

**FILE**

BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

In the Matter of the Application of Akron Thermal, Limited Partnership for Approval of Revised Tariffs.	:	Case No. 09-315-HT-ATA
In the Matter of the Application of Akron Thermal, Limited Partnership for Authority to Issue Three (3) Promissory Long-Term Notes.	:	Case No. 09-414-HT-AIS
In the Matter of the Application of Akron Thermal, Limited Partnership for Approval of an Arrangement with an Existing Customer.	:	Case No. 09-441-HT-AEC
In the Matter of the Application of Akron Thermal, Limited Partnership for Approval of a Modification to an Existing Arrangement.	:	Case No. 09-442-HC-AEC
In the Matter of the Application of Akron Thermal, Limited Partnership for an Emergency Increase in its Rates and Charges for Steam and Hot Water Service.	:	Case No. 09-453-HT-AEM

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REPLY BRIEF  
OF  
AKRON THERMAL, LIMITED PARTNERSHIP

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Barth E. Royer  
Bell & Royer Co., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927  
(614) 228-0704 - Phone  
(614) 228-0201 - Fax  
BarthRoyer@aol.com - Email

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Thomas Mullooly  
Foley & Lardner, LLP  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
414-297-5566 - Phone  
*TMullooly@foley.com* - Email

Attorneys for  
Akron Thermal, Limited Partnership

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**I. INTRODUCTION**

Initial post-hearing briefs were filed herein on July 28, 2009 by the Akron Thermal, Limited Partnership ("Akron Thermal" or the "company"), the Commission staff ("Staff"), and intervenors the city of Akron ("City"), Children's Hospital Medical Center ("Children's Hospital"), Canal Place, Ltd. ("Canal Place"), County of Summit, Ohio ("Summit County") and

David Wehrle, in his capacity as Trustee for the Creditor's Trust for Akron Thermal ("Trustee"). In its initial brief, Akron Thermal demonstrated that it has met each of the long-standing criteria established and used by this Commission to evaluate emergency rate increase applications, and urged the Commission to grant its application for emergency relief in Case No. 09-453-HT-AEM, as well as its other pending applications in Case Nos. 09-315-HT-ATA, 09-414-HT-AIS, 09-441-HT-AEC, and 09-442-HC-AEC, which have been consolidated with the emergency case for hearing and decision. In this reply brief, Akron Thermal will address, in detail, the arguments advanced by Staff, the City, and Summit County in their initial briefs, but will begin with a short summary of the respective positions of Staff and the intervenors so as to identify the issues that are actually in dispute in connection with each of the applications now before the Commission.

As emphasized in Akron Thermal's initial brief, Staff does not dispute that Akron Thermal faces a financial emergency as a result of the loss of the University of Akron ("UA") as a customer, nor does Staff dispute that, without emergency rate relief, Akron Thermal will be financially imperiled and its ability to render service will be impaired. However, consistent with the recommendation of its witness Puican, Staff, on brief, argues that the application for emergency rate relief in Case No. 09-453-HT-AEM should be denied because of the possibility that granting the emergency rate increase might ultimately drive other customers off the system, thereby creating a death spiral scenario. Notwithstanding that the forbearance agreement entered into by the holders of the three promissory notes that are the subject of the application in Case No. 09-414-HT-AIS has removed the sole basis for Staff witness Mahmud's original recommendation that the application be denied,<sup>1</sup> Staff continues to oppose approval of this application based on its position that the emergency increase should be denied. However, Staff,

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<sup>1</sup> Compare Staff Ex. 3, at 4 with Staff Ex. 4, at 2.

consistent with the record recommendations of Mr. Puican, supports approval of the tariff amendment application in Case Nos. 09-315-HT-ATA and the contract approval applications in Case Nos. 09-441-HT-AEC and 09-442-HC-AEC.

In its brief, the City argues against approval Akron Thermal's application for emergency rate relief in Case No. 09-453-HT-AEM and its financing application in Case No. 09-414-HT-AIS. Although the City's brief is silent with respect to the remaining three applications, the City specifically cautions that its failure to address these applications should not be read as indication that it supports or does not object to these applications.

Children's Hospital's brief advocates approval of its special contract with Akron Thermal – the subject of the application in Case No. 09-441-HT-AEC – and argues that the alternative tariff mechanism initially proposed by Akron Thermal for recovering the emergency rate increase from Children's Hospital and Canal Place in addition to tariff customers should be rejected.<sup>2</sup> The Children's Hospital brief also contains the bare statement that Children's Hospital opposes the emergency rate increase application in Case No. 09-453-HT-AEC, but does not contain any argument in support of that position. Canal Place, based on arguments that are similar to those advanced by Children's Hospital, takes the same position with respect to approval of the modification to its existing contract with Akron Thermal that is before the Commission in Case No. 09-442-HC-AEC and the alternative surcharge proposed in Akron Thermal's emergency application. However, Canal Place expressly states that it takes no position with respect to the emergency rate increase application.<sup>3</sup> Neither intervenor has addressed the applications in Case Nos. 09-315-HT-ATA and 09-414-HT-AIS.

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<sup>2</sup> Children's Hospital Brief, 3-6.

<sup>3</sup> Canal Place Brief, 2-9.

As previously noted, Staff has recommended approval of the Children's Hospital and Canal Place contracts, and, notwithstanding the caveat in the City's brief, no party has opposed approval of these applications. Further, Akron Thermal has withdrawn the alternative demand charge adder contained in its application for emergency rate increase application.<sup>4</sup> Thus, apart from the bare statement in the Children's Hospital brief that it opposes the emergency application, there are no matters in dispute between Children's Hospital and Canal Place, on the one hand, and Akron Thermal, on the other. Accordingly, Akron Thermal will not address these briefs further herein.

In its initial brief, Summit County opposes Akron Thermal's application for emergency rate relief, but does not address the other four applications. Summit County offers three arguments with respect to the emergency application. As discussed *infra*, two of these arguments rely on statutes that have no application in this setting, while the third goes to the impact granting the application would have on Summit County's financial situation. Although Akron Thermal in no way intends to minimize the financial difficulties Summit County, like many other local governmental entities, faces in these dire economic times, Summit County's calculation of the dollar impact the proposed emergency increase would have on its cost of steam service is incorrect and grossly overstates the increase in the steam costs to which it would be subject if the emergency application is approved.

Finally, Akron Thermal is in complete agreement with the positions set forth in the Trustee's brief. Although Akron Thermal will touch on those positions in addressing certain arguments advanced by the Staff and the City, Akron Thermal will not separately discuss the Trustee's brief in its reply brief.

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<sup>4</sup> App. Ex. 5, at 11.



## II. ARGUMENT

### A. STAFF BRIEF

1. The Staff recommendation that Akron Thermal's application for emergency rate relief be denied is inconsistent with long-standing Commission precedent and ignores the limitations on scope of the Commission's authority in emergency rate proceedings.

Staff does not dispute that Akron Thermal has met the criteria that the Commission routinely applies in evaluating applications for emergency rate relief. Indeed, staff does not even mention these criteria in its brief. Rather, Staff, relying on its witness Puican's death spiral argument, urges the Commission to deny Akron Thermal's emergency application because "the state of knowledge is such that it cannot be determined whether an emergency increase would help or hurt the situation."<sup>5</sup> In other words, Staff asks the Commission to ignore the undisputed evidence – evidence that includes the testimony of its own witness<sup>6</sup> – that Akron Thermal faces a financial emergency as a result of the loss of UA as a customer and that, without emergency rate relief, Akron Thermal will be financially imperiled and its ability to render service will be impaired, and deny the emergency application based on the possibility that granting the proposed increase might ultimately drive other customers off the system.<sup>7</sup> Apparently recognizing that this result would be inconsistent with the criteria heretofore applied by the Commission in considering requests for emergency rate relief, Staff simply ignores these criteria and, instead, claims that an unprecedented decision to force Akron Thermal to cease operations is within the "very broad emergency powers" conferred upon the Commission by Section 4909.16, Revised Code.<sup>8</sup>

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<sup>5</sup> Staff Brief, 11.

<sup>6</sup> Tr. II, 138-139.

<sup>7</sup> Staff Brief, 11.

<sup>8</sup> Staff Brief, 10.

Akron Thermal does not dispute that the Commission has broad discretion in determining whether an emergency exists.<sup>9</sup> However, where, as here, the record clearly shows that an emergency exists, it would be an abuse of that discretion for the Commission to conclude that the mere possibility that granting the requested emergency rate relief might drive some customers off the system outweighs the certainty that Akron Thermal will be forced to cease operations if its emergency application is denied. As Akron Thermal noted in its initial brief, Staff witness Puican has not conducted the customer-by-customer analysis that would be necessary to provide a concrete basis for his concern that granting Akron Thermal's emergency request would lead to a death spiral scenario.<sup>10</sup> Yet, on brief, Staff goes so far as to affirmatively claim that "a death spiral is unfolding before us."<sup>11</sup> Although it is obviously true that the proposed emergency surcharge will not generate the projected revenues if Akron Thermal were to lose its largest customers, Staff ignores that the customers it has identified as being at risk will not be subject to the emergency surcharge. Summa Health System Hospitals ("Summa"), which is now Akron Thermal's largest customer is not a tariff customer, and, in view of its alternative fuel capability, will never be a tariff customer.<sup>12</sup> The other customers identified by Staff – Canal Place and Children's Hospital – are special contact customers, not tariff customers. Although Akron Thermal had included an alternative emergency surcharge in its application that was designed to apply if the Commission determined that the emergency rate increase should be recovered from

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<sup>9</sup> See, e.g., *Cambridge v. Pub. Util. Comm.*, 159 Ohio St. 88 (1953); *Manufacturer's Light and Heat Co.*, 163 Ohio St. 570 (1955).

<sup>10</sup> Akron Thermal Brief, 36-37.

<sup>11</sup> Staff Brief, 13.

<sup>12</sup> As Akron Thermal witness Pucak explained, Summa, which was a City customer before Akron Thermal began operating the system, has alternative fuel capability and can use its own system to meet its heating needs. Tr. I, 131-133. Thus, Summa has been served pursuant to a long-standing arrangement under which the price charged by Akron Thermal is based on Summa's avoided costs. *Id.* Mr. Pucak indicated that Akron Thermal had insisted that this arrangement be reduced to a written contract and that, at the time of the hearing, the parties were negotiating a contract that would memorialize the terms of the existing arrangement. Tr. I, 131-132. Those negotiations have since been completed, and Akron Thermal has this date filed an application with the Commission for approval of the Summa contract in Case No. 09-681-HT-AEC.

Canal Place and Children's Hospital in addition to tariff customers, Akron Thermal has since withdrawn the proposed alternative surcharge.<sup>13</sup> Thus, Canal Place and Children's Hospital will not be subject to the proposed emergency rate increase. As Akron Thermal acknowledged in its initial brief, the possibility obviously exists that one or more tariff customers could leave the system if the Commission were to grant the emergency relief requested by the company. However, to assess the likelihood of that happening, one would have to know whether the customer in question had the capital available to invest in the facilities that would be required to change its energy source, and, if the customer did have the necessary capital, whether the conversion would make economic sense.<sup>14</sup> One would also have to know whether the loss of the revenue from a customer that did elect to leave the system would, in fact, necessitate a filing for additional rate relief.<sup>15</sup> In view of the foregoing, it cannot be fairly said that "a death spiral is now unfolding," and Staff's suggestion that granting the requested emergency relief will inevitably lead to the Akron Thermal's collapse is pure conjecture.

In this same vein, Staff's assertion that Akron Thermal is doomed "because rates cannot be set that would provide a stable, sustainable basis for this utility to operate"<sup>16</sup> is belied by Staff witness Hodgden's rebuttal testimony. In his rebuttal testimony, Mr. Hodgden specifically stated that, with the forbearance agreement entered into by the holders of the promissory notes that are the subject of the application in Case No. 09-414-HT-AIS, his estimate of the rate increase Akron Thermal could justify in the follow-on permanent rate case would be sufficient to cover its operating expenses and service its debt.<sup>17</sup> Although acknowledging Mr. Hodgden's change of position, Staff witness Puican continued to cling to his death spiral hypothesis as the basis for his

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<sup>13</sup> App. Ex. 5, at 11.

<sup>14</sup> Akron Thermal Brief, 36.

<sup>15</sup> *Id.*

<sup>16</sup> Staff Brief, 13.

<sup>17</sup> Staff Ex. 2, at 4.

recommendation that Akron Thermal's application for emergency rate relief should be denied.<sup>18</sup>

It is unthinkable that this Commission would make the unprecedented decision to force a utility that has met the applicable standards for an emergency rate increase to cease operations based on a mere hypothesis.

Although Section 4909.16, Revised Code, vests the Commission with broad discretionary powers in determining when an emergency exists and in tailoring a remedy which will enable the applicant public utility to meet that emergency,<sup>19</sup> the discretion conferred upon the Commission by the statute does not permit the Commission to exercise authority beyond that specifically delegated to it by the legislature under the guise that it is acting within its emergency powers. As argued in Akron Thermal's initial brief, a deliberate decision by the Commission to force Akron Thermal to cease operations would be tantamount to a Commission-ordered abandonment, notwithstanding that the statute governing abandonment of service, Section 4905.21, Revised Code, contains no provision authorizing the Commission to order an abandonment.<sup>20</sup> In this same vein, a deliberate decision by the Commission to force Akron Thermal to turn back the system to the City would be tantamount to an order terminating Akron Thermal's lease, and would constitute a taking of Akron Thermal's property rights. Again, the Commission has no statutory authority to order a utility to terminate a lease, and, notwithstanding that turning back the system to the City is Staff's preferred outcome, the Commission has no authority to do something under its emergency powers that it cannot do under the authority specifically delegated to it by the legislature. Finally, Ohio law is clear that, in a permanent rate proceeding, the Commission is duty-bound to set rates pursuant to the statutory ratemaking formula, and

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<sup>18</sup> Staff Ex. 6, at 2-3.

<sup>19</sup> See, e.g., *Cambridge v. Pub. Util. Comm.*, 159 Ohio St. 88 (1953); *Manufacturer's Light and Heat Co.*, 163 Ohio St. 570 (1955).

<sup>20</sup> Akron Thermal Brief, 34.

cannot alter that formula based on concerns regarding the impact the resulting rate increase would have on customers.<sup>21</sup> Staff witness Hodgden's rebuttal testimony shows that his estimate of the revenue increase that Akron Thermal could justify in a follow-on permanent rate increase would, in light of the forbearance agreement, be sufficient to cover the company's operating costs and service its debt.<sup>22</sup> Staff asserts that granting Akron Thermal's request for emergency relief will not guarantee its long-term viability, and suggests that the virtue of denying the emergency rate increase is that it will spare customers from burdensome rate increases that will not ensure the company's survival. However, a deliberate decision by the Commission to deny rate relief based on the unknown impact that future rate increases would have on customers is beyond the Commission's statutory ratemaking authority.

2. The Commission has never deemed the fact that the financial information presented by an applicant utility to demonstrate the existence of an emergency has not been audited by Staff or an outside auditor to be an impediment to granting emergency rate relief.

Staff points out that, in view of the time constraints associated with an emergency proceeding, Staff has not performed an audit of Akron Thermal's books, and also observes that the financial information presented by Akron Thermal to demonstrate that an emergency exists has not been subject to an outside audit.<sup>23</sup> Staff then states that, because there has been no external review of Akron Thermal's financial data, "there is no real reason to accept the accuracy of any accounting value in this record," and goes on to characterize the financial data submitted by Akron Thermal as being "doubtful."<sup>24</sup> With all due respect, this is nonsense.

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<sup>21</sup> See *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 537-543 (1993).

<sup>22</sup> Staff Ex. 2, at 4-5.

<sup>23</sup> Staff Brief, 10-11.

<sup>24</sup> Staff Brief, 11.

First, the time constraints in this proceeding are no different than the time constraints typically associated with emergency rate cases. Indeed, Section 4909.16, Revised Code, applications for temporary rate increases are filed because the applicant utility needs immediate rate relief. Akron Thermal is not aware of any instances in which the Staff performed a full-blown, rate case-type audit of the financial information submitted by an applicant for emergency rate relief, but even if there were a few isolated instances when this occurred, it is certainly not Staff's normal practice to conduct such an audit in emergency cases. Second, there is no statute or Commission rule that requires a Commission-regulated public utility to engage an external auditor to perform an audit of its financial statements.<sup>25</sup> In fact, most smaller Ohio utilities do not engage outside auditors to provide an opinion with respect to the accuracy of their accounting records. Third, even those utilities that are subject to external audit requirements by virtue of their corporate status might very well not have current externally-audited financial statements available to present in an emergency rate case, depending on the relationship between the date of the most recent audit opinion and the date the emergency application was filed. Fourth, the Staff, in the Staff Report in Akron Thermal's 2005 rate case, specifically stated that Akron Thermal's plant ledgers and continuing property records represented a reliable source of original cost data,<sup>26</sup> and there is no reason to suspect that the 2008 financial statements presented by Akron Thermal witness Stott are not similarly reliable. Fifth, although Staff obviously did not conduct the in-depth investigation that it would perform in a permanent rate case, Staff did issue information requests to Akron Thermal in connection with the financial information presented in the emergency application. Akron Thermal fully responded to these requests, and no Staff witness in this proceeding even remotely suggested that the accuracy of these responses

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<sup>25</sup> The one exception would be the Commission-ordered external GCR financial audits of natural gas companies (see Rule 4901:1-14-07, Ohio Administrative Code), but this obviously does not apply to Akron Thermal.

<sup>26</sup> Staff Report of Investigation, Case No. 05-05-HT-AIR, 4.

were in any way suspect. Fifth, to the extent Staff's comment regarding "the company's unaudited assertions"<sup>27</sup> goes to Ms. Stott's cash flow projections and her calculation of the savings associated with the various cost-reduction measures implemented by Akron Thermal to mitigate the emergency, an external audit would not have addressed the accuracy of these estimates in any event.

Finally, and most importantly, this Commission has never deemed the fact that the financial information presented by the applicant in an emergency rate proceeding has not been audited by the Staff or by an external auditor to be an impediment to granting emergency relief. Rather, as a review of the Commission's decisions on emergency rate applications will show, the Commission understands full well that, at least in the majority of cases, the applicant's financial evidence of an emergency has not been subject to a staff audit. Indeed, this is precisely what led the Commission to establish its oft-repeated "strictest scrutiny" standard for evaluating the applicant's evidence in emergency rate applications:

(A)pplicant's evidence will be reviewed with strictest scrutiny and that evidence must clearly and convincingly demonstrate the presence of extraordinary circumstances which constitute a genuine emergency situation.<sup>28</sup>

Despite Staff's attempt on brief to muddy the waters with its unfounded and ill-conceived assertions regarding the reliability of the financial information presented by Akron Thermal in support of its request for emergency relief, there can be no question that Akron Thermal has clearly and convincingly demonstrated that it faces a genuine financial emergency. Staff's own witness, Mr. Puican, specifically testified that, if the Commission denies Akron Thermal's application, Akron Thermal will no longer be able to provide service to its customers and would

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<sup>27</sup> Staff Brief, 12.

<sup>28</sup> See, e.g., *Toledo Edison Company*, Case No. 84-1286-EL-AEM (Supplemental Opinion and Order dated May 12, 1987), at 4.

be forced to cease operations.<sup>29</sup> If Staff truly believed that Akron Thermal witness Stott's cash flow projections and savings calculations were "doubtful," Staff could have challenged them by cross-examining Ms. Stott on these subjects. Alternatively, Staff could have proposed adjustments to the applicant's projections and estimates, just as it has in numerous other emergency cases.<sup>30</sup> Either of these measures would have meant that the Commission would have had to weigh the evidence to determine if Akron Thermal had clearly and convincingly demonstrated that an emergency exists and whether the proposed emergency rate increase is minimum amount necessary to avert the emergency. However, in this record, there is no competing evidence to weigh. In fact, Mr. Puican has specifically stated that he does not dispute that Akron Thermal faces a financial emergency and that, without emergency rate relief, Akron Thermal will be financially imperiled and its ability to render service will be impaired.<sup>31</sup> Mr. Puican also specifically stated that he agreed with Ms. Stott's revenue shortfall calculation.<sup>32</sup> Thus, although there are several disputed issues that the Commission must decide in ruling on applications now before it, whether Akron Thermal has met the criteria applied by the Commission for evaluating emergency rate increase applications is not one of them.

3. There will be no follow-on permanent rate case if Akron Thermal's application for emergency rate relief is denied.

In conjunction with its make-weight criticism of Akron Thermal's "unaudited assertions," Staff suggests that "(w)hat is needed is a base rate case,"<sup>33</sup> and goes on to state that, "(i)n the absence of fully vetted information would be obtained through a permanent rate case,"

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<sup>29</sup> Staff Ex. 6, at 3.

<sup>30</sup> See, e.g., *Lakeland Erie Utilities Company*, Case No. 86-799-WS-AEM (Opinion and Order dated August 26, 1986), at 6-7.

<sup>31</sup> Tr. II, 138-139.

<sup>32</sup> Tr. II, 140.

<sup>33</sup> Staff Brief, 11.



it is not reasonable to approve emergency relief at this time.<sup>34</sup> Obviously, if the Commission were to buy into this specious argument, it would create a Catch 22 standard that no applicant for emergency rate relief could ever meet. Emergency rate increase applications are filed because the applicant utility needs immediate temporary rate relief to avert a cash flow crisis and cannot wait for a permanent rate increase application to be prepared, investigated, litigated, and decided. Staff has explicitly recognized that a Commission decision to deny Akron Thermal's application for emergency rate increase will force the company to cease operations, which would, of course, mean that the permanent rate case that Staff sees as the necessary and appropriate vehicle for examining Akron Thermal's operations and costs<sup>35</sup> will never leave the garage.

4. The Commission should not make the unprecedented decision to force a Commission-regulated public utility to cease operations based on Staff's bare assertion that turning back the system to the City represents a better alternative than granting Akron Thermal's request for emergency rate relief.

Staff concludes its discussion of the emergency rate application by suggesting that, because the City has an interim operating agreement in place with Akron Energy Systems, LLC ("AES"), a Commission decision that would force Akron Thermal to cease operations, and thereby force the company to hand the system back to the City, is the better alternative.<sup>36</sup> However, as a review of the record will make clear, Staff witness Puican had never even seen, let alone read, this interim operating agreement before citing it in his rebuttal testimony for the proposition that there will be continuity of service in the event that the Commission denies Akron Thermal's emergency rate request.<sup>37</sup> For those reasons previously stated, a decision by the Commission that would force Akron Thermal to cease operations even though it has met the

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<sup>34</sup> Staff Brief, 13.

<sup>35</sup> Staff Brief, 13.

<sup>36</sup> Staff Brief, 13-14.

<sup>37</sup> Tr. II, 141-142.

Commission's long-standing criteria for granting emergency relief would exceed its statutory authority. For the Commission to then attempt to backstop this decision by accepting, on blind faith, the Staff's suggestion that the City-AES interim operating agreement will solve all the problems would add insult to injury.

As emphasized in Akron Thermal's initial brief, this interim operating agreement makes no mention of the rates the City would charge for service.<sup>38</sup> What is clear is that this agreement, which was executed in November of 2007, was specifically intended as an "emergency" arrangement to provide an "orderly transitional protocol" in the event the bankruptcy court determined that Akron Thermal had violated the lease and that the system should be returned to the City.<sup>39</sup> That triggering event did not happen. Although the interim agreement contemplates that the City and AES would ultimately enter into a "Long Term Agreement," which, among other things would result in AES purchasing the system from the City,<sup>40</sup> the interim agreement specifically provides that AES will not assume or accept any responsibility in connection with the USEPA's NOV's associated with the BF Goodrich plant and that the City will hold AES harmless from any NOV-related liability resulting from AES's operation of the plant during the term of the interim arrangement.<sup>41</sup>

The evidence shows that, in November 2008, Akron voters approved, by an overwhelming margin, a charter amendment that requires voter approval at a general election of any attempt by the City to sell or lease a City-owned utility.<sup>42</sup> Akron Thermal will not speculate as to the outcome of such a vote, except to note that the margin by which the charter amendment passed would appear to suggest that voter approval of a sale of the steam system is not a given.

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<sup>38</sup> Akron Thermal Brief, 37.

<sup>39</sup> Interim License and Operating Agreement, 3.

<sup>40</sup> *Id.*

<sup>41</sup> Interim License and Operating Agreement, 7-8.

<sup>42</sup> Tr. II, 66-67.

Staff witness Puican, when asked if this charter amendment represented a potential barrier to the City's plan to transfer the system to a new operator, stated that the City could continue to operate the system indefinitely as a municipal utility, with AES providing operating services as provided in the interim agreement. However, as surely must be obvious, if the City were to operate the system as a municipal utility, it would be faced with the very same issues with respect to Boiler 32 now confronting Akron Thermal.<sup>43</sup>

Like its witness before it, the Staff, on brief, gives no consideration to whether the City has the financial wherewithal to deal with the Boiler 32, or, for that matter, with other costs and capital requirements that would arise in the normal course of operating and maintaining the system. It is no secret that the City, like many other Ohio municipalities, currently faces a huge budget deficit. Further, as Mr. Puican agreed, unless the City intends to operate the system at a loss, it will have to establish compensatory rates.<sup>44</sup> Moreover, City witness Merolla testified that the City has had no discussions with UA as to how its service requirements would be met if the City were to undertake to operate the system or the rates UA could expect to be charged if the City became the service provider.<sup>45</sup> Mr. Puican agreed that UA's status would impact the City's ability to meet the costs of operating the system, but that he had no way of knowing if UA would return as a customer if the City took over the system.<sup>46</sup> Thus, although Staff has characterized the interim operating agreement is a reason for "optimism,"<sup>47</sup> the Commission cannot rely on the existence of the interim operating agreement to justify denying emergency rate relief to Akron Thermal.

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<sup>43</sup> See *Partial Opinion*, 26.

<sup>44</sup> Tr. II, 143-145.

<sup>45</sup> Tr. II, 65.

<sup>46</sup> Tr. II, 145.

<sup>47</sup> Staff Brief, 13.

5. The Staff position that Akron Thermal's financing application in Case No. 09-414-HT-AIS should be denied is not supported by the record, logic, or the law.

By its application in Case No. 09-414-HT-AIS, Akron Thermal sought approval of three promissory notes – the Creditor's Trust note, the Treasurer of the State of Ohio note, and Thermal Ventures II, L.P. ("TVII") note – which restructured Akron Thermal's indebtedness in accordance with the Plan of Reorganization approved by the bankruptcy court. In his direct testimony, Staff witness Mahmud recommended that this application be denied based on his assessment that emergency rate increase proposed by the company would be insufficient to cover the debt service obligations associated with these notes.<sup>48</sup> The basis for Mr. Mahmud's recommendation could not have been more clearly stated:

To the extent Akron Thermal's cash flow projections under the Company proposed rates appear to be insufficient to meet its debt service obligations, I recommend that the Company's request for Commission approval be denied.<sup>49</sup>

In direct response to Mr. Mahmud's recommendation, the Creditor's Trust, the Treasurer of the State of Ohio, and TVII entered into a forbearance agreement with Akron Thermal that modified the schedule of repayments associated with each of the three instruments.<sup>50</sup> The forbearance agreement provides that the combined installment payments due under the Creditor's Trust note and the Treasurer of the State of Ohio note will be reduced by \$100,000 per year, with 60 percent of the reduction coming from the Creditor's Trust note and 40 percent coming from the Treasurer of State of Ohio note. The agreement further provides that the one-time \$262,500 payment (principal and interest) associated with the TVII note that would have been due April 1, 2010, will not be due until the Creditor's Trust note and the Treasurer of State

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<sup>48</sup> Staff Ex. 3, at 4.

<sup>49</sup> *Id.*

<sup>50</sup> App. Ex. 5, Ex. JPB(Surrebuttal)-1.

of Ohio note have been paid in full, which under the revised payment schedule, will not occur until 2015.<sup>51</sup> The forbearance agreement reduces the 2010 debt service payments to the sum of the payments due under the Creditor's Trust note and the Treasurer of State of Ohio note, or \$440,868. Moreover, the forbearance agreement does not affect Akron Thermal's right to defer the first payment under the Creditor's Trust note to February 20, 2011.<sup>52</sup> If Akron Thermal were to exercise this right, the only payment due in 2010 would be the \$177,812.67 payment on the Treasurer of the State of Ohio note due August 2010.<sup>53</sup>

There is no question that the forbearance agreement eliminated the sole stated basis for Mr. Mahmud's original recommendation that the financing application be denied. Indeed, Mr. Mahmud specifically stated that "(t)aking the restructured debt service costs into consideration, Akron Thermal's cash flow projections for 2009 under its proposed rates appear to enable Akron Thermal to meet its debt service obligations in 2010."<sup>54</sup> However, on brief, Staff takes the position that, notwithstanding Mr. Mahmud's rebuttal testimony, the financing application should be denied because, without emergency relief, there would not be sufficient cash flow to cover the debt payments.<sup>55</sup> This statement implies that a utility seeking emergency relief from the Commission cannot seek approval of a financing application if the associated debt service obligations cannot be met in the absence of emergency relief. Obviously, there is no such prohibition, and the Commission has, on numerous occasions, found that emergency relief is appropriate to permit the applicant utility to obtain financing on more favorable terms.<sup>56</sup> Thus, it is clear that Staff's position on the financing application is based solely on its position that

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<sup>51</sup> *Id.*

<sup>52</sup> *Id.*

<sup>53</sup> App. Ex. 5, Ex. JPB(Surrebuttal)-1, at 2.

<sup>54</sup> Staff Ex. 4, at 2, as corrected at Tr. II, 127-128.

<sup>55</sup> Staff Brief, at 9.

<sup>56</sup> See, e.g., *Dayton Power & Light Company*, Case No. 80-826-EL-AEM (Opinion and Order dated November 26, 1980); *Toledo Edison Company*, Case No. 77-1171-EL-AEM (Opinion and Order dated December 29, 1977).

emergency rate relief should be denied and has nothing to do with whether the proposed emergency rates would be sufficient to cover Akron Thermal's debt service obligations during the period the emergency rates would remain in effect.

Staff also contends that the forbearance agreement "is not currently before the Commission," and that Akron Thermal "would need to submit a new application in Case No. 09-414-HT-AIS," noting that, to date, Akron Thermal has not done so.<sup>57</sup> However, Staff goes on to say that even if Akron Thermal were to file a new application, "Staff would oppose because the restructured obligation would depend on emergency relief, which Staff opposes."<sup>58</sup> Several points bear mention.

First, Akron Thermal questions Staff's assessment that the forbearance agreement is not currently before the Commission. The financing application is clearly before the Commission by virtue of the Commission's June 17, 2009 entry consolidating all the pending Akron Thermal applications for hearing and decision. Mr. Bees' rebuttal testimony, to which the forbearance agreement is attached, was specifically denominated as being filed in Case No. 09-414-HT-AIS. A new application would present no information that is not already before the Commission and which the Staff has not already reviewed. Indeed, the forbearance agreement has been fully explored at hearing. For staff to now claim that a new application must be filed in this docket to put the forbearance agreement before the Commission places form over substance, and is particularly perturbing because Staff has already stated what its position will be with respect to the agreement if a new application were filed.

Second, as the Commission well knows from the flurry of activity in this docket that followed the filing of Mr. Bees' rebuttal testimony, a controversy has arisen between the City

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<sup>57</sup> Staff Brief, 9.

<sup>58</sup> Staff Brief, 9-10.

and the Trustee of the Creditor's Trust regarding the authority of the Trustee to enter into the forbearance agreement. This matter is now before the bankruptcy court. Thus, even if the Commission were to conclude that a new application is required, it would be premature for Akron Thermal to file the application before the bankruptcy court rules.

In so stating, Akron Thermal in no way intends to suggest that the Commission cannot rule on the emergency rate application until the issue regarding the Trustee's authority is resolved by the bankruptcy court. The authority of the Treasurer of State of Ohio and TVII to enter into a forbearance agreement is not in issue, and it is clearly in the interest of all three note holders to take whatever action is necessary to increase the likelihood that they will be paid. Indeed, it was Mr. Bees that initially pointed out in direct testimony filed before the first round of Staff testimony that the initial debt service payments were beyond the horizon of the cash flow projections submitted by Akron Thermal witness Stott, which were intended to demonstrate the immediate need for emergency rate relief.<sup>59</sup> As Mr. Bees explained, once the emergency increase was in place, Akron Thermal, like any prudent company, would look to restructure its debt payment obligations to permit it to meet those obligations on a timely basis.<sup>60</sup> When Mr. Mahmud recommended denial of the application in Case No. 09-414-HT-AIS in his prefiled direct testimony based on his assessment that the emergency relief requested would not produce the cash necessary for the company to meet its 2010 debt service obligations, Akron Thermal and the holders of the notes entered into the forbearance agreement to address this concern within a matter of days. As previously noted, the objective of the holders of the notes is to get paid, and, based on the speed with which they reacted to Mr. Mahmud's initial recommendation, the Commission can be quite confident that, even if the bankruptcy court were to find that the

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<sup>59</sup> App. Ex. 2, at 10.

<sup>60</sup> *Id.*

Trustee did not have authority to enter into the forbearance agreement, the note holders will do everything in their power to satisfy that objective.

Finally, Staff, in anticipation of an argument that the bankruptcy court's approval of the Plan of Reorganization has preempted the Commission's authority to deny Akron Thermal's financing application, points to Section 15.2 of the Plan of Reorganization, which provides as follows:

The PUCO will retain jurisdiction over any rate change to be requested by Debtor, and all other matters otherwise within the jurisdiction of the Public Utilities Commission of Ohio ("PUCO").<sup>61</sup>

Akron Thermal does not dispute that the Commission has jurisdiction over its rates, but Staff's reliance on the second phrase of this sentence as a basis for its authority over the financing application simply begs the question. If, under the law, the bankruptcy court's approval of the notes in question has preempted the Commission's authority to approve the notes, approval of the notes is not a matter "otherwise within" the Commission's jurisdiction. As argued by the Trustee in his motion to intervene, the case law is quite clear that, where a plan of reorganization provides for restructuring of a debtor's liabilities, a federal bankruptcy court's approval of the restructuring preempts state statutes that would normally require state regulatory commission approval of the debtor's restructuring.<sup>62</sup> Indeed, the Staff position that the Commission's authority to approve the restructured debt obligations is unaffected by the bankruptcy court's approval of the Plan of Reorganization creates the very outcome the federal preemption doctrine is designed to prevent – an impenetrable conflict between the decision of the

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<sup>61</sup> App. Ex. 2, Ex. JPB-1, at 35.

<sup>62</sup> See *Public Svc. Co. of New Hampshire v. State of New Hampshire (In re Public Svc. Co. of New Hampshire)*, 108 B.R. 854 (D.N.H. 1989). Although this opinion is quite lengthy, it contains a scholarly analysis that squarely addresses the very argument raised by Staff.



bankruptcy court and the decision of the state regulatory agency. Further, Staff has obviously not considered the ramifications of its position.

What is the status of the promissory notes if the Commission denies Akron Thermal's financing application? Staff apparently believes that, in the absence of Commission approval, the notes are null and void. If that were true, Staff's concern regarding the ability of Akron Thermal to service the associated debt under the proposed emergency rates (or on an ongoing basis under the rates that could be justified in the follow-on permanent rate case) would become moot. Although the Commission retains authority over Akron Thermal's rates, the preemption doctrine clearly precludes the Commission from undoing the debt restructuring provisions of the Plan of Reorganization approved by the bankruptcy court by denying approval of Akron Thermal's application in Case No. 09-414-HT-AIS.

## B. CITY BRIEF

1. Although the City and Akron Thermal agree upon the standards that must be met by a utility seeking emergency rate relief, the City would have the Commission apply those standards in a manner that is inconsistent with long-standing Commission precedent.

Akron Thermal and City agree with respect to the criteria to be applied by the Commission in evaluating Akron Thermal's emergency rate increase application.<sup>63</sup> In view of the City's relentless campaign to oust Akron Thermal, any point of agreement between Akron Thermal and the City is worthy of note. However, contrary to the arguments advanced by the City in its brief, it is clear that Akron Thermal has met those standards. Indeed, none of the City's arguments is persuasive.

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<sup>63</sup> Compare City Brief, 8-9 with Akron Thermal Brief, 15-17.

First, despite the evidence showing that if emergency rate relief is not granted, Akron Thermal will be financially imperiled, the City actually argues that there is no emergency present.<sup>64</sup> The City makes this remarkable assertion based on the notion that Akron Thermal was aware of the possibility that UA might leave the system. Thus, the City maintains that, because it was foreseeable that UA might leave the system, the loss of the UA load cannot be considered to be an emergency. Of course, this argument is ridiculous. An earthquake is foreseeable, but that would not render the actual occurrence consequences of an earthquake anything less than an emergency. As fully described in Akron Thermal's initial brief, the actual emergency that occurred is that Akron Thermal lost its largest customer and largest source of revenue. In order to continue operations, Akron Thermal requires immediate rate relief to replace the lost revenue. Not only is this an emergency in any normal sense of the word, but, as noted in Akron Thermal's initial brief, the Commission has uniformly held that a negative cash flow situation that leaves the applicant unable to pay its operating expenses constitutes an emergency.<sup>65</sup>

Second, the City argues that the rate relief requested is not the minimal amount necessary to avert or relieve the emergency.<sup>66</sup> However, this argument is inconsistent with positions taken by the City elsewhere in its brief. On the one hand, the City argues that the amount requested should be lower because it cannot understand the decision to shut down Boiler 32. On the other hand, the City argues elsewhere that the rate increase is insufficient to permit Akron Thermal to meet its obligations.<sup>67</sup> The City also argues that the relief requested is not the minimal amount required to avert the emergency based on some of Mr. Bees answers to questions posed by the attorney examiner. The City further argues that the rate relief requested will not solve the

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<sup>64</sup> City Brief, 11-12.

<sup>65</sup> Akron Thermal Brief, 16.

<sup>66</sup> City Brief, 13.

<sup>67</sup> City Brief, 5.

problem of UA's departure because, like the Staff, the City believes that a death spiral will be created by other customers exiting the system in response to the rate increase. All these arguments are wrong.

As to the decision to shut down Boiler 32, Akron Thermal's testimony is clear that this decision was, in fact, the least-cost option. Indeed, the situation that drove that conclusion would be exactly the same whether Akron Thermal was operating the system or any other party was operating the system. To briefly summarize, Boiler 32 is currently the subject of an NOV from the USEPA. It would require a significant capital investment to put in place the pollution control technology demanded by the USEPA. However, with the departure of UA, the Boiler 32 capacity is no longer needed to serve the load of the remaining customers. Further, notwithstanding Akron Thermal's belief that its position that no new equipment is required is meritorious, it would cost a considerable amount of money to continue to fight and litigate with USEPA over the allegations in the NOV. In view of these factors, the analysis conducted by Akron Thermal, as described by its witnesses, led to the conclusion that shutting down Boiler 32 was the most prudent course.<sup>68</sup> With the rate increase granted, Akron Thermal will have the opportunity to continue operations. Thus, despite City's professed difficulty in understanding the situation – a situation that the City itself would face if the Commission forces Akron Thermal to turn back the system to the City – the record is clear that shutting down Boiler 32 is, in fact, the least-cost option.

Further, the City cites the testimony of Mr. Bees in response to questions from the bench in support of its argument that Akron Thermal is seeking more than the minimum amount of

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<sup>68</sup> As for the shutdown possibly being temporary, if UA suffers an outage on its own equipment in the middle of the next heating season, that circumstance alone could bring UA back on to the system. If this were to occur, the emergency would also be alleviated, and, as Akron Thermal noted, it would no longer seek to collect the increased revenue being requested in this case.

relate relief required to avert the emergency. However, Mr. Bees' testimony on this point is clear. As he explained, Akron Thermal witness Stott's analysis of the amount of temporary rate relief required to avert the emergency is a bare-bones estimate of the amount necessary to enable Akron Thermal to meet its operating expenses, and includes no lost-profit element. When the Attorney Examiner asked if Akron Thermal could continue operating if it received only 50 percent of the amount requested, Mr. Bees said no, it would not be able to do so. However, Mr. Bees also acknowledged that, if the Commission granted some amount of revenue increase that was not appreciably less than that requested, Akron Thermal would be required to review the order, review its operations, and decide whether there was any way it could continue to operate based on the relief granted. The City's suggestion that this rational, understandable response somehow signals that the amount of Akron Thermal's emergency rate request exceeds the amount necessary to avert the emergency is ludicrous on its face, as is the City's suggestion that the fact that Akron Thermal offered a significant reduction in its current rates to UA in an attempt to retain UA as customer somehow means that its request for emergency rate relief is overstated.<sup>69</sup>

As previously indicated in response to the Staff's death spiral argument, there is no indication in this record of the rates the City would charge if Akron Thermal is forced to cease operations and turn back the system to the City. Indeed, the ultimate irony here is that, based on the mere possibility of a death spiral, the Staff and the City ask for Akron Thermal's immediate execution, notwithstanding that this record contains no information regarding the rates the City

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<sup>69</sup> The City also argues that because Akron Thermal offered UA a discount to stay on the system, it should be prevented from recouping the full amount of revenue lost by its departure. City Brief, 13. This ignores that, in calculating the amount necessary to avert the emergency, Akron Thermal witness Stott estimated the return component of the rates charged UA under its contract and eliminated that component in calculating the amount of rate relief necessary to replace the UA revenue stream. App. Ex, 4, at 9.

would charge if it were to take over the operation of the system as a result of Akron Thermal's demise.

Finally, with respect to the standard that provides that the Commission will not grant emergency rate relief if the emergency application was intended to circumvent, and as a substitute for, permanent rate relief, the City contends that Akron Thermal's emergency application, is, in fact intended as a substitute for a permanent rate increase application. The City's argument is based on the notion that Akron Thermal has not taken the actions the City believes would be expected from a utility that intended to file a permanent rate increase application.<sup>70</sup> Leaving aside the fact that the Akron Thermal personnel that will be involved in preparing the permanent rate application have been devoting their efforts to attempting to secure the emergency relief that is necessary to avert the cash flow crisis that Akron Thermal now faces, the City fails to draw a logical connection between its perception as to the status of Akron Thermal's preparations for a permanent rate case, and the issue now before the Commission. If Akron Thermal had done everything that the City maintains should have been done to evidence its intent to file a permanent rate application, it would not change the fact that immediate emergency rate relief is required for Akron Thermal to continue to provide service to its customers. Plainly, all this has nothing to do with whether the emergency rate increase request is intended to circumvent the rate case process. The record is clear that Akron Thermal is facing an emergency right now, and that emergency rate relief is necessary to allow it to continue to provide service to its customers. Even if Akron Thermal had commenced preparation of a permanent rate increase application at the very moment it began preparing its emergency application, there is no way that a permanent rate case would have generated additional revenue in time for Akron Thermal to avert the case flow crisis it faces. Akron Thermal, in fact, has

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<sup>70</sup> City Brief, 17-18.

every intention to file a permanent rate application, and has indicated that it will file its notice of intent by September 1, 2009. The fact that it has not yet done so in no way shows that the emergency rate application was intended to circumvent the and as a substitute for permanent rate relief.

Beyond these key legal issues, the City also raises of number of misleading ancillary points, a few of which require a response.

2. The City's retroactive ratemaking argument ignores the basis upon which the amount of Akron Thermal's emergency rate request was calculated.

The City argues that it would be inappropriate retroactive ratemaking "if ATLP was seeking rate relief to pay bills that ATLP did not pay."<sup>71</sup> As Akron Thermal understands it, this argument goes to the debt service obligations associated with the notes that are the subject of the application in Case No. 09-414-HT-AIS, which the City says cannot be recovered through rates absent a Commission order establishing a regulatory asset without violating restrictions against retroactive ratemaking. Among the several flaws in this argument, the most important is that the amount of the emergency relief requested by Akron Thermal is the minimum amount necessary for Akron Thermal to pay its current operating expenses and continue to provide service to its customers. It was the Staff that introduced the ability of Akron Thermal to service its debt under the proposed increase into the equation. Akron Thermal answered that concern by orchestrating the forbearance agreement, not by upping the amount of its rate request. Further, unlike permanent rate increases, emergency rate relief is not based on a Section 4909.15, Revised Code, revenue requirements analysis. The amount of an emergency rate request is based on the rate relief necessary to avert the cash flow crisis confronting the applicant utility. Akron Thermal's

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<sup>71</sup> City Brief, 3, n. 4.

emergency request, which contains no component for debt service or lost profits, is consistent with that standard.

3. The City's argument that Akron Thermal failed to secure all necessary Commission approvals that were a condition to the Plan of Reorganization becoming effective is without merit.

On brief, the City continues to rely on Section 13.2(b) of the Plan of Reorganization to suggest that Akron Thermal has failed to comply with the conditions of the Plan of Reorganization by failing to secure Commission approvals of the promissory notes and the Canal Place contract modification prior to securing confirmation of the Plan of Reorganization from the bankruptcy court.<sup>72</sup> This argument is based on a fundamental misunderstanding of the import of Section 13.2. The point that seems lost upon the City is that this section deals with the conditions precedent to the Effective Date of the Plan of Reorganization. The bankruptcy court approved the Plan of Reorganization, including the plan's Effective Date of February 20, 2009, thereby signifying that all conditions precedent to the Effective Date had been satisfied or waived. Further, Akron Thermal's earlier response to the Staff argument with respect to Section 15.2 of the Plan of Reorganization applies with equal force here as well.

4. Akron Thermal currently has no special contracts that have not either been approved by the Commission or filed with the Commission for approval.

Never missing an opportunity to cast aspersions on Akron Thermal, the City accuses Akron Thermal of routinely ignoring its obligation to file special contracts with the Commission approval. Akron Thermal acknowledges that, from time to time, it has had arrangements with customers that provided for service at other than tariff rates, and further acknowledges that certain of those arrangements should have been submitted to the Commission approval.

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<sup>72</sup> City Brief, 4.

However, Akron Thermal currently has no special contracts that have not either been approved by the Commission or filed with the Commission for approval. At this juncture, Akron Thermal has only five customers that are not served at tariff: Children's Hospital, Canal Place, Summa, Rogers Industrial Products ("Rogers"), and Canal Park Condominium.<sup>73</sup> The Children's Hospital contract and the modification to the previously approved Canal Place are before the Commission in this proceeding. As previously noted, the application for approval of the Summa contract has been filed for approval this date. The Rogers contract and the Canal Park Condominium contract predated Akron Thermal's operation of the system and were assigned by the City to Akron Thermal under the terms of the operating lease agreement entered into by the City and Akron Thermal in 1997. The operating lease agreement itself was submitted to the Commission for approval in Case No. 97- 1059-HT-AIS. Thus, Akron Thermal did not believe that it was not required to submit individual applications for approval of these contracts, particularly because it was bound by the operating lease agreement to honor them in any event.

The Canal Park Condominium contract presents something of a unique situation. Although, as City witness Bowser correctly points out, this contract, which was due to expire in September 2009 was rejected in the bankruptcy proceeding,<sup>74</sup> moving the individual residents of the condominium to tariff would have required installing meters for each unit at a cost that would have been prohibitive. Thus, Akron Thermal, by its application in Case No. 09-315-HT-ATA, sought approval of a tariff amendment to provide for a reasonable basis for billing these customers without the need for installing metering. Contrary to the City's reading of the language in the application in that case, Akron Thermal did meet with the condominium association board members after it emerged from bankruptcy to explain the situation, and

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<sup>73</sup> Tr. I, 129.

<sup>74</sup> City Ex. 2, at 8-9.



indicated that, under the circumstances, it would continue to provide service to the condominium residents under the terms of the prior contract until September 2009 when the contract would have expired.

C. SUMMIT COUNTY BRIEF

1. Section 4909.154, Revised Code, has no application in this setting.

Summit County opens its brief by citing Section 4909.154, Revised Code, for the proposition that the Commission cannot “allow operating and maintenance expenses incurred by management policies or administrative practices that the Commission considers imprudent.”<sup>75</sup> Then, without any further reference to this statute, Summit County cites the testimony of Staff witness Mahmud as indicating that Akron Thermal is in a “precarious financial position,”<sup>76</sup> and the testimony of Staff witness Puican indicating his concern regarding Akron Thermal’s long-term viability,<sup>77</sup> leaving the reader to guess at the purpose of its reference to Section 4909.154, Revised Code.

As the Commission well knows, Section 4909.154, Revised Code, is typically invoked in determining the revenue requirement in a permanent rate case as the basis for disallowing operation and maintenance expenses that the Commission deems to have been imprudently incurred. In Case No. 05-05-HT-AIR, the Section 4909.18, Revised Code, rate proceeding in which Akron Thermal’s current tariff rates were established, the Commission, in granting the full amount of the rate increase requested by the company, did not disallow any operation or maintenance expenses on the ground that they were imprudently incurred. In this case, as in any Section 4909.16, Revised Code, emergency rate case, the issue is the level of additional temporary revenues required by the utility to avert the financial emergency. The financial

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<sup>75</sup> Summit County Brief, 2.

<sup>76</sup> *Id.*

<sup>77</sup> Summit County Brief, 3.

emergency now confronting Akron Thermal was created by the loss of the UA load. No party to this proceeding, Summit County included, has contended that the emergency was created by increases in operating and maintenance expenses that were incurred as a result of imprudent management practices of Akron Thermal.

Even assuming, for the sake of argument, that Section 4909.154, Revised Code, has some application in emergency rate proceedings, it could only conceivably come into play in connection with the evaluation of whether the emergency relief requested is the minimum amount necessary to avert the emergency. However, in this case, although Akron Thermal's decision to stop using Boiler 32 in response to UA's departure drew considerable attention during the hearing, no party to the proceeding, Summit County included, has effectively challenged Akron Thermal's conclusion that this decision represents the least-cost option available to the company. Thus, Summit County's reliance on Section 4909.154, Revised Code, as a ground for denying emergency rate relief – if, indeed, that is the purpose for which it was cited – is totally misplaced.

2. The Section 4905.22, Revised Code, requirement that the rates charged by a utility be “shall be just and reasonable” does not open the door to a finding by the Commission that proposed rates are unjust and unreasonable simply by virtue of the fact that the proposed rates are substantially higher than the utility's current rates.

Summit County next argues that the proposed rate increase, due to its magnitude, is not just and reasonable and that, therefore, the proposed rates violate the Section 4905.22, Revised Code requirement that rates charged by a utility “shall be just and reasonable.”<sup>78</sup> The obvious flaw in Summit County's argument is that the question of whether rates are just and reasonable cannot be answered in a vacuum. Rather, this is a determination that must be made with

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<sup>78</sup> Summit County Brief, 3-4.

reference to the various statutes that govern utility rates, such as, for example, the anti-discrimination provisions of Sections 4905.32 and 4905.35, Revised Code. There is no statute that provides that the Commission may deem proposed rates to be unjust and unreasonable simply because they are perceived to be “too high” when compared to current rates. Indeed, this Commission, in evaluating competing rate design proposals, has expressly acknowledged that it “is not bound by any statutory requirement relating to the principle of gradualism.”<sup>79</sup> Further, as noted in Akron Thermal’s initial brief, the Supreme Court of Ohio has squarely held that, in the context of permanent rate case, rate shock concerns do not relieve the Commission from its obligation to set rates in accordance with the statutory ratemaking formula.<sup>80</sup> Clearly, the magnitude of the emergency surcharge proposed by Akron Thermal does not mean, as Summit County would have it, that the surcharge violates the Section 4905.22, Revised Code, requirement that rates be just and reasonable.

Summit County also contends that, because Akron Thermal has not previously secured Commission approval of its contracts with Summa, Rogers, and Canal Park Condominium, Akron Thermal is charging those customers “a rate as determined solely by Akron Thermal,” and, until the Commission approves these contract rates, “it is unknown if all Akron Thermal’s customers are being charged fair and reasonable rates.”<sup>81</sup> Although not artfully stated, Akron Thermal assumes that the point Summit County is attempting to make is that, if the rates in these contracts were higher, the amount of the surcharge required to recover the proposed emergency rate increase might be lower, which, therefore, calls into question the reasonableness of the proposed emergency surcharge. However, there are two problems with this theory.

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<sup>79</sup> *In the Matter of the Application of East Ohio Gas Company dba Dominion East Ohio*, Case Nos. 07-829-GA-AIR, et al. (Entry on Rehearing dated December 19, 2008), at 13-14.

<sup>80</sup> *Columbus S. Power Co. v. Pub. Util. Comm.*, 67 Ohio St.3d 535, 537-543 (1993)

<sup>81</sup> Summit County Brief, 4.

First, both the Rogers and Canal Park Condominium contracts predated Akron Thermal's existence and were, in effect, inherited from the City when Akron Thermal began operating the system in the late 1990s. The Rogers contract, a copy of which is attached hereto as Attachment A, is an evergreen contract that can only be terminated upon notice by the customer. The Canal Park Condominium contract, a copy of which is attached hereto as Attachment B, was originally entered into by the City in 1984 and had a 25-year term. As previously explained, these contracts were assigned by the City to Akron Thermal under the operating lease agreement submitted to the Commission for approval in Case No. 97-1059-HT-AIS. Thus, Akron Thermal did not believe that it was required to secure additional Commission approval of these contracts by filing separate applications with the Commission. However, whether or not separate applications were required, it is clear that, under contract law, Akron Thermal had no ability to alter the terms of the contracts originally agreed to by the City and the customers in question. Thus, not only did Akron Thermal have no role in determining the rates contained in these contracts, but, under the circumstances, the fact that these contracts were not individually approved by the Commission has absolutely no bearing on the reasonableness of the proposed emergency surcharge.

Second, with respect to the Summa arrangement, the record is quite clear that, because Summa has its own steam production facilities, there is no prospect that Akron Thermal could retain Summa as a customer at a rate that was based on something other than Summa's avoided costs.<sup>82</sup> Thus, as in the case of the two contracts previously discussed, the rates charged Summa were not, in fact, "determined solely by Akron Thermal," but were, at all times, limited by Summa's ability to generate its own steam. As previously indicated, Akron Thermal and Summa have recently memorialized the basis upon which the rates charged by Akron Thermal are

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<sup>82</sup> Tr. I, 43.

established in a contract, which has now been submitted to the Commission for approval.

However, under the circumstances, the fact that the long-standing arrangement between Akron Thermal and Summa was not previously submitted to the Commission for approval had no effect on the amount of the emergency surcharge proposed in this case.

3. Summit County's calculation of the impact the proposed emergency increase would have on its annual cost of steam service is incorrect and grossly overstates the effect of the proposed increase.

In connection with its argument that the rates that would result under the proposed emergency increase are not just and reasonable, Summit County alleges that the proposed temporary surcharge would increase its annual steam costs from \$974,749.87 to \$3,108,971.44. To arrive at this \$3,108,971.44 figure, Summit County multiplied the 38,151.57 Mlbs consumed by Summit County in 2008 by the proposed \$81.49 surcharge.<sup>83</sup> However, the proposed emergency surcharge has been designed as an adder to the demand charge component of Akron Thermal's rates, not as surcharge on total usage. Thus, Summit County's calculation does not accurately portray the impact of the emergency increase on its total annual costs for steam service.

The steam tariff approved by the Commission in Case No. 05-05-HT-AIR has three separate components, an eight-step declining block usage rate, a demand charge, and a gross receipts tax multiplier of 1.0498, which is applied to total of the consumption charge and demand charge.<sup>84</sup> The demand charge is calculated by multiplying the demand – defined in the tariff as the highest monthly steam usage in Mlbs. for prior twelve months – by \$33.66 and dividing the product by 12. Summit County has eleven steam accounts with Akron Thermal. Consumption levels vary by month for each account, so, the usage charge component of Summit County's

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<sup>83</sup> Summit County Brief, 4.

<sup>84</sup> Akron Thermal P.U.C.O. No. 2, First Revised Sheet No. 13 and 14.

monthly bills depends not on the total volumes consumed, but on the usage blocks in which the consumption of the various accounts falls. In addition, the demand to which the demand rate is applied is obviously different for each account, so the monthly demand charge component of the bill is also different for each account. Thus, to calculate the impact of the proposed emergency demand surcharge on Summit County's annual cost of steam service, one must perform an account-by-account analysis to recalculate the monthly demand charge component for each account by adding the amount of the surcharge to the current demand charge and by applying the gross receipts tax multiplier to the resulting total of the usage and demand charges. The calculations are set forth in Attachment C to this brief.

Summit County's actual 2008 cost for steam service, by month and by account, is shown in the revenue analysis set forth on pages 2 through 5 of Attachment C. This analysis produces the \$974,749.87 cited in Summit County's brief as its current annual cost of steam service. The proposed demand surcharge of \$81.49, when added to the current demand rate of \$33.66 per Mlb., produces a total demand rate of \$115.15 per Mlb. of demand. The revenue analysis set out in pages 6 through 9 of Attachment C shows the proforma results of applying the proposed demand surcharge to the 2008 monthly demands of each account. After applying the gross receipts tax multiplier, the proforma monthly totals sum to an annual total cost for steam service to Summit County of \$1,548,304.27, as opposed to the \$3,108,971.44 calculated by Summit County, which represents an increase of \$573,554.85.

The results of the 2008 actual and the proforma revenue analyses are carried forward, respectively, to the first two schedules on the first page of Attachment C, which compare the average cost of steam service to Summit County at the present and proposed demand rates expressed on a per Mlb. of usage basis. The third schedule on the page identifies the increase in

the average cost per Mlb. of steam consumed that would result under the proposed emergency demand surcharge expressed on this same basis. As indicated in Exhibit JDS-3 to the testimony of Akron Thermal witness Stott, the average revenue increase under the proposed demand charge adder across all tariff customers is 71.6 percent.<sup>85</sup> However, based on the 2008 usage and demand characteristics of its eleven accounts, the average cost increase to Summit County will be just under 59 percent ( $\$15.03 / \$25.55 = 58.8$  percent).

In correcting Summit County's calculation of the impact of the emergency rate increase to show that the effect is far less than alleged by Summit County and below the average percentage increase that would be experienced across all tariff customers, Akron Thermal in no way intends to minimize the burden the proposed emergency increase would impose on Summit County. Akron Thermal acknowledges that Summit County, like many other Ohio local governmental entities, are, indeed, facing their own financial emergencies in terms of extraordinary budget deficits. However, as explained above, this has no bearing on the issue of whether the rates charged by Akron Thermal are just and reasonable within the meaning of those terms as used in Section 4905.22, Revised Code. Further, even if, contrary to fact, the Commission were permitted to consider the impact on customers as a basis for denying a proposed rate increase, the Commission should certainly not do so without considering the repercussions of such a decision. As Summit County points out on brief, it must be able to keep its buildings heated and open to the public in order to provide necessary governmental services to its citizens.<sup>86</sup> As emphasized above, the Staff's proposed remedy of forcing Akron Thermal to cease operations based on the notion that the City can step in and provide service to Akron Thermal's current customers is based on an interim operating agreement between the City and

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<sup>85</sup> App. Ex. 4, Ex. JDS-3.

<sup>86</sup> Summit County Brief, 5.

AES that makes no mention of the rates the City would charge customers. Although this remedy would permit the Commission to wash its hands of Akron Thermal, it offers no assurance that the rates to which Summit County would then be subjected – a matter that would no longer be subject to Commission jurisdiction – would have any appreciable impact on Summit County's ability to pay for the steam service necessary to provide essential services to its citizens.

### III. CONCLUSION

For all the foregoing reasons, as well as the reasons set forth in Akron Thermal's initial brief, the Commission should grant all pending Akron Thermal applications.

Respectfully submitted,



Barth E. Royer  
Bell & Royer Co., LPA  
33 South Grant Avenue  
Columbus, OH 43215-3927  
(614) 228-0704 - Phone  
(614) 228-0201 - Fax  
[BarthRoyer@aol.com](mailto:BarthRoyer@aol.com) - Email

Thomas Mullooly  
Foley & Lardner, LLP  
777 East Wisconsin Avenue  
Milwaukee, Wisconsin 53202  
414-297-5566 - Phone  
[TMullooly@foley.com](mailto:TMullooly@foley.com) - Email

Attorneys for  
Akron Thermal, Limited Partnership



## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties by electronic mail this 4th day of August 2009.

  
Barth E. Royer

Samuel C. Randazzo  
Gretchen J. Hummel  
McNees Wallace & Nurick LLC  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215  
(614) 469-8000 (T)  
(614) 469-4653 (F)  
sam@mwncmh.com  
ghummel@mwncmh.com

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

Glenn S. Krassen  
Bricker & Eckler LLP  
1375 East Ninth Street, Suite 1500  
Cleveland OH 44114  
gkrassen@bricker.com

E. Brett Breitschwerdt  
Matthew W. Warnock  
Bricker & Eckler LLP  
100 South Third Street  
Columbus OH 43215  
BBreitschwerdt@bricker.com

Linda Murphy  
Attorney for the County of Summit  
Executives' Office  
175 S. Main Street, 8<sup>th</sup> Floor  
Akron, OH 44308  
LMurphy@Summitoh.net

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

Christopher Niekamp  
Michael J. Palumbo  
Bernlohr Wertz, LLP  
The Nantucket Building  
23 South Main Street, Third Floor  
Akron, OH 44308-1822  
cjm@b-wlaw.com  
Michael@b-wlaw.com

Joseph F. Hutchinson, Jr.  
Kelly S. Burgan  
Baker & Hostetler LLP  
3200 National City Center  
1900 East Ninth Street  
Cleveland, Ohio 44114-3485  
jhutchinson@bakerlaw.com  
kburgan@bakerlaw.com

## ATTACHMENT A

12/06/05

14:50

EP216 434 0883

WTe Corp./Ohio

002

CITY OF AKRON, OHIO  
DEPARTMENT OF PUBLIC SERVICE

RECYCLE ENERGY SYSTEM  
CONTRACT FOR STEAM SERVICE

ACCOUNT NO. 22107AKRON, OHIO March 16, 1993

The undersigned, Rogers Industrial Prod. (hereinafter called the Customer, Owner/Tenant) of the premises located at 532 South Main Street Akron, Ohio, (hereinafter called the Premises), hereby contracts with the City of Akron Recycle Energy System:

For: X Steam Service        Hot/Chilled Water ServiceTo Be Used For:        Residential X Industrial        Commercial Purposes

## IT IS HEREBY AGREED THAT:

1. In consideration of the furnishing of steam, the Customer agrees to pay for all of said services at the rates contained in the attached schedule and made part of this contract as they are now established or may be revised, commencing April 1 1993 and continuing until such time as written notice is given by Customer to discontinue service.
2. All Customer requests for turning-on or turning-off service to the Premises shall be made in writing and signed by the Customer or his authorized agent.
3. The Owner of the Premises to which service is provided shall be held liable for all steam charges against the Premises as the guarantor.
4. Customer shall comply with the rules and regulations of the Akron Recycle Energy System applicable to steam service as amended by Exhibit A attached hereto and made a part hereof or as they may hereafter be revised.

OWNER:

NAME

ADDRESS

PHONE

SIGNATURE

DATE

Rogers Industrial Products, Inc  
+ John R. Cole Inc.  
534 South Main St.  
Akron, Ohio 44311  
(216) 535-3331  
[Signature] for both companies  
March 17, 1993

8. It is mutually agreed and understood that, although other sections of the aforementioned Rules and Regulations may reference installation, operation, and maintenance activities as being performed by the Akron RES, the intent of the parties is that, subject to the limitations set forth herein, the RES will be responsible for such activities only up to the Premises.
9. Customer agrees to indemnify, defend and hold harmless the RES, the City of Akron and wTe Corporation of Ohio (or successor operator of the RES) from any and all claims or liabilities arising out of the supply of steam to the Premises. Customer is responsible for the installation, operation and maintenance of all steam service lines and equipment located in the Premises.
10. Customer's monthly billings will total the greater of the following: 1) a set minimum monthly fee of \$315.00 for usage at or below a total monthly metered usage of 50 Mlbs. (hereafter referred to as Minimum Usage), or 2) the charge for the actual metered amount over the Minimum Usage at the Large Industrial Rate (See attached Schedule).
11. The minimum monthly fee is subject to an annual increase, effective on December 1 of each year and is equal to the percentage rate of the United States Consumer Price Index.
12. The Large Industrial Rate Schedule will be subject to an annual escalation on December 1 of each year based on the higher of 1) two percent (2%) of the base rate per year, or 2) the net percentage rate increase of the East Ohio Gas Schedule 500A rate when compared to the 500A rate during the commencement year of this Agreement not to exceed five percent (5%).

IN WITNESS WHEREOF, the parties have caused this Contract to be executed by their duly authorized representatives.

Signed and Acknowledged:

THE CITY OF AKRON, OHIO

Valerie Strawn  
Witness

Linda Sowa  
Linda Sowa, Director  
Department of Public Service

Victoria H. Beedy  
Witness

3-31-93  
Date

ROGER'S INDUSTRIAL PRODUCTS

Margaret A. Horan  
Witness

John R. Cole  
John R. Cole  
President, CEO

March 17, 1993  
Witness

March 17, 1993  
Date

## **ATTACHMENT B**

9/25/84

THIS AGREEMENT, entered into on the \_\_\_\_\_ day of \_\_\_\_\_, 1984 by and between the City of Akron, Ohio, acting by and through its Director of Public Service, duly authorized by Ordinance No. 293-1975, passed by the Council of the City of Akron, Ohio, on the 22nd day of April 1975, hereinafter referred to as the CITY, Alpha Phi Alpha Homes, Inc., a non-profit corporation existing under the laws of the State of Ohio, hereinafter referred to as ALPHA.

WHEREAS, the CITY owns, operates, and maintains certain facilities consisting of a central plant for the production and generation of steam and hot water using combustible solid waste as the principal source of fuel; and

WHEREAS, the CITY wishes to sell, and ALPHA wishes to purchase, hot water as a heat source for Phase II and Phase III of the Canal Park Condominium Project pursuant to the terms and conditions set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants contained herein, the parties hereby agree as follows:

Section 1. The CITY shall construct a system for the distribution of hot water which shall service those condominiums, said system constructed in Phases II and III of the Canal Park Condominium Project. Said distribution system shall be extended by the CITY through the use of service laterals to the edge of the dedicated right of ways at suitable locations for the servicing of the above-mentioned condominiums.

ALPHA shall purchase from the CITY all hot water service required for heating each condominium constructed in Phase II and III of the Canal Park Condominium Project.

Section 2. It is hereby agreed by the CITY and ALPHA that the agreement to supply hot water shall be in force for a period of TWENTY-FIVE (25) years from the date first mentioned above.

Section 3. The CITY and ALPHA hereby agree to the following:

- (a) ALPHA shall install hot water equipment for space heating in all units constructed in Phases II and III of the Canal Park Condominium Project.
- (b) All heating systems beyond the hot water service valves, except any CITY metering device, shall be owned and controlled by ALPHA, and the CITY shall have no responsibility for the use, handling, or action of hot water, or return water, nor any liability for anything which may be done, happen or arise with respect to any of them on ALPHA's side of said valve.
- (c) The CITY may interrupt service for maintenance purposes:
  - 1) without notice when emergency arises, whether said

before the date shown on the bill, the gross amount, which is 5% more than the net amount, is due and payable.

(b) Meter combination:

The rate schedules of the City contemplate that service will be supplied to each separate premise as one customer through one meter. Steam service used by the same person, firm or corporation, delivered and measured separately, will not be combined and several premises will not be billed as one customer. More than one meter may be installed and the meters combined for billing purposes when in the opinion of the City the conditions make such metering installation necessary.

(c) Meter failure and leakage:

If a meter fails to register or to register accurately the amount of steam used, the bill for the billing period in which such error is discovered shall be adjusted on the basis of an estimated amount of steam used. Where leaks occur in the Customer's pipes or apparatus resulting in loss of steam or a condensation registration on meters, the Customer shall be required to make immediate repairs, but if the leak occurs beyond the point of metering, no adjustment shall be made on the billing for the period.

4. QUALITY OF SERVICE

The City will endeavor at all times to provide a regular and uninterrupted supply of steam and maintain pressure within reasonable limits, but the City does not warrant or guarantee uninterrupted service at specified pressures and shall not be liable for damages caused by or resulting from temporary interruptions in service, pressure variations, or from the supply or use of steam on Customer's premises.

5. ACCESS

The City shall have free and unrestricted access at all times to any of its equipment, apparatus or other facilities situated upon or within property owned or leased by the Customer (hereinafter sometimes referred to as the "Customer's Premises") and may remove any or all of such items at any time for cleaning, repair, or any other purpose. The City shall also have free and unrestricted access at any time to inspect all steam pipes, return pipes, and related apparatus of the Customer.

6. INSTALLATION OF EQUIPMENT

(a) Installation by the City:

The City shall install and maintain at its own expenses one standard steam service to the property line of each customer, and shall also

install and maintain a service valve. Any change of service location or equipment made at the request of the customer shall be paid for by the customer.

- (b) Equipment shall remain City's property:  
All equipment placed in or on the Customer's Premises by the City for the purpose of providing steam service unless otherwise expressly provided, shall be and remain the property of the City, and the customer shall exercise reasonable care to protect such property from loss or damage.
- (c) Easements:  
The Customer shall provide, without cost to the City, any easement in, over, under or through the Customer's Premises required by the City for the installation of the City's standard steam service and related apparatus for the purpose of providing steam service to the Customer's Premises. Any such easement shall provide for a term of not less than the term of the attached contract, and any renewals or extensions thereof, and shall further provide for the City's ingress and egress for maintenance, repair, replacement or removal of the City's equipment, and the right, at the City's option, to abandon service lines on the Customer's Premises at the termination of any such easement or other right.
- (d) Installation by the customer:  
The Customer shall install pressure regulating valves on all connections to the City's steam supply when so specified by the City. The City shall have the right to require installation of new equipment or repair of the Customer's current equipment when deemed necessary for safe operation of the steam system. If such installation or repair is not made within a reasonable time, the City shall have the right to temporarily discontinue service to the Customer until such repair or installation is completed.

## 7. PROHIBITED ACTIONS

- (a) Unauthorized devices:  
The Customer shall not connect any device to the City's steam distribution facilities without prior written authorization from the City.
- (b) Unauthorized use of City's steam distribution facilities:  
No customer shall make any use of the City's facilities without prior written authorization from the City.
- (c) Source of supply:  
No customer shall use steam supplied by the City as an emergency or reserve service for another source of supply.
- (d) Resale:  
The steam service furnished by the City is furnished for the sole use



of the Customer and the Customer shall not sell any of such service to any other person.

(e) Violation:

All of the foregoing actions shall constitute a misdemeanor with respect to which the City may initiate prosecution. Such right of the City shall be, however, in addition to any and all other rights and remedies to which the City may be entitled at law or in equity.

8. DISCONTINUANCE OF SERVICE

Upon failure to comply with the terms and conditions of any schedule attached to or with the terms of these rules and regulations or to pay an indebtedness owing to the City, service may be discontinued and the City may remove its equipment, facilities and other property from the Customer's Premises or from any easement relating thereto. The right of the City to discontinue service under this regulation shall be in addition to any and all rights and remedies which the City may be entitled to at law or in equity.

9. RECONNECTION CHARGE

A charge will be made to cover the cost of discontinuing and restoring service when it has been discontinued for the Customer's failure to pay bills for service rendered or for the Customer's violation of the service agreement, and also for reconnecting service for the same Customer on the same premise within one year.

10. CONDENSATE

The Customer shall, where condensate return mains may be provided, be required to pump uncontaminated condensate into the City's condensate return system at pressure sufficient to enter the City's system and to return the condensate to the Facilities, as may be determined. No contaminated condensate or condensate from process steam shall be pumped back into the return system, but shall be disposed of by the Contractor.

11. TEMPORARY SERVICE

Any applicant desiring temporary service, shall, in addition to the schedule rates, pay the entire cost of installing and furnishing such temporary service and also the cost of disconnecting and removing the same.

12. CHANGES IN RULES AND REGULATIONS

All contracts for service are subject to change in rates, service, and in

rules and regulations, hereinafter put into effect by the City, the Public Utilities Commission, or other public authority, as provided by law.

13. PAST DUE ACCOUNTS.

Term net ten (10) days. Notification will be made in writing when the bill becomes ten (10) days delinquent. If payment is not received within ten (10) calendar days after notification, there will be a cut-off of steam service to the customer.

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed in their respective names by their duly authorized officers all as of the date hereinbefore written.

WITNESSES

William J. Ruddy  
Robert J. Wierwille

CITY OF AKRON

By [Signature]  
Director of Public Service

[Signature]  
[Signature]

ALPHA PHI ALPHA HOMES, INC.

By [Signature]  
CHAIRMAN

Approved as to form  
and correctness.

[Signature] MSB  
Director of Law

EXHIBIT A

CITY OF AKRON RECYCLE ENERGY SYSTEM  
RESIDENTIAL HOT WATER SERVICE CONTRACT

The undersigned, \_\_\_\_\_ (hereinafter called the Owner), Owner of the premises located at \_\_\_\_\_, Akron, Ohio does hereby contract with the City of Akron for hot water service located on said premises.

In consideration of the furnishing of said hot water service, the Owner agrees to pay the amount of \_\_\_\_\_. Owner further agrees that the amount charged for said hot water service may change according to future changes in the price of natural gas.

In addition to the above, the Owner agrees to the following:

- a. The Owner agrees to furnish free access to the premises for the purpose of installing, reading, inspecting, repairing and removing the meter.
- b. All orders for turning on or turning off hot water service to premises must be made in writing and signed by the Owner or his authorized agent.
- c. The Owner of the property to which hot water is supplied shall be held liable for all hot water charges against property.
- d. The Owner agrees to comply with the rules and regulations of the Akron City Recycle Energy System. Sections of the Akron Building Code applicable to steam service, as they now exist or may hereinafter be revised, any any applicable ordinances of the City of Akron.

Signed: \_\_\_\_\_ (Owner)

\_\_\_\_\_ (Owner)

Accepted:

AKRON CITY RECYCLE ENERGY SYSTEM

By: \_\_\_\_\_

Approved as to form and correctness:

\_\_\_\_\_  
Director of Law / City of Akron

# EXHIBIT 8

The East Ohio Gas Company has determined monthly gas budget amounts for each of the four different condominium unit types in Phase I. The budget amounts are based on a gas rate of \$4.965/MCF plus a monthly service charge of \$4.28. A single average flat rate amount is to be charged to all condominium owners. The table below illustrates the determinator of the average gas budget amount for Phase II and III of the development as if they were heated with gas:

	<u>Gas Budget</u>	<u>No. Units</u>	<u>Gas Revenue</u>
Unit A	\$43.00	50	\$2,100.00
Unit B	34.00	20	680.00
Unit C	39.00	30	1,170.00
Unit D	36.00	30	1,080.00
		<u>130</u>	<u>\$5,030.00/mo.</u>

$$\text{AVERAGE GAS BUDGET} = \$5,030.00/130 = \$38.69$$

The condominiums will be using hot water for space heating only. To allow for natural gas used for domestic hot water heating, cooking gas, and gas dryers, the monthly flat rate for hot water heat is \$20.00 (twenty dollars).

This rate will be adjusted periodically to remain in competition with natural gas. However, the rate shall not be less than \$20.00. The method for adjusting the rate is to use a rate factor, equivalent to the number of MCF of gas that can be purchased with \$20.00, at a rate of \$4.965/MCF. The hot water rate will then be adjusted by multiplying the rate factor by the current price for natural gas. The rate factor is computed as follows:

$$\frac{\$20.00}{\$4.965/\text{MCF}} = 4.03$$

Thus, the monthly flat rate will be adjusted periodically by multiplying the current East Ohio Gas rate for residential gas by 4.03. However, the monthly flat rate shall not be less than \$20.00.

3/18/85

EXHIBIT C

CITY OF AKRON  
GENERAL RULES AND REGULATIONS  
GOVERNING SUPPLY OF STEAM SERVICE

1. CONTRACT FOR SERVICE

- (a) Contract required:  
A written contract, accepted by the City, shall be required from each customer before steam service is supplied. This requirement shall apply whether the supply of service involves a new installation, the unsealing of the service valve where service has been previously supplied, or a change in the name of the Customer.
- (b) Refusal of service:  
Service may be refused to any customer in debt to the City for services previously rendered.
- (c) Denial of service due to location:  
New contracts for steam service may be rejected by the City for locations or quantities beyond the limits of adequate service from the then existing plant and distribution system.

2. SECURITY DEPOSIT

- (a) City may require:  
Before steam service is supplied, the City may require a cash deposit or other suitable guaranty securing the payment of bills in such amount as the City reasonably deems necessary. If at any time the City deems any cash deposit or other security to be inadequate or determines that a cash deposit or other security is required, then the Customer shall be required to furnish additional cash deposit, or to provide additional or new security or guaranty, and upon failure to do so, the City shall have the right to discontinue its service.
- (b) City may retain:  
The City may retain any deposit and apply the same upon bills for steam service or in payment of costs incurred in connection with any damage to City steam equipment for which the Customer may be liable.

3. BILLING AND METERS

- (a) Billing periods:  
All bills for service shall be rendered monthly based on monthly or bi-monthly meter readings and shall be payable within ten (10) days of the date of the monthly bill. If the net amount is not paid on or

## ATTACHMENT C

**AKRON THERMAL, LP**  
**SUMMIT COUNTY REVENUE COMPARISON**  
**2008 Actual vs. 2008 with Proposed Demand Surcharge**

Customer Number	Customer Name	2008 - Total (Actual)					Avg. Cost/Mlb.
		Mlbs.	Consumption \$	Demand \$	GRT \$	Total \$	
5651	Summit County Welfare	950.50	\$ 19,071.47	\$ 7,704.61	\$ 1,333.46	\$ 28,109.54	\$ 29.57
5750	Summit County Welfare	1,558.00	30,903.80	10,546.86	2,064.22	43,514.88	27.93
7800	Summit County Courthouse	4,118.47	79,009.41	18,072.24	4,834.67	101,916.32	24.75
7900	Summit County Courthouse	5,489.08	101,117.70	31,809.09	6,619.74	139,546.53	25.42
7950	Summit County Safety Bldg.	8,941.73	154,863.55	54,860.94	10,444.28	220,168.77	24.62
9701	Summit County Welfare	966.00	19,601.96	6,028.00	1,276.35	26,906.31	27.85
9800	Summit County Welfare	1,646.00	32,899.87	9,974.64	2,135.14	45,009.65	27.34
9850	Summit County Welfare	7,295.79	132,972.77	38,569.41	8,542.81	180,084.99	24.68
14300	Summit County - Ohio Building	5,635.00	101,186.44	38,118.31	6,937.39	146,242.14	25.95
23301	Summit County - Art Center	1,338.00	26,824.71	8,493.55	1,758.86	37,077.12	27.71
27400	Summit County - Veterans Services	213.00	4,385.67	1,495.07	292.88	6,173.62	28.98
Total Summit County Tariff		38,151.57	\$ 702,837.35	\$ 225,672.72	\$ 46,239.80	\$ 974,749.87	\$ 25.55

Customer Number	Customer Name	2008 - Total (With Proposed Demand Surcharge)					Avg. Cost/Mlb.
		Mlbs.	Consumption \$	Demand \$	GRT \$	Total \$	
5651	Summit County Welfare	950.50	\$ 19,071.47	\$ 26,357.15	\$ 2,262.33	\$ 47,690.95	\$ 50.17
5750	Summit County Welfare	1,558.00	30,903.80	36,080.29	3,335.83	70,319.92	45.13
7800	Summit County Courthouse	4,118.47	79,009.41	61,824.70	7,013.54	147,847.65	35.90
7900	Summit County Courthouse	5,489.08	101,117.70	108,817.98	10,454.78	220,390.46	40.15
7950	Summit County Safety Bldg.	8,941.73	154,863.55	187,677.71	17,058.56	359,599.82	40.22
9701	Summit County Welfare	966.00	19,601.96	20,621.40	2,003.14	42,226.50	43.71
9800	Summit County Welfare	1,646.00	32,899.87	34,122.76	3,337.72	70,360.35	42.75
9850	Summit County Welfare	7,295.79	132,972.77	131,945.12	13,192.92	278,110.81	38.12
14300	Summit County - Ohio Building	5,635.00	101,186.44	130,401.59	11,533.09	243,121.12	43.14
23301	Summit County - Art Center	1,338.00	26,824.71	29,056.15	2,782.87	58,663.73	43.84
27400	Summit County - Veterans Services	213.00	4,385.67	5,114.61	473.13	9,973.41	46.82
Total Summit County Tariff		38,151.57	\$ 702,837.35	\$ 772,019.46	\$ 73,447.91	\$ 1,548,304.72	\$ 40.58

Customer Number	Customer Name	Effect of Proposed Demand Surcharge					Avg. Cost/Mlb. Increase
		Mlbs.	Consumption \$	Demand \$	GRT \$	Total \$	
5651	Summit County Welfare	-	\$ -	\$ 18,652.54	\$ 928.87	\$ 19,581.41	\$ 20.60
5750	Summit County Welfare	-	-	25,533.43	1,271.61	26,805.04	17.20
7800	Summit County Courthouse	-	-	43,752.46	2,178.87	45,931.33	11.15
7900	Summit County Courthouse	-	-	77,008.89	3,835.04	80,843.93	14.73
7950	Summit County Safety Bldg.	-	-	132,816.77	6,614.28	139,431.05	15.60
9701	Summit County Welfare	-	-	14,593.40	726.79	15,320.19	15.86
9800	Summit County Welfare	-	-	24,148.12	1,202.58	25,350.70	15.41
9850	Summit County Welfare	-	-	93,375.71	4,650.11	98,025.82	13.44
14300	Summit County - Ohio Building	-	-	92,283.28	4,595.70	96,878.98	17.19
23301	Summit County - Art Center	-	-	20,562.60	1,024.01	21,586.61	16.13
27400	Summit County - Veterans Services	-	-	3,619.54	180.25	3,799.79	17.84
Total Summit County Tariff		-	\$ -	\$ 546,346.74	\$ 27,208.11	\$ 573,554.85	\$ 15.03



**AKRON THERMAL, LP  
ACTUAL 2008 SUMMIT COUNTY REVENUE**

Cust. No.	Customer Name	Jan-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total Company Charge	Monthly Demand Charge	0.0408 Cross Receipts	Total Monthly Charge
		MWhs	Demand	MWhs @ 20.59	MWhs @ 19.40	MWhs @ 18.32	MWhs @ 16.63	MWhs @ 14.65		\$ 33.66		
5651	Summit County Welfare	205.94	205.94	\$ 4,259.00	\$ 3,953.30				\$ 4,112.30	\$ 577.38	\$ 235.55	\$ 4,925.23
5750	Summit County Welfare	311.00	339.00	\$ 6,459.00	\$ 5,880.00	\$ 260.42			\$ 6,139.42	\$ 550.30	\$ 353.18	\$ 7,043.42
7800	Summit County Courthouse	556.78	607.28	\$ 11,459.00	\$ 10,800.00	\$ 4,777.07			\$ 16,616.07	\$ 1,705.42	\$ 113.31	\$ 18,435.00
7900	Summit County Courthouse	1,079.78	884.04	\$ 22,159.00	\$ 17,280.00	\$ 5,668.08	\$ 6,532.00	\$ 1,168.78	\$ 28,227.78	\$ 2,784.13	\$ 1,092.11	\$ 31,112.02
7950	Summit County Safety Bldg.	1,813.42	2,118.00	\$ 37,159.00	\$ 40,800.00	\$ 5,466.08	\$ 6,532.00	\$ 11,916.68	\$ 59,973.60	\$ 5,946.18	\$ 1,888.08	\$ 67,808.58
9701	Summit County Welfare	179.00	180.00	\$ 3,689.00	\$ 3,512.00				\$ 7,201.00	\$ 284.38	\$ 204.01	\$ 7,689.39
9800	Summit County Welfare	285.00	431.00	\$ 5,889.00	\$ 8,380.00				\$ 14,269.00	\$ 1,180.91	\$ 340.08	\$ 15,790.00
9810	Summit County Welfare	968.11	1,180.00	\$ 19,859.00	\$ 22,800.00	\$ 5,668.08	\$ 6,128.32		\$ 34,455.40	\$ 3,309.58	\$ 1,377.99	\$ 39,143.00
14300	Summit County - Ohio Building	1,246.00	1,563.00	\$ 25,559.00	\$ 30,000.00	\$ 5,466.08	\$ 6,532.00	\$ 5,603.98	\$ 42,551.06	\$ 4,284.33	\$ 1,297.05	\$ 48,133.44
22301	Summit County - Aut. Center	237.00	319.00	\$ 4,859.00	\$ 6,243.80				\$ 11,102.80	\$ 894.08	\$ 238.78	\$ 12,235.66
22400	Summit County - Veterans Services	44.00	45.00	\$ 905.56					\$ 905.56	\$ 126.33	\$ 51.48	\$ 1,083.37
Month Total Summit County Tariff		6,946.15	7,943.58	\$ 14,495.96	\$ 16,500.70	\$ 26,741.49	\$ 26,084.32	\$ 16,888.17	\$ 134,281.75	\$ 12,238.89	\$ 7,510.38	\$ 154,030.02

Cust. No.	Customer Name	Feb-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total Company Charge	Monthly Demand Charge	0.0408 Cross Receipts	Total Monthly Charge
		MWhs	Demand	MWhs @ 20.59	MWhs @ 19.40	MWhs @ 18.32	MWhs @ 16.63	MWhs @ 14.65		\$ 33.66		
5651	Summit County Welfare	238.44	238.99	\$ 4,859.00	\$ 4,651.74				\$ 4,744.78	\$ 647.55	\$ 268.15	\$ 5,660.48
5750	Summit County Welfare	319.00	313.00	\$ 6,559.00	\$ 6,080.00	\$ 346.18			\$ 6,265.18	\$ 571.36	\$ 356.45	\$ 7,193.00
7800	Summit County Courthouse	442.81	479.38	\$ 9,159.00	\$ 9,300.00	\$ 2,692.08			\$ 11,951.08	\$ 1,244.06	\$ 492.31	\$ 13,687.45
7900	Summit County Courthouse	588.42	708.00	\$ 12,059.00	\$ 13,800.00	\$ 5,466.08	\$ 5,128.00		\$ 26,453.08	\$ 2,680.12	\$ 933.28	\$ 29,066.48
7950	Summit County Safety Bldg.	1,472.50	1,561.50	\$ 30,159.00	\$ 30,000.00	\$ 5,466.08	\$ 6,532.00	\$ 6,923.30	\$ 48,180.38	\$ 4,780.18	\$ 1,462.15	\$ 54,422.71
9701	Summit County Welfare	156.00	179.00	\$ 3,239.00	\$ 3,480.40				\$ 6,719.40	\$ 281.18	\$ 181.63	\$ 7,182.21
9800	Summit County Welfare	285.00	285.00	\$ 5,889.00	\$ 5,512.00				\$ 11,401.00	\$ 799.43	\$ 281.24	\$ 12,481.67
9810	Summit County Welfare	1,179.41	1,142.75	\$ 24,259.00	\$ 22,000.00	\$ 5,466.08	\$ 6,532.00	\$ 3,231.39	\$ 39,488.47	\$ 3,293.41	\$ 1,189.91	\$ 43,971.79
14300	Summit County - Ohio Building	1,072.00	1,072.00	\$ 22,159.00	\$ 20,400.00	\$ 5,466.08	\$ 6,532.00	\$ 1,034.80	\$ 35,651.88	\$ 3,609.08	\$ 1,181.65	\$ 40,442.61
22301	Summit County - Aut. Center	244.00	244.00	\$ 4,959.00	\$ 4,732.00				\$ 9,691.00	\$ 804.42	\$ 275.74	\$ 10,771.16
22400	Summit County - Veterans Services	41.00	41.00	\$ 844.19					\$ 844.19	\$ 123.42	\$ 48.19	\$ 1,015.80
Month Total Summit County Tariff		6,338.16	6,480.45	\$ 13,484.19	\$ 15,046.34	\$ 24,813.18	\$ 25,085.02	\$ 10,603.39	\$ 114,967.53	\$ 12,177.63	\$ 6,631.64	\$ 133,776.80

Cust. No.	Customer Name	Mar-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total Company Charge	Monthly Demand Charge	0.0408 Cross Receipts	Total Monthly Charge
		MWhs	Demand	MWhs @ 20.59	MWhs @ 19.40	MWhs @ 18.32	MWhs @ 16.63	MWhs @ 14.65		\$ 33.66		
5651	Summit County Welfare	134.22	230.99	\$ 2,759.00	\$ 449.87				\$ 3,208.87	\$ 647.55	\$ 158.10	\$ 3,915.00
5750	Summit County Welfare	275.00	311.00	\$ 5,659.00	\$ 5,950.00				\$ 11,609.00	\$ 571.36	\$ 215.00	\$ 12,395.36
7800	Summit County Courthouse	365.48	479.38	\$ 7,559.00	\$ 9,300.00	\$ 1,193.05			\$ 18,052.05	\$ 1,244.06	\$ 492.34	\$ 19,788.45
7900	Summit County Courthouse	886.72	928.84	\$ 18,359.00	\$ 18,000.00	\$ 5,466.08	\$ 3,497.04		\$ 35,322.12	\$ 2,680.12	\$ 871.34	\$ 38,873.58
7950	Summit County Safety Bldg.	1,217.04	1,561.50	\$ 25,059.00	\$ 30,000.00	\$ 5,466.08	\$ 6,532.00	\$ 4,658.41	\$ 46,655.49	\$ 4,780.18	\$ 1,349.36	\$ 52,785.03
9701	Summit County Welfare	134.00	179.00	\$ 2,759.00	\$ 3,480.40				\$ 6,239.40	\$ 281.18	\$ 169.39	\$ 6,690.00
9800	Summit County Welfare	181.00	255.00	\$ 3,719.00	\$ 4,940.00				\$ 8,659.00	\$ 799.43	\$ 340.32	\$ 9,800.75
9810	Summit County Welfare	671.42	1,142.75	\$ 13,859.00	\$ 22,000.00	\$ 5,466.08	\$ 1,254.23		\$ 22,579.31	\$ 3,293.41	\$ 1,117.45	\$ 27,030.17
14300	Summit County - Ohio Building	942.00	1,072.00	\$ 19,359.00	\$ 20,400.00	\$ 5,466.08	\$ 6,532.00		\$ 31,757.08	\$ 3,609.08	\$ 1,217.45	\$ 36,583.61
22301	Summit County - Aut. Center	281.00	244.00	\$ 5,799.00	\$ 4,732.00				\$ 10,531.00	\$ 804.42	\$ 234.28	\$ 11,569.70
22400	Summit County - Veterans Services	21.00	41.00	\$ 432.39					\$ 432.39	\$ 123.42	\$ 28.73	\$ 584.54
Month Total Summit County Tariff		4,988.82	6,480.45	\$ 11,061.37	\$ 25,908.27	\$ 23,097.09	\$ 17,433.33	\$ 4,658.41	\$ 92,805.25	\$ 12,177.63	\$ 5,491.64	\$ 110,574.52

**AKRON THERMAL, L.P.  
ACTUAL 2008 SUMMIT COUNTY REVENUE**

Cust. No.	Customer Name	Apr-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total Company Charge	Monthly Demand Charge	0.0408 Credit Receipts	Total Monthly Charge
		MBs	Demand	MBs @ 20.59	MBs @ 10.40	MBs @ 18.32	MBs @ 16.53	MBs @ 14.65				
5651	Summit County Welfare	11.55	230.99	\$ 237.81	-	-	-	-	\$ 237.81	\$ 647.35	\$ 44.11	\$ 229.85
5750	Summit County Welfare	167.00	311.00	2,059.00	1,299.80	-	-	-	3,358.80	872.36	210.71	4,441.87
7800	Summit County Courthouse	327.21	479.38	2,059.00	3,880.80	492.77	-	-	6,434.77	1,344.66	287.43	8,166.85
7900	Summit County Courthouse	499.74	929.81	2,059.00	3,880.80	3,639.26	-	-	9,579.26	2,608.12	606.96	12,793.24
7950	Summit County Safety Bldg	896.00	1,561.56	2,059.00	3,880.80	5,466.00	4,849.23	-	16,294.23	4,380.18	1,029.59	21,703.99
9701	Summit County Welfare	117.00	179.00	2,059.00	329.80	-	-	-	2,388.80	302.16	145.97	3,094.87
9800	Summit County Welfare	269.00	285.00	2,059.00	3,278.40	-	-	-	5,337.40	799.43	305.62	6,442.05
9850	Summit County Welfare	372.82	1,142.75	2,059.00	3,880.80	1,326.76	-	-	7,265.76	3,205.41	521.47	10,992.64
14000	Summit County - Ohio Building	421.00	1,072.94	2,059.00	3,880.80	2,206.62	-	-	8,143.62	3,069.68	555.43	11,768.73
23301	Summit County - Aut. Center	109.00	244.00	2,059.00	174.40	-	-	-	2,233.40	684.42	145.32	3,063.14
23400	Summit County - Veterans Services	5.00	44.00	123.54	-	-	-	-	123.54	123.42	12.80	259.26
Month Total Summit County Tariff		3,194.32	6,480.43	\$ 15,899.35	\$ 24,488.80	\$ 13,332.45	\$ 4,899.23	\$ -	\$ 41,399.30	\$ 18,177.63	\$ 3,962.82	\$ 63,537.25

Cust. No.	Customer Name	May-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total Company Charge	Monthly Demand Charge	0.0408 Credit Receipts	Total Monthly Charge
		MBs	Demand	MBs @ 20.59	MBs @ 10.40	MBs @ 18.32	MBs @ 16.53	MBs @ 14.65				
5651	Summit County Welfare	6.49	230.99	\$ 133.43	-	-	-	-	\$ 133.43	\$ 647.35	\$ 38.32	\$ 320.48
5750	Summit County Welfare	-	311.00	-	-	-	-	-	-	872.36	43.44	\$ 915.80
7800	Summit County Courthouse	230.89	479.38	2,059.00	2,339.27	-	-	-	4,398.27	1,344.66	205.96	6,218.89
7900	Summit County Courthouse	257.05	929.81	2,059.00	3,046.77	-	-	-	5,105.77	2,608.12	384.15	8,098.04
7950	Summit County Safety Bldg	146.25	1,561.56	2,059.00	910.83	-	-	-	2,969.83	4,380.18	368.03	7,718.04
9701	Summit County Welfare	115.00	179.00	2,059.00	194.00	-	-	-	2,253.00	302.16	137.20	2,692.36
9800	Summit County Welfare	132.00	285.00	2,059.00	332.80	-	-	-	2,391.80	799.43	153.94	3,245.17
9850	Summit County Welfare	431.58	1,142.75	2,059.00	3,892.00	2,903.95	-	-	8,842.95	3,205.41	575.11	12,123.47
14000	Summit County - Ohio Building	13.00	1,072.94	267.67	-	-	-	-	267.67	3,069.68	163.21	3,440.56
23301	Summit County - Aut. Center	46.00	244.00	947.14	-	-	-	-	947.14	684.42	81.25	1,712.81
23400	Summit County - Veterans Services	4.00	44.00	82.76	-	-	-	-	82.76	123.42	10.25	216.43
Month Total Summit County Tariff		1,358.32	6,480.43	\$ 15,784.80	\$ 10,808.87	\$ 3,803.95	\$ -	\$ -	\$ 30,397.62	\$ 18,177.63	\$ 2,148.46	\$ 47,493.51

Cust. No.	Customer Name	Jun-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total Company Charge	Monthly Demand Charge	0.0408 Credit Receipts	Total Monthly Charge
		MBs	Demand	MBs @ 20.59	MBs @ 10.40	MBs @ 18.32	MBs @ 16.53	MBs @ 14.65				
5651	Summit County Welfare	0.26	230.99	\$ 5.35	-	-	-	-	\$ 5.35	\$ 647.35	\$ 32.53	\$ 685.23
5750	Summit County Welfare	-	311.00	-	-	-	-	-	-	872.36	43.44	\$ 915.80
7800	Summit County Courthouse	139.54	479.38	2,852.80	767.08	-	-	-	3,619.88	1,344.66	287.78	4,378.44
7900	Summit County Courthouse	51.59	929.81	1,062.86	-	-	-	-	1,062.86	2,608.12	182.78	3,853.76
7950	Summit County Safety Bldg	170.18	1,561.56	2,852.80	1,361.49	-	-	-	4,214.29	4,380.18	380.47	8,189.14
9701	Summit County Welfare	-	179.00	-	-	-	-	-	-	302.16	13.08	\$ 315.24
9800	Summit County Welfare	13.00	285.00	267.67	-	-	-	-	267.67	799.43	53.16	1,120.26
9850	Summit County Welfare	62.97	1,142.75	1,296.55	-	-	-	-	1,296.55	3,205.41	324.28	4,726.24
14000	Summit County - Ohio Building	17.00	1,072.94	350.03	-	-	-	-	350.03	3,069.68	167.31	3,526.94
23301	Summit County - Aut. Center	19.00	244.00	391.21	-	-	-	-	391.21	684.42	53.57	1,129.20
23400	Summit County - Veterans Services	-	44.00	-	-	-	-	-	-	123.42	6.15	129.57
Month Total Summit County Tariff		478.34	6,480.43	\$ 7,401.85	\$ 2,138.57	\$ -	\$ -	\$ -	\$ 9,540.42	\$ 18,177.63	\$ 1,384.20	\$ 20,102.25

**AKRON THERMAL, LP  
ACTUAL 2008 SUMMIT COUNTY REVENUE**

Cust No.	Customer Name	July-08		First 100	Rest 200	Rest 300	Rest 400	Rest 1,000	Total Consump Charge	Monthly Demand Charge	0.0498 Gross Receipts	Total Monthly Charge
		MBtu	Demand	MBtu @ \$ 20.59	MBtu @ \$ 19.40	MBtu @ \$ 18.22	MBtu @ \$ 16.65	MBtu @ \$ 14.65				
5411	Summit County Welfare	-	230.99	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 447.99	\$ 12.27	\$ 460.26
5750	Summit County Welfare	-	311.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 722.35	\$ 43.44	\$ 765.79
7800	Summit County Courthouse	106.47	479.38	2,059.00	128.52	-	-	-	2,187.52	1,344.65	173.75	3,705.92
7800	Summit County Courthouse	1.25	929.81	27.80	-	-	-	-	27.80	2,608.12	121.27	2,757.19
7950	Summit County Safety Bldg.	107.44	1,561.56	2,059.00	144.34	-	-	-	2,203.34	4,380.18	327.46	6,911.38
9701	Summit County Welfare	-	179.00	-	-	-	-	-	-	502.10	23.00	525.10
9800	Summit County Welfare	-	285.00	-	-	-	-	-	-	799.43	39.61	839.04
9800	Summit County Welfare	9.04	1,142.75	186.55	-	-	-	-	186.55	3,205.41	148.02	3,540.08
14300	Summit County - Ohio Building	14.00	1,072.94	288.56	-	-	-	-	288.56	3,809.60	164.23	4,262.39
22901	Summit County - Art Center	4.00	244.00	82.36	-	-	-	-	82.36	684.42	34.19	748.57
22400	Summit County - Veterans Services	-	44.00	-	-	-	-	-	-	123.42	6.15	129.57
Month Total Summit County Total		242.31	6,480.43	\$ 4,792.97	\$ 269.86	\$ -	\$ -	\$ -	\$ 4792.97	\$ 18,177.63	\$ 1,328.20	\$ 34,280.35

Cust No.	Customer Name	Aug-08		First 100	Rest 200	Rest 300	Rest 400	Rest 1,000	Total Consump Charge	Monthly Demand Charge	0.0498 Gross Receipts	Total Monthly Charge
		MBtu	Demand	MBtu @ \$ 20.59	MBtu @ \$ 19.40	MBtu @ \$ 18.22	MBtu @ \$ 16.65	MBtu @ \$ 14.65				
5411	Summit County Welfare	-	230.99	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 447.99	\$ 12.27	\$ 460.26
5750	Summit County Welfare	-	311.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 722.35	\$ 43.44	\$ 765.79
7800	Summit County Courthouse	131.39	479.38	2,059.00	608.97	-	-	-	2,667.97	1,344.65	199.83	4,212.45
7900	Summit County Courthouse	-	929.81	-	-	-	-	-	-	2,608.12	129.88	2,738.00
7950	Summit County Safety Bldg.	9.18	1,561.56	2.86	-	-	-	-	2.86	4,380.18	218.34	4,600.48
9701	Summit County Welfare	-	179.00	-	-	-	-	-	-	502.10	23.00	525.10
9800	Summit County Welfare	-	285.00	-	-	-	-	-	-	799.43	39.61	839.04
9800	Summit County Welfare	71.57	1,142.75	1,478.65	-	-	-	-	1,478.65	3,205.41	231.02	4,912.08
14300	Summit County - Ohio Building	11.00	1,072.94	226.55	-	-	-	-	226.55	3,809.60	165.26	4,201.71
22901	Summit County - Art Center	1.06	244.00	21.59	-	-	-	-	21.59	684.42	33.11	740.12
22400	Summit County - Veterans Services	-	44.00	-	-	-	-	-	-	123.42	6.15	129.57
Month Total Summit County Total		219.05	6,480.43	\$ 3,864.15	\$ 608.97	\$ -	\$ -	\$ -	\$ 4,473.12	\$ 18,177.63	\$ 1,328.81	\$ 34,788.74

Cust No.	Customer Name	Sep-08		First 100	Rest 200	Rest 300	Rest 400	Rest 1,000	Total Consump Charge	Monthly Demand Charge	0.0498 Gross Receipts	Total Monthly Charge
		MBtu	Demand	MBtu @ \$ 20.59	MBtu @ \$ 19.40	MBtu @ \$ 18.22	MBtu @ \$ 16.65	MBtu @ \$ 14.65				
5411	Summit County Welfare	-	230.99	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 447.99	\$ 12.27	\$ 460.26
5750	Summit County Welfare	-	311.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 722.35	\$ 43.44	\$ 765.79
7800	Summit County Courthouse	208.65	479.38	2,059.00	2,080.21	-	-	-	4,239.21	1,344.65	270.61	5,704.48
7900	Summit County Courthouse	-	929.81	-	-	-	-	-	-	2,608.12	129.88	2,738.00
7950	Summit County Safety Bldg.	13.54	1,561.56	278.79	-	-	-	-	278.79	4,380.18	232.02	4,890.99
9701	Summit County Welfare	-	179.00	-	-	-	-	-	-	502.10	23.00	525.10
9800	Summit County Welfare	-	285.00	-	-	-	-	-	-	799.43	39.61	839.04
9800	Summit County Welfare	452.55	1,142.75	2,859.90	3,880.00	1,779.44	-	-	8,719.44	3,205.41	599.81	12,517.66
14300	Summit County - Ohio Building	14.00	1,072.94	288.56	-	-	-	-	288.56	3,809.60	164.23	4,262.39
22901	Summit County - Art Center	6.00	244.00	123.54	-	-	-	-	123.54	684.42	40.34	848.30
22400	Summit County - Veterans Services	-	44.00	-	-	-	-	-	-	123.42	6.15	129.57
Month Total Summit County Total		680.34	6,480.43	\$ 4,906.59	\$ 5,910.21	\$ 1,779.44	\$ -	\$ -	\$ 12,606.35	\$ 18,177.63	\$ 1,577.46	\$ 33,353.35

**AKRON THERMAL, LP  
ACTUAL 2008 SUMMIT COUNTY REVENUE**

Cust. No.	Customer Name	Dec-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total	Monthly	0.0408	Total
		Mbs	Demand	Mbs @ 20.59	Mbs @ 19.40	Mbs @ 18.22	Mbs @ 16.63	Mbs @ 14.65	Consump Charge	Demand Charge 33.66	Gross Receipts	Monthly Charge
5051	Summit County Welfare	12.59	230.99	\$ 2,059.00	\$ -	\$ -	\$ -	\$ -	\$ 259.23	\$ 477.93	\$ 45.18	\$ 928.34
5750	Summit County Welfare	-	311.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 772.34	\$ 42.64	\$ 945.60
7900	Summit County Courthouse	227.45	479.98	\$ 2,059.00	\$ 3,084.13	\$ -	\$ -	\$ -	\$ 4,143.53	\$ 1,344.44	\$ 273.53	\$ 5,761.50
7900	Summit County Courthouse	227.15	929.81	\$ 2,059.00	\$ 2,358.59	\$ -	\$ -	\$ -	\$ 4,409.50	\$ 2,608.12	\$ 349.49	\$ 7,367.10
7950	Summit County Safety Bldg.	232.56	1,561.56	\$ 2,059.00	\$ 2,059.00	\$ -	\$ -	\$ -	\$ 3,018.66	\$ 4,388.18	\$ 408.05	\$ 5,866.90
9701	Summit County Welfare	24.00	179.09	\$ 494.14	\$ -	\$ -	\$ -	\$ -	\$ 494.14	\$ 502.10	\$ 60.63	\$ 1,045.67
9800	Summit County Welfare	127.00	285.00	\$ 2,059.00	\$ 521.00	\$ -	\$ -	\$ -	\$ 2,580.00	\$ 799.43	\$ 168.44	\$ 3,550.69
9850	Summit County Welfare	793.88	1,142.75	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 1,224.22	\$ -	\$ 11,629.22	\$ 3,205.41	\$ 688.16	\$ 18,722.79
14300	Summit County - Ohio Building	78.00	1,872.94	\$ 1,606.02	\$ -	\$ -	\$ -	\$ -	\$ 1,606.02	\$ 3,009.00	\$ 226.86	\$ 4,843.48
23301	Summit County - Art Center	53.00	344.00	\$ 1,091.27	\$ -	\$ -	\$ -	\$ -	\$ 1,091.27	\$ 694.42	\$ 98.49	\$ 1,864.12
27400	Summit County - Veterans Services	8.00	44.00	\$ 164.72	\$ -	\$ -	\$ -	\$ -	\$ 164.72	\$ 122.42	\$ 14.35	\$ 302.49
Month Total Summit County Total		1,771.64	6,480.43	\$ 15,016.20	\$ 11,786.69	\$ 5,466.00	\$ 8,334.22	\$ -	\$ 42,599.11	\$ 18,177.63	\$ 2,588.30	\$ 63,365.04

Cust. No.	Customer Name	Dec-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total	Monthly	0.0408	Total
		Mbs	Demand	Mbs @ 20.59	Mbs @ 19.40	Mbs @ 18.22	Mbs @ 16.63	Mbs @ 14.65	Consump Charge	Demand Charge 33.66	Gross Receipts	Monthly Charge
5051	Summit County Welfare	123.27	230.99	\$ 2,059.00	\$ 1,889.44	\$ -	\$ -	\$ -	\$ 3,948.44	\$ 477.93	\$ 224.92	\$ 4,241.29
5750	Summit County Welfare	221.00	311.00	\$ 2,059.00	\$ 2,347.40	\$ -	\$ -	\$ -	\$ 4,406.40	\$ 772.34	\$ 242.88	\$ 5,541.64
7900	Summit County Courthouse	564.09	479.98	\$ 2,059.00	\$ 3,880.00	\$ 1,167.72	\$ -	\$ -	\$ 7,104.72	\$ 1,344.44	\$ 430.88	\$ 8,972.26
7900	Summit County Courthouse	582.38	929.81	\$ 2,059.00	\$ 3,880.00	\$ 3,143.14	\$ -	\$ -	\$ 11,082.14	\$ 2,608.12	\$ 681.77	\$ 14,372.03
7950	Summit County Safety Bldg.	930.15	1,561.56	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 3,490.39	\$ -	\$ 16,995.39	\$ 4,388.18	\$ 1,053.52	\$ 22,335.89
9701	Summit County Welfare	123.00	179.09	\$ 2,059.00	\$ 446.30	\$ -	\$ -	\$ -	\$ 2,505.30	\$ 502.10	\$ 149.76	\$ 3,157.66
9800	Summit County Welfare	218.00	285.00	\$ 2,059.00	\$ 2,239.20	\$ -	\$ -	\$ -	\$ 4,298.20	\$ 799.43	\$ 256.35	\$ 5,093.98
9850	Summit County Welfare	1,175.51	1,142.75	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 2,568.29	\$ 20,655.29	\$ 3,205.41	\$ 1,186.77	\$ 25,047.47
14300	Summit County - Ohio Building	484.00	1,872.94	\$ 2,059.00	\$ 3,880.00	\$ 3,388.92	\$ -	\$ -	\$ 9,337.92	\$ 3,009.00	\$ 634.41	\$ 12,981.33
23301	Summit County - Art Center	129.00	344.00	\$ 2,059.00	\$ 562.00	\$ -	\$ -	\$ -	\$ 2,621.00	\$ 694.42	\$ 168.66	\$ 3,479.66
27400	Summit County - Veterans Services	33.00	44.00	\$ 679.47	\$ -	\$ -	\$ -	\$ -	\$ 679.47	\$ 122.42	\$ 39.98	\$ 842.87
Month Total Summit County Total		4,455.10	6,480.43	\$ 21,340.47	\$ 26,994.34	\$ 24,631.78	\$ 12,142.39	\$ 2,568.29	\$ 95,466.77	\$ 18,177.63	\$ 5,061.88	\$ 106,706.28

Cust. No.	Customer Name	Dec-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total	Monthly	0.0408	Total
		Mbs	Demand	Mbs @ 20.59	Mbs @ 19.40	Mbs @ 18.22	Mbs @ 16.63	Mbs @ 14.65	Consump Charge	Demand Charge 33.66	Gross Receipts	Monthly Charge
5051	Summit County Welfare	157.84	230.99	\$ 2,059.00	\$ 1,122.10	\$ -	\$ -	\$ -	\$ 3,181.10	\$ 477.93	\$ 190.49	\$ 4,019.72
5750	Summit County Welfare	265.00	311.00	\$ 2,059.00	\$ 2,361.00	\$ -	\$ -	\$ -	\$ 5,240.00	\$ 772.34	\$ 305.39	\$ 6,317.73
7900	Summit County Courthouse	1,041.79	1,041.79	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 612.22	\$ 18,609.22	\$ 2,022.82	\$ 1,073.25	\$ 22,696.69
7900	Summit County Courthouse	1,077.99	1,077.99	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 1,342.15	\$ 19,109.55	\$ 3,023.76	\$ 1,164.72	\$ 23,338.03
7950	Summit County Safety Bldg.	1,022.81	1,822.93	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 12,054.44	\$ 30,111.44	\$ 5,113.04	\$ 1,754.38	\$ 36,978.68
9701	Summit County Welfare	122.00	179.09	\$ 2,059.00	\$ 446.30	\$ -	\$ -	\$ -	\$ 2,505.30	\$ 502.10	\$ 149.76	\$ 3,157.66
9800	Summit County Welfare	256.00	285.00	\$ 2,059.00	\$ 3,026.40	\$ -	\$ -	\$ -	\$ 5,085.40	\$ 799.43	\$ 293.65	\$ 6,177.69
9850	Summit County Welfare	1,102.13	1,142.75	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 1,494.50	\$ 19,553.50	\$ 3,205.41	\$ 1,333.39	\$ 23,892.30
14300	Summit County - Ohio Building	1,297.00	1,297.00	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 4,251.00	\$ 22,406.00	\$ 3,618.09	\$ 1,297.10	\$ 27,303.89
23301	Summit County - Art Center	265.00	344.00	\$ 2,059.00	\$ 2,278.64	\$ -	\$ -	\$ -	\$ 5,337.60	\$ 754.55	\$ 303.39	\$ 6,395.54
27400	Summit County - Veterans Services	34.00	44.00	\$ 1,111.86	\$ -	\$ -	\$ -	\$ -	\$ 1,111.86	\$ 134.64	\$ 62.08	\$ 1,308.58
Month Total Summit County Total		7,466.00	7,785.33	\$ 21,701.26	\$ 38,494.30	\$ 21,950.00	\$ 33,260.00	\$ 19,656.78	\$ 131,415.54	\$ 21,613.50	\$ 5,671.01	\$ 181,707.46

GRAND TOTAL - 2008		38,151.57							\$ 782,857.33	\$ 225,672.72	\$ 46,330.80	\$ 954,760.87
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**AKRON THERMAL, LP**  
**PROFORMA SUMMIT COUNTY 2008 REVENUE WITH PROPOSED DEMAND SURCHARGE**

Cust No.	Customer Name	Jan-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total	Monthly	00-09	Total
		MBs	Demand	MBs @ 20.59	MBs @ 19.40	MBs @ 18.32	MBs @ 16.58	MBs @ 14.65	Consump Charge	Charge 115.15	Gross Receipts	Monthly Charge
5651	Summit County Welfare	305.84	205.84	\$ 2,059.00	\$ 2,018.10	\$ -	\$ -	\$ -	\$ 4,112.30	\$ 1,973.21	\$ 383.16	\$ 6,398.67
5750	Summit County Welfare	311.00	330.00	\$ 2,059.00	\$ 2,080.00	\$ 280.42	\$ -	\$ -	\$ 6,139.42	\$ 2,252.99	\$ 467.74	\$ 9,860.15
7800	Summit County Courthouse	536.78	607.28	\$ 2,059.00	\$ 3,880.00	\$ 4,677.07	\$ -	\$ -	\$ 10,616.07	\$ 5,827.95	\$ 818.88	\$ 17,262.31
7900	Summit County Courthouse	1,079.78	964.04	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 1,168.78	\$ 19,225.78	\$ 9,250.77	\$ 1,418.13	\$ 29,894.68
7910	Summit County Safety Bldg	1,813.42	3,119.82	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 11,916.00	\$ 29,973.00	\$ 20,348.44	\$ 2,505.09	\$ 52,826.73
9701	Summit County Welfare	179.00	180.00	\$ 2,059.00	\$ 1,532.00	\$ -	\$ -	\$ -	\$ 3,591.00	\$ 1,727.25	\$ 244.89	\$ 5,563.14
9800	Summit County Welfare	245.04	421.00	\$ 2,059.00	\$ 3,585.00	\$ -	\$ -	\$ -	\$ 5,644.00	\$ 4,899.85	\$ 482.45	\$ 10,179.30
9810	Summit County Welfare	248.11	1,180.00	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,128.32	\$ -	\$ 17,539.32	\$ 11,328.68	\$ 1,437.05	\$ 30,299.45
14300	Summit County - Ohio Building	1,246.00	1,563.00	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 3,603.00	\$ 21,660.00	\$ 14,928.20	\$ 1,822.63	\$ 38,494.82
23301	Summit County - Air Center	237.00	318.00	\$ 2,059.00	\$ 3,043.80	\$ -	\$ -	\$ -	\$ 5,102.80	\$ 3,961.07	\$ 486.66	\$ 8,772.73
23400	Summit County - Vehicle Services	44.00	45.00	\$ 265.96	\$ -	\$ -	\$ -	\$ -	\$ 905.96	\$ 431.81	\$ 66.62	\$ 1,404.39
Month Total Summit County Tariff		6,946.25	7,943.98	\$ 21,498.96	\$ 33,900.70	\$ 26,741.49	\$ 26,084.32	\$ 16,489.28	\$ 154,911.75	\$ 76,229.12	\$ 9,996.88	\$ 230,207.76

Cust No.	Customer Name	Feb-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total	Monthly	00-09	Total
		MBs	Demand	MBs @ 20.59	MBs @ 19.40	MBs @ 18.32	MBs @ 16.58	MBs @ 14.65	Consump Charge	Charge 115.15	Gross Receipts	Monthly Charge
5651	Summit County Welfare	238.44	230.99	\$ 2,059.00	\$ 2,483.74	\$ -	\$ -	\$ -	\$ 4,542.74	\$ 2,216.34	\$ 346.07	\$ 7,307.25
5750	Summit County Welfare	319.04	311.00	\$ 2,059.00	\$ 3,880.00	\$ 346.18	\$ -	\$ -	\$ 6,285.18	\$ 2,984.30	\$ 461.62	\$ 9,731.10
7800	Summit County Courthouse	423.81	479.38	\$ 2,059.00	\$ 3,880.00	\$ 2,802.00	\$ -	\$ -	\$ 8,741.00	\$ 4,680.05	\$ 654.42	\$ 13,975.47
7900	Summit County Courthouse	900.42	929.87	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 5,129.00	\$ -	\$ 16,534.00	\$ 9,222.30	\$ 1,369.72	\$ 26,726.34
7910	Summit County Safety Bldg	1,472.58	1,261.55	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 6,923.30	\$ 24,986.30	\$ 14,984.47	\$ 1,990.25	\$ 41,952.02
9701	Summit County Welfare	154.00	179.00	\$ 2,059.00	\$ 1,066.40	\$ -	\$ -	\$ -	\$ 3,125.40	\$ 1,717.45	\$ 242.18	\$ 5,105.13
9800	Summit County Welfare	245.04	285.00	\$ 2,059.00	\$ 3,201.00	\$ -	\$ -	\$ -	\$ 5,260.00	\$ 2,734.81	\$ 398.14	\$ 8,392.95
9810	Summit County Welfare	1,179.61	1,142.75	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 2,631.39	\$ 20,688.39	\$ 10,963.64	\$ 1,774.19	\$ 33,526.10
14300	Summit County - Ohio Building	1,072.09	1,072.54	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 1,054.00	\$ 19,111.00	\$ 10,208.75	\$ 1,464.50	\$ 30,872.93
23301	Summit County - Air Center	244.00	244.00	\$ 2,059.00	\$ 2,791.00	\$ -	\$ -	\$ -	\$ 4,850.00	\$ 2,341.38	\$ 358.26	\$ 7,532.24
23400	Summit County - Vehicle Services	41.00	44.00	\$ 244.19	\$ -	\$ -	\$ -	\$ -	\$ 944.19	\$ 432.22	\$ 65.07	\$ 1,521.48
Month Total Summit County Tariff		6,308.86	6,490.45	\$ 21,498.19	\$ 33,948.74	\$ 24,912.38	\$ 25,083.08	\$ 10,489.39	\$ 114,907.58	\$ 62,185.11	\$ 8,553.38	\$ 185,244.83

Cust No.	Customer Name	Mar-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total	Monthly	00-09	Total
		MBs	Demand	MBs @ 20.59	MBs @ 19.40	MBs @ 18.32	MBs @ 16.58	MBs @ 14.65	Consump Charge	Charge 115.15	Gross Receipts	Monthly Charge
5651	Summit County Welfare	124.22	230.99	\$ 2,059.00	\$ 460.07	\$ -	\$ -	\$ -	\$ 2,519.07	\$ 2,216.34	\$ 334.33	\$ 4,941.73
5750	Summit County Welfare	275.00	311.00	\$ 2,059.00	\$ 3,195.00	\$ -	\$ -	\$ -	\$ 5,254.00	\$ 2,984.30	\$ 420.23	\$ 8,658.53
7800	Summit County Courthouse	345.48	479.38	\$ 2,059.00	\$ 3,880.00	\$ 1,193.05	\$ -	\$ -	\$ 7,132.05	\$ 4,680.05	\$ 584.28	\$ 12,416.36
7900	Summit County Courthouse	809.72	928.01	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 3,487.04	\$ -	\$ 14,998.04	\$ 9,222.30	\$ 1,195.99	\$ 25,606.92
7910	Summit County Safety Bldg	1,217.94	1,261.55	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,652.00	\$ 4,658.41	\$ 22,715.41	\$ 14,984.47	\$ 1,877.45	\$ 39,577.33
9701	Summit County Welfare	134.00	179.00	\$ 2,059.00	\$ 459.40	\$ -	\$ -	\$ -	\$ 2,518.40	\$ 1,717.45	\$ 228.93	\$ 4,657.18
9800	Summit County Welfare	100.00	285.00	\$ 2,059.00	\$ 18.40	\$ -	\$ -	\$ -	\$ 2,077.40	\$ 2,734.81	\$ 339.70	\$ 5,092.91
9810	Summit County Welfare	675.42	1,142.75	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 1,254.25	\$ -	\$ 12,659.25	\$ 10,963.64	\$ 1,774.50	\$ 24,901.39
14300	Summit County - Ohio Building	246.00	1,072.54	\$ 2,059.00	\$ 3,880.00	\$ 5,466.00	\$ 6,020.00	\$ -	\$ 17,425.00	\$ 10,208.75	\$ 1,308.50	\$ 29,141.31
23301	Summit County - Air Center	240.00	244.00	\$ 2,059.00	\$ 1,938.40	\$ -	\$ -	\$ -	\$ 4,018.40	\$ 2,341.38	\$ 316.72	\$ 6,676.50
23400	Summit County - Vehicle Services	23.00	44.00	\$ 475.57	\$ -	\$ -	\$ -	\$ -	\$ 475.57	\$ 432.22	\$ 44.41	\$ 940.40
Month Total Summit County Tariff		4,988.82	6,490.45	\$ 21,063.57	\$ 25,098.37	\$ 23,067.08	\$ 17,423.08	\$ 4,658.41	\$ 92,896.23	\$ 62,185.11	\$ 7,882.22	\$ 164,244.56

**AKRON THERMAL, LP**  
**PROFORMA SUMMIT COUNTY 2008 REVENUE WITH PROPOSED DEMAND SURCHARGE**

Cust. No.	Customer Name	Apr-08		First	Next	Next	Next	Next	Total	Monthly	0.0498 Gross Receipts	Total Monthly Charge
		Mbs	Demand	100 Mbs @ 20.50	200 Mbs @ 18.40	300 Mbs @ 18.22	400 Mbs @ 16.63	1,000 Mbs @ 14.65		Demand Charge 115.15		
5451	Summit County Welfare	11.53	230.59	\$ 237.81	\$ -	\$ -	\$ -	\$ -	\$ 237.81	\$ 2,210.54	\$ 122.23	\$ 2,574.58
5750	Summit County Welfare	167.00	311.00	2,059.00	1,329.00	-	-	-	3,388.00	2,984.30	315.89	6,658.99
7800	Summit County Courthouse	227.21	479.38	2,059.00	3,880.00	495.77	-	-	6,434.77	4,603.05	540.59	11,584.35
7900	Summit County Courthouse	459.74	929.81	2,059.00	3,880.00	1,619.26	-	-	9,578.26	8,922.30	921.33	19,421.89
7950	Summit County Safety Bldg.	694.00	1,361.56	2,059.00	3,880.00	5,466.00	4,889.22	-	16,294.22	14,984.47	1,537.48	32,834.37
9701	Summit County Welfare	117.00	179.00	2,059.00	329.00	-	-	-	2,388.00	1,717.65	204.30	4,310.95
9800	Summit County Welfare	269.00	385.00	2,059.00	3,278.00	-	-	-	5,337.00	2,734.81	402.61	8,474.42
9850	Summit County Welfare	372.82	1,142.75	2,059.00	3,880.00	1,316.76	-	-	7,263.76	10,965.64	507.92	18,197.34
14300	Summit County - Ohio Building	421.00	1,072.94	2,059.00	3,880.00	2,204.42	-	-	8,143.42	10,255.75	312.28	18,357.65
23301	Summit County - Art Center	189.00	344.00	2,059.00	174.00	-	-	-	2,233.00	2,341.38	227.85	4,802.81
27400	Summit County - Veterans Services	4.00	44.00	125.34	-	-	-	-	125.34	422.22	27.18	572.34
Month Total Summit County Tariff		3,334.33	6,480.43	\$ 18,692.35	\$ 24,482.00	\$ 13,132.45	\$ 4,889.22	\$ -	\$ 41,394.90	\$ 42,188.11	\$ 4,514.38	\$ 128,742.39

Cust. No.	Customer Name	May-08		First	Next	Next	Next	Next	Total	Monthly	0.0498 Gross Receipts	Total Monthly Charge
		Mbs	Demand	100 Mbs @ 20.50	200 Mbs @ 18.40	300 Mbs @ 18.22	400 Mbs @ 16.63	1,000 Mbs @ 14.65		Demand Charge 115.15		
5451	Summit County Welfare	6.49	230.59	\$ 133.63	\$ -	\$ -	\$ -	\$ -	\$ 133.63	\$ 2,210.54	\$ 117.04	\$ 2,467.21
5750	Summit County Welfare	-	311.00	-	-	-	-	-	-	2,984.30	148.42	3,132.92
7800	Summit County Courthouse	230.89	479.38	2,059.00	2,532.37	-	-	-	4,591.37	4,603.05	458.08	9,656.49
7900	Summit County Courthouse	257.65	929.81	2,059.00	3,046.77	-	-	-	5,105.77	8,922.30	498.68	14,726.75
7950	Summit County Safety Bldg.	146.55	1,361.56	2,059.00	910.88	-	-	-	2,969.88	14,984.47	894.12	18,848.47
9701	Summit County Welfare	110.00	179.00	2,059.00	104.00	-	-	-	2,233.00	1,717.65	197.74	4,148.39
9800	Summit County Welfare	112.00	385.00	2,059.00	292.00	-	-	-	2,351.00	2,734.81	258.33	5,274.94
9850	Summit County Welfare	431.94	1,142.75	2,059.00	3,880.00	2,403.95	-	-	8,342.95	10,965.64	961.57	20,270.16
14300	Summit County - Ohio Building	13.00	1,072.94	267.67	-	-	-	-	267.67	10,255.75	526.06	11,059.48
23301	Summit County - Art Center	44.00	344.00	947.14	-	-	-	-	947.14	2,341.38	143.77	3,432.29
27400	Summit County - Veterans Services	4.00	44.00	80.36	-	-	-	-	80.36	422.22	23.13	525.71
Month Total Summit County Tariff		1,368.32	6,480.43	\$ 13,794.00	\$ 10,893.57	\$ 2,403.95	\$ -	\$ -	\$ 26,991.52	\$ 42,188.11	\$ 4,441.60	\$ 93,613.89

Cust. No.	Customer Name	Jun-08		First	Next	Next	Next	Next	Total	Monthly	0.0498 Gross Receipts	Total Monthly Charge
		Mbs	Demand	100 Mbs @ 20.50	200 Mbs @ 18.40	300 Mbs @ 18.22	400 Mbs @ 16.63	1,000 Mbs @ 14.65		Demand Charge 115.15		
5451	Summit County Welfare	0.28	230.59	\$ 5.73	\$ -	\$ -	\$ -	\$ -	\$ 5.73	\$ 2,210.54	\$ 110.43	\$ 2,322.34
5750	Summit County Welfare	-	311.00	-	-	-	-	-	-	2,984.30	148.42	3,132.92
7800	Summit County Courthouse	139.54	479.38	2,059.00	767.08	-	-	-	2,826.08	4,603.05	389.42	7,795.55
7900	Summit County Courthouse	11.59	929.81	1,062.24	-	-	-	-	1,062.24	8,922.30	497.25	10,481.77
7950	Summit County Safety Bldg.	170.18	1,361.56	2,059.00	1,361.42	-	-	-	3,420.42	14,984.47	914.57	19,321.57
9701	Summit County Welfare	-	179.00	-	-	-	-	-	-	1,717.65	85.54	1,803.19
9800	Summit County Welfare	13.00	385.00	267.67	-	-	-	-	267.67	2,734.81	149.52	3,152.00
9850	Summit County Welfare	62.97	1,142.75	1,296.55	-	-	-	-	1,296.55	10,965.64	610.66	12,872.85
14300	Summit County - Ohio Building	17.00	1,072.94	358.03	-	-	-	-	358.03	10,255.75	530.16	11,175.94
23301	Summit County - Art Center	19.00	344.00	391.21	-	-	-	-	391.21	2,341.38	136.08	2,868.67
27400	Summit County - Veterans Services	-	44.00	-	-	-	-	-	-	422.22	21.03	443.25
Month Total Summit County Tariff		473.34	6,480.43	\$ 7,691.86	\$ 2,128.57	\$ -	\$ -	\$ -	\$ 9,819.63	\$ 42,188.11	\$ 3,975.88	\$ 95,383.61

**AKRON THERMAL, LP**  
**PROFORMA SUMMIT COUNTY 2008 REVENUE WITH PROPOSED DEMAND SURCHARGE**

Cust. No.	Customer Name	July 08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total	Monthly	0.0408	Total
		Mbs	Demand	Mbs @ \$20.59	Mbs @ \$9.40	Mbs @ \$8.22	Mbs @ \$6.63	Mbs @ \$4.65	Consump. Charge	Demand Charge \$115.15	Cross Receipts	Monthly Charge
5651	Summit County Welfare	-	230.99	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,316.54	\$ 110.38	\$ 2,326.92
5750	Summit County Welfare	-	311.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,984.30	\$ 146.62	\$ 3,130.92
7800	Summit County Courthouse	106.47	479.38	2,059.00	125.52	-	-	-	2,184.52	4,600.05	337.87	7,122.44
7900	Summit County Courthouse	1.35	929.81	27.80	-	-	-	-	27.80	9,922.30	441.71	9,393.81
7950	Summit County Safety Bldg.	107.44	1,561.56	2,059.00	144.34	-	-	-	2,203.34	14,994.47	855.95	19,843.76
9701	Summit County Welfare	-	179.00	-	-	-	-	-	-	1,717.65	\$5.54	1,803.19
9800	Summit County Welfare	-	285.00	-	-	-	-	-	-	2,734.81	\$36.19	2,871.00
9850	Summit County Welfare	9.04	1,142.75	186.55	-	-	-	-	186.55	10,965.64	\$53.38	11,707.57
14300	Summit County - Ohio Building	14.00	1,072.94	288.26	-	-	-	-	288.26	10,295.75	\$27.06	11,111.09
23301	Summit County - Art Center	4.00	244.00	82.56	-	-	-	-	82.56	2,341.38	\$28.76	2,344.44
27400	Summit County - Veterans Services	-	44.00	-	-	-	-	-	-	422.32	\$1.03	443.25
Month Total Summit County Tariff		342.32	6,488.43	\$ 4,702.97	\$ 289.92	\$ -	\$ -	\$ -	\$ 4,972.89	\$ 62,185.11	\$ 3,344.45	\$ 70,502.39

Cust. No.	Customer Name	Aug 08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total	Monthly	0.0408	Total
		Mbs	Demand	Mbs @ \$20.59	Mbs @ \$9.40	Mbs @ \$8.22	Mbs @ \$6.63	Mbs @ \$4.65	Consump. Charge	Demand Charge \$115.15	Cross Receipts	Monthly Charge
5651	Summit County Welfare	-	230.99	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,316.54	\$ 110.38	\$ 2,326.92
5750	Summit County Welfare	-	311.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,984.30	\$ 146.62	\$ 3,130.92
7800	Summit County Courthouse	131.39	479.38	2,059.00	608.77	-	-	-	2,667.77	4,600.05	\$61.95	7,329.97
7900	Summit County Courthouse	-	929.81	-	-	-	-	-	-	9,922.30	444.39	9,366.69
7950	Summit County Safety Bldg.	81.0	1,561.56	2.06	-	-	-	-	2.06	14,994.47	746.35	15,732.88
9701	Summit County Welfare	-	179.00	-	-	-	-	-	-	1,717.65	\$5.54	1,803.19
9800	Summit County Welfare	-	285.00	-	-	-	-	-	-	2,734.81	\$36.19	2,871.00
9850	Summit County Welfare	71.57	1,142.75	1,473.63	-	-	-	-	1,473.63	10,965.64	\$179.46	13,058.75
14300	Summit County - Ohio Building	15.00	1,072.94	108.85	-	-	-	-	108.85	10,295.75	\$28.11	11,132.71
23301	Summit County - Art Center	1.00	244.00	20.59	-	-	-	-	20.59	2,341.38	\$17.63	2,479.60
27400	Summit County - Veterans Services	-	44.00	-	-	-	-	-	-	422.32	\$1.03	443.25
Month Total Summit County Tariff		219.06	6,480.45	\$ 3,864.15	\$ 688.99	\$ -	\$ -	\$ -	\$ 4,553.10	\$ 62,185.11	\$ 3,319.50	\$ 69,977.80

Cust. No.	Customer Name	Sep 08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total	Monthly	0.0408	Total
		Mbs	Demand	Mbs @ \$20.59	Mbs @ \$9.40	Mbs @ \$8.22	Mbs @ \$6.63	Mbs @ \$4.65	Consump. Charge	Demand Charge \$115.15	Cross Receipts	Monthly Charge
5651	Summit County Welfare	-	230.99	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,316.54	\$ 110.38	\$ 2,326.92
5750	Summit County Welfare	-	311.00	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 2,984.30	\$ 146.62	\$ 3,130.92
7800	Summit County Courthouse	204.45	479.38	2,059.00	2,030.21	-	-	-	4,089.21	4,600.05	\$32.73	9,121.99
7900	Summit County Courthouse	-	929.81	-	-	-	-	-	-	9,922.30	444.39	9,366.69
7950	Summit County Safety Bldg.	13.54	1,561.56	378.79	-	-	-	-	378.79	14,994.47	798.11	16,023.37
9701	Summit County Welfare	-	179.00	-	-	-	-	-	-	1,717.65	\$5.54	1,803.19
9800	Summit County Welfare	-	285.00	-	-	-	-	-	-	2,734.81	\$36.19	2,871.00
9850	Summit County Welfare	452.55	1,142.75	2,059.00	3,880.00	2,778.46	-	-	8,717.46	10,965.64	\$98.27	20,644.97
14300	Summit County - Ohio Building	14.00	1,072.94	288.26	-	-	-	-	288.26	10,295.75	\$27.06	11,111.09
23301	Summit County - Art Center	6.00	244.00	123.54	-	-	-	-	123.54	2,341.38	\$22.75	2,387.67
27400	Summit County - Veterans Services	-	44.00	-	-	-	-	-	-	422.32	\$1.03	443.25
Month Total Summit County Tariff		690.54	6,480.45	\$ 4,888.39	\$ 5,910.21	\$ 2,778.46	\$ -	\$ -	\$ 13,496.36	\$ 62,185.11	\$ 3,349.03	\$ 79,421.40

**AKRON THERMAL, LP**  
**PROFORMA SUMMIT COUNTY 2008 REVENUE WITH PROPOSED DEMAND SURCHARGE**

Cust. No.	Customer Name	Oct-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total Consump. Charge	Monthly Demand Charge	0.0408 Gross Receipts	Total Monthly Charge
		MBs	Demand	MBs @ \$ 20.59	MBs @ 19.40	MBs @ 18.22	MBs @ 16.63	MBs @ 14.65		\$ 115.15		
5651	Summit County Welfare	12.59	230.59	\$ 259.23	\$ -	\$ -	\$ -	\$ -	\$ 259.23	\$ 2,216.34	\$ 120.29	\$ 2,595.86
5750	Summit County Welfare	-	311.00	-	-	-	-	-	-	2,984.30	148.62	\$ 3,132.92
7800	Summit County Courthouse	207.45	479.38	2,059.00	2,084.53	-	-	-	4,143.53	4,600.05	431.43	\$ 9,175.01
7900	Summit County Courthouse	221.16	929.81	2,059.00	2,190.50	-	-	-	4,249.50	9,922.30	468.32	\$ 13,995.72
7950	Summit County Safety Bldg.	252.56	1,561.56	2,059.00	2,999.05	-	-	-	5,058.05	14,994.47	595.16	\$ 20,595.68
9701	Summit County Welfare	24.00	179.00	496.16	-	-	-	-	496.16	1,717.65	110.15	\$ 3,321.96
9800	Summit County Welfare	127.00	285.00	2,059.00	323.80	-	-	-	2,382.80	2,734.81	244.82	\$ 5,362.43
9850	Summit County Welfare	779.88	1,142.75	2,059.00	3,880.00	5,466.00	3,224.25	-	14,629.25	10,965.64	1,574.62	\$ 26,869.49
14300	Summit County - Civic Building	78.00	1,072.54	1,608.02	-	-	-	-	1,608.02	10,295.75	598.71	\$ 12,494.48
23301	Summit County - Art Center	53.00	244.00	1,091.27	-	-	-	-	1,091.27	2,341.38	170.35	\$ 3,603.00
27400	Summit County - Veterans Services	8.00	44.00	164.72	-	-	-	-	164.72	422.22	29.23	\$ 616.17
Month Total Summit County Tariff		1,777.64	6,480.43	\$ 13,910.40	\$ 11,708.40	\$ 5,466.00	\$ 3,224.25	\$ -	\$ 34,599.11	\$ 23,183.11	\$ 4,980.90	\$ 100,364.12

Cust. No.	Customer Name	Nov-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total Consump. Charge	Monthly Demand Charge	0.0408 Gross Receipts	Total Monthly Charge
		MBs	Demand	MBs @ \$ 20.59	MBs @ 19.40	MBs @ 18.22	MBs @ 16.63	MBs @ 14.65		\$ 115.15		
5651	Summit County Welfare	129.27	230.59	\$ 2,059.00	\$ 1,809.44	\$ -	\$ -	\$ -	\$ 3,868.44	\$ 2,216.34	\$ 383.03	\$ 6,388.01
5750	Summit County Welfare	221.00	311.00	2,059.00	2,147.40	-	-	-	4,206.40	2,984.30	268.06	\$ 7,558.76
7800	Summit County Courthouse	344.09	479.38	2,059.00	3,880.00	1,187.72	-	-	7,106.72	4,600.05	588.08	\$ 12,895.72
7900	Summit County Courthouse	582.28	929.81	2,059.00	3,880.00	3,143.14	-	-	11,982.14	9,922.30	594.22	\$ 21,899.66
7950	Summit County Safety Bldg.	930.15	1,561.56	2,059.00	3,880.00	5,466.00	5,498.35	-	14,909.35	14,994.47	1,597.02	\$ 33,467.48
9701	Summit County Welfare	123.00	179.00	2,059.00	446.80	-	-	-	2,505.80	1,717.65	210.78	\$ 4,433.15
9800	Summit County Welfare	218.00	285.00	2,059.00	2,299.20	-	-	-	4,358.20	2,734.81	326.73	\$ 7,419.74
9850	Summit County Welfare	1,173.31	1,142.75	2,059.00	3,880.00	5,466.00	6,652.00	2,568.29	20,625.29	10,965.64	1,573.23	\$ 33,164.16
14300	Summit County - Civic Building	486.00	1,072.54	2,059.00	3,880.00	3,788.92	-	-	9,727.92	10,295.75	877.26	\$ 20,900.93
23301	Summit County - Art Center	129.00	244.00	2,059.00	562.00	-	-	-	2,621.00	2,341.38	247.16	\$ 5,213.14
27400	Summit County - Veterans Services	57.00	44.00	879.47	-	-	-	-	879.47	422.22	34.44	\$ 1,336.13
Month Total Summit County Tariff		4,455.30	6,480.43	\$ 11,569.47	\$ 20,854.84	\$ 20,631.78	\$ 12,142.39	\$ 3,568.29	\$ 53,496.77	\$ 23,183.11	\$ 7,255.47	\$ 100,364.35

Cust. No.	Customer Name	Dec-08		First 100	Next 200	Next 300	Next 400	Next 1,000	Total Consump. Charge	Monthly Demand Charge	0.0408 Gross Receipts	Total Monthly Charge
		MBs	Demand	MBs @ \$ 20.59	MBs @ 19.40	MBs @ 18.22	MBs @ 16.63	MBs @ 14.65		\$ 115.15		
5651	Summit County Welfare	157.04	230.59	\$ 2,059.00	\$ 1,122.10	\$ -	\$ -	\$ -	\$ 3,181.10	\$ 2,216.34	\$ 268.30	\$ 5,665.44
5750	Summit County Welfare	243.00	311.00	2,059.00	3,201.00	-	-	-	5,260.00	2,984.30	410.37	\$ 8,654.67
7800	Summit County Courthouse	1,041.79	1,041.79	2,059.00	3,880.00	5,466.00	6,652.00	412.22	18,488.22	9,994.94	1,427.37	\$ 30,093.63
7900	Summit County Courthouse	1,077.59	1,077.59	2,059.00	3,880.00	5,466.00	6,652.00	1,143.55	19,199.55	10,344.21	1,471.28	\$ 31,015.04
7950	Summit County Safety Bldg.	1,821.85	1,822.83	2,059.00	5,880.00	5,466.00	6,652.00	12,074.46	30,111.46	17,491.57	2,370.60	\$ 49,973.66
9701	Summit County Welfare	123.00	179.00	2,059.00	446.20	-	-	-	2,505.20	1,717.65	210.38	\$ 4,633.15
9800	Summit County Welfare	236.00	285.00	2,059.00	3,026.40	-	-	-	5,085.40	2,734.81	380.45	\$ 8,200.66
9850	Summit County Welfare	1,102.15	1,142.75	2,059.00	3,880.00	5,466.00	6,652.00	1,495.50	19,553.50	10,965.64	1,519.05	\$ 32,038.99
14300	Summit County - Civic Building	1,297.00	1,297.00	2,059.00	3,880.00	5,466.00	6,652.00	4,351.85	22,408.05	12,443.80	1,755.72	\$ 36,607.57
23301	Summit County - Art Center	269.00	244.00	2,059.00	3,779.60	-	-	-	5,838.60	2,341.38	394.36	\$ 8,574.34
27400	Summit County - Veterans Services	54.00	44.00	1,111.86	-	-	-	-	1,111.86	440.40	78.31	\$ 1,630.57
Month Total Summit County Tariff		7,448.00	7,988.35	\$ 21,701.84	\$ 30,494.50	\$ 17,530.00	\$ 33,320.00	\$ 19,498.70	\$ 122,483.94	\$ 78,909.34	\$ 10,374.84	\$ 214,868.02

<b>GRAND TOTAL - 2008</b>		38,151.57		\$ 762,897.85	\$ 772,619.46	\$ 73,497.91	\$ 1,548,304.72					
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