

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

FINDING AND ORDER

Entered in the Journal on June 30, 2017

I. SUMMARY

{¶ 1} In this Finding and Order, the Commission finds that Youngstown Thermal, LLC and Youngstown Thermal Cooling, LLC (Youngstown Thermal) cannot ensure adequate service to their customers and, therefore, are in violation of R.C. 4905.22. The Commission further finds 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 is in imminent danger of insolvency. Thus, pursuant to the authority granted by R.C. 4905.60, the Commission orders the Attorney General to seek the appointment of a receiver and pursue any other appropriate civil remedy.

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 are 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 aforementioned alleged unpaid accounts and loss of its largest customer. While the letter expressed optimism that fiscal circumstances would self-correct, Youngstown Thermal admits that the immediate situation is dire: the company faces 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 requests 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.

III. STAFF REPORT

{¶ 5} In response to Youngstown Thermal's request for assistance, Staff conducted a review of Youngstown Thermal's status. On June 29, 2017, Staff issued its report. Therein, Staff relates that it was first apprised of Youngstown Thermal's potential fiscal trouble in February 2015. At that time, Youngstown Thermal informed Staff that its largest customer—representing 60% of both system load and revenues—was potentially leaving the system. Over the next 19 months, Staff maintained ongoing communication with company management, who expressed confidence that, regardless of that potential loss of business, its revenues would be supplemented by adding a local hospital as a client and participating in the newly awarded Department of Energy Advanced Supercritical Project (DOE Project). In August 2016, Youngstown Thermal confirmed that its largest customer had withdrawn its business from the system.

{¶ 6} In May 2017, after an unusually warm winter yielded a reduced heat load, Staff contacted Youngstown Thermal regarding its financial state. Management told Staff that cash flow was tightening. Collection problems and the unexpected cancellation of the DOE Project were cited amongst other causes for its worsening financial condition.

{¶ 7} With regard to Youngstown Thermal's current finances, Staff discusses the contents of the letter received from Youngstown Thermal on June 14, 2017. Youngstown

Thermal has reported acute cash-flow problems due to the loss of its largest customer, collection delays on alleged outstanding receivables, and cancellation of the DOE Project. Its gas, electric, and water utility suppliers are threatening to shut off their supplies for nonpayment, which would, in turn, result in service interruptions for Youngstown Thermal's customers. As stated in its June 14, 2017 letter, Youngstown Thermal fears that, without the Commission's intervention, its inability to satisfy its utility debt servicing requirements could "result in an energy supply crisis in the downtown Youngstown area."

{¶ 8} On June 15, 2017, Staff traveled to the company's facility to investigate the issues raised in Youngstown Thermal's letter. In meeting with Staff, company management provided additional information and documentation regarding its current status. Staff reports 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.

{¶ 9} 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 notes 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.

{¶ 10} Staff further reports 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. Indeed, without a licensed boiler operator onsite, the Youngstown

Thermal plant would have to shut down until a properly credentialed operator is present. *See* R.C. 4104.05.

{¶ 11} Staff also reports 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.

{¶ 12} 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.

{¶ 13} Staff indicates 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.

{¶ 14} Ultimately, based on the worsening financial conditions described above, Staff concludes 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 recommends 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.

IV. DISCUSSION

{¶ 15} 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. 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. R.C. 4905.06.

{¶ 16} 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.

{¶ 17} 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.

{¶ 18} We note that, under R.C. 2735.01(A)(6), receivership is a special remedy available when a corporation has been dissolved, is insolvent or is in imminent danger of insolvency. Accordingly, where a public utility is insolvent or is in imminent danger of insolvency, the appointment of a receiver is amongst the "appropriate civil remedies" we may direct the Attorney General to pursue when it appears that utility has failed or is about to fail to obey any law or order or is permitting or is about to permit anything contrary to or in violation of law. R.C. 4905.60; *In the Matter of the Investigation of the Rutland Fuel Col*, Case No. 86-2013-GA-COI, Opinion and Order (April 7, 1987) at 10 (*Rutland*). See also *City of Huber Heights v. Ohio Suburban Water Co.*, Case No. 88-1471-WW-CSS, Entry (January 31, 1989) at 2; *In the Matter of the Citation of Buckhorn Utilities, Inc.*, Case No. 83-1059-WW-COI, et al., Opinion and Order (December 27, 1984).

V. CONCLUSION

{¶ 19} Upon consideration of the information reported to the Commission from Youngstown Thermal and set forth in the Staff Report, the Commission finds that Youngstown

Thermal is unable to satisfy its utility, debt and employee payroll obligations when due and carries outstanding debt that far outweighs reasonably forecasted revenue. Consequently, Youngstown Thermal is in imminent danger of losing gas, water, and electric service. Without these services, Youngstown Thermal cannot provide necessary and adequate utility service to its customers as required by R.C. 4905.22.

{¶ 20} The Commission has previously found a utility to be in violation of R.C. 4905.22 under similar circumstances. In *Rutland, supra*, the public utility owed a delinquent balance of approximately \$300,000 to its natural gas provider, which was pursuing cessation of service. The Commission cited the delinquency to the natural gas supplier, other high outstanding debt, excessive uncollectible accounts, and potential loss of service as grave concerns and evidence of Rutland being in imminent danger of breaching its duty to serve its customers adequately under R.C. 4905.22. *Rutland*, Opinion and Order (April 7, 1987) at 11. Ultimately, the Commission ordered the Attorney General to seek appointment of a receiver for Rutland and to pursue any other appropriate civil remedy. *Id.*

{¶ 21} Similarly, here, Youngstown Thermal owes more than \$200,000 to its natural gas, electric and water utility providers. Moreover, Youngstown Thermal's utility debt continues to grow on a monthly basis as it consumes more than it pays for in utilities services. Youngstown Thermal's substantial accounts receivable (which are contested), failure to timely meet payroll, and rapidly growing debt are also evidence of its declining financial health and certain insolvency. Furthermore, Youngstown Thermal has received shut-off or disconnection notices from its gas, electric, and water providers.

{¶ 22} The Commission is committed to taking all appropriate steps to maintain reliable utility service to Youngstown Thermal's customers. Moreover, the exigent circumstances of this situation, where the disconnection of Youngstown Thermal by its utility service providers is looming, require that the Commission act expeditiously. Upon careful deliberation, we find that Youngstown Thermal has a statutory obligation to provide utility service to its customers under R.C. 4905.22. We further find that its potential disconnection of utility service, inability

to timely process employee payroll, and insurmountable indebtedness jeopardizes Youngstown Thermal's ability to continue to provide service to its customers. In addition, based on these issues, we find that Youngstown Thermal is in imminent danger of insolvency. R.C. 1701(O); R.C. 2735.01(A)(6). Furthermore, the Commission concludes that Youngstown Thermal is about to fail in its duty as a public utility to furnish necessary and adequate service to its customers, as required by R.C. 4905.22.

{¶ 23} Accordingly, pursuant to R.C. 4905.60, the Commission directs the Attorney General to seek appointment of a receiver for Youngstown Thermal or any other appropriate civil remedies. Appointment of a receiver will facilitate the collection of accounts receivable, the creation of accurate accounting records and the establishment of new rates for service, all of which are necessary for the continuation of utility service to Youngstown Thermal's customers.

VI. ORDER

{¶ 24} It is, therefore,

{¶ 25} ORDERED, That the Attorney General take all necessary action authorized under R.C. 4905.60 to establish a receivership over Youngstown Thermal or pursue any other appropriate civil remedy. It is, further,

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

THE PUBLIC UTILITIES COMMISSION OF OHIO



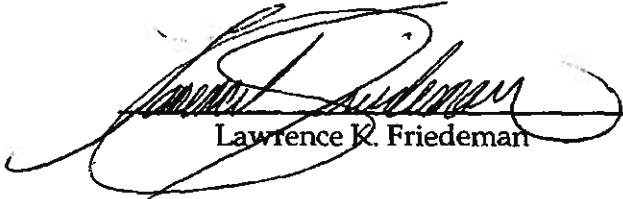
Asim Z. Haque, Chairman



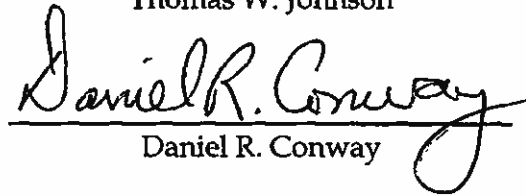
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