

# THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE 2015 REVIEW OF THE  
DELIVERY CAPITAL RECOVERY RIDER  
CONTAINED IN THE TARIFFS OF OHIO  
EDISON COMPANY, THE CLEVELAND  
ELECTRIC ILLUMINATING COMPANY, AND  
THE TOLEDO EDISON COMPANY.

CASE NO. 15-1739-EL-RDR

## FINDING AND ORDER

Entered in the Journal on July 17, 2019

### I. SUMMARY

{¶ 1} In this Finding and Order, the Commission finds that the recommendations proposed by Blue Ridge Consulting Services, Inc., and the supplemental recommendations proposed by Staff, regarding the 2015 audit review of the Delivery Capital Recovery Rider should be adopted.

### II. DISCUSSION

#### A. *Procedural History*

{¶ 2} Ohio Edison Company (Ohio Edison), The Cleveland Electric Illuminating Company (CEI), and The Toledo Edison Company (Toledo Edison) (collectively, FirstEnergy or the Companies) are electric distribution utilities as defined in R.C. 4928.01(A)(6) and public utilities as defined in 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 territory a standard service offer (SSO) of all competitive retail electric services necessary to maintain essential electric services to customers, including a 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 R.C. 4928.143.

{¶ 4} On August 25, 2010, the Commission issued an Opinion and Order in *In re Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, 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 associated with distribution, subtransmission, and general and intangible plant. Additionally, under the terms of the stipulation, FirstEnergy agreed to submit to an annual audit review process of Rider DCR. Thereafter, on July 18, 2012, the Commission issued an Opinion and Order in 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*.

{¶ 5} By Entry issued December 9, 2015, the Commission selected Blue Ridge Consulting Services, Inc. (Blue Ridge) to conduct the 2015 annual audit and investigation of FirstEnergy's Rider DCR pursuant to a request for proposal.

{¶ 6} On December 17, 2015, Ohio Consumer's Counsel (OCC) filed a motion to intervene. On January 4, 2016, the Companies filed a memorandum contra OCC's motion to intervene, to which OCC filed a reply on January 11, 2016.

{¶ 7} On April 22, 2016, Blue Ridge submitted its compliance audit of FirstEnergy's Rider DCR (Audit Report).

{¶ 8} On July 20, 2016, OCC filed a motion to compel, requesting that the Commission direct FirstEnergy to provide documents and information regarding the 2015 audit and investigation conducted by Blue Ridge, which OCC alleges FirstEnergy

unreasonably withheld during the discovery process. In addition, OCC filed a motion for protective order.

{¶ 9} At a prehearing conference held on November 30, 2016, the attorney examiner granted OCC's motion to compel, and denied FirstEnergy's motion for protective order, clarifying that as a non-signatory party, OCC's ample discovery rights begin after the filing of the audit report (Tr. at 20-21, 31). The attorney examiners did not rule on OCC's pending motion to intervene or its motion for protective order.

{¶ 10} Staff, FirstEnergy, and OCC filed initial comments on June 23, 2017.

{¶ 11} FirstEnergy and OCC filed reply comments on July 24, 2017. Staff notified the attorney examiner that it would not be filing reply comments.

#### **B. Summary of Audit Report**

{¶ 12} Blue Ridge's 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 distribution rate case. The 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 Commission to recover delivery-related capital additions to ensure they are excluded from Rider DCR. The purpose of the Audit Report is to identify, quantify, and explain any significant net plant increase within individual accounts. (Audit Report at 10.)

{¶ 13} The scope of the project as defined in the RFP was organized into two main areas. According to Scope Area 1, the auditor was tasked to determine if FirstEnergy implemented its Commission-approved Rider DCR and is in compliance with the stipulation approved in the *ESP II Case*. Scope Area 2, on the other hand, required Blue Ridge to examine the effects of the merger between FirstEnergy and Allegheny Energy to determine whether there are net job losses at FirstEnergy, or with respect to FirstEnergy

Service Company employees who provide support for distribution services provided by the Companies, as a result of involuntary attrition from the merger. (Audit Report at 10.)

{¶ 14} The Audit Report addresses Scope Area 1 first, which includes the overall impact of findings on Rider DCR revenue requirements, processes and controls, variance analysis, Rider LEX, EDR, AMI, and general exclusions, gross plant-in-service, accumulated deferred income taxes (ADIT), depreciation expense, property tax expense, service company, commercial activity tax and income taxes, return, Rider DCR calculation, and projections (Audit Report at 10-19).

{¶ 15} Blue Ridge examined the overall impact of its findings on the Rider DCR revenue requirement and noted that it found several impactful items, including removal of several work orders that should not have been included in Rider DCR and other adjustments found during the detailed transactional work order testing. Considering all recommended adjustments, the cumulative impact to the Rider DCR revenue requirement amounted to a reduction of \$453,761. (Audit Report at 10-11.)

{¶ 16} Next, 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 the controls were adequate and not unreasonable, and that progress toward remediation has been made since the dates of the internal audit reports.

{¶ 17} Blue Ridge also conducted variance analysis of plant-in-service balances for 2015 with 2014. Blue Ridge concluded that FirstEnergy's responses regarding the variances in plant account balances were largely a result of normal work order activity not uncommon among utilities, and thus, were not unreasonable.

{¶ 18} The next section of the Audit Report addresses Riders LEX, EDR, and AMI, in addition to general exclusions. Blue Ridge concluded that, although the Companies had

minor adjustments that were erroneously included or excluded in the Rider DCR, the adjustments are not material. However, the cumulative impact is included in the overall findings and recommendations associated with the Audit Report. (Audit Report at 14.)

{¶ 19} Blue Ridge also reviewed gross plant-in-service for each Company. Blue Ridge's review of gross plant through transactional testing and field inspection of the work order sample uncovered several findings that impact the gross plant included in Rider DCR, including work orders that should have been excluded from the Rider DCR. However, Blue Ridge stated that the Companies have adequate procedures in place to approve work orders, and that all justification provided for all projects analyzed was reasonable. Blue Ridge recommended that the Companies include a reconciliation calculation in the next Rider DCR filing. (Audit Report at 14-15.) Blue Ridge found that 15 projects of the 56 work orders in the sample were 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 review their project planning process to ensure that the methodology allows for projects to be fully scoped prior to execution. (Audit Report at 15-16.) Further, Blue Ridge found that the Companies have made significant progress to reduce the unitization backlog (Audit Report at 17).

{¶ 20} Blue Ridge next reviewed accumulated reserve for depreciation. Blue Ridge found several adjustments that should be made to the reserve balances to ensure that net plant is appropriately reflected in the Rider DCR, which are discussed more thoroughly elsewhere in the Audit Report. (Audit Report at 17.)

{¶ 21} In the next section of the Audit Report, Blue Ridge reviewed ADIT. Blue Ridge stated that the ADIT is not unreasonable, and that the Companies recognized the significant impact of the extension of bonus depreciation on the ADIT balances (Audit Report at 17).

{¶ 22} Regarding depreciation expense, Blue Ridge found that the calculation of depreciation expense is not unreasonable. Blue Ridge noted that the depreciation accrual rates used in the Rider DCR are based on balances as of May 31, 2007, but the Companies updated the depreciation study using plant as of December 31, 2013, and submitted the study to Staff on June 1, 2015, in compliance with their obligations in past Audit Reports. (Audit Report at 18.)

{¶ 23} Blue Ridge reported that several work orders were identified during the transactional testing related to the service company that should be adjusted, which are discussed elsewhere in the Audit Report. However, Blue Ridge noted that other than these adjustments, nothing was found to indicate that service company costs included within Rider DCR are unreasonable. (Audit Report at 18.) Further, Blue Ridge found that commercial activity tax and income taxes, return on rate base, and Rider DCR calculation were all not unreasonable. Although Blue Ridge did state that balances used in the Rider DCR calculations should be adjusted, it found that the Rider DCR calculation is not unreasonable and that Rider DCR revenues are under both the aggregate annual cap and the allocated annual cap by the Companies. (Audit Report at 18-19.)

{¶ 24} Finally, Blue Ridge stated that it examined FirstEnergy's compliance filing projections for the first quarter of 2016 and found that the projected amounts included within the first two months of 2016 are not unreasonable (Audit Report at 19).

{¶ 25} Next, Blue Ridge's Audit Report addressed Scope Area 2, which examines the effects of the merger between FirstEnergy Corp and Allegheny Energy. Blue Ridge states that the Commission agreed not to review the merger because it was an all-stock transition and no change would result in control of the Companies; however, the Commission directed net capital additions for plant-in-service for general plant to be included in the Rider DCR so long as there are no net job losses at the Companies resulting from involuntary attrition as a result of the merger. *ESP II Case*, Opinion and Order (Aug. 25, 2010) at 17, 35. Blue Ridge found that, regarding the period under review, there were

no net job losses at the Companies or with respect to FirstEnergy Service Company employees as a result of involuntary attrition due to the merger. (Audit Report at 20.)

**C. *Audit Report Recommendations and Party Comments***

{¶ 26} Blue Ridge filed its compliance audit of the Rider DCR of the Companies on April 22, 2016. The following are Blue Ridge's recommendations:

- (a) Blue Ridge recommends that the overstatements regarding the Toledo Edison Company account be corrected in future Rider DCR filings (Audit Report at 21, 43-45).
- (b) Blue Ridge recommends that a reconciliation of the Rider DCR revenue requirement be included in the next filing that incorporates the cumulative effect of the corrections needed to be made to the EDR(g) exclusions (Audit Report at 21, 51).
- (c) Blue Ridge recommends that a reconciliation of the Rider DCR revenue requirement be included in the next filing that incorporates the effect on revenues had the additional AMI-related charge been appropriately excluded (Audit Report at 21, 52).
- (d) Blue Ridge recommends that a reconciliation of the Rider DCR requirements be included in the next filing that incorporates the effect on revenues had the December 2014 through February 2015 ATSI Land Lease exclusion value activity been incorporated beginning with the actual plant balances (Audit Report at 21, 54).
- (e) Blue Ridge recommends that a reconciliation calculation be included in the next Rider DCR filing to reflect the cumulative revenue requirement impact regarding the non-jurisdictional work that should have been excluded from Rider DCR (Audit Report at 21, 58).

- (f) Blue Ridge recommends that a reconciliation calculation be included in the next Rider DCR filing to reflect the cumulative revenue requirement impact that results from the inclusion of the pension adjustments that did not have retirements recorded (Audit Report at 21, 59-60).
- (g) Blue Ridge recommends that FirstEnergy move the residual pension asset balances associated with the Federal Energy Regulatory Commission that were residing in unspecified locations as of September 2015 to specified locations (Audit Report at 21, 60).
- (h) Blue Ridge recommends that the Companies review their project planning process on non-IT-related projects to ensure that the methodology allows for projects to be fully scoped prior to execution (Audit Report at 21, 65).
- (i) Blue Ridge recommends that the Companies evaluate the process used to record retirements so that the recording of retirements takes place at or before the plant additions are recorded to plant-in-service to ensure that both the replacement asset and the retired asset are not recording depreciation as the same time (Audit report at 21, 67).
- (j) Blue Ridge recommends that the formulas in the estimated first quarter intangible depreciation expense net calculation be adjusted to ensure that depreciation expense is calculated or not calculated depending on whether the assets are fully amortized (Audit Report at 21, 74).

{¶ 27} Staff filed initial comments on June 23, 2017. In addition to agreeing with recommendations put forth by Blue Ridge in the Audit Report, Staff recommends that Blue Ridge assess the sufficiency of changes made to FirstEnergy's planning process regarding non-IT-related projects in the Companies' 2017 annual compliance audit for Rider DCR. Staff further recommends that the Commission direct the Companies to take



steps to ensure that the recording of retirements takes place at or before plant additions are recorded to plant-in-service.

{¶ 28} FirstEnergy filed initial comments on June 23, 2017. FirstEnergy agrees with the conclusions and recommendations in the Audit Report and requests that the Commission adopt the recommendations, noting that all of which have either already been implemented or were sufficiently addressed by the Companies' Rider DCR 2016 audit compliance report. See *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 16-2041-EL-RDR, Audit Report (May 1, 2017).

{¶ 29} OCC filed initial comments on June 23, 2017. OCC agrees with Blue Ridge's recommendations in the Audit Report that FirstEnergy review the project planning process to ensure that projects are fully scoped prior to execution. However, OCC further recommends that future auditors of FirstEnergy be instructed to review efforts to reduce cost overruns related to project management. OCC further recommends that the Companies provide the auditor with all projects over one million dollars that exceeded their scoped budget by 15 percent, and for projects which are 30 percent over the scoped budget, that the Commission determine that such cost overruns will amount to a rebuttable presumption of imprudence. OCC also noted two accounting discrepancies in the Audit Report that it believes should be addressed in future audits. Specifically, OCC alleges that the Companies' accounting of asset retirement obligations may have caused customers to overpay under Rider DCR, and that the Companies' accounting of accumulated deferred income taxes may have adversely affected the costs charged to customers. OCC also states that the Rider DCR has effectively shifted the financial risk of investments from shareholders to ratepayers.

{¶ 30} The Companies filed reply comments on July 24, 2017. The Companies state that OCC's comments regarding audit recommendations on project planning are misguided and unwarranted, as not all relevant circumstances pertaining to the audit recommendation for the Companies regarding their non-IT planning process were

acknowledged by OCC. Further, FirstEnergy contends that OCC also fails to recognize the stipulation between Staff and the Companies from the 2014 Rider DCR review, which required that FirstEnergy conduct an internal audit pursuant to Staff's input on the audit scope by December 31, 2015, as verified by Blue Ridge (Audit Report at 28). See also *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1929-EL-RDR, Finding and Order (Apr. 10, 2019) at 3. The Companies also aver that OCC referenced the wrong year when making its recommendation. Regarding OCC's recommendations requiring the Companies to provide the auditor with all projects over one million dollars that exceed the scoped budget by 15 percent, the Companies state that the auditor is already provided the entire universe of work orders in an electronic spreadsheet. In response to OCC's recommendation that all projects exceeding the scoped budget by 30 percent be presumed imprudent, the Companies state that the 30 percent threshold is an arbitrary standard, and that actual costs exceeding budgeted costs alone can't be indicative of imprudence. Moreover, FirstEnergy points to the Commission approved revenue caps as a check on the Companies' spending. Further, the Companies state that the Rider DCR does not shift the financial risk of investments to ratepayers, noting that the focus of the audit on the Companies' incremental investments over the prior year allows for a larger degree of scrutiny and granular review compared to a traditional rate case. According to FirstEnergy, the experience of the auditor over several years of conducting these audits also promotes more precise and thorough investigations than would otherwise occur. Similarly, FirstEnergy notes that while some variances have occurred for individual projects, the Companies' 2015 overall capital spending came in under budget.

{¶ 31} Finally, the Companies aver that the accounting errors OCC claimed it found in the Audit Report are unclear and without sufficient basis. Regarding OCC's assertion that the Companies' treatment of asset retirement obligations is inconsistent with the 2007 base rate case, the Companies state that OCC has improperly combined two separate and distinct accounts: asset retirement obligations and asset removal costs. The Companies

state that the asset retirement obligations were not part of the base rates in the last base distribution rate case and are not currently reflected in Rider DCR, but asset removal costs were included in the last base distribution rate case and are largely reflected incrementally in Rider DCR. According to the Companies, it's unclear which account OCC is referring to, but that in any case, the exclusion of these accounts from Rider DCR is appropriate, as they are outside the scope authorized by the Commission. The Companies refute OCC's claim that the Companies' treatment in Rider DCR of the regulatory assets and liabilities associated with customer receivables for future income tax is inappropriate on several grounds. The Companies first state that, because the Commission specifically listed what is to be included in Rider DCR (plant in service, accumulated reserve for depreciation, and ADIT associated with plant in service), other rate base items have been excluded. Thus, the Companies argue, customer receivables for future income taxes are outside the scope of Rider DCR. Second, the Companies aver that OCC is misguided when it states that customer receivables for future income taxes is related to Rider DCR, because changes in the remaining balances of these accounts occur independent of the level of incremental investments made by the Companies since the last base distribution rate case.

{¶ 32} OCC filed reply comments on July 24, 2017. OCC states that Staff's recommendations that FirstEnergy review its planning process for non-IT related projects and report on the sufficiency of the changes stop short of protecting consumers from paying potentially unreasonable project costs. OCC then reasserted its recommendations contained in its initial comments as added protections for consumers.

#### ***D. Commission Conclusion***

##### **1. PROCEDURAL ISSUES**

{¶ 33} As noted above, OCC filed a motion to intervene in this proceeding on December 17, 2015. In its memorandum of support, OCC asserts that Ohio's residential customers may be adversely affected by this case, as it involves an investigation into the appropriateness of costs submitted by the Companies.

{¶ 34} On January 4, 2016, the Companies filed a memorandum contra OCC's motion to intervene, alleging that OCC lacks a real or substantial interest in the audit review process, and also lacks a legal position on which to advance. On January 11, 2016, OCC filed a response in which it claims that not only has OCC requested and been granted intervention in prior Rider DCR review cases, it has also intervened and participated in similar distribution-related rider proceedings for other Ohio utilities. Moreover, OCC notes that FirstEnergy has never opposed OCC's intervention in past Rider DCR review cases.

{¶ 35} The Commission finds that OCC's motion to intervene is reasonable and should be granted. As the attorney examiners noted during the prehearing conference held on November 30, 2016, consistent with our Opinion and Order in the *ESP II Case*, OCC's involvement as a non-signatory party will have the opportunity to fully participate in any Commission proceeding after the filing of the audit report (Tr. at 21). While FirstEnergy is correct that OCC has the full opportunity to review the audit results, as it did in this case, the Companies have not cited to any precedent precluding OCC, or any other party for that matter, from requesting intervention before an audit report has been filed. Contrarily, OCC has been granted intervention in numerous Rider DCR and related reviews pending before this Commission, including the 2013 review of FirstEnergy's Rider DCR where OCC requested intervention before the final audit report was filed. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 13-2100-EL-RDR, Finding and Order (July 13, 2016) at ¶ 7. We also note, as the audit report has already been filed and parties have taken the opportunity to file their responsive comments, many of FirstEnergy's arguments regarding the timing of OCC's intervention request are now moot.

{¶ 36} Next, OCC filed its motion for protective order on July 20, 2016, asserting that the discovery responses attached to its motion to compel, specifically in regard to Attachment 2, contain information FirstEnergy alleges is confidential and/or trade secret.

However, OCC notes that it does not concede that the information constitutes trade secrets, pursuant to R.C. 1333.61, or is confidential. No memoranda contra OCC's motion for protective order were filed. While OCC reserved the right to later contest the confidentiality of the information contained in the discovery responses, to date, it has elected not to do so.

{¶ 37} R.C. 4905.07 provides that all facts and information in the possession of the Commission shall be public, except as provided in R.C. 149.43 and as consistent with the purposes of R.C. Title 49. R.C. 149.43 specifies that the term "public records" excludes information that, under state or federal law, may not be released. The Supreme Court of Ohio has clarified that the "state or federal law" exemption is intended to cover trade secrets. *State ex rel. Besser v. Ohio State*, 89 Ohio St. 3d 396, 399, 732 N.E.2d 373 (2000).

{¶ 38} Ohio Adm.Code 4901-1-24 allows the Commission to issue an order to protect the confidentiality of information contained in a filed document, "\*\*\* to the extent that state or federal law prohibits release of the information, including where the information is deemed . . . to constitute a trade secret under Ohio law, and where non-disclosure of the information is not inconsistent with the purposes of R.C. Title 49 \*\*\*."

{¶ 39} R.C. 1333.61(D) defines a trade secret as "information . . . that satisfies both of the following: (1) It derives independent economic value, actual or potential, from not being generally known to, and not being readily ascertainable by proper means by, other persons who can obtain economic value from its disclosure or use. (2) It is the subject of efforts that are reasonable under the circumstances to maintain its secrecy."

{¶ 40} The Commission has reviewed the information included in OCC's motion for protective order, as well as the assertions set forth in the supportive memorandum. Applying the requirements that the information have independent economic value and be the subject of reasonable efforts to maintain its secrecy pursuant to R.C. 1333.61(D), as well as the six-factor test set forth by the Supreme Court of Ohio in *State ex rel. the Plain Dealer v.*

*Ohio Dept. of Ins.*, 80 Ohio St.3d 513, 524-525, 687 N.E.2d 661 (1997), the Commission finds that the information filed by OCC on July 20, 2016, contains trade secret information. Its release is, therefore, prohibited under state law. The Commission also finds that nondisclosure of this information is not inconsistent with the purposes of Title 49 of the Revised Code. Accordingly, the Commission finds that OCC's motion for protective order is reasonable with regard to Attachment 2 of OCC's motion to compel, as filed on July 20, 2016, and should be granted.

{¶ 41} Ohio Adm.Code 4901-1-24(F) provides that protective orders expire after 24 months. Therefore, confidential treatment shall be afforded to confidential information filed by OCC on July 20, 2016, for a period ending 24 months from the issuance of this Finding and Order, or until July 17, 2021. Until that date, the docketing division should maintain, under seal, information filed under seal by OCC on July 20, 2016.

{¶ 42} Ohio Adm.Code 4901-1-24(F) requires a party wishing to extend a protective order to file an appropriate motion at least 45 days in advance of the expiration date. If OCC wishes to extend this confidential treatment, it should file an appropriate motion at least 45 days in advance of the expiration date. If no such motion to extend confidential treatment is filed, the Commission may release this information without prior notice to OCC.

## 2. AUDIT REPORT

{¶ 43} Based on our review of the comments filed in this case, the Commission finds that the recommendations submitted by Blue Ridge, as supplemented by Staff's additional recommendations to the extent they have not already been implemented as reflected in subsequent compliance audits,<sup>1</sup> should be adopted and that OCC's recommendations and alleged accounting discrepancies by FirstEnergy should be rejected.

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<sup>1</sup> See *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 17-2009-EL-RDR, Audit Report (May 11, 2018); *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 18-1542-EL-RDR, Audit Report (Apr. 30, 2019).

We note that OCC's recommendation pertaining to all projects over one million dollars exceeding the scoped budget by 15 percent being subject to the auditor's review is unnecessary in that all work orders are already subject to review by the auditor. Any threshold that triggers review by the auditor is a redundant check on work orders already accessible to the auditor. Further, OCC's recommendation that all projects which are 30 percent over the scoped budget being labeled presumptively imprudent affixes an arbitrary threshold, and only looks at cost as the sole factor determining whether the Companies were imprudent. Any determination that costs included in a rider are unreasonable are to be made in light of facts and circumstances known at the time such costs were committed, and should not rely on cost overrun as a sole determining factor. See *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (*ESP IV Case*), Opinion and Order (Mar. 31, 2016) at 20. Additionally, we conclude that the Rider DCR does not shift financial burden to the ratepayers, as the Companies carry the burden of proof to demonstrate that the amounts sought for recovery under Rider DCR are not unreasonable in each annual audit pursuant to R.C. 4928.148(C). Regarding OCC's two claims of accounting discrepancies, we agree with FirstEnergy's assertion that the issues raised by OCC lie outside the scope of Rider DCR, as the Commission has listed the specific base rate items to be included in Rider DCR. *ESP II Case*, Opinion and Order (Aug. 25, 2010) at 11-14. Accordingly, arguments pertaining to the inclusion and subsequent review of items beyond those already permissibly recovered through Rider DCR were more appropriate to raise in the cases where we approved Rider DCR, such as FirstEnergy's referenced ESP cases, than in this proceeding. Thus, we agree there is no need for a future auditor to address whether they should be included. Finally, as the disputed issues regarding the 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.

{¶ 44} Accordingly, the Commission finds that the recommendations by Blue Ridge, and supplemental recommendations by Staff, consistent with this Finding and Order, are reasonable and should be adopted.

### III. ORDER

{¶ 45} It is, therefore,

{¶ 46} ORDERED, That OCC's motion to intervene be granted. It is, further,

{¶ 47} ORDERED, That OCC's motion for protective order be granted, in accordance with Paragraphs 36-42. It is, further,

{¶ 48} ORDERED, That the recommendations of Blue Ridge and supplemental recommendations of Staff be adopted, consistent with this Finding and Order. It is, further,

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

{¶ 50} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

*Approving:*

Sam Randazzo, Chairman  
M. Beth Trombold  
Lawrence K. Friedeman  
Daniel R. Conway  
Dennis P. Deters

MJA/TMS/mef



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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 2015 audit review of the Delivery Capital Recovery Rider should be adopted. electronically filed by Docketing Staff on behalf of Docketing