



Office of the Chicago City  
Clerk



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Office of the City Clerk

City Council Document Tracking Sheet

**Meeting Date:**

7/28/2011

**Sponsor(s):**

Mayor Emanuel

**Type:**

Ordinance

**Title:**

Amendment to District Cooling System Use Agreement with  
Thermal Chicago Corporation

**Committee(s) Assignment:**

Committee on Transportation and Public Way



## CITY COUNCIL

### CITY OF CHICAGO

**COUNCIL CHAMBER**  
CITY HALL—SECOND FLOOR  
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### COMMITTEE MEMBERSHIPS

TRANSPORTATION & PUBLIC WAY  
(CHAIRMAN)

BUDGET AND GOVERNMENT OPERATIONS

ENERGY, ENVIRONMENTAL PROTECTION  
& PUBLIC UTILITIES

EDUCATION AND CHILD DEVELOPMENT

FINANCE

POLICE AND FIRE

RULES AND ETHICS

### ANTHONY A. BEALE

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September 6, 2011

To the President and Members of the City Council:

Your Committee on Transportation and Public Way begs leave to report and recommend that Your Honorable Body pass At the request of the Commissioner of the Environment, an ordinance authorizing a 26th Amendment to the District Cooling System Use Agreement with Thermal Chicago Corporation. This ordinance was referred to the Committee on July 28, 2011.

This recommendation was concurred unanimously by a viva voce vote of the members of the Committee with no dissenting vote.

(Ward )

Respectfully submitted,

Anthony Beale,  
Chairman





OFFICE OF THE MAYOR  
CITY OF CHICAGO

RAHM EMANUEL  
MAYOR

July 28, 2011

TO THE HONORABLE, THE CITY COUNCIL  
OF THE CITY OF CHICAGO

Ladies and Gentlemen:

At the request of the Commissioner of the Environment, I transmit herewith an ordinance authorizing an amendment to the District Cooling System Use Agreement with Thermal Chicago Corporation.

Your favorable consideration of this ordinance will be appreciated.

Very truly yours,

Mayor

## ORDINANCE

**WHEREAS**, on the 14<sup>th</sup> day of September, 1994, the City Council (the "City Council") of the City of Chicago, Illinois (the "City") adopted an ordinance authorizing the City to enter into a "District Cooling System Use Agreement" (the "Original Agreement") with MDE Thermal Technologies, Inc. (formerly Exelon Thermal Technologies, Inc. and formerly before that Unicom Thermal Technologies, Inc. and formerly before that Northwind, Inc., and referred to herein as "Grantee"), which grants to Grantee the non-exclusive right to use certain public ways of the City to construct, operate and maintain a district cooling system (the "System"); and

**WHEREAS**, the City and Grantee entered into the Original Agreement as of October 1, 1994; and

**WHEREAS**, on the 17<sup>th</sup> day of May, 1995, the City Council adopted an ordinance authorizing the City to enter into a "First Amendment to District Cooling System Use Agreement" (the "First Amendment"); and

**WHEREAS**, the First Amendment is dated as of June 1, 1995; and

**WHEREAS**, on the 13<sup>th</sup> day of July, 1995, the City Council adopted an ordinance authorizing the City to enter into a "Second Amendment to District Cooling System Use Agreement" (the "Second Amendment"); and

**WHEREAS**, the Second Amendment is dated as of July 15, 1995; and

**WHEREAS**, on the 10 day of January, 1996, the City Council adopted an ordinance authorizing the City to enter into a "Third Amendment to District Cooling System Use Agreement" (the "Third Amendment"); and

**WHEREAS**, the Third Amendment is dated as of February 1, 1996; and

**WHEREAS**, on the 6<sup>th</sup> day of March, 1996, the City Council adopted an ordinance authorizing the City to enter into a "Fourth Amendment to District Cooling System Use Agreement" (the "Fourth Amendment"); and

**WHEREAS**, the Fourth Amendment is dated as of April 1, 1996; and

**WHEREAS**, on the 16<sup>th</sup> day of April, 1996, the City Council adopted an ordinance authorizing the City to enter into a "Fifth Amendment to District Cooling System Use Agreement" (the "Fifth Amendment"); and

**WHEREAS**, the Fifth Amendment is dated as of October 1, 1996, and

**WHEREAS**, on the 30<sup>th</sup> day of October, 1996, the City Council adopted an ordinance authorizing the City to enter into a "Sixth Amendment to District Cooling System Use Agreement"

(the "Sixth Amendment"); and

**WHEREAS**, the Sixth Amendment is dated as of November 7, 1996; and

**WHEREAS**, on the 11<sup>th</sup> day of December, 1996, the City Council adopted an ordinance authorizing the City to enter into a "Seventh Amendment to District Cooling System Use Agreement" (the "Seventh Amendment"); and

**WHEREAS**, the Seventh Amendment is dated as of January 15, 1997; and

**WHEREAS**, on the 7<sup>th</sup> day of February, 1997, the City Council adopted an ordinance authorizing the City to enter into an "Eighth Amendment to District Cooling System Use Agreement" (the "Eighth Amendment"); and

**WHEREAS**, the Eighth Amendment is dated as of May 1, 1997; and

**WHEREAS**, on the 30<sup>th</sup> day of July, 1997, the City Council adopted an ordinance authorizing the City to enter into a "Ninth Amendment to District Cooling System Use Agreement" (the "Ninth Amendment"); and

**WHEREAS**, the Ninth Amendment is dated as of August 1, 1997; and

**WHEREAS**, on the 10<sup>th</sup> of September, 1997, the City Council adopted an ordinance authorizing the City to enter into a "Tenth Amendment to District Cooling System Use Agreement" (the "Tenth Amendment"); and

**WHEREAS**, the Tenth Amendment is dated as of October 1, 1997;

**WHEREAS**, on the 5<sup>th</sup> day of February, 1998, the City Council adopted an ordinance authorizing the City to enter into an "Eleventh Amendment to District Cooling System Use Agreement" (the "Eleventh Amendment"); and

**WHEREAS**, the Eleventh Amendment is dated as of March 12, 1998; and

**WHEREAS**, on the 29<sup>th</sup> day of April, 1998, the City Council adopted an ordinance authorizing the City to enter into a "Twelfth Amendment to District Cooling System Use Agreement" (the "Twelfth Amendment"); and

**WHEREAS**, the Twelfth Amendment is dated as of June 1, 1998; and

**WHEREAS**, on the 7<sup>th</sup> day of October, 1998, the City Council adopted an ordinance authorizing the City to enter into a "Thirteenth Amendment to District Cooling System Use Agreement" (the "Thirteenth Amendment"); and

**WHEREAS**, the Thirteenth Amendment is dated as of October 8, 1998; and

**WHEREAS**, on the 21<sup>st</sup> day of April, 1999, the City Council adopted an ordinance authorizing the City to enter into a "Fourteenth Amendment to District Cooling System Use

Agreement" (the "Fourteenth Amendment"); and

**WHEREAS**, the Fourteenth Amendment is dated as of April 21, 1999; and

**WHEREAS**, on the 16<sup>th</sup> day of February, 2000, the City Council adopted an ordinance authorizing the City to enter into a "Fifteenth Amendment to District Cooling System Use Agreement" (the "Fifteenth Amendment"); and

**WHEREAS**, the Fifteenth Amendment is dated as of March 15, 2000; and

**WHEREAS**, on the 16<sup>th</sup> day of February, 2000, the City Council adopted an ordinance authorizing the City to enter into a "Sixteenth Amendment to District Cooling System Use Agreement" (the "Sixteenth Amendment"); and

**WHEREAS**, the Sixteenth Amendment is dated as of March 15, 2000; and

**WHEREAS**, on the 17<sup>th</sup> day of May, 2000, the City Council adopted an ordinance authorizing the City to enter into a "Seventeenth Amendment to District Cooling System Use Agreement" (the "Seventeenth Amendment"); and

**WHEREAS**, the Seventeenth Amendment is dated as June 1, 2000; and

**WHEREAS**, on the 27<sup>th</sup> day of September, 2000, the City Council adopted an ordinance authorizing the change of control and name change from Unicom Thermal Technologies, Inc. to Exelon Thermal Technologies, Inc.; and

**WHEREAS**, on the 7<sup>th</sup> day of March, 2001, the City Council adopted an ordinance authorizing the City to enter into an "Eighteenth Amendment to District Cooling System Use Agreement" (the "Eighteenth Amendment"); and

**WHEREAS**, the Eighteenth Amendment is dated as of August 1, 2001; and

**WHEREAS**, on the 31<sup>st</sup> day of October, 2001, the City Council adopted an ordinance authorizing the City to enter into a "Nineteenth Amendment to District Cooling System Use Agreement" (the "Nineteenth Amendment"); and

**WHEREAS**, the Nineteenth Amendment is dated as of November 1, 2001; and

**WHEREAS**, on the 29<sup>th</sup> day of May, 2002, the City Council adopted an ordinance authorizing the City to enter into a "Twentieth Amendment to District Cooling System Use Agreement" (the "Twentieth Amendment"); and

**WHEREAS**, the Twentieth Amendment is dated as of June 1, 2002; and

**WHEREAS**, on the 23<sup>rd</sup> of June, 2004, the City of Chicago adopted an ordinance authorizing the City to enter into a "Twenty-First Amendment to the District Cooling System Use Agreement" (the "Twenty-First Amendment") which authorized the change of ownership and control of Thermal Chicago Corporation from Exelon Thermal Holdings, Inc. to Macquarie

District Energy, Inc.; and

**WHEREAS**, the Twenty-First Amendment is dated as of June 30, 2004; and

**WHEREAS**, on the 23<sup>rd</sup> day of June, 2004, the City Council adopted an ordinance authorizing the City to enter into a "Twenty-Second Amendment to the District Cooling System Use Agreement" (the "Twenty-Second Amendment") which authorized the change of ownership and control of Exelon Thermal Technologies, Inc. from Macquarie Investment Holdings, Inc. to Macquarie Infrastructure Assets, Inc. and collectively with the Original Agreement and all prior amendments described above the "Current Agreement" and the Current Distribution Facilities are described in Exhibit 1 and Exhibit 2; and

**WHEREAS**, the Twenty-Second Amendment is dated as of December 23, 2004; and

**WHEREAS**, on the 6th day of October, 2005, the City Council adopted an ordinance authorizing the City to enter into a "Twenty-Third Amendment to the District Cooling System Use Agreement" (the "Twenty-Third Amendment") which authorized amendments to the current Exhibits to include in the current Distribution Facilities a portion of East Randolph Street from North Columbus Drive to a point approximately 340 feet east of the right-of-way line of North Columbus Drive, and collectively with the Original Agreement and all prior amendments described above, the "Current Agreement" and the Current Distribution Facilities are described in Exhibit 1 and Exhibit 2; and

**WHEREAS**, the Twenty-Third Amendment is dated as of November 1, 2005; and

**WHEREAS**, on the 1st day of November, 2006 the City Council adopted an ordinance authorizing the City to enter into a "Twenty-Fourth Amendment to the District Cooling System Use Agreement" (the "Twenty-Fourth Amendment") which authorized amendments to the current Exhibits to include in the current Distribution Facilities with respect to Plant #1 Wabash Avenue from Adams Street to 200 feet north of Monroe Street, with respect to Plant #3 in the LaSalle Street Trolley Tunnel, from Lake Street to Kinzie, in Kinzie Street from the LaSalle Street Trolley Tunnel to 75 feet east of State Street and in Erie Street from State Street to Michigan Avenue and collectively with the Original Agreement and all prior amendments described above, the "Current Agreement" and the Current Distribution Facilities are described in Exhibit 1 and Exhibit 2; and

**WHEREAS**, the Twenty-Fourth Amendment is dated as of November 1, 2006; and

**WHEREAS**, on the 30th day of July, 2008, the City Council adopted an ordinance authorizing the City to enter into a "Twenty-Fifth Amendment to the District Cooling System Use Agreement" (the "Twenty-Fifth Amendment") which authorized the extension of the Termination Date of the Original Agreement to December 31, 2040 in consideration of an increase in the use fee from 3.0% of Grantee's Total Gross Billings to 3.5% of Grantee's Gross Billings commencing on January 1, 2009 and another .5% increase of Grantee's Gross Billings effective January 1, 2014, and the City reserved the right after considering and analyzing business and economic realities to increase the General Compensation by no more than 2% of Grantee's Gross Billings in 2024 in any event not to exceed in the aggregate 6.0% of Grantee's Gross Billings throughout the term of the Current Agreement; and

**WHEREAS**, the Twenty-Fifth Amendment is dated as of October 1, 2008; and

**WHEREAS**, the Grantee wishes to amend the current Exhibits to include in the Current Distribution Facilities a portion of Wabash Avenue from Erie Street to Superior Street, and a portion of Superior Street from Wabash Avenue to a point 100 feet west of Wabash Avenue, and collectively with the Original Agreement and all prior amendments described above, the "Current Agreement" and the Current Distribution Facilities are described in Exhibit 1 and Exhibit 2.

NOW, THEREFORE, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF CHICAGO:

SECTION 1: The above recitals are expressly incorporated herein and made a part of this ordinance by reference as though fully set forth herein.

SECTION 2: Subject to the approval of the Corporation Counsel, as to form and legality the Commissioner of the Department of the Environment, the Commissioner of the Department of Transportation, and the Executive Director of the Department of Business and Licensing Affairs (collectively, the "Commissioners") are hereby authorized to enter into and execute on behalf of the City, a Twenty-Sixth Amendment to the District Cooling System Use Agreement (the "Twenty-Sixth Amendment") substantially in the form attached hereto as Exhibit A, subject to such changes as shall be approved by the officials executing the same, their execution constituting conclusive evidence of their approval and this City Council's approval of any such changes or revisions therein from the form of the Twenty-Sixth Amendment attached hereto (including, but not limited to reduction or elimination of specific routes or locations herein authorized in the interest of public safety or in the public interest); provided, however, that no such change or revision may reduce General Compensation paid to the City contrary to the provisions of the Current Agreement as modified by the Twenty-Sixth Amendment attached hereto without further action of this City Council. Such officials may also negotiate in the Twenty-Sixth Amendment such additional environmental terms and conditions as shall be deemed desirable by the Commissioner of the City's Department of the Environment. In addition, such officials may also negotiate in the Twenty-Sixth Amendment such changes to the insurance terms and conditions set forth in Section 6 of the Current Agreement as shall be deemed desirable by the City's Risk Manager.

SECTION 3. All ordinances, resolutions and agreements, or parts thereof, in conflict with this ordinance are, to the extent of such conflict, hereby repealed.

SECTION 4. This Ordinance shall be in full force and effect upon its passage and approval.



**Exhibit A**

This Twenty-Sixth Amendment to District Cooling System Use Agreement (the "Twenty-Sixth Amendment"), dated as of \_\_\_\_\_, 2011 (the "Effective Date") by and between the City of Chicago, Illinois (the "City"), a home rule unit and municipality under Article VII of the Constitution of the State of Illinois, and MDE Thermal Technologies, Inc., an Illinois corporation (the "Grantee").

WITNESSETH:

**WHEREAS**, the City and the Grantee have entered into that certain District Cooling System Use Agreement dated as of October 1, 1994 (the "Original Agreement"), as heretofore amended (the "Current Agreement"), which grants to the Grantee (and its successors in interest) the non-exclusive right to use certain public ways of the City to construct, operate and maintain a district cooling system (the "System"); and

**WHEREAS**, Exhibit 1 to the Current Agreement describes the "Current Distribution Facilities" (as such term is defined in the Current Agreement) for the Grantee's System; and

**WHEREAS**, Exhibit 2 to the Current Agreement provides the Location Map of the Grantee's System, including the Current Distribution Facilities; and

**WHEREAS**, Grantee wishes to amend Exhibit 1 and Exhibit 2 to the Current Agreement (the "Current Exhibit") to include in the Current Distribution Facilities a portion of Wabash Avenue from Erie Street to Superior Street, and a portion of Superior Street from Wabash Avenue to a point 100 feet west of Wabash Avenue as described and depicted in amended Exhibits 1 and 2, each as attached to this Twenty-Sixth Amendment (collectively, the "Amended Exhibits"); and

**WHEREAS**, the City Council of the City on \_\_\_\_\_, 2011, adopted an ordinance authorizing and approving execution of a Twenty-Sixth Amendment to the Current Agreement in substantially the form of this Twenty-Sixth Amendment, including the Amended Exhibits (the "Ordinance"); and

**WHEREAS**, the City and the Grantee now desire to amend the Current Agreement, including the Current Exhibits, subject to the terms and conditions set forth below;

**NOW, THEREFORE,**

It is agreed by the parties hereto as follows:

Section 1. The above recitals are expressly incorporated herein and made a part of this Twenty-Sixth Amendment by reference as though fully set forth herein. The capitalized terms not otherwise defined herein shall have the meanings set forth in the Current Agreement.

Section 2. As of the Effective Date of this Twenty-Sixth Amendment, the current Exhibits are deemed superseded and replaced by the Amended Exhibits.

Section 3. The Grantee represents that, to the best of its knowledge, no member of the governing body of the City and no other official, officer, agent or employee of the City is employed by the Grantee or has a personal financial or economic interest directly or indirectly in this Twenty-Sixth Amendment or any contract or subcontract resulting therefrom or in the privileges to be granted hereunder except as may be permitted in writing by the Board of Ethics established pursuant to (Chapter 2-156) of the Municipal Code of Chicago (the "Code"). No payment, gratuity or offer of employment shall be made in connection with this Twenty-Sixth Amendment by or on behalf of any contractors to the Grantee or higher tier subcontractors or anyone associated therewith, as an inducement for the award of contracts, subcontracts or orders. Any agreement entered into, negotiated or performed in violation of any of the provisions of said Chapter 2-156 shall be voidable as to the City.

Section 4. Neither the Grantee nor its contractors shall be in violation of the provisions of Section 2-92-320, Chapter 2-92 of the Code. In connection herewith, the Grantee has executed the applicable Certification required under the Illinois Criminal Code, 720 ILCS 5/33-11 (1994 State Bar Edition) and under the Illinois Municipal Code, 65 ILCS 5/1-1 et seq. (1994 State Bar Edition).

Section 5. It shall be the duty of the Grantee, all contractors, all consultants, and all officers, directors, agents, partners, and employees of the Grantee to cooperate with the

Inspector General and/or Legislative Inspector General in any investigation or hearing undertaken pursuant to Chapter 2-55 and/or 2-56 of the Code. The Grantee shall inform all its contractors of the provision and require understanding and compliance herewith.

Section 6. The Grantee has provided copies of its latest articles of incorporation and bylaws and its certification of good standing from the Office of the Secretary of State of Illinois. The Grantee has provided the City with the Disclosure of Ownership Interest Affidavit for the Grantee and its direct and indirect corporate parents.

Section 7. If the Grantee conducts any business operations in Northern Ireland, it is hereby required that the Grantee make all reasonable and good faith efforts to conduct any such business operations in Northern Ireland in accordance with the MacBride Principles for Northern Ireland as defined in Illinois Public Act 85-1390 (1988 Ill. Laws 3220).

Section 8. Pursuant to Section 2-156-030(b) of the Municipal Code of the City of Chicago, it is illegal for any elected official of the city, or any person acting at the direction of such official, to contact, either orally or in writing, any other city official or employee with respect to any matter involving any person with whom the elected official has a business relationship, or to participate in any discussion in any city council committee hearing or in any city council meeting or to vote in any discussion in any city council meeting hearing or in any city council meeting or to vote on any matter involving the person with whom an elected official has a business relationship. Violation of Section 2-156-030(b) by any elected official with respect to this Twenty-Sixth Amendment shall be grounds for termination of the Current Agreement and this Twenty-Sixth Amendment. The term business relationship is defined as set forth in Section 2-156-080 of the Code.

Section 2-156-080 defines a "business relationship" as any contractual or other private business dealing of an official, or his or her spouse, or of any entity in which an official or his or her spouse has a financial interest, with a person or entity which entitles an official to compensation or payment in the amount of \$2,500 or more in a calendar year; provided, however, a financial interest shall not include: (i) any ownership through purchase at fair market value or inheritance of less than one percent of the share of a corporation, or any corporate

subsidiary, parent or affiliate thereof, regardless of the value of or dividends of such shares, if such shares are registered on a securities exchange pursuant to the Securities Exchange Act of 1934, as amended; (ii) the authorized compensation paid to an official or employee for his or employment; (iii) any economic benefit provided equally to all residents of the city; (iv) a time or demand deposit in a financial institution; or (v) an endowment or insurance policy or annuity contract purchased from an insurance company. A "contractual or other private business dealing" shall not include any employment relationship of an official's spouse with an entity when such spouse has no discretion concerning or input relating to the relationship between that entity and the City.

Section 9. Except as expressly modified in this Twenty-Sixth Amendment, all other terms covenants and conditions in the Current Agreement (including exhibits and attachments) remain unchanged and all affidavits, certificates and representations in the Current Agreement (including exhibits and attachments) are deemed reaffirmed as if made as of the date hereof.

IN WITNESS WHEREOF, the City has caused this Twenty-Sixth Amendment to be duly executed in its name and behalf as of the date first written by its Commissioner of the Department of Environment, its Comptroller and its Commissioner of the Department of Transportation and the Grantee has signed and sealed the same on or as of the day and year first written.

(SEAL)

CITY OF CHICAGO

\_\_\_\_\_  
City Clerk

By:  
Title: Commissioner of the  
Department of Environment

By:  
Title: Comptroller

By:  
Title: Commissioner of the  
Department of Transportation

Reviewed as to form  
and legality:

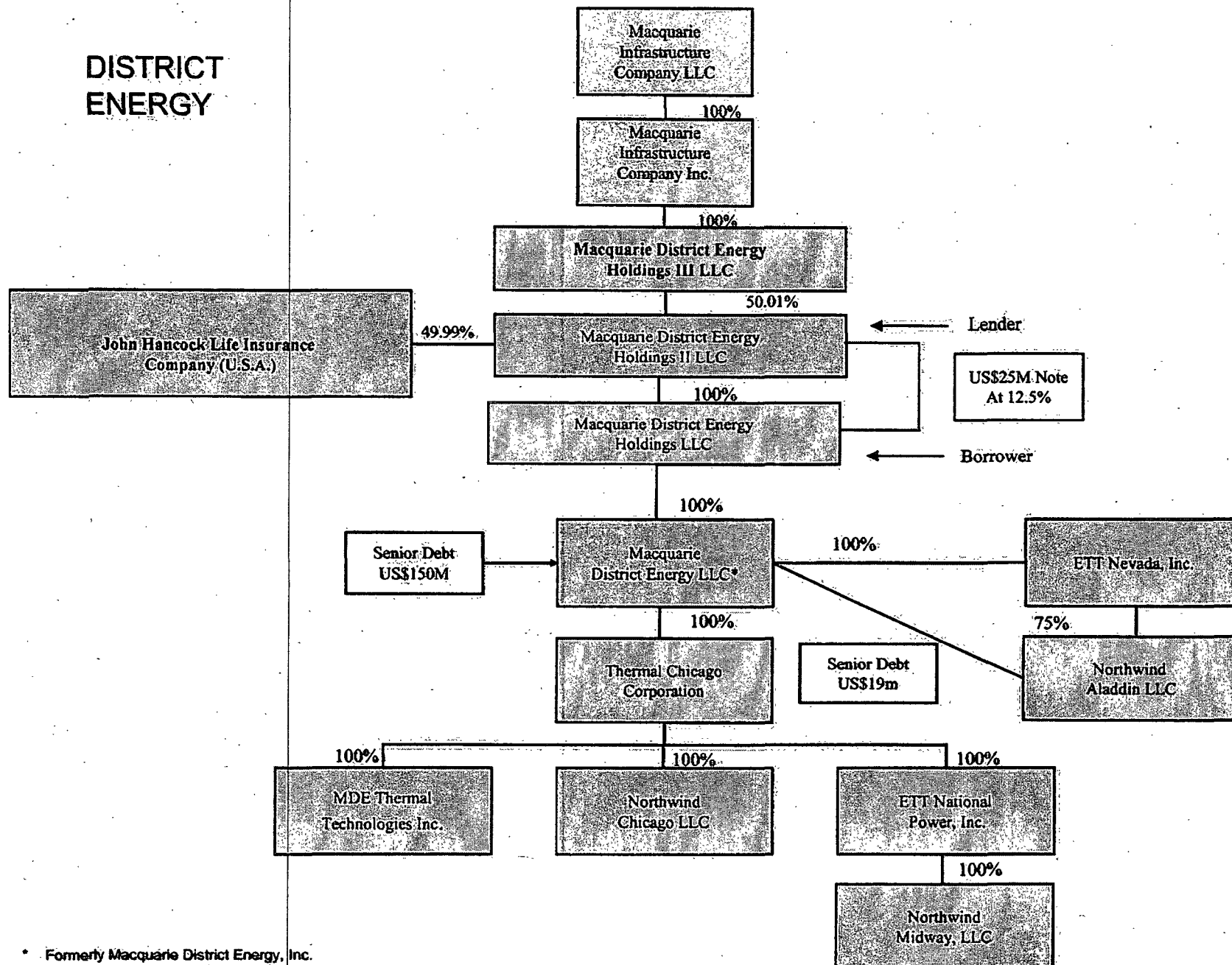
Assistant Corporation Counsel  
or Senior Counsel

ATTEST:

MDE THERMAL TECHNOLOGIES, INC.

\_\_\_\_\_  
By:  
Title: President

# DISTRICT ENERGY



\* Formerly Macquarie District Energy, Inc.

APPROVED  
Stephen R. Poth  
CORPORATION COUNSEL

APPROVED  
Rahm Emanuel *REP*  
9/16/11 Mayor