

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE 2018 REVIEW OF
THE DELIVERY CAPITAL RECOVERY
RIDER OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY.

CASE NO. 18-1542-EL-RDR

IN THE MATTER OF THE 2019 REVIEW OF
THE DELIVERY CAPITAL RECOVERY
RIDER OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY.

CASE NO. 19-1887-EL-RDR

FINDING AND ORDER

Entered in the Journal on March 8, 2023

I. SUMMARY

{¶ 1} The Commission finds that the recommendations proposed by Blue Ridge Consulting Services, Inc., and the supplemental recommendations proposed by Staff, regarding the 2018 and 2019 audit review of the Delivery Capital Recovery Rider should be adopted.

II. PROCEDURAL HISTORY

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, FirstEnergy or Companies) are electric distribution utilities (EDUs) as defined by R.C. 4928.01(A)(6), and public utilities as defined in R.C. 4905.02, and, as such, are subject to the jurisdiction of this Commission.

{¶ 3} R.C. 4928.141 provides that an electric distribution utility shall provide consumers within its certified territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including firm supply of electric generation services. The SSO may be either a market rate offer, in accordance with R.C. 4928.142, or an electric security plan (ESP), in accordance with 4928.143.

{¶ 4} On August 25, 2010, the Commission issued an Opinion and Order in *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co. for Authority to Establish a Std. Serv. Offer Pursuant to Section 4928.143, Revised Code*, Case No. 10-388-EL-SSO (*ESP II Case*). In that Opinion and Order, the Commission approved a combined stipulation, as modified, authorizing FirstEnergy to establish a delivery capital recovery rider (Rider DCR) effective January 1, 2012. Rider DCR provides for recovery of property taxes, commercial activity tax, and associated income taxes, and the opportunity to earn a return on and of plant-in-service capital expenditures associated with distribution, subtransmission, and general and intangible plant. Additionally, under the terms of the stipulation, FirstEnergy agreed to submit an annual audit review process of Rider DCR. Thereafter, on July 18, 2012, the Commission issued an Opinion and Order in *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO (*ESP III Case*), approving a stipulation filed by various parties extending, with modifications, the combined stipulation approved by the Commission in the *ESP II Case*. On March 31, 2016, the Commission issued an Opinion and Order in *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (*ESP IV Case*), approving an extension, with modification, of the Companies' Rider DCR.

{¶ 5} On September 29, 2020, the attorney examiner consolidated the above-captioned cases in the spirit of administrative efficiency. Contemporaneously, the attorney examiner granted motions to intervene from the Ohio Consumers' Counsel (OCC) and Ohio Cable Telecommunications Association (OCTA). Motions to intervene already filed in at least one of the above-captioned cases shall be treated as a motion to intervene in both the cases.

III. 2019 AUDIT REPORT

A. *Procedural History*

{¶ 6} On November 6, 2019, the Commission issued an Entry directing Staff to issue a request for proposal (RFP) for the audit services necessary to assist with the

compliance audit of the Companies in Case No. 19-1887-EL-RDR. Prospective bidders were directed by the Commission to submit proposals to Staff by December 4, 2019.

{¶ 7} By Entry issued December 18, 2019, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge) from the submitted proposals to complete the required audit services.

{¶ 8} According to the timeline ordered by the Commission, Blue Ridge was required to submit a draft audit report to Staff by May 21, 2020 and file a final audit report with the Commission by June 5, 2020.

{¶ 9} On June 12, 2020, Staff filed the auditor's report.¹ On June 26, 2020, the attorney examiner set a comment period to file initial and reply comments regarding the auditor's report by July 27, 2020, and August 11, 2020, respectively.

{¶ 10} Comments were filed on July 27, 2020, by FirstEnergy, Staff, and OCC.

{¶ 11} Replies were filed on August 11, 2020, by FirstEnergy, Staff, OCC, and OCTA.

B. Summary of 2019 Audit Report

{¶ 12} Blue Ridge's 2019 Audit Report assessed the accuracy and reasonableness of FirstEnergy's compliance with its Commission-approved Rider DCR with regard to the return earned on plant-in-service since FirstEnergy's last Rider DCR compliance audit. The 2019 Audit Report also identified capital additions recovered through the Line Extension Recovery Rider (Rider LEX), Economic Development Rider (Rider EDR), and the Advanced Metering Infrastructure Rider (Rider AMI), or any other subsequent rider authorized by the

¹ The Commission's offices were officially closed from June 1, 2020, through June 5, 2020. According to Staff, when Blue Ridge attempted to file the report on June 5, 2020, the auditor faced technical difficulties due to the Commission's office closure and, as a result, the report was not accepted for filing. Staff became aware the report had not been accepted for filing on June 11, 2020. On June 26, 2020, the attorney examiner accepted the auditor's report as filed on June 12, 2020.

Commission to recover delivery-related capital additions to ensure they are excluded from Rider DCR. The purpose of the 2019 Audit Report was to identify, quantify, and explain any significant net plant increase within individual accounts. (2019 Audit Report at 8-9.)

{¶ 13} Blue Ridge examined the overall impact of its findings on the Rider DCR revenue requirement and noted that it found several impactful items, including a project that was cancelled and should not have been in plant-in-service, two work orders with over-accrued allowance for funds used during construction (AFUDC) due to incorrect service dates, over-accrual of AFUDC during inactive periods, work orders in service but not unitized with no associated retirement recorded, a project that was incorrectly recorded in-service while still in progress, vegetation management expenditures that should not be charged to plant, and regulatory liabilities that reflect the refund of the excess deferred taxes owed to ratepayers was different from the amount approved in the Commission-approved stipulation. Considering all recommended adjustments, the cumulative impact to the Rider DCR revenue requirement amounted to a reduction of \$6,532,887. (2019 Audit Report at 9.)

{¶ 14} Blue Ridge stated that, upon review of the Companies' processes and controls affecting each of the categories within the Rider DCR, it was satisfied with actions taken regarding internal audits. Blue Ridge concluded that, except for the recommendations regarding vegetation management, the controls were adequate and not unreasonable. Blue Ridge believes that the Companies' vegetation management policy is in conflict with the FERC Uniform System of Accounts (USoA). Blue Ridge recommends that the Commission address and define vegetation management capital and expense activity on a global basis for all electric utilities in Ohio to eliminate any bias on how vegetation management costs should be recorded (capital versus expense) that is created based on how those costs are recovered. Absent a Commission policy determination, Blue Ridge recommends that Staff undertake a periodic audit of the Companies' vegetation management activities. (2019 Audit Report at 10.)

{¶ 15} Blue Ridge found a high percentage of work that was over budget by more than 15 percent. While Blue Ridge did not recommend an adjustment to these projects specifically, it did recommend that the Companies further enhance and refine their project estimating process. Further, Blue Ridge found that the Companies have experienced a significant increase in the unitization backlog. Blue Ridge recommends that the Companies make a concerted effort to reduce the volume of backlog work orders. (Audit Report at 11-12.)

{¶ 16} Blue Ridge also reviewed the Tax Cuts and Jobs Act (TCJA) effect. Blue Ridge recommends reversing all accumulated deferred income taxes (ADIT) adjustments, except for reclasses between normalized and non-normalized property, so that the total property ADIT reflected in Rider DCR matches the total property ADIT as of December 31, 2017, per the Stipulation. *In re the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company to Implement Matters Relating to the Tax Cuts and Jobs Act of 2017*, Case No. 18-1604-EL-UNC, Supplemental Stipulation and Recommendation (*TCJA Stipulation*) (Jan. 25, 2019), Supplemental Attachment A. Blue Ridge notes that there are no true-up provisions in the *TCJA Stipulation* that would allow the Companies to adjust those balances. Blue Ridge states that it has not and cannot validate whether the reclass from property to non-property was appropriately reflected in the new credit mechanism. (Audit Report at 14-15.)

C. Summary of 2019 Audit Report Recommendations

{¶ 17} Blue Ridge filed its compliance audit of the Rider DCR of the Companies on April 30, 2019. The following are Blue Ridge's recommendations:

1. That FirstEnergy's Customer Request Work Scheduling System modernization pre-implementation internal audit results be reviewed by the Rider DCR auditors when they become available (2019 Audit Report at 16, 24-25).
2. That the Companies did not provide sufficient detailed vegetation management documentation to support the inclusion of capital charges in Rider DCR or to

support verification of work according to current vegetation policies. Blue Ridge recommends that:

- a. The Companies supplement their vegetation management policies and procedures to provide more detail in support of the timesheet task codes used by contractors;
 - b. The Commission address and define vegetation management capital and expense activity on a global basis for all electric utilities in Ohio to eliminate any bias on how vegetation management costs should be recorded (capital versus expense) that is created based on how those costs are recovered; and
 - c. Absent a Commission policy on the determination of capital and expense vegetation management activity, the Companies revise their vegetation management accounting policy to be consistent with the FERC USoA. (2019 Audit Report at 16-17, 40-41, 42, 62).
3. That the Companies further enhance and refine their project estimating process. (2019 Audit Report at 17, 66).
 4. That because the software capitalization process, by which fees between capital and maintenance are split, is activated by a vendor, internal audit should review the process to determine that the split of charges between capital and expense is not unreasonable (2019 Audit Report at 17, 81).
 5. That the Companies include a reconciliation for the five work orders that were in-service, but not unitized in a subsequent filing (2019 Audit Report at 17, 82).
 6. That the Companies make a concerted effort to reduce the volume of backlog work orders both in quantity and dollar value (2019 Audit Report at 17, 89).
 7. That that the Companies rectify the inconsistent formula in the depreciation estimates in FERC account 390.3 between actual and estimated calculation by the next filing date (2019 Audit Report at 17-18, 94).
 8. That all ADIT adjustments be reversed, except for reclasses between normalized and non-normalized property, so that the Total Property ADIT reflected in Rider

DCR matches the Total Property ADIT as of December 31, 2017, in the stipulation (2019 Audit Report at 18, 104).

D. Discussion

{¶ 18} In their initial comments, the Companies agree with most of the conclusions and recommendations in the 2019 Audit Report and request that the Commission adopt the recommendations, noting that most of which have already been implemented. However, FirstEnergy disagrees with two of the recommendations. First, the Companies disagree with the recommendation to reverse the ADIT adjustments the Companies made after the *TCJA Stipulation* was filed. The Companies contend that the balances in the *TCJA Stipulation* were preliminary, as the best available balances at the time, and were labeled as “illustrative” because they were not the actual final balances. FirstEnergy argues that even though the *TCJA Stipulation* doesn’t include a “true-up reconciliation” provision, the *TCJA Stipulation* does require the use of actual final balances, which require a true-up. Second, FirstEnergy disputes recommendation number two, that off-corridor vegetation management costs the Companies capitalized should instead be recorded as maintenance expenses. The Companies argue that the work removes the threat of trees falling into the circuit conductors, which extend the in-service life of the conductors. FirstEnergy adds that this policy conforms to Generally Accepted Accounting Practices (GAAP) and has been in place since 2004, predating the Companies’ last base rate case and the existence of Rider DCR. Moreover, the Companies argue that Blue Ridge’s reliance on the definitions in the FERC USoA is misplaced because the Commission maintains the full discretion and authority to interpret the FERC USoA definitions as it deems appropriate, citing R.C. 4905.13. According to FirstEnergy, the Commission is within its authority to modify the USoA as it applies to utilities operating within Ohio. See *In re the Application of The Columbus S. Power Co.*, Case No. 94-1812-EL-AAM, Entry (Apr. 13, 1995). Also, in recommendation number two, FirstEnergy disagrees that it should require more detail in support of timesheet task codes used by contractors and that twelve work orders be removed from Rider DCR because of insufficient documentation. FirstEnergy emphasizes that there are multiple levels of approval for the internal processing of invoices and field verification for accuracy

of recorded timesheets. FirstEnergy also argues that it would be expensive to require additional support for contractor timesheet task codes.

{¶ 19} In its initial comments, Staff supports the recommendations put forth by Blue Ridge in the 2019 Audit Report. Staff also recommends that the Commission establish a concrete goal for FirstEnergy to reduce the current backlog work orders and that the Companies provide a process improvement plan that would reduce the high volume of budget variances. Staff also notes that it compared the results of the compliance review conducted in Case Nos. 17-2009-EL-RDR and 18-1542-EL-RDR with the recommendations proposed in the 2019 Audit Report and confirms all the recommendations proposed by Blue Ridge have been implemented except for two: the TCJA-related recommendations, which have been addressed in the stipulation in Case No. 18-1604-EL-UNC, and the accounting treatment of the expenses related to vegetation management. Staff adds that it supports Blue Ridge's recommendation regarding the accounting treatment of these expenses. However, Staff adds the additional recommendation that the Companies be required to document the capitalized vegetation management activity with photographs rather than schematics or drawings.

{¶ 20} In its comments, OCC agrees with Blue Ridge's recommendations in the 2019 Audit Report. OCC supports the recommendations of Blue Ridge related to the vegetation management costs of FirstEnergy and argues that the Commission should direct FirstEnergy to require more supportive documentation for vegetation management expenses and to revise its vegetation management accounting policies to be consistent with the FERC USoA. OCC also opposes FirstEnergy's adjustment to the ADIT balances because the parties agreed to the balances and the Commission approved the balances in the *TCJA Stipulation*. OCC emphasizes that the balances in the *TCJA Stipulation* were based on "final, audited balances." However, OCC agrees with the audit recommendation that the Companies' "reclass" adjustments to the *TCJA Stipulation* balances be retained.

{¶ 21} In response, the Companies reassert that the ADIT balances in the *TCJA Stipulation* were merely illustrative and the adjusted amounts are based on better information. The Companies also argue that it would be inappropriate to accept only the Companies' "reclass" adjustments to the *TCJA Stipulation* balances, pointing out that would lead to some information being final and other information subject to revision. The Companies also reiterate that their vegetation management accounting practices should be allowed. They noted that no party has challenged the prudence of the vegetation management policies, so photographic evidence of vegetation management should not be required. FirstEnergy also states that it does not object to establishing a concrete goal for reducing the unitization backlog but advocates for a goal based on dollar amount rather than age, which would yield more accurate depreciation expenses. Although Staff recommended that the Companies refine their budget estimating process, the Companies note that focusing on the number of projects that exceed estimates is not a representative measure. Specifically, FirstEnergy notes that their total actual-to-budget variance from December 2018 to November 2019 was less than three percent.

{¶ 22} In its reply comments, Staff once again agrees with Blue Ridge's recommendations related to the accounting policy for the capitalization of initial vegetation management practices. Staff notes that it does not believe the Companies have presented a compelling rationale as to why their accounting treatment of this activity, namely the capitalization of certain costs, is appropriate. Staff opposes FirstEnergy's rationale that the vegetation management costs become capitalized after FirstEnergy refrains from vegetation management for an extended period of time, which allows the trees inside the right-of-way (ROW) to grow taller than the allowed height. Staff argues that the height of the vegetation is entirely within the Companies' control, and the Companies should not be allowed to manipulate the height to change how the activity is treated for accounting purposes. Staff reiterates its recommendation that a photograph of the tree (or limb) that demonstrates its horizontal and vertical distance from the corridor prior to treatment should be required before cutting to verify it met the conditions for removal and capitalization. Staff states that

as to the ADIT findings, it continues to recommend reversing the ADIT adjustments, with the exception of reclasses between normalized and non-normalized property, so that the numbers match the *TCJA Stipulation*.

{¶ 23} OCC argues that the Commission should follow the recommendations from Blue Ridge, Staff, and OCC and base the ADIT on the *TCJA Stipulation* rather than the adjusted numbers used by FirstEnergy. OCC also argues that the off-corridor vegetation management costs should be recorded as operation and maintenance expenses rather than capitalized, per Blue Ridge's recommendation. While recognizing that the initial ROW clearing could be capitalized, OCC asserts all subsequent ROW clearing costs should be expensed as maintenance activity, consistent with FERC USoA guidance.

{¶ 24} In its comments, OCTA argues that the Commission should adopt the auditor's recommendation and reject the adjusted ADIT balances used by FirstEnergy. OCTA notes that the adjusted ADIT balances are inconsistent with the *TCJA Stipulation*, to which OCTA was a party, and the Commission should not use the adjusted balances for the calculation of Rider DCR or for future pole rates. OCTA also argues that the Commission should instruct its Staff and other auditors to examine the ADIT values in future proceedings, including the pole attachment rate proceedings, to ensure that the appropriate ADIT values are consistently used.

{¶ 25} As an initial matter, the Commission notes that there is unanimous consensus on the validity of six out of the eight recommendations proposed by Blue Ridge. We agree with the parties that these six recommendations are reasonable and, thus, should be adopted. The only two recommendations that warrant additional discussion are the recommendations related to the Companies' vegetation management accounting practices and the TCJA.

{¶ 26} In July 2019, the Commission approved the *TCJA Stipulation*. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 16-481-EL-UNC, et al., Opinion and Order (July 17, 2019) (TCJA Resolution Order). By the terms of the stipulation,

the Companies agreed to refund all tax savings associated with the TCJA including riders, tax savings not reflected in riders, and the return over time of all of the normalized and non-normalized excess ADIT from January 1, 2018. TCJA Resolution Order at ¶¶ 25-27, 66-67. Furthermore, the approval of the stipulation was consistent with the Commission's earlier determination that customers should receive the savings derived from the TCJA. See *In re the Commission's Investigation of the Financial Impact of the TCJA on Regulated Ohio Utility Companies*, Case No. 18-47-AU-COI (*TCJA Investigation*), Finding and Order (Oct. 24, 2018) at ¶ 30. While the Companies assert that they filed compliance tariffs for the Tax Savings Adjustment Rider (Rider TSA) on July 26, 2019, in Case No. 18-1656-EL-ATA, alleging those tariffs reflect the "final, audited balances," the objections presented in the comments submitted in this proceeding raise questions as to whether those compliance tariffs conform to the directives in the TCJA Resolution Order or the Commission's findings in the *TCJA Investigation*. Importantly, Staff seems to suggest that the Companies are making adjustments that fundamentally change what amounts should be included in the excess ADIT balances. With these considerations in mind, the Commission finds it appropriate for the Companies to restore the excess ADIT balances to reflect the stipulated amounts and allow the Commission to consider the parties' arguments and the Companies' adjustments, particularly the claim that there is no excess ADIT attributable to AFUDC equity, within the next Rider TSA annual filing. Thus, we find that Blue Ridge's recommendations as to this issue should be adopted in their entirety. Similarly, we also agree with Blue Ridge that the reclass adjustments may remain in place, as they have no impact on the total liability to be refunded to customers and would not interfere with our directives in the *TCJA Investigation*.

{¶ 27} Addressing capitalization of tree-trimming costs, the Commission has already determined that the Companies should follow the FERC USoA. See *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case Nos. 16-2041-EL-RDR and 17-2009-EL-RDR, Finding and Order (June 16, 2021) at ¶ 40. Although the Companies argue that their vegetation management removes the threat of trees falling into the circuit conductors, which extend the in-service life of the conductors, the only instance in which

clearing activities should be capitalized is during an initial clearing or official expansion of the ROW. The Commission has previously found that initial clearing includes removing vegetation from the ROW when the ROW is first established or when a ROW is permanently expanded beyond the previously established ROW. See *In re Ohio Power Co.*, Case Nos. 17-38-EL-RDR and 18-230-EL-RDR, Opinion and Order (June 17, 2020) at ¶ 25, 50. We instruct the Companies to implement the recommendations set forth in the 2019 Audit Report as they relate to its current accounting policy for the capitalization of certain clearing activities including removing the costs from Rider DCR that were charged to capital task codes 05, 14, 30, and 36, as recommended by Blue Ridge. However, tree removal during the initial clearing of the corridor or an expansion of the existing corridor may continue to be capitalized.

{¶ 28} In terms of requiring additional documentation, FirstEnergy has the burden of proof to demonstrate that the amounts sought for recovery under Rider DCR are not unreasonable in each annual audit. If the Companies are unable to provide sufficient evidence to meet this burden at the time of the audit, the Commission will deny recovery of the disputed costs.

{¶ 29} As to Blue Ridge's recommendation that the Commission define vegetation management capital and expense activity on a global basis for all electric utilities in Ohio, we note that even if we determined this was necessary, an audit proceeding such as this would not be the right proceeding to make such a generalized directive.

{¶ 30} Blue Ridge also recommends that the Companies include a reconciliation for the five work orders that were in-service, but not unitized in a subsequent filing. The Companies agree and have stated that they will make an adjustment to the Rider DCR revenue requirement in a subsequent filing to reflect this recommendation. We find the suggested reconciliation to be appropriate.

{¶ 31} As to the recommendation that the Commission establish a concrete goal for FirstEnergy to reduce the current backlog of work orders, the Companies do not oppose a

concrete goal for reducing the unitization backlog but advocate for a goal based on dollar amount rather than age. As to the recommendation that the Companies provide a process improvement plan that would reduce the high volume of budget variances, the Companies argue that focusing on the number of projects that exceed estimates is not a representative measure. The Commission finds that FirstEnergy shall work with Staff to create an appropriate goal, which can be reviewed in the next Rider DCR filing. Although FirstEnergy notes that their total actual-to-budget variance was less than three percent, a process improvement plan would help to decrease the variance.

{¶ 32} Consistent with our earlier findings, the Commission agrees with the recommendations of Blue Ridge and directs the Companies to make all of the necessary changes. Finally, as the disputed issues regarding the 2019 Audit Report have been addressed, and no parties have indicated that a hearing would be beneficial in this proceeding, the Commission finds that it is unnecessary to hold a hearing in this matter.

IV. 2018 AUDIT REPORT

A. Procedural History

{¶ 33} On October 31, 2018, the Commission issued an Entry directing Staff to issue an RFP for the audit services necessary to assist with the compliance audit of the Companies in Case No. 18-1542-EL-RDR. Prospective bidders were directed by the Commission to submit proposals to Staff by November 21, 2018.

{¶ 34} By Entry issued December 5, 2018, the Commission selected Blue Ridge from the submitted proposals to complete the required audit services.

{¶ 35} On April 30, 2019, Blue Ridge filed its final audit report with the Commission.

{¶ 36} On September 29, 2020, the attorney examiner set a comment period for interested parties to file initial and reply comments regarding the auditor's report by October 30, 2020, and November 16, 2020, respectively.

{¶ 37} Comments were filed on October 30, 2020, by Staff, OCTA, FirstEnergy, and OCC.

{¶ 38} Replies were filed on November 16, 2020, by Staff, FirstEnergy, and OCC.

B. *Summary of 2018 Audit Report*

{¶ 39} Blue Ridge's 2018 Audit Report assessed the accuracy and reasonableness of FirstEnergy's compliance with its Commission-approved Rider DCR with regard to the return earned on plant-in-service since FirstEnergy's last Rider DCR compliance audit. The 2018 Audit Report also identified capital additions recovered through Rider LEX, Rider EDR, Rider AMI, or any other subsequent rider authorized by the Commission to recover delivery-related capital additions to ensure they are excluded from Rider DCR. The purpose of the 2018 Audit Report is to identify, quantify, and explain any significant net plant increase within individual accounts. (2018 Audit Report at 8.)

{¶ 40} Blue Ridge examined the overall impact of its findings on the Rider DCR revenue requirement and noted that it found several impactful items, including adjustments for plant recovered through other riders that were not excluded in the Companies' consolidated unitization process, vegetation management expenditures that should not be charged to plant, overstated plant balances due to delays or incorrect in-service dates or retirements not recorded timely, and failure to record a regulatory liability to reflect a refund of the excess deferred taxes owed to ratepayers because the Companies historically collected federal tax expense at 35% but will later pay the deferred portion to the federal government at 21%. Considering all recommended adjustments, the cumulative impact to the Rider DCR revenue requirement amounted to a reduction of \$54,006,048. (2018 Audit Report at 8-9.)

{¶ 41} Blue Ridge stated that, upon review of the Companies' processes and controls affecting each of the categories within the Rider DCR, it was satisfied with actions taken regarding internal audits and the process and control of prior Rider DCR

recommendations. Blue Ridge concluded that, except for the recommendations regarding vegetation management, the controls were adequate and not unreasonable. Blue Ridge believes that the Companies' vegetation management policy is in conflict with the FERC USoA. Blue Ridge recommends that the Commission address and define vegetation management capital and expense activity on a global basis for all electric utilities in Ohio to eliminate any bias on how vegetation management costs should be recorded (capital versus expense) that is created based on how those costs are recovered. Absent a Commission policy determination, Blue Ridge recommends that Staff undertake a periodic audit of the Companies' vegetation management activities. (Audit Report at 9.)

C. Summary of 2018 Audit Report Recommendations

{¶ 42} Blue Ridge filed its compliance audit of the Rider DCR of the Companies on April 30, 2019. The following are Blue Ridge's recommendations:

1. That the vegetation management costs charged to the Rider DCR associated with activity codes 05, 36, 14, and 30, be excluded from the Rider DCR (2018 Audit Report at 18, 46, 67).
2. That that the Commission address and define vegetation management capital and expense activity on a global basis for all electric utilities in Ohio to eliminate any bias on how vegetation management costs should be recorded (capital versus expense) that may be created based on how those costs are recovered (2018 Audit Report at 18, 46).
3. That the Companies revise their vegetation policy to be consistent with the FERC USoA (2018 Audit Report at 18, 46).
4. That, in the absence of a Commission policy on the determination of capital and expense vegetation management activity, Staff undertake a periodic audit of the Companies' vegetation management activities (2018 Audit Report at 18, 46).
5. That the results of the three internal audits in progress in 2018 be reviewed in next year's Rider DCR audit (2018 Audit Report at 18, 47).

6. That that the Companies include a reconciliation for the work order that was recovered in rider EDR(g) and was not excluded from Rider DCR in a subsequent filing (2018 Audit Report at 18, 53).
7. That the Companies modify the reported summary of exclusions to reflect the total amount of Rider AMI plant that is actually excluded (2018 Audit Report at 18, 55-56).
8. That that the Companies review the charges reflected in the consolidated unitization to ensure that all plant recovered through the Rider AMI are properly identified and excluded from the Rider DCR (2018 Audit Report at 18, 56-57).
9. That the Companies include a reconciliation for the experimental company-owned LED light program work orders in a subsequent filing (2018 Audit Report at 19, 58).
10. That the Companies review the charges reflected in the consolidated unitization to ensure that all plant recovered through the experimental company-owned LED light program (and any other associated plant recovered through other riders) is properly identified and excluded from the Rider DCR (2018 Audit Report at 19, 58-59, 61, 86).
11. That that the percentage of projects over budget be revisited in the next Rider DCR audit to determine whether those 2018-implemented recommendations were successful in reducing the percentage of projects coming in over budget (2018 Audit Report at 19, 73-74).
12. That the Companies include a reconciliation for the two work orders with over-accrued AFUDC and incorrect in-service days in a subsequent filing (2018 Audit Report at 19, 74).
13. As to the work orders that had been completed but are still awaiting retirement to be charged, Blue Ridge recommends that once the retirement is recorded, the Companies calculate the impact on depreciation and on the Rider DCR (2018 Audit Report at 19, 76).

14. That the Companies include a reconciliation in the Rider DCR revenue requirement in a subsequent filing for the two work orders in which retirement was charged after November 30, 2018 (2018 Audit Report at 19, 76-77).
15. That adjustments be made to change the in-service dates and that the Companies include a reconciliation in the Rider DCR revenue requirement in a subsequent filing for the two work orders that had delays of in-service dates resulting in over-accrued AFUDC and overstatement of depreciation expense (2018 Audit Report at 19, 79-80).
16. That a depreciation study be performed, as the last depreciation study was performed using December 31, 2013 balances (2018 Audit Report at 20, 86, 91-92).
17. That the ADIT balances be reflected within the Rider DCR and the overcollection due to the delay in recording the ADIT in the Rider DCR be adjusted within the next Rider DCR filing (2018 Audit Report at 20, 99).

D. Discussion

{¶ 43} In its initial comments, FirstEnergy agrees to most of the 2018 Audit Report's recommendations. The Companies dispute only two of the recommendations, both of which involve vegetation management. The Companies dispute recommendation one, in which Blue Ridge suggests that the vegetation management costs charged to certain activity codes be excluded from Rider DCR. FirstEnergy also disputes recommendation three, in which Blue Ridge recommends that the Companies revise the specified policy to be consistent with the FERC USoA. FirstEnergy asserts that the policy appropriately allows for capitalization as the work removes the threat of vegetation falling into and damaging circuit conductors, thus shortening the useful life of the conductors. FirstEnergy adds that this policy conforms to GAAP and has been in place since 2004, predating the Companies' last base rate case and the existence of Rider DCR. Moreover, the Companies argue that Blue Ridge's reliance on the definitions in the FERC USoA is misplaced because the Commission maintains the full discretion and authority to interpret the FERC USoA definitions as it deems appropriate, citing R.C. 4905.13. According to FirstEnergy, the

Commission is within its authority to modify the USoA as it applies to utilities operating within Ohio. See *In re the Application of The Columbus S. Power Co.*, Case No. 94-1812-EL-AAM, Entry (Apr. 13, 1995). Accordingly, FirstEnergy agrees with the recommendations made in the 2018 Audit Report and requests that the Commission adopt Blue Ridge's recommendations, with the exception of the recommendations related to modification of the Companies' vegetation management practices and capitalization policy.

{¶ 44} In their initial comments, Staff adopts their comments filed in the 2019 audit as their comments for the 2018 audit. In short, Staff states that it fully supports the auditor's recommendations. In its comments filed in the 2019 audit, Staff recommends that the expenses related to vegetation management should not be capitalized.

{¶ 45} OCTA filed a letter on October 30, 2020, stating that it reaffirms its position and arguments set forth in its comments filed in the 2019 audit.

{¶ 46} In its comments, OCC recommends that the Commission adopt Blue Ridge's recommendations, although OCC offers additional recommendations of its own. OCC agrees with the audit recommendation that the Rider DCR rate base should be adjusted to remove the vegetation management costs that were improperly capitalized. OCC explains that tree clearing during the initial construction should be capitalized, but that vegetation management not a part of initial construction should be a part of operation and maintenance costs. Citing Ohio Adm.Code 4901:1-9-05(A), OCC also contends that the Commission should order FirstEnergy, as well as all other utilities in the state, to conform with FERC accounting standards. OCC agrees with the auditor recommendation that, if the Commission does not issue a policy on capital and expense vegetation management activity, Staff undertake periodic reviews of each of the Companies' vegetation management policies, practices, and accounting activities. As to its additional recommendations, OCC recommends that the Commission should also reduce approximately \$18 million in rate base because of vegetation management expenses that should not have been capitalized. OCC also argues that the Commission should require FirstEnergy to file a report that includes the

total amount of vegetation management costs that were improperly charged to consumers since 2017.

{¶ 47} In response, the Companies reiterate that they agree with or have already implemented most of the audit recommendations but disagree with the vegetation management recommendations. The Companies argue that OCC's proposal for additional Staff oversight of the vegetation management activities would be duplicative because the annual Rider DCR audits will serve the same purpose. The Companies also state that the capitalization of those expenses is consistent with their longstanding accounting policy since 2004, so the policy should not be rejected by the Commission now for consistency with the last base rate case. FirstEnergy opposes OCC's recommendations that the Companies be required to file a report of vegetation management costs since 2017.

{¶ 48} In its reply comments, Staff once again agrees with Blue Ridge that the vegetation management costs not associated with establishing a ROW or expanding a ROW should be expensed rather than capitalized. Staff argues that the height of the vegetation is entirely within the Companies' control, and Companies should not be allowed to manipulate the height to change how an activity is treated for accounting purposes. Staff further states that if the Commission allows FirstEnergy to continue capitalizing its vegetation management costs, it should require FirstEnergy to photograph the tree or limb before removal to verify that it met the conditions for capitalization.

{¶ 49} In its reply, OCC reiterates its support of Blue Ridge's recommendations, while conceding that adoption of the auditor's recommendations, adjustments, and OCC suggested modifications might not necessarily result in refunds to customers in this proceeding because of the annual Rider DCR revenue caps currently in place. OCC contends that FirstEnergy improperly capitalized vegetation management costs, which should be excluded from Rider DCR. OCC explains that by capitalizing these expenses, FirstEnergy is able to charge customers a return on and of the expenses, as though the

expenses were a rate base item, which increases the rates that customers pay.² OCC also continues to argue that Staff should more actively review FirstEnergy's capitalization policies until it conforms to FERC accounting standards, as Ohio Adm.Code 4901:1-09-05 requires FirstEnergy to follow FERC accounting standards. OCC also argues that it would be inappropriate for the Commission to establish alternative accounting rules retroactively and that the Commission should order FirstEnergy and other utilities to conform to FERC accounting standards.

{¶ 50} As an initial matter, the Commission notes that there is unanimous consensus on the validity of 15 out of the 17 recommendations proposed by Blue Ridge. We agree with the parties that these 15 recommendations are reasonable and, thus, should be adopted. The only two recommendations that warrant additional discussion are the recommendations related to the Companies' vegetation management accounting practices.

{¶ 51} Blue Ridge recommends that the Companies include a reconciliation for a number of work orders in a subsequent filing, including the work order that was recovered in Rider EDR, the experimental company-owned LED light program work orders, the two work orders with over-accrued AFUDC and incorrect in-service days, the two work orders in which retirement was charged after November 30, 2018, and the two work orders that had delays of in-service dates resulting in over-accrued AFUDC and overstatement of depreciation expense. As to the work orders had been completed but are still awaiting retirement to be charged, Blue Ridge recommends that once the retirement is recorded, the Companies calculate the impact on depreciation and on the Rider DCR.

{¶ 52} Consistent with our earlier findings, the Commission agrees with the recommendations of Blue Ridge and directs the Companies to make all of the necessary

² OCC clarifies that it does not object to the capitalization of vegetation management expenses for the initial clearing of the ROW because under FERC guidelines, tree-trimming costs associated with the initial clearing of the ROW are authorized capital costs. However, OCC argues that FirstEnergy has broadened its capitalization policy beyond the FERC guidelines by including costs that it claims are an "expansion" of the initial clearing, which are merely the routine maintenance costs that occur on a periodic basis.

changes, including excluding the vegetation management costs associated with activity codes 05, 36, 14, and 30 from Rider DCR, as recommended by Blue Ridge. Finally, as the disputed issues regarding the 2018 Audit Report have been addressed, and no parties have indicated that a hearing would be beneficial in this proceeding, the Commission finds that it is unnecessary to hold a hearing in this matter, as well.

V. CONCLUSION

{¶ 53} Having considered each audit report, the comments filed in each case submitted by FirstEnergy, OCC, OCTA, and Staff, the Commission finds that the recommendations set forth in the 2018 Audit Report and the 2019 Audit Report, and the supplemental recommendations by Staff, are reasonable and should be adopted and that the Companies should fully comply with those recommendations as discussed in this Finding and Order.

VI. ORDER

{¶ 54} It is, therefore,

{¶ 55} ORDERED, That the recommendations of Blue Ridge set forth in the 2018 Audit Report and the 2019 Audit Report, as well as Staff's supplemental recommendations, be adopted, consistent with this Finding and Order. It is, further,

{¶ 56} ORDERED, That FirstEnergy comply with the recommendations set forth in this Finding and Order. It is, further,

{¶ 57} ORDERED, That a copy of this Entry be served upon all parties of record.

COMMISSIONERS:

Approving:

Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

JWS/dr

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in

Case No(s). 18-1542-EL-RDR, 19-1887-EL-RDR

Summary: Finding & Order that the Commission finds that the recommendations proposed by Blue Ridge Consulting Services, Inc., and the supplemental recommendations proposed by Staff, regarding the 2018 and 2019 audit review of the Delivery Capital Recovery Rider should be adopted electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio