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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Akron Thermal, Limited Partnership for Authority to Issue Three (3) Promissory Long-Term Notes.	))))	Case No. 09-414-HT-AIS
In the Matter of the Application of Akron Thermal, Limited Partnership for an Emergency Increase in its Rates and Charges for Steam and Hot Water Service.	))))	Case No. 09-453-HT-AEM
In the Matter of the Application of Akron Thermal, Limited Partnership for Approval of Revised Tariffs.	)))	Case No. 09-315-HT-ATA
In the Matter of the Application of Akron Thermal, Limited Partnership for Approval of an Arrangement with an Existing Customer.	)))	Case No. 09-441-HT-AEC
In the Matter of the Application of Akron Thermal, Limited Partnership for Approval of a Modification to an Existing Arrangement.	)))	Case No. 09-442-HC-AEC

DIRECT TESTIMONY OF JOSEPH G. BOWSER ON BEHALF OF THE CITY OF AKRON

Max Rothal (No. 0009431)
Director of Law
Cheri B. Cunningham (No.0009433)
Assistant Director of Law
161 S. High Street, Suite 202
Akron, OH 44308
Telephone: (330) 375-2030
Telecopier: (330) 375-2041
Cunnich@ci.akron.oh.us

{C28414: }

Samuel C. Randazzo, Trial Attorney
Lisa G. McAlister
Joseph M. Clark
Gretchen J. Hummel
McNees Wallace & Nurick LLC
21 East State Street, 17th Floor
Columbus, OH 43215-4228
Telephone: (614) 469-8000
Telecopier: (614) 469-4653
sam@mwncmh.com
lmcalister@mwncmh.com
jclark@mwncmh.com
ghummel@mwncmh.com

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Attorneys for the City of Akron

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DIRECT TESTIMONY OF JOSEPH G. BOWSER
ON BEHALF OF THE CITY OF AKRON

I. INTRODUCTION

Q1. Please state your name and business address.

A1. My name is Joseph G. Bowser. My business address is 21 East State Street, 17th Floor, Columbus, Ohio 43215-4228.

Q2. By whom are you employed and in what position?

A2. I am a Technical Specialist for McNees Wallace and Nurick, LLC ("McNees"), providing testimony on behalf of the City of Akron ("Akron").

Q3. Please describe your educational background.

A3. In 1976, I graduated from Clarion State College with a Bachelor of Science degree in Accounting. In 1988, I graduated from Rensselaer Polytechnic Institute with a Master of Science degree in Finance.

Q4. Please describe your professional experience.

A4. I have been employed by McNees for four years, where I assist clients in addressing issues that affect the price and reliability of utility services. Prior to joining McNees, I worked with the Ohio Consumers' Counsel, Ohio's residential consumer advocate, as Director of Analytical Services. There, I managed the analysis of financial, accounting, and ratemaking issues associated with utility regulatory filings. I also previously worked for Northeast Utilities, where I held positions in the Regulatory Planning and Accounting departments of the company, provided litigation support in regulatory hearings and assisted in the preparation of the financial and technical documents filed with state and federal regulatory commissions. I began my career with the Federal Energy Regulatory Commission ("FERC"), where I lead and conducted audits of gas and electric utilities in the Eastern and Midwestern regions of the United States. I am also a member of the American Institute of Certified Public Accountants.

Q5. Have you previously submitted expert testimony before this Commission?

A5. Yes. I have previously submitted testimony before the Public Utilities Commission of Ohio ("PUCO" or "Commission") in the following cases: *In the Matter of the Application of The East Ohio Gas Company for Authority to*

Implement Two New Transportation Services, for Approval of New Pooling Agreement, and for Approval of a Revised Transportation Migration Rider, Case No. 96-1019-GA-ATA; *In the Matter of the Applications of Columbus Southern Power Company and Ohio Power Company for Approval of Their Electric Transition Plans and for Receipt of Transition Revenues*, Case Nos. 99-1729-EL-ETP, *et al.*; *In the Matter of the Commission's Investigation into the Policies and Procedures of Ohio Power Company, Columbus Southern Power Company, The Cleveland Electric Illuminating Company, Ohio Edison Company, The Toledo Edison Company, and Monongahela Power Company Regarding the Installation of New Line Extensions*, Case No. 01-2708-EL-COI, *et al.*; *In the Matter of the Application of Columbus Southern Power Company to Adjust its Power Acquisition Rider Pursuant to its Post-Market Development Period Rate Stabilization Plan*, Case No. 07-333-EL-UNC; *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Increase Rates for Distribution Service, Modify Certain Accounting Practices and for Tariff Approvals*, Case Nos. 07-551-EL-AIR, *et al.*; *In the Matter of the Application of Ohio Edison Company, The Cleveland Electric Illuminating Company, and The Toledo Edison Company for Authority to Establish a Standard Service Offer Pursuant to Section 4928.143, Revised Code, in the Form of an Electric Security Plan*, Case No. 08-935-EL-SSO; *In the Matter of the Application of Columbus Southern Power Company for Approval of its Electric Security Plan; an Amendment to its Corporate Separation Plan; and the Sale or Transfer of Certain Generating*

Assets, Case Nos. 08-917-EL-SSO, *et al.*, and *In the Matter of the Application of the Dayton Power & Light Company for Approval of Its Electric Security Plan, Case Nos. 08-1094-EL-SSO, et al.*

Q6. What is the purpose of your testimony in this case?

A6. The purpose of my testimony is to address the filings that have been consolidated into this proceeding. Because of its relative significance, the bulk of my testimony deals with the emergency rate increase requested by Akron Thermal, Limited Partnership ("ATLP").

II. SUMMARY OF FILINGS CONSOLIDATED FOR THIS PROCEEDING

Q7. Please summarize the various filings made by ATLP.

A7. The filings consist of an application for authority to issue promissory long-term notes which appear to have already been issued, an application for an emergency increase in ATLP's rates and charges for steam and hot water service, an application for approval of an arrangement with an existing customer, an application for approval of a modification to an existing arrangement, and an application for approval of revised tariffs.

Q8. What are the details of the application for authority to issue promissory notes?

A8. The application for authority to issue promissory long-term notes (Case No. 09-414-HT-AIS) was filed by ATLP on May 18, 2009, and involved three notes, each of which is related to the restructuring of ATLP's indebtedness that is associated with ATLP's bankruptcy proceeding, and each of which was entered into on February 20, 2009. The promissory notes are more specifically described below.

1) A note in the initial principal amount of $2,060,000 with Creditors Trusts. In response to Akron interrogatory 26, ATLP stated that the note was reduced by $18,689 to reflect payments to Class 3.1 claimants under the Bankruptcy Court's approved Plan of Reorganization ("Plan"). This note is payable in 8 equal semi-annual installments of principal and accrued interest each in the total amount of $293,055.76. The first installment is due 18 months after the effective date of the Plan (August 2010), and the last payment is due in February 2014. The August 2010 payment may be deferred by ATLP, but if such election is made, the interest rate on the note increases from 5% per annum to 7% per annum.

2) A note in the principal amount of $1,350,000 with the Treasurer of the State of Ohio. This note is payable in 8 equal semi-annual installments of principal and accrued interest each in the total amount of $197,812.67, with the first installment due in August 2010.

3) A note in the principal amount of $250,000 with Thermal Ventures II, L.P. ("TV II"), which is ATLP's limited partner. The entire unpaid balance of principal and accrued but unpaid interest is payable on the maturity date, which is no later than April 30, 2010.

Q9. Can you provide more information about ATLP's emergency rate increase request?

A9. Yes. This application was filed on May 29, 2009 in Case No. 09-453-HT-AEM, and requests an annualized emergency rate increase request of $4,195,561. ATLP indicates in the filing that the requested increase will result in an overall rate increase to customers of 47.8% if applied to all tariff customers and the contract rates for Canal Place and Children's Hospital Medical Center of Akron ("Children's"), or 71.6% if applied only to tariff customers. According to ATLP, the emergency rate increase request was precipitated by a decision by its largest steam customer, the University of Akron ("the University"), to meet its steam needs through the use of its own equipment rather than continue to receive service from ATLP by extending its contract with ATLP. According to information provided at page 3 of ATLP's application, the University accounted for 29.9% of ATLP's steam sales volume in 2008, and total revenues from the University in 2008 were $4,018,854. ATLP's request for emergency rate relief was filed less than four months after ATLP's emergence from a bankruptcy proceeding in which it received approval of a plan of reorganization and in which ATLP projected that it would have sufficient profitability and liquidity to allow its plan of reorganization to be feasibly implemented.

Q10. Please provide more information about the application for approval of an arrangement with an existing customer.

A10. On May 26, 2009, in Case No. 09-441-HT-AEC, ATLP filed a request for approval of a reasonable arrangement for the provision of steam service to Children's. The filing indicated that ATLP and Children's have entered into an arrangement where Children's will purchase all of its steam requirements on an uninterruptible basis, and the contract shall continue at least until March 31, 2011. A review of the agreement attached to the filing indicates that the agreement has already been entered into, and appears to have existed for some time. The agreement states that the term of the agreement shall commence not later than April 1, 2006 and shall continue until March 31, 2011, unless terminated earlier. The agreement was executed by the parties in mid-2006.

Q11. What are the details of the application for approval of a modification to an existing arrangement?

A11. On May 26, 2009, in Case No. 09-442-HC-AEC, ATLP filed a request for approval of a modification to an existing arrangement with Canal Place, Ltd., a company that owns and operates the Canal Place complex in Akron. ATLP provides steam and chilled water service to Canal Place under contract. During the ATLP bankruptcy, ATLP and Canal Place reached an interim agreement for services through July 31, 2008, and subsequently entered into an agreement dated September 30, 2008, which covers service during the period August 1, 2008 through March 31, 2012. The application seeks to obtain Commission approval for the September 30, 2008 agreement.

Q12. Please provide more information about the application for approval of revised tariffs.

A12. On April 10, 2009, in Case No. 09-315-HT-ATA, ATLP filed a request to modify and apply its hot water heating service tariff to the Canal Park Condominium customers subsequent to the termination of the current contract with Canal Park Condominiums, which expires in September of 2009. ATLP proposes to install a single master meter for Canal Park Condominiums and to bill each customer virtually identical monthly bills by spreading the monthly aggregate bill to all Canal Park Condominium customers. It appears that ATLP is seeking in this case a modification to its generally applicable tariff to address a specific situation rather than attempting to address the situation through a reasonable arrangement.

Q13. Do you have any comments to make about the various filings that have been consolidated into the current proceeding?

A13. Yes. These filings are important because they may affect the cost and availability of steam and hot water service to ATLP's customers, as well as the financial condition of ATLP. It also appears that there are problems with completeness and consistency in some of the applications and, in some cases, issues with the timing of the applications. Moreover, I will also discuss how some of the actions ATLP says it intends to take may negatively affect Akron Thermal Cooling L.L.C ("ATC"), ATC's customers, and ultimately ATLP's financial condition arising from its plan of reorganization approved by the bankruptcy court.

The applications requesting approvals of contracts in Case Nos. 09-442-HC-AEC and 09-441-HT-AEC appear to be untimely filed as ATLP and the customers apparently entered into the contracts, but did not file them with the Commission for approval prior to doing so. As noted earlier, the agreement with Canal Place was entered into on September 30, 2008, but ATLP only recently has filed for Commission approval of the agreement. Similarly, the agreement with Children's was executed in mid-2006, but only recently did ATLP file for Commission approval of the agreement. Based on advice of counsel, it is my understanding that service may not be provided by a public utility pursuant to a contract unless and until the Commission has approved the arrangement.

In the application in Case No. 09-315-HT-ATA (Canal Park Condominium), ATLP indicated that the current contract with the customer goes through September 2009. However, in reviewing the materials provided by ATLP in response to Staff's data request 1, (Exhibit 8.2 of ATLP's Second Amended Plan of

Reorganization dated July 14, 2008), ATLP rejected this contract in its bankruptcy proceeding which, based on advice of counsel, resulted in a termination of the contract some months ago. It is unclear from the information furnished how ATLP has been billing for service since the rejection of the contract. In addition, ATLP indicated at page 3 of the application that it will only inform the Canal Park Condominium Board about the proposed tariff change after the Commission approves the change.

Q14. Are there any issues with the timing of the AIS application?

A14. Yes, as I already mentioned, the three promissory notes that are the subject of Case No. 09-414-HT-AIS all appear to have been issued before ATLP filed for Commission approval. Based on advice of counsel, it is my understanding that a public utility can only issue securities if it has received prior approval of the Commission. Furthermore, the AIS application appears to have left out a request for the approval of other securities that ATLP has issued. For instance, according to pleadings filed by ATLP in the bankruptcy proceeding, immediately prior to filing the bankruptcy petition, ATLP executed a demand promissory note dated June 15, 2007 in favor of TV II of up to $750,000. In addition, ATLP also provided TV II a pre-petition security interest by virtue of a security agreement dated January 25, 2005 covering all deposit accounts, all accounts receivable, and all proceeds and products of all the foregoing. Also, ATLP granted TV II a blanket lien on its personal property through a June 15, 2007 Security Agreement. In addition, the AIS application appears to portray a much brighter picture of ATLP's financial prospects than the emergency rate increase application filed in Case No. 09-453-HT-AEM even though the two applications were both filed after the University elected to not extend its service relationship with ATLP. For example, the two-month income statement in the AIS application (two months ended 2/28/09) shows net income of $29.3 million, while a 12-month income statement in the emergency case based on 2008 shows a net loss of $1.3 million. If the one-time item for the cancellation of debt income was eliminated from the income statement in the AIS application, ATLP would have shown a net loss of $625,000 for the two months ended February 28, 2009.

The information ATLP has supplied with its emergency rate increase request suggests that ATLP will not be able to meet its obligations under the promissory notes identified in the AIS application.

I believe that the Commission would be hesitant to approve the issuance of securities if the applicant appeared to be unable to satisfy the obligations attendant to the issuance of the securities even assuming that the Commission has the ability to make retroactive its approval of securities.

III. AKRON THERMAL, LIMITED PARTNERSHIP'S HISTORY

Q15. Please provide some background information about ATLP, leading up to the present time.

A15. According to the information that ATLP has provided either in Commission or bankruptcy court proceedings, it is my understanding that ATLP began operating the district heating and cooling system in November 1995 under an interim agreement with Akron while negotiating a long-term lease. The interim lease was addressed by the Commission in Case No. 95-924-HT-AIS. The Operating Lease Agreement between ATLP and Akron and covering Akron's district heating and cooling system was ultimately executed in 1997 and resulted in ATLP operating the district heating and cooling system pursuant to a 1996 franchise ordinance issued by Akron to ATLP. Because ATLP claimed that the 1997 Operating Lease Agreement was "...a long-term obligation of a public utility which is evidence of indebtedness issued wholly for property" in its September 10, 1997 application (at page 2), the Commission addressed the 1997 Operating Lease Agreement in Case No. 97-1059-HT-AIS. Akron leases the district heating and cooling system to ATLP and Akron is a customer of ATLP. Previous to that time, Akron had developed the district heating and cooling system and operated it from 1974 to 1995. Based on my review of the records, I have been unable to identify any lease arrangement or franchise that has been entered into between Akron and ATC.

Based on advice of counsel, I understand that ATLP is a "heating company" as defined in Section 4905.03(A)(9), Revised Code, is a public utility as defined in Section 4905.02, Revised Code, and is subject to the jurisdiction of the Commission. Based on advice of counsel, it is my understanding that ATLP is also a "cooling company" and a public utility subject to the PUCO's jurisdiction in this functional capacity as well.

The significance of the ATLP's dual heating and cooling company functions and resulting public utility status have been somewhat confused at times as a result of the interaction and transactions between ATLP and ATC. As I discuss below, this confusion complicates any effort on the part of ATLP to seek, obtain or collect any emergency rate increase that may be authorized by the Commission.

ATLP filed its verified "first filing" application with the PUCO on September 28, 1998 in PUCO Case No. 98-1360-HT-ATA. ATLP's initial rates for steam heat, steam for air conditioning, hot water service and chilled water service were authorized by the Commission on an interim basis (until July 1, 1999) by an order issued on April 1, 1999 in Case No. 98-1360-HT-ATA.

The Commission conditioned the first filing rate approval (making it interim) to address the competitive environment in the steam heating and chilled water cooling environment. The Commission required ATLP to submit a methodology to develop flexible rates based on a formula approach saying that if an agreement on the establishment of a formula rate was not reached by July 1, 1999, the PUCO may set the first filing case for hearing. After several extensions of the July 1, 1999 filing deadline, ATLP filed an application to establish formula-based rates on March 17, 2000 in Case No. 98-1360-HT-ATA. However, it does not appear that the Commission ever acted on the March 17, 2000 application or otherwise took action in Case No. 98-1360-HT-ATA.

In November of 2000, ATLP filed an application seeking emergency rate relief in the form of a 21% surcharge to be applied to all tariff customers' steam and hot water bills (Case No. 00-2260-HT-AEM). The revised request in 98-1360-HT-ATA was still pending before the Commission at the time the emergency rate relief was requested.

In an Order issued January 25, 2001 in Case No. 00-2260-HT-AEM, the Commission approved a stipulation entered into between PUCO Staff and ATLP in which ATLP was permitted to implement a temporary emergency surcharge of 18% on the bills of steam and hot water tariff customers, subject to refund. The temporary surcharge was effective for bills rendered on and after February 1, 2001.

On November 9, 2001, ATLP and ATC filed a joint application to establish ATC as the owner operator of the cooling and chilled water assets previously operated by ATLP. As I noted earlier, I have been unable to find any arrangements between Akron and ATC allowing ATC to own or operate the district cooling system which was leased to ATLP in the 1997 Operating Lease Agreement approved by the Commission in Case No. 97-1059-HT-AIS. I have been advised by counsel that Section 15 (at page 14) of the 1997 Operating Lease Agreement requires Akron's prior consent for any assignment or subletting.

The applicants (ATLP and ATC) also requested that ATC be established as the public utility for the purpose of providing chilled water services that were previously provided by ATLP. On November 29, 2001, the PUCO approved the joint application. Also on November 9, 2001, in Case No. 01-2922-HC-ATA, ATLP and ATC jointly requested approval of tariff modifications reflecting the separation of the heating and steam services from the cooling and chilling services to be provided by the newly established public utility ATC.

On May 19, 2003, ATLP filed a complaint with the Commission against ATC alleging that ATC had not paid for service and owed ATLP $1,000,000 and otherwise contesting ATC's ability to provide cooling services. (Case No. 03-1185-CC-CSS). After a settlement process initiated by the Commission, ATLP filed a request to withdraw the complaint with prejudice and the Commission granted ATLP's request on May 11, 2005. However, on June 17, 2003, after ATLP had filed its complaint against ATC, ATLP filed for and obtained the Commission's approval of a proposal to reestablish rates for providing chilled water services. (Case No. 03-1379-CC-ATA). In Case No. 03-1379-CC-ATA, the Commission approved an ATLP rate schedule relating to the BF Goodrich facility, which facility was used to provide cooling service to five contract customers. The information available from that case indicates that additional cooling customers might be served under the ATLP rate schedule in the future. The reestablishment of a cooling service tariff for ATLP recognized that ATLP still held the leasehold rights to the BF Goodrich facility and had entered into the contracts under which the five customers were being served from that facility. ATLP was thus providing chilled water service from a facility that it leased from Akron, to end use customers under contract to ATLP.

ATLP's dual heating and cooling company functions have been somewhat confused at times as a result of the interaction and transactions between ATLP and ATC. As I have already stated, this confusion complicates any effort by ATLP to obtain and collect an emergency rate increase.

The Bankruptcy Court's Opinion in *Confirmation of Modified Second Amended Plan of Reorganization*, dated January 26, 2009, at page 13, indicates that ATC uses ATLP's two chilled water plants, and ATLP provides steam service to ATC so that ATC can generate chilled water. It also notes that ATLP's leased system includes two adjacent steam generating plants (the Akron Plant and the BF Goodrich Plant), two chilled water plants, and 18 miles of distribution piping. Lastly, at pages 19 and 44 of ATLP's First Amended Disclosure Statement for Debtor's Second Amended Plan of Reorganization ("First Amended Disclosure Statement") filed with the Bankruptcy Court on July 28, 2008, ATLP states ATC uses steam to generate chilled water from Boiler 32 at the BF Goodrich facility. Therefore, the November 1, 2009 shutdown of Boiler 32 which ATLP describes in its testimony in this proceeding appears to mean that ATC will need to find another and more expensive way to generate the chilled water it needs to meet the needs of its customers.

The most recent Annual Reports filed by ATLP and ATC with the Commission are Annual Reports for 2007. A review of ATC's 2007 Annual Report filed with the Commission indicates that ATC is owned by TV II (ATLP's general partner), and that ATC began operations in December 2001. In 2007, ATC was a profitable company, with net income of $100,000 on revenues of $1.3 million. The relationship between ATLP and ATC is financially significant, as ATC reported accounts receivable from ATLP of $413,500 as of December 31, 2007, out of total accounts receivable of $552,000. It is unclear how the steam service supplied by ATLP is priced and under what arrangements (tariff or contract) ATC receives service from ATLP.

Returning now to ATLP's rate history, on July 8, 2003, ATLP filed a notice of intent to file an application for an increase in steam and hot water rates in Case No. 03-1497-HT-AIR. No further action was taken in that case, and on February 2, 2005, ATLP requested dismissal of that case in favor of a subsequent rate increase application that it filed in Case No. 05-5-HT-AIR on March 4, 2005.

ATLP also filed a "self-complaint" case on August 16, 2004 in Case No. 04-1298-HT-SLF, in which it sought approval of a temporary fuel cost surcharge rider. The surcharge rider was approved on November 3, 2004. In the Commission's order, it stated that the fuel surcharge would be collected subject to refund pending the determination of a base rate case, which was ordered to be filed within 90 days. The order led to the filing of the base rate case in Case No. 05-5-HT-AIR that I noted earlier.

In Case No. 05-5-HT-AIR, the Commission issued an order on September 28, 2005, adopting a stipulation entered into between ATLP and PUCO Staff. The stipulation provided for an increase of $2.6 million to the tariff rates. The Commission stated that the remaining $2.1 million of additional revenue was stipulated to be the responsibility of ATLP in the renegotiation of its contracts with its contract customers. In addition, the Commission closed Case No. 03-1497-HT-AIR (for which no application was ever filed), ordered that the emergency surcharge approved in Case No. 00-2260-HT-AEM be terminated and that case closed, and ordered that the temporary fuel cost surcharge rider approved in Case No. 04-1298-HT-SLF be terminated and that case closed.

In the current proceeding, ATLP witness Bees indicates at page 6 of his prefiled testimony that the tariff rate increase agreed to in Case No. 05-5-HT-AIR was the full amount of the increase in tariff rates requested by ATLP. Mr. Bees' testimony acknowledges that the new tariff rates approved in that proceeding were not intended to recover the total company revenue requirement, but also contemplated that ATLP would attempt to renegotiate its contracts with its special contract customers to make up the remainder of the total company revenue requirement. Mr. Bees' testimony also indicates that at the time of Case No. 05-5-HT-AIR, sales to tariff customers represented less than 40% of ATLP's total revenues.

Based on information ATLP submitted to the bankruptcy court, such as its First Amended Disclosure Statement, it is my understanding that:

> From ATLP's inception through December 31, 2004, ATLP operated at a loss and incurred approximately $30 million in unpaid obligations.
>
> As of December 31, 2004, ATLP owed approximately $8 million to TV II while Akron, the State of Ohio and Ohio Edison claimed they were owed approximately $5 million, $4 million (including interest and penalties) and $3 million (including interest), respectively.
>
> Immediately after a change in the general partner, ATLP began a series of steps designed to enable the business to generate positive income cash flow.
>
> ATLP commenced a rate case with the PUCO, which increased rates to tariff customers by over 32% effective October, 2005. ATLP also negotiated rate increases with certain of its major contract customers. The full effect of these rate increases began to be realized in 2006 and 2007.

While ATLP operated at a loss of $2,306,329 in 2005, in 2007 it generated an operating income of $678,737.

Throughout the latter half of 2006 and into the first half of 2007, ATLP worked on a restructuring to address its accumulated debt and its balance sheet. On June 13, 2007, Akron delivered a letter to ATLP stating, inter alia, that the Operating Lease Agreement would be terminated effective June 19, 2007 at 9:00 a.m. In response, ATLP served a notice on Akron that said that ATLP was exercising its option to extend the Operating Lease Agreement until August 15, 2017, and immediately thereafter filed its Chapter 11 petition from which it emerged in February 2009.

Q16. You have described the relationship between ATC and ATLP. How does this relationship affect ATLP's request for emergency rate relief in your opinion.

A16. In Section 7.1.5 of ATLP's Second Amended Plan of Reorganization ("Second Amended Plan") dated July 14, 2008, the Plan states that ATC is to contribute its income and earnings to ATLP.

In addition, at page 19 of the First Amended Disclosure Statement ATLP states that ATC's seasonal operations allow ATLP to fully employ its labor pool and to make very profitable use of its co-generated steam that would otherwise be vented out of the generation plant's roof. This steam supply for ATC, which ATLP has asserted costs little incrementally, is about 50% of ATC's annual requirements, i.e. 50,000 Mlbs. of the 98,000 Mlbs. required. Also, ATC uses very little natural gas in its operations. ATLP has asserted that increases in ATC sales work to add disproportionately to overall profitability, i.e. its EBITDA margin is some 20%, which is significantly above that of ATLP. Thus, the relationship between ATC and ATLP and the source of cash that is available to ATLP from ATC pursuant to the Second Amended Plan should be taken into account in evaluating ATLP's request for emergency rate relief. It appears that ATLP has not recognized this source of cash in the information it has supplied to support its request for emergency rate relief or indicated how the costs and resources that appear to be used in common to operate ATLP and ATC have been assigned or allocated between ATLP and ATC. The allocation or assignment of these common costs is an important step in determining ATLP's financial condition.

Q17. Why do you believe that looking back at ATLP's background information is relevant to the current proceeding?

A17. First of all, I find it troubling that less than four months after ATLP's emergence from bankruptcy, it appears to now require a large emergency rate increase in order to be able to meet its public utility obligations. During the bankruptcy proceeding ATLP presented financial forecasts to support its position that its Plan of Reorganization was feasible.

Moreover, and as I discuss later, ATLP has asserted that its request for emergency rate relief rests exclusively on the cash flow implications of the University's decision to not extend its contract. Because a large portion of ATLP's revenues are concentrated in a few contract customers, ATLP's financial health depends on collecting a reliable, sufficient revenue stream from these customers. Both the Commission, in prior rate proceedings for ATLP, and ATLP, in the same rate proceedings and in the information it submitted to the bankruptcy court, identified that renegotiation of competitive contract rates with these larger customers is a key factor in ATLP's ability to operate profitably. This issue was specifically raised by the Commission in Case No. 05-5-HT-AIR and by ATLP. Indeed, the Commission's order in Case No. 98-1360-HT-ATA recognized the competitive nature of the steam and cooling markets. Similarly, the February 5, 2009 affidavit of Mr. Jeffrey Bees in the bankruptcy proceeding indicates the significance of ATLP's contract customers; just three customers (University of Akron, Summa Hospital, and Akron General Medical Center) accounted for over 53% of the revenues of ATLP at that time. Mr. Bees' affidavit also indicates that "It is conceivable that, in lieu of timely firm commitments from ATLP, the University and Summa would be more inclined to enter into commitments with natural gas suppliers." Clearly, the business risk that the University would discontinue its service relationship with ATLP was a known risk to ATLP.

The First Amended Disclosure Statement, at pages 18 and 92, notes that ATLP's large concentration of sales in several large customers is a risk factor for ATLP in part because two of the customers (one of which is the University and the other of which is Summa) have gas based alternative systems. Moreover, ATLP reiterated, in its current emergency rate increase request, that there remains a risk that Summa will discontinue its short-term service relationship with ATLP. At page 5 of the emergency rate increase application, ATLP states that Summa has an alternative energy system in place which precludes ATLP from seeking to increase its rates. In the First Amended Disclosure Statement at page 43, ATLP indicated that Summa provided about $2.1 million of ATLP's revenues in 2007, or approximately 14% of ATLP's total 2007 revenues.

Q18. From the materials you have reviewed, can you identify the events that lead up to the University's decision to discontinue its service relationship with ATLP?

A18. Yes. Based on the February 5, 2009 affidavit of Mr. Bees which ATLP submitted in its bankruptcy proceeding, it is my understanding that the agreement with the University was dated May 3, 2006 and had a term that expired April 30, 2009 unless both parties agreed to extend the agreement by successive one year terms. It is my understanding that on January 30, 2009, ATLP hand delivered a notice to the University indicating that ATLP wished to extend the agreement for a period of one year. During the several months prior to the date of Mr. Bees affidavit, ATLP attempted to pursue discussions with the University and other similarly situated customers, such as Akron General Medical Center, which had an agreement that expired on March 31, 2009, and with Summa.

Q19. Are there other issues that are important to these proceedings?

A19. Yes. The Final Report of the City of Akron Thermal Energy Task Force Report ("Report") sponsored by Akron witness Merolla indicates that the poor financial performance of the steam and hot water system was the impetus for Akron Mayor Plusquellic convening a special task force. According to the Report, the Mayor sought to determine what should be done to assure the long-term financial and operational integrity of the system. In addition, the Report indicated that task force members who were also system customers were concerned that the service downtime experienced during ATLP's operations was not going to improve, citing over 10 years of unreliable service.

IV. THE EMERGENCY RATE INCREASE REQUEST

Q20. Has the Commission set forth any criteria to be satisfied in order to grant emergency rate relief?

A20. From my review of prior Commission orders in emergency rate relief cases (AEM cases), the Commission is guided by the following considerations when evaluating a request for emergency rate relief:

1) Emergency rate relief is "extraordinary" in nature;

2) The existence of an "emergency" is a condition precedent to temporary rate relief;

3) Temporary rate relief will be granted only at the "minimum level" necessary to avert or relieve the emergency;

4) The applicant's evidence will be reviewed with the "strictest scrutiny" and that evidence must "clearly and convincingly" demonstrate the presence of "extraordinary circumstances" which constitute a genuine emergency situation; and

5) Emergency rate relief *will not* be granted under Section 4909.16, Revised Code, if the emergency request was filed merely to circumvent and as a substitute for permanent rate relief under Section 4909.18, Revised Code.

Q21. Can you expand on your understanding of the meaning of criteria number 3 above?

A21. Yes. Based on my review of the Commission's AEM orders to better understand how to apply the criteria identified by the Commission for purposes of reviewing requests for emergency rate relief and advice of counsel, it appears that any emergency rate relief must be limited to the minimum amount required to financially sustain an applicant on an interim or temporary basis until the applicant can complete a permanent or traditional rate increase proceeding. In the Commission's order in Case No. 79-928-EL-AEM, for instance, it was stated that the Dayton Power and Light Company ("DP&L") had pending a permanent electric case. The Commission stated that, as it had done in several other emergency cases, it would require DP&L to keep and file records of the amount collected pursuant to its emergency rate case order, and if that amount exceeded the amount which would have been produced, during the same period, by the rates approved in the permanent rate case, that excess would be refunded, with accrued interest.

Q22. Based on your understanding of the Commission's criteria number 3 and assuming the Commission was to grant some amount of emergency rate relief, do you have an opinion on the reporting and other conditions that the Commission should impose on ATLP?

A22. Yes. ATLP indicated in its emergency rate increase request filing that it will submit its notice of intent to file a traditional rate case by September 1, 2009. This notice of intent will, among other things, include the rates and charges that

ATLP will request the PUCO to approve. Since September 1, 2009 is not that far away, I assume that ATLP has already started on the work that needs to be completed to submit a notice of intent and prepare its application for a rate increase. Unlike in other cases dealing with emergency rate increase requests including the request filed by ATLP in Case No. 00-2260-HT-AEM, ATLP's request for emergency rate relief in this case is not accompanied by any assertion that ATLP expects the requested emergency rate increase will be less than the increase that will be shown reasonable in the permanent rate increase proceeding. ATLP has also not expressed its willingness to refund the amount of any temporary emergency rate increase should the amount ultimately granted in the permanent case be less than the temporary emergency rate increase. Therefore, I recommend that if the Commission determines that some emergency rate relief is appropriate that the Commission condition the award on ATLP keeping and filing records showing the amount collected pursuant to any order authorizing an emergency increase. I also recommend that the Commission require that any emergency relief be subject to refund, with accrued interest at an interest rate judged to be reasonable by the Commission, to the extent the revenue generated by any temporary emergency rate increase proves to be greater than the amount that ATLP would have collected had any permanent increase awarded by the Commission gone into effect on the effective date of the emergency increase.

Q23. Do these recommendations indicate that you believe that an emergency increase is warranted in this case?

A23. No. I don't believe that ATLP's application or the information it has supplied to support its application support emergency rate relief based on my understanding of the criteria that the Commission has established. First, ATLP's supporting information, when subjected to the strictest scrutiny, indicates that the emergency request is designed to circumvent the process that is attendant to a request for permanent rate relief. In fact, it appears that ATLP's request for emergency rate relief is designed to circumvent the results of the settlement that ATLP executed in its last permanent rate increase case.

Q24. Please explain.

A24. As described earlier in my testimony, ATLP previously executed a settlement which was approved by the Commission in its last base rate case (Case No. 05-5-HT-AIR). That settlement states that, "the signatory parties recognize that the remainder of the needed revenue increase will be the responsibility of Akron Thermal to secure through the renegotiation of its contracts with its customers. Thus, the revenue increase proposed in the Stipulation and Recommendation as to tariff customers alone produces just and reasonable rates as shown at pages 16-17 of the Staff Report. The revenue increase sought from tariff customers plus reasonable increases in revenue from contract customers should provide Akron Thermal with a reasonable opportunity to achieve a fair and reasonable rate of return as recommended by the Staff on p. 14 of the Staff Report." (Stipulation at page 4). Therefore, it was clear from the Commission's order on the settlement to which ATLP was a signatory party that ATLP's tariff customers would not be subject to responsibility for additional revenue responsibility as a result of ATLP's ability or inability to offer competitively priced service to its non-tariff customers.

Q25. Do you agree that the decision by the University to not continue its service relationship with ATLP created the existence of an emergency?

A25. No. The University's decision cannot be regarded as an unforeseen, extraordinary circumstance or event. The potential departure of the University was a risk that was identified by ATLP for many years. The service relationship between ATLP and the University was based on ATLP's ability to meet or beat the competitive option available to the University. The University was an interruptible customer of ATLP, not a firm customer, and ATLP did not supply steam to the University when it had insufficient steam generating capacity or it had problems with its distribution system. Since ATLP's emergency rate increase request is based exclusively on the foreseeable election by the University to not continue its interruptible service relationship with ATLP, ATLP is essentially asking the Commission to transfer the business risk associated with its ability to compete for the University's business to ATLP's other customers.

Q26. Has the Commission addressed ATLP's responsibility in situations where ATLP sought and obtained Commission approval of a competitive response contract?

A26. Yes. In Case No. 99-379-HT-AEC, ATLP filed an application for approval of an arrangement for steam and chilled water service. The Commission approved the contract but classified the arrangement as a competitive response arrangement. In the Commission's April 1, 1999 order, it said:

> This Agreement is categorized as a competitive response Agreement. Any delta revenue resulting from the Agreement shall be borne exclusively by the Applicant.

Q27. Did the Commission address this issue in the case of the contract between the University and ATLP?

A27. Not as far as I can tell from a review of the records. I have found no indication that ATLP sought Commission approval of the contract with the University.

Q28. Based on your review of ATLP's application, its testimony and the other information you have mentioned in your testimony and using the Commission's "strictest scrutiny" standard, is the amount of emergency rate relief requested by ATLP the minimum level necessary to avert or relieve any emergency?

A28. No and my answer would be the same if the Commission's standard was casual scrutiny. The magnitude of ATLP's proposed emergency rate increase is a function of choices that ATLP says it is making, not circumstances beyond its control. By proposing to take actions to shut Boiler 32 (after ATLP claimed repeatedly in its bankruptcy proceeding that the United States EPA Notice of Violation was without merit) and produce replacement steam using much more expensive fuels (wood chips, tire-derived fuels and natural gas), ATLP is proposing to make its claimed cash flow and competitive problems worse. It is not asking for the minimum level that might be associated with any cash flow problem that might arise from the University's decision to end its service relationship with ATLP. As discussed above, shutting Boiler 32 also appears likely to negatively affect the viability of ATC and the cash contribution that ATLP is supposed to obtain from ATC as a result of the plan of reorganization approved for ATLP by the bankruptcy court.

Q29. Does ATLP have arrangements in place to obtain the wood chips, tire-derived fuel and natural gas?

A29. Based on ATLP's response to Canal Place Ltd.'s interrogatory 7, ATLP has not entered into any long-term agreements for wood supply, and intends to continue to purchase wood chips on a "spot-market" basis. ATLP previously had a contract in place with one of its suppliers of tire-derived fuels, but that contract has expired and a new contract is currently being negotiated. ATLP purchases all of its natural gas from one supplier with the pricing set monthly based on the NYMEX closing price for each month. In the information ATLP provided to the bankruptcy court, it indicated that the availability of wood chips was a risk as a result of conditions in the general economy and that it must stockpile wood chips due to the seasonal availability of wood chips. More specifically, ATLP's First Amended Disclosure Statement at page 93 indicates that a strategy that requires the burning of more wood chips may carry the risk of an insufficient supply of chips: "Wood chips are used by a nearby paper mill, within a 90 mile radius. While ATLP believes it should be able to optimize its wood chip cost once it has available funding, the recent housing and construction downturn has reduced the wood chip supply". At page 49 of the same document, ATLP stated that "the wood chip market is effected by the residential and industrial construction markets; declines in construction generally reduce tree clearing and wood chip supplies."

From the information that ATLP has furnished, and given its stated intention to shut Boiler 32 as it moves into the heating season (November 2009), it appears that its plan to use alternate fuels to meet its steam requirements in lieu of the steam production from Boiler 32 are, at best, still a work in process.

I also am concerned about the meager amount and quality of information provided by ATLP to support its emergency rate increase request.

According to the response to Akron interrogatory 13, an independent audit of the 2008 information relied upon by ATLP to support its emergency rate increase request audit has not yet been completed (but is in progress). In addition, ATLP's responses to Akron interrogatories 27 and 28 indicated that ATLP double-counted the accrued interest on the Creditors Trust promissory note and the State of Ohio promissory notes in the February 28, 2009 Statement of Operations appended to the Application for authority to issue promissory notes. The interrogatory responses indicate that the accrued interest was included in the line labeled "interest expense", as well as the line labeled "chapter 11 costs". ATLP has also changed management consulting firms, having previously used and extensively relied upon Sasco Hill Advisors, Inc. to develop its plan of reorganization in its bankruptcy proceeding. ATLP's discovery responses in these proceedings (response to Akron interrogatory 4) state that it has now retained services of Alea Management, L.L.C. ("Alea"), a Boston-based management consulting firm, and that Alea provided input with respect to the emergency application.

Q30. What support has ATLP offered to demonstrate that it should receive an emergency rate increase?

A30. As I noted earlier, in its May 29, 2009 emergency rate increase filing, ATLP indicated that its request was precipitated by the loss of its largest steam customer on April 30, 2009, the University of Akron, when the University's contract with ATLP expired and the University left the ATLP system. ATLP's application states that it is requesting an emergency rate increase of $4,195,561, and that without emergency rate relief it will not be able to meet its current operating expenses and will have a negative cash balance by August 2009. At page 5 of the application, ATLP indicated that it "has exhausted all other available options to increase its revenue stream", and that it "has also done everything in its power to control costs".

Q31. Has ATLP indicated any specific actions that it has taken or plans to take to mitigate the financial impacts of the loss of the University load?

A31. Yes. At page 3 of the application, ATLP states that it has developed a series of measures to offset the loss of the $4,018,854 in revenues that the University provided in 2008. These include terminating the employment of a substantial segment of its workforce, reducing steam generation capacity by closing down the BF Goodrich Plant, discontinuing use of Boiler 32, which would settle its Notice of Violation ("NOV") issued by the U.S. Environmental Protection Agency, serving remaining steam customers with the Akron Plant and the three remaining boilers, and renting a natural gas-fired package boiler during the heating season for peak and backup needs. In ATLP's First Amended Disclosure Statement at page 53, ATLP stated that the BF Goodrich Plant has two operational boilers, Boiler 31 and Boiler 32; Boiler 31 is used for emergency backup, while Boiler 32 runs 11 months of the year, with one month of the year for planned maintenance. In the same document, at page 92, ATLP identified the Boiler 32 NOV issue as a material environmental issue facing ATLP, but asserted: "ATLP believes the EPA concerns are not sound and continues to work to resolve same. Emissions are well below current standards set forth in the applicable permits".

Q32. By how much does ATLP estimate that these measures will mitigate the lost revenues from the University load?

A32. According to ATLP's figures, the actions proposed by ATLP will actually result in a net increase in expenses, causing the requested emergency rate increase to be greater than the 2008 revenues from the University. In other words, on a net basis, ATLP's actions will not result in expense reductions to mitigate the revenue reduction occurring as a result of the University's decision. Figures provided on Exhibit 3 to the emergency rate increase application show reductions in costs for labor, gross receipts tax, and other reductions totaling $1,356,381. However, these reductions are more than offset by increased fuel costs of $1,533,088. To derive the emergency rate increase requested, ATLP took the annualized net increase in expenses of $176,707, and added it to the annualized lost revenues from the University ($4,018,854), resulting in a figure of $4,195,561.

Q33. Does the fact that not serving the University load results in expenses being higher than if the load was being served seem unusual to you?

A33. All other things being equal, yes. On Exhibit 3, ATLP indicates that the University's annual load was 317,248 Mlb. of steam. Since fuel costs are a direct input cost into the production of steam, and the single largest cost of producing steam, one would expect that reduced steam production would result in reduced fuel costs. For example, based on the 2007 ATLP Annual Report filed with the Commission, 2007 fuel costs were $5,727,590, on total operating revenues of $14,586,688. In other words, it took roughly 39¢ worth of fuel for each $1.00 of revenues produced. A cost of approximately 39¢ in fuel for each $1.00 of revenues produced is also indicated from the 2008 income statement that ATLP included in Exhibit 2 to the filing.

It should be noted that, all other things being equal, other direct costs of steam production such as for chemicals and waste disposal would also likely decrease with reduced steam production. However, I have chosen to focus on fuel costs as they are the largest single cost of producing steam.

Q34. Isn't ATLP also in the hot water business?

A34. Yes, and while ATLP indicated in its filing that it currently provides service to 52 steam customers and 96 hot water customers, in terms of revenues, the steam business is much larger. Turning again to ATLP's 2007 Annual Report, over 99% of ATLP's operating revenues were derived from the steam business, while less than 1% of the revenues were from hot water sales.

Q35. Going back to fuel costs, if steam sales are decreasing, why is ATLP estimating that fuel costs will increase?

A35. As explained earlier, this is the result of ATLP's decisions with regard to Boiler 32. ATLP's elimination of coal as its cheapest fuel source as the result of its decision to shut down the BF Goodrich plant Boiler 32 and substitution of other more expensive fuels (natural gas, wood chips and tire derived fuel) to produce steam leads to much higher projected fuel costs, despite the fact that ATLP will be producing much less steam.

Q36. What does this suggest to you?

A36. As I discussed previously, it suggests that ATLP may not be choosing the right "cost reduction" measures and thereby not minimizing the amount of emergency relief that it is seeking. It also appears that even if this fuel switching choice may have merit in the short term, it may ultimately produce negative longer term consequences for ATLP and its customers. In ATLP witness Pucak's testimony, he indicates that Boiler 32 will be shut down, "at least for the time being", on or about November 1, 2009, holding out hope that if the University was to return as a customer, the Boiler 32 capacity would be needed. (Pucak Testimony at 5). This suggests that the shutdown may be temporary. However, in the testimony of ATLP witness Stott, she indicates that the projected insurance expense savings from the cost reduction measures will only be realized if Boiler 32 is permanently shut down (Stott Testimony at 8). In addition, witness Stott indicates that additional savings from the cost reduction measures come from the cancellation of planned superheater tube replacements to Boiler 32. If Boiler 32 is not shut down permanently, these costs are only being deferred into the future.

If Boiler 32 is permanently shut down, by substituting natural gas, tire-derived fuel and wood chips for coal into its operations ATLP's fuel costs are likely to be permanently higher on a going forward basis, potentially causing other contract or tariff customers to leave the system while exposing remaining customers to the risk of additional increase. Also, as noted above, if Boiler 32 were to shut down, ATC would need to find another way to run its steam chillers.

In ATLP's previous emergency rate increase case which I discussed above (Case No. 00-2260-HT-AEM), then Chairman and Chief Executive Officer of Thermal Ventures, Inc., Mr. Avers testified to the measures that ATLP had taken to reduce its fuel expenses. At that time, fuel expenses were ATLP's largest single expense, comprising 41% of revenue. (Avers Testimony at 5, 6). Mr. Avers indicated that all operating boilers were gas-fired before ATLP began leasing the system, but that ATLP had reduced fuel expense by restoring one boiler to coal and converting another boiler from natural gas to wood chips. Mr. Avers noted that fuel expense at that time was approximately 1/5 of what it otherwise would have been had no conversions taken place.

ATLP's proposed actions in the current case would reverse the previous actions taken reduce costs and improve its competitive position relative to alternative sources of steam.

Interestingly, Mr. Bees notes in his testimony at page 12 that "in view of the roller coaster ride that natural gas prices have taken over the last several years, it is certainly possible that UA (the University of Akron) will, at some point, conclude that the economics again favor steam as the preferred choice for meeting its heating requirements". If that is not the case, and the University does not return, and the Boiler 32 shutdown is permanent, then the remaining ATLP customers may be subjected to that natural gas roller coaster ride because of ATLP's greater dependence on natural gas.

Q37. If you are concerned about the effects of ATLP's plans on its future costs, did you perform any analysis of ATLP's likely financial condition after 2009?

A37. With about six months remaining in 2009, 2010 will be upon us very shortly. Therefore, I attempted to obtain 2010 forecasted data, by requesting in City Request for Production of Documents 12, ATLP's 2010 forecasted income statement and balance sheet. However, ATLP responded that it had no documents responsive to this request even though it presented multi-year forecasts of its financial condition during its bankruptcy case to demonstrate that its proposed plan could be feasibly implemented. Nonetheless, I attempted to evaluate some of the bigger picture issues that might affect ATLP in 2010.

As I noted above, ATLP indicated in its emergency rate increase request filing that it will submit its notice of intent to file a traditional rate case by September 1, 2009. Given the typical time that a rate case runs from its filing to the issuance of a Commission order, the earliest that ATLP could expect a permanent rate increase to go into effect would be about June 1, 2010. The first payment for the promissory notes discussed in the AIS case above (for which ATLP is seeking the Commission to approve retroactively) will be due no later than April 30, 2010 for the TV II note. The payment will be for approximately $265,000. Payments on the other two notes, totaling approximately $490,000, will be due in August 2010. If, for some reason, contract customer Summa was to leave ATLP's system, as noted above, an annual revenue shortfall on the order of $2.1 million (based on 2007 revenue figures) would also be created. The debt payments and potential lost revenue from Summa could have a very negative impact on ATLP's financial condition in 2010.

V. RECOMMENDATIONS

Q38. What are your recommendations?

A38. First, as discussed above, I do not believe that ATLP has met all of the criteria for being awarded an emergency rate increase and, therefore, no emergency rate increase should be granted to ATLP.

Second, as my foregoing testimony indicates, during recent years, ATLP has had chronic financial difficulties, which ultimately culminated in bankruptcy. Now, just four months after emerging from bankruptcy, ATLP finds itself seeking emergency rate relief, and a yet-to-be determined permanent rate increase request is, according to ATLP, waiting in the wings. In the context of a very large request for emergency rate relief, ATLP has provided no indication of an intention to go back to the bankruptcy court and seek to modify its recently approved plan of reorganization. ATLP has failed to timely submit contracts to the Commission for approval, and has treated at least one customer (Canal Park Condominium) as though it is none of the customer's business as to when and by how much its rates may be increasing. ATLP has also failed to timely request Commission approval to issue securities. If implemented, the so-called cost reduction measures proposed by ATLP in the emergency rate increase case are likely to significantly increase going forward fuel costs, putting further competitive pressure on ATLP.

Other information in these proceedings indicates that there have been reliability issues with ATLP's service to customers.

In short, ATLP has not been doing the things that are consistent with my understanding of its public utility obligations on a variety of fronts and it does not appear that awarding an emergency rate increase so that ATLP can move forward with the plans that it has outlined in its testimony is going to get at the root cause of ATLP's persistent difficulties. It has previously taken steps to block Akron's efforts to terminate the Operating Lease Agreement including filing a bankruptcy petition even though its responsibilities under the Operating Lease Agreement seem to result in ATLP being unable to sustain profitable operations. If the Commission accepts my recommendation to reject the request for emergency rate relief, I also urge the Commission to: (1) recommend that ATLP seek to abandon its public utility obligations; (2) terminate the Operating Lease Agreement and terminate its obligations under Akron's 1996 franchise; and (3) direct ATLP to engage in good faith negotiations with Akron to effectuate a business-like transfer of such obligations back to Akron. I also recommend that the Commission retain jurisdiction to monitor ATLP's actions.

VI. CONCLUSION

Q39. Does this conclude your prepared direct testimony?

A39. Yes, at the present time. However, I reserve the right to submit supplemental testimony.

Certificate Of Service

I hereby certify that a copy of the foregoing *Direct Testimony of Joseph G. Bowser* was served upon the following parties of record this 8th day of July 2009, *via* hand-delivery, electronic transmission or first class mail, postage prepaid.

Samuel C. Randazzo

Barth E. Royer
Bell & Royer Co., LPA
33 South Grant Avenue
Columbus, OH 43215-3927
barthroyer@aol.com

Attorneys for Akron Thermal, Limited Partnership

Daniel R. Conway (Counsel of Record)
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, OH 43215
dconway@porterwright.com

Attorney for Children's Hospital Medical Center of Akron

Glenn S. Krassen
Bricker & Eckler LLP
1375 East Ninth Street, Suite 1500
Cleveland OH 44114
gkrassen@bricker.com

E. Brett Breitschwerdt
Matthew W. Warnock
Bricker & Eckler LLP
100 South Third Street
Columbus OH 43215
BBreitschwerdt@bricker.com

Attorneys for Canal Place, LTD

Linda Murphy
Attorney for the County of Summit
Executives' Office
175 S. Main Street, 8th Floor
Akron, OH 44308
LMurphy@Summitoh.net

Attorney for County of Summit

Christopher Niekamp
Michael Palumbo
Bernlohr Wertz, LLP
The Nantucket Building
23 South Main St., Third Floor
Akron, OH 44308-1822
cjn@b-wlaw.com
Michael@b-wlaw.com

Attorneys for Community Hall Foundation dba The Akron Civic Theatre

Thomas McNamee
Sarah Parrot
Attorney General's Section
Public Utilities Commission of Ohio
180 E. Broad St., 9th Floor
Columbus, OH 43215
thomas.mcnamee@puc.state.oh.us
Sarah.parrot@puc.state.oh.us

Attorneys for the Public Utilities Commission of Ohio

Scott Farkas
Attorney Examiner
Legal Department
Public Utilities Commission of Ohio
180 E. Broad St., 9th Floor
Columbus, OH 43215
scott.farkas@puc.state.oh.us

Attorney Examiner