

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Complaint of Material Sciences Corporation,)	
)	Case No. 13-2145-EL-CSS
)	
Complainant,)	
)	
v.)	
)	
The Toledo Edison Company,)	
)	
Respondent.)	

ANSWER

In accordance with Ohio Admin. Code 4901-9-01(D), Respondent, The Toledo Edison Company (“Toledo Edison” or the “Company”), for its Answer to the Complaint of Material Sciences Corporation (“Complainant”), states:

FIRST DEFENSE

1. The Company denies the allegations set forth in Paragraph 1 for lack of knowledge as to their truth.

2. In response to the allegations set forth in Paragraph 2 of the Complaint, the Company admits that the Facility (as defined in Paragraph 2) has a service address of 30610 E. Broadway Street, Walbridge, Ohio, and that the Facility is a high demand user of electricity. The Company denies the remaining allegations for lack of knowledge as to their truth.

3. The Company denies the allegations set forth in Paragraph 3 for lack of knowledge as to their truth.

4. In response to the allegations set forth in Paragraph 4, the Company: admits that the Facility’s monthly peak demand averages between 25,000 and 30,000 kVa; admits that the Company provides the Facility with electric service under rates, terms, and conditions approved

by the Commission (the “Schedule of Rates”); admits that the Company is duly organized and existing under the laws of the State of Ohio; admits that the Company is a public utility as defined by R.C. § 4905.02, an electric light company as defined by R.C. § 4905.03(C), an electric distribution utility as defined by R.C. § 4928.01(A)(6), an electric supplier as defined by R.C. § 4928.01(A)(10), and an electric utility as defined by R.C. § 4928.01(A)(11); and admits that the Company is an affiliate of The Cleveland Electric Illuminating Company, Ohio Edison Company, and FirstEnergy Solutions Corp., each of whose parent company is FirstEnergy Corp.

5. In response to the allegations set forth in Paragraph 5, the Company: admits that the Facility is a large electric customer on the Company’s system; admits that the Facility receives electric service from the Company; admits that the Facility receives standard service offer (“SSO”) service from the Company; admits that the Facility qualifies as a mercantile customer as defined by R.C. § 4928.01(A)(19); and admits that the Company currently provides SSO service in accordance with the Schedule of Rates.

6. In response to the allegations set forth in Paragraph 6, the Company admits that its ESP approved by the Commission in Case No. 10-388-EL-SSO (“ESP II”) covers the period June 1, 2011 through May 31, 2014.

7. In response to the allegations set forth in Paragraph 7, the Company admits that the Facility received electric service from the Company in accordance with the Schedule of Rates and admits that its first Commission-approved ESP was approved in Case No. 08-935-EL-SSO (“ESP I”).

8. In response to the allegations set forth in Paragraph 8, the Company admits that the Commission approved its ESP I for the time period June 1, 2009 through May 31, 2011.

9. In response to the allegations set forth in Paragraph 9, the Company avers that the Commission approved its third ESP as set forth in Case No. 12-1230-EL-SSO (“ESP III”) for the time period June 1, 2014 through May 31, 2016. The Company denies the remaining allegations for lack of knowledge as to their truth.

10. In response to the allegations set forth in Paragraph 10, the Company admits that the Commission approved its ESP III for the time period June 1, 2014 through May 31, 2016.

11. In response to the allegations set forth in Paragraph 11, the Company: admits that MSC was a signatory to the Stipulations reached in the ESP I, ESP II, and ESP III proceedings; and denies that MSC “stipulated” to receiving Rider ELR service in any of the three ESP proceedings. Rather, MSC voluntarily elected, via execution of a contract addendum, to receive service under Rider ELR. The Company admits that Rider ELR and Rider EDR may provide credit amounts for certain customers, so long as such customers comply with the tariff provisions. The Company further notes that the focus of Rider ELR is to provide an important demand-response function to support system reliability. The Company admits that MSC met the qualification criteria under Rider ELR as approved in the current ESP II and further states that MSC’s receipt of service under Rider ELR is governed by the requirements of the applicable tariff (P.U.C.O. No. 8, Sheet 101) (the “Tariff”) and all other applicable tariff provisions. The Company denies any remaining allegations for lack of knowledge as to their truth.

12. In response to the allegations set forth in Paragraph 12, the Company states that the terms and conditions of the Tariff speak for themselves.

13. In response to the allegations set forth in Paragraph 13, the Company states that the terms and conditions of the Tariff speak for themselves.

14. In response to the allegations set forth in Paragraph 14, the Company states that the terms and conditions of the Tariff speak for themselves.

15. In response to the allegations set forth in Paragraph 15, the Company states that the terms and conditions of the Tariff speak for themselves.

16. In response to the allegations set forth in Paragraph 16, the Company admits that it is not aware of any compliance issues associated with the Facility's participation in the September 2011 and September 2012 tests. The Company admits that the Facility was not subject to a Tariff-related ECE prior to 2013 and that the Facility complied with its obligations under the Tariff in connection with the ECEs called on July 15, 16, and 18, 2013, and September 10, 2013. The Company further admits that the Facility failed to comply with the Facility's obligations under the Tariff in connection with the ECE called on September 11, 2013. The Company denies any remaining allegations for lack of knowledge as to their truth.

17. In response to the allegations set forth in Paragraph 17, the Company denies that an ECE was called on August 10, 2013, and denies the remaining allegations for lack of knowledge as to their truth.

18. The Company denies the allegations set forth in Paragraph 18 for lack of knowledge as to their truth.

19. The Company denies the allegations set forth in Paragraph 19 for lack of knowledge as to their truth.

20. In response to the allegations set forth in Paragraph 20, the Company denies that it has any obligation under the Tariff to contact a customer that does not comply with the customer's obligations under the Tariff by any certain date and denies that the Company "never contacted" the Facility regarding the Facility's failure to comply with its obligations in

connection with the September 11, 2013 ECE. The Company denies the remaining allegations for lack of knowledge as to their truth.

21. In response to the allegations set forth in Paragraph 21, the Company: admits that, by penalty letter dated October 4, 2013, the Company notified Facility management that the Facility's actual Measured Load exceeded the contract Firm Load at the Facility during the ECE on September 11, 2013; and admits that the Company assessed the Facility with the forfeiture and penalties required under the Tariff in the amounts identified in Paragraph 21 on the basis that the actual Measured Load for the Facility exceeded 110% of its contract Firm Load for the half hours ending 3:00 PM EDT and 3:30 PM EDT.

22. In response to the allegations set forth in Paragraph 22, the Company: admits that, during the September 11, 2013 ECE, the Facility's actual Measured Load exceeded its contract Firm Load (2,000 kW/kVa) during the half-hours ending 3:00 PM EDT and 3:30 PM EDT; and denies the remaining allegations for lack of knowledge as to their truth.

23. In response to the allegations set forth in Paragraph 23, the Company: admits that it assessed the Facility with the forfeiture and penalties required under the Tariff in the amounts identified in Paragraph 23; and denies that the forfeiture of all ELR and EDR-b credits for the immediately preceding 12 months covers the period September 2013 back to August 2012.

24. In response to the allegations set forth in Paragraph 24, the Company: admits that the Tariff requires the Facility to pay the amounts imposed by the forfeiture and penalties set forth in the Tariff; and admits that the Company has proposed to recover those amounts over the next twelve billing months without a carrying charge.

COUNT ONE

25. In response to the allegations set forth in Paragraph 25, the Company incorporates its responses to the preceding paragraphs as if set forth herein.

26. In response to the allegations set forth in Paragraph 26, the Company: admits that PJM's notice of the September 11, 2013 ECE included the referenced language; and admits that PJM scheduled the ECE to begin at 14:00 PM EDT / 2:00 PM EDT.

27. In response to the allegations set forth in Paragraph 27, the Company denies the Complainant's restatement of the Tariff and avers that the Tariff provides, among other things, that:

Upon no less than two hour advance notification provided by the Company, a customer taking service under this rider must curtail all load above its Firm Load during an Emergency Curtailment Event consistent with the Company's instructions.

The Company further admits that PJM scheduled the mandatory ECE on September 11, 2013, beginning at 2:00 PM EDT.

28. In response to the allegations set forth in Paragraph 28, the Company: admits that its notice was sent to the Facility at 12:05 PM EDT; admits that it sent an Event Termination notice at 8:05 PM EDT; and admits that the ECE period under the Tariff commenced at 12:05 PM EDT. The Company denies the remaining allegations. The Company avers that it did not measure the Facility's compliance with the Tariff until the first full half-hour of service after the two-hour notification period ending at 2:05 PM EDT (i.e., the half-hour ending 3:00 PM EDT), which was in excess of two hours after the Facility was notified of the ECE.

29. The Company denies the allegations set forth in Paragraph 29.

30. In response to the allegations set forth in Paragraph 30, the Company denies the Complainant's misinterpretation of the Tariff's notice provisions and denies the remaining allegations for lack of knowledge as to their truth.

31. The Company denies the allegations set forth in Paragraph 31 and avers that the terms and conditions of the Tariff speak for themselves.

32. The Company denies the allegations set forth in Paragraph 32 and avers that it properly assessed and calculated the forfeiture and penalties required under the Tariff for the Facility's failure to abide by its obligations under the Tariff.

33. The Company denies the allegations set forth in Paragraph 33.

COUNT TWO

34. In response to the allegations set forth in Paragraph 34, the Company incorporates its responses to the preceding paragraphs as if set forth herein.

35. In response to the allegations set forth in Paragraph 35, the Company: admits that its notice was sent to the Facility at 12:05 PM EDT; admits that it sent an Event Termination notice at 8:05 PM EDT; and admits that a Rider ELR customer that does not meet its obligations under an ECE "may" be disconnected from the transmission system for the duration of the ECE and "shall be subject" to the forfeiture and penalties set forth in the Tariff. The Company denies the remaining allegations.

36. In response to the allegations set forth in Paragraph 36, the Company: denies that the Tariff allows for any mitigation for the forfeiture and penalties required under the Tariff; denies that the Company's assessment of the required forfeiture and penalties was unreasonable or unlawful; and denies the remaining allegations for lack of knowledge as to their truth.

37. In response to the allegations set forth in Paragraph 37, the Company: denies that it “justified” the assessment of the forfeiture and penalties “on a theory of equity”; avers that the forfeiture and penalties are required by the Tariff; admits that the Facility’s payment of the forfeiture and penalties would offset the increased costs paid by non-interruptible customers; and denies the remaining allegations.

38. In response to the allegations set forth in Paragraph 38, the Company: denies that it “relie[d] on a fairness rationale” in assessing the forfeiture and penalties; avers that the forfeiture and penalties are required by the Tariff; admits that the Tariff does not incorporate any “fairness rationale” upon which to excuse a customer’s non-compliance with the Tariff or upon which to base a forfeiture or penalties; admits that customers benefit from the Tariff’s demand-response benefits to system reliability, which can only occur when customers taking service under the Tariff comply with the Tariff; and admits that the Tariff, in conjunction with the other provisions of the Company’s ESP, complies with the State’s policies, as set forth in, among others, R.C. § 4928.02(A) and (N).

39. In response to the allegations set forth in Paragraph 39, the Company: admits that the Facility’s failure to comply with the Tariff requires the payment of forfeiture and penalties in the amount of \$2,445,543.15; and admits that the Company has proposed to recover these amounts over the next twelve billing months without a carrying charge. The Company denies the remaining allegations.

COUNT THREE

40. In response to the allegations set forth in Paragraph 40, the Company incorporates its responses to the preceding paragraphs as if set forth herein.

41. In response to the allegations set forth in Paragraph 41, the Company admits that it charges the Facility in accordance with the Schedule of Rates.

42. In response to the allegations set forth in Paragraph 42, the Company states that the terms and conditions of the Schedule of Rates and the Tariff speak for themselves.

43. In response to the allegations set forth in Paragraph 43, the Company: admits that its Rider GEN is bypassable and its Rider NMB is nonbypassable; denies that it has a DESE Rider credit or a Rider DESE; and denies that Complainant or other qualifying customers receive rate discounts through Riders ELR and EDR “to lower generation rates below those rates paid by [the Company’s] shopping customers.”

44. In response to the allegations set forth in Paragraph 44, the Company admits that, beginning June 1, 2013, the Facility and certain other GT customers’ rates increased due to an increase in Commission-approved Rider GEN energy charges (from \$0.049868/kWh to \$0.060551/kWh), an increase in Commission-approved Rider GEN capacity charges (from \$0.000795/kWh to \$0.001594/kWh), an increase in the charges included in Commission-approved Rider NMB (from \$1.6711/kVa to \$2.1249/kVa), and, for July 1, 2013 until January 1, 2014, a decrease in the Commission-approved Rider DSE2 credit (from \$0.002586/kWh to \$0.000039/kWh).

45. In response to the allegations set forth in Paragraph 45, the Company: admits that, as of June 1, 2013, and as contemplated by the stipulations reached in the Company’s ESP II and ESP III, generation energy charges increased by 21% and generation capacity charges increased by 101%; admits that, as of June 1, 2013, Rider NMB charges increased by 27%; and admits that, as of July 1, 2013, the Rider DSE2 credit decreased by nearly 98%. The Company further admits that the Rider NMB charges increased to \$2.1249/kVa for the Company’s GT customers,

based on a 31.83% demand allocation of costs to that class. The Company avers that all referenced riders and charges were approved by the Commission. The Company admits the stated charges and allocations attributed to Ohio Edison Company's and The Cleveland Electric Illuminating Company's GT customers differ from the Company's as a result of differences in the utilities' facilities and customer bases.

46. The Company denies the allegations set forth in Paragraph 46 for lack of knowledge as to their truth.

47. In response to the allegations set forth in Paragraph 47, the Company states that R.C. § 4928.02 speaks for itself. The Company denies the remaining allegations for lack of knowledge as to their truth.

48. In response to the allegations set forth in Paragraph 48, the Company: admits that the Facility's rates increased in Summer 2013 (June 2013 – August 2013) from Winter 2013 (September 2012 – May 2013); admits that the Company, in accordance with the Tariff, has calculated that the Facility is responsible for a forfeiture and penalties in the amount of \$2,445,543.15 as a result of the Facility's failure to comply with its obligations under the Tariff; and denies that the Company's rates are unreasonable or unlawful. The Company denies the remaining allegations for lack of knowledge as to their truth.

49. The Company denies the allegations set forth in Paragraph 49 for lack of knowledge as to their truth.

50. In response to the allegations set forth in Paragraph 50, the Company: denies that the Facility's increase in rates as of June 2013 was unjust, unreasonable, unlawful, or in violation of R.C. § 4928.02(A) or (N); denies that the cost allocation to the GT class was 33.83%; admits the stated charges and allocations attributed to Ohio Edison Company's and The Cleveland

Electric Illuminating Company's GT customers differ from the Company's as a result of differences in the utilities' facilities and customer bases; denies that the Company's "practices affecting [the Facility's] services" are unjust or unreasonable; and denies Complainant's characterization of the "incremental increases." The Company denies any remaining allegations for lack of knowledge as to their truth. The Company avers that Complainant was a signatory to the Company's ESP II and ESP III, in which it agreed to the referenced rate structure.

51. The Company denies generally any allegations not specifically admitted or denied in this Answer, in accordance with O.A.C. 4901-9-01(D).

AFFIRMATIVE DEFENSES

SECOND DEFENSE

52. The Complaint fails to set forth reasonable grounds for a complaint, as required by R.C. § 4905.26.

THIRD DEFENSE

53. The Complaint fails to state a claim upon which relief can be granted.

FOURTH DEFENSE

54. Complainant's and/or the Facility's claims are barred, in whole or in part, by its agreement to the Joint Stipulation underlying the Company's ESP II and ESP III.

FIFTH DEFENSE

55. The Company at all times complied with Ohio Revised Code Title 49; the applicable rules, regulations, and orders of the Public Utilities Commission of Ohio; and Tariff, PUCO No. 8, on file with the Public Utilities Commission of Ohio. These statutes, rules, regulations, orders, and tariff provisions bar Complainant's and/or the Facility's claims.

SIXTH DEFENSE

56. The Company reserves the right to raise other defenses as warranted by discovery in this matter.

WHEREFORE, The Toledo Edison Company respectfully requests an Order dismissing the Complaint and granting The Toledo Edison Company all other necessary and proper relief.

Respectfully submitted,

/s/ Laura C. McBride

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On behalf of The Toledo Edison Company

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *The Toledo Edison Company's Answer* was served this 9th day of December, 2013, via electronic mail on:

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/s/ *Laura C. McBride*

On behalf of The Toledo Edison Company

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Summary: Answer electronically filed by Ms. Laura C. McBride on behalf of The Toledo Edison Company