



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

September 4, 2020

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

Enclosed for filing please find the **Main Brief of the Bureau of Investigation and Enforcement in Support of Order of Administrative Law Judge Denying Interim Emergency Relief Requested by the Office of Consumer Advocate** for the above-captioned proceeding.

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

Sincerely,

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Enclosures

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Vice Chairman David W. Sweet (*via email only*)
Commissioner John F. Coleman, Jr. (*via email only*)
Commissioner Ralph V. Yanora (*via email only*)
Honorable Joel H. Cheskis (*via email only*)
Office of Special Assistants (*via email only* – RA-OSA@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**MAIN BRIEF
OF THE BUREAU OF INVESTIGATION & ENFORCEMENT
IN SUPPORT OF ORDER OF ADMINISTRATIVE LAW JUDGE
DENYING INTERIM EMERGENCY RELIEF REQUESTED BY
THE OFFICE OF CONSUMER ADVOCATE**

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Dated: September 4, 2020

TABLE OF CONTENTS

I. INTRODUCTION AND PROCEDURAL HISTORY 1

A. Procedural History..... 1

B. Standard for Material Question. 2

II. MATERIAL QUESTION..... 3

Whether the presiding Administrative Law Judge correctly denied the expedited petition for interim emergency relief requesting that Aqua Pennsylvania, Inc. be directed to act as a receiver to operate Twin Lakes Utilities, Inc. until the resolution of the Section 529 proceeding pending at docket number P-2020-3020914?

Suggested Answer: Yes..... 3

III. SUMMARY OF ARGUMENT. 3

IV. ARGUMENT. 5

A. The Pennsylvania Public Utility Commission should not appoint a receiver for Twin Lakes Utilities, Inc..... 5

1. The Petitioner’s right to relief is not clear..... 5

2. The need for relief is not immediate. 6

3. The injury would not be irreparable if relief is not granted..... 9

4. The relief requested may be injurious to the public interest. 11

V. CONCLUSION. 12

TABLE OF AUTHORITIES

STATUTES

66 Pa. C.S. § 1501 5, 6
66 Pa. C.S. § 529(g)..... 1
66 Pa. C.S. §§ 3301 6
66 Pa. C.S. §§ 3302 6

REGULATIONS

52 Pa. Code § 3.6(b) 2
52 Pa. Code § 3.6(b)(1)-(4)..... 2, 5
52 Pa. Code § 5.305..... 1, 2

I. INTRODUCTION AND PROCEDURAL HISTORY.

A. Procedural History.

On August 28, 2020, Deputy Chief Administrative Law Judge Joel H. Cheskis (“ALJ Cheskis”) issued an *Order Denying Petition of the Office of the Consumer Advocate for Issuance of an Interim Emergency Order on an Expedited Basis filed Pursuant to Sections 3.6, 3.6(a), and 3.7 of the Commission’s Regulation* (“ALJ Order Denying Relief”). In his Oder, ALJ Cheskis certified to the Commission the following material question requiring interlocutory review pursuant to Section 5.305 of the Commission’s regulations, 52 Pa. Code § 5.305:

Whether the presiding Administrative Law Judge correctly denied the expedited petition for interim emergency relief requesting that Aqua Pennsylvania, Inc. be directed to act as a receiver to operate Twin Lakes Utilities, Inc. until the resolution of the Section 529 proceeding pending at docket number P-2020-3020914?

Suggested answer: Yes.

Further, ALJ Cheskis included a comprehensive summary of the procedural history of this proceeding. In summary and in pertinent part, on August 18, 2020, the Office of Consumer Advocate (“OCA”) filed its *Petition for Issuance of an Emergency Order on an Expedited Basis* (“OCA Petition”) requesting the appointment of a receiver pursuant to Section 529(g),¹ if Twin Lakes was unable to secure a new system operator.

On August 20, 2020, the Bureau of Investigation and Enforcement (“I&E”) filed a timely Answer (“I&E Answer”) to the OCA Petition requesting that the Commission

¹ 66 Pa. C.S. § 529(g).

deny the requested relief. And, on August 24, 2020 I&E filed its Main Brief in support of the I&E Answer, arguing that denying the requested relief was warranted because the OCA had failed to meet its burden of proof; and, because the OCA Petition failed to justify the request that the Commission issue an order authorizing the appointment of a receiver.

I&E now files this Brief in support of the ALJ Order Denying Relief and answering the material question in the affirmative. I&E incorporates its Main Brief filed in support of the I&E Answer herein by reference as if fully set forth. This brief presents essentially the same arguments I&E presented in its Main Brief.

B. Standard for Material Question.

Section 5.305 states that during the course of a proceeding, a presiding officer may certify to the Commission for review and answer a material question which has arisen.² In the exercise of its discretion in the instant proceeding, the Commission may consider the factors set forth in Section 3.6(b)³ of the Commission regulations. As stated in Section 3.6(b), the petitioner requesting the interim emergency relief must establish the need for the emergency relief by establishing facts that support the following: (1) the petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and, (4) the relief requested is not injurious to the public interest.⁴

² 52 Pa. Code § 5.305.

³ 52 Pa. Code § 3.6(b).

⁴ 52 Pa. Code § 3.6(b)(1)-(4).

II. MATERIAL QUESTION.

Whether the presiding Administrative Law Judge correctly denied the expedited petition for interim emergency relief requesting that Aqua Pennsylvania, Inc. be directed to act as a receiver to operate Twin Lakes Utilities, Inc. until the resolution of the Section 529 proceeding pending at docket number P-2020-3020914?

Suggested Answer: Yes.

III. SUMMARY OF ARGUMENT.

The presiding Administrative Law Judge correctly denied the expedited petition for interim emergency relief. No party has established the existence of the need for interim emergency relief because no party has supported the request for the interim emergency relief by presenting substantial evidence to support the following: (1) the petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if relief is not granted; and, (4) the relief requested is not injurious to the public interest.

The right to relief is not clear. Under the current status quo, Twin Lakes Utilities, Inc. ("Twin Lakes") is providing water service to the Twin Lakes customers and there is no justifiable reason why the status quo cannot continue. Further, the need for the relief is not immediate, no irreparable harm will result if the requested relief is not granted, and it may be injurious to the public interest if the requested relief is granted.

The facts in this case support a finding that the need for interim emergency relief is not immediate. Twin Lakes is currently providing water service to its customers and is capable of continuing to provide water service to its customers going forward. Twin

Lakes and its parent, Middlesex Water Company (“Middlesex”) forced an artificial deadline on the Commission, Administrative Law Judge, the parties, and most importantly on the Twin Lakes customers. Twin Lakes and its parent company Middlesex have the necessary financial, managerial and technical ability to provide safe and reasonable service and facilities until this proceeding or a potential abandonment proceeding results in a final Commission order. If Aqua Pennsylvania (“Aqua”) or another capable public utility were appointed the receiver, Aqua would not bring anything to the table beyond what Twin Lakes is providing today. In fact, Aqua would be coming to the table with less knowledge of the Twin Lakes system and its current challenges than the Twin Lakes’ current management and technical personnel.

Regarding whether there will be irreparable harm, Twin Lakes is currently providing water service to its customers. Twin Lakes has and will continue to have the technical, managerial and financial capability of providing service to its customers. Twin Lakes, with the support of its parent Middlesex, is more than capable of maintaining the status quo, and therefore no irreparable harm will result if the requested emergency relief is not granted.

In determining whether or not granting the requested relief will be injurious to the public interest requires looking at both the short-term consequences and the long-term consequences. And in this case, granting the requested relief may be injurious to the public interest in both the short-term and the long-term. If the requested relief is granted, the only thing that will be accomplished in the short-term is that this burden will be shifted from one capable public utility to another. And the shifting of that burden, in this

case presumably to Aqua, may be injurious to the existing customers of Aqua and therefore may be injurious to the public interest. In the long term, allowing Commission regulated entities to force the Commission to shift the burden from one capable public utility to another by threatening harm to the customers may have unintended injurious consequences long into the future.

I&E respectfully submits that the presiding Administrative Law Judge correctly denied the expedited petition for interim emergency relief requesting that Aqua Pennsylvania, Inc. be directed to act as a receiver to operate Twin Lakes Utilities, Inc. until the resolution of the pending Section 529 proceeding.

IV. ARGUMENT.

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

No party has established the existence of the need for interim emergency relief because no party has supported the request for the interim emergency relief by presenting substantial evidence to support the following: (1) the petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be reparable if relief is not granted; and, (4) the relief requested is not injurious to the public interest.⁵

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

The OCA's right to relief is not clear. Under the current status quo, Twin Lakes is providing water service to the Twin Lakes customers.⁶ Further, Section 1501 of the Code mandates that every public utility shall furnish and maintain adequate, efficient, safe, and

⁵ 52 Pa. Code § 3.6(b)(1)-(4).

⁶ Twin Lakes Section 529 Petition, ¶ 1.

reasonable service.⁷ The Company's obligation is clear and the Company can only be relieved of this obligation if the Commission approves a capable public utility to acquire Twin Lakes pursuant to a Section 529 proceeding or if the Commission approves an abandonment of service.⁸ Twin Lakes has a continuing obligation to provide safe and reliable service to its customers. Twin Lakes' failure to do so may expose Twin Lakes to civil and criminal penalties.⁹

Therefore, the right to relief is not clear because Twin Lakes has an obligation to continue providing safe and reliable water service to its customers until the Commission approves otherwise.

2. The need for relief is not immediate.

The facts in this case support a finding that the need for interim emergency relief is not immediate. Twin Lakes is currently providing water service to its customers¹⁰ and is capable of continuing to provide water service to its customers going forward. There is no justifiable reason why Twin Lakes would violate the Public Utility Code and cease providing water to its customers on an artificial deadline. Twin Lakes, and its parent company, Middlesex, forced an artificial deadline on the parties, customers and the Commission.¹¹ I&E shares OCA's concerns as it is paramount that Twin Lakes customers continue to receive service until either a Section 529 proceeding is resolved or

⁷ 66 Pa. C.S. § 1501.

⁸ I&E Answer, ¶ 8. *See also* OCA Petition, ¶ 7.

⁹ *See* 66 Pa. C.S. §§ 3301, 3302.

¹⁰ Twin Lakes Section 529 Petition, ¶ 1.

¹¹ Twin Lakes Section 529 Petition, ¶¶ 24, 26.

the Company receives Commission approval to abandon service.¹² However, the Company's threats to stop serving customers are a clear violation of its obligations under the Public Utility Code and do not justify the appointment of a receiver. Twin Lakes, by and through its parent company Middlesex, as shown *infra*, has the necessary financial, managerial and technical ability to provide safe and reasonable service and facilities until this proceeding or a potential abandonment proceeding results in a final Commission order.

Twin Lakes attempted to justify the artificial deadline in its Section 529 Petition by claiming that its parent company, Middlesex, would not be renewing its Service Agreement and would be terminating all financial support to Twin Lakes.¹³ All of these decisions and actions on the part of Middlesex can be reversed, modified or extended. It is clear that Middlesex has the ability to change any artificial deadline and must do so to remain in compliance with the Public Utility Code; therefore the need for the requested emergency relief is not immediate.

Further, as Aqua witness Stephen Clark stated in his testimony, if Aqua were appointed the receiver, Aqua would not bring anything to the table beyond what Twin Lakes is providing today.¹⁴ In fact, Aqua has less knowledge of the Twin Lakes system and its current challenges than the Twin Lakes' current management and technical personnel.¹⁵ Even Twin Lakes Vice President A. Bruce O'Connor stated that the biggest

¹² I&E Answer, ¶ 9.

¹³ See OCA Ex. No. 2. See also Twin Lakes Section 529 Petition, ¶¶ 21-26.

¹⁴ Hr. Tr., p. 129.

¹⁵ Hr. Tr., p. 123.

problem with Twin Lakes is the physical condition of the system and not the management of the system.¹⁶ Appointing Aqua as receiver would do nothing to change that.

And, with regard to Middlesex, it publicly touts its financial, managerial and technical capabilities on its website, yet is threatening to terminate service to its Pennsylvania customers.¹⁷ Middlesex states that it was incorporated as a water utility in 1897, and that it “provides a full range of regulated and non-regulated water and wastewater utility and related services in parts of New Jersey, Delaware and Pennsylvania.”¹⁸ Further, Middlesex proclaims “[t]hrough our affiliated companies we are delivering technical and management capabilities that creatively address challenges such as aging infrastructure and increasing regulatory pressures faced by municipalities, developers and small system owners.”¹⁹ Finally, both Twin Lakes President Robert Fullagar and Vice President A. Bruce O’Connor stated that Middlesex is a well-run company.²⁰

Additionally, Middlesex has approximately 350 employees and the Middlesex family of companies serves nearly 500,000 customers in New Jersey, Delaware and Pennsylvania.²¹ In its Annual Statement, Middlesex reported a Net Income of \$33.9 million in 2019 and \$32.5 million in 2018; a return on average common equity of 12.5%

¹⁶ Hr. Tr., p. 85.

¹⁷ See <https://www.middlesexwater.com/>.

¹⁸ See, <https://www.middlesexwater.com/about-us/>, p. 1 of 8.

¹⁹ See, <https://www.middlesexwater.com/about-us/>, p. 2 of 8.

²⁰ Hr. Tr., p. 105 (testimony of President Robert Fullagar); Hr. Tr., p. 85 (testimony of Vice President A. Bruce O’Connor).

²¹ See <https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 1.

in 2019 and 13.6% in 2018; basic earnings per share of \$2.02 in 2019 and \$1.97 in 2018; and, cash dividends per share of \$0.976 in 2019 and \$0.911 in 2018.²²

Moreover, according to the Middlesex July 2020 Fact Sheet, its corporate credit rating was “A stable” and its 2019 revenue was \$134.6 million.²³ In short, this is not a situation like Winola and Indian Springs, as argued by OCA,²⁴ where the regulated utility was no longer able to provide safe and reliable service; rather, it is a situation where the utility is simply refusing to continue to provide service.²⁵ The Middlesex July 2020 Fact Sheet states it is “OUR MISSION: To provide service in the water, wastewater and related service fields in a safe, reliable and efficient manner.”²⁶ That is what the Public Utility Code also requires and Twin Lakes must continue to provide such service until this Commission approves otherwise.

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

Twin Lakes is currently providing water service to its customers. And while Twin Lakes has infrastructure problems, it is addressing those problems and it is still capable of providing water service as required by its certificate of public convenience pursuant to the Pennsylvania Public Utility Code. Twin Lakes has and will continue to have the technical managerial and financial capability of providing service to its customers.²⁷ Twin Lakes, with the support of its parent Middlesex, is more than capable of

²² See, <https://www.middlesexwater.com/news-room/>, 2019 Annual Report, p. 10.

²³ See <https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 2.

²⁴ OCA Petition, ¶ 12.

²⁵ Twin Lakes Section 529 Petition, ¶ 26.

²⁶ See <https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 1.

²⁷ See Section IV. 2. The need for relief is not immediate, *supra*.

maintaining the status quo until a Section 529 or abandonment proceeding is concluded, and therefore no irreparable harm will result if the emergency relief is not granted.

A prevailing issue in this case is that Middlesex has, in Twin Lakes, a financially underperforming segment of their overall public utility business that they would like to divest however possible.²⁸ And after listening to the testimony of the Twin Lakes witnesses, one can conclude that this is purely a financial decision by Middlesex.²⁹ Further, Twin Lakes even threatened a bankruptcy filing.³⁰ In fact, 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.

As stated by Twin Lakes President Robert Fullagar, the decision to cease water service to the Twin Lakes customers would be his³¹ and it will require a physical act.³² The performing of that physical act would be done with full knowledge that it would result in the cessation of water service to the Twin Lakes customers.³³ Doing so would be a clear violation of the Public Utility Code.

Again, referring to the Middlesex website, in the July 2020 Fact Sheet at the Company Overview tab, Middlesex states that it “serves as a trusted provider offering life-sustaining high quality water service for residential, commercial, industrial and fire protection purposes.”³⁴ This statement is wholly accurate as utility customers and the

²⁸ See generally Twin Lakes Section 529 Petition.

²⁹ Hr. Tr., pp. 73-82 (testimony of Vice President A. Bruce O’Connor); Hr. Tr., pp. 92-98 (testimony of President Robert Fullagar).

³⁰ Twin Lakes Section 529 Petition, ¶ 32.

³¹ Hr. Tr., p. 104.

³² Hr. Tr., p. 104.

³³ Hr. Tr., p. 104-105.

³⁴ See <https://www.middlesexwater.com/news-room/>, Fact Sheet – July 2020, p. 1.

Commission trust regulated utilities to provide important utility services until authorized by the regulatory body to cease service. Middlesex recognizes the import of this role and allowing its regulated Pennsylvania utility to simply stop service to customers would be a breach of this stated trust.

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

In determining whether or not granting the relief will be injurious to the public interest requires looking at both the short-term consequences and the long-term consequences. Currently, under the status quo, the burden of running the Twin Lakes water system and providing water service to its customers is shared by both Twin Lakes and its parent company Middlesex.³⁵ If the requested relief is granted, the only thing that will be accomplished in the short term is that this burden will be shifted from one capable public utility, Middlesex, to another, most likely Aqua.³⁶ And the shifting of that burden, in this case presumably to Aqua, may be injurious to the existing customers of Aqua and therefore may be injurious to the public interest.

In the long term, allowing one capable public utility to force the Commission to shift the burden from one capable public utility to another by threatening harm to the customers may have unintended injurious consequences long into the future. Setting this type of precedent may open the door for other public utilities to create artificial deadlines that put the Commission in the position of having to make decisions that may not necessarily be in the public interest in the long-term in order to protect threatened

³⁵ Twin Lakes Section 529 Petition, ¶¶ 1-7.

³⁶ OCA Petition, ¶ 17.

customers in the short-term. This potential injurious precedent cannot be set as it is not in the public interest.

V. CONCLUSION.

In consideration of the reasoning set forth in this I&E Brief, as well as I&E's Answer and supporting Main Brief in response to the OCA Petition; the Bureau of Investigation and Enforcement respectfully requests that the Commission find the presiding Administrative Law Judge correctly denied the expedited petition for interim emergency relief requesting that Aqua Pennsylvania, Inc. be directed to act as a receiver to operate Twin Lakes Utilities, Inc. until the resolution of the pending Section 529 proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Scott B. Granger".

Scott B. Granger
Prosecutor
PA Attorney ID No. 63641

Dated: September 4, 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. : Docket No.: P-2020-3020914
by a Capable Public Utility Pursuant to :
66 Pa. C.S. §529 :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **I&E Main Brief in Support of ALJ's Order** dated September 4, 2020, in the manner and upon the persons listed below.

Served via Electronic Mail Only

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