

COMMONWEALTH OF PENNSYLVANIA



OFFICE OF CONSUMER ADVOCATE

555 Walnut Street, 5th Floor, Forum Place
Harrisburg, Pennsylvania 17101-1923
(717) 783-5048
800-684-6560

 @pa_oqa

 /pennoca

FAX (717) 783-7152
consumer@paoca.org

August 5, 2020

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

Re: Petition of Twin Lakes Utilities, Inc. For A
Commission Order Authorizing The Acquisition
Of Twin Lakes Utilities, Inc. By A Capable Public
Utility Pursuant To 66 Pa. C.S. § 529
Docket No. P-2020-3020914

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Answer in Support of the Petition of Twin Lakes Utilities, Inc. in the above-referenced proceeding. The undersigned certifies that this filing contains no averments or denials of fact subject to verification and penalties under 52 Pa. Code Section 1.36.

Copies have been served per the attached Certificate of Service.

Very truly yours,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Enclosures:

cc: The Honorable Joel H. Cheskis (**email only**)
Certificate of Service

*293579

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Twin Lakes Utilities, Inc. For A :
Commission Order Authorizing the Acquisition : Docket No. P-2020-3020914
Of Twin Lakes Utilities, Inc. By A Capable Public :
Utility Pursuant to 66 Pa. C.S. § 529 :

ANSWER OF THE
OFFICE OF CONSUMER ADVOCATE
IN SUPPORT OF PETITION

The Office of Consumer Advocate (OCA) hereby submits this Answer in support of Twin Lakes Utilities, Inc.'s (Twin Lakes or the Company) Petition For A Commission Order Authorizing The Acquisition of Twin Lakes Utilities, Inc. By A Capable Public Utility Pursuant to 66 Pa. C.S. § 529 (Petition) at Docket No. P-2020-3020914.

I. ANSWER

Twin Lakes filed this Petition on July 16, 2020 requesting consideration of the Petition by the Commission on an expedited basis. Twin Lakes is a wholly-owned subsidiary of Middlesex Water Company (Middlesex), a New Jersey corporation. Petition ¶ 3. Twin Lakes has filed three requests for rate increases since its acquisition by Middlesex, the first in 2011, second in 2015 and most recently in 2019. Petition ¶ 8. Middlesex is Twin Lakes' sole source of equity capital, debt financing and primary operations support, as Twin Lakes is unable to establish a credit arrangement at a reasonable cost as a stand-alone entity as a result of its inability to demonstrate that its net income and cash flow can support debt repayment. Petition ¶ 9. Middlesex has extended financial credit to Twin Lakes through three outstanding Unsecured Revolving Promissory Notes. Petition ¶ 10. Since the acquisition, Middlesex states that it has invested, loaned or advanced over \$2.4 million to Twin Lakes. Petition ¶ 11. Soon after Twin Lakes began

operating the system, it states that it became aware that the condition of the assets was significantly worse than had been represented by the previous owner or had been apparent from inspection. Petition ¶ 13. Beginning in July 2011, Twin Lakes has discussed acquisition of the system with other water companies, but none of Twin Lakes' attempts have resulted in a takeover decision. Petition ¶ 14.

On October 23, 2018, Twin Lakes filed an Application to Abandon Service. Application of Twin Lakes Utilities, Inc. for all approvals and waivers (if any) which may be required under the Public Utility Code for the Abandonment of Service, Docket No. A-2018-3005590 (Application to Abandon). In its Application, Twin Lakes described the state of the distribution system and the wells, and the necessary capital expenditures to fix the problems that exist. Id. On October 25, 2018, a Secretarial Letter was issued to Twin Lakes in which the Application was rejected because Twin Lakes did not provide a buyer or alternative to the existing water service. On October 29, 2018 Twin Lakes filed an appeal of staff action regarding the rejection of the Application. On February 28, 2019, the Commission entered an Order denying Twin Lakes' appeal.

As mentioned above, Twin Lakes has filed three rate increase requests since 2011. It received rate relief in each case, and in the 2011 and 2015 rate case settlements, the rate increases were tied to specific improvements to its facilities. On June 10, 2011, Twin Lakes filed a request to increase revenues by \$124,420, or 368%. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2011-2246415. (2011 Rate Case). The Commission approved an Amended Joint Petition for Settlement of Rate Investigation (2011 Settlement) on March 1, 2012. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2011-2246415 Order (March 1, 2012). The 2011 Settlement provided for increased revenues of \$42,060, or 124%, starting with an increase of \$21,060, followed by two

additional increases phased in over the next two years. In exchange, Twin Lakes was required to reduce unaccounted for water (UFW) from 55% to 49.5% within 18 months; conduct an annual pressure survey as required by Commission regulation, and provide an annual bill insert to describe how it would notify its customers about boil water advisories or other emergency situations. 2011 Settlement at ¶¶ 7. c., d., and h.

On November 16, 2015, Twin Lakes filed a rate increase request asking for additional revenues of \$195,287, or 257%. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2015-2506337 (2015 Rate Case). The Commission approved a Joint Petition for Settlement of Rate Investigation (2015 Settlement) on June 9, 2016. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2015-2506337 Order (June 9, 2016). The settlement of the 2015 rate case provided for an increase in revenues of \$125,000, or a 164.54% increase over three years, including an immediate 82% increase (\$62,500) along with two subsequent increases based on specific improvements being made to trigger phases 2 and 3. 2015 Settlement at ¶ 6. The 2015 Settlement required Twin Lakes to, *inter alia*, replace Well #1 to trigger the second phase of the rate increase (additional 25%) (¶ 7.c.1); install and/or replace various mains in the distribution system to trigger the third phase of the rate increase (additional 25%) (¶ 7.c.2), and send outage alert billing inserts two times per year (¶ 7.h), and pressure readings protocol for customers complaining about low pressure, as well as a commitment to increase pressure by a certain amount when it replaced Well #1 (¶ 7.k).

On July 23, 2019, Twin Lakes filed its most recent rate increase request with the Commission. On March 26, 2020, the Commission issued an Order approving an annual increase of \$117,374 (88%) as opposed to \$211,793 (158.63%) as initially requested by Twin Lakes. Pa. PUC, et al. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958 Opinion and Order (Mar. 26, 2020) (Twin Lakes 2019 Rate Case); see also Petition ¶ 17. As evidenced by customer

testimony in the public input hearings, and as presented by various party witnesses, affordability was a significant concern in the 2019 rate case. Petition ¶ 17. The rates resulting from the 2019 rate case is a \$114.84 monthly customer charge for a 5/8 inch meter and a volumetric rate of \$27.75 per 1,000 gallons. Twin Lakes Compliance Tariff Supplement No. 10 to Tariff-Water Pa. P.U.C. effective 4/19/20. For a customer using 3,000 gallons of water per month, the resulting bill is \$198 per month, or \$2,377 per year.¹ It should be noted that these rates do not reflect any of the necessary improvements described above. See e.g., Twin Lakes 2019 Rate Case, slip op. at 64. In addition to affordability concerns from the 2019 rate increase, if Twin Lakes were to replace Well #1, it estimated that its cost to replace Well #1 would be \$1,600,000 in addition to the \$611,375, the amount recorded in Construction Work in Progress for this project. Twin Lakes St. 3 at 3-4. In the 2018 Application to Abandon, Twin Lakes stated that the cost of Well #1 would be extremely expensive for its 114 customers, and along with other necessary costs, would drive rates to approximately \$3,800 per customer per year. 2018 Application to Abandon at 2-4.

In the 2019 rate case, the OCA argued that Twin Lakes is not a viable entity.² The OCA argued that the service is inadequate and continues to be inadequate. See Twin Lakes 2019 Rate Case, slip op. at 51-55, 62. The Administrative Law Judge found that service was inadequate, but did not adopt the OCA's recommended remedy. Twin Lakes 2019 Rate Case, Recommended Decision, issued Feb. 19, 2020 (R.D.) at 82-83. In addition, the capital expenditures that are needed to improve the system and the supply are too high for the 114 customers to bear, even assuming that financing can be secured for all of the capital improvements. OCA St. 1 at 14-15.

¹ $\$114.84 + (\$27.75 \times 3) = \$198$. $\$198 \times 12 = \$2,377$.

² The OCA presented the testimony of Stacy Sherwood regarding revenue requirement, including an adjustment for inadequate service and affordability of rates (OCA Statement 1 and 1SR), the testimony of Aaron Rothschild regarding the cost of capital (OCA Statement 2), and the testimony of Terry L. Fought, Engineer regarding the ongoing quality of service issues (OCA Statement 3 and 3SR).

The situation requires finding a long term solution through the initiation of a Section 529 proceeding. 66 Pa. C.S. § 529. OCA St. 1 at 14-15.

The Commission rejected recommendations proposed by the OCA, and agreed to by Twin Lakes in its Exceptions, to initiate a Section 529 proceeding to determine whether the Commission should direct a capable public utility to acquire Twin Lakes, stating that it is not warranted at this time based upon the rate increase granted in that proceeding and Twin Lakes' prospective securing of a PENNVEST loan. Twin Lakes 2019 Rate Case, slip op. at 64. Twin Lakes filed its application to PENNVEST on August 7, 2019 and on January 29, 2020, it was notified that PENNVEST had approved a grant of \$4.66 million and a loan of \$304,573. Petition ¶ 19. Twin Lakes states that it later concluded that a grant award would carry with it an income tax liability of \$1.358 million which would be recoverable from Twin Lakes' customers. Petition ¶ 19. Twin Lakes states that it has concerns regarding its ability to recover this amount from customers based upon the Commission's decision in the 2019 rate case citing affordability as an issue in that case. Petition ¶ 20.

On May 28, 2020, Middlesex demanded payment amounts due on the three outstanding promissory notes, to which Twin Lakes replied on May 29, 2020 that it was unable to meet the demand. Petition ¶¶ 21-22. On June 1, 2020, Middlesex issued a notice of termination of the Service Agreement between Middlesex and Twin Lakes, effective on September 1, 2020. Petition ¶ 24. As a result of that notice of termination, Twin Lakes issued a Request for Proposal to solicit proposals for the operation and maintenance of Twin Lakes following Middlesex's expected departure on September 1, 2020. Petition ¶ 25. On June 10, 2020, Twin Lakes issued a letter to Paul Diskin, Director of the Commission's Bureau of Technical Utility Services, Richard Kanaskie, Director and Chief Prosecutor of the Commission's Bureau of Investigation and

Enforcement, and Tanya McCloskey, Acting Consumer Advocate of the Pennsylvania Office of Consumer Advocate, once again requesting initiation of a Section 529 proceeding. Petition ¶ 28. On July 13, 2020, the Commission informed Twin Lakes that its letter requesting initiation of a Section 529 proceeding did not constitute a proper filing. Subsequently, on July 16, 2020, Twin Lakes filed this Petition.

As the OCA has argued previously, Twin Lakes has significant quality of service issues. Twin Lakes 2019 Rate Case, slip op. at 48-55. The record evidence in the 2019 rate case showed that Twin Lakes has unacceptably high unaccounted for water, a well that has not been replaced and is not providing service, a remaining well that is in danger of being overpumped, and has exceeded the lead action level. Twin Lakes 2019 Rate Case, R.D. at 82-83. The OCA argued that Twin Lakes is not providing safe, adequate, and reliable service in accordance with the requirements of the Public Utility Code. Specifically, Well #2 is its only operable well which is at risk of collapse due to over-pumping to compensate for the loss of Well #1. Twin Lakes 2019 Rate Case, slip op. at 65. The system is also plagued by repeated leaks resulting in unaccounted for water as high as 86%. Id. These quality issues are not newly-discovered. Middlesex states that it became aware of the severity of the problem with the system shortly after it acquired it from the previous owner. Petition ¶ 13. Since that time it has requested three rate increases, filed an Application to Abandon, and requested the Commission authorize a takeover of the system. Twin Lakes' customers testified at public input hearings in the 2019 rate case about how the proposed increases would be unaffordable for them, potentially leading to at least one customer having to leave their property, among other negative consequences. See Twin Lakes 2019 Rate Case, R.D. at 11-12. Twin Lakes was granted annual rate increases in all three of its rate cases, and in each case, those increases were tied to specific improvements to the system and the service provided to

its customers. Despite these increases, it still has not been able to resolve its quality issues related to leaks and unaccounted for water. Twin Lakes 2019 Rate Case, R.D. at 82; Twin Lakes 2019 Rate Case, slip op. at 63. It is OCA's position that standard rate increases will not solve the problems Twin Lakes continues to experience. The rates approved in the 2019 rate case are extremely high. See OCA St. 1 at 11. The rates that would result, if Twin Lakes is able to make all of the necessary improvements, would be unaffordable to many of its customers. OCA St. 1 at 13-15. In light of the long history of inadequate service, the high level of rates resulting from the 2019 rate case, Twin Lakes' concern regarding accepting the PENNVEST loan, and Middlesex's termination of its relationship with Twin Lakes, the OCA supports the initiation of a Section 529 proceeding as in the best interest of Twin Lakes' customers.

II. CONCLUSION

For the reasons set forth above, the Office of Consumer Advocate supports Twin Lakes' Petition for A Commission Order Authorizing The Acquisition of Twin Lakes Utilities, Inc. By A Capable Public Utility Pursuant to 66 Pa. C.S. § 529.

Respectfully Submitted,

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Lauren E. Guerra
Assistant Consumer Advocate
PA Attorney I.D. # 323192
E-Mail: LGuerra@paoca.org

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Telephone: (717) 783-5048
Facsimile: (717) 783-7152
Dated: August 5, 2020
293569

CERTIFICATE OF SERVICE

Re: Petition of Twin Lakes Utilities, Inc. For A :
Commission Order Authorizing The Acquisition : Docket No. P-2020-3020914
Of Twin Lakes Utilities, Inc. By A Capable Public :
Utility Pursuant To 66 Pa. C.S. § 529 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Answer in Support of the Petition of Twin Lakes Utilities, Inc., 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 5th day of August 2020.

SERVICE BY E-MAIL ONLY

Scott B. Granger, Esquire
Bureau of Investigation & Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor
Harrisburg, PA 17120

John R. Evans, Esquire
Office of Small Business Advocate
555 Walnut Street
1st Floor, Forum Place
Harrisburg, PA 17101-1923

John J. Gallagher, Esquire
711 Forrest Road
Harrisburg, PA 17109

Jay L. Kooper, Secretary
Twin Lakes Utilities, Inc.
485C Route 1 South, Suite 400
Iselin, NJ 08830-3020

Eric Bartolacci
Department of Environmental Protection
Office of Field Operations
2174B Route 611
Swiftwater, PA 18370

Sean Kemether, Sagamore Estates
Property Owners Association
E-Mail: sepoachairman@gmail.com

/s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
E-Mail: CHoover@paoca.org

Counsel for:
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152
Dated: August 5, 2020
*293577

Lauren E. Guerra
Assistant Consumer Advocate
PA Attorney I.D. # 323192
E-Mail: LGuerra@paoca.org