

**PENNSYLVANIA  
PUBLIC UTILITY COMMISSION  
Harrisburg, PA 17105-3265**

Public Meeting held August 22, 2024

Commissioners Present:

Stephen M. DeFrank, Chairman  
Kimberly Barrow, Vice Chair  
Ralph V. Yanora  
Kathryn L. Zerfuss  
John F. Coleman, Jr.

Petition of Deer Haven, LLC Requesting an  
*Ex Parte* Emergency Order Allowing Aqua  
Pennsylvania, Inc. to Act as a Receiver to Operate  
the Deer Haven Water and Wastewater Systems

P-2024-3050545

**RATIFICATION ORDER**

**BY THE COMMISSION:**

On August 7, 2024, Chairman Stephen M. DeFrank issued an *Ex Parte* Emergency Order (Emergency Order) in response to Deer Haven, LLC's (Deer Haven)<sup>1</sup> Petition for the issuance of an *ex parte* emergency order appointing Aqua Pennsylvania, Inc. (Aqua) to act as a temporary receiver to operate Deer Haven's Water System and Wastewater System (Sewer System). The Emergency Order granted, in part, and denied, in part, the Petition with respect to Deer Haven's Water System only<sup>2</sup> and as modified therein. By issuing the Emergency Order, the Chairman took immediate, affirmative action to protect Deer Haven's water customers and to confirm Deer Haven's obligation to provide safe, reasonable, and adequate water service. Emergency Order at 6, 9.

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<sup>1</sup> Deer Haven is a jurisdictional public utility that provides water service, under Utility Code 210124, and wastewater service, under Utility Code 230106.

<sup>2</sup> The Petition was assigned two docket numbers due to the involvement of a water system and a wastewater system. Deer Haven's request regarding its Water System was addressed at the instant docket and Deer Haven's request regarding its Sewer System was addressed at Docket No. P-2024-3050549.

The Emergency Order explained that, according to Deer Haven’s Petition, Deer Haven entered into a Purchase Agreement (Utility Agreement) with Pocono Lakefront, LLC (Pocono Lakefront) in 2014 under which Pocono Lakefront would purchase the Water System and Sewer System subject to Commission approval, Pocono Lakefront would form a new company to hold the certificate of public convenience once a new sewer system was constructed, and the Water System would be operated by an unaffiliated company, Pocono Water Works Company, Inc. (Pocono Water Works)<sup>3</sup> pending the transfer to Pocono Lakefront. Pocono Lakefront, however, informed Deer Haven that it no longer intends to take possession of the Water System, which is currently operated by Pocono Water Works. Deer Haven believed that operation of the Water System became the sole responsibility of Pocono Water Works under the 2014 Agreement, but, in 2024, Pocono Water Works demanded payment for services rendered in operating the Water System and, upon investigation, Deer Haven determined that it remained the owner of the certificate of public convenience. *Id.* at 2-3.

The Emergency Order also explained that, according to Deer Haven’s Petition, Deer Haven was notified on an outage of a recently installed well pump on the Water System on June 24, 2024. On June 26, 2024, the Pennsylvania Department of Environmental Protection (DEP) issued a Notice of Violation identifying multiple significant deficiencies at the Water System and directed Deer Haven to respond with a schedule for correcting the deficiencies by August 10, 2024, and to correct all sufficient deficiencies by October 24, 2024. Deer Haven stated that it lacks the technical or financial fitness to address the deficiencies or to compensate Pocono Water Works for continued operation of the Water System and that Pocono Water Works intended to cease all administrative and operational activity related to the water plant as early as August 1, 2024. As a result, Deer Haven stated that it is unable to provide adequate, safe, and reasonably continuous service without unreasonable interruption or delay.

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<sup>3</sup> Pocono Water Works is a jurisdictional public utility that provides water service, under Utility Code 210097.

Deer Haven requested the issuance of an *ex parte* emergency order directing Aqua to take temporary receivership of the Water System until the impacted parties develop a long-term solution. *Id.* at 3-4.

The Chairman determined that Deer Haven met the requisite standard for the issuance of an *ex parte* emergency order. *See* 52 Pa. Code § 3.1-3.2 The Emergency Order concluded that a receiver should act immediately to address and correct conditions that would cause Deer Haven to provide unsafe, inadequate, or unreasonable water service to its customers and the public. The Emergency Order noted that, since Pocono Water Works currently has been acting in the capacity as the operator of the Deer Haven Water System, it rather than Aqua, is a more suitable candidate to be appointed as a temporary receiver for the Water System under the circumstances. Specifically, the Emergency Order explained that, as stated in Deer Haven's Petition, Pocono Water Works has been the *de facto* operator of the Deer Haven Water System since 2014. The Emergency Order stated that Pocono Water Work's familiarity with the Deer Haven Water System will allow it to serve as a capable temporary receiver. In addition, the Emergency Order acknowledged that the impacted parties will work to develop a long-term solution during the receivership and, concluded that, in light of Pocono Water Work's current involvement with Deer Haven, it is appropriate for Pocono Water Works to serve as the temporary receiver rather than to implicate another public utility, such as Aqua, at this juncture. Therefore, the Emergency Order appointed Pocono Water Works as the Receiver for the Deer Haven Water System. *Id.* at 5, 8.

Additionally, the Emergency Order concluded that Deer Haven should appear before the Commission to demonstrate whether it is capable of providing safe, reliable, and reasonably continuous water service. The Emergency Order initiated a proceeding pursuant to Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, which is the emergency provision that authorizes the Commission to take immediate action to protect the public interest by ordering the acquisition of a small water or sewer utility. Under the Emergency Order, Deer Haven shall appear before the Commission to address these matters and, if necessary, provide reasonable solutions thereto. In accordance with Section 529(g) of the Public Utility Code, 66 Pa.C.S. § 529(g), the Emergency Order directed Pocono Water Works to act as the Receiver for Deer Haven's Water System beginning August 9, 2024, and to continue acting as the Receiver during the pendency of the Section 529 proceeding. The responsibilities of the Receiver were set forth in Appendix A to the Emergency Order. *Id.* at 5-6, 10. Thus, the Emergency Order granted, in part, and denied, in part, Deer Haven's Petition with respect to its Water System only and as modified therein. *Id.* at 9.

For the reasons expounded in the Emergency Order, the circumstances warranted the immediate and affirmative action taken to protect Deer Haven's water customers. However, we find it appropriate to modify the Emergency Order based on information received since the issuance of the Emergency Order. By letter dated August 13, 2024, and filed at this docket, Aqua expressed its willingness to accept an appointment as receiver of the Deer Haven Water System.<sup>4</sup> Aqua has the technical and financial resources to safely and adequately operate the Deer Haven Water System during the pendency of the Section 529 proceeding. We further note that Aqua operates water

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<sup>4</sup> In its August 13, 2024 letter, Aqua requested that the Commission include in an Order appointing it as Receiver, *inter alia*, the establishment of deferred accounting for capital expenditures and operating expenditures in allowing the establishment of deferred expense accounts.

facilities within a reasonably close proximity to the Deer Haven Water System. Thus, we modify the Emergency Order to appoint Aqua as a temporary Receiver for the Deer Haven Water System.

Additionally, it is appropriate to modify subparagraph 1.s. of Appendix A to the Emergency Order to clarify that operating expenses and DEP mandated capital expenses incurred by Aqua as temporary receiver are eligible for deferred accounting treatment and may be charged to a deferred expenses account. We also modify subparagraph 1.k of Appendix A to clarify that Aqua is authorized to receive and utilize grant funds in the name of Deer Haven and borrow money in the name of Deer Haven necessary for the implementation of corrective actions and continued provision of adequate, efficient, safe and reasonable service to the customers of the Deer Haven Water System.

All other components of the Emergency Order remain in place, including the commencement of a proceeding pursuant to Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, where remaining issues may be addressed. However, in addition to the parameters identified in the Emergency Order for the Section 529 proceeding, we note that the Commission's Office of Administrative Law Judge should be tasked with assigning one of its judges to initiate the Section 529 proceeding.

Upon review of the circumstances surrounding the issuance of the *Ex Parte* Emergency Order, we conclude that it is in the public interest to make such action the action of the full Commission with the modifications to the *Ex Parte* Emergency Order and Appendix A thereto as set forth herein; **THEREFORE,**

**IT IS ORDERED:**

1. That the *Ex Parte* Emergency Order and accompanying Appendix A that were issued August 7, 2024, at Docket No. P-2024-3050545, are hereby ratified with the modifications set forth in this Ratification Order, which are described in more detail in Ordering Paragraph Nos. 2 and 3 below.

2. That Ordering Paragraphs No. 1, 5, 12-13, and 15 of the *Ex Parte* Emergency Order are modified as follows:

1. That the Petition of Deer Haven, LLC Requesting an *Ex Parte* Emergency Order Allowing Aqua Pennsylvania, Inc. to Act as Receiver to Operate the Deer Haven Water and Sewer Systems filed on August 1, 2024, at Docket No. P-2024-3050545 is granted with respect to Deer Haven's Water System consistent with this Ratification Order.

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5. That pursuant to 66 Pa.C.S. § 529(g), the Commission directs Aqua Pennsylvania, Inc. to act as the Receiver for Deer Haven, LLC's Water System beginning August 22, 2024, and to continue during the pendency of the Section 529 proceeding ordered above and in accordance with Appendix A to this Order.

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12. That Deer Haven, LLC, and Pocono Water Works Company, Inc., as the former Receiver, shall, no later than August 22, 2024, turn over copies or originals of all books, records, accounts, and any other information used and useful in the provision of water service to customers served by Deer Haven, LLC to Aqua Pennsylvania, Inc., the Receiver appointed by the Commission, or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

13. That Deer Haven, LLC, and Pocono Water Works Company, Inc. as the former Receiver, shall no later than August 22, 2024, turn over all operations and assets, including keys to locks securing facilities, buildings, and any other property, whether personal or real property, used and useful in the provision of water service to customers served by Deer Haven, LLC to Aqua Pennsylvania, Inc., the Receiver appointed by the Commission, or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

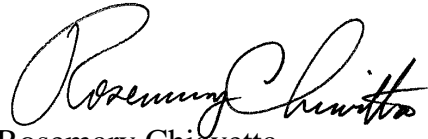
...

15. That Deer Haven, LLC, and Pocono Water Works Company, Inc., as the former Receiver, shall cease all billing and collections activity to Deer Haven, LLC's former water customers as of August 22, 2024.

3. That Appendix A to the *Ex Parte* Emergency Order is modified as attached to this Ratification Order.

4. That a copy of this Ratification Order and the modified Appendix A to the Emergency Order be served upon the Commission's Office of Administrative Law Judge and all parties served with the *Ex Parte* Emergency Order issued August 7, 2024.

**BY THE COMMISSION**



Rosemary Chiavetta  
Secretary

(SEAL)

ORDER ADOPTED: August 22, 2024

ORDER ENTERED: August 26, 2024



**APPENDIX A**  
Docket No. P-2024-3050545

1. That the Receiver Aqua Pennsylvania, Inc., in its capacity as a receiver of Deer Haven, LLC's (Deer Haven) Water System (Deer Haven Water System, or the system), shall have the following duties and responsibilities:
  - a. Operate the system in compliance with all State, Federal, and local laws and regulations.
  - b. Maintain any existing or necessary permits, licenses, approvals, authorizations, orders, consents, registrations, or filings.
  - c. Provide a listing of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the system, to address or anticipate the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.
  - d. Provide all supervision and personnel necessary to operate the system in a professional, efficient and economic manner, and in accordance with sound operating practices and prudent industry and utility standards.
  - e. Respond to system emergencies by taking necessary action to ensure the continued provision of adequate, efficient, safe and reasonable water service.
  - f. Notify appropriate regulatory or governmental agencies regarding any emergency which, in the reasonable judgement of the Receiver, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety.
  - g. Provide for normal routine maintenance and the provision of supplies for the system.
  - h. Keep financial and accounting records and all pertinent operating data and information relating to the system as prudent industry and utility practices would require.
  - i. Continue billing and collection functions for the Deer Haven Water System.

- j. Provide the Deer Haven Water System's customer service.
- k. Have the authority to receive and utilize grant funds in the name of Deer Haven and borrow money in the name of Deer Haven necessary for the implementation of corrective actions and continued provision of adequate, efficient, safe and reasonable service to the customers of the Deer Haven Water System.
- l. Have the authority to file a petition for bankruptcy and participate in such proceedings on behalf of the Deer Haven Water System.
- m. Comply with Deer Haven's effective tariff for Deer Haven Water System customers.
- n. Submit all necessary paperwork to regulatory agencies of the system on behalf of the Deer Haven Water System.
- o. Submit an initial status report to the Commission within 60 days of August 7, 2024, and then quarterly thereafter to detail any relevant updates pursuant to duties and responsibilities assigned through receivership.
- p. Participate in discussions with the Commission regarding alternatives to the acquisition of the Deer Haven Water System, pursuant to 66 Pa.C.S. § 529(b).
- q. Submit testimony regarding each factor delineated under 66 Pa.C.S. § 529(c) in any future proceeding pursuant to 66 Pa.C.S. § 529(a) relating to the acquisition of the Deer Haven Water System by a capable public utility.
- r. Make reasonable efforts to establish the financial position of the Deer Haven Water System at the time the Receiver assumed receivership.
- s. Establish a deferred expense account for expenses incurred by the Deer Haven Water System that are payable to the Receiver.
  - i. Operating expenses and Department of Environmental Protection (DEP) mandated capital expenses incurred by Aqua as Receiver are eligible for deferred accounting treatment and may be charged to a deferred expenses account.

- t. Petition the Commission to add or remove any duties or responsibilities; however, the Receiver must continue to fulfill all duties and responsibilities until such duties or responsibilities are removed by Commission Order or by a court with competent jurisdiction.
  - u. Be permitted to use existing Commission-approved affiliated entities to provide services to the Deer Haven Water System, provided that the Receiver provides the Commission written notice identifying which affiliates are providing services for which approval under 66 Pa.C.S. § 2102 would typically be required.
  - v. Satisfy the aforementioned duties and responsibilities either directly, through Commission-approved affiliates, or through competitive operation and maintenance agreements or any combination thereof.
  - w. Charge Deer Haven reasonable rates for all services rendered to or for the Deer Haven Water System on behalf of the receivership.
2. That the Receiver, in its own capacity, shall have the following duties and responsibilities:
- a. Should Deer Haven be unable to obtain necessary financing for ensuring the continued provision of adequate, efficient, safe and reasonable service to the customers of the Deer Haven Water System, the Receiver, at its option, may either directly provide financing for Deer Haven or file a petition for bankruptcy.
  - b. Establish a deferred expense account for expenses incurred by the Receiver resulting from this order, including prudent and reasonable legal expenses.
3. The Receiver may petition the Commission for modification or termination of this receivership, or to appoint another, or an additional, entity as a receiver of the Deer Haven Water System.