

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison Company,)
The Cleveland Electric Illuminating Company, and The)
Toledo Edison Company for Approval of Their Energy) Case No. 16-0743-EL-POR
Efficiency and Peak Demand Reduction Program Portfolio)
Plans for 2017 through 2019.)

**THE OHIO HOSPITAL ASSOCIATION'S
MOTION TO COMPEL AND REQUEST FOR IMMEDIATE
PRE-HEARING CONFERENCE**

Pursuant to Ohio Administrative Code (“OAC”) Rule 4901-1-23, the Ohio Hospital Association (“OHA”) hereby moves the Public Utilities Commission of Ohio (“Commission”) to issue an order against Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively “FirstEnergy”) compelling FirstEnergy to respond to OHA’s First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents (“Discovery Requests”) in the above-captioned proceeding. Although FirstEnergy has refused to answer almost all of OHA’s Discovery Requests, this entire discovery dispute arises from FirstEnergy’s refusal to answer a very basic question: why did FirstEnergy terminate OHA as a contract administrator? FirstEnergy’s refusal to answer this question is meritless considering that FirstEnergy is obligated to respond to all discovery requests that are “reasonably calculated to lead to the discovery of admissible evidence.” OAC Rule 4901-1-16(B).

The reasons for this Motion to Compel are set forth more fully in the accompanying Memorandum in Support. Because the hearing in this case is rapidly approaching, OHA requests

that the Attorney Examiner immediately set a prehearing conference to address this discovery dispute.

Respectfully submitted on behalf of
THE OHIO HOSPITAL ASSOCIATION



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**BEFORE
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The Cleveland Electric Illuminating Company, and The)
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

On December 19, 2016, OHA propounded its First Set of Discovery Requests on FirstEnergy (the “Discovery Requests”).¹ On December 28, 2016, FirstEnergy provided cursory and non-responsive answers to the Discovery Requests.² Upon FirstEnergy’s failure to adequately respond to these requests, and in compliance with OAC Rule 4901-1-23(C), counsel for OHA sent an e-mail to FirstEnergy on December 29, 2016.³ The purpose of the December 29, 2016 e-mail was to attempt to resolve the discovery dispute without the Commission’s assistance. On December 30, 2016, FirstEnergy responded to OHA’s email by continuing to refuse to respond the vast majority of OHA’s Discovery Requests.

Based on FirstEnergy’s responses, it became apparent to OHA that this discovery dispute needs to be resolved by the Commission.⁴ For the reasons stated below, the Commission should order FirstEnergy to respond to the following Discovery Requests:

¹ A copy of OHA’s Discovery Requests is attached as Attachment A.

² . A copy of FirstEnergy’s responses to the Discovery Requests is attached as Attachment B.

³ A copy of the December 29, 2016 e-mail is attached as Attachment C.

⁴ An affidavit attesting to the good faith efforts of OHA’s counsel to informally resolve this dispute are set forth in the Affidavit of Devin D. Parram (the “Affidavit”), attached hereto as Attachment D.

- Requests for Admission 1-5,
- Interrogatories 1-5, 7-8, and 10-12, and
- Request for Production 3.

II. BACKGROUND

A. OHA's role as a contract administrator.

In Case No. 08-935-EL-SSO, FirstEnergy committed to using certain contract administrators to assist the companies in meeting their EE/PDR goals. OHA was one of these administrators. Contracting with OHA to assist with targeting hospitals in FirstEnergy's territory made sense. OHA is uniquely situated because of its relationship with hospitals throughout Ohio. Sixty-eight (68) hospitals served by FirstEnergy are members of OHA. Virtually every hospital in FirstEnergy's territory is a member of OHA. In Case No. 09-0553-EL-EEC, FirstEnergy submitted applications to approve the administrator contracts. The Commission ultimately approved of the terms of the administrator contracts with certain modifications. Since the Commission's approval of the administrator contracts, OHA has been acting as a Commission-approved administrator for FirstEnergy's portfolio programs.

On December 1, 2016, FirstEnergy notified OHA that it was terminating its administrator contract with OHA. FirstEnergy failed to provide OHA any basis for terminating the administrator contract. On December 9, 2016, FirstEnergy filed a Stipulation and Recommendation ("Stipulation") in this proceeding. In conjunction with the Stipulation, FirstEnergy filed Revised EE/PDR Portfolio Plans, which are attached to the Stipulation. In the Revised EE/PDR Portfolio Plans, FirstEnergy states that "[p]ursuant to a Stipulation entered into in Case No. 08-935-EL-SSO, the Companies committed to using specific organizations as 'Administrators.'" Revised EE/PDR Portfolio Plans at 11. Although FirstEnergy terminated

OHA as a contract administrator, FirstEnergy lists OHA as a possible contract administrator in the Revised EE/PDR Portfolio Plans.

C. OHA's Discovery Requests.

On Monday, December 19, 2016, OHA served FirstEnergy with the Discovery Requests. Almost all of OHA's Discovery Requests addressed FirstEnergy's decision to terminate OHA as contract administrator. Specifically, FirstEnergy refused to answer five key requests for admissions:

RFA NO. 1: Admit that you served OHA with a notice of intent to terminate OHA's Administrator Contract ("Notice of Termination") on or about December 1, 2016.

RFA NO. 2: Admit that Attachment A is a true, accurate, and authentic copy of the Notice of Termination.

RFA NO. 3: Admit that you have not provided OHA any basis for terminating OHA's Administrator Contract.

RFA NO. 4: Admit that you never informed OHA that it failed to perform its obligations as an Administrator.

RFA NO. 5: Admit that you are not aware of any instance when OHA failed to perform its obligations as an Administrator.

FirstEnergy refused to answer any of these requests for admissions, stating that the "requests seek[] irrelevant information and/or information not reasonably calculated to lead to the discovery admissible evidence." FirstEnergy also refused to answer any interrogatory or request for production of document that related to its termination of OHA as contract administrator. Even though OHA offered to narrow the scope of some of its request, FirstEnergy continued to refuse to provide any responses regarding its termination of OHA as contract administrator.

As demonstrated below, the information sought by OHA is relevant, reasonably calculated to lead to the discovery of admissible evidence, and essential to determining if the Stipulation satisfies the three-prong test.

III. LEGAL ARGUMENT

A. The Commission's Discovery Rules.

OAC Rule 4901-1-16 governs discovery in Commission proceedings. This rule establishes the Commission's policy of encouraging the use of pre-hearing discovery, and allowing "any party to a commission proceeding" to "obtain discovery of any matter, not privileged, which is relevant to the subject matter of the proceeding." Pursuant to OAC Rule 4901-1-23(A)(1) and (2), a party seeking discovery may file a motion to compel based upon a failure to answer interrogatories or produce requested documents. Further, OAC Rule 4901-1-23(A)(4) allows a party to file a motion to compel based on a failure to answer requests for admissions. OAC Rule 4901-1-23(B) provides that an evasive or incomplete answer shall be treated as a failure to answer.

B. OHA's Discovery Requests are reasonably calculated to lead to the discovery of admissible evidence.

OHA's Discovery Requests are targeted to obtain the information necessary to determine if FirstEnergy's Revised EE/PDR Portfolio Plans are just and reasonable for the hospitals OHA serves, and necessary to determine if the Stipulation satisfies the three-prong test. In approving partial stipulations offered to resolve proceedings before it, the Commission traditionally considers a three-prong analysis, which was endorsed by the Ohio Supreme Court in *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, 592 N.E.2d 1370 (1992): (1) Does the settlement, as a package, benefit ratepayers and the public interest? (2) Does the settlement

package violate any important regulatory principle or practice? and (3) Is the settlement a product of serious bargaining among capable, knowledgeable parties?

1. *The Discovery Requests are reasonably calculated to determine whether FirstEnergy's decision to terminate OHA's administrator contract will negatively impact hospitals, which relates to the "public interest" prong of the stipulation test.*

OHA intends to show that FirstEnergy's decision to terminate OHA's administrator contract was baseless and that FirstEnergy's termination of OHA as a contract administrator will negatively impact hospitals in FirstEnergy's territory. As an initial matter, OHA's role as an administrator is undeniably relevant because FirstEnergy specifically mentions the fact it intends to use contract administrators in its Revised EE/PDR Portfolio Plans and also lists OHA as a potential administrator. FirstEnergy has put OHA's role as contract administrator squarely before the Commission.

OHA plays a critical role for hospitals as a contract administrator for FirstEnergy, and has acted as an administrator since the Commission approved the administrator contracts in Case No. 09-0553-EL-EEC. As far as OHA is aware, it has always dutifully performed its obligations as contract administrator. FirstEnergy discusses the benefit of using administrators in its plans. Revised EE/PDR Portfolio Plans at 11. Specifically, contract administrators are valuable because they are adept at targeting and educating their respective customer segments regarding FirstEnergy's portfolio programs. But, for some unknown reason, FirstEnergy has terminated OHA as administrator and refuses to explain why.

OHA intends to show that FirstEnergy arbitrarily terminated OHA despite the importance of OHA's role in assisting its member hospitals with participation in FirstEnergy's energy efficiency programs. This does not benefit hospitals and does not serve the public interest. Evidence that FirstEnergy arbitrarily terminated OHA is relevant to whether such

termination negatively impacts hospitals. Under Rule 401, evidence is “relevant” if it has a “tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable...” This is not a high bar. Further, OHA is not required to prove the information sought is necessarily admissible at this stage. OHA simply must show that the “information sought appears reasonably calculated to lead to the discovery of admissible evidence.” OAC Rule 4901-1-16(B).

OHA intends to recommend that the Commission modify the Stipulation to ensure that FirstEnergy works cooperatively with OHA during FirstEnergy’s portfolio program. OHA’s basis for this recommendation is, in part, due to the unreasonable termination of OHA. It’s entirely appropriate for a party opposing a stipulation to seek information through discovery that supports potential modifications to the stipulation. See *In re FirstEnergy*, Case No. 12-1230-EL-SSO, Entry at 4-5 (May 17, 2012)(the attorney examiner granted Direct Energy’s motion to compel over FirstEnergy’s objections because Direct Energy sought information that would support a potential modification to the stipulation). OHA intends to show that it has successfully worked with AEP Ohio, Dayton Power and Light Company (“DP&L”), and Duke Energy Ohio, Inc. (“Duke”)⁵ to target hospitals to implement energy efficiency measures, while FirstEnergy has decided to cut ties with OHA for apparently no reason. OAC Rule 4901:1-39-04(C)(3) requires that FirstEnergy show how it is attempting to align its programs with other public utilities' programs. OHA intends to show that FirstEnergy’s decision to arbitrarily terminate OHA is inconsistent with the other EDUs’ portfolio programs.

⁵ OHA entered into a stipulation with Duke which provides that Duke will provide funding for OHA’s program and coordinate with OHA to serve hospitals in Duke’s territory. *In re Duke*, Case No. 16-0576-EL-POR. This stipulation was filed on December 12, 2016 and is pending before the Commission. Although this stipulation has not been approved by the Commission, it is still an indication that Duke is willing to work cooperatively with OHA, much like AEP Ohio and DP&L have in their portfolio programs.

FirstEnergy will presumably claim that it is irrelevant why it terminated OHA because, according to FirstEnergy, it had the discretion to terminate OHA without cause. While OHA does not concede that FirstEnergy could terminate it without cause, this argument is beside the point. Assuming, for the sake of argument, that FirstEnergy can terminate OHA without cause, this does not mean termination of OHA serves the public interest. OHA has direct relationships with virtually every hospital in FirstEnergy's territory. The rationale behind OHA's administrator contract was to use these relationships to enhance participation in FirstEnergy's portfolio programs. FirstEnergy's termination of OHA as contract administrator will negatively impact the success of its portfolio plans with respect to hospitals. The Commission should consider this evidence when determining if the stipulation benefits the public interest.

2. *The Discovery Requests are reasonably calculated to discover evidence regarding whether the Stipulation is the result serious bargaining.*

OHA's discovery requests are designed to determine if FirstEnergy attempted to seriously bargain with OHA, or whether FirstEnergy's termination of OHA as contract administrator was punishment for not agreeing to sign the stipulation. OHA was terminated after serving for years as a contract administrator without issue. FirstEnergy has failed to state why OHA was terminated as a contract administrator. If FirstEnergy terminated OHA because it wouldn't play ball, this is relevant because the Stipulation is not the result of serious bargaining. OHA is also seeking evidence regarding the termination of any signatory or non-opposing parties as contract administrators. If a prerequisite to continuing as a contract administrator is agreeing to the term of any stipulation FirstEnergy presents, the Commission should consider this when determining if the Stipulation is the result of serious bargaining. The Ohio Supreme Court has indicated that parties may inquire into the negotiations between the signatory parties to a

stipulation to determine if the stipulation is the result of serious bargaining. *Ohio Consumers' Counsel v. PUC*, 111 Ohio St.3d 300, 2006-Ohio-5789, 856 N.E.2d 213, ¶ 86.

IV. CONCLUSION

For the reasons set forth above, OHA respectfully requests that the Commission grant this Motion to Compel and order FirstEnergy to respond to OHA's Discovery Requests. In order to expeditiously address this discovery dispute, OHA requests that the Attorney Examiner immediately set a pre-hearing conference regarding this matter.

Respectfully submitted on behalf of
THE OHIO HOSPITAL ASSOCIATION



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Motion to Compel was served upon the parties of record listed below this 4th day of January 2017 *via* electronic mail.



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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of Ohio Edison Company,)
The Cleveland Electric Illuminating Company, and The)
Toledo Edison Company for Approval of Their Energy) Case No. 16-743-EL-POR
Efficiency and Peak Demand Reduction Program Portfolio)
Plans for 2017 through 2019.)

**THE OHIO HOSPITAL ASSOCIATIONS' FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS, AND REQUESTS FOR
ADMISSIONS TO OHIO EDISON COMPANY, THE CLEVELAND ELECTRIC
ILLUMINATING COMPANY AND THE TOLEDO EDISON COMPANY**

Pursuant to Ohio Administrative Code (“OAC”) Rules 4901-1-16, 4901-1-17, 4901-1-18, 4901-1-19, 4901-1-20, 4901-1-22, and as a party in the above-captioned proceedings, the Ohio Hospital Association (“OHA”) hereby propounds the following Interrogatories, Requests for Admissions, and Requests for Production of Documents (“Discovery Requests”) to Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company (collectively “FirstEnergy” or “Companies”) to be answered in writing and under oath. OHA requests that FirstEnergy answer the Discovery Requests and provide copies, or access to, all responsive documents to:

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INSTRUCTIONS

1. If you refuse to answer any interrogatory, in whole or in part, specifically describe the basis for your refusal to answer, including a detailed statement of facts relied on for any claim of privilege and the type of privilege you are claiming.
2. For all documents produced, identify by Bates number which documents are responsive to each separate discovery request.
3. In accordance with Rule 4901-1-16(D), of the Ohio Administrative Code, these interrogatories and requests for production of documents shall be deemed to be continuing so as to request supplementation of the responses up to and through the time of the hearing in this case.
4. In accordance with Rule 4901-1-19(A), for each response to these interrogatories and requests for production of documents, state the name and title of the person responsible for preparing the response.
5. Terms in the plural include the singular and terms in the singular include the plural.
6. Except as otherwise noted, the period of time covered by each interrogatory is to date.
7. The word “or” is not exclusive.
8. Terms referring to a gender include all genders.
9. The use of the past tense in any interrogatory shall include the present tense, and vice versa.
10. No statement or inference contained in any Discovery Request herein shall constitute a representation or admission of any fact or condition on the part of OHA.

DEFINITIONS

1. The term “person,” when used herein, means an individual, corporation, partnership or association, any other business or governmental entity, or political subdivision.

2. The term “document” refers to any written, printed, typed, photostatic, photographed, recorded, electronically stored, computerized and/or otherwise reproduced communication or representation, whether comprised of letters, words, numbers, pictures, sounds or symbols, electronic and/or computerized data or any combination thereof. This definition includes all drafts of every document and/or computer file, and copies or duplicates of documents and/or computer files contemporaneously or subsequently created which have any non-conforming notes or other markings. More specifically, the term “document” includes, but is not limited to, correspondence, memoranda, notes or notations, records, letters, e-mail, envelopes, telegrams, messages, studies, analyses, contracts, agreements, working papers, accounts, analytical records, reports and/or summaries of investigations, trade letters, press releases, comparisons, books, calendars, diaries, articles, magazines, newspapers, booklets, brochures, pamphlets, circulars, bulletins, notices, drawings, diagrams, instructions, notes or minutes of meetings or of other communications of any type, including inter- and intra-office communications, questionnaires, surveys, charts, graphs, photographs, phonograph recordings, films, tapes, disks, data cells, e-mail, printouts or hard copies of information stored or maintained by electronic data processing or word processing equipment, all other data compilations from which information can be obtained (by translation, if necessary, by you through detection devices into usable form) including, without limitation, electromagnetically sensitive storage media such as floppy disks, hard disks and/or CD-ROM, and any preliminary versions, drafts or revisions of any of the foregoing.

3. The term “communication(s)” or “communicate” includes information relating to all oral communications, meetings, conferences, “documents” (as defined above), whether or not

any such document, or the information contained therein, was transmitted by its author to any other person.

4. The term “identify,” when used herein, has the following meanings:
 - A. When used in reference to an individual, it means to state the person’s (a) full name; (b) present business address, or, if unavailable, last known home address; and (c) business or governmental affiliation or job title or, if unavailable, the last known business or governmental affiliation and job description.
 - B. When used in reference to any person other than an individual, it means to state the person’s (a) full name and d/b/a, if any; and (b) present address or, if unavailable, last known address;
 - C. When used in reference to corporate or other business entities, it means to state (a) the name of the corporation or business entity; (b) the date and place(s) of incorporation; (c) the principal place(s) of business; (d) all locations where it is licensed or authorized to do business; and (e) all of its present business addresses.
 - D. When used in reference to communications, it means to describe the statements and communications by (a) stating the date and place where they were made; (b) identifying each of the makers and recipients thereof, in addition to all persons present; and (c) indicating the medium of communication.

Note: When identifying the date of an oral statement or communication, the precise date must be given. If only an approximate date is given, it will be

presumed that you have no recollection or do not have specific knowledge as to the exact date.

- E. When used in reference to a document or documentary evidence, it means to state the type of document (e.g., letter, memorandum, telegraph, chart), its author and originator, its date(s), all addresses and recipients, its present location or custodian, the topics dealt with therein, with such reasonable particularity as is sufficient for a specific demand for production, and any identifying marks, numerals, code words or letters distinguishing it from other similar documents. If any such document was but no longer is, in your possession or subject to your custody or control, state what disposition was made of it. Documents to be identified shall include all those documents in your possession, custody or control and all of the documents of which you have knowledge, all documents available to you, and all documents that you could obtain from your employees, agents, representatives, sureties, or indemnitors.
- F. When used in reference to damages, it means to state the damages, including each component and the method by which the damages were calculated.

5. “Relates to”, “relating to”, and “regarding” are intended to include referring to, embodying, connected with, commenting on, responding to, showing, describing, analyzing, reflecting, or constituting.

6. “You” and “your” refers to Ohio Edison Company, The Cleveland Electric Illuminating Company, or The Toledo Edison Company individually and/or collectively, and all

employees, agents, representatives, affiliates, successor corporations, subsidiary corporations, and parent corporations thereof.

7. “FirstEnergy” refers collectively to Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company, its parent companies, subsidiaries, affiliates, predecessors, successors, officers, directors, agents, employees, and other persons acting on its behalf.

8. The “Commission” means the Public Utilities Commission of Ohio.

9. “Administrator(s)” refers to the organizations used by the Companies, pursuant to a stipulation in Case No. 08-0935-EL-SSO, to educate their respective customer segments and to “market” various programs offered by the Companies to achieve program targets and objectives.

10. “Administrator Contract” refers to administrator agreements approved by the Commission on in Case No. 09-553-EL-EEC on December 2, 2009, and the modified compensation structure approved on March 16, 2011.

11. “Proposed EE/PDR Portfolio Plans” means the Companies respective Energy Efficiency (“EE”) and Peak Demand Reduction (“PDR”) Plans filed on April 15, 2016 in Case No. 16-0743-EL-POR.

12. “Stipulation” means the Stipulation and Recommendation that was filed in Case No. 16-0743-EL-POR on December 9, 2016.

13. “Revised EE/PDR Portfolio Plans” are the revised Proposed EE/PDR Portfolio Plans, which are attached to the Stipulation as Exhibit B.

REQUESTS FOR ADMISSIONS

RFA NO. 1: Admit that you served OHA with a notice of intent to terminate OHA’s Administrator Contract (“Notice of Termination”) on or about December 1, 2016.

RESPONSE:

RFA NO. 2: Admit that **Attachment A** is a true, accurate, and authentic copy of the Notice of Termination.

RESPONSE:

RFA NO. 3: Admit that you have not provided OHA any basis for terminating OHA's Administrator Contract.

RFA NO. 4: Admit that you never informed OHA that it failed to perform its obligations as an Administrator.

RESPONSE:

RFA NO. 5: Admit that you are not aware of any instance when OHA failed to perform its obligations as an Administrator.

RESPONSE:

INTERROGATORIES

INT NO. 1: If you denied RFA NO. 1, please explain in detail the basis for your denial.

RESPONSE:

INT NO. 2: If you denied RFA NO. 2, please explain in detail the basis for your denial.

RESPONSE:

INT NO. 3: If you denied RFA NO. 3, please explain in detail the basis for your denial.

RESPONSE:

INT NO. 4: If you denied RFA NO. 4, please explain in detail the basis for your denial.

RESPONSE:

INT NO. 5: If you denied RFA NO. 5, please explain in detail the basis for your denial.

RESPONSE:

INT NO. 6: On page 89 of the Revised EE/PDR Portfolio Plans, you refer to seven (7) “current Administrators.” Identify all Administrators that you intend to use during implementation of the Revised EE/PDR Portfolio Plans.

RESPONSE:

INT NO. 7: Please identify all Administrators that received a notice intent to terminate their Administrator Contract during 2016.

RESPONSE:

INT NO. 8: For those Administrators that received a notice of intent to terminate their Administrator Contract during 2016, please identify the date that you notified these Administrators that their contracts would be terminated.

RESPONSE:

INT NO. 9: Please identify any and all communications you had with OHA regarding your decision to terminate OHA as an Administrator. Please identify all individuals involved in these communications, the dates on which these communications occurred, and describe the substance of these communications.

RESPONSE:

INT NO. 10: Please identify any and all communications you had with parties to this case, including Commission Staff or attorneys for Commission Staff, regarding your decision to terminate OHA as an Administrator. Please identify all individuals involved in these communications, the dates on which these communications occurred, and describe the substance of these communications.

RESPONSE:

INT NO. 11: Please identify any and all internal communications you had regarding your decision to terminate OHA as an Administrator. Please identify all individuals involved in these

communications, the dates on which these communications occurred, and describe the substance of these communications.

INT NO. 12: Please identify any and all communications you had with any person regarding your decision to terminate OHA as an Administrator. Please identify all individuals involved in these communications, the dates on which these communications occurred, and describe the substance of these communications.

RESPONSE:

INT NO. 13: On page 11 of the Revised EE/PDR Portfolio Plans, you state that you “use the Administrators primarily to educate their respective customer segments and to ‘market’ various programs being offered by the Companies to achieve the program target and objectives.” Please describe how you intend to educate and market programs to hospitals during implementation of the Revised EE/PDR Portfolio Plans.

RESPONSE:

INT NO. 14: Please identify any and all Administrators you intend to use to educate and market programs to hospitals during implementation of the Revised EE/PDR Portfolio Plans.

RESPONSE:

INT NO. 15: Please identify any and all vendors you intend to use to educate and market programs to hospitals during implementation of the Revised EE/PDR Portfolio Plans.

RESPONSE:

REQUESTS FOR PRODUCTION

RFP NO. 1: Please produce all documents you referred to, reviewed, and/or relied upon when preparing responses to the above requests for admissions and interrogatories.

RESPONSE:

RFP NO. 2: Please produce all documents identified, discussed, or described in the above requests for admissions and interrogatories.

RESPONSE:

RFP NO. 3: Please provide documents related to your decision to issue the Notice of Termination.

RESPONSE:

Respectfully submitted on behalf of
THE OHIO HOSPITAL ASSOCIATION



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing First Set of Discovery Requests was served upon the parties of record listed below this 19th day of December 2016 *via* electronic mail.



Devin D. Parram

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December 1, 2016

**VIA OVERNIGHT EXPRESS
MAIL AND E-MAIL**

Ohio Hospital Association
Attn: Rick Sites
155 East Broad Street, 15th Floor
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Re: Notice of Intent to Terminate Program Administrator Agreement

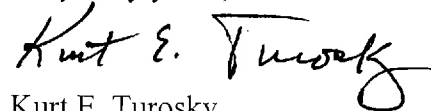
Dear Mr. Sites:

I am contacting you regarding the Program Administrator Agreement by and between Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "Companies"), and OHA Solutions, Inc. ("OHA") dated as of June 24, 2009 ("Agreement"). Capitalized terms used but not defined in this letter have the meanings given to them in the Agreement.

By this letter, OHA is hereby notified of the Companies' intent to terminate the Agreement effective December 31, 2016. This letter constitutes advance written notice of at least thirty (30) days pursuant to Section 11 of the Agreement. Accordingly, the Agreement will terminate on December 31, 2016, except for those provisions of the Agreement which, by their express terms, survive termination of the Agreement. Under the terms of the Agreement, OHA bears full responsibility of timely notifying its members that it will no longer represent them in the Companies' Programs.

Please do not hesitate to contact our counsel, Erika Ostrowski, Esq. (eostrowski@firstenergycorp.com), should you have any questions regarding this notice.

Very truly yours,



Kurt E. Turosky

cc: Erika Ostrowski, Esq., Dylan Borchers, Esq.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO REQUESTS FOR ADMISSIONS

RFA No. 1: Admit that you served OHA with a notice of intent to terminate OHA's Administrator Contract ("Notice of Termination") on or about December 1, 2016.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO REQUESTS FOR ADMISSIONS

RFA No. 2: Admit that **Attachment A** is a true, accurate, and authentic copy of the Notice of Termination.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company For Approval
of Their Energy Efficiency and Peak Demand Reduction Program Portfolio
Plans for 2017 through 2019

RESPONSES TO REQUESTS FOR ADMISSIONS

RFA No. 3: Admit that you have not provided OHA any basis for terminating OHA's Administrator Contract.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO REQUESTS FOR ADMISSIONS

RFA No. 4: Admit that you never informed OHA that it failed to perform its obligations as an Administrator.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company For Approval
of Their Energy Efficiency and Peak Demand Reduction Program Portfolio
Plans for 2017 through 2019

RESPONSES TO REQUESTS FOR ADMISSIONS

RFA No. 5: Admit that you are not aware of any instance when OHA failed to perform its obligations as an Administrator.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company For Approval
of Their Energy Efficiency and Peak Demand Reduction Program Portfolio
Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 1: If you denied RFA NO. 1, please explain in detail the basis for your denial.

Response: Not applicable.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company For Approval
of Their Energy Efficiency and Peak Demand Reduction Program Portfolio
Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 2: If you denied RFA NO. 2, please explain in detail the basis for your denial.

Response: Not applicable.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company For Approval
of Their Energy Efficiency and Peak Demand Reduction Program Portfolio
Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 3: If you denied RFA NO. 3, please explain in detail the basis for your denial.

Response: Not applicable.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company For Approval
of Their Energy Efficiency and Peak Demand Reduction Program Portfolio
Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 4: If you denied RFA NO. 4, please explain in detail the basis for your denial.

Response: Not applicable.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company For Approval
of Their Energy Efficiency and Peak Demand Reduction Program Portfolio
Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 5: If you denied RFA NO. 5, please explain in detail the basis for your denial.

Response: Not applicable.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 6: On page 89 of the Revised EE/PDR Portfolio Plans, you refer to seven (7) "current Administrators." Identify all Administrators that you intend to use during implementation of the Revised EE/PDR Portfolio Plans.

Response: The Companies object to this request because it is vague and ambiguous with respect to the terms "intend to use" and "implementation." Subject to and without waiving the foregoing objection, the Companies state as follows: At the time the Revised EE/PDR Portfolio Plans were filed, the Companies had active administrator agreements with: OHA, Ohio Schools Council, Council of Smaller Enterprises, Ohio Manufacturers' Association, Industrial Energy Users- Ohio, County Commissioners' Association of Ohio, and Association of Independent Colleges and Universities of Ohio. Effective January 1, 2017, the Companies will use the following entities as Administrators under the Revised EE/PDR Portfolio Plans: Council of Smaller Enterprises, Ohio Manufacturers' Association, Industrial Energy Users- Ohio, County Commissioners' Association of Ohio, and Association of Independent Colleges and Universities of Ohio. The Companies, however, reserve their right to enter into additional administrator agreements or to terminate current administrator agreements pursuant to the terms and conditions of said agreements.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 7: Please identify all Administrators that received a notice intent to terminate their Administrator Contract during 2016.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 8: For those Administrators that received a notice of intent to terminate their Administrator Contract during 2016, please identify the date that you notified these Administrators that their contracts would be terminated.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 9: Please identify any and all communications you had with OHA regarding your decision to terminate OHA as an Administrator. Please identify all individuals involved in these communications, the dates on which these communications occurred, and describe the substance of these communications.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence. The Companies also object because this request is overbroad and unduly burdensome, and because it seeks confidential settlement communications. Further objecting, OHA is already in the possession, custody, and control of the requested information.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 10: Please identify any and all communications you had with parties to this case, including Commission Staff or attorneys for Commission Staff, regarding your decision to terminate OHA as an Administrator. Please identify all individuals involved in these communications, the dates on which these communications occurred, and describe the substance of these communications.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 11: Please identify any and all internal communications you had regarding your decision to terminate OHA as an Administrator. Please identify all individuals involved in these communications, the dates on which these communications occurred, and describe the substance of these communications.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence. The Companies also object because this request is overbroad and unduly burdensome. Moreover, the Companies object to this request because it is vague and ambiguous with respect to the term "internal communications," and to the extent it seeks information protected from disclosure by the attorney-client privilege.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company For Approval
of Their Energy Efficiency and Peak Demand Reduction Program Portfolio
Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 12: Please identify any and all communications you had with any person regarding your decision to terminate OHA as an Administrator. Please identify all individuals involved in these communications, the dates on which these communications occurred, and describe the substance of these communications.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence. The Companies also object because this request is overbroad and unduly burdensome. Moreover, the Companies object to this request to the extent it seeks information protected from disclosure by the attorney-client privilege.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 13: On page 11 of the Revised EE/PDR Portfolio Plans, you state that you “use the Administrators primarily to educate their respective customer segments and to ‘market’ various programs being offered by the Companies to achieve the program target and objectives.” Please describe how you intend to educate and market programs to hospitals during implementation of the Revised EE/PDR Portfolio Plans.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence. Moreover, the Companies object to this request because it is vague and ambiguous with respect to the terms “intend to use” and “implementation.” Subject to and without waiving the foregoing objections, the Companies state as follows: The Companies will educate and market programs to hospitals under their Revised EE/PDR Portfolio Plans through its vendors, program allies, and customer support representatives, among others, similar to other business segments. Responding further, the Companies refer OHA to the Marketing Strategies and Implementation Strategies in the Revised EE/PDR Portfolio Plans, including, without limitation, those included for the C&I Energy Solutions for Business Programs – Small and Large and the Mercantile Customer Program.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 14: Please identify any and all Administrators you intend to use to educate and market programs to hospitals during implementation of the Revised EE/PDR Portfolio Plans.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence. Moreover, the Companies object to this request because it is vague and ambiguous with respect to the terms "intend to use" and "implementation." Subject to and without waiving the foregoing objections, the Companies state as follows: The Companies refer OHA to the administrator contracts filed and approved with the Commission in Case No. 09-553-EL-EEC. Responding further, the Companies state that hospitals may choose to work with any of the Companies' active administrators or to work with the Company through its vendors, program allies, and/or customer support representatives.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO INTERROGATORIES

INT No. 15: Please identify any and all vendors you intend to use to educate and market programs to hospitals during implementation of the Revised EE/PDR Portfolio Plans.

Response: The Companies object to this request because it seeks irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence. Moreover, the Companies object to this request because it is vague and ambiguous with respect to the term "intend to use" and "implementation." Subject to and without waiving the foregoing objections, the Companies state as follows: At this time, negotiations with potential vendors are ongoing and incomplete. The Companies will supplement this response upon the finalization and execution of vendor contracts.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO REQUESTS FOR PRODUCTION

RFP No. 1: Please produce all documents you referred to, reviewed, and/or relied upon when preparing responses to the above requests for admissions and interrogatories.

Response: The Companies object to this request because it seeks irrelevant documents and/or documents not reasonably calculated to lead to the discovery of admissible evidence. The Companies also object because this request is overbroad and unduly burdensome. Subject to and without waiving the foregoing objections, the Companies state that the only documents referred to, reviewed, and/or relied upon in preparing its responses to OHA's discovery requests are the Administrator Contract, the Notice of Termination, the Revised EE/PDR Portfolio Plans, and publicly-available filings that can be accessed through the Commissions' Docketing Information System in Case No. 09-553-EL-EEC.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company For Approval of Their Energy Efficiency and Peak Demand Reduction Program Portfolio Plans for 2017 through 2019

RESPONSES TO REQUESTS FOR PRODUCTION

RFP No. 2: Please produce all documents identified, discussed, or described in the above requests for admissions and interrogatories.

Response: The Companies object to this request because it seeks irrelevant documents and/or documents not reasonably calculated to lead to the discovery of admissible evidence. The Companies also object because this request is overbroad and unduly burdensome. Moreover, the Companies object to this request to the extent it seeks documents protected from disclosure by the attorney-client privilege. Subject to and without waiving the foregoing objections, the Companies state that the only non-privileged documents identified, discussed, and/or described in preparing its responses to OHA's discovery requests are the Revised EE/PDR Portfolio Plans and publicly-available filings that can be accessed through the Commissions' Docketing Information System in Case No. 09-553-EL-EEC.

Case No. 16-0743-EL-POR

In the Matter of the Application of Ohio Edison Company, The Cleveland Electric
Illuminating Company, and The Toledo Edison Company For Approval
of Their Energy Efficiency and Peak Demand Reduction Program Portfolio
Plans for 2017 through 2019

RESPONSES TO REQUESTS FOR PRODUCTION

RFP No. 3: Please provide documents related to your decision to issue the Notice of Termination.

Response: The Companies object to this request because it seeks irrelevant documents and/or documents not reasonably calculated to lead to the discovery of admissible evidence. The Companies also object because this request is overbroad and unduly burdensome. Moreover, the Companies object to this request to the extent it seeks documents protected from disclosure by the attorney-client privilege.

From: Parram, Devin
Sent: Friday, December 30, 2016 4:29 PM
To: 'Michael R Gladman'
Cc: Borchers, Dylan; 'eostrowski@firstenergycorp.com'; 'kjklaw@yahoo.com'; Warnock, Matthew; 'Rick Sites'
Subject: RE: FW: Discovery Responses associated with P.U.C.O Case No 16-0743-EL-POR - OHA Set 2 [BRICKER-WS.FID329977]

Thanks for getting back to me, Michael. I appreciate you offering to meet and confer by telephone. However, I think we need Attorney Examiner Bulgrin's assistance at this point. I will include this email chain as an attachment to the motion to compel. Attorney Examiner Bulgrin will have to decide if FirstEnergy will have an opportunity to respond in writing before the conference.

Devin

From: Michael R Gladman [mailto:mrgladman@JonesDay.com]
Sent: Friday, December 30, 2016 3:55 PM
To: Parram, Devin
Cc: Borchers, Dylan; 'eostrowski@firstenergycorp.com'; 'kjklaw@yahoo.com'; Warnock, Matthew; 'Rick Sites'
Subject: Re: FW: Discovery Responses associated with P.U.C.O Case No 16-0743-EL-POR - OHA Set 2 [BRICKER-WS.FID329977]

Devin,

On behalf of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, "FirstEnergy"), this email responds to the Ohio Hospital Association's ("OHA") communication regarding FirstEnergy's responses and objections to OHA's second set of discovery in the above-referenced matter ("Discovery Requests"). Specifically, OHA contends that FirstEnergy's responses to Requests for Admission 1-5, Interrogatories 1-5, 7-8, and 10-12, and Request for Production 3 ("Disputed Discovery Requests") are "incomplete and nonresponsive." For the reasons set forth below, FirstEnergy rejects OHA's contention and stands on its responses and objections.

As an initial matter, the Commission's rules allow a party responding to discovery to object to requests that go beyond the permissible scope of discovery. See O.A.C. 4901-1-19 ("Each interrogatory shall be answered separately and fully . . . unless it is objected to, in which case the reason for the objection shall be stated in lieu of an answer"); O.A.C. 4901-1-20 ("The response shall state, with respect to each item or category, that the inspection and related activities will be permitted as requested, unless the request is objected to, in which case the reason for the objection shall be stated"); O.A.C. 49-1-1-22 ("The matter is admitted unless . . . the party to whom the request is directed serves upon the party requesting the admission a written answer or objection If an objection is made, the reasons therefor shall be stated").

Here, OHA's Disputed Discovery Requests plainly go beyond the permissible scope of discovery in seeking information and documents that have no bearing on this proceeding. See O.A.C. 4901-1-16 (discovery limited to "any matter, not privileged, which is relevant to the subject matter of the proceeding" or that is "reasonably calculated to lead to the discovery of admissible evidence"). All of the Disputed Discovery Requests seek information and documents relating to the **reasons** for the termination of OHA's and other entities' administrator agreements, but the **reasons** for the termination of those agreements are not relevant to the only remaining issue in this case: whether the December 8, 2016 Stipulation and Recommendation signed by FirstEnergy and numerous other parties (i) is the product of serious bargaining among capable, knowledgeable parties; (ii) benefits ratepayers and the public interest; and (iii) violates any important regulatory principle or practice. See, e.g., Cincinnati Gas & Elec. Co., Case No. 91-410-EL-AIR (April 14, 1994). Simply stated, the reasons why certain administrator agreements were terminated have nothing to do with those discreet issues, and OHA does not provide any basis to conclude otherwise. OHA merely states in conclusory fashion that FirstEnergy's basis for the termination "is relevant to the portfolio and relevant to the reasonableness of the stipulation" and "whether the stipulation meets the three-pronged test", but OHA provides no explanation **how** or **why** the reasons for termination of the administrator agreements are relevant to the stipulation or the three-part test.

Instead of explaining how or why the reasons for termination are relevant to the remaining issues in this case, OHA contends that the information it seeks in the Disputed Discovery Requests is relevant because it relates to who will actually serve as administrators and how certain customer segments (including hospitals) will be addressed. This argument misses the mark for two main reasons. First, the reasons for the termination are unrelated to which entities will actually serve as administrators and how customer segments will be served. Second, FirstEnergy has already provided this exact information. See Response to Interrogatory 6 (identifying entities that will serve as administrators for Revised EE/PDR Portfolio Plans); Response to Interrogatory 13 (explaining how FirstEnergy will educate and market programs to hospitals under Revised EE/PDR Portfolio Plans). In other words, FirstEnergy has already provided the very information OHA uses to justify its Disputed Discovery Requests. To the extent OHA believes that the Revised EE/PDR Portfolio Plans incorrectly identify OHA as an administrator, OHA was, in fact, a current administrator at the time those plans were filed, and FirstEnergy intends to supplement the plans to reflect the termination of OHA's administrator agreement.

More broadly, it is readily apparent that OHA is engaged in a fishing expedition in the hopes of building a breach of contract action against FirstEnergy. To be sure, whether FirstEnergy breached OHA's administrator agreement is not relevant to the limited issues that remain in this proceeding. Moreover, FirstEnergy's Notice of Termination to OHA, dated December 1, 2016, explicitly stated that its decision to terminate the administrator contract was made pursuant to Section 11 of the agreement, which expressly authorizes a party to terminate the agreement upon advance written notice to the other party of at least thirty days. Such provisions are enforceable in Ohio, without inquiry into the motivation for termination. Thus, even in a breach of contract action (which the Commission does not have jurisdiction to entertain), the Disputed Discovery Requests would remain objectionable.

Finally, your request for a privilege log relating to FirstEnergy's responses to Interrogatories 11-12 and Request for Production 3 fails to recognize the impact of the relevance objection -- FirstEnergy need not log communications and documents relating to inquiries that are not relevant to this proceeding.

Notwithstanding the foregoing, we would be happy to meet and confer by telephone about these issues on Tuesday January 3. If OHA chooses to file a motion to compel, FirstEnergy requests that this email chain (including this communication) be provided with the motion and that FirstEnergy be provided an opportunity to respond to the motion to compel in writing prior to any conference with Attorney Examiner Bulgrin. Thanks.

Michael R. Gladman
Partner
[JONES DAY® - One Firm WorldwideSM](http://www.jonesday.com)
325 John H. McConnell Blvd., Suite 600, Columbus, OH 43215
Mailing Address: P.O. Box 165017, Columbus, OH 43216
Office +1.614.281.3865 | Mobile +1.614.506.6187
mrgladman@jonesday.com

From: "Parram, Devin" <dparram@bricker.com>
To: "'eostrowski@firstenergycorp.com'" <eostrowski@firstenergycorp.com>
Cc: "'mrgladman@jonesday.com'" <mrgladman@jonesday.com>, "'kjklaw@yahoo.com'" <kjklaw@yahoo.com>, "Borchers, Dylan" <DBorchers@bricker.com>, "Warnock, Matthew" <MWarnock@bricker.com>, 'Rick Sites' <Rick.Sites@ohiohospitals.org>
Date: 12/29/2016 03:49 PM
Subject: FW: Discovery Responses associated with P.U.C.O Case No 16-0743-EL-POR - OHA Set 2 [BRICKER-WS.FID329977]

Erika,

This email is regarding Ohio Edison Company, The Cleveland Electric Illuminating Company and The Toledo Edison Company's (collectively, "FirstEnergy") incomplete responses to Ohio Hospital Association's ("OHA") first set of discovery requests ("Discovery Requests") in Case No. 16-743-EL-POR. A copy of your responses to the Discovery Requests is attached to this email. Pursuant to O.A.C. 4901-1-23(C), I am sending you this

email as an attempt to resolve this issue without involving the hearing examiner. FirstEnergy’s “responses” and objections to OHA’s Discovery Requests are incomplete and nonresponsive for the following reasons:

- **Requests for Admissions 1-5:** These Requests for Admissions address FirstEnergy’s decision to terminate OHA’s administrator contract. In response to these Requests for Admissions, you refuse to answer because the requests allegedly “seek[] irrelevant information and/or information not reasonably calculated to lead to the discovery of admissible evidence.” This objection is baseless for a number of reasons. The information is relevant because it relates directly to FirstEnergy’s representation in “Revised EE/PDR Portfolio Plans” (defined in the Discovery Requests) that it may use certain contract administrators in this case. In its Revised EE/PDR Portfolio Plans, FirstEnergy describes how contract administrators are used to target certain customer segments. OHA is one of the Commission-approved contract administrators listed in FirstEnergy’s Revised EE/PDR Portfolio Plans, and it has been operating as an administrator since the Commission approved the contracts in Case No. 09-553-EL-EEC. FirstEnergy’s sudden decision to terminate OHA as a contract administrator impacts its portfolio with respect to hospitals, which also calls into question whether the stipulation is in the public interest. While FirstEnergy may contend that it has the “discretion” to terminate OHA for any reason at all, FirstEnergy’s basis for termination is relevant to the portfolio and relevant to the reasonableness of the stipulation.

- **Interrogatories 1- 5:** These requests address OHA’s Requests for Admissions. Because your refusal to respond the Requests for Admissions is warrantless, your failure to respond to Interrogatories 1- 5 is also improper.

- **Interrogatory 7-8:** These interrogatories relate to FirstEnergy’s decision to terminate OHA as the contract administration. This specific information is relevant because OHA (one of the Commission-approved administrators listed in FirstEnergy’s Revised EE/PDR Portfolio Plans) may have been terminated for absolutely no reason while other contact administrators (presumably signatory or non-opposing parties) may not have been terminated. If this is the case, this information relevant to whether the stipulation meets the three-pronged test.

- **Interrogatory 10:** This interrogatory seeks information regarding FirstEnergy’s decision to terminate OHA as a contract administration. I already explained why this information is relevant.

- **Interrogatory 11:** Your response contains four parts:
 - Relevancy- This interrogatory seeks information regarding FirstEnergy’s decision to terminate OHA as a contract administration. I already explained why this information is relevant.
 - Overbroad and unduly burdensome – OHA is willing to limit the scope of this request to “Communications” (defined in the Discovery Requests) made from the filing of your application in Case No. 16-743-EL-POR (April 15, 2016) to today.

- “Internal Communications” means Communications between representatives, employees, and/or agents of FirstEnergy.
 - Attorney-client privilege- As requested in the Discovery Requests (page 2), please provide a privilege-log regarding all Communications for which you are claiming attorney-client privilege.
- **Interrogatory 12:** Your response contains three parts:
 - Relevancy- This interrogatory seeks information regarding FirstEnergy’s decision to terminate OHA as a contract administration. I already explained why this information is relevant.
 - Overbroad and unduly burdensome – OHA is willing to limit the scope of this request to Communications made from the filing of your application in Case No. 16-743-EL-POR (April 15, 2016) to today. In addition, OHA is willing to limit the scope of this request to Communications between FirstEnergy and parties that have intervened in Case No. 16-743-EL-POR.
 - Attorney-client privilege- As requested in the Discovery Requests, please provide a privilege-log regarding all Communications for which you are claiming attorney-client privilege.
- **Request for Production 3:** Your response contains three parts:
 - Relevancy- This interrogatory seeks information regarding FirstEnergy’s decision to terminate OHA as a contract administration. I already explained why this information is relevant.
 - Overbroad and unduly burdensome – OHA is willing to limit the scope of this request to (1) Communications made from the filing of your application in Case No. 16-743-EL-POR (April 15, 2016) to today and (2) “Documents” (as defined in the Discovery Requests”) created/developed/produced/drafted on or after the date the application in Case No. 16-743-EL-POR was filed (April 15, 2016) to today.
 - Attorney-client privilege- As requested in the Discovery Requests, please provide a privilege-log regarding all Communications for which you are claiming attorney-client privilege.

OHA’s testimony is due on Tuesday, January 10, 2017 and the hearing begins on January 23, 2017. Considering the extremely tight timeframe we are working with, I need to know soon if I need to file a motion to compel to resolve these issues. Please let me by **5:00 p.m. tomorrow (December 30, 2016)** if FirstEnergy intends to amend its responses. If you are going to provide amended responses, I request that you provide these responses and responsive documents by close of business Tuesday, January 3, 2017. If I do not hear from you (or if you indicate that FirstEnergy is unwilling to amend its responses), I will be filing a motion to compel first thing **Tuesday morning (January 3, 2017)**, and I will also be requesting an immediate prehearing conference to address these issues.

Best regards,

Devin

PS – Please make sure I am on you service list.

From: Singleton, Tamera J. [<mailto:singletont@firstenergycorp.com>]

Sent: Wednesday, December 28, 2016 4:08 PM

To: cmooney@ohiopartners.org; mfleisher@elpc.org; trent@theoec.org; rdove@attorneydove.com; jfinnigan@edf.org; Christopher.Healey@occ.ohio.gov; Sites, Richard; Warnock, Matthew; Borchers, Dylan; mpritchard@mwncmh.com; bojko@carpenterlipps.com; RKelter@elpc.org; Stinson, Dane; William.Wright@ohioattorneygeneral.gov; natalia.messenger@ohioattorneygeneral.gov; robert.wolfe@puco.ohio.gov; sechler@carpenterlipps.com; gpoulos@enernoc.com; joliker@igsenergy.com; KField@elpc.org; john.jones@ohioattorneygeneral.gov; perko@carpenterlipps.com

Subject: Discovery Responses associated with P.U.C.O Case No 16-0743-EL-POR - OHA Set 2

RE: Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively, the "Companies") Discovery Responses associated with P.U.C.O. Case No. 16-0743-EL-POR

Enclosed herein are the Companies' Discovery Responses associated with P.U.C.O Case No 16-0743-EL-POR More specifically:

1. Response to Discovery – OHA Set 2

The Discovery Responses are true and accurate based on information currently available to the Companies. Please direct any questions or comments of a legal nature to Carrie Dunn at 330-7961-2352 or cdunn@firstenergycorp.com. If technical in nature, please contact Rebecca Leiter at (330) 384-5342 or leiterr@firstenergycorp.com.

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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Ohio Edison Company,)
The Cleveland Electric Illuminating Company, and The)
Toledo Edison Company for Approval of Their Energy) Case No. 16-0743-EL-POR
Efficiency and Peak Demand Reduction Program Portfolio)
Plans for 2017 through 2019.)

AFFIDAVIT OF DEVIN D. PARRAM

State of Ohio :
 : S.S.
County of Franklin :

I, Devin D. Parram, counsel for Ohio Hospital Association (“OHA”), being first duly sworn, depose and say:

1. On December 19, 2016, the OHA served Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively “FirstEnergy”) with OHA’s First Set of Discovery Requests (the “Discovery Requests”).

2. On December 28, 2016, FirstEnergy provided cursory and non-responsive answers to the Discovery Requests.

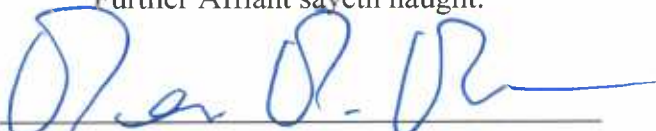
3. Upon FirstEnergy’s failure to adequately respond to the Discovery Requests., I sent an e-mail to FirstEnergy’s counsel on December 29, 2016. The purpose of my December 29, 2016 e-mail was to attempt to resolve the discovery dispute without the Commission’s assistance.

4. On December 30, 2016, FirstEnergy’s counsel responded to my email by continuing to refuse to respond to OHA’s Discovery Requests. FirstEnergy offered to discuss its refusal to answer the Discovery Requests on January 3, 2017. However, considering that the


hearing date is quickly approaching, and FirstEnergy's blanket refusal to answer any of the disputed Discovery Requests, I informed counsel for FirstEnergy that I would be filing a motion to compel.

5. It is my belief that FirstEnergy will not provide responses to the Discovery Requests without intervention from the Commission.

Further Affiant sayeth naught.


Devin D. Parram

Sworn to before and signed in my presence this 4th day of January 2017.


Notary Public



TERESA E. ORAKHOOD
Notary Public, State of Ohio
My Commission Expires December 3, 2020

This foregoing document was electronically filed with the Public Utilities

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Case No(s). 16-0743-EL-POR

Summary: Text The Ohio Hospital Association's Motion to Compel and Request for Immediate Pre-Hearing Conference electronically filed by Teresa Orahood on behalf of Parram, Devin D.