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March 2, 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
EXCEPTIONS

Dear Secretary Chiavetta:

On behalf of the Twin Lakes Utilities, Inc. ("Twin Lakes") please find enclosed a copy of Twin Lakes' Exceptions 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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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission	DOCKET NO: R-2019-3010958
Office of Consumer Advocate	C-2019-3011845
Irene Blanchard	C-2019-3011969
Jeffrey Shatt	C-2019-3012087
Ciro Matrecano	C-2019-3012169
Neil and Kathleen Joyce	C-2019-3012221
Lisa Celenza	C-2019-3012272
Tami DeFrancesco	C-2019-3012332
Virgina Pfeiffer	C-2019-3012399
Charles Dellert	C-2019-3012487
James Gelardi	C-2019-3012659
Frank and Shuko Kashimba	C-2019-3012667

V.

Twin Lakes Utilities, Inc.

EXCEPTIONS OF TWIN LAKES UTILITIES, INC. TO THE RECOMMENDED DECISION OF ADMINISTRATIVE LAW JUDGE MARTA GUHL

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For Petitioner
Counsel for Twin Lakes Utilities, Inc.

Date: March 2, 2020

TABLE OF CONTENTS

I. INTRODUCTION

These exceptions are filed, through the undersigned counsel, on behalf of Petitioner, Twin Lakes Utilities Inc. ("Twin Lakes" or the "Company") in response to the Recommended Decision of Administrative Law Marta Guhl ("ALJ" or "ALJ Guhl") recommending that Twin Lakes Utilities, Inc. be permitted to increase its operating revenues in the total amount of $111,776.00 for a total operating revenue of $245,290.00. Pursuant to Section 5.533 of the Commission's Rules of Practice and Procedure, 52 Pa. Code § 5.533, Twin Lakes files these Exceptions to the Recommended Decision ("RD") of ALJ Guhl and respectfully requests that the Pennsylvania Public Utility Commission ("Commission") modify the recommended order of ALJ Guhl to address Twin Lakes' concerns as more fully set forth below.

In support of these Exceptions, Twin Lakes sets forth the following:

II. EXCEPTION NO.1

The ALJ Erred in her Recommendation by stating that Twin Lakes has acknowledged that the system needs to be replaced but has failed to take any measure to improve the conditions.

In her RD, ALJ Guhl notes that "while there has been some replacement of mains in the [Twin Lakes] system, it clearly has not improved the unaccounted-for-water levels which exceed 80% in some years." RD at 82. As a result, according to the ALJ, "The Company should be not rewarded for its inaction in this case." Id. Again, in her Recommendation the ALJ states that "Twin Lakes acknowledges that the system needs to be replaced but has failed to take any measure to improve the conditions." Id. To the point, Twin Lakes has replaced 2,790 feet of main since its last rate case proceeding in 2015. It defies logic, basic common sense and the

practical reality of experience with this system to infer that if only Twin Lakes had replaced an additional 1,290 feet of main – a condition for Twin Lakes attaining full rate recovery from its 2015 rate case – then all of the system's operational problems, including lost and unaccounted-for water ("UFW"), would have been resolved. The level of UFW in Twin Lakes' system in the time since the acquisition of the system by Middlesex Water Company to present day – by itself – constitutes clear and irrefutable evidence that no amount of main replacement, short of complete system replacement, will resolve Twin Lakes' operational problems with respect to UFW given the extensive nature of Twin Lakes' main replacement over the years including the years since Twin Lakes' last rate case in 2015.

Twin Lakes has provided adequate and reasonable service in accordance with Section 1501 of the Public Utility Code notwithstanding the extremely poor condition of the original *distribution system, which is the root cause of the UFW, the excessive pumping/treating and* associated costs, the loss of Well No. 1 and the threat to the continued viability of Well #2 due to over-pumping. This is firmly grounded in this rate case through the testimony proffered by Twin Lakes witness Robert Fullagar. It is dubious to conclude that if Twin Lakes had replaced the entire 4,000 feet of main stipulated in its 2015 base rate case settlement rather than the actual 2,790 feet it has replaced, that the UFW issues being used to deny Twin Lakes just and reasonable rate recognition would be resolved, OCA and I&E would take a different position or the ALJ would conclude otherwise. In any event, the ALJ's basis for denial of the requested rate recovery because of Twin Lakes perceived "inaction" has no basis in fact or on the record. Twin Lakes has taken action and the ALJ's conclusion to the contrary is in clear error.

III EXCEPTION NO. 2

The ALJ erred in concluding that affordability of rates is a factor in setting just and reasonable rates

The ALJ states that if rates are too high, then not only does that violate the basic principles of rate setting, it will result in customers not being able to afford water utility service. RD at 87. In so stating, the ALJ places the outcome of this rate case on two pillars that inherently contradict one another. The first pillar, as discussed in Exception No. 1 above, is that Twin Lakes has not invested enough to improve its UFW levels and should therefore be denied adequate rate recovery. The second pillar, as set forth by the ALJ, is that affordability is a factor in setting just and reasonable rates. The inescapable end result of the ALJ's adoption of these two pillars is that the investment of another $3.1 million by Twin Lakes to replace the remaining mains and construct a replacement well will only create a higher level of misperceived rate unaffordability for Twin Lakes customers. Therefore, according to the ALJ, Twin Lakes' rate request must be denied. But, because Twin Lakes has not replaced its remaining mains and constructed the replacement well, its rate request for the actions it has already undertaken must also be denied.

The Commission's acceptance of this reasoning in the RD would constitute a clear breach, if not complete abolishment, of the regulatory compact itself. If Twin Lakes or any utility makes investments in their system, it is reasonable for Twin Lakes or any utility to rely on the Commission to be afforded an opportunity to attain a just and reasonable return on the prudently invested capital. For a Commission to set rates that are not just and reasonable and do not support an opportunity to provide an adequate return on capital already invested is antithetical to the regulatory compact relied on by utilities, including Twin Lakes, for decades. It would send a clear, chilling message to Pennsylvania utilities.

To bolster her RD, the ALJ cites the OCA's witness testimony stating that the proposed revenue requirement at full rate of return would result in rates that would be at 7% of Median

Household Income ("MHI"). Twin Lakes strongly objected to the inclusion of this testimony, as OCA's witness, Ms. Stacy Sherwood, is not a qualified expert in this area. (See Twin Lakes Reply Brief at 15) Ms. Sherwood is not qualified to opine on the demographics of the Twin Lakes customers, nor, their particular fiscal capabilities. Ms. Sherwood has no experience with poverty statistics, lacks knowledge as to the method for determining the poverty level or measuring real purchasing power. The ALJ also cites Ms. Sherwood's use of a comparative chart illustrating the residential rates of major Pennsylvania water utilities to find that Twin Lakes' proposed rates are significantly in excess of the rates assessed by the major water utilities in the Commonwealth. RD at 86. Such a comparison that equates the Twin Lakes system with the systems of the largest water utilities in Pennsylvania as part of an equally absurd non-expert dissertation on rate affordability is obviously absurd and illogical.

Adding to the absurdity of reliance on this non-expert testimony is the fact that the Commission addressed this same affordability issue in 1993 in *Pennsylvania Public Utility Commission v Pennsylvania Gas & Water Company 1993 Pa PUC Lexis 61, 80* wherein the Commission clarified the statutory nature of the regulatory bargain and concluded that the Commission's obligation to enforce the regulatory bargain precludes reliance on affordability as a factor in setting just and reasonable rates. *Pennsylvania Public Utility Commission v. Pennsylvania Gas and Water Co., 68 Pa. P.U.C. 191, 197 (1988).*

In the *Pennsylvania Gas and Water Co.* case, OCA, as in this case, relied on an unqualified witness, Ms. Sherman, to opine on median household income as the basis for determining poverty levels to establish a definition of affordability. The Commission made clear in *Pennsylvania Gas & Water Co.* that this reliance should not be condoned. It should be not be permitted in this matter.

IV EXCEPTION NO. 3

THE ALJ ERRED IN CONCLUDING THAT TWIN LAKES HAS FAILED TO PROVIDE ADEQUATE AND REASONABLE SERVICE.

As stated above in Exception No. 1, Twin Lakes has provided adequate and reasonable service in accordance with Section 1501 of the Public Utility Code given the extremely poor condition of the system. Twin Lakes has continually attempted to upgrade its system and it is the Company's position that if it had not lived up to its part of the regulatory bargain then Twin Lakes customers would not have a generally consistent water supply at the present time.

The core issue in this matter is that Twin Lakes operates a system comprised of a non-rehabilitated portion of its distribution system that is in poor condition, a Well No. 1 that has failed, a Well No. 2 that requires replacement, significant UFW losses, all of which will require Twin Lakes to, of necessity, invest at least an additional $3.1 million of capital improvements. At the same time, Twin Lakes will face the certain guarantee of regulatory resistance to the opportunity to earn a just and reasonable return on this necessary investment on the grounds of inadequate service and unaffordability. What I&E and OCA have argued in this case (where Twin Lakes is seeking recovery of improvements well below $3.1 million) and the ALJ has concluded in the RD make it all but certain these arguments will be raised if Twin Lakes makes these necessary investments and then seeks rate recovery.

Given these circumstances, it is more than fair to conclude that Twin Lakes' efforts to resuscitate a seriously troubled water system has finally reached a point of unsustainability

because its customers, according to I&E and OCA, can no longer support a fully functional public water utility. Twin Lakes concurs with OCA's recommendation that the parties and the Commission turn to finding a long term solution that can address the quality of service issues in a manner that results in just and reasonable rates to the Twin Lakes customers. The OCA recommended that a Section 529 proceeding be initiated to permit the investigation into finding a capable public utility to acquire Twin Lakes. OCA M. Brief at 44, 45. Twin Lakes joins with the OCA in their recommendation and strongly encourages the Commission to initiate a Section 529 proceeding as part of its Final Order resolving this current rate proceeding.

V EXCEPTION NO. 4

THE ALJ ERRED IN CONCLUDING THAT A RESIDUAL $36,018 ACQUISITION ADJUSTMENT AS OF SEPTEMBER 30, 2019 BE SUBTRACTED FROM THE COMPANY'S CLAIMED $54,406 WHICH RESULTS IN A DOWNWARD ADJUSTMENT TO RATE BASE OF $18,388 RD AT 20

The ALJ failed to address the Company's position that 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. Annual depreciation of utility plant is an O&M expense item and therefore an annual amortization adjustment should also be included as an O&M expense. Therefore, the Amortization Adjustment reducing rate base by $18,388 should have a corresponding amortization expense O&M adjustment. The corresponding amortization expense O&M adjustment would correctly provide Twin Lakes the ability to properly capture the return of the investment it made when it acquired the Company.

Twin Lakes requests an annual amortization be added to O&M in one of two recommended time frames:

- Over 24 months (the projected timeframe for a subsequent rate request) = $9,194 (18,388/24*12)
- Over 39 months (I&E's proposed timeframe for normalizing rate case expense) = $5,687.85 (18,388/39*12)

VI CONCLUSION

Based on the foregoing, Twin Lakes respectfully requests that the Commission approve the Company's Exceptions and modify the ALJ's Recommended Decision and order such other relief as it may deem appropriate.

Respectfully submitted,

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(717) 257-7500

For Petitioner
Twin Lakes Utilities, Inc.

Date: March 2, 2020

155251.1

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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