

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

| | | |
|--|---|--------------------------------|
| In the Matter of the Application of The |) | |
| Toledo Edison Company and Kraft |) | |
| Foods Global Inc. For Approval of a |) | Case No. 10-2121-EL-EEC |
| Special Arrangement Agreement With |) | |
| A Mercantile Customer |) | |
| |) | |

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

Applicants, The Toledo Edison Company ("Company"), and Kraft Foods Global Inc. ("Customer") (collectively, "Applicants"), hereby submit their application, pursuant to Rule 4901:1-39-05(G) 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 DSE2 charge of the Company's Rider DSE. In support of this Application, Applicants state as follows:

1. R.C. § 4928.66 sets forth certain energy efficiency and peak demand reduction ("EE&PDR") 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"). Exhibit 3 attached to this Application sets forth a description of the documents, methodologies, protocols and/or practices reviewed by the Company in measuring and verifying the results of Customer Energy Projects.
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 or peak-demand reduction 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. Pursuant to O.A.C. 4901:1-39-05(G), the Application must (1) address coordination requirements between the Company and the Customer with regard to voluntary reductions in load by the Customer, which are not part of an electric utility program, including specific communication procedures and intervals (not applicable); (2) grant the Company and Commission Staff permission and access to the Customer's site for purposes of measuring and verifying EE&PDR results;¹ (3) identify all consequences for noncompliance by the Customer with any of the terms of the Agreement;² (4) include a copy of the Agreement;³ and (5) describe the methodologies, protocols, and practices used or proposed to be used in measuring and verifying program results, and identify and explain all deviations from any program measurement and verification guidelines published by the Commission.⁴
8. The Agreement includes a provision that, upon Commission approval of this Joint Application, the Company will exempt the Customer from paying the DSE2 charge of the Company's Rider DSE at approved customer sites identified in Exhibit A of the Agreement, provided that the Commission approves such exemption through this Application.
9. Should the Commission approve this Application, the Customer's exemption

¹ Included in Exhibit 1 at ¶ 1(d).

² Included in Exhibit 1 at ¶ 3(e)-(f).

³ See Exhibit 1.

⁴ See Exhibit 3.

shall begin on the date that the Application is approved and continue for period set forth in Exhibit 2, or until the exemption terminates pursuant to the terms of the Agreement.

10. As required by O.A.C. 4901:1-39-08, the Agreement also includes a provision that requires the Customer, if the exemption is approved, to submit an annual report on a calendar year basis that includes, at a minimum, the following:

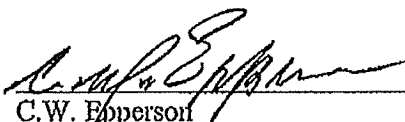
- a) A demonstration that the energy savings and peak-demand reductions associated with the Customer Energy Projects meet the total resource cost test or that the Company's avoided cost exceeds the cost to the Company for the mercantile customer's program;
- b) A statement distinguishing programs implemented before and after January 1 of the current year;
- c) A quantification of the energy savings or peak-demand reductions for programs initiated prior to 2009 in the baseline period;
- d) A recognition that the Company's baselines have been increased by the amount of mercantile customer energy savings and demand reductions;
- e) A listing and description of the Customer Energy Projects that have been implemented, which provides the detail required by the Rules;
- f) An accounting of expenditures made by the mercantile customer for each program and its component energy savings and peak-demand reduction attributes;
- g) A timeline showing when each Customer Energy Project went into effect and when the energy savings and peak-demand reductions occurred;
- h) Any 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 EE&PDR results related to each Customer Energy Project.

11. The Customer's decision to commit its Customer Energy Projects to the Company for inclusion in the Company's Energy Efficiency & Peak Demand Reduction Program Portfolio Plan ("Company Plan") has been encouraged by the possibility that the Commission will excuse the Customer from paying the DSE2 charge of Rider DSE.
12. The Company believes that, based on the information provided by the Customer, the energy efficiency or peak-demand reduction savings are significant enough to result in a one-year or greater payback.
13. The Company's avoided cost exceeds the cost to the Company for the Customer Energy Projects.
14. The following Customer Energy Projects involve the early retirement of fully functioning equipment, which is not yet fully depreciated: Replace light fixtures in the New Mill Building, November 15, 2007, 564,284 kWh, 64 kW.
15. 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 certain charges under Rider DSE consistent with this Application.

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

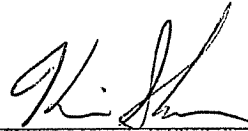
- a. Approve the Agreement attached to this Application as Exhibit 1;
- b. Approve the commitment of the Customer Energy Projects included in Exhibit A to the Agreement for integration into the Company Plan;
- c. Authorize the Company to exempt Customer from paying the DSE2 charge in the Company's Rider DSE 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 period set forth in Exhibit 2, or as long as the Customer meets the requirements set forth in the Agreement and Rider DSE; and
- d. Any other relief that the Commission deems appropriate.

Respectfully submitted,



C.W. Epperson
Kraft Foods Global Inc.
2221 Front St.
Toledo, OH 43605
419-697-6601
419-691-8174 (fax)
William.Epperson@Kraft.com

Respectfully submitted,



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Attorneys for The Toledo Edison Company

Mercantile Customer Project Commitment Agreement

THIS MERCANTILE CUSTOMER PROJECT COMMITMENT AGREEMENT ("Agreement") is made and entered into by and between The Toledo Edison Company, its successors and assigns (hereinafter called the "Company") and Kraft Foods Global Inc., 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)(19), 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 peak demand reduction ("EE&PDR") benchmarks; and

WHEREAS, when complying with certain EE&PDR benchmarks the Company may include the effects of mercantile customer-sited EE&PDR projects; and

WHEREAS, Customer has certain customer-sited demand reduction, demand response, or energy efficiency 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 the Company's Energy Efficiency & Peak Demand Reduction Program Portfolio Plan ("Company Plan") that the 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 DSE") as approved by the Public Utilities Commission of Ohio ("Commission") for recovery of the costs associated with the Company Plan; and

WHEREAS, Customer has consented to providing the Company with an annual report on the energy savings and/or peak-demand reductions achieved by the Customer Energy Project(s); and

WHEREAS, Customer's decision to commit its Customer Energy Project(s) to the Company for inclusion in the Company Plan has been reasonably encouraged by the possibility of an exemption from the DSE charge of Rider DSE.

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 the commitment of the Customer Energy Project(s) for inclusion in the Company Plan, and its determination that the Customer qualifies for exemption from paying the DSE2 charge of Rider DSE.
- a. The Joint Application shall include all information required by the Commission's Rules (the "Rules") to approve the commitment of the Customer Energy Project(s) for integration into the Company Plan, and shall:
 - i. Address coordination requirements between the electric utility and the mercantile customer with regard to voluntary reductions in load by the mercantile customer, which are not part of an electric utility program;
 - ii. Grant permission to the electric utility and staff to measure and verify energy savings and/or peak-demand reductions resulting from the Customer Energy Project(s);
 - iii. Identify all consequences of noncompliance by the Customer with the terms of this Agreement;
 - iv. Include a copy of this Agreement and any requirement that the electric utility will treat the customer's information as confidential and not disclose such information without an appropriate protective order; and
 - v. Include a description of all methodologies, protocols, and practices used or proposed to be used in measuring and verifying the savings resulting from the Customer Energy Projects, and identify and explain all deviations from any program measurement and verification guidelines that may be published by the Commission.
3. **Customer Exemption and Annual Report.** Upon Commission approval of the Joint Application, the Company will exempt Customer from paying any Rider DSE charges consistent with any Commission directives as set forth in the Commission's Finding and Order 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 for integration into the Company Plan by the Commission in the Joint Application.
- a. 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.

- b. 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 DSB charges.
- c. 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 March 15th following identification of said account in the annual report required under Section 3(d)(iii) below.
- d. 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. Company shall provide Customer with such information as it may require, that is in Company's possession, for the purposes of preparing such report. Company shall provide a template for Customer to use in preparing the annual report and shall make available a designated Company representative to answer questions.
 - i. Said report shall be submitted annually on or before January 31 of each year after Commission approval of the Joint Application.
 - ii. Said report shall provide all information required under the Rules, and where the requirements of the Rules conflict with a requirement under this Agreement or the Joint Application, the requirements of the Rules shall control.
 - iii. Said report shall, at a minimum, include the following information for each Customer Energy Project that has been approved by the Commission:
 - 1. A demonstration that the energy savings and peak-demand reductions associated with the Customer Energy Project(s) meet the total resource cost test or that the Company's avoided cost exceeds the cost to the Company for the Customer's program;
 - 2. A statement distinguishing programs implemented before and after January 1 of the current year;
 - 3. A quantification of the energy savings or peak-demand reductions for programs initiated prior to 2009 in the baseline period;
 - 4. A recognition that the Company's baselines have been increased by the amount of merchantile customer energy savings and demand reductions;
 - 5. A listing and description of the Customer Energy Projects that have been implemented, which provides the detail required by the Rules;
 - 6. An accounting of expenditures made by the merchantile customer for each program and its component energy savings and peak-demand reduction attributes; and

7. A timeline showing when each Customer Energy Project went into effect and when the energy savings and peak-demand reductions occurred.
8. Any 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 RE&PDR results related to each Customer Energy Project.

e. Customer's Exemption shall automatically terminate:

- i. Upon order of the Commission or pursuant to any Commission rule;
- 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, within a reasonable period of time after receipt of written notice of such non-compliance;
- iii. If it is discovered that Customer knowingly falsified any documents provided to the Company or the Commission in connection with this Agreement or the Joint Application. 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; or
- iv. If Customer fails to submit the annual report required in (d) 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. It is expressly agreed that this provision shall not apply should said report contain errors, provided that the submission of said report is made in good faith. It is further agreed that the Company will provide written notice of the date on which said report is due at least thirty (30) days prior thereto.

f. Company reserves the right to recover from Customer any Rider DSE charges incurred by Customer after the date Customer's exemption terminates.

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.

Customer shall also have an option to terminate this Agreement should the Commission not approve the Customer's Exemption, provided that Customer provides the Company with written notice of such termination within fifteen (15) days of the Commission's ruling.

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 at the time of disclosure.

- a. Notwithstanding the above, a Party may disclose to its employees, directors, attorneys, consultants and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, directors, 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 or proprietary 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 Company:

FirstEnergy Service Company
 76 South Main Street
 Akron, OH 44308
 Attn: Victoria Nofziger
 Telephone: 330-384-4684
 Fax: 330-761-4281
 Email: ymnofziger@firstenergycorp.com

If to the Customer:

Kraft Foods Global Inc.
 2221 Prout Street
 Toledo, Ohio 43605
 Attn: Richard Leggett
 Telephone: 419-697-6619
 Fax: 419-691-8174
 Email: Richard.Leggett@Kraft.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.

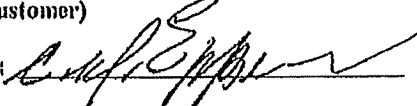
7. **Authority to Act.** The Parties represent and warrant that they are represented by counsel in connection with this Agreement, have been fully advised in connection with the execution thereof, have taken all legal and corporate steps necessary to enter into this Agreement, and that the undersigned 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 DSB, 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 DSE 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.

Kraft Foods Global Inc.
(Customer)

By: 

Title: Plant Manager

Date: March 29, 2010

The Toledo Edison Company
(Company)

By: 

Title: V.P. Utility Support

Date: April 28, 2010

Exhibit A

| Customer Legal Entity Name | Site Name | | |
|---|--|--------------|--|
| Kraft Foods Global Inc. | Kraft Foods Global Inc. 2221 Front Street Toledo, OH 43605-1231 | | |
| Project Name | In-Service Date | Project Cost | |
| | MM/DD/YY | \$ | |
| Replace light fixtures in New Mill Building. | | | |
| 1 The project involved the early retirement of fully functional equipment. | 11/15/07 | \$67,168 | |

Site: Kraft Foods Global Inc. 2221 Front Street Toledo, OH 43605-1231

Customer Exemption Through End of Year (G)

4928.66(A)(1)(a).
{C30520:}

Exhibit 3

| Project No. | Project Name | Description of Methodologies, Protocols and Practices used in Measuring and Verifying Project Results |
|-------------|---|---|
| 1 | Replace light fixtures in New Mill Building. The project involved the early retirement of fully functional equipment. | An engineering study was performed to calculate energy savings. A copy of the study has been provided. The methodology used to measure savings conforms to the general principles of the International Performance Measurement Verification Protocol (IPMVP). |

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 10-2121-EL-EEC

Summary: Application of The Toledo Edison Company and Kraft Foods Global Inc. for Approval of a Special Arrangement Agreement with a Mercantile Customer electronically filed by Mr. Kevin P. Shannon on behalf of The Toledo Edison Company