



**BEFORE THE  
PUBLIC UTILITIES COMMISSION OF OHIO**

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

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**ANSWER AND AFFIRMATIVE DEFENSES  
OF  
CLEVELAND THERMAL STEAM DISTRIBUTION, LLC  
TO COMPLAINT**

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On April 4, 2012, Manchester Realty, LLC ("Manchester" or "Complainant") filed a complaint ("Complaint") against Cleveland Thermal Steam Distribution, LLC ("Cleveland Thermal"). Cleveland Thermal denies all allegations set forth in the introductory paragraph of the Complaint. Further, Cleveland Thermal denies any allegations not specifically admitted herein and denies that the Complainants are entitled to the relief sought. Cleveland Thermal answers the remaining allegations set forth in the Complaint as follows:

**OVERVIEW OF THE COMPLAINT**

1. Cleveland Thermal denies the allegations in Paragraph 1 of the Complaint. Cleveland Thermal avers that this Complaint arises, not out of Cleveland Thermal's disconnection of service to Manchester, but, rather, out of Manchester's

refusal to pay for steam service rendered to it. But for Manchester's unpaid bills, no disconnection would have occurred. Cleveland Thermal avers that it provided notice of disconnection to Manchester by letter dated February 14, 2012 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. (Disconnection Notice attached hereto as Exhibit 1). Cleveland Thermal agreed to delay the disconnection date 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 disconnected steam service to Manchester on Monday, March 26, 2012. Cleveland Thermal further avers that it delayed disconnection of service to Manchester until that day 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.

2. Cleveland Thermal denies the allegations in Paragraph 2 of the Complaint. Further, Cleveland Thermal declines to reconnect service to Manchester until its arrearages (including applicable late payment charges) are fully paid.

3. Cleveland Thermal denies the allegations in Paragraph 3 of the Complaint. Cleveland Thermal avers that its disconnection of service to Manchester was solely the culmination and result of Manchester's failure to pay its bills for steam service in full and on time. Manchester raised a question about Cleveland Thermal's fuel charges for the first time on February 16, 2012, only after it had received Cleveland Thermal's disconnection notice.

4. Cleveland Thermal denies the allegations in Paragraph 4 of the Complaint. Cleveland Thermal avers that it has submitted its "weighted average cost of fuel burned for central steam service" as required by its Tariff Sheet No. 16 each month to the Public Utilities Commission of Ohio ("Commission") Staff through March 2011 and in Commission-established dockets starting April 2011. There is no monthly fuel cost or procurement filing directive in the Commission's October 15, 1998 Opinion and Order in Case No. 97-522-HT-AIR, a case to which Cleveland Thermal was not a party.<sup>1</sup> There is no requirement anywhere that Cleveland Thermal make a monthly filing of its fuel procurement activities.<sup>2</sup>

5. Cleveland Thermal denies the allegations of Paragraph 5 of the Complaint. Cleveland Thermal avers that there is no contract in effect between it and Manchester. On May 17, 2010, Manchester provided Cleveland Thermal a twelve-month notice (attached hereto as Exhibit 2) that it was cancelling its steam service

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<sup>1</sup> *In the Matter of the Application of Cleveland Thermal Energy Corporation dba Cleveland Energy Resources for an Increase in the Rates to be Charged for Steam Service*, Case No. 97-522-HT-AIR, Opinion and Order at 8 (October 15, 1998). This case was filed by Cleveland Thermal Energy Corporation ("CTEC"), all of whose assets were transferred to Dominion Cleveland Thermal, LLC who then transferred the steam distribution assets to Dominion Cleveland Steam Distribution, LLC ("DCSD") by Commission Opinion and Order dated February 8, 2001 in Case No. 00-2449-HT-ATR. By Commission Finding and Order dated September 1, 2004, the Commission approved the transfer of the ownership interest in DCSD (then indirectly owned by Dominion Cleveland Thermal, Inc.) to CT Acquisitions I, Inc., which ultimately renamed DCSD to Cleveland Thermal Steam Distribution, LLC, by Notification of Name Change and simultaneous filing of amended Tariffs on February 18, 2005, all in Case No. 04-1179-HT-UNC.

<sup>2</sup> Cleveland Thermal is a distribution system which neither procures fuel nor produces steam. Fuel procurement functions are provided by Cleveland Thermal's parent, Cleveland Thermal, LLC, which is then used by Cleveland Thermal Generation, LLC to produce steam which is sold to Cleveland Thermal for distribution to end-use customers. Fuel information for the monthly filings made by Cleveland Thermal is provided by its parent in order to permit Cleveland Thermal to satisfy the requirement of the legacy Tariff pursuant to which Cleveland Thermal currently provides steam distribution service.

contract in existence at that time.<sup>3</sup> Accordingly, Manchester was transferred to Tariff service beginning July 1, 2011.

6. Cleveland Thermal denies the allegations in Paragraph 6 of the Complaint. Cleveland Thermal avers that, upon Manchester's return to Tariff service, Cleveland Thermal began billing each building separately, consistent with its Tariff Sheet No. 8, Paragraph 5(d), which prohibits the aggregation of service connections for billing services.

### **THE PARTIES AND THE OFFICE BUILDINGS**

7. Cleveland Thermal states that it has insufficient knowledge or information to form a belief as to the truth of the allegations in Paragraph 7 of the Complaint. Cleveland Thermal admits that the steam service it provided to Manchester is for the two buildings known as the IMG Building and the Lincoln Building.

8. Cleveland Thermal admits that it is a Commission-regulated Ohio limited liability company which is a "heating company" as defined by Section 4905.03(A)(8), Revised Code, and provides steam energy to customers in Cleveland, Ohio. Cleveland Thermal denies the remaining allegations in Paragraph 8 of the Complaint.

9. Cleveland Thermal admits the allegations in Paragraph 9 of the Complaint. Cleveland Thermal avers that it ceased providing steam service to Manchester on March 26, 2012.

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<sup>3</sup> Cleveland Thermal initially believed this notice to be inadequate, but upon review of the terms of the 2007 Addendum to Standard Service Agreement (attached hereto as Exhibit 3) 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.

## JURISDICTION

10. Cleveland Thermal admits that the recitation of Section 4905.26, Revised Code, in Paragraph 10 of the Complaint is accurate.

11. Cleveland Thermal denies the over-broad allegations in Paragraph 11 of the Complaint. Cleveland Thermal avers that the Commission's jurisdiction over Cleveland Thermal (as a public utility) extends to the extent set forth in Section 4905.05, Revised Code. Further, Cleveland Thermal admits that the Commission has subject matter jurisdiction over issues related to the disconnection of and billing for public utility service such as those alleged in the Complaint.

12. Cleveland Thermal denies the abbreviated paraphrase of Section 4905.37, Revised Code, in the allegations in Paragraph 12 of the Complaint. Cleveland Thermal avers that Section 4905.37, Revised Code provides that:

Whenever the public utilities commission is of the opinion, after hearing had upon complaint or upon its own initiative or complaint, served as provided in section 4905.26 of the Revised Code, that the rules, regulations, measurements, or practices of any public utility with respect to its public service are unjust or unreasonable, or that the equipment or service of such public utility is inadequate, inefficient, improper, insufficient, or cannot be obtained, or that a telephone company refuses to extend its lines to serve inhabitants within the telephone company operating area, the commission shall determine the regulations, practices, and service to be installed, observed, used, and rendered, and shall fix and prescribe them by order to be served upon the public utility. After service of such order such public utility and all of its officers, agents, and official employees shall obey such order and do everything necessary or proper to carry it into effect. This section does not give the commission power to make any order requiring the performance of any act which is unjust, unreasonable, or in violation of any law of this state or the United States.

## LEGAL FRAMEWORK PART 1 – THE PRIOR COMMISSION ORDERS

13. Cleveland Thermal denies the allegations in Paragraph 13 of the Complaint.<sup>4</sup>

14. Cleveland Thermal denies the allegations in Paragraph 14 of the Complaint. Cleveland Thermal avers that, in its Order in Case No. 97-522-HT-AIR, the Commission adopted the Staff recommendations that the fuel costs of Cleveland Energy Resources ("CER"), "...be reviewed on an annual basis"<sup>5</sup> and that CER "...keep records of the quantity and quality of coal on an as received basis in order to monitor the performance of its coal suppliers."<sup>6</sup> Further, Cleveland Thermal avers that the Staff recommended that CER's "...**new** transportation agreement with CSXT be reviewed as part of the annual fuel procurement and utilization review."<sup>7</sup> (emphasis added).<sup>8</sup>

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<sup>4</sup> See FN 8.

<sup>5</sup> *In the Matter of the Application of Cleveland Thermal Energy Corporation dba Cleveland Energy Resources for an Increase in the Rates to be Charged for Steam Service*, Case No. 97-522-HT-AIR, Staff Report of Investigation at 49 (August 7, 1998), Opinion and Order at 5-6 (October 15, 1998).

<sup>6</sup> *Id.*

<sup>7</sup> *Id.*

<sup>8</sup> *In the Matter of the Application of Cleveland Thermal Energy Corporation dba Cleveland Energy Resources for an Increase in the Rates to be Charged for Steam Service*, Case No. 97-522-HT-AIR, Opinion and Order (October 15, 1998) ("1997 Rate Case"); Manchester incorrectly states that the Commission directed Cleveland Thermal to "comply with all Commission directives set forth in this opinion, and order and adopt and implement the recommendations of the staff as set forth in the staff report." Complaint, ¶13. Also, Manchester incorrectly characterizes the Staff recommendations. Complaint, ¶14. The Staff actually recommended that the fuel costs of Cleveland Energy Resources ("CER"), the corporate name under which CTEC was doing business in Ohio, "... be reviewed on an annual basis" and that CER "...keep records of the quantity and quality of coal on an as received basis in order to monitor the performance of its coal suppliers;" and that CER's "...**new** transportation agreement with CSXT be reviewed" as a part of the annual review. Staff Report of Investigation at 49; emphasis added. Although Cleveland Thermal was not the Applicant and has no relationship with CTEC or CER, Manchester incorrectly asserts that these recommendations apply to Cleveland Thermal. **It is important to note that, after its Opinion and Order in the 1997 Rate Case, the Commission never initiated annual reviews of CER's fuel costs. Additionally, in the ownership transfer from CTEC ultimately to DCSD, the Commission did not require annual reviews of DCSD's fuel adjustment rider ("FAR") charges. Likewise, the Commission has never ordered annual reviews of Cleveland Thermal's FAR charges, either during the stock transfer (See FN 1) or since.** Nevertheless, Cleveland Thermal {C37383: }

15. Cleveland Thermal denies the allegations in Paragraph 15 of the Complaint. Cleveland Thermal avers that it filed nothing with the Commission on August 13, 1999; Cleveland Thermal did not exist in 1999. Further, Cleveland Thermal avers that, although never required to do so in any Commission order to which it is a party, it is in compliance with the recommendations of the Staff adopted by the Commission in Case No. 97-522-HT-AIR.

16. Cleveland Thermal admits that, in Case No. 08-238-HT-UNC, it sought and obtained Commission approval to adjust its Tariff block rates in its General Service Schedule, P.U.C.O. No. 1, Sheet No. 12. Cleveland Thermal denies the remaining allegations in Paragraph 16 of the Complaint.

#### **LEGAL FRAMEWORK PART 2 – THE STEAM SERVICES CONTRACT**

17. Cleveland Thermal denies the allegations in Paragraph 17 of the Complaint. Cleveland Thermal avers that Manchester cancelled its Standard Steam Service Agreement (BOMA Version) as amended by its 2007 Addendum to Standard Steam Service Agreement in 2010 by twelve month written notice, (see Exhibit 2). Since July 1, 2011, Manchester has been served pursuant to Cleveland Thermal's Tariff.

18. Cleveland Thermal denies the allegations in Paragraph 18 of the Complaint. Cleveland Thermal avers that, although a housekeeping error delayed the filing of the 2007 Standard Steam Service Agreement (BOMA Version) and Addendum to Standard Steam Service Agreement, they were filed in Case No. 07-732-HT-AEC

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has done nothing to prevent annual reviews of its fuel charges by the Commission and has maintained coal records of quantity and quality on a received basis sufficient to monitor supplier performance and has submitted the information specified in the Tariff to the Commission each month.



and approved by the Commission pursuant to the automatic approval process approved by the Commission in that case.<sup>9</sup>

19. Cleveland Thermal admits that Manchester's 2007 Standard Steam Service Agreement contained a Section 7 as set out in Paragraph 19 of the Complaint. Cleveland Thermal avers that the Standard Steam Service Agreement was cancelled by Manchester and that Manchester has been served pursuant to Cleveland Thermal's Tariff since July 1, 2011.

20. Cleveland Thermal admits the provision in Section 7 of Manchester's Standard Steam Service Agreement cited in Paragraph 19 of the Complaint was applicable during the period the Agreement was in effect. Cleveland Thermal avers that it has submitted the required fuel information to Commission Staff or in the required docket every month as required by the Agreement (when it was in effect) and its Tariff.

21. Cleveland Thermal denies the allegations in Paragraph 21 of the Complaint. Cleveland Thermal avers that, because Manchester cancelled its Standard Steam Service Agreement, Manchester has been a Tariff customer since July 1, 2011. Cleveland Thermal further avers that its Tariff Sheet No. 8, Paragraph 5(d), prohibits the aggregation of service connections for billing purposes.

### **STATEMENT OF FACTS AND CLAIMS**

22. Cleveland Thermal admits that it provided steam service to Manchester for two office buildings in Cleveland, Ohio, from at least November 2007 until March 26, 2012, when Cleveland Thermal terminated service to Manchester for failure to pay its

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<sup>9</sup> *In the Matter of the Application of Cleveland Thermal Steam Distribution, LLC for approval of its Standard Steam Service Agreements*, Case No. 07-732-HT-AEC, Commission Entry at 2, February 27, 2008).

bills. Cleveland Thermal avers that it provided steam service to Manchester beginning in January 2003.

23. Cleveland Thermal admits it is required to submit its "weighted average cost of fuel burned for central steam service" as required by its Tariff Sheet No. 16 each month. Cleveland Thermal denies the remaining allegations in Paragraph 23 of the Complaint. Cleveland Thermal avers that it has made the required submission each month, to the Commission Staff through March 2011 and in Commission-established dockets starting April 2011.<sup>10</sup> Further, Cleveland Thermal avers that it had no duty to establish a docket for the submission of its monthly fuel information.

24. Cleveland Thermal denies the allegations in Paragraph 24 of the Complaint. Cleveland Thermal avers that it had no duty to establish a docket for the submission of its monthly fuel data, and that it is not the established procedure for utilities to establish dockets for regulatory reviews of fuel charges. Further, Cleveland Thermal avers that its monthly fuel data has been submitted to Commission Staff or in a Commission-established docket every month and has, therefore, been available for Commission review.

25. Cleveland Thermal denies the allegations in Paragraph 25 of the Complaint.

26. Cleveland Thermal denies the allegations in Paragraph 26 of the Complaint. Cleveland Thermal avers that the fuel charges were calculated and billed to

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<sup>10</sup> Cleveland Thermal has copies of monthly fuel information reports submitted to Commission Staff or in Commission-established dockets from 1994 to date, with the exception of calendar year 2000, during which Cleveland Thermal believes the negotiations of the sale of the steam distribution system's assets by CTEC to Dominion occurred.

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Manchester consistent with the terms of its Standard Steam Service Agreement when it was in effect and its Tariff thereafter.

27. Cleveland Thermal denies the allegations in Paragraph 27 of the Complaint. Cleveland Thermal avers that it has complied with all requirements imposed on it and has not done and could not do anything to preclude the Commission from exercising its authority to initiate and conduct annual reviews of its fuel charges. Further, Cleveland Thermal avers that its monthly fuel reports have been available publicly; Cleveland Thermal has never refused a request for copies of its monthly fuel information reports.

28. Cleveland Thermal denies the allegations in Paragraph 28 of the Complaint.

29. Cleveland Thermal denies the allegations in Paragraph 29 of the Complaint. Cleveland Thermal avers that beginning July 1, 2011, Manchester has been served pursuant to Cleveland Thermal's Tariff because it cancelled its Standard Steam Service Agreement. Cleveland Thermal further avers that its Tariff Sheet No. 8, Paragraph 5(d), prohibits the aggregation of service connections for billing purposes.

30. Cleveland Thermal admits that Manchester asked for and received an explanation of the separation of bills during the 2011-2012 winter season. Cleveland Thermal denies the remaining allegations in Paragraph 30 of the Complaint. Cleveland Thermal avers that Manchester first raised the fuel charge issues addressed in this Complaint on February 16, 2012, only after it received the disconnection notice from Cleveland Thermal attached hereto as Exhibit 1. Cleveland Thermal avers that it has

calculated Manchester's charges for service and applied them to Manchester's bills in strict compliance with the contract or Tariff provisions applicable at the time in question.

31. Cleveland Thermal denies the allegations in Paragraph 31 of the Complaint. Cleveland Thermal avers that it delayed its intended disconnection date of February 20, 2012 for several weeks in order to provide an opportunity for discussions with Manchester and to give Manchester an opportunity to pay its overdue bill arrearages and that, on March 20, 2012, Manchester failed to perform on an agreement that would have resulted in avoidance of disconnection. Following communications with Manchester counsel which failed to obtain performance on the agreement, and, rather than disconnect on Friday, March 23, 2012, Cleveland Thermal choose to disconnect the following Monday during business hours to maximize Manchester's opportunity to eliminate its arrearage and secure reconnection of service.

#### **RESPONSE TO COUNT 1**

32. Cleveland Thermal states and incorporates by reference its responses set forth in Paragraphs 1 through 31 of its Answer as if fully rewritten herein.

33. Cleveland Thermal denies the allegations in Paragraph 33 of the Amended Complaint.

34. Cleveland Thermal denies the allegations in Paragraph 34 of the Complaint. Cleveland Thermal avers that the relief requested in Paragraph 34 cannot be granted for reasons set forth below.

#### **RESPONSE TO COUNT 2**

35. Cleveland Thermal states and incorporates by reference its responses set forth in Paragraphs 1 through 34 of its Answer as if fully rewritten herein.

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36. Cleveland Thermal denies the allegations in Paragraph 36 of the Complaint. Cleveland Thermal avers that the Tariff pursuant to which Manchester is served prohibits aggregation of services for billing purposes.

37. Cleveland Thermal denies the allegations in Paragraph 37 of the Complaint. Cleveland Thermal avers that the relief requested in Paragraph 37 cannot be granted on the basis set out above for reasons set forth below.

### **RESPONSE TO COUNT 3**

38. Cleveland Thermal states and incorporates by reference its responses set forth in Paragraphs 1 through 37 of its Answer as if fully rewritten herein.

39. Cleveland Thermal admits the citation to Section 4905.22, Revised Code, in Paragraph 39 of the Complaint is accurate.

40. Cleveland Thermal denies the allegations in Paragraph 40 of the Complaint. Cleveland Thermal states that its fuel charges billed to Manchester, having been calculated and billed consistent with the terms of its contract and Tariff, whichever was applicable at the time, are lawful.

41. Cleveland Thermal denies the allegations in Paragraph 41 of the Complaint. Cleveland Thermal avers that it billed Manchester pursuant to the Tariff during the the 2011-2012 winter season.

42. Cleveland Thermal denies the allegations in Paragraph 42 of the Complaint. Cleveland Thermal avers that it has complied with all applicable Ohio laws, Commission rules and regulations, its Tariff, and the terms and conditions of its agreement (when applicable) with Manchester. 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 Standard Steam Service Agreement remains in effect, Manchester has failed to make any legitimate claim that Cleveland Thermal has violated any law, rule, tariff or contract requirements to support its Complaint.

43. Cleveland Thermal denies the allegations in Paragraph 43 of the Complaint.

#### **RESPONSE TO COUNT 4**

44. Cleveland Thermal states and incorporates by reference its responses set forth in Paragraphs 1 through 43 of its Answer as if fully rewritten herein.

45. Cleveland Thermal admits the citation to Section 4905.56, Revised Code, in Paragraph 45 of the Complaint is accurate.

46. Cleveland Thermal denies the allegations in Paragraph 46 of the Complaint. Further, Cleveland Thermal denies that it has violated Sections 4905.22 and 4905.56, Revised Code. Cleveland Thermal avers that it has complied with all applicable Ohio laws, Commission rules and regulations, its Tariff, and the terms and conditions of its agreement (when applicable) with Manchester. 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 Standard Steam Service Agreement remains in effect, Manchester has failed to make any legitimate claim that Cleveland Thermal has violated any law, rule, tariff or contract requirements to support its Complaint.

47. Cleveland Thermal denies the allegations in Paragraph 47 of the Complaint.

## **RESPONSE TO COUNT 5**

48. Cleveland Thermal states and incorporates by reference its responses set forth in Paragraph 1 through 47 of its Answer as if fully rewritten herein.

49. Cleveland Thermal denies the allegations in Paragraph 49 of the Complaint.

50. Cleveland Thermal denies the allegations in Paragraph 50 of the Complaint.

## **FIRST AFFIRMATIVE DEFENSE**

51. Cleveland Thermal has complied with all applicable Ohio laws, Commission rules and regulations, its Tariff, and the terms and conditions of its agreement (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 Standard Steam Service Agreement remains in effect, Manchester has failed to make any legitimate claim that Cleveland Thermal has violated any law, rule, tariff or contract requirements to support its Complaint.

## **SECOND AFFIRMATIVE DEFENSE**

52. Manchester has failed to state reasonable grounds for a complaint against Cleveland Thermal required by Section 4905.26, Revised Code.

It should be noted that Manchester initiated this Complaint only after Cleveland Thermal disconnected Manchester's service for its failure to pay its bills. In fact,  
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Manchester has been a chronic late payer. During the time Cleveland Thermal provided steam service to Manchester beginning January 2003, Manchester was current on its bill payments only 28 out of 135 months, or a mere 20.7% of the time.<sup>11</sup> At the time of the notice of disconnection, Manchester was in arrears in the amount of \$79,957. 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 has grown to \$128,061, of which \$111,815 is now overdue.

In this Complaint, Manchester has merely observed that the fuel charges it has been billed have increased since 2007 and that the Commission has never undertaken an annual review of Cleveland Thermal's fuel charges. Manchester has made no legitimate claim that Cleveland Thermal has violated any Ohio laws, Ohio rules, Commission orders directed to Cleveland Thermal, or its own Tariff. Observations that bills have increased and that the Commission has not exercised its discretion to conduct annual reviews of Cleveland Thermal's fuel charges do not constitute reasonable grounds for a complaint against Cleveland Thermal.

### **THIRD AFFIRMATIVE DEFENSE**

53. Complainants have failed to state a claim for which relief can be granted.

Manchester has cited no authority and has established no circumstances which would support an extraordinary requirement that the service be reconnected immediately to a commercial customer which has failed to pay its bills. Manchester has

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<sup>11</sup> 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 out of thirty-five months, or 2.86% of the time.



made it clear to Cleveland Thermal and to Commission representatives (see attached correspondence from the Commission Call Center attached hereto as Exhibit 4) that it seeks reconnection for service only until May 15, 2012. Requiring reconnection for such a short time, without the required payment of the arrearages or some reliable guarantee of payment of the arrearages, would unreasonably subject Cleveland Thermal to the risk that it would remain unpaid for previously provided utility service. This would be tantamount to requiring the provision of free service, which is precluded by Section 4905.33, Revised Code.

Manchester seeks findings that Cleveland Thermal's fuel charges billed to it are unjust, unreasonable, and unlawful and should be invalidated. Manchester's claims that Cleveland Thermal's fuel charges have increased since October 2007 and that the Commission has not initiated annual reviews of Cleveland Thermal's fuel charges do not constitute claims for which the relief sought may be granted.

Finally, Manchester asks the Commission to enter an award of damages and order an award of treble damages and attorney's fees and costs in its favor. The Commission lacks statutory authority to grant any of these requests.

**WHEREFORE,** Respondent Cleveland Thermal Steam Distribution, LLC respectfully requests:

That the Commission find that the Complainant states no reasonable grounds for complaint;

That the Commission find that the Complainant is not entitled to the relief requested; and

That the Complaint be dismissed and Cleveland Thermal be afforded all other relief to which it is entitled under law.

Respectfully submitted,

/s/ Gretchen J. Hummel

Gretchen J. Hummel (Trial Attorney)

Frank P. Darr

Joseph E. Olikier

McNees Wallace & Nurick LLC

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

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing *Answer and Affirmative Defenses of Cleveland Thermal Steam Distribution, LLC to Complaint* has been hand-delivered, sent electronically or served *via* ordinary U.S. Mail, postage prepaid, this 16th day of April, 2012 to the following parties of record.

/s/ Gretchen J. Hummel

David Proano  
Melissa DeGaetano  
Baker & Hostetler LLP  
3200 PNC Center  
1900 East Ninth Street  
Cleveland, OH 44114  
dproano@bakerlaw.com  
mdegaetano@bakerlaw.com

Attorneys for Complainant

## EXHIBIT 1

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 9<sup>th</sup> 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.

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

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 F76*

Cc: ☒ S. Losh  
☒ M. Divis  
☐ J. Kavelec

**Linda Atkins**

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**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

You can track your shipment in more detail at any time from [bonniespeed.com](http://bonniespeed.com)

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2/14/2012

## EXHIBIT 2



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](mailto: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](http://www.breenandcompany.com)



### EXHIBIT 3

**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 14<sup>th</sup> 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

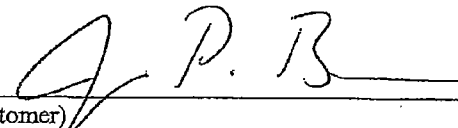
ten (10) percent, then Cleveland Thermal shall notify each Impacted Individual BOMA Steam Member in writing at least thirty days in advance of making any such mandated system changes or modifications, detailing the facts and circumstances of such mandate(s), the estimated amount per Mlb that Cleveland 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 14<sup>th</sup> day of November, 2007.

  
CLEVELAND THERMAL STEAM DISTRIBUTION, LLC.

  
(Customer)

## EXHIBIT 4

**From:** ContactThePUCO@puc.state.oh.us  
**Sent:** Wednesday, April 04, 2012 1:19 PM  
**To:** Gretchen Hummel  
**Subject:** Follow-up E-mail. Case: DPRO040412JZ

Public Utilities Commission of Ohio  
Investigation and Audit Division

Memorandum

Re: David Prolano  
Manchester Realty  
1360 E 9th

Cleveland, OH 44114  
(216) 861-7834

CASE ID: DPRO040412JZ

Notes:

Mr. Prolano contacted our Call Center today, and reported that service was disconnected on 3/26/12. He stated that they plan to file a Formal Complaint, but asked for our offices to request that service be reconnected before it is filed.

In a separate email he said that his client would agree to pay in advance for the steam from now through May 15 based on historical usage.

From: Stephen Watson

Compliance Investigator  
PUCO/SMED/IAD

**This foregoing document was electronically filed with the Public Utilities**

**Commission of Ohio Docketing Information System on**

**4/16/2012 3:02:41 PM**

**in**

**Case No(s). 12-1161-HC-CSS**

Summary: Answer Cleveland Thermal Steam Distribution LLC's (Respondent) Answer to Manchester Realty LLC's (Complainant) Complaint electronically filed by Ms. Vicki L. Leach-Payne on behalf of Hummel, Gretchen J. Ms.