



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
P.O. BOX 3265, HARRISBURG, PA 17105-3265

IN REPLY PLEASE
REFER TO OUR FILE

March 21, 2017

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

Re: Pennsylvania Public Utility Commission, Bureau of Investigation
and Enforcement v. Metropolitan Edison Company and North
Heidelberg Sewer Company
Docket No. P-2017-

Dear Secretary Chiavetta:

Enclosed please find the Petition of the Bureau of Investigation and Enforcement
of the Pennsylvania Public Utility Commission for the Issuance of an *Ex Parte*
Emergency Order Regarding Metropolitan Edison Company and North Heidelberg Sewer
Company.

Should you have any questions, please feel free to contact me.

Sincerely,

Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

cc: Chairman Gladys M. Brown
Vice Chairman Andrew G. Place
Commissioner John F. Coleman, Jr.
Commissioner Robert F. Powelson
Commissioner David W. Sweet
Jan H. Freeman, Exec. Director
Bohdan Pankiw, Chief Counsel
As per Certificate of Service

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	
Bureau Of Investigation And Enforcement,	:	
Petitioner	:	
	:	
v.	:	Docket No. P-2017-_____
	:	
Metropolitan Edison Company And	:	
North Heidelberg Sewer Company,	:	
Respondents	:	

**PETITION OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
OF THE PENNSYLVANIA PUBLIC UTILITY COMMISSION
FOR THE ISSUANCE OF AN *EX PARTE* EMERGENCY ORDER**

AND NOW, comes the Bureau of Investigation and Enforcement ("I&E") of the Pennsylvania Public Utility Commission ("Commission" or "PUC"), pursuant to 52 Pa. Code § 3.2, and petitions the Commission for the issuance of an *ex parte* emergency order: 1) requiring Metropolitan Edison Company ("Met-Ed") to immediately cease and desist from terminating electric service to North Heidelberg Sewer Company ("NHSC") due to non-payment, 2) providing notice to customers to ensure the continued provision of safe and reliable service, and 3) directing NHSC to immediately cease the unauthorized withholding of current and past due electric service payments to Met-Ed. In support of this Petition, I&E avers as follows:

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I. INTRODUCTION

1. On or about May 28, 2013, the North Heidelberg Sewer Company entered into a Settlement Agreement with the Office of Consumer Advocate ("OCA"), I&E and others to resolve all issues in the Rate Proceeding before the Commission at Docket No. R-2012-2330877.¹ That Settlement Agreement was approved by Commission Order entered July 16, 2013. Paragraph 8 of the Commission's Order approving the Joint Petition for Settlement states as follows:

That North Heidelberg Sewer Company will provide the Office of Consumer Advocate with the terms of its repayment agreement with Metropolitan Edison Company to address the Company's approximately \$60,000 past-due balance within thirty days of the Company entering into the repayment agreement or the entry of the Commission Order approving this Joint Petition, whichever date is later.

2. By way of Interoffice Memorandum dated September 22, 2015, the Commission's Bureau of Technical Utility Services ("TUS") informed I&E about a matter involving NHSC and Met-Ed. The memo further disclosed that NHSC refused to pay its electric bills to Met-Ed, and an arrearage of \$114,107 was due to Met-Ed for service provided to NHSC. TUS requested that I&E investigate whether NHSC had failed to comply with the Commission Order at R-2012-2330877 and to take whatever action I&E deemed appropriate.

¹ At the time of this rate proceeding, NHSC served approximately 253 customers.

3. On or about December 30, 2015, an I&E prosecutor was assigned and initiated an investigation focusing on the relevant provision of the Settlement at Paragraph 8, which stated: "NHSC will provide the OCA with the terms of its repayment agreement with Met-Ed to address the Company's approximately \$60,000 past due balance within 30 days." The investigation included a review of the Settlement Order at R-2012-2330877, contact with OCA and communication with a Met-Ed regulatory contact to determine the status of any payment arrangement between Met-Ed and NHSC. An OCA representative stated that they had not been provided any such payment arrangement. The Met-Ed regulatory contact indicated that he believed a payment arrangement existed. Neither party, however, was able to produce a payment arrangement.

4. The assigned I&E prosecutor then attempted to telephone Mr. Aicholtz, the Chief Executive Officer ("CEO") and owner and operator of NHSC. As a result of those unsuccessful attempts to reach the NHSC CEO, a formal letter was sent by I&E to Mr. Aicholtz on January 29, 2016. By this time, NHSC was in arrears to Met-Ed for approximately \$118,000 and I&E advised NHSC that such an arrearage – and the resulting threat of termination of electric service by Met-Ed – "puts at risk the safe, adequate, and reasonable service North Heidelberg Sewer Company is obligated to provide its customers under Section 1501 of the Public Utility Code. 66 Pa.C.S § 1501." NHSC was further advised that failure to pay its outstanding arrearage for electric service

could result in further enforcement action by I&E, including the assessment of a civil penalty.

5. Upon receiving the letter, Mr. Aicholtz contacted the I&E prosecutor by telephone in early February 2016 and discussed the repayment of his outstanding arrearage to Met-Ed. Mr. Aicholtz indicated that no payment arrangement had ever been entered into between NHSC and Met-Ed, but that NHSC did intend to pay the money owed to Met-Ed, and that legal counsel to NHSC would be in touch. I&E was never contacted by counsel to NHSC and all further telephone messages and calls from I&E to Mr. Aicholtz went unanswered and unreturned.

6. I&E had been tasked to investigate whether NHSC had failed to comply with the Commission Order at R-2012-2330877. The Commission Order did not expressly or impliedly order NHSC to pay Met-Ed the arrearage due, but rather, only required that a copy of the payment arrangement be sent to OCA within 30 days. I&E concluded that no violation of the Commission Order at R-2012-2330877 by NHSC had occurred.

7. Upon concluding that I&E enforcement action was not justified pursuant to the terms of the settlement, the assigned I&E prosecutor communicated with Met-Ed's regulatory contact to discuss Met-Ed's options for collection of its outstanding arrearage, including the filing of a Commission formal complaint. Met-Ed agreed that the matter would be handled through some form of formal proceeding that Met-Ed would initiate before the Commission. In July, 2016, I&E closed its investigation.

8. I&E understands that the arrearage owed by NHSC to Met-Ed for electric service now totals approximately \$157,000. Over the past 14 months, Met-Ed has sent numerous notices to NHSC, all to no avail. At this juncture, due to the continued failure of NHSC to make payments for electric service rendered by Met-Ed, and there being no indication of any amicable resolution being reached by the parties, it is apparent that action by Met-Ed to terminate electric service to NHSC for non-payment is imminent.

9. Accordingly, due to the continuing failure of NHSC to pay for electric service rendered by Met-Ed, and Met-Ed's clear and imminent threat of termination of electric service to NHSC, I&E is now compelled to bring this Petition for Issuance of *Ex Parte* Emergency Order and request that the Commission direct: 1) that Met-Ed shall immediately cease and desist from terminating electric service to NHSC without prior authorization from the Commission; 2) that NHSC shall ensure its customers by way of written correspondence, that said NHSC customers will continue to be provided safe, adequate and reasonable wastewater services; and 3) that NHSC shall pay its current and past due amounts due and owing to Met-Ed as deemed appropriate by the Commission. Moreover, should NHSC fail to abide by the terms of the Emergency Order, including making payments of current and past due amounts due and owing to Met-Ed as set forth therein, the Commission shall be compelled to utilize the power granted to it by the Legislature of this Commonwealth regarding the acquisition of small water or sewer entities by a capable public utility as set forth at Section 529 of the Public Utility Code, 66 Pa.C.S. § 529.

II. PARTIES

10. The Pennsylvania Public Utility Commission, with a mailing address of P.O. Box 3265, Harrisburg, PA 17105-3265, is a duly constituted agency of the Commonwealth of Pennsylvania empowered to regulate public utilities within the Commonwealth pursuant to the Public Utility Code, 66 Pa.C.S. §§ 101, *et seq.*

11. Petitioner is the Commission's Bureau of Investigation and Enforcement and is the entity established to initiate proceedings that are prosecutory in nature for violations of the Public Utility Code and Commission regulations. *See Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a)(11).

12. Respondent, North Heidelberg Sewer Company, with a principal place of business at 231 East Second Street, P.O. Box 609, Bernville, PA 19506, is a wastewater company certificated by the Commission at Docket No. A-230009. The CEO of NHSC is Joseph M. Aichholz, III.

13. Respondent, Metropolitan Edison Company, a subsidiary of First Energy Company, with a principal place of business at 2800 Pottsville Pike, P.O. Box 1600, Reading, PA 19612, is a certificated electric distribution company within the Commonwealth. The attorney for Met-Ed is Tori L. Giesler, Esquire.

III. JURISDICTION

14. The Commission has jurisdiction over this matter pursuant to 66 Pa.C.S. § 501, which provides in pertinent part: "In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, **and it shall be its duty to enforce**, execute and carry out, by its regulations, orders, or otherwise, **all and singular, the provisions of this part, and the full intent thereof . . .**" (emphasis added).

15. Section 1501 of the Public Utility Code states that every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities and that such service shall be reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S § 1501.

IV. STANDARD FOR ISSUANCE OF AN EMERGENCY ORDER

16. Section 3.2 of the Commission's regulations, 52 Pa. Code § 3.2, permits a petition to the Commission for the issuance of an *ex parte* emergency order where supported by a verified statement of facts which establishes the existence of an emergency. The petition must establish facts to demonstrate that:

1. The Petitioner's right to relief is clear.
2. The need for relief is immediate.
3. The injury would be irreparable if relief is not granted.
4. The relief requested is not injurious to the public interest.

52 Pa. Code § 3.2(b).

17. "Emergency" is defined in the Commission's regulations as "[a] situation which **presents a clear and present danger to life or property** or which is uncontested

and requires action prior to the next scheduled meeting.” 52 Pa. Code § 3.1 (emphasis added).

18. The person or entity seeking emergency relief bears the burden of proving that the facts and circumstances meet all four of the above requirements. 66 Pa.C.S. § 332; 52 Pa. Code § 3.2(b). The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990). The petitioner's evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (1950).

19. The Chairperson, a Commissioner, the Commission’s Director of Operations and the Commission’s Secretary have the authority to issue an emergency order. 52 Pa. Code § 3.3(a). An emergency order will be issued in writing. 52 Pa. Code § 3.3(b). An emergency order will be ratified, modified or rescinded by the Commission at the next scheduled public meeting after issuance of the order. 52 Pa. Code § 3.3(c). An emergency order will be served by the Secretary as expeditiously as practicable upon the persons directly affected by the decision with copies to the Commissioners and the Director of Operations. 52 Pa. Code § 3.3(d).

20. A person against whom an emergency order is issued *may* file a petition for an expedited hearing to be held before a presiding officer within 10 days of receipt of the petition by the Secretary. 52 Pa.Code § 3.4.

A. I&E's Right To Relief Is Clear

21. I&E has shown that its right to relief is clear. It is not necessary to determine the merits of the controversy or dispute in order to find that a petitioner has satisfied the first prong of Section 3.2(b) of the Commission's regulations, 52 Pa. Code 3.2(b), by showing that the right to relief is clear. Rather, the Commission has found that if a petitioner raises "substantial legal questions," then a petitioner has established that its right to relief is clear. *Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered September 23, 2011); *Level 3 Communications, LLC v. Marianna & Scenery Hill Telephone Company*, Docket No. C-20028114 (Order entered August 8, 2002); *T.W. Phillips Gas and Oil Company v. The Peoples Natural Gas Company*, 492 A.2d 776 (Pa. Cmwlth. 1985).

22. I&E serves as the Commission's prosecutory bureau and enforces compliance with the Public Utility Code and Commission regulations. *Implementation of Act 129 of 2008; Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011), p. 5.

23. Section 1501 of the Public Utility Code states, in pertinent part, as follows:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in, or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees and the public. Such service also shall be reasonably continuous and without unreasonable interruptions or delay.

66 Pa.C.S § 1501.

24. The electric service provided by Met-Ed serves, among other things, NHSC's wastewater (sewage) treatment plant. Electric service is critical for the proper operation of this wastewater treatment facility.

25. The termination of electric service to the NHSC treatment plant could have catastrophic results, including the discharge of untreated wastewater into Pennsylvania waterways and backups at customer locations.

26. The termination of electric service to NHSC could pose a serious and immediate health and safety hazard to NHSC's customers. Moreover, any sustained loss of electric service has the potential to adversely impact public drinking water supplies downstream of the NHSC treatment plant discharge, critical to the well-being of the public-at-large.

27. Consequently, the termination of electric service to NHSC would stifle NHSC's obligation to furnish and maintain adequate, efficient, safe and reasonable service that is reasonably continuous and without unreasonable interruptions or delay pursuant to Section 1501 of the Public Utility Code.

B. The Need For Relief Is Immediate

28. I&E's need for relief is immediate. I&E has attempted on numerous occasions to communicate with NHSC and prompt payment for its past due electric service charges - all to no avail. Met-Ed has provided NHSC with ample notice and ample time to pay its arrearage or enter into a payment arrangement. NHSC's arrearage continues to grow, now at over \$157,000 and increasing. Met-Ed would, under normal

circumstances, be within its right to terminate electric service to NHSC for its non-payment of service rendered over an extended period of time and after many attempts to threaten termination action.

29. Termination of electric service would have an immediate adverse impact on the operation of NHSC's treatment plant and failure of the plant to operate could result in immediate threats to the environment as well as the health and safety of NHSC's customers and the public-at-large.

C. The Injury From Respondents' Actions Will Be Irreparable If Relief Is Not Granted

30. By failing to pay for electric service rendered to it by Met-Ed, NHSC risks termination of its electric service, thereby jeopardizing its obligation as a public utility in this Commonwealth to provide safe and reasonable service to its wastewater customers. By terminating electric service to NHSC, Met-Ed could induce a tidal wave of adverse consequences, including the potential discharge of untreated wastewater into the Commonwealth's waterways, which could result in irreparable harm to the environment, the health of its NHSC's customers and the safety of the public at large.

31. Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, creates a process whereby the Commission can direct a "capable public utility" with 4,000 or more customer connections to acquire a "small sewer utility" with 1,200 or fewer customer connections.

32. The Commission has exercised its authority under Section 529 of the Code to direct a “capable public utility” to acquire a “small sewer utility.” See also, *Investigation Instituted into Whether the Commission Should Order a Capable Public Utility to Acquire Clean Treatment Sewage*, Docket No. I-2009-2109324.

33. By consciously and intentionally placing in jeopardy its ability to provide safe, reliable and reasonable wastewater service to its customers, NHTC has indicated that it, among other things, cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities to its customers in the future. 66 Pa.C.S. § 529(a)(3).

D. The Relief Requested Is Not Injurious To The Public Interest

34. The relief that I&E requests is certainly not injurious to the public interest. To the contrary, it is clear that it will be injurious to the public interest if the relief requested is *not* granted.

V. PRAYER FOR RELIEF

WHEREFORE, the Bureau of Investigation and Enforcement, Petitioner, respectfully requests that the Commission enter an Emergency Order that directs:


1) that Met-Ed shall immediately cease and desist from terminating electric service to NHSC without prior authorization from the Commission;

2) that NHSC shall ensure its customers by way of written correspondence, that said NHSC customers will continue to be provided safe, adequate and reasonable wastewater services; and

3) that NHSC shall pay its current and past due amounts due and owing to Met-Ed as deemed appropriate by the Commission.

Moreover, should NHSC fail to abide by the terms of the Emergency Order, including making payments of current and past due amounts due and owing to Met-Ed as set forth therein, the Commission shall be compelled to utilize the power granted to it by the Legislature of this Commonwealth regarding the acquisition of small water or sewer entities by a capable public utility as set forth at Section 529 of the Public Utility Code, 66 Pa.C.S. § 529.

Respectfully submitted,



Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
P.O. Box 3265
Harrisburg, PA 17105-3265
(717) 783-6369

Date: March 21, 2017

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VERIFICATION

I, John Van Zant, Utility Energy and Conservation Analyst III, Technical Utility Services, Water Reliability Group, hereby state that the facts above set forth are true and correct to the best of my knowledge, information and belief and that I expect that the Bureau will be able to prove same at any hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa.C.S. § 4904 relating to unsworn falsification to authorities.

Date: March 21, 2017

A handwritten signature in black ink, appearing to read 'J H Zant', is written over a horizontal line.

John Van Zant
Utility Energy and Conservation Analyst III
Technical Utility Services, Water Reliability
Group

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Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,
Petitioner

v.

Metropolitan Edison Company and North
Heidelberg Sewer Company
Respondents

Docket No. P-2017-

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document, upon the parties, listed below, in accordance with the requirements of 52 Pa. Code §1.54 (relating to service by a party).

Service by First Class Mail:

North Heidelberg Sewer Company
231 East Second Street
P.O. Box 609
Bernville, PA 19506

Tori L. Giesler, Esquire
Metropolitan Edison Company
2800 Pottsville Pike
P.O. Box 16001
Reading, PA 19612

Office of Consumer Advocate
555 Walnut Street – 5th Floor
Harrisburg, PA 17101-1923

Office of Small Business Advocate
Commerce Tower
300 North Second Street, Suite 202
Harrisburg, PA 17101



Michael L. Swindler
Deputy Chief Prosecutor
PA Attorney ID No. 43319

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Dated: March 21, 2017

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