



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

December 6, 2021

Via Electronic Filing

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Section 529 Investigation of North Heidelberg Sewer Company
Docket No. I-2018-3001161
I&E Prehearing Conference Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing is the Bureau of Investigation and Enforcement's ("I&E") **Prehearing Conference Memorandum** in the above-referenced matter.

Copies have been served on the parties of record in accordance with the Certificate of Service. If you have any questions, please contact the undersigned.

Sincerely,

A handwritten signature in cursive script that reads 'Carrie B. Wright'.

Carrie B. Wright
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 208185
(717) 783-6156
carwright@pa.gov

CBW/jfm
Enclosures

cc: Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Section 529 Investigation of North : Docket No. I-2018-3001161
Heidelberg Sewer Company :

**PREHEARING MEMORANDUM
OF THE
BUREAU OF INVESTIGATION AND ENFORCEMENT**

TO ADMINISTRATIVE LAW JUDGE STEVEN K. HAAS:

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) respectfully submits the following Prehearing Memorandum in the above-captioned proceeding.

The Bureau of Investigation and Enforcement Prosecutor in these proceedings will be Carrie B. Wright. Contact information is as follows:

By mail: Carrie B. Wright
 Pennsylvania Public Utility Commission
 400 North Street
 Harrisburg, PA 17120

By e-mail: carwright@pa.gov

By telephone: (717) 783-6156

By fax: (717) 772-2677

I. INTRODUCTION

The Pennsylvania Public Utility Commission (“PUC” or “Commission”) has appointed Aqua Pennsylvania Wastewater, Inc. (“Aqua”) as receiver for the North Heidelberg Sewer Company (“NHSC”) as a result of NHSC’s failure to pay Metropolitan Edison (“Met Ed”) for electric services. The instant Docket, I-2018-3001161, arose out of a Commission Order entered on October 5, 2017 at Docket No. P-2017-2594688 (“NHSC October 5 Order”) and a Commission Order entered on February 9, 2018 at Docket No. M-2018-2645983 (“NHSC February 9 Order”). In the October 5, 2017 Order the Commission stated in the event that NHSC failed to make timely payments to Met Ed for electric services it was appropriate at that time for the Commission to institute an investigation under Section 529 of the Public Utility Code based on the evidence presented. On December 11, 2017 Met Ed’s parent company, First Energy, notified the Commission that NHSC failed to make payments as the Commission had directed. Thus, the Commission invoked it’s authority 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 services to its customers and that NHSC management has created a public health and safety threat that the Commission must address.”¹ Therefore, the Commission directed Aqua to act as receiver for NHSC beginning March 5, 2018.

On June 1, 2018, a Notice of the 529 investigation was served on the proximate providers located near the NHSC service territory. A prehearing conference was held, and a

¹ NHSC February 8, 2018 Order at 3.

litigation schedule was established. However, during the pendency of this proceeding, the owner of NHSC passed away. As a result, I&E asked that the litigation schedule be suspended until such a time as matters related to the owner's estate regarding who NHSC ultimately would go to, be settled.

Pursuant to the Order dated February 1, 2019, the procedural schedule in the instant proceeding was suspended due to the death of the owner of NHSC.

On November 23, 2021, a Prehearing Order was issued scheduling a Prehearing Conference for December 8, 2021, at 10:00 am with Administrative Law Judge Steven K. Haas presiding.

II. ISSUES

The following list represents I&E's preliminary determination of the potential issues in these proceedings. The listing is as complete as can be made at this time. I&E specifically reserves the right to address other issues, as it deems appropriate if any such relevant issues arise and any legal issues will be addressed in the I&E Main and Reply Briefs. The issues are as follows:

1. Should the Commission order a capable public utility to acquire North Heidelberg Sewer Company?
2. Are the six elements of 66 Pa. C.S. Section 529 met?
3. Is capable public utility for purposes of 66 Pa. C.S. Section 529 available to acquire North Heidelberg Sewer Company?

III. WITNESSES

It is currently expected that I&E may call the following expert witnesses without being limited thereto:

1. Jim Harchar, Pipeline Safety Engineer
2. Christopher Keller, Fixed Utility Financial Analyst

The I&E witnesses may be contacted through the information listed above for Prosecutor Wright. The witness list is provided without the benefit of complete discovery or analysis of the positions of potential other parties to this proceeding. Accordingly, I&E reserves the right to call additional witnesses or withdraw the name of the witnesses listed above.

IV. EVIDENCE

I&E expects to present all written direct, rebuttal and surrebuttal testimony and accompanying exhibits at the evidentiary hearing. Moreover, I&E intends to rely on the Company's filing, answers to data requests and interrogatories, annual reports and other documents submitted to the Commission, other relevant Commission filings, any other relevant Commonwealth agency letters or reports, general financial market information sources and other public documents and reports.

V. DISCOVERY

Discovery in this proceeding is being conducted according to 52 Pa. Code §§5.321 et. seq. No modifications to the rules of discovery have been proposed by I&E. I&E will, however, give due consideration to any discovery modifications proposed by any other party.

VI. SCHEDULE

I&E is willing to work with the ALJ and the parties to develop a schedule in this proceeding.

VII. SERVICE OF DOCUMENTS

The Commission's March 20, 2020 Emergency Order,² which was controlling

² Docket No. M-2020-3019262, *Re: Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements* ("March 20 Order").

regarding electronic service of documents, expired on September 30, 2021. In anticipation of the expiration of the March 20 Order, the Commission issued a new Order on September 15, 2021 regarding the regulations controlling service requirements.³ Pursuant to the September 15 Order, the Commission recognized, for purposes of satisfying service of documents requirements:

... that some of the measures we implemented significantly benefitted the operational needs of the Commission, the public and the regulated community. Specifically, the electronic service requirements we adopted were essential to ensuring continued, uninterrupted operations, providing needed flexibility. Therefore, in order to maintain that flexibility to respond to operational demands, we will waive certain regulatory service provisions, consistent with our previous actions.⁴

Further, the Commission stated:

... some of the operational restraints occasioned by the pandemic remain. ... Toward this end, we will continue to permit electronic service *by* the Commission on all parties, regardless of whether a particular party has agreed to electronic service. ... Additionally, service *on* Commission staff in proceedings pending before it, whether staff is a party or otherwise, shall be exclusively electronic unless the parties agree otherwise.⁵

Therefore, for purposes of satisfying in-hand service requirements for discovery responses, prepared testimony, briefs and other documents; while operational restraints continue during this proceeding, and consistent with the Commission's September 15 Order, I&E requests that electronic delivery of documents continue to satisfy the service requirements.

³ Docket No. M-2021-3028321, *Re: Waiver of Regulations Regarding Service Requirements* ("September 15 Order").

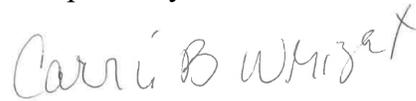
⁴ September 15 Order, p. 3.

⁵ *Id.*, p. 6.

VIII. SETTLEMENT

I&E is willing to make good faith efforts to successfully resolve this matter through settlement. In the event settlement discussions fail to result in a full and complete resolution of the matter, I&E is prepared to fully or partially litigate this proceeding.

Respectfully Submitted,



Carrie B. Wright
Prosecutor
PA Attorney ID No. 208185

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Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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Harrisburg, Pennsylvania 17120
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Dated: December 6, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Section 529 Investigation of North : Docket No. I-2018-3001161
Heidelberg Sewer Company :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Conference Memorandum** dated December 6, 2021, in the manner and upon the persons listed below:

Service by Electronic Mail Only

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