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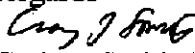
Case No. 10-388-EL-SSO

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 Section 4928.143, Revised Code, in the Form of an Electric Security Plan.

Greetings:

Material Sciences Corporation files in these dockets its Brief. The originals and necessary copies are enclosed. Any questions please contact me.

Regards


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**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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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 Section 4928.143, Revised
Code, in the Form of an Electric Security
Plan.

Case Nos. 10-388-EL-SSO

**BRIEF BY
MATERIAL SCIENCES CORPORATION**

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Statement of Case

Material Sciences Corporation (“MSC”) negotiated and entered into the Stipulation¹ now before the Commission for approval. The Stipulation, with Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company (collectively the “Companies”) and other Signatory Parties, uses a comprehensive electric security plan (“2010 ESP”) as the standard service offer (“SSO”) from June 1, 2011 through May 31, 2014.

The Companies, MSC and other Signatory Parties to the Stipulation, with widely diverse interests, fairly and reasonably reached resolution of complex issues. Broader and more flexible overall package of services advantageous to ratepayers and the public

¹ Joint Ex. 1, Stipulation filed on March 23, 2010, as modified by Company Ex. 2, the Errata filed on March 30, 2010, and Company Ex. 3, the Second Errata filed on April 13, 2010. The Application requesting approval filed on March 23, 2010 is Company Ex. 1. This Brief’s reference to the Stipulation includes all modifications.

interest are embodied in the 2010 ESP than under the Market Rate Offer litigated in Case No. 09-906-EL-SSO (“2009 MRO”).²

MSC use of TE service as a GT customer incurs substantial costs to electro-galvanize or zinc-nickel plate, laminate, and paint steel coils.³ MSC receives firm, and interruptible service under its Electric Load Response Program Rider (“Rider ELR”) and the Economic Development Rider (“Rider EDR”), from TE under the Electric Security Plan approved in Case No. 08-935-EL-SSO (“2009 ESP”). The 2010 ESP continues firm, and interruptible service under the ELR and EDR riders from June 1, 2011 through May 31, 2014.

Applicable Law

RC 4928.14 and RC 4928.141 require the Companies to provide SSO default generation to customers under either a Commission approved MRO or ESP.

Ohio continues to face economic and environmental challenges present when the Commission approved the 2009 ESP. Chapter 4928, through integrated regulation, intends to advance state policies enumerated under RC 4928.02 to ensure adequate, reliable, and reasonably priced electric service to meet these significant challenges.⁴

The 2010 ESP complies with RC 4928.143, and merits Commission approval under RC 4928.143 (C), on the basis the 2010 ESP in the aggregate is more favorable than expected under the proposed 2009 MRO.⁵

² Joint Ex. 1, Stipulation at p. 1-5; Company Ex. 1, Application at p. 2-3.

³ Refer to MSC Motion to Intervene in Case No. 09-906-EL-SSO.

⁴ In Re Companies’ ESP, Second Opinion and Order, Case No. 08-935-EL-SSO, et al, dated March 25, 2009 at p. 7-8.

⁵ RC 4928.142 applies to preparation and approval of a MRO.

The comprehensive Stipulation setting forth the 2010 ESP resolves all outstanding issues in this case, and becomes the basis for approval under the three prong test long-used by the Commission and affirmed by the Ohio Supreme Court, in that.⁶

1. The settlement is a product of serious bargaining among capable, knowledgeable parties

The genesis for ESP negotiations began with Staff submitted comments on December 1, 2009, as part of the 2009 MRO case, to encourage use of the significantly more advantageous ESP format under RC 4928.143, including economic development and energy efficiency initiatives, along with rate flexibility, as demonstrated by the 2009 ESP now in effect.⁷ The Staff urged MRO parties to submit comments and proposals on structuring an ESP.

The 2009 MRO case proceeded as scheduled with extensive discovery, pre-filed testimony, numerous interveners/Staff, multiple day hearings ending December 23, 2009, with briefs and reply briefs filed by early January 2010.⁸

The Stipulation for the 2010 ESP, filed on March 23, 2010 under RC 4928.143 and Commission rules, resulted from continuous serious discussions, based on the initial Staff

⁶ OAC 4901-1-30, authorizes stipulations among parties; while not binding, the Commission gives substantial weight to resolve issues in an economical manner to ratepayers and public utilities. *Consumers' Counsel v. Pub. Util. Comm.*, 64 Ohio St.3d 123, at 125 (1992), citing *Akron v. Pub. Util. Comm.*, 55 Ohio St.2d 155 (1978), *Indus. Energy Consumers of Ohio Power Co. v. Pub. Util. Comm.*, 68 Ohio St.3d 559 (1994), citing *Consumers' Counsel*, supra, at 126. The Commission uses the following criteria to determine whether to adopt as reasonable a stipulated agreement: (1) Is the settlement a product of serious bargaining among capable, knowledgeable parties? ; (2) Does the settlement as a package, benefit ratepayers and the public interest? ; and (3) Does the settlement package violate any important regulatory principle or practice? In *Re Companies, Second Opinion and Order*, Case No. 08-935-EL-SSO, et al, dated March 25, 2009 at p. 16-17.

⁷ Staff Comments filed November 24, 2009, p. 21-22, Case No. 09-906-EL-SSO pursuant to Entry dated November 12, 2009.

⁸ Joint Ex. 1, Stipulation, p. 2-4.

proposal, among capable, knowledgeable parties many of whom, including MSC, participated in negotiations of the 2009 ESP, opposed approval of the 2009 MRO, and reached agreement on the 2010 ESP.

2. The settlement as a package benefits ratepayers and the public interest

The settlement package resolved many complex issues among parties with diverse interests for providing electric service under the 2010 ESP from June 1, 2011 through May 31, 2014 at more favorable terms than expected under the 2009 MRO.

Favorable 2010 ESP features include but not limited to:⁹

- Descending-clock format Competitive Bid Process (“CBP”) to determine retail generation rates for SSO customers for the period of June 1, 2011 through May 31, 2014.
- PIPP customers provided with a six percent (6%) discount off price to compare.
- Governmental aggregation and customer shopping for competitive generation service not subject to minimum stay provisions, minimum default service charges, standby charges, or shopping credit caps.
- Gradualism applied to retail rate design to help in transition to market based pricing. Rider EDR bill credits provided for non-standard residential customers, schools, interruptible customers, and domestic automaker facilities. Rider EDR caps average annual rate increases for lighting and transmission customers at 1.5 times the average increase by Company. Rider EDR mechanism recovers the costs associated with these credits as well as the cost of infrastructure investment to support economic development expansion of a large employer in Ohio.
- Continue rate options that otherwise expire on May 31, 2011, such as the ELR rider, peak demand reduction rider and the time-differentiated pricing riders.
- Continue purchasing Renewable Energy Credits (“RECs”) through RFP process, or bilateral contracts. Costs to procure RECs recovered through Rider AER.
- Rider GEN bills residential customers at the same rate for all kWhs consumed during summer period.
- Base distribution rates remain at current levels through May 31, 2014. Expiring Rider DSI replaced by new Rider DCR to encourage delivery system investment.
- Significantly Excessive Earnings Test (“SEET”) considers revenues as agreed upon from Rider DSI and Rider DCR.

⁹ Ridmann Testimony, Company Ex. 4, p. 3-8

- Aggregate contributions of \$3 million for economic development and job retention activities and an additional \$1.5 million to support the fuel fund for low income residential customers, both without recovery from customers.
- Continue \$5 million dollars per year for low income residential energy efficiency and weatherization assistance, and an additional \$300,000 for energy efficiency programs in the City of Cleveland.
- Resolve outstanding issues before the Commission on cost recovery for the Smart Grid Initiative, corporate separation, and ATSI transition to PJM. Signatory Parties recommend Commission not assert jurisdiction over or to review the merger with Allegheny Energy, Inc.
- Agree not to seek cost recovery from customers of MISO exit fees, PJM integration costs, and RTEP charges for the period of June 1, 2011 through May 31, 2016 for projects approved by PJM prior to June 1, 2011.
- Funds administration of energy efficiency projects.
- Continue most riders in current form, or as modified to conform to provisions of this Stipulation.

The comprehensive plan in the 2010 ESP benefit ratepayers and the public interest by providing service with more stable and predictable prices, enhanced delivery systems, economic development and energy efficiency measures, and programs to support low-income customers, than otherwise provided for under the 2009 MRO.¹⁰

The 2010 ESP achieves savings of \$280.1 million, on a present value basis, when compared to the expected 2009 MRO.¹¹

3. The settlement package does not violate any important regulatory principle or practice

The 2009 MRO rate design eliminates the Rider ELR and EDR Rider when the 2009 ESP expires on May 31, 2011. Those riders continue, however, through May 31, 2014 under the Stipulation providing for the 2010 ESP.

EnerNOC opposes continuation of those riders after May 31, 2011 under the Stipulation and 2010 ESP as unfair and unjust based on its allegations that FirstEnergy

¹⁰ Joint Ex. 1, Stipulation at p. 4-5.

¹¹ WRR Attachment 1 to Ridmann Test., Company Ex. 4

(not the Companies) failed to correct market information of a materially false nature about the ATSI Integration auction.¹²

EnerNOC's allegations remain weak and unsubstantiated based on the hearing record. EnerNOC never alleges nor argues violation of any important regulatory principle or practice to deny approval of the Stipulation embodying the 2010 ESP. Instead, EnerNOC seeks from the Commission an unreasonable remedy (end the riders) based on these unsubstantiated claims. Further, it appears far more likely jurisdiction to resolve these allegations rests with PJM, FERC, or the courts, than the Commission.

It clearly appears, however, discontinued use of the ELR and EDR riders after May 31, 2011, as EnerNOC requests, would violate important regulatory principles or practices by ignoring state policy requirements under RC 4928.02 and subjecting these large customers to rate shock during the 2010 ESP period, June 1, 2011 through May 31, 2014.

Rider ELR and Rider EDR continued through May 31, 2014 under the 2010 ESP provides Ohio's largest energy users with electric price and quality options to remain competitive, furthers economic development and job retention, and facilitates Ohio's competitiveness in the global market.¹³ Also significant, these large energy users commit their demand response capabilities to the Companies for integration into their RC 4928.66 compliance programs.¹⁴

¹² Schisler Testimony, EnerNOC Ex. 1, p. 3, 4, 19.

¹³ State policies under RC 4928.02 intend to (A) ensure reasonably priced retail electric service; (B) provide consumers with the price and quality options to fit their needs; (D) encourage access to cost-effective supplies including time-differentiated pricing; and (N) facilitate Ohio's effectiveness in the global economy.

¹⁴ Company Ex. 3, proposed Rider ELR, sheet 101, 1 of 5.


Rate shock would result from eliminating the \$10/kW credit as EnerNOC requests.¹⁵ Rates paid by Ohio's largest GT electric consumers under the 2010 ESP could go up by 17% for OE, 43% for CEI, and 34% for TE, service without these riders in effect, according to OEG's witness Baron. [MRO OEG Ex. 1, Baron Test., pg 8-9, Table 1, SJB-3, pg 1-3]. Nucor witness Dr. Goins reached similar results. Without the \$10.00/kW credit, GT customers could pay nearly a 50% price increase depending on achieved load factors. (MRO Nucor Ex. 1, Goins Test., pg. 10).

EnerNOC's request for the Commission not to extend these riders after May 31, 2011 must be rejected. Rider ELR and Rider EDR need to continue through May 31, 2014 for service to Ohio's largest customers under the 2010 ESP, as the Stipulation provides.

Conclusion

The Stipulation meets the three tests needed for Commission approval. Likewise, the 2010 ESP meets the statutory requirements for Commission approval as a broad and flexible approach to supply default SSO generation through May 31, 2014, with provisions considerably more beneficial to the Companies' customers, and the public interest, than proposed by the 2009 MRO.

Respectfully Submitted,



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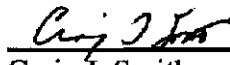
¹⁵ The ELR Rider applies mostly to large customers receiving interruptible services as of February 2008 under contract or tariff provisions. (MRO Fanelli, Tr. IV, pg. 534, L 3-13). The EDR Rider approved in the 2009 Electric Security Plan intended to mitigate that alignment (transition) for some customers. (MRO Fanelli, Tr. IV, pg. 534, L 14-25; pg. 535, L 1-5).

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing Brief was served this 30th day of April 2010 by electronic mail upon the persons listed below.



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