

## 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**

### **APPLICATION FOR RE-HEARING**

Now comes the Young Men's Christian Association of Youngstown Ohio ("the YMCA"), a ratepayer and customer of Youngstown Thermal, LLC and hereby requests a re-hearing with regard to the imposition and amount of a surcharge to the YMCA as set forth in the Third Finding and Order filed on August 2, 2017 and the letter from the PUCO to the YMCA dated August 3, 2017 and received by the YMCA on August 10, 2017 which advised the YMCA as to the imposition of an emergency surcharge and the amount thereof.

### **MEMORANDUM**

A Receiver was appointed on August 1, 2017 in Mahoning County Common Pleas Court case number 17CV1743. On August 10, 2017 a Meeting, pursuant to a Notice filed in the case, was held by the Receiver for Youngstown Thermal Cooling, LLC and Youngstown Thermal, LLC ("Youngstown Thermal") with current and prospective customers of Youngstown Thermal. At that meeting, the Receiver advised the customers about the imposition of a surcharge and when questioned, he advised that the surcharge had been determined by a "formula" utilized by the PUCO. He stated he was unfamiliar with the "formula" or how the amounts of surcharge were determined as to each customer. The Receiver further advised that the customers could appeal the surcharge to the PUCO. Subsequent to the Meeting, the YMCA contacted the PUCO at the phone number listed in the August 3<sup>rd</sup> letter and was advised that if the YMCA wanted to appeal the surcharge, it would need to file an Application for Re-Hearing with regard to the Third Finding and Order filed in this PUCO case.

The YMCA was not made a party to any of the legal proceedings with regard to Youngstown Thermal which began on June 29, 2017 in this PUCO case and the Common Pleas Court case in which the Complaint for Peremptory and Permanent Writ of Mandamus and Motion for the Appointment of a Receiver was filed on July 7, 2017.

The customers of Youngstown Thermal, including the YMCA, have not had the opportunity to provide input with regard to the surcharge, discuss with the PUCO how the surcharge was determined or otherwise be involved in the PUCO and Common Pleas Court proceedings. The YMCA, a non-profit organization, without any prior notice or discussion with the PUCO, received a letter from the PUCO dated August 3, 2017 stating that the YMCA must pay an emergency surcharge in addition to regularly billed rates. That surcharge was more than 125% of the amount of the YMCA's regularly billed monthly rate.

In reviewing the Staff Report, filed on July 31, 2017 in this PUCO case, which recommended the surcharge amounts, the YMCA has serious concerns about the validity of the determination of the surcharge. The surcharge is being assessed to pay for payroll and benefits of employees of Youngstown Thermal. There is no itemization as to the total number of employees, what jobs they perform, nor any itemization as to the monthly wages for any of the employees. Attachment 1 to the Staff Report is titled "Youngstown Thermal's Essential Monthly Expense." It merely lists dollar amounts for payroll of \$70,000 and Health Ins. of \$8500, with no itemization or breakdown as to how this figure was determined. Further, there is an asterisk at the bottom of the attachment which states: "\*Expenses as reported by Youngstown Thermal."

Therefore, the Staff Report provides that the surcharge is based on expenses which were reported by Youngstown Thermal to the PUCO. The PUCO Finding and Order filed on June 30, 2017, states that "Staff indicates that Youngstown Thermal's financial woes are compounded by

**its poor record keeping** (emphasis added). Staff attempted to compare annual reports filed with the Commission to Youngstown Thermal's source documents, ie. 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.”¶ 13. The YMCA asserts that since the record keeping of Youngstown Thermal was poor and unreliable, those records cannot be utilized to impose a surcharge in excess of 125% to the YMCA and the other customers. Further, the dollar amounts appear on the Attachment 1 with nothing to support how they were determined, other than “expenses as reported by Youngstown Thermal.” The PUCO must utilize accurate, verifiable records for the surcharge. It did not. There is nothing to substantiate the amounts of monthly payroll and health insurance other than a line item on an attachment which is based on the reporting by Youngstown Thermal. The Staff Report and the Third Finding and Order make no reference to an independent determination of monthly payroll and healthcare expense by the PUCO and its Staff.

The Third Finding and Order used the Staff Report's calculation of the surcharge based on “each customer's contribution to the system peak demands for heating and cooling.” That calculation is flawed and inequitable because it bases the surcharge on how much steam was used by heating customers for only one month, January, 2016. Thus, the surcharge for heating customers is solely based on one month of usage which occurred more than 18 months prior to the surcharge determination. So many variables come into play as to the usage by customers in that one month of January, 2016 that would have caused the usage to be skewed either higher or lower than it is in 2017. The use of the single month of January, 2016 is unreliable and inequitable to the YMCA because the YMCA completed a \$5 million renovation in 2016 in

which it upgraded its HVAC system to be more efficient. A reliable and accurate reflection of steam use would be the current usage by the heating customers in 2017.

The same argument of poor recordkeeping by Youngstown Thermal can be made with regard to the use of Youngstown Thermal's January, 2016 data in determining the surcharge. The YMCA further asserts that the accuracy of the meters and usage charges for heating and cooling have been matters of dispute between Youngstown Thermal and numerous customers. In the June 29, 2017 Staff Report it was represented that in excess of \$1 million is in Youngstown Thermal Collections due to non-payment by Youngstown Thermal customers. The data used by the PUCO for January, 2016 usage by the heating customers is unreliable. Further, the PUCO utilization of a customer's single month's usage of steam for a surcharge determination made eighteen months later is inequitable and does not accurately reflect what the usage of the heating customers will be during the months that the surcharge will be imposed (July, 2017 and thereafter).

The surcharge imposed by the Third Finding and Order is 120% of the monthly employee payroll and healthcare costs. The additional 20 % surcharge is imposed due to the potential of late and/or non-payment by customers. This amounts to an additional payment of approximately \$15,000 per month and penalizes the YMCA disproportionately for the late or non-payment of other customers. That is due to the fact that the YMCA has the highest surcharge amount of any customer which is more than double the amount of surcharge for the second highest customer. The PUCO has not given any rational explanation as to how the exact amount of 20% was determined, nor has it provided any evidence, data or documentation that supports the need for the imposition of an additional 20% surcharge. The imposition of an additional 20% without providing evidence, data or documentation that it is necessary, creates an undue burden to the

customers of Youngstown Thermal, and especially the YMCA who pays a disproportionate higher amount of the additional 20%.

Due process requires that a utility, ratepayer or railroad be accorded a reasonable opportunity to be heard with respect to the promulgation of orders by PUCO. *See, e.g., City of Parma v. Public Utils. Comm.*, 86 Ohio St. 3d 144, 1999-Ohio-141, 712 N.E.2d 724 (1999); *Myers v. Public Utils. Comm.*, 64 Ohio St. 3d 299, 1992-Ohio-135, 595 N.E.2d 873 (1992). While in some cases, the urgent need to protect the public will justify immediate action during a proceeding instituted for the purpose of securing an order relating to the protection, welfare and safety of the public, “due process certainly requires that the parties affected by such immediate action be thereafter promptly given a reasonable opportunity to be heard.” *New York C. R. Co. v. Public Utils. Comm.*, 157 Ohio St. 257, 264, 47 Ohio Op. 161, 105 N.E.2d 410 (1952).

WHEREFORE, Youngstown Thermal Customer/Ratepayer, YMCA respectfully requests that this Application for Re-Hearing be granted for the reasons set forth herein.

Respectfully submitted,



THOMAS M. GACSE (#0008715)

17 N. Champion Street

Youngstown, Ohio 44503

Phone: (330).742.4799

Email: [tgacse@youngstownymca.org](mailto:tgacse@youngstownymca.org)

Attorney for YMCA of Youngstown Ohio

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Summary: Application Application for Re-Hearing electronically filed by Mr. Thomas M. Gacse  
on behalf of YMCA of Youngstown Ohio