

**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.)	

INITIAL BRIEF OF MATERIAL SCIENCES CORPORATION

June 20, 2014

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I. INTRODUCTION

On October 30, 2013, Material Sciences Corporation (“MSC” or “Complainant”) filed its complaint against The Toledo Edison Company (“Toledo Edison” or “TE”), under R.C. 4905.26, with the Public Utilities Commission (“Commission” or “PUCO”).

The complaint alleges that Toledo Edison sent less than a two hour notice before the clock time beginning of the emergency curtailment event on September 11, 2013. Such a timely notice is required under Rider ELR¹ upon which MSC must mandatorily curtail its measured load to firm load levels at its MSC Walbridge Facility located in Walbridge Ohio (“Facility”). While MSC chose to voluntarily curtail to firm load levels for that event, unique operating conditions caused measured usage to exceed firm load levels for a brief time period at the Facility. Nevertheless, Toledo Edison, without timely sending the notice required for a mandatory curtailment, unreasonably, unjustly and unlawfully assessed \$2.4 million in penalties and forfeiture under Rider ELR in violation of its statutory and regulated duties under R.C. 4905.22, because MSC exceeded firm load during part of its voluntary curtailment at the Facility.

Further, Toledo Edison unreasonably, unjustly and unlawfully assessed \$2.4 million in penalties and forfeitures under Rider ELR in violation of its statutory and regulatory duties under R.C. 4905.22 based on the brief period of time that the measured load exceeded firm load levels by an insignificant amount of usage valued at \$85.00 during that event on September 11, 2013.

Finally, Toledo Edison unjustly, unreasonably, and unlawfully, in violation of its statutory and regulatory duties under R.C. 4905.22, imposed a 40% increase in rates based on usage billed during August 2012 through May 2013 billed at 2012-2013 winter rates compared to

¹ The Economic Load Response Program Rider is referred to as Rider ELR.

usage billed at 2013 summer rates as shown on Exhibit JS-5. Within that 40% increase, summer rates for GEN Energy, GEN Capacity, Rider NMB, and Rider DES 2 increased by 27%.

Likewise, Toledo Edison unjustly, unreasonably, and unlawfully, in violation of its statutory and regulatory duties under R.C. 4905.22, collected, between 2002 and 2013, \$6,265,748 more than if billed MSC at 5.00 cents/kWh projected historic and current projected baselines increases as also shown on Exhibit JS-5.

The heart of this complaint, significantly, focuses on the \$2.4 million dollar penalty charge that Toledo Edison demanded payment for from MSC. While now held in abeyance until a Commission decision, Toledo Edison intends to claw back all credits that MSC received over the past twelve months as an interruptible customer for re-billing as if firm load. The additional \$2.4 million in billings over then current monthly billings for actual service to the Facility increases cost by 55% to 207%, or from 9.65 to 15.83 cents per kWh, whether Toledo Edison collects the penalty all at once or over twelve months.

Rider ELR provides no statutory or regulatory basis for Toledo Edison to claw back \$2.4 million as penalties and forfeiture especially given its disingenuous positions in this case. Toledo Edison failed to provide a timely notice for a mandatory curtailment under Rider ELR. The notice sent to MSC came late—less than two hours before the clock time beginning of the event stated in that notice. Toledo Edison, having violated the noticing provision for mandatory curtailments, still relies on the penalty provision of Rider ELR intended for mandatory curtailments to assess MSC penalties and forfeiture of \$2.4 million. MSC, without receiving the required notice, protected the public interest by voluntarily curtailing on September 11, 2013 during which the Facility unintentionally and unexpectedly consumed \$85.00 of incremental load above firm load levels. An assessment of \$2.4 million penalty under Rider ELR based on MSC

being long by \$85 dollars' worth of power during that event is not only unjust and unlawful but inequitable.

II. PROCEDURAL BACKGROUND

After MSC filed its complaint on October 30, 2013, Toledo Edison answered and presented affirmative defenses on December 9, 2013. On February 13, 2014, Toledo Edison moved for dismissal of the complaint. By Entry dated April 7, 2014, the attorney examiner denied the motion and scheduled the hearing for May 21, 2014, noting that the prerogatives rest with the Commission, not Toledo Edison, on whether the utility must strictly enforce its tariffed penalty provision, or whether signing the ESP II stipulation now bars MSC from objecting to TE's enforcement of that penalty provision.²

During the hearing, MSC presented the written testimony of MSC employees: John Siffer, Plant Manager; Jeff Ramsay, Operations Manager, and Jim Augsburg, Engineering Manager at the Facility. Toledo Edison presented testimony of two employees of FirstEnergy Service Company: Joanne M. Savage, Analyst in the Rates and Regulatory Affairs Department-Ohio; and Peter Blazunas, State Regulatory Analyst in the Rates and Regulatory Affairs Department.

III. STATEMENT OF FACTS

MSC operates a state of the art manufacturing facility that utilizes a multiple functional, one production line, while multiple workers perform the same jobs throughout that process,³ to electro galvanize ("EG") or zinc-nickel ("ZnNi") plate steel coils, laminate steel coils, and coat steel coils, including using a 72" wide processing line to produce process steel and zinc-nickel

² See the April 7, 2014 Entry, p. 3, Finding 9.

³ MSC Ex. 2, Ramsay Testimony: pgs. 3-4.

electro galvanized steel for fuel tanks.⁴ The electroplating process results in monthly electrical demand averaging 25,000 to 30,000 kVa.⁵

Toledo Edison serves that demand under its ESP II from June 1, 2011 through May 31, 2014, and thereafter, under ESP III, through May 31, 2016.⁶ Interruptible service under Rider ELR serves most of that demand. Mandatory curtailments require MSC to reduce measured load to the firm load level set at 2,000 kW. Credits of \$5.00 per kVa under both Rider ELR and the EDR apply monthly to the maximum Curtailable Load set at 19,952 kW.⁷

Written procedures in place insure timely compliance with the 2,000 kW firm load requirement during Toledo Edison noticed curtailments under Rider ELR.⁸ The Complainant's Downtime Outage Shutdown procedures require turning off all items, except those on the "on list" which will continue to operate with total consumption expected at less than the 2,000 kW firm load.⁹ MSC's Oven Shutdown Procedures protect from damage both the prime and finish ovens by cooling, through use of circulation blowers and fans, to 200 degrees or less before opening the oven access doors. Oven Startup Procedures safely start up the prime and finish ovens after the curtailment ends.¹⁰

The clear and unambiguous language of Rider ELR expressed in Toledo Edison's tariff applies the terms and conditions of interruptible service.

Firm Load is defined as:

****that portion of a customer's electric load that is not subject to curtailment....¹¹

⁴ MSC Ex. 1, Siffer Testimony, pg. 5.

⁵ MSC Ex. 1, Siffer Testimony, pg. 5.

⁶ MSC Ex. 1, Siffer Testimony, pg. 5-6.

⁷ MSC Ex. 1, Siffer Testimony, pg. 6-7.

⁸ MSC Ex. 2, Ramsay Testimony, pg. 3, Ex. JR-1, JR-2, JR-3.

⁹ MSC Ex. 2, Ramsay Testimony, pg. 4.

¹⁰ MSC Ex. 2, Ramsay Testimony, pg. 4.

¹¹ MSC Ex. 1, Siffer Testimony, Exhibit JS 1, Other Provisions, subpart A, Firm Load, pg. 3-4.

An Emergency Curtailment Event is:

“****one in which the Company, a regional transmission organization and/or a transmission operator determines, in its respective sole discretion, that an emergency situation exists that may jeopardize the integrity of either the distribution or transmission system in the area.”¹² (emphasis added)

A mandatory curtailment is one 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.”¹³ (emphasis added)

The tariff language of Rider ELR also limits PJM requested ECEs, by providing that:

“If the Emergency Curtailment Event is requested solely by the regional transmission organization, the maximum duration that load must be curtailed will be 6 hours and shall be limited to ten events per planning year as defined by PJM. Any interruptions requested by the regional transmission organization will only occur between 12:00 PM (Noon) to 8:00 PM (Eastern Prevailing Time) for the months of May through September and 2:00 PM to 10:00 PM for the months of October through April, on weekdays other than PJM Holidays.”¹⁴ (emphasis added)

Importantly, Rider ELR prescribes the content of notices:

“Customers served under this Rider shall be provided notification of Economic Buy Through Option Events and Emergency Curtailment Events by the Company. Customers shall be provided clock times of the beginning and ending of these events, except the Emergency Curtailment Event notification may be stated that customers must curtail their actual measured load to its Firm Load in two hours from the time the notification is issued. Receipt of notifications set out in this paragraph shall be the sole responsibility of the customers.”¹⁵ (emphasis added)

¹² MSC Ex. 1, Siffer Testimony, Exhibit JS 1, Other Provisions, subpart D, Emergency Curtailment Event, pg. 3-4.

¹³ MSC Ex. 1, Siffer Testimony, Exhibit JS.1, Other Provisions, subpart D, Emergency Curtailment Event, pg. 3-5.

¹⁴ MSC Ex. 1, Siffer Testimony, Exhibit JS.1, Other Provisions, subpart D, Emergency Curtailment Event, pg. 3-5.

¹⁵ MSC Ex. 1, Siffer Testimony, Exhibit JS.1, Other Provisions, subpart F, Notification, pg. 5-5.

The five notices that Toledo Edison sent to MSC for the Emergency Curtailment Events on July 15, 16, and 18; and on September 10 and 11, 2013 were less than two hours before the beginning of the events to require a mandatory curtailment to the 2,000 kW firm load levels, as this chart shows:¹⁶

Date	ECE Start Time	Length of Notice Required Sent Before Event	Actual Length of Notice Sent Before Event	Minutes Actually Notice	Late Sent
July 15, 2013	3:50 PM EDT	2 Hr. 00 Minutes	1 Hr. 41 Minutes	19	
July 16, 2013	1:30 PM EDT	2 Hr. 00 Minutes	1 Hr. 55 Minutes	5	
July 18, 2013	2:40 PM EDT	2 Hr. 00 Minutes	1 Hr. 53 Minutes	7	
Sept. 10, 2013	3:50 PM EDT	2 Hr. 00 Minutes	1 Hr. 33 Minutes	27	
Sept. 11, 2013	2:00 PM EDT	2 Hr. 00 Minutes	1 Hr. 55 Minutes	5	

Prior to September 11, 2013, there were less than two hour notices before the beginning of the ECEs sent by Toledo Edison: a 1 hour and forty one minute notice for July 15, 2013; a 1 hour and fifty five minute notice for July 16, 2013; a 1 hour and fifty three minute notice for July 18, 2013; and a 1 hour and thirty three minute notice for September 10, 2013.

The notice sent by Toledo Edison for September 11, 2013 stated that:

“PJM Interconnection has initiated an Emergency Load Curtailment event beginning on September 11, 2013 at 2:00 P.M. (Eastern Prevailing Time) for First Energy ATSI Control Zone. The duration of this event is for six hours. This is a mandatory load curtailment event. You must reduce load to your firm service level prior to the start of this event. If you have any questions, please contact your First Energy Customer Support Representative.”¹⁷ (emphasis added)

Toledo Edison sent that notice 1 hour and fifty five minutes before the ECE began at 2:00 P.M. (Eastern Prevailing Time) for the First Energy ATSI Control Zone.¹⁸ Toledo Edison failed to notice a mandatory curtailment by sending its notice less than two hours before the ECE.¹⁹

¹⁶ MSC Ex. 1, Siffer Testimony, pg. 10-11.

¹⁷ MSC Ex. 1, Siffer Testimony, pg. 11.

¹⁸ MSC Ex. 3, Augsburg Testimony, pg.4.

¹⁹ MSC Ex. 1, Siffer Testimony, pg. 11-12.

MSC voluntarily curtailed on September 10 and September 11, 2013, recognizing the noticed emergency curtailment events within PJM for the FirstEnergy ATSI zone.²⁰ MSC successfully used the written procedures on September 10, 2013 to timely curtail to firm load throughout the ECE.²¹

The manufacturing process on September 11, 2013, which required ovens to heat the product differently, resulted in use of fans after the ECE began²² to cool the ovens significantly enough to protect the oven fan blades, and other internal mechanical equipment. MSC fully expected measured load to remain below the contract Firm Load after the 2:00 PM (EDT) curtailment event began even with added incremental load caused by operation of the circulation fans.²³

However, shortly after receipt of the notice sent by Toledo Edison, a computer system unexpectedly failed, preventing MSC from tracking its electrical energy demand on a real time basis to keep the measured load at or below firm load levels during the ECE on September 11, 2013.²⁴ An investigation later that day concluded that a faulty mother board on the computer caused the failure because it would not re-boot. A new computer replaced the other computer on October 8, 2013 to solve the problem.²⁵

The incremental load added by the operation of the circulation fans most likely caused measured load to exceed firm load during the half hour ending 3:00 PM (EDT) and half hour ending 3:30 PM (EDT) before the fans turned off at about 3:30 PM on September 11, 2013. The

²⁰ MSC Ex. 1, Siffer Testimony, pg. 11-12.

²¹ MSC Ex. 1, Siffer Testimony, pg. 9.

²² MSC Ex. 1, Siffer Testimony, pg.4-5.

²³ MSC Ex. 1, Siffer Testimony, pg.9.

²⁴ MSC Ex. 1, Siffer Testimony, pg.10.

²⁵ MSC Ex. 1, Siffer Testimony, pg.10.

measured load beginning at 4:00 PM met firm load levels as the chart shows for measurements taken at those times by Toledo Edison for the 30 minutes duration ending at that time:²⁶

Date—September 11, 2013

Time EST	Time EDT	KVA
13:30	2:30 PM	3030
14:00	3:00 PM	3041
14:30	3:30 PM	2895 Fans Off at 3:30
15:00	4:00 PM	1932
15:30	4:30 PM	1819
16:00	5:00 PM	1793
16:30	5:30 PM	1833
17:00	6:00 PM	1853
17:30	6:30 PM	1755
18:00	7:00 PM	1709
18:30	7,30 PM	1723
19:00	8.00 PM	1776

The value of this incremental usage from operation of the circulation fans during these two hours approximate \$85.00. The MSC typical monthly bill totals \$200,000 to \$300,000. The ECE charge by Toledo Edison determined that cost as \$54.05 ($162.15 / 3 = 54.05$).²⁷

Toledo Edison, under Rider ELR, intends to claw back all the ELR and EDR credits over the past twelve months through penalties and forfeitures in the amount of \$2,445,543.15²⁸ on the basis that during the ECE on September 11, 2013 MSC's actual load exceeded its contracted Firm Load of 2,000 kW by more than 110% during the half-hours ending 3:00 PM EDT and 3:30 PM EDT.²⁹ In assessing these penalties, Toledo Edison miscalculated the 110% threshold. Based on 3,041 kVa, as the highest demand consumed per Toledo Edison data on September 11th, the percent exceeding contract firm load was only 52%.³⁰

²⁶ MSC Ex. 1, Siffer Testimony pg. 13-14.

²⁷ MSC Ex. 1, Siffer Testimony pg. 13-14.

²⁸ MSC Ex. 1, Siffer Testimony pg. 13-14.

²⁹ MSC Ex. 3, Augsburger Testimony pg. 9-10, Exhibit JA-2.

³⁰ MSC Ex. 3, Augsburger Testimony pg. 9-10, Exhibit JA-2.

The claw back of all ELR and EDR credits would occur through charging a deferred penalty payment of \$195,468.42 per month over twelve months going forward to cancel out those credits previously received by MSC for each of the past twelve months.³¹ The recovery of \$2.4 million in additional costs for MSC service increases monthly bills by 55% to 207%, resulting in per unit monthly bills of between 9.65 and 15.83 cents per kWh.³²

After MSC paid its October 2013 bill with those credits included without paying the deferred monthly payment, Toledo Edison then billed as owing the entire \$2.4 million penalty with a disconnection notice included, in its November 2013 invoice.³³ Presently, MSC pays undisputed amounts for current service while Toledo Edison agrees not to disconnect service under their agreement.³⁴

IV. STATUTORY AND CASE LAW BASIS

1. R.C. 4905.26, Complaints as to Service.

R.C 4905.26 provides for complaints:

Upon complaint in writing against any public utility by any person, firm, or corporation, or upon the initiative or complaint of the public utilities commission, that any rate, fare, charge, toll, rental, schedule, classification, or service, or any joint rate, fare, charge, toll, rental, schedule, classification, or service rendered, charged, demanded, exacted, or proposed to be rendered, charged, demanded, or exacted, is in any respect unjust, unreasonable, unjustly discriminatory, unjustly preferential, or in violation of law, or that any regulation, measurement, or practice affecting or relating to any service furnished by the public utility, or in connection with such service, is, or will be, in any respect unreasonable, unjust, insufficient, unjustly discriminatory, or unjustly preferential, or that any service is, or will be, inadequate or cannot be obtained, and, upon complaint of a public utility as to any matter affecting its own product or service, if it appears that reasonable grounds for complaint are stated, the commission shall

³¹ MSC Ex. 3, Augsburger Testimony pg. 11-12, Exhibit JA-5.

³² MSC Ex. 3, Augsburger Testimony pg. 13, Exhibit JA-8-9.

³³ MSC Ex. 3, Augsburger Testimony pg. 11-12, Exhibit JA-5.

³⁴ MSC Ex. 3, Augsburger Testimony pg. 13.

fix a time for hearing and shall notify complainants and the public utility thereof. The notice shall be served not less than fifteen days before hearing and shall state the matters complained of. The commission may adjourn such hearing from time to time.

The parties to the complaint shall be entitled to be heard, represented by counsel, and to have process to enforce the attendance of witnesses.

2. R.C. 4905.22, Unreasonable Charge Prohibited.

R.C. 4905.22 prevents unjust, unreasonable, or unlawful charges:

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demands for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

3. A public utility must charge rates in accord with the terms and conditions of its tariff.

Every public utility in Ohio must charge rates that are in accord with its tariffs approved by, and on file with the Commission. R.C. 4905.22. Kazmaier Supermarkets, Inc. v. Toledo Edison Co. (1991) 61 Ohio St. 3d 147 at 150.

In doing so, a public utility must abide by the terms and conditions of its approved filed tariffs ... Hull v. Columbia Gas of Ohio, Inc., 110 Ohio St. 3d 96 at 103, 2006-Ohio-3666.

V. ARGUMENT

A. Toledo Edison's assessment of a \$2.4 million penalty and forfeiture without following its notice requirements in Rider ELR imposes unjust, unreasonable, and unlawful charges for service under Rider ELR in violation of statutory and regulatory duties under R.C. 4905.22.

Rider ELR is clear and unambiguous whose interpretation is a matter of law to carry out its intent. There are no ambiguities within Rider ELR; its language is not subject to multiple interpretations. The intent of the parties is derived from the language used.

The clear and unambiguous language of Rider ELR requires that MSC must curtail for an Emergency Curtailment Event “upon no less than two hour advance notification provided by the Company” (i.e. Toledo Edison).³⁵ The notice for an Emergency Curtailment Event shall provide “clock times for the beginning and ending” of the emergency curtailment event, except the notice “may be stated such that customers must curtail their actual measured load to its Firm Load in two hours from the time the notification is issued.”³⁶

In 2013, Toledo Edison chose the option of providing “clock times for the beginning and ending” of the emergency curtailment events in its notices sent to MSC. Toledo Edison during 2013 never stated in its notices that customers must curtail two hours from time notification issued.

The notice sent at 12:05 PM (EDT) on September 11, 2013 for the Emergency Curtailment Event provided MSC with a 2:00 PM (Eastern Prevailing Time) clock time beginning, and a six hour duration.³⁷ A notice sent one hour and fifty five minutes before the event failed to meet the requirements of Rider ELR under which MSC must curtail to its Firm

³⁵ MSC Ex. 1, Siffer Testimony, Exhibit JS.1, Other Provisions, subpart D, Emergency Curtailment Event, pg. 3-5.

³⁶ MSC Ex. 1, Siffer Testimony, Exhibit JS.1, Other Provisions, subpart F, Notification, pg. 5-5.

³⁷ MSC Ex. 1, Siffer Testimony, pg.11.

Load during that event. Likewise, the notice sent at 12:05 PM (EDT) never stated that MSC must curtail to Firm Load in two hours from the time of issuing the notice.

The preponderance of the evidence demonstrates that Toledo Edison under Rider ELR never sent a timely notice requiring that MSC must curtail to its firm load levels during the Emergency Curtailment Event on September 11, 2013. Without a timely notice, Rider ELR provided no legal right to assess MSC penalties and forfeiture during the non-mandatory, voluntary curtailment on September 11, 2013. The assessment of \$2,445,543.15 as penalties and forfeitures under Rider by Toledo Edison constitute unjust, unreasonable and unlawful charges in violation of its statutory and regulatory duties under R.C. 4905. 22.

The Commission must reject Toledo Edison's reliance on parol (extrinsic) evidence to interpret, then modify, the clear and unambiguous language of Rider ELR. For mandatory curtailments, Toledo Edison must send its notice no less than two hours before the clock time beginning of the event. Toledo Edison's notices during 2013 never stated the alternative language of Rider ELR that the event began two hours after issuance (sending) of the notice.

Toledo Edison witness Savage attempts to introduce extrinsic evidence showing impossible compliance with the clear and unambiguous language of Rider ELR because PJM sent late its notifications to FirstEnergy from which were sent on behalf of Toledo Edison notifications to Rider ELR customers. At that time, Toledo Edison did not contemplate modifying the language in its tariff.³⁸ Under Rider ELR, either Toledo Edison could provide clock times in the notice or state in the notice the event begins two hours after sent. Toledo Edison chose not to change the language of the notice to begin the event two hours after sent; rather, it sent a late notice by using the clock time beginning of the event in its September 11, 2013 notice. As previously noted, Toledo Edison sent all its notices late for the ECEs in July and

³⁸ See Tr. 74-75.

September 2013 by using the clock time beginnings of the event. Toledo Edison's claim of impossible compliance presents an incredulous argument given that it never chose under Rider ELR the alternative to state that the event began two hours after notice sent.

B. Toledo Edison's assessment of a \$2.4 million penalty and forfeiture for the Emergency Curtailment Event on September 11, 2013 for measured load exceeding firm load for a short period of time by usage valued at \$85.00 imposes unjust, unreasonable, and unlawful charges for service under Rider ELR in violation of statutory and regulatory duties under R.C. 4905.22.

The assessment of \$2.4 million in penalties and forfeiture for exceeding firm load levels by usage of \$85.00 is most troubling. Clearly, Toledo Edison never gave the timely notice required by Rider ELR under which MSC must curtail for emergency curtailment events. MSC elected to voluntarily curtail when called upon five times by Toledo Edison, each time using the same protocol dictated by the shutdown and startup procedures. Four of the five called for curtailments ended with measured load at or lower than the firm load for the full duration of the event.

During the fifth interruption, noticed on September 11, 2013, again with less than two hours' advance notice, MSC voluntarily curtailed, but unintentionally and unexpectedly exceeded its Firm Load for two half hour periods during that six hour emergency curtailment event at the Facility. The shutdown procedures required that cooling fans remain on long enough for the safe shut down on ovens in use during a unique manufacturing project that ended before the noticed curtailment event began at 2:00 PM EDT. The tracking of that incremental load from the cooling fans became impossible because the computer used for internal tracking of load within the Facility ceased operation around the time the curtailment notice was sent.

MSC never intended to exceed its firm entitlement of power. The value of the incremental power in excess of the 2,000 kW firm load level was \$85 or less. Compliance was

not the issue. MSC would have turned off more of its electricity consuming equipment if the computer operated to monitor usage, or if it had learned from Toledo Edison or other sources about exceeding Firm Load levels.

After the September 11, 2013 emergency curtailment event ended, Toledo Edison, in reviewing its records, determined usage exceeded firm load levels, and under Rider ELR assessed MSC a penalty of over \$2.4 million dollars on such paltry incremental usage valued at \$85.00. The penalty retroactively eliminates the approximate credits received over the past twelve months for recovery by Toledo Edison by not applying future credits to service for the next twelve months. MSC effectively becomes a firm rate customer for a whole service year because of this shockingly large penalty which dramatically increases electric costs of MSC for the Facility by that \$2.4 million, a 55% to 207% increase, or increasing electric costs from 9.65 to 15.83 cents per kWh, whether Toledo Edison collects the penalty all at once or over twelve months.

A \$2.4 million penalty and forfeiture assessed because MSC's measured load exceeded firm load for a short period of time at the Facility by usage valued at \$85.00 imposes unjust, unreasonable, and unlawful charges for service under Rider ELR in violation of statutory and regulatory duties under R.C. 4905.22.

Ironically, Toledo Edison justifies its claw back of \$2.4 million for over usage valued at \$85.00 from MSC as an equitable outcome for the other customers funding the credits. Under the facts and law of this case, neither Toledo Edison nor other customers may legally claim rights to MSC's credits received for assuming the risks during mandatory interruptions under Rider ELR. Toledo Edison failed to timely give notice of a mandatory interruption under which MSC was required to curtail on September 11, 2013; such a timely notice is a condition

precedent to impose any penalty for disbursement to other customers in the form of monthly bill credits. Clearly, the imposition of a \$2.4 million penalty for incremental usage valued at \$85.00 beyond 2,000 kW firm load levels for two one half hour periods not only is inequitable, but unconscionable, under Rider ELR.

The computer glitch works only one way because Toledo Edison's firm tariff endeavors but does not guarantee continuous service to protect Toledo Edison from paying a \$2.4 million penalty for curtailing MSC's firm service on September 11, 2013 by a couple of hundred kW for two one-half hour periods valued at \$85.00. While protected from imperfect performance, Toledo Edison interprets rather applies the clear and unambiguous language of Rider ELR to demand perfect performance of MSC by assessing \$2.4 million penalty for MSC exceeding its firm load curtailment on September 11, 2013 by a hundred or so kW for two-half hour periods valued at \$85.00 during a non-mandatory voluntary curtailment caused by lack of timely notice.³⁹

Toledo Edison demands perfect performance from its interruptible customers, subject to penalties, without demanding the same from itself, such as actually reading the notice provisions of Rider ELR. The preponderance of the evidence shows that Toledo Edison never noticed a mandatory curtailment event on September 11, 2013 because its notice sent at 12:05 PM for a curtailment event beginning at 2:00 PM failed to comply with the no less two hour notice requirement of Rider ELR. Such imperfect performance under Rider ELR by Toledo Edison would allow MSC not to curtail at all on September 11, 2013 during the emergency curtailment event. Even so, MSC responded responsibly, using a common sense approach by voluntarily curtailing for the good of the transmission system as TE's second largest interruptible customer. In contrast, Toledo Edison denies not sending a timely notice and refuses to even consider

³⁹ See Tr. 88-92.

waiver of the penalty, knowing quite well that mitigation through waiver is possible with Commission approval.⁴⁰

The common sense waiver of penalties for good cause shown with Commission approval benefits all customers because of the circumstances. Emergency Curtailment Events occur only during emergencies that threaten the integrity of the transmission and distribution system within the area. All ECEs during 2013 were called for by PJM. When these Emergency Curtailment Events occur, interruptible customers should do their best to curtail load upon notice, even if the notice is five minutes late and unenforceable under Rider ELR.

Similarly, whether during a mandatory curtailment when the notice was sent timely, or during a voluntary event when notice was sent untimely, a good faith effort to curtail load that fails to maintain firm load levels throughout without harm to the system or intent to avoid Rider ELR responsibilities should allow for waiver of penalties by good cause shown to the Commission. Draconian penalties applied for imperfectly exercised good faith curtailments efforts will not deter unintended violations; they will simply discourage both MSC and others on the TE, OE, and CEI system from assuming those risks as interruptible customers.

C. Toledo Edison unjustly, unreasonably and unlawfully, in violation of its statutory and regulatory duties under R.C. 4905.22, imposed a 40% increase in rates between those in effect during winter 2012-2013 and during summer 2013 rates under ESP II.

Exhibit JS-5 shows that rates increased by \$0.01819/kWh covering the usage period June 2013 through August 2013. With that increase, MSC paid an average of \$0.0694/kWh compared to \$0.04581/kWh for the period August 2012 through May 2013, which includes all winter 2012-2013 rates.⁴¹

⁴⁰ See Tr. 87-88.

⁴¹ MSC Ex. 1, Siffer Testimony, Exhibit JS-5.

Tariff changes in effect June 1, 2013 to riders GEN Energy, GEN Capacity, NMB (\$/kVa), and DSE 2 caused 27% of that 40% increase, as shown below:⁴²

Rate \$/kWh	2012-2013 Winter	2013 Summer	\$/kWh/kVa Difference	% Increase
GEN Energy	\$0.049868	\$0.060551	\$0.010683	21 %
GEN Capacity	\$0.000795	\$0.001594	\$0.000799	101%
NMB (\$/kVa)	\$1.6711	\$2.1249	\$0.4538	27%
DSE 2	(\$0.002586)	(\$0.000039)	(\$0.002547)	(98%)
Totals	\$1.71921	\$2.1870	\$0.4627	27%

The 27% increase of the NMB rider from \$1.6711 to \$2.1249 per kVa, an increase of \$0.4538 per kVa, based on a 33.83% allocation of costs to that GT class, significantly affected MSC because its demand load averages between 25,000 to 30,000 kW when using the electroplating manufacturing process. By comparison, Ohio Edison charges GT customers \$1.4032/kVa, while CEI charges its comparable customers \$1.1021/kVa under their respective NMB riders.⁴³

MSC and other GT customers on the Toledo Edison system pay at least 50% more under its rider to recover PJM related costs than required of customers served by the other Ohio affiliates. The \$0.4538/kVa increase effective June 1, 2013 under ESP II effectively eliminated MSC's margin negotiated with Toledo Edison as part of the ESP III stipulation in exchange for dismissal of the complaint in Case No. 12-919-EL-CSS.⁴⁴

A 40% increase in rates beginning with the June, 2013 bills results in unjust, unreasonable and unlawful rates under R.C. 4905.22 in violation of statutory and regulatory duties. Further, the increase violates the state energy policy under R.C. 4928.02(A) and (N).

⁴² MSC Ex. 1, Siffer Testimony, pg.14-15.

⁴³ MSC Ex. 1, Siffer Testimony, pg. 15.

⁴⁴ MSC Ex. 1, Siffer Testimony, pg. 15.

D. Toledo Edison unjustly, unreasonably and unlawfully, in violation of its statutory and regulatory duties under R.C. 4905.22, collected, between 2002 and 2013, \$6,265,748 more than if billed at 5.00 cents/kWh projected historic and current projected baselines.

Historically, electric rates charged to MSC for TE service systemically tilt upward in incremental increases during ESP I, ESP II, and, likely now, during ESP III as Exhibit JS-5 shows:

	Periods	Average Cents/kWh
<u>Baseline</u>	February 2002 to February 2003	4.00
	February 2003 to February 2004	4.70
	<u>February 2004 to June 2005</u>	<u>5.70</u>
	June 2005 to December 2007	7.20
	February 2007 to February 2008	7.77
<u>Baseline</u>	February 2008 to December 2008	12.00
	February 2009 to February 2010	8.08
	<u>February 2010 to June 2011</u>	<u>5.41</u>
	June 2011 to June 2012	6.94
	August 2012 to May 2013	4.581
	June 2013 to October 2013	6.40

These rates include the credits received by interruptible customers, and for other services necessary under Ohio's energy policies intending for Toledo Edison to supply adequate, reliable, and reasonably priced retail electric service for Ohio's manufacturing sector to prosper and maintain jobs by effectively competing in the global markets.⁴⁵

The rates paid by MSC to Toledo Edison for electric service between 2002 and 2013 (including the credits provided for ESP I and ESP II services) totaled at least \$6,265,748 more than for electric service that would have been charged at 5.00¢ per kWh based on projected

⁴⁵ MSC Ex. 1, Siffer Testimony, pg. 16.

historic and currently projected baselines. If these incremental charges were not paid to Toledo Edison for electric service, this would benefit the Ohio economy with more jobs, taxes and greater output from the MSC Facility leading to three times the energy supplied.⁴⁶

As a result, Toledo Edison unjustly, unreasonably and unlawfully, in violation of its statutory and regulatory duties under R.C. 4905.22, collected, between 2002 and 2013, \$6,265,748 more than if billed at 5.00 cents/kWh projected historic and current projected baselines.

VI. CONCLUSION

The Commission must find that based upon the preponderance of the evidence, Toledo Edison unjustly, unreasonably and unlawfully charged for service under Rider ELR in violation of statutory and regulatory duties under R.C. 4905.22.

For Count 1 of the complaint, the preponderance of the evidence demonstrates that in violation of Rider ELR, Toledo Edison never sent MSC timely notice to require that the Facility mandatorily curtail to its firm load levels at the beginning of, and during, the Emergency Curtailment Event (ECE) on September 11, 2013. MSC voluntarily curtailed its Facility to firm load levels at the beginning of the ECE in recognition of the emergency nature of that curtailment. However, unique operating conditions unexpectedly caused the actually measured load to exceed MSC's mandatory firm load during two one-half hour clock times during September 11th at the beginning of the ECE. Toledo Edison imposed the penalty provision of Rider ELR without providing timely notice to require mandatory curtailment to the firm load level. Toledo Edison unjustly, unreasonably, and unlawfully charged \$2,445,543.15 as penalties and forfeitures under Rider ELR for MSC exceeding its firm load during the non-mandatory,

⁴⁶ MSC Ex. 1, Siffer Testimony, pg. 16.

voluntary curtailment at the Facility on September 11, 2013 in violation of its statutory and regulatory duties under R.C. 4905.22.

Further, the preponderance of the evidence demonstrates under Count 2 that Toledo Edison unreasonably, unlawfully and unjustly assessed \$2,445,543.15 in penalties and forfeitures in violation of its statutory and regulatory duties under R.C. 4905.22 because MSC exceeded its firm load level during the non-mandatory, voluntary curtailment on September 11, 2013 by a minuscule amount of incremental usage valued at \$85.00.

Count 3 results from the dramatic 40% increases when summer 2013 rates supersede winter 2012-2013 rates that MSC pays for service to the MSC Walbridge Facility. Count 3 further addresses the extent to which actually incurred historic rates paid by MSC for service to the MSC Walbridge Facility exceeded reasonable base line rates. In both instances, Toledo Edison's rates violated R.C. 4905.22 by demanding unjust, unreasonable, and unlawful charges for service in violation of statutory and regulatory duties.

Respectfully submitted,

/s/ Craig I. Smith

Craig I. Smith
Counsel of Record
15700 Van Akin Blvd.
Shaker Heights, OH 44120
(216) 571-2717
wttplmc@aol.com

M. Howard Petricoff
Stephen M. Howard
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, OH 43215
(614) 464-5414
mhpetricoff@vorys.com
smhoward@vorys.com

Attorneys for the Complainant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Initial Brief of Material Sciences Corporation was served via electronic mail this 20th day of June, 2014 on the following persons:

Carrie M. Dunn
Counsel of Record
FirstEnergy Service Company
76 S. Main Street
Akron, OH 44308
cdunn@firstenergycorp.com

Laura C. McBride
Christine E. Watchorn
Ulmer & Berne LLP
65 East State Street, Suite 1100
Columbus, OH 43215
lmcbride@ulmer.com
cwatchorn@ulmer.com

_____/s/ Stephen M. Howard
Stephen M. Howard

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