

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

)	
)	
In the Matter of the Application of Ohio)	
Edison Company, The Cleveland Electric)	Case No. 14-1297-EL-SSO
Illuminating Company, and The Toledo)	
Edison Company for Authority to Establish)	
a Standard Service Offer Pursuant to R.C.)	
4928.143 in the Form of an Electric Security)	
Plan.		

**REPLY HEARING BRIEF
BY
MATERIAL SCIENCES CORPORATION**

**Craig I. Smith
Attorney at Law (0019207)
15700 Van Aken Boulevard
Suite #26
Shaker Heights, Ohio 44120**

**216-571-2717
wttpmlc@aol.com**

Counsel for Material Sciences Corporation

TABLE OF CONTENTS

I.	Introduction	Pg. 3
II.	Rider RRS Approval Necessary Part of the Economic Stability Program	Pg. 3
	1. Rider RRS Solely Subject to Commission Jurisdiction	Pg. 3
	2. Rider RRS not Subject to FERC Jurisdiction	Pg. 4
	3. Rider RRS Conforms to Ohio Statutes and Ohio Supreme Court Precedents	Pg. 4
	4. Rider RRS Benefits Customers and the Public Interest	Pg. 6
III.	Stipulated ESP IV meets the Three Prong Test for Approval	Pg. 7
	1. A Product of Serious Bargaining among Capable, Knowledgeable Parties	Pg. 7
	2. Does not Violate any Important Regulatory Principle or Practice	Pg. 7
	3. As a Package, Benefits Ratepayers and the Public Interest	Pg. 7
IV.	Conclusion	Pg. 8

I. Introduction

Material Sciences Corporation (“MSC”) files its reply brief to those parties opposing the Application, and the Stipulated ESP IV, as filed by Ohio Edison Company (“OE”), The Cleveland Electric Illuminating Company (“CEI”), and Toledo Edison Company (“TE”), collectively referred to as the “Companies,” with The Public Utilities Commission of Ohio (“Commission” or “PUCO”) for authority to establish a Standard Service Offer (“SSO”) pursuant to ORC 4928.143 in the form of an Electric Security Plan (“ESP IV”) to become effective upon termination of the Companies current ESP III on May 31, 2016.¹

The Stipulated ESP IV constitutes the “Prior Stipulations” identified as: the Stipulation and Recommendation filed with the Commission on December 22, 2014, as modified by the Stipulation and Recommendation Errata filed January 21, 2015; the Supplemental Stipulation and Recommendation filed on May 28, 2015; and the Second Supplemental Stipulation and Recommendation filed on June 4, 2015.² Further, the Stipulated ESP IV includes the Third Supplemental Stipulation filed with the Commission on December 1, 2015.³

II. Rider RRS Approval Necessary Part of the Economic Stability Program

1. Rider RRS Solely Subject to Commission Jurisdiction

The Economic Stability Program addresses the volatile market prices for retail electric service; baseload generation retirements that result in a mixture of generation plants incapable of continuous operation especially during grid stress; and a generation mix increasingly dominated

¹ Application, Companies’ Ex. 1, Pg. 1-2

² Stipulation and Recommendation, Companies’ Ex. 2; Stipulation and Recommendation Errata, Companies’ Ex. 2a; Supplemental Stipulation and Recommendation, Companies’ Ex. 3; and Second Supplemental Stipulation and Recommendation, Companies’ Ex. 4

³ Third Supplemental Stipulation Companies’ Ex. 154

by natural gas generation in the event of retirements by nuclear and baseload coal generation plants.⁴ The Companies request Commission approval of Rider RRS in this proceeding without the necessity of receiving subsequent state approvals.⁵

2. Rider RRS not subject to FERC Jurisdiction

The “Companies’ proposal,” pertains to Commission jurisdiction over all relevant matters introduced into the record in these proceedings, including the Economic Stability Program and approval of Rider RRS. FERC jurisdiction addresses approval of the Purchase Power Agreement between the Companies and FES.

3. RRS Conforms to Ohio Statutes and Ohio Supreme Court Precedents.

ORC 4928.143 (B)(2)(d) limits *the type* of categories a plan may include, but “allows *as many or as much* of the listed categories as the commission finds reasonable—subject to any other applicable limits, which [the Court does] not consider here.”⁶

ORC 4928.143 (B)(2)(d) may include “[t]erms, conditions, or charges * * * as would have the effect of stabilizing or providing certainty regarding retail electric service” as provided to customers. The term “retail electric service,” under ORC 4928.01(A)(27), means “any service involved in supplying or arranging for the supply of electricity to ultimate consumers in this state, from the point of generation to the point of consumption.”⁷

In AEP Ohio, the Commission on remand determined from the evidence that environmental-investment carrying costs “have the effect of providing certainty to both the Companies and their customers regarding retail electric service, specifically generation service.

⁴ Strah Direct Test., Companies’ Ex.13, Pg. 4, LN 4-14

⁵ Mikkelsen, Companies’ Witness, Vol. I Tr. Pg. 58, Ln 23-25; Pg. 59, Ln 1-9

⁶ In re Application of Columbus S. Power Co., 128 Ohio St.3d 512, { ¶ 33, ¶ 34 }

⁷ In re Application of Columbus S. Power Co., 138 Ohio St.3d 448, 2014-Ohio-462, {¶ 21 }

The Commission further found that the carrying costs contributing to “stabilizing prices,” benefited AEP customers.⁸

The Court affirmed that remand decision as the record supported the Commission findings that carrying costs authorized under ORC 4928.143(B)(2)(d) have the effect of providing certainty to both AEP and its customers regarding retail electric service, specifically generation service, and that lower retail prices for retail electric service resulted from AEP providing lower-cost generation power.⁹

The Court further emphasized that ORC 4928.143(B)(2)(d) only requires a showing that “[t]erms, conditions, or charges * * * have the effect of stabilizing or providing certainty regarding retail electric service.” The carrying charges provided for both reasonably priced and certainty regarding electric-generation service.¹⁰

In this proceeding, customers of the Companies continue to purchase generation service either from competitive suppliers,¹¹ or through competitively bided SSO service.¹² SSO prices remain unchanged for energy physically received, but Rider RRS, as a non-bypassable generation-related component, separate from the SSO price, impacts all customers.¹³

SSO customers do not purchase generation from the Plants and OVEC Plants under the Term Sheet.¹⁴ The amounts paid to FES under negotiated prices of the agreed to Term Sheet by the Companies not impacted by the non-bypassable credits or charges to customers passed through under Rider RRS.¹⁵

⁸ In re Application of Columbus S. Power Co., 138 Ohio St.3d 448 {¶ 21}

⁹ In re Application of Columbus S. Power Co., 138 Ohio St.3d 448 {¶ 31}

¹⁰ In re Application of Columbus S. Power Co., 138 Ohio St.3d 448 {¶ 32}

¹¹ Mikkelsen Companies’ Witness, Vol. I Tr. Pg. 39, Ln. 6-10

¹² Mikkelsen Companies’ Witness, Vol. I Tr. Pg. 38, Ln. 6-9

¹³ Mikkelsen Companies’ Witness, Vol. I Tr. Pg. 38-39, Ln. 18-22, 2

¹⁴ Mikkelsen Companies’ Witness, Vol. I Tr. Pg. 38-39, Ln. 24-25, 1

¹⁵ Mikkelsen, Companies’ Witness, Vol. I Tr. Pg. 49, Ln. 1-4, 6-10; Pg. 50, Ln 5-7, 9-14; Pg. 51, Ln. 6-15

Rider RRS passes through to retail customer, as a non-bypassable charge or credit, the net of costs the Companies incurred to purchase from FES the generation output from the Plants and OVEC Plants, and the market revenues the Companies received by selling the energy, capacity, ancillary services, and environmental attributes into PJM.¹⁶

Rider RRS pass through of non-bypassable charges stabilize or provide certainty regarding retail electric service for the period June 1, 2016 through May 31, 2024. Rider RRS non-bypassable charges under ORC 4928.143 (B)(2)(d) authorized “to the extent that such charges have the effect of stabilizing or providing certainty regarding retail electric service.” Rider RRS, by design, intends to mitigate the effects of market volatility by providing those customers with more stable pricing, and a measure of protection against substantial increases in market prices.¹⁷

4. Rider RRS Benefits Customers and the Public Interest

In markets increasingly supplied by natural gas generation services, Rider RRS promotes generation resource diversity to stabilize rates against fluctuations and forecasted increases by purchasing the entire output from the Plants and the OVEC Plants for resale into the PJM market. Rider RRS, as a non-bypassable charge, eliminates the customers’ need to elect whether or not to choose third-party suppliers. Both shopping and non-shopping customers of the Companies significantly benefit from the increased certainty and stability associated with stable retail electric service, and the economic support provided to the Ohio economy.¹⁸

¹⁶ Mikkelsen Companies’ Witness, Vol. I Tr. Pg. 42, Ln 3-9

¹⁷ Strah, Direct Test., Companies’ Ex.13, Pgs. 4, LN 16-21

¹⁸ Strah, Direct Test., Companies’ Ex.13, Pgs. 6, LN 2-12

Economic development promoted through Rider RRS by tempering future rate increases and volatility. The Companies' SSO competitive procurements benefits non-shopping customers by smoothing out the impact of short-term price volatility over the ESP period, while credits under Rider RRS benefits both shopping and non-shopping customers during long-term volatility and price increases.¹⁹

III. Stipulated ESP IV meets the Three Prong Test for Approval

1. A Product of Serious Bargaining among Capable, Knowledgeable Parties

The Signatory Parties resolved multiple complex issues to reach an overall package advantageous to rate payers and the public through an open settlement process among capable and knowledgeable parties. Settlement resulted from serious bargaining as evidenced by the expressed terms and conditions within the Prior Stipulations and The Third Supplemental Stipulation that embodied the Stipulated ESP IV.

2. Does not Violate any Important Regulatory Principle or Practice

The Stipulated ESP IV implements the Economic Stability Program through the Rider RRS mechanism to provide customers with stability and certainty regarding retail electric service, along with benefits of economic development and job retention. Rider RRS limits the financial consequences from shopping without limiting a customer's ability to shop, nor negatively impact retail competition or POLR auctions. Stipulated ESP IV violated no important regulatory principle or practice.

3. As a Package, Benefits Ratepayers and the Public Interest

¹⁹ Strah, Direct Test., Companies' Ex.13, Pg. 11, LN 1-7

The Stipulated ESP IV, as a package, benefits ratepayers and the public interest in providing, through the regulatory principle of gradualism, adequate, safe, reliable and predictably priced electric service to stabilize rates; support competitive markets; encourage energy efficiency and peak demand reduction; protect at-risk populations through low income programs; provide benefits through Rider ELR and other measures needed for large industrial customers to better compete in the global marketplace; along with supporting federal advocacy to improve the capacity market; reduce CO₂ emission; modernize the grid; diversify resources; and as otherwise expressed in the Stipulated ESP IV to benefit ratepayer customers and in the public interest.²⁰

IV. Conclusion

Wherefore, the Application and Stipulated ESP IV requires Commission approval to implement the Powering Ohio's Progress initiatives, the Economic Stability Program, and agreed to Stipulated ESP IV for benefit of ratepayer customers and the public interest, including the interest of large energy users to benefit from Rider ELR and other measures to compete in the global markets.

/s/ Craig I. Smith

**Craig I. Smith
Attorney at Law (0019207)
15700 Van Aken Boulevard
Suite #26
Shaker Heights, Ohio 44120**

**216-571-2717
wttpmlc@aol.com**

Dated February 26, 2016

Counsel for Material Sciences Corporation

²⁰ Mikkelsen, Fifth Supplemental Test., Companies' Ex. 155, Pg. Pg. 10

This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

2/26/2016 2:54:32 PM

in

Case No(s). 14-1297-EL-SSO

Summary: Brief Reply Brief of Material Sciences Corporation by its counsel electronically filed by Mr. Craig I Smith on behalf of Material Sciences Corporation