

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE REVIEW OF
YOUNGSTOWN THERMAL, LLC AND
YOUNGSTOWN THERMAL COOLING, LLC

CASE NO. 17-1534-HC-UNC

SECOND FINDING AND ORDER

Entered in the Journal on July 21, 2017

I. SUMMARY

{¶ 1} In this Second Finding and Order, the Commission finds that immediate action is necessary to protect public health and safety and to prevent damage to property. Thus, the Commission takes additional steps to ensure reliable utility service to the customers of Youngstown Thermal, LLC and Youngstown Thermal Cooling, LLC (Youngstown Thermal).

II. HISTORY

{¶ 2} Youngstown Thermal is “engaged in the business of supplying water, steam, or air through pipes or tubing to consumers within this state for heating or cooling purposes.” R.C. 4905.03(H). Therefore, Youngstown Thermal is a “heating and cooling company” as defined in R.C. 4905.03(H) and a “public utility” under R.C. 4905.02, rendering it subject to the Commission’s jurisdiction.

{¶ 3} Youngstown Thermal provides steam and chilled water service for heating and cooling purposes to approximately 40 customers, mainly commercial and governmental, in the central business district of Youngstown. Most of these customers’ rates have been established by special contract or municipal ordinance rather than by the Commission.

{¶ 4} By letter received June 14, 2017, Youngstown Thermal informed the Commission that it is experiencing acute financial distress. The letter summarized Youngstown Thermal’s self-identified collection problem and touched on its hopes for restructuring to allow the system to survive and grow. The letter further professed a cash

flow problem prompted by the alleged unpaid accounts and loss of its largest customer. While the letter expressed optimism that fiscal circumstances would self-correct, Youngstown Thermal admitted that the immediate situation is dire: the company faced disconnection of electric, gas, and water utility services due to nonpayment. Thus, given its current inability to finance its day-to-day operations, Youngstown Thermal requested the Commission's assistance in maintaining utility service such that it, in turn, can continue to provide its customers with uninterrupted service and avert an energy supply crisis.

{¶ 5} On June 15, 2017, Staff conducted an on-site review to investigate the issues raised in Youngstown Thermal's letter, and on June 29, 2017, Staff filed its report of this review. Staff reported that Youngstown Thermal's recent electric and water bills included disconnection notices, but the company made minimum payments to avoid imminent loss of service. No disconnection notice was included in Youngstown Thermal's natural gas bills, but those bills revealed that the company continues to consume upwards of \$100,000 of natural gas while paying approximately \$30,000 per month. Subsequently, on June 20, 2017, Youngstown Thermal did receive a disconnection notice from its natural gas provider.

{¶ 6} Staff noted that combined, Youngstown Thermal owes more than \$200,000 in past-due amounts to its natural gas, electric and water service providers. Its utility debt continues to grow as it pays for only a fraction of its continued use. Staff also noted that EDF Energy Services, LLC (EDF) has sued Youngstown Thermal based on its alleged failure to pay for natural gas it received from EDF. In addition to its debts to its utility service providers, Youngstown Thermal is in arrears in its statutory annual assessments to the Commission.

{¶ 7} Staff further reported that, during a June 22, 2017 meeting with management, Youngstown Thermal disclosed that it was unable to process payment for its most current payroll period. Without the skilled, knowledgeable workers required to run its complicated systems, Youngstown Thermal would be unable to fulfill its duty to furnish adequate service under R.C. 4905.22.

{¶ 8} Staff also reported concerns regarding Youngstown Thermal's unpaid corporate debt. In 2011, Youngstown Thermal became a guarantor for a secured term loan in the principal amount of \$5 million. The pertinent loan instruments called for a maturity date within four years of closing. Youngstown Thermal has produced no documentation of renegotiated terms or replacement financing. Moreover, Youngstown Thermal has not made consistent debt service payments, resulting in assessed penalties, accrued interest, and other administrative charges. Consequently, as of December 31, 2016, the total debt ballooned to an amount in excess of \$7 million. Based on current projections, continued nonpayment will result in a total debt amount of approximately \$9 million by December 31, 2017.

{¶ 9} Staff indicated that Youngstown Thermal's financial woes are compounded by its poor record keeping. Staff attempted to compare annual reports filed with the Commission to Youngstown Thermal's source documents, i.e., general ledger, invoices, billing statements, some of which were unavailable. What records Staff was able to review, however, exposed worrisome accounting discrepancies and misaligned data.

{¶ 10} Ultimately, based on the worsening financial conditions described above, Staff concluded that Youngstown Thermal is permitting or about to permit a breach of its duty to furnish adequate service to its customers pursuant to R.C. 4905.22. In reaching this conclusion, Staff determined that Youngstown Thermal "is unable to pay its obligations as they become due in the usual course of affairs" – as is evidenced by their inability to timely or fully pay utility suppliers, debt service, and employee payroll – and, therefore, is insolvent (or in imminent danger of becoming so). R.C. 1701.01(O). As such, Staff recommended that the Commission consider placing Youngstown Thermal into receivership to facilitate a new direction for a critical utility service provider that is insolvent or in imminent danger of insolvency.

{¶ 11} On June 30, 2017, the Commission issued a Finding and Order in this proceeding, concluding that Youngstown Thermal cannot ensure adequate service to their

customers in violation of R.C. 4905.22. The Commission further found that, due to its inability to timely pay utility suppliers, debt service, and employee payroll and the magnitude by which its outstanding debt servicing requirements exceed currently projected revenue, Youngstown Thermal was in imminent danger of insolvency. Thus, pursuant to the authority granted by R.C. 4905.60, the Commission directed the Attorney General to seek the appointment of a receiver and pursue any other appropriate civil remedy.

{¶ 12} Subsequently, on July 7, 2017, the Attorney General filed a complaint in the Mahoning County Court of Common Pleas. Along with the complaint, the Attorney General filed a motion for the appointment of a receiver. In response to this motion, the Magistrate for the Common Pleas Court directed that the Commission and Youngstown Thermal submit the name of the receiver to be appointed by July 21, 2017. Since that time, Staff has contacted and interviewed several potential candidates for receiver.

III. DISCUSSION

{¶ 13} R.C. Chapter 4905 enumerates the general powers of this Commission over public utilities. Specifically, R.C. 4905.04 states, in relevant part:

*The public utilities commission is hereby vested with the power and jurisdiction to supervise and regulate public utilities and railroads, to require all public utilities to furnish their products and render all services exacted by the commission or by law * * *.*

R.C. 4905.04 (emphasis added). Additionally, R.C. 4905.06 grants the Commission general supervision over all public utilities within its statutory jurisdiction. This supervisory power encompasses the ability to examine a public utility and keep informed as to its general condition, capitalization, operation and management with respect to the adequacy of its service and compliance with all laws and orders of the commission. Further, R.C. 4905.06, states that the Commission and Staff “may enter in or upon, *for purposes of inspection*, any property, equipment, building, plant, factory, office, apparatus, machinery, device, and

lines of any public utility. *The power to inspect includes the power to prescribe any rule or order that the commission finds necessary for protection of the public safety.*" R.C. 4905.06 (emphasis added).

{¶ 14} R.C. Chapter 4905 also sets forth certain statutory obligations of public utilities within the state. R.C. 4905.22 states that:

Every public utility shall furnish necessary and adequate service and facilities, and every public utility shall furnish and provide with respect to its business such instrumentalities and facilities, as are adequate and in all respects just and reasonable. All charges made or demanded for any service rendered, or to be rendered, shall be just, reasonable, and not more than the charges allowed by law or by order of the public utilities commission, and no unjust or unreasonable charge shall be made or demanded for, or in connection with, any service, or in excess of that allowed by law or by order of the commission.

R.C. 4905.22.

{¶ 15} R.C. 4909.16 states:

When the public utilities commission deems it necessary to prevent injury to the business or interests of the public or of any public utility of this state in case of any emergency to be judged by the commission, it may temporarily alter, amend, or, with the consent of the public utility concerned, suspend any existing rates, schedules, or order relating to or affecting any public utility or part of any public utility in this state. Rates so made by the commission shall apply to one or more of the public utilities in this state, or to any portion thereof, as

is directed by the commission, and shall take effect at such time and remain in force for such length of time as the commission prescribes.

{¶ 16} The Commission finds that immediate action is necessary to protect public health and safety and to prevent unnecessary or avoidable damage to property. Therefore, the Commission finds that it is necessary to take additional measures, pursuant to R.C. 4905.04 and 4905.06, to ensure that Youngstown Thermal provides necessary, reliable and adequate service to its customers until the appointment of a receiver. We believe that it is of primary importance to assure Youngstown Thermal's skilled employees that they will be compensated for their assistance in providing service to customers.

{¶ 17} First, in light of the poor record keeping by Youngstown Thermal cited by the Staff, the Commission directs Youngstown Thermal to establish a segregated escrow account in which all future payments by customers should be deposited. The Commission further directs that, until the appointment of a receiver, no funds should be disbursed from this account without the prior, written approval of Staff.

{¶ 18} Second, in order to ensure that sufficient funds are available to provide necessary and adequate service to customers, the Commission directs Youngstown Thermal and Staff to work together on a plan for an emergency surcharge on customer rates. This surcharge should be levied on all customers, including customers currently served by contract. Staff should file a recommendation in this docket within seven days for the emergency surcharge, including rate design and a revenue requirement sufficient, at a minimum, to compensate the skilled employees necessary for the operation of the system.

{¶ 19} The Commission understands that customers have been paying Youngstown Thermal for heating and cooling services. We also note that the City of Youngstown (City) has previously enacted ordinance rates for Youngstown Thermal. However, based upon the Staff investigation discussed above, Youngstown Thermal is in imminent danger of

insolvency and an emergency surcharge is necessary to maintain heating and cooling service to downtown Youngstown.

{¶ 20} Finally, the Commission requests that all customers with arrearages owed to Youngstown Thermal pay any amounts not in good faith dispute with the Company. These payments should be deposited in the segregated escrow account discussed above. Payment of non-disputed arrearages by customers is essential to provide the funds to continue service to all customers.

{¶ 21} With respect to amounts billed to customers which are in dispute, the Commission will open an investigation under R.C. 4905.26 to review all disputed customer bills. In order to resolve these disputes as expeditiously as possible, we direct Staff to review each individual account with disputed customer bills, determine the nature of the dispute and provide a recommendation to resolve the dispute. Customers who do not accept Staff's recommendation will have the opportunity for a hearing and a Commission decision on the dispute.

{¶ 22} Finally, the Commission has authority under R.C. 4905.60 to direct the Attorney General to seek appropriate civil remedies in the name of the State of Ohio. Specifically, R.C. 4905.60 states, in relevant part:

Whenever the public utilities commission is of the opinion that any public utility * * * has failed or is about to fail to obey any order made with respect to it, or is permitting anything or is about to permit anything contrary to or in violation of law, or of an order of the commission, authorized under Chapters 4901., 4903., [and] 4905. * * * of the Revised Code, the attorney general, upon the request of the commission, shall commence and prosecute such action * * * by injunction, or by other appropriate civil remedies in the name of the state, as is directed by the commission against such public entity.

R.C. 4905.60.

{¶ 23} The Commission directs the Attorney General to seek any appropriate civil remedies necessary to enforce the terms of this Second Finding and Order.

IV. CONCLUSION

{¶ 24} The Commission is committed to taking all necessary and appropriate steps to maintain reliable utility service to Youngstown Thermal's customers. Until a receiver is appointed, the Commission directs Staff to facilitate the collection of accounts receivable, the creation of accurate accounting records and the establishment of an emergency surcharge for service. As we have previously noted, all of these steps are necessary for the continuation of utility service to Youngstown Thermal's customers.

V. ORDER

{¶ 25} It is, therefore,

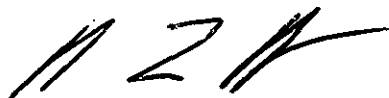
{¶ 26} ORDERED, That Youngstown Thermal carry out all steps necessary to comply with this Second Finding and Order. It is, further,

{¶ 27} ORDERED, That Staff open an investigation pursuant to R.C. 4905.26 to review all disputed customer bills. As part of this investigation, Staff is directed to review each individual account with disputed customer bills, determine the nature of the dispute and provide a recommendation to resolve the dispute. It is, further,

{¶ 28} ORDERED, That, if necessary, the Attorney General take all necessary action authorized under R.C. 4905.60 to enforce the terms of this Second Finding and Order. It is, further,

{¶ 29} ORDERED, That a copy of this Finding and Order be served upon all parties of record.

THE PUBLIC UTILITIES COMMISSION OF OHIO



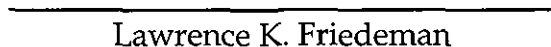
Asim Z. Haque, Chairman



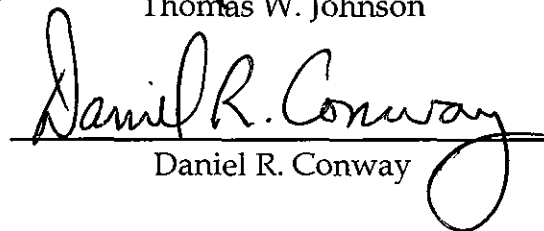
M. Beth Trombold



Thomas W. Johnson



Lawrence K. Friedeman

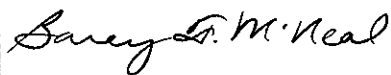


Daniel R. Conway

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Secretary