

FILE

**BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

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

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

REPLY BRIEF OF CANAL PLACE, LTD.

RECEIVED-DOCKETING DIV

2009 AUG -4 AM 11:30

PUCO

Glenn S. Krassen (0007610)
BRICKER & ECKLER LLP
1375 East Ninth Street
Suite 1500
Cleveland, Ohio 44114
Phone: (216) 523-5405
Facsimile: (216) 523-7071

E. Brett Breitschwerdt (0082801)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
Phone: (614) 227-2300
Facsimile: (614) 227-2390

Attorneys for Canal Place, LTD.

This is to certify that the images appearing are an
accurate and complete reproduction of a case file
document delivered in the regular course of business.

Technician TS Date Processed 8-4-09

I. Introduction

On July 28, 2009, Canal Place, LTD. ("Canal Place") filed its Initial Post Hearing Brief in these consolidated cases that have been subsumed within Akron Thermal Limited Partnership's ("ATLP" or "Applicant") application requesting Commission approval of an emergency rate increase. Initial briefs were also filed by the Applicant, Commission Staff, the City of Akron ("City"), Summit County ("Summit"), Children's Hospital Medical Center ("Children's Hospital"), and Creditor's Trust Trustee David Wehrle ("Trustee"). The positions set forth by each of these parties reinforced the positions asserted in pre-filed testimony and expressed during the evidentiary hearing without any significant deviation.

In its Initial Post Hearing Brief, Canal Place focused on the critical issues that directly and immediately affect its interests in these consolidated cases, while recognizing that the more critical perspectives of Commission Staff, the Applicant, and the City of Akron ("City") should inform the Commission's consideration of the overarching legal and policy questions incumbent upon the determination of whether to approve any emergency rate increase. To reiterate, Canal Place, in its Initial Post Hearing Brief, asserted that:

1. The Commission should grant ATLP's unopposed request in Case No. 09-442-HC-AEC for approval of a modification to its reasonable arrangement with Canal Place.
2. Canal Place does not take a position on whether the Commission should grant ATLP's request for an emergency rate increase, and defers to the testimony of ATLP, the City, and Commission Staff to fully inform the Commission's decision on this issue.
3. However, should the Commission grant ATLP's request for emergency relief, the Commission should accept the consensus of all parties in the case, including the Applicant and Staff, that any approved emergency rate increase should not be applied to Canal Place as a special contract customer.

As discussed further herein, Canal Place's Reply Brief reasserts these positions, recognizing that no party has opposed positions 1 and 3, while also briefly providing Canal Place's support for the Commission Staff's insistence that the long-term interests of the public must be served by the Commission's decision in these cases.

II. Discussion

A. Case No. 09-442-HC-AEC

In its Initial Post Hearing Brief, Canal Place expressly joined ATLP's request that the Commission approve the September 30, 2008 amendment to the May 2001 Agreement¹ as a reasonable modification to an approved reasonable arrangement under Section 4905.31, Ohio Revised Code. To reiterate, the net effect of this modification for Canal Place is to increase the steam rates negotiated under the May 2001 Agreement by \$375,000 per year (an increase of approximately 75 percent) for the remainder of the Agreement's term through March 31, 2012.

All other parties either supported approval of Canal Place's modification or chose not to address whether the Commission should approve ATLP's Application in Case No. 09-442-HC-AEC. Importantly, both Commission Staff² and ATLP³ requested approval of the Application, while the City only recognized that ATLP should have requested approval of this modification contemporaneous with its effective date.⁴

B. Case No. 09-453-HT-AEM

In its Initial Post Hearing Brief, Canal Place argued that should the Commission grant ATLP's request for emergency relief, any approved emergency rate increase should not be applied to Canal Place as a special contract customer. Canal Place's position remains firmly based on 1) the consensus of the parties that applying the rate increase to Canal Place or Children's Hospital should not be considered a viable or acceptable option by the Commission; 2) the fact that ATLP, through rebuttal testimony, withdrew the option of applying the emergency rate increase to special contract customers; and 3) no party, especially the Applicant, has satisfied the heavy burden of proof

¹ As discussed further herein, the Commission approved the May 18, 2001 reasonable arrangement between ATLP and Canal Place underlying this modification on February 21, 2002 in Case No. 01-3333-HC-AEC.

² *Post Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio*, at 8.

³ *Initial Post Hearing Brief of Akron Thermal Limited Partnership*, at 38.

⁴ *City of Akron's Initial Brief*, at 6.

necessary for the Commission to exercise its extraordinary power to abrogate an approved Section 4905.31, Ohio Revised Code contract between a utility and its customer.

While Canal Place strongly asserted its position regarding these issues which directly and immediately affect its interests, Canal Place chose not to address the issue of whether the Commission should grant ATLP's request for emergency rate relief. Instead, Canal Place deferred to the Commission Staff, the City, and ATLP to inform the Commission's consideration of this decision, as it would have global consequences that would affect all parties. Essentially, Canal Place chose not to address whether the path forward for all parties should effectively foreclose on ATLP as the operator of the system.

To be clear, Canal Place does not support granting ATLP's emergency rate increase application, and only chose not to expressly oppose the rate increase based on ATLP's amended position that the rate increase should not be applied to Canal Place. Canal Place viewed its position as at least providing known rates through the end of its contract term on March 31, 2012.

However, especially in the current economic downturn, Canal Place recognizes the importance of reasonable rates for all customers as critical to maintaining a viable, sustainable system over the long term. Canal Place joins the Staff in its concern about the ongoing sustainability of the system if the emergency rate increase is granted, even if it is only applied to tariff customers. The risk of customers leaving the system is real. As Staff explains in its Initial Brief,

This is a death spiral unfolding before us. First, a big customer leaves because the rates are too high. This creates a need for a rate increase but that rate increase spurs more customers to leave. This in turn drives the need for even higher rates, pushing more customers off utility service, and so on until the inevitable collapse.⁵

While contract customers have articulated the economic considerations that would motivate an exit from the system, tariff customers, most notably including Akron General Medical Center ("AGMC"), have been silent in this proceeding. Potentially, this may mean that they may have already begun the process of leaving the system or, perhaps, they are awaiting the Commission's decision. Regardless,

⁵ *Post Hearing Brief Submitted on Behalf of the Staff of the Public Utilities Commission of Ohio*, at 13.

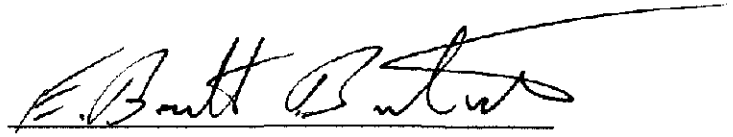
Canal Place believes the Commission Staff is correct that the risk of tariff customers leaving the system is also real.

If, as Staff suggests, the Commission cannot determine that substantially burdening tariff customers with an emergency rate increase would actually prevent injury to the business or interests of the public, effectively harming the system over the long term, then the Commission should not grant the requested emergency relief under Section 4909.16, Ohio Revised Code.

III. Conclusion

Canal Place respectfully requests the Commission adopt its recommendations in this case, and approve ATLP's application in Case No. 09-442-HC-AEC without any additional modification. Further, for the reasons discussed herein, Canal Place asserts that the Commission should not subject Canal Place to any emergency rate increase in unilateral abrogation of its approved special contract with ATLP.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Glenn S. Krassen", written over a horizontal line.

Glenn S. Krassen (0007610)
BRICKER & ECKLER LLP
1375 East Ninth Street
Suite 1500
Cleveland, Ohio 44114
Phone: (216) 523-5405
Facsimile: (216) 523-7071
gkrassen@bricker.com

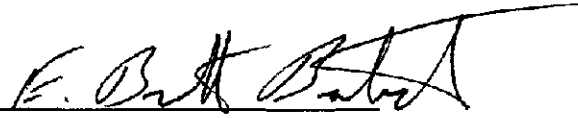
and

E. Brett Breitschwerdt (0082801)
BRICKER & ECKLER LLP
100 South Third Street
Columbus, Ohio 43215
Phone: (614) 227-2300
Facsimile: (614) 227-2390
bbreitschwerdt@bricker.com

Attorneys for the Canal Place, LTD.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing *Reply Brief of Canal Place, Ltd.* was served upon the parties of record listed below this 4th day of August, 2009 via e-mail.


E. Brett Breitschwerdt

Barth E. Royer
Bell and Royer Co., LPA
33 South Grant Avenue
Columbus, Ohio 43215
barthroyer@aol.com

Samuel C. Randazzo
Gretchen Hummel
McNees Wallace & Nurrick LLC
Fifth Third Center
21 East State Street, 17th Floor
Columbus, Ohio 43215
sam@mwncmh.com
ghummel@mwncmh.com

Daniel R. Conway
Porter Wright Morris & Arthur LLP
41 South High Street
Columbus, Ohio 43215
dconway@porterwright.com

Linda Murphy
Attorney for the County of Summit
175S. Main Street, 8th Floor
Akron, OH 44308
LMurphy@Summitoh.net

Kelly Burgan
Baker & Hostetler LLP
3200 National City Center
1900 East 9th Street
Cleveland, OH 44114-3485
kburgan@bakerlaw.com

Christopher J. Niekamp
Bernlohr Wertz, LLP
The Nantucket Building
23 South Main Street – Third Floor
Akron, Ohio 44308
cjm@b-wlaw.com

Thomas McNamee
Sarah Parrot
Attorney General's Section
Public Utilities Commission of Ohio
180E. Broad St., 9th Floor
Columbus, OH 43215
thomas.mcnamee@puc.state.oh.us
sarah.parrot@puc.state.oh.us