

## BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

- - -

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

- - -

## PROCEEDINGS

before Scott E. Farkas and Rebecca L. Hussey, Hearing  
Examiners, at the Public Utilities Commission of Ohio,  
180 East Broad Street, Room 11-C, Columbus, Ohio,  
called at 10:00 a.m. on Wednesday, July 15, 2009.

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17 On behalf of the Applicant, Akron Thermal,  
18 Limited Partnership.

19 McNeese, Wallace & Nurick, LLC  
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On behalf of the City of Akron.

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8 On behalf of Canal Place, Ltd.

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20 On behalf of Children's Hospital Medical  
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22 County of Summit, Ohio  
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On behalf of the County of Summit.

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By Christopher J. Niekamp, Esq.  
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On behalf of The Community Hall Foundation,  
Inc., d/b/a The Akron Civic Theater.

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1 Wednesday Morning Session,  
2 July 15, 2009.

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4 HEARING EXAMINER FARKAS: Let's go on the  
5 record. The Commission has called for hearing at this  
6 time and place the matter of the Application of Akron  
7 Thermal, Limited Partnership for Authority to -- I'm  
8 sorry, for Approval of the -- for Emergency Increase in  
9 its Rates and Charges for Steam and Hot Water Service,  
10 Case No. 09-453-HT-AEM, and Associated Cases  
11 09-414-HT-AIS, 09-315-HT-ATA, 09-441-HT-AEC, and  
12 09-442-HT-AEC.

13 My name is Scott Farkas. I'm the Attorney  
14 Examiner assigned to hear this case. Sitting next to  
15 me is Rebecca Hussey. She's an Attorney Examiner,  
16 also. At this time, it's my understanding that the  
17 parties are agreeable to a schedule whereby the  
18 witnesses for Akron Thermal would go forward today, be  
19 subject to cross-examination, and that witnesses for  
20 Staff and the City of Akron would go forward on  
21 Monday. Is that the parties' understanding?

22 MR. RANDAZZO: Yes, Your Honor.

23 MR. McNAMEE: Unless you wanted to proceed  
24 with Staff witnesses today, if we have time.

25 HEARING EXAMINER FARKAS: If time permits,

1 we can do Staff, if that's agreeable.

2 MR. ROYER: We had planned on doing that  
3 Monday, so we would prefer to wait until Monday.

4 MR. McNAMEE: Okay.

5 MR. RANDAZZO: I'm not sure that this  
6 needs to be on the record, Your Honor, my comment. I  
7 just want to alert everybody that our schedule or my  
8 schedule specifically, and I'm alerting other counsel  
9 of this, in the event that we can't get finished  
10 Monday, I'm out of pocket until at least the 29th, so  
11 we've -- at least counsel for the Applicant and myself  
12 have come to the conclusion we think we can get it all  
13 done Monday, but in the event that our expectations  
14 prove to be unrealistic, then we've got the other  
15 logistical issue that will quickly arrive. I'm highly  
16 motivated to get done by the end of Monday.

17 HEARING EXAMINER FARKAS: Okay.

18 MR. McNAMEE: We do have the additional  
19 testimony of Mr. Bees' rebuttal that I just got a  
20 couple of minutes ago.

21 HEARING EXAMINER FARKAS: I have not seen  
22 it.

23 MR. McNAMEE: Yes.

24 HEARING EXAMINER FARKAS: I guess that  
25 would also go forward Monday.

1 MR. ROYER: Correct.

2 MR. McNAMEE: We'll see. The Staff needs  
3 to look at that, and it's possible we would need to, I  
4 don't know, submit additional written testimony, I  
5 suppose. It's hard to tell until we've had the  
6 opportunity to review it, so there is that one other  
7 twist we need to deal with.

8 HEARING EXAMINER FARKAS: I believe the  
9 parties are waiving Mr. Gentile and the witness for  
10 Canal Place and cross for them?

11 MR. BREITSCHWERDT: That's correct, Your  
12 Honor. Brett Breitschwerdt for Canal Place. All the  
13 other parties have waived cross-examination and agreed  
14 to stipulate to Mr. Lorman's testimony, and whenever  
15 it's convenient to the Bench, we can stipulate to that  
16 and enter it into the record.

17 HEARING EXAMINER FARKAS: Why don't we,  
18 before we go further, take appearances on behalf of all  
19 the parties. Go ahead.

20 MR. ROYER: Thank you, Your Honor. On  
21 behalf of Akron Thermal, Limited Partnership, the  
22 Applicant in these proceedings, my name is Barth Royer,  
23 with the firm of Bell & Royer, Co., LPA, 33 South Grant  
24 Avenue, Columbus, Ohio, 43215. Also appearing on  
25 behalf of the Applicant is Mr. Thomas Mullooly,

1 M-u-l-l-o-o-l-y, with the firm of Foley & Lardner, LLP,  
2 77 -- 777 East Wisconsin Avenue, Milwaukee, Wisconsin.  
3 Your Honor knows you've already granted Mr. Mullooly  
4 leave to appear in this case.

5 HEARING EXAMINER FARKAS: We'll go this  
6 way first.

7 MS. BURGAN: Kelly Burgan on behalf of the  
8 Trustee for the Creditors' Trust under the Akron  
9 Thermal Plan of Reorganization from Baker & Hostetler,  
10 1900 East Ninth Street, Suite 3200, Cleveland, Ohio,  
11 44114, seeking intervention in these proceedings.

12 MS. MURPHY: Linda Murphy, Summit County,  
13 175 South Main Street, 8th Floor, Akron, Ohio, 44308.

14 MR. HEINTZ: On behalf of Children's  
15 Hospital Medical Center of Akron, I'm Michael Heintz,  
16 H-e-i-n-t-z. Also appearing will be Daniel R. Conway  
17 of Porter, Wright, Morris & Arthur, 41 South High  
18 Street, Columbus, Ohio, 43215.

19 HEARING EXAMINER FARKAS: Thank you.

20 MS. HUMMEL: Thank you, Your Honor. On  
21 behalf of the City of Akron, Max Rothal, Director of  
22 Law, and Cheri B. Cunningham, Assistant Director of  
23 Law, for the City of Akron, 161 South High Street,  
24 Suite 202, Akron, Ohio, 44308, and McNees, Wallace &  
25 Nurick by Samuel C. Randazzo, Gretchen J. Hummel, Lisa



1 G. McAlister, and Joseph M. Clark, 21 East State  
2 Street, 17th Floor, Columbus, Ohio, 43215.

3 I have also been asked and agreed to enter  
4 the appearance of the Community Hall Foundation, Inc.,  
5 d/b/a the Akron Civic Theater, Bernlohr Wertz, LLP, by  
6 Christopher J. Niekamp, The Nantucket Building, 23  
7 South Main Street, Third Floor, Akron, Ohio, 44308.

8 Mr. Niekamp asked me to indicate for the record that  
9 the Akron Civic Theater supports the position of the  
10 City of Akron in this proceeding.

11 HEARING EXAMINER FARKAS: Okay.

12 MR. BREITSCHWERDT: Your Honor, Brett  
13 Breitschwerdt on behalf of Canal Place, Ltd. Also  
14 appearing will be Glenn S. Krassen and Matthew W.  
15 Warnock, Bricker & Eckler, LLP, 100 South Third Street,  
16 Columbus, Ohio, 43215.

17 HEARING EXAMINER FARKAS: Okay.

18 MR. McNAMEE: On behalf of the Staff of  
19 the Public Utilities Commission of Ohio, Richard  
20 Cordray, Attorney General of the State of Ohio, Duane  
21 Luckey, Chief, Public Utilities Section, we are Sarah  
22 Parrot and Thomas McNamee, Assistant Attorneys  
23 General. The address is 180 East Broad Street,  
24 Columbus, Ohio, 43215.

25 MR. RANDAZZO: For the Bench, just a note,

1 make sure its aware, and everybody, we have opposed the  
2 intervention by the Trustee through a memorandum contra  
3 based upon the fact that the intervention was untimely  
4 and no extraordinarily circumstances were  
5 demonstrated.

6 HEARING EXAMINER FARKAS: Duly noted.  
7 Does anybody else have a position on the intervention  
8 of -- the intervention that's pending? Okay.

9 Was it the intention of the Trustee to  
10 present any witnesses in this proceeding?

11 MS. BURGAN: No, it is not.

12 HEARING EXAMINER FARKAS: Okay. The Bench  
13 will grant the motion to intervene.

14 MS. BURGAN: Thank you.

15 HEARING EXAMINER FARKAS: In terms of the  
16 administrative notice that's been requested, Mr.  
17 Randazzo has a list of 29 documents that you request  
18 the Commission take administrative notice on. I guess  
19 to start off, I guess I want to know why you want the  
20 Bench to take administrative notice of all these  
21 documents.

22 MR. RANDAZZO: Your Honor, the request is,  
23 as I indicated at the prehearing conference, it is my  
24 judgment that by taking administrative notice of these  
25 documents we will save a substantial amount of time in

1 the hearing as a result of not having to pour through  
2 the history, the PUCO proceedings and the bankruptcy  
3 proceedings; so it's primarily for administrative  
4 convenience. In the event that administrative notice  
5 is not taken, unfortunately, I think we'll be here much  
6 longer than the two days that we've identified, but  
7 that's the primary purpose. All the documents -- many  
8 of the documents are discussed or referenced in the  
9 testimony, and I think in the interest of having a full  
10 and complete understanding of what has happened both in  
11 the bankruptcy proceeding and historically before the  
12 Commission, it would be useful to have access to those  
13 documents for purposes of arguing as well as presenting  
14 information to the Commission, to the extent there's  
15 any briefs submitted in this case. That's the primary  
16 motivation.

17 HEARING EXAMINER FARKAS: Are you asking  
18 that the Commission take administrative notice of the  
19 existence of the document and the fact that it was  
20 filed on a certain date?

21 MR. RANDAZZO: No. The content of the  
22 documents.

23 HEARING EXAMINER FARKAS: So, for  
24 instance -- let me ask this, does anybody oppose taking  
25 administrative notice of all these documents?

1 MR. ROYER: No. In fact, we would support  
2 it.

3 HEARING EXAMINER FARKAS: You would  
4 support it? Okay.

5 MR. RANDAZZO: If I might, Your Honor,  
6 I've offered for the convenience of the parties to make  
7 copies of all these documents available either  
8 electronically or hard copy in some fashion. We  
9 recognize that it would be a burden for everybody to go  
10 and try to find the documents in some cases, so we're  
11 quite happy to accommodate the Bench and other parties  
12 by working out something to do that. I raised that  
13 issue informally with the other parties. We never  
14 really got any guidance in terms of what the preference  
15 was, but I think Mr. McNamee suggested filing all these  
16 things in docketing.

17 MR. McNAMEE: Just the federal ones.

18 MR. RANDAZZO: Oh, just the federal ones,  
19 right, that's correct, which I'm happy to do, but I  
20 would like the Bench's guidance in terms of dealing  
21 with the convenience issue, assuming the Bench is  
22 inclined to grant administrative notice.

23 HEARING EXAMINER FARKAS: In terms of  
24 the -- one of these is -- well, first let me say that  
25 the Commission doesn't have to take administrative

1 notice of its own decision. They are decisions, and  
2 they're -- just as you wouldn't ask the Supreme Court  
3 to take administrative notice of a case.

4 MR. RANDAZZO: I agree with that, Your  
5 Honor.

6 HEARING EXAMINER FARKAS: So any finding  
7 and order or any entry that the Commission would issue,  
8 I don't see the need to take administrative notice of  
9 those. You can cite those and refer to those in  
10 testimony or in briefs.

11 MR. RANDAZZO: I agree completely.

12 HEARING EXAMINER FARKAS: In terms of --  
13 one of these is the Direct Testimony of Carl Abers.

14 MR. RANDAZZO: Right.

15 HEARING EXAMINER FARKAS: He's not here  
16 for cross-examination. I'm not sure how we would take  
17 administrative notice of the Direct Testimony.

18 MR. RANDAZZO: Statements made on behalf  
19 of the Company in prior Commission proceedings. I'm  
20 not going for the truth of the matter asserted in the  
21 case of Mr. -- is it Abers? Mr. Abers' testimony.  
22 It's what he said?

23 HEARING EXAMINER FARKAS: Just what he  
24 said?

25 MR. RANDAZZO: What he said that's

1 correct.

2 HEARING EXAMINER FARKAS: Okay. So with  
3 that clarification, then -- it's not for the truth of  
4 the matter asserted --

5 MR. RANDAZZO: That's correct.

6 HEARING EXAMINER FARKAS: -- just for the  
7 fact he said it, whatever he said in his testimony?

8 MR. RANDAZZO: That's correct.

9 HEARING EXAMINER FARKAS: Would that also  
10 be true with respect to applications that the Applicant  
11 in this case filed in the variety of cases you cited,  
12 you're not seeking -- you're not requesting  
13 administrative notice for the purposes of the truth of  
14 the matter asserted, just for the positions taken in  
15 the application?

16 MR. RANDAZZO: Actually, Your Honor, in  
17 many instances the applications have been verified by  
18 the Applicant, so I think they stand also for the truth  
19 of the matter asserted.

20 HEARING EXAMINER FARKAS: Okay. In terms  
21 of, I think, No. 11, you've got ATC's memo in support  
22 of a motion and ATLP's brief in opposition to the  
23 motion.

24 MR. RANDAZZO: Right.

25 HEARING EXAMINER FARKAS: Explain why I

1 should take administrative notice of those.

2 MR. RANDAZZO: Again, the content of these  
3 documents provides a historical description of the  
4 relationship between Akron Thermal, Limited Partnership  
5 and its affiliate, Akron Thermal Cooling and deals with  
6 the subject of who has authority to do what and how  
7 they got that authority relative to the cooling and  
8 heating business, so -- and it's the fact that they're  
9 saying this, not necessarily that it's true, but that  
10 they are representing these things to the Commission in  
11 the course of their advocacy.

12 HEARING EXAMINER FARKAS: Okay. Would  
13 that reasoning also apply to No. 9, the motion for  
14 clarification and the memo opposing the motion for  
15 clarification?

16 MR. RANDAZZO: Yes, Your Honor.

17 HEARING EXAMINER FARKAS: In No. 11 you've  
18 got entry closing case.

19 MR. RANDAZZO: That would be another  
20 order, Your Honor. It would be unnecessary, based upon  
21 our prior discussion, of course, to include that in the  
22 list.

23 HEARING EXAMINER FARKAS: Okay. I guess  
24 what I would next ask you to do, before I act on these  
25 requests, this request, can you produce the documents

1 for the --

2 MR. RANDAZZO: The difficulty that I have  
3 today, Your Honor, is that we circulated the list, and  
4 I'm trying not to be critical here, we circulated the  
5 list because we needed to have some understanding of  
6 what the Bench's preference was in order to figure out  
7 what we can do from a cross-examination standpoint, so  
8 I'm happy to furnish the documents, as we indicated in  
9 an e-mail we sent around. Many of them are readily  
10 available from the Commission's files through the  
11 Docketing Information System. Some of the documents  
12 have already been furnished from the bankruptcy  
13 proceeding, and we've identified some of those. Again,  
14 I'm happy to do that, but if you're withholding ruling  
15 on how you're going to deal with the administrative  
16 notice request, I'm afraid that's going to affect how  
17 we deal with cross-examination.

18 HEARING EXAMINER FARKAS: Okay. Is it  
19 your intent during cross to present these documents, to  
20 cross-examine the witness through them, but not mark  
21 them as exhibits? Is that correct?

22 MR. RANDAZZO: Your Honor, again, I think  
23 that is largely a matter of your preference. It would  
24 not be my intent to mark them as exhibits. In a  
25 normal -- if I were sort of running the show, which I'm



1 not, but I would be happy to mark them for  
2 identification purposes so it's easier to follow the  
3 record. Some Attorney Examiners have actually  
4 preferred that approach. I'm indifferent. I think  
5 that my cross-examination questions will be specific  
6 enough and clear enough to avoid the need to have  
7 documents identified as exhibits even if it's for  
8 identification purposes where they are being used or  
9 taken notice of administratively. And if I fail to do  
10 that, that will be my -- I guess I'll be responsible  
11 for the consequences.

12 HEARING EXAMINER FARKAS: Okay.

13 (Discussion off the record.)

14 HEARING EXAMINER FARKAS: Can you clarify  
15 which numbered exhibits you're not asking for the  
16 administrative notice to mean that -- that you're not  
17 asking that it be for the truth of the matter  
18 asserted? Do you know which ones?

19 MR. RANDAZZO: Not off the top of my head,  
20 Your Honor. I can do that, of course.

21 HEARING EXAMINER FARKAS: Let's go off the  
22 record for a second.

23 (Discussion off the record.)

24 HEARING EXAMINER FARKAS: Let's go back on  
25 the record. With the exception of the Commission

1 decisions finding orders and entries, which, as I  
2 indicated, we don't need to take administrative notice  
3 on, I will grant administrative notice of these  
4 documents and the request of the City of Akron with the  
5 qualification that the City will indicate which  
6 documents it is not asking for administrative notice  
7 for the purposes of the truth of the matter asserted.

8 MR. RANDAZZO: Thank you, Your Honor.

9 HEARING EXAMINER FARKAS: And I believe  
10 there's also a request from Mr. Royer to take  
11 administrative notice of two documents.

12 MR. ROYER: Yes. At this point, following  
13 Mr. Randazzo's lead and for all the same reasons he  
14 gave, we thought it would be more convenient to do that  
15 with respect to the two documents that are identified  
16 in the mail I circulated yesterday, and I'll be happy  
17 to provide hard copies of those just for your  
18 convenience.

19 HEARING EXAMINER FARKAS: Okay. Is there  
20 any objection to that?

21 MR. BREITSCHWERDT: No, Your Honor.

22 MR. RANDAZZO: I wouldn't dare, Your  
23 Honor.

24 HEARING EXAMINER FARKAS: That will be  
25 granted. My preference is not to mark them as

1 exhibits, so -- okay. I believe the last matter --

2 MR. ROYER: Before we close that one, one  
3 of the questions was convenience. Now that the  
4 Commission documents -- and I don't have a list in  
5 front of me, but the Commission documents are readily  
6 accessible. I'm not sure that -- I don't remember  
7 whether all of them are. I'm wondering if Mr. Randazzo  
8 would still be willing to at least send electronic  
9 versions of the ones I can't get from the Commission.

10 HEARING EXAMINER FARKAS: If I may, I  
11 think our electronic imaging system began in '98, I  
12 think.

13 MR. RANDAZZO: All of these documents are  
14 available on the electronic imaging system that relate  
15 to the regulatory history before the Commission. At  
16 least I've been able to discover them. There was one  
17 missing from the Commission's electronically available  
18 Docketing Information System. I assume it's buried  
19 somewhere in the microfilm, but it's not a big deal.

20 HEARING EXAMINER FARKAS: Does it show,  
21 when you pull up the case, the docketing for the case,  
22 does it indicate that there is a document filed on that  
23 date?

24 MR. RANDAZZO: Yes, and there are  
25 pleadings that refer to it. It's not on the docketing

1 card, but there are pleadings in the record that refer  
2 to it.

3 HEARING EXAMINER FARKAS: And you have a  
4 copy of it?

5 MR. RANDAZZO: I do not.

6 HEARING EXAMINER FARKAS: I'm not sure  
7 how -- how do we take administrative notice?

8 MR. RANDAZZO: I assume it's in the  
9 microfilm. We'll find out, Your Honor, and let you  
10 know.

11 HEARING EXAMINER FARKAS: You may want to  
12 reserve on that particular one.

13 MR. RANDAZZO: That's fine. But other  
14 than that, other than that one item, I was able to  
15 locate personally all of the documents that we've  
16 identified here in the Commission's electronic  
17 Docketing Information System.

18 MR. BREITSCHWERDT: Your Honor, for your  
19 information, the two documents Mr. Randazzo is  
20 referring to is under No. 9. It's the motion for  
21 clarification, and there's a memo opposing the motion  
22 for clarification that's in the docketing system, so I  
23 think it's safe to say there was a motion somewhere.

24 HEARING EXAMINER FARKAS: You think  
25 somebody wouldn't just file a memo opposing something

1 if there wasn't something to oppose, although there  
2 might be a reason.

3 MR. ROYER: It depends on the counsel.

4 MR. RANDAZZO: Today you would expect it.  
5 In those days, probably not.

6 HEARING EXAMINER FARKAS: Okay. I believe  
7 the next matter is the testimony of Brian Lorman and  
8 Linda Gentile; is that correct?

9 MR. BREITSCHWERDT: That's correct. Thank  
10 you, Your Honor. Brett Breitschwerdt on behalf of  
11 Canal Place. It's my understanding that all of the  
12 parties have agreed to waive cross-examination and to  
13 stipulate to the admission of the testimony of Brian L.  
14 Lorman on behalf of Canal Place, Ltd. At this time I  
15 would request admission of that testimony into the  
16 record.

17 HEARING EXAMINER FARKAS: Do you want to  
18 mark it as an exhibit?

19 MR. BREITSCHWERDT: I do. Thank you, Your  
20 Honor. I would mark it as Canal Place Exhibit 1,  
21 please.

22 HEARING EXAMINER FARKAS: Is there any  
23 objection to the admission of Canal Place Exhibit 1?

24 MR. McNAMEE: No.

25 MR. RANDAZZO: None.

1 HEARING EXAMINER FARKAS: Then that will  
2 be admitted.

3 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION  
4 PURPOSES.)

5 (EXHIBIT ADMITTED INTO EVIDENCE.)

6 HEARING EXAMINER FARKAS: I believe next  
7 is --

8 MR. HEINTZ: Your Honor, Michael Heintz on  
9 behalf of Akron Children's Hospital. Just as counsel  
10 for Canal Place indicated there was a stipulation as to  
11 Mr. Lorman's testimony, I'd ask that Miss Gentile's  
12 testimony be marked as Akron Children's Hospital  
13 Exhibit 1 and move for entry into the record.

14 HEARING EXAMINER FARKAS: Okay. Any  
15 objection? Hearing none, then it will be admitted.

16 (EXHIBIT HEREBY MARKED FOR IDENTIFICATION  
17 PURPOSES.)

18 (EXHIBIT ADMITTED INTO EVIDENCE.)

19 HEARING EXAMINER FARKAS: I believe that  
20 brings us to the Applicant.

21 MR. ROYER: Thank you, Your Honor. As a  
22 preliminary matter, yesterday we docketed the original  
23 of the Proof of Publication of Legal Notice that's  
24 required by the Commission's entry of July -- or June  
25 17th, and I'd like to have that marked as Applicant's

1 Exhibit 1, and I would move its admission.

2 HEARING EXAMINER FARKAS: Okay. Any  
3 objection to the admission of this exhibit?

4 MR. RANDAZZO: I don't think so, Your  
5 Honor, but we just got it, so if we could have just an  
6 opportunity to take a look at it and get back to you  
7 prior to lunchtime, that would be --

8 HEARING EXAMINER FARKAS: That's fine.  
9 Okay.

10 MR. ROYER: Then as our first witness we  
11 call Jeffrey Bees. While Mr. Bees is taking the stand,  
12 I would like to ask that a copy of the Direct Testimony  
13 of Jeffrey P. Bees filed in this matter on July 2nd,  
14 2009, be marked as Applicant's Exhibit 2.

15 HEARING EXAMINER FARKAS: Okay. So  
16 marked.

17 You want to raise your right hand?

18 JEFFREY P. BEES,  
19 being by the Hearing Examiner first duly sworn, as  
20 hereinafter certified, testifies and says as follows:

21 HEARING EXAMINER FARKAS: Proceed.

22 DIRECT EXAMINATION

23 By Mr. Royer:

24 Q. Would you state your name and business  
25 address for the record.

1           A.       Jeffrey P. Bees, and I am located at 236  
2 North Champion, Youngstown, Ohio.

3           Q.       Do you have before you a document that's  
4 been marked as Applicant's Exhibit 2?

5           A.       Yes, I do.

6           Q.       What is that document?

7           A.       This is the testimony that I've provided  
8 in this case.

9           Q.       Was this testimony prepared by you or  
10 under your direction and supervision?

11          A.       It was.

12          Q.       And do you have any corrections or  
13 additions to that testimony?

14          A.       Yes, I do. On Page 1, under the  
15 Introduction, at Line 5, I would like to delete, after  
16 the word president, I'd like to delete "and chief  
17 executive officer."

18          Q.       What's the basis for that change?

19          A.       We have made a recent organizational  
20 change for Opportunity Parkway.

21          Q.       Do you have other corrections?

22          A.       Yes, I do. On Page 6, at Line 21, it  
23 reads, "...no longer be absorbed, and, for the  
24 company...", and I'd like to change "for" to if. It  
25 will read if the company were to continue. Then at



1 Page 7, Line 10, the first word in that line is  
2 "achieving," and I'd like to change that to achieved,  
3 achieved, e-d.

4 HEARING EXAMINER FARKAS: I'm sorry, e-d?

5 THE WITNESS: e-d, yes. At Line 12 on  
6 that same page, after "center," it reads, "...Medical  
7 Center to tariff...", and after "center" should be a  
8 comma. And on Page 8, at Line 8, middle of that line,  
9 it reads, "UA," comma, "which" has "the capability,"  
10 I'd like to insert which also has -- I'm sorry. It  
11 reads, "...which also the capability," and it should  
12 read which also has the capability. On Page 9, at Line  
13 7, the question reads, "Did the bankruptcy," comma,  
14 "the associate" -- "the associate financial  
15 obligations." That should read the associated, at the  
16 end of associate, associated. Then on Page 11, the  
17 first line, and the question reads, "Will the permanent  
18 rate...application will support," and delete the second  
19 "will" there, the application support, should delete  
20 "will." And I think that's all of the corrections.

21 Q. Mr. Bees, subject to those corrections, if  
22 I were to ask you the questions contained in  
23 Applicant's Exhibit 2 today on the stand, will your  
24 answers be the same as set forth therein?

25 A. Yes.

1 Q. Thank you.

2 The witness is available for  
3 cross-examination.

4 HEARING EXAMINER FARKAS: All right.

5 MR. RANDAZZO: Would you like us to go  
6 first, Your Honor?

7 HEARING EXAMINER FARKAS: Sure.

8 CROSS-EXAMINATION

9 By Mr. Randazzo:

10 Q. Mr. Bees, my name is Sam Randazzo, as I  
11 think you know, here on behalf of the City of Akron. I  
12 have a few questions for you. The change you made to  
13 your testimony at Page 1, you indicated that there's  
14 been a recent organizational change. When was that  
15 organizational change?

16 A. That was recent, effective Friday. We  
17 discussed it Friday and made the decision Friday to  
18 make that change.

19 Q. Friday, as in last week?

20 A. This past Friday, yes.

21 Q. So that would have been July 10th?

22 A. I'm not sure what the date was.

23 HEARING EXAMINER FARKAS: Let's go off the  
24 record a second.

25 (Discussion off the record.)

1           Q.     You say it was effective July 10th or --  
2 when was this change decided upon?

3           A.     Friday, July 10th.

4           Q.     Okay. And you continue to be the  
5 President of Opportunity Parkway?

6           A.     That's correct.

7           Q.     Who is the Chief Executive Officer of  
8 Opportunity Parkway now?

9           A.     Charles Abbott, A-b-b-o-t-t.

10          Q.     And is Mr. Abbott employed by Opportunity  
11 Parkway?

12          A.     He'll be the CEO of Opportunity Parkway,  
13 correct.

14          Q.     And does Mr. Abbott work for a  
15 consulting -- management consulting firm by the name of  
16 Alea?

17          A.     Yes, he does.

18          Q.     And is it true that the Applicant in this  
19 case relied upon the services of this management  
20 consulting firm, Alea, for purposes of developing the  
21 application in this case?

22          A.     In part Mr. Abbott and Alea did  
23 participate in the development of some of this  
24 information, yes.

25          Q.     And which part of the application and

1 materials offered in support was Mr. Abbott responsible  
2 for?

3 A. I'm not sure specifically what Mr. Abbott  
4 may have contributed to in detail, but Mr. Abbott is an  
5 experienced operations individual. He's an engineer  
6 and has participated in some of the operational  
7 decisions and discussions that we have gone through in  
8 terms of looking forward to deal with this situation  
9 with the University of Akron.

10 Q. Okay. But Alea, the management consulting  
11 firm that we've just spoken about to which Mr. Abbott  
12 is attached, was hired in March; right?

13 A. Alea is -- has been working with TVII on a  
14 number of other areas.

15 Q. When you say TVII, you're referring to  
16 Thermal Ventures with the Roman numeral two behind it?

17 A. That's correct. And we asked Mr. Abbott  
18 and Alea Management to participate specifically on  
19 certain matters in Akron related to the University of  
20 Akron around that time in March.

21 Q. Okay. So Alea was retained to help you  
22 deal with the University of Akron's situation back in  
23 March of this year?

24 A. Well, again, Alea is a consulting group  
25 that has been participating in matters outside of Akron

1 with Thermal Ventures II, and I asked that they  
2 participate and take a look at certain matters in  
3 Akron, including the University of Akron.

4 Q. Prior to retaining Alea, was there another  
5 consulting firm that Akron Thermal, Limited Partners  
6 was relying upon, for example, during the course of the  
7 bankruptcy proceeding to guide it forward?

8 A. There were consultants participating in  
9 the bankruptcy case and in particular related to the  
10 financial counsel, advisors. Other than that, legal  
11 representation for purposes of bankruptcy.

12 Q. Are you familiar with a management  
13 consulting firm by the name of SASCO?

14 A. Yes.

15 Q. And what did that firm do for Akron  
16 Thermal, Limited Partners during the course of the  
17 bankruptcy proceeding?

18 A. Provided financial advisor services.

19 Q. And that firm would have been intimately  
20 and significantly responsible for assisting in the  
21 development of the Plan of Reorganization approved by  
22 the bankruptcy court; is that correct?

23 A. They were a contributor, yes.

24 Q. Significant contributor?

25 A. It was a collaborative effort, and they

1 were a contributor.

2 Q. And approximately how much did you pay  
3 SASCO during the bankruptcy proceeding for its  
4 management consulting services? Would you accept  
5 subject to check that it was in excess of \$600,000?

6 A. I would want to ask someone else. I'm not  
7 sure what that number would be.

8 Q. Who would know?

9 A. I think Miss Stott would know.

10 Q. Okay. For purposes of my question, would  
11 you assume that Akron Thermal, Limited Partners was  
12 responsible for paying that management consulting firm  
13 in excess of \$600,000 as a result of the services it  
14 provided during the bankruptcy proceeding? And, again,  
15 I'm referring to SASCO. Now, is there some reason why  
16 you found it necessary to retain the services of  
17 another management consulting firm and not further use  
18 SASCO?

19 A. Can I hear the question again? I'm not  
20 sure I --

21 Q. Sure. Let me back up.

22 A. Okay.

23 Q. Is Akron Thermal, Limited Partners still  
24 relying upon the management consulting services of  
25 SASCO?

1 A. No.

2 Q. When did that relationship end?

3 A. Shortly after we emerged from the  
4 bankruptcy in February.

5 Q. Why did it end?

6 A. The services that SASCO had provided were  
7 related to the bankruptcy. That was complete, and it  
8 was -- complete.

9 Q. So then you apparently you, emerging from  
10 the bankruptcy proceeding, you elected to hire another  
11 management consulting firm, namely Alea? Do I have  
12 that right?

13 A. Again, Alea has been involved in other  
14 matters unrelated to Akron Thermal.

15 Q. I'm talking about Akron Thermal now. You  
16 can assume that, for purposes of this proceeding, that  
17 we're not talking about the other affiliated entities,  
18 but we're focused on Akron Thermal.

19 A. Okay. I'm sorry, so your question again?

20 Q. Shortly after emerging from the bankruptcy  
21 proceeding, you decided, Akron Thermal decided to  
22 retain the services of another management consulting  
23 firm; correct?

24 A. For purposes of work related to the  
25 University of Akron contract, we asked Mr. Abbott, Alea

1 Management, to participate in the development of  
2 proposals for the University of Akron, that's correct.

3 Q. And is it fair to say that Mr. Abbott has  
4 been the lead person on behalf of Akron Thermal in  
5 developing proposals and presenting those proposals to  
6 the University of Akron?

7 A. I'm not sure I would call him the lead. I  
8 would say that, again, it was a collaborative effort  
9 with the management team in Akron, myself, and Alea  
10 Management at our request.

11 Q. Well, now that Mr. Abbott is the CEO, he  
12 would be the person responsible for determining what  
13 Akron Thermal is going to do relative to the University  
14 of Akron; right?

15 A. He will take a lead role as described by  
16 the Chief Executive Officer within Akron Thermal,  
17 that's correct.

18 Q. Is he currently engaged in discussions  
19 with the University of Akron?

20 A. At present there are not direct  
21 discussions with the University of Akron.

22 Q. Is he presently engaged in discussions  
23 with the City of Akron?

24 A. Yes.

25 Q. Is it true, sir, that Akron Thermal,



1 through Mr. Abbott or other representatives of Akron  
2 Thermal, have approached the City of Akron and  
3 indicated that Akron Thermal wishes to end its lease  
4 relationship with the City of Akron?

5 A. I think it's well known that the City of  
6 Akron and Akron Thermal have struggled with its  
7 relationship for some time. The city has made it very  
8 clear that they would like Akron Thermal to consider  
9 exiting Akron, and we did not necessarily approach the  
10 city, but I believe that the discussions are there for  
11 the city and Akron Thermal to discuss how that may  
12 happen, yes.

13 Q. Would it be fair to say, sir, that Akron  
14 Thermal, through Mr. Abbott or other representative of  
15 Akron Thermal, have indicated that they are willing to  
16 end the lease relationship with the City of Akron?

17 A. Under conditions that would make sense,  
18 that's correct.

19 Q. And what conditions have you requested?

20 A. We requested a process that would -- that  
21 would ascertain the value of the system under certain  
22 conditions, and then it would be a discussion that is  
23 yet to be -- to be had.

24 Q. Do the conditions include any expectation  
25 by Akron Thermal that the City of Akron would pay Akron

1 Thermal some amount of money in order to end the lease  
2 arrangement, if you know?

3 A. I don't believe so.

4 Q. Why would it be necessary to value the  
5 system as a condition for ending the lease if that were  
6 not the case, sir?

7 A. Akron Thermal is in a committed position  
8 with regard to that lease. There is a term of that  
9 lease, and we believe there to be some value related to  
10 that term, and we are open to discussions to meet the  
11 desires of the City of Akron as well as our own, and we  
12 are open to discussions about how to do that.

13 Q. Do I take it from your answer, sir, that  
14 Akron Thermal expects to be -- expects to receive the  
15 value it associates with the lease arrangement from the  
16 City of Akron prior to ending the lease?

17 A. I think one has to obviously precede the  
18 other. The value of the lease, if ended, is gone, and  
19 so we obviously would expect to go through a process to  
20 establish what the market value of that lease is, and  
21 once agreed, then we would have terms under which Akron  
22 Thermal would convey its rights in the lease.

23 Q. Let me see if I can get you to answer the  
24 question. Is it fair, sir, to suggest that Akron  
25 Thermal wants to be paid the value it attributes to the

1 lease before it's willing to end the lease?

2 A. Yes.

3 Q. And is the value of the lease at all  
4 related to the revenue streams that you might get as a  
5 result of the Commission's action in this proceeding,  
6 in your judgment?

7 A. I think --

8 Q. Let me ask it more bluntly, as I'm  
9 inclined to do eventually.

10 A. I see that.

11 Q. If the Commission were to not give you any  
12 incremental revenue, would that have a positive or  
13 negative impact on the value of the lease?

14 A. I think it's pretty clear it would have a  
15 negative impact on the value of the system.

16 Q. How about the lease? I mean, do you think  
17 the lease value is at all related to the value of the  
18 system?

19 A. Directly, I believe so.

20 Q. Okay. So when is it this process that you  
21 described that would come to some valuation of the  
22 lease -- strike that. Mr. Bees, did you participate in  
23 the bankruptcy proceeding?

24 A. Yes, I did.

25 Q. And by that I'm referring to the

1 bankruptcy proceeding for Akron Thermal that has  
2 produced a Plan of Reorganization.

3 A. Yes.

4 Q. And when I refer to the bankruptcy  
5 proceeding in my question, I will be referring to that  
6 same proceeding, the one that produced the Plan of  
7 Reorganization for Akron Thermal. Okay. The  
8 bankruptcy court has approved a Plan of Reorganization  
9 for Akron Thermal; correct?

10 A. Yes.

11 Q. In fact, the promissory notes that have  
12 been submitted for approval to the Commission are --  
13 were entered into by Akron Thermal prior to them being  
14 submitted to the Commission as part of the  
15 implementation of the Plan of Reorganization; correct?

16 A. Yes.

17 Q. And the Plan of Reorganization specifies,  
18 with regard to those promissory notes, the amount of  
19 payments and the timing of payments that are to be made  
20 to the State of Ohio as well as the Trustee for the  
21 Creditors' Trust; correct?

22 A. I believe so.

23 Q. I assume at this point that you would  
24 agree that Akron Thermal is well on its way to  
25 implementation of the Plan of Reorganization. Would

1 that be a correct assumption?

2 A. I think so.

3 Q. And because the Plan of Reorganization  
4 deals with things like the timing and magnitude of  
5 payments to the State of Ohio and the Trustee for the  
6 Creditors' Trust, do you intend to go to the bankruptcy  
7 court and seek a modification of the Plan of  
8 Reorganization?

9 A. To my knowledge, no, but --

10 MR. ROYER: Objection, Your Honor, to the  
11 extent this calls for a legal conclusion as to what's  
12 required.

13 MR. RANDAZZO: I'll break it down. I'll  
14 withdraw the question.

15 HEARING EXAMINER FARKAS: Okay.

16 Q. Mr. Bees, you're familiar with the Plan of  
17 Reorganization, I take it?

18 A. Yes.

19 Q. Again, we're talking about the Plan of  
20 Reorganization for Akron Thermal that's been approved  
21 by the bankruptcy court. Are you with me?

22 A. So far.

23 Q. Okay. Are there any requirements in that  
24 plan that deal with modifications, what Akron Thermal  
25 needs to do in order to modify the Plan of

1 Reorganization, if you know?

2 A. I don't know.

3 Q. Let me ask you hypothetically. If that  
4 plan specified that Akron Thermal would need to seek  
5 the bankruptcy court's approval prior to modifying the  
6 Plan of Reorganization, I take it that you presently  
7 have no plans to seek bankruptcy approval of such a  
8 modification. Is that a correct statement?

9 MR. ROYER: Could I have that question  
10 again?

11 (Question read back.)

12 MR. ROYER: I'm not sure how he can answer  
13 that the way it's framed. I don't understand where  
14 he's going.

15 MR. RANDAZZO: I'll break it down. I'll  
16 withdraw and break it down.

17 Q. Mr. Bees, I want you to accept an  
18 assumption with me, and if you'd like, I'll show you  
19 where in the plan it requires this. I want you to  
20 assume with me that the Plan of Reorganization states  
21 that to the extent that Akron Thermal wishes to modify  
22 the Plan of Reorganization that's been approved by the  
23 bankruptcy court, after there is substantial  
24 consummation of the plan, that it has to obtain  
25 approval from the bankruptcy court. Will you assume

1 that for me? Just assume it for purposes of my  
2 question.

3 HEARING EXAMINER FARKAS: Why don't we  
4 refer to the section of the bankruptcy plan, and that  
5 way he can look at it for purposes -- do you have your  
6 Direct Testimony in front of you?

7 THE WITNESS: I do.

8 HEARING EXAMINER FARKAS: Attached to your  
9 Direct Testimony, I believe, is the bankruptcy second  
10 plan that's been approved.

11 THE WITNESS: Yes.

12 HEARING EXAMINER FARKAS: I believe Mr.  
13 Randazzo is referring to Page 35. If that's not the  
14 page, then let me know. Is that the page?

15 MR. RANDAZZO: Yes, at 16.2, Your Honor.

16 HEARING EXAMINER FARKAS: You're familiar  
17 with this plan, correct, this order?

18 THE WITNESS: Yes.

19 HEARING EXAMINER FARKAS: Okay. So go  
20 ahead.

21 MR. RANDAZZO: Thank you, Your Honor.

22 MR. ROYER: Your Honor, he's trying to ask  
23 the witness for a legal interpretation of what this  
24 provision requires. The plan itself is also subject to  
25 provisions of the Bankruptcy Code. There are also

1 provisions that govern what are -- there are also  
2 provisions that govern what the Trustee or -- Trustees  
3 or Claimants are entitled to do, so I'm just not sure  
4 what -- he's asking to accept a legal interpretation  
5 that we may not necessarily agree with, so he -- so I  
6 don't think it's appropriate. I don't think it's an  
7 appropriate -- I don't think it's appropriate as a  
8 hypothetical.

9 HEARING EXAMINER FARKAS: Okay. Do you  
10 want to respond?

11 MR. RANDAZZO: Your Honor, I wasn't  
12 asking -- I was asking the witness to just assume that  
13 this provision has some effect and whether or not, if a  
14 modification is required, there are any plans by ATLP  
15 to go to the bankruptcy court and request a  
16 modification of the plan.

17 HEARING EXAMINER FARKAS: Go ahead.

18 MR. ROYER: The short answer is that --

19 MR. RANDAZZO: I'd like the short answer  
20 from the witness, please.

21 MR. ROYER: But you're asking --

22 HEARING EXAMINER FARKAS: I'm going to  
23 allow the question, so go ahead and answer. Do you  
24 want the question?

25 THE WITNESS: I'd like the question



1 again.

2 HEARING EXAMINER FARKAS: You want to ask  
3 the question again?

4 MR. RANDAZZO: Yes.

5 Q. Mr. Bees, through the courtesy of the  
6 Attorney Examiner here, he's shortened this up a bit by  
7 directing us to the provision in the plan that's been  
8 approved by the bankruptcy court which is attached to  
9 your testimony, Section 16.2. Do you see that?

10 A. I do.

11 Q. Now, reading that, is it clear to you that  
12 if the Plan of Reorganization is modified, there may be  
13 a need to engage the bankruptcy court? Not a legal  
14 opinion, just from the clear language that's there.

15 A. I would have to say that there's enough, I  
16 think, language in here that it gives me a question as  
17 to whether we do or do not have to approach the  
18 bankruptcy court, and I frankly would not answer that  
19 without some kind of legal interpretation of what the  
20 section means.

21 Q. Okay. And I take it that this is the  
22 first time you've noticed this provision in the Plan of  
23 Reorganization, this 16.2 here today?

24 A. No. I'm sure I've seen it before, but --

25 Q. Who is responsible for the administration

1 of the Plan of Reorganization within Akron Thermal? Is  
2 it you or Mr. Abbott or somebody else?

3 A. Well, I think it is a combination of  
4 folks, including Mr. Pucak, Miss Stott, S-t-o-t-t, Ms.  
5 Kechler, who is in my office at Thermal Ventures II,  
6 and from time to time, if necessary, referring to  
7 counsel.

8 HEARING EXAMINER FARKAS: Can we go off  
9 the record for one second?

10 (Discussion off the record.)

11 HEARING EXAMINER FARKAS: Let's go on the  
12 record. Go back on the record.

13 Q. So I take it you're -- sitting here today,  
14 you're not sure whether what you're proposing in this  
15 proceeding requires the bankruptcy court to approve a  
16 modification of the Plan of Reorganization? Do I  
17 correctly understand your testimony?

18 A. Well, I've relied on counsel participating  
19 in discussions in modification agreements and trust  
20 they understand what the requirements are.

21 Q. Well, I trust them, too, that they may  
22 understand the requirements. I'm a lawyer and provide  
23 advice to clients from time to time who decide to do  
24 things different than my advice might suggest, so it's  
25 important to me to understand -- I assume all lawyers

1 have that problem. It's important for me to  
2 understand, sir, what it is that you, representing  
3 ATLP, intend to do, if anything, and also to understand  
4 what it is that your plans are currently. Do you have  
5 any plans to go to the bankruptcy court to seek a  
6 modification of the Plan of Reorganization?

7 A. This has been very recent in this  
8 modification, meaning in the last few days. I do not  
9 know that there are plans to go to the bankruptcy court  
10 or if our counsel is expected to go. I'm not -- I am  
11 not aware of that yet.

12 Q. And when do you expect to have that  
13 information?

14 A. I would imagine we'll hear about that  
15 today.

16 Q. While we have the plan, if you would, sir,  
17 would you go to Page 33, Section 13.2. Have you  
18 reviewed Section 13.2 of the plan previously?

19 A. I've reviewed all of the plan. I've not  
20 recently reviewed it. If you'd like me to review it  
21 now, I will.

22 Q. What is the -- the effective date that's  
23 in the title there, it refers to the effective date of  
24 the Plan of Reorganization; is that correct?

25 A. I believe so, yes.

1           Q.     Okay. As I read it, and I'd ask whether  
2 or not it's your understanding as well, before the Plan  
3 of Reorganization can be effective, it states that you  
4 need to get "all approvals and consents appropriate  
5 under the public utility laws of Ohio or required by  
6 the PUCO." Is that your understanding?

7           A.     I see that in 13.2(b).

8           Q.     And that's your understanding of the plan?

9           A.     This is -- this is the plan, yes.

10          Q.     And I presume that that's why you asked  
11 the Commission to approve the promissory notes that  
12 have been submitted and are being considered on a  
13 consolidated basis in this proceeding?

14          A.     I think that's the subject of some  
15 discussion. We submitted the promissory notes sort of  
16 in an abundance of caution to assure that we provided  
17 the Commission with the information that's available  
18 related to those notes, and I know that there's some  
19 additional discussion about the requirement for those  
20 approvals subject to the bankruptcy court and some  
21 legal interpretation of those requirements.

22          Q.     Well, I thought that the Applicant in this  
23 proceeding was asking and had already asked the  
24 Commission for approval of the promissory notes. Are  
25 you saying you don't need Commission approval?

1           A.     I understand that to be a question, a  
2 legal matter, and, frankly, I'm not sure that I can  
3 describe to you a legal factor in order to try to do  
4 that.

5           Q.     Are you asking the Commission to approve  
6 the promissory notes or not?

7           A.     I think we would like them to approve the  
8 notes based upon their understanding of that  
9 information, what we've submitted to them, yes.

10          Q.     Okay. You've asked the Commission to  
11 approve those notes why?

12                 MR. ROYER: Asked and answered.

13                 THE WITNESS: I'm sorry, I didn't --

14                 MR. ROYER: I object. Asked and  
15 answered.

16                 MR. RANDAZZO: I'll withdraw the question,  
17 Your Honor. Thank you.

18          Q.     Mr. Bees, the promissory notes that have  
19 been submitted to the Commission for approval by Akron  
20 Thermal have already been issued by Akron Thermal;  
21 correct?

22           A.     Yes.

23          Q.     Okay. Now, if they've already been issued  
24 by Akron Thermal, why have you filed with the PUCO for  
25 approval of notes that have already been issued?

1           A.     Well, it's my impression that there are  
2 times when you certainly want to provide the  
3 information related to the -- related to the utility  
4 that is sometimes informational for purposes of the  
5 Commission's use, and in this case there are a few  
6 contracts that we are trying to get into the Commission  
7 for their review and approval, and we are trying to  
8 catch up on certain matters related to those contracts  
9 and those customer contracts, and we are trying to  
10 provide the information that's -- that is related to  
11 these notes for the Commission's review.

12           Q.     I'm thoroughly confused. I thought that  
13 Akron Thermal submitted applications requesting that  
14 the Commission approve the issuance of securities, and  
15 in this case the securities consist of some of the  
16 notes that were issued during the course of the  
17 bankruptcy proceeding. Is my understanding of what  
18 Akron Thermal has requested of the Commission  
19 incorrect?

20           A.     Your understanding of what we requested?

21           Q.     Yes.

22           A.     The filings are as they've been prepared  
23 and submitted.

24           Q.     Well, Mr. Bees, what will Akron Thermal do  
25 if the Commission does not approve the notes?

1           A.     I'm not sure.

2           Q.     Are you currently making payments under  
3 the promissory notes?

4           A.     I don't believe there are any payments  
5 that were due to this date, no.

6           Q.     All right. Was Mr. Abbott, Mr. Abbott  
7 that we talked about earlier, Charles Abbott, involved  
8 in making determinations on what applications should be  
9 filed with the Commission?

10          A.     No.

11          Q.     Now, the application for emergency relief  
12 was submitted subject to your verification; correct?

13          A.     Yes.

14          Q.     And you verified that in the capacity as  
15 Chief Executive Officer of Opportunity Parkway;  
16 correct?

17          A.     I believe that's the way it was.

18          Q.     And the change that you made here in your  
19 testimony today should also be made in the application  
20 itself? In other words, you're no longer Chief  
21 Executive Officer?

22          A.     Of Opportunity Parkway?

23          Q.     Of Opportunity Parkway.

24          A.     I don't know what's required in terms of  
25 the change.

1           Q.     Sure. Do you have a copy of the  
2 application in front of you?

3           A.     No, I do not.

4           MR. ROYER: Do you have an extra one?

5           MR. RANDAZZO: May I approach the witness,  
6 Your Honor?

7           HEARING EXAMINER FARKAS: Yes.

8           Q.     Are you sponsoring the application in this  
9 proceeding?

10          A.     I'm not sure what sponsor means.

11          Q.     I wasn't sure either. Your testimony says  
12 you're supporting the application, so I guess we'll  
13 leave that where it is. You talk about the history of  
14 Akron Thermal in the first two pages of the  
15 application; correct?

16          A.     Yes.

17          Q.     Okay. Is Akron Thermal still a cooling  
18 company, if you know?

19          A.     I don't know.

20          Q.     You mentioned the lease arrangement with  
21 the City of Akron there. The original lease  
22 arrangement also was part of a larger package that  
23 provided Akron Thermal with an opportunity to purchase  
24 the system; correct?

25          A.     There is a provision in the negotiated



1 purchase agreement that includes options for the city  
2 and Akron Thermal to trigger the sale, yes.

3 Q. Is that -- why has not Akron Thermal  
4 exercised the option to purchase the system?

5 A. It's a matter of a business decision that  
6 we've not yet concluded.

7 Q. Did Akron Thermal preserve its rights  
8 under the purchase agreement as part of the bankruptcy  
9 proceeding, if you know?

10 A. I believe we did.

11 Q. Okay. In the original operating lease  
12 between the City of Akron and Akron Thermal, Akron  
13 Thermal received the leasehold rights for both heating  
14 and cooling; correct?

15 A. Leasehold rights for heating and cooling?

16 Q. Yes. The operating lease conveyed rights  
17 to Akron Thermal for both heating and cooling business;  
18 right?

19 A. I believe it did at the time it was -- it  
20 was combined.

21 Q. And subsequently Akron Thermal spun off  
22 its cooling business into a separate affiliated entity;  
23 correct?

24 A. Yes.

25 Q. And that would be Akron Thermal Cooling;

1 correct?

2 A. Correct.

3 Q. Does Akron Thermal Cooling have a lease  
4 with the City of Akron?

5 A. I don't believe there's one between Akron  
6 Thermal Cooling and the city.

7 Q. Does Akron Thermal Cooling have a  
8 franchise with the City of Akron?

9 A. I don't believe Akron Thermal Cooling has  
10 the franchise.

11 Q. Under -- strike that. You mentioned the  
12 first filing case of Akron Thermal at Page 2 of the  
13 application, Case No. 98-1360, and you observe in that  
14 paragraph that as a result of the new rates and the  
15 principle of gradualism, that Akron Thermal continued  
16 to sustain annual operating losses. Do you see that in  
17 the application there, Paragraph No. 5, Page 2?

18 A. Yes.

19 Q. Okay. Now, is it correct, sir, that the  
20 Commission approved what Akron Thermal filed as the  
21 first filing?

22 A. I believe it did, yes.

23 Q. So there's -- whatever losses, annual  
24 operating losses occurred as described in Paragraph No.  
25 5 on Page 2, was a function of what Akron Thermal asked

1 the Commission to approve; right?

2 A. As a function of that application and that  
3 order, plus the business conditions that followed that.

4 Q. Well, you say the new rates that were  
5 approved in the first filing in Case 98-1360 were  
6 higher than the rates established by Akron's ordinance,  
7 a recognized principle of gradualism, I think is what  
8 you said. Whatever the rates were in that filing were  
9 something that Akron Thermal proposed and the  
10 Commission approved based upon what Akron Thermal  
11 proposed; right?

12 A. Yes.

13 Q. Okay. And then in the next paragraph,  
14 Paragraph No. 6, you talk about the rate case, the 2005  
15 rate case, Case No. 05-05-HT-AIR, and indicate what  
16 transpired there. The amount of revenue that the  
17 Commission approved in that case was exactly what Akron  
18 Thermal asked for; correct?

19 A. I believe it was. If it wasn't exactly,  
20 it was close.

21 Q. Would you accept subject to check that it  
22 was exactly what Akron Thermal asked for?

23 A. If that's important, I'll accept subject  
24 to check.

25 Q. So to the extent that there have been any

1 operating losses, again, subsequent to the 2005 rate  
2 case, the Commission -- the Commission's actions have  
3 done exactly what Akron Thermal has asked the  
4 Commission to do up to this point; correct?

5 A. The Commission issues related to the  
6 commercial tariff I believe were very close to what  
7 Akron Thermal requested. The Commission also asked us  
8 to go to the contract customers and renegotiate the  
9 other portion of Akron Thermal's revenue.

10 Q. Okay. Mr. Bees, I'm going to try and make  
11 this --

12 May I approach the witness, Your Honor?

13 HEARING EXAMINER FARKAS: Yes.

14 Q. Mr. Bees, I want to hand you a copy of  
15 what I understand to be the testimony that you filed in  
16 05-05-HT-AIR, titled Testimony of Jeffrey Bees on  
17 Behalf of Akron Thermal, Limited Partnership. Do you  
18 recall submitting that testimony?

19 A. I do recall.

20 Q. Okay. And if you could turn to the last  
21 page of that testimony, I'd ask you to read the next to  
22 the last question and answer and then ask you to  
23 identify the amount of revenue increase that you were  
24 asking the Commission to approve in that case. If you  
25 need to read all the testimony, that's fine, too. Make

1     yourself comfortable with the content.

2                 MR. ROYER:   If this will shorten things  
3     up, we will stipulate that the Commission's order in  
4     the '05 granted the full request of the Company.

5                 HEARING EXAMINER FARKAS:   Thank you.

6                 MR. RANDAZZO:   That will shorten it.

7                 Q.     Now, turning to your testimony in this  
8     proceeding, going to Page 6 -- I have a bad habit of  
9     doing this.  I like to interrupt myself with a  
10    different question.  I've noticed as a result of  
11    reviewing a lot of documents related to Akron Thermal  
12    that you have employed different law firms or attorneys  
13    to handle your regulatory work over a period of  
14    approximately 12 years.  In the '05 case you were using  
15    the firm of Thompson Hine.  You used Vorys, and you're  
16    now benefited by the able counsel of Mr. Royer.

17                MR. ROYER:   I was just about to object  
18    until you got that part right, but I'll object anyway.

19                MR. RANDAZZO:   Well, I haven't gotten a  
20    question yet.

21                MR. ROYER:   Okay.

22                Q.     Can you help me understand the -- why  
23    Akron Thermal found it necessary to change  
24    representation through this roughly 12 years of history  
25    in matters before the Commission?

1           A.     Yes. The issues that gave rise to any  
2 change was related to some type of conflict of the  
3 party, the law firm that was in conflict in the case.

4           Q.     Okay. And in the cases that have been  
5 consolidated for purposes of this proceeding, you were  
6 also using different counsel. Can you tell me why you  
7 were using different counsel for contract applications,  
8 security issuance applications, and the emergency rate  
9 case?

10          A.     It's the same issue. The Vorys law firm  
11 has for many years been our main regulatory counsel,  
12 and at this point, when the emergency rate case was  
13 filed and there was a prospect of intervention, certain  
14 parties that Vorys also represents was anticipated to  
15 be intervenors.

16          Q.     Now, if I can turn you back to your  
17 testimony. Thank you for indulging me. Page 6 of your  
18 testimony in this proceeding, which is Applicant's  
19 Exhibit 2, starting at Line 10 you talk about, in  
20 response to a question, "Why did Akron Thermal find it  
21 necessary to file a Chapter 11 petition," you talk  
22 about the results in case 05-05-HT-AIR; correct?

23          A.     Yes.

24          Q.     And you say -- and, again, that was the  
25 case in which the Commission gave you everything you

1 asked for; right?

2 A. Yes.

3 Q. Then at the bottom of that answer on that  
4 page you say that, "However, even with these increases  
5 in revenue, Akron Thermal's accumulated outstanding  
6 obligations to its creditors could no longer be  
7 absorbed," and then you made a change here today in  
8 your testimony, continuing, and if "the company were to  
9 continue to provide service to its customers, it had no  
10 alternative but to file for reorganization under  
11 Chapter 11"; right? Are you suggesting there that the  
12 results in Case 05-05 were responsible at all for Akron  
13 Thermal's decision to file a petition for  
14 reorganization with the bankruptcy court?

15 A. No.

16 Q. At Line 20, what do you mean by  
17 "accumulated outstanding obligations"? Is that code  
18 for unpaid bills?

19 A. That's fair.

20 Q. Now, the accumulated outstanding  
21 obligations, you say there it's to its creditors.  
22 Actually, it was vendors and the State of Ohio and a  
23 variety of folks who subsequently became creditors;  
24 correct?

25 A. There's a number of different avenues for

1 the debt that's on the balance sheet, that's correct.

2 Q. So even though the Commission gave you the  
3 full amount of the rate relief requested in  
4 05-05-HT-AIR, subsequent to that you were not able to  
5 pay your bills; correct?

6 A. That's correct.

7 Q. All right. Now, are you familiar with the  
8 disclosure statement that was submitted by Akron  
9 Thermal in conjunction with the bankruptcy court's  
10 evaluation of the Plan of Reorganization that was  
11 ultimately approved by the bankruptcy court?

12 A. Yes.

13 MR. RANDAZZO: Your Honor, this is one of  
14 the documents that we asked be taken administrative  
15 notice of, so I'd like to do some cross on that with  
16 the understanding that we worked out earlier today.

17 HEARING EXAMINER FARKAS: Okay. That's  
18 fine.

19 MR. RANDAZZO: Your Honor, may I approach  
20 the witness?

21 HEARING EXAMINER FARKAS: Yes.

22 Q. Mr. Bees, I'm handing you a document which  
23 I understand to be the First Amended Disclosure  
24 Statement filed with the bankruptcy court on July 28th,  
25 2008. Do you recognize that document?



1           A.     Yes.

2           Q.     Am I correct that that's the Disclosure  
3 Statement that was submitted in conjunction with the  
4 Plan of Reorganization that Akron Thermal filed with  
5 the bankruptcy court coincident with the Disclosure  
6 Statement? In fact, the Plan of Reorganization is  
7 attached to the Disclosure Statement; right?

8           A.     I believe so.

9           Q.     I'd like you to turn to -- before we do  
10 that, do you know what the Disclosure Statement is  
11 supposed to do in a bankruptcy court?

12          A.     In general, disclose information relative  
13 to the Plan of Reorganization.

14          Q.     Right. And to who? Who is it disclosing  
15 information to? Is it disclosing information to the  
16 creditors and other affected parties to try and  
17 encourage them to support the Plan of Reorganization?

18          A.     I don't know that that's all-inclusive,  
19 but that's certainly part of it.

20          Q.     Part of the population?

21          A.     I believe, right.

22          Q.     And the purpose I mentioned is the  
23 purpose? I mean, the Disclosure Statement is submitted  
24 by the debtor, in this case Akron Thermal, to try to  
25 encourage support for its Plan of Reorganization; is

1 that correct, if you know?

2 A. There may be more to -- to the intent  
3 purpose than that, and I'm not sure that I'm fully able  
4 to describe all of that.

5 Q. Okay. If you would turn to Page 21 of the  
6 Disclosure Statement. Now, there's a preface with  
7 Roman numerals at the bottom of the page, the beginning  
8 of the Disclosure Statement, and then there's the more  
9 detailed text which has numbers at the bottom of the  
10 pages, and I'm referring to Page 21 with the non-Roman  
11 numeral.

12 A. Okay.

13 Q. All right. Page 21, "Historical Financial  
14 and Operating Highlights," do you see that title?

15 A. Yes, I do.

16 Q. As part of the Disclosure Statement that  
17 was submitted to the bankruptcy court, you were -- you  
18 being Akron Thermal in this instance was providing  
19 historical financial information, which you can see on  
20 Page 22, as long as -- as well as projected financial  
21 information; is that correct?

22 A. I think that's correct.

23 Q. Well, in fact, there's a column on Page 22  
24 titled, "Proj. 2008." That would be projected 2008  
25 information; correct?

1           A.     Yes.

2           Q.     And what is E-B-I-T-D-A, which is on that  
3 schedule of information? I think I know, but I'm  
4 asking for the record.

5           A.     Earnings before interest, taxes,  
6 depreciation, and --

7           Q.     Amortization; right?

8           A.     -- amortization.

9           Q.     Otherwise known as EBITDA?

10          A.     Right.

11          Q.     Okay. And at least for purposes of the  
12 Disclosure, you were projecting that for 2008 you were  
13 going to have earnings before interest, taxes,  
14 depreciation, and amortization of \$1.9 million; right?

15          A.     That's correct.

16          Q.     And if you know, these data assume  
17 consolidation of Akron Thermal, Limited Partnership  
18 with Akron Thermal Cooling; correct?

19          A.     I believe so.

20          Q.     And for purposes of your emergency  
21 application, you've not included any of the revenue or  
22 income from Akron Thermal Cooling; correct?

23          A.     I think that's correct.

24          Q.     Even though the Plan of Reorganization  
25 requires Akron Thermal Cooling to contribute its income

1 to Akron Thermal, Limited Partnership; correct?

2 A. Right.

3 Q. Why have you not included the cash flow  
4 from Akron Thermal Cooling for purposes of displaying  
5 your accurate and true cash flow situation?

6 A. I'm not sure I have the specific answer to  
7 that. I think that might be something that Miss Stott  
8 would be better to provide you.

9 Q. Well, the Plan of Reorganization says that  
10 Akron Thermal, which is the cooling company --

11 A. Yes.

12 Q. -- has not been in bankruptcy and is not  
13 seeking emergency rate relief. It's supposed to  
14 contribute its income to Akron Thermal; right?

15 A. (Witness nods head.)

16 Q. Which means that Akron Thermal has a  
17 source of cash, being Akron Thermal Cooling; correct?

18 A. Those are very close to being -- I think  
19 that for that purpose it's close to break even, but,  
20 again, that's something that Miss Stott might be able  
21 to help with, whether it's a positive or negative  
22 impact, but --

23 Q. Were you at all responsible in any  
24 decision to exclude Akron Thermal Cooling?

25 A. Not specifically, no.

1           Q.     Based upon the Plan of Reorganization,  
2 Akron Thermal, Limited Partnership's financial  
3 condition is also defined by the financial performance  
4 of Akron Thermal Cooling; correct?

5           A.     Being combined, yes.

6           Q.     Right.

7           A.     Yes.

8           Q.     So the answer to my question is yes;  
9 right?

10          A.     If you can restate the question, make sure  
11 I'm saying yes to the right question.

12          Q.     The financial condition of Akron Thermal,  
13 Limited Partnership as a result of the Plan of  
14 Reorganization approved by the bankruptcy court also  
15 includes the performance, financial performance of  
16 Akron Thermal Cooling; correct?

17          A.     For the bankruptcy proceedings, yes,  
18 that's right.

19          Q.     Well, and -- so you think that -- well,  
20 strike that. Let's go on. At Page 23 of the  
21 Disclosure Statement, and, again, we talked about the  
22 historical and projected financial information on Page  
23 22, at the top of Page 23, it states there, "...that  
24 the projections for 2008...should be achieved and,  
25 perhaps, surpassed." Was that an accurate statement at

1 the time that it was included in the Disclosure  
2 Statement?

3 A. I think that was a fair comment.

4 Q. Were you part of the management of Akron  
5 Thermal at that point?

6 A. Yes.

7 Q. Did you believe the projections for 2008  
8 and beyond should be achieved and, perhaps, surpassed?

9 A. Yes.

10 Q. And I take it you no longer believe that  
11 that's the case?

12 A. Well, given the situation that we have,  
13 having lost a major customer, it obviously brings us  
14 here today with the issues that have to be addressed.

15 Q. Okay. Now, you recall that we had an  
16 earlier discussion about the -- your testimony at the  
17 bottom of Page 6 in which you said that even with the  
18 increases in revenue, you were unable to pay your  
19 bills. I'd like to turn your attention now to Page  
20 26. Actually, if we can jump to Page 95 of the  
21 Disclosure Statement, I'll shorten this up. Do you  
22 have Page 95?

23 A. Yes, I do.

24 Q. This is the section of the Disclosure  
25 Statement where Akron Thermal is discussing the

1 feasibility of its Plan of Reorganization; is that  
2 correct?

3 A. That's the section here, yes.

4 Q. All right. At the bottom of that page,  
5 Page 95, am I correct that Akron Thermal, for purposes  
6 of the bankruptcy proceeding, represented that the  
7 results for 2007 and the most recent 12 months through  
8 March 2008, as well as the projections for 2008 and  
9 beyond, show that Akron Thermal has "reached sustained  
10 profitability and cash flow which is more than adequate  
11 to operate, provide quality service...and timely cover  
12 all operating expenses"? Is that what you were  
13 representing in the bankruptcy court?

14 A. Yes.

15 Q. During what period of time were you unable  
16 to pay your bills during 2007 and 2008? I'm referring  
17 now to the statement on Page 6 of your testimony.

18 A. Not being able to pay the bills in this  
19 context is referring to the accumulated debt that was  
20 on the balance sheet prior to 2005. Current operating  
21 expenses during '07, '08, I believe we were -- we were  
22 maintaining those in current status. So the bankruptcy  
23 was related to the carried debt that accumulated over a  
24 long period of time. When TVII acquired the interest  
25 in Akron Thermal, it was essentially two steps. One

1 was to address the revenue requirements that were  
2 substantially below what -- the operating requirements  
3 expenses of Akron Thermal. We did that through both  
4 the 2005 filing and the negotiated contracts with the  
5 three hospitals and the University of Akron. Once we  
6 completed the revenue adjustments, we then turned to  
7 the restructuring of the debt, the balance sheet that  
8 was accumulated, as I said, over a long period of  
9 time. That restructuring effort that we were going  
10 through with the city and with other creditors came to  
11 a point during 2007 that it was apparent that that  
12 restructuring was not going to be successful out of  
13 court, and that's what caused us to go into court in  
14 June of '07 under the Chapter 11 bankruptcy.

15 Q. Okay. Mr. Bees, I -- are you aware that  
16 the Disclosure Statement discusses what caused Akron  
17 Thermal to file a petition for reorganization under  
18 Chapter 11 with the bankruptcy court?

19 A. I don't recall the detail of it, but I  
20 certainly realize that it describes that.

21 Q. Are you -- do you recall any discussion in  
22 the Disclosure Statement that indicates that the Plan  
23 of Reorganization was designed to deal with the  
24 accumulated debt and the balance sheet condition that  
25 you just described?



1           A.     I'm sorry, can you ask me the question  
2 again?

3           Q.     Well, let me ask it in a more positive  
4 context. Isn't it true, sir, that for purposes of the  
5 bankruptcy proceeding, Akron Thermal represented that  
6 the reason it went to the bankruptcy court was because  
7 its efforts to reach an out-of-court restructuring  
8 failed and the City of Akron issued a notice to vacate  
9 the property? Isn't that what you told the bankruptcy  
10 court?

11          A.     Well, the issue of vacating the property  
12 is what culminated the restructuring effort, so that  
13 was clearly an indication that the restructuring effort  
14 was not going to proceed. That triggered our  
15 requirement to proceed into bankruptcy court.

16          Q.     Right. You were -- Akron Thermal was  
17 engaged in an effort to restructure itself prior to  
18 filing the petition in bankruptcy court; right?

19          A.     Right.

20          Q.     In fact, you filed an application with  
21 this Commission seeking approval of an agreement with  
22 Summit County to issue revenue bonds to deal with your  
23 out-of-court restructuring ambitions; right?

24          A.     That's correct.

25          Q.     All right. And that restructuring effort

1 would have required the City of Akron to guaranty the  
2 debt; correct?

3 A. That was part of the negotiation, part of  
4 the discussion, yes, that's correct.

5 Q. Right. And when that fell apart, when  
6 that restructuring effort fell apart and the City of  
7 Akron issued its notice to leave, you went to  
8 bankruptcy court in order to block the efforts of the  
9 City of Akron directed at having you, Akron Thermal,  
10 removed; correct?

11 A. We went to bankruptcy court because it was  
12 the appropriate avenue for us to address the issues  
13 related to the debt on the balance sheet and to deal  
14 with the creditors and all the parties that were  
15 related to Akron Thermal at the time, and if we were to  
16 simply walk away, the creditors would have received  
17 nothing, and we did not feel that that was appropriate.

18 Q. Okay. You received the notice from the  
19 City of Akron to turn over the property or exit the  
20 lease on June 13th, 2007; correct?

21 A. I think that was the date, yes.

22 Q. When did you file the petition in  
23 bankruptcy?

24 A. June 18th.

25 Q. When did you give the City of Akron a

1 notice that you wished to continue the lease?

2 A. I think that was June 18th as well.

3 Q. 2007?

4 A. (Witness nods head.)

5 Q. Right? All those dates are 2007? June  
6 13th the city says we're done. June 18th you file a  
7 petition in bankruptcy. Right?

8 A. That's correct, 2007.

9 Q. And you're saying that the filing of the  
10 petition in bankruptcy was not a defensive move on the  
11 part of Akron Thermal to block the City of Akron's  
12 efforts to have Akron Thermal removed?

13 MR. ROYER: I object. He's already  
14 answered, given his reason.

15 HEARING EXAMINER FARKAS: I'll sustain the  
16 objection.

17 Q. All right. In the course of the  
18 bankruptcy proceeding, Akron Thermal made it very clear  
19 that it had large customers served under special  
20 contracts at rates that were below tariff; correct?

21 A. In the bankruptcy proceeding?

22 Q. Yes.

23 A. I think we fully disclosed what the  
24 condition of those were.

25 Q. And you talk in your testimony about the

1 University of Akron leaving and that necessitating, in  
2 your view, the filing of the emergency increase. There  
3 was a contract between the University of Akron and  
4 Akron Thermal, I take it?

5 A. Yes, there was.

6 Q. Was that contract ever filed with the  
7 Public Utilities Commission of Ohio for approval?

8 A. I don't know. I don't believe it was.

9 Q. Why not?

10 A. There were a number of contracts that were  
11 not filed, including the University, and I -- I have  
12 sort of a question, for some reason I'm recalling  
13 something about the State of Ohio, contracts that don't  
14 require filing. I may be wrong on that, that aspect,  
15 but we recognized that we needed to file those  
16 contracts, and we have recently gotten those filed, the  
17 contracts that are appropriate to be filed. We're  
18 trying to make sure we do that correctly.

19 Q. How many other contracts were not filed  
20 with the Commission?

21 A. The --

22 Q. Maybe I should ask how many were? Of the  
23 total contracts, how many were actually filed with the  
24 Commission for approval?

25 A. You want me to -- you don't want me to

1 answer the first one?

2 Q. Either one. Either one. Just tell me  
3 which one you're answering.

4 A. I believe that the contracts that are  
5 filed and consolidated in this case are the first  
6 contracts that I recall being filed, but others may  
7 know of other contracts that have been filed  
8 previously.

9 Q. So it's your understanding that the  
10 service relationship with the University of Akron or  
11 between the University of Akron and Akron Thermal was  
12 not something that required PUCO approval because it  
13 was outside the Commission's jurisdiction?

14 A. Again, that's something that I -- I have a  
15 vague recollection of something related to certain  
16 provisions of the code that doesn't require that, but  
17 that's subject to legal interpretation.

18 Q. Sure, but that's your understanding of why  
19 it was not filed?

20 A. I can't tell you that that's the exact  
21 reason it wasn't filed. If it should have been filed,  
22 we should have filed it.

23 Q. Okay. Maybe I shouldn't ask this, but  
24 that's not stopped me before, if the University of  
25 Akron's service relationship was outside the

1 Commission's jurisdiction, why would jurisdictional  
2 customers be responsible for making up the revenue  
3 shortfall associated with the loss of the University of  
4 Akron?

5 MR. ROYER: I object predicated on an  
6 answer the witness already said, he wasn't confident  
7 about it. If we want to talk about why the contract  
8 wasn't filed, I'll be happy to do that, but without --  
9 the factual predicate is it's just not fair for this  
10 question.

11 HEARING EXAMINER FARKAS: If he knows,  
12 I'll let him answer.

13 A. I'm not sure what the question was.

14 HEARING EXAMINER FARKAS: You want to  
15 reread the question?

16 (Question read back.)

17 A. It's my impression that that's not the  
18 case, that the -- if you're referring to the tariff  
19 customers, the tariff customers, as I understood the  
20 process, are evaluated, and I don't know if this is the  
21 right way to say it, but in isolation of the contract  
22 customers so that does not happen. That's my  
23 impression of how the tariff is set.

24 Q. Okay. Was the University of Akron an  
25 interruptible customer?

1           A.     They were.

2           Q.     And were they interrupted?

3           A.     Yes.

4           Q.     And they were interrupted anytime there  
5 was an inadequate steam generated capacity or a problem  
6 with the distribution system that would require service  
7 to Akron to be interrupted; right?

8           A.     In addition to other times when they  
9 requested to be taken off-line as well, yes.

10          Q.     Okay. And the University of Akron made it  
11 clear during the course of the bankruptcy contract --  
12 or bankruptcy proceeding that it was not ready to  
13 discuss any extension in contract with the University  
14 of Akron; is that correct?

15          A.     I think their sense was it wasn't timely  
16 to try to come to some agreement prior to the  
17 completion of the bankruptcy and months prior to the  
18 term of their contract.

19          Q.     And the fact that the University of Akron  
20 had its own natural gas fired, steam-generating  
21 facilities and could meet its needs without relying on  
22 Akron Thermal was well known to Akron Thermal prior to  
23 the bankruptcy case, during the bankruptcy case, and  
24 since; right?

25          A.     I'm not sure when that plant was built at

1 the University of Akron, but they, in '95, were -- when  
2 Akron Thermal was first formed, they were not a  
3 customer of the system. They became a customer of the  
4 system, I think, in '98, and our staff management team  
5 has worked with the University since '95, working to  
6 get them on the system, and after they became a  
7 customer, we worked with the University for 10, 11  
8 years. Everyone very well understood that there was a  
9 plant there and it was maintained as a standby for the  
10 purposes of the interruptible contract, and they  
11 remained a customer for 10, 11 years; so we clearly  
12 understood the relationship with that plant, yes.

13 Q. Right. And you mentioned it in your  
14 answer, but I just want to make sure I understand.  
15 When Akron Thermal started operating the system, the  
16 district energy system owned by the City of Akron, the  
17 University of Akron was not a customer of Akron  
18 Thermal; is that correct?

19 A. That's correct. They indicated in prior  
20 discussions, before '95, that they would be willing to  
21 come back on the system, that's correct.

22 Q. Did the University of Akron have any  
23 claims as a creditor in the bankruptcy proceeding?

24 A. Yes, they did.

25 Q. Did the University of Akron support the



1 Plan of Reorganization, if you know? Let me ask it a  
2 different way. Did the University of Akron object to  
3 the Plan of Reorganization?

4 A. Initially they had filed an objection  
5 which was resolved, and in some fashion a settlement  
6 agreement was reached. So in light of the way that  
7 settlement was reached, I'm a little vague on exactly  
8 where the University ended up. I guess they supported  
9 the plan.

10 Q. Now, in our earlier discussions where we  
11 were talking about Mr. Abbott and the extent to which  
12 he may be involved in discussions with the University  
13 of Akron, you suggested that there have been proposals  
14 made to the University of Akron by Akron Thermal. I  
15 assume that those proposals involve some request on  
16 Akron Thermal's part that the University of Akron  
17 continue as a customer. Am I correct?

18 A. Proposals to the University?

19 Q. Yes.

20 A. That, of course, was the purpose of the  
21 proposals, to provide them with an agreement that would  
22 retain them as a customer.

23 Q. And are you still talking to the  
24 University of Akron about what it would take to get  
25 them back as a customer?

1           A.     We have not yet been able to approach the  
2 University since this case has been filed. We have  
3 attempted to.

4           Q.     And the fuel that the University of Akron  
5 uses to meet its needs that would otherwise be met by  
6 Akron Thermal is primarily natural gas; correct?

7           A.     The University fuel?

8           Q.     Yes.

9           A.     That's correct.

10          Q.     And to the extent that Akron Thermal is  
11 suggested in your testimony -- not your testimony, but  
12 Akron Thermal's testimony. To the extent that Akron  
13 Thermal switches away from coal and relies on natural  
14 gas, it will not have any competitive advantage  
15 relative to the University of Akron, will it? In other  
16 words, the fuel supply for Akron Thermal will be very  
17 much composed of natural gas which the University of  
18 Akron is relying upon; correct?

19          A.     Not entirely, but the fuel composition for  
20 Akron Thermal does include waste wood chips, which are  
21 significantly lower fuel cost than tire-derived fuels,  
22 and if the comparison purpose here is related to the  
23 overall expense of Akron Thermal versus the  
24 alternative, it's not simply a comparison of fuels.  
25 There are all of the components necessary to produce

1 energy, which is capital, electric, labor, debt  
2 service. All of those things that Akron Thermal has to  
3 incur, the University would as well.

4 Q. Akron Thermal is suggesting in its  
5 testimony that it's not going to increase the prices  
6 that it's currently using for service provided to Summa  
7 Hospital; correct?

8 A. I'm sorry, not going to --

9 Q. Not going to.

10 A. Summa is, as you may know, an  
11 interruptible customer as well and has been very firm  
12 in what -- their willingness to pay in terms of pricing  
13 mechanism, that they're willing to accept steam, so we  
14 are in negotiations with them now and trying to get to  
15 an agreement that can be submitted to the Commission as  
16 well.

17 Q. Was Summa Hospital's contract submitted to  
18 the Commission and approved by the Commission?

19 A. Summa is, as I mentioned, a customer with  
20 their own production facilities, and we are still in  
21 the process of trying to come to a conclusion on an  
22 agreement that can be submitted to the Commission.

23 Q. Is Summa currently being served under a  
24 tariff?

25 A. No.

1 Q. What is it being served under?

2 A. It is at an alternative cost approach, and  
3 that's the subject of the negotiation process that  
4 we're going through to try to have it reduced to a  
5 contract form that can be submitted to the Commission.

6 Q. So whatever arrangement you have with  
7 Summa is not something that has been reviewed or  
8 approved by the PUCO; is that correct?

9 A. That's correct.

10 Q. Why not?

11 A. Because we haven't been able to get to the  
12 contract at which we can supply to the Commission.

13 Q. With all due respect, Mr. Bees, you're  
14 charging them prices, and my question is designed to  
15 try and understand why it is that whatever prices  
16 you're charging them you've not submitted to the Public  
17 Utilities Commission of Ohio for approval. Can you  
18 tell me why you've not done that?

19 A. Well, what I'm trying to say is that we  
20 recognize this has to be done. We recognize that there  
21 is a contract that needs to be provided. That's the  
22 document that we are trying to complete. To this point  
23 we have not gone -- come to the Staff to come to the  
24 Commission to say here is where we are with this, how  
25 can we -- how can we proceed without having the

1 contract completed and executed. We have not yet asked  
2 for that recommendation.

3 HEARING EXAMINER FARKAS: I have a  
4 question, how long have you been providing service for  
5 Summa? Is that what it's called?

6 THE WITNESS: Summa. It's a number of  
7 years.

8 HEARING EXAMINER FARKAS: Does that stand  
9 for something? Is it Summa?

10 THE WITNESS: Summa Health Care.

11 HEARING EXAMINER FARKAS: So for a number  
12 of years. You're providing it to an alternative cost  
13 approach?

14 THE WITNESS: Yes.

15 HEARING EXAMINER FARKAS: How does that  
16 relate?

17 THE WITNESS: It's less than the tariff.

18 HEARING EXAMINER FARKAS: And that  
19 arrangement, is it a written arrangement or is it an  
20 oral agreement? How do you decide how you're going to  
21 charge?

22 THE WITNESS: Well, it is a -- it's a  
23 written communication, which the -- under the current  
24 arrangements, the -- Summa is able to purchase natural  
25 gas under some type of --

1 HEARING EXAMINER FARKAS: A rate that's  
2 less than the tariff rate?

3 THE WITNESS: Correct.

4 HEARING EXAMINER FARKAS: And that  
5 arrangement that you have with them, you have not  
6 provided that to the Commission and asked for approval  
7 of that?

8 THE WITNESS: That's correct.

9 HEARING EXAMINER FARKAS: Okay. Thank  
10 you.

11 Q. Just so it's clear on the record, Summa is  
12 a very large customer of Akron Thermal; right?

13 A. They're substantial, yes.

14 Q. What percentage of your total steam sales,  
15 in throughput steam now, not revenue, but what  
16 percentage of your total sales are provided to Summa  
17 annually?

18 A. Ten to 15 percent maybe.

19 Q. When do you expect these discussions with  
20 Summa to be completed?

21 A. Well, I know that there are exchanges of  
22 the agreement. I don't know. I'm not directly  
23 involved in that.

24 Q. Who is?

25 A. Mr. Pucak is involved in that.

1           Q.     Is he acting under the direction of Mr.  
2 Abbott, Charles Abbott?

3           A.     He will be now, yes.

4           Q.     Is it your understanding that the  
5 arrangement that is currently being discussed with  
6 Summa will provide incremental revenue over and above  
7 the current pricing to Akron Thermal? In other words,  
8 have you asked them to increase the price?

9           A.     I don't know the answer to that, that  
10 question.

11          Q.     Did you ask the University of Akron to pay  
12 higher rates in your discussions with the University of  
13 Akron?

14          A.     Recently?

15          Q.     Whenever they took place. Did the  
16 proposals that Akron Thermal made to the University of  
17 Akron indicate that Akron Thermal wanted to increase  
18 prices for steam service?

19          A.     Well, just to make sure that we're clear,  
20 if we go back to 2005 and prior, the University of  
21 Akron was substantially undermarket, underpriced, and  
22 as I said, the process that we went through included  
23 both the tariff filing here in '05 and it included  
24 subsequent negotiations with our contracts, including  
25 the University of Akron. Their rate was increased

1 substantially in '06 and '07. In '09, when the I think  
2 three-year contract was expiring, our proposals to them  
3 actually were reduced rates this spring. So it would  
4 have increased their rates significantly to bring  
5 them -- the revenue of Akron Thermal in total up to  
6 where it should be, and then recently, with the  
7 expiration of this contract, our proposal to them was  
8 substantially less than what it had been.

9 Q. How much did you propose to reduce their  
10 rates? I'm talking about the University of Akron now.

11 A. I think it was -- I think it was close to  
12 15 percent, but it was on a variable basis. There were  
13 several options that we were looking at, that we  
14 proposed to them.

15 Q. Okay. So Akron Thermal was willing to, as  
16 part of a negotiated arrangement, take less revenue  
17 from the University of Akron in conjunction with  
18 extending the contractual relationship? Do I have that  
19 straight? That was your offering?

20 A. Yes.

21 Q. Okay. And in the emergency rate increase  
22 application that you filed, you are proposing to  
23 recover 100 percent of the revenue shortfall associated  
24 with the loss of the University of Akron; correct?

25 A. I think that's a calculation of both the



1 revenue and the reduced expenses and --

2 Q. You take all of the revenue that you say  
3 is associated with the loss of the University of Akron  
4 and asked that that be included in the emergency  
5 increase; right?

6 A. I believe that's the way that it's  
7 structured, but others may be able to give you a more  
8 accurate answer.

9 Q. My question for you is if you are willing  
10 to take 15 percent less in pricing for the University  
11 of Akron in order to maintain the service, why is it  
12 that the tariff customers should be responsible for a  
13 hundred percent of the revenue shortfall?

14 A. I think that your request here is more  
15 related to the requirements, the expenses and immediate  
16 cash requirements that were required to maintain  
17 service.

18 Q. Well, if your proposal with the University  
19 of Akron would have been accepted by the University of  
20 Akron, it would have reduced your cash; correct?

21 A. Yes.

22 Q. And by how much on an annual basis? I'm  
23 sure you did the analysis to project revenue associated  
24 with the proposed contract. How much did you project  
25 the revenue would drop at the pricing you proposed for

1 the University of Akron?

2 A. Again, in the context of that contract, it  
3 was a multi-year commitment, and it included indexing  
4 to the natural gas market; so the initial period where  
5 we're in a very low market, the year -- I think the  
6 year-to-year comparison looked something maybe like  
7 600,000 on a 15 percent -- it may not have been that  
8 high, but on \$4 million of revenue from the University,  
9 it was something in that neighborhood.

10 Q. Well, the 15 percent drop in price you  
11 estimated would adjust the approximate \$4 million in  
12 revenue from Akron Thermal downward by approximately  
13 600,000 on an annual basis; correct?

14 A. Correct.

15 HEARING EXAMINER FARKAS: I have another  
16 question here. Other than the contracts that you asked  
17 the Commission to approve that haven't been filed with  
18 the Commission and the arrangement you have with Summa  
19 Hospital and the arrangement with the University of  
20 Akron, are there other customers you serve at a rate  
21 lower than the tariff by a contract or an arrangement  
22 that have been not been approved by the Commission?

23 THE WITNESS: Not to my knowledge, no.

24 HEARING EXAMINER FARKAS: Thank you.

25 Q. Let's talk about that. Akron Thermal

1 Cooling buys steam from Akron Thermal, Limited  
2 Partnership; correct?

3 A. Yes.

4 Q. Do they pay tariff prices?

5 A. They do not.

6 Q. What is the basis for the pricing between  
7 Akron Thermal Cooling and Akron Thermal, Limited  
8 Partnership?

9 A. Akron Thermal Cooling essentially uses  
10 waste steam, and it's from the turbines that are used  
11 to spin the pumps and fans. The majority of that steam  
12 that would be exhausted is taken to the absorption  
13 charge, and so the basis of the pricing that goes  
14 through the cooling company is on the basis of  
15 recovering the waste steam.

16 Q. That's not what I asked you. I didn't ask  
17 you for the formula that you used to determine prices.  
18 I asked you -- well, strike that. Strike the comment.  
19 Has the service relationship between Akron Thermal  
20 Cooling and Akron Thermal, Limited Partnership been  
21 submitted for approval by the Commission?

22 A. I don't know.

23 Q. Can you find out?

24 A. I will look.

25 Q. Will you let me know?

1           A.       Sure.

2                   HEARING EXAMINER FARKAS:   The Bench would  
3 also like to know.

4                   THE WITNESS:   Sure.

5           Q.       So we know that at least in the case of  
6 Akron Thermal, there is a sale of steam by Akron  
7 Thermal, Limited Partnership that is occurring through  
8 some arrangement that is not based on the tariff, Akron  
9 Thermal, Limited Partnership tariff.  Is there a  
10 written arrangement in place between Akron Thermal,  
11 Limited Partnership and Akron Thermal Cooling dealing  
12 with supply of steam?

13           A.       I'm not sure, and that's something that  
14 maybe Mr. Pucak or Miss Stott ought to be able to help  
15 with.

16                   HEARING EXAMINER FARKAS:   Can we go off  
17 the record for a second?

18                   (Discussion off the record.)

19                   (Recess taken.)

20                   HEARING EXAMINER FARKAS:   Let's go back on  
21 the record.

22                   MR. RANDAZZO:   Thank you, Your Honor.

23           Q.       Mr. Bees, before we broke briefly we were  
24 discussing about service arrangements that Akron  
25 Thermal may have or have had with customers other than

1 based upon the Akron Thermal tariff. Okay. I'd like  
2 for you to turn to Page 42 of the Disclosure Statement  
3 that I handed you previously. Now, do you see on the  
4 bottom half of Page 42 a listing of executory contracts  
5 with the customers?

6 A. Yes, I do.

7 Q. Is it fair to say that that list  
8 represents the customers that you either have had or  
9 currently have service arrangements based on something  
10 other than the tariff?

11 A. I assume that that is the case.

12 Q. Now, we see the University of Akron there  
13 as No. 1 on the list, and the terms of the arrangements  
14 are also set forth. Do you believe those are accurate  
15 as well?

16 A. I assume that they're accurate, but some  
17 of these I believe are not customers any longer.

18 Q. Okay. Do you see No. 6? That's Akron  
19 City Hospital, Summa?

20 A. Yes.

21 Q. It indicates that there is some sort of  
22 letter agreement dated March 12th, 2007?

23 A. I see that.

24 Q. Is it your understanding that Summa -- the  
25 prices that Summa is currently paying is based upon a

1 letter agreement dated March 12th, 2007?

2 A. I don't believe that that's the case  
3 today.

4 Q. Okay. What is your understanding today?

5 A. There is a dialogue with Summa along the  
6 lines of the contract that we are trying to complete  
7 with them that I described earlier that would be filed  
8 with the Commission.

9 Q. It hurts my head, but I'll leave it  
10 alone.

11 A. Sorry.

12 Q. It's all right. It's my problem. The  
13 listing here of executory contracts on Page 42 of the  
14 Disclosure Statement, is it your understanding that in  
15 bankruptcy the debtor, Akron Thermal in this case, has  
16 the opportunity to terminate executory contracts?

17 A. I believe that there is an option to  
18 assume or reject.

19 Q. Okay. And how many cases, for the  
20 customers that are listed on Page 42, did Akron Thermal  
21 elect to terminate the contracts as part of the  
22 bankruptcy proceeding?

23 A. I'm not sure.

24 Q. Well, if you terminated the contracts,  
25 those customers would migrate to tariff service; right?

1 A. I believe so.

2 Q. And if they migrated to tariff service,  
3 they would be paying Akron Thermal more money; right?

4 A. Yes.

5 Q. Now, there's an agreement here designated  
6 No. 9, Ohio Building Authority, which has a term that  
7 runs through September 23rd, 2013. Do you see that?  
8 It's No. 9.

9 A. Yes.

10 Q. Was that contract filed with the  
11 Commission for approval?

12 A. I don't know. I'm not sure.

13 Q. How about the Akron Board of Education?

14 A. I'm not sure.

15 Q. Are you aware of whether any of these  
16 executory contract arrangements were filed with or  
17 approved by the Commission?

18 A. I'm not sure whether some of these older  
19 ones may have been filed or not.

20 Q. Okay. On Page 43, the next page --

21 HEARING EXAMINER FARKAS: Before we leave  
22 that, are there any other customers not listed here  
23 that you have arrangements with?

24 THE WITNESS: Not to my knowledge, but I  
25 think it would probably be appropriate that Mr. Pucak

1 and Miss Stott address that to make sure that I'm not  
2 informed of something that you would need to know.

3 HEARING EXAMINER FARKAS: Okay. And the  
4 list from two to sixteen, what percent of the total  
5 sales did that represent, do those customers --

6 MR. RANDAZZO: I was just getting to that,  
7 Your Honor.

8 HEARING EXAMINER FARKAS: Okay.

9 THE WITNESS: I'm not sure what that would  
10 be.

11 HEARING EXAMINER FARKAS: All right.

12 Q. Mr. Bees, would you turn to Page 43? And  
13 at least in the case of the five largest contract  
14 customers you'll see a display of sales and dollar  
15 volume on Page 43; correct?

16 A. Yes.

17 Q. So that -- from those -- from the data  
18 displayed on Page 43, at least for those five  
19 customers, you can calculate what percentage they are  
20 of the total; right?

21 A. These five, as the paragraph there I think  
22 indicates, are 66 percent of the sales, of the unit  
23 sales.

24 Q. On Page 44, you were talking earlier about  
25 the price increases that you were able to secure from



1 the contract customers. On Page 44, at the top of the  
2 page, it shows the escalation in prices for that same  
3 population of customers that are listed on Page 43;  
4 correct?

5 A. Yes.

6 Q. And between 2004 and 2007, in the case of  
7 the University of Akron, the top line, the price  
8 doubled, more than doubled; right?

9 A. From the beginning to the most recent?

10 Q. From 2004 to 2007, the price increased by  
11 more than a hundred percent?

12 A. That's correct.

13 Q. And you were projecting in 2008 a price of  
14 \$12.49; right?

15 A. Yes.

16 Q. Okay. For the contracts, whether they've  
17 been filed with the Commission or approved by the  
18 Commission or not, the contracts that you have with  
19 customers that are not served under tariff tend to have  
20 mechanisms in them to pass on increases in fuel costs;  
21 correct?

22 A. In which?

23 Q. The contracts that you have for customers  
24 that are not served by tariff tend to have mechanisms  
25 that pass onto the customers increases in the cost of

1 fuel; correct?

2 A. Increases in the pricing of the fuels that  
3 were determined at the time those agreements were  
4 created, yes.

5 Q. Okay. And to the extent that the plan  
6 that is identified in Akron Thermal's submission in the  
7 emergency case to close Boiler 32 and to increase  
8 reliance on natural gas to create steam, I think you  
9 would agree with me that that would tend to increase  
10 the total cost of fuel consumed by Akron Thermal;  
11 correct?

12 A. That it would increase the cost of fuel to  
13 Akron Thermal to replace coal with gas?

14 Q. Yes.

15 A. It would increase the cost per unit of  
16 fuel, yes.

17 Q. And is it your understanding of the  
18 contractual arrangements that if you were to displace  
19 coal with natural gas, as described in the testimony  
20 that's been submitted by Akron Thermal, that the  
21 increases in fuel costs would be passed onto those  
22 contract customers that have mechanisms to allow Akron  
23 Thermal to pass through changes in fuel costs?

24 A. Those contracts have a fixed fuel mix.  
25 So, in other words, if there's 10 percent gas and 50

1 percent coal, that's the pricing structure. The  
2 increase, I think, or decrease in the pricing of those  
3 fuels is what passes through to the customers.

4 MR. BREITSCHWERDT: Your Honor, I would  
5 request that either counsel or the witness be  
6 instructed to define which contracts for which customer  
7 they're referring to, because they're talking  
8 generalities. Not all the contracts are structured the  
9 same, so this -- while it may apply to one contract, it  
10 may not similarly apply to another.

11 MR. RANDAZZO: I wish, Your Honor, I could  
12 deal in other than generalities, but since these  
13 haven't been filed with the Commission, I have no  
14 idea.

15 MR. BREITSCHWERDT: Not to speak for the  
16 witness, at least with regard to Canal Place's  
17 agreement, which pending -- I guess has been filed and  
18 you said that we don't need to take administrative  
19 notice of, so it is approved by the Commission in 2001,  
20 so at least with regards to Canal Place's contract, I  
21 would like some specificity as to how this is to be  
22 applied or how the discussion is going to proceed.

23 HEARING EXAMINER FARKAS: Okay. Do you  
24 want to -- just proceed with that understanding.

25 MR. RANDAZZO: Thank you, Your Honor.

1           Q.     Have you had discussions with any contract  
2 customers about how you expect their price to be  
3 affected as a result of reducing reliance on coal and  
4 increasing reliance on natural gas?

5           A.     Well, I think to the point that was just  
6 raised, I believe the contract that you're referring  
7 to --

8           Q.     I'm not referring to a specific contract.

9           A.     Well, the contract structure that you're  
10 referring to relates -- I think now is only related to  
11 the Canal -- the Children's Medical Center contract.  
12 AGMC, which had a similar contract which expired, is  
13 now a tariff customer. The University of Akron had a  
14 similar structure contract. They are not under  
15 contract today. Summa we've already discussed. So  
16 it's only the Children's Medical Center that I think  
17 the description of the fuel pass-through that you're  
18 referring to is only to Children's Hospital, Children's  
19 Medical Center.

20          Q.     Okay. So if Akron Thermal -- let's focus  
21 on Children's Hospital. If Akron Thermal's fuel  
22 substitutes natural gas for coal, the revenue collected  
23 from Children's Hospital will increase based upon the  
24 fuel adjustment mechanism that's in the contractual  
25 arrangement with Children's Hospital, is that your

1 understanding?

2 A. Because of the replacing coal with natural  
3 gas?

4 Q. Yes.

5 A. If I recall the mechanics of that contract  
6 correctly, I think the answer to that is no. It is the  
7 fuel price that has an impact on that section.

8 Q. Okay. This gets me to, I guess, the --  
9 strike that. Page 11 of your testimony, in the Q and A  
10 there you indicate that, "The projected income  
11 statement presented by Miss Stott reflects the same  
12 operating expense levels that will be considered in  
13 setting rates in the permanent case." Have you  
14 identified the test year for the permanent case? Do  
15 you know what test year is?

16 A. I'm not sure.

17 Q. Okay. I'd ask you to assume for purposes  
18 of my question that the test year is the 12 month  
19 period designated by the Applicant that is used as the  
20 basis for evaluating the adequacy of existing revenues  
21 based upon expense levels.

22 A. Yes.

23 Q. And I believe you've been involved in the  
24 rate-making process on behalf of Akron Thermal and  
25 you're aware of using that 12 month period; correct?

1           A.     Correct.

2           Q.     Okay. Have you identified what Akron  
3 Thermal is going to use as the test year or test period  
4 for purposes of the permanent rate case?

5           A.     I'm not sure what the specific period of  
6 that 12 month period -- I'm not sure what that is, what  
7 period that is.

8           Q.     How do you know, then, that the projected  
9 income statement, projected -- presented by Ms. Stott  
10 reflects the same operating expense levels that will be  
11 considered in the permanent case?

12          A.     That's my understanding, that it will be,  
13 but I don't know what that period of time is.

14          Q.     Has Akron Thermal filed its 2008 annual  
15 report with the Public Utilities Commission of Ohio?

16          A.     I believe we have.

17          Q.     When was that filed?

18          A.     I don't know what the date was.

19          Q.     Did Akron Thermal submit Operating Reports  
20 to the bankruptcy court on a monthly basis showing its  
21 performance, financial performance?

22          A.     Yes, we did.

23          Q.     Did you submit one as of 12/31/08, do you  
24 recall?

25          A.     I don't recall specifically that we did,

1 but I assume we did.

2 MR. RANDAZZO: Your Honor, may I approach  
3 the witness?

4 HEARING EXAMINER FARKAS: Yes.

5 Q. Mr. Bees, I'm handing you what I believe  
6 is the Operating Report that Akron Thermal filed in the  
7 bankruptcy court on December 31, if I can look over  
8 your shoulder -- or filed on January 20, but showing  
9 the results as of 12/31/08; correct?

10 A. That's correct.

11 Q. Filed January 20 of 2009?

12 A. Yes.

13 Q. And as part of that Operating Report, did  
14 you include income statement information?

15 A. Yes.

16 Q. And what is the -- is the operating income  
17 positive or negative that you show as of 12/31/08?

18 A. Positive.

19 Q. And what is the amount of positive  
20 operating income as of 12/31/08?

21 A. For the current month or for the --

22 Q. As of 12/31/08, for the month.

23 A. For the month, it was 401,811.

24 Q. So, in the month of December of 2008, you  
25 had positive net operating income of four hundred --

1 over \$400,000; right?

2 A. Correct.

3 Q. What was your -- what was the ending  
4 operating income for 2008, year-end, if you know?

5 A. Operating income?

6 Q. Yes.

7 A. For the 12 month period in December '08  
8 was, I think, in the neighborhood of 1.2 million maybe.

9 Q. 1.2 million, you say?

10 A. I believe.

11 Q. Okay. Now, do you have customers that  
12 prepay for steam?

13 A. We have some customers who have been on  
14 budget programs.

15 Q. And at times, those customers that are on  
16 budget programs, do they have more money paid to you  
17 than their actual bill would be under the contract or  
18 the tariff?

19 A. During certain times of the cycle, the 12  
20 month cycle, that could be the case, yes.

21 Q. Have you gone to customers previously and  
22 asked them to advance funds in order to do things like  
23 help you buy wood chips?

24 A. That has occurred in the past, yes.

25 Q. And customers have done that in the past?



1           A.     In some cases, yes.

2           Q.     Have you done that prior to filing an  
3 application for emergency rate relief?

4           A.     In 2009?

5           Q.     Prior to filing your application for  
6 emergency rate relief, did you seek customer assistance  
7 to deal with the cash flow circumstances?

8           A.     In 2009, no. That's not correct.

9           Q.     Now --

10           HEARING EXAMINER FARKAS: Before you leave  
11 that line of questions, on the same page, 11, starting  
12 at Line 7 and going to Line 9, it says, "I would expect  
13 that the permanent rate increase application will  
14 support a revenue increase in this same range." What  
15 is that referring to? What's the range? Is that the  
16 range of revenue increase you're seeking in the  
17 emergency case?

18           THE WITNESS: Yes.

19           HEARING EXAMINER FARKAS: So you're  
20 anticipating in the permanent rate case a rate increase  
21 the same as you're asking for in this emergency case;  
22 is that correct?

23           THE WITNESS: I'm not sure --

24           MR. ROYER: The answer does say the same  
25 range. It doesn't say identical.

1 THE WITNESS: I'm not sure I can answer  
2 that, because, to my knowledge, we don't have that  
3 permanent rate case prepared, and so I think the intent  
4 is to say that we believe this is in the range, as  
5 counsel said.

6 HEARING EXAMINER FARKAS: Okay. I'll  
7 accept that. Thank you.

8 Q. Why didn't -- if you already have the 2008  
9 annual report, if you've got income statement  
10 information for 2008, why haven't you just filed your  
11 application for permanent rate relief?

12 A. Well, the permanent -- the -- there wasn't  
13 an intent to file a permanent rate case until we  
14 determined that we had to come in to the Commission for  
15 this emergency rate case. If it were not for the fact  
16 that we lost the revenue stream from the University of  
17 Akron, we would not have anticipated coming into the  
18 Commission on the tariff customers at all. We were  
19 comfortable that with the University and the balance of  
20 the customers, that we were in a position that we were  
21 economically sound.

22 Q. I understand that from the testimony. I  
23 guess my question was if you've got all the information  
24 available -- well, let me back up. In order to start a  
25 permanent rate case process, is it your understanding

1 that it's initiated with filing what's called a Notice  
2 of Intent?

3 A. I don't know if that's the first step, but  
4 I know that's one of the steps.

5 Q. Would you assume with me that that's the  
6 case, and as part of that notice you have to identify  
7 the test year and date certain, and you also include  
8 the rates that you proposed to submit in your  
9 application for permanent rate relief. Will you  
10 indulge my assumption?

11 A. Okay.

12 Q. Have you developed the rates that you  
13 intend to submit with your permanent rate increase  
14 application?

15 A. I don't know that those are prepared at  
16 this point. I think the intent is somewhere in the  
17 September time frame that we would be coming in with  
18 that information.

19 Q. I guess I'm confused here. I thought you  
20 said in your testimony that you'd expect the results in  
21 the permanent case to be very similar to the results  
22 that you're asking for in the emergency case, which  
23 translates to me into we already know how much revenue  
24 we want, okay, and I guess I'm struggling, Mr. Bees, to  
25 understand why it is you can't file your permanent rate

1 increase, at least the Notice of Intent, sooner than  
2 September. Can you help me? Why have you not  
3 submitted at least a Notice of Intent showing the rates  
4 that you propose in your permanent rate increase  
5 application?

6 A. Well, I think our focus is on this  
7 emergency rate filing, and we are going to get to that  
8 next step once this is addressed, and we will deal with  
9 it in the fashion that I think is understood with the  
10 Staff as appropriate.

11 Q. Am I correct that you don't, at this  
12 point, intend to file even the Notice of Intent until  
13 September 2009?

14 A. I can't tell you exactly what the timing  
15 is going to be on that, but it's my general  
16 understanding that that is in the next month or so.

17 Q. Are you willing, if the Commission were to  
18 give you any emergency rate increase, are you willing  
19 to accept a condition that would require you to refund  
20 the difference between the amount of revenue that you  
21 collect based upon the emergency relief and the amount  
22 of revenue that you would have otherwise collected had  
23 the permanent relief gone into effect at the same time  
24 as the emergency relief?

25 A. My understanding is that's the nature of

1 the process here.

2 Q. Well, it's my understanding, too, but it's  
3 not one of the things that you have identified in your  
4 testimony, so I need to have an answer from you on  
5 behalf of Akron Thermal about whether you would accept  
6 such a condition if the Commission were to impose one  
7 in conjunction with granting emergency rate relief?

8 A. I'm not sure I'm in a position to make  
9 that kind of commitment with the information that I  
10 have available at this point, but I understand the  
11 process is such that that is a part of the process, and  
12 I would expect that that will be evaluated as it  
13 becomes timely.

14 Q. Evaluated based on what?

15 A. Based on legal counsel and discussions  
16 with the Staff, with all those involved.

17 Q. So there are at least some conditions in  
18 your mind where you would be unwilling to accept a  
19 refund obligation in conjunction with an award of  
20 emergency rate relief; is that correct?

21 A. No. I have no conditions in mind. I'm  
22 just simply telling you I don't know the answer to your  
23 question at this point.

24 Q. Well, let me see if I can end this this  
25 way, as things stand right here right now, you are

1 unable to state that Akron Thermal would accept a  
2 refund obligation as a condition for the receipt of an  
3 emergency rate increase? Is that a correct statement?

4 A. Given my understanding of the process  
5 here, I recognize that it is part of the discussion. I  
6 don't know if there are other issues that come into  
7 play in terms of how the process unfolds. If there's  
8 something that -- it seems that it's premature for me  
9 to be able to make that comment, so I don't know that I  
10 can make that comment.

11 Q. Is there any other witness that Akron  
12 Thermal is going to present in this proceeding that  
13 would be prepared to address that issue?

14 MR. ROYER: Your Honor, Akron Thermal will  
15 do what the Commission tells it to do in that regard.  
16 I don't know what -- where we're going with this.  
17 We'll do what the Commission tells us to do as a  
18 condition of the order. To make him say that he's  
19 going to commit to it, if the Commission understands  
20 that that's generally the precedent, but if the  
21 Commission were to order something else, I don't know  
22 where that gets us, so --

23 MR. RANDAZZO: Your Honor, it's been my  
24 experience and I suspect also Mr. Royer's that it is  
25 typically the Applicant that affirmatively states that

1 the Applicant will accept as a condition of any  
2 emergency rate relief a refund obligation.

3 HEARING EXAMINER FARKAS: I believe he's  
4 answered he can't make that statement. Is that  
5 correct, you can't -- you can't state affirmatively yes  
6 to his question?

7 THE WITNESS: I guess the right way to put  
8 it is I'm not sure I know enough about the answer, so I  
9 can't answer his question affirmatively.

10 HEARING EXAMINER FARKAS: That's fine.

11 MR. RANDAZZO: Okay.

12 Q. One last area, Page 26 of the Disclosure  
13 Statement.

14 HEARING EXAMINER FARKAS: Just for the  
15 record, is this going back to the financial statement?  
16 Was that one of the documents I took administrative  
17 notice of?

18 MR. RANDAZZO: Yes, Your Honor.

19 HEARING EXAMINER FARKAS: Thank you.

20 A. I'm sorry, what page was that?

21 Q. Page 26.

22 MR. RANDAZZO: Your Honor, it's Item No.  
23 26 on my list.

24 HEARING EXAMINER FARKAS: Thank you.

25 Q. Do you have Page 26 of the Disclosure

1 Statement in front of you?

2 A. Yes, I do.

3 Q. I'd like you to focus on the second full  
4 paragraph that begins with, "The two customers." Do  
5 you have that paragraph?

6 A. Yes.

7 Q. And there the Disclosure Statement is  
8 discussing the fact that the University of Akron and  
9 Summa have their own gas-fired alternatives. The point  
10 actually that I'd like to discuss with you is the next  
11 sentence that begins, "ATLP has had preliminary  
12 discussions." Do you see that sentence?

13 A. Yes.

14 Q. And the sentence indicates that there have  
15 been some discussions with the PUCO Staff or  
16 representatives of the PUCO Staff with respect to the  
17 challenge presented by the two large customers with  
18 alternative means of meeting their steam requirements  
19 and that you think there's some way to mitigate the  
20 financial effect of these circumstances faced by ATLP.  
21 Do you see that?

22 A. Yes, I do.

23 Q. And can you tell me what the nature of the  
24 discussions were and what means of mitigating the  
25 financial effect these circumstances faced by ATLP



1 might be?

2 A. No. Actually, I cannot recall exactly  
3 what this section is referring to.

4 Q. Are you aware of anybody who will be  
5 testifying on behalf of Akron Thermal in this  
6 proceeding that can address this issue?

7 A. I don't know.

8 Q. Do you have any idea what the basis for  
9 this statement might be?

10 A. I can't recall if I did know what the  
11 basis of this was.

12 Q. If you would turn to Page 23 and the  
13 section that is titled, "District Energy System  
14 Regulation in the 2005 Rate Case," would it be fair to  
15 say that this discussion describes the conflict between  
16 the business model of ATLP, Akron Thermal, Limited  
17 Partners, and the statutory rate-making process  
18 administered by the Public Utilities Commission of  
19 Ohio?

20 A. I'm sorry, will you ask me the question  
21 again?

22 Q. Yes. The question was would it be fair to  
23 say that this section of the Disclosure Statement  
24 discusses the challenges presented to Akron Thermal,  
25 Limited Partners as a result of the differences between

1 the business model that ATLP relies upon, in other  
2 words, leasing system that it operates, and the  
3 regulatory process administered by the PUCO to  
4 establish rates?

5 A. I think it's meant to address that issue,  
6 yes.

7 MR. RANDAZZO: That's all I have, Your  
8 Honor.

9 Thank you, Mr. Bees.

10 HEARING EXAMINER FARKAS: Thank you.

11 Mr. McNamee, any questions? Do you have  
12 any questions?

13 MR. McNAMEE: Yes.

14 MR. BREITSCHWERDT: Your Honor, I do have  
15 a few questions. Would it be appropriate for me to go  
16 before Staff?

17 HEARING EXAMINER FARKAS: That's fine.

18 MR. BREITSCHWERDT: Do you normally go  
19 last?

20 MR. McNAMEE: I usually do. Go right  
21 ahead.

22 MR. ROYER: Can we go off the record for a  
23 moment?

24 HEARING EXAMINER FARKAS: Yes. Let's go  
25 off the record.

1 (Discussion off the record.)

2 HEARING EXAMINER FARKAS: We're back on  
3 the record.

4 CROSS-EXAMINATION

5 By Mr. Breitschwerdt:

6 Q. Mr. Bees, Brett Breitschwerdt for Canal  
7 Place, Ltd. I have a few questions for you. I would  
8 like to return to an area that Mr. Randazzo asked you a  
9 number of questions on which related to the terms and  
10 conditions of special contracts and whether they were  
11 approved by the Commission. On Page 7 of your  
12 testimony you refer or you make the statement, starting  
13 at Line 8 through Line 12, that Akron Thermal is  
14 comfortable with a special contract situation, and  
15 specifically in Line 10 you reference "a modification  
16 of its special contract with Canal Place" that it  
17 achieved in the context of the bankruptcy proceeding.  
18 Are you familiar with that modification?

19 A. I'm familiar somewhat, and I understand  
20 that the revenue from Canal Place is higher as a result  
21 of that, that modification.

22 Q. Are you familiar with the agreement that  
23 was underlying that modification?

24 A. Not in detail I'm not, no.

25 MR. BREITSCHWERDT: Your Honor, if I could

1 approach?

2 HEARING EXAMINER FARKAS: Yes.

3 MR. BREITSCHWERDT: Your Honor, I'm  
4 showing the witness Joint Application in Case No.  
5 01-3333. It's one of the documents that Mr. Randazzo  
6 requested administrative notice of.

7 HEARING EXAMINER FARKAS: Okay. Thank  
8 you.

9 MR. RANDAZZO: Your Honor, that's No. 10  
10 on my list, if anybody is keeping track.

11 HEARING EXAMINER FARKAS: Thank you.

12 Q. Mr. Bees, would you accept subject to  
13 check that this is the application by both Akron  
14 Thermal and Canal Place for approval of a reasonable  
15 arrangement to the Commission in 2001? I'm sorry, I'll  
16 allow you some time to read it.

17 A. Yes.

18 Q. If you turn to Exhibit A, the date of this  
19 agreement was May 18th, 2001?

20 A. Yes.

21 Q. If you look at Section 1, the term of the  
22 agreement is through March 31, 2012?

23 A. Yes.

24 Q. Is that correct?

25 A. Right.

1           Q.     And is it your understanding that this  
2 agreement still controls the relationship between Akron  
3 Thermal, Limited Partnership and Canal Place at least  
4 with regards to steam issues --

5           A.     I believe so.

6           Q.     -- supply of steam?

7                     And the modification to the agreement from  
8 the 09-442 case that you're requesting approval of is a  
9 modification to this agreement?

10          A.     I believe that's the correct way to put  
11 that.

12          Q.     Would you accept subject to check that  
13 this reasonable arrangement was approved by the  
14 Commission on February 21st, 2002, in this same case?

15          A.     I'm not sure what the date was. It was  
16 approved.

17          Q.     But it's your understanding it was  
18 approved?

19          A.     Yes.

20          Q.     And it's currently in effect subject to  
21 the modification that you're requesting approval of  
22 now?

23          A.     Yes.

24          Q.     Okay. And I'd like to turn to the  
25 modification itself. Do you have a copy of the

1 application in the 09-442 case where you're requesting  
2 approval of the modification?

3 A. I do not.

4 MR. BREITSCHWERDT: Your Honor, may I  
5 approach?

6 HEARING EXAMINER FARKAS: Yes.

7 Q. Mr. Bees, if you could turn to the last  
8 page of this application where it -- the signature  
9 page?

10 A. Yes.

11 Q. You are the signatory party on behalf of  
12 Akron Thermal, Limited Partnership. You're signing on  
13 behalf of Opportunity Parkway, LLC as the general  
14 partner, as the president of the organization; is that  
15 correct?

16 A. That's correct.

17 Q. So you are familiar with the terms and  
18 conditions of this modification to the 2001 reasonable  
19 arrangement, is that correct, generally familiar?

20 A. Generally, yes.

21 Q. And it's your -- based on your  
22 familiarity, it was an arm's length negotiated  
23 agreement between two knowledgeable parties?

24 A. I believe so.

25 Q. And it's the request of the Applicant,

1 Akron Thermal, for this modification to the 2001  
2 agreement be approved by the Commission?

3 A. Yes.

4 Q. Okay. Thank you.

5 That's all I have, Your Honor.

6 HEARING EXAMINER FARKAS: Okay. Thank  
7 you.

8 CROSS-EXAMINATION

9 By Mr. McNamee:

10 Q. Good afternoon, Mr. Bees. I just have a  
11 couple of questions for you. You'll recall in  
12 cross-examination by Mr. Randazzo talking about the  
13 steam that's provided from Akron Thermal to its cooling  
14 company; right?

15 A. Yes.

16 Q. Is there a payment that's made for that  
17 steam?

18 A. I'm not sure whether the -- there is a  
19 payment made between the two companies or if it's some  
20 type of intercompany accounting for that. Miss Stott,  
21 I think, would be able to explain that.

22 Q. Okay. The only other thing, if you look  
23 at Page 7 of your testimony, the second question -- or  
24 the second answer on that page refers to an "equity  
25 infusion" and "unsecured line of credit." Do you see

1 that?

2 A. I do.

3 Q. Okay. That equity infusion and at least  
4 the draws on that line of credit would be reflected  
5 somewhere in Akron Thermal's financial statements,  
6 wouldn't it?

7 A. I believe so, yes.

8 Q. Where?

9 A. The three million should be an equity  
10 accounting.

11 Q. Do you know which one?

12 A. I'm not sure.

13 Q. So you couldn't tell me specifically  
14 the --

15 A. The line item?

16 Q. Yes.

17 A. I think that would be something Miss Stott  
18 would be able to handle.

19 Q. That's all I need. Thank you.

20 HEARING EXAMINER FARKAS: I have a couple  
21 of questions for you.

22 EXAMINATION

23 By Hearing Examiner Farkas:

24 Q. On Page 6 of your testimony, on Line 4  
25 you've stated that Akron Thermal emerged from



1 bankruptcy in February '09. What does that mean? Does  
2 that mean that you no longer have any obligations to  
3 report back to the bankruptcy court on anything?

4 A. No. There's some continuing reporting  
5 that is required to the U.S. Trustee.

6 Q. Okay.

7 A. And, again, I think Miss Stott would be  
8 able to explain how that works and what the mechanics  
9 are of what we filed.

10 Q. Have you reported back to the bankruptcy  
11 court that you lost your -- 30 percent of your revenue  
12 from the University of Akron is no longer coming into  
13 the company, that that customer is gone?

14 A. I don't know what the communication has  
15 been directly through the Trustee.

16 Q. You don't know if that's been reported to  
17 the Trustee or the bankruptcy court?

18 A. I don't know.

19 HEARING EXAMINER HUSSEY: Who would be  
20 responsible for those communications to the Trustee?

21 THE WITNESS: I think that would be  
22 between Miss Stott, possibly Miss Kechler of my office  
23 as well.

24 MR. RANDAZZO: I'm sorry, I'm having  
25 trouble hearing the witness.

1 THE WITNESS: Miss Stott or Miss Kechler  
2 in my office.

3 Q. The same on Page 6, on Line 20 you  
4 indicated that the reason you went into bankruptcy was  
5 because of outstanding -- accumulated outstanding  
6 obligations?

7 A. Correct.

8 Q. Is the amount of those -- the amount of  
9 that outstanding obligation larger or smaller than the  
10 loss of revenue from the University of Akron?

11 A. Much larger.

12 Q. Much larger?

13 A. The accumulated debt that was resolved  
14 through the bankruptcy?

15 Q. Yes.

16 A. Much larger.

17 Q. On Page 9, on Line 20 you say, "Ms.  
18 Stott's analysis shows that this is a bare-bones  
19 request and contains no profit component." Also, on  
20 Page 11, Line 20, you say, "In the absence of emergency  
21 relief, Akron Thermal will be unable to continue to  
22 operate." Are you stating that if Akron Thermal -- if  
23 the Commission does not approve Akron Thermal's request  
24 as stated in the application, that Akron Thermal will  
25 no longer be able to operate?

1           A.       Well, without the additional revenue,  
2 Akron Thermal will not be able to continue to pay its  
3 normal course of bills.

4           Q.       So if the Commission were to come back and  
5 grant 50 percent of the request, that doesn't do Akron  
6 Thermal any good? They'd still have to stop operating?

7           A.       I think that's correct.

8           Q.       Okay. Has the -- are the contracts -- or  
9 the agreements that Akron Thermal has with these  
10 customers that were listed in the Disclosure Statement,  
11 do those allow Akron Thermal to void the contract at  
12 any time?

13          A.       I don't believe they would, but -- and  
14 that whole subject of what's listed in that Disclosure  
15 Statement, I'm not sure which of those contracts are  
16 still in effect, and I'm sure that Mr. Pucak and Miss  
17 Stott would be able to provide more detail about those.

18          Q.       Okay. On Page 12, Line 10, you said, "Any  
19 other operator would face the precise situation Akron  
20 Thermal is now in." Is your situation the result of  
21 the outstanding obligations you have rather than the  
22 revenue stream? I mean, if another operator was to  
23 take the place of Akron Thermal and didn't have the  
24 debt obligations, are you saying that that entity could  
25 not operate the system profitably?

1           A.     If the situation remains the same with the  
2 customer base that Akron Thermal receives revenue from  
3 today, that doesn't change and the rates don't change,  
4 I don't see how another operator could come in and do  
5 much different than what we have done through what  
6 we've indicated with the plan approaching the loss of  
7 the University.

8           Q.     Okay. Thank you.

9                   Why don't we go off the record?

10                  (Discussion off the record.)

11           HEARING EXAMINER FARKAS: We're going to  
12 break for lunch. We'll come back at 2:00.

13                  (Lunch recess taken.)

14           HEARING EXAMINER FARKAS: Let's go back on  
15 the record -- wait a minute. Let's go off the record.

16                  (Discussion off the record.)

17           HEARING EXAMINER FARKAS: Let's go back on  
18 the record, and we'll just proceed. Go ahead.

19           MR. ROYER: Thank you, Your Honor.

20                   REDIRECT EXAMINATION

21 By Mr. Royer:

22           Q.     Mr. Bees, during your cross-examination by  
23 Mr. Randazzo, he asked you some questions along the  
24 lines of whether the University of Akron had supported  
25 the Plan of Reorganization, and I believe you referred

1 to an agreement -- or an agreed order that had  
2 accomplished that result. Just for the record, is that  
3 order attached to your testimony as part of JPB  
4 Exhibit 1?

5 A. Yes, it is.

6 Q. And would that be the last document in the  
7 set?

8 A. Yes.

9 Q. Okay. Now, Mr. Randazzo also asked you  
10 some questions regarding whether the fact that the fuel  
11 mix contemplated would now be comprised with the --  
12 more heavily with natural gas would, in fact, offset  
13 any competitive advantage you might be able to offer UA  
14 in the subsequent contract discussions. Do you recall  
15 that question?

16 A. I do, yes.

17 Q. Would the fuel mix that's -- that contains  
18 this greater proportion of natural gas be the fuel mix  
19 that would be used to serve -- or that would be  
20 involved if UA were to come back to the system?

21 A. No. If the University would return to the  
22 system as a customer now, we would retain the capacity  
23 of Boiler 32 and provide service that would include  
24 coal in the fuel mix.

25 Q. If you would do that when -- if UA -- why

1 would you do that if UA came back?

2 A. Well, we'd need that capacity for purposes  
3 of meeting the peak requirements of the system, and it  
4 would be the least cost approach.

5 Q. Mr. Randazzo also asked some questions  
6 regarding the last proposal that you had made to UA in  
7 an attempt to retain them as a customer, and I believe  
8 you -- and I believe he developed with you a number in  
9 the \$600,000 range that would basically -- that you  
10 were willing to forego to try to get them back on the  
11 system -- or retain them on the system. Do you recall  
12 that testimony?

13 A. Yes, I do.

14 Q. Then he followed that up by asking you  
15 about -- asking you if, as a result of that, weren't  
16 you asking effectively the other ratepayers to pick up  
17 that -- those dollars as a result of asking for the  
18 amount of rate relief requested in the emergency case.

19 A. Yes.

20 Q. Is that correct?

21 A. It's not correct that the application  
22 request is based solely on the revenue lost from the  
23 University. It's a combination of the lost revenue as  
24 well as the reduced expenses that occur because of the  
25 University leaving the system as well as increases in

1 costs related to decisions that are necessary to  
2 accommodate the lower peak requirement, having to  
3 reduce the capacity of the system; so it's the net  
4 effect of all of that, plus some accommodation  
5 adjustment that would -- profit estimates and so forth  
6 related to the University.

7 Q. So why were you willing to -- in other  
8 words, why were you willing to offer the -- offer that  
9 proposal to the University?

10 A. Well, there was sufficient margin, as we  
11 saw it, with the University's revenue that we could  
12 absorb that, that reduced price to the University  
13 during the period where there's such low natural gas  
14 prices right now.

15 Q. Mr. Randazzo also asked you why the  
16 company hadn't simply filed a permanent -- proceeded  
17 with a permanent rate request. What's your  
18 understanding of the timing that would be involved for  
19 prosecuting a permanent rate application to the point  
20 where you finally had a Commission order?

21 A. My understanding is that it can take nine  
22 months or so for a permanent rate case.

23 Q. So would a -- given that understanding,  
24 would a permanent rate case filing have done anything  
25 to alleviate the emergency that the company is

1 currently facing?

2 A. No.

3 Q. That's all I have. Thank you.

4 HEARING EXAMINER FARKAS: Go ahead.

5 RECROSS-EXAMINATION

6 By Mr. Randazzo:

7 Q. Couple of questions. The University of  
8 Akron left the system in March of this year, 2009?

9 A. I think they were -- I think it was  
10 through April. April 30 was the -- I believe was the  
11 date of the contract.

12 Q. So between then and now you knew you had  
13 this big revenue loss, cash flow issue; right?

14 A. I think the University notified us of the  
15 decision late on the 30th of April.

16 Q. Okay. And had you filed an application  
17 for permanent rate relief, it would have required you  
18 to provide supporting schedules showing rate base,  
19 expenses, cost of capital, and other information, so  
20 that we didn't have to speculate quite as much about  
21 what the permanent case might look like; correct?

22 MR. ROYER: I object. I'm not sure  
23 what -- I'm not sure anybody is speculating about what  
24 the permanent case might look like because it's not  
25 relevant to the issues at hand.



1 MR. RANDAZZO: With your permission, Your  
2 Honor, I thought the witness previously had suggested  
3 that the information that was furnished by Ms. Stott  
4 would be indicative of what they expect the permanent  
5 case to look like.

6 MR. ROYER: Well, I believe the specific  
7 testimony was that the operating expenses that were  
8 included or that were reflected in Miss Stott's cash  
9 flow analysis would look a lot like the -- would look a  
10 lot like the operating expenses in a permanent --  
11 permanent case. I don't think there's any suggestion  
12 that Miss Stott's analysis supports that. I mean, if  
13 you want to go for an analysis of what a permanent case  
14 might look like, you might want to go to Mr. Hodgden's  
15 testimony, where he comes up with a number that's  
16 certainly within the range of what the emergency  
17 application is.

18 HEARING EXAMINER FARKAS: I'll allow the  
19 question. Do you want it to be read?

20 (Question read back.)

21 A. I understand the process for a permanent  
22 rate case includes a series of schedules and  
23 information that's required. This -- this process of  
24 getting this emergency filing has been time consuming,  
25 and our -- our determination was that we needed to get

1 action immediately and not spend time filing a  
2 permanent rate case that would potentially take nine  
3 months. We needed to focus on this emergency filing,  
4 and we will, as we've already discussed, be focusing on  
5 those schedules and working towards the permanent rate  
6 case, but this is the first part we could even attend  
7 to. We have to deal with this issue now.

8 Q. Okay. You told Mr. Royer in response to  
9 his redirect examination that if the University of  
10 Akron were to return, that you would retain the  
11 capacity in Boiler 32, I think was your exact words.  
12 If the University of Akron came back, would you not be  
13 as sensitive to the Notice of Violation issued by the  
14 EPA as is indicated in your testimony?

15 A. Would we not be as sensitive?

16 Q. Yes.

17 A. We'd be sensitive in the context of having  
18 an opportunity to approach it with a customer base that  
19 would support some of the alternatives that we see  
20 going forward to deal with that in a capital investment  
21 program. That is one avenue to deal with that. The  
22 other avenue, unfortunately, is we're not quite sure  
23 how to conclude the NOV with Boiler 32 as a standby  
24 unit; so there are two different situations.

25 Q. Sure. And if you were to shut down Boiler

1 32, would it affect the steam supply available to Akron  
2 Thermal Cooling?

3 A. I'm not sure that it would or wouldn't. I  
4 think that's something that maybe Mr. Pucak could  
5 address more specifically.

6 Q. Okay. The last point, you said that the  
7 proposal which you submitted to the Commission is not  
8 asking other customers to pick up the \$600,000 revenue  
9 difference between the revenue under the University of  
10 Akron's prior contract and the proposal that you made.  
11 Did I correctly understand your testimony?

12 A. I'm not sure I understand your question.

13 Q. Okay. Let me try it this way, the amount  
14 of rate relief that you're asking for starts with the  
15 revenue -- you're asking for on an emergency basis,  
16 starts with the revenue that you attribute to the  
17 service arrangement that you had historically with the  
18 University of Akron; right?

19 A. That's one of the components of the  
20 calculation, yeah.

21 Q. You reduce that revenue by the expenses  
22 that you associate with the loss of the University of  
23 Akron; correct?

24 A. I think so.

25 Q. And then you increase that prior

1 University of Akron revenue level as adjusted by the  
2 amount of incremental expenses you associate with  
3 closing down Boiler 32 and shifting to natural gas,  
4 wood chips, and tire-derived fuels; right?

5 A. You said increase that revenue, that --  
6 just I'm not sure I understand exactly the way you put  
7 that.

8 Q. The base number for purposes of computing  
9 the rate relief that you requested on an emergency  
10 basis is the revenue produced by the University of  
11 Akron under the prior contract; right?

12 A. 2008, I believe.

13 Q. Right. It's not the revenue that you  
14 would have obtained had your proposal to the University  
15 of Akron been accepted by the University of Akron;  
16 correct?

17 A. That's correct.

18 Q. That's all I have. Thank you.

19 HEARING EXAMINER FARKAS: Do you have any  
20 questions?

21 MR. BREITSCHWERDT: No recross, Your  
22 Honor.

23 HEARING EXAMINER FARKAS: Staff?

24 MR. McNAMEE: Nothing.

25 HEARING EXAMINER FARKAS: Do you have any

1 questions?

2 MR. HEINTZ: No, Your Honor.

3 MS. BURGAN: No questions.

4 MR. ROYER: One follow-up on Mr.  
5 Randazzo.

6 HEARING EXAMINER FARKAS: I don't do  
7 re-recross, so you're excused.

8 (Witness excused.)

9 HEARING EXAMINER FARKAS: We'll go off the  
10 record for a second.

11 (Discussion off the record.)

12 MR. ROYER: I would move the admission of  
13 Applicant's Exhibit 2.

14 HEARING EXAMINER FARKAS: Any objections?

15 Hearing none, then that will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 MR. ROYER: Applicant would call Richard  
18 Pucak. I would ask that the Direct Testimony of  
19 Richard J. Pucak which was submitted July 2nd, 2009, be  
20 identified as Applicant Exhibit 3.

21 HEARING EXAMINER FARKAS: So marked.

22 Raise your right hand.

23 RICHARD J. PUCAK,  
24 being by Hearing Examiner Farkas first duly sworn, as  
25 hereinafter certified, testifies and says as follows:

1 HEARING EXAMINER FARKAS: You're sworn.

2 You may be seated.

3 You may proceed.

4 DIRECT EXAMINATION

5 By Mr. Royer:

6 Q. Would you state your name and business is  
7 address for the record.

8 A. Richard Pucak, P-u-c-a-k, 226 Opportunity  
9 Parkway, Akron, Ohio, 44307.

10 Q. You have before you a document that's been  
11 marked for identification purposes as Applicant's  
12 Exhibit 3.

13 A. There's no documents here.

14 Q. You didn't bring yours?

15 A. No. Sorry.

16 Q. I am placing before you a document that's  
17 been identified as Applicant's Exhibit 3. Can you  
18 identify that document?

19 A. Yes. It's my Direct Testimony on behalf  
20 of Akron Thermal.

21 Q. Was that testimony prepared by you or  
22 under your direction and supervision?

23 A. Yes.

24 Q. And do you have any corrections or  
25 additions to your testimony?

1 A. No.

2 Q. If I were to ask you the questions set  
3 forth in Applicant's Exhibit 3, would your answers to  
4 those questions be the same today here on the stand?

5 A. Yes.

6 MR. ROYER: Witness is available.

7 HEARING EXAMINER FARKAS: Mr. Randazzo.

8 MR. RANDAZZO: Yes. Thank you, Your  
9 Honor.

10 CROSS-EXAMINATION

11 By Mr. Randazzo:

12 Q. Mr. Pucak, you say that your  
13 responsibilities are those of General Manager of Akron  
14 Thermal. Have your responsibilities changed as a  
15 result of the reorganization that Mr. Bees described  
16 earlier today?

17 A. Just my reporting.

18 Q. And who do you report to now?

19 A. Mr. Abbott.

20 Q. Have you discussed with Mr. Abbott your  
21 testimony or positions that you might take in this  
22 proceeding?

23 A. Not directly, no.

24 Q. Have you discussed with him indirectly?

25 A. Just a conversation about the case.

1 Q. And did you receive any guidance from him  
2 regarding the case?

3 A. No.

4 Q. You say that you were involved in the --  
5 at the bottom of Page 2, the 2000 emergency rate relief  
6 application of Akron Thermal. Do you see that?

7 A. Yes.

8 Q. That case is one in which Akron Thermal  
9 requested an emergency increase for the steam and hot  
10 water customers; correct?

11 A. That's correct.

12 Q. And did Akron Thermal propose in that case  
13 that the emergency increase be subject to refund?

14 A. I don't recall the answer to that.

15 Q. You were here during the conversation with  
16 Mr. Bees about how many steam or hot water customers of  
17 Akron Thermal -- by the way, does Akron Thermal,  
18 Limited Partnership have any cooling customers  
19 presently?

20 A. Akron Thermal?

21 Q. Akron Thermal, Limited Partnership.

22 A. Does it have any cooling customers?

23 Q. Presently.

24 A. There is a customer that takes steam for  
25 cooling purposes, and they're served off the tariff



1 sheet with regard to that service.

2 Q. Okay. You were here earlier -- you were  
3 in the hearing room when we started today; correct?

4 A. Yes, I was.

5 Q. And you were here during the conversation  
6 with Mr. Bees regarding those customers that may be  
7 served under arrangements other than through the  
8 tariff?

9 A. Yes.

10 Q. How many customers is Akron Thermal,  
11 Limited Partnership presently serving on arrangements  
12 that are other than tariff?

13 A. Four -- five.

14 Q. Can you identify those five for me,  
15 please?

16 A. Children's Hospital, Canal Place, Rogers  
17 Industries, Summa, and the Canal Park Condominium  
18 Association.

19 Q. And do you have -- probably not.

20 Could I ask that the Disclosure Statement  
21 be returned to the stand?

22 May I approach the witness?

23 HEARING EXAMINER FARKAS: Yes.

24 Q. Would you turn to Page 42?

25 A. I'm sorry?

1 Q. Forty-two of the Disclosure Statement.

2 And for purposes of the record, this is  
3 the Disclosure Statement that I previously discussed  
4 with Mr. Bees as a witness in the proceeding and one  
5 that we ask administrative notice be taken.

6 HEARING EXAMINER FARKAS: Okay.

7 Q. Are you at the page?

8 A. Yes, I am.

9 Q. Okay. And could you -- you identified  
10 Children's Hospital, which is on the list on Page 42;  
11 right?

12 A. Yes.

13 Q. And that has the term through March 31,  
14 2011?

15 A. Correct.

16 Q. Is that the current term?

17 A. Yes.

18 Q. And has that been filed with and approved  
19 by the Commission?

20 A. It has been filed with. It has not been  
21 approved.

22 Q. And when was it filed with the Commission?

23 A. Recently.

24 Q. You mentioned Canal Place?

25 A. Yes.

1 Q. Okay. Has that been filed with the  
2 Commission for approval?

3 A. Yes.

4 Q. And Summa, which is No. 6 on the list;  
5 right?

6 A. Yes.

7 Q. Akron City Hospital?

8 A. Yes.

9 Q. Could you tell me what the nature of the  
10 arrangement is under which Summa is presently receiving  
11 service?

12 A. Yes. We have been -- have ongoing  
13 discussions with Summa about their contract and --

14 Q. What contract?

15 A. About their negotiating contract. And  
16 originally they basically said that they wanted to be a  
17 month-to-month contract and they would not sign any  
18 agreement at this point in time due to the bankruptcy  
19 and where Akron Thermal was at. A few months ago I  
20 went back to them and told them we have to have some  
21 kind of documented paper between us to get into  
22 compliance with the Commission rules, we can't serve  
23 them without either a contract or a -- having them on  
24 tariff, and they obviously aren't going to go on tariff  
25 with their own system.

1           Q.     So how are you developing the prices for  
2 Summa presently?

3           A.     Summa has a calculation that they believe  
4 is their avoided costs for producing steam, their fuel  
5 component to produce their steam, and basically they  
6 determine their gas costs and plug it into the formula,  
7 and it gives us a monthly -- or gives them a monthly  
8 price that they would be willing to pay for the steam.

9           Q.     So they're setting their own price, more  
10 or less?

11          A.     Well, they're trying to set their price  
12 based on their avoided costs to produce it themselves.

13          Q.     And you're using the price that they set,  
14 then, to bill them for steam?

15          A.     Yes.

16                 HEARING EXAMINER FARKAS:   Just so I  
17 understand you, are you saying that if you were to  
18 charge Summa the tariff rate, they would stop being a  
19 customer?

20                 THE WITNESS:   That is correct.

21                 HEARING EXAMINER FARKAS:   Thank you.

22          Q.     Again, Summa is one of those large  
23 customers that has its own system in place and can meet  
24 its needs without relying on Akron Thermal?

25          A.     Yes.

1 Q. And when Akron Thermal, Limited  
2 Partnership took over the operation of the system, was  
3 Summa a customer?

4 A. I believe so.

5 Q. You mentioned Rogers Industries?

6 A. Yes.

7 Q. That would be Rogers Industrial, Item No.  
8 10 on Page 42?

9 A. Yes.

10 Q. And the description on Page 42 indicates  
11 that the contract is dated March 16th, 1993?

12 A. Yes.

13 Q. Is that the current arrangement that's in  
14 place with Rogers?

15 A. Yes, it is.

16 Q. And what is the term of that?

17 A. There is no term on the contract.

18 Q. And has that contract been filed with and  
19 approved by the Commission?

20 A. I do not believe so.

21 Q. Now, the list on Page 42 identifies other  
22 customers that were previously served by contracts;  
23 correct?

24 A. Yes.

25 Q. You have identified five that are

1 continuing to receive service through a contract. What  
2 happened to the other contracts?

3 A. Some of them expired and the customers  
4 don't take steam anymore or they've gone out of  
5 business, and some of them were rejected in the  
6 bankruptcy and they went to tariff.

7 Q. Okay. Which ones were rejected in the  
8 bankruptcy and went to tariff?

9 A. I don't know that I can give you an exact  
10 list, but I can give it a try. Akron Professional  
11 Baseball, Akron Board of Education, Akron Art Museum,  
12 and St. Bernard's -- actually, I believe St. Bernard's  
13 was on tariff before the contract was canceled or their  
14 contract expired.

15 Q. How about the City of Akron?

16 A. Yeah. Those were canceled, rejected in  
17 the bankruptcy.

18 Q. I assume you're aware that there's a lease  
19 between the City of Akron and Akron Thermal as well as  
20 an ordinance --

21 A. Yes.

22 Q. -- giving Akron Thermal a franchise to  
23 provide heating and cooling service?

24 A. Yes.

25 Q. Are you aware of any provisions in either

1 the lease agreement or the franchise ordinance that  
2 affect the timing of Akron Thermal's ability to  
3 increase rates to the City of Akron?

4 A. I believe there's language in there, but I  
5 don't know it specifically off the top of my head.

6 Q. If I were to suggest to you that the City  
7 of Akron's rates can't be increased without notice, 180  
8 days prior to the fiscal year of the City of Akron,  
9 would that refresh your recollection?

10 A. That's -- yes.

11 Q. Do you recall that limitation on your  
12 ability to raise rates to the City of Akron?

13 A. I believe that's in the franchise -- or  
14 the lease.

15 Q. Are there also provisions in either the  
16 lease or the franchise ordinance that entitle Akron to  
17 receive rates based upon the most favored, favorable  
18 rate offered by Akron Thermal?

19 A. I believe for similar situated customers.

20 Q. Right. Is the price that you're currently  
21 charging Summa above or below the price that you  
22 offered the University of Akron?

23 A. I believe it's pretty representative of  
24 what we offered. The University buys BTUs and Summa  
25 buys Mlbs, so you have to convert --

1 Q. By "Mlbs," you mean thousand pounds?

2 A. Yes, thousand pounds of steam.

3 Q. What percent of your total sales are  
4 presently dedicated to Summa or Akron City Hospital?

5 A. Without the University, it's probably 15  
6 to 20 percent.

7 Q. And what percent of revenue without the  
8 University?

9 A. I don't know the answer to that.

10 Q. Can you tell us anything about the nature  
11 of the service relationship between Akron Thermal,  
12 Limited Partnership and Akron Thermal Cooling?

13 A. Akron Thermal, Limited Partnership  
14 provides steam for the cooling plant to operate.

15 Q. And does Akron Thermal do that for free?

16 A. No.

17 Q. And am I correct that approximately 50  
18 percent of the steam that is provided to Akron Thermal  
19 Cooling comes from what is referred to in the testimony  
20 as Boiler 32?

21 A. Yes.

22 Q. And how is the steam that is provided by  
23 Akron Thermal, Limited Partnership to Akron Thermal  
24 Cooling priced?

25 A. It's based on a calculation on the fuel



1 cost.

2 Q. On the fuel cost?

3 A. To Akron Thermal.

4 Q. Okay. And is there an arrangement  
5 contract between Akron Thermal, Limited Partnership and  
6 Akron Thermal Cooling that describes the pricing  
7 structure?

8 A. Not to my knowledge.

9 Q. And, of course, if there's nothing, no  
10 arrangement, nothing has been filed with the Commission  
11 for approval?

12 A. That's correct.

13 HEARING EXAMINER FARKAS: So what is the  
14 price -- what is the price Akron Thermal Cooling pays  
15 for its steam that they get from Akron Thermal, Limited  
16 Partnership?

17 THE WITNESS: It varies monthly based on  
18 the fuel mix, and I believe Janet Stott can probably  
19 give you a better range than I could give you on that.

20 HEARING EXAMINER FARKAS: But it's lower  
21 than the tariff charge?

22 THE WITNESS: That is correct.

23 Q. Is it higher or lower than the price that  
24 was offered to the University of Akron?

25 A. Lower.

1           Q.     Is it higher or lower than the price that  
2 Summa pays?

3           A.     Lower.

4           Q.     Order of magnitude percentage lower, can  
5 you tell me?

6           A.     Fifty percent lower.

7           Q.     Has Akron Thermal, Limited Partnership  
8 approached Akron Thermal Cooling and suggested that  
9 they need to raise the price of the steam?

10          A.     No.

11          Q.     Why not?

12          A.     All the -- all the margin income from  
13 Akron Thermal Cooling gets put back into Akron Thermal,  
14 so I don't know that it would be -- improve the cash  
15 position in any way.

16          Q.     And where is that shown in the information  
17 that's been filed by the Applicant in this proceeding?

18          A.     I don't know the answer to that.

19          Q.     But in the real world, the revenue from  
20 Akron Thermal is credited back to Akron Thermal --  
21 excuse me. Strike that. In the real world, the  
22 revenue derived from sales by Akron Thermal Cooling  
23 gets credited back to Akron Thermal, Limited  
24 Partnership; correct?

25          A.     Not the revenue. The expense of the fuel,

1 the labor, all those things are credited back.

2 Q. So what happens to the income of Akron  
3 Thermal Cooling?

4 A. Well, it goes to pay the vendors that are  
5 associated with Akron Thermal Cooling, and Akron  
6 Thermal is one of those vendors. They get the majority  
7 of the cash, but there are chemicals and those kinds of  
8 things.

9 Q. Okay. I need to understand this for my  
10 own sanity maybe, what's left of it. If Akron Thermal  
11 Cooling has net operating income, does that net  
12 operating income flow to Akron Thermal, Limited  
13 Partnership?

14 A. Yes.

15 Q. Where is that accounted for in the  
16 materials that have been furnished with the application  
17 for emergency rate relief?

18 A. I don't know. Janet would probably be  
19 able to answer that question.

20 Q. But in the real world, in the way you  
21 understand that the books work --

22 A. Yes.

23 Q. -- whatever operating income is derived by  
24 Akron Thermal Cooling and whatever positive cash flow  
25 would work for the benefit of Akron Thermal, Limited

1 Partnership; right?

2 A. That's correct.

3 HEARING EXAMINER FARKAS: Do you know if  
4 Akron Thermal Cooling is subject to this emergency rate  
5 increase? If the Commission were to approve it, would  
6 it apply to Akron Thermal Cooling?

7 THE WITNESS: Not the way that --

8 HEARING EXAMINER FARKAS: Structured the  
9 application?

10 THE WITNESS: That's correct.

11 Q. Do you work for Akron Thermal Cooling as  
12 well?

13 A. Yes.

14 Q. Does Akron Thermal have any contract  
15 customers that have arrangements that have not been  
16 filed with and approved by the PUCO?

17 A. Does --

18 Q. Akron Thermal Cooling -- let me restate  
19 the question. Does Akron Thermal Cooling have any  
20 contract customers that it is presently serving under  
21 arrangements that have not been filed with or approved  
22 by the Commission?

23 A. I don't believe so.

24 Q. How many customers are served by Akron  
25 Thermal Cooling presently?

1           A.     Less than 10.

2           Q.     Are any of those customers that are served  
3 by Akron Thermal Cooling under contract the same as  
4 those customers that are listed on Page 42 of the  
5 Disclosure Statement?

6           A.     Canal Place is a heating and cooling  
7 customer, and O'Neil's Building is a heating and  
8 cooling customer. Akron Baseball is a heating and  
9 cooling customer.

10          Q.     Okay. In the case of Akron Baseball,  
11 you're saying that the contract that they're served  
12 under is -- has been filed with and approved by the  
13 Commission?

14          A.     That one may not have been filed. I stand  
15 corrected.

16          Q.     And you're saying that the City of Akron,  
17 otherwise known as the O'Neil's Building, is being  
18 presently served by Akron Thermal Cooling under a  
19 contract that's been filed and approved by the  
20 Commission?

21          A.     It was part of a joint contract on heating  
22 and rejected in the --

23          Q.     Bankruptcy?

24          A.     -- bankruptcy.

25          Q.     What happens when a contract is rejected

1 in a bankruptcy proceeding?

2 A. What happens?

3 Q. Is the contract terminated or --

4 A. I believe it's terminated.

5 HEARING EXAMINER FARKAS: Do you no longer  
6 serve those customers, then, on a contract that's  
7 terminated?

8 THE WITNESS: They're served on tariff.

9 HEARING EXAMINER FARKAS: Okay. Thank  
10 you.

11 Q. Have you done an analysis to determine how  
12 much in the way of sales, steam sales, hot water sales  
13 and revenue may be lost as a result of the magnitude of  
14 the rate increase that you're requesting in this  
15 proceeding?

16 A. Can you ask the question again, please?

17 Q. Sure. Have you done an analysis of the  
18 magnitude of sales and revenue for steam and hot water  
19 customers that you may lose as a result of the rate  
20 increase that you're requesting in this proceeding?

21 A. No.

22 Q. Why not?

23 A. I don't know that we can predict, you  
24 know, what customers are going to do, what capital that  
25 they have available to them to put into their own

1 systems.

2 Q. Are there customers that the only issue is  
3 the availability of capital that would switch to their  
4 own system? Do you have those type of customers on  
5 your system?

6 A. I don't know if customers have the  
7 availability for capital or not to put their own  
8 systems in. I would assume some of the larger  
9 customers may.

10 HEARING EXAMINER FARKAS: Can I ask you a  
11 hypothetical? If the Commission approved the rate  
12 increase, the emergency rate increase you've asked for,  
13 and as a result of that, based on previous witnesses'  
14 testimony that if that rate increase went into effect,  
15 Summa would leave and Summa did leave, what would the  
16 company do? Would it come back immediately with  
17 another emergency rate application?

18 THE WITNESS: I don't believe that the  
19 emergency rate application we filed will have an impact  
20 on Summa's rates because they're --

21 HEARING EXAMINER FARKAS: Let's say the  
22 Commission said you have to apply it to them.

23 THE WITNESS: Oh, I see. Summa would  
24 leave the system, I'm sure of that.

25 HEARING EXAMINER FARKAS: And then what

1 would Akron Thermal do at that point if Summa left the  
2 system?

3 THE WITNESS: We'd have to go through the  
4 same analysis we've been through with -- when Akron U.  
5 left the system to see what the effect of that has on  
6 the overall operation of the system.

7 HEARING EXAMINER FARKAS: Okay.

8 Q. Mr. Bees, I'd like now to turn to --  
9 excuse me. I didn't mean to call you Mr. Bees. If you  
10 would turn to Page 4 of your testimony, Mr. Pucak,  
11 there you talk about the Notice of Violation that you  
12 received from -- that Akron Thermal received from the  
13 EPA, United States EPA; correct?

14 A. That's correct.

15 Q. And that was related to Boiler 32;  
16 correct?

17 A. Yes.

18 Q. Has Akron Thermal also received Notice of  
19 Violations from the USEPA or other regulatory agencies  
20 regarding its other boiler?

21 A. Yes.

22 Q. And are there any boilers that Akron  
23 Thermal has that have not received a Notice of  
24 Violation?

25 A. Yes.



1 Q. Which one?

2 A. Boiler No. 2, Boiler No. 3, Boiler 31.

3 Q. Okay. And when does the -- strike that.

4 At the bottom of Page 4 you talk about the prospect of  
5 a civil penalty for the continued operation of Boiler  
6 32; right?

7 A. Yes.

8 Q. Were you involved in the bankruptcy  
9 proceeding?

10 A. To some degree, yes.

11 Q. If you know, was this subject discussed  
12 extensively in the bankruptcy proceeding? In other  
13 words, the potential liability associated with the  
14 Notice of Violation directed at Boiler 32, was that  
15 subject discussed extensively in the bankruptcy  
16 proceeding?

17 A. I did some testimony to that, and -- but I  
18 was not in the courtroom for all the conversation  
19 concerning Boiler 32.

20 Q. Okay. I'd like for you -- do you still  
21 have the Disclosure Statement?

22 A. Yes.

23 Q. I'd like for you to turn to Page 64 of the  
24 Disclosure Statement, and do you see there at the  
25 bottom of Page 64 a discussion of environmental

1 matters?

2 A. Yes.

3 Q. Is it -- am I correct in understanding  
4 that Akron Thermal, Limited Partnership, in the  
5 Disclosure Statement, said that it does not believe  
6 that there's any basis in law or fact to the Notice of  
7 Violation directed at Boiler 32?

8 A. Yes. That's one of our beliefs.

9 Q. And beginning at this page, the Disclosure  
10 Statement also discusses strategy for dealing with the  
11 NOV, or Notice of Violation, directed at Boiler 32;  
12 right?

13 A. Which page are you on?

14 Q. Well, it's beginning at Page 64.

15 A. Yes.

16 Q. For example, it deals with how you're  
17 going to fund the USEPA settlement on Page 70. It  
18 deals with the cost, capital cost associated with  
19 modifying Boiler 32 --

20 A. Uh-huh.

21 Q. -- Pages 67 and 68; right?

22 A. Yes.

23 Q. And at Page 70 of the Disclosure  
24 Statement, more specifically am I correct that Akron  
25 Thermal, Limited Partnership represented that it was

1 going to be able to handle the 1.5 -- or \$1.8 million  
2 capital expenditure discussed in this section of the  
3 Disclosure Statement in part because it had already  
4 budgeted \$900,000 for the EPA litigation; right? And  
5 that's Page 70, second paragraph under Section F?

6 A. Yes.

7 Q. Okay. So if you're not going to fight  
8 with the EPA and you're going to close down Boiler 32,  
9 then are we to understand that there is some  
10 expectation that your forecasted budget would be  
11 adjusted downward by \$900,000?

12 A. Well, the forecasted budget assumed that  
13 the University of Akron would be a customer.

14 Q. In the bankruptcy proceeding?

15 A. Yes.

16 Q. But if the University of Akron is not  
17 going to be a customer and you're not going to fight  
18 with the EPA and test the Notice of Violation, wouldn't  
19 the forecast also need to be adjusted by the \$900,000?

20 MR. ROYER: What forecast are we talking  
21 about?

22 MR. RANDAZZO: The forecast in the  
23 bankruptcy proceeding.

24 MR. ROYER: The forecast in the bankruptcy  
25 proceeding was what it was and based upon the

1 assumptions there. The suggestion that it has some  
2 bearing here, I'm missing it.

3 MR. RANDAZZO: Okay. I'll withdraw the  
4 question.

5 Q. Mr. Pucak, at Page 70 and continuing on to  
6 Page 71, do you see there a discussion of the potential  
7 for a civil penalty?

8 A. Yes.

9 Q. And am I missing something here, but it  
10 seems to me that that section states, according to  
11 Akron Thermal, Limited Partnership, that the risk of a  
12 civil penalty is not great as long as Akron Thermal,  
13 Limited Partnership doesn't have any money? Do I  
14 correctly understand the significance of that  
15 paragraph?

16 A. Yes.

17 Q. Okay. Yet in your testimony at Page 4  
18 you're holding out the risk of a civil penalty related  
19 to the Notice of Violation for Boiler 32 as warranting  
20 closing down Boiler 32?

21 MR. ROYER: I object. That's a total  
22 nonsequitur. I don't know how he can answer it.

23 HEARING EXAMINER FARKAS: I'll allow him  
24 to answer it, if he can.

25 Q. Am I correct?

1 HEARING EXAMINER FARKAS: Do you want the  
2 question reread?

3 MR. RANDAZZO: I'll withdraw it and  
4 rephrase it, if I might.

5 HEARING EXAMINER FARKAS: Thank you.

6 Q. Mr. Pucak, at Page 4 of your testimony, as  
7 we discussed previously, you are suggesting that the  
8 threat of a civil penalty related to the Notice of  
9 Violation and directed at Boiler 32 is providing you  
10 with motivation to close down Boiler 32. Am I correct?

11 A. That is one of the reasons to consider  
12 that, yes.

13 Q. Even though, as you acknowledge in your  
14 testimony, that it will ultimately increase the cost of  
15 service provided by Akron Thermal, Limited Partnership;  
16 right?

17 A. Yes.

18 Q. If you close down Boiler 32 and shift to  
19 tire-derived fuels, otherwise known as TDF, I guess,  
20 or -- and natural gas and wood chips, it's my  
21 understanding you'll have to significantly expand the  
22 on-site storage for wood chips. Is my understanding  
23 correct?

24 A. I don't know that we'd have to  
25 significantly increase our on-site storage. We have an

1 off-site storage location as well.

2 Q. Okay. You would have to significantly  
3 increase your storage capacity for wood chips, correct,  
4 either on site or off site, one --

5 A. We would want to increase the amount of  
6 wood that we have in inventory going into the heating  
7 season.

8 Q. By how much?

9 A. Five to 10,000 tons.

10 Q. Do you recall any discovery that was  
11 directed at this issue?

12 A. Some, yes.

13 Q. And do you currently have -- are you  
14 currently ramping up your on-site storage of wood  
15 chips?

16 A. Not at this time.

17 Q. Is there a seasonal availability for wood  
18 chips?

19 A. Some, yes.

20 Q. And that seasonal availability essentially  
21 requires you to build inventory during the -- what I'll  
22 call the warmer months?

23 A. We typically have built inventories  
24 August, September, October time period.

25 Q. But you're not doing so presently?

1 A. We are not.

2 Q. How about the same with tire-derived  
3 fuels?

4 A. We don't inventory much tire-derived fuel  
5 on site.

6 Q. Do you presently have arrangements for  
7 natural gas supply to deal with the shutdown of Boiler  
8 32?

9 A. We have no natural gas contract.

10 Q. How do you procure natural gas?

11 A. We procure it from a company called North  
12 Coast Energy or Excalon.

13 Q. Do you buy that gas on a spot market  
14 basis?

15 A. Yes. They provide a cost for the  
16 preceding month, and then as we use gas during the  
17 course of that month, we pay for it on a going forward  
18 basis.

19 Q. Boiler 32 is what I would call a base-load  
20 boiler; is that correct?

21 A. Yes.

22 Q. In other words, you're operating that  
23 boiler whenever it's available to the limit of its  
24 capacity subject to the demands on the system; correct?

25 A. Yes.

1           Q.     Moving into the winter heating season, if  
2 you close down that boiler, you would have to operate  
3 your other boilers to meet the production capacity that  
4 is not available from Boiler 32; right?

5           A.     Yes.

6           Q.     Do you know the extent to which you would  
7 be relying on natural gas for the other boilers  
8 presently, if you shut down Boiler 32?

9           A.     Well, Boiler No. 1 and Boiler No. 2 are  
10 wood-fired, and they would become the base load based  
11 on availability and system demand, and then Boiler 3  
12 would be used for peaking purposes, which would be  
13 natural gas.

14          Q.     Okay. And Boiler 1 and 2, the ones that  
15 are fired by wood, of course would not be fired if you  
16 didn't have a wood supply?

17          A.     They have natural gas backup.

18          Q.     So in the event that there's not wood  
19 supply for those two boilers, then you would simply  
20 switch to natural gas?

21          A.     That's correct.

22          Q.     To the extent you needed the steam  
23 capacity from those -- or hot water capacity from those  
24 boilers; right?

25          A.     Yes.



1           Q.     Now, given your plans to close down Boiler  
2     32, can you tell me why you haven't attempted -- strike  
3     that. As I think is referenced in the testimony here,  
4     natural gas prices have declined rather precipitously  
5     over the last two years. Do you agree with that?

6           A.     Over the last six, eight months.

7           Q.     Okay. And if you were to close down  
8     Boiler 32, you know you're going to need more natural  
9     gas; correct?

10          A.     Yes.

11          Q.     Can you tell me why you haven't attempted  
12     to lock in a price for your natural gas supply as  
13     opposed to relying on the spot market?

14          A.     Because I don't believe we have the cash  
15     to lock that hedge up.

16          Q.     What kind of capital requirements would  
17     you need in order to forward manage your price risk on  
18     natural gas supply?

19          A.     I don't know the answer to that.

20          Q.     What kind of credit or collateral are you  
21     going to need to post when you start asking North Coast  
22     to provide you with gas supply?

23          A.     At this point, we don't have to supply  
24     anything.

25          Q.     Have you let them know that you're likely

1 going to be requiring more natural gas as a result of  
2 shutting down Boiler 32?

3 A. Not at this point.

4 Q. Why not?

5 A. Because we pay for gas pretty much on an  
6 as-use basis, so their exposure is pretty minimal.

7 Q. Do you rely on interruptible  
8 transportation for your gas supply?

9 A. No.

10 Q. Have you secured firm transportation for  
11 your gas supply?

12 A. Just the transportation agreement we have  
13 Dominion East Ohio Gas.

14 Q. Dominion East Ohio Gas would be the local  
15 distribution company?

16 A. Yes.

17 Q. How about the upstream firm transportation  
18 associated with getting the gas to Dominion, have you  
19 arranged for firm transportation for that gas supply?

20 A. North Coast takes care of that.

21 Q. Not if you don't tell them about what your  
22 needs are; right?

23 A. We've never had an issue with North Coast  
24 on volumes and how we buy our gas.

25 Q. Do you think that as a prudent operator it

1 would be good to have a discussion with your natural  
2 gas supplier about an expectation that you're going to  
3 increase your demand for natural gas supply?

4 A. Yes.

5 Q. Tell me why you haven't done that.

6 A. We haven't had the opportunity to get to  
7 that point in this process yet.

8 Q. When will you be comfortable enough with  
9 this process to have that discussion with your natural  
10 gas supplier?

11 A. I don't know the answer to that.

12 Q. Is that a decision that will be made by  
13 somebody other than you?

14 A. I'm sure it will be a decision by the  
15 management company.

16 Q. If I were to ask you the same or very  
17 similar questions about the wood chip suppliers, have  
18 you had any discussions with the wood chip suppliers to  
19 let them know you may be significantly increasing your  
20 need for wood chips?

21 A. No, we have not.

22 Q. Have you looked into what permits are  
23 required to increase your on-site or off-site storage  
24 of wood chips?

25 A. No.

1 Q. Have you had any discussions with the fire  
2 department about the potential for fire hazard or other  
3 risk related to large stockpiles of wood chips?

4 A. The fire department has been to the  
5 facility and has not raised that issue.

6 Q. Do they know that you're going to be  
7 storing between 5,000 and 10,000 more tons someplace?

8 A. No.

9 Q. Have you looked at whatever -- strike  
10 that. Is it correct that the current air permit for  
11 Boiler 32 expires on January the 30th of 2010 -- or,  
12 excuse me, expired January 30, 2009?

13 A. I don't believe that's correct, but I  
14 don't know the exact date.

15 Q. When does it expire?

16 A. I don't know the exact date.

17 Q. Have you done anything to make sure that  
18 you have a valid air permit for the operation of Boiler  
19 32?

20 A. Yes. We manage our Title V.

21 Q. If you were to increase the utilization of  
22 wood chips and tire-derived fuel, how would that  
23 affect -- at the other boilers, how would that affect  
24 the emissions at those other boilers?

25 A. I'm not sure I understand the question.

1           Q.     Well, if you burn tire-derived fuel or  
2 wood chips, would it increase the regulated emissions  
3 that come out of the stack?

4           A.     We have a limit on volume of wood that we  
5 can burn along with TDF.

6           Q.     Have you examined your permits to  
7 determine whether or not those permits would permit you  
8 to use the volume of wood that you assume will be used  
9 for purposes of shutting down Boiler 32?

10          A.     Yes.

11          Q.     And so you believe you're within your  
12 permit limits?

13          A.     Yes. I believe we have 100,000 tons of  
14 wood that we can use, and the analysis that we did was  
15 based upon the 100,000 tons of wood.

16          Q.     Have you talked to the EPA about that?

17          A.     No.

18          Q.     Why not?

19          A.     We believe we are within our permit rights  
20 for 100,000 tons of wood.

21          Q.     Well, you believe you're within your  
22 permit rights on Boiler 32, don't you?

23          A.     Yes, we do.

24          Q.     Do you think a prudent operator would have  
25 a discussion with the Ohio or USEPA about what they can

1 do underneath their air permit as a result of  
2 significantly increasing the combustion of tire-derived  
3 fuel and wood chips?

4 A. I believe we're operating our plant within  
5 the framework of our permit.

6 Q. On Page 5 of your testimony it states that  
7 Akron Thermal will shut down Boiler 32 on or about  
8 November 1st, 2009. Has a firm decision been made to  
9 shut down Boiler 32?

10 A. Without the return of the University, yes.

11 Q. Let's assume you shut down Boiler 32.  
12 What does shut down mean in this context?

13 A. Cease the operation of it.

14 Q. And do what?

15 A. Not burn any coal, not make any steam with  
16 32 Boiler.

17 Q. Are there systems associated with Boiler  
18 32 that would need to be modified or stabilized for  
19 purposes of mothballing Boiler 32?

20 A. I mean, you'd have to bunker. You would  
21 open up the water side, so that the boiler would be  
22 dry.

23 Q. And if you -- if you shut down Boiler 32,  
24 would the shutdown be permanent, to manage your risk of  
25 civil penalty from the EPA?

1           A.     I believe that's something that the  
2 attorneys that are dealing with the NOV would have to  
3 determine how we would handle that.

4           Q.     Well, if it's not permanent, would you be  
5 able to manage the risk associated with a civil  
6 penalty?

7           A.     Again, I think that's something that our  
8 attorneys that deal with environmental would have to --

9           Q.     Have you inquired of counsel -- strike  
10 that. On Page 6 of your testimony you talk about the  
11 plan to shut down Boiler 32 and increase reliance on  
12 wood waste, wood chips, tire-derived fuel, and natural  
13 gas, and I'm correct to conclude from your testimony  
14 there that you're essentially increasing expenses  
15 because you're trying to avoid incurring the capital  
16 costs associated with Boiler 32; right?

17          A.     And additional operating costs.

18          Q.     The least cost option would be to continue  
19 to operate Boiler 32; right?

20          A.     The least cost option as far as fuel?

21          Q.     Yes.

22          A.     Fuel would go down if 32 continued to  
23 operate.

24          Q.     Have you made arrangements for coal supply  
25 for Boiler 32?

1           A.     We get coal from the same supplier we've  
2 gotten coal from for 10 years, 12 years.

3           Q.     Do you have a contract for coal?

4           A.     No. We've never had a contract with that  
5 supplier.

6           Q.     So they just show up with a truck?

7           A.     No. It's a business relationship that  
8 goes back with this company for 25 years, and we  
9 spot-check the pricing, and we've never been able to  
10 find anybody that could beat the pricing, and it's been  
11 a good relationship with the coal vendor.

12          Q.     And I value those kinds of relationships  
13 personally myself. I'm not being critical here, but  
14 I'm trying to get a sense of in the -- I'm trying to  
15 get a sense of whether you have arrangements for a coal  
16 supplier for Boiler 32 beyond November, and I take it  
17 from your testimony that you do not?

18          A.     No.

19          Q.     Have you advised your coal supplier that  
20 you intend to shut down Boiler 32 November 1 and will  
21 not be needing any more coal?

22          A.     We have not given them a specific date.

23          Q.     Have you let them know you're going to be  
24 shutting down Boiler 32 at some undefined date?

25          A.     We let them know that the University of



1 Akron's decision to leave the system changes the  
2 dynamics of what we're doing and we may consider  
3 shutting 32 down to solve the NOV issues of Boiler 32.

4 Q. But you haven't told them yet your plan is  
5 to shut down -- even though you said it in public  
6 testimony, you're not telling this valued service --  
7 valued vendor that you intend to not buy any more coal  
8 from them effective November 1st?

9 MR. ROYER: I object.

10 MR. RANDAZZO: I'll withdraw the  
11 question.

12 HEARING EXAMINER FARKAS: Thank you.

13 Q. You say at Page 8 of your testimony, at  
14 Lines 9 through 12, that there's no prospect of getting  
15 additional revenue from your remaining contract  
16 customers to mitigate the amount of temporary rate  
17 relief, and there you're talking about revenues from  
18 Akron Thermal, Limited Partnership, I take it?

19 A. Yes.

20 Q. Have you recently moved customers that  
21 were under contract on the chilled water side to  
22 tariff?

23 A. Yes. Well, their contracts were basically  
24 at tariff, so there was no real increase in revenue.

25 MR. RANDAZZO: May I approach the

1 witness?

2 HEARING EXAMINER FARKAS: Yes.

3 Q. Mr. Pucak, I've handed you what I believe  
4 to be a copy of a letter that you authored to the  
5 Community Hall Foundation, otherwise known as the Civic  
6 Theater. Do you recognize that letter?

7 A. Yes.

8 Q. Is this a letter that you wrote?

9 A. Yes, it is.

10 Q. And in this letter are you advising the  
11 Civic Theater or Community Hall Foundation that their  
12 contract is over and they're going to tariff?

13 A. Yes. I wasn't thinking about them when I  
14 answered previously.

15 Q. So what other -- are there any other  
16 opportunities that you have to take away contracts or  
17 end contracts and push customers served by Akron  
18 Thermal, Limited Partnership or Akron Thermal Cooling  
19 to tariff service?

20 A. I believe at this time either the other  
21 contract customers are close to or at tariff or -- the  
22 Canal Place contract would be the only other one.

23 Q. And the letter to Community Hall  
24 Foundation that I've just handed you is dated what?

25 A. May 22nd.

1 Q. And when will their service under tariff  
2 become effective?

3 A. It became effective in the June billing  
4 cycle.

5 MR. RANDAZZO: I believe that's all I  
6 have, Your Honor. Thank you very much.

7 Thank you, sir.

8 HEARING EXAMINER FARKAS: Do you have any  
9 questions?

10 MR. HEINTZ: No, Your Honor.

11 HEARING EXAMINER FARKAS: Questions?

12 MS. BURGAN: No.

13 HEARING EXAMINER FARKAS: Any questions?

14 MR. BREITSCHWERDT: I do have a few  
15 questions.

16 CROSS-EXAMINATION

17 By Mr. Breitschwerdt:

18 Q. Mr. Pucak, Brett Breitschwerdt on behalf  
19 of Canal Place. I want to walk you through starting on  
20 Page 10 of your testimony. You are supporting the  
21 company's application in Case No. 09-442; is that  
22 correct?

23 A. Yes.

24 Q. And that application is for the approval  
25 of modification to a previous approved contract with

1 Canal Place for steam service that was approved by the  
2 Commission; is that correct?

3 A. Yes.

4 Q. And that contract extends to when?

5 A. 2012, I believe, or 11.

6 Q. Okay. Do you have a copy of that  
7 application with you?

8 A. No, I don't.

9 MR. ROYER: Here.

10 MR. BREITSCHWERDT: This is the  
11 application I previously provided.

12 Q. I'd just like to walk through a few of the  
13 terms under -- backing up a second, what specifically  
14 are -- is the Applicant requesting the Commission  
15 approve?

16 A. Modification to the contract.

17 Q. That would be the September 30, 2008,  
18 modification of the contract?

19 A. Yes.

20 Q. And that is included as Exhibit B, is that  
21 correct, to this application?

22 A. Yes.

23 Q. Under Section 2, can you explain the  
24 surcharge that is included under Section 2.1 and 2.2,  
25 starting with Section 2.1?

1           A.       Canal Place agreed to pay \$120,000 within  
2 three business days of the court order approving the  
3 agreement and then initially agreed to pay \$40,000 a  
4 month -- well, over three months. Then the remaining  
5 \$120,000 was split into three equal payments of \$13,333  
6 each for that period, for an eight month --

7           Q.       For Section 2.2 of the agreement?

8           A.       That's the -- it split the \$120,000  
9 additional payment into eight monthly installments.

10          Q.       So since what date has Canal Place been  
11 paying the installments of the \$375,000 per year rate  
12 increase?

13          A.       Wait a minute. I'm sorry. I'm looking at  
14 the previous agreement.

15          Q.       All right. That explains why we're not on  
16 the same page.

17          A.       My glasses are broke, so I'm having a  
18 tough time.

19          Q.       That's all right. Exhibit B, September  
20 30, 2008, was the date of the agreement.

21          A.       I don't see an Exhibit B. Exhibit 1 --  
22 oh, there it is. I'm sorry. Okay.

23          Q.       Section 2.1.

24          A.       Yes.

25          Q.       Starting there.

1           A.       From August 1st of 2008 they were paying  
2 \$240,000 a year divided into -- based on steam Mlbs.

3           Q.       So through July 31, 2008, Canal Place paid  
4 the rate increase of \$240,000; is that correct?

5           A.       Yes.

6           Q.       Under Section 2.2 is it also correct that  
7 starting with the effective date, which was on or about  
8 February 20 of 2009, Canal Place started paying the  
9 rate increase of \$375,000 per year?

10          A.       That's correct.

11          Q.       It's split by the number of Mlbs they  
12 used. That's how it's calculated and billed on a  
13 monthly basis?

14          A.       That's correct, and it's trued up at the  
15 end of the year.

16          Q.       And it's correct that this has been  
17 approved by the bankruptcy court?

18          A.       That's correct.

19          Q.       And then go to Section 7, please, the last  
20 sentence. I want to confirm that it says that  
21 there's -- there will not be any amendment to this  
22 agreement without both parties agreeing thereto. Would  
23 you agree with that statement?

24          A.       Yes.

25               MR. BREITSCHWERDT: That's all I have,

1 Your Honor. Thank you.

2 HEARING EXAMINER FARKAS: Does Staff have  
3 any questions?

4 MR. McNAMEE: Yes, just a couple.

5 CROSS-EXAMINATION

6 By Mr. McNamee:

7 Q. Mr. Pucak, what sort of pollution control  
8 equipment would have to be installed to keep Boiler 32  
9 operating?

10 A. Dry scrubber.

11 Q. What is a dry scrubber used to scrub?

12 A. Sulfur.

13 Q. You may not know the answer to this, but  
14 let me ask it anyway. Assuming that Boiler 32 is shut  
15 down on November 1st, 2009, the value of Boiler 32  
16 would no longer be something that could be included in  
17 a rate base for rate setting purposes for Akron Thermal  
18 in any future rate case with a date certain after the  
19 date that the Boiler 32 is shut down; isn't that right?

20 A. If it was permanently shut down.

21 Q. Okay. How would I tell the difference  
22 between whether it's permanently shut down or  
23 temporarily shut down?

24 MR. ROYER: Call your environmental  
25 lawyer.

1 Q. All right.

2 A. Well, I think when we would end up with a  
3 consent agreement with the USEPA, we would know exactly  
4 the status of Boiler 32.

5 Q. Okay. So short of that, in your mind, it  
6 would never be permanently shut down?

7 A. No. There are limits to how long you  
8 cannot operate it that would also make it not  
9 operational in the future without going through another  
10 permitting process.

11 Q. What would those be? How long would  
12 that --

13 A. I don't know the answer to that.

14 Q. Years?

15 A. Yes, it's years.

16 Q. All right. Let's see. You also, at some  
17 point that I can't find, made reference to the  
18 possibility that you would bring in a package boiler  
19 rented?

20 A. Yes.

21 Q. For peak purposes?

22 A. Yes.

23 Q. And in the event that you did that, the  
24 value of that package boiler would not be something  
25 that could be included in the rate base in a future



1 rate case?

2 MR. ROYER: I'm going to object. That  
3 certainly calls for a legal conclusion.

4 MR. McNAMEE: It does.

5 MR. ROYER: Exactly.

6 Q. Would you seek to have rate base  
7 treatment, would the company seek to have rate base  
8 treatment for the value of that package boiler in a  
9 future rate case?

10 A. If it was a temporary rental, no.

11 Q. That's -- I believe that's contemplated in  
12 your testimony, isn't it?

13 A. Yes.

14 Q. If it's a permanent installation --

15 A. Different case.

16 Q. That's all I need. Thank you.

17 HEARING EXAMINER FARKAS: Any redirect?

18 MR. ROYER: Just a couple on Mr. McNamee  
19 questions.

20 REDIRECT EXAMINATION

21 By Mr. Royer:

22 Q. He asked you about the significance  
23 between permanently shutting something down and  
24 temporarily shutting it down. Does that have to do  
25 with the ability to retain your existing rights to --

1 or existing authority to operate the boiler?

2 A. Yes.

3 Q. Could you flesh that out for us a little  
4 bit?

5 A. Well, if -- just because you don't operate  
6 a boiler doesn't mean that it's not -- you can't  
7 operate it in the future, but based on your permit,  
8 there are limits and restrictions and time for -- in  
9 which you have to operate the unit or you would end up  
10 losing your permitted right to operate the boiler.

11 Q. And if -- and is there another aspect of  
12 this that goes to the requirements that would be  
13 associated with as to whether the boiler is considered  
14 to be existing or new?

15 A. Ask that again, please.

16 Q. Is another consideration in terms of how  
17 you -- what you might do with respect to Boiler 32  
18 whether the boiler is considered to be, quote, existing  
19 or, quote, new for -- by the EPA?

20 A. Yeah. If you have an existing boiler,  
21 you'd have the permits viable to operate under. If you  
22 have a new boiler, you have to go through the whole  
23 permitting process.

24 (Discussion off the record.)

25 Q. One more. I apologize. Mr. McNamee asked

1 you -- Mr. McNamee also asked you whether a temporary  
2 natural gas unit would be eligible for inclusion of  
3 rate base, and I believe you indicated it wouldn't. Is  
4 that according to your understanding?

5 A. Yes.

6 Q. Would the expenses associated with  
7 operating it -- or the rental expenses associated with  
8 maintaining it be included as an expense for  
9 rate-making purposes?

10 A. I believe so.

11 Q. That's all I have.

12 HEARING EXAMINER FARKAS: Any --

13 MR. RANDAZZO: One real quick one.

14 RECROSS-EXAMINATION

15 By Mr. Randazzo:

16 Q. Mr. Pucak, have you rented a boiler for  
17 peaking purposes?

18 A. No.

19 Q. Do you know -- where are you going to get  
20 one?

21 A. There are a number of vendors that supply  
22 rental equipment for that type purpose.

23 Q. And those suppliers might also supply  
24 rental boilers to Children's Hospital and customers?

25 A. Sure.

1 Q. Thank you.

2 MR. McNAMEE: One last thing about  
3 shutting down the boilers.

4 RECROSS-EXAMINATION

5 By Mr. McNamee:

6 Q. So, basically, you can't look at the  
7 boiler and determine whether it's permanently shut down  
8 or not. It's more to do with a state of permits for  
9 using the thing?

10 A. Yes.

11 Q. Okay. That's fair. Thank you.

12 HEARING EXAMINER FARKAS: Any questions?

13 MR. HEINTZ: No, Your Honor.

14 MS. MURPHY: No.

15 HEARING EXAMINER HUSSEY: I think Mr. Bees  
16 might have touched upon this earlier, but in addition  
17 to letting your Title V lapse, if you decommission  
18 Boiler 32, do you intend to take any physical action to  
19 the boiler or let it remain as is?

20 THE WITNESS: Remain as is.

21 HEARING EXAMINER HUSSEY: Okay.

22 HEARING EXAMINER FARKAS: Thank you.

23 (Witness excused.)

24 MR. ROYER: Your Honor, I'd offer  
25 Applicant's Exhibit 3 into evidence.

1 HEARING EXAMINER FARKAS: Any objection to  
2 the admission of Exhibit 3?

3 Hearing none, it will be admitted.

4 (EXHIBIT ADMITTED INTO EVIDENCE.)

5 HEARING EXAMINER FARKAS: Why don't we  
6 take a short recess, 10 minutes or so.

7 (Recess taken.)

8 HEARING EXAMINER FARKAS: Let's go back on  
9 the record. Call your next witness.

10 MR. ROYER: Thank you, Your Honor. I'd  
11 like to call Janet Stott.

12 HEARING EXAMINER FARKAS: Raise your right  
13 hand.

14 JANET D. STOTT,  
15 being by Hearing Examiner Farkas first duly sworn, as  
16 hereinafter certified, testified and says as follows:

17 HEARING EXAMINER FARKAS: You may sit  
18 down.

19 You can proceed.

20 MR. ROYER: Your Honor, I'd like to have  
21 the document titled the Direct Testimony of Janet D.  
22 Stott submitted in this proceeding on July 2nd, 2009,  
23 marked for identification as Applicant's Exhibit 4.

24 HEARING EXAMINER FARKAS: So marked.  
25

## 1 DIRECT EXAMINATION

2 By Mr. Royer:

3 Q. Would you state your name and business  
4 address for the record.5 A. Janet Stott, S-t-o-t-t, 226 Opportunity  
6 Parkway, Akron, Ohio, 44307.7 Q. And you have before you a document that's  
8 been identified -- marked for identification as  
9 Applicant's Exhibit 4?10 A. Well, it's not marked that way, but  
11 it's --

12 Q. What is that document?

13 A. It's my Direct Testimony dated July 2nd,  
14 2009.15 Q. Was this testimony prepared by you or  
16 under your direction and supervision?

17 A. Yes.

18 Q. And do you have any corrections or  
19 deletions to your testimony?

20 A. No.

21 Q. If I were to ask you the questions that  
22 are set out in Applicant's Exhibit 4, would your  
23 answers here today on the stand be the same as are in  
24 the written document?

25 A. Yes.

1 Q. Thank you.

2 The witness is available.

3 HEARING EXAMINER FARKAS: Thank you.

4 Proceed.

5 MR. RANDAZZO: Thank you, Your Honor.

6 CROSS-EXAMINATION

7 By Mr. Randazzo:

8 Q. Ms. Stott, in your testimony at Page 1, is  
9 a good starting place for me, you indicate that you're  
10 employed by Akron Thermal, Limited Partnership?

11 A. That is correct.

12 Q. And so you're not -- unlike Mr. Bees, for  
13 example, you don't hold a position with -- as a general  
14 partner?

15 A. No. I have only one title.

16 Q. Okay. Is there a president of Akron  
17 Thermal, Limited Partnership?

18 A. Not that I'm aware of.

19 Q. How about chief executive officer?

20 A. Apparently now we do have a CEO.

21 Q. Who would that be?

22 A. Charles Abbott.

23 Q. And that was part of the reorganization  
24 that Mr. Bees discussed earlier?

25 A. Yes.

1           Q.     You've been in the hearing room up to now;  
2 correct?

3           A.     Yes.

4           Q.     The income statement, if I can use that  
5 shorthand reference, information that you've included  
6 with your testimony assumes the operational changes  
7 that were described by Mr. Pucak; is that correct?

8           A.     In the projected income statement, yes.

9           Q.     Okay. And you're relying on him basically  
10 to determine whether or not those operational changes  
11 will actually take place; is that correct?

12          A.     Yes.

13          Q.     Have you done a calculation that would  
14 show what you think the cash requirement would be in  
15 the event that the operational changes described by Mr.  
16 Pucak are not made, in other words, if you keep Boiler  
17 32 open?

18          A.     I have not done any calculations.

19          Q.     Are you aware of anybody else that has  
20 done that calculation?

21          A.     No.

22          Q.     Would it be fair to say that if Boiler 32  
23 stayed operational status, that the cash required to  
24 meet operating expenses would be less than what you  
25 have portrayed in your testimony and exhibits?



1 A. Probably in the short term, yes.

2 Q. Short term?

3 A. 2009. I can't say beyond that.

4 Q. And you would need to know -- one of the  
5 things you would need to know to project beyond that is  
6 the price of coal, I take it, for Boiler 32?

7 A. The price of coal, the EPA issues, you  
8 know, the capital improvements, the additional  
9 maintenance.

10 Q. Were you involved at all in the decision  
11 making related to closing Boiler 32 on November the  
12 1st?

13 A. No.

14 Q. So you simply have taken that as an  
15 assumed state for purposes of developing your numbers?

16 A. That is correct.

17 Q. In the information that you supply with  
18 your testimony, the revenue expense information, have  
19 you included the revenue from Akron Thermal Cooling?

20 A. No.

21 Q. And why not?

22 A. Akron Thermal Cooling, as a standalone  
23 entity, really the operating income is about -- it's  
24 very close to zero. Sometimes it's positive.  
25 Sometimes it's negative, but it's not significant, so I

1 have not included the revenue in these projections.  
2 They are not consolidated statements, in other words.

3 Q. Do you show anywhere in your information  
4 what the operating income for Akron Thermal Cooling  
5 would be on a proforma basis, on the same basis as you  
6 show for Akron Thermal, Limited Partnership?

7 A. No.

8 HEARING EXAMINER FARKAS: Can I ask a  
9 question on that, since I have a question directly  
10 related to that? In Exhibit JDS 2, the second page,  
11 where it says Akron Thermal, Limited, Statement of  
12 Operations, actual projections, do you see that?

13 THE WITNESS: Are you on the assumptions  
14 page?

15 HEARING EXAMINER FARKAS: I'm on Statement  
16 of Operations.

17 THE WITNESS: Statement of Operations,  
18 yes.

19 HEARING EXAMINER FARKAS: It says  
20 "Revenue," and it says, "Steam, hot water,  
21 electricity, steam ATC." Is that Akron Thermal  
22 Cooling?

23 THE WITNESS: Yes, it is.

24 HEARING EXAMINER FARKAS: The first  
25 column, it says total, and that shows revenue from

1 Akron Thermal Cooling, so I guess I'm trying to  
2 reconcile that with your -- the statement you just made  
3 that you're not including revenue from Akron Thermal  
4 Cooling.

5 THE WITNESS: We are not including Akron  
6 Thermal Cooling's revenues that it bills its  
7 customers.

8 HEARING EXAMINER FARKAS: Okay.

9 THE WITNESS: We do bill Akron Thermal  
10 Cooling for steam, electricity allocation, labor  
11 allocation. We send them a monthly bill. However, in  
12 these financials, obviously the biggest piece is the  
13 steam piece, and we have the full -- in the fuel  
14 expense we have the full fuel. So, in other words,  
15 they're pretty much offset.

16 HEARING EXAMINER FARKAS: Why is that --  
17 why is steam ATC different from just steam? Why isn't  
18 it just rolled into the steam part?

19 THE WITNESS: We put it separately because  
20 until the financial statements are consolidated, I  
21 think it would be more misleading to put it in steam,  
22 because the fuel expense has also the fuel for Akron  
23 Thermal Cooling.

24 HEARING EXAMINER FARKAS: Okay.

25 THE WITNESS: It's not broken out, also,

1       so --

2                       HEARING EXAMINER FARKAS:   Okay.   Thank  
3       you.   Go ahead.

4               Q.       As I understand the structural  
5       relationship between Akron Thermal, Limited  
6       Partnership, or ATLP, and ATC, all the employees and  
7       resources are accounted for in Akron Thermal, Limited  
8       Partnership, but then expenses are allocated to Akron  
9       Thermal Cooling?

10              A.       That's correct.

11              Q.       And where in your information do you show  
12       the allocation factors to identify how much cost is  
13       pushed to Akron Thermal Cooling through that process?

14              A.       Part of it would be in the labor and  
15       employee benefits.   They would be higher because we do  
16       allocate labor directly and an allocation.

17              Q.       Okay.   Let's just talk about the  
18       accounting here.

19              A.       Okay.

20              Q.       For purposes of allocating common costs  
21       between business units there are two principal methods,  
22       one is direct assignment and the other one is  
23       allocation; correct?

24              A.       Correct.

25              Q.       And in direct allocation you may have a

1 good means of identifying how much of the costs should  
2 be directly assigned or attributed to one entity or the  
3 other; correct?

4 A. That is correct.

5 Q. And in this case we're talking about costs  
6 that are common to multiple business units; right?

7 A. Correct.

8 Q. And in an allocation context, you're  
9 basically trying to figure out a formula that you  
10 believe fairly represents the relative cost  
11 responsibility of the two business units that are  
12 operated in common; correct?

13 A. That is correct.

14 Q. And my question to you is where in your  
15 testimony do you show how you have directly assigned or  
16 allocated costs between Akron Thermal, Limited  
17 Partnership and Akron Thermal Cooling?

18 A. I have not shown it in my testimony.

19 Q. Okay. But there is some cost allocation  
20 process that goes underneath -- that goes on underneath  
21 the numbers that you've included in your testimony to  
22 show the financial performance of Akron Thermal,  
23 Limited Partnership; correct?

24 A. Could you restate the question?

25 Q. There's some cost assignment or allocation

1 process that was done prior to developing the numbers  
2 that are portrayed in your testimony?

3 A. That is correct.

4 Q. So we see the bottom -- we're seeing in  
5 your testimony the bottom-line consequences after those  
6 allocations or assignments have been done?

7 A. Yes.

8 Q. Have you participated in the rate-making  
9 process here before the Public Utilities Commission of  
10 Ohio?

11 A. I participated in the 2005 rate case.

12 Q. If you recall, when you file a permanent  
13 rate case, are you required to identify the total costs  
14 and then the portion of costs that are allocated to the  
15 utility that's seeking rate relief, if you recall?

16 A. I believe so.

17 Q. And typically that would be portrayed on  
18 the required PUCO schedules as the gross number being  
19 the total company number, and the specific utility  
20 number that's seeking the rate increase would be the  
21 jurisdictional number; correct?

22 A. Correct.

23 Q. Now, as I understand the history that gave  
24 rise to the formation of ATC, the principal motivation  
25 for creating Akron Thermal Cooling was to avoid gross

1 receipts tax?

2 A. That's my understanding, but that was  
3 before my time.

4 Q. So if there's clearly -- in order to avoid  
5 gross receipts, Akron Thermal Cooling has to have gross  
6 receipts; right?

7 A. Correct.

8 Q. And you're saying in your testimony here  
9 today that the net operating income of Akron Thermal  
10 Cooling is essentially zero?

11 A. Sometimes it's slightly positive.  
12 Sometimes it's slightly negative, but it's pretty  
13 insignificant.

14 Q. Positive in the summer when you need  
15 cooling; right?

16 A. No. I mean for the entire year, the  
17 entire calendar year.

18 Q. All right. And you think that business  
19 unit is sustainable with zero operating income?

20 A. Probably not on its own.

21 Q. And, therefore, why is it that you have  
22 not sought a rate increase for cooling service?

23 A. I would say mainly because we've been in  
24 crisis mode, and, you know, the cooling company as a --  
25 you know, the total revenues are not nearly what Akron

1 Thermal's are. We only have eight -- maybe eight  
2 customers. We've discussed doing a rate case, but that  
3 was before the bankruptcy and everything else that has  
4 transpired. You know, it's been a lower priority.

5 Q. Of the total steam that is sold by Akron  
6 Thermal, Limited Partnership, my recollection is about  
7 10 percent of the total steam is consumed by Akron  
8 Thermal Cooling. Am I correct?

9 A. That I --

10 Q. You don't know?

11 A. I don't know.

12 Q. On Page 4, top of your testimony, you're  
13 responding to a question about whether there's been an  
14 external audit of the balance sheet and income  
15 statement information you supply with your testimony,  
16 and you say no. Is that still correct today?

17 A. It's not complete.

18 Q. So the -- it's still underway?

19 A. Yes.

20 Q. When do you project that that will be  
21 complete?

22 A. I would say -- I would estimate four to  
23 eight weeks.

24 Q. Have you given them a specification on  
25 when you would like to have that done?



1           A.     They know we are anxious to have it done.  
2     Actually, we have had to postpone them coming out  
3     because we've been involved with the emergency rate  
4     case.

5           Q.     When did you make the request for the  
6     external audit?

7           A.     I believe that was probably March or  
8     April.

9           Q.     How long do you think this postponement  
10    period is going to continue?

11          A.     I know they are scheduled to come out next  
12    Wednesday. I've postponed it twice now.

13          Q.     And that would be, what, the commencement,  
14    the initial meeting associated with the external audit  
15    or what?

16          A.     I've already sent them all the data  
17    they've requested. They have our trial balance. They  
18    have -- you know, I think they've actually sent out  
19    some confirmations.

20          Q.     And the firm that you identify at the top  
21    of Page 4 is Packer Thomas. Have they performed audits  
22    for you before?

23          A.     Yes.

24          Q.     How frequently?

25          A.     The last one they were working on was the

1 2005, and I believe they started the 2006.

2 Q. And they haven't done 2007 either yet?

3 A. No. We didn't ask them to do 2007.

4 Q. But they're still working on 2006 as well?

5 A. No. We've -- I don't believe so. I think  
6 they're just -- they're going on 2008.

7 Q. All right. From the time you requested  
8 the two thousand -- well, never mind. On the top of  
9 Page 5, the answer at the top of the page, Line 2, you  
10 refer to professional fees. Can you tell me what you  
11 mean by professional fees?

12 A. Those are the legal fees for  
13 Schottenstein, which was our -- they're our counsel for  
14 the bankruptcy, and it would also be the professional  
15 fees of Baker & Hostetler, who were the unsecured  
16 creditors' legal counsel, and also for BMF Advisors,  
17 which were -- they're the financial advisors for the  
18 Unsecured Creditors Committee.

19 Q. And BMF Advisors happens to be the firm  
20 that is -- that the Trustee for the Creditors' Trust  
21 currently works; correct?

22 A. That is correct.

23 Q. And you indicate there that you have  
24 obligations remaining as a result of what the  
25 bankruptcy has referred to as the holdback or the

1 percentage of professional fees that have not been  
2 paid; correct?

3 A. That is correct.

4 Q. And the total holdback identified at Line  
5 3 on Page 5 is \$373,499; right?

6 A. That is correct.

7 Q. And what is your -- under the plan as  
8 approved by the bankruptcy court, what is your  
9 obligation to pay that remaining amount?

10 A. I'm not sure exactly under the plan when  
11 they had to be paid.

12 Q. But Akron Thermal -- as I understand it,  
13 Akron Thermal, Limited Partnership is responsible for  
14 paying all these professional fees; correct?

15 A. That is correct.

16 Q. And can you tell me, order of magnitude,  
17 the professional fee obligation in total that you had  
18 to Schottenstein, Zox & Dunn, who were your counsel for  
19 the bankruptcy proceeding?

20 A. Their portion was approximately 237,000 or  
21 238,000.

22 Q. That's their portion of the holdback;  
23 right?

24 A. Correct.

25 Q. I was asking for the total amount of the

1 payment obligation that you have for Schottenstein, Zox  
2 & Dunn.

3 A. That would be the remaining.

4 Q. How much in total -- if you paid them the  
5 holdback amount, how much in total will you have paid  
6 them for the bankruptcy proceeding?

7 A. Oh, I don't know. I would have to go back  
8 and look, you know, from June of '07.

9 Q. Would you accept subject to check that  
10 it's in excess of \$2 million?

11 A. Yes.

12 Q. In the case of Baker & Hostetler, again,  
13 they were counsel to the Unsecured Creditors Committee?

14 A. Correct.

15 Q. And Akron Thermal, Limited Partnership had  
16 to pay them as well?

17 A. Correct.

18 Q. And order of magnitude, do you have any  
19 idea what the total fees and charges by Baker &  
20 Hostetler were?

21 A. Not off the top of my head.

22 Q. Would you accept subject to check that  
23 it's in excess of \$900,000?

24 A. That sounds about right.

25 Q. In the case of BMF Advisors, do you have

1 any sense of what the total outlay was as a result of  
2 ATLP's obligation to compensate BMF Advisors?

3 A. I don't know the total. It would be  
4 significantly less than the legal fees.

5 Q. Under the bankruptcy process, before  
6 professionals can be compensated, they have to submit  
7 an application to the court and receive approval,  
8 bankruptcy court, and receive approval; correct?

9 A. That's correct.

10 Q. Would you accept subject to check that the  
11 compensation that ATLP is obligated for for BMF  
12 Advisors is in excess of \$200,000?

13 A. Yes.

14 Q. If you know, are there any negotiations  
15 going on with the various professional service  
16 providers that deal with the timing of the payment of  
17 the holdback amount, the 373,000?

18 A. Yes. I'm not involved in those  
19 discussions; but, yes.

20 Q. You have not included the payment of these  
21 professional fee amounts in your income statement or  
22 balance sheet information; correct?

23 A. They would already be in there because  
24 they're actuals. They have not been paid, but they  
25 would have -- they would be -- in these financial

1 statements, they would be in accounts payable.

2 Q. When you say "these financial statements,"  
3 can you be a little bit more specific?

4 A. The projected financial statements through  
5 January through April of '09 are actuals, so the  
6 holdbacks are for professional fees through February  
7 20th, 2009; so they are already recorded on the books  
8 through February.

9 Q. So you're treating the professional fees  
10 in effect as a cost of service for Akron Thermal,  
11 Limited Partnership?

12 A. Yes.

13 Q. You've included the 373,499 amount without  
14 adjustment for some expectation about what the  
15 negotiations on what the payment might actually be;  
16 correct?

17 A. Correct. These reflect that liability.

18 Q. Are you presently, from an accounting  
19 standpoint, reserving for any other contingencies?

20 A. No, not other than regular operating  
21 expenses.

22 Q. So you wouldn't be reserving --

23 A. Well, we reserve for taxes, also.

24 Q. You wouldn't be reserving in an accounting  
25 sense for civil penalties that you might have to pay to

1 the USEPA?

2 A. No.

3 Q. How about liabilities as a result of  
4 litigation like the litigation initiated by Ohio Edison  
5 over the damage done to its transformer?

6 A. No.

7 Q. So if there were a cash obligation to  
8 arise as a result of either civil penalty from the  
9 USEPA or litigation of the type that I described, you  
10 would need to make an adjustment for budgeting  
11 purposes; correct?

12 A. If there was an actual penalty, we would  
13 have to actually record it.

14 Q. Right. In an accounting sense, if there  
15 was a threat of civil penalty, would you be obligated  
16 to recognize that?

17 A. I'm not sure. I'm not sure based on a  
18 threat.

19 Q. At what point, from an accounting  
20 perspective, would you be obligated to identify the  
21 potential for a civil penalty for purposes of  
22 accurately reflecting the ongoing character of your  
23 business?

24 A. I would say when we could quantify it and  
25 when it became real.

1           Q.     Now, the -- I asked some questions of Mr.  
2 Bees about where things stood with regard to the  
3 preparation of the permanent rate case that he  
4 indicates will commence. Have you been asked to start  
5 pulling together information for the filing of a  
6 permanent rate case?

7           A.     On a very preliminary basis, yes.

8           Q.     And can you tell me have they -- have you  
9 been advised about what test period, what 12 month  
10 period will be used for purposes of developing your  
11 rate case information?

12          A.     We have not discussed that yet.

13          Q.     And are you familiar with the term date  
14 certain?

15          A.     Yes.

16          Q.     And do you understand that that's the date  
17 upon which the assets are valued for purposes of  
18 rate-making?

19          A.     Yes.

20          Q.     Has anybody talked to you about specifying  
21 a date certain?

22          A.     No.

23          Q.     As things currently stand, do you think  
24 it's humanly possible for you to file a Notice of  
25 Intent to seek a rate increase by September 1?



1 A. That I don't know.

2 Q. Has anybody told you that you have to get  
3 a rate case pulled together by September 1?

4 A. No.

5 Q. Has the annual report for 2008 been filed  
6 by Akron Thermal, Limited Partnership with the Public  
7 Utilities Commission of Ohio?

8 A. Yes.

9 Q. When was it filed?

10 A. June 29th.

11 Q. Where was it filed?

12 A. I e-mailed it to Tina Watkins at the  
13 Public Utilities Commission.

14 Q. Thank you. Did you also file a 2008  
15 annual report for Akron Thermal Cooling?

16 A. No. I've got an extension to July 31st on  
17 that one.

18 Q. And the 2008 report, was that filed  
19 timely?

20 A. Yes. We had two extensions on it.

21 Q. When would it have normally been due for  
22 filing without the extensions?

23 A. It would normally be due April 30th.

24 Q. As I understand the structure of Akron  
25 Thermal, Limited Partnership, some customers are billed

1 on a budget basis?

2 A. Correct.

3 Q. And does the term prepaid steam mean  
4 anything to you?

5 A. That's the -- what that is is when they've  
6 paid more on their budget than what they've actually  
7 consumed.

8 Q. Okay. So it would be the line item  
9 reconciliation to deal with the difference between how  
10 much revenue you received and how much they would  
11 actually have been billed straight up on the tariff?

12 A. Correct.

13 Q. All right.

14 A. Not on the tariff, but --

15 Q. On the contract?

16 A. On their contract or tariff.

17 Q. Whichever applies?

18 A. Yes.

19 Q. And if you get the increase that has been  
20 requested by Akron Thermal, Limited Partnership in this  
21 case, how would you affect the budget bills of  
22 customers?

23 A. That would not be affected.

24 Q. So you would continue to bill the  
25 customers the amount that you previously told them to

1 pay based upon their budget billing plan?

2 A. Well, Children's is the biggest customer.

3 Q. Right.

4 A. And I'm assuming their rate isn't going to  
5 be affected. The other -- I guess theoretically we  
6 could recalculate the other ones, but there's only  
7 maybe five other budget customers. I think the biggest  
8 budget bill other than Children's is 20,000 a month.

9 Q. But your plan right now would be not to  
10 adjust their budget payments?

11 A. No. I take that back. I was thinking of  
12 Children's. No. We would probably refigure that  
13 budget payment or the other budget payments.

14 Q. And would you prorate their bills?

15 A. I'm not sure how we would go about it.

16 Q. Now, at Page 11 you touch on the subject  
17 we discussed earlier. Lines 9 through 11 talk about  
18 negotiating payment plans?

19 A. Yes.

20 Q. For the holdback of professional fees, and  
21 you don't know -- I take it from your prior answer, you  
22 don't know where those negotiations stand?

23 A. I know where they -- I know where they  
24 stand as of this minute, but I haven't been part of  
25 them.

1           Q.     Okay. Has there been an agreement to  
2 extend the payment of the professional fees?

3           A.     On Schottenstein, yes.

4           Q.     In the case of BMF Advisors or Baker &  
5 Hostetler?

6           A.     They've been paid.

7           Q.     And if you know, is there any requirement  
8 to go back to the bankruptcy court to seek a  
9 modification of the Plan of Reorganization as a result  
10 of the renegotiation of those payment arrangements?

11          A.     I'm not aware of that.

12          Q.     In the next line you talk about  
13 negotiating payment plans with the State of Ohio for  
14 various taxes and fees. Tell me a little bit more  
15 about what taxes and fees were involved here.

16          A.     We've already negotiated a payment plan on  
17 a portion of our gross receipts tax --

18          Q.     I want to be careful here not to get into  
19 the rebuttal phase of this case. I'm really interested  
20 in just you identifying the taxes that were referenced  
21 at Line 11, taxes and fees. What are the taxes there?

22          A.     Gross receipts tax and emission fees.

23          Q.     And as I understand it, Akron Thermal,  
24 Limited Partnership was also not paying the PUCO  
25 assessment and the Office of Consumers' Counsel

1 assessment historically. Is that my understanding?

2 A. Historically, but I believe we're current.

3 Q. Okay. But the PUCO assessment and the OCC  
4 assessment are not embedded in the taxes and fees?

5 A. I don't believe so.

6 Q. Now, if you know, if you -- if the payment  
7 plans with the State of Ohio on these taxes and fees is  
8 renegotiated, do you need to go back to the bankruptcy  
9 court and seek approval?

10 A. I believe so.

11 Q. Have you made an application to the  
12 bankruptcy court to obtain such approval?

13 A. I believe the bankruptcy court has  
14 approved at least one of our payment arrangements.

15 Q. And when did that occur?

16 A. I would say either late June or early  
17 July.

18 Q. Which arrangement was that?

19 A. That was a gross receipts tax payment  
20 schedule.

21 Q. At the bottom of Page 11 you say you're  
22 negotiating payment plans to avert a cash deficit. Are  
23 the payment plans that you reference on the bottom of  
24 Page 11 the same ones that you talk about above or are  
25 they different?

1           A.     It's kind of all-encompassing. I mean,  
2 they're -- it's primarily gross receipts tax and  
3 emission fees.

4           Q.     Who do you pay the emissions fees to?

5           A.     The Ohio EPA, I believe.

6           Q.     You state on Page 12, Lines 10 through 12,  
7 that Akron Thermal will file a Notice of Intent for a  
8 permanent rate case by September 1st, 2009. What is  
9 the basis for that statement?

10          A.     That's what I've been told.

11          Q.     By who?

12          A.     I'm not sure, probably either counsel  
13 or -- probably counsel.

14          Q.     I'd like to talk to you on just one last  
15 thing, on the bottom of Page 12 you talk about the  
16 mechanism that Akron Thermal is using to recover the  
17 emergency rate relief that it has proposed. Would you  
18 agree with me that fuel is generally regarded as a  
19 variable expense?

20          A.     Generally.

21          Q.     And that the mechanism that you are  
22 proposing or Akron Thermal is proposing here is to  
23 increase rates by an adjustment to the demand charge?

24          A.     That's correct.

25          Q.     And the -- would I be correct that the

1 demand charges are generally designed to recover fixed  
2 costs?

3 A. Generally.

4 Q. And by putting -- strike that. The way  
5 your rates work is that the demand charge is driven by  
6 the maximum demand of the customer subject to the  
7 demand charge; right?

8 A. Correct.

9 Q. So if a customer has a maximum demand of  
10 ten in one month but has three or four in other months,  
11 the demand charge that the customer will pay in all  
12 months is driven by the ten; right?

13 A. I believe it's the highest usage in a 12  
14 month period.

15 Q. So in the summertime when a steam customer  
16 is not using any steam, they will be paying a demand  
17 charge that is driven by the maximum demand that will  
18 occur most likely during the heating season; correct?

19 A. That's correct.

20 Q. And they won't be able to avoid that  
21 demand charge by reducing their steam usage; right?

22 A. Correct. Not in the summertime.

23 Q. The only way they would be able to avoid  
24 the demand charge is if they leave the system; right?

25 A. Correct.

1           Q.     When you put a variable cost in a demand  
2 charge, don't you increase the likelihood that there  
3 will be a mismatch between revenues and expenses?

4           MR. ROYER:  Objection.  What's the  
5 variable cost you're referring to?

6           MR. RANDAZZO:  Fuel.  Strike that.

7           MR. ROYER:  I don't understand the  
8 question.

9           Q.     Fuel is the biggest expense that Akron  
10 Thermal, Limited Partnership has; right?

11          A.     Correct.

12          Q.     Order of magnitude, what percentage of its  
13 total cost is made up of fuel?

14          A.     I'd have to look at the financial  
15 statements.  Is that before or after --

16          Q.     After the operational changes.

17          A.     After the operational changes.  I'd have  
18 to do a calculation since my totals include both.

19          Q.     Well, it's just a percentage  
20 relationship.  You've got the numbers in your  
21 testimony.  Simple math; right?

22          A.     Well, if I'm looking at my projections,  
23 the totals -- the operational change does not take  
24 place until after April 30th.

25          Q.     Let's try and make it simpler.  Fuel is



1 clearly the largest expense?

2 A. Yes.

3 Q. And what you're proposing to do is take  
4 variable fuel expense and recover it through a demand  
5 charge; right?

6 A. I'm not sure that's totally true.

7 Q. Why not?

8 A. I would have to look at -- I would have to  
9 do a whole analysis to answer that question. I can't  
10 answer that question.

11 Q. Well, to the extent that you are placing  
12 increased fuel expenses in a demand charge for  
13 recovery, would you agree that because fuel is a  
14 variable expense related to steam production and sales,  
15 you're likely to have, through that rate design, a  
16 mismatch between revenues and expenses?

17 MR. ROYER: I object. That's not what the  
18 process is. The process is how the emergency rate  
19 increase is to be covered. That's an amount, and then  
20 it's being recovered through the demand charge. I  
21 don't get the connection.

22 MR. RANDAZZO: Let me try again.

23 Q. Does the level of emergency rate relief  
24 that you are seeking include your estimate of the  
25 increased fuel expense associated with the operational

1 changes that Mr. Pucak described?

2 A. There is an increased fuel as a result of  
3 the operational changes.

4 Q. What is the order of magnitude -- how much  
5 of that revenue is associated with -- that you're  
6 requesting is associated with an increase in fuel cost?

7 A. I believe it's 1.5 million.

8 Q. To the extent that fuel and -- strike  
9 that. You're proposing to recover that incremental 1.5  
10 million through a demand charge; right?

11 A. The total rate increase is -- is being  
12 proposed through the demand charge.

13 Q. Right. I'll leave it at that. Thank you  
14 very much.

15 HEARING EXAMINER FARKAS: Thank you. Do  
16 you have any --

17 MR. BREITSCHWERDT: No questions, Your  
18 Honor.

19 HEARING EXAMINER FARKAS: Anyone on this  
20 side?

21 MR. HEINTZ: No, Your Honor.

22 MS. BURGAN: None from me, Your Honor.

23 HEARING EXAMINER FARKAS: Staff?

24 MR. McNAMEE: Just one or two.  
25

## CROSS-EXAMINATION

By Mr. McNamee:

Q. This is referred actually to you by Mr. Bees. He refers to an equity infusion and a line of credit in his testimony. Were you here for that?

A. Yes.

Q. Okay. I asked him where in your financial statements those -- for that equity infusion and at least the draws on the line of credit would be reflected, how were these things accounted for. He said he didn't know, but you would. Can you tell me, please?

A. Actually, on the projected financial statement, if you look at the balance sheet, which is Page 2 of, I believe, Exhibit 2, under long-term liabilities -- or no. I take that back. Under current liability, the line of credit, TVII, it shows up starting in March, which is when we drew on it.

Q. Okay. And prior to drawing on that line of credit, there would be nothing to reflect in your books; right?

A. Correct.

Q. How about the equity infusion?

A. The equity infusion is on the second to the last line of the balance sheet in the total

1 partners' deficit, and that was made in February.

2 Q. February of?

3 A. 2009.

4 Q. 2009. Okay. That's all I need. Thank  
5 you.

6 HEARING EXAMINER FARKAS: Any redirect?

7 MR. ROYER: No.

8 HEARING EXAMINER FARKAS: You are excused.

9 (Witness excused.)

10 HEARING EXAMINER FARKAS: Thank you.

11 MR. ROYER: Move the admission of  
12 Applicant's Exhibit 4.

13 HEARING EXAMINER FARKAS: Any objection to  
14 the admission of Applicant's Exhibit 4?

15 Hearing none, it will be admitted.

16 (EXHIBIT ADMITTED INTO EVIDENCE.)

17 HEARING EXAMINER FARKAS: I believe that's  
18 all the witnesses we have for today; is that correct?  
19 And we are going to be in recess until Monday.

20 MR. ROYER: Yes.

21 MR. McNAMEE: At nine?

22 MR. ROYER: Yeah. I was going to suggest  
23 maybe starting at nine to assure we can get done.

24 HEARING EXAMINER FARKAS: Is that okay,  
25 9:00?

1 MR. RANDAZZO: Yes.

2 HEARING EXAMINER FARKAS: We stand in  
3 recess until Monday at 9:00.

4 (Discussion off the record.)

5 HEARING EXAMINER FARKAS: Go ahead.

6 MR. ROYER: I would again offer  
7 Applicant's Exhibit 1, the Proof of Publication.

8 HEARING EXAMINER FARKAS: Any objection?  
9 It will be admitted.

10 (EXHIBIT ADMITTED INTO EVIDENCE.)

11 (Thereupon, the hearing was concluded at  
12 4:41 p.m.)

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## 1 CERTIFICATE

2 I do hereby certify that the foregoing is  
3 a true and correct transcript of the proceedings taken  
4 by me in this matter on Wednesday, July 15, 2009, and  
5 carefully compared with my original stenographic notes.  
6

7 \_\_\_\_\_  
8 s/Valerie J. Sloas  
9 Valerie J. Sloas, Registered  
10 Professional Reporter and Notary  
Public in and for the State of  
Ohio.

11 My commission expires June 8, 2011.

12 (VJS-656)  
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