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

CHILDREN'S HOSPITAL MEDICAL CENTER OF AKRON'S
INITIAL POST-HEARING BRIEF

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Submitted: July 28, 2009

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I. Introduction

In this consolidated action before the Public Utilities Commission of Ohio (“PUCO” or “the Commission”), Akron Thermal, LP (“ATLP”) requests approval of several applications. In its Initial Post-Hearing Brief, Children’s Hospital Medical Center of Akron (“Children’s Hospital” or “the Hospital”) specifically addresses ATLP’s application for approval of a its contract with the Hospital (Case No. 09-441-HT-AEC) and ATLP’s request for an emergency rate increase (Case No. 09-453-HT-AEM). The Hospital urges this Commission to approve the contract entered into between ATLP and the Hospital, attached as Exhibit A to the Application, as a reasonable arrangement pursuant to Ohio Revised Code §4905.31. The Hospital also recommends that the Commission deny ATLP’s application for an emergency rate increase.

As to the contract between ATLP and Children’s Hospital, the Hospital asks this Commission to approve the agreement pursuant to Ohio Revised Code §4905.31. No party opposes approval of the contract, and Staff recommends that the Commission approve it. ATLP and the Hospital have abided by the terms of the contract since its execution in 2006. One of the principal benefits of the contract to the Hospital, a benefit for which the Hospital has paid and continues to pay, is some degree of pricing stability. Failure to approve the arrangement would deny Children’s Hospital of that benefit, and expose it to significant financial and operating risks.

ATLP is also seeking a massive rate increase for its tariff customers to address an alleged, approximate \$4 million revenue shortfall. For the reasons articulated by Staff, the City of Akron, and other parties, Children’s Hospital opposes any increase in rates.

II. Applicable Facts and Law

The facts at issue in this case are largely undisputed as they relate to Children's Hospital. ATLP is proposing an emergency rate increase of 72% for its tariff customers in order to raise \$4,195,561 resulting from a revenue shortfall caused by the University of Akron's exit from the ATLP system. See Direct Testimony of Linda L. Gentile ("Gentile Testimony") at 7; Direct Testimony of Joseph G. Bowser ("Bowser Testimony") at 5; Direct Testimony of Stephen E. Puican ("Puican Testimony") at 3. ATLP originally proposed, as an alternative, placing a portion of the emergency rate increase on contract customers, such as Children's Hospital. See Application for Emergency Rate Increase, Case No. 09-453-HT-AEM, at 8. However, ATLP withdrew that alternative and now proposes that its emergency rate increase apply only to tariff customers. Rebuttal Testimony of Jeffrey P. Bees ("Bees Rebuttal") at 10-11.

In order to protect against the type of dramatic rate increase requested by ATLP, the Hospital contracted with ATLP for steam service beginning April 1, 2006. Gentile Testimony at 5. The contract expires on March 31, 2011. *Id.* ATLP submitted the contract for approval on May 26, 2009. See Application in Case No. 09-441-HT-AEC. No other party disputes that ATLP and Children's Hospital have abided by the terms of this contract, and no party objects to the Commission approving the contract. Staff formally recommends PUCO approval. Puican Testimony at 6-7. In fact, Staff did not evaluate the ATLP alternative that would increase the Hospital's rate because of the *force majeure* clause in the contract that allows the reopening of contract negotiations should the Commission disapprove or modify the arrangement. Puican Testimony at 6. Staff reasoned that because the impact of renegotiating the Hospital's contract on ATLP's revenues is unknown, it did not consider subjecting the Hospital to an emergency surcharge as viable. Puican Testimony at 6. ATLP subsequently withdrew this alternative rate

request. Bees Rebuttal at 10-11. Consequently, Staff recommends the approval of the contract between ATLP and Children's Hospital as submitted.

In order for the Commission to approve the contract between ATLP and Children's Hospital, the Commission must determine that the contract is a "reasonable arrangement" pursuant to Ohio Revised Code §4905.31. Special contracts are not lawful until approved by the Commission. Ohio Rev. Code §4905.31(E). The contract between ATLP and Children's Hospital is a reasonable arrangement, and the Commission should approve it.

III. Argument

Children's Hospital takes no position on many of the issues presented by ATLP for determination by the Commission. It, however, maintains a position with regard to the application to approve the Hospital's contract with ATLP and ATLP's request for emergency rate relief. First, regardless of any rate increase, Children's Hospital asks the Commission to approve the contract between ATLP and the Hospital, thereby maintaining the negotiated rates paid by the Hospital and protecting it from any tariff increase sought by ATLP. Second, it is important to note that while ATLP initially submitted alternative forms of rate relief for the PUCO to consider, ATLP withdrew the alternative that contemplated increasing the Hospital's rates. Finally, the Hospital agrees with Staff, the City of Akron, and other parties that argue the Commission should deny ATLP's request for emergency rate relief.

A. The Commission Should Approve The Special Contract Between ATLP And Children's Hospital

The Commission has undisputed testimony before it that the contract between Children's Hospital and ATLP complies with Ohio Revised Code §4905.31, and that all parties have abided by its terms since execution in 2006. *See* Exhibit A to Application (Case No. 09-441); Gentile

Testimony at 6-7. Furthermore, no other party suggests the Commission should disapprove the contract.

The Hospital is not advocating that it should be exempt from price increases. Rather, Children's Hospital is asking that the contract be approved so that price increases occur within the confines of the negotiated agreement between the parties, allowing the Hospital to manage its steam supply costs effectively. Children's Hospital has paid, and will continue to pay, rate increases as ATLP's costs change. Between the initiation of the contract, April 2006, and March 2009, Children's Hospital has paid \$296,675.22 beyond the revenue that would have resulted if the original contract rate had remained fixed during that period. Gentile Testimony at Exhibit LLG-1. Because fuel and non-fuel costs increased, Children's Hospital's rates and, thus, the revenues that the Hospital paid to ATLP have steadily increased since April 2006. *See* Attachment to Exhibit LLG-1 in Gentile Testimony; Attachment A to Application (Case No. 09-441-HT-AEC) at 3. According to the Section 7(c) of the contract, the prices of the fuel blend constituents impact the Hospital's rates. As those prices change, so do the rates paid to ATLP. Attachment A to Application at 3.

The purpose for the Hospital's agreement with ATLP is to "protect itself against fluctuations in the market, while at the same time insulating the Hospital from adverse financial consequences unrelated to the market, i.e. a sudden decrease in Akron Thermal's customer base" Gentile Testimony at 2. In return, the Hospital agreed to automatic rate changes as fuel prices and non-fuel costs, as measured by the Consumer Price Index, changed over time. Attachment A to Application at 3. Disapproving the contract would deprive the Hospital of the benefit of its agreement with ATLP, eliminating the Hospital's confidence in the fuel rates it can

expect to pay, and creating a severe financial strain on the Hospital that would be duplicative of rate increases already paid. Gentile Testimony at 4, 8.

The PUCO should note that Staff is recommending approval of the contract, while no other party objects to its approval. Puican Testimony at 6-7; *See generally* Direct Testimony of Richard Merolla, Bowser Testimony, and Lorman Testimony. Staff Witness Puican testified that because “the parties have been operating under the terms of that agreement since July 13, 2006, and the Staff is not recommending the Commission alter those terms, Staff is recommending the contract be approved.” Puican Testimony at 6-7. Although the Hospital intends to honor its contract with ATLP, should the Commission not approve the contract, there is the risk that the Hospital will leave the system entirely should rates rise to a level that make alternative steam supplies economically preferable. Gentile Testimony at 7.

Finally, not approving the contract would put Children’s Hospital in a precarious position with regards to its steam needs. The Hospital is an entity of limited resources. Gentile Testimony at 4. Its primary concern is that of treating its patients—500,000 annually. Gentile Testimony at 3. Funds spent on increased steam costs would decrease the funds available to other Hospital operations. Gentile Testimony at 3-4. Children’s Hospital cannot serve its patients without steam for heating, humidification, and sterilization of hospital equipment—critical needs for the Hospital’s operation. Gentile Testimony at 4. The Hospital has “many competing demands for . . . scarce financial resources. Consequently [the Hospital] can afford only to pay the lowest reasonable amount for [its] steam supply.” Gentile Testimony at 4. The Hospital achieved this goal by negotiating an arm’s-length contract for steam supply, including automatic rate increases, with ATLP. To disapprove or alter that arrangement now would be exceedingly burdensome to the Hospital, and more importantly, to its patients.

Subjecting the Hospital to the emergency increase is a burden that stretches the Hospital to its limit. Should the Commission reject ATLP's request for an emergency rate, then the issue is moot. However, if the Commission grants the increase, the Hospital's contract with ATLP should insulate it from any increases not contemplated within the terms of the contract. Consequently, Children's Hospital requests the Commission approve its contract with ATLP.

B. ATLP Withdrew The Emergency Relief Alternative

As indicated above, no party, including ATLP, suggests that the emergency rate increase should be borne by the Hospital. Although ATLP originally presented the Commission with two alternatives for emergency rate relief, one applicable to tariff customers, and one applicable to all customers including the Hospital, ATLP withdrew the latter based on Staff's testimony. Bees Rebuttal at 10-11. Consequently, ATLP is not requesting any emergency rate relief, if granted, be applied to the Hospital. For this reason alone, the Commission should except the Hospital from any emergency rate relief granted to ATLP.

C. The Commission Should Deny ATLP's Application For Emergency Rate Relief

Children's Hospital agrees with the positions set forth by Staff, the City of Akron, and others for why the Commission should deny the ATLP's requested emergency rate increase. Consequently, the Hospital recommends that the Commission deny ATLP's requested emergency rate increase in total.

IV. Conclusion

The Hospital respectfully asks that this Commission approve the contract between Children's Hospital and ATLP, and allow the parties to continue abiding by its terms through the expiration of the agreement. The contract contemplates reasonable rate increases, which the Hospital accepted, in return for concessions by ATLP, and both parties have abided by those

terms. No other party objects to the contract's approval, and Staff recommends the Commission approve it. Furthermore, ATLP has withdrawn the emergency rate request alternative that would apply to Children's Hospital. As a result, ATLP is not seeking a rate increase on the Hospital. Finally, for the reasons Staff, the City of Akron, and others articulate, the Hospital asks that this Commission deny ATLP's request for an emergency rate increase in its entirety. For all of these reasons, Children's Hospital respectfully requests the Commission approve the contract between ATLP and Children's Hospital as a reasonable arrangement under Ohio Rev. Code §4905.31 and deny ATLP's request for emergency rate relief.

Respectfully submitted,



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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing was served upon the parties of record listed below this 28th day of July 2009 *via* e-mail.


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