

**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 Reply Brief Following Remand**

In response to the Main Briefs submitted on behalf of Metropolitan Edison Company (“Met-Ed”) and the Bureau of Investigation and Enforcement (“BI&E”), North Heidelberg Sewer Company (“NHSC”), through its undersigned counsel, files this post-remand reply brief in the above captioned matter.

**Argument**

While most of the issues raised in Met-Ed and BI&E’s briefs have already been addressed in NHSC’s main brief, several have not. A discussion of those issues set forth below.

**1. DIVERSION FROM MET-ED’S STANDARD PAYMENT PLAN, IN A MANNER NOT GENERALLY AVAILABLE TO OTHER CUSTOMERS, IS NOT PROHIBITED BY 66 PA.C.S. §1502 BECAUSE SUCH A DIVERSION IS REASONABLE GIVEN THE CIRCUMSTANCES AT PLAY IN THIS MATTER.**

Met-Ed argues in its brief that NHSC has no right to a repayment plan that significantly differs from those offered to its other customers. Main Brief on Behalf of Metropolitan Edison Company, 3. Met-Ed relies on 66 Pa.C.S. §1502 to support this conclusion, arguing that any payment plan arising out of this matter must include three

specific characteristics: a down payment of 50% of the total balance, an amortization period of less than two years, and no waiver of late payment charges. *Id.* at 5.

There are at least two problems with this argument. First, Section 1502 only applies to a utility's "service" as defined by the public utility code. While "service" is defined broadly<sup>1</sup>, Met-Ed has offered no authority that would indicate that negotiation of a payment arrangement falls under the definition of service such that this situation would trigger Section 1502. Second, Section 1502 only prevents **unreasonable** discrimination. Stated another way, the plain meaning of Section 1502 allows a utility to provide a customer with a payment plan that differs from those offered to other customers if such discrimination is reasonable given the circumstances.

The facts and circumstances involved in this matter are unique because Met-Ed's decision to terminate NHSC's electrical service will result in an ecological and public health crisis. The imposition of a payment arrangement by the Commission on NHSC and Met-Ed is designed to prevent such a crisis; in fact, the entire purpose of this proceeding is to ensure that such a crisis does not occur. However, a payment agreement that is not sensitive to NHSC's financial condition will almost certainly fail. If NHSC defaults on this agreement, then this proceeding will ultimately be rendered ineffective because it will increase the likelihood of a crisis scenario. In that regard, this particular payment agreement between Met-Ed and its customer requires consideration of these extraordinary potential consequences.

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<sup>1</sup> 66 Pa.C.S. §102 defines "service" to as:

" . . . any and all acts done, rendered, or performed, and any and all things furnished or supplied, and any and all facilities used, furnished, or supplied by public utilities, or contract carriers by motor vehicle, in the performance of their duties under this part to their patrons, employees, other public utilities, and the public, as well as the interchange of facilities between two or more of them . . . "

NHSC has argued that it lacks the ability to make an upfront lump-sum payment of 50% of the total balance as required by Met-Ed. *Transcript of August 2, 2017 Hearing*, 123-124. NHSC's CEO testified that he believes NHSC is only capable of paying \$1000.00 per month in addition to its normal monthly electricity consumption charges. *Id.* at 125:6-13. It will be impossible to develop a payment plan that accounts for these facts without venturing beyond the parameters of Met-Ed's standards. Doing so, however, will increase the likelihood that NHSC will be able to meet its obligations under the terms of the agreement, thereby preventing the crisis that this proceeding seeks to remedy. Therefore, to the extent that NHSC's proposed payment plan is considered discriminatory under Section 1502, said agreement is not prohibited because it is reasonable to allow NHSC to enter into a payment arrangement that is not within the normal parameters to prevent a public health crisis.

**2. THE CONCERNS RAISED IN MET-ED AND BI&E'S BRIEFS REGARDING NHSC'S CURRENT AND FUTURE VIABILITY AS A PUBLIC UTILITY ARE NOT RELEVANT IN THIS PROCEEDING; TO THE EXTENT THAT NHSC'S VIABILITY IS RELEVANT, DOCUMENTS PURPORTEDLY SHOWING NHSC'S SUGGESTED UNVIABILITY SERVE AS SUBSTANTIAL EVIDENCE THAT WARRANTS MODIFICATION OF THE PREVIOUSLY ORDERED PAYMENT AGREEMENT.**

Both briefs raise questions about NHSC's current and future viability as a public utility operating within the Commonwealth of Pennsylvania. It is not clear from either party's brief that concerns about NHSC's viability are material to determining the outcome of the legal issues involved in this matter. The ultimate purpose of this proceeding was to prevent an emergency crisis, not to judge the ultimate viability of NHSC. Since the Commission has already addressed the need for a proceeding under 66

Pa.C.S. §529 in its previous order by directing an investigation into NHSC's business practices, these concerns are arguably not relevant in this remand proceeding. However, to the extent that NHSC's viability speaks to its ability to participate in a payment agreement, avoid a crisis, and provide safe, reliable wastewater services to the people NHSC's service territory, the record contains substantial evidence of NHSC's ability to abide by the terms of the payment arrangement it proposes.

It is no secret that NHSC has faced challenging circumstances in the past few years; if the opposite were true, there would be no need for an emergency proceeding regarding its inability to pay its electric bills and the possibility of a section 529 proceeding would not even be being discussed. At this point, it remains uncontested that the company is still recovering from several years' worth of operating losses, as shown by NHSC's tax returns.

Ultimately, Met-Ed and BI&E fail to consider that NHSC has provided safe, reliable, and affordable wastewater treatment for its customers for over three decades. Main Brief of the Bureau of Investigation and Enforcement, 16; Tr. At 109: 3-5. While not free from blame about the position the company now finds itself in, Joseph M. Aichholz, Jr. has competently directed NHSC's operations during that time.

Contrary to the assertions of BI&E, which paint Mr. Aichholz Jr. as a "CEO who exhibited a limited understanding of the financial condition of the Company," Mr. Aichholz Jr.'s decision to seek the company's first ever rate increase in 2012 and his use of personal funds and income from his other businesses<sup>2</sup> to support the company, and illustrates that he is acutely aware of his company's financial difficulties.

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<sup>2</sup> BI&E and Met-Ed both raise questions about the integrity of the company's books based on the apparent intermingling of assets between other companies owned by Aichholz, Jr. and NHSC, and other issues. Mr. Aichholz,

The financial documents provided at the hearing tend to show that the 2013 rate increase has begun to have a positive effect on NHSC's gross income, however, as Mr. Aichholz Jr. testified, the rate increase was phased in over several years and NHSC has only now begun to reap its full benefits. Tr. At 109:8-15. NHSC's proposed payment arrangement considers NHSC's financial condition in a way that will allow the company to take responsibility for the debt owed to Met-Ed while increasing the likelihood that the company can continue to operate and realize the benefits of its 2013 rate increase. To the extent that NHSC's payment agreement is found by the Commission to be inappropriate, the considerations raised in NHSC's main brief seek to address NHSC's most pressing concerns regarding any agreement the Commission may choose to institute. These suggestions, along with information within the company's financial documents are substantial evidence indicating that a modified payment plan is needed.

## **Conclusion**

NHSC's evidence introduced during the remand hearing provide substantial evidence that the company has operated with the budget deficit for many years. Additionally, it did so without a rate increase for decades. These two facts, along with costs from the 2010 incident have unfortunately led to the difficult position the company now finds itself in. With that said, NHSC's CEO testified regarding what NHSC **can** afford to pay; NHSC respectfully requests that the Commission take this into account, along with the company's concerns regarding Met-Ed's proposed payment plan, when determining whether the proposed payment plan should be modified.

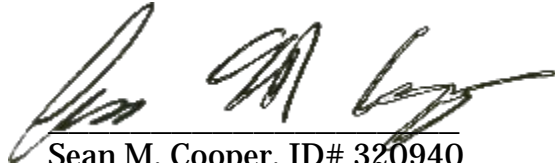
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Jr. addressed these concerns by explaining that the intermingling was the result of paying money from Aichholz Jr.'s other companies to account for NHSC's budget shortfalls. Tr. 21, 147: 1-7, 149: 15-18.

For the reasons listed above, NHSC respectfully requests that the Commission modify the previously proposed payment arrangement to match its proposal or to otherwise account for NHSC's concerns.

Date: 8/24/2017

Respectfully submitted,

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

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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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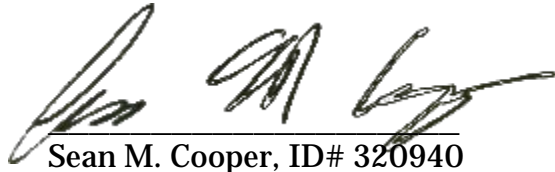
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Respectfully submitted,

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