

COMMONWEALTH OF PENNSYLVANIA



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August 24, 2020

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
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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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief Regarding the Office of Consumer Advocate's Petition for Interim Emergency Order Appointing A Receiver in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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cc: The Honorable Joel H. Cheskis (**email only**)
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Certificate of Service

*294587

CERTIFICATE OF SERVICE

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

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate’s Main Brief Regarding the Office of Consumer Advocate’s Petition for Interim Emergency Order Appointing A Receiver, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 24th day of August 2020.

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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 :

MAIN BRIEF OF THE
OFFICE OF CONSUMER ADVOCATE
REGARDING OFFICE OF CONSUMER ADVOCATE'S
PETITION FOR INTERIM EMERGENCY ORDER
APPOINTING A RECEIVER

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I. INTRODUCTION

Twin Lakes Utilities, Inc. (Twin Lakes or the Company) maintains a principal place of business at 485C Route 1 South, Suite 400, Iselin, New Jersey 08830 and serves approximately 115 customers in the Sagamore Estates community in Shohola Township, Pike County, Pennsylvania. Twin Lakes is a wholly-owned subsidiary of Middlesex which also has a principal place of business at 485C Route 1 South, Suite 400, Iselin, New Jersey 08830. Middlesex is Twin Lakes' only financial and operational support. 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 at 2 (Twin Lakes Petition) (the Petition and its Appendices was admitted into the record as Twin Lakes Exhibit 1). Middlesex has extended financial credit to Twin Lakes through three promissory notes which provided Middlesex the right to demand payment from Twin Lakes for the total amount due plus interest. Twin Lakes Exh. 1, Appendices D and G. Middlesex provides operational support to Twin Lakes through a Service Agreement between Middlesex and Twin Lakes dated December 1, 2009. Twin Lakes Exh. 1, Appendix E. Twin Lakes' system is comprised of Well #2, its only working well, and Well #1, which is inoperable and at risk of collapse due to over-pumping of Well #2. OCA Exhs. 6 and 7. Twin Lakes also suffers from significant unaccounted for water (UFW) levels rising as high as 86% in recent years.¹ OCA Exh. 6 and 7. Twin Lakes has requested and received rate increases three times since 2011 and in the 2011 and 2015 cases the rate increases were tied to specific improvements to its facilities.² On June 10, 2011, Twin Lakes filed a request to increase revenues by \$124,420, or 368%. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No .R-2011-

¹ Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958, Opinion and Order at 65 (Mar. 26, 2020) (Twin Lakes 2019 Rate Case)

² See OCA Answer to Twin Lakes Petition at 3.

2246415. (Twin Lakes 2011 Rate Case). The Commission approved an Amended Joint Petition for Settlement of Rate Investigation (2011 Settlement) on March 1, 2012. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2011-2246415 Order (March 1, 2012). The 2011 Settlement provided for increased revenues of \$42,060, or 124%, starting with an increase of \$21,060, followed by two additional increases phased in over the next two years. In exchange, Twin Lakes was required to reduce unaccounted for water (UFW) from 55% to 49.5% within 18 months; conduct an annual pressure survey as required by Commission regulation, and provide an annual bill insert to describe how it would notify its customers about boil water advisories or other emergency situations. 2011 Settlement at ¶¶ 7. c., d., and h.

On November 16, 2015, Twin Lakes filed a rate increase request asking for additional revenues of \$195,287, or 257%. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2015-2506337 (Twin Lakes 2015 Rate Case). The Commission approved a Joint Petition for Settlement of Rate Investigation (2015 Settlement) on June 9, 2016. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2015-2506337 Order (June 9, 2016). The settlement of the 2015 rate case provided for an increase in revenues of \$125,000, or a 164.54% increase over three years, including an immediate 82% increase (\$62,500) along with two subsequent increases based on specific improvements being made to trigger phases 2 and 3. 2015 Settlement at ¶ 6. The 2015 Settlement required Twin Lakes to, *inter alia*, replace Well #1 to trigger the second phase of the rate increase (additional 25%) (¶ 7.c.1); install and/or replace various mains in the distribution system to trigger the third phase of the rate increase (additional 25%) (¶ 7.c.2), and send outage alert billing inserts two times per year (¶ 7.h), and pressure readings protocol for customers complaining about low pressure, as well as a commitment to increase pressure by a certain amount when it replaced Well #1 (¶ 7.k).

On July 23, 2019, Twin Lakes filed its most recent rate increase request with the Commission. On March 26, 2020, the Commission issued an Order approving an annual increase of \$117,374 (88%) as opposed to \$211,793 (158.63%) as initially requested by Twin Lakes. Pa. PUC, et al. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958 Opinion and Order (Mar. 26, 2020) (Twin Lakes 2019 Rate Case); see also Twin Lakes Exh. 1, Petition ¶ 17. As evidenced by customer testimony in the public input hearings, and as presented by various party witnesses, affordability was a significant concern in the 2019 rate case. Twin Lakes Exh. 1, Petition ¶ 17. The rates resulting from the 2019 rate case is a \$114.84 monthly customer charge for a 5/8 inch meter and a volumetric rate of \$27.75 per 1,000 gallons. Twin Lakes Compliance Tariff Supplement No. 10 to Tariff-Water Pa. P.U.C. effective 4/19/20. For a customer using 3,000 gallons of water per month, the resulting bill is \$198 per month, or \$2,377 per year.³ It should be noted that these rates do not reflect any of the necessary improvements described above. See e.g., Twin Lakes 2019 Rate Case, slip op. at 64.⁴

Despite these increases, Twin Lakes has failed to find solutions to the problems plaguing the system. Twin Lakes 2019 Rate Case Order at 63. Additionally, Twin Lakes exceeded the lead action level, and in addition to DEP requirements, is required to take additional steps related to testing and notice to customers. Twin Lakes 2019 Rate Case, Order, Appendix B. In its 2019 rate case, Twin Lakes requested an annual increase of \$211,793 (158.63%) and received \$117,374 (87.91%). Twin Lakes 2019 Rate Case, slip op. at 4. In that case, the OCA argued that a Section

³ $\$114.84 + (\$27.75 \times 3) = \$198$. $\$198 \times 12 = \$2,377$.

⁴ In addition to affordability concerns from the 2019 rate increase, if Twin Lakes were to replace Well #1, it estimated that its cost to replace Well #1 would be \$1,600,000 in addition to the \$611,375, the amount recorded in Construction Work in Progress for this project. Twin Lakes St. 3 at 3-4. In the 2018 Application to Abandon, Twin Lakes stated that the cost of Well #1 would be extremely expensive for its 114 customers, and along with other necessary costs, would drive rates to approximately \$3,800 per customer per year. 2018 Application to Abandon at 2-4.

529⁵ proceeding was necessary as long-term solution to Twin Lakes' problems, and Twin Lakes joined in the OCA's request. Twin Lakes Exc. at 6. The Commission rejected the request for a Section 529 proceeding stating that "[b]ased on the Company's increased revenue *via* the rate increase granted in this proceeding, and the record evidence of Twin Lakes' prospective opportunity to secure PENNVEST loans for the necessary improvements, we conclude that initiation of a Section 529 proceeding is not warranted at this time." Twin Lakes 2019 Rate Case, slip op. at 64.

Twin Lakes recently applied for PENNVEST funding and was notified that it was eligible to receive a grant of \$4.66 million and a loan amount of \$304,573. Twin Lakes Exh. 1, Petition at 7. However, Twin Lakes expressed its reluctance to accept the funds because of the accompanying \$1.358 million tax liability related to the grant which would be properly recoverable from its customers in rates. Id. Twin Lakes stated that since the Commission has acknowledged that affordability is a factor in this case, it is unsure of its ability to collect this amount from ratepayers if it accepts the funding. Id. at 8.

On May 28, 2020, Middlesex demanded payment on the three outstanding promissory notes it holds with Twin Lakes, to which Twin Lakes replied on May 29, 2020 that it is unable to meet Middlesex's demand. Twin Lakes Exh. 1, Appendices G and H. On June 1, 2020, Middlesex notified Twin Lakes of its intention to terminate the Service Agreement it has with Twin Lakes. Id., Appendix I. Middlesex stated that it will no longer provide operational and financial support to Twin Lakes and water service will cease at 12:01 a.m. on September 1, 2020.⁶ A notice stating such was sent to Twin Lakes' customers. See OCA Exh. 1.

⁵ 66 Pa. C.S. § 529.

On July 14, 2020, Twin Lakes sent a Request for Proposal – Contract Operations & Maintenance Services For The Twin Lakes Utilities, Inc. Community Water System Located in Shohola Township, Pike County, Pennsylvania. Twin Lakes Exh. 1, Appendix J. Twin Lakes did not receive a viable offer by the response due date of August 14, 2020. Tr. at 95-96; 99-100. As a result, Twin Lakes states that it will cease providing water service as of 12:01 a.m. on September 1, 2020. Tr. at 102.

On July 16, 2020, Twin Lakes filed a Petition requesting that the Commission issue an order authorizing the acquisition of Twin Lakes pursuant to Section 529. Administrative Law Judge (ALJ) Cheskis was assigned to preside over the Section 529 proceeding. On July 27, 2020, ALJ Cheskis conducted an Initial Prehearing Conference. On July 28, 2020, ALJ Cheskis issued a Scheduling Order containing a schedule for the litigation of a Section 529 proceeding, including a September 1 deadline for notice to be provided to the Twin Lakes’ customers and proximate capable public utilities regarding the investigation. Answers to the Twin Lakes’ Petition were filed by the Office of Consumer Advocate (OCA)⁷ and the Bureau of Investigation and Enforcement (I&E).

The OCA filed a Petition for Interim Emergency Order on August 18, 2020. (OCA Petition) and asked for expedited treatment of its Petition. Due to the imminent cessation of water service by Twin Lakes, the OCA requested a receiver be appointed to ensure Twin Lakes’ customers continue to receive water service and to ensure that Twin Lakes does not cease providing water service to its customers effective 12:01 a.m. on September 1, 2020.

A Further Prehearing Conference was held on August 19, 2020 to discuss the OCA’s Petition. ALJ Cheskis issued a Second Scheduling Order on August 19, 2020 to set the answer

⁷ The OCA incorporates its Answer herein by reference.

period, hearing, briefs and dates for an Order pursuant to the expedited treatment of the OCA's Petition. On August 21, 2020, ALJ Cheskis issued a Briefing Order. This brief is filed pursuant to that Order.

II. SUMMARY OF ARGUMENT

Twin Lakes' customers are faced with losing water service at 12:01 a.m. on September 1, 2020 when Twin Lakes stops providing water. OCA Exh. 1. September 1 at 12:01 is the date that the service agreement between Twin Lakes and its parent company, Middlesex Water, ends. Twin Lakes Exhibit 1, Appendix I. The OCA's Interim Emergency Petition asks that Aqua PA, a capable water utility serving more than 430,000 customers across the Commonwealth and 4,697 in Pike County (OCA Exh. 3), be appointed as a receiver to provide service to Twin Lakes' customers effective 12:01 on September 1. The appointment of a receiver will ensure that water continues to flow to the customers of Twin Lakes, while the Section 529 proceeding continues. The alternatives, as discussed below, will not ensure that the customers continue to receive water service or potable water after September 1, 2020. If the OCA's Interim Emergency Petition is not granted, as argued by I&E and Aqua, it will be a game of chicken with Twin Lakes. The customers are facing immediate, irreparable harm.

As a certificated water utility, Twin Lakes has an ongoing obligation to provide water service to its customers in Sagamore Estates. 66 Pa. C.S. § 1501. Despite that legal obligation, Twin Lakes notified its customers (OCA Exh. 1), and presented evidence in this case, that it will cease providing service on September 1, 2020. Twin Lakes Exh. 1, Appendix I; Tr. at 102. The Commission has the authority to force Twin Lakes to continue to provide service under Sections 501, 502, and 503 of the Public Utility Code. 66 Pa. C.S. §§ 501, 502, 503. However, even if the Commission directs Twin Lakes to continue to provide service after September 1, the evidence shows that Twin Lakes would allow the water to continue to flow but due to the expiration of the service agreement with Middlesex Water, Twin Lakes would not be able to pay for more chemicals when the current inventory runs out, and Twin Lakes would not be able to pay its employees or

contractors, such as the certified operator. Tr. 102-103. In this scenario, customers would continue to receive water, at least until the first main break or leak, Tr. at 103, but that water would not be potable drinking water. Thus, even if Twin Lakes is ordered to continue to provide water service, as argued by I&E, the customers could use the water for basic sanitation, at least until a main break, but would not be able to use the water for drinking and cooking. Again, the customers should not be placed in this avoidable situation. The OCA's requested relief would avoid this harm, and would ensure that the customers have ongoing water service provided by receiver using a certified operator and providing customer service that would be a resource for emergency service if issues arise.

As discussed below, the evidence establishes that the OCA's right to its requested interim emergency relief is clear, because of the public health and safety issues that will arise due to Twin Lake's cessation of water service. The public health and safety issues are exacerbated during the COVID-19 pandemic. The need for relief is immediate because the termination of the Service Agreement is effective on September 1, 2020. In addition, the appointment of a receiver would avoid irreparable injury to customers and is not injurious to the public interest, and would promote the public interest. The OCA respectfully submits that its Interim Emergency Petition should be granted.

III. INTERIM EMERGENCY ORDER

The standards that govern the issuance of interim emergency orders are set forth at 52 Pa. Code § 3.6. Section 3.6 requires a petition for interim emergency relief be supported by a verified statement of facts that establishes the existence of the need for emergency relief, including facts which support the following four elements:

- (1) The petitioner's right to relief is clear.
- (2) The need for relief is immediate.
- (3) The injury would be irreparable if the relief is not granted.
- (4) The relief requested is not injurious to the public interest.

52 Pa. Code § 3.6(b).

All elements must be present in order for the Commission to grant interim emergency relief,⁸ but it is not necessary to determine the merits of the case in order to find that a petitioner's right to relief is clear.⁹ When evaluating whether an injury is irreparable, the Commission examines "whether the harm can be reversed if the request for emergency relief is not granted."¹⁰ The party seeking relief bears the burden of proving all four elements,¹¹ which must be demonstrated by a preponderance of the evidence.¹² Additionally, any finding of fact necessary to support the Commission's adjudication must be based upon substantial evidence.¹³ Section 3.10(a) provides that an order granting or denying interim emergency relief is immediately effective upon issuance by the ALJ and that no stay of the order will be permitted pending Commission review of

⁸Glade Park East Home Owners Association v. Pa. P.U.C., 628 A.2d 468, 473 (Pa. Cmwlth. 1993).

⁹ T.W. Phillips Gas and Oil v. Peoples Natural Gas, 492 A.2d 776 (Pa. Cmwlth. 1985) (Phillips Gas) (holding that the only required determination is that the petition raises substantial legal questions).

¹⁰ Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC, Docket No. P-2011-2253650 (Order entered Sept. 23, 2011).

¹¹ 66 Pa. C.S. § 332; 52 Pa. Code § 3.6(b).

¹² Samuel J. Lansberry, Inc. v. Pa. P.U.C., 578 A.2d 600 (Pa. Cmwlth. 1990).

¹³ Mill v. Pa. PUC, 447 A.2d 1100 (Pa. Cmwlth. 1982); Edan Transportation Corp. v. Pa. PUC, 623 A.2d 6 (Pa. Cmwlth. 1993); 2 Pa. C.S. § 704

the order.¹⁴ A presiding officer is required to certify the grant or denial of relief to the Commission as a material question.¹⁵ An “emergency” is defined as a “situation which presents clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.”¹⁶

A. The OCA’s Right to Relief is Clear.

The first requirement to obtaining interim emergency relief is a demonstration by the petitioner that its right to relief is clear.¹⁷ As petitioner in this case, the OCA is not required to show that it has an absolute right to relief on the underlying claim; rather, that its petition raises substantial legal questions.¹⁸ The Petition raises substantial legal questions, including whether Twin Lakes’ anticipated cessation of water service to its customers on September 1, 2020 in the absence of a Commission Order approving its abandonment of service violates Section 1501 of the Public Utility Code.¹⁹ Section 1501 requires public utilities to “furnish and maintain adequate, efficient, safe and reasonable service and facilities, and make such repairs, changes, alterations, substitutions, extensions and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience and safety of its patrons, employees, and the public.”²⁰ Recognizing that the cessation of water service would be in violation of these legal requirements, it is clear that is what Twin Lakes has said it will do. Regardless of the legal remedies available to address Twin Lakes’ actions, such as fines, it is clear that those remedies will not address the reality that the customers of Twin Lakes will not have water service starting at 12:01 a.m. on

¹⁴ 52 Pa. Code § 3.10(a).

¹⁵ 52 Pa. Code § 3.10(b).

¹⁶ 52 Pa. Code § 3.1

¹⁷ 52 Pa. Code § 3.6(b)(1).

¹⁸ See Phillips Gas, *supra*.

¹⁹ 66 Pa. C.S. § 1501.

²⁰ Id.

September 1, 2020. The absence of water service is a public health and safety issue, especially during a pandemic. Aqua PA's witness, Mr. Clark, indicated that Aqua is not willing to consider being a receiver in the circumstances where the current operator is capable of providing service. See Tr. 117-18. Although that is understandable, it does not consider that from the customers' perspective, they will be without water service, regardless of the reasons why.

The OCA submits that it has established, by a preponderance of the evidence, substantial legal questions demonstrating that its right to relief is clear. The record clearly shows that Twin Lakes has been involved in actions demonstrating its intent to violate its obligations under the Public Utility Code. Middlesex, its parent company and sole source of financial and operational support, has terminated its Service Agreement with Twin Lakes and Twin Lakes has notified its customers of its plan to walk away from the system on September 1, 2020. Most recently, in the August 21, 2020 hearing, Twin Lakes has indicated that if ALJ Cheskis were to issue an Order requiring Twin Lakes to continue providing water service, it would leave the water on but could not guarantee that an employee would be there to operate the system, supply chemicals, or turn the switches back on in the event of an automatic shut-off, and it would issue a "do not drink" notice to its customers. Tr. at 102-103. Twin Lakes President, Mr. Fullagar, stated that if no one is there, the water may only stay on for a couple days, or at most, a week. Id.

B. The Need for Relief is Immediate.

The second requirement for obtaining interim emergency relief is a demonstration by the petitioner that its need for relief is immediate.²¹ Twin Lakes issued a notice to its customers stating that it will cease providing water service to its customers effective 12:01 a.m. on September 1,

²¹ 52 Pa. Code § 3.6(b)(2).

2020 if it does not receive a qualified proposal to its RFP. OCA Exh. 1. Twin Lakes did not receive a viable proposal by the deadline of August 14, 2020, Tr. at 95-96; 99-100, and thus, according to Twin Lakes, it will cease providing water service on September 1, 2020, only eight (8) days following the filing date of this brief. In arguing that the need for relief is not immediate, I&E and Aqua stated that Twin Lakes' intention to terminate water service is a mere threat (I&E Answer to OCA's Petition at 6) and I&E appears to doubt that Twin Lakes will actually walk away from the system on September 1, 2020 because, as it argues, "Twin Lakes is currently providing water service to the Twin Lakes customers and is capable of continuing to do so in the future." Id. at 9.²² As explained below, it is clear that the steps taken by Twin Lakes meet the definition of "immediate".

In West Goshen Township v. Sunoco Pipeline, L.P., West Goshen Township filed a petition for interim emergency order to enjoin Sunoco from beginning or continuing construction related to Sunoco's Mariner East 2 pipeline on a tract of land located within the township. The Commission held that where it was undisputed that Sunoco was making plans to begin pipeline construction within several weeks, the township had established, by a preponderance of the evidence, that the need for relief was immediate.²³ Similarly, in this case, Twin Lakes has not only notified its customers of its plans to terminate water service effective September 1, 2020, it also informed all of the parties and ALJ Cheskis that it cannot guarantee the safe and continuous provision of water service to Twin Lakes' customers following that date. Tr. at 102-103. In accordance with the Commission's decision in West Goshen, Twin Lakes' statements and actions

²² The OCA notes that, at the August 21, 2020 hearing, I&E presented no evidence to support its statements

²³ West Goshen Township v. Sunoco Pipeline, L.P., 2017 Pa. PUC LEXIS 209 *43, Docket No. C-2017-2589346 (Order entered on Oct. 26, 2017) (West Goshen)

to date show a clear plan to violate the law. As such, the OCA submits that it has demonstrated, by a preponderance of the evidence, that the need for relief is immediate.

C. The Injury Would Be Irreparable if Relief is Not Granted.

The third requirement for obtaining interim emergency relief is a demonstration by the petitioner that the injury would be irreparable if relief is not granted.²⁴ In West Goshen, the ALJ observed that construction would have a negative impact on the township, including safety concerns, transportation delays, dust, noise. West Goshen at 45-46. Safe and reliable water service which supports the health and safety of Pennsylvania's citizens is of utmost importance, especially during the global COVID-19 pandemic.

1. The Public Utility Commission and the Department of Environmental Protection Recognize The Important Link Between Water Service and Public Health and Safety.

Gladys Brown Dutrieuille, Chairman of the Commission, issued an Emergency Order dated March 13, 2020 which states:

I believe that issuance of an emergency order is appropriate under the unique circumstances. It is beyond argument that the provision of public utility service is necessary for the safety of the public. This is especially the case under the current challenges that resulted in the Proclamation of a pandemic emergency. Irreparable injury to the public is likely to occur with disruption of service, creating a clear and present danger to life.

Therefore, all electric, natural gas, water, wastewater, telecommunications, and steam utilities subject to the Commission's jurisdiction are prohibited from terminating service during the pendency of the Proclamation of Disaster Emergency, unless to ameliorate a safety emergency, or unless otherwise determined by the Commission.

Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Docket No. M-2020-3019262 (Mar. 20, 2020) (Emergency Order).

²⁴ 52 Pa. Code § 3.6(b)(3).

The purpose of DEP's regulation of community water systems, like Twin Lakes, is as follows:

The purpose of this chapter is to protect the public health and safety by assuring that public water systems provide a safe and adequate supply of water for human consumption by establishing drinking water quality standards, permit requirements, design and construction standards, system management responsibilities and requirements for public notification

25 Pa. Code § 109.2

The cessation of water service, at any time, and especially during the COVID-19 pandemic, would negatively impact the public health and safety of the Twin Lakes' customers and that would constitute irreparable harm to the customers. See Tr. at 62. In fact, DEP, on its website, states:

During the COVID-19 crisis, Public Water Systems (PWSs) have a heightened responsibility to protect public health. Access to clean water for drinking and handwashing is critical during this situation. PWSs need to continue to manage and operate their facilities in a manner that is safe and that protects the public."²⁵

The link between continuing water service and the public health and safety of the Twin Lakes' customers is clear based on these statements by the Commission and DEP's regulations and statement. The OCA submits that the appointment of a receiver will ensure that the Twin Lakes' customers do not suffer irreparable harm due to the water being shut off or through the supply of water that cannot be consumed.

2. It is Clear That Irreparable Harm Will Result To The Twin Lakes' Customers If Water Service Is Stopped.

In addition to the fundamental protections that should be afforded the Twin Lakes' customers under the existing regulatory framework, the OCA presented evidence from those who are present in the community or oversee the DEP regulation of the community water system. Tr.

²⁵ <https://www.dep.pa.gov/Business/Water/BureauSafeDrinkingWater/Pages/Coronavirus.aspx>

at 47-63. Specifically, the OCA presented the testimony of Mr. Kemether and Mr. Bartolacci. As discussed below, they will be among the people who will have to address the issues that would be experienced by the Twin Lakes' customers if water service is stopped, and their testimony is critical to understanding the irreparable harm that would result if a receiver is not appointed.

Mr. Kemether testified about the impact on the Twin Lakes' customers if Twin Lakes stops providing water service at 12:01 a.m. on September 1, 2020. Tr. at 54-55. Mr. Kemether is the Chairman of the Sagamore Estates Community's Property Owner's Association (POA). Tr. at 48. Twin Lakes' customer base of approximately 115 homes is exclusively within Sagamore Estates (approximately 185 homes), which is in Shohola Township, Pike County. Tr. at 49. Thus, the Twin Lakes' customers are also members of the Sagamore Estates Property Owners' Association (POA). Tr. at 49. Mr. Kemether has been Chairman of the POA since 1997. Tr. at 48. He owns a home in Sagamore Estates and is about to become a customer of Twin Lakes Utilities for a new home that he recently purchased. Tr. at 48. There are approximately 185 homes in Sagamore Estates of which 115 are connected to the Twin Lakes system. Tr. at 49.

As Chairman of the POA, Mr. Kemether oversees the management of the common areas of the community and, if something is going on that impacts all, helps to facilitate communication among the homeowners in Sagamore Estates. Tr. at 48. The POA has a Facebook page and email chain to communicate with its members. Tr. at 48. Regarding issues involving the water company, he tries to let people know what the POA finds out about water issues and to make sure that everyone is aware of the facts. Tr. at 49.

The water system in Sagamore is approximately 60 years to 70 years old, originating around the time that it was a camp for adults. Tr. at 49. Most of the families in Sagamore Estates

are full time residents (about 80%) and many of those homeowners have children in the home. Tr. at 49.

Mr. Kemether stated that while Twin Lakes has done some upgrades, it is far from an adequate system, and there remain frequent outages. Tr. at 49-50. Moreover, the existing well pumps far more in water on a daily basis than what serves customers because of leaks throughout the system. Tr. at 50. If the well fails, which is a distinct possibility, the customer base will have no water and will thereby suffer immense hardship and loss of substantial value of their homes. Tr. at 50.

Mr. Kemether has been Chairman of the POA for 23 years, including the entire time that Twin Lakes has been providing service to a large portion of Sagamore Estates. Tr. at 50. It is his understanding that Twin Lakes was required to solve these problems as part of the repeated rate increases that the PUC approved. Tr. at 50. Twin Lakes has failed to do so. Tr. at 50. Customers are left paying 400-500% percent more than the average water customer does for service in the Commonwealth due to Twin Lakes' actions, but Twin Lakes has left the customer base in little better than condition than it was when Middlesex purchased the system many years ago. Tr. at 50-51. Mr. Kemether stated:

Over the years that Twin Lakes Utilities or its parent Middlesex has owned the utility, there's not much of an increase in quality of service; and now the customer base has very, very high rates and an uncertain future as to will service even be provided. And, from what I've been reading and hearing through these recent proceedings, the intent is to turn the water system off completely for customers effective September 1st.

It's fairly clear to me that through the time and progressively getting worse from now Twin Lakes Utilities management - - which from what I understand is essentially Middlesex Water - - it really doesn't appear that they could be trusted to operate a public utility in Sagamore. So I and the customer base are very, very concerned going forward will we have even this impaired quality of service that we have now going forward?

Tr. at 51.

As Chairman of the POA, Mr. Kemether receives calls and emails about water issues from the homeowners on a regular basis. Tr. at 51. Generally he will get the calls and emails when there is an outage; or when someone is buying a house. Tr. at 51-52. Mr. Kemether received a copy of the customer notice sent by Twin Lakes to its customers on or about August 3, 2020. Tr. at 52-53. OCA Exhibit 1 is a copy of the notice to customers and Twin Lakes' attorney's letter and certificate of service of the notice. Tr. at 52. Mr. Kemether was aware that the customers of Twin Lakes received the notice because he received many calls and emails due to the concerns of the homeowners about their water being turned off. Tr. at 53.

Mr. Kemether described the harm that would occur in the community if Twin Lakes turns off the water at 12:01 on September 1, 2020 as stated in the notice (OCA Exh. 1). Tr. at 54.

So basically 60 percent of the community would have no water service. Of that 60 percent, the majority are people with children. There are a fair percentage of elderly folks. They have no ability to take a shower, no ability to boil to make meals with water, no ability to drink water, and just no use of water. So just imagine what it's like to own a house if you don't have water. That would happen immediately to 60 percent of Sagamore's property owners if that happens. It would be catastrophic for them.

Tr. at 54. He also stated that it would have a devastating effect on the property values of the homes connected to the Twin Lakes' system and to the neighboring houses. Tr. at 54-55.

The OCA also presented the testimony of Mr. Bartolacci who is a Sanitarian Supervisor for the Pennsylvania Department of Environmental Protection (DEP) and works in DEP's Pocono office located in Swiftwater. Tr. at 59. Mr. Bartolacci has been a Sanitarian Supervisor for a little over five years. Tr. at 59. Before that he worked for DEP, in the same office, as a trainee starting in 2006 before becoming a Sanitarian. Tr. at 60. As explained above, DEP regulates community water systems based on public health and safety. 25 Pa. Code Chapter 109.

As part of his duties with DEP, Mr. Bartolacci is familiar with Twin Lakes Utilities, Inc. Tr. at 60-61. Mr. Bartolacci is aware of the notice that Twin Lakes sent to the customers, having received it from OCA. Tr. at 61. He also has participated in the conference call and prehearing conferences in this proceeding.

Mr. Bartolacci explained that DEP can take action against Twin Lakes but **not** before it would turn off water service at 12:01 a.m. on September 1, 2020. Tr. at 61-62. He explained that if Twin Lakes turns off water service, then, at that time, DEP would issue a field order requiring Twin Lakes to provide for continuation of service. Tr. at 62. After the issuance of the field order, there would be a 30 day appeal period. Tr. at 62. After that, if Twin Lakes has not complied with the field order, DEP would petition the courts to enforce the order. Tr. at 62. During the time that DEP pursues these legal actions, the customers would not have water service. Tr. at 69.

Mr. Bartolacci confirmed that the continued provision of drinking water is important for public health and safety. Tr. at 60, 62. The absence of water service to the homes in Sagamore Estates would have a negative impact on the public health and safety of those customers. Tr. at 62. He stated that the impact of the lack of water is even more critical during the COVID-19 pandemic. Tr. at 62.

Regarding the OCA's request that Aqua PA be appointed as a receiver, Mr. Bartolacci testified that he would not have any concerns if Aqua PA is appointed as receiver to operate the Twin Lakes system. Tr. at 62.

3. There Are No Timely and Viable Alternatives That Avoid Irreparable Harm To Customers.

Regarding any potential argument that there is not irreparable harm because there are other alternatives to the existing water service provided by Twin Lakes, such as Twin Lakes continuing to provide service or that Twin Lakes' customers can drill their own wells, the OCA submits that those alternatives to service by Twin Lakes are properly addressed in the underlying Section 529 proceeding and not as part of the Interim Emergency Petition. However, if those issues are raised by other parties' briefs, the OCA submits that the evidence refutes viable alternatives to a receiver.

a. If Twin Lakes Is Ordered To Continue To Provide Service

If Twin Lakes is ordered to continue to provide service, Twin Lakes President Robert Fullagar testified that it would do its best to abide by the order that but it would be without the service agreement with Middlesex that is in place until September 1, 2020. Tr. at 102-103. Mr. Fullagar stated that after the end of the service agreement with Middlesex, if Twin Lakes cannot pay their bills and cannot pay their employees, at some point they will stop showing up. Tr. at 102-103. If ordered to continue to provide service, Twin Lakes would keep going as long as they could until the services they depend on stop. Tr. at 102-103. Mr. Fullagar also stated that Twin Lakes would issue a do not consume notice if it were directed to continue to provide service under these circumstances. Tr. at 102-103.

Although this option of continuing the service agreement beyond September 1, 2020 has a logical appeal, it is clear that there are at least two flaws. First, while this option may appear to avoid the immediate interruption of service on September 1, it is clear that the service would not continue as is. As Mr. Fullagar stated, Twin Lakes would issue a "do not consume" notice meaning that customers do not have potable water. In addition, there is a likelihood of an interruption of

service, due to a main break or large leak and there may not be a way to restore service. In addition, it is possible that when chemicals would need to be purchased, Twin Lakes would not be able to do so. Tr. at 103. These circumstances would result in no water being provided to the homes or in water being provided that the customers have been notified not to consume and water that does not meet the most basic treatment requirements. Any of these circumstances, individually or in combination, would jeopardize the public health and safety of the customers and constitute irreparable harm.

Second, there are different positions on the legal issues regarding this option.²⁶ It would not be in the public interest have the customers irreparably harmed by permitting the water to be turned off or provided under compromised circumstances while the legal issues are resolved.

b. If Wells Can Be Drilled By Homeowners

Other parties may raise the possibility of wells being drilled by homeowners, perhaps in combination with Twin Lakes operating the system after September 1, as an alternative to the appointment of a receiver. Even if that issue were to be considered now rather than in the underlying Section 529 proceeding, Mr. Kemether explained why that is not a viable alternative. Tr. at 53-54. Mr. Kemether explained that most of the customers of Twin Lakes are not able to drill wells because Shohola Township prevents homeowners from drilling a well without proof of hardship. Tr. at 53. In addition, most of the properties connected to the Twin Lakes system do not have enough land to drill wells (the well would be too close to the septic facility on each lot). Tr. at 53. He also stated that the vast majority of the customers lack the money to pay for a new well. Tr. at 53-54. Mr. O'Connor, Vice President and Treasurer of Twin Lakes testified that Twin

²⁶ As noted above, the OCA does not take a position on whether DEP and I&E are able to force Middlesex Water to continue its service agreement with Twin Lakes.

Lakes investigated the possibility of having individual wells installed and found that it was not a viable alternative because of the size of the lots.

c. If A Capable Water Provider Can Take Over Service

The search for a capable water provider to take over the provision of water service to the Twin Lakes' customers is one of the major issues to be addressed in the underlying Section 529 proceeding. It cannot be addressed in the context of the Interim Emergency Petition.

D. The Interim Emergency Relief Will Not Be Injurious to the Public Interest.

The fourth requirement for obtaining interim emergency relief is a demonstration by the petitioner that the relief will not be injurious to the public interest.²⁷ The relief requested by the OCA, appointment of a receiver to operate Twin Lakes' system, will not be injurious to the public interest; in fact, such relief is requested to protect Twin Lakes' customers' health and safety through the continuation of water service which will promote the public interest. The consideration of the public interest should consider the impact on all affected parties. See Application of CMV Sewage Co., 2008 Pa. PUC LEXIS 950. The discussion below addresses the impact of the OCA's proposed relief on the affected parties: the ratepayers, the utility, the regulators, and Aqua PA.

As discussed above in III.C., the customers will suffer irreparable harm if a receiver is not appointed to begin operating the system starting at 12:01 a.m. on September 1, 2020. Tr. at 54-55. Thus, the uncontroverted evidence establishes the Interim Emergency Relief will be a benefit and will not be injurious to the customers.

²⁷ 52 Pa. Code § 3.6(b)(4).

Mr. Bartolacci, a Sanitarian Supervisor at DEP, testified that public health and safety is the principle for DEP's regulation of community water providers²⁸ and that the cessation of water service to the Twin Lakes' customers would be a public health and safety issue. Tr. at 60-62.

The uncontroverted evidence establishes the Interim Emergency Relief will be a benefit and will not be injurious to the interests of DEP to ensure that public health and safety is protected.

Twin Lakes testified that it supports the relief requested by OCA and thus, the public utility will not be harmed by the appointment of a receiver.²⁹ Moreover, Twin Lakes is walking away from its obligations as a certificated public utility in Pennsylvania, so to the extent that there is harm resulting from remedies against Twin Lakes and/or Middlesex Water that are sought and obtained, the OCA submits that any potential harm from those remedies is outweighed by the failure of Twin Lakes to comply with the Public Utility Code.

The OCA's requested relief asks that Aqua PA act as receiver starting no later than September 1, 2020 until a capable public utility has received authority to provide service to the Twin Lakes' customers.³⁰ Aqua PA is a Class A certificated public utility that serves 443,152 customers, or a population of approximately 1.4 million in the Commonwealth of Pennsylvania.

²⁸ A community water system is defined as "A public water system which serves at least 15 service connections used by year-round residents or regularly serves at least 25 year-round residents." 25 Pa. Code § 109.1.

²⁹ The OCA cannot address the impact of any legal remedies that might be pursued by the Commission, and the impact that those potential legal remedies might have on Twin Lakes because that is outside of the scope of this Interim Emergency proceeding. Further, the OCA is not aware nor is there any evidence of any other proceedings regarding any potential legal remedies. The evidence shows that DEP will not be able to pursue its legal remedies until after Twin Lakes stops providing water service. Tr. at 61-62.

³⁰ On August 19, 2020, I&E filed a Petition for Interlocutory Review (I&E Petition) that, if answered in the affirmative, would result in the current proceeding, at Docket Number P-2020-3090914, being terminated. I&E Petition at 3. The OCA will address the merits of the I&E Petition in its Brief in Opposition. However, if I&E's Petition is granted, the OCA submits that the Receiver should continue to operate in that capacity until a capable public utility receives a certificate of public convenience to provide service to the Twin Lakes' customers.

OCA Exh. 3. Aqua PA provides water service in 33 counties in Pennsylvania. OCA Exh. 3. According to its 2019 Annual Report, Aqua PA already provides water service to 4,697 customers in Pike County. OCA Exh. 3. Aqua PA has a Honesdale/White Haven Division that covers parts of Carbon, Lackawanna, Lehigh, Luzerne, Monroe, Northampton, Pike, Schuylkill, Susquehanna, Wayne and Wyoming counties.³¹ Aqua PA has an operational presence in the geographic area that includes Twin Lakes' service territory. Mr. Clark, Director of Operations for Aqua PA, testified that his business address is in Honesdale, PA. Tr. at 113. It is reasonable to appoint Aqua PA because of its expertise and experience in operating water utilities subject to regulation under the Public Utility Code. See Pa. Public Utility Comm'n. v. North Heidelberg Sewer Co., Docket No. M-2018-2645983 slip op. at 15 (Order entered Feb. 9, 2018) (North Heidelberg)³² (Commission appointed Aqua PA Wastewater to act as receiver due to its expertise and experience in operating wastewater utilities subject to regulation under the Public Utility Code).

Mr. Clark explained that Aqua PA has concerns, *inter alia*, about the lack of time for it to do its due diligence before it can consider taking over as a receiver. Tr. at 115-117. The OCA understands Aqua's position but, for the reasons set forth above, the time needed is not available. Moreover, to attempt to address those concerns, Twin Lakes agreed that it would work with Aqua PA and provide any and all information regarding its operations, including its files related to DEP permits, correspondence, and maps to Aqua PA. Tr. at 108. Mr. Bartolacci stated that he would

³¹<https://www.aquaamerica.com/our-states/pennsylvania.aspx>

³²<http://www.puc.state.pa.us/pcdocs/1552889.docx>

provide DEP files electronically to Aqua PA and would arrange for an in-person file review if all files were not available electronically. Tr. at 68.

To address the impact on Aqua PA and its customers, it is important that Aqua PA, as receiver, be able to conduct the necessary business of providing water service to the Twin Lakes' customers. To accomplish that, the OCA has provided proposed ordering paragraphs and a proposed Appendix to the Order that sets forth 29 provisions related to issues that could be raised in a receivership. OCA M.B., Attachment B. The OCA's proposed ordering paragraphs and proposed Appendix to the Order provide for the transfer of all books and records from Twin Lakes to Aqua. In addition the proposed ordering paragraphs and proposed Appendix to the Order provide for Aqua to commence billing and collection of those revenues effective on September 1, 2020. The OCA's proposed ordering paragraphs and proposed Appendix to the Order also provide, *inter alia*, that Aqua PA would be directed to establish regulatory assets for recovery of expenses and capital costs that Aqua PA will incur as Receiver. The OCA's proposed ordering paragraphs and proposed Appendix to the Order provide for a framework that will insulate Aqua PA from legal obligations related to Twin Lakes and its operation of the system. The OCA's proposed Order and ordering paragraphs follow the framework used by the Commission in Indian Springs and provide a reasonable framework for all parties if the OCA's relief is granted. In addition, the OCA stands ready to work with Aqua PA to ensure that the transition is accomplished as efficiently as possible, including working on the necessary communications to customers.

The OCA understands that its requested relief is a burden on Aqua PA, and its customers, especially due to the short time frame. Given the evidence, and the attached proposed Order, the OCA submits that the proposed framework will address part of the risk and burden placed on Aqua PA. Further the OCA submits that, to the extent necessary for a determination in this proceeding,

the burden to Aqua PA and its customers is outweighed by the protection of public health and safety that will result from the appointment of Aqua PA as receiver.

In summary, the OCA submits that the appointment of Aqua PA as a receiver will not be injurious to the public interest.

IV. COMMISSION AUTHORITY TO APPOINT A RECEIVER UNDER SECTION 529(g)

The Commission is authorized, in its discretion, to appoint a receiver to protect the interests of the customers of a small water utility.³³ See North Heidelberg, Winola, Indian Springs. The appointment must be by order of the Commission which shall specify the duties and responsibilities of the receiver.³⁴ The appointment of a receiver is one of the alternatives listed in Section 529(b) that should be discussed and investigated prior to the Commission ordering the acquisition of a small water utility under Section 529(a). 66 Pa. C.S. §§ 529(a) and (b).

The Commission has previously appointed receivers. See e.g., North Heidelberg, *supra*. In 2018 the Commission appointed a receiver to operate Winola Water Company. Ex Parte Emergency Order, Docket No. P-2018-3006216 and C-2018-2644592 slip op. at 1 (Nov. 29, 2018, ratified Dec. 6, 2018)(Winola). Winola provided service to 10-year round and 25 seasonal customers around Lake Winola in Overfield Township, Wyoming County, Pennsylvania. The DEP directed Winola to notify its customers that its water was not safe for consumption due to cadmium and lead exceeding the maximum allowable levels. Id. Winola failed to take action to correct the water conditions and failed to provide an alternative source of potable water to its customers. Id. I&E filed a Petition for an Ex Parte Emergency Order requesting the Commission to appoint a receiver to operate WWC. Id. The Commission determined that in order to protect the health, safety and welfare of WWC's customers, the appointment of a receiver was necessary. Id. at 5.

Additionally, in 2019, the Commission appointed a receiver to operate Indian Springs Water Company. In re: The Indian Springs Water Co., Docket No. M-2019-3011972 Opinion and

³³ 66 Pa. C.S. § 529(g).

³⁴ Id.

Order (August 8, 2019) (Indian Springs). Indian Springs provided water service to approximately 54 customers in the community of Glen Summit in Fairview Township, Luzerne County, Pennsylvania. Since 2015, the DEP issued ten Notices of Violation to Indian Springs for various noncompliant items, including lead and copper exceedances and unsanitary water conditions. Id. at 1-2. Based upon these violations, the Commission determined a receiver was necessary to correct the problems which would lead to Indian Springs providing unsafe, inadequate or unreasonable water service to its customers and the public. Id. at 2.

I&E argues in its Answer to OCA's Petition that Winola and Indian Springs are not comparable to the instant case.³⁵ It states that neither Winola nor Indian Springs were subsidiaries of a parent company with similar financial capabilities and size as that of Middlesex.³⁶ Aqua argues that “[b]oth 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”).”³⁷ The OCA recognizes that both Winola and Indian Springs involved “do not consume” orders because the drinking water was not safe for consumption at the time the receiver was appointed. As explained below, Aqua PA and I&E's arguments are contrary to the plain language of Section 529(g), the evidence of the service at Twin Lakes, and the unrebutted evidence regarding the outcome if the OCA's Petition is denied.

First, Section 529(g) states, in part, “The commission may, in its discretion, appoint a receiver **to protect the interests of the customers** of the small water or sewer utility.” 66 Pa. C.S. § 529(g)(emphasis added). As described below, the evidence establishes that the customers

³⁵ I&E Answer to OCA's Petition at 4-6.

³⁶ Id. at 4.

³⁷ Aqua Answer to OCA's Petition for the Issuance of an Interim Emergency Order on an Expedited Basis at 4.

of Twin Lakes need the protection of having a receiver appointed before Twin Lakes turns off the water effective September 1, 2020. Even if the water is not turned off but continues to flow after the termination of the service agreement between Twin Lakes and Middlesex effective at midnight on September 1, 2020, the evidence shows that Twin Lakes would issue a “do not drink” advisory. Tr. at 103.

Second, contrary to Aqua PA’s argument that this case is different from Winola and Indian Springs due to DEP violations involving Winola and Indian Springs, the evidence establishes that Twin Lakes exceeded the lead action level in 2018 and is subject to additional sampling and notification to consumers related to compliance with DEP’s requirements. See Twin Lakes 2019 Rate Order, slip op., Appendix B (Stipulation). It is clear that the Commission is not limited to DEP violations as the only indicator of whether a receiver should be appointed. The customers of Twin Lakes are receiving inadequate service and have been dealing with service issues for a very long time. See OCA Exhs. 6, 7, 8; Twin Lakes 2019 Rate Case; Twin Lakes 2015 Rate Case; Twin Lakes 2011 Rate Case. Twin Lakes’ customers have dealt with various quality of service issues at least since Middlesex acquired the system since 2011, including several boil water advisories, shut-offs without adequate communication to customers when water service was resumed, excessive UFW, only one working well with no back-up source, and customer service issues. OCA Exhs. 6 and 7. Twin Lakes stated that the distribution system is made up of electrical conduit, garden hose, and hose clamps that are used in car engines. Tr. at 97. Twin Lakes stated that problems associated with using these materials in the system have likely been occurring since inception. Tr. at 97. While experiencing inadequate service, Twin Lakes’ customers have had three rate increases, the most recent in March 2020 which has caused their bills to be extremely high and for many to be unaffordable. OCA Exhs. 4 and 5.

Further, in Twin Lakes' 2019 rate case, OCA and I&E argued that Twin Lakes was not providing adequate service under the Public Utility Code and that the proposed rate increase should be reduced by reflecting a zero return on equity. Twin Lakes 2019 Rate Case, slip op. at 53. In February of 2020, ALJ Guhl found that Twin Lakes had failed to provide adequate and reasonable service in accordance with Section 1501 of the Public Utility Code.³⁸ Twin Lakes 2019 Rate Case, Recommended Decision at 82-83 (Feb. 19, 2020). The Commission affirmed the Recommended Decision in substantial part. Twin Lakes 2019 Rate Case, slip op. at 63, 81.

Nothing has changed regarding the service since ALJ Guhl's Recommended Decision. Tr. at 100-101. Moreover, as discussed in OCA Exhibits 6 and 7 (Statement 3 and Statement 3 SR), and in the Commission's Order in the rate case, Twin Lakes has failed to comply with numerous provisions of Commission orders in its prior rate cases. See slip op. at 64-65.

Third, the practical reality of the situation is that Twin Lakes' customers will be in a "do not consume" situation if Twin Lakes stays in control of the system without a certified operator (as stated in the August 21, 2020 hearing by Twin Lakes witness Mr. Fullagar), or will have no water flowing to their homes if Twin Lakes turns off water service altogether. From the customers' perspective, they either end up with water that is not safe to consume or no water at all. Thus, from the customers' perspective, the service that they receive after September 1, if any water continues to flow into the distribution system, puts them in a similar situation as the customers in Winola or Indian Springs.

³⁸ ALJ Guhl did not adopt the OCA and I&E's recommended zero return on equity. R.D. at 75.

Aqua also argues that Section 529(g) cannot be used until the Commission determines whether the provisions in Section 529(a) (1) and (2) have been met.³⁹ This argument must fail based on the plain language of Section 529. Section 529(g) does not reference Section 529(a) and thus none of the findings in Section 529 (a) are a prerequisite for the Commission to appoint a receiver. Other provisions in Section 529 do include references to Section 529(a) when the subsections are interrelated, including Section 529 subsections (b), (c), (d), and (h).

Contrary to the arguments of I&E and Aqua PA, the OCS submits that the Commission has the authority to appoint a receiver pursuant to Section 529(g) and should exercise that authority in this proceeding for the reasons set forth above.

³⁹ Sections 529(a)(1) and (2) are two of the six requirements that the Commission must address in a Section 529 proceeding. Those two provision require the Commission to find that the small water or sewer utility is in violation of statutory or regulatory standards and that the small water or sewer utility has failed to comply with any order of DEP or the Commission prior to ordering a capable public utility to acquire the small water or sewer utility.

V. CONCLUSION

The Office of Consumer Advocate submits that it has met the four prong test required for interim emergency relief and respectfully requests that Aqua PA be appointed receiver of Twin Lakes Utilities, Inc. for the reasons set forth above. The appointment of Aqua PA as a receiver will ensure that the customers of Twin Lakes will continue to receive water service which is vital to their public health and safety.

Respectfully Submitted,

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August 24, 2020
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Evidence Introduced by OCA

Witnesses

Mr. Sean Kemether, Tr. 47-59

Mr. Sean Kemether is the Chairman of the Sagamore Estates Community's Property Owner's Association. He has held that position since 1997. He owns a home in Sagamore Estates and is about to become a customer of Twin Lakes Utilities for a new home that he recently purchased. There are approximately 185 homes in Sagamore Estates of which 115 are connected to the Twin Lakes system.

As Chairman of the POA, Mr. Kemether oversees the management of the common areas of the community and, if something is going on that impacts all, helps to facilitate communication among the homeowners in Sagamore Estates. The POA has a Facebook page and email chain. Regarding issues involving the water company, he tries to let people know what the POA finds out about water issues and to make sure that everyone is aware of the facts.

Twin Lakes' customer base of approximately 110 homes is exclusively within Sagamore Estates, which is in Shohola, Pike County, Pennsylvania. The water system in Sagamore is approximately 60 years to 70 years old, originating around the time that it was a camp for adults. Most of these families in Sagamore Estates, about 80%, are full time residents and many of those homeowners have children in the home.

Mr. Kemether stated that while Twin Lakes has done some upgrades, it is far from an adequate system, and there remain frequent outages. Moreover, the existing well pumps far more in water on a daily basis than what serves customers because of leaks throughout the system. If the well fails, which is a distinct possibility, the customer base will have no water and will thereby suffer immense hardship and loss of substantial value of their homes.

Mr. Kemether has been Chairman of the POA for 23 years, including the entire time that Twin Lakes has been providing service to a large portion of Sagamore Estates. It is his understanding that Twin Lakes was required to solve these problems as part of the repeated rate increases that the PUC approved. Twin Lakes has failed to do so. Customers are left paying 400-500% percent more than the average water customer does for service in the Commonwealth due to Twin Lakes' actions, but Twin Lakes has left the customer base in little better than condition than it was when Middlesex purchased the system many years ago

Twin Lakes has provided its customer base with little to show for its years of service and have left the customers with a very uncertain future. Further, they have left the customers paying egregiously high rates for service which is spotty at best, and now intend to leave the customers with no water service whatsoever. Twin Lakes' management – which is really Middlesex Water – cannot be trusted to operate a public utility in Pennsylvania.

Mr. Kemether receives calls and emails about water issues from the homeowners on a regular basis. Generally get the calls and emails when there's an outage; or when someone is buying a house.

Mr. Kemether explained that most of the customers of Twin Lakes are not able to drill wells because Shohola Township prevents homeowners from drilling a well without proof of hardship. In addition, most of the properties connected to the Twin Lakes system do not have enough land to drill wells (the well would be too close to the septic facility on each lot). He also stated that the vast majority of the customers lack the money to pay for a new well.

As Chairman of the POA, Mr. Kemether received a copy of the customer notice sent by Twin Lakes to its customers on or about August 3, 2020. OCA Exhibit 1 contains a copy of the notice as well Twin Lakes' attorney's letter and certificate of service. Mr. Kemether was aware that the customers of Twin Lakes received the notice because he received many calls and emails due to the concerns of the homeowners about their water being turned off.

Mr. Kemether described the harm that would occur in the community if Twin Lakes shuts off the water at 12:01 on September 1, 2020 as stated in the notice (OCA Exhibit 1). The potential harm which this customer base faces is obvious and significant especially during the COVID-19 pandemic.

Over the years that Twin Lakes Utilities or its parent Middlesex has owned the utility, there's not much of an increase in quality of service; and now the customer base has very, very high rates and an uncertain future as to will service even be provided. And, from what I've been reading and hearing through these recent proceedings, the intent is to turn the water system off completely for customers effective September 1st.

It's fairly clear to me that through the time and progressively getting worse from now Twin Lakes Utilities management - - which from what I understand is essentially Middlesex Water - - it really doesn't appear that they could be trusted to operate a public utility in Sagamore. So I and the customer base are very, very concerned going forward will we have even this impaired quality of service that we have now going forward?

So basically 60 percent of the community would have no water service. Of that 60 percent, the majority are people with children There are a fair percentage of elderly folks. They have no ability to take a shower, no ability to boil to make meals with water, no ability to drink water, and just no use of water. So just imagine what it's like to own a house if you don't have water. That would happen immediately to 60 percent of Sagamore's property owners if that happens. It would be catastrophic for them.

Mr. Eric Bartolacci, Tr. 59-73

Mr. Bartolacci is a Sanitarian Supervisor for the Pennsylvania Department of Environmental Protection (DEP) and work in DEP's Pocono office located in Swiftwater. He has been a

Sanitarian Supervisor for a little over five years. Before that he worked for DEP, in the same office, as a trainee starting in 2006 before becoming a Sanitarian.

DEP regulates community water systems under Chapter 109 of Pa. Consolidated Statutes, CITE. Chapter 109 is based on the Safe Drinking Water Act and establishes primary standards that are based on public health and safety as well as other requirements based on public health and safety.

As part of his duties with PA DEP, he is familiar with Twin Lakes Utilities, Inc. He is aware of the notice that Twin Lakes sent to the customers, having received it from OCA. He also has sat in on the conference call and prehearing conferences in this proceeding.

He explained that DEP can take action against Twin Lakes but not before it would turn off water service at 12:01 a.m. on September 1, 2020. He explained that if Twin Lakes turns off water service, then, at that time, DEP would issue a field order requiring Twin Lakes to provide for continuation of service. After the issuance of the field order, there would be a 30 day appeal period. After that, if Twin Lakes has not complied with the field order, DEP would petition the courts to enforce the order. During the time that DEP pursues these legal actions, the customers would not have water service.

Mr. Bartolacci confirmed that the continued provision of drinking water important for public health and safety. The absence of water service to the homes in Sagamore Estates would have a negative impact on the public health and safety of those customers. He stated that the impact of the lack of water is even more critical during the COVID-19 pandemic.

Mr. Bartolacci testified that he would not have any concerns if Aqua PA is appointed as receiver to operate the Twin Lakes system.

OCA Exhibits⁴⁰:

OCA Exhibit 1: Cover letter, certificate of service and notice provided by Twin Lakes to its customers regarding the Section 529 proceeding

OCA Exhibit 3 Schedule 610 of Aqua PA 2019 Annual Report (Water) to Public Utility Commission

OCA Exhibit 4: OCA Statement 1, Direct Testimony of Stacy Sherwood, Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958

OCA Exhibit 5: OCA Statement 1 SR, Surrebuttal Testimony of Stacy Sherwood, Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958

⁴⁰ There is a break in the numbering of the OCA Exhibits that were labeled and provided to ALJ Cheskis and the parties before the hearing. OCA Exhibit 2 was not introduced because it was admitted as part of Twin Lakes Exhibit 1.

OCA Exhibit 6: OCA Statement 3, Direct Testimony of Terry L. Fought, Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958

OCA Exhibit 7: OCA Statement 3SR, Surrebuttal Testimony of Terry L. Fought, Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958

OCA Exhibit 8: 10/17/19 Public Input Hearing Transcripts, pages 31-109, Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958

Attachment B

Proposed Finding of Fact, Conclusions of Law and Ordering Paragraphs

Proposed Findings of Fact

1. Twin Lakes Utilities, Inc. (Twin Lakes or the Company) maintains a principal place of business at 485C Route 1 South, Suite 400, Iselin, New Jersey 08830 and serves approximately 115 customers in the Sagamore Estates community in Shohola Township, Pike County, Pennsylvania.
2. Twin Lakes is a wholly-owned subsidiary of Middlesex which also has a principal place of business at 485C Route 1 South, Suite 400, Iselin, New Jersey 08830.
3. Middlesex is Twin Lakes' only financial and operational support. Twin Lakes Exh. 1, Petition at 2.
4. Middlesex has extended financial credit to Twin Lakes through three promissory notes which provided Middlesex the right to demand payment from Twin Lakes for the total amount due plus interest. Twin Lakes Exh. 1, Appendices D and G.
5. Middlesex provides operational support to Twin Lakes through a Service Agreement between Middlesex and Twin Lakes dated December 1, 2009. Twin Lakes Exh. 1, Appendix E.
6. Twin Lakes' system is comprised of Well #2, its only working well, and Well #1, which is inoperable and at risk of collapse due to over-pumping of Well #2. OCA Exhs. 6 and 7.
7. Twin Lakes also suffers from significant unaccounted for water (UFW) levels rising as high as 86% in recent years. OCA Exh. 6 and 7.
8. Twin Lakes has requested and received rate increases three times since 2011 and in the 2011 and 2015 cases the rate increases were tied to specific improvements to its facilities.

9. On June 10, 2011, Twin Lakes filed a request to increase revenues by \$124,420, or 368%. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No .R-2011-2246415.
10. The Commission approved an Amended Joint Petition for Settlement of Rate Investigation (2011 Settlement) on March 1, 2012. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2011-2246415 Order (March 1, 2012).
11. The 2011 Settlement provided for increased revenues of \$42,060, or 124%, starting with an increase of \$21,060, followed by two additional increases phased in over the next two years.
12. In exchange for the three phase rate increase, Twin Lakes was required to reduce unaccounted for water (UFW) from 55% to 49.5% within 18 months; conduct an annual pressure survey as required by Commission regulation, and provide an annual bill insert to describe how it would notify its customers about boil water advisories or other emergency situations. 2011 Settlement at ¶¶ 7. c., d., and h.
13. On November 16, 2015, Twin Lakes filed a rate increase request asking for additional revenues of \$195,287, or 257%. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2015-2506337 (Twin Lakes 2015 Rate Case).
14. The Commission approved a Joint Petition for Settlement of Rate Investigation (2015 Settlement) on June 9, 2016. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2015-2506337 Order (June 9, 2016).
15. The settlement of the 2015 rate case provided for an increase in revenues of \$125,000, or a 164.54% increase over three years, including an immediate 82% increase (\$62,500) along with two subsequent increases based on specific improvements being made to trigger phases 2 and 3. 2015 Settlement at ¶ 6.

16. The 2015 Settlement required Twin Lakes to, *inter alia*, replace Well #1 to trigger the second phase of the rate increase (additional 25%) (§ 7.c.1); install and/or replace various mains in the distribution system to trigger the third phase of the rate increase (additional 25%) (§ 7.c.2), and send outage alert billing inserts two times per year (§ 7.h), and pressure readings protocol for customers complaining about low pressure, as well as a commitment to increase pressure by a certain amount when it replaced Well #1 (§ 7.k).

17. On July 23, 2019, Twin Lakes filed its most recent rate increase request with the Commission.

18. On March 26, 2020, the Commission issued an Order approving an annual increase of \$117,374 (88%) as opposed to \$211,793 (158.63%) as initially requested by Twin Lakes. Pa. PUC, et al. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958 Opinion and Order (Mar. 26, 2020); see also Twin Lakes Exh. 1, Petition § 17.

19. As evidenced by customer testimony in the public input hearings, and as presented by various party witnesses, affordability in the face of the large amount of capital improvements was a significant concern in the 2019 rate case. Twin Lakes Exh. 1, Petition § 17.

20. The rates resulting from the 2019 rate case is a \$114.84 monthly customer charge for a 5/8 inch meter and a volumetric rate of \$27.75 per 1,000 gallons. Twin Lakes Compliance Tariff Supplement No. 10 to Tariff-Water Pa. P.U.C. effective 4/19/20.

21. For a customer using 3,000 gallons of water per month, the resulting bill is \$198 per month, or \$2,377 per year. It should be noted that these rates do not reflect any of the necessary improvements described above. See e.g., Twin Lakes 2019 Rate Case, slip op. at 64.

22. Despite these increases, Twin Lakes has failed to find solutions to the problems plaguing the system. Twin Lakes 2019 Rate Case Order at 63.
23. Twin Lakes exceeded the lead action level, and in addition to DEP requirements, is required to take additional steps related to testing and notice to customers. Twin Lakes 2019 Rate Case, Order, Appendix B.
24. In its 2019 rate case, Twin Lakes requested an annual increase of \$211,793 (158.63%) and received \$117,374 (87.91%). Twin Lakes 2019 Rate Case, slip op. at 4.
25. Twin Lakes recently applied for PENNVEST funding and was notified that it was eligible to receive a grant of \$4.66 million and a loan amount of \$304,573. Twin Lakes Exh. 1, Petition at 7.
26. Twin Lakes expressed its reluctance to accept the funds because of the accompanying \$1.358 million tax liability related to the grant which would be properly recoverable from its customers in rates. Twin Lakes Exh. 1, Petition at 7.
27. Twin Lakes stated that since the Commission has acknowledged that affordability is a factor in this case, it is unsure of its ability to collect this amount from ratepayers if it accepts the funding. . Twin Lakes Exh. 1, Petition at 8.
28. On May 28, 2020, Middlesex demanded payment on the three outstanding promissory notes it holds with Twin Lakes, to which Twin Lakes replied on May 29, 2020 that it is unable to meet Middlesex's demand. Twin Lakes Exh. 1, Appendices G and H.
29. On June 1, 2020, Middlesex notified Twin Lakes of its intention to terminate the Service Agreement it has with Twin Lakes. Twin Lakes Exh. 1, Appendix I.
30. Middlesex stated that it will no longer provide operational and financial support to Twin Lakes and water service will cease at 12:01 a.m. on September 1, 2020.

31. On or about August 3, 2020, a notice stating, inter alia, that water service will cease at 12:01 a.m. on September 1, 2020 was sent to Twin Lakes' customers. See OCA Exh. 1.
32. On July 14, 2020, Twin Lakes sent a Request for Proposal – Contract Operations & Maintenance Services For The Twin Lakes Utilities, Inc. Community Water System Located in Shohola Township, Pike County, Pennsylvania. Twin Lakes Exh. 1, Appendix J.
33. Twin Lakes did not receive a viable offer by the response due date of August 14, 2020. Tr. at 95-96; 99-100.
34. As a result, Twin Lakes states that it will cease providing water service as of 12:01 a.m. on September 1, 2020. Tr. at 102.
35. Even if Twin Lakes is ordered to continue to provide water service the customers could use the water for basic sanitation, at least until a main break, but would not be able to use the water for drinking and cooking.
36. Even if Twin Lakes is ordered to continue providing water service, it would leave the water on but could not guarantee that an employee would be there to operate the system, supply chemicals, or turn the switches back on in the event of an automatic shut-off, and it would issue a “do not drink” notice to its customers. Tr. at 102-103.
37. Twin Lakes President, Mr. Fullagar, stated that if no one is there, the water may only stay on for a couple days, or at most, a week. Tr. at 102-103.
38. The cessation of water service, at any time, and especially during the COVID-19 pandemic, would negatively impact the public health and safety of the Twin Lakes' customers. See Tr. at 62; Suspension of Regulatory and Statutory Deadlines; Modification to Filing and Service Requirements, Docket No. M-2020-3019262 (Mar. 20, 2020).

39. Mr. Kemether is the Chairman of the Sagamore Estates Community's Property Owner's Association (POA). Tr. at 48.
40. Twin Lakes' customer base of approximately 115 homes is exclusively within Sagamore Estates (approximately 185 homes), which is in Shohola Township, Pike County. Tr. at 49.
41. The Twin Lakes' customers are also members of the Sagamore Estates Property Owners' Association (POA). Tr. at 49.
42. Mr. Kemether has been Chairman of the POA since 1997. Tr. at 48.
43. Mr. Kemether owns a home in Sagamore Estates and is about to become a customer of Twin Lakes Utilities for a new home that he recently purchased. Tr. at 48.
44. There are approximately 185 homes in Sagamore Estates of which 115 are connected to the Twin Lakes system. Tr. at 49.
45. As Chairman of the POA, Mr. Kemether oversees the management of the common areas of the community and, if something is going on that impacts all, helps to facilitate communication among the homeowners in Sagamore Estates. Tr. at 48.
46. The POA has a Facebook page and email chain to communicate with its members. Tr. at 48.
47. Regarding issues involving the water company, Mr. Kemether tries to let people know what the POA finds out about water issues and to make sure that everyone is aware of the facts. Tr. at 49.
48. The water system in Sagamore is approximately 60 years to 70 years old, originating around the time that it was a camp for adults. Tr. at 49.

49. Most of the families in Sagamore Estates are full time residents (about 80%) and many of those homeowners have children in the home. Tr. at 49.
50. Mr. Kemether stated that while Twin Lakes has done some upgrades, it is far from an adequate system, and there remain frequent outages. Tr. at 49-50.
51. The existing well pumps far more in water on a daily basis than what serves customers because of leaks throughout the system. Tr. at 50.
52. If the well fails, which is a distinct possibility, the customer base will have no water and will thereby suffer immense hardship and loss of substantial value of their homes. Tr. at 50.
53. Mr. Kemether has been Chairman of the POA for 23 years, including the entire time that Twin Lakes has been providing service to a large portion of Sagamore Estates. Tr. at 50.
54. Twin Lakes was required to solve these problems as part of the repeated rate increases that the PUC approved. Tr. at 50.
55. Twin Lakes has failed to solve the problems with the water system. Tr. at 50.
56. Twin Lakes' customers pay 400-500% percent more than the average water customer does for service in the Commonwealth due to Twin Lakes' actions, but Twin Lakes has left the customer base in little better than condition than it was when Middlesex purchased the system many years ago. Tr. at 50-51.
57. Over the years that Twin Lakes Utilities or its parent Middlesex has owned the utility, there's not much of an increase in quality of service; and now the customer base has very, very high rates and an uncertain future as to will service even be provided.

58. It is Mr. Kemether's understanding that the intent is to turn the water system off completely for customers effective September 1st.
59. As Chairman of the POA, Mr. Kemether receives calls and emails about water issues from the homeowners on a regular basis. Tr. at 51.
60. Mr. Kemether will get the calls and emails when there is an outage; or when someone is buying a house. Tr. at 51-52.
61. Mr. Kemether received a copy of the customer notice sent by Twin Lakes to its customers on or about August 3, 2020. Tr. at 52-53.
62. Mr. Kemether is aware that the customers of Twin Lakes received the notice because he received many calls and emails due to the concerns of the homeowners about their water being turned off. Tr. at 53.
63. Mr. Kemether described the harm that would occur in the community if Twin Lakes turns off the water at 12:01 on September 1, 2020 as stated in the notice (OCA Exh. 1). Tr. at 54.
64. If the water is turned off, 60 percent of the community would have no water service. Tr. at 54.
65. Of that 60 percent, the majority are people with children. Tr. at 54.
66. There are a fair percentage of elderly folks. Tr. at 54.
67. If the water is turned off, the customers will have no ability to take a shower, no ability to boil to make meals with water, no ability to drink water, and just no use of water. Tr. at 54.
68. If the water is turned off, Mr. Kemether described that as catastrophic for customers. Tr. at 54.

69. He also stated that it would have a devastating effect on the property values of the homes connected to the Twin Lakes' system and to the neighboring houses. Tr. at 54-55.
70. Mr. Bartolacci is a Sanitarian Supervisor for the Pennsylvania Department of Environmental Protection (DEP). Tr. at 59.
71. Mr. Bartolacci works in DEP's Pocono office located in Swiftwater. Tr. at 59.
72. Mr. Bartolacci has been a Sanitarian Supervisor for a little over five years. Tr. at 59.
73. Before becoming a Sanitarian Supervisor, Mr. Bartolacci worked for DEP, in the same office, as a trainee starting in 2006 before becoming a Sanitarian. Tr. at 60.
74. DEP regulates community water systems based on public health and safety. 25 Pa. Code Chapter 109.
75. As part of his duties with DEP, Mr. Bartolacci is familiar with Twin Lakes Utilities, Inc. Tr. at 60-61.
76. Mr. Bartolacci is aware of the notice that Twin Lakes sent to the customers, having received it from OCA. Tr. at 61. He also has participated in the conference call and prehearing conferences in this proceeding.
77. Mr. Bartolacci explained that DEP can take action against Twin Lakes but **not** before it would turn off water service at 12:01 a.m. on September 1, 2020. Tr. at 61-62.
78. Mr. Bartolacci explained that if Twin Lakes turns off water service, then, at that time, DEP would issue a field order requiring Twin Lakes to provide for continuation of service. Tr. at 62.
79. After the issuance of the field order, there would be a 30 day appeal period. Tr. at 62.

80. After that, if Twin Lakes has not complied with the field order, DEP would petition the courts to enforce the order. Tr. at 62.
81. During the time that DEP pursues these legal actions, the customers would not have water service. Tr. at 69.
82. The continued provision of drinking water is important for public health and safety. Tr. at 60, 62.
83. The absence of water service to the homes in Sagamore Estates would have a negative impact on the public health and safety of those customers. Tr. at 62.
84. The impact of the lack of water is even more critical during the COVID-19 pandemic. Tr. at 62.
85. Mr. Bartolacci does not have any concerns if Aqua PA is appointed as receiver to operate the Twin Lakes system. Tr. at 62.
86. Twin Lakes' customers have dealt with various quality of service issues at least since Middlesex acquired the system since 2011. OCA Exhs. 6 and 7.
87. Those service issues include several boil water advisories, shut-offs without adequate communication to customers when water service was resumed, excessive UFW, only one working well with no back-up source, and customer service issues. OCA Exhs. 6 and 7.
88. The distribution system is made up of electrical conduit, garden hose, and hose clamps that are used in car engines. Tr. at 97.
89. The problems associated with using these materials in the system have likely been occurring since inception. Tr. at 97.

90. While experiencing inadequate service, Twin Lakes' customers have had three rate increases, the most recent in March 2020 which has caused their bills to be extremely high and for many to be unaffordable. OCA Exhs. 4 and 5.

91.

Proposed Conclusions of Law

1. Petitioner OCA has established that its right to relief is clear because of the public health and safety issues that will arise due to Twin Lake's cessation of water service. The public health and safety issues are exacerbated during the COVID-19 pandemic. . 52 Pa. Code § 3.6(a);
2. Petitioner OCA has established that the need for relief is immediate because the termination of the Service Agreement between Middlesex Water and Twin Lakes is effective on September 1, 2020. 52 Pa. Code § 3.6(b);
3. Petitioner OCA has established that the injury to customers of no water service or water service that is not properly treated or continuous is irreparable if relief is not granted. 52 Pa. Code § 3.6(c);
4. Petitioner OCA has established that appointment of Aqua PA as receiver is not injurious to the public interest;
5. The Commission has the authority to appoint a receiver pursuant to Section 529(g);
6. To protect the health, safety and welfare of the customers of Twin Lakes Utilities, Inc., the appointment of a receiver under Section 529(g) will protect the customers of Twin Lakes Utilities, Inc. and the affected public; **THEREFORE,**

Proposed Ordering Paragraphs, including Appendix A

IT IS ORDERED:

1. That Twin Lakes Utilities, Inc. shall provide notice to its customers of the imposition of the receivership and shall inform its customers to direct future payments for water service to the Receiver as appointed by this Order.

2. That pursuant to 66 Pa. C.S. § 529(g), I direct Aqua Pennsylvania, Inc. to act as the Receiver for Twin Lakes Utilities Inc. beginning September 1, 2020, and to continue during the pendency of the Section 529 proceeding and in accordance with Appendix A to this Order.

3. The Receiver shall not assume any debt incurred by Twin Lakes Utilities, Inc. unless such assumption is approved through an Order of this Commission.

7. The Receiver shall not be liable for preexisting conditions, defects, or regulatory or statutory violations occasioned by Twin Lakes Utilities, Inc.

8. That utilities serving Twin Lakes Utilities, Inc. are permitted and directed to initiate service to the facilities used to serve Twin Lakes Utilities, Inc. customers in the name of the Receiver as appointed by on and consistent with this Order.

9. That Twin Lakes Utilities, Inc. shall preserve all hard copy or electronic records, files, bank statements, documents, papers, or any other materials related to its offering of utility water service, including records of all contracts, agreements, loans, payments, and other arrangements with affiliated companies or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

10. That Twin Lakes Utilities, Inc. shall, no later than September 1, 2020, turn over copies or originals of all books, records, accounts, and any other information used and useful in the provision of utility water service to customers served by Twin Lakes Utilities, Inc. to the Receiver as appointed by this Order or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

11. That Twin Lakes Utilities, Inc. shall, no later than September 1, 2020, turn over all operations and assets, including keys to locks securing facilities, buildings, and any other property, whether personal or real property, used and useful in the provision of utility water service to customers served by Twin Lakes Utilities, Inc. to the Receiver as appointed by this Order or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

12. That Twin Lakes Utilities, Inc., including its owners and employees, are directed to provide full and unconditional cooperation with the orderly transition of operations, management, and oversight to the Receiver as appointed by this Order or be subject to criminal and/or civil prosecution under Chapter 33 of the Public Utility Code and any other applicable state or federal law.

13. That Twin Lakes Utilities, Inc. shall cease all billing and collections activity to its former customers as of September 1, 2020.

14. Effective immediately, Twin Lakes Utilities, Inc. shall not engage in any purchase, sale, payment, lease, loan, or exchange of any service, property, money, security, right, or thing under contract, whether oral or written, or under any arrangement with an affiliated interest, the terms of which have not been approved by the Commission, subject to criminal and/or civil prosecution under Chapters 19, 21, and 33 of the Public Utility Code and any other applicable state or federal law.

15. That a copy of this Interim Emergency Order be served on Twin Lakes Utilities, Inc. Aqua Pennsylvania, the Commission's Bureau of Investigation and Enforcement, the Office of Consumer Advocate, the Northeast Regional Office of the Pennsylvania Department of Environmental Protection.

16. That a copy of this Interim Emergency Order be posted on the Commission's website at www.puc.pa.gov.

DRAFT APPENDIX A

Docket No. P-2020-3020914

1. That the Receiver, in its capacity as receiver of Twin Lakes Utilities, Inc. (Twin Lakes), shall have the following duties and responsibilities:
 - a. Operate the system in compliance with all State, Federal, and local laws and regulations, including such repairs as may be necessary for safe and adequate service.
 - b. Maintain any existing or necessary permits, licenses, approvals, authorizations, orders, consents, registrations, or filings.
 - c. Provide a listing of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the system, to address or anticipate the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.
 - d. Provide all supervision and personnel necessary to operate the system in a professional, efficient and economic manner, and in accordance with sound operating practices and prudent industry and utility standards.
 - e. Respond to system emergencies by taking necessary action to ensure the continued provision of adequate, efficient, safe and reasonable service.
 - f. Notify appropriate regulatory or governmental agencies regarding any emergency which, in the reasonable judgement of the Receiver, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety.
 - g. Provide for normal routine maintenance, repairs, and the provision of supplies for the system.
 - h. Keep financial and accounting records and all pertinent operating data and information relating to the system as prudent industry and utility practices would require.
 - i. Assume Twin Lakes' billing and collection functions.
 - j. Provide Twin Lakes' customer service.
 - k. Have the authority to borrow money in the name of Twin Lakes necessary for the continued provision of adequate, efficient, safe and reasonable service to the customers of Twin Lakes.

- l. Have the authority to file a petition for bankruptcy and participate in such proceedings on behalf of Twin Lakes.
- m. Comply with Twin Lakes' effective tariff for Twin Lakes' customers.
- n. Submit all necessary paperwork to regulatory agencies of the system on behalf of Twin Lakes.
- o. Submit an initial status report to the Commission within 60 days of assuming operations and then quarterly thereafter to detail any relevant updates pursuant to duties and responsibilities assigned through receivership.
- p. Participate in discussions with the Commission regarding alternatives to the acquisition of Twin Lakes, pursuant to 66 Pa. C.S. § 529(b).
- q. Submit testimony regarding each factor delineated under 66 Pa. C.S. § 529(c) in the underlying proceeding pursuant to 66 Pa. C.S. § 529(a) relating to the acquisition of Twin Lakes by a capable public utility.
- r. Make reasonable efforts to establish the financial position of Twin Lakes at the time the Receiver assumed receivership.
- s. Establish deferred accounting treatment for expenses incurred by Twin Lakes that are payable to the Receiver and to present those expenses for recovery as a part of a subsequent base rate proceeding if not recoverable from Twin Lakes.
- t. Establish deferred accounting treatment for reasonable capital costs incurred by the Receiver to restore safe, adequate, and reasonably continuous service to Twin Lakes' customers and to present those costs for recovery as a part of a subsequent base rate proceeding if not recoverable from Twin Lakes.
- u. Petition the Commission to add or remove any duties or responsibilities; however, the Receiver must continue to fulfill all duties and responsibilities until such duties or responsibilities are removed by Commission Order or by a court with competent jurisdiction.
- v. Be permitted to use existing Commission-approved affiliated entities to provide services to Twin Lakes, provided that the Receiver provides the Commission written notice identifying which affiliates are providing services for which approval under 66 Pa. C.S. § 2102 would typically be required.
- w. Satisfy the aforementioned duties and responsibilities either directly, through Commission-approved affiliates, or through competitive operation and maintenance agreements or any combination thereof.

- x. Charge Twin Lakes reasonable rates for all services rendered to or for Twin Lakes on behalf of the receivership and to present those charges for recovery as a part of a subsequent base rate proceeding if not recoverable from Twin Lakes.
 - y. File a tariff incorporating the existing water rates of Twin Lakes within ten (10) days of assuming operations, to become effective on one day's notice, and notify Twin Lakes' customers of the filing of the tariff rates.
2. That the Receiver, in its own capacity, shall have the following duties and responsibilities:
- a. Should Twin Lakes be unable to obtain necessary financing for ensuring the continued provision of adequate, efficient, safe and reasonable service to the customers of Twin Lakes, the Receiver, at its option, may either directly provide financing for Twin Lakes or file a petition for bankruptcy.
 - b. Establish a deferred expense account for expenses incurred by the Receiver resulting from this order, including prudent and reasonable legal expenses for presentation in a subsequent rate proceeding and to present those expenses for recovery as a part of a subsequent base rate proceeding if not recoverable from Twin Lakes.
 - c. Provide tentative schedules, updates, and recommendations in status reports to the Commission for bringing Twin Lakes into compliance with conditions of Twin Lakes' certificate of public convenience as appropriate.
3. The Receiver may petition the Commission for modification or termination of this receivership, or to appoint another, or an additional, entity as a receiver of Twin Lakes.