

**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of the Application of U.S. )	
Foodservice-Cleveland Division and )	
Ohio Edison Company For Approval of )	Case No. 09-1204-EL-EEC
a Special Arrangement Agreement )	
With A Mercantile Customer )	
)	

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**JOINT APPLICATION FOR APPROVAL OF A SPECIAL ARRANGEMENT WITH A  
MERCANTILE CUSTOMER AND EXEMPTION FROM PAYMENT OF COSTS  
INCLUDED IN RIDER DSE2**

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Applicants, Ohio Edison Company ("Company"), and U.S. Foodservice – Cleveland Division ("Customer") (collectively, "Applicants"), hereby submit their application, pursuant to Rule 4901:1-39-08(B) of the Ohio Administrative Code ("O.A.C."), for the Commission's approval of the special arrangement described in and pursuant to the Mercantile Customer Project Commitment Agreement ("Agreement"), which is attached as Exhibit 1 and which includes a provision that will exempt Customer from paying costs included in the Company's Rider DSE2. In support of this Application, Applicants state as follows:

1. Am. Sub. S.B. 221 ("Senate Bill 221") sets forth in R.C. § 4928.66 certain energy efficiency and demand reduction ("EEDR") benchmarks with which electric distribution utilities ("EDUs") must comply. Subparagraph (A)(2)(c) of this statute allows an EDU to include for purposes of compliance with said benchmarks "mercantile customer-sited energy efficiency and peak demand reduction programs" (individually and collectively "Customer Energy Projects.")
2. The Company is an electric distribution utility and electric light company, as defined in R.C. § 4928.01(A).

3. The Customer uses more than 700,000 kWh annually and believes that it otherwise meets the requirements of a "mercantile customer," as that term is defined in § 4928.01(A)(19).

#### **Customer Energy Projects**

4. The Customer has implemented the Customer Energy Projects described in Exhibit A to the attached Agreement. These projects were implemented after January 1, 2006.
5. For purposes of measuring and verifying the results of the Customer Energy Projects, the Customer has provided to the Company documentation providing evidence that the methodology used to calculate energy savings conforms to the general principals of the International Performance Measurement Verification Protocol (IPMVP), which include but may not necessarily be limited to a) through g).
  - a) Baselines for Customer's kilowatt-hour (kWh) consumption and/or peak demands which shall be based upon averages of the three most recent years of metered data or, if metered data is not available, based upon a reasonable method of estimation and including appropriate baseline normalization adjustments;
  - b) The Customer Energy Project(s) impacts on Customer's baseline kWh consumption and/or kW reduction ;
  - c) An accounting of the annual incremental energy saved and/or incremental peak-demand reductions achieved through the Customer Energy Project(s);
  - d) A listing and description of the Customer Energy Projects implemented, including measures taken, devices or equipment installed, processes modified, or other actions taken to increase energy efficiency and reduce peak demand, including specific details such as the number, type and efficiency levels both of the installed equipment and the old equipment that is being replaced, if applicable;

- c) A description of all methodologies, protocols, practices and baseline normalization adjustments used or proposed to be used in measuring and verifying the results of implementing the Customer Energy Project(s). Any deviations from applicable guidelines shall be identified and explained;
- f) An accounting of expenditures made by the Customer for Customer Energy Project(s) and the associated energy savings and peak demand reduction attributes;
- g) A timeline showing when each Customer Energy Project or measure went into effect, and when the energy savings and/or peak demand reductions took place.

Exhibit 3 attached to this Application sets forth a description of the documents, methodologies, protocols and/or practices reviewed by the Company.

- 6. Based upon a review of said materials, the Company believes to the best of its knowledge and belief that the information included on Exhibit 2 attached to this Application is correct and that said Customer Energy Projects meet the requirements as valid mercantile customer-sited energy efficiency projects contemplated in R.C. 4928.66(A)(2)(c). Accordingly, Applicants respectfully request that the Commission make a similar finding.

#### **The Agreement and Exemption**

- 7. The Agreement (a) addresses coordination requirements between the Company and the Customer, including specific communication procedures and intervals; (b) specifies the qualifying circumstances under which demand reductions may be effectuated by the Customer; (c) grants the Company and Commission Staff permission and access to the Customer's site for purposes

of measuring and verifying EEDR results; and (d) identifies all consequences for noncompliance by the Customer of any of the terms of the Agreement.

8. The Agreement also includes a provision that, upon Commission approval of this Joint Application, the Company will exempt the Customer from paying the charge included in the Company's Rider DSE2 at approved customer sites identified in Exhibit A of the Agreement attached as Exhibit 1 to this Application, provided that the Commission approves such exemption through this Application.

9. The Agreement also includes a provision that requires the Customer, as a result of any approval of such request for exemption from payment, to submit an annual report on a calendar year basis that includes, at a minimum, the following:

1. The kWh and/or KW reductions originally reported with the Joint Application;
2. The current estimated kWh and/or KW reductions attributable to the Customer Energy Project, based on then current annualized operations of the Customer;
3. An explanation for any significant variations between the information submitted under (1) and (2) above;
4. A calculation of Customer's annual baseline based upon usage information provided by the Company, with such calculation being made consistent with Commission rules and/or other directives;
5. Any new accounts that Customer identifies for exemption; and
6. Other information reasonably necessary for the Company to (i) verify Customer's continued eligibility for exemption from paying Rider charges; and (ii) report in the Company's annual status report to the Commission the EEDR results related to each Customer Energy Project.

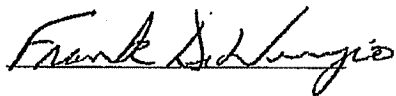
10. Applicants believe that the attached Agreement addresses all relevant issues related to a mercantile customer's commitment of customer-sited energy efficiency projects and, accordingly, the Applicants respectfully ask that the Commission approve said Agreement, including without limitation, the provision that exempts Customer from paying charges under Rider DSE2 consistent with this Application.

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WHEREFORE, having fully complied with R.C. 4928.66 and the related rules and regulations set forth in Section 4901-1-39-08, O.A.C., Applicants respectfully request that the Commission:

- a. Approve the Agreement attached to this Application as Exhibit 1;
- b. Approve the Customer Energy Projects included in Exhibit A to the Agreement as valid mercantile customer-sited energy efficiency projects as contemplated in R.C. 4928.66;
- c. Authorize the Company to exempt Customer from paying the charges included in the Company's Rider DSE2 consistent with this Application, effective for the Customer's first billing cycle after the date on which the Commission issues its Opinion and Order in this matter and continuing for as long as Customer meets the requirements set forth in the Agreement and Rider DSE2; and
- d. Any other relief that the Commission deems appropriate.

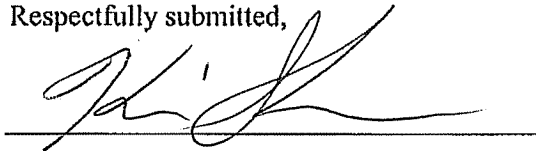
Respectfully submitted,



Frank DiNunzio

Vice President of Finance  
U.S. Foodservice –Cleveland Division  
8000 Bavaria Rd  
Twinsburg, Ohio 44087  
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Respectfully submitted,



James F Lang (0059668)  
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Email: kshannon@calfee.com

Attorneys for Ohio Edison Company

**Mercantile Customer Project Commitment Agreement**

THIS MERCANTILE CUSTOMER PROJECT COMMITMENT AGREEMENT ("Agreement") is made and entered into by and between Ohio Edison Company, its successors and assigns (hereinafter called the "Company") and U.S. Foodservice-Cleveland Division, its permitted successors and assigns (hereinafter called the "Customer") (collectively the "Parties" or individually the "Party") and is effective on the date last executed by the Parties as indicated below.

**WITNESSETH**

WHEREAS, the Company is an electric distribution utility and electric light company, as both of these terms are defined in R.C. § 4928.01(A); and

WHEREAS, Customer believes that it is a mercantile customer, as that term is defined in R.C. § 4928.01(A), doing business within the Company's certified service territory; and

WHEREAS, R.C. § 4928.66 (the "Statute") requires the Company to meet certain energy efficiency and demand reduction ("EEDR") benchmarks; and

WHEREAS, when complying with certain EEDR benchmarks the Company may include mercantile customer-sited EEDR projects; and

WHEREAS, Customer has certain energy project(s) as set forth in attached Exhibit A (the "Customer Energy Project(s)") that it desires to commit to the Company for integration into Company's EEDR benchmark compliance plan ("Company Plan") that Company will implement in order to comply with the Statute; and

WHEREAS, the Customer, pursuant to and consistent with the Statute, desires to pursue exemption from paying charges included in the Company's then current cost recovery mechanism (hereinafter, "Rider") as approved by the Public Utilities Commission of Ohio ("Commission") for recovery of the costs associated with the Company Plan..

NOW THEREFORE, in consideration of the mutual promises set forth herein, and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties, intending to be legally bound, do hereby agree as follows:

1. **Customer Energy Projects.** Customer hereby commits to the Company and Company accepts for integration into the Company Plan the Customer Energy Project(s) set forth on attached Exhibit A. Said commitment shall be for the life of the Customer Energy Project(s). Company will incorporate said project(s) into the Company Plan to the extent that such projects qualify. In so committing, Customer acknowledges that the information provided to the Company about the Customer Energy Project(s) is true and accurate to the best of its knowledge.
  - a. By committing the Customer Energy Project(s) to the Company, Customer acknowledges and agrees that the Company shall control the use of the kWh and/or kW reductions resulting from said projects for purposes of complying with the Statute. It is expressly agreed that Customer may use any and all energy related and other attributes created from the Customer Energy Project(s) to the extent permitted by state or federal laws or regulations, provided, and to the extent, that such uses by Customer do not conflict with said compliance by the Company.
  - b. Any future Customer Energy Project(s) committed by Customer shall be subject to a separate application and, upon approval by the Commission, said projects shall become part of this Agreement.

- c. Customer will provide Company or Company's agent(s) with reasonable assistance in the preparation of a joint application for approval of this Agreement ("Joint Application") that will be filed with the Commission.
  - d. Upon written request and reasonable advance notice, Customer will grant employees or authorized agents of either the Company or the Commission reasonable, pre-arranged access to the Customer Energy Project(s) for purposes of measuring and verifying energy savings and/or peak demand reductions resulting from the Customer Energy Project(s). It is expressly agreed that consultants of either the Company or the Commission are their respective authorized agents.
2. **Joint Application to the Commission.** The Parties will submit the Joint Application seeking the Commission's approval of this Agreement and its determination that the Customer qualifies for exemption from paying Rider charges.
- a. The Joint Application shall include:
    - i. Baselines for Customer's kilowatt-hour (kWh) consumption and/or peak demands which shall be based upon averages of the three most recent years of metered data or, if metered data is not available, based upon a reasonable method of estimation and including appropriate baseline normalization adjustments;
    - ii. The Customer Energy Project(s) impacts on Customer's baseline kWh consumption and/or kW reduction ;
    - iii. An accounting of the annual incremental energy saved and/or incremental peak-demand reductions achieved through the Customer Energy Project(s);
    - iv. A listing and description of the Customer Energy Projects implemented, including measures taken, devices or equipment installed, processes modified, or other actions taken to increase energy efficiency and reduce peak demand, including specific details such as the number, type and efficiency levels both of the installed equipment and the old equipment that is being replaced, if applicable;
    - v. A description of all methodologies, protocols, practices and baseline normalization adjustments used or proposed to be used in measuring and verifying the results of implementing the Customer Energy Project(s). Any deviations from applicable guidelines shall be identified and explained;
    - vi. An accounting of expenditures made by the Customer for Customer Energy Project(s) and the associated energy savings and peak demand reduction attributes;
    - vii. A timeline showing when each Customer Energy Project or measure went into effect, and when the energy savings and peak demand reductions took place; and
    - viii. A copy of this Agreement.
3. **Customer Exemption.** Upon Commission approval of the Joint Application, the Company will exempt Customer from paying any Rider charges consistent with any Commission directives as set forth in the Commission's Entry approving the Joint Application. Such exempt status shall apply to those accounts identified by Customer that pertain to those Customer sites with one or more Customer Energy Project(s) approved by the Commission in the Joint Application.



- i. For purposes of this Agreement, a "site" shall be a single location with one or more facilities. As examples only, a site includes an industrial plant, a hospital complex or a university located on one or more parcels of land, provided that said parcels are contiguous.
  - ii. For purposes of this Agreement, an "account" shall be as defined by the Company through its normal business practices. Any account identified by Customer shall be eligible for exemption, provided that said account pertains to a specific site with at least one Customer Energy Project that qualifies Customer for exemption from paying Rider charges.
  - iii. Any new accounts created at a site on which there is already an approved Customer Energy Project shall, at the option of the Customer, be included within the exemption granted under said project, and shall be included for purposes of calculating future eligibility for exemption under the project. Any such election shall become effective in the first billing cycle after April 15<sup>th</sup> following identification of said account in the annual report required under Section 2(b) below.
- b. Customer acknowledges and agrees that if it desires to pursue such exempt status, as evidenced in the Joint Application, Customer is obligated to provide to the Company an annual report on the energy savings and peak-demand reductions achieved by the Customer Energy Project(s) on a calendar year basis.
- i. Said reports shall be submitted annually on or before January 31 of each year after Commission approval of the Joint Application.
  - ii. Said report shall include the following information for each Customer Energy Project that has been approved by the Commission:
    - 1. The kWh and/or KW reductions originally reported with the Joint Application;
    - 2. The current estimated kWh and/or KW reductions attributable to the Customer Energy Project, based on then current annualized operations of the Customer;
    - 3. An explanation for any significant variations between the information submitted under (1) and (2) above;
    - 4. A calculation of Customer's annual baseline based upon usage information provided by the Company, with such calculation being made consistent with Commission rules and/or other directives;
    - 5. Any new accounts that Customer identifies for exemption as contemplated in Section 2(a)(iii) above; and
    - 6. Other information reasonably necessary for the Company to (i) verify Customer's continued eligibility for exemption from paying Rider charges; and (ii) report in the Company's annual status report to the Commission the EEDR results related to each Customer Energy Project.

c. Customer's Exemption shall automatically terminate:

- i. Upon order of the Commission;
- ii. If Customer fails to comply with the terms and conditions set forth in the Company's then current Rider DSE, or its equivalent, as amended from time to time by the Commission;
- iii. If it is discovered that Customer falsified any documents. In such an instance, Company reserves the right to recover any exempted rider charges from the date of approval of the Joint Application through the date said exemption is terminated.
- iv. If Customer fails to submit the annual report required in (b) above. In such an instance, Company reserves the right to recover any exempted rider charges from the date of approval of the Joint Application through the date said exemption is terminated.

d. Company reserves the right to recover any unbilled DSE rider charges incurred by Customer after the termination of Customer's exemption.

4. Termination of Agreement. This Agreement shall automatically terminate:

- a. If the Commission fails to approve this Agreement through the Joint Application;
- b. Upon order of the Commission; or
- c. At the end of the life of the last Customer Energy Project subject to this Agreement..

5. Confidentiality. Each Party shall hold in confidence and not release or disclose to any person any document or information furnished by the other Party in connection with this Agreement that is designated as confidential and proprietary ("Confidential Information"), unless: (i) compelled to disclose such document or information by judicial, regulatory or administrative process or other provisions of law; (ii) such document or information is generally available to the public; or (iii) such document or information was available to the receiving Party on a non-confidential basis.

- a. Notwithstanding the above, a Party may disclose to its employees, attorneys, consultants and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, attorneys, consultants and agents have been advised of the confidential nature of this information and through such disclosure are deemed to be bound by the terms set forth herein.
- b. A Party receiving such Confidential Information shall protect it with the same standard of care as its own Confidential Information.
- c. A Party receiving notice or otherwise concluding that Confidential Information furnished by the other Party in connection with this Agreement is being sought under any provision of law, to the extent it is permitted to do so under any applicable law, shall endeavor to: (i) promptly notify the other Party; and (ii) use reasonable efforts in cooperation with the other Party to seek confidential treatment of such Confidential Information, including without limitation, the filing of such information under a valid protective order.
- d. By executing this Agreement, Customer hereby acknowledges and agrees that Company may disclose to the Commission or its Staff any and all Customer information, including Confidential Information, related to a Customer Energy Project, provided that Company uses reasonable efforts to seek confidential treatment of the same.

6. **Notices.** Unless otherwise stated herein, all notices, demands or requests required or permitted under this Agreement must be in writing and must be delivered or sent by overnight express mail, courier service, electronic mail or facsimile transmission addressed as follows:

**If to the Customer:**

U.S. Foodservice-Cleveland Division  
8000 Bavaria Rd  
Twinsburg, Ohio 44087  
Attn: Frank DiNunzio  
Telephone 330-963-5058  
Fax :330-963-5050  
E-Mail: [frank.dinunzio@usfood.com](mailto:frank.dinunzio@usfood.com)

**If to the Company:**

FirstEnergy Company  
76 South Main Street  
Akron, OH 44308  
Attn: Victoria Nofziger  
Telephone: 330-384-4684  
Fax: 330-761-4281  
E-mail: [vmnofziger@firstenergycorp.com](mailto:vmnofziger@firstenergycorp.com)

or to such other person at such other address as a Party may designate by like notice to the other Party. Notice received after the close of the business day will be deemed received on the next business day; provided that notice by facsimile transmission will be deemed to have been received by the recipient if the recipient confirms receipt telephonically or in writing.

7. **Authority to Act.** The Parties represent and warrant that they are represented by counsel in connection with this Agreement, have been fully advised in connection with the execution thereof, have taken all legal and corporate steps necessary to enter into this Agreement, and that the undersigned has the authority to enter into this Agreement, to bind the Parties to all provisions herein and to take the actions required to be performed in fulfillment of the undertakings contained herein.
8. **Non-Waiver.** The delay or failure of either party to assert or enforce in any instance strict performance of any of the terms of this Agreement or to exercise any rights hereunder conferred, shall not be construed as a waiver or relinquishment to any extent of its rights to assert or rely upon such terms or rights at any later time or on any future occasion.
9. **Entire Agreement.** This Agreement, along with related exhibits, and the Company's Rider DSE, or its equivalent, as amended from time to time by the Commission, contains the Parties' entire understanding with respect to the matters addressed herein and there are no verbal or collateral representations, undertakings, or agreements not expressly set forth herein. No change in, addition to, or waiver of the terms of this Agreement shall be binding upon any of the Parties unless the same is set forth in writing and signed by an authorized representative of each of the Parties. In the event of any conflict between Rider DSE2 or its equivalent and this document, the latter shall prevail.
10. **Assignment.** Customer may not assign any of its rights or obligations under this Agreement without obtaining the prior written consent of the Company, which consent will not be unreasonably withheld. No assignment of this Agreement will relieve the assigning Party of any of its obligations under this Agreement until such obligations have been assumed by the assignee and all necessary consents have been obtained.
11. **Severability.** If any portion of this Agreement is held invalid, the Parties agree that such invalidity shall not affect the validity of the remaining portions of this Agreement, and the Parties further agree to substitute for the invalid portion a valid provision that most closely approximates the economic effect and intent of the invalid provision.

12. **Governing Law.** This Agreement shall be governed by the laws and regulations of the State of Ohio, without regard to its conflict of law provisions.

13. **Execution and Counterparts.** This Agreement may be executed in multiple counterparts, which taken together shall constitute an original without the necessity of all parties signing the same page or the same documents, and may be executed by signatures to electronically or telephonically transmitted counterparts in lieu of original printed or photocopied documents. Signatures transmitted by facsimile shall be considered original signatures.

IN WITNESS WHEREOF, the Parties hereto have caused this Agreement to be executed by their duly authorized officers or representatives as of the day and year set forth below.

U.S. Foodservice-Cleveland Division  
(Customer)

By: Frank Sedlitz

Title: V.P. of Finance

Date: 11-18-09

Ohio Edison Company  
(Company)

By: John E. Paganini

Title: VP Customer Service & Energy Efficiency

Date: 11-25-09

Exhibit A			
Customer Legal Entity Name		Site Address or Name	
US FOODSERVICE CLEVELAND		8000 BAVARIA RD TWINSBURG, OH	
Project Description		In-Service Date (Month, Year)	Project Cost \$
<div>1</div> <div>2</div> <div>3</div> <div>4</div> <div>5</div>	Lighting	F-09	\$158,966

Exhibit 2						
Customer Legal Entity Name		Weather Adjusted Baseline Usage			Weather Adjusted Baseline Adjusted for Savings, kWh	
US FOODSERVICE CLEVELAND  Site		2008	5,869,680		5,869,680	
		2007	6,109,040		6,109,040	
		2006	6,227,520		6,227,520	
		Average	6,068,747		6,068,747	
Project Number	Project Description	In-Service Date (Month, Year)	Project Cost \$	KWh Saved/Year	Utility Peak Demand Reduction Contribution, KW	
1	Lighting	39845	\$158,966	1,382,896	119	
2	0	0	\$0			
3	0	0	\$0			
4	0	0	\$0			
5	0	0	\$0			
			TOTAL	1,382,896	119	
Savings as percent of usage =					23%	

Notes  
 Customer's usage is adjusted to exclude the effects of the energy efficiency programs included in this application.  
 Such adjustments are prorated to the nearest month of in-service date.

**Exhibit 3**

Exhibit 3		
Project No.	Project Description	Description of Methodologies, Protocols and Practices used in Measuring and Verifying Project Results
1	Lighting	US Food Services hired Orion Energy Services to develop a solution to maximize waste reduction while improving lighting output to acceptable levels. Orion provided a proposal including completed engineering work and energy/cost savings analysis. Orion Energy Services is an energy company specializing in the development and deployment of energy-efficient lighting systems.
2	0	
3	0	
4	0	
5	0	

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**12/23/2009 3:09:07 PM**

**in**

**Case No(s). 09-1204-EL-EEC**

Summary: Application of Ohio Edison Company and U.S. Foodservice for approval of a special arrangement agreement with a mercantile customer. electronically filed by Mr. Kevin P. Shannon on behalf of Ohio Edison Company