

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

Public Meeting held August 22, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman
Kimberly Barrow, Vice Chair
Ralph V. Yanora
Kathryn L. Zerfuss
John F. Coleman, Jr.

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 Wastewater Systems

P-2024-3050549

RATIFICATION ORDER

BY THE COMMISSION:

On August 15, 2024, Chairman Stephen M. DeFrank issued an *Ex Parte* Emergency Order (Emergency Order) in response to Deer Haven, LLC's (Deer Haven)¹ August 13, 2024 letter (Letter) informing the Commission of developments regarding its Sewer System, which was deemed to be a renewed request for *ex parte* emergency relief under the circumstances. The Emergency Order granted Deer Haven's renewed request for *ex parte* emergency relief with respect to its Sewer System. By issuing the Emergency Order, the Chairman took immediate, affirmative action to protect Deer Haven's wastewater customers and to confirm Deer Haven's obligation to provide safe, reasonable, and adequate wastewater service. Emergency Order at 7, 8, 11.

¹ Deer Haven is a jurisdictional public utility that provides water service, under Public Utility Code 210124, and wastewater service, under Utility Code 230106.

The Emergency Order explained that, on August 1, 2024, Deer Haven filed a Petition with the Commission requesting the issuance of an *ex parte* emergency order allowing Aqua Pennsylvania, Inc. (Aqua) to act as a temporary receiver to operate its Water System and Sewer System.² According to Deer Haven's Petition, Deer Haven entered into a Purchase Agreement (Utility Agreement) with Pocono Lakefront, LLC (Pocono Lakefront) in 2014 under which Pocono Lakefront would purchase the Water System and Sewer System subject to Commission approval, Pocono Lakefront would form a new company to hold the certificate of public convenience once a new sewer system was construction, and the Water System would be operated by an unaffiliated company, Pocono Water Works Company, Inc. pending the transfer to Pocono Lakefront. Deer Haven stated that, after numerous delays, it and Pocono Lakefront now intend to move forward with the transfer of the Sewer System and that PL Utilities, LLC (PLU) has been formed to own and operate the Sewer System. *Id.* at 2-3.

The Emergency Order also explained that, according to Deer Haven's Petition, Pocono Lakefront took 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 Deer Haven's abandonment of sewer service and the commencement of sewer service by PLU. However, Pocono Lakefront has not yet completed the Act 537 planning process or concluded negotiations of a three-party Consent Order and Agreement to address Deer Haven's prior environmental noncompliance and, while the Utility Agreement designated Pocono Lakefront as the party responsible for paying for operation of the Water System and Sewer System, a subsequent New Jersey settlement directs Deer Haven to operate the Sewer System in the interim. *Id.* at 3-4.

² The Petition was assigned two docket numbers due to the involvement of both a water system and a sewer system. Deer Haven's request regarding its Sewer System was addressed at the instant docket and Deer Haven's request regarding its Water System was addressed at Docket No. P-2024-3050545.

The Emergency Order noted that, in its Petition, Deer Haven stated that it has struggled to maintain the Sewer System in compliance with Department of Environmental Protection (DEP) and Commission regulations and that, in February 2024, it hired Environmental Services Corp. (ESC) to operate the Sewer System and improve compliance. Deer Haven explained that the cost of retaining ESC and conducting supplemental sampling required by DEP alone exceed the annual revenue for the Sewer System and that it is challenged to stay current on monthly invoices. Deer Haven further explained that, although ESC continued to operate the Sewer System, it remained at high risk of ESC withdrawing as plant operator. As a result, Deer Haven's Petition requested the issuance of an *ex parte* emergency order directing Aqua to take temporary receivership of the Sewer System until the Pocono Lakefront has secured all regulatory approvals to consummate the transfer of the sewer utility assets to PLU. *Id.* at 4-5.

On August 7, 2024, the Commission issued a Secretarial Letter addressing Deer Haven's Petition as it pertains to the Sewer System. The Commission concluded that Deer Haven failed to present facts demonstrating the existence of an emergency in its Petition and, in light of the pending Application regarding the Sewer System, we denied Deer Haven's request for an *ex parte* emergency order with respect to the Sewer System and declined to impose a receivership for the Sewer System. Secretarial Letter at 4-5.

Subsequently, on August 13, 2024, Deer Haven filed its Letter informing the Commission of intervening developments regarding its Sewer System that are relevant to its Petition. Deer Haven explained that, on August 7, 2024, ESC informed Deer Haven it would terminate service as operator of the Sewer System effective August 9, 2024, due to a past due balance on the account. Deer Haven stated that, notwithstanding recent payments toward the outstanding balance, ESC terminated service on August 9, 2024, leaving Deer Haven without a certified operator. Deer Haven also stated that its financials continue to deteriorate to the point where it is considering declaring bankruptcy. Thus, Deer Haven requested that the Commission reconsider its disposition

as to the Sewer System. Letter at 1. Deer Haven's Letter was accompanied by an Appendix, which is the communication from ESC, as well as a Verification.

Under the circumstances, in the Emergency Order, the Chairman treated Deer Haven's Letter as a renewed request for *ex parte* emergency relief. See 52 Pa. Code § 1.2. The Chairman stated that, based on the intervening developments since the issuance of the Commission's August 7, 2024 Secretarial Letter, the facts regarding Deer Haven's Sewer System as presented in Deer Haven's Letter satisfied the requisite standard for the issuance of an *ex parte* emergency order. See 52 Pa. Code § 3.1-3.2. Thus, the Chairman granted Deer Haven's request for *ex parte* emergency relief for the Sewer System. The Emergency Order stated that a receiver should act immediately to address and correct conditions that would cause Deer Haven to provide unsafe, inadequate, or unreasonable wastewater service to its customers and the public. In this regard, the Emergency Order noted that Deer Haven requested that Aqua be appointed as a temporary receiver for the Sewer System because it currently operates wastewater facilities near the Sewer System and has the technical and financial resources to safely and adequately operate the Sewer System. The Chairman agreed that Aqua's expertise in operating wastewater utilities subject to regulation under the Public Utility Code will allow it to work to ensure safe, adequate, reliable, and reasonably continuous wastewater service to Deer Haven's customers and the public. Therefore, the Emergency Order appointed Aqua as the Receiver for the Deer Haven Sewer System.³ Emergency Order at 7, 10-11.

³ The Emergency Order also noted that, on August 13, 2024, at Docket No. P-2024-3050545, Aqua filed a Letter stating that it is willing to accept appointment as receiver for Deer Haven's Water System. Aqua requested that, in an order related to the Water System, the Commission include, *inter alia*, the establishment of deferred accounting for capital expenditures and operating expenditures in allowing the establishment of deferred expense accounts. While Aqua did not file a similar letter regarding the Sewer System at the instant docket and the Chairman did not addressing the merits of Aqua's requests with respect to the Water System, the Emergency Order took into account these requests in delineating the responsibilities of the receiver for Deer Haven's Sewer System in Appendix A thereto.

Additionally, the Emergency Order concluded that Deer Haven should appear before the Commission to demonstrate whether it is capable of providing safe, reliable, and reasonably continuous wastewater service. The Emergency Order initiated a proceeding pursuant to Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, which is the 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. Under the Emergency Order, Deer Haven shall appear before the Commission to address these matters and, if necessary, provide reasonable solutions thereto. In accordance with Section 529(g) of the Public Utility Code, 66 Pa.C.S. § 529(g), the Emergency Order directed Aqua to act as the Receiver for Deer Haven's Sewer System beginning August 15, 2024, and to continue acting as the Receiver during the pendency of the Section 529 proceeding. The Emergency Order set forth the responsibilities of the Receiver were set forth in Appendix A thereto. *Id.* at 11.


Upon review of the circumstances surrounding the issuance of the *Ex Parte* Emergency Order, we conclude that it is in the public interest to rescind the Commission's August 7, 2024 Secretarial Letter and make the August 15, 2024 *Ex Parte* Emergency Order action the action of the full Commission; **THEREFORE,**

IT IS ORDERED:

1. That the Secretarial Letter issued August 7, 2024, at Docket No. P-2024-3050549, is hereby rescinded.
2. That the *Ex Parte* Emergency Order issued August 15, 2024, at Docket No. P-2024-3050549, is hereby ratified.

3. That a copy of this Ratification Order be served upon all parties served with the *Ex Parte* Emergency Order issued August 15, 2024.

BY THE COMMISSION

A handwritten signature in black ink, appearing to read "Rosemary Chiavetta". The signature is fluid and cursive, with the first letter of each word being significantly larger and more stylized.

Rosemary Chiavetta
Secretary

(SEAL)

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: August 22, 2024