

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oca

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

December 6, 2021

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

Re: Investigation of North Heidelberg Sewer
Company Pursuant to Section 529 of the
Pennsylvania Public Utility Code Utility
Code
Docket No. I-2018-3001161

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Further Prehearing Memorandum in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Very truly yours,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Interim Acting Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Enclosures:

cc: The Honorable Steven K. Haas (**email only**)
Certificate of Service

*320651

CERTIFICATE OF SERVICE

Re: Investigation of North Heidelberg Sewer :
Company Pursuant to Section 529 of the : Docket No. I-2018-3001161
Pennsylvania Public Utility Code Utility Code :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Further Prehearing Memorandum, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 6th day of December 2021.

SERVICE BY E-MAIL ONLY

Carrie B. Wright, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg PA 17120
carwright@pa.gov

Sean M. Cooper, Esquire
Cooper Law PLLC
P.O. Box 560
Leesport, PA 19533
sean@cooperlawpa.com

Tori L. Giesler, Esquire
FirstEnergy
2800 Pottsville Pike
P.O. Box 16001
Reading PA 19612-6001
tgiesler@firstenergycorp.com

Thomas T. Niesen, Esquire
Thomas, Niesen & Thomas, L.L.C.
212 Locust Street
Suite 302
Harrisburg, PA 17101
tniesen@tntlawfirm.com

Susan Simms Marsh, Esquire
Pennsylvania American Water Company
852 Wesley Drive
Mechanicsburg, PA 17055
susan.marsh@amwater.com

Alexander R. Stahl, Esquire
Aqua Pennsylvania Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com

John D. Hollenbach, VP & General Manager
Suez Water Pennsylvania Inc.
4211 East Park Circle
Harrisburg, PA 17111
john.hollenbach@suez.com

Michael A. Gruin, Esquire
Stevens & Lee
17 North Second Street, 16th Floor
Harrisburg, PA 17101
michael.gruin@stevenslee.com

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Interim Acting Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: December 6, 2021
*319456

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Investigation of North Heidelberg Sewer Company :
Pursuant to Section 529 of the Pennsylvania Public : Docket No. I-2018-3001161
Utility Code :

FURTHER PREHEARING MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to Section 333 of the Public Utility Code, 66 Pa. C.S. § 333, and the June 27, 2018 Prehearing Conference Order, the Office of Consumer Advocate (OCA) provides the following further prehearing memorandum.

I. BACKGROUND

North Heidelberg Sewer Company (NHSC or the Company) serves approximately 273 residential customers and one commercial customer in portions of North Heidelberg and Jefferson Townships, Berks County. During NHSC's 2013 rate case, the Company was authorized to increase its annual operating revenue by \$75,000 over a period of four years, ending July 17, 2017. At that time, NHSC had an approximately \$60,000 past-due electric service charge to Metropolitan Edison Company (Met Ed). NHSC was ordered (2013 Order) to form a payment plan to remove the arrearage and to demonstrate the plan's implementation to the OCA.

On March 21, 2017, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Petition for Issuance of an Ex Parte Emergency Order against Met Ed and NHSC, averring that Met Ed had begun termination procedures against NHSC. At that time, NHSC's arrearage to Met Ed amounted to \$157,000. The Commission granted a modified Petition on March 22, 2017, which provided that NHSC customers receive uninterrupted wastewater service. The Order also directed the scheduling of a hearing before an Administrative Law Judge (ALJ).

The OCA provided Notice of Intervention at Docket No. P-2017-2594688 on March 28, 2017. The OCA intervened in this proceeding to protect the interests of NHSC's and Met Ed's customers and to ensure that a resolution was found that was in accordance with applicable statutes.

The ALJ's April 11, 2017 Recommended Decision established a payment plan, which provided a way for NHSC to eliminate its charges from the 2013 Order in addition to the other arrearages that had accrued since. The Commission issued an Order on May 4, 2017 (May 2017 Order), directing NHSC to pay as a lump sum half the outstanding balance to Met Ed within 60 days of the Order and to pay the remaining half in twenty-four monthly payments.

NHSC sought a stay of the May 2017 Order in the Commonwealth Court on June 2, 2017, which the Court granted in part because it found that compliance with the 2013 Order would cause the Company irreparable harm. The Commonwealth Court relinquished jurisdiction on July 5, 2017 after the Commission filed an Expedited Application for Remand on July 3, 2017. The Court did not vacate the May 2017 Order.

The Commission again referred the case to an ALJ for further hearing on July 10, 2017. The ALJ issued a Recommended Decision on September 1, 2017, which found that Met Ed had a legal right to terminate the Company's service due to non-payment; that NHSC failed to comply with the 2013 Order, and; that the evidence did not demonstrate that the Company could not pay for its electric service under the May 2017 Order. The Recommended Decision also provided for the same payment plan from the May 2017 Order. The ALJ further recommended that if the Company failed to follow the payment plan, the Commission should initiate a Section 529, 66 Pa. C.S. § 529, proceeding against NHSC. The Commission's October 2017 Order adopted the Recommended Decision without modification.

On December 11, 2017, Met Ed filed a letter at Docket No. P-2017-2594688 to notify the

Commission that NHSC failed to make any payments in compliance with the October 2017 Order. Consequently, on February 8, 2018 (February 2018 Order), under 66 Pa. C.S. § 529, the Commission directed Aqua Pennsylvania Wastewater Company, Inc. (Aqua PA) to be receiver for and manager and operator of NHSC during the Section 529 proceeding. Notice was provided on May 1, 2018 to NHSC customers and to proximate wastewater providers pursuant to Section 529(h). A further prehearing conference was held on November 19, 2018.

On February 1, 2019, ALJ Haas issued an Order granting I&E's Motion to Delay Procedural Schedule. (February 2019 Order). The Motion was prompted by the passing of the CEO of NHSC. In the February 2019 Order ALJ Haas suspended the procedural schedule until such time as the parties were able to determine who would take over the role of CEO. February 2019 Order at 1. ALJ Haas also directed counsel for NHSC to file status reports every 60 days. *Id.* at 2. Mr. Cooper, counsel for NHSC, filed a status report on April 12, 2019 and on January 30, 2020.

On September 14, 2021, Aqua PA filed a Petition seeking to clarify the 2018 Receivership Order. Petition of Aqua Pennsylvania Water To Affirm And Clarify The Conditions Set Forth in Appendix A of the Opinion And Order Entered February 9, 2018, at Docket No. M-2018-2645983 On An Expedited Basis (Aqua Clarification Petition). The Aqua PA Clarification Petition was filed as a result of storm damage to the NHSC wastewater treatment plant caused by remnants of Hurricane Ida. Aqua PA Clarification Petition at 1-2. By Order entered October 7, 2021, the Commission granted Aqua PA's Clarification Petition and directed ALJ Haas to conduct proceedings and to issue a Recommended Decision no later than June 30, 2022. On November 23, 2021, a prehearing conference order was issued by ALJ Haas setting a further prehearing for December 8, 2021.

The OCA now files this Further Prehearing Memorandum incorporating the basic issues that were set forth in its Initial Prehearing Memorandum, while recognizing the developments in the case since that time, and to set forth the procedure and issues that the OCA believes are relevant to this proceeding.

II. SERVICE ON THE OCA

The OCA respectfully requests that the Presiding Officer permit electronic service without the requirement of a follow-up hard copy. The OCA will be represented in this proceeding by Senior Assistant Consumer Advocate Christine Maloni Hoover:

Christine Maloni Hoover
Senior Assistant Consumer Advocate
Office of Consumer Advocate
555 Walnut Street, Forum Place 5th Floor
Harrisburg PA 17101-1923

Telephone (717) 783-5048
Facsimile (717) 783-7152

As a courtesy, the OCA requests that all electronic correspondence be copied to the OCA's support person, Lauren Myers (lmyers@paoca.org) and the OCA's witnesses Terry L. Fought (foughtbusiness@gmail.com) and neastman@paoca.org

III. DISCOVERY

The OCA proposes one modification to the Commission's discovery regulations. Specifically, the OCA proposes that answers to written interrogatories be served in-hand within ten (10) days of service. The OCA requests that all discovery due dates be "in-hand" and e-mail service on the due date will satisfy the "in-hand" requirement.

IV. WITNESSES

If necessary, the OCA will present the testimony of Noah Eastman, Regulatory Analyst with the Office of Consumer Advocate and Terry L. Fought, P.E. Their contact information is as

follows:

Noah Eastman, Regulatory Analyst
Office of Consumer Advocate
555 Walnut Street, Forum Place 5th Floor
Harrisburg PA 17101-1923
Telephone (717) 783-5048
Facsimile (717) 783-7152
Email: neastman@paoca.org

Terry L. Fought, P.E., Consulting Engineer
780 Cardinal Drive
Harrisburg PA 17111
(717) 580-4265
(717) 566-7298 (Fax)
E-mail: foughtbusiness@gmail.com

The OCA specifically reserves the right to call additional witnesses and to expand the issues addressed in testimony, as necessary. If the OCA determines that an additional witness is necessary for any portion of its case, it will notify all parties of record immediately.

V. ISSUES, EVIDENCE AND PROPOSED SCHEDULE

In the interest of efficiency and expedience, the OCA submits that the parties may be able to stipulate to many of the findings set forth in Section 529 of the Public Utility Code regarding NHSC's financial, technical and managerial fitness.

To the extent that the requisite findings are not stipulated by the parties or moved into the record from other proceedings, the OCA will provide testimony to show that acquisition of NHSC would be in the public interest, including evidence to support the findings required by Section 529.

The OCA will evaluate the impact of acquisition by Aqua Pennsylvania, Pennsylvania-American Water Company, Suez Water Pennsylvania, or other proximate service providers or municipalities on rates for NHSC's customers and the acquiring utility's existing customers. See 66 Pa. C.S. § 529(a)(6).

The OCA will examine the reasonableness of any proposed acquisition price for NHSC.

VI. SCHEDULE

The OCA has reviewed a proposed schedule provided by Aqua PA and can agree to that proposed schedule. The OCA reserves the right to review any other schedules or changes to Aqua PA's proposed schedule.

VII. SETTLEMENT

The OCA is willing to participate in settlement discussions in this matter.

Respectfully Submitted,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Interim Acting Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Erin L. Gannon
Senior Assistant Consumer Advocate
PA Attorney I.D. # 83487
E-Mail: EGannon@paoca.org

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
DATED: December 6, 2021
*320655