


COMMONWEALTH OF PENNSYLVANIA



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March 9, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, PA 17120

Re: Pennsylvania Public Utility Commission
v.
Twin Lakes Utilities, Inc.
Docket No. R-2019-3010958

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Reply Exceptions in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Respectfully submitted,

A handwritten signature in cursive script that reads "Christine Maloni Hoover".

Christine Maloni Hoover
Senior Assistant Consumer Advocate
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Enclosures:

cc: The Honorable Marta Guhl, ALJ
Office of Special Assistants (e-mail only: ra-OSA@pa.gov)
Certificate of Service

*284866

CERTIFICATE OF SERVICE

Re: Pennsylvania Public Utility Commission :
v. : Docket No. R-2019-3010958
Twin Lakes Utilities, Inc. :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Reply Exceptions, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 9th day of March 2020.

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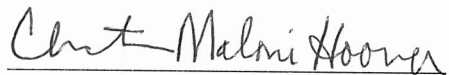
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Dated: March 9, 2020
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Pennsylvania Public Utility Commission :
 :
 v. : Docket No. R-2019-3010958
 :
 Twin Lakes Utilities, Inc. :

REPLY EXCEPTIONS
OF THE
OFFICE OF CONSUMER ADVOCATE

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I. INTRODUCTION

On February 19, 2020, the Public Utility Commission's (Commission) Office of Administrative Law Judge issued the Recommended Decision (R.D.) of Administrative Law Judge (ALJ) Marta Guhl regarding Twin Lakes Utilities, Inc.'s (Twin Lakes or the Company) proposed rate increase for water service. The ALJ recommended an increase of \$111,776 as a result of adjustments to the Company's rate base, operation and maintenance expenses, taxes, and rate of return.

The ALJ did not adopt the OCA's primary position that the Commission should reduce the return on equity from a market-based rate of 8.78% to 0% to reflect the inadequate service provided by Twin Lakes. The ALJ recognized the inadequate service but did not adopt a reasonable remedy for inadequate service or the unaffordability of the rates. The OCA filed Exceptions to address certain aspects of the R.D. Regarding revenue requirement, the OCA's Exceptions pointed out that the ALJ did not adopt a number of the OCA's accounting adjustments, but in adopting I&E's revenue and expense adjustments that are similar to the OCA's adjustments, the ALJ has addressed the OCA's revenue and expense adjustments. The OCA did file Exceptions addressing the ALJ's failure to adopt the OCA's position on the acquisition adjustment, taxes, return on equity, adequacy of service, and affordability of rates.

The OCA submits that its Exceptions, if granted, would ensure that Twin Lakes' inadequate service is reflected in the approved revenue requirement in accordance with the Public Utility Code and respectfully requests that the Commission adopt the OCA's Exceptions.

Exceptions were also filed by Twin Lakes and the Commission's Bureau of Investigation (I&E). The OCA provides the following replies to the Exceptions of Twin Lakes. As set forth below, the OCA submits that the Exceptions of Twin Lakes should be denied.

Reply To Exception #1: The Steps Taken By Twin Lakes Are In the Record and Were Generally Recognized By The ALJ.

Twin Lakes excepts to various statements made by the ALJ arguing that the ALJ's statements do not adequately recognize the distribution system replacements that Twin Lakes made since its last rate case. Twin Lakes Exc. at 1-2. Specifically, Twin Lakes points to the following statement by the ALJ: "Twin Lakes acknowledges that the system needs to be replaced but has failed to take any measure to improve the conditions¹." Twin Lakes Exc. at 1; R.D. at 82. Twin Lakes disputes this statement arguing that it has replaced 2,790 feet of main since its last proceeding in 2015. Twin Lakes Exc. at 1. The OCA submits that the ALJ's recommendation, taken in context, is intended to convey that the action Twin Lakes has taken has failed to improve the system's operational deficiencies.²

The Company goes on to state that:

[t]he 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.

¹ The OCA includes more of the ALJ's recommendation surrounding this statement here for context:

While Twin Lakes indicates that it is not possible for it to undertake the needed improvement to the system without the full proposed rate increase in this matter, there is evidence in the record which establishes the Company has failed to take advantage of rate increase related to the 2015 Settlement. Twin Lakes did not replace Well No.1 and Phase 2 of the 2015 Settlement rates did not go into effect. In addition, Twin Lakes did not replace the specific mains required to trigger Phase 3 of the 2015 Settlement rates. Twin Lakes acknowledges that the system needs to be replaced but has failed to take any measure to improve the conditions. While there has been some replacement of mains in the system, it clearly has not improved the unaccounted-for water levels which exceed 80% in some years. The Company should not be rewarded for its inaction in this case. The customers of Twin Lakes are in danger of having no water if the only well in the system fails. Further, the lead levels in the system have triggered DEP action and the parties have addressed this through Stipulation. The Company has failed to provide adequate and reasonable service in the matter in accordance with Section 1501 of the Public Utility Code. As such, as has been noted above, Twin Lakes is not entitled to its full requested rate increase. R.D. at 82-83.

² Id.

Twin Lakes Exc. at 2. The OCA does not disagree with Twin Lakes' statement that it faces significant operational problems and the need for extensive main replacement. That, however, does not excuse the fact that Twin Lakes did not comply with the 2015 Settlement that sought to make progress on these operational problems. It is also important to note that Twin Lakes admitted that by not replacing the amount of main required by the 2015 Settlement, it did not meet the conditions for subsequent phases of the agreed upon rate increase. See Twin Lakes Exc. at 2.

Twin Lakes continues its Exception, stating:

[i]t 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.

Twin Lakes Exc. at 2. The OCA notes that the ALJ's conclusion that Twin Lakes is not providing adequate service is based on more than Twin Lakes not replacing 4,000 feet of distribution lines since the 2015 Settlement. While Twin Lakes has replaced 2,790 feet of main, this amount of main replacement does not comply with the terms of the 2015 rate case settlement to which Twin Lakes agreed. As the ALJ noted:

[t]here is evidence in the record which establishes the Company has failed to take advantage of rate increase related to the 2015 Settlement. Twin Lakes did not replace Well No.1 and Phase 2 of the 2015 Settlement rates did not go into effect. In addition, Twin Lakes did not replace the specific mains required to trigger Phase 3 of the 2015 Settlement rates.

The OCA submits that this evidence supports the ALJ's finding that Twin Lakes' service is not safe, adequate, and reliable as required by Section 1501 of the Public Utility Code. 66 Pa. C.S. § 1501.

It appears that Twin Lakes disagrees with some of the phrasing in the Recommended Decision, but the facts regarding the amount of distribution system replaced, its failure to meet the

conditions in the 2015 Settlement, and the ALJ's conclusion that unaccounted for water has not been improved do not appear to be in dispute.

Next, Twin Lakes states:

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.

Twin Lakes Exc. at 2. The OCA submits that Twin Lakes' conclusion that it is providing adequate service is undercut by the remainder of its statement that the distribution system is in extremely poor condition, that there is excessive UFW, excessive pumping/treating and associated costs, the loss of Well # 1, and the threat to the viability of Well # 2 due to over-pumping. The record in this proceeding contains evidence to support all of these problems. OCA M.B. at 14, 34, 39-41; OCA R.B. at 17, 18-19; R.D. at 81-83. The ALJ correctly found, based on the evidence in this proceeding, that Twin Lakes does not provide adequate service under Section 1501 of the Public Utility Code. R.D. at 82-83. To the extent that Twin Lakes' Exception disagrees with the ALJ's finding of inadequate service, the Exception should be denied.

Reply To Exception #2: The ALJ Did Not Err In Concluding That Affordability of Rates Is a Factor In Setting Just and Reasonable Rates.

Twin Lakes excepts to the ALJ's conclusion that affordability is an issue in this case. Twin Lakes Exc. at 2-4. Twin Lakes argues that the ALJ has essentially concluded that since Twin Lakes has not fully addressed the viability concerns of the system, it is not entitled to adequate rate recovery. On the other hand, Twin Lakes states, if it were to invest the \$3.1 million estimated to replace the entire system, it would also be denied rate recovery as the rates would be unaffordable to Twin Lakes' customers. Further, Twin Lakes argues that OCA witness Sherwood is unqualified

to opine on median household income of Twin Lakes' customers. Twin Lakes states that Ms. Sherwood has no experience with poverty statistics and criticizes Ms. Sherwood's use of a comparative chart illustrating the residential rates of major Pennsylvania water utilities to show that Twin Lakes' proposed rates are significantly in excess of the rates charged by large water utilities in Pennsylvania.

The OCA agrees with the ALJ's conclusion that affordability is an issue in this case. The majority of customers who testified at the public input hearings testified that the proposed rate increase would be too high for them to afford, and several noted that they have trouble affording their bills at current rates.³

Ms. Sherwood found that under the rates proposed by Twin Lakes, or even under the OCA's two scenarios (adjusted revenue requirement or zero return on equity), Twin Lakes' customers will experience rate shock that violates the ratemaking principle of gradualism. OCA St. 1 at 12-15. Moreover, the resulting level of rates may not be affordable for some customers. As for Ms. Sherwood's qualification to opine on poverty statistics, Ms. Sherwood has more than ten years of experience in the public utility regulatory area. See OCA St. 1, App. A. During that time, she has worked at a regulatory commission and in the private sector addressing many aspects of utility regulation. Id. In addition, she worked as the lead analyst for the EmPOWER Maryland limited income programs implemented by the Maryland Department of Housing. Id. Ms.

³ For example, Donna Hersca testified that she and her husband are struggling to pay their current bill, and "[i]f an increase were approved, [they] anticipate that [they] would simply not be able to afford it." Tr. 71-82.

Stacy DeFrancesco testified that if the proposed rates go into effect, she and her husband would be forced to foreclose on the home they own and rent out in the Twin Lakes community. Tr. 94-96.

Grzegorz (Greg) Nieczaj testified that it would be "devastating" for him, his wife, and their 4-month-old son if the proposed rates became effective. Tr. 99-101.

Sherwood is qualified to address the level of rates proposed in this case, the median household income statistics from Pike County as well as the indicators used by the United States Environmental Protection Agency (EPA) and the Pennsylvania Infrastructure Investment Authority (Pennvest). Based on her experience, she is qualified to address the issue of affordability presented in this proceeding and Twin Lakes' argument should be disregarded.

Regarding Twin Lakes' argument that affordability is not part of the regulatory compact, it is clear that just and reasonable rates are part of the regulatory compact. 66 Pa. C.S. § 1301. In Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) (Hope), the Court noted that “[t]he ratemaking process under the Act, *i.e.*, the fixing of ‘just and reasonable’ rates, involves a balancing of the investor and consumer interests . . . and does not insure that the business shall produce revenues.” Additionally, in Pa. P.U.C. v. Roaring Creek Water Co., the Commission addressed the issue of affordability as part of the Company’s water rate case. Pa. PUC v. Roaring Creek Water Co., 1995 Pa. PUC LEXIS 67 *110-117 (1995). There, the OCA emphasized the public input testimony of the Company’s customers who opposed the increase. Id. at 110. The ALJ recommended that the Commission reject the OCA’s proposed remedies regarding affordability because of the adverse impact it would have on the Company. Id. at 112. The Commission adopted the ALJ’s recommendation that the Company be directed to work with the Bureau of Consumer Services (BCS) to develop a monthly budget plan for residential customers. Further, the Commission acknowledged the role of affordability in ratemaking by recommending that:

[t]he Company and BCS should work together to consider the feasibility of implementing other measures which would promote the affordability of water service. This approach is in both the shareholders’ and ratepayers’ best interest. Affordable bills will maximize revenues for the Company and will enable ratepayers to continue to receive an essential service.

Id. at 116.

More recently, the Court stated that the consumers are obliged to rely upon regulatory commissions to protect them from excessive rates and charges. See Permian Basin Area Rate Cases, 390 U.S. at 794-95 (1968).

Regarding affordability specifically, rates are required to be just and reasonable under Section 1301 of the Public Utility Code. 66 Pa. C.S. § 1301. Further, the OCA submits that the comparative chart was included by OCA simply to highlight how excessively high Twin Lakes' proposed rates are as compared to other water utilities.

Based on the foregoing, the OCA reiterates its recommendation that a 529 proceeding be initiated by the Commission. The OCA submits, and Twin Lakes agrees, that a 529 proceeding will allow Twin Lakes to address the unsustainability of the proposed rates in this case and future cases on Twin Lakes' customers.

The OCA submits that Twin Lakes' Exception should be denied.

Reply To Exception #3: The ALJ Did Not Err In Concluding That Twin Lakes Has Failed To Provide Safe, Adequate, and Reliable Service.

Twin Lakes excepts to the ALJ's conclusion that Twin Lakes has failed to provide adequate and reasonable service. Twin Lakes Exc. at 5-6. However, Twin Lakes joins the OCA's recommendation that the Commission initiate a Section 529 proceeding as part of its final order in this proceeding. Twin Lakes Exc. at 6.

In addition to UFW above 80%, Twin Lakes has no back-up water supply (and its primary well is in danger of being over-pumped), and it has exceeded the lead action level in its 2019 monitoring, which requires it to perform additional monitoring and possibly a corrosion control study that may lead to the addition of corrosion control. OCA M.B. at 35-43; OCA R.B. at 17-22. Twin Lakes acknowledged in its 2019 Application to Abandon that it cannot make the necessary

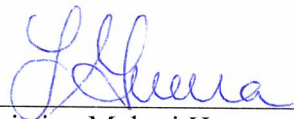
improvements at a reasonable cost to its 114 customers. The ALJ properly found that Twin Lakes is not providing adequate service under the requirements of the Public Utility Code.

As a long-term solution, the OCA has argued through the course of this proceeding that the Commission should initiate a 529 proceeding. OCA M.B. 6, 45, 49, 51; OCA R.B. at 2, 29. In its Exceptions, Twin Lakes stated that it joins the OCA in its recommendation, and it “strongly encourages the Commission to initiate a Section 529 proceeding as part of its Final Order resolving this current rate proceeding.” Twin Lakes Exc. at 6. The OCA submits that the initiation of a 529 proceeding would allow a capable public utility to acquire Twin Lakes which would help resolve the operational deficiencies present in this case and provide Twin Lakes’ customers with reasonable and just rates in compliance with the Public Utility Code and the Commission’s regulations.

II. CONCLUSION

For the reasons set forth above and in its Main Brief, Reply Brief, and Exceptions, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission deny the Exceptions of Twin Lakes Utilities, Inc., provide a water revenue increase that reflects a zero return on equity to properly reflect the inadequate service provided by Twin Lakes Utilities, Inc., and move forward with a Section 529 investigation to find a capable public utility to acquire the system.

Respectfully Submitted,



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