

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	:	M-2018-2645983
	:	I-2018-3001161
v.	:	
	:	
North Heidelberg Sewer Company	:	

RECOMMENDED DECISION

Before
Steven K. Haas
Administrative Law Judge

INTRODUCTION

On February 9, 2018, an investigation was initiated by the Pennsylvania Public Utility Commission (Commission), pursuant to Section 529 of the Pennsylvania Public Utility Code, 66 Pa.C.S. § 529 (Section 529), into whether the Commission should order a capable public utility to acquire the wastewater system assets of North Heidelberg Sewer Company (NHSC). On May 13, 2022, Aqua Pennsylvania Wastewater, Inc, North Heidelberg Sewer Company, Bureau of Investigation and Enforcement, Office of Consumer Advocate, and Metropolitan Edison Company (Joint Petitioners) filed a Joint Petition for Approval of Settlement (Joint Petition) with the Commission. In the Joint Petition, the Joint Petitioners memorialized their resolution of all issues in this proceeding (settlement) and requested that the Commission approve the settlement without modification. This decision recommends approval of the Joint Petition without modification because it is in the public interest.

PROCEDURAL HISTORY

These proceedings concern the Commission’s Section 529 Investigation of NHSC and a related Order directing Aqua Pennsylvania Wastewater, Inc. (Aqua) to serve as receiver.

The Joint Petition resolves these proceedings, as well as a formal complaint proceeding initiated by the Commission's Bureau of Investigation and Enforcement (I&E) at Docket No. C-2016-2547755.

NHSC provides wastewater service to approximately 273 residential customers and one commercial customer in portions of North Heidelberg and Jefferson Townships in Berks County, Pennsylvania.

The Section 529 Investigation involving NHSC stems, in part, from NHSC's failure to pay a long-standing, relatively large arrearage for electric service provided by Metropolitan Edison Company (Met-Ed), the electric distribution company that provides electric distribution service to NHSC.

The Commission adjudicated issues related to the arrearage in NHSC's 2013 base rate case. On July 16, 2013, the Commission entered an Order at Docket No. R-2012-2330877 that expressly provided NHSC with additional revenue to pay its ongoing electric costs and its Met-Ed arrearage. The 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. The Order was designed to provide sufficient revenue to pay what was then a \$60,000 arrearage.

On March 21, 2017, I&E filed a Petition, at Docket No. P-2017-2594688, for Issuance of an *Ex Parte* Emergency Order against Met-Ed and NHSC. The Petition averred that Met-Ed had initiated termination procedures against NHSC due to NHSC's non-payment of a \$157,000 arrearage. I&E requested that the Commission enjoin Met-Ed from terminating electric service and direct NHSC to cease withholding payments to Met-Ed. I&E also asked the Commission to require NHSC to notify its customers that they will continue to receive wastewater service.

Chairman Brown Dutrieuille issued an *Ex Parte* Emergency Order on March 22, 2017, granting I&E's Petition as modified. The Order temporarily preserved the status quo such that NHSC customers continued to receive uninterrupted wastewater service. The Order also

directed the Office of Administration Law Judge (OALJ) to schedule a hearing, which was held on April 3, 2017.

By Order entered May 4, 2017, the Commission adopted a Recommended Decision, as modified, and directed NHSC to pay an initial lump-sum amount to Met-Ed within 60 days and make monthly payments over a two-year period to avoid termination of its electric service.

NHSC appealed the Commission's Order to Commonwealth Court, seeking a stay of the Order and a remand to the Commission for further hearings. At the Commission's request, the Commonwealth Court relinquished jurisdiction and remanded the matter for further proceedings.

A Recommended Decision in the remand proceeding was issued on September 1, 2017, which concluded, *inter alia*:

- that NHSC failed to meet the terms of the July 16, 2013 Order in NHSC's 2013 base rate case; and
- that Met-Ed had a legal right to terminate electric service to NHSC due to non-payment.

The Recommended Decision required payment of an initial lump-sum amount to Met-Ed within 60 days and monthly payments over a two-year period in order for NHSC to avoid termination of its electric service. The Recommended Decision also recommended that the Commission initiate a Section 529 proceeding if NHSC failed to comply with the payment plan.

The Commission, by Order entered October 5, 2017 (*October 5 Order*), adopted the Recommended Decision without modification.

NHSC failed to comply with the *October 5 Order*, and the Commission, on February 9, 2018, entered an Order at Docket No. M-2018-2645983, (*Receivership Order*)

initiating a Section 529 proceeding. Petitions to Intervene were subsequently filed by Pennsylvania-American Water Company (PAWC) and Met-Ed. By Order dated June 25, 2018, I joined PAWC and Suez Water Pennsylvania, Inc. (Suez) as indispensable parties because they were both eligible as capable public utilities to be ordered to acquire the NHSC system.¹

The *Receivership Order* also appointed Aqua as Receiver for NHSC, pursuant to 66 Pa.C.S. § 529(g), beginning March 5, 2018, and continuing during the pendency of the Section 529 proceeding to “protect the interests of the customers” of NHSC. The duties and responsibilities of Aqua as Receiver were set forth in Appendix A to the *Receivership Order*.

The Section 529 Investigation was commenced at Docket No. I-2018-3001161 in accordance with the *Receivership Order*. I was assigned to preside over the Investigation.

An Initial Prehearing Conference in the Section 529 Investigation was held on July 27, 2018, and a litigation schedule was established.

Thereafter, the litigation schedule was suspended by Order Granting Motion to Delay Procedural Schedule, issued February 1, 2019, following the death of Joseph M. Aichholz, Jr., the owner and Chief Executive Officer of NHSC.

On January 30, 2020, counsel for NHSC filed a Status Report indicating that the matter should proceed.

By Order entered October 7, 2021 (*October 7 Order*), the Commission granted, as modified, a Petition of Aqua to Affirm and Clarify its receivership status, filed by Aqua following extensive storm damage to the NHSC system and facilities.

¹ PAWC and Suez are not signatories to the Joint Petition but neither oppose the settlement.

The Commission, in its *October 7 Order*, also:

- [d]irected OALJ to move forward with the Section 529 Investigation and issue a Recommended Decision no later than June 30, 2022;
- [d]irected Aqua to continue to act as Receiver for NHSC during the pendency of the Section 529 Investigation;
- [a]mended the duties and responsibilities of Aqua as Receiver; and
- [e]stablished deferred accounting treatment for reasonable costs incurred by Aqua, as Receiver to restore safe, adequate, and reasonably continuous service to NHSC's customers with the opportunity to present those costs for recovery as part of a subsequent base rate proceeding, if not recoverable from NHSC.

A further Prehearing Conference was noticed for, and held on, December 8, 2021.

A new litigation schedule was established with the objective of having a Recommended Decision issue no later than June 30, 2022.

By e-mail dated March 25, 2022, I was informed by Aqua's counsel that a settlement of all issues in the proceeding had been reached. Accordingly, the litigation schedule was suspended. On May 13, 2022, the Joint Petitioners filed their Joint Petition and Statements in Support of the Settlement.

For the reasons discussed below, I recommend that the Joint Petition be approved without any modifications because it is in the public interest.

DISCUSSION

I. Joint Stipulation of Fact

On May 20, 2022, the Joint Petitioners submitted a Joint Stipulation of Facts which support the Joint Petition. The facts contained in the Joint Stipulation are set forth below as submitted and are adopted in this recommended decision.

A. The Parties

1. NHSC is a regulated public utility providing wastewater service to approximately 273 residential customers and one commercial customer in portions of North Heidelberg and Jefferson Townships in Berks County, Pennsylvania.

2. Aqua is a regulated public utility providing wastewater service to approximately 45,000 wastewater customers throughout Pennsylvania.

3. OCA is a Commonwealth agency created by Act 161 of 1976 to represent the interests of consumers before the Commission. 71 P.S. § 309-2.

4. I&E serves as the prosecutory bureau for the Commission for purposes of representing the public interest in ratemaking and service matters, and enforcing compliance with the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. §§ 101 *et seq.*, and Commission regulations, 52 Pa. Code §§ 1.1 *et seq.* See *Implementation of Act 129 of 2008: Organization of Bureaus and Offices*, Docket No. M-2008-2071852 (Order entered August 11, 2011).

5. Met-Ed is a regulated public utility providing electric distribution service to NHSC.

B. The Section 529 Investigation

6. By Order entered February 9, 2018, at Docket No. M-2018-2645983, the Commission initiated a Section 529 investigation of NHSC for reasons stated in the Order.

7. In that same Order entered February 9, 2018, the Commission appointed Aqua as Receiver for NHSC, pursuant to Section 529(g) of the Code.

C. The Proposed Settlement

8. On May 13, 2022, the [Joint Petitioners] filed a Joint Petition asking the Commission to approve a settlement of the Section 529 investigation.

9. The [Joint Petitioners] agree, in the Joint Petition, that they will not contest that NHSC is a small, non-viable system as defined in 66 Pa.C.S. § 1327(a) and 52 Pa. Code § 69.711.

10. The Commission is asked, as part of that settlement, to approve an Asset Purchase Agreement between Aqua and NHSC whereby Aqua will purchase the wastewater system assets of NHSC for \$121,771.56.

11. Additional terms of the settlement ask that the Commission approve the purchase price of \$121,771.56; approve the Plan for Improvements included with the Joint Petition; and allow Aqua to implement the rates presented in the tariff supplement included with the Joint Petition.

12. The Joint Petition also resolves a formal complaint of I&E against NHSC at Docket No. C-2016-2547755, including a Motion for Default Judgment, for NHSC's failure to pay its Commission assessment for the 2015-2016 fiscal year.

13. The sale of the system, moreover, is subject to all necessary government approvals by the Commission, the Department of Environmental Protection, and North Heidelberg and Jefferson Townships.

14. The Joint Petition further asks that, upon closing of the sale of the NHSC system to Aqua, the Commission issue certificates of public convenience authorizing Aqua to provide wastewater service in the Requested Territory in North Heidelberg and Jefferson Townships and NHSC to abandon its wastewater service.

15. Aqua, NHSC, I&E, OCA and Met-Ed have submitted Statements presenting their reasons for supporting the Joint Petition.

Joint Stipulation of Facts, pp. 2-3.

II. Settlement Terms

The settlement terms contained in the Joint Petition and agreed upon by the Joint Petitioners are stated below. The paragraph numbering is shown as it appears in the Joint Petition for ease of reference.

24. Joint Petitioners agree to the following terms and conditions in settlement of these proceedings. The terms and conditions, to which Joint Petitioners agree, are as follows:

(a) Transaction between Aqua and NHSC

(i) Aqua will acquire the NHSC assets for \$121,771.56. The purchase price is sufficient to satisfy secured creditor amounts. The purchase price will be directed by Aqua at closing to clear title for the asset purchase.

(ii) Met-Ed and Aqua agree that Met-Ed will write off half of the outstanding electric bill owed by NHSC to Met-Ed and Aqua will pay one half of the outstanding electric bill owed by NHSC, which is reflected in the purchase price.

(iii) Aqua and NHSC will enter into an Asset Purchase Agreement (“APA”) on terms acceptable to Aqua.

(iv) The acquisition of the assets of NHSC by Aqua under the APA (“Transaction”) will be subject to all necessary government approvals, included approvals by the Commission, DEP and North Heidelberg and Jefferson Townships, Berks County, Pennsylvania.

(v) Joint Petitioners request that the Commission, upon approval of this Joint Petition, issue certificates of public convenience authorizing Aqua to acquire the wastewater system assets of NHSC and authorizing NHSC to sell all of its wastewater system assets to Aqua. Joint Petitioners further request that the Commission direct Aqua to notify the Commission, OCA, and I&E upon closing of the Transaction. The Secretary’s Bureau will then issue certificates of public convenience evidencing Commission approval of:

1) Aqua’s right, effective the date of closing, to begin providing wastewater service to the public in the Requested Territory, shown in Appendix A, Schedule 1.

2) NHSC’s abandonment, effective the date of closing, of the provision of wastewater service to the public in Pennsylvania.

(vi) Pursuant to 66 Pa. C.S. § 529(e) Joint Petitioners request that the Commission make a determination that the purchase price contained in the Asset Purchase Agreement is reasonable.

(b) Plan for Improvements

(i) A Plan for Improvements required under 66 Pa. C.S. § 529(j) is attached as Appendix B.

(ii) Aqua will serve a copy of the Plan for Improvements upon the DEP, North Heidelberg Township and Jefferson Township, and will notify them of the opportunity to comment within 60 days of service. Should any entity file comments, Aqua may file responses within a reasonable time period. In advance of filing the settlement, OCA will review the Plan for Improvements and may provide comments to it.

(iii) Joint Petitioners acknowledge that additional upgrades may be required beyond those in the Plan for Improvements and that such upgrades will not require an amendment to the Plan for Improvements, and rate recovery for upgrades outside the Plan for Improvements will be treated under traditional ratemaking principles.

(iv) Joint Petitioners request that Judge Haas recommend approval of, and the Commission approve, the Plan for Improvements and allow the reasonably and prudently incurred costs of each improvement to be recoverable in rates after that improvement becomes used and useful in the public service in accordance with 66 Pa. C.S. § 529(j).

(c) Rates

(i) Aqua will file a pro-forma tariff supplement that includes NHSC existing rates to be charged to NHSC customers in the Requested Territory.

(ii) All other rules, regulations, fees, and charges of Aqua's tariff shall apply to NHSC customers after closing. The Parties agree that Aqua will apply its distribution system improvement charge ("DSIC") to the NHSC system after the first base rate case that includes the NHSC system.

(iii) The tariff supplement, in the form of Appendix C, will be filed within 10 days of closing to be effective as of the date of closing.

(d) Aqua’s first base rate case including NHSC

(i) From the time of closing until Aqua’s first base rate case that includes the NHSC system, Aqua will be permitted to continue to utilize deferred accounting for any capital investments or operating expenses not funded by the revenues being collected under NHSC tariffed rates and present those amounts for recovery in Aqua’s first base rate case that includes NHSC.

(ii) Nothing in this settlement will limit the ability of I&E and OCA to challenge the reasonableness and prudence of amounts claimed for recovery, the types and timing of costs claimed for recovery; however, Joint Petitioners will not challenge the reasonableness of the purchase price of the NHSC system assets.

(iii) Joint Petitioners will not contest that NHSC is a small, non-viable system as defined in 66 Pa. C.S. § 1327(a) and 52 Pa. Code § 69.711 but may rebut or challenge acquisition incentives claimed by Aqua.

(iv) Joint Petitioners will not contest an Aqua proposal to allocate a portion of the NHSC revenue requirement to its combined water and wastewater customer base as in the public interest but may contest the amount of Aqua’s proposed allocation and whether that amount is in the public interest.

(e) Termination of Other Proceedings

(i) Joint Petitioners acknowledge that I&E has filed a formal complaint against NHSC at Docket No. C-2016-2547755, including a Motion for Default Judgment, for NHSC’s failure to pay its Commission assessment for the 2015-2016 fiscal year seeking a civil penalty of \$200. Joint Petitioners agree that Aqua will pay the outstanding \$200 civil penalty owed by NHSC under Docket No. C-2016-2547755; however, Joint Petitioners acknowledge that Aqua’s payment of the civil penalty is to reach a full settlement on the issues in the aforementioned docket and shall not be interpreted as a civil penalty against Aqua for any actions taken during Aqua’s receivership duties for NHSC.

(f) Limitations on Enforcement Actions

(i) Joint Petitioners acknowledge that there are limitations on liability and enforcement actions by state agencies following Commission approval of the Plan for Improvements and the acquisition of the small wastewater system under Section 529(1).

(ii) Joint Petitioners will not seek a civil penalty of Aqua after closing for actions taken by NHSC prior to closing.

25. The Joint Petition is consistent with the Commission's policy favoring negotiated settlements and in the public interest. It reduces administrative burden by resolving the Section 529 Investigation and related matters, after thorough and extensive discovery; and recognizes, through the participation of Aqua/NHSC/I&E/OCA/Met-Ed, the concerns of customers, creditors and the entities that are parties to the transfer of the wastewater system. The statements of Aqua, NHSC, I&E, OCA and Met-Ed in support of the Joint Petition and setting forth their respective bases on why the settlement is consistent with the Public Utility Code are attached as Appendices D, E, F, G, and H.

26. This Joint Petition is proposed to settle the instant matters and is made without any admission against or prejudice to any positions that any Joint Petitioner might adopt during subsequent litigation in any case, including further litigation in this case if this Joint Petition is rejected by the Commission or withdrawn by any one of the Joint Petitioners as provided below. This Joint Petition is conditioned upon the Commission's approval of all terms and conditions contained herein. Joint Petitioners agree that the Joint Petition does not expressly or implicitly represent approval of any specific claim or claims made in this proceeding, other than as set forth above, and agree not to contend otherwise in any subsequent proceeding. If the Commission should fail to grant such approval or should modify the terms and conditions herein, this Joint Petition may be withdrawn by any Joint Petitioner upon written notice to the Commission and all parties within three business days by any of the Joint Petitioners. In such event, the Joint Petition shall be of no force and effect.

27. In the event that the Commission does not approve the Joint Petition or any Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective

right to fully litigate the case, including producing witnesses, conducting full cross-examination and presenting briefs and legal argument.

28. Joint Petitioners will make reasonable, good faith efforts to obtain approval of the Joint Petition by the Administrative Law Judge and the Commission without modification. If the Administrative Law Judge in his Recommended Decision recommends that the Commission adopt the Joint Petition without modification as herein proposed, the Joint Petitioners agree to waive the filing of Exceptions. However, the Joint Petitioners do not waive their right to file Exceptions with respect to any modifications to the terms and conditions of this Joint Petition, or any additional matters, proposed by Administrative Law Judge Haas in his Recommended Decision. The Joint Petitioners reserve their right to file Reply Exceptions to any Exceptions which may be filed whether by a Joint Petitioner or other party to the proceeding.

Joint Petition, pp. 5-9.

III. Approval of Settlement

Legal Standards

Section 529 provides a mechanism by which the Commission may order a capable public utility to acquire and operate going forward a troubled small water or sewer utility. In order to issue such a directive, the Commission, after providing notice to the parties and an opportunity to be heard, must determine that the following conditions exist:

1. that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L. 1987, No. 394), known as the Clean Streams Law, the act of January 24, 1966 (1965 P.L. 1535, No. 537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P. L. 206, No. 43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the services provided by the small water or sewer utility;

2. that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the [C]ommission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;
3. that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;
4. that alternatives to acquisition have been considered in accordance with subsection(b) and have been determined by the [C]ommission to be impractical or not economically feasible;
5. that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and
6. that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

66 Pa.C.S. § 529(a)(1)-(6)(footnotes omitted).

In addition, various other requirements must typically be satisfied as set forth in Section 529. For example, Section 529(e) requires that the Commission find the agreed upon purchase price of the acquired system to be reasonable. 66 Pa.C.S. § 529(e). Additionally, the capable public utility ordered to acquire a small water or sewer utility must submit for Commission approval an improvement plan for bringing the small company into compliance with applicable statutory and regulatory standards. 66 Pa.C.S. § 529(j). On the other hand, a capable public utility ordered to acquire a small troubled system is afforded protections against liability and limitations on enforcement actions by State or local agencies where the bases of the liability or enforcement actions were proximately related to violations by the acquired system. 66 Pa.C.S. § 529(k)(1).

In this proceeding, however, the Joint Petitioners have negotiated and agreed upon a full settlement of all issues and ask that the settlement be approved by the Commission without modification. Commission policy promotes settlements. 52 Pa. Code § 5.231. Settlements lessen the time and expense the parties must expend litigating a case and at the same time conserve administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully litigated proceeding. 52 Pa. Code § 69.401.

The focus of inquiry for determining whether a proposed settlement should be recommended for approval is not a “burden of proof” standard, as is utilized for contested matters. *Pa. Pub. Util. Comm’n v. City of Lancaster – Bureau of Water*, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011) (*Lancaster*). Instead, the benchmark for determining the acceptability of a settlement or partial settlement is whether the proposed terms and conditions are in the public interest. *Id.* (citing, *Warner v. GTE N., Inc.*, Docket No. C-00902815 (Opinion and Order entered April 1, 1996) (*Warner*)); *Pa. Pub. Util. Comm’n v. CS Water & Sewer Assocs.*, 74 Pa. PUC 767 (1991). In addition, the Commission has held that parties to settled cases are afforded flexibility in reaching amicable resolutions, so long as the settlement is in the public interest. *Pa. Pub. Util. Comm’n v. MXenergy Elec. Inc.*, Docket No. M-2012-2201861 (Opinion and Order entered Dec. 5, 2013).

Here, as in all proposed settlements, the Commission must determine that the transaction is in the public interest before issuing its approval. As more fully explained below, I find that the settlement terms are in the public interest and, accordingly, I recommend that the Joint Petition be approved without modification.

Settlement Terms

a. Transaction Between Aqua and NHSC

As set forth in paragraph 24 of the Joint Petition, the Joint Petitioners have agreed on a purchase price for the NHSC assets of \$121,771.56. It is noted in the Joint Petition that the

purchase price amount is sufficient to enable NHSC to satisfy amounts owed to all secured creditors of the company. In particular, under the Settlement, Met-Ed agrees to write off one half of the outstanding balance owed to it by NHSC, with the remaining balance to be paid to Med-Ed from money included as part of the purchase price.² Appendix A to the Joint Petition is an executed Asset Purchase Agreement (APA) between Aqua and NHSC memorializing the purchase price and other terms and conditions of the sale, including amounts to be paid to secured creditors to satisfy those obligations. Finally, the Joint Petitioners acknowledge in paragraph 24 of the Joint Petition that the acquisition of NHSC's assets by Aqua is subject to all necessary government approvals.

In its statement in support, Aqua notes, “[t]he purchase price is sufficient to retire outstanding liens that encumber the NHSC system assets. . . . Other creditors [other than Met-Ed] will be paid in similar fashion as presented in Section 17 of the APA. NHSC agrees that the satisfaction and release of outstanding liens is good and valuable consideration for the system assets.” Aqua Stmt. in Support, p. 5.

The Office of Consumer Advocate (OCA) states:

The Settlement provides for an agreed-upon purchase price of \$121,772 for the NHSC system. Settlement ¶24(1)(a)(i). The determination of this amount is based on amounts that satisfy the payment of compromised amounts with the secured creditors. *See* Settlement, Appendix A (detailed breakdown of the secured creditor claims and agreed upon settlement amounts). The purchase price will be used to clear title for the assets. Settlement ¶24(1)(a)(ii). As discussed above, Met-Ed is one of the secured creditors. Met-Ed and Aqua agree that Met-Ed will write off half of the outstanding amount of NHSC's electric bill and Aqua will pay the remaining half of the outstanding amount of NHSC's electric bill. Settlement ¶24(1)(a)(ii). The amount payable to Met-Ed is part of the total purchase price of \$121,772. *Id.* The resolution of NHSC's outstanding electric bill addresses one of the issues that was raised initially in NHSC's 2013 rate case and in subsequent litigation that, in part, led to the Section

² As noted in Aqua's Statement in Support, the total outstanding arrearage owed to Met-Ed is \$201,015.14. Under the settlement, Met-Ed will write off half of this balance and the remaining balance of \$100,507.57 will be paid from the purchase price. (Aqua Stmt. in Support, p. 5).

529 proceeding. It is in the public interest to resolve NHSC's outstanding electric bill, and to address its other secured creditors. The proposed purchase price is a reasonable resolution of the secured creditor claims and is reasonable for the customers of NHSC.

OCA Stmt. in Support, pp. 4-5.

In support of approval of the purchase price, I&E states:

Because Aqua has been appointed the receiver as Aqua is the closest wastewater utility that could reasonably operate the system, and because NHSC has been unable to provide safe and reliable service without the appointment of a receiver, it makes sense for Aqua to purchase the system. Furthermore, I&E believes the purchase price is not unreasonable. I&E supports this settled upon term as a full and fair compromise that addresses the concerns raised by the Commission related to NHSC's service, namely the non-payment of the Met-Ed bill for electricity; provides regulatory certainty; and provides a resolution of any potential service issues; all of which facilitates the Commission's stated preference favoring negotiated settlements as in the public interest.

I&E Stmt. in Support, pp. 3-4.

I agree that the sale of the NHSC assets to Aqua at the purchase price set forth in the APA and Joint Petition is reasonable, in the public interest and recommend that it be approved. In arriving at the settlement memorialized in the Joint Petition, the Joint Petitioners engaged in extensive negotiations aimed at addressing and resolving the concerns of all interested parties, including most importantly secured creditors to whom money was owed by NHSC. The purchase price of \$121,772 was determined as being sufficient to pay off all amounts owed to the company's secured creditors as set forth in the APA, including the compromised amount to be paid to Met-Ed. As noted by the Joint Petitioners, the payments to secured creditors will enable NHSC to transfer to Aqua clear title to the acquired assets which, in turn, will allow Aqua to continue to provide to NHSC's customers efficient and safe wastewater service going forward, as it has been doing since being appointed receiver.

b. Plan for Improvements

66 Pa.C.S. § 529(j) requires that a capable public utility ordered by the Commission to acquire a small water or sewer utility submit to the Commission a Plan for Improvements for bringing the system into compliance with all applicable statutory and regulatory standards. As part of the Settlement, Aqua has submitted as Appendix B to the Joint Petition its Plan for Improvements. The Settlement further indicates that the plan has been submitted to the Pennsylvania Department of Environmental Protection (DEP), North Heidelberg Township and Jefferson Township for review. Aqua's Plan for Improvements includes, *inter alia*, a detailed description of the existing assets and an assessment of existing system deficiencies. The Plan also includes a thorough description of needed improvements and their estimated costs, as well as a proposed timeline for completion of the proposed improvements. Aqua's plan was prepared by the GHD company and anticipates total expenditures over the next 10 years of approximately \$2,930,000.

Aqua notes that “[t]he Plan was prepared by GHD working closely with Aqua personnel and based on site visits to the NHSC wastewater treatment plant by GHD personnel. It projects necessary system capital projects totaling \$2,930,000 over the next ten years.” Aqua Stmt. in Support, p. 5. I&E states, “[s]afety remains a paramount concern in the utility business. It is important that upgrades and repairs are made to this system to ensure the customers of NHSC are receiving service that meets all necessary safety standards.” I&E further states, “I&E supports this term because it allows Aqua to make the needed upgrades and improvements to this system. This ensures ratepayers receive safe and reliable service from a financially and technically fit, capable utility provider.” I&E Stmt.in Support, p. 4. Finally, in supporting approval of Aqua's Plan for Improvements, OCA adds, “[t]he reasonably and prudently incurred costs of each improvement in the Plan will be recoverable in rates after that improvement becomes used and useful in the public service. Settlement ¶24(b)(iv). . . . These provisions preserve the normal timing of recovery of capital and the review of capital improvements and are reasonable and appropriate.” OCA Stmt. in Support, p. 6.

I agree with the Joint Petitioners that Aqua's Plan for Improvements complies with 66 Pa.C.S. § 529(j), is reasonable and in the public interest and recommend that it be approved. As noted, the Plan contains a thorough review and analysis of current system components, current system deficiencies, needed system improvements and their estimated costs, as well as a proposed timeline for completion of the proposed improvements. Under its Plan, Aqua anticipates spending approximately \$2,930,000 over the next 10 years to bring the system into compliance with applicable statutory and regulatory standards. The Plan includes very detailed descriptions of proposed repairs, improvements, and upgrades to all components of the NHSC system, including the treatment/lab and office building, electrical system, equalization system, pump stations and the collection system. Table 6 to Aqua's Plan includes an estimated breakdown, year by year, of specific proposed improvements and their anticipated costs. The Joint Petition allows for the recovery of reasonable and prudent capital expenditures once the improvements become used and useful in the public service.

c. Rates

Under the Settlement, Aqua agrees to continue to charge NHSC customers the same rates they are currently paying until new rates are approved by the Commission in a future Aqua base rate proceeding. To that end, Aqua will file a pro-forma tariff supplement that includes existing rates for NHSC customers in the NHSC territory. The Joint Petitioners agree that all other rules, regulations, fees and charges in Aqua's tariff will apply to NHSC customers. Aqua has included a proposed tariff supplement as Appendix C to the Joint Petition. Additionally, the Joint Petition provides that Aqua will apply its DSIC to the NHSC system after its first base rate case that includes the NHSC system.

In its support of these provisions, I&E states:

First and foremost, these provisions make clear that for the time being, NHSC rates will not increase. Therefore, until at least the time that new rates are approved by the Commission as a result of a base rate case, NHSC customers will continue paying those rates to which they are accustomed. Further, these provisions allow for Aqua to continue to make capital improvements in the

system to continue the provision of safe and reliable service. However, it is also ensured that other parties to the next base rate case including NHSC assets have the ability to challenge these expenditures to the extent that they believe they were not reasonably or prudently incurred. This affords protection to the customers from paying for expenses that were not reasonable or prudent.

I&E Stmt. in Support, p. 5.

OCA notes, “. . . customers will experience no rate increase, despite the change in ownership to a capable utility that is financially, managerially, and technically capable of acquiring and operating the system.” OCA Stmt. in Support, p. 5.

I agree with the Joint Petitioners that these rate provisions in the Joint Petition are reasonable and in the public interest and I recommend that they be approved. As emphasized by the Joint Petitioners, the rates of NHSC’s customers will remain the same at least until Aqua’s next base rate case. This provides a degree of rate protection to NHSC’s customers during the time the NHSC system and its customers fully transition to and are integrated into the Aqua system. Additionally, the Settlement provides that Aqua will apply its DSIC to NHSC customers after its first base rate case that includes the NHSC system. This assures that all customers who will benefit from expenditures made by Aqua to improve its system will share in the costs of those improvements. These rate protections are in the public interest and should be approved.

d. Aqua’s First Base Rate Case Including NHSC

Under the Settlement, Aqua will be permitted, from the time of closing until its first base rate case that includes the NHSC system, to utilize deferred accounting for capital investments or operating expenses that are not funded by revenues being collected under NHSC’s tariffed rates and present those amounts for recovery in the first base rate case that includes the NHSC system. Further, the Joint Petitioners agree that nothing in the Settlement will limit the ability of I&E and the OCA from challenging the reasonableness and prudence of amounts claimed by Aqua for recovery, or the timing and types of costs claimed. The Joint Petitioners further agree that they will not challenge (1) the reasonableness of the purchase price

of the system, or (2) that NHSC is a small, non-viable system as defined in 66 Pa.C.S. §1327(a) and 52 Pa. Code § 69.711. Finally, the Joint Petitioners agree not to contest an Aqua proposal to allocate a portion of the NHSC revenue requirement to its combined water and wastewater customer base as in the public interest but may contest the amount of Aqua’s proposed allocation and whether that amount is in the public interest.

Aqua states, “[t]he foregoing rate provisions reflect a negotiated resolution of competing interests and are significant, from Aqua’s perspective, as they recognize Aqua’s ability to present rate proposals going forward. The provisions also retain for I&E and OCA the ability to challenge Aqua’s proposals.” Aqua Stmt. in Support, p. 7. Similarly, I&E states, “. . . it is also ensured that other parties to the next base rate case including NHSC assets have the ability to challenge these expenditures to the extent that they believe they were not reasonably or prudently incurred. This affords protection to the customers from paying for expenses that were not reasonable or prudent.” I&E Stmt. in Support, p. 5.

In explaining its support for these settlement terms, OCA states:

[i]n the Receivership Order appointing Aqua as receiver, the Commission granted permission for Aqua to use deferred accounting treatment for capital improvements and operations and maintenance expenses associated with the provision of service as the Receiver. Receivership Order, Appendix A. Subsequently, in its October 2021 Order, the Commission granted Aqua’s request that it be permitted to establish deferred accounting treatment for reasonable costs incurred by Aqua, as Receiver to restore safe, adequate, and reasonably continuous service to NHSC’s customers with the opportunity to present those costs for recovery as part of a subsequent base rate proceeding, if not recoverable from NHSC. Settlement ¶ 22. In addition, from the time of closing until Aqua’s first base rate case that includes the NHSC system, the Settlement provides that Aqua will be permitted to continue to utilize deferred accounting for any capital investments or operating expenses not funded by the revenues being collected under NHSC tariffed rates and present those amounts for recovery in Aqua’s first base rate case that includes NHSC. Settlement ¶ 24(d)(i).

These provisions do not preclude OCA from reviewing the deferred costs, or from challenging the reasonableness and prudence of amounts claimed for recovery, and the types and timing of costs claimed for recovery. Settlement ¶ 24(d)(ii). In the circumstances of this proceeding, with the long receivership, extreme damage to the treatment plant due to a hurricane, and the time until the next Aqua base rate case, it is not unreasonable to permit the deferrals described above. Importantly, the parties retain the opportunity to review the claims in the first base rate case that includes NHSC.

The Settlement also provides that Joint Petitioners will not contest that NHSC is a small, non-viable system as defined in 66 Pa. C.S. § 1327(a) and 52 Pa. Code § 69.711 but may rebut or challenge acquisition incentives claimed by Aqua. Settlement ¶ 24(d)(iii). This provision is reasonable because it preserves the parties' opportunity to challenge any acquisition incentives that Aqua may claim in the first base rate case that includes NHSC.

The Settlement also provides that Joint Petitioners will not contest an Aqua proposal to allocate a portion of the NHSC revenue requirement to its combined water and wastewater customer base as in the public interest (*see* 66 Pa. C.S. § 1311(c)) but may contest the amount of Aqua's proposed allocation and whether that amount is in the public interest. Settlement ¶ 24(d)(iv). This provision is reasonable because it preserves the parties' opportunity to challenge the amount of a proposed shift of revenue requirement from wastewater to water in future base rate cases that include NHSC.

OCA Stmt. in Support, pp. 6-7.

These settlement provisions memorialize Aqua's right to present various rate proposals in future rate proceedings while, most importantly, preserving the rights of I&E and OCA to challenge the reasonableness and prudence of the company's proposals, thereby offering a degree of protection to customers. I agree with the parties that these settlement terms are reasonable and in the public interest and I recommend that they be approved by the Commission.

e. Termination of Other Proceedings

As explained in the Joint Petition, there is an outstanding I&E formal complaint proceeding pending against NHSC at Docket No. C-2016-2547755 based on NHSC's failure to pay its Commission assessment for the 2015-2016 fiscal year. I&E seeks in that proceeding a civil penalty in the amount of \$200. Under the settlement, Aqua agrees to pay the \$200 civil penalty with the agreement of the Joint Petitioners that the payment fully resolves all issues in that proceeding and may not be interpreted as a civil penalty against Aqua for any actions taken during its receivership duties.

As explained by I&E, "[t]his provision helps to clear up the issues of non-payment that resulted under NHSC's operation of this system. As, to the best of I&E's knowledge, all Commission assessments have been paid, this final step will allow for the closure of I&E's complaint. Therefore, I&E supports this term as being in the public interest." I&E Stmt. in Support, pp. 5-6.

This provision is reasonable and in the public interest and I recommend that it be approved by the Commission. The Settlement resolves the issues raised by I&E in its complaint proceeding to its satisfaction and allows the proceeding to be closed without the parties and the Commission having to expend any additional unnecessary time and expense.

f. Limitations on Enforcement Actions

Sections 529(k) and 529(l) of the Public Utility Code, 66 Pa.C.S. §§ 529(k)(1), provide certain protections to acquiring public utilities against liability and enforcement actions by state agencies related to violations of applicable statutes or regulations by the selling utility. In the Joint Petition, the Joint Petitioners recognize and acknowledge the existence of these protections and agree that no civil penalty will be sought against Aqua after closing for any actions taken by NHSC prior to closing. These provisions merely restate protections already afforded to acquiring utilities by statute in Section 529 proceedings and I recommend, therefore, that they be approved by the Commission.

g. Other Provisions

The Joint Petitioners have agreed on standard settlement conditions that are typical of settlements before the Commission. These standard settlement terms are set forth below as stated in the Joint Petition.

26. This Joint Petition is proposed to settle the instant matter and is made without any admission against or prejudice to any positions that any Joint Petitioner might adopt during subsequent litigation in any case, including further litigation in this case if this Joint Petition is rejected by the Commission or withdrawn by any one of the Joint Petitioners as provided below. This Joint Petition is conditioned upon the Commission's approval of all terms and conditions contained herein. Joint Petitioners agree that the Joint Petition does not expressly or implicitly represent approval of any specific claim or claims made in this proceeding, other than as set forth above, and agree not to contend otherwise in any subsequent proceeding. If the Commission should fail to grant such approval or should modify the terms and conditions herein, this Joint Petition may be withdrawn by any Joint Petitioner upon written notice to the Commission and all parties within three business days by any of the Joint Petitioners. In such event, the Joint Petition shall be of no force and effect.

27. In the event that the Commission does not approve the Joint Petition or any Joint Petitioner elects to withdraw as provided above, the Joint Petitioners reserve their respective right to fully litigate the case, including producing witnesses, conducting full cross-examination and presenting briefs and legal argument.

28. Joint Petitioners will make reasonable, good faith efforts to obtain approval of the Joint Petition by the Administrative Law Judge and the Commission without modification. If the Administrative Law Judge in his Recommended Decision recommends that the Commission adopt the Joint Petition without modification as herein proposed, the Joint Petitioners agree to waive the filing of Exceptions. However, the Joint Petitioners do not waive their right to file Exceptions with respect to any modifications to the terms and conditions of this Joint Petition, or any additional matters, proposed by Administrative Law Judge Haas in his

Recommended Decision. The Joint Petitioners reserve their right to file Reply Exceptions to any Exceptions which may be filed whether by a Joint Petitioner or other party to the proceeding.

Joint Petition, pp. 8-9

I find that these standard settlement provisions are reasonable and in the public interest and recommend that they be approved. These provisions merely protect the ability of the parties to advocate their litigation positions in the event the Commission either rejects or modifies the settlement.

Finally, I provide the following passage from NHSC as further support for approval of the Joint Petition. NHSC summarizes its position in its Statement in Support as follows:

[t]he Joint Petition proposes a comprehensive resolution of all issues in this matter, as well as the underlying payment dispute between Met-Ed and NHSC that led, in part, to the Commission's Section 529 investigation. In doing so, the Joint Petition will reduce the amount of time, money, and effort that all involved parties will be required to expend to bring this matter to resolution and lessen the potential financial burden on current customers of all involved utilities.

With the death of CEO Joseph M. Aichholz, Jr. in 2019, NHSC lost most of its institutional knowledge and business capability, severely jeopardizing NHSC's ability to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in the future. Notwithstanding the extremely limited involvement his son, Joseph M. Aichholz, III, Mr. Aichholz's children, his presumptive heirs, have no interest in operating the system. As such, NHSC is no longer in the best position to provide the services required by its customers.

The settlement proposed in the Joint Petition will allow NHSC's customers to continue to receive adequate, efficient, safe, and reasonable service from Aqua. Since March 5, 2018, Aqua has demonstrated through its receivership that it is financially, managerially, and technically capable of operating the wastewater system in compliance with all applicable

statutory and regulatory standards. Because the Joint Petition resolves all issues in this matter and ensures continuing service to NHSC's customers, the Joint Petition and proposed settlement is, therefore, clearly in the public interest.

NHSC Stmt. in Support, pp. 2-3.

CONCLUSION

For all of the reasons set forth above, I find that the proposed settlement reflected in the Joint Petition is in the public interest and, accordingly, I recommend that the Commission approve the Joint Petition without modifications.

CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter of, and the parties to, this investigation. 66 Pa.C.S. § 529.
2. Commission policy promotes settlements. *See* 52 Pa. Code § 5.231.
3. A settlement lessens the time and expense that the parties must expend litigating a case and, at the same time, conserves precious administrative resources. The Commission has indicated that settlement results are often preferable to those achieved at the conclusion of a fully-litigated proceeding. *See* 52 Pa. Code § 69.401.
4. In order to accept a settlement, the Commission must determine that the proposed terms and conditions are in the public interest. *Pa. Pub. Util. Comm'n v. York Water Co.*, Docket No. R-00049165 (Order entered October 4, 2004); *Pa. Pub. Util. Comm'n v. C.S. Water & Sewer Assocs.*, 74 Pa. P.U.C. 767 (1991).
5. The Settlement and its proposed terms and conditions are in the public interest and, therefore, should be approved without modification. *Pa. Pub. Util. Comm'n v. City*

of Lancaster – Bureau of Water, Docket No. R-2010-2179103 (Opinion and Order entered July 14, 2011)

ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the Joint Petition for Approval of Settlement executed by Aqua Pennsylvania Wastewater, Inc., North Heidelberg Sewer Company, the Pennsylvania Public Utility Commission’s Bureau of Investigation and Enforcement, the Pennsylvania Office of Consumer Advocate, and Metropolitan Edison Company dated May 13, 2022 be approved without modification.
2. That the Commission approve the Asset Purchase Agreement between Aqua Pennsylvania Wastewater, Inc. and North Heidelberg Sewer Company.
3. That the Commission issue certificates of public convenience:
 - a. Authorizing Aqua Pennsylvania Wastewater, Inc. to acquire the wastewater system assets of North Heidelberg Sewer Company;
 - b. Authorizing Aqua Pennsylvania Wastewater, Inc. to provide wastewater service in portions of North Heidelberg and Jefferson Townships, Berks County, Pennsylvania;
 - c. Authorizing North Heidelberg Sewer Company to sell its wastewater system assets to Aqua Pennsylvania Wastewater, Inc.; and

d. Authorizing North Heidelberg Sewer Company to abandon its public wastewater service in portions of North Heidelberg and Jefferson Townships, Berks County, Pennsylvania.

4. That the Commission grant Aqua Pennsylvania Wastewater, Inc. special permission to file a tariff supplement in the form attached to the Joint Petition as Appendix C, following entry of a Commission Order and within 10 days of closing of the transaction.

5. That the Commission approve as reasonable the payment, at Closing, of \$121,771.56 as the purchase price for the North Heidelberg Sewer Company wastewater system assets.

6. That the Commission terminate Aqua Pennsylvania Wastewater, Inc.'s status as Receiver for North Heidelberg Sewer Company effective on the date and time of Closing.

7. That the complaint of the Bureau of Investigation and Enforcement at Docket Nos. C-2016-2547755 and M-2018-2645983 be marked as satisfied and closed.

8. That the Section 529 Investigation of North Heidelberg Sewer Company at Docket No. I-2018-3001161 be marked closed.

Date: June 24, 2022

_____/s/_____
Steven K. Haas
Administrative Law Judge