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September 3, 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 ALJ Certification of Material Question

Dear Secretary Chiavetta:

On behalf of the Twin Lakes Utilities, Inc. ("Twin Lakes") please find enclosed a copy of Twin Lakes Answer and Brief ALJ Cheskis' Certification of a Material Question.

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: September 3, 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 RESPONSE TO THE
AUGUST 28, 2020 CERTIFICATION OF MATERIAL QUESTION BY PRESIDING
DEPUTY CHIEF ADMINISTRATIVE LAW JUDGE JOEL H. CHESKIS PURSUANT
TO 52 PA. CODE §5.305**

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 5.305(c) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code §5.305(c), files this Answer and Brief in response to the certification of material question issued by Deputy Chief Administrative Law Judge Joel H. Cheskis on August 28, 2020 in this Commission docket (Docket No. P-2020-3020914).

I. BACKGROUND

For purposes of brevity with respect to the recitation of the procedural history in this case, Twin Lakes incorporates by reference the procedural history set forth in the July 16, 2020 Petition (“Twin Lakes Petition”) initiating this Commission Docket (Docket No. P-2020-3020914)¹, which was admitted into the record as Twin Lakes Exh. 1 at the August 21, 2020 evidentiary hearing held before Judge Cheskis in this matter. In addition, Twin Lakes

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”).

incorporates by reference the procedural history set forth in the ALJ Order and Twin Lakes' answers to Discovery Responses M-1 through M-19 promulgated by the Commission Staff of the Bureau of Technical Utility Services in Docket No. M-2020-3020390 (the predecessor docket to this current docket), which were incorporated by reference in the Twin Lakes Petition.²

Section 3.6 of the Commission's regulations ("Section 3.6") allows a party to submit a petition for an interim emergency order during the course of a proceeding. 52 Pa. Code § 3.6(a). The petition must be accompanied by a verified statement of facts establishing the need for emergency relief. 52 Pa. Code § 3.6(b). The facts must 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 the relief is not granted; and (4) the relief requested is not injurious to the public interest. Id.

On August 28, 2020, Judge Cheskis issued an "Order Denying Petition of the Office of Consumer Advocate For Issuance of an Emergency Interim Order On An Expedited Basis Filed Pursuant To Sections 3.6, 3.6a and 3.7 of the Commission's Regulations" ("ALJ Order").³ In the ALJ Order, Judge Cheskis certified the following material question to the Commission pursuant to Section 5.305: ***Whether the presiding Administrative Law Judge correctly denied the expedited petition for emergency interim relief requesting that Aqua Pennsylvania, Inc. be directed to act as receiver for Twin Lakes Utilities, Inc. until the resolution of the Section 529 proceeding pending at Docket No. P-2020-3020914? Suggested Answer: Yes.***⁴

² Twin Lakes Petition, ¶ 34.

³ *Order Denying Petition of the Office of Consumer Advocate For Issuance of an Emergency Interim Order On An Expedited Basis Filed Pursuant To Sections 3.6, 3.6a and 3.7 of the Commission's Regulations*, Docket No. P-2020-3020914, (Aug. 28, 2020) ("ALJ Order").

⁴ ALJ Order at 37-39.

II. ANSWER

For the reasons discussed herein, Twin Lakes’ suggested answer to the material question certified by Judge Cheskis for Commission review and answer pursuant to Section 5.305 is **No**. Specifically, it is Twin Lakes’ position that Judge Cheskis was correct in finding that the petitioner’s – in this case, the Pennsylvania Office of Consumer Advocate (“OCA”) – right to relief was clear, but that Judge Cheskis was incorrect in finding that the OCA failed to demonstrate that the need for relief was immediate; that the injury would be irreparable if relief was not granted and that the relief requested was not injurious to the public interest. Accordingly, it is Twin Lakes’ position that Judge Cheskis should have granted OCA’s Petition For Issuance of an Interim Emergency Order On An Expedited Basis (“OCA Petition”).⁵

III. DISCUSSION

A. Whether Petitioner’s Right To Relief is Clear.

For the reasons set forth in the ALJ Order⁶, it is Twin Lakes’ position that Judge Cheskis correctly decided that OCA’s right to relief with respect to the issuance of an interim emergency order was clear.

B. Whether The Need For Relief Is Immediate.

In the ALJ Order, Judge Cheskis found that OCA failed to meet its burden of demonstrating that the need for requested relief was immediate because “Although September 1, 2020 is now just a few days away...this date alone does not warrant a finding that the need for relief was immediate.”⁷ Judge Cheskis goes on to conclude that “but for Middlesex’s letter of

⁵ *Petition of the Office of Consumer Advocate For Issuance of an Interim Emergency Order On An Expedited Basis*, Docket No. P-2020-3020914, (Aug. 18, 2020) (“OCA Petition”).

⁶ ALJ Order at 15-18.

⁷ ALJ Order at 21.

June 1, 2020 indicating to Twin Lakes its intent to no longer provide operational support services to Twin Lakes after 12:01 am on September 1, 2020, there is no significance to the deadline of September 1, 2020 that warrants granting the OCA's petition for emergency relief and forcing Aqua to take over this water system as a receiver, even on an interim basis."⁸ Judge Cheskis further postulates that "Middlesex could have issued its 90-day notice of intent to terminate the service agreement with Twin Lakes on July 1st, August 1st, June 1, 2021 or some other date. Had it done so, the need for Aqua to be ordered to take over the Twin Lakes system as a an interim receiver...would be alleviated."⁹ Judge Cheskis' finding that the relief requested is not immediate based on the timing of when Middlesex exercised a contractual right it was legally within its rights to exercise or a postulation of "would have, could have, should have" with respect to when Middlesex exercised its legal right to terminate the Service Agreement¹⁰ are both misplaced and beside the point.

Under Section 1 of the Service Agreement, Middlesex was well within its legal and contractual rights to provide written notice on June 1, 2020 that it would terminate the Service Agreement with Twin Lakes on September 1, 2020, 90 days from the date of the June 1, 2020 written notice.¹¹ Twin Lakes' sole source of operations support was from Middlesex through the Service Agreement.¹² Middlesex is a New Jersey corporation. It is incorporated in New Jersey with its principal place of business in New Jersey. It is not registered to do business in the

⁸ *Id.* at 21-22.

⁹ *Id.* at 22-23.

¹⁰ *See* Twin Lakes Exh. 1, Twin Lakes Petition, Appendix E, Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc., dated December 1, 2009 ("Service Agreement").

¹¹ *Id.*

¹² Twin Lakes Petition ¶ 12.

Commonwealth of Pennsylvania. It is not a jurisdictional public utility in the Commonwealth of Pennsylvania. Middlesex is not the entity that entered into the Asset Purchase Agreement to acquire the Twin Lakes system on November 3, 2009, and is not the entity listed on the Recorded Deed as the owner of the Twin Lakes system.¹³ In short, Middlesex is a foreign corporation to the Commonwealth of Pennsylvania, and it is hornbook law that the Commonwealth of Pennsylvania cannot exercise jurisdiction over a foreign corporation that is not registered to conduct business in the Commonwealth of Pennsylvania.¹⁴

The Commonwealth of Pennsylvania – including this Commission – cannot compel Middlesex to continue to lend money to, or make further equity investments in, Twin Lakes, or to continue to provide the services it has provided to Twin Lakes under the Service Agreement, an agreement that Middlesex was well within its legal and contractual rights to terminate. As detailed by Twin Lakes witness Robert K. Fullagar in his testimony at the August 21, 2020 hearing before Judge Cheskis, the consequences of compelling Twin Lakes to keep the Twin Lakes system operating on September 1, 2020 without the financial and operational backing of Middlesex would be nothing short of catastrophic to the customers of Twin Lakes.¹⁵ Whatever Middlesex’s reasons for terminating the Service Agreement with Twin Lakes and the timing of this termination, this was the situation Twin Lakes and its customers faced on August 28, 2020, and under these circumstances, the need for relief pursuant to Section 3.6 was clearly immediate.

¹³ Twin Lakes Petition ¶¶ 3-6 and 34 (incorporating by reference Twin Lakes’ response to Discovery Request M-3 in Docket No. M-2020-302390).

¹⁴ *Sullivan v. A.W. Chesterton, Inc. (In re Asbestos Prods. Lia. Litig. No .VI)* 2019 U.S. Dist. LEXIS 95861 (E.D. Pa. June 6, 2019) (citing *Daimler A.G. v. Bauman*, 571 U.S. 117, 134 S.Ct.746, 187 L.Ed.2d 624 (2014)).

¹⁵ See Docket No. P-2020-3020914, Testimony of Robert K. Fullagar, President of Twin Lakes Utilities, Inc., on behalf of Twin Lakes (Aug. 21, 2020), Tr. at 102-103; Main Brief on Behalf of Twin Lakes Utilities, Inc. (Aug. 25, 2020) at 8-11.

C. Whether The Injury Is Irreparable If The Relief Is Not Granted.

In the ALJ Order, Judge Cheskis correctly framed this case as representing a “worst-case scenario”¹⁶, a scenario that both Twin Lakes and OCA worked tirelessly to avoid through efforts stretching back for nearly a decade and that Judge Cheskis to his credit recognized when he stated: “Twin Lakes and the OCA are commended for their efforts in these regards to avoid the precise situation we are faced with currently.”¹⁷ Twin Lakes greatly appreciates the recognition of these efforts.

Judge Cheskis went on to find that “it is clear the potential injury would be irreparable if either the relief requested was or was not granted”¹⁸ and further finding that “the greatest likelihood for the best possible outcome occurs if Twin Lakes continues to operate the system on an interim basis, at least until the Commission can address the material question that arises from this order, or the petition for interlocutory review filed by I&E¹⁹, both of which may be addressed as early as September 17, 2020.”²⁰

The basis, therefore, of Judge Cheskis’ finding is not that there would be irreparable injury if the relief of an emergency receiver was not granted – Judge Cheskis found that there would be – but rather the irreparable injury is best minimized by “requiring Twin Lakes to operate the system on an interim basis [until a capable public utility may be identified and take over service] more so than granting the petition and forcing Aqua to take over the system in three

¹⁶ ALJ Order at 29.

¹⁷ *Id.* at 23.

¹⁸ *Id.* at 29.

¹⁹ The Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement (“I&E”).

²⁰ ALJ Order at 29.

days.”²¹

Twin Lakes’ concern with Judge Cheskis’ finding are fourfold. First, the plain language of Section 3.6 only requires a petitioner to demonstrate that “The injury would be irreparable if not granted.”²² The regulation does not require OCA to not only demonstrate that the injury would be irreparable, but potentially more irreparable than any other potential outcome. Judge Cheskis found that the injury would be irreparable if OCA’s petition was not granted.²³ The analysis under Section 3.6 should have stopped right there as OCA met its burden as required under the plain language of Section 3.6(b)(3).

Second, Judge Cheskis pinned his hopes on a best possible outcome to minimize the potential for irreparable injury on an outcome that was far from certain at the time he issued the ALJ Order – that Middlesex agree to extend the Service Agreement with Twin Lakes by one month.²⁴ At the time Judge Cheskis issued this ALJ Order, this outcome was purely speculative and nothing in the record before him indicated that this outcome was realistic or imminent. Subsequent to the issuing of the ALJ Order, on August 31, 2020, as Judge Cheskis suggested, Middlesex and Twin Lakes *voluntarily* entered into a First Amendment to the Service Agreement²⁵ that amends the Service Agreement by deleting Section 1, entitled “Duration of Service Agreement”, and replaces Section 1 with the following terms:

²¹ *Id.*

²² 52 Pa. Code §3.6(b)(3).

²³ ALJ Order at 29.

²⁴ *Id.*

²⁵ *Application of Twin Lakes Utilities, Inc., For Commission Approval, Nunc Pro Tunc, of First Amendment To The Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc. Pursuant to 66 Pa. C.S. §2102, Docket No. G-2020-3020941, Appendix A, “First Amendment To The Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc. Dated August 31, 2020 (“First Amendment”) (Sept. 1, 2020).*

“The services to be rendered hereunder shall commence on the effective date and time of the First Amendment, which shall be 12:01 am Eastern Daylight Time (“EDT”) on September 1, 2020, and shall continue in full force and effect until the termination of the Service Agreement, which shall take effect 12:01 am EDT on October 1, 2020.”²⁶

On October 1, 2020 at 12:01 am EDT, the Service Agreement, as amended by the First Amendment, terminates with no advance written notice required. In the ALJ Order, Judge Cheskis stated that:

As Twin Lakes witness Fullagar noted, among other things, that, if it is ordered in this proceeding to continue to provide service, the company “would do its best to abide by the order” but that “if Twin Lakes cannot pay their bills and cannot pay their employees, at some point they will stop showing up.” *See*, Tr. 102-103. As a result of this order, Twin Lakes may only have to do that for 17 days, after which time the Commission may direct a capable utility to take over the system as receiver, or Aqua could takeover by January 1, 2021 under its alternative proposal. This could be possible to the extent that Middlesex agrees to extend the service agreement with Twin Lakes by one month.²⁷

The circumstances described by Mr. Fullagar on behalf of Twin Lakes that led Judge Cheskis to conclude that the injury would be irreparable if OCA’s petition were not granted were on the record before Judge Cheskis at the time he issued the ALJ Order – a time when any extension of the Service Agreement was pure speculation. Twin Lakes respectfully submits that the subsequent one-month extension of the Service Agreement by way of the First Amendment hoped for by Judge Cheskis – purely on a voluntary basis by Middlesex – creates the same irreparable injury come 12:01 am EDT on October 1, 2020.

Third, Judge Cheskis concluded that “In contrast, it is unreasonable to require Aqua to assume responsibility as receiver in three days.”²⁸ While Twin Lakes agrees that this

²⁶ First Amendment, ¶ 1.

²⁷ ALJ Order at 29.

²⁸ ALJ Order at 29-30.

circumstance is far from ideal, there was nothing in the record that indicated that Aqua was not capable of assuming responsibility as receiver of the Twin Lakes system even on three days' notice. The record before Judge Cheskis was replete with Aqua's financial and technical capability of assuming receivership control of a small water system, even on such short notice, and Aqua's well-earned reputation as a more than capable financial and operational steward of a small water system both precedes it and was well-ensconced in the record.²⁹ In any event, OCA did not have the burden under Section 3.6(c) of demonstrating that Aqua could take over as receiver on three days' notice – OCA's only burden was to demonstrate that irreparable injury would occur if its petition were not granted and OCA did just that.

Fourth and finally, Judge Cheskis' ideal scenario, whereby Twin Lakes continues to operate the system for a short time while the Commission sorts out both Judge Cheskis' certification of material question and I&E's petition for interlocutory review, does not provide the certainty that irreparable injury will be avoided. Without going into detail here as this issue is being separately briefed before the Commission, I&E's petition is nothing short of a direct frontal assault against what is in the best interest of the customers of Twin Lakes and Twin Lakes' right to request the Commission to open a Section 529 proceeding to resolve this situation. If I&E's petition were to be granted, this underlying Section 529 proceeding will terminate, Twin Lakes will remain a small water utility without financial support since Middlesex stopped such support on May 28, 2020, and will be without a source of operations support effective October 1, 2020. Furthermore, any operational anomaly in the form of a main break, power outage or failure of Well No. 2, which is the sole source of the water supply, could immediately result in a lack of funds available to remediate the emergency, requiring the water system to be shut down in the interest of public health and safety. This could occur at any time

²⁹ See OCA Main Brief at 23.

from the present day forward in the absence of any further funding from Middlesex, regardless of whether or not the Service Agreement remains in effect. The potential for irreparable injury, one that OCA demonstrated, will remain.

D. Whether The Relief Requested Is Injurious To The Public.

Section 3.6 requires a petitioner to demonstrate that “the relief requested is not injurious to the public interest.”³⁰ This is all that is required of a petitioner under the plain language of Section 3.6(d), and OCA clearly met its burden, as acknowledged by Judge Cheskis in the ALJ Order:

[I]f the petition is not granted and Twin Lakes is required to continue to operate the system pursuant to its existing certificate of public convenience, the public interest will be injured because of the risk of Twin Lakes’ customers losing access to safe and reliable water service at just and reasonable rates. There is substantial record evidence regarding the injury to the public that may occur if Twin Lakes continues to operate this system. This is certainly injurious to the public interest, especially during a pandemic. The best interests of the customers affected by this petition is paramount.³¹

If the petition is not granted and Twin Lakes continues to provide service as best it can, the public interest would be injured because of the general reliance on large water companies in Pennsylvania, such as Aqua, assisting customers of smaller water companies in Pennsylvania, such as Twin Lakes, when the smaller companies can no longer provide service. Larger companies have been asked in the past to “rescue” smaller companies at times and denying the petition filed by the OCA in this case would contradict such precedent, thereby, injuring the public interest.³²

The analysis should have stopped there as OCA clearly met its burden under Section 3.6(d). Judge Cheskis, however, held otherwise on the ground that “precedent will be created that...other parent companies wishing to divest itself of unprofitable or difficult small systems

³⁰ 52 Pa. Code §3.6(d).

³¹ ALJ Order at 35.

³² *Id.*

who are otherwise unable to abandon service could terminate a service agreement and self-impose a deadline by which emergency relief would be needed.”³³

With all due respect, any concern that the granting of OCA’s requested relief will create the precedent that causes parent companies to run to the Commission’s doors to divest themselves of small water systems is baseless. If this concern were even in the realm of probable, there would likely have been a flood of these kinds of petitions over the years. Twin Lakes has found no such case. Even, assuming *arguendo*, that parent companies would be inspired by Twin Lakes to petition the Commission to divest themselves of small water systems, Twin Lakes is its own unique circumstance easily distinguishable from any future bold naked attempt to divest a small water system as feared by Judge Cheskis. Consider the odyssey of Twin Lakes in reaching this point:

- Over the past 9 years, Twin Lakes has engaged other, larger water companies based in Pennsylvania to acquire Twin Lakes;³⁴
- In late 2014, Twin Lakes investigated the possibility of installing individual wells for each of the then approximately 115 customers served by Twin Lakes. Because many of the lot sizes in the community did not allow for adequate clearance between the septic system and a well, this solution was scrapped.³⁵
- On multiple occasions from 2015 forward, Twin Lakes executives travelled to Harrisburg, Pennsylvania to meet with the then-Chairman of the Pennsylvania Public Utility Commission (“PAPUC”), PAPUC Staff and the OCA for the sole purpose of requesting their assistance in identifying a system take-over solution that would mitigate the inevitable need for Twin Lakes to petition the PAPUC for triple digit increases in base rates for the residents of the Sagamore Estates community.³⁶

³³ *Id.* at 34.

³⁴ Twin Lakes Petition ¶ 34 (incorporating by reference Twin Lakes’ Response To Discovery Request M-8 in Docket No. M-2020-3020390).

³⁵ *Id.*

³⁶ *Id.*

- On three occasions, Twin Lakes filed three petitions for rate increases in 2011 (Docket No. R-2011-2246415), 2015 (Docket No. R-2015-2506337) and 2019 (Docket No. R-2019-3010958), all three cases resulting in rate increases that were far from adequate to enable Twin Lakes to operate the system at the adequate levels sought by the Commission and OCA.³⁷
- On February 26, 2018, Twin Lakes issued correspondence to senior members of PAPUC Staff, the OCA and Office of Small Business Advocate informing them of the emergent need to undertake system improvements that would incur just and reasonable costs increasing Twin Lakes customers’ annual water bills to over \$4,000 and informing these parties on the three options it believed it could practically proceed: (1) file a petition for abandonment of the Twin Lakes system franchise; (2) file for emergency rate relief; or (3) identify a larger investor-owned water utility better positioned to make these necessary improvements to the Twin Lakes system.³⁸
- 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.³⁹ 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).⁴⁰ On October 29, 2019, Twin Lakes filed an appeal of the rejection of the Application To Abandon under Section 1102(a)(2).⁴¹ On February 28, 2019, the Commission entered an Order denying Twin Lakes’ appeal.⁴²
- On June 10, 2020, Twin Lakes issued a letter to Senior Commission Staff and the OCA, again notifying these parties of the current state of Twin Lakes and Middlesex’s intended termination of the Service Agreement. Based on these developments, Twin Lakes requested initiation of a Commission proceeding

³⁷ Twin Lakes Petition ¶ 8.

³⁸ Twin Lakes Petition ¶ 34 (incorporating by reference Twin Lakes’ response To Discovery Request M-8 in Docket No. M-2020-3020390); *see generally* Docket No. P-2020-3020914, Testimony of A. Bruce O’Connor, Vice President and Treasurer of Twin Lakes on behalf of Twin Lakes (Aug. 21, 2020).

³⁹ *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”).

⁴⁰ *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).

⁴¹ *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).

⁴² *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).

under Section 529. Twin Lakes' request was assigned a docket number of M-2020-3020390, Commission Staff promulgated substantial discovery on Twin Lakes, which were all answered on July 1, 2020. On July 13, 2020, nearly two weeks after the submission of these discovery responses, in what can only be fairly described as blatantly disingenuous procedural maneuvering, the Commission closed this docket.⁴³

- On July 16, 2020, Twin Lakes filed the Twin Lakes Petition initiating this current docket. Judge Cheskis issued a Scheduling Order on July 28, 2020. In what again can only be characterized as blatantly disingenuous procedural maneuvering, I&E waited nearly 3 weeks and a mere 13 days before the September 1, 2020 cessation of the Service Agreement to file a petition for interlocutory review challenging Twin Lakes' right to request the Commission to initiate a Section 529 proceeding.⁴⁴
- Twin Lakes has considered the alternative of having the nearby public water system serve as a source for water service to Sagamore Estates, an option determined to be non-viable.⁴⁵ On July 14, 2020, Twin Lakes issued a Request For Proposals for the operation of the system after the effective termination date of the Service Agreement, and no viable or suitable bids were submitted.⁴⁶

The record and history are clear that Twin Lakes did not seek Commission initiation of a Section 529 proceeding and OCA did not seek an interim emergency order installing Aqua as a receiver as a first resort, but on the contrary *as an absolute last resort after all other numerous options were exhausted*. Judge Cheskis states that “The Commission cannot be put in a situation where situations such as this occur in the future.”⁴⁷ There is one simple answer for ensuring the Commission is not placed in such situations in the future – *when a small water utility asks the Commission for assistance in identifying a system takeover solution to help customers avoid triple digit base rate increases, the Commission should help rather than ignore the problem.*

⁴³ Twin Lakes Petition ¶¶ 28-31.

⁴⁴ ALJ Order at 3-4.

⁴⁵ Twin Lakes Petition ¶ 15.

⁴⁶ *Id.* ¶ 25.

⁴⁷ ALJ Order at 34.

Had the Commission assisted Twin Lakes rather than ignore its repeated requests for assistance, we would not be in the situation we find ourselves in today.

Finally, Judge Cheskis is correct in his observation that denial of relief to Twin Lakes under Section 529(g) of the Public Utility Code where similar relief for a receivership has been granted to other small water systems is troubling.⁴⁸ In fact, it is more than troubling – it is discriminatory. Section 529(m) defines a “small water utility” as “a public utility which regularly provides water service to 1,200 or fewer customer connections.”⁴⁹ That is the text of Section 529(m). Section 529 does not limit this definition to small water utilities who are not affiliated with a parent company who the Commission thinks may otherwise qualify as a certificated public utility under its regulations.

Similarly, Section 529(g) states that “The commission may, in its discretion appoint a receiver to protect the interests of customers of the small water or sewer utility.”⁵⁰ That is the text of Section 529(g). It does not limit the appointment of a receiver to protect the interests of customers of only those small water utilities not affiliated with a corporate parent who the Commission thinks may otherwise qualify as a certificated public utility under its regulations.

It is beyond dispute that the Commission has previously invoked its powers under Section 529(g) to appoint a receiver early on in a Section 529 investigation.⁵¹ The only difference between Twin Lakes on the one hand and Winola and Indian Springs on the other hand is that Twin Lakes has a parent company in Middlesex that I&E deems to have financial and operational capability to support Twin Lakes. As stated above, Middlesex is under no legal,

⁴⁸ ALJ Order at 35.

⁴⁹ 66 Pa. C.S. § 529(m).

⁵⁰ 66 Pa. C.S. § 529(g).

⁵¹ *Winola Water Company*, Docket Nos. P-2018-3006216 and C-2018-2644592, slip op., (Nov. 29, 2018, ratified Dec. 6, 2018); *Indian Springs Water Co.*, Docket No. M-2019-3011972, Opinion and Order (Aug. 8, 2019).

regulatory or contractual obligation to be compelled to do this and in any event the Legislature did not limit Section 529 to only those small water utilities who did not have such a corporate parent. It applied Section 529 to *all small water utilities* as defined in Section 529(m). Any Commission decision to the contrary is in contravention to Section 529 and discriminatory as applied to Twin Lakes.

IV. CONCLUSION

WHEREFORE, Twin Lakes Utilities, Inc. respectfully requests that Commission answer the certified question of *Whether the presiding Administrative Law Judge correctly denied the expedited petition for emergency interim relief requesting that Aqua Pennsylvania, Inc. be directed to act as receiver for Twin Lakes Utilities, Inc. until the resolution of the Section 529 proceeding pending at Docket No. P-2020-3020914?* with the following answer: *No.*

Respectfully submitted,



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Date: September 3, 2020

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