

FILE

8

RECEIVED-DOCKETING DIV  
2009 JUN 15 PM 4:30

PUCO

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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  
)

**MOTION TO INTERVENE  
OF  
CANAL PLACE, LTD**

Pursuant to Ohio Revised Code ("R.C.") Section 4903.221 and Ohio Administrative Code ("OAC") Rule 4901-1-11, Canal Place, LTD ("Canal Place") hereby respectfully moves the Public Utilities Commission of Ohio for leave to intervene in this proceeding.<sup>1</sup> As set forth in the attached Memorandum in Support, Canal Place submits that it has a real and substantial interest in this proceeding, that it is so situated that the disposition of this complaint without Canal Place's participation may impair or impede its ability to protect that interest, and that its participation in this proceeding will contribute to a just result. Canal Place further submits that no existing party represents its interest in these proceedings and that granting its motion to intervene will not unduly delay this complaint or unjustly prejudice any existing party.

<sup>1</sup> Canal Place has separately moved to intervene in Case No. 09-453-HT-AEM. Canal Place is aware of the Motion for Consolidation filed on June 11, 2009 by the City of Akron in Case Nos. 09-442-HC-AEC and 09-453-HT-AEM on June 11, 2009. Because the Commission has not yet ruled upon the City of Akron's Motion, Canal Place has separately moved to intervene in both cases.

**This is to certify that the images appearing are an accurate and complete reproduction of a case file document delivered in the regular course of business.**  
Technician Jim Date Processed 6/16/09

Respectfully submitted,

*Glenn S. Krassen*

Glenn S. Krassen *EBB per Approval*

BRICKER & ECKLER LLP

1375 East Ninth Street, Suite 1500

Cleveland, Ohio 44114

(216) 523-5405 Phone

(216) 523-7071 Fax

E. Brett Breitschwerdt

Matthew W. Warnock

BRICKER & ECKLER LLP

100 South Third Street

Columbus, Ohio 43215

(614) 227-2301 Phone

(614) 227-2301 Fax

Attorneys for Canal Place LTD

## MEMORANDUM IN SUPPORT

### Introduction

#### **1. Canal Place.**

Canal Place LTD (“Canal Place”) owns and operates a 1.4 million square foot nationally recognized redeveloped property located in downtown Akron, Ohio that operates under the name Canal Place. This large complex currently is comprised of more than 91 local, regional, national and global companies representing more than 40 different types of businesses and having a combined work force of more than 2,500 people. In terms of total square footage, Canal Place is larger than Akron’s entire downtown central business district, and is an important economic development center for the City of Akron.

To heat and cool the numerous industrial and office buildings operated by Canal Place, Canal Place purchases steam and chilled water service from Akron Thermal, Limited Partnership (“Akron Thermal”) pursuant to a special contract dated May 18, 2001. The special contract is a reasonable arrangement under R.C. 4905.31 that was filed with, and approved by, the Commission in Case No. 01-3333-HC-AEC on February 21, 2002 (“Special Contract”). The duration of the Special Contract continues through March 31, 2012.

#### **2. Akron Thermal’s Bankruptcy Proceeding.**

On June 18, 2007, Akron Thermal filed a Chapter 11 bankruptcy petition in the United States Bankruptcy Court for the Northern District of Ohio (Case No. 07-51884). During the pendency of the bankruptcy proceeding, Akron Thermal filed a motion seeking to reject the Special Contract between Canal Place and Akron Thermal as previously filed with, and approved by, the Commission in Case No. 01-3333-HC-AEC on February 21, 2002.

While the aforementioned motion was pending, Akron Thermal and Canal Place

mutually negotiated an interim agreement covering the rate for steam services from August 1, 2007 through July 31, 2008 ("Interim Agreement"). Executed on September 27, 2007, and approved by the Bankruptcy Court on October 1, 2007, the Interim Agreement required Canal Place to pay an additional monthly "surcharge" over and above the rate approved by the Commission as part of the Special Contract. The amount of the surcharge set forth in the Interim Agreement was \$40,000 per month for the first three months (August-October 2007), and approximately \$13,333 per month for the remaining nine (9) months of the Interim Agreement. In all, Akron Thermal collected total surcharges in the amount of \$240,000 in addition to the rates set forth in the Special Contract during the period of the Interim Agreement

**3. The Amended Special Contract awaiting Commission approval in this case.**

On September 30, 2008, Akron Thermal and Canal Place entered into a second agreement (the "September 2008 Agreement") covering the rate of service from August 1, 2008 through the termination of the Special Contract on March 31, 2012. The September 2008 Agreement was formally approved by the Bankruptcy Court by Order dated December 1, 2008. Similar to the Interim Agreement, the September 2008 Agreement imposed another significant increase to the rates for steam service paid by Canal Place. The effective date of this rate increase was the effective date on which the Bankruptcy Court approved Akron Thermal's reorganization plan on February 20, 2009. The amount of the additional surcharge under the September 2008 Agreement to be paid by Canal Place is scheduled to be \$375,000. Canal Place has been paying the increased steam rates since February 2009.

As a party to the September 2008 Agreement, Canal Place has a direct and substantial interest in the Commission's review and consideration of Akron Thermal's

Application, especially in light of Akron Thermal's recent filing of an Application for an Application for an emergency increase in rates and charges in Case No. 09-453-HT-AEM -- yet another attempt by Akron Thermal to increase the rates paid by Canal Place established by a contract between the parties.

### **Legal Argument**

#### **1. The Standard.**

Ohio Revised Code Section 4903.221(B) establishes criteria for the Commission to consider in ruling on motions to intervene:

- (1) the nature and extent of the movant's interest;
- (2) the movant's legal position and its probable relation to the merits;
- (3) whether the movant will unduly prolong or delay the case; and
- (4) whether the movant will significantly contribute to resolution of the factual issues.

Ohio Administrative Code Rule 4901-1-11(A) also provides for intervention upon a timely showing that the movant has a real and substantial interest in the proceeding. The Rule's criteria for the Commission to consider in ruling on motions to intervene are set forth under O.A.C. Rule 4901-1-11(B) as follows:

- (1) The nature and extent of the prospective intervenor's interest.
- (2) The legal position advanced by the prospective intervenor and its probable relation to the merits of the case.
- (3) Whether the intervention by the prospective intervenor will unduly prolong or delay the proceedings.
- (4) Whether the prospective intervenor will significantly contribute to full development and equitable resolution of the factual issues.
- (5) The extent to which the person's interest is represented by existing parties.

#### **2. Applying the Standard to Canal Place.**

As noted above, Canal Place has a direct and substantial interest in this case. Akron Thermal is a party to the Special Contract, Interim Agreement, and the September 2008 Agreement (the proposed modification to the Special Contract).

Canal Place occupies a unique position as a party to the Special Contract and September 2008 Agreement. From this perspective, Canal Place can offer the “other” perspective on both factual and legal issues relevant to the history of the parties’ contractual relationship and the September 2008 Agreement that is the focal point of this proceeding. As such, Canal Place’s participation goes to the issues at the heart of the case, and will provide additional clarity on the merits of Akron Thermal’s Application.

Canal Place’s participation is necessary to a just resolution of the merits of this case, and will neither unduly prolong nor delay the Commission’s review and consideration of Akron Thermal’s Application. In fact, Canal Place’s longstanding contractual relationship with Akron Thermal, and its understanding of the factual issues at the heart of this case, make Canal Place well-suited to assist the Commission in resolving any factual disputes. Furthermore, no other person or existing party represents Canal Place’s interest as a party to the September 2008 Agreement.

Accordingly, Canal Place respectfully requests that the Commission grant its Motion to Intervene in this case.

Respectfully submitted,

Glenn S. Krassen

Glenn S. Krassen *EBB per Approval*  
BRICKER & ECKLER LLP  
1375 East Ninth Street, Suite 1500  
Cleveland, Ohio 44114  
(216) 523-5405 Phone  
(216) 523-7071 Fax

E. Brett Breitschwerdt  
Matthew W. Warnock  
BRICKER & ECKLER LLP  
100 South Third Street  
Columbus, Ohio 43215  
(614) 227-2301 Phone  
(614) 227-2301 Fax

Attorneys for Canal Place

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of the foregoing Motion to Intervene was served upon the parties of record listed below this 15<sup>th</sup> day of June 2009 via Regular U.S. Mail, postage prepaid.



Brett Breitschwerdt

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

Samuel C. Randazzo  
McNees Wallace & Nurrick LLC  
Fifth Third Center  
21 East State Street, 17<sup>th</sup> Floor  
Columbus, Ohio 43215