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

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|  | Public Meeting held May 4, 2017 |
| Commissioners Present: |  |

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| Gladys M. Brown, Chairman | | |  |
| Andrew G. Place, Vice Chairman | | |  |
| John F. Coleman, Jr. |  |
| Robert F. Powelson |  |
| David W. Sweet |  |

Pennsylvania Public Utility Commission,

Bureau of Investigation and Enforcement

v. P-2017-2594688

Metropolitan Edison Company and

North Heidelberg Sewer Company

### OPINION AND ORDER

**BY THE COMMISSION:**

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition are the Exceptions of North Heidelberg Sewer Company (NHSC) filed on April 17, 2017, to the Recommended Decision of Administrative Law Judge (ALJ) Elizabeth H. Barnes, issued on April 11, 2017, in the above-captioned matter. For the reasons stated below, we will deny the Exceptions and adopt the ALJ’s Recommended Decision, as modified, consistent with this Opinion and Order.

**History of the Proceeding**

On March 21, 2017, the Bureau of Investigation and Enforcement (I&E or Petitioner) filed a Petition for Issuance of an *Ex Parte* Emergency Order (Petition) against Metropolitan Edison Company (Met-Ed) and North Heidelberg Sewer Company (NHSC or Company) pursuant to 52 Pa. Code § 3.2. In its Petition, I&E averred that Met-Ed had begun termination procedures against NHSC due to non-payment of a $157,000 arrearage for electric services rendered, which continues to increase. For relief, the Petitioner requested that the Commission enjoin Met-Ed from terminating electric service to NHSC without prior Commission approval. I&E also sought a Commission order for the Company to cease withholding electric service payments to Met-Ed. Finally, the Petitioner requested that the Commission direct NHSC to notify its customers that they will continue to receive wastewater services.

On March 22, 2017, Chairman Gladys M. Brown signed an *Ex Parte* Emergency Order (*Ex Parte Order*). The *Ex Parte Order* granted the Petition as modified to ensure continued wastewater service from NHSC to its customers, subject to ratification by the full Commission at the next public meeting on April 6, 2017.[[1]](#footnote-1) On March 28, 2017, the Office of Consumer Advocate (OCA) filed a petition to intervene and public statement seeking to represent the interests of the customers of NHSC and Met-Ed. By letter dated March 28, 2017, the Pennsylvania Department of Environmental Protection stated that it had no intention of intervening in the proceeding but reserved its right to do so at a later time. On April 3, 2017, Administrative Law Judge (ALJ) Elizabeth H. Barnes held an evidentiary hearing. I&E was represented by legal counsel who presented one witness but did not offer any exhibits into evidence. Met-Ed was represented by legal counsel who presented two witnesses and offered six exhibits, which were admitted into the record. NHSC was represented by legal counsel who presented one witness, but the Company did not offer any exhibits into evidence. Additionally, OCA and Aqua Pennsylvania Wastewater, Inc. (Aqua)[[2]](#footnote-2) were represented by their respective legal counsel but did not offer any testimony or exhibits into evidence.

Thereafter, by Order entered on April 6, 2017, the full Commission ratified the *Ex Parte Order*. In her Recommended Decision issued on April 11, 2017, ALJ Barnes recommended that the *Ex Parte Order* remain in effect with some modifications. On April 14, 2017, I&E filed a letter stating that it would not be filing Exceptions. As previously noted, NHSC filed Exceptions on April 17, 2017. By letters filed on April 17, 2017, both OCA and Met-Ed indicated that they would not be filing Exceptions. Additionally, on April 17, 2017, NHSC filed an affidavit stating that it provided written notice to all of its customers informing them that they are under no threat of losing wastewater service as a result of electrical service termination and attached a copy of the customer notice. On April 18, 2017, counsel for NHSC filed a letter purporting to correct an error contained in the Exceptions (Correction Letter). According to NHSC’s counsel, the Exceptions did not include a reference to the arrearage balance of $64,023.95 that existed at the beginning of March 2013. NHSC’s counsel indicates that without this reference the Exceptions would be unintentionally misleading.[[3]](#footnote-3) Correction Letter at 1.

On April 19, 2017, the Commission’s Secretary’s Bureau issued a Secretarial Letter waiving the requirement under 52 Pa. Code § 3.4(e) that the Recommended Decision be acted upon by the Commission by the next scheduled public meeting, which at the time would have been the public meeting of April 20, 2017.

**Discussion**

**Legal Standards**

Section 3.2 of our Regulations, 52 Pa. Code § 3.2, permits a

petition 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; and (4) the relief requested is not injurious to the public interest. 52 Pa. Code § 3.2(b).

“Emergency” is defined as “[a] situation which presents a clear and present danger to life or propertyor which is uncontested and requires action prior to the next scheduled public meeting.” 52 Pa. Code § 3.1.

As the proponent of the Petition, I&E bears the burden of proof pursuant to Section 332(a) of the Public Utility Code (Code), 66 Pa. C.S. § 332(a), and for proving that the facts and circumstances satisfy all four of the requirements under 52 Pa. Code

§ 3.2(b). Such a showing must be by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. denied,* 529 Pa. 654, 602 A.2d 863 (1992). That is, the Petitioner’s evidence must be more convincing, by even the smallest amount, than that presented by the other Parties. *Se-Ling Hosiery, Inc. v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

Before addressing the Exceptions, we note that any issue or Exception that we do not specifically delineate shall be deemed to have been duly considered and denied without further discussion. It is well settled that the Commission is not required to consider expressly or at length each contention or argument raised by the parties. [Consolidated Rail Corp. v. Pa. PUC, 625 A.2d 741 (Pa. Cmwlth. 1993);](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=5&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b625%20A.2d%20741%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=ad2b02d95c2a9216e83b92a3570d4785) *also* see, generally, [University of Pennsylvania v. Pa. PUC, 485 A.2d 1217 (Pa. Cmwlth. 1984).](file://C:\research\buttonTFLink?_m=69761b6202cb4178e2a6e6fe02f5751b&_xfercite=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b2000%20Pa.%20PUC%20LEXIS%2067%20%5d%5d%3e%3c\cite%3e&_butType=3&_butStat=242&_butNum=6&_butInline=1&_butinfo=%3ccite%20cc=%22USA%22%3e%3c!%5bCDATA%5b485%20A.2d%201217%5d%5d%3e%3c\cite%3e&_fmtstr=FULL&docnum=5&_startdoc=1&_startchk=1&wchp=dGLSzS-lSlbz&_md5=9b1cc8319afd12440738bb82d74455ef)

**Background**

The Commission authorized NHSC to operate as a wastewater company on December 27, 1993.[[4]](#footnote-4) NHSC presently serves 273 residential customers and one commercial customer (a country club) in portions of North Heidelberg and Jefferson Townships in Berks County, Pennsylvania. Met-Ed is a jurisdictional electric distribution company providing continuous electric service to the Company since October 19, 1990. Tr. at 11, 22, 57, 73.

On May 28, 2013, NHSC, OCA, I&E, and one of the Company’s customers filed a Joint Settlement Agreement (Settlement) to resolve issues in NHSC’s rate proceeding before the Commission. Thereafter, the Commission approved the Settlement. *Pa. PUC, et al. v. North Heidelberg Sewer Company*, Docket Nos. R-2012-2330877, *et al.* (Order entered July 16, 2013) (*Settlement Order*). The *Settlement Order* contained the following ordering paragraph:

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 Company entering into the repayment agreement or the entry of the Commission Order approving this Joint Petition, whichever date is later.

*Settlement Order* at 2-3. To date, NHSC has not entered into or provided the OCA with any terms of a repayment arrangement with Met-Ed regarding the arrearage of $60,000. Tr. at 12, 36, 67.

The Commission authorized an increase in NHSC’s annual operating revenue by $75,000 from July 17, 2013, to July 17, 2017. Tr. 70-72. However, from the time of the *Settlement Order* through the date of the hearing in this proceeding, the Company’s arrearage has increased to $160,217. Tr. at 22; Exh. 1. Generally, since June 2013, NHSC has only paid the electric generation supplier billed amounts for current usage each month and not the monthly late payment charges. Tr. 49, 58-60, 67-69; Exhs. 2-4.

Met-Ed’s Commission-approved tariff authorizes the issuance of late payment charges for overdue bills. Tr. at 49, 81; Exh. 4.[[5]](#footnote-5) Although Met-Ed has frequently and regularly issued termination notices, Met-Ed has never terminated service to NHSC because of environmental and customer reasons and because of promises to pay and partial payments made by the Company. Tr. at 31-34; Exh. 5. But in failing to pay for electric service rendered by Met-Ed, NHSC risks termination of its electric service which could jeopardize the environment, the health of the Company’s customers and the safety of the public at large. Specifically, a termination of electric service would likely cause wastewater processing equipment to stop operating and cause untreated sewage to flow into North Kell Creek and Blue Marsh Lake in Berks County. Sewage could also back up into the homes of 273 customers and a country club. Tr. at 13-16, 54-55; Exh. 6 at 5-6.

**Recommended Decision**

ALJ Barnes made thirty-seven Findings of Fact and reached eleven Conclusions of Law. R.D. at 2-7, 21-22. The Findings of Fact and Conclusions of Law are incorporated herein by reference and are adopted without comment unless they are either expressly or by necessary implication rejected or modified by this Opinion and Order. The ALJ explained that the purpose of her Recommended Decision was to determine if the *Ex Parte Order*, as ratified by the Commission on April 6, 2017, should remain in effect, be modified or rescinded.

***Emergency Order Factors***

The ALJ began with an analysis of the emergency order petition factors under 52 Pa. Code § 3.2. R.D. at 10.

Regarding the first factor, the ALJ found that I&E carried its burden of proving that its right to relief is clear by raising substantial legal questions about NHSC’s decisions to withhold payments for electric service. The ALJ determined that there is a question of whether the Company is in compliance with 66 Pa. C.S. § 1501, which requires it to maintain reasonable and safe service to its customers and the public. She noted the evidence related to NHSC’s refusal to enter into a repayment arrangement for its outstanding arrearage despite the directive of the Commission to provide OCA with a copy of such an agreement with Met-Ed. The ALJ also found the Company’s refusal to pay for electric service rendered by Met-Ed and Met-Ed’s imminent threat of terminating NHSC’s service as supporting a finding that I&E’s right to its requested relief is clear. R.D. at 11-12.

Under the second factor, the ALJ considered I&E’s need for relief to be immediate. According to the ALJ, I&E presented sufficient evidence as to the connection between NHSC’s poor payment history, the lack of a payment arrangement between the Company and Met-Ed, the numerous termination notices issued by Met-Ed, and a growing arrearage. The ALJ found the testimony of I&E’s witness – regarding potential catastrophic results if the sewage treatment plant failed to operate because of electric service termination – to be persuasive. The ALJ explained the foreseeability of a sustained electric outage as causing wastewater to back up into customers’ homes and a country club and of untreated sewage flowing into a neighboring creek and lake. R.D. at 12.

As to the third factor, pertaining to irreparable injury, the ALJ explained that economic detriment alone does not constitute irreparable harm. However, she noted that injury coupled with monetary losses can satisfy the irreparable injury requirement. R.D. at 13 (citing *Penn Power Co. v. Pa. PUC*, 615 A.2d 951 (Pa. Cmwlth. 1992), *alloc. denied*, 536 Pa. 631, 637 A.2d 291 (1993), *cert. denied*, 513 U.S. 925 (1994)). Here, she explained that termination of electric service to NHSC’s pumps and processing equipment could cause irreparable injury because it poses serious and immediate health and safety hazards to NHSC’s customers in addition to economic losses. According to the ALJ, any sustained outage has the potential to adversely affect public drinking supplies downstream of the Company’s treatment plant discharge location and thereby impact the public well-being. R.D. at 13 (citing Tr. at 13-16, 54-55). A back up of sewage into customers’ homes and the country club, the ALJ explained, could cause property damage and economic detriment. R.D. at 13. As such, the ALJ concluded that the third factor has been met. *Id.*

Regarding the fourth factor, the ALJ concluded that I&E’s requested relief does not appear to be injurious to the public interest because it requires payments to be made by NHSC and prevents termination of service. According to the ALJ, the requested relief is beneficial to the public. R.D. at 13.

***Payment Dispute and Late Charges***

Next, the ALJ addressed the question of whether there was a payment dispute between NHSC and Met-Ed. The ALJ noted that there is no pending formal complaint regarding disputed charges before the Commission. And the ALJ explained that, although NHSC may have sustained damage to its wastewater pumps in 2010 due to an electric voltage surge, the Company never filed a formal complaint against Met-Ed regarding the incident. Moreover, the ALJ continued, to the extent that NHSC may now be seeking a reduction in its arrearage due to such damage, the Commission lacks jurisdiction to award compensatory damages. R.D. at 14 (citing *Feingold v. Bell of Pennsylvania*, 477 Pa. 1, 383 A.2d 791 (1977)).

Although deeming the testimony of NHSC’s Chief Executive Officer, Joseph Aichholz, Jr., about the pump damage to be credible, the ALJ explained that NHSC is prohibited from withholding payments for current undisputed portions of its bills. According to the ALJ, the Company cannot withhold payments it believes are compensatory damages related to some act or omission of Met-Ed. R.D. at 14 (citing *Third Avenue Realty Limited Partners v. Pennsylvania-American Water Company*, Docket No. C-2010-2167286 (Initial Decision issued August 30, 2010; Final Order entered September 30, 2010)). The ALJ reiterated that NHSC is not entitled to implement a self-help mechanism to recover either damages or late payment charges. She explained that the proper recourse for all ratepayers seeking to recover alleged overcharges is provided in 66 Pa. C.S. § 1312, under which the Commission has the authority to order refunds only as to the excessive charges paid within four years preceding the filing of a complaint. R.D. at 14.

Next, the ALJ addressed the late payment charges noting the testimony of NHSC’s witness that the Company is being charged continual late fees which it cannot afford to pay. The ALJ explained that a utility’s Commission-approved tariff is *prima facie* reasonable, has the force of law, and is binding on the utility and the customer. R.D. at 15 (citing, in part, 66 Pa. C.S. § 316)). To the extent that NHSC has raised a defense of incorrect charges on its account, the ALJ continued, the burden falls upon the customer to prove that the existing charge or rate is no longer reasonable or that the application of an existing tariff at issue is applied unreasonably. R.D. at 15 (citing *Brockway Glass Co. v. Pa. PUC*, 437 A.2d 1067 (Pa. Cmwlth. 1981)). In this proceeding, the ALJ explained that Met-Ed provided bills and account summaries indicating that Met-Ed is correctly applying and compounding its late payment charges in accordance with its Commission-approved tariff. R.D. at 15.

The *Ex Parte Order* directed NHSC to pay all “current monthly bills” issued to it by Met-Ed on or before the due date unless the Commission or a court of competent jurisdiction directs otherwise. *Ex Parte Order* at 6. The ALJ explained that during closing arguments I&E requested that the *Ex Parte Order* remain in effect unmodified but deferred to Met-Ed and NHSC regarding what is meant by “current monthly bills.” R.D. at 16. In its closing argument, Met-Ed asserted that current bills should include consumption, miscellaneous and all current late payment charges. Met-Ed requested that the *Ex Parte Order* be modified to clarify that late payment charges are included in the term current monthly bills in order to address the outstanding arrearage exceeding $160,000. In the alternative, Met-Ed suggested a payment arrangement in which it would reduce or reverse its entire late fee charges assessed in 2016 and 2017 because NHSC was making partial monthly payments during that time period. However, in exchange, Met-Ed would require a fifty percent up-front payment of the arrearage with the remaining fifty percent paid over twenty-four months at a rate of 1/24th per month in addition to current monthly bills. R.D. at 16.

During closing arguments, NHSC argued that the Commission should direct the Parties to negotiate a payment arrangement on the late charges but did not offer a specific proposal. The Company agreed to continue making payments for consumption on a monthly basis but excluding the late fees. *Id.* at 17.

The ALJ agreed with Met-Ed that the *Ex Parte Order* as ratified seemed to be a temporary fix to a systemic problem because the term “current monthly bills” appears to mean current consumption charges exclusive of monthly late payment charges. Also, the ALJ noted that the absence of an ordering paragraph directing payments toward the $160,000 arrearage will cause the late payment balance to continue to grow at an “alarming rate.” As such, the ALJ considered Met-Ed’s proposal of a fifty percent deposit of the arrearage amount and a waiver of the late payment charges for 2016 and 2017 to be a reasonable offer to a commercial customer. Further, the ALJ explained that there was no evidence suggesting that NHSC failed to implement its graduated tariffed rate increases beginning in July 2013. Therefore, the ALJ stated that the Company is presumed to have collected $68,000 as of the hearing date and that the full $75,000 will be collected by July 13, 2017. R.D. at 18-19.

Given the breakdown in the relationship between Met-Ed and NHSC, the ALJ declined to direct a negotiated payment arrangement. Instead, the ALJ recommended the following payment terms: (1) Met-Ed would refund or reverse $25,000 in late payment charges from the current arrearage of $160,000;[[6]](#footnote-6) (2) Met-Ed would reduce the outstanding arrearage balance to $135,000 conditioned on NHSC paying fifty percent of the remaining balance of $67,500 within sixty days of a final Commission Order; and (3) NHSC would pay current monthly electric distribution company (EDC) and electric generation supplier (EGS) billing amounts plus 1/24th of the remainder of the outstanding balance of $67,500 for a monthly arrearage payment of $2,812.50. R.D. 19-20.

***Customer Notification***

The ALJ explained that the *Ex Parte Order* directed NHSC to provide written notice to all its customers explaining that they are under no threat of losing wastewater service as a result of electric termination. Additionally, the ALJ noted that the *Ex Parte Order* required the inclusion of specific language in the written notice, the filing of a compliance affidavit, and the inclusion of a copy of the customer notice. As of the issuance date of the Recommended Decision, NHSC had not complied with the customer notification requirements. R.D. at 17.

***Section 529 Relief***

Lastly, the ALJ outlined that Section 529 of the Code, 66 Pa. C.S. § 529, establishes a process by which 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. R.D. at 17. Here, the ALJ noted that NHSC fits the definition of a small sewer utility and that I&E has requested the institution of a Section 529 proceeding if the Company fails to pay its current monthly charges and its past due arrearage. According to the ALJ, NHSC failed to enter into a payment arrangement and intentionally neglected to pay its bills in full. If electricity were terminated on the account servicing NHSC’s equipment, the ALJ continued, the customers of NHSC would not receive reasonable and safe wastewater service. The ALJ stated that the Company’s pattern of non-payment has extended over the past four years. Also, the ALJ explained that NHSC had not as of yet complied with the customer notice requirements. As such, the ALJ found NHSC to have not complied with the *Ex Parte Order*. Accordingly, the ALJ found there was *prima facie* evidence that NHSC cannot reasonably be expected to provide adequate, efficient, safe and reasonable services and facilities to its customers in the future. The ALJ recommended that if NHSC fails to comply with the Commission’s final order in this proceeding, the Commission may elect to initiate a Section 529 proceeding. R.D. at 18.

Additionally, the ALJ determined that the Commission’s Bureau of Audits, the Bureau of Technical Utility Service and the Law Bureau should begin investigating the business practices of NHSC in order to obtain a better understanding of the circumstances surrounding the Company’s historical failure to timely pay its electric bills. *Id.* at 20.[[7]](#footnote-7)

**Exceptions**

In its Exceptions, NHSC objects to the ALJ’s recommended payment arrangement as being unreasonable. The Company asserts that from March 11, 2013, until March 23, 2017, Met-Ed has assessed $88,592.09 in late fees while only assessing approximately $80,237 in EDC and EGS consumption charges. NHSC argues that during this time period it made $71,552.93 in payments. Without the late payment charges assessed during March 11, 2013, through March 23, 2017, NHSC contends that its arrearage balance would have only increased by $8,684.07 thereby bringing its total balance owed to $72,708.02 rather than $160,217.33. The Company proffers that a substantial portion of the outstanding balance is comprised of late payment charges. Exc. at 2; Correction Letter at 1-2.

NHSC argues that Met-Ed is attempting to extract a lump-sum payment over a time-frame that is unrealistic. The Company proposes that the Commission direct Met-Ed to cease assessing additional late payment charges provided that NHSC continue to pay its monthly EDC and EGS consumption charges. And the Company requests a modification of the proposed lump-sum payment to “a number that more fairly reflects NHSC’s ability to pay.” Exc. at 2.

**Disposition**

NHSC did not assert any Exceptions related to the ALJ’s application of the emergency order petition factors under 52 Pa. Code § 3.2. Indeed, we agree with the ALJ’s analysis that I&E has satisfied its burden of proof that emergency relief is appropriate in this proceeding. Additionally, we affirm the recommendation that the *Ex Parte Order*, as ratified by us on April 6, 2017, should remain in effect with some modifications. However, as discussed below, we shall modify the ALJ’s recommendations pertaining to the terms of the payment arrangement.

In its Exceptions, NHSC argues that a substantial portion of its arrearage is comprised of late payment charges. But the Company does not raise objections as to the method of calculation and the accrual of the late payment arrearage. In fact, NHSC offered no evidence that Met-Ed’s late payment charges were improper or somehow violated its Commission-approved tariff. Rather, NHSC contends that the time-frame for the repayment of the arrearage is “unrealistic.” Exc. at 2. For relief, the Company requests a modification of the proposed lump-sum payment that more accurately reflects its financial circumstances and ability to repay the arrearage.

Although Mr. Aichholz testified that NHSC has operated on a tight budget and that he sometimes borrows from his Social Security income to pay the electric charges, the ALJ correctly noted that there was no evidence to support these assertions. NHSC failed to adequately explain its poor payment history since 2011. Aside from alleging general damage to its service equipment due to a power surge purportedly caused by Met-Ed in 2010, NHSC offered nothing to bolster its claim of being financially distressed and unable to pay the late payment charges over a four-year period. As explained by the ALJ, it is unclear from the record whether the Company withheld payments due to self-help reasons or because NHSC unexpectedly incurred a large cost in repairing and replacing broken pumps and used its revenue to pay for the repairs instead of its electric service. R.D. at 20.

Importantly, NHSC entered into a Settlement in 2013 authorizing an increase in its revenue for the purpose of repaying its arrearage to Met-Ed. Indeed, in the *Settlement Order* we directed NHSC to provide OCA with a copy of the terms of a repayment arrangement with Met-Ed regarding the arrearage which at the time amounted to $60,000. The Company never entered into a payment arrangement with Met-Ed for the past-due balance. Additionally, NHSC has apparently collected additional revenue pursuant to the Settlement which by July 13, 2017, will amount to $75,000. We agree with the ALJ that there is no “satisfactory explanation as to why the increased revenues from customers after July 17, 2013, were not applied to a payment arrangement with Met-Ed envisioned by the Commission in [the *Settlement Order*].” R.D. at 20. Accordingly, we will deny the Company’s Exceptions.

Regarding the recommended payment terms, we find that there should be an adjustment to the amount of the refund or reversal of late payments accrued during 2016 and 2017. During the hearing Met-Ed offered to reverse its late fee charges assessed in 2016 and 2017 because NHSC was making partial payments during this time period. Met-Ed conditioned this offer on compliance with its other proposed terms including a fifty-percent up-front payment of the arrearage. In the closing arguments, Met-Ed’s counsel estimated that the amount of the late charges for 2016 and 2017 exceeded $24,000. In her recommended payment arrangement, the ALJ estimated that the refund should amount to $25,000. However, upon review of the record it appears that Met-Ed applied $37,326 in late charges from January 7, 2016, through March 6, 2017. Exh. 2.

Accordingly, we will revise the payment arrangement to reflect the higher refund amount as follows: (1) Met-Ed shall refund or reverse $37,326 in late payment charges from the current arrearage of $160,000; (2) Met-Ed shall reduce the outstanding arrearage balance to $122,674 conditioned on NHSC paying fifty percent of the remaining balance of $61,337 within sixty days of this Opinion and Order; and (3) NHSC shall pay current EDC and EGS billing amounts plus 1/24th of the remainder of the outstanding balance of $61,337 for a monthly arrearage payment of $2,555.71.

Additionally, we note that subsequent to the issuance of the Recommended Decision, NHSC filed an affidavit indicating that on or about March 27, 2017, it provided written notice to all of its customers informing them that they are under no threat of losing wastewater service as a result of electrical service and attached a copy of the customer notice. Upon review, however, the copy of the notice does not contain the required language informing its customers that “they are under no threat of losing wastewater service as a result of electric service termination.” *Ex Parte Order* at 5. Although the notice included the required statement indicating that Met-Ed is prohibited from terminating NHSC’s electric service, there is nothing to indicate that NHSC’s customers are under no threat of wastewater service termination. It is unclear why NHSC has failed to fully comply with the directives of the *Ex Parte Order* as ratified. At this stage of the proceeding – and in light of the fact that NHSC provided the contact information for the Commission’s Bureau of Consumer Services and the OCA should a customer require assistance – we shall decline to order the Company to reissue the customer notice.

Finally, we shall address the recommendation that the Bureau of Audits, TUS and Law Bureau begin an expedited investigation of the business practices of NHSC and of its continued viability as a public utility. Although we agree with the ALJ that it would be prudent to begin a review of NHSC’s historical failure to timely pay its bills, it would be premature for the Commission to direct an investigation proceeding. The Commission is not initiating a Section 529 proceeding at this time. Accordingly, we shall modify the Recommended Decision to direct the Bureau of Audits and TUS to begin a review of the business practices of NHSC and of its continued viability as a public utility. At the conclusion of their review, the Bureau of Audits and TUS shall make a joint recommendation to the Commission as to whether the Commission should initiate a Section 529 proceeding.

**Conclusion**

In light of the above discussion, we shall deny the Exceptions and adopt the ALJ’s Recommended Decision, as modified, consistent with this Opinion and Order; **THEREFORE,**

**IT IS ORDERED:**

1. That the Exceptions of North Heidelberg Sewer Company filed on April 17, 2017, are denied.
2. That the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes, issued on April 11, 2017, is adopted, as modified, consistent with this Opinion and Order.
3. That the *Ex Parte* Emergency Order signed by Chairman Gladys M. Brown on March 22, 2017, and ratified by Order entered April 6, 2017, be modified, consistent with this Opinion and Order.
4. That Metropolitan Edison Company is enjoined from terminating electric service to North Heidelberg Sewer Company without prior authorization from the Commission.
5. That North Heidelberg Sewer Company is directed to pay a lump-sum amount of $61,337 in arrearage owed to Metropolitan Edison Company within sixty days of the date of entry of this Opinion and Order.
6. That upon receipt of the payment described in Ordering Paragraph No. 5, Metropolitan Edison Company is directed to: (a) withhold assessing late payment charges on the remaining arrearage of North Heidelberg Sewer Company’s account going forward; and (b) reverse/refund $37,326 in late payment charges out of the current outstanding arrearage balance of approximately $160,000; both provided that North Heidelberg Sewer Company continues to pay its current monthly electric distribution company and electric generation supply bills plus $2,555.71 each month towards arrearage until the remaining outstanding balance of $61,337 is paid in full over a two-year period.
7. That in the event North Heidelberg Sewer Company fails to make timely payments as directed in Ordering Paragraph Nos. 5 and 6, Metropolitan Edison Company shall notify the Secretary of 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., within thirty days of the missed deadline that such failure has occurred.
8. That in the event a Notice as set forth in Ordering Paragraph No. 7 is received by the Commission, a separate proceeding shall be initiated pursuant to 66 Pa. C.S. § 529 (relating to directing a competent utility to operate or acquire a small sewer utility that has jeopardized public safety by failing to provide reasonable and adequate service).
9. That North Heidelberg Sewer Company is precluded from filing another general sewer rate increase under Section 1308(d) of the Public Utility Code until July 13, 2017, except for filings pertaining to the state tax adjustment surcharge, other filings required by the Commission or filings seeking extraordinary rate relief pursuant to Section 1308(e).
10. That the Bureau of Audits and the Bureau of Technical Utility Services are directed to conduct a review into the continued viability of North Heidelberg Sewer Company as a going concern and of its ability to provide safe and reliable service at reasonable rates. Upon completion of their review, the Bureau of Audits and the Bureau of Technical Utility Services shall make a joint recommendation to the Commission as to whether the Commission should initiate a proceeding pursuant to 66 Pa. C.S. § 529.
11. That in all other respects, the *Ex Parte* Emergency Order ratified by Order entered April 6, 2017, remains in full force and effect.
12. That the Secretary shall serve a copy of this Order on the Office of Small Business Advocate, the Pennsylvania Department of Environmental Protection, the Commission’s Bureau of Audits, and the Bureau of Technical Utility Services.

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**BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: May 4, 2017

ORDER ENTERED: May 4, 2017

1. Generally, a person against whom an emergency order is issued may file a petition for an expedited hearing to determine whether the order will remain in effect. 52 Pa. Code § 3.4(a). Here, no petition for an expedited hearing was filed. However, in accordance with the *Ex Parte Order*, a hearing was scheduled with the Office of Administrative Law Judge (OALJ) for April 3, 2017. [↑](#footnote-ref-1)
2. In the *Ex Parte Order* NHSC was cautioned that, if it failed to make timely and full payments on its electric bill, Aqua will be directed to assume immediate and complete control of NHSC’s operations to ensure safe, adequate and reasonably continuous wastewater service to the Respondent’s customers. *Ex Parte Order* at 4. Thus, Aqua is listed as an interested party to this proceeding. [↑](#footnote-ref-2)
3. NHSC’s counsel stated that the error was brought to his attention by Met-Ed’s counsel. Thus, the Correction Letter appears to be correcting a mistake contained in the original, timely-filed Exceptions. Under the circumstances, including the apparent lack of prejudice to the opposing Parties, we will permit the filing pursuant to 52 Pa. Code § 1.2(a), which mandates that our Regulations be liberally construed to secure the just, speedy, and inexpensive determination of every action or proceeding to which they are applicable. [↑](#footnote-ref-3)
4. *Application of North Heidelberg Sewer Company for approval of the right to begin to offer, render, furnish or supply sanitary sewage collection and disposal service to the public in portions of North Heidelberg and Jefferson Townships, Berks County*, Docket No. A-230009 (Order entered December 27, 1993) (*Application Order*). The *Application Order* noted that NHSC had been operating as a *de facto* utility furnishing sewage services to the public since 1990. [↑](#footnote-ref-4)
5. Pursuant to 52 Pa. Code § 5.406, pertaining to public documents, we take notice of Met-Ed’s tariff provision which was referenced during the hearing. The provision pertaining to late payment charges provides:

   A Non-Residential Customer’s overdue bill shall be subject to a late payment charge of two percent (2.0%) interest per month on the overdue balance of the bill. Interest charges shall be calculated by the Company on the overdue portions of the bill and shall not be charged against any sum that falls due during a current billing period.

   Metropolitan Edison Tariff Electric Pa. PUC No. 52, Original Page 47. [↑](#footnote-ref-5)
6. In setting the refund amount, the ALJ referenced the statement of Met-Ed’s counsel that the late payment charges for 2016 and 2017 are estimated to exceed $24,000. R.D. at 18. [↑](#footnote-ref-6)
7. We note that the ALJ recommended Law Bureau’s participation in the investigation of NHSC’s business practices. R.D. at 20. However, Ordering Paragraph No. 8 of the Recommended Decision refers to I&E’s participation in the investigation. *Id.* at 24. [↑](#footnote-ref-7)