

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE APPLICATION OF
CLEVELAND THERMAL STEAM
DISTRIBUTION, LLC FOR APPROVAL OF A
CONVERSION TO A DOMESTIC
CORPORATION AND RELATED MATTERS.

CASE NO. 19-2106-HT-UNC

IN THE MATTER OF THE APPLICATION OF
CLEVELAND THERMAL CHILLED WATER
DISTRIBUTION, LLC FOR APPROVAL OF A
CONVERSION TO A DOMESTIC
CORPORATION AND RELATED MATTERS.

CASE NO. 19-2107-CC-UNC

FINDING AND ORDER

Entered in the Journal on September 23, 2020

I. SUMMARY

{¶ 1} The Commission approves, subject to Staff's recommendations, the applications of Cleveland Thermal Steam Distribution, LLC and Cleveland Thermal Chilled Water Distribution LLC for approval to convert from limited liability companies to Ohio domestic corporations and related matters.

II. DISCUSSION

{¶ 2} Pursuant to R.C. 4905.04, 4905.05, and 4905.06, the Commission is vested with the power and jurisdiction to supervise and regulate public utilities.

{¶ 3} Cleveland Thermal Steam Distribution, LLC (CTSD) is a heating company and Cleveland Thermal Chilled Water Distribution, LLC (CTCWD) is a cooling company, each as defined in R.C. 4905.03. As heating and cooling companies, CTSD and CTCWD (together, Companies) are public utilities as defined in R.C. 4905.02. As such, the Companies are subject to the jurisdiction of this Commission.

{¶ 4} On December 4, 2019, the Companies filed an application (Application) with the Commission requesting: (1) approval of corporate conversion from limited liability companies to domestic corporations (Conversion); (2) approval of revised tariffs to reflect

the Conversions; (3) approval of automatic approval processes for standard contracts; and (4) approval of tariff modifications.

{¶ 5} The Application states that, as limited liability companies organized under Ohio law, the Companies are wholly owned subsidiaries of Cleveland Thermal LLC. In turn, Cleveland Thermal, LLC, through an intermediary company, is a wholly owned subsidiary of Corix Utilities (Cleveland) Inc., a private corporation which is ultimately owned by British Columbia Investment Management Corporation through its ownership of Corix Infrastructure, Inc. And, to address a potentially adverse tax consequence due to the operation of an international tax treaty, entities with an interest in the Companies have elected to convert from limited companies to domestic corporations as permitted in R.C. 1701.782.

{¶ 6} The Application further represents that, following completion of the desired Conversion, CTSD will be converted to Cleveland Thermal Steam Distribution, Inc., and CTCWD will be converted to Cleveland Thermal Chilled Water Distribution, Inc., with each of the Companies being Ohio domestic corporations. Additionally, the Companies would continue to operate as public utilities subject to the Commission's jurisdiction. The Conversion would provide for the substitution of Cleveland Thermal, LLC's ownership interests in the limited liability companies for interests in the resulting domestic corporations, with the assets and liabilities of the converting and converted companies remaining unchanged. The Application states that the substitution of ownership interests will not adversely affect the management, property, capitalization, or any service obligations of the Companies under tariff or reasonable arrangements. Additionally, neither converted company will increase or decrease its capitalization, and there will be no abandonment of services.

{¶ 7} The Application explains that Conversion would not alter the requirements imposed on the Companies by the Commission in any prior proceeding, including Case No.

15-1451-HC-UNC; instead, as is necessary, the Companies will incorporate those requirements as a condition for the approval of the requested relief. Similarly, current reasonable arrangements provide for and will be assigned from the limited liability companies to the domestic corporations. Further, the Conversion will result in no change in tariff rates or the terms and conditions contained therein, nor will it change current billing systems. Rather, the Companies are requesting to alter their current tariffs and bill statements, both of which refer to the Companies as limited liability companies, simply to reflect that their change in status to domestic corporations.

{¶ 8} Finally, attached to the Application are numerous exhibits, including revised tariffs, updated contracts as appendices to the revised tariffs, revised billing statements, and draft customer notices pertaining to the Conversion. Among these exhibits is a revised standard steam contract for which the Companies request continued authorization of the automatic approval process previously granted in Case Nos. 07-732-HT-AEC and 12-1450-HT-AEC. The Companies state that this automatic approval process, paired with the Commission's approval of limited modifications to the standard contract as a means of providing competitive response, has reduced administrative costs while providing CTSD the ability to respond to competitive pressures to its business and, therefore, continues to be in the public interest. The Companies additionally request that the Commission extend the automatic approval process to a standard contract for the chilled water utility, CTCWD. Specifically, the Application requests that the Commission authorize a process by which a standard chilled water contract would be automatically approved if the Commission takes no action within 30 days of the standard contract's filing.

{¶ 9} On June 9, 2020, Staff filed its Review and Recommendation. Staff represents that it has reviewed the Application, inclusive of all exhibits, as well as clarifications provided to Staff by the Companies. Staff explains that the Companies have elected to pursue Conversion to address a potentially adverse tax consequence due to the operation of an international tax treaty, the United States-Canada Income Tax Convention (Treaty).

Specifically, the Conversion will result in the Companies each obtaining status as a resident in the United States under the Treaty and the converted corporations will be liable to pay tax in the United States. Staff states that the proposed Conversion will not result in a change of ownership, as Cleveland Thermal, LLC will continue to own 100 percent of the Companies' stock, and that the Companies confirmed that there are no increased financial or tax burdens as a result of the proposed Conversion. Staff notes that the Companies were unable to provide proposed articles of incorporation for review, but that said articles would be finalized once all necessary regulatory approvals were received and the Conversion completed.

{¶ 10} Ultimately, Staff concludes that the Conversion is reasonable, as are the proposed changes to the tariffs, billing statements, standard steam contract, proposed chilled water contract, and customer notices. Staff further concludes that the proposed standard chilled water contract with 30-day automatic approval process appears reasonable. Staff does, however, recommend the three changes to the tariff and customer service notice. First, Staff recommends that the Companies correct the lettering in Exhibit A Appendix A and Exhibit B Appendix A under paragraph 5, "Rates, Charges, and Billing" as follows. The first paragraph should be "A." and the "(1)" should be deleted, as should the reference to "B.(2);" the sentence "Company's invoice for service supplied to Customer pursuant to this Agreement shall include the following:" should be the last sentence of paragraph A. Second, Staff recommends that the Companies correct the Table of Contents within Exhibits C and D. Specifically, Section 19 of the Table of Contents refers to the "Rate Schedule for Chilled Water Distribution Default Service." The rates first appear on Sheet No. 23 which should be reflected in the Table of Contents. And, third, because the Commission does not issue certificates to steam or chilled water companies, Staff recommends the Companies remove the "certified to" reference from its proposed customer notice. Finally, Staff recommends that the Companies be required to provide articles of incorporation to Staff upon completion of the Conversion. With the adoption of the above specifications, Staff recommends that the Commission approve the Application.

{¶ 11} Upon review of the Application and Staff's Review and Recommendation, and considering the supervisory and regulatory powers granted by R.C. 4905.04, 4905.05, and 4905.06, the Commission finds that the Application—subject to Staff's recommendations—is reasonable, should not adversely impact the Companies' customers, and should be approved. The Commission further finds that it is not necessary to hold a hearing in this matter.

III. ORDER

{¶ 12} It is, therefore,

{¶ 13} ORDERED, That the Companies' Application be approved, subject to Staff's recommendations as discussed in Paragraph 10. It is, further,

{¶ 14} ORDERED, That the Companies provide articles of incorporation to Staff upon completion of the Conversions, as stated in Paragraph 10. It is, further,

{¶ 15} ORDERED, That the Companies be authorized to file tariffs, in final form, consistent with this Finding and Order. The Companies shall file one copy in this case docket and one copy in its TRF docket. It is, further,

{¶ 16} ORDERED, That the effective date of the new tariff shall be a date not earlier than the date upon which the final tariff page is filed with the Commission. It is, further,

{¶ 17} ORDERED, That nothing in this Finding and Order shall be binding upon this Commission in any further proceedings or investigation involving the justness or reasonableness of any rate, charge, rule or regulation. It is, further,

{¶ 18} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

COMMISSIONERS:

Approving:

Sam Randazzo, Chairman
M. Beth Trombold
Lawrence K. Friedeman
Daniel R. Conway
Dennis P. Deters

PAS/hac

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Case No(s). 19-2106-HT-UNC, 19-2107-CC-UNC

Summary: Finding & Order approving, subject to Staff's recommendations, the applications of Cleveland Thermal Steam Distribution, LLC and Cleveland Thermal Chilled Water Distribution LLC for approval to convert from limited liability companies to Ohio domestic corporations and related matters electronically filed by Heather A Chilcote on behalf of Public Utilities Commission of Ohio