

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE 2017 REVIEW OF
THE SMART GRID MODERNIZATION
INITIATIVE CONTAINED IN THE TARIFFS
OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY.

CASE No. 16-2166-EL-RDR

IN THE MATTER OF THE 2018 REVIEW OF
THE SMART GRID MODERNIZATION
INITIATIVE CONTAINED IN THE TARIFFS
OF OHIO EDISON COMPANY, THE
CLEVELAND ELECTRIC ILLUMINATING
COMPANY, AND THE TOLEDO EDISON
COMPANY.

CASE No. 17-2276-EL-RDR

FINDING AND ORDER

Entered in the Journal on November 16, 2023

I. SUMMARY

{¶ 1} The Commission approves the applications for the annual reviews of the Advanced Metering Infrastructure/Modern Grid Rider filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, as modified herein.

II. DISCUSSION

A. Procedural History

{¶ 2} Ohio Edison Company, The Cleveland Electric Illuminating Company (CEI), and The Toledo Edison Company (collectively, FirstEnergy) 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 service to customers, including a firm supply of electric generation service. 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} The Commission has approved several riders in FirstEnergy's approved ESP proceedings, some of which require the Companies to file annual updates. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 08-935-EL-SSO, et al.; *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 10-388-EL-SSO (ESP II Case); *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 12-1230-EL-SSO; *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 14-1297-EL-SSO (ESP IV Case). Among these Commission-approved riders is the Advanced Metering Infrastructure/Modern Grid Rider (Rider AMI). Rider AMI is a non-bypassable rider and operates as the mechanism for recovering the costs related to the deployment of smart grid and advanced metering infrastructure. In the *ESP II Case*, the Commission provided its guidance in matters related to Rider AMI and costs that could be recovered through this rider. The Commission authorized FirstEnergy to collect smart grid costs that it incurred as part of its pilot program over a ten-year period through Rider AMI, with quarterly adjustments to the rate. The rider is billed monthly on a fixed customer charge basis.

{¶ 5} On March 31, 2016, the Commission approved FirstEnergy's application for its fourth ESP. *ESP IV Case*, Opinion and Order (Mar. 31, 2016). Moreover, on October 12, 2016, the Commission issued the Fifth Entry on Rehearing in the *ESP IV Case*, further modifying ESP IV.

{¶ 6} Among other terms, ESP IV continued Rider AMI and required the Companies to undertake grid modernization initiatives that promote customer choice in Ohio and to file a grid modernization business plan. *ESP IV Case*, Opinion and Order at 22, 95-96. Thereafter, the Companies made the requisite application filings with the Commission for its grid modernization plan (Case No. 16-481-EL-UNC) and its distribution platform modernization plan (Case No. 17-2436-EL-UNC).

{¶ 7} The Commission issued an Opinion and Order on July 17, 2019, approving the Stipulation filed in Case Nos. 16-481-EL-UNC and 17-2436-EL-UNC, subject to the Commission's adjustments to the calculation of the total estimated net benefits proposed for the initial phase of the Companies' grid modernization efforts (Grid Mod I). As noted in the Commission's orders, the approved costs related to the Companies' grid modernization plan are recoverable by FirstEnergy through Rider AMI. *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) at ¶¶ 30-34; *ESP IV Case*, Opinion and Order (Mar. 31, 2016) at 22-23.

{¶ 8} Pursuant to the Commission's orders in the ESP and grid modernization proceedings, FirstEnergy was directed to file updates for Rider AMI on an annual basis, in a separate docket, no later than February of each year, for review by the Commission. The Companies filed the required applications in Case Nos. 16-2166-EL-RDR (*2017 Rider AMI Review*) and 17-2276-EL-RDR (*2018 Rider AMI Review*) on February 28, 2018, and February 28, 2019, respectively.

{¶ 9} Staff filed its reviews and recommendations in the *2017 Rider AMI Review* and the *2018 Rider AMI Review* on November 8, 2018, and November 15, 2019, respectively.

{¶ 10} By Entry issued March 3, 2020, the attorney examiner set a procedural schedule requesting initial comments and reply comments to be filed by April 17, 2020, and May 8, 2020, respectively.

{¶ 11} FirstEnergy filed initial comments on April 17, 2020, and the Ohio Consumers' Counsel (OCC) and FirstEnergy filed reply comments in regard to the 2018 *Rider AMI Review* on May 8, 2020.

B. 2017 Rider AMI Review

{¶ 12} As noted above, Staff filed its review and recommendation in the 2017 *Rider AMI Review* on November 8, 2018. In its review, Staff examined the as-filed schedules for consistency with the Commission's Opinion and Orders in previous smart grid cases and to ensure proper accounting treatment was applied. The audit consisted of a review of the financial statements for completeness, occurrence, presentation, valuation, interviews, and interrogatories. Staff notes that it requested documentation as needed to determine that the costs were substantiated or to conclude that an adjustment was warranted. Staff recommends that the Companies correct its August 2017 expenditures to reflect an increase of Operation and Maintenance (O&M) expenditures by \$161,698 and decrease August 2017 capital expenditures by the same amount, resulting in a December 31, 2017 rate base reduction of \$124,964. Additionally, Staff suggests that FirstEnergy reflect in its next quarterly filing O&M adjustments totaling \$47,439 and capital expenditure corrections totaling \$16,922. Ultimately, assuming the recommended adjustments are accepted, Staff concludes that FirstEnergy appropriately included in Rider AMI only those costs that were incurred as a result of serving its customers in Ohio.

{¶ 13} In their comments, the Companies agree with several of Staff's adjustments, including: (1) removal of \$614 for airline costs, flight change fees, hotel room expenses, and sundries; (2) removal of a \$200 expense for flight change fees; and (3) reclassification of certain expenditures as operations and maintenance expenses for August 2017, resulting in a reduction to the rate base of \$124,964 as of December 31, 2017. However, the Companies disagree with several Staff recommendations, including Staff's determination that Rider AMI requires a reduction of \$1,043 from expenses related to journal corrections for

purchases made outside of the test year period. While acknowledging the purchases were made in January and February of 2016, the Companies state both purchases were used for CEI's distribution automation¹/Volt-VAR² control (DA/VVC) pilot but the materials were never charged to a pilot work order and were, consequently, not included in Rider AMI. According to the Companies, the journal correction completed in May 2017 appropriately transferred these charges to be included in Rider AMI. Continuing, the Companies assert that disallowing these expenses would result in the Companies foregoing recovery of these expenses in contravention with the Commission's order approving the pilot program, which stated that "[a]ll costs associated with the [pilot program] will be considered incremental for recovery under Rider AMI." *ESP II Case*, Opinion and Order (Aug. 25, 2010) at 13.

{¶ 14} As their second point of disagreement, the Companies contend Staff's recommendation regarding the proposed deduction of \$746 of software and license expenses from AMI should be rejected, as the \$746 expense resulted from a sales tax adjustment made by the vendor after the vendor incorrectly allocated the purchase to the Companies' general office in Summit County, rather than CEI's headquarters in Cuyahoga County.

{¶ 15} Further, while agreeing to the \$614 adjustment related to travel costs noted above, the Companies argue that Staff's recommendation to remove an additional \$336 for a rental car from Rider AMI should be rejected. According to the Companies, this expense was incurred in order to participate in a conference with other companies using the same software as was being used in the CEI pilot area, allowing CEI employees an opportunity to discuss and resolve issues based on the collective experiences of those companies. Finally,

¹ Distribution automation enables autonomous reaction to system disturbances such as faults and non-fault loss of voltage scenarios, which may improve service reliability for customers.

² Voltage/Voltage-Ampere Reactive Optimization is intended to reduce distribution line losses and increase efficiency through control of voltage and current fluctuations.

the Companies disagree with Staff's treatment of \$61,422 of short-term incentive program payments, noting that these payments are part of employee compensation to directly support the CEI pilot. The Companies argue their treatment of these expenses in Rider AMI in 2017 was similar to prior years' Rider AMI filings and Staff did not identify any exceptions for those filings.

{¶ 16} There were no reply comments filed in regard to the 2017 Rider AMI Review.

{¶ 17} As an initial matter, the Commission notes that there is unanimous consensus on the validity of the majority of recommendations proposed by Staff. We agree with the parties that these recommendations are reasonable and, thus, should be adopted. The only recommendations that warrant additional discussion are the recommendations related to the \$1,043 of expenses made outside of the test year period, the \$746 of software and license expenses, the \$336 incurred for a rental car, and the \$61,422 of short-term incentive payments.

{¶ 18} Beginning with the short-term incentive payments, the Commission agrees with Staff's suggested adjustment to remove \$61,422,³ which was not directly and exclusively based on safety or reliability-related key performance indicators, consistent with Commission precedent in which financial performance incentives were excluded from the rate cost calculation when the goals were correlated with shareholder interests rather than benefit of the utility's customers. See *In re Duke Energy Ohio, Inc.*, Case No. 16-664-EL-RDR, et al., Finding and Order (May 15, 2019) at ¶ 16; *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 07-551-EL-AIR, et al., Opinion and Order (Jan. 21, 2009) at 17, Entry on Rehearing (Feb. 2, 2011) at 4-5; *In re Ohio American Water Co.*, Case No. 09-391-WS-AIR, Opinion and Order (May 5, 2010) at 20-22, Entry on Rehearing (June

³ Based on the Company's allocation, this adjustment results in recommended reductions of \$44,500 and \$16,922 to O&M expenses and capitalized expenses, respectively.

23, 2010) at 11-12. However, as noted by Staff in its review and recommendation, Staff is only suggesting an adjustment of \$61,422 of the total \$77,384 of short-term incentive payments originally included by FirstEnergy for recovery through Rider AMI. Again, this approach is consistent with recent Commission precedent that only excluded incentive-based compensation costs from test year expenses when those costs largely benefited the Company's shareholders, rather than ratepayers. *In re the Application of The Dayton Power and Light Co. d/b/a AES Ohio*, Case No. 20-1651-EL-AIR, et al., Opinion and Order (Dec. 14, 2022) at ¶¶ 65-68 (where, after AES Ohio acknowledged "that the Commission typically denies an EDU's ability to recovery incentive based [long-term compensation] and [short-term compensation] through rates," the Commission adopted Staff's recommendation to allow recovery of 25 percent of short-term incentive compensation expenses from test year expenses, as those performance-based incentives related to safety and reliability, as opposed to financial metrics.) As such, the \$61,422 should be removed as suggested by Staff.

{¶ 19} As to the journal corrections made for purchases made outside of the test year period, we note that this appears to be limited to an isolated clerical error. Staff does not claim that the purchases of materials are imprudent or unreasonable costs. Under the circumstances as described by Staff and the Companies, we find that it is appropriate to allow for the correction of the limited, inadvertent error in omitting the amounts from the prior reporting period. *See, e.g., In re Columbus S. Power Co.*, Case No. 87-102-EL-EFC, Opinion and Order (Nov. 10, 1987) (allowing collection of otherwise properly recoverable fuel costs associated with utility's clerical error that occurred in a prior audit period); *In re the Application of Cincinnati Gas & Elec. Co.*, Case Nos. 03-118-GA-FOR, et al., Entry (Dec. 10, 2004); *In re the Infrastructure Development Rider of The East Ohio Gas Company d/b/a Dominion Energy Ohio*, Case No. 21-519-GA-IDR, Finding and Order (Sept. 23, 2021). Accordingly, we decline to adopt Staff's recommended adjustment of \$1,043.

{¶ 20} Next, we consider Staff's recommendation to remove \$746 from Rider AMI, as the associated invoice showed an amount lower than the amount claimed to have been

paid. While we acknowledge this issue should have been resolved with the vendor prior to payment of the invoice, we will allow FirstEnergy to reflect the correct amount of sales tax attributable to this transaction. As such, we will decline to adopt Staff's recommendation. However, we find that the disputed rental car fee should be excluded. The Commission has previously found that expenditures which do not appear to offer any direct and primary customer benefit should not be borne by ratepayers. *In re Ohio Power Co.*, Case No. 15-240-EL-RDR, et al., Finding and Order (Apr. 19, 2017) at ¶ 32. Further, we have noted that FirstEnergy bears the burden of proof to demonstrate that the amounts sought for recovery are not unreasonable in each annual audit, adding that, 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. *In re the Application of Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case Nos. 18-1542-EL-RDR et al., Finding and Order (Mar. 8, 2023) at ¶ 28. We find that FirstEnergy has failed to meet this burden as to the \$336 related to the rental car expense.

{¶ 21} Consistent with our earlier findings, the Commission directs the Companies to make all of the necessary adjustments discussed herein. Finally, as the disputed issues regarding Staff's report in the *2017 Rider AMI Review* 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.

C. 2018 Rider AMI Review

{¶ 22} As noted above, Staff filed its review and recommendation in the *2018 Rider AMI Review* on November 15, 2019. In its review, Staff examined the as-filed schedules for consistency with the Commission's Opinion and Orders in previous smart grid cases and to ensure proper accounting treatment was applied. The audit consisted of a review of the financial statements for completeness, occurrence, presentation, valuation, interviews, and interrogatories. Staff notes that it requested documentation as needed to determine that the

costs were substantiated or to conclude that an adjustment was warranted. Upon completing its review, Staff found that FirstEnergy appropriately included in Rider AMI only those costs that were incurred as a result of serving its customers in Ohio, with some noted exceptions. Specifically, Staff recommends an adjustment of approximately \$774,535 as shown in the attachment to its review. Staff explains the recommended adjustment is comprised of both capital and maintenance expenses, with some project costs being allocated between both categories. Additionally, Staff requests that, if the Commission agrees that these charges are inappropriate for recovery, that the Commission direct the Companies to work with Staff in order to accurately reflect the adjustment within Rider AMI.

{¶ 23} As they did in their comments for the *2017 Rider AMI Review*, the Companies agree with several of Staff's adjustments, including: (1) \$60,497 for two reclosers lying outside of CEI's pilot footprint; and (2) \$20,623 for work that was not associated with the CEI pilot. However, the Companies oppose the remaining proposed adjustments. Initially, the Companies take issue with Staff's recommendation to remove \$616,415 for capital expenditures related to the installation of new reclosers, communication equipment, and enhancements to the support system for smart meter infrastructure in the CEI pilot program. While Staff alleges the costs should be excluded because they were not matched by the United States Department of Energy (DOE) and the Companies did not include them in their application for cost recovery related to the Ohio Site Deployment of the Smart Grid Modernization Initiative, the Companies first assert that these expenditures are a part of their December 22, 2014 application submitted in Case No. 09-1820-EL-ATA. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 09-1820-EL-ATA, et al. (*Ohio Site Deployment Case*). Specifically, the Companies assert they requested approval to collect 100 percent of the "on-going data collection and maintenance costs" for the completion of the DA/VVC studies after June 1, 2015 through June 1, 2019, rather than merely limiting their request to O&M costs, in order to fully understand and enhance the customer benefits associated with the technologies. Continuing, the Companies note that

they made capital investments in 2018 with the Ohio Site Deployment by expanding the installation and testing new smart grid devices in CEI's pilot footprint, again to collect additional data and better understand the benefits of these types of investments for their customers in order to be better prepared for widespread deployment of these types of investments throughout the Companies' service territories as part of their approved Grid Mod I plan. *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).

{¶ 24} Furthermore, the Companies argue that these capital expenditures are not subject to the DOE match requirement imposed by the Commission in 2010, explaining that they are components of the Companies' December 22, 2014 application in the *Ohio Site Deployment Case* which sought additional cost recovery to cover a period after the conclusion of the DOE funding. In the application submitted in the *Ohio Site Deployment Case*, the Companies observed that DOE funding for the Ohio Site Deployment completes on June 1, 2015; however, they also noted that there were several years remaining for data collection in order to complete the DA/VVC studies. The Commission approved the Companies' application on May 28, 2015. The Companies claim the proper inclusion of these costs in Rider AMI is further bolstered by the fact that the Rider AMI tariff language specifically authorizes the recovery of "costs associated with the Ohio Site Deployment of the Smart Grid Modernization Initiative in Case No. 09-1820-EL-ATA" including "any additional costs associated with expansion of the Ohio Site Deployment." According to the Companies, this language was approved by the Commission on May 25, 2016, after the Commission's May 28, 2015 order approving the Companies' application in the *Ohio Site Deployment Case* and should be considered in conjunction with the prior order.

{¶ 25} The Companies also take issue with Staff's recommendation to remove \$1,101 for tree trimming and a duplicative invoice, noting those costs were associated with the Smart Grid Modernization Initiative and would not have otherwise been incurred.

Further, after independent review, the Companies state they were unable to identify any duplicative invoices, including those referenced in the Staff Report.

{¶ 26} Finally, although again acknowledging that \$20,623 should be removed from Rider AMI as the work was not part of CEI's pilot project, the Companies assert the remaining \$77,000 of Staff's total recommended disallowance of \$97,623 should remain in Rider AMI, as these replacements and repairs were properly recorded by the Companies as O&M expenses and similar maintenance and repair expenses have been included in prior Rider AMI filings with no exceptions identified. While Staff contends that these replacement and repair costs are outside the scope of Rider AMI, and should instead be recognized as capital investments within the Companies' Delivery Capital Recovery Rider (Rider DCR), the Companies disagree. Instead, FirstEnergy claims the referenced costs are directly associated with the Ohio Site Deployment pilot part of the Smart Grid Modernization Initiative and would not otherwise have been incurred. Further, the Companies note that the costs are considered incremental, consistent with the Commission's approval of the Companies' application in the *Ohio Site Deployment Case*.

{¶ 27} In its comments, OCC alleges FirstEnergy has provided no evidence that the capital expenditures totaling \$616,415⁴ were directly related to data collection for its DA/VVC studies and, therefore, cannot be deemed as Commission-approved. Further, as it is FirstEnergy's burden of proof to justify that its expenses are prudent, just, and reasonable, OCC claims that FirstEnergy cannot meet that burden here. Furthermore, while the Companies allege that the Commission authorized an expansion of the pilot program and the purchase of the noted equipment to support the expansion, OCC contends the Commission did no such thing; rather, OCC agrees with Staff's disallowance assessment

⁴ OCC's comments note that the Commission should disapprove a total of \$676,912 expenses noted in the Staff Report; however, FirstEnergy does not object to the removal of \$60,497; as such, the only disputed amount according to the parties, as it relates to the capital expenditures incurred for the expansion of the Ohio Site Deployment, equates to \$616,415.

and suggests these unapproved expansion costs should be refunded to customers through an adjustment to the Rider AMI charges to be collected in the future. In response to the Companies' claim that the DOE match requirement is not relevant for the recovery of these capital expenditures, OCC argues that the Commission explicitly ordered that the Companies "shall not complete any part of the Ohio Site Development that the [DOE] does not match funding in equal amount." OCC notes the Rider AMI tariff language later approved by the Commission does not supersede the Commission's earlier explicit directions requiring the DOE funding match, as there was no revocation of this requirement in the Commission's subsequent order; in fact, OCC notes that FirstEnergy never even requested that the Commission discontinue the DOE funding match requirement in the later application. As these costs were not approved by the Commission, OCC recommends that they be disallowed as suggested by Staff. OCC also argues that FirstEnergy should not be authorized to collect costs related to the Ohio Site Deployment pilot program after June 1, 2019, noting the applicable order in the *Ohio Site Deployment Case* specifically limits the duration of the pilot program through June 1, 2019.

{¶ 28} However, in its reply comments, FirstEnergy again reiterates that the \$616,415 of disputed capital expenditures are not subject to the DOE match requirement and were approved by the Commission. The Companies argue these expenditures are not subject to this requirement imposed by the Commission in 2010 because they are, instead, components of the Companies' 2014 application which sought additional cost recovery to cover a period after the conclusion of the DOE funding. *ESP II*, Opinion and Order (Aug. 25, 2010) at 13-14; *Ohio Site Deployment Case*, Finding and Order (May 28, 2015) at 2-3. Additionally, FirstEnergy notes these capital expenditures are recoverable through Rider AMI, as expressly set forth in Rider AMI's tariff language. According to the Companies, the Commission approved Rider AMI tariff language authorizing the recovery of "costs associated with the Ohio Site Deployment of the Smart Grid Modernization Initiative in Case No. 09-1820-EL-ATA" including "any additional costs associated with expansion of the Ohio Site Deployment * * *." As this tariff language was approved by the Commission

on May 25, 2016, after the Commission's May 28, 2015 order approving the additional recovery for the Ohio Site Deployment, FirstEnergy concludes that this tariff language effectively controls. *ESP IV Case*, Opinion and Order (Mar. 31, 2016) at 120-122; Finding and Order (May 25, 2016) at 3.

{¶ 29} Furthermore, although OCC agrees with Staff's recommendation to remove \$97,623 related to replacement and repair costs from Rider AMI, FirstEnergy claims OCC makes no additional arguments of its own to support this disallowance. As such, the Companies emphasize their earlier comments to support the inclusion of approximately \$77,000 in Rider AMI, after removing the \$20,623 the Companies agree was not related to CEI's pilot project.

{¶ 30} The Commission has reviewed the Companies' applications and Staff's review and recommendations. As noted, above, the Companies are not contesting \$81,120⁵ of the recommended adjustment of \$774,535 proposed by Staff. We agree with Staff and the Companies that recovery of these costs would be inappropriate and, therefore, adopt Staff's recommendation as to these adjustments.

{¶ 31} Before addressing the disputed recommendations, we believe it necessary to review the history behind the Ohio Site Deployment pilot program. On January 21, 2009, the Commission approved the creation of Rider AMI as a mechanism for the recovery of costs related to the deployment of smart grid and advanced metering infrastructure. *In re Ohio Edison Co., The Cleveland Elec. Illum. Co., and The Toledo Edison Co.*, Case No. 07-551-EL-AIR, et al. Opinion and Order (Jan. 21, 2009) at 44-45. On July 31, 2008, as amended on February 19, 2009, FirstEnergy filed an application for an ESP in *In re FirstEnergy*, Case No. 08-935-EL-SSO (*ESP I Case*). On March 25, 2009, the Commission approved the stipulation

⁵ The Companies agreed to removing \$60,497 for two reclosers lying outside of CEI's pilot footprint; and \$20,623 for work that was not associated with the CEI pilot.

filed in the *ESP I Case*. In the stipulation, FirstEnergy committed to developing a proposal to pursue federal funds that may be available for smart grid investment. The signatory parties also agreed that recovery for smart grid investment would be through an unavoidable rider. *ESP I Case*, Second Opinion and Order (Mar. 25, 2009) at 13. In furtherance of FirstEnergy's commitment, FirstEnergy submitted its Smart Grid Modernization Initiative to the DOE on August 6, 2009. FirstEnergy received notification that its Smart Grid Modernization Initiative was selected for award negotiations from DOE on October 27, 2009. On November 18, 2009, in the *Ohio Site Deployment Case*, FirstEnergy filed an application with the Commission for approval of its proposed Ohio Site Deployment, a three-year pilot program of the Companies' Smart Grid Modernization Initiative. By Finding and Order issued on June 30, 2010, the Commission approved FirstEnergy's application for the program with modifications, specifically Phase 1, which was an initial test phase of 5,000 customers. The Commission provided that, after reviewing the results of Phase 1, the Commission would make a decision whether the Companies should proceed to Phase 2, or expansion of the initial test phase to 44,000 customers. *Ohio Site Deployment Case*, Finding and Order (June 30, 2010).

{¶ 32} Thereafter, on May 15, 2013, the Commission issued a Finding and Order, instructing the Companies to proceed with Phase 2 of the Smart Grid Modernization Initiative and implement various recommendations agreed to by the parties. On May 1, 2014, the Companies filed tariff pages reflecting the pilot Residential Critical Peak Pricing Rider (Rider RCP) in order to carry out the Commission's May 15, 2013 Order.⁶

{¶ 33} On December 22, 2014, FirstEnergy filed an application seeking authority for further cost recovery to complete studies related to the Ohio Site Deployment of the Smart

⁶ Rider RCP provides for time-of-day pricing or critical peak pricing options in lieu of the Generation Service Rider (Rider GEN) as to residential customers participating in the voluntary smart grid modernization initiative.

Grid Modernization Initiative. In its application, FirstEnergy stated that DOE funding for the Ohio Site Deployment would end on June 1, 2015, but that the Companies still had several years of data collection remaining to complete the DA/VVC studies after June 1, 2015. Consequently, the Companies requested approval to collect 100 percent of their ongoing data collection and maintenance costs for the completion of the DA/VVC studies.

{¶ 34} By Finding and Order issued May 28, 2015, the Commission granted FirstEnergy's application with certain modifications. In the Order, the Commission directed the Companies to continue to offer to Phase 2 customers the voluntary two-part residential time-of-use/on- and off-peak SSO rate until otherwise ordered by the Commission. Additionally, the Commission directed the Companies to file interim reports regarding the data obtained from the DA/VVC studies. Further, the Commission held that it would approve only recovery of prudently incurred costs, subject to an annual true-up and reconciliation.

{¶ 35} All three parties agree that the Commission expressly provided for a match funding requirement from the DOE for expenses related to the Ohio Site Deployment in *ESP II*. Specifically, the Commission approved the combined stipulation in that case as to the DOE match requirement and further modified the combined stipulation to note that, “in the event that the DOE does not provide matching funding for any part of the Ohio Site Deployment for any reason, FirstEnergy should seek guidance from the Commission regarding how it should proceed with completion of the Ohio Site Deployment and any related cost recovery.” *ESP II*, Opinion and Order (Aug. 25, 2010) at 36. As noted earlier, the DOE grant in Ohio covered a four-year implementation period, from June 2010 through June 2014, with a one-year data collection period immediately following from June 2014 through June 2015, for the DA/VVC studies.

{¶ 36} The Companies, in their December 22, 2014 application, explicitly requested “approval to collect 100% of the *on-going data collection and maintenance costs* for the

completion of the Volt Var and Distribution Automation studies after June 1, 2015.” (emphasis added). This application estimated the operating and maintenance costs to complete the data collection through June 1, 2019 to be approximately \$8.5 million. Absent from the application, however, was any request for authority to recover additional capital expenditures associated with the Ohio Site Deployment.

{¶ 37} Similarly, the Finding and Order issued in that case does not contemplate the recovery of capital expenditures; instead, the Commission limited the recovery to 100 percent of the on-going data collection and maintenance costs for the completion of the DA/VVC studies from June 1, 2015 to June 1, 2019, as requested by the Companies. Finding and Order (May 28, 2015) at 3.

{¶ 38} We agree with Staff that the December 22, 2014 application appears to be limited to the O&M costs associated with ongoing data collection, estimated at the time of approval to be around \$8.5 million through June 1, 2019. Authorization for recovery of operation and maintenance expenses and costs related to data collection does not extend to recovery of capital expenditures. Thus, the Commission’s approval of their application did not grant them the authority to recover the costs of these additional capital expenditures during this additional four-year data collection period. Although FirstEnergy, Staff, and OCC disagree as to whether the DOE match requirement still applies to capital costs incurred subsequent to June 2015, it is not dispositive as to this proceeding as the Companies were never authorized to recover these capital costs in our May 28, 2015 Finding and Order. However, the Commission previously noted in response to the Companies’ 2014 application that “limiting customers’ obligation to half of the charges for the Ohio Site Deployment clearly applied only during the time period of the DOE grant, which ended June 1, 2015,” noting further that we did not find that the language limiting recovery to half of the charges associated with Ohio Site Deployment applied to the Companies’ recovery beyond June 1, 2015. *Ohio Site Deployment Case*, Finding and Order (May 28, 2015) at 3, Entry on Rehearing (Aug. 19, 2015) at 6. Thus, we reiterate that FirstEnergy was permitted to recover 100 percent

of those allowable expenses, consistent with our previous findings. The Companies claim that their tariffs, approved nearly a year after the contested *Ohio Site Deployment Case* order in *ESP IV Case*, expressly provide for the recovery of costs related to the expansion of the Ohio Site Deployment, and, as such, effectively controls this dispute. However, such an interpretation runs contrary to R.C. 4905.22, which provides “[a]ll charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the [Commission], and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the [C]ommission.” Regardless, the very language cited by the Companies in support of their argument is grouped, not with the authorized expenses of the *Ohio Site Deployment Case*, but, instead, with language pertaining to any additional advanced metering or grid modernization infrastructure in Ohio subsequently approved by the Commission for recovery.⁷ Thus, through our prior order and the tariff language itself, the Companies were authorized only to recover operation and maintenance expenses and costs related to data collection beyond June 1, 2015. Furthermore, we decline to address OCC’s comment regarding recoverability beyond the June 2019 deadline since 2019 falls outside the scope of this review.

{¶ 39} As to the remaining \$77,000 at issue, Staff noted its concerns with the Companies including for recovery capital expenditures and expenses related to the replacement and repairs of smart meters, communication devices, and recloser controls for the pilot program. Staff further observed that some of the repairs were partially allocated to capital expenditures, despite the fact that such repairs are usually expensed. Staff argues

⁷ The approved compliance tariff states “The charges set forth in this Rider recover costs associated with the Ohio Site Deployment of the Smart Grid Modernization Initiative in Case No. 09-1820-EL-ATA. Any additional costs associated with expansion of the Ohio Site Deployment or the implementation of any additional advanced metering or grid modernization infrastructure in Ohio including, but not limited to, Commission directed, legislatively mandated or Company initiated and Commission approved infrastructure expansion will be collected through this Rider.” *ESP IV Case*, Compliance Tariff Filing P.U.C.O. No. 8, Sheet 106, 24th Revised Page 1 of 1 (May 13, 2016).

that this is outside the scope of the rider and that any capital replacements should be recognized within Rider DCR, and repairs are typical operation and maintenance expenses that are recovered through base rates.

{¶ 40} We agree with Staff that the more appropriate treatment of these costs would be for the capital replacements to be recognized within Rider DCR and repairs to be recovered through base rates. While FirstEnergy argues that these costs are directly associated with the Ohio Site Deployment pilot part of the Smart Grid Modernization Initiative and would not otherwise have been incurred, we have already determined that the recovery authority granted in the governing Finding and Order issued in the *Ohio Site Deployment Case* never extended to capital expenditures; instead, the Commission limited recovery of Ohio Site Deployment expenses to operation and maintenance expenses related to data collection conducted after June 1, 2015. Case Nos. 09-1820-EL-ATA, et al., Finding and Order (May 28, 2015) As such, we agree the remaining \$77,000 should be eliminated from Rider AMI.

{¶ 41} Finally, Staff notes in its report that, within the new capital installation transactions, it identified issues pertaining to tree trimming maintenance and duplicate invoices. As a result, Staff suggests that, if the Commission decides to authorize the capital expenditures associated with the new installations, then the \$1,101 associated with a duplicate invoice and tree trimming should be removed. As we have determined that the recovery of additional capital expenditures is inappropriate under Rider AMI, it is unnecessary to discuss the disputed \$1,101 related to tree-trimming and a duplicative invoice.

{¶ 42} Consistent with our earlier findings, the Commission directs the Companies to make all of the necessary adjustments discussed herein, including working with Staff in order to accurately reflect the adjustments within Rider AMI. Finally, as the disputed issues regarding Staff's report in the *2018 Rider AMI Review*, mainly dealing with the interpretation

of the Commission's prior order in the *Ohio Site Deployment Case*, 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.

III. ORDER

{¶ 43} It is, therefore,

{¶ 44} ORDERED, That FirstEnergy's applications be approved, as set forth in this Finding and Order. It is, further,

{¶ 45} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any future proceeding or investigation involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

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

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

MJA/ dmh

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Case No(s). 16-2166-EL-RDR, 17-2276-EL-RDR

Summary: Finding & Order that the Commission approves the applications for the annual reviews of the Advanced Metering Infrastructure/Modern Grid Rider filed by Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, as modified herein electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.