

STATE OF MICHIGAN

BEFORE THE MICHIGAN PUBLIC SERVICE COMMISSION

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In the matter of the application of)	
DETROIT THERMAL, LLC,)	
for approval of a steam sales agreement.)	Case No. U-17259
_____)	

At the May 29, 2013 meeting of the Michigan Public Service Commission in Lansing, Michigan.

PRESENT: Hon. John D. Quackenbush, Chairman
Hon. Orjiakor N. Isiogu, Commissioner
Hon. Greg R. White, Commissioner

ORDER APPROVING STEAM SALES AGREEMENT

On May 17, 2013, Detroit Thermal, LLC (Detroit Thermal), filed an application for *ex parte* approval of a steam sales agreement for the supply of steam service to the Michigan Science Center (MSC). Detroit Thermal states that it and the MSC explored several proposals for the provision of service, including a rate based on Detroit Thermal’s published steam service rate. The parties arrived at an equitable agreement, which is attached as Exhibit A.

The agreement has an initial term of three years, beginning the day following the Commission’s approval of the agreement. The rate for service set forth in the agreement is equivalent to the published steam service rate Detroit Thermal charges to its tariffed customers. Given the MSC’s projected steam consumption, the steam service rate will cover the variable costs of the steam the MSC consumes while making a contribution to Detroit Thermal’s fixed costs and margins. Both the customer and the company will benefit from the agreement.

Detroit Thermal is not requesting any ratemaking determinations or any change in the rates or costs of service to other customers. Approval of the contract does not increase any other customer's rate; therefore, the Commission may approve the contract without providing notice or an opportunity for a hearing, pursuant to MCL 460.6a(1).

The Commission finds that the steam sales agreement is reasonable and in the public interest, and should be approved. *Ex parte* approval of the application is appropriate.

THEREFORE, IT IS ORDERED that the contract between Detroit Thermal, LLC, and the Michigan Science Center, attached to this order as Exhibit A, is approved.

The Commission reserves jurisdiction and may issue further orders as necessary.

Any party desiring to appeal this order must do so in the appropriate court within 30 days after issuance of this order, pursuant to MCL 462.26.

MICHIGAN PUBLIC SERVICE COMMISSION

John D. Quackenbush, Chairman

By its action of May 29, 2013.

Orjiakor N. Isiogu, Commissioner

Mary Jo Kunkle, Executive Secretary

Greg R. White, Commissioner

the Customer's outstanding balance. In the event the deposit is applied to an outstanding balance, the Customer shall be required to deposit any amounts necessary to replenish the deposit back up to Fifty Thousand Dollars (\$50,000.00). The Customer agrees that Detroit Thermal shall be allowed to commingle the deposit with the Company's other funds.

5. If the Company shall be delayed, hindered in, or prevented from the performance of any of its obligations under this Agreement as a result of Force Majeure (as hereinafter defined), it shall not be liable for loss or damage for the failure or be liable to Customer for a breach of contract. "Force Majeure" shall mean any period of delay which arises from or through Acts of God; strikes, lockouts or labor difficulty; explosion, sabotage, accident, riot or civil commotion; act of war; fire or other casualty; delays caused by the Customer; causes beyond the reasonable control of Company; and delay, interruption or termination of steam, water, electricity, gas or other commodities supplied to Company by third parties for reasons other than non-payment or non-performance by the Company of its obligations under any applicable supply contract. Price hardship resulting from this Agreement shall not constitute Force Majeure.
6. Neither party hereto, nor their directors, officers, partners, shareholders, employees, agents or representatives will be liable to the other for any special, indirect, or consequential damage of such other party arising as a result of the performance or non-performance of any obligation under this Agreement, or the breach of any express or implied representation, covenant, or warranty herein.
7. The Customer may not assign this Agreement to another party without prior written consent of the Company, which consent may be withheld in the sole discretion of the Company.
8. To the maximum extent permitted by law, Customer shall indemnify, release, defend and hold harmless Company and its members, officers, directors, managers, employees, representatives and agents from and against any and all suits, sanctions, actions, liabilities, legal proceedings, demands, losses, costs and expenses of whatsoever kind or character, including reasonable attorneys' fees and expenses, for any injury to or death of third parties or loss or damage to or loss of property of third parties arising directly or indirectly under this Agreement, to the extent caused by the acts or omissions of Customer or its employees, agents or contractors. To the maximum extent permitted by law, Company shall indemnify, release, defend and hold harmless Customer and its members, officers, directors, managers, employees, representatives and agents from and against any and all suits, sanctions, actions, liabilities, legal proceedings, demands, losses, costs and expenses of whatsoever kind or character, including reasonable attorneys' fees and expenses, for any injury to or death of third parties or loss or damage to or loss of property of third parties arising directly or indirectly under this Agreement, to the extent caused by the acts or omissions of Company or its employees, agents, or contractors.

9. Except as otherwise specifically provided for in this Agreement, all notices, statements, demands, or other communications required or permitted to be given hereunder shall be in writing and shall be hand delivered, sent by telefacsimile, or forwarded by courier (such as Federal Express) in each case against written receipt or confirmation, to the following addresses:

If to Company:

Detroit Thermal, LLC
541 Madison Ave.
Detroit, MI 48226
Telephone: (313) 963-3844
Fax: (313) 963-7285
Attention: Kevin Murphy, Controller

If to Customer:

Michigan Science Center
5020 John R Street
Detroit, MI 48202
Telephone:
Fax:
Attention: James Issner, Executive Director

or to such other person or address as the addressee may have specified in a notice duly given as provided herein. All notices given in the foregoing manner shall be effective when received.

10. This Agreement is explicitly conditioned upon approved in its original form by the MPSC.
11. Except to the extent this Agreement provides for different terms and conditions, the sale and delivery of steam under this Agreement is governed by the terms of the Company's filed tariff, *Detroit Thermal, LLC M.P.S.C. NO. 1 – Steam*, as revised from time to time (the "Tariff"). A copy of the Company's current filed tariff, *Detroit Thermal, LLC M.P.S.C. NO. 1 – Steam*, is available upon request and is incorporated herein by reference. The terms of this Agreement shall apply in all cases where a conflict exists with the provisions of the Company's filed tariff.
12. In the event the Customer defaults in its obligations under the terms of this Agreement, the Customer shall be liable to the Company for any costs incurred by the Company, including, without limitation, all reasonable attorneys' fees and court costs, disbursements and other expenses incurred by the Company arising out of such default or the enforcement of this Agreement.

13. The MPSC shall be the exclusive forum for any claims by the Customer against the Company arising out of or related to the rates for service or services provided under the terms of this Agreement or otherwise within the jurisdiction of the MPSC. This Agreement is subject to Michigan law, without regard to conflict-of-law principles.
14. The invalidity or unenforceability of any provision of this Agreement shall not affect the validity and enforceability of any other provisions and each provision of this Agreement shall be enforced to the maximum extent permitted by applicable law. The terms of any provision hereof held to be invalid or unenforceable shall be construed, if possible, to give effect to the parties' lawful intent, as evidenced by the terms of this Agreement. Both Company and Customer and their respective legal counsel have participated extensively in the preparation, negotiation, and drafting of this Agreement. Accordingly, no presumption will apply in favor of Company or Customer in the interpretation of this Agreement or in the resolution of any ambiguity herein.
15. None of the provisions of this Agreement or the Tariff shall be considered waived by either party except when such waiver is given in writing and executed by both parties. The failure of either party to insist in any instance on strict performance of any of the provisions of this Agreement shall not be construed as a waiver of any such provision or the relinquishment of any rights hereunder in the future.

DETROIT THERMAL, LLC

MICHIGAN SICENCE CENTER

By: _____

Rick Pucak

Its: President

By: _____

James Issner

Its: Executive Director