

**PENNSYLVANIA
PUBLIC UTILITY COMMISSION
Harrisburg, PA 17105-3265**

March 22, 2017

Pennsylvania Public Utility Commission,
Bureau of Investigation and Enforcement,

v.

Docket No. P-2017-2594688

North Heidelberg Sewer Company

EX PARTE EMERGENCY ORDER

On March 21, 2017, the Commission's Bureau of Investigation and Enforcement filed the above-captioned Petition for an Ex Parte Emergency Order regarding the North Heidelberg Sewer Company (NHSC), Utility Code 230009 (BIE Petition). NHSC provides wastewater service in portions of North Heidelberg and Jefferson Townships in Northern Berks County. NHSC is under threat of immediate termination of the electric service that it receives from Metropolitan Edison Company (Met-Ed) because of its long standing non-payment of its electric bills. BIE Petition at 10, ¶ 28.

The Commission will grant the Petition, as modified herein, to ensure continued wastewater service from NHSC. The Commission takes immediate affirmative actions here, subject to revision in a subsequent Ratification Order, to protect NHSC customers and all members of the public affected by the regulated utility service rendered by NHSC, and to confirm the NHSC obligation to provide safe, reasonable and adequate utility service. The essence of the emergency the BIE Petition describes is as follows.

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.

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.

BIE Petition at 10, ¶¶ 24-25.

The BIE Petition begins by pointing out that this is not the first instance where the Commission has addressed the electric service arrearages of NHSC. BIE Petition at 4, ¶¶ 6-7. On July 16, 2013, the Commission issued an Order at Docket No. R-2012-2330877 approving the Settlement of the October 23, 2012 rate increase request filed by NHSC (*July 2013 Order*). A pivotal term of that Settlement is as follows:

North Heidelberg agrees to provide the OCA [Office of Consumer Advocate] with the terms of its repayment agreement with Met-Ed to address North Heidelberg's approximately \$60,000 past-due balance, in writing, within 30 days of the Company entering into the repayment agreement or entry of the Commission Order approving this Settlement, which date is later.

BIE Petition at 2, ¶ 1. Thus, it appears that the Commission sought to address this situation as early as 2013. Also, while Met-Ed was a beneficiary of this settlement language, it was not a party to the rate proceeding.

However, the BIE Petition suggests that the *July 2013 Order* did not obligate NHSC to pay any arrearage owed to Met-Ed, only to provide the Office of Consumer Advocate with a copy of any payment arrangement NHSC may secure. BIE Petition at 4, ¶¶ 6-7. On the contrary, nothing in the *July 2013 Order* operates to relieve NHSC of its obligation as an electric customer of Met-Ed to pay its current bills and to make payments towards its legitimate arrearages on a reasonable amortization schedule. The reporting requirement for OCA was intended to document NHSC's adherence to these fundamental customer obligations.

The BIE Petition points out that the size of the NHSC arrearage to Met-Ed has now grown to approximately \$157,000 and is increasing. BIE Petition at 10, ¶28. In addition, the Commission can find no instance where NHSC formally contested the accuracy or amount of any Met-Ed bill or arrearage. Utility bills issued in accordance with a utility's approved tariff are presumed valid. 66 Pa. C.S. § 1303. Similarly, under established public utility law, Met-Ed cannot provide NHSC with "free service." 66 Pa. C.S. § 1304. Nevertheless, the Commission is cognizant of the no-win circumstance in which Met-Ed finds itself. That is, Met-Ed is loath to terminate service to NHSC because an abrupt termination of electric service would likely harm NHSC customers and the public.

The Public Utility Code authorizes the Commission to regulate the conduct of public utilities in the Commonwealth. 66 Pa. C.S. § 501. It is also authorized to "enforce obedience" to the Public Utility Code, Commission regulations and orders. 66 Pa. C.S. § 502. Pursuant to that authority, the Commission has issued regulations governing emergency situations, specifically when it will issue *ex parte* emergency orders to address clear and present dangers to life or property. 52 Pa. Code § 3.1. As a part of the due process provided to persons subject to an *ex parte* emergency order, 52 Pa. Code § 3.4 provides access to an expedited hearing within 10 days.

Based on the apparent lack of timely payments by NHSC of its current bills and accumulated arrearage, it appears that Met-Ed has the legal right and obligation to terminate service to NHSC. BIE Petition at 11, ¶ 28. The imminent and unplanned cessation of wastewater service to several hundred households, or a large-scale discharge of untreated wastewater into Pennsylvania waterways, would present a serious public health and safety threat that the Commission cannot ignore. BIE Petition at 5, ¶ 8. As such, the Commission finds that BIE has met the standards for issuance of an *Ex Parte* Emergency Order. BIE Petition at 7-12, ¶¶ 16-34. In addition, it would be grievous error for any Party to assume that the Commission will not respond in the strongest possible manner to any course of

conduct that would threaten public safety in an effort to obtain favorable regulatory treatment.

The Commission agrees with the BIE Petition that 66 Pa. C.S. § 529 authorizes the Commission to direct a competent public utility to operate or acquire a small sewer utility that has jeopardized public safety by failing to provide reasonable and adequate utility service. The BIE Petition provides as follows:

By consciously and intentionally placing in jeopardy its ability to provide safe, reliable and reasonable wastewater service to its customers, [NHSC] as 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.

BIE Petition at 12, ¶ 33. As to this *Ex Parte* Emergency Order, the Commission agrees.

The BIE Petition also seeks to name Met-Ed as a respondent. While the Commission will join Met-Ed as an indispensable party, as an initial matter, the Commission makes clear that Met-Ed's reluctance to terminate NHSC is not unreasonable under circumstances. This *Ex Parte* Order should not be read as implying wrong-doing on the part of Met-Ed because it has avoided unilateral action that could create a public health and safety catastrophe. Therefore, because this matter cannot be resolved without the active participation of Met-Ed, the Commission will join Met-Ed as an indispensable party.

NHSC is cautioned that, upon notice from Metropolitan Edison Company that it has failed to make timely and full payments on its electric bill, Aqua Pennsylvania Wastewater Inc. will be directed to assume immediate and complete control for all billing and operations of NHSC to ensure safe, adequate and reasonably continuous wastewater service to NHSC customers and the public. In that event, the Commission will also initiate a proceeding to determine an appropriate payment from NHSC to Aqua Pennsylvania Wastewater Inc. to operate NHSC, up to and including an acquisition proceeding under 66 Pa. C.S. § 529.

The Commission is taking immediate action here to avoid any disruption in service to NHSC customers and members of the affected public. To avoid any misunderstanding on the part of the Parties or affected persons, pursuant to its authority under the Public Utility Code, its regulations, and its Orders; **THEREFORE,**

IT IS ORDERED:

1. That 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 North Heidelberg Sewer Company at Docket No. P-2017-2594688 is granted consistent with this Order.

2. That Metropolitan Edison Company is joined to this proceeding as an indispensable party.

3. That Metropolitan Edison Company shall not terminate electric service to North Heidelberg Sewer Company without prior authorization from the Pennsylvania Public Utility Commission.

4. That, within five (5) days of the date of this Emergency Order, North Heidelberg Sewer Company shall provide written notice to all its customers informing that they are under no threat of losing wastewater service as a result of electric service termination. In that written notice North Heidelberg Sewer Company will provide the following statement:

By Order of the Pennsylvania Public Utility Commission, Metropolitan Edison Company is prohibited from terminating electric service to the North Heidelberg Sewer Company. Should you require more information or assistance, please contact one of the following:

Pennsylvania Public Utility Commission
Bureau of Consumer Services
1-800-692-7380

PA Office of Consumer Advocate
1-800-684-6560

5. That NHSC will file with the Commission at this Docket No. P-2017-2594688 an affidavit that it has complied with Ordering Paragraph 4 within five (5) days of compliance, and include a copy of the customer notice provided therein.

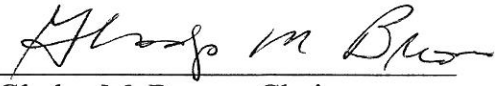
6. That North Heidelberg Sewer Company shall pay all current monthly bills issued to it by Metropolitan Edison Company on or before the due date specified on the bill unless the Commission or a court of competent jurisdiction directs otherwise.

7. That within thirty (30) days of ratification of this Emergency Order, North Heidelberg Sewer Company shall provide to the Pennsylvania Public Utility Commission, Bureau of Technical Utility Services, Commonwealth Keystone Building, 400 North Street, Harrisburg PA 17120, a complete customer list including all account information.

8. That, in the event North Heidelberg Sewer Company fails to make any payment directed herein, Metropolitan Edison Company shall notify the Commission, the Director of the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and Aqua Pennsylvania Wastewater Inc. that such failure has occurred.

9. That the Office of Administrative Law Judge shall schedule an on-the-record hearing within 10 days of the date of this *Ex Parte* Emergency Order to prepare a recommended decision for consideration of the full Commission.

10. That the Secretary shall serve a copy of this Emergency Order on North Heidelberg Sewer Company, Metropolitan Edison Company, Aqua Pennsylvania Wastewater Inc., the Department of Environmental Protection, Southcentral Regional Office and Central Office-Bureau of Regulatory Counsel, the Bureau of Investigation and Enforcement, the Office of Consumer Advocate, and the Office of Small Business Advocate.


Gladys M. Brown, Chairman

DATE: March 22, 2017