

THE PUBLIC UTILITIES COMMISSION OF OHIO

IN THE MATTER OF THE JOINT
APPLICATION OF YOUNGSTOWN
THERMAL, LLC, YOUNGSTOWN
THERMAL COOLING, LLC, AND SOBE
THERMAL ENERGY SYSTEMS, LLC FOR
APPROVAL OF SOBE THERMAL ENERGY
SYSTEMS, LLC AS A HEATING AND
COOLING COMPANY ON THE ROLL OF
PUBLIC UTILITIES, CHANGE IN
OWNERSHIP OF ASSETS, TRANSFER OF
CUSTOMERS, AND SUBSTITUTION OF
SERVICE.

CASE NO. 21-28-HC-ATC

ENTRY

Entered in the Journal on May 17, 2023

I. SUMMARY

{¶ 1} The Commission orders SOBE Thermal Energy Systems, LLC to provide confirmation of completion of the transfer of assets and customers authorized in its November 17, 2021 Finding and Order, to annually provide Staff balance sheets and profit and loss statements, and to take appropriate action to ensure it is listed on the Commission's roll of public utilities.

II. PROCEDURAL HISTORY

{¶ 2} By Finding and Order dated March 27, 2002, the Commission authorized the establishment of Youngstown Thermal, LLC and Youngstown Thermal Cooling, LLC (the Youngstown Thermal Entities or the Entities) as heating and cooling companies, as defined in R.C. 4905.03(H), and public utilities under R.C. 4905.02, which are subject to our jurisdiction. *In re Youngstown Thermal, Ltd. Partnership, et al.*, Case No. 02-235-HT-UNC, et al., Finding and Order (Mar. 27, 2002).

{¶ 3} On June 29, 2017, Staff initiated Case No. 17-1534-HC-UNC by filing a report (Staff Report) in which it concluded that the Youngstown Thermal Entities were permitting or about to permit a breach of their duty to furnish adequate service to customers under

R.C. 4905.22 due to ongoing and worsening financial conditions. *In re the Review of Youngstown Thermal, LLC and Youngstown Thermal Cooling, LLC*, Case No. 17-1534-HC-UNC(*Youngstown Case*), Staff Report (June 29, 2017). One day later, on June 30, 2017, the Commission issued a Finding and Order finding that the Entities were in imminent danger of insolvency and otherwise poised to fail in their duty to furnish necessary and adequate service to customers, as required by R.C. 4905.22. Accordingly, and pursuant to R.C. 4905.60, the Commission directed the Attorney General to seek appointment of a receiver for the Youngstown Thermal Entities. *Youngstown Case*, Finding and Order (June 30, 2017) at ¶ 22-23, 25.

{¶ 4} On August 1, 2017, the Mahoning County Court of Common Pleas placed the Entities into receivership at the request of the Ohio Attorney General's Office following direction by the Commission. *State ex rel. Public Utilities Commission of Ohio v. Youngstown Thermal Cooling LLC and Youngstown Thermal*, Mahoning Co. No. 2017 CV 01743 (*Receivership Case*), Entry (Aug. 1, 2017).

{¶ 5} On or about April 19, 2019, the court-appointed receiver entered into a Purchase and Sale Agreement (Purchase Agreement) to sell all the business and assets of the Youngstown Thermal Entities to SOBE. *Receivership Case*, Motion (May 3, 2019). The Purchase Agreement was expressly conditioned upon approval by the Commission and the Mahoning County Court of Common Pleas, which court approved the Purchase Agreement on August 27, 2019. *Receivership Case*, Judgment Entry (Aug. 27, 2019).

{¶ 6} On January 13, 2021, in this case, the Youngstown Thermal Entities and SOBE filed the joint application seeking Commission approval of the following pursuant to the Purchase Agreement: (1) the establishment of SOBE as a heating and cooling company and public utility on the rolls of the Commission; (2) the transfer of the assets and customers of the Youngstown Thermal Entities to SOBE; and (3) the substitution of heating and cooling services to customers from the Youngstown Thermal Entities to SOBE. The joint application acknowledged the Commission's jurisdiction over the Purchase Agreement and associated

transaction by virtue of R.C. 4905.04 and 4905.06. The joint application represented that, upon consummation of the Purchase Agreement, the Youngstown Thermal Entities would cease to provide any retail services and discontinue service to transferred customers, with continuous and uninterrupted service to be provided to customers thereafter by SOBE. Additionally, SOBE and the Entities committed to provide the Commission with a copy of any agreement that was necessary to effectuate the transfer of assets and customers from the Entities to SOBE. SOBE further committed to adopt the emergency tariff rates in effect as approved by the Commission in the *Youngstown Case*.

{¶ 7} By Finding and Order dated November 17, 2021, the Commission approved the joint application to transfer the assets and operational obligations of the Youngstown Thermal Entities to SOBE, thereby approving the Purchase Agreement. The Commission specifically authorized the establishment of SOBE as a heating and cooling company on the roll of public utilities and the transfer of assets and customers of the Entities to SOBE. The Commission also approved the substitution of heating and cooling services to customers from the Entities to SOBE. Finding and Order (Nov. 17, 2021) at ¶ 13. Additionally, the Commission ordered:

Upon the completion of the transaction, the Youngstown Thermal Entities shall be removed from the roll of public utilities, shall cease to provide utility service to customers, and all associated tariffs, responsibilities and obligations connected thereto shall also terminate. Thereafter, the assets and related obligations transferred from the Youngstown Thermal Entities to SOBE shall continue to be subject to the jurisdiction of this Commission.

Finding and Order (Nov. 17, 2021) at ¶ 14. Finally, SOBE and the Youngstown Thermal Entities were ordered to “file a notification in this case docket upon closing of the transaction, as well as copies of any subsequent agreements necessary to effectuate the approved transfer of assets and customers.” *Id.* at ¶ 18.

{¶ 8} As a result of the Finding and Order, SOBE is subject to the Commission's jurisdiction.

III. DISCUSSION

{¶ 9} The Commission notes that, notwithstanding our directives in the November 17, 2021 Finding and Order, SOBE currently serves customers under tariffs still associated with the Youngstown Thermal Entities and no confirmation of the completion of the Purchase Agreement. Additionally, the Entities, and not SOBE, continue to appear on our roll of public utilities. At this time, the Commission orders SOBE to comply with our previous directives. To facilitate the process, in an Entry also issued on this date in the *Youngstown Case*, the Commission has directed the Docketing Division to transfer the tariffs associated with Case No. 17-1534-HC-UNC, and filed in tariff dockets 89-6012-HT-TRF and 89-6017-CC-TRF, to this case docket. *See Youngstown Case*, Entry (May 17, 2023). We further directed the Docketing Division to substitute SOBE's name for each of the Youngstown Thermal Entities' names on the Commission's roll of public utilities. *Id.*

{¶ 10} In this matter, the Commission instructs SOBE to file, in this docket, proof of the closing of the transactions detailed in the Purchase Agreement, as well as copies of any subsequent agreements necessary to effectuate the approved transfer of assets and customers by June 16, 2023. Additionally, SOBE shall cooperate with the Docketing Division to provide any information necessary to fully effectuate the transfer of tariffs and appropriate listing and recognition of SOBE as a public utility in the state of Ohio. Finally, in the continued exercise of our jurisdiction to supervise public utilities, the Commission orders SOBE to provide Staff balance sheets and profit and loss statements on an annual basis. Where appropriate, SOBE may designate as confidential the information provided to Staff.

IV. ORDER

{¶ 11} It is, therefore,

{¶ 12} ORDERED, That SOBE file, in this docket, proof of the closing of the transactions detailed in the Purchase Agreement as well as copies of any subsequent agreements necessary to effectuate the approved transfer of assets and customers by June 16, 2023, in accordance with Paragraph 10. It is, further,

{¶ 13} ORDERED, That SOBE cooperate with the Docketing Division to provide any information necessary to fully effectuate the transfer of tariffs from Case Nos. 17-1534-HC-UNC, 89-6012-HT-TRF, and 89-6017-CC-TRF to this case docket and any necessary tariff dockets in accordance with Paragraph 10. It is, further,

{¶ 14} ORDERED, That the Docketing Department list this case as related to Case No. 17-1534-HC-UNC on the public docket. It is, further,

{¶ 15} ORDERED, That SOBE provide Staff balance sheets and profit and loss statements on an annual basis as stated in Paragraph 10. It is, further,

{¶ 16} ORDERED, That a copy of this Entry be served upon all interested persons and parties of record.

COMMISSIONERS:

Approving:

Jenifer French, Chair
Daniel R. Conway
Lawrence K. Friedeman
Dennis P. Deters
John D. Williams

PAS/dr

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in

Case No(s). 21-0028-HC-ATC

Summary: Entry that the Commission orders SOBE Thermal Energy Systems, LLC to provide confirmation of completion of the transfer of assets and customers authorized in its November 17, 2021 Finding and Order, to annually provide Staff balance sheets and profit and loss statements, and to take appropriate action to ensure it is listed on the Commission's roll of public utilities electronically filed by Ms. Donielle M. Hunter on behalf of Public Utilities Commission of Ohio.