



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

August 19, 2020

Via Electronic Filing

Secretary Rosemary Chiavetta
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
I&E Petition for Interlocutory Review and Order

Dear Secretary Chiavetta:

Enclosed for filing please find the **Petition for Interlocutory Review and Order of the Bureau of Investigation and Enforcement Following the July 28, 2020 Scheduling Order of Presiding Deputy Chief Administrative Law Judge Joel H. Cheskis** for the above-captioned proceeding.

Please note, pursuant to 51 Pa. Code Section 5.302(b), the parties have ten (10) days to file a responsive brief to the attached Petition.

Copies are being served on parties of record per the attached Certificate of Service. *Due to the temporary closing of the PUC's offices, I&E is only providing electronic Service.* Should you have any questions, please do not hesitate to contact me.

Sincerely,

Scott B. Granger
Prosecutor
Bureau of Investigation and Enforcement
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SBG/ac
Enclosures

cc: Gladys Brown Dutrieuille, Chairman (*via email only*)
David W. Sweet, Vice Chairman (*via email only*)
John F. Coleman, Jr., Commissioner (*via email only*)
Ralph V. Yanora, Commissioner (*via email only*)
Office of Special Assistants (*via email only* – RA-OSA@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**PETITION FOR INTERLOCUTORY REVIEW AND ORDER
OF THE BUREAU OF INVESTIGATION AND ENFORCEMENT
FOLLOWING THE JULY 28, 2020 SCHEDULING ORDER OF PRESIDING
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS**

AND NOW, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”), pursuant to 52 Pa. Code §5.301 et seq files this Petition for Interlocutory Review (“I&E Petition”) following the July 28, 2020 Scheduling Order of Deputy Chief Administrative Law Judge Joel H. Cheskis.

On July 16, 2020, Twin Lakes Utilities Inc., (“Twin Lakes”) filed the 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 (“Twin Lakes Petition”).

I. QUESTION

Should the Commission permit a certificated small water or wastewater public utility to proceed by its own petition pursuant to 66 Pa. C.S. § 529 of the Public Utility Code? Suggested Answer: No.

1. The instant case presents a fundamental question regarding the statutory interpretation¹ and application of the Public Utility Code.

2. Pursuant to 66 Pa. C.S. § 529 (“Section 529”) of the Public Utility Code, the Commission may order a “capable public utility” to acquire a small water utility if all six of the conjunctive requirements of Section 529 are met.²

¹ See 1 Pa. C.S. Section 1901 et seq.

² 66 Pa. C.S. § 529(a)(1)-(6).

3. The language of the Public Utility Code is clear and unambiguous. Section 529 is part of Chapter 5, POWERS AND DUTIES [of the Commission], of the Public Utility Code.

Chapter 5 grants powers to the Commission and clearly states “[t]he express enumeration of the powers of the Commission in this part”³

4. As one of the powers bestowed upon the Commission in Chapter 5, Section 529 is unambiguously intended for use by the Commission pursuant to its own motion.⁴

5. Neither Chapter 5 nor Section 529 confers or bestows any powers upon the certificated public utilities. Further, nothing in Section 529 permits a small water or wastewater utility to proceed under Section 529 pursuant to its own petition.

6. Section 529 places the burden of establishing a prima facie case on the Commission’s Bureau of Investigation and Enforcement.⁵

7. It is contrary to legal reasoning to posit that one party may file a petition requesting a specific relief from a tribunal and then the burden of proving the prima facie case to grant the requested relief is placed on another (possibly adversarial) party to move the tribunal toward granting the requested relief.

8. Further, allowing the small public utility to utilize Section 529 will have the effect of incentivizing the small public utility to intentionally violate the Public Utility Code or Pennsylvania DEP regulations in order to meet the requirements of Section 529(a)(1) and (a)(2).

9. The improper use of Section 529 by certificated small water and wastewater companies must be stopped.

10. On the other hand, Chapter 11 CERTIFICATES OF PUBLIC CONVENIENCE,⁶ of the Public Utility Code, discusses the general provisions governing certificates of public convenience and certificated public utilities.

³ See 66 Pa. C.S. § 501(a).

⁴ 66 Pa. C.S. § 529(a).

⁵ 66 Pa. C.S. § 529(i).

⁶ 66 Pa. C.S. § 1101 et seq.

11. Section 1102 discusses the enumeration of acts requiring a certificate.

Subparagraph 1102(a)(2) states:

Upon the application of any public utility and the approval of such application by the commission, ... it shall be lawful:

...

(2) For any public utility to abandon or surrender, in whole or in part, any service, except that this provision is not applicable to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron.⁷

12. Chapter 11 provides the avenue for certificated public utilities to act under the Public Utility Code.

WHEREFORE, the Bureau of Investigation and Enforcement respectfully requests the Commission undertake an interlocutory review of this proceeding and issue an Order declaring that certificated small water and wastewater public utilities are not permitted to proceed by their own petition pursuant to Section 529 of the Public Utility Code; and, issue an Order dismissing Twin Lakes Petition as improper and in violation of the Public Utility Code.

Respectfully submitted,



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Pennsylvania Public Utility Commission
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(717) 425-7593

Dated: August 19, 2020

⁷ 66 Pa. C.S. § 1102(a)(2).

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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a Commission Order Authorizing the :
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by a Capable Public Utility Pursuant to :
66 Pa. C.S. §529 :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Petition for Interlocutory Review and Order** dated August 19, 2020, in the manner and upon the persons listed below.

Served via Electronic Mail Only

Honorable Joel H. Cheskis
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Pennsylvania Public Utility Commission
Office of Administrative Law Judge
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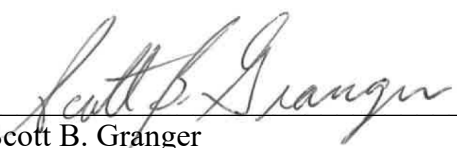
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