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**FirstEnergy**

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July 28, 2009

Ms. Renee J. Jenkins  
Director, Administration Department  
Secretary to the Commission  
Docketing Division  
The Public Utilities Commission of Ohio  
180 East Broad Street  
Columbus, OH 43215-3793

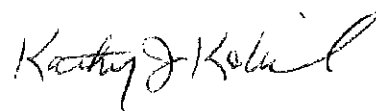
Dear Ms. Jenkins:

**Re: Joint Application for Approval of a Special Arrangement with a  
Mercantile Customer and Exemption from Payment of Costs  
Included in Rider DSE2  
Case No. 09-1201-EL-UNC**

Enclosed for filing, please find the original and seventeen (17) copies of Ohio Edison Company's Joint Application regarding the above-referenced case. Please file the enclosed Joint Application, time-stamping the two extras and returning them to me in the enclosed envelope.

Thank you for your assistance in this matter. Please contact me if you have any questions concerning this matter.

Very truly yours,



kag  
Enclosures

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**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

<b>In the Matter of the Application of</b>	)	
<b>Heinz Frozen Food Company a division</b>	)	
<b>of H.J. Heinz Company L.P. and Ohio</b>	)	<b>Case No. 09-1201-EL-UNC</b>
<b>Edison Company For Approval of a</b>	)	
<b>Special Arrangement Agreement With</b>	)	
<b>A Mercantile Customer</b>	)	

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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 Heinz Frozen Food Company a division of H.J. Heinz Company L.P., ("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 "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/or otherwise meets the requirements of a “mercantile customer,” as that term is defined in § 4928.01(A)(19).
4. The Customer has implemented the Energy Projects described in Exhibit A to the attached Agreement. The Energy Projects were implemented after January 1, 2006.
5. The Company has reviewed the details associated with the Energy Projects and believes that said projects satisfy all of the requirements set forth in R.C. § 4928.66, as well as furthers the State of Ohio’s goals of reducing energy costs and usage. The relevant details surrounding the Energy Projects are set forth on attached Exhibit 2. Accordingly, the Applicants request approval of the attached Agreement (Exhibit 1) and related Energy Projects so as to allow the Company to include the Energy Projects as part of its EEDR compliance plan.
6. 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.
7. For purposes of measuring and verifying the results of the 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 sets forth a description of the documents, methodologies, protocols and/or practices reviewed by the Company. Based upon said review, the Company believes to the best of its knowledge and belief that the information included on attached Exhibit 2 is correct and that said Energy Projects meet the requirements for inclusion in the Company's EEDR compliance plan.

8. The Agreement also includes a provision that, if the Energy Projects are approved by the Commission as qualifying for inclusion in the Company's EEDR compliance plan and otherwise meet the prerequisites set forth in the Companies Rider DSE2, the Company will exempt the Customer from paying the charge included in the Company's Rider DSE2, provided that the Commission approves such exemption through this Application. Accordingly, Applicants jointly request authority from the Commission to exempt Customer from paying the charges set forth in said rider, which shall become effective during the Customer's first billing cycle after the issuance of the Commission's Opinion and Order approving the Energy Projects for inclusion in the Company's EEDR compliance plan.
9. The Agreement also includes a provision that requires the Customer, as a result of such request for exemption from payment, to submit an annual report on a calendar year basis that includes, at a minimum, the following:
  - i. Baselines for Customer's kilowatt-hour (kWh) consumption and peak demand 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;

- ii. The impacts on Customer's baseline kWh consumption and baseline peak demand of the Energy Projects committed under this Agreement;
- iii. An accounting of the incremental energy saved and incremental peak-demand reductions achieved in the most recent year through the Energy Projects;
- iv. A listing and description of the Customer 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 and practices used or proposed to be used in measuring and verifying Energy Projects, including the identification and explanation of any deviations from applicable guidelines;
- vi. An accounting of expenditures made by the Customer for Energy Projects and the associated energy savings and peak demand reduction attributes;
- vii. A timeline showing when each of the Energy Projects or measure went into effect, and when the energy savings and peak demand reductions took place; and
- viii. A copy of the Agreement.

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;
- b. Approve the Energy Projects as qualifying for inclusion in the Company's EEDR compliance plan;

- c. Authorize the Company to exempt Customer from paying the charges included in the Company's Rider DSE2, effective for the Customer's first billing cycle after the date on which the Commission issue its Opinion and Order in this matter approving the Energy Projects for inclusion in the Company's EEDR compliance plan and continuing for as long as Customer meets the requirements set forth in Rider DSE2; and
- d. Any other relief that the Commission deems appropriate.

Respectfully submitted,

HEINZ FROZEN FOODS COMPANY  
(Customer)  
By: [Signature]  
Title: PLANT MANAGER  
Date: 7/21/09

Respectfully submitted,

Ohio Edison Company  
(Company)  
By: [Signature]  
Title: VP Customer Service & Energy Efficiency  
Date: 7.28.09

[Signature]  
Kathy J. Kolich (Reg. No. 0038855)  
Senior Attorney  
FirstEnergy Service Company  
76 South Main Street  
Akron, Ohio 44308  
Phone: 330-384-4580  
Fax: 330-384-3875

kjkolich@firstenergycorp.com

Attorney 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, hereinafter called the "Company," and Heinz Frozen Food Company a division of H.J. Heinz Company L.P., hereinafter called the "Customer," (collectively the "Parties" or individually the "Party"), and is effective as of the last day executed by the Parties as evidenced 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 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 requires the Company to meet certain energy efficiency and demand reduction benchmarks; and

**WHEREAS**, compliance with certain energy efficiency and demand reduction benchmarks may include mercantile customer-sited energy efficiency and peak demand reduction projects (individually and collectively, "Energy Project(s)"); and

**WHEREAS**, Customer has certain Energy Projects that it desires to commit to the Company for consideration as part of Company's energy efficiency and demand reduction benchmark compliance program ("Program").

**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 hereby commits for the life of the project, and Company accepts, the Energy Project(s) set forth on attached Exhibit A. In so committing, Customer acknowledges that the information provided is true and accurate to the best of its knowledge. It further agrees to:
  - a. Provide the Company or Company's representative with all necessary documentation, records and/or other evidence that demonstrates: (i) Customer's energy consumption and/or electric load requirements for a minimum of three years prior to the implementation of each Energy Project; (ii) energy consumption and/or load demand reductions resulting from the implementation of each Energy Project; and (iii) completion and operation of each Energy Project and any other such information and documentation as required by the Company for the purposes of compliance with applicable laws, rules and regulations. All such information, documentation, records and/or other evidence provided by the Customer shall be subject to the confidentiality provisions set forth in Paragraph 5 of this Agreement.
  - b. Provide Company or Company's representative with reasonable assistance in the filing with the Public Utilities Commission of Ohio ("Commission") of a joint application ("Joint Application") for approval of this Agreement.
  - c. Upon request, grant representatives from the Company, Commission Staff, or consultants of either, reasonable, pre-arranged access to the Energy Project(s) for purposes of measuring and verifying energy savings and/or peak demand reductions resulting from Energy Project(s).

For purposes of this Agreement, by committing the Energy Projects, 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 Company's EEDR compliance plan. If other programs unrelated to the Company's program arise that do not allow for the multiple use of said results, then said results shall be limited to use by the Company.

2. The Commission may determine that the Customer qualifies for exemption from any applicable Company cost recovery mechanism related to the Company's Program. Such exemption may be requested as part of the Joint Application. Upon Commission authorization, the Company will exempt Customer from paying any costs included in said recovery mechanism related to the Company's Program, consistent with any Commission directives as set forth in its Entry approving this Agreement. Customer acknowledges and agrees that if it desires to pursue such exempt status, as evidenced in the Joint Application, Customer shall be obligated to provide to the Company an annual report on the energy savings and peak-demand reductions achieved by the Energy Project(s) on a calendar year basis. Such report shall be due within thirty (30) days of the end of the applicable reporting year and shall include, at a minimum, all requirements set forth in the Commission's rules and regulations, as modified from time to time. Current requirements include:
  - a. Baselines for Customer's kilowatt-hour (kWh) consumption and peak demand 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;
  - b. The impacts on Customer's baseline kWh consumption and baseline peak demand of the Energy Project(s) committed under this Agreement;
  - c. An accounting of the incremental energy saved and incremental peak-demand reductions achieved in the most recent year through the Energy Project(s);
  - d. A listing and description of the Customer 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;
  - e. A description of all methodologies, protocols and practices used or proposed to be used in measuring and verifying Energy Project(s). Any deviations from applicable guidelines shall be identified and explained;
  - f. An accounting of expenditures made by the Customer for Energy Project(s) and the associated energy savings and peak demand reduction attributes;
  - g. A timeline showing when each Energy Project or measure went into effect, and when the energy savings and peak demand reductions took place; and
  - h. A copy of this Agreement.
3. This Agreement shall automatically terminate if Customer fails to substantially comply with the provisions set forth in this Agreement.
4. Customer's exempt status as described in Paragraph 2 shall be contingent upon compliance with the terms and conditions set forth in the Company's Rider DSE2 or its equivalent, which may be amended from time to time upon Commission approval, and substantial compliance with all provisions set forth in this Agreement. Except as provided herein, and absent a Commission Order to the contrary, such exempt status shall continue for as long as Customer meets the requirements set forth in Rider DSE2 or its equivalent.
5. This Agreement is contingent upon the Commission's approval of the Joint Application.



6. Each Party shall hold in confidence and not release or disclose any document or information furnished by the other Party in connection with this Agreement that is designated as confidential ("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. Notwithstanding the above, a Party may disclose to its employees, representatives, consultants and agents all documents and information furnished by the other Party in connection with this Agreement, provided that such employees, representatives, consultants and agents have been advised of the confidentiality of this information and through such disclosure are deemed to be bound by the terms set forth herein. 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 seal. 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 an Energy Project, provided that Company uses reasonable efforts to seek confidential treatment of the same.
7. 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:

Heinz Frozen Food Company  
1301 Oberlin Road S.W.  
Massillon, OH 44647  
Attention : Michael Parks  
Telephone: 330-830-8253  
Email: [Michael.parks@us.hjheinz.com](mailto:Michael.parks@us.hjheinz.com)

Cc : Daniel Fomer  
Heinz North America, Global Utility Manager  
1000 Ericsson Drive  
Warrendale, PA 15086  
Telephone: (724) 778-5523  
Email: [daniel.fomer@us.hjheinz.com](mailto:daniel.fomer@us.hjheinz.com)

Cc : Bob Ostryniec  
Heinz North America, Chief Supply Chain Officer  
357 6<sup>th</sup> Avenue  
Pittsburgh, PA 15222  
Telephone: (412) 237-9340  
Email: [bob.ostryniec@us.hjheinz.com](mailto:bob.ostryniec@us.hjheinz.com)

If to the Company:

FirstEnergy Service Company  
76 South Main Street  
Akron, OH 44308  
Atten: Victoria Nofziger  
Telephone: 330-384-4684  
Fax: 330-761-4281  
Email: [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.

8. 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 have the authority to enter into this

Agreement, to bind themselves to all provisions herein and to take the actions required to be performed in fulfillment of the undertakings contained herein.

9. This Agreement 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.
10. 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.

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 first written above.

HEINZ FROZEN FOODS COMPANY  
(Customer)

By: Michael W. Park

Title: PLANT MANAGER

Date: 7/22/09

Ohio Edison Company  
(Company)

By: John E. Paganie

Title: VP Customer Service & Energy Efficiency

Date: 7.28.09

**Exhibit A**

Customer Name	Project Description	In-Service Date	Project Cost
Weight Watchers Food Co.	1 Refrigeration & Optimization	2007	\$581,000
	2 Lighting	2006	\$274,951
	3 Compressed Air	2007	\$530,000

## Exhibit 2

Customer Name		Baseline Usage, kWh		Weather Adjusted Usage, kWh	Usage, Adjusted for EE addbacks <sup>1</sup>
Weight Watchers Food Co.		2008		33,249,342	34,569,342
		2007		37,309,518	37,529,518
		2006		38,305,890	38,305,890
		Average		36,288,250	36,801,583
Project Number	Project Description	In-Service Date	Project Cost \$	KWh Saved/Year	KW Reduced
1	Refrigeration & Optimization	2007	\$581,000	8,452,281	508
2	Lighting	2006	\$274,951	1,320,000	157
3	Compressed Air	2007	\$530,000	1,800,000	221
Savings as percent of usage =				31.4%	

### Notes

- <sup>1</sup> 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

Customer	Project No.	Description of Methodologies, Protocols and/or Practices Reviewed by the Company
Weight Watchers Food Co.	1 and 3	A third party measurement and verification summary performed by Brewer-Garrett Company, certifying to the projection of the savings identified in Exhibit 2, dated 3/07/08. This document uses the general principals of the International Performance Measurement Verification Protocol (IPMVP), Option B (measurement), which uses calculations based on measurements taken for a period of time.
	2	A detailed description by ECO Engineering detailing the old (baseline) fixtures that were replaced versus the new fixtures installed, including wattage, number & type, and hours of use. Customer also provided receipts showing proof of purchase for new fixtures. The calculations conform to Option A, of the IPMVP, which relies on operational factors and commonly-accepted usage assumptions.