

**PENNSYLVANIA PUBLIC UTILITY COMMISSION
Harrisburg, Pennsylvania 17120**

Joint Application of Deer Haven, L.L.C. and PL Utilities, LLC for approval of: (1) PL Utilities, LLC’s acquisition of certain wastewater system assets of Deer Haven, L.L.C.; (2) the abandonment by Deer Haven, L.L.C. of wastewater service to the public in Palmyra Township, Pike County, Pennsylvania; and (3) authorization of PL Utilities, LLC to offer, render, furnish, or supply wastewater service to the public in a portion of Palmyra Township, Pike County, Pennsylvania

**Public Meeting held February 20, 2025
3049591-TUS
Docket Nos. A-2024-3049591
A-2024-3049587**

MOTION OF COMMISSIONER RALPH V. YANORA

Before the Pennsylvania Public Utility Commission (Commission) for consideration and disposition is the uncontested application (Joint Application) filed on June 18, 2024, by Deer Haven, L.L.C (Deer Haven), Utility Code 230106, and PL Utilities, LLC (PL Utilities), Utility Code 2127226, (Deer Haven and PL Utilities, collectively referred to as the “Joint Applicants”), seeking certificates of public convenience (CPCs) pursuant to Sections 1101 and 1102(a)(2) and (3) of the Pennsylvania Public Utility Code (Code), 66 Pa.C.S. §§ 1101 and 1102(a)(2) and (3), evidencing Commission approval of: (1) PL Utilities’ acquisition of certain wastewater system assets of Deer Haven; (2) the abandonment by Deer Haven of wastewater service to the public in Palmyra Township, Pike County, Pennsylvania; and (3) authorization of PL Utilities to offer, render, furnish, or supply wastewater service to the public in a portion of Palmyra Township, Pike County, Pennsylvania.

Need

The Deer Haven wastewater system has a long history as a troubled utility which I will not reiterate here. The system has existing customers, and its operations also affect the safety and convenience of the public and utility employees. To expedite relief in this matter, on August 15, 2024, the Chairman entered an *ex parte* emergency order, which, *inter alia*, initiated an investigation into whether the Commission should order a capable public utility to acquire Deer Haven’s Wastewater System pursuant to 66 Pa.C.S. § 529 (529 Investigation). Pursuant to Section 529(g), the *ex parte* emergency order also directed Aqua to act as the receiver (Receiver) for Deer Haven’s Wastewater System during the pendency of the Section 529 proceeding.

Upon preliminary inspection, Aqua determined that the Deer Haven Wastewater Treatment Plant (Deer Haven WWTP) building and facilities were so structurally unsafe that it would not permit its employees to enter the facility. As a temporary solution, Aqua has implemented a pump and haul operation to treat sewage collected at the Deer Haven WWTP at an off-site location. Aqua reports that this pumping, hauling, and treatment effort requires, on average, one truckload per day at an average cost of \$26,310 per month. I note that Aqua

ratepayers will likely pay these costs. This Motion seeks to minimize that ratepayer liability while not compromising public safety.

PL Utilities has completed construction of a new wastewater treatment plant (PL Utilities WWTP) in 2023, which is approximately 1,000 feet from the non-functioning Deer Haven WWTP. The PL Utilities WWTP has the same flow rating as the Deer Haven WWTP and is available to accept effluent from Deer Haven customers. Connecting the Deer Haven collection system to the PL Utilities WWTP (System Interconnection) should provide a long-term solution to the deficiencies of the Deer Haven WWTP. Based on its potential ability to provide the necessary System Interconnection, I find PL Utilities is well-positioned to acquire the wastewater system assets of Deer Haven. The System Interconnection is the necessary and proper long-term solution required and will also work to prevent indefinite continuation of Aqua's manual and expensive pumping, hauling, and treatment efforts. Thus, it is in the public interest to conditionally grant the Joint Application which will effectuate the System Interconnection, with a self-executing timeline.

I note that the Pennsylvania Department of Environmental Protection (DEP) has imposed conditions that PL Utilities must meet prior to interconnecting the Deer Haven collection system and the operation of the PL Utilities WWTP. Through recent correspondence with DEP's Northeast Regional Office, Commission staff determined that PL Utilities and Deer Haven have not completed the following: an Act 537 Official Sewage Facilities Plan Update; Water Quality Management Permit certification for the PL Utilities WWTP; National Pollutant Discharge Elimination System Permit transfer; decommissioning of the existing Deer Haven WWTP per the decommissioning plan; and, *inter alia*, a Consent Order and Agreement between Deer Haven, PL Utilities, and DEP must be finalized. As such, the Commission's approval of the Joint Application should be conditioned upon PL Utilities' compliance with aforementioned DEP requirements.

Fitness

Under the circumstances of this docket, I believe that PL Utilities possesses the requisite technical, legal, and financial fitness to acquire the Deer Haven Wastewater System. Regarding technical and legal fitness, PL Utilities has significant experience in the wastewater industry as it has constructed, owned, and operated its new WWTP. In its Joint Application, PL Utilities also provides that it has reached an agreement with a certified operator to operate its new WWTP. Further, PL Utilities will utilize its affiliate, Empire, for its administrative operations. Empire has been in business since 1976 and currently has over 50 employees. Finally, PL Utilities avers that it will contract with third-party vendors to assist with day-to-day wastewater system operations in compliance with all regulatory requirements.

Regarding financial fitness, PL Utilities provided in the Joint Application that its new WWTP cost over \$2.6 million to construct. PL Utilities states in the Joint Application that this cost was funded by the members of PL Utilities in cash, evidencing its commitment to the success of the land development project served by PL Utilities, and ultimately, the long-term financial viability of PL Utilities itself.

In contrast, Deer Haven does not have the financial, technical, or managerial wherewithal to operate the Deer Haven wastewater system. Therefore, under the facts here, I believe that PL Utilities possesses the requisite fitness to operate the Deer Haven Wastewater System.


Land Transfer

On October 25, 2010, Deer Haven, Haven Development, and Pocono Lakefront entered into a Purchase and Sale Agreement (APA) for Pocono Lakefront to purchase the Property, consisting of approximately 84 acres of land, including land on which the Deer Haven WWTP, and now the PL Utilities WWTP, are situated, from Deer Haven and Haven Development for \$2,500,000. An executed copy of the APA was provided in supplemental information filed with the Commission as the Joint Application's Attachment U. The Joint Applicants assert that per the APA, Pocono Lakefront completed the purchase of the Property and is the current owner of the Property. While I avoid conflating the sale of non-jurisdictional assets with those under Commission oversight, I recognize that, under the APA, Deer Haven sold utility plant-in-service without prior Commission approval. Pursuant to Section 1102(a)(3) of the Code, 66 Pa.C.S. § 1102(a)(3), public utilities are required to obtain Commission approval, evidenced by a CPC, of an application for a proposed transfer of the title, possession or use of any property used or useful in service to the public. However, Commission records indicate that Deer Haven has neither applied for nor received Commission approval for this transfer of the Property.¹ Thus, approval of the Joint Application should be conditioned on Deer Haven applying for Commission approval of the proposed transfer of jurisdictional utility assets to Pocono Lakefront.

THEREFORE, I MOVE:

1. That the Joint Application of Deer Haven, L.L.C. and PL Utilities, LLC at Docket Nos. A-2024-3049591 and A-2024-3049587 is hereby granted, subject to the conditions set forth in this Motion.
2. If the conditions referenced in Ordering Paragraph 1 are not satisfied by August 31, 2025, the Joint Application shall be automatically consolidated with the pending Section 529 proceeding such that the Commission may investigate and address these issues along with whether it should order a capable public utility to acquire Deer Haven, L.L.C.'s Sewer System pursuant to 66 Pa.C.S. § 529, at Docket No. P-2024-3050549.
3. That the Bureau of Technical Utility Service draft an Opinion and Order consistent with this Motion.

Date: February 20, 2025



Ralph V. Yanora

¹ The Commission has previously advised Deer Haven of its statutory responsibility to file a *nunc pro tunc* Section 1102 Application seeking Commission approval of the proposed transfer of its Property to Pocono Lakefront. *See generally, Pennsylvania Public Utility Commission v. Deer Haven, LLC d/b/a Deer Haven Sewer Company*, Order entered May 19, 2011, at Docket Nos. R-2010-2194577, et al.