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August 27, 2020

VIA HAND DELIVERY

Honorable Rosemary Chiavetta
Secretary
Pennsylvania Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

**Re: Petition of Twin Lakes for Commission Order
Authorizing the Acquisition of Twin Lakes Utilities Inc.
By a Capable Public Utility
Docket No. R-2020-3020914**

Answer & Brief to I&E's Petition for Interlocutory Review

Dear Secretary Chiavetta:

On behalf of the Twin Lakes Utilities, Inc. ("Twin Lakes") please find enclosed a copy of Twin Lakes Answer and Brief to I&E's Petition for Interlocutory Review and Verification in this matter.

If you have any questions concerning this filing, please contact me at your convenience.

Copies of this document has been served on the parties listed in the attached Certificate of Service.

Sincerely,



John J. Gallagher
Counsel for Twin Lakes Utilities Inc.

cc: Certificate of Service
Mr. Jay Kooper, Esq.
Mr. A. Bruce O'Connor

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a true copy of the foregoing document upon the participants, listed below, in the manner indicated below, and in accordance with the requirements of § 1.54 (relating to service by a party).

VIA ELECTRONIC MAIL

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Date: August 27, 2020

**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 Capable Public Utility Pursuant to
66 Pa. C.S. § 529

Docket No. P-2020-3020914

**ANSWER AND BRIEF OF TWIN LAKES UTILITIES , INC. IN OPPOSITION TO THE
PETITION FOR INTERLOCUTORY REVIEW AND ORDER OF THE BUREAU OF
INVESTIGATION AND ENFORCEMENT FOLLOWING THE JULY 28, 2020
SCHEDULING ORDER OF PRESIDING DEPUTY CHIEF
ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS**

AND NOW, Twin Lakes Utilities, Inc. (“Twin Lakes” or “the Company”), serving customers located in Sagamore Estates, Shohola Township, Pike County, Pennsylvania, by and through its attorneys, pursuant to Section 5.302(b) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code §5.302(b), files this Answer and Brief in Opposition to the Bureau of Investigation and Enforcement’s (“I&E”) Petition for Interlocutory Review (“I&E Petition”) dated August 19, 2020.

I. BACKGROUND

On July 16, 2020, Twin Lakes filed a Petition (“Twin Lakes Petition”) initiating this Commission Docket (Docket No. P-2020-3020914).¹ In its Petition, Twin Lakes requested a Commission Order authorizing the acquisition of Twin Lakes pursuant to Section 529 of the Pennsylvania Public Utility Code, 66 Pa. C.S. §529, (“Section 529”) by a “capable public utility”

¹ *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 Ps. C.S. §529*, Petition of Twin Lakes Utilities, Inc., Docket No. P-2020-3020914 (July 16, 2020) (“Twin Lakes Petition”).

as that term is defined by statute.² Twin Lakes stated that it is a wholly owned subsidiary of Middlesex Water Company (“Middlesex”), a New Jersey corporation.³ Middlesex has provided operations support to Twin Lakes through a Service Agreement dated December 1, 2009.⁴ Per this Service Agreement, either party may terminate the Agreement by giving the other party 90 days advance written notice.⁵ On June 1, 2020, Middlesex issued a letter notice of termination of the Service Agreement to Twin Lakes advising that the termination would become effective on September 1, 2020.⁶

Since Twin Lakes’ acquisition of the system in 2009, Twin Lakes’ sole source of equity capital, debt financing and primary operations support has been through the Service Agreement with Middlesex.⁷ Since 2009, Middlesex has loaned to, or made equity investments in, Twin Lakes totaling more than \$2.4 million.⁸ The loans to Twin Lakes from Middlesex were comprised of three outstanding Unsecured Revolving Promissory Notes between Middlesex as Lender and Twin Lakes as Borrower.⁹ On May 28, 2020, pursuant to the terms of these Notes, Middlesex issued a letter to Twin Lakes demanding from Twin Lakes immediate payment of the total amounts due on the Notes.¹⁰ On May 29, 2020, Twin Lakes issued to Middlesex a response

² Twin Lakes Petition at 1-12.

³ *Id.*

⁴ *Id.* at 4-5.

⁵ *Id.*

⁶ *Id.* at 9.

⁷ *Id.* at 4.

⁸ *Id.*

⁹ *Id.* at 8.

¹⁰ *Id.*

letter stating it was unable to meet Middlesex’s payment demand requirements and did not expect to have the ability to satisfy any repayment of the outstanding Notes.¹¹ As a result, Twin Lakes has lost its sole source of debt financing as of May 28, 2020. Furthermore, Twin Lakes has been unable to secure debt financing from any alternate source as a stand-alone entity due to an insufficient amount of net income and cash flow.¹²

Given the urgency of Twin Lakes losing its source of debt financing and the impending loss of its operator of the system effective September 1, 2020, Twin Lakes on June 10, 2020 filed a letter with representatives of I&E and the Pennsylvania Office of Consumer Advocate (“OCA”) notifying them of the above facts and requesting initiation of a proceeding under Section 529.¹³ Twin Lakes’ letter was accepted and assigned a docket number (Docket No. M-2020-3020390) and on June 17, 2020, Commission Staff issued a First Set of Discovery Requests, from which Twin Lakes provided detailed responses on July 1, 2020.¹⁴ By letter dated July 13, 2020, the Commission informed Twin Lakes that its June 10, 2020 letter request for an initiation of a Section 529 proceeding was not in the form of an official filing and would therefore be rejected without prejudice for refile as a proper pleading such as a petition or application.¹⁵

On July 16, 2020, three days after the Commission’s July 13, 2020 letter, Twin Lakes filed the Twin Lakes Petition (docketed as Docket No. P-2020-3020914) and this matter was subsequently assigned to Deputy Chief Administrative Law Judge Joel H. Cheskis (“Judge

¹¹ *Id.*

¹² *Id.* at 8-9.

¹³ *Id.* at 10.

¹⁴ *Id.*

¹⁵ *Id.* at 10-11.

Cheskis”). In its Petition, Twin Lakes sought expedited treatment seeking relief at either the Commission’s August 6, 2020 or August 27, 2020 public meeting given the urgency of the impending loss of Twin Lakes’ operator effective September 1, 2020. On July 27, 2020, Judge Cheskis held a Prehearing Conference with the parties to this docket, and while it was determined that it would not be possible for a procedural schedule to accommodate Twin Lakes’ request for the Commission to act on the Twin Lakes Petition at either its August 6, 2020 or August 27, 2020 public meetings, Judge Cheskis issued a Scheduling Order the next day, on July 28, 2020, setting forth the litigation schedule for this docket.¹⁶

I&E waited more than three weeks after Judge Cheskis issued the Scheduling Order – and a mere 13 days before the September 1, 2020 effective date of the termination of the Service Agreement between Twin Lakes and its operator, without whom Twin Lakes cannot provide safe drinking water to its 113 active residential customer accounts – before challenging the Scheduling Order through the I&E Petition for an Interlocutory Review filed on August 19, 2020.

II. DISCUSSION

The I&E Petition, in challenging Judge Cheskis’ Scheduling Order, requests the Commission to review and answer the following question: ***“Should the Commission permit a certificated small water or wastewater public utility to proceed by its own petition pursuant to 66 Pa. C.S. §529 of the Public Utility Code?”***¹⁷ I&E suggests to the Commission that the answer should be ***“No.”***¹⁸

¹⁶ *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 Ps. C.S. §529*, Scheduling Order, Docket No. P-2020-3020914 (July 16, 2020) (“Scheduling Order”).

¹⁷ I&E Petition at 1.

¹⁸ *Id.*

I&E’s suggestion that no certificated small water or wastewater public utility can even dare petition the Commission to request that the Commission exercise its own authority under Section 529 to investigate and determine whether it should authorize the acquisition of a small water or wastewater system by a “capable public utility” pursuant to that statute is ludicrous. Section 529 confers to the Commission the power to order a “capable public utility”, as that term is defined by statute, to acquire a small water or sewer utility if the Commission, after notice and an opportunity to be heard, determines that the acquisition is in the public interests and meets the six criteria set forth in Section 529(a) of that statute, 66 Pa. C.S. §529(a). *Nowhere* in Section 529 or any other provision of the Public Utility Code does there exist any prohibition or limitation on a certificated public water or wastewater utility, or any other entity for that matter, from filing a petition requesting the Commission to invoke its own express powers under Section 529 to authorize the acquisition of a small water system by a capable public utility. That is what Twin Lakes sought in the Twin Lakes Petition. In fact, that is what Twin Lakes sought after the Commission – through its Secretarial Letter issued on July 13, 2020 in Docket No. M-2020-3020390¹⁹ – instructed Twin Lakes to file its request for the Commission to exercise its authority under Section 529 through a formal Petition, which Twin Lakes did three days later on July 16, 2020.

The right of a certificated public water or wastewater utility to seek initiation of a Section 529 proceeding through the filing of a petition requesting the Commission to exercise its powers under Section 529 is well supported by Commission precedent. Indeed, one need only go as far as to March 26, 2020, where the Commission issued an Opinion and Order in a Section 529

¹⁹ *Notice of Termination of Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc.*, Secretarial Letter, Docket No. M-2020-3020390 (July 13, 2020).

proceeding that was initiated by a certificated public wastewater utility’s petition. In Docket No. I-2016-2526085, the Commission opened a docket to determine whether it should authorize a “capable public utility” to acquire Delaware Sewer Company. On March 26, 2020, the Commission issued its final Opinion and Order²⁰ in this docket. At the very top of page 2 of this Opinion and Order – the very first sentence of the Commission’s recitation of the “History of the Proceeding” – the Commission states:

This proceeding commenced with Delaware Sewer Company’s (DSC) filing of a Petition seeking an investigation pursuant to Section 529 of the Public Utility Code (Code), into whether the Commission should order a capable public utility to acquire the wastewater system assets of DSC.²¹

Commission precedent, exercised as recently as March 26, 2020 with respect to the Section 529 proceeding for the acquisition of Delaware Sewer Company, could not be clearer. What Twin Lakes seeks in the Twin Lakes Petition is no different from what Delaware Sewer Company sought in its petition – that the Commission invoke its own authority pursuant to Section 529 to authorize the acquisition of a small water or wastewater utility by a “capable public utility.”

Finally, I&E suggests in its Petition that certificated public water and wastewater utilities are somehow restricted to only seeking remedies under Chapter 11 of the Pennsylvania Public Utility Code, and specifically cites to Section 1102(a)(2), 66 Pa. C.S. §1102(a)(2), permitting a public utility to file an application for abandonment of a utility system.²² I&E’s suggestion is a total canard. In fact, one reason Twin Lakes filed its Petition seeking Commission approval of

²⁰ *Investigation Instituted per Section 529 Into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company*, Opinion and Order, Docket No. I-2016-2526085 (Mar. 26, 2020) (“Delaware Sewer Company 529 Order”).

²¹ *Id.* at 2 (emphasis added).

²² I&E Petition at 2-3, ¶¶ 10-12.

an acquisition of Twin Lakes pursuant to Section 529 is because the Commission just 18 months ago rejected out of hand, with no discovery or other substantive due process, an Application To Abandon filed by Twin Lakes.

On October 23, 2018, Twin Lakes filed an Application To Abandon Service (“Application To Abandon”) pursuant to 66 Pa. C.S. §1102(a)(2) of the Public Utility Code.²³ On October 25, 2018, a Secretarial Letter was issued to Twin Lakes in which the Application was rejected because Twin Lakes did not provide a buyer or alternative to the existing water service as the Commission stated was required under Section 1102(a)(2).²⁴ On October 29, 2019, Twin Lakes filed an appeal of the rejection of the Application To Abandon under Section 1102(a)(2).²⁵ On February 28, 2019, the Commission entered an Order denying Twin Lakes’ appeal.²⁶

Moving forward to July 16, 2020, Twin Lakes: (1) has lost its sole source of debt and equity financing with no hope of attaining a replacement; (2) has been notified that its operator has terminated its Service Agreement with Twin Lakes effective September 1, 2020; and (3) Twin Lakes does not have a buyer or an alternate operator (the prerequisites for abandonment under Section 1102(a)(2)) to be able to continue to provide service as of September 1, 2020. Under the Commission’s interpretation of Section 1102(a)(2), an application for abandonment is

²³ *Application of Twin Lakes Utilities, Inc. to Abandon Service to its Customers in Sagamore Estates in Shohola Township, Pike County, Pennsylvania*, Application of Twin Lakes Utilities, Inc., Docket No. A-2018-3005590 (Oct. 23, 2018)(“Application To Abandon”).

²⁴ *Application of Twin Lakes Utilities, Inc. to Abandon Service to its Customers in Sagamore Estates in Shohola Township, Pike County, Pennsylvania*, Secretarial Letter, Docket No. A-2018-3005590 (Oct. 25, 2018).

²⁵ *Application of Twin Lakes Utilities, Inc. to Abandon Service to its Customers in Sagamore Estates in Shohola Township, Pike County, Pennsylvania*, Twin Lakes Letter Response To Secretarial Letter (Oct. 29, 2018).

²⁶ *Application of Twin Lakes Utilities, Inc. to Abandon Service to its Customers in Sagamore Estates in Shohola Township, Pike County, Pennsylvania*, Opinion and Order, Docket No. A-2018-3005590 (Feb. 28, 2019).

an avenue closed to Twin Lakes. The only available remedy left to ensure uninterrupted service to the customers of Twin Lakes is to petition the Commission to invoke its authority under Section 529 to authorize the acquisition of Twin Lakes by a “capable public utility.” To state that Twin Lakes or any other certificated public utility would be precluded from petitioning the Commission to invoke this remedy produces an absurd result that is contrary to the public interest, the legislative purpose of Section 529, basic tenets of due process and plain common sense.

In further response to the I&E Petition, Twin Lakes answers each corresponding paragraph of the I&E Petition as follows:

III. ANSWER

1. **Denied.** Nothing in Section 529 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 529 (“Section 529”), or any provision of the Pennsylvania Public Utility Code prohibits a certified public water or wastewater utility from filing a petition requesting the Commission to exercise its own powers under Section 529 to initiate a Section 529 proceeding or authorize the acquisition of a small water or sewer utility by a “capable public utility” as that term is defined in Section 529. In addition, Commission precedent, as reflected in the Delaware Sewer Company 529 Order, permits a certified public utility to file a petition seeking the initiation of a Section 529 proceeding and Commission authorization of the acquisition of a small water utility pursuant to Section 529.

2. **Admitted.** Pursuant to 66 Pa. C.S. §529(a)(3), “The Commission may order a capable public utility to acquire a small water or sewer utility if the Commission, after notice and an opportunity to be heard determines...that the small water or small sewer utility

cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.” Id.

3. **Admitted.** Section 529 is part of Title 66, Chapter 5 of the Pennsylvania Public Utility Code, which is entitled “POWERS AND DUTIES.” 66 Pa. C.S. §501(a) states in its entirety: “In addition to any powers expressly enumerated in this part, the commission shall have full power and authority, and it shall be its duty to enforce, execute and carry out by its regulations, orders, or otherwise, all and singular, the provisions of this part, and the full intent thereof; and shall have the power to rescind or modify any such regulations or orders. The express enumeration of the powers of the commission in this part shall not exclude any power which the commission would otherwise have under any of the provisions of this part.” Id.

4. **Denied.** Section 529(a) of the Pennsylvania Public Utility Code, 66 Pa. C.S. §529(a), states that the Commission “may order a capable public utility to acquire a small water or sewer utility if the commission, after notice and opportunity to be heard” determines that the criteria outlined in subsections (1)-(6) of Section 529(a) have been met. Id. Nowhere in the Public Utility Code is there language prohibiting or otherwise limiting any party from filing a petition requesting the Commission to invoke its powers pursuant to Section 529. In addition, Commission precedent, as reflected in the Delaware Sewer Company 529 Order, permits a certified public utility to file a petition seeking the initiation of a Section 529 proceeding and Commission authorization of the acquisition of a small water utility pursuant to the Commission’s powers under Section 529.

5. **Admitted in part and Denied in part.** Section 529 and Chapter 5 do not confer or bestow any powers on certificated public utilities and Twin Lakes is not claiming that they do. The Twin Lakes Petition requests the Commission *to exercise its own authority under*

Section 529 to authorize the acquisition of Twin Lakes by a “capable public utility.” This is consistent with Commission precedent, as reflected in the Delaware Sewer Company 529 Order, which permits a certified public utility to file a petition seeking the initiation of a Section 529 proceeding and Commission authorization of the acquisition of a small water utility pursuant to Section 529. In addition, nowhere in Section 529 or Chapter 5 does there exist any prohibition on any party from filing a petition to request the Commission to invoke its own authority to approve an acquisition of a small water or sewer utility pursuant to Section 529.

6. **Admitted.** Pursuant to 66 Pa. C.S. § 529(i): “The Bureau of Investigation and Enforcement shall have the burden of establishing a prima facie case that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of this section.” Id.

7. **Denied.** In the Twin Lakes Petition inclusive of its accompanying Appendices, Twin Lakes has established a prima facie case that an acquisition of Twin Lakes by a “capable public utility” is in the public interest and meets the full criteria set forth in Section 529. To the extent I&E chooses to abrogate its duty and openly ignore this prima facie evidence within the current docket (Docket No. P-2020-3020914), Twin Lakes and other parties will have ample opportunity under the Procedural Schedule issued by Judge Cheskis to demonstrate that a prima facie case meeting the criteria of Section 529(a)(1)-(6) and enabling Commission approval of an acquisition as in the public interest pursuant to Section 529 has indeed been made.

8. **Denied.** I&E presents no evidence substantiating its baseless and purely speculative assertion that allowing a public utility or any party to request the Commission to invoke its own authority pursuant to Section 529 will cause any small utility to intentionally

violate the Public Utility Code or the regulations of the Pennsylvania Department of Environmental Protection.

9. **Denied.** Twin Lakes is not “improperly using” Section 529. In the Twin Lakes Petition, Twin Lakes is petitioning the Commission to invoke its own authority to authorize the acquisition of Twin Lakes by a “capable public utility” pursuant to Section 529 based on the evidence Twin Lakes presents in the Appendices accompanying the Twin Lakes Petition. This is an entirely proper and appropriate action and is supported by Commission precedent, as reflected in the Delaware Sewer Company 529 Order, that permits a certified public utility to file a petition seeking the initiation of a Section 529 proceeding and Commission authorization of the acquisition of a small water utility pursuant to the Commission’s powers under Section 529.

10. **Admitted in Part and Denied in Part.** Chapter 11 of the Public Utility Code discusses the general provisions governing certificates of public convenience and certificated public utilities. No provision of Chapter 11 or any other provision of the Public Utility Code prohibits certificated public utilities or any other party from filing a petition requesting the Commission to invoke its own powers pursuant to Section 529. In addition, no other provision of the Public Utility Code prohibits the Commission from authorizing the acquisition of a small public water utility pursuant to Section 529 based on a petition from a certificated public utility requesting the Commission to make such an authorization. Furthermore, Commission precedent, as reflected in the Delaware Sewer Company 529 Order, permits a certified public utility to file a petition seeking the initiation of a Section 529 proceeding and Commission authorization of the acquisition of a small water utility pursuant to its powers under Section 529.

11. **Admitted.** Section 1102(a)(2) of the Pennsylvania Public Utility Code states: “Upon application of any public utility and the approval of such application by the commission...it shall be lawful: For any public utility to abandon or surrender, in whole or in part, any service, except that this provision is not applicable to discontinuance of service to a patron for nonpayment of a bill, or upon request of a patron.” Id.

12. **Admitted in Part and Denied in Part.** Chapter 11 of the Public Utility Code provides *an* avenue for certificated public utilities to act under the Public Utility Code but *not the sole* avenue, and does not prohibit certificated public utilities from petitioning the Commission to invoke the Commission’s own powers under the Public Utility Code, including its powers under Section 529. Under Commission precedent, as reflected in the Delaware Sewer Company 529 Order, a certified public utility such as Twin Lakes is permitted to file a petition seeking the initiation of a Section 529 proceeding and Commission authorization of the acquisition of a small water utility pursuant to its powers under Section 529.

IV. CONCLUSION

WHEREFORE, Twin Lakes Utilities, Inc. respectfully requests that Commission reject the I&E Petition for Interlocutory Review in its entirety and with prejudice and affirm that a certificated small water or wastewater public utility, which includes Twin Lakes, is permitted to petition the Commission to request that the Commission investigate and authorize the acquisition of a small water or wastewater utility pursuant to the Commission's powers set forth in Section 529 of the Pennsylvania Public Utility Code.

Respectfully submitted,



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Date: August 27, 2020

Counsel for Twin Lakes Utilities, Inc.

VERIFICATION

I, A. Bruce O'Connor, Vice President and Treasurer of Twin Lakes Utilities, Inc., hereby state that the facts set forth in the foregoing Answer & Brief are true and correct to the best of my knowledge, information and belief, and that I expect to be able to prove the same at a hearing held in this matter.

I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

A handwritten signature in blue ink, appearing to read "A. Bruce O'Connor", written over a horizontal line.

A. Bruce O'Connor

Date: September 27, 2019