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MAHONING COUNTY, OHIO
JUL 7 - 2017
FILED
ANTHONY VIVO, CLERK

IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO

State of Ohio *ex rel.* Public Utilities
Commission of Ohio,
180 East Broad Street
Columbus, Ohio 43215

Relator,

v.

Youngstown Thermal Cooling, LLC
205 North Avenue
Youngstown, Ohio 44502,

and

Youngstown Thermal, LLC
205 North Avenue
Youngstown, Ohio 44502.

Respondents.

Case No. _____

Judge _____

COMPLAINT FOR PEREMPTORY AND PERMANENT WRIT OF MANDAMUS
AND MOTION FOR THE APPOINTMENT OF A RECEIVER AND
MEMORANDUM IN SUPPORT

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Youngstown Thermal Cooling, LLC
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Youngstown, OH 44503
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Carl E. Avers, Chief Executive Officer
Youngstown Thermal, LLC
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Ohio Attorney General

William L. Wright (0018010)
Section Chief

Thomas W. McNamee (001735)
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Attorney for Relator,
The Public Utilities Commission of Ohio

**IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO**

**State of Ohio *ex rel.* Public Utilities
Commission of Ohio,
180 East Broad Street
Columbus, Ohio 43215**

Case No. _____

Judge _____

Relator,

v.

**Youngstown Thermal Cooling, LLC
205 North Avenue
Youngstown, Ohio 44502,**

and

**Youngstown Thermal, LLC
205 North Avenue
Youngstown, Ohio 44502.**

Respondents.

**COMPLAINT FOR PEREMPTORY AND PERMANENT WRIT OF
MANDAMUS**

I. Complaint

Now comes the Public Utilities Commission of Ohio (PUCO) and for its

Complaint states:

II. Jurisdiction

1. This Court has jurisdiction to enforce orders of the PUCO issued against public utilities subject to the jurisdiction of the PUCO pursuant to Article IV Section 4(B) of the Ohio Constitution and Sections 2731.02 and 4905.60 of the Ohio Revised Code. In such circumstances this Court "...may make such order as is proper in the premises." Section 4905.60 of the Ohio Revised Code.
2. This Complaint seeks a writ of mandamus directing Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, (respondents) to comply with its duty to furnish necessary and adequate service, as required by R.C. 4905.22. On June 30, 2017, the PUCO issued an order, which found that respondents were about to fail in this duty. A copy of this PUCO order is attached as exhibit A. The PUCO order further directs respondents to come into compliance with these requirements. This Complaint seeks to enforce that duty through a writ of mandamus.
3. Because the respondents are in violation of the above referred legal requirements as found by the PUCO, this Court should grant the requested writ and alternative writ.

III. Parties

4. The Public Utilities Commission of Ohio is an administrative agency of the State of Ohio established pursuant to Title 49 of the Ohio Revised Code. It has regulatory control provided by statute over heating and cooling companies as those terms

are defined in Section 4905.03(H) and may issue orders regarding such public utilities. Public utilities must comply with statutory obligations. When public utilities are in violation of their statutory obligations, the PUCO is authorized to request that the Attorney General's office file to enforce those orders through mandamus. R.C. 4905.60. Such a request was made in the PUCO's June 30, 2017 order. See Exhibit A.

5. The PUCO has determined that Youngstown Thermal Cooling, LLC, is a cooling company within the meaning of Section 4905.03(H) Ohio Revised Code and is therefore subject to regulation by the PUCO and must comply with its orders. See Exhibit A. Youngstown Thermal Cooling, LLC, operates its facilities in downtown Youngstown and is therefore within the territorial jurisdiction of this Court. Carl E. Avers is the chief executive officer and owner of Youngstown Thermal Cooling, LLC.
6. The PUCO has determined that Youngstown Thermal, LLC is a heating company within the meaning of Section 4905.03(H) Ohio Revised Code and is therefore subject to regulation by the PUCO and must comply with its orders. See Exhibit A. Youngstown Thermal, LLC operates its facilities in downtown Youngstown and is therefore within the territorial jurisdiction of this Court. Carl E. Avers is the chief executive officer and owner of Youngstown Thermal, LLC.

IV. Factual Situation

7. On June 29, 2017 the Staff of the PUCO filed a document entitled a Report by the Staff of the Public Utilities Commission of Ohio (Staff Report) detailing a wide variety of problems associated with respondents. A copy of the Staff Report, supported by affidavit, is attached as Exhibit B and is incorporated as if fully set forth herein. This filing of the Staff Report initiated PUCO case *In the Matter of the Review of Youngstown Thermal, LLC and Youngstown Thermal Cooling LLC* Case No. 17-1534-HC-UNC.
8. The Staff Report revealed that:
 - a. the respondents are insolvent or in imminent danger of insolvency;
 - b. they have received shut off notices from their utility suppliers due to very large unpaid bills;
 - c. respondents were not able to process payment for a payroll period;
 - d. their recordkeeping is not compliant;
 - e. they are in default on a major loan;
 - f. they have not paid annual assessments owed to the PUCO;
 - g. they have not made tariff filings with the PUCO as required by law;
 - h. they are not charging customers approved rates as required by law;
 - i. alleged outstanding bills issued by respondents have not been collected; and
 - j. there is a significant risk that they will be unable to continue to provide service to their customers as required by R.C. 4905.22.

9. The PUCO reviewed the Staff Report and issued an order on June 30, 2017 determining that the respondents' situation presents a serious risk that service will not be provided to the customers. The contents of the PUCO order, attached as Exhibit A, are incorporated herein as if fully set forth. These problems are of such magnitude that it is necessary for this Court to issue a writ of mandamus requiring the respondents to comply with R.C. 4905.22.
10. No other adequate remedy at law exists to address the financial and service crisis that exists currently, indeed mandamus is the remedy specifically provided by law pursuant to Section 4905.60 Ohio Revised Code.
11. The obligation to comply with the PUCO's orders is clear and provided by statute specifically Section 4905.54 which provides in pertinent part "Every public utility or railroad and every officer of a public utility or railroad shall comply with every order, direction, and requirement of the public utilities commission..." No valid excuse for a public utility not following a PUCO order can exist under law and therefore a peremptory writ should be issued pursuant to Section 2731.06 Ohio Revised Code.

V. Prayer for Relief

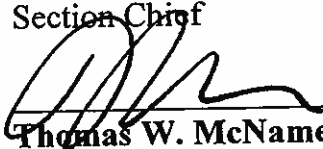
12. Because (1) respondents have a clear statutory duty to furnish necessary and adequate service, (2) there is an imminent danger that service will no longer be provided to respondents' customers, and (3) there is no other adequate remedy at law,

relator requests that this Court issue a preemptory and permanent writ requiring respondents to comply with R.C. 4905.22.

Respectfully submitted,

Michael DeWine (0009181)
Ohio Attorney General

William L. Wright (0018010)
Section Chief



Thomas W. McNamee (001735)
Assistant Attorney General
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30 East Broad Street, 16th Floor
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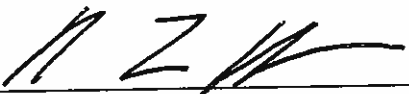
**Attorney for Relator,
The Public Utilities Commission of Ohio**

Verification

State of Ohio
County of Franklin

Before me and being first duly sworn on this 5th day of July, 2017 did appear Asim Z. Haque, Chairman of the Public Utilities Commission of Ohio, who did verify that the contents of the above complaint for writ of mandamus are true to the best of his knowledge and belief.

In witness of this verification he has subscribed his name below in my presence.



Asim Z. Haque

Witness My Official Hand and Seal



Werner L. Margard III
Notary Public

My Commission Never Expires

Werner L. Margard III
Notary Public, State of Ohio
My Commission Does Not Expire

APPENDIX

**APPENDIX
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2735.01 Appointment of receiver.

(A) A receiver may be appointed by the supreme court or a judge thereof, the court of appeals or a judge thereof in the judge's district, the court of common pleas or a judge thereof in the judge's county, or the probate court, in causes pending in such courts respectively, in the following cases:

(1) In an action by a vendor to vacate a fraudulent purchase of property, or by a creditor to subject property or a fund to the creditor's claim, or between partners or others jointly owning or interested in any property or fund, on the application of the plaintiff, or of a party whose right to or interest in the property or fund, or the proceeds of the property or fund, is probable, and when it is shown that the property or fund is in danger of being lost, removed, or materially injured;

(2) In an action by a mortgagee, for the foreclosure of the mortgagee's mortgage and sale of the mortgaged property, when it appears that the mortgaged property is in danger of being lost, removed, materially injured, diminished in value, or squandered, or that the condition of the mortgage has not been performed, and either of the following applies:

(a) The property is probably insufficient to discharge the mortgage debt.

(b) The mortgagor has consented in writing to the appointment of a receiver.

(3) To enforce a contractual assignment of rents and leases;

(4) After judgment, to carry the judgment into effect;

(5) After judgment, to dispose of the property according to the judgment, or to preserve it during the pendency of an appeal, or when an execution has been returned unsatisfied and the judgment debtor refuses to apply the property in satisfaction of the judgment;

(6) When a corporation, limited liability company, partnership, limited partnership, or other entity has been dissolved, is insolvent, is in imminent danger of insolvency, or has forfeited its corporate, limited liability company, partnership, limited partnership, or other entity rights;

(7) In all other cases in which receivers have been appointed by the usages of equity.

(B) A receiver appointed under division (A)(1), (2), (3), or (5) of this section shall be appointed only with respect to the particular property that is the subject of the action in which the appointment of a receiver is sought.

(C) A receiver appointed under division (A)(6) of this section may be appointed to manage all the affairs of the corporation, limited liability company, partnership, limited partnership, or other entity with respect to which the appointment of a receiver is sought.

(D) A receiver appointed under division (A)(4) or (7) of this section may be appointed to manage all the affairs of the corporation, limited liability company, partnership, limited partnership, or other entity, or only with respect to particular property as determined by the court.

Amended by 130th General Assembly File No. TBD, HB 9, §1, eff. 3/23/2015.

Effective Date: 10-01-1953 .

4905.22 Service and facilities required - unreasonable charge prohibited.

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.

Effective Date: 10-01-1953 .

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,

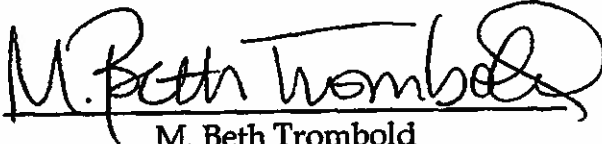
{¶ 25} ORDERED, That the Attorney General take all necessary action authorized under R.C. 4905.60 to establish a receivership over Youngstown Thermal or pursue any other appropriate civil remedy. It is, further,

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

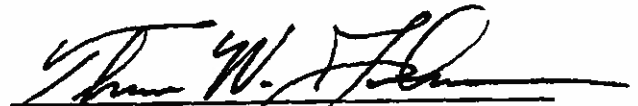
THE PUBLIC UTILITIES COMMISSION OF OHIO



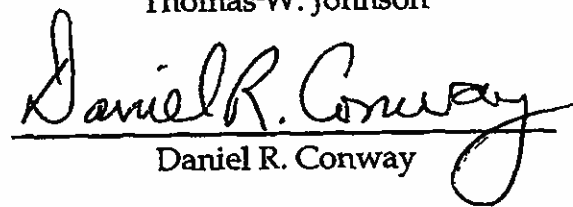
Asim Z. Haque, Chairman



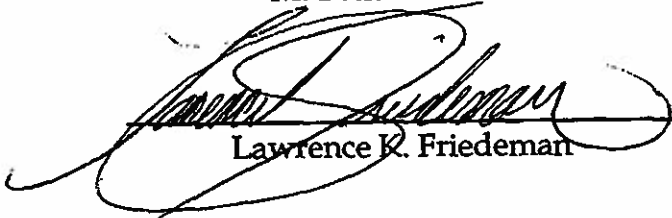
M. Beth Trombold



Thomas W. Johnson




Daniel R. Conway



Lawrence R. Friedeman

GAP/PAS/sc

Entered in the Journal
JUN 30 2017



Barcy F. McNeal
Secretary

**IN THE COURT OF COMMON PLEAS
MAHONING COUNTY, OHIO**

**State of Ohio ex rel. Public Utilities
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Columbus, Ohio 43215**

Case No. _____

Relator,

Judge _____

v.

**AFFIDAVIT OF PATRICK
DONLON**

**Youngstown Thermal Cooling, LLC
205 North Avenue
Youngstown, Ohio 44502,**

and

**Youngstown Thermal, LLC
205 North Avenue
Youngstown, Ohio 44502.**

Respondents.

STATE OF OHIO)

COUNTY OF FRANKLIN)

SS:

Comes now Patrick Donlon, and being first duly sworn, states:

1. I am Patrick Donlon and I am the staff employee of the Public Utilities Commission of Ohio who was in charge of the examination Youngstown Thermal Cooling LLC and Youngstown Thermal LLC.


2. I was responsible for the preparation of the Staff Report attached hereto and marked as Exhibit B.
3. The contents of the Staff Report attached hereto and marked as Exhibit B are true to the best of my knowledge and belief.
4. I have reviewed the content of the Finding and Order attached hereto and marked as Exhibit A.
5. The document attached hereto and marked as Exhibit A is a true copy of the Finding and Order entered by the Public Utilities Commission of Ohio in its case number 17-1534-HC-UNC.

FURTHER AFFIANT SAYETH NAUGHT.


PATRICK DONLON

NOTARY PUBLIC

Sworn to and subscribed by me, a Notary Public of the State of Ohio, this 5th day of July, 2017.


Werner L. Margard III
Notary Public

My Commission Never Expires

Werner L. Margard III
Notary Public, State of Ohio
My Commission Does Not Expire.

**IN THE COURT OF COMMON PLEAS
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MOTION FOR THE APPOINTMENT OF A RECEIVER

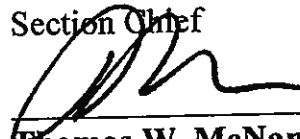
Relator the Public Utilities Commission of Ohio (PUCO) hereby moves this Court, pursuant to Rule 66 of the Ohio Rules of Civil Procedure and Section 2735.01 of the Ohio Revised Code for an Order appointing a receiver to operate Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, (respondents) because the respondents are either insolvent or in imminent danger of insolvency under Section 2735.01(A)(6). This receiver should be authorized to manage all the affairs of the respondents pursuant to Section 2735.01(C) Revised Code and to make appropriate filings with the Public Utilities Commission of Ohio to come into compliance with regulatory requirements..

The legal and factual bases for this motion are set forth in the Memorandum in Support attached below. For the reasons set forth therein, and in the interests of justice and for the protection of the public health, safety and welfare, relator's Motion should be granted.

Respectfully submitted,

Michael DeWine (0009181)
Ohio Attorney General

William L. Wright (0018010)
Section Chief



Thomas W. McNamee (001735)
Assistant Attorney General
Public Utilities Section
30 East Broad Street, 16th Floor
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thomas.mcnamee@ohioattorneygeneral.gov

**Attorney for Relator,
The Public Utilities Commission of Ohio**

**MEMORANDUM IN SUPPORT
OF
MOTION FOR THE APPOINTMENT OF A RECEIVER**

STATEMENT OF THE CASE

Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, (respondents), provide heating and cooling services to most of the downtown buildings in the City of Youngstown. The customers of respondents have no alternative source for these heating and cooling services.

The respondents are public utilities under Section 4905.03(H) Ohio Revised Code and are subject to regulation by the Public Utilities Commission of Ohio (PUCO) under Title 49 of the Ohio Revised Code.

The Staff of the PUCO has examined the financial situation of respondents and determined that:

1. the respondents are insolvent, or in imminent danger of insolvency;
2. they have received shut off notices from their utility suppliers due to very large unpaid bills;
3. respondents were unable to process payment for a period;
4. their recordkeeping is not compliant;
5. they are in default on a major loan;
6. they have not paid assessments owed to the PUCO;

7. they have not made tariff filings with the PUCO as required by law;
8. they are not charging customers approved rates as required by law;
9. alleged outstanding bills issued by respondents have not been collected; and
10. there is a significant risk that they will be unable to continue to provide service to their customers as required by R.C. 4905.22.

The findings of the Staff of the PUCO are attached hereto as Exhibit B and incorporated here as if fully set forth.

The PUCO has reviewed the Staff Report and issued an order in its Case Number 17-1534-HC-UNC finding that the Staff Report raises very serious issues about the viability of respondents and their ability to continue to provide service. A copy of the PUCO order is attached hereto as Exhibit A and is incorporated as if fully set forth herein. This order requests that the Attorney General initiate the action currently before this Court.

ARGUMENT

The Ohio Revised Code, the Ohio Rules of Civil Procedure, and the Ohio Supreme Court recognize the need for receivers in circumstances like the one at hand. An immediate danger exists that respondents' insolvency or imminent insolvency will result in a failure of service to their customers. Insolvency or imminent insolvency is a basis under which a receivership may be established. R.C. 2735.01(A)(6), Appendix at 1. The continuation of service is vital to those customers and is required by R.C. 4905.22. Appendix at 2. Accordingly, Ohio law justifies appointment of a receiver to manage

Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, to protect their customers from losing their vital utility service.

It is difficult to overstate the gravity of this situation. Respondents have received shut off notices from their utility suppliers, water, gas, and electricity. The termination of any of these services would end the ability of respondents to continue to operate. Respondents were recently unable to process payment for their payroll. Should any key employee decide to leave, the respondents could be forced to shut down. Particularly a licensed boiler operator must be present for the boiler to be used. Should the licensed operator leave due to not being paid or being paid late, the operation would have to close.

It is simply not acceptable for these utilities to cease operation. R.C. 4905.22, Appendix at 2. The customers of these utilities must have heating and air conditioning to be able for function. One of the customers of these utilities is a hospital. The customers have no alternative. The entire point of district heating and cooling utilities is that their customers will buy chilled water or steam from the utility so that they do not have to install their own boilers or chillers. That is the situation here. The customers of these utilities do not have alternatives that they can fall back on.

The appointment of a receiver is necessary to stabilize the current situation. The state of respondents' records is such that it is impossible to currently understand the exact nature and depth of the financial and practical problems that exist. An outsider must be brought in to develop a clear understanding of respondents' situation. From the Staff Report of the PUCO it appears that:

1. Respondents are in default on a loan;

2. PUCO authorized rates may not have been collected although only PUCO authorized rates may be charged pursuant to Section 4905.32 Ohio Revised Code; and,
3. significant amounts of alleged accounts receivable have not been collected.

In sum, although it is clear that respondents are insolvent or in imminent danger of insolvency within the meaning of the statute, in the sense that they clearly do not have the funds to pay their current bills, it is not possible to fully plumb the depths of their financial crisis. The state of the respondents' recordkeeping just does not allow this. An outsider must be brought in to clarify this situation so as to develop a plan which will allow a restructuring of these entities into a form that is sustainable.

The PUCO recognizes that the appointment of a receiver is discretionary for this Court. "It has long been recognized that the trial court is vested with sound discretion to appoint a receiver." *State, ex rel. Celebrezze v. Gibbs*, 60 Ohio St.3d 69, 73 (1991). Indeed, "[t]he question of whether or not a receiver will be appointed in a given case is addressed to the sound discretion of the court under all circumstances." *South Main Akron, Inc. v. Lynn Realty, Inc.*, 62 Ohio Law Abs. 103, 112 (App.1951). Moreover, "[a]bsent an abuse of discretion, an appellate court will not reverse a decision on whether to appoint a receiver." *Walsh v. Smith*, 2014-Ohio-1451, ¶ 7 (2nd Dist.), citing *Gibbs*. Abuse of discretion is defined as "a decision that is unreasonable, arbitrary, or unconscionable." *Id.*, citing *JPMorgan Chase Bank v. Taylor*, 2013-Ohio-2760, ¶ 6 (2d Dist.).

A court in exercising its discretion to appoint or refuse to appoint a receiver must take into account all the circumstances and facts of the case, the presence of conditions and grounds justifying the relief, the ends of justice, the rights of all the parties interested in the controversy and subject matter, and the adequacy and effectiveness of other remedies.” 65 American Jurisprudence 2d (1972) 873, 874, Receivers, Sections 19, 20. Despite the efforts of the current management, the respondents are in a position of imminent collapse. This must be prevented. A receivership is the only tool available to accomplish this. The circumstances and facts of this case and all other pertinent factors support the exercise of this Court’s discretion to appoint a receiver to operate Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, to protect the customers of these utilities from losing their vital service today, and to assure the long-term viability of these services.

CONCLUSION

Appointment of a receiver is an extraordinary equitable remedy, committed to the sound discretion of the court. It is appropriate when the requirements of R.C. 2735.01 are met and the equities of the case support it. As has been shown in the pleadings filed in this case the equities require that new management be brought in to operate respondents. Vital utility services could be terminated literally at any time. It is inequitable to deprive the customers of these utilities the vital services on which they rely and which are required by law to be provided.

In the interests of justice and for the benefit of the customers of Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, relator's Motion for Appointment of a Receiver should be found well taken and granted.

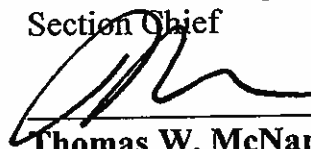
RELIEF REQUESTED

Appoint a Receiver for Youngstown Thermal Cooling, LLC, and Youngstown Thermal, LLC, to continue to supply service, to collect accounts receivable, to create accurate accounting records, to establish new rates for service so as to come into compliance with regulatory requirements of the Public Utilities Commission of Ohio, and comply with the Court's Orders.

Respectfully submitted,

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**Attorney for Relator,
The Public Utilities Commission of Ohio**

PROOF OF SERVICE

I hereby certify that a true copy of the foregoing Complaint for Peremptory and Permanent Writ of Mandamus and Motion for Appointment of a Receiver and Memorandum in Support, submitted on behalf of relator, the Public Utilities Commission of Ohio, was served via electronic mail or U.S. mail, postage prepaid, upon the following parties of record, this 7th day of JULY, 2012.



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