



McNees
Wallace & Nurick LLC

RECEIVED-DOCKETING DIV

2010 JAN 25 PM 5:11

21 East State Street • Columbus, OH 43215-4228
Tel: 614.469.8000 • Fax: 614.469.4653

PUCO

Gretchen J. Hummel
(614) 719-2841-Direct Dial
ghummel@mwncmh.com

January 25, 2010

This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business
Technician DNM Date Processed 01-26-10

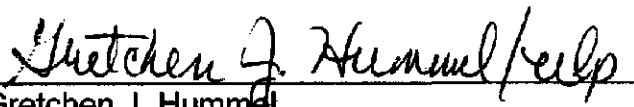
Renee Jenkins
Secretary, Docketing Division
Public Utilities Commission of Ohio
180 East Broad Street
Columbus, Ohio 43215

Re: Case 10-85-I-HT-AEC

Dear Secretary Jenkins:

Pursuant to the Commission's February 23, 2005 Finding and Order in Case No. 04-255-HT-AEC, Cleveland Thermal Steam Distribution, LLC hereby files a New Load Steam Service Agreement with 700 Prospect Corporation located at 700 Prospect Avenue, Cleveland, Ohio 44115. This agreement is similar to the New Load Service Agreements filed previously in this case.

Very truly yours,


Gretchen J. Hummel
Attorney for Cleveland Thermal Steam
Distribution, LLC

GJH:vlp

Enclosure

cc: Ms. Kathy L. Houston, Treasurer, 700 Prospect Corporation
Steve Puican, Co-Chief, Rates & Tariffs/Energy & Water Division,
Utilities Department

www.mwn.com

HARRISBURG, PA • LANCASTER, PA • STATE COLLEGE, PA • HAZLETON, PA • COLUMBUS, OH • WASHINGTON, DC

NEW LOAD STEAM SERVICE AGREEMENT

This Steam Service Agreement (the "Agreement") is made and entered into as of the **December 22, 2009** between **CLEVELAND THERMAL STEAM DISTRIBUTION, LLC** ("Company") and the **700 Prospect Corp.** ("Customer"), located at **700 Prospect Avenue, Cleveland, Ohio**, and sets forth the terms and conditions pursuant to which Company will provide steam utility service to Customer and Customer will use that service for space heating and process purposes in the premises.

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

WHEREAS, Customer desires to use Company's steam utility service for Customer's heating purposes at the Premises and Company intends to provide such service for such purposes to Customer;

WHEREAS, Company and Customer recognize the benefits of having customers committed to the steam utility and Customer is willing to use and pay for steam utility service in accordance with the terms and conditions set forth in this Agreement.

NOW, THEREFORE, in consideration of the mutual promises hereinafter set forth, and subject to the terms and provisions of the Agreement, the parties agree as follows:

1. **Service.** Company will provide to Customer, and Customer will use, Company's steam utility service for Customer's heating and process purposes at the Premises throughout the term specified in Paragraph 2.
2. **Term.** The term during which Company will provide and Customer will use is December 31, 2009 (the "Effective Date") and, unless earlier terminated by either party pursuant to Paragraph 9 and/or 10 hereof, shall continue thereafter until December 31, 2014. This agreement may be renewed for an additional five year period unless notice is given by either party at least three (3) months prior to December 31, 2014.
3. **Premises.** This Agreement relates to the provision of steam utility service to the Premises identified in the initial Paragraph hereof. Other 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 Energy and Steam Service.** The utility steam service provided by Company shall be the sole source of Customer's space heating and domestic hot water energy requirements for the Premises and the sole source of steam service to the Premises throughout the term of this Agreement.

5. Charges. Customer shall pay Company 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 6), plus
 - b) the "Fuel Adjustment Charge" (set forth in Paragraph 7), plus
 - c) the "Tax Rider" (set forth in Paragraph 8).

Base Rates.

6. Steam Heating Service. The Base Rate for Steam Heating Service shall be the rate which is below.

RATES PER MLB. OF STEAM

Effective
01/01/09

The first 250 Mlbs.	\$12.65 per Mlb
The next 250 Mlbs.	\$10.99 per Mlb
The next 500 Mlbs.	\$ 10.28 per Mlb
The next 2,000 Mlbs.	\$ 9.57 per Mlb
The next 2,000 Mlbs	\$ 8.51 per Mlb
All excess over 5,000 Mlbs.	\$ 6.20 per Mlb

The rate per 1,000 pounds of steam reflected in Paragraph 6 above for each of the usage blocks set forth above will be increased on January 1, 2010 by 3%, and on January 1st of each year thereafter; in year two the increase will be 3%, and in year two 3%, plus 1 ½%, rounded to two decimal places. After the second year or December 31, 2011, the Standard Steam Service Rate or its equivalent will be charged.

- (i) New Load Steam Heating Service. The Base Rate for Steam Heating Service will be the current Standard Steam Service Rate or its equivalent, a copy of which is included in this document, multiplied by a "Multiplier", which in the initial year shall be 85%. The Multiplier shall be increased by 5% per year up to maximum of 100%.
7. Fuel Adjustment Rider. Company shall ascertain the weighted average cost of fuels burned by Company for steam utility service for each month (including all direct costs incurred by Company to place fuel at the point of burning in the boilers at plants in which steam is generated for sale under this Agreement) and will file that cost (expressed as cents per million BTU) with PUCO on a monthly basis. The Customer's rates shall be increased each month by applying the AVERAGE, fuel adjustment rider schedule ratio (contained in

(contained in Sheet 16 of the PUCO approved tariffs of Company) for each full 0.1¢ of the monthly cost of fuel per million BTU. Notwithstanding anything contained in this paragraph or in any PUCO approved tariff, the monthly fuel adjustment rider may also include a portion of the Customers' individual fuel account balance as of the date of this Agreement.

8. Taxes & Other Impositions.

- a. **Gross Receipts Tax.** For so long as the State of Ohio or any other taxing authority or authorities impose or assess a tax on Company's gross receipts, the Customer's rates and charges under Paragraphs 6 and 7 above shall be increased by an amount equal to the total rate of the gross receipts tax(es) imposed or assessed by all such taxing authorities multiplied by the total of such charges.
 - b. **Other Impositions.** In the event that any tax, fee, levy, surcharge, imposition or similar charge (other than a gross receipts tax as referred to in subparagraph A above) is imposed or assessed by any taxing authority on Company or Customer (but only to the extent that such charge is required to be collected by Company from Customer and remitted to such taxing authority), which tax or other charge is identifiable to, or measured by, Customer's use, consumption or purchase of Company's products or services (or the sale thereof by Company to Customer), the Customer's rates and charges under Paragraphs 6 and 7 above shall be increased by an amount equal to the amount necessary for Company to recover such charge(s) imposed or assessed on Company or which it is responsible to collect.
 - c. **Direct Impositions on Customer.** In the event that any tax, fee, levy, surcharge, imposition or similar charge is imposed or assessed by any taxing authority directly on Customer, which tax or other charge is identifiable to, or measured by, Customer's use, consumption or purchase of Company's products or services (or the sale thereof by Company to Customer), Company shall have no obligation at any time to reimburse to Customer any such tax or other charge, or any portion thereof.
 - d. **Method of Payment.** Any charges imposed by Company on Customer pursuant to subparagraphs a. and b. above shall be included on Customer's monthly bill as such amounts are assessed to Customer.
9. Termination Charges. This Agreement may be terminated by Customer (a) at no cost or expense to Customer upon eighteen (18) months prior written notice to Company by certified mail, or (b) upon less than eighteen (18) months notice by payment upon effective date of termination of a lump sum amount which shall be equal to the following:

- (A) The total of the last twelve (12) months steam usage by Customer in Mlbs. multiplied by \$8.00 per Mlb.,

plus;

- (B) A disconnect charge equal to the sum of (i) all documented unamortized costs (as determined in accordance with Company's accounting procedures and reflected in its books and records for Customer) associated with originally connecting Customer to the central steam system and (ii) all costs incurred by Company in disconnecting such system from Customer's steam system.

Upon written request, given by Customer not more than twice during the term of this Agreement, Company shall furnish the amount of the unamortized cost described in Paragraph 9B)(i) above.

10. Termination.

- a. If Customer fails to pay any charges properly billed to Customer by Company within a thirty (30)-day period or fails to perform any of Customer's obligations to Company, Company 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 Company discontinues service to Customer pursuant to this Paragraph 10, Company reserves the right to seek damages from Customer to compensate Company for all losses, costs, expenses and damages suffered by Company as a result of Customer's breach of this Agreement.
- b. If the rights and privileges that Company 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 Company 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 Company 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 Company shall have the right to discontinue the supply of steam and terminate this Agreement forthwith. Company will provide notice to Customer of any termination of the Agreement under this Paragraph 10 as promptly as practicable.
- c. Upon termination of the Agreement under Paragraphs 9 and/or 10, Company shall have the right to enter the Premises and remove all of Company's equipment, including without limitation, all meters installed therein.

11. Rules and Regulations. Company'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.
12. Meter Installation, Maintenance and Testing. Company shall install and maintain such meters as may be required to determine the quantity and rate of taking of steam which is supplied by Company. Such meters shall be installed and maintained upon the Premises at a point or points most convenient for Company'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 Company. If the meter is found to be accurate within three percent (3%), Customer requesting the inspection shall pay Company 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 Company shall furnish a new meter or repair the existing meter without charge to Customer. If Company 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 Company determines; provided, however, that such bills shall be aggregated for the purpose of determining all charges under this Agreement.
13. Monthly Bills and Due Date. Company shall render bills on a monthly basis unless Company determines that a different billing period is necessary or convenient. All bills shall be due and payable upon presentation. If Company 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.
14. Failure to Make Timely Payments; Deposits. 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, Company 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. Company 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 Company 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, Company 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

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.

15. Service Valve Installation. Company 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 Company. Company 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, Company shall remove such service pipes and restore the Premises if required by Customer.
16. Notice of Interruption of Service. Company reserves the right, upon reasonable advance notice to Customer, to interrupt the supply of steam to enable Company to make any necessary repairs or connections to its system or mains. In general, Company will give Customer twenty-four (24) hours advance notice. In the event of an emergency, Company will give Customer as much advance notice as practical.
17. No Guarantee of Uninterrupted Service. Company 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 Company 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 Company to refuse to deliver, or Customer to refuse to accept, steam service after the cause of interruption has been removed.
18. Indemnification. Subject to the limitation on the liability of Company for interruptions in the delivery of steam service as provided in Paragraph 17 Company 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 Company, its employees, and agents. Customer agrees to indemnify and hold Company, 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 Company for any repairs to or loss of Company's personal property or fixtures in the Premises when such repairs are

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.

19. Permission for Company to Enter Premises. Customer hereby grants Company 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 Company to enter Premises for that purpose.
20. No Resale of Steam Service. Customer shall not supply steam to anyone or allow anyone to take steam from its system, except for use on the Premises.
21. Customer Provided Cooling Equipment. 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.
22. Assignment. This Agreement shall be binding upon and inure to the benefit of the parties' respective successors and assigns; provided, however, that neither party shall 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 Company (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 Company 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. Company may assign this Agreement upon giving not less than thirty (30) days prior written notice to Customer of its intent to make such assignment. Any such assignment shall relieve Company of all its obligations under this Agreement. Notwithstanding any other provision of this Agreement, Company and Customer agree that Company'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.
23. No Waiver for Failure or Delay to Exercise any Right. 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.

24. Arbitration. 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 arbitration in Cleveland, Ohio 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. Notice of demand for arbitration shall be in writing and served on the other party to the Agreement. A demand for arbitration shall be made within a reasonable time after the claim has arisen, and in no event shall be made after the expiration of this Agreement. 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 if mutually agreed to in writing by the parties at the time of the dispute
25. Governmental Authority or Insurance Company Mandated Changes or Modifications. 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 Company 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.
26. Notices. Notices, requests, demands, statements, billings or other matters which Company 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:

COMPANY

Cleveland Thermal Steam Distribution, LLC
1921 Hamilton Avenue
Cleveland, Ohio 44114
Attention: President
(216) 241-3636

CUSTOMER:

700 Prospect Corporation
700 Prospect Avenue
Cleveland, OH 44115
Attn: Business Manager for Property and Insurance

27. Regulatory Approval. Company, 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.

28. Ohio Law Governs This Agreement. This Agreement shall be governed by and construed in accordance with the laws of the State of Ohio.

CLEVELAND THERMAL STEAM DISTRIBUTION, LLC

By: _____

Marc G. Divis

Printed Name & Title

1/15/10

Date

CUSTOMER

By: _____

Name

Kathy L. Houston

Houston

Kathy L. Hariston, Treasurer

Printed Name & Title

December 22, 2009

Date

SCHEDULE A

AMENDMENT TO NEW LOAD STEAM SERVICE AGREEMENT

This Amendment ("Amendment") is dated **December 22, 2009** and amends the Steam Service Agreement dated the same between **the 700 Prospect Corp** ("Customer") and Company Cleveland Thermal, LLC, "Company". This Amendment will be attached to the Agreement as Schedule B.

Only those terms and conditions specifically amended below will supersede the existing terms and conditions of the Agreement. All other terms and conditions in the existing Agreement not inconsistent herewith will remain in full force and effect. Effective on the date of this executed Amendment.

29. Company agrees to provide up to \$50,000 toward the steam connection/conversion cost of the United Church of Christ Building located at 700 Prospect Avenue, Cleveland, Ohio. Company will provide the final connection/conversion cost to Customer within 90 days of the steam Service Commencement Date.

In the event this agreement is terminated prior to December 31, 2014, the unamortized portion of the final amount provided to Customer will be due. See sample schedule below.

Year one	\$ 50,000
Year two	\$ 40,000
Year three	\$ 30,000
Year four	\$ 20,000
Year five	\$ 10,000

Executed by:

700 Prospect Corp:

By: Kathy L. Houston (Name)

Treasurer _____ (Title)

Date: December 22, 2009

Cleveland Thermal Steam Distribution, LLC

By: Marc Divis (Name)

Marc Divis

President

(Title)

Date: 1/15/10