

COMMONWEALTH OF PENNSYLVANIA



PATRICK M. CICERO
Consumer Advocate

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
www.oca.pa.gov

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, L.L.C. (Water)
Docket Nos. P-2024-3050545 and I-2024-3051540

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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Prehearing Memorandum in the captioned proceeding.

Copies have been served on the parties as indicated on the enclosed Certificate of Service.

Respectfully submitted,

/s/ Emily A. Farren

Emily A. Farren
Assistant Consumer Advocate
PA Attorney I.D. # 322910
EFarren@paoca.org

Enclosures

cc: The Honorable Christopher P. Pell (*Via E-mail Only*)
Certificate of Service

CERTIFICATE OF SERVICE

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

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

I hereby certify that I have this day filed electronically on the Commission’s electronic filing system and served a true copy of the following document, the Office of Consumer Advocate’s 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 12th day of November 2024.

SERVICE BY E-MAIL ONLY

Allison C. Kaster, Esq.
Scott B. Granger, Esq.
Pennsylvania Public Utility Commission
Bureau of Investigation and Enforcement
Commonwealth Keystone Building
P.O. Box 3265
Harrisburg, PA 17105-3265
akaster@pa.gov
sgranger@pa.gov
Counsel for I&E

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

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

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 Pennsylvania, Inc.

Palmyra Township Planning Commission
115 Buehler Lane
Paupack, PA 18451

SERVICE BY E-MAIL ONLY

Courtney L. Schultz, Esq.
Kruti B. Patel, Esq.
Saul Ewing, LLP
1500 Market Street, 38th Floor
Philadelphia, PA 19102
courtney.schultz@saulewing.com
kruti.patel@saulewing.com
Counsel for Aqua Pennsylvania, Inc.
Mark J. Shaw, Esq.
Macdonald Illig
100 State St. Suite 700
Erie, PA 16507
mshaw@mijb.com
*Counsel for Pocono Lakefront Inc, Pocono
Utilities LLC*

Marc A. Lucca, President
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Maw, PA 19010
malucca@aquaamerica.com

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

Paul Diskin, Director
Pennsylvania Public Utility Commission
Bureau Of Technical Utility Services
Commonwealth Keystone Building
Harrisburg, PA 17120
pdiskin@pa.gov

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

Pennsylvania Dept. of Environmental Protection
Rachel Carson State Office Building
400 Market Street
Harrisburg, PA 17101
RA-epwater@pa.gov

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

Pennsylvania Dept. of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701-1915
RA-epwater@pa.gov

/s/ Emily A. Farren
Emily A. Farren
Assistant Consumer Advocate
PA Attorney I.D. #322910
EFarren@paoca.org

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
BSheridan@paoca.org

Counsel for:
Patrick M. Cicero
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: 717-783-5048

Dated: November 12, 2024

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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

PREHEARING CONFERENCE MEMORANDUM
OF THE
OFFICE OF CONSUMER ADVOCATE

Pursuant to the Corrected Prehearing Conference Order issued on October 18, 2024, in the captioned proceeding, by the Honorable Deputy Chief Administrative Law Judge (ALJ) Christopher P. Pell of the Office of Administrative Law Judge (OALJ) of the Pennsylvania Public Utility Commission (Commission), and pursuant to Section 333 of the Public Utility Code (Code), 66 Pa. C.S. § 333, and the Commission’s regulations at 52 Pa. Code §§ 5.221-5.224, the Pennsylvania Office of Consumer Advocate (OCA) submits the following Prehearing Conference Memorandum.

I. INTRODUCTION

This matter involves the proceeding commenced by the captioned Petition of Deer Haven, L.L.C. (Deer Haven) Requesting an *Ex Parte* Emergency Order (Petition). The Deer Haven Petition asked the Commission to allow Aqua Pennsylvania, Inc. (Aqua) to act as a receiver to

operate the Deer Haven water system and to operate the Deer Haven wastewater system.

By Emergency Order entered On August 14, 2024 and Ratification Order dated August 22, 2024, the Commission granted Deer Haven *ex parte* emergency relief and appointed Aqua as temporary receiver to operate the Deer Haven wastewater system. As temporary receiver, Aqua has been charged to take action to address and correct conditions in the Deer Haven wastewater system that caused unsafe, inadequate, or unreasonable wastewater service. The Emergency Order also initiated a proceeding pursuant to Section 529 regarding the future of the Deer Haven wastewater system, with Aqua to continue as temporary receiver in the interim.

As to the Deer Haven water system, Deer Haven's Petition explained that the operator of the Deer Haven water system, Pocono Water Works Company, Inc. had demanded payment for prior years of operating the system. Deer Haven had – incorrectly – assumed an earlier planned transfer of ownership of the Deer Haven water system to Pocono Water Works had been finalized. Deer Haven's Petition stated that it did not have the intention nor the resources to operate its water system. Additionally, Deer Haven identified a well pump failure and Department of Environmental Protection (DEP) Notice of Violation. By Emergency Order entered on August 14, 2024, the Commission granted Deer Haven *ex parte* emergency relief and initially appointed Pocono Water Works as temporary receiver. In the August 22, 2024 Ratification Order, the Commission modified that directive and named Aqua as temporary receiver to operate the Deer Haven water system.

The OCA filed a Notice of Intervention on September 6, 2024. The Office of Small Business Advocate filed a Notice of Intervention on October 9, 2024. Aqua Pennsylvania, Inc. filed a Notice of Appearance on September 9, 2024.

II. ISSUES

The OCA is participating in this proceeding to ensure that the interests of the customers of Deer Haven water and wastewater systems are protected. Based upon its investigation and review of the filing, the issues to be addressed in these Section 529 proceedings include, but are not limited to, the following:

- The technical, managerial, and financial fitness, or lack thereof, of Deer Haven to operate its existing water and wastewater systems;
- Failures to comply with DEP and/or Commission orders and regulations by Deer Haven;
- Whether the Commission should order a capable public utility to acquire Deer Haven; if so, which capable public utility should be ordered to acquire Deer Haven; and
- The reasonableness of any purchase price for the Deer Haven water and wastewater systems.

III. WITNESSES

The OCA intends to present the written direct, rebuttal, and surrebuttal testimonies, as may be necessary, of the below witness:

Nicholas A. DeMarco
Regulatory Analyst
Office of Consumer Advocate
5th Floor, Forum Place
555 Walnut Street
Harrisburg, PA 17101-1923

The OCA specifically reserves the right to call additional witnesses, as necessary. If the OCA determines that additional witnesses will be necessary for any portion of its case, it will notify all parties of record promptly.

IV. PROPOSED SCHEDULE

The OCA will work with the ALJ and the parties to develop a procedural schedule.

V. PUBLIC INPUT HEARINGS

At this time, the OCA is not requesting a Public Input Hearing. However, the OCA reserves the right to make such a request if the OCA determines that one is necessary.

VI. DISCOVERY

The OCA does not request any discovery rule modifications at this time.

VII. OCA COUNSEL / SERVICE ON THE OCA

The OCA will be represented in this case by the attorneys listed below:

Barrett C. Sheridan
Emily A. Farren
Assistant Consumer Advocates
555 Walnut Street, 5th Floor, Forum Place
Harrisburg, PA 17101-1923
Email: OCADeerHaven@paoca.org

The OCA will accept email service without provision of a hard copy. To the extent that materials are available electronically, it is requested that copies be served upon the following group email: OCADeerHaven@paoca.org.

VIII. SETTLEMENT

The OCA will participate in settlement discussions in this matter.

Respectfully submitted,

/s/ Emily A. Farren

Emily A. Farren
Assistant Consumer Advocate
PA Attorney I.D. # 322910
E-Mail: EFarren@paoca.org

Barrett C. Sheridan
Assistant Consumer Advocate
PA Attorney I.D. # 61138
E-Mail: BSheridan@paoca.org

Counsel for:
Patrick M. Cicero
Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
(717) 783-5048

Dated: November 12, 2024