

# John J. Gallagher

Attorney at Law

711 Forrest Road, Harrisburg, PA 17112

Tel. (717) 599-5839

✉ jgallagher@jglawpa.com

August 4, 2020

## VIA HAND DELIVERY

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

**Re: John & Donna Hersca v. Twin Lakes Utilities, Inc.**  
**Docket No. C-2020-3020883**  
**Motion for Summary Judgement**

Dear Secretary Chiavetta:

Please find enclosed a copy of the Twin Lakes Utilities Inc. Motion for Summary Judgement, Notice to Plead and a Certificate of Service in the above-captioned matter

Should you have any questions concerning this correspondence please contact me at your convenience. Copies of this correspondence and the City of Lancaster's Certificate and have been served on the parties listed in the attached Certificate of Service.

Sincerely,



John J. Gallagher

Enclosures

cc: Certificate of Service

## 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

Mr. John and Donna Hersca  
110 Sagamore Road  
Shohola, PA 18458

Hon. Joel L. Cheskis  
Office of Administrative Law Judge  
PA Public Utility Commission  
P.O. Box 3265  
400 North Street  
Harrisburg, PA 17101-3265

Dated: August 4, 2020



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John J. Gallagher  
711 Forrest Road  
Harrisburg, PA 17112  
[jgallagher@jglawpa.com](mailto:jgallagher@jglawpa.com)  
Counsel for Twin Lakes  
Utilities Inc.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John & Donna Hersca

v.

Twin Lakes Utilities, Inc.

Docket No. C-2020-3020883

**MOTION OF TWIN LAKES UTILITIES INC. FOR SUMMARY JUDGMENT  
TO ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:**

AND NOW, comes Twin Lakes Utilities, Inc. (“Twin Lakes” or “the Company”), by and through its attorneys, and files this Motion For Summary Judgment pursuant to Sections 5.102 and 5.103 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code §§5.102-5.103, and Rules 1035.1 through 1035.5 of the Pennsylvania Rules of Civil Procedure, Pa. R.C.P. Nos. 1035.1-1035.5, and respectfully requests that the above-captioned Complaint be summarily dismissed, with prejudice.

As explained herein, there is no genuine issue of material fact and Complainants John and Donna Hersca’s (collectively, “Complainants”) claim constitutes no more than a backdoor attempt to re-litigate the Commission’s final Opinion and Order issued on March 26, 2020 in Twin Lakes’ most recently concluded rate case.<sup>1</sup> The principle of *res judicata* bars the Complainants from seeking relief in this action from the Twin Lakes Rate Order. As a result, Twin Lakes is entitled to judgment as a matter of law with respect to Complainant’s claim and relief sought in this matter.

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<sup>1</sup> *Pennsylvania Public Utility Comm’n et al. v. Twin Lakes Utilities, Inc.*, Opinion and Order, Docket No. R-2019-3010958 (Pa. P.U.C. Mar. 26, 2020) (“Twin Lakes Rate Order”).

For this reason, and as explained in more detail below, Twin Lakes respectfully requests that Administrative Law Judge Joel H. Cheskis (the “ALJ”) grant this Motion For Summary Judgment and summarily dismiss the instant Complaint in whole and with prejudice. In support thereof, Twin Lakes states as follows:

**I. BACKGROUND AND PROCEDURAL HISTORY**

1. Twin Lakes is a public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Twin Lakes provides retail water service to 113 active residential accounts in Pennsylvania, all located in the Sagamore Estates community located in Shohola Township, Pike County, Pennsylvania. One of these active accounts is the Complainants, who Twin Lakes serves under Account Number 0737594252.

2. On March 26, 2020, the Commission issued the Twin Lakes Rate Order in Commission Docket No. R-2019-3010958. In the Twin Lakes Rate Order, the Commission approved an annual increase of \$117,374 (87.91%) compared to Twin Lakes’ requested annual increase of \$211,793 (158.63%). As the Commission noted, Twin Lakes sought its requested rate increase as a reflection of “the business challenges the Company currently faces, including the required investments in the repair/replacement or improvement of the distribution system; and the high costs associated with maintaining distribution system while serving a small customer base.”<sup>2</sup> Part of the Commission’s basis for approving this rate increase, an increase far below the level requested by Twin Lakes, was “the concerns with affordability of rates of customers.”<sup>3</sup>

3. The Twin Lakes rate case docket (Docket No. R-2019-3010958) was a fully litigated rate case that included eleven (11) formal complaint dockets brought by the

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<sup>2</sup> Twin Lakes Rate Order at 5.

<sup>3</sup> *Id.* at 73 (quoting the Recommended Decision of Administrative Law Judge Marta Guhl at 87).

Pennsylvania Office of Consumer Advocate (“OCA”) and ten (10) Twin Lakes customer complainants.<sup>4</sup> The gravamen of these complaints was that the rates proposed by Twin Lakes were unjustly and unreasonably high, rendering their water service unaffordable.

4. On June 29, 2020, Twin Lakes issued a quarterly bill to the Complainants in the amount of \$528.68 for service rendered during the period March 28, 2020 to June 27, 2020. The amount charged during this quarterly period reflected the new rates approved by the Commission in the Twin Lakes Rate Order.

5. This matter was initiated on July 16, 2020 with the filing of the Formal Complaint matter by the Complainants. The Commission subsequently assigned Docket No. C-2020-302883 to this matter on July 17, 2020, and served Twin Lakes with the Formal Complaint on July 23, 2020.

6. In the Formal Complaint, the Complainants state that they “oppose Twin Lakes Utilities, Inc.,’s rate and amount billed to us [in the June 29, 2020 quarterly bill] because it is an illegal, unreasonable and unjust rate and bill amount, which is in direct violation of Pennsylvania Code Title 66 – Public Utilities, Chapter 13, Section 1301 – Rates to be Just and Reasonable.” See Formal Complaint at 2. The Complainants further argue that: “It is unreasonable and unjust because Twin Lakes Utilities is charging us \$600 for our quarterly water bill for us (two people) when the average national and state water monthly bill is only \$40!” Id. (emphasis included). Finally, the Complainants argue that the rates charged in the June 29, 2020 quarterly bill are egregiously unaffordable, unreasonable and unjust.” Id.

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<sup>4</sup> *Pennsylvania Public Utility Comm’n et al. v. Twin Lakes Utilities, Inc.*, Docket Nos. C-2019-3011845 (OCA), C-2019-3011969 (Irene Blanchard), C-2019-3012087 (Jeffrey Shatt), C-2019-3012169 (Ciro Matrecano), C-2019-3012221 (Neil and Kathleen Joyce), C-2019-3012272 (Lisa Celenza), C-2019-3012332 (Tami DeFrancesco), C-2019-3012399 (Virginia Pfeiffer), C-2019-2487 (Charles Dellert), C-2019-3012659 (James Gelardi) and C-2019-3012667 (Frank and Shuko Kashimba).

7. In the Formal Complaint, the Complainants request the following relief: “(1) Twin Lakes Utilities immediately reduce our water rates down to a reasonable and just rate and be immediately ordered by the PUC to do so and mandate that our water bill does not exceed the national and statewide average water bill in Pennsylvania of \$40.00 per month, as required by Pennsylvania Code Title 66 – Public Utilities, Chapter 13, Section 1301 – Rates to Be Just and Reasonable; and (2) We further request that Twin Lakes reimburse us for all past monies we have overpaid to them as a result of them overcharging us an unreasonable and unjust rate.” Id. at 3.

8. On July 27, 2020, Twin Lakes filed an Answer in the above-captioned docket. In its Answer, Twin Lakes denied the Complainant’s claim that the amount charged in the June 29, 2020 was unreasonable and unjust as that amount was calculated in accordance with the rates approved by the Commission in the Twin Lakes Rate Order. See Answer at 2. In addition, Twin Lakes denied the Complainants’ claim that they were entitled to the relief they requested because the June 29, 2020 bill was calculated in accordance with the rates approved by the Commission in the Twin Lakes Rate Order, and that there was no basis in fact or law to justify Complainant’s proposed *post hoc* reversal of a final Commission Order or remedies of reimbursements *sua sponte*. Id.

9. On July 30, 2020, the Complainants filed a Response To Twin Lakes’ Answer, basically repeating their claims set forth in the Formal Complaint and further alleging that the Commission committed an unspecified error of law in issuing the Twin Lakes Rate Order. See Response To Twin Lakes’ Answer at 1-2.

10. On July 30, 2020, the ALJ issued an Initial Telephonic Hearing Notice in the above-captioned matter, scheduling the hearing for October 6, 2020 at 10:00 am.

## II. STANDARD FOR SUMMARY JUDGMENT

11. Section 5.102 of the Commission's regulations provides the Commission's standard of review for a request for summary judgment:

(1) *Standard for grant or denial on all counts.* The presiding officer will grant or deny a motion for judgment on the pleadings or a motion for summary judgment, as appropriate. The judgment sought will be rendered if the applicable pleadings, depositions, answers to interrogatories and admissions, together with affidavits, if any, show that there is no genuine issue as to a material fact and that the moving party is entitled to a judgment as a matter of law.

12. Similarly, Rule 1035.2 of the Pennsylvania Rules of Civil Procedure sets forth the following:

After the relevant pleadings are closed, but within such time as not to unreasonably delay trial, any party may move for summary judgment in whole or part as a matter of law

(1) whenever there is no genuine issue of any material fact as to a necessary element of the cause of action or defense which could be established by additional discovery or expert report, or

(2) if, after the completion of discovery relevant to the motion, including the production of expert reports, an adverse party who will bear the burden of proof at trial has failed to produce evidence of facts essential to the cause of action or defense which in a jury trial would require the issues to be submitted to a jury.

Pa. R.C.P. No. 1035.2

13. The Commission is granted discretion to dismiss any complaint without a hearing if, in its opinion, a hearing is not necessary in the public interest. 66 Pa. C.S. § 703(b); 52 Pa. Code § 5.21(d). A hearing is necessary only to resolve disputed questions of fact, and when the question presented is one of law, the Commission need not hold a hearing. *Lehigh Valley Power Comm. V. Pa. Pub. Util. Comm'n*, 563 A.2d 548 (Pa. Comwlth. 1989); *Edan Transp. Corp. v. Pa. Pub. Util. Comm'n*, 623 A.2d 6 (Pa. Comwlth. 1993).

### III. SUMMARY OF ARGUMENT

14. There is no genuine issue of material fact in this case. There is no dispute that on June 29, 2020, Twin Lakes issued a quarterly bill to the Complainants in the amount of \$528.68 and that this bill was issued pursuant to rates approved by the Commission in the Twin Lakes Rate Order issued on March 26, 2020.

15. The dispute raised in the Formal Complaint is not one of fact, but one of law – that the amount of the June 29, 2020 quarterly bill is “egregiously unaffordable, unreasonable and unjust” because it was issued in accordance with the Twin Lakes Rate Order that is itself a product of an “error or law” committed by the Commission. See Formal Complaint at 2; Response To Twin Lakes Answer at 1-2.

16. The issues of the justness, reasonableness and affordability of the rates approved in the Twin Lakes Rate Order and subsequently used in the calculation of the June 29, 2020 quarterly bill issued to the Complainants were fully litigated and resolved by a final Commission Order in Docket No. R-2019-3010958, a docket that included the full participation of the OCA and ten Twin Lakes customer complainants.

17. *Res judicata*, and the related doctrine of *collateral estoppel*, have as their basis the protection of final judgments, 1B Moore’s *Federal Practice* ¶ 0.405[3](2d. ed. 1987), making valid final judgments binding on the parties and barring subsequent relitigation of the issues. *Id.* at ¶ 0.405[2]. The goal of both doctrines is “to secure the peace and repose of society by the settlement of matters capable of judicial determination.” *Southern Pacific R. Co. v. United States*, 168 U.S. 1, 49, 18 S.Ct. 18, 27, 42 L.Ed. 355 (1897). “The essential inquiry is whether the ultimate and controlling issues have been decided in a prior proceeding in which the present parties had an opportunity to appear and assert their rights.” *Callery v. Blythe Township*

*Municipal Authority*, 432 Pa. 307, 312, 243 A.2d 385 (1968) (citation omitted). These principles of *res judicata* also apply to the decisions of administrative agencies including the Commission. *City of McKeesport v. Pennsylvania PUC*, 65 Pa. Cmwlth. 179, 442 A.2d 30, 31 (1982), *citing Philadelphia Electric Co. v. Pennsylvania PUC*, 61 Pa. Cmwlth. 325, 433 A.2d 620 (1981), *see also* K. Davis, 4 *Administrative Law Treatise* §21.1 (2d ed. 1981); 1 *P.L.E. Administrative Law and Procedure* § 93.

18. Here, the issues of the justness, reasonableness and affordability of the rates approved by the Commission in the Twin Lakes Rate Order and used to calculate the June 29, 2020 quarterly bill to the Complainants were issues that were decided in a prior proceeding – Docket No. R-2019-3010958 – in which the Complainants had every opportunity to appear and assert their rights as OCA and other Twin Lakes customers did. These issues were fully litigated and decided by a Commission Order – the Twin Lakes Rate Order – that was, is and remains valid and binding. The principle of *res judicata* – a fundamental principle firmly rooted in American jurisprudence – applies to the final decisions of administrative agencies including the Commission and bars the Complainants from re-litigating the last Twin Lakes rate case here.

**IV. CONCLUSION**

WHEREFORE, Twin Lakes Utilities, Inc. respectfully requests that the Honorable Administrative Law Judge Joel H. Cheskis grant the Motion For Summary Judgment, enter judgment in favor of Twin Lakes Utilities, Inc., and summarily dismiss this entire matter, with prejudice.

Respectfully submitted,



John J. Gallagher, Esq.  
Attorney at Law  
711 Forrest Road  
Harrisburg, PA 17112  
Tel: (717) 599-5839  
E-Mail: [jgallagher@jglawpa.com](mailto:jgallagher@jglawpa.com)

Jay L. Kooper  
(Motion For Admission *Pro Hac Vice*, pending)  
Secretary  
Twin Lakes Utilities, Inc.  
485C Route One South, Suite 400  
Iselin, NJ 08830  
Tel: (732) 638-7506  
E-Mail: [jkooper@middlesexwater.com](mailto:jkooper@middlesexwater.com)

Date: August 4, 2020

Attorneys for Twin Lakes Utilities, Inc.