

**BEFORE THE
PUBLIC UTILITIES COMMISSION OF OHIO**

Manchester Realty, LLC,

Complainant,

v.

Cleveland Thermal Steam Distribution, LLC,

Respondent.

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)
)
)
)
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)
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)
)

Case No. 12-1161-HT-CSS

MOTION TO DISMISS AND MEMORANDUM IN SUPPORT

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September 17, 2012

**Attorneys for Cleveland Thermal Steam
Distribution, LLC**

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Manchester Realty, LLC,)	
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Complainant,)	
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v.)	Case No. 12-1161-HT-CSS
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Cleveland Thermal Steam Distribution, LLC,)	
)	
Respondent.)	

MOTION TO DISMISS

Now comes Cleveland Thermal Steam Distribution, LLC ("Cleveland Thermal") and, in accordance with Rule 4901-1-12, Ohio Administrative Code ("O.A.C."), respectfully requests that the Public Utilities Commission of Ohio ("Commission") dismiss this complaint filed by Manchester Realty, LLC ("Manchester" or "Complainant"), with prejudice, for the reasons set forth in the attached Memorandum in Support.

Respectfully submitted,

/s/ Gretchen J. Hummel
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MEMORANDUM IN SUPPORT

I. INTRODUCTION

Manchester filed its complaint ("Complaint") in this proceeding on April 4, 2012, and Cleveland Thermal filed its answer ("Answer") on April 16, 2012.

In its Complaint, Manchester has asserted that, because its fuel charges increased in the past several years and because Cleveland Thermal failed to provide monthly fuel cost information to the Commission, certain fuel charges billed to Manchester by Cleveland Thermal were unlawful and that, because Cleveland Thermal billed each of its buildings separately for service, Cleveland Thermal breached the service contract between it and Manchester.¹ Manchester has **not** alleged that Cleveland Thermal has failed to calculate and bill its fuel charges in compliance with the provisions of its tariff and special contract (as amended) approved by the Commission. In the face of known facts already found by the Commission and as demonstrated by documents provided to it in Cleveland Thermal's Answer and further attached hereto,

¹ Complaint at 2-4.

unsupported allegations that certain filing requirements have not been met and billing arrangements have not been followed do not constitute reasonable grounds for a complaint against Cleveland Thermal.

II. ARGUMENT

A. Manchester's Complaint does not state reasonable grounds for complaint as required by Section 4905.26, Revised Code.

- 1. Cleveland Thermal's fuel adjustment rider ("FAR") charges billed to Manchester were approved by the Commission, and Cleveland Thermal submitted its fuel information to the Commission monthly as required by tariff and special arrangement.**

Before a complaint filed pursuant to Section 4905.26, Revised Code, may be set for hearing, the Commission must first find that reasonable grounds have been stated for complaint.² If the alleged facts, even if true, do not set forth a cognizable claim, the complaint must be dismissed.³ In this case, Manchester complains that Cleveland Thermal's fuel charges are unreasonable, unlawful, and unjust.

Manchester states that the FAR charges "...leveled against Manchester Realty by Cleveland Thermal have increased dramatically over the past several years, thus forcing Manchester Realty to incur significant additional expenses..." and that "...the dramatic increase in FAR charges is unreasonable and reflects a lack of reasonableness and due diligence on the part of Cleveland Thermal in the procurement of its fuel for steam production."⁴ Manchester also claims that "...through April of 2011,

² Section 4905.26, Revised Code.

³ See, e.g., *Lucas Cty. Comm'nrs v. Pub. Util. Comm'n* (1997), 80 Ohio St.3d 344, 347, 686 N.E.2d 501.

⁴ Complaint at 2. In fact, Cleveland Thermal's FAR charges have been decreasing since 2008. Also, it should be noted that Cleveland Thermal is a distribution system which neither procures fuel nor produces steam. Fuel is procured by Cleveland Thermal's parent, Cleveland Thermal, LLC, which is then used by {C38667: }

... Cleveland Thermal has been in violation of a directive issued by the Commission ... by failing to submit records to the Commission on its fuel costs and procurement activities” and that because of “this failure ... the FAR charges should be held unlawful and contrary to the Orders issued to Cleveland Thermal.”⁵ Manchester does **not** claim that Cleveland Thermal failed to calculate the FAR charges consistent with the requirements of either the special contract (and amendment) pursuant to which Manchester received service prior to July 2011 or the tariff pursuant to which Manchester received service subsequent to July 2011.⁶

It is well-established Commission precedent that a complaint alleging that approved rates should not be charged fails to set forth reasonable grounds required under Section 4905.26, Revised Code, and must be dismissed.⁷ In this case, Cleveland Thermal's FAR rates billed to Manchester over the last several years were established by an approved special arrangement (and amendment) until July 2011 and by Cleveland Thermal's approved tariff since then. Manchester has not claimed that Cleveland Thermal has charged it the wrong FAR rates; it argues simply that it should not be charged the approved rates and, therefore, concludes that the rates it is being

Cleveland Thermal Generation, LLC to produce steam which is sold to Cleveland Thermal for distribution to end-use customers.

⁵ *Id.*

⁶ Manchester's steam service contract was approved by the Commission in Case No. 07-732-HT-AEC. Cleveland Thermal's tariff was approved by the Commission in Case No. 90-1386-HT-SLF and again in Case No. 04-1179-HT-UNC.

⁷ See, e.g., *Gannis v. The Cleveland Electric Illuminating Co.*, Case No. 94-154-EL-CSS (May 11, 1994 Entry); *Hughes v. The Cleveland Electric Illuminating Company*, Case No. 94-969-EL-CSS (September 1, 1994 Entry); *Seketa v. The East Ohio Gas Co.*, PUCO Case No. 06-549-GA-CSS (August 9, 2006 Entry) (“*Seketa*”); and *In the Matter of the Complaints of Young, et al. v. The Ohio American Water Co.*, PUCO Case Nos. 05-1170-WW-CSS, 05-1181-WW-CSS, 05-1183-WW-CSS, 05-1187-WW-CSS, 05-1188-WW-CSS, 05-1199-WW-CSS, 05-1251-WW-CSS, 05-1263-WW-CSS, 05-1317-WW-CSS, 05-1335-WW-CSS, 05-1349-WW-CSS (November 1, 2006 Entry).

charged are unreasonable, unjust, and unlawful. The facts in the *Seketa* case are remarkably similar, and the Commission found:

...the Commission agrees with Dominion that the complaint should be dismissed with prejudice. From the pleadings, it appears that Mr. Seketa has been billed the tariff rates for the service he receives from Dominion. In fact, Mr. Seketa does not allege that Dominion charged him the wrong rate; rather, he argues that he should not be charged one of the components (the PIPP rider). As a result, Mr. Seketa argues that the tariff rates are excessive, unjust, and unreasonable.

* * *

...There is no allegation that Dominion charged Mr. Seketa something other than the approved rate.

* * *

...The Commission does not believe that the complaint sets forth reasonable grounds. We have similarly dismissed other complaints that allege that approved rates should not be charged.... We believe this complaint, likewise, does not meet the reasonable grounds standard required in Section 4905.26, Revised Code, and should be dismissed with prejudice.⁸

Additionally, contrary to Manchester's claim that Cleveland Thermal violated a Commission order or the terms of its service contract during the time it was in effect, Cleveland Thermal has submitted its "weighted average cost of fuel"⁹ burned for central steam service" as required by its former Tariff Sheet 16¹⁰ or Manchester's amended service contract (as applicable at the time) to the Commission's Staff every month through March 2011 and in Commission-established dockets starting April 2011.

⁸ *Seketa* at 2-3.

⁹ Cleveland Thermal's current tariff, P.U.C.O. No 2, was approved in Case No. 12-1451-HT-ATA and became effective on May 24, 2012.

¹⁰ Neither Cleveland Thermal nor any of its predecessors were ever ordered by the Commission to provide any monthly filings related to fuel procurement processes.

The Commission has only recently considered these same claims and found that they failed to set forth reasonable grounds for complaint as required by Section 4905.26, Revised Code.¹¹ In the K&D complaint, K&D made the same allegations that Cleveland Thermal's FAR charges between 2007 and 2010 were unreasonable and that Cleveland Thermal had failed to file its fuel information with the Commission monthly as required by tariff and service contract. In its Entry dismissing K&D's complaint, the Commission said:

... it is well-established that complaints alleging solely that Commission-approved rates should not be charged or solely questioning the reasonableness of Commission-approved rates do not constitute reasonable grounds for complaint. *Pavicic v. The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 11-2700-GA-CSS, Entry (July 15, 2011); *Gannis v. The Cleveland Electric Illuminating Company* Case No. 94-154-EL-CSS, Entry (May 14, 1994); *Hughes v. The Cleveland Electric Illuminating Company*, Case No. 94-969-EL-CSS, Entry (September 1, 1994); *Avery Dennison Company v. The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 00-989-GA-CSS, Entry (December 14, 2000); *Seketa v. The East Ohio Gas Company d/b/a Dominion East Ohio*, Case No. 06-549-GA-CSS, Entry (August 9, 2006). The Commission finds that K&D's sole basis for complaint in this proceeding is its claim that Cleveland Thermal's past rates, which were approved by the Commission as set forth above, were unreasonable and should not have been charged to K&D. Based on the well-established Commission precedents, as well as the undisputed facts of this case, the Commission finds that K&D has failed to set forth reasonable grounds for complaint as required by Section 4905.26, Revised Code.

Further, the Commission notes that the FAR charges were periodically filed with Commission Staff for review as provided for by the Tariff. The scope of Staff's review was not within the control of Cleveland Thermal, and, to the

¹¹ See *In the Matter of the Complaint of The K&D Group, Inc. and Reserve Apartments, LTD, Complainants, v. Cleveland Thermal Steam Distribution, LLC, Respondent*, Case No. 11-898-HT-CSS, Entry (May 30, 2012).

extent that K&D claims that Staff's review was insufficient or inadequate, such claim does not constitute reasonable grounds for complaint against Cleveland Thermal. Therefore, Cleveland Thermal's motion to dismiss is granted, and the complaint is dismissed.¹²

In sum, the Commission has recently considered the key allegations in Manchester's complaint and found that they failed to constitute reasonable grounds for complaint. This complaint should be summarily dismissed.

2. Manchester's usage was properly metered and its bills were properly rendered beginning July 2011 pursuant to Cleveland Thermal's tariff.

Manchester claims that (as a tactic in its relationship with Manchester Realty), Cleveland Thermal breached its special contract "...by changing the way that steam is metered to the two office buildings for billing purposes."¹³ Manchester asserts that, beginning the winter of 2011-2012, Cleveland Thermal ceased combining the usage of Manchester's two buildings for billing purposes and began billing them for usage separately, denying Manchester the opportunity to benefit from the lower rates applicable to higher usage blocks. Manchester claims that this "...conduct by Cleveland Thermal was unreasonable, unjustified, executed in bad faith, and contrary to the agreement between the parties."¹⁴

The facts are that, when Manchester terminated its special arrangement, it reverted to tariff service, and Cleveland Thermal's then applicable tariff prohibited the combination of meter readings for billing purposes. In fact, as of July 2011, when

¹² *Id.* at 7.

¹³ Complaint at 4.

¹⁴ *Id.*

Cleveland Thermal began serving Manchester under its tariff, there was no special contract in effect between it and Manchester. By letter dated May 17, 2010, Manchester provided Cleveland Thermal a twelve-month notice (attached to Cleveland Thermal's Answer and further hereto as Exhibit 1) that it was cancelling its steam service contract in existence at that time.¹⁵ Accordingly, Manchester was transferred to Tariff service beginning July 1, 2011, at which time Cleveland Thermal began billing each building separately, consistent with the terms of its applicable Tariff Sheet No. 8, Paragraph 5(d) (attached hereto as Exhibit 3), which prohibits the aggregation of service connections for billing services.

The attached documents are clearly dispositive of the question of whether Cleveland Thermal was in breach of a special arrangement between it and Manchester. Cleveland Thermal in fact complied with the provisions of the contract by honoring the termination notice provided to it by Manchester.¹⁶ This claim must be rejected as false and, therefore, insufficient to constitute reasonable grounds for complaint.

3. Cleveland Thermal's disconnection of Manchester's steam service was made consistent with the requirements of Cleveland Thermal's tariff.

Finally, Manchester claims that Cleveland Thermal's disconnection of its steam service was "... unlawful and unreasonable."¹⁷ To the contrary, Cleveland Thermal (at

¹⁵ Cleveland Thermal initially believed this notice to be inadequate, but upon review of the terms of the 2007 Addendum to Standard Service Agreement (attached to Cleveland Thermal's Answer and further hereto as Exhibit 2) between Manchester and itself, realized that the twelve month notice at Manchester's sole discretion was valid. Accordingly, Manchester was transferred to Tariff service in July 2011.

¹⁶ It is Manchester who, as discussed below, has failed to adhere to the timely payment provisions of the special contract and has, as of the date of this writing, failed to discharge its significant outstanding bill balance.

¹⁷ Complaint at 2.
{C38667: }

its own risk) gave Manchester a generous opportunity to discharge its significant bill arrearage and, only after Manchester failed to perform on an agreed-upon settlement that would have resolved the payment issue and avoided disconnection of service, Cleveland Thermal had no other recourse. But for Manchester's failure to pay its bills, no disconnection would have occurred.

Cleveland Thermal provided notice of disconnection to Manchester by letter dated February 14, 2012 (attached to Cleveland Thermal's Answer and further hereto as Exhibit 4) for overdue bill arrearages in the amount of \$79,957 as provided for in Cleveland Thermal's Tariff, Sheet Nos. 6 and 7, Paragraph 3, Reasons for Disconnecting Service (attached hereto as Exhibit 5). Cleveland Thermal agreed to delay the noticed disconnection date of February 20, 2012, to permit discussion with Manchester. After several weeks, during which Manchester ultimately failed to perform on an agreed-upon settlement on March 20, 2012, Cleveland Thermal scheduled disconnection of steam service to Manchester which, in the normal course of events, would have occurred late that week. Cleveland Thermal further delayed disconnection of service to Manchester until Monday, March 26, 2012, to avoid disconnection on a Friday in an effort to maximize Manchester's opportunity to achieve elimination of its arrearage and achieve reconnection of its service. As a matter of policy, Cleveland Thermal does not disconnect service on Fridays.

It should be noted that the tariff does not require any notice, yet Cleveland Thermal's February 14 notice of disconnection to be carried out on February 20 provided six (6) days' notice for a substantial arrearage of \$79,957 that was more than 60 days overdue. It should also be noted that Cleveland Thermal delayed

disconnection for thirty-five (35) additional days after February 20 until March 26, 2012 in order to permit Manchester the opportunity to cure its arrearage and avoid disconnection. In the end, Manchester failed to follow through on an agreement that would have done just that. In short, there was nothing unreasonable or unlawful about Cleveland Thermal's disconnection of service to Manchester. Cleveland Thermal was, as shown by the language of the applicable tariff, more than generous to Manchester, all of which cost Cleveland Thermal an additional \$48,104,¹⁸ and all of which remains unpaid to date.

The Commission should find that Cleveland Thermal's disconnection of Manchester's steam service was made consistent with the provisions of its tariff, and that Manchester's claim otherwise is insufficient to constitute reasonable grounds for complaint.

III. CONCLUSION

Cleveland Thermal has complied with all applicable Ohio laws, Commission rules and regulations, its Tariff, and the terms and conditions of its special contract (when applicable) with Manchester. Most significantly, Cleveland Thermal has calculated and billed its charges to Manchester in compliance with its Tariff or Manchester's Standard Steam Service Agreement, whichever was applicable at the time. Apart from its unsubstantiated and erroneous claims that Cleveland Thermal has not submitted its fuel charge information to Commission Staff on a monthly basis as required by its Tariff, and that its special agreement remains in effect, Manchester has failed to make any

¹⁸ As of April 16, 2012, the date of Cleveland Thermal's Answer in this docket.

legitimate claim that Cleveland Thermal has violated any law, rule, tariff or contract requirements to support its Complaint.

It is significant that Manchester initiated this Complaint only after Cleveland Thermal disconnected Manchester's service for its failure to pay its bills. At the time of the notice of disconnection, Manchester was in arrears in the amount of \$79,957. In fact, Manchester has been a chronic late payer. During the time that Cleveland Thermal provided steam service beginning January 2003, Manchester was current on its bill payments only 28 of 135 months, or a mere 20.7% of the time.¹⁹ As a result of Cleveland Thermal's willingness to delay disconnection to provide Manchester the opportunity to cure the default, and in spite of an agreement to that end on which Manchester failed to perform, Manchester's unpaid bill amount grew to \$128,061, as of April 16, 2012, none of which has been paid to date. During the years that Cleveland Thermal has provided steam service to Manchester, it has been extremely lenient and generous, often at its own risk, to assist Manchester in maintaining continuity of service. By its historical and current payment practices and by this Complaint, Manchester has demonstrated how little it respects reasonable business practices. Amazingly, Manchester complains about the tactics Cleveland Thermal has deployed in its relationship with Manchester,²⁰ rather than pursuing this complaint with patently insufficient grounds, Manchester would be better served by deploying a tactic of its own -- the tactic of paying its bills.

¹⁹ Cleveland Thermal Chilled Water Distribution, LLC, provided chilled water service to Manchester from January 2003 to November 2005. During that time, Manchester was current on its bill payments only one month of thirty-five months, or 2.86% of the time.

²⁰ Complaint at 4.

WHEREFORE, Cleveland Thermal respectfully requests that the Commission dismiss this Complaint, with prejudice.

Respectfully submitted,

/s/ Gretchen J. Hummel

Gretchen J. Hummel (Trial Attorney)

Frank P. Darr

Joseph E. Olier

McNees Wallace & Nurick LLC

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**Attorneys for Cleveland Thermal Steam
Distribution, LLC**

Exhibit 1



May 17, 2010

Cleveland Thermal Steam Distribution, LLC
1921 Hamilton Avenue
Cleveland, OH 44114

Re: IMG Center

Please be advised we are submitting our twelve month notice canceling our contract with Cleveland Thermal Steam Distribution, LLC at this time. If you have any questions, you may contact Jim Breen at 216.902.8150 x202 or jbreen@breenandcompany.com.

Breen & Company

1360 E. 9th Street
Cleveland OH 44114

P 216 902 8150 | F 216 902 8155

Thank you,

Michelle Saraniti
Breen & Company

www.breenandcompany.com

Exhibit 2

**ADDENDUM TO
STANDARD STEAM SERVICE AGREEMENT**

(Available Only to Impacted Individual BOMA Steam Members Who Sign a
Standard Steam Service Agreement)

This Addendum to this Standard Steam Service Agreement (the "Addendum") is made and entered into as of the 14th November, 2007 between Cleveland Thermal Distribution, LLC ("Cleveland Thermal") and Manchester Realty ("Customer"), located at 1360 East 9th Street, Cleveland, Ohio and sets forth the special terms and conditions applicable to this customer who is a member of BOMA.

a) This Addendum will become effective September 1, 2007, regardless of when it is executed, and is only available to Impacted Individual BOMA Steam Members who sign the Standard Steam Service Agreement in the form similar to those Standard Steam Service Agreements filed on June 22, 2007 in PUCO Case No. 07-732-HT-AEC. Impacted Individual BOMA Steam Members are: AT&T; Manchester Realty (Breen & Fox); Brinks, Inc.; BLE Building Association; Calabrese, Racek Management, Inc.; 1621 Euclid Limited Partnership; Sterling Telecon Office Building, LLC; Ernst & Young Product Sales LLC; Forest City Commercial Management, Inc. (Dillards - 100 Public Square); Forest City Commercial Management, Inc. (Halle Building - 1228 Euclid Avenue); Forest City Commercial Management, Inc. (Terminal Management, Inc. - 50 Public Square); 55 Public Square LLC; Huntington National Bank; Medical Mutual of Ohio; Ohio Savings Management; Middough Consulting; Playhouse Square Foundation; PSF Management Co. LLC (Bulkley Building - 1501 Euclid Avenue); PSF Management Co., LLC (Hanna Building - 1422 Euclid Avenue); United Way of Greater Cleveland; First States Investors 0231 LLC (Cleveland Thermal Acct. No. 48131250); First States Investors 0231 LLC (Cleveland Thermal Acct. No. 48130970); and Diamond Building (1100 Superior Avenue - Cleveland Thermal Acct. No. 491222850). This Addendum will be in effect only for the initial term of the Standard Steam Service Agreement and is not subject to automatic renewal.

b) Commencing September 1, 2007, Customer shall pay a rate of \$.43 per Mlb. over a maximum of a thirty-nine (39) month period to satisfy in full its portion of the "deferred fuel cost" claims of Cleveland Thermal existing in Customer's individual fuel account balance on April 1, 2007, as referenced in paragraph seven of such Standard Steam Service Agreement, representing an approximate 71.12 percent discount in the amount of Customer's individual fuel account balance. This \$.43 per Mlb. rate is intended to recover a portion of those deferred fuel costs in Customer's individual fuel account and is in addition to any current monthly fuel charges billed to Customer under the Standard Steam Service Agreement.

c) Customer shall have the right to terminate its Standard Steam Service Agreement and this Addendum without penalty by providing a twelve month cancellation notice to Cleveland Thermal. However, if such termination is effective before the end of the thirty-nine (39) month "deferred fuel cost" recovery period, Customer must pay its portion of the remaining "deferred fuel costs"; if the termination is effective before the end of five years and if the Customer had been connected to the Cleveland Thermal system for the first time in the previous five years, Customer must pay any unamortized connection charges.

d) To the extent any "system changes or modifications as mandated by any governmental authority or insurance company" (as that phrase is used in the Standard Steam Service Agreement) result in an increase in the Standard Steam Service Agreement base rate of more than

ten (10) percent, then Cleveland Thermal shall notify each Impacted Individual BOMA Steam Member in writing at least thirty days in advance of making any such mandated system changes or modifications, detailing the facts and circumstances of such mandate(s), the estimated amount per Mlb that Cleveland Thermal will expect to charge each Impacted Individual BOMA Steam Member, and the period of time over which such charge will be made. In such event, Customer shall have the right to terminate the Standard Steam Service Agreement and this Addendum without penalty with thirty (30) days written notice to Cleveland Thermal and Customer may opt to become a customer under Cleveland Thermal's then existing tariff (either bundled or unbundled rate options) or under any other service offering by Cleveland Thermal at the time. However, if such termination is effective before the end of the thirty-nine (39) month "deferred fuel cost" recovery period, Customer must pay its portion of the remaining deferred fuel costs; if the termination is effective before the end of five years and if Customer had been connected to the Cleveland Thermal system for the first time in the previous five years, the Customer must pay any unamortized connection charges.

e) Customer shall have a one-time option, exercisable at the end of the initial term of the Standard Steam Service Agreement to which this Addendum is attached (provided such Standard Steam Service Agreement has not been terminated prior to the end of the initial term thereof), to execute an amendment to its Standard Steam Service Agreement or a new Standard Steam Service Agreement, in the form then being offered by Cleveland Thermal; provided however, that the base rates for steam service in any such amendment or new Standard Steam Service Agreement shall be escalated annually commencing January 1, 2013 at the Consumer Price Index-All Urban ("CPI-AU"), with no cap (a "BOMA Renewal"). At least 90 days prior to offering a BOMA Renewal, Cleveland Thermal shall provide Impacted Individual BOMA Steam Members with a detailed explanation of the components of its then-effective Standard Steam Service Agreement, including an illustrative rate comparison among the BOMA Renewal, the then-current Standard Steam Service Agreement and Cleveland Thermal's tariff, so that each Impacted Individual BOMA Steam Member can make an informed decision whether to accept a BOMA Renewal, accept an Standard Steam Service Agreement, become a Cleveland Thermal tariff customer or discontinue steam service from Cleveland Thermal.

f) In the event of any inconsistency between the terms contained in this Addendum and the terms contained in the Standard Steam Service Agreement (BOMA version), the terms and conditions contained in this Addendum shall prevail.

In witness hereof, the parties manifest their acceptance of this Addendum by signing below on this 14th day of November, 2007.


CLEVELAND THERMAL STEAM DISTRIBUTION, LLC.

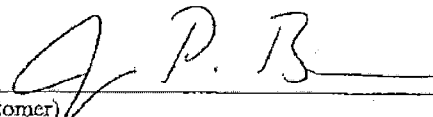

(Customer)

Exhibit 3

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

GENERAL RULES AND REGULATIONS

(b) PAYMENT

Full payment of all bills for service shall be received in the Company's offices, or by an authorized agent within 21 days after the mailing of the bill. Interest, at the rate of 1.5 percent per month, may be charged on any unpaid balance existing at the next billing date.

(c) METER INACCURACY

If accurate meter readings are not available or if meter readings cover more or less than the usual billing period, bills shall be pro-rated or estimated by the Company on the basis of use during a similar period.

Where leaks occur in Consumer's pipes or apparatus resulting in loss of steam or of condensation registration on meters, the Consumer shall be required to make immediate repairs, and the billing for the period of such leakage shall be adjusted on the basis of an estimated amount of steam used.

(d) METER READINGS NOT TO BE COMBINED

All steam furnished through separate service connections shall be billed and charged separately at the applicable rates and charges, except under the following conditions meter registrations of two or more service connections on the same Premises may be combined for billing purposes:

- (i) Where the applicable rate schedule specifically authorizes the combination of meter registrations, or
- (ii) Where, prior to January 1, 1971, the Company has authorized such combination of meter registrations, or
- (iii) Where, on and after January 1, 1971, a Consumer requests the combination of meter registrations of two or more service connections on the same Premises and pays for all but one service connection, or
- (iv) Where the Company elects, for engineering reasons affecting the supply of its service, to install or maintain at the same or different locations, two or more service connections.

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. Divis, President

Exhibit 4

Cleveland Thermal, LLC
1921 Hamilton Avenue
Cleveland, Ohio 44114
Phone: (216) 241-3636
Fax: (216) 241-6486



February 14, 2012

Manchester Realty, LLC
1360 East 9th St.
Cleveland, OH 44114

RE: Account # 50160121 IMG Building
Account # 50161825 Lincoln Building

Dear Sir:

This letter is to advise you that the above referenced accounts of Manchester Realty LLC are more than 60 days past due. General Rules and Regulations of the Public Utilities Commission of Ohio require payment within 21 days after the mailing of the invoice. Because of this delinquency Cleveland Thermal has no choice but to issue this shutdown notice. This account must be brought current by 5:00 PM on Monday, February 20, 2012 or steam service will be terminated.

TOTAL DUE by February 20, 2012:	Acct # 50160121	\$69,508.42
	Acct # 50161825	<u>\$10,448.61</u>
	TOTAL:	\$79,957.03

To restore service the account must be brought current and a deposit of \$36,352.00 must be paid. Interest will accrue at the rate of 3% per annum for all deposits held in excess of six consecutive months.

If you have any questions, please do not hesitate to contact me at 216-241-3728.

Sincerely,

Linda S. Atkins
Chief Financial Officer
Cleveland Thermal, LLC

Bonnie Sp 455 176

Cc: S. Losh
M. Divis
J. Kavelec

Linda Atkins

From: Operations@BonnieSpeed.com
Sent: Tuesday, February 14, 2012 2:04 PM
To: Linda Atkins
Subject: Delivery Notification

Delivery Notification

Our records indicate that the following order has been delivered:

Order Number: 455176

Order was Placed by: Linda Atkins

Pickup Address:
Cleveland Thermal
1921 Hamilton Ave
Cleveland, OH, 44114

Delivery Address:
Manchester Realty
1360 E 9th St
Cleveland, OH, 44114

Authorization:

Delivered On: 2/14/2012 14:3
Signed By: Bules

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2/14/2012

Exhibit 5

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

GENERAL RULES AND REGULATIONS

(f) DENYING SERVICE DUE TO LOCATION

Applications shall be accepted for steam service at locations served by existing street mains. The Company may, at its sole discretion, extend its facilities to serve prospective loads but shall not be required to provide such service.

(g) TEMPORARY SERVICE

Any applicant desiring temporary service shall, in addition to the schedule rates, pay the entire cost of installing and removing such temporary service.

2. CREDIT REQUIREMENTS

(a) SECURITY REQUIREMENTS

The Company may require of a Consumer as security for the payment of bills, a cash deposit not exceeding an amount sufficient to cover an estimate of the monthly average of the annual consumption by such Consumer plus thirty percent, unless the Consumer is a freeholder and financially responsible, or unless the Consumer gives a reasonably safe guaranty in an amount sufficient to secure the payment of bills for sixty days' supply; upon which deposit there shall be allowed and paid to the Consumer interest at the rate of not less than three percent per annum to the date of the final bill, provided it remains on deposit six consecutive months.

(b) USE OF DEPOSITS

The company may retain any deposit and apply the same upon bills for service or any indebtedness to the Company.

3. REASONS FOR DISCONNECTING SERVICE

(a) DISCONNECTING SERVICE - Initiated by the Company

Service may be disconnected without charge and the Company may remove its meters, appliances and other property for any of the following reasons:

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. Divis, President

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

GENERAL RULES AND REGULATIONS

- (i) The Consumer's failure to comply with the terms and conditions of any schedule or with the General Rules and Regulations of the Company.
- (ii) The Consumer's failure to pay any indebtedness to the Company.
- (iii) The Consumer's connection of any unauthorized devices to the Company's lines or equipment, or
- (iv) The Consumer's unauthorized use of the Company's lines or equipment.

(b) DISCONNECTING SERVICE - Initiated by the Consumer

If the Consumer requests that one or more of the steam services or meters be turned off during a portion of the year, a disconnection charge shall be made commensurate with the cost of said turn-off. In addition, the Consumer shall comply with the provisions of Rule 4(a) with respect to a subsequent service reconnection.

4. RECONNECTING SERVICE

(a) RECONNECTION CHARGE

When any service has been disconnected for failure to comply with the terms and conditions of the schedules or rules and regulations of the Company, a reconnection charge shall be made commensurate with the cost of making such reconnection.

If service is disconnected at the Consumer's request, the Company shall not be under any obligation to resume said service to the same Consumer on the same premises until the Consumer has made payment of an amount equal to the minimum monthly charge (if any) for each month of the intervening period, but not to exceed twelve (12) months, plus the cost of making such reconnection.

5. BILLING AND PAYMENT FOR SERVICE

(a) BILLING PERIOD

Bills for steam service shall be rendered monthly based on monthly or bimonthly meter readings.

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Motion to Dismiss and Memorandum in Support* has been hand-delivered, sent electronically or served *via* ordinary U.S. Mail, postage prepaid, this 17th day of September, 2012 to the following parties of record.

/s/ Gretchen J. Hummel

Gretchen J. Hummel

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This foregoing document was electronically filed with the Public Utilities

Commission of Ohio Docketing Information System on

9/17/2012 1:52:37 PM

in

Case No(s). 12-1161-HT-CSS

Summary: Motion Cleveland Thermal's Motion to Dismiss and Memorandum in Support
Manchester Realty LLC's Complaint electronically filed by Ms. Vicki L. Leach-Payne on behalf
of Hummel, Gretchen J. Ms.