THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE 2016 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. 16-2041-EL-RDR**
IN THE MATTER OF THE 2017 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. 17-2009-EL-RDR**

FINDING AND ORDER

Entered in the Journal on June 16, 2021

I. SUMMARY

{¶ 1} The Commission finds that the recommendations proposed by Blue Ridge Consulting Services, Inc., as well as the supplemental recommendations proposed by Staff, regarding the 2016 and 2017 audit review of the Delivery Capital Recovery Rider should be adopted to the extent set forth in this Finding and Order.

II. 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 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 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 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 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 *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.

III. 2016 AUDIT REVIEW

A. Procedural History

{¶ 5} By Entry issued December 7, 2016, in Case No. 16-2041-EL-RDR, the Commission chose Blue Ridge Consulting Services, Inc. (Blue Ridge), to conduct the 2016 audit review of Rider DCR in accordance with the Commission's orders in the SSO proceedings.

{¶ 6} On May 1, 2017, Blue Ridge filed a report on its audit review of Rider DCR (2016 Audit Report). The 2016 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 2016 Audit Report also identified capital additions recovered through the Line Extension Recovery Rider (Rider LEX), Economic Development Rider (Rider EDR), 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 report is to identify, quantify, and explain any significant net plant increase within individual accounts. (2016 Audit Report at 6-8.)

{¶ 7} Thereafter, on May 24, 2017, the attorney examiner established a comment period regarding the 2016 Audit Report, requiring comments and reply comments to be filed by July 7, 2017, and August 7, 2017, respectively.

{¶ 8} On June 13, 2017, the Ohio Consumers' Counsel (OCC) filed a motion to intervene in Case No. 16-2041-EL-RDR. In its memorandum in 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. No memoranda contra OCC's motion to intervene were filed. The Commission finds that the motion to intervene is reasonable and should be granted.

{¶ 9} On July 7, 2017, initial comments were filed by Staff, the Companies, and OCC. OCC and the Companies elected to file reply comments on August 7, 2017. Staff filed correspondence indicating that it would not be filing reply comments.

B. Summary of the 2016 Audit Report

{¶ 10} The scope of the audit as defined in the RFP included an overview of the Companies' processes and controls policies and procedures that affect the categories that feed into the Rider DCR calculations, including a variance analysis to review the significant changes in net plant by individual Federal Energy Regulatory Commission (FERC) account. Specifically, 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 III Case*, as extended with modifications in the *ESP IV Case*. (2016 Audit Report at 8.)

{¶ 11} The 2016 Audit Report addresses 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 (2016 Audit Report at 10-19). 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 an increase of $222,965. (2016 Audit Report at 8-9.)

{¶ 12} 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. Blue Ridge also conducted variance analysis of plant-in-service balances for 2016 with 2015. 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. (2016 Audit Report at 9-11.)

{¶ 13} 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 justifications provided for the projects analyzed were reasonable. Blue Ridge recommended that the Companies include a reconciliation calculation in the next Rider DCR filing. (2016 Audit Report at 12-14.) Blue Ridge found that the Companies have experienced a significant increase in the unitization backlog from the prior 2015 audit. While Blue Ridge noted that most of the work orders would individually not be material to the accumulated reserve for depreciation, on an aggregate basis, the work orders in the backlog totaled over $62 million, which is considered significant. As a result, Blue Ridge recommends that the Companies make a concerted effort to reduce the volume of backlog work orders in both quantity and dollar value. (2016 Audit Report at 14-15.)

C. Summary of 2016 Audit Report Recommendations

{¶ 14} As noted above, Blue Ridge filed its compliance audit of the Rider DCR of the Companies on May 1, 2017. The following are Blue Ridge's recommendations:

(a) That the Companies include a reconciliation in the Rider DCR revenue requirement in a future filing that incorporates the effect on revenues had the correct Rider EDR(g) balances been incorporated in prior Rider DCR filings, beginning with actual September 30, 2012, and ending with actual August 31, 2016, gross plant and reserve balances (2016 Audit Report at 44).

(b) That the amount of the advanced metering infrastructure work order included in Rider DCR for 2016 be included in the reconciliation calculation in a future Rider DCR filing (2016 Audit Report at 44, 50).

(c) That a reconciliation be included in the Rider DCR revenue requirements in a future filing that incorporates the effect on revenues had the correct, updated American Transmission Systems, Inc. (ATSI) balances been incorporated beginning with the actual February 29, 2016, plant balances (2016 Audit Report at 47).

(d) Due to a lack of detail associated with a single line adjustment of approximately $669,638 related to retirements of unspecified assets, that the Companies determine the impact of the retirements on the depreciation reserve, and specifically on the over accrual of depreciation, relative to the CEI work order HE123, and adjust the subsequent DCR filing accordingly (2016 Audit Report at 52).

(e) Due to the inability to determine the nature of certain retired assets or whether those retirements were timely recorded, that the Companies determine the impact of the retirements on the depreciation reserve, and specifically the over accrual of depreciation, relative to the Toledo Edison work order JC607, and adjust the subsequent Rider DCR filing accordingly (2016 Audit Report at 52).

(f) That the Companies consider how they review the conditions of infrastructure during the budget cycle to ensure, wherever possible, emergent projects are budgeted and, therefore, part of the approved capital budget (2016 Audit Report at 52-53).

(g) That the Companies review their project planning process to ensure that the methodology allows for non-IT projects to be fully scoped prior to execution, consistent with Blue Ridge's recommendations in the Companies' 2015 audit report for Rider DCR (2016 Audit Report at 57). Blue Ridge further suggests that the Companies initiate an internal audit of the non-IT-related budget process as described in their response to the 2015 audit report. (2016 Audit Report at 57.)

(h) That the Companies include a reconciliation in the Rider DCR revenue requirement in a future filing that incorporates the effect on revenues had the overstatement of allowance for funds used during construction (AFUDC) on FES work order SC-000002-1 not occurred (2016 Audit Report at 59).

(i) That the Companies include a reconciliation in the Rider DCR revenue requirement in a future filing that incorporates the effect on revenues had the overstatement of AFUDC on Ohio Edison work order OE-700402 not occurred (2016 Audit Report at 59-60).

(j) That the Companies place additional emphasis on completing projects timely when they have direct control of the projects and can mitigate delays (2016 Audit Report at 61).

(k) That the Companies make a concerted effort to reduce the volume of backlog work orders both in quantity and dollar value (2016 Audit Report at 64).

(l) Any insurance recovery reduce plant in service and be recognized in a future Rider DCR filing (2016 Audit Report at 64).

(m) That the Companies include a reconciliation in the Rider DCR revenue requirement in a future filing that incorporates the effect on revenues had depreciation expense not been calculated on the FAS109 land assets since the July 1, 2016 Rider DCR filing (2016 Audit Report at 69).

(n) That the Companies include a reconciliation in the Rider DCR revenue requirement in a future filing that incorporates the effect on revenues had the correct Ohio Edison personal property tax rate been used in the September 30, 2016, and December 30, 2016, Rider DCR compliance filings (2016 Audit Report at 70).

(o) That FirstEnergy review the Toledo Edison real property tax rate in next year's audit to verify a decline based on Toledo Edison no longer paying property taxes on assets removed in plant in service (2016 Audit Report at 71).

(p) That the Companies include a reconciliation in the Rider DCR revenue requirement in a future filing that incorporates the effect on revenues had the correct effective income tax rate been used in the Toledo Edison calculation (2016 Audit Report at 74).

D. Discussion

{¶ 15} In their initial comments, the Companies state the 2016 Audit Report accurately documents Blue Ridge's analysis of the data provided by the Companies and explains its conclusions and recommendations. Accordingly, FirstEnergy agrees with the recommendations made in the 2016 Audit Report and requests that the Commission adopt Blue Ridge's recommendations in their entirety.

{¶ 16} Staff agrees with the recommendations made by Blue Ridge, noting several of them are simply quantitative adjustments whose cumulative impact should be reflected in the Rider DCR revenue requirement, but requests that the Commission adopt Staff's additional recommendations that go beyond those contained in the 2016 Audit Report, specifically in regard to the recommendations discussed above in Paragraph 8(f), (g), (j), (k) and (o). For instance, Staff agrees with Blue Ridge's recommendations that the Companies consider how they conduct reviews on the condition of infrastructure during the budget cycle and review their planning process to improve the methodology for fully scoping non-IT projects prior to their execution, but suggests that the Commission also direct FirstEnergy to undertake both reviews and report on their findings, as well as direct the auditor to conduct an evaluation of the success of FirstEnergy's efforts toward these issues and make specific corrective recommendations in the next audit. Staff also suggests the Commission direct the auditor in the next Rider DCR audit to review FirstEnergy's progress toward reducing the delayed in-service placement discussed in Paragraph 8(j) to one which is not statistically significant. Similar to its recommendations from previous years' audits, Staff also suggests that, in addition to adopting Blue Ridge's recommendation in Paragraph 8(k), FirstEnergy maintain the level of backlog work orders to the levels FirstEnergy achieved in 2013, while acknowledging that Staff does not view this to be a sustained issue with the Companies given their progress to reduce backlogged work orders in prior years. Finally, in response to Blue Ridge's recommendation set forth in Paragraph 8(o), Staff recommends that FirstEnergy review Toledo Edison's real property tax rate to verify the rate's decline and provide Staff its findings and supporting documentation.

{¶ 17} In its initial comments, OCC agrees with Blue Ridge's recommendations in the 2016 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 disclose all work orders 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. Additionally, OCC takes issue with the number and nature of the emergent projects, alleging that the fact these projects should have been considered typical ongoing capital projects raises concerns about FirstEnergy's planning process. Similar to its recommendations to reduce cost overruns, OCC suggests that the Companies be required to disclose all work orders over $500,000 that are designated emergent projects to allow the future auditor to determine whether these projects were properly scoped and recommends the same rebuttable presumption of imprudence related to those emergent projects exceeding one million dollars.

{¶ 18} OCC also noted two ongoing accounting discrepancies that it raised in its comments for the 2015 Rider DCR audit that were not addressed before the 2016 Audit

Report had been filed. 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.

{¶ 19} In their reply comments, 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. Additionally, the Companies note that the prudency threshold proposed by OCC for cost overruns and emergent projects is an arbitrary one, adding that actual costs exceeding budgeted costs alone cannot be indicative of imprudence. Further, FirstEnergy contends OCC's suggestion for the Companies to provide certain work orders in future audits is unnecessary, as the auditor is provided the entirety of all work orders in an electronic spreadsheet. Finally, the Companies aver that the accounting errors OCC claimed it found in the 2016 Audit Report are unclear and without sufficient basis.

{¶ 20} 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,[1] should be adopted and that OCC's recommendations and alleged accounting discrepancies by FirstEnergy should be rejected. OCC's comments and concerns appear to be largely repetitive of those raised in the 2015 Rider DCR audit, which the Commission thoroughly considered and rejected. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 15-1739-EL-RDR, Finding and Order (July

---

1 See *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); *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 19-1887-EL-RDR, Audit Report (June 12, 2020).

17, 2019) at ¶ 43. Thus, we will not take the time reiterate our findings and conclusions from that proceeding. However, we will again note that Rider DCR does not shift the 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). Finally, as the disputed issues regarding the 2016 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. 2017 AUDIT REVIEW

A. Procedural History

{¶ 21} On November 3, 2017, OCC filed a motion to intervene in Case No. 17-2009-EL-RDR. In its memorandum in 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. No memoranda contra OCC's motion to intervene were filed. The Commission finds that the motion to intervene is reasonable and should be granted.

{¶ 22} By Entry issued December 6, 2017, in Case No. 17-2009-EL-RDR, the Commission chose Blue Ridge to conduct the 2017 audit review of Rider DCR in accordance with the Commission's orders in the SSO proceedings.

{¶ 23} On May 11, 2018, Blue Ridge filed a report on its audit review of Rider DCR (2017 Audit Report). The 2017 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 2017 Audit Report also identified capital additions recovered through 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 report is to identify, quantify, and explain any significant net plant increase within individual accounts. (2017 Audit Report at 7-9.)

{¶ 24} Thereafter, on April 5, 2019, the attorney examiner established a comment period regarding the 2017 Audit Report, requiring comments and reply comments to be filed by May 10, 2019, and June 10, 2019, respectively.

{¶ 25} On May 10, 2019, initial comments were filed by Staff, the Companies, OCC. Staff, OCC, and the Companies elected to file reply comments on June 10, 2019.

B. Summary of 2017 Audit Report

{¶ 26} The scope of the audit as defined in the RFP included an overview of the Companies' processes and controls policies and procedures that affect the categories that feed into the Rider DCR calculations, including a variance analysis to review the significant changes in net plant by individual FERC account. Specifically, 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 III Case*, as extended with modifications in the *ESP IV Case*. (2017 Audit Report at 9.)

{¶ 27} The 2017 Audit Report addresses 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, ADIT, depreciation expense, property tax expense, service company, commercial activity tax and income taxes, return, Rider DCR calculation, and projections (2017 Audit Report at 9-21). 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 $54,887,940. (Audit Report at 8-9.)

{¶ 28} 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. Of the work orders that should have been excluded from Rider DCR, Blue Ridge recommends a reduction of the Rider DCR revenue requirement of $3,678,742. Additionally, absent a Commission policy determination, Blue Ridge recommends that Staff undertake a periodic audit of the Companies' vegetation management activities. (2017 Audit Report at 10.)

{¶ 29} 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. Despite making progress to reduce the unitization backlog, Blue Ridge noted that the Companies still had backlogs well above the amounts noted in the 2015 review of Rider DCR. Blue Ridge recommends that the Companies make a concerted effort to reduce the volume of backlog work orders both in quantity and dollar value. (2017 Audit Report at 17.)

{¶ 30} Blue Ridge also reviewed gross plant-in-service for the Companies. 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 justifications provided for the projects analyzed were reasonable. Blue Ridge recommended that the Companies include a reconciliation calculation in the next Rider DCR filing. (2016 Audit Report at 12-14.) Blue Ridge found that the Companies have experienced a significant increase in the unitization backlog from the prior 2015 audit. While Blue Ridge noted that most of the work orders would individually not be material to the accumulated reserve for depreciation, on an aggregate basis, the work orders in the backlog totaled over $62 million, which is considered significant. As a result, Blue Ridge recommends that the Companies make a concerted effort to reduce the volume of backlog work orders in both quantity and dollar value. (2016 Audit Report at 14-15.)

{¶ 31} Blue Ridge also reviewed the Tax Cuts and Jobs Act (TCJA) effect on Rider DCR and found that there is a lack of clarity surrounding the treatment of excess ADIT, including whether the Companies intended to set up a regulatory liability, if such a regulatory liability will be reflected as an offset to rate base, and the timing and rate at which the excess ADIT would be returned to customers. Blue Ridge recommends that such a regulatory liability be established to reflect a refund of the excess ADIT to ratepayers due to the future tax obligation being reduced by the federal government. Overall, Blue Ridge's recommendations related to the TCJA amount to a reduction of the Rider DCR revenue requirement of $54,887,940. (Audit Report at 20.)

C. Summary of 2017 Audit Report Recommendations

{¶ 32} As noted above, Blue Ridge filed its compliance audit of the Rider DCR of the Companies on May 11, 2018. The following are Blue Ridge's recommendations:

(a) To address Blue Ridge's concerns regarding the Companies' planning process raised in the 2016 Audit Report, the Companies completed an internal audit with an objective to confirm that project management methodology and process design allows for projects to be fully scoped and resulted in several recommendations that are expected to be complete by June 2018. Blue Ridge recommends that, during next year's Rider DCR audit, the auditor reviews whether the recommendations presented in the Distribution Portfolio and Planning Process were implemented. (2017 Audit Report at 42.)

(b) That all FirstEnergy affiliated companies that benefit from fleet services, not just the Companies, should be allocated the costs of fleet services since it is a shared services organization (2017 Audit Report at 42).

(c) Given the recommendations of internal auditors to design and implement an invoice review process for less significant storms after conducting an internal audit of the Companies' major storm back office review process, Blue Ridge recommends that this process, once implemented, should be reviewed as part of future Rider DCR audits (2017 Audit Report at 42.)

(d) That the Companies review their unitization process for work orders to determine whether additional controls can be implemented to ensure more accurate recording in regard to plant additions, retirements, adjustments, and transfers (2017 Audit Report at 46).

(e) As acknowledged by the Companies, that a future filing includes a reconciliation in the Rider DCR revenue requirement that incorporates the effect on $58,187 being included in FERC account 366, rather than appropriately included in FERC account 367 (2017 Audit Report at 51).

(f) After noting a significant difference between the incremental change in AMI plant in 2017 and the incremental change in Rider AMI costs excluded through Rider DCR through November 30, 2017, that the Companies provide a reconciliation to document that there is no double recovery of AMI (2017 Audit Report at 53).

(g) As acknowledged by the Companies, that the next filing includes a reconciliation in the Rider DCR revenue requirement that incorporates the effect on revenues had costs associated with the Experimental Company Owned LED Lighting Program been properly excluded in the 2016 quarterly Rider DCR compliance filings (2017 Audit Report at 55).

(h) That future Rider DCR filings specifically review any distribution plant-related costs recovered through the Government Directives Recovery rider and the Experimental Company Owned LED Lighting Program to ensure that these costs are excluded from Rider DCR (2017 Audit Report at 55).

(i) As acknowledged by the Companies, that a reconciliation calculation be included in a future Rider DCR filing to reflect the cumulative revenue requirement impact of removing the $1,192,607 related to the Toledo Edison Plaza Tenant Improvement project (2017 Audit Report at 61).

(j) That the Companies' policy Accounting for the Clearing of Transmission and Distribution Corridors be better defined, given the broad discretion the policy affords the Companies to remove vegetation outside the corridor for any reason and treat it as a capital cost. Further, Blue Ridge recommends that FirstEnergy revise its vegetation management policy to be consistent with FERC 365[2] and FERC 593[3] regarding what vegetation management costs should be capitalized versus treated as maintenance expenses. Finally, Blue Ridge recommends that three vegetation management work orders discovered in the sample taken be excluded from Rider DCR. (2017 Audit Report at 62-65.)

(k) As acknowledged by the Companies, that all necessary adjustments to the Rider DCR revenue requirement associated with improper ATSI expenditures being

---

2 FERC 365 permits utilities to capitalize various costs related to the installation of overhead conductors and other devices used for distribution purposes, including the initial cost of tree trimming.

3 FERC 593 includes the cost of labor, materials used and expenses incurred in the maintenance of overhead distribution line facilities, including trimming trees, clearing brush, and chemical treatment of right of way area when occurring subsequent to construction of the line.

recovered through Rider DCR be reflected in the reconciliation included in the next Rider DCR filing (2017 Audit Report at 65-66).

(l) As acknowledged by the Companies, that a reconciliation be included in a future Rider DCR filing to reflect the cumulative revenue requirement impact had certain assert retirements not been delayed (2017 Audit Report at 71-72).

(m) That certain adjustments be made to remove excess AFUDC costs through a reconciliation in the Rider DCR revenue requirement in a future filing (2017 Audit Report at 76).

(n) That a reconciliation be included in the next Rider DCR that incorporates the effect on Rider DCR revenue requirements had the depreciation expense for FERC account 390.3 been calculated on net plant in service, rather than gross plant in service (2017 Audit Report at 87).

(o) Although making progress in reducing the unitization backlog, that the Companies continue to make a concerted effort to reduce the volume of backlog work orders in both quantity and dollar value (2017 Audit Report at 79-80).

(p) As acknowledged by the Companies, that any impacts associated with bonus depreciation resulting from the federal income tax reform will be reconciled in the Companies' next Rider DCR filing (2017 Audit Report at 96).

(q) Regarding the TCJA, that the amount by which the ADIT balance is revalued is also the amount by which the Companies must set up a regulatory liability to refund the excess deferred taxes to ratepayers, or, in the alternative, demonstrate that it has been reflected in another filing. Further, Blue Ridge suggests that the Companies apply the average rate assumption method to update the regulatory liability. Finally, Blue Ridge recommends reconciliation of the Companies' reported annual TCJA savings reflected in all riders. (2017 Audit Report at 97-98.)

D. Discussion

{¶ 33} In their initial comments, the Companies state the 2017 Audit Report accurately documents Blue Ridge's analysis of the data provided by the Companies and explains its conclusions and recommendations. For the majority of the recommendations, FirstEnergy states it either has no objection or that the recommendation has been addressed in another proceeding.[4] The sole remaining recommendation FirstEnergy disputes is that contained in Paragraph 20(j), in which Blue Ridge suggests certain modifications to FirstEnergy's accounting policy with regard to its vegetation management practices. Initially, the Companies contend that the existing accounting policy provides sufficient detail for initial clearing activities that qualify for capitalization. Further, and as acknowledged by Blue Ridge, FirstEnergy asserts the policy was developed in collaboration with external auditors and 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 confirms to Generally Accepted Accounting Principles and has been in place since 2004, predating the Companies' last base rate case and the existence of Rider DCR. The Companies note that the Commission has previously found that the Rider DCR rate base should remain consistent with the establishment of rate base during the Companies' last base rate case. See *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 11-5428-EL-RDR (*2011 DCR Review*), Finding and Order (Aug. 22, 2012). 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

---

4 For instance, FirstEnergy alleges that Blue Ridge's recommendation set forth in Paragraph 20(q) regarding excess ADIT was addressed in the Companies' stipulation filed in Case No. 18-1604-EL-UNC.

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, Opinion and Order (Apr. 13, 1995). Accordingly, FirstEnergy agrees with the recommendations made in the 2017 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.

{¶ 34} In its initial comments, Staff notes that it compared the results of the compliance review conducted in Case No. 18-1542-EL-RDR with the recommendations proposed in the 2017 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 is supports Blue Ridge's recommendation regarding the accounting treatment of these expenses.

{¶ 35} OCC notes that, while the stipulation filed in Case No. 18-1604-EL-UNC will resolve some of the tax issues related to Rider DCR, the Commission should still adopt Blue Ridge's recommendations related to the TCJA until all excess ADIT is returned to customers to protect customers from being improperly overcharged. OCC also supports the recommendations of Blue Ridge related to the vegetation management costs of FirstEnergy, adding that all such costs that were inappropriately included in Rider DCR during the audit period should be removed, not just those identified in the sampled work orders noted by Blue Ridge. As such, OCC requests that the Commission require an audit of all work orders involving tree-trimming costs included in Rider DCR to determine the full impact of capitalized costs that should have been recorded as maintenance expenses.[5] Finally, OCC

---

5 It is not clear from the comments on whether OCC is proposing that the Commission direct an audit of all tree-trimming related work orders to be performed over the 2017 audit period or simply that the auditors in future Rider DCR audits conduct such a review, or both.

again suggests additional recommendations related to FirstEnergy's capital budgeting process, as raised in its comments in response to the 2016 Audit Report.

{¶ 36} In response, the Companies first note that Blue Ridge's TCJA-related recommendations, and OCC's support thereof, are unnecessary given the comprehensive approach the Companies took when drafting the stipulation filed in Case No. 18-1604-EL-UNC. According to FirstEnergy, the stipulation explicitly addresses the impact of the TCJA on Rider DCR and there is no basis to allege that customers are being overcharged due to the improper treatment of the excess ADIT. Additionally, the Companies note that, because these types of vegetation management costs were being capitalized at the time of the Companies' last base rate case, there were not included as maintenance expenses in the Companies' current base distribution rates, as implied by OCC. Consistent with prior Commission precedent, FirstEnergy asserts that it is appropriate to continue to include these capitalized costs in the Rider DCR rate base. Regardless, the Companies also reiterate that the Commission is authorized to implement whatever system of accounting it deems appropriate. Finally, the Companies argue its capital budgeting process is not unreasonable and OCC's additional recommendations should be rejected.

{¶ 37} 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. While recognizing that the initial right of way clearing could still be capitalized, including the expansion thereof, Staff asserts all subsequent right of way clearing costs should be expensed as maintenance activity, consistent with FERC USoA guidance. OCC also supports the alignment of FirstEnergy's vegetation management practices with FERC's guidelines and reiterates its suggestion for a review of all tree-trimming work orders during the audit period to ensure there is no double recovery of these costs, in addition to the $3,678,742 identified by Blue Ridge during its review.

{¶ 38} 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 and the TCJA.

{¶ 39} While the comments submitted in this proceeding were made when the stipulation in Case No. 18-1604-EL-UNC was pending before the Commission, we subsequently approved the stipulation to resolve a number of proceedings before us. *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. In fact, OCC noted that the allocation of the rate reduction in refunds related to the excess ADIT being returned to residential customers was a just and reasonable credit to those customers' monthly bills. 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, Finding and Order (Oct. 24, 2018) at ¶ 30. Accordingly, we agree with FirstEnergy and Staff in that Blue Ridge's recommendations involving the TCJA were addressed by the Commission in the TCJA Resolution Order.

{¶ 40} Addressing capitalization of tree-trimming costs, we similarly find that Blue Ridge's recommendations are reasonable and should be adopted on a going forward basis.

Although OCC argues that Blue Ridge found that there is a possibility that FirstEnergy is charging customers multiple times for certain tree-trimming costs, Blue Ridge made no such finding. Rather, Blue Ridge determined that, because it disagrees with the Companies' vegetation management policy with respect to clearing the corridor, Blue Ridge was unable to determine whether some costs included in Rider DCR as capital should have instead been treated as expense, according to Blue Ridge's interpretation of the FERC definitions. Blue Ridge, therefore, recommended that the Companies better define capital and expense work associated with clearing the corridor to conform to the FERC USoA definitions. We agree with these recommendations and find that they are consistent with the ultimate treatment of such costs in similar audit proceedings. See, e.g., *In re Ohio Power Co.*, Case Nos. 17-38-EL-RDR and 18-230-EL-RDR, Opinion and Order (June 20, 2019) at ¶ 50. The Companies' reliance on the *2011 DCR Review* is misplaced. In that case, the Commission specifically acknowledged Staff and the Companies' agreement that the treatment of ADIT in Rider DCR was intended to be the same methodology approved in the last distribution rate case, further noting that Blue Ridge had subsequently removed the applicable recommendation. The circumstances of this case are clearly different.

{¶ 41} We further note that FirstEnergy has failed to demonstrate any reasonable justification for deviating from the USoA. Moreover, while this Commission does have the power to modify the USoA prescribed by the FERC, if it so chooses, as it applies to utilities operating within this state, we have historically approved such requests when evaluating applications to modify accounting procedures, rather than as a result of an annually conducted rider audit. Even then, however, we are not obligated to approve the request simply because we hold the authority to do so. See, e.g., *In re Vectren Energy Delivery of Ohio, Inc.*, Case No. 15-1238-GA-AAM, Finding and Order (July 6, 2016); *In re Cincinnati Gas & Elec. Co.*, Case No. 93-696-EL-AAM, Entry (Aug. 19, 1993); *In re Dayton Power and Light Co.*, Case No. 91-200-EL-AAM, Entry (Mar. 14, 1991). Thus, we instruct the Companies to implement the recommendations set forth in the 2017 Audit Report as they relate to its current accounting policy for the capitalization of certain clearing activities. However, consistent with Staff's comments, tree removal during the initial clearing of the corridor or an expansion of the existing corridor may continue to be capitalized, which appears to also comply with the FERC USoA. While we are adopting this recommendation on a going forward basis, the Companies are further directed to remove the $3,678,742 attributable to the vegetation management work orders identified by Blue Ridge from the Rider DCR revenue requirement. We find that this guidance is sufficient for the Companies and that no specific audit of the vegetation management activities, as proposed by Blue Ridge, is necessary at this time.

{¶ 42} Finally, consistent with our findings in relation to the 2016 Audit Report, we do not find it necessary to address OCC's additional comments regarding FirstEnergy's capital budgeting process, as those comments were thoroughly considered and rejected by the Commission during the 2015 annual audit of Rider DCR. Therefore, based on our review of the comments filed in Case No. 17-2009-EL-RDR, 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,[6] should be adopted and that OCC's recommendations and alleged accounting discrepancies by FirstEnergy should be rejected. Finally, as the disputed issues regarding the 2017 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

{¶ 43} Having considered each audit report, the comments filed in each case submitted by FirstEnergy, OCC, and Staff, the Commission finds that the recommendations set forth in the 2016 Audit Report and the 2017 Audit Report, and the supplemental

---

6 See *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); *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 19-1887-EL-RDR, Audit Report (June 12, 2020).

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

{¶ 44} It is, therefore,

{¶ 45} ORDERED, That the motions to intervene filed by OCC in Case Nos. 16-2041-EL-RDR and 17-2009-EL-RDR be granted. It is, further,

{¶ 46} ORDERED, That the recommendations of Blue Ridge set forth in the 2016 Audit Report and the 2017 Audit Report, as well as Staff's supplemental recommendations, be adopted, consistent with this Finding and Order. It is, further,

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

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

COMMISSIONERS:
Approving:
Jenifer French, Chair
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

MJA/kck