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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of the Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company, for Authority to Establish a Standard Service Offer Pursuant to R.C. § 4928.143 in the Form of an Electric Security Plan	))))	Case No. 08-0935-EL-SSO

COMMENTS BY MATERIAL SCIENCES CORPORATION TO THE REQUEST OF OHIO EDISON, CEI, AND TOLEDO EDISION COMPANIES FOR APPROVAL OF A SHORT TERM ELECTRIC SECURITY PLAN

Material Sciences Corporation ("MSC") opposes Ohio Edison, CEI, and Toledo Edison (the "Companies") requests for approval by November 14, 2008 of their short term Electric Security Plan while review continues on their three-year Electric Security Plan by the Commission. There is no statutory basis for Commission approval of an interim plan. The comprehensive framework of RC 4928.14, RC 4928.141, RC 4928.142, and RC 4928.143 provides for timely review and adjudication of a filed market rate offer [MRO] or an Electric Security Plan [ESP]. These provisions do not provide the Commission with authority to approve a severable short term ESP for services rendered from January 1, 2009 through April 30, 2009. Timely adjudication of the ESP filed on July 31, 2008 is required during December 2008 to reject, approve, or approve with modifications. Thereupon, the Companies current rates approved by their Rate

Stabilization and Rate Certainty plans continue in effect during 2009 until an approved ESP or MRO rate plan becomes effective. The controlling statutes of RC 4928 do not provide for the interim rates proposed by the Companies under the short term ESP.

2. Substance of the Companies' Request

a. Companies' Time Table

The Companies propose approval by November 14, 2008 of a Severable Short Term ESP under Paragraph 8 of its ESP[1] to put into effect interim SSO pricing to avoid the constricted December 2008 deadlines imposed by S.B. 221. The Companies argue approval of the short term ESP allows more time for the Commission to orderly consider the ESP application, especially in light of not owing generation or employing skillful purchasers of wholesale power.[2] The short term ESP becomes severed from the ESP unless accepted by the Commission by November 14, 2008. The Companies believe the short term ESP provides price certainty beginning January 1, 2009 when their current rate plans expire especially if within the 150-day review period set by S.B. 221 does not result in an acceptably approved ESP. The Companies further argue additional time for Commission approval of the Companies' ESP or MRO allows a more orderly MRO competitive bid process, if needed, and more time for the Companies to consider and accept or reject Commission imposed ESP modifications.[3]

The Companies' proposal requires rejection, approval, or approval with modifications of the ESP by March 5, 2009. The ESP thereupon becomes effective upon expiration of seven days. Commission rejecting or not acting upon the ESP by March 5,

[1] Companies ESP App. Ex. 9 at p. 35
[2] Companies ESP App. Ex. 9, par. 8 a. at p. 35-36
[3] Companies ESP App. Ex. 9, par. 8 a. and b. at p. 35-36

2009, or the Companies rejection of an approved modified ESP, permits the Companies to implement the competitive bid process under their MRO application. The schedule proposed holds auction bidding on April 8, 2009; ends the short term ESP rates on April 30, 2009; and on May 1, 2009 begins power receipts from successful bidders, and service at MRO rates.

b. Short Term ESP Rates and Terms

The short term ESP's average base generation rate of 7.75 cents/kWh is reduced to 6.75 cents/kWh, with the difference deferred for future recovery in the same manner as the base generation rate deferrals in the ESP.[4] The same rate design implements the short term ESP generation rates.

All provisions of the proposed ESP apply to the short term ESP except for: [5] (a) waiver of the RTC charge for CEI customers;[6] (b) the Green Resource Program Offer for residential customers;[7] (c) FES' obligations to add 1,000 MW, and to support environmental stewardship up to $15 million per year;[8] (d) a distribution rate freeze through January 1, 2014;[9] (e) undertaking at least $1 billion in distribution system capital improvements; [10] (f) a number of provisions for undertaking the AMI pilot program;[11] (g) the comprehensive Smart Grid Study;[12] (h) significant investments to support energy

[4] Companies ESP App. Ex. 9, par. 8 c. at p. 37
[5] Companies ESP App. Ex. 9, par. 8 c. at p. 37
[6] Companies ESP App. Ex. 9, par. A. 1.a. at p. 9]

[7] Companies ESP App. Ex. 9, par A.2.d. at p. 11
[8] Companies ESP App. Ex. 9, par A.2. l and m., at p. 17-18
[9] Companies ESP App. Ex. 9, par A.3.c. at p. 20
[10] Companies ESP App. Ex. 9, par A.3. g. at p. 22
[11] Companies ESP App. Ex. 9, par A.4. a-e at p. 23-25
[12] Companies ESP App. Ex. 9, par A.4. f at p. 25

efficiency demand response programs;[13] (i) the annual investment commitments for economic development and job retention activities;[14] (j) and the implementation of the economic development rider while the Demand Side Management and Energy Efficiency rider and Delta Revenue Recovery rider continue to apply.[15]

These provisions of the ESP continue to apply upon termination of the short term ESP:[16] (a) securitization;[17] (b) resolution of the Distribution Case; [18] (c) DSI Rider;[19] (d) storm damage expense deferrals; [20] (e) the Demand Side Management and Energy Efficiency Rider, Delta Revenue Recovery Rider, Reasonable Arrangements Rider, and, to the extent needed for recovery and reconciliation, the Economic Development Rider;[21] (f) the Reasonable Arrangements Rider, the Delta Revenue Recovery rider and Demand Side Management and Energy Efficiency rider continue to the extent necessary to provide rider discounts and recover delta revenues;[22] (g) as permitted, allocations across the Companies involving the Economic Development Rider, the Delta Revenue Recovery rider and the Demand Side Management and Energy Efficiency rider;[23] (h) the transmission and transmission-related cost rider; [24] (i) the significantly excessive earnings test set forth in Attachment H; [25] (j) the rate stabilization charge spread across all customers pertaining to under recovered aggregation costs;[26] (k) competitive bidding for

[13] Companies ESP App. Ex. 9, par A.4. g at p. 25
[14] Companies ESP App. Ex. 9, par A.4. h at p. 25-26
[15] Companies ESP App. Ex. 9, par A.4. i at p. 26-27
[16] Companies ESP App. Ex. 9, par 8 c. at p. 37
[17] Companies ESP App. Ex. 9, par A.2. f. at p. 13
[18] Companies ESP App. Ex. 9, par A.3 b, d, e at p. 19-20
[19] Companies ESP App. Ex. 9, par A.3 f at p. 21-22
[20] Companies ESP App. Ex. 9, par A.3 h at p. 22-23
[21] Companies ESP App. Ex. 9, par A.3 i at p. 26-27
[22] Companies ESP App. Ex. 9, par A.3 j at p. 27
[23] Companies ESP App. Ex. 9, par A.3 k at p. 27-28
[24] Companies ESP App. Ex. 9, par A.5 a-b. at p. 28-29
[25] Companies ESP. App. Ex. 9, par A.7 d at p. 32
[26] Companies ESP. App. Ex. 9, par A.7 h at p. 34

determining generation prices upon termination of ESP's generation prices; [27] and (j) all other provisions to reconcile or recovery deferred costs until completion of such recovery and reconciliation.[28]

2. Legal Basis for Companies' Request

a. Presented in the ESP

The Companies request approval by no later than December 10, 2008 of the ESP to become effective on January 1, 2009. Alternatively, the Companies request Commission approval of the Short Term ESP. [29] This timetable comes with the admonition that, as the Commission knows, the Companies' ESP commitments require generation purchases from FES and/or other wholesale providers. Commission approval or disapproval of the ESP determines whether FES dedicates its generation resources to the Companies' Ohio customers, or uses those resources to supply other obligations. FES needs enough lead-time to purchase additional energy supplies because after 2008 its controlled generation resources fall short of meeting its Ohio POLR commitments. Finally, implementation of an alternative market rate offer through competitive bidding still requires enough lead time to satisfy the procedures required by R.C. 4928.142.[30]

b. Companies' Requests Unsupported by S.B. 221

S.B. 221 does not authorize Commission approval of a short term ESP while

[27] Companies ESP App. Ex. 9, par A.7 i at p. 34-35
[28] Companies ESP App. Ex. 9, par 8 c. at p. 37
[29] Companies ESP App. Ex. 9, Section C at p. 40]
[30] Companies ESP App. Ex. 9, Section C at p. 41

continuing to consider the ESP. The Companies become legally obligated on January 1, 2009 to provide POLR services, including firm generation services, under a Standard Service Offer ("SSO") established under either RC 4928.142 (MRO) or RC 4928.143 (ESP). Plans may be simultaneously applied for by the Companies except the first application must include an ESP. [31] RC 4928.14 requires default standard service provided by a SSO authorized under either of those sections.

Commission adjudication of the ESP application within the 150-day limit makes unnecessary the Companies requested approval of a short term ESP. Further, approval of a short term ESP violates RC 4928.143 by putting into effect interim rates and service terms without the Companies meeting their burden of proof, and prior to Commission adjudication on whether the long term ESP meets the statutory test for approval, or approval with modifications upon which the Companies may agree or terminate the plan. The Commission must approve, or modify and approve an ESP upon determining whether the pricing and other terms or conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply to a MRO filed under RC 4928.142. Otherwise, the Commission shall disapprove the application. [32]

There is no statutory basis for the Commission putting into effect interim rates based on approving a short term ESP. Rather than interim rates, RC 4928.143 provides for continuation of the Companies current rates approved in the Rate Stabilization and

[31] RC 4928.141. (A)
[32] RC 4928.143. (C) (1)

Rate Certainty proceedings while the Commission considers approval of the ESP or MRO standard service offer. [33]

RC 4928.143 provides the Commission with limited discretion in allowing the recovery of costs not recoverable under the current rate plans. The statutes require the Commission to approve, or modify and approve, or otherwise disapprove the ESP application. [34] Modification and approval of the ESP allow the Companies to withdraw it upon which to file a new SSO ESP or MRO application.[35] Upon disapproval of the ESP, or termination by the Companies of their ESP upon rejection of modifications, the Commission shall issue necessary orders to continue the provisions, terms, and conditions of the utility's most recent standard service offer, along with any expected increases or decreases in fuel costs from those contained in that offer, until a subsequent offer is authorized under RC 4928.142.[36]

In this proceeding, The Companies request approval of a short term ESP by November 14, 2008 without meeting its burden of proof, and without prior Commission adjudication on whether the long term ESP meets the statutory test for approval, or approval with modifications upon which the Companies may agree or terminate the plan. There is no statutory basis for the Commission putting into effect interim rates based on approving a short term ESP. Wherefore, the Commission should deny the request.

Respectfully submitted,

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[33] RC 4928.141. (A)
[34] RC 4928.143. (C) (1)
[35] The Companies have filed a MRO
[36] RC 4928.143. (C) (1) (2) (a) and 2 (b)

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing document was served this 31 day of October 2008 by electronic mail, upon the persons listed below.

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