

COMMONWEALTH OF PENNSYLVANIA



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August 28, 2020

Rosemary Chiavetta, Secretary
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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Brief in Opposition to the Bureau of Investigation and Enforcement's Petition for Interlocutor Review and Answer to a Material Question in the above-referenced proceeding.

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

Respectfully submitted,

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Commissioner Ralph V. Yanora (**email only**)
Commissioner John F. Coleman (**email only**)
The Honorable Joel H. Cheskis (**email only**)
Office of Special Assistants (**email only**: ra-OSA@pa.gov)
Certificate of Service

*294967

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 Brief in Opposition to the Bureau of Investigation and Enforcement's Petition for Interlocutor Review and Answer to a Material Question, 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 28th day of August 2020.

SERVICE BY E-MAIL ONLY

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Dated: August 28, 2020
*294966

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 :

OFFICE OF CONSUMER ADVOCATE'S
BRIEF IN OPPOSITION TO THE
BUREAU OF INVESTIGATION AND ENFORCEMENT'S
PETITION FOR INTERLOCUTOR REVIEW AND ANSWER
TO A MATERIAL QUESTION

On July 16, 2020, Twin Lakes filed a Petition (Twin Lake 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 28, 2020, ALJ Cheskis issued a Scheduling Order containing a schedule for the litigation of a Section 529 proceeding. 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. The OCA submits this Brief in Opposition, pursuant to 52 Pa. Code § 5.302(b). The OCA submits that the question poses a false premise and is not the situation presented here. Moreover, as discussed below, the Commission has previously addressed this circumstance and determined whether the Commission will initiate a Section 529 proceeding. There is nothing new or novel about the current circumstances and I&E's Petition should be denied and the underlying proceeding be permitted to proceed in accordance with the schedule set by ALJ Cheskis.

In its Petition, I&E propose 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?

I&E's question poses a false premise because Twin Lakes filed a Petition asking the Commission to initiate a Section 529 proceeding.¹ It did not "proceed by its own petition". Even if it is determined that the Twin Lakes Petition is read otherwise, it can be considered a petition for relief under Section 5.41 of the Commission's regulations. See 52 Pa. Code § 5.41.

Section 5.41(a) addresses petitions for relief "under the act or other statute that the Commission administers" and must be in writing, state clearly and concisely the interest of the subject matter, the facts and law relied upon and the relief sought. 52 Pa. Code § 5.41 (a). There is nothing in the plain language of Section 529 that would prohibit any entity from seeking Commission action pursuant to 52 Pa. Code § 5.41. I&E's Petition would read into Section 529 a prohibition on the use of the general requests for relief that can be filed pursuant to 52 Pa. Code § 5.41. I&E has presented no legal argument to support its position and this is not an accurate reading of the Public Utility Code or the Commission's regulations.

The Commission has already addressed this question in multiple instances and has made it clear that a small water or wastewater utility or the OCA, or other stakeholders, can petition the commission and ask it to initiate a Section 529 proceeding. The Commission first addressed this issue in the same year that Section 529 was added to the Public Utility Code. The Commission found that an entity can ask the Commission to initiate a Section 529 proceeding by filing a petition for relief. Public Service Water Co. v. Fairview Water Co., 77 PaPUC 544 (1992)(PSW). In that

¹ I&E's Petition would prevent not only small water or wastewater utility's from petitioning the Commission for the initiation of a Section 529 proceeding, but would also prevent OCA, or other stakeholders, from petitioning the Commission asking for the initiation of a Section 529 proceeding because there would not be any real distinction based on I&E's arguments.

proceeding, a water utility filed a complaint against another water utility alleging that the Section 529 criteria were met. The Commission deemed the complaint to be a petition for relief, which it held was an appropriate mechanism for pursuing a remedy under Section 529. PSW, 77 PaPUC at 548-49.

Since that time, Section 529 proceedings have been requested in a number of ways. Specifically, the Commission has instituted a formal complaint against a water company and required the company to show cause as to why the Commission should not order the acquisition of the company by a proximate capable public utility. Pa. P.U.C. v. Tremont Water Co., Docket No. C-00935209 (Order entered Sept. 23, 1993) (Tremont). The OCA has filed a Petition asking the Commission to institute a Section 529 proceeding. Investigation of W.P. Water Co., Inc. and W.P. Sanitary Co., Inc. Pursuant to Section 529 of the Pennsylvania Public Utility Code, Docket Nos. I-00070114, P-00072313 and A-230550F2000, 2009 Pa. PUC Lexis 691 (WP). The OCA has also asked the Commission to initiate a Section 529 proceeding as part of the relief requested in other proceedings, such as complaint cases or rate cases. See McCloskey v. Hidden Valley Utility Services, Docket Nos. C-2014-2447138 and C-2014-2447169 (Order entered 2018); Investigation Instituted in to Whether the Commission should Order a Capable Public Utility to Acquire Clean Treatment Sewer Company Pursuant to 66 Pa. C.S. § 529, Docket No. I-2009-2109324 (Order entered July 16, 2013).

I&E raised this same issue in the Petition of Delaware Sewer Company, arguing that Delaware Sewer Company, a small wastewater utility, was not permitted to file its own Petition asking the Commission to initiate a Section 529 proceeding and arguing that the proper process was the filing of an application to abandon. Petition of Delaware Sewer Co. for the Opening of an Investigation into Whether the Public Utility Commission Should Order a Capable Public Utility

to Acquire the Company Pursuant to 66 Pa. C.S. § 529, Docket No. P-2014-2404341 (January 28, 2016). In rejecting I&E’s argument, the Commission noted that it agreed with the ALJ that a petition for relief or an application to abandon service are both available avenues that rely on similar evidence and ultimately share the same goal – the continuous provision of safe, adequate, reliable, and efficient wastewater service to the affected customers of the small water or wastewater utility. Slip op. at 23. In reviewing the history of Section 529, the Commission found that the OCA’s argument, that Section 529 investigations have been initiated by the Commission under a variety of circumstances was not contradicted by I&E. Id. The Commission confirmed that Section 529 does not preclude it from taking notice, no matter how directly or indirectly, of the potential need for such an investigation. Slip op. at 24.

As discussed herein, it is clear that a petition seeking the Commission initiation of a Section 529 proceeding is permitted under Section 529 and is treated by the Commission as a petition for relief. Contrary to I&E’s question posed in its Petition for Interlocutory Review, the filing of a petition (or the use of other mechanisms) asking for the Commission to initiate an investigation under Section 529, does not mean that the petitioner is “proceeding by its own petition”; rather the petition is asking the Commission to open an investigation under Section 529 of the Public Utility Code. Nothing in the plain language of Section 529 or 52 Pa. Code § 5.41 supports I&E’s position. The Commission’s analysis of different methods used to request a Commission investigation under Section 529, as discussed above, support the OCA’s request that I&E’s Petition be denied. The OCA submits that the underlying proceeding should be permitted to proceed in accordance with the schedule issued by ALJ Cheskis.

Respectfully Submitted,

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