

COMMONWEALTH OF PENNSYLVANIA



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August 25, 2020

Rosemary Chiavetta, Secretary
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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 Reply 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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Certificate of Service

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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 Reply 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 25th 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 :

REPLY 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

The Office of Consumer Advocate (OCA) submits this Reply Brief in response to the Main Briefs (M.B.) of the Bureau of Investigation and Enforcement (I&E), Aqua Pennsylvania Water (Aqua PA) and Twin Lakes Utilities, Inc. (Twin Lakes or Company). The OCA's Main Brief contained a comprehensive discussion of the evidence and its position on all issues; thus, the OCA will respond only to those matters raised by others that were not previously addressed or that require clarification, including Aqua PA's alternative solution. Nevertheless, the OCA does not waive its position on contested issues because it does not repeat arguments here. Accordingly, the OCA incorporates the arguments and analysis contained in its Main Brief herein by reference.

II. SUMMARY OF ARGUMENT

The OCA seeks to ensure that the 114 homes served by Twin Lakes have water service after midnight on September 1, 2020. If the OCA thought that Twin Lakes would continue to serve its customers after that date, in the manner that it is currently providing service to them, the OCA would not have sought this interim emergency appointment of Aqua PA as receiver. I&E's argument that, due to its obligation as a certificated public utility, Twin Lakes will continue to provide service after 12:01 a.m., on September 1, 2020, is not supported by any evidence. The OCA does not dispute the legal requirements imposed on Twin Lakes as a certificated public utility, and does not dispute the capability of Middlesex Water. However, the evidence shows that Twin Lakes will not continue to provide water service after the service agreement with Middlesex ends at midnight on September 1, 2020. I&E's legal arguments ignore the evidence in this proceeding and the reality that the customers of Twin Lakes should not suffer irreparable harm while the legal arguments related to Twin Lakes and Middlesex are raised but not acted upon. Similarly, Aqua PA did not provide any evidence to show that Twin Lakes will continue to serve the Twin Lakes customers in the same manner as they are serving them today.

The un rebutted evidence establishes that Twin Lakes, without its existing service agreement in place, intends to stop providing water service on September 1, 2020. The evidence also shows that even if the ALJ and the Commission order Twin Lakes to provide service after that date, Twin Lakes will inform its customers not to drink the water because of concerns regarding the safety of the water when there is no certified operator. If a leak occurs, or there is a storm, and service is interrupted, or if Twin Lakes runs out of the necessary chemicals it needs to treat the water, Twin Lakes has prided sworn testimony that it will not be able to address those problems, and water service would cease.

The OCA agrees with Aqua PA and I&E that this is not a reasonable situation, where a knowledgeable, certificated utility is walking away from its obligations. Twin Lakes has placed its customers, the ALJ, the Commission, DEP, and all of the parties in the position of having to determine whether it really will turn off the water supply on September 1, 2020. The OCA is not willing to play a wait and see game or play chicken with the public health and safety of the Twin Lakes customers hanging in the balance. If I&E or the Commission believe that further action is necessary given Twin Lakes' and Middlesex's threats, those remedies should be pursued outside of the context, and in addition to, ensuring safe and adequate service.

III. INTERIM EMERGENCY ORDER

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

In its Main Brief, Aqua PA inappropriately applies general mandatory injunction standards of law to a Pennsylvania public utility receivership case. See Aqua M.B. at 7-11. None of the cases cited by Aqua PA to support its argument that OCA has failed to demonstrate that its right to relief is clear deal with receiver cases. First, Aqua PA cites Crums Mill for the proposition that the OCA seeks a mandatory injunction. Aqua PA M.B. at 8; Crums Mills Assoc., et al. v. Dauphin Consolidated Water Supply Company, Docket No. C-00934810, 1993 Pa. PUC Lexis 89 at *10 (Mar. 23, 1993) (citing Audenried v. Philadelphia R.R. Co., 68 Pa. 370 (Pa. 1871)). Crums Mill deals with the extension of a water main, not appointment of a receiver in a situation where customers may find themselves without water service. See Crums Mill at 2-3. In addition, the OCA's request for a receiver preserves the status quo that a continuous water supply is delivered to the Twin Lakes' customers.

Second, Aqua PA cites Zebra in arguing that "when a preliminary injunction contains mandatory provisions which will require a change in the position of the parties, it should be granted even more sparingly than one which is merely prohibitory." Aqua PA M.B. at 8; Zebra v. School Dist., 206 A.2d 748, 750 (Pa. 1972)(Zebra). Aqua PA also cites to Zebra, a Pennsylvania Supreme Court case which dealt with a school reorganization in 1971. Zebra, 206 A.2d 748. There, appellant school district adopted a reorganization plan where students from the first school were transferred to a second school in an attempt to achieve a racial balance, but where the second school remained predominantly black. Id. at 749. Appellee parents filed a complaint seeking to enjoin appellant from compelling their children to attend the second school. Id. The Court held that the testimony did not demonstrate a clear right to immediate relief or that irreparable harm

would result. Id. at 752. It also concluded that testimony did not show improper action by the school board. Id. In its analysis, the Court stated that “[c]ourts are further restrained, when dealing with matters of school policy, by the long-established and salutary rule that the courts should not function as school boards.” Id. at 750. It further states that “[i]t is only when the board transcends the limits of its legal discretion that it is amenable to the injunctive processes of a court of equity. Id. Aqua PA’s use of Zebra to argue that the OCA is held to a higher standard of proof in this case is misapplied. Zebra dealt with a school board case where, as the Court stated, there is a higher standard for a petitioner to reach in preliminary injunction cases; this case is a water service case before the Public Utility Commission. The Commission and the Commonwealth Court do not require the “stronger case” that Aqua PA argues is required for demonstrating that a petitioner’s right to relief is clear. Specifically, as the OCA argued in its Main Brief, the Commonwealth Court has held that the **only** requirement that the OCA must meet to show that its right to relief is clear is that its petition raises substantial legal questions. T.W. Phillips Gas and Oil v. Peoples Natural Gas, 492 A.2d 776 (Pa. Cmwlth. 1985) (emphasis added). The OCA submits that it has done that. OCA M.B. at 10-11.

Third, Aqua PA cites Leisenring emphasizing that a mandatory preliminary injunction will only issue “in the clearest cases, and only so far as is necessary to restore the status quo, that is, the last actual peaceable and uncontested status which preceded the pending controversy. Aqua PA M.B. at 9; Leisenring v. Pennsylvania Lighting Co., 59 Pa. Super. 202, 208 (Pa. Super. 1915) (emphasis added). Aqua PA argues that the OCA has “failed to satisfy the “essential prerequisites” necessary to demonstrate that it is entitled to preliminary injunction relief, and furthermore, has failed to present the “stronger case” required to show it is entitled to preliminary injunctive relief that is mandatory in nature.” Aqua PA M.B. at 9. Regarding Leisenring, contrary to Aqua Pa’s

arguments, the OCA's request that basic water service continue is not "subverting" the status quo. The status quo, at the initiation of this proceeding indicates that on June 1, 2020, Middlesex Water had already terminated its service agreement with Twin Lakes, with an effective termination date of September 1, 2020. Twin Lakes Exh. 1, Appendix I. No party has presented evidence that the termination of the service agreement was done improperly or is otherwise unlawful. The OCA's request maintains the continuation of water service as it was on July 22, 2020, when this proceeding was assigned to ALJ Cheskis. Prehearing Conference Order (July 23, 2020).

Aqua PA also argues that OCA has failed to show that its right to relief is clear, citing to McMullan. McMullan v. Wohlgemuth, 281 A.2d 836, 841 (Pa. 1971). McMullan involved a complaint which sought to enjoin the Commonwealth from withholding the Inquirer newspaper records containing the names, addresses and amounts of public assistance of certain welfare recipients in Philadelphia, and enjoining the Commonwealth from denying the Inquirer the right to inspect those records. Id. at 837. It was not a Commission or Commonwealth case which dealt with the imminent threat of a public health emergency where customers were faced with the termination of their water service.

No party contests that the Commission can appoint a receiver under Section 529(g), as discussed *infra*.¹ Aqua PA's discussion of the case law related to the type of injunction requested is not dispositive. The OCA's use of an interim emergency petition was due to the upcoming termination date of the service agreement between Middlesex and Twin Lakes. The underlying request, the appointment of a receiver, has been used by the Commission in numerous recent

¹ Aqua PA argues that Section 529(a)(1) and (2) are prerequisites before the appointment of a receiver, but as discussed in the OCA's Main Brief at 30, and *infra*, the plain language of Section 529 (g) refutes Aqua PA's argument.

proceedings. OCA M.B. at 26-28; In re: The Indian Springs Water Co., Docket No. M-2019-3011972 (Opinion and Order entered Aug. 8, 2019)(Indian Springs); Ex Parte Emergency Order, Docket No. P-2018-3006216 and C-2018-2644592 slip op. (Nov. 29, 2018, ratified Dec. 6, 2018)(Winola); Pa. P.U.C. v. North Heidelberg Sewer Co., Docket No. M-2018-2645983 (Opinion and Order entered Feb. 9, 2018)(North Heidelberg). The OCA's request relief can be granted in this proceeding for the reasons set forth in the OCA's Petition and Main Brief. Alternatively, the OCA's Petition can be treated as a petition request, to the ALJ and the Commission, to be addressed on an expedited basis. Presumably, the legal vehicle used to appoint the receiver does not matter to the customers. Rather, the reality facing the customers is that a receiver is needed to ensure that they continue to have water service at 12:01 a.m. on September 1, 2020.

Contrary to Aqua PA's argument (M.B. at 10-11), the OCA's Petition does not grant the ultimate relief sought by Twin Lakes. The relief requested by OCA under Section 529(g) is for the duration of the Section 529 proceeding. Possible outcomes of the Section 529 proceeding include one of the alternatives to acquisition as set forth in Section 529(b), including the reorganization of Twin Lakes under new management, or the entering of a contract with another public utility or management or service company to operate Twin Lakes, for example. See 66 Pa. C.S. § 529(b)(1) and (2). The OCA's requested relief does not prejudice the outcome of the underlying proceeding. The OCA submits that it has met the requirement that the injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(1).

B. The Need for Relief is Immediate.

Aqua PA argues that "[t]he need for relief is not immediate where the complained of events are not imminent, or likely to occur." Aqua PA M.B. at 14 citing Application of Fink Gas Company for Approval of the Abandonment of Service by Fink Gas Company to 22 Customers

Located in Armstrong County, Pennsylvania, and the Abandonment by Fink Gas Company of all Natural Gas Services and Natural Gas Distribution Services, Docket No. A-2015-2466653, 2015 Pa. PUC LEXIS 408, (Order entered Aug. 20, 2015). It argues that the September 1, 2020 date is arbitrary and the need for the appointment of a receiver to operate Twin Lakes is not immediate. Aqua PA M.B. at 15. It argues that in order to preserve the status quo, Twin Lakes should be ordered to continue operating the system and Middlesex should be required to continue supporting Twin Lakes under the Service Agreement. Id.

The OCA submits that whether the specific September 1, 2020 date is arbitrary or not, Twin Lakes and Middlesex have taken actions, made statements, and provided sworn testimony indicating Twin Lakes' intent to walk away from the system on September 1, 2020. Twin Lakes Exh. 1, Appendix I; OCA Exh. 1. The OCA is not willing to wait and see whether Twin Lakes will actually walk away in violation of their obligations. The risks to customers are far too high.

As argued in its Main Brief and reiterated here, the OCA submits that the need for relief is immediate. The OCA submits that it has met the requirement that the injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(2).

C. The Injury Would Be Irreparable If Relief Is Not Granted

As discussed in the OCA's Main Brief, it is clear that the cessation of water service would be an irreparable harm. OCA M.B. at 13-18. The Commission has stated that water service is necessary for the safety of the public and DEP's regulation of community water systems is based on the protection of public health and safety. OCA M.B. at 13-14. The Commission and DEP recognize that this is even more critical during the current COVID-19 pandemic. OCA M.B. at 13-14. The OCA also discussed what constitutes irreparable harm. In 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) the Commission addressed what constitutes irreparable harm. In that case, the ALJ found that the construction would have a negative impact on West Goshen Township due to the safety concerns, transportation delays, dust and noise. West Goshen at 45-46. OCA M.B. at 13. In this case, the OCA presented evidence to establish the harm that would occur if Twin Lakes turns off the water service to 115 homes in Sagamore Estates. OCA M.B. at 14-18. Mr. Kemether, the Chairman of the Sagamore Estates Property Association (POA) explained the immediate harm if the water service is turned off to the homes connected to the Twin Lakes system:

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.

In its Main Brief, I&E argues that there would not be any harm because it presumes that Twin Lakes will not stop providing water service on September 1, 2020 because it would be a violation of the Public Utility Code. I&E M.B. at 10. I&E's discussion of irreparable harm focuses on the financial standing of Middlesex and statements on the Middlesex website and fails to discuss the harm to the customers of Twin Lakes. I&E M.B. at 10-12. As stated in the OCA's Main Brief, the evidence refutes I&E's assumptions. I&E admits, however, that **“the only thing that will cause irreparable harm to the customers of Twin Lakes is if the Company carries through with its threat to cease providing water service effective September 1, 2020.** I&E M.B. at 11 (emphasis added). That admission is consistent with the evidence in this case. Despite this

admission, I&E does not address how its position, that the OCA's Petition be denied, will protect the Twin Lakes' customers from that admittedly irreparable harm. I&E has not taken any steps to force Twin Lakes and Middlesex to extend the service agreement, nor has it taken any steps to address the "threat" of no water being provided after September 1, 2020, which it acknowledges would cause irreparable harm to the customers of Twin Lakes.

In its Main Brief, Aqua PA acknowledges the need to ensure continuous service to the customers served by Twin Lakes to avoid critical health and safety concerns for those customers. Aqua PA M.B. at 15-16. Aqua PA then focuses on the same argument raised by I&E, that the harm can be avoided by requiring Middlesex and Twin Lakes to continue operating the system pursuant to the terminated service agreement. I&E M.B. at 10-12; Aqua PA M.B. at 16. This argument is refuted by the evidence in this case. First, the argument assumes that the Commission can compel Middlesex Water to take specific actions regarding the service agreement. The OCA does not take a position on that legal issue in this case but notes that there is no evidence that such legal action is being taken. Assuming that action is taken by the Commission², before September 1, 2020, the evidence in this case from Mr. O'Connor and Mr. Fullagar and contained in Twin Lakes Exhibit 1, Appendices D, E, G, H, I, make it appear likely that there would be legal opposition from Middlesex. See Twin Lakes M.B. at 5-7. No evidence has been provided to show how continuous service will be ensured while the legal issues are resolved. Accepting I&E and Aqua PA's arguments would result in the cessation of water service to Twin Lakes' customers.

Second, if the service agreement is not extended by agreement between Twin Lakes and Middlesex, the argument appears to be that Twin Lakes will be ordered to continue operating the

² DEP will not be able to take action before the water is shut off by Twin Lakes. Tr. 61.

system. If that occurs, the evidence establishes that there would still be irreparable harm to the customers of Twin Lakes. Twin Lakes President Fullagar set forth in detail what would happen if Twin Lakes was ordered to continue providing service:

A. I would say operationally, right, if we did that, if we just left it on and issued everyone served by the utility a do not drink water because there would be no one there to add chlorine to the water, eventually one of the recurring power outages up there would shut the system off and there would be no one there to turn it back on. It would probably go for a couple days, a week, basically until the next, you know, rainstorm, thunderstorm came through and knocked the power out.

Q. And hypothetically, if a pipe broke during that time while the water was being allowed to continue to flow but without any operations oversight, what would happen if a pipe broke, one of the pipes in the distribution system for example?

A. Okay. If it happens today and if the leak is big enough, if the system leaks more water than the well can pump and eventually there's no water. The system can't hold pressure, so there's no water. Even though the well is pumping, there's no water in the system for people to use.

Tr. 103. See also Twin Lakes M.B. at 8-11. Finally, the evidence establishes that Twin Lakes tried to find a solution to continue service after September 1, 2020 by issuing a Request For Proposals on July 14, 2020. Twin Lakes Exh. 1, Appendix J. As Mr. Fullagar testified, no qualified proposals were received. Tr. 95-96, 99-100.

There would be irreparable harm if Twin Lakes turns off the water supply. The evidence also establishes the same irreparable harm if Twin Lakes is ordered to continue to provide service without the service agreement with Middlesex Water. There is no evidence to support I&E or Aqua PA's arguments that irreparable harm can be avoided by requiring Middlesex and Twin Lakes to extend the service agreement and in fact, the evidence suggests that is unlikely to happen. The OCA submits that it has met the requirement that the injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(3).

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

In its Main Brief, the OCA reviewed the impact of its requested relief on the customers, the utility, Aqua PA and other stakeholders because the analysis of the public interest must include a wide range of stakeholders in this case. OCA M.B. at 21-25. This analysis of the public interest must be broader than the impact on Aqua PA. “[W]hen the ‘public interest’ is considered, it is contemplated that the benefits and detriments of the acquisition be measured as they impact on all affected parties, and not merely one particular group or geographic subdivision.” Middletown Twp. v. Pa. PUC, 482 A.2d 674, 682 (Pa. Commw. 1983); Application of CMV Sewage Co., 2008 Pa. PUC LEXIS.

In its Main Brief, I&E argues that the review of whether the interim emergency relief is injurious to the public interest must be viewed in the short term and the long term. I&E M.B. at 12. Regarding the short term, I&E argues that “only thing” the requested relief would accomplish is to “shift the burden of running the Twin Lakes system from one capable public utility, Middlesex, to another [capable public utility], most likely Aqua.” Id. One flaw in I&E’s argument is that it describes Middlesex as the public utility, but it is not a jurisdictional utility in Pennsylvania. Twin Lake M.B. at 6. Assuming *arguendo* that I&E is correct that Middlesex Water is the certificated utility, the evidence establishes that the capable public utility is going to turn off water service. I&E has not presented any evidence to show how it would avoid the water service being turned off; rather it has presented its legal argument as to why it should not happen. I&E’s legal arguments will not ensure that the water service will remain on and available starting September 1, 2020.

I&E also posits that the long term consequences of the OCA's requested relief is "precedent" for other utilities to shift burdens and create artificial deadlines. I&E M.B. at 12. If I&E's concern was probable, there would have been a flood of these types of petitions over the decades. Each case involving inadequate service presents unique circumstances. In addition, the OCA submits that I&E's opposition to the manner in which the request was made to have this Section 529 proceeding initiated by the Commission is being litigated through its Petition for Interlocutory Review and, according to I&E, that Petition has nothing to do with the OCA's Interim Emergency Petition. Tr. at 46.

Aqua PA, through its witness Mr. Clark explained the process that it normally uses to complete its due diligence. Aqua PA M.B. at 16-20. It states that the relief sought by OCA would "only continue the provision of water service and would prevent Aqua from being able to immediately improve that service." Aqua PA M.B. at 17; Tr. 136-37. The OCA agrees that its requested relief is to ensure the continued provision of service when Twin Lake turns off the water service on September 1, 2020. Contrary to Aqua PA's statement, the OCA's requested relief did not include a request that Aqua PA "immediately improve" the service provided by Twin Lakes. The OCA's requested relief would permit the customers to continue to receive water service while the underlying Section 529 proceeding moves forward in accordance with the schedule established by ALJ Cheskis. During that Section 529 proceeding, an investigation into capable public utilities would occur, and when a capable public utility was determined, it would, prior to acquisitions, develop a plan for improvements in accordance with the requirements of Section 529(j). 66 Pa. C.S. § 529(j). Regarding Aqua PA's concerns about the risks that it would undertake as receiver, the OCA provided a proposed Attachment to the Order that would provide a reasonable framework to try to minimize those risks. OCA M.B. at Attachment B (proposed Attachment to a Proposed

Order). The OCA submits that it has met the requirement that the injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(4).

Aqua PA states that it is willing to participate in the Section 529 proceeding “if the Commission determines to begin a proceeding, but that OCA’s Emergency Petition simply seeks to implement the ultimate outcome of that process too fast.” Aqua PA M.B. at 19. First, the Section 529 proceeding is at this docket and before ALJ Cheskis. Contrary to Aqua PA’s unfounded statement, the OCA does not “simply seek to implement the ultimate outcome”. Rather, the OCA seeks to ensure continued service to the customers while that Section 529 proceeding moves forward in accordance with the schedule established by ALJ Cheskis. The OCA would note that there are three other pending Section 529 proceedings in which receivers are operating the systems (North Heidelberg, Winola Water, and Indian Springs) while the parties move forward with the individual Section 529 proceedings. See OCA M.B. at 26-28.

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

The OCA addressed the Commission's authority to appoint a receiver under Section 529(g). OCA M.B. at 26-30. In its Main Brief, Aqua PA argues that the Commission must first make determinations under Section 529 (a)(1) and (2) before it can exercise its authority under Section 529(g) and appoint a receiver. Aqua PA M.B. at 12. As explained in the OCA's Main Brief, the plain language of Section 529(g) does not require that the Commission first determine that there has been a violation of any statutory or regulatory standards (66 Pa. C.S. § 529(a)(1)) or that the utility has failed to comply with any order of the commission or DEP (66 Pa. C.S. § 529(a)(2)). OCA M.B. at 30. 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. *Id.* 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). *Id.*

Assuming *arguendo* that such a showing is required the OCA presented evidence of violations of statutory and regulatory standards and failure to comply with orders of the Commission. OCA M.B. at 1-4, 28-29. The OCA also presented evidence of ongoing quality of service issues and the affordability concerns raised by the most recent increase and how that impacts Twin Lakes' ability raise rates to cover the costs of the necessary improvements. OCA Exhs. 4 5, 6, 7, and 8. In the most recent rate case, concluded just five months ago, the ALJ found that Twin Lakes failed to provide adequate and reasonable service in accordance with Section 1501 of the Public Utility Code. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958 Recommended Decision at 82-83 (Feb. 19, 2020). The Commission affirmed the Recommended

Decision in substantial part. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958 slip op. at 63, 81 (Opinion and Order entered Mar. 26, 2020)(Twin Lakes 2019 Rate Case).

In its Main Brief, Aqua PA provides an alternative solution to the OCA's requested relief. Aqua PA M.B. at 20-22. Specifically, Aqua PA proposes that an injunction that prohibits Middlesex and Twin Lakes from terminating water service to their customers during the pendency of the current Section 529 proceeding and no earlier than January 1, 2021. Aqua PA M.B. at 21. Additional conditions would provide Aqua PA until January 1, 2021 to complete its due diligence and consider making a recommendation to its management regarding whether Aqua PA should voluntarily act as receiver. Id. Aqua PA would agree to file a letter on January 4, 2021 indicating whether it would voluntarily act as the receiver.³ Finally, Aqua PA proposes that the Commission stay all proceeding and pending filings associated with Docket No. P-2020-3020914 until January 4, 2021. Id.

The OCA appreciates Aqua PA's proposed alternative solution. Although the OCA does not necessarily agree with Aqua PA's reasons for providing the alternative solution, the OCA submits that the alternative solution could represent a possible path forward with some modifications. First, the extension of the service agreement between Middlesex and Twin Lakes must be accompanied by an additional condition that provides for the expeditious appointment of Aqua PA as receiver if, for any reason, Twin Lakes does not meet its obligations during the duration of the stay. The OCA remains concerned that given Twin Lakes and Middlesex's current action, compliance with any Commission Order cannot be assured. Adding this condition would

³ Under the proposed alternative relief, the OCA presumes that if Aqua PA determines that it will not voluntarily act as the receiver, then the parties would need to resume the litigation on the OCA's Petition and I&E's Petition.

assure that the customers receive continuous water service under those circumstances and that there is no delay in ensuring this continuous service if there is non-compliance with the ALJ's or Commission's Order. The OCA would also add that the reporting requirements contained in Aqua's proposal also allows for reporting by the customers of Twin Lakes if there is a lack of compliance by Twin Lakes or Middlesex. The customers will likely be the first to know, and to experience, the results of any non-compliance.

Second, the OCA has a concern regarding the timing of the conditions regarding the extension of the service agreement, the completion of Aqua Pa's due diligence and management decision, and Aqua PA's letter indicating whether it will act voluntarily as a receiver. Under the proposed conditions, the service agreement could end on January 1, 2021 while Aqua PA's letter to the Commission would be filed on January 4. This gap would raise the possibility of the customers losing water service after January 1, 2021. That gap could be addressed by requiring that the service agreement be extended to February 1, 2021 and/or by having Aqua PA's letter be provided no later than December 1, 2020. Third, the OCA submits that the notice to the proximate public utilities should be issued no later than September 1, 2020, as set forth in the Scheduling Order before the proceeding is stayed. The OCA believes these small modifications to the conditions would result in a reasonable path forward.

V. CONCLUSION AND REQUEST FOR RELIEF

For the reasons set forth above and in the OCA's Main Brief, the Office of Consumer Advocate respectfully requests that its request for relief be granted, and that Aqua PA be appointed as a receiver to ensure the continuation of water service to the 115 homes served by Twin Lakes Utilities, Inc.

Respectfully Submitted,

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