



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

August 25, 2020

**Via Electronic Filing**

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

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

Dear Secretary Chiavetta:

Enclosed for filing please find the **Reply Brief of the Bureau of Investigation and Enforcement in Support of the I&E Answer to the OCA Petition for Interim Emergency Relief** for the above-captioned proceeding.

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

Sincerely,

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SBG/ac  
Enclosures

cc: Honorable Joel H. Cheskis (*Deputy Chief ALJ, PUC Harrisburg, via email only*)  
Office of Special Assistants (*via email only – RA-OSA@pa.gov*)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**REPLY BRIEF  
OF  
THE BUREAU OF INVESTIGATION & ENFORCEMENT  
REGARDING  
THE OCA PETITION FOR INTERIM EMERGENCY RELIEF**

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Dated: August 25, 2020

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

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

The Bureau of investigation and Enforcement (“I&E”) files this timely Reply Brief (“I&E Reply Brief”).

Also, I&E incorporates herein by reference the Procedural History set forth in the I&E Main Brief. The parties referenced in this Reply Brief are: Twin Lakes Utilities Inc. (“Twin Lakes” or “Company”); the Middlesex Water Company (“Middlesex”); the Office of Consumer Advocate (“OCA”), I&E and Aqua PA (“Aqua”).

Pleadings relevant to this proceeding are the Twin Lakes Section 529 Petition (“Section 529 Petition”); the instant *Petition for Issuance of an Emergency Order on an Expedited Basis* (“OCA Petition”); the I&E Answer (“I&E Answer”) to the OCA Petition; the OCA’s Main Brief; the I&E Main Brief; and Aqua’s Main Brief. Also tangentially relevant is the *I&E Petition for Interlocutory Review and Order* (“I&E Petition”) filed August 19, 2020 at this docket number and pending before the Commission.

Finally, despite only having a one day turn around between the Main Brief date of August 24 and the Reply Brief date of August 25, Twin Lakes served an untimely Main Brief on the parties on August 25, 2020.

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

I&E incorporates herein by reference the Standard for Interim Emergency Relief and the Burden of Proof set forth in the I&E Main Brief.

I&E reiterates that the OCA has not met its burden and the requested interim emergency relief must be denied.

## **II. ISSUE.**

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

**Suggested Answer: No.**

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

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

The OCA's right to relief is not clear. The need for the relief is not immediate and no irreparable harm will result if the requested relief is not granted. Finally, it may be injurious to the public interest if the requested relief is granted.

The facts in this case support a finding that the need for interim emergency relief is not immediate. Twin Lakes is currently providing water service to its customers and is capable of continuing to provide water service to its customers going forward. Twin Lakes and its parent company Middlesex have the necessary financial, managerial and technical ability to provide safe and reasonable service and facilities until this proceeding

or a potential abandonment proceeding results in a final Commission order. If Aqua or another capable public utility were appointed the receiver, Aqua would not bring anything to the table beyond what Twin Lakes is providing today. In fact, Aqua would be coming to the table with less knowledge of the Twin Lakes system and its current challenges than the Twin Lakes' current management and technical personnel.

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

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

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

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

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

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

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

The OCA argues in its main brief that it's right to relief is clear.<sup>2</sup> The OCA's arguments fail. The OCA argues that it merely has to raise substantial legal questions in its petition rather than an absolute right.<sup>3</sup> The OCA then discussed<sup>4</sup> the potential legal consequences of Twin Lakes threat to cease water service to its customers on September 1, 2020 in the in the absence of a Commission order approving its abandonment of service violates Section 1501<sup>5</sup> of the Public Utility Code.<sup>6</sup> The OCA also discussed the potential public health and safety issues.<sup>7</sup> I&E has stated that any cessation of providing water service to its customers by Twin Lakes, regardless of the date on which it occurs,

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

<sup>2</sup> OCA M.B., pp. 10-11.

<sup>3</sup> OCA M.B., p. 10.

<sup>4</sup> *Id.*

<sup>5</sup> 66 Pa. C.S. § 1501.

<sup>6</sup> 66 Pa. C.S. §§ 101, *et seq.*

<sup>7</sup> OCA M.B., pp. 10-11.

will be a clear violation of the Public Utility Code.<sup>8</sup> Further, Twin Lakes has an ongoing obligation, as a certificated public utility, to continue to provide adequate, efficient, safe and reasonable service to its customers.<sup>9</sup> And while it is true, that the absence of water service is a public health and safety issue, Twin Lakes and Middlesex are capable of provide water service. An interim emergency order is not required and the right to relief is not clear.

Second, the OCA refers to the statements by Twin Lakes President, Robert Fullagar, when asked what Twin Lakes would do if an order were issued requiring Twin Lakes to continue providing water service.<sup>10</sup> Mr. Fullagar responded that Twin Lakes 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.<sup>11</sup> Further, Mr. Fullagar stated Twin Lakes would issue a “do not drink” notice to its customers.<sup>12</sup> The OCA argues Twin Lakes’ threat to take these drastic actions is evidence that the OCA’s right to relief is clear. However, the unfortunate truth is the statements of Twin Lakes President Mr. Fullagar show a blatant disregard for the Pennsylvania Public Utility Commission, the Pennsylvania Public Utility Code, Twin Lakes’ obligations as a certificated public utility in Pennsylvania and, most importantly the customers that Twin Lakes is obligated to serve. It is shameful that Twin Lakes and its parent company, Middlesex, have placed the Commission in this

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<sup>8</sup> I&E M.B., p. 6-7; I&E Answer, ¶¶ 18, 24, 26.

<sup>9</sup> 66 Pa. C.S. § 1501.

<sup>10</sup> OCA M.B., p. 11.

<sup>11</sup> OCA M.B., p. 11.

<sup>12</sup> *Id.*

situation with their threats to cease the water service to the Twin Lakes customers. However, these threats do not establish that the petitioner's right to relief is clear.

To the contrary, I&E has established the Company's obligation is clear and the Company can only be relieved of this obligation if the Commission approves a capable public utility to acquire Twin Lakes pursuant to a Section 529 proceeding or if the Commission approves an abandonment of service.<sup>13</sup> I&E demonstrated and presented substantial evidence that Twin Lakes, by and through its parent company Middlesex, is capable of continuing to providing water service to the Twin Lakes customers.<sup>14</sup>

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

The OCA argues that because Twin Lakes issued a notice to its customers stating that it will cease providing water service on September 1, 2020 and because Twin Lakes did not receive a viable proposal to its RFP regarding its search for a replacement system operator; the need for the appointment of a receiver is immediate.<sup>15</sup> The OCA then references the I&E Answer to the OCA Petition and states that I&E appears to doubt that Twin Lakes will actually walk away from the system and stop providing water service.<sup>16</sup> This argument and reasoning presents a false choice for the Commission. The threat to walk away from the system does not create the need for the immediate relief.

Instead, I&E's argument in the I&E Answer and the I&E Main Brief is that Twin Lakes, and its parent Middlesex, are obligated to continue to provide safe and reliable

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<sup>13</sup> I&E Answer, ¶ 8. *See also* OCA Petition, ¶ 7.

<sup>14</sup> I&E M.B., pp. 9-10; I&E Answer, ¶¶ 3, 12, 35.

<sup>15</sup> OCA M.B., pp. 11-13.

<sup>16</sup> *Id.*, p. 12.

water service to the Twin Lakes customers.<sup>17</sup> Twin Lakes, and its parent company, Middlesex, have forced this artificial deadline on the parties, customers and the Commission.<sup>18</sup> Twin Lakes, by and through its parent company Middlesex, has the necessary financial, managerial and technical ability to provide safe and reasonable service and facilities until this proceeding or a potential abandonment proceeding results in a final Commission order.<sup>19</sup>

In support of its argument OCA referenced *West Goshen Township v. Sunoco Pipeline, L.P.* (“West Goshen”).<sup>20</sup> The *West Goshen* case is factually distinguishable from the instant proceeding. In *West Goshen*, Sunoco was making plans to begin construction pursuant to regulatory approvals. In the instant case, Twin Lakes is making plans to stop providing water service to its customers in violation of regulatory obligations. The making of plans to begin doing something which you have regulatory approval to do is clearly distinguishable from threatening to stop doing something that you are obligated to do. Therefore, the need for interim emergency relief is not immediate.

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

The OCA Petition and the OCA Main Brief set up a false choice with regard to whether the injury would be irreparable if the requested relief is not granted.<sup>21</sup> It is a false choice because whether irreparable injury occurs is not contingent on whether the

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<sup>17</sup> 66 Pa. C.S. § 1501.

<sup>18</sup> Section 529 Petition, ¶¶ 24, 26.

<sup>19</sup> See I&E M.B., pp. 7-12.

<sup>20</sup> OCA M.B., p. 12.

<sup>21</sup> OCA M.B., pp. 13-21.

requested relief is granted. But rather, the question of whether irreparable injury will occur, hinges on whether Twin Lakes will cease water service to its customers on September 1, 2020 in violation of the Public Utility Code as it has threatened. And, that question can only be answered by Twin Lakes and its parent Middlesex.

The remedy for avoiding any irreparable injury that may occur is for Twin Lakes and Middlesex continue to provide water service to the Twin Lakes customers as they have been doing since Middlesex purchased Twin Lakes and to comply with their obligations under the Public Utility Code until they are relived of that obligation in this or some other proceeding.

The OCA places a false choice on the Commission when it argues that if the relief is not granted irreparable injury will occur.<sup>22</sup> That argument obscures the issue. If the Commission issues an order directing Twin Lakes to continue to provide water service to its customers, as they are obligated to do, then the requested relief will not be granted. And, at the same time, no irreparable injury will occur if Twin Lakes complies with the Commission order.

The OCA also raises issues regarding public health and safety.<sup>23</sup> The OCA arguments with regard to safe and reliable water service directly supporting the public health and safety of Pennsylvania citizens are the exact arguments that support the argument that Twin Lakes should continue to meet its obligations as a certificated public utility and continue to provide safe and reliable water service as required by the Public

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<sup>22</sup> *Id.*

<sup>23</sup> OCA M.B., pp. 13-15.

Utility Code.<sup>24</sup> Further, the OCA arguments regarding the condition of the Twin Lakes system and the occurrence of outages are irrelevant to the issue of whether the Commission should appoint a receiver. The condition of the system will not change whether Twin Lakes continues to operate the system or a receiver is forced to step in and operate the system. As Aqua witness Stephen Clark stated in his testimony, if Aqua were appointed the receiver, Aqua would not bring anything to the table beyond what Twin Lakes is providing today.<sup>25</sup> In fact, Aqua has less knowledge of the Twin Lakes system and its current challenges than Twin Lakes' current management and technical personnel.<sup>26</sup>

Finally, the OCA argues that the Commission should succumb to the threats made by Twin Lakes and Middlesex by providing the OCA requested relief. Middlesex chose to purchase Twin Lakes. Middlesex chose to create a Pennsylvania Corporation in order to operate Twin Lakes as a certificated Pennsylvania public utility. Twin Lakes has and will continue to have the technical managerial and financial capability of providing service to its customers.<sup>27</sup> Twin Lakes, with the support of its parent Middlesex, is more than capable of maintaining the status quo until a Section 529 or abandonment proceeding is concluded, and therefore no irreparable harm will result if the requested emergency relief is not granted.

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<sup>24</sup> 66 Pa. C.S. § 1501.

<sup>25</sup> Hr. Tr., p. 129.

<sup>26</sup> Hr. Tr., p. 123.

<sup>27</sup> See I&E M.B., pp. 7-10, Section IV. 2. The need for relief is not immediate.

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

The OCA begins by arguing that granting the interim emergency relief will not be injurious to the public interest.<sup>28</sup> Then, after some discussion, the OCA turns to the potential impact on the Aqua PA and its customers.<sup>29</sup> The OCA states that it understands that the requested relief is a burden on Aqua PA, and its customers, especially due to the short timeframe.<sup>30</sup> It is clear that the OCA recognizes that if the relief requested is granted it may be injurious to Aqua PA and its customers, and therefore, to the public interest in the short-term. As I&E stated, if the requested relief is granted, the only thing that will be accomplished in the short term is that this burden will be shifted from one capable public utility, Middlesex, to another, most likely Aqua.<sup>31</sup>

The OCA did not discuss the potential long-term ramifications of allowing a capable public utility to force the Commission to shift the burden from one capable public utility to another by threatening harm to the customers. As I&E argued in its Main Brief, granting the requested relief may, and almost assuredly will, have unintended injurious consequences long into the future.<sup>32</sup> Setting this type of precedent may open the door for other public utilities to create artificial deadlines that put the Commission in the position of having to make decisions that may not necessarily be in the public interest in the long-term in order to protect threatened customers in the short-term. This potential injurious precedent would not be in the public interest.

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<sup>28</sup> OCA M.B., p. 21.

<sup>29</sup> *Id.*, p. 24.

<sup>30</sup> *Id.*

<sup>31</sup> I&E M.B., p. 12.

<sup>32</sup> I&E M.B., pp. 12-13.

**B. Commission Authority to Appoint a Receiver under Section 529(g).**

The OCA argues that the Commission has authority to appoint a receiver pursuant to Section 529(g)<sup>33</sup> of the Public Utility Code. I&E does not dispute the Commission's authority to appoint a receiver as part of a proper Section 529 investigation of a troubled small water or wastewater public utility when that investigation is initiated by the Commission on its own motion.<sup>34</sup> The instant proceeding, however, was not initiated by the Commission on its own motion, but rather this proceeding was initiated by the filing of a petition by Twin Lakes because Twin Lakes and Middlesex have decided to threaten the termination of water service to its customers.

I&E has raised the issue with the Commission regarding whether the instant proceeding is a proper Section 529 proceeding.<sup>35</sup> While that issue is in dispute, it is questionable whether the Commission should exercise its authority under Section 529(g) and appoint a receiver. It's not a question of whether or not the Commission has the authority to appoint a receiver, it does. The question is whether or not the Commission should exercise that authority in this proceeding.

**C. Jurisdiction Argument Improperly Raised by Twin Lakes.**

Twin Lakes mysteriously raised an issue regarding whether the Commonwealth of Pennsylvania and its agencies have jurisdiction to exercise any authority over Middlesex, the parent company of Twin Lakes located in New Jersey.<sup>36</sup> This entire argument is improper. Twin Lakes is a certificated public utility in Pennsylvania and is wholly

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<sup>33</sup> 66 Pa. C.S. § 529(g).

<sup>34</sup> See 66 Pa. C.S. § 529(a).

<sup>35</sup> On August 19, 2020, I&E filed a *Petition for Interlocutory Review and Order*, Docket No. P-2020-3020914.

<sup>36</sup> Twin Lakes M.B., Section B.

owned by Middlesex. The Middlesex family of companies serves nearly 500,000 customers in New Jersey, Delaware and Pennsylvania<sup>37</sup> it employs approximately 350 people and, in 2019, it reported a Net Income of \$33.9 million and a return on average common equity of 12.5%.<sup>38</sup> Middlesex has the financial and technical resources to continue to assist Twin Lakes in its provision of service to its customers in Pennsylvania and must continue to do so until the Commission states otherwise.

Moreover, the Company's argument should be rejected and stricken from the record as Twin Lakes raised this argument in its Main Brief in an untimely manner given that it failed to electronically serve the ALJ and parties with its Main Brief on the date it was due. This is especially important given that Main Briefs were due on August 24 and this Reply Brief was due one day later on August 25, 2020. Despite the clear directive to provide a Main Brief on August 24, Twin Lakes did not properly electronically serve its Main Brief until August 25, 2020. Further, this issue was not raised and is not properly in dispute pursuant to the OCA Petition for interim emergency relief. Accordingly, this improper and untimely argument should be rejected.

**D. If Twin Lakes is ordered to continue service on September 1, 2020 will the health and safety of the Twin Lakes customers be severely jeopardized?**

Twin Lakes, unfortunately, has chosen to repeat its threats of ceasing water service to its customers.<sup>39</sup> The actions threatened by Twin Lakes and Middlesex rise to the level

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<sup>37</sup> See <https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 1.

<sup>38</sup> See, <https://www.middlesexwater.com/news-room/>, 2019 Annual Report, p. 10.

<sup>39</sup> Twin Lakes M.B., Section C.

of intentional conduct with full knowledge of the consequences.<sup>40</sup> The Twin Lakes and Middlesex threats cannot be rewarded or tolerated. I&E addressed these threats throughout the I&E Main Brief and incorporates I&E's arguments herein by reference as if fully set forth.

**V. CONCLUSION.**

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

Respectfully submitted,



Scott B. Granger  
Prosecutor  
PA Attorney ID No. 63641

Dated: August 25, 2020

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<sup>40</sup> I&E M.B., p. 11.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Brief of the Bureau of Investigation and Enforcement in Support of the I&E Answer to the OCA Petition for Interim Emergency Relief** dated August 25, 2020, in the manner and upon the persons listed below:

**Served via Electronic Mail Only**

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