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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 Amendment to an Existing Arrangement.)))	Case No. 09-442-HC-AEC

DIRECT TESTIMONY OF BRIAN L. LORMAN

ON BEHALF OF
CANAL PLACE, LTD.

July 8, 2009

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1 **I. QUALIFICATIONS AND SUMMARY**

2 **Q. Please state your name and business address.**

3 A. My name is Brian L. Lorman. My business address is Lorman & Associates, Inc.,
4 2743 York Drive, Stow, Ohio 44224-5439.

5 **Q. What is your occupation and by who are you employed?**

6 A. I am the co-owner, president and senior consultant of Lorman & Associates, Inc., an
7 energy planning and consulting firm.

8 **Q. Please briefly describe the nature of the consulting services provided by Lorman**
9 **& Associates.**

10 A. Lorman & Associates provides consulting services to property management
11 companies, utilities and other consultants in the areas of energy procurement and
12 management, utility sub-metering and tenant billbacks, energy efficiency/cost reduction
13 projects and capital replacement and improvement projects. My educational background and
14 professional experience are summarized on Lorman Exhibit 1 (BLL-1). Per the exhibit, I
15 have about 15 years of experience in plant engineering, plant management and project
16 engineering at the Akron Recycle Energy System from about 1979 through 1995 prior to
17 Akron Thermal, Limited Partnership ("ATLP") taking over management/operation of the
18 system.

19 **Q. On whose behalf are you testifying in this proceeding?**

20 A. I am testifying on behalf of Canal Place, LTD ("Canal Place"), a steam and chilled
21 water special contract customer of ATLP. Canal Place owns and operates a 1.4 million
22 square foot nationally recognized redeveloped property located in downtown Akron. This
23 large complex is home to more than 91 local, regional, national and global companies

1 representing more than 40 different types of businesses and having a combined work force of
2 more than 2,500 people.

3 Canal Place is also an important economic development center for the City of Akron.
4 In addition to employing over 2,500 people, the businesses that are located in the office and
5 industrial buildings within Canal Place have an annual payroll of over \$80 million dollars
6 and contribute considerable amounts to the City of Akron's tax base. Many of the companies
7 located in Canal Place are well recognized and important corporate citizens in the Akron
8 community. Currently, these businesses are confronted with the same difficult economic
9 hardships that are confronting businesses throughout Ohio.

10 **Q. Have you previously testified in or are you otherwise familiar with any of**
11 **ATLP's prior cases before the Commission?**

12 **A.** I have not previously testified in any Commission proceeding involving ATLP,
13 although I have been a consultant to Canal Place in its dealings with ATLP since 1997 and
14 am familiar with and have factual knowledge of past ATLP proceedings before the
15 Commission as they relate to Canal Place. Specifically, I served as a consultant to Canal
16 Place during ATLP's first filing of tariffs in Case No. 98-1360-HT-ATA as well as during
17 the negotiation of the 2001 reasonable arrangement that was subsequently approved by the
18 Commission. I am also generally familiar with the various regulatory proceedings that ATLP
19 has brought before the Commission since 2001, as they relate to Canal Place, and am also
20 generally familiar with ATLP's recent bankruptcy case in the Bankruptcy Court of the
21 Northern District of Ohio, Case No. 07-51884.

22 **Q. Please provide a general explanation of your understanding of this proceeding.**

1 A. My understanding is that this proceeding is a consolidation of five separate dockets
2 before the Commission in which ATLP is the applicant. Specifically, my testimony will
3 focus on those consolidated cases that directly affect Canal Place. This includes Case No.
4 09-442-HC-AEC, in which ATLP is requesting Commission approval of the September 30,
5 2008 Amendment to the approved May 18, 2001 Canal Place – ATLP reasonable
6 arrangement (“May 2001 Agreement”). This also includes Case No. 09-453-HT-AEM, in
7 which ATLP is requesting a substantial emergency rate increase from tariff and potentially
8 special contract customers, including Canal Place, due to the University of Akron’s (“UA”)
9 decision not to renew its contract for service with ATLP. I am also generally familiar with
10 the other cases consolidated into this docket to the extent they affect Canal Place, but my
11 testimony will not address those cases.

12 **Q. What is the purpose of your testimony in this proceeding?**

13 A. In my testimony I address a number of issues raised in these consolidated cases as
14 they affect Canal Place. First, I will address the reasonableness of the September 2008
15 Amendment to Canal Place’s existing May 2001 Agreement with ATLP for steam and
16 chilled water service.¹ Then I will discuss the potential impact of ATLP’s proposed
17 emergency rate increase in Case No. 09-453-HT-AEM on Canal Place, as well as the
18 potential financial and business implications of such an additional increase on ATLP, Canal
19 Place, and the Akron community in general.

20 **Q. Would you please summarize your testimony?**

21 A. Yes. In summary, my testimony addresses the following:

22 The September 2008 Amendment at issue in Case No. 09-442-HC-AEC is a
23 reasonable, arms length contract negotiated between Canal Place and ATLP that should be

¹ The chilled water portion of the May 2001 Agreement was subsequently assigned to Akron Thermal Cooling.

1 approved by the Commission. As set forth in Lorman Exhibit 2 (BLL-2), the September
2 2008 Amendment increases the total price paid by Canal Place to \$16.88 per Mlb of steam,
3 providing ATLP with an approximately 75 percent annual rate increase above the negotiated
4 rates in the May 2001 Agreement. However, based on a number of factors including the
5 prospective cost to Canal Place to install alternative fuel capabilities and Canal Place's lower
6 cost of service to ATLP, this increase is nearing the upper bound of reasonableness.

7 Additional increases, as proposed in ATLP's emergency application, may detrimentally
8 impact ATLP and the Akron business community as Canal Place would likely consider
9 whether it is in its economic interest to install its own system and leave ATLP's system.

10 ATLP's requested emergency rate increase in Case No. 09-453-HT-AEM, if the
11 Commission were to approve ATLP's request at any level, should not be applied to Canal
12 Place. Such an increase, if applied to Canal Place, violates the terms of Canal Place's
13 approved reasonable arrangement, is economically unreasonable, and could potentially
14 further ATLP's cash flow problems that are the impetus for this emergency rate case. My
15 testimony shows that applying the proposed adder to Canal Place would increase Canal
16 Place's rate per Mlb to \$26.92 per Mlb, which creates a *business case for Canal Place to*
17 *consider installing its own alternative steam system and leave the ATLP steam system.* This
18 situation could replicate the financial and business implications that ATLP, the City of Akron
19 and ATLP's tariff customers are currently confronted with due to the UA's decision to leave
20 ATLP's system.

II. TESTIMONY IN SUPPORT OF REASONABLE ARRANGEMENT

Q. Please provide the history underlying the September 30, 2008 Amendment to the May 2001 Agreement, which ATLP has requested the Commission approve in Case No. 09-442-HC-AEC.

A. The history of Canal Place's May 2001 reasonable arrangement pre-dates that agreement by a few years. In September 1998, ATLP filed a "first filing" application with the Commission in Case No. 98-1360-HT-ATA to establish tariff rates for steam and hot water service. Canal Place intervened and actively participated with Staff in this proceeding as the application proposed substantial increases to Canal Place's steam rates on the ATLP system. Stemming from this case, Canal Place and ATLP negotiated a contract for steam and chilled water service for the period through March 23, 2002. This contract was approved as a reasonable arrangement by the Commission in Case No. 99-379-HT-AEC. In May 2001, Canal Place and ATLP negotiated a subsequent ten-year agreement for steam and chilled water service through March 31, 2012. This May 2001 Agreement was approved as a reasonable arrangement by the Commission on February 21, 2002 in Case No. 01-3333-HC-AEC.

Q. Please describe the key provisions of the May 2001 Agreement?

A. As this Agreement is still binding and in effect, all of its provisions continue to be relevant, but the following are most important to my testimony. The May 2001 Agreement's term is for a period of ten years, through March 31, 2012. ATLP agreed to provide steam service to Canal Place at annual rates starting at \$8.00 per Mlb plus the Gross Receipts Tax ("GRT") in Year 1 (through March 31, 2003) and increasing incrementally each year until the rate becomes \$9.56 per Mlb plus GRT in Year 10. Currently, Canal Place is paying

1 \$9.19 plus GRT in Year 8 (through March 31, 2010), plus the \$375,000 September 2008
2 Amendment annual surcharge discussed below.

3 **Q. How was Canal Place able to negotiate this favorable price term for steam?**

4 **A.** Canal Place achieved this favorable rate for steam by also agreeing to purchase
5 chilled water service under the agreement at rates in excess of Canal Place's calculated cost
6 to produce. Similarly, Canal Place's location on ATLP's system and its ability to return
7 condensate to ATLP under the Agreement created additional value for ATLP that Canal
8 Place used as leverage to negotiate the rate for steam. For example, under the May 2001
9 Agreement, Canal Place would be obligated and subject to financial penalty to return a
10 minimum of 75 percent of condensate to ATLP if ATLP made certain capital improvements
11 to Canal Place's and ATLP's condensate return facilities. These improvements have not
12 been made to date. In 2001, Canal Place also had significant reserves of on-site natural gas
13 from their own gas wells that created a competitive alternative as well.

14 **Q. Does the May 2001 Agreement provide Canal Place with the ability to terminate**
15 **the Agreement prior to its March 2012 expiration date?**

16 **A.** Yes. In addition to the right to terminate upon ATLP's default under the Agreement,
17 Canal Place may also terminate the May 2001 Agreement at any time as to either steam or
18 chilled water or both without the occurrence of an event of default upon twelve months prior
19 written notice to ATLP.

20 **Q. Does the May 2001 Agreement provide any mechanism for ATLP to modify**
21 **Canal Place's rates for steam during the term of the Agreement?**

22 **A.** My layman's understanding is that, except for minor modifications to account for
23 potential legislative changes to the GRT, there is nothing within the May 2001 Agreement

1 that provides for unilateral modification to the agreement without Canal Place's consent.
2 Canal Place negotiated the rates to be paid under the agreement in good faith with the
3 expectation that it would be subject to these rates for the duration of the agreement. Outside
4 of the context of ATLP's bankruptcy, as discussed below, it seems unfair and unreasonable
5 to allow an arms-length contract to be modified to the detriment of one of the parties to the
6 agreement.

7 **Q. Has Canal Place's approved May 2001 Agreement been modified or otherwise**
8 **directly affected by any Commission Order since it was approved by the Commission in**
9 **2001?**

10 **A.** Yes. The chilled water portion of the contract was assigned to Akron Thermal
11 Cooling in approximately 2002. However, the Commission has not attempted to modify the
12 terms of the approved reasonable arrangement, and the terms of the May 2001 Agreement do
13 not contemplate that ATLP has any authority to request the Commission do so without Canal
14 Place's consent. Both ATLP's 2004 "self complaint" case², seeking a temporary fuel cost
15 surcharge rider, and its 2005 permanent rate³ case sought only to adjust tariff customers'
16 rates, and ATLP has not proposed to unilaterally modify the May 2001 Agreement as
17 approved by the Commission. Similarly, in ATLP's prior emergency rate case, Case No. 00-
18 2260-HT-AEM, the Company only sought to impose its emergency rate surcharge on tariff
19 customers, which did not directly impact Canal Place's prior negotiated and approved
20 reasonable arrangement rates that were in effect at the time.

² See Case No. 04-1298-HT-SLF, *Finding and Order that Akron Thermal's Proposed fuel cost surcharge rider of \$3.50 for tariff customers is approved.*

³ See Case No. 05-05-HT-AIR, *Opinion and Order In the Matter of the Application of Akron Thermal, Limited Partnership for an increase in its rates for Steam and Hot Water Service.*

1 **Q. What is the basis for the September 30, 2009 Amendment at issue in Case No.**
2 **09-442-HC-AEC?**

3 **A. On June 18, 2007, ATLP filed for protection under Chapter 11 of the Bankruptcy**
4 **Code in the United States Bankruptcy Court for the Northern District of Ohio (Case No. 07-**
5 **51884). On August 24, 2007, ATLP filed a Motion for an Order Authorizing the Rejection**
6 **of an Executory Contract with Canal Place, Ltd., proposing to terminate Canal Place's May**
7 **2001 Agreement and return Canal Place to tariff rates under ATLP's future plan of**
8 **reorganization. However, instead of terminating the May 2001 Agreement, ATLP and Canal**
9 **Place negotiated an interim compromise agreement on September 27, 2007, included as**
10 **Exhibit 1 to Exhibit A to ATLP's application in Case No. 09-442-HC-AEC. This interim**
11 **agreement provided for Canal Place to pay an additional \$240,000 surcharge for steam**
12 **service rendered during the one-year period of August 1, 2007 through July 31, 2008 in**
13 **addition to the May 2001 Agreement's steam rates. As of July 31, 2008, Canal Place had**
14 **paid ATLP the full \$240,000 surcharge in addition to its negotiated rates under the May 2001**
15 **Agreement. Subsequently, on September 30, 2008, while ATLP remained under the**
16 **protection of the Bankruptcy Court, Canal Place and ATLP reached a further agreement for**
17 **service through the end of the May 2001 Agreement on March 31, 2012. This September 30**
18 **2008 Amendment, included as Exhibit B to ATLP's Application in Case No. 09-442-HC-**
19 **AEC, required Canal Place to continue to pay the \$240,000 annual surcharge pro rata through**
20 **the effective date of an approved plan of reorganization, at which time the surcharge would**
21 **increase to \$375,000 per year through the expiration of the May 2001 Agreement. Canal**
22 **Place continued to pay the pro rata \$240,000 surcharge through the effective date of ATLP's**

1 Plan of Reorganization on February 20, 2009, and, pursuant to the contract, has commenced
2 paying the \$375,000 surcharge since that date.

3 **Q. In your opinion, is the September 30, 2008 Amendment to the May 2001**
4 **Agreement economically reasonable, and should it be approved by the Commission as**
5 **an amendment to the May 2001 reasonable arrangement?**

6 **A.** Yes. Given the legal and financial circumstances of ATLP's bankruptcy, I believe the
7 September 2008 Amendment is reasonable. The Amendment was negotiated at arms length
8 between the parties to the contract, and was determined by Canal Place and ATLP to be
9 economically reasonable and in their best interest. Therefore, it should be approved by the
10 Commission.

11 **Q. What do you mean by the term "economically reasonable"?**

12 **A.** In my mind, a decision is reasonable if it achieves a result that is at least equal to or
13 more positive than the outcome of choosing an alternative course of action. An economically
14 reasonable decision contemplates a business decision where the costs, capital investment,
15 risks, and return of a given decision exceed choosing the alternative. If knowledgeable
16 parties agree to an arms length negotiated contract for service, then I would presume that
17 they determined that the terms were economically reasonable to accept when compared to
18 their alternative.

19 **Q. In your opinion, why is this Amendment economically reasonable for Canal**
20 **Place and, relatedly, ATLP?**

21 **A.** The September 2008 Amendment must be compared to Canal Place's and, relatedly,
22 ATLP's alternatives. From Canal Place's perspective, its alternatives were to either 1) accept
23 rejection of the May 2001 agreement in the bankruptcy case and return to higher tariff rates;

1 2) negotiate an amendment to its current reasonable arrangement or a subsequent
2 arrangement; or 3) leave ATLP's system and install its own heating system. Canal Place
3 considered all of these options and determined that it was in its best interest to agree to the
4 September 2008 surcharge.

5 **Q. Did Canal Place analyze installing its own alternative heating system and leaving**
6 **the ATLP system as an alternative to agreeing to the September 2008 Amendment?**

7 **A. Yes.** Canal Place analyzed the capital and other costs associated with installing an
8 alternative system, and determined that the September 2008 amendment to the contract was a
9 more economically reasonable alternative. Essentially this analysis considered the capital
10 investment cost of installing an on-site heating system, the expected delta of savings that
11 Canal Place could achieve by not paying ATLP's increased rates, including the \$375,000
12 annual surcharge, and calculated the period of time it would take Canal Place to recoup its
13 capital investment.

14 I have updated this analysis, which is included in BLL-2. BLL-2 shows that Canal
15 Place's prospective monthly rate for steam under the September 2008 Amendment is \$16.88
16 per Mlb.⁴ I then calculate the cost of fuel and other utility costs that Canal Place would incur
17 if it installed its own system. Canal Place's projected near term cost (fuel and utilities) for
18 natural gas firing of an alternative steam generation system is about \$ 13.40 per Mlb (BLL-2,
19 Line 41). This leaves a cost delta of about \$3.48 per Mlb. When multiplied by Canal Place's
20 annual usage of 51,990 Mlbs, this delta yields an annual sum of approximately \$180,000 that
21 could be used by Canal Place to pay the debt service and operation and maintenance costs

⁴ I would note that my analysis is based on Canal Place's invoice statements for the 12 month period from June 2008 through May 2009. Although Canal Place requested the monthly detail used to calculate Canal Place's usage, rate, and revenue calculations within ATLP's Exhibit 3, I was unable to reconcile the information provided with ATLP's results in Exhibit 3. Therefore, I have instead used the most recent 12 months of billing information that is available.

1 associated with installing its own system. Canal Place determined that this \$180,000 annual
2 delta resulting from the September 2008 Amendment would be insufficient to finance a
3 project.

4 Based on this analysis, it was economically reasonable for Canal Place to agree to the
5 \$375,000 annual surcharge and remain on ATLP's system, but this increase is nearing the
6 upper bound of reasonableness.

7 **Q. Explain what you mean by the September 2008 Amendment nearing the upper**
8 **bound of reasonableness.**

9 **A.** As shown on BLL-2, if Canal Place chose to install an alternative heating system for
10 its facilities, the \$3.48 per Mlb of savings would provide approximately \$180,000 of delta
11 savings that could be used to finance an alternative heating system. If Canal Place's rates
12 were to be further increased, then this delta would increase making this alternative
13 incrementally more reasonable and more attractive. As explained below, applying ATLP's
14 requested emergency rate increase to Canal Place would provide approximately \$700,000 of
15 annual delta savings that could be used to finance an alternative heating system.

16 **Q. Did Canal Place contemplate that it potentially would be subject to any**
17 **additional rate increases above the surcharge negotiated in the September 2008**
18 **Amendment?**

19 **A.** No. Canal Place's expectations in agreeing to the September 2008 Amendment are
20 set forth in the contract negotiated and agreed to between the parties, approved by the
21 Bankruptcy Court, and now before the Commission for approval. Canal Place did not
22 contemplate that it could potentially be subject to any additional rate increase after ATLP's
23 bankruptcy case concluded.

IV. TESTIMONY IN OPPOSITION TO EMERGENCY RATE INCREASE

Q. Please describe your understanding of the basis for ATLP's request for emergency rate relief in Case No. 09-453-HC-AEM.

A. Simply put, ATLP is requesting an emergency rate increase because UA determined that it was in its best interest to allow its contract with ATLP to expire, and to instead utilize its installed alternative heating system. Based on documents from ATLP's bankruptcy case and discovery responses that Canal Place received from ATLP, the UA never committed at any time to extending or renewing its agreement with ATLP, and ATLP was informed that the UA would not be renewing or extending its contract on or about the agreement's termination date of April 30, 2009.⁵ The possibility that the UA would choose not to renew or extend its contract with ATLP was even recognized by the bankruptcy court its Opinion confirming Akron Thermal's reorganization plan stating that if the UA could satisfy its own steam needs "at a cost that was predictably lower than what they are charged the Debtor, that portion of Debtor's business would likely evaporate."⁶

In my opinion, market forces and UA's non-commitment both during and after ATLP's bankruptcy made it highly likely and foreseeable that the UA would not extend its current agreement or agree to a subsequent agreement.

Q. Please describe ATLP's requested rate relief.

A. ATLP is requesting a \$4,195,561 emergency revenue increase to be recovered through an adder to the demand charges of ATLP's current rates for steam and hot water.

⁵ See ATLP's Response to Canal Place Interrogatory No. 18,19. (Received July 7, 2009).

⁶ *Opinion Re: Confirmation of Modified Second Amended Plan of Reorganization* (N.D. Ohio Bank. Ct. Jan. 26, 2009), p. 13.

1 ATLP's application proposes two options to achieve this revenue increase, without directly
2 supporting either option.

3 Option one applies the adder to steam and hot water tariff customers and to the
4 Children's Hospital Medical Center of Akron ("Children's Hospital") and Canal Place
5 special contract rates. According to ATLP's application, this would result in these
6 customers' demand charge increasing by \$54.78 per Mlb representing an average 47.8
7 percent increase.

8 Option two applies the adder to all steam and hot water tariff customers, but does not
9 seek to impose the adder upon Canal Place's or Children's Hospital's special contract.
10 According to ATLP's application, this would result in tariff customers' demand charge
11 increasing by \$81.49 per Mlb representing an average 71.6 percent overall rate increase for
12 tariff customers.

13 **Q. Do you have an opinion regarding the sufficiency of ATLP's request for**
14 **emergency rate relief?**

15 **A.** While I am not an attorney, my layman's understanding based on ATLP's application
16 is that the Company must satisfy the legal test set forth in Ohio Revised Code Section
17 4909.16 to establish that an emergency exists. ATLP must demonstrate the presence of
18 extraordinary circumstances that create a genuine emergency situation.

19 While there are a number of events associated with ATLP's recent history and its
20 application that are extraordinary, these circumstances do not create a justifiable emergency
21 that should result in an additional rate increase for Canal Place, as a special contract
22 customer. For example, it is extraordinary that ATLP agreed to a Chapter 11 reorganization
23 plan less than five months ago that failed to sufficiently address the risk of the UA leaving

1 the system. It is extraordinary that ATLP is in a position where it will be producing 30
2 percent less steam, but increasing its overall fuel costs by approximately 25 percent, mainly
3 through a large increase in the use of natural gas at the Akron Plant, which is, in my opinion,
4 due to ATLP's lack of access to capital. It is extraordinary that ATLP's \$4,195,561 rate
5 increase includes a \$1,533,088 annual increase in fuel costs, while dismissing a \$1,800,000
6 capital investment in the Boiler 32 plant as not feasible and, therefore, not in the best interest
7 of customers. To the extent these extraordinary circumstances create any emergency, they
8 have been created by ATLP's actions and business decisions and should not be recovered
9 from ATLP's customers, especially special contract customers, without sufficient
10 contribution by ATLP itself.

11 **Q. Do you have an opinion on the minimum level of relief that may be necessary to**
12 **avert or relieve the perceived emergency described in ATLP's application.**

13 **A.** No. Due to the time constraints within this case, I have not completed a financial
14 analysis of the reasonableness of the assertions and assumptions underlying ATLP's request
15 for emergency relief, except to the extent they impact Canal Place, as discussed below.
16 Canal Place anticipates that Staff and other intervenor's testimony in the case will refute or
17 propose modifications to ATLP's assumptions and assertions of an emergency.

18 **Q. If the Commission were to determine that a certain level of rate increase is**
19 **appropriate, do you have an opinion on how such a rate increase should be apportioned**
20 **between tariff and special contract customers?**

21 **A.** Yes. If the Commission determines that any level of rate increase should be
22 granted, this rate increase should not be applied to Canal Place, as a special contract
23 customer, for two key reasons.

1 First, Canal Place and ATLP have an approved reasonable arrangement for service
2 through March 31, 2012. The contract is legally binding on Canal Place, meaning Canal
3 Place has agreed to operate under its terms and conditions for the duration of the agreement.
4 As a general principle, it seems unfair and unreasonable to allow an arms-length contract to
5 be unilaterally modified to the detriment to one of the parties to the agreement. Customers
6 that negotiate reasonable arrangements with a utility have evaluated the risk of agreeing to a
7 long term contract with the expectation that the terms they have agreed to will control for the
8 duration of the agreement. Allowing the utility to request, either explicitly or implicitly, that
9 this contract should be unilaterally modified by the Commission severely increases the risk
10 and erodes the value of customers negotiating such agreements.

11 The second reason is that an additional increase to Canal Place's rates may create a
12 reasonable business case for Canal Place to consider installing its own alternative steam
13 system, terminate its contract, and leave the ATLP system. This result could replicate the
14 negative financial and business implications that ATLP, the City of Akron and ATLP's tariff
15 customers are currently confronted with as a result of UA decision to leave ATLP's system.

16 **Q. Please explain your analysis of the impact of applying ATLP's requested**
17 **revenue increase to Canal Place?**

18 **A.** While ATLP's application is correct that applying the requested rate increase across
19 tariff customers and Canal Place and Children's Hospital would result in an average overall
20 47.8 percent rate increase, it would result in an additional 60 percent rate increase for Canal
21 Place. This is in addition to the 75 percent rate increase that Canal Place has been paying
22 under the September 2008 Amendment since February 20, 2009.

1 **Q. How does this proposed increase affect Canal Place's future business decision**
2 **regarding whether to install its own alternative heating system, and, potentially, leave**
3 **the ATLP steam system?**

4 Further increases to Canal Place's rates above the September 2008 Amendment
5 incrementally increase the delta that would be available to finance an alternative heating
6 system. My analysis in BLL-2 shows that Canal Place's prospective monthly rate for steam
7 under the emergency surcharge would be increased to \$26.92 per Mlb. To reiterate, I then
8 calculated the cost of fuel and other utility costs that Canal Place would incur if it installed its
9 own system. Canal Place's projected near term cost (fuel and utilities) for natural gas firing
10 of an alternative steam generation system is about \$ 13.40 per Mlb (BLL-2, Line 41). This
11 leaves a cost delta of about \$ 13.50 per Mlb yielding an annual sum of approximately
12 \$700,000 that could be used by Canal Place for debt service and operating and maintenance
13 costs to pay off the capital investment of installing its own system. Although this analysis
14 focuses on fuel and utilities costs only, I believe that operations and maintenance costs would
15 be minimal for new Ohio special boilers operated by Canal Place's current maintenance
16 personnel. Assuming that \$ 680,000 per year would be available to be applied to debt
17 service, Canal Place could finance a capital investment of approximately \$ 2,800,000 over a
18 five year period with an eight percent cost of capital.

19 **Q. Does ATLP's application propose that any special contract customers other than**
20 **Children's Hospital and Canal Place bear the requested emergency rate increase?**

21 **A. No.** ATLP's application implicitly only proposes that the proposed rate increase
22 potentially apply to Canal Place and Children's Hospital. ATLP recognizes that customers
23 that have installed alternative heating systems, such as Summa Hospital, may determine it in

1 their best interest to leave ATLP's system and serve their own heating needs. ATLP's
2 application states that "Akron Thermal's other large contract customer, Summa Hospital, has
3 an alternative energy system in place, which precludes Akron Thermal from seeking to
4 increase its rates."⁷

5 ATLP correctly recognizes that any proposed option to recover a temporary rate
6 increase is limited by the market price of natural gas with respect to any customers with
7 alternative fuel capabilities. Neither Children's Hospital nor Canal Place have as of yet made
8 the capital investment to install an alternative heating system.

9 **Q. Why is the cost of applying the prospective rate increase to Canal Place or,**
10 **similarly, Children's Hospital, important to the Commission's analysis of ATLP's**
11 **application for an emergency rate increase?**

12 **A.** Increasing Canal Place's rates to the point where Canal Place can justify leaving
13 ATLP's system by installing its own alternative heating capabilities will further erode
14 ATLP's ability to provide service to all customers. ATLP's sole basis for its emergency
15 application is the loss of the UA, a special contract customer which determined that it was in
16 its economic best interest to utilize its own steam system as opposed to remaining on ATLP's
17 system. Similarly, ATLP has determined that it cannot request Summa Hospital to contribute
18 to its requested emergency increase because Summa could immediately leave the system if
19 its rates were increased. According to discovery responses obtained from ATLP Witness
20 Pucak,

21 If Summa chose to utilize this [alternative energy] capability rather than relying
22 on ATLP to meet its heating requirements, it would heighten the emergency
23 created by UA's decision to utilize an alternative fuel source.⁸
24

⁷ See Case No. 09-453-HT-AEM, Application, at Fn. 5.

⁸ ATLP's Response to Canal Place Interrogatory No. 16. (Received July 7, 2009).

1 As I show on BLL-2 and explain in my testimony above, if the requested emergency rate
2 increase were to be applied to Canal Place, it may be in Canal Place's best interest to
3 terminate its agreement with ATLP for its heating requirement and install an alternative fuel
4 source. Similar to the potential loss of Summa Hospital as a customer, the loss of Canal
5 Place as customer would heighten the financial situation ATLP is currently seeking to be
6 alleviated.

7 While I have not completed an analysis of Children's Hospital's usage or the
8 potential delta that would be created by applying the rate increase to Children's Hospital's
9 negotiated contract rates, I would surmise that they would be able to come to a similar
10 business justification for installing their own alternative system if subjected to this substantial
11 rate increase.

12 **Q. Does this conclude your direct testimony?**

13 **A. Yes.**

Exhibit BLL-1

Brian L. Lorman, P.E.

2743 York Drive
Stow, Ohio 44224-5439
Office Phone: 330-688-4844

SUMMARY	A Professional Engineer with thirty years combined experience in Consulting Engineering/Construction Management, Plant Engineering/Plant Management, Project Engineering/Project Management, Budgeting, Cost Analysis, Contracts and Procurement.
LICENSURE	Registered Professional Engineer - State of Ohio - 52332 Certified Energy Procurement Professional - AEE - #000484
PROFESSIONAL AFFILIATIONS	National Society of Professional Engineers Association of Energy Engineers Green Energy Ohio
EDUCATIONAL BACKGROUND	
1973 - 1978	University of Akron, Akron, OH, B.S. in Civil Engineering (5 Year Cooperative Education Program) Graduated Magna Cum Laude Member of Tau Beta Pi - Engineering Honorary Society
1978 - 1979	University of Akron, Akron OH, Completed 50% of coursework toward M.S. in Civil Engineering specializing in structures and foundations
HONORS	Awarded Memorial Award, as Outstanding Senior Civil Engineering Student, by Akron Section of the American Society of Civil Engineers
PROFESSIONAL EXPERIENCE	
01/96 - Present	LORMAN & ASSOCIATES, INC. Stow, OH Co-owner, president and senior consultant of a consulting services business performing project engineering and management services for companies and professionals. Responsibilities include: Perform duties of senior consultant supporting property management companies, utilities and other consultants in the areas of energy procurement and management, utility submetering and tenant billbacks, energy efficiency/cost reduction projects and capital replacement and improvement projects.

01/94 - 12/95

wTe CORPORATION

Bedford, MA

Senior Engineer for the Akron Recycle Energy System (ARES), Akron, OH
Responsibilities included:

- Formulated operating scenarios and prepared operating and capital cost estimates and revenues for same for the ARES as part of a City of Akron commissioned Options Study.
- Formulated operating budget, capital plan (\$1.8 million) and implementation schedule to transition the ARES to a gas-only fired facility.
- Formulated the operating plan, developed a negotiation strategy and successfully negotiated contracts for electrical service from Ohio Edison and natural gas transportation service from East Ohio Gas Company for the gas-only fired ARES.
- Formulated procurement concept and purchased natural gas for the ARES facility.
- Provided project engineering services for justification and conceptual design for various projects related to the transition to a gas-only fired ARES.
- Formulated the technical and operating plan for a proposal to privatize the ARES as a gas-fired and coal-fired facility. Coordinated outside engineering firms to further develop concepts of the proposal for incorporation into the economic model.

10/85 - 01/94

wTe CORPORATION of OHIO

Akron, OH

11/92 - 01/94

Technical Specialist for the ARES

Akron, OH

Responsibilities included:

- Provided professional and technical support to the ARES plant staff in the conduct of daily operations.

07/91 - 11/92

Energy Distribution Manager for the ARES

Akron, OH

Responsibilities included:

- Managed the operation, maintenance and capital improvements for the ARES Energy Distribution System including a staff of one supervisor and four hourly employees with an annual budget of \$400,000.
- Managed the design and construction of a \$1.3 million Ohio Issue 2 project for the rebuilding of 33 steam manholes in the ARES.

01/90 - 07/91

Assistant to the Plant Manager for the ARES

Akron, OH

Responsibilities included:

- Provided professional and technical support to the ARES plant staff in the conduct of daily operations.

01/86 - 01/90

Assistant Plant Manager for the ARES

Akron, OH

Responsibilities included:

- Managed the operation, maintenance and capital improvements for the entire ARES facility including monitoring a staff of 80 people including 10 management personnel. Maintained an annual operations budget of \$10,000,000.
- Developed management systems to track production and business activities.

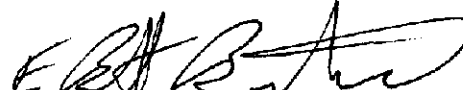
10/85 - 01/86	Plant Engineer for the ARES Akron, OH Responsibilities included: Provided engineering support services to ARES departments in conducting daily operations, establishing budgets and planning capital programs.
08/81 - 10/85	TRICIL RESOURCES, INC. Akron, OH
01/83 - 10/85	Plant Engineer for the ARES Akron, OH Responsibilities included: Provided engineering support services to ARES departments in conducting daily operations, establishing budgets and planning capital programs. Managed the operation, maintenance and capital improvements for the ARES Energy Distribution System and Tire Shredder including a staff of three supervisors and eight hourly employees with an annual budget of \$600,000.
08/81 - 01/83	Plant Engineer for the ARES Akron, OH Responsibilities included: Supervised all on-site activities of engineering for the capital project work associated with Tricil's major retrofit of the ARES. Major work included the installation of a new waste handling system and a semi-automatic gas firing system for the boilers. Performed as liaison between construction and operations during the retrofit and commissioning of the capital improvements. Performed as Commissioning Manager of the Tricil Modified plant and supervised startup of the boiler systems on waste. Assisted in writing Tricil's Plant Operating and Safety Manual.
09/75 - 08/81	GLAUS, PYLE, SCHOMER, BURNS & DeHAVEN, INC. Akron, OH
06/78 - 08/81	Staff Engineer Akron, OH Responsibilities included: Designed and prepared construction drawings and specifications for a new industrial building (Cyclone Drill Co., Orrville, OH) and two power plants (ARES and the former Hooker Chemical Co. Waste-to-Energy Facility, Niagara Falls, NY). Performed construction engineering and management for the installation and startup of the high pressure steam distribution system for the ARES including service equipment at the University of Akron and Akron City Hospital. Performed construction engineering and management for the installation and startup of gas fired burners for the ARES boilers.
09/75 - 09/77	Cooperative Education Student Akron, OH Responsibilities included: Performed design, drafting and surveying work on numerous interstate upgrading, bridge replacement and road resurfacing projects.

PUCO CASE 09-442 - EXHIBIT BLL-2

A	B	C	D	E	F	G	H	I	J	K	L	M	N	O	P	Q
ITEM	LOCATION	JAN	FEB	MAR	APR	MAY	JUN	JUL	AUG	SEP	OCT	NOV	DEC	TOTAL	AVG COST \$/MCF	
1																
2																
3	MODELED A1/P/CANAL PLAGE STEAM CHARGES - BASED ON 2008-2009 USAGE ACTUALS FROM A1/P INVOICES - OFFICE AND SOUTH COMPLEX SERVICES FROM JUNE 2008 THROUGH MAY 2009															
4	5 YEAR	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009	2009			
5	PERIOD	12/28-01/27	01/27-02/26	02/26-03/26	03/26-04/25	04/25-05/24	05/24-06/23	06/23-07/31	07/31-08/29	08/29-09/28	09/28-10/27	10/27-11/26	11/26-12/25			
6	7 USAGE-MF	6,052	6,169	3,432	2,464	905	681	380	329	382	1,697	4,739	3,680	28,100		
7	OFFICE COMPLEX	4,450	6,092	3,284	1,220	0	0	0	0	0	702	3,728	4,384	22,890		
8	SOUTH COMPLEX	9,532	10,251	6,716	3,674	905	681	380	329	382	2,369	8,467	8,264	51,990		
9	TOTAL															
10																
11	RATE FOR:															
12	CONSUMPTION - RATE 1	\$ 9.19	\$ 9.19	\$ 9.18	\$ 9.37	\$ 9.37	\$ 9.37	\$ 9.37	\$ 9.18	\$ 9.19	\$ 9.19	\$ 9.19	\$ 9.19			
13	CONSUMPTION - TOTAL	\$ 87,599	\$ 94,207	\$ 61,720	\$ 34,425	\$ 8,490	\$ 6,381	\$ 3,561	\$ 3,024	\$ 3,602	\$ 22,047	\$ 77,812	\$ 75,948	\$ 478,804	\$ 9.21	
14	GROSS RECEIPTS TAX (GRT) @ 4.98%	\$ 4,362	\$ 4,892	\$ 3,074	\$ 1,714	\$ 422	\$ 318	\$ 177	\$ 161	\$ 179	\$ 1,068	\$ 3,875	\$ 3,782	\$ 23,844	\$ 0.46	
15	TOTAL PER 2001 CONTRACT	\$ 91,961	\$ 99,099	\$ 64,794	\$ 36,139	\$ 8,912	\$ 6,699	\$ 3,738	\$ 3,185	\$ 3,781	\$ 23,115	\$ 81,687	\$ 79,730	\$ 502,648	\$ 9.67	
16	SURCHARGE PER 2008 AND (INCL GRT)	\$ 68,247	\$ 71,244	\$ 51,232	\$ 30,080	\$ 10,847	\$ 4,733	\$ 2,641	\$ 2,287	\$ 2,724	\$ 16,673	\$ 68,848	\$ 67,435	\$ 375,000	\$ 7.21	
17	SUBTOTAL	\$ 160,208	\$ 170,343	\$ 116,026	\$ 66,219	\$ 19,759	\$ 11,432	\$ 6,379	\$ 5,482	\$ 6,505	\$ 39,818	\$ 140,533	\$ 137,165	\$ 877,648	\$ 16.88	
18	EMERG. SURCHARGE (\$ 64.78 x 9.632)	\$ 43,515	\$ 43,515	\$ 43,515	\$ 43,515	\$ 43,515	\$ 43,515	\$ 43,515	\$ 43,515	\$ 43,515	\$ 43,515	\$ 43,515	\$ 43,515	\$ 522,184	\$ 10.04	
19	GRAND TOTAL	\$ 203,724	\$ 213,858	\$ 159,542	\$ 109,734	\$ 63,274	\$ 54,947	\$ 49,894	\$ 48,977	\$ 50,021	\$ 83,333	\$ 184,048	\$ 180,678	\$ 1,399,832	\$ 26.92	
20																
21																
22	ALTERNATIVE EXISTING CANAL PLAGE STEAM SYSTEM AND PROPOSED COMBUSTION OF NATURAL GAS IN PURCHASED NEW OHIO SPECIAL BOILERS WITH ECONOMIZERS (EFFICIENCY AT 80% TO 12%)															
23	OFFICE COMPLEX STEAM USAGE	5,052	5,159	3,432	2,454	905	681	380	329	382	1,697	4,739	3,680	29,100		
24	SOUTH COMPLEX STEAM USAGE	4,480	5,092	3,284	1,220	0	0	0	0	0	702	3,728	4,384	22,890		
25	EST. OF STEAM LINE LOSSES	500	500	500	500	250	250	250	250	250	500	500	500	500		
26	LOAD AS STEAM	9,904	10,587	7,088	4,034	1,081	661	568	515	572	2,771	8,827	8,063	55,452		
27	LOAD AS MMBTU (@ 950 BTU/LB STEAM)	9,408	10,058	6,734	3,832	1,038	618	536	489	543	2,632	8,368	8,204	52,679		
28	AVG. GAS CONVERSION EFFICIENCY	82	82	82	80	80	80	80	80	80	80	80	82	82		
29	BURNER TIP NAT GAS BURNED	11,474	12,265	8,212	4,790	1,298	672	612	612	679	3,281	10,228	10,005	64,545		
30	TRANSPORT NAT GAS DELIVERED	11,915	12,737	8,527	4,874	1,345	698	635	635	705	3,417	10,619	10,380	67,026		
31	CALCULATE GAS COSTS															
32	LDC COSTS - BURNERTIP GAS (@ \$ 1.10/MCF)	\$ 12,622	\$ 13,482	\$ 9,033	\$ 5,269	\$ 1,425	\$ 1,135	\$ 739	\$ 673	\$ 747	\$ 3,620	\$ 11,249	\$ 11,005	\$ 70,999		
33	BASIS - TRANSPORT GAS (@ \$ 1.50/MCF)	\$ 17,873	\$ 19,105	\$ 12,781	\$ 7,482	\$ 2,018	\$ 1,593	\$ 1,047	\$ 953	\$ 1,058	\$ 5,125	\$ 15,928	\$ 15,584	\$ 100,837		
34	HENRY HUB GAS PRICE (\$/MMBTU)	\$ 7,429	\$ 7,424	\$ 7,209	\$ 6,614	\$ 6,574	\$ 6,574	\$ 6,749	\$ 6,574	\$ 6,604	\$ 6,884	\$ 6,924	\$ 7,214			
35	HENRY HUB GAS COST (\$)	\$ 88,517	\$ 94,557	\$ 61,473	\$ 32,901	\$ 8,844	\$ 7,063	\$ 4,710	\$ 4,175	\$ 4,688	\$ 22,839	\$ 73,528	\$ 74,950	\$ 478,217		
36	TAX ON GAS (SALES TAX @ 6.50%)	\$ 5,754	\$ 6,146	\$ 3,996	\$ 2,139	\$ 576	\$ 460	\$ 308	\$ 271	\$ 303	\$ 1,485	\$ 4,779	\$ 4,872	\$ 31,054		
37	TOTAL BURNERTIP GAS COST	\$ 124,764	\$ 133,300	\$ 87,292	\$ 47,770	\$ 12,862	\$ 10,241	\$ 6,803	\$ 6,072	\$ 6,706	\$ 33,099	\$ 105,488	\$ 106,412	\$ 680,837		
38																
39	EST OTHER UTILITY (W/SELETRIC) COSTS	\$ 2,500	\$ 2,600	\$ 2,000	\$ 1,000	\$ 500	\$ 500	\$ 500	\$ 500	\$ 500	\$ 1,000	\$ 2,000	\$ 2,600	\$ 16,000		
40																
41	TOTAL GAS UTILITIES COSTS													\$ 896,837	\$ 13.40	
42																
43	HENRY HUB FUTURES STRIP GAS PRICES AS OF JULY 7, 2009															
44	GAS PRICE (\$/MMBTU) - 08/06-07/10	\$ 6,604	\$ 6,560	\$ 6,504	\$ 6,429	\$ 5,476	\$ 5,574	\$ 5,694	\$ 5,429	\$ 3,558	\$ 3,775	\$ 4,482	\$ 5,196			
45	GAS PRICE (\$/MMBTU) - 08/10-07/11	\$ 6,924	\$ 6,924	\$ 6,769	\$ 6,334	\$ 6,304	\$ 6,394	\$ 6,498	\$ 5,784	\$ 5,849	\$ 5,964	\$ 6,309	\$ 6,704			
46	GAS PRICE (\$/MMBTU) - 08/11-07/12	\$ 7,429	\$ 7,424	\$ 7,209	\$ 6,614	\$ 6,574	\$ 6,574	\$ 6,749	\$ 6,574	\$ 6,604	\$ 6,884	\$ 6,924	\$ 7,214			
47																
48	GAS PRICE (\$/MMBTU) - FOB MODEL	\$ 7,429	\$ 7,424	\$ 7,209	\$ 6,614	\$ 6,574	\$ 6,574	\$ 6,749	\$ 6,574	\$ 6,604	\$ 6,884	\$ 6,924	\$ 7,214			

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the parties of record listed below this 8th day of July, 2009 *via* e-mail.


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