



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

November 12, 2024

Via Electronic Filing

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

Re: Pennsylvania Public Utility Commission v.
Deer Haven, LLC
Docket Nos. P-2024-3050545 and I-2024-3051540 (Water)
P-2024-3050549 and I-2024-3051541 (Wastewater)
I&E Prehearing Memorandum

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the Prehearing Memorandum of the Bureau of Investigation and Enforcement (I&E) for the above-captioned proceeding.

Copies are being served on parties per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Scott B. Granger'.

Scott B. Granger
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 63641
(717) 425-7593
sgranger@pa.gov

SBC/ac
Enclosures

cc: Administrative Law Judge Christopher P. Pell (*via email* – cpell@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
 :
 v. : Docket Nos. P-2024-3050545
 : I-2024-3051540
 Deer Haven, L.L.C. (Water) :

Pennsylvania Public Utility Commission :
 :
 v. : Docket Nos. P-2024-3050549
 : I-2024-3051541
 Deer Haven, L.L.C. (Wastewater) :

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

TO: ADMINISTRATIVE LAW JUDGE CHRISTOPHER P. PELL:

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 consolidated proceedings.

The Bureau of Investigation and Enforcement Prosecutor in this proceeding will be Scott B. Granger. Contact information is as follows:

By mail: Scott B. Granger
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

By e-mail: sgranger@pa.gov
By telephone: (717) 425-7593
By fax: (717) 772-2677

I. INTRODUCTION

On August 1, 2024, Deer Haven, LLC (“Deer Haven” or “Company”) filed a Petition (“Petition” or “August 1 Petition”) with the Pennsylvania Public Utility Commission (“Commission”) requesting the issuance of an *ex parte* emergency order appointing Aqua Pennsylvania, Inc. (“Aqua” or “Aqua Pennsylvania”) to act as a temporary receiver to operate Deer Haven’s Water System and Sewer System. Both the water system and the sewer collection system and wastewater treatment plant are located in Palmyra Township, Pike County, Pennsylvania.

Deer Haven is a jurisdictional public utility that provides water service under Utility Code 210124 and wastewater service under Utility Code 230106. The Deer Haven water system provides water service to approximately 43 customers and the sewer system provides wastewater service to approximately 62 customers. Deer Haven’s August 1 Petition set forth the comprehensive history of the Company and both the water and sewer systems.¹ In summary, Deer Haven alleges 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. In 2004, Deer Haven alleges it acquired all of the Edwin, Inc. common stock together with all the assets used and useful in the provision of water distribution services to the public as well as all assets used and useful in the provision of wastewater services to the public.²

Additionally Deer Haven alleges, in 2004, it owned an 85-acre property in Palmyra Township, Pike County, that included the land where the sewer collection system and

¹ August 1 Petition, pp. 1-7.

² *Id.*, p. 2.

treatment plant, as well as the water system, are located.³ The intent of Deer Haven and an affiliated development company was to subdivide and develop the land.⁴ The plan also included constructing a new wastewater treatment plant.⁵

In 2010, Deer Haven and its affiliate entered into a purchase and sale agreement with Pocono Lakefront, LLC (“Pocono Lakefront”) for the sale of the referenced property.⁶ At the same time, Deer Haven and Pocono Lakefront entered into a grant of capacity and option to purchase agreement for the water and sewer system subject to Commission approval.⁷ Further, Deer Haven alleged the plan was to transfer its Certificates of Public Convenience to Pocono Lakefront.⁸

In 2014, Deer Haven and Pocono Lakefront allegedly entered into a purchase agreement (“Utility Agreement”) under which Pocono Lakefront would purchase both the water and sewer systems subject to PUC approval.⁹ Deer Haven contractually agreed to continue operating the sewer system while a new sewer system and treatment plant were constructed.¹⁰ Regarding the water system, Deer Haven alleges that the plan was for the water system to be operated by a third party, Pocono Water Works Co., Inc. (“Pocono Water Works”), pending the transfer of the water system to Pocono Lakefront.¹¹ Deer Haven alleged that it had entered into private contractual agreements with third-parties that would allow Deer Haven to modify, abdicate and/or transfer to other parties its statutory duties under the Public Utility Code as the certificated public utility.

³ *Id.*

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*, pp. 2-3.

⁸ *Id.*, p. 3.

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Id.*

Ultimately, after delays and the settlement of a lawsuit in New Jersey, Deer Haven alleges the transfer of both the water system and sewer system to Pocono Lakefront were/are in jeopardy.¹² Deer Haven alleges, in accordance with the Utility Agreement, an entity was formed to own and operate the sewer system upon transfer from Deer Haven to Pocono Lakefront.¹³ However, Pocono Lakefront subsequently informed Deer Haven that it no longer intends to take possession of the water system.¹⁴ Therefore, Deer Haven filed its August 1 Petition requesting that Aqua be appointed receiver for both the Deer Haven water and wastewater systems.¹⁵

Deer Haven alleges that it believed that the water system operations became solely the responsibility of Pocono Water Works pursuant to the 2014 Utility Agreement despite the fact that Deer Haven was still the certificated public utility.¹⁶ Deer Haven stated that it made a determination that despite having no operational involvement with the water plant for several years, it remained the owner of the PUC Certificate of Public Convenience.¹⁷ Deer Haven has never filed for any abandonment relief regarding its water system Certificate of Public Convenience with the Commission. Finally, Deer Haven admits that it is unable to provide adequate, safe and reasonably continuous service without unreasonable disruption or delay to its water system customers.¹⁸

Regarding the sewer system, a new wastewater treatment plant, being constructed by Pocono Lakefront, was substantially completed in 2023.¹⁹ Then, in June 2024, Deer Haven

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*, pp. 4-7.

¹⁶ *Id.*, p. 4.

¹⁷ *Id.*

¹⁸ *Id.*, p. 5.

¹⁹ *Id.*

and Pocono Lakefront filed a Joint Application for certificates of public convenience at Docket Nos. A-2024-3049587 and A-2024-3049591 seeking approvals necessary for the abandonment of Deer Haven’s sewer service and the commencement of sewer service by Pocono Lakefront.²⁰ Deer Haven alleges, in the meantime, the sewer system would remain exposed to additional violations as Deer Haven does not possess the resources to take the corrective actions necessary to respond to notices of violations it received from the Pennsylvania Department of Environmental Protection.²¹

Deer Haven questioned why it was directed to operate the sewer system during the interim period in which Pocono Lakefront was attempting to secure the necessary regulatory approvals to connect the new wastewater treatment plant when Deer Haven thought the parties had agreed to shift responsibilities to Pocono Lakefront in the Utility Agreement.²² Deer Haven also alleges that mounting operational costs make it hard for Deer Haven to stay current on monthly invoices and Deer Haven remains at high risk of its plant operator withdrawing.²³

On August 7, 2024, in response to Deer Haven’s August 1 Petition, the Commission issued an *Ex Parte* Emergency Order (“August 7 Order”) ordering, among other things, that Pocono Water Works Company, Inc. (“Pocono Water Works”) begin acting as receiver for Deer Haven’s water system.²⁴

²⁰ *Id.*, p. 6.

²¹ *Id.*

²² *Id.*

²³ *Id.*, p. 7.

²⁴ August 7 Order, pp. 8, 10.

Further, the Commission ordered that an investigation be instituted into whether the Commission should order a capable public utility to acquire Deer Haven's water system pursuant to Section 529 of the Public Utility Code.²⁵

Additionally, the Commission denied Deer Haven's request to have a receiver appointed for Deer Haven's sewer system and treatment plant because the Commission understood that Deer Haven and Pocono Lake Front, LLC ("Pocono Lake Front") intended to move forward with the transfer of the sewer system and that, in accordance with the Utility Agreement among the parties, PL Utilities, LLC ("PLU") was formed to own and operate the sewer system after the transfer, negating the need to appoint a receiver.²⁶

On August 13, 2024, Aqua Pennsylvania filed a Notice of Appearance in these proceedings. At the same time, Aqua Pennsylvania filed a letter with the Commission informing the Commission that Aqua is willing to accept an appointment as receiver for the Deer Haven water system and requested certain conditions attach.

Further, Aqua informed the Commission, it is Aqua's understanding that, as of August 10, 2024, the operator of Deer Haven's wastewater system was no longer performing operations oversight for the wastewater system.

Inconsideration of Aqua's letter, on August 15, 2024, the Commission issued a second *Ex Parte* Emergency Order ("August 15 Order") which renewed Deer Haven's request for relief with respect to its sewer system and appointed Aqua to act as the Receiver for Deer Haven's sewer system according to the terms set forth in its August 15 Order. Further, the Commission ordered that an investigation be instituted into whether the

²⁵ *Id.*, p. 9.

²⁶ *Id.*, pp. 2-3.

Commission should order a capable public utility to acquire Deer Haven’s sewer system pursuant to Section 529 of the Public Utility Code.²⁷

On August 19, 2024, I&E filed its Notice of Appearance at Docket No. P-2024-3050549.

On August 22, 2024, Commission Chairman, Stephen M DeFrank, offered a Motion at Public Meeting modifying the Commission’s August 7 Order withdrawing Pocono Water Works as receiver and appointing Aqua as temporary receiver of the Deer Haven water system.

On August 28, 2024, the Office of Small Business Advocate (“OSBA”) filed a Notice of Appearance in these proceedings.

On September 6, 2024, the Office of Consumer Advocate (“OCA”) filed Notice of Intervention and Public Statement in these proceedings.

Also on September 6, 2024, the OSBA filed a notice of intervention, public statement, and verification on behalf of the OSBA in these proceedings.

On October 10, 2024, and again on October 18, 2024, Deputy Chief Administrative Law Judge Christopher P. Pell (“ALJ Pell”) issued a Prehearing Conference Notice and a Corrected Prehearing Conference Order scheduling a Telephonic Prehearing Conference for Friday, November 15, 2024, beginning at 10:00 am.

II. BURDEN OF PROOF

Section 332(a) of the Public Utility Code states that, except for as may be otherwise provided in Section 315 regarding the burden of proof relating to the reasonableness of rates,

²⁷ August 15 Order, pp. 11-12.

the proponent of a rule or order has the burden of proof.²⁸ In the instant case, Deer Haven, as the proponent of the requests set forth in its August 1 Petition, has the burden of proof.

Additionally, in cases where the Commission, by and through a complaint or petition filed by I&E, initiates the Section 529 proceeding against a small water or sewer utility, Section 529 of the Public Utility Code states that I&E shall have the burden of establishing a prima facie case that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of Section 529.²⁹ However, in this case, I&E did not initiate the request for a Section 529 investigation. Rather, Deer Haven initiated these proceedings by setting forth the facts supporting its request for a Section 529 acquisition in its August 1 Petition.

Therefore, I&E requests that all parties desiring to support the Section 529 acquisition be allowed to file direct testimony supporting the establishment of the prima facie case for acquisition.

III. 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. The issues are as follows:

- Burden of Proof
- 66 Pa. C.S. Section 332 (a), Burden of Proof attaches to Proponent of Rule or Order.
- 66 Pa. C.S. Section 529, Power of Commission to Order Acquisition of Small Water and Wastewater Public Utilities.
- Section 529(a) Six Determinations to be made by Commission to Order Acquisition.

²⁸ 66 Pa. C.S. § 332(a).

²⁹ 66 Pa. C.S. §529(i).

- Section 529(b), Alternatives to Acquisition.
- Section 529 (c), Factors to be Considered in making Determination under Section 529(a).
- Section 529(h), Required Notice.
- Section 529 (i), Burden of Proof, Any Party.
- Abandonment
- Just and Reasonable Conditions for Abandonment.
- Factors to be Considered when Making a Determination Regarding Abandonment.
- The Rights of the Customers Receiving Service.
- Availability of Substitute Service.
- 66 Pa. C.S. Sections 3301-3316, Violations and Penalties.

IV. WITNESSES

I&E currently expects that it may call the following expert witnesses without being limited thereto:

- D.C. Patel, Fixed Utility Financial Analyst.
- Eshyan Sakaya, Fixed Utility Valuation Engineer.
- Christine Wilson, Fixed Utility Financial Analyst Supervisor.

The I&E witnesses may be contacted through the information listed above for Prosecutor Granger. 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.

V. 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, supplemental testimony, 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.

VI. DISCOVERY

Discovery in these proceedings will be 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 give due consideration to any discovery modifications proposed by any other party. Also, pursuant to 52 Pa. Code §§5.322 and 5.331(b), discovery has begun and is ongoing.

VII. SCHEDULE

I&E is working with the parties to develop a schedule in this proceeding. As of this date, the parties have not yet agreed on a schedule. I&E will continue to work with the parties to establish a reasonable schedule.

Filing – Deer Haven Petition

August 1, 2024

All Parties Direct

Rebuttal Testimony

Surrebuttal Testimony

Hearings³⁰

Main Brief

Reply Brief

³⁰ Upon the rescinding of Governor Tom Wolf's Proclamation of Disaster Emergency; the re-opening of the Keystone Commonwealth Building; and the return to in-person hearings; I&E requests that Hearings be held in Harrisburg, PA.

VIII. PUBLIC INPUT HEARINGS

I&E does not oppose public input hearings. Should public input hearings be deemed necessary, I&E recommends the Commission consider the use of telephonic hearings to encourage increased participation by the ratepayers.

IX. SERVICE OF DOCUMENTS

The Commission's March 20, 2020, Emergency Order,³¹ which was controlling 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.³² 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.³³

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.³⁴

³¹ Docket No. M-2020-3019262, *Re: Suspension of Regulatory and Statutory Deadlines, Modification to Filing and Service Requirements* ("March 20 Order").

³² Docket No. M-2021-3028321, *Re: Waiver of Regulations Regarding Service Requirements* ("September 15 Order").

³³ September 15 Order, p. 3.

³⁴ *Id.*, p. 6.

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.

X. SETTLEMENT

I&E will maintain an open dialogue and 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,



Scott B. Granger
Prosecutor
PA Attorney ID No. 63641

Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
(717) 425-7593

Dated: November 12, 2024

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission :
 :
 v. : Docket Nos. P-2024-3050545
 : I-2024-3051540
 Deer Haven, L.L.C. (Water) :

Pennsylvania Public Utility Commission :
 :
 v. : Docket Nos. P-2024-3050549
 : I-2024-3051541
 Deer Haven, L.L.C. (Wastewater) :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Prehearing Memorandum** dated
November 12, 2024, in the manner and upon the persons listed below:

Served via Electronic Mail Only

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

Kruti B. Patel, Esq.
Courtney L. Schultz, Esq.
Saul Ewing LLP
1500 Market Street, 38th Floor
Philadelphia, PA 19102
kruti.patel@saul.com
courtney.schultz@saul.com
Counsel for Aqua

Alexander R. Stahl, Esq.
Kimberly Joyce, Esq.
Aqua Pennsylvania Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com
kajoyce@essential.com
Counsel for Aqua

Steven C. Gray, Esq.
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923
sgray@pa.gov

Barrett C. Sheridan, Esq.
Melanie Joy El Atieh, Esq.
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
bsheridan@paoca.org
melatieh@paoca.org

Mark J. Shaw, Esq.
MacDonald Illig
100 State St., Suite 700
Erie, PA 16507
mshaw@mijb.com
*Counsel for Pocono Lakefront Inc.,
Pocono Utilities*

Joseph R. Bonamico, Sr., President
Pocono Water Works, Inc.
Box 189
Hamlin, PA 18427
jbona@aol.com

Palmyra Township
115 Buehler Lane
Paupack, PA 18451
administrator@palmyrapike.org

Department of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101
ra-epwater@pa.gov
ra-epwaste@pa.gov

Pike County Commissioners
506 Broad Street
Milford, PA 18337
mosterberg@pikepa.org
rschmalzle@pikepa.org
ccaceres@pikepa.org

Pike County Planning Commission
506 Broad Street
Milford, PA 18337
planning@pikepa.org



Scott B. Granger
Prosecutor
Bureau of Investigation and Enforcement
PA Attorney ID No. 63641
(717) 425-7593
sgranger@pa.gov