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BEFORE
THE PUBLIC UTILITIES COMMISSION OF OHIO**PUCO**

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-ABC
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

REPLY IN SUPPORT OF MOTION TO INTERVENE
OF
DAVID WEHRLE, IN HIS CAPACITY AS TRUSTEE OF THE CREDITORS' TRUST
FOR AKRON THERMAL, LIMITED PARTNERSHIP,

The City of Akron, in its Memorandum Contra to the Trustee's¹ Motion to Intervene,
does not dispute that the Trustee satisfies the criteria for intervention. Furthermore, the City of
Akron cites no legal authority whatsoever that contravenes the Trustee's jurisdictional argument.

¹ Capitalized terms not otherwise defined herein have the meanings assigned to them in the Motion to Intervene of David Wehrle, In His Capacity as Trustee of the Creditors' Trust for Akron Thermal, Limited Partnership, filed on July 13, 2009.

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By its own intervention in this proceeding, including its response to the Trustee's Motion to Intervene, the City of Akron demonstrates its continuing and unyielding efforts to block Akron Thermal's reorganization, oust it from operation at any cost and, in effect, destroy Akron Thermal, regardless of the effect on other creditors. Given the City of Akron's motivation, it is obvious why the City so vehemently opposes the Trustee's intervention – the City wishes to prevent this Commission from considering Akron Thermal's agreements with the Trust and the State of Ohio which will alleviate the Staff's concerns regarding Akron Thermal's cash needs and contribute to Akron Thermal's successful reorganization. The Trustee can conceive of no other reason why the City of Akron would not support the broadest possible participation in these proceedings, and the Commission's full consideration of all facts and legal arguments that bear on the issues.

The City of Akron has provided the Commission with Baker & Hostetler LLP's fourth application for interim fees and final allowance of compensation in the bankruptcy proceeding. As an initial matter, for the sake of clarification, these applications represent fees sought as counsel to the Committee of Unsecured Creditors, not the Trust. Second, if and to the extent the Commission determines that these fee applications are somehow relevant, the Trustee encourages the Commission to review the applications carefully. A careful review reveals that the vast majority of the fees were incurred defending against the City of Akron's relentless crusade to destroy Akron Thermal. *See, e.g.*, charges under the headings "Plan and Disclosure Statement" and "Executory Contracts and Leases," which comprise over 75% of the total fees in the fourth interim period, alone. The City of Akron lost those expensive battles, but is clearly still waging its war.

It is ludicrous for the City of Akron to suggest that it can adequately represent the interests of all creditors in these proceedings, when the City of Akron's goal is the denial of a rate increase which would result in Akron Thermal's demise and would deprive the Trust creditors of any recovery whatsoever. This may be of little consequence to the City of Akron, however, because it already has recovered \$2.5 million on its own claims. This Commission should not exclude the Trustee from these proceedings. The City of Akron's position has been adverse to the interests of other creditors since Akron Thermal's bankruptcy case was filed, and remains so today.

The Trustee does not dispute this Commission's jurisdiction over Akron Thermal's rates, including the requested increase. The Trustee's simply takes the position that the increases should be granted, and offers this Commission facts critical to the determination -- primarily facts regarding Akron Thermal's agreements with the Trust and the State of Ohio which will provide Akron Thermal an additional \$100,000 per year for its operations. The Trustee maintains its position that the financial obligations approved by the Bankruptcy Court as part of Akron Thermal's Plan are not subject to further approval by the Commission, on the basis of the authority cited in the Trustee's Motion to Intervene. Accordingly, the Trustee assumed that this Commission's approval of any Plan obligations would be merely a formality, and it was not until the Staff testimony that the Trust had any reason to believe that its interests might be adversely affected by the application.

Finally, the Trustee submits that, if he is permitted to intervene in these proceedings, no continuance or further discovery is warranted. The jurisdictional question is purely a matter of law, and all parties have had a full opportunity to present their positions and analysis with respect to the requested rate increase. The Trustee is simply responding to the Staff's analysis by

presenting the terms of Akron Thermal's agreements with the Trustee and the State of Ohio which will address and resolve the Staff's concerns.

Accordingly, the Trustee respectfully requests that the Commission grant the Trustee's motion to intervene in this proceeding pursuant to Section 4903.221, Revised Code, and Rule 4901-1-11, Ohio Administrative Code.

WHEREFORE, the Trustee respectfully requests that the Commission grant his motion to intervene.

Respectfully submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing was served upon the following parties by first class US mail, postage prepaid, and by electronic mail this 14th day of July, 2009.

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