EX PARTE EMERGENCY ORDER

The James Black Water Service Company (JBW) provides water service to a residential development of nineteen residences, and serves a total population of 55, in the community of Belle Aire Acres in Jefferson Township, Lackawanna County, Pennsylvania. Since July 2016, the Department of Environmental Protection (DEP) has issued 48 Notices of Violation to JBW, 35 of which were for failure to monitor or report routine samples for contaminants. Through August 2018, despite these issues, DEP was in each case able to achieve regulatory compliance from JBW. Since that time, JBW has failed to issue six Tier 3 public notifications and has been directed to issue to its customers a public notification advising that water produced by JBW is not safe for consumption. On April 18, 2019, DEP became aware JBW did not issue this notification to its customers. The Commission understands that on June 21, 2019, DEP issued a field order to JBW because actions were taken to bypass JBW’s contact tanks which brought the system out of compliance with four log treatment requirements. The Commission further understands JBW has not corrected this issue to date.

On July 8, 2019, James Black, the owner of JBW, contacted the Bureau of Technical Utility Services concerning the process for abandoning water service. Mr. Black did not indicate that he intended to take any immediate action to discontinue service. Mr. Black stated he would continue to discuss the transfer of JBW to another regulated water company, specifically Aqua Pennsylvania, Inc. (Aqua). On August 29,
2019, the Bureau of Technical Utility Services received a notarized letter from Mr. Black requesting the Commission issue an Emergency Order and appoint a competent public utility as a receiver to begin the management and day-to-day operations of JBW. That letter is attached as Appendix B.

The Commission encourages a reduction in the number of small, nonviable drinking water systems and fosters the acquisition of small, nonviable water systems by viable utilities when those acquisitions are in the public interest. See 66 Pa. C.S. §§ 69.701, 69.711. Aqua, one of Pennsylvania’s two largest regulated water utilities, and JBW have engaged in discussions regarding the transfer of the JBW system to Aqua. These discussions, however, have not yielded a timely resolution of this matter. Due to ongoing issues with JBW’s water service, worsening compliance with DEP, and the request by JBW to be placed in receivership, Commission action is necessary and in the public interest.

The Commission takes immediate affirmative action here, subject to revision in a subsequent Ratification Order, to protect JBW customers and all members of the public affected by the regulated utility service rendered by JBW, and to confirm the JBW obligation to provide safe, reasonable, and adequate utility service. Based on its apparent lack of safe, reasonably continuous, and adequate service, present management and operating conditions at JBW appear to present a serious public health and safety threat that the Commission will not ignore. As such, the Commission finds that the standards for issuance of an Ex Parte Emergency Order have been met.

The Public Utility Code authorizes the Commission to regulate the conduct of public utilities in the Commonwealth. 66 Pa. C.S. § 501. The Commission is also authorized to “enforce obedience” to the Public Utility Code, Commission regulations, and orders. 66 Pa. C.S. § 502. Pursuant to that authority, the Commission has issued regulations governing emergency situations, specifically when it will issue ex parte emergency orders to address
clear and present dangers to life or property. 52 Pa. Code § 3.1. As a part of the due process provided to persons subject to an *ex parte* emergency order, 52 Pa. Code § 3.4 provides access to an expedited hearing within 10 days.

Section 529 of Title 66, 66 Pa. C.S. § 529, authorizes the Commission to direct a competent public utility to assume operational control or to acquire a small water utility that has jeopardized public safety by failing to provide reasonable and adequate utility service.

Section 529 is an emergency provision in which the Public Utility Code authorizes the Commission to take immediate action to protect the public interest. Pursuant to 66 Pa. C.S. § 529, the Commission may order a capable public utility to acquire a small water utility like JBW, if the Commission determines, after notice and hearing, that (1) JBW has violated statutory or regulatory standards which affect the safety, adequacy, efficiency or reasonableness of the service provided by it, (2) JBW has failed to comply within a reasonable period of time with any DEP\(^1\) or Commission order concerning the safety, adequacy, efficiency, or reasonableness of service, (3) JBW cannot reasonably be expected to furnish and maintain adequate, efficient, safe, and reasonable service and facilities in the future, (4) alternatives to acquisition are impractical or not economically feasible, (5) the acquiring utility is capable of acquiring and operating JBW in compliance with statutory and regulatory standards, and (6) that the rates charged by the acquiring public utility to its existing customers will not increase unreasonably because of the acquisition. 66 Pa. C.S. § 529(a). In making these determinations, the Commission is to consider the factors enumerated in 66 Pa. C.S. § 529(c).

Regarding 66 Pa. C.S. § 529(a)(4), that Section requires the Commission to explore alternatives to acquisition as outlined in 66 Pa. C.S. § 529(b). Finally, as the bureau with prosecutorial discretion under Section 529 of the Public Utility Code, the Bureau of

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\(^1\) 66 Pa. C.S. § 529(a)(2) references the Department of Environmental Resources, which was abolished by Act 18 of 1995. Its functions were transferred to DEP and the Department of Conservation and Natural Resources.
Investigation and Enforcement (BIE) shall be directed to participate in this matter as appropriate to address fitness determinations, alternatives to acquisition, and factors for consideration required under Sections 529(a), (b), and (c) as it deems appropriate and before a final determination on acquisition can be rendered.

In addition to the above, 66 Pa. C.S. § 529(g) provides that the Commission may take action to ensure that customers of a small water utility and the affected public will receive safe and adequate service during the pendency of a Section 529 proceeding. Section 529 provides as follows:

(g) Appointment of receiver.—The commission may, in its discretion, appoint a receiver to protect the interests of the customers of the small water or sewer utility. Any such appointment shall be by order of the commission, which order shall specify the duties and responsibilities of the receiver.

66 Pa. C.S. § 529(g). Given that Aqua has engaged in discussions regarding the transfer of the JBW system to Aqua and that Aqua presently serves customers in the Mount Cobb water system which borders the JBW service territory in Jefferson Township, Aqua is a suitable receiver for JBW.

This Order will appoint Aqua as the Receiver to manage and operate JBW during the pendency of the Section 529 proceeding ordered herein. The Commission appoints Aqua as the Receiver because of its expertise and experience in operating water utilities subject to regulation under the Public Utility Code, and because its familiarity and understanding of the circumstances will work to ensure safe, adequate, reliable, and reasonably continuous service to the public. Accordingly, the Commission has specified the duties and responsibilities of the Receiver in this Order and in Appendix A.
CONCLUSION

To protect the health, safety and welfare of the customers of The James Black Water Service Company, the Commission will initiate a proceeding pursuant to 66 Pa. C.S. § 529, including the appointment of a receiver under Section 529(g). These actions will provide for the orderly transition of operation and perhaps ownership of JBW to a competent water provider and will protect the customers of JBW and the affected public;

THEREFORE, IT IS ORDERED:

1. That an investigation shall be instituted into whether the Commission should order a capable public utility to acquire The James Black Water Service Company pursuant to 66 Pa. C.S. § 529 and as is consistent with this Order.

2. That the Bureau of Investigation and Enforcement is expected to participate in the investigation proceeding. Water utilities with an interest in this matter may petition to participate as appropriate.

3. That The James Black Water Service Company shall provide notice to its customers of the imposition of the receivership and the initiation of a Section 529 proceeding in the same manner as a general rate increase and shall inform its customers to direct future payments for water service to the Receiver as appointed by the Commission. The James Black Water Service Company shall file a verification statement pursuant to 52 Pa. Code § 1.36 with the Secretary’s Bureau at this docket indicating compliance with this requirement within ten (10) days of said completion.
4. That pursuant to 66 Pa. C.S. § 529(g), the Commission directs Aqua Pennsylvania, Inc. to act as the Receiver for the James Black Water Service Company beginning Wednesday, September 11, 2019, and to continue during the pendency of the Section 529 proceeding ordered below and in accordance with Appendix A to this Order.

5. Aqua Pennsylvania, Inc. will provide potable bottled or bulk water to the James Black Water Service Company customers as required.

6. The Receiver shall not assume any debt incurred by the James Black Water Service Company unless such assumption is approved through an Order of this Commission.

7. The Receiver shall not be liable for preexisting conditions, defects, or regulatory or statutory violations occasioned by the James Black Water Service Company.

8. That utilities serving the James Black Water Service Company are permitted and directed to initiate service to the facilities used to serve the James Black Water Service Company customers in the name of the Receiver as appointed by the Commission and consistent with this Order.

9. That the James Black Water Service Company shall preserve all hard copy or electronic records, files, bank statements, documents, papers, or any other materials related to its offering of utility water service, including records of all contracts, agreements, loans, payments, and other arrangements with affiliated companies 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.
10. That the James Black Water Service Company shall, no later than Wednesday, September 11, 2019, turn over copies or originals of all books, records, accounts, and any other information used and useful in the provision of utility water service to customers served by the James Black Water Service Company to the Receiver as 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.

11. That the James Black Water Service Company shall, no later than Wednesday, September 11, 2019, 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 utility water service to customers served by the James Black Water Service Company to the Receiver as 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.

12. That the James Black Water Service Company, including its owners and employees, are directed to provide full and unconditional cooperation with the orderly transition of operations, management, and oversight to the Receiver as 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 the James Black Water Service Company shall cease all billing and collections activity to its former customers as of Wednesday, September 11, 2019.

14. Effective immediately, the James Black Water Service Company shall not engage in any purchase, sale, payment, lease, loan, or exchange of any service, property, money, security, right, or thing under contract, whether oral or written, or under any arrangement with an affiliated interest, the terms of which have not been approved by the
Commission, subject to criminal and/or civil prosecution under Chapters 19, 21, and 33 of the Public Utility Code and any other applicable state or federal law.

15. That a copy of this Order be served on the James Black Water Service Company, Aqua Pennsylvania, Inc., Pennsylvania American Water Company, the Commission’s Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Office of Small Business Advocate, the Pennsylvania Department of Environmental Protection’s central office and northeast regional office, the Jefferson Township Board of Supervisors, the Lackawanna County Board of Commissioners, and all proximate municipalities and authorities providing water service in an around Jefferson Township, Lackawanna County, Pennsylvania.

16. That a copy of this Order be posted on the Commission’s website at www.puc.pa.gov.

Seth Mendelsohn, Executive Director

DATE: September 3, 2019
1. That the Receiver, in its capacity as receiver of the James Black Water Service Company (JBW), shall have the following duties and responsibilities:

   a. Operate the system in compliance with all State, Federal, and local laws and regulations, including such repairs as may be necessary for safe and adequate service.

   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 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, repairs, 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. Assume JBW’s billing and collection functions.

   j. Provide JBW’s customer service.
k. Have the authority to borrow money in the name of JBW necessary for the continued provision of adequate, efficient, safe and reasonable service to the customers of JBW.

l. Have the authority to file a petition for bankruptcy and participate in such proceedings on behalf of JBW.

m. Comply with JBW’s effective tariff for JBW customers.

n. Submit all necessary paperwork to regulatory agencies of the system on behalf of JBW.

o. Submit an initial status report to the Commission within 60 days of assuming operations 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 JBW, 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 JBW by a capable public utility.

r. Make reasonable efforts to establish the financial position of JBW at the time the Receiver assumed receivership.

s. Establish deferred accounting treatment for expenses incurred by JBW that are payable to the Receiver and to present those expenses for recovery as a part of a subsequent base rate proceeding if not recoverable from JBW.

t. Establish deferred accounting treatment for reasonable capital costs incurred by the Receiver to restore safe, adequate, and reasonably continuous service to JBW customers and to present those costs for recovery as a part of a subsequent base rate proceeding if not recoverable from JBW.

u. 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.
v. Be permitted to use existing Commission-approved affiliated entities to provide services to JBW, 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.

w. Satisfy the aforementioned duties and responsibilities either directly, through Commission-approved affiliates, or through competitive operation and maintenance agreements or any combination thereof.

x. Charge JBW reasonable rates for all services rendered to or for JBW on behalf of the receivership and to present those charges for recovery as a part of a subsequent base rate proceeding if not recoverable from JBW.

y. To the extent required, file a tariff incorporating the existing water rates of JBW within ten (10) days of assuming operations, to become effective on one day’s notice, and notify JBW customers of the filing of the tariff rates.

z. Provide tentative schedules, updates, and recommendations in status reports to the Commission for bringing JBW into compliance with the conditions of JBW’s Certificate of Public Convenience, as appropriate.

2. That the Receiver, in its own capacity, shall have the following duties and responsibilities:

a. Should JBW be unable to obtain necessary financing for ensuring the continued provision of adequate, efficient, safe and reasonable service to the customers of JBW, the Receiver, at its option, may either directly provide financing for JBW 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 for presentation in a subsequent rate proceeding and to present those expenses for recovery as a part of a subsequent base rate proceeding if not recoverable from JBW.

3. That 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 JBW.
4. Except as otherwise required by this Order, the Receiver shall not be subject to the conditions of the Certificate of Public Convenience issued April 5, 2018 at Docket No. A-2013-2395443 unless and until directed otherwise by Order of the Commission.
August 29, 2019

Paul Dishua
Bureau of Technical Utility Services
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

RE: James Black Water Service Company Request for Emergency Order

Dear Mr. Dishua:

I am writing you to request that the Pennsylvania Public Utility Commission issue an Emergency Order and establish a receivership for the James Black Water Service Company for a capable public utility to begin the management and day-to-day operations of the James Black Water Service Company.

If you have any question regarding this letter, please contact me at 570-840-1042.

Sincerely,

James L. Black
Pennsylvania Department of Environmental Protection
Bureau of Safe Drinking Water
Rachel Carson State Office Building, 10th Floor
400 Market Street
Harrisburg, PA 17101

Pennsylvania Department of Environmental Protection
Northeast Regional Office
2 Public Square
Wilkes-Barre, PA 18701-1915

Jefferson Township
Board of Supervisors
487 Cortez Road
Jefferson Township, PA 18436

Lackawanna County
Board of Commissioners
123 Wyoming Avenue
Scranton, PA 18503