

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of )  
 Cleveland Thermal Steam Distribution, )  
 LLC to Amend its Tariff by Bundling Its )  
 Tariff Rate and Offering an Alternative )  
 Unbundled Rate Via Special Contract )

Case No. 07-989-HT-ATA

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APPLICATION

Pursuant to Section 4909.18, Revised Code, Cleveland Thermal Steam Distribution, LLC ("Cleveland Thermal") respectfully applies for Commission approval to amend its tariff by bundling its tariff rate and by offering an alternative unbundled rate via special contract. In support of its application, Cleveland Thermal states as follows:

1. Cleveland Thermal is a public utility and heating or cooling company pursuant to Sections 4905.02 and 4905.03(A)(a)(9), Revised Code. Cleveland Thermal is in the business of supplying steam through pipes or tubing to consumers within the downtown area of Cleveland, Ohio for heating purposes.
2. The Commission has jurisdiction over Cleveland Thermal.
3. Cleveland Thermal has a tariff on file with the Commission, PUCO No. 1, which has been approved by the Commission.
4. Cleveland Thermal's tariff contains a multi-block declining base rate and a fuel adjustment clause.
5. By this application, Cleveland Thermal seeks to combine its base rate with the fuel adjustment clause rate into a single bundled rate applicable to all tariff customers who elect to purchase steam service under a bundled rate tariff. The bundling of this rate has been

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done in such a manner so as to not impose any rate increase on tariff customers. Thus, this application is not for an increase in rates.

6. At the same time that the bundled rate would become effective, Cleveland Thermal proposes to eliminate its fuel adjustment clause, Sheet 16.

7. The proposed bundling is just and reasonable because it gives customers the ability to have a stable rate which will not vary in any month.

8. However, some customers may wish to purchase steam under an unbundled rate arrangement whereby base rates are fixed as they are now but that the customer would pay for the actual cost of fuel which would track historical costs and would be adjusted monthly.

9. Cleveland Thermal proposes that its tariff be amended to allow customers to have the option of purchasing steam under a special contract where the base rate is unbundled from the fuel charge and customers pay a base rate charge plus a fuel charge which can vary monthly. A multiplier of 1.0498 will be applied to both the base rate and the fuel charge in order to recover Ohio gross receipts tax liability. This alternative unbundled rate option will be provided to all customers who elect a special contract that will be submitted to the Commission for approval pursuant to Section 4905.31, Revised Code.

10. Providing both a bundled rate and an alternative unbundled rate option to customers is just, reasonable, consistent with the energy policy of this state, and is consistent with the principle of stable energy prices contained in Governor Strickland's recently announced energy policy.

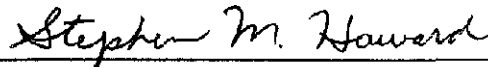
11. In order to coordinate these changes and allow all customers to take advantage of these proposals, Cleveland Thermal proposes that its proposed tariff sheets become

effective on March 31, 2008. This will allow time for Cleveland Thermal to conduct face to face meetings with customers to explain these options.

12. Attached to this application are Exhibit A (Current Affected Tariff Sheets), Exhibit B (Proposed Tariff Sheets), Exhibit C (Narrative Rationale for Amendments), and Exhibit D (Verification Sheets). Cleveland Thermal submits that its application is just and reasonable and that the Commission will find that the proposal does not appear to be unjust or unreasonable. Thus, Cleveland Thermal requests that the Commission approve this Application without a hearing.

WHEREFORE, Cleveland Thermal respectfully asks that the Commission approve its Application and approve the tariff sheets contained in Exhibit B to this Application to become effective on March 31, 2008.

Respectfully submitted,



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**EXHIBIT A**  
**(Current Tariff Sheets Affected)**

P.U.C.O. NO. 1  
STEAM SERVICE

## GENERAL SERVICE SCHEDULE

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Applicable to any Consumer, public or private, using steam service in the City of Cleveland, Ohio.

**RATES:** (a) Base

The base rate shall be set at 1.10 times the authorized block rates contained in the Standard Contract after the Standard Contract rates are adjusted for the Gross Receipts Tax and the "tax on tax" effect. A copy of the current Standard Contract is attached as Appendix A to this tariff.

The current base rates are:

First 250 MLBs	\$12.41	per MLB
Next 250 MLBs	\$10.80	per MLB
Next 500 MLBs	\$10.10	per MLB
Next 2,000 MLBs	\$ 9.41	per MLB
Next 2,000 MLBs	\$ 8.37	per MLB
All excess over 5,000 MLBs	\$ 6.12	per MLB

If and when the Commission authorizes a change in the rates for a Standard Contract Consumer, the Company, pursuant to Section 4905.31, Revised Code, will file an updated General Service Schedule (Sheet No. 10) which will supersede this tariff sheet and will conform the tariff rates to the level established by the process set forth on Sheet 3.1 of this tariff.

(b) Fuel

The above rates shall be increased or decreased in accordance with the provisions of the FUEL ADJUSTMENT RIDER, Sheet No. 17, or subsequent revision thereof.

**MINIMUM CHARGE:**

The minimum monthly charge for any Consumer served under this schedule during the heating season (i.e., October 1 to May 31) shall be \$300.00.

**SPECIAL RULES:****1. OPEN JET SERVICE**

- (a) The estimated steam consumption of a steam jet shall be considered to be the same as metered consumption and such consumption shall be combined with the Consumer's metered registrations (if any) for billing purposes.

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Issued: February 18, 2005

Effective: February 18, 2005

Filed under authority of the Finding and Order in Case No. 04-1179-HT-UNC  
of the Public Utilities Commission of Ohio dated September 1, 2004

Issued by  
Cleveland Thermal Steam Distribution, LLC  
Marc G. Davis, President

P.U.C.O. NO. 1  
STEAM SERVICE

FUEL ADJUSTMENT RIDER SCHEDULE

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The weighted average cost of fuel burned for central steam service for each month shall be ascertained by the Company and filed monthly with the Public Utilities Commission of Ohio. The rates in each of the Company's steam schedules in which this Rider is applicable shall be increased for such month by \$0.00225 per 1,000 pounds of steam for each full 0.1¢ of the cost of fuel per million Btu.

The weighted average cost of fuel as used in the above shall include all direct costs incurred by the Company to place coal or oil as the case may be, at the point of burning in the boilers at plants in which steam is generated for sale under this tariff.

This schedule shall not affect those contracts between the Company and its customers existing on the effective date of this tariff.

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Issued: February 18, 2005

Effective: February 18, 2005

Filed under authority of the Finding and Order in Case No. 04-1179-HT-UNC  
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Issued by  
Cleveland Thermal Steam Distribution, LLC  
Marc G. Davis, President

## **EXHIBIT B**

**(Proposed Tariff Sheets)**

## Cleveland Thermal Steam Distribution, LLC

P.U.C.O. NO. 1  
STEAM SERVICEGENERAL SERVICE BUNDLED RATE SCHEDULE

~~Applicable Available~~ to any Consumer, public or private, ~~using who elects to purchase steam service in the City of Cleveland, Ohio, on a bundled basis under tariff.~~

RATES: (a) BaseBundled Rate

The base rate shall be set at 1.10 times the authorized block rates contained in the Standard Contract after the Standard Contract rates are adjusted for the Gross Receipts Tax and the "tax on tax" effect. A copy of the current Standard Contract is attached as Appendix A to this tariff.

The current ~~base-bundled rates~~, which include fuel expense and are "grossed up" for the effects of the gross receipts tax, are:

First 250 MLBs	<del>\$12.44</del> <u>22.30</u>	per MLB
Next 250 MLBs	<del>\$10.80</del> <u>20.55</u>	per MLB
Next 500 MLBs	<del>\$10.10</del> <u>19.81</u>	per MLB
Next 2,000 MLBs	<del>\$ 9.41</del> <u>19.07</u>	per MLB
Next 2,000 MLBs	<del>\$ 8.37</del> <u>17.94</u>	per MLB
All excess over 5,000 MLBs	<del>\$ 6.12</del> <u>15.49</u>	per MLB

If and when the Commission authorizes a change in the rates for a Standard Contract Consumer, the Company, pursuant to Section 4905.31, Revised Code, will file an updated General Service Schedule (Sheet No. 10) which will supersede this tariff sheet and will conform the tariff rates to the level established by the process set forth on Sheet ~~3.14~~ of this tariff.

(b) Fuel

The above bundled rates shall be increased or decreased in accordance with the provisions of the ~~FUEL ADJUSTMENT RIDER, Sheet No. 17, or subsequent revision thereof~~include the recovery of fuel expense.

## MINIMUM CHARGE:

The minimum monthly charge for any Consumer served under this schedule during the heating season (i.e., October 1 to May 31) shall be \$300.00.

## SPECIAL RULES:

## 1. OPEN JET SERVICE

- (a) The estimated steam consumption of a steam jet shall be considered to be the same as metered consumption and such consumption shall be combined with the Consumer's metered registrations (if any) for billing purposes.

Issued: ~~February 18, 2005~~September 6, 2007

Effective: ~~February 18, 2005~~March 31, 2008

Filed under authority of the Finding and Order in Case No. 04-1170-HT-UNC07-~~989-HT-ATA~~  
of the Public Utilities Commission of Ohio dated September 1, 2004

Issued by  
Cleveland Thermal Steam Distribution, LLC  
Marc G. Divis, President

P.U.C.O. NO. 1  
STEAM SERVICE

ALTERNATIVE UNBUNDLED RATE OPTION STEAM SERVICE VIA SPECIAL CONTRACT

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Available to any Consumer, public or private, who elects to purchase steam service on an unbundled basis where the base rate and the fuel charge are separate and the fuel charge is adjusted monthly. Consumers may purchase steam service under an Alternative Unbundled Rate Option Steam Service under an special contract Agreement which has been approved by the Commission and the form of which is attached as Appendix B to this tariff.

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Issued: ~~February 18, 2005~~ September 6, 2007

Effective: ~~February 18, 2005~~ March 31, 2008

Filed under authority of the Finding and Order in Case No. ~~04-1170-HT-UNC07~~ 989-HT-ATA  
of the Public Utilities Commission of Ohio dated September 1, 2004

Issued by  
Cleveland Thermal Steam Distribution, LLC  
Marc G. Divis, President

P.U.C.O. NO. 1  
STEAM SERVICE

FUEL ADJUSTMENT RIDER SCHEDULE

~~The weighted average cost of fuel burned for central steam service for each month shall be ascertained by the Company and filed monthly with the Public Utilities Commission of Ohio. The rates in each of the Company's steam schedules in which this Rider is applicable shall be increased for such month by \$0.00225 per 1,000 pounds of steam for each full 0.1¢ of the cost of fuel per million Btu.~~

~~The weighted average cost of fuel as used in the above shall include all direct costs incurred by the Company to place coal or oil as the case may be, at the point of burning in the boilers at plants in which steam is generated for sale under this tariff.~~

~~This schedule shall not affect those contracts between the Company and its customers existing on the effective date of this tariff.~~

~~Provisions formerly shown herein are hereby canceled.~~

Issued: ~~February 18, 2005~~ September 6, 2007

Effective: ~~February 18, 2005~~ March 31, 2008

Filed under authority of the Finding and Order in Case No. ~~04-1179-HT-UNC07-989-HT-ATA~~  
of the Public Utilities Commission of Ohio dated ~~September 1, 2004~~ \_\_\_\_\_

Issued by  
Cleveland Thermal Steam Distribution, LLC  
Marc G. Divis, President

## ALTERNATIVE UNBUNDLED RATE OPTION STEAM SERVICE AGREEMENT

This Alternative Unbundled Rate Option Steam Service Agreement (the "Agreement") is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 2007 between **CLEVELAND THERMAL STEAM DISTRIBUTION, LLC** ("CTSD") and \_\_\_\_\_ ("Customer"), located at \_\_\_\_\_, and sets forth the terms and conditions pursuant to which CTSD will provide steam utility service to Customer and Customer will use that service for space heating, process, and/or cooling purposes in its Premises.

WHEREAS, CTSD is a public utility steam company providing utility steam service to premises located within the City of Cleveland, Ohio, under contracts and approved tariffs with the Public Utilities Commission of Ohio ("PUCO");

WHEREAS, Customer desires to use CTSD's alternative unbundled steam rate option service for Customer's heating and/or cooling purposes at its premises and CTSD intends to provide such services for such purposes to Customer;

WHEREAS, CTSD and the Customer recognize the benefits of having customers committed to the steam utility and the Customer is willing to use and pay for steam utility service in an alternative unbundled rate option steam service agreement in accordance with the terms and conditions set forth in this Agreement;

NOW, THEREFORE, in consideration of the mutual promises herein set forth, the parties agree as follows:

1. Service. CTSD will provide to Customer, and Customer will use, CTSD's steam utility service for Customer's heating, process, and/or cooling purposes at its premises throughout the terms specified in Paragraph 2.
2. Term. CTSD will provide and Customer will use steam utility services for its premises. This Agreement shall commence on \_\_\_\_\_ (the "Effective Date") and shall continue on a month to month basis unless earlier terminated by either party pursuant to Paragraphs 7 and 8 hereof.
3. Premises. This Agreement relates to the provision of alternative unbundled rate option steam utility service to the Premises identified in the initial paragraph hereof. Those Premises may be added to by mutual agreement of the parties. Any such addition shall be set forth in a new schedule to be executed by both parties and attached to this Agreement.
4. Sole Source of Heating and Energy and Steam Service. The alternative unbundled rate option steam service provided by CTSD shall be the sole source of

Customer's heating energy requirements for the Premises and the sole source of steam service to the Premises throughout the term of this Agreement.

5. Charges. The Customer shall pay CTSD an amount per 1000 pounds of steam ("Mlb.") delivered under this Agreement equal to the sum of:

- a) The "Base Rate for Steam Heating Service" (set forth in Paragraph 5A); plus
- b) The "Fuel Charge", adjusted monthly (set forth in Paragraph 5B), plus
- c) The "Tax Rider" (set forth in Paragraph 5C).

A. Base Rates. The Base Rate shall be set at 1.10 times the authorized block rates contained in the Standard Contract after the Standard Contract rates are adjusted for the Ohio gross receipts tax and the "tax on tax" effect. A copy of the current Standard Contract is attached as Appendix A to the tariff. The Base Rate for Steam Heating Service shall be a declining block rate per 1000 pounds of steam based on the amount of steam utility service used by the Customer during each billing month, determined as follows:

BASE RATES PER MLB. OF STEAM

First 250 Mlbs. per Mlb.	\$13.333
Next 250 Mlbs. per Mlb.	\$11.586
Next 500 Mlbs. per Mlb.	\$10.846
Next 2,000 Mlbs. per Mlb.	\$10.106
Next 2,000 Mlbs. per Mlb.	\$ 8.976
All excess over 5,000 Mlbs. per Mlb.	\$ 6.526

The base rate per Mlb. of steam reflected above for each of the usage blocks set forth above will be increased on April 1, 2008 by 3%. On January 1, 2009, the base rates for Mlb. of steam will be increased by 3%. On January 1, 2010, the base rates per Mlb. of steam will be increased by 3%. On January 1, 2011, the base rates per Mlb. of steam will be increased by 3%. On January 1, 2012, the base rates per Mlb. of steam will be increased by 4.5%.

B. Fuel Charge. In addition to the base rate, CTSD will ascertain the weighted average cost of fuel and related costs for steam service on a monthly basis. The fuel charge will be calculated on a monthly basis by multiplying \$0.00225 per Mlb. of steam for each full \$.01 of the cost of fuel and related costs per million Btu. The weighted average cost of fuel as used above shall include all direct costs incurred by CTSD to place fuel at the point of burning in the boilers and removal of the fuel byproducts from the boilers at

plants in which steam is generated for sale under this contract. Thus, each month the fuel charge per Mlb. may vary.

- C. Tax Rider. The current applicable Ohio gross receipts tax is 4.75%. The Customer's rates and charges under Paragraphs 5A and 5B above shall be increased by multiplying a factor of 1.0498 surcharge to recover the Ohio gross receipts tax and the "tax on tax" effect. There is currently no other tax, fee, levy, surcharge or similar cost imposed on the amount of steam sold to or consumed by the Customer. If any other tax, fee, levy, surcharge, or similar cost is imposed on the CTSD or Customer during this Agreement, the base rates and the fuel charge will not be adjusted to alter Customer's charges, nor will the Customer be assessed any such tax, fee, levy, surcharge or similar cost, provided, however, that such other tax, fee, levy, surcharge or similar cost, if intended by the applicable governmental entity to be imposed upon and paid by the Customer based upon Customer's consumption or usage of steam, will be assessed to Customer based upon the Customer's consumption or usage of steam, will be assessed to the Customer to the extent required under state law. If any other tax, fee, levy, surcharge or similar costs is imposed upon the Customer and is required under state law to be paid directly by the Customer, CTSD shall reimburse such amount to the Customer on the Customer's monthly bill as such amounts are assessed to the Customer.
6. Rate Ceiling. Notwithstanding anything contained in Paragraph 5 of this Agreement to the contrary, it is agreed that the rates charged for steam service shall in no event exceed the PUCO approved tariff rates during the term of this Agreement.
7. Termination Charges. This month to month agreement may be terminated by Customer and by CTSD at no cost or expense by providing the other with 60 days' prior written notice to the other party by certified mail.
8. Termination.
- a. The Customer and CTSD shall both have the right to terminate this agreement with 60 days' written notice to the other via certified mail.
  - b. If Customer fails to pay any charges properly billed to Customer by CTSD within a thirty (30)-day period or fails to perform any of Customer's obligations to CTSD, CTSD shall have the right to discontinue its service upon thirty (30) days' written notice to Customer; provided, however, that in the case of a payment default, Customer may avoid termination by bringing its account current prior to the expiration of said thirty (30)-day notice period. In the event that CTSD discontinues service to Customer

pursuant to this Paragraph 8, CTSD reserves the right to seek damages from Customer to compensate CTSD for all losses, costs, expenses and damages suffered by CTSD as a result of Customer's breach of this Agreement.

- c. If the rights and privileges that CTSD now has or may obtain, without additional cost to it, in and through any premises, streets, avenues, alleys or places public or private, are withdrawn or are not obtained; if any governmental authority essential for the furnishing by CTSD of steam service substantially as required under the provisions of this Agreement is withdrawn; if any governmental authority enforces any rule or regulation that prevents CTSD from furnishing steam service substantially as required under the provisions of this Agreement; or if PUCO, any other governmental authority, or any court of competent jurisdiction disapproves or materially changes, alters, or modifies this Agreement, then CTSD shall have the right to discontinue the supply of steam and terminate this Agreement forthwith. CTSD will provide notice to Customer of any termination of the Agreement under this Paragraph 8.b as promptly as practicable.
- d. Upon termination of the Agreement under Paragraphs 7 and/or 8, CTSD shall have the right to enter the Premises and remove all of CTSD's equipment, including without limitation, all meters installed therein.

Miscellaneous.

- 9. CTSD's standard rules and regulations for steam service as in effect during the term of this Agreement shall be applicable to the provision of steam service under this Agreement and are incorporated herein by this reference.
- 10. CTSD shall install and maintain such meters as may be required to determine the quantity and rate of taking of steam which is supplied by CTSD. Such meters shall be installed and maintained upon the Premises at a point or points most convenient for CTSD's service. Steam meters in use may be tested at the request of Customer in its presence if desired by it with a tested and sealed meter-tester by an officer or employee of CTSD. If the meter is found to be accurate within three percent (3%), Customer requesting the inspection shall pay CTSD for the expense of removing it for the purpose of being tested. The fact of reinspection shall be stamped and dated upon the meter. If the meter is proved inaccurate by more than three percent (3%), no fees or expense shall be paid by Customer and CTSD shall furnish a new meter or repair the existing meter without charge to Customer. If CTSD maintains more than one meter or set of meters for the Premises, the steam service metered through each such meter may be billed separately as CTSD determines; provided, however, that such bills shall be aggregated for the purpose of determining all charges under this Agreement.

11. CTSD shall render bills on a monthly basis unless CTSD determines that a different billing period is necessary or convenient. All bills shall be due and payable upon presentation. If CTSD has not received payment on any bill within thirty (30) days from the date thereof, interest shall accrue on the unpaid balance on a daily basis at the rate of one and one half percent per month from the date of the bill until the date of payment.
12. In the event Customer has failed to make payment on any bills within thirty days (30) from date thereof on two or more occasions in any calendar year, CTSD may thereafter require a cash deposit in an amount not in excess of 1-12th of the estimated charges for all steam for the ensuing twelve (12) months, plus fifty percent of the monthly estimated charge. CTSD shall accrue and pay interest at the annual rate of four percent (4%) on deposits held more than one hundred eighty (180) days and shall: (a) refund such deposit including interest accrued to date to Customer if it has paid all bills for service for twelve (12) consecutive months without having had service discontinued for nonpayment of its bill and without having had more than two (2) occasions on which his bill was not paid by the time specified by the regulations of CTSD regarding prompt payment of bills and Customer is not then delinquent in the payment of his bills; or (b) promptly apply Customer's deposit, including interest accrued to date, to the final bill for service upon termination or discontinuance of service. If after twelve (12) consecutive months Customer has not paid its bill on time on three (3) or more occasions, or Customer is delinquent at any time, or Customer's service has been discontinued for non-payment of service, CTSD shall retain the deposit for another twelve (12) months, accruing interest during that time, and shall reevaluate Customer's status again at the end of a second twelve (12)-month period. Any remaining deposit in excess of the final bill for service shall be promptly refunded or credited to the Customer. If Customer cannot be located, any unclaimed deposit, plus accrued interest, shall be disposed of in conformity with Chapter 169 of the Ohio Revised Code.
13. CTSD shall furnish and install a service valve on the Premises and shall have permission to install additional service pipes on the Premises, and with prior review and customer approval of designated pipe locations, through the walls of Customer's building to serve other customers of CTSD. CTSD shall make any such installation entirely at its own expense and will indemnify Customer for any damage done to the Premises on account of making such installation. Upon termination of this Agreement, CTSD shall remove such service pipes and restore the Premises if required by Customer.
14. CTSD reserves the right, upon reasonable advance notice to Customer, to interrupt the supply of steam to enable CTSD to make any necessary repairs or connections to its system or mains. In general, CTSD will give Customer twenty-four (24) hours advance notice. In the event of an emergency, CTSD will give Customer as much advance notice as practical.

15. CTSD will endeavor at all times to provide a regular and uninterrupted supply of service throughout the year on a twenty-four-hour-a-day basis except as interruptions may be required to make any necessary repairs or connections to its system or mains, but CTSD does not warrant or guarantee uninterrupted service, and shall not be liable for any special, direct, indirect or consequential damages relating to or arising from an interruption in service including, without limitation, damages for lost rents or lost profits. In the event of any interruption of service, both parties shall be prompt and diligent in attempting to remove and overcome the cause of the interruption, and nothing contained herein shall be construed as permitting CTSD to refuse to deliver, or Customer to refuse to accept, steam service after the cause of interruption has been removed.
16. Subject to the limitation on the liability of CTSD for interruptions in the delivery of steam service as provided in Paragraph 18 CTSD agrees to indemnify and hold Customer harmless against any loss, damage, expense (including reasonable attorney's fees), or claim for personal injury, death, property damage, or otherwise arising from or incidental to the sale and delivery of steam service to the Premises pursuant to this Agreement, to the extent such loss, damage, expense, or claim is caused by the negligence of CTSD, its employees, and agents. Customer agrees to indemnify and hold CTSD, its employees, and agents harmless from any loss, damage, expense (including reasonable attorney's fees), or claim for personal injury, death, property damage, or otherwise arising from or incidental to the sale and delivery of steam service pursuant to this Agreement, to the extent such loss, damage, expense, or claim is caused by the negligence of Customer, its employees, or agents. Customer agrees to pay CTSD for any repairs to or loss of CTSD's personal property or fixtures in the Premises when such repairs are necessitated, or loss occasioned, by negligence on the part of Customer, its agents, tenants, employees, or invitees, or by its failure to comply with the aforementioned rules and regulations.
17. Customer hereby grants CTSD permission to enter the Premises during normal business hours, with prior notification (but subject to Customer's security procedures), for the purpose of inspecting and keeping in repair or removing any or all of its apparatus used in connection with the supply of steam, and Customer hereby authorizes and requests Customer's landlord, if any, to permit CTSD to enter Premises for that purpose.
18. Customer shall not supply steam to anyone or allow anyone to take steam from its system, except for use on the Premises.
19. Customer shall provide and connect suitable cooling equipment to cool the condensate before discharging the condensate to the condensation meter or sewer if the temperature of the condensate would otherwise exceed the temperature allowed by local code.
20. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns; provided, however, that the Customer shall not

be relieved of liability in the event of an assignment of this Agreement except as set forth below. In the event Customer (i) conveys fee title to the Premises to a third party and (ii) assigns its interest in this Agreement to the same third party and if that third party executes a written agreement in a form reasonably satisfactory to CTSD (wherein such third party assumes and agrees to keep and perform promptly all of the Customer's obligations under this Agreement to be kept and performed from and after the date of assignment), and provides evidence reasonably satisfactory to CTSD of its financial ability to discharge the obligations of this Agreement, then Customer shall be relieved of all its obligations under this Agreement not having theretofore accrued. Notwithstanding any other provision of this Agreement, CTSD and Customer agree that CTSD's performance under this Agreement shall be solely for the benefit of Customer. This Agreement shall not be construed as to confer any rights of a third party beneficiary upon any person or entity.

21. No failure or delay on the part of either party hereto in exercising any right, power, or remedy hereunder shall operate as a waiver thereof, nor shall any single or partial exercise of any such right, power, or remedy preclude any other or further exercise thereof or the exercise of any other right, power, or remedy hereunder. The remedies herein are cumulative and not exclusive of any remedies provided by law.
22. Any claim or dispute involving an amount in controversy less than \$200,000 that arises out of or is related to this Agreement or any breach thereof shall be resolved by mutually agreeable alternative dispute resolution techniques, or arbitration and the rules of the American Arbitration Association shall apply. Any judgment upon the award rendered by the arbitrators may be entered in any court having jurisdiction thereof. Reasonable discovery shall be permitted in any such arbitration subject to the control of the arbitrators and shall include, but not be limited to, depositions of the parties and production of documents. Claims or disputes involving an amount in controversy in excess of \$200,000 may be resolved by arbitration only at the election of the parties at the time of the dispute
23. System changes or modifications as mandated by any governmental authority or insurance company, are not a part of this service agreement. In the event that CTSD must incur significant financial costs to comply with such requirements, a prorated amount of the total expense will be applied to each Mlb. of steam sold over a reasonable period.
24. Notices, requests, demands, statements, billings or other matters which CTSD or Customer desire or are required to provide to each other shall be in writing, where possible, and shall be considered as delivered when mailed post-paid and addressed as follows:

**CTSD:**

Cleveland Thermal Steam Distribution, LLC

1921 Hamilton Avenue  
Cleveland, Ohio 44114  
Attention: General Manager  
(216) 241-3720

**CUSTOMER:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

25. CTSD, at its sole cost and expense, shall make such filings for approval with the PUCO as may be required in connection with this Agreement, and shall use its best efforts to secure such approval.
26. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

**CLEVELAND THERMAL STEAM DISTRIBUTION, LLC**

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Date

**CUSTOMER**

By: \_\_\_\_\_

\_\_\_\_\_  
Printed Name & Title

\_\_\_\_\_  
Date

## Schedule A

## EXHIBIT C

### (Narrative Rationale)

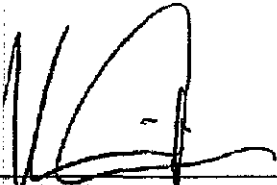
By this application to amend its tariff, Cleveland Thermal Steam Distribution, LLC is providing two rate options to customers. The first rate option is a bundled rate option under tariff that offers a stable rate. This rate would recover both fuel and non-fuel related expenses. The second rate option is an alternative unbundled rate option which allows customers to pay a three part rate under a special contract. The special contract would have an unbundled rate which would allow customers to purchase steam and pay a base rate and also pay a fuel charge which would vary monthly. The fuel charge would track actual fuel costs. A multiplier of 1.04980 would also be applied in order to recover Ohio gross receipts tax liability. This proposal is just and reasonable as it will not impose a rate increase on customers and will afford a choice to customers. Some customers may prefer a stable bundled rate (First Revised Sheet 12) which can be purchased through the tariff. Other customers may prefer an unbundled rate which can be accomplished through a special contract (Original Sheet 14.1) and the Alternative Unbundled Rate Option Steam Service Agreement (Attachment B).

**EXHIBIT D**  
**(Verification Sheets)**

VERIFICATION

County of Cuyahoga )  
                                  ) ss:  
State of Ohio            )

I, Marc Divis, being first duly sworn, declare that I am the President of Cleveland Thermal Steam Distribution, LLC, that I have read the foregoing application and exhibits, and declare under oath that the information contained therein is true and accurate to the best of my knowledge and belief.

  
\_\_\_\_\_  
Marc Divis

Sworn and subscribed before me and in my presence this 6<sup>th</sup> day of September,  
2007.

  
\_\_\_\_\_  
Notary Public  
CHRISTINE PAYNE  
Notary Public, State of Ohio  
My Commission Expires 10-18-2009

VERIFICATION

County of Cuyahoga )  
                                  ) ss:  
State of Ohio                )

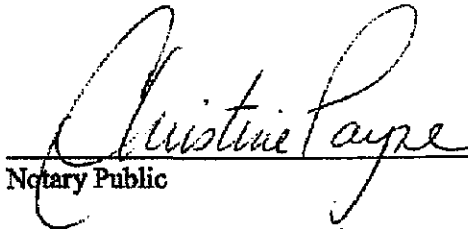
I, Linda Atkins, being first duly sworn, declare that I am the Chief Financial Officer of Cleveland Thermal Steam Distribution, LLC and that I have read the foregoing application and exhibits and verify that the information contained therein is true and accurate to the best of my knowledge and belief.



Linda Atkins

Sworn and subscribed before me and in my presence this 16<sup>th</sup> day of September,

2007.

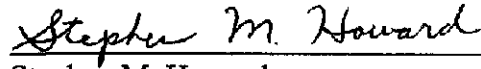


Notary Public

CHRISTINE PAYNE  
Notary Public, State of Ohio  
My Commission Expires 10-18-2009

### **CERTIFICATE OF SERVICE**

I certify that a copy of this Application and Exhibits was served upon Emily Lipovan, City Clerk and Clerk of Council, 601 Lakeside Avenue, Room 220, Cleveland, Ohio 44114; and upon Robert J. Triozzi, Director of Law, City Hall, 601 Lakeside Avenue, E., Cleveland, Ohio 44114, by first-class U.S. mail, postage pre-paid, this 6<sup>th</sup> day of September, 2007.

  
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Stephen M. Howard