



Tori L. Giesler, Esq.  
(610) 921-6658  
(330) 315-9263 (Fax)

2800 Pottsville Pike  
P.O. Box 16001  
Reading, PA 19612-6001

610-929-3601

August 16, 2017

**VIA UNITED PARCEL SERVICE**

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

Dear Secretary Chiavetta:

Attached please find the Main Brief on Behalf of Metropolitan Edison Company in the above-referenced matter. This document has been served on the all parties as shown in the Certificate of Service. Please timestamp and return one copy of the filing to me in the self-addressed stamped envelope provided.

Please contact me if you have any questions.

Very truly yours,

Tori L. Giesler

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**v.**

**Metropolitan Edison Company and North  
Heidelberg Sewer Company**

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**Docket No. P-2017-2594688**

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**MAIN BRIEF  
ON BEHALF OF  
METROPOLITAN EDISON COMPANY**

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Tori L. Giesler, Attorney No. 207742

2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001

**Counsel for Metropolitan Edison Company**

**Dated: August 16, 2017**

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## **I. STATEMENT OF THE CASE**

On or about March 21, 2017, the Commission's Bureau of Investigation and Enforcement ("BIE") filed a Petition for the Issuance of an *Ex Parte* Emergency Order with the Commission seeking the issuance of an *ex parte* emergency order regarding termination of service to North Heidelberg Sewer Company ("NHSC") by Metropolitan Edison Company ("Met-Ed").

On March 22, 2017, the Commission issued an *Ex Parte* Emergency Order directing, among other items, that a hearing be set within ten days of the date of the order so as to provide evidence for the Office of Administrative Law Judge to prepare a recommended decision on the issues involved.

On March 28, 2017, the Office of Consumer Advocate ("OCA") filed a notice of intervention and public statement in this matter.

On March 24, 2017, an Initial In-Person Hearing Notice as well as a Prehearing Order were issued setting this matter for an initial hearing to be held on April 3, 2017. The evidentiary hearing was held, as scheduled, on April 3, 2017 ("April 3 Hearing"). Parties participating in that hearing included the OCA, I&E, NHSC, Aqua Pennsylvania Wastewater, Inc. ("Aqua"), and Met-Ed. The only parties presenting testimony or evidence were I&E, NHSC and Met-Ed.

On April 6, 2017, the Commission ratified the March 22 *Ex Parte* Emergency Order at its public meeting.

On April 11, 2017, Administrative Law Judge ("ALJ") Elizabeth Barnes issued a recommended decision in this matter ("April 11 RD"), directing, among other things: 1) that NHSC make a lump-sum payment to Met-Ed in the amount of \$67,500 within sixty days of the entry of a final order at this docket adopting the April 11 RD; 2) that Met-Ed, after receiving this payment, reverse \$25,000 in late payment charges ("LPCs") to NHSC's account; and 3) that NHSC

continue paying its current monthly bills plus \$2812.50 to Met-Ed each month until the remaining outstanding balance is paid in full (which was expected to take approximately two years). April 11 RD at Ordering Paragraphs 3, 4. This arrangement matched that which was offered into the record by Met-Ed at the April 3 Hearing.

On April 14, 2017, NHSC filed Exceptions to the April 11 RD, disputing the payment arrangement offered by Met-Ed and incorporated into the ALJ's decision as "unreasonable". The Exceptions were corrected by a filing made on April 18, 2017.

On May 4, 2017, the Commission issued an Opinion and Order adopting and modifying the April 11 RD to properly state the value of the LPCs offered by Met-Ed to be returned as part of the arrangement, thus reducing the total amount due and the amount to be initially paid in the lump sum ("May 4 Order"). The May 4 Order also set the clock for compliance of the sixty-day deadline for payment of the initial lump sum.

On June 2, 2017, NHSC filed a Petition for Review with the Commonwealth Court, alleging due process violations as a result of its not having been given notice that it needed to present testimony regarding its financial condition and ability to pay Met-Ed's arrearage at the April 11 Hearing. As such, NHSC sought a stay of the May 4 Order as well as a remand of the proceeding for further evidentiary hearings. On June 26, 2017, an order was issued granting a stay of the May 4 Order.

On July 5, 2017, the Commonwealth Court entered an Order relinquishing control of the matter back to the PUC for remand and further hearings. Consistent with that Order, the Commission issued a secretarial letter on July 10, 2017 directing that further hearings be held culminating in a recommended decision to be issued no later than September 8, 2017. It was specifically directed that the hearings address payment of the arrearage owed to Met-Ed, including

terms such as duration, initial lump sum payments, and LPCs, as well as the present financial condition of NHSC.

On July 13, 2017, a hearing notice was issued setting this matter for further hearings to be held on August 2, 2017. Those hearings were held on August 2, 2017 (“August 2 Hearing”), at which testimony and exhibits were presented by NHSC and Met-Ed. Other participants included I&E, OCA and Aqua.

## **II. ARGUMENT**

### **A. NHSC Is Not Entitled To A Payment Arrangement As A Matter Of Law And As Such, The Commission Should Not Modify The Arrangement Outlined In Its May 9, 2017 Order.**

NHSC has argued throughout this proceeding, including on appeal to the Commonwealth Court, that it should be offered more favorable terms under which to repay its years-old debt to Met-Ed, on the basis that it is not in a financial position to repay those amounts. In fact, the entire reason that this matter was remanded for further hearings was on the basis that NHSC must be given due process to demonstrate its financial condition for purposes of establishing a reasonable payment arrangement. However, the fact is that NHSC, as a commercial customer, has absolutely no legal entitlement to, nor does the Commission have the authority to direct, a payment arrangement for the account in question. This conclusion must be reached based on long-standing and well-accepted Commission precedent, and without regard to any fact of this matter except that the customer seeking the arrangement is a commercial customer under the terms of Met-Ed’s retail electric tariff and, accordingly, takes service under a commercial rate schedule within that tariff – both facts which are undisputed in this matter.

It has been consistently held by the Commission that a commercial customer taking public utility service does not fall within the protections offered by Commission regulations at 52 Pa. Code Chapter 56 (pertaining to residential service). *Kayla's Place Inc. v. Duquesne Light Co.*, Docket No. C-00981711 (Order entered May 24, 1999); *Kenny d/b/a Flower and Flag Depot v. Duquesne Light Co.*, Docket No. C-00967789 (Order entered November 27, 1996); see also, 52 Pa. Code § 56.1. Instead, commercial accounts are governed by Chapter 55 of the Commission's regulations. *Kayla's Place Inc.*; *Kenny d/b/a Flower and Flag Depot*; see also, 52 Pa. Code § 55.2(a). As such, commercial accounts are not entitled to payment arrangements or other protections applicable to residential accounts under the Commission's regulations at Chapter 56. *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.*; *Kenny d/b/a Flower*. The Commission has gone on to note that a public utility may, of its own volition, offer a payment arrangement to a commercial customer, but has explicitly acknowledged that the Commission may not require a utility to do so. *Kayla's Place Inc.*

Here, no factual dispute has been raised with regard to the status of NHSC as a commercial customer under Met-Ed's tariff. Indeed, no factual dispute has been raised at all with regard to the accuracy of the bills rendered to NHSC to Met-Ed.<sup>1</sup> As such, the Commission cannot, by law, direct Met-Ed to enter into an arrangement with NHSC at all, nor can it direct modifications to an

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<sup>1</sup> Reference has been made at several points through the record with regard to an alleged "dispute" of amounts due to Met-Ed by NHSC due to the legally incorrect belief that NHSC has the right to offset amounts billed by Met-Ed with financial damages that NHSC allegedly incurred - which also fall outside the statute of limitations at this point - relating to equipment repairs it attributes as being the fault of Met-Ed for service-related reasons. However, there has been absolutely no dispute raised regarding the appropriateness of Met-Ed's tariffed rates, or the calculation of those rates as billed to NHSC.



arrangement which Met-Ed has voluntarily offered to one of its customers, as it did on April 3, 2017 in the case of NHSC.

**B. Even If NHSC Were Entitled To A Payment Arrangement, It Has No Right To Receive Treatment That Is Different Than Any Other Met-Ed Customer**

Met-Ed presented clear evidence at the August 2 Hearing of its policies and procedures as they relate to voluntarily offering payment arrangements to its commercial customers. Specifically, Met-Ed's Witness Lowe testified as to the fact that commercial accounts are offered payment arrangements, which without variation have three characteristics: 1) a down payment of at least 50% is required; 2) the amortization period does not ever exceed two years, or twenty-four months; and 3) LPCs are generally not waived, either retroactively or prospectively. Met-Ed Exhibit 11; Tr. 169-172.

The Pennsylvania Public Utility Code<sup>2</sup> specifically provides, relating to "Discrimination in service," that:

No public utility shall, as to service, make or grant any unreasonable preference or advantage to any person, corporation, or municipal corporation, or subject any person, corporation, or municipal corporation to any unreasonable prejudice or disadvantage.

66 Pa.C.S. § 1502. In preparing for the hearing and at the direction of the ALJ, NHSC proposed a payback plan that would include no initial down payment and which would amortize the balance over a period of 120 months – or ten years.<sup>3</sup> The proposal was silent with regard to treatment of LPCs.<sup>4</sup> Even apart from LPC treatment, both the lack of a down payment as well as the substantial duration of the amortization period fall dramatically outside the bounds of what Met-Ed would offer to any other of its non-residential customers, as testified to by Mr. Lowe.<sup>5</sup> In fact, Mr. Lowe

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<sup>2</sup> 66 Pa.C.S. § 101, et. seq. ("Code").

<sup>3</sup> Met-Ed Exhibit 7. The balance to be amortized as of the date of the proposal, July 19, 2017, was \$172,434.95.

<sup>4</sup> *Id.*

<sup>5</sup> Tr. 171-172.

testified that in his nearly forty-seven years working in credit and collections for FirstEnergy Corp.'s subsidiaries or predecessor companies, he has never granted a payment arrangement similar to the one sought by NHSC.<sup>6</sup> As such, a payment arrangement of the type sought by NHSC would violate Section 1502 of the Code and thus should not be granted.

**C. Even If NHSC Were Entitled To A Payment Arrangement, It Has Not Demonstrated Justification To Receive Treatment That Is Different Than Any Other Met-Ed Customer**

The August 2 Hearing was held due to NHSC's claims that it was not given ample due process based on its assertion that it was not put on sufficient notice that the requirement to pay its arrearage would be an issue at the April 3 Hearing to allow it to adequately represent its interests. Setting aside the fact that it has no legal right to any arrangement despite any evidence it would be able to present, NHSC failed to produce evidence on remand to justify an outcome different than was directed upon it by the May 4 Order.

Instead, NHSC showed up prepared to present the testimony of one witness – Joseph M. Aicholz, Jr., the Chief Executive Officer of NHSC. This is the same witness it presented at the April 3 Hearing. While there were some additional points raised in his testimony and several exhibits introduced, much of the direct testimony offered replicated the testimony given at the previous evidentiary hearing. Of the new information offered, many questions were raised with respect to not only the propriety of the accounting kept by NHSC, but also the veracity of the claims it has made with regard to its ability to repay its debt to Met-Ed. For instance, at various points throughout his testimony, Mr. Aicholz on several occasions refused to confirm the accuracy of NHSC's accounting records.<sup>7</sup> This is despite the fact that he personally verified the responses

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<sup>6</sup> Tr. 172.

<sup>7</sup> Tr. 119, Lines 2-4 (relaying NHSC's certified public accountant's ("CPA") representations of accuracy); Tr. 120, Lines 10-13 (again relaying NHSC's CPA representations); Tr. 131, Lines 12-13 (stating he is not familiar with how the accounting reflects accounts payable on NHSC's balance sheet).

offered to discovery propounded by Met-Ed which included significant volumes of financial records,<sup>8</sup> as well as testified to the fact that he is the individual responsible for “all financials” on behalf of NHSC.<sup>9</sup> At no point did NHSC offer up its CPA, bookkeeper, or any other witness who was able to confidently and consistently respond to questions regarding the accounting of the company or its financial condition.

Furthermore, while Mr. Aicholz did confirm the accuracy of NHSC’s balance sheet as of June 30, 2017, which was offered into evidence as NHSC Exhibit 1,<sup>10</sup> he later went on to admit that the balance owed to Met-Ed by NHSC is not properly reflected on the balance sheet whatsoever,<sup>11</sup> drawing into question the credibility of any of NHSC’s accounting practices.

To the extent that any of NHSC’s accounting can be relied upon, NHSC’s own testimony reflects a pattern of money being taken from NHSC to fund other business endeavors – all while Met-Ed remains unpaid for longstanding arrearages. For instance, Mr. Aicholze testified freely about his various business interests on behalf of Tubin’ Air, an affiliated company which has such varied business interests as building snow parks and processing transactions relating to military “hummers”.<sup>12</sup> Mr. Aicholz testified to financial records of NHSC that showed significant financial withdrawals from NHSC to Tubin’ Air – without detailed descriptions or explanations – relating to some of these business endeavors.<sup>13</sup> No evidence was produced or testimony offered to confirm that those business dealings were in any way related to the sewer company’s business as a public utility. Furthermore, Mr. Aicholz admitted that while revenues increased between 2011 and 2015 (the period for which financial records were available), expenses were conversely declining, which

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<sup>8</sup> Met-Ed Exhibit 8.

<sup>9</sup> Tr. 108, Line 6.

<sup>10</sup> Tr. 117, Lines 5, 18.

<sup>11</sup> Tr. 131, Line 22.

<sup>12</sup> Tr. 142-143.

<sup>13</sup> Tr. 141-147; Met-Ed Exhibit 8.

amounted to a net income figure of \$80,291 at the end of 2015.<sup>14</sup> Astonishingly, as the man in charge of NHSC's financials, Mr. Aicholz did not know what happened to this excess income.<sup>15</sup>

While NHSC's accounting records and the testimony relating to them undoubtedly presents numerous concerns to the various parties to this proceeding, there are two specific concerns of paramount import to Met-Ed. First, the fitness of NHSC to properly run its business in such a way as to not perpetually have problems paying its electric bills, among other, larger issues must be considered. But as it specifically relates to any arrangement for repayment of the outstanding arrearage at issue, it is abundantly clear based on the limited records produced and Mr. Aicholz's own admissions that there is money leaving NHSC for other purposes unrelated to the business of running the public utility, while Met-Ed continues to go unpaid. Given this fact, even if NHSC were entitled to a payment arrangement more favorable to NHSC and the Commission had authority to direct Met-Ed to enter into the same, it would be unnecessary. Instead, NHSC should simply be directed to use NHSC funds for NHSC business – including payment of its electric bills.

### **III. CONCLUSION**

NHSC is not legally entitled to the grant of any payment arrangement of its outstanding arrearage in this or any other proceeding as discussed in Section II, *supra*. Nonetheless, Met-Ed previously offered, and continues to offer, an arrangement which matches that which was outlined and directed upon NHSC in the Commission's May 4 Order. The Commission is without the jurisdiction to direct Met-Ed to enter into any arrangement which deviates from that offer. Furthermore, a deviation from that offer which would be more favorable to NHSC would be inappropriate as a violation of Section 1502 of the Code. Finally, NHSC has not demonstrated any reason that it cannot afford the amounts directed by the May 4 Order. To direct a smaller

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<sup>14</sup> Tr. 152-153.

<sup>15</sup> Tr. 153, Line 22.

down payment or longer amortization period would unjustifiably lead to this particular customer being treated more favorably than its peers, unnecessarily delay Met-Ed's recovery of amounts billed which are already long overdue, and at the same time prolong the timeline over which public utility (which may not be viable) is permitted to continue creating a risk to its own and other utility customers, as well as the public health. Accordingly, the payback proposal offered by NHSC should be rejected and the Commission should not modify the arrangement directed by its May 4 Order.

Respectfully submitted,

Dated: August 16, 2017



Tori L. Giesler  
Attorney No. 207742  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001  
(610) 921-6658  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)

Counsel for Metropolitan Edison Company

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**v.**

**Metropolitan Edison Company and North  
Heidelberg Sewer Company**

**Docket No. P-2017-2594688**

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true copy of the Interrogatories, Requests for Production of Documents and Requests for Admissions upon the individuals listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

Service by email and first class mail, as follows:

The Honorable Elizabeth Barnes  
Office of Administrative Law Judge  
Pennsylvania Public Utility Commission  
400 North Street  
Harrisburg, PA 17120

Christine M. Hoover  
Erin L. Gannon  
Office of Consumer Advocate  
5<sup>th</sup> Floor, Forum Place  
555 Walnut Street  
Harrisburg, PA 17101

Michael L. Swindler  
Bureau of Investigation & Enforcement  
P.O. Box 3265  
Harrisburg, PA 17105-3265

Sean Cooper  
Cooper Law PLLC  
P.O. Box 312  
Elizabethtown, PA 17022

Kimberly Joyce  
Frances P. Orth  
762 West Lancaster Avenue  
Bryn Mawr, PA 19010

Thomas T. Niesen  
Thomas Niesen & Thomas LLC  
212 Locust Street, Suite 600  
Harrisburg, PA 17101

Dated: August 16, 2017



Tori L. Giesler  
FirstEnergy Service Company  
2800 Pottsville Pike  
P.O. Box 16001  
Reading, Pennsylvania 19612-6001  
(610) 921-6658  
[tgiesler@firstenergycorp.com](mailto:tgiesler@firstenergycorp.com)  
Counsel for Metropolitan Edison Company

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