STATE OF MAINE
PUBLIC UTILITIES COMMISSION

Docket No. 2020-00316

October 28, 2021

VERSANT POWER
Request for Approval of a Distribution
Rate Change

ORDER (Part II)

BARTLETT, Chair; DAVIS and SCULLY, Commissioners

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I. INTRODUCTORY SUMMARY

With this order, the Commission rejects Versant Power's (Versant) proposed increase in distribution rates and instead approves a distribution revenue requirement of $103,526,129, which represents an increase in rates of $15.4 million (or about 17.5%, taking into account adjustments to the sales forecast), for effect November 1, 2021. This distribution rate increase shall be applied evenly across all rate classes and rate elements in both Versant's Maine Public District and its Bangor Hydro District.

The Commission also approves establishment of a revenue-decoupling mechanism for Versant, and determines that the ratemaking treatment of the impact of the net energy billing kilowatt-hour credit program will be determined in a separate investigation that we order be opened promptly upon closure of this docket.

II. SUMMARY OF KEY DRIVERS OF RATE ADJUSTMENT

For any cost-of-service rate case, the revenue requirement consists of two main components: recovery of expenses and return on rate base. Operating expenses include depreciation (the recovery of rate base investments), staffing, vegetation management, storm response, and other direct costs paid by ratepayers. Return on rate base reflects the amount a utility can earn on its investment. This is not a guaranteed profit, but rather a return an efficiently run utility should be able to earn. Utilities are entitled to rates that are just and reasonable.

A. Key Drivers

Versant's rate request, originally a 25% proposed increase, included significant increases in both rate base and expenses. This summary briefly describes key drivers of the rate increase we approve here. The details underlying this summary are primarily in section V of this order.

The revenue requirement we approve reflects increases in a number of rate components, some of the largest of which relate to storm response or electric reliability. The amount assumed in rates for power restoration following non-extraordinary storms increases significantly, from approximately $1.9 million approved in the last case to approximately $3.8 million approved here. This is due mainly to the increase in incidence in these types of storms in the last few years, plus inflation, newly added in this case. Storm costs also increase due to the recent deferral of costs for three extraordinary storms, one that occurred in October 2019 and two in April 2020. In addition, the amount in rates for vegetation management increases to $7.8 million from $5.4 million approved in Versant's last rate case, due to increased contract costs for that program. Versant will continue its five-year trim cycle and other vegetation management programs, and will be subject to a new requirement to report on its management of that program to ensure the quality of its contractors' work.

The amount of capital investments increases significantly, for a few reasons. First, Versant is replacing all of the meters in its service territory with advanced metering infrastructure, sometimes referred to as smart meters. The meters that are being replaced in the Maine Public District have reached the end of their useful life, and those in the Bangor Hydro District will soon do the same. Some of these meters, and the back-office operations needed to support them, will be operational in 2022. A portion of the total project investment is thus reflected in this rate increase.

Second, due to investments in distribution reliability and related endeavors, Versant's plant in service increased significantly from its last rate case. Our decision authorizes an increase to those recurring investments to reflect a four-year average trend—less than what Versant sought, but still notable. This will provide Versant funds in rates to enable continued investments in reliability and resiliency, and software investments to support customers' full participation in programs such as net energy billing (NEB).

With such a significant approved annual increase to the forecast of distribution plant in service, the Commission fully expects to see evidence from Versant of reliability performance improvements in the coming months and years. If that demonstration is not forthcoming, a different approach to forecasting plant in service may be required in the future.

B. Comparison of Versant and Staff Positions and Decision on Rate Increase

A comparison of the positions of Versant (at the rebuttal stage), the Staff's Reply Bench Analysis, the Examiners' Report, and this decision is shown below in Figure 1.

Figure 1: Summary of Approved Rate Increase and Comparison to Positions of Versant and Staff

	Versant Power Rebuttal Amount ($ Millions)	Staff Reply Bench Analysis Amount ($ Millions)	Examiners Report Amount ($ Millions)	Order Amount ($ Millions)
Total Rate Base	$ 418.48	$ 397.18	$ 402.3	$ 409.3
WACC	8.55%	8.55%	8.36%	8.36%
Return on Rate Base	$ 35.78	$ 33.96	$ 33.63	$ 34.22
Add: Carrying Costs on Swan's Island Acquisition Adjustment	$ 0.01	$ 0.01	$ 0.01	$ 0.01
Cost of Service	$ 70.05	$ 64.23	$ 67.78	$ 69.30
Total Distribution Revenue Requirement	**$ 105.84**	**$ 98.20**	**$ 101.42**	**$ 103.53**
Rate Year Distribution Revenues at current rates*	$ 88.10	$ 88.10	$ 88.10	$ 88.10
Distribution Revenue Shortfall	**$ 17.74**	**$ 10.10**	**$ 13.32**	**$ 15.42**
Distribution Rate Increase	**20.14%**	**11.46%**	**15.12%**	**17.51%**

* - Based on agreed Staff adjustment to sales. RBA at 38 and Versant Br. at 84.

C. Impacts of Expanded Net Energy Billing kWh Credit Program Not Yet Incorporated into Rates

It is worth noting that the effects on sales of the newly expanded net energy billing program known as the kilowatt-hour (kWh) credit program have been excluded from this case. Had they been included, the effects of that program alone would have made this rate increase nearly $3 million greater. As one party pointed out in its brief, this amount is just the tip of the iceberg, and the ongoing impacts of the NEB kWh credit program will soon find their way into rates. As it stands, the Commission will open a case to consider how the impacts of that program should be recovered in rates—whether through stranded cost rates or distribution.

III. BACKGROUND AND PROCEDURAL HISTORY

A. General Backdrop of Versant's Rate Case Filing

Events that preceded Versant's rate case filing help give it context. In early 2019, Versant's predecessor in name, Emera Maine, filed a general rate case seeking a distribution rate increase of approximately $16 million. *Emera Maine, Request for Approval of Proposed Rate Increase*, Docket No. 2019-00019, Notice of Proceeding (Feb. 27, 2019). Around the same time, its then-owner, Emera Inc., announced Emera Maine's sale to ENMAX Corporation. *See id.* Procedural Order (Mar. 28, 2019) (noting news about the proposed sale and requiring briefing on the subject). After questions were raised about the propriety of seeking a rate increase on the cusp of a reorganization, Emera Maine voluntarily withdrew its rate case. *See id.* Procedural Order (Apr. 25, 2019) (noting voluntary dismissal and closure of docket).

In early 2020, the Commission approved the reorganization resulting from ENMAX's acquisition of Emera Maine. *Emera Maine et al., Request for Approval of Reorganization*, Docket No. 2019-00097, Order Approving Stipulation (Part II) (Apr. 21, 2020). That case was resolved by a settlement stipulation that included various rate-related provisions. The key provisions relevant here are:

(1) a distribution rate-case stay-out requiring that Versant not seek a rate increase that would become effective before October 1, 2021, *id.* at 7, Rev. Stip. ¶ 2;

(2) a requirement that Versant propose an alternative rate plan in its rate-case filing, *id.* Rev. Stip. ¶ 9;

(3) a prohibition of recovery in rates of the acquisition adjustment and transaction costs, *id.* Rev. Stip. ¶ 6;

(4) a cap on the cost of affiliate services ENMAX may recover from Versant, *id.* Rev. Stip. ¶ 38; and

(5) three years of reliability and service-quality indices with associated penalties for failure to meet specified targets, *id.* at 9–10, Rev. Stip. § F.

Two other factors outside of Versant's filing make this rate case unique. Versant's filing was made amid both (1) a global pandemic and (2) the early implementation of new renewable energy programs that will cause a major shift in costs from one group of customers to another.

Versant's filing was made approximately 11 months into a global pandemic that has significantly altered society. The pandemic involves the spread of a potentially deadly respiratory illness known as Covid-19. By the end of 2020, vaccines had been developed to help stem the spread of this disease and people had begun to be vaccinated throughout the State. The effects of the pandemic do not appear in Versant's 2019 test year. Versant stated that it had not made any discrete adjustments to expenses relating to the pandemic (EXM-003-002), though the pandemic is reflected in the Company's forecast of lower sales (EXM-006-001; EXM-006-002).

The filing was also Versant's first since a series of new renewable energy laws were adopted with the goal of dramatically reducing Maine's carbon footprint.[1] One of these initiatives was a significantly modified net energy billing program that allowed projects of up to 5 MW (the cap used to be 660 kW) subscribed to by an unlimited number of ratepayers (the cap used to be 10) to offset their own energy use with renewable energy produced by the renewable resource. While subsequent amendments have placed some potential limits on the growth of the program,[2] as originally designed, this program will cause a multimillion-dollar shift in costs from those who subscribe to the renewable developments to those who do not. The net energy billing program is mentioned as a reason for many aspects of Versant's distribution rate proposal, including technology investments and customer service positions.

B. <u>November 2020, January 2021: Rate Case Notification; Notice of Proceeding; Interventions; Initial Filing</u>

On November 17, 2020, Versant filed a letter notifying the Commission of its intent to file a general rate case in January 2021. Versant explained that it expected to seek a rate increase of approximately $22.2 million.

On January 8, 2021, the Examiners issued a notice of proceeding setting a deadline for petitions to intervene, scheduling an initial case conference, and proposing a schedule for parties' consideration and discussion at the conference.

On January 14, 2021, on Versant's motion the Examiners issued Temporary Protective Order No. 1 (Proprietary Business Information) and Temporary Protective Order No. 2 (Personnel Information).

On January 19, 2021, Versant submitted its full initial filing requesting an increase of approximately $21.5 million, or about 25% over current distribution rates, for effect October 1, 2021. In addition to a petition and Chapter 120 information, the filing included the prefiled direct testimony and exhibits of: (1) Kristian Chahley and David Davoren on revenue requirement; (2) David Bourgeois and Mr. Chahley on affiliate services; (3) Michael Adams on the lead-lag study and cash working capital requirement; (4) John Stewart on the revenue-decoupling mechanism; (5) James Coyne

[1] *See, e.g.*, P.L. 2019 ch. 478, Pt. A, §§ 3, 4 (codified at 35-A M.R.S. §§ 3209-A, 3209-B); P.L. 2019 ch. 477, § 2 (codified at 35-A M.R.S. § 3210-G).

[2] P.L. 2021, ch. 390.

on cost of capital and capital structure; (6) John Flynn on policy-related matters; (7) Steve Sloan, Kyle Ravin, Paul Miller, and David Norman on distribution operations and reliability; (8) Larry Rocha on information technology; (9) Kendra Overlock, Lisa Henaghen, and Allison Doughty on customer experience; (10) Krystal Hein on human resources; (11) Steve Dutra, Timothy Olesniewicz, and Brianna Littlefield on sales forecast; (12) Dr. George Criner on the econometric sales forecast; and (13) Andrew Barrett on the alternative rate plan proposal. Some of the main drivers of the proposed increase were:

(1) investments in information technology, including the consolidation of Versant's Maine Public District (MPD) into the existing customer information system currently serving the remainder of its service territory, the Bangor Hydro District (BHD), and an advanced meter infrastructure (AMI) investment that will, among other things, require replacement of all meters within each of Versant's two service territories;

(2) a number of enhanced resiliency and reliability investments and upgrades and an expanded vegetation management program;

(3) increases to depreciation and property tax expenses of approximately $8.4 million, largely attributable to the proposed increases to plant in service;

(4) a sales forecast that assumes a reduction of 6% from test year levels, nearly half of which is associated with the net energy billing kWh credit program, accounting for approximately $2.85 million of the proposed increase; and

(5) increases to operations and maintenance expense of approximately $2 million.

From January 12 to January 26, 2021, petitions to intervene were filed by the Office of the Public Advocate (OPA), Dot Kelly, ratepayer Francis Weld, ND Paper, A Climate to Thrive (ACTT), ratepayer Dennis Rose, and ratepayer Ania Wright.

The initial case conference was held January 27, 2021. The petitions to intervene of the OPA, ratepayer Francis Weld, ratepayer ND Paper, A Climate to Thrive, ratepayer Dennis Rose, and ratepayer Ania Wright were granted on a mandatory basis or on a discretionary basis as full parties. The petition to intervene of Dot Kelly was granted on a discretionary and limited basis and Ms. Kelly was designated the non-attorney representative for Mr. Weld and Ms. Wright. Jan. 28, 2021 Procedural Order (Case Schedule and Interventions) at 1–2. At the initial case conference, the parties discussed the case schedule and determined that the case could be decided within nine months, rather than the 8.5 months Versant's filing contemplated, though at least one party commented that if needed, additional time could be taken under suspension orders given how Versant filed its case. The case schedule agreed upon concluded with deliberations in October 2021 and an order on October 18, 2021. *Id.* at 2–3.

C. <u>February 2021: Supplemental Filing; Versant Letter on Schedule</u>

On February 3, 2021, the Staff issued a procedural order requiring Versant to supplement its initial filing with greater detail regarding, in particular, the support in the revenue requirement for its proposed capital investments. Versant made the supplemental filing on February 10, 2021. Written discovery followed and the supplemental filing was rolled into the already-scheduled technical conference on the initial filing.

On February 25, 2021, Versant filed a letter regarding the schedule, requesting that the case be completed within nine months.

D. <u>March 2021: OPA Letter on Schedule; Discovery on Initial Filing</u>

On March 3, 2021, the OPA filed a letter on the schedule preserving its right to seek additional time to complete the case beyond the nine months Versant requested and that was agreed upon in the case schedule proposed and then approved by Staff.

Related to its initial filing (as supplemented), Versant sought and obtained Temporary Protective Order No. 3 (Customer-Specific Information) on March 1, 2021, then responded to written data requests, questions at a technical conference on the initial filing on March 16, 17, and 18, 2021, and oral data requests.

E. <u>April–May 2021: Intervenor Testimony and Discovery; Bench Analysis and Discovery; Late-filed Intervention of Aroostook Energy Association</u>

On April 8, 2021, the OPA filed the testimony of Mr. Lafayette Morgan on revenue requirement and of Dr. Marlon Griffing on cost of capital and capital structure. The OPA's testimony showed a revenue requirement increase for Versant of about $15 million. On the same date, the Staff issued its Bench Analysis, which showed a revenue requirement increase for Versant of about $11 million, or about 13% above current rates.

On April 13, 2021, the Aroostook Energy Association (AEA) submitted a late-filed petition to intervene, which was granted on a discretionary basis with no objection on the condition that the AEA take the case as it found it. Apr. 22, 2021 Procedural Order (Late Intervention Granted).

Witnesses for the OPA and the Staff responded to written data requests, questions at a technical conference on May 14, 2021, and oral data requests. On May 3, 2021, the Examiners issued Protective Order No. 4 (Copyright-Protected Information) to allow for a response to an oral data request.

On May 11, 2021, the Examiners issued a procedural order resolving questions on confidentiality issues that were raised in the course of discovery on the Company's initial filing.

F. May–June 2021: Public Witness Hearing; Comments of A Climate to Thrive; Late Intervention of and Motion of the IECG

On May 7, 2021, the Industrial Energy Consumer Group (IECG) submitted a late-filed petition to intervene, which was granted subject to the IECG's taking the case as it found it. May 18, 2021 Procedural Order.

A public witness hearing was scheduled to occur via teleconference (due to the ongoing coronavirus pandemic) on May 26, 2021. No public witnesses attended to provide testimony.

On May 25, 2021, A Climate to Thrive filed comments on Versant's proposed rate increase.

On May 28, 2021, the IECG filed a motion to modify the schedule to allow for parallel processing of the issue of the rate treatment of net energy billing kWh credit program and whether Versant was imprudent in its actions before the Legislature's Joint Standing Committee on Energy, Utilities, and Technology because Versant did not oppose the NEB laws strenuously enough. On June 1, 2021, the Examiners set deadlines for responses to the motion. On June 10, 2021, Versant filed an opposition to the IECG's motion, and on June 16 the IECG responded, renewing its arguments.

On June 28, 2021, the Examiners denied the IECG's request because it had been required to take the case as it had found it, it had had an opportunity to file rebuttal testimony on the Bench Analysis, and because its request, if granted, risked policing political speech, which is protected under the First Amendment. June 28, 2021 Procedural Order Denying Motion to Modify Schedule.

G. June 2021: Versant's Rebuttal Testimony and Discovery

On June 1, 2021, Versant filed its rebuttal testimony, which updated its revenue requirement increase to be approximately $19.6 million, or about 23% over current rates. The filing included the prefiled rebuttal testimony and exhibits of: (1) Mr. Chahley and Mr. Davoren on revenue requirement; (2) Mr. Bourgeois and Mr. Chahley on affiliate services; (3) Mr. Adams on the lead-lag study and cash working capital requirement; (4) Mr. Coyne on cost of capital and capital structure; (5) Mr. Flynn on policy-related matters; (6) Mr. Sloan, Mr. Rocha, Mr. Ravin, Mr. Miller, Ms. Doughty, Mr. Norman, and Ms. Overlock on distribution operations and reliability and information technology; (7) Ms. Overlock and Ms. Hein on customer experience and human resources; and (8) Mr. Dutra, Mr. Olesniewicz, and Mr. Stewart on sales forecast, net energy billing, and the revenue-decoupling mechanism.

Versant's witnesses responded to written data requests, questions at a technical conference on June 30, 2021, and oral data requests.

H. <u>July–August 2021: Intervenors' Surrebuttal Testimony, Reply Bench Analysis, and Discovery; Settlement Conference</u>

On July 14, 2021, the IECG filed surrebuttal testimony of Dr. Richard Silkman and Eben Perkins arguing against the Staff's proposal to reconcile the impact of the NEB kWh credit program through stranded costs. The witnesses subsequently responded to written data requests.

Also on July 14, 2021, the OPA filed the surrebuttal testimony and exhibits of Mr. Morgan and Dr. Griffing. The OPA's witnesses updated their revenue requirement increase to be approximately $16.9 million. The witnesses subsequently responded to written data requests.

On the same day, the Staff issued its Reply Bench Analysis, which showed a revenue requirement increase of approximately $12 million. The Staff subsequently responded to written data requests.

Witnesses for the OPA and Commission Staff also responded to questions at a technical conference on August 6, 2021, and oral data requests. In one of those oral data requests, the Staff made corrections to its calculation of the revenue requirement; that corrected revenue requirement increase was approximately $13.7 million. ODR-004-001.

On August 6, 2021, after the technical conference, a settlement conference was held. *See* July 30, 2021 Procedural Order (Settlement Conference). Ultimately, no settlement was presented to the Commission.

I. <u>August 2021: Prehearing and Hearing Procedures; Suspension Order</u>

On July 29, 2021, the Examiners issued the Prehearing Order requiring any party who intended to participate in the evidentiary hearing to file a case management memorandum.

On August 10, 2021, Versant, the OPA, and the IECG submitted case management memoranda. Among other things, the IECG sought post-briefing oral argument on the issue of how the impact of the NEB kWh credit program would be reconciled in rates, and Versant sought oral argument on several disputed issues in the case. On the same date, the Staff issued a Bench Memorandum. A case management conference was held August 16, 2021. Among other things, Staff clarified that the Commission would decide what issues it wished to hear oral argument on, if any, and the parties would be informed of those issues and an argument scheduled if needed.

On August 17, 2021, Staff issued Prehearing Order No. 2 establishing a deadline for hearing exhibits, scheduling of questioning and witness appearance at the hearing, the stipulated admission of testimony, and various evidentiary rulings.

On August 18, 2021, the members of the Commission presided over the evidentiary hearing (which was held via remote means, given the ongoing coronavirus pandemic). Versant responded to oral data requests from the Bench by the deadline of September 1, 2021.

On August 25, 2021, the Commission issued a suspension order suspending the effective date of Versant's new rates to October 19, 2021, consistent with discussion among the parties at the outset of the case (see section III.B. above), because more time was required for the Commission to complete the case.

J. Early to Mid-September 2021: Briefing

On September 7, 2021, direct briefs were filed by Versant, the OPA, and the IECG. On September 14, 2021, the same parties filed reply briefs.

It was determined based on the briefs that oral argument was unnecessary and thus would not be scheduled. Sept. 16, 2021 Procedural Order.

K. Mid- to Late September 2021: Process Regarding Bench ODR

On September 10, 2021, the Examiners issued a procedural order striking a portion of Versant's response to ODR-005-006—an oral data request Commission Staff posed at the hearing seeking certain documents present to Versant's board—along with associated portions of its direct brief, from the record for exceeding the bounds of the question posed and supplementing its testimony without leave to do so.

On September 16, 2021, Versant filed a request for reconsideration arguing that its response to ODR-005-006 should be included in the record because it was only asked this line of questioning at the hearing and that, if its request for reconsideration was denied, it nevertheless requested an opportunity to add to the record at this stage. Versant also pointed out that certain portions of the brief that had been struck were supported by other evidence in the record, so should not be struck.

On September 20, 2021, the OPA responded to Versant's request for reconsideration, arguing that the struck narrative is "impermissible supplemental testimony." The OPA argued that any opportunity Versant may have had to supplement the record has passed and that since it did not seek to do so when it would have been appropriate, it has no argument for inclusion of the struck narrative in the record.

On September 28, 2021, the Examiners denied Versant's request for reconsideration. Sept. 28, 2021 Procedural Order.

L. Late September–October 2021: Examiners' Report, Exceptions, Decision

On September 28, 2021, the Staff issued its recommendation to the Commission in an Examiners' Report. The Staff recommended an overall rate increase of 15% (accounting for adjustments to the sales forecast). The recommendation consisted of, among other things, adding approximately $9.4 million of the AMI investment and use of a historical trend analysis to calculate the forecast increase to plant in service.

On September 30, 2021, Staff added one workbook to the appendix to the Examiners' Report and provided an extra day to submit exceptions relating to that portion of the appendix.

On October 5, 2021, Versant, the OPA, the IECG, and A Climate to Thrive filed exceptions to the Examiners' Report.

On October 13, 2021, the Commission deliberated this matter and on October 18, 2021 issued Order (Part I). That order was followed by a compliance filing from Versant on October 19, 2021, and a delegated decision confirming the amount of the Commission's approved revenue requirement.

IV. LEGAL STANDARD

In setting rates, the utility "is entitled to only those rates [that] are 'just and reasonable' under the circumstances."[3] A main objective in rate-setting is "to achieve a proper balance between the right of the utility's investors to earn a fair return on their investment and the right of ratepayers to a fair charge based on the value of the services provided by the utility."[4]

The Commission's findings of fact supporting its decision on the revenue requirement must be supported by substantial evidence in the record.[5] The methodology the Commission uses in rate cases "need not be suggested by any witness in the record" but instead "lies within the Commission's expertise and discretion, and is subject only to a test of reasonableness. If the methodology is reasonable, then the result will not be disturbed if the factual findings employed in that methodology are supported by the record." *Mars Hill & Blaine Water Co. v. Pub. Utils. Comm'n*, 397 A.2d 570, 576. (Me. 1979).

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[3] *New England Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 390 A.2d 8, 30 (Me. 1978); 35-A M.R.S. § 301(3) (2010).

[4] *New England Tel. & Tel. Co. v. Pub. Utils. Comm'n*, 448 A.2d 272, 288 (Me. 1982); *Am. Ass'n of Retired Persons v. Pub. Utils. Comm'n*, 678 A.2d 1025, 1030–31 (Me. 1996); *Cent. Me. Power Co. v. Pub. Utils. Comm'n*, 150 Me. 257, 278, 109 A.2d 512, 522 (1954) ("[T]he Commission must strike a nice balance between the essential revenue needs of the Company and the value of the service to the rate payer and his ability to pay.").

[5] *Cent. Me. Power Co. v. Pub. Utils. Comm'n*, 150 Me. 257, 260, 109 A.2d 512, 513 (1954) ("[T]he basic question before us is whether or not the Commission has fixed reasonable and just rates, supported by substantial evidence, which will produce a fair return upon the reasonable value of the property of the Company used or required to be used in its service to the public within the state.").

V. DISCUSSION AND DECISIONS ON ISSUES

A. Cost of Capital and Capital Structure

1. Cost of Capital

There is no apparent dispute about a number of the key components of the Company's weighted average cost of capital (WACC). Both the OPA and Versant recommend that the long-term debt component of the capital structure be adjusted to reflect known and measurable changes occurring after the test year, which would result in an overall weighted cost of long-term debt of 4.08%. OPA Br. at 14; Versant Br. at 80; ODR-005-002, Att. B. The Company accepted the recommendation in the Bench Analysis that the cost of short-term debt should be set at 2.09% and the OPA notes that this issue is not in dispute. Rev. Req. Reb. Ex. RR-4; BA at 10; OPA Br. at 12. Notably, there is no dispute on the allowed return on equity (ROE). Versant proposed maintaining its current authorized ROE of 9.35%, the OPA recommended an ROE of 9.35%, and Staff's analysis supported the ROE proposed by the Company. ROE Dir. at 68; Griffing Surr. at 5; BA at 21. The parties also agree that short-term debt should represent 4.46% of the capital structure and preferred stock should represent 0.04% of the capital structure at a cost of 7.00%. ROE Dir. at 67; OPA Br. at 12; BA at 9. The Commission accepts the lack of dispute and approves the apparent agreement of the parties on these components of the WACC calculation as a just and reasonable outcome.

2. Capital Structure

a. Positions of the Parties and Staff

The remaining issue in dispute is the capital structure, specifically the common equity ratio and the proportion of the capital structure represented by long-term debt. The Company has proposed a capital structure with 49.0% common equity and 46.5% long-term debt. Versant Br. at 77. The OPA recommends a capital structure with 47.75% common equity and 47.75% long-term debt. OPA Br. at 12. Staff supported Versant's proposed capital structure. BA at 9.

In its brief, the OPA identifies the fact that its capital structure analysis was performed at the holding-company level while Versant's was developed using operating-company data as a key factor explaining the difference between the OPA's and Versant's common equity ratio recommendations. OPA Br. at 13. The OPA's cost of capital witness developed his recommended common equity ratio by calculating the average common equity ratio for the 21 electric utilities in his comparison group for each of the eight quarters in 2019 and 2020. He then excluded the results for six companies which had one capital-structure ratio that exceeded 55%, noting that commissions rarely approve a common equity ratio of 55%. His resulting common equity ratios ranged from 27.05% to 56.48% and averaged 46.63%. Griffing Dir. at 44–45, Ex. MFG-20, Sched. 2.

The OPA argues that it is appropriate to use holding company capital structures "because it is holding-companies that issue common stock, and it is the common stock of the holding-companies investors purchase . . . . As such, it is the holding-company capital structure that is relevant to the investment decisions." OPA Br. at 13. Further, the OPA argues, "the cost of equity models utilized by the OPA and Versant in this rate case are predicated on the share prices of the holding-companies, and the share prices of the holding-companies are influenced by their capital structures. It is, therefore, appropriate to use the capital structure of the holding-companies to maintain consistency with the ROE analyses and cost of equity estimates." *Id*.

Versant argues that the OPA's analysis improperly considers the capital structure of holding companies rather than operating companies and that, because Versant is an operating company, the relevant comparison is to other operating companies and not to holding companies. Versant Reply Br. at 12–13. Versant's cost of capital witness testified that the common equity ratios of the operating companies in his proxy group ranged from 47.36% to 60.53% and averaged 53.32%. ROE Dir. at 67.

The Company states that a common equity ratio of 49% is consistent with a recent Commission decision regarding Central Maine Power Company (CMP), which was allowed a 50% common equity ratio. Versant Br. at 13. Moreover, Versant argues, the Company's proposed capital structure is reasonable when compared to approved common equity ratios from other jurisdictions, noting that in rate case decisions for electric utilities from January 1, 2020 through May 18, 2021, the average authorized common equity ratio is greater than 50% and the median is greater than 51%. Versant Br. at 79.

As presented in the Bench Analysis, Staff's capital structure analysis conducted on its proxy group companies showed a common equity layer that fell within a range of 46.88% to 56.92% with a mean of 50.81%. Thus, Staff did not disagree with Versant's proposed capital structure. BA at 8–9. Staff's analysis also included the common equity layers for all the operating companies owned by the proxy group holding companies, which showed a range 43.07% to 100% with an average of 51.75%. BA Workpapers Att. B.

b. Decision

As noted, essentially all of the issues related to determining an allowed rate of return for Versant are not in dispute. The remaining question is the common equity ratio to allow as reasonable in the context of this ratemaking proceeding. Both the 49% common equity ratio proposed by the Company and supported by Staff and the 47.75% common equity ratio recommended by the OPA fall well within the ranges established by the evidence in this case. The OPA has presented a comparison to the equity ratios of the holding companies while the Company has based its recommendation on an analysis of the equity ratios of the operating companies owned by those publicly traded holding companies. Staff has provided analysis of the equity ratios of the holding companies within its proxy group, with an average of 50.81%, and the operating companies owned by those holding companies, with an average of 51.75%.

As always, the determination of an appropriate allowed rate of return involves the exercise of judgment by the Commission. The evidence in the case establishes reasonable parameters for the individual components comprising the WACC and the overall outcome. Some issues, such as the cost of long-term debt, lend themselves to objective calculations that can be made independently. The determination of a capital structure appropriate to use in a ratemaking context, however, is not remote from other rate of return considerations, but one that works in conjunction with the analytical results of the ROE analyses and other market considerations. The initial OPA testimony estimated a return on equity of 9.55% and recommended a capital structure with a 47.75% equity layer. Griffing Dir. at 43. The Company's ROE testimony recommended an equity ratio of 49% and developed a reasonable range of ROE for Versant of between 10.3% and 10.8%. ROE Dir. at 67–68. Staff's analysis developed a reasonable equity ratio in the range of 50% and a reasonable average ROE of 9.36% using a consistent proxy group of companies. BA at 8–9, 17. The Commission finds the Staff's analysis to be somewhat more persuasive. That analysis used the same group of companies to support the 9.35% ROE requested by the Company combined with a common equity ratio of 49%. Thus, the Commission accepts a common equity ratio of 49% as a just and reasonable outcome.

3. Resulting Rate of Return

These determinations on cost of capital and capital structure result in an overall pre-tax rate of return for Versant of 8.36%, which the Commission hereby approves.

Figure 2: Summary of Authorized Rate of Return

Versant Power and Staff			
Computation of Weighted Average Cost of Capital			
Capital Structure	Ratios	Cost	After-tax Weighted Ave. Cost
Long-Term Debt	46.50%	4.08%	1.90%
Short-Term Debt	4.46%	2.09%	0.09%
Preferred Stock	0.04%	7.00%	0.00%
Common Stock	49.00%	9.35%	4.58%
	100.00%		
	Weighted Cost of Debt		1.99%
	Pre-Tax Cost of Equity		6.37%
	Pre-Tax WACC		8.36%

B. Rate Base: Plant in Service

1. Versant's Proposal

A large portion of the rate increase Versant seeks is due to a significant increase in rate base. In its rebuttal filing, Versant proposed an increase of approximately $151 million in distribution gross plant-in-service between the 13-month test-year average balance and the 13-month rate-year average balance. Rev. Req. Reb. Ex. RR-101. This represents approximately a 23% increase relative to the test-year gross plant in service balance; Versant's rebuttal 13-month distribution rate-year gross plant balance was approximately $801.4 million. Its 13-month distribution test-year gross plant balance was approximately $650.5 million. The Company claimed that its increased focus on distribution plant and reliability stem from two events in the last five years: the results of a management audit conducted by the Commission's consultant The Liberty Consulting Group (Liberty) in 2016,[6] and testimony and other statements offered in the ENMAX merger case. Versant asserted that the reliability improvements it seeks to make will be necessary to facilitate anticipated significant growth in distributed generation in its service territory.

Versant's proposed increase in plant additions consists of several elements. Versant described a series of "resiliency/reliability" investments and a multi-component "targeted asset condition replacement program" aimed at identifying elements of its distribution system that it says are at the end of their useful lives and in need of replacement. Ops. Dir.[7] at 16–20; Ops. Reb.[8] at 18–23. The Company claimed that these proposed investments are carefully aimed at "achieving continuous, incremental reliability improvement at reasonable cost, and sustaining that improvement through prudent asset management." Versant Br. at 36. These programs are discussed below in section V.B.0.

Versant also proposed two major capital investments in information technology: (1) consolidation of its customer information system (CIS) (integrating its MPD customers into the existing CIS that has served the BHD for several years) and (2) development and deployment of advanced metering infrastructure (AMI) (replacing all meters in both service territories and making associated software and network

[6] This service quality audit was part of a larger audit performed by Liberty on behalf of the Commission in an Emera Maine rate case. *Emera Maine, Request for Approval of a Proposed Rate Increase*, Docket No. 2015-00360, Liberty Report, Aug. 8, 2016.

[7] "Ops. Dir." refers to the direct testimony and exhibits of Paul Miller, Kyle Ravin, Steve Sloan, and David Norman on distribution operations and reliability, as included in Versant's January 19, 2021 initial filing.

[8] "Ops. Reb." refers to the rebuttal testimony and exhibits of Paul Miller, Kyle Ravin, Steve Sloan, David Norman, Kendra Overlock, Allison Doughty and Larry Rocha on distribution operations and reliability, as well as information technology, as included in Versant's June 1, 2021 rebuttal filing.

upgrades and investments). IT Dir.[9] at 7–9. Mr. Rocha also described two other proposals, Enterprise Service Bus and Work Order Management System, but indicated in discovery that the Company does not seek recovery in rates for these programs. EXM-010-035; EXM-010-037. Versant capital investments also include costs associated with routine equipment upgrades and replacements that occur in the ordinary course, such as blanket projects, additions due to growth, replacement of equipment as a result of failure, and planned projects that result from routine inspections. Tr. at 63 (Mar. 17, 2021 Tech. Conf.). Versant refers to this type of investment as a "base capital" investment. *Id.* at 59.

In addressing Versant's proposal on plant in service, the Commission first (1) discusses the issue of forecasting future plant in service and the Staff's proposal for doing so under a so-called attrition approach, then turns to (2) Versant's significant investment in advanced metering infrastructure, then to (3) the Company's CIS upgrade project, (4) the various targeted asset condition and resiliency/reliability investments, and finally (5) the Company's proposed right-of-way clearing pilot program.

2. <u>Forecast of Future Plant in Service and CAGR Approach</u>

a. Parties' Positions

i. Staff's Analysis

In its Bench Analysis, Staff expressed concern about the size of Versant's request. Staff first pointed out that in 2018 and 2019, Versant's spending on distribution plant exceeded budgeted amounts by approximately 50% where spending had tracked budget in prior years. EXM-003-007, Att. A. While offering several explanations for this increase, the Company described the majority of the difference between budget and actuals as related to reliability. BA at 22–23.

Staff expressed concerns about the Company's forecast of plant investments. Based on the information included in the Company's revenue requirement model and the Company's Federal Energy Regulatory Commission (FERC) Form 1 data, Staff noted that, even including the higher 2018 and 2019 spending, the Company's 2019–2022 non-transmission plant balance was projected to grow by approximately $200 million in the three-year period between 2019 and 2022, which is nearly double the corresponding increase in the prior three-year period. *Id*. at 31.

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[9] "IT Dir." refers to the direct testimony and exhibits of Larry J. Rocha on information technology, as included in Versant's January 19, 2021 initial filing.

Figure 3: End-of-Year Plant Balances (FERC Form 1 and Ex. RR-111)[10]

	End of Year Balances (FERC Form 1 and RR-111)				
	TOTAL	Transmission	Non-Transmission		
2016	$ 1,169,985,651	$ 568,822,736	$ 601,162,915	FERC Form 1	
2017	$ 1,223,307,725	$ 591,549,653	$ 631,758,072	FERC Form 1	
2018	$ 1,272,441,568	$ 608,783,922	$ 663,657,646	FERC Form 1	Delta 2019 - 2016
2019	$ 1,340,083,613	$ 631,009,741	$ 709,073,872	FERC Form 1	$ 107,910,957
2020	$ 1,421,742,220	$ 667,844,999	$ 753,897,221	FERC Form 1	
2021	$ 1,520,894,403	$ 693,399,572	$ 827,494,831	RR-111	Delta 2022 - 2019
2022	$ 1,623,332,173	$ 712,382,571	$ 910,949,602	RR-111	$ 201,875,730

Based in part on the table reproduced as Figure 3 above, Staff questioned whether the Company was proposing these investments to increase its revenue, as opposed to providing necessary improvements in service. *Id.* at 31. Staff added that the Company's planned investments in 2021 were more than double, and in 2022 were nearly double, what it spent on these items in 2020. EXM-009-062, Att. A; VERS-001-003.[11] Staff noted that Versant had not proposed to change its CAIDI and SAIFI reliability indicator metric numbers in response to this increased spending on reliability-related projects. BA at 31.

Staff expressed two high-level concerns about the size of Versant's requested rate increase and rate base investments. First, the amounts proposed for inclusion in rate base were the result of high-level estimates that would become more speculative the further into the future one looks. EXM-003-007; ODR-001-046. Second, Versant could, following the Commission's rate decision, reprioritize, defer, or otherwise alter its spending plans, for whatever reason. BA at 43–44. Versant's witnesses described the flexibility of schedules and ability to prioritize efforts where needed. *See, e.g.*, Tr. at 41, 43, 62–63, 75, 81–82 (Mar. 17, 2021 Tech. Conf.).

Staff pointed out that although unlimited amounts may be invested in attempts to make a distribution system more reliable, such investments must be balanced against the benefits of these investments as well as the ability of customers to pay the resulting rates. BA at 43.

With these considerations, Staff proposed use of a compound average growth rate (CAGR) as an alternative approach to Versant's proposed forecast increase in plant in service. A CAGR approach is essentially a trend analysis that bases the plant additions included in the revenue requirement calculation used to set rates on historical investment trends. Staff noted that it is ultimately up to management how to invest capital within a reasonable budget to ensure safe, adequate, and reliable service. Staff

[10] BA at 31, Fig. 9.

[11] In the Bench Analysis, the Staff incorrectly indicated that the 2021 and 2022 investments were more than triple the 2020 investment. The Staff corrected this in its response to VERS-001-003.

indicated that this approach leads to what is essentially an allowance in rates for investments, using recent years' investment trends, and is an appropriate way to provide the Company the funding it needs to invest in important capital projects—and recognize the emphasis the Company has placed on reliability investments in recent years—while also attending to the need for stability in and reasonableness of customers' rates. *Id*. at 44–45.

To develop its CAGR, the Staff reviewed the end-of-year non-transmission plant balances over the period 2015 through 2020. The data for 2015 through 2019 was obtained from the Company's FERC Form 1 data and the 2020 data was based on the Company's reported actual 2020 plant-in-service balances provided in its revenue requirement model.[12] Using this information, the Staff developed a CAGR value of 5.95% (or 0.48% per month). BA at 47–48.

The Staff applied this CAGR to the test-year 13-month average distribution electric plant balance of $650.5 million identified by the Company in Exhibit RR-110 for 33 months to determine the rate-year value. This resulted in a 13-month average distribution electric plant in the rate year of $762.6 million, which is $38.8 million less than the Company's rebuttal filing value of $801.4 million. RBA at 10.

Figure 4: Staff's CAGR-Based Adjustment to Versant's Electric Plant Balance[13]

		13-mo. Avg Distribution Electric Plant Balance
Company As Filed Test Year	RR-110	$ 650,533,583
Company As Filed Rebuttal Rate Year	RR-111	$ 801,402,713
Company As Filed Adjustment	RR-101	$ 150,869,130
Company As Filed Test Year	RR-110	$ 650,533,583
Bench Analysis Rate Year		**$ 762,598,942**
Bench Analysis Adjustment		$ 112,065,359
Change from Company's Adjustment		**$ (38,803,771)**

[12] When the Staff filed the Bench Analysis, it included CAGR calculations using both the Company's 2020 plant balances from its direct testimony revenue requirement information and from its Supplemental Revenue Requirement Exhibit 3, which ultimately was the same as the plant investments included in the Company's rebuttal revenue requirement calculation. In its analysis, the Staff used the CAGR that resulted from the Supplemental Revenue Requirement Exhibit 3/Rebuttal.

[13] RBA Workpaper Att. D.

The Company argued that Staff's approach "equates to a $77.6 million reduction in total capital spend during the rate year, based on a 13-month average rate base calculation to achieve Staff's proposed plant rate base amount." Ops. Reb. at 12. It further argued that Staff's CAGR analysis did not adequately address the AMI and customer information system (CIS) investments as these are significant, non-recurring projects that should not impact or limit the amount the Company is able to spend on it recurring projects. Rev. Req. Reb. at 37–38. The CIS-related investments are often referred to as CIS/NEB, an acronym that refers to two combined initiatives: the consolidation of Versant's CIS to fold the MPD into the existing system, and modifications to allow that system to facilitate the growth of net energy billing (NEB) in the MPD. *See*, *infra*, section V.B.4.

Staff responded that its CAGR adjustment would provide for an additional $110.8 million in distribution investment by the end of the rate year (relative to the end of the test year). The Company's rebuttal filing provides for an additional $157.9 million relative to the end of the test year over the same period. Accordingly, Staff's CAGR produces a distribution plant investment between the end of the rate year and the end of the test year (a total of 33 months) of $47 million less than proposed by the Company, but still allows for over $110 million in additional investment over that period. This is roughly the same level of investment that has occurred in the 33 months prior to December 2020 and, in Staff's view, did not "eliminat[e] all or virtually all distribution projects," as the Company suggested in rebuttal. RBA at 11.

In response to the Company's arguments that the CAGR trend analysis should only cover 2017–2020, Staff identified concerns with the Company's recent increased level of plant additions, and said that three years seemed like too short of a period for this type of analysis. *Id*.

Staff agreed with the Company that it may be appropriate to treat the AMI project separately from the CAGR adjustment since it is a very large investment and the period used in Staff's CAGR analysis did not include projects of similarly irregular nature and/or magnitude. However, Staff did not support including the AMI project in the plant balance. Staff noted that just over the course of this proceeding, there have been significant changes in the assumptions of the level and timing of the AMI costs. Staff's position was that the AMI project does not yet meet the known and measurable standard. RBA at 12. Staff also did not agree that the CIS/NEB project should be treated separately. *Id*. at 12. Staff argued that the magnitude of the total investment in that project, estimated to be $9.4 million, Rev. Req. Reb. at KC-5, is substantially less than that of the AMI project, which is projected to be over $60 million in total. EXM-010-034, Att. A.

ii. OPA's Position

The OPA agreed with the Bench Analysis that Versant's elevated spending in the test year will lead to significantly higher rates and questions whether any of Versant's proposed reliability investments are known and measurable. OPA Br. at 4–5. The OPA endorsed the Staff's CAGR-based approach to increase plant in service. *Id*. at 6. The

OPA also agreed with the Reply Bench Analysis's proposed treatment of CIS/NEB and AMI and that the costs of the former are known and measurable, but the costs of the latter are not.[14] *Id*. at 5.

iii. Versant's Response

Versant argued that Staff's CAGR approach would not provide sufficient funds for Versant to pursue "continuous reliability improvement," conflicts with feedback the Company heard in recent Commission proceedings, would require deferral of "much of the important work Versant is doing in connection with developing a formal Asset Management program," would reduce its storm-hardening efforts, could reduce the Company's ability to meet its SQI targets, and would not meet its perception of its customers' reliability expectations.[15] Ops. Reb. at 4. Versant claimed that "the clear message conveyed to the Company in prior proceedings by Staff, the Commission, and the OPA was that the Company needed to accelerate its work to address reliability and customer service issues." Ops. Reb. at 7; Versant Br. at 2–3. The Company asserted that its proposed investments are needed for reliability but will serve to facilitate the transition to clean energy technologies going forward. Versant Br. at 23–26, 29–30.

Versant argued that the rates resulting from Staff's CAGR approach would not allow the Company to "make sufficient progress" towards its reliability goals, or "to meet the State's aggressive climate goals, including the widespread integration of renewable energy sources and distributed generation projects." Ops. Reb. at 2–4; *see also* EXM-023-001; EXM-023-002; EXM-023-004.

The Company noted that the ENMAX merger stipulation requires Versant to report on and be subject to penalties associated with the service quality indices (SQI) measuring CAIDI and SAIFI, and that it needs the proposed projects to be funded so it can manage for significant variability that occurs year to year in the SQI results. Ops. Reb. at 8–9; Versant Br. at 5.

Company witnesses, citing Staff's conclusion that the application of the CAGR results in a $38.8 million reduction in Versant's 13-month average plant balances, testified that if one assumes that capital investments are "placed into service evenly throughout the rate year, this equates to a $77.6 million reduction in total capital" spending in the rate year. Ops. Reb. at 12. Versant claimed that this would require eliminating all of its investment in distribution projects during the rate year. *Id*. Versant also argued that Staff's CAGR analysis results in a reduction of $47 million to Versant's proposed capital spending, compared to Versant's proposed 2022 base distribution spending of $41 million. The Company claimed this would reduce funding for distribution projects, fleet, and intangible and general property, and also reduce the number of

[14] It is not clear whether the OPA supports placing this project in rate base as part of the CAGR analysis or incremental to it.

[15] On September 24, 2021, Versant filed its new Asset Management Plan in accordance with the approved stipulation in Docket No. 2019-00097. Because this was filed after the close of evidence, it is not part of this case and was not reviewed in connection with this order.

contractors working on the distribution system, affecting storm response. Versant Br. at 23. The Company argued that the inclusion of plant balances from 2015 and 2016 in the Staff's trend analysis failed to account for a shift in (i.e., notable increase in) investments that began in 2017. This followed the Liberty audit report and was underlined by statements and considerations expressed in its recent reorganization docket, Docket No. 2019-00097. *Id*. at 23–26. In its brief, the Company also argued that the Commission should determine rate base additions by examining and approving the system needs identified by Versant and not through consideration of "a general desire to constrain rates." *Id*. at 37.

Versant argued that the CIS/NEB and the AMI project costs should be "carved out" of any attrition analysis that may be used, since both are large, one-time investments. Ops. Reb. at 16–17; Versant Br. at 18–21. Versant also proposed an alternative CAGR analysis that follows this approach, and while Versant did not prefer this over its originally filed forecast of plant additions, it suggested that its calculation would produce "a result very close to the capital plant balance under Versant's proposal." Ops. Reb. at 16; Versant Br. at 31–33. Versant argued that if AMI is entirely excluded and the CIS/NEB project costs are only allowed into rates as part of the CAGR adjustment, it would be in "an untenable situation" that will "virtually assure" that the Company will be unable to earn its allowed return during the rate year. Versant Br. at 28–29.

Versant asserted that Staff's CAGR approach is "purely backward-looking and assumes that spending patterns in the historical period are reflective of future needs." Versant Br. at 4. The Company asserted that it "cannot continually forestall needed investments to a future date," and that Staff's approach would lead to such deferral. *Id*. Versant argued that the calculation of rate base is "intended to forecast rate year capital investments, not to prevent a utility from undertaking necessary investments in its plant," and that use of the Staff's analysis would be unjust and unreasonable. *Id*. at 21–22. The Company asserted that Staff's application of the CAGR starting with the test year is unfair. Versant claimed this is a retroactive application of the CAGR and pointed to a $14 million difference between Versant's actual distribution electric plant balance and Staff's CAGR-based adjustment as of April 2021. Versant argued that because such spending has already occurred, it will have to curtail its spending on plant to account for this $14 million test year difference. The Company argued that the appropriate way to question or challenge actual spending is through a prudence review, not application of the CAGR. *Id*. at 27–28.

Versant argued that its rates, even after the proposed increase, would be lower than those of many other utilities in New England. *Id*. at 8; Ops. Reb. Ex. PM-Reb-1.

iv. A Climate to Thrive

In its exceptions, A Climate to Thrive argued that the Staff's rate recommendation did not provide sufficient financial support for Versant's investments. A Climate to Thrive argued that a historical trend analysis fails to address climate concerns: "At a time when climate impacts require urgent and forceful action to decarbonize the electricity grid and to electrify Maine's transportation and building sectors, the Examiner's Report inappropriately applies a historical averaging approach to determine recommended investment levels going-forward." Exceptions of ACTT at 1. There are risks to the Staff's approach, A Climate to Thrive argued: "[D]elays now will impose greater costs resulting from the more severe impacts of a worsening climate." *Id.* at 2.

b. Decision

For the reasons detailed below, the Commission adopts a CAGR attrition calculation for the purposes of adjusting the plant in service allowed in the rate year for investments other than the CIS/NEB and AMI. As discussed in section V.B.3., the Commission approves $9.4 million (59%) of the Company's proposed 13-month average AMI distribution costs for inclusion in rate base at this time. Also, as discussed in section V.B.4, the Commission approves for inclusion in distribution rate base at this time Versant's $7.5 million investment in the CIS/NEB project. This results in an allowed plant in service rate base in the rate year of $783 million which is an increase of $132 million over the average plant in service rate base of the test year.

Versant's 13-month-average rate base in the test year, December 2018 through December 2019, represents a rate base that is significantly higher than in previous years. Company witnesses testified that following its 2015 rate case, knowing the results of the management audit finding that the Company paid insufficient attention to reliability, the Company decided to increase its investment in reliability measures. This level of test-year rate base (none of which has been challenged in this case as imprudent) is an important consideration because it shows that even if there were no rate increase, Versant's level of funds for reliability investment is considerably greater than when the audit was conducted. The reliability metrics reported by the Company are trending in the right direction, Ops. Reb. at 9, and the Commission believes the two facts are likely connected.

Importantly, for this decision, this elevated test-year plant in service is the starting point for the increase that will result from the application of the CAGR. The CAGR-based adjustment to plant in service the Commission approves here increases the distribution plant-in-service portion of rate base by 6.12% per year, or ultimately $114.6 million by the end of September 2022 (before applying the adjustment for AMI and the CIS/NEB), thus providing a sizable addition to the funds available to the Company to continue its focus on better reliability.

In a recent rate case involving Central Maine Power Company (CMP), the Commission adopted an attrition approach to determining a reasonable amount to allow into the utility's rate base. In doing so, the Commission stated:

> An attrition analysis is a standard ratemaking technique that has been used in CMP's and Emera Maine's rate cases. Attrition happens when a utility's probability of earning its allowed return is reduced (the opposition situation is called accretion, or negative attrition). *Bangor Hydro-Elec. Co., Proposed Increase in Rates*, Docket No. 97-116, Order at 21 (Feb. 9,

> 1998). If the balance between a company's revenues, expenses, and rate base have a high likelihood of changing from the adjusted test-year levels, attrition or accretion can occur. *Id*. To reduce the effects of attrition or accretion, the Commission adopts an adjustment to certain elements of a utility's revenue requirement.

Public Utilities Commission, Investigation into Rates and Revenue Requirements of Central Maine Power Company, Docket No. 2018-00194, Order at 31 (Feb. 19, 2020). In that Order the Commission quoted from a Bangor Hydro-Electric Co. rate case:

> The standards that we apply to adjustments in the attrition analysis are slightly different than those applied to test year adjustment, where a strict known and measurable standard is observed. In an attrition analysis, the degree of precision by which proposed adjustments are evaluated and measured must, by their nature, take into account the lesser degree of certainty that surrounds projections of the items involved. An attrition analysis looks at a future period, the first rate effective year, and tries to project, using educated estimates and forecasting mechanisms, how that future will affect the operations of the utility. In other words, it tries to determine if there will be a change from the test year level of operations that would reduce or enhance the utility's ability to earn its authorized return.

Bangor Hydro-Elec. Co., Proposed Increase in Rates, Docket No. 97-116, Order at 22 (Feb. 9, 1998).

In this case, Versant has proposed a very large increase to its rate base. It essentially seeks the Commission's pre-approval to invest $158 million by the end of the rate year, RBA at 11, in a series of programs aimed at increasing the reliability of the Company's distribution system. Staff responded to Versant's proposal with concern about its rate impact, as well as general concerns about the certainty associated with Versant's plans. Staff advocated instead for an attrition approach based on a CAGR analysis, in effect to provide Versant with additional funding to pursue those investments deemed by its management to be most effective to promote reliability and an incentive to better prioritize its investments. The Company responded by standing by its approach, but also running its own CAGR calculation under different assumptions that would result in an increase very close to what it already proposes. Ops. Reb. at 16–17; Tr. at 34–35 (Aug. 18, 2021 Hr'g).

The Commission must resolve three issues raised by this dispute. The first is whether using the CAGR approach is preferable or whether Versant's forecast of plant investments are sufficiently known and measurable to be included in a calculation of just and reasonable rates. Second, if a CAGR approach is more appropriate, what is the proper calculation of the CAGR? Third, should there be any adjustments to the CAGR approach to capture any of Versant's programs such as the AMI and CIS/NEB investments?

The Commission has broad discretion to determine which method to employ in making its determination about just and reasonable rates. "If the methodology is reasonable, then the result will not be disturbed if the factual findings employed in that methodology are supported by the record." *Mars Hill & Blaine Water Co. v. Pub. Utils. Comm'n*, 397 A.2d 570, 576 (Me. 1979). The Law Court has stated: "Allowance for attrition is an accepted ratemaking procedure designed to assure a fair rate of return. This Court has long recognized that the inflexible use of the historic test year could result in an erosion of the rate of return." *Cent. Me. Power Co. v. Pub. Utils. Comm'n*, 455 A.2d 34, 40 (Me. 1983). Contrary to Versant's assertions about prejudice to it and allegations about hindering future investments, the utility still has an opportunity to earn its authorized return under a CAGR approach. It is a forward-looking tool, based on historic spending trends, that captures the level of changes reasonably likely to occur in the future compared to those evident in the past. Versant's supposed inability to make those investments at the levels it proposes—because of this order—will not necessarily result in an erosion of allowed earnings. Versant still retains significant flexibility to adjust its investments. Moreover, the CAGR does, in fact, provide a substantial fund from which Versant management can make informed plant investment decisions.

Versant claims that Staff's CAGR calculation harms it because in April 2021 Staff's calculation results in approximately $14 million less investment in plant than Versant's actual investment. However, there is no support in the record for finding that the April 2021 plant balance represents actual investments made by the Company. The April 2021 balance cited by the Company does not reflect actual spending, but rather the Company's forecast of investments. The record includes actual spending only through December 2020, which was the first month that Staff's CAGR analysis produced a lower plant balance than actuals. There is nothing in the record to indicate how close the Company's April 2021 forecast of plant balance, or for that matter any subsequent month's balance, is to the actual plant balances. Selectively choosing one month and claiming it shows an estimate lower than actuals does not change our conclusion that using the CAGR approach, which allows for a large annual increase in plant in service, is sound.

Although Versant prefers its forecast of plant to a CAGR approach, to the extent a CAGR approach is used, Versant and the Staff agree on the use of end-of-year plant balances in the calculation. However, there is disagreement about which years to include in the calculation. Staff uses the end-of-year balances for the years 2015 to 2020. The Company asserts that only the last three of these years should be used, arguing that in 2015 and 2016, it was in a rate case in which reliability was an issue, and in which the Liberty audit found shortcomings in Versant's attention to its distribution plant resulting in reliability issues. Responding to these issues, Versant changed its practices beginning in 2017 and thus suggests that beginning the CAGR with 2017 rather than 2015 is a more appropriate reflection of its current asset management. The Staff stated that "three years seems like a short period for this type of analysis." RBA at 11. Further, Staff expressed concern with the recent increased level of plant additions. *Id*.

The Commission agrees with Staff that for programs that involve capital additions, a longer period than three years for the CAGR analysis is appropriate. A longer period will have the effect of smoothing out increased spending levels that may not be sustained. Tr. at 153 (Aug. 18, 2021 Hr'g). In addition, Versant's argument that using 2015 as a starting point for the CAGR calculation does not take into account changes Versant made in the years following the Liberty Audit to increase its reliability performance (Versant Br. at 23) is incorrect. Staff's CAGR analysis used the period from 2015 through 2020 for its CAGR analysis; therefore, if Versant began making the reliability investments resulting from the Liberty report beginning in 2018, these investments would have been included in most of the five years of the CAGR analysis. The Staff's CAGR analysis does take the effect of the reliability investments induced by the Liberty audit into account since it started with the difference between end-of-year 2017 as compared to end-of-year 2016. However, the Commission removes the increase from the first year (end-of-year 2016 as compared to end-of-year 2015), from the CAGR analysis in the Examiners' Report. Thus, the CAGR approved here is calculated using end-of-year plant balances for the years 2016 through 2020, which produces a CAGR of 6.12%.

The Commission notes that the CAGR approved here is in fact far larger (almost 50% larger) than the 4.11% CAGR authorized for CMP in its last rate case, where the Commission calculated a CAGR that used a five-year trend period. *Public Utilities Commission, Investigation into Rates and Revenue Requirements of Central Maine Power Company*, Docket No. 2018-00194, Order at 38–39 (Feb. 19, 2020).

In this case, Versant argues that the rate base programs for which it seeks funding through rates are sufficiently known and measurable and warrant full approval. As discussed below, the Commission disagrees that Versant has shown that these programs are reasonably certain to be implemented. Moreover, the Commission shares the concern voiced by the Staff that Versant's customers could be subject to an unreasonably high increase were we to approve the filing. As it is, the Commission is approving an increase of 17.5%, including other adjustments described elsewhere in this Order.

In its last rate case, CMP proposed, in addition to other rate base additions, certain rate year resiliency investments. These were similar to many of the programs Versant is proposing here, including the use of covered conductor, increasing ties between circuits, and increasing automation. In support of including these costs in rate base, CMP argued, as Versant does here, that an attrition approach that relies on historical investments does not account for these new programs. *Public Utilities Commission, Investigation into Rates and Revenue Requirements of Central Maine Power Company*, Docket No. 2018-00194, Order at 39–40 (Feb. 19, 2020). CMP also argued that the benefit-cost plan it presented demonstrated a positive net benefit and that its proposed plant additions were known and measurable. *Id*. Essentially concluding that the proposed investments were not known and measurable, the Commission excluded the items from rate base, finding that the proposed investments were already addressed by the attrition adjustment. The investments were not "new types of investments but are made regularly to improve reliability." *Id*. at 43. The Commission noted that CMP's proposal was "largely a forward-looking plan" and thus "conceptually fit[] within the attrition adjustment." *Id.*

Such is the case here. While Versant, like any utility, must continue to invest in its system to maintain reliability, the stated purpose of Versant's large proposed increase is to go beyond maintaining the system, to have "continuous reliability improvement." Ops. Reb. at 4. This is the case for all its programs, but particularly for the so-called resiliency investments and the right-of-way widening program. In approving the use of the CAGR approach, which assumes annual increases in investment of 6.12%, reliability investments and improvement can, with proper management, be achieved. With such a significant annual increase to rate base, the Commission anticipates seeing evidence from Versant of reliability performance improvements in the coming months and years. If in the future Versant seeks another large increase in plant in service but cannot show that past investments resulted in improvements in reliability, the Commission will expect to factor that into the approved forecasts and the evaluation of expected benefits of planned investments.

The Commission now turns to the question whether there should be any discrete adjustments to reflect investments that would not be captured by the CAGR adjustment.

3. Advanced Metering Infrastructure

a. Positions and the Parties and Staff

i. Versant's Proposal

Versant stated that the meters serving customers in the BHD will reach the end of their useful life in 2025, due to the lack of manufacturer support after that time. EXM-010-033; ODR-001-007. Mr. Rocha testified that they will "be unsupportable" in three years. IT Dir. at 8. The system in the MPD is even older and is "only supported through used, refurbished hardware procured in the second-hand market." *Id*. Versant now plans to deploy an entirely new AMI system to serve both districts using radio frequency via a radio mesh network. Mr. Rocha testified that this project received board approval in the fall of 2020. *Id.*; EXM-010-034. This AMI rollout was planned to proceed in three phases. IT Dir. at 8. First, Versant would build the back-office application and field area network, expected to be completed by the end of 2021. *Id*. at 9. Versant indicated that, in addition to the field area network (the radio mesh collection system), this includes "all applications, hardware and professional services to support the AMI platform." EXM-015-004; Tr. at 41 (Mar. 16, 2021 Tech. Conf.). Although this was initially scheduled to be completed in the fourth quarter of 2021, IT Dir. at 8, it has now slipped to January 2022 as of the filing of Versant's rebuttal, Ops. Reb. at 32. During the Hearing, Versant indicated that the AMI project is still on track as reflected in its rebuttal filing. Tr. at 74 (Aug. 18, 2021 Hr'g). Second, Versant expected to begin deploying meters first in the MPD during the first half of 2022. This would involve approximately 35,000 meters. Versant witnesses provided conflicting figures for the number of meters in the MPD. In his direct testimony, Mr. Rocha testified that the first phase of meter deployment "will include replacing approximately 40,000 residential/commercial meters."

IT Dir. at 9. In rebuttal, however, the panel of witnesses, including Mr. Rocha, testified that there were “approximately 34,000 meters in the MPD.” Ops. Reb. at 32; *see also* Tr. at 16–17 (June 30, 2021 Tech. Conf.). In their direct testimony, Ms. Overlock, Ms. Henaghen, and Ms. Doughty testified, in connection with the CIS project, that there are 35,000 MPD customers. Cust. Exp. Dir. at 14. The Commission assumes that the number of customers should correspond to the number of meters. If this is not the case, then the Commission would expect there to be more meters than customers since some customers, especially businesses, often have more than one meter. The Commission recognizes that the number of meters in a service territory is not static, and that customers move, and businesses can start, expand, and close.

Versant indicated that it would not consider the meters to be “in service” until “all of the meters at issue are installed, even though each meter will be used and ‘in service’ immediately upon installation.” Ops. Reb. at 32. Third, the remaining meters (approximately 120,000) would be deployed in the BHD beginning in 2022 and are scheduled for completion in early 2023. *Id*. In his direct testimony, Mr. Rocha stated that Versant planned to complete this third phase in the fourth quarter of 2022 but changed that to early 2023 in a March data response. *Id.*; EXM-015-004(c). Versant has indicated that the cost of the BHD meters is not included in the revenue requirement calculation because their in-service date is after the end of the rate year. Tr. at 66 (Mar. 16, 2021 Tech. Conf.).

In its direct testimony, the Company proposed to include \$21.6 million as the 13-month average rate year distribution plant balance for the AMI project. However, the Company modified its request over the course of this proceeding due to changes in its AMI schedule. As a result of these schedule changes, the Company reduced its forecast of the 13-month average rate year distribution plant balance for the AMI project to \$15.9 million, a reduction of \$5.7 million as compared to the Company’s direct testimony. Rev. Req. Reb. at 4.

ii. Staff’s Analysis

Staff noted that the AMI project is an expensive, complex, multiyear endeavor that is broken into three phases. The aggressive schedule for installation of meters for every single Versant customer, and the past experiences of controversy surrounding these kinds of meters, led Staff to question how likely it is that the cost and timing of this project is sufficiently known and measurable to be included in the revenue requirement calculation. Staff explained it had witnessed similar projects taking more time, more investment, or both, before going live, and some have experienced significant operational problems, including at Versant. BA at 40. Staff also noted the apparent changing forecast of investments just since the Company filed its testimony. *Id*. Staff stated that since this project is not complete, and the possibility of issues arising that may need to be addressed, it remains a question whether this project will go into service during the rate year, whether it will do so successfully, and whether prudence issues will arise. *Id*. at 41. If schedules slip, technical or other difficulties are encountered, or the project needs to be reprioritized based on other organizational needs, the average AMI plant balance in the rate-year maybe significantly altered as compared to the forecast.

The uncertainty about the timing of this investment is one factor that led to Staff's proposed CAGR attrition analysis. *Id.* at 41–42. Staff noted that in the few months between the Company's direct testimony and its rebuttal testimony the Company's estimate of the AMI investment to be included in the rate year distribution plant balance decreased by a total of $5.7 million due to a shift of a portion of the investment's in-service dates by only a few months. RBA at 12; Rev. Req. Reb. at 4 & Att. K. In its response to VERS-006-006, Staff noted that the total year-end 2022 plant balance changed by $29 million due to the changes in the AMI schedule, with $5.7 million allocated to the rate-year distribution average plant balance. Staff pointed out that the difficulty of accurately forecasting costs was being further demonstrated in Attachment K by the approximately $8 million increase in the rate-year plant balance from the Company's update for actual costs for the last three months of 2020. Staff concluded that the AMI project did not yet meet the standard for "known and measurable" required for inclusion in rates in this case. RBA at 12.

At the hearing, Staff expressed concerns that the back-office system and field area network may not be fully used or useful until the meters are in service. Tr. at 100–01 (Aug. 18, 2021 Hr'g).

iii. OPA's Brief

In its brief, the OPA supported Staff's position as stated in the Reply Bench Analysis. OPA Br. at 5.

iv. Versant's Response

In its rebuttal case, Versant had adjusted its AMI plant in service schedule to reflect a change in the in-service date for the MPD meters from February to May of 2022. Rev. Req. Reb. at 4; Rev. Req. Supp. Ex. RR-Supp-3; ODR-001-009.

In its brief, Versant pointed to its testimony where witnesses show that the Company is only seeking rate treatment in this case for 34,000 meters, "even though it is highly likely that many more meters will actually be installed and in service during the rate year." Versant Br. at 12. Versant asserted that this is a conservative approach because it expects that more than 80% of all the meters will be installed by the end of the rate year. *Id.* at 13.

Versant touts the qualifications of two of its AMI partners: IBM, which Versant says has completed over 80 AMI installations and will serve as the system integrator; and Aclara Smart Grid Solutions, which will be responsible for meter installation. *Id.* at 13–15. Aclara has taken steps to account for the weather in MPD's territory and plans to install 820 meters per day. *Id.* Versant indicates its flexibility with respect to installing the 34,000 meters, saying it can shift between the MPD and BHD depending on the weather, though it says it will have all the MPD meters installed in the rate year.

Responding to Staff concerns about customer opposition slowing down deployment, Versant stated that because other AMI projects nationwide have met with resistance over health concerns, it has sought approval of a proposed opt-out program.

Id. at 15; *see also Versant Power f/k/a Emera Maine, Request for Approval of Terms and Conditions Related to Advanced Meter Opt-Out Program*, Docket No. 2021-00184, Procedural Order (Notice of Filing and Opportunity to Comment) (July 16, 2021).

In its brief, Versant argues that the AMI back-office systems and field area network are scheduled for completion within months and will therefore be "used or useful" during the rate year. Versant Br. at 17.

v. Examiners' Report and Exceptions

In the Examiners' Report, Staff recommended including a portion of the AMI investment in rates in this case—specifically, the investments beginning May 2022 in the 13-month average of plant in service. ER at 49.

A Climate to Thrive argued in exceptions that the Staff's rate recommendation did not provide sufficient financial support for Versant's investments in AMI. A Climate to Thrive expressed disappointment in Versant's timing for processing interconnection requests and providing timely and necessary information to customers about net energy billing, and stated that Versant's investment in AMI "will go a long way toward rectifying these concerns." Exceptions of ACTT at 1–2. In its exceptions, Versant made arguments similar to those it had made previously, summarized above.

b. Discussion and Decision

The Company argued that AMI costs should not be assumed to be included in the CAGR analysis. The Staff stated that "it may be appropriate" to carve AMI costs out of the CAGR analysis. RBA at 11–12. Based upon this apparent agreement between the Company and Staff, the Commission will not consider AMI costs to be captured by the CAGR analysis. The remaining question, then, is how much of the AMI costs, if any, are sufficiently known and measurable to be approved as an incremental addition to CAGR-calculated plant in service in this case. While some facts in this case point to a portion of the project being known and measurable, other facts point to its not being so.

Versant's witnesses testified that the existing meters in the MPD are at the end of their useful life and can be maintained only with "refurbished hardware purchased in the second-hand market." IT Dir. at 8. The existing meters in the BHD are not as old but are nearing the end of their useful life and will become harder to maintain as time goes on. *Id*.

Versant has chosen to replace the meters with an AMI system that uses radio frequency for two-way transmission of data over a radio mesh system. Versant has selected meters, installers, other system components, and a system integrator. *Id*. at 8–9; Ops. Reb. at 31–32. With these contractors and purchases in place, the Company has developed its three-stage approach to deploying this AMI system. IT Dir. at 9.

The Commission decides this matter based on the known and measurable standard. Before turning to that, however, the Commission addresses arguments in Versant's brief about the "used or useful" standard. The Company was responding to

Staff testimony at hearing about whether the back-office systems and field area network would be used or useful unless meters are in service. Versant cites to *Central Maine Power Co. v. Public Utilities Commission*, 405 A.3d 153, 184 (Me. 1979), for the proposition that property may be considered used or useful if the utility has "a sufficiently definite plan for its use." Versant Br. at 17. In the decision appealed from, the Commission had approved the inclusion of land on Sears Island in CMP's rate base because its plans to develop a coal-fired power plant there were found to be sufficiently definite. The Commission notes that it is well-known in the regulatory community that CMP never developed a power plant of any type on Sears Island. Thus, there is good reason for the Commission to be cautious when approving the plans of utilities.

Several factors point to the project's being not known and measurable.

The record reveals slippage in and confusion about the schedule, questions about timing with regard to the back-office systems and field area network installations, changes in where and when meters are to be deployed, and conflicting information about the number of meters to be deployed to the MPD.

First, and most significant, is the lack of definition around the schedule. In the initial case, Mr. Rocha testified that the installation of the MPD meters was scheduled to be complete in the second quarter of 2022. IT Dir. at 8. This is consistent with a star on the Gantt chart produced in response to EXM-015-004, Att. B, which shows installation to be completed in May 2022. The bottom row on this chart, "Meter Installation," has two stars, one that corresponds to May and the scheduled installation of the MPD meters and the other at year's end consistent with the scheduled completion of all meter deployment.

However, in its rebuttal case, Company witnesses refer to a schedule revision. Ops. Reb. at 12, n.5. In his rebuttal testimony, Mr. Chahley also refers to a shift in the schedule for deployment of the MPD meters from February 2022 to May 2022. Rev. Req. Reb. at 4. This is consistent with Revenue Requirement Rebuttal Attachment K, tab "AMI," which compares the initial and rebuttal filings. As noted by Staff, it is clear from reviewing Attachment K that the Company incorporated a delay of at least five months in the schedule underlying the general and intangible categories of AMI investment in the rebuttal revenue requirement and a delay of three months in the AMI investment in the distribution category between the time the direct and rebuttal testimonies were filed. VERS-006-006. As discussed above, and as shown in Attachment K, these seemingly small differences in the AMI schedule make significant differences in the 13-month average plant balances. This was identified by Staff as a concern. RBA at 12.

There was also a shift in the completion of the meter deployment in the BHD. In the initial filing, witnesses stated this would be by the end of 2022. Ops. Dir. at 9. Within two months, this had moved to January 2023. EXM-015-004. Versant has never proposed that the cost of completing the deployment of the BHD meters be included in this case.

With respect to the back-office systems and field area network, there is also confusion. The Company has stated that this phase is now scheduled to be completed in January of 2022, having slipped from an earlier in-service estimate of late 2021. IT Dir. at 8; Tr. at 42 (Aug. 18, 2021 Hr'g). However, there is evidence in the record that raises questions about whether the "field area network" portion of this phase will in fact be completed at that time. In March, Mr. Rocha testified that the back-office systems were scheduled for go-live in January 2022. He did not mention, at that time, the go-live date for the network. Tr. at 42 (Mar. 16, 2021 Tech. Conf.). Attachment B to EXM-015-004, noted above, is the AMI timeline in the form of a Gantt chart. This contains a row, fourth from the bottom, labelled "network deployment." (The bottom two rows refer to meter procurement and meter installation, so it appears that "network deployment" is not about meters.) This row shows completion for the network at the end of March 2022 and not January as put forward by the Company.

Also, at hearing, Staff raised a question about whether the field area network would operate as expected given, in part, that this is the first time Versant is deploying a radio mesh network. Tr. at 104, 112 (Aug. 18, 2021 Hr'g). Ms. Monroe also pointed out that the existence of a customer opt-out programs can create holes in the mesh network. She elaborated that the rural nature of Versant's service territory may contribute to significant problems with the mesh network and its ability to relay information from meters to the Company. *Id*. at 128. These problems, should they occur, could delay the project and add to costs.

Finally, it stands to reason that the radio communication that must occur between and among the radio network devices and the meters will need to be fine-tuned in places, something that can only happen during the meter deployment.

Thus, the picture of when the full "back-office systems and field area network" will be installed and ready to operate is cloudy.

The entire AMI schedule is potentially dependent on the CIS consolidation schedule. A report to Versant's Board on June 21, 2021 identified a risk that the CIS implementation posed to the AMI deployment:

> CIS Consolidation Go-Live delays will impact the availability of AMI resources and may impact the timing of the AMI go-live. Versant has many resources that are working on both projects, and the longer the CIS Consolidation projects continues to run, the less attention those resources can focus on the AMI Implementation.

ODR-005-006, Att. A. at 10. In the early stages of this case, Versant indicated that the CIS consolidation was scheduled to go live in the spring (Q2) of 2021. Cust. Exp. Dir. at 12; ODR-005-006, Att. B at 2 of 3. In fact, the CIS schedule did slip, and Versant reported at the hearing that it was scheduled to go live on August 21 or 22. Tr. at 76 (Aug. 18, 2021 Hr'g). The record does not contain evidence whether that occurred as predicted. Versant witnesses testified at hearing, nevertheless, that the AMI project was on schedule. *Id.* at 74.

In its initial case, the Company sought approval to place into rate base the MPD meters and the back-office system, saying that it intended to complete the meter installation in the MPD in the second quarter of the rate year. IT Dir. at 8; EXM-015-004(c). However, in rebuttal, Mr. Rocha testified that the goal was to have 34,000 meters, equivalent to the number it said were in the MPD, installed by May of 2022, and it would do so by deploying meters in the BHD if the weather in the MPD prevented deployment. Tr. at 16–17 (June 30, 2021 Tech. Conf.). By the time of the hearing, this shift had further evolved, Mr. Rocha testifying that Versant had decided to start the meter deployment in Bangor. Tr. at 74 (Aug. 18, 2021 Hr'g) ("The anticipated projections now show us beginning in Bangor in the southern district because of the weather, and as soon as the weather clears, we will then transition to the northern meters in our northern territories."). And, in the June 21, 2021 presentation to its Board, Versant indicated that the MPD deployment would begin in April 2022 and finish in August. ODR-005-006, Att. A at 5 of 16.

As explained in section V.B.3.a.1., Versant has supplied conflicting information on the number of meters in the MPD. Mr. Rocha, in his direct testimony in January, said there were 40,000, but in his June rebuttal, as part of the operations/IT panel, he said 34,000. The customer experience panel said there were 35,000 MPD customers. The reason for these conflicting numbers is unclear. The Commission does not believe that the expected normal fluctuation in customer counts would include as many as 5,000 meters out of 40,000 in the time between January and June. It is unclear whether these conflicting numbers reflect internal misunderstandings among Versant's witnesses, or perhaps that Versant has, during the course of this case and without explaining why, decided to reduce the number of meters it intends to deploy to the MPD.

In sum, these factors are not trivial, and raise questions about the certainty of this project being completed as Versant witnesses have testified. Further it is possible, given the complexity and scope the project, that Versant could encounter significant problems that would affect the schedules.

However, other factors point to at least some portion of the investment for the project most likely being known and measurable during the rate year.

First, it is apparent that the Company needs to replace the meters in the MPD in the near future. Further, there is no dispute concerning the Company's assertions that it has all the elements of the AMI program either under contract or will otherwise use internal resources. Indeed, Mr. Rocha testified that Aclara is under a contractual obligation to complete deploying the meters by December 2022. Tr. at 74–75 (Aug. 18, 2021 Hr'g). There is, therefore, reasonable certainty that significant sums will be spent deploying meters in 2022.

On balance, the Commission therefore finds that some amount of AMI costs associated with meters and the back-office systems and field area network should go into rate base at this time. This finding is in part because of the reasonable certainty associated with the Company's plans to deploy 34,000 meters in the rate year, whether they are placed in the MPD or the BHD or some combination.

Although the Commission still has concerns about potential additional schedule changes that could significantly impact the "in-service" date of the system, it also recognizes that including a portion of these costs now may limit later rate shock associated with inclusion of this project in rates. The Company is seeking to include a total of $18.2 million (with $15.9 million allocated to distribution) of the AMI project in distribution rates at this time. This represents just under 30% of the cost of the entire AMI program, currently estimated to be $63 million (including contingencies). EXM-010-034, Att. A at 18 (Oct. 2020 Board presentation); *see also* ODR-005-006, Att. B at 2 (indicating that the project was slightly under budget as of February).

In addition to concerns about potential changes in the schedule that could affect the amount of investment that should reasonably be included in rates at this point, the Commission also has concerns about what portions of the project are included in the rate year revenue requirement. Revenue Requirement Rebuttal Attachment K includes the breakdown of AMI costs that are included in the revenue requirement calculation and breaks the AMI plant investments into three categories: General, Intangibles, and Distribution. However, no additional detail is available as to what is included in each of these revenue requirement categories. EXM-023-010 requested a breakdown of each capital program proposed to be included in plant rate base for each month of the rate year. In response, Versant provided values that match those included in Attachment K, but the descriptions for AMI investment only reference "AMI Project Planning." Although the investments in the Distribution category appear to line up with the Company's testimony regarding the timing of the meter deployments, it is unclear what other investments beyond meters (such as network infrastructure) might be included in this line item.

Weighing all of these factors—the Commission's multiple concerns about the project schedule, the lack of clarity as to which portions of the project are included in the revenue requirement calculation, while recognizing that some portion of the AMI investment should be included in rates now—the Commission adopts the following approach. The Commission finds that a portion of the AMI investment will go into service in May of 2022, coincident with the scheduled completion of the deployment of the first 34,000 meters. This is consistent with Revenue Requirement Attachment K, and with Versant's indication that it would consider meters to be in service when those "at issue" all are installed. Ops. Reb. at 32. Versant indicated that it would not consider the meters to be "in service" until "all of the meters at issue are installed, even though each meter will be used and 'in service' immediately upon installation." Ops. Reb. at 32 (emphasis added). The Commission interprets "at issue" to refer to the meters initially associated with the MPD. Otherwise, this testimony would be at odds with the Company's request to place that subset of meters into rate base.

Further, the Commission concludes that completion of the deployment of the back office system and field area network is not sufficiently known and measurable to be assumed placed into service prior to that time as requested, but that, given the Company's plan to have its back office systems available prior to the meters being in place and its contract with Aclara that requires meter installations be completed by the end of 2022, it appears reasonably likely that the back office systems will be completed by May 2022. Accordingly, the Commission includes those investments beginning in May 2022 in the revenue requirement. This reduces the 13-month average distribution rate base to be included in the revenue requirement from the Company's request of $15.9 million to $9.4 million.

This finding in no way is an endorsement of the prudence of any of Versant management's decisions about AMI. To the extent necessary, questions of prudence will be decided in a later proceeding. The balance of AMI costs not included in rates at this time leave sufficient room for any potential imprudence disallowance.

4. Customer Information System Upgrade and Consolidation

a. Parties' Positions and Staff's Analysis

i. Versant's Proposal

In June of 2015, Versant (then known as Emera Maine) implemented a new Cayenta CIS in its BHD. The Company's desire to expand the CIS to also serve the customers in the MPD was known at the time, and initial estimates were that the Company would do this in 2015. *Emera Maine, Request for Approval of Rate Increase*, Docket No. 2015-00360, Order (Part II) at 51 (Dec. 22, 2016). In this docket, Versant indicated that the expansion is now underway and proposed to include those costs in rate base. IT Dir. at 7–8. Versant also plans to incorporate technology to support customer participation in net energy billing (NEB) under recently enacted legislation. Cust. Exp. Dir.[16] at 13; EXM-010-026.

Customers in the MPD have been served by an old CIS known as AS400 that "limits programs and offerings." IT Dir. at 8. Following the consolidation, MPD customers will be able to receive bills with improved design including detailed usage data and high bill alerts and the system will improve outage reporting. Also, the new system will expand the ability of customers to jointly participate in an NEB project. Cust. Exp. Dir. at 14; EXM-010-021. Replacing it with the Cayenta CIS will allow more than 10 customers to jointly participate in a single NEB project, as contemplated by the newly expanded programs. Cust. Exp. Dir. at 14.

In its initial filing, Versant stated that the budget for these combined projects was $10 million and that it expected to complete them in the second quarter of 2021. Cust. Exp. Dir. at 14. The initial forecast of capital cost was $5.8 million. Rev. Req. Reb. at 5. In rebuttal, Versant indicated that the cost estimate had increased to $9.4 million, but was still within the $10 million budget, *id.*, and it identified a slip in the schedule, with go-live targeted for August 2021. Ops. Reb. at 30.

[16] "Cust. Exp. Dir." refers to the direct testimony and exhibits of Kendra Overlock, Lisa Henaghen, and Allison Doughty on customer experience, as included in Versant's January 19, 2021 initial filing.

In its brief, Versant claimed that the CIS/NEB project is "now in service" and is therefore known and measurable. Versant Br. at 18.[17] Versant also argued that the investment is necessary because of the enactment of recent legislation that pertains to the inability of MPD customer to enroll in groups of ten or more in a net energy billing arrangement. Versant Br. at 20. As for the size of the investment and whether it should be assumed to be covered by the CAGR adjustment, Versant argued that although the size is consistent with the total cost of the Substation and Line Asset program (approximately $14 million over two years) and the Substation Transformer Replacement program (approximately $7 million over two years), it differs because it is a single large investment as opposed to a sum of many similar investments in each program. Versant Br. at 19. Versant also argued that the CIS/NEB project is a significant one-time investment that should be considered "separate and apart from any attrition adjustment." *Id*. at 20.

ii. Staff's Analysis

Staff noted that the CIS/NEB Consolidation and AMI deployment were competing for time and resources with a host of other projects, as shown on the Company's Technology Roadmap. IT Dir. Ex. LR-2; EXM-010-016, Att. A. These two major projects overlap each other by several months. Mr. Rocha testified that the Roadmap is a "living document" that is "kept up to date based upon the actual delivery of projects." Tr. at 21 (Mar. 16, 2021 Tech. Conf.). In other words, the timing associated with projects changes over time as needed. Staff recognized that schedules for projects large or small need to change, with the more complex projects perhaps requiring more flexibility on time and cost. BA at 40.

In the Bench Analysis, Staff expressed concerns about the aggressive and optimistic schedule presented in the testimony and depicted on the Roadmap. Staff explained it had witnessed similar projects taking more time, more investment, or both, before going live, and some have experienced significant operational problems, including at Versant. BA at 40. Staff stated that since this project is not complete, and the possibility exists of issues arising that may need to be addressed, it remains a question whether this project will go into service during the rate year and whether it will do so successfully. *Id*. at 41.

In its Reply Bench Analysis, Staff stated that the CIS project appeared sufficiently known and measurable for consideration in rate base. RBA at 5. However, because the size of this investment was consistent with the size of other investments included in Staff's CAGR analysis computations, its cost was included in that calculation. *Id*. at 12.

[17] The Company's record citations do not support this assertion. Versant cited to the testimony of Ms. Doughty who, said, "We are gearing up to go live this weekend." Tr. at 76 (Aug. 18, 2021 Hr'g). It also cited to the testimony of Ms. Monroe, who said, "[I]t's my understanding it was supposed to go into service this month." Tr. at 135 (Aug. 18, 2021 Hr'g). The Commission's experience with IT implementations is that until the project is actually on-line and functioning as intended, there is no certainty.

iii. A Climate to Thrive

In its exceptions, A Climate to Thrive pressed similar arguments to those it made around the AMI, arguing that the Staff's rate recommendation did not provide sufficient financial support for Versant's investments in its CIS. A Climate to Thrive expressed disappointment in Versant's timing for processing interconnection requests and providing timely and necessary information to customers about net energy billing, and that Versant's investment in the CIS will help address these concerns. Exceptions of ACTT at 1–2.

b. Decision

Staff proposed that the CIS/NEB project be assumed to be captured by application of the CAGR, asserting that the $9.4 million cost is consistent in magnitude with other investments included in the historical CAGR computations. Tr. at 137, 151–52 (Aug. 18, 2021 Hr'g). This led Staff to conclude that although it considered the CIS/NEB to be a known and measurable investment, it should not be an incremental addition to plant in service beyond what the CAGR analysis produces.

Versant argued that its investments in CIS/NEB should be "carved out" of the CAGR analysis and approved separately for inclusion in rates, stating that these are significant non-recurring investments that are "not reflected in the historical period and not accounted for in the attrition analysis." Ops. Reb. at 17. The Company also argues that the CIS differs from two items identified by Staff for inclusion in the CAGR approach (the Substation Line and Asset program and the Substation Transformer Replacement program) that are in the same cost range (ODR-004-005).

The question whether Versant's CIS/NEB consolidation project costs are captured by the CAGR approach requires the Commission to evaluate whether the cost of the project is sufficiently large or its occurrence sufficiently rare to not be captured by the historic trend analysis of the CAGR.

The Commission finds the CIS/NEB investment is of a size and particularly a type that should be carved out of the CAGR analysis. The approximate $10 million cost is, in fact, similar in magnitude to other projects or programs advanced by Versant in this case, such as the two Staff cited to, the Substation Line and Asset program and the Substation Transformer Replacement program, as well as the Maintenance and Inspection Replacements and Upgrades program. Versant argues, on the other hand, that these programs are made of many individual investments, and that no individual investment within those proposed programs was close to the cost of the CIS/NEB project. Versant Br. at 19. The AMI project, currently estimated to cost approximately $63 million, is more similar to a "once in a generation" investments that the Commission has in the past excluded from the CAGR. The CIS/NEB project is a closer call.

The Commission understands that development and implementation of a customer information system does not occur every year, but that upgrades to existing systems, like the one Versant installed for its BHD system in 2019 at the cost of

$4.4 million, Cust. Exp. Dir. at 11, are more frequent. In fact, because that upgrade was placed in service in 2019, this amount is included in plant balances used to establish the CAGR. CIS implementations are not uncommon and occur with some regularity although there are many years between such implementations. However, the CIS project before us in this case is not an entire, new CIS build-out, but a consolidation and extension of Versant's existing CIS to the MPD. Cust. Exp. Dir at 12. The Commission believes that a consolidation and extension like this is even more unlikely to recur than a full-blown CIS implementation.

For all of these reasons, the Commission concludes that the CIS/NEB project should be included in rate base as is and not through the operation of the CAGR.

5. Specific Proposed Capital Investments on Targeted Asset Replacement and Resiliency

The Commission now turns to the parties' arguments and decision on the other specific proposed capital investments to address asset condition and resiliency.

a. Positions and Analysis on Specific Capital Investments

i. Substation Power Transformer Upgrades

Versant has developed a "series of projects in its capital plan to proactively replace the oldest and most at-risk transformers in the fleet." Ops. Dir. at 16. The Company estimated spending approximately $8 million in 2021 and 2022 on these transformers and reports that it has included $5.7 million of this in the revenue requirement calculation. *Id*.; EXM-009-019, Att. A.

Staff expressed reservations about what appeared to be Versant's arbitrary selection of transformers for this program because they are 50 or more years old, pointing out that transformers often continue to provide reliable service well beyond 50 years. Also, replacing substation power transformers is part of the ordinary course of business for any electric utility and Versant, which has historically replaced approximately three substation transformers per year since 2016, is now proposing to replace nine over the next two years. EXM-009-018; EXM-009-019, Att. A. Staff asserts that the replacements should be prioritized in accordance with appropriate diagnostic maintenance reports. BA at 32.

Staff opined that Versant's effort to create a health index for the purpose of identifying transformers in need of upgrade or replacement had only just begun, and that the Company's actual plans for upgrading specific transformers in 2021 and 2022 were, therefore, uncertain. Staff concluded that this program, and all the others, should not be specifically approved and that investments should be made based upon management's discretion to use the rate base increase that results from the CAGR analysis. *Id*.

In rebuttal, Versant indicated that it has 26 transformers that meet its "threshold criteria," which is whether the transformer is older than 50 years. This list was narrowed by identifying certain risk factors such as dissolved gas analysis, oil quality and insulation power factor. The Company indicated that these tests do not indicate imminent failure but provide information used to create a health score which is then used to select transformers for replacement. Ops. Reb. at 20–21. Versant also indicated that the use of mobile transformers varies depending on where in the service territory they are needed. *Id*. at 21–22. In its brief, Versant reiterated these points, asserting that Staff did not state that this program was not known and measurable. Versant Br. at 38–40.

ii. Maintenance and Inspection Replacements and Upgrades

Versant stated that through an inspection program, it will identify distribution line and substation assets that need replacement. The Company estimated spending approximately $14 million in 2021 and 2022 on these assets and reported that it has included $10.9 million of this in the revenue requirement calculation. Ops. Dir. at 16–17; EXM-009-020, Att. A.

Staff recognized that distribution assets require constant inspection and frequent investment because equipment wears out or suffers damage for other reasons, but points out that these are ongoing costs. Staff noted that the five-year average for these expenses was only $319,000. Staff indicated that it is not clear why costs associated with upgrading distribution assets pursuant to deficiencies found in inspections would not belong to base capital expenditures. In Staff's view, the revenue increase resulting from the CAGR provides sufficient resources to management to make appropriate investment decisions based upon these inspections. BA at 33.

Versant clarified that its spending in this category in 2019 and 2020 was approximately $8.1 million. Ops. Reb. at 23; Versant Br. at 2–3. Versant claimed that the increased amounts it seeks to spend in this category are the result of its recent "experience and learnings." *Id*. Versant also claimed that investments from inspection programs are the direct result of the Company's efforts to comply with its reading of the Liberty audit. Versant Br. at 41.

iii. Voltage Cutovers

Versant's distribution grid contains areas where lower voltage elements remain, and these present reliability, safety, and efficiency risks. It proposed to "cut over" these areas to its standard 12.47/7.2-kv. It estimated spending $4 million in 2021 and 2022 and included $2.9 million of this in the revenue requirement calculation. Ops. Dir. at 17; EXM-009-029, Att. A. Versant asserted that Staff has not claimed that these projects are not known and measurable. Versant Br. at 41.

Staff agreed that voltage cutover projects could provide safety, reliability, and resiliency benefits. Staff stated that these projects appear to be reasonably needed but could be spread out over additional years rather than concentrating the $4 million in spending in 2021 and 2022. BA at 33.

iv. Planned Replacements or Upgrades

This program involves replacement of “antiquated equipment, installation of new equipment, or construction rebuild” as identified by Versant engineers or by its new Asset Management Group. Ops. Dir. at 17. The Company estimated spending approximately $9 million in 2021 and 2022 and reported that it has included $8.5 million of this in the revenue requirement calculation. *Id*.; EXM-009-032, Att. A. In its brief, Versant stated that the Staff did not claim these projects were not known and measurable. Versant Br. at 42.

Many of these projects are rather small, but Versant has provided a lengthy list. EXM-009-032, Att. A. As with Maintenance and Inspection Replacements discussed above, Staff indicates that these are items management should address in the ordinary course of business, developing a prioritization of projects, stretching them out over a longer period of time. Staff points to the example of the Blue Hill Local Reconfigure. EXM-009-031, Att. A. This is the most expensive item on this and may not need to be completed in one year. BA at 34.

Versant witnesses testified that the Blue Hill Reconfigure project was already ongoing over a number of years. The Company detailed the work done on this project which included the replacement of a substation and the use of a breaker to isolate the transmission line for better reliability. Ops. Reb. at 23–24.

v. Covered Conductor

Also known as “tree wire,” covered conductor is electrical cable with an insulating coating that can prevent a fault when vegetation or other contact occurs. Versant stated its intent to deploy tree wire to areas of its system that have frequent outages due to vegetation contact. As part of its forecast of resiliency/reliability investments, Versant proposed to spend $5 million in 2021 and 2022 on tree wire. Ops. Dir. at 18. Staff points out that in comparison, over the past three years the Company has spent an average of $820,000 on covered conductor projects. EXM-009-037, Att. A.

Staff did not support Versant’s proposed covered wire program. Staff stated that tree wire is not new to the industry, and while it has potential effectiveness in reducing outages, two factors must be considered when examining whether it is prudent to invest in this project. First, Versant is only in the third year of its first five-year cycle of trimming vegetation near its distribution lines and the results of that effort are therefore unknown. Second, Staff noted that the material cost for tree wire is three times more expensive that bare wire. BA at 34–35 (citing Ops. Reb. at 27).

In rebuttal, the Company asserted that the cycle trim would not reduce the high incidence of contact from trees outside the right-of-way, which it says account for over 80% of storm and vegetation-related outages. Ops. Reb. at 26. The Company also asserted that the danger tree program will not, by itself, eliminate tree contact. *Id*. Company witnesses testified that this program would apply to only 20 circuit miles out of 6,200. *Id.* The Company agreed that the material cost of covered wire is three times the cost of bare wire but contends that this differential is “minimal and justified” on a total cost basis. *Id*. at 27–28. Versant stated that Staff is not contending that this program is not known and measurable. Versant Br. at 43.

vi. #6 Copper Conductor Replacement

Versant intends to target poor performing areas identified in its covered conductor program to identify areas that have non-standard #6 copper conductor and replace that with tree wire. The Company described the quality of the information it receives from its field personnel about the condition of #6 copper wire in support of its program. Ops. Reb. at 29. The Company expects to spend about $4.5 million on this in 2021 and 2022 and reports that it has included $3.8 million of this in the revenue requirement calculation. Ops. Dir. at 18; EXM-009-042, Att. A.

Staff noted that it had asked the Company to justify the replacement of #6 conductor with tree wire instead of bare wire, and that in EXM-009-040 the Company cited the reliability benefits of tree wire, but then stated that #6 conductor is old, brittle, difficult to work with and poses a worker safety risk. Staff pointed out that all of these issues are resolved by replacing the #6 copper wire with standard bare wire as much as with tree wire. Staff considered Versant’s proposed program to be premature at this time since Versant has not completed its first five-year cycle trim. Staff further notes that the Company has not performed tests to demonstrate any deterioration of its #6 copper conductor. EXM-009-045. Staff indicated that Versant’s desire to replace #6 copper wire is reasonable, although Staff left it to Versant’s management to determine where replacement of #6 copper conductor was appropriate, given the budget it can develop from the revenue requirement awarded under the CAGR approach Staff recommended. BA at 35–36; RBA at 6.

The OPA agreed with the Reply Bench Analysis’s proposed treatment of #6 copper replacement costs, saying that it should be covered by the CAGR adjustment. OPA Br. at 5–6.

The Company admitted that it had not undertaken metallurgy analysis but stood by the conclusions of its field personal and described the quality of the information it receives from them about the condition of its #6 copper wire in support of its program. Ops. Reb. at 29. Versant pointed out that the incremental cost of covered wire versus bare wire for replacement old #6 is minimal. Versant Br. at 44. And the Company reiterated that it is targeting poor performing circuits for this program. *Id*. at 45.

vii. Protection and Coordination

Versant explained that it studies its worst-performing circuits to see if protection and coordination equipment like reclosing devices, sectionalizers, and fused cutouts should be installed as a way of mitigating outages. Versant said it has installed 70 of these “smart” devices and fused cutouts in the last two years. It anticipated spending approximately $2.6 million in 2021 and 2022 and reports that it has included $2.1 million of this in the revenue requirement calculation. Ops. Dir. at 19; EXM-009-049, Att. A.

Versant stated that Staff does not claim that this program is not known and measurable. Versant Br. at 45.

Staff recognized that protection and coordination devices, such as reclosing devices, sectionalizers, and fused cutouts, are integral parts of the distribution system and may reduce SAIFI numbers if additional devices are installed in the proper locations for the functions needed. Staff noted that Versant has spent roughly $550,000 per year on protection and coordination devices and, using Staff's CAGR approach, should be able to continue prioritizing areas that will provide the most benefit. BA at 36; EXM-009-037, Att. A.

viii. Automatic Load Transfer Schemes

Using automated sectionalizing and communications equipment, Versant proposed to increase its ability to supply circuits from alternative sources to reduce the impact of outages. The Company estimated spending around $3.5 million on this program in 2021 and 2022 and reports that it has included $2.8 million of this in the revenue requirement calculation. Ops. Dir. at 20; EXM-009-054.

Staff recognized that automatic load transfer (ALT) schemes hold promise for reliability purposes. ALT schemes are relatively new to the Company, first used only in the test year. EXM-009-053. Versant stated that the scope of its work on ALT schemes is "still currently in development," EXM-009-051, and that the detailed engineering for the installations it proposes for this case is still underway, EXM-009-053. On Attachment A of EXM-009-054, Versant showed the cost estimates for the projects it proposes to install in 2021 and 2022. These estimates appeared to Staff to be in the early stages as the amounts for all 2021 projects are identical to those for all 2022 projects. Staff suggested that with the engineering incomplete and the project still in development, the cost estimates and thus the benefits flowing from the costs is not sufficiently known and measurable for inclusion in rates. Staff proposed that the amount of plant in service in rates for the ALT schemes fall under the CAGR. BA at 36–37.

Versant witnesses responded that the ALT schemes it plans in various locations are similar in type and thus the costs are predictable. Ops. Reb. at 29. Versant uses calculations of dollars per avoided customer in interruption ($/ACI and $/ACHI) to help justify this program. Ops. Reb. at 29. Under this approach, the Company reviews historical data to determine the number and duration of outages experienced by the customer that could have been avoided if the investment were made. The Company assumes that historical outage patterns on the circuit would be representative of what might be expected in the future. Versant divides the cost of the investment by either the customer interruptions or the customer outage duration to determine the investment cost per interruption or hour of interruption. When evaluating the capital spending plan, a low cost-per-interruption investment is prioritized. EXM-009-050, Att. A.

ix. Miscellaneous

The Company listed a series of programs that it said would have a combined total of less than $1 million. This list includes fault indicators, porcelain cutout replacement, wildlife protection, high priority inspections that find critical issues in need of immediate attention and improving its approach to planned outages. Ops. Dir. at 20–21. The Company indicated that it had included approximately $600,000 in capital expenditures and $100,0000 in expense associated with these items in its revenue requirement calculation. EXM-009-055.

Staff observed that the Company did not provide evidence of any analysis of the benefits versus costs in relation to any of these items. Staff expressed the view that management can determine if and when to make these investments with the rate amounts awarded through the CAGR trending calculations discussed below. BA at 37.

Looking at the entirety of these proposed programs, Staff pointed out that the Company stated that the effectiveness of most of these programs is under study and awaits further review, expected to be completed by the end of 2022. *Id.* (citing EXM-009-014). The exceptions are the protection and coordination and the ALT scheme programs which have shown more "immediate benefit." *Id*.

x. The OPA's Position

Mr. Morgan generally described Versant's filing, drawing a distinction between "large capital additions" and "base capital additions." With respect to the former, he testified that the Company was "able to provide details" about each project and opined that it was possible to "monitor the status of each project." Morgan Dir. at 12. Thus, he opined, "in the traditional sense, the major projects are known and measurable." *Id*.

Mr. Morgan stated that the base capital additions appeared to lack specific budget data, were presented "based upon an arithmetic calculation" and had "no budget guard rails" to govern costs. *Id*. at 13. Mr. Morgan then removed $3.4 million in base capital additions from rate base on the basis that these are not known and measurable, largely because of the uncertainty in customer load levels going forward as a result of the COVID-19 pandemic. *Id*. at 14–15. In its brief, the OPA does not discuss Mr. Morgan's testimony on rate base.

b. Decision

The Commission treats each of these projects as being covered by the CAGR calculation authorized in section V.B.2.b.

Staff acknowledged that many of Versant's proposed programs would, if prudently executed, be good for reliability. BA at 43. Staff also found, however, that on the whole, certainty about the programs was questionable, stating that "Versant's projections are in many cases high-level estimates and, naturally, become more speculative the farther into the future one attempts to forecast." *Id*. The Staff also pointed out that the Company does not always hold to an established budget, and that "much of the spending that has led the Company to exceed its budget has been on items within its control." *Id*. at 44; EXM-003-007; ODR-001-046. Staff opined that many of the Company's proposed investments, standing alone, would likely benefit customers if properly deployed but that the new investments exceeded a reasonable level of costs, and some appeared to be premature or in need of more development and analysis and others may not be needed because of other programs. BA at 30.

The Company indicated that it uses a capital planning process that "assesses the effectiveness of current programs and discontinues, continues, or adjusts those programs to address current and projected distribution system needs." Ops. Dir. at 15. In response to a data request about this testimony, Versant stated that it expects an evaluation of many of its programs to be completed by the end of year 2022 "with decisions made on continuing, adjusting or ending each following these analyses." EXM-009-014. While the Commission agrees that reasonable flexibility is needed when it comes to capital investment programs, this flexibility underlines the assertion that these programs are not known and measurable.

The Company, citing to *Camden and Rockland, Maine and Wanakah Water Cos., Proposed Increase in Rates*, Docket No. 93-145, Order (Part II) at 9 (July 12, 1994), urges the Commission to apply only the well-established known and measurable standard to whether its proposed investments should be reflected in plant in service for ratemaking purposes. In *Camden and Rockland*, the Commission examined the utility's construction projects that were underway during the case. In one instance, the Commission approved as known and measurable a disinfectant plant that was due to be complete around the time the rate case would be decided, where 97% of its costs were known at the rebuttal stage and which, without approval, would cause the utility financial difficulty. This approval was granted over the objection of interveners who pointed out that there had been two delays in the schedule. *Camden and Rockland* at 12–13. A second project, a new intake facility, was rejected even though it was expected to be completed in the month following the Commission's decision. The Commission found it was not sufficiently known and measurable because there was no evidence of a signed construction contract, it was not known how close the contract price (if any) was to the prior engineering estimates and because of concerns about whether it would be completed within the time projected. *Id*. at 14.

With the exception of the CIS/NEB and AMI projects, Versant's programs are not discrete construction projects like a water utility's disinfection or intake plants. As described earlier, Versant retains significant flexibility to adjust its investments in these programs in the future. For example, Versant says it plans to spend $5 million in 2021 and 2022 on covered conductor. Unlike Camden and Rockland's disinfectant plant, which once started needed to be completed, covered conductor can be deployed in stages and thus the $5 million might be spread out over future years. This could occur for any number of reasons, whether the Commission were to approve the $5 million amount or not. How much is invested will remain within the discretion of Company management, as evidenced above by its response to EXM-009-014. Further, at hearing, Mr. Chahley testified that even under Versant's approach, or some smaller version of it, there could be "a number of factors that could cause the actual spend to deviate from the original plan." Tr. at 31 (Aug. 18, 2021 Hr'g); *see also* BA at 44 ("[F]or any of the capital projects in its spending plans, Versant could decide, for whatever reason, to reprioritize, defer, or otherwise change its plans. Versant's witnesses described the flexibility of schedules and ability to prioritize efforts where needed. *See, e.g.*, Tr. at 41, 43, 62–63, 75, 81–82 (Mar. 17, 2021 Tech. Conf.).").

Versant's proposed investments are in a position similar to the new intake facility in *Camden and Rockland* which was rejected *even though it was expected to be completed in the month following the decision*. The intake facility was not an investment, like Versant's, that could be stretched over years, at least not prudently. And yet the Commission found that it was not known and measurable. Here, the degree of management's discretion of whether to invest in, for example, transformers, or covered conductor or certain replacements or upgrades renders these programs less known and measurable than that intake facility. All of Versant's asset management and resiliency programs are discretionary in this way.

Moreover, the Commission finds that the programs put forth under Versant's targeted asset condition replacement program and its resiliency/reliability investment program do not rise to the level of known and measurable. Further, the magnitude of the projects' costs as well as the frequency of their recurrence (i.e., their apparent regularity) is such that it is they should be appropriately captured in the CAGR-based calculation.

The Commission notes a general concern with the proposed investments in resiliency and reliability. Some of the projects do not appear to have been well supported in terms of their benefits versus their costs. For example, the use of dollars per avoided customer interruption, while a generally understood ratio, is not clearly useful in determining whether a project is cost-beneficial. Knowing whether something is cost-beneficial requires knowing the cost of the alternative scenario—here, dollars of avoided customer interruption purports to tell the Commission the cost of avoiding an interruption or a certain duration of interruption, but does not compare that to the customer benefit of the avoided interruption. It also is clearly a forward-looking estimate and does not provide a backcast to tell interested parties whether those forecast avoided interruptions were, in fact, avoided.

The question of the net benefits of these investments also presents itself in the context of storm response. Large investments—and large increases in investments over the past—in reliability and resiliency should have the effect of reducing outages and customer interruptions, at the very least during smaller storms. But the Commission has no evidence currently to say that this is the case. In a region of the country that is heavily wooded and experiences poor reliability, it behooves Versant to track this information more closely—not only the lived performance of these investments after they are put into service, but also how they affect outages during non-extraordinary storm events.

6. Proposal for Right-of-Way Clearing Pilot Program

a. Positions of Parties and Staff

i. Versant

Versant seeks to conduct a reliability pilot project that would involve trimming all vegetation to at least an additional 10 feet beyond the edge of the public right-of-way (ROW) for distribution lines along certain roads. Ops. Dir. at 27. To reduce the rate impact, it proposed to capitalize the cost of the real estate rights and the initial trimming. *Id*. at 31. The Company stated that it has no rights to cut beyond the public right-of-way, the width of which is normally 10 feet (*id*. at 27) but can be less than this amount (EXM-010-078). This close proximity leaves the lines vulnerable to overhanging limbs, falling limbs, falling trees, and significant horizontal ingrowth between trim cycles. The program would involve first identifying selected line segments that would provide the greatest reliability benefits from additional clearance, and then seeking to clear a wider zone from the lines to the nearest vegetation. Ops. Dir. at 26–32. Versant would then need to negotiate with adjoining landowners to acquire the necessary rights to trim. EXM-010-080. Versant stated it would "carefully evaluate the reliability impact" of the pilot and, "if successful," propose to expand it to other areas of its territory. Ops. Dir. at 31. Versant proposed to add $4 million to rate base in the rate year for the cost of this pilot. *Id*.

ii. Staff's Analysis

Staff noted that Versant's right-of-way pilot proposal raises some concerns. It was not clear to Staff whether this program is necessary given that Versant is entering the third year of its recently shortened (five-year) maintenance trim cycle and has yet to see the results of its more aggressive routine trimming. Moreover, the enhanced danger tree program also has only two years of results. Staff believes that continuing to target danger trees with safe, innovative technology will continue to reduce tree caused outages. Staff added that, if the Company deploys additional reliability measures such as tree wire, there could be a reduction in the number of tree-related outages on the troubled circuits Versant intends to include in this pilot. BA at 75–78; RBA at 8.

Staff questioned whether Versant is currently taking advantage of existing trim opportunities within the current right-of-way areas, noting that a Company witness testified that Versant might have legal challenges with the way current state law and policy affects its ability to clear ground-to-sky within the right-of-way and that it would encounter public resistance. Tr. at 107 (Mar. 17, 2021 Tech. Conf.). If the Company is not currently clearing all vegetation located within the existing rights-of-way, especially the vegetation located above the conductor, Staff pointed out that the Company may be missing an opportunity to improve reliability without expanding the existing rights-of-way. RBA at 8–9. Staff also noted possible public resistance to the pilot, and that it appears that property owners are generally reluctant to grant permission to conduct vegetation management when they have the choice. According to Staff, property owners would presumably be much more willing to give the Company permission to cut a single danger tree under the enhanced danger-tree program than to give the Company a wider right-of-way area to be totally cleared of vegetation. *Id*. at 10.

Staff noted the Company's admission that historic vegetation management practices did not meet specifications and that additional work would be required to bring the system back to standard. ODR 001-059, Att. A. Versant's current 10-foot specification is intended to keep vegetation growth away from the conductor until the next trim cycle. (Versant's 10-foot specification is based upon a six- to seven-year trim cycle. EXM-009-072(d).) Staff noted that, if work is performed properly, grow-ins should not be a significant concern, but Versant had not performed regrowth analysis nor work-load surveys on its system, EXM-009-066, nor, apparently, had it considered limited ground-to-sky opportunities. Staff asserted that these steps should be completed and the results analyzed before any additional program costs are considered. BA at 77.

Staff added that Versant acknowledged the additional work required to acquire the property rights, a process that will include "significant stakeholder outreach effort with communities, municipal officials, property owners, and the media to explain the benefits of this program and to seek broad support." Ops. Dir. at 29. Staff expressed skepticism about the feasibility of the Company's proposed schedule. BA at 77–78 (citing EXM-009-084).

Staff also was concerned about the high $4 million cost of this pilot and stated that it is not convinced that the high cost of this pilot can or should be capitalized. Staff noted that vegetation management costs have historically been treated as expenses. *Id.*

iii. Versant's Response

Versant disagreed that its other vegetation management and reliability investments make the right-of-way expansion pilot unnecessary. The pilot is not applied to all areas of Versant's territory but is targeted to, in Phase I, its repeat worst-performing line sections and, in Phase II, its highest-risk line sections, i.e., those that affect greatest number of customers. Ops. Reb. at 39. Versant believes that the pilot will provide greater reliability benefits per dollar spent compared to ground-to-sky clearing because more than 75% of tree-related outages are caused by trees falling from outside of the current rights-of-way and ground-to-sky clearing will not address the root cause of these outages. The Company stated that

> the [right-of-way] expansion pilot has absolutely no relation to Versant's cycle-trim program. Rather, it is a targeted proposal to reduce vegetation-caused outages from trees that fall from outside of the existing right-of-way. The five-year cycle-trim program is not relevant to Versant's pilot proposal because they target different vegetation and thus different causes of outages.

Id. at 41.

The Company provided examples of other state commissions that have allowed the capitalization of costs for clearing expanded rights-of-way. The Company also stated that even if the costs are not explicitly capitalized, the Commission could allow the Company to amortize the costs over a longer period to avoid the need to expense them in a single year. It believes that capitalizing the cost of the program is in the best interest of customers because it will greatly reduce the rate impact of the program in the short term. *Id.* at 42.

iv. OPA

In its brief, the OPA agreed with the Reply Bench Analysis's proposed treatment of the right-of-way expansion pilot, saying that it should be covered by the CAGR-based adjustment. OPA Br. at 5–6.

b. Discussion and Decision

The Commission declines to separately approve the right-of-way clearing pilot either as a separate expense item or as a discrete investment in plant. The uncertainty about the feasibility, targets, and potential benefits of the project are obvious and render the program not known and measurable. Moreover, before embarking on an expensive pilot that presents significant uncertainty, it is best at the least to first see the results of the shortened trim cycle and the danger tree program. Without sufficient time to evaluate the benefits or "return" of those programs, it is not possible to say that the benefits of this clearing pilot would outweigh its costs. The Commission encourages Versant to explore its ability to clear from ground-to-sky within the existing trim zone to further reduce vegetation-related outages.

C. Rate Base: Issues Not in Dispute

The remaining rate base issues—deferral amounts and cash working capital—are not in dispute and are discussed briefly below.

1. Regulatory Assets and Liabilities

a. General Background and Parties' Positions

On regulatory assets and liabilities reflected in rate base, there is no apparent dispute among the parties or Staff. *See* Versant Br. at 86.

On March 15, 2021, Versant filed a correction to reflect the gross-up of taxes on deferred storms. Mar. 15, 2021 Letter from Versant. This adjustment reduced Versant's calculation of its revenue requirement by about $1.1 million. *Id.*

In the Bench Analysis, Staff pointed out the odd timing of the Swan's Island vegetation management deferral (EX. RR-153) but did not suggest that any adjustment was required. BA at 51. In the Reply Bench Analysis, the Staff updated the deferred storm costs to reflect the Commission's decision in Docket No. 2020-00208 authorizing an accounting order for three storms and denying an accounting order for a fourth. RBA at 14–15; *Versant Power f/k/a Emera Maine, Request for Accounting Order for Deferral of Incremental 2019 and 2020 Storm Restoration Costs*, Docket No. 2020-00208, Order at 1 (June 23, 2021). In discovery on the Reply Bench Analysis, Staff updated its revenue requirement calculation to reflect certain corrections to this calculation and the application of the excess accumulated deferred income taxes liability to offset storm costs, among other things. VERS-006-002; ODR-004-001.

b. Discussion and Decision

With the updates and corrections following the decision in Docket No. 2020-00208, there is no apparent dispute on the regulatory assets and liabilities in rate base, and the Commission is satisfied that the parties' implicit agreement on these issues is a reasonable result.

2. <u>Cash Working Capital</u>

a. General Background and Parties' Positions

In support of its proposed cash working capital requirement, the Company submitted the testimony and lead-lag study of Michael J. Adams of Concentric Energy Advisors, Inc. (Concentric). Cash working capital is the amount of money required to fund the utility's day-to-day operations and is a component of its rate base. CWC Dir.[18] at 3, 4. The Company initially proposed that payment of state and federal taxes be reflected based on their statutory due dates. CWC Dir. at 8. It also proposed that the collections lag be capped at 90 days for aging vintages of accounts receivable. Rev. Req. Dir. Ex. RR-160.

As the case proceeded, the Company agreed to modify state and federal taxes to reflect actual payment dates (EXM-004-004; Tr. at 4 (Mar. 18, 2021 Tech. Conf.)), the Staff agreed to accept the Company's assumption of a 90-day cap for aging accounts receivable (RBA at 15), and the OPA did not take issue with the cash working capital calculation.

b. Decision

In sum, there is no apparent dispute on the issue of cash working capital in the revenue requirement. *See* Versant Br. at 86. The Commission agrees with the parties' and Staff's implicit agreement on this issue and approves the amount in rate base of $3,127,919 as just and reasonable.

D. <u>Depreciation Expense and Capitalized Overheads</u>

1. <u>Positions of Versant and the Staff</u>

In its calculation of its revenue requirement, Versant included a certain amount of capitalized overheads related to its capital investments. In its rebuttal testimony, Versant

[18] "CWC Dir." refers to the direct testimony and exhibits of Michael J. Adams of Concentric on cash working capital and the lead-lag study, as included in Versant's January 19, 2021 initial filing.

argued that the Staff's Bench Analysis did not appear to reflect a reduction in the capitalized overheads (which are an offset to the revenue requirement) relative to the value included in the Company's revenue requirement filed with its direct case. However, the Company also did not make any adjustment to its capitalized overheads associated with its reduction in plant rate base in its rebuttal filing. In its rebuttal filing, Versant included a calculation of an adjustment to capitalized overheads under Staff's calculation, suggesting it would have amounted to $2.25 million. Rev. Req. Reb. Att. G; Versant Br. at 32.

In response to a data request from Versant on the Reply Bench Analysis, Staff noted that a change in the calculation of capitalized overheads may be appropriate, but noted that the relationship between changes in capital additions and the capitalized overheads is not clear given that Versant did not make a change in its overhead calculation to reflect its change in capital additions. VERS-006-004. Versant later posed an oral data request asking what information Staff would need to perform that calculation, and Staff responded with a list. ODR-004-003.

At the hearing, Versant questioned Staff on this issue, and then asked to be asked to provide additional backup information. At the hearing and in its brief, Versant placed blame on the Staff for not asking for the information earlier. Tr. at 157–63 (Aug. 18, 2021 Hr'g); Versant Br. at 32–35. Versant argued that failing to make the $2.25 million addition to its cost of service "would arbitrarily exclude significant necessary revenue from the revenue requirement for no justifiable reason, in violation of established ratemaking principles." Versant Br. at 7, 32–33.

Versant also argued that an adjustment to Staff's calculation of depreciation expense is required. In discovery on the Reply Bench Analysis, Staff acknowledged that the rate-year depreciation rate Staff included in its Reply Bench Analysis reflected a rounded value of 3% and that a more precise value of depreciation expense would be appropriate. The Staff calculated this more precise value to be 3.2%. VER-006-005. Versant requested that the Commission adopt the 3.2% depreciation rate. Versant Br. at 35.

2. <u>Discussion and Decision</u>

On depreciation expense, the Commission agrees with Versant on adopting the "more precise 3.2% depreciation rate" in calculating depreciation expense.

The Commission also authorizes an adjustment to capitalized overheads to reflect the approved adjustments to rate base. Both Versant and Staff agreed that the Staff's analysis did not reflect an appropriate capital allocation for overheads, and that an adjustment to capitalized overheads is generally appropriate when adjusting rate base. In Order (Part I), the Commission required Versant make a compliance filing including the information Staff identified for Versant as necessary to calculate those amounts.

E. O&M Expenses

1. Affiliate Costs

a. Background

In 2020, the Commission approved the reorganization resulting from ENMAX's acquisition of Emera Maine. *Emera Maine et al., Request for Approval of Reorganization*, Docket No. 2019-00097, Order Approving Stipulation Parts I & II (Mar. 19 & Apr. 21, 2020). The settlement stipulation in that case included a cap on the cost of affiliate services ENMAX could recover from Versant that would remain in effect until a decision in the next Versant rate case. The acquisition by ENMAX was completed on March 24, 2020.

As with its prior corporate parent, Versant purchases certain corporate services from ENMAX. After the closing of the acquisition, the Commission approved, under 35-A M.R.S. § 707, an Intercorporate Services Agreement between Versant and ENMAX for this purpose. *Emera Maine, Request for Approval of an Affiliated Interest Transaction with ENMAX Corporation*, Docket No. 2020-00131, Order at 1, 5–7 (July 13, 2020). The approval of the Intercorporate Services Agreement was conditioned upon ENMAX not charging more for intercompany services provided to Versant Power than Emera Inc. previously charged Emera Maine for such services. *Id.*; *Emera Maine et al., Request for Approval of Reorganization*, Docket No. 2019-00097, Order Approving Stipulation (Part II), Rev. Stip. ¶ 38 (Apr. 21, 2020).

In a filing in Docket No. 2020-00131 on July 22, 2020, Versant submitted a copy of a document describing the so-called direct-charge methodology under which ENMAX charges Versant for services. The Commission did not formally approve that methodology and deferred the issue of treatment in rates of costs for affiliate services to Versant's next rate case following the development of a full and complete rate-making record. *See Versant Power f/k/a Emera Maine, Request for Approval of an Affiliated Interest Transaction with ENMAX Corporation*, Docket No. 2020-00131, Procedural Order (120-day report) (Aug. 18, 2020).

b. Versant's Proposal

Here, for affiliate services it sells to Versant, ENMAX intends to charge Versant the actual number of hours spent on work for Versant. Affil. Dir.[19] at 4. Mr. Bourgeois of ENMAX confirmed that for an employee's time to be charged to Versant, it would need to be tracked in a Versant-specific project number, and if an employee was doing work attributable to multiple entities it would not end up in the direct charge to Versant. Tr. at 128 (Mar. 16, 2021 Tech. Conf.).

[19] "Affil. Dir." refers to the direct testimony and exhibits of Kristian Chahley and David Bourgeois on affiliate services, as included in Versant's January 19, 2021 initial filing.

The rate charged for these hours will vary depending on the functional area in which the work is being performed. ENMAX calculated an average salary for each functional area. Hourly rates are based on the fully loaded cost of ENMAX employees' time. Affil. Dir. at 4–5; EXM-012-001, Att. A (confidential copy of direct-charge methodology); EXM-012-002 (explanation of calculation of fully loaded costs).

To calculate the cost of affiliate services for the revenue requirement, ENMAX relied on employees' estimates of the time they plan to spend on Versant matters in the rate-effective year (i.e., parts of 2021 and 2022). ENMAX asked each employee to estimate their time; supervisors then were expected to evaluate the estimates for reasonableness. EXM-012-010.

Versant presented a statement by KPMG LLP that this so-called direct-charge methodology is consistent with the "2017 Organisation for Economic Cooperation and Development Transfer Pricing Guidelines for Multinational Enterprises and Tax Administrations" and is thus reasonable. Affil. Dir. at 5–6, Ex. AS-1; EXM-012-007.

Versant's 2019 test year is based on costs Versant paid for services to its former corporate parent for similar services. Affil. Dir. at 6. The amount in Versant's rate-effective year is based on ENMAX's forecast of costs for services, which is based on the employee surveys and averaged hourly rates. Affil. Dir. at 8. The difference is a reduction to the test year of $(143,241). Rev. Req. Dir. Ex. RR-333.

c. Positions of the Parties and Staff

i. Staff's Analysis

In the Bench Analysis, Staff expressed concerns about the method Versant and ENMAX propose to use to charge Versant for affiliate services from ENMAX and produced an alternative calculation to use for the rate-effective year based on actual past amounts paid to ENMAX. BA at 57–59.

First, Staff did not understand the purpose of averaging hourly rates by functional area. If individual employees are recording their time for Versant, it should be possible to charge that time based on that employee's hourly rate. By averaging rates by functional area, it is possible that employees with lower hourly rates than the average could end up charging far higher than the actual cost of providing their service. The opposite is also possible: an employee with a far higher hourly rate than the average could end up charging less than the value of the service. Given this disconnect between the hourly cost of the employee and the actual cost they charge to Versant, Staff did not see this methodology as a "direct charge." BA at 57. Mr. Bourgeois indicated that "we don't do an Excel tie out sheet reference for this as to what might be over or, conversely, under allocated. There are elements of the calculation that could go either way on that." Tr. at 51 (June 30, 2021 Tech. Conf.). If an entity does not know what the amount of the difference between the costs it incurs and costs it charges for services provided, it is not clear that the method is reasonable. RBA at 17–18. Staff was also not convinced that the method ENMAX used to estimate time spent on Versant matters during the rate-effective year is reliable enough to establish a known and measurable adjustment to the test year. ENMAX asked its employees to estimate their time as much as two years into the future for a new subsidiary operating in a separate country—a set of circumstances that does not lend itself to a recognizable level of precision. Also, supervisors at ENMAX were to review employees' time estimates for reasonableness, and ENMAX did not provide any evidence that managers adjusted employees' time estimates for reasonableness beyond minor, non-material changes. BA at 57 (citing ODR-001-014 and EXM-003-061, Att. A).

When asked to provide documentation of how employees are instructed on proper time-tracking, Versant provided a decision tree on how employees should determine their estimated time, though apparently it is also serves as instructions on how to enter actual time worked, which could lead to confusion. EXM-012-001; BA at 58. Staff also expressed concern about the way affiliate costs were allocated between transmission and distribution, and the reliance on the wage allocator instead of using a direct method of allocation. BA at 58–59.

Staff proposed that ENMAX's proposed methodology not be formally approved in this case. Instead, Versant should be required to obtain from ENMAX the affiliate costs calculated using actual salaries as well as using the current methodology, which can then be compared to the so-called direct-charge methodology in the next rate case proceeding. RBA at 18.

For this element of the revenue requirement, in the Bench Analysis Staff used the data for year 2020 the Company provided in EXM-003-061 to calculate the adjustment to the test year. Versant/ENMAX provided the actual amount of affiliate services from ENMAX to Versant from April to December 2020. Staff has annualized this nine-month amount, applied the CAD to USD conversion factor of 0.79, inflated the amount by 3% per year (the wage increase factor) through 2022, and then applied the wage allocator to reach a distribution allocation of $665,393. BA at 59. In the Reply Bench Analysis, Staff added costs to reflect what Versant described as post-closing services Emera Inc. provided to Versant. RBA at 16–17. This increased the amount in the revenue requirement by $15,511. In response to Versant's statements that that the 2020 affiliate service charges did not reflect the "full extent of services that ENMAX will provide to Versant during the rate year," Affil. Reb. at 8, Staff stated that the cost of those services was not known even if it was known the services would be provided. RBA at 18–19.

ii. Versant's Response

In its rebuttal, Versant retained its original proposed test-year adjustment for affiliate services, which it based upon ENMAX's forecasts of those costs. Versant also continued to support ENMAX's methods to calculate amounts charged to Versant for affiliate services as appropriate and reasonable. Versant stated that the hourly wages are averaged "within each employee level . . . to arrive at a single hourly charge-out rate for that level." Affil. Reb.[20] at 3. According to Versant, charging based upon each employee's precise salary would present problems such as: (1) confidentiality issues, because the charge-out rates are visible to many employees at ENMAX, and (2) administrative inefficiency, as it would require that individual rates be calculated for each employee who might perform services. Versant relied on KMPG's support for the use of this methodology, and stated that ENMAX uses this same methodology with other affiliates, "which further supports its reasonableness." *Id.* at 4. Versant added that Emera Inc. continued to provide certain affiliate services to Versant that were not reflected in the test-year amount. Affil. Reb. at 8. Pointing to its direct testimony, Versant also argued that it would be receiving other services from ENMAX in the future that are not yet reflected in actual charges but will be, and Staff's calculation excluded these. *Id.* at 8; Tr. at 169–72 (Aug. 18, 2021 Hr'g).

In its briefs, Versant asserted that ENMAX's direct-charge methodology is reasonable, its forecast of affiliate services expense is reasonable and reliable, and Staff's alternative forecast does not capture all of the affiliate services that would be provided in the rate year. Versant Br. at 67–74. On the direct-charge methodology, Versant described the fully loaded cost calculation; described it as not unusual in industries that charge for time; described it as consistent with international guidelines, as confirmed by KPMG's analysis of the OECD Transfer Pricing Guidelines; described charging out for individual employees' time as creating "a significant administrative burden" and raising "serious confidentiality concerns for ENMAX"; and that using individual employee rates would not make a "material difference to affiliate service charges " *Id.* at 68–71; *see also* Versant Reply Br. at 12 (opposing the OPA's position, summarized below).

On the reasonableness of its forecast, Versant claimed that the individuals who provided forecasts of future time to be spent on Versant have the experience necessary to do so; pointed to the fact that only minor changes were made to employees' estimates of their time confirmed the reasonableness of the initial estimates; and pointed to KPMG's finding of reasonableness. *Id.* at 71–72.

Versant argued that Staff's calculation excludes costs that are known to be occurring in the future, and that Staff's understanding that the costs were not measurable is not accurate because Versant estimated the costs in its initial filing. Versant Br. at 72–73. Including three categories of excluded service areas (Finance internal audit, Finance insurance and IT, and IT cybersecurity) should increase Staff's calculation by $83,192. *Id.* at 73–74. Versant also stated that, when accounting for the full level of these services, ENMAX's forecast and Staff's calculation differ by only approximately $17,000. *Id.*

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[20] "Affil. Reb." refers to the rebuttal testimony and exhibits of Messrs. Chahley and Bourgeois on affiliate services, which the Company filed on June 30, 2021.

iii. OPA

In its brief, the OPA agreed with the Staff's position of basing the revenue requirement on actual past affiliate charges imposed by ENMAX since the acquisition, followed by adjustments to annualize those costs and adjust for inflation. OPA Br. at 9–10. The OPA questioned the use of an average charge-out rate instead of using actual rates for individual employees, saying that this "approach lacks the rigor necessary to serve as the basis for a rate adjustment as it relies too heavily on estimates that are not readily verifiable through third-party analysis." *Id.* at 10.

d. Decision

The Commission shares the concerns about the so-called direct-charge methodology and at this time declines to formally approve that approach, for several reasons. First, while there may be an opinion of KPMG that the approach reasonably comports with the OECD guidelines, those guidelines are used for tax purposes and are not used by utility regulators to determine what amounts ratepayers of those utilities should be paying for services the utility receives from an affiliate. Second, establishing a revenue requirement based on affiliate employees' estimates of their future time is a potentially problematic way to set a revenue requirement, especially where the affiliate relationship is relatively new and the scope of services may change in the near future. Third, as for the decision tree given to employees to come up with those estimates, it is unclear whether this is the complete advice given to employees how to estimate their time, or the complete advice given to employees on how to enter and track their actual work time, or something else. If it is used for both time entry and time estimation, it is easy to see how use of the document could lead to confusion. Fourth, the document does not make clear how employees are supposed to allocate their time if time is spent on multiple entities. Fifth, using averages of hourly rates strikes the Commission as an unnecessarily indirect way of charging time; ENMAX uses a computerized payroll system which should allow it to easily determine the base salary for the hours that will be charged to Versant. Tr. at 55 (June 30, 2021 Tech. Conf.).

Versant and ENMAX may continue to use this approach, even though the Commission is not formally approving it, until more is known about the affiliate services Versant will purchase and their costs. Under the circumstances, the Commission believes the cautious approach is the better one here, and thus adopts the approach of using actual 2020 affiliate costs to establish the revenue requirement, with some adjustments, such as the assumed 3% wage inflation and the currency conversion factor.

The Commission disagrees with part of Staff's calculation. The Commission is comfortable with the component of that calculation based on actual charges from ENMAX for 2020. The Commission also is comfortable with incorporating the component of that calculation based on actual charges from Emera Inc. As for the services ENMAX anticipates providing Versant in the future but has not yet begun to provide, the Commission agrees that Staff's methodology resulted in lower annualized costs for certain services where there were no actual costs during April to September

2020. Therefore, for just those services, the Commission requires that the annualized cost be calculated based upon the October to December actuals. This results in an increase of the cost to be included in affiliate services of $78,412, prior to the application of the wage allocator.

It is possible that ENMAX's direct-charge methodology is a reasonable one, but it is hard to render a judgment on that given the newness of the affiliate relationship here and the method proposed for charging for affiliate services, which the Staff was unfamiliar with. To allow the Commission to understand better whether the direct-charge methodology results in charges to Versant that reflect closely enough the actual costs of the individuals performing those services, the Commission directs Versant and ENMAX to track the costs that would actually be incurred had individual ENMAX employees' time been charged specifically to Versant at each employee's rate, instead of at the average rate. This will allow the parties in a future case to compare the charges to Versant under the so-called direct-charge methodology to the charges Versant would have incurred under a direct charge system.

Finally, at a technical conference Mr. Chahley stated that when bills arrive from ENMAX the Company's personnel "treat it no different than a contractor to make sure that they're getting value for the charges that they're being charged," but also that "we feel comfortable in the costs that we're being charged, knowing that they're on a direct cost basis, are fair and reasonable." Tr. at 56, 57 (June 30, 2021 Tech. Conf.). Versant's obligation with all charges from any source, whether an affiliate or not, is to review the charges and make sure that Versant and its ratepayers are getting what they are paying for and being charged accurately.

2. Medical Expenses

a. Company's Proposal

The Company testified that there have been no changes to its medical benefits since the last rate case. HR Dir. at 6, 7. The Company's medical expenses are presented in Exhibit RR-306. As shown there, medical expenses encompass the costs for medical claims, administration/other medical insurance, other insurances, and an offset for employee contributions. The total amount is allocated approximately 86% to distribution based on the Company's wage allocator. The Company calculated the adjustment to the test year by taking actual medical expenses from 2019 and inflating them annually through 2022. The Company's calculation of the adjustment to the test year was an increase of $206,047.

b. Positions of the Parties and Staff

i. Staff's Analysis

In the Bench Analysis, the Staff updated medical expenses for 2020 (provided in EXM-003-048). Actual data for 2020 was lower than the Company's forecast. In making this update, the Staff noted that the Company's medical expenses have not followed inflation from year to year. Some past years have seen noteworthy reductions to medical costs, such as a decrease in medical claims from $4,673,286 in 2016 to $4,038,731 in 2017 and a decrease in administrative/other medical insurance from $799,172 in 2018 to $425,336 in 2019. Thus, it is not unusual for the Company's medical expenses to fluctuate. Updating the 2020 amounts for actuals, and then adjusting the 2020 actuals in 2021 and 2022 for inflation, Staff calculated an adjustment to the test year of $(834,366), about a million dollars less than the Company's adjustment. BA at 68–69.

In the Reply Bench Analysis, the Staff considered the Company's testimony in rebuttal about the claims trend in 2021 and the effect of the pandemic on medical claims in 2020. Staff decided it was best to forecast the test year using 2019 and excluding 2020 from consideration due to the likely effect of the pandemic on medical expenses for that year. The Staff stated that, in agreeing to this "pandemic exception," for purposes of this case it would reject the past practice of adjusting test-year medical expenses for inflation, for a couple of reasons: (1) Versant's medical expenses are volatile year over year and do not follow a clear trend of yearly increases; and (2) the pandemic's apparently strong effect on medical claims makes the task of forecasting future medical expenses more difficult. Removing inflation from the Company's calculation reduced medical expenses by $(206,047). RBA at 26–27.

ii. OPA

In direct and surrebuttal testimony, the OPA's witness Mr. Morgan argued that 2020 should be used as the basis for estimating medical expenses for the rate-effective year. Morgan Dir. at 17; Morgan Surr. at 5. Mr. Morgan's view was that Versant's rebuttal testimony on its medical claims experience addressed only one of the four pieces of medical expenses, and Versant had not made a case that all four components of medical expenses in 2020 were affected in the downward direction by the pandemic. Morgan Surr. at 5.

In its brief, the OPA agreed with the Staff's analysis that 2019 medical expenses should be used as the basis for establishing rates and that inflation should not be added to those costs. The OPA argued that inflation applied to the year 2019 costs is not a known and measurable adjustment given the volatility of Versant's medical expenses year over year and the difficulty of forecasting future medical expenses under the conditions of the pandemic. OPA Br. at 9 (citing RBA at 26–27).

iii. Versant

In rebuttal and in its brief, the Company argued that 2020 actuals should not be used due to the outsized effect the pandemic had on limiting employees' seeking of medical care beginning in March 2020. HR/Cust. Reb. at 2–6. Versant argued that 2020 was "clearly an outlier" related to the "lockdown in response to the COVID-19 pandemic." Versant Br. at 60–61. It pointed to the analysis of its consultant projecting an increase in Versant's medical costs for 2022, and argued that this consultant has projected relatively accurately past medical costs, within about 10%. *Id.* at 61 (citing HR/Cust. Reb. at 6).

Versant also disagreed with Staff's proposal (and the OPA's position in brief) to not increase the 2019 figures by inflation. Versant pointed to one of its last rate cases in which inflation on medical expenses was an issue in the case, and the Commission ultimately decided to apply a general inflation index rather than a medical-specific inflation index because the general inflation rate included a medical cost component. *Emera Maine, Request for Approval of a Proposed Rate Increase*, Docket No. 2015-00360, Order Part II at 14 (Dec. 22, 2016). Versant explained that it followed the same approach with medical expenses since that case. Versant Br. at 58. Versant pointed to the Staff's agreement that uncertainty in medical expenses "cuts both ways" and that the "pandemic could either increase or decrease medical expenses beyond what would otherwise be expected," and then argued that the evidence showed it would increase in the future. *Id.* at 59–60; *see also* Versant Reply Br. at 9–10.

c. Decision

To forecast medical expenses in the past, the Commission has generally used the test year amount or an updated amount, and applied inflation through to the rate year. In this case, 2019 was the test year and 2020 is the most recent year for which full data on medical expenses is available. Total expenses for 2020 were notably lower than those of 2019, but they were also almost identical to the total expenses of 2017. While the pandemic likely was a significant reason for reduced medical claims in 2020, as Versant argued in its rebuttal, it is possible that there were other reasons for the cost decrease. The Commission also agrees with the OPA's witness Mr. Morgan's observations that medical costs fluctuate year over year: "in 2017 Medical Claims decreased by 13.6 percent [from 2016]; in 2018 Other Insurances decreased by 36.7 percent [from 2017]; and in 2019 Admin/Other Medical Insurance decreased by 46.8 percent [from 2018]." Morgan Surr. at 5. The following table shows the breakdown of the Company's actual medical expenses from 2016 through 2020.

Figure 5: Versant Medical Expenses by Category, 2016 through 2020 Actuals[21]

		Actual 2016 Cost	Actual 2017 Cost	Actual 2018 Cost	Actual 2019 Cost	Actual 2020 Cost
Medical Claims		**4,673,286**	**4,038,731**	**4,923,378**	**5,726,767**	**5,030,044**
			-13.6%	21.9%	16.3%	-12.2%
Admin/Other Medical Insurance		**693,437**	**734,119**	**799,172**	**425,336**	**170,243**
			5.87%	8.86%	-46.78%	-59.97%
Employee Contributions		**(1,379,359)**	**(1,418,290)**	**(1,400,693)**	**(1,536,784)**	**(1,679,700)**
			2.8%	-1.2%	9.7%	9.30%
Other Insurances		**370,429**	**477,140**	**302,201**	**363,664**	**310,986**
			28.81%	-36.66%	20.34%	-14.49%
	Annual Totals	**4,357,793**	**3,831,700**	**4,624,058**	**4,978,982**	**3,831,573**
			-12.1%	20.7%	7.7%	-23.0%
Allocation to Transmission	Revised	**593,967**	**522,261**	**630,259**	**678,635**	**522,243**
Distribution Portion of Active Medical Costs		**3,763,826**	**3,309,439**	**3,993,799**	**4,300,347**	**3,309,330**

Based on this data, it is obvious that Versant's medical expense experience, and especially the individual components of medical expense, are prone to variability, and do not always increase year over year.

Medical claims are only one aspect of Versant's medical expenses, and Versant's medical claims appear to have decreased in 2020, though by only 12.2% from 2019. It remains unclear how the pandemic will affect medical expenses going forward. In adopting a disconnection moratorium in 2020, the Commission noted that societally measures were taken to preserve critical public-health resources for the treatment of cases of Covid-19. *Public Utilities Commission, Emergency Moratorium on Disconnection Activities Due to Covid-19 Pandemic*, Docket No. 2020-00081, Order at 1–2 (Sept. 17, 2020). If cases of Covid-19 increase in the State as a whole or in Versant's service territory, and decisions are made about preservation of critical public-health resources, it could affect future medical claims in the direction that the pandemic did in 2020—among many possible futures. Versant's arguments on this subject exhibit tension; it seems to find as credible the idea that the pandemic could "cut both ways" on medical expenses, yet then argues that it is "more likely" that costs will increase than decrease. It also pointed to statements from Staff agreeing that 2020 was an unreliable stand-in for future medical expenses, but downplayed statements from Staff that future medical expenses were highly uncertain, leading it to reject the addition of inflation. *See* Versant Br. at 60–61.

The Commission finds that there is uncertainty around future medical claims amid the ongoing effects of the pandemic, and that selecting any one year in Versant's recent experience has the potential to misrepresent actual future experience. This uncertainty is unavoidable, but in an attempt to address it with the information available

[21] Adapted from BA Rev. Req. Model, RR-306.

to the Commission now, the Commission agrees with the Company, Staff, and the OPA in its brief that using 2019 data makes sense—but only for the component of medical claims. The Commission bases the other three components of medical expenses (admin/other medical insurance, employee contributions, and other insurances) on the 2020 actual numbers. As noted above, most of the components of medical expenses are variable year over year and do not move only in one direction. While Versant called 2020 an "outlier," the total medical costs for that year were nearly equal to total costs for 2017, as shown in Figure 5 above. If 2020 was an outlier, so was 2017—making two out of four contiguous years outliers. It is possible that medical claims could increase from the test year, and it is possible that they could decrease; the same is true for the other components of medical expense. In fact, as Figure 5 shows, over the last five years, only one component of medical expense has steadily increased in absolute value year over year: the employee contributions that *offset* the Company's medical expenses. Using medical claims from a non-pandemic year and other medical expenses from 2020 addresses Versant's concern about its actual recent medical claims experience, and addresses the Commission's concern about using a potentially unrepresentative test year as the primary basis for setting rates amid the ongoing pandemic. Adding inflation to this amount also addresses Versant's claims about generally increasing medical costs, which the Commission has acknowledged in a past Versant rate case tends to be the case. *See Emera Maine, Request for Approval of a Proposed Rate Increase*, Docket No. 2015-00360, Order Part II at 14 (Dec. 22, 2016).

Applying the distribution allocator and then the Company's inflation numbers of this combination of 2019 and 2020 costs results in an adjustment to the test year of $(155,551).

3. <u>Storm Expenses</u>

The parties generally do not disagree on the costs Versant has incurred for restoration of service following non-extraordinary storms.[22] The issues before the Commission are whether to apply inflation to those costs, as Versant has requested, and whether to use a five-year average or six-year average of storm costs, as the OPA has recommended in its brief.

a. Versant's Proposal

In its direct case, Versant sought to include in rates $2,848,623 for normally occurring storms. As in the past, Versant included the five-year average storm costs (here, from 2015 through 2019), excluding the costs of storms for which it has requested or obtained accounting orders. In this case, though, Versant added inflation to each historic year to "bring [past costs] up to today's dollars." Tr. at 44 (Mar. 18, 2021 Tech. Conf.).

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[22] For a discussion of what constitutes extraordinary or non-extraordinary storms, see *Versant Power f/k/a Emera Maine, Request for Accounting Order for Deferral of Incremental 2019 and 2020 Storm Restoration Costs*, Docket No. 2020-00208, Order (June 23, 2021).

b. Positions of the Parties and Staff

i. Staff's Analysis

In the Bench Analysis, Staff observed that in Versant's last rate case, inflation was not added to the historic actual storm costs, nor was it proposed to be, and the same was true in CMP's most recent rate case. BA at 80. Staff stated that including storm costs in rates is not an attempt to capture an exact cost. Each storm year is different and recovery costs are affected by multiple variables. Staff recommended removing Versant's inflation adder to conform with past precedent in establishing recurring storm costs. BA at 78–81.

In the Reply Bench Analysis, Staff re-calculated the five-year average of incremental storm expenses to reflect 2020 storm costs and to incorporate the decision in Docket No. 2020-00208, including the removal of information-technology-related costs. In discovery, Staff corrected its calculation to ensure that the adjustment to the test year reflected the expensing of the October 17, 2019 storm and other aspects of the decision in Docket No. 2020-00208. Staff again rejected the application of inflation to past storm costs. RBA at 30–32; ODR-004-001. Ultimately Staff calculated an adjustment to the test year of $(500,138), resulting in $3,637,373 being reflected in Staff's revenue requirement for this component of expense. VERS-006-014, Att. A (at Ex. RR-308); ODR-004-001, Att. A.

ii. OPA

The OPA argued that inflation should not be added to the average of storm costs, and that storm costs should be averaged over six years, not five years. OPA Br. at 11–12. The OPA disputed the Company's rationale for including inflation, arguing that the work is never the same from year to year, and that storm costs are subject to significant fluctuation that follow no discernible inflationary trend. *Id.* at 11 (citing Morgan Dir. at 18). In his surrebuttal testimony, Mr. Morgan noted these same arguments, and also stated that storm costs are made up of labor and external contractor costs, which are subject to annual cost escalation, and thus the effect of inflation is already captured in the averaged storm costs. Morgan Surr. at 6–8.

In its brief, the OPA added that it supports the recommendation in the Reply Bench Analysis except that it recommends use of a six-year average of storm costs instead of a five-year average. OPA Br. at 11. The OPA noted that Versant witness Mr. Chahley conceded that there was no reason a five-year average is a better predictor of future storm expenses than a six-year average. *Id.* at 12 (citing Tr. at 25 (Aug. 18, 2021 Hr'g)). Replacing "2015 with 2020 results in replacing a low cost year with a high cost year" and "there is no basis to conclude that either year is more representative of likely actual future costs . . . ." *Id.* The OPA noted that using a six-year average instead of a five-year would reduce the amount in the revenue requirement by $389,213. *Id.*

iii. Versant

Versant supported use of the five-year average as calculated in Staff's corrections in ODR-004-001, except that Versant continued to press for the Commission to apply inflation to storm costs. Versant emphasized that the purpose of averaging storm costs is to determine what a normal storm year is likely to look like, and that the cost elements that make up storm costs—for instance, payroll costs and contractor costs—are known to increase. Not applying inflation to the storm costs deprives Versant of the general growth in these kinds of costs that is known to occur. Versant Br. at 62–63. Versant argued that the Commission has previously accepted inflation adjustments for Versant in other contexts where the per-unit cost will trend upward over time even if the total costs might vary from year to year. Versant Reply Br. at 10–11. Versant compared storm costs to the stock market: "Just as stock market valuations vary considerably in the short-term, there is a clear upward trend in overall valuations over time." Versant Br. at 62–64. Versant described the use of past storm costs as a "lagging indicator" and that it constantly risks under-recovery of storm costs. Versant Br. at 64.

Versant also argued that the proposal of the OPA's witness Mr. Morgan to move storm-related overtime to payroll and outside of storm expense is at odds with the method of calculating incremental storm costs approved in its last two rate cases. Versant Br. at 64 (citing *Emera Maine, Request for Approval of a Proposed Rate Increase*, Docket No. 2015-00360, Order – Part II at 13 (Dec. 22, 2016), and *Emera Maine, Request for Approval of Proposed Rate Increase*, Docket No. 2017-00198, Order at 27 (June 28, 2018)).

In its reply brief, Versant took issue with the OPA's position in its brief on averaging six years of storm costs instead of five. Versant Reply Br. at 10–11. Versant argued that allowing a shift from five years to six would enable the Commission and parties to cherry-pick a span of years to back into a result, rather than follow a consistent methodology. *Id.*

c. Decision

The Commission accepts the Staff's calculation of average incremental storm costs from 2016 to 2020, the most recent five-year period for which actuals are available, including the adjustment to the test year (and other adjustments) required by the decision in Docket No. 2020-00208 and the removal of pandemic-related expenses.

The OPA in its brief requests that the Commission use a six-year average, instead of a five-year average, which would lower storm costs in rates by nearly $400,000. The issue of the five-year average was litigated in Versant's last rate case, where it was proposed that a year be excluded from the averaging as an outlier. In that decision, the Commission stated: "Given the volatility in current climate conditions, we find that it is appropriate to use a five-year average and not exclude any year as an outlier." *Emera Maine, Request for Approval of Proposed Rate Increase*, Docket No. 2017-00198, Order at 27 (June 28, 2018). Here the Commission retains the use of the five-year average as approved in the last case. In so doing, the Commission also rejects the proposal of the OPA's witness Mr. Morgan to move storm-related overtime from storm expense to payroll.

The final issue is whether to adjust this amount for inflation. The Commission finds that adding inflation to the five-year average of storm costs is appropriate and approves doing so here. The Commission agrees with Versant that, similar to the application of inflation to regulatory assessments or medical expenses, the application of inflation to storm costs ensures that the assumed estimate of those costs is adjusted directionally consistent with forecast inflation while rates are in effect. The uncertainty about future storm frequency and severity is different from the issue of inflation. The former is addressed through the multiyear averaging of storm costs, while the latter—which accounts for increases in labor, fuel, and materials costs—should be reflected separately.

The averaging of inflated storm costs over five years increases the amount of so-called ordinary incremental storm expenses in rates twofold, from approximately $1.9 million approved in the last rate case, *Emera Maine, Request for Approval of Proposed Rate Increase*, Docket No. 2017-00198, Order at 27 (June 28, 2018), to approximately $3.8 million in this case.

4. Property Taxes

a. Versant's Initial Proposal

In its initial case, Versant included in its revenue requirement property tax expenses of $10,256,741. Versant projected this expense based on the "forecasted plant in service and the forecasted blended assessment rates based on the 2019 actual rate adjusted for the average change in rates over the prior two years." Rev. Req. Dir. at 8. The blended assessment rate was calculated by dividing the annual property tax amount by the total amount of electric plant in service. Versant calculated an average year-over-year increase of 5.07% in the blended assessment rate based on the two annual changes between 2017 and 2019. Versant also used a forecast property tax expense amount for 2020, 2021, and 2022.

b. Positions of the Parties and Staff

i. Staff's Analysis

In its analysis, Staff updated the property tax projections to reflect the actual 2020 expense and to calculate the average annual rate increase based on the three annual increases between 2017 through 2020. The actual 2020 property tax expense was $15,889,583, EXM-003-055, versus Versant's projected amount of $16,828,457. Staff then calculated an average annual increase of 3.12% to the blended assessment rate between 2017 and 2020 versus the Company's calculation of 5.07% between 2017 and 2019. Staff also updated the adjustment to test year property taxes to reflect Staff's proposed plant-in-service amount. BA at 67–68.

In the Reply Bench Analysis, Staff agreed with Versant's updated calculation to reflect 2020 actuals, resulting in an average annual increase of 3.36%. RBA at 25.

ii. OPA

In testimony, the OPA's witness Mr. Morgan proposed essentially the same update for 2020 that the Staff did in its Bench Analysis. Morgan Dir. at 19–20.

iii. Versant

In its rebuttal testimony, the Company used an average growth rate of 3.36%, which reflected the calculation proposed by Staff and the OPA using 2020 actual plant in service numbers which had been finalized since the Company's initial filing. Rev. Req. Reb. at 14 & Ex. RR-316.

In its brief, Versant observed that there is no dispute about the property tax rate. Versant Br. at 87.

c. Decision

Here, there is no apparent dispute about updating property tax expense projections for 2020 actuals and using the 3.36% average annual rate. The Commission accepts the parties' implicit agreement on this issue and finds it to be reasonable.

There also appears to be no dispute about applying property tax expense to the amount of plant in service reflected in rate base as approved in this decision (though there is clearly a dispute about the amount of plant in service to be reflected in rate base, to which the 3.36% rate is applied). The Commission agrees that doing so is proper in this case and so orders.

5. Non-Labor Regulatory Expenses

a. Background

Chapter 85 of the Commission's rules governs the ratemaking treatment for regulatory proceeding expenses. It states that these "include any expense, fee or charge paid directly or indirectly by any public utility to any person, firm, corporation, or association other tha[n] its own employees, for legal, accounting, financial or other expert or specialized services in association with any proceeding before the Maine Public Utilities Commission or in any proceeding before the Maine Supreme Judicial Court arising out of a Commission proceeding." MPUC Rules, ch. 85, § 1. To be recovered in rates, the costs incurred for regulatory proceeding expenses must be reasonable, and they will be set on a normalized test year basis. *Id.* § 3.

b. Versant's Proposal

Versant's regulatory proceeding expenses were offered in Exhibit RR-319 and supporting workpapers (provided in response to EXM-015-012) as "Non-Labor

Regulatory Expenses." In Exhibit RR-319, Versant proposed to include a four-year average of the distribution portion of all outside regulatory expenses.

c. Positions of the Parties and Staff

i. Staff's Analysis

In its Bench Analysis and Reply Bench Analysis, Staff explained it had attempted to follow the methodology for normalizing outside regulatory proceeding costs that was used in Docket No. 2017-00198, the Company's last rate case. In so doing, the Staff removed costs of the Liberty Management Audit and the Acadia substation investigation because they were not likely to reoccur at any regular interval. Staff initially removed costs labeled as "Regulatory Support" in each year as Versant did not indicate what the costs were provided for and whether they were reasonable, though in the Reply Bench Analysis Staff added this back in based on documentation the Company provided in rebuttal. Staff also removed amounts from 2018 that were related to FERC cases but were allocated to distribution (a correction the Company later made). BA at 71–72; RBA at 28.

Next, Staff determined the level of normalized rate case costs to include in the revenue requirement. Staff took the amounts included in the supporting workpapers for the costs for 2015-00360 and 2017-00198 and calculated an average cost of $618,035. Staff did not include the costs incurred for Docket No. 2019-00019 as that case was voluntarily withdrawn by the utility and would not reflect the cost of a completed proceeding (and a withdrawn rate case is not a normalize-able event). In Docket No. 2017-00198, the Commission normalized rate case costs over a five-year period. In the Bench Analysis, Staff used a four-year normalization period given the general frequency of Versant's rate case proceedings. This resulted in a normalized cost of $154,509 for rate case proceeding costs. BA at 72.

In the Reply Bench Analysis, the Staff held to some portions of its calculation and adjusted others in response to the Company's rebuttal testimony. First, the Staff stood by its exclusion of the costs for the rate design study, Liberty audit, the Swan's Island acquisition cases, and the Acadia substation case. The first three of these were excluded in Docket No. 2017-00198 and Staff saw no reason to depart from the precedent of that case. *Emera Maine, Request for Approval of Proposed Rate Increase*, Docket No. 2017-00198, Order at 25 (June 28, 2018). Staff stood by the exclusion of the Acadia Substation costs as being not representative of future costs. RBA at 27–28.

The Staff also made some adjustments. The distribution portion of non-labor regulatory expense for 2020 was included to calculate a five-year average. Rate case expenses were normalized over a three-year period to reflect the frequency more accurately, but continued to exclude the costs incurred for Docket No. 2019-00019 and the current rate case because neither represented the full cost of a completed proceeding. Finally (as noted above), based on a review of Versant's supporting documentation, costs for "regulatory support" were no longer excluded. Modifications to Staff's calculation resulted in an adjustment to the test year of $3,991. RBA at 27–28.

ii. OPA

In its brief, the OPA generally adopted the Staff's position on non-labor regulatory expenses. OPA Br. at 6–8. The OPA supported the removal from the normalization calculation of the costs of: the Acadia substation investigation and the Liberty management audit, as they were not likely to reoccur and not representative of future costs; and the rate design study and Swan's Island acquisition cases, as consistent with the decision in Docket No. 2017-00198. *Id.* at 7–8.

iii. Versant

In rebuttal, Versant agreed with Staff's and the OPA's removal of FERC-related expenses from 2018 distribution non-labor regulatory expenses, but disagreed with the other adjustments proposed by Staff. In its brief, Versant proposed the Commission average five years of total distribution-related outside regulatory proceeding costs and argued that this was reasonable "since these amounts fluctuate from year to year, similar to storm costs." Versant Br. at 53–54.

As for the exclusions of non-reoccurring cases, Versant did not agree either that the methodology used in Docket No. 2017-00198 excluded costs for cases unlikely to reoccur or that Chapter 85 requires this. Versant argued that in that rate case, regulatory expenses were excluded where the Commission had "authorized separate recovery," and stated that Staff acknowledged this fact in the Reply Bench Analysis. *Id.* at 54. Versant claimed that Chapter 85 requires the Commission to set regulatory proceeding expenses on a normalized test year basis, but "does not dictate any specific normalization methodology." *Id.* at 54. Versant argued that Staff's interpretation of Chapter 85 deprives it of any opportunity to recover the costs of proceedings deemed non-reoccurring. *Id.*; Versant Reply Br. at 7.

Versant also argued that non-reoccurring cases should be included in the calculation to account for future non-reoccurring cases, such as on net energy billing, tax reform, or new legislation. While the individual cases themselves may be non-reoccurring, the general category of non-reoccurring cases is going to recur. Versant Br. at 55–56; Versant Reply Br. at 7–8.

On rate case expenses, Versant pressed that the proper normalization period is two years, based upon the frequency of Versant's rate case filings. Versant emphasized the frequency of rate case "filings," even though its 2019 case was voluntarily withdrawn, and stated that a "rate case proceeding would normally have occurred at that time." Versant Br. at 57.

iv. Examiners' Report and Exceptions

In the Examiners' Report, Staff recommended the Commission adopt the position laid out in Staff's Reply Bench Analysis. In exceptions, Versant disputed the use of a three-year normalization period for rate case costs and the exclusion of the Acadia Substation case as unlikely to reoccur.

d. Decision

In Docket No. 2017-00198, non-labor regulatory costs were determined "using the methodology proposed in the Company's direct case, excluding the $300,000 cost for the rate design study." *Emera Maine, Request for Distribution Rate Change*, Docket No. 2017-00198, Order at 25 (June 28, 2018). That methodology was to take the grand total of costs incurred for each year, less costs for cases unlikely to reoccur and specific rate case costs, calculate an average, and adjust the average for inflation. The Company then added normalized rate case costs to determine the total amount allowed in rates.

Here, the Commission finds that Staff's hybrid approach for recovering non-labor regulatory proceeding cases—the averaging of annual regulatory non-labor proceeding costs less rate case and non-reoccurring proceeding costs, plus rate case costs normalized over three years—is reasonable and thus hereby adopts it. Staff's calculation of non-labor regulatory costs as proposed in the Reply Bench Analysis is reasonable. While the Commission agrees that this could result in Versant not recovering all of its costs, by requiring normalization instead of amortization, Chapter 85 recognizes this possibility. As noted in our decision in CMP's last rate case:

> Chapter 85 of the Commission's rules requires normalization of rate-case expenses. The purpose of normalization is to provide in rates recovery of a normal amount of an expense that is expected to be incurred in an average year during which those rates are likely to be in effect. *Re Camden and Rockland, Maine and Wanakah Water Cos.*, 154 P.U.R.4th 89, Docket No. 93-145, Order (Part II) at 65 (July 12, 1994). Normalization does not guarantee full recovery of those expenses; in the Company's next rate proceeding, amounts for normalized expenses then currently in rates will be altered to reflect expected future normal amounts. *Id.* By contrast, the purpose of amortization is to ensure recovery of a specific expense over a period the Commission deems reasonable. With normalization, actual expenditures may never be fully recovered; with amortization, actual expenditures are designed to be fully recovered. *See id.* Under the Commission's rule, CMP's rate-case expenses must be normalized, and thus recovery of the full amount of the expenses is not guaranteed.

Public Utilities Commission, Investigation into Rates and Revenue Requirements of Central Maine Power Company, Docket No. 2018-00194, Order at 69 (Feb. 19, 2020).

As it relates to rate case costs, The Commission also takes issue with Versant's likening non-labor regulatory expenses, especially rate case costs, to storm costs to argue that it is reasonable to use a simple averaging approach. Versant Br. at 53–54. Utilities and their management are in control of when to make regulatory filings and what costs to incur with each proceeding. For example, which portions of a rate proceeding will be handled in-house versus by an external consultant affects the level of costs. Therefore, just because management has decided that it should "file" a proceeding every two years, even when at least one of those filings is withdrawn, is not sufficient reason to use that period in the normalization calculation; as the Company testified, plans for rate case filings can change. Tr. at 100, 113 (Mar. 16, 2021 Tech. Conf.). Also, in CMP's last rate case, the Commission disagreed with using CMP's proposed two-year normalization period, and selected normalization periods based upon the likely frequency of the topic covered by each consultant being raised in the future. *Public Utilities Commission, Investigation into Rates and Revenue Requirements of Central Maine Power Company*, Docket No. 2018-00194, Order at 69 (Feb. 19, 2020). Here, the Commission is also approving Versant's request for an RDM, which could decrease the frequency of full rate proceedings.

Separately, the Commission acknowledges that the current form of Chapter 85 may be outdated and thus orders that an inquiry be opened into updating Chapter 85 of the Commission's rules. It is possible that at the time Chapter 85 was adopted, rate case proceedings were the main context in which utilities appeared before the Commission. Now, there are many more types of proceedings where Versant and other utilities are expected to appear and participate, and thus many more types of proceedings where outside legal or consulting costs might be incurred. This rule should be reviewed to determine whether greater definition around these proceedings and recoverability of costs, among other things, is warranted, and how the rule might be updated to account for this.

6. Payroll: Bonus Compensation

a. Versant's Proposal

Bonus compensation is an element of Versant's payroll expense. Employee bonus compensation is determined based on Versant's Balanced Scorecard. The scorecard contains five areas of focus with various targets or expectations: (i) customer service, (ii) safety performance, (iii) workplace excellence, (iv) management efficiency, and (v) financial results. Threshold, target, and maximum or "stretch" results are established for each area of focus on the scorecard including financial results. HR Dir. at 5, 6; EXM-011-004, Atts. A–D. All employees, including management and executives, are subject to all five objectives, though union employees are eligible to achieve only threshold and target results (not stretch). EXM-011-004.

The objective of the financial results component, which is weighted at 30%, "is . . . achieving designated levels of net income and cash flows from operations." HR Dir. at 4–5. The 2019 Balanced Scorecard described the financial results as "business targets." EXM-011-004, Att. B at 3. The net income target is "aimed at measuring the effectiveness of Emera Maine meeting its earnings targets as established in the 2019 business plan." *Id.*

In discovery, Versant calculated the total amount for bonus compensation in the test year as $2,624,183. OPA-002-005; EXM-011-005. Versant calculated the amount attributable to financial results for the 2019 Balanced Scorecard to be $554,535.87, around 20% of that year's total. ODR-001-020. Versant also stated that for the 2020

Balanced Scorecard, the Company paid $2,875,409.98, and that financial results accounted for $984,195.67, or more than one-third of that year's total. ODR-001-020.

b. Positions of the Parties and Staff

i. Staff's Analysis

Staff asserted that the amount in bonus compensation associated with financial targets should be removed from rates because it is shareholders, not customers, who benefit from the Company's reaching certain earnings targets. In CMP's last two rate cases, Staff took the position that amounts in bonus compensation associated with shareholder benefits should be removed from rates ("any incentive compensation program [CMP] has established should be allocated between ratepayers and shareholders based on which party is the beneficiary of the metric"),[23] and in the more recent rate case CMP filed its case on that assumption.[24] BA at 65–66. The Commission's decision in that case accepted the removal of shareholder-benefiting variable compensation across the board (and removed all executive-level bonus compensation due to poor customer service), as there was no dispute about the issue even though the case itself was fully litigated. *See Public Utilities Commission, Investigation into Rates and Revenue Requirements of Central Maine Power Company*, Docket No. 2018-00194, Rev. Req. Dir. at 19 & Ex. RRP-3-9 Sched. D (filed Oct. 15, 2018), Order at 21 (Feb. 19, 2020); *see also Camden and Rockland, Maine and Wanakah Water Cos., Proposed Increase in Rates*, Docket No. 93-145, Order (Part II) at 44 (July 12, 1994) (in a case where this issue was litigated, deciding a portion of bonus compensation should be excluded due to its benefiting shareholders and not customers).

In the Bench Analysis, Staff removed $554,535.87 (the amount paid out in 2019 for meeting financial targets) from the revenue requirement, and in the Reply Bench Analysis agreed with Versant's observation in rebuttal that the wage allocator needed to be applied to this amount; doing so resulted in excluding $482,446.21 from payroll. BA at 65–66; RBA at 24–25; Rev. Req. Reb. at 20; OPA-002-005; ODR-001-020.

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[23] *Central Maine Power Company, Request for New Alternative Rate Plan ("ARP 2014")*, Docket No. 2013-00168, Bench Analysis at 73 (Dec. 12, 2013); *see also Public Utilities Commission, Investigation into Rates and Revenue Requirements of Central Maine Power Company*, Docket No. 2018-00194, Bench Analysis at 15 (Feb. 22, 2019) (applying the same principle). In Docket No. 2018-00194, Staff added that because of management and customer service issues, CMP should not recover any management/executive bonus compensation from ratepayers.

[24] *Public Utilities Commission, Investigation into Rates and Revenue Requirements of Central Maine Power Company*, Docket No. 2018-00194, Rev. Req. Dir. at 19 & Ex. RRP-3-9 Schedule D (filed Oct. 15, 2018) ("[A]n estimate of the portion of variable compensation that is attributed to customer benefits has been factored into the total payroll projection.").

ii. Versant

Versant objected to Staff's proposal to exclude any amounts of bonus compensation since the overall payroll cost is reasonable. HR/Cust. Reb. at 7; Versant Br. at 48–53; Versant Reply Br. at 8–9. Versant made two main arguments. First, it argued that all of the employee compensation should be included in rates because overall employee compensation is reasonable. Versant cited to general rate case decisions of a natural gas utility and a telecommunications utility, in which the Commission upheld the inclusion of all aspects of bonus compensation, even those potentially shareholder-focused, because the overall level of payroll was reasonable. HR/Cust. Reb. at 7; Versant Br. at 49–50 (citing *Northern Utilities, Inc., Request for Approval of Rate Change*, Docket No. 2017-00065, Order at 30 (Feb. 28, 2018) and *N. New England Tel. Ops. LLC d/b/a FairPoint Communications-NNE, Request for Increase in Rates*, Docket No. 2013-00340, Order at 63 (Nov. 21, 2014)). Versant argued that the exclusion of shareholder-focused bonus compensation in CMP's recent rate case "does not establish a legal precedent." Versant Br. at 51. Adopting Staff's position would be deviating from precedent, and "[n]either Staff nor OPA have offered any basis to depart from [the] established, well-reasoned Commission precedent" of the *Unitil* and *FairPoint* cases in this case. *Id.* at 50; *see also* Versant Reply Br. at 8–9.

Second, Versant pressed that customers benefit from a "healthy utility" so meeting earnings targets benefits customers. Versant Br. at 52–53. Versant argued that its "financial strength directly affects [its] credit rating, which directly affects [its] borrowing costs," and that increasing its credit rating and lowering its borrowing costs "translates into lower rates for customers." *Id.* at 52–53. It also argued that "incentivizing financial results can lead employees to find cost savings and efficiencies." *Id.* at 53. In response to Staff's concern that earnings can be met through cutting costs, which could negatively affect customers, Versant argued that, due to the SQIs in place for it, it had "no incentive, not even a financial one, to cut costs that would negatively impact customer service." *Id.* at 53; *see also* Versant Reply Br. at 8–9.

iii. OPA

In surrebuttal, the OPA's witness adopted the Staff's position on the issue of bonus compensation, and the OPA recommended this outcome in its brief. Morgan Surr. at 4; OPA Br. at 8–9. Mr. Morgan stated that the "incentive to improve financial performance is not necessarily consistent with the interests of Versant's ratepayers" and that "[s]hareholder value has a correlation to earnings . . . ." Morgan Surr. at 4. Thus, the OPA argued, bonus compensation tied to financial results should be excluded from the revenue requirement. OPA Br. at 9.

iv. Examiners' Report and Exceptions

In the Examiners' Report, Staff continued to recommend exclusion of the earnings-related bonus compensation, though updated this specific component of payroll for 2020 figures. In its exceptions, Versant again disputed Staff's position and requested that the 2020 bonus compensation be added back into the revenue requirement.

c. Decision

Consistent with recent precedent on this question, the Commission finds that in this case bonus compensation tied to earnings should be included in the revenue requirement, along with the rest of payroll expense, because overall payroll expenses are reasonable. It is “not the Commission’s place to dictate the exact structure of the Company’s overall employee compensation package.” *Northern Utilities, Inc. d/b/a Unitil, Request for Approval of Rate Change Pursuant to Section 307*, Docket No. 2017-00065, Order (Corrected) at 31 (Feb. 28, 2018). Here, neither Staff nor any party took issue with Versant’s overall level of payroll expenses, and application of our recent precedent on this issue requires that bonus compensation be included under those circumstances even if the bonus compensation arises out of meeting earnings targets. The Commission approves Versant’s request for inclusion of bonus compensation as originally requested, consistent with the overall payroll reflected in the 2019 test year as adjusted for the undisputed factors of wage inflation and newly added positions (discussed below)—and without analyzing whether specific components of the compensation plant benefit shareholders as opposed to ratepayers.

7. <u>Payroll: Unfilled Positions</u>

a. Versant’s Proposal

The Company included in payroll expense new positions that were not filled at the time of the initial filing. This included the following positions:

(1) Commercial Customer Specialist, who would be responsible for helping manage relationships with Versant’s 26,000 commercial customers and to meet their evolving needs. Cust. Exp. Dir. at 6–7; Tr. at 79–80 (Mar. 16, 2021 Tech. Conf.); ODR-001-011. The Company testified that it was on track to hire in the second quarter of 2021. Tr. at 82 (Mar. 16, 2021 Tech. Conf.). The cost for this position was captured in Exhibit RR-307 under “Incremental Customer Service & Billing” (as shown below in Figure 6).

(2) Government Relations Lead, who would “not perform any lobbying” work but would perform legislative and stakeholder work—work that has “increased dramatically . . . since 2018.” HR Dir.[25] at 8. The cost for this position was reflected as a discrete adjustment to payroll in Exhibit RR-307. It appeared that this position was filled one month before the rate filing. OPA-001-032, Att. A (Confidential).

[25] “HR Dir.” refers to the direct testimony and exhibits of Krystal Hein on human resources and employee compensation, as included in Versant’s January 19, 2021 initial filing.

(3) Manager, Large Customer Solutions, who would "be responsible for identifying core business opportunities, addressing large customer needs, and interfacing with new customers in our service territory." HR Dir. at 9. The Company testified that it was on track to fill this position in the second quarter of 2021. *Id.*

(4) IT Security Analyst, "who is tasked with creating and enforcing the IT Security Policy" and "responsible for forensics, investigation and auditing of possible cybersecurity incidents." IT Dir. at 3–4. It appeared that this position was filled in October or November of 2020. OPA-001-032, Att. A (Confidential) (October); EXM-010-007 (November). The cost for this and other IT positions is reflected as a discrete adjustment to payroll in Exhibit RR-307.

(5) Operational Application Analyst (AMI), who would be dedicated to providing operational support during and after the deployment of the new AMI. IT Dir. at 4. It appears that this position was at the pre-employment stage as of discovery. OPA-001-032, Att. A (Confidential); EXM-010-007.

(6) Business Application Support Analyst (2 positions), who would be full-time employees replacing external contractors. IT Dir. at 4. These positions were posted on January 12, 2021. EXM-010-007. It appeared that one of these two position was at the offer stage as of initial discovery, and the other position was unfilled. OPA-001-032, Att. A (Confidential). In its rebuttal, Versant reported that one of those positions (Business Application Support Analyst) was filled in May 2021. HR/Cust. Reb. at 14.

(7) Accounting – Business Analyst, who would "provide additional support for the corporate budgeting and forecasting processes, the corporate financial reporting tools, operating and maintenance cost reporting and analytics, [and] coordination of the distribution revenue requirement calculations." Rev. Req. Dir. at 12. This position was unfilled as of the time of discovery on the initial filing. OPA-001-032, Att. A (Confidential). At the evidentiary hearing, the Company informed the Commission that this position had been filled. Tr. at 7 (Aug. 18, 2021 Hr'g).

b. Positions of the Parties and Staff

i. Staff's Analysis

In the Bench Analysis and Reply Bench Analysis, Staff accepted in the revenue requirement the positions that had been filled or were at the offer stage by the date of those analyses. For positions that were not yet filled or whose status was unclear, the Staff removed the costs from the revenue requirement. The unfilled positions that Staff excluded from the revenue requirement were as follows: (1) Manager, Large Customer Solutions and (2) Accounting – Business Analyst. BA at 63–64; RBA at 23–24.

ii. OPA

Mr. Morgan initially proposed various adjustments to payroll to (a) reflect actual salary levels for positions filled; (b) remove three positions that appeared to have been included in the test year; (c) reduce payroll amounts for the two Business Application Support Analyst positions to assume a lower salary amount the Company indicated (OPA-002-015, EXM-010-006, OPA-001-032); and (d) add overtime pay he recommended removing from storm expenses. Morgan Dir. at 15–17. In surrebuttal, Mr. Morgan removed the adjustment for (b) based on a clarification. Morgan Surr. at 3–4.

The OPA did not address this issue in its brief.

iii. Versant

At the hearing, Versant updated the status of its unfilled positions to note that the Business Analysis position had by then been filled, and advocated for this to be reflected in the revenue requirement. Versant Br. at 67 (citing Tr. at 7 (Aug. 18, 2021 Hr'g)).

In its rebuttal, Versant rejected Mr. Morgan's arguments on the salaries for the filled positions because incorporating the actual salaries in lieu of the assumed ones would, in fact, increase the revenue requirement. HR/Cust. Reb. at 14. (Versant's response to Mr. Morgan's proposal regarding storm-related overtime is discussed above in section V.E.3.b.iii.)

c. Decision

There is apparently no dispute on including the costs of the filled positions in payroll and excluding the unfilled position (Manager, Large Customer Solutions). The Commission agrees that including the costs for those filled positions in the revenue requirement is just and reasonable in this case.

8. Payroll: Customer Service Representatives

a. Versant's Proposal

In its payroll expense, the Company proposed to assume an average of 56 customer-service representatives (CSRs) in the rate year. The Company explained that its business target is an average of 56 CSRs per year. Cust. Exp. Dir. at 3, 6. This adjustment is captured in Exhibit RR-307 under "Incremental Customer Service & Billing." The Company provided a breakdown of the total "Incremental Customer Service & Billing" adjustment, reproduced below.

Figure 6: Versant's Itemization of Incremental Customer Service and Billing Costs in Exhibit RR-307[26]

Full Customer Contact Center Staffing	257,778
CSR Schedule of Wages	202,238
CSR High Call Volume Standby	19,583
CSR Overtime	25,479
Commercial Specialist	74,984
Interim Director to Director Salary	20,924
Supervisor On-Call Duty	11,000
Total Cost	**611,986**

In its rebuttal, the Company stood by its headcount target of 56 CSRs in the revenue requirement, maintaining that this amount is reasonable. In support, Versant gave a brief history of the challenges and problems created when the Company implemented its new Cayenta customer information system (CIS). Following the implementation of its new CIS in June 2015, the Company stopped credit work entirely during the fourth quarter of 2015 to build capacity for answering phones with the staff available at that time. HR/Cust. Reb. at 9. In early 2016, the winter credit waiver process resumed in the MPD but remained on hold in the BHD and continues to remain on hold today, while other credit activities resumed on a limited basis in April 2016. *Id.* While it was able to meet its customer-service goals during 2018 and 2019, Versant was still not able to resume all credit and collection activities and other services took a back seat to responding to customers' incoming calls. *Id.* at 10. In spring 2017, Versant conducted a staffing analysis to determine the appropriate staffing targets and established an average staffing target of 58 CSRs to meet call-answer *and* internal bill-error targets, as well as complete other CSR functions. *Id.* at 9, 10. The staffing analysis's recommendation of 58 CSRs included both CSRs that work in the billing area of the Company (billing CSRs) and CSRs who work in the call center (non-billing CSRs). The Company also stated that its current number of 57 CSRs has allowed the Company to return credit and collection activities to normal and that it plans to resume seeking winter waiver disconnections in both districts during winter 2021–2022. *Id.* at 11.

Finally, the Company stated that it is important for it to meet its target staffing levels because of the CIS consolidation and AMI upgrade projects, as well as potential higher call volumes related to net energy billing as projects coming online this year and next.

[26] OPA-001-035, Att. A; BA at 60, Fig. 15.

b. Positions of the Parties and Staff

i. Staff's Analysis

In the Bench Analysis, the Staff observed that from 2017 to 2020, Versant averaged no more than 53 customer service representatives in any year. EXM-008-001. Versant provided the following table of its historical average CSR headcount.

Figure 7: Versant's Average Annual CSR Headcount, Target v. Actual, 2017 to 2020[27]

	2017	2018	2019	2020
Target CSR Staffing	58.0	58.0	56.0	56.0
Actual CSR Staffing	51.0	51.8	52.2	53.0

Thus, while Versant has targeted 56 to 58 CSRs in the past, its actual average CSR staffing has averaged less than the target. The Company also stated that with its current staffing levels it was able to meet or exceed its benchmarks for call-answering and billing accuracy. Cust. Exp. Dir. at 3; BA at 62–63. Versant provided the following table of its service-quality performance.

Figure 8: Versant's SQI Performance, 2016 to 2020[28]

SQI	2016	2017	2018	2019	2020
Calls Answered in 30 Seconds	61%	77%	80%	82%	83%
Bill Errors	3.88%	0.15%	0.70%	0.18%	0.11%
Abandoned Calls	NA	NA	NA	NA	4%

Given the trend of average staffing levels and Versant's ability to meet or exceed targets with existing resources, Staff did not agree with an assumption of 56 CSRs in payroll expense as a known and measurable change to the revenue requirement. Instead, the Staff assumed 53 CSRs in the revenue requirement, which Staff explained was consistent with 2020 levels and still more than in recent years. BA at 63. Staff removed $52,945 of payroll for each of the three positions that it excluded, for a total decrease of $(158,835) from the Company's proposed adjustment for "incremental customer service and billing." Rev. Req. Dir. Ex. RR-307 (line 14). The $52,945 represents the components of the fully loaded CSR costs that match the amounts included in the Company's adjustment. BA at 63; BA Workpapers Att. J.

In its Reply Bench Analysis, Staff considered the Company's arguments about inadequate staffing and new policy programs that, Versant argued, would require

[27] EXM-008-001, Att. A; BA at 62, Fig. 16.

[28] EXM-008-003, Att. A; BA at 63, Fig. 17.

additional CSRs. RBA at 20–23. Staff continued to find 53 CSRs to be an appropriate level for the revenue requirement: it was consistent with 2020 levels, still more than in other recent years, and consistent with the Company's own staffing analysis conducted in 2017. RBA at 20–21.

In rebuttal, Versant detailed the problems with call-answering that began in June 2015 with the implementation of the new Cayenta CIS and the ripple effect those problems had on the Company's ability to do credit and collections. The Company seemed to attribute these problems to inadequate staffing. Staff agreed that the Company needs adequate staffing to answer calls and to perform normal credit and collection activity, but disagreed that the target number of 56 non-billing CSRs is known to be necessary. Staff observed that the complexities of learning a new CIS for the Company's CSRs and the problems the Company encountered implementing the new system in 2015 led to its call-answering problems and the cessation of certain credit and collections activities. While inadequate staffing at the time of transition may have contributed to the problem, this was a short-term problem that would be resolved once CSRs learned the new system. Staff observed that at the technical conference, Versant's witness testified that the demand on staff was not related to a system problem but instead was a process of "learning and growing with a brand new system interface navigation." Tr. at 87 (June 30, 2021 Tech. Conf.); RBA at 21–22.

Staff noted that the difference between billing and non-billing CSRs is that non-billing CSRs answer phones and conduct routine credit and collection activities, while billing CSRs focus their work on handling all aspects of billing customers, not taking calls from customers. EXM-020-003. The Company explained that its target of 56 CSRs is for non-billing CSRs only, and does not include the billing CSRs. RBA at 21 (citing Tr. at 72 (June 30, 2021 Tech. Conf.)). Figure 9 below (reproduced from the Staff's Bench Analysis) shows that from 2017 to 2020 the total number of CSRs at year's end has ranged from 53 to 60, with an average of 56.

Figure 9: Versant's End-of-Year CSR Staffing, 2015 through 2020[29]

	2015	2016	2017	2018	2019	2020
Billing CSRs	3	3	3	4	6	7
Non-billing CSRs	39	37	50	49	54	51
Total	42	40	53	53	60	58

For the same period, the Company averaged 51 non-billing and 5 billing CSRs. Thus, Staff saw its recommendation of 53 non-billing CSRs as both consistent with and slightly above the number of non-billing CSRs the Company had annually at year-end since its staffing analysis was completed in 2017, and as exceeding the Company's target for non-billing CSRs established in its staffing analysis when the billing CSRs are included. Staff understood the Company's staffing analysis to show that the number of CSRs needed to answer phones *and* conduct billing work was 58. RBA at 22–23.

[29] EXM-020-005, Att. A; BA at 22, Fig. 2.

On the need for CSRs to cover the upcoming CIS consolidation and AMI upgrade projects, as well as potential higher call volumes related to net energy billing as projects made possible by new legislation begin to come online this year and next, Staff stated that the results of these events are not known and measurable at this time. Thus, while potentially important for future rate cases, these issues should not be prematurely decided in this case. RBA at 23.

ii. OPA

The OPA did not address this issue in its briefs or in testimony.

iii. Versant

Versant urged the Commission to approve its target of 56 CSRs as a component of its payroll. Versant Br. at 65–66. Versant argued that its business target is reasonable, and that while its actual CSR headcount has been below its target in the past, under those conditions it "has had to pause credit activity for months at a time to maintain its customer service levels." *Id.* at 65 (citing HR/Cust. Reb. at 9–11). Versant also argued that with new programs on the horizon, such as its CIS improvements to consolidate the MPD and BHD into one system and to allow for full NEB-related capabilities, Versant anticipates "additional call load from customers." *Id.* at 66 (citing HR/Cust. Reb. at 12–13).

As for its actual staffing levels, Versant argued that it would meet its target staffing level during the rate year, stating that it had 53 CSRs in March plus six in training, 57 CSRs in June, and 52 CSRs in August. *Id.* Versant stated that it "is hiring a new training class of CSRs this fall to maintain the annual average of 56 CSRs," and thus requested that the Commission allow recovery in rates of that amount. *Id.*

c. Decision

The Commission finds that 53 CSRs is the appropriate level to include for purposes of setting a revenue requirement and thus approves Staff's reduction from Versant's proposed increase to payroll for this cost element. This finding is based on several consecutive recent years in which Versant's average annual number of CSRs did not exceed 53 and in some cases was far below its business target. For example, in its last rate case, Versant stated that its business target was 58 CSRs but for 2017 and 2018 it averaged less than 52 CSRs annually, and through 2020 the largest number of CSRs it has averaged annually is 53. Based on these facts, a simple rubber-stamping of the business target in the past would have clearly missed the mark.

Now, Versant's target is 56, but, as shown in Figure 7 above, from 2017 to 2020, it never averaged close to 56 CSRs annually. Versant claimed that it would "meet its target staffing level during the rate year." The Commission doesn't claim that Versant will not at some point in time meet its target staffing level, but rather finds that the average number of CSRs over a year is (based on past experience) more likely than not to be below that target. In its brief, Versant described several different levels of CSRs at various times during this case alone—53 as of mid-March (with some additional in training), 57 as of June 1, 52 as of August 18. Versant Br. at 66. This regular fluctuation in headcount illustrates why the higher business target is not the most important indicator for setting the revenue requirement. There are many possible reasons why a company may not meet its business target for headcount, including for example high turnover, a tight labor market, or simply a change in plans or in needs. Whatever the reason for missing the mark, approving the higher-than-actual business target in this case is not warranted. Fifty-three is the right number to reflect in the revenue requirement given the record.

Also, it appears that Versant is able to meet its business targets for service quality using the level of CSRs, as shown in Figure 8 above, so there is not currently a reason to grow this number beyond the amount that typically has been the case for Versant.

9. Vegetation Management

a. Versant's Proposal

Versant proposed to continue its five-year cycle trim and expanded danger-tree programs and to add three new personnel (an Arborist, a Danger Tree Coordinator, and a Protective Equipment Tester) to aid with the oversight of these programs. These roles were previously filled using external contractors, but the Company believes that having these roles filled with internal resources will be more efficient, cost-effective, and sustainable. Ops. Dir. at 32.

b. Responses

i. Staff

Staff generally agreed with Versant's proposal but raised concerns about the quality of past performance,[30] the increasing costs of the cycle-trim program, whether Versant's move to a fixed-price contract would provide customer value, and the costs of deferred line sections that would need to be made up in the future. BA at 74. Staff also requested that Versant provide a schedule for remedying the deferred line sections that were not trimmed according to schedule. Staff did not seek any adjustments to Versant's revenue requirement for its ongoing vegetation management programs. BA at 74–78.

Staff proposed that Versant include in its annual reliability report the line sections that were scheduled to be trimmed versus those completed; any line sections that did not meet the Company's audit requirements and required re-work; and documentation of deficiency letters sent to contractors. Since Versant believed the changes it has made

[30] The Commission has since initiated a summary investigation of Versant's vegetation management practices in the Town of Mapleton. *See Public Utilities Commission, Summary Investigation of Vegetation Management Practices on Mapleton Road in Mapleton Regarding Versant Power*, Docket No. 2021-00127, Procedural Order (Request for Information) (June 4, 2021).

will improve performance and limit costs, this reporting would help the Commission understand whether those expectations are being met. RBA at 28–30.

ii. Versant

The Company acknowledged that it has had some trouble with vendor performance but that it expects the new contract structure to lead to better performance. Ops. Reb. at 35. Versant filed the new vegetation management contracts with its rebuttal testimony.[31] The Company stated that the move to a fixed-price contract will ensure that line sections are properly trimmed by its contractors and that the cost certainty will benefit customers. *Id.* Its personnel audit the contractors' performance by physically inspecting trimmed circuits to ensure that line sections are being cleared to Versant's specification; if Versant finds the contractor's work to be inadequate, the Company requires the contractor to remedy the deficiency at its own expense. *Id.* at 36. Versant also responded to Staff's concern that customers could be made to pay twice for deferred cycle-trim work by stating that the Company would only seek funding for a full trim cycle over the five-year period even though its contracts are for two years and even if all planned work is not always completed within the intended year. *Id.* at 37. Finally, Versant addressed Staff's question regarding its plan to make up for the miles of the cycle trim that were not completed in previous years by verifying that the work will be completed by the end of 2023. *Id.* at 38.

iii. OPA

The OPA initially proposed an adjustment to vegetation management expense, but later withdrew this proposal. Morgan Surr. at 8. The OPA did not address vegetation management in its brief.

c. Decision

Here, there is no apparent dispute about Versant's proposal for continuing with its vegetation management program or the costs of that program. *See* Versant Br. at 87. Versant also agreed with Staff's recommendation that it be required to file, as part of its annual reliability report: a list of all line sections that were scheduled versus those completed; any line sections that did not meet the Company's audit requirements and required re-work; and documentation of deficiency letters sent to contractors. Since Versant believes the changes it has made will improve performance and limit costs, this reporting will help the Commission understand whether those expectations are being met. The Commission accepts the implicit agreement on these issues, finds the amount to be included in rates and the reporting requirement to be reasonable and, thus, approves them.

[31] Ops. Reb. Ex. PM-Reb-5 Cycle Trim Contract, Ex. PM-Reb-6 Danger Tree Contract, and Ex. PM-Reb-7 Service Work Contract.

10. Membership Organizations

a. Versant's Proposal

In OPA-003-011, the Company provided information on the costs it pays for memberships in industry organizations; these were local chambers of commerce, a public relations group, the Aroostook Partnership for Progress, and the Energy Council of the Northeast. The Company confirmed that the costs are accounted for above the line, and thus are included in the revenue requirement as an expense item. Tr. at 107 (Mar. 18, 2021 Tech. Conf.); ODR-001-063. The costs for the Energy Council of the Northeast were allocated specifically to distribution, while the costs allocated to distribution of all the other organizations were assigned to G&A (general and administrative expenses). OPA-003-011.

b. Positions of the Parties and Staff

i. Staff's Analysis

In the Bench Analysis and Reply Bench Analysis, Staff excluded costs of membership organizations from the revenue requirement. According to Staff, membership in these kinds of organizations is also sometimes used to support charitable efforts of the organization. Because the costs can go toward lobbying, promotional activities, and charitable endeavors, ratepayers should not be responsible for these membership costs. BA at 84–85. Staff also asserted that membership in these organizations is not used to serve customers, is thus not a cost of utility service, and thus should not be included in the revenue requirement. RBA at 33–35. Staff pointed to precedent to support the idea that dues for membership organizations should be excluded from the revenue requirement. *Id.* For these reasons, Staff removed $43,023 associated with these membership fees from the revenue requirement.

Staff cited to a case clarifying when payments to outside organizations should be excluded from rates, where the Commission stated:

> It has long been the position of this commission that charitable contributions of utilities are expenses which must be borne by the stockholders. *Re New England Teleph. & Teleg. Co.* (1972) F.C. No. 1961. The rationale behind this position is well-stated by the California commission:
>
> 'Dues, donations, and contributions, if included as an expense for rate-making purposes, become an involuntary levy on ratepayers, who, because of the monopolistic nature of utility service, are unable to obtain service from another source and thereby avoid such a levy. Ratepayers should be encouraged to contribute directly to worthy causes and not involuntarily through an allowance in utility rates.' *Re Pacific Teleph. & Teleg. Co.* (Cal. 1964) 53 P.U.R.3d 513, 586.

> Although the activities at issue here can scarcely be termed charitable, the above rationale remains applicable to this case.

Re Rangeley Power Co., F.C. No. 2074, 9 P.U.R.4th 289 (Me. P.U.C. Apr. 24, 1975).

ii. OPA

The OPA recommended excluding costs of "membership organizations, where these dues could be used to pay for lobbying, charitable, or other activities" and because customers should not be forced to pay dues for an organizations whose politics they might abhor." OPA Br. at 8 (quoting BA at 33–35). If such dues are to be included in the revenue requirement, "there must be some showing that the participation in the membership organization contributes to utility service." OPA Br. at 8.

iii. Versant

Versant argued that the costs of the dues for these membership organizations—which are business organizations, not charitable organizations—does benefit customers. Rev. Req. Reb. at 30–31; Versant Br. at 74–76. The Company also explained that the only organization that reported lobbying activities was the Maine State Chamber of Commerce, which expends 20% of dues on lobbying. *Id.* Using that as a proxy, Versant proposed reducing the overall amount of membership organization costs in rates by 20%. Reb. Ex. RR-344. Versant argued that it does not request lobbying or benefit from promotional advertising from these organizations, and any promotional benefits it would receive would be through sponsorships, which it would account for below the line. Rev. Req. Reb. at 30. Membership dues support the day-to-day operations of these organizations, and are not charitable contributions. *Id.* Versant added that through its memberships, it "is more connected to the concerns of our business customers and better able to address their specific needs," that when businesses in its communities thrive, "that is a benefit to all customers," and that these costs have been included in the revenue requirement in past cases. *Id.* at 31; *see also* Versant Reply Br. at 12.

Versant pointed to the precedent of *Central Maine Power Co., Proposed Increase in Rates*, Docket No. 92-345, Order (Dec. 14, 1993), where the Commission rejected the OPA's arguments that membership dues for the Edison Electric Institute and the Electric Power Research Institute should be excluded from rates. Versant Br. at 76 (citing *id.*). In that case, the Commission found it "appropriate to allow the Company to weigh the costs and benefits of membership in these organizations," and a similar "discretionary expense" approach should be applied here. *Id.*

c. Decision

Chapter 83 prohibits recovery from ratepayers of costs associated with lobbying, institutional advertising, political advertising, or promotional advertising. *See generally* MPUC Rules, ch. 83. Commission policy has also for decades held that charitable contributions are properly removed from rates. *See New England Tel. & Tel. Co. v. Pub.*

Utils. Comm'n, 390 A.2d 8, 56 (Me. 1978). Membership in a chamber of commerce or similar association can be used both to support those groups' lobbying efforts and often to promote the brand of the company joining as a member. ODR-001-063. Because the costs can go toward lobbying, promotional activities, and charitable endeavors, ratepayers should not be responsible for these membership costs without some showing that the dues support a utility-service-related mission. MPUC Rules, ch. 83, § 5(C), (D).

There may be costs for membership organizations that are appropriate to include in the revenue requirement. For instance, an organization that provides educational opportunities to those in the electric delivery industry or training on energy efficiency or utility customer issues would contribute to the utility's mission of serving those customers. Customers should not be forced to pay dues to an organization whose mission has nothing to do with utility service and whose dues could be used to fund lobbying and related activities, even if today not all of those funds are regularly used for that purpose.

The Commission finds it appropriate to remove the costs of the public relations group, the chambers of commerce, and the Aroostook Partnership for Progress dues from the revenue requirement, but allow the Energy Council of the Northeast dues to be included. With its focus on energy, the Energy Council's work is relevant to providing utility service in a way that a business's being a member of a chamber of commerce or economic development proponent is not. This decision is consistent with a past decision of the Commission allowing the cost for membership dues of the Edison Electric Institute and the Electric Power Research Institute into rates. *Central Maine Power Co., Proposed Increase in Rates*, Docket No. 92-345, Order (Dec. 14, 1993). This finding does not mean that a utility may not or should not join organizations such as chambers of commerce and others—just that shareholders should bear the cost.

11. <u>Commission and OPA Regulatory Assessments</u>

a. Versant's Proposal

To calculate the amount in rates for regulatory assessments from the Commission and the OPA to Versant, the Company calculated the average annual total of assessments from 2017 to 2019, then increased that amount by estimated inflation for 2020, 2021, and 2022. The Company calculated a test-year amount of $2,186,978, then adjusted the test year by the inflated average. This resulted in a reduction to the test year of $(451,802). Ex. RR-315; EXM-015-012 Workpaper Ex. RR-315.

In discovery, the Company provided updated regulatory assessments for 2020. EXM-003-054, Atts. A, B, C.

b. Positions of the Parties and Staff

i. Staff

In the Bench Analysis, Staff factored this 2020 updated information into its revenue requirement calculation, applying inflation consistent with past practice. Including the 2020 amounts in the averaging resulted in an inflated average of $1,891,923, which produced an adjustment to the test year of $(295,055), a net increase from the Company's adjustment. In the Reply Bench Analysis, Staff noted that the Commission's regulatory assessment to Versant for 2021 was a decrease from that of 2020, and thus the addition of inflation for 2021 is not a known and measurable adjustment. RBA at 33. Thus, Staff removed inflation for that year. *Id.*

ii. OPA

The OPA did not take issue with the amount of the regulatory assessments and did not address this issue in its brief.

iii. Versant

In its brief, Versant accepted the Staff's adjustment to regulatory assessments included in the Reply Bench Analysis. Versant Br. at 87; RBA at 33.

c. Decision

Here, Versant has accepted Staff's calculation of the regulatory assessments to be reflected in the revenue requirement, including updating for 2020 and excluding inflation for 2021 because the assessment from the Commission to Versant for 2021 is in fact a decrease from 2020, and thus an inflation increase for that year is not a known and measurable adjustment to the test year. The Commission accepts the lack of dispute on this issue, finds the implicit agreement to be just and reasonable, and thus approves it.

F. <u>Sales Forecast</u>

1. <u>Description of Issue</u>

In its initial filing, Versant forecast significant decreases in its sales during the rate year as compared to the test year. As Staff described in its Bench Analysis, Versant forecast that sales would decrease by more than 117 million kWh, or 6%. BA at 85–86, Fig. 22. (Staff also noted its concern that Versant may have double-counted some of the NEB effects in its forecast. *Id.* at 85, n.35.) Almost half of that decrease was attributable to Versant's projections of reductions in billed kWh sales that would result from the NEB kWh credit program.

The sales forecast presents two main questions for the Commission: (1) how to address the divergence between the Company's sales projections and actual sales observed over the past several months; and (2) how to address the impact of the NEB kWh credit program on sales. Both of these issues affect assumed sales during the rate year, which are the basis for the billing units used to set rates in this proceeding. At this stage, there is no dispute among the parties on (1) but there is a dispute on (2).

2. <u>Adjustment of Sales Forecast for Accuracy</u>

a. Positions of the Parties and Staff

For its sales forecast, the Company presented the testimony and exhibits of Dr. George Criner, who conducted an econometric forecast of rate year sales, and of Steve Dutra and Brianna Littlefield in direct and Steve Dutra and Tim Olesniewicz in rebuttal. Dr. Criner's testimony describes how the effects of the pandemic were captured in his modeling methodology and results. Sales Econ. Dir. at 10–11.

In the Reply Bench Analysis, the Staff observed that the actual sales for Versant small and medium commercial and industrial customers were notably higher than the levels forecast by Dr. Criner, apparently due to an overstatement by Dr. Criner's models of the extent or duration of pandemic-related downturns in economic activity. BA at 88. Staff thus proposed to adjust the assumed sales for these customer classes to more accurately capture rate-year levels. For the reasons discussed in the Reply Bench Analysis, Staff proposed to estimate sales for these classes using the Company's actual sales experience from 2018 to 2020. RBA at 38.

The OPA recommended that the Commission adopt the sales forecast calculated in the Reply Bench Analysis because the Company's sales forecast was "simply not sufficiently accurate to support the Company's rate request as proposed." OPA Br. at 16. The OPA observed that the divergence of the Company's econometric sales forecast and actual sales until recently is "substantial[]" and "undoubtedly due to the COVID-19 pandemic." *Id.* at 16–17. The OPA argued that use of the Staff's sales forecast analysis is reasonable and consistent with case law. OPA Br. at 17 (citing *Public Advocate v. Public Utilities Commission*, 625 A.2d 1251 (Me. 1995)). Finally, the OPA noted that any RDM established in this case "provides protection for both the Company and ratepayers against the effects of" a potentially "inaccurate forecast in this proceeding," because it ensures that rates will be adjusted if "actual sales deviate from those assumed in setting rates." OPA Br. at 17–18.

In its brief, Versant accepted Staff's adjustment to the sales forecast. Versant Br. at 84.

b. Decision

The Commission observes that there is no apparent dispute among the parties or Staff about adopting the Staff's modification to the sales forecast for the small and medium commercial and industrial customer classes to reflect a trend based on 2018 to 2020 sales, rather than the sales forecast presented in the initial case. The data provided by Versant in response to ODR-005-001 further supports this trend. The Commission accepts the parties' agreement on this issue and, finding the Staff's proposed adjustment to be sound and reasonable, approves it. Thus, the billing units to set rates in this proceeding will be consistent with this approach.

3. NEB kWh Credit Program

a. Positions of the Parties and Staff

i. Staff's Analysis

In the Bench Analysis, the Staff noted that Versant's sales projections, including the effects of the newly expanded NEB kWh credit program, 35-A M.R.S. § 3209-A, were a significant driver of Versant's calculations of its revenue deficiency and proposed rate increase. The reduction in revenue from that program alone was projected to be $3.4 million per year at current rates and $3.8 million to $4.2 million per year over two years beginning October 1, 2021. BA at 87. Figure 10, reproduced from the Bench Analysis, shows these forecast results.

Figure 10: Versant's Projected NEB Lost Revenue Amounts[32]

Projected NEB Lost Revenue Amounts
Rates from Exhibit SD-8A
See Notes 1 and 2

	At Current Rates			At Rate Year 1 Rates			At Rate Year 2 Rates		
	Rate A	Rate B1		Rate A	Rate B1		Rate A	Rate B1	
	$0.06361	*$0.04330*	Total	*$0.07164*	*$0.04876*	Total	*$ 0.07967*	*$ 0.05422*	Total
21 Oct	$ 46,047	$ 7,836	$ 53,883	$ 51,860	$ 8,824	$ 60,684	$ 57,673	$ 9,812	$ 67,486
21 Nov	$ 33,301	$ 5,667	$ 38,968	$ 37,505	$ 6,382	$ 43,887	$ 41,709	$ 7,096	$ 48,805
21 Dec	$ 50,277	$ 8,556	$ 58,833	$ 56,624	$ 9,635	$ 66,259	$ 62,971	$ 10,714	$ 73,685
21 Jan	$ 57,047	$ 9,708	$ 66,755	$ 64,249	$ 10,932	$ 75,181	$ 71,450	$ 12,156	$ 83,607
21 Feb	$ 74,589	$ 12,693	$ 87,282	$ 84,005	$ 14,294	$ 98,299	$ 93,421	$ 15,895	$ 109,316
21 Mar	$ 183,312	$ 31,196	$ 214,508	$ 206,453	$ 35,129	$ 241,582	$ 229,594	$ 39,063	$ 268,657
21 Apr	$ 236,323	$ 40,217	$ 276,540	$ 266,156	$ 45,288	$ 311,444	$ 295,989	$ 50,359	$ 346,348
21 May	$ 252,054	$ 42,894	$ 294,948	$ 283,873	$ 48,303	$ 332,176	$ 315,692	$ 53,712	$ 369,403
21 Jun	$ 524,978	$ 89,339	$ 614,317	$ 591,250	$ 100,605	$ 691,855	$ 657,522	$ 111,870	$ 769,392
21 Jul	$ 504,270	$ 85,815	$ 590,085	$ 567,928	$ 96,637	$ 664,564	$ 631,586	$ 107,458	$ 739,043
21 Aug	$ 486,200	$ 82,740	$ 568,940	$ 547,577	$ 93,174	$ 640,750	$ 608,953	$ 103,607	$ 712,560
21 Sep	$ 426,670	$ 72,610	$ 499,280	$ 480,532	$ 81,766	$ 562,298	$ 534,394	$ 90,922	$ 625,316
Total	$ 2,875,068	$ 489,272	$ 3,364,341	$3,238,011	$ 550,968	$ 3,788,979	$ 3,600,954	$ 612,664	$ 4,213,618

Note 1: Based on 80% residential/20% small commercial.
Note 2: Assumes projects are fully subscribed and all kWhs produced are creditted. (This is Staff's understanding of Versant's assumptions.)

Given the significance of the NEB-related effects, as well as relevant policy considerations, including equity, Staff proposed a change to the ratemaking treatment of lost revenue from the NEB kWh credit program, to reconcile that lost revenue through stranded cost rates instead of distribution rates. Staff stated that this would address issues of cross-customer allocation and equity concerns that would result from Versant's proposed approach to allocate relatively more costs to residential and small commercial customers than to other classes. Staff noted that the kWh credit program is one of two policy-driven NEB programs created by the Legislature during its 2019 session in An Act

[32] BA at 88, Fig. 24 (rates from Sales Dir. Ex. SD-8A).

to Promote Solar and Distributed Generation Resources in Maine. P.L. 2019, ch. 478, Pt. A, §§ 3, 4 (codified at 35-A M.R.S. §§ 3209-A, 3209-B). The Act also created a new NEB program for commercial and institutional customers, known as the C/I (commercial and industrial) tariff rate program. The costs of the C/I tariff rate program are expected to flow through stranded cost rates, where they will be allocated to all customer classes based on their proportion of kW. Staff explained that it was not equitable for residential customers to pay for the C/I program when they cannot participate in it, while the costs of the kWh credit program are recovered through distribution rates which some customers—most notably those taking service at transmission and sub-transmission voltages—pay little if any of. BA at 89.

Thus, Staff proposed that, in lieu of recovering these costs through distribution rates, the Company should recover them through stranded cost rates. This would apply only to costs associated with NEB kWh credit program facilities that began operating after the 2019 test year. Staff explained that this approach would align cost recovery for the NEB kWh credit program with that for the NEB C/I tariff rate program, as well as with cost recovery for other state policy programs. Recovery through stranded cost rates would also eliminate any risk to Versant of the NEB lost revenue because stranded costs are reconciled to actual amounts and trued up annually. Staff stated that, in any future distribution rate cases, the NEB kWh credit program's lost revenue recovered though stranded cost charges would be imputed against the revenue deficiency to avoid double-recovery of these costs. BA at 89–90.

ii. OPA

In its brief, the OPA stated that it supports the Staff's approach of reconciling the impact of the NEB kWh credit program in stranded costs. The OPA stated that this approach "ensures greater precision in the recovery of related rate impacts" and "spreads the combined impact of the rate increase and the recovery of the rate impact of this program over multiple years, thereby smoothing the increase and reducing any potential rate shock." OPA Br. at 19–20. The OPA agreed with the Staff that this "proposal more equitably allocates the impact of the program over all rate classes," which is how the C/I tariff rate program works and which reflects the fact that "the societal benefits of this program benefit all customers," so "it is appropriate that all customers share in the cost." *Id.* at 20.

In its reply brief, responding to arguments of the IECG (summarized below), the OPA pressed that Staff's proposed treatment of the impacts of the kWh credit program "is legal and appropriate." OPA Reply Br. at 5. The OPA pointed to the implied powers of the Commission, which, given the significant policy change that has come with adoption of the program, provide the Commission the authority "to develop a rate mechanism, that allocates responsibility for the impact of the program." *Id.* at 5–6. The OPA described RDMs as inexact in that "they inherently capture effects beyond those for which they are intended," and stated that the anticipated size of the expanded NEB kWh credit program makes it necessary to adopt a "targeted revenue decoupling mechanism that precisely calculates the impact of load reductions from the program on the Company." *Id.* at 6.

The OPA acknowledged that neither NEB program creates stranded costs as that term is defined in statute, but that (1) the annual stranded cost proceedings have been used to provide utilities recovery for post-restructuring costs and (2) the NEB C/I tariff rate program is already recovered in that same manner, even though its costs are not stranded costs under Maine law. *Id.* at 7. The OPA pointed out that CMP's RDM is not currently segregated by class, so an RDM designed the same way (as is proposed for Versant) would not allow for allocation of costs of the C/I program to only commercial and industrial customers. Treatment of both NEB programs in stranded costs achieves the goal of allocating the impacts of the expanded NEB program to all customer classes based on kWh sales. *Id.* at 8.

iii. IECG

The IECG urged the Commission to reject the Staff's proposal that reduced sales from the NEB kWh credit program be recovered through stranded costs, and proposed an alternative approach. *See generally* IECG Dir. and IECG Br. (both discussing this issue throughout). The IECG suggested that, rather than implement this change in this case, the Commission "initiate a comprehensive review of Versant's rate design, taking into account the expected increase in Versant customer rates, just as the Commission has begun to consider with CMP." IECG Br. at 1. According to the IECG, the "regulatory process has yet to give a carefully reasoned and analytical consideration to" allocation of costs among customer classes for this program. *Id.* at 2–3.

The IECG made several arguments for rejecting the Staff's proposal. First, the IECG argued that accepting the Staff's position would deviate "from precedent and common sense in relation to net energy billing." The IECG argued that revenue losses are not the same as costs: "revenue reductions of the NEB kWh credit program are no more a cost than are class revenue decreases from economic recessions, energy efficiency investments . . ., customer self-generation, business demise or technological change, none of which is recognized as creating stranded costs." *Id.* at 1, 3. The IECG argued that Versant supports the Staff's position "based solely on the justification that it ensures 'that all of Versant's customer classes are paying their share of such costs,'" which the IECG described as a "conclusory rationalization." *Id.* at 4 (citing Sales Reb. at 2).

The IECG argued that the kWh credit program does not belong in stranded costs because it is a load reducer, thereby reducing revenues, and does not add costs that are stranded. *Id.* at 4, 5. Other than administrative costs to manage the program, Versant incurs no costs from the program. *Id.* at 5 (citing IECG Surr. at 8–9). Comparisons to the C/I tariff rate program "are not on point" because that program involves "no reduction in the electricity usage/billing units of any Versant customer that is a subscriber and therefore no revenue loss for Versant." *Id.* at 5–6 (citing IECG Surr. at 9). Under the C/I tariff rate program, Versant incurs a net cost if the value it receives from the sale into the wholesale market is less than the value of the credit it allocates to the subscriber's bill. *Id.* at 6. The kWh credit program involves no such sale or potential cost. *See id.*

Second, on the policy-driven nature of the NEB program, the IECG argued that this “does not justify the recovery of associated losses via stranded cost rates” as “the law does not distinguish losses based on ‘policy’ from other revenue reductions.” *Id.* at 6. Initiatives based upon policy-driven legislation that, for example, promotes electric vehicles or heat pumps, which can affect electricity usage, are not separated out from distribution rates for their effect on sales, even though they could be called load enhancers. *Id.* at 6 (citing IECG Surr. at 12–13). The IECG thus urged “the Commission to require that Versant follow the approach currently in place and not tie load reducers or load enhancers to stranded costs” and to instead “let recovery of lost revenues be handled through traditional ratemaking processes or through an RDM.” *Id.* This approach is simpler, consistent with how load impacts are addressed in regional market and settlement processes, and “does not create any artificial and potentially discriminatory differences” in climate-related programs. *Id.* at 6–7 (citing IECG Surr. at 14).

Third, the IECG argued that the Staff’s proposed approach “has no basis in Maine law.” *Id.* at 7. The IECG observed that sections 3483(3) (distributed generation) and 3604(8) (community-based renewable energy long-term contracts) of Title 35-A each provide that costs from those procurements are to be recovered using the same process as provided for long-term contracts under sections 3210-C and 3210-F (that is, through stranded costs, *Public Utilities Commission, Investigation into Recovery of Expenses and Disposition of Resources from Long-Term Contracts by Maine’s T&D Utilities*, Docket No. 2011-222, Order at 4–5 (Oct. 26, 2011)). But neither section 3209-A (creating the NEB kWh credit program) nor section 3209-B (creating the NEB C/I tariff rate program) includes such language, and neither section provides a mechanism for making the utility whole either for the lost revenues or the credit amounts under the programs. The IECG deduced that, absent any specific direction by the Legislature, Versant must seek recovery through the normal ratemaking process. IECG Br. at 7.

Fourth, the IECG argued that the rate effects of the NEB kWh credit program “should be determined under appropriate ratemaking methodology.” *Id.* at 7. The IECG stated that utility law in Maine requires that rates be based on allowable costs fairly allocated among cost-causers and cost-beneficiaries. *Id.* at 8 (citing Maine Electric Rate Reform Act, 35-A M.R.S. §§ 3151–3156). According to the IECG, the Bench Analysis “invokes ‘equitable’ concerns, but fails to give consideration to the primary determinant of rate equity . . . that rates be based on costs.” *Id.* The IECG states that “equity exists when rates are rationally and reasonably related to cost of service. Equity in the sense of public utility rates does not mean equal rates.” IECG Reply Br. at 5. Citing to Commission precedent on the need for a competent cost of service study in rate analysis,[33] the IECG claimed the Bench Analysis “fails to live up to the rigor of analysis mandated” by this precedent. Rather than following the Staff’s proposal, the IECG

[33] *Bangor Hydro Electric Company, Investigation of Cost of Service and Rate Design*, Docket No. 80-108, Order (Jan. 10, 1985); *Central Maine Power Company, Investigation into Cost of Service of Customer Classes and Rate Design of CMP*, Docket No 80-66, Order at 6 (Sept. 11, 1985).

advocated for a separate "formal and plenary investigation and determination" on this issue. IECG Br. at 9–10.

Finally, the IECG acknowledged that the C/I tariff rate program is not available for residential customers to participate in, yet residential customers (and other rate classes) pay for the actual costs of that program through stranded cost rates. The IECG suggested that the C/I tariff rate program could be recovered through a revenue-decoupling mechanism that has separate residential and commercial and industrial classes, as CMP's was initially stablished. *Id.* at 10. The IECG stated that "while this limitation may harm IECG members, the principle matters"—that is, the principle of cost incurrence (as opposed to revenue loss). IECG Reply Br. at 6.

iv. Versant

Versant supported the Staff's proposal that recovery of lost revenues from the kWh credit program occur through stranded cost rates, rather than distribution rates, with two qualifications. Versant Br. at 81. First, Versant explained it would need to make a minor modification to its billing system software "to allow it to track the value of each individual kWh credit, which varies according to the customer's rate class." *Id.* Versant estimated the cost of this to be less than $50,000, and suggested that that amount be recovered in stranded cost rates as an administrative cost of the program. *Id.*

Second, Versant proposed that all sales losses from behind-the-meter facilities continue to be included in distribution rates. *Id.* Versant stated that it is unable to track overall generation from these facilities, which are typically smaller rooftop facilities that are unlikely to make up a large share of the program's costs. *Id.*

Versant stated its belief that Staff's approach presents "at least two key advantages," First, Staff's approach is more equitable as it proposes the same rate treatment as the C/I tariff rate program, thus leaving both residential and commercial and industrial customers similarly treated for both programs. Second, Versant described Staff's proposal as making "the costs of the NEB program more transparent for customers and policymakers," *Id.* Requiring a discrete tracking and recovery mechanism for both programs makes it "easier to understand the overall costs of NEB." *Id.* at 81–82. The impact of the NEB kWh credit program is "a major cost over which Versant has no control," and this treatment will provide "clarity . . . when evaluating the overall reasonableness of Versant's distribution rates in the future." *Id.* at 82.

Versant went on to respond to the IECG's opposition to Staff's proposal. Versant disagreed with the IECG's claim that the NEB kWh credit program is a load-reducer, as the program allows an unlimited number of customers to subscribe to a single facility that is not co-located with any customer's electric load; Versant will continue to provide those customers the same electricity it always has. *Id.* at 82. Versant also disagreed with the IECG's claim that the proposal is discriminatory, claiming the IECG made no basis for the claim and stating that the IECG "ignore[s] the obvious discriminatory difference in the treatment of the tariff rate NEB program and the kWh NEB program costs." *Id.* at 83. Versant stated that "Staff's proposal properly seeks to correct inequity while IECG's proposal would perpetuate it." Versant Reply Br. at 17.

Versant disagreed with the IECG's claims that the Commission would have no statutory basis to adopt Staff's proposal, as the Commission's implied powers would allow it to determine where NEB program costs should be recovered in the absence of a legislative mandate on the subject. Deciding these costs should be recovered through stranded costs is consistent with treatment of the C/I tariff rate program; if the Commission can do the latter, it must have authority to do the former. Versant Br. at 83–84. Versant also pointed to other examples of costs that are reconciled through stranded costs even though they do not meet the strict definition of stranded costs. Here, Versant likened the NEB kWh costs to long-term renewable energy contract costs under section 3210-C because both allow for 20-year contracts. Versant Reply Br. at 17–18.

Versant disputed the IECG's claims that the treatment in stranded costs of the lost revenues violates the cost-causation principle. *Id.* at 17. According to Versant, the costs are related to a policy initiative meant to benefit all customers, so are properly recoverable from all customers. *Id.* And even though only commercial and industrial customers "cause" the costs of the C/I tariff rate program, all customers pay those costs. *Id.*

v. Examiners' Report and Exceptions

In the Examiners' Report, the Staff recommended that the Commission open an investigation into the treatment of lost revenues from the NEB kWh credit program, with a determination on the issue applicable to both CMP and Versant. ER at 144–45.

The IECG agreed with the Staff's recommendation, adding that the investigation should address "the recovery of the costs of the C/I tariff rate program," "whether NEB related revenue losses and costs should be recovered through distribution rates or stranded cost rates," and "the appropriate method for allocation and recovery of revenue losses and costs within each rate category." Exceptions of IECG at 1.

The OPA also agreed with the Staff's recommendation but stated that "it is not clear from the Examiners' Report whether sales losses between the effective date of rates in this proceeding and the conclusion of such a subsequent proceeding would be addressed." To clarify this issue, "the OPA suggests that the Commission state expressly that the deferral of any lost revenue resulting from the NEB kWh credit program commence as of the effective date of rates implemented at the conclusion of this proceeding. Exceptions of OPA at 3–4.

b. Decision

The question before the Commission is whether to treat the impacts of the NEB kWh credit program through stranded cost rates or through distribution rates, or to open a separate investigation where this question can be answered for both utilities at once. The Commission finds that the latter option is preferable in that it would allow the question to be addressed for both Versant and CMP at the same time.[34] Thus, the Commission orders that an investigation be initiated, in which both CMP and Versant are parties, to resolve the question as well any related methodological and process matters. The Commission also grants the exception of the IECG that the investigation address the C/I tariff rate program as well as the NEB kWh credit program, and the exception of the OPA that the sales forecast reconciliation be effective as of the date of this Order (Part II). Opening an investigation targeted to this specific issue and involving both utilities for a simultaneous decision is procedurally consistent with the approach the Commission took in addressing the question of how net costs or benefits from long-term contracts entered into under 35-A M.R.S. § 3210-C were to be reconciled. *Public Utilities Commission, Investigation into Recovery of Expenses and Disposition of Resources from Long-Term Contracts by Maine's T&D Utilities*, Docket No. 2011-222, Order at 4–5 (Oct. 26, 2011).

Given the pendency of that investigation, expected sales reductions associated with the effects of the NEB kWh credit program during the rate year will not be reflected in the billing units used to set rates or determine any rate increases in this proceeding. (If the Commission later decides to treat the effects of the kWh credit program through distribution rates, those effects would be captured through the RDM.) The presiding officers of the new investigation are to ensure that the case is ready for a Commission decision by February 2022 so that ratemaking treatment can be reflected in the utilities' next stranded cost or RDM-related filings.

G. Revenue-Decoupling Mechanism

1. Background and Versant's Proposal

Versant proposed approval of a revenue-decoupling mechanism (RDM). *See generally* RDM Dir.;[35] *see also* ARP Dir.[36] at 6. In general, an RDM provides for formulaic adjustments to a utility's rates between rate cases to reflect changes in sales levels; as such, it reduces risk to the utility. The Commission first approved an RDM for CMP in Docket No. 2013-00168.[37] CMP's RDM has operated each year since to adjust rates based on the approved RDM structure. In CMP's most recent rate case, the Commission approved certain simplifying changes to CMP's RDM.[38] In a recent

[34] *Central Maine Power Company, Request for Approval of Rate Change Regarding Annual Reconciliation of Stranded Cost Revenue and Costs*, Docket No. 2021-00037, Order Approving Stipulation at 5 & Stip. § 5 (July 19, 2021).

[35] "RDM Dir." refers to the direct testimony and exhibits of John Stewart on the revenue-decoupling mechanism, as included in Versant's January 19, 2021 initial filing.

[36] "ARP Dir." refers to the direct testimony and exhibits of Andrew Barrett on the alternative rate plan, as included in Versant's January 19, 2021 initial filing.

[37] *Central Maine Power Company, Request for New Alternative Rate Plan ("ARP 2014")*, Docket No. 2013-00168, Order Approving Stipulation at 6 (Aug. 25, 2014).

[38] *Public Utilities Commission, Investigation into Rates and Revenue Requirements of Central Maine Power Company*, Docket No. 2018-00194, Order at 29–30 (Feb. 19, 2020).

investigation initiated by the Commission to examine potential changes to, or suspension of, CMP's RDM in light of Covid-19-related effects on sales, the Commission ordered that the two-class structure of the RDM (by which there was, in effect, one RDM for residential classes and another, separate RDM for commercial classes) be modified to combine these classes into a single RDM.[39]

Versant's proposed RDM would function similarly to the RDM currently in place for CMP. *See* RDM Dir. at 6, nn.10–12 (citing to CMP RDM decisions). Target sales levels of kWh and kW would be set based on actual customer growth rates and a factor of 0.75. For example, if the actual year-over-year customer growth rate for a given period was 1.0%, target sales levels for that year would be set based on an assumed growth rate of 0.75% (that is, 1.0% × 0.75). Differences between the targets and actual sales levels, positive or negative, would then be used to determine the RDM adjustment for that year. RDM Dir. at 7; Tr. at 149–50 (Mar. 18, 2021 Tech. Conf.). Versant proposed that annual adjustments under its RDM be capped at 5% (in contrast to the cap of 2% currently in place for CMP).

2. <u>Positions of the Parties and Staff</u>

a. Staff's Analysis

In the Bench Analysis, Staff supported an RDM for Versant. Staff explained its understanding that the main drivers of Versant's proposed RDM are the new NEB kWh credit program adopted by the Legislature (P.L. 2019, ch. 478, Pt. A, § 3 (codified at 35-A M.R.S. § 3209-A)) and any potential lingering effect on sales from the pandemic. BA at 91 (citing RDM Dir. at 6, 9, 11). In Staff's view, even if its proposed change to the ratemaking treatment of the costs of the NEB kWh credit program were adopted as proposed, sales-related uncertainty and risk remain and would justify adoption of an RDM just as was the case when CMP's RDM was adopted in Docket No. 2013-00168. Factors driving uncertainty today that were not present when CMP's RDM was adopted included the pandemic and electrification. BA at 91–92.

If the NEB-related effects on sales are reconciled through stranded costs and not through distribution rates (and the RDM), Staff would support Versant's proposal to establish targets and otherwise structure the RDM the same way CMP's is structured, with one exception: If the NEB-related effects are moved to stranded costs from the RDM, Staff did not support setting the cap on distribution rate increases under the RDM at 5% rather than at the 2% in place for CMP's RDM. Because removal of the NEB-related effects, combined with the fact that other major factors (such as the pandemic and electrification) could affect sales and be directionally offsetting, a 2% cap appeared to Staff to be reasonable. BA at 91–92. If the NEB-related effects are not excluded from the RDM, in Staff's view, the use of a "0.75 × customer growth" formula to establish the

[39] *Public Utilities Commission, Investigation of Possible Suspension of Central Maine Power Company's Revenue Decoupling Mechanism*, Docket No. 2020-00159, Order at 19–23 (Dec. 16, 2020).

kW and kWh targets—which is the approach taken in CMP's RDM—would not be appropriate. BA at 92, n.44.

b. OPA

In testimony, the OPA's witness Mr. Morgan did not oppose adoption of an RDM for Versant but believed that a 2% cap on any rate increases produced by the RDM reconciliation was appropriate. Morgan Dir. at 9; Morgan Surr. at 2–3. The OPA held to this position in its brief, pointing to Mr. Morgan's testimony on the issue as well as the fact that the 2% cap is the same cap in place for CMP since its RDM was adopted. OPA Br at 18 (citing *Central Maine Power Company, Request for New Alternative Rate Plan ("ARP 2014")*, Docket No. 2013-00168, Order Approving Stipulation (Aug. 25, 2014)).

The OPA also stated that given the proposal to reconcile the impact of the NEB kWh credit program through stranded costs, "there is no reason to adopt a higher cap than the one [the Commission] previously found to be reasonable . . . for CMP." *Id.* at 18–19.

c. Versant

In its brief, Versant observed that there appears to be no dispute on whether the Commission should approve an RDM for Versant, and the only dispute on the RDM is the cap on annual rate adjustments. Versant Br. at 84. Versant argued that if the Commission approves Staff's proposal for Versant to recover the costs of the NEB kWh credit program in stranded cost rates, then the cap can be lowered from its initial proposal, but only to 2.5% "due to ongoing uncertainty related to the pandemic and behind-the-meter NEB impacts." Versant Br. at 84–85 (citing Sales Reb. at 5). If, on the other hand, the Commission does not approve Staff's proposal for Versant to recover the impact of the NEB kWh credit program in stranded cost rates, then the Commission should adopt the higher RDM annual cap of 5%. *Id.* at 85 (citing Sales Reb. at 5).

3. Decision

The Commission generally agrees with Versant and the Staff that adoption of an RDM is appropriate for Versant. An RDM is reasonable for Versant for the same reasons an RDM for CMP was approved—in addition to other factors that have arisen since then, including the pandemic and increased electrification, which are likely to effect Versant's sales from year to year. The Commission thus approves an RDM for Versant that will function similarly to CMP's. The Commission agrees with Staff, however, that the "0.75 × customer growth" factor may not be appropriate for setting sales targets if the effects of the NEB kWh credit program are to be recovered through the RDM, and will determine the alternative manner for establishing the targets, if necessary, in a future proceeding. With respect to the RDM "cap," the Commission determines that, as is the case with the CMP RDM, a 2% cap on any annual RDM-related increase is appropriate. RDM adjustments that result in a rate decrease will not be limited, consistent with how CMP's RDM is structured.

Versant shall file its proposed RDM adjustment by April 1 each year beginning 2023, to reflect the prior calendar year's actual sales versus targets, so the case can be decided and adjusted rates effective by July 1 each year. To maximize the efficient processing of the case, Versant's initial filings for its RDM cases shall include all calculations, workpapers, and other backup (in Excel format where applicable) supporting the proposed adjustment, along with a narrative explanation of the components of the filing, the mechanics of the adjustment, and Versant's understanding of the drivers of it.

If in our subsequent investigation (discussed above in section V.F.3.) of how transmission and distribution utilities should recover lost revenues from the NEB kWh credit program the Commission decides that should occur through distribution rates, Versant's first RDM filing (in 2023 with a reconciliation period of calendar year 2022) could result in a gap for recovery of lost revenues from the NEB kWh credit program that arose in 2021. If the Company believes such a gap exists and that there are NEB-related lost revenues not captured in the standard RDM adjustment, the Company can propose recovering those limited 2021 lost revenues in its first RDM adjustment. This would be a one-time exception to the normal operation of the RDM.

H. Approved Increase to Revenue Requirement

Given the above determinations, the Commission approves an increase to the revenue requirement of $103,526,129, which is an increase of approximately 17.5% over its current distribution rates. The components of this revenue requirement are summarized below in Figure 11.

Figure 11: Summary of Components of Approved Increase to Revenue Requirement Relative to Test Year

Description	**Versant Power Rebuttal** Amount ($ Millions)	**Staff Reply Bench Analysis** Amount ($ Millions)	**Examiners Report** Amount ($ Millions)	**Order** Amount ($ Millions)
Increases in plant-in-service (including return on rate base and associated increases to depreciation and property tax expenses)	16.83	11.46	13.69	14.69
Other Rate Base	0.54	0.90	0.79	0.79
O&M and payroll taxes	2.98	0.41	2.09	3.19
Regulatory amortizations	1.97	1.97	1.97	1.97
Tax amortizations	(1.25)	(1.25)	(1.25)	(1.25)
Revenue credits	(0.62)	(0.62)	(0.62)	(0.62)
Incremental revenue requirement over test year	**20.45**	**12.87**	**16.67**	**18.77**

I. Implementation of Rates

1. Versant's Proposal to Phase in Rates and Modification of Position in Its Brief

The Company framed its rate filing as incorporating an alternative rate plan (ARP). Versant submitted the testimony of Andrew Barrett, Vice President of Regulatory

Applications for ENMAX, who explained that the proposed ARP consists of three components: (1) a two-year phase-in of rates, (2) a revenue-decoupling mechanism (discussed above in section V.G.), and (3) an additional year of SQI benchmarks, equivalent to the targets set for the third year in Docket No. 2019-00097.

Mr. Barrett pointed out that the "intent of the phase-in proposal is to smooth the rate impact for customers. . . . The phase-in would also allow additional time for Maine's economy to continue to improve." EXM-007-002. The forgone revenue—the 50% of the annual revenue requirement increase not included in rates in the first year—would be deferred as a regulatory asset and collected in a subsequent rate case. *Id.* Versant did not specify a date by which the deferral would need to be added to rates but did not object to a deadline. EXM-007-003. At the technical conference on the initial filing, the Company suggested that without a phase-in of rates, customers would experience rate shock with the one-time rate increase. Tr. at 102 (Mar. 16, 2021 Tech. Conf.) (Mr. Chahley: "[T]he benefit of the deferral was to smooth rates for customers to avoid the rate shock in year one."). The Company also suggested that its plan was to file a new general rate case for rates to be effective two years after this year's rate increase, and that those plans could change. *Id.* at 100, 113 (Mr. Barrett: "[W]hile no final decision has been taken, the [C]ompany's plan is to file a rate case that would have rates effective at the end of the two-year period.").

In its brief, however, Versant withdrew its request to phase in rates, stating that "Versant's rate request as set forth in its rebuttal testimony and modified [in its brief] is significantly reduced from its initial proposal" and thus "additional mitigation of the increase is no longer warranted." Versant Br. at 85.

2. <u>Positions of the OPA and Staff</u>

a. Staff's Analysis

In the Bench Analysis, Staff did not take a firm position on the Company's ARP proposal but left open the possibility. Staff's observation was that the Company proposed not an alternative rate plan but a two-step rate increase. Versant did not propose a stay-out provision, meaning the Company could file another general rate case at any time during the two-year period (subject to the requirements of 35-A M.R.S. § 307). Staff was generally unfamiliar with the concept of a rate plan that lacks a stay-out provision. *See* Tr. at 113 (Mar. 16, 2021 Tech. Conf.) (Mr. Barrett: "[T]his was not envisioned as a rate stay out."). Staff also noted that ARPs typically include various incentive mechanisms and other ways of sharing risks and benefits between the utility and its customers—and last longer than two years. The Company described the ARP as imposing risks on it in the form of the extra year of SQI (another year of possible financial penalties) and an extra year where Versant's costs might increase but its rates do not; Staff responded that regulatory lag is a known effect following rate cases, and not something unique to this case or to ARP proposals. BA at 93.

On the proposed extra year of SQI, Staff observed that despite proposing new investments in reliability and customer service, Versant proposed to keep the SQI targets at the same levels as those established for year three of the stipulation in Docket No. 2019-00097. Staff questioned whether the targets would need to be adjusted given those anticipated investments. BA at 93–94.

The Staff agreed with the Company on the goal of rate stability and that a two-step rate increase is one way of easing in a significant rate increase, adding that whether a rate-smoothing mechanism is advised here can be determined later as the revenue requirement is refined. BA at 94.

b. OPA

The OPA did not address this issue in its brief, though earlier in the case OPA witness Mr. Morgan expressed concerns about the proposed phase-in of rates. Morgan Dir. at 8–9.

3. Decision

The Commission's decision on the RDM is described above in section V.G. The issue of SQIs in the future can be addressed in a separate proceeding. *See Public Utilities Commission, Inquiry into Performance Metrics and Regulatory Mechanisms for Transmission and Distribution Utilities*, Docket No. 2020-00344, Notice of Inquiry and Request for Comment (Dec. 15, 2020) (opening inquiry into service quality and performance incentives for utilities, including Versant).

On the phase-in of rates, at this stage it appears that no party is advocating to phase in rates. Allowing the entire rate increase to go into effect at once has the benefits of finality, avoidance of built-in future rate increases, and avoidance of creation of a large regulatory asset that will accrue carrying costs for an indeterminate period. The argument against is mainly the immediate effect on customers (which will vary depending on the size of the increase). Allowing the rate increase to go into effect in two steps has the benefits of incrementalism, potential avoidance of rate shock, and knowing the size of the step-two rate increase in advance. Among the downsides are that in addition to the fact of a second rate increase, customers will later be required to pay for a relatively large regulatory asset, and the regulatory asset will accrue carrying charges for an indeterminate time. Also, because there is no stay-out period, the Company could file for new rates at any time, even for rates that would go into effect concurrent with the step-two increase.

Weighing the pros and cons, the Commission accepts Versant's withdrawal of its request to phase in rates and the lack of obvious dispute on this issue. The Commission is convinced that the benefits of a one-time rate increase—including finality, avoidance of built-in future rate increases, and avoidance of creation of a large regulatory asset that will accrue carrying costs for an indeterminate period—outweigh the downsides. The Commission thus finds that the rate increase shall go into effect all at once.

VI. CONCLUSION AND ORDERS

Accordingly, the Commission

O R D E R S

1. That Versant's requested rate increase is denied and that, instead, the Commission approves a distribution revenue requirement of $103,526,129 for effect November 1, 2021;

2. That Versant submit, as a compliance filing, revised schedules of rates and supporting calculations, **as soon as practicable but no later than Thursday, October 28, 2021** for delegated review and approval;

3. That the Clerk of the Commission open a new docket to address the ratemaking treatment of lost revenues associated with the NEB kWh credit program and C/I tariff program, as discussed in section V.F.3.v. of the body of this order, and that Commission Staff ensure the processing of that investigation begins promptly so that a decision can be rendered by February 2022;

4. That an inquiry be opened into possible modifications to Chapter 85 of the Commission's rules, as discussed in section V.E.5.d. of the body of this order;

5. That Versant's request for approval of a revenue-decoupling mechanism is granted under the terms described in section V.G.3. of the body of this order, and that under those provisions Versant shall make its first RDM adjustment filing by April 1, 2023, with all detail and support necessary to properly evaluate that filing;

6. That in its next general rate case Versant include the comparative analysis of affiliate costs described in section V.E.1.d. of the body of this order;

7. That, henceforth and until further notice, Versant shall include its annual reliability report the information described in section V.E.9.c of the body of this order.

Dated at Hallowell, Maine, this 28th day of October, 2021.

/s/ *Harry Lanphear*
Harry Lanphear
Administrative Director

COMMISSIONERS VOTING FOR: Bartlett
Davis
Scully

NOTICE OF RIGHTS TO REVIEW OR APPEAL

5 M.R.S. § 9061 requires the Public Utilities Commission to give each party at the conclusion of an adjudicatory proceeding written notice of the party's rights to seek review of or to appeal the Commission's decision. The methods of review or appeal of Commission decisions at the conclusion of an adjudicatory proceeding are as follows:

1. Reconsideration of the Commission's Order may be requested under Section 11(D) of the Commission's Rules of Practice and Procedure (65-407 C.M.R. ch. 110) within **20** days of the date of the Order by filing a petition with the Commission stating the grounds upon which reconsideration is sought. Any petition not granted within **20** days from the date of filing is denied.

2. Appeal of a final decision of the Commission may be taken to the Law Court by filing, within **21** days of the date of the Order, a Notice of Appeal with the Administrative Director of the Commission, pursuant to 35-A M.R.S. § 1320(1)–(4) and the Maine Rules of Appellate Procedure.

3. Additional court review of constitutional issues or issues involving the justness or reasonableness of rates may be had by the filing of an appeal with the Law Court, pursuant to 35-A M.R.S. § 1320(5).

Pursuant to 5 M.R.S. § 8058 and 35-A M.R.S. § 1320(6), review of Commission Rules is subject to the jurisdiction of the Superior Court.

Note: The attachment of this Notice to a document does not indicate the Commission's view that the particular document may be subject to review or appeal. Similarly, the failure of the Commission to attach a copy of this Notice to a document does not indicate the Commission's view that the document is not subject to review or appeal.