**BEFORE**

**THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**THE TOLEDO EDISON COMPANY’S REPLY BRIEF**

**TABLE OF CONTENTS**

[**I.** **INTRODUCTION** 1](#_Toc392772619)

[**II.** **LAW AND ARGUMENT** 3](#_Toc392772620)

[**A.** **All Of MSC’s Arguments Through Which It Seeks To Avoid The Rider ELR Penalties Are Inconsistent With The Tariff And Must Be Rejected.** 3](#_Toc392772621)

[**1.** **Rider ELR dictates MSC’s required response to an ECE.** 4](#_Toc392772622)

[**2.** **Rider ELR dictates the formula for calculating the mandatory penalties, a formula which does not include MSC’s suggested mitigating factors.** 7](#_Toc392772623)

[**3.** **Rider ELR dictates that the penalties are mandatory upon non-compliance and other tariff provisions regarding Toledo Edison’s obligations for supplying electricity are not only totally unrelated, but also dictated by another Commission-approved tariff.**  9](#_Toc392772624)

[**4.** **Rider ELR dictates that non-Rider ELR customers are legally entitled to penalty amounts arising from a Rider ELR customer’s non-compliance – including repayment of the credits those other customers previously paid to Rider ELR customers.** 10](#_Toc392772625)

[**B.** **The Rates That Toledo Edison Charged MSC Are Just, Reasonable, Lawful, and Commission-Approved; MSC’s Arguments to the Contrary Are Incorrect and Wholly Unsupported.** 11](#_Toc392772626)

[**III.** **CONCLUSION** 13](#_Toc392772627)

# **INTRODUCTION**

As the Complainant in this proceeding, Material Sciences Corporation (“MSC”[[1]](#footnote-1)) has the burden to prove its claims.[[2]](#footnote-2) MSC has failed to meet that burden because it has not demonstrated that The Toledo Edison Company (the “Company” or “Toledo Edison”) did not properly apply its Commission-approved tariffs to MSC. As MSC concedes in its Initial Brief, the Company is a public utility that must charge rates in accordance with its tariffs, which are approved by and on file with the Commission.[[3]](#footnote-3) And MSC also essentially concedes that the Company has done nothing more than apply its Commission-approved rates and riders to MSC. Thus, MSC’s Complaint is nothing more than a Hail Mary pass in the hope that the Commission will excuse it from paying a penalty assessed to it for its failure to fulfill an obligation that it agreed to in exchange for substantial benefits.

On the issue of rate increases, all MSC does is recite the testimony of its lone witness, who admittedly lacks any knowledge or credibility whatsoever regarding the rates about which it complains. MSC does not even dispute the fact that the Company has properly applied its rates and tariffs to MSC. On the issue of its compliance with the Company’s Economic Load Response Program Rider (“Rider ELR”[[4]](#footnote-4)), all MSC does is raise issues that are irrelevant to whether it could have complied or did comply with its obligations under Rider ELR on September 11, 2013. Rider ELR, in which MSC voluntarily elected to participate, requires that MSC reduce its load and that if MSC fails to do so in accordance with the terms of Rider ELR, then a penalty shall be assessed. MSC does not dispute the fact that it failed to curtail during the emergency curtailment event (“ECE”) that day as required by Rider ELR. Therefore, MSC violated the tariff, which in turn requires the application of the mandatory penalty to MSC. For those reasons, the fact that other non-compliant Rider ELR customers have been subject to and either have paid or are paying the same penalties as those assessed to MSC, the Commission should dismiss the Complaint.

Indeed, all of the arguments raised by MSC in its Brief are inconsistent with the Company’s Commission-approved tariffs and should be dismissed. The Company’s tariffs dictate the rates that MSC must pay for electric service and the penalties that must apply for MSC’s non-compliance during the September 11, 2013 ECE. The Company properly applied all of the relevant tariffs and there is no evidence that MSC was treated any differently than any other customer.

MSC’s arguments are particularly unavailing given its express support for all of the rates and riders at issue in its Complaint. As a signatory party to the Company’s ESP II Stipulation, MSC explicitly agreed that the Company’s riders are reasonable.[[5]](#footnote-5) Thus, MSC supported the reasonableness of Rider ELR, including its notice and penalty provisions. MSC also supported the reasonableness of the Company’s Rider GEN[[6]](#footnote-6) and Rider NMB.[[7]](#footnote-7) MSC cannot be allowed to purportedly change its perspective on those same rates and riders now that it has been penalized because it failed to comply with an obligation for which it has received millions of dollars to perform. All three of MSC’s claims fail and the claims should be dismissed as legally improper due to its support of the ESP II Stipulation and under the doctrines of estoppel and res judicata. Even if the claims were legally supported, they fail because the facts do not establish that any of the Company’s rates and riders or the Company’s application of those rates and riders to MSC are unjust or unreasonable. For all of those reasons, the Commission should dismiss MSC’s Complaint.

# **LAW AND ARGUMENT**

## **All Of MSC’s Arguments Through Which It Seeks To Avoid The Rider ELR Penalties Are Inconsistent With The Tariff And Must Be Rejected.**

It is undisputed that MSC voluntarily elected to participate in Rider ELR with full knowledge that ECEs could be called and would require it to curtail to its Firm Load, and with full knowledge that penalties would be imposed for non-compliance.[[8]](#footnote-8) It is also undisputed that MSC failed to curtail to its Firm Load within two hours after the Company’s notice of an ECE on September 11, 2013.[[9]](#footnote-9) And it is undisputed that MSC’s actual load exceeded 110% of its Firm Load for the half hour ended 3:00 PM EDT and for the half hour ended 3:30 PM EDT.[[10]](#footnote-10) MSC has not offered (and could not have offered) any evidence to the contrary. Thus, in accordance with the plain language of Rider ELR, MSC must pay the requisite penalties, including returning some of its Rider ELR and Rider EDR-b credits – credits that were funded by, and in this instance shall be returned to, non-Rider ELR customers of Ohio Edison Company, The Cleveland Electric Illuminating Company, and Toledo Edison.[[11]](#footnote-11)

MSC cannot legitimately dispute the only facts relevant to whether it is subject to the Rider ELR penalties for its failure to comply with the ECE on September 11, 2013. Therefore, it attempts to offer arguments as to why the Commission should allow it to avoid penalties that other similarly situated, and equally noncompliant, Rider ELR customers have paid. None of the arguments have merit and all of them are inconsistent with the Commission-approved Rider ELR tariff – and, thus, must be rejected.

### **Rider ELR dictates MSC’s required response to an ECE.**

To avoid Rider ELR’s penalties, MSC attempts to create a distinction between a supposed voluntary and mandatory ECE based upon its determination of whether an ECE notice is sufficient.[[12]](#footnote-12) MSC claims that the ECE notices in 2013, including the notice of the September 11, 2013 ECE at issue here, were sent less than two hours before the beginning of the PJM load management event, making MSC’s compliance optional.[[13]](#footnote-13) But MSC’s argument is wholly without merit and must fail. First, there is nothing in Rider ELR that provides for such a “voluntary” response.[[14]](#footnote-14) What Rider ELR does say is that “[u]pon no less than two hour advance notification [of an ECE] provided by the Company, a customer taking service under this rider must curtail all load above its Firm Load . . . .”[[15]](#footnote-15) Thus, in order to comply with its Rider ELR obligations, MSC was required to reduce to its Firm Load within two hours of the Company’s notice of an ECE. Said another way, MSC would not have been subjected to penalties under Rider ELR if it failed to reach its Firm Load one hour after the notice, or one hour and 55 minutes after the notice from the Company. However, if MSC failed to curtail to its Firm Load two hours after the notice, MSC would have failed to comply. MSC, by its own admission, failed to reach its Firm Load until well over three hours after it received the Company’s notice[[16]](#footnote-16) and, therefore, it failed to comply with its obligations under Rider ELR and the penalties apply.

MSC points to the language in Rider ELR that describes notices as including “clock times for the beginning and ending” of ECEs and argues, without any citation to record evidence, that “[i]n 2013, Toledo Edison chose the option of providing” such clock times in its ECE notices.[[17]](#footnote-17) Not only is there no evidence that the Company made some predetermined decision to provide clock times in its ECE notices during 2013, Company witness Savage explained that the Company provides clock times for notices of Economic Buy-through Events, which are provided under a separate provision of Rider ELR not relevant here.[[18]](#footnote-18) Ms. Savage also testified that, consistent with the language of Rider ELR, the Company issues ECE notices that require Rider ELR customers to curtail within two hours of the notice, as is relevant here.[[19]](#footnote-19)

It is easy to understand why Rider ELR provides for notices of differing types. If, for example, in the unlikely event that the Company was able to provide more than two-hour notice of an emergency situation, it may provide a later start time in the notice – giving Rider ELR customers a further heads-up as to the need to curtail at some point later in the day. However, in the more likely event that an emergency situation is not identified more than two hours in advance, Rider ELR acknowledges that customers may be provided with notice of an ECE that would simply obligate Rider ELR customers to curtail to Firm Load within two hours of the time that notice is sent by the Company, as was the case on September 11, 2013.

At 12:00 PM on September 11, 2013, PJM Interconnection, LLC (“PJM”) issued notice of an emergency event on the PJM system (including the Company’s territory and transmission operator) beginning at 2:00 PM.[[20]](#footnote-20) Upon receipt and in accordance with its standard procedures, the Company issued notice of an ECE at approximately 12:05 PM to all Rider ELR customers, including MSC.[[21]](#footnote-21) While PJM’s emergency event may have started at 2:00 PM, Rider ELR did not obligate Rider ELR customers to curtail by 2:00 PM. Rather, Rider ELR customers are only obligated to curtail “upon no less than two hour advance notification from the Company.” Thus, Rider ELR customers, including MSC, were obligated to reach their Firm Load by 2:05 PM on September 11, 2013 – no less than two hours after the 12:05 PM notice from the Company.[[22]](#footnote-22) MSC failed to do so and its arguments about the ECE notices are simply attempts to distract the Commission from its failure to comply.

MSC admits that the Company provided notice to MSC at 12:05 PM on September 11, 2013, and that it immediately initiated its shut down procedures.[[23]](#footnote-23) MSC admits that its response to the ECE was unaffected by the timing of the notice and MSC’s after-the-fact argument that MSC construed its compliance to the ECE as “voluntary” as a result of the notice is wholly unsupported by the facts.[[24]](#footnote-24) MSC’s witnesses repeatedly testified that no one discussed whether the ECE was “voluntary” and no one contacted the Company to clarify whether the ECEs were mandatory.[[25]](#footnote-25) Moreover, there is no reference to “voluntary” ECEs in Rider ELR. MSC also admits that it failed to reach its Firm Load until the half-hour ending 4:00 PM.[[26]](#footnote-26) The Company is not seeking to penalize MSC for failing to curtail by PJM’s 2:00 PM start time. On the contrary, in accordance with the terms of Rider ELR, the Company’s application of the penalties arises because, “[u]pon no less than two hour advance notification from the Company” on September 11, 2013, MSC failed to curtail its load to Firm Load.[[27]](#footnote-27) MSC cannot avoid the impact of its noncompliance by asserting an interpretation of the notice requirement that is inconsistent with Rider ELR and that admittedly had no impact on its ability to comply.

### **Rider ELR dictates the formula for calculating the mandatory penalties, a formula which does not include MSC’s suggested mitigating factors.**

Rider ELR’s penalties for exceeding 110% of Firm Load during an ECE are unambiguous and mandatory: “If at any time during the [ECE] a customer’s actual measured load exceeds 110% of its Firm Load, the customer shall be subject to all four (4) of the following [penalties]. . . . .”[[28]](#footnote-28) No other factors are pertinent to the application of the penalties – not MSC’s good intentions, its production process on September 11, 2013, or its assertion that it only exceeded its Firm Load for a short time.[[29]](#footnote-29) MSC argues that the imposition of the penalties is unreasonable, unjust, and unlawful because the Company has not taken these factors into account, but Rider ELR does not permit the Company to consider any of these other factors when it applies the mandatory penalties for non-compliance. The Company is required by law to follow its tariff and MSC has offered no evidence to the contrary.

For example, MSC postulates that a particular production process required oven cooling fans to continue running after the ECE began, and “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)” on September 11, 2013.[[30]](#footnote-30) However, there is no exception in Rider ELR for non-compliance based on a unique manufacturing operation, and MSC has not directed the Commission to any such provision. Moreover, if MSC was aware that it would experience unique manufacturing conditions that may render it unable to curtail to its Firm Load in the allotted time, it could have and should have contacted the Company to adjust (increase) its Firm Load.

MSC also suggests that the penalty is unreasonable and unlawful because MSC only failed to comply for a “brief period of time” and because it only exceeded Firm Load by a usage amount that it values at $85.00.[[31]](#footnote-31) Rider ELR does not condition the imposition of penalties upon the length of a customer’s non-compliance or the value ascribed to the energy consumption above Firm Load. Indeed, MSC’s calculation of the cost of its incremental usage during the ECE is completely irrelevant to the matters before the Commission here. The Rider ELR penalties are set forth in the tariff and they do not incorporate any mitigating factor based on the value of the incremental usage. In accordance with the Commission-approved and MSC-supported Rider ELR, the penalties “shall” apply if a Rider ELR customer’s load exceeds its Firm Load during the ECE. Certain penalties apply if the customer exceeds 100-110% of its Firm Load and additional penalties apply if the customer exceeds 110% of its Firm Load.[[32]](#footnote-32)

MSC also suggests that its “$85” of incremental usage and its “good faith effort” to curtail are relevant to whether the Commission-approved penalties are unjust or unreasonable. However, not only are these factors not incorporated in Rider ELR, but they are inconsistent with the demand-response goals of Rider ELR. The emergency provisions of Rider ELR are not dependent on the price of electricity at any given time, but rather a higher-than-normal demand on the system that may jeopardize the system.[[33]](#footnote-33) Thus, Rider ELR customers are paid to reduce their load during such emergencies to a pre-determined level (their Firm Load) – so that all of the customers connected to the system can rely on a demand-response resource to enhance system reliability. To calculate or enforce penalties based on some arbitrary determination that one customer’s failure to comply was in “good faith,” but another’s was not (or that one customer’s failure “cost less”) would render Rider ELR essentially unenforceable and impractical. Rider ELR warrants – as MSC supported in the Company’s ESP I, II, and III, and the Commission approved – strict and non-discretionary penalties. It is undisputed that MSC’s load exceeded 110% of its Firm Load during the September 11, 2013 ECE and, therefore, Rider ELR dictates that MSC “shall be subject” to the penalties set forth therein.

### **Rider ELR dictates that the penalties are mandatory upon non-compliance and other tariff provisions regarding Toledo Edison’s obligations for supplying electricity are not only totally unrelated, but also dictated by another Commission-approved tariff.**

MSC also asserts the unsupported arguments that Rider ELR’s penalty provisions are unjust or unreasonable because the Company is “protected” from “imperfect performance,” apparently to suggest that the Company is held to a lower standard than that to which Rider ELR customers are held.[[34]](#footnote-34) In doing so, MSC references questioning during the hearing to which the Company objected and to which the Attorney Examiner simply agreed to take administrative notice of the Company’s Electric Service Regulations.[[35]](#footnote-35) MSC cites no specific provision of the Electric Service Regulations. However, any argument that the Company’s inability to guarantee, for example, a continuous supply of electric energy[[36]](#footnote-36) is somehow analogous to MSC’s obligation to curtail its own load during an ECE is wholly without merit. Such an argument is nonsensical and totally irrelevant to a determination of whether MSC is subject to the Rider ELR penalties due to its noncompliance on September 11, 2013. These two tariff provisions are totally separate.[[37]](#footnote-37) It also goes without saying that these tariff obligations are totally distinct and unconnected. There is a myriad of reasons as to why the Company’s obligation to supply continuous and uninterrupted electric supply to every single customer in its service territory might be limited. On the other hand, there is similarly a myriad of reasons as to why MSC’s choice to be obligated to reduce its load in response to an ECE is more defined and straightforward. Regardless, however, the fact is that the Commission approved both provisions. The Commission-approved tariffs dictate that the Company may be entitled to some “protection” for issues that arise in the supply of electric service, and the Commission-approved tariffs dictate that Rider ELR customers are subject to mandatory penalties upon non-compliance. MSC’s argument should be rejected out of hand.

### **Rider ELR dictates that non-Rider ELR customers are legally entitled to penalty amounts arising from a Rider ELR customer’s non-compliance – including repayment of the credits those other customers previously paid to Rider ELR customers.**

MSC also makes the unreasonable suggestion that “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.”[[38]](#footnote-38) This suggestion is flatly false. While Toledo Edison does not retain any of the amounts received via the Rider ELR penalties, the Commission approved (and MSC supported) the requirement that non-compliant Rider ELR customers repay certain of the credits they previously received under Rider ELR when they fail to comply as a part of the penalties provided for in the Rider. Non-Rider ELR customers pay for the credits provided to Rider ELR customers (including MSC) amounting to millions of dollars. Non-Rider ELR customers pay these amounts in exchange for the agreement by Rider ELR customers (including MSC) to reduce their load to a pre-determined level during an ECE. The penalty amounts paid by non-compliant Rider ELR customers are then flowed directly back to non-Rider ELR customers.[[39]](#footnote-39) MSC failed to reduce its load in accordance with Rider ELR and, therefore, all other non-Rider ELR customers do and should claim the right to recover some of the amounts they previously paid MSC.

The fact is that MSC failed to comply with the requirements of Rider ELR on September 11, 2013, and the imposition of the penalties mandated by Rider ELR is not unreasonable, unjust, or unlawful. MSC must be subject to the same penalties imposed on other customers under the same Rider ELR provisions so that the tariffs are administered in a fair and consistent manner. Counts One and Two of the Complaint should be denied. The Commission should order MSC to pay the required Rider ELR penalties and dismiss the Complaint with prejudice.

## **The Rates That Toledo Edison Charged MSC Are Just, Reasonable, Lawful, and Commission-Approved; MSC’s Arguments to the Contrary Are Incorrect and Wholly Unsupported.**

Having nothing to do with Rider ELR, MSC also tries to assert in its Complaint that the Commission-approved rates it is paying for electricity are unjust, unreasonable and unlawful. In its brief, MSC does nothing more than recite the unsupported testimony of MSC witness Siffer,[[40]](#footnote-40) which the Company established warrants no credibility and should be stricken.[[41]](#footnote-41) In addition, even if his testimony was appropriate or competent, MSC fails to dispute the fact that the rates and riders (including all pass-through mechanisms) that the Company has charged MSC are Commission-approved and were properly calculated and billed to MSC.[[42]](#footnote-42) As established in the Company’s Brief, MSC’s analysis of a 40% increase in rates between a winter and summer period is improper and meaningless, as is its recitation of differences in the relative size of the Rider NMB rate for Rate GT customers between the FirstEnergy Ohio utilities.[[43]](#footnote-43) Changes to and differences in the riders highlighted by MSC arise from the Commission-approved rate design applied to each individual rider, and nothing more. MSC has not offered and cannot offer any evidence to suggest that the Company is charging MSC the wrong rates or that the Company is treating MSC any differently than any other similarly-situated customer (except for the $2.00 per kVa discount that only MSC receives pursuant to the Commission-approved Stipulation in Toledo Edison’s ESP III).[[44]](#footnote-44) There is absolutely no record evidence that Toledo Edison has charged MSC rates under Rider GEN, Rider NMB, or Rider DSE that were in any way contrary to the rates approved by the Commission.

The Company also established why MSC’s arguments regarding amounts charged above a theoretical “baseline” are irrelevant as to whether the Company’s rates are unjust or unreasonable.[[45]](#footnote-45) MSC’s “baseline” number of 5 cents per kWh is nothing more than an aspirational internal target created exclusively by MSC.[[46]](#footnote-46) There is no concept of a historical baseline rate used in traditional ratemaking in Ohio in terms of determining whether rates are reasonable. In addition, an individual customer’s cost target is not an appropriate factor in assessing whether rates already approved by the Commission are unjust or unreasonable.[[47]](#footnote-47)

MSC’s supposition that Ohio’s economy would have benefited if MSC had been able to pay its goal “baseline” rate between 2002 and 2013 is empty conjecture.[[48]](#footnote-48) Its only support in this regard is Mr. Siffer’s testimony, which lacks credibility and is not supported by any verifiable quantitative or qualitative analysis.[[49]](#footnote-49) Countless factors necessarily influence Ohio jobs, taxes, and MSC’s production output[[50]](#footnote-50) and it is illogical to suggest a direct cause and effect relationship between MSC’s internal target electric rate and a benefit to Ohio’s economy. It is not unreasonable or unjust for Toledo Edison to charge MSC Commission-approved rates, even if those rates, when applied to MSC’s usage, result in an internal electric rate that differs from the one MSC wishes it could pay. In fact, Ohio law requires Toledo Edison to charge, and only charge, Commission-approved tariffs.[[51]](#footnote-51)

Count Three of MSC’s Complaint should be dismissed with prejudice.

# **CONCLUSION**

As set forth in the Company’s Initial Brief and herein, MSC has failed to meet its burden to establish that the Company failed to properly apply its Commission-approved rates and riders and that the Company’s application of those rates and riders is unjust or unreasonable. MSC’s Complaint should be dismissed with prejudice and its claims rejected.

Respectfully submitted,

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**CERTIFICATE OF SERVICE**

The PUCO’s e-filing system will electronically serve notice of filing of this document on the party set forth below, and in addition, a copy of the foregoing *The Toledo Edison Company’s Reply Brief* was served this 11th day of July, 2014, via electronic mail on:

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*/s/ Laura C. McBride*

On behalf of The Toledo Edison Company

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1. “MSC,” as used herein, shall refer to Complainant Material Sciences Corporation and its subsidiary MSC Walbridge Coatings, Inc. [↑](#footnote-ref-1)
2. *Grossman v. Pub. Util. Comm.*, 5 Ohio St. 2d 189 (1966). [↑](#footnote-ref-2)
3. Initial Brief of Material Sciences Corporation, filed June 20, 2014 (“MSC Brief”), p. 10; *See also* R.C. § 4905.32. [↑](#footnote-ref-3)
4. *See* P.U.C.O. No. 8, Sheet 101. [↑](#footnote-ref-4)
5. *See* The Toledo Edison Company’s Initial Post-Hearing Brief, filed June 20, 2014 (“Company Brief”), pp. 4-5. [↑](#footnote-ref-5)
6. Generation Service Rider, P.U.C.O. No. 8, Sheet 114. [↑](#footnote-ref-6)
7. Non-Market-Based Services Rider, P.U.C.O. No. 8, Sheet 119. [↑](#footnote-ref-7)
8. *See* Company Brief, pp. 6, 29; *see generally* MSC Brief (failing to provide any evidence to the contrary). [↑](#footnote-ref-8)
9. Company Brief, pp. 19-20; MSC Brief, pp. 7-8. [↑](#footnote-ref-9)
10. Company Brief, p. 20. The Company did not miscalculate the percentage by which MSC exceeded its Firm Load, as MSC suggests in its brief. *See* MSC Brief, p. 8. As Mr. Augsburger admitted at page 11 of his testimony, MSC exceeded its Firm Load by 52% during the September 11, 2013 ECE; thus, MSC’s measured load was 152% of its Firm Load –as dictated under Rider ELR for application of the penalties. Direct Testimony of Peter Blazunas (“Blazunas Testimony”), pp. 15-16; Rider ELR, § D. [↑](#footnote-ref-10)
11. Direct Testimony of Joanne Savage (“Savage Testimony”), pp. 4, 16. [↑](#footnote-ref-11)
12. *See* MSC Brief, pp. 11-13. [↑](#footnote-ref-12)
13. MSC Brief, p. 6. [↑](#footnote-ref-13)
14. *See, generally,* Rider ELR*.* Indeed, in its post-hearing brief, MSC goes as far as offering a definition of “mandatory curtailment.” MSC Brief, p. 5. This is a misrepresentation; there is no such term used or defined in Rider ELR. [↑](#footnote-ref-14)
15. Rider ELR, § D (emphasis added). [↑](#footnote-ref-15)
16. Company Brief, pp. 9-10. [↑](#footnote-ref-16)
17. MSC Brief, p. 11. [↑](#footnote-ref-17)
18. Hearing Transcript (“Tr.”), p. 80. [↑](#footnote-ref-18)
19. Tr., p. 83. [↑](#footnote-ref-19)
20. Company Brief, p. 8. [↑](#footnote-ref-20)
21. Company Brief, p. 8. [↑](#footnote-ref-21)
22. Company Brief, p. 9. [↑](#footnote-ref-22)
23. Tr., p. 22 (Mr. Siffer received the notice at 12:05pm, the time-stamp on the email). [↑](#footnote-ref-23)
24. Company Brief, pp. 22-24. [↑](#footnote-ref-24)
25. Company Brief, pp. 22-24. [↑](#footnote-ref-25)
26. Company Brief, pp. 9-10. [↑](#footnote-ref-26)
27. Although Rider ELR does not provide the Company discretion for “close calls”, put simply MSC’s non-compliance was not a close call. The Company did not measure Rider ELR customers’ (including MSC’s) compliance under Rider ELR until the half-hour ending 3:00 PM (the first full half-hour after 2:05 PM). MSC did not curtail to Firm Load until the half-hour ending 4:00 PM – one hour after its compliance was first measured for the purposes of Rider ELR and well over three hours after the notice was issued. [↑](#footnote-ref-27)
28. Rider ELR, § D (emphasis added). [↑](#footnote-ref-28)
29. *See* MSC Brief, pp. 13-16. [↑](#footnote-ref-29)
30. MSC Brief, p. 7. [↑](#footnote-ref-30)
31. MSC Brief, p. 1. [↑](#footnote-ref-31)
32. Rider ELR, § D. [↑](#footnote-ref-32)
33. *See* Rider ELR, § D (defining an ECE). [↑](#footnote-ref-33)
34. MSC Brief, p. 15. [↑](#footnote-ref-34)
35. *See* MSC Brief, p. 15, citing Tr., pp. 88-92. [↑](#footnote-ref-35)
36. *See* P.U.C.O. No. 8, Sheet 4, p. 3. [↑](#footnote-ref-36)
37. *Compare* Rider ELR (Sheet 101) *with* Electric Service Regulations (Sheet 4). [↑](#footnote-ref-37)
38. MSC Brief, p. 14. [↑](#footnote-ref-38)
39. *See* Company Brief, p. 8. [↑](#footnote-ref-39)
40. MSC Brief, pp. 16-18. [↑](#footnote-ref-40)
41. Company Brief, pp. 11-13. For example, Mr. Siffer admitted that he has no knowledge regarding Riders GEN, NMB, or DSE 2, and that he is not familiar with the contents or provisions of Riders GEN or NMB. Tr., p. 12-14. [↑](#footnote-ref-41)
42. Blazunas Testimony, pp. 3-4; Tr., p. 19-20. [↑](#footnote-ref-42)
43. Company Brief, pp. 14-15, 16-17. [↑](#footnote-ref-43)
44. Tr. pp. 19-20; Blazunas Testimony, p. 6. In fact, Mr. Siffer, MSC’s plant manager, admitted that he assumes that the rates that Toledo Edison is currently charging MSC are the rates that the Commission approved. Tr., p. 20. [↑](#footnote-ref-44)
45. Company Brief, pp. 14-16. [↑](#footnote-ref-45)
46. Tr., p. 19. [↑](#footnote-ref-46)
47. Company Brief, pp. 15. [↑](#footnote-ref-47)
48. *See* MSC Brief, pp. 18-19. [↑](#footnote-ref-48)
49. *See, generally,* Direct Testimony of John Siffer. [↑](#footnote-ref-49)
50. E.g., the cost and availability of raw materials, a properly trained workforce, and customer demand, to name just a few. [↑](#footnote-ref-50)
51. R.C. § 4905.32 [↑](#footnote-ref-51)