



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

August 24, 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 Main Brief**

Dear Secretary Chiavetta:

Enclosed for filing please find the **Main Brief of the Bureau of Investigation and Enforcement in Support of the I&E Answer to the OCA Petition for Interim Emergency Relief** 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,

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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. by : Docket No.: P-2020-3020914  
a Capable Public Utility Pursuant to 66 Pa. :  
C.S. §529 :

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**MAIN BRIEF  
OF THE BUREAU OF INVESTIGATION & ENFORCEMENT  
IN SUPPORT OF THE I&E ANSWER TO  
THE OCA PETITION FOR INTERIM EMERGENCY RELIEF**

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Dated: August 24, 2020

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## **I. INTRODUCTION AND PROCEDURAL HISTORY.**

### **A. Procedural History.**

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* (“Section 529 Petition”). In its Section 529 Petition, Twin Lakes set forth its history of ownership by the Middlesex Water Company (“Middlesex”) confirming its business address in Iselin, NJ.<sup>1</sup> In support of the requested Section 529 acquisition, Twin Lakes discussed the termination of the existing Service Agreement between Twin Lakes and its parent, Middlesex.<sup>2</sup> Twin Lakes 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.<sup>3</sup> The Bureau of Investigation and Enforcement (“I&E”) filed a timely Answer to the Twin Lakes’ Section 529 Petition on August 5, 2020.

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),<sup>4</sup> if Twin Lakes is unable to secure a new system operator.

On August 20, 2020, I&E filed a timely Answer (“I&E Answer”) to the OCA Petition requesting that the Commission deny the requested relief. Denying the requested

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<sup>1</sup> Section 529 Petition, ¶¶ 2-7.

<sup>2</sup> Section 529 Petition, ¶¶ 12, 24.

<sup>3</sup> Section 529 Petition, ¶¶ 24, 26.

<sup>4</sup> 66 Pa. C.S. § 529(g).

relief 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.

I&E now files this Main Brief in support of the I&E Answer to the OCA Petition, and the averments set forth in the I&E Answer are incorporated herein as if fully set forth.

**B. Standard for Interim Emergency Relief and Burden of Proof.**

Section 529<sup>5</sup> of the Public Utility Code grants the Commission certain powers to act. Further, Section 529(g)<sup>6</sup> grants the Commission discretionary power to appoint a receiver, when warranted, to ensure that customers of small water and wastewater utilities will receive safe and adequate service. In the exercise of its discretion in the instant proceeding, the Commission may consider the factors set forth in Section 3.6(b)<sup>7</sup> of the Commission regulations. As stated in Section 3.6(b), the petitioner requesting the interim emergency relief must establish the need for the emergency relief by establishing facts that support the following: (1) the petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and, (4) the relief requested is not injurious to the public interest.<sup>8</sup>

The OCA, as the petitioner, carries the burden in this proceeding. This burden is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with

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<sup>5</sup> 66 Pa. C.S. § 529.

<sup>6</sup> 66 Pa. C.S. § 529(g).

<sup>7</sup> 52 Pa. Code § 3.6(b).

<sup>8</sup> 52 Pa. Code § 3.6(b)(1)-(4).

evidence to support a particular position.<sup>9</sup> The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast.<sup>10</sup>

The OCA must satisfy its burden by presenting a preponderance of evidence.<sup>11</sup> A preponderance of the evidence is such evidence that is more convincing, by even the smallest amount, than that presented by another party.<sup>12</sup> If a preponderance of evidence is submitted, the burden of going forward with competing evidence shifts to opposing parties to produce credible evidence of at least co-equal weight.

While the burden of going forward and producing evidence may shift back and forth between the parties, the Commission must ensure that any adjudication is supported by substantial evidence. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.<sup>13</sup>

The OCA has not met its burden and the requested interim emergency relief must be denied.

## II. ISSUE.

**Should the Pennsylvania Public Utility Commission exercise its discretion, pursuant to 66 Pa. C.S. § 529(g) and appoint a capable public utility as receiver for Twin Lakes Utilities, Inc.?**

**Suggested Answer: No.**

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<sup>9</sup> *See, In re: Loudenslager's Estate*, 430 Pa. 33, 240 A.2d 477 (1968).

<sup>10</sup> *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa. Commw. 1993).

<sup>11</sup> *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Commw. 1990).

<sup>12</sup> *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

<sup>13</sup> *Norfolk & Western Ry. Co. v. Pennsylvania Public Utility Commission*, 413 A.2d 1037 (Pa. 1980);

### **III. SUMMARY OF ARGUMENT.**

The Commission should not appoint a capable public utility as receiver for Twin Lakes. No party has established the existence of the need for interim emergency relief because no party has supported the request for the interim emergency relief by presenting substantial evidence to support the following: (1) the petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and, (4) the relief requested is not injurious to the public interest.

The OCA's right to relief is not clear. Under the current status quo, Twin Lakes is providing water service to the Twin Lakes customers and there is no justifiable reason why the status quo cannot continue. Further, the need for the relief is not immediate, no irreparable harm will result if the requested relief is not granted, and it may be injurious to the public interest if the requested relief is granted.

The facts in this case support a finding that the need for interim emergency relief is not immediate. Twin Lakes is currently providing water service to its customers and is capable of continuing to provide water service to its customers going forward. Twin Lakes and Middlesex have forced this artificial deadline on the Commission, Administrative Law Judge, the parties, and most importantly on the Twin Lakes customers. Twin Lakes and its parent company Middlesex have 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. If Aqua or another capable public utility were appointed the receiver, Aqua would not bring anything to the table beyond what Twin Lakes is providing today. In fact, Aqua would be coming to the

table with less knowledge of the Twin Lakes system and its current challenges than the Twin Lakes' current management and technical personnel.

Regarding whether there will be irreparable harm, Twin Lakes is currently providing water service to its customers. If the OCA's requested relief is not granted, Twin Lakes has and will continue to have the technical, managerial and financial capability of providing service to its customers. To be clear, I&E shares OCA's concerns about customers if Twin Lakes follows through with its threat to illegally terminate service on September 1; however, threatening to violate its obligations under the Public Utility Code does not warrant the appointment of a receiver. Twin Lakes, with the support of its parent Middlesex, is more than capable of maintaining the status quo, and therefore no irreparable harm will result if the requested emergency relief is not granted.

In determining whether or not granting the requested relief will be injurious to the public interest requires looking at both the short-term consequences and the long-term consequences. And in this case, granting the requested relief may be injurious to the public interest in both the short-term and the long-term. If the requested relief is granted, the only thing that will be accomplished in the short-term is that this burden will be shifted from one capable public utility to another. And the shifting of that burden, in this case presumably to Aqua, may be injurious to the existing customers of Aqua and therefore may be injurious to the public interest. In the long term, allowing Commission regulated entities to force the Commission to shift the burden from one capable public utility to another by threatening harm to the customers may have unintended injurious consequences long into the future.

I&E respectfully requests that the Commission deny the interim emergency relief requested by the Office of Consumer Advocate in the instant Petition.

#### **IV. ARGUMENT.**

##### **A. The Pennsylvania Public Utility Commission should not appoint a receiver for Twin Lakes Utilities, Inc.**

No party has established the existence of the need for interim emergency relief because no party has supported the request for the interim emergency relief by presenting substantial evidence to support the following: (1) the petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be reparable if relief is not granted; and, (4) the relief requested is not injurious to the public interest.<sup>14</sup>

##### **1. The Petitioner's right to relief is not clear.**

The OCA's right to relief is not clear. Under the current status quo, Twin Lakes is providing water service to the Twin Lakes customers.<sup>15</sup> I&E understands that Twin Lakes is threatening to stop providing service on the arbitrary September 1 deadline; however, unilaterally stopping water service to its customers would be in violation of the Public Utility Code.<sup>16</sup> Specifically, Section 1501 of the Code mandates that every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service.<sup>17</sup> The Company's obligation is clear and the Company can only be relieved of this obligation if the Commission approves a capable public utility to acquire Twin Lakes pursuant to a

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<sup>14</sup> 52 Pa. Code § 3.6(b)(1)-(4).

<sup>15</sup> Section 529 Petition, ¶ 1.

<sup>16</sup> 66 Pa. C.S. §§ 101, et seq.

<sup>17</sup> 66 Pa. C.S. § 1501.

Section 529 proceeding or if the Commission approves an abandonment of service.<sup>18</sup> These approvals will not occur by the Company's artificial September 1 deadline; therefore, Twin Lakes has a continuing obligation to provide safe and reliable service to its customers. Twin Lakes' failure to do so may expose Twin Lakes to civil and criminal penalties.<sup>19</sup>

Therefore, the OCA's right to relief is not clear because Twin Lakes has an obligation to continue providing safe and reliable water service to its customers until the Commission approves otherwise.

## **2. The need for relief is not immediate.**

The facts in this case support a finding that the need for interim emergency relief is not immediate. Twin Lakes is currently providing water service to its customers<sup>20</sup> and is capable of continuing to provide water service to its customers going forward. There is no justifiable reason why Twin Lakes would violate the Public Utility Code and cease providing water to its customers on its artificial September 1, 2020 deadline. Twin Lakes, and its parent company, Middlesex, have forced this artificial deadline on the parties, customers and the Commission.<sup>21</sup> 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.<sup>22</sup> However, the Company's threats to stop serving customers on September 1 are a clear violation of its

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<sup>18</sup> I&E Answer, ¶ 8. *See also* OCA Petition, ¶ 7.

<sup>19</sup> *See* 66 Pa. C.S. §§ 3301, 3302.

<sup>20</sup> Section 529 Petition, ¶ 1.

<sup>21</sup> Section 529 Petition, ¶¶ 24, 26.

<sup>22</sup> I&E Answer, ¶ 9.

obligations under the Public Utility Code and do not justify the appointment of a receiver. Twin Lakes, by and through its parent company Middlesex, as shown *infra*, 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.

Twin Lakes attempted to justify the artificial deadline in its Section 529 Petition by claiming that its parent company, Middlesex, would not be renewing its Service Agreement and would be terminating all financial support to Twin Lakes.<sup>23</sup> All of these decisions and actions on the part of Middlesex can be reversed, modified or extended. It is clear that Middlesex has the ability to change the artificial deadline of September 1, 2020 and must do so to remain in compliance with the Public Utility Code; therefore the need for the requested emergency relief is not immediate.

Further, as Aqua witness Stephen Clark stated in his testimony, if Aqua were appointed the receiver, Aqua would not bring anything to the table beyond what Twin Lakes is providing today.<sup>24</sup> In fact, Aqua has less knowledge of the Twin Lakes system and its current challenges than the Twin Lakes' current management and technical personnel.<sup>25</sup> Even Twin Lakes Vice President A. Bruce O'Connor stated that the biggest problem with Twin Lakes is the physical condition of the system and not the management of the system.<sup>26</sup> Appointing Aqua as receiver would do nothing to change that.

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<sup>23</sup> See OCA Ex. No. 2. See also Section 529 Petition, ¶¶ 21-26.

<sup>24</sup> Hr. Tr., p. 129.

<sup>25</sup> Hr. Tr., p. 123.

<sup>26</sup> Hr. Tr., p. 85.

And, with regard to Middlesex, it publicly touts its financial, managerial and technical capabilities on its website, yet is threatening to terminate service to its Pennsylvania customers.<sup>27</sup> 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.”<sup>28</sup> 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.”<sup>29</sup> Finally, both Twin Lakes President Robert Fullagar and Vice President A. Bruce O’Connor stated that Middlesex is a well-run company.<sup>30</sup>

Additionally, Middlesex has approximately 350 employees and the Middlesex family of companies serves nearly 500,000 customers in New Jersey, Delaware and Pennsylvania.<sup>31</sup> 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.<sup>32</sup>

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<sup>27</sup> See <https://www.middlesexwater.com/>.

<sup>28</sup> See, <https://www.middlesexwater.com/about-us/>, p. 1 of 8.

<sup>29</sup> See, <https://www.middlesexwater.com/about-us/>, p. 2 of 8.

<sup>30</sup> Hr. Tr., p. 105 (testimony of President Robert Fullagar); Hr. Tr., p. 85 (testimony of Vice President A. Bruce O’Connor).

<sup>31</sup> See <https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 1.

<sup>32</sup> See, <https://www.middlesexwater.com/news-room/>, 2019 Annual Report, p. 10.

Moreover, according to the Middlesex July 2020 Fact Sheet, its corporate credit rating was “A stable” and its 2019 revenue was \$134.6 million.<sup>33</sup> In short, this is not a situation like Winola and Indian Springs, as argued by OCA,<sup>34</sup> 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.<sup>35</sup> 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.”<sup>36</sup> That is what the Public Utility Code also requires and Twin Lakes must continue to provide such service until this Commission approves otherwise.

### **3. The injury would not be irreparable if relief is not granted.**

Twin Lakes is currently providing water service to its customers. And while Twin Lakes has infrastructure problems, it is addressing those problems and it is still capable of providing water service as required by its certificate of public convenience pursuant to the Pennsylvania Public Utility Code. If the OCAs requested relief is not granted, Twin Lakes has and will continue to have the technical managerial and financial capability of providing service to its customers.<sup>37</sup> Twin Lakes, with the support of its parent Middlesex, is more than capable of maintaining the status quo until a Section 529 or abandonment proceeding is concluded, and therefore no irreparable harm will result if the requested emergency relief is not granted.

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<sup>33</sup> See <https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 2.

<sup>34</sup> OCA Petition, ¶ 12.

<sup>35</sup> Section 529 Petition, ¶ 26.

<sup>36</sup> See <https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 1.

<sup>37</sup> See Section IV. 2. The need for relief is not immediate, *supra*.

A prevailing issue in this case is that Middlesex has, in Twin Lakes, a financially underperforming segment of their overall public utility business that they would like to divest however possible.<sup>38</sup> And after listening to the testimony of the Twin Lakes witnesses, one can conclude that this is purely a financial decision by Middlesex.<sup>39</sup> Further, Twin Lakes even threatened a bankruptcy filing.<sup>40</sup> In fact, 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.

As stated by Twin Lakes President Robert Fullagar, the decision to cease water service to the Twin Lakes customers would be his<sup>41</sup> and it will require a physical act.<sup>42</sup> The performing of that physical act would be done with full knowledge that it would result in the cessation of water service to the Twin Lakes customers.<sup>43</sup> Doing so would be a clear violation of the Public Utility Code.

Again, referring to the Middlesex website, in the July 2020 Fact Sheet at the Company Overview tab, Middlesex states that it “serves as a trusted provider offering life-sustaining high quality water service for residential, commercial, industrial and fire protection purposes.”<sup>44</sup> This statement is wholly accurate as utility customers and the Commission trust regulated utilities to provide important utility services until authorized by the regulatory body to cease service. Middlesex recognizes the import of this role and

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<sup>38</sup> See generally Section 529 Petition.

<sup>39</sup> Hr. Tr., pp. 73-82 (testimony of Vice President A. Bruce O’Connor); Hr. Tr., pp. 92-98 (testimony of President Robert Fullagar).

<sup>40</sup> Section 529 Petition, ¶ 32.

<sup>41</sup> Hr. Tr., p. 104.

<sup>42</sup> Hr. Tr., p. 104.

<sup>43</sup> Hr. Tr., p. 104-105.

<sup>44</sup> See <https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 1.

allowing its regulated Pennsylvania utility to simply stop service to customers on September 1 would be a breach of this stated trust.

**4. The relief requested may be injurious to the public interest.**

In determining whether or not granting the requested relief will be injurious to the public interest requires looking at both the short-term consequences and the long-term consequences. Currently, under the status quo, the burden of running the Twin Lakes water system and providing water service to its customers is shared by both Twin Lakes and its parent company Middlesex.<sup>45</sup> If the requested relief is granted, the only thing that will be accomplished in the short term is that this burden will be shifted from one capable public utility, Middlesex, to another, most likely Aqua.<sup>46</sup> And the shifting of that burden, in this case presumably to Aqua, may be injurious to the existing customers of Aqua and therefore may be injurious to the public interest.

In the long term, allowing one capable public utility to force the Commission to shift the burden from one capable public utility to another by threatening harm to the customers may have unintended injurious consequences long into the future. Setting this type of precedent may open the door for other public utilities to create artificial deadlines that put the Commission in the position of having to make decisions that may not necessarily be in the public interest in the long-term in order to protect threatened customers in the short-term. This potential injurious precedent cannot be set as it is not in the public interest.

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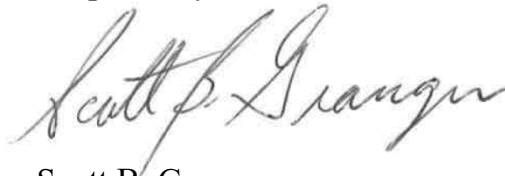
<sup>45</sup> Section 529 Petition, ¶¶ 1-7.

<sup>46</sup> OCA Petition, ¶ 17.

**V. CONCLUSION.**

In consideration of the averments set forth in the I&E Answer and the reasoning set forth in this I&E Main Brief, 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,

A handwritten signature in cursive script that reads "Scott B. Granger". The signature is written in black ink and is positioned above the printed name and title.

Scott B. Granger

Prosecutor

PA Attorney ID No. 63641

Dated: August 24, 2020

## APPENDIX A

### Findings of Fact.

1. Twin Lakes is a public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania. (Section 529 Petition, ¶ 1).

2. Twin Lakes provides retail water service to 113 active residential customer accounts in Pennsylvania, all located in the Sagamore Estates community located in Shohola Township, Pike County, Pennsylvania. (Section 529 Petition, ¶ 1).

3. Twin Lakes corporate address is 485C Route 1 South, Suite 400, Iselin, NJ 08830. (Section 529 Petition, ¶ 2).

4. Twin Lakes is a wholly-owned subsidiary of Middlesex Water Company. Middlesex is a New Jersey corporation and the sole owner of Twin Lakes. (Section 529 Petition, ¶ 3).

5. On April 6, 2009, Middlesex formed Twin Lakes by filing articles of incorporation with the Pennsylvania Department of State, Corporation Bureau. (Section 529 Petition, ¶ 4).

6. Middlesex created Twin Lakes, a wholly-owned Pennsylvania subsidiary company, for the sole purpose of ensuring that the assets of Twin Lakes Water System, LLC, the predecessor owner to the system serving the Sagamore Estates customers, could be operated by an entity incorporated in the Commonwealth of Pennsylvania. (Section 529 Petition, ¶ 4).

7. Middlesex was incorporated as a water utility in 1897, and it provides a full range of regulated and nonregulated water and wastewater utility and related services in

parts of New Jersey, Delaware and Pennsylvania. (<https://www.middlesexwater.com/>; I&E Answer, ¶ 11).

8. Middlesex has approximately 350 employees and the Middlesex family of companies serves nearly 500,000 customers in New Jersey, Delaware and Pennsylvania. (<https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 1; I&E Answer, ¶ 11).

9. Middlesex states through their affiliated companies they 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. (<https://www.middlesexwater.com/about-us/>, p. 1 of 8; I&E Answer, ¶ 11).

10. Twin Lakes President, Robert Fullagar, stated that Middlesex is a well-run company. (Hr. Tr., p. 105).

11. Twin Lakes Vice President, A. Bruce O'Connor, stated that Middlesex is a well-run company. (Hr. Tr., p. 85).

12. 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. (<https://www.middlesexwater.com/news-room/>, 2019 Annual Report, p. 10; I&E Answer, ¶ 11).

13. According to the Middlesex July 2020 fact sheet, its corporate credit rating was “A stable” and its 2019 revenue was \$134.6 million.

(<https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 2; I&E Answer, ¶ 12).

14. 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.” (<https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 1; I&E Answer, ¶ 12).

15. The Middlesex July 2020 fact sheet states that Middlesex serves as a trusted provider offering life-sustaining high quality water service for residential, commercial, industrial and fire protection purposes. (<https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 1; I&E Answer, ¶ 15).

16. Twin Lakes parent company, Middlesex, made equity investments in, and extended credit to, Twin Lakes in order to maintain service for the Twin Lakes customers since 2009. (Section 529 Petition, ¶ 9).

17. Middlesex has extended financial credit to Twin Lakes through three outstanding unsecured revolving promissory notes, the first executed in January 2016, the second executed in October 2019, and the third also executed in October 2019. (Section 529 Petition, ¶ 10).

18. Middlesex provides operations support to Twin Lakes through a Service Agreement executed between Middlesex and Twin Lakes dated December 1, 2019. Under the terms of the Service Agreement, Middlesex provides operations support for

Twin Lakes including, but not limited to customer service, accounting, administration, communications, corporate secretarial, engineering, financial, human resources, information systems, operations, rates and revenue, risk management and water quality. (Section 529 Petition, ¶ 12).

19. In the Commission's 2019 Rate Case Order, the Commission rejected recommendations made by both Twin Lakes and the OCA to initiate a Section 529 proceeding to determine whether the commission should direct a capable public utility to acquire Twin Lakes. (Section 529 Petition, ¶ 18).

20. On August 7, 2019, Twin Lakes submitted an application to PENNVEST for grants and/or loans to finance system improvements for the Twin Lakes system. On January 29, 2020, Twin Lakes was notified that PENNVEST had approved a grant of \$4.66 million. (Section 529 Petition, ¶ 19).

21. On May 28, 2020, Middlesex issued a letter to Twin Lakes demanding from Twin Lakes immediate payment of the total amounts due on three outstanding Unsecured Revolving Promissory Notes between Middlesex as Lender and Twin Lakes as Borrower. (Section 529 Petition, ¶ 21).

22. On May 29, 2020, Twin Lakes issued a letter to Middlesex responding to the Middlesex payment demand. In the response letter, Twin Lakes stated that it was unable to meet Middlesex's payment demand requirements. (Section 529 Petition, ¶ 22).

23. On June 1, 2020, Middlesex issued a letter notice of termination of the Service Agreement between Middlesex and Twin Lakes, advising that the termination would become effective on September 1, 2020. (Section 529 Petition, ¶ 24).

24. With the termination of the Service Agreement by, and the end of financial support from Middlesex, Twin Lakes alleged it will have no means to maintain water quality or distribute water of any quality to customers; and therefore, Twin Lakes threatened water service will likely cease. (Section 529 Petition, ¶ 26).

25. As of July 16, 2020, Middlesex has stated that it is unwilling to renegotiate the terms of Twin Lakes' obligations pursuant to the three outstanding Unsecured Revolving Promissory Notes executed in 2016 and 2019. (Section 529 Petition, ¶ 32).

26. Twin Lakes stated that it is considering all options including the filing of a petition for bankruptcy protection. (Section 529 Petition, ¶ 32).

27. Twin Lakes President Robert Fullagar stated that the decision to cease water service to the Twin Lakes customers would be his. (Hr. Tr., p. 104).

28. Twin Lakes President Robert Fullagar stated that it will require a physical act in order to cease water service to the Twin Lakes customers. (Hr. Tr., p. 104).

29. Twin Lakes President Robert Fullagar stated that the performing of the necessary physical act would be done with full knowledge that it would result in the cessation of water service to the Twin Lakes customers. (Hr. Tr., p. 104-105).

30. Twin Lakes is currently providing water service to its customers. (Section 529 Petition, ¶ 1).

31. Twin Lakes is capable of continuing to provide water service to its customers going forward. (I&E Answer, ¶¶ 9, 11, 12, 15; Section 529 Petition, ¶ 1).

32. The September 1, 2020 deadline is an artificial deadline resulting from the unilateral decision of Middlesex to terminate the Service Agreement. (Section 529 Petition, ¶ 24).

33. Aqua witness Stephen Clark testified that if Aqua were appointed the receiver, Aqua would not bring anything to the table beyond what Twin Lakes is providing today. (Hr. Tr., p. 129).

34. Aqua witness Stephen Clark testified that Aqua has less knowledge of the Twin Lakes system and its current challenges than the current Twin Lakes management and technical personnel. (Hr. Tr., p. 123).

35. Twin Lakes Vice President A. Bruce O'Connor testified that the biggest problem with Twin Lakes is the physical condition of the system more so than the management of the system. (Hr. Tr., p. 85).

## **Conclusions of Law.**

1. The Commission has been granted certain powers by Section 5 of the Public Utility Code. 66 Pa. C.S. §§ 501 et seq.
2. Section 529 of the Public Utility Code granted the Commission certain powers to act. 66 Pa. C.S. § 529.
3. Section 529(g) grants the Commission discretionary power to appoint a receiver, when warranted, to ensure that customers of small water and wastewater utilities will receive safe and adequate service. 66 Pa. C.S. § 529(g).
4. A party may submit a petition for an interim emergency order during the course of a proceeding. 52 Pa. Code § 3.6.
5. A petition for an interim emergency order must be supported by a verified statement of facts which establishes the existence of the need for interim emergency relief including facts to support the following: (1) the petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and, (4) the relief requested is not injurious to the public interest. 52 Pa. Code §3.6(b)(1)-(4).
6. The Office of Consumer Advocate, as the petitioner, has the burden to establish that it is entitled to the interim emergency relief it is seeking. *In re: Loudenslager's Estate*, 430 Pa. 33, 240 A.2d 477 (1968).
7. The OCA must prove its case by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Commw. 1990).

8. To meet its burden of proof, the OCA must present evidence more convincing, by even the smallest amount, than that presented by any opposing party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

9. The OCA has failed to present facts which establish the existence of the need for interim emergency relief. 52 Pa. Code § 3.6(b).

10. The OCA has failed to present facts and substantial evidence establishing that it's right to relief is clear. 52 Pa. Code§ 3.6(b)(1).

11. The OCA has failed to present facts and substantial evidence establishing that the need for relief is immediate. 52 Pa. Code§ 3.6(b)(2).

12. The OCA has failed to present facts and substantial evidence to establish that the injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(3).

13. The OCA has failed to present facts and substantial evidence to establish that the relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b)(4).

14. Twin Lakes' unilateral cessation of water service to its customers would be a violation of Twin Lakes' obligations under the Public Utility Code. 66 Pa. C.S. § 1501.

15. Section 1501 of the Public Utility Code mandates that every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service. 66 Pa. C.S. § 1501.

16. Twin Lakes has a continuing obligation, pursuant to its certificate of public convenience, to provide service to its customers until the resolution of a Section 529 proceeding and/or the commission otherwise approves an abandonment of service. 66 Pa. C.S. §§ 1101, 1102, 1501.

17. Section 3301 of the Public Utility Code authorizes the Commission to impose civil penalties for violations of the Public Utility Code as described therein. 66 Pa. C.S. § 3301(a).

18. In construing and enforcing the provisions of Section 3301 of the Public Utility Code, the violation, omission, failure, neglect, or refusal of any officer, agent, or employee acting for, or employed by, any such public utility, person or corporation shall, in every case be deemed to be the violation, omission, failure, neglect, or refusal of such public utility, person or corporation. 66 Pa. C.S. § 3301(a).

19. Section 3301 authorizes the Commission the find that each and every day's continuance in the violation of any regulation or final direction, requirement, determination, or order of the commission, ... or of any final judgment, order or decree made by any court, shall be a separate and distinct offense. 66 Pa. C.S. § 3301(b).

20. Section 3302 authorizes the Commission to find that any person, including an officer, agent or employee of any public utility, or any corporation, who or which shall knowingly fail, omit, neglect or refuse to obey, observe, and comply with any regulation or final order, direction, or requirement of the commission, ... or any final order or decree of any court, or who shall knowingly procure, aid, or abet any such violation, omission, failure, neglect, or refusal, shall be guilty of a misdemeanor of the first degree. 66 Pa. C.S. § 3302.

21. Twin Lakes, by and through its parent company Middlesex, has the necessary financial, managerial and technical ability to provide safe and reasonable service and facilities. 66 Pa. C.S §§ 529(a)(3), 529(c)(1); I&E Answer ¶¶ 9, 11, 12, 15.

**Proposed Ordering Paragraphs.**

Therefore, it is Recommended:

1. That the Office of Consumer Advocate's Petition for Issuance of an Interim Emergency Order on an Expedited Basis at Docket No. P-2020-3020914 requesting the appointment of a receiver for Twin Lakes Utilities, Inc. be DENIED.

## **Description of the Evidence.**

Twin Lakes is a public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Twin Lakes is a wholly-owned subsidiary of Middlesex Water Company. Middlesex is a New Jersey corporation and the sole owner of Twin Lakes. Middlesex created Twin Lakes for the sole purpose of ensuring that the Twin Lakes water system could be operated by an entity incorporated in the Commonwealth of Pennsylvania.

Middlesex was incorporated as a water utility in 1897, and provides a full range of regulated and nonregulated water and wastewater utility and related services in parts of New Jersey, Delaware and Pennsylvania. Middlesex has approximately 350 employees and the Middlesex family of companies serves nearly 500,000 customers in New Jersey, Delaware and Pennsylvania. Middlesex has stated that through their affiliated companies they 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.

In its annual statement, Middlesex reported a net income of \$33.9 million in 2019 and \$32.5 million in 2018. They also reported 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. According to the Middlesex July 2020 fact sheet, its corporate credit rating was “A stable” and its 2019 revenue was \$134.6 million.

Finally, Middlesex has stated that it is “Our Mission: To provide service in the water, wastewater and related service fields in a safe, reliable and efficient manner.” They have also stated that they serve as a trusted provider offering life-sustaining high quality water service for residential, commercial, industrial and fire protection purposes. Both, Twin Lakes President, Robert Fullagar, and Twin Lakes Vice President, A Bruce O’Connor, stated that Middlesex is a well-run company.

Middlesex has been providing operations support to Twin Lakes through a Service Agreement executed between Middlesex and Twin Lakes. Under the terms of the Service Agreement, Middlesex provides operations support for Twin Lakes including but not limited to customer service, accounting, administration, communications, corporate secretarial, engineering, financial, human resources, information systems, operations, rates and revenue, risk management and water quality. On June 1, 2020, Middlesex issued a letter notice of termination of the Service Agreement between Middlesex and Twin Lakes, advising that the termination would become effective on September 1, 2020. Twin Lakes has alleged that with the termination of the Service Agreement it will have no means to maintain water quality or distribute water of any quality to customers; and therefore, Twin Lakes has threatened that water service will likely cease.

Twin Lakes Pres. Robert Fullagar stated that the decision to cease water service to the Twin Lakes customers would be his, and that it will require a physical act in order to turn off the water service to the Twin Lakes customers. Further, the performing of the necessary physical act would be done with full knowledge that it would result in the cessation of water service to the Twin Lakes customers.

Middlesex has stated that it is unwilling to renegotiate the terms of Twin Lakes' obligations regarding three outstanding Unsecured Revolving Promissory Notes and the implementation of the Service Agreement for another term. The September 1, 2020 deadline is an artificial deadline resulting from Middlesex's unwillingness to renegotiate Twin Lakes' obligations and re-implement the Service Agreement for another term.

Even if a receiver was appointed for Twin Lakes, in this case presumably Aqua, the Aqua witness testified that if Aqua were appointed the receiver, Aqua would not bring anything to the table beyond what Twin Lakes is providing today. The Aqua witness stated further that Aqua has less knowledge of the Twin Lakes system and its current challenges than the current Twin Lakes' management and technical personnel. Finally, Twin Lakes Vice President, A. Bruce O'Connor, testified that the biggest problem with the Twin Lakes system is the physical condition and not the management of the system.

Twin Lakes, by and through its parent 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.

**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 :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Main Brief of the Bureau of Investigation and Enforcement in Support of the I&E Answer to the OCA Petition for Interim Emergency Relief** dated August 24, 2020, in the manner and upon the persons listed below:

**Served via Electronic Mail Only**

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A handwritten signature in cursive script, reading "Scott B. Granger". The signature is written in black ink and is positioned above a horizontal line.

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