

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

In the Matter of Cleveland Thermal Steam                     )  
Distribution, LLC and Cleveland Thermal Chilled            )  
Water Distribution, LLC    )  
  )  
  )     Case No. 15-1451-HC-UNC  
  )  
  )  
  )  
  )

---

**NOTICE OF TRANSACTION OR, ALTERNATIVELY,  
JOINT APPLICATION FOR APPROVAL OF TRANSACTION**

---

Cleveland Thermal Steam Distribution, LLC and Cleveland Thermal Chilled Water Distribution, LLC, hereby notify the Commission that Corix Infrastructure (US), Inc., has executed an agreement to purchase Cleveland Thermal, LLC. Although no provision of Title 49, Ohio Revised Code, expressly requires Commission review or approval of the transaction as described herein, the transaction is structured similarly to transactions where the Commission has exercised its general supervisory authority under R.C. 4905.05 and 4905.06 to ensure that the effect of the transaction will be consistent with the public interest, convenience and necessity. Accordingly, the parties submit this Notice of Transaction for the Commission’s consideration. If the Commission elects to exercise general supervisory authority to review the transaction, the parties respectfully request that the Commission approve the transaction, and that such approval occur without a hearing and as expeditiously as possible.

## PARTIES

1. Cleveland Thermal Holdings, LLC (CT Holdings) is the sole member of Cleveland Thermal, LLC (Cleveland Thermal). Cleveland Thermal in turn owns three subsidiaries: Cleveland Thermal Generation, LLC (CT Generation), Cleveland Thermal Steam Distribution, LLC (CT Steam) and Cleveland Thermal Chilled Water Distribution, LLC (CT Chilled Water).
2. CT Steam and CT Chilled Water are heating and cooling public utilities that render service in Ohio in accordance with tariffs approved in Case No. 04-1179-HT-UNC, as amended in Case No. 10-466-CC-ATA (CT Chilled Water), and 12-1451-HT-ATA (CT Steam). CT Holdings, Cleveland Thermal and CT Generation are not public utilities.
3. Corix is a private corporation owned by the British Columbia Investment Management Corporation, with offices in Vancouver, BC; Wauwatosa, WI; and Northbrook, IL. The Corix group of companies, which includes Corix Infrastructure (US) Inc., are leaders in the implementation of sustainable water, wastewater and energy utility infrastructure across North America.

## THE TRANSACTION

4. Corix and Cleveland Thermal are in the final stages of negotiation and execution of an agreement whereby Corix will purchase Cleveland Thermal. The targeted closing date is no later than September 30, 2015. In order to meet that deadline, the parties request that the Commission provide any necessary approval by September 23, 2015. The agreement will be filed separately in conjunction with a motion for protective order.

5. Upon closing of the transaction, CT Chilled Water and CT Steam will continue to provide public utility service, and will continue to own, operate and maintain the facilities necessary to provide such service.
6. The transaction will have no immediate effect on the rates, terms or conditions of service to existing customers of CT Chilled Water or CT Steam. CT Chilled Water and CT Steam will continue to provide service under their existing, Commission-approved tariffs and special arrangements. Existing procedures for Commission review and approval of rates and new contracts will continue to be observed
7. The transaction will have no effect on the day-to-day management or operation of CT Chilled Water or CT Steam. Mr. Marc Divis will continue to serve as President of Cleveland Thermal and its subsidiaries.
8. The transaction will have no effect on the legal status or relationship of Cleveland Thermal or its subsidiaries. Cleveland Thermal will continue in business as the sole member/owner of CT Generation, CT Steam and CT Chilled Water. No new entity is being created to provide service, nor is any existing entity changing its name. Thus, the transaction will not require any changes to existing bill formats.
9. Corix, as owner of Cleveland Thermal, will ensure that CT Steam and CT Chilled Water maintain the managerial, technical, and financial resources necessary to continue to provide safe, adequate and reliable service.
10. By ordinance dated July 22, 2015, the City of Cleveland has affirmed that the terms and conditions of the franchise granted to CT Chilled Water and CT Steam on October 25, 2004, and amended on April 30, 2012, will continue to apply after the transaction closes. A copy of the ordinance is attached as Exhibit A.

## APPLICABLE LAW

11. R.C. 4905.48 requires Commission approval of transactions between public utilities. Corix is not a public utility. Although CT Steam and CT Chilled Water are public utilities, the transaction described herein is with Cleveland Thermal, which is not a public utility.
12. R.C. 4905.63 provides that companies formed to acquire property or to transact business subject to Chapters 4901, 4903, 4905, 4907, 4909, 4921, 4923 and 4972, Revised Code, are subject to those chapters' provisions, although no property has been acquired and no business has been transacted. The parties to the transaction described herein have not been formed to acquire property or transact business subject to the foregoing Revised Code provisions.
13. The transaction will not require CT Chilled Water or CT Steam to issue stocks, bonds or notes under R.C. 4905.40.
14. The transaction will not constitute an abandonment of service under R.C. 4905.20. Upon closing of the transaction, the same public utilities will continue to provide service to the same customers, pursuant to the same Commission-approved special arrangements or tariffs.
15. Although the foregoing statutes do not expressly require review or approval of the transaction described herein, the transaction is structured similarly to transactions where the Commission has exercised its general supervisory authority under R.C. 4905.05 and 4905.06 to ensure that the effect of the transaction will be consistent with the public interest, convenience and necessity. *See, e.g., Joint Application of Dominion Energy, Inc.*

*et al.*, Case No. 04-1179-HT-UNC (July 26, 2004 Application at ¶ 13; Sept. 1, 2004 Finding and Order at ¶ 3.)

16. CT Steam, CT Chilled Water and Corix (collectively, Joint Applicants) are providing this Notice so that the Commission may determine whether to exercise general supervisory authority to review the transaction.
17. If the Commission elects to exercise such general supervisory authority here, it should approve the transaction. As indicated, the effect of the transaction will be the change of ownership of Cleveland Thermal. Customers of CT Steam and CT Chilled Water will continue to receive service under existing contracts and tariffs. The same management team will continue to oversee the day-to-day operation of CT Steam and CT Chilled Water. The City of Cleveland is the largest customer of CT Steam and CT Chilled Water, and has affirmed that the terms of the existing franchise granted by the City will continue in effect following closing of the transaction. Accordingly, the public interest, convenience and necessity favor approval of the transaction.
18. In addition to the City of Cleveland, the remaining customer base of CT Steam and CT Chilled Water consists predominantly of governmental, large commercial and industrial customers served under special contracts. All customers are located within the territorial limits of the City of Cleveland. The Commission's docket reflects no complaints, inquiries or other correspondence regarding the change of ownership of Cleveland Thermal since the City of Cleveland authorized continuation of the franchise on July 22, 2015. Accordingly, the Joint Applicants request that this application be approved without a public hearing, evidentiary hearing, customer notice, or other process.

19. In order to facilitate timely closing of the transaction, the Joint Applicants request that the Commission act on this filing as expeditiously as possible, but no later than September 23, 2015, so that the transaction may close by no later than September 30, 2015. A timely closing is necessary, among other reasons, to avoid regulatory uncertainty in the midst of Cleveland Thermal's ongoing effort to convert its system from coal to natural gas in order to timely comply with regulatory requirements of the Clean Air Act. The conversion process requires coordination with other construction projects in the City of Cleveland, including the extension of gas main lines. The extension of gas main lines, in turn, requires coordination with other right-of-way projects being undertaken by the City of Cleveland in preparation for the 2016 Republican Convention. Thus, a delayed closing could have a detrimental "ripple effect" not only to the Joint Applicants, but to the City of Cleveland generally.

WHEREFORE, the Joint Applicants request a Finding and Order by not later than September 23, 2015, affirming that Commission approval of the transaction is not required or, alternatively, authorizing and approving the transaction, and such other relief as the Commission deems appropriate.

Dated: August 18, 2015

Respectfully submitted,

/s/ Samuel C. Randazzo  
Samuel C. Randazzo (0016386)  
Frank P. Darr (0025469)  
Matthew R. Pritchard 0088070)  
MCNEES, WALLACE & NURICK LLC  
Fifth Third Center  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, OH 43215  
Telephone: 614-469-8000  
Telecopier: 614-469-4653  
[sam@mwncmh.com](mailto:sam@mwncmh.com)  
[fdarr@mwncmh.com](mailto:fdarr@mwncmh.com)  
[mpritchard@mwncmh.com](mailto:mpritchard@mwncmh.com)

(All counsel will accept service by email)

*Attorney for Cleveland Thermal Steam Distribution,  
LLC and Cleveland Thermal Chilled Water  
Distribution, LLC*

s/Mark A. Whitt  
Mark A. Whitt (0067996)  
Andrew J. Campbell (0081485)  
Rebekah J. Glover (0088798)  
WHITT STURTEVANT LLP  
The KeyBank Building, Suite 1590  
88 East Broad Street  
Columbus, OH 43215  
Telephone: 614-224-3911  
[whitt@whitt-sturtevant.com](mailto:whitt@whitt-sturtevant.com)  
[campbell@whitt-sturtevant.com](mailto:campbell@whitt-sturtevant.com)  
[glover@whitt-sturtevant.com](mailto:glover@whitt-sturtevant.com)

(All counsel will accept service by email)

*Attorneys for Corix Infrastructure (US) Inc.*

# The City Record

Official Publication of the Council of the City of Cleveland




---

July the Twenty-Ninth, Two Thousand and Fifteen

---

**Frank G. Jackson**  
Mayor

**Kevin J. Kelley**  
President of Council

**Patricia J. Britt**  
City Clerk, Clerk of Council

**Ward Name**

- 1 Terrell H. Pruitt
- 2 Zachary Reed
- 3 Joe Cimperman
- 4 Kenneth L. Johnson
- 5 Phyllis E. Cleveland
- 6 Mamie J. Mitchell
- 7 TJ Dow
- 8 Michael D. Polensek
- 9 Kevin Conwell
- 10 Jeffrey D. Johnson
- 11 Dona Brady
- 12 Anthony Brancatelli
- 13 Kevin J. Kelley
- 14 Brian J. Cummins
- 15 Matthew Zone
- 16 Brian Kazy
- 17 Martin J. Keane

The City Record is available online at  
[www.clevelandcitycouncil.org](http://www.clevelandcitycouncil.org)

Containing	PAGE
City Council	3
The Calendar	45
Board of Control	45
Civil Service	46
Board of Zoning Appeals	54
Board of Building Standards and Building Appeals	55
Public Notice	57
Public Hearings	57
City of Cleveland Bids	57
Adopted Resolutions and Ordinances	57
Committee Meetings	87
Index	87





Those voting yea: Council Members Brady, Brancatelli, Cimperman, Cleveland, Conwell, K. Johnson, Keane, Kelley, Mitchell, Polensek, Pruitt and Zone.

Those voting nay: Council Members Cummins, Dow, J. Johnson and Reed.

Absent: Council Member Kazy.

**FIRST READING ORDINANCE  
READ IN FULL AND PASSED**

**Ord. No. 755-15.  
By Council Members Pruitt and Kelley.**

**An ordinance approving a transaction related to the franchise agreement with Cleveland Thermal, LLC for the transmission and supply of steam and water for heating, cooling and power purposes.**

Whereas, the Charter of the City of Cleveland authorizes this Council by ordinance to grant a non-exclusive franchise to any person, firm or corporation to construct, install, maintain and operate a utility in, under, over, along, across and upon any of the streets and public grounds of the City of Cleveland; and

Whereas, pursuant to Ordinance No. 1519-04, passed October 25, 2004, as amended by Ordinance No. 550-12, passed April 30, 2012, as amended by Ordinance No. 952-12, passed July 25, 2012, (collectively, the "Franchise Ordinance"), Cleveland Thermal, LLC has been granted a non-exclusive franchise to construct, install, maintain and operate a system for the transmission and supply of steam and hot water in, under, over, along, across and upon certain of the streets, public rights of way and public grounds of the City of Cleveland; and

Whereas, Section 6 of the franchise agreement contained in Ordinance No. 550-12 provides that "... the Grantee shall not, without consent of Council, either directly or indirectly, consolidate, merge or in any other way give or permit control of the management of its business to or by any other heating, cooling or power company now operating or that may in the future operate in the City"; and

Whereas, Cleveland Thermal Holdings, LLC ("Holdings"), which is the sole member of Cleveland Thermal, LLC, is in the process of negotiating an agreement to transfer its membership interest in Cleveland Thermal, LLC to Corix Infrastructure (US) Inc. or one of its directly or indirectly held wholly-owned subsidiaries ("Corix"), which transfer, if Holdings and Corix agree thereto, would require the consent of Council; and

Whereas, Cleveland Thermal, LLC and its operating affiliates, Cleveland Thermal Generation, LLC, Cleveland Thermal Steam Distribution, LLC and Cleveland Thermal Chilled Water Distribution, LLC (collectively, "Cleveland Thermal"), have requested this Council to approve the potential transfer by Holdings to Corix of the membership interest in Cleveland Thermal, LLC; now, therefore,

Be it ordained by the Council of the City of Cleveland:

**Section 1.** That, under Chapter 35 of the Charter of the City of Cleveland and Section 1 of the franchise granted by the Franchise Ordinance, this Council approves the proposed sale by Cleveland Thermal Holdings, LLC of its membership interest in Cleveland Thermal, LLC to Corix, if the parties mutually agree on the terms of the sale and all relevant consents and approvals have been obtained.

**Section 2.** That in the event that the sale of Holdings' membership interests in Cleveland Thermal, LLC to Corix does not proceed, there shall be no amendment to the franchise granted by the City to Cleveland Thermal, LLC, and Cleveland Thermal, LLC shall continue as franchisee as provided in the Franchise Ordinance.

**Section 3.** That this ordinance shall take effect and be in force from and after the earliest period allowed by law.

Motion to suspend rules, Charter, and statutory provisions and place on final passage.

The rules were suspended. Yeas 16. Nays 0. Read second time. Read third time in full. Passed. Yeas 16. Nays 0.

**FIRST READING EMERGENCY  
RESOLUTIONS READ IN FULL  
AND ADOPTED**

**Res. No. 841-15.**

**By Council Member Brancatelli.  
An emergency resolution supporting the application from the Western Reserve Land Conservancy to the Cuyahoga County Department of Development for the Emerald Valley-Henninger Big Creek Greenway Redevelopment project at 3967 Pearl Road, Cleveland, Ward 12.**

Whereas, the City of Cleveland recognizes the importance of preserving open space, protecting water quality, and creating opportunities for passive recreation within the City of Cleveland; and

Whereas, the Western Reserve Land Conservancy is submitting an application to the Cuyahoga County Department of Development's USEPA Brownfield Revolving Loan Fund in order to support environmental assessment, Voluntary Action Program assistance and clean-up of 24.81 acres zoned for general industry known as the Emerald Valley-Henninger Big Creek Greenway Redevelopment project at 3967 Pearl Road, Cleveland, Ward 12; and

Whereas, the Emerald Valley-Henninger Big Creek Greenway Redevelopment project will transform a former landfill into a park amenity for the community and region and will contribute to a network of green space already protected in the City of Cleveland; and

Whereas, the Western Reserve Land Conservancy's application to the Cuyahoga County Department of Development, or this Council's support thereof, does not commit the City of Cleveland to provide monetary support or any other monetary or non-monetary obligation in furtherance of the Project; and

Whereas, this resolution constitutes an emergency measure providing for the usual daily operation of a municipal department; now, therefore,

Be it resolved by the Council of the City of Cleveland:

**Section 1.** That this Council supports the application from the Western Reserve Land Conservancy to the Cuyahoga County Department of Development for the Emerald Valley-Henninger Big Creek Greenway Redevelopment project at 3967 Pearl Road, Cleveland, Ward 12.

**Section 2.** That the Clerk of Council is directed to transmit certified copies of this resolution to the Western Reserve Land Conservancy, Emerald Valley-Henninger Big Creek Greenway Redevelopment and the Cuyahoga County Department of Development.

**Section 3.** That this resolution is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; otherwise, it shall take effect and be in force from and after the earliest period allowed by law.

Motion to suspend rules, Charter, and statutory provisions and place on final adoption.

The rules were suspended. Yeas 16. Nays 0. Read second time. Read third time in full. Adopted. Yeas 16. Nays 0.

**Res. No. 901-15.**

**By Council Member Brancatelli.  
An emergency resolution objecting to the renewal of a D1, D2, D3 and D3A Liquor Permit at 3314 Broadview Road, 1st floor, basement and patio.**

Whereas, the uniform date for renewal of liquor permits in the State of Ohio is October 1st; and

Whereas, pursuant to Section 4303.271 of the Revised Code, the legislative authority of a municipal corporation may object to the renewal of a permit based upon legal grounds as set forth in division (A) of Revised Code Section 4303.292; and

Whereas, the applicant is unfit to continue to engage in the liquor permit business in that he has operated his liquor permit business in a manner that demonstrates a disregard for the laws, regulations or local ordinances of the state, and that this objection is based on other legal grounds as set forth in Revised Code Section 4303.292; and

Whereas, this resolution constitutes an emergency measure providing for the immediate preservation of the public peace, prosperity, safety and welfare pursuant to Section 4303.271 of the Ohio Revised Code, objections to renewal of liquor permits shall be made no later than thirty days prior to the expiration date of the permit; now, therefore,

Be it resolved by the Council of the City of Cleveland:

**Section 1.** That Council does hereby record its objection to the renewal of a D1, D2, D3 and D3A Liquor Permit, Permit No. 0965330 owned by Broadview Sports Bar & Grill, Inc., DEB N Yuk N Yuks, 3314 Broadview Road, 1st floor, basement and patio, Cleveland, Ohio 44109, and requests the Superintendent of the Division of Liquor Control to set a hearing for said application in accordance with provisions of Section 4303.271 of the Revised Code of Ohio.

**Section 2.** That the Clerk of Council be and she is hereby directed to transmit two certified copies of this resolution, together with two copies of a letter of objection and two copies of a letter requesting that the hearing be held in Cleveland, Cuyahoga County, and a statement by the Director of Law that, in the Director's opinion, that the objection is based upon substantial legal grounds within the meaning and intent of division (A) of Section 4303.292 of the Revised Code to the Superintendent of the Division of Liquor Control.

**Section 3.** That this resolution is hereby declared to be an emergency measure and, provided it receives the affirmative vote of two-thirds of all the members elected to Council, it shall take effect and be in force immediately upon its adoption and approval by the Mayor; otherwise, it shall take effect and be in force from

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

**Commission of Ohio Docketing Information System on**

**8/18/2015 5:08:08 PM**

**in**

**Case No(s). 15-1451-HC-UNC**

Summary: Notice of Transaction or, Alternatively, Joint Application for Approval of Transaction electronically filed by Ms. Rebekah J. Glover on behalf of Corix Infrastructure (US) Inc.