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January 7, 2020

VIA HAND DELIVERY

Honorable Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Pa. Public Utility Commission v. Twin lakes Utilities Inc.
Docket No. R-2019-3010958
MAIN BRIEF**

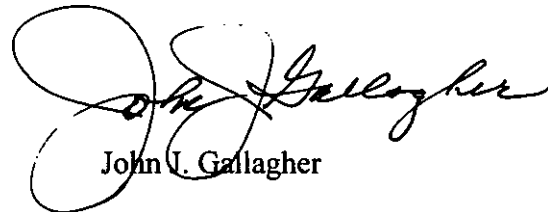
Dear Secretary Chiavetta:

On behalf of the Twin Lakes Utilities, Inc. ("Twin Lakes") please find enclosed a copy of Twin Lakes Main Brief in this matter.

If you have any questions concerning this filing, please contact me at your convenience.

Copies of this document has been served on the parties listed in the attached Certificate of Service.

Sincerely,



John J. Gallagher

cc: Certificate of Service
Mr. Jay Kooper, Esq.
Mr. A. Bruce O'Connor

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in the manner indicated below, and in accordance with the requirements of § 1.54 (relating to service by a party).

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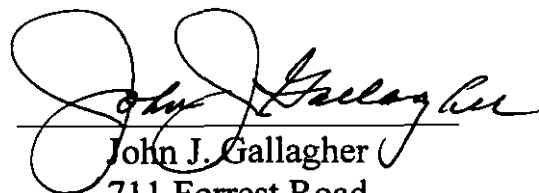
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Dated: January 7, 2020



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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Pennsylvania Public Utility Commission

vs.

Twin Lakes Utilities, Inc.

Docket No. R 2019-3010958
C-2019-3011845
C-2019-3011969
C-2019-3012087
C-2019-3012169
C-2019-3012221
C-2019-3012272
C-2019-3012332
C-2019-3012399
C-2019-3012487
C-2019-3012659
C-2019-3012667

**MAIN BRIEF
ON BEHALF OF
THE TWIN LAKES UTILITIES, INC.**

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I. INTRODUCTION

The Twin Lakes Utilities Inc. ("Twin Lakes" or the "Company") system serves 114 residential customers, and is comprised of one functional well (Well No. 2), one non-functional well (Well No. 1), a small treatment/pumping station including an atmospheric 20,000 gallon storage tank integral to the station, approximately 3.7 miles of water main of various diameter and approximately 120 active and inactive services combined. On July 19, 2019, Twin Lakes filed Supplement No. 8 to Tariff Water-Pa. P.U.C. No. 4 to become effective September 19, 2019. Supplement No. 8 proposed rates designed to produce an increase in jurisdictional annual operating revenues of \$211,793 or approximately 158.63% percent, above the overall level of pro forma revenue under existing jurisdictional rates. Accompanying Supplement No. 8, Twin Lakes filed the detailed supporting information required by the Commission's regulations regarding general rate increases under \$1 million ("Short Form Filing"). In this Short Form Filing, Twin Lakes presented data based upon its level of operations during the historic twelve month period ended March 31, 2019 and the pro forma future test period for the twelve months ended September 30, 2019, as adjusted for known and measurable changes.

On July 29, 2019, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance in this matter. On July 30, 2019 the Office of Consumer Advocate ("OCA") filed a formal Complaint against the proposed increase in rates. In addition to OCA, ten customers filed formal complaints against the proposed rate increase.

On August 29, 2019, the Commission entered an Order suspending the proposed rates contained in Supplement No. 8 and instituting an investigation into the justness and reasonableness of the rates, rules and regulations proposed in Supplement No. 8. Pursuant to Section 1308(d) of the Code, 66 Pa. C.S. § 1308(d), the Commission's Order suspended Supplement No. 40 by operation of law for a period of seven (7) months until April 20, 2020. The Commission assigned the matter to the Office of Administrative Law Judge for disposition and preparation of a Recommended Decision.

Eleven (11) complaints in total have been filed against the proposed rate increase, those being the Complaints of the Office of Consumer Advocate (C-2019-2197988); Irene Blanchard (C-2019-); Jeffrey Shatt (C-2019-3012087); Ciro Matrecano (C-2019-3012169); Neil and Kathleen Joyce (C- 2019-3012221); Lisa Celenza (C-2019-3012272); Tami De Francesco (C-2019-3012332); Virginia Pfeiffer (C-2019-3012399); Charles Dellert (C-2019-

3012487); James Gelardi (C- 2019-3012659); and Frank and Shuko Kashimba (C-2019-3012667).

On September 23, 2019, Administrative Law Judge Marta Guhl (“ALJ Guhl”) conducted a telephonic Prehearing Conference in this proceeding. At this Prehearing Conference, Twin Lakes, I&E and the OCA were represented by their respective counsel. Twin Lakes, I&E and OCA filed Prehearing Memoranda identifying potential issues and listing anticipated witnesses in the proceeding. During the Prehearing Conference, a procedural schedule was established for the proceeding. Subsequently, ALJ Guhl memorialized the actions taken at the Prehearing Conference through the issuance of an Interim Order.

On September 27, 2019, Twin Lakes submitted its Direct Testimony. On October 17, 2019, ALJ Guhl conducted two Public Input Hearings at the Shohola Township Municipal Building in Shohola, PA. The first took place at 1:00 pm and the second took place at 6:00 pm at the same location.

OCA submitted Direct Testimony on November 1, 2019 and I&E, submitted Direct Testimony on November 4,, 2019. Rebuttal Testimony was submitted by Twin Lakes, OCA, and I&E on November 20, 2019. Surrebuttal Testimony was submitted by I&E, and OCA, on December 10, 2019.

In addition to providing the supporting data required by the Commission's regulations, Twin Lakes responded to over 256 written interrogatories propounded by I&E and OCA, inclusive of multiple subparts contained in these interrogatories. Twin Lakes also conducted a site view of its system for the parties on October 17, 2019.

All of the Parties’ testimony and exhibits were stipulated to in their current form and entered into the record. A copy of the filed Stipulation and Motion to Admit into the Record which was filed with the Commission on December 18, 2019 is attached as Appendix A. On December 23, 2019, ALJ issued a Briefing Order confirming the cancellation of evidentiary hearings scheduled for this matter on December 19 and 20, 2019 and the submission dates of the main briefs and reply briefs on January 6, 2020 and January 15, 2020, respectively.

II. SUMMARY OF ARGUMENT

On July 19, 2019 Twin Lakes filed its Short Form Filing, which included Supplement No. 8 to Water Tariff- PA PUC No. 4, requesting an increase in total operating revenues of \$211,793 above the level of revenues for the test year ending March 31, 2019. Various

revisions were made to Twin Lakes' filing during the course of the proceeding, and schedules setting forth Twin Lakes' final revenue, expense and rate base claims are set forth in the Company's filed testimony exhibits. The requested rate levels would produce an overall Rate of Return of 9.0% on Twin Lakes' Rate Base utilizing an 11.0% return on the cost of common equity. These return levels are supported by Twin Lakes' witness using Twin Lakes' proposed capital structure of 50% debt and 50% common equity.

Along with Supplement No. 8, Twin Lakes' Short Form Filing contained detailed supporting information for the historic test year ending March 31, 2019 and the future test year ending September 30, 2019. Considerable additional information was provided by way of responses to interrogatories and data requests propounded by I&E, and the Office of Consumer Advocate. During the course of the proceeding, Twin Lakes presented three witnesses. In total, Twin Lakes presented three elements of Direct Testimony, two elements of Rebuttal Testimony, various supporting exhibits sponsored by these witnesses, and answered over 256 written interrogatories inclusive of subparts contained in those interrogatories.. In addition, I&E and OCA submitted testimony and exhibits.

Twin Lakes' primary objective, as it has been since its acquisition of the system in 2009, is to provide safe and reliable water service to its customers in Shohola Township. As with any regulated public utility, however, Twin Lakes requires an adequate level of operating revenues and access to debt and equity capital to achieve this objective. This rate increase request plays an integral and vital role in Twin Lakes' ongoing ability to ensure safe and reliable service is maintained. As explained in detail by Twin Lakes witness Robert Fullagar in his Rebuttal Testimony, the Twin Lakes system continues to experience a high level of unaccounted-for-water ("UFW") as a result of continually occurring leaks. See Twin Lakes Statement No. 2R, Rebuttal Testimony of Robert K. Fullagar ("Fullagar Rebuttal Testimony") at page 2, lines 1-6. These leaks are the result of a combination of factors including age of the system and the quality of the original pipe material and poor quality workmanship associated with leak repairs, all of which took place prior to the acquisition of the system by Twin Lakes. Id. Mr. Fullagar further states that the recommendations made by the OCA and I&E witnesses do nothing to help the current situation for Twin Lakes and its customers. Id. at page 2, lines 13-15. Most significantly, Mr. Fullagar states further that the adoption of the I&E and OCA recommendations places the operational viability of the system at significant risk of complete failure absent granting of rates that those witnesses have labelled unaffordable for the Twin Lake's customer base. Id. at page 2, lines 15-18.

The principal reason for Twin Lakes' rate increase request relates to the Company's significant investment in utility plant. From January 2016 through September 2019 Twin Lakes has invested more than \$476,008 in critically-needed utility plant. This represents over a 49.2% increase in Twin Lake's physical assets (property, plant and equipment net of retirements) in service since the Company's last rate case. Furthermore, Twin Lakes needs this increase to address ever-increasing expenses of operation, to pay debt service, and to earn a fair return on its prudent investment in capital assets. Due, in large part, to the significant investment in utility plant and increases in cost and expense items, Twin Lakes' overall rate of return under present rates is anticipated to be negative. This negative rate of return is obviously dramatically less than the level necessary to provide Twin Lakes with a reasonable opportunity to attract additional capital needed to finance future plant additions and improvements and replacements, for which there is also a critical need.

In addition, Twin Lakes included a rate structure proposal for an equal "across-the-board" percentage increase to be applied to the fixed and volumetric rates. As discussed in more detail below, this issue does not appear to be a major point of contention among the parties to this proceeding.

Notwithstanding Twin Lakes' critical need for rate relief, I&E, and OCA, have proposed large reductions to Twin Lakes requested rate increase. In support of their positions, these parties have recommended a number of adjustments to Twin Lakes' expenses, depreciation and rate of return claims. In addition, the I&E has also made adjustments to Twin Lake's proposed rate design. As discussed below, the adjustments advanced by the parties are without merit, inappropriately deny Twin Lakes a fair opportunity to attract the additional capital it needs to maintain safe, adequate and reliable service and will imperil Twin Lakes' ability to access this necessary additional capital in contravention of well-established public utility ratemaking precedent. For these reasons, the Commission should reject these proposals proffered by I&E and OCA.

III. RATE BASE

A. Introduction

Twin Lakes submitted Direct and Rebuttal Testimony and Exhibits by witness Michele L. Tilley to support its rate base claims. Twin Lakes Statement No. 2, Direct Testimony of Michele L. Tilley ("Tilley Direct Testimony"). I&E and OCA submitted direct and surrebuttal testimony and exhibits supporting their position on two specific rate base

addition claims of Twin Lakes. In her Direct Testimony Ms. Tilley stated that net of retirements, utility plant in service increased by \$476,008 or 49.2% to \$1,443,561 as of March 31, 2019. See Tilley Direct Testimony, Page 4, Lines 21-22. Ms. Tilley also explained in her Direct Testimony she had made a pro forma adjustment of \$37,500 to the utility plant in service balance as of March 31, 2019. See Tilley Direct Testimony at Page 5, Lines 10-12. This pro forma adjustment was made in the development of rate base in this case for the six month period from April 1, 2019 through September 30, 2019.

I&E and OCA do not object to the proposed Utility Plant in Service (“UPIS”) as outlined in the Short Form Filing and Ms. Tilley’s Direct Testimony nor do I&E or OCA oppose the pro forma adjustment to UPIS outlined by Ms. Tilley in her Direct Testimony. The primary areas of disagreement between Twin Lakes and I&E and OCA with respect to rate base are: (1) whether the Company should be allowed to include an acquisition adjustment to calculate its rate base, and if so the amount of the adjustment; and (2) whether depreciation and bad debt expense should be included in the Company’s cash working capital calculation.

B. Utility Plant in Service

Twin Lakes and I&E and OCA are in agreement with respect to Utility Plant in Service component of Rate Base, including the pro forma adjustment in the amount of \$1,481,061. See Twin Lakes Short Form Filing, Exhibit E.

C. Additions to Rate Base

Included in Ms. Tilley’s Direct Testimony as Exhibit MLT-5 is a detailed schedule of the claimed additions to rate base, which are described as Utility Plant Acquisition Adjustment (the “Acquisition Adjustment”) and Working Capital Allowance (1/8 O&M Methodology) (“Cash Working Capital”). Both I&E and OCA witnesses have opposed various aspects of the Company’s proposed additions to rate base which are discussed below.

1. Acquisition Adjustment

In surrebuttal testimony submitted in this proceeding, OCA proposed exclusion of the full claimed Acquisition Adjustment of \$54,406, arguing that this amount comprises an acquisition adjustment that should be excluded from Twin Lakes’ rate base. This position is unreasonable. As set forth in the Rebuttal Testimony of Twin Lakes witness Michele Tilley, the OCA’s position rests entirely on the point that the Commission has never approved such

an acquisition adjustment in any of the Company's previous filings. See Twin Lakes Statement No. 2R, Rebuttal Testimony of Michele L. Tilley ("Tilley Rebuttal Testimony") at p. 2. As Ms. Tilley further explains, this lack of Commission approval was a direct result of parties in previous Twin Lakes rate cases reaching a settlement without the Commission determining the ratemaking treatment of the Acquisition Adjustment claimed by Twin Lakes in either of the prior base rate matters. Id. at page 3, lines 7-11.

In support of OCA's position that the Acquisition Adjustment be completely excluded as an addition to Twin Lakes' rate base, OCA witness Stacy Sherwood mischaracterizes both the Pennsylvania statute and Commission regulation governing the ratemaking treatment of acquisition adjustments. Specifically, in her Direct Testimony Ms. Sherwood incorrectly states that an acquisition adjustment must be determined and receive Commission approval in the first rate case following an acquisition or the opportunity for this adjustment is lost forever. See OCA Statement No. 1, Direct Testimony of Stacy L. Sherwood, page 4, lines 5-11. This is a clear mischaracterization of 66 Pa. C.S. § 1327 and 52 Pa. Code § 69.721. Nowhere in this statute or this regulation exists any prohibition on the Commission from considering or approving an acquisition adjustment request after a first rate case following acquisition of a utility system. 52 Pa. Code §69.721 specifically states: "After approval of an acquisition...an acquiring utility may request the inclusion of the value of the used and useful assets of the acquired system in its rate base. A request will be considered during the acquiring utility's next filed rate case proceeding." Id. *Nowhere* does this regulation prohibit a utility seeking an acquisition adjustment in a future rate case or restrict the Commission from considering or approving such an adjustment in future rate cases beyond the first post-acquisition rate case.

By agreeing to enter into a settlement in prior rate cases that did not require the Commission to make a determination on the treatment of the acquisition adjustment in those cases, Twin Lakes did not by statute or regulation forswear from seeking an acquisition adjustment for all time to come. Ms. Sherwood's attempt to read such an act into the governing statute and regulation not only is inconsistent with the plain language contained therein but would place ratemaking principles and concepts of basic, fairness and fundamental good faith and fair dealing on its head.

I&E witness Esysan Sakaya recommends reduction of the Company's claimed Acquisition Adjustment by the accumulated amortization through September 30, 2019. Mr.

Sakaya's justification for this reduction is that 10 years have passed since Twin Lakes' acquisition of the system and therefore any acquisition adjustment should be reduced by accumulated amortizations over a ten-year period. Mr. Sakaya acknowledges the Company has never amortized the claimed Acquisition Adjustment. In making this proposed adjustment Mr. Sakaya assumes that the inclusion of the Acquisition Adjustment in Twin Lake's rate base was approved 10 years ago and that the Company has been amortizing an adjustment in rates for the accumulated amortization. If both assumptions are correct, which they are not, Mr. Sakaya has failed to propose a corresponding adjustment to operations and maintenance ("O&M") expense to account for the annual amortization of the Acquisition Adjustment. Mr. Sakaya's Acquisition Adjustment, as proposed, therefore does not adhere to the "matching principle." In addition, as explained by Ms. Tilley in her Rebuttal Testimony on behalf of Twin Lakes, Mr. Sakaya's recommendation constitutes impermissible retroactive ratemaking as Mr. Sakaya proposes to restate the Company's unamortized acquisition adjustment balance as if Twin Lakes had used ten years of amortization, which the Company has not. See Tilley Rebuttal Testimony, page 3, lines 15-25.

2. Cash Working Capital

In Twin Lakes' witness Michele Tilley's Direct Testimony, the Company set forth its claimed adjustment for Cash Working Capital methodology in Exhibit MLT-5. Ms. Tilley also provided additional insight and support for the Company Cash Working Capital methodology in her Rebuttal Testimony beginning at Page 7, Line 9 and continuing onto Page 9, Line 8. Both OCA and I&E oppose these recommendations as reflected in the Direct Testimonies of OCA witness Stacey Sherwood and I&W witness John Zalesky. While Ms. Sherwood fails to provide any justification for these proposed exclusions, Mr. Zalesky testifies that depreciation and bad debt expense are non-cash items and should therefore be excluded from the calculation of cash working capital. As set forth in her Rebuttal Testimony, however, Ms. Tilley explains that inclusion of both depreciation and bad debt in the calculation of cash working capital is a long-held and widely accepted basic principle of public utility accounting as set forth in a highly regarded text for understanding public utility ratemaking concepts and applications. See Tilley Rebuttal Testimony at page 7, line 9 – page 9, line 8. OCA's and I&E's witnesses fail to provide sufficient justification for proposals that radically depart from these basic public utility accounting concepts.

D. Deductions from Rate Base

The proposed deductions from rate base by Twin Lakes, namely accumulated depreciation and deferred income taxes were unopposed by I&E and OCA.

E. Rate Base Conclusion

The record evidence in this proceeding supports the adoption of Twin Lakes' proposed Utility Plant in Service and Additions to Rate Base as set forth in its Short Form Filing and the Direct and Rebuttal testimonies of Twin Lakes' witness. By contrast, OCA and I&E have failed to produce any credible evidence to support any deductions from Twin Lakes' proposed rate base, most notably the OCA's proposed exclusion and I&E's proposed reduction of an acquisition adjustment that Twin Lakes is entitled to recover.

Accordingly, Twin Lakes respectfully requests that the Commission adopt the Utility Plant in Service and Rate Base recommendations as submitted by its witness Michele Tilley.

IV. REVENUES

Twin Lakes made no revenue adjustment claim to its Test Year revenues. None of the parties offered any objections to claimed Test Year revenues. Accordingly, Twin Lakes respectfully requests that the Commission adopt the revenue recommendation of its witness Michele L. Tilley for a proposed revenue requirement of \$345,307 which is \$211,793 or 158.63% above present revenues.

V. EXPENSES

A. Introduction

In support of its recommendations on expenses, Twin Lakes submitted Direct Testimony and Rebuttal Testimony along with exhibits sponsored by Michele Tilley. In addition, the Company submitted financial data in its Short Form Filing with the Commission on July 19, 2019 as part of a Small Water Utility rate increase filing requirement.

B. Rate Case Expense Normalization

The Commission should adopt Twin Lakes' recommendation and reject I&E and OCA's recommendations. Twin Lakes maintains its intention to file its next water rate case in two years, if not sooner, and the normalization period for the rate case expense should remain at two (2) years so that the cost of this case will be recovered before the next rate increase. Twin Lakes' two-year filing time frame is not speculative as indicated by I&E and

OCA. Twin Lake's has three planned critically-needed capital projects totaling \$4,800,000 over the next five years in addition to the increase in normal operating costs. These projects are outlined in the Twin Lakes 5-year Master Plan provided by Twin Lakes witness Robert Fullagar in his Direct Testimony. See Twin Lakes Statement No. 3, Direct Testimony of Robert K. Fullagar ("Fullagar Direct Testimony").

Twin Lakes has adequately presented, in this case, a five-year time line for future infrastructure improvements that will cause it to file for another rate increase well ahead of a five-year timeframe. The Commission should therefore adopt Twin Lake's recommendation for normalization of rate case expense.

The record evidence in this proceeding supports the adoption of Twin Lakes' Expense Adjustment recommendations as I&E and OCA have failed to produce any credible evidence to suggest that Ms. Tilley's recommendation of a two 2-year normalization period should not be adopted.

Accordingly, Twin Lakes respectfully requests that the Commission adopt the Expense Adjustment Recommendations as revised by its witness Michele Tilley.

VI. RATE OF RETURN

The defining cases of *Federal Power Commission v. Hope Natural Gas Co. (Hope)* 320 U.S. 591 (1944) and *Bluefield Waterworks Improvement Co. v. Public Service Commission (Bluefield)* 262 U.S. 679 (1923) mandate that public utility commissions must authorize a sufficient, or fair, rate of return to public utilities to ensure adequate revenues to cover operating expenses, debt service expenses and common and preferred (if necessary) dividends, as well as to maintain the financial integrity of the utility and enable the public utility to attract needed debt and equity capital in the marketplace on reasonable terms, in competition with firms of similar risk. The U.S. Supreme Court stated in *Hope*:

From the investor or City's point of view, it is important that there be enough revenues not only for operating expenses but also for the capital costs of the business. These include service on the debt and dividends on the stock. By that standard, the return to the equity owner should be commensurate with returns on investment in other enterprises having corresponding risks. That return, moreover, should be sufficient to ensure confidence in the financial integrity of the enterprise, so as to maintain credit and to attract capital.

The Court further stated the following in *Bluefield*:

Rates which are not sufficient to yield a reasonable return on the value of the property used at the time it is being used to render the service are unjust, unreasonable and confiscatory, and their enforcement deprives the public utility company of its property in violation of the Fourteenth Amendment. This is so well settled by numerous decisions of this Court that citation of the cases is scarcely necessary.

Courts in Pennsylvania have adopted or followed the aforesaid U.S. Supreme Court legal standards regarding rate of return, noting these cases *require the Commission to balance utility company and ratepayer interests in setting rates*. The determination of a fair rate of return thus requires the review of many factors, including: (1) the earnings which are necessary to assure confidence in the financial integrity of the Company and to maintain its credit standing; (2) the need to pay dividends and interest; and (3) the amount of the investment, the size and nature of the utility, its business and financial risks, and the circumstances attending its origin, development and operation. *Pa. P. U. C. v. Pennsylvania Gas and Water Co. - Water Division*, 19 Pa. Cmwlth. 214, 233, 341 A.2d 239 (1975). Moreover, the Commission's findings must be based upon substantial and competent evidence on the record before it, not upon speculation or hypothesis. *Ohio Bell Tele. Co. v. Pub. Util Comm'n of Ohio*, 301 U.S. 292 (1937); *United States Steel Corp. v. Pa. P.U.C.*, 37 Pa. Cmwlth. 195, 390 A.2d 849 (1978); *Octorara Water Co. v. Pa. P.U.C.*, 38 Pa. Cmwlth. 83, 391 A.2d 1129 (1978).

OCA witness Aaron Rothschild presented testimony recommending a cost of equity of 8.78%, a capital structure containing 50.00% common equity and 50.00% debt and an overall rate of return of 7.89%. See OCA Statement No. 2, Direct Testimony of Aaron Rothschild.

Twin Lakes Witness Michele L. Tilley recommends that the Commission authorize Twin Lakes the opportunity to earn an overall rate of return of 9.0%, based upon the proposed capital structure estimated at March 31, 2019, consisting of 50.00% debt and 50.00% equity at a debt cost rate of 7.0% and 11.0% for return on equity, respectively, before being adjusted for taxes. See Twin Lakes Statement No. 2, Tilley Direct Testimony, page 6, line 4 – page 7, line 3. Ms. Tilley has stated that the 7.0% debt cost represents the stated interest on a \$1,000,000 Promissory Note held by Middlesex Water Company, the sole shareholder of Twin Lakes, which is payable on demand at the option of the holder. Id. The 7.0% rate is a below-market rate concession by Middlesex Water Company to Twin Lakes given the high level risk of non-payment by Twin Lakes. Id. A repayment guarantee from

Middlesex Water Company would be required to establish a more favorable credit arrangement with an independent financial institution. Id. Middlesex Water Company is unwilling to provide this guarantee. The recommendation is summarized below:

	Capital Structure		Weighted
	Ratios	Cost Rate	Return
Long-Term Debt	50.00%	7%	3.50%
Common Equity	<u>50.00%</u>	<u>11%</u>	<u>5.50%</u>
Total	<u>100.00%</u>	<u> </u>	<u>9.00%</u>

It should be noted that OCA Witness Rothschild agrees with Twin Lakes' recommendation of 50% debt and a 50% equity capital structure. It should be further noted, as Ms. Tilley testified, that Twin Lakes did not engage an expert to assist with the development of a proposed fair Rate of Return on Equity ("ROE") due to the high cost of such expert services and their impact on the total cost of this proceeding, which would thereby add additional cost to Twin Lakes' customers. In addition, Ms. Tilley noted that given the extremely small size of Twin Lakes, coupled with the most recently published authorized ROE ranging between 8.02-10.58% for a Pennsylvania water utility, a recommendation of a 11.00% ROE is a fair and reasonable expected return. See Tilley Direct Testimony, page 6, lines 1-3.

It is clear that Ms. Tilley's recommendations meet the legal standards of *Hope* and *Bluefield* and will help the Twin Lakes to run efficiently and continue to provide safe and reliable water service. In addition, it is highly important that Twin Lakes be awarded a fair rate of return on its total pro forma rate base of \$1,307,710 including its investment in utility plant of \$513,508 as of September 30,, 2019. As described in Mr. Fullagar's Direct Testimony, Twin Lakes has a Five-Year Master Plan which includes \$4.8 million of capital improvements that will need to take place in the near term. Twin Lakes needs to make these critically-needed improvements to upgrade the water system all to help ensure safe and reliable service to the Company's customers. Twin Lakes needs to attract capital to make these vital improvements. OCA witness Aaron Rothschild acknowledges that Twin Lakes has difficulty accessing capital with any financial institution as a stand-alone entity See Rothschild Direct Testimony at page 9, lines 14-16. In order to be able to attract capital for these projects, Twin Lakes' rate of return should reflect the use of a capital structure that results in its debt and equity ratios being comparable to those of similar water utilities. Furthermore, Twin Lakes should be awarded an appropriate return on equity to attract equity

capital.

VII. CAPITAL STRUCTURE

A. Introduction

Twin Lakes recommends using a capital structure of 50% long term debt and 50% common equity in this proceeding, which I&E and OCA witnesses agree is acceptable.

The proposed pro forma capital structure at September 30, 2019 consisting of 50% long term debt and 50% equity, represents the current commonly-accepted water industry practice.

B. Cost of Debt

Twin Lakes has proposed to use Twin Lakes embedded long term debt cost rate of 7.0% at March 31, 2019. This cost of debt was accepted by I&E and OCA, and should be adopted.

C. Cost of Equity

Twin Lakes Witness Michele Tilley proposed a common equity cost rate of 11.0% based upon the market data of a comparison group of six water companies. The comparison group is similar in risk to Twin Lakes. After adjusting the common equity cost rate of 11.0% for income taxes, the common equity cost rate results in an overall rate of return range of 8.02-10.58%. The 9.0% overall rate of return reflects Twin Lakes' proposed common equity ratio of 50.00% as of September 30, 2019. Ms. Tilley's recommended common equity cost rate should be adopted by the Commission in combination with Twin Lakes' proposed overall capital structure.

I&E, and OCA both recommended a cost of equity for Twin Lakes of 0%. Each party's recommended cost of equity for Twin Lakes is entirely unreasonable and inappropriate given the physical condition of the system and the continued extraordinary efforts by Twin Lakes to work toward ensuring safe and reliable service for its customers. In addition, these recommendations fly in the face of long-established public utilities ratemaking precedent as ensconced in *Hope* and *Bluefield* and their progeny. These recommendations by I&E and OCA should be unequivocally rejected by the Commission.

I&E, and OCA's recommendations represent a significant departure from recent

decisions of this Commission. In addition, these proposed returns on equity by I&E and OCA will have a significant negative impact on Twin Lakes and its customers. These returns on common equity would place Twin Lakes at a significant disadvantage in the ability to raise capital thereby making it extraordinarily difficult, if not impossible, to finance critically-needed improvements to maintain safe and reliable service. Also, by recommending a proposal that is not consistent with recent Commission decisions, OCA's and I&E's positions cause regulatory uncertainty rendering it impossible for a water utility to plan for future investments in infrastructure.

It is also possible that the recommendations by I&E, and OCA will cause Twin Lakes and other water utilities in Pennsylvania to experience a credit downgrade because credit rating agencies consider, as a significant factor in determining creditworthiness, the political and regulatory environment in which a utility operates. Twin Lake's ability to access capital should be strictly based on its assets, earnings and cash flow. An unreasonably low authorized ROE will jeopardize Twin Lakes' ability to attract capital and dramatically impair the Company's ability to obtain a reasonable credit rating. The level of an authorized return on equity provides an indication or lack thereof of regulatory support for the utilities that a Commission regulates. To retain existing capital and to attract new capital, the authorized rate of return on common equity must be high enough to satisfy investors' requirements at all times; including periods of economic uncertainty.

Financial capital can flow from one company to another company, from one region to another region. A rate decision that departs from prior rulings, particularly where there is no rational support for the departure, injects regulatory uncertainty into the marketplace. A company can lose its investors as a result of a situation when a commission's decision breaks from past rulings. Moreover, this lack of regulatory clarity may also result in seemingly unrelated companies to lose their investors as well. The rate decision in this proceeding will impact all utility companies that are regulated in Pennsylvania. Similar occurrences also happen in local economies as a result of controversial decisions; financial capital flees cities, counties, states and countries just to avoid taxes. A similar occurrence may result if I&E and, OCA's unreasonably low return on equity is authorized in these proceedings. See Twin Lakes Statement No. 1R, Rebuttal Testimony of Michele L. Tilley ("Tilley Rebuttal Testimony"), page 10, lines 21-28 and page 11, lines 11-24.

Accordingly, Twin Lakes respectfully requests that the Commission adopt the Rate of Return recommendation of its witness, Michele L. Tilley and reject the regressive cost of equity proposals proffered by OCA and I&E.

VIII. OTHER ISSUES

A. Quality of Service

The parties have stipulated to the admission into the record of a Twin Lakes report regarding finding of an elevated lead sample level at one customer location. See Appendix B, infra. Testing was conducted on Well No. 1 and entry point to the system with no finding of lead exceedance levels. Twin Lakes has agreed with the parties to a 12-point program in which the Company will conduct various tests annually and report on its findings.

The fractured relationship between the I&E and OCA analyses and the operational reality of Twin Lakes is best shown in I&E's and OCA's dismissal of Company claims for purchased power and chemical costs. OCA Witness Sherwood states that she does not agree that ratepayers are responsible for the entirety of those costs due to the high levels of UFW. Based upon her claim that the UFW is 60.2% above the Commission's regulations, Ms. Sherwood concludes that ratepayers should not pay for those costs. Twin Lakes witness Robert Fullagar has stated that adopting I&E and OCA recommendations increases operational risk to the detriment of Twin Lakes customer base. The UFW rate continues to increase in spite of the Company's replacement and repair work. This is a clear indication that the entire system needs to be replaced. See Fullagar Rebuttal Testimony, p. 3, line 1 – page 4, line 6. Further, Mr. Fullagar states that the entire system is in need of replacement given that the system is incapable of being pressurized to an acceptable level without an extraordinary amount of leakage. Id. Reliable service cannot be maintained without adequate amounts of purchased power and chemicals. Mr. Fullagar's testimony details the causes of the high UFW and the various proactive steps taken by the Company to address this issue, all while working diligently to ensure the Company's customers continue to receive service. The quality of service issues raised by the customers who attended the Public Input Hearings were primarily focused on the Company's dissemination of boil water advisories, primarily in the summers of 2018 and 2019. The Company has shown above the cause and remediation it has taken to date for the boil advisories. All boil water advisories were issued out of an abundance of caution based on the Company's conservative internal policy to protect public health to the extent possible.

B. Affordability of Rates

This issue has been raised primarily by the OCA witness Sherwood when she stated

that the proposed rates may be unaffordable. Ms. Sherwood cites U.S. Census Bureau data as a basis for such an erroneous conclusion. Based on her submitted qualifications, it is not clear that Ms. Sherwood has the qualifications to testify on such matters as poverty statistics, earning levels and demographics as they pertain to affordability of a commodity. Ms. Sherwood is neither a statistician nor an economist and has no experience dealing with poverty statistics. See OCA Statement No. 1, Direct Testimony of Stacy L. Sherwood, Appendix A. Ms. Sherwood's testimony is even more startling given the paucity of such testimony from the Public Input Hearings witnesses, with only one witness (Ms. Helen Miller) testifying that any further rate increases would be a financial hardship. Ms. Sherwood, as advised by her Counsel, states that her proposed increase of \$153,494 be reduced to \$98,707 based upon a yet-to-be explained legal opinion from OCA's counsel concerning adequacy of service. See id., at page 12, lines 9-11 and page 15, lines 4-9. This claim has nothing to do with affordability of rates.

As described by Twin Lakes witness A. Bruce O'Connor in his Direct Testimony, see Twin Lakes Statement No. 1, Direct Testimony of A. Bruce O'Connor ("O'Connor Direct Testimony"), the circumstances of this rate proceeding highlight the classic small water company challenges faced by many similar-sized utilities across the nation. With significant capital and operating costs required to sustain service for a relatively small customer base, the issue of affordability takes on increased prominence. "Affordability" is a subjective word which the Company acknowledges is a social concern. The regulatory compact, however, requires that the true cost of service be borne by the customers receiving the service, regardless of the size of the customer base. See O'Connor Direct Testimony at page 6, lines 6-17. The concept of affordability is not contemplated in the regulatory compact. The parent company of Twin Lakes, Middlesex Water Company, has gone above and beyond what should be reasonably expected of any investor in terms of its ongoing commitment to fund the capital and operating needs of a utility that has no ability to remain viable on its own. Without an acceptable outcome from this proceeding, Middlesex Water Company will no longer be able to make a financial commitment to meeting the Company's capital and operating needs.

IX. RATE STRUCTURE AND RATE DESIGN

Traditional ratemaking has involved three discrete, logical steps.

Step 1. Identify costs and the utility's revenue requirements;

Step 2. Allocate costs to types of water usage; and

Step 3. Design rates for each type of water usage to recover costs from customers.

Rate design is the process by which revenues allowed as a result of a rate proceeding are allocated to the various customer classes in a just, reasonable and nondiscriminatory manner based on the costs incurred by the utility to serve the class. Public utility rates should enable the utility to recover its cost of providing service and should allocate this cost among the utility's customers. *Pa. PUC v. West Penn Power Company*, 73 Pa. P.U.C. 454, 119 PUR4th 110 (1990). In her Direct Testimony on behalf of Twin Lakes, Ms. Tilley recommended that the Company's proposed rate increase should be applied to existing rates as an across-the-board percentage increase to be applied to the fixed and volumetric rates. See Tilley Direct Testimony at page 7, lines 13-15. In his Direct Testimony, I&E witness Eryan Sakaya recommends that in the event the Commission grants Twin Lakes less than its full rate request that each proposed rate be reduced proportionally so that each rate receives the same percentage increase. See Sakaya Direct Testimony, pages 24-26. Twin Lakes does not object to Mr. Sakaya's proportional scale-back proposal.

X. MISCELLANEOUS: PUBLIC INPUT SESSIONS

On October 17, 2019, two Public Input Hearings were held in this case. The first public input session took place at 1:00 PM (4 witnesses) in Shohola Township Municipal Building, and the second public input session took place at the same location at 6:00 PM (9 witnesses). A total of only thirteen people testified in both sessions combined. At the first session, only four (4) people testified and all testified under oath. All of the witnesses were ratepayers. In the evening session only nine (9) people testified and all testified under oath. All nine people were ratepayers. Twin Lakes' counsel, along with representatives from the Company, was present and available at both Public Input Hearings.

The customers who testified all expressed similar concerns. Most of the ratepayers who testified were retired and on fixed incomes so they were concerned about the amount of the increase. Some of the people who testified also expressed concerns about frequent boil water advisories. This issue was addressed in the Rebuttal Testimony of Twin Lakes witness Robert Fullagar. In his Rebuttal Testimony, Mr. Fullagar states that the Twin Lakes system has been, and, continues to be experiencing a high level of UFW loss due to continually-occurring leaks. *Id.* at page 2. The leaks are the result of a combination of factors including age and quality of the original pipe material, and poor quality workmanship from prior to Twin Lakes taking ownership of the system. The frequent boil-water advisories that occurred

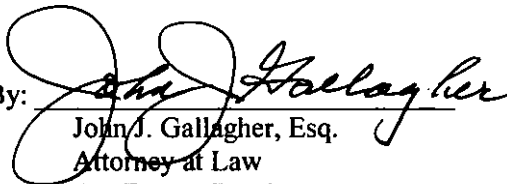
primarily in the summers of 2018 and 2019 were considered necessary by the Company due to system repairs needed to be made during those periods. The Company's internal boil water advisory policy requires that each customer is directly sent a boil-water advisory at the time of the occurrence. While this is not a regulation, it is the Company's internal policy to issue such advisories in an abundance of caution for the protection of its customers.

The participation level and comments at the Public Input Sessions are further proof that Twin Lakes is providing its customers with safe and reliable service and that the requested increase is needed in order for the Company to continue to provide appropriate service to all of its customers.

XI. CONCLUSION

For all of the foregoing reasons, Twin Lakes proposed rate increase, as adjusted via its rebuttal testimony, in the amount of \$345,307 which is \$211,793 higher than present revenues should be approved, and the Commission's investigation should be closed.

Respectfully submitted,

By: 

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Counsel for Twin Lakes Utilities Inc.

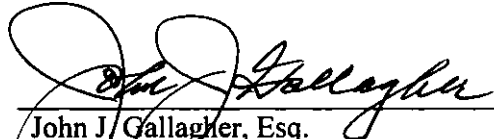
Dated: January 7, 2019

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in the manner indicated below, and in accordance with the requirements of § 1.54 (relating to service by a party).

VIA FIRST CLASS MAIL

Dated:



John J. Gallagher, Esq.
Attorney at Law
711 Forrest Road
Harrisburg, PA 17112
Counsel for Twin Lakes Utilities, Inc.

APPENDIX A

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission
v
Twin Lakes Water Utilities, Inc.

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DOCKET NOS. R-2019-3010958
C-2019-3011845 et al

RECEIVED

JAN 07 2019

**MOTION FOR ADMISSION
OF TESTIMONY AND EXHIBITS**

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

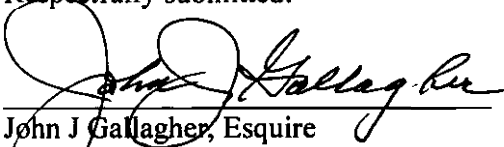
TO THE HONORABLE MARTA GUHL ADMINISTRATIVE LAW JUDGE:

The undersigned move for admission into the evidentiary record of the respective testimony identified in the Stipulation for Admission of Testimony and Exhibits ("Stipulation") attached hereto as Appendix A. This Motion and the Stipulation are being submitted in conjunction with the joint stipulation made by Twin Lakes Water Utilities Inc. ("Twin Lakes"), the Bureau of Investigation and Enforcement ("I&E") and the Office of Consumer Advocate ("OCA") which is attached hereto.

Pursuant to the Stipulation, all active parties to this proceeding have stipulated to the authenticity of the testimony and exhibits listed therein "Appendix A" and have waived cross-examination of the witnesses sponsoring their respective testimony. In addition, the parties have also executed a stipulation related to lead, which is attached hereto as "Appendix B".

Accordingly, the parties request that the Administrative Law Judge grant this Motion and admit into the evidentiary record the respective testimony listed in the attached Stipulation. In addition, the parties' request that the information contained in Appendix B (the lead stipulation) be entered into the record of the proceeding. Lastly the undersigned request that the hearings scheduled for this matter for December 19, and 20 2019 be cancelled.

Respectfully submitted:



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Dated: December 17, 2019

*Counsel for Twin Lakes Water Utilities,
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JAN 07 2019

**STIPULATION FOR ADMISSION
OF TESTIMONY AND EXHIBITS** PA PUBLIC UTILITY COMMISSION
PARTIES TESTIMONY AND EXHIBITS SECRETARY'S BUREAU

Twin Lakes Testimony and Exhibits

a. Direct

- 1. Twin Lakes Water Utilities Inc. Statement No.1- Direct Testimony of ABOConnor- ABOC-1**
- 2. Twin Lakes Water Utilities Inc. Statement No. 2- Direct Testimony of Michele D.Tilley- MDT-2**
- 3. Twin Lakes Water Utilities Inc. Statement No. 3-Direct Testimony of Robert K. Fullagar- RKF-2**

b. Rebuttal

- 1. Twin Lakes Water Utilities Inc. Statement No.2-R Rebuttal Testimony of Michele D. Tilley-MDT-2**
- 2. Twin Lakes Water Utilities Inc. Statement No. 2-R Rebuttal Testimony of Robert K. Fullagar-RKF-2R**

Bureau of Investigation and Enforcement Testimony and Exhibits:

a. Direct

- 1. I&E Statement No. 1 – Direct Testimony of John Zalesky and I&E Exhibit No. 1**
- 2. I&E Statement No. 2 – Direct Testimony of Christopher M. Henkel, and I&E Exhibit No. 2**
- 3. I&E Statement No. 3 – Direct Testimony of Esyan A. Sakaya, and Exhibit No. 3**

b. Surrebuttal

- 1. I&E Statement No. 1-SR – Surrebuttal Testimony of John Zalesky**
- 2. I&E Statement No. 2-SR – Surrebuttal Testimony of Christopher M. Henkel, and I&E Exhibit No. 2-SR**
- 3. I&E Statement No. 3-SR – Surrebuttal Testimony of Esyan A. Sakaya**

Office of Consumer Advocate Testimony and Exhibits:

a. Direct

- 1. OCA Statement No. 1 – Direct Testimony and Exhibits of Stacy L. Sherwood**
- 2. OCA Statement No. 2 – Direct Testimony and Exhibits of Aaron L. Rothschild**
- 3. OCA Statement No. 3 – Direct Testimony of Terry L. Fought; Exhibit TLF-1, Exhibit TLF-2, Exhibit TLF-3, and Exhibit TLF-4**

b. Surrebuttal

- 1. OCA Statement No. 1SR – Surrebuttal Testimony and Exhibits of Stacy L. Sherwood**
- 2. OCA Statement No. 3SR – Surrebuttal Testimony of Terry L. Fought; Exhibit TLF-5**

APPENDIX B

RECEIVED

**Pennsylvania Public Utility Commission
V.
Twin Lakes Utilities, Inc.
Docket No. R-2019-3010958
2019 Base Rate Case Proceeding**

JAN 07 2019

PA PUBLIC UTILITY COMMISSION
SECRETARY'S BUREAU

STIPULATION OF THE PARTIES

Prior to the August 18, 2019 sampling event, Twin Lakes Utilities, Inc. (TLUI) was in compliance with the Lead and Copper Rule.

As a result of being in compliance with the Lead and Copper Rule, TLUI qualified for reduced monitoring in accordance with the regulations. Reduced monitoring allowed the water system to obtain fewer samples and at a reduced frequency. For TLUI the reduced monitoring required the system to obtain 5 samples once every three years.

Prior to the August 18, 2019 sampling event the previous lead and copper testing was conducted on July 25, 2016.

The 2016 lead results and sample locations (customer premises) are as follows:

<u>Lead (ppb)</u>	<u>Location</u>
<5	118 Sagamore Road
<5	118 Cheyenne Road
<5	109 Shawnee Road
<5	115 Beach Road
5.7	128 Ottawa Trail

In accordance with the reduced monitoring protocol, TLUI initiated lead and copper sampling on August 18, 2019. At this time only 3 of the 5 customer sample locations needed could be obtained as 128 Ottawa Trail was vacant/abandoned and 118 Cheyenne had installed a private well and was no longer a TLUI customer.

While TLUI and Prosser worked on acquiring two replacement sample locations, the results of the 3 samples that had been collected were obtained on August 29, 2019. These analysis revealed result in excess of the action level for lead at 115 Beach Road. The lead action level exceedance was verbally communicated to TLUI by Prosser and in response TLUI notified our Pennsylvania Department of Environmental Protection (PADEP) Sanitarian, Mary-Anne Seese, on August 29, 2019. The date that the official analytical report was received by TLUI for the first 3 sample locations was September 3, 2019.

Upon notification on August 29, 2019, the PADEP instructed TLUI to obtain the 2 replacement samples and 5 additional samples.

These samples were obtained on September 15, 2019 and the results were verbally communicated to TLUI by Prosser and to the PADEP by TLUI on September 19, 2019. The date that the official analytical report was received by TLUI for the second round of sampling was October 3, 2019.

The results of the samples obtained in the first and second rounds of the testing conducted in 2019 are as follows:

<u>Sample Site</u>	<u>Lead Result (ppb)</u>	<u>Sample Date</u>
115 Beach Rd.	33	8/18/19
109 Shawnee Rd.	<5	8/18/19
118 Sagamore Rd.	<5	8/18/19
172 Twin Lakes Dr.	<5	9/15/19
133 Twin Lakes Dr.	50	9/15/19
116 Josephine Ln.	5	9/15/19
100 Cheyenne Rd.	<5	9/15/19
106 Sagamore Rd.	<5	9/15/19
189 Twin Lakes Dr.	<5	9/15/19
103 Susan Ln.	<5	9/15/19

As of December 5, 2019 no fine or penalty has been assessed the PADEP.

In response to the elevated lead action level TLUI has taken the following actions:

- Notified the PADEP.
- Obtained additional lead and copper samples.
- Notified the customer of record at the address of the sampling locations of their specific sample results.
- Issued the mandatory public notification to all customers of the system.
- Obtained the first round of water quality parameters (WQP) samples (pH, alkalinity, calcium, conductivity and temperature) on November 15, 2019.
- Sampled for lead in the raw water and at the entry point to the system on November 15, 2019.

The results of the first round of WQP sampling was received by TLUI from Prosser on December 5, 2019 and are as follows:

<u>Parameter</u>	<u>Raw Water</u>	<u>Entry Point</u>	<u>System</u>
pH (field test)	5.9	6.11	6.15
Temp. (C)	10.3	11.0	10.4
Hardness mg/l	28.0	30.0	28.0
Alkalinity mg/l	47.0	51.5	51.0
Conductivity umhos/cm ²	112	126	125

The results for lead in the raw water and at the entry point on November was <5 ppb for both samples.

Going forward TLUI will be taking the following actions:

- Sample the raw, well-water for lead.
- No longer eligible for reduced monitoring, resume lead and copper monitoring at 10 sample locations twice per year.

- Continue WQP monitoring (pH, alkalinity, calcium, conductivity and temperature).
- Initiate the corrosion control feasibility study depending on the results of the upcoming water quality parameters and lead and copper sample results.
- The Company shall provide copies, to OCA and I&E , of the August and September 2019 test results from the laboratory;
- The Company shall continue to provide copies, to OCA and I&E, of all lead and copper test results taken going forward until it returns to reduced monitoring status;
- The Company shall provide copies, to OCA and I&E, of the test results for the additional water quality parameters that it must test for pursuant to 25 Pa. Code § 109.301;
- The Company shall provide a copy, to OCA and I&E, of its corrosion control study when it is submitted to DEP;
- The Company shall provide a copy, to OCA and I&E, of all future notices to its customers regarding the exceedance of the lead action level;
- The Company shall inform its customers that it will test for lead levels at an individual's house upon request. The Company shall immediately provide this information by its phone messaging system and on its website and then on each bill until it returns to reduced monitoring status and;
- The Company shall inform its customers about steps that a customer can take to reduce exposure to lead in water by posting the information prominently on its website starting immediately, and provide this information at least every three months through bill insert.
- The Company shall provide the notice sent on November 2019 and information regarding available testing to all new customers when the customer contacts Twin Lakes regarding a new customer account.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

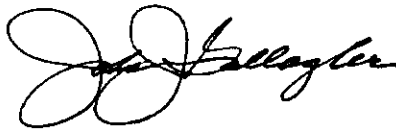
Pennsylvania Public Utility Commission	:	DOCKET NOS. R-2019-3010958
V.	:	C-2019-3011845 et al
Twin Lakes Water Utilities, Inc.	:	
	:	
	:	
	:	
	:	

**STIPULATION FOR ADMISSION
OF TESTIMONY AND EXHIBITS**

The undersigned, being all active parties to this proceeding: (1) hereby stipulate the authenticity of the following testimony and exhibits which were previously served upon all the parties and upon the presiding Administrative Law Judge and Listed in Appendix A: (a) Twin Lakes Water Utilities, Inc. Company Direct Testimony Statement Nos. , and Twin Lakes Water Utilities Inc.: Direct Testimony Statement Nos 1, 2 and 3 and related exhibits, Rebuttal Testimony Statement Nos.1 and 2 together with related exhibits; and, (b) Office of Consumer Advocate Direct Testimony Statements No.1, 2 and 3, along with related Exhibits and Office of Consumer Advocate Surrebuttal Testimony Statements No. 1SR and 3SR; and (c) the Bureau of Investigation and Enforcement Direct Testimony Statement Nos. 1, 2 and 3 and Exhibit Nos. 1, 2, and 3 and Surrebuttal Testimony Statement Nos. 1-SR, 2-SR, and 3-SR and Exhibit No. 2-SR (2) acknowledge and agree that they waive cross-examination with respect to the respective testimony listed in 1(a), (b) and (c) above, and, (3) further stipulate that the testimony listed in 1(a), (b) and (c) above should be admitted into the record in this case. Additionally, the parties request that the Stipulation contained in Appendix B be admitted into the record in this case.

Accordingly, this Stipulation for Admission of Testimony and Exhibits is hereby submitted.

Respectfully submitted:



Dated: December 17, 2019

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