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Via Next Day Delivery

November 21, 2008

Public Utilities Commission of Ohio
PUCO Docketing
180 East Broad Street, 13th Floor
Columbus, Ohio 43215

In Re: Case No. 08-0935-EL-SSO

Greetings:

Material Sciences Corporation files its Initial Brief in the above proceeding via fax on November 21, 2008. Docketing will receive for filing the original and necessary copies of the Initial Brief on November 24, 2008, the next business day.

Regards

Craig I Smith

Craig I. Smith
Attorney for Material Sciences Corporation

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

INITIAL BRIEF BY MATERIAL SCIENCES CORPORATION

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I. ESP Procedures

RC 4928.141 (a) requires distribution utilities to provide standard service offers on a comparable and nondiscriminatory basis after 2008 for competitive retail electric services, including firm generation.

In their application filed July 31, 2008, the FirstEnergy Ohio companies, Ohio Edison, CEI, and Toledo Edison [collectively the "Companies"] request regulatory authority to establish a standard service offer ("SSO") under R.C. 4928.141 covering three years. The SSO becomes part of the Companies' Electric Security Plan ["ESP"] filed under R.C. 4928.143 to offer stable priced energy services, assured electric supplies, maintain, enhance, and improve the existing distribution system, and promote economic development, job retention, energy efficiency and peak demand reduction within their service areas.[1]

The Commission within 150 days of the filing approves, modifies and approves, or rejects the proposed ESP.[2] A modified and approved ESP allows the Companies to terminate by withdrawal, upon which to file for approval a new ESP or MRO.[3] The Companies current SSO continues, with adjusted fuel costs, until the Commisison subsequently approves the SSO filed as part of an ESP or MRO.[4]

II. Substance of the ESP

[1] ESP App., Company Ex. 9A, pg. 2
[2] RC 4928.143 (C) (1)
[3] See RC 4928. 143 (C)(2)(a); The Companies filed an MRO in Case No. 08- 0936-EL-SSO
[4] See RC 4928.143 (C)(2)(b)

Under RC 4928.143, the ESP shall include supply and pricing provisions for electric service. An ESP longer than three years may include provisions to test the plan for significant excessive earnings and transitional conditions if termination of the plan results from that test.[5] The ESP may include also the following provisions: [6]

(a) Automatic recovery of prudently incurred costs by the Companies for purchased power supplied under the SSO (including energy and capacity costs and affiliate acquired purchased power); emission allowances; and federally mandated carbon or energy taxes;[7]

(b) Reasonable recovery of CWIP allowances for the cost to construct, or environmental expenditures for, electric generation facilities of the Companies incurred on or after January 1, 2009. RC 4909.15 (A) applies to the CWIP allowances, except the Commission may authorizes the allowances upon the Companies incurring the costs or occuring the expenditures. Authorization of the CWIP allowance requires the Commission to first determine (in the ESP proceeding) that a need exists to construct the facility based on the Companies submitted resource planning projections. The Commission may not authorize the CWIP allowance unless competitive bidding sourced the facility's construction. Recovery of CWIP allowances is through a nonbypassable surcharge for the life of the facility.[8]

(c) The establishment of a nonbypasable surcharge as provided for by RC 4928.143(B)(2)(c).[9]

(d) Terms, conditions, or charges to stabilize or provide certainty as to retail electric service that relate to limitations on customer shopping for retail generation service, bypassability, standby, back-up or supplemental power service, default service, carrying costs, amortization periods, and accounting or deferrals, including future recovery of deferrals.[10]

(e) SSO price components that automatically increase or decrease;[11]

(f) Securitization of phase-in, including carrying charges, of the SSO price under RC 4928.144, including provisions to recover securitization costs;[12]

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5 See RC 4928.143 (B) (1)
6 See RC 4928.143 (B) (2)
7 See RC 4928.143 (B)(2)(a)
8 See RC 4928. 143 (B)(2)(b)
9 See RC 4928. 143 (B) (2)(c)
10 RC 4928.143 (B)(2)(d)
11 RC 4928.143 (B)(2)(e)
12 RC 4928.143 (B)(2)(f)

(g) Provisions of the SSO relating to transmission, ancillary, congestion, or related services, including cost recovery;[13]

(h) Provisions regarding the Companies distribution service, including, without limitation, single issue ratemaking, a revenue decoupling mechanism or other incentive ratemaking; distribution infrastructure and modernization incentives for the Companies that may include long-term energy delivery infrastructure modernization plans and recovery of costs, including lost revenue, shared savings, and avoided costs, and a just and reasonable rate of return on such infrastructure modernization. An allowance for such inclusions in the ESP requires the Commission to examine the reliability of the Companies' distribution system, and ensure that expectations align between the Companies and customers, and the Companies place sufficient emphasis on and dedicate sufficient resources to system reliability.[14]

(i) Provisions to implement economic development, job retention, and energy efficiency programs for which program costs may be allocated across customer classes within the same holding company.[15]

III. Argument

I. The Companies' ESP is not shown more favorable in the aggregate when compared to the expected results of a Market Rate SSO

Commission approval, or modification and approval, of the Companies'ESP is upon finding the plan "including its pricing, and all other terms and 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 the Market Rate SSO under RC 4928.142.[16]

The Companies rely on the testimony of Mr. Blank, Mr. Jones, and Mr. Graves to satisfy its burden under RC 4928.143 (C) (1) that the ESP is more favorable in the aggregate when compared to the expected results of a MRO.

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[13] RC 4928.143 (B)(2)(g)
[14] RC 4928.143 (B)(2)(h)
[15] RC 4928.143 (B)(2)(i)
[16] RC 4928.143 (C) (1)

Mr. Blank opined "[a]t a minimum, based upon and in comparison to the market prices projected by Mr. Jones and Mr. Graves, the ESP provides net present value to customers exceeding $1.3 billion[17] over the Plan period."[18]

Learned experts, however, disagree. Michael Schnitzer[19] recommends rejection of the ESP application on a number of grounds. The Companies rely on out of date prices. Current forward electricity prices are lower than prices used by the Companies to support the ESP. The Companies conducted a materially flawed quantitative comparison of the MRO and ESP. Updated market conditions, and corrected comparison flaws completely eliminates the Companies' claimed ESP benefits in the aggregate.[20]

Mr. Schnitzer concludes that use of market prices for September 26, 2008 reduces the Companies claimed customer benefits from $1,303.4 million to $750.6 million.[21] The net effect of comparable adjustments between the ESP and MRO changes the present value of the Companies claimed ESP benefits from $1,303.4 to $1,055.5 million, a reduction of $247.9 million.[22] The net effect of using only Mr. Graves' estimate as the risk premium for the MRO product using ESP rules and switching rules reduces the Companies claimed ESP benefits from $1,303.4 to 873.6 million, or a $429.8 million reduction.[23] The cumulative effect of all properly made adjustments reduces the ESP claimed benefits from $1,303.4 million to a ($246.0), as shown on Table 4.[24] An unbiased "apples to apples" comparison using FES[25] assumed risks under the ESP further

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[17] Blank Test., Company Ex. 1A, Alternative Att. pg. 1-4, revised $1.3 Billion to $1.008.3 Billion
[18] Blank Test., Company Ex. 1, pg. 5
[19] Testified for Constellation New Energy, Inc., and Constellation Energy Commodities Group, Inc.
[20] Schnitzer Test., Competitive Supplier Ex. 2, pg. 32-34.
[21] Schnitzer Test., Competitive Supplier Ex 2., pg. 16-17, Table 1
[22] Schnitzer Test., Competitive Supplier Ex. 2, pg. 22-23, Table 2
[23] Schnitzer Test., Competitive Supplier Ex. 2, pg. 26-27, Table 3
[24] Schnitzer Test., Competitive Supplier Ex. 2, pg. 28-29, Table 4
[25] FES means FirstEnergy Solutions, the affiliate generation supplier

reduces MRO costs annually by $220 million. This further reduction applied to Table 4 shows the claimed benefits of the ESP is ($841.9) when compared to the MRO option.[26]

Similarly, Lane Kollen, testifies the ESP fails to meet the statutory test for approval.[27] The ESP becomes more expensive by $1,692.6 million[28] when the MRO price becomes $63.45/MWh, $65.23/MWh, and $6?.15/MWh during 2009, 2010, and 2011 after grossing up the transmission component for line losses,[29] using September 19, 2008 forward wholesale market prices,[30] and removing retail market premiums.[31]

The Companies analysis of benefits understates the ESP's present value revenue requirements by not recognizing rider adjustments. Generation rates proposed for 2009, 2010, and 2011 at $75/MWh, $80/MWh and $85/MWhH, are set before applying the 10% phase in, and adjustments for fuel, environmental, and capacity.[32]

Rider FTE (TE #110), effective in 2009, assumes all of FES incurred costs support the ESP. The rider recovers costs incurred by FES for fuel transportation surcharges billed by shippers in excess of $30 million in 2009, $20 million in 2010, and $10 million in 2011.[33] The FTE rider also recovers the costs for new alternative energy/renewable type requirements beyond those under S.B. 221, tax and environmental laws enacted or interpreted effective after January 1 2008, that exceed $50 million in costs during the ESP, and relate to FES generation assets used to support the ESP.[34]

[26] Schmitzer Test., Competitive Supplier Ex. 2, pg. 29-32, Table 5
[27] Kollen Test., OEG Ex. 2, pg. 3
[28] Kollen Test., OEG Ex. 2, pg. 3
[29] Kollen Test., OEG Ex. 2, pg. 8
[30] Kollen Test., OEG Ex. 2, pg. 11; Ex. 2 A update prices for October 10, 2008
[31] Kollen Test., OEG Ex. 2, pg. 12-13
[32] Kollen Test., OEG Ex. 2, pg. 18; ESP App., Company Ex. 9A, pg. 5
[33] Kollen Test., OEG Ex. 2, pg. 18; See TE Rider 110
[34] Kollen Test., OEG Ex. 2, pg. 18; See TE Rider 110

Rider FCA (TE #115) recovers higher fuel costs at plants owned by FES in MISO in excess of 2010 fuel costs incurred, upon the assumption that all fuel consumed at those plants provides service under the ESP.[35]

Rider CCA (TE #111), effective January 1, 2009, also assumes all incurred FES costs supports the ESP. The rider recovers the costs of capacity purchases for FES to meet its planning reserve requirements under FERC NERC, MISO, or other applicable standards for its Ohio retail load during May1 through September 30 of each year.[36]

Rider MDS (#103) provides for a non-bypassable $10/MWH minimum default service charge to compensate for shopping risks that possibly recovers $1.7 billion in revenues over three years.[37]

The MRO does not include these riders. The Companies failure to include these and other rider adjustments understate the present value revenue requirements for the ESP when compared to the MRO.[38]

OEG witness Baron finds unreasonable the EPS negotiated generation rates. POLR services obtained through RFP solicitations fully compensate the Companies for assuming the retail shopping risks without marked up retail prices.[39] The ESP marks up retail prices by 17% to 40% over wholesale generation prices to outsource those POLR risks to FES.[40] Companies' witness Jones estimates the retail margins paid by customers above wholesale market generation costs nearly $4 billion ($22.86/MWh.)[41]

[35] Kollen Test., OEG Ex. 2, pg. 18; See TE Rider 115
[36] Kollen Test., OEG Ex. 2, pg. 18; See TE Rider 115
[37] Kollen Test., OEG Ex. 2, pg. 18, See TE Rider 103
[38] Kollen Test., OEG Ex. 2, pg. 19
[39] Baron Test., OEG Ex. 1, pg. 8
[40] Baron Test., OEG Ex. 1, pg. 9
[41] Baron Test., OEG Ex. 1, pg. 10

Staff witness Johnson concludes the Companies projected market prices through its experts Dr. Jones and Mr. Graves overstate MRO prices if "conducted today" under RC 4928.142.[42]

Mr. Johnson, Schnitzer, Kollen, and Baron appear in accord the Companies overstated ESP benefits by incorrectly determining the MRO market rates.

Based on the record, the Companies' failed to prove its ESP plan is more favorable in the aggregate than the MRO. A significantly modified plan is needed before its approval.

II. The Companies proposed Significant Excessive Earnings Test fails to protect consumers as intended by SB 221.

RC 4928.143 (F) considers annually whether adjustments under the plan resulted in excessive earnings:

> "as measured by whether the earned return on common equity of the electric distribution utility is significantly in excess of the return on common equity that was earned during the same period by publicly traded companies, including utilities, that face comparable business and financial risk, with such adjustments for capital structure as may be appropriate."

Consideration of significant excess earning excludes the revenues, expenses, or earnings of the parent or any affiliate.[43]

Upon the Commission finding that plan adjustments, in the aggregate, result in significantly excessive earnings, the Companies prospectively return to consumers the

[42] Johnson, Staff Ex. 9, pg 12-13; Ex. 9D, Fourth Rev. Ex. 1, 2
[43] RC 4928.143 (F)

excess amounts. In turn, the Companies may terminate the plan and file for approval a MRO under RC 4928.142. [44]

Witness Vilbert on behalf of the Companies interpreted and applied RC 4928.143 (F) as an expert in financial and regulatory economics. [45] Mr. Vilbert sponsors (i), and Mr. Blank sponsors (ii), of Attachment H to the ESP application that reads:[46]

> Following the conclusion of each year under the Plan, a significantly excessive earnings test for each electric utility will be performed. The test will be comprised of the following:
>
> i) If the ROE, recognizing an adjustment for differences in capital structure, for each electric utility for a year under the Plan is greater than the average ROE, also recognizing an adjustment for differences in capital structure, plus 1.28 standard deviations above the average for a group of capital intensive industries, then significantly excessive earnings may exist for the particular utility, subject to the consideration of the capital requirements of future committed investments in Ohio. The group of capital intensive industries is comprised of electric utilities, natural gas utilities, oil and gas distribution companies, water utilities, environmental companies, railroads and telecommunication services companies that have an investment-grade credit rating.
>
> ii) Earnings in this test shall be adjusted for paragraph A.3.f under this Plan, to exclude subsidiary equity earnings and to exclude any RTC or impairment write-offs that may occur subsequent to December 31, 2007. The equity base for purposes of this test shall be increased by any RTC write-off (to the extent that it would not have otherwise been amortized pursuant to the RCP) or impairment write-offs that have accumulated subsequent to December 31, 2007.

The Companies proposed test results in the probability that significantly excessive earnings occurs 10% of the time to protect against false positives. [47] The test mitigates

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44 RC 4928.143 (F)
45 Vilbert Test, Company Ex. 8, pg. 1
46 ESP App., Company Ex. 9 A, Att. H
47 Vilbert Test., Vol XI, pg. 58-59

potentially imposed asymmetric risks.[48] The test also eliminates nonrecurring gains and losses from net income.[49]

Staff witness Cahaan recommends a technical conference to examine the methodology for determining a "comparable group" and then report back to the Commission. The Staff further believes that an adder of 200 to 400 basis points would constitute "significantly excessive" earnings;[50] the statistical concept of "significant" is not useful or relevant under SB 221;[51] and the ultimate purpose of the "significantly excessive earnings" test is a fair outcome based on unknown future earnings of a comparable group. The Staff concludes its easier to technically resolve the use of different methods since statistical agreements among parties are difficult to achieve.[52]

OEG witness King agrees with a simple and clear test for the Commission to determine whether the utility's earnings were significantly in excess of earnings earned by similar companies based on data publicly available.[53] Commission use of adders should determine when equity returns become significantly excessive.[54] Mr. King recommends the 200 basis points adder that FERC uses to encourage investments in innovative major transmission lines as the significantly excessive earnings threshold.[55]

OEG witness Kollen supports adoption of Mr. King's threshold,[56] and use of the test to protect against earned revenues significantly in excess of costs incurred to provide

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[48] Vilbert Test., Company Ex. 8, pg. 2
[49] Vilbert Test., Company Ex. 8, pg. 8-9
[50] Cahaan Test., Staff. Ex. 6, pg. 2
[51] Cahaan Test., Staff Ex. 6, pg 18-19
[52] Cahaan, Test., Staff Ex. 6, pg. 18-20, 27-28
[53] King Test., OEG Ex. 3, pg. 4
[54] King Test., OEG Ex. 3, pg. 9
[55] King Test., OEG Ex. 3, pg. 9
[56] Kollen Test., OEG Ex. 2, pg. 23-24

service to non-shoppers.[57] Mr. Kollen believes the Commission should now determine the methodology for computing the actual yearly common equity return, [58] and recommends using an accounting basis with only limited ratemaking adjustments in line with RC 4928.143(B)(2) recoveries. [59]

In particular, Mr. Kollen disagrees with Companies witness Vilbert's [60]exclusion of non-representative items in the test's earnings computation. [61] In general, the Commission should prescribe the income or loss exclusions. [62] In particular, test computations should include DSI rider (TE #106) revenues, and other specifically authorized ESP revenues, according to Mr. Kollen.[63] Otherwise, the exclusion of DSI revenues distorts the Companies financial situation. Inclusion of DSI revenues retains the Companies incentives, and recognizes that system improvements involve recurring and normal costs.[64]

III. The Companies proposed Generation Phase-In Deferrals recover revenues far in excess of received benefits.

The Companies proposes to mitigate rate impacts under the ESP through a 10% phase in of fixed base generation rates. This results in phased in prices under Rider GPI (TE #87) during 2009 at 6.75 cents/kWh, during 2010 at 7.15 cents/kWh, and during 2011 at 7.55 cents/kWh. [65] The minimum default service charge of 1.0 cent per kWh for

[57] Kollen Test., OEG Ex. 2, pg. 23
[58] Kollen Test., OEG Ex. 2, pg. 24
[59] Kollen Test., OEG Ex. 2, pg. 25
[60] Vilbert Test, Company Ex. 8, pg. 9
[61] Kollen Test., OEG Ex. 2, pg. 26
[62] Kollen Test., OEG Ex. 2, pg. 26-27
[63] Kollen Test., OEG Ex. 2, pg. 27-28
[64] Kollen Test., OEG Ex. 2, pg. 28-29
[65] Warvell Test., Company Ex. 5, pg. 7

non-shoppers is part of Rider GEN (TE #88), and is separately charged to shopping customers at that amount under Rider MDS (TE #103).[66]

The phase-in credit attempts to balance through deferrals the rate impact on customers. The Companies estimate deferrals at $430 M in 2009, $490 M in 2010, and $550 M in 2011 based on projected sales over the ten-year recovery period.[67] Alternative Attachment 1 shows the GDC recovers $1.558.4 billion in 2014-2035.[68] Rider GDC (TE #114) recovers the deferred costs and carrying charges.

Staff witness Cahaan opposes the phase-in deferrals because of distortion problems and other difficulties from extending unavoidable charges beyond the ESP three-year term. The Staff grounds its position on problems with the RTC deferrals.[69]

While generally supporting rate mitigation, the proposed phase in generation deferrals appear unreasonable based on the record. Commission ordered modifications to the ESP plan expectedly lowers generation rates to more closely reflect current market prices, as discussed supra. Lower generation rates eliminates the need for phase in prices, and avoids consumers paying the Companies over $1.5 billion to recover those deferred costs long past receiving the provided generation.

IV. The Companies failed to meaningfully provide for Shopping Opportunities

Unlike the Companies' ESP, the MRO price becomes the shopping credit when customers leave the SSO. The ESP shopping credit by design equals less than the full

[66] Warvell Test., Company Ex. 5, pg. 7-8
[67] Warvell Test., Company Ex. 5, pg. 8
[68] Blank Test., Company Ex. 1, Company Ex. 1A, Alternative Att. pg. 1-4
[69] Cahaan Test., Staff Ex. 6, pg. 3

commodity charge. The MRO structure causes competitive bidders to charge fixed prices for full requirements service, and recover costs from SSO revenues received from customers. In contrast, the ESP limits FES risks through adjusted prices and reduced shopping opportunities.[70] The ESP "shopping credit" is far lower than the avoided commodity charge partly because Rider DGC (TE #114) recovers phase-in generation deferrals from all customers.[71] Shopping customers also pay for minimum default service under Rider MDS (TE #103).[72] Further reductions to the shopping credit may result from shopping customers paying the standby charge of Rider PSR (TE #101) to return to SSO service at ESP rates.[73] These returning customers otherwise pay at either the ESP rate or 160 % of applicable market prices, whichever higher.[74] MRO customers, however, avoid the commodity charge without the risk of paying for POLR service at market prices plus 60%.[75]

The ESP reduces the 2009 pre-deferral generation rate of $75/MWh to an unavoidable rate of $42.50/MWh due to the 10% deferral ($7.50/MWH); the unavoidable MDS Rider at $10.00/MWH, and the Standby Charge of $15.00/MWh.[76] Furthermore, those customers switching to CRES providers under the ESP forfeits discounts or credits already provided under the Economic Development Rider (TE #108), and the Reasonable Arrangements Rider (TE #85).[77]

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70 Schnitzer Test., Competitive Supplier Ex. 2, pg. 5
71 Schnitzer Test., Competitive Supplier Ex. 2, pg. 6
72 Schnitzer Test., Competitive Supplier Ex. 2, pg. 6
73 Schnitzer Test., Competitive Supplier Ex. 2, pg. 6
74 Schnitzer Test., Competitive Supplier Ex. 2, pg. 6
75 Schnitzer Test., Competitive Supplier Ex. 2, pg. 8
76 Schnitzer Test., Competitive Supplier Ex. 2, pg. 7
77 Schnitzer Test., Competitive Supplier Ex. 2, pg. 9

The highly adverse ESP structure unreasonably discourages retail competition by reducing economic opportunities to benefit from the pricing options offered by CRES suppliers. Furthermore, The ESP limits the number of bypassable riders, as shown:[78]

Revenue/Cost Recover Riders	Revenue/Cost Recover Riders
Rider TAS (TE #83)**	Rider DSI (TE # 106)
Rider GPI (TE #87)**	Rider DTC (TE # 107)
Rider GEN (TE # 88)**	DRR (TE # 109)
Rider DFC (TE #98)	Rider FTE (TE #110)**
Rider PSR (TE #101)** (Conditional)	Rider CCA (TE # 111)**
Rider NDC (TE # 102)	Rider DDC (TE # 113)
Rider MDS (TE # 103)	Rider DGC (TE # 114)** (Conditional)
	Rider FCA (TE # 115)**

** Bypassable

The ESP effectively results in customers becoming captive to the Companies' POLR service. The MRO provides customers with fully allocated avoided costs, and full requirements service at fixed cost for commodity supply and transmission services without rider adjustments. Customers pay higher ESP rates with less shopping opportunities because FES assumes less service risks. The Commission should not approve the ESP under these circumstances without substantial modifications.

V. The Companies Failed to Provide Reasonable Mitigation Measures and Reasonable Alternatives.

The Companies mitigate cost through reasonable arrangements or other special rate offerings, as listed below.[79]

[78] TE Schedules

[79] TE Schedules

Rate Mitigation/Reasonable Arrangements

EDR Grandfathered (TE #84)
RAR (TE # 85)
BDC (TE #86)
DSM/EEF (TE #97)
ELR (TE # 99)
OLR (TE # 100)
EDR (TE # 108)

The offerings are unreasonable to the extent the Companies limit the ELR and EDR only to those customers with interruptible contracts in effect on July 31, 2008. The Companies selected that date to coincide with the ESP filing. [80] The Companies choice of dates, however, appears unreasonable under the circumstances described by its witness Hussing. The Economic Development Rider, including the interruptible credit provision and standard charge credit, provides credit and charges to promote economic stability.[81] The Companies view these tariff charges as socially beneficial for all customers. All customers should bear the costs. In fact, allowing customers to avoid these charges makes unsustainable the Companies efforts. In deed, the Companies, under RC 4928.143(B)(2)(i) recover from all customers the credits and charges associated with this rider. The recovery rider is not by-passable by shoppers, and the recipients of those credits and charges forfeit and pay back those benefits upon choosing to shop.[82]

The Commission should expand the social benefits of providing for economic stability by making eligible all customers with interruptible provisions under special contracts in effect on January 1, 2008.

[80] Blank Test., Tr. VI, pg. 289
[81] Hussing Test., Company Ex. 4, pg. 8
[82] Hussing Test., Company Ex. 4, pg. 8-9

The RAR schedule (TE #85) is unreasonable to the extent the arrangement for new or expanding facilities extends twice the term of the incentives. Commission proposed rules require only one term.[83] Further, it is unreasonable and unlawful to terminate the RAR arrangement upon Commission regulatory actions that result in un-recovered delta revenue through the DRR (TE #109), without notice to customers and response opportunities to the Companies and Commission.[84]

Further, it is necessary to address language of the PSR (TE #101), that "any member of a household or any continuing business at the same location will be considered the customer, irrespective of the name on the account."[85] Since the charge applies only upon the Companies receipt of written notice when the customer request CRES service, the context become unclear how this language applies. It is further unclear whether the Companies intend this language as a customer benefit. In any event, the overly broad language making anyone a customer appears unlawful and unreasonable as stated. The Commission should clarify and narrow its scope upon approving a modified ESP.

Finally, the Companies by order of the Commission need to conform language of their reasonable arrangements to rules approved for Chapter 4901:1-38 by entry dated September 17, 2008, in Case No. 08-777-EL-ORD.

IV. Conclusion

[83] Chapter 4901:1-38 Reasonable Arrangements, Case No. 08-777-EL-ORD, Entry , September 17, 2008
[84] RAR, TE #85, pg. 4, Delta Revenue Recovery
[85] PSR, TE # 101, pg. 2

This fully litigated proceeding requires the exercise of Commission powers as required by the statutes and within its regulatory discretion as an expert on energy matters. Approval of the ESP as filed is not supported by the record or the law. The ESP requires extensive modifications before approval to provide Ohio consumers with fairly priced electric power, service terms, and reasonable customer choice options.

Respectfully submitted

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Certificate of Service

I hereby certify serving by electronic mail this initial brief on November 21, 2008 upon the listed persons and parties.

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