John J. Gallagher

Attorney at Law
711 Forrest Road, Harrisburg, PA 17112

☎ Tel. (717) 599-5839
✉ jgallagher@jglawpa.com

January 15, 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
REPLY BRIEF

Dear Secretary Chiavetta:

On behalf of the Twin Lakes Utilities, Inc. ("Twin Lakes") please find enclosed a copy of Twin Lakes Reply 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

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	Docket No. R 2019-3010958
	C-2019-3011845
vs.	C-2019-3011969
	C-2019-3012087
Twin Lakes Utilities, Inc.	C-2019-3012169
	C-2019-3012221
	C-2019-3012272
	C-2019-3012332
	C-2019-3012399
	C-2019-3012487
	C-2019-3012659
	C-2019-3012667

REPLY BRIEF
ON BEHALF OF
TWIN LAKES UTILITIES, INC.

John J. Gallagher, Esq.
Attorney at Law
711 Forrest Road
Harrisburg, PA 17112
jgallagher@jglawpa.com
(717) 599-5839

Dated: January 17, 2020

Counsel for Twin Lakes Utilities Inc.

Table of Contents

TABLE OF AUTHORITIES

I. INTRODUCTION

Throughout this proceeding, Twin Lakes Utilities, Inc. ("Twin Lakes" or "the Company") has sought an increase in jurisdictional annual operating revenues of $211,793, or approximately 158.63%, above the overall level of pro forma revenue under existing jurisdictional rates. As summarized in Twin Lakes' Main Brief dated January 7, 2020, the Company has presented detailed supporting information required by the Commission's regulations governing general rate increases under $1 million. This supporting information includes data presented in the Supplement No. 8 to Tariff Water-Pa. P.U.C. No. 4 and accompanying Short Form Filing ("Short Form Filing") filed on July 19, 2019. It also includes Direct and Rebuttal Testimonies and exhibits filed in this case by Twin Lakes witnesses A. Bruce O'Connor, Michele Tilley and Robert Fullagar as well as responses to over 256 written interrogatories. As set forth in these above documents, the principal reason for Twin Lakes' rate increase request relates to the Company's significant investment in utility plant. Specifically, from January 2016 through September 2019, Twin Lakes has invested more than $476,008 in critically-needed utility plant, representing an over 49.2% increase in the Company's physical assets in service since its last rate case.

In response, the Bureau of Investigation and Enforcement ("I&E") and the Office of Consumer Advocate ("OCA"), have recommended revenue increases far below the level demonstrated by Twin Lakes – with OCA advocating for a revenue increase of no more than $98,688 and I&E advocating for a revenue increase of $51,098. A primary driver for these substandard revenue increase proposals is their positions that Twin Lakes should receive a 0% return on equity for two reasons: (1) adequacy of service, and (2) affordability.

The most fundamental principle in Commission rate proceedings is that resultant rates must be just and reasonable and in conformity with regulations or Orders of the Commission. 66 Pa. C.S. § 1301. Indeed, the bedrock of public utility ratemaking jurisprudence is that a public utility is entitled to rates that

allow it to recover prudent expenses and the opportunity to earn a fair rate of return on the value of its property dedicated to public service. *Pennsylvania Gas and Water Co. v. Pa. P.U.C., 19 Pa. Commw.* 214, 341 A.2d 239 (1975); *Bluefield Water Works and Improvement Co. v. Public Service Comm'w of West Virginia*, 262 U.S. 679, 692-3 (1923); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944).

Twin Lakes' revenue increase request follows this fundamental principle of public utility ratemaking. The Company has met its burden of proof with the testimony and exhibits it submitted into the record and has established the justness and reasonableness of every element of its rate increase request in this proceeding as stated under 66 Pa. C.S. § 1308(d) and has also met the standard set forth at 66 Pa. C.S. §315(a).

It also should be noted that a public utility does not need to affirmatively defend every claim it has made in its filing, even those which no other party has questioned, in proving that its proposed rates are just and reasonable. The Pennsylvania Commonwealth Court has held:

> While it is axiomatic that a utility has the burden of proving the justness and reasonableness of its proposed rates, it cannot be called upon to account for every action absent prior notice that such action is to be challenged.

Additionally, 66 Pa. C.S. §315(a) does not place the burden of proof on the utility with respect to an issue the utility did not include in its general rate case filing and which, frequently, the utility would oppose. The burden of proof must be on a party to a general rate increase case who proposes a rate increase beyond that sought by the utility.

Twin Lakes has shown that it needs this increase to recoup costs on the $476,008 investment it made as of March 31, 2019 to maintain the operation and maintenance of its infrastructure so that it can continue to provide safe and reliable service to its customers. It has addressed its position with respect to the

recommended adjustments proffered by each of the parties in their testimony and exhibits.

By contrast, the proposed revenue increases proffered by I&E and OCA are not only not anchored by sound ratemaking practice but turn public utility ratemaking jurisprudence on its head. It is undisputed that Courts in Pennsylvania have adopted and followed U.S. Supreme Court legal standards regarding rate of return, noting that these cases ***require the Commission to balance utility company and ratepayer interests in setting rates.*** See Twin Lakes Main Brief at 10. Ignoring this precedent, I&E and OCA make two incredulous arguments to support their proposals anchored by their recommended 0% return on equity for Twin Lakes: (1) Twin Lakes has not made sufficient system improvements that rise to the level of their subjective satisfaction; and (2) even if Twin Lakes rose to such a level – and even if Twin Lakes replaced the entire system (as Mr. Fullagar basically recommends in this case) – the Company should ***still*** receive a 0% return on equity because Twin Lakes customers cannot afford such a rate increase.

It bears repeated emphasis that the fundamental principle of public utility ratemaking is to allow a public utility to recover its expenses and an opportunity to earn a fair return on its prudent investments in a utility system with the Commission balancing the interests of ***both*** the utility and the ratepayers. It is not "heads I win, tails you lose" as I&E and OCA are advocating.

Indeed, I&E and OCA – through their reliance on adequacy of service and affordability as their twin pillars for a 0% return on equity – are basically recommending that both the Administrative Law Judge and the Commission place Twin Lakes in the following position: (1) expend the capital necessary to completely eradicate service quality issues but not receive adequate rate relief (because such rates would be unaffordable for Twin Lakes' customers); or (2) make the expenditures it needs to operate and maintain the system short of its complete replacement but not receive adequate rate relief (because such

measures do not rise to the level of I&E's and OCA's subjective level of service quality satisfaction, and such rates would be unaffordable for Twin Lakes' customers). Both the Administrative Law Judge and Commission should decline I&E's and OCA's invitation to place Twin Lakes in this no-win scenario.

Accordingly, this Reply Brief is filed on behalf of Twin Lakes Utilities Inc. to respond to these above-referenced arguments set forth in the Main Briefs, testimonies and exhibits submitted in this case by I&E and OCA. While Twin Lakes does not specifically respond in this Reply Brief to each and every claim raised in I&E's and OCA's Main Briefs, Twin Lakes relies on its previously submitted Main Brief, testimonies, exhibits, discovery responses and other record evidence submitted on the specific topic.

II. RATE BASE

A. Additions to Rate Base

1. Acquisition Adjustment

I&E and the OCA propose in their Main Briefs that the Company's claim for an acquisition adjustment should be $36,018 (I&E) while OCA supports a total rejection of the claim. As stated in Twin Lakes Main Brief, this is a clear mischaracterization of 66 Pa. C.S. § 1327 and 52 Pa. Code § 69.721. Nowhere in this statute or this regulation does there exist 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.

Both OCA and I&E claim that the acquisition adjustment was not properly amortized from the acquisition date. In so doing, they conveniently leave out some critical details. Twin Lakes witness Michele Tilley stated in her Rebuttal Testimony that the Company's prior two base rate cases were resolved through a Joint Petition for Settlement. Absent a specific ruling by the Commission determining the ratemaking treatment and specific amortization period of the proposed acquisition adjustment, the Company did not have the required approval to move forward with amortizing the acquisition adjustment.

Similar to the depreciation of utility plant, an acquisition adjustment is amortized as an expense over a specific period of time approved by the commission. Just as a Company earns a fair return ***on*** the investment in utility plant as well as a return ***of*** that investment in the form of depreciation expense, the same principle would apply in the case of an acquisition adjustment and amortization expense. It is a fundamental ratemaking rule that utility rates are exclusively prospective in nature. However, I&E is proposing to reach back into prior rate case periods to compute a retroactive adjustment and restate the Company's acquisition adjustment balance as if ten years of amortization has been recorded even though it hasn't. The Company's current rates do not include nor have they ever included a provision for amortization expense. The prior period cumulative adjustment proposed by I&E would leave no opportunity for the Company to fully recover its capital investment. Although I&E contends its proposed cumulative amortization adjustment does not violate the rule against retroactive ratemaking, it in fact would do so as it would modify what was reflected in prior settled rates.

2. Cash Working Capital

I&E and OCA both oppose Twin Lakes' cash working capital calculation, with OCA adjusting the Company's cash working capital amount of

$17,175 by $4,879 to arrive at an adjusted amount of $11,885, see OCA Main Brief at 9, and I&E adjusting the Company's amount by $4,752 to arrive at an adjusted amount of $12,423. See I&E Main Brief at 11-12.

As discussed in Twin Lakes' Main Brief, Ms. Tilley explained that inclusion of both depreciation and bad debt in the calculation of cash working capital is a long-held and widely accepted principle of public utility accounting. See Twin Lakes Main Brief at 7. That these are widely accepted principles of public utility accounting is not something that is refuted by OCA or I&E. For the reasons previously stated in its Main Brief and Direct and Rebuttal Testimonies of Ms. Tilley, Twin Lakes recommends that the Administrative Law Judge and Commission adhere to the long and widely-accepted principle of public utility accounting cited therein which does allow for the inclusion of depreciation and bad debt in the calculation of cash working capital.

B. Conclusion

For the reasons set forth above and in its Main Brief and Testimonies submitted in this case, Twin Lakes recommends adoption of its recommended additions to rate base.

III. EXPENSES

A. Introduction

In Section V of its Main Brief, Twin Lakes set forth its recommendations on expenses, relying on the Company's submitted Direct and Rebuttal Testimonies and financial data provided in its Short Form Filing. Twin Lakes' recommendations addressed its expense issues. Twin Lakes stands by these recommendations as the Company has met its burden of proof with regard to its expense claims and adjustments. In addition, Twin Lakes has a few responsive arguments to arguments raised by I&E and OCA in their Main Briefs,

specifically with respect to Twin Lakes' expense recommendations for purchased power and chemicals.

B. Purchased Power and Chemical Expenses

In its submittals in this case, Twin Lakes requests recovery of a purchased power expense of $10,524 and a chemical expense of $3,003. In its Main Brief, OCA recommends that the Company's purchased power expense recovery be reduced by $6,335 and the chemical expense recovery be reduced by $1,808. See OCA Main Brief at 13-14. I&E recommends that the Company's purchased power and chemical expense recovery be reduced by a combined $9,392. See I&E Main Brief at 20-28. Both I&E and OCA cite to the high levels of unaccounted for water ("UFW") loss as its primary reasons for these proposed reductions. Id.

In proposing to reduce these justified and necessary expenses, OCA and I&E completely disregard record evidence detailing the condition of the Twin Lakes system prior to its acquisition by Twin Lakes Utilities, Inc. As emphatically detailed in Mr. Fullagar's testimonies in this case, the Twin Lakes system has experienced and continued to experience a high level of UFW loss. The leaks are the result of a combination of factors including age and quality of the original pipe material, and poor quality workmanship associated with leak repairs ***that all took place prior to the acquisition of this system by Twin Lakes Utilities Inc.*** TLU St. No.3 P-2

Mr. Fullagar further stated that the UFW rate continues to increase in spite of the Company's proactive and diligent replacement and repair work. This is a clear indication that the entire system is in need of replacement and is incapable of being pressurized without an extraordinary amount of leakage. TLU St. No.2-R P-3 Therefore, as stated by Mr. Fullagar, the only means possible for maintaining water quality in the system and avoiding potential illness to customers is to keep the water chlorinated and the mains under pressure. This

cannot happen without adequate purchased power and chemical cost recovery. TLU St. No. 2-R P3.

OCA's only response to Mr. Fullagar's testimony is that Twin Lakes is required to provide safe and reliable service to its customers, and therefore because of the high level of UFW Twin Lakes should not be permitted full recovery of its verified purchased power and chemical expenses. See OCA Main Brief at 24.

OCA's blithe response is indicative of its – and I&E's – refusal to address two fundamental questions that have never been resolved with respect to Twin Lakes and go to the heart of this case and future Twin Lakes rate cases to come – when does a severely troubled water system of 114 customers, which is in need of total replacement in its entirety, achieve stasis and at what cost? I&E and OCA totally ignore the fundamental issue with this system in their refusal to acknowledge the clear reality that water quality and UFW will not be resolved – certainly to their subjective satisfaction – until the entire Twin Lakes system is replaced. Until that future state of the system is achieved, those issues will remain for Twin Lakes' customers. In the meantime, I&E and OCA have labelled the revenue increase requested by Twin Lakes in this rate case – for expenses and investment well short of complete replacement of the Twin Lakes system – as unaffordable. This fundamental issue underlies all issues in this case and will be further addressed in Sections IV and V of this Reply Brief.

Turning back to expenses, the overall amount of expense recommended by OCA and I&E will not be adequate to enable Twin Lakes to operate and maintain its infrastructure and deliver water to its customers in a safe and reliable manner. That applies to all expenses, but purchased power and chemical expenses stand as two stark examples. Twin Lakes' expense recommendations are supported by evidence that is on the record that shows that the request is just, reasonable and necessary. For the foregoing reasons listed here and in Twin Lakes' Main Brief, the Commission should adopt the Final Expense Adjustments

listed in Twin Lakes' Schedules A-1 through A-4, as admitted into the record by Order of Judge Guhl on December 18, 2019.

IV. RATE OF RETURN

A. Cost of Equity

As discussed in Section VI of Twin Lakes' Main Brief, Twin Lakes witness Michele 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 September 30, 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 Main Brief at 10. With respect to capital structure and cost of debt, Twin Lakes, OCA and I&E are in agreement and those issues will not be addressed further.

With respect to cost of equity, Ms. Tilley proposed a common equity cost rate of 11.0% based upon the market data of a comparison group of six water companies similar in risk to Twin Lakes. See Twin Lakes Main Brief at 12. Ms. Tilley's recommendations clearly meet the legal standards of *Hope* and *Bluefield*, the two U.S. Supreme Court pillars of public utility ratemaking. As the U.S. Supreme Court stated in *Hope*:

> From the investor...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.

And further stated 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.

In response, OCA and I&E both recommend a cost of equity for Twin Lakes of 0%. See OCA Main Brief at 22-33 and I&E Main Brief at 40-64. Both OCA and I&E cite to their argument that the Company has failed to provide, in their subjective assessment, safe and adequate service, as the driver for this 0% cost of equity recommendation. Id.

Twin Lakes addresses in more detail the service and water quality issues relied upon by OCA and I&E with respect to their cost of equity recommendation in Section V of this Reply Brief. It must also be noted the context in which OCA and I&E both propose a 0% return on equity for Twin Lakes. Both OCA and I&E are citing to adequacy of service as their justification for this recommendation while at the same time clearly signaling that Twin Lakes' current rate proposal – one that in OCA's and I&E's view falls far short of achieving the service adequacy they are looking for – should not be granted as it is "unaffordable" for Twin Lakes' customers. Logic and basic common sense dictate that if Twin Lakes were to ever completely replace the current system to address these service quality issues, and then request recovery for this replacement in rates, that OCA and I&E would raise this exact affordability issue in opposing such a recovery. Under this scenario, Twin Lakes is damned if it invests in a complete replacement of the Twin Lakes system – the alternative that Mr. Fullagar testifies would address the UFW issues plaguing the current system – and damned if it makes expenditures and invests in improvements well short of such a complete replacement. "Heads, I win, tails you lose."

The United States Constitution as applied to public utility ratemaking through *Bluefield*, *Hope* and their progeny does not work that way. The

Constitution and long-ensconced U.S. Supreme Court case law 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, 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. See Twin Lakes Main Brief at 9-10. Courts in Pennsylvania have adopted or followed the aforesaid U.S. Supreme Court standards, noting that these cases ***require the Commission to balance utility company and ratepayer interests in setting rates***. See Twin Lakes Main Brief at 10.

In their advocacy of a 0% cost of equity, I&E and OCA are not advocating for maintenance of this balance; rather, they use adequacy of service and affordability as blunt instruments to deny Twin Lakes recovery of its operating expenses and opportunity to obtain a fair return on their investment for failing to completely replace a system that – through their affordability argument in this current case – OCA and I&E are signaling they would actively deny Twin Lakes even if it achieves total system replacement. This violates both U.S. Supreme Court and Pennsylvania precedent and, more significantly, if adopted would constitute an unlawful taking in violation of the Fifth and Fourteenth Amendments to the U.S. Constitution and Article I, Section 10 of the Pennsylvania Constitution.

For all of these reasons, the Administrative Law Judge and Commission should reject I&E's and OCA's recommended 0% cost of equity for Twin Lakes.

V. SERVICE AND WATER QUALITY ISSUES

A. Introduction

The heart of issues concerning service and water quality with respect to the Twin Lakes system had its origins long before the system's acquisition in 2009 by Twin Lakes Utilities, Inc. The parties to this case are familiar with this

history as they have been actively involved with respect to this system before and since this 2009 acquisition. As stated by Twin Lakes witness A. Bruce O'Connor, prior to the acquisition of the system by Twin Lakes Utilities, Inc., the system was subject to frequent boil water advisories issued by the Pennsylvania Department of Environmental Protection and water supply was frequently suspended due to operational problems. TLU St. No.1 at p. 3. Mr. O'Connor further recounted that Commission Staff strongly encouraged Middlesex Water Company, the parent company of Twin Lakes Utilities, Inc., to acquire the system to avoid the exercise of control over the system by the Commonwealth of Pennsylvania, which ultimately resulted in the acquisition of the system by Twin Lakes Utilities, Inc. Id.

As further stated in Mr. O'Connor's testimony, the Company established an ongoing dialogue with the Homeowners Association and educated its customers about what they should expect from the Company in terms of service quality and the resulting rate impact. It is important to understand that the system was operationally near collapse at the time of the acquisition – a fact well known to the parties in this case at the time. Improvements necessary to maintain adequate, reasonable, and reliable service were made on an ongoing basis since the acquisition. TLU St No. 1 at P-3&4. These facts are undisputed.

It is therefore accurate to say that since the acquisition of this system in 2009, Twin Lakes' customers continue to enjoy a level of service quality today that is dramatically greater than under the prior ownership. TLU St. No. 1 at 4. However, as detailed in the record in this case, UFW levels and well over-pumping continue to plague the system. In response, the OCA, citing Commission policy, states that UFW levels should be kept within what it labels as reasonable levels, or approximately under 20%. See OCA Main Brief at 13.

The UFW levels at the time of the 2009 acquisition of the system were unknown and unknowable to Twin Lakes as service to the customers on the system was unmetered – again, a fact known to all of the parties to this case at

that time. Twin Lakes initially had to meter all of its customers before it could even ascertain whether and to what degree there was a UFW problem of any significant level. TLU St. No. 1 at P-3

In this case, OCA has offered witness testimony that fails to detail the operational causes of the UFW. Instead, OCA's witness reviewed the UFW percentages from 2011-2018, asserted that distribution system improvements are critically important to the provision of safe, adequate and reliable service, but concluded that the Twin Lakes' plan to address these service and water quality issues – a $4.8 million five-year capital improvement plan that provides for the replacement of Well No. 1 and addresses the UFW problems relied upon by OCA and I&E in supporting a 0% return on common equity in this case – is not feasible because it would result in unaffordable rates for the 114 customers of the Twin Lakes System. See OCA Direct Testimony of Stacy L. Sherwood at 13-15. If such a plan is not feasible now, when would a plan that would replace the entire system ever be feasible for the customers of Twin Lakes? This is the dilemma resulting from OCA's conflated view, without evidence, that exorbitant rates equate to unaffordable rates.

B. Water Quality Issues

1. Inadequate Service

The record from the Public Input Hearings reveals only one witness testified as to concerns regarding affordability while 9 customers testified about numerous boil water advisories, which as previously stated by Twin Lakes were high due to the main replacement activities of Twin Lakes. See TLU Main Brief at 16. 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. The boil water advisories issue was unavoidable due to main replacement activities of the

Company which have been previously noted. Id.

2. Exceedance of Lead Action Levels

Twin Lakes, I&E and OCA filed a Motion for Admission of Testimony and Exhibits into the evidentiary record with Judge Guhl on December 17, 2019. Judge Guhl ruled affirmatively on the Motion and admitted the Parties' testimony, exhibits and stipulations into the record on December 18, 2019. The Motion also contained a Stipulation listed as Appendix B in which Twin Lakes presented a report regarding its lead and copper sampling program which Twin Lakes has implemented for the system since its acquisition in 2009. As the report states, prior to August 18, 2019, Twin Lakes was in compliance with the Lead and Copper Rule. See Appendix B at 1. Site sampling revealed a result in excess of the action level for lead at one location. This lead action exceedance was communicated to the Pennsylvania Department of Environmental Protection ("PA DEP") on August 29, 2019. PA DEP instructed Twin Lakes to obtain 2 replacement samples and an additional 5 samples which was performed by Twin Lakes. As of December 5, 2019 no fine or penalty has been assessed by the PA DEP. The Stipulation contains 12 directives that Twin Lakes will execute.

C. Affordability

OCA asserts that affordability is an important consideration in this proceeding and cites OCA witness Stacy Sherwood's Statement OCA St. 1 at P-12 that the proposed Company rates violate ratemaking principles because increasing rates as proposed will result in rate shock that violates the important ratemaking principle of gradualism and it is likely that the average $155 monthly increase may not be affordable for some customers. Id. This presumption is groundless, as OCA has submitted no record evidence to support this conclusion. Ms. Sherwood is not qualified to opine on the demographics of the Twin Lakes

customers, nor, their particular fiscal capabilities. "The Witness has no experience with poverty statistics, lacks knowledge as to the method for determining the poverty level or measuring real purchasing power." In fact, Ms. Sherwood stated that "Due to the inadequate service provided by Twin Lakes, ***I have been advised by Counsel*** that a reduced revenue requirement of $134,631 should be the maximum revenue requirement approved in this case". [i] OCA Statement No. 1 at P-15. At the risk of stating the obvious, advice of counsel on service adequacy does not equate to expertise on affordability.

OCA attempts to bolster its affordability argument by utilizing a comparison of the major Pennsylvania water utilities to assert that Twin Lakes proposed rates are significantly in excess of the rates assessed by the major water utilities in the Commonwealth. OCA Main Brief at P- 47. It stretches credulity to conflate the operations of Twin Lakes' 114-customer system with the rates and operations of the largest Pennsylvania's water utilities.

OCA argues that Twin Lakes has the clear obligation to make the necessary capital investment to furnish and maintain safe adequate, and reliable service but that the costs to serve the customers, including the costs of the improvements, is not able to be borne by its 114 customers, no matter what. In other words, Twin Lakes should proceed to expend capital without adequate rate relief, and in the meantime if Twin Lakes fails to make expenditures that rise to the level of I&E's and OCA's satisfaction then Twin Lakes should not receive adequate rate relief. I&E and OCA have failed to present substantive evidence regarding the lack of fiscal ability of Twin Lake's customers that would justify such a capital confiscation in violation of the Fifth and Fourteenth Amendments of the U.S. Constitution and Article 1 Section 10 of the Pennsylvania Constitution. The unavoidable effect of the OCA's adjustment is that investors will be compelled to bear the burden of the alleged inability to pay for their utility service, a burden which ought to be borne by the public as a whole. The

Commission has previously considered such arguments and has rejected them. *See Pennsylvania Public Utility Commission v Pa Gas &Water* Company, 1993 Pa PUC Lexis 61. The Commission should adhere to this precedent and reject these arguments here.

VI. CONCLUSION

For all of the foregoing reasons, as well as the reasons expressed in the Twin Lakes' Main Brief, Twin Lakes' proposed rate increase, as adjusted via its Rebuttal Testimony, in the amount of $211,793 should be approved, and the Commission's investigation should be closed.

Respectfully submitted,

By: _____

John J. Gallagher, Esq.
Attorney at Law
711 Forrest Road
Harrisburg, PA 17112
jgallagher@jglawpa.com
(717) 599-5839
Counsel for Twin Lakes Utilities Inc.

Dated: January 15, 2020

[1] Witness Sherwood's work for her firm is primarily related to energy efficiency, renewable energy, automated metering infrastructure, cost recovery, and revenue requirements. OCA St. No. 1 Appendix A

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 ELECTRONIC MAIL AND HAND DELIVERY

Honorable Marta Guhl
Office of Administrative Law Judge
Pennsylvania Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

Ms. Pamela McNeal
Office of Administrative Law Judge
PA Public Utility Commission
801 Market Street, Suite 4063
Philadelphia, PA 19107

Christine Maloni Hoover, Esquire
J.D. Moore, Esquire
Lauren Guerra, Esquire
Office of Consumer Advocate
5th Floor, Forum Place
Harrisburg, PA 17101-1923

Erika McClain, Esquire
Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
400 North Street
P.O. Box 3265
Harrisburg, PA 17105-3265

VIA FIRST CLASS MAIL

Ms. Virginia W. Pfeiffer
424 W. 22nd St.
New York, N.Y.

MS. IRENE BLANCHARD
4715 STEUBEN RD
NAZARETH PA 18064

Jeffrey Shatt
111 Dylan Lane
Shohola, PA 18458

Mr James Gelardi
158 Twin Lakes Drive
Shohola, PA 18458

LISA CELENZA
116 SAGAMORE RD
SHOHOLA PA 18458

Ciro Matrecano
100 Susan Lane
Shohola PA 1845

Tami Defrancesco
120 Kyra Lane
Shohola, PA 18458

Charles Dellert
130 Ottawa trail
Shohola, PA 18458

Neil & Kathleen Joyce
P.O. Box 1507
Milford PA 18337

Frank & Shuko Kashimba
111 Shawnee Road
Shohola, PA 18458

Dated: January 15, 2020

John J. Gallagher
711 Forrest Road
Harrisburg, PA 17112
jgallagher@jglawpa.com
Counsel for Twin
Lakes Utilities, Inc.