

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

**SUMMIT COUNTY'S
BRIEF IN OPPOSITION TO
AKRON THERMAL, L.P.
APPLICATION FOR EMERGENCY RATE INCREASE**

I. STATEMENT OF FACTS

On May 29, 2009, Akron Thermal, L.P. ("Akron Thermal") filed with The Public Utilities Commission of Ohio ("Commission") an Application for Emergency Rate Increase ("Application for Rate Increase"). Akron Thermal states that its contract with its largest steam customer, the University of Akron, expired on April 30, 2009. Akron Thermal further states the sales to Akron University accounted for 29.9 percent of Akron Thermal's total steam sales volume. (See Application for Rate Increase, ¶ 8.)

Akron Thermal now seeks a rate increase to \$54.78 per Mlb (an overall increase of 47.8 percent) to be applied to all tariff customers and to certain contract customers (Children's Hospital Medical Center of Akron and Canal Place) or, if the Commission determines, a rate increase to \$81.49 per Mlb (an overall increase of 71.6 percent) to be applied only to the steam and hot water tariff customers.

The County of Summit, Ohio ("County"), is an Ohio political subdivision. The County was granted a right to intervene in this proceeding by the Commission pursuant to Ohio Revised Code § 4903.221 ("O.R.C.") and the Ohio Administrative Code § 4901-1-11 ("O.A.C.").

II. LAW AND ARGUMENT

A. It is Imprudent to Grant the Rate Increase when the Management of Akron Thermal has Failed to Prove It's Viability in Accordance with R.C. § 4909.154

Pursuant to R.C. § 4909.154, the Commission shall not allow operating and maintenance expenses incurred by management policies or administrative practices that the Commission considers imprudent.

R.C. § 4909.154 Consideration of Management

In fixing the just, reasonable, and compensatory rates, joint rates, tolls, classifications, charges, or rentals to be observed and charged for service by any public utility, the public utilities commission shall consider the management policies, practices, and organization of the public utility. The commission shall require such public utility to supply information regarding its management policies, practices, and organization.

If the commission finds after a hearing that the management policies, practices, or organization of the public utility are inadequate, inefficient, or improper, the commission may recommend management policies, management practices, or an organizational structure to the public utility.

In any event, the public utilities commission shall not allow such operating and maintenance expenses of a public utility as are incurred by the utility through management policies or administrative practices that the commission considers imprudent.

The testimony of the Commission staff indicate that Akron Thermal is currently in a precarious financial position. There is no indication of any improvement in the near future.

According to the testimony of Shahid Mahmud, the Commission has determined:

"Taking the restructured debt service cost into consideration, Akron Thermal's cash flow projections for 2009 under its proposed rates appear to make Akron Thermal likely to be able to meet its debt service obligations for approximately

\$440,869 in 2010. Akron Thermal's request for Commission approval of the restructured debt obligations is dependent upon Commission granting the requested emergency rate relief. Absent requested rate relief, Akron Thermal will not even be able to service the restructured debt in 2010." (See Mahmud, Surrebuttal Testimony, Page 2, Lines 16-21, Page 3, Lines 1-2)

The testimony of Stephen Puican further indicates the Commission's concerns with the viability of Akron Thermal and the negative impact the rate increase will have on its customers.

"It does not. Although the Company may be able to survive a while longer with the increase, I do not believe it changes the overall prospects for the long-term viability of Akron Thermal. The likelihood that the proposed rates will generate the required revenues is dependent on the stability of the current customer base such that any further loss of customers will require additional rate increases. As discussed in my pre-filed testimony, **if the proposed emergency rates are approved, tariff customers would be facing extremely large rate increases in the midst of one of the worst recessions since the Great Depression. A rate increase of this magnitude would almost certainly cause customers to re-evaluate the economics of staying with Akron Thermal vs. other alternatives. Some business customers without alternative may even be forced to close. In either case, the long-term stability of the current customer base is questionable at best. Given this uncertainty as to Akron Thermal's long-term viability, the Commission should not approve the proposed emergency surcharge.** That would at least have the benefit of sparing Akron Thermal's customers from burdensome rate increases that do not in any event ensure the survival of Akron Thermal."

(See Puican Surrebuttal Testimony, Page 2, Lines 10-22, Page 3, Lines 1-2)

B. Akron Thermal's Proposed Rate Increase is Not Just and Reasonable and is In Violation of R.C. § 4905.22

In accordance with R.C. § 4905.22, Akron Thermal is required to charge a rate that is just and reasonable.

R.C. § 4905.22 Service and Facilities Required; Unreasonable Charge Prohibited
Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. **All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with,**

any service, or in excess of that allowed by law or by order of the commission.

As evidenced by Akron Thermal's Attorney Examiner-Ordered Exhibit attached hereto and incorporated herein as Exhibit 1, Akron Thermal failed to obtain the Commission's approval for the rates it charges to three of its contract customers (Summa Health System, Rogers Industrial and O'Neils Parking Condo Customers). Certain customers are charged a rate as determined solely by Akron Thermal. The proposed rate increase is not just and reasonable because the Commission was not given the opportunity to approve all rates currently charged for all of Akron Thermal's customers. Until the Commission approves all rates, it is unknown if all of Akron Thermal's customers are being charged fair and reasonable rates.

The amount of the proposed rate increase is not just and reasonable. In order for the County to heat its buildings, Akron Thermal is demanding that the County pay a 47.8 percent increase (\$54.78 per Mlb) or a 71.6 percent increase (\$81.49 per Mlb). In accordance with Exhibit 1, based on 38,151.57 Mlbs used by the County in 2008, an increase from \$25.55 to \$54.78 per Mlb would increase the County's costs from \$974,749.87 to approximately \$2,089,943; and the increase from \$25.55 to \$81.49 would increase the County's costs from \$974,749.87 to approximately \$3,108,971.44. The County does not have the funds available and therefore can not appropriate nor certify the amount Akron Thermal is demanding to be paid as required by the State's appropriation laws (R.C. §5705.41).

C. Akron Thermal has Failed to Prove that an Emergency Exists and has Failed to Meet the Requirements of R.C. § 4909.16

Pursuant to R.C. § 4909.16, the Commission shall determine if an emergency exists on behalf of Akron Thermal. The Commission may also deem it necessary to prevent injury to the public.

R.C. § 4909.16 Power to Amend, Alter, or Suspend Schedule of Rates

When the public utilities commission deems it necessary to prevent injury to the business or interests of the public or of any public utility of this state in case of any emergency to be judged by the commission, it may temporarily alter, amend, or, with the consent of the public utility concerned, suspend any existing rates, schedules, or order relating to or affecting any public utility or part of any public utility in this state. Rates so made by the commission shall apply to one or more of the public utilities in this state, or to any portion thereof, as is directed by the commission, and shall take effect at such time and remain in force for such length of time as the commission prescribes.

The County is a steam tariff customer and is subject to either the 47.8 percent or 71.6 percent proposed rate increase. Akron Thermal is the sole source of steam heat for several County-owned buildings including the Courthouse (Common Pleas Court and Clerk of Courts), the Safety Building (main headquarters of the Sheriff's Office), the Department of Job & Family Services (main headquarters for social and welfare services), the Ohio Building (main headquarters for the County administration), Veteran's Services and a storage building. The County's duty to provide for police protection and the safety and welfare of its citizens is directly related to the County's ability to keep these buildings heated and open to the public.

Pursuant to O.R.C. § 4909.16, Akron Thermal requests that the Commission prevent injury to its business or interests by determining that an emergency exists as the result of the termination of its contract with the University of Akron.

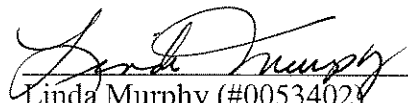
However, the County questions whether such circumstances warrant the finding of an emergency when the County also incurred a financial emergency in 2009. The County has incurred a loss of \$1,800,000 in sales and use taxes, a loss of \$2,700,000 in property transfer taxes, a loss of \$500,000 in interest income, a loss of \$1,200,000 in intergovernmental receipts and a loss of \$1,000,000 in service charges, fines and miscellaneous. The general fund expenditures also have a loss of \$1,600,000. The 2009 forecast has a loss in County revenues and funds resulting in a budget deficit of \$12,800,000. It is detrimental to the County to incur

either a 47.8 percent increase or a 71.6 percent increase in its costs to heat its buildings. In order to prevent injury to the public, the County's buildings must be kept heated in order to provide the public with services including police protection, welfare services and courthouse services.

III. CONCLUSION

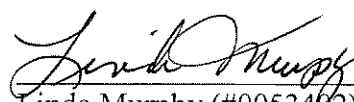
Akron Thermal has failed to prove that it is entitled by law to have the Commission approve its Application for Emergency Rate Increase. The vicarious financial position of Akron Thermal is recognized by the Commission. Akron Thermal provided no evidence of a long-term plan to become solvent. As the Commission staff recognized, customers of Akron Thermal should be spared the burdensome rate increases that do not ensure the viability of Akron Thermal.

Respectfully submitted,


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Certificate of Service

A copy of the foregoing Brief in Opposition has been served on this 28th of July, 2009 by First Class U.S. Mail, prepaid postage and e-mail to the parties of record listed below.


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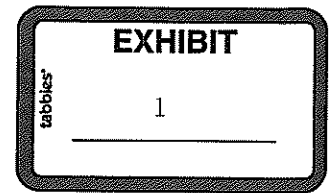
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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of :
Akron Thermal, Limited Partnership for : Case No. 09-315-HT-ATA
Approval of Revised Tariffs. :

In the Matter of the Application of :
Akron Thermal, Limited Partnership for : Case No. 09-414-HT-AIS
Authority to Issue Three (3) Promissory :
Long-Term Notes. :

In the Matter of the Application of :
Akron Thermal, Limited Partnership for : Case No. 09-441-HT-AEC
Approval of an Arrangement with an :
Existing Customer. :

In the Matter of the Application of :
Akron Thermal, Limited Partnership for : Case No. 09-442-HC-AEC
Approval of a Modification to an :
Existing Arrangement. :

In the Matter of the Application of :
Akron Thermal, Limited Partnership : Case No. 09-453-HT-AEM
for an Emergency Increase in its Rates :
and Charges for Steam and Hot Water :
Service. :

AKRON THERMAL, LIMITED PARTNERSHIP
ATTORNEY EXAMINER-ORDERED EXHIBIT

Pursuant to the July 20, 2009 directive of the presiding attorney examiner during the hearing in these matters, Akron Thermal, Limited Partnership ("Akron Thermal") hereby submits the attached spreadsheet showing the 2008 revenues derived from its tariff and contract customers, the percentage of total steam and hot water revenues these revenues represent, and, for contract customers, whether the contract was filed with the Commission, and, if so, the date the contract was filed with the Commission. The spreadsheet also shows the 2008 revenues

derived by Akron Thermal from its billings for steam service to Akron Thermal Cooling, LLC. Finally, the spread sheet shows the annualized impact of the modification to the Canal Place, Ltd. ("Canal Place") contract in February 2009 on the average rate charged to Canal Place, as well as the annualized impact of moving those customers served pursuant to contract in 2008 to tariff in 2009.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties by electronic mail this 21st day of July 2009.

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**AKRON THERMAL, LP
2008 CUSTOMER REVENUE**

STEAM TARIFF REVENUE

Customer Number	Customer Name	2008 - Total		Avg. Rate	% of Total	Service Type	Filed w/PUCO?	Date Filed	Note
		Mlbs	\$						
1300	AT&T Services	5,055.00	\$ 128,661.70	\$ 25.45	0.83%	Tariff			
1501	Bowery Management	55.00	2,184.17	39.71	0.01%	Tariff			
1602	Bowery Management	2,294.00	63,040.53	27.48	0.41%	Tariff			
2200	St. John's - St. Paul's	821.66	23,835.07	29.01	0.15%	Tariff			
2300	Akron Public Schools	3,247.00	85,440.96	26.31	0.55%	Tariff			
2800	Inventure Place	3,224.52	51,303.84	15.91	0.33%	Tariff			
2801	National Inventors Hall of Fame School	1,413.30	29,327.11	20.75	0.19%	Tariff			
3603	Akron Area YMCA	1,242.12	27,017.04	21.75	0.17%	Tariff			
3604	Testa Management	519.01	15,059.17	29.02	0.10%	Tariff			
4102	University of Akron	-	388.71	N/A	0.00%	Tariff			
7300	Zion Lutheran Church	2,099.54	57,739.49	27.50	0.37%	Tariff			
8000	Access	225.00	6,630.25	29.47	0.04%	Tariff			
10601	Chemstress Courtyard Mgmt.	1,845.63	52,909.99	28.67	0.34%	Tariff			
11400	First Merit Real Estate Mgmt.	10,783.80	265,170.03	24.59	1.71%	Tariff			
12000	Akron Main Place Development	2,034.16	55,438.66	27.25	0.36%	Tariff			
12503	RCM, Inc.	165.00	5,027.12	30.47	0.03%	Tariff			
12551	RCM, Inc.	468.94	13,604.81	29.01	0.09%	Tariff			
13003	RCM, Inc.	14.00	576.49	41.18	0.00%	Tariff			
13201	Bowery Management	5,082.00	134,965.88	26.56	0.87%	Tariff			
14900	Community Hall Foundation	3,190.00	86,559.64	27.13	0.56%	Tariff			
15001	Community Hall Foundation	293.00	8,485.87	28.96	0.05%	Tariff			
16500	Malone Properties, Inc.	1,092.00	34,711.06	31.79	0.22%	Tariff			
17800	Owner's Management	9,425.11	238,336.75	25.29	1.54%	Tariff			
21401	Cross Roads Land Co.	369.00	10,302.42	27.92	0.07%	Tariff			
22104	Akron Incubator	9,747.60	220,521.94	22.62	1.43%	Tariff			
22106	Valley Rubber Mixings, Inc.	1,153.79	37,468.14	32.47	0.24%	Tariff			
26701	University of Akron	-	1,504.75	N/A	0.01%	Tariff			
27101	Ladallow Enterprises, Inc.	4,622.40	110,824.06	23.98	0.72%	Tariff			
27102	Model	1,446.51	36,324.44	25.11	0.23%	Tariff			
27300	Board of Education	1,814.60	50,231.14	27.68	0.32%	Tariff			
28501	AT&T	4,901.87	138,047.86	28.16	0.89%	Tariff			
28800	Hope Academies	882.00	24,001.37	27.21	0.16%	Tariff			
28850	St. Bernard's Church	1,119.00	32,115.63	28.70	0.21%	Tariff			
All	City of Akron	16,239.08	436,817.92	26.90	2.82%	Tariff			
All	Summit County	38,151.57	974,749.87	25.55	6.30%	Tariff			
Total Steam Tariff Revenue		135,037.21	\$ 3,459,323.88	\$ 25.62	22.32%				

Note: Average rates differ by tariff customer due primarily to the difference in demand level/charges.

HOT WATER TARIFF REVENUE

Customer Number	Customer Name	2008 - Total		Avg. Rate	% of Total	Service Type	Filed w/PUCO?	Date Filed	Note
		Mmbtu's	\$						
22370	Stadium Restaurant Canal Park	279.61	\$ 6,589.39	\$ 23.57	0.04%	Tariff			
Total Hot Water Tariff Revenue		279.61	\$ 6,589.39	\$ 23.57	0.04%				

STEAM CONTRACT REVENUE

Customer Number	Customer Name	2008 - Total		Avg. Rate	% of Total	Service Type	Filed w/PUCO?	Date Filed	Note
		Mlbs	\$						
3300	Childrens Hospital Medical Center	119,814.54	\$ 2,226,096.62	\$ 18.58	14.40%	Contract	Y	5/26/2009	
4200	Akron Public Schools	7,806.74	73,222.63	9.38	0.47%	Contract	NA		Contract rejected 2/20/09, now tariff
7501	Ohio Building Authority	2,414.57	40,988.49	16.98	0.26%	Contract	NA		Contract expired 9/08; went off system 11/08
20801	Akron Professional Baseball	2,188.00	52,822.70	24.14	0.34%	Contract	NA		Contract rejected 2/20/09; now tariff
22850	Akron Art Museum	252.22	5,155.86	20.44	0.03%	Contract	NA		Contract rejected 2/20/09; now tariff
23750	Summa Health System	139,733.02	1,910,439.13	13.67	12.36%	Contract	N		
22107	Rogers Industrial	19.48	5,360.76	275.19	0.03%	Contract	N		
22132	Canal Place Limited	53,295.75	694,191.34	13.03	4.49%	Contract	Y	5/26/2009	
30600	Akron General Medical Center	131,627.75	2,414,828.18	18.35	15.62%	Contract	NA		Contract expired 3/31/09
Total Steam Contract Revenue		457,152.07	\$ 7,423,105.71	\$ 16.24	48.00%				

HOT WATER CONTRACT REVENUE

Customer Number	Customer Name	2008 - Total		Avg. Rate	% of Total	Service Type	Filed w/PUCO?	Date Filed	Note
		Mmbtu's	\$						
3200	University of Akron	265,680.25	\$ 4,018,854.30	\$ 15.13	25.98%	Contract	NA		Contract expired 4/30/09
22380	OTNeils Bldg. Condo. Assoc.	4,866.41	60,563.72	12.47	0.39%	Contract	NA		Contract rejected 2/20/09; now tariff
22400	City of Akron - O'Neils Parking	3,592.80	44,453.68	12.37	0.29%	Contract	NA		Contract rejected 2/20/09; now tariff
	Condo Customers		44,472.60	NA	0.29%	Contract	N		
Total Hot Water Contract Revenue		274,139.46	\$ 4,168,444.30	\$ 15.21	26.95%				

Note: No volume for the condo customers is recorded above since the Mmbtu's are not metered.

STEAM REVENUE - AKRON THERMAL COOLING

Customer Number	Customer Name	2008 - Total		Avg. Rate	% of Total
		Mlbs	\$		
	Cooling - BFG	78,965.40	\$ 137,824.48	\$ 1.75	0.89%
	Cooling - Downtown	74,127.96	277,754.60	3.75	1.80%
Total Steam - Akron Thermal Cooling		153,093.36	\$ 415,579.08	\$ 2.71	2.69%

Note: ATUP bills ATC for steam used in the production of chilled water as well as for electric and labor allocations. These billings are reflected in ATUP's income statement as revenue (for steam) and reduced expenses (for utilities and labor). The total of all billings amount to approximately 85% of ATC's 2008 revenues from its customers. The remaining 15% is retained by ATC to pay its own direct expenses.

TOTAL REVENUE	\$ 15,473,042.36	100.00%
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ANNUALIZED STEAM REVENUE - AMENDED/REJECTED/EXPIRED CONTRACTS

Customer Number	Customer Name	2008 Mlbs	\$	Avg. Rate	Service Type
4200	Akron Public Schools	7,806.74	\$ 149,276.87	\$ 19.12	Tariff
20801	Akron Professional Baseball	2,188.00	64,130.17	29.31	Tariff
22850	Akron Art Museum	252.22	8,040.74	31.88	Tariff
22132	Canal Place Limited	53,295.75	884,709.45	16.60	Contract
30600	Akron General Medical Center	131,627.75	2,187,748.39	16.62	Tariff
Total Steam Revenue		195,170.46	\$ 3,293,905.62		

ANNUALIZED HOT WATER REVENUE - REJECTED CONTRACTS

Customer Number	Customer Name	2008 Mmbtu's	\$	Avg. Rate	Service Type
22380	O'Neils Bldg. Condo. Assoc.	4,866.41	\$ 96,252.67	\$ 19.78	Tariff
22400	City of Akron - O'Neils Parking	3,592.80	74,063.10	20.61	Tariff
Total Hot Water Revenue		8,459.21	\$ 170,315.77		

This foregoing document was electronically filed with the Public Utilities

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in

Case No(s). 09-0453-HT-AEM

Summary: Brief Summit County's Brief in Opposition to Akron Thermal LP Application for Rate Increase electronically filed by Ms. Linda Murphy on behalf of Akron Thermal Limited Partnership and Canal Place Ltd and Children's Hospital of Akron and City of Akron and Community Hall Foundation