



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

August 20, 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 Answer to Petition

Dear Secretary Chiavetta:

Enclosed please find a copy of the **Bureau of Investigation and Enforcement's (I&E) Answer to the Office of Consumer Advocate's Petition for Issuance of an Interim Emergency Order on an Expedited Basis** for the above-captioned proceeding.

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
PA Attorney ID No. 63641
(717) 425-7593
sgranger@pa.gov

SBG/ac
Enclosures

cc: Honorable Joel H. Cheskis (*Deputy Chief ALJ, PUC Harrisburg – 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 :

**BUREAU OF INVESTIGATION AND ENFORCEMENT’S ANSWER TO
THE OFFICE OF CONSUMER ADVOCATE’S
PETITION FOR ISSUANCE OF AN INTERIM EMERGENCY ORDER
ON AN EXPEDITED BASIS**

I. INTRODUCTION

On July 16, 2020, Twin Lakes Utilities Inc. (“Twin Lakes” or “Company”) 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. The Company has stated that it will 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. On August 18, 2020, the Office of Consumer Advocate (“OCA”) filed the instant Petition for Issuance of an Emergency Order on an Expedited Basis (“OCA Petition”) requesting 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.

Pursuant to 52 Pa. Code Section 3.6(c), the Bureau of Investigation and Enforcement (“I&E”) hereby files this timely Answer requesting that the Commission deny the relief requested relief in the OCA Petition. Doing so is warranted because the

OCA has failed to meet its burden of proof; and, because the Petition fails to justify the request that the Commission issue an order authorizing the appointment of a receiver pursuant to 66 Pa. C.S. §529(g). The appointment of a receiver is not warranted.

As further support of I&E's request for the denial of the OCA Petition, I&E avers the following:

II. INTERIM EMERGENCY PETITION

1. Admitted.
2. Admitted.
3. Admitted.
4. Admitted.
5. It is admitted that I&E filed an Answer to the Twin Lakes Petition on August 5, 2020. To the extent the averments in this paragraph attempt to paraphrase I&E's Answer, as a written document, the Answer speaks for itself and must be read in the context of the entire document, and the averments are therefore denied. Further, I&E's Answer is incorporated herein as if fully set forth.
6. Admitted upon information and belief.
7. Admitted.
8. Admitted in part, denied in part. It is admitted that Twin Lakes has threatened to stop providing service by 12:01 a.m. on September 1 if a qualified operator is not found. However, it is denied that it is likely that the Company will cease providing service by September 1 deadline because unilaterally stopping water service to its

customers would be in violation of the Public Utility Code.¹ Specifically, Section 1501 of the Code mandates that every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service.² The Company can only be relieved of this obligation if the Commission approves a capable public utility to acquire Twin Lakes pursuant to a Section 529 proceeding or if the Commission approves an abandonment of service. These approvals will not occur by the Company's arbitrary September 1 deadline; therefore, the Company has a continuing obligation to provide safe and reliable service to its customers. Twin Lakes' failure to do so would be a violation of the Public Utility Code and may expose Twin Lakes to civil and criminal penalties.³

9. Denied. It is denied that it is necessary to appoint a receiver to ensure that the Twin Lakes' customers continue to receive water service. Twin Lakes is currently providing water service to its customers and is capable of continuing to provide water service to its customers going forward. There is no valid reason or justifiable explanation as to why Twin Lakes would violate the Public Utility Code and cease providing water to its customers on its September 1, 2020 deadline. I&E shares OCA's concerns as it is paramount that Twin Lakes customers continue to receive service until either a Section 529 proceeding is resolved or the Company receives Commission approval to abandon service. However, the Company's threats to stop serving customers on September 1 are a clear violation of its obligations under the Public Utility Code and do not justify the appointment of a receiver as Twin Lakes, by and through its parent company Middlesex

¹ 66 Pa. C.S. §§ 101 et seq.

² 66 Pa. C.S. § 1501.

³ See 66 Pa. C.S. §§ 3301, 3302.

Water Company (“Middlesex”), has the necessary financial, managerial and technical ability to provide safe and reasonable service and facilities until this proceeding or a potential abandonment proceeding results in a final Commission order.

10. Admitted in part, denied in part. It is admitted that Section 529 of the Public Utility Code grants the Commission certain powers to act. It is also admitted that Section 529(g) grants the Commission the power to appoint a receiver, when warranted, to ensure that customers of small water and wastewater utilities will receive safe and adequate service. However, it is denied that the facts pertinent to the instant proceeding warrant the appointment of a receiver. Twin Lakes is currently providing water service to its customers and Twin Lakes is capable of continuing to provide water service to its customers going forward. Further, Twin Lakes’ parent, Middlesex, is more than capable of ensuring that Twin Lakes can continue to provide the financial, managerial and technical ability to continue to provide water service to the Twin Lakes customers.

11. Admitted in part, denied in part. It is admitted that the Commission has previously appointed receivers in emergency situations. However, it is denied that any of the referenced previous situations were comparable to the instant situation. Neither Winola Water Company nor Indian Springs Water Company were the subsidiary of a parent company with the capabilities of Middlesex.

By way of further response, on its website, Middlesex states that it was incorporated as a water utility in 1897, and that it “provides a full range of regulated and non-regulated water and wastewater utility and related services in parts of New Jersey,

Delaware and Pennsylvania.”⁴ Further, Middlesex proclaims “[t]hrough our affiliated companies we are delivering technical and management capabilities that creatively address challenges such as aging infrastructure and increasing regulatory pressures faced by municipalities, developers and small system owners.”⁵ In its Annual Statement, Middlesex reported a Net Income of \$33.9 million in 2019 and \$32.5 million in 2018; a return on average common equity of 12.5% in 2019 and 13.6% in 2018; basic earnings per share of \$2.02 in 2019 and \$1.97 in 2018; and, cash dividends per share of \$0.976 in 2019 and \$0.911 in 2018.⁶ Additionally, Middlesex has approximately 350 employees and serves approximately 500,000 customers in New Jersey, Delaware and Pennsylvania. Middlesex, as evidenced by its own statements on its website, is financially, managerially, and technically capable of operating Twin Lakes in compliance with all applicable statutory and regulatory standards.

12. Denied in part, admitted in part. It is specifically denied that this case is similar to the appointment of a receiver for Winola or Indian Springs. Winola and Indian Springs were both small water utilities serving approximately 35 customers and 54 customers respectively. In contrast, Twin Lakes is the wholly owned subsidiary of Middlesex who has approximately 350 employees and whose family of companies serve nearly 500,000 customers in New Jersey, Delaware and Pennsylvania. Moreover, according to the Middlesex July 2020 Fact Sheet, its corporate credit rating was A stable

⁴ See, <https://www.middlesexwater.com/about-us/>, p. 1 of 8.

⁵ See, <https://www.middlesexwater.com/about-us/>, p. 2 of 8.

⁶ See, <https://www.middlesexwater.com/news-room/>, 2019 Annual Report, p. 10.

and its 2019 revenue was \$134.6 million.⁷ In short, this is not a situation like Winola and Indian Springs where the regulated utility was no longer able to provide safe and reliable service; rather, it is a situation where the utility is simply refusing to continue to provide service. The Middlesex July 2020 Fact Sheet states it is “OUR MISSION: To provide service in the water, wastewater and related service fields in a safe, reliable and efficient manner.”⁸ That is what the Public Utility Code also requires and Twin Lakes must continue to provide such service until this Commission approves otherwise.

13. Denied. It is specifically denied that the right to relief regarding the appointment of a receiver is clear in this case. While the Commission does have the authority to appoint a receiver pursuant to Section 529(g), the appointment of a receiver is discretionary and not warranted in this case. By way of further response, to the extent that the remaining allegations contained in this paragraph are conclusions of law, no response is required and they are therefore denied.

14. Denied. It is specifically denied that the need for relief is immediate because Twin Lakes did not receive a qualifying proposal. To the contrary, Twin Lakes is currently providing water service to its customers and has the ability to continue to do so. Twin Lakes’ threat that it will cease providing water service in violation of its duties as a certificated public utility does not rise to the level that would warrant immediate relief. By way of further response, to the extent that the remaining allegations contained

⁷ See <https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 2.

⁸ *Id.*, p. 1.

in this paragraph are conclusions of law, no response is required and they are therefore denied.

15. Denied. It is specifically denied that the customers of Twin Lakes will be irreparably harmed if the OCA's requested relief is not granted. To the contrary, the only thing that will cause irreparable harm to the customers of Twin Lakes is if the Company carries through with its threat to cease providing water service effective September 1, 2020. For the reasons stated above, doing so is a clear violation of the Public Utility Code. In the Company Overview in the July 2020 Fact Sheet, Middlesex states that it "serves as a trusted provider offering life-sustaining high quality water service for residential, commercial, industrial and fire protection purposes."⁹ This statement is wholly accurate as utility customers and the Commission trust regulated utilities to provide important utility services until authorized to cease service. Middlesex recognizes the import of this role and cannot allow its regulated Pennsylvania utility to simply stop service to customers on September 1. By way of further response, to the extent that the allegations contained in this paragraph are conclusions of law, no response is required and they are therefore denied.

16. Admitted in part, denied in part. It is admitted that the relief requested in the OCA Petition is not injurious to the public interest. However, it is specifically denied that the relief requested by the OCA is warranted in the instant proceeding for the reasons stated herein. By way of further response, to the extent that the allegations contained in

⁹ *Id.*

this paragraph are conclusions of law, no response is required and they are therefore denied.

17. Admitted upon information and belief.

18. Denied. After a reasonable investigation, I&E is without knowledge or information sufficient to form a belief as to the truth of the averments in this paragraph and they are therefore denied. Strict proof thereof is demanded. By way of further response the remaining averments in this paragraph are a prayer for relief and no response is required. Additionally, I&E reiterates that the appointment of a receiver in this proceeding is not warranted.

19. Admitted in part, denied in part. It is admitted that the procedural rules in the Commission regulations set time limitations for interim emergency relief that may be described as “short.” It is specifically denied that the timeframe for interim emergency relief is short. As stated *supra*, Twin Lakes is currently providing water service to the Twin Lakes customers and is capable of continuing to do so into the future. The September 1, 2020 is an artificial deadline placed on the parties and the Commission by Twin Lakes’ threat to cease water service to the Twin lakes customers.

20. Denied. The averments in this paragraph are related to the prayer for relief and no response is required. They are therefore deemed denied.

By way of further response, it is denied that there is a September 1, 2020 deadline. This artificial deadline only exists because of Twin Lakes’ threats to cease providing water service to the Twin Lakes customers on September 1, 2020. As stated

supra, Twin Lakes is currently providing water service to the Twin Lakes customers and is capable of continuing to do so into the future.

III. CONCLUSION

WHEREFORE, in consideration of the averments set forth in this I&E Answer, the Bureau of Investigation and Enforcement respectfully requests that Deputy Chief Administrative Law Judge Joel H. Cheskis and the Pennsylvania Public Utility Commission deny the interim emergency relief requested by the Office of Consumer Advocate in the instant Petition.

Respectfully submitted,



Scott B. Granger
Prosecutor
PA Attorney ID No. 63641

Bureau of Investigation and Enforcement
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street
Harrisburg, Pennsylvania 17120
(717) 425-7593

Dated: August 20, 2020

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PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Bureau of Investigation and Enforcement's (I&E) Answer to the Office of Consumer Advocate's Petition for Issuance of an Interim Emergency Order on an Expedited Basis** dated August 20, 2020, in the manner and upon the persons listed below:

Served via Electronic Mail Only

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