

**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 ) Case No. 16-743-EL-POR  
Energy Efficiency and Peak Demand )  
Reduction Program Portfolio Plans for 2017 )  
through 2019. )

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**THE OHIO HOSPITAL ASSOCIATION’S REPLY BRIEF**

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**I. INTRODUCTION**

The Ohio Hospital Association (“OHA”) has successfully performed as an administrator for hospitals in FirstEnergy’s<sup>1</sup> energy efficiency/peak demand (“EE/PDR”) portfolio programs. That is why FirstEnergy continued to work with OHA while implementing its prior EE-PDR programs for years. This relationship benefited not only hospitals in FirstEnergy’s territory, but also benefited FirstEnergy by increasing hospital participation in FirstEnergy’s programs. However, for no legitimate reason,<sup>2</sup> FirstEnergy terminated OHA as a contract administrator. FirstEnergy’s decision removes OHA from the critical role it previously played as an administrator, which likely will decrease hospital participation in FirstEnergy’ programs.

Although FirstEnergy claims that the Stipulation and the Proposed Plans benefit customers,<sup>3</sup> hospitals served by FirstEnergy are negatively impacted by the termination of OHA

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<sup>1</sup> “FirstEnergy” collectively refers to Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company.

<sup>2</sup> Vol. I, Tr. 107; Notice to Terminate (OHA Ex. 1.) FirstEnergy has not provided any evidence that OHA was terminated for failure to perform its contractual obligations. Rather, FirstEnergy has cited Section 11 of the agreement and has stated that it has the “discretion” to terminate OHA whenever it chooses and for any reason.

<sup>3</sup> FirstEnergy Initial Brief at 36.

as an administrator. As such, the Commission should modify the Stipulation so that FirstEnergy is required to contract with OHA as an administrator. This modification would ensure that OHA can continue to assist and encourage hospital participation in FirstEnergy's programs.

## II. ARGUMENT

FirstEnergy incorrectly claims that “the Stipulation is in the public interest and benefits the customers in the Companies’ service territories.”<sup>5</sup> The Stipulation and the Proposed Plans do not benefit hospitals served by FirstEnergy because FirstEnergy has abandoned its commitment to have the OHA serve as a program administrator for hospitals. The Stipulation from Case No. 08-0935-EL-SSO stated that the “Ohio Hospital Association **will serve** as administrator for the class of customers comprising hospitals in the service territories of [FirstEnergy].”(emphasis added)<sup>6</sup> The intent behind using contract administrators was for the administrators to “educate their respective customer segments” and to “‘market’ various programs being offered by [FirstEnergy] to achieve the program target and objectives.”<sup>7</sup> FirstEnergy’s unjustified termination of OHA as administrator decreases the likelihood of hospitals participating in FirstEnergy’s programs.

Further, FirstEnergy’s decision is inconsistent with other Ohio electric distribution utilities’ (“EDUs”) portfolio programs. Although FirstEnergy claims that it attempted to align its programs with those of other EDUs in Ohio,<sup>8</sup> a critical distinction between FirstEnergy’s portfolio and the other EDUs’ portfolios is that all the other EDUs have committed to working

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<sup>5</sup> FirstEnergy Initial Brief at 36.

<sup>6</sup> *FirstEnergy*, Case No. 08-935-EL-SSO, Stipulation and Recommendation at pg. 26 (February 19, 2009); *FirstEnergy*, Case No. 08-935-EL-SSO Second Opinion and Order (March 25, 2009).

<sup>7</sup> Stipulation, Exhibit B at pg. 11 (Joint Ex. 1.)

<sup>8</sup> FirstEnergy Initial Brief at 28.

with OHA as a program administrator. As OHA discussed in its initial brief, Ohio Power Company d/b/a AEP Ohio and Dayton Power and Light Company (“DP&L”) use OHA as a program administrator for hospitals in their portfolios.<sup>9</sup> Duke Energy Ohio, Inc. (“Duke”) has made a similar commitment to OHA in the stipulation filed in its pending portfolio case.<sup>10</sup> FirstEnergy is the only Ohio EDU that decided not to work with OHA as an administrator. This decision is unreasonable considering that OHA successfully performed as an administrator for FirstEnergy for years.

In its initial brief, FirstEnergy summarizes what it believes to be the “key” provisions of the Stipulation which amended the plans filed on April 15, 2016.<sup>11</sup> However, FirstEnergy overlooks another “key” modification it made to its initial plans. FirstEnergy decided to terminate OHA as an administrator without providing any legitimate basis,<sup>12</sup> and then removed OHA from the list of potential administrators.<sup>13</sup> FirstEnergy took such action even though OHA has experience working with hospitals and is committed to its member hospitals.<sup>14</sup> FirstEnergy witness Edward Miller previously testified regarding OHA’s ability to successfully target member hospitals for participation in FirstEnergy’s programs and discussed OHA’s experience

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<sup>9</sup> OHA Initial Brief at 7; *Columbus Southern Power*, 11-5568-EL-POR et al., Opinion and Order at pg. 13 (March 21, 2012).; *Ohio Power Company*, Case No. 16-0574-EL-POR, Opinion and Order (January 18, 2017); *Dayton Power and Light Company*, Case No. 13-0833-EL-POR, Opinion and Order at 5-6 (December 4, 2013); and *Dayton Power and Light Company*, Case No. 16-0649-EL-POR, Stipulation and Recommendation at 6-7 (December 13, 2016).

<sup>10</sup> *Duke*, Case No. 16-576-EL-POR Amended Stipulation and Recommendation at pgs. 15-16 (January 27, 2017).

<sup>11</sup> FirstEnergy Initial Brief at 11.

<sup>12</sup> Vol. I, Tr. 107; Notice to Terminate (OHA Ex. 1.)

<sup>13</sup> Stipulation, Exhibit B at pg. 89 (Joint Ex. 1.)

<sup>14</sup> Rebuttal Testimony of Edward C. Miller, Case No. 12-2190-EL-POR, at pg. 6-7 (OHA Ex. 2.)

working with member hospitals.<sup>15</sup> Mr. Miller testified that working with OHA would provide the companies “additional savings opportunities.”<sup>16</sup> In addition, hospitals in FirstEnergy’s territory have indicated that OHA’s participation as program administrator is critical. The Ohio Society for Healthcare Facilities Management, MetroHealth, and Lake Health filed public comments in support of OHA.<sup>17</sup> Yet, for some unknown reason, FirstEnergy has terminated OHA as an administrator. FirstEnergy’s sudden and unjustified termination of OHA will negatively impact hospitals’ ability to participate in EE-PDR programs.

In addition, FirstEnergy’s decision to terminate OHA probably will cause a delay in hospital participation in EE-PDR programs. FirstEnergy admits that it will have a three-month “ramp up” period before it can launch any of the programs, which means it might not begin its programs until the summer of 2017 or later.<sup>18</sup> If OHA was still operating an administrator, it would be able to hit the ground running to assist with marketing and implementation of those programs that apply to hospitals the second the Commission approves the programs. This is due to OHA’s experience working with hospitals as an administrator and its long-standing relationships with hospitals. However, because FirstEnergy errantly terminated OHA, it will have to work through other contractors or vendors to market programs to hospitals and implement programs for hospitals. These other entities will not have the same of level of experience working with hospitals as OHA and will not have the same relationship OHA has with hospitals in FirstEnergy’s territory. FirstEnergy’s decision to terminate OHA not only

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<sup>15</sup> *Id.*

<sup>16</sup> *Id.* at 7.

<sup>17</sup> See Public Comment filed by OSHFM on February 21, 2017; Public Comment filed by MetroHealth on February 21, 2017; and Public Comment filed by Lake Health on March 3, 2017.

<sup>18</sup> FirstEnergy Initial Brief at 55.

impairs hospitals' ability to participate in EE-PDR programs, but it also hinders FirstEnergy's ability to maximize EE-PDR savings.

### III. CONCLUSION

FirstEnergy's decision to terminate OHA as an administrator benefits no one: not OHA, not FirstEnergy, and definitely not the hospitals served by FirstEnergy. Having OHA serve as an administrator has worked for other EDUs, and has worked for FirstEnergy during its prior portfolios. FirstEnergy has presented no evidence supporting its rationale for suddenly changing course. As such, the Commission should modify the Stipulation so that FirstEnergy is required to contract with OHA as an administrator.

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 Reply Brief was served upon the parties of record listed below this 3<sup>rd</sup> day of March 2017 *via* electronic mail.



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