

John and Donna Hersca  
110 Sagamore Road  
Shohola, PA 18458

August 18, 2020

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  
Answer to Motion of Twin Lakes Utilities, Inc. for Summary Judgment

Dear Secretary Chiavetta:

Please find enclosed a copy of the Answer of John Hersca and Donna Hersca to the Motion of Twin Lakes Utilities Inc. for Summary Judgment and 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, the Answer to Motion of Twin Lakes Utilities Inc. for Summary Judgment and Certificate of Service have been served on the parties listed in the attached Certificate of Service.

Sincerely,



Donna Hersca  
(570) 618-0487

Enclosures

cc: The Honorable Joel L. Cheskis  
John J. Gallagher, Esq.  
Jay L. Kooper, Esq.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John & Donna Hersca	:
	:
v.	: No. C-2020-3020883
	:
Twin Lakes Utilities, Inc.	:

**ANSWER TO MOTION OF TWIN LAKES UTILITIES INC. FOR SUMMARY JUDGMENT**

**TO ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS:**

**I. INTRODUCTION**

AND NOW, comes plaintiffs, John Hersca and Donna Hersca (“the Herscas”), pro se, and file this Answer to defendant’s, Twin Lakes Utilities, Inc. (“Twin Lakes”), Motion for Summary Judgment pursuant to the Pennsylvania Public Utility Commission’s regulations and the Pennsylvania Rules of Civil Procedure, and respectfully requests that Twin Lakes’ Motion for Summary Judgment be summarily dismissed, with prejudice.

As previously set forth in the Hersca’s Complaint and Answer and in this Answer hereto, there are genuine issues of material fact and law which must be addressed at the upcoming October 6, 2020 hearing as follows.

**II. DISCUSSION**

**GENERAL ISSUES OF MATERIAL FACT AND LAW EXIST IN THIS MATTER**

As set forth in our/the Herscas’, Formal Complaint, we/the Herscas oppose Twin Lakes’ rate and amount billed to us/the Herscas 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. It is unreasonable and unjust because Twin Lakes is charging us/the Herscas a higher rate that amounted to a bill to the Herscas in the amount of \$528.68 (which is

approximately \$600.00 for the entire quarterly billing cycle) for just us two people who use very little water and we/the Herscas do not even drink the water since the potability of it is questionable due to it possibly containing high levels of lead (as was confirmed in their/the Herscas' neighbor's prior water tests). So, in addition to paying this unjust and unreasonable bill amount, we/the Herscas spend approximately \$100.00 additional per month buying drinking water from the store.

We/the Herscas further stated that the conduct of Twin Lakes in charging us/the Herscas this outrageously high water bill as stated above in violation of Section 1301 above is particularly egregious since Twin Lakes unconscionably hit us/the Herscas with an even higher water rate/water bill during the time when a declaration of a state emergency was being declared as a result of COVID-19, during which plaintiff, Donna Hersca, was and continues to suffer the hardships of being laid off from work.

Plaintiff, Donna Hersca, who has a Juris Doctor Degree and who specialized in research as her vocation previously, showed by way of attachment to her/the Hersca's Formal Complaint that the national and state average water bill is \$40.00 per month. Twin Lakes is illegally billing the Herscas **five times above what the national and state average water bill amount is**. This, out of fairness and justice, is in part what the Herscas are asking this Court to take into consideration and remedy at the upcoming October 6, 2020 hearing. Due to this fact alone, it is clear the ALJ erred as a matter of law in rendering a decision in case docket no. R-2019-3010958 resulting in this illegal, unjust and unreasonably high bill amount of \$528.68 (\$600.00 for the entire three quarters). The ALJ additionally erred by not reflecting on an adequate remedy for the affordability issue that was previously presented and, as a result, we/the Herscas ask this Court, in the interests of fairness and justice, overturn the ALJ's decision in that case of docket no. R-2019-3010958 for purposes of this matter or, in the alternative, the Herscas respectfully request this Court consider the facts of this matter as they currently stand on their own (and notwithstanding the prior ALJ's decision) of Twin Lakes charging the Herscas an unreasonable and unjust water rate which are in violation of Section 1301. If rates are too high, which they are in this

instance, then not only does that violate the basic principles of rate setting in general, it will result in the customers, including the Herscas, not being able to afford water utility service. Under the Fifth Amendment's last clause as stated in the "PUC Guide to Utility Ratemaking" by James H. Cawley and Norma J. Kennard, 2018 Edition, under the "Price Regulation" section, this is "tantamount to confiscation of property" where the regulators set rates so high, causing the Herscas and other water customers to not be able to afford to pay for the water into the future, which nonpayment would result in no water service, which would result in the Herscas not being able to live in their home without no water and therefore being forced to vacate our/the Herscas' home.

In Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) that 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." Twin Lakes clearly should not be allowed to continue to seek certain profits at the costs of the Herscas not being able to afford to pay their outrageously unjust and unreasonable water rates/water bill. Twin Lakes must reduce their water rates so that it does not exceed the national and state average of \$40.00 per month for the total bill. Further, Twin Lakes should reimburse the Hersca's for all past monies the Herscas overpaid to Twin Lakes for their/Twin Lakes' rates which were in violation of Section 1301. The Herscas reserve the right to supplement this response and attach in their upcoming hearing exhibits their supporting documentation setting forth proof of their/the Herscas' prior overpayment to date to Twin Lakes, which currently totals \$4,647.00.

Additionally, it is the job of regulatory commissions to protect consumers, including the Herscas, from excessive rates and charges. See Permian Basin Area Rate Cases, 390 U.S. 747 (1968) at 794-95. Regarding affordability specifically, rates are required to be just and reasonable under Section 1301 of the Public Utility Code. 66 Pa. C.S. Section 1301. Rates, such as those being charged to the Herscas by

Twin Lakes that are set at a level above that zone of reasonableness are not considered to be just and reasonable. See Market St. R. Co. v. Railroad Comm'n of California, 324 U.S. 548 (1945); 65 S.Ct. 770.

Further, in a letter dated June 30, 2020 from Pennsylvania State Representative Michael Peifer to the Pennsylvania Public Utility Commission which Representative Peifer composed on behalf of the Herscas, Representative Peifer requested the Pennsylvania Public Utility Commission “refer this matter to its Bureau of Investigation and Enforcement to ensure that the ratepayers [including the Herscas] of Twin Lakes Utilities ... “are not being charged unjust or unreasonable rates” and “if the Bureau of Investigation and Enforcement determines that this revenue resulted in unjust or unreasonable receipt of revenue, or was in violation of any regulation or order, that refunds [emphasis added] be considered under 66 Pa. C.S. Section 1312.” To date, the Herscas have not received a response from the Commission or from Twin Lakes to Rep. Peifer’s letter and have not received any refund and have not received any notice from Twin Lakes or the Commission stating that their/the Herscas rates were being lowered down to a reasonable, just rate, nor were they/the Herscas made aware as to whether or not Twin Lakes or the Commission have even responded to Representative Peifer’s letter. The Herscas respectfully reserve the right to supplement this response by submitting said June 30, 2020 letter from Representative Peifer into evidence and include it in their upcoming hearing exhibits which they will provide to the Court. Representative Peifer’s request appears to have fallen upon deaf ears, which is all the more reason why the Herscas respectfully request this Court to hear and decide in favor of the Herscas on these outstanding issues.

### **III. CONCLUSION**

For the above reasons, the defendant’s, Twin Lakes Utilities, Inc.’s, Motion for Summary Judgment should be denied. Genuine issues of material fact exist in this matter, and accordingly, a grant of summary judgment should not be sustained. Moreover, Defendant, Twin Lakes Utilities, Inc., is not

entitled to judgment as a matter of law for all the reasons discussed herein. We, John and Donna Hersca, pro se Plaintiffs, respectfully urge the Commission to deny Twin Lakes Utilities' Motion.

Respectfully submitted,



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Date: August 18, 2020


**CERTIFICATE OF SERVICE**

We, John Hersca and Donna Hersca hereby certify that we have this day served a true copy of the Answer to Motion of Twin Lakes Utilities, Inc. for Summary Judgment upon the participants listed below, in the manner indicated below, and in accordance with the requirements of Section 1.54 (relating to service by a party).

Honorable Joel L. Cheskis  
Pennsylvania Public Utility Commission  
Office of Administrative Law Judge  
400 North Street, 2<sup>nd</sup> Floor West  
Harrisburg, PA 17120  
Fax: (717) 787-0481

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