



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

IN REPLY PLEASE
REFER TO OUR FILE
P-2024-3050549

August 7, 2024

Adeolu A. Bakare, Esq.
McNees Wallace & Nurick, LLC
100 Pine Street
Harrisburg, PA 17101
Counsel for Deer Haven, LLC

Re: Petition of Deer Haven, LLC Requesting an *Ex Parte* Emergency Order
Allowing Aqua Pennsylvania, Inc. to Act as a Receiver to Operate the
Deer Haven Water and Sewer Systems, Docket No. P-2024-3050549

Dear Mr. Bakare:

On August 1, 2024, Deer Haven, LLC (Deer Haven) filed a Petition with the Pennsylvania Public Utility Commission (Commission) requesting the issuance of an *ex parte* emergency order appointing Aqua Pennsylvania, Inc. (Aqua) to act as a temporary receiver to operate its Water System and its Sewer System.¹ Petition at 1, 8.

Deer Haven is a jurisdictional public utility that provides water service, under Utility Code 210124, and wastewater service, under Utility Code 230106. Deer Haven provides water service to approximately 43 customers and wastewater service to approximately 62 customers. In its Petition, Deer Haven notes that its water wells and distribution system, along with its wastewater collection system and sewage treatment plant, were initially owned and operated by Edwin, Inc (Edwin). In 2004, Deer Haven acquired all of the Edwin common stock together with all assets used and useful in the provision of water distribution services to the public, including but not limited to, water distribution lines, wells, and all other equipment and facilities used by Edwin in the provision of water service (Deer Haven Water System, or Water System) as well as all assets used and useful in the provision of wastewater services to the public, including but not limited to collection mains, pumps, treatment facilities, and all other equipment and facilities used and useful by Edwin in the provision of wastewater services (Sewer System). The water distribution system and wastewater treatment plant and collection system are located in Palmyra Township, Pike County, Pennsylvania. Petition at ¶¶ 2-4.

¹ The Petition has been assigned two separate docket numbers due to the involvement of both a water system and a sewer system. Deer Haven's request regarding its Sewer System will be addressed at the instant docket number as set forth in this Secretarial Letter. Deer Haven's request regarding its Water System will be addressed separately at Docket No. P-2024-3050545.

Deer Haven explains that Deer Haven and its affiliate, Haven Development, owned approximately 85 acres of property, including the site where the Water System and Sewer System are located. They intended to complete phased redevelopment of the area, including a new wastewater treatment plant to replace the existing plant. In 2010, they entered into a Purchase and Sale Agreement with Pocono Lakefront, LLC (Pocono Lakefront) for the sale of the property, including the land where the Water System and Sewer System are located. Deer Haven and Pocono Lakefront also entered into a Grant of Capacity and Option to Purchase Agreement whereby Deer Haven granted Pocono Lakefront, its successors, and assigns the option to purchase the Water System and Sewer System for \$1.00, subject to Commission approval of the transfer of the certificate of public convenience to Pocono Lakefront. In 2014, Deer Haven and Pocono Lakefront entered into a Purchase Agreement (Utility Agreement) under which Pocono Lakefront would purchase the Water System and Sewer System subject to Commission approval, Pocono Lakefront would form a company to hold the certificate of public convenience once a new sewer system was constructed, and the Water System would be operated by an unaffiliated company, Pocono Water Works Company, Inc. (Pocono Water Works), pending the transfer of the Water System to Pocono Lakefront. Petition at ¶¶ 4-6.

Deer Haven states that, after numerous delays and as the result of the settlement of a lawsuit in New Jersey, Deer Haven and Pocono Lakefront now intend to move forward with the transfer of the Sewer System and that, in accordance with the Utility Agreement, PL Utilities, LLC (PLU) was formed to own and operate the Sewer System after the transfer. However, Deer Haven also states that Pocono Lakefront has informed Deer Haven that it no longer intends to take possession of the Water System, which is currently operated by Pocono Water Works. Petition at ¶ 7.

With respect to the Sewer System, Deer Haven explains that, in 2015, DEP issued a Water Quality Management Permit to Pocono Lakefront for the construction of a new wastewater treatment plant (WWTP) and associated sewer lines/connections and that, after construction delays, the new WWTP was substantially completed in 2023. Pocono Lakefront has since taken numerous steps to secure regulatory approvals for the transfer of the Sewer System from Deer Haven. On June 17, 2024, Deer Haven and PLU filed a Joint Application for Abandonment and Certificate of Public Convenience (Application) with the Commission at Docket Nos. A-2024-3049587 and A-2024-3049591 seeking approval of the abandonment of Deer Haven's sewer service and the commencement of sewer service by PLU. Deer Haven notes that it continues to support expeditious approval of the Application. Before Pocono Lakefront can begin operating the new WWTP, however, it must complete the Act 537 planning process and conclude negotiation of a three-party Consent Order and Agreement to address Deer Haven's prior environmental noncompliance. These processes will continue

through the end of the calendar year or longer and, in the meantime, the Sewer System would remain exposed to additional violation as Deer Haven does not possess the resources to take corrective action in response to violations identified by DEP. Petition at ¶¶ 13-14.

Further, Deer Haven explains that, while the Utility Agreement designated Pocono Lakefront as the party responsive for paying for operation of the Water System and Sewer System, the subsequent New Jersey settlement directs Deer Haven to operate the Sewer System during an interim period while Pocono Lakefront secures the regulatory approvals necessary for it to connect the new WWTP to the Sewer System and take over operations, including certificates of public convenience. Deer Haven states that, with Sewer System revenues failing to cover operating expenses, it has struggled to maintain the aged and distressed existing WWTP in compliance with DEP and Commission regulations. Deer Haven notes that, in February 2024, it hired Environmental Services Corp. (ESC) to operate the Sewer System and improve compliance efforts, although efforts to secure an operator were extremely challenging due to the poor environmental compliance record. Deer Haven also notes that, since the New Jersey settlement, the existing WWTP suffered a tank leak requiring costly repairs and that DEP has imposed daily sampling requirements above and beyond those identified in Deer Haven's NPDES permit. Deer Haven explains that retaining ESC and conducting the supplemental sampling required by DEP costs approximately \$7,000 per month. Deer Haven notes that these expenses alone far exceed the annual revenue from the Sewer System and that the company is challenged to stay current on monthly invoices. Deer Haven states that, although ESC continues to operate the Sewer System, Deer Haven remains at high risk of ESC withdrawing as plant operator. Petition at ¶ 15.

Thus, Deer Haven requests the immediate issuance of an *ex parte* emergency order directing Aqua to take temporary receivership of the Sewer System and conduct all operational and administrative activities necessary to preserve reasonably continuous safe and adequate service until Pocono Lakefront has secured all required regulatory approvals to consummate the transfer to the sewer utility assets to PLU.² Deer Haven notes that Aqua currently operates sewer facilities within close proximity to the Sewer System and has the technical and financial resources to safely and adequately operate the Sewer System. Petition at ¶ 16.

² Deer Haven also requests the issuance of an *ex parte* emergency order directing Aqua to take temporary receivership of the Water System and conduct all operational and administrative activities necessary to preserve reasonably continuous safe and adequate service until the impacted parties develop a long-term solution for the Water System. As noted above, this request will be addressed separately at Docket No. P-2024-3050545. *See supra*, n.1.

As set forth in the Commission’s regulations at 52 Pa. Code §§ 3.2-3.4, *ex parte* emergency relief is granted in situations that present a clear and present danger to life or property or are uncontested and require action prior to the next scheduled public meeting. 52 Pa. Code § 3.1. A petition for *ex parte* emergency order must be supported by a verified statement of facts that establish the existence of an emergency and the following:

- (1) The petitioner’s right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if relief is not granted.
- (4) The relief requested is not injurious to the public interest.

52 Pa. Code § 3.2(b).

Upon review, the Commission finds that Deer Haven failed to present facts demonstrating the existence of an “emergency,” *i.e.*, that the situation presents a clear and present danger to life or property or is uncontested and requires action prior to the next scheduled public meeting with respect to its request for an *ex parte* emergency order for the Sewer System. *See* 52 Pa. Code §§ 3.1, 3.2(b).

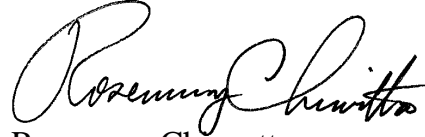
Deer Haven does not aver that the situation involving the Sewer System presents a clear and present danger to life or property or is uncontested and requires action prior to the next scheduled public meeting. *See* 52 Pa. Code §§ 3.1, 3.2(b). In particular, in its Petition, Deer Haven states that ESC, which it hired to improve compliance efforts, continues to operate the Sewer System. Petition at ¶ 15. Additionally, as Deer Haven notes, there is an Application involving the Sewer System pending before the Commission at Docket Nos. A-2024-3049587 and A-2024-3049591. In the Application, Deer Haven seeks to abandon sanitary sewer service to the public and seeks cessation of all rights and obligations as a public utility as well as the termination of all regulatory responsibility for operation of the Sewer System. PLU, which was formed for the purpose of owning and operating the Sewer System, seeks to begin to offer, furnish, or supply sanitary sewer service to the public in portions of Palmyra Township, Pike County, Pennsylvania and to serve as the public utility for the Sewer System. Application at 1, ¶¶ 7, 29; Petition at ¶ 7. The issues raised in Deer Haven’s Petition for *ex parte* emergency order are largely intertwined with those in the Application. Moreover, Deer Haven states in its Petition that it continues to support Commission approval of the Application. Petition at ¶ 14.

Unlike requests for interim emergency relief pursuant to 52 Pa. Code §§ 3.6-3.12, which require the petition to establish *the need for interim emergency relief*, requests for *ex parte* emergency relief pursuant to 52 Pa. Code §§ 3.2-3.4 require the petition to establish *the existence of an emergency*. While the matter may require prompt attention, Deer Haven has not demonstrated that it rises to the level of an “emergency.”

Given that Deer Haven failed to present facts demonstrating the existence of an emergency and in light of the pending Application regarding the Sewer System, we deny Deer Haven's request for an *ex parte* emergency order with respect to the Sewer System and decline to impose a receivership for the Sewer System. Imposing a receivership may convolute or unnecessarily delay the Application proceeding.³ Deer Haven should proceed with the Application at Docket Nos. A-2024-3049587 and A-2024-3049591.

Please direct any questions to Hayley E. Hinken, Assistant Counsel, Law Bureau, (717) 214-9594, hhinken@pa.gov.

Sincerely,



Rosemary Chiavetta

cc: Parties of Record, Docket No. P-2024-3050549
Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora, Commissioner
Kathryn L. Zerkfuss, Commissioner
John F. Coleman, Jr., Commissioner
Jennifer L. Berrier, Executive Director
David E. Screven, Chief Counsel
Hayley E. Hinken, Assistant Counsel

³ In the Application, Deer Haven and PLU have requested expeditious review and Commission approval of the Application on or before the August 22, 2024 Public Meeting. Application at 2.