the proposed rate increase. Notice of the application and of the local public hearings was published by the company in accordance with Sections 4903.083 and 4909.19, Revised Code, and the April 17, 1990 entry (Company Exs. 3A and 3B). Post-hearing briefs and replies were submitted on May 25, June 4, June 8, and June 18, 1990. In the February 15, 1990 entry, the parties were instructed to address their objections to the Staff Report in their initial briefs. Any objection which was not discussed was to be deemed withdrawn. The examiners have certified the recorded transcript of the proceeding and the exhibits admitted into evidence to the Commission for its consideration.

COMMISSION REVIEW AND DISCUSSION:

Case No. 89-1001-EL-AIR comes before the Commission upon the application of Ohio Edison Company, pursuant to Section 4909.18, Revised Code, for authority to increase its rates and charges for electric service to jurisdictional customers. The applicant alleges that its existing base rates are insufficient to provide it reasonable compensation for the service it renders, and seeks Commission approval of base rate schedules which would yield $216,346,022, as indicated in the company's two-month update, in additional gross annual base rate revenues based on the company's analysis of test-year operations (Co. Ex. 5A, Sched. A-1). This is an increase of approximately 13.07 percent over staff's adjusted total current revenues. The company proposes to reduce the first year's increase by a credit of $93,687,164 (Co. Ex. 5A, Sched. A-1). Thus, the base rate increase in the first year would be $122,658,858, or approximately 7.41 percent over staff's adjusted total current revenues. It now falls to the Commission to determine if the existing rates are inadequate and, in the event of such a finding, to establish rates which will afford the company a reasonable earnings opportunity.

Three stipulations were offered at the hearing for the Commission's consideration in this case. The first stipulation (Jt.

Ex. 1), entered into between Ohio Edison, the Ohio Cable Television Association, and the staff, concerns pole attachment matters and will be discussed in the rates and tariffs section of this opinion and order. The second stipulation (Jt. Ex. 2), entered into between Ohio Edison and the staff, deals with the staff's management and operations review and the consumer services review and will be addressed in those sections of this opinion and order. The third stipulation (Jt. Ex. 3), entered into between Ohio Edison and the staff, concerns an alternative phase-in plan for the Commission's consideration. This stipulation will be discussed in the section of this opinion and order regarding the authorized rate increase. Rule 4901-1-30, O.A.C., provides for stipulations of the type presented in these cases. Although not binding upon the Commission, such stipulations are entitled to careful consideration. See Cincinnati Gas & Electric Company, Case No. 76-302-EL-AIR (May 4, 1977).

Before turning to the substance of applicant's rate proposal, an evidentiary matter will be addressed. At the commencement of the hearing, the attorney examiner granted Ohio Edison's motion to strike IEC's objections to the Staff Report on the traffic and street lighting tariff, the partial service tariff, and certain portions of IEC witness Knobloch's testimony concerning rate comparisons. IEC filed a motion to certify an interlocutory appeal from the examiner's ruling. By entry dated April 25, 1990, the examiner denied the motion to certify on the grounds that the appeal did not present a new or novel question of interpretation, law, or policy. On brief, IEC requested that the Commission consider this matter and reverse the attorney examiner's ruling.

In the company's application, costs attributable to the traffic and street lighting customers were excluded in the jurisdictional allocations, and the company proposed no change in rates for these customers. These allocations are not disputed. Further, the company did not propose any changes to its partial service tariff. IEC objected that the staff unreasonably failed to attribute responsibility for any of the proposed increase in revenue requirements to the traffic and street lighting class. IEC's objection on the partial service tariff was that the staff failed to recommend that Ohio Edison be required to offer a partial service tariff similar to the tariff offerings of The Cleveland Electric Illuminating Company and The Toledo Edison Company. The examiner struck the objections on the grounds that these were matters not put in issue by the applicant and not related to the rates which are the subject of the application.

IEC argued that revenues generated by the traffic and street lighting tariff and the partial service tariff affect Ohio Edison's financial condition and are at issue in this case. According to IEC, Ohio Edison's decision not to change the rates under these tariffs affects the rates under consideration and are properly considered by the Commission.

The Commission is of the opinion that it has considerable discretion in determining which matters are proper for consideration in rate proceedings. In this instance, the Commission believes that the examiner's ruling was proper. The staff's investigation in this case was comprehensive and included all of the company's services and revenues. The staff concluded that it was reasonable for the company to exclude the street and traffic lighting service from the application. According to the staff, the exclusion of street and traffic lighting does not adversely affect the process of establishing rates for those services subject to this application (S.R. at 13). Under these circumstances, the Commission believes that the examiner properly ruled that these matters, which were not put in issue by the application, were not related to the rates which are the subject of this application. Accordingly, the examiner's ruling shall be affirmed.

IEC's final allegation of error goes to the examiner's preclusion of IEC evidence on comparative rate analysis. IEC witness Knobloch presented prefiled testimony regarding the rates of electric companies throughout the United States. He also presented the results of a comparison of the rates for typical industrial loads based on several midwestern utilities' rates. These studies show Ohio Edison to be one of the highest priced electric utilities in the nation. The examiner found this evidence to be irrelevant. IEC argues that this testimony is relevant to show the effect of Ohio Edison's proposed rates on its industrial sales and to the evaluation of competitive forces at work in the company's service territory.

Again, the Commission agrees with the examiner's ruling. Rate comparisons are not a part of the formula by which the Commission is obliged to set rates under Section 4909.15, Revised Code. Further, while the Commission is concerned about the impact of utility rates on the company's customers, the proposed comparative rate analysis does not assist the Commission in addressing this concern. The rate comparisons do not give any indication of the impact of Ohio Edison's proposed rates on its customers; nor do they address competitive forces in the company's service territory. The Commission finds the comparative rate information to be irrelevant.

RATE BASE

The following table compares the original company (Co. Ex. 5A, Sched. B-1) and staff (S.R., Sched. 7) estimates of the value of applicant's property used and useful in rendering electric service to jurisdictional customers as of the date certain of June 30, 1989. Objections to the staff's rate base valuation are discussed below.

Jurisdictional Rate Base
(000's Omitted)

		Applicant	Staff
Plant in Service		$ 5,213,179	$ 5,196,252
Less:	Depreciation Reserve	1,308,808	1,308,044
Net Plant in Service		$ 3,904,371	$ 3,888,208
Plus:	CWIP	0	0
	Working Capital	537,979	325,525
Less:	Other Items	275,975	215,512
	Mirrored CWIP Allowance	26,837	26,837
Jurisdictional Rate Base		$ 4,139,538	$ 3,971,384

Plant in Service:

In this case, Ohio Edison seeks for the first time recognition of its share of Beaver Valley 2 in plant in service. The date certain amount requested is $964,132,493 (Co. Ex. 5A, Sched. B-3.2). Beaver Valley 2 has been generating electricity to serve Ohio Edison's load since November 1987. During its first full year of operation in 1988, it had a capacity factor of approximately 88 percent. Further, Beaver Valley 2 is one of the first units dispatched in an economic dispatch order of operations (Co. Ex. 8A, at 23). Thus, there is no question that Beaver Valley 2 was providing service to customers at the date certain of June 30, 1989, and should be included in rate base.

Perry and Beaver Valley 2 Lease Payments

The staff adjusted plant in service and excluded from the plant accounts $16,941,431 representing the Perry and Beaver Valley 2 lease payments capitalized prior to the respective unit's in-service date (S.R. at 16-17). The company objected to the staff's adjustment contending that the lease payments represent preoperational operation and maintenance expenses properly capitalized and included in the plant in service accounts. As an alternative to inclusion in plant in service, the company recommended that the sale/leaseback payments prior to the in-service date of the units be added to the deferred operation and maintenance costs and amortized over the appropriate period. In addition, under the company's alternative, these costs would also be included in the working capital allowance (Co. Ex. 9C, at 13). The staff accepts the company's alternative (Staff Ex. 12, at 9-10).

The company argues that the staff's adjustment is contrary to normal utility accounting procedures provided for in the FERC uniform system of accounts. The uniform system of accounts does not specifically address lease payments made under sale/leaseback arrangements; however, it does establish criteria that determine what costs should be capitalized in connection with a project before it is placed in service (Co. Ex. 9C, at 8-9). The company points to an electric plant instruction of the uniform system of accounts as support for including the lease payments in the plant accounts. Electric plant instruction 3A(18)(b) provides as follows:

> (18) Earnings and expenses during construction. The earnings and expenses during construction shall constitute a component of construction costs.
>
> . . .
>
> (b) The expenses shall consist of the cost of operating the power plant, and other costs incident to the production and delivery of the power for which construction is credited under paragraph (a), above, including the costs of repairs and other expenses of operating and maintaining lands, buildings, and other property, and other miscellaneous and like expenses not properly includable in other accounts.

(Co. Ex. 9C, Ex. B). The company contends that the lease payments are "incident to" the generation or delivery of power because without making the lease payments, the company would not have been entitled to the power associated with its respective leasehold interest (Co. Ex. 9C, at 9).

The answer to the question presented is not at all clear cut. However, the Commission in inclined to agree with its staff on this issue. The lease payments are not a cost of operating the power plant, and they are not costs incident to the production and delivery of power. They have nothing to do with the production and delivery of power. The sale/leaseback payments were incurred as a result of a financing technique, and they would have been payable even if the generating stations in question had never generated any power prior to their in-service date (Staff Ex. 12, at 9). The Commission finds the company's alternative treatment, with which the staff concurs, is appropriate in this instance. The amount of the lease payments in question should be included in working capital and amortized over the same period as other deferred operating and maintenance expenses for each of the plants.

Land Costs

The staff recommended an adjustment of $6,512 to plant in service associated with the cost of certain excess acreage associated with five substations that the staff believes is not used and useful in providing service (S.R., Sched. 8.2a). This exclusion was based on the staff's investigation which included on-site physical inspections of the land parcels to determine their used and useful status as of the date certain. In valuing the land to be excluded, the staff took an average price per acre for an entire lot and applied the average to the amount excluded (Staff Ex. 5, at 3; S.R., Sched. 8.2a).

Company witness Daniels objected to the staff's exclusion of these costs because the portions of the parcels identified by the staff represent unmarketable segments. When the parcels were purchased, a portion of the parcels were not able to be used for anything; they were merely part of the whole. Because the marketable portions of the parcels are being used for utility service, Mr. Daniels believes that the full price paid by the company should be included in rate base. The fair market value would not have been inflated due to the additional land which is unmarketable. Accordingly, the inclusion of the full price represents what had to be paid to provide service to customers (Co. Ex. 9C, at 14).

The company's argument is two-fold. First, the company argues that the entire parcels had to be purchased in order to obtain the portions which are used and useful. Thus, the necessary portion of the properties could not have been acquired without also purchasing the portions excluded by the staff. This argument has been rejected by the Commission on numerous occasions. The Commission has held that land purchased by a utility, which is not used and useful in the provision of utility service, must be excluded from rate base even though the utility had no choice but to purchase a larger parcel than required for utility purposes. Cleveland Electric Illuminating Company, Case No. 81-146-EL-AIR (March 17, 1982) at 7; Cleveland Electric Illuminating Company, Case No. 86-2025-EL-AIR (December 15, 1987) at 8.

The second part of the company's argument goes to the value of the land excluded. Essentially, the company contends that since the land is unmarketable, it has no value. In Case No. 81-146-EL-AIR, the Commission indicated that perhaps the unused land should not be valued on an average price basis; however, in that case there was no evidence to substantiate a different basis of valuing the land. Here, the company contends that it has provided sufficient evidence to show that the price of the land was not inflated by the unmarketable portions and that the entire purchase price of the parcels should be included in rate base.

The company raises a valid argument; however, the Commission would require additional evidence on this point before finding it persuasive. There are five separate portions of land involved in the staff's exclusion. The company has simply said that they are all unmarketable. However, no evidence was presented to show how each land portion is unmarketable. Without sufficient facts to support the company's conclusion of marketability, the Commission has no way of determining whether the land is marketable or not.

The company's objection is overruled. The Commission concludes that the staff's exclusion is proper.

Completed Construction Projects

The company objected to the staff's failure to include in rate base $8,003,841 of completed construction projects which were used and useful in providing service at date certain. According to company witness Daniels, the projects had not been cleared from construction work in progress to utility plant in service accounts as of the date certain because of the time it takes to receive and process completion reports from the various divisions and generating plants (Co. Ex. 9C, at 15-16).

The staff did not include these projects in plant in service because they were not a part of the company's application. Further, they were not included in the company's two-month update filing. The staff opposes the inclusion of any of the projects. Staff witness Kotting testified that the purpose of the staff's audit is to determine whether the figures contained in the applicant's filings represent plant used and useful in providing service to customers. It is not the staff's mission to seek out any and all plant which might conceivably be used and useful to ratepayers (Staff Ex. 12, at 12). The company made no mention of the projects until its post-staff report testimony filed on March 12, 1990.

The crux of the company's argument is that the staff should have discovered the company's error and included the projects which the company overlooked in its application and its update filing. The failure of the company to advise the staff of these projects before the filing of its testimony, however, effectively precluded the staff from conducting an investigation on the status of these projects. The company contends that in Columbia Gas of Ohio, et al., Case No. 88-716-GA-AIR, et al. (October 17, 1989) (Columbia Gas I), the Commission found that a staff audit is not required, and that reliable property records and the representation that the property is used and useful are sufficient. The Commission did make this finding, but went on to state that while the lack of a subsequent inspection of the additional plant does not prevent its inclusion in rate base, it is the better practice for staff to make such supplemental investigations and that the staff should do so in future cases involving similar circumstances. In the subsequent Columbia rate cases, a situation arose similar to the one presented by this Ohio Edison case. However, in the Columbia cases, the company provided its information to the staff in time for the staff to conduct the requisite supplemental investigation. Columbia Gas of Ohio, et al., Case No. 89-616-GA-AIR, et al. (April 5, 1990) (Columbia Gas II) at 10. In this case, there was no time for the staff to conduct a supplemental investigation.

After due consideration of this matter, the Commission does not believe that Ohio Edison should be able to sit back and wait to provide information in its post-staff report testimony and then complain that the staff did not do its job. The staff cannot be expected to be responsible for detecting omissions to the company's application. The company was certainly aware that certain construction work had been completed but not yet transferred to the plant accounts. There is no reason why the company could not have provided an estimate in its application and supplemented this with updated information in testimony. The company's awareness is demonstrated by Mr. Daniels' testimony that even though a completed project remains in the construction work in progress account, AFUDC does not continue to be capitalized. Mr. Daniels stated that "[w]e are usually notified that a project is ready for service before the actual completion report is prepared; therefore, we do not capitalize AFUDC even though the project is still included in account 107" (Co. Ex. 9C, at 16). Thus, it is clear to the Commission that the company could have provided estimates on this completed construction well in advance of its post-staff report testimony. The company's objection is overruled. The company may consider the Commission's determination to be harsh. Nevertheless, the Commission believes that it is required so that rate applicants do not wait until the last minute to raise an issue thereby precluding staff review.

Before leaving this subject, one final matter needs to be discussed. At the hearing, the examiners denied OCC's motion to strike Mr. Daniels' post-staff report testimony on this subject on the grounds that the information should have been presented sooner. On brief, OCC requests that the Commission reverse the examiners' ruling. The Commission declines to do so. The Commission believes, as did the examiners, that the company should at least have the opportunity to explain its position and provide an explanation on why the information was not presented sooner. The company was appropriately provided with this opportunity.

Other Items

OCC objected that the staff erred in including costs for post-in-service accrual of AFUDC for Perry and Beaver Valley 2 in that AFUDC accrual should cease as of the plants' in-service dates. However, OCC did not pursue this objection either in testimony or on brief, and it is deemed withdrawn.

The staff excluded $2,798,049 from plant in service related to Perry prudence audit costs incurred in connection with Case No. 85-521-EL-COI. Instead, the staff recommended that these costs be amortized and recovered in a manner similar to rate case expense (S.R. at 16). The company objected to this exclusion from plant in service, but withdrew its objection on brief.

Depreciation Reserve:

The company objected that the staff adjusted plant in service to exclude the cost of utility poles and certain communication equipment without making an offsetting adjustment to the depreciation reserve. At the hearing, the staff agreed and presented revised figures that incorporate the appropriate adjustment to depreciation reserve (Staff Ex. 12, at 11).

Generating Capacity:

Considerable time and effort were spent in this proceeding on the questions of whether excess generating capacity exists on Ohio Edison's system and, if so, what is the appropriate regulatory response. In Excess Electrical Generating Capacity, Case No. 87-941-EL-UNC (November 24, 1987), the Commission considered these matters on a generic basis and issued a policy statement on the subject. The Commission's stated policy is that an appropriate generic benchmark for an electric utility's reserve margin is 20 percent. Where a reserve margin does not exceed 20 percent, there is a presumption of no excess capacity. Where a reserve margin exceeds 20 percent, there is a presumption of excess capacity. A reserve margin greater than 20 percent may be appropriate if it confers a positive net present benefit to the ratepayer or is justified by unique system characteristics. If excess capacity is found to exist, the Commission will determine the appropriate regulatory treatment on a case-by-case basis. Excess Electrical Generating Capacity, at Appendix A.

The staff evaluated the current and projected reserve margins of the applicant, and determined that the reserve margins significantly exceed the 20 percent benchmark. The staff then evaluated the nature and causes of these margins and recommended that the Commission make no reduction to authorized revenue on the basis of excess capacity (S.R. at 27). This finding and recommendation drew a number of objections. The company objected to the staff's conclusion that the reserve margins exceed the 20 percent benchmark as well as the staff's application of the 20 percent benchmark to Ohio Edison. OCC, IEC, North Star, and RMI all objected to the staff's failure to reduce the authorized revenue due to the existence of excess capacity.

Applicability of the 20 Percent Benchmark

The company's first argument is that the benchmark should not be applied to Ohio Edison because the company's load growth since 1980 has exceeded its net capacity additions during the same time frame. According to the company, the fact that Ohio Edison's capacity additions have not kept pace with load growth since 1980 is significant because none of the company's rate cases decided since the beginning of 1980 has resulted in a finding of excess capacity. Thus, in light of the net reduction in relative load carrying capability since 1980 and the series of decisions over that same period finding no excess capacity, there can be no excess capacity now (Co. Ex. 8A, at 11-14). Second, the company contends that the benchmark should not be applied because the company has acted prudently in its capacity planning. However, these arguments ignore the existence of the guidelines set in Case No. 87-941-EL-UNC. By establishing its reserve capacity policy, the Commission set new guidelines to be used in making determinations on appropriate generating reserves. Thus, past Commission decisions do not prevent the Commission from applying the 20 percent benchmark. Further, the issues of excess capacity and prudence are separate questions. Excess Electrical Generating Capacity, at 2. In Case No. 87-941-EL-UNC, the Commission found that the question of excess capacity is an engineering and economic question. Once the reserve margin is established, then the question of prudence may be one factor to consider in determining the reasonableness of that reserve margin. Thus, Ohio Edison's arguments are without merit.

Ohio Edison also argues that the intervenors have presented no credible evidence that a 20 percent reserve margin is appropriate for Ohio Edison and, therefore, the 20 percent benchmark should not be applied to the company. However, both IEC witness Falkenberg (IEC Ex. 5, at 12-43) and OCC witness Bernow (OCC Ex. 10, at 21-41) testified that from a reliability standpoint, the 20 percent reserve margin is appropriate for Ohio Edison. Although, Ohio Edison presents various arguments attacking Mr. Falkenberg's and Dr. Bernow's conclusions, Ohio Edison provided no testimony to the contrary. Ohio Edison provided no testimony indicating what an adequate reserve margin for Ohio Edison should be. Thus, the Commission's conclusion is that Ohio Edison has not demonstrated why the 20 percent benchmark is not appropriate for Ohio Edison, and we will use this benchmark in evaluating Ohio Edison's reserve margin.

Calculation of the Reserve Margin

The staff's reserve margin calculation for the test year is as follows:

	5074 MW	Net Seasonal Capability
+	40 MW	Firm Purchase
-	3911 MW	Peak Load
	1203 MW	Reserve Margin
	30.8%	Reserve Margin

(Staff Ex. 13, at 10). The staff projects that the reserve margin for 1990 will be 38.5 percent; for 1991, 35.0 percent; for 1992, 33.5 percent; for 1993, 34.5 percent; and for 1994, 31.9 percent (S.R., Sched. 8.3a). In contrast to the staff, the company's calculation of the test-year reserve margin is 16.5 percent. The company projects that the reserve margin for 1990 will be 16.1 percent; for 1991, 17.1 percent; for 1992, 14.2 percent; for 1993, 15.7 percent, and for 1994, 13.7 percent (Co. Ex. 8C, Ex. BLC-1). The major differences between the company's and the staff's calculations can be accounted for by the differing treatment of Ohio coal research and development capacity, the West Lorain generating plant capacity, interruptible load, and the load attributable to the sale of power to the Potomac Electric Power Company (PEPCO).

In determining the generating capability, the staff included 108 MW of capacity associated with Ohio Edison's coal research and development projects. OCC and IEC both agreed that this capacity should be included in the calculation. The company contends that this capacity must be excluded from the calculation in accordance with Section 4905.70, Revised Code. Section 4905.70, Revised Code, provides that the Commission shall establish criteria for the investigation, identification, and remedy of the existence of excess capacity, exclusive of capacity used primarily for Ohio coal research and development. Thus, it is the company's position that its generating plants associated with Ohio coal research and development must be excluded from the calculation.

The company provided information on its coal research and development projects in supplemental testimony filed with the two-month update on September 29, 1989. At that time OCC and IEC filed a joint motion to strike the testimony on the grounds that it should have been filed with the application. The attorney examiner denied the motion to strike. On brief, OCC seeks the reconsideration of its motion to strike. The Commission agrees with the examiner for the reasons given in the November 15, 1989 entry. The statute requires that consideration be given to capacity associated with Ohio coal research and development projects. Further, the testimony was presented sufficiently early so that no party could be prejudiced by the timing of the filing of this testimony. The examiner's ruling is affirmed.

Ohio Edison's coal research and development projects include the limestone injection multi-state burner project at Edgewater 4, the E-SOx project at the Burger plant, and the NOXSO pilot project at the Toronto plant (Co. Ex. 8B, at 2-3). The reason that the staff included these projects in the generating capability is because the units are not used "primarily" for coal research and development. Staff witness Tucker testified that each of the company coal research projects was added to an old, existing boiler. The units were selected because of some characteristic which made them suitable for the projects. However, these units were in service long before the projects were initiated and will likely be in service long after the projects are concluded. Further, the coal research projects add no capacity to the system. Thus, the staff believes that the projects constitute incidental rather than primary use of the units (Staff Ex. 13, at 8).

The Commission must agree with the staff and the intervenors. The statute provides that capacity used primarily for Ohio coal research and development be excluded from the calculation. However, the capacity in question was available to customers before the coal research projects began, and it will be available once the projects are complete. Under these circumstances, the Commission cannot find that the capacity is related primarily to coal research and development. Ohio Edison's objection is overruled.

OCC and IEC objected to the staff's generating capability determination because it did not include 141 MW of capacity associated with the West Lorain generating plant. West Lorain was removed from service in 1983, and is presently maintained in a cold standby status (Tr. XIII, 10-11). It was taken out of service because of the high cost of fuel oil. The company anticipates that it will take approximately 30 months to bring West Lorain back on line, and presently expects to return West Lorain to service in 1993 (Tr. XIII, 13). On this basis, staff witness Tucker included the West Lorain generating capacity in the company's total capability beginning in 1993.

The Commission is of the opinion that West Lorain should not be considered as part of the company's generating capability at this time. This plant was not used and useful during the test year and is not part of plant in service for purposes of this case. There are a number of matters that must be addressed and resolved prior to the company's return of West Lorain back into service (Id.). Further, it is anticipated that it will be at least 30 months before West Lorain can returned to service. Clearly, West Lorain cannot be considered part of the company's existing capacity. The staff has appropriately accounted for West Lorain capacity in its projections for 1993. OCC's and IEC's objections are overruled.

In the staff's peak load calculation, it excluded load associated with interruptible customers. The intervenors all agree with this exclusion. In Case No. 87-941-EL-UNC, the Commission determined that because generating reserve is not necessary to cover interruptible load, the reserve margin calculation should exclude interruptible load. In that case, however, the Commission found that the peak load shall be calculated as the utility's native load. Native load is defined as the internal load minus interruptible loads (as defined in ECAR Document No. 2). The issue in this case arises because ECAR Document No. 2 defines interruptible load as that which can be fully realized in ten minutes (OCC Ex. 33).

Ohio Edison contends that under its interruptible contracts, the company cannot interrupt the load without less than 15 minutes notice for an emergency interruption and at least 90 minutes in the event of an economic interruption. Because the company's interruptible load cannot be realized in the time provided by ECAR Document No. 2, it did not subtract any of its interruptible contract customers' load from peak load (Co. Ex. 11, at 11).

The staff and the intervenors argue that the ten minute standard of ECAR Document No. 2 is a consideration only for daily operating reserve purposes, and it should not be applied to the reserve capacity margin analysis here. They argue that the Commission's use of ECAR Document No. 2 must have been an oversight or an inadv..tent error. The Commission's intent in Case No. 87-941-EL-UNC was that in calculating the reserve margin, interruptible load should be excluded. The Commission pointed out that some utilities now have interruptible load which approaches the size of a base load generating unit. The Commission concluded that reserve is not necessary to cover interruptible load and, therefore, the reserve calculation should be based on native load which excludes interruptible load. Excess Electrical Generating Capacity, at 2. In describing the method by which to compute the reserve margin in Appendix B, the Commission referred to the definitions of native load and internal load used in ECAR Document No. 2. However, the Commission never intended to define interruptible load by ECAR Document No. 2. Obviously, when making the determination of how much capacity is required to serve Ohio Edison's load, it makes no difference whether the load is interruptible within 10 or 15 minutes. Under either circumstance, the company does not need installed capacity to serve this load. Clearly, the ECAR Document No. 2 definition of interruptible load should not be applicable to the determination of the reserve margin. Accordingly, the peak load calculation should exclude interruptible load. Ohio Edison's objection should be overruled.

In light of the confusion in this case on the matter of interruptible load, the Commission believes that the method of calculating the reserve margin as described in Case No. 87-941-EL-UNC, Appendix B, should be clarified to conform with the Commission's intent. The Commission directs its staff to take the appropriate steps to accomplish this task.

The final area of major controversy in calculating the peak load is related to the Potomac Electric Power Company (PEPCO) firm power sales agreement. This agreement became effective on June 1, 1987, and continues for an 18-year period until December 31, 2005. The amount of the firm sale began at 200 MW. On January 1, 1989, it was stepped up to 300 MW, and in June of 1989, it was stepped up to 450 MW, where it will remain until 2005. Ohio Edison's share of the 450 MW sale is 387 MW, with Pennsylvania Power being responsible for the remainder (Co. Ex. 11, at 5). The contract requires that PEPCO shall have parity with Ohio Edison's native load, in the event curtailment becomes necessary. If a shortage occurs and requires Ohio Edison to curtail a percentage of service to its native load, Ohio Edison may not curtail service to PEPCO by more than the same percentage (Id.).

The staff excluded the PEPCO sale in its reserve margin calculation of the peak contending that it is non-jurisdictional

(Staff Ex. 13, at 4). The company objected to the exclusion. It is true that the PEPCO load is non-jurisdictional. The costs associated with this sale, including a reserve margin, have been excluded from the cost of service for ratemaking purposes (Co. Ex. 10A, at 8-9). However, that this sale is non-jurisdictional for ratemaking purposes is not necessarily relevant to the determination of the company's reserve margin. In calculating the reserve margin, the Commission is interested in determining how much capacity the company has to serve its customers. The 387 MW PEPCO sale is an ongoing daily firm load requirement of the company. PEPCO has been taking energy deliveries at an average load factor of over 85 percent, and these deliveries are routinely made, even during peak conditions (Co. Ex. 8A, at 5-6). The Commission is of the opinion that the megawatts associated with this firm sale should be recognized in calculating the peak load requirements of the company. Exclusion of the PEPCO sale from the peak load calculation would imply that the megawatts associated with the sale are available to the company for service to customers. However, this is not the case. Ohio Edison is obligated to serve PEPCO on parity with native load, and 387 MW are not available to serve customers. Thus, the PEPCO load must be included in the reserve margin calculation.

The intervenors have raised other arguments to exclude the PEPCO sale from the reserve margin calculation. Essentially, the arguments are as follows. With the addition of Perry 1 and Beaver Valley 2, excess capacity now exists on Ohio Edison's system. The PEPCO sale was a response to excess capacity, not a remedy for it. Further, the PEPCO contract does not recover the costs associated with the excess capacity, which intervenors would value as the cost of Beaver Valley 2. The PEPCO contract is based on average costs. Thus, they contend that the PEPCO sale must be excluded from the peak load used to compute excess capacity because ratepayers should not be required to pay for any of the excess capacity assigned to PEPCO (IEC Ex. 5, at 48-50; North Star Ex. 14, at 5; OCC Ex. 10, at 52-53).

The Commission agrees that ratepayers should not be required to pay for any costs associated with the PEPCO sale. It is for this precise reason that the costs associated with the 387 MW firm PEPCO load plus an amount for reserves have been allocated away from the jurisdictional customers in this case. The costs which Ohio Edison recovers from PEPCO are irrelevant. It is the allocations process, not the pricing of the contract, that affects retail customers' revenue requirements. The intervenors would have the Commission eliminate the cost of serving the PEPCO load once through the allocations process and a second time by counting the capacity used to serve that load as excess and making an excess capacity adjustment to the revenue requirement. This result is unreasonable. The cost of serving the PEPCO load is not included in the revenue requirements in this case. Further, the 387 MW

PEPCO load is not available to serve jurisdictional customers. The Commission finds that under these circumstances, it would be inappropriate to exclude the PEPCO load in the generating reserve calculation. The company's objection will be sustained. However, because we are allocating out a slice-of-system cost to reflect the PEPCO sale rather than the cost of the most recent capacity addition, we recognize that jurisdictional customers are bearing a cost associated with the most recent capacity addition. In exchange for the costs borne by the jurisdictional customers, as the contract expires or in the event that Ohio Edison reduces its commitment under the contract, absent prior Commission approval, the company should not enter into further long-term, firm off-system sales of amounts representing the PEPCO capacity.

One further matter concerning the reserve margin calculation needs to be addressed. While actual peak load data is used to calculate the 1989 test-year reserve margin, forecasted data must be used to estimate the reserve margins for the five-year projected period 1990-1994. At the time this case was filed, the 1989 load forecast was the most recent forecast available, and the parties used this data in their analyses. However, in January of 1990, the company released its 1990 forecast. Company witness Byrd testified that the 1990 forecast reflects Ohio Edison's most recent experience and contains the latest and best estimates of the peak demands that the company expects to supply in the future (Co. Ex. 7B, at 10). The company recommends that the Commission use the 1990 forecast data in making its peak load calculations. The staff and OCC oppose this recommendation.

The staff believes that the 1989 forecast should be used because it represents the company's published estimate as of the test year. OCC contends that had the 1990 forecast been made available to OCC earlier, OCC would have used it. However, it was not made available until the beginning of 1990. Accordingly, OCC used the 1989 forecast in its analysis. OCC urges the Commission to do the same.

Forecasting is an estimate of what can be expected in the future. It is not a precise analysis of exactly what will occur. However, a forecast that considers the latest information available is likely to be more reliable than one that uses outdated information. For this reason, the Commission believes that the 1990 forecast data should be used in the projected load calculation. No party has presented any valid reason why the 1990 forecast should not be used. The company's objection is sustained.

For purposes of calculating the test-year peak load in this case, the Commission has used the actual single highest peak because it is representative of the company's normal peak load. The use of the actual peak load in this case does not, however, preclude the use of a different method of calculating the peak in the future if it is determined that the actual peak represents an aberration from normal conditions.

The calculation of the reserve margin for the test year in a manner consistent with the foregoing discussion is as follows:

5,074 MW	Net Seasonal Capacity
+ 40 MW	Firm Purchase
- 4,163 MW	Peak Load
951 MW	Reserve Margin
22.84%	Reserve Margin

For 1990, the reserve margin is projected to be 2[illegible] 34 percent; for 1991, 20.98 percent; for 1992, 17.75 percent; for 1993, 19.24 percent; and for 1994, 17.14 percent. These reserve margins are slightly above the Commission's 20 percent benchmark through 1991. After 1991, they fall below the benchmark. The intervenors urge the Commission to make an adjustment for excess capacity. The preferred remedy would be to disallow a return on equity for capacity deemed to be above the 20 percent benchmark. However, under the circumstances presented in this case, the Commission believes that no adjustment is warranted.

The primary reason for the Commission's conclusion that no adjustment should be made is that the deviation above the benchmark is extremely small. Further, the reserve margin falls to below the benchmark after 1991. The Commission does not consider Ohio Edison's reserve margin to be excessive. Further, even at the staff's higher reserve margin calculations, it recommended that no adjustment be made in this case. In making its recommendation, the staff considered a number of factors. First, the staff believes that capacity used for state and federal experimental programs confers a benefit to the ratepayer in the long run. Second, system planning is necessarily done on a corporate basis, which includes Penn Power. The total system reserves are lower and are projected to fall in the 1990s. Third, "acid rain" legislation is very likely to reduce available physical and economic generating capacity in the near future. Finally, the capacity sold to PEPCO has reduced the reserve margin and also confers a benefit to the ratepayer (S.R. at 27). The Commission agrees with its staff, that under the circumstances presented by this case, no adjustment should be made.

<u>Working Capital:</u>

Working capital has been generally defined as the average amount of capital provided by investors in the company, over and above the investments in plant and other specifically identified rate base items, to bridge the gap between the time expenditures are required to provide service and the time collections are received for that service. The objective of including a working capital allowance in rate base is to produce a total rate base that will result in allowing investors the opportunity to earn a fair return on all capital invested by them in utility operations (S.R. at 19-20).

The staff recommended that a $325,525,000 allowance for working capital be included in the rate base valuation (S.R., Sched. 11). The company raised several objections to the staff's allowance and proposed a working capital allowance of $537,979,302 (Co. Ex. 5A, Sched. B-5). OCC also raised several objections to the staff's recommendation. IEC raised two objections concerning the working capital allowance, however, these objections were withdrawn at hearing. The matters in dispute are discussed below.

Cash Component

One component of the working capital allowance is cash working capital. Historically, the staff determined this component based upon a formula approach which used one-eighth of operation and maintenance expense, less fuel and purchased power, plus a fuel expense lag allowance, less one-fourth of operating taxes exclusive of FICA, the .75 percent excise tax, and deferred income taxes. However, in Ohio Edison Company, Case No. 84-1359-EL-AIR (October 29, 1985), the Commission approved a new formula. The new formula was based upon the company's lead/lag study and used a revenue lag ratio and an expense lag ratio to derive revenue lag dollars and expense lag dollars, the net of which was the applicant's cash working capital allowance (S.R. at 20). In this case, the staff updated the ratios developed in the prior case to account for changes in accounting or in payment schedules which affect the leads or lags of individual items (Staff Ex. 8, at 7).

In determining the cash working capital component, the staff applied the expense and revenue lag ratios to adjusted test-year operating revenues and expenses (Staff Ex. 8, at 2). The company objected to the staff's method contending that the revenue lag ratio should be applied to proforma revenues and expenses. The Commission has on a number of occasions determined that the staff's method is appropriate and results in a more representative working capital allowance which reasonably represents the shareholders' investment in addition to their investment in plant in service. Ohio Edison Company, Case No. 84-1359-EL-AIR (October 29, 1985); Cleveland Electric Illuminating Co., Case No. 86-2025-EL-AIR (December 16, 1987; Toledo Edison Co., Case No. 86-2026-EL-AIR (December 16, 1987; Columbia Gas of Ohio Inc., Case No. 89-616-GA-AIR, et al. (April 5, 1990). Ohio Edison has presented nothing new on this point for the Commission's consideration, and its objection should be overruled.

The company further objected to the staff's application and adjustment of the formula in a manner in which the company contends is selective and arbitrary and which systematically understates cash working capital. Specifically, the company objected to the staff's failure to adjust the expense lag ratio to reflect known changes in expense lags due to changes in payment schedules for FICA taxes, and OCC and PUCO assessments. Other alleged selective adjustments to which the company objects are staff adjustments related to OES Fuel, Inc., Perry and Beaver Valley sale/leasebacks, vacation pay, and federal and state unemployment taxes.

Company witness Flower testified that his objection does not go to the calculation of expense lag days calculated by the staff, but to its selective alteration of a few items which has the effect of reducing working capital, without attempting in an even-handed and comprehensive manner, to update all areas where lag days may have changed. For instance, he indicated that the staff revised the FICA tax rate but failed to accelerate the date of payment of the FICA tax by two days. Further, the staff used a three-year average for PUCO and OCC assessments in its lead/lag analysis, even though the lag days for these items decreased during each year. He recommended that the selective adjustments be rejected until a comprehensive update to the lead/lag analysis has been performed (Co. Ex. 10B, at 13).

The record reflects that the staff did not reflect a change in the FICA tax payment schedule because the new federal requirement will not become effective until July 31, 1990 (Tr. XVI, 171). Further, the staff used a three-year average for PUCO and OCC assessments because the payments fluctuated every year. It was impossible to determine if any one year was more reasonable than the other. To eliminate this fluctuation, the staff used a three-year average of the payment dates to determine an average payment date. The staff used this average payment date to calculate the lead/lag days for the PUCO and OCC assessments (Staff Ex. 8, at 6). The staff's approach to the FICA tax payment schedule and the PUCO and OCC assessments is reasonable, and the Commission will accept it.

Concerning the staff's other adjustments, the record reflects that the staff's revisions to the lead/lag study for uncollectible accounts expense, nuclear fuel disposal costs, vacation pay, and investment tax credit were due to recent Commission opinion and orders issued since Ohio Edison's last rate case. The staff's adjustments were consistent with the prior precedent. The staff's revision to nuclear fuel and the Perry and Beaver Valley sale/

leasebacks were due to changes in the payment patterns of these items. The revision to the federal and state unemployment taxes were made in accordance with items discovered in other recent cases before the Commission. In addition to the items adjusted, the staff reviewed other items in the lead/lag study. These items included non-associated company sales revenues, CAPCO transmission, fuel expense coal, fuel expense oil, purchased and interchange power, and CAPCO expenses. After reviewing these items, the staff did not change any lead/lag days because there were no significant changes in the payment patterns (Staff Ex. 8, at 7-8). The Commission finds the staff's adjustments to be acceptable and will adopt them. The staff's recommendations are based on prior Commission-approved adjustments as well as real changes in payment patterns. The company has complained about the staff's adjustments which only reduced working capital. If there were significant changes in payment patterns which would have increased working capital, the company should have presented them. In light of the Commission's inclination to adjust the ratios of the new formula, the Commission suggests that in the next base rate proceeding, Ohio Edison should feel free to make its own proposals concerning this matter.

On November 30, 1989, the applicant sold its accounts receivable to Ohio Edison Capital. As a result of the transaction, the applicant will collect revenues more quickly which reduces the need for working capital collection lag days (S.R. at 11). The company objected that the staff failed to accurately calculate the impact of OES Capital on cash working capital and net operating income by using incorrect balances for accounts receivable sold to OES Capital and by understating the billing lag associated with accounts receivable sold. Company witness Flower testified that the primary impact of the sale of accounts receivable to OES Capital under the staff's lead/lag approach is the reduction of the revenue days lag due to the fact that the previous days lag between billing for electric service and receipt of cash is almost entirely eliminated. However, the staff incorrectly assumed that the billing lag is entirely eliminated (Co. Ex. 10B, at 8). Staff witness Garcia agreed with the company that 1.44 lag days should be added to the retail revenue from sales lag days and that the revenue lag days for non-associated sales revenue should be changed to 24.13 days. There is generally a one-day period between the billing of accounts receivable and their sale to OES Capital. The effect of intervening weekends and holidays results in a small billing lag of 1.4 days for retail revenue and also for the non-associated sales. The one day of revenue in receivables lag for the non-associated sales is similarly impacted by weekends and holidays as is the retail revenue (Staff Ex. 8, at 9). The company's objection is sustained and the cash working capital allowance should be adjusted accordingly.

OCC alleged that the staff erred in its calculation of the lead day values associated with Pennsylvania foreign corporation franchise tax, as it assumed these taxes were paid in advance of the service period instead of in arrears. Staff witness Garcia, however, indicated that the applicant's lead/lag study shows that the taxes for Pennsylvania foreign corporation franchise tax were paid in advance of the service period (Id.). OCC presented no evidence to support its view; neither did it address this matter on brief. The staff's treatment of the Pennsylvania foreign corporation franchise tax will be adopted.

OCC objected to the staff's calculation of the lag associated with sale/leaseback expense. OCC witness Hixon testified that an adjustment was necessary to reflect the fact that lease payments for Beaver Valley 2 are made in arrears, not in advance of the service period as originally assumed by the staff. Ms. Hixon testified that the lag of 91.17 days should be applied to Beaver Valley 2 lease payments instead of the 60.3 days lag initially calculated by the staff (OCC Ex. 2, at 5-7). Staff witness Garcia agreed with OCC (Staff Ex. 8, at 10). No evidence to the contrary was presented. OCC's objection should be sustained. The cash working capital allowance should be calculated in accordance with OCC's recommendation.

Coal Inventory

The applicant requested a fossil fuel inventory working capital allowance of $42,960,305, which includes $41,733,883 attributable to coal inventory (Co. Ex. 5A, Sched. B-5 and B-5.1). The staff reviewed the applicant's request and recommends that the Commission adopt this allowance. To review the reasonableness of the applicant's proposed fuel inventory for ratemaking purposes, the staff compared the applicant's test-year 13-month average to a calculation based on an average 60-day supply. The staff calculated an average day's burn at each generating station. This average day's burn was multiplied by an estimate of an appropriate number of days' supply. In this case, the staff used 60 days. The staff's inventory balance, priced at the date certain cost per ton for coal, yielded a coal inventory allowance which exceeded the applicant's proposed allowance. Further, the applicant's proposed coal inventory allowance was less than the allowance granted in Ohio Edison's last rate case. Because the applicant's request fell below what the staff calculated to be reasonable and below what had been determined in the past by the Commission to be reasonable, the staff concluded that the applicant's request in this case was reasonable (Staff Ex. 12, at 23-24).

OCC posed a number of objections to the working capital allowance associated with coal inventory. All of OCC's objections are based upon the staff's use of a target 60-day coal supply for

Ohio Edison. OCC recommends a working capital allowance for coal inventory in the amount of $30,768,018 based upon 40 days of supply (OCC Ex. 5, at 15).

Ohio Edison has a target inventory level of 60 days (OCC Ex. 5, at 2). The parties have directed their arguments toward the reasonableness of this target. The Commission will, to the extent necessary, address these arguments. However, it must be kept in mind that Ohio Edison currently is operating with approximately a 50-day fuel inventory at each plant (Id. at 12). Presumably it is this 50-day level which is the basis of the company's requested coal inventory allowance, and not the 60-day target level upon which the parties focus.

OCC argues that the staff failed to evaluate the company's present policy of maintaining a 60-burn-day supply at each of its generating plants. However, the staff based its opinion on its own experience, on a comparison of the applicant's inventory levels to the inventory levels of other companies, on prior Commission determinations in rate cases, and on the findings of the company's electric fuel component (EFC) proceedings (Tr. XXII, 177-180). In all recent EFC proceedings, the present 60-day policy has been found to be reasonable. Ohio Edison Company, Case No. 88-104-EL-EFC (December 28, 1988); Ohio Edison Company, Case No. 89-104-EL-EFC (November 21, 1989). OCC's objection on this point is without merit. The staff has evaluated the company's present policy and found it to be reasonable.

Next OCC asserts that the staff failed to consider the impact of generation from Perry 1 and Beaver Valley 2 on the required coal inventories. This allegation is incorrect. To review the reasonableness of the applicant's proposed fuel inventory for ratemaking purposes, the staff compared the test-year 13-month average to a calculation based on an average 60-day supply. The test-year coal consumption used by the staff reflects the generation from applicant's share of Perry 1 and Beaver Valley 2. Both units were generating power during the test year, and the availability of the nuclear units would have affected the order in which the company dispatched its generating units, thereby impacting upon the average day's burn at each coal-fired generating station (Staff Ex. 12, at 22-23). The effect of nuclear generation is thus already reflected in test-year coal consumption.

OCC further objects that the staff did not analyze the company's use of the utility fuel inventory model (UFIM). However, the staff did not perform such a review because the company did not base its coal inventory allowance on the results of the UFIM model. The applicant used the model to help determine whether the current policy regarding the number of day's supply is adequate (Id. at 25-26). The model confirmed that it was. However, the staff believes that one should not base a wide reaching policy such as appropriate inventory levels solely on the basis of a computer model (Id.).

In support of the contention that a 60-day target inventory level is unreasonable, OCC witness Hillger ran the UFIM model correcting for certain errors which he perceived were made by the company. The result of Mr. Hillger's run of the UFIM model showed that a target inventory level of 22 days is appropriate for Ohio Edison (OCC Ex. 5, at 11). Based upon this analysis, Mr. Hillger recommended that Ohio Edison reduce its coal inventory at each plant to 30 days. His reduction would take place in two steps. He recommended that the company should achieve 40 days as of October 1, 1990, and 30 days by October 1 1991 (Id. at 12).

Mr. Hillger's recommendation is inappropriate. If Ohio Edison were to maintain its inventory at the recommended levels, it would have to impose its emergency electrical procedures. Under the company's Commission-approved emergency electrical procedures, when system fuel supplies reach 40 normal burn days, the company must make appeals to all customers for voluntary conservation to effect a reduction of at least 25 percent of all non-priority use of electricity. At 30 days supply the company will implement mandatory curtailment procedures for all customers (Co. Ex. 29). Mr. Hillger's recommendation is rejected.

Despite the volume of evidence on this subject, no credible evidence has been presented from which the Commission can conclude that the company's 60-day target inventory level is not reasonable. Accordingly, all of OCC's objections are overruled, and the Commission will adopt the company's proposed coal inventory for working capital purposes.

Materials and Supplies

The staff recommended a materials and supplies working capital allowance of $49,404,000 (S.R., Sched. 11). The applicant's proposed materials and supplies component of working capital is based upon a test-year 13-month average of month-end balances held for normal operation and repair purposes and which excludes three percent held for construction. The staff's recommended allowance excludes 3.23 percent held for construction and half of the Perry inventory (Id. at 20). The company objected to the staff's exclusion related to Perry inventory.

In the course of the staff's investigation in Cleveland Electric Illuminating Company, Case No. 88-170-EL-AIR (January 31, 1989), the staff noted that the materials and supplies balance for Perry was substantially larger than the materials and supplies balance for either Beaver Valley 2 or Davis Besse. In fact, it was larger than the materials and supplies balance for Beaver Valley 2 and Davis Besse combined. In that proceeding, the staff recommended that Perry materials and supplies be reduced by 50 percent. The Commission, noting that the company presented no justification for its Perry materials and supplies amount, accepted the staff's recommendation (Staff Ex. 12, at 13-14). The staff found no significant reduction of Perry inventory in this case and makes the same recommendation here (S.R. at 20).

The company contends that the staff's recommendation is inappropriate because it did not compare inventory at comparable units. First, Beaver Valley and Davis Besse are pressurized water reactors, while Perry is a boiling water reactor (Tr. XXIII, 95-96). In addition, they are much smaller units. Company witness Daniels testified that the Perry inventory maintains nuclear safety-related equipment and a host of other supplies necessary to operate and maintain the plant. Mr. Daniels indicated that there are five one-unit boiling water nuclear reactors in the United States similar in size to Perry. Of those five, he received permission from the operating companies of two of the units to compare inventory levels at those units with the Perry inventory level. His comparison shows that Perry's inventory level is considerably less than one unit and comparable to the other unit. Mr. Daniels stated that when inventory levels at comparable units are compared, there is no basis for an adjustment (Co. Ex. 9C, at 27-28).

Based upon this record, the Commission is of the opinion that the staff's adjustment to Perry materials and supplies inventory level should be rejected. First, the staff made no independent analysis of the inventory at Perry. The staff merely compared Perry's inventory with the non-comparable Beaver Valley and Davis Besse units and observed that Perry's inventory was higher. Based upon this sole observation, the staff adjusted the materials and supply request by one-half. However, in this case, unlike the CEI case, the company presented evidence that the inventory is required to operate and maintain the plant. Further, when inventory levels at comparable plants are reviewed, the Perry inventory level is not at all unusual. The Commission believes that Ohio Edison has justified the Perry materials and supplies inventory levels; the company's objection is sustained.

OCC presented a number of objections concerning inventory management and control and concluded that the company's materials and supplies inventory is overstated. However, OCC provided no testimony on this subject and did not address the matter on brief. Accordingly, OCC's objections on materials and supplies are overruled.

Deferred Operation and Maintenance Expenses

The Commission has previously authorized Ohio Edison to defer on its books and to accrue carrying charges on certain operation and maintenance expenses associated with Perry and Beaver Valley 2. The expenses were incurred by the company from June 1, 1987 through February 1, 1988 for Perry, and subsequent to November 17, 1987, for Beaver Valley 2. Electric rates for the company's customers effective on February 2, 1988, included annual costs attributable to Perry; therefore, deferral of Perry operation and maintenance expenses ended on that date. However, those electric rates did not include recovery of Perry amounts deferred through February 1, 1988. This rate case is the first opportunity which the Commission has had to address the deferred Beaver Valley expenses (Co. Ex. 9A, at 8-9).

The company included as part of working capital in this case the unamortized deferred Perry and Beaver Valley operation and maintenance expenses at end of test-year levels. The staff agreed that these amounts should be included at end of test-year levels. OCC objected, arguing that the balances should be restricted to those accumulated as of the date certain. OCC's recommendation would reduce the company's working capital allowance by approximately $60 million.

Staff witness Hess testified that staff often relies upon the date certain concept to quantify rate base working capital. However, the staff believes that the circumstances surrounding this item warrant a different treatment. Prior to June 30, 1990, the applicant is compensated for carrying costs on the unamortized balance through the accrual of carrying costs. When the rates in this case are set, the applicant will be compensated for carrying costs on the unamortized balance through inclusion in rate base. If the date certain balance of unamortized deferred costs is used in rate base, the applicant will not be compensated for carrying charges on the difference between the unamortized balance at date certain and the unamortized balance as of June 30, 1990. Due to regulatory lag, even if the end of year balance is used, there will still be a portion of the balance upon which the applicant will not receive carrying costs and which it will be required to carry on its own until the next rate case. The staff's year-end recommendation will minimize the amount the applicant will be required to carry. Under the staff's year-end recommendation, the applicant would only be required to carry the difference in deferred expense balances between December 31, 1989, and June 30, 1990, or approximately $66 million. If OCC's recommendation to use the date certain balance is adopted, the applicant would be required to carry deferred costs of approximately $132 million (Staff Ex. 14, at 6-8).

Section 4909.15(A)(1), Revised Code, requires that rates shall be fixed based upon the date certain value of property used and useful in providing public utility service. However, the statute sets no such specific date for determining working capital. The statute refers only to a reasonable allowance for working capital. Thus, although a reasonable working capital allowance should be representative of the test-year requirement, the mechanical application of a date certain valuation is not required. In determining a reasonable working capital allowance, the Commission has previously used a date certain valuation, a 13-month average, or end of test year, depending upon what is most representative of the company's operations. In this case, the balances grew larger each month, and it is the end of test-year balance amount which investors will be required to carry during the period rates set in this case are in effect. These deferred expenses have been carried by the investors for over a two and one-half year period. The investors will continue to supply funds necessary to carry the balances in the future, as these expenses will be amortized over the life of the Perry and Beaver Valley plants. Under the circumstances, the Commission is of the opinion that the end of test-year balances are the most representative and should be used for working capital purposes. Amortization expense should be calculated accordingly.

Beaver Valley 2 Post In-Service Carrying Charges

Ohio Edison has also been authorized to capitalize interest on its investment in Beaver Valley 2 from the in-service date of the unit until rates are made effective that reflect inclusion of such amount in rate base. The company was authorized to accrue carrying charges at a net of tax interest rate of 6.6 percent.

The company included $31,192,161 of these carrying charges accrued between the date certain and the end of the test year in its proposed working capital allowance. The company argues that these costs are no different than the other Beaver Valley 2 costs being deferred by the company and included in working capital at end of test-period levels. As with other Beaver Valley 2 deferred expenses, the amount of carrying charges has grown throughout the course of the test year and will continue to increase through June 30, 1990. Thus, according to the company, the same reasons which support the inclusion of deferred operation and maintenance balances in working capital also warrant the inclusion in working capital of carrying charges capitalized from the date certain through the end of the test year (Co. Ex. 9C, 3-6). The staff opposes the company's treatment of these costs.

At first blush, the company's contention seems plausible. However, the company has ignored one crucial point. The applicant has included in this case, as part of plant in service, its investment in Beaver Valley 2 valued at date certain. Included in the date certain plant balance for Beaver Valley are the post in-service carrying costs accrued between November 17, 1987, and date certain. Thus, the carrying costs accrued after date certain are in actuality a part of the company's plant. Under Section 4909.15, Revised Code, the company's plant is to be valued at date certain. The company's proposal, to include these costs in working capital, reaches the same result as if the post in-service carrying charges had been included in plant in service as of the end of the test year. This result in contrary to the statute. The staff's adjustment shall be accepted. Ohio Edison's objection is overruled.

Beaver Valley 2 Allocation Factors

As discussed above, Ohio Edison has been authorized to defer on its books and accrue carrying charges on certain operation and maintenance expenses associated with Beaver Valley 2. The company has also been authorized to capitalize interest on its investment in Beaver Valley 2 from the in-service date. The company used a 92.4 percent composite allocation factor to defer and accrue on its books the Beaver Valley costs. This allocation factor was developed from the composite ratio of jurisdictional nuclear plant to adjusted total company nuclear plant as of May 31, 1987, the date certain in the company's last rate case (Co. Ex. 10C, at 1).

In this case, the company used the same 92.4 percent allocation factor to compute the working capital allowance associated with these Beaver Valley costs. The allocator was also used to calculate associated deferred expenses, plant in service, and depreciation expense. OCC objected to the use of the 92.4 percent allocation factor in this case because this factor does not reflect the increased PEPCO sales which occurred during the test year.

OCC witness Effron testified that the firm sale of capacity to PEPCO increased from 172 MW to 258 MW in January of 1989, and to 387 MW in June of 1989. The increases in the firm sales to PEPCO have resulted in decreases to the jurisdictional allocation factors used in developing the company's cost of service in this case (OCC Ex. 1, at 7). Thus, the company has revised its jurisdictional allocation factors to reflect the current test-year data. However, in requesting recovery of the test-year Beaver Valley accruals and deferrals, the company did not apply a jurisdictional allocation factor based upon test-year data. Rather, the company continued to use the 92.4 percent allocator from the prior rate case. Specifically, the company developed its jurisdictional allocation factors, except for the factor applied to Beaver Valley deferred and accrued costs, based upon annualizing the PEPCO sale at 387 MW and the AMP-Ohio sale at 125 MW (Tr. XXVIII, 71-72).

In order to reflect the increased PEPCO firm sales, Mr. Effron proposed that incremental reductions to the D-1 demand ratio of 2.20 percent as of January 1989, and 3.11 percent as of June 1989, for an accumulative total reduction of 5.31 percent to the 92.4 percent allocation factor be applied to the deferred costs (Id. at 8-9). The staff agrees with OCC that application of a 92.4 percent allocation factor is not reflective of test-year data; however, the staff disagrees with OCC's methodology used to compute its adjustments. Staff witness McDonald testified that OCC's adjustments constitute a selective adjustment to test-year jurisdictional allocation factors and is inappropriate (Staff Ex. 11, at 11-12). The staff recommends that an allocation of 86.2 percent be used to adjust the Beaver Valley 2 post in-service carrying charges and deferred costs incurred subsequent to January 1, 1989. This allocation factor is calculated on a similar basis as the 92.4 percent allocation factor previously used by the applicant and is based on the composite of the Beaver Valley 2 jurisdictional and total company nuclear production plant investment. The staff's factor is based upon the test-year data developed by the company in its nuclear plant and expense allocation factors in this case (Id.).

The company alleges that if the Commission were to accept either the staff's or OCC's proposal, it would be forced to write off approximately $16.4 million of deferred costs and post in-service AFUDC through June 30, 1990. The company contends that its 92.4 percent allocator is in accordance with the Commission's orders approving the deferrals and accruals in the first place. Because the company's accounting is in accordance with the accounting entries, the company believes that the 92.4 percent allocator is appropriate for this case. Further, the company argues that the deferral of the Beaver Valley 2 costs at the 92.4 percent level has been an integral part of the company's rate deferral and moderation program. Had the company known when it committed to delay this rate increase until July 1990, that it would not be allowed to recover all deferred expenses, the program, if any, would have been different (Co. Ex. 9D, at 3, 9-10).

In addition, the company argues that OCC and the staff have ignored the impact of changes to Ohio Edison's off-system firm sales other than PEPCO. Company witness Flower testified that AMP-Ohio sales fell to approximately 30 MW in 1989 and have been scheduled at that level for the next several years. Mr. Flower developed a test-period allocation factor that reflects the reduction in the AMP-Ohio sales of 89.1 percent. However, Mr. Flower went on to advocate that, not only should the Beaver Valley 2 allocator be changed to reflect the reduction in the level of

AMP-Ohio sales, but that all the allocation factors in this case should be changed to reflect the actual test-year sales to AMP-Ohio. Use of revised test-year jurisdictional allocation factors would increase the revenue requirements in this case by $30 million (Co. Ex. 10C, at 5-7).

As previously discussed, the Commission has authorized the deferral and accrual accounting for Beaver Valley 2 costs. However, the accounting orders did not set the ratemaking treatment of these costs. In fact, in Ohio Edison Company, Case No. 87-985-EL-AEM (October 20, 1987), the company specifically requested that the Commission address the ratemaking treatment of the deferred costs. The Commission adopted its staff's recommendation that any issues as to future recovery and rate base inclusion should be deferred to the company's future rate case proceedings. If the company was not sure of this statement, then it should have become crystal clear when in denying IEC's motion to intervene, the Commission reiterated its conclusion that the accounting entry grants permission for Ohio Edison to defer operating costs past the in-service date for booking purposes only and does not address the ratemaking treatment of these items. The Commission made a similar statement when it addressed post in-service carrying charges in Ohio Edison Company, Case No. 87-984-EL-AAM (October 20, 1987). Thus, the company's argument, that its proposed ratemaking treatment was somehow authorized by prior Commission orders, is clearly wrong.

The Commission is of the opinion that the Beaver Valley 2 deferrals and accruals must be adjusted for ratemaking purposes to account for increased sales to PEPCO. Failure to make such an adjustment would result in jurisdictional customers paying more than their share of the deferrals and accruals. The Commission is also of the opinion that the staff's allocation factor of 86.2 percent is the most appropriate method to use in making the adjustment. The staff's allocation factor is based upon the test-year data used by the company to develop its jurisdictional allocation factors. The Commission declines to adjust the test-year data to account for decreased AMP-Ohio sales. The Commission believes that such a selective adjustment to test-year data is inappropriate, especially in light of the company's contention that all the test-year allocation factors should be changed to reflect the present level of AMP-Ohio sales. It must be remembered that it is the company's test-year data upon which the composite 86.2 percent allocation factor is based. It was the company, that provided the test-year information; it was the company that, with the exception of the Beaver Valley accruals and deferrals, based all of its allocations on the PEPCO sale at 387 MW and the AMP-Ohio sale at 125 MW. Thus, in making the adjustment to the amount of deferrals and accruals to be recovered from ratepayers, the Commission has determined that the deferrals and accruals should be based upon test-year allocation factors, just as the company proposed in all other instances. OCC's objection is sustained. In addition to an adjustment to the working capital allowance, the appropriate adjustments to deferred annual amortization expense, plant in service, and depreciation expense should be made.

Perry 68 MW Power Purchase

In May of 1989, the company's obligation to purchase 68 MW of Perry capacity from CEI expired. This obligation to purchase the 68 MW of Perry capacity for an 18-month period was the result of reallocating 5.6 percent of the Perry plant from Ohio Edison to CEI. The transaction reduced Ohio Edison's investment in Perry by approximately $400 million.

OCC, through its witness Mr. Effron, pointed out that the company's present rates, established in Case No. 87-689-EL-AIR, still reflect the cost associated with the purchase of 68 MW of Perry capacity. Mr. Effron argues that a savings results from the cessation of this purchase, and that the savings to the company resulting from the expiration of the obligation to purchase this capacity should be accrued and offset against the Perry and Beaver Valley 2 deferred costs (OCC Ex. 1, at 10). In support of its contention, OCC relies on the Commission's accounting entries which authorized the deferral of Perry and Beaver Valley 2 costs. In those entries, the Commission indicated that the deferral of the operating costs should be net of any and all savings that result from the operation of the plants. According to Mr. Effron, the expiration of the obligation to purchase 68 MW of capacity from CEI is a savings related to the Perry plant and would not have occurred, were the Perry plant not in operation (Id. at 11).

The Commission cannot agree with OCC. The cessation of the Perry 68 MW sale has nothing to do with the operation of either the Perry or the Beaver Valley plants. Obviously, the sale could not have been made in the first place, and, consequently, would not have ceased, had the Perry plant not been operating. However, the operation of the plant had nothing to do with any savings. The savings resulted from the expiration of Ohio Edison's obligation to CEI to purchase Perry capacity. It is because of the transaction between CEI and Ohio Edison that ratepayers are receiving a savings in the amount of a $400 million reduction in rate base. Thus, the savings to ratepayers are attributable to the reduction in rate base, not the cessation of the purchase. Finally, OCC would have the Commission look back at prior rates and selectively adjust one item. This is inappropriate retroactive ratemaking. OCC's objection is overruled.

Perry Prudence Audit Costs

The staff recommended that the jurisdictional portion of $2,798,049, which represents Ohio Edison's share of the audit costs incurred as a result of the Commission-ordered investigation into the construction costs of Perry in Case No. 85-521-EL-COI, be amortized over a three-year period and included as an expense item in this proceeding. The company requests that the unamortized balance of the audit costs be included in working capital. The staff opposes any working capital allowance for the unamortized balance of the Perry audit costs.

The company complains that without a working capital allowance, it will not fully recover these costs, as the company continues to incur carrying costs on the unamortized balance. Failure to include these amounts in working capital, according to the company, would be an injustice.

The Commission has previously addressed this matter for CEI. In that case, the Commission amortized this expense over a three-year period, but declined to include the unamortized balance in rate base. Cleveland Electric Illuminating Co., Case No. 86-2025-EL-AIR (December 16, 1987) at 68. Ohio Edison has provided the Commission no reason which persuades us to depart from prior precedent. The Commission considers this expense to be similar to rate case expense. Reasonable rate case expense is usually amortized over a period of time; however, no working capital is authorized. Similarly, no working capital allowance for Perry audit costs will be allowed.

PIP Arrearages

The company alleged that the staff inadvertently failed to include the percentage of income payment plan (PIP) arrearages that are greater than 12 months old. Staff witness Meridith agreed and recommended that the PIP arrearage balance of $34,603,647 be used when calculating the working capital requirement (Staff Ex. 6, at 2).

OCC objected that the staff used PIP customer deposits as of November 1989, to offset rate base instead of using the date certain balance to offset rate base. However, OCC provided no testimony on this subject and did not address it on brief. OCC's objection is, therefore, deemed withdrawn.

Working Capital Summary

The following schedule reflects the Commission's determination of the allowance for working capital to be included in rate base in this proceeding.

Jurisdictional Working Capital Allowance
(000's Omitted)

Cash Component	$ (139,732)
Material and Supplies	53,656
Fuel Inventory	42,960
PIP Uncollectibles	34,604
PIP Customer Deposits	(1,128)
Perry 1 Lease Financing	15,896
Beaver Valley 2 Lease Financing	28,196
Beaver Valley 2 Book Loss	40,360
Perry 1 Unamortized O&M	48,250
Beaver Valley 2 Unamortized O&M	212,069
Unclaimed Fund	(361)
Perry Unamortized Sale/Leaseback	6,604
Beaver Valley Unamortized Sale/ Leaseback	7,868
Jurisdictional Working Capital Allowance	$ 349,242

Other Rate Base Deductions:

Unclaimed Funds

The company's unclaimed funds account is made up of undeliverable accounts payable, petty cash, line extension deposits, security deposits, overpayments on electric and other accounts, dividends, bond interests, claims, and payroll checks (OCC Ex. 6, at 4). OCC witness Chan testified that unclaimed funds are a non-investor supply source of funds available for use by the company. Further, the company has indicated to OCC that the level of unclaimed funds will not change significantly in the near future. Mr. Chan recommended that the unclaimed funds in the amount of $360,825 should be subtracted from the company's rate base. The staff would deduct only $60,150 from rate base, which is the amount attributable to the security deposits portion of unclaimed customer funds (Staff Ex. 5, at 4).

The company opposes both adjustments; however, it provided no testimony on the subject. The company only argues that it is clear from the names in the account that the funds are not customer-provided. Further, the company contends that it is only customer-provided funds which should be deducted from rate base.

Investors are entitled to earn a return on capital invested by them in utility operations. Clearly, customer-provided security deposits are not provided by investors and must be deducted from rate base. This matter is not subject to debate. Consumers'

Counsel v. Pub. Util. Comm., 58 Ohio St. 2d 108 (1979). As to the other components of unclaimed funds, the only evidence of record is that unclaimed funds are a non-investor supply source of funds available for use by the company. The record does not establish from where the funds come. Based upon the record presented to the Commission on this subject, the Commission believes that OCC's adjustment should be accepted. The company has not met its burden of demonstrating that it is entitled to a return on these unclaimed funds. Rate base should be reduced by $360,825 attributable to unclaimed funds.

Deferred Taxes Associated With Property Taxes

The staff recommended that $4,895,924 of accumulated deferred taxes associated with property taxes continue to be used as a rate base deduction (Staff Ex. 9, at 6). The company objected to this deduction.

The company's book-tax timing difference for property taxes arises as a result of the company booking property tax expense for book purposes in the year in which the property is assessed, and for tax purposes in the year in which the lien attaches. This creates a deferred credit that is netted against rate base (Tr. XXII, 30). According to the company, the Internal Revenue Service (IRS) informed the company that its property tax treatment does not meet the economic performance test established by the IRS. Therefore, the IRS has proposed that property taxes be deducted in the year paid, rather than in the year in which the lien attaches. This treatment will result in a deferred debit, as opposed to a credit which presently exists (Co. Ex. 15B, at 7-8). The company recommends that the Commission should eliminate the entire book-tax timing difference in this case.

Staff witness Hensel testified that it would be improper to eliminate the tax timing difference at this time because the IRS has not issued final tax regulations. According to Ms. Hensel, there are two IRS proposals related to property taxes. The first one is that property taxes should be deducted in the year paid; the second one is that property taxes should be deducted in the year they are booked as an expense. However, the IRS has not finalized its position on this issue, nor have final regulations been issued. The staff believes that the income tax calculation used for ratemaking purposes should be based on the tax laws and regulations currently in effect, and not on proposed changes (Staff Ex. 9, at 3-4).

The Commission believes that the staff's position is correct. At this point in time, one can only speculate when any final IRS regulations will be issued. Further, the details of any such regulations cannot be known at this time. Accordingly, the Commission finds that the tax timing difference related to property tax should continue to be used as a rate base deduction.

Deferred Taxes on Nuclear Fuel Carrying Charges

The company has on its books accumulated deferred income taxes related to nuclear fuel carrying charges. When the nuclear fuel was in process, the carrying charges on that fuel were capitalized for book purposes and added to the cost of the nuclear fuel. For income tax purposes, the carrying charges were deducted as incurred. To recognize the effect of this timing difference, deferred taxes were recorded on the carrying charges at that time. As the fuel is burned, the company amortizes the cost of the nuclear fuel, including the carrying charges. As the carrying charges are amortized, the balance of accumulated deferred income taxes is reversed. The balance of the accumulated deferred income taxes as of the date certain represents the income taxes previously deferred. OCC recommended that $16,988,000 of accumulated deferred income taxes related to nuclear fuel carrying charges as of the date certain be included in the deferred taxes deducted from plant in service because they are non-investor supplied funds. When the company took the tax deduction for the carrying charges, it realized a benefit from the timing of the tax deduction. Since the tax deduction related to the nuclear fuel carrying charges was not flowed through by the company in the computation of income taxes, the time value of this tax deduction was not passed on to ratepayers (OCC Ex. 1, at 13-16). The staff agrees with OCC.

The company opposes this rate base deduction. The company contends that nuclear fuel has never been included in the company's rate base because it has been procured on behalf of the company through various leasing and trust arrangements. Since the nuclear fuel to which these deferred income taxes relate is not included in rate base, the company reasons that it would be inappropriate to reduce rate base by these accumulated deferred income taxes. However, company witness Daniels testified that if the Commission believes that a deduction should be made, only $3,621,363 of the balance relates to nuclear fuel in service. The remainder relates to nuclear fuel which was still in process as of the date certain (Co. Ex. 9D, at 16).

The Commission is of the opinion that a rate base deduction should be made in the amount of $3,621,363 in accordance with Cleveland Electric Illuminating Company, Case No. 85-675-EL-AIR (June 24, 1986) at 30-31. In that case, the Commission stated that deferred taxes related to nuclear fuel interest associated with in-service fuel cores should clearly be deducted. Customers being served by the nuclear fuel in service are the ones who are required to bear the interest costs through their rates and who should receive a rate base deduction. However, because it is not until the fuel is burned that interest expense is recognized, customers do not pay any carrying charges associated with nuclear fuel which is still in process. Therefore, there should be no deduction for nuclear fuel in process. OCC's objection is sustained to the extent that $3,621,363 should be used as a rate base deduction.

Double Deduction for Deferred Taxes

The company objected that the staff accounted for deferred taxes associated with deferred Beaver Valley 2 depreciation expense twice--once as a working capital deduction, and a second time as a rate base deduction. Staff witness Soliman testified that a double deduction for deferred taxes associated with Beaver Valley depreciation may have occurred; however, he needed additional information before making that determination (Staff Ex. 10, at 26-27). Company witness Siterz provided the additional information required by the staff (Co. Ex. 15C). The information provided confirms that a double deduction has occurred. Accordingly, the amount attributable to deferred taxes associated with deferred Beaver Valley 2 depreciation expense should be excluded from other rate base deductions.

Rate Base Summary:

Consistent with the foregoing discussion, the Commission finds the jurisdictional rate base, as of the date certain of June 30, 1989, to be as follows:

Jurisdictional Rate Base
(000's Omitted)

Plant In Service		$ 5,194,082
Less:	Depreciation Reserve	1,307,986
Net Plant In Service		$ 3,886,096
Plus:	CWIP	$ 0
	Working Capital	349,242
	Mirrored CWIP Allowance	0
Less:	Other Items	189,735
Jurisdictional Rate Base		$ 4,045,603

OPERATING INCOME

Ohio Edison and the staff each submitted an analysis of test-year accounts reflecting the results of operations under the company's present rates. OCC and IEC also presented evidence in support of certain adjustments to the staff's findings. Issues raised by the objections filed by the parties are discussed below.

Adder Revenue:

Adder revenue is the mark-up on the company's energy costs for sales to other utilities (OCC Ex. 3, at 3). OCC recommends that $4,731,189 be added to the company's jurisdictional operating revenues to account for adder revenues associated with non-firm sales to GPU, and for short or limited term sales to other utilities (Id. at 3 and Att. KH-1). According to OCC witness Hagans, jurisdictional customers should fully share in all revenue derived from the plant investment on which they are paying a return. Ms. Hagans believes that the Commission should treat Ohio Edison's adder revenues in the same manner as CEI's net non-jurisdictional interconnection revenues (NNIR), which have been considered 100 percent jurisdictional revenues in CEI's last two litigated rate cases, Cleveland Electric Illuminating Co., Case No. 85-675-EL-AIR (June 24, 1986) at 32-34, and Cleveland Electric Illuminating Co., Case No. 86-2025-EL-AIR (December 16, 1987) at 39-41 (Id. at 4-6). North Star Steel also contends that adder revenues should be flowed through to the jurisdictional customers since retail ratepayers are bearing a significant part of the cost burden of the facilities used to produce the energy sold in the off-system sales (North Star Ex. 14, at 29-30).

The staff and the applicant both believe that adder revenues should be excluded from jurisdictional revenues. Staff witness McDonald testified that adder revenues should be treated as non-jurisdictional for the following reasons: 1) Ohio Edison's adder revenues represent the mark-up on energy charges whereas CEI's NNIR includes both demand and energy revenues for opportunity sales; 2) in this proceeding, the company's ratepayer's are fully compensated for the costs associated with making off-system sales; and 3) there is no assurance that the non-firm sales will continue at the test-year level (Staff Ex. 11, at 14-16). Ohio Edison did not present a witness on this issue but states on brief that, in addition to the arguments raised by the staff, adder revenues provide the company with the incentive to assume risks associated with off-system sales, and in Ohio Edison Co., Case No. 84-1359-EL-AIR (October 29, 1985) at 19-21, the Commission distinguished adder revenues from CEI's NNIR and determined that adder revenues should be treated as non-jurisdictional (Co. Initial Br. at 43; Co. Reply Br. at 20-21).

The Commission finds that Ohio Edison's adder revenues should be included in the cost of service in this case. While we recognize that this conclusion is a departure from our decision in Case No. 84-1359-EL-AIR, we believe that no valid distinction exists for treating Ohio Edison's adder revenues differently from CEI's NNIR. In Case No. 84-1359-EL-AIR, the Commission rejected the staff's (50/50 split) and OCC's (100 percent to jurisdictional) proposals to include adder revenues in Ohio Edison's cost of service. In that case, however, there were several factors which contributed to the Commission's decision which are not present in this proceeding. At that time, CEI was required to include only 50 percent of NNIR in jurisdictional revenues. Further, there was company testimony in the prior Ohio Edison case that a 50/50 sharing of off-system sales revenues, in a manner similar to CEI's treatment of NNIR, would actually reduce the level of revenues included in the jurisdictional cost of service (See Ohio Edison, supra, at 19-20). Subsequently, in CEI, Case Nos. 85-675-EL-AIR and 86-2025-EL-AIR, supra, the Commission included all NNIR in CEI's cost of service. In Case No. 86-2025-EL-AIR, we concluded that, since "...all the assets associated with NNIR are included in jurisdictional rate base, and all of the operation and maintenance expenses related to these assets are included in jurisdictional expenses ... [including] ... the administrative and billing expenses .... [w]e see no reason why 100% of NNIR should not be included." (CEI, Case No. 86-2025-EL-AIR, supra, at 40-41). In this proceeding, we see no reason why Ohio Edison should receive different treatment than CEI. Indeed, in Ohio Edison, supra, at 20-21, we stated that "...the Commission is concerned about the different treatments afforded off-system sales revenues among the electric utilities. Accordingly, the Commission will continue to examine this issue in future rate proceedings." Nor is the Commission persuaded by the company's argument that adder revenues are necessary to provide an incentive to make off-system sales. We rejected a similar argument in CEI, Case No. 86-2025-EL-AIR, supra, at 40, wherein the record showed that CEI's NNIR had increased nearly $3 million in the year following the date of the Commission's order requiring the inclusion of 100 percent of NNIR in jurisdictional revenues. Therefore, consistent with our prior treatment of CEI NNIR, we will adopt OCC's recommendation that $4,731,189 of jurisdictional adder revenues be included in the applicant's cost of service in this case.

Unbilled Revenues:

Unbilled revenues represent revenues for utility service used but not yet billed to the customer because of bimonthly or cycle billing, or for some other reason (IEC Ex. 4, at 5). In the past, many utilities did not book unbilled revenues for financial and ratemaking purposes to be consistent with their claims that unbilled revenues were not taxable income. However, the Tax Reform Act of 1986 (TRA-86) required that unbilled revenues be included in taxable income. While many utilities now recognize unbilled revenues for financial reporting and ratemaking purposes, Ohio Edison recognizes unbilled revenues for taxable income purposes only (Id. at 7-10). The difference between the company's taxable income recognition, compared to book accounting and ratemaking recognition, creates a timing difference which generates an asset accumulated deferred tax balance (Id. at 10). While the applicant had originally sought to include this deferred tax balance in rate base, the Staff Report excluded this amount from rate base and the company did not oppose the staff's adjustment (See S.R. at Sched. 12).

IEC recommends that the Commission order Ohio Edison to record unbilled revenues for financial reporting and ratemaking purposes and impute the resulting gain, subject to a three-year amortization, in its pro forma earnings calculation (IEC Ex. 4, at 11-12). IEC's primary concern is that, following the rate order in this case the company may decide to begin recording unbilled revenues for financial reporting purposes, resulting in a $52 million boost in the company's earnings (Id. at 9). IEC witness Kollen claims that if IEC's proposal is adopted, and Ohio Edison begins recording unbilled revenues, the company's revenue requirement in this case would be reduced by $64.5 million with a one-year recognition, or by $21.5 million on an annual basis, assuming a three-year amortization of the initial balance, as IEC recommends (Id. at 12). Under this scenario, Mr. Kollen asserts that the company's earnings would be unaffected and ratepayers would receive the benefit of a lower rate increase (Id.).

The staff rejects IEC's recommendation as unnecessary. According to staff witness Hess, it is unnecessary to recognize the effects of either booked or tax unbilled revenues in a base rate proceeding (Staff Ex. 14, at 10). Mr. Hess testified that the applicant's total sales represent the full level of sales for the 12 months of the test year. The sales are priced at current rates to determine total operating revenues for the test year and, thus, revenues are properly matched with their associated time period, eliminating the need for a revenue adjustment such as IEC's proposed unbilled revenue adjustment (Id. at 11).

The Commission finds that the staff's recommended adjustment should be adopted. As Mr. Hess explained, ignoring the revenue requirement aspects of unbilled revenues properly matches test-year revenues with test-year sales, and eliminates the need for any revenue adjustments. This treatment is also consistent with the Commission's findings in Columbia Gas I and Columbia Gas II wherein Columbia (which books unbilled revenues) was prohibited from passing on to ratepayers the expense associated with an adjustment required by TRA-86 without recognizing the corresponding customer benefit of increased revenues. Columbia Gas I, supra, at 49-51; Columbia Gas II, supra, at 44-45. In this case, since Ohio

Edison does not currently book unbilled revenues, the staff's exclusion of the deferred tax balance from rate base properly recognized the inconsistency in the company's original proposal. Thus, under the staff's recommendation, ratepayers are protected from the type of inconsistent treatment which the Commission disallowed in the Columbia cases. IEC fears that, at some point in the future, Ohio Edison will begin to book unbilled revenues, thereby generating revenues for the company above the earnings opportunity granted by the Commission in this case. However, as Mr. Hess explained, no such revenue discrepancy would occur because if the company began booking unbilled revenues, the company would catch up to where it should be, since recognizing unbilled revenues assumed recognition of only 11-1/2 months of revenues in the first year of such recognition.

Special Arrangements for Economic Development Contracts:

Schedule 3.1 of the Staff Report reflects inclusion in operating revenues of one-half of the "delta revenues" resulting from Ohio Edison's Special Arrangements for Economic Development (SAED) contracts (S.R. at 5, 89-90). Delta revenues represent the difference between revenues which would have been collected under the applicant's tariffs and the lesser revenues collected under the SAED economic incentive contracts which grant price concessions to encourage new and expanded load (Staff Ex. 20, at 3). The staff recommends that the delta revenue deficiency be split evenly between the applicant and its customers as recognition that both the company and customers benefit from the SAED contracts through the retention of load, load growth, increased income, greater efficiency of facilities, retained and increased employment, and increased tax revenues associated with economic recovery initiatives (Id. at 3-4). According to staff witness Fortney, the staff's recommendation is consistent with past Commission precedent that companies and ratepayers should share in the revenue deficiencies associated with economic incentive contracts, including Toledo Edison Co., Case No. 86-2026-EL-AIR (December 15, 1987) at 36 (40 percent attributed to company), and Cleveland Electric Illuminating Co., Case No. 88-170-EL-AIR, et al. (January 31, 1989) at 18-19 (50/50 split of delta revenues) (Id. at 5).

Ohio Edison argues that delta revenues are merely hypothetical values since, without the availability of SAED contracts, it is likely that many existing customers would have left the system and much new load or growth would not have occurred (Co. Ex. 14C, at 10). The company cites to the first case in which the Commission addressed the issue of the apportionment of delta revenues, Cleveland Electric Illuminating Co., Case No. 85-675-EL-AIR (June 24, 1986), at 36, to support its position that no "phantom" delta revenues should be imputed to the applicant's cost of service. The company claims that the Commission should follow that CEI decision and reject the staff's 50/50 proposal since, in this proceeding, 100 percent of the SAED revenue is credited to the customer classes and that SAED incremental revenue covers the company's variable costs and part of its fixed costs (Tr. XXVII, 37, 41; Co. Ex. 14C, at 9-10). Ohio Edison asserts that the Commission should not penalize the company for making efforts to facilitate economic growth. The applicant argues that taking a portion of SAED revenues, which would not exist at all but for the company's efforts, is inconsistent with Ohio's efforts to attract and promote economic development.

OCC contends that a 75 percent (company) and 25 percent (customer) sharing of delta revenue deficiencies is appropriate for this case (OCC Ex. 9, at 9). OCC witness Yankel testified that there are two reasons which justify OCC's recommendation. First, Mr. Yankel claims that recent declines in Ohio's unemployment rates indicate that the need for economic incentive rates is much less than it was in the early 1980s (Id. at 6). Second, Mr. Yankel states that the company's incremental load which has been stimulated by the SAED program is substantially more on-peak than the existing load of the same customers (Id. at 7-9, AJY-1). As a final matter, Mr. Yankel proposes that in future rate cases Ohio Edison be ordered to break out SAED customers as a separate class in the company's cost of service studies (Id. at 10).

The Commission finds that the staff's recommended treatment of the delta revenues in this proceeding is appropriate and should be adopted. We are not persuaded by Ohio Edison's argument that sharing of the delta revenues is inconsistent with the statewide goals of encouraging economic development in Ohio. The Commission believes that a 50/50 split properly recognizes that both the company and its customers benefit from the company's policy of providing economic incentive rates to certain customers to retain load, encourage expansion, or attract new development in the company's service territory. Further, this equal sharing of the SAED delta revenues is consistent with our most recent decision which addressed the issue (See CEI, Case No. 88-170-EL-AIR, supra). We also reject OCC's proposal. One need only have attended the public statements hearings in this case to recognize that residential and business customers alike are deeply concerned with the lack of employment opportunities and the shrinking economic base of the areas in which they live or operate. The Commission believes that its policy encourages economic development and that the staff's treatment represents a fair sharing of the benefits and the revenue deficiency attributable to SAED contracts.

Annualization of SAED Revenues:

In addition to its objection to the imputation of any SAED delta revenues, the applicant also disputes the staff's method of annualizing SAED revenues in this proceeding. Staff witness Soliman testified that the staff annualized test-year SAED incremental revenue to reflect the actual level of revenue experienced by the company during the test year and which was expected to continue in the future (Staff Ex. 10, at 4-7). The company claims that annualization should not be applied to SAED revenue because of the lack of stability and certainty of the SAED contracts. If the Commission accepts the staff's annualization of SAED revenues, the applicant argues that a corresponding increase in operating expenses must also be included, to account for the costs needed to generate the additional kWh (Co. Ex. 14C, at 11-13). Mr. Soliman states that the staff agrees, in theory, with the applicant's request for a corresponding increase in O&M expenses but does not recommend an adjustment because of the staff's belief that the operating expenses recommended in this case already reflect a normal level of operating expenses for the company (Staff Ex. 10, at 6-7).

The Commission finds that the staff's annualization of the SAED revenues is appropriate in order to reflect a more accurate estimate of the company's actual test-year experience and future SAED revenues. Company witness Burg testified that, as of March 31, 1989, 64 companies had taken advantage of SAED contracts with the potential to add $19 million in annual revenues (Co. Ex. 6A, at 17). Mr. Soliman pointed out, however, that the company's application reflected SAED revenue of only $15.4 million (Staff Ex. 10, at 5). We believe that the staff's annualization of SAED revenues is reasonable and should be adopted. Consistent with our adjustments regarding short-term sales and the Perry 68 MW purchase power issues, the Commission finds that the company's operating expenses should reflect the increased costs associated with the additional kWh caused by the staff's annualization. Thus, as indicated by company witness Norris (Co. Ex. 14C, at 13), the Commission will add $523,767 to the company's operating expenses to recognize the corresponding generating expenses associated with the staff's annualization of the SAED revenues.

Allocation of Nonjurisdictional Fuel Revenues:

North Star claims that Ohio Edison's allocation of 88.2 percent of total fuel costs to jurisdictional customers causes those customers to pay a disproportionate share of the company's total energy requirements (North Star Ex. 14, at 27-30). According to North Star witness Drzemiecki, under Ohio Edison's cost-of-service study, jurisdictional customers are responsible for 88.2 percent of fuel costs but only 85 percent of the fuel costs which are included in the energy allocation factor. Staff witness McDonald testified that the staff did not include any nonjurisdictional fuel costs in its determination of the jurisdictional revenue requirement (Staff Ex. 11, at 17). Mr. McDonald claims, therefore, that it would be improper to include nonjurisdictional fuel revenues as suggested by Mr. Drzemiecki (Id.). On brief, the company pointed out that, in computing his claimed mismatch of energy sales and fuel expense allocations, Mr. Drzemiecki had mistakenly compared unadjusted and adjusted figures. The applicant argues that the unadjusted energy allocation factor should have been compared to the corresponding 88.2 percent factor cited by Mr. Drzemiecki.

The Commission finds that North Star's objection on this issue should be overruled. As both the staff and the company indicated, Mr. Drzemiecki's analysis apparently was based on incorrect assumptions. North Star made no attempt to refute, through cross-examination or additional testimony, Mr. McDonald's contention that the staff had appropriately excluded nonjurisdictional fuel costs from the jurisdictional revenue requirement. Thus, the Commission will adopt the staff's position on this issue.

Mirror CWIP Revenues:

In the company's last rate case, Case No. 87-689-EL-AIR, the Commission implemented a mirrored CWIP surcredit tariff rider to return to customers revenues collected as a result of the inclusion of two projects (Mansfield-Juniper 345 kv and Sammis generator protection) in the CWIP allowance in the company's prior rate case (84-1359-EL-AIR). This tariff rider was instituted by the Commission to effect the so-called "mirror CWIP" provision of Section 4909.15(A)(1), Revised Code, which is intended to credit ratepayers for revenues paid as a return on any property included in rate base, prior to the time the property is used and useful in providing utility service. The CWIP rider expired in May of 1990, some five months after the end of the test year in this proceeding. Since the tariff rider was in effect during the entire test year, the staff followed the proposal set forth in the company's application (Co. Ex. 5A, Sched. B-9; Co. Ex. 5A, Sched. E-4.1A) and deducted from rate base $26,837,306 associated with the two prior CWIP projects (S.R. at Sched. 10.1) and reflected the revenue reduction resulting from the application of the surcredit rider in the staff's base revenue annualization (S.R. at 14-15, Sched. 3.1). Staff witness Hess testified that the effects of the mirror CWIP surcredit rider should not be removed from the revenue requirement calculation in this case because, to do so, would represent a post-test year adjustment (Staff Ex. 14, at 11).

IEC objected to the staff's treatment of the CWIP surcredit tariff rider on the basis that the rider will never be applied to the base rates established in this proceeding and that the rider is not tied in any way to the base rate valuation determined in this case. According to IEC witness Barber, the appropriate treatment in this proceeding is to determine the jurisdictional revenue requirement for this case without regard to the surcredit rider (IEC Ex. 2, at 14). Mr. Barber contends that the effect of returning the mirror CWIP to rate base, and increasing operating revenues by eliminating the effect of the surcredit, is to lower the jurisdictional revenue requirement by more than $1 million (Id.). IEC claims that the post-test year adjustment argument posited by the staff and the company is incorrect since IEC's recommendation does not attempt to adjust test-year operating income based on a change in costs occurring after the test year. According to IEC, the fact that the mirror CWIP surcredit rider was in place during the test year has nothing to do with establishing the appropriate level of rates to be charged after the rider expires. Rather, IEC argues that the level of the surcredit turned on the deduction of mirror CWIP from rate base in Case No. 87-689-EL-AIR, and the Commission's order in that case satisfied the requirements of Section 4909.15(A)(1), Revised Code.

The Commission finds that IEC's proposal should be adopted. We are not persuaded by the arguments that this recommendation violates the test-year concept since the CWIP surcredit rider will not be in effect for any part of the period for which rates are in effect. Further, the elimination of the rider was a known and measurable event during the test year and at the time the company filed its application. Thus, although the CWIP rider was in effect during the entire test year, its expiration prior to the issuance of this order creates the type of "anomaly" which makes the test year unrepresentative for ratemaking purposes. See Board of Commissioners v. Pub. Util. Comm., 1 Ohio St. 3d 125, at 127 (1982); Consumers' Counsel v. Pub. Util. Comm., 67 Ohio St. 2d 153, at 166 (1981). As IEC points out on brief, this mirror CWIP adjustment is comparable to the Commission's consistent use in rate cases of the latest-known fuel component portion of the EFC rate, even if the new fuel component is established after the test year. See Ohio Power Co., Case No. 85-726-EL-AIR (July 10, 1986). The Commission believes that IEC witness Barber's recommendation represents the appropriate treatment of the mirror CWIP tariff rider revenues in this proceeding and, accordingly, it shall be adopted. Further, the appropriate mirror CWIP amount should be added to rate base.

Perry Depreciation Expense:

Ohio Edison objected to the staff's calculation of nuclear fuel disposal costs and the staff's use of units-of-production depreciation for the Perry plant. Specifically, the company claimed that the staff had incorrectly calculated the Perry depreciation factor and the plant's capacity factor (thereby causing an incorrect calculation of the nuclear fuel disposal cost), and that straight-line depreciation should be used to eliminate the types of errors inherent in the units-of-production method (Co. Ex. 9C, at 21-26; Co. Ex. 12C, at 10-12).

Staff witness Kotting agreed with the company that the Staff Report had incorrectly included the effects of a refueling outage in calculating Perry generation and, accordingly, updated the available operating hours from 7,080 to 8,760 and the capacity factor from 71.7 percent to 72.7 percent (Staff Ex. 12, at CK-6; Tr. XXII, 142, 146). Mr. Kotting indicated that, consistent with these changes, Perry generation would increase from 1,837,536 MWh to 2,273,562 MWh (Tr. XXII, 142). According to Mr. Kotting, these changes would result in Perry depreciation expense of $26,926,601 and a nuclear fuel disposal adjustment cost of $1,045,531 (Staff Ex. 12, at CK-3, CK-4; Tr. XXII, 143). These changes are consistent with Ohio Edison's testimony, assuming the use of the units-of-production method for Perry depreciation.

The staff does not agree, however, with the company's proposal to use straight-line depreciation. Mr. Kotting indicated that the mathematical errors contained in the Staff Report are not evidence of any inherent deficiencies with the units-of-production method, as claimed by the company (Staff Ex. 12, at 16-17). Mr. Kotting also claims that the company's concerns about different depreciation factors being used for the different owners of the Perry plant are unfounded since, the next time the Centerior companies file a rate case, their depreciation factor will also be subject to recalculation (Id. at 18). Mr. Kotting notes that Ohio Edison should be more concerned with the inconsistency which would occur if its depreciation rate was calculated using the straight-line method while the other owners were using units-of-production (Id.).

OCC does not dispute the staff's use of units-of-production depreciation for Perry but contends that the 72.7 percent capacity factor used by the company and the staff is unrepresentative, considering Perry's generating history. OCC asserts that the appropriate capacity factor for calculating Perry depreciation should be 62.2 percent, based on the most recent 18-month period of actual data (including the test year) from July 1988 through December 1989 (OCC Ex. 20). OCC claims that the use of historical, rather than forecasted, data is consistent with the staff's position in prior cases and more accurately represents the performance of the Perry plant.

The Commission finds that the staff's position should be adopted for purposes of determining the proper depreciation rate for Perry, as well as for the calculation of nuclear fuel disposal cost. We are not persuaded by the company's arguments that straight-line depreciation should be used for the Perry plant. As staff witness Kotting pointed out, an equal number of assumptions must be employed with the straight-line method as with units-of-production and the errors contained in the Staff Report were simply minor miscalculations, rather than indications of flaws with the units-of-production method (Staff Ex. 12, at 16-18). Indeed, company witness Byrd agreed that, to the extent the underlying assumptions used for either method were incorrect, the resulting depreciation result would also be incorrect (Tr. VII, 197-198). Further, the Commission believes that it would be inappropriate for Ohio Edison to use straight-line depreciation while the other owners of Perry are required to use the units-of-production method. Finally, the Commission notes that there is no evidence in the record upon which an appropriate straight-line depreciation calculation could be made. For all of these reasons, the Commission finds that the units-of-production method should be used in this proceeding for determining Perry depreciation.

Regarding OCC's contention that a 62.6 percent capacity factor should be used, the Commission believes that the 18-month period chosen by OCC is less representative of Perry generating capability than the factor proposed by the staff and the company. OCC fails to consider that the refueling outage contained in its historical period was more than twice as long as refueling outages scheduled for subsequent years (See OCC Ex. 65). Additionally, if the refueling outage contained in OCC's historical sample is removed, only two months of the remaining 13 months show capacity factors less than 72.7 percent, and the last five months of the test year show that Perry operated at an average capacity factor of 96.6 percent (See OCC Ex. 20). Clearly, a forward looking analysis of the Perry plant's expected future operating performance, based on recent historical data, supports the use of the 72.7 percent capacity factor. We find, therefore, that the Perry depreciation expense and nuclear fuel disposal costs calculated by the staff in Revised Schedules 9.3a and 3.18 should be adopted in this proceeding.

Perry Budget Expense Adjustment:

The staff has recommended that the test-year expenses budgeted by the company for operating costs at the Perry plant be reduced by a jurisdictional amount of $3,576,782 (S.R. at 10, Sched. 3.28). The staff's adjustment reflects the difference between the preliminary six months estimated budget, which was used by the company, and the final Perry budget from the plant operators (Id.). Staff witness Hess testified that the staff prefers to use final budgets over preliminary budgets because the staff "does not believe that preliminary budgets reflect an expected level of operating and maintenance costs" (Staff Ex. 14, at 5).

The applicant submits that it rejected using the final budget in its updated filing in this case because the preliminary budget "reflected a more realistic level of operating expenditures for the July through December period" (Co. Ex. 12C, at 19). According to company witness Hall, the actual year-end expenditures for Perry O&M were $5,305,566 over the preliminary budget and $14,048,937 over the final budget (Id.). Thus, Ohio Edison claims that the preliminary budget should be adopted because it is more reflective of the company's actual level of expenditures than the final Perry budget, which the staff recommends be used.

Normally, the Commission would agree with the staff's position that a final budget is preferable to a preliminary budget since the final budget would tend to be more accurate and reliable than a preliminary budget. In this case, however, the applicant has shown that, in preparing its updated filing, the preliminary budget was chosen because expenditures during the first six months of the test year were much closer to the preliminary budget than the final budget submitted by the plant operators. Indeed, when actual figures became available for Perry O&M during the test year, they reflected a level of expenditures nearly $9 million closer to the preliminary budget, compared to the final budget. Under these circumstances, the Commission agrees with the applicant that the staff's recommendation to use the final Perry budget was inappropriate. Accordingly, the company's objection on this issue will be sustained.

Nuclear Decommissioning Expense:

At the hearing in this proceeding, the attorney examiner granted OCC's motion to strike (joined by the staff) a portion of company witness Byrd's prefiled testimony regarding an alleged miscalculation in the Staff Report on nuclear decommissioning costs, on the basis that the applicant had failed to pose an objection to the Staff Report on this issue (Tr. VII, 56-58). Following the attorney examiner's ruling, company counsel made an offer of proof of the stricken testimony and, on brief, the applicant urges the Commission to consider Mr. Byrd's testimony on this issue (Co. Initial Br. at 80-82). On June 5, 1990, the staff filed a motion to strike the section of the company's brief dealing with the stricken testimony.

While the Commission does not consider it necessary to strike the portion of the company's brief cited by the staff, we do find that the examiner's ruling was correct pursuant to Rule 4901-1-28, O.A.C., and Commission precedent. The Commission is not persuaded by the company's argument that the staff and the other parties were put on notice of the applicant's position through its prefiled post-Staff Report testimony. Were the Commission to accept the company's logic, it would render Rule 4901-1-28, O.A.C., essentially meaningless. As we noted in Columbia Gas II, supra, at 50, "Rule 4901-1-28, O.A.C., states that the objections to the

Staff Report by the parties frame the issues in the proceeding". Accordingly, the Commission will not reconsider or reinstate the stricken testimony.

Centerior Audit Savings:

IEC objected to the staff's failure to consider savings related to the Perry plant, which may be identified in the management audit of the Centerior Energy Corporation pursuant to the stipulation adopted in Cleveland Electric Illuminating Co., Case No. 88-170-EL-AIR, et al. (January 31, 1989). Under the terms of the stipulation in the CEI case, the management auditor, Cresap, was to identify targeted levels of annual savings for Centerior's operations. On May 7, 1990, the Audit Advisory Panel for the Centerior audit filed, in Case No. 89-498-EL-COI (In the Matter of the Commission's Consideration of Matters Related to the Stipulation Approved in Recent Cases Involving Cleveland Electric Illuminating Co. and Toledo Edison Co.), the Cresap preliminary report and an agreement, dated April 26, 1990, between Centerior, OCC, and IEC which, among other things, identifies certain O&M cost savings for the Centerior companies. On the final day of hearing, the attorney examiner took administrative notice of the entries and orders issued in Case No. 89-498-EL-COI, as well as the April 26, 1990 agreement filed in that docket (Tr. XXIX, 64-66).

IEC argues that since Cresap identified specific cost savings which can be achieved by the owners of the Perry plant, since Cresap reviewed a time period which incorporates the test year in this case as the basis of the audit recommendations, and since Centerior, IEC, and OCC have reached an agreement that a certain level of cost savings will, in fact, be achieved, the Commission should consider these savings in setting the level of Perry O&M expenses in this proceeding (IEC Ex. 4, at 13; Tr. XVII, 41). On cross-examination by IEC, staff witness DeVore testified that Cresap had estimated the non-Centerior owners' (Ohio Edison, Pennsylvania Power, and Duquesne Light) share of the Perry O&M savings to be $10.3 million (Tr. XXVII, 78). The staff disagrees, however, with IEC's claim that test-year expenses in this case should be adjusted to reflect any cost savings identified by the Cresap audit. According to Mr. Hess and Mr. DeVore, IEC's proposal represents an out of test-year adjustment because any savings associated with the audit will not occur until 1990 and 1991 (Staff Ex. 14, at 5; Tr. XXIII, 142-143; Tr. XXVII, 74).

Ohio Edison also opposes any adjustment to Perry operating expenses based on the Centerior management audit. The applicant argues there is no evidence in the record which would identify savings related to the test year or, in fact, what level of savings would be attributable to Ohio Edison. The company claims that there is no certainty that the savings will occur as the auditor estimates and whatever savings do occur will take effect after the test year (Tr. XXVII, 83-84, 86-87).

The Commission agrees with the staff and the company that no adjustment should be made to Perry O&M in this proceeding based on the preliminary findings of the Cresap audit. Even if Cresap based its findings on Perry expenses during the test year (which is not at all clear from the record - See Tr. XXVII, 76), any savings which may be realized will not occur until well after the test year and adjustments based on those savings would clearly be violative of the test-year concept since, at this point, the savings are too speculative to quantify accurately. See Ohio Water Service Co. v. Pub. Util. Comm., 3 Ohio St. 3d 1 (1983); Consumers' Counsel v. Pub. Util. Comm., 67 Ohio St. 2d 372 (1981). Assuming that the Commission could make adjustments based on the Cresap audit without violating the test-year concept, the record is devoid of any evidence upon which to make such an adjustment. IEC did not produce a witness who could identify savings attributable to Ohio Edison and the only witness with specific knowledge of the Centerior audit, staff witness DeVore, was unable to state what level of the targeted savings would be specifically associated with Ohio Edison. Thus, the Cresap audit provides no basis for the Commission to adjust Perry O&M in this proceeding.

Beaver Valley Administrative and General (A&G) Rebilling:

Original billings to Ohio Edison from Duquesne Light for Beaver Valley Units 1 and 2 A&G expenses were incorrect. In September 1989, Duquesne Light issued revised billings to Ohio Edison for the period of July 1983 through December 1988 (OCC Ex. 2, at 15). This underbilling was due to Duquesne's use of an incorrect expense ratio for bills rendered to the company (Tr. IV, 115). OCC witness Hixon recommends that a jurisdictional exclusion of $4,999,908 be made to the company's cost of service because the rebillings, although paid by the company in the test year, represent an attempt by Ohio Edison to retroactively recover expenses associated with periods prior to the test year (OCC Ex. 2, at 16-17). In the alternative, Ms. Hixon stated that, if the Commission adopts the staff's three-year amortization proposal, certain adjustments should be made to the staff's calculations contained in the Staff Report (Id. at 17-18).

The staff proposes to amortize the Beaver Valley A&G rebilling expenses over a three-year period (S.R. at 10 and Sched. 3.27). Staff witness Meridith testified that the staff agreed with the adjustments to the staff's Schedule 3.27 proposed by Ms. Hixon (Staff Ex. 6, at 6-7). The staff disagrees, however, with OCC's recommendation that the A&G rebilling expenses be totally excluded from the applicant's cost of service. Mr. Meridith stated that the expenses should not be excluded because discovery and notification of the error occurred during the test year, ratepayers have benefited from not having previously paid for these underbillings, and the applicant would likely have recovered these expenses in prior rate cases if it had been aware of the correct level of expenses (Id. at 7-8).

Ohio Edison did not present a witness on this issue but agrees with the adjustment to Schedule 3.27, proposed by Ms. Hixon, and agrees with the staff's recommendation to amortize the rebillings over three years (Co. Reply Br. at 60). Like the staff, the company opposes OCC's proposal to completely exclude the rebilling costs. The company argues that the relevant time period to consider, for ratemaking purposes, is the year in which the expenses were incurred.

The Commission finds that the Beaver Valley A&G expenses should be excluded from the applicant's cost of service in this proceeding. We are not persuaded by the arguments set forth by the company and the staff that, because the rebilling expense was incurred during the test year, the Commission must necessarily pass those costs through to ratepayers. While the test year is the period examined by the Commission to determine an appropriate level of the applicant's revenues and expenses, if the test year is found to be unrepresentative, the Commission will make adjustments to reflect a more representative level. The Commission believes that the A&G rebilling expenses, while incurred during the test year, represent a one-time event since, presumably, Ohio Edison does not expect to incur expenses related to Beaver Valley A&G underbillings in future years. Given the fact that these rebilling expenses reflect a one-time adjustment, not reflective of a normal test-year level of expense, the Commission must deny inclusion of those expenses in the applicant's cost of service. Our decision is consistent with Toledo Edison Co., Case No. 79-143-EL-AIR (February 29, 1980). In that case, the applicant utility sought to amortize, over two years, costs related to a property tax surcharge which had not been included in its prior rate case. The Commission denied inclusion of the expenses in Toledo Edison's cost of service finding: "...this item represents a one-time charge which cannot properly be reflected in future rates. Ohio Edison Co., Case No. 78-1567-EL-AIR (January 30, 1980). Just as the Commission will not order the refund of anticipated expenses which are not actually incurred, it will not increase future rates to reflect unanticipated expenses which have been incurred in the past." Toledo Edison, supra, at 29. Although the applicant has sought to distinguish Toledo Edison, supra, on the basis that the A&G rebilling represents an adjustment to costs that will be incurred in the future, there has been no allegation that the Toledo Edison decision was erroneous. Further, we do not find the company's distinction to be relevant. While some level of Beaver Valley A&G expenses will certainly be incurred by Ohio Edison in future years, the lump-sum rebilled expenses for underbilled amounts between 1983 and 1988 clearly reflect the "one-time" type of expense which we excluded in Toledo Edison. Nor are we persuaded by the arguments raised by the staff on this issue. Despite the staff's contention to the contrary, the Commission must consider the period when the services were rendered, not just when the costs related to those services were incurred. See Section 4909.15(A)(4), Revised Code. The Commission finds that the company has failed to sustain its burden of proof on this issue and, thus, the Beaver Valley A&G rebilled expenses must be excluded from cost of service.

Company Use and Line Losses:

A portion of the electricity generated by Ohio Edison's system is accounted for as company use and line loss. The company use and line loss estimate represents the difference between electricity generated and electricity sold. This estimate is used in the calculation of test-year fuel expense. The applicant has reflected 1,693,772 MWh for company use and line loss and has estimated a loss factor of 11.47 percent for the secondary service level for 1989 (OCC Ex. 1, at 23-24). For off-system sales, the company has assumed a zero percent loss factor (Id.). The staff reviewed these loss factor estimates and found them to be reasonable (Staff Ex. 13, at 12-13).

OCC contends that the company's line loss estimate is overstated. According to OCC witness Effron, the company's actual experience for the 12 months ended June 30, 1989, resulted in a secondary service loss factor of 10.49 percent (OCC Ex. 1, at 24). Mr. Effron also claims that Ohio Edison has improperly allocated losses between jurisdictional and off-system sales by assuming a zero percent loss factor for off-system sales (Id. at 25). OCC recommends that the off-system sales loss factor be assumed to be three percent, consistent with the company's transmission service loss factor.

The Commission concludes that the company has failed to meet its burden of proof that the line loss factors of 11.47 percent for the secondary service level and zero for off-system sales are reasonable. OCC presented evidence that the most recent actual line losses for secondary service, for the 12 months ended June 30, 1989 (which includes the first six months of the test year), averaged 10.49 percent. Not only did the company not present any evidence to rebut OCC, it did no cross-examination of Mr. Effron on this issue. Staff witness Tucker testified that the staff found the company's 11.47 percent line loss figure to be "reasonable" and recommends that it be adopted (Staff Ex. 13, at 12). Mr. Tucker admitted, however, that OCC's proposed 10.49 percent line loss figure is representative of the actual line loss figures for the first six months of the test year and that, if the loss factors continued for the remainder of the test year at a comparable level, the actual loss factor for 1989 would be closer to 10.49 percent than 11.47 percent (Tr. XXII, 85, 91). Mr. Tucker also conceded that he did no investigation to determine the reasonableness of the 11.47 percent loss factor or whether the actual loss factor had increased during the last six months of the test year (Id. at 90-91). The Commission addressed virtually the same issue in Ohio Power Co., Case No. 85-726-EL-AIR (July 10, 1986). In that case, the applicant proposed an estimated test-year line loss factor of 9.44 percent. OCC recommended that the loss factor be reduced to reflect the company's actual experience of 8.4 percent. The Commission found that the company had failed to rebut OCC's evidence and that the company's estimate was overstated. The Commission concluded that the latest known actual loss factor for the preceding 12 months should be used to set the appropriate line loss factor. Ohio Power, supra, at 37-38. We agree with OCC that the secondary service level line loss factor should reflect the most representative level for the test year. The company, having failed to rebut OCC's evidence or offer any explanation why the 11.47 percent loss factor is more representative of test-year experience, has clearly not met its burden of proof on this issue. Accordingly, we will adopt the 10.49 percent loss factor proposed by Mr. Effron.

The applicant has also failed to rebut Mr. Effron's recommendation that the loss factor for off-system sales should be calculated at three percent, rather than zero. The basis of the staff's and the company's contention that the zero line loss factor is reasonable is that "losses are less on off-system sales because interconnections are generally closer than load centers to generation" (Staff Ex. 13, at 13; See OCC Ex. 1, at 25). Although Mr Tucker testified that he did not believe the off-system line losses were anywhere near three percent, he also stated that he did not believe the loss factor was zero and that the company had not supported the zero loss factor (Staff Ex. 13, at 13; Tr. XXII, 76, 94). Despite Mr. Tucker's admission that the line losses are not zero, the staff still recommends that the Commission adopt the company's position of zero line loss for off-system sales. The Commission declines to do so. Mr. Effron based his three percent line loss factor on the same loss factor which the company uses for transmission service and the company failed to offer any testimony on the inappropriateness of Mr. Effron's proposal. While Mr. Effron's proposal to adopt a three percent line loss factor is somewhat speculative, there is no support in the record for the Commission to accept a zero loss factor. Mr. Tucker believes that the off-system losses are "much closer" to zero than three percent, but he has offered no evidence to support an alternative loss factor in this proceeding. As with the secondary service line loss factor, the Commission finds that the applicant has failed to sustain its burden of proof that its proposed zero loss factor is reasonable. The Commission will, therefore, adopt OCC's recommendation to adjust jurisdictional line losses.

Advertising Expense:

The recovery of advertising costs by an Ohio public utility is governed by the standards set forth in Cleveland v. Pub. Util. Comm., 63 Ohio St. 2d 62 (1980). In that case, the Ohio Supreme Court found that utilities engage in four basic types of advertising: institutional, promotional, consumer informational, and conservational. Institutional advertising is "designed to enhance or preserve the corporate image of the utility, and to present it in a favorable light...". Promotional advertising is "designed to obtain new utility customers, to increase usage by present customers or to encourage...one form of energy in preference to another...". Consumer or informational advertising is "designed to inform the consumer of rates, charges and conditions of service, of benefits and savings available to the consumer; [and] of proper safety precautions and emergency procedures and similar matters...". Conservational advertising is "designed to inform the consumer of the means whereby he can conserve energy and reduce his usage, and seeks to encourage him to adopt those means". Cleveland, supra, at 70-71. The court held that costs associated with informational or conservational advertising were recoverable because those advertisements provide "obvious" direct, primary benefits to consumers. Id. at 71. With regard to promotional and institutional advertising, however, the court stated that similar benefits were not readily apparent and that such advertising expenses must be disallowed, "unless the utility can clearly demonstrate a direct, primary benefit to its customers from such ads". Id. at 72-73.

Ohio Edison objects to the staff's exclusion of $1,713,373 in advertising costs which the staff claims are associated with advertisements which are promotional or institutional in nature (Co. Obj. 21; Staff Ex. 7, at 4-8). As an example, the company claims that its ads referring to The Electric Decision Maker and its "Gatekeeper" and "Crime Watch" programs are primarily designed to provide information or promote conservation.

OCC argues that the staff's advertising exclusions do not go far enough and recommends an additional exclusion of $1,228,061 for a total disallowance of $2,941,434. According to OCC, ads such as "Six Points" (OCC Ex. 4A, at 408) and "Kosar Quality #2" (OCC Ex. 4A, at 461) should also have been excluded by the staff because they are intended to promote the purchase of electric heat pumps and furnaces, as well as promoting the increased usage of electricity.

Staff witness Habib testified that the staff reviewed each of the ads proposed by the company and used the "dominant message of the advertisement" test to determine which ads met the standards set forth in Cleveland v. Pub. Util. Comm., supra (Staff Ex. 7, at 5-6). Mr. Habib indicated that, while the ads cited by OCC may have been partially promotional or institutional, the predominant messages were of an informational or conservational nature and, therefore, should not be excluded from the company's cost of service in this case (Id. at 8). Staff witness Hess testified that line 21 of Mr. Habib's Exhibit MH-1a should be deleted to remedy a duplication of EEI media dues (Tr. XXIII, 115-116). The Commission agrees with Mr. Hess and finds that line 21 should be deleted from Mr. Habib's Exhibit MH-1a.

The Commission finds that the company's and staff's positions should be rejected and OCC's recommended exclusion should be adopted, subject to slight modification. As noted in Columbia Gas II at 37, the "dominant message of the advertisement" test has been adopted by the Commission to determine which ads comply with the court's standard in Cleveland, supra. Under this test, if the dominant message of the advertisement is informational or conservational, the dollars associated with the advertisement are fully includable. In all other instances, however, nothing is included as an allowable expense. We believe that the dominant message of only two of the advertisements contained in OCC Exhibit 4A may be considered informational or conservational. These two advertisements, on pages 428 and 703 of OCC Exhibit 4A, are directed towards enhancing economic development in Ohio Edison's service territory. The Commission has previously found that such ads are beneficial to ratepayers because their purpose is to attract new industry to locate in the company's service territory and to encourage existing businesses to remain in the area. See Ohio Edison Co., Case No. 84-1359-EL-AIR (October 29, 1985) at 28-29. Thus, the cost of those two advertisements should be removed from the exclusion recommended by OCC. None of the other advertisements contained in OCC Exhibit 4A exhibit a direct, primary benefit to Ohio Edison's customers. While a few customers may derive some benefit from the programs or products advertised by the company, we do not believe that fact alone is sufficient to allow inclusion of those advertising costs pursuant to the court's standard in the Cleveland case. Accordingly, the Commission will grant OCC's Objections 34 and 35, to the extent described above.

Demonstration and Selling Expense:

The staff excluded from test-year operating expenses demonstration and selling expenses charged to Account 912 (S.R. at 9). Staff witness Habib testified that these expenses were excluded because they were related to promotional activities (Staff Ex. 7, at 8-9). Although Ohio Edison filed an objection to the staff's exclusion of these expenses, the company did not cross-examine Mr. Habib on this issue or address it on brief. Thus, the Commission finds that the demonstration and selling expenses exclusion recommended by the staff should be adopted and the company's objection overruled.

Rate Case Expense:

Ohio Edison originally estimated rate case expense of $46,770 for this proceeding which the staff recommended be amortized over a three-year period (S.R. at 212, Sched. 3.17). The company objected to the staff's understatement of rate case expense as not reflecting the costs incurred by Ohio Edison for outside legal counsel and retained experts (Co. Obj. 23). In his post-staff report testimony, company witness Flower updated the estimated rate case expense to $1,115,000 ($525,000 for outside legal fees, $520,000 for consultants, and $70,000 for other expenses) (Co. Ex. 10B, Att. E). Mr. Flower explained that the substantial increase was due to the fact that the company retained outside legal counsel and an outside consulting firm in December 1989 to assist in preparing and presenting this case (Id.; Tr. V, 160-161). Mr. Flower indicated that outside counsel and consultants were necessary primarily because of the extensiveness of the depositions and interrogatories involved (Tr. V, 102).

OCC made its usual objection to the staff's failure to exclude all rate case expense (OCC Obj. 36), and IEC objected to the staff's recommendation that the Commission review the company's late-filed rate case expense exhibit before establishing a reasonable allowance for rate case expense in this case (IEC Obj. 17). Staff witness Hess testified that Ohio Edison's updated rate case expense of $1,115,000 was "the largest estimate of a rate case expense in recent history" and "seems to be a little high" (Staff Ex. 14, at 3).

On May 24, 1990, the company submitted its late-filed Exhibit 21, which quantifies Ohio Edison's most recent estimate of rate case expenses in this proceeding. According to this exhibit, the company now seeks to recover a total of $1,446,850 for rate case expense, including $647,084 for outside legal services and $591,429 for outside consultants. On brief, the staff argues that the company's rate case expense request is "patently unreasonable" and that the Commission should reduce the company's request by half (to $723,425) and amortize that amount over three years (Staff Br. at 27).

The Commission has consistently found that the preparation, filing, and prosecution of a rate case is an ordinary and necessary feature of utility operation and, as such, must be recognized in the expenses allowed. See Ohio Power Co., Case No. 81-782-EL-AIR (July 14, 1982) at 27. Consistent with that principle, the Commission has traditionally permitted the inclusion of a reasonable amount for this expense. Columbia Gas II, supra, at 39. In Cleveland Electric Illuminating Co., Case No. 86-2025-EL-AIR (December 16, 1987) at 74-75, the Commission allowed CEI to recover $519,000 in rate case expense for a proceeding in which the hearing spanned nearly two months. In that case, however, we noted our "continuing concern over the magnitude of the rate case expense incurred by CEI...". Id. at 75. Having reviewed the applicant's request in this proceeding, the Commission agrees with the staff that the amount of requested rate case expense is unreasonable. We believe that the CEI case provides a measure of comparison for this case and, accordingly, we will limit Ohio Edison's recovery of rate case expense to $520,000, amortized over three years. While the Commission recognizes the complexity and volume of issues and discovery matters in this case, we are also aware that the principal components of the claimed rate case expenditures are related to fees for outside counsel and consultants; neither of which were retained until December 1989. We believe that $520,000 more accurately reflects the level of rate case expense permitted in past cases, while still recognizing the complexity and length of this proceeding. The Commission is concerned with the magnitude of Ohio Edison's requested rate case expense in this proceeding and, accordingly, directs the company, in its next rate case, to provide an explanation of the efforts of its management to control those costs and to assure that such costs are reasonable.

EEI Expenses:

In the Staff Report, the staff recommended that a portion of the assessments paid by Ohio Edison to the Edison Electric Institute (EEI) during the test year be excluded (S.R. at 214, Sched. 3.19). Ohio Edison objected to the staff's exclusion of expenses for EEI dues ($105,512) and expenses related to the Three Mile Island clean-up project ($325,197) while OCC objected to the staff's failure to exclude an appropriate percentage of the company's Media Communication Fund expenses.

OCC witness Chan testified that the staff's adjustment for EEI expenses related to the Media Communication Fund should have been based upon the 1988 NARUC Report of the Committee on EEI Oversight, rather than the 1986 version of the report which the staff used in the Staff Report (OCC Ex. 6, at 6-7). Staff witness Carr agreed that the 1988 report should have been used and adopted Mr. Chan's recommendation (Staff Ex. 3, at 3-4). In adopting the 1988 NARUC report, Mr. Carr increased the percentage exclusion from 7.05 percent to 77.88 percent for the Media Communication Fund expense, as recommended by Mr. Chan, but also made downward adjustments in the exclusion for EEI Dues, Solid Waste Activities, and Air Regulatory Group (Staff Ex. 3, at Ex. DPC-1). Thus, Mr. Carr's total recommended adjustment amounts to a $394,738 exclusion as opposed to the $393,387 originally recommended in the Staff Report.

The Commission finds the staff's position to be reasonable and will exclude $394,738 from the company's proposed cost of service. This amount includes the $325,197 expense for the Three Mile Island clean-up which the Commission is excluding consistent with prior decisions. See Cleveland Electric Illuminating Co., Case No. 86-2025-EL-AIR (December 16, 1987) at 79-80).

Akron Area Corporate Challenge Expenses:

OCC witness Chan testified that $14,000 in expenses related to the Akron Area Corporate Challenge program should have been excluded from Ohio Edison's cost of service (OCC Ex. 7, at 8, RKC-3). Staff witness Carr agreed with OCC that the company's contribution to this program is not related to necessary utility functions and customers received no direct, primary benefit (Staff Ex. 3, at 4). The company claims that these costs should be included because the program contributes to employee health, morale, and performance and, thus, is beneficial to the company and its customers.

The Commission agrees with OCC and the staff that the expenses associated with the Akron Area Corporate Challenge should be excluded from the company's test-year operating expenses since they are not related to providing utility service and customers derive no direct, primary benefit from Ohio Edison's participation in the program. Accordingly, the jurisdictional amount of $12,238 should be excluded from the company's operating expenses.

Employee Membership and Employee Club Expenses:

OCC witness Chan submitted testimony indicating that $1,526 for employee membership dues (Account 930.2) and $37,000 for employee club benefits (Account 926.50) should be excluded from the company's test-year expenses because the costs are not related to the provision of utility service (OCC Ex. 7, at 9-11, RKC-4). Staff witness Zieg testified that the staff agreed in principle with OCC that membership fees which do not result in direct benefits to ratepayers should be eliminated (Staff Ex. 5, at 5). Mr. Zieg stated, however, that the staff did not discover the inclusion of any such expenses and, therefore, the staff disagreed with OCC's proposal to exclude the amount contained in Account 926.50. The staff did not address OCC's recommendation regarding Account 930.2 and Ohio Edison did not submit testimony on this issue. On cross-examination, Mr. Zieg testified that the staff did not do an "in-depth review" of the expenses related to employee memberships or club expenses and, thus, he could not recommend an exclusion without such an analysis (Tr. XIII, 147).

On brief, both the company and the staff attack the credibility of Mr. Chan's analysis, arguing that his recommendation should be accorded no weight because his review of these expenses was limited to looking at the names of the associations Mr. Chan claims should be excluded. Staff argues that "OCC has failed to prove that the expenses charged to company Accounts 930.2 and 926.50 do not primarily and directly benefit ratepayers" (Staff Br. at 33). The Commission notes, first, that it is the applicant which bears the burden of proving the reasonableness of its expenditures and the company presented no testimony on this issue. Next, while the staff is critical of Mr. Chan's analysis, the staff's review was apparently even less comprehensive than Mr. Chan's (See Tr. XIII, 141-151). Accordingly, the Commission finds that the expenses identified by Mr. Chan should be excluded from Ohio Edison's test-year operating expenses, as adjusted on a jurisdictional basis.

Research and Development Expense:

Ohio Edison seeks to recover in this case $5,607,230 for total company research and development (R&D) expense. OCC does not dispute the company's entitlement to recover $4,405,220 for the company's EPRI research subscription. OCC does recommend, however, that the balance of Ohio Edison's claimed expense for other R&D, $1,202,010, should be reduced to $703,518 to reflect the company's actual experience for R&D expense during the test year, rather than six months actual and six months budgeted data used by the company (OCC Ex. 2, at 8-11). The staff has not recommended any adjustments to the amount proposed by the company. Staff witness Zieg stated that, as a policy, staff "does not recommend selective adjustments to whole budgets when actual experience has later been discovered to vary" (Staff Ex. 5, at 4). Ohio Edison presented no testimony on this issue but, on brief, argues that OCC's position is a selective adjustment of a budgeted expense to actual experience which is inconsistent with OCC's position for other operating costs (Co. Initial Br. at 94).

In Columbia Gas I, at 42-43, the Commission addressed a similar set of circumstances related to the applicant's claim for corporate insurance expenses. In that case, the Commission adopted OCC's recommendation that actual, rather than forecasted expenses, should be used since Columbia had failed to "respond to the issue by providing an explanation for the higher than normal estimated July payments and for the 24% difference between estimated and actual test period expenses" (Id. at 43).

The Commission finds that the company has failed to sustain its burden of proof on this issue. While OCC's claim that the test-period estimate is excessive in comparison to the actual expenses incurred may not, in and of itself, be sufficient to prevail on this issue, Ohio Edison has not provided any evidence to explain this difference. Thus, consistent with Columbia Gas I, the Commission will adopt OCC's recommendation on this issue.

The Commission would note that a substantial amount of funds are being included in operating expenses to allow the applicant to recover the cost of its membership in EPRI. The Commission expects the company to use the funds to continue its membership.

Injuries and Damages Expense:

Ohio Edison proposes to include $5,346,493 for injuries and damages (I&D) expense based on six months actual and six months budgeted data. OCC witness Hixon recommends adjusting the company's six and six proposal to reflect Ohio Edison's actual operating experience during the test year of $4,098,668 (OCC Ex. 2, at 12-14). Ms. Hixon claims that the company's actual I&D expense was less than anticipated during the test year due to the settlement of court cases for less than previously estimated and because of a refund of paid premiums from the company's insurer (Id. at 13). As with the prior issue, staff witness Habib claims that OCC's recommendation should be rejected because it represents a selective adjustment to the overall budget (Staff Ex. 7, at 11). The company, while presenting no testimony on this issue, agrees with the staff that OCC's proposal to adjust to actual expenses is an inconsistent selective adjustment (Co. Initial Br. at 94).

The Commission again notes that the company has the burden of proof in this case. The Commission finds that Ohio Edison has a responsibility to provide an explanation for the difference between the estimated and actual test period expenses. OCC has raised a question regarding the reasonableness of a forecasted expense and it is not sufficient for the company to sustain its burden by simply claiming that OCC has made a selective adjustment. The Commission will, therefore, adopt OCC's recommendation on this issue.

FERC Account 908 - Customer Assistance Costs:

Ohio Edison charges to FERC Account 908, Customer Assistance Expense, costs for activities which provide instruction or assistance to customers with the objective being to educate and encourage the safe, efficient, and economical use of electrical services and equipment (Co. Ex. 12C, at 39-40). The company has included a jurisdictional amount of $11,469,494 for recovery in this case (Id. at 39). The staff proposes to exclude $1,561,849 (jurisdictional) from this account which it believes to be promotional or institutional (Staff Ex. 1, Sched. 3.16; Staff Ex. 3, at 2).

The company argues that: 1) the promotional/institutional test used in Cleveland v. Pub. Util. Comm., supra, is applicable only to advertising expenses and the proper test should be only whether the expenses were reasonably incurred; 2) a review of the specific programs charged to Account 908 reveals that their primary intent is to promote the efficient use of electricity; and 3) the staff's review of Account 908 was only superficial. According to company witness Hall, Ohio Edison works closely with customers and appliance dealers to encourage the purchase of appliances which are safe, efficient, and economical and which will, in the long run, improve system load factor (Co. Ex. 12C, at 38-42). Staff witness Carr stated that the programs which were excluded by the staff were intended primarily to achieve growth in sales by the company and were, therefore, "not reasonably related to providing electric utility service" (Staff Ex. 3, at 2).

The Commission has reviewed the description of the programs set forth in Attachment C of Mr. Hall's testimony and concludes that certain aspects of the company's programs excluded by the staff promote the sale and use of electric appliances and energy while other aspects of these programs provide beneficial information to home builders, appliance dealers, and the company's customers. Considering the testimony regarding the benefits derived from these programs, the Commission finds that 50 percent of the test-year expenses excluded by the staff in Schedule 3.16 of the Staff Report, which amounts to $780,925, should be recognized in the company's test-year operating expenses. We believe that this treatment provides an appropriate resolution of this issue and is consistent with our treatment of customer assistance expenses in Ohio Edison Co., Case No. 84-1359-EL-AIR et al. (October 29, 1985), at 29-30.

Reorganization Expense Adjustment:

The company proposes to recover $1,351,819 for test-year reorganization expenses related to a work force reduction plan implemented in 1989 (Co. Ex. 12C, at 27). The components of the company's reorganization expense include costs for severance pay, retraining, outplacement, health care, annuities, and outside consultant and contractor fees. Ohio Edison objected to the staff's exclusion of outside consultant fees for the firm of Temple, Barker, & Sloan (TB&S), the staff's amortization of the reorganization costs over three years, and the staff's reduction of outside contractor fees related to the reorganization.

Staff witness DeVore testified that the costs associated with TB&S's work on the reorganization project were excluded because the staff was unable to verify the firm's role in the project due to the fact that a number of workpapers had been destroyed (Staff Ex. 27, at 5). Regarding the three-year amortization period, staff witness Habib claimed that "some of the reorganization costs will be paid or accrued in more than a one-year period" (Staff Ex. 7, at 10). Mr. Habib also indicated that outside contractor fees should be reduced by using the total company O&M ratio of 73.56 percent, rather than the 32 percent ratio the company identified as applicable to O&M expenditures (Staff Ex. 7, at 10; Co. Ex. 12C, at 27).

Regarding the expense associated with the TB&S's consulting fees, the staff apparently does not dispute the fact that the fees were actually paid by Ohio Edison (S.R. at 139). Rather, the staff disputes recovery for those fees because the workpapers discussing TB&S's activities were destroyed and, therefore, not available for the staff's review (Staff Ex. 27, at 5-6). Company employee Gill (called by the staff as if on cross-examination) explained that, at the beginning of Ohio Edison's reorganization study, senior management ordered such documents destroyed to prevent preliminary information from being leaked to employees which might affect morale and productivity (Tr. XXV, 168).

While the Commission certainly does not encourage the destruction of documents which support a rate applicant's claimed expenditures, under the particular facts of this case, we find that the company should be allowed to recover the requested $329,470 for TB&S's expenses related to the reorganization study. We also reject the staff's proposal to amortize all reorganization expenses over a three-year period. Despite Mr. Habib's claim that some of the reorganization costs would be paid over more than a one-year period, he was unable to cite to any examples where such costs would be spread over a three-year period (Tr. XIV, 192-194). Finally, with regard to the reduction for outside contractor fees, we will accept the company's testimony that only 32 percent of these costs were related to O&M expense while 68 percent were capitalized costs (Co. Ex. 12C, at 27). The staff was unable to refute company witness Hall's testimony on this issue or offer any explanation why the total O&M ratio of 73.56 percent should be applied.

The Commission finds that Ohio Edison should be permitted to recover the full amount requested for reorganization expense. We believe that it is sound policy to encourage utilities to streamline their operations to the extent possible. Reasonable test-year costs associated with performing reorganizations should, therefore, be recoverable in cost of service. We will permit Ohio

Edison to recover $1,090,622 for jurisdictional reorganization expense.

West Lorain Station Costs:

Ohio Edison has objected to the staff's exclusion of expenses charged to FERC Accounts 548 and 549 which reflect costs associated with maintaining the West Lorain generating facilities. The company contends that ratepayers are benefited by expenditures made to maintain the plant in a "cold standby status" since the company plans to return West Lorain to service in the near future and maintaining the plant will reduce the costs of bringing the plant back on-line (Co. Ex. 12C, at 33-34). Staff witness McDonald testified that test-year expenses related to West Lorain are properly excluded for ratemaking purposes because the plant was not in-service on the date certain or at any time during the test year (Staff Ex. 11, at 3-5). Mr. McDonald claims that the staff's exclusion of these costs is consistent with the staff's position in numerous cases because it matches test-year expenses to the rate base exclusion of plant and equipment which is not used and useful (Id.).

The Commission agrees with the staff that the "matching principle" should be employed in this instance to exclude operating expenses associated with a facility that was not in operation during the test year. There is no dispute that the West Lorain plant was not in operation during the test year and the company has indicated that it will not be placed into service for at least two to three years (Tr. VIII, 71-73). We also note that, as indicated in the section on Generating Capacity, West Lorain was not included in the Commission's determination of the company's capacity reserve margin. Given these facts, we are not inclined to deviate from the concept of matching test-year expenses to used and useful plant and equipment.

Amortization Period for Deferred Perry and Beaver Valley 2 Expense:

Ohio Edison proposed to use a 30-year amortization period for both Perry and Beaver Valley 2 deferred costs. Company witness Daniels indicated that the 30-year period was based primarily on the recovery period for the company's composite utility plant (nuclear and non-nuclear), as well as upon the company's composite nuclear depreciation rate, and the Perry and Beaver Valley 2 lease periods (Co. Ex. 9C, at 18-19; Tr. II, 57). The staff has recommended amortization periods of 429 months (35 years, 9 months) for Perry and 443 months (36 years, 11 months) for Beaver Valley 2 based on the remaining NRC license periods for each unit (S.R. at 9-10, Scheds. 3.25 and 3.26; Staff Ex. 6, at 3-5). Staff witness Meridith indicated that the staff's adjustments were based on accounting entries issued by the Commission which authorized the company to amortize the deferred Perry and Beaver Valley 2 operating costs over the lives of the plants (Staff Ex. 6, at 3-5). See Ohio Edison, Case No. 88-144-EL-AAM (February 2, 1988) at 2; Ohio Edison, Case No. 87-985-EL-AAM (October 20, 1987) at 3.

The Commission finds that the amortization periods recommended by the staff should be adopted in this proceeding. The staff's proposal is consistent with the Commission's entries authorizing the deferrals and more accurately reflects the lives of the Perry and Beaver Valley 2 plants. The company's proposed 30-year amortization period is rather arbitrarily based upon a composite amortization rate for all of the company's plants, including the non-nuclear facilities. Accordingly, the amortization periods for deferred Perry and Beaver Valley 2 expenses of 429 and 443 months, respectively, shall be adopted by the Commission.

Wage Annualization Adjustment:

The staff adjusted the company's claimed labor expense for the test year by using the actual number of employees as of November 1, 1989, the latest figures available at the time the Staff Report was prepared (S.R. at 6; Staff Ex. 7, at 3). Staff witness Habib testified that the staff's labor annualization adjustment was employed to reflect the company's work force reduction due to organizational changes and the effects of a hiring freeze during the test year (Staff Ex. 7, at 3). Mr. Habib indicated that the staff would have used the actual number of employees at the end of the test year, December 31, 1989, if that number had been available (Id. at 3-4). Mr. Habib also offered to revise the staff's labor annualization adjustment if the company provided the end-of-test-year number of employees during the hearing (Id.).

The company objected to the staff's wage annualization adjustment on the basis that the staff had failed to account for budgeted positions not affected by the reorganization. According to company witness Hall, since the reorganization affected only the general office group, the staff's adjustment does not recognize unfilled budgeted positions which have been approved by senior management and were not eliminated as a result of the work force reduction (Co. Ex. 12C, at 22-25). The company recommends that its budgeted labor expense be reduced only to recognize the effect of the 129 positions eliminated in the work force reduction program, rather than using an actual level of employees which fails to reflect positions which the company intends to fill (Id.). On brief, the company cited Ohio Power Co., Case No. 85-726-EL-AIR (July 10, 1986) and Columbia Gas II, supra, for the proposition that the staff's recommendation in this case is inconsistent with the Commission's normal practice of basing labor expense on the average number of employees during the test year using actual and budgeted employee levels. The applicant does not dispute that the effects of the reorganization should be considered, but it claims that the staff's methodology arbitrarily relies on a single date in the test year without reflecting a true picture of the level of employees needed to provide reliable service.

The Commission will adopt the staff's recommendation regarding wage annualization. As Mr. Habib noted, the staff used the latest-known employee levels in preparing the Staff Report and agreed to update its recommendation using end-of-test-year numbers if the company provided those figures at the time of the hearing. Despite the staff's offer, the record reflects that the company did not provide updated employee numbers but, instead, relied on the position set forth in Mr. Hall's testimony. We do not find the cases cited by the applicant to be inconsistent with the staff's recommendation in this proceeding. In both Ohio Power and Columbia Gas II, supra, the Commission adopted updated actual employee levels as of the end of the test year as the basis for determining labor expense. Indeed, in Columbia Gas II, we stated that using year-end figures was appropriate "[i]n order for the expenses to be realistic and representative..." and was consistent with our precedent. Columbia Gas II, supra, at 32. Ohio Edison's failure to provide year-end employee numbers in this proceeding dictates that, consistent with our prior decisions, we will use the latest-known figures in determining labor expense. Since the record provides no number later than the staff's November 1, 1989 date, the Commission will adopt the staff's wage annualization adjustment as of that date.

Annualization of Nuclear Outage Costs:

In this proceeding, the staff annualized the company's test-year incremental operation and maintenance expenses associated with refueling outages for Perry, Beaver Valley Unit 1, and Beaver Valley Unit 2 (S.R. at 9, Sched. 3.20). The staff amortized the total nuclear refueling outage costs for all three units over 18 months based on the assumption that the plants operate on an 18-month refueling cycle (Staff Ex. 10, at 11). In addition to the staff's adjustment in the Staff Report, staff witness Soliman testified that the applicant has not complied with three Commission accounting orders which directed Ohio Edison to book and defer nuclear refueling outage costs for Perry and Beaver Valley Unit 2 and to establish and maintain liability accounts for these costs (Staff Ex. 10, at 11-16). Mr. Soliman indicated that the three Commission entries, Ohio Edison Co., Case No. 87-985-EL-AAM (October 20, 1987); Ohio Edison Co., Case No. 88-506-EL-AAM (April 14, 1988); and Ohio Edison Co., Case No. 88-144-EL-AAM (February 2, 1988), were intended to allow the applicant to recover future costs of refueling outages, prior to the company's incurrence of those costs (Id. at 16). Mr. Soliman stated that the same Commission directives were being followed by the Centerior companies and that these accounting orders were consistent with generally accepted accounting principles (GAAP) (Id.). Mr. Soliman recommended that the company be ordered to comply with the Commission's prior accounting directives by using the specific journal entries set forth in his testimony (Id. at 17-21, Atts. ISS-2, ISS-3, ISS-4).

Ohio Edison contends that the staff's 18-month annualization is not reflective of the company's actual nuclear refueling outage expense since only four percent of the total outage costs were directly related to refueling while 96 percent of the costs were attributable to other maintenance activities which were incidentally performed at the time of the refueling outage (Co. Ex. 9D, at 18; Co. Ex. 12C, at 17). Thus, the applicant argues that maintenance costs associated with the nuclear plants during refueling outages should not be annualized because no valid distinction exists for treating nuclear plants differently than non-nuclear plants. Company witness Daniels testified that the company did not implement the Commission's accounting directives because it did not interpret the AAM cases to require the accounting treatments suggested by Mr. Soliman and because the company's auditors considered the Commission's orders to be contrary to GAAP (Co. Ex. 9D, at 23; Tr. II, 69-72; Tr. XXVIII, 21-24). Specifically, Mr. Daniels claims that Statement of Financial Accounting Standards No. 71 (Para. 11b) requires the recovery of expected costs in the current rates and a liability to customers in the event the expected costs do not equal the amount charged (Co. Ex. 9D, at 21-22). Mr. Daniels asserts that the staff's prior recommendations, as contained in the accounting entries, do not meet these requirements (Id.). If the Commission adopts the staff's recommendation in this case, Mr. Daniels urges the Commission to use the actual refueling outage costs for the entire test year ($42,758,199), rather than the $36,731,776 amount used by the staff (Id. at 18).

The Commission agrees with the company that the applicant's nuclear refueling outage expense should not be amortized over the full 18-month refueling cycle since, as indicated by Mr. Daniels, only four percent of the nuclear outage expenses were related directly to refueling the nuclear reactors. The staff's adjustment fails to recognize that the bulk of the expenses incurred, during a so-called nuclear refueling outage, are actually related to routine maintenance on the nuclear units, which cannot be performed during the operating cycles of the units. During the test year, each of the applicant's nuclear units experienced refueling outages. Thus, the company was unable to perform certain maintenance on fossil-fueled units due to the need for capacity while the nuclear units were down for refueling and maintenance. In years where less nuclear refueling outages occur, however, the company would be required to perform more maintenance on its fossil-fueled plants. Depending on which particular year (or other period of time) is examined, therefore, varying amounts of maintenance and refueling costs will be incurred for nuclear and non-nuclear units. If the Commission were to adopt the staff's recommendation to annualize nuclear outage expenses over an 18-month period, based solely on the test-year nuclear outage costs, the company would not be fully compensated for its refueling and maintenance costs since no similar adjustment has been proposed to annualize the company's non-nuclear maintenance expenses. The Commission finds that the staff's recommendation would result in an unrepresentative recovery of nuclear refueling and maintenance expenses and would undercompensate the company for expenses actually incurred. Accordingly, we reject the staff's recommendation to annualize nuclear refueling outage expenses in this proceeding. Although we are rejecting the 18-month period proposed by the staff, we are doing so based upon facts particular to this case. We are not making a generic finding with precedential effect with regard to the treatment of all nuclear refueling outage costs.

We are not persuaded, however, by the applicant's contention that the accounting orders in Case Nos. 87-935-EL-AAM, 88-144-EL-AAM, and 88-506-EL-AAM are inconsistent with GAAP. As indicated by Mr. Soliman, the Centerior companies have complied with the Commission's directives to book and defer future refueling outage costs and to establish and maintain liability accounts for these costs. Further, even if the accounting treatments ordered by the Commission could be interpreted as being inconsistent with GAAP, the Commission has full authority pursuant to Section 4905.13, Revised Code, to issue accounting orders without reference to GAAP, and the company may not ignore or disobey the Commission's orders. We suggest that if the applicant disputes the applicability of future Commission directives, the company would be wise to seek a waiver from the Commission before deciding not to comply. The Commission directs Ohio Edison to work with the staff to insure that the company's accounting treatment for nuclear refueling outage expenses is consistent with this order and with the Commission's prior accounting entries.

<u>Short-Term Sales Reduction:</u>

Ohio Edison annualized test-year AMP-Ohio sales to reflect an anticipated 125 MW level. This annualization increased the applicant's sales by 339,018,062 kWh. The company also reflected the annualization of sales in the jurisdictional allocation factors, resulting in increased non-jurisdictional loads and lower jurisdictional allocation factors, and reducing the amount of costs to jurisdictional customers (Co. Ex. 10A, at 8-9). The third, and final, part of the company's AMP-Ohio adjustment was to reflect a reduction in other short-term sales as an alternative to increasing power production expenses as a result of the anticipated 339,018,062 kWh increase in sales. The applicant claims that if its proposal to reduce other short-term sales is rejected, the Commission must, at a minimum, increase test-year expenses by $1,444,217 to reflect the operating costs necessary to generate the additional kWh sales (Co. Ex. 12C, at 43).

The staff, while accepting the increased AMP-Ohio sales and the lower jurisdictional allocation factors, rejected the applicant's proposal to reduce other short-term sales (S.R. at 5, Sched. 3.4). Staff witness Soliman testified that the staff's rejection of the short-term sales reduction was based on the staff's belief that an increase in sales to one customer will not necessarily eliminate sales to other customers (Staff Ex. 10, at 7-8). In its reply brief, the staff also argues that, since the staff had annualized test-year operating expenses to reflect a normal level of expenses, no further adjustments were necessary to account for the increased AMP-Ohio sales (Staff Reply Br. at 6).

The Commission will not adopt the company's recommendation to offset increased production expenses by reducing short-term sales since the record does not clearly indicate how the proposed reduction in short-term sales would simulate the increased nonfuel O&M expenses associated with increased AMP-Ohio sales. The Commission agrees with the applicant, however, that the recognition of increased sales and the corresponding reduction in the jurisdictional allocation factor must also recognize the additional nonfuel production costs needed to generate the additional capacity for the increased sales. Accordingly, the Commission finds that the applicant's test-year operating expenses should be increased by a jurisdictional amount of $1,230,481.

Perry 68 MW Purchase Power Adjustment:

Both the applicant and the staff adjusted the company's test-year operating expense to remove demand charges resulting from the June 1, 1989 termination of Ohio Edison's 68 MW power purchase agreement with CEI (S.R. at 6, Sched. 3.7). The staff's further removal of energy charges was the basis of the company's objection that the staff's adjustment understated operating expenses because the applicant would be required to produce or purchase power to replace the 68 MW of capacity no longer received under the contract with CEI (Co. Ex. 12C, at 20-22). Company witness Hall stated that the necessary replacement power would be generated or purchased at an estimated additional cost of $380,558, on a jurisdictional basis (Co. Ex. 12C, at 22). This replacement cost estimate is based on 73,737 MWhs, which is the amount of power the applicant actually received in early 1989 while the purchase power agreement was still in effect (Tr. IV, 174).

The staff disputes the company's contention that the proposed replacement power adjustment is not already part of the overall revenue requirement recommendation. Staff witness Soliman explained that if the applicant incurs higher costs for replacement power, it will recover the additional fuel costs through EFC proceedings (Staff Ex. 10, at 10). To the extent that the company incurred additional O&M costs during the test year, Mr. Soliman stated that those costs have been accounted for as part of the staff's calculation of test-year O&M expenses (Id.). The staff argues that the applicant's proposed adjustment is based entirely on hypothetical costs of replacement power and that the company has not produced any evidence to show that it actually incurred any such additional costs during the test year.

The Commission finds that the staff's exclusion of the energy charge associated with the 68 MW Perry purchase agreement, for the entire test year, had the effect of understating the applicant's cost of replacing that power for the first five months of the test year, when the agreement was in effect. As Mr. Soliman conceded, the company's allowance in its budget to cover the cost of replacement power applied only to June through December of 1989 (Tr. XX, 44). Thus, the staff's adjustment fails to account for the fact that, during the first five months of the test year, Ohio Edison incurred nonfuel costs related to power received under the agreement, but which the staff excluded in Schedule 3.7 of the Staff Report. The Commission believes that these excluded costs have not been recognized as part of the staff's overall revenue requirement recommendation and, accordingly, the applicant's request to recognize $380,558 in additional O&M expenses will be granted.

Sale of Accounts Receivable:

On November 30, 1989, the applicant sold its accounts receivable, except PIP receivables and locally billed accounts, to OES Capital, a subsidiary of Ohio Edison (S.R. at 11; OCC Ex. 1, at 17). The staff adjusted test-year operating expenses to recognize the discount and the administrative expenses of this transaction on Schedule 3.30 of the Staff Report and reduced working capital requirements on Schedule 11.2 (see discussion in Rate Base section). When the accounts receivable are sold to OES Capital, the company does not receive the full amount of the receivable. Rather, the amount received by the company is less a financing discount and any administrative expenses incurred by the subsidiary (Co. Ex. 10B, at 11). The staff adopted company witness Flower's recommendation that a 13-month average of the accounts receivable (October 1988 through October 1989), which were subject to sale to OES Capital, should be used to calculate the discount expense (Staff Ex. 10, at 21). The staff also agreed with the company that each type of account receivable shoul a different discount period (Id. at 23).

OCC witness Effron recommended four modifications to the staff's calculation of expenses related to the sale of the accounts receivable. First, Mr. Effron proposes that the discount rate be applied directly to the amount of the reduction in revenue lag dollars, rather than being applied to the 13-month average of accounts receivable. Mr. Effron claims that such treatment provides a better matching of costs and benefits because, unlike the 13-month average approach, it is synchronized with the proposed rate base treatment adopted by the staff. Mr. Effron's second recommendation is that the authorized return on equity in this case be used to the calculate the discount rate for the accounts receivable. Both the staff and the company have agreed with this proposal (Staff Ex. 10, at 23; Tr. V, 153). Third, OCC proposes that the calculation of the discount expense should recognize that customer deposits transferred to OES Capital represent a low-cost source of capital which are not affected by uncollectible considerations associated with accounts receivable. OCC's fourth recommendation is that the discount rate should be applied only to the net amount advanced by OES Capital, rather than on the gross balance of the receivables transferred by the applicant. Mr. Effron claims that the investment made by OES Capital is equal to the amount which it advances, not the amount which it ultimately receives in payment for the receivables which it has purchased. Thus, according to Mr. Effron, allowing OES Capital to earn a return on the total accounts receivable would permit OES Capital to earn a return on an investment which it has not made (OCC Ex. 1, at 17-22).

The Commission will reject OCC's first recommendation and adopt the staff's use of the 13-month average of the balances of accounts receivable for the calculation of the discount expense. The Commission is not persuaded by OCC's contention that the discount expense should be calculated based on the reduction in the revenue lag dollars. As noted by Mr. Soliman, use of the average balances more accurately reflects the actual accounts that are subject to sale to OES Capital. Mr. Effron's second recommendation will be accepted. Both the staff and the company have agreed that the discount rate applied to the accounts receivable should be based on the return on equity determined in this proceeding. OCC's third proposed adjustment will also be adopted. As Mr. Effron explained, customer deposits have become a low-cost source of funds to OES Capital which should be recognized in calculating the discount rate. These deposits represent funds which are not subject to the same uncollectible problems as accounts receivable and, in addition, the value of the funds related to customer deposits is enhanced by the fact that a portion of the deposits go unclaimed each year. OCC's final recommendation will also be accepted by the Commission. We are not convinced by the staff's claim that the face value of the accounts receivable transferred from the company represents the investment upon which OES Capital should earn a return. The Commission believes that the calculation of the discount rate should be based only on the amount advanced by OES Capital, as calculated by Mr. Effron. This treatment will avoid a windfall to OES Capital by precluding it from earning a return on an investment which it has not actually made.

Federal Income Taxes:

Beaver Valley 2 Deferred Depreciation

OCC witness Hixon testified that the staff had incorrectly adopted the company's 30-year amortization period for Beaver Valley Unit 2 deferred expenses, on Schedule 4.1 of the Staff Report (OCC Ex. 2, at 19). As recognized on Schedule 3.26, the deferred depreciation should be amortized over 443 months, the remaining life of the plant. Staff witness Soliman agreed with Ms. Hixon that the amortization amount of Beaver Valley 2 deferred depreciation expense on Schedule 3.26 should be used as a reconciling item on Schedule 4.1, line 6 (Staff Ex. 10, at 27). The applicant presented no testimony on this issue and did not address it on brief. The Commission finds OCC's recommendation to be reasonable and it shall be adopted.

Deferred Taxes Related to the Excess of Perry Tax Accelerated Depreciation Over Straight-Line

Company witness Sitarz testified that the staff had failed to carry its adjusted units-of-production depreciation (Sched. 9.3a) to the calculation of deferred taxes on excess accelerated over straight-line tax depreciation for Perry (Co. Ex. 15B, at 15). OCC witness Hixon also pointed out that, on Schedule 4.1, the staff erred in its calculation of deferred taxes related to the excess accelerated over straight-line tax depreciation by not making an adjustment to the deferred taxes to reflect the reduction of Perry depreciation expense (OCC Ex. 2, at 21-22). Staff witness Soliman agreed with both the company and OCC that the same Perry depreciation rate used on Schedule 9.3a of the Staff Report should be used to calculate the deferred taxes on excess accelerated over straight-line tax depreciation for Perry on Schedule 4.1 (Staff Ex. 10, at 27-28). Since the parties are in agreement on this issue, the Commission will adopt the staff's revised position.

Deferred Taxes on Perry and Beaver Valley 2 ITC Pass-Through and Bad Debts

Staff witness Soliman agreed with the applicant's Objection 38, that the staff's calculation, on Schedule 4.1, of deferred taxes on "Perry 1 Investment Tax Credit (ITC) Pass-Thru, Beaver Valley 2 ITC Pass-Thru, and Bad Debts", was incorrect and should be adjusted as proposed by the company (Staff Ex. 10, at 25). No other party addressed this issue. The Commission finds that the staff's adjustment should be adopted.

Deferred Taxes on ITC Lease Expense

Mr. Soliman also agreed with the company's Objection 39, that the staff had used the wrong number to calculate deferred taxes on ITC lease expense on Schedule 4.1 of the Staff Report (Staff Ex. 10, at 25-26). No other party addressed this issue. The Commission finds that the staff's adjustment should be adopted.

Bruce Mansfield A&G Expense:

Staff witness Habib explained that the staff agreed with the company's Objection 35 and, accordingly, adjusted Schedule 3.32 to eliminate the staff's proposed .04 percent adjustment to the applicant's portion of the Bruce Mansfield A&G expenses. Mr. Habib agreed that the staff's prior adjustment would be an improper out-of-test-year adjustment since it was based on a change in the A&G rate reduction which was not estimated to occur until July 1, 1993 (Staff Ex. 7, at 10-11). No other party addressed this issue. The Commission will adopt the staff's revised position.

Senate Bill 156 Property Tax Expense:

By its Objection 41, the applicant proposed to base the calculation of property taxes on the end of test-year plant-in-service balances, rather than upon date certain balances. In the alternative, the company proposed that, pursuant to Senate Bill 156, only one-half of the maximum effect of property tax expense be recognized for ratemaking purposes (Co. Obj. 41(a)). Staff witness Hensel disagreed with the company's Objection 41, but accepted the alternative proposal set forth in Objection 41(a). On brief, the applicant essentially withdrew its Objection 41 and recommended that the company's alternative proposal, as accepted by Ms. Hensel, should be adopted by the Commission. No other party addressed this issue. Accordingly, the Commission finds that Ms. Hensel's recommendation should be adopted.

Jurisdictional Allocation Factor for Perry and Beaver Valley 2 Deferred O&M Expenses:

Ohio Edison indicated in its Objections 30 and 31 that the Staff Report, in Schedules 3.25 and 3.26, had applied an incorrect jurisdictional allocation factor in the staff's calculation of amortization expenses associated with deferred Perry and Beaver Valley 2 operation and maintenance expense. After reviewing the testimony of company witnesses Daniels and Flower, staff witness McDonald agreed with the company (Staff Ex. 11, at 5-7). Thus, Mr. McDonald recommended the use of an allocation factor of 99.42604128 percent on Schedules 3.25 and 3.26, as proposed by the applicant. The Commission finds that the staff's recommendation to accept the company's proposal is appropriate and should be adopted.

PIP Customer Deposit Balance:

By its Objection 30, OCC alleged that the staff had inappropriately used the PIP customer deposit balance as of November 30, 1989, instead of the date certain, in calculating interest expense on Schedule 3.21 of the Staff Report. As staff witness Meridith explained, the staff used the November 1989 PIP deposit balance because Ohio Edison sold its accounts receivable, except for PIP receivables (including PIP customer deposits), to OES Capital during the test year (Staff Ex. 6, at 6, 8). Thus, prior to the November 30, 1989 transfer of the receivables to OES Capital, there had been no separation of PIP receivables from the total amount. OCC presented no witnesses on this issue and did not address it on brief. Accordingly, OCC's objection is overruled and the Commission will adopt the calculation contained on Schedule 3.21 of the Staff Report.

1989 Amortization of Excess Deferred Taxes and ITCs:

In Case No. 88-506-EL-AAM, the Commission granted the applicant's request to institute certain accounting changes including the "(a)doption of an amortization period not to exceed twelve months for the deferred investment tax credit taken under section 46(f)(3) of the Internal Revenue Code which is not restricted, and the excess deferred taxes arising because of the reduction in the corporate income tax rate from 46% to 34%." Ohio Edison Co., Case No. 88-506-EL-AAM (April 14, 1988) Entry at 2. The purpose of Ohio Edison's requested accounting changes in that proceeding was to allow the company to delay an increase in base rates to reflect the company's ownership and leasehold interest in Beaver Valley Unit 2. In 1989, pursuant to the authority granted by Case No. 88-506-EL-AAM, Ohio Edison flowed back into book income $14,990,999 of unrestricted excess deferred taxes and $33,150,000 of unrestricted investment tax credits (ITCs) (OCC Ex. 1, at 28).

This flowback of deferred taxes and ITC increased the company's 1989 net income by $48.1 million (Id.). Neither the company nor the staff reflected this income in the applicant's test-year operating income or in the determination of the company's revenue deficiency. OCC recommends that, in determining the applicant's rate base and adjusted operating income in this case, the flow back of the excess deferred taxes and ITCs in 1989 should not be recognized. OCC witness Effron claims that these items represent non-investor supplied funds which should be returned to ratepayers. According to Mr. Effron, the Commission did not intend to make the accounting changes approved in Case No. 88-506-EL-AAM binding for ratemaking purposes, as evidenced by the specific language to that effect in the entry. OCC also disputes the contention that ratepayers have benefited from Ohio Edison's delay in seeking a rate increase. Mr. Effron asserts that, in the long run, any benefits associated with such a delay inure to the benefit of the company because the applicant is presently recording net income and deferring for future recovery net costs of $176 million at a time when its annual income deficiency is no more than $73 million. Thus, OCC proposes to flow back into income the excess deferred taxes and ITCs over three years and reinstate the deferrals for rate base purposes (OCC Ex. 1, at 28-39). Both the company and the staff contend that the rate deferral achieved by the approved accounting changes benefited ratepayers by delaying the filing of a rate case from 1988 to 1990. Company witness Daniels and staff witness Hess claim that, since customers have already benefited from the rate deferral program, adoption of OCC's recommended treatment would allow ratepayers to benefit twice from Ohio Edison's 1989 amortization of the excess deferred taxes and ITCs (Co. Ex. 9D, at 6; Staff Ex. 14, at 9-10).

The Commission finds that OCC's recommendation should be rejected. While the Commission agrees with OCC that the accounting treatments approved in Case No. 88-506-EL-AAM are not binding in this proceeding for ratemaking purposes, we find that there is sufficient evidence in this record to show that ratepayers have benefited from the applicant's delay in filing for rate relief so as not to warrant the adjustments proposed by OCC. On cross-examination, Mr. Hess testified that, at the time the company filed its application in Case No. 88-506-EL-AAM, the staff conducted an analysis of the requested accounting treatments and determined that customers received a benefit from the deferrals and the rate case delay (Tr. XXIV, 110-112). The staff's position is consistent with Mr. Daniels' testimony that ratepayers have received a benefit by avoiding any rate increases over the past two years (Co. Ex. 9D, at 6). Although Mr. Effron indicated in his prefiled testimony that customers did not benefit from the company's rate case delay, he conceded at the hearing that, at least for 1989 and 1990, ratepayers saved money by the company's delay in filing a rate case (Tr. XIV, 38). Further, OCC's position that ratepayers have not benefited from such delays is inconsistent with its own 1990 Annual Report wherein OCC claims that its March 1989 agreement with Ohio Edison to delay seeking a rate increase could save ratepayers up to $100 million (Co. Ex. 36). In its brief, OCC argues that the flow-back of excess deferred taxes and ITCs is mandated by the Fifth and Fourteenth Amendments of the United States Constitution and by Section 4909.15(A)(4), Revised Code. While OCC does not explain the basis of its constitutional argument, apparently it believes that failure to refund excess deferred taxes and ITCs constitutes a taking of property without due process of law. The Commission does not believe that any such "taking" has occurred but, even if we assume that the lack of an explicit flow-through could be considered a taking of property, constitutional due process requires only that the Commission afford notice and a hearing. Clearly, the lengthy hearing process in this proceeding has afforded all parties ample opportunity to address the issues and has satisfied the due process requirement.

Nor is the Commission persuaded by OCC's other assertion, that Section 4909.15(A)(4), Revised Code, requires the Commission to adopt OCC's position. The portion of the statute relied upon by OCC states that the benefits of tax normalizations "may not be retained by the company, used to fund a dividend or distribution, or utilized for any purpose other than the defrayal of the operating costs of the utility and the defrayal of the expenses of the utility in connection with construction work". There is no evidence in the record which indicates that these "funds" have been retained for the company's benefit or used to fund a dividend or distribution. Further, the statute requires only a defrayal of operating costs, not a refund as advocated by OCC. Indeed, the evidence of record in this proceeding indicates that the applicant's operating expenses have been "defrayed" by the excess deferred taxes and ITCs during the two-year period in which the company has foregone rate relief (Staff Ex. 14, at 9-10). The record further shows that ratepayers have received a benefit from this rate case delay and that adopting the adjustment proposed by OCC would confer this benefit upon ratepayers a second time. As company witness Daniels pointed out, absent an ability to flow-through the deferred taxes and ITCs, "no rate deferral program could have been possible" (Co. Ex. 9D, at 6). The Commission finds that OCC's recommendation should be rejected.

Excess Deferred Taxes Attributable to AFUDC:

By its application in this proceeding, Ohio Edison proposed to effect a $216 million rate increase through a two-step process (subject to Commission approval of the applicant's recommended accounting treatment for certain excess deferred taxes related to

AFUDC). The "excess deferred taxes" at issue represent "that portion of accumulated deferred income taxes on AFUDC recorded on the company's books that exceeds the amount that would have been accumulated through the end of the test year in this case had the current federal and state income tax rates been in effect from 1979" (Co. Ex. 9A, at 11). Company witness Daniels explained that, since the federal corporate tax rate had decreased from 46 percent in 1979 to 34 percent in 1988, the amount of taxes the company will have to pay at the time the tax benefit of capitalized interest is passed through to customers is less than anticipated. Mr. Daniels calculated that the company had recorded $58,188,997 in jurisdictional AFUDC-related excess deferred taxes which, when multiplied by the gross revenue conversion factor, has a revenue requirement impact of approximately $94 million. While this tax differential would usually be credited to customers over the life of the applicable asset, the company requested authorization from the Commission in this case to amortize the full differential in one year in order to reduce first year revenue requirements under the company's two-step proposal (Id. at 11-14). The company's two-step proposal contemplated that, during the first year of the new rates, (using a discount adjustment rider) the $216 million rate increase would be reduced by a $94 million credit associated with flowing through the excess deferred taxes. In the second year, the discount adjustment rider would expire and the full increase would be reflected in rates (Co. Ex. 13A, at 4-6). The Commission notes that, pursuant to the stipulation between the company and the staff (Jt. Ex. 3), the applicant's recommendation has been amended to reflect a three-step increase, if the Commission authorizes more than a $198.5 million increase. Under this stipulation, certain excess deferred taxes would also be amortized by the company to minimize the impact of increased rates (See Jt. Ex. 3, at para. 2).

The staff recommends that no step-in of rates using excess deferred taxes as an offset to revenue requirements be authorized in this case unless, as set forth in Joint Exhibit 3, the Commission authorizes a revenue increase greater than $198.5 million. According to staff witness Hensel, the term "excess deferred taxes" is a misnomer since, under the accounting method employed by Ohio Edison, "[t]here are no deferred taxes recorded or accrued on the [company's] books..." (Staff Ex. 9, at 13). Ms. Hensel stated that Ohio Edison uses the "net-of-tax" AFUDC method which accrues AFUDC at a lower rate than the alternative "gross-of-tax" method. Ms. Hensel explained that under the net-of-tax method, tax savings are built in as a permanent reduction to rate base when the plant goes into service. Thus, Ms. Hensel claims that no deferred tax reserves associated with AFUDC exist on the company's books which can be amortized (Id. at 13-16).

OCC, IEC, and North Star oppose the company's two-step increase proposal, as well as the stipulated three-step plan. OCC and IEC recommend that the excess deferred taxes attributable to AFUDC be amortized over three years, regardless of the revenue requirement determined in this case (OCC Ex. 2, at 23-24; IEC Ex. 2, at 15-17). North Star proposes to amortize the excess deferred taxes (apparently in one year) to offset, to the extent possible, any rate increase granted in this case (North Star Ex. 15, at 21). The intervenors generally allege that the excess deferred taxes should be refunded to ratepayers because they represent funds contributed by customers between 1979 and 1989 to which the company has no entitlement. The intervenors argue that, since the company has recognized the existence of excess deferred taxes associated with AFUDC, and, since those excess deferred taxes are unrestricted, there is no reason why ratepayers should not benefit from the availability of the excess deferred taxes regardless of the magnitude of the authorized rate increase in this proceeding. The intervenors also claim that the staff's contention that the excess deferred taxes do not exist is inconsistent with Joint Exhibit 3, wherein the staff has agreed that certain excess deferred taxes attributable to AFUDC should be flowed through in the event of a $198.5 million revenue increase.

The Commission agrees with staff witness Hensel that, since there are no deferred tax reserves associated with AFUDC on the company's books, there are no excess deferred taxes to amortize. Under the net-of-tax method employed by Ohio Edison, any tax savings which have occurred are built in as a permanent reduction to rate base. Thus, the so-called tax savings have already benefitted ratepayers by reducing rate base when the plant goes into service, and resulting in lower plant-in-service balances and lower depreciation expense. We are not persuaded that the company should be forced to additionally create excess deferred taxes through an accounting entry, in order to flow revenues back to ratepayers. Rather, the Commission is convinced, as pointed out by Ms. Hensel, that the term "excess deferred taxes" is actually a misnomer. Indeed, customers have not paid additional funds for the company's future tax liability because the so-called excess deferred taxes were never normalized for ratemaking purposes. Accordingly, the objections of OCC, IEC, and North Star, related to the issue of excess deferred taxes attributable to AFUDC, shall be overuled.

<u>Operating Income Summary</u>:

Consistent with the foregoing discussion, the Commission finds the company's jurisdictional adjusted operating income for the 12 months ending December 31, 1989, the test period in this proceeding, to be as set forth in the following schedule:

Adjusted Operating Income
(000's Omitted)

Operating Revenues	$ 1,666,054
Operating Expenses	
Operation and Maintenance	855,447
Depreciation	163,646
Taxes Other Than Income Tax	162,923
Income Taxes	119,187
Total Operating Expenses	$ 1,301,203
Net Operating Income	$ 364,851

PROPOSED INCREASE

A comparison of jurisdictional operating revenues of $1,666,054,000 with allowable jurisdictional expenses of $1,301,203,000 indicates that under its present rates, the applicant realized net operating income in the amount of $364,851,000 based on adjusted test-year operations. Applying this dollar return to the jurisdictional rate base of $4,045,603,000, results in a rate of return under present rates of 9.02 percent. This rate of return is below that recommended as reasonable by any of the witnesses testifying on the subject and, accordingly, the Commission must conclude that the company's present rates are insufficient to provide it reasonable compensation for the service rendered customers affected by the application. Rate relief is clearly required at this time.

Under the rates proposed by the applicant, additional annual revenues of $216,420,000 would have been realized based on the analysis of test-year operations accepted herein. On a pro forma basis, which assumes necessary revenues and expense adjustments calculated in a manner consistent with that analysis, the proposed increase would have yielded an increase in jurisdictional net operating income of $134,156,000, resulting in net operating income of $499,007,000. Applying this dollar return to the jurisdictional rate base results in a rate of return of 12.33 percent. This rate of return exceeds that recommended as reasonable by any of the witnesses testifying on the subject. Thus, the Commission finds that although the existing rates are inadequate, the rates proposed in the application would produce revenue which exceeds that recommended as reasonable by any of the expert witnesses. Thus, further analysis is required to establish a reasonable earnings opportunity for this company.

RATE OF RETURN

Five witnesses presented cost of capital analyses to be considered by the Commission in determining a fair rate of return for purposes of this proceeding. Company witness Burg recommended that Ohio Edison's authorized rate of return be set at 11.68 percent (Co. Ex. 6C, Att. 3). Staff witness Cahaan testified that an overall range of 10.83 to 11.28 percent would be reasonable (Staff Ex. 17A). IEC witness Kennedy recommended a return of 10.89 percent (IEC Ex. 3, at 40; Tr. XVII, 8-11). OCC witnesses Pultz and Talbot recommended overall rates of return of 10.84 and 10.66 percent, respectively, although Mr. Pultz's proposal represents OCC's recommendation for purposes of this proceeding (OCC Ex. 7A; OCC Ex. 11, at 46). Several other witnesses presented rate of return-related testimony in this proceeding but did not offer independent cost of capital analyses. North Star witness Smith critiqued the applicant's and the staff's rate of return recommendations in this proceeding (North Star Ex. 15) while company witnesses Abrams, Benderly, Addison, and Curley offered testimony on the company's overall revenue requirements and the impact of various recommendations on the company's financial indicators (Co. Exs. 17, 18, 19, 20). Rate of return was discussed in the briefs of the applicant, the staff, IEC, OCC, and North Star.

End-Result Analysis:

Ohio Edison argues that this is a financial integrity case of constitutional dimensions and urges the Commission, in setting the rate of return, to step back and look at the end result to see that the company will be given the opportunity to maintain and support its credit and to raise needed capital. The applicant relies on Federal Power Comm. v. Hope Natural Gas Co., 320 U.S. 591 (1949), and Bluefield Water Works Co. v. Pub. Service Comm., 262 U.S. 679 (1923), for the proposition that what really matters is the impact of the rate order on the company's financial integrity, rather than the precision of the calculations. This "end-result" theory of setting rates was the primary tenet of each of the company's rate of return witnesses.

Company witness Burg indicated that, while he had performed a cost of capital analysis, his primary concern was in achieving a reasonable end result (Co. Ex. 6C, at 11, 26, 32). Ohio Edison also presented several additional witnesses who suggested that the Commission should grant the company's entire rate request because of the negative impact on the company's financial condition which would result if such rate relief were not achieved. Company witness Abrams, a vice-president at Duff & Phelps, testified that the revenue levels recommended by the staff would place the company's credit rating in serious jeopardy (Co. Ex. 17, at 8). Mr. Abrams also stated that even with the full rate relief requested, Ohio

Edison would just barely be able to maintain its current rating and that the full amount should be authorized, even if the cost of capital analysis does not support such a revenue level (Id.). Company witness Addison, a vice-president at Citibank, testified that the staff's proposed level of increase would detrimentally affect Ohio Edison's ability to obtain future financing (Co. Ex. 18, at 9). Mr. Addison admitted that his testimony was not offered in support of any particular revenue requirement but was "offered in support of whatever the number is that is required to generate the kinds of coverage ratios that we look for" (Tr. III, 224). Company witness Curley, a managing director at Morgan Stanley, indicated that the full rate relief requested would not completely restore Ohio Edison's financial health and that even the staff's recommended upper range would cause a serious deterioration in the company's financial condition (Co. Ex. 20, at 3-4). Mr. Curley stated that it would be impossible for Ohio Edison to maintain its current dividend level at the staff's proposed revenue level (Id. at 9). Mr. Curley further testified that he believed the Commission should focus on the bottom line to insure a financially healthy company (Tr. VII, 52-53).

The Commission has rejected similar result-oriented arguments in a number of prior cases. For example, in Columbus & Southern Ohio Electric Co., Case No. 83-314-EL-AIR (December 20, 1983), the Commission rejected the applicant's attempt to attain certain financial goals through a higher rate of return. The Commission stated that it "must rely on market measures of investor return requirements, not the amount of rate relief which will produce certain desired results". Id. at 8. In Cleveland Electric Illuminating Co., Case No. 79-537-EL-AIR (July 10, 1980), the Commission declined to set the rate of return at a level which the applicant deemed necessary to improve its financial ratings. The Commission found that, while higher ratings may lower a company's future financing costs, the real issue is whether ratepayers should be required to pay a higher rate of return to achieve those financial goals. As the Commission stated, "[w]ere it not for this consideration, we could simply send the rate of return witnesses home and decide the earnings requirement question solely through an analysis of coverage ratios". Id. at 34. The Commission has similarly rejected outcome-oriented rate of return recommendations in Toledo Edison Co., Case No. 81-620-EL-AIR (June 9, 1982) and Columbus & Southern Ohio Electric Co., Case No. 81-1058-EL-AIR (November 5, 1982). In addition, the Ohio Supreme Court has rejected an appellant-utility's "end-result" argument. Dayton Power & Light Co. v. Pub. Util. Comm., 61 Ohio St. 2d 215 (1980). In that case, the appellant contended that the Commission had made several errors which contributed to an unreasonable end result. The court, however, upheld the Commission's decision finding that the Commission's judgment was not unreasonable. Id. at 217-218.

The Commission finds that Ohio Edison's end-result analysis is inappropriate as a basis for setting the rate of return, or the company's overall revenue requirement. Although the information provided by the applicant's "financial experts" may have some value in providing an insight into the company's overall financial condition, the Commission believes that the rate of return established in this proceeding should be based upon the company's cost of capital. The applicant's concern that the cost of capital recommendations offered in this proceeding may not accurately capture the company's true revenue requirements is without merit. Undoubtedly, investors perceived Ohio Edison stock to be a somewhat riskier investment in the March to April 1990 time period, as evidenced by the decline in market price. This increased perception of risk need not, however, be remedied by the application of end-result motivated adjustments. Rather, the financial impact of market declines is adequately recognized in the calculation of the yield requirement under the DCF formula. The DCF methodology also captures investor growth expectations based on information available to the market. Thus, no additional adjustment is necessary to determine the appropriate capital requirement. Clearly, the Hope and Bluefield cases do not require the Commission to set rates based solely on the applicant's alleged financial needs. The Commission must, instead, rely on the evidence presented regarding investor return requirements. Otherwise, no need would exist for rate base or rate of return determinations. See Columbus & Southern Ohio Electric Co., Case No. 83-314-EL-AIR (December 20, 1983) at 8.

Capital Structure:

All of the witnesses presenting testimony on the applicant's cost of capital used the Ohio Edison consolidated capital structure in their analyses (Co. Ex. 6A, at 30; S.R. at 23; IEC Ex. 3, at 40; OCC Ex. 7, at 5; OCC Ex. 11, at 13). The most current data available, as of December 31, 1989, reveals the following capital structure: 48.96 percent long-term debt; 7.51 percent preferred stock; and 43.53 percent common equity (Co. Ex. 6C, at 27-28; Staff Ex. 17, 15-16; Staff Ex. 17A). The Commission finds this 1989 year-end capital structure to be reasonable for purposes of determining the appropriate cost of capital in this case.

Cost of Debt and Preferred Stock:

Each of the cost of capital witnesses also agrees that the current embedded costs associated with long-term debt and preferred stock should be employed by the Commission in this proceeding (Co. Ex. 6C, at 28; Staff Ex. 17, at 15-16; Tr. XVII, 11; OCC Ex. 7, at 5-6; OCC Ex. 11, at 14). As indicated by Mr. Burg (Co. Ex. 6C, Att. 2) and Mr. Cahaan (Staff Ex. 17A), the Ohio Edison embedded costs of long-term debt and preferred stock, as of

December 31, 1989, were 9.83 and 8.54 percent, respectively. The Commission finds these cost components to be reasonable and they will be adopted in determining the company's overall cost of capital.

Cost of Equity:

While the task of determining the proper cost of debt and preferred stock is largely a mechanical process, as evidenced by the parties' agreement on those issues, analyzing the cost of common equity involves estimations. The process of estimating the appropriate cost of equity may, as the Commission has noted in a number of prior cases, be accomplished through a variety of methods. The Commission must ultimately select a recommendation which, in its best judgment, appears to be the most reasonable considering all of the facts and circumstances of the particular case.

In this proceeding, several different methods and recommendations were presented for the Commission's consideration as to the appropriate cost of common equity for Ohio Edison. Company witness Burg employed a discounted cash flow (DCF) analysis to arrive at his recommended 14.32 percent cost of equity (Co. Ex. 6C, Att. 3). Staff witness Cahaan also used a company-specific DCF analysis in his recommended range of 12.37 to 13.39 percent (Staff Ex. 17A). OCC witness Pultz proposed an 11.70 percent cost of equity based on his DCF analysis (OCC Ex. 7A, Revised Sched. FRP-3). OCC witness Talbot recommended an 11.27 percent equity return based on his comparable company DCF analysis, as well as a company-specific DCF study of Ohio Edison (OCC Ex. 11, at 46). IEC witness Kennedy combined the results of his DCF analysis of Ohio Edison with the results of a comparable company DCF analysis and a risk premium study in reaching a recommended cost of equity of 12.20 percent (IEC Ex. 3, at 37-40). During his oral testimony, Dr. Kennedy suggested that, given the stock price decline in the immediately preceding period, he would recommend increasing the cost of equity to 12.50 percent (Tr. XVII, 10). North Star did not sponsor an independent rate of return analysis but, on brief, argues that the low end of the staff's cost of equity range should be adopted (North Star Br. at 19).

The DCF formula estimates the required return on equity by adding the expected dividend yield (dividend divided by a representative stock price) and the expected rate of growth in dividends. Although the Commission has not precluded the use of alternative methods of determining cost of capital, it has traditionally relied upon the DCF method as the most reliable measure of a company's cost of equity.

Dividend Yield

In calculating the dividend yield, each of the witnesses performing DCF analyses, except Mr. Talbot, originally used a 12-month average of Ohio Edison stock prices. The staff and company witness Burg relied on the 12-month average price for the test year of $21.31 per share (Co. Ex. 6C, at 29; S.R. at 24). IEC witness Kennedy also employed a 12-month average during the test year in calculating dividend yield (IEC Ex. 3, at 17). OCC witness Pultz used stock prices for the 12 months ending February 1990 in arriving at an average price of $21.65 (OCC Ex. 7A, Revised Sched. FRP-3).

In his pre-filed testimony, staff witness Cahaan noted that Ohio Edison's stock price had fallen 18 percent between the end of December 1989 ($23.75) and March 8, 1990 ($19.50) and then had stabilized between March 8 and April 12, 1990. Accordingly, Mr. Cahaan recommended that an average price between March 8 and April 12, 1990 ($19.55) be employed to recognize this "price break" Staff Ex. 17, at 15-19). At the hearing, Mr. Cahaan updated his data to include the period of March 8 through May 4, 1990 and, accordingly, recommends that the average stock price for that period ($19.31) be used to calculate the dividend yield (Staff Ex. 17A; 17B). Mr. Cahaan claims that this "break" in the price of Ohio Edison stock warrants a departure from the staff's traditional recommendation to use a 12-month average. Mr. Cahaan contends that the cost of equity for Ohio Edison has clearly risen since the end of 1989 and, thus, the stock price used to calculate the dividend yield should reflect that increased cost. According to Mr. Cahaan, use of a short-term average price is appropriate in this case to account for an increased perception of risk and a decreased expectation of future growth (Staff Ex. 17, at 15-19). In his rebuttal testimony, company witness Burg identified a second "price break" which he claimed occurred on April 20, 1990. Mr. Burg testified that, from April 20, 1990 to May 14, 1990 (the date when he offered his rebuttal testimony), Ohio Edison stock traded in a range of $18.25 to $19.75 and averaged $18.85. Ohio Edison argues that the stock prices after this second break must be used to accurately calculate the dividend yield (Co. Ex. 6D, Att. A; Tr. XXIX, 5-6).

The Commission has historically expressed a preference for using a 12-month average stock price in calculating the dividend yield in order to "avoid distortions which may be created by short-term fluctuations in market price". Toledo Edison Co., Case No. 81-620-EL-AIR (June 9, 1982) at 24. In various cases, however, the Commission has adopted dividend yield recommendations based on shorter periods of average stock prices where the 12-month average would have produced a result which was not a valid indicator of the market's ongoing perception of the investment risks associated with the utilities being considered. See, e.g., Ohio Bell Telephone Co., Case No. 84-1435-TP-AIR (December 10, 1985) at 37-38 (three-month average); Ohio Edison Co., Case No. 84-1359-EL-AIR (October 29, 1985) at 34-35 (nine-month average); Cincinnati Gas & Electric Co., Case No. 79-11-EL-AIR (January 7, 1980) at 25-26 (three-month average). In Cleveland Electric Illuminating Co., Case No. 84-188-EL-AIR (March 7, 1985), the Commission adopted the staff's recommendation to use a one-month "spot" stock price in calculating the dividend yield due to the extremely volatile price of CEI's stock during the period in question. The Commission agreed with the staff that, given the unique record of CEI's stock prices, it would be inappropriate to use a twelve month average in calculating the dividend yield. Id. at 45-46.

In this proceeding, there is no dispute that, as Mr. Cahaan testified, Ohio Edison stock prices experienced a sharp decline in the March to April 1990 time period. The performance of Ohio Edison stock subsequent to the conclusion of the hearings, however, lends little support to Mr. Burg's contention that a second "price break" occurred on April 20, 1990. The Commission takes administrative notice of the fact that, since mid-May, Ohio Edison stock has fairly consistently traded in the $20.00 per share (or slightly under) range. This partial recovery of the stock price suggests that the "second price break" identified by Mr. Burg was more of a short-term fluctuation than a long-term change in investor expectations. The partial recovery tends to support Mr. Cahaan's claim that, while a precipitous decline occurred in March and April, the stock price has stabilized since that time and his recommendation properly captures both the decline and subsequent stabilization.

On brief, IEC argues that the Commission should not adopt the staff's recommendation because the recent recovery of Ohio Edison's stock price makes Mr. Cahaan's "spot" proposal unrepresentative. IEC claims that this recovery is similar to the facts presented in Cleveland Electric Illuminating Co., Case No. 79-537-EL-AIR (July 10, 1980), wherein the applicant's stock price had dropped significantly in the six months prior to the hearing (due primarily to an announcement by the Federal Reserve Board) and then rebounded to a level comparable to the range at which it had traded prior to the price decline. In that case, the Commission adopted the staff's recommended 12-month average "in order to even out short-term fluctuations". Id. at 40. Unlike the facts presented in that case, however, the Commission notes that Ohio Edison stock has only partially recovered from the March-April 1990 price decline. While the stock has most recently traded in the $20.00 range, the price at the end of 1989 was $23.75. Thus, we believe that recognition must be given to the fact that the stock price has made only a minimal recovery from the April 1990 level and is still far short of the 12-month average for the test year. Under these circumstances, the Commission finds that the staff's stock price recommendation of $19.31 is appropriate and should be adopted.

While we are somewhat uncomfortable with relying upon an average stock price for less than a two-month period, we do not believe that the intervenors' recommendations give adequate consideration to the severity of the price decline which occurred in March and April of 1990. In his direct oral testimony, IEC witness Kennedy stated that, considering the impact of the March-April price decline would be appropriate if it was averaged with a recent 12-month average price (Tr. XVII, 10-11). Dr. Kennedy explained that this alternative recommendation would enable the Commission to recognize the impact of the decline while not abandoning the 12-month methodology completely, and would avoid jumping around to accommodate short-term fluctuations (Id.). Under Dr. Kennedy's averaging approach, a $20.61 per share stock price would be achieved for purposes of calculating the dividend yield. Although IEC's proposed method has some merit, the Commission believes that Dr. Kennedy's recommendation still overestimates a representative stock price for purposes of this proceeding, as evidenced by subsequent stock performance. Nor do OCC witnesses' recommendations accord adequate consideration to the downturn in Ohio Edison's stock price, since they are based upon longer, and less representative periods of time. Rather, the Commission finds that the staff's recommendation reasonably reflects current and future investor expectations.

Expected Dividend Growth

We turn next to consideration of the appropriate dividend growth component for the DCF methodology. Assessment of the expected level of dividend growth inherently involves a certain amount of judgment, since it requires the estimation of future events. The Commission must, however, determine which of the growth recommendations is best supported by the evidence upon which the various analysts relied. The rate of return witnesses in this proceeding have, for the most part, projected relatively similar growth rates for Ohio Edison's dividend.

Company witness Burg originally proposed a dividend growth estimate of 2.5 to 3.0 percent (Co. Ex. 6A, at 39). Mr. Burg increased his growth estimate to 3.5 percent in his post-Staff Report testimony to reflect his view of increased investor expectations, based on the relatively higher stock prices between June and December of 1989 (Co. Ex. 6C, at 29). In his rebuttal testimony, however, Mr. Burg returned to his original 2.5 to 3.0 percent range because of lower market prices in March and April of 1990 (Co. Ex. 6D, at 5; Tr. XXIX, 19). Mr. Burg's 2.5 to 3.0

percent growth estimate is based upon the following five factors: 1) the capital market in which Ohio Edison competes; 2) the estimates of expected growth by research firms; 3) projected dividend increases for the utility industry, in general; 4) five years' earnings growth; and 5) the company's success in selling stock above book value (Co. Ex. 6A, at 39). Mr. Burg also expressed his belief that investors were expecting significant improvements over the dividend levels experienced in the recent past. In determining his growth estimate, Mr. Burg relied primarily on a growth projection average of 2.6 percent by five investor research firms to support his growth recommendation (although IEC and North Star assert that the correct application of an April 1989 Value Line projection would reduce this growth estimate to 2.20 percent). He also looked at a May 23, 1989 publication by Goldman Sachs which indicated average estimated dividend growth of 3.7 percent for the 67 utilities analyzed (Co. Ex. 6A, at 36-39).

IEC witness Kennedy proposed a growth estimate of 2.10 percent (IEC Ex. 3, at 21). Dr. Kennedy relied on the published estimates of investor analysts to derive his recommended growth rate. Dr. Kennedy averaged estimates from three investor analyst sources to determine his 2.10 percent proposal (IEC Ex. 3, at 21). OCC witnesses Pultz and Talbot recommended dividend growth estimates of 1.7 to 2.54 percent and 2.10 percent, respectively (OCC Ex. 7A, Revised Sched. FRP-3; OCC Ex. 11, at 36). Mr. Pultz calculated his 1.7 to 2.54 percent growth estimate range by performing a "b times r" analysis ("b" is the fraction of earnings retained and "r" is the return on average common equity) for the years 1985 through 1989 (2.54 percent) and by using estimated growth rates projected by Value Line for the years 1992 through 1994 (OCC Ex. 7, at 13-14). Mr. Talbot based his 2.10 percent growth estimate on the projections of the Institutional Brokerage Estimate System (IBES) (OCC Ex. 11, at 35-36).

The staff initially recommended a dividend growth range of 1.9 to 2.8 percent (S.R. at 24). Mr. Cahaan later adjusted the staff's recommendation downward, to a range of 1.7 to 2.6 percent, to reflect "reduced expectations of growth" (Staff Ex. 17, at 18). The staff's recommendation was based upon b x r calculations under various assumptions (S.R. at 24). Staff witness Cahaan testified that the staff's recommendation was confirmed by its analysis of other data (Tr. XXIV, 145). Mr. Cahaan stated that the staff did not propose a single point within its range but that the Commission's selection of any point within the range would be consistent with the staff's recommendation (Staff Ex. 17, at 10-11; Tr. XXIV, 140-148). According to Mr. Cahaan, a $19.31 stock price and a growth range of 1.7 to 2.6 percent results in a baseline cost of equity of 12.02 percent to 13.01 percent.

The Commission finds that the staff's method of calculating a "growth range" is reasonable and should be adopted in this proceeding. We believe that acceptance of the staff's range recognizes the inherent uncertainty involved in estimating the dividend growth rate. Further, while the company asserted that the new method understates its true cost of capital, there is actually very little difference between the recommended ranges under the staff's new and traditional methods. The Commission also notes that the staff's growth range under the new method encompasses the growth recommendations of each of the other parties. Company witness Burg ultimately agreed that the high end of the staff's range (2.6 percent) was a reasonable growth estimate while IEC witness Kennedy and OCC witness Talbot proposed growth rates near the midpoint of the staff's range (2.1 percent). OCC witness Pultz recommended a growth range nearly identical to the staff's range (1.7 to 2.54 percent). Thus, the Commission believes that the staff's range reasonably and accurately quantifies the range of investor growth expectations, while considering the normal degree of uncertainty which exists in calculating the company's cost of capital. Accordingly, we find that a baseline cost of equity range of 12.02 percent to 13.01 percent is reasonable, based upon the application of the staff's recommended $19.31 stock price and 1.7 to 2.6 percent growth range.

As indicated in the Staff Report, the staff has traditionally recommended the use of a single point estimate of the baseline cost of equity, which would then be adjusted by factors of 1.032 to 1.100 to take into consideration "issuance costs, dilution, and the need for future financing flexibility" (S.R. at 24). Under the traditional approach, the staff would have used a 2.0 percent growth rate (S.R. at 24). Considering the subsequent adjustments recommended by Mr. Cahaan ($19.31 stock price and 20 basis point reduction of growth rate), applying the traditional adjustment factor would result in a range of 12.52 to 13.35 percent for the recommended return on equity (See Staff Br. at 64). While the staff presented the traditional method for the Commission's review, it indicated that it has recently reconsidered this practice and now recommends that the baseline cost of equity should be measured as a range to reflect the degree of uncertainty in the estimating process. Accordingly, the staff proposes that a 3.5 percent increment be applied to common equity net of retained earnings to account for the "issuance cost" effect. As calculated by the staff, and subsequently revised by Mr. Cahaan, this issuance cost effect would result in a 1.02873 adjustment factor being applied to the baseline cost of equity to achieve the appropriate cost of common equity recommendation (See S.R. at 25-26; Staff Ex. 17A). Implementing the staff's new method results in a final return on equity recommendation of 12.37 to 13.39 percent, compared to the 12.52 to 13.35 percent recommendation which would have been derived from applying the staff's traditional method.

The Commission believes that the staff's modified issuance cost adjustment is appropriate. As indicated by the staff, the baseline cost of equity range established above implicitly recognizes the company's need for "future financing flexibility". We further agree with the staff that there is not sufficient evidence to warrant an explicit adjustment for "dilution". Thus, rather than applying the traditional 3.2 to 10 percent adjustment factor to the baseline cost of equity to account for issuance costs, dilution, and financing flexibility, the Commission will use the staff's generic 3.5 percent factor, applied to common equity net of retained earnings, to account solely for the "issuance cost" effect. As Mr. Cahaan explained, this "issuance cost" adjustment gives recognition to the "difference between investors' outlays and company receipts, and is necessary whenever a market-based cost of equity estimation process is used" (Staff Ex. 17, at 14). Use of the adjustment factor is not dependent, however, upon the company's issuance of new stock during the test year, or upon whether the company plans to issue stock in the near future. We also believe that the issuance cost adjustment should only be applied to common equity net of retained earnings since the company incurs no issuance costs to retain earnings. Applying the 3.5 percent issuance cost adjustment factor to the baseline cost of equity range established above, net of retained earnings, results in a range for the cost of equity of 12.37 to 13.39 percent.

Having adopted the staff's range as a reasonable estimation of the company's required return on equity, the Commission must determine a specific point within that range. As noted previously, IEC witness Kennedy recommended a return on equity of 12.50 percent, which is within the lower quartile of the range we have adopted in this proceeding as a reasonable estimate of Ohio Edison's cost of capital. We further note that Dr. Kennedy's analysis is useful as a check on the reasonableness of the staff's range and, indeed, supports the use of that range. In choosing the point within the adopted range, however, the Commission believes that recognition must be given to the company's aggressive and innovative actions in the past several years. Specifically, Ohio Edison has sought to balance its obligations to both ratepayers and shareholders by undertaking off-system marketing efforts (including the PEPCO sale), resolved the problems associated with the Quarto Coal contract, settled the Perry rate and prudence cases, engaged in the sale/leaseback of $1.4 billion of the company's ownership in Perry and Beaver Valley 2, and accomplished its rate delay and moderation program. Considering these additional factors, the Commission concludes that a return on common equity of 13.21 percent, which falls in the upper quartile of the staff's range, represents a reasonable estimate of the cost of equity capital to this company. As a final matter, the Commission notes that, in the section of the Staff Report related to demand side management, the staff recommended that Ohio Edison "adopt a formal procedure to include the consideration of long-term impacts in evaluating the appropriateness of current and future short-term marketing goals" (S.R. at 147). Consistent with the staff's recommendation, the Commission emphasizes that, in future rate cases, one of the criteria for determining the appropriate return on equity will be the applicant's efforts in pursuing demand side management initiatives.

Rate of Return Summary:

Applying a cost of equity of 13.21 percent to the equity component of the capital structure approved herein produces, when combined with the findings relative to long-term debt and preferred stock, a weighted cost of capital of 11.20 percent. The Commission is of the opinion that a rate of return of 11.20 percent is sufficient to provide the company reasonable compensation for the electric service it renders customers affected by these proceedings.

AUTHORIZED INCREASE

A rate of return of 11.20 percent applied to the jurisdictional rate base of $4,045,603,000 results in an allowable return of $453,108,000. Certain expenses must be adjusted if the gross revenues authorized are to produce this dollar return. These adjustments, which have been calculated in a manner consistent with the analysis of accounts accepted herein, result in an increase in federal and state income taxes of $46,861,000, in state excise tax of $6,890,000, and in the allowance for uncollectibles expense of $368,000. Adding the approved dollar return to the adjusted allowable expenses of $1,355,322,000 produces a finding that applicant is entitled to place rates in effect which will generate $1,808,430,000 in total gross annual operating revenue, including fuel and late-payment revenue. This represents an increase of $142,376,000 over the total revenues which would be realized under the applicant's present rate schedules, an increase of 8.5 percent.

The company and the staff entered into a stipulation which provided that if the Commission approved a revenue increase of at least $198,500,000 that the increase should become effective in increments over a three-year period (Jt. Ex. 3). The Commission has not authorized this level of an increase; accordingly, the provisions of the stipulation are not applicable.

OCC recommended that if the Commission granted an increase in excess of $122,000,000, it should be phased in over a two-year period (OCC Ex. 8, at 12). Both the staff and the company oppose OCC's recommended phase-in plan. The Commission is of the opinion that given the magnitude of the increase in this case, a phase-in plan is not warranted. OCC was concerned that a rate increase in the magnitude of 13.1 percent would result in rate shock (Id. at 14). However, the Commission has not granted an increase of that magnitude. Accordingly, OCC's recommendation should be rejected.

RATES AND TARIFFS

As part of its investigation, the staff reviewed the various rate schedules and provisions governing terms and conditions of service set out in the applicant's proposed tariffs (Co. Ex. 5A, Sched. E-1). The resulting staff recommendations (S.R. at 48-126) drew a number of objections. The issues raised are discussed below.

Revenue Distribution:

The applicant proposed rates which would produce equal rates of return for the residential and combined general service classes (Co. Ex. 13C, at 3). Staff, however, assigned more revenue responsibility to the residential and general service large/special contract customers, and less to the general service secondary customers, than did the applicant (Staff Ex. 19, at 3). The company, OCC, and North Star all objected to the staff's assignment of revenue responsibility in favor of the company's proposal.

Staff witness Howard testified that the company's proposed revenue distribution generates revenue close to the cost of service when the residential and general service classes as a whole are considered. However, instead of assigning revenues that would generate returns that were closer to the average rate of return, the applicant moved in the opposite direction, creating returns for these classes that are further from the average rate of return (Staff Ex. 19, at 3). Thus, staff assigned more revenue to the residential and general service large/special contract customers than did the company. According to Mr. Howard, this distribution results in the residential class generating revenues that create an equal rate of return for that class, and the combined general service class generating revenues that move in the direction of an equal rate of return (Id.).

Ohio Edison has six residential and two general service rates in its filed tariffs. The staff accepted applicant's percentage revenue distribution within the residential class. The general service class is broken down into general service secondary and general service large/special contracts. The staff reported that even though the general service class as a whole is generating revenue that closely reflects the cost of service, the individual schedules within the class do not. The general service secondary class is generating a rate of return well above the company's average rate of return, and the general service large/special contract class is generating a below average rate of return (Id. at 4). The applicant's proposal slightly reduces the general service secondary's above average return and slightly increases the general service large/special contract customers' below average return. While staff agrees that the applicant is heading in the right direction, staff believes that the changes should be of greater magnitudes. The staff's proposal moves the general service classes approximately half way to the level needed to achieve an equal rate of return. To attempt to move these classes all the way would overlook staff's other criteria for determining appropriate revenue distribution, such as continuity and customer understanding (Id. at 5).

Under the staff's proposal, the residential class will receive a 15.74 percent increase in revenues excluding fuel that will result in a 11.54 percent rate of return. The jurisdictional average rate of return is 11.54 percent. The general service secondary class will receive a 11.74 percent increase in revenues which will result in a 13.33 percent rate of return. The general service large/special contract class will receive 21.02 percent increase which will result in a 9.79 percent rate of return (S.R. at 60, 67).

The company contends that under the staff's proposal of moving toward equalized rates of return for the general service secondary and general service large/special contract classes, there would be a large differential in the overall percentage increase experienced by the two classes, 11.74 percent and 21.02 percent excluding fuel, respectively. The company's proposal, however, produces a 16.83 percent and an 18.69 percent increase, respectively (Co. Ex. 13C, at 3; S.R. at 60, 66). Under the company's proposal, the rate of return is 14.45 percent for the general service secondary class, and 9.39 percent for the general service large/special contract class (S.R. at 60). In addition, the company argues that under the staff's revenue distribution, the revenue requirement will not be attainable due to the staff's failure to consider that borderline customers on rate 23 would pay less under the new rate 21 and would switch to the cheaper rate. Therefore, the staff's proposed revenue is overstated by the amount of money saved by the customers that transfer (Id. at 4).

OCC argues that the staff's revenue distribution inappropriately shifts revenue responsibility to the residential class. OCC witness Yankel testified that the current residential rate of return of 8.16 percent should be considered equivalent to the jurisdictional average rate of return of 8.30 percent because it is within a 10 percent margin of error of the jurisdictional average. Mr. Yankel also stated that because the staff's proposal does not include the numerous revenue adjustments proposed by staff, it understates the residential rate of return. Finally, Mr. Yankel indicated his belief that certain costs were over allocated to the residential class in the company's cost of service study (OCC Ex. 9, at 16-19).

North Star objected to the staff's revenue spread in that it allocates more of the increase to general service large/special contracts than the company proposed. North Star contends that, at least with respect to the special contract class, the earnings are not below the system average rate of return. North Star witness Goins testified that if the staff's reclassification of pollution control equipment as a demand-related charge is considered and the inclusion of interruptible loads in the D-1 allocation factor is taken into consideration, it will be seen that the contract customers are paying greater than the system average rate of return (North Star Ex. 16, at 14, 20).

The Commission is of the opinion that the staff's revenue distribution is the most equitable and should be adopted. The company's proposal does not fairly distribute revenue responsibility among the classes. The company's proposal would assign more revenue responsibility to general service secondary class which is already earning well above the system average rate of return. The staff's proposal, on the other hand, lowers the rate of return for the general service secondary class and brings it closer to the system average. Likewise, the staff's proposal will bring the general service large/special contract class closer to the system average, and the residential class will be right on average. Thus, the staff's proposal moves each class closer to its cost of service.

The company's concern is that the percentage increase differential between the two general service classes is too large. While the company has expressed a valid concern, the Commission believes that it is outweighed by the disproportionate rates of return which would be generated by these classes under the company's proposal. Fairness dictates that the classes be moved closer to the system average rate of return. The staff's proposal does this. In the interest of gradualism, however, the staff has only moved each class approximately half way to the level needed to achieve an equal rate of return.

North Star's concerns are directed specifically toward the special contract class. However, the staff has not considered the special contract customers to be a separate class. The Commission believes that the staff's classification is appropriate. But for the contracts, the special contract customers are general service large customers; their firm load is billed under general service large rates (S.R. at 83-88). There is no reason to look at the special contract customers as a separate class.

OCC argues that the residential class is already providing revenue at the approximate average rate of return; therefore it should be assigned a lesser amount of revenue responsibility than provided for by the staff. Obviously, it is difficult to determine perfectly the exact cost of providing service. However, as we have previously indicated, the staff's analysis is the most equitable. The staff's revenue distribution does not result in the residential class earning either above or below the average rate of return. OCC's other arguments, that the revenue distribution did not account for the staff's revenue adjustments or allocation of costs, are without merit. These matters will be accounted for in the determination of the amount of the total revenue requirement in this case. The revenues assigned to the residential class will then be adjusted proportionately.

In summary, the Commission believes that the staff's recommendation is the most reasonable. It moves the revenue responsibility of each class in the proper direction and it applies the principles of rate continuity and gradualism. The staff's revenue distribution shall be adopted. The Commission has based its decision on the record in this case which indicates that rate design is appropriately based upon the principle that revenues should be distributed so that the various customer classes earn close to an equalized rate of return. Nevertheless, there may be ways to design rates based upon different principles. Should any party wish to offer evidence in the future on other factors which should be considered in determining revenue distribution, the Commission is open to their suggestions.

The company next argues that, if the staff's revenue distribution is adopted, the Commission must take into consideration transfers of customers from rate 23 to rate 21, which, according to the company, will occur and result in a revenue shortfall. Company witness Moore testified that under the staff's proposal, borderline customers on rate 23 would pay less under rate 21 and would, accordingly, switch to rate 21. The billing units the staff used did not take these transfers into account (Co. Ex. 13C, at 4). The record reflects that, under these circumstances, the company will be precluded from earning up to $2.7 million in revenue authorized in this case (Staff Ex. 20A, at 1).

The staff does not believe that any customer transfers should be taken into consideration in the rate design. The staff opposes the company's position because of its belief that it is uncertain how many customers might transfer and when such transfer might occur (Id. at 2). However, the record reflects that once new rates are approved in this proceeding, the company will contact the affected customers and place them on the cheapest rate (Tr. IX, 35).

The Commission believes that Ohio Edison should be authorized to perform a transfer study based upon the revenue level allowed in this case and modify the general service rate design so that the rates put into effect in this case can produce the authorized revenue level. One of the staff's tenets of rate design is that the schedules should provide the utility the opportunity of recovering an authorized revenue (S.R. at 57). However, if Ohio Edison cannot adjust rate design based upon a transfer study, it will be precluded from the beginning from earning the authorized revenue level. This is an unfair result. Further, the Commission has previously, in Case Nos. 77-1249-EL-AIR and 82-1025-EL-AIR, authorized Ohio Edison rates based on transfer studies (Co. Exs. 71B and 72B). Ohio Edison's objection should be sustained.

Seasonal Rates:

Ohio Edison's tariffs contain six residential schedules, and the company proposes a rate increase in all of them. In all residential rates, except the optional time-of-day rate and the water heating service rate, the applicant incorporates a summer/winter differential with the higher summer rates reflecting the higher costs to serve. As a further reflection of costs in the summer months, the pricing of the energy blocks is inverted. The rates for higher levels of usage are higher than the rates for usage at lower levels. The company's rationale is that customers that have higher usages, generally air conditioning customers, are responsible for the higher demand requirement placed on the company's system (S.R. at 73). The company is not proposing seasonal rates for the general service schedules. The staff accepted the company's seasonal rate proposal.

OCC objected to the seasonal rate for residential customers because no such rate was proposed for the other rate schedules. OCC does not accept the assumption that there is a difference in the base cost of service to customers between seasons. Further, OCC contends that all customers, not just residential customers, contribute to the higher summer service costs (OCC Ex. 9, at 37-41).

Company witness Moore testified in support of the seasonal rate proposal. He indicated that during the past three years, the company has had dominant summer peak demands and that forecasts project that Ohio Edison will remain a summer peaking company. This situation is due, in part, to increasing residential air conditioning saturation and creates a different cost pattern for the company. By having a higher rate in the four-month summer season than in the eight-month winter season, growth in the summer peak will tend to be moderated (Co. Ex. 13A, at 6-7). Mr. Moore also testified that seasonal rates are not feasible for general service customers because of sensitive tracking problems. In addition, summer weather sensitive equipment, such as air conditioning, is operated by the general service customers over a number of months, even year around in many cases, as opposed to the more limited use of such equipment by the residential class. Mr. Moore stated that the greater use of this equipment by general service customers results in reasonable recovery of costs under the existing rate structures (Id. at 16).

The Commission believes that the company's seasonal rate proposal is reasonable and should be accepted. Although seasonal rates may be new to Ohio Edison, they are not a new concept in Ohio. All but one of the other six major Ohio electric companies have seasonal rates (Co. Ex. 13D, at 2). The evidence shows that Ohio Edison is now a summer peaking company. The evidence also shows that the coincident summer demands of the residential class at the time of the monthly system peaks have increased at a faster rate than general service summer demands, and that residential air conditioning is responsible, in part, for this increase (Staff Ex. 20, at 12). The seasonal rates will help in moderating the growth in the summer peak and tend to delay the need for new capacity and encourage better utilization of the company's facilities. OCC's objection is overruled.

In connection with seasonal rates, the staff has recommended that before the company's next rate case, Ohio Edison should perform and provide a seasonally adjusted cost of service study for all classes, in addition to the cost of service study it normally provides. The study should provide additional information on the appropriate levels of seasonal rates, identify the degree seasonal rates alter consumption patterns, and consider whether seasonal rates for the general service classes are appropriate (Staff Ex. 20, at 12). The company should perform this study. The company argues that sufficient time will not have passed by the next rate case to generate the required data or complete the study. If, at the time of the next rate case, the company has had insufficient time to gather data or complete the study, it should request a waiver at the time it files its notice of intent.

Standard Rate 10:

The company has proposed to divide its present standard residential rate 10 into two rates. The company's present standard residential rate incorporates an energy only rate and a load management rate. Proposed rate 10 is an energy only rate and proposed rate 17 is a load management rate. Proposed rate 10 will become the new standard rate which will generally be applicable to customers whose monthly usage is significantly less than 1,000 kWh. The standard rate was designed to be less expensive than the load management rate for a majority of the residential customers. Further, because the standard rate is a kWh rate and requires only standard kWh metering, it will diminish the need for relatively more expensive load meters (Co. Ex. 13A, at 9). The optional small use rate has been incorporated into the standard rate. This rate also contains a controlled water heating provision in order to offer customers on that rate a water heating option (Id. at 10). The staff found that the proposed changes to rate 10 do not eliminate any of the options available to residential customers and recommended, with one exception, approval of the proposed standard rate (S.R. at 48).

The company proposed that the standard rate will be available to customers where "monthly usage is generally less than 1,000 kWh" (Co. Ex. 13C, at 15). The staff rejected the availability language on the grounds that it is unnecessary, misleading, and confusing (Staff Ex. 19, at 11). Staff witness Howard testified that a residential customer at any level of consumption could be served under this rate (Id. at 12).

Company witness Moore testified that the availability language was proposed in order to clarify the general type of customer to whom the rate will be applied and is not meant to be a strict criterion. It is intended as a guideline for company personnel and customers to use in determining the appropriate rate (Co. Ex. 13C, at 15).

The Commission finds that the company's proposed availability language serves a valid purpose and should be approved. The majority of residential customers will be served under this rate, and the company will use the 1,000 kWh usage as an initial screening device in determining which rate schedule will produce the lowest annual bill (Co. Ex. 13A, at 10). If the company determines that a different rate schedule will benefit a customer, that customer will be changed to the most beneficial rate schedule. However, as a general rule, customers whose monthly usage is 1,000 kWh or less will have a lower bill under this standard rate.

Load Management Rate 17:

The company is proposing a new separate load management rate which was previously a part of rate 10. In order to qualify, a customer must have a load meter, or have equipment capable of accepting a load meter. The proposed rate structure is similar to the load management provision of the current rate 10, except that the applicant is proposing to increase the minimum demand from 5 kW to 6 kW. In addition, in order to qualify, a customer's six highest monthly kWh usages out of the 12 preceding months must average 850 kWh or more. This average usage compares to 675 kWh in the present rate (S.R. at 51, 78).

The staff recommends that the present 5 kW minimum demand and average 675 kWh usage be retained. According to the staff, the company's proposal would eliminate certain customers that can practice load management. Staff witness Fortney testified that not all customers who have load between 5 kW and 6 kW are able, or willing, to practice load management. However, the minimum level should not be increased to eliminate those customers with a lower demand who are both willing and able to practice load management. As pointed out by Mr. Fortney, the Commission is in the process of implementing integrated resource planning procedures which encourage demand side management practices. Staff believes that it is unreasonable that, at the same time load management practices are being encouraged, the applicant is proposing changes which will eliminate potential opportunities for its residential customers to engage in those practices (Staff Ex. 20, at 9).

The company contends that only customers with a load of 6 kW have the capability to practice meaningful load management. Based upon the company's load research data, the company determined that customers with only one major appliance have a median load of 6 kW. Because two major appliances are required in order to practice meaningful load management, the company contends that 6 kW is the minimum load most customers with more than one major appliance would attain (Co. Ex. 13C, at 7-8). The company concedes that some customers with loads between 5 kW and 6 kW can benefit from the load management rate, but argues that rate 17 should not be used to reward happenstance (Co. Ex. 13D, at 9).

The Commission is of the opinion that the present 5 kW minimum load provision should be retained. The minimum load provision should not be increased to eliminate those customers who are practicing load management under the company's present load management rate provisions.

The company has also proposed that the load management rate be available to customers whose six highest monthly kWh usages out of the 12 preceding months average 850 kWh or more and that a customer may be removed from the rate at his option or if his usage has not exceeded 800 kWh in each of the 12 preceding months (S.R. at 51). The staff recommends that these usages remain at 675 kWh and 625 kWh, respectively (Id.).

Company witness Moore, however, testified that the staff's recommended changes to the kWh criteria for rate 17 availability are inappropriate even under the staff's recommended 5 kW minimum billing load. The staff's recommendations would result in segments of the residential customers being placed on staff's recommended rate 17 who would pay higher annual bills than if they were billed under proposed rate 10. Customers with monthly usages of 675 kWh or less and billing loads in excess of 5 kW would pay more than they would had they been billed on rate 10 (Co. Ex. 13C, at 11). The staff acknowledges that this may be true; however, staff relies on applicant's annual review of residential customers' bills to determine which rate would be cheaper for them (Staff Ex. 20, at 10).

The Commission is concerned that the staff's kWh usage recommendation will result in customers being placed on a rate which is not beneficial to them. Under the staff's kWh usage, a customer may qualify for the load management rate and be placed upon that rate. However, at the lower kWh usage, the load management rate would be more expensive. A requirement that the load management rate be made available to those who cannot benefit would result in customer confusion. Although the company's annual review of customer accounts will assist in placing a customer on the lowest rate, it will not prevent the customer from getting on the wrong rate in the first place. The company's proposal provides adequate rate separation to insure stable and appropriate customer placement and will be adopted.

Residential Rate Design:

With the exception of the load management rate, which is discussed above, staff accepted applicant's proposed rate design for each of the residential classes. The differences between the company's and the staff's rates reflect the difference in the revenue distribution and the differing level of customer charges (Staff Ex. 20, at 13).

OCC objected to the proposed residential rate designs. According to OCC, the rate structure should generally be flat or inverted, and the deeply discounted portions of the rates should be granted a rate increase. However, according to OCC, the company has proposed declining block rates for the residential rate schedules which contain sharply declining elements and proposed no increase for the deeply discounted portions of these rates. OCC further objected that the company proposed different percentage increases, instead of a uniform increase, for the various residential rate schedules in spite of the fact that there was no cost of service study which separately delineated the cost of serving each residential schedule (OCC. Ex. 9, at 50-56). OCC proposed its own rate schedules which provide a gradual move to flatten the declining rate structure and to reflect a more uniform revenue spread to the various rate schedules within the residential class (Id. at 56-61).

According to the staff, the applicant has provided its rationale for the design of rates. Rates in one schedule are designed to track rates in other schedules for consistency or to reduce the likelihood of rate jumping. Some rates are left unchanged to reflect costs. Experimental rates may be adjusted to maintain the integrity of the experiment. The basic formats of the rate schedules have previously been approved by the Commission. While cost is a major consideration, a utility should be able to exercise discretion and flexibility as to the level and form that rates take within a particular class to achieve objectives. Staff finds the company's rate design to be acceptable (Staff Ex. 20, at 13).

The Commission finds no useful purpose would be served by analyzing in this opinion and order each residential schedule block by block and change by change. The company's proposed rate design is detailed and interrelated with each rate being designed to serve a purpose. The Commission will accept its staff's recommendation on the residential rate design and approve the company's proposed design. The rate designs have been previously approved by the Commission, and the staff has had an opportunity to observe how they work. Based upon this record, the Commission is not inclined to adopt new, untested rate structures as proposed by OCC.

Both the staff and OCC recommend that the company should perform and provide a cost of service study which differentiates the existing residential rate classes. The company should perform the study and provide it for its next rate proceeding. If there has been insufficient time to gather the data at the time of the next proceeding, the company should request a waiver at the time it files its notice of intent.

Contract Language for Residential Schedules:

In its original filing, the company proposed certain language to be added to rates 10 and 17 so that service under these schedules would be for a minimum period of one year. This provision is intended to eliminate continual rate jumping due to seasonal load variations. While the staff believed that the restructuring was appropriate, it felt that certain additional language should be added (S.R. at 50).

At the hearing, staff witness Howard agreed with the company that the following language would be appropriate:

> Customers selecting this rate schedule will be billed for service hereunder for a minimum period of one year unless: 1) service is no longer required by the customer at the same

> address at any time during the remainder of the one-year period; or 2) at the customer's request when the customer adds or removes load and the company projects that the customer's load characteristics for the next twelve months can be served more economically under an alternative tariff for which the customer qualifies.

(Tr. XXVI, 54-55). Mr. Howard also testified that this language should be added to rates 10 and 17 and replace the current language contained in rates 11, 12, and 19 (Id.). The Commission agrees that the language is appropriate and should be adopted.

Customer Charge:

The purpose of the customer charge is to provide a utility with a partial recovery of the fixed costs which it incurs in order to provide service to a customer by mere reason of the customer's connection to the utility's system. The staff, Ohio Edison, and OCC have each employed a different methodology in arriving at their recommendation as to the appropriate customer charge which the Commission should adopt in this proceeding.

The staff's policy regarding the methodology for determining the customer charge was established in June of 1980, and has been adopted by the Commission numerous times. Its methodology derives a charge which is minimally compensatory, and uses expenses which are solely attributable to the number of customers regardless of demand and consumption (Staff Ex. 19, at 6). The staff determined that the customer charge for customers that have standard kWh meters should be $4.05 (Tr. XXVI, 6-7; Tr. XXVII, 79; Staff Rate Design Reply Br. at 21). The proposed customer charge for the load management rate is $6.05; and the time-of-day rate is $9.89 (Staff Ex. 19, at 6; Tr. XXVI, 6-7; Tr. XXVII, 79; Staff Rate Design Reply Br. at 21). Because the residential water heating rate is in the process of elimination, the staff recommends that its customer charge be increased by the percent equal to the overall percentage increase granted in this case (Staff Ex. 19, at 7).

The company's proposal for the customer charge for customers that have standard kWh meters is $6.00, and it is $8.00 for the load management customers (Co. Ex. 13C, at 12). A basic difference between the company and the staff is that, in addition to costs associated with meters and services, the company's method includes the costs of a minimum distribution system. Company witness Moore testified that historically, the present $2.00 customer charge of the standard residential rate has been set at an artificially low level (Id. at 12-13).

Although OCC agrees generally with the staff's proposed methodology, OCC believes that the staff has included certain expenses which are not customer based. As an example, OCC witness Yankel testified that 93 percent of account 908 expenses should be excluded from the calculation because they are related to marketing activities and should not be attributable to residential customers (OCC Ex. 9, at 32-33). However, the staff had already excluded a large portion of account 908 expenses from its calculation (Tr. XXVI, 74-76). Further, Mr. Yankel did not believe that costs concerning account collection activities should be included (OCC Ex. 9, at 34). Mr. Yankel is incorrect on this point. Clearly account collection costs are customer-based activities. Mr. Yankel's other concern about metering costs was accepted and addressed by the staff at the hearing (Staff Ex. 19, at 6). OCC's proposed customer charge for customers with kWh meters is $2.10, and the load management customer charge is $4.10 (OCC Ex. 9, at 35-36).

Upon consideration of customer charge proposals presented in this proceeding, the Commission concludes that the staff's proposal is the most reasonable. Although the company's proposal is predicated on customer-based costs, it results in a percentage increase in the customer charge which is extremely high. On the other hand, OCC's proposal does not account for even the minimum amount of customer-based costs, and its adjustments are not proper. The staff's proposal is based upon the principles of gradualism and stability and recovers expenses attributable to solely the number of customers. The staff's customer charge proposal should be adopted, with one exception.

In the staff report, the staff recommended that in the event the Commission does not authorize rates which recover the applicant's requested revenues, the customer charges should not be adjusted to a lower level because the staff's customer charges are minimally compensatory in the first place (S.R. at 70). However, at the hearing, staff witness Fortney testified that the customer charge increase should be reduced proportionately (Staff Ex. 20, at 15-16). The Commission is of the opinion that the staff's first inclination, that the customer charges should not be adjusted, is more appropriate given that they have been set at a minimum level. The staff's proposed customer charges should be adopted without adjustment for the authorized revenue level.

Seasonal or Temporary Discontinuance of Service Charge:

The company has proposed a seasonal or temporary discontinuance of service charge equal to the customer charge times the number of months a customer is disconnected, plus a $20.00 reconnection charge (S.R. at 49). This charge will be applicable when a customer wants to remain a customer at a certain location but wants the electric current to the residence temporarily discontinued due to the customer's occupancy being temporarily discontinued for reasons such as the customer is planning an extended vacation, has two homes, or owns a special purpose residence. The company contends that during the period of disconnection, expenses of standing ready to serve the customer and fixed costs continue. The company's proposal assigns these continuing costs to the temporarily disconnected customers instead of to customers taking service on a year-round basis (Co. Ex. 13C, at 14-15).

The staff finds this charge to be inappropriate. The staff recommends that customers who request to have their service discontinued, seasonally or temporarily, should be assessed a charge equal to that of the approved reconnection charge (Staff Ex. 19, at 10). The Commission agrees.

The applicant's proposal would treat customers that are not receiving electric service, as if they were receiving service. A customer is charged a monthly customer charge to recover costs associated with the customer receiving service for that month. If a customer has chosen not to receive electric service for a number of months, that customer should not be subject to customer charges for those months (Staff Ex. 19, at 10). Ohio Edison's proposal should be rejected. A customer who requests to have service temporarily or seasonally discontinued should be assessed the approved reconnection charge when the customer chooses to recommence service.

Employee Discovery Fee:

The company has a program whereby company employees, except those whose specific job it is to find unauthorized use, are encouraged by the use of a $25.00 reward to discover and report unauthorized use of electricity. This program enables the company to recover the costs associated with fraud, which may have otherwise gone undetected (Co. Ex. 14C, at 4). This $25.00 reward is the employee discovery fee which the company proposes to charge to the customer.

The staff and OCC oppose the $25.00 employee discovery fee. According to staff witness Howard, the company already has a tampering/investigation charge which recovers actual costs incurred by the applicant as a result of a customer's fraudulent practices. The employee discovery fee is not a cost that the applicant has incurred because of the customer. The company simply desires to provide monetary rewards to employees who report fraudulent practices. The staff believes that reporting fraudulent practices should be a part of the employees' job requirements (Staff Ex. 19, at 8).

The Commission agrees with staff and OCC. The actual costs incurred by the company associated with fraudulent use of electricity are recovered from the customer by imposition of the tampering/investigation charge. The company has presented no argument which persuades the Commission that additional charges ought to be imposed. If the applicant desires to reward its employees with $25, then it should be the company that is responsible for this fee, not the ratepayers.

Other Miscellaneous Charges:

The company has proposed several other changes to the miscellaneous charges section of its tariff. Specifically, the company has proposed to increase the disconnection call charge from $5.00 to $7.00 and to increase the reconnect charge from $10.00 to $20.00 during normal business hours and from $20.00 to $30.00 after normal business hours (S.R. at 55). The company also proposes an increase in the dishonored check charge from $5.00 to $7.00 (Id.). Ohio Edison proposes to increase the meter test charge from $25.00 to $50.00 (Id.). Additionally, the company proposes to establish a tampering/investigation charge of $125 (Id.). The staff's investigation revealed that these charges are cost-based, and the staff recommends approval of the charges (Staff Ex. 19, at 7, 9).

In OCC's view, even though these charges may be assigned to particular customers, the increases are inappropriate given the overall negative impact (OCC Ex. 9, at 64). In reaching this conclusion, OCC determined that if these costs were spread over all the customers, it would not have a significant negative impact upon the other customers. Further, an increase in these fees will have little impact in reducing the work load of the company (Id. at 64-65). Finally, from a customer relations perspective, the impact of these charges is very negative and increasing the charges will make matters worse (Id. at 65).

The Commission finds that the company's proposed increases to the miscellaneous charges as set forth above should be accepted. The costs associated with these charges can be assigned to particular customers, and under these circumstances, it has been the Commission's policy that the customers who cause the costs to be incurred should be responsible for paying those costs.

Pole Attachment Tariff:

Although there were several filed objections relating to Ohio Edison's pole attachment tariff, the issues raised have been resolved to the satisfaction of the affected parties by a joint stipulation and recommendation (Jt. Ex. 1). Ohio Edison, the Ohio Cable Television Association (OCTA), and the staff agree that for purposes of this proceeding, the pole attachment rate should be $4.69 per year. The parties negotiated certain indemnification language for inclusion within the tariff. They also included the language on limitation of liability required by the Commission in Limitation of Liability Clauses in Utility Tariffs, Case No. 85-1406-AU-COI (October 6, 1987). In order to insure that the additional language is taken in proper context if the need to rely on the indemnity language should ever arise, the Commission notes, as provided in the stipulation, the following:

> The Commission recognizes that the first two paragraphs of the indemnification clause in the pole attachment tariff were negotiated at arms length by the OCTA, as representative of the cable companies, and the company, two sophisticated parties of equal bargaining position. And it is the OCTA's and the company's belief that said indemnification clause represents an essential element in the fair balancing of the relevant interests in resolving the pole attachment issues. The staff believes that the pole attachment tariff is reasonable.

The Commission finds that the stipulation is reasonable and should be adopted for purposes of this case.

Allocation of Pollution Control Costs:

As part of the applicant's allocated cost of service study, the company allocated the cost of pollution control equipment based upon an energy allocator. In the staff report, the staff accepted this allocation in determining the class revenues necessary to achieve a levelized rate of return (S.R. at 59). IEC, North Star, and RMI all objected to the classification of pollution control equipment as energy-related. At the hearing, however, the staff agreed with these intervenors that these costs should be allocated on a demand basis (Staff Ex. 20, at 16).

The pollution control equipment that Ohio Edison seeks to classify and allocate on the basis of energy are those facilities which were installed for the purpose of removing and storing pollutants produced in the generation of electricity (Co. Ex. 10A, at 13). The company has classified this equipment on an energy basis because of its belief that the size and capacity of the equipment are a function of the volume of energy produced by the generating facilities (Tr. V, 50, 81). The company also contends that these facilities are tradeoffs to permit utilization of less expensive coal than more expensive oil or gas and are, therefore, energy-related (Co. Ex. 13D, at 17).

The staff and intervenors argue that in general, fixed costs are classified as demand and variable costs are classified as energy. They contend that the pollution control equipment costs are included in production plant accounts, which should be demand allocated. These costs are fixed and should be treated consistently with other production plant. The investment in pollution control equipment does not vary over time or with the amount of energy produced (Staff Ex. 20, at 16).

Based upon the record in this case, the Commission is of the opinion that the pollution control equipment should be allocated on an energy-related basis. While it is true that pollution control costs are fixed, the pollution control equipment was installed for the purpose of removing and storing pollutants produced in the generation of electricity. Thus, the cost responsibility is a function of the amount of energy usage (Co. Ex. 10A, at 13). Further, Ohio Edison's investment in pollution control facilities is approximately $1 billion. This investment has served to reduce fuel costs for Ohio Edison's customers. For instance, pollution control facilities at the Mansfield plant were constructed to control pollutants produced by burning coal. Had oil or natural gas been the company's choice for fuel, there would have been no need for the facilities. Therefore, these installations were tradeoffs to permit the use of less expensive coal rather than more expensive oil and natural gas (Co. Ex. 13D, at 16-17). In making its rate design determinations, the staff used the company's cost of service study which allocated the cost of pollution control equipment based upon an energy allocator. Thus, the staff's rate design, which the Commission is accepting in this case, already incorporates the Commission's determination herein that the pollution control facilities be allocated on an energy-related basis. The objections of IEC, RMI, and North Star are overruled.

The allocation of pollution control costs continues to be of interest to the Commission, and we will continue to review this matter in future rate cases of electric utilities. Our disposition of this issue, based upon the record in this case, does not foreclose the presentation of other evidence on this subject in future proceedings.

General Service Large Tailblock:

Both the company and the staff proposed that there be no increase to the second block of the energy charge for the general service large/special contract class (S.R. at 84). North Star, however, argues that this tailblock should be increased because of its belief that the tailblock is under-priced and does not fully recover the variable cost of service (North Star Ex. 16, at 17).

North Star further contends that the company's and staff's treatment of the second block benefits high load-factor customers at the expense of low load-factor customers (Id.).

Staff witness Fortney testified that the present charge of 92¢ per kWh reflects the average variable non-fuel production costs. Mr. Fortney stated that the Commission has recognized as appropriate and approved tailblock rates which approximate the average variable production operation and maintenance expenses. Further, the staff finds it appropriate that rates reflect the more efficient use of facilities by higher load factor customers (Staff Ex. 20, at 11).

The Commission is of the opinion that based upon the record presented, North Star's objection must be overruled. North Star's own exhibit (North Star Ex. 13) shows a calculation of 85¢ per kWh as the average variable non-fuel rate for the company (Tr. IX, 5). Clearly, at a rate of 92¢ per kWh, the tailblock cannot be underpriced. Further, a good rate design will encourage customers to improve their load factors. The company benefits from high load factor customers because the demand is more consistent throughout the day. With a high load factor, the company better uses its facilities by avoiding start-up and cycling of unit-type costs, thereby keeping its operations and maintenance costs down (Tr. XXI, 116-117). The setting of the tailblock of the energy charge at the staff's and company's level will encourage efficient use of facilities. The Commission concludes that the company's and staff's proposed second block of the energy rate should be adopted. It comports with the rate design principle that the tailblock energy charge should be held at a level approximating non-fuel variable costs and it encourages the efficient use of facilities. Cleveland Electric Illuminating Company, Case No. 85-675-EL-AIR (June 2, 1986) at 83-84.

Allocation of Demand-Related Costs to Interruptible Load:

The company allocates demand-related production costs on the basis of each class' contribution to the 12 monthly system coincident peak demands. Both the staff and the company allocated fixed production and transmission costs to interruptible service based upon demand equal to 25 percent of the class' monthly coincident peak demands (Staff Ex. 20, at 6; North Star Ex. 16, at 19). IEC and North Star objected to this allocation. IEC's and North Star's position is that because the load that is interrupted should not be considered in a utility's capacity planning, and is less costly to serve, that load should not be assigned any production or transmission-related fixed costs (IEC Ex. 6, at 31; North Star Ex. 16).

Both the company and the staff provided testimony indicating that if interruptible load could be interrupted at any time capacity is required by the utility, then it would be appropriate not to assign any of the demand-related costs to this class (Staff Ex. 20, at 6; Co. Ex. 13D, at 12). However, this is not the case for Ohio Edison. The terms of the agreements under which the company provides interruptible service limit the company's ability to interrupt. First, the interruptions are limited to 30 per year, not to exceed five per month. Each interruption is limited to a maximum duration of 13 hours. Second, an interruptible customer can terminate its contract upon 60 days notice at which time the company becomes obligated to serve that customer's load on a firm basis. Third, load reduction depends on the customer's response to the company's request to interrupt. If a customer chooses not to respond to an emergency interruption request, the company has the right to terminate the contract and the customer would revert to firm load status. Finally, economic interruptions can be avoided by the customers by forfeiting the interruptible credit for the month (Staff Ex. 20, at 7).

The Commission finds that the 25 percent assignment of demand-related production and transmission costs to the interruptible customers is appropriate. This assignment recognizes that the interruptible load provides operational benefits to the company while taking into account the fact that this load cannot be interrupted at any time and for unlimited duration. Thus, the interruptible customers are responsible for a portion of the demand-related production and transmission costs. The objections of IEC and North Star on this point are overruled.

Interruptible Demand Credit:

Standard interruptible and interruptible rate contract customers are billed for their total load and usage according to the general service large rate. An interruptible demand credit of $3.68 per kVa is then applied to a contract interruptible amount. Further, the contracts contain a provision that kVa charges may only be increased by 6 percent annually (S.R. at 88; Staff Ex. 19, at 13). Staff agrees that the applicant's capped kVa portion of the rate should be approved because it reflects the 6 percent increase allowed (Staff Ex. 19, at 13).

IEC objected to staff's proposal to increase the demand and energy charges for the interruptible customers without recommending an increase in the interruptible demand credit. According to IEC, the failure to increase the demand credit results in a proportionately greater revenue increase to the interruptible customers on the standard contract than to the firm contract service customers (IEC Ex. 6, at 33; Tr. XXVI, 136). RMI joins in IEC's arguments.

The $3.68 demand credit is one provision of a contract providing for interruptible service. The parties to the contracts tied the energy and demand charges to the general service large rate. However, they made no provision which would allow for modification of the demand credit. IEC would have the Commission find that one provision of the interruptible contracts has become unreasonable and unilaterally change that provision of the contracts. The Commission is not inclined to take this action. Each contract was agreed to by the parties and submitted for Commission approval. The Commission has found the contracts as a whole to be reasonable under Section 4905.31, Revised Code. There is simply no justification for the Commission to change the demand credit provision provided for by the parties.

IEC and RMI both contend that these contracts are not really arrived at by arms-length bargaining, but are presented to the customers as a take-it-or-leave-it situation. In support of this contention, they point to the uniform nature of the level of the credit in each contract contending that it is not a negotiated provision (Tr. XX, 172-173). They further point to a recent contract approved by the Commission in Ohio Edison Company/Copperweld Steel Company, Case No. 90-465-EL-AEC (May 8, 1990), where Ohio Edison was able to negotiate more favorable terms, but the level of the demand credit remained at $3.68. Thus, they contend that the demand credit is not subject to negotiation. This contention is belied, however, by the recent amendment to the Ohio Edison/Copperweld contract filed with the Commission in the same case on June 4, 1990. The amendment provides that the demand credit range from $2.76 per kVa to $5.13 per kVa based upon the customer's load factor. The Commission cannot look behind the terms of the contracts and speculate on whether or not there was arms-length bargaining or what was in each party's mind when the $3.68 demand credit was agreed upon. IEC's objection should be overruled.

Optimum Interruptible Load:

In the general service large tariff, the company is proposing to change language which currently reads, "[t]he company will negotiate providing interruptible service . . ." to "[t]he company may, at its option, negotiate providing interruptible service . . ." The staff opposes the change on the grounds that the proposed language could result in discrimination. However, the staff proposed additional language stating that negotiations will be contingent upon the company's aggregate interruptible load not exceeding its optimum level. According to the staff, this level is currently being determined by the applicant and should be included in the tariff when it becomes available (S.R. at 52-53).

RMI and North Star objected to the staff's proposed additional language on the optimum interruptible load contending that the parties should have the opportunity to participate in a determination on the optimum interruptible level. They fear that the staff's proposed language would place the determination of the optimum interruptible load solely in the hands of Ohio Edison (North Star Ex. 16, at 21). Staff believes that their fear is unfounded because when the optimum level is determined by the company, it will have to seek approval for its inclusion in the tariff. Staff would only recommend approval of an optimum level after an investigation as to the appropriateness of that level is performed. The staff believes that the parties should pursue their interest at that time (Staff Ex. 19, at 12).

The Commission agrees with the staff that Ohio Edison's proposal to change its tariff to provide for negotiation at the option of the company should be rejected. However, the Commission does not agree with the staff's proposal to include language that negotiations will be contingent upon applicant's aggregate interruptible load not exceeding its optimum level. Ohio Edison has not yet determined the optimum level of interruptible load. When Ohio Edison does make this determination, it can apply for Commission approval of both the tariff language and the appropriate optimum level. At the present time, no reason exists for the inclusion of such language.

CONSUMER SERVICES

The staff of the consumer services department investigated the company's service procedures, customer complaints, and selected company policies and procedures for compliance with the company's tariffs. In addition, the staff investigated two separate issues at two of the nuclear plants partially owned by Ohio Edison (S.R. at 149). As a result of its review, the staff made several recommendations (S.R. at 149-189). A number of these recommendations were resolved by a stipulation entered into between the company and the staff (Jt. Ex. 2). No party has opposed the stipulation. The stipulation provides that Ohio Edison will implement certain procedures and report to the staff on its meter test program, pad-mounted enclosure inspection program, line clearance program, service interruption reporting program, customer information, and the Perry offgas system report. The Commission finds the stipulation to be reasonable and will adopt it.

The company has proposed language in the meter test charge provision of its tariff which states that when the company tests a meter at the request of the customer, a charge of $50.00 shall be paid by the customer after testing is performed (Co. Ex. 5A, Sched. E-1, proposed sheet 53). The amount of this charge has been discussed previously in this opinion and order. Putting aside the amount of the charge, the staff expressed concerns over the language of the tariff. The staff found that the language was unclear as to under what circumstances a charge may be levied and recommended that the tariff should expressly state what the meter test charge is for and under what circumstances it applies (S.R. at 150). The company objected to staff's recommendation.

Staff witness Kirk testified at the hearing that the tariff should read as follows: "The company will test a meter at the request of the customer. The first test shall be at no charge to the customer. The company shall charge $50.00 for any subsequent tests performed at the customer's request. No payment will be required of the customer if the meter is found to be registering incorrectly" (Staff Ex. 25, at 3). Ms. Kirk testified that in 1989, of the 2,781 customer-requested meter tests that were conducted, only 197 customers were actually charged the tariffed rate (Id.). The staff's proposal, providing that the first meter test would be free, would avoid discrimination in the imposition of the charge (Tr. XXIV, 128).

Company witness Moore testified that the company expends considerable effort in resolving high bill investigations. Meter testing is somewhat a last resort. The company will perform a meter test at its cost if it has reason to believe that the meter could be reading improperly. Only when the company does not believe that there is a valid cause for concern, and the customer insists on a meter test, does the company charge for the test (Co. Ex. 13D, at 10).

The Commission finds that the staff proposed language should be adopted. Under the company's present tariff, it appears that the company does not impose a meter testing charge in most instances. Only when the company does not believe that the customer has a valid concern, does it impose the charge. The Commission finds that the company's practice results in unequal treatment of customers. How does one determine whether the customer's concern is valid or not? How does one determine whether the meter could be reading improperly? The Commission believes that the staff's proposal will result in more equitable treatment of customers. The company's objection is overruled.

MANAGEMENT AND OPERATIONS REVIEW

Section 4909.154, Revised Code, states that the Commission shall consider the management policies, practices, and organization of a utility when fixing the rates that the utility will charge for service. For purposes of performing a review of the company's management and operations in this proceeding, staff selected several different areas of investigation: reorganization and marketing; internal auditing, inventory management and control, and risk management; rates and tariffs; and marketing and demand-side management (S.R. at 127). Staff offered a number of recommendations as the result of its investigation (S.R. at 128-147). Several of the staff's recommendations in this proceeding were resolved by a stipulation entered into between the company and the staff (Jt. Ex. 2). No party has opposed the stipulation, which provides that the company will perform certain studies and provide certain information to the staff related to the company's reorganization, marketing procedures, inventory management and control, and rates and tariffs. The Commission finds the terms of this stipulation to be reasonable and will approve it for purposes of this proceeding.

Three other recommendations made by staff in this proceeding drew no objections from the parties. The staff recommended that the Commission accept the company's proposal to report on certain marketing activities on a quarterly basis (S.R. at 132). The staff also proposed that the company be directed to consider implementing a formalized communication process that would provide for timely reporting to the risk management department concerning the status of certain insurance required for services provided through contracts or other transactions and to report to the staff within 90 days of this opinion and order (S.R. at 141). Finally, the staff proposed that the company adopt a formal procedure to include the consideration of long-term impacts in evaluating the appropriateness of current and future short-term marketing goals (S.R. at 147). The Commission finds these recommendations to be reasonable and adopts them.

OCC voiced two objections to the staff's marketing and demand-side management review. The staff reported that the company sets marketing goals in terms of sales targets. Currently the target is for two percent growth per year in sales, with the emphasis on off-peak sales. The staff indicated that although the current goals are for increased sales, other types of demand-side programs are also being evaluated to prepare for the day that reducing the growth rate of demand may be the primary marketing goal (S.R. at 147). OCC's objection is that the staff should have evaluated the reasonableness of Ohio Edison's sales target of two percent strategic growth per year. Further, OCC believes that the staff should have recommended that Ohio Edison be ordered to broaden its demand-side management efforts beyond strategic load growth to include conservation objectives.

OCC's objections should be overruled. The Commission agrees with staff witness Puican that these determinations are more properly considered in an integrated resource planning proceeding (Staff Ex. 15, at 3-4). This opinion and order demonstrates that the rate case proceeding is already detailed and complicated enough without interjecting subjects which are specifically subjects of other proceedings.

NUCLEAR PERFORMANCE STANDARDS

The staff and IEC have recommended that the Commission adopt the same nuclear performance standards for Ohio Edison's shares of Perry and Beaver Valley Units 1 and 2 which were adopted for Toledo Edison and CEI in Case Nos. 88-170-EL-AIR and 88-171-EL-AIR. Staff witness DeVore testified that ratepayers of Ohio Edison are entitled to the same protection against poor nuclear plant performance that Centerior's ratepayers are, especially since Ohio Edison and Centerior share ownership in two of the nuclear plants (Staff Ex. 27, at 6).

Mr. DeVore indicated that the standard would first be applied in a 1991 electric fuel component proceeding. In that proceeding, the 36-month average operating availability factor of Perry and Beaver Valley Units 1 and 2 would be compared to the computed 36-month average operating availability factors of domestic nuclear units. To the extent that the average operating availability factor for the company's nuclear units is below the 36-month average, a disallowance will be computed and applied through the reconciliation adjustment of the electric fuel component rate. If performance of the company's nuclear units is above the industry average, then certain other provisions apply which enable the company to offset poorer than average performance. There is also a provision in the standard for determining whether a company should receive recovery of and on its nuclear investment if availability falls below the 35 percent level (Id. at 6-7).

Although Ohio Edison opposes the application of nuclear performance standards to it, it has presented no valid reason in support of its position. It argues that the Commission has in the past rejected nuclear performance standards for Ohio Edison and that Beaver Valley 1 is not part of the Centerior standards. The Commission, however, agrees with the staff and IEC that the Centerior nuclear performance standards should apply to Ohio Edison. First of all, Perry 1 and Beaver Valley 2 are already a part of the nuclear performance standard approved for CEI and Toledo Edison. The standard is already applicable to these nuclear units, and Ohio Edison's portion of those units should also be governed by the same standard. Second, Ohio Edison owns part interest in Beaver Valley 1. This unit should also be governed by the performance standard. The same reasons prompting the establishment of standards for the other nuclear units exist for establishing a standard for Beaver Valley 1 (IEC Ex. 6, at 15). The Commission believes that the Ohio ratepayers of all the owners of shares of nuclear units are entitled to the same protections.

Accordingly, the Commission will adopt the Centerior nuclear performance standards for Ohio Edison's share of Perry 1 and Beaver Valley 1 and 2.

The stipulation on nuclear performance standards adopted by the Commission in the Centerior cases provides that it would be desirable to use equivalent availability data in lieu of the operating availability data contained in NUREG-0020. According to the stipulation, such equivalent availability data is maintained for the units, but it is not readily available on an industry-wide basis like that contained in NUREG-0020. The stipulation provided that if reliable, equivalent availability data becomes readily available, the nuclear performance standards will be modified to use equivalent availability data in lieu of operating availability data. IEC suggests that now is the appropriate time to switch to the use of equivalent availability data. However, there is no evidence of record to indicate that the equivalent availability data is readily available on an industry-wide basis. Therefore, this IEC recommendation will not be adopted. However, the Commission remains interested in pursuing this issue and, accordingly, all interested parties shall provide testimony in Ohio Edison's Spring 1991 EFC proceeding concerning whether equivalent availability data can be obtained and how it could be applied. If it cannot be obtained, then the parties should develop alternatives which will assist in the development of standards which will result in an improvement over the operating availability standard.

EFFECTIVE DATE

The Commission's general practice is to require that the applicant utilities notify customers of any rate increase authorized prior to the effective date of the new tariffs, and to delay the effective date in order that this customer notification can be accomplished. However, in instances where the Commission has not acted upon a rate application within 275 days of the date of filing, and where the applicant utility has not invoked the provisions of Section 4909.42, Revised Code, to attempt to place its proposed rates in effect subject to refund, the Commission establishes the effective date of the new tariffs as the date they are approved by entry so as not to penalize the company for its forbearance. In this case, the applicant has not attempted to place its proposed rates in effect although the 275-day period has expired. Thus, the Commission finds that the effective date of the tariffs filed pursuant to this opinion and order shall be the date applicant files four complete, printed final copies of its tariffs pursuant to the entry approving the form of the new tariffs. The applicant shall notify the affected customers of the increase in rates authorized herein by means of insert or attachment to its billings, by special mailing, or by a combination of the above methods. The applicant shall submit copies of a proposed customer notice for the Commission's review when it files its new tariffs for approval.

FINDINGS OF FACT:

1) The value of all of applicant's property used and useful for the rendition of electric service to the jurisdictional customers affected by this proceeding, determined in accordance with Sections 4909.05 and 4909.15, Revised Code, as of the date certain of June 30, 1989, is not less than $4,045,603,000.

2) For the twelve-month period ending December 31, 1989, the test period in this proceeding, the revenues, expenses, and net operating income realized by the applicant under its present rate schedules were $1,666,054,000, $1,301,[illegible]3,000, and $364,851,000, respectively.

3) This net annual compensation of $364,851,000 represents a rate of return of 9.02 percent on the jurisdictional rate base of $4,045,603,000.

4) A rate of return of 9.02 percent is insufficient to provide applicant reasonable compensation for the service rendered to customers affected by the application.

5) A rate of return of 11.20 percent is fair and reasonable under the circumstances presented by this case and is sufficient to provide the company just compensation and return on the value of its property used and useful in furnishing electric service to its customers.

6) A rate of return of 11.20 percent applied to the rate base of $4,045,603,000 will result in net operating income of $453,108,000.

7) The allowable annual expenses of the company for purposes of this proceeding are $1,355,322,000.

8) The allowable gross annual revenue to which applicant is entitled for purposes of this proceeding is the sum of the amounts stated in Finding 6 and 7, or $1,808,430,000.

9) Applicant's present tariffs should be withdrawn and canceled and applicant should submit new tariffs consistent in all respects with th discussion and findings set forth above.

CONCLUSIONS OF LAW:

1) The application in this case was filed pursuant to, and this Commission has jurisdiction thereof, under the provisions of Sections 4909.17, 4909.18, and 4909.19, Revised Code. Further, the applicant has complied with the requirements of those statutes.

2) A staff investigation was conducted and a report duly filed and mailed, and public hearings have been held in this case, the written notice of which complied with the requirements of Sections 4909.19 and 4903.083, Revised Code.

3) The existing rates and charges as set forth in the tariffs governing electric service to customers affected by this application are insufficient to provide applicant with adequate net annual compensation and return on its property used and useful in the rendition of electric service.

4) A rate of return of 11.20 percent is fair and reasonable under the circumstances of this case and is sufficient to provide applicant just compensation and return on its property used and useful in the rendition of electric service to its customers.

5) Applicant should be authorized to cancel and withdraw its present tariffs governing service to customers affected by this application and to file tariffs consistent in all respects with the discussion and findings set forth above.

ORDER:

It is, therefore,

ORDERED, That the application of Ohio Edison Company for authority to increase its rates and charges for electric service is granted to the extent provided in this opinion and order. It is, further, ORDERED, That applicant is authorized to cancel and withdraw its present tariffs governing service to customers affected by this application and to file new tariffs consistent with the discussion and findings set forth above. Upon receipt of four complete copies of tariffs conforming to this opinion and order, the Commission will review and approve those tariffs by entry. It is, further,

ORDERED, That the effective date of the new tariffs shall be the date applicant files four complete, printed final copies of its tariffs pursuant to the entry approving the form of the new tariffs. The rates contained in the new tariffs shall be applicable to all bills rendered on or after the effective date. It is, further,

ORDERED, That applicant shall immediately commence notification of its customers of the increase in rates authorized herein by insert or attachment to its billings, by special mailing, or by a combination of these methods. Applicant shall submit a proposed form of notice to the Commission when it files its tariffs for approval. The Commission will review the notice and, if it finds it to be proper, will approve the notice by entry. It is, further,

ORDERED, That applicant comply with all Commission directives set forth in this opinion and order. It is, further,

ORDERED, That all objections and motions not specifically discussed in this opinion and order, or rendered moot thereby, are overruled and denied. It is, further,

ORDERED, That a copy of this opinion and order be served on all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO

Jolynn Barry Butler

Jolynn Barry Butler, Chair

J. Michael Biddison

J. Michael Biddison

Ashley C. Brown

Ashley C. Brown

Richard M. Fanelly

Lenworth Smith, Jr.

AKR/DDN;geb

Entered in the Journal
AUG 16 1990

A True Copy

Gary E. Vigorito

Gary E. Vigorito
Secretary

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Appendix Submitted on Behalf of Intervening Appellee, Suburban Natural Gas Company, was served in accordance with S.Ct.Prac.R. 3.11(D)(1) and R.C. 4903.13 upon all parties of record via electronic transmission this October 20, 2020.

/s Kimberly W. Bojko
Kimberly W. Bojko

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