

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

ENTRY ON REHEARING

Entered in the Journal on September 27, 2017

I. SUMMARY

{¶ 1} The Commission grants the application for rehearing filed by the Young Men's Christian Association of Youngstown Ohio on September 1, 2017 for the purpose of holding a hearing regarding the revenue requirement and rate design of the emergency surcharge approved by the Commission in its Third Finding and Order issued August 2, 2017.

II. HISTORY

{¶ 2} Youngstown Thermal, LLC and Youngstown Thermal Cooling, LLC (Youngstown Thermal) are "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 in downtown Youngstown, Ohio. Most of these customers pay rates 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 was experiencing acute financial distress. In that letter, among other things, Youngstown Thermal reported that its immediate situation was dire: the

company faced disconnection of electric, gas, and water utility services due to nonpayment. Thus, given its inability to finance day-to-day operations, Youngstown Thermal requested the Commission's assistance in maintaining utility service such that it, in turn, could 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. Through this review and ongoing communication with Youngstown Thermal, Staff reported that, by June 20, 2017, the company had received disconnection notices from its water, electricity, and natural gas providers. Further, Youngstown Thermal continued to consume more than it could pay in order to provide utility service to its own customers.

{¶ 6} Staff additionally noted that combined, Youngstown Thermal owned more than \$200,000 in past-due amounts to its natural gas, electric and water service providers. Its utility debt continued to grow as it pays for only a fraction of its continued use. Staff further reported that Youngstown Thermal was unable to timely process payment for its then most current payroll. 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.

{¶ 7} 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. Staff explained that Youngstown Thermal was inconsistent in its debt service payments, resulting in assessed penalties, accrued interest, and other administrative charges. Consequently, as of December 31, 2016, the total debt had ballooned to an amount in excess of \$7 million.

{¶ 8} Ultimately, based on the worsening financial conditions reported by Youngstown Thermal and observed during its review, Staff concluded that Youngstown Thermal was 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 was “unable to pay its obligations as they become due in the usual course of affairs” – as evidenced by their inability to timely or fully pay utility suppliers, debt service, and employee payroll – and, therefore, was 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.

{¶ 9} On June 30, 2017, the Commission issued a Finding and Order concluding that Youngstown Thermal could not 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.

{¶ 10} 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.

{¶ 11} On July 21, 2017, the Commission issued a Second Finding and Order in this proceeding. Therein, we noted that, based upon the Staff review discussed above, Youngstown Thermal was in imminent danger of insolvency and that an emergency surcharge was necessary to not only maintain heating and cooling service to downtown Youngstown, but to protect public health and safety and to prevent unnecessary or

avoidable damage to property. Amongst other measures to ensure that sufficient funds are available to provide necessary and adequate service to customers, we directed Youngstown Thermal and Staff to work together on a plan for an emergency surcharge on customer rates, pursuant to our emergency ratemaking authority under R.C. 4909.16.

{¶ 12} Accordingly, on July 28, 2017, the Staff filed its Report and Recommendation, as revised on July 31, 2017, for an emergency surcharge on all Youngstown Thermal customers. Additionally, on August 1, 2017, Staff filed to this docket the Mahoning County Court of Common Pleas' Entry placing Youngstown Thermal in receivership.

{¶ 13} On August 2, 2017, the Commission issued a Third Finding and Order, in which we adopted the recommendation for an emergency rate surcharge contained in Staff's July 28, 2017 Report. The Commission reviewed all of the information in the various staff reports and our own prior orders and concluded that Youngstown Thermal was already financially imperiled, leading to an impairment of its ability to render service. Further, absent emergency relief, Youngstown Thermal's financial distress would result in the closure of its facilities and failure of service. Thus, we invoked the authority granted us in R.C. 4909.16 and approved an emergency surcharge. In calculating that surcharge, the Commission accepted Staff's recommendation that the revenue requirement should be calculated at 120% of monthly employee payroll and healthcare costs. The Commission further agreed that it is reasonable to allocate this revenue requirement between heating and cooling customers based upon the share of total 2016 revenue generated by those customer groups, with 90% allocated to heating customers and 10% to cooling customers. We additionally adopted Staff's recommendation that the emergency measure should be a fixed monthly sum, with each customer bearing a minimum monthly charge of \$100 in addition to an amount based on each customer's contribution to the system peak demands for heating and cooling. Finally, the Commission underscored that the emergency surcharge would be temporary,

as the newly appointed receiver could seek additional emergency rate relief, if necessary, and would be expected to propose new permanent rates in the future.

{¶ 14} Following the Commission's instruction, the receiver filed final tariffs consistent with the Third Finding and Order on August 4, 2017. Pursuant to the Finding and Order, the tariffs were approved upon filing and effective immediately for services rendered on or after the filing date.

{¶ 15} On September 1, 2017, the Young Men's Christian Association of Youngstown Ohio (the YMCA), a ratepayer and customer of Youngstown Thermal, filed an application for rehearing of the Commission's August 4, 2017 Third Finding and Order. On September 5, 2017, the YMCA filed a supplemental memorandum in support of its application.¹

III. DISCUSSION

{¶ 16} R.C. 4903.10 permits any affected person, firm or corporation to seek leave to file and make an application for rehearing within 30 days after the journalization of any final order by the Commission. To successfully obtain leave to file the application, an affected corporation must demonstrate that its failure to enter an appearance prior to journalization of the order complained of was due to just cause and that its interests were not adequately considered in the proceeding. The statute further provides that the application for rehearing may seek rehearing with respect to any matter determined in the order and must set forth specifically the grounds on which the applicant considers the order to be unreasonable or unlawful.

¹ Ohio Adm.Code Chapter 4901-1, which sets forth the procedural standards and practices applicable to all entities appearing before the Commission, does not allow the filing of supplemental memoranda. Accordingly, the Commission disregards the YMCA's supplemental memorandum in support of the application for rehearing filed September 5, 2017.

{¶ 17} As a ratepayer and customer of Youngstown Thermal that is subject to the emergency surcharge, the YMCA is an affected corporation in these proceedings. Additionally, the Commission finds that the YMCA has shown sufficient cause for filing the application despite its failure to intervene in this proceeding before the Commission issued its Third Finding and Order; this matter has progressed rapidly with limited ability to foretell its direct effect on Youngstown Thermal's customer base. Thus, the Commission hereby grants the YMCA leave to file the application for rehearing such that its interests as a Youngstown Thermal ratepayer can be fully considered.

{¶ 18} In its September 1, 2017 application for rehearing, the YMCA does not dispute the Commission's legal authority to set and implement the emergency surcharge, but questions the manner in which the emergency surcharge was calculated. More specifically, the YMCA protests two of the key components of the surcharge: the revenue requirement and the rate design.

{¶ 19} With respect to the revenue requirement, the YMCA takes issue with both the information used to calculate the amount and the amount itself. Noting that the surcharge is being assessed to pay for payroll and benefits of Youngstown Thermal's employees, the YMCA questions the lack of data to support the calculation, such as the total number of employees, their job duties, and an itemization of their monthly wages. Instead, the YMCA notes that the Staff Report lists only payroll of \$70,000 and Health Ins. of \$8,500 without explanation beyond the numbers being "as reported by Youngstown Thermal." The YMCA asserts that it is unreasonable to rely on Youngstown Thermal's untested records to impose the surcharge, especially where the Commission criticized the company's poor record keeping. The YMCA argues that the Commission must independently determine the monthly payroll and healthcare expenses utilizing accurate, verifiable records.

{¶ 20} In addition to challenging the total cost of healthcare and payroll, the YMCA argues that the 20% added to account for late or non-payment by customers is

unreasonable. More specifically, due to the fact that it has the highest surcharge amount of any customer—more than double that of the second highest customer—the YMCA states that it is penalized disproportionately for late or non-payment of other customers. According to the YMCA, the imposition of an additional 20% without providing evidence, data or documentation that it is necessary and correctly calculated creates an undue burden to it and other Youngstown Thermal customers.

{¶ 21} The YMCA also criticizes the rate design of the emergency surcharge. It first confronts the Commissions' reliance on Staff's calculation of the surcharge based on each customer's contribution to the system peak demands for heating and cooling. The YMCA insists that the calculation is flawed and inequitable because it bases the surcharge on steam use from a single month, January 2016. Using only a single month that is 18 months removed from the surcharge determination is unreliable and inequitably skews the amount assessed to the YMCA. This is especially true, it says, because the use of one month to determine peak demand does not take into account a \$5 million renovation it undertook in 2016 in which it upgraded its HVAC system to be more efficient. Here, the YMCA again raises the specter of Youngstown Thermal's poor record keeping to challenge the propriety of surcharge amount and rate design. Pointing to the meter disputes allegedly accounting for approximately \$1 million of Youngstown Thermal's outstanding accounts receivable, the YMCA questions whether the usage data relied upon in determining system peak demands is accurate and reliable.

{¶ 22} The Commission notes that the Supreme Court of Ohio has held that "any legal right a ratepayer would have to notice or a hearing would have to stem directly from the statutes." *Cleveland v. Pub. Util. Comm.*, 67 Ohio St.2d 446, 453 (1981), 424 N.E.2d 561, 21 O.O.3d 279. However, R.C. 4909.16 contains no requirement for a hearing prior to the approval of emergency rates. Further, we affirm our finding that due to the exigent circumstances in this case, it was not possible to hold a hearing prior to imposing the emergency surcharge. The genuine emergency circumstances presented by Youngstown

Thermal's impending failure of service required that a surcharge be imposed to prevent injury to the public's safety and welfare. There was insufficient time to hold even a limited hearing on an expedited schedule if service to Youngstown Thermal's customers was to be maintained.

{¶ 23} However, the Commission finds that a hearing should be held to allow YMCA to present additional evidence and to allow the Commission to further review the revenue requirement and rate design for the emergency surcharge on a forward basis.

IV. CONCLUSION

{¶ 24} The Commission concludes that the YMCA's application for rehearing should be granted for the purpose of holding a hearing regarding the revenue requirement and rate design of the surcharge. Meanwhile, and until otherwise ordered, the current surcharge shall remain effective.

V. ORDER

{¶ 25} It is, therefore,

{¶ 26} ORDERED, That the YMCA's application for rehearing filed September 1, 2017, be granted for the purpose of holding a hearing on the revenue requirement and rate design of the emergency surcharge authorized by the Commission's Third Finding and Order issued August 2, 2017. It is, further,

{¶ 27} ORDERED, That the attorney examiner shall issue a hearing date and procedural schedule as expeditiously as possible. It is, further,


{¶ 28} ORDERED, That a copy of this Entry on Rehearing be served upon all parties of record.

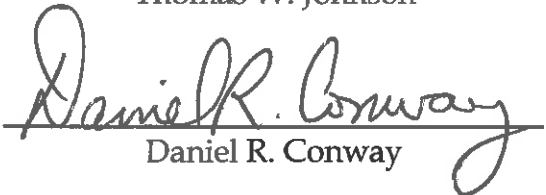
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Summary: Entry ordering that the YMCA's application for rehearing filed September 1, 2017, be granted for the purpose of holding a hearing on the revenue requirement and rate design of the emergency surcharge authorized by the Commission's Third finding and order issued August 2, 2017 electronically filed by Docketing Staff on behalf of Docketing