

**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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P-2017-2594688

RECOMMENDED DECISION ON REMAND

Before
Elizabeth H. Barnes
Administrative Law Judge

INTRODUCTION

This decision recommends no modification to the Commission's Opinion and Order entered May 4, 2017 at P-2017-2594688 (May 4 Order). In its May 4 Order, the Commission denied a sewer company's exceptions and adopted with modification my Recommended Decision issued on April 11, 2017. The May 4 Order modified Chairman Gladys Mr. Brown's *Ex Parte* Emergency Order entered on March 22, 2017, as ratified by Order entered April 6, 2017. The May 4 Order enjoined an electric distribution company (EDC) from terminating electric service to the sewer company without prior authorization from the Commission. The May 4 Order further directed the sewer company to pay \$61,337 in arrearage owed to the EDC within sixty days, and the EDC to withhold assessing late payment charges against the sewer company as well as reverse/refund \$37,326 in late payment charges if the sewer company would continue to pay current monthly charges plus \$2,555.71 monthly until the remaining outstanding balance of \$61,337 was paid in full over a two-year period. In the event said payments were not made, the EDC was directed to not terminate service, but rather to notify the Commission to initiate a separate Section 529 proceeding, 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.)

HISTORY OF THE PROCEEDING

On March 21, 2017, the Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (I&E or Petitioner) filed a Petition for Issuance of an *Ex Parte* Emergency Order against Metropolitan Edison Company (Met-Ed) and North Heidelberg Sewer Company (NHSC). The Petition averred that Met-Ed had begun termination procedures against NHSC due to non-payment of a \$157,000 arrearage for electric services rendered. Petitioner requested the Commission enjoin Met-Ed from terminating electric service to NHSC without prior Commission approval. Petitioner further requested that the Commission direct NHSC to cease withholding electric service payments to Met-Ed. Finally, Petitioner requested 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. The *Ex Parte* Order directed that the Office of Administrative Law Judge (OALJ) schedule a hearing within ten days of the date of the *Ex Parte* Order. By notice dated March 24, 2017, this case was assigned to me and a hearing was scheduled for April 3, 2017. On March 28, 2017, OCA filed a petition to intervene and public statement seeking to represent the interests of NHSC and Met-Ed customers. On March 28, 2017, I received a letter from the Department of Environmental Protection indicating it had no current intention of intervening in the proceeding; however, it reserved a right to intervene later.

A hearing was held on April 3, 2017. I&E was represented by Michael L. Swindler, Esquire, who presented one witness, John Van Zant, and no exhibits. Met-Ed was represented by Tori L. Giesler, Esquire, who presented two witnesses, Robin Delp and Brian Lowe, and 6 exhibits. NHSC was represented by Sean M. Cooper, Esquire, who presented one

witness, Joseph Aichholz, Jr., and no exhibits. Office of Consumer Advocate (OCA) was represented by Christine Maloni Hoover, Esquire, who presented no witnesses or exhibits. Aqua Pennsylvania Wastewater, Inc. (Aqua) was represented by Thomas T. Niesen, Esquire, who presented no witnesses or exhibits. A 91-page transcript was filed on April 4, 2017. The *Ex Parte* Order was ratified by the full Commission on April 6, 2017.

On April 3, 2017, I held an evidentiary hearing. On April 11, 2017, I issued a Recommended Decision. NHSC filed Exceptions to my decision. By its May 4, 2017 Opinion and Order, the Commission denied NHSC's Exceptions and adopted the Recommended Decision as modified. The Commission found that NHSC had not asserted any exceptions regarding the application of the Section 3.2 emergency order petition factors; did not raise any objection regarding the method of calculation and the accrual of late payment charges; offered no evidence that the late payment charges were improper; failed to adequately explain its poor payment history since 2011; offered nothing to bolster its claim of being financially distressed and unable to pay the late payment charges over a four year period; and never clarified the record regarding whether the Company withheld payments due to self-help reasons or because NHSC unexpectedly incurred a large cost in repairing and replacing its broken equipment and used its revenue to pay for that rather than pay for its electric service. Nevertheless, the Commission did elect to modify the recommended payment arrangement to reflect that a larger amount of late payment charges had been paid during 2016 and 2017. As such, the amount of late charges to be reversed was modified from \$25,000 to \$37,326. This decreased the then outstanding arrearage balance at the time to \$122,674. NHSC was to pay one-half, or \$61,337 as a lump-sum payment within 60 days of the Order, and the remaining \$61,337 as twenty-four payments of \$2,555.71 to be paid monthly in addition to each month's billed current charges. The May 4 Order also directed the Company to take other, non-payment related action.

NHSC appealed the Commission's ruling, filing a Petition for Review with the Commonwealth Court on June 2, 2017. NHSC contended that it had not been given proper notice of the Commission's intention to implement a repayment schedule and an opportunity to present relevant evidence of its financial situation and arguments regarding the validity of the arrearage and the Company's ability to pay. NHSC requested that the matter be remanded for further hearing. On June 26, 2017, by Memorandum Opinion, the Commonwealth Court issued

a Memorandum Opinion and Order granting NHSC's Application for Stay in part with respect to Paragraphs 5 through 9 of the May 4, 2017 Opinion and Order. *North Heidelberg Sewer Company v. Pa. Pub. Util. Comm'n*, No. 696 C.D. 2017 (Pa. Cmwlth. June 26, 2017).

By Order entered July 5, 2017, upon consideration of NHSC's unopposed expedited application for remand, the Commonwealth Court granted the application, relinquished jurisdiction and remanded the matter back to the Commission for further proceedings and the issuance of a new adjudication. The Court did not vacate the Opinion and Order entered May 4, 2017. Neither did the Court address whether the partial stay regarding Ordering Paragraphs 5 through 9 of the May 4, 2017 Opinion and Order remains in effect. *North Heidelberg Sewer Company v. Pa. Pub. Util. Comm'n*, No. 696 C.D. 2017 (Pa. Cmwlth. July 5, 2017). On July 10, 2017, the Commission's Secretary served a letter upon all parties of record referring the matter to Office of Administrative Law Judge ("OALJ") for further hearing and the issuance of a recommended decision by September 8, 2017. It directed that the further hearing address repayment of the arrearages owed by NHSC to Met-Ed, a repayment schedule, an initial lump sum payment, repayment of late payment charges, the present financial condition and cash flow of NHSC and all other issues related to repayment of the arrearages in question. The Secretarial Letter directed that a prehearing conference and schedule for discovery be scheduled, a hearing held and briefs filed, each proposing an appropriate repayment plan.

An off-the-record telephonic conference with all parties in attendance was held on July 12, 2017, pursuant to the Secretarial Letter. A Third Prehearing Order was entered establishing modifications to discovery rules and setting forth a litigation schedule. A further evidentiary hearing was held on August 2, 2017. Main Briefs were filed by NHSC, I&E, and Met-Ed on August 16, 2017. Reply Briefs were filed by NHSC, I&E and Met-Ed on August 24, 2017. The record closed on August 24, 2017.

FINDINGS OF FACT

1. The Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement (I&E) is authorized under 66 Pa.C.S. §§ 308 and 701 as well as 52 Pa. Code §§ 1.8 and 3.2 to bring the instant Petition for Issuance of *Ex Parte* Emergency Order against

Respondents. *See Delegation of Prosecutory Authority to Bureaus with Enforcement Responsibilities*, Docket No. M-00940593 (Order entered September 2, 1994), as amended by Act 129 of 2008, 66 Pa.C.S. § 308.2(a) (11).

2. North Heidelberg Sewer Company (NHSC) is a wastewater company certificated by the Commission at Docket No. A-230009 with a principal place of business located at 231 East Second Street, P.O. Box 609, Bernville, PA 19506. N.T. 57, 73.

3. NHSC currently serves 273 residential customers and one commercial customer (a country club), in portions of North Heidelberg Township and Jefferson Township, Berks County, Pennsylvania since 1990. N.T. 57, 73.

4. The Office of Consumer Advocate (OCA) is authorized by Act 161 of the Pennsylvania General Assembly, 71 P.S. § 309-2, as enacted July 1, 1976, and 52 Pa. Code §5.72(b) to intervene in this matter and represent the interests of Pennsylvania consumers before the Pennsylvania Public Utility Commission. OCA Notice of Intervention and Public Statement.

5. Aqua Pennsylvania Wastewater, Inc. is a jurisdictional public utility providing residential and commercial wastewater service in the Commonwealth of Pennsylvania.

6. Metropolitan Edison Company (Met-Ed) is a jurisdictional electric distribution company that has been providing continuous electric service to NHSC since October 19, 1990. N.T. 11, 22; Met-Ed Exhibits 1-4.

7. On or about May 28, 2013, NHSC entered into a Settlement Agreement with OCA, I&E, and some customers to resolve all issues in the Rate Proceeding before the Commission at Docket No. R-2012-2330877. N.T. 11.

8. The Settlement Agreement was approved by Commission Order entered July 16, 2013. N.T. 11.

9. Paragraph 8 of the Commission's Order approving the Joint Petition for Settlement states as follows:

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

10. To date, NHSC has neither entered into nor provided OCA with any terms of a repayment agreement with Met-Ed to address an arrearage of approximately \$60,000. N.T. 12.

11. NHSC has multiple electric service accounts with Met-Ed; however, the arrearage owed on NHSC's account number ending in 808 has increased in the past 4 years to \$160,217 as of the date of hearing. N.T. 22, 72; Met-Ed Exhibit 1.

12. This arrearage increase of approximately \$100,000 is due in part to late payment charges assessed in 2016 and 2017 of approximately \$25,000. N.T. 24, 87; Met-Ed Exhibits 2 and 4.

13. NHSC's customer base grew from 253 in 2013 to 274 at the time of the hearing, including 20 residential customers and one commercial customer, and the company's CEO has plans for developing 99 acres of undeveloped land to bring approximately 250 future customers to the system. N.T. 57-58, 61.

14. In 2013, the Commission approved NHSC's Tariff Wastewater – Pa. PUC No. 2, which increased NHSC's annual operating revenue by \$75,000 from July 17, 2013 – July 17, 2017. N.T. 62; Tariff Wastewater – Pa. PUC No. 2.

15. Since July 17, 2013, NHSC will have collected \$75,000 in increased operating revenues by July 13, 2017. N.T. 47.

16. The \$75,000 revenue increase was approved in part to facilitate a payment arrangement between NHSC and Met-Ed for arrears NHSC owed Met-Ed in 2013 of approximately \$60,000 - \$70,000 at the time. *Pa. Pub. Util. Comm'n, et al. v. North Heidelberg Sewer Company*, R-2012-2330877, Recommended Decision dated June 11, 2013 at 14-15; N.T. 47.

17. With few exceptions, NHSC has only paid the Met-Ed and electric generation supplier monthly billed amounts for current usage each month since June, 2013. N.T. 49, 58-60, 67-69; Met-Ed Exhibit 2.

18. NHSC has a history of paying its current Met-Ed consumption charges relatively consistently on a monthly basis since June 27, 2013; however, during 2011, NHSC made only one payment on October 24, 2011 of \$1,599.46 that year and only three payments totaling \$4,008 for the year of 2012. N.T. 29, 60; Met-Ed Exhibits 2 and 3.

19. Since July 13, 2013, NHSC has not been paying the monthly late payment charges or significant portions of its arrearage on a monthly basis. Met-Ed Exhibits 3 and 4.

20. Met-Ed's Commission-approved Tariff Electric Pa. PUC No. 52 at p. 47 provides in pertinent part, "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."

21. NHSC has not specifically alleged that there are incorrect charges on NHSC's bills; however, Joseph Aichholz, Jr., Chief Executive Officer (CEO) of NHSC testified that NHSC is being charged late fees upon late fees month after month that NHSC cannot pay. N.T. 56.

22. Because of a poor payment history since 2010, NHSC has accrued a large arrearage which will continue to grow if the company merely pays the current Met-Ed and electric generation supplier (EGS) consumption charges each month and fails to pay any amount

towards late payment charges or the outstanding arrearage balance. N.T. 30, 67; Met-Ed Exhibits 2 and 4.

23. Mr. Aichholz is 84 years old, and claims he sometimes pays NHSC's current consumption charges by borrowing from his personal Social Security income. N.T. 72.

24. NHSC employs three people including Joseph Aichholz, Jr., his son, and a part-time accountant. N.T. 62-63.

25. Mr. Aichholz testified that he "just needs more customers to make it work" and he would like to continue operating and paying the way he is currently. N.T. 63.

26. NHSC sustained damage to its wastewater pumps in 2010 due to a surge in electrical voltage; however, NHSC never filed a complaint at the Commission against Met-Ed regarding the incident. N.T. 64, 113-114.

27. NHSC has not filed for a rate increase since 2012, and there is a stay-out provision in Ordering Paragraph No. 4 of the Commission's Order entered on July 16, 2013, at R-2012-2330877 *et seq.*, which precludes NHSC from filing a rate increase until after July 13, 2017, unless it seeks extraordinary rate relief pursuant to 66 Pa. C.S. § 1308(e). N.T. 65.

28. Service termination notices began to be regularly and frequently issued beginning on May 20, 2010. N.T. 31-32; Met-Ed Exhibit 5.

29. Met-Ed never terminated service to NHSC because of environmental and customer reasons and because of promises to pay and partial payments made by NHSC. N.T. 34.

30. Some late charges were reversed in 2012. N.T. 33-36.

31. Absent an injunction by a governmental agency such as the Public Utility Commission or the Department of Environmental Protection, Met-Ed has a legal right to terminate service to NHSC due to non-payment. N.T. 12; Met-Ed Exhibits 1-6.

32. A termination of electric service to NHSC would likely result in the wastewater processing equipment to cease operating, which in turn would foreseeably cause untreated sewage to flow into the North Kell Creek and Blue Marsh Lake in Berks County as well as back-up sewage into 273 customers' homes and one commercial customer's country club. N.T. 13-16, 54-55. Met-Ed Exhibit 5.

33. The electric service provided by Met-Ed serves, among other things, NHSC's wastewater (sewage) treatment plant and is critical for the proper operation of this wastewater treatment facility. N.T. 13-15, 54.

34. The termination of electric service to NHSC's account ending in 808 could pose a serious and immediate health and safety hazard to NHSC's customers because that is the account associated with electricity operating the pumps and processing equipment. N.T. 13-16, 54-55; Met-Ed Exhibit 5 at 5-6.

35. 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. N.T. 13-16, 54-55; Met-Ed Exhibit 5 at 5-6.

36. By failing to pay for electric service rendered to it by Met-Ed, NHSC risks termination of its electric service, thereby jeopardizing the environment, the health of its NHSC's customers, and the safety of the public at large. N.T. 13-16, 54-55; Met-Ed Exhibit 5 at 5-6.

37. There have been 32 termination notices regarding NHSC's one account issued by Met-Ed since 2013. Met-Ed Exhibit 5 and 6 at 5-6.

38. Mr. Aichholz has owned NHSC for thirty-one years, and in that time, has only sought a rate increase one time in 2013, when it was granted a graduated 50% rate increase over five years, from 2013 to 2017. N.T. 109.

39. Mr. Aichholz mortgaged his house and loaned NHSC money, and receives \$300 each week from NHSC to pay the mortgage of his house. N.T. 115, 133. NHSC Exhibit 1.

40. NHSC has had zero taxable income in 2013 – 2015. NHSC Exhibits 3.1, 3.2 and 3.3.

41. NHSC is willing to enter into a payment arrangement with Met-Ed for the full current outstanding balance of approximately \$172,434.95 as of July 19, 2017, under the following terms: 1) no lump-sum upfront payment; 2) payment of current monthly usage charges plus a payment of \$1,437 per month over the next 120 months; and 3) no late fee charges accruing on the outstanding balance unless and until there is a default on the payments under these terms. Met-Ed Exhibit 7. N.T. 124.

42. Met-Ed is only willing to enter into a payment arrangement under the terms as outlined in the Commission's May 4, 2017 Opinion and Order including: 1) a reduction in the outstanding balance from \$172,435 to \$122,674 such that all late fee charges from 2016 and 2017 are reverse charged; 2) a lump-sum upfront payment of 50% of the outstanding balance of \$61,337 within 60 days of the date of entry of a final order; 3) payment of current monthly usage charges plus a payment of \$2,555.71 per month over the next 24 months; and 4) no late fee charges accruing on the outstanding balance unless and until there is a default on the payments under these terms. N.T. 173-174.

43. There are development possibilities on a 99-acre piece of land that is undeveloped, but for which some builders have paid hook-up fees or equivalent dwelling unit (EDU) fees in advance. N.T. 123-124.

44. The plant has capacity at 100,000 gallons and is running at 30,000 a day for 280 homes, so there is room for expansion when the 99 acres are developed. N.T. 124.

45. NHSC's balance sheet does not account for everything it is billed from Met-Ed. N.T. 131. NHSC Exhibit 1.

46. NHSC never filed a formal complaint at the Commission against Met-Ed. N.T. 132-133.

47. NHSC's affiliate companies (including Tubin' Air and SEWAT) owe NHSC \$57,000 as of year end 2015. N.T. 134-139.

48. Mr. Aichholz sold North Heidelberg Water company for approximately \$800,000 to Reading Area Water Authority and paid some bills for the sewer company with the proceeds in 2011; however, the exhibits do not show any specific payments. N.T. 145-146. Met-Ed Exhibit No. 8 at page 90.

49. NHSC has paid Tubin' Air \$122,381.38 as of December 31, 2015. Met-Ed Exhibit 8 at page 90, N.T. 146-147.

50. NHSC had net income of \$80,291.32 at the end of 2015, but Mr. Aichholz does not know where the income went. N.T. 153, Met-Ed Exhibit 8 at 103.

51. Robin Delp is Supervisor of Operations for the FirstEnergy Service Center. N.T. 156.

52. As of August 3, 2017, the current total amount owed and past due on the account of NHSC is \$172,435, disaggregated to \$72,902 in consumption charges, and \$99,533 in late payment charges. N.T. 158, 163. Met-Ed Exhibit 9.

53. Since the April 3, 2017 hearing, three payments of current charges billed have been made on the Account in question and no additional payments were made towards the arrearage or late payment charges. N.T. 161, Met-Ed Exhibit 10.

54. Brian Lowe is the Manager of Revenue Operations for Pennsylvania at FirstEnergy Service Company. N.T. 165.

55. Met-Ed's policy for non-residential accounts is to require a down payment of at least 50% of the total account balance, and the general representative is authorized to amortize the balance over a three-month period. With supervisory approval, the supervisor can go up to six months. N.T. 190, Met-Ed Exhibit 11.

56. Mr. Lowe has discretion to deviate from the policy for payment arrangements to commercial accounts; however, he typically does not vary from the guidelines. N.T. 170, Met-Ed Exhibit 11.

57. Met Ed does not agree to a 120-month payback period for a non-residential customer. N.T. 172.

DISCUSSION

The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm'n*, 578 A.2d 600 (Pa. Cmwlth. Ct.1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, by presenting evidence more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosier v. Marquies*, 364 Pa. 45, 70 A.2d 854 (1950).

Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm'w., Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa.C.S. §704. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. Pa. Pub. Util. Comm'n*, 489 Pa. 109, 413 A.2d 1037 (1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dept. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth.1984).

The Commission has jurisdiction over this matter pursuant to 66 Pa.C.S. § 501, which provides in pertinent part: "In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute

and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof . . .” (emphasis added). Section 1501 of the Public Utility Code states that every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities and that such service shall be reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S. § 1501.

Parties Positions

Met-Ed asserts that the Commission has no authority to direct a payment arrangement for NHSC to pay its arrearage because NHSC is a commercial customer. Met-Ed M.B. at 3-5. In support of its position, Met-Ed relies on *Kayla’s Place Inc. v. Duquesne Light Co.*, C-00981711 (Order entered May 24, 1999) (*Kayla’s Place*), to argue that the Commission “cannot, by law, direct Met-Ed to enter into an arrangement with NHSC at all . . .” Met-Ed M.B. at 4.

Met-Ed is only willing to enter into a payment arrangement under the terms as outlined in the Commission’s May 4, 2017 Opinion and Order including: 1) a reduction in the outstanding balance from \$172,435 such that all late fee charges from 2016 and 2017 are reversed bringing the total down to \$122,674; 2) a lump-sum upfront payment of 50% of the outstanding balance of \$61,337 within 60 days of the date of entry of a final order; 3) payment of current monthly usage charges plus a payment of \$2,555.71 per month over the next 24 months; and 4) no late fee charges accruing on the outstanding balance unless and until there is a default on the payments under these terms. Met-Ed M.B. at 8-9.

Whereas before, I&E took no position on a payment arrangement, it now advocates for the same payment arrangement terms as in the May 4 Order and contends that the evidence presented on remand by NHSC regarding: 1) a repayment schedule; 2) a lump-sum payment; 3) late payment charges; and 4) the initiation of a Section 529 proceeding should the company fail to comply with the payment arrangement, warrants no revision to the payment arrangement set forth in the Commission’s May 4 Order. I&E M.B. at 9-15.

NHSC has indicated it can only come up with a lump-sum if there are builders willing to prepay for hook-ups on the undeveloped 99-acre lot that NHSC owns, or alternatively, NHSC admits that it could seek a PENNVEST loan. N.T. 124-125.

OCA and Aqua offered no positions on these issues.

Disposition

In *Kayla's Place*, the Commission did not make such a sweeping determination that it can never direct a payment arrangement involving a commercial account as it stated, "a ratepayer of a commercial account does not usually qualify for special protections afforded by Chapter 56 of the Commission's regulations, 52 Pa. Code §56.1 *et seq.*, including the establishment of a payment schedule for any unpaid arrearage owned on such an account." *Id.* (emphasis added).

I agree with Met-Ed that the directed arrangement in the May 4 Order stems from an offer made by Met-Ed at the initial hearing on April 3, 2017, and reasonably reflects offers that Met-Ed might make for similarly situated commercial customers. This is in accordance with Section 1502 of the Public Utility Code which provides:

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.

I do not recommend the Commission direct Met-Ed to comply with NHSC's proposed terms. This is because Met-Ed does not agree to the terms, and the terms are unlike a typical offer to a similarly situated commercial customer. Also, there is insufficient evidence to support NHSC's claim of an inability to pay either a \$61,337 lump sum payment or \$2,555.71 in addition to current monthly charges per month over twenty-four months. 66 Pa. C.S. § 1502.

Met Ed Exhibit 8 at page 103 of 105 shows that at least in 2015 an income of \$80,291.32 was reported. Additionally, NHSC Exhibit 3.3 shows NHSC's tax return for 2015 and an \$82,017 reported income prior to the net operating loss of same. This Exhibit also shows Tubin' Air, Inc. as a group member with NHSC. NHSC Exhibit 3.3. The net losses reported for 2014 of -\$7,200 and 2013 of -\$37,253 respectively are noted. However, it is difficult to determine the true financial picture of NHSC when there appears to be co-mingling of accounts with the CEO and other affiliate companies. The Company's affiliates owe a substantial amount to NHSC and there is evidence of co-mingling of funds among the following: 1) proceeds from the sale of North Heidelberg Water Company; 2) the affiliates of SEWAT and Tubin' Air; 3) Mr. Aichholtz's personal assets; and 4) NHSC. NHSC Exhibits 1, 2, 3.1, 3.2, and 3.3. Met-Ed Exhibits 8, 9 and 10. N.T. 115, 133-140.

I do not have the financial records of Tubin' Air, SEWAT or Mr. Aichholz to review. Although Mr. Aichholz claimed he receives \$300 a week as payback on a loan to NHSC, the loan instrument was not offered into evidence. I agree with I&E that the evidence presented by NHSC regarding its financial condition and cash flow is not substantial enough to warrant a recommendation that the Commission amend its May 4 Order.

Additionally, the CEO admits that NHSC could seek a PENNVEST loan. However, there is no evidence that it has ever attempted to do so. Although it is noted that the Company has had only one rate increase in 31 years, NHSC was supposed to enter a payment arrangement with Met-Ed in 2013 as part of its rate case settlement. Because NHSC did not enter a payment arrangement sooner with Met-Ed, it has contributed to its accumulating arrearage to Met-Ed. A ten-year payment plan with no lump-sum payment upfront would unreasonably prefer NHSC over Met-Ed's other similarly situated customers.

I believe that the emergency circumstances in the instant case warrant the Commission directing a payment arrangement with terms such that failure to pay does not result in termination, but rather the initiation of a Section 529 proceeding. 52 Pa. Code §56.1 *et seq.* Termination in this case would result in the back-up of sewage into over two-hundred residential homes and one country club, and would cause sewage to flow into local streams. However,

recognizing Section 1502 of the Public Utility Code, the payment arrangement should be reasonable and non-discriminatory to other customers of Met-Ed.

Section 529 Relief

On remand, NHSC did not challenge the potential initiation of a Section 529 proceeding should it fail to comply with the payment arrangement that is ultimately imposed in this proceeding. Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, creates a process whereby 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. The Commission has exercised its authority under Section 529 of the Code to direct a “capable public utility” to acquire a “small sewer utility.” *See also, Investigation Instituted into Whether the Commission Should Order a Capable Public Utility to Acquire Clean Treatment Sewage*, Docket No. I-2009-2109324.

Recommendation

I am persuaded to agree with Met-Ed and I&E that the Commission’s May 4 Order should remain as is, and I do not recommend any amendments or modifications.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over this matter pursuant to 66 Pa.C.S. § 501, which provides in pertinent part: “In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out, by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof . . .” (emphasis added).

2. Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities and that such service shall be reasonably continuous and without unreasonable interruptions or delay. 66 Pa.C.S. § 1501.

3. A ratepayer of a commercial account does not usually qualify for special protections afforded by Chapter 56 of the Commission's regulations. *Kayla's Place Inc. v. Duquesne Light Co.*, C-00981711 (Order entered May 24, 1999).

4. Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence. *Mill v. Comm 'w., Pa. Pub. Util. Comm'n*, 447 A.2d 1100 (Pa. Cmwlth. 1982); *Edan Transportation Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Cmwlth. 1993), 2 Pa.C.S. §704.

5. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. *Norfolk and Western Ry. v. PA Public Utility Comm'n*, 413 A.2d 1037 (Pa. 1980); *Erie Resistor Corp. v. Unemployment Compensation Bd. of Review*, 166 A.2d 96 (Pa. Super. 1960); *Murphy v. Commonwealth, Dep't. of Public Welfare, White Haven Center*, 480 A.2d 382 (Pa. Cmwlth. 1984).

6. 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.

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Commission not amend its Opinion and Order entered on May 4, 2017, at Docket No. P-2017-2594688.

2. That the Exceptions of North Heidelberg Sewer Company filed on April 17, 2017, be denied.

3. That the Recommended Decision of Administrative Law Judge Elizabeth H. Barnes, issued on April 11, 2017, be adopted, as modified, consistent with the Opinion and Order entered May 4, 2017.

4. 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 the Commission's May 4, 2017 Opinion and Order.

5. That Metropolitan Edison Company be enjoined from terminating electric service to North Heidelberg Sewer Company without prior authorization from the Commission.

6. That North Heidelberg Sewer Company be 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 a final Commission Order.

7. That upon receipt of the payment described in Recommended Ordering Paragraph No. 6, Metropolitan Edison Company be 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.

8. That in the event North Heidelberg Sewer Company fails to make timely payments as directed in Recommended Ordering Paragraph Nos. 6 and 7, 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.

9. That in the event a Notice as set forth in Ordering Paragraph No. 8 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).

10. That the Bureau of Audits and Bureau of Technical Utility Services be directed to continue conducting 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 any final Commission Order upon the Office of Small Business Advocate, Pennsylvania Department of Environmental Protection, the Commission's Bureau of Audits, and the Bureau of Technical Utility Services.

Date: September 1, 2017

/s/
Elizabeth H. Barnes
Administrative Law Judge