

COMMONWEALTH OF PENNSYLVANIA



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December 6, 2024

Via Electronic Mail

The Honorable Christopher P. Pell
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
110 North 8th St., Suite 503
Philadelphia, PA 19107

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

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

Dear Judge Pell:

During the prehearing conference for the captioned matter, you directed the parties to confer on: (1) a mutually agreeable litigation schedule; and (2) a possible resolution to the current wastewater pump and haul situation Aqua Pennsylvania Wastewater, Inc., acting as Receiver, instituted to manage the system. The Office of Consumer Advocate (OCA) seeks to address Your Honor's requests herein.

First, the OCA proposed, and circulated to all parties, preferred due dates, as well as an alternative schedule of due dates, both of which proposed that the Bureau of Investigation and Enforcement file direct testimony before the filing of other parties' direct testimony. As noted during the Prehearing Conference, it is the OCA's position that the Commission's Bureau of Investigation & Enforcement (I&E) is charged with the statutory burden of presenting a prima facie case pursuant to Section 529 proceedings. *See* 66 Pa. C.S. § 529(i). Thus, the OCA submits that for an orderly adjudication of the case, it would be preferable for I&E to submit direct testimony first, as the party with the statutory burden of a prima facie case, as delineated in the below proposed litigation schedule labeled "OCA Preferred Due Date."

Filing:	OCA Preferred Due Date:	Alternate Schedule
I&E Direct Testimony	Friday, Feb. 7, 2025	All parties would file on March 7, 2025.
Other Parties' Direct Testimony	Friday, March 7, 2025	Friday, March 7, 2025
Rebuttal Testimony	Friday, April 4, 2025	Friday, April 4, 2025
Surrebuttal Testimony	Friday, April 11, 2025	Friday, April 11, 2025
Evidentiary Hearings	Tues./Wed., April 29-30, 2025	Tues./Wed., April 29-30, 2025

The OCA understands that the Commission has previously acknowledged:

Although it is accurate that I&E bears a statutory burden of proof in a Section 529 proceeding pursuant to 66 Pa. C.S. § 529(i), we have previously stated that the burden is not exclusive to I&E. Rather, any party may present or rebut a *prima facie* case in support of its position in the proceeding. We reasoned, [w]hile the burden of going forward with evidence is on I&E, I&E is not assigned this task with any predetermined or targeted result in mind and will be guided in making its recommendation by the evidence it adduces. This does not preclude any other party, however, from producing its own evidence to address the evidentiary and statutory requirements of Section 529.

Petition of Twin Lakes Utilities, Inc. for a Commission Order Authorizing the Acquisition of Twin Lakes Utilities, Inc. by a Capable Public Utility Pursuant to 66 Pa. C.S. § 529, P-2020-3020914 (Order Entered Sept. 17, 2020) (Twin Lakes Order) (Twin Lakes Order at 21).

The OCA submits the *Twin Lakes Order* does not imply any statutory burden shift on to other parties, but rather any party championing a specific result must demonstrate its outcome with sufficient evidence. The Public Utility Code is clear that the Commission, through I&E, bears the burden of a *prima facie* case. To establish this case, it would be far more expedient for the parties for I&E to submit direct testimony before other interested parties to this proceeding. That said, the OCA also proposes an “Alternate Schedule” above, should Your Honor order all parties file direct testimony at the same time.

Second, the OCA understands that the parties’ communications broke down regarding resolution and cessation of the wastewater pump and haul situation. While the OCA understands that several of the parties to this proceeding would rather resolve this matter through the separate Application proceeding at docket nos. A-2024-3049591 and A-2024-3049587, the OCA will not withdraw its Notice of Intervention in the Application proceeding. At this juncture, the OCA believes that the matter of ownership of the Deer Haven water and wastewater systems requires adjudication before the Office of Administrative Law Judge. However, the OCA supports lifting the stay of the Application proceedings with a request that the Commission assign the proceedings to Your Honor for adjudication in concert with the Section 529 wastewater and water proceedings.

Judge Pell
Dec. 6, 2024

The OCA requests Your Honor convene a second prehearing conference to establish a litigation schedule and will make itself available at Your Honor's convenience.

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

Respectfully submitted,

/s/ Emily A. Farren

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Enclosures

cc: Secretary Rosemary Chiavetta (Via E-filing)
Certificate of Service

CERTIFICATE OF SERVICE

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

Pennsylvania Public Utility Commission :
v. : Docket Nos. P-2024-3050549
Deer Haven, LLC (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 Correspondence to Administrative Law Judge Pell, 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 6th day of December 2024.

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Dated: December 6, 2024