

**COMMONWEALTH OF PENNSYLVANIA
BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission,	:	Commission Docket No.:
Bureau of Investigation and Enforcement,	:	P-2017-2594688
	:	
v.	:	
	:	
Metropolitan Edison Company and	:	
North Heidelberg Sewer Company	:	

North Heidelberg Sewer Company's Main Brief Following Remand

Pursuant to 52 Pa. Code §5.501 et seq., North Heidelberg Sewer Company (“NHSC”), through its undersigned counsel, files this post-remand main brief in the above captioned matter. This matter is being heard on remand because of the July 6, 2017, Order issued by the Honorable Julia K. Hearthway of the Commonwealth Court of Pennsylvania.

Introduction and Procedural History

On April 18, 2017, NHSC filed exceptions to the April 5, 2017, recommended decision of Administrative Law Judge Elizabeth H. Barnes. *North Heidelberg Sewer Company's Exceptions to the Recommended Decision of ALJ Barnes*, P-2017-2594688, pg. 2. NHSC argued in its exceptions that the payment arrangement recommended by ALJ Barnes was not feasible because it required NHSC to a lump sum of \$67,500 within 60 days of the date of entry of the Commission's final order. *Id.* NHSC argued that the proposed payment arrangement should account for NHSC's actual ability to pay. *Id.*

In response, on May 5, 2017, the Commission entered an order revising the payment arrangement. *Opinion and Order*, May 5, 2017, P-2017-2594688, pg. 16-7. In doing so, the Commission ordered Met-Ed to increase the total refund amount for late payment charges and reduce the remaining balance accordingly. *Id.* However, the

Commission noted that the record did not contain sufficient evidence pertaining to NHSC's finances, its payment history, or its ability to pay the arrearage balance and late fees. *Id.* 15-6. As a result, the Commission did not modify the 60-day period within which NHSC was required to make the lump-sum payment. *Id.* at 17.

On June 2, 2017, NHSC filed a Petition for Review in the Commonwealth Court of Pennsylvania. *Petition for Review*, 696 CD 2017. In its petition, NHSC argued that the Commission violated the sewer company's procedural due process rights by choosing to institute the arrearage repayment schedule by failing to provide adequate notice of the Commission's intentions to mandate a repayment schedule. *Id.* at 3. Since the proceeding was an emergency petition made by the Bureau of Investigation and Enforcement ("BI&E") to determine whether Met-Ed should cease service termination, NHSC argued that the Commission denied the sewer company an adequate opportunity to prepare evidence and testimony regarding a payment arrangement. *Id.* As a result, NHSC did not have a meaningful opportunity to present evidence pertaining to its financial status or its ability to pay. *Id.* NHSC also requested that the Commonwealth Court stay the Commission's order. *Id.* at 5. Following oral argument on NHSC's application for stay, the Honorable Mary Hannah Leavitt issued a stay of Paragraphs 5 through 9 of the Commission's order. *Memorandum Opinion*, Issued June 26, 2017, 696 CD 2017.

On July 3, 2017, the Commission filed an unopposed Expedited Application for Remand, which was granted by Order on July 5, 2017. *Expedited Application for Remand*; and *Order*, July 6, 2017, 696 CD 2017. The remand order did not address the stay or the specific nature of the remand proceedings. On July 10, 2017, Secretary Rosemary Chiavetta served all parties with a letter indicating that the remand hearing

should include an arrearage repayment schedule, “the payment of an initial lump sum toward the arrearage, the repayment of late payment charges, the present financial condition and cash flow of NHSC, and all other issues related to repayment of the arrearages accrued by NHSC.” *Letter of Chiavetta*, July 10, 2017, P-2017-2594688.

Statement of Facts

North Heidelberg Sewer Company is a small wastewater utility serving customers in North Heidelberg and Jefferson Townships in Berks County. NHSC’s customer base has grown to include 271 residential customers and one non-residential customer. *Met-Ed Exhibit 12*, pg. 2. The company has been owned by Joseph M. Aichholz, Jr. and his family for 31 years. *Id.* at 29. Mr. Aichholz, Jr., the company’s Chief Executive Officer, oversees all of NHSC’s technical and business operations. *Remand Hearing Transcript*, August 2, 2017, 106:19-25; 108:4-6. Aside from a few independent contractors (an accountant and office assistant), Mr. Aichholz, Jr., who is 84 years old, and his son are solely responsible for maintenance and operation of the company’s wastewater treatment system. *Id.* at 115: 10-17. Mr. Aichholz, III is on call seven days a week, 24 hours a day. *Id.*

NHSC operates on a meager budget; Mr. Aichholz, Jr. seeks to operate the company in a way that does not waste any money. *Id.* at 122:1-2. During its 31-year history, the company has only attempted to increase its rates on one occasion, in 2012. *Id.* at 109:1, 6-15. NHSC’s lack of rate increases has meant that the company has absorbed the cost of plant repairs and system improvements rather than seeking to recoup those costs through higher rates; as a result, the company has operated with a budget deficit for many years. *NHSC Exhibit 3.3 – 2015 Federal Income Tax Return, Net Operating Loss Carryover Worksheet.*

In light of its generally unchanging rates and increasing operating costs, Mr. Aichholz, Jr. often provides out-of-pocket financing in the form of a loan to NHSC, sometimes taking money from his personal Social Security income or insurance premiums or through borrowing against his home mortgage. *Tr.* at 111:9-10; 115: 15-16, 18-25; 116:1-4; 133:18-21. Aside from \$300 taken per week, Mr. Aichholz, Jr. does not take money out of the company to repay his payments to NHSC, unless the company makes enough money to do so. *Id.* at 133:12-13, 20-21. NHSC has worked out payment arrangements with its other creditors. *Id.* at 149: 20-22. Other budget shortfalls have been covered by inter-company loans from Tubin' Air, Inc., another company operated by Mr. Aichholz, Jr. *Id.* at 142:13-25, 143:1. Under the loan arrangement, the sewer company collects the income for contracting jobs performed by Tubin' Air, Inc. *Id.* 149:14-15.

In 2010, NHSC suffered damage to its pump stations following a surge in electrical voltage. *Recommended Decision*, 7, Finding of Fact No. 26. NHSC claims that similar damage has occurred on several other occasions. *Tr.* at 113:24-25. Between NHSC's lack of rate increases, budget deficit, and repair/replacement costs from damage to NHSC's equipment, NHSC has accrued a significant unpaid balance on its accounts with Met-Ed. *Id.* at 111:18-20; *Met-Ed Ex. 9*. NHSC's total balance as of July 14, 2017, is \$174,434.95. *Met-Ed Ex. 9*.

In 2013, NHSC successfully obtained a rate increase, which was expected to generate an increase in annual operating revenue of 54.8% (i.e. \$75,000). *Recommended Decision*, 8. The increase was phased in over a four-year period, beginning in July 2013 and ending in July 2017; an annual revenue increase of around 40% in year one, 25% in year two, and 17.5% in years two and three. *Id.* Though the

effects of this increase can be seen in NHSC's gross income, the company continued to have a budget deficit until 2015. *NHSC Exhibits 3.1-3 – 2013, 2014, 2015 Federal Income Tax Returns, Forms 1120 and Net Operating Loss Carryover Worksheets.* Though the company's financial status is arguably improving, the company is still responsible for addressing its budget deficits and the consequences thereof which occurred during the years before the rate increase.

Summary of Argument

Establishing a payment arrangement that is likely to succeed is in the best interests of interested parties and the public generally. The proposed payment arrangement should be allowed to deviate from Met-Ed's policies as described in the record. Modifications that account for NHSC's financial situation will be more likely to succeed. The Commission should include provisions requiring NHSC's cooperation with all Commission orders and requests within a specific time to address the concerns raised by the other interested parties regarding the finality of a solution to this long-standing dispute.

Argument

I. ALLOWING NHSC TO ENTER AN ARRANGEMENT IS EQUITABLE AND IN THE BEST INTEREST OF ALL PARTIES IN THIS PROCEEDING AS WELL AS THE PUBLIC AT LARGE, AND ORDERING A PAYMENT ARRANGEMENT IS ARGUABLY WITHIN THE SCOPE OF THE COMMISSION'S AUTHORITY.

After a reasonable inquiry, NHSC is unaware of any statute or regulations that would entitle NHSC to a payment plan. The Responsible Utility Customer Protection Act ("RUCPA"), 66 Pa.C.S.A. §§ 1401, et seq., enables the Commission to establish payment agreements between public utilities and their customers. However, commercial customers are not entitled to a Commission authorized payment agreement under the RUCPA. *Alliance of Youth Mission Ministries v. PECO Energy Company*, C-2013-2358115, 2013 Pa. PUC LEXIS 772, *14 (Pa. P.U.C. Nov. 27, 2013) (initial decision adopted by Commission Opinion and Order without modification of relevant rule).

Nor are commercial customers entitled to a payment arrangement under 52 Pa. Code Chapter 56. *Id.* at 14-15 (citing *Bio/Data Corporation v. PECO Energy Co.*, Docket No. C-20026698 (Order entered July 30, 2002); *Lebanon Valley Enterprises, Inc. v. Metropolitan Edison Co.*, Docket No. C-00015522 (Order entered October 15, 2001); *Kayla's Place Inc. v. Duquesne Light Co.*, Docket No. C-00981711 (Order entered May 24, 1999); *Kenny v. Duquesne Light Co.*, Docket No. C-00967789 (Order entered November 27, 1996); see also, 52 Pa. Code §§ 55.2(a), 56.1.). However, a public utility may offer a payment arrangement to a commercial customer if it chooses to do so. *BST Foods, LLC; v.; PPL Electric Utilities Corporation*, 2006 Pa. PUC LEXIS 109, *10 (Pa. P.U.C. Oct. 17, 2006) (citing *Kayla's Place, Inc.*).

Nevertheless, 66 Pa.C.S. §501(b) gives the Commission "general administrative power and authority to supervise all public utilities doing business within this

Commonwealth.” §501(b) also contains a “necessary and proper” clause to allow the PUC to take certain unenumerated actions in furtherance of the performance of its statutory duties. Further, 66 Pa.C.S. §508, expressly grants the Commission the power to modify contracts between any public utility and any corporation, on a fair, reasonable, and equitable basis, provided that those contracts are concerned with the public interest and the general well-being of the Commonwealth. NHSC argues that these provisions, when taken together, enable the Commission to order two public utility companies to enter into a payment arrangement if that payment arrangement is in the best interests of the public.

In the instant matter, a payment arrangement is in the best interests of all parties involved, not least of which are those interests of the public. NHSC’s financial situation is improving in part due to the 2013 rate increase. A reasonably crafted payment arrangement will enable NHSC, an entity that has existed and provided safe, reliable wastewater treatment services successfully for 31 years, to continue to operate. Such an arrangement will allow Met-Ed to recover the money that is legally owed to it by NHSC. The public will be protected from the discharge of untreated wastewater into bodies of water surrounding NHSC’s facilities because a reasonable agreement virtually removes the risk of termination of service by Met-ed. NHSC’s customers will continue to enjoy the service they have had for the past 31 years without interruption.

On the other hand, should the Commission or Met-Ed decline allowing NHSC to enter a reasonable payment arrangement, NHSC will be unable to pay what is owed and the company may be forced to consider bankruptcy protection. It is unlikely that Met-Ed will be able to recover the full amount of what is owed in such a proceeding. NHSC’s inability to enter a payment plan is an existential threat to the company; if the current

situation continues without an appropriate remedy, a proceeding under 66 Pa.C.S. §529 will almost certainly be instituted. This path will result in further customer anxiety about their ability to receive uninterrupted wastewater treatment services, anger or fear about possible rate increases in the future, and a loss of good will towards public utility companies generally.

A reasonable payment plan is the best way for NHSC to take responsibility for the situation currently at hand, while balancing the interests of all parties involved in the proceeding. Accordingly, the Commission should institute a reasonable payment agreement.

II. Payment Arrangement Considerations

Though this payment dispute has existed since 2010, NHSC and Met-Ed have yet to successfully negotiate a payment arrangement. This impasse has resulted in large part from NHSC's financial position. To generate the money necessary for a lump-sum settlement offer or initial payment, NHSC testified at the hearing that it would need to rely on either financing or Equivalent Dwelling Unit service connection fees generated from further development of undeveloped land in NHSC's service territory. *Tr.* at 123:3-25; 124:1-25. NHSC estimated that it could contribute up to \$1000.00 per month on top of its monthly electricity service charges to address its arrearage balance.

Met-Ed has indicated on numerous occasions that it is unable to accept a payment plan that does not include a lump-sum payment or an "aggressive" monthly payment schedule. Met-Ed's witness, Brian Lowe, explained that these terms are based on policies set by Met-Ed's parent company, FirstEnergy. *Tr.* at 168:1-13. However, Mr. Lowe also indicated that he has the discretion to deviate from these guidelines. *Id.* at 170:10-19. In fact, the company's initial proposal deviated from Met-Ed's guidelines

requiring an up-front payment of 50% of the total arrearage balance, with the rest to be amortized over three to six months. *Id.* at 169:22-25; 170:1-5.

As Met-Ed has argued, through counsel, the current situation is unique based on NHSC's status as a public utility company and the potential for environmental hazards created by Met-Ed's termination of electrical service. *Id.* at 102:21-25; 103:1-3. Based on the unique characteristics of this matter, NHSC respectfully requests that the Commission consider a payment arrangement outside of the parameters suggested by Met-Ed. As previously stated, a workable payment plan is in the best interests of the parties in this proceeding and the public at large.

A payment arrangement will not be feasible unless the Commission addresses the 2% late payment charges that have allowed the amount owed to grow to extraordinary proportions. As it stands now, NHSC would need to pay nearly \$3,500 per month on top of its normal monthly usage charges just to offset the monthly late payment charge. Even if the Commission were to effectively lower the remaining balance to \$87,500 (either by Met-Ed's forgiveness of late fees or a requiring a lump-sum payment), NHSC would still need to pay \$1,750 per month in addition to its usual charges to prevent the balance from growing larger. Accordingly, NHSC suggests that the Commission order Met-Ed to cease applying late payment charges for the duration of the payment arrangement, subject to NHSC's compliance with the other terms of the agreement.

A lump-sum payment large enough to result in a lower monthly payment, following the previously suggested payment period, would require NHSC to come up with a large portion of its annual income within 60 days. This payment would likely represent 30% or more of NHSC's annual gross revenue as indicated by NHSC's tax returns. Such a large lump-sum payment would be difficult for a financially stable

company of a comparable size and revenue to pay without imperiling the company. Accordingly, if the Commission finds that a lump-sum payment is required, NHSC respectfully requests that the Commission set the total amount of that payment at an amount below 50% of the total arrearage. Alternatively, NHSC requests that the Commission give NHSC more time than 60 days to come up with the money required to make the lump-sum payment.

Considering NHSC's requests pertaining to the late payment charges and the lump sum payment, NHSC recognizes that the total value of the amount owed constrains the Commission's ability to modify the post-lump sum amortization period or monthly payment amount. To that effect, NHSC respectfully requests that the Commission implement an amortization period that is longer than the previously suggested 2 years. To compensate for this longer amortization period, NHSC suggests that the Commission implement a graduated repayment schedule. The monthly payment amount value should be set in relation to the annual revenue of the company and increase over the lifetime of the arrangement.

To ensure that this agreement is not a temporary solution to what has historically been a long-term problem, these suggestions are offered with the understanding that any agreement will be contingent upon NHSC's compliance with all laws and regulations as well as all existing Commission orders and data requests within a specifically enumerated period of time. Additionally, NHSC agrees to comply with any investigations by the Commission regarding the long-term viability of the company. Should NHSC fail to comply with the payment arrangement or any Commission Order pertaining to this matter, the sewer company recognizes the Commission's legal authority to utilize all available enforcement mechanisms, including but not limited to a

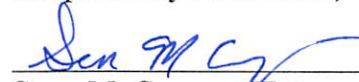
proceeding under 66 Pa.C.S. §529. NHSC believes that an agreement written in alignment with the spirit of these requests and deadlines would be fair, reasonable, and equitable given the circumstances.

Conclusion

Notwithstanding any arguments that NHSC is not entitled to a payment plan, the Commission holds the authority to direct NHSC and Met-Ed to enter into a payment arrangement that pertains to matters of interest to the public and that is fair, reasonable, and equitable given the circumstances. The considerations raised above will result in an agreement that is likely to succeed, and failing that, that contains enforcement provisions to ensure a requisite level of finality desired by the other parties to this action.

Date: 8/16/17

Respectfully submitted,



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VERIFICATION

I, Joseph M. Aichholz, Jr., Chief Executive Officer of North Heidelberg Sewer Company (NHSC), on behalf of NHSC, have fully reviewed *NHSC's Main Brief following Remand* and hereby verify that the statements made in the foregoing document are true and correct to the best of my knowledge, information and belief. I understand that the statements in the foregoing document are made subject to the penalties of 18 Pa.C.S. §4909 relating to unsworn falsification to authorities.

08/16/2017
Date



Joseph M. Aichholz, Jr.
CEO, North Heidelberg Sewer Company

FAX TO 855-559-5292

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Certificate of Service

Pursuant to the Commission's Rules of Procedure, I hereby certify that on this date I served the following parties with North Heidelberg Sewer Company's *Main Brief following Remand*:

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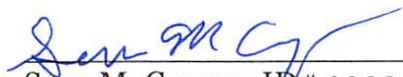
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Respectfully submitted,

A handwritten signature in blue ink, appearing to read "Sean M. Cooper", is written over a horizontal line.

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