

BEFORE

THE PUBLIC UTILITIES COMMISSION OF OHIO

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. 09-442-HC-AEC
of a Modification to an Existing)
Arrangement.)

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 to Issue Three) Case No. 09-414-HT-AIS
Promissory Long-Term Notes.)

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

ENTRY

The Commission finds:

- (1) On May 29, 2009, Akron Thermal, Limited Partnership (ATLP) filed an application in 09-453-HT-AEM for an emergency annual increase of \$4,195,561 in its rates and charges for steam and hot water service. By Opinion and Order issued September 2, 2009, the Commission denied ATLP's application.
- (2) On September 8, 2009, ATLP filed a letter in the docket (September 8 Letter), stating that ATLP and Akron Thermal Cooling (ATC) were suspending operations at 5:00 p.m. EST that day. In its letter, ATLP states the following:

It is the understanding of Akron Thermal that the city of Akron, Ohio ("City"), the owner of the

facilities leased by Akron Thermal for the purpose of supplying steam and hot water service to customers, has entered into an arrangement with Akron Energy Services, LLC ("AES") whereby AES will take over operation of the facilities on the City's behalf upon the suspension of operations by Akron Thermal and ATC.

Because it indicates a change in the provider of heating and cooling service, from ATLP to the City of Akron (City), or a representative of the City, we construe the September 8 Letter as an application for substitution of service.

- (3) ATLP is a public utility as defined by Section 4905.02, Revised Code, and a heating company as defined by Section 4905.03(A)(9), Revised Code. As such, ATLP is subject to this Commission's jurisdiction under Sections 4905.04 through 4905.06, Revised Code. The City is an Ohio municipal corporation and, as such, is an entity that does not fall within the statutory definition of a public utility regulated by the Commission.
- (4) As noted above, the September 8 Letter indicates that Akron Energy Services, LLC (AES) would "take over operation" of the facilities on the City's behalf. The facilities are presently, and have historically been, owned by the City, but leased and operated by ATLP. Given that the City will continue to own the facilities, but take over operation of said facilities, heating and cooling service to the former customers of ATLP shall be maintained and not diminished by the City providing service. In order to facilitate a smooth transition of service, ATLP's customer accounts must also be transferred to the City.
- (5) In cases such as these, the Commission has found that the cessation of service by the regulated utility, accompanied by uninterrupted and reasonable service by the nonregulated entity, is not tantamount to an abandonment of service and is not subject to Commission review under Sections 4905.20 and 4905.21, Revised Code. ATLP's operation of the facilities is being turned over to the City. According to the September 8 Letter, AES will be operating the facilities on the City's behalf.

However, in such cases, the Commission has also found it appropriate to exercise its authority pursuant to Sections 4905.05 and 4905.06, Revised Code, to ensure that the proposed transfer of accounts and operations results in uninterrupted and adequate service to the utility's existing customers. See *In the Matter of the Application to Cancel the Certificate of Public Convenience and Necessity of Copley Square Water Company and Substitute Service*, Case No. 09-644-WW-UNC; *In the Matter of the Application to Cancel the Certificate of Public Convenience and Necessity of Copley Square Water Company and Substitute Service*, Case No. 09-645-ST-UNC (August 12, 2009); *In the Matter of the Joint Application of Public Utility Service Corporation and the Board of Commissioners of Fairfield County to Remove Public Service Corporation from the Roll of Public Utilities Regulated by this Commission*, Case No. 87-1320-ST-UNC (September 9, 1987); *In the Matter of the Commission Investigation into the Operations and Service of Lake Erie Utilities Company*, Case No. 86-1561-WS-COI (October 18, 1988); *In the Matter of the Application of Aqua Ohio, Inc. for Approval of the Sale of Certain Water Supply Facilities and Associated Operations to the City of Geneva Ohio, Modification of its Tariff and Certificate of Public Convenience and Necessity and other Appropriate Relief and Approvals*, Case No. 04-1685-WW-UNC (December 8, 2004). Accordingly, in order to protect the public interest, the Commission will exert jurisdiction to this limited extent over the transaction taking place in this case.

- (6) In order to ensure that service is transferred smoothly from ATLP to the City, the Commission finds that ATLP should provide the City with all records of its current customer accounts. These records should be transferred immediately, but no later than seven days from the date of this entry.
- (7) Having reviewed the record in these matters, the Commission is satisfied that the City's operation of ATLP's heating and cooling operations will result in uninterrupted and reasonable service to the affected customers, and that this transaction constitutes a substitution of service rather than an abandonment of service. Accordingly, the Commission finds that the substitution of service indicated in the September 8 Letter should be approved; that ATLP's tariffs should be canceled; and that ATLP should be removed from the rolls of Commission-regulated utilities.

It is, therefore,

ORDERED, That the substitution of service and transfer of operations to the City of Akron be approved as set forth in this entry. It is, further,

ORDERED, That ATLP immediately transfer its customer accounts to the City, in accordance with Finding (6). It is, further,

ORDERED, That ATLP's operating authority in Ohio is canceled and ATLP be removed from the rolls of Commission-regulated public utilities effective as of the date of this entry. It is, further,

ORDERED, That ATLP's tariffs on file with the Commission are canceled effective as of the date of this entry. It is, further,

ORDERED, That nothing in this entry shall be binding upon this Commission in any subsequent investigation or proceeding involving the justness or reasonableness of any rate, charge, rule, or regulation. It is, further,

ORDERED, That a copy of this entry be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



Alan R. Schriber, Chairman



Paul A. Centolella

Ronda Hartman Fergus



Cheryl L. Roberto

Valerie A. Lemmie

RLH:ct

Entered in the Journal

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Renee J. Jenkins
Secretary