
Garrett P. Lent
Associate

glent@postschell.com
717-612-6032 Direct
717-731-1979 Direct Fax

August 20, 2020

VIA ELECTRONIC FILING

Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

**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. Section 529
Docket No. P-2020-3020914**

Dear Secretary Chiavetta:

Attached for filing please find the Answer of Aqua Pennsylvania, Inc., in Opposition to the Petition of the Office of Consumer Advocate for the Issuance of an Interim Emergency Order on an Expedited Basis in the above-referenced proceeding. Copies will be provided per the Certificate of Service.

Very truly yours,



Garrett P. Lent

GPL/kl
Attachment

Rosemary Chiavetta
August 20, 2020
Page 2

cc: Honorable Joel Cheskis
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

VIA E-MAIL ONLY

Jay L. Kooper, General Counsel
Twin Lakes Utilities Inc.
485C Route One South
Suite 400
Iselin, NJ 08830
jkooper@middlesexwater.com

John J. Gallagher, Esquire
711 Forrest Road
Harrisburg, PA 17112
jgallagher@jglawpa.com

Christine M. Hoover, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place – 5th Floor
Harrisburg, PA 17101
choover@paoca.org

Scott B. Granger, Esquire
Bureau of Investigation and Enforcement
400 North Street – 2nd floor West
Harrisburg, PA 17120
sgranger@pa.gov

Eric Bartolacci, Esquire
Department of Environmental Protection
Office of Field Operations
2174B Route 611
Swiftwater, PA 18370
ebartolacc@pa.gov



Date: August 20, 2020

Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**ANSWER OF AQUA PENNSYLVANIA, INC. IN OPPOSITION TO THE PETITION
OF THE OFFICE OF CONSUMER ADVOCATE FOR THE ISSUANCE OF AN
INTERIM EMERGENCY ORDER ON AN EXPEDITED BASIS**

AND NOW, comes Aqua Pennsylvania, Inc. (“Aqua” or the “Company”), by its attorneys, pursuant to Sections 3.6 and 5.61 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code §§ 3.6 and 5.61, and in accordance with the Honorable Deputy Chief Administrative Law Judge Joel H. Cheskis’ (the “ALJ”) August 19, 2020 Second Scheduling Order, submits this Answer to the Petition of the Office of Consumer Advocate For The Issuance Of An Interim Emergency Order On An Expedited Basis (“Emergency Petition”). In opposition to the Petition, Aqua submits the following:

I. BACKGROUND

1. On July 16, 2020, Twin Lakes Utilities, Inc. (“Twin Lakes”) filed with the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) a Petition for a Commission Order authorizing the acquisition of Twin Lakes pursuant to Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, by a capable public utility (the “TLU Petition”).

2. Twin Lakes is a wholly owned subsidiary of Middlesex Water Company (“Middlesex”), a New Jersey Corporation. Middlesex provides operational support to Twin Lakes

through a Service Agreement dated December 1, 2009.

3. On June 1, 2020, Middlesex issued a notice that it would terminate the Service Agreement effective September 1, 2020.

4. On July 22, 2020, John J. Gallagher filed a Notice of Appearance for Twin Lakes.

5. On July 23, 2020, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance.

6. On July 24, 2020, the Office of Consumer Advocate ("OCA") filed a Notice of Appearance.

7. A Prehearing Conference was held on July 27, 2020.

8. The OCA filed its Petition on August 18, 2020, requesting that the Commission name Aqua as Receiver for the Twin Lakes system under Section 529 of the Public Utility Code, 66 Pa. C.S. § 529.

9. On August 19, 2020, Aqua filed a Notice of Appearance in the proceeding.

10. On August 19, 2020, a further Prehearing Conference was held, and Second Scheduling Order issued that same day directing parties to file any answers to OCA's Petition on August 20, 2020.

11. On August 20, 2020, Aqua filed an additional Notice of Appearance, entering the appearance of Michael W. Hassell and Garrett P. Lent as additional counsel for Aqua.

II. ANSWER TO OCA PETITION FOR INTERIM EMERGENCY ORDER

12. Pursuant to Section 3.6(c) of the Commission's regulations, "Allegations set forth in the petition shall be deemed to have been denied by the opposing parties, and an answer is not required." 52 Pa. Code § 3.6(c). As such, Aqua's filing of this Answer should not be deemed an

admission of any allegations contained in the Petition. Except where otherwise expressly stated, Aqua denies each paragraph contained in the Petition.¹

13. Aqua is a regulated Pennsylvania public utility that provides water service to approximately 443,000 customer throughout the Commonwealth of Pennsylvania.

14. Aqua has standing to participate in the above-captioned proceeding because OCA's Emergency Petition requests the Commission issue an order appointing Aqua as a receiver of the Twin Lakes water system. *See* 52 Pa. Code § 5.61(e)(2) (requiring a party to state its standing to participate); *see also* 52 Pa. Code § 3.6(c) (permitting a party to file an answer to a petition for interim emergency relief in the form set forth in 52 Pa. Code § 5.61). As such, Aqua has a direct, immediate and substantial interest in the outcome of this proceeding, and its interest is not and cannot be adequately represented by any other party.

15. The Company submits that the Commission should deny OCA's Emergency Petition at this time.

16. As an initial matter, Aqua submits that OCA's right to the relief it seeks is not clear at this time. 52 Pa. Code § 3.6(b)(1).

17. In order for the Commission to act under Section 529 of the Public Utility Code, it is required to first determine "that the small water...utility is in violation of statutory or regulatory standards...which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility" and "that the small water...utility has failed to comply...with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service," among other requirements. *See* 66 Pa. C.S. § 529(a)(1)-(2).

¹ Aqua further fully reserves its rights to raise additional issues and respond to other issues and evidence at the hearing scheduled to occur on August 21, 2020, in this matter.

18. Twin Lakes does not aver in the TLU Petition that it is in violation of any “statutory or regulatory standards...which affect the safety, adequacy, efficiency or reasonableness of the service” it provides. *Id.* at § 529(a)(1). In addition, Twin Lakes does not aver that it “has failed to comply...with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service.” *Id.* at § 529(a)(1).

19. OCA’s Emergency Petition similarly does not show that the requirements of Sections 529(a)(1) or (2) have been satisfied in this proceeding. Both of the cases that OCA submits are similar to the case at hand dealt with small water utilities that were currently violating water quality standards and had failed to remedy those violations after receiving notices from the Pennsylvania Department of Environmental Protection (“DEP”). *See Ex Parte Emergency Order*, Docket No. P-2018-3006216 and C-2018-2644592, at 1 (Order issued Nov. 29, 2018, ratified Dec. 6, 2018) (noting that the water utility had failed to correct water condition issues consistent with a DEP directive); *In re: The Indian Springs Water Co.*, Docket No. M-2019-3011972, at 1-2 (Opinion and Order entered August 8, 2019) (noting that DEP had issued the utility ten Notices of Violation to the subject water utility).

20. As such, it is not clear that the necessary requirements of Section 529 have been met in order for the Commission to exercise its discretion and appoint Aqua as a receiver under Section 529(g) of the Public Utility Code, 66 Pa. C.S. § 529(g) (“The commission may, in its discretion, appoint a receiver to protect the interests of the customers of the small water or sewer utility.”). And, even if OCA is not required to demonstrate that the requirements of Section 529(a) have been met in order for the Commission to act under Section 529(g), Aqua submits that the absence of such a demonstration weighs against the Commission exercising its discretion under Section 529(g).

21. Based on the facts alleged in the TLU Petition and the Emergency Petition, the statutory criteria required for the Commission to direct Aqua to act as a receiver to operate the Twin Lakes system have not been met at this time. *See* 52 Pa. Code § 3.6(b)(1) (requiring a petitioner’s right to relief must be clear). Therefore, the Commission should not grant the relief requested by OCA in the Emergency Petition at this time.

22. Aqua further submits that OCA has failed to show that the “need for relief is immediate” at this time. 52 Pa. Code § 3.6(b)(2). Importantly, Aqua submits that there are certain different intermediate steps that the Commission could take before ordering Aqua to act as the receiver of the Twin Lakes system, including (a) prohibiting Middlesex from terminating the Service Agreement pending Twin Lakes exploring options to engaging other contract operators, or (b) prohibiting Middlesex from terminating the Services Agreements pending the outcome of the TLU Petition.² Either of these alternative steps would adequately ensure that Twin Lakes’ customers continue to receive service, without ordering Aqua to begin operating the Twin Lakes’ system on less than two weeks’ notice.

23. Finally, Aqua believes that OCA has not shown that the relief requested in the Emergency Petition is “not injurious to the public interest” at this time. 52 Pa. Code § 3.6(b)(4).

24. The Company was served with the Petition on August 18, 2020, and will be potentially required to begin operations of Twin Lakes in less than fourteen days (i.e., by September 1, 2020) if the Commission rules that Aqua should be appointed as receiver.

25. Aqua’s operations personnel are already fully engaged in providing quality service to its existing customers.

² Aqua submits that these are merely among several other alternatives that the Commission could order pursuant to Section 529(b) of the Public Utility Code, 66 Pa. C.S. § 529(b).

26. As such, although Aqua has just begun reviewing the characteristics of the Twin Lakes system to understand potential operational issues—*e.g.*, any outstanding water service safety, quality and reliability issues, the capital needs of the system to ensure quality service, and personnel requirements—facing that system, the nature and extent of any such issues are not known by Aqua at this time. Until Aqua has had adequate time to understand the nature and extent of any operational issues identified in its review of the Twin Lakes system, Aqua will not know the nature and extent of any corrective measures it may need to take upon being appointed the receiver of the Twin Lakes system to ensure customers on that system continue to received reasonably continuous, reliable and adequate service.

27. Therefore, Aqua submits that the OCA’s Emergency Petition has not demonstrated that the relief sought is “not injurious to the public interest” and should be denied at this time.

III. CONCLUSION

WHEREFORE Aqua Pennsylvania, Inc. respectfully requests that the Public Utility Commission deny the Petition of the Office of Consumer Advocate For Issuance Of An Interim Emergency Order On An Expedited Basis at this time.

Respectfully submitted,



Alexander R. Stahl (ID # 317012)
Regulatory Counsel
Aqua Pennsylvania, Inc.
762 West Lancaster Avenue
Bryn Mawr, PA 19010
Phone: 610-645-1130
E-mail: astahl@aquaamerica.com

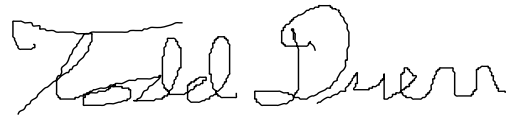
Michael W. Hassell (ID # 34851)
Garrett P. Lent (ID # 321566)
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
Phone: 717-731-1970
E-mail: mhassell@postschell.com
E-mail: glent@postschell.com

Date: August 20, 2020

Counsel for Aqua Pennsylvania, Inc.

VERIFICATION

I, Todd M. Duerr, Vice President of Production, of Aqua Pennsylvania, Inc., hereby state that the facts set forth in the foregoing Answer of Aqua Pennsylvania, Inc., dated August 20, 2020, to the Office of Consumer Advocate's Petition for an Interim Emergency Order on an Expedited Basis in the matter at PaPUC Docket No. P-2020-3020914, 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).

A handwritten signature in black ink that reads "Todd Duerr". The signature is written in a cursive style with a horizontal line underneath it.

Todd M. Duerr
Vice President of Production
Aqua Pennsylvania, Inc.

Dated: August 20, 2020