

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_oca

 /pennoca

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

August 18, 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:

Enclosed please find the Office of Consumer Advocate's Notice to Plead and the Petition for Issuance of an Interim Emergency Order on an Expedited Basis, pursuant to Sections 3.6, 3.6a and 3.7, 52 Pa. Code §§ 3.6, 3.6a, 3.7, in the above-referenced proceeding. The OCA has attached a verification pursuant to the requirements of 52 Pa. Code § 1.36.

Please note that the Office of Consumer Advocate is respectfully requesting **expedited treatment of the Interim Emergency Order including shortening the answer period from five to three days, and shortening of the hearing from ten to six days, and shortening the time for issuance of an Order from fifteen to ten days**, if so directed by the Chief Administrative Law Judge or presiding Deputy Chief Administrative Law Judge Cheskis.

Copies have been served as indicated on the enclosed 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 Charles E. Rainey, Jr. (**email only**)
The Honorable Joel H. Cheskis (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*294249

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 Petition for Issuance of an Interim Emergency Order on an Expedited Basis, 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 18th 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

Alexander R. Stahl, Esquire
Aqua Pennsylvania, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010

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 18, 2020

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

*294074

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 :
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NOTICE TO PLEAD

You are hereby advised to file a written response to the attached OCA's Petition for Issuance of an Interim Emergency Order on an Expedited Basis in the above-captioned proceeding within five (5) days after the date of service **or within a shorter period, three (3) days, as requested in the attached pleading.** If you do not file a written response to OCA's Petition, the Chief Administrative Law Judge may rule in favor of OCA on the attached Petition.

All pleadings, such as answers to petitions, must be filed with the Secretary of the Pennsylvania Public Utility Commission:

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

A copy should also be served on the undersigned counsel, the Presiding Officer and all other parties.

Respectfully submitted,

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

Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923
Phone: (717) 783-5048
Fax: (717) 783-7152

Counsel for:
Tanya J. McCloskey
Acting Consumer Advocate

Dated: August 18, 2020

BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Twin Lakes Utilities, Inc. for a :
Commission Order Authorizing the Acquisition : Docket No. P-2020-3020914
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OFFICE OF CONSUMER ADVOCATE'S
PETITION FOR ISSUANCE OF AN INTERIM EMERGENCY ORDER
ON AN EXPEDITED BASIS

I. INTRODUCTION

The Office of Consumer Advocate (OCA) hereby submits the instant Petition for Issuance of an Interim Emergency Order (Interim Emergency Petition) pursuant to Section 3.6 of the Public Utility Commission's (PUC or Commission) regulations. See 52 Pa. Code § 3.6. **The OCA asks that its Interim Emergency Petition be treated in an expedited manner, with shorter time frames than provided for in Section 3.6, 36a, and 3.7 as set forth below in Paragraph 20. See 52 Pa. Code § § 3.6, 3.6a, 3.7.**

On or about August 3, 2020, Twin Lakes Utilities, Inc. (Twin Lakes or Company) sent a notice (attached as Exhibit A) to each of its customers regarding its request that the Commission authorize a capable utility to acquire Twin Lakes. In the notice, Twin Lakes informed its customers, *inter alia*, that it would cease providing water service to its customers effective at 12:01 a.m. on September 1, 2020, if it is unable to secure a new system operator. The OCA respectfully requests the Commission grant this Interim Emergency Petition in the above-referenced docket asking for the appointment of a receiver pursuant to Section 529 (g), 66 Pa. C.S. § 529(g), if Twin Lakes is unable to secure a new system operator, for the reasons set forth below.

Background

On July 16, 2020, Twin Lakes filed a 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 (Twin Lakes' Petition). Twin Lakes' Petition was assigned to Administrative Law Judge Cheskis. In the Twin Lakes' Petition, it set forth the history of its ownership by Middlesex Water Company and its rate increase history. Twin Lakes' Petition at 2-11. Since Middlesex acquired Twin Lakes in 2011 it has requested and received three rate increases,¹ filed an Application to Abandon,² engaged in unsuccessful discussions with other public utilities about acquiring Twin Lakes and, most recently, notified Twin Lakes' customers of its intention to discontinue water service and filed a Petition with the Commission requesting the Commission to order an acquisition pursuant to Section 529.³

Also attached to the Twin Lakes' Petition, was a Request for Proposal (RFP) that it had issued on July 14, 2020. Twin Lakes' Petition, Appendix J. The RFP sought "Contract Operations & Maintenance Services For The Twin Lakes Utilities, Inc. Community Water System Located In Shohola Township, Pike County, Pennsylvania" Id. It appears that a qualified proposal has not

¹ On June 10, 2011, Twin Lakes requested a \$124,420 or 368% increase and it received \$42,060 or a 124% increase phased in over three years. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2011-2246415 Order (March 1, 2012).

On November 16, 2015, Twin Lakes requested additional revenues of \$195,287 or 257% and it received \$125,000 or a 164.54% increase over three years based upon specific improvements that would trigger phases 2 and 3. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2015-2506337 Order (June 9, 2016).

On July 23, 2019, Twin Lakes filed its most recent rate increase request asking for \$211,793 or 158.63% and it received \$117,374 or 88%. Pa. P.U.C., et al. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958 Opinion and Order (Mar. 26, 2020) (Twin Lakes 2019 Rate Case).

² The Application was rejected because Twin Lakes failed to provide a buyer or alternative to the existing water 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). On October 29, 2018, Twin Lakes filed an appeal of staff action regarding the rejection which was denied by Order on February 28, 2019.

³ Twin Lakes' Petition at 11-12.

been received by Twin Lakes. As set forth below, the OCA requests immediate appointment of a receiver to ensure that Twin Lakes' customers receive continuous, efficient, safe and reasonable service. 66 Pa. C.S. § 529(b) (3).

Twin Lakes' system is comprised of Well #2, its only operable well, and Well #1, which is inoperable and at risk of collapse due to over-pumping of Well #2. It has a small pumping station and its mains are made up of various types of materials, which have not been properly maintained, leading to excessive unaccounted for water (UFW) levels rising as high as 86% in recent years. Additionally, Twin Lakes exceeded the lead action level at one residence in Sagamore Estates.⁴ Since 2011, although it has received three rate increases, Twin Lakes has failed to solve the problems that continue to plague the system.

II. INTERIM EMERGENCY PETITION

1. On July 16, 2020, as stated above, Twin Lakes filed a Petition requesting that the Commission issue an order authorizing the acquisition of Twin Lakes pursuant to Section 529.

2. On July 27, 2020, an Initial Prehearing Conference was held before ALJ Cheskis. During that Initial Prehearing Conference, the possibility that a qualified proposal would not be submitted in response to the RFP was discussed.

3. On July 28, 2020, ALJ Cheskis issued a Scheduling Order containing a schedule for the litigation of a Section 529 proceeding, including a September 1 deadline for notice to be provided to the Twin Lakes' customers and proximate capable public utilities regarding the investigation.

4. On August 5, 2020, the OCA filed an Answer supporting the initiation of a Section 529 proceeding. The OCA incorporates its Answer by reference.

⁴ Twin Lakes 2019 Rate Case, R.D. at 82-83.

5. On August 5, 2020, I&E filed its Answer to Twin Lakes' Petition, in which it argued that it is not within the Company's power to request a Section 529 proceeding and that the Commission has the authority initiate a Section 529 proceeding on its own motion.⁵

6. The deadline for the proposals was August 14, 2020. It appears that Twin Lakes has not received any qualified proposals in response to its request and whether Twin Lakes will accept any qualified proposals.

7. It is clear that Twin Lakes has an ongoing obligation, pursuant to its certificate of public convenience, to provide service to its customers until the resolution of the Section 529 proceeding and/or the Commission otherwise approves an abandonment of service. 66 Pa. C.S. §§ 1101, 1102, 1501.

8. Without a qualified proposal, it is likely that Twin Lakes will cease providing water service to its customers at 12:01 a.m. on September 1, 2020.

9. Due to the imminent cessation of water service by Twin Lakes, the OCA respectfully requests a receiver be appointed to ensure Twin Lakes' customers continue to receive water service and to ensure that Twin Lakes does not cease providing water service to its customers effective 12:01 a.m. on September 1, 2020.

10. Pursuant to Section 529(g), 66 Pa. C.S. § 529(g) the Commission may take action to ensure that customers of a small water utility will receive safe and adequate service. Section 529(g) provides as follows:

(g) Appointment of receiver.—The commission may, in its discretion, appoint a receiver to protect the interests of the customers of the small water or sewer utility. Any such appointment shall be by order of the commission, which order shall specify the duties and responsibilities of the receiver.

66 Pa. C.S. § 529(g).

⁵ I&E Answer to Twin Lakes' Petition at 12.

11. The Commission has previously appointed receivers in emergency situations such as this.⁶

12. The OCA submits that this case is similar to Winola and Indian Springs in that Twin Lakes is not providing safe, adequate and reasonable service to its customers. To date, Twin Lakes has not addressed the problems facing its system. Most importantly for the purposes of this Interim Emergency Petition, Twin Lakes has expressed its intention to terminate all water service to Twin Lakes' customers effective September 1, 2020.

13. The OCA submits that its right to relief is clear. The Commission has the authority to appoint a receiver pursuant to Section 529(g). 52 Pa. Code § 3.2 (b).

14. The OCA submits that the need for relief is immediate because it appears that Twin Lakes did not receive a qualified proposal and thus, according to Twin Lakes, it will cease providing water service effective 12:01 a.m. on September 1, 2020. 52 Pa. Code § 3.2 (b).

15. The OCA submits that the injury to the customers of Twin Lakes is irreparable if the OCA's requested relief is not granted. 52 Pa. Code § 3.2 (b). Without water service, the public

⁶ Winola Water Company (WWC) provided service to 10 year-round and 25 seasonal customers around Lake Winola in Overfield Township, Wyoming County, Pennsylvania. The DEP directed WWC to notify its customers that its water was not safe for consumption due to cadmium and lead exceeding the maximum allowable levels. Ex Parte Emergency Order, Docket No. P-2018-3006216 and C-2018-2644592 slip op. at 1 (Nov. 29, 2018, ratified Dec. 6, 2018) (Winola). WWC failed to take action to correct the water conditions and failed to provide an alternative source of potable water to its customers. I&E filed a Petition for an Ex Parte Emergency Order requesting the Commission to appoint a receiver to operate WWC. Id. The Commission determined that in order to protect the health, safety and welfare of WWC's customers, the appointment of a receiver was necessary. Id. at 5.

Indian Springs Water Company (Indian Springs) provided water service to approximately 54 customers in the community of Glen Summit in Fairview Township, Luzerne County, Pennsylvania. In re: The Indian Springs Water Co., Docket No. M-2019-3011972 Opinion and Order (August 8, 2019) (Indian Springs). Since 2015, the DEP has issued ten Notices of Violation to Indian Springs for various noncompliant items, including lead and copper exceedances and unsanitary water system conditions. Indian Springs at 1-2. Based upon these violations, the Commission determined a receiver was necessary to correct the problems which would lead to Indian Springs providing unsafe, inadequate or unreasonable water service to its customers and the public. Id. at 2.

health and safety of Twin Lakes' customers will be compromised. The continued provision of water service is even more critical during the global COVID-19 pandemic.

16. The OCA submits that the relief requested in OCA's Interim Emergency Petition is not injurious to the public interest. 52 Pa. Code § 3.2 (b). Granting the OCA's Interim Emergency Petition will, in fact, support the public interest by ensuring the continued provision of water service to the Twin Lakes' customers.

17. Aqua Pennsylvania appears to be financially, managerially, and technically capable to serve Twin Lakes' customers. It is a capable PUC jurisdictional water utility⁷ and a proximate public utility⁸ as required under Section 529.

18. It appears that Twin Lakes has not received a qualified proposal in response to the RFP. The OCA respectfully requests the Commission direct Aqua Pennsylvania to act as a receiver to operate Twin Lakes until the resolution of the Section 529 proceeding.

19. The time frame for an interim emergency relief is short, requiring answers to be filed within five days of the filing of the Petition (52 Pa. Code § 3.6(c)), a hearing within ten days of the filing of the Petition (52 Pa. Code § 3.6a) and an interim emergency order within fifteen days of the filing of the Petition. 52 Pa. Code § 3.7.

20. The OCA respectfully requests that the time frames be shortened to three days for the filing of an answer (8/21), six days for the hearing (8/24), and the issuance of the order within ten days of the filing (8/28) of the OCA's Interim Emergency Petition. This even more expedited treatment would permit the Receiver to have time to work with Twin Lakes before the September 1 deadline.

⁷ 66 Pa. C.S. § 529(m).

⁸ 66 Pa. C.S. § 529(i) (2).

III. CONCLUSION

For the reasons set forth in this Interim Emergency Petition and for the protection of the health, safety and welfare of Twin Lakes' customers, the OCA respectfully requests that the Commission immediately appoint a receiver to ensure the continued provision of water service to Twin Lakes' customers.

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
Consumer Advocate

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 18, 2020
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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Twin Lakes Utilities, Inc. for a :
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Utility Pursuant to 66 Pa. C.S. § 529 :

VERIFICATION

I, Christine Maloni Hoover, Senior Assistant Consumer Advocate of the Office of Consumer Advocate, hereby state that the facts above set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

DATED: August 18, 2020
*294075

Signature: /s/ Christine Maloni Hoover
Christine Maloni Hoover
Senior Assistant Consumer Advocate
PA Attorney I.D. # 50026
Office of Consumer Advocate
555 Walnut Street
5th Floor, Forum Place
Harrisburg, PA 17101-1923