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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

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REBUTTAL TESTIMONY
OF

JEFFREY P. BEES

ON BEHALF OF
AKRON THERMAL, LIMITED PARTNERSHIP

Submitted: July 14, 2009

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**REBUTTAL TESTIMONY
OF**

JEFFREY P. BEES

**ON BEHALF OF
AKRON THERMAL, LIMITED PARTNERSHIP**

Q. Please state your name and business address.

A. My name is Jeffrey P. Bees My business address is 236 North Champion Street,
Youngstown, Ohio 44503.

**Q. Are you the same Jeffrey P. Bees whose direct testimony was filed in these
proceedings on July 2, 2009?**

A. Yes.

Q. What is the purpose of the rebuttal testimony you are presenting at this time?

A. The purpose of this testimony is to respond to the recommendations contained in the
testimony of Staff witnesses Shahid Mahmud and David R. Hodgden filed in these
proceedings on July 8, 2009, and to present information that addresses the concerns

identified by Mr. Mahmud and Mr. Hodgden as the basis for their respective recommendations. I will also respond to the portion of the testimony of Staff witness Stephen E. Puican regarding the alternative mechanism for the recovery of the proposed emergency rate increase contained in Exhibit 4 to Akron Thermal's application in Case No. 09-453-AEM. Finally, I will respond to certain allegations in the testimony of city of Akron witness Richard Merolla.

Q. What is the subject of Staff witness Mahmud's testimony?

A. Mr. Mahmud addresses Akron Thermal's application in Case No. 09-414-HT-AIS for approval of the three promissory notes that restructured Akron Thermal's indebtedness in accordance with the Second Amended Plan of Reorganization for Akron Thermal, Limited Partnership dated July 14, 2008, as amended (the "Plan"), which was approved by the bankruptcy court's confirmation order dated January 26, 2009. The documents comprising the Plan were attached as Exhibit JPB-1 to my direct testimony.

Q. What did Staff witness Mahmud recommend with respect to the application for approval of these promissory notes?

A. Mr. Mahmud recommended that the application be denied.

Q. What was the basis stated by Mr. Mahmud for his recommendation that the application be denied?

A. Mr. Mahmud compared the payment obligations under the three notes to the cash flow statement showing the impact of the requested emergency rate relief and concluded that, even with the proposed emergency increase, Akron Thermal "would not be able to meet the debt service needs in 2010." Mr. Mahmud's calculation of the 2010 debt service cost

is shown on Attachment-SUM-1 to his testimony. The cash flow statement to which he refers is presented as Attachment-SUM-3 to his testimony.

Q. Does Attachment-SUM-1 accurately quantify the 2010 payment obligations associated with the three promissory notes?

A. No. The three notes in question are the Creditors' Trust note, the Treasurer of the State of Ohio note, and the Thermal Ventures II, L.P. ("TVII") note. The principal amount of the Creditors' Trust note is \$2,060,000, less a reduction amount equal to the cash payment made to Class 3.1 creditors under the Plan. The note bears a 5% interest rate, and is payable in eight semi-annual installments of \$293,055.76, which reflect principal and accrued interest. The Treasurer of the State of Ohio note has a principal amount of \$1,350,000 and a 5% interest rate. This note is payable in eight semi-annual installments of \$197,812.67. However, under the terms of both these notes, the first installment is not due until eighteen months from the effective date of the Plan. The Plan was effective February 20, 2009, which means that the first installment payments are not due until August 20, 2010. Thus, what is actually depicted on Attachment-SUM-1 are the annualized payment obligations associated with these two notes commencing with the first payment, not the amount Akron Thermal is actually required to pay in 2010.

Q. Is there any other factor that Mr. Mahmud failed to consider in determining the 2010 payment obligations under the Creditors' Trust note?

A. Yes. Under the terms of the note, Akron Thermal may elect to defer the initial August 20, 2010 payment. If that election is made, the first installment is not due until February 20, 2011. However, if Akron Thermal elects to defer the August 20, 2010 payment, the

interest rate becomes 7% and the number of semi-annual payments is reduced from eight to seven.

Q. Assuming Akron Thermal does not elect to defer the initial semi-annual payment under the Creditor's Trust note, what would its actual debt service obligations associated with the three promissory notes be in 2010?

A. The total of the actual 2010 payments would be \$753,368.43, which is the sum of the \$293,055.76 installment payment to the Creditors' Trust due August 20, 2010, the \$197,812.67 installment payment to the Treasurer of the State of Ohio due August 20, 2010, and the one-time payment to TVII of \$262,500.00 due April 30, 2010.

Q. You indicated that Staff witness Mahmud recommends denying the application in Case No. 09-414-HT-AIS on the grounds that, based on Akron Thermal's cash flow projections under the proposed rates, there will not be sufficient revenues to meet the payment obligations associated with the three notes. Do you agree with Mr. Mahmud's assessment?

A. As I noted in my direct testimony, the cash flow analysis attached as Exhibit JDS-5 to the testimony of Akron Thermal witness Stott, which is reproduced as Attachment-SUM-3 to Mr. Mahmud's testimony, is a projected statement of 2009 cash flow assuming emergency rate relief. The purpose of this analysis was to demonstrate the need for immediate emergency rate relief resulting from the loss of the University of Akron ("UA") load. This analysis does not consider the actual 2010 payment obligations, nor does it consider the annual amount of the payment obligations in subsequent years. Thus, I do not dispute Mr. Mahmud's conclusion that, based on this analysis, the additional revenue requested in the emergency application would not be adequate to meet

the payment obligation associated with these notes during the period the emergency rates would be in effect. However, Mr. Mahmud's conclusion assumes that Akron Thermal would have no opportunity to restructure these payment obligations. The amount of the temporary rate relief requested is intended to permit Akron Thermal to avert the immediate cash flow crisis resulting from the loss of the UA as a customer. As I explained in my direct testimony, if the Commission grants the emergency rate increase, Akron Thermal would look to restructure these payment obligations so as to meet them on a timely basis.

Q. Has Akron Thermal approached the Creditors' Trust, the Treasurer of the State of Ohio, and TVII in an attempt to restructure the payment obligations under the respective notes?

A. Yes. Because Akron Thermal will be financially imperiled if the Commission does not grant its emergency application, Akron Thermal assumed that that these creditors would not entertain a proposal to restructure the payment obligations under the notes until the Commission granted emergency relief to stabilize Akron Thermal's cash position. Thus, Akron Thermal did not contemplate initiating negotiations with these entities until after the emergency case was decided by the Commission. However, in view of the positions set forth in the testimony of Staff witnesses Mahmud and Hodgden, Akron Thermal immediately entered into discussions with the holders of this notes, and has, in fact, entered into an agreement with Creditors' Trust, the Treasurer of the State of Ohio, and TVII that significantly alters the payment obligations.

Q. Please describe the agreement to which you refer.

A. A copy of the agreement ("Agreement"), which was is dated July 13, 2009, is attached to my testimony as Exhibit JPB(Rebuttal)-1. The Agreement provides that the obligations due TVII under the \$250,000 note will be extended such that no principal or interest will be due until the Creditors' Trust note and the Treasurer of the State of Ohio note have been paid in full. Thus, not only will the \$262,500.00 payment identified on Attachment-SUM-1 to Mr. Mahmud's testimony not be due April 1, 2010, but it will not be due until 2015. The Agreement further provides that the combined installment payments due under the Creditors' Trust note and the Treasurer of the State of Ohio note will be reduced by \$100,000 per year, with 60% of the reduction coming from the Creditors' Trust note and 40% from the Treasurer of the State of Ohio note. The Agreement is, of course, contingent on the Commission granting emergency rate relief to Akron Thermal.

Q. Does this Agreement answer the concern identified by Staff witness Mahmud?

A. I believe that it does. Mr. Mahmud stated that his recommendation was that: "To the extent Akron Thermal's cash flow projections under the Company proposed rates appear to be insufficient to meet its debt service obligations, I recommend the Company's request for Commission approval of the debt obligations be denied." With the deferral of the obligation associated with TVII note to 2015 and reduction in the annual payment associated with the Creditors' Trust and Treasurer of the State of Ohio notes, I believe that the rates proposed in the emergency application will be sufficient to meet these payment obligations. I would also note that the Agreement does not affect Akron Thermal's right to defer the first payment under the Creditors' Trust note to February 20, 2011.

Q. What is the subject of Staff witness Hodgden's testimony?

- A. While Mr. Mahmud's testimony goes to the issue of whether the emergency relief requested will permit Akron Thermal to meet the note payment obligations, Staff witness Hodgden addresses whether Akron Thermal can support a request for permanent rate relief in an amount that will permit it to meet these obligations on an ongoing basis. Mr. Hodgden utilized the December 31, 2008 statement of operations and balance sheet to estimate the annual revenue requirement that would result from the application of the ratemaking formula that would be applied in a permanent rate application. Based on his model, he estimated that Akron Thermal could support an annual total-company revenue requirement of \$15,509,429, which would support a total-company revenue increase of \$3,995,210. Mr. Hodgden determined that, under this model, Akron Thermal would have an estimated \$912,202 in cash available to meet its debt service obligations. He then compared this amount to the first-year annualized debt service payments of \$1,244,237 as calculated by Mr. Mahmud, and concluded that, in the first year, there would be a short-fall of \$332,035. After reducing the first-year annualized debt service payments to eliminate the one-time TVII payment due in 2010, he determined that the annual debt service payments for the next three years would be \$981,736 per year. This exceeds his estimate of the annual revenue available to meet debt service obligations by \$69,534 ($\$981,736 - \$912,202 = \$69,534$). Thus, Mr. Hodgden concluded that, under the Ohio rate setting procedures, the Commission could not authorize permanent rates that would be sufficient to enable Akron Thermal to meet its debt service requirements.
- Q. Does the Agreement between Akron Thermal, Creditors' Trust, the Treasurer of the State of Ohio, and TVII address Mr. Hodgden's concern that the revenue

increase that could be supported in a permanent rate case would not be sufficient to enable Akron Thermal to meet its debt service requirements on an ongoing basis?

- A. Yes. The deferral of the TVII payment obligation to 2015, coupled with the combined \$100,000 reduction in the annual installment payment obligations associated with the Creditors' Trust and the Treasurer of the State of Ohio promissory notes, indicates that Akron Thermal would have cash revenue under Mr. Hodgden's model sufficient to meet its debt service requirements over the next several years. In so stating, I recognize that Mr. Hodgden's estimate is, as he characterized it, a "shortcut estimate." As I indicated in my direct testimony, there is no way to know at this time the precise amount of the revenue increase that the Commission would ultimately authorize in the permanent rate case, but I believe Mr. Hodgden's estimate is a reasonable proxy for the purpose at hand.

Q. Did Mr. Hodgden express any other concerns in his testimony?

- A. Mr. Hodgden observes that financing cost are a below-the-line item for ratemaking purposes and that, as a result, an applicant utility's debt service requirements are recognized only through the rate of return applied to the utility's rate base. Mr. Hodgden points out that, after the \$3 million in owner's equity infusion required under the Plan and the total debt obligations associated with the three promissory notes, Akron Thermal's capitalization exceeds its rate base by approximately \$3 million. He concludes from this that Akron Thermal's business model is "incompatible with public utility rate setting principles."

Q. Do you agree?

- A. No. The Plan approved by the bankruptcy court required Akron Thermal's limited partner, TVII, to contribute \$3 million as an equity infusion and to assume the debt

obligations for the benefit of the unsecured creditors. Although I agree that this additional capital will not be reflected as rate base assets, I disagree with Mr. Hodgden's conclusion that this means that: "Applicant's asset base, financial structure, and operating costs do not support a revenue requirement under Ohio public utility rate setting procedures that would be sufficient to cover its financing costs." It is my understanding that under the Ohio statutory ratemaking formula, a utility is entitled to recover its reasonable annual operating expenses, and that this is true regardless of its capitalization. Further, as previously explained, under the Agreement modifying the payment obligations associated with the three notes, the net operating revenue, as estimated by Mr. Hodgden, will be sufficient to cover the annual payment obligations associated with these notes over the next several years. Thus, it is only the equity investor, *i.e.*, TVII, that is at risk to the extent that the rates set under the Ohio rate setting procedures will not produce the indicated proforma dollar return on equity resulting from applying a rate of return based on the weighted cost of capital to the rate base. By agreeing to the Plan, TVII clearly assumed this risk. Thus, as long as the rates authorized under the Ohio ratemaking formula are designed to produce revenues that cover its Akron Thermal's annual operating expenses and the dollar return on rate base is sufficient to meet Akron Thermal's debt service obligations in practice, the fact that capitalization requirement approved by the bankruptcy court exceeds rate base should play no role in the Commission's decision.

- Q. You indicated that you would also address the testimony of Staff witness Puican. What is the subject of Mr. Puican's testimony?**

A. Mr. Puican discusses the Akron Thermal applications in Case Nos. 09-441-HT-AEC and 09-442-HT for approval of special contracts with Children's Hospital and Canal Place, Ltd., respectively, and the application in Case No. 09-315-HT-AEC for a tariff change to accommodate the residential customers that were previously served pursuant to an agreement with Canal Park condominium. He also addresses the alternative temporary surcharge for recovering the proposed emergency rate increase that was included in Exhibit 4 to the application in Case No. 09-453-HT-AEM.

Q. What was Mr. Puican's recommendation with respect to the alternative mechanism for recovering the proposed emergency increase?

A. Exhibit 4 to the application contained alternative surcharge proposals for recovering the proposed emergency increase. The first surcharge contemplated that the temporary demand charge adder would apply only to tariff customers, while the alternative surcharge was calculated based on an assumption that the adder would be applied to both tariff customers and to Children's Hospital and Canal Place. Mr. Puican recommended that the proposed surcharge to tariff customers not be approved based on the Staff recommendation that the application for emergency rate relief should be denied. Mr. Puican then indicated that Staff did not consider the alternative surcharge that contemplated recovery of the emergency increase from both tariff customers and Children's Hospital and Canal Place, because Staff viewed applying the surcharge to these special contract customers as inappropriate under the circumstances. Although Mr. Puican recommended approval of the Children's Hospital and Canal Place contracts, he did not see the application of the surcharge to these special contract customers as a viable alternative.

Q. Do you disagree with Staff witness Puican's conclusion with respect to the application of the surcharge to Children's Hospital and Canal Place?

A. No. As indicated in the direct testimony of Akron Thermal witness Pucak, Akron Thermal took no position with respect to which of the alternative mechanisms for recovering the proposed emergency increase should be approved. The intention was simply to show the amount of the adder that would be required under the two alternative scenarios. Akron Thermal does not disagree with Mr. Puican's observations regarding applying the surcharge to the special contract customers, and is also cognizant of the objections to this alternative discussed in the testimony of the Children's Hospital and Canal Place witnesses. Thus, Akron Thermal withdraws the proposed alternative surcharge that would have provided for the recovery of a portion of the emergency rate increase from these special contract customers.

Q. You also indicated that you would respond to certain allegations in the testimony of city of Akron witness Merolla. What are the allegations to which you refer?

A. At page 3 of his testimony, in response to a question whether the city, in its capacity as a customer, has experienced problems with the reliability of the service provided by Akron Thermal. Mr. Merolla appears to answer in the affirmative and then goes on to refer to "persistent reliability and service quality problems" experienced by Akron Thermal customers.

Q. To your knowledge, has the city ever experienced an unplanned interruption in service?

A. No. Other than the infamous 2003 Northeast Blackout, which was obviously not within Akron Thermal's control, Akron Thermal's records show no unplanned interruption in

the service provided to the city, or, for that matter, to any other of its current customers.

There are certain occasions when Akron Thermal is required to conduct routine planned maintenance. In these instances, Akron Thermal personnel are in contact with the customer's facilities personnel to coordinate the necessary work.

Q. Have other Akron Thermal customers experienced interruptions in service or complained about the reliability of the service provided by Akron Thermal?

A. As I indicated, none of Akron Thermal's current customers has experienced service interruption problems. I acknowledge that UA experienced service interruptions as a result of problems with the high-pressure line that has served UA's facilities. These problems related only to the condensate return piping. This Ricwil System was originally installed with a cathodic protection system to reduce the deterioration of the piping from outside influences. This protection began to fail years ago. In accordance with the term of its interruptible contract, service to UA was interrupted on those occasions when it was necessary to repair the condensate pipe, as well as when requested by UA for its own maintenance purposes. Substantial work was completed to address the weak areas of the condensate return system. However, I do not believe there is any support for the allegation that customers, generally, have experienced reliability and service quality problems. To my knowledge, no other customer has ever complained to Akron Thermal regarding the reliability of its service, nor has any customer complained to the Commission, either formally or informally, about the reliability of Akron Thermal's service.

Q. Does this conclude your rebuttal testimony?

A. Yes.

EXHIBIT JPB(Rebuttal) - 1

AGREEMENT

This Agreement is made by and among the undersigned parties (individually, a "Party" and collectively, the "Parties") as of the 13th day of July, 2009.

BACKGROUND INFORMATION

A. Akron Thermal, Limited Partnership ("ATLP") has issued the following Promissory Notes dated February 20, 2009 (collectively, the "Notes") in connection with its Second Amended Plan of Reorganization dated July 14, 2008, as modified (the "Plan"):

	<u>Payee</u>	<u>Principal Amount</u>
1.	Creditors' Trust	\$2,060,000 (subject to reduction for payments to Class 3.1)
2.	State of Ohio	\$1,350,000
3.	Thermal Ventures II, L.P. ("TVII")	\$250,000

B. ATLP has filed applications with the Public Utilities Commission of Ohio ("PUCO") seeking, among other things, an emergency increase in its tariff rates. The PUCO staff has questioned whether ATLP will have sufficient cash flow to service the annual obligations under the Notes. The undersigned have agreed to modify the terms of the Notes to address these concerns.

AGREEMENT

NOW, THEREFORE, in consideration of the foregoing Background Information and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Parties, intending to be legally bound, hereby agree as follows:

Section 1. TVII Note. TVII agrees that the obligations due it under the \$250,000 Note will be extended such that no principal or interest will be due until the Creditors' Trust Note and the State of Ohio Note have been paid in full.

Section 2. Creditors' Trust and State of Ohio Notes. The Creditors' Trust and the State of Ohio agree that the terms of payment be modified to reduce the combined payment obligations by the sum of \$100,000 per year, with 60% of the reduction coming from the Creditors' Trust Note and 40% from the State of Ohio Note. Because of payments made to Class 3.1 creditors, the original principal amount of the Creditors' Trust Note is \$2,041,311.49. ATLP will make payments to the Creditors' Trust and the State of Ohio, as follows:

	<u>Creditors' Trust</u>	<u>State of Ohio</u>
August 20, 2010	\$263,055.76	\$177,812.67
February 20, 2011	\$263,055.76	\$177,812.67
August 20, 2011	\$263,055.76	\$177,812.67
February 20, 2012	\$263,055.76	\$177,812.67
August 20, 2012	\$263,055.76	\$177,812.67
February 20, 2013	\$263,055.76	\$177,812.67
August 20, 2013	\$263,055.76	\$177,812.67
February 20, 2014	\$263,055.76	\$177,812.67
August 20, 2014	\$263,055.76	\$176,881.67
February 20, 2015	\$58,146.89	

Section 3. Other Terms.

3.1. These changes are made to facilitate ATLP's application for emergency rate relief pending before the PUCO. Accordingly, in the event that the PUCO declines to approve the emergency rate relief, then this Agreement will be void.

3.2. The parties agree to execute any further items needed to implement this agreement, including any allonge to the respective Notes.

3.3. All other terms and conditions of the Plan, the Notes and all items related thereto remain as stated therein (including the right of ATLP to defer the initial payment to the Creditors' Trust Note as more fully described in that Note).

Section 4. Representations and Warranties by Parties.

4.1. **Transfer of Rights.** This Agreement is intended to address certain affairs specified in this Agreement, and to bind the Parties and their predecessors, subsidiaries or affiliates as well as their successors and assigns. The Parties therefore represent and warrant that, except as expressly set forth herein, they have not sold, factored, pledged, assigned, transferred, conveyed or otherwise disposed of any claim, demand or cause of action related to any matter covered by this Agreement such that some other person, firm or entity may be expected to pursue any claims against any party.

4.2. **Authority to Execute.** Each person executing this Agreement on behalf of the Parties specifically warrants that he or she has full power and authority to execute this Agreement on behalf of such Party.

Section 5. Notices. Any notices required hereunder shall be in writing, shall be transmitted by registered or certified mail, postage prepaid, return receipt requested. Notice shall be deemed given when so deposited in the United States Postal Service, addressed to the Parties as set forth below:

- (i) If intended for ATLP, to:

Akron Thermal, LP
226 Opportunity Parkway
Akron, OH 44307-2232
Attn: Richard J. Pucak

With a copy to:

Daniel R. Swetnam, Esq.
Schottenstein, Zox & Dunn Co., LPA
250 West Street, Suite 700
Columbus, OH 43215

- (ii) If intended for Creditors' Trust, to:

BMF Advisors, LLC
c/o Bober, Markey, Fedorovich & Company
3421 Ridgewood Road, Suite 300
Akron, OH 44333-3119
Attn: David Wehrle

With a copy to:

Joseph Hutchinson, Esq.
Baker & Hostetler, LLP
3200 National City Center
1900 E. Ninth Street
Cleveland, OH 44114-3485

- (iii) If intended for State of Ohio, to:

Donn D. Rosenblum, Esq.
Principal Assistant Attorney General
Attorney General of Ohio
150 E. Gay Street, 21st Floor
Columbus, OH 43215

(iv) If intended for Thermal Ventures II, L.P., to:

Thermal Ventures II, L.P.
236 N. Champion Street
Youngstown, OH 44503
Attn: Jeffrey P. Boes

Section 6. Miscellaneous.

6.1. **Entire Agreement.** This Agreement sets forth the understanding among the Parties concerning the subject matter of this Agreement, and incorporates all prior negotiations and understandings. No covenants, promises, agreements, conditions or understandings, either oral or written, exists between the Parties relating to the subject matter of this Agreement other than those set forth herein. No alteration, amendment or change to this Agreement shall be binding upon any Party hereto unless in writing, and signed by all Parties.

6.2. **Joint Preparation.** This Agreement is deemed to have been prepared jointly by the Parties. Any uncertainty or ambiguity existing herein shall not be interpreted against any Party.

6.3. **Counsel.** Each of the Parties hereby represents and warrants that they are executing this Agreement after having received full legal advice as to their rights from their respective legal counsel.

6.4. **No Admission.** This Agreement is entered into by the Parties solely for the purpose of addressing the matters described herein, subject to the conditions specified herein. This Agreement does not constitute, nor shall it be construed as, an admission by any Party of the truth or validity of any claims or contentions asserted by any other Party, or as a ratification of any past conduct by any other Party.

6.5. **Headings.** The section headings contained in this Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Agreement.

6.6. **Governing Law.** This Agreement shall be construed, interpreted, and governed by the law of the State of Ohio without reference to conflict of law principles.

6.7. **Business Day.** For purposes hereof, a "business day" shall mean a day of the year, other than (i) a Saturday; (ii) a Sunday; or (iii) any day upon which The Huntington National Bank, Columbus, Ohio, is required or authorized by law to remain closed.

6.8. **Counterparts.** This Agreement may be executed in counterparts by facsimile or "PDF" transmission, all of which counterparts shall be deemed originals, all of which counterparts taken together shall constitute a single instrument, and the signature pages of each such counterpart may be detached from the several counterparts and attached to a single copy of this document to physically form a single instrument.

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

AKRON THERMAL, LIMITED
PARTNERSHIP

By: Opportunity Parkway, LLC
Its: General Partner

By: Therese Kechler
Therese Kechler, Treasurer

STATE OF OHIO PRIORITY CREDITORS
INCLUDED IN THE STATE OF OHIO
NOTE

By: _____
Donn Rosenblum

THERMAL VENTURES II, L.P.

By: Yorktown Thermal G.P., Inc.
Its: General Partner

By: Jeffrey P. Boes
Jeffrey Boes

CREDITORS' TRUST

By: _____
David Wehrle, Trustee

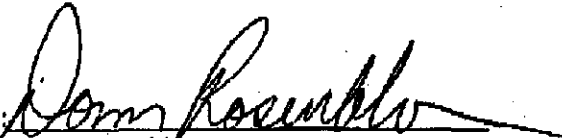
IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

**AKRON THERMAL, LIMITED
PARTNERSHIP**

By: Opportunity Parkway, LLC
Its: General Partner

By: _____
Therese Kechler, Treasurer

**STATE OF OHIO PRIORITY CREDITORS
INCLUDED IN THE STATE OF OHIO NOTE**

By: 
Donn Rosenblum

THERMAL VENTURES II, L.P.

By: Yorktown Thermal G.P., Inc.
Its: General Partner

By: _____
Jeffrey Bees

CREDITORS' TRUST

By: _____
David Wehrle, Trustee

IN WITNESS WHEREOF, the Parties hereto have executed this Agreement as of the day and year first above written.

AKRON THERMAL, LIMITED
PARTNERSHIP

By: Opportunity Parkway, LLC
Its: General Partner

By: _____
Therese Kechler, Treasurer

STATE OF OHIO PRIORITY CREDITORS
INCLUDED IN THE STATE OF OHIO NOTE


By: _____
Donn Rosenblum

THERMAL VENTURES II, L.P.

By: Yorktown Thermal G.P., Inc.
Its: General Partner

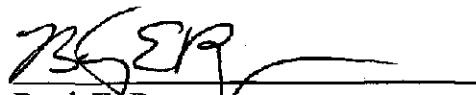
By: _____
Jeffrey Bees

CREDITORS' TRUST

By:  _____
David Wehrle, Trustee

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served upon the following parties by first class U.S. mail, postage prepaid, and by electronic mail this 19th day of July 2009.


Barth E. Royer

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Gretchen J. Hummel
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