FILE FAX

(14)

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of The Application of The Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Provide for a Standard Service Offer Pursuant to R.C. Section 4928.143 in the Form of an Electric Security Plan.	)	Case No. 12-1230-EL-SSO

INITIAL BRIEF
MATERIAL SCIENCES CORPORATION

Craig I. Smith (0019207)
Attorney at Law
15700 Van Aken Blvd., #26
Shaker Heights, Ohio 44120
Tel. (216) 571-2717
wttpmlc@aol.com

Attorney for Materials Sciences Corporation

TABLE OF CONTENTS

Statement of the Case

The FirstEnergy companies, Ohio Edison Company, Cleveland Electric Illuminating Company, and Toledo Edison Company (collectively the "Companies"), request Commission approval of their standard service offer ("SSO") for retail electric service from June 1, 2014 through May 31, 2016 provided under an electric security plan stipulated to by the Companies and other signatory parties representing different customer groups and entities.[1] ("ESP 3") Many of the same signatory parties stipulated to the current electric security plan for SSO service beginning June 1, 2011 through May 31, 2014, [2] ("ESP 2") and the earlier electric security plan for SSO service ending May 31, 2011. [3] ("ESP 1")

ESP 3 continues many provisions of ESP 2, with its provisions paraphrased from Companies' witness W. R. Ridmann testimony:

a. ESP 3 continues the descending-clock format Competitive Bid Process ("CBP") to set SSO customers' retail generation rates for June 1, 2013 through May 31, 2016, and blends the results of the October 2012 and January 2013 auctions with prior auctions to set the ESP 2 price for June 1, 2013 through May 31, 2014, with results of those auctions extended 36 months to blend currently low generation prices with potentially higher prices during the ESP 3 period. [4] [W. R. Ridmann, Company Ex. 3, at pg. 3]

b. ESP 3 supports governmental aggregation and customer shopping for competitive generation as in ESP 2; customers not subject to minimum default service charges, standby charges, or shopping caps; the Companies continue to provide CBP bidders with lower credit requirements and more customer information and data; and continue under certain conditions an avoidable Rider GCR. [W. R. Ridmann, Company Ex. 3, at pg. 4]

---

[1] Case No. 12-1230-EL-SSO: The stipulated to ESP 3 provides service at ESP 3 Rates during the ESP 3 Term.
[2] Case No. 10-388 EL-SSO: The stipulated to ESP 2 provides service at ESP 2 Rates during the ESP 2 Term.
[3] Case No. 08-935-EL-SSO: The stipulated to ESP 1 provided service at ESP 1 Rates during the ESP 1 Term.
[4] The CBP design continues the process used in the successful, highly competitive, and Commission accepted auctions conducted for ESP 2.

c. ESP 3 rate design continues the principle of gradualism to transition certain customers to market based pricing. Rider EDR provides bill credits for non-standard residential customers, schools, interruptible customers, and domestic automaker facilities; will cap for lighting and transmission customers their average annual rate increases at one and one-half times the average increase by Company. Rider EDR continues to recover costs associated with these credits, and the cost of infrastructure investment supporting the economic development expansion of a large employer in Ohio. [W. R. Ridmann, Company Ex. 3, at pg. 4-5]

d. ESP 3 continues the otherwise to expire rate options under ESP 2, such as the Economic Load Response ("ELR") peak demand reduction rider and the time-differentiated pricing riders approved in Case No. 09-541-EL-ATA. [W. R. Ridmann, Company Ex. 3, at pg. 5]

e. Base distribution rates of the Companies remain at current levels through May 31, 2016, benefiting customers with predictable distribution rates; Rider DCR continues to encourage the Companies to invest in their delivery systems to improve reliability by providing for opportunities to recover costs of actual investments to their delivery systems not included at date certain in Case No. 07-551-EL-AIR. WRR-Attachment 1 sets forth the maximum recovery through Rider DCR over the ESP 3 period. [W. R. Ridmann, Company Ex. 3, at pg. 6]

f. ESP 3 contains similar provisions and similar adjustments now used under ESP 2 for the Significantly Excessive Earnings Test ("SEET"), and provides for, on an agreed upon basis, consideration of Rider DCR revenues as part of the SEET. [W. R. Ridmann, Company Ex. 3, at pg. 6]

g. ESP 3 continues in the current form approved ESP 2 riders with some modifications without introducing new riders. [W. R. Ridmann, Company Ex. 3, at pg. 8]

h. ESP 3 potentially enables the Companies bidding of demand response resources (adding low cost capacity supply) into the PJM 2015-2016 Base Residual Auction. [W. R. Ridmann, Company Ex. 3, at pg. 8]

i. ESP 3 modifies the ESP 2 by making October 2012 and January 2013 bids for a three year period, rather than one, to capture historically lower generation prices for a longer period of time. [W. R. Ridmann, Company Ex. 3, at pg. 8]

j. ESP 3 extends the renewable energy credit costs recovery period over the life of the plan to mitigate impacts on customer rates for compliance with statutory benchmarks for renewable energy resources. [W.R. Ridmann, Company Ex. 3, at pg. 8]

k. ESP 3, under a new provision for Economic Development and Job Retention, [5] authorizes Toledo Edison to bill and collect a charge of $6.00 per kVa of billing demand under Rider EDR Sheet 116, subpart (d), General Service-Transmission (Rate GT) under the current ESP 2 ending May 31,2014, and then under ESP 3 ending May 31, 2016, for rendered services to Material Sciences Corporation to promote economic development in the Toledo, Ohio region and support MSC retention of existing manufacturing jobs in this state. [ESP 3 Stipulation, Company Ex. 1, FN 11, pg. 37, H. Other Issues, provision 9, pg. 42-43; Supplemental Information Filing, Company Ex. 2, pgs. 11-12]

The signatory parties support the ESP 3 stipulation that justly and reasonably resolve the issues, violates no regulatory principle or precedent, and results from lengthy, serious bargaining among knowledgeable and capable parties. [ESP 3 Stipulation, Company Ex. 1, pgs. 1-3] Compromises reached by signatory parties reasonably resolve all issues, while not reflecting individual views of parties acting unilaterally. Accordingly, the Stipulation is entitled to careful Commission consideration. [ESP 3 Stipulation, Company Ex. 1, pg. 5]

The evidence in the record supports approval of the ESP 3 stipulation under the Commission's three-part test, and the statutory finding "that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code." [6]

[5] ESP 3 FN 11 reads: In an effort to provide economic development support and retain existing manufacturing jobs in Ohio that otherwise may be at risk of being lost, Commission approval of the ESP Stipulation authorizes Toledo Edison to bill and collect, commencing the first billing period following Commission approval of this Stipulation and the Companies acceptance of such approval, a charge of $6.00 per kVa of billing demand under Rider EDR Sheet 116, part d., General Service-Transmission (Rate GT) Provision, under the current ESP ending May 31,2014, and then under ESP 3 ending May 31, 2016, for service rendered to Material Sciences Corporation, an existing large industrial customer that utilizes a unique manufacturing process. [ESP 3 Stipulation, Company Ex. 1, pg. 37] Under provision H-9, MSC agrees to dismiss its complaint against Toledo Edison in Case No. 12-919-EL-CSS upon receiving TE service billed at that $6.00 per kVa. [ESP 3 Stipulation, Company Ex. 1, pgs. 42-43]

[6] RC 4928.143 (C)(1)

Argument

The three-part test used to evaluate stipulations requires the Commission to decide: whether the settlement is a product of serious bargaining among capable, knowledgeable parties; whether the settlement, as a package, benefits ratepayers and the public interest; and whether the settlement package violates any important regulatory principles or practices. *Consumers' Counsel v. Pub. Util. Comm.* (1992), 64 Ohio St.3d 123, 126, 592 N.E.2d 1370. See, also, *AK Steel Corp. v. Pub. Util. Comm.* (2002), 95 Ohio St.3d 81, 82-83, 765 N.E.2d 862.

1. **The ESP 3 settlement is a product of serious bargaining among capable, knowledgeable parties**

The ESP 3 stipulation resulted from serious bargaining among numerous capable, knowledgeable parties, representing wide range of interests. The signatory parties, very familiar with the issues, record, and components of the electric security plan under consideration from involvement in the Companies' ESP 1 and ESP 2 cases, encompassed different customer groups, having broad range of experience in receiving energy services, including municipal consumers and competitive suppliers, and were represented by counsel experienced in these matters.[7] [W R Ridmann, Company Ex. 3, pg. 10-11]

[7] Signatory Parties besides the Companies include the Staff, Ohio Manufacturers' Association, Ohio Partners for Affordable Energy, Ohio Hospital Association, Industrial Energy Users of Ohio, Ohio Energy Group, The Association of Independent Colleges and Universities of Ohio, Council of Smaller Enterprises, Nucor Steel Marion Inc., the City of Akron, the Empowerment Center of Greater Cleveland, Cleveland Housing Network, Consumer Protection Association, Material Sciences Corporation, Morgan Stanley Capital Group Inc., FirstEnergy Solutions Corp., and parties not opposing the Stipulation include Kroger Company, GEXA-Energy Ohio, LLC, EnerNoc, Duke Energy Retail Sales, LLC and Duke Energy Commercial Asset Management.

The signatory parties, which represent varied and diverse interests including large industrial customers, small and medium sized manufacturers, small businesses, hospitals, colleges and universities, low income residential customers, power marketers, and a large municipality, include the Companies, Commission Staff, Ohio Manufacturers' Association, Industrial Energy Users of Ohio, Ohio Energy Group, Nucor Steel Marion Inc., and Material Sciences Corporation ("MSC"). Some parties who participated in the ESP 3 discussions ultimately declined to sign the stipulation. [W R Ridmann, Company Ex. 3, pg. 10-11]

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

The ESP 3 stipulation benefits ratepayers and the public interest with more stable and certain pricing by continuing ESP 2 offerings, such as Rider ELR for large industrial customers, and the Rider EDR billing credits for non-standard residential customers, schools, interruptible customers, and domestic automaker facilities. [W.R. Ridmann, Company Ex. 3, at pgs. 4, 5, 8]

The ESP 3 stipulation further benefits ratepayers and the public interest by providing for Material Sciences Corporation a load factor adjustment that bills kVa demand under Rider EDR subpart (d) at $6.00/kVa, rather than the current $8.00/kVa charge, to promote economic development in the Toledo, Ohio region and support MSC retention of existing manufacturing jobs in this state,[8] for Toledo Edison service rendered under the ESP 2 ending May 31, 2014, and then under ESP 3 ending May 31, 2016. [ESP 3 Stipulation, Company Ex. 1, FN 11, pg. 37, Provision H-9, pg. 42-43]

---

[8] Refer to Footnote 5 for language of ESP 3 FN 11 and H-9.

The load factor adjustment charges MSC less per kVa under subpart (d) of Rider EDR reflecting that operational changes result in higher monthly peak demand consumption; GT customers, signatories to the ESP 3 stipulation, agreed with this adjustment, as an economic development effort to assist MSC, finding it's reasonably small in the scheme of things for the GT class[9]. This Rider EDR subpart (d) provision for MSC, as revenue neutral to the Companies, is recovered from all GT class customers of the Companies (OE, CEI, and TE). Residential, GS, and GP customers of the Companies (OE, CEI, and TE) are not affected by this MSC adjustment. [W.R. Ridmann, Tr. I, pg. 42 line 25; pg. 43 lines 1-9, 25; pg. pg. 44, lines 1-7; pg. 45, lines 11-14; pg. 232, lines 1-10, 13, 16-20]

The load factor adjustment for MSC under Rider EDR subpart (d), as a reasonable economic development and job retention program, benefits ratepayers and furthers the public interest since it promotes the Toledo, Ohio region; supports within that region and the state existing MSC manufacturing jobs; conforms to the guidelines of state policy under RC 4928.02; and presents a timely and reasonable settlement of the pending complaint filed against Toledo Edison in Case No. 12-919-EL-CSS now held in abeyance pending Commission approval of FN 11 and H-9 of the ESP 3 stipulation.

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

[9] The load factor adjustment equals the $2.00/kVa difference times the monthly metered demand usage at the Walbridge, Ohio facility. [W. R. Ridmann, Tr. I. pg. 45, lines 11-14] Mr. Ridmann testified it's difficult to compare this $2.00/kVa load factor adjustment relative to other GT customers because it's a function of load factors achieved by separate GT rate customers. [W.R. Ridmann, Tr. I. pg. 43, lines18-22]

ESP 3 settlement as a package does not violate any important regulatory principle or practice, particularly with regards to the load factor adjustment under Rider EDR, subpart (d), for MSC provided for under explicit statutory authority and conforming to the guidelines of state policies under RC 4928.02.

The MSC load factor adjustment under Rider EDR subpart (d) furthers state policy under RC 4928.02 by providing for (A) adequate, reliable safe, efficient, nondiscriminatory, and reasonably priced electric service; (B) unbundled and comparable retail electric service options, and a choice of supplier, price, terms, conditions, and quality to meet their respective needs; and (N) ensures the rendition of retail electric service that facilitates the State's effectiveness in the global economy.

Explicit statutory authority provides for the MSC load factor adjustment under Rider EDR subpart (d) since RC 4928.143 (B) (2) (i) provides that an: "electric distribution utility may implement economic development, job retention, and energy efficiency programs, which provisions may allocate program costs across all classes of customers of the utility and those of electric distribution utilities in the same holding company system."

The Commission applied that authority when approving the bill credits under Rider EDR for the domestic automaker facilities. *In Re Application for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case No. 10-388-EL-SSO, Opinion and Order, dated August 25, 2010, at pg. 39.*

Further, MSC agreeing to dismiss its complaint against Toledo Edison in Case No. 12-919-EL-CSS conforms to language approved by the Commission in ESP 1 requiring dismissal of complaints upon approval of stipulated to language.[10] *In Re Application for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan, Case No. 08-935-EL-SSO, Opinion and Order, dated March 4, 2009, at pg. 6, par. 14; p. 8)*

4. The proposed ESP is more favorable in the aggregate as compared to the expected results that would otherwise apply under Section 4928.142, Revised Code

RC 4928.143(C) (1) provides for Commission approval of an ESP upon determining "that the electric security plan so approved, including its pricing and all other terms and conditions, including any deferrals and any future recovery of deferrals, is more favorable in the aggregate as compared to the expected results that would otherwise apply under section 4928.142 of the Revised Code."

The ESP 3 stipulation is more favorable in the aggregate than the expected results of a more narrowly focused MRO from both a qualitative and quantitative perspective. [W. R. Ridmann, Company Ex. 3, at pg. 14]

The Companies used the same approach for quantitative evaluation for ESP 3 as in the ESP 2 accepted by the Commission. [W. R. Ridmann, Company Ex. 3, at pg. 19]

Analysis of compared quantitative benefits of ESP 3 to a MRO, attached as WRR-Attachment 1, shows that ESP 3 provides over its duration, at a minimum, present value benefits to customers of $200.6 million based on compared differences between the present value

[10] OAC Sec. 4901-9-01 (F) encourages settlement of complaints which in this case occurred through extensive negotiations to resolve all issues with, as a condition of settlement, provisions of the ESP 3 stipulation at FN 11 and H-9 require Commission approval for Toledo Edison to bill MSC the lower rate.

amounts calculated on a year to year basis for the ESP and MRO. [W. R. Ridmann, Company Ex. 3, at pgs. 16, 17, 19] [11] A positive difference between the two present value amounts means greater ESP quantitative benefits to customers than under a MRO.

There are also substantial qualitative benefits of an ESP 3 Stipulation compared to a MRO not reflected in the $200.6 million present value benefits. [W. R. Ridmann, Company Ex. 3, at pgs. 16,]

Qualitative benefits include: bidding October 2012 and January 2013 products for three years instead of for one year to smooth out generation prices and mitigate for customers generation price volatility; extending over its term the recovery period for renewable energy credit costs to lower rates charged for compliance; more predictable pricing from the Companies not recovering MISO exit fees, PJM integration costs, and RTEP charges for periods specified; continuing to support competitive electric generation markets, governmental aggregation, and shopping; and continuing a number of rate design issues and programs to preserve and enhance the rate options and programs the Companies offer to customers under ESP 2. [W R Ridmann, Company Ex. 3, at pgs. 15-16]

Based on the record presented, the Commission should find ESP 3 benefits customers over a MRO by at least $200 million dollars on a present value basis, and that the Companies met the statutory standard for approval under RC 4928.143(C) (1).

<u>Conclusion</u>

[11] W.R. Ridmann's supplemental testimony demonstrated by excluding an adjustment for DCR related regulatory lag that ESP 3 benefits compared to a MRO increased from $200.6 million to $226.5 million upon which to conclude under either analysis the Commission should approve the ESP 3 stipulation.[W. R. Ridmann, Company Ex. 4, at pgs. 7, 8]

The ESP 3 stipulation meets the three prong test and the required statutory showing under RC 4928.143 (C) (1), for Commission approval, including approval of the load factor adjustment for Toledo Edison service to MSC under Rider EDR, subpart (d), provided for at FN 11, page 37, that also settles the pending complaint case against Toledo Edison in Case No. 12-919-EL-CSS provided for at H-9, pages 42-43, of the stipulation.

Respectfully submitted,

Craig I. Smith

Craig I. Smith (0019207)
Attorney at Law
15700 Van Aken Blvd., #26
Shaker Heights, Ohio 44120
Tel. (216) 571-2717
wttpmlc@aol.com

Attorney for Material Sciences Corporation

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and accurate copy of the foregoing was served this 22nd day of June, 2012, by electronic mail upon the persons listed below.

Craig I. Smith

Craig I. Smith (0019207)

Attorney for Material Sciences Corporation

Arthur E. Korkosz
James W. Burk (Counsel of Record)
FIRSTENERGY SERVICE COMPANY
76 South Main Street
Akron, Ohio 44308
korkosza@firstenergycorp.com
burkj@firstenergycorp.com

James F. Lang
Laura C. McBride
CALFEE, HALTER & GRISWOLD LLP
1400 KeyBank Center
800 Superior Ave
Cleveland, OH 44114
jlang@calfee.com
lmcbride@calfee.com

Morgan Parke, Esq
FIRSTENERGY SOLUTIONS
76 South Main Street
Akron, Ohio 44308
parkem@firstenergycorp.com

Larry S. Sauer (Counsel of Record)
Terry L. Etter
Melissa R. Yost
Office of the Ohio Consumers' Counsel
10 West Broad Street, Suite 1800
Columbus, Ohio 43215-3485
sauer@occ.state.oh.us
etter@occ.state.oh.us
yost@occ.state.oh.us

Samuel Randazzo
MCNEES WALLACE & NURICK LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, OH 43215-4228
sam@mwncmh.com

David F. Boehm, Esq.
Michael L. Kurtz, Esq.
BOEHM, KURTZ & LOWRY
36 East Seventh Street
Suite 1510
Cincinnati, OH 45202
dboehm@bkllawfirm.com
mkurtz@bkllawfirm.com

Trent A. Dougherty
Cathryn N. Loucas
1207 Grandview Ave. Suite 201
Columbus, Ohio 43115
trent@theoec.org
cathy@theoec.org
Thomas J. O'Brien
Matthew W. Warnock
Lisa McAlister
BRICKER & ECKLER LLP
100 South Third Street
Columbus, OH 43215-4291
tobrien@bricker.com
mwarnock@bricker.com
lmcalister@bricker.com

Cynthia Fonner Brady
David I. Fein
550 W. Washington Street, Suite 300
Chicago, Il 60661
cynthia.a.fonner@constellation.com
david.fein@constellation.com

Stephen Bennett
Exelon Generation Company, LLC
300 Exelon Way
Kennett Square, PA 19348
stephen.bennett@exeloncorp.com

David A. Kutik
JONESDAY
901 Lakeside Avenue
Cleveland, Ohio 44114
dakutik@jonesday.com

Joseph M. Clark
6641 North High Street, Suite 200
Worthington, Ohio 43805
jmclark@vectren.com

Vincent Parisi
Matthew White
Interstate Gas Supply, Inc.
6100 Emerald Parkway
Dublin, Ohio 43016
vparisi@igsenergy.com
mswhite@igsenergy.com

Thomas McNamee
William L. Wright
Attorney General's Office
Public Utilities Section
180 East Broad Street, 9th Floor
Columbus, Ohio 43215
thomas.mcnamee@puc.state.oh.us
william.wright@puc.state.oh.us

Robert Kelter
Justin M. Vickers
35 East Wacker Drive #1600
Chicago, Illinois 60601
rkelter@elpc.org
jvickers@elpc.org

M. Howard Petricoff
Vorys, Sater, Seymour and Pease LLP
52 E. Gay Street
Columbus, Ohio 43215
mhpetricoff@vorys.com

Colleen L. Mooney
Ohio Partners for Affordable Energy
231 West Lima Street
P.O. Box 1793
Findlay, OH 45839-1793
cmooney2@columbus.rr.com

Sandy I-ru Grace
Exelon Business Services Company
101 Constitution Avenue N.W.,
Suite 400 East
Washington, DC 20001
sandy.grace@exeloncorp.com

Christopher J. Allwein
Williams, Allwein and Moser, LLC
1373 Grandview Ave., Suite 212
Columbus, OH 43212
callwein@wamenergylaw.com

Joseph P. Meissner, Esq.
The Legal Aid Society of Cleveland
1223 W. 6th Street
Cleveland, Ohio 44113
jpmeissn@lasclev.org

Judi L. Sobecki
Randall V. Griffin
Dayton Power & Light Company
1065 Woodman Drive
Dayton, Ohio 45432
judi.sobecki@DPLINC.com
randall.griffin@DPLINC.com

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215-3927
BarthRoyer@aol.com

Matthew J. Satterwhite (0071972)
Steven T. Nourse (0046705)
American Electric Power Service Corporation
1 Riverside Plaza, 29th Floor
Columbus, OH 43215
mjsatterwhite@aep.com
stnourse@aep.com

Glenn S. Krassen
BRICKER & ECKLER LLP
1375 East Ninth Street
Suite 1500
Cleveland, Ohio 44114
gkrassen@bricker.com

Michael K. Lavanga
mkl@bbrslaw.com
Counsel of Record
Brickfield, Burchette, Ritts & Stone, P.C.
1025 Thomas Jefferson Street, N.W.
8th Floor, West Tower
Washington, D.C. 20007

Christopher L. Miller
Gregory H. Dunn
Asim Z. Haque
Ice Miller
250 West Broad Street
Columbus, Ohio 43215
christopher.miller@icemiller.com
asim.haque@icemiller.com
gregory.dunn@icemiller.com

Leslie A. Kovacik
City of Toledo
420 Madison Ave. Suite 100
Toledo, Ohio 43604
leslie.kovacik@toledo.oh.gov

Thomas R. Hays
Lucas County Prosecutors Office
700 Adams St., Suite 251
Toledo, Ohio 43604
trhays@gmail.com

Mark S. Yurick
Taft Stettinius & Hollister LLP
65 East State Street
Suite 1000
Columbus, Ohio 43215
myurick@taftlaw.com