

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

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-2024-3050545

**EX PARTE EMERGENCY ORDER**

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. Petition at 1, 8. This Order pertains to Deer Haven's Water System only.<sup>1</sup>

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

---

<sup>1</sup> 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 Water System will be addressed at the instant docket number as set forth in this Order. Deer Haven's request regarding its Sewer System will be addressed separately at Docket No. P-2024-3050549.

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.

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.<sup>2</sup> 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 Water System, Deer Haven explains that Pocono Water Works has served as the *de facto* operator, controlling billing, administrative operations, and maintenance since 2014. Deer Haven notes that it believes this relationship was intended to be memorialized through a contract with Pocono Lakefront, but that it is not aware of any such contract. Deer Haven also notes that it believed operation of the Water System became solely the responsibility of Pocono Water Works under the 2014 Agreement. However, in 2024, Pocono Water Works approached Deer Haven and demanded payment for services rendered in operating the Water System. Upon investigation, Deer Haven determined that, although it had no operation involvement with the water plant for several years, it remains the owner of the certificate of public convenience. Petition at ¶ 8.

Deer Haven further explains that, on June 24, 2024, it was notified of an outage of a recently installed well pump on the Water System. On June 26, 2024, the Pennsylvania Department of Environmental Protection (DEP) issued a Notice of Violation identifying multiple significant deficiencies at the Water System and directing Deer Haven to respond with a schedule for correcting the deficiencies by August 10, 2024, and to correct all sufficient deficiencies by October 24, 2024. Petition at ¶ 9.

---

<sup>2</sup> Deer Haven and PLU filed a Joint Application for Certificates of Public Convenience 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. Petition at ¶ 14.

Deer Haven states that it lacks the technical or financial fitness to address the deficiencies identified in the DEP's Notice of Violation or to compensate Pocono Water Works for continued operation of the Water System. Deer Haven also states that, while Pocono Water Works has continued invoicing and collecting payment from customers of the Water System, Pocono Water Works intends to cease all administrative and operational activity related to the water plant as early as August 1, 2024, due to unsustainable shortfalls between operating income and operating expenses. Deer Haven states that, as a result, it is unable to provide adequate, safe, and reasonably continuous service without unreasonable interruption or delay. Petition at ¶¶ 10-11.

Deer Haven requests immediate relief, noting that the Water System may be without an operator or administrative support as early as August 1, 2024. Deer Haven notes that irreparable injury will result absent such relief since Water System has already been cited for significant environmental deficiencies that are expected to continue without corrective actions, which Deer Haven is not equipped to undertake. Thus, Deer Haven 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.<sup>3</sup> Deer Haven notes that Aqua currently operates water facilities in close proximity to the Water System and has the technical and financial resources to safely and adequately operate the Water System. Deer Haven states that the requested relief is not injurious to the public interest and would serve the public interest by preserving safe, adequate, and reasonably continuous service for its water customers. Petition at ¶¶ 10-12.

---

<sup>3</sup> Deer Haven also requests the 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. As noted above, this request will be addressed separately at Docket No. P-2024-3050549. *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. Additionally, pursuant to 52 Pa. Code § 3.2, petitions for emergency orders must be supported by a verified statement of facts which establishes the existence of an emergency, including facts to support 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; and (4) the relief requested is not injurious to the public interest.

Based on the matters described herein, I determine that the facts as presented in Deer Haven's Petition with respect to its Water System satisfy the requirements of 52 Pa. Code § 3.2. Thus, I grant Deer Haven's request for an *ex parte* emergency order, in part, with respect to Deer Haven's Water System only and subject to the modifications set forth in this Order.

I believe that a receiver should act immediately to assess and correct conditions that would cause Deer Haven to provide unsafe, inadequate, or unreasonable water service to its customers and the public. Deer Haven should also appear before the Commission to demonstrate whether it is capable of providing safe, reliable, and reasonably continuous water service in accordance with the requirements of the Commission and the DEP. To this end, I will initiate a proceeding pursuant to Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, where Deer Haven shall appear before the Commission to address these matters and, if necessary, provide reasonable solutions thereto. In the interim, I will appoint a receiver for the Water System pursuant to 66 Pa.C.S. § 529(g) to protect the interests of Deer Haven's water customers and members of the affected public. The responsibilities of the receiver are specified in the attached Appendix A.

I take immediate affirmative action here, subject to revision in a subsequent Ratification Order, to protect Deer Haven's water customers and all members of the public affected by the regulated water service rendered by Deer Haven, and to confirm Deer Haven's obligation to provide safe, reasonable, and adequate water service. Based on its apparent lack of safe, reasonably continuous, and adequate service, present management and operating conditions at Deer Haven appear to present a serious public health and safety threat that the Commission will not ignore.

Pursuant to the Public Utility Code, every public utility has a duty to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa.C.S. § 1501. Additionally, "such service shall be reasonably continuous and without unreasonable interruptions or delay." *Id.*

The Public Utility Code authorizes the Commission to regulate the conduct of public utilities in the Commonwealth. 66 Pa.C.S. § 501. The Commission is also authorized to "enforce obedience" to the Public Utility Code, Commission regulations, and Commission orders. 66 Pa.C.S. § 502. Moreover, Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, authorizes the Commission to direct a competent public utility to assume operational control or to acquire a small water utility that has jeopardized public safety by failing to provide reasonable and adequate water service.

Section 529 is an emergency provision that authorizes the Commission to take immediate action to protect the public interest by ordering the acquisition of a small water or sewer utility. Pursuant to 66 Pa.C.S. § 529(a), the Commission may order a capable public utility to acquire a small water utility like Deer Haven, if the Commission determines, after notice and hearing, that: (1) Deer Haven has violated statutory or regulatory standards, (2) Deer Haven has failed to comply within a reasonable period of

time with any Commission order concerning the safety, adequacy, efficiency, or reasonableness of service, (3) Deer Haven cannot reasonably be expected to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in the future, (4) alternatives to acquisition are determined to be impractical or not economically feasible, (5) the acquiring utility is capable of operating Deer Haven in compliance with statutory and regulatory standards, and (6) that the rates charged to Deer Haven customers will not increase unreasonably because of the acquisition. In making these determinations, the Commission is to consider the factors enumerated in 66 Pa.C.S. § 529(c). Additionally, 66 Pa.C.S. § 529(a)(4) requires the Commission to explore alternatives to acquisition, as outlined in 66 Pa.C.S. § 529(b).

As the bureau with delegated prosecutory discretion under Section 308.2(a)(11) of the Public Utility Code, 66 Pa.C.S. § 308.2(a)(11), the Commission's Bureau of Investigation and Enforcement (BIE) 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(b)(3) and (g) provides that the Commission may take action to appoint a receiver to ensure the provision of adequate, efficient, safe, and reasonable service and facilities to the public and ensure that customers of a small water utility and the affected public will receive safe and adequate service during the pendency of a Section 529 proceeding. Section 529(g) of the Public Utility Code 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).

Although Deer Haven requested that Aqua be appointed as the temporary receiver for its Water System, Deer Haven's Petition demonstrates that Pocono Water Works is a more suitable candidate under the circumstances. Thus, I deny Deer Haven's request for Aqua to act as a receiver. Pocono Water Works is a jurisdictional public utility that provides water service, under Utility Code 210097, and, more importantly, as stated in Deer Haven's Petition, Pocono Water Works has been the *de facto* operator of the Deer Haven Water System since 2014. Petition at ¶ 8. Pocono Water Works' familiarity with the Deer Haven Water System will allow it to serve as a capable temporary receiver. While there appears to be a disagreement between Deer Haven and Pocono Water Works regarding Pocono Water Works' demand for payment for services rendered in operating the Deer Haven Water System, the receivership is governed by definitive terms and conditions for Pocono Water Works' operation of the Deer Haven Water System, among other things, and these terms and conditions will serve to avoid any such issues going forward. Moreover, Deer Haven's Petition states that the impacted parties will work to develop a long-term solution for the Water System during the receivership. Petition at ¶ 12. In light of Pocono Water Works' current involvement with Deer Haven, it is appropriate for Pocono Water Works to serve as the temporary receiver rather than to implicate another public utility, such as Aqua, at this juncture.

Therefore, this Order will appoint Pocono Water Works as the Receiver to manage and operate the Deer Haven Water System during the pendency of the Section 529 proceeding ordered herein. I appoint Pocono Water Works as the Receiver because its familiarity with the system and understanding of the circumstances will allow it to work to ensure safe, adequate, reliable, and reasonably continuous water service to Deer Haven's customers and the public. Accordingly, I have specified the duties and responsibilities of the Receiver in this Order and in Appendix A.

## CONCLUSION

Deer Haven, LLL's Petition for an *ex parte* emergency order is granted, in part, and denied, in part, with respect to its Water System only and as modified by this Order. I hereby issue this *Ex Parte* Emergency Order to protect the health, safety and welfare of the water customers of Deer Haven, LLC. However, I deny Deer Haven, LLC's request for Aqua Pennsylvania, Inc. to act as a receiver for Deer Haven, LLC's Water System. I will initiate a proceeding pursuant to Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, including the appointment of Pocono Water Works, Inc. a receiver under Section 529(g). These actions will provide for the orderly transition of operation and perhaps ownership of Deer Haven, LLC's water system to a competent water provider and will protect the water customers of Deer Haven, LLC and the affected public; **THEREFORE,**

### IT IS ORDERED:

1. That the 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 filed on August 1, 2024, at Docket No. P-2024-3050545 is granted, in part, and denied, in part, with respect to Deer Haven, LLC's Water System only and as modified by this Order.
2. That an investigation shall be instituted into whether the Commission should order a capable public utility to acquire Deer Haven, LLC's Water System pursuant to 66 Pa.C.S. § 529 and as is consistent with this Order.
3. That the Bureau of Investigation and Enforcement is expected to participate in the investigation proceeding. Water utilities with an interest in this matter may petition to participate as appropriate.

4. That Deer Haven, LLC shall provide notice to its water 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 water customers to direct future payments for water service to the Receiver as appointed by the Commission.

5. That pursuant to 66 Pa.C.S. § 529(g), the Commission directs Pocono Water Works Company, Inc. to act as the Receiver for Deer Haven, LLC's Water System beginning August 9, 2024, and to continue during the pendency of the Section 529 proceeding ordered above and in accordance with Appendix A to this Order.

6. That, if necessary, Pocono Water Works Company, Inc. will provide bottled water to Deer Haven, LLC's water customers in the interim between this Order and August 9, 2024.

7. That the Receiver shall not assume any debt incurred by Deer Haven, LLC, unless such assumption is approved through an Order of this Commission.

8. That the Receiver shall not be liable for preexisting conditions, defects, or regulatory or statutory violations occasioned by Deer Haven, LLC.

9. That the Receiver shall be permitted to establish a regulatory asset account for all reasonably incurred expenses in its capacity as receiver.

10. That utilities serving Deer Haven, LLC are permitted and directed to initiate service to the facilities that used to serve Deer Haven, LLC's water customers in the name of the Receiver as appointed by the Commission and consistent with this Order.

11. That Deer Haven, LLC shall preserve all hard copy or electronic records, files, bank statements, documents, papers, or any other materials related to its offering of water service, including records of all contracts, agreements, 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.

12. That Deer Haven, LLC shall, no later than August 9, 2024, turn over copies or originals of all books, records, accounts, and any other information used and useful in the provision of water service to customers served by Deer Haven, LLC 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 Deer Haven, LLC shall, no later than August 9, 2024, turn over all operations and assets, including keys to locks securing facilities, buildings, and any other property, whether personal or real property, used and useful in the provision of water service to customers served by Deer Haven, LLC 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.

14. That Deer Haven, LLC, 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.

15. That the Deer Haven, LLC shall cease all billing and collections activity to its former water customers as of August 9, 2024.

16. Effective immediately, Deer Haven, LLC 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.

17. That a copy of this Order be served on Deer Haven, LLC, Pocono Water Works Company, Inc., Aqua Pennsylvania, Inc., the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, and the Northeast Regional Office of the Pennsylvania Department of Environmental Protection.

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

  
\_\_\_\_\_  
Stephen M. DeFrank, Chairman

DATE: August 7, 2024

## **APPENDIX A**

**Docket No. P-2024-3050545**

- 1. That the Receiver Pocono Water Works Company, Inc., in its capacity as a receiver of Deer Haven, LLC's (Deer Haven) Water System (Deer Haven Water System, or the system), shall have the following duties and responsibilities:**
  - a. Operate the system in compliance with all State, Federal, and local laws and regulations.**
  - b. Maintain any existing or necessary permits, licenses, approvals, authorizations, orders, consents, registrations, or filings.**
  - c. 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.**
  - d. 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.**
  - e. Respond to system emergencies by taking necessary action to ensure the continued provision of adequate, efficient, safe and reasonable water service.**
  - f. 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.**
  - g. Provide for normal routine maintenance and the provision of supplies for the system.**
  - h. Keep financial and accounting records and all pertinent operating data and information relating to the system as prudent industry and utility practices would require.**
  - i. Continue billing and collection functions for the Deer Haven Water System.**

- j. Provide the Deer Haven Water System's customer service.
- k. Have the authority to borrow money in the name of Deer Haven necessary for the continued provision of adequate, efficient, safe and reasonable service to the customers of the Deer Haven Water System.
- l. Have the authority to file a petition for bankruptcy and participate in such proceedings on behalf of the Deer Haven Water System.
- m. Comply with Deer Haven's effective tariff for Deer Haven Water System customers.
- n. Submit all necessary paperwork to regulatory agencies of the system on behalf of the Deer Haven Water System.
- o. Submit an initial status report to the Commission within 60 days of August 7, 2024, and then quarterly thereafter to detail any relevant updates pursuant to duties and responsibilities assigned through receivership.
- p. Participate in discussions with the Commission regarding alternatives to the acquisition of the Deer Haven Water System, pursuant to 66 Pa.C.S. § 529(b).
- q. 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 the Deer Haven Water System by a capable public utility.
- r. Make reasonable efforts to establish the financial position of the Deer Haven Water System at the time the Receiver assumed receivership.
- s. Establish a deferred expense account for expenses incurred by the Deer Haven Water System that are payable to the Receiver.
- t. 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.

- u. Be permitted to use existing Commission-approved affiliated entities to provide services to the Deer Haven Water System, 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.
  - v. Satisfy the aforementioned duties and responsibilities either directly, through Commission-approved affiliates, or through competitive operation and maintenance agreements or any combination thereof.
  - w. Charge Deer Haven reasonable rates for all services rendered to or for the Deer Haven Water System on behalf of the receivership.
2. That the Receiver, in its own capacity, shall have the following duties and responsibilities:
- a. Should Deer Haven be unable to obtain necessary financing for ensuring the continued provision of adequate, efficient, safe and reasonable service to the customers of the Deer Haven Water System, the Receiver, at its option, may either directly provide financing for Deer Haven or file a petition for bankruptcy.
  - b. 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 the Deer Haven Water System.