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

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|  | Public Meeting held February 8, 2018 |
| Commissioners Present: |  |

Gladys M. Brown, Chairman

Andrew G. Place, Vice Chairman

Norman J. Kennard

David W. Sweet

John F. Coleman, Jr.

Pennsylvania Public Utility Commission :

:

:

v. : M-2018-2645983

:

:

North Heidelberg Sewer Company :

**ORDER**

**BY THE COMMISSION:**

On October 5, 2017, the Pennsylvania Public Utility Commission (Commission) issued an Order at Docket No. P-2017-2594688 (*October 2017 Order*) providing conditions on which the North Heidelberg Sewer Company (NHSC) could remedy the public health and safety emergency occasioned by its failure to pay for electric service rendered to it over the past decade. No Party appealed the *October 2017 Order*; therefore, the Met Ed charges for electric service (and late payment fees) and the directives of the *October 2017 Order* are final and binding. Specifically, NHSC is subject to lawful termination of its electric service by the Metropolitan Edison Company (Met Ed) because NHSC has refused to pay Met Ed for accurate and lawful tariffed charges for electric service over a course of years.

The approved Met Ed tariff has the force and effect of law. *Cheltenham & Abington Sewerage Co. v. Pa. Pub. Util. Com.*, 25 A.2d 334, 336 (Pa. 1942). The Met Ed tariff authorizes it to issue bills, collect payments, and charge late payment fees for overdue bills; the tariff also requires Met Ed to terminate service to customers that refuse to pay. *May 2017 Order* at 7. Met Ed customers that happen to be regulated utilities are not exempt from these tariff rules nor does their utility status entitle them to receive free or discounted electric utility service. Either of these would violate the Public Utility Code. 66 Pa. C.S. §§ 1303–1304. “Free public utility service has been examined by our appellate courts and found to be anathema to a system of regulation and publication of a utility's tariffs.” *Phila. Suburban Water Co. v. Pa. Puc*, 808 A.2d 1044, 1050 (Pa. Cmwlth. 2002).

The *October 2017 Order* was the result of a fully litigated proceeding to develop a payment arrangement for NHSC that, if followed, would have addressed the relatively large arrearage NHSC owes to Med Ed. However, to protect NHSC customers and the public, the *October 2017 Order* not only provided how NHSC could avoid termination of its electric service, it also provided for further action should NHSC fail to comply with the Order. The *October 2017 Order* directed Met Ed to notify the Commission and the Parties if NHSC failed to comply with the terms of that Order, i.e., failed to make payments as directed.

Ordering Paragraph No. 8 of the *October 2017 Order* directed Met Ed to provide notice to the Commission and the Parties if NHSC failed to make payments as directed, thus triggering necessary additional public protection measures. On December 11, 2017, First Energy, the Met Ed parent company, filed a letter at this docket notifying the Commission and the Parties, including NHSC, that NHSC had failed to make any payments in compliance with the terms of the *October 2017 Order*, and that the NHSC balance owed had grown to approximately $193,000. The *October 2017 Order* has the force and effect of law, and the Commission will now implement its terms.

As discussed in detail below, this Order affirmatively protects NHSC customers from the unauthorized cessation of wastewater service. The Commission also acts to protect members of the public potentially affected by a failure of the NHSC wastewater treatment plant and the larger group of Met Ed customers from unreasonable rates. As was directed in the *October 2017 Order*, the Commission now invokes its authority under 66 Pa. C.S. § 529 to: (1) direct a competent utility to act as a receiver to manage and operate NHSC consistent with public safety; and (2) initiate a proceeding to transfer NHSC to a competent utility because NHSC has demonstrated that it can no longer provide reasonable and adequate service to its customers and that NHSC management has created a public health and safety threat that the Commission must address.

**BACKGROUND**

NHSC serves approximately 273 residential customers and one commercial customer in portions of North Heidelberg and Jefferson Townships in Berks County, Pennsylvania. Met Ed, a First Energy subsidiary, is the jurisdictional electric distribution company providing continuous electric service to NHSC since October 19, 1990. The fundamental issue addressed here is a long-standing arrearage owed by NHSC to Met Ed. NHSC recognized that the charges making up the arrearage were valid in a formal adjudication nearly five years ago in a July 16, 2013 NHSC rate increase Order. *Pennsylvania Public Utility Commission, et al., v. North Heidelberg Sewer Company*, Docket Nos. R-2012-2330877, et al. (Order entered July 16, 2013) (*2013 Rate Order*).

The *2013 Rate Order* expressly provided NHSC with additional revenue not only to pay its ongoing electric costs, but also to pay its Met Ed arrearage. The *2013 Rate Order* authorized NHSC to increase its annual operating revenue by $75,000 over a four-year period from July 17, 2013, to July 17, 2017. Approximately eighty percent of the *2013 Rate Order* increase was designed to provide sufficient revenues to pay a then $60,000 past-due balance NHSC owed to Met Ed. The *2013 Rate Order* directed NHSC to develop a payment plan to eliminate the arrearage and to provide evidence of the payment plan to the Office of Consumer Advocate, the party representing ratepayer interests in that proceeding. *2013 Rate Order* at 2–3. The *2013 Rate Order* memorialized the NHSC obligation to address the arrearage as on-going and as having a mandatory binding effect upon NHSC in all future proceedings. *Id*. at 10.

**Recent Litigation**

On March 21, 2017, the Commission’s Bureau of Investigation and Enforcement[[1]](#footnote-2) (I&E or Petitioner) filed a Petition for Issuance of an Ex Parte Emergency Order against Met Ed and NHSC. The Petition averred that Met Ed had begun termination procedures against NHSC due to non-payment of what had become a $157,000 arrearage for electric services rendered. In short, it appeared that NHSC had not fulfilled its obligation under the *2013 Rate Order*. To protect the public, the 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 as a temporary measure to preserve the status quo such that NHSC customers would continue to receive uninterrupted wastewater service. The *Ex Parte Order* also directed the Commission’s Office of Administrative Law Judge (OALJ) to schedule a hearing, which was held on April 3, 2017. 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 11, 2017, the ALJ issued a Recommended Decision establishing a payment play by which NHSC could remedy the arrearage previously adjudicated in the *2013 Rate Order* and additional amounts now owed to Met Ed. NHSC filed Exceptions challenging the payment plan, which the Commission denied in its May 4, 2017 Opinion and Order (*May 2017 Order*). As to NHSC exceptions, the Commission found, *inter alia*, that NHSC did not dispute the amount owed, 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, and failed to adequately explain its poor payment history since 2011.

Nevertheless, the Commission modified 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 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 2017 Order* also directed the Company to take other, non-payment related action.

NHSC appealed the *May 2017 Order* to the Commonwealth Court on June 2, 2017, seeking a stay of the *May 2017 Order* and remand for further hearings. NHSC argued that it had no notice that the Commission intended to implement a repayment schedule and had no opportunity to present relevant evidence of its financial situation and arguments regarding the validity of the arrearage and the Company’s ability to pay. On June 26, 2017, the Honorable Mary Hannah Leavitt, President Judge of Commonwealth Court, granted the NHSC Application for Stay in part with respect to Paragraphs 5 through 9 of the *May 2017 Order*. *North Heidelberg Sewer Company v.* *Pennsylvania Public Utility Commission*, 696 C.D. 2017 (Pa. Cmwlth. June 26, 2017). The Memorandum Opinion ultimately determined that compliance with the *2013 Rate Order* and payment of uncontested tariff rates for electric service would cause NHSC irreparable harm.

To expedite its ongoing effort to protect the public, on July 3, 2017, the Commission filed an Expedited Application for Remand with the Commonwealth Court indicating that it would provide NHSC with its requested opportunity for additional litigation. The Commonwealth Court granted the application on July 5, 2017, relinquishing jurisdiction and remanding the matter back to the Commission for further proceedings. The Court did not vacate the *May 2017 Order*. *North Heidelberg Sewer Company v. Pennsylvania Public Utility Commission*,696 C.D. 2017 (Pa. Cmwlth. July 5, 2017).

On July 10, 2017, by Secretarial Letter, the Commission referred the matter to OALJ for further hearing and the issuance of a recommended decision by September 8, 2017. The Commission 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 also directed that NHSC be provided a full opportunity to litigate these issues, including discovery, hearings, and briefing. A further evidentiary hearing was held on August 2, 2017, which developed an additional 87 pages of transcript. 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, and the ALJ issued a Recommended Decision on September 1, 2017.

That Recommended Decision found that NHSC had failed to meet the terms of the *2013 Rate Order* regarding its $60,000 arrearage with Met Ed and that the arrearage had since grown by approximately $100,000 to a total of $160,217. Finding of Fact Nos. 10, 11; R.D. at 6. As of August 3, 2017, that amount increased to a past due amount of $172,435. Findings of Fact No. 52; R.D. at 11.

In addition, while it has not paid its electric bill, NHSC is now collecting an additional $75,000 in annual operating revenue, in part, to facilitate the payment of its arrearage with Met Ed and its current electric bills. Finding of Fact Nos. 14, 15; R.D. at 6; *2013 Rate Order* at 8. NHSC did not contest the accuracy of the Met Ed bills. Rather, the owner of NHSC testified that he “would like to continue operating and paying the way he is currently” and that NHSC requires additional customer growth from successful real estate speculation to “make it work.” Findings of Fact Nos. 21, 25; R.D. at 8. In lieu of the half-down, half over twenty-four-month plan described above, NHSC sought a no money down, 10-year payment plan for the entire $172,434.95 balance as of July 19, 2017. Findings of Fact No. 41; R.D. at 10. NHSC argued that it could come up with a lump-sum payment only if prospective home builders would prepay for wastewater hook-ups on an undeveloped 99-acre lot proximate to the NHSC service territory that is owned by either NHSC or an affiliate. R.D. at 14.

As to Met Ed, the Recommended Decision found that it began to serve termination notices on NHSC beginning in May 2010, totaling upwards of 32 notices, and that Met Ed has a legal right to terminate service to NHSC due to non-payment. Findings of Fact Nos. 28, 31, 37; R.D. at 8, 9. While the Recommended Decision found that Met Ed had the legal right to terminate NHSC, Met Ed did not do so because of the following:

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.

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.

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.

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.

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.

Findings of Fact Nos. 32-36; R.D. at 9 (citations omitted). Met Ed argued that the Commission could not direct a payment arrangement for a commercial customer and that its normal policy for over-due commercial accounts is to require half down and the remainder over three months. R.D. at 13; Findings of Fact No. 55; R.D. at 12. Met Ed did not agree to terms proposed by NHSC.

The Recommended Decision also found that NHSC has made loans to affiliated companies totaling at least $57,000 as of year-end 2015. Findings of Fact No. 47; R.D. at 11. Also, NHSC has paid out $122,381 to affiliated companies as of December 31, 2015. Findings of Fact No. 49; R.D. at 11. In addition, it was found that NHSC had net income of $80,291.32 at the end of 2015, but the NHSC owner testified that he “does not know where the income went.” Findings of Fact No. 50, R.D. at 11. As to whether the Commission should initiate an acquisition proceeding under 66 Pa. C.S. § 529, NHSC did not challenge its being subject to a Section 529 proceeding should it fail to comply with any payment arrangement resulting from the proceeding. R.D. at 16.

The ALJ reasoned that the evidence did not support a conclusion that NHSC could not pay for its electric service under the terms proposed by the *May 2017 Order*. R.D. at 14. Also, the ALJ reasoned that the emergency circumstances presented by NHSC warranted a payment arrangement with terms such that a failure to pay would trigger a Section 529 proceeding rather than a termination resulting in the back-up of sewage into over two-hundred residential homes and untreated wastewater to flow into public drinking water supplies. R.D. at 15. However, the Recommended Decision balanced the availability of a repayment plan with the requirements of 66 Pa. C.S. § 1502 whereby the payment arrangement should be reasonable and non-discriminatory to other similarly situated customers of Met Ed. R.D. at 16.

Balancing these factors, the Recommended Decision ultimately imposed a payment plan of half-down, half over twenty-four-months, identical to the one described above. The ALJ also recommended that, should NHSC fail to comply with the payment arrangement, the Commission should initiate a proceeding under 66 Pa. C.S. § 529 and direct a competent utility to operate or acquire NHSC because it has jeopardized public safety by failing to provide reasonable and adequate service. Ordering Paragraph Nos. 7, 9; R.D. at 18, 19. The *October 2017 Order* adopted the September 1, 2017 Recommended Decision as its Order without modification. With no appeal taken, the *October 2017 Order* is final and binding.

**Viability Review of the Bureaus of Audits and Technical Utility Services**

Also adopted in the *October 2017 Order* is the ALJ’s recommendation that the Bureaus of Audits and Technical Utility Services conduct a review into the continued viability of NHSC as a going concern and its ability to provide safe and reliable service at reasonable rates. Ordering Paragraph No. 10 of the *October 2017 Order* directs that, upon completion, those Bureaus were to make a joint report to the Commission as to whether the Commission should initiate a proceeding pursuant to 66 Pa. C.S. § 529. That review was to proceed regardless of the status of the NHSC arrearage with Met Ed. Based on the conclusions discussed below, and on the fact that NHSC had failed to comply with the terms of the payment arrangement in the *October 2017 Order*, the report recommends that the Commission initiate a Section 529 proceeding as soon as practicable.

The Bureaus of Audits and Technical Utility Services (TUS) provided their report to the Commission on January 5, 2018. Audits and TUS had issued Data Requests Sets 1 and 2 to NHSC via Secretarial Letter on May 26, 2017, and June 1, 2017, respectively. Set 1 addressed financial matters, annual reports, and assessments. Set 2 addressed operational concerns. NHSC neither responded nor did it contact the Commission seeking additional accommodation as to either Set 1 or 2. Thus, NHSC has failed to provide any data detailing its current operations or financial matters.

The Report also noted that NHSC has not filed annual reports with the Commission for any year from 2012 to 2016. Similarly, the Report identified that NHSC has a $2,970 outstanding balance for assessments due in 2015, 2016, and 2017. The last NHSC assessment payment was a partial payment of $296 made December 12, 2015, on a $1,096 assessment due for 2015. NHSC has made no payments towards 2016 and 2017 assessments. The Report identified that NHSC has not filed Public Utility Security Planning and Readiness Self-Certifications with the Commission for each year from 2009 through 2017.

The Report explains that TUS conducted a physical file review at the Department of Environmental Protection (DEP) Southcentral Offices on November 21, 2017. That review revealed that NHSC was cited by DEP for many violations of environmental law over the past four years. These include Notices of Violation issued: (1) October 26, 2017, for a failure to pay an annual fee; (2) June 2, 2017, for a failure to pay an annual fee; (3) February 24, 2017, for a discharge of raw sewage from the collection system with a system comminutor offline; (4) November 1, 2016, for a failure to pay an annual fee; (5) October 16, 2015, for a failure to pay an annual fee; (6) November 1, 2013, for a failure to timely renew a permit; (7) August 1, 2013, for a failure to pay an annual fee; and (8) July 3, 2013, for bypassing a sand filter and improper sampling.

The Report also examined financial exhibits submitted at hearings in this docket and arrived at conclusions similar to those of the ALJ, that the hearing exhibits do not indicate that NHSC cannot pay for its electric service. The Report recommends that the Commission direct Audits to perform a forensic review of the books and records of NHSC, and all entities properly affiliated with NHSC under Chapter 21 of the Public Utility Code from the date of the appointment of a receiver to 2012. The Report recommends that, if the Commission institutes a Section 529 proceeding, this audit be introduced as evidence in that proceeding.

The Report also recommends that the Commission take immediate action pursuant to 66 Pa. C.S. § 529 to appoint a receiver for NHSC to protect the interest of the NHSC customers and the public as soon as practicable. Audits and TUS provided specific recommendations as to the duties of the receiver. The Report recommends that, in conjunction with the appointment of a receiver, the Commission should lift the prohibition on Met Ed’s termination of NHSC at Ordering Paragraph No. 5 of the *October 2017 Order*. The Report recommends that Met Ed then initiate service in the name of the receiver at the NHSC facilities under receivership.

**DISCUSSION**

The circumstances surrounding NHSC are not only troubling, but also represent a clear threat to public health and safety. To be clear, while the Commission believes that Met Ed should have acted sooner to address this situation, the Commission does not fault Met Ed for exercising caution under the circumstances. Now, however, NHSC has yet again failed to comply with the terms of a Commission Order, this time the *October 2017 Order,* and Commission action under 66 Pa. C.S. § 529 is not only mandated as a matter of law, but also serves as a practical solution to the public health emergency created by NHSC.

Taking the facts as developed from the evidentiary hearing of August 2, 2017, it does not appear that NHSC *cannot* pay for its electric service due to rates that are inadequate or unjust as to NHSC. Rather, the facts show that NHSC simply *refuses* to pay for that service and instead may have made loans and transferred funds to unregulated affiliates and may have engaged in other comingling of funds among NHSC, affiliated companies, and the owner(s) of NHSC. Because NHSC has failed to file annual reports as required by the Public Utility Code and ignored official Commission directives that it provide additional financial and operation information in response to data requests, the Commission is, at this time, unable to assess the full gravity of the situation. Under these circumstances, the Commission is not at liberty to take a “wait and see” approach and simply react to the type of public health and environmental emergency that this situation is likely to produce.

In addition, the Commission finds NHSC’s lack of candor disturbing. The records of the Department Environmental Protection, of which we take official notice, appear to show that NHSC committed multiple violations of Pennsylvania environmental law over many years. Nevertheless, NHSC testified under oath at the evidentiary hearings of April 3, 2017, that “[o]ur plant works absolutely – we have no violations in 31 years. The plant runs prefect [sic].” Tr. at 54. In fact, DEP records show that NHSC had been cited by DEP many times, and most importantly, had been cited for a discharge of raw sewage from its collection system approximately one month before NHSC offered this sworn testimony.

In addition to its failure to pay for electric service, there are a number of other issues that call into question NHSC’s ability to operate its wastewater system, including: (1) the failure to pay its Commission assessments; (2) the failure to file its Annual Reports; (3) whether its arrangements with affiliated entities have been approved under the Public Utility Code; (4) the validity of contracts and arrangements between or among NHSC and its affiliates; (5) whether the exchange of services, property, money, or securities between or among NHSC and its affiliates constitutes criminal conduct under Chapters 19, 21, or 33 of the Public Utility Code; and (6) whether testimony offered at hearings in this matter, particularly at the April 3, 2017 hearing, constitutes one or more criminal violations of Chapter 33 of the Public Utility Code or Chapter 49 of the Pennsylvania Crimes Code.

The Commission does not lose sight of the circumstances that occasion this proceeding. At its core, this proceeding is about whether a utility and a commercial utility customer are required to abide the terms and conditions of a Commission-approved tariff. The law is settled. A Commission-approved tariff has the force and effect of law and is binding on both the utility and its customers. *Moyer v. PUC*, 167 A.3d 296 (Pa. Cmwlth. 2017). Commercial utility customers are obligated to pay tariff rates for service rendered, and utilities are obligated to protect all customers from those that refuse to pay by terminating overdue unpaid accounts. There is no argument that the Met Ed charges are valid, that NHSC owes Met Ed for the service rendered, or that there is record evidence that NHSC had revenue sufficient to pay for its electric service.

While the Commission does not agree that it cannot direct a payment arrangement for a commercial customer, such arrangements are highly unusual and appropriate only in cases effecting the public health, safety and welfare. Here, the *October 2017 Order* developed a reasonable payment plan considering NHSC rates and revenue. It now appears that NHSC has chosen to ignore the payment plan and the Order.

The Commission cannot legally direct Met Ed to refrain from terminating NHSC forever. As to that termination, the Commission likewise cannot ignore its statutory duty to enforce, execute, and carry out all provisions of the Public Utility Code to ensure public health and safety. 66 Pa. C.S. § 501(a). To that end, the Public Utility Code provides the Commission with “general administrative power and authority to supervise and regulate all public utilities doing business within this Commonwealth.” 66 Pa. C.S. § 501(b). Similarly, every regulated public utility, including its officers, agents, and employees, is legally obligated to observe, obey, and comply with Commission directives. By appointing a receiver and initiating a Section 529 proceeding under the terms provided here, we will have the opportunity to examine whether NHSC has the ability to furnish and maintain adequate, efficient, safe, and reasonable service.

Section 529 of Title 66 is in the nature of an emergency provision in which the Public Utility Code authorizes the Commission to take immediate action to protect the public interest. Pursuant to Section 529, the Commission may order a capable public utility to acquire a small water or sewer utility like NHSC if the Commission determines, after notice and hearing, that (1) NHSC has violated statutory or regulatory standards, (2) NHSC has failed to comply within a reasonable period of time with any Commission order concerning the safety, adequacy, efficiency, or reasonableness of service, (3) NHSC cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future, (4) alternative to acquisition are determined to be impractical or not economically feasible, (5) the acquiring utility is capable of operating NHSC in compliance with statutory and regulatory standards, and (6) that the rates charged to NHSC customers will not increase unreasonably because of the acquisition. 66 Pa. C.S. § 529(a). In making these determinations, the Commission is to consider the factors enumerated in 66 Pa. C.S. § 529(c).

Regarding 66 Pa. C.S. § 529(a)(4), that Section requires the Commission to explore alternatives to acquisition as outlined in 66 Pa. C.S. § 529(b). Finally, as the bureau with delegated prosecutory discretion under Section 308.2(a)(11) of the Public Utility Code, the Bureau of Investigation and Enforcement (BI&E) shall be directed to participate in this matter to address fitness determinations, alternatives to acquisition, and factors for consideration required under Sections 529(a), (b) and (c) as it deems appropriate and before a final determination on acquisition can be rendered.

In addition to the above, 66 Pa. C.S. § 529(g) provides that the Commission may take action to ensure that customers of a small wastewater utility and the affected public will receive safe and adequate service during the pendency of a Section 529 proceeding. Section 529 provides as follows:

(g) Appointment of receiver.—The commission may, in its discretion, appoint a receiver to protect the interests of the customers of the small water or sewer utility. Any such appointment shall be by order of the commission, which order shall specify the duties and responsibilities of the receiver.

66 Pa. C.S. § 529(g). This Order will appoint Aqua Pennsylvania Wastewater Company, Inc. (APWC) as the Receiver to manage and operate NHSC during the pendency of the Section 529 proceeding ordered herein. The Commission appoints APWC as the Receiver because of its expertise and experience in operating wastewater utilities subject to regulation under the Public Utility Code, and because its familiarity and understanding of the circumstances will work to ensure safe, adequate, and reasonably continuous service to the public. Accordingly, the Commission has specified the duties and responsibilities of the Receiver in this Order and in Appendix A.

**CONCLUSION**

To protect the health, safety and welfare of the customers of the North Heidelberg Sewer Company, the Commission will initiate a proceeding pursuant to 66 Pa. C.S. § 529, including the appointment of a receiver under Section 529(g). These actions will provide for the orderly transition of operation and perhaps ownership of the North Heidelberg Sewer Company to a competent wastewater provider and will protect the customers of NHSC and the affected public; **THEREFORE,**

**IT IS ORDERED:**

1. That an investigation shall be instituted into whether the Commission should order a capable public utility to acquire North Heidelberg Sewer Company pursuant to the Commission’s October 5, 2017 Order at Docket Number P-2017-2594688 and 66 Pa. C.S. § 529 and consistent with this Order.

2. That the Bureau of Investigation and Enforcement is expected to participate in the investigation proceeding. Wastewater utilities with an interest in this matter may petition to participate as appropriate.

3. That the North Heidelberg Sewer Company shall provide notice to its customers of the imposition of the receivership and the initiation of a Section 529 proceeding in the same manner as a general rate increase and shall inform its customers to direct future payments for wastewater service to the Receiver as appointed by the Commission.

4. That pursuant to 66 Pa. C.S. § 529(g), the Commission directs Aqua Pennsylvania Wastewater Company, Inc. to act as the Receiver for the North Heidelberg Sewer Company beginning March 5, 2018 and to continue during the pendency of the Section 529 proceeding ordered below and in accordance with Appendix A to this Order.

5. The Receiver shall not assume any debt incurred by the North Heidelberg Sewer Company unless such assumption is approved through an Order of this Commission.

6. The Receiver shall not be liable for preexisting conditions, defects, or regulatory or statutory violations occasioned by the North Heidelberg Sewer Company.

7. That the Metropolitan Edison Company is ordered to initiate electric service to the facilities used to serve the North Heidelberg Wastewater Company customers in the name of the Receiver as appointed by the Commission and consistent with this Order.

8. That, upon establishment of service in the name of the Receiver, the prohibition on termination of the North Heidelberg Sewer Company established in Ordering Paragraph No. 5 of the October 5, 2017 Order at Docket No. P-2017-2594688 is hereby removed, and the Metropolitan Edison Company is ordered to terminate electric service to the North Heidelberg Sewer Company consistent with this Order.

9. That the North Heidelberg Sewer Company shall preserve all hard copy or electronic records, files, bank statements, documents, papers, or any other materials related to its offering of utility wastewater service, including records of all contracts loans, payments, and other arrangements with affiliated companies or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

10. That the North Heidelberg Sewer Company shall, no later than February 20, 2018, turn over copies or originals of all books, records, accounts, and any other information used and useful in the provision of utility wastewater service to customers served by the North Heidelberg Sewer Company to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

11. That the North Heidelberg Sewer Company shall, no later than March 5, 2018, turn over all operations, assets, and any other property whether personal or real property, used and useful in the provision of utility wastewater service to customers served by the North Heidelberg Sewer Company to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

12. That the North Heidelberg Sewer Company, including its owners and employees, are directed to provide full and unconditional cooperation with the orderly transition of operations, management, and oversight to the Receiver as appointed by the Commission or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

13. That the North Heidelberg Sewer Company shall cease all billing and collections activity to its former customers as of March 5, 2018.

14. That the North Heidelberg Sewer Company shall not engage in any purchase, sale, payment, lease, loan, or exchange of any service, property, money, security, right, or thing under contract, whether oral or written, or under any arrangement with an affiliated interest, the terms of which have not been approved by the Commission, subject to criminal and/or civil prosecution under Chapters 19, 21, and 33 of the Public Utility Code and any other applicable state or federal law.

15. That the Bureau of Audits perform a forensic review of the books and records of the North Heidelberg Sewer Company, and all entities affiliated with it pursuant to Chapter 21 of the Public Utility Code, for the period from January 1, 2012, through the entry date of this Order. When complete, the Bureau of Audits shall make the report public.

16. That a copy of this Order be served on the North Heidelberg Sewer Company, the Metropolitan Edison Company, Aqua Pennsylvania Wastewater, Pennsylvania American Wastewater Company, the National Association of Water Companies – Pennsylvania Chapter, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Pennsylvania Department of Environmental Protection – Southcentral Region, all proximate municipalities and authorities providing wastewater service, and to North Heidelberg and Jefferson Townships in Berks County, Pennsylvania.

17. That a copy of this Order posted on the Commission’s website at [www.puc.pa.gov](http://www.puc.pa.gov).

 **BY THE COMMISSION**

Rosemary Chiavetta

Secretary

(SEAL)

ORDER ADOPTED: February 8, 2018

ORDER ENTERED: February 9, 2018

APPENDIX A

Docket No. M-2018-2645983

1. That the Receiver, in its capacity as receiver of the North Heidelberg Sewer Company (NHSC), shall have the following duties and responsibilities:
   1. Operate the system in compliance with all State, Federal, and local laws and regulations.
   2. Maintain any existing or necessary permits, licenses, approvals, authorizations, orders, consents, registrations, or filings.
   3. Provide a listing of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the system, to address or anticipate the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.
   4. Provide all supervision and personnel necessary to operate the system in a professional, efficient and economic manner, and in accordance with sound operating practices and prudent industry and utility standards.
   5. Respond to system emergencies by taking necessary action to ensure the continued provision of adequate, efficient, safe and reasonable service.
   6. Notify appropriate regulatory or governmental agencies regarding any emergency which, in the reasonable judgement of the receiver, is likely to result in material loss or damage to the system, or constitute a material threat to human health or safety.
   7. Provide for normal routine maintenance and the provision of supplies for the system.
   8. Keep financial and accounting records and all pertinent operating data and information relating to the system as prudent industry and utility practices would require.
   9. Assume NHSC’s billing and collection functions.
   10. Provide NHSC’s customer service.
   11. Have the authority to borrow money in the name of NHSC necessary for the continued provision of adequate, efficient, safe and reasonable service to the customers of NHSC.
   12. Have the authority to file a petition for bankruptcy and participate in such proceedings on behalf of NHSC.
   13. Comply with NHSC’s effective tariff for NHSC customers.
   14. Submit all necessary paperwork to regulatory agencies of the system on behalf of NHSC.
   15. Submit an initial status report to the Commission within 60 days of assuming operations and then quarterly thereafter to detail any relevant updates pursuant to duties and responsibilities assigned through receivership.
   16. Participate in discussions with the Commission regarding alternatives to the acquisition of NHSC, pursuant to 66 Pa. C.S. § 529(b).
   17. Submit testimony regarding each factor delineated under 66 Pa. C.S. § 529(c) in any future proceeding pursuant to 66 Pa. C.S. § 529(a) relating to the acquisition of NHSC by a capable public utility.
   18. Make its best efforts to establish the financial position of NHSC at the time the receiver assumed receivership.
   19. Establish a deferred expense account for expenses incurred by NHSC that are payable to the receiver.
   20. Petition the Commission to add or remove any duties or responsibilities; however, the receiver must continue to fulfill all duties and responsibilities until such duties or responsibilities are removed by Commission Order or by a court with competent jurisdiction.
   21. Be permitted to use existing Commission-approved affiliated entities to provide services to NHSC, provided that the receiver provides the Commission written notice identifying which affiliates are providing services for which approval under 66 Pa. C.S. § 2102 would typically be required.
   22. Satisfy the aforementioned duties and responsibilities either directly, through Commission-approved affiliates, or through competitive operation and maintenance agreements or any combination thereof.
   23. Charge NHSC reasonable rates for all services rendered to or for NHSC on behalf of the receivership.
2. That the Receiver, in its own capacity, shall have the following duties and responsibilities:
   1. Should NHSC be unable to obtain necessary financing for ensuring the continued provision of adequate, efficient, safe and reasonable service to the customers of NHSC, the receiver, at its option, may either directly provide financing for NHSC or file a petition for bankruptcy.
   2. Establish a deferred expense account for expenses incurred by the receiver resulting from this order, including prudent and reasonable legal expenses.
3. The Receiver may petition the Commission for modification or termination of this receivership, or to appoint another, or an additional, entity as a receiver of NHSC.

1. Under a reorganization plan, the Commission’s prosecutory functions are now performed by the Bureau of Investigation and Enforcement. [↑](#footnote-ref-2)