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April 24, 2025

**VIA ELECTRONIC FILING**

Matthew Homsher, 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 Homsher:

Enclosed for filing in the above-referenced matter is the **Notice to Plead, Motion in Limine and Certificate of Service** on behalf of PL Utilities, LLC.

Copies are being served on parties of record per the enclosed **Certificate of Service**.

Very truly yours,

MacDONALD, ILLIG, JONES & BRITTON LLP

By \_\_\_\_\_

  
Mark J. Shaw

MJS/nes/1927296.1

Enclosures

cc w/ attachments: All Parties of Record  
The Honorable Christopher P. Pell (*via electronic mail*)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Deputy Chief Administrative Law Judge  
Christopher P. Pell, Presiding**

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Pennsylvania Public Utility Commission,	:	P-2024-3050545
	:	I-2024-3051540

v.

Deer Haven, L.L.C. (Water)

Pennsylvania Public Utility Commission,	:	P-2024-3050549
	:	I-2024-3051541

v.

Deer Haven, L.L.C. (Wastewater)

Intervenors:

Pocono Lakefront, LLC  
PL Utilities, LLC

**NOTICE TO PLEAD**

Pursuant to 52 Pennsylvania Code § 5.103(b) and Paragraph 11 of Prehearing Order #1, notice is hereby given that an answer to the following motion may be filed within three (3) days or sooner if circumstances warrant.

Respectfully submitted,

*/s/ Mark J. Shaw*

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Attorneys for Intervenors:  
Pocono Lakefront, LLC and PL Utilities, LLC

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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**Deputy Chief Administrative Law Judge  
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Pennsylvania Public Utility Commission, : P-2024-3050545  
: I-2024-3051540

v. :

Deer Haven, L.L.C. (Water) :

Pennsylvania Public Utility Commission, : P-2024-3050549  
: I-2024-3051541

v. :

Deer Haven, L.L.C. (Wastewater) :

Intervenors:

Pocono Lakefront, LLC  
PL Utilities, LLC

**MOTION IN LIMINE OF INTERVENOR PL UTILITIES  
REGARDING THE REBUTTAL TESTIMONY OF NICHOLAS A. DEMARCO  
AND THE LIVE DIRECT TESTIMONY OF MR. WAYNE SHURTS**

Pursuant to 52 Pa. Code § 5.103 and Paragraph 11 of Prehearing Order #1, PL Utilities ("PLU") hereby files this Motion in Limine Regarding the Rebuttal Testimony of Nicholas A. DeMarco and the Live Direct Testimony of Mr. Wayne Shurts relating to the ownership and responsibility of the wastewater collection system located wholly within the property boundaries of White Pines on the Lake., and states the following in support thereof.

**I. BACKGROUND**

The wastewater aspect of these consolidated cases was initiated as a result of the Pennsylvania Public Utility Commission (“Commission”) issuing an Order on August 15, 2024 ordering that an investigation be instituted into whether the Commission should order a capable public utility to acquire Deer Haven’s sewer system pursuant to Section 529 of the Public Utility Code.

Prior to the issuance of that Commission Order, there was pending before the Commission a Joint Application for Issuance of Certificate of Public Convenience and Abandonment seeking approval of the transfer of the sewer system from Deer Haven to PLU, granting a Certificate of Public Convenience to PLU, granting the Application for Abandonment by Deer Haven and approving various affiliate agreements and a proposed tariff. This pending Joint Application was filed by Deer Haven and PLU on June 18, 2024.

On [INSERT DATE], the Commission granted the Joint Application, subject to several conditions that Deer Haven and PLU are working on meeting.

Despite the Commission's Order, the hearing on the Section 529 investigation is proceeding.

## **II. RELEVANT PROCEDURAL HISTORY**

ON [INSERT DATE], the parties filed their prehearing memorandum. IN its prehearing memorandum, the Office of Consumer Advocate identified the following issues to be addressed in the Section 529 proceeding.

- 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.

In addition, the OCA identified Nichoals A. DeMarco as its only witness.

On March 7, 2025, the OCA submitted the direct testimony of Mr. DeMarco. In that direct testimony, Mr. Demarco only made a passing reference to an email submitted by Mr. Wayne Shurts, who identified himself as the President of the White Pines on the Lake Homeowners Association. Mr. DeMarco made no commentary on what Mr. Shurts said.

None of the direct testimony submitted by any of the other parties made any reference to Mr. Shurts or what he stated in his email to Judge Pell, nor was there any reference to the White Pines on the Lake wastewater collection system.

On April 4, 2025, Mr. Demarco submitted rebuttal testimony. In his rebuttal testimony, Mr. Demarco asserts that he is responding to testimony that PLU will be serving 60 customers. As part of that response, Mr. Demarco asserts that it is unclear whether the resident of White Pines on the Lake are customers of Deer Haven. He then refers to the letter from Mr. Shurts which asserted that Deer Haven had failed to maintain the waste collection system serving White Pines on the Lake. Then, at the end of his testimony, he recommends that the ultimate entity that acquires the system should be required to assume control over the White Pines wastewater collection system..

On Friday, April 18, 2025, OCA submitted a letter to Judge Pell advising of its intent to present Mr. Wayne Shurts as a live direct witness during the hearing on April 29, 2025. During a conference call on Tuesday, April 22, 2025, OCA explained that the purpose of Mr. Shurts was to confirm that he was a resident of White Pines on the Lake, that he received a bill from Deer Haven for its sewer service, and that Deer Haven failed to maintain the wastewater collection system as

required. Mr. Shurts was never identified by OCA as a potential witness until it serviced its notice of intent on April 18, 2025, 11 days before the first day of the hearing and on a Friday before a major holiday.

### **III. LEGAL STANDARDS**

A Motion in Limine is an appropriate vehicle to limit the scope of this proceeding to issues actually justiciable by the Commission. Section 5.403(a)(2) of the Commission's regulations authorizes the presiding officer to control the receipt of evidence, expressly granting authority to confine the evidence to the issues in the proceeding and to impose other necessary limitations. A Motion in Limine is a recognized, valid means of requesting that the presiding officer control the receipt of evidence in proceedings as an exercise of authority granted under 52 Pa. Code § 5.483 (regarding authority of presiding officer).

### **IV. ARGUMENT**

A. The Rebuttal Testimony Of Nicholas A. Demarco At Page 9, Lines 18-22, Page 10, Lines 1-10 And Page 12, Lines 13-18 Should Be Stricken From The Record And Mt. Demarco Prevented From Testifying Regarding The Ownership And/Or Responsibility Of The White Pines On The Lake Wastewater Collection System

Mr. DeMarco should be precluded from testifying regarding the ownership and/or responsibility of the White Pines On The Lake Wastewater Collection System because the issue was not included in the OCA's prehearing memo, the issue was first raised in his rebuttal testimony, when no direct testimony of any other party raised the issue, and the issue ultimately goes to an alleged dispute between the White Pines on the Lake Homeowners Association and Deer Haven that does not fall within the Jurisdiction of the Commission.

Under 52 Pa Code §5.401, evidence must be relevant and material. In addition, even relevant and material evidence will be excluded will be excluded if:

- (b)(2) Its probative value is outweighed by:
  - (i) The danger of unfair prejudice.
  - (ii) Confusion of the issues.
  - (iii) Considerations of undue delay or waste of time.

Further, under 52 Pa Code §5.243(e),

- (e) A party will not be permitted to introduce evidence during a rebuttal phase which:
  - (1) Is repetitive.
  - (2) Should have been included in the party's case-in-chief .
  - (3) Substantially varies from the party's case-in-chief.

First, to the extent the testimony seeks to have the Commission adjudicate the rights of the HOA and Deer Haven as to the Wastewater Collection System on White Pine's property, it is seeking to have this Commission resolve a purported dispute between the parties over those rights. That is a matter that is beyond the scope of the Commission. The Commission only has the enforcement and remedial authority granted to it by the General Assembly set forth in the Public Utility Code. *See Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791, 794 (Pa. 1977). Thus, as a creation of the legislature, the Commission must act within, and may not exceed, its jurisdiction. *Id.* The Pennsylvania Commonwealth Court has repeatedly held that the Commission does not have the authority to adjudicate private contractual disputes. *See, e.g., T.W. Phillips Gas and Oil Co. v. Peoples Natural Gas Co.*, 492 A.2d 776, 779 (Pa. Commw. Ct. 1985); *Bell Tel. Co. v. Pennsylvania Public Utility Com.*, 417 A.2d 827, 830 (Pa. Commw. Ct. 1980).

This is exactly what OCA is seeking to have the Commission do. It wants the Commission to resolve this alleged dispute between the parties, which is not within its jurisdiction.

The OCA's efforts to have the Commission resolve this issue is particularly troublesome here due to the manner in which it has sought to achieve this resolution. First, White Pines on the Lake is not a party and never sought to be a party. Second, the OCA did not raise this issue in its Prehearing memo and therefore, no party has notices that this could be an issue. Third, OCA waits

until the submission of the rebuttal testimony of its direct witness to recommend that "the ultimate acquiror should be required to integrate, operate, and maintain the wastewater collection system of the White Pines HOA."

Besides not being relevant and material, the testimony should be excluded under all of the basis of Section 5.401(b)(2) as unfairly prejudicial, creating a confusion of issues and causing undue delay and wasting time. OCA's late insertion of this issue is creating a litigation within a litigation on the eve of trial; ultimately seeking to impose on the ultimate acquiring party (i.e. PLU) a burden that is not currently carried by the current owner/operator. Without a full vetting this issue, which cannot be, and should not be, accomplished within this proceeding, it simply is not fair to PLU and highly prejudicial to it.

Further, this testimony also clearly should have been included in the direct testimony of Mr. DeMarco, and its introduction through rebuttal testimony is prohibited under the rules.

For these reasons, The Rebuttal Testimony Of Nicholas A. Demarco at Page 9, Lines 18-22 , Page 10, Lines 1-10 and Page 12, Lines 13-18 should be stricken from the record and Mr. Demarco prevented from testifying regarding the ownership and/or responsibility of the White Pines On The Lake Wastewater Collection System

**B. The Live Direct Testimony Of Wayne Shurts Regarding The Ownership And/Or Responsibility Of The White Pines On The Lake Wastewater Collection System Should Be Precluded**

For the same reasons given to preclude portions of the Rebuttal Testimony of Mr. Demarco, the testimony of Mr., Shurts should be precluded. In addition, Mr. Shurts was not identified in either the Prehearing memorandum as a witness and OCA did not introduce direct testimony from Mr. Shurt's when it clearly has an opportunity to do so. OCA was aware of Mr. Shurt's email, yet

waited until the Friday of a major holiday the week before the hearing to advise the parties of its intention to call Mr. Shurts and introduce his testimony. Again, the late introduction of this evidence, even if relevant and material (which it is not), unfairly prejudices PLU, has the potential of confusing the issues and will cause undue delay and waste time.

For these reasons, the live direct testimony of Wayne Shurts regarding the ownership and/or responsibility of the White Pines On The Lake Wastewater Collection System should be precluded.

Respectfully submitted,

*/s/ Mark J. Shaw*

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	:	I-2024-3051541
	:	
v.	:	
	:	
Deer Haven, L.L.C. (Wastewater)	:	

**CERTIFICATE OF SERVICE**

I hereby certify that I have this day served a true and correct copy of the foregoing document upon the individuals and in the manner listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

**VIA ELECTRONIC MAIL**

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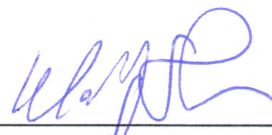
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April 24, 2025



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