

BEFORE THE PUBLIC UTILITIES COMMISSION OF OHIO

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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 Mr. Scott Farkas and Ms. Rebecca L. Hussey,  
Hearing Examiners, at the Public Utilities Commission  
of Ohio, 180 East Broad Street, Room 11-C, Columbus,  
Ohio, called at 9:00 a.m. on Monday, July 20, 2009.

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VOLUME II

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Monday Morning Session,

July 20, 2009.

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EXAMINER FARKAS: This is a continuation  
of the hearing in Case No. 09-453-HT-AEM, et al.

Mr. Royer?

MR. ROYER: Yes, thank you, your Honor.

At the hearing last week Mr. Randazzo and  
I each requested certain documents that we had  
identified that the Bench take administrative notice  
of them, so discussion ensued as to what was  
administrative notice and what was not.

And, but in any event, whether the  
documents were to come in as being administratively  
noticed or whether it was just simply recognized as  
judicial authority or as Commission documents,  
Commission files, I did want to provide hard copies  
of the documents I had referenced just because it's  
easier than you having to try to find them.

EXAMINER FARKAS: Okay. I appreciate  
that.

MR. ROYER: The parties have those as  
well.

EXAMINER FARKAS: Just for the record, my  
ruling on administrative notice not being necessary

1 for Commission decisions and/or Supreme Court cases  
2 would also hold with Bankruptcy Court decisions that  
3 are official decisions or entries of the Bankruptcy  
4 Court.

5 MR. ROYER: Okay. That was my  
6 understanding.

7 EXAMINER FARKAS: Okay, thanks.

8 MR. ROYER: These are the three.

9 EXAMINER FARKAS: Thank you.

10 And then just for the record just so the  
11 record is full and complete for the Commission, in  
12 the first amended disclosure statement on pages 43  
13 and 44, there are listings of customers and sales by  
14 unit and sales by dollar, and what I'd like the  
15 applicant to do either today or tomorrow or at some  
16 point prior to briefs, is to file a list that would  
17 show the number of customers that Akron Thermal has,  
18 whether those customers are on contract or tariff,  
19 the percent by volume, and percent by revenue that  
20 they have, unit sales and unit dollars, and then what  
21 the rate that they pay is, the contract rate versus  
22 what the tariff rate would be, just so we have a  
23 comparison.

24 Yes?

25 MR. RANDAZZO: Your Honor, would that

1 also apply to ATC Akron Thermal Cooling.

2 EXAMINER FARKAS: No, I'm just interested  
3 in Akron Thermal Limited Partnership.

4 MR. RANDAZZO: I mean the sales too,  
5 Akron Thermal Cooling?

6 EXAMINER FARKAS: Yes. Yes.  
7 That would apply to any customer that  
8 Akron Thermal Limited Partners provides service to be  
9 that Akron Thermal Cooling or anyone else.

10 MR. ROYER: We will endeavor to provide  
11 it by close of business tomorrow. What's your  
12 Honor's pleasure in how to do that?

13 EXAMINER FARKAS: You can -- I believe  
14 electronic mail would be fine as long as it's served  
15 to all the parties?

16 MR. ROYER: Sure.

17 EXAMINER FARKAS: Is that what you were  
18 asking?

19 MR. ROYER: Well, yes. Because I was a  
20 little confused because as I recall, the disclosure  
21 statement is not an exhibit in the case, it was just  
22 used on cross, so we don't, I mean --

23 EXAMINER FARKAS: This would be something  
24 I'm taking administrative notice of.

25 MR. ROYER: Sure, okay. We'll be happy



1 to provide -- we'll try to do it by the end of the  
2 day tomorrow.

3 EXAMINER FARKAS: And my understanding  
4 is -- I shouldn't say "my understanding," strike  
5 that.

6 Are any of the customers that Akron  
7 Thermal has residential?

8 MR. ROYER: The customers of the condo  
9 are residential customers. And that's it. They're  
10 the only residential customers.

11 EXAMINER FARKAS: So I would appreciate  
12 also just note that with respect to the customer  
13 types that they are.

14 MR. ROYER: Okay.

15 EXAMINER FARKAS: All right. At this  
16 time -- yes.

17 MR. RANDAZZO: Your Honor, I don't want  
18 to interfere with your request, but do you want the  
19 information provided on an annualized basis, 2008  
20 forecast basis?

21 EXAMINER FARKAS: Well, I would say the  
22 most current available information. If you have it  
23 for the last year for 2008, that would be -- and also  
24 whatever projection you would have for 2009.

25 MR. ROYER: 2008.

1 EXAMINER FARKAS: Okay. Thank you.

2 MR. RANDAZZO: And again, your Honor, I  
3 very much respect the Bench's interest in the  
4 information, but it's facts and information that will  
5 be coming in to the record after the close of the  
6 record and if we have any concern about it, we will  
7 advise the Bench.

8 EXAMINER FARKAS: That's fine.

9 MR. McNAMEE: As you're already aware,  
10 the staff filed three pieces of surrebuttal testimony  
11 on Friday.

12 EXAMINER FARKAS: Yes.

13 MR. McNAMEE: My thought would be that  
14 perhaps we could put those three staff witnesses on  
15 when we're done with the rest of the witnesses and  
16 have them cross-examined on both their direct  
17 testimony and the surrebuttal. That make sense?

18 EXAMINER FARKAS: Yes.

19 MR. ROYER: No objection.

20 MR. BREITSCHWERDT: Your Honor, to return  
21 to the previous subject just to make sure I  
22 understand what we're going to be providing, Canal  
23 Place, the amendment that we agreed to has been  
24 paying an increased rate starting as of February of  
25 2009.

1           So I heard the Bench say that they would  
2     like the most up-to-date information. There was also  
3     discussion of 2008 annualized information. So just  
4     making sure we're providing the most current  
5     information to the Bench for their view.

6           EXAMINER FARKAS: Okay, I appreciate  
7     that.

8           MR. ROYER: We can show that. We'll show  
9     that as an adjustment.

10          MR. BREITSCHWERDT: One additional item.

11          EXAMINER FARKAS: Yes.

12          MR. BREITSCHWERDT: There was also some  
13     discussion last Wednesday about what contracts were  
14     or were not approved by the Commission, and perhaps  
15     it would better inform the Bench and the Commission  
16     if the information provided by Mr. Royer also  
17     recognized which special contracts were currently  
18     approved by the Commission for the customers that  
19     they're going to be recognizing. So if that would be  
20     assistance to you.

21          EXAMINER FARKAS: Also note that.

22          MR. ROYER: Sure.

23          EXAMINER FARKAS: Thank you.

24                 Okay, at this time I believe the next  
25     witness would be the trustee; is that correct?

1                   MR. RANDAZZO: Yes, your Honor. We would  
2 ask that -- I'm not sure how to pronounce your last  
3 name.

4                   MR. WEHRLE: Werl-ly.

5                   MR. RANDAZZO: Thank you very much.

6                   We would ask Mr. Wehrle be called. We  
7 caused him to be here today via a subpoena and given  
8 the interest of the trustee relative to the City of  
9 Akron, we're calling Mr. Wehrle and intend to ask  
10 questions as if he were on cross-examination as a  
11 result of the difference of views, I was going to say  
12 hostility here, but difference in views that exist  
13 between the trustee and the City of Akron.

14                  EXAMINER FARKAS: Duly noted.

15                  MR. RANDAZZO: Thank you, your Honor.

16                  (Witness sworn.)

17                                 - - -

18                                 DAVID WEHRLE

19 being first duly sworn, as prescribed by law, was  
20 examined and testified as follows:

21                                 CROSS-EXAMINATION

22 BY MR. RANDAZZO:

23                   Q. Sir, would you state your full name and  
24 your business address please?

25                   A. David Wehrle, W-e-h-r-l-e, 3421 Ridgewood

1 Road, Akron, Ohio 44333.

2 Q. Mr. Wehrle, have you participated in a  
3 Public Utilities Commission of Ohio proceeding  
4 previously?

5 A. No, I never have.

6 Q. Well, am I correct that you are a partner  
7 and practice group leader for BMF Advisors, LLC?

8 A. Yes, that's correct.

9 Q. And BMF Advisors, LLC is an affiliate of  
10 another firm by the name of Bober, Markey &  
11 Fedorovich?

12 A. Yes, that's correct.

13 Q. And you serve in the capacity as trustee  
14 for the Akron Thermal Limited Partners unsecured  
15 creditors for a trust that was approved by the  
16 Bankruptcy Court, correct?

17 A. Yes, that's correct.

18 Q. And that's known as the creditors' trust,  
19 correct?

20 A. Yes.

21 Q. And your perspective as trustee is  
22 focused exclusively on the unsecured creditors,  
23 correct?

24 A. Yes. It's the trust that is for the  
25 benefit of the unsecured creditors.

1 Q. Right.

2 And the -- I believe you identified in  
3 your request for intervention the largest creditors,  
4 unsecured creditors that are the beneficiaries of  
5 that trust are Ohio Edison, City of Akron, and the  
6 State of Ohio, correct?

7 A. Yes.

8 Q. Does BMF Advisors or Bober, Markey &  
9 Fedorovich, do either of those enterprises do any  
10 work for Akron Thermal Limited Partnership, Akron  
11 Thermal Cooling, Thermal Ventures II or any  
12 affiliate?

13 A. No, we do not.

14 Q. Do you do any work for public utilities  
15 other than related to the capacity that you have as  
16 trustee?

17 A. Bober-Markey does some benefit plan  
18 audits for First Energy.

19 Q. And that would be employee benefit plans?

20 A. Yes.

21 Q. Okay, thank you.

22 Now, are you aware of a management change  
23 that has taken place at Akron Thermal Limited  
24 Partners?

25 A. As part of the -- no, I'm not. I guess

1 I'm not. Unless you're referring to something with  
2 the actual emergence from the plan.

3 Q. You're not aware that Mr. Bees is no  
4 longer an officer with Akron Thermal Limited  
5 Partnership?

6 MR. ROYER: Objection, your Honor.  
7 Mischaracterizes the record. Mr. Bees is still the  
8 president of Akron Thermal Limited Partnership.

9 MR. RANDAZZO: I thought Mr. Bees was  
10 still the president of Opportunity Parkway.

11 MR. ROYER: I'm sorry, Opportunity  
12 Parkway. I misspoke.

13 EXAMINER FARKAS: Okay.

14 A. No, I was not aware of any changes.

15 Q. Have you ever spoken to a gentleman by  
16 the name of Charles Abbott who is employed by Alia  
17 Management, LLC?

18 A. No, I haven't.

19 Q. Are you aware that Charles Abbott is  
20 currently the CEO of Akron Thermal Limited Partners?

21 A. No, I am not aware of that.

22 Q. During the bankruptcy proceeding would I  
23 be correct that the firm of Sasco Hill Advisors, Inc.  
24 was providing management consulting services to Akron  
25 Thermal Limited Partnership?

1           A.    I don't know if it's -- they were the  
2 financial advisor to the debtor. I don't know if  
3 that would be characterized as management. They were  
4 financial advisor.

5           Q.    And they helped the debtor to develop the  
6 plan of reorganization that was ultimately approved  
7 by the Bankruptcy Court; is that correct?

8           A.    Yes, that was their role.

9           Q.    Are you aware that they're no longer  
10 providing services to Akron Thermal Limited  
11 Partnership?

12          A.    Yes.

13          Q.    And when did you become aware of that?

14          A.    Well, as part of the plan basically all  
15 the advisors or the -- that on the effective date it  
16 all kind of goes away.

17          Q.    And approximately, if you know, how much  
18 did Akron Thermal Limited Partners pay Sasco Hill  
19 Advisors as a result of the work that Sasco did  
20 during the bankruptcy proceeding?

21          A.    I don't know. You could look at the  
22 final fee applications. They were a fixed fee per  
23 month. There was a period during which they waived  
24 their fees I believe from towards the end of '08  
25 forward, and I don't know if they've gotten their



1 final.

2 So I don't know what they've gotten paid.  
3 So I'd like to look at the numbers, but it was like  
4 35,000 a month.

5 Q. And that would have been their fixed fee.

6 A. Yes.

7 Q. If I were to tell you that their total  
8 compensation from the Bankruptcy Court was  
9 \$624,670.20, would that number sound like it's in the  
10 ballpark?

11 A. Yes, that would.

12 Q. And the Bankruptcy Court actually issues  
13 an order approving the payment of fees, correct?

14 A. Correct.

15 Q. Are you aware of whether or not those  
16 fees have actually been paid to Sasco Hill Advisors?

17 A. I am not.

18 Q. Have you looked at operating reports or  
19 cash flow statements of Akron Thermal Limited  
20 Partnership since the bankruptcy plan has been  
21 approved?

22 A. No. After the bankruptcy plan is  
23 approved, they don't file monthly operating reports.

24 Q. Have you asked for monthly operating  
25 reports or cash flow statement?

1           A.    Yes, I asked, well, after the news came  
2 out in the papers Akron Beacon Journal that the  
3 University of Akron had was not renewing their  
4 contract, sent an e-mail to Mr. Pucak saying gee, do  
5 you have cash forecasts through the end of the year,  
6 do you have any information, and I think what was a  
7 true-up.

8                   Actually that was one of the things I  
9 brought along in an e-mail. And he told me what the  
10 estimated true-up was and they really were still  
11 working through this process.

12           Q.    So approximately when would that  
13 communication take place?

14           A.    That was June. Let's see, June 5th,  
15 and he replied June 10.

16                   EXAMINER FARKAS: Is that 2009?

17                   THE WITNESS: I'm sorry, yes, 2009.

18           Q.    And when did the Akron Beacon Journal  
19 article that you referenced appear?

20           A.    Well, I don't know. Not too long before  
21 that I think. Maybe a week or so. I'm not exactly  
22 sure.

23           Q.    So you initiated some -- upon learning  
24 that University of Akron had left, you realized that  
25 University of Akron was the largest customer for

1 Akron Thermal Limited Partnership, correct?

2 A. Yes. At that point I didn't quite recall  
3 whether they were the largest or, but I knew they  
4 were very significant.

5 Q. So you reached out to Akron Thermal  
6 Limited Partnership and Mr. Pucak specifically and  
7 asked him what?

8 A. I asked him what -- if he had any  
9 forecasts through the balance of the year, what this  
10 impact -- how this would impact their business.

11 And I also knew that at the conclusion of  
12 the contract, because the University of Akron's on a  
13 budget payment plan, they true up the actual  
14 consumption compared to the budgeted payments and  
15 there's either a surplus or a deficit and that's  
16 trued up. And I asked him what that was.

17 Q. And what did Mr. Pucak provide you in  
18 response?

19 A. He sent me an e-mail, said that the  
20 true-up would be about -- well, actually gave me  
21 \$477,076.20. And then he also said that there was an  
22 emergency rate case in process and that it would  
23 really depend on that, the outcome of that case what  
24 his cash flows would be for the balance of the year.

25 Q. And the date of Mr. Pucak's response was?

1           A.     June 10th.

2           Q.     June 10.

3           A.     2009.

4           Q.     And prior to that were you aware of Akron  
5 Thermal Limited Partnership filing an application for  
6 emergency increase in rates?

7           A.     No, I was not.

8           Q.     Now, the creditors committee is the name  
9 that is given to the -- in the aggregate to the group  
10 of unsecured creditors in the bankruptcy proceeding,  
11 correct?

12          A.     Well, I guess the creditors committee  
13 would be a group of people who represent the  
14 interests of the unsecured -- yes. Creditors  
15 committee, to me there's three people and in this  
16 instance, yeah.

17          Q.     They serve in a representative capacity  
18 for the population of unsecured creditors, correct?

19          A.     Correct, yes, yes.

20          Q.     And the creditors committee during the  
21 bankruptcy proceeding was represented by an attorney,  
22 namely Baker and Hostetler, correct?

23          A.     Correct.

24          Q.     And do you know how much in the way of  
25 compensation Akron Thermal Limited Partnership paid

1 to Baker and Hostetler during the bankruptcy  
2 proceeding? And if I were to tell you on the order  
3 of \$713,000, would that sound about right?

4 A. That probably sounds about right.

5 Q. And then BMF Advisors, the firm that  
6 you're directly associated with --

7 A. Correct.

8 Q. -- was also paid approximately 194,000  
9 for its services to the creditors committee during  
10 the bankruptcy proceeding, correct?

11 A. Yes, that's correct.

12 Q. And in addition to Sasco Hill Advisors,  
13 Baker and Hostetler, and BMF Advisors having  
14 professional fees during the bankruptcy proceeding,  
15 Akron Thermal Limited Partnership had its own counsel  
16 during the bankruptcy proceeding, namely  
17 Schottenstein, Zox & Dunn, correct?

18 A. Correct.

19 Q. And do you recall how much compensation  
20 was paid to Schottenstein, Zox & Dunn during the  
21 bankruptcy proceeding?

22 A. Not exactly. I'm thinking it was  
23 a-million-nine.

24 Q. Approximately \$2 million?

25 A. \$2 million.

1           Q.    And now are you aware of whether or not  
2 all those professional fees have been paid at this  
3 point in time?

4           A.    I am not. I know that we have been.

5           Q.    You know that BMF Advisors has been fully  
6 paid?

7           A.    Yes.

8           Q.    And when were -- when did you receive  
9 your final payment?

10          A.    I think it was last Monday. I think. I  
11 think it was near the deadline.

12          Q.    You think that was near the deadline?

13          A.    Yeah, I think there was some time period  
14 following the final fee application during which  
15 final fee applications were to be made.

16          Q.    And in your earlier discussion with  
17 Mr. Pucak, did you talk to him about whether or not  
18 Akron Thermal was going to be able to pay the  
19 professional service providers such as BMF providers?

20          A.    No, I didn't ask him about that.

21          Q.    Now, you continue to serve as trustee and  
22 in that capacity you also are compensated by Akron  
23 Thermal Limited Partnership, correct?

24          A.    Correct.

25          Q.    And approximately -- have you invoiced

1 Akron Thermal Limited Partnership since the effective  
2 date of the bankruptcy?

3 A. Yes, we have.

4 Q. On a monthly basis?

5 A. Yes, we have.

6 Q. Have you been paid?

7 A. Yes, we have. Yes. I think the last  
8 invoice which was sent out at the end of the first  
9 week of July we haven't been paid yet.

10 Q. And can you give me roughly the order of  
11 magnitude of those invoices, monthly invoices?

12 A. The total of the invoices is a little  
13 less than \$30,000 I believe.

14 MR. ROYER: I'm sorry?

15 THE WITNESS: I'm sorry, \$30,000. And  
16 we've been paid 20 I think.

17 Q. And going through the materials in the  
18 bankruptcy proceeding, it appears that your hourly  
19 rate is approximately \$347 an hour; is that correct?

20 A. That's correct.

21 Q. Are there other individuals within your  
22 firm that are working on the Akron Thermal Limited  
23 Partnership bankruptcy for the creditors' trust?

24 A. You mean that worked during the pendency?

25 Q. Since the effective date of the

1 bankruptcy. Is it just you or are there other people  
2 that are invoicing Akron Thermal?

3 A. There's a difference there. During the  
4 case we were the financial advisors to the unsecured  
5 creditors committee. On the effective date we were  
6 then the trustee. And Bober, Markey, Fedorovich was  
7 also accountants to the trustee.

8 So during -- I think to fully answer your  
9 question, during the pendency of the case there were  
10 people that worked on the -- in some aspects of the  
11 bankruptcy case.

12 Since the filing or since the effective  
13 date, there would be a slightly different composition  
14 of people

15 Q. Is Bober, Markey & Fedorovich invoicing  
16 Akron Thermal Limited Partnership different?

17 A. We've been combining everything.

18 Q. And your invoices would include your  
19 attorney's fees as well?

20 A. No, our invoice would just be for our  
21 services. Baker and Hostetler invoices separately.

22 Q. And do you know how much Baker and  
23 Hostetler has invoiced Akron Thermal Limited  
24 Partnership since the effective date of the  
25 bankruptcy?



1           A.    I don't have that information.

2           Q.    Would you see those invoices in the  
3 course of your capacity as trustee?

4           A.    Yes, typically, yeah.  And in fact the  
5 process is we invoice Akron Thermal, Baker invoices  
6 Akron Thermal.  Akron Thermal pays or sends us the  
7 checks because we need to deposit it into the trust  
8 account, and then we make the disbursements from the  
9 trust account.

10          Q.    Okay.  So you don't have any idea  
11 ballpark number of what Baker and Hostetler has  
12 invoiced since the --

13          A.    I don't know, I guess ballpark number  
14 might be \$40,000.  Something like that.

15               EXAMINER FARKAS:  Just for the record you  
16 said "since the"?

17               MR. RANDAZZO:  Since the effective date  
18 of the bankruptcy.

19               EXAMINER FARKAS:  Thank you.

20               MR. RANDAZZO:  Thank you, your Honor.

21          Q.    Now, just so I have an understanding of  
22 sequence of events, the bankruptcy petition that was  
23 filed by Akron Thermal Limited Partnership was filed  
24 on June 18, 2007, correct?

25          A.    I believe that's true.

1 Q. And you say that you became aware of the  
2 University of Akron departure as a customer of Akron  
3 Thermal Limited Partnership sometime prior to June 5?

4 A. Yes.

5 Q. The effective date of the bankruptcy --  
6 EXAMINER FARKAS: Excuse me, is that  
7 June 5?

8 MR. RANDAZZO: 2009, I'm sorry. Thank  
9 you, your Honor.

10 Q. The effective date of the bankruptcy was  
11 February?

12 A. February 21, '09.

13 Q. 2009.

14 A. 2009.

15 Q. Now, subsequent to the effective date of  
16 the bankruptcy in the bankruptcy proceeding, there  
17 have been hearings before the Bankruptcy Court on the  
18 fee applications submitted by Sasco Hill Advisors and  
19 Schottenstein, Zox & Dunn; is that correct?

20 A. And also Baker and Hostetler and BMF  
21 Advisors. Everyone.

22 Q. Do you know when those hearings took  
23 place?

24 A. I should. I attended them.

25 Q. May 26?

1           A.    Okay.

2           Q.    Would you accept -- does that sound like  
3 it was the right date, May 26, 2009?

4           A.    That could be.   Okay.

5           Q.    Did you -- were you aware of the  
6 University of Akron's departure on May 26, 2009?

7           A.    No.

8           Q.    Once you became aware that the University  
9 of Akron had left, did you --

10          A.    I'm sorry, no, I was, because I remember  
11 now it was raised at the hearing, at the fee  
12 application hearing by Judge Haystone.   So I must  
13 have known it at that point.   So whenever it came out  
14 in the Akron Beacon Journal is when I would have  
15 learned of it.

16          Q.    And did --

17               EXAMINER FARKAS:   I'm sorry, that fee  
18 application was February?

19               THE WITNESS:   No, I'm sorry.   The fee  
20 application hearing was March 26 --

21          Q.    May.

22          A.    May 26, 2009.   And at that point that  
23 issue of the University of Akron terminating or  
24 letting their contract lapse was known at that time.  
25 So it was some -- the news had come out sometime

1 before that.

2 Q. Okay. And as part of your responsibility  
3 as trustee to the creditors' trust, did you raise  
4 that issue with the Court, the Bankruptcy Court, once  
5 you became aware of it and inquire about whether or  
6 not that development might affect the ability of  
7 Akron Thermal to implement its plan of  
8 reorganization?

9 A. I had some discussions with counsel at  
10 Baker and Hostetler and they were in contact with  
11 Mr. Swetnam at Schottenstein, and they were assured  
12 through Mr. Swetnam that the company was going to try  
13 to work -- was going to work through it and that  
14 there were other options that they were going to  
15 explore.

16 So no, I did not -- I actually didn't  
17 speak at all at the fee application hearing.

18 Q. Okay, and do you know when Akron Thermal  
19 Limited Partnership filed its application for an  
20 emergency rate increase?

21 A. I do not.

22 Q. Did Akron Thermal Limited Partnership  
23 call you and let you know that they were filing an  
24 application for an emergency rate increase at the  
25 PUCO?

1           A.    They did not call me.

2           Q.    Do you know when they filed with the  
3 Public Utilities Commission of Ohio to secure  
4 approval of the promissory notes that were issued as  
5 a result of the bankruptcy proceeding to creditors'  
6 trust, for example, and the State of Ohio?

7           A.    No, I don't.

8           Q.    So in your -- strike that.  
9                   Your intervention request in this  
10 proceeding was filed on July 13, correct?

11          A.    I believe so.

12          Q.    And when did you instruct counsel to seek  
13 intervention in this proceeding?

14                MS. BURGAN:  Objection, privileged.  
15 Attorney/client privilege.

16                EXAMINER FARKAS:  I'll sustain the  
17 objection.

18          Q.    Okay.  When did you become aware of the  
19 staff testimony, prefiled testimony that was  
20 submitted in this proceeding on July the 8th?

21          A.    I think it may have been that day or the  
22 day after.  Because 13th was last Monday and I know  
23 there was conversations with counsel towards the end  
24 of the previous week, I think Thursday.

25                Would that have been -- maybe Thursday of

1 the previous week. So approximately that time or  
2 possibly the day after.

3 Q. Well, Thursday the prior week would have  
4 been July what?

5 A. I think the 9th?

6 Q. And how did you become aware of the staff  
7 testimony that was filed in this proceeding on  
8 July 8?

9 A. It was contact by counsel.

10 Q. Counsel for who?

11 A. Baker-Hostetler, I'm sorry. Counsel for  
12 me.

13 Q. Counsel actually for the trustee, right?

14 A. Yeah, counsel for the trustee, yeah.

15 Q. Okay. And after you saw the staff  
16 testimony, did you have any conversations with Akron  
17 Thermal Limited Partnership?

18 A. I did not have any direct conversation  
19 with Akron Thermal Limited Partnership. It was just  
20 between conversations with counsel Baker and  
21 Hostetler. And then some e-mails with Baker and  
22 Hostetler.

23 Q. So after the staff testimony was filed,  
24 you didn't commence discussions with Akron Thermal  
25 Limited Partnership about modifying the notes?

1           A.    I did not.  If by Akron Thermal Limited  
2 Partnership you mean, say, Mr. Pucak or Mr. Bees, I  
3 did not have any direct conversations with them.  It  
4 was always through Baker-Hostetler and Mr. Swetnam.

5           Q.    Well, did you speak directly with  
6 Mr. Swetnam?

7           A.    I did not speak directly with  
8 Mr. Swetnam.  I just saw there was an e-mail on  
9 occasion between Mr. Swetnam and Mr. Hutchinson that  
10 I was occasionally copied on --

11          Q.    So --

12          A.    -- when I talk about Mr. Swetnam.

13          Q.    So that the forbearance arrangement that  
14 you describe in your intervention request was worked  
15 out between counsel for the trustee or the trustee  
16 and counsel for Akron Thermal Limited Partnership?  
17 And you were not directly involved in that?

18               MS. BURGAN:  Objection, mischaracterizes  
19 witness' testimony.

20               MR. RANDAZZO:  I'm asking, your Honor.

21               EXAMINER FARKAS:  I'm sorry?

22               MR. RANDAZZO:  I'm asking.

23               EXAMINER FARKAS:  Thank you.

24               You can answer.

25          A.    Yeah, I would have conversations with

1 Mr. Hutchinson at Baker or Kelly Burgan at Baker, and  
2 they would have discussions with Mr. Swetnam. So it  
3 was always through counsel.

4 Q. Was there any direct dialogue between  
5 yourself and any representative of Akron Thermal  
6 Limited Partnership regarding the forbearance  
7 arrangement?

8 A. No.

9 Q. Who proposed the forbearance arrangement?

10 A. I'm not really certain who initiated the  
11 proposal. I'm not certain. I'm assuming it may have  
12 been the -- may have been someone from Akron Thermal.

13 Q. But you don't know.

14 A. But I don't know.

15 Q. You did not initiate.

16 A. Correct, I did not initiate.

17 Q. It wasn't your proposal to forbear on the  
18 note, correct?

19 A. Not initially, no.

20 Q. Well.

21 A. I did not come up with it.

22 Q. Right. You went along with it. Or you  
23 signed the note.

24 A. Yes, I signed it.

25 Q. So you went along with it, right?



1           A.    Yes.

2           Q.    Now, we've talked about -- earlier we  
3 talked about the largest creditors of unsecured  
4 creditors of Akron Thermal Limited Partnership, and  
5 one of those was Ohio Edison, correct?

6           A.    Yes.

7           Q.    Did they oppose the plan of  
8 reorganization?

9           A.    I believe they voted against it as part  
10 of the polling process of the solicitation of votes.  
11 On the committee itself I think they probably  
12 abstained. I don't recall.

13          Q.    And if you recall, do you know whether or  
14 not they expressed concerns about the feasibility of  
15 the plan of reorganization as part of their  
16 objections to the Bankruptcy Court?

17          A.    I don't recall offhand. I'm sure it's  
18 part of the record.

19          Q.    I'm sure it is too.

20          A.    Yeah. I didn't sit through the hearings.

21          Q.    Well, you did participate in the  
22 bankruptcy process.

23          A.    Oh, sure. But I didn't sit through all  
24 the -- read the all the depositions, et cetera.

25          Q.    Well, as trustee for the unsecured

1 creditors it would have been important for you to  
2 know what the individual positions of the unsecured  
3 creditors were relative to the plan of  
4 reorganization, wouldn't it?

5 MS. BURGAN: Objection. That  
6 mischaracterizes -- he was not the trustee of  
7 unsecured creditors during the bankruptcy case.  
8 Mr. Wehrle was simply the financial advisor to the  
9 committee.

10 MR. RANDAZZO: I'll withdraw the  
11 question.

12 EXAMINER FARKAS: Thank you.

13 Q. Mr. Wehrle, do you have your intervention  
14 request in this proceeding available to you on the  
15 stand there?

16 A. No, I don't. I think it's over -- I  
17 think I got one in my bag. I don't have it up here.

18 MR. RANDAZZO: May I approach the  
19 witness?

20 THE WITNESS: I could get one.

21 MR. RANDAZZO: I've got an extra copy.

22 EXAMINER FARKAS: Yes.

23 MR. RANDAZZO: One of the things I  
24 anticipated you might need.

25 May I approach the witness, your Honors?

1 EXAMINER FARKAS: Yes.

2 MR. RANDAZZO: Let the record reflect I'm  
3 handing Mr. Wehrle a copy of the motion to intervene  
4 with the transmittal letter from Baker and Hostetler  
5 that was submitted in this proceeding on July the  
6 13th.

7 Q. (By Mr. Randazzo) Mr. Wehrle, do you  
8 have that document in front of you?

9 A. Yes, I do.

10 Q. If you would turn to page 8 of the  
11 memorandum in support. Have you seen this document  
12 before?

13 A. Yes, I've read this.

14 Q. When did you read it?

15 A. I think about the time it was filed.

16 Q. I'd like you to turn to page 8. At the  
17 bottom of the page you see the paragraph that begins  
18 with "As a result of"?

19 A. Yes.

20 Q. Now, when I read that sentence, it  
21 suggests to me that the trust, after reviewing the  
22 staff's analysis, approached Akron Thermal to discuss  
23 Akron Thermal's obligation on the note payable to the  
24 trust.

25 Is that your recollection?

1           A.    Well, I did not approach Akron Thermal.  
2 I think it's probably more accurate to say that Akron  
3 Thermal may have -- counsel approached trust and the  
4 trust was receptive to that.

5           Q.    Prior to -- when was the forbearance  
6 agreement signed by you?

7           A.    By me? Sometime last week. I'm not  
8 exactly sure of the date but it was sometime last  
9 week. Because I sent the signature page to counsel,  
10 I don't know, last Tuesday maybe. I'm not sure.

11          Q.    When did you review the forbearance  
12 agreement in its final form?

13          A.    I think it was probably on Monday or  
14 Tuesday, because I believe -- as I recall I think  
15 Mr. Swetnam was drafting the final version and I  
16 think that that was available Monday sometime, and I  
17 think I probably signed it and -- reviewed it and  
18 signed it on Tuesday.

19          Q.    On?

20          A.    I think on Tuesday.

21          Q.    Tuesday of last week?

22          A.    The 14th, yeah.

23          Q.    And did you make any -- did you see a  
24 draft of the agreement prior to the final document?

25          A.    Yes, I believe there were a couple that

1 were drafts. I think I saw maybe one. I don't think  
2 it changed very much between drafts.

3 Q. When did you see the initial draft?

4 A. I think it was on Monday sometime. It  
5 was late Monday. I think there were -- they came in  
6 fairly rapid succession, as I recall.

7 Q. And so if I can characterize it this way,  
8 the business agreement to do a forbearance would have  
9 taken place prior to Monday?

10 A. Yes.

11 Q. And when did you have the forbearance  
12 arrangement worked out as you understand it? And  
13 then subject to documentation through the agreement.

14 A. I think it was -- with conversation with  
15 counsel I think it was Thursday of the previous week.  
16 I think we said the 9th. We were trying to pin  
17 down that date.

18 Q. And on the same page in your intervention  
19 request, page 8?

20 A. Yep.

21 Q. The next sentence after the one that we  
22 talked about earlier states that "As a result of  
23 these discussions, the trust has agreed. . ."

24 A. Uh-huh.

25 Q. And this document was filed on

1 July 13th, as we earlier discussed. So at least by  
2 July 13th this document suggests that there was  
3 already an agreement on the forbearance. Is that a  
4 correct statement?

5 A. I think the terms of the forbearance  
6 where we -- particularly the commercial terms which  
7 we would forego the \$60,000 a year were known at that  
8 time.

9 Q. Well, you're not foregoing 60,000, you're  
10 postponing.

11 A. Well, I'm postponing, yes, that would be  
12 a more correct characterization.

13 Q. Did you have any direct discussions with  
14 the State of Ohio regarding the portion that the  
15 State of Ohio would be forbearing on versus the  
16 portion that the trust would be forbearing on?

17 A. I did not have any direct conversations  
18 with the State of Ohio.

19 Q. And the total amount of the forbearance  
20 is \$100,000, correct?

21 A. Correct.

22 Q. And who decided it was going to be 60/40  
23 between the State and the creditors' trust?

24 A. Well, again, that was with counsel,  
25 that's kind of the proportionate amounts of the notes

1 approximately. So that was kind of the understanding  
2 there.

3 Q. And so prior to -- excuse me.

4 July 13, 2009 the commercial arrangements  
5 associated with the forbearance had largely been  
6 worked out.

7 At that point in time did you reach out  
8 to the unsecured creditors to make them aware of any  
9 plans that you might have or recommendations that you  
10 might have to enter into the forbearance arrangement?

11 A. No, I did not.

12 Q. Now, as part of the unsecured creditors  
13 obligation that the trust has, you would also be  
14 looking at the value of Akron Thermal Limited  
15 Partnership via a liquidation, correct?

16 A. As part of the trustee?

17 Q. Right.

18 A. Or as part of the financial advisor?

19 Q. As part of the trustee's work.

20 A. Part of the trustee's work first, well,  
21 it would be I'm trying to guard the -- I guess that's  
22 a fair characterization in that I'm trying to guard  
23 the value of the note which is the principal asset.

24 In a liquidation I don't think there  
25 would be very much at all. For the unsecured

1 creditors.

2 Q. Are you aware that Akron Thermal Limited  
3 Partnership has approached the City of Akron and  
4 indicated that it wants out of the lease arrangement  
5 in exchange for being compensated for the value it  
6 perceives to be associated with the lease? Are you  
7 aware of that?

8 A. No, I'm not.

9 Q. Did you conduct a liquidation analysis  
10 prior to agreeing to the forbearance?

11 A. No, not a formal liquidation analysis.

12 Q. Any liquidation analysis, formal,  
13 informal?

14 A. I think it's apparent from having looked  
15 at the company prior to the -- during the bankruptcy  
16 that there really isn't -- there wouldn't be very  
17 much left for the unsecured creditors in the case the  
18 company went out of business.

19 There would be the receivables to  
20 collect, the most of the assets are leased. By the  
21 time you would pay for the cost of collecting the  
22 receivables it would be very little if anything left  
23 for the unsecured creditors.

24 Q. And you advocated in favor of the plan of  
25 reorganization; is that correct?



1           A.    Yes.

2           Q.    And that plan of reorganization assumed  
3 there would not be a need for rate increases at the  
4 PUCO; is that correct?

5           A.    That's correct. The base case  
6 projections did not include a rate increase.

7           Q.    And the plan of reorganization assumed  
8 that Akron Thermal would be able to retain the  
9 University of Akron as a customer; is that correct?

10          A.    That's correct.

11          Q.    Now, we talked about this a moment ago.  
12 I assume you have a copy of the forbearance agreement  
13 available to you?

14          A.    Again, I don't think that was -- I just  
15 brought up the documents that I was asked to -- okay,  
16 I do have it.

17          Q.    Good. Great. I was going to get you a  
18 copy.

19          A.    I've got it.

20                EXAMINER FARKAS: Just for the record is  
21 that the agreement attached to the rebuttal testimony  
22 of Mr. Bees?

23                MR. RANDAZZO: Yes, your Honor. I was  
24 just going to do that. Thank you.

25                EXAMINER FARKAS: Thank you.

1           Q.    Now, would you turn to the first page of  
2 the agreement?

3           A.    Okay.

4           Q.    And the agreement says that it was made  
5 as of the 13th day of July 2009. Is that your  
6 understanding?

7           A.    Yes.

8           Q.    And the background information there  
9 shows the notes that were previously issued by Akron  
10 Thermal Limited Partnership?

11          A.    Yes.

12          Q.    In favor of the three payees identified  
13 there, correct?

14          A.    Correct.

15          Q.    And what is the Thermal Ventures II note  
16 for? The \$250,000, what's that for?

17          A.    That was for as part of the  
18 reorganization plan, Thermal Ventures put both cash  
19 into the company and provided effectively a line of  
20 credit or a backstop line of credit. And that would  
21 be that note.

22          Q.    Okay, and in the same page of the  
23 forbearance agreement that's attached to Mr. Bees'  
24 rebuttal testimony, you see the title "Agreement" and  
25 the capitalized letter, the capitalized words "Now

1 Therefore"? On that same page.

2 A. Okay.

3 Q. And then there's these somewhat magic  
4 words for lawyers, "in consideration." You see those  
5 words?

6 A. Yes.

7 Q. Was there anything of value given to  
8 creditors' trust in exchange for this forbearance  
9 agreement?

10 A. Just the hope that we would actually get  
11 paid our 2 million on our note. Because absent the  
12 accommodation, or however you want to characterize  
13 it, of postponing some of the cash payments, we may  
14 very well get nothing.

15 Q. But you didn't get an improved interest  
16 rate or --

17 A. No.

18 Q. Did Thermal Ventures II get an improved  
19 interest rate?

20 A. I don't believe they did.

21 Q. If we would look at page 2 of the  
22 forbearance agreement. It lists the schedule of  
23 payments under the forbearance agreement and I think  
24 as we talked about a moment ago, you've agreed that  
25 you're not foregoing any money, you're just pushing

1 out the payments over a longer term; is that correct?

2 A. Yes. You're -- yes.

3 Q. And by doing that does it have the effect  
4 of increasing the total amount of interest that  
5 attaches to the note?

6 A. Yes, because there's a 5 percent interest  
7 rate that's attached to the note.

8 Q. And over the term am I correct that the  
9 total dollar amount that Akron Thermal would be  
10 obligated to pay creditors' trust would go from  
11 the -- would escalate to roughly \$2.4 million?

12 A. Sounds about right.

13 Q. What's the term of the creditors' trust?

14 A. Well, the term of the --

15 Q. Am I correct that the term of the  
16 creditors' trust is five years from the effective  
17 date of the plan of reorganization?

18 A. That could be. I would have to look at  
19 all the documents.

20 Q. And five years from the effective date of  
21 the plan of reorganization was February -- the  
22 effective date of plan of reorganization was February  
23 the 9th, 2009?

24 A. I think it was February 21, 2009.

25 Q. And again, that would be a matter of

1 record before the Bankruptcy Court? But sometime in  
2 February.

3 A. Yeah, I think February 21.

4 Q. And five years from that would be -- take  
5 us to February of 2014, correct?

6 A. Yes.

7 Q. And the forbearance agreement has  
8 payments extending into 2015, correct?

9 A. Yes, it does.

10 Q. Did you check the plan of reorganization  
11 to determine whether or not the schedule of payments  
12 under the forbearance agreement would extend beyond  
13 the life of the creditors' trust?

14 A. Well, I did not specifically check for  
15 the life if there's anything in the agreement that  
16 would preclude that would set that term of the life  
17 of the trust. I don't have a specific date.

18 Q. Now, same page, page 2, section 3.1  
19 there, says that these changes are made to facilitate  
20 Akron Thermal's application for emergency rate relief  
21 pending before the PUCO.

22 So your purpose in entering into this  
23 forbearance arrangement was to assist Akron Thermal  
24 relative to its prosecution of the emergency rate  
25 increase proceeding?

1           A.     Correct.   Because our view is that if  
2     there isn't an emergency rate increase, the value of  
3     the note is seriously compromised.

4           Q.     And in the event that the PUCO, the next  
5     sentence says "In the event the PUCO declines to  
6     approve the emergency rate relief, that the agreement  
7     is void."

8                     Is that correct?

9           A.     Yes, that's what it says.

10          Q.     And what happens then?

11          A.     I'm not really sure.

12          Q.     Have you asked Akron Thermal Limited  
13     Partnership what happens if the PUCO doesn't approve  
14     the emergency rate increase?

15          A.     I have not had any conversation -- I have  
16     not asked Akron Thermal Limited Partnership. I can  
17     only look at their application for an emergency rate  
18     increase.

19          Q.     And by -- in that sentence it says "in  
20     the event that the PUCO declines to approve the  
21     emergency rate relief."

22                     Is it your understanding that the words  
23     "the emergency rate relief" refers to the amount of  
24     emergency rate relief that's been requested by Akron  
25     Thermal Limited Partnership?

1           A.    I would term -- well, I don't know. That  
2 may call for a legal interpretation. But my  
3 understanding would be that if the PUCO, whatever the  
4 PUCO ruled in granting relief, that would be viewed  
5 by the PUCO as being sufficient to allow them to  
6 continue to operate and that would be something that  
7 we would not then void this.

8           Q.    Your counsel has been here throughout  
9 this proceeding. So I'll ask you this question: Are  
10 you aware that Mr. Bees testified that the full  
11 amount of the emergency rate increase that was  
12 requested by Akron Thermal was the minimum amount  
13 required and it wouldn't do any good for the  
14 Commission to give anything less?

15           MR. ROYER: I object. I object.

16           EXAMINER FARKAS: Basis?

17           MR. ROYER: Conversation with the Bench  
18 and Mr. Bees was whether the Commission decided to  
19 give 50 percent of the amount. That's the only  
20 conversation I recall on that subject.

21           MR. RANDAZZO: The record will stand for  
22 itself, your Honor. And I mean I'm stuck with the  
23 record as well, but if the witness is unaware of any  
24 conversation, then.

25           MS. BURGAN: I also object to the extent

1 that it encroaches on privilege. I mean everyone in  
2 the room is aware that I was here but Mr. Wehrle was  
3 not.

4 MR. RANDAZZO: I'll withdraw the  
5 question. I think that's -- I like that objection.  
6 I'll withdraw the objection.

7 MS. BURGAN: Thank you, Mr. Randazzo.

8 Q. (By Mr. Randazzo) Mr. Wehrle, are you  
9 aware that Mr. Bees has indicated that the full  
10 amount of the requested emergency rate relief must be  
11 granted and that anything less than the full amount  
12 won't do the applicant any good in terms of its cash  
13 flow problems?

14 MS. BURGAN: Same objection.

15 MR. ROYER: Me too.

16 EXAMINER FARKAS: One second.

17 MS. BURGAN: I will clarify that I have  
18 no objection to Mr. Wehrle assuming, as long as it  
19 accurately reflects the record for the same of  
20 whatever your question may be.

21 MR. RANDAZZO: I think he's going to say  
22 "no." So I mean we can have this discussion or we  
23 can get it over with.

24 MS. BURGAN: The objection stands.

25 EXAMINER FARKAS: I'll let him answer the



1 question.

2 A. I was not aware of whatever he said.

3 Q. (By Mr. Randazzo) Whatever he said  
4 regardless.

5 A. Yes.

6 Q. I'll ask you your understanding of  
7 section 3.1. If the PUCO gives the applicant  
8 50 percent of the emergency rate increase that's  
9 requested, would the agreement still be void as you  
10 understand it?

11 And by "agreement" I'm referring to the  
12 forbearance agreement in section 3.1 of that  
13 agreement.

14 MS. BURGAN: Objection to the extent it  
15 calls for a legal conclusion.

16 EXAMINER FARKAS: I'll allow him to  
17 answer.

18 A. Actually I'm not a hundred percent sure.  
19 I mean because if there was a partial amount that was  
20 granted, I think we would revisit the situation what  
21 does that mean for Akron Thermal to what does that  
22 mean for their cash flow and ability to pay going  
23 forward.

24 And if it was clear that that was not  
25 going to be feasible, well, we would have to take

1 whatever steps we need to to protect our interests.

2 If it was something that looked like it  
3 might be reasonable, I think that we might fashion an  
4 agreement to keep things going with the prospect that  
5 what our -- again, our goal is to get paid our  
6 \$2,041,000 plus interest.

7 Q. So sitting here today your understanding  
8 of this language here is that you really don't know  
9 whether the agreement would be in place or need to be  
10 modified in the event that the Commission were to  
11 give the applicant less than the requested amount of  
12 emergency rate relief; is that correct?

13 A. I think that's correct, because again,  
14 I'm not a lawyer, I can't get into what the  
15 definition of -- the emergency rate relief is not a  
16 defined term here, but it's clear that if -- I think  
17 it's clear that if they get nothing, then it's  
18 certainly one end of the spectrum. If they get  
19 something, we would have to look at it. If for some  
20 reason they got more, I guess we wouldn't have any  
21 worries for a while, so.

22 Q. You don't think you'd have any worries if  
23 they get more than --

24 A. Well, if they got more, I guess strike  
25 that.

1           Q.    Yeah.

2                    Have you looked at the impact of the rate  
3 increase on the potential for Akron Thermal's other  
4 customers to leave?

5           A.    I have not looked at that specifically.  
6 I saw only there was a third person from the PUCO I  
7 think that had testimony relating to that. I have  
8 not looked at the impact.

9           Q.    Fair enough.

10                   Now, are you aware that in emergency rate  
11 cases that the Commission typically imposes, the  
12 Public Utilities Commission of Ohio typically imposes  
13 a refund obligation on the utility that receives an  
14 emergency rate increase?

15           A.    I am not. I'm really not familiar with  
16 PUCO regulations.

17           Q.    Let's -- so you haven't considered, for  
18 purposes of developing your position on this  
19 forbearance agreement you haven't considered whether  
20 some amount of the emergency rate relief would --  
21 might be refunded, have to be refunded by the  
22 applicant pending on the results of the permanent  
23 rate case?

24           A.    No, I have not.

25           Q.    Are you aware that there's an obligation

1 on the part of Akron Thermal to file a permanent rate  
2 increase application in conjunction with seeking an  
3 emergency rate case?

4 A. I only know that from -- well, I don't  
5 know that they were obligated to do it. I saw  
6 references to it in some of the court documents.  
7 But, no.

8 Q. Do you know what their plan is relative  
9 to filing for permanent rate case?

10 A. I do not.

11 Q. Have you talked to them about where they  
12 are in terms of preparing the emergency rate increase  
13 application?

14 And by "them" in this question I'm  
15 referring to Akron Thermal Limited Partnership.

16 A. I have not spoken to them, no.

17 Q. I take it you're familiar with the plan  
18 of reorganization that was approved for Akron Thermal  
19 Limited Partnership?

20 A. Yes.

21 Q. And do you have a copy of that in front  
22 of you?

23 A. No.

24 MR. RANDAZZO: It's attached to Mr. Bees'  
25 direct testimony in this proceeding and I can

1 approach the witness with my copy, if it's okay if I  
2 look over his shoulder.

3 EXAMINER FARKAS: Yes.

4 Let's go off the record for a second.

5 (Off the record.)

6 EXAMINER FARKAS: Back on the record.

7 MR. RANDAZZO: Is it okay if I approach  
8 the witness with my copy?

9 EXAMINER FARKAS: Yes.

10 Q. (By Mr. Randazzo) Mr. Wehrle, will you  
11 allow me to look over your shoulder?

12 A. Sure.

13 Q. I've opened my notebook here to Mr. Bees'  
14 direct testimony to which the plan of reorganization  
15 was attached and ask you to look at page 30 of the  
16 plan of reorganization, and section 10.14.

17 Do you see there that the trust  
18 associated with the creditors' trust has a term five  
19 years from the anniversary date?

20 A. I see that you've underlined that. But  
21 would it be okay if I read the rest of that  
22 paragraph?

23 Q. Sure.

24 A. Just to see, sometimes these documents,  
25 they give it one way and the other.

1 Q. Lawyers.

2 A. Yeah.

3 MR. MULLOOLY: Could you restate the  
4 page?

5 MR. RANDAZZO: Page 30, section is 10.14.  
6 Just prior to Article 11.

7 A. Okay, terminate automatically. Now  
8 unless terms of the trust agreement are extended by  
9 way of a final order, but again as I would defer to  
10 counsel on what may or may not be possible with  
11 changing the things in terms of final order.

12 Q. And for purposes of the plan of  
13 reorganization, were you aware of the language that  
14 appears on page 33 in section 13.2.b?

15 A. Yes --

16 Q. So you --

17 A. -- I saw that.

18 Q. So you were aware that plan of  
19 reorganization, the effective date for the plan of  
20 reorganization was conditioned on securing all  
21 required approvals from the PUCO?

22 A. That's what the language here says. I'm  
23 not sure, I think there have been some jurisdictional  
24 issues about who has that jurisdiction I guess.

25 Q. Yeah. And were you aware on page 35 of

1 the language in 15.2 that present service to the PUCO  
2 jurisdiction over all matters that are jurisdictional  
3 to the Commission?

4 A. Yes.

5 Q. As part of Akron Thermal Limited  
6 Partnership's presentation in support of its request  
7 for emergency rate relief, Akron Thermal has  
8 described various operational changes that it  
9 proposes to make. Are you aware of the operational  
10 changes that Akron Thermal proposes to make?

11 A. I have not discussed them specifically  
12 with Akron Thermal. I saw their rate application and  
13 it seems I got the strong impression from that that  
14 boiler 32 would not be running and that they would  
15 switch fuels to primarily natural gas, et cetera.

16 Q. Have you looked -- you understand that  
17 Akron Thermal leases boiler 32 and the balance of the  
18 system from the City of Akron, right?

19 A. Yes, they lease almost everything.

20 Q. Have you -- did you look at the lease  
21 between Akron Thermal and the City of Akron to  
22 determine whether or not closing down boiler 32 might  
23 affect the --

24 A. The terms of the lease?

25 Q. -- terms of the lease?

1           A.    No, I did not.

2                   MR. RANDAZZO:  That's all I have.  Thank  
3 you very much, Mr. Wehrle, I appreciate you very much  
4 coming here today.  There may be other people with  
5 questions so you may need to wait up there.

6                   EXAMINER FARKAS:  I have a quick question  
7 before other counsel.

8                   You've indicated that "Akron Thermal  
9 leases almost everything."  What assets does Akron  
10 Thermal own?

11                   Other than the, well, I guess they have  
12 some value in the lease, but are there physical  
13 assets that they own?

14                   THE WITNESS:  Well, they might own some  
15 of the improvements.  The Akron Thermal Cooling, some  
16 of that equipment I think they might own.  There  
17 might be some mobile equipment things like that that  
18 they have.

19                   But the system itself is predominantly  
20 the boilers and all that sort of thing is under the  
21 lease.  I think they still have assets of about  
22 \$3 million or so I think in the rate base.

23                   So there are other things but they  
24 certainly couldn't do -- you need pretty much  
25 everything to actually function.



1 EXAMINER FARKAS: Thank you.

2 Before -- I guess we'll ask Akron Thermal  
3 do you have any questions?

4 MR. ROYER: I just have a couple  
5 clarifying questions.

6 - - -

7 CROSS-EXAMINATION

8 BY MR. ROYER:

9 Q. You described a true-up adjustment with  
10 University of Akron that occurred because they were  
11 on a budget plan?

12 A. Correct.

13 Q. And you've referenced I think  
14 \$440,000 number, something in that zone?

15 A. In the e-mail I got from Mr. Pucak said  
16 \$477,076.

17 Q. When you said "true-up," that was money  
18 paid by University of Akron to Akron Thermal,  
19 correct?

20 A. Yes, that 477,000 would have gone from  
21 the University to Akron Thermal.

22 Q. And then Mr. Randazzo asked you some  
23 questions or referred you to section 13.2 of the plan  
24 regarding the conditions to the effective date, and  
25 is it your understanding that those are conditions

1 that if necessary would have had to be satisfied  
2 before the effective date was pronounced by the  
3 Court?

4 A. Yes.

5 MR. ROYER: That's all I have.

6 EXAMINER FARKAS: Staff have any  
7 questions?

8 MR. McNAMEE: No.

9 EXAMINER FARKAS: Anyone else have any  
10 questions?

11 MR. HEINTZ: No, your Honor.

12 MS. BURGAN: No, thank you.

13 MR. BREITSCHWERDT: No, your Honor.

14 EXAMINER FARKAS: I think that's all we  
15 have then.

16 MR. RANDAZZO: Thank you very much,  
17 Mr. Wehrle.

18 EXAMINER FARKAS: Thank you very much.  
19 You're excused.

20 Let's go off the record for a second.

21 (Off the record.)

22 EXAMINER FARKAS: Let's go back on the  
23 record.

24 Call your first witness?

25 MR. RANDAZZO: Yes, your Honor, I would

1 ask the Bench to call Richard Merolla to the stand  
2 and be sworn so he can be sworn as a witness in this  
3 proceeding.

4 EXAMINER FARKAS: Thank you.

5 (Witness sworn.)

6 EXAMINER FARKAS: You may be seated.

7 - - -

8 RICHARD MEROLLA

9 being first duly sworn, as prescribed by law, was  
10 examined and testified as follows:

11 DIRECT EXAMINATION

12 BY MR. RANDAZZO:

13 Q. Mr. Merolla, good morning.

14 A. Good morning.

15 Q. Would you state your full name and your  
16 business address for the record please?

17 A. My name is Richard Merolla. Address is  
18 166 South High Street, Akron, Ohio 44308.

19 Q. And by whom are you employed?

20 A. The City of Akron?

21 Q. And in what capacity?

22 A. I'm director of public service.

23 Q. Mr. Merolla, for purposes of this  
24 proceeding did you cause to be prepared testimony  
25 that has been filed in this case?

1           A.    I did.

2                   MR. RANDAZZO:   Your Honor, I would ask  
3   that the prepared testimony of Richard Merolla,  
4   director of public service, City of Akron, which was  
5   filed in this proceeding on July 8, be marked as  
6   Akron Exhibit, why don't we call it City of Akron  
7   Exhibit 1, so there's less confusion between Akron  
8   Thermal.

9                   EXAMINER FARKAS:   So marked.

10                   (Exhibit marked.)

11           Q.    Mr. Merolla, I'm handing you what's been  
12   marked for identification purposes City of Akron  
13   Exhibit No. 1.  Is that the prepared testimony that  
14   you were responsible for in this proceeding?

15           A.    That's correct.

16           Q.    Was that prepared by you or under your  
17   direction and supervision?

18           A.    Yes, it was.

19           Q.    Mr. Merolla, if I were to ask you the  
20   questions that are set forth in this testimony here  
21   today, would the answers that are set forth in City  
22   of Akron Exhibit No. 1 be the ones you would provide  
23   to us today?

24           A.    Yes, they would.

25                   MR. RANDAZZO:   Your Honor, I would move

1 the admission of City of Akron Exhibit No. 1 subject  
2 to cross-examination and make Mr. Merolla available  
3 for any cross-examination.

4 EXAMINER FARKAS: Thank you.

5 MR. ROYER: Motion to strike, your Honor.  
6 Move to strike Mr. Merolla's testimony beginning at  
7 line 16 on page 2 through the end of the question on  
8 line 2 of page 3, as well as the exhibit attached to  
9 the testimony which is discussed in those passages.

10 The exhibit or the attachment is  
11 objectionable as pure hearsay, and further, it's not  
12 relevant -- if it wasn't hearsay it wouldn't be  
13 relevant to any of the issues before the Commission  
14 in terms of the applications in this case.

15 EXAMINER FARKAS: You want to respond?

16 MR. RANDAZZO: Your Honor, if I may.

17 What the testimony indicates is that the  
18 Akron Thermal energy task force report, which is the  
19 subject of Mr. Royer's motion, identifies the plan of  
20 action that was developed by the City of Akron to  
21 deal with the circumstances presented by Akron  
22 Thermal's ongoing capital formation issues, service  
23 quality issues, and I think it is very relevant to  
24 this proceeding and certainly useful to the  
25 Commission as the Commission considers the overall

1 impact of the application as well as potential  
2 consequences associated with Akron Thermal's  
3 inability to provide service.

4 EXAMINER FARKAS: Okay.

5 MR. ROYER: With respect again to the  
6 hearsay argument which counsel didn't address, I  
7 don't know how it could be anything else.

8 With respect to relevance, I don't see  
9 how this task force plays any role in the questions  
10 before the Commission in terms of whether this  
11 utility is entitled to emergency rate relief.

12 He's referenced an arrangement in his  
13 testimony. Don't have any problem with that because  
14 it's something concrete going forward. But this is  
15 just basically the druthers of the task force of what  
16 they would like to see happen and it doesn't have  
17 anything to do with whether Akron Thermal qualifies  
18 for emergency rate relief in this case.

19 MR. RANDAZZO: Well, your Honor, one of  
20 the things that the applicant has said is that absent  
21 emergency rate relief it will be unable to meet its  
22 obligations as a public utility.

23 And to the extent that that issue is in  
24 play and the potential consequence of that issue is  
25 of concern to the Commission, I believe that

1 Mr. Merolla's testimony is designed to show the  
2 Commission that City of Akron has been working on  
3 this, that it assembled a task force at the request  
4 of the mayor of the city.

5 Mr. Merolla was directly involved. Akron  
6 Thermal was directly involved in this effort. It is  
7 not a new piece of information. It was extensively  
8 explored in the bankruptcy proceeding.

9 And I don't know how anything could be  
10 more relevant to the overall consequences that the  
11 Commission is dealing with in the interplay between  
12 bankruptcy, PUCO's jurisdictional authority, as well  
13 as the City of Akron's responsibility to its  
14 citizens.

15 EXAMINER FARKAS: I'm going to deny your  
16 motion to strike.

17 MR. ROYER: Thank you, your Honor.

18 - - -

19 CROSS-EXAMINATION

20 BY MR. ROYER:

21 Q. Good morning, Mr. Merolla.

22 A. Good morning.

23 Q. While we're on this report then, are you  
24 the author of this report?

25 A. I co-authored it with the chairman of the

1 committee former Mayor Roy Ray.

2 Q. And was this report -- your counsel  
3 indicated that this report was the subject of the  
4 bankruptcy -- was reviewed in the context of the  
5 bankruptcy proceeding.

6 Is that your understanding?

7 A. Yes.

8 Q. And did -- as a result of this report did  
9 the City of Akron make any proposals for any  
10 alternative plan of reorganization for Akron Thermal?

11 A. We did not.

12 Q. I just have a couple questions for you  
13 then on other matters.

14 Did you or anyone at the City to your  
15 knowledge ever have any communications with the  
16 University of Akron relating in any way to their  
17 status as a customer of the system?

18 A. Well, obviously there were members of the  
19 task force and we had talked to them throughout the  
20 proceedings of the task force and they called  
21 occasionally just to find out the status of what was  
22 going on with the case.

23 Q. Did you during any -- well, the task  
24 force concluded its work in the summer of 2007?

25 A. That's correct.



1           Q.    And this was well before the University  
2 of Akron made its decision not to reenter its -- to  
3 not to renew its lease with Akron Thermal?

4           A.    That's correct.

5           Q.    And you had no discussions with the City  
6 of Akron regarding that decision, correct?

7           A.    You mean with the University of Akron?

8           Q.    Correct.

9           A.    That's correct. We were notified they  
10 were going to -- actually had a meeting that morning  
11 with John Case, the CFO of University of Akron, who  
12 informed us they were going to not renew their lease  
13 or their contract.

14          Q.    So you did have communications with them.

15          A.    He called me to tell me that.

16          Q.    If in discovery you responded to a  
17 similar question there were no communications, that  
18 would be wrong, correct?

19          A.    There were none that I initiated.

20          Q.    All right. And did the City either  
21 suggest or propose or otherwise communicate to the  
22 University of Akron how its service requirements  
23 would be met if the City were to undertake to operate  
24 the utility?

25          A.    No.

1           Q.    And then I assume that you never  
2           communicated to the City or to the University  
3           anything regarding the rates that UA could expect to  
4           be charged if the City were to undertake to meet UA's  
5           needs?

6           A.    That's correct.

7           Q.    And then one other matter.

8                   Is there any provision in the charter of  
9           the City of Akron that limits what the City can do in  
10          terms of leasing or selling utility facilities?

11          A.    There was a referendum passed by the  
12          voters last November.  It affects public utilities.

13          Q.    And would I be correct that that  
14          referendum provided that any action by the counsel or  
15          mayor of City of Akron to sell, transfer, or lease  
16          any part of any interest in any city-owned utility  
17          shall be without force and affect unless and until it  
18          is approved by a majority of votes cast by the  
19          electors of the City of Akron at the next general  
20          election occurring at least after 90 days after such  
21          action?

22          A.    I'm not sure if that's exactly the ballot  
23          language but that sounds familiar.

24          Q.    And you indicated that that proposed  
25          charter was adopted?

1           A.    It was.

2           Q.    Do you recall the margin by which it was  
3 adopted?

4           A.    I do not.

5           Q.    Would it refresh your recollection if I  
6 indicated that the Beacon Journal reported it was  
7 approved by nearly 67 percent of the voters?

8           A.    Very well could have been, I just don't  
9 recall.

10           MR. ROYER:  That's all I have.  Thank  
11 you.

12           EXAMINER FARKAS:  Any questions on this  
13 side?

14           MR. HEINTZ:  No, your Honor.

15           EXAMINER FARKAS:  Staff have any  
16 questions?

17           MR. McNAMEE:  No.

18           MR. BREITSCHWERDT:  No questions, your  
19 Honor.

20           EXAMINER FARKAS:  Is there any redirect?

21           MR. RANDAZZO:  Just one question that  
22 might help the record.

23                               - - -

24

25

1 REDIRECT EXAMINATION

2 BY MR. RANDAZZO:

3 Q. Mr. Merolla, the City of Akron is a  
4 charter city?

5 A. That's correct.

6 Q. And how often does the charter, the  
7 writers of the charter meet to review the charter?

8 A. Every ten years.

9 Q. And when is the next meeting?

10 A. Next year.

11 MR. RANDAZZO: That's all I have, your  
12 Honor. Thank you.

13 EXAMINER FARKAS: Anything?

14 You're excused. Thank you very much.

15 MR. RANDAZZO: Thank you, Mr. Merolla.

16 I would re-move City of Akron Exhibit No.  
17 1.

18 EXAMINER FARKAS: You don't want to  
19 remove it.

20 MR. RANDAZZO: That's correct. Move it  
21 again.

22 EXAMINER FARKAS: Any objection to the  
23 admission?

24 MR. ROYER: Same objection, your Honor.

25 EXAMINER FARKAS: It will be admitted.

1 (Exhibit admitted.)

2 EXAMINER FARKAS: Call your next witness.

3 MR. RANDAZZO: I ask Mr. Joseph Bowser be  
4 called and sworn as a witness in this proceeding.

5 (Witness sworn.)

6 EXAMINER FARKAS: Be seated.

7 Proceed.

8 - - -

9 JOSEPH G. BOWSER

10 being first duly sworn, as prescribed by law, was  
11 examined and testified as follows:

12 DIRECT EXAMINATION

13 BY MR. RANDAZZO:

14 Q. Mr. Bowser, would you state your full  
15 name and your business address please?

16 A. Yes. My name is Joseph G. Bowser, and my  
17 address is 21 East State Street, Columbus, Ohio  
18 43215.

19 Q. Mr. Bowser, did you cause to be prepared  
20 testimony that has been filed in this proceeding?

21 A. Yes, I did.

22 MR. RANDAZZO: Your Honor, I would like  
23 to have the direct testimony of Joseph G. Bowser on  
24 behalf of the City of Akron that was filed in this  
25 proceeding on July 8, designated as City of Akron

1 Exhibit No. 2.

2 EXAMINER FARKAS: So marked.

3 (Exhibit marked.)

4 Q. Mr. Bowser, do you have before you what  
5 has been marked for identification purposes as City  
6 of Akron Exhibit No. 2?

7 A. Yes, I do.

8 Q. Do you have any changes or corrections  
9 that you would like to make in that document?

10 A. Yes. The first change is at page 34,  
11 line 18. After the first word on that line which is  
12 "taken," need to insert the word "to," t-o.

13 Q. Page 34, line 18?

14 A. Correct.

15 Q. And repeat the change again please.

16 A. After the word "taken," insert the word  
17 "to," t-o.

18 Q. Any other changes?

19 A. Yes. Also at page 37, beginning on line  
20 17. After item 2, which is in parentheses, the word  
21 "terminate" should be eliminated. And substituted in  
22 the phrase "recommend that ATLP seek to terminate any  
23 remaining term of."

24 And then on line 18, the word "terminate"  
25 should also be stricken.

1 Q. Once again, please.

2 A. Okay, page 37, line 17, after item 2 in  
3 parentheses, eliminate the word "terminate," and  
4 substitute in the phrase "recommend that ATLP seek to  
5 terminate any remaining term of."

6 And then on line 18, eliminate the word  
7 "terminate."

8 Q. Any other changes?

9 A. No, that's all.

10 Q. Mr. Bowser, at page 15 of your prefiled  
11 testimony that's been marked for identification  
12 purposes as City of Akron Exhibit No. 2, you describe  
13 the most recent annual report filed by Akron Thermal  
14 Limited Partnership as being the annual report for  
15 2007.

16 Are you aware of additional information  
17 that --

18 A. Yes. The Akron Thermal Limited  
19 Partnership 2008 annual report has been filed with  
20 the Commission. That filing took place I believe on  
21 June 29th.

22 Q. And when you say "filed with the  
23 Commission," was it filed with Docketing if you know?

24 A. I believe it was e-mailed to the Fiscal  
25 Department and it could be that that's why we were

1 not aware that it had been filed because it was not  
2 posted on the Commission's website at the time I  
3 prepared my testimony.

4 Q. Okay. Any other changes or corrections,  
5 Mr. Bowser?

6 A. No.

7 Q. Mr. Bowser, if I were to ask you the  
8 questions that are set forth in City of Akron  
9 Exhibit No. 2, would the answers you would give here  
10 today be as set forth in that exhibit?

11 A. Yes, they would.

12 MR. RANDAZZO: Your Honor, I would move  
13 for the first time City of Akron Exhibit No. 2 and  
14 make Mr. Bowser available for any cross-examination.

15 EXAMINER FARKAS: Thank you.

16 MR. ROYER: No questions.

17 MR. HEINTZ: No, your Honor.

18 EXAMINER FARKAS: Staff have any  
19 questions.

20 MR. McNAMEE: No.

21 MR. RANDAZZO: Mr. Bowser, if Mr. Royer  
22 would ask you -- no, I ask Mr. Bowser be excused and  
23 move again City of Akron Exhibit No. 2, unless you  
24 have questions.

25 EXAMINER HUSSEY: I just wondered if you



1 have reviewed the lease arrangement for equipment  
2 between the City of Akron and Akron Thermal Limited  
3 Partnership?

4 THE WITNESS: No, your Honor, I have not.

5 EXAMINER HUSSEY: That's all I have.

6 EXAMINER FARKAS: I have no questions.

7 Any objection to the admission of City of  
8 Akron Exhibit 2?

9 Hearing none, it will be admitted.

10 (Exhibit admitted.)

11 EXAMINER FARKAS: You're excused.

12 THE WITNESS: Thank you.

13 MR. RANDAZZO: Your Honor, that would  
14 conclude the City of Akron's direct case.

15 EXAMINER FARKAS: Off the record.

16 (Off the record.)

17 EXAMINER FARKAS: Let's go back on the  
18 record.

19 (Witness sworn.)

20 EXAMINER FARKAS: You can proceed.

21 - - -  
22  
23  
24  
25

1 JEFFREY BEES

2 being first duly sworn, as prescribed by law, was  
3 examined and testified as follows:

4 DIRECT EXAMINATION

5 BY MR. ROYER:

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

8 A. Jeffrey Bees, 236 North Champion,  
9 Youngstown, Ohio.

10 Q. And you previously offered testimony in  
11 this proceeding.

12 A. Yes, I have.

13 Q. Do you have before you a document titled  
14 Rebuttal Testimony of Jeffrey P. Bees, on behalf of  
15 Akron Thermal Limited Partnership, which was filed in  
16 this docket on July 14, 2009?

17 A. I do.

18 MR. ROYER: I would ask that that be  
19 marked for purposes of identification Akron Thermal  
20 Exhibit 5.

21 EXAMINER FARKAS: So marked.

22 (Exhibit marked.)

23 Q. Can you identify that document please?

24 MR. ROYER: I'm sorry, Applicant's  
25 Exhibit 5.

1           A.    I'm sorry?

2           Q.    I misspoke when I titled the exhibit.

3                   Do you have a copy of what's been marked  
4 as Applicant's Exhibit 5 in front of you?

5           A.    Yes, I do.

6           Q.    And what is that document?

7           A.    That is my rebuttal testimony.

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

10          A.    Yes, it was.

11          Q.    Do you have any corrections or additions  
12 to your testimony at this time?

13          A.    No, I do not.

14          Q.    If I were to ask you the questions  
15 contained in Applicant's Exhibit 5 today on the  
16 stand, would your answers be as set forth therein?

17          A.    Yes.

18                   MR. ROYER:  The witness is available.

19                   EXAMINER FARKAS:  Thank you.

20                   Before you begin I just want to clarify  
21 something for the record.

22                                   - - -

23                                   EXAMINATION

24 BY EXAMINER FARKAS:

25          Q.    On your application that you filed for

1 emergency rate relief, was it your testimony that if  
2 Akron Thermal Limited Partnership, if the Commission  
3 does not grant Akron Thermal Limited Partnership's  
4 application as it was filed for the amount that  
5 they're asking for, that any amount other than that  
6 would be insufficient for Akron Thermal Limited  
7 Partnership to continue operations?

8 A. What I believe we developed in that  
9 application was our understanding of what the minimum  
10 requirements would be for the revenue that support  
11 the expenses of the system as we projected. Yes.

12 Q. So any less than that amount will be  
13 insufficient for Akron Thermal Limited Partnership to  
14 operate.

15 A. I guess what I would say is if the  
16 Commission comes back with an order that is less than  
17 that number, we will have to go back through another  
18 thorough review to understand whether there are any  
19 other areas where we might further reduce our costs  
20 to be able to meet the revenue that would be  
21 provided.

22 Q. But if you didn't reduce costs, would it  
23 be insufficient? Any further costs I should say.

24 A. I guess what we were trying to do with  
25 this application was to match what we believed the

1 expenses were going to be, and if the number is less  
2 than that, we'll have to look again to see if there's  
3 a way that we can further reduce those expenses. I'm  
4 not sure, insufficient may be --

5 Q. How long could you operate at your  
6 present operating expenses? If you did not get the  
7 rate relief requested.

8 A. Without?

9 Q. Yeah.

10 A. The cash flows I think are through August  
11 we begin to go negative and it becomes very tight.

12 EXAMINER FARKAS: All right, thank you.

13 Proceed.

14 - - -

15 CROSS-EXAMINATION

16 BY MR. RANDAZZO:

17 Q. Mr. Bees, while we're on that subject,  
18 what other expense items would you review to see if  
19 there were opportunities for further adjustment?

20 A. All of them.

21 Q. If you did not make the operational  
22 changes that are made in Mr. Pucak's testimony, would  
23 the amount of expenses going forward be less?

24 A. If we did not make the operational  
25 changes.

1 Q. Right.

2 A. I think the period of time at which we  
3 determined that we needed to make operational changes  
4 is consistent with the way that the load profile  
5 works with our customers.

6 So there's a period of time where the  
7 current operation as it's structured is the least  
8 cost operation. Beyond that it begins to change to  
9 the higher cost operating scenario.

10 Q. But you projected that by closing down  
11 boiler 32 your expenses actually increase over what  
12 they would otherwise be, right?

13 A. I don't believe that to be the case.

14 Q. Okay. To the extent that Mr. Pucak's  
15 testimony indicates that expense levels go up  
16 primarily as a result of the fuel expense increase  
17 associated with closing boiler 32, that would not be  
18 your understanding. Right?

19 A. Can you ask that question again?

20 Q. Yeah. If I understood your prior answer,  
21 it is your opinion that expense levels do not  
22 increase as a result of closing down boiler 32 --

23 MR. ROYER: Object.

24 Q. -- is that correct?

25 MR. ROYER: That's not what he said.

1                   EXAMINER FARKAS: I'll allow the answer.

2                   A. I think what I said was that the  
3 operation as it's currently structured has an expense  
4 profile that works with the current load profile.

5                   Q. Current load profile does not include the  
6 University of Akron, right?

7                   A. That's correct. Nor does it include  
8 winter type of operation. When we get to the winter  
9 operation and we are required to have two plants to  
10 operate under a coal-fired scenario that you referred  
11 to, then the expenses in all likelihood and the way  
12 that we have looked at this, all costs considered,  
13 will increase over time if we were to try to maintain  
14 the coal-fired boiler facility at this customer base.

15                  Q. And you believe that that's illustrated  
16 by Mr. Pucak's testimony and the cash flow  
17 projections that Ms. Dot has submitted with her  
18 testimony; is that correct?

19                  A. I think. . .

20                  Q. I'll withdraw the question.

21                         Mr. Bees, attached to your testimony is a  
22 copy of the forbearance agreement that I discussed  
23 earlier with the trustee. Correct?

24                  A. Yes.

25                  Q. Could you turn to the first page of that

1 document?

2           Were you involved directly in the  
3 negotiation of this forbearance agreement?

4           A.    I had discussions with Mr. Swetnam and  
5 with our staff involved in this discussion, yes.

6           Q.    Were you directly involved in any  
7 discussions with the other parties to the forbearance  
8 agreement?

9           A.    No.

10          Q.    Whose idea was the forbearance agreement?

11          A.    I think it was both. I think these  
12 issues arose with my impression of the discussions  
13 that I had --

14          Q.    Let's be clear. I don't want you to  
15 speculate. If you don't know whose idea it was, the  
16 answer should be "I don't know." I don't want you to  
17 speculate if you don't know.

18                Do you know who initiated the idea for  
19 the forbearance agreement?

20          A.    I don't know who made contact first, but  
21 both parties looked at the information that came out  
22 with regard to this case and I think both parties  
23 were interested in looking at what kind of solutions  
24 were necessary here.

25          Q.    You did not speak directly with the other



1 parties in this forbearance agreement, right?

2 A. That's correct.

3 Q. So any understanding you might have about  
4 what the other parties were interested in is based  
5 upon discussions with the attorney from  
6 Schottenstein, Zox & Dunn, correct?

7 A. Correct.

8 Q. When did -- when were discussions  
9 initiated about the forbearance agreement?

10 A. I think soon after the testimony came out  
11 regarding the staff concerns.

12 Q. Is there any reason why the discussion  
13 about the forbearance agreement could not have taken  
14 place prior in conjunction with your filing for  
15 emergency rate relief?

16 A. I don't know that there's a reason that  
17 they couldn't. I don't know if there is one but I'm  
18 not aware of it.

19 Q. Are there any other discussions with  
20 suppliers or creditors about adjusting payment on  
21 invoices that may already be due and payable or  
22 restructuring the timing of payments that may be due  
23 on a going-forward basis?

24 A. The staff at Akron Thermal is always in  
25 touch with its vendors and is always working with its

1 vendors to assure that cash flow and that  
2 requirements and expectations of those vendors are  
3 met in some fashion.

4 And to the extent that there would be a  
5 cash issue like we would be facing here now, I would  
6 expect that they are involved in discussions with  
7 normal everyday creditors.

8 Q. Would you be aware of those discussions  
9 if they were occurring?

10 A. Not in specifics I wouldn't.

11 Q. Would Mr. Charles Abbott who's the  
12 current CEO of Akron Thermal Limited Partnership be  
13 more directly involved in those type of discussions  
14 than you would at this point?

15 A. At this point he's getting up to speed  
16 and is becoming more involved. But the degree that  
17 I'm more acquainted with our folks in some of these  
18 issues, I don't know whether he's more involved and  
19 aware than I am at this point.

20 Q. When we were here before we talked about  
21 Mr. Abbott being associated with the firm of Alia  
22 Management? Do you recall that?

23 A. Yes, I do.

24 Q. What does Alia do? If you know.

25 A. Alia is a number of individuals who are

1 very experienced in district energy and they're  
2 providing management consulting services in a variety  
3 of different situations.

4 Q. Does Alia take a financial interest in  
5 its clients?

6 A. I don't know what all of Alia's  
7 arrangement would be. With us there's none.

8 Q. So you wouldn't know if Alia had taken a  
9 financial interest in Akron Thermal Limited  
10 Partnership or Thermal Ventures II or any other  
11 affiliated firm?

12 MR. ROYER: I object. Mischaracterized.  
13 He just answered that there was none for Akron  
14 Thermal. He didn't know about the others.

15 EXAMINER FARKAS: Okay.

16 MR. RANDAZZO: Okay, I'll accept  
17 counsel's representation.

18 Q. Now, turning back to forbearance  
19 agreement, in the first page next to the capital  
20 letters "Now Therefore," was there anything of value  
21 given to the trustee or the State of Ohio in exchange  
22 for the forbearance agreement?

23 A. In terms of value I heard how Mr. Wehrle  
24 addressed that issue, and I would say that value from  
25 the standpoint of creditors committee is that they

1 are in a better position to receive their payments  
2 over time.

3 Q. You are already obligated to pay the  
4 creditors' trust the note that was approved as part  
5 of the Bankruptcy Court, right?

6 A. Correct.

7 Q. Was there any incremental value that was  
8 provided by Akron Thermal to the creditors' trust or  
9 the State of Ohio in exchange for changing the timing  
10 of the payments on the notes that were previously  
11 issued?

12 MR. ROYER: I object. He just answered  
13 that question.

14 EXAMINER FARKAS: I'll allow it.

15 A. Can you define "value" for me? If you're  
16 talking about dollars?

17 Q. Cash in kind value.

18 A. There's not additional cash or interest  
19 in terms of the modifications that are made here.  
20 Modifications kind of speaks for itself.

21 Q. Are you aware of anything, anything of  
22 value that was given to the creditors' trust or the  
23 State of Ohio in exchange for the forbearance  
24 agreement?

25 A. Well, as I just said, if you're referring

1 to cash and additional interest in some fashion, then  
2 no. We provided what's in this agreement.

3 Q. Now, the section 3.1 of the forbearance  
4 agreement which is attached to your testimony states  
5 that in the event that the PUCO declines to approve  
6 the emergency rate relief, then the agreement is  
7 void.

8 You see that?

9 A. I do.

10 Q. Whose idea was that?

11 A. I don't know whose idea it was.

12 Q. Why is that provision in here?

13 A. I don't know that I can add anything to  
14 that paragraph.

15 Q. Well, would it be okay with you if that  
16 sentence were removed from the agreement?

17 A. Without going through that kind of  
18 question with my counsel, I would probably want to  
19 answer that question I don't know the answer to that.

20 Q. States there that sentence says "If the  
21 PUCO declines to approve the emergency rate relief."

22 By the words "the emergency rate relief,"  
23 is the document referring to the amount of the rate  
24 relief that has been requested by the applicant? If  
25 you know.

1           A.    I don't know that it is a specific  
2 number.

3           Q.    Well, I didn't ask you if it was a  
4 specific number. I asked you if the words refer to  
5 the amount of the rate relief that's been requested  
6 by the applicant.

7                   Do the words refer to the amount of the  
8 rate relief that's been requested by the applicant?  
9 As you understand them.

10          A.    I think I'd have to give you the same  
11 answer I don't know if that phrase is referring to a  
12 specific number, so I don't know.

13          Q.    Well, if the Commission grants 50 percent  
14 of the relief requested, is the agreement void? Is  
15 the forbearance agreement void? If you know.

16          A.    Again, you know, I did hear Mr. Wehrle's  
17 comments and I think that's -- that I would agree  
18 with that, that we would like to see an order before  
19 trying to answer that kind of an issue. And I'm sure  
20 that there would be further discussions with the  
21 parties.

22          Q.    And at that point you'd determine whether  
23 or not the agreement was void; is that correct?

24          A.    Again, it's language that was negotiated  
25 and part of discussions that included counsel and I

1 would have to understand how counsel would interpret  
2 that.

3 Q. Well, that's, Mr. Bees, that's why I  
4 asked you the earlier questions.

5 You weren't involved in negotiating  
6 directly the language that we just focused on,  
7 correct?

8 A. Described how it took place.

9 Q. Well, you weren't directly involved in  
10 negotiating the language in section 3.1, were you?

11 A. I reviewed this before I signed it.

12 Q. Yeah, I understand that. I presume that.  
13 Maybe I shouldn't at this point.

14 But did you -- were you directly involved  
15 in the negotiations of the language that's in section  
16 3.1?

17 A. I didn't craft this paragraph. The  
18 answer to your question is no, I did not negotiate  
19 that paragraph.

20 Q. Okay. So somebody else did, right?

21 A. Well, as these things happen, counsel  
22 represents Akron Thermal, there are documents like  
23 this developed, we discuss them, some in very great  
24 detail, some not. And document is overall reviewed  
25 and then we determine whether we. . .

1 Q. And you signed it. Right?

2 A. Yes.

3 Q. You signed it on behalf of who?

4 You needed to look at the document to  
5 determine --

6 A. No, I actually didn't. But I could have  
7 determined without flipping through the pages but if  
8 it's okay, I would like to look at the signature.

9 Q. That's absolutely fine.

10 A. So I signed it as Thermal Ventures II.

11 Q. And who signed on behalf of Akron  
12 Thermal?

13 A. Theresa Keckler.

14 Q. And her position is what?

15 A. She is a treasurer of Opportunity  
16 Parkway, LLC.

17 Q. And Opportunity Parkway is the general  
18 partner for Akron Thermal Limited Partnership, right?

19 A. That's correct.

20 Q. So were you negotiating with Ms. Keckler?

21 A. Negotiating with Ms. Keckler?

22 Q. Yes.

23 A. Ms. Keckler reviewed the documents. I  
24 reviewed the documents.

25 Q. Was Ms. Keckler represented by counsel?



1           A.    I would expect so, but I think you'd have  
2 to ask her.

3           Q.    Is Ms. Keckler authorized to execute  
4 documents on behalf the Akron Thermal Limited  
5 Partnership?

6           A.    As treasurer I believe she is.

7           Q.    Do you know? As part of the closing  
8 associated with this agreement did you secure  
9 documentation to identify the authority of the  
10 individuals that signed the agreement, such as  
11 Ms. Keckler?

12          A.    I did not.

13          Q.    Did you have any direct discussions with  
14 Donn Rosenblum?

15          A.    No, I did not.

16          Q.    Do you know who Donn Rosenblum is?

17          A.    Yes, I do.

18          Q.    Who is he?

19          A.    He is counsel on behalf of the State. I  
20 believe he works with the Attorney General Office.

21          Q.    And did you have any direct discussions  
22 with David Wehrle who was here earlier today?

23          A.    I did not.

24          Q.    When I'm asking you about direct  
25 discussions, I'm referring about discussions related

1 to the negotiation and finalization of the  
2 forbearance agreement.

3 Is that the way you understood my prior  
4 question?

5 A. Yes.

6 Q. Now, does the forbearance agreement or at  
7 least the arrangements as they relate to Thermal  
8 Ventures II change the interest rate for the  
9 outstanding obligation that is owed by Akron Thermal  
10 to Thermal Ventures II?

11 A. I don't believe it does.

12 Q. Doesn't go from 5 percent to 7 percent?

13 A. Between -- I don't believe it does.

14 Q. Does the -- why is it that Ms. Keckler  
15 didn't testify to sponsor the forbearance agreement,  
16 if you know?

17 A. I don't know.

18 Q. Now, Akron Thermal has not amended the  
19 applications it filed for approval to issue  
20 securities, has it?

21 A. I don't know if it has.

22 Q. Well, the forbearance agreement would  
23 change the principal, the timing of the principal and  
24 interest payments under the notes that are owed to  
25 the creditors' trust as well as the State of Ohio,

1 correct?

2 A. I believe it would, yes.

3 Q. And I take it from your testimony that  
4 we're not going to know until you review the order  
5 that's issued in this case whether or not the  
6 forbearance agreement will actually go into effect;  
7 is that correct?

8 MR. ROYER: I'm going to object. He's  
9 certainly asking for a legal conclusion.

10 EXAMINER FARKAS: I'll allow it.

11 A. I don't know.

12 Q. Since you testified last in this  
13 proceeding is there any reason why you believe you'll  
14 not be able to file the -- strike that.

15 Have you looked -- well, strike that.

16 Based upon the presentation that Akron  
17 Thermal has made in this case, it's my understanding  
18 that at least prior to today that Akron Thermal  
19 intended to cease operating boiler 32 on or about  
20 November the 1st. Is that still the plan of Akron  
21 Thermal?

22 A. I don't think anything has changed in  
23 that regard.

24 Q. And have you -- boiler 32 is part of the  
25 system that is leased by Akron Thermal from the City

1 of Akron, right?

2 A. Yes, it is.

3 Q. And under that lease am I correct that  
4 the -- that Akron Thermal has an obligation to  
5 continuously operate the system, including boiler 32?

6 MR. ROYER: I object.

7 Q. If you know.

8 MR. ROYER: Still object. Calls for a  
9 legal conclusion.

10 EXAMINER FARKAS: I'll allow it.

11 A. I don't know which sections of the lease  
12 may come into my being able to answer that question.  
13 Some provisions may allow it.

14 Q. Let me ask it this way: Did you look at  
15 the lease to see if there were any restrictions in  
16 the lease that would affect your ability to close  
17 down boiler 32 prior to making a decision to idle  
18 boiler 32?

19 A. I believe that was reviewed.

20 Q. By who?

21 A. By counsel and I think Mr. Pucak.

22 MR. RANDAZZO: That's all I have, your  
23 Honor.

24 Thank you, Mr. Bees.

25 EXAMINER FARKAS: Staff have any

1 questions?

2 MR. McNAMEE: No.

3 EXAMINER FARKAS: Questions?

4 MR. HEINTZ: No.

5 EXAMINER HUSSEY: Do you have a question?

6 MR. ROYER: I can wait.

7 - - -

8 EXAMINATION

9 BY EXAMINER HUSSEY:

10 Q. I take it you've read the lease  
11 Mr. Randazzo indicated between the City of Akron and  
12 ATLP for the equipment operated; is that correct?

13 A. Yes.

14 Q. Do you happen to know if the lease  
15 reflects any obligation on the part of City of Akron  
16 to maintain the boilers that Akron Thermal operates  
17 in compliance with the environmental safety codes?

18 A. That the City of Akron would have to  
19 provide maintenance?

20 Q. Yes.

21 A. I don't think there's anything to that  
22 point.

23 EXAMINER FARKAS: Any redirect?

24 MR. ROYER: Just a couple questions.

25 - - -

REDIRECT EXAMINATION

BY MR. ROYER:

Q. Mr. Bees, would you turn to paragraph 4.2 of the forbearance agreement you were discussing with Mr. Randazzo, page 2.

A. 4.2?

Q. Yeah, on page 2.

A. Yes.

Q. Does that paragraph warrant the folks in executing the agreement have authority to do so?

A. It does.

Q. And Mr. Randazzo also asked you some questions about the costs associated with or the increased fuel costs that would be associated with the decision to stop using boiler 32.

Do you recall those questions?

A. Yes.

Q. And I believe you indicated that, well, would the -- was the decision to stop operating boiler 32, despite the increase in fuel costs that result valuated against any other -- against other scenarios for meeting the system load?

A. I'm sorry, the decision to stop the use of boiler 32?

Q. I'm sorry.

1           You described that as what you believe to  
2 be the least cost decision. I'm asking if you  
3 considered other scenarios for meeting the load that  
4 would include continuing to operate boiler 32.

5           A.    Yes.

6           Q.    What did you conclude?

7           A.    That when all costs were considered that  
8 shutting down boiler 32 was the more appropriate  
9 approach.

10          Q.    And then Mr. Randazzo also asked you some  
11 questions about your interpretation of section 3.1 of  
12 the forbearance agreement.

13          A.    Yes.

14          Q.    Certainly wasn't Akron Thermal that  
15 insisted that a provision that the agreement would be  
16 void be included if the rate relief were denied, is  
17 it?

18               MR. RANDAZZO: Object. Witness said he  
19 didn't know where this came from.

20               MR. ROYER: I'm asking him if he had  
21 input into that decision.

22               MR. RANDAZZO: He said he didn't know  
23 where it came from.

24               EXAMINER FARKAS: I'll --

25               MR. ROYER: The question was did Akron

1 Thermal do it. I didn't ask him where it came from.

2 EXAMINER FARKAS: I'll allow the answer.

3 If you know.

4 A. Well, no, I don't think we inserted that  
5 language.

6 Q. (By Mr. Royer) Then Mr. Randazzo also  
7 asked you why you hadn't considered trying to arrange  
8 a forbearance agreement even before you filed the  
9 application.

10 Do you recall that question?

11 A. Yes.

12 Q. Did you believe that the creditors would  
13 be receptive to such an agreement prior to receiving  
14 the staff testimony in this case, the original staff  
15 testimony in this case?

16 A. Our intent could have been the answers to  
17 the emergency rate case and then handle that issue.  
18 The testimony that came up when the testimony from  
19 the staff came up, came to the file, then it became  
20 an issue that had to be addressed then.

21 MR. ROYER: In any event, that's all I  
22 have.

23 EXAMINER FARKAS: Thank you.

24 MR. RANDAZZO: Just a couple very short I  
25 think.



1                                   - - -

2                                   RECROSS-EXAMINATION

3       BY MR. RANDAZZO:

4                   Q.     Mr. Bees, when you responded to  
5       Mr. Royer's questions about looking at the costs  
6       associated with closing down boiler 32, you indicated  
7       that your answer was based upon looking at all costs.

8                             Do you recall that?

9                   A.     I believe that's correct.

10                  Q.     And that would --

11                            EXAMINER FARKAS:   Can you speak up?

12                  Q.     When you said "all costs," you were  
13       including the estimated 1.8 million in capital costs  
14       associated with modifications of boiler 32?

15                  A.     I think that along with all of the  
16       operating costs and the fact that you have to operate  
17       two facilities versus one, all of that would have  
18       been considered.

19                  Q.     Right.  If we were just to limit the  
20       valuation to change in fuel expense, would you agree  
21       that closing boiler 32 increases the fuel expense  
22       associated with providing service through Akron  
23       Thermal?

24                  A.     Does increase the fuel expense.

25                  Q.     Is there any other, anything other than

1 capital costs -- strike that.

2 I asked you with regard to section 3.1 in  
3 the forbearance agreement, I asked you if it would be  
4 okay if we took out the second sentence in that  
5 paragraph. And in response to a question from  
6 counsel, you said that Akron Thermal did not insert  
7 this language.

8 Who put the language in there?

9 A. I assume that it was the creditors' trust  
10 or one of the other parties did.

11 Q. But you don't know, right? You don't  
12 know who put this language in here.

13 A. I think that's fair. It was a discussion  
14 between the parties.

15 Q. Well, it was discussion between the  
16 attorneys.

17 A. Attorneys, correct.

18 Q. Right.

19 A. Right.

20 Q. It was not a discussion that you directly  
21 participated in, correct?

22 A. That's correct.

23 Q. So as far as you're concerned would it be  
24 okay if this sentence was removed from the agreement?

25 MR. ROYER: I object because it's an

1 impossibility. He can't waive the right to other  
2 parties in the agreement.

3 EXAMINER FARKAS: I'll sustain the  
4 objection.

5 Q. Now, you were here earlier today when  
6 Mr. Wehrle testified, right?

7 A. Yes, I was.

8 Q. And do you recall him testifying that he  
9 reached out to Mr. Pucak around June 5 after he found  
10 out about the University of Akron and the emergency  
11 rate increase application?

12 MR. ROYER: I object. It's beyond the  
13 scope of the redirect.

14 EXAMINER FARKAS: It's beyond the scope.

15 MR. RANDAZZO: Your Honor, one of the  
16 redirect questions was directed at whether or not the  
17 creditors would have been receptive to a discussion  
18 about the forbearance agreement. And I believe this  
19 line of question is directly related to that.

20 MR. ROYER: And that was the subject that  
21 was covered in Mr. Bees' direct testimony.

22 EXAMINER FARKAS: Can I have the question  
23 reread again.

24 (Record read.)

25 EXAMINER FARKAS: I'm sustaining the

1 objection.

2 Q. (By Mr. Randazzo) You testified in  
3 response to redirect examination that you did not  
4 believe the creditors would be receptive to a  
5 forbearance agreement until the emergency rate  
6 increase request was complete.

7 Do you recall that?

8 A. Yes.

9 Q. Were you aware that Mr. Wehrle reached  
10 out to Mr. Pucak on his own on or around June 5 of  
11 2009?

12 I'll withdraw the question.

13 Did you attempt to discuss with the  
14 creditors, namely the creditors' trust, State of  
15 Ohio, whether they would be receptive to a  
16 forbearance agreement prior to filing the emergency  
17 case?

18 A. I did not.

19 MR. RANDAZZO: That's all I have, your  
20 Honor. Thank you.

21 Thank you, Mr. Bees.

22 EXAMINER FARKAS: You're excused. Thank  
23 you very much.

24 Any objection to the admission of  
25 Applicant Exhibit 5?

1                   Hearing none, then it will be admitted.

2                   (Exhibit admitted.)

3                   EXAMINER FARKAS: I believe that's the  
4 extent of your case?

5                   MR. ROYER: Oh, yes, thank you.

6 Applicant rests.

7                   EXAMINER FARKAS: Let's go off the record  
8 for a second.

9                   (Recess taken.)

10                  EXAMINER FARKAS: Let's go back on the  
11 record.

12                  (Witness sworn.)

13                                 - - -

14                                 DAVID R. HODGDEN

15 being first duly sworn, as prescribed by law, was  
16 examined and testified as follows:

17                                 DIRECT EXAMINATION

18 BY MR. McNAMEE:

19                   Q. Mr. Hodgden, can you state and spell your  
20 name for the record please?

21                   A. David R. Hodgden, H-o-d-g-d-e-n.

22                   Q. By whom are you employed and in what  
23 capacity?

24                   A. I'm employed by the Public Utilities  
25 Commission of Ohio, I am chief of the Capital

1 Recovery and Financial Analysis Division in the  
2 Utilities Department.

3 Q. What is your business address?

4 A. 180 East Broad Street, Columbus, Ohio.

5 MR. McNAMEE: Your Honor, at this time I  
6 would like to have marked for identification two  
7 different documents, one entitled Direct Testimony of  
8 David R. Hodgden, and the other marked Surrebuttal  
9 Testimony of David R. Hodgden. I don't know if the  
10 Bench has a preference in calling this 1 and 2 or 1  
11 and 1A.

12 EXAMINER FARKAS: Why don't we do 1 and  
13 2.

14 MR. McNAMEE: Would ask to have the  
15 direct testimony then marked as Staff Exhibit 1, and  
16 the surrebuttal testimony marked as Staff Exhibit 2.

17 EXAMINER FARKAS: So marked.

18 (Exhibits marked.)

19 Q. (By Mr. McNamee) Mr. Hodgden, do you  
20 have in front of you what's been marked for  
21 identification as Staff Exhibits 1 and 2?

22 A. Yes, I do.

23 Q. What are they?

24 A. They are my direct testimony that I filed  
25 originally in this case and my surrebuttal testimony.

1           Q.    Were those prepared by you or under your  
2 direction?

3           A.    Yes, they were.

4           Q.    Do you have any corrections that you need  
5 to make to either Staff Exhibits 1 or 2?

6           A.    Yes, I do.

7           Q.    What are those?

8           A.    On my surrebuttal testimony, page 3, line  
9 1, that should all be stricken. That is a  
10 duplication typo.

11                    So the sentence should read -- it begins  
12 on page 2, line 20, should read like this: "The  
13 applicant's asset-based financial structure and  
14 operating costs do not support a revenue requirement  
15 under Ohio Public Utilities Commission rate stating  
16 procedures that would be sufficient to cover its  
17 financing costs."

18           Q.    Okay. Do you have any other corrections  
19 that you need to make to either Staff Exhibits 1 or  
20 2?

21           A.    No, I do not.

22           Q.    If I were to -- well, first, are the  
23 contents of Staff Exhibits 1 and 2 with the  
24 correction noted true to the best of your knowledge  
25 and belief?

1           A.    Yes, they are.

2           Q.    If I were to ask the questions that are  
3 contained within what's been marked for  
4 identification as Staff Exhibits 1 and 2 here again  
5 this morning, would your answers be as presented  
6 therein?

7           A.    Yes, they would.

8           Q.    And you adopt the contents of what's been  
9 marked for identification of Staff Exhibits 1 and 2  
10 as your testimony in this case?

11          A.    Yes, I do.

12               MR. McNAMEE:  Witness is available for  
13 cross-examination.

14               MR. BREITSCHWERDT:  I have no questions,  
15 your Honor.

16               MR. HEINTZ:  No question, your Honor.

17               EXAMINER FARKAS:  You're up.

18               MR. ROYER:  Thank you, your Honor.

19                               - - -

20                               CROSS-EXAMINATION

21 BY MR. ROYER:

22           Q.    Morning, Mr. Hodgden.  I understand this  
23 is your swan song for testifying?

24           A.    Yes, I expect it to be, yes, I do.

25           Q.    Let me make sure I understand the subject



1 you're addressing in your testimony. You're not  
2 addressing the question of the amount of emergency  
3 relief requested as to whether that's adequate to  
4 meet the debt service costs of Akron Thermal,  
5 correct? That's the subject of Mr. Mahmud's  
6 testimony.

7 A. Maybe it would help if I would explain  
8 what my testimony was designed to do, if that would  
9 help?

10 Q. Let me ask you --

11 A. Okay.

12 Q. -- what your -- as I understand it what  
13 your testimony addresses is initial testimony  
14 addressed the concern that in a follow-on permanent  
15 rate case, the company would not be able to sustain  
16 or make the case for a rate increase that would be  
17 sufficient to meet its debt service obligations on an  
18 ongoing basis; is that accurate?

19 A. That's correct, yes.

20 Q. And so you're looking at what was  
21 happening in the follow-on rate case and Mr. Mahmud  
22 is addressing the adequacy of the emergency revenues  
23 in the emergency case to meet that objective,  
24 correct?

25 A. I don't believe Mr. Mahmud really speaks

1 to that --

2 Q. Well -- I'm sorry, I didn't mean to  
3 interrupt.

4 A. That would really be myself and  
5 Mr. Puican.

6 Q. Well, with the understanding.

7 So the analysis you performed was to  
8 attempt to estimate based on 2008 data the results  
9 that would likely occur in a permanent case, in a  
10 permanent rate case for this company, correct?

11 A. That is correct. The applicant in its  
12 filing requested a \$4.1 million increase and my  
13 analysis was intended to provide some sort of sanity  
14 check to see if that could possibly be supported in a  
15 subsequent permanent rate case.

16 Q. And you concluded that an increase of --  
17 based on your, the way you characterize it, your  
18 shortcut estimate, you concluded that the company  
19 would likely be able to sustain an increase in a  
20 permanent case of some \$3.99 million; is that right?

21 A. Based on the information that was filed  
22 by the applicant for year 2008, I made no  
23 adjustments, these were not audited by the staff but  
24 I just assumed those numbers and converted them,  
25 input them in the prior model.

1           Q.    And the actual -- when the company files  
2   its actual permanent rate request, then of course  
3   what would the -- unless the Commission ordered  
4   otherwise, what would the test year be in that case?

5           A.    That will be determined by the applicant  
6   what they file for.

7           Q.    Isn't it true that the statute provides  
8   that unless the Commission orders otherwise, that the  
9   test year essentially brackets the date of filing the  
10   application six months before and six months after?

11          A.    Well, again, the company has not given  
12   its 30 days notice of its intent to file permanent  
13   case.

14          Q.    Right.

15          A.    And I would believe that they could  
16   submit a perhaps a different test period if they so  
17   chose.

18          Q.    And in fact, they would be authorized to  
19   request what we call a 3 and 9 test year and that  
20   would be three months of actual data and nine months  
21   of projected data?

22          A.    That's correct.

23          Q.    And if the company were to file its  
24   notice of intent on September 1, that would mean the  
25   application would likely be filed on October 1?

1 Under the normal course.

2 A. Under normal course of business, yes.

3 Q. So you would have test year then that  
4 would include projected three months of actual data  
5 from July, August, and September, and projected data  
6 into 2010, correct?

7 A. I believe that's correct.

8 Q. And then of course in the context of the  
9 permanent rate case and I think as you suggested,  
10 staff and the company for that matter, they would --  
11 could provide or could propose rate-making  
12 adjustments intended to make the test year data more  
13 representative for purposes of setting rates,  
14 correct?

15 A. That is correct.

16 Q. And of course that analysis has not been  
17 performed, correct?

18 A. That is correct.

19 Q. So you're not testifying that the  
20 company -- you're not suggesting that you know at  
21 this point exactly what the company could support or  
22 what the staff would recommend in terms of a revenue  
23 requirement for the company resulting from the  
24 permanent case; is that right?

25 A. That is correct. I base -- this analysis

1 was based upon the information that the company filed  
2 in its emergency proceeding.

3 Q. And then subsequently, subsequent to  
4 filing your initial testimony where you concluded  
5 that the company's -- company couldn't support rate  
6 relief sufficient to service its debt under the  
7 statutory rate-making formula, you then reviewed the  
8 forbearance agreement and testimony of Mr. Bees; is  
9 that right?

10 A. That's correct.

11 Q. And you concluded based on that that for  
12 some period at least the company would be able to --  
13 under your revenue requirement the company would be  
14 able to meet those obligations, correct?

15 A. Yes. I took the updated payment schedule  
16 and determined an as-estimated annual payment and  
17 essentially bottom-up analysis using my same model to  
18 determine what revenue requirement would potentially  
19 shake out of that analysis.

20 Q. But your revenue requirement number  
21 didn't change between the two testimonies, correct?  
22 That's still the 3,995,120, which would be the  
23 increase you would say? Or you estimate would be  
24 supportable based on 2008 data?

25 A. No, I think my surrebuttal shows that if

1 the -- under those payment -- under the revised  
2 payment schedule, a revenue, total company revenue  
3 increase of I'll say \$3.8 million.

4 EXAMINER FARKAS: Are you referring to a  
5 page?

6 THE WITNESS: Yes. You might look at DRH  
7 surrebuttal Exhibit 2. And the middle column there  
8 pro forma adjustments, that shows \$3,797,831 as the  
9 new revenue increase. Total company revenue increase  
10 that would support amended principal and interest  
11 payments.

12 Q. And maybe we're misunderstanding each  
13 other. But your -- as shown on page 5 of your  
14 rebuttal testimony, line 11, you are still -- you are  
15 still calculating your estimate of the increase that  
16 would be supportable based on the revenue requirement  
17 you estimate in a -- based on 2008 value you're still  
18 saying -- you're not saying that \$3,995,120 has  
19 changed, are you?

20 A. No. I just point out that that is a  
21 range of sort of a minimum/maximum perhaps.

22 Q. And basically the difference between the  
23 range in your revised calculation you didn't include  
24 any return component in examining the -- when you  
25 examined the new payment on the investigations,

1 right?

2 A. My surrebuttal testimony does not have an  
3 equity return built into it.

4 Q. Right. In your initial testimony you  
5 make the point that that's the amount that has to --  
6 that return amount is what has to be sufficient to  
7 cover under the statutory rate-making formula has to  
8 be such to cover debt service, correct?

9 Let me say it this way: Under Ohio  
10 rate-making law, debt service costs are below the  
11 line item, correct?

12 A. That is correct.

13 Q. And the only way debt service costs are  
14 recognized in a permanent rate case is through the  
15 rate of return -- through the rate of return based on  
16 the way cost of capital is then applied to asset base  
17 to determine the dollar return, right?

18 A. That is correct, but depreciation expense  
19 provides revenues to cover that.

20 Q. Right. And so your point in your initial  
21 testimony was that that \$3,995,000 increase that you  
22 projected wouldn't be sufficient to cover the costs  
23 or cover the financing costs under the formula,  
24 correct?

25 A. Yes. Looking at the original payment

1 schedules it did not appear they would be able to  
2 cover those.

3 Q. And your rebuttal testimony now indicates  
4 that based on that same analysis it would be  
5 sufficient to cover those costs.

6 A. Yes, it is.

7 MR. ROYER: No more questions.

8 EXAMINER FARKAS: Mr. Randazzo?

9 - - -

10 CROSS-EXAMINATION

11 BY MR. RANDAZZO:

12 Q. Mr. Hodgden, how long have you worked at  
13 the Commission?

14 A. Thirty-four years and about seven months  
15 maybe.

16 Q. Well, I'm sure I speak for everybody  
17 that's worked at the Commission, very much appreciate  
18 your public service.

19 A. Thank you, Sam.

20 Q. I want to see if I understand your  
21 testimony, particularly in view of the questions and  
22 answers that were asked by Mr. Royer.

23 You're not recommending a specific level  
24 of increase as part of your testimony; is that  
25 correct?



1           A.    My analysis would provide a revenue  
2 number that if the Commission were to decide an  
3 increase was appropriate, I would suggest that they  
4 would use my range.

5           Q.    Okay, and that is your range has been  
6 calculated for purposes of making sure that it's not  
7 likely that the applicant would exceed in the  
8 permanent case the amount that might be authorized in  
9 the emergency rate case, right?

10          A.    That is correct.

11          Q.    Now, you indicated earlier, and I was  
12 going to get into this in any event, that you have  
13 not done the kind of things that the staff typically  
14 would do for purposes of a staff report of  
15 investigation, and that is to audit the utility to  
16 make sure that the financial information that has  
17 been provided by the utility fairly represents and --  
18 fairly represents the business and is reliable for  
19 rate-making purposes, right?

20          A.    That is correct.

21          Q.    So you've simply taken the 2008  
22 information that Akron Thermal has furnished and  
23 without subjecting it to that level of analysis and  
24 used that as the starting point for your calculation,  
25 right?

1           A.    That is correct.

2           Q.    Now, Mr. Royer asked you about some of  
3 the assumptions. You haven't, for example, made any  
4 adjustment to the base revenues to reflect the  
5 difference between contract and tariff rates, have  
6 you?

7           A.    No, I haven't.

8           Q.    And what have you assumed for purposes of  
9 your numbers relative to the operational changes that  
10 have been described by the applicant with regard,  
11 specifically with regard to boiler 32?

12          A.    Probably be the best way to explain it is  
13 to go to my direct testimony DRH Exhibit 2, page 6 of  
14 7, Schedule C2.

15          Q.    All right.

16          A.    And maybe I can just walk through this.

17                You'll see a column Applicant and under  
18 that Test Year Revenues/Expenses, Adjustments, and  
19 Revenue Adjustments, and then to the right of the  
20 staff if we made any adjustment.

21                Test year revenues and expenses, this is  
22 essentially the applicant's 2008 financial  
23 information as submitted in the filing.

24                The Adjustment column identifies the  
25 adjustments that the company accountant had made to

1 those numbers to try to identify the potential  
2 impact.

3 For example, they indicated that the loss  
4 of University of Akron would result in about  
5 \$4,018,000 loss in revenues.

6 They indicated that the shutting down of  
7 the boiler would increase their fuel and purchased  
8 power cost by \$1,533,088.

9 And they had also listed -- identified a  
10 number of other adjustments that would reduce their  
11 operating costs and I totaled those up to total  
12 \$8,065,486 of reductions. The net being that total  
13 operation maintenance expense would have gone up  
14 \$667,602.

15 The net net result of all that is that  
16 their net operating income was adjusted downward by  
17 \$4,495,560.

18 Q. Okay.

19 A. And then that Adjusted Revenues/Expenses  
20 column the only adjustment I made was to consider the  
21 tax implications to determine the starting base.

22 Q. And that's helpful.

23 And so you're showing you've got  
24 essentially on DRH Exhibit No. 2, C2, you're showing  
25 on the left-hand side three columns that are your

1 restatement of what you believe the applicant  
2 submitted for 2008?

3 A. Yes, that's correct.

4 Q. And the two columns to the right of that  
5 show your work where you are accepting the  
6 applicant's fuel and purchased power expense, for  
7 example, for purposes of your calculation, correct?

8 A. That is correct.

9 Q. So another way to say this is that to tie  
10 it together is for purposes of your numbers you have  
11 assumed that boiler 32 closes down, right?

12 A. That is correct.

13 Q. And that they're meeting their fuel  
14 expense increasingly by reliance on natural gas, wood  
15 chips, and tire derived fuel, correct?

16 A. That is correct.

17 Q. Yeah. And you're again not taking any  
18 position regarding whether or not that operational  
19 change is appropriate and should be recognized for  
20 rate-making purposes, correct?

21 A. That is correct.

22 Q. And just take another line here to sort  
23 of illustrate the point perhaps a little bit more  
24 directly.

25 You have a line, the applicant had a line

1 and you have a line in your work here on Schedule C2  
2 or DRH Exhibit 2, page 6 of 7, where you're showing  
3 depreciation and amortization.

4 A. Yes.

5 Q. Typically that would be the -- that line  
6 would show the annual amount of depreciation expense  
7 that the staff believes is appropriate for  
8 consideration for rate-making purposes?

9 A. That is correct.

10 Q. And one of the things that would drive  
11 the dollar value that's shown on that line is a  
12 valuation of the useful lives of the underlying  
13 assets that are subject to depreciation; is that  
14 correct?

15 A. That is correct.

16 Q. And some judgment as to what an  
17 appropriate depreciation schedule would be over that  
18 useful life; is that correct?

19 A. That is correct.

20 Q. And you would develop from that analysis  
21 a depreciation of accrual rate by plant account that  
22 would drive to the annual amount of depreciation  
23 expense; is that correct?

24 A. That's correct.

25 Q. And you have not in the exhibit done

1 anything to valuate the depreciation of useful lives,  
2 the accrual rates or the annual level of expense  
3 that's reported by the applicant; is that correct?

4 A. No analysis. I accepted what was  
5 submitted in their financial statements.

6 Q. And for purposes of your going -- your  
7 supplemental or surrebuttal I should say, surrebuttal  
8 testimony, you show on Exhibit 2, Schedule C1 a rate  
9 base value of approximately 3.6 million. It's  
10 actually 3.66 and some change?

11 A. That's correct.

12 Q. And Mr. Royer asked you some questions  
13 about rate-making. The value of the rate base is  
14 driven by what?

15 Is it the used and useful property that  
16 is dedicated to the public utility service?

17 A. It would be the book value of the used  
18 and useful property that is dedicated public service.

19 Q. And that would be net book value, right?

20 A. Net book value after accumulated  
21 depreciation.

22 Q. And that would be, for rate-making  
23 purposes that valuation would be established based  
24 upon a date certain or a specific point in time; is  
25 that correct?

1           A.    That is correct.

2           Q.    Has the staff done any analysis of what  
3 the rate base value of the applicant would be if it  
4 were to submit an application for a period of time  
5 rate increase?

6           A.    No.   I used the balance sheet information  
7 that was provided in 2008 submission.

8           Q.    And when you say you "used the balance  
9 sheet information," that would be the information  
10 that was furnished by Witness Dot from Akron Thermal?

11          A.    It was in their original application I  
12 believe she would have prepared for that.

13          Q.    Fair enough.

14               And the balance sheet shows a place for  
15 accounting purposes where you show both the assets  
16 and liabilities of the corporation; is that correct?

17          A.    That is correct.

18          Q.    And what was the net worth of the Akron  
19 Thermal Limited Partnership based upon the balance  
20 sheet information that you reviewed?

21          A.    Do you want the net plant service?

22          Q.    Net worth.

23          A.    Net worth.

24          Q.    In other words, what was the difference  
25 between the asset side of the balance sheet and the

1 liability side of the balance sheet, that's how you  
2 determined it, wasn't it, Mr. Hodgden?

3 A. Yes.

4 Q. Yeah.

5 A. I prepared a comparative income statement  
6 of balance sheet for the years 2000 through 2008, and  
7 the year-end 2008 the company reported a total assets  
8 of \$4,358,820, and they showed by my calculation  
9 total liabilities of \$39,221,094 resulting in a  
10 negative stockholders equity of \$34,862,274.

11 Q. It's typical -- Mr. Royer asked you some  
12 questions about things that fall below the line. The  
13 utility will typically have expenses that they, the  
14 utility will incur that are not considered for  
15 rate-making purposes; is that correct?

16 A. That is correct.

17 Q. And for example, the utility might make  
18 political contributions or charitable contributions  
19 that typically would fall below the line for  
20 rate-making purposes; is that correct?

21 A. That is correct.

22 Q. You have not looked at the actual cash  
23 flow obligations of Akron Thermal Limited Partnership  
24 to determine whether or not there's adequate cash  
25 flow to meet all the expenses above and below the



1 line, have you?

2 A. I did not do a cash flow analysis myself.  
3 I focused mostly on my revenue requirement  
4 calculation.

5 Q. For example, you've been in the hearing  
6 room throughout this process, correct?

7 A. Yes.

8 Q. And you heard earlier today witness  
9 testimony from Mr. Wehrle who indicated that Akron  
10 Thermal Limited Partnership continues to incur costs  
11 associated with the bankruptcy proceeding.

12 Do you recall that testimony?

13 A. Yes.

14 Q. The professional fees that are being  
15 incurred as a result of payments to the trustee or  
16 payments to other professional service providers,  
17 would those be above or below the line?

18 A. Those would be below the line expenses.

19 Q. So even if there's adequate cash flow to  
20 service the debt based upon your analysis, there may  
21 not be adequate cash flow to meet all the expenses  
22 including those that are not considered for  
23 rate-making purposes, correct?

24 A. That is correct. My analysis was focused  
25 on what I call operating revenues after expenses.

1           Q.    In your initial testimony, first piece of  
2 your testimony, Staff Exhibit 1, you talk about the  
3 what I'll -- my words here, and correct me if you  
4 think they're inappropriate, but you talk about the  
5 conflict between the rate-making formula and the  
6 business model of the applicant.

7                   Do you recall that?

8           A.    Yes.

9           Q.    There's nothing in the forbearance  
10 agreement that has been presented that caused you to  
11 make the additional calculations that have occurred  
12 in your surrebuttal testimony don't change that  
13 conflict, do they?

14                   They don't change the conflict between  
15 the business model and the rate-making law as you  
16 understand.

17           A.    No, they don't.

18           Q.    Mr. Hodgden, has Akron Thermal spoken to  
19 the staff about specifying a test year or date  
20 certain that they would like to have for purposes of  
21 filing an application to increase rates on a  
22 permanent basis?

23           A.    Not that I'm aware of. I understand that  
24 they're filing -- they talked about September making  
25 a filing, but we've not had any discussion about test

1 periods or anything like that.

2 Q. And typically would it be your experience  
3 that if a utility is going to file an application to  
4 increase rates, the utility would come talk to the  
5 staff about test year date, certain kinds of things  
6 early on prior to submitting a notice of intent?

7 A. That's fairly common practice. Yes.

8 MR. RANDAZZO: That's all I have. Thank  
9 you very much, Mr. Hodgden, we'll miss you.

10 EXAMINER FARKAS: Any redirect?

11 MR. McNAMEE: If I may have a word with  
12 the witness. I suspect I don't.

13 EXAMINER FARKAS: Okay.

14 (Off the record.)

15 MR. McNAMEE: No questions, your Honor.

16 Staff would move the admission of Staff  
17 Exhibits 1 and 2.

18 EXAMINER FARKAS: Any objection?

19 They will be admitted.

20 (Exhibits admitted.)

21 EXAMINER FARKAS: You're excused.

22 THE WITNESS: Thank you.

23 EXAMINER FARKAS: Call your next witness.

24 MR. McNAMEE: Staff will call Shahid  
25 Mahmud.

1 (Witness sworn.)

2 EXAMINER FARKAS: You can proceed.

3 - - -

4 SHAHID MAHMUD

5 being first duly sworn, as prescribed by law, was  
6 examined and testified as follows:

7 DIRECT EXAMINATION

8 BY MR. McNAMEE:

9 Q. State and spell your name for the record  
10 please.

11 A. The first name is Shahid, S-h-a-h-i-d.  
12 And last name is Mahmud, M-a-h-m-u-d.

13 Q. By whom are you employed and in what  
14 capacity?

15 A. I'm employed by the Public Utilities  
16 Commission of Ohio, and I'm a senior utility  
17 specialist in the Capital Regulatory and Financial  
18 Analysis Division of the Utilities Department.

19 Q. What is your business address?

20 A. My business address is 180 East Broad  
21 Street, Columbus, Ohio 43215.

22 MR. McNAMEE: Your Honor, at this time I  
23 ask to have marked for identification as Staff  
24 Exhibit 3 a document entitled -- a document already  
25 filed in this case entitled Testimony of Shahid

1 Mahmud.

2 And I would also ask to have marked for  
3 identification as Staff Exhibit 4 a document filed  
4 last Friday in this docket entitled Surrebuttal  
5 Testimony of Shahid Mahmud.

6 EXAMINER FARKAS: So marked.

7 (Exhibits marked.)

8 Q. Mr. Mahmud, do you have before you what's  
9 been marked for identification as Staff Exhibits 3  
10 and 4?

11 A. I have some corrections for both  
12 exhibits.

13 Q. But do you have the documents in front of  
14 you?

15 A. I do, yes.

16 Q. You do, good.

17 You've anticipated my next question.

18 Do you have any -- first let me ask you,  
19 can you identify what these documents are?

20 A. Yeah, the first document Exhibit 3 is the  
21 testimony of mine pertaining to the Case No.  
22 09-453-HT-AEM. And my second testimony is Staff  
23 Exhibit 4 is surrebuttal testimony party to the same  
24 case as I described.

25 Q. Were these two documents prepared by you

1 or under your direction?

2 A. Yes, they were.

3 Q. Now, do you have any corrections that you  
4 need to make to either of those?

5 A. Yes, I do.

6 Q. Could you tell us what they are very  
7 slowly please?

8 A. Yes. I would first go with Staff  
9 Exhibit 3, Attachment D was involuntarily attached to  
10 my testimony and should be excluded as part of my  
11 testimony.

12 Q. Attachment D. Okay.

13 A. And in the --

14 Q. That should just be ignored then.

15 A. Be ignored, yes.

16 Q. Do you have any other?

17 A. Yes. And Attachment SUM-3, third line  
18 from the top should be corrected as follows: Replace  
19 the word "current" with the word "proposed."

20 Q. So how would that title read?

21 A. That title would read -- the title would  
22 read "Cash Flow at Proposed Rates."

23 Q. Okay.

24 A. And I have some corrections on Staff  
25 Exhibit 4, page 1, line 11. "The purpose of this

1 surrebuttal testimony is to respond to certain  
2 part --"

3 Q. I'm sorry, which page was that?

4 A. The first page of my surrebuttal  
5 testimony, line 11.

6 Q. Okay.

7 A. "The purpose of this surrebuttal  
8 testimony is to respond to certain parts. Add the  
9 word "s" to "part."

10 On page 2, line 10, after 60 percent add  
11 the word "is."

12 On line 18, strike the word "make" and  
13 replace it with "enable."

14 MR. ROYER: I'm sorry?

15 THE WITNESS: "Enable."

16 Then strike the word "likely" --

17 MR. RANDAZZO: I'm sorry, I didn't follow  
18 that.

19 THE WITNESS: Strike the word "make" and  
20 make it "enable."

21 MR. RANDAZZO: Thank you, sorry.

22 A. And then strike "likely" to be "able,"  
23 line 19, strike for approximately \$440,869.

24 Q. So how would that sentence read with  
25 these corrections?

1           A.     Okay, with these corrections "Taking the  
2     restructured debt service cost into consideration,  
3     Akron Thermal's cash flow projections for 2009 under  
4     its proposed rates appear to enable Akron Thermal to  
5     meet its debt service obligations in 2010."

6           Q.     Okay.

7           A.     And I would like to insert the next line  
8     before "Akron Thermal's request, I infer from  
9     Mr. Bees' testimony that," and goes on following.

10                  And my last correct is, I'm sorry, second  
11     last correction would be strike Attachment-1. It  
12     should be ignored.

13           Q.     That's another one I put in by mistake,  
14     isn't it?

15           A.     And Attachment D also should be striking  
16     off, should be ignored.

17                  MR. ROYER: I'm sorry, are we striking 1?

18           A.     Yeah, that first one SUM-1, and then  
19     Attachment D. So in that sense there will be only  
20     one titled SUM-1 Surrebuttal.

21           Q.     Is that all of them?

22           A.     Yes.

23           Q.     With those various corrections to Staff  
24     Exhibits 3 and 4 are the contents of what's been  
25     marked for identification of Staff Exhibits 3 and 4



1 true to the best of your knowledge and belief?

2 A. They are.

3 Q. If I were to ask you the questions that  
4 are contained within what's been marked for  
5 identification as Staff Exhibits 3 and 4 again here  
6 today, would your answers be as presented therein?

7 A. Yes, they are.

8 Q. And you adopt what's been marked for  
9 identification as a Staff Exhibits 3 and 4 as your  
10 testimony in this case?

11 A. Yes, I do.

12 MR. McNAMEE: Witness is available for  
13 cross-examination.

14 EXAMINER FARKAS: You want to go first?

15 MR. RANDAZZO: If you like.

16 EXAMINER FARKAS: Sure.

17 - - -

18 CROSS-EXAMINATION

19 BY MR. RANDAZZO:

20 Q. Let's first turn to, Mr. Mahmud, let's  
21 first turn to your initial testimony Attachment  
22 SUM-3. And I'd like to see if I understand the  
23 schedule.

24 Based on this schedule you're showing  
25 that as of the end of December of 2009 the applicant

1 would have an ending cash balance of negative  
2 \$630,058, correct?

3 A. That's correct.

4 Q. And that's even assuming they get the  
5 full amount of the increase, correct?

6 A. That is correct.

7 Q. What would the negative cash balance be  
8 based upon the revised payment schedule in  
9 forbearance agreement? Did you do another one?

10 A. Yes. That is in Surrebuttal Testimony  
11 Exhibit 4. The last exhibit to the testimony.

12 I'm sorry, was the question involved cash  
13 flow?

14 Q. Cash flow, yeah.

15 A. No, I did not. Because I didn't have  
16 available other analysis. It would be just striking  
17 off 50 percent off if you -- I mean but I didn't make  
18 any calculations.

19 Q. And again, as Mr. Hodgden did, you were  
20 taking, as you indicate on Attachment SUM to Staff  
21 Exhibit No. 3, you were taking the information that  
22 was furnished by the applicant as the starting point  
23 for your calculations.

24 A. Yes.

25 Q. And you did not subject that to an

1 independent staff analysis; is that correct?

2 A. No. I just took it in its entirety based  
3 on what they provide in their base case and also the  
4 pro forma. So my Attachment SUM-3 and SUM-2 reflect  
5 that calculation. No different than that  
6 company-supplied information.

7 Q. Now, page 2 and you changed in your  
8 surrebuttal testimony at the line 19 you modified  
9 your testimony to indicate that you were inferring  
10 from Mr. Bees' testimony that the Commission's  
11 approval of the restructured debt obligations is  
12 dependent upon the Commission granting the requested  
13 emergency rate relief.

14 Has the applicant filed for approval of  
15 the restructured debt obligation?

16 A. No. To the best of my knowledge.

17 Q. As long as you're -- this statement is  
18 based on what you have interpreted from Mr. Bees  
19 again?

20 A. Yeah, from Mr. Bees' testimony.

21 Q. And you've been in the hearing room  
22 during the presentation of the testimony for the most  
23 part.

24 A. For the most part, yes.

25 Q. And what is your understanding on the

1 amount of emergency rate relief that is required in  
2 order for the restructured debt obligations to be  
3 effective?

4 A. As I infer from Mr. Bees' rebuttal, that  
5 in the event Commission grants the requested  
6 emergency rate relief of approximately  
7 \$4.195 million, then applicant will be in a position  
8 to service those debts in year 2010. And my  
9 calculation didn't go beyond 2010.

10 Q. Okay. Well, do you have an understanding  
11 about the amount of emergency rate relief that needs  
12 to be granted by the Commission before the  
13 restructured debt obligation becomes effective?

14 A. Could you rephrase the question please?

15 Q. Yes. Do you have an understanding about  
16 the amount of emergency rate relief that the  
17 Commission would need to approve before the  
18 restructured debt obligations would become effective?

19 Let me back up and try it this way: You  
20 assumed that the forbearance agreement that changes  
21 the timing of the payments on the notes to the  
22 creditors' trust in the state of Ohio is in effect.

23 A. Yes.

24 Q. Correct?

25 A. Yes.

1           Q.    You understand that that agreement may  
2 not be effective depending upon what the Commission  
3 does in the emergency rate case, right?

4           A.    Right.

5           Q.    Do you have an understanding about the  
6 magnitude of emergency rate relief that the  
7 Commission would need to grant before the  
8 restructured debt obligations would be anything other  
9 than void?

10          A.    Let me answer the question this way: I  
11 don't know whether I -- in my Staff Exhibit 3 I made  
12 calculation based on what would be the cash flow in  
13 the event Commission grants the applicant the  
14 emergency rate relief in its entirety.

15               And if I make the calculation at the  
16 year-end, everything's projected, that will be about  
17 half million dollar cash shortage. Now, that does  
18 not include the debt service cost during the year  
19 2009.

20               Now, come 2010 based on the applicant's  
21 payment structure, this is before the restructure,  
22 the first payment comes due to approximate  
23 \$65,000 and second payment comes the half yearly  
24 payment to the creditors' trust and State of Ohio.

25          Q.    And that's based upon the way the notes

1 were prior to any forbearance agreement, right?

2 A. Forbearance agreement. And my second  
3 calculation was if it is assumed that -- now, when  
4 you call forbearance, I will say that. But I don't  
5 think this \$100,000 is a write-off. It's just  
6 current payment and ultimately it will have to pay  
7 that \$100,000 down the line there.

8 What you're saying is that the change in  
9 the timing of the debt service is approximately  
10 \$100,000 but it only postpones and it ultimately  
11 increases the magnitude on the obligation. Yes.

12 MR. RANDAZZO: Thank you very much, sir.

13 - -

14 CROSS-EXAMINATION

15 BY MR. ROYER:

16 Q. Just one or two. Good afternoon.

17 Would you turn to attachment SUM-1 of  
18 Staff Exhibit 3, your initial testimony?

19 A. Yes.

20 Q. And you've titled that attachment  
21 "Calculation of Debt Service Cost in 2010."

22 A. Yes.

23 Q. Is that accurate?

24 A. No. 3 is accurate, and No. 2 is as I  
25 calculate it I cover for year 2010 annual payment. I

1 did not factor the half yearly payment.

2 Q. Right. But in terms under the agreements  
3 prior to the forbearance agreement, the numbers for  
4 the creditors' trust and the treasurer of the State  
5 of Ohio, that's actually two payments.

6 A. Yes.

7 Q. And in fact in 2010 there would only be  
8 one payment for each of those, correct?

9 A. Yes.

10 Q. So it's an annualized number commences  
11 with the first payment.

12 A. Yes.

13 MR. ROYER: I think that's all I have.  
14 Thanks.

15 EXAMINER FARKAS: Any redirect?

16 MR. McNAMEE: No.

17 Staff would move the admission of Staff  
18 Exhibits 3 and 4.

19 EXAMINER FARKAS: Any objections?

20 Hearing none, they will be admitted.

21 (Exhibits admitted.)

22 EXAMINER FARKAS: You're excused, thank  
23 you.

24 MS. PARROT: Your Honor, at this time the  
25 staff calls Mr. Stephen Puican to the witness stand.

1 (Witness sworn.)

2 - - -

3 STEPHEN E. PUICAN

4 being first duly sworn, as prescribed by law, was  
5 examined and testified as follows:

6 DIRECT EXAMINATION

7 BY MS. PARROT:

8 Q. Good afternoon, Mr. Puican. Would you  
9 please state and spell your last name for the record?

10 A. Stephen E. Puican, S-t-e-p-h-e-n, last  
11 name P-u-i-c-a-n.

12 Q. And your business address please?

13 A. 180 East Broad Street, Columbus, Ohio.

14 Q. By whom are you employed?

15 A. By the Public Utilities Commission of  
16 Ohio.

17 Q. And what is your role with the Public  
18 Utilities Commission of Ohio?

19 A. I am co-chief of the Rates, Tariffs,  
20 Energy, and Water Division.

21 Q. Mr. Puican, have you previously filed  
22 testimony in this case?

23 A. I filed two pieces of testimony in this  
24 case, yes.

25 Q. And that would be your direct testimony



1 as well as surrebuttal testimony; is that right?

2 A. Correct.

3 MS. PARROT: Your Honor, at this time I  
4 would like to mark as Exhibit No. 5 the direct  
5 testimony of Stephen E. Puican that was previously  
6 filed in this docket. And I would also like to mark  
7 as Staff Exhibit 6, surrebuttal testimony of Stephen  
8 E. Puican that was filed.

9 EXAMINER FARKAS: So marked.

10 (Exhibits marked.)

11 Q. Mr. Puican, do you have what's been  
12 marked for identification purposes as Staff Exhibits  
13 5 and 6 before you?

14 A. Yes.

15 Q. Would you please identify those documents  
16 for us?

17 A. Staff Exhibit 5 is my prefiled direct  
18 testimony, Staff Exhibit 6 is my surrebuttal  
19 testimony.

20 Q. Thank you.

21 Were Staff Exhibits 5 and 6 prepared by  
22 you or under your direction?

23 A. Yes.

24 Q. Are there any corrections or additions to  
25 either Staff Exhibit 5 or Staff Exhibit 6 that you

1 would like to make at this time?

2 A. No.

3 Q. Are Staff Exhibits 5 and 6 correct and  
4 accurate to the best of your knowledge and belief?

5 A. Yes.

6 Q. And would you like to at this time adopt  
7 Staff Exhibits 5 and 6 as your testimony in this  
8 case?

9 A. Yes, I would.

10 MS. PARROT: At this time Mr. Puican is  
11 available for cross-examination.

12 MR. RANDAZZO: No questions.

13 EXAMINER FARKAS: Mr. Royer?

14 MR. ROYER: Yes, I have a few.

15 - - -

16 CROSS-EXAMINATION

17 BY MR. ROYER:

18 Q. Good afternoon, Mr. Puican.

19 A. Good afternoon.

20 Q. And if I understand your testimony, you  
21 do not dispute that the loss of the University of  
22 Akron revenue stream has created a financial  
23 emergency for the company, do you?

24 A. No, I don't dispute that.

25 Q. And you do not dispute that without

1 emergency rate relief the company would be  
2 financially in peril and would be -- and its  
3 abilities to render service to its customers would be  
4 impaired, correct?

5 A. I understand that they would not be able  
6 to provide service without the emergency relief.

7 Q. And in fact, you state that your  
8 expectation would be as a consequence of the denial  
9 of emergency rate relief the company would be forced  
10 to cease operations, correct?

11 A. Correct.

12 Q. Could you turn to your Staff Exhibit 5,  
13 your initial testimony? And the question on page  
14 6 -- I'm sorry, a question on line 5, question No.  
15 6 --

16 A. I'm sorry, what page?

17 Q. I'm sorry, try again.

18 Page 3, line 5, question 6. Apologize.

19 A. Okay.

20 Q. In the previous answer you identified the  
21 total revenue shortfall due to the loss of the  
22 University as being a 4,195,000 number.

23 A. Yes.

24 Q. And then in question 6 asks does staff  
25 agree with the calculation of the revenue shortfall,

1 and I'm a little confused by your answer. I'm not  
2 sure it responds to that question.

3 Do you disagree with the calculation of  
4 the amount of revenue shortfall?

5 A. I see what you're saying, yeah, that is a  
6 little bit confusing the way I worded that.

7 No, I agree with the revenue shortfall  
8 calculation and I was trying to point out that  
9 Mr. Hodgden indicated it in a full base rate case  
10 that amount could probably not be justified.

11 Q. And now I'm also a little confused, you  
12 talk about in the answer that starts on line 13, and  
13 line 17 you say "using the staff's alternative  
14 revenue requirement estimate."

15 Does that mean, are you saying that  
16 that's the alternative revenue requirement estimate  
17 for this emergency case or are you describing using  
18 it in the way Mr. Hodgden described it?

19 A. The way Mr. Hodgden described it, his  
20 revised estimate of the 3.995 million.

21 Q. Okay. Now, in your testimony after  
22 suggesting that the outcome of denial of rate relief  
23 in this case would require the company to close its  
24 operations, you address whether service to the  
25 customers would be jeopardized, correct?

1           A.    Can you --

2           Q.    I'm sorry, page 3 of your surrebuttal.

3   Line 7.

4           A.    Okay, yes.

5           Q.    And you cite, you state that or the basis  
6   for your conclusion that service would not be  
7   jeopardized, you cite an arrangement between Akron  
8   Energy Systems, LLC and the City of Akron; is that  
9   correct?

10          A.    Right.

11          Q.    Have you reviewed that arrangement?

12          A.    I have not.

13               MR. ROYER:   May I approach?

14               EXAMINER FARKAS:   Yes.

15               MR. ROYER:   Just for identification I'd  
16   like to mark this Interim License and Operating  
17   Agreement between the City of Akron and Akron Energy  
18   Systems, LLC as Applicant's Exhibit 6.

19               EXAMINER FARKAS:   So marked.

20               (Exhibit marked.)

21          Q.    (By Mr. Royer)   You indicated that you  
22   have not reviewed this document?

23          A.    I don't believe I've ever seen this  
24   before.

25          Q.    So you were confident that this

1 arrangement would permit service to the customers to  
2 not to be jeopardizing even though you never read it?

3 A. Based on the testimony of Mr. Merolla and  
4 certain data requests from the City of Akron to Akron  
5 Thermal.

6 Q. Do you know if there's any -- if you  
7 haven't read it I assume you don't. But do you know  
8 based on the any of the documents you've read whether  
9 there's any provision in this arrangement that would  
10 indicate what rates would be charged to customers  
11 during the term of this arrangement?

12 A. I don't believe that rates have been  
13 determined if this arrangement would take place.

14 Q. And then under this arrangement the City  
15 would become the provider service to the customers,  
16 correct?

17 A. My understanding is that it's an interim  
18 agreement, that the facilities there would not be a  
19 lease offered to the new company, at least during the  
20 interim period. So by default, yes, the City  
21 would -- the system would revert back to the City.

22 Q. So the City would be setting the rate.  
23 Correct? It would be charged to customers.

24 A. I would think that they could.

25 Q. Who else would? I'm sorry.

1                   Who else could set the rate?

2                   A.    In the interim, yes, you're correct,  
3 because the new company would not have tariffs filed  
4 at the Commission, so basically be a home rule  
5 situation.

6                   Q.    Okay, well -- okay.

7                   And the company that's party to this  
8 operating agreement, that's what is -- so they're  
9 just operating it for the City, correct?

10                  A.    Correct.

11                  Q.    And they wouldn't be -- they would have  
12 no reason to be coming to the Commission for approval  
13 because it wouldn't be a Commission-regulated public  
14 utility, correct?

15                  A.    Not during this interim period.

16                  Q.    So, and of course the rates that would be  
17 charged by the City, those would not be subject to  
18 the Commission's jurisdiction, correct?

19                  A.    Correct.

20                  Q.    But the City would have to, presumably  
21 have to establish rates, correct?

22                  A.    The City would have to have rates, yes.

23                  Q.    And unless the City planned to ask  
24 taxpayers to subsidize it, one would presume that the  
25 rates would have to cover the cost of providing the

1 service to the customers, correct?

2 MR. McNAMEE: Object.

3 EXAMINER FARKAS: Do you object?

4 MR. McNAMEE: Yeah, I just objected.

5 Asking the witness to speculate about what the City  
6 would do under some future state of affairs. The  
7 witness has no possibility of knowing what the City  
8 will do or how they'll do it.

9 MR. ROYER: If your Honor please, that's  
10 exactly how the City will do and how they do it is  
11 exactly the subject of his testimony is the basis for  
12 why he's comfortable with this arrangement's going to  
13 work. I'm certainly entitled to inquire I think.

14 MR. RANDAZZO: I think the witness has  
15 explained he relied on Mr. Merolla. Mr. Merolla  
16 testified, and had the counsel wished to inquire the  
17 City of Akron on this subject, Mr. Merolla is here.  
18 I don't think it's fair game for this witness, your  
19 Honor.

20 EXAMINER FARKAS: If you know, answer the  
21 question.

22 THE WITNESS: I don't know if the City  
23 would require taxpayers subsidy of rate or if they'd  
24 be fully compensatory. I don't know how they they'd  
25 go about setting the rates.



1           Q.    (By Mr. Royer)  If they weren't fully  
2   compensatory, then the City would be operating at a  
3   loss, correct?

4           A.    That's correct.

5           Q.    And then do you know if this agreement  
6   makes any assumptions about whether the University of  
7   Akron would be on the system or not?

8           A.    I don't.

9           Q.    And without University of Akron on the  
10  system, the City would face at least the same sort of  
11  challenge that confronts Akron Thermal in terms of  
12  need for revenues, correct?

13          A.    No, I don't think it's going to be the  
14  same situation at all.  They would not be carrying  
15  the baggage that Akron Thermal is currently carrying.

16          Q.    Well, in terms of the -- the City would  
17  certainly be better placed if University of Akron was  
18  on the system than if it wasn't, correct, in terms of  
19  its abilities to meet its operating costs?

20          A.    Yes.

21          Q.    And the City hasn't told you, have they,  
22  that under the proposed arrangement University of  
23  Akron will return to the system?

24          A.    Nobody from the City of Akron has told me  
25  that, no.

1                   EXAMINER FARKAS: Just for the record,  
2 the reference to "baggage" that you made in your  
3 answer, you're referring to the debt obligations?

4                   THE WITNESS: Yes.

5                   EXAMINER FARKAS: Thank you.

6                   Q. Do you know how long this arrangement  
7 would be in effect?

8                   A. The interim arrangement? I don't know  
9 this from reading the document, but I presume until  
10 the City would make a decision whether to turn the  
11 franchise over to the new company.

12                  Q. And were you here in the room when  
13 Mr. Merolla testified this morning?

14                  A. At least partially.

15                  Q. And I asked him about the provision of  
16 the City of Akron's charter that would prohibit the  
17 mayor or City Council from leasing or selling utility  
18 systems without voter approval.

19                         Did you hear that testimony?

20                  A. Yes.

21                  Q. Did that have any bearing on your  
22 thinking as to the efficacy or as to whether that can  
23 present a potential problem for the City in terms of  
24 bringing new operators?

25                  A. No. Could be running indefinitely with

1 the City operating the franchise and the new entity  
2 simply being the operator.

3 Q. That's not what's contemplated by this  
4 arrangement, if you know.

5 A. I don't know. It simply could be that  
6 indefinite.

7 Q. Now, your concern is that even though  
8 Mr. Hodgden's analysis suggests that in a permanent  
9 rate case rates would be -- the company could justify  
10 rates that would provide it with the opportunity to  
11 meet its debt service obligations, your concern is  
12 that with the emergency rate increase there may be  
13 additional customers driven off the system, correct?

14 A. There's certainly that potential.

15 What I take away from Mr. Hodgden's  
16 surrebuttal testimony is that even though they are  
17 technically covering their obligations what  
18 potentially could come out of a base rate proceeding,  
19 in my view it's such a narrow margin that there's no  
20 margin for error in the future.

21 And my concern is that if we're going to  
22 implement these huge rate increases, I would have to  
23 have -- before I would recommend Commission approval,  
24 I would have to feel pretty comfortable that this is  
25 really going to resolve the long term viability of

1 the company. And I don't have that confidence.

2 Q. And I heard your answer but I don't think  
3 that was exactly what I asked.

4 I think I asked if your concern, at least  
5 one of your concerns was that the emergency rate  
6 relief, if granted, could effectively drive  
7 additional customers off the system which would  
8 exacerbate the problem and this wouldn't cure it. Is  
9 that basically it?

10 A. That is one of the primary concerns and  
11 one of the biggest uncertainties on a going-forward  
12 basis is that you don't know what's going to happen  
13 with these customers, and margin of error is so thin  
14 that even though a little bit of loss of load could  
15 instigate what we call a desk file.

16 Q. But to know what customers would do  
17 -- well, let me say it this way: You haven't  
18 performed any sort of customer-by-customer analysis  
19 to determine which customers would find additional  
20 capital investment as an appropriate means of meeting  
21 their own energy requirements as opposed to  
22 continuing to take service from Akron Thermal.

23 A. No, I have not.

24 Q. And you also make some reference that  
25 some customers will be forced to close. You've made

1 no analysis that would show which customers if any  
2 would be forced to close as result of this, correct?

3 A. No, I'm presenting this as a major source  
4 of uncertainty of the long term viability of the  
5 company going forward.

6 MR. ROYER: That's all I have, thanks.

7 EXAMINER FARKAS: Any redirect?

8 MS. PARROT: No, your Honor.

9 EXAMINER FARKAS: Any objection to the  
10 admission of Staff Exhibits 5 and 6?

11 Hearing none, they will be admitted.

12 (Exhibits admitted.)

13 EXAMINER FARKAS: Thank you, you're  
14 excused.

15 Let's go off the record.

16 (Off the record.)

17 EXAMINER FARKAS: Let's go back on the  
18 record.

19 The Interim Agreement that you marked,  
20 you want to move to admit it?

21 MR. ROYER: We're not going to offer it.  
22 The witness didn't know anything about it.

23 EXAMINER FARKAS: All right. Let's go  
24 off the record.

25 (Off the record.)

1                   EXAMINER FARKAS: Let's go back on the  
2 record.

3                   I will take administrative notice of the  
4 document that's been marked as Applicant's Exhibit 6,  
5 which is the City of Akron Lease Agreement.

6                   MR. McNAMEE: Excuse me, what are you  
7 going to call the document?

8                   MR. ROYER: If it would simplify things,  
9 your Honor, I'm happy to leave it marked as Applicant  
10 Exhibit 6.

11                   EXAMINER FARKAS: I don't like to take  
12 administrative notice of exhibits, so why don't we  
13 just call it the Interim License and Applicant  
14 Operating Agreement. And I'll take administrative  
15 notice of that.

16                   (Off the record.)

17                   EXAMINER FARKAS: Let's go back on the  
18 record.

19                   The initial briefs will be due July 28  
20 and reply briefs on August 4.

21                   MR. RANDAZZO: With electronic service?

22                   EXAMINER FARKAS: Electronic service, and  
23 I would say noon on those days too.

24                   MR. RANDAZZO: Eastern?

25                   EXAMINER FARKAS: Yeah, Eastern Standard

1 Time. Thank you.

2 Is there anything further?

3 Okay, with that on the record, thank you.

4 (Hearing concluded at 12:55 p.m.)

5 - - -

CERTIFICATE

I do hereby certify that the foregoing is a true and correct transcript of the proceedings taken by me in this matter on Monday, July 20, 2009, and carefully compared with my original stenographic notes.

\_s/Julianna Hennebert\_\_\_\_\_

Julieanna Hennebert, Registered Professional Reporter, and Notary Public in and for the State of Ohio.

My commission expires February 19, 2013.

(JUL-1436)

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Summary: Transcript Akron Thermal 7/20/09 electronically filed by Mrs. Jennifer Duffer on behalf of Armstrong & Okey, Inc. and Hennebert, Julieanna Mrs.