

FILE

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BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO

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 an Emergency Increase in its Rates and Charges for Steam and Hot Water Service.	) ) ) )	Case No. 09-453-HT-AEM
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 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

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PREPARED TESTIMONY OF RICHARD MEROLLA  
DIRECTOR OF PUBLIC SERVICE  
CITY OF AKRON

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July 8, 2009

**Attorneys for the City of Akron**

**BEFORE  
THE PUBLIC UTILITIES COMMISSION OF OHIO**

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

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

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

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

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

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**PREPARED TESTIMONY OF RICHARD MEROLLA  
DIRECTOR OF PUBLIC SERVICE  
CITY OF AKRON**

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1    **Q.    Please state your name, describe your background, identify your current**  
2            **position with the City of Akron and state your current business address.**

3    **A.    My name is Rick Merolla and I am the Director of Public Service for the City of**  
4            **Akron, a position I have held since March of 2007. The City of Akron's**  
5            **Department of Public Service has more than 800 employees who work in various**  
6            **areas within the Department such as in the Public Utilities Bureau. I began my**

1 career with the City of Akron in 1973 as an Economist in the Department of  
2 Planning and Urban Development. Prior to becoming Director of Public Service,  
3 I was named the City of Akron's Budget Director in 1986 and I was appointed  
4 Director of Finance by the City of Akron's then and still current Mayor, Don  
5 Plusquellic, in 1993. During a period of about ten years starting in 1996, when I  
6 was not providing service to the City of Akron, I worked in the private sector for  
7 Deloitte Consulting as a senior manager in the company's public sector practice  
8 and as chief operating officer of Buckingham, Doolittle, and Burroughs law firm.  
9 I am a graduate of Cleveland State University (1972) and I earned a Masters  
10 degree from the London School of Economics and Political Science (1973). I  
11 have also served as the board chair of the Summit County Port Authority, am a  
12 graduate of the Leadership Akron program and also previously served as an  
13 alternate to the Akron City Planning Commission.

14 My current business address is 166 South High Street, Akron, Ohio 44308.

15 **Q. What is the purpose of your testimony?**

16 **A.** The purpose of my testimony is to provide the Public Utilities Commission of  
17 Ohio ("PUCO" or "Commission") with a copy of a report issued by the City of  
18 Akron Thermal Energy Task Force ("Task Force") in July 2007. A copy of the  
19 report is attached to my testimony. The report identifies the plan of action that  
20 was developed by the Task Force at the request of the City of Akron to address  
21 the price and service quality needs of the steam, hot water and chilled water  
22 customers that receive service from the system operated by Akron Thermal,  
23 Limited Partnership ("ATLP") and affiliates. The opportunity for the City of Akron

1 to implement the plan has been constrained by actions (including filing a petition  
2 in bankruptcy court) taken by ATLP.

3 **Q. Is the City of Akron a customer of ATLP?**

4 A. Yes, the City of Akron is a customer of ATLP. The City of Akron is also a  
5 supplier of utility service to ATLP which accumulated unpaid bills for such service  
6 amounting to \$5,704,152.53 through the date that ATLP filed its bankruptcy  
7 petition (June 18, 2007).

8 **Q The Task Force report attached to your testimony indicates that ATLP's**  
9 **customers have had reliability problems over an extended period of time.**  
10 **In the City of Akron's capacity as a customer of ATLP and in your capacity**  
11 **as Director of Public Service, have you observed problems with ATLP's**  
12 **service quality?**

13 A. Yes. And, over and above the substantial prices increase that will occur if the  
14 proposed emergency rate increase is approved by the PUCO, the persistent  
15 reliability problems and service quality problems negatively affect the ability of  
16 customers to maintain their service relationship with ATLP, particularly in cases  
17 where the customers have alternatives.

18 **Q. Have you reviewed ATLP's application for an emergency rate increase?**

19 A. Yes, I have.

20 **Q. Does the City of Akron have in place an arrangement that is designed to**  
21 **address how it will meet the needs of steam, hot water and chilled water**  
22 **customers in the event the PUCO does not grant ATLP an immediate**

1        **emergency rate increase and ATLP is unable to meet its service**  
2        **obligations?**

3    A.    Yes, the City of Akron has entered into an arrangement with Akron Energy  
4        Systems LLC for this purpose. Akron Energy Systems LLC and Cleveland  
5        Thermal, the company referenced in The Task Force report attached to my  
6        testimony, are affiliated through common ownership.

7    **Q.    Does that complete your prepared direct testimony?**

8    A.    At this time, yes.

## Final Report

### City of Akron Thermal Energy Task Force

July 2007.

In August, 2006, Mayor Plusquellic invited a number of individuals to serve on the City of Akron Thermal Energy Task Force. Roy Ray was named Chairman. The purpose of the Task Force was to recommend to the Mayor the best long term viable solution to providing district heating and cooling in the Downtown area. (see attached roster of Task Force members.)

The Task Force first met on August 28, 2006. The Committee agreed at the outset that the City's district heating system was an asset to the community. Decommissioning of the plant, and forcing all existing customers to install their own energy systems was considered out of the question.

#### Akron District Heating/Cooling System Facts:

- Ohio Edison began serving 12 downtown buildings with a coal fired steam generated at the Beech Street plant in 1927. By 1947, Edison added an electrical substation to the Beech Street plant and four additional boilers.

- By 1953, there were 531 steam customers, and by 1963, 375 buildings were being served.
- In the late 1970's, Ohio Edison announced they were going to discontinue operations at the Beech Street plant. Concurrently, the City of Akron was exploring alternatives to land filling solid waste. To solve both problems, the City designed and constructed a Recycle Energy System (RES) to burn municipal solid waste (RFD) and produce steam to serve the district heating system. The RES opened in 1979. The system served the steam needs of the three major hospital systems, the University of Akron, and many downtown buildings, including both the City and County buildings.
- In addition to producing and distributing steam, the City also developed a chilled water system (one chiller in the mid-80's and the second in 1996) for summer cooling of downtown buildings.
- By 1994, the City had invested over \$100 million into the RES to deal with the technical and financial issues that continued to plague the operation. In addition, the EPA identified the RES as a contributor of dioxins in the air, and another \$30 million was required to eliminate the dioxins. At that time, Mayor Plusquellic decided that the City could no longer afford to keep the system operating as designed. However, the downtown district was still in need of heating and cooling. The decision was made to redesign the RES to provide steam and



chilled water without burning municipal solid waste. The RDF boilers were converted to burn wood chips and waste oil.

- In 1997, the City entered into a 10 year lease agreement with Akron Thermal, a Limited Partnership, to manage the plant and provide steam and chilled water to downtown customers. The City of Akron continues to own the capital assets of the system (except for a chilled water plant on property adjacent to Canal Park.)
- Since 1997, Akron Thermal has operated the plant and set the rates (with approval from the PUCO for the tariff customers.) Akron Thermal has not been current in paying suppliers over this time, and has accumulated millions of dollars in outstanding accounts payable; including money owed the City of Akron, Ohio Edison and the State of Ohio. The system is also facing potentially substantial fines for being in non-compliance with EPA clean air regulations regarding Boiler 32 at the former BFG plant. (Akron Thermal is disputing the EPA position regarding boiler 32.)
- In 2004, tire derived fuel (TDF) capabilities were added to the plant.
- In January 2005, the ownership of Akron Thermal Limited Partnership(ATLP) was changed. At that time, Thermal Ventures II (TVII) took control of ATLP from Thermal Ventures I (TVI) after lengthy legal proceedings. ATLP is now

94% owned by TVII, and Yorktown Energy Partners IV (YEPIV) owns 80% of TVII. The Cooling system is owned 100% by TV II.

- As of January, 2007, Akron Thermal had negative equity of \$31 million on its balance sheet, and had an operating loss of over \$3.9 million in 2005. In 2006, there were earnings before interest, taxes, depreciation and amortization (EBITDA) of \$0.8 million. The main reason for the improved financial performance in 2006 was the institution of negotiated rate increases for the major users.
- The system is comprised of the former RES plant with three steam boilers, the former BFG steam plant with two coal fired steam boilers, 18 miles of underground distribution piping, two downtown pressure reducing valves, and a condensate return line back from City Hospital and the University of Akron. The two chilled water plants are located at the BFG plant and next to Canal Park.
- There are currently 200 customers of the steam/hot water system (including approximately 100 homes at the Landings development) and 12 chilled water customers.

As a result of the poor financial performance of the system, the Mayor convened the task force to determine what needed to be done to assure the long term financial and operational integrity of the system.

Against this background, the Task Force began their review. The Task Force, as part of its charge, also engaged the services of both financial and engineering consultants to investigate the existing and potential future operations.

The Task force engaged the services of CODACO, a local engineering firm with deep experience in power plant operations and maintenance needs, and SS&G, a local accounting firm to review the financial statements of the Akron Thermal and Akron Cooling. CODACO developed a short and long term capital investment plan that will serve as the basis for future investments into the plant. SS&G reviewed the draft ATLP audited statements and indicated they appeared to fairly represent the condition of ATLP.

At the October meeting, Akron Thermal, with the help of their financial consultant, Sasco Hill Advisors, presented a proposed restructuring plan. The plan was developed because Akron Thermal could not continue with their current business model.

Akron Thermal, at that meeting, indicated they were approaching the Summit County Port Authority for financing, but that the City would have to guarantee the entire financing package.

When news of the formation of the Task Force became public, Cleveland Thermal contacted the Task Force and asked if they could be considered as a potential operator of the plant. The Task Force invited Cleveland Thermal to make a presentation.

Cleveland Thermal made their initial presentation on April 16, 2007. Subsequent to their presentation to the Task Force, Cleveland Thermal independently met with each of the major system users to learn more of their current issues and their expectations of the system in the next few years.

The Task Force toured the Akron system, and Chairman Ray and Service Director Rick Merolla toured the Cleveland Thermal operation.

By the end of April, 2007, it was apparent that there were two completely different proposals for the future of the system. Both Akron Thermal and Cleveland Thermal presented solutions to the existing issues, but in different ways. In order for the Task Force to accurately compare the two proposals, each company was asked to present at the June 12 Task Force meeting. Both companies were asked to answer identical questions in order to assist the task force in making their decision. The questions posed to each were:

1. What is the term of the Proposal?
2. What commitments, if any, are required from the City?
3. In general, what will happen to rates to various users (Big four and all others) in the near term?
4. What is your plan for repayment of outstanding obligations?
5. What is your short and long term capital investment plan?
6. What is your proposed resolution of Environmental concerns?

7. What is your marketing plan for future growth of the system?

Both companies presented on June 12, 2007 and afterwards, the Committee evaluated the costs and benefits of each proposal. As part of their deliberations, the Task Force also took into account current and future system reliability.

In addressing the each of the questions above, the Cleveland Thermal proposal was deemed superior. The Task Force spent considerable time discussing three of the issues, reliability, city commitments, and payment to creditors. Regarding reliability, task force members who are also system customers were concerned that the downtime currently experienced with Akron Thermal was not going to improve. They cited over 10 years of unreliable service and did not feel it prudent to rely on the same provider into the future.

Regarding the commitment needed from the City, Akron Thermal required the City to guarantee its restructuring plan in order to proceed, while Cleveland Thermal required no financial commitment from the City.

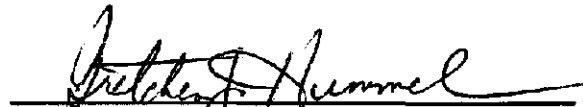
Finally, regarding repayment of creditors, Akron Thermal's proposal contained a formula for returning some money to each major creditor based on pre-2005 debts and post 2005 debts. Cleveland Thermal agreed to repay the City \$5 million for its prior utility bills and investments in the plant. This payment was also in recognition of the fact that the plant assets are owned by the City and the extraordinary efforts the City had taken in the past to ensure the energy needs in the district were met. While the Task Force was very sensitive that Ohio Edison and other unsecured creditors were not going to repaid in the

Cleveland Thermal proposal, they felt Ohio Edison would have a better change of having future bills paid if the Cleveland Thermal proposal was accepted.

At the conclusion of the meeting on June 12, Chairman Ray asked for a vote. There was unanimous agreement that the Cleveland Thermal proposal represented the best solution to the downtown energy needs.

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing *Prepared Testimony of Richard Merolla, Director of Public Service, City of Akron* was served upon the following parties of record this 8th day of July, 2009, via hand-delivery, electronic transmission or first class mail, postage prepaid.

  
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