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September 4, 2020

***VIA ELECTRONIC FILING***

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street, 2nd Floor North  
P.O. Box 3265  
Harrisburg, PA 17105-3265

**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. Section 529  
Docket No. P-2020-3020914**

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Dear Secretary Chiavetta:

Attached for filing is Aqua Pennsylvania, Inc.'s Brief in Support of the Interim Order Denying the OCA's Petition for Interim Emergency Relief in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Garrett P. Lent

GPL/kl  
Attachment

cc: Honorable Joel Cheskis  
Certificate of Service

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: September 4, 2020

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Garrett P. Lent

**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 :

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**AQUA PENNSYLVANIA, INC.'S  
BRIEF IN SUPPORT OF THE INTERIM ORDER DENYING  
THE OCA'S PETITION FOR INTERIM EMERGENCY RELIEF**

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Date: September 4, 2020

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**Table of Contents**

	<b>Page</b>
I. INTRODUCTION .....	1
II. BACKGROUND .....	1
III. SUMMARY OF ARGUMENT .....	3
IV. ARGUMENT .....	5
A. OCA FAILED TO DEMONSTRATE ITS RIGHT TO RELIEF IS CLEAR. ....	6
B. THE ORDER CORRECTLY CONCLUDED THAT THE OCA FAILED TO DEMONSTRATE THAT THE NEED FOR RELIEF IS IMMEDIATE. ....	7
C. THE ORDER CORRECTLY CONCLUDED THAT OCA FAILED TO DEMONSTRATE THE ALLEGED INJURY WOULD BE IRREPARABLE IF RELIEF IS NOT GRANTED. ....	8
D. THE ORDER CORRECTLY CONCLUDED THE REQUESTED RELIEF WOULD BE INJURIOUS TO THE PUBLIC INTEREST. ....	10
V. STAY OF THE PROCEEDING .....	14
VI. CONCLUSION .....	15

**TABLE OF AUTHORITIES**

**Page**

**Pennsylvania Statutes**

66 Pa. C.S. § 529(g) .....2

**Pennsylvania Court Decisions**

*Audenried v. Philadelphia R.R. Co.*, 68 Pa. 370 (Pa. 1871) .....5

*Allen v. Colautti*, 417 A.2d 1303 (Pa. Cmwlt. 1980).....5

*County of Allegheny v. Commonwealth*, 544 A.2d 1305 (Pa. 1988) .....5

*Golden Triangle News v. Corbett*, 689 A.2d 974 (Pa. Cmwlt. 1997).....5

*Metropolitan Edison Co. v. Pa. Pub. Util. Comm’n*, 437 A.2d 76 (Pa. Cmwlt. 1981).....1

*McMullan v. Wohlegmuth*, 281 A.2d 836 (Pa. 1971) .....6

*Peoples Natural Gas Co. v. Pa. Pub. Util. Comm’n*, 555 A.2d 288 (Pa. Cmwlt. 1989) .....5

*Phila. Rec. Co. v. C.-M. News, Inc.*, 157 A. 796 (Pa. 1931).....6

*Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995 (Pa. 2003) .....5

*T.W. Phillips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776 (Pa. Cmwlt. 1985) .....6

*Zebra v. School Dist.*, 206 A.2d 748 (Pa. 1972) .....6

**Administrative Agency Decisions**

*Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered Sept. 23, 2011).....6

*Crums Mill Assoc., et al. v. Dauphin Consolidated Water Supply Company*, Docket No. C-00934810, 1993 Pa. PUC LEXIS 89 (Interim Emergency Order Denying Relief dated Mar. 23, 1993).....5, 7

*Crums Mill Assoc. v. Dauphin Consolidated Water Supply Co.*, 1993 Pa. PUC LEXIS 90 (Order dated April 16, 1993) .....5, 7

*Schwartz v. Delaware & Hudson Rwy. Co.*, 2011 Pa. PUC LEXIS 1715 (Order entered July 5, 2011) .....5

**Regulations**

52 Pa. Code § 3.6(b) ..... *passim*

## **I. INTRODUCTION**

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) hereby files this Brief in Support of the Deputy Chief Administrative Law Judge Joel H. Cheskis’ (the “ALJ”) Order Denying Petition of the Office of Consumer Advocate (“OCA”) For Issuance of an Interim Emergency Order on an Expedited Basis Filed Pursuant to Sections 3.6, 3.6a and 3.7 of the Pennsylvania Public Utility Commission’s (“Commission”) Regulations dated August 28, 2020 (the “Order”). Therein, the ALJ correctly determined that the OCA had failed to carry its burden of proof to demonstrate it was entitled to an interim emergency order mandating Aqua to act as the receiver—i.e., public utility operator—of the water system owned by Twin Lakes Utilities, Inc. (“Twin Lakes”) effective immediately. Pursuant to Section 3.10 (b) of the Commission’s regulations, the ALJ has certified the question of denial of relief as a material question in accordance with Section 5.305 of the Commission’s regulations. In accordance with Section 5.305 (c), Aqua submits this Brief addressing the merits of the question presented and whether a stay of the proceedings is required. For the reasons explained below, and also explained in Aqua’s Post-Hearing Main and Reply Briefs, the Commission should: (1) affirm the Order of the Deputy Chief Administrative Law Judge Joel H. Cheskis dated August 28, 2020; (2) answer the material question set forth therein in the affirmative; and (3) deny the Petition of the Office of Consumer Advocate For Issuance Of An Interim Emergency Order On An Expedited Basis at this time.

## **II. BACKGROUND**

On July 16, 2020, Twin Lakes filed with the Commission a Petition for a Commission Order authorizing the acquisition of Twin Lakes pursuant to Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, by a capable public utility (“the TLU Petition”).

Twin Lakes is a wholly owned subsidiary of Middlesex Water Company (“Middlesex”) a New Jersey Corporation and water utility providing water service to customers in New Jersey.

Middlesex provides operational support to Twin Lakes through a Service Agreement dated December 1, 2009.

On June 1, 2020, Middlesex issued a notice that it would terminate the Service Agreement effective September 1, 2020.

On July 22, 2020, John J. Gallagher filed a Notice of Appearance for Twin Lakes.

On July 23, 2020, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance.

On July 24, 2020, the OCA filed a Notice of Appearance.

A Prehearing Conference was held on July 27, 2020.

The OCA filed its Petition For Issuance of an Interim Emergency Order on an Expedited Basis ("Emergency Petition") on August 18, 2020, requesting that the Commission name Aqua as Receiver for the Twin Lakes system under Section 529 of the Public Utility Code, 66 Pa. C.S. § 529.

On August 19, 2020, Aqua filed a Notice of Appearance in the proceeding.

On August 19, 2020, a further Prehearing Conference was held, and Second Scheduling Order issued that same day directing parties to file any answers to OCA's Petition on August 20, 2020.

On August 20, 2020, Aqua filed an additional Notice of Appearance, entering the appearance of Michael W. Hassell and Garrett P. Lent as additional counsel for Aqua.

Also on August 20, 2020, Aqua, I&E and Twin Lakes each respectively filed an Answer to the Emergency Petition.

A telephonic evidentiary hearing regarding OCA's Emergency Petition was held on August 21, 2020.

A Briefing Order was issued on August 21, 2020.

Pursuant to the Briefing Order, the parties submitted post-hearing main briefs on August 24, 2020, and post-hearing reply briefs on August 25, 2020.

The ALJ issued the Order on August 28, 2020, and certified the following material question to the Commission pursuant to Sections 3.10(b) and 5.305 of the Commission's regulations, 52 Pa. Code §§ 3.10(b) and 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.

### **III. SUMMARY OF ARGUMENT**

The Order correctly recognized that an interim emergency order is an extraordinary remedy. The ALJ further correctly concluded that the OCA did not demonstrate that (a) the need for the relief it sought was immediate, (b) the injury would be irreparable if the relief OCA sought is not granted, and (c) the relief requested is not injurious to the public. Although Aqua submits that OCA similarly failed to demonstrate its right to relief is "entirely clear," OCA's failure to carry its burden of proof with respect to all four requirements set forth in Section 3.6(b) of the Commission's regulations warrants denial of the Emergency Petition.

As explained in this Brief and in the briefs to the ALJ, OCA's Emergency Petition does not request traditional injunctive relief that prohibits a party from taking actions that could alter the status quo. Rather, OCA's Emergency Petition—when filed—specifically sought preliminary injunctive relief that would require a non-party to the TLU Petition, Aqua, to take specific affirmative actions. While the ALJ determined that OCA did show that its right to relief is entirely

clear, Aqua submits that the fact that OCA seeks a mandatory preliminary injunction further supports the ALJ's Order denying it interim emergency relief.

The Order correctly concluded that the OCA has not shown that the need for the relief it seeks is immediate. The ALJ correctly concluded that the prospect of the September 1, 2020 termination of service was driven by Middlesex's voluntary decision to terminate the Service Agreement and the Commission should not indirectly reward Middlesex and Twin Lakes for creating the alleged "immediacy" at issue by granting the OCA's Emergency Petition.

Third, the Order correctly found that OCA did not demonstrate that irreparable injury would result if its specific relief is not granted. Indeed, Twin Lakes cannot simply turn off a switch and stop providing service to its customers, thereby violating its obligations under the Public Utility Code.

Finally, OCA did not show that the mandatory preliminary injunction it seeks is not injurious to the public interest. Importantly, the Order recognized that Aqua has had no opportunity to conduct normal due diligence or otherwise investigate and learn about the known and unknown risks associated with the Twin Lakes System. Such action would require Aqua to take on unknown risks associated with operating a troubled water system. And, in addition, the Order further recognized that the public interest could be injured by the establishment of precedent that it is acceptable for parent companies (such as Middlesex,) can divest themselves of unprofitable or difficult small systems by self-imposing a deadline by which emergency relief would be needed.

Therefore, and for the reasons more fully explained below, the Order should be affirmed by the Commission and the relief sought by the OCA's Emergency Petition should be denied at this time.

#### IV. ARGUMENT

An interim emergency order is an extraordinary remedy that can only be granted after a party meets several, “essential prerequisites.” See *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995, 1001 (Pa. 2003) (citations omitted); *Golden Triangle News v. Corbett*, 689 A.2d 974, 978 (Pa. Cmwlth. 1997) (citation omitted); *Schwartz v. Delaware & Hudson Rwy. Co.*, 2011 Pa. PUC LEXIS 1715, at \*12-13 (Order entered July 5, 2011) (citation omitted).

In order to justify this extraordinary relief, OCA must demonstrate all of the following elements: (1) the petitioner’s right to relief is clear; (2) the need for relief is immediate; (3) injury would be irreparable if relief is not granted; (4) relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b); see also *Summit*, 828 A.2d at 1001 (citations omitted); see also *Peoples Natural Gas Co. v. Pa. Pub. Util. Comm’n*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989). If the OCA fails to prove any one of the four requirements, the Commission will deny the relief requested. *Crums Mill Assoc. v. Dauphin Consolidated Water Supply Co.*, 1993 Pa. PUC LEXIS 90 (Order dated April 16, 1993); see also *County of Allegheny v. Commonwealth*, 544 A.2d 1305, 1307 (Pa. 1988) (“For a preliminary injunction to issue, every one of the[] prerequisites must be established; if the petitioner fails to establish any one of them, there is no need to address the others.”).

However, as explained in Aqua’s Post-Hearing Briefs, the Commission has explained that where the relief sought is “the performance of some positive or affirmative act”, a party “seeking a mandatory injunction is required to present a stronger case than that needed to warrant the granting of a restraining-type injunction.” *Crums Mill Associates, et al.*, 1993 Pa. PUC LEXIS 89, at \*10 (citing *Audenried v. Philadelphia R.R. Co.*, 68 Pa. 370 (Pa. 1871) and *Allen v. Colautti*, 417 A.2d 1303 (Pa. Cmwlth. 1980)). Indeed, “when a preliminary injunction contains mandatory provisions which will require a change in the positions of the parties, it should be granted even

more sparingly than one which is merely prohibitory.” *Zebra v. School Dist.*, 206 A.2d 748, 750 (Pa. 1972);<sup>1</sup> *see also* Aqua Post-Hearing MB at 7-10 (citing authorities).

As explained below, the Order correctly determined that the OCA has failed to satisfy all of the “essential prerequisites” necessary to demonstrate that it is entitled to preliminary injunctive relief. Therefore, and for the reasons more fully explained below, the ALJ correctly concluded that the Commission should not order Aqua to immediately act as the receiver for the Twin Lakes water system at this time.

**A. OCA FAILED TO DEMONSTRATE ITS RIGHT TO RELIEF IS CLEAR.**

The Order determined that OCA demonstrated its right to relief is clear. Order at 15, 18. The ALJ reasoned that OCA need only establish that the “underlying claim raises substantial legal questions.” Order at 15 (citing *Core Communications, Inc. v. Verizon Pennsylvania, Inc. and Verizon North LLC*, Docket No. P-2011-2253650 (Order entered Sept. 23, 2011) (“*Core*”) and *T. W. Phillips Gas and Oil v. Peoples Natural Gas*, 492 A.2d 776 (Pa. Cmwlth. 1985) (“*T.W. Phillips*”).

As explained in Aqua’s Post-Hearing Briefs, in order to find that OCA’s right to preliminary mandatory injunctive relief is clear, it must demonstrate that “the rights of the parties are entirely clear.” *McMullan*, 281 A.2d at 841 (quoting *Phila. Rec. Co. v. C.-M. News, Inc.*, 157 A. 796 (Pa. 1931)). Although Aqua agrees with the ultimate conclusion reached by the Order, it is important to note that the specific relief sought by OCA is distinguishable from the “restraining

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<sup>1</sup> The Supreme Court of Pennsylvania further recognized in *Zebra* that “Courts are further restrained, when dealing with matters of school policy, by the long-established and salutary rule that the courts should not function as super school boards.” *Zebra*, 206 A.2d at 750. This principle is analogous to long-standing precedent that recognizes the Commission “is not empowered to act as a super board of directors for the public utility companies of this state.” *See, e.g., Metropolitan Edison Co. v. Pa. Pub. Util. Comm’n*, 437 A.2d 76, 80 (Pa. Cmwlth. 1981). Here, the relief sought by OCA would require to Commission to impermissibly act in this role by mandating Aqua to take over the operation of the Twin Lakes water system, prior to conducting normal and reasonable due diligence of the system and allowing its management to evaluate the known and unknown risks associated with the system.

type” injunctions sought in both *Core* and *T.W. Phillips*. These distinctions further support the Order’s decision to decline the relief sought by OCA.

In its Emergency Petition, OCA specifically sought relief that would require Aqua to perform “some positive or affirmative act.” *See Aqua Post-Hearing MB* at 7-11. In *Core*, the specific relief sought and granted was the restriction of Verizon’s ability to cease payments under interconnection agreements with Core, and payment of certain invoices subject to refund. *See Core*, at 2, 20. Importantly, the “status quo” in *Core* prior to the institution of the complaint was the payment of these amounts to Core by Verizon. Similarly, in *T.W. Phillips*, the injunction at issue sought to enjoin “further activities in connection with the construction of a pipeline via public rights-of-way.” *See T.W. Phillips*, 462 A.2d at 778. Indeed, in each of these instances, the injunction sought attempted to “restrain” the activities of a party, rather than mandate affirmative action by a party. *See Crums Mill Associates, et al.*, 1993 Pa. PUC LEXIS 89, at \*10. The Commission has recognized that the latter relief requires an “even stronger case” and, therefore, cannot be simply satisfied by OCA raising substantial legal questions as the Order concludes.

For these reasons, Aqua submits that OCA has failed to demonstrate its right to relief is “entirely clear” in this case. Although Aqua recognizes and supports the Order’s conclusion that OCA did not carry its burden of proof regarding the remaining three requirements set forth in Section 3.6(b), Aqua submits that the reasons set forth above and in its Post-Hearing Briefs further demonstrate the OCA is not entitled to the preliminary injunction sought by the Emergency Petition should be denied at this time.

**B. THE ORDER CORRECTLY CONCLUDED THAT THE OCA FAILED TO DEMONSTRATE THAT THE NEED FOR RELIEF IS IMMEDIATE.**

The Order correctly concludes that the alleged need for relief is not immediate because the genesis of the complained of September 1, 2020 termination deadline was established by

Middlesex’s voluntary decision to terminate the Service Agreement. Order at 21. Indeed, the Order correctly recognized that:

Middlesex could have issued its 90-day notice of intent to terminate service on July 1<sup>st</sup>, August 1<sup>st</sup>, 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 an interim receiver... would be alleviated.”

Order at 22-23 (citing Tr. 139-140).

Moreover, the need for the specific, mandatory relief sought by OCA, i.e., the appointment of Aqua as a receiver of the Twin Lakes system, is not immediate. The Order appropriately recognized that the answer to the termination problem “is not to force Aqua to take over the case as a receiver with just a few days’ notice.” Order at 23. The “immediate challenges with the Twin Lakes system are not ones that can be immediately resolved with financial resources,” and Aqua lacks the knowledge of the system that Twin Lakes currently possesses. *See* Order at 23.

As the OCA has failed to show the need for the mandatory preliminary injunction sought by the Emergency Petition is immediate, the Emergency Petition should be denied at this time.

**C. THE ORDER CORRECTLY CONCLUDED THAT OCA FAILED TO DEMONSTRATE THE ALLEGED INJURY WOULD BE IRREPARABLE IF RELIEF IS NOT GRANTED.**

The Order also correctly held that OCA failed to demonstrate irreparable harm would result if the mandatory preliminary injunction it seeks is not granted. Order at 30. Although Aqua understands the need to ensure continuous water service to the customers served by the Twin Lakes system to avoid critical health and safety concerns for Twin Lakes’ customers, the ALJ properly concluded that it would be unreasonable to require Aqua to take over as a receiver on an interim emergency basis. Order at 29. Indeed “denying the petition and requiring Twin Lakes to continue to operate the system on an interim basis would minimize the irreparable injury more so than

granting the petition and forcing Aqua to take over the system in three days.” Order at 29.<sup>2</sup>

The Order also relied on the testimony of Aqua witness Mr. Steve Clark, who testified that Aqua would not be able to conduct necessary due diligence on three-days notice. Order at 30. As such, requiring Twin Lakes to continue operating the system with its years of knowledge and experience will cause less harm than requiring Aqua to operate the system without such knowledge. Order at 30. Moreover, Aqua notes that OCA has not shown that Middlesex and Twin Lakes are incapable of providing the necessary technical, financial and legal support to operate the Twin Lakes system. (Tr. Tr. 85, 105.) Rather, service will only cease on September 1, 2020, because Middlesex has voluntarily attempted to relieve itself of the operation and financing of Twin Lakes by terminating the Service Agreement between them. (Tr. 107, 139-140.) It is to be emphasized that no evidence was offered to demonstrate Middlesex is incapable of fulfilling its

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<sup>2</sup> Although the ALJ’s Order did not directly address the merits of the alternative proposal set forth in Aqua’s Post-Hearing Main Brief, it recognized that this alternative exists. Order at 29 (... “or Aqua could takeover by January 1, 2021 under its alternative proposal.”). Aqua’s alternative proposal is summarized as follows:

if the ALJ and the Commission determines that an injunction should issue to continue the provision of water service to Twin Lakes’ customers, it should issue a traditional, prohibitive injunction that prohibits Middlesex and Twin Lakes from terminating water service to their customers, subject to the following conditions:

- Middlesex and Twin Lakes are prohibited from terminating service to the customers served by the Twin Lakes system during the pendency of the proceeding at Docket No. P-2020-3020914;
- Middlesex and Twin Lakes are prohibited from terminating the Service Agreement between them until at least January 1, 2021;
- Aqua shall be provided until at least January 1, 2021, to complete normal due diligence and conduct a reasonable investigation of the Twin Lakes system and consider making a recommendation to its management regarding whether Aqua should voluntarily act as a receiver. During this period, Aqua will provide the Commission with regular status reports regarding its due diligence efforts, and Middlesex and Twin Lakes will fully cooperate with Aqua in its investigation of the system;
- On January 4, 2021, Aqua will file a letter with the Commission indicating whether it will agree to voluntarily act as the receiver of the Twin Lakes system during the pendency of the Docket No. P-2020-3020914; and
- The Commission shall stay all proceedings and pending filings associated with Docket No. P-2020-3020914 until January 4, 2021.

Aqua Post-Hearing MB at 20-21.

responsibilities under the Service Agreement and as the owner of Twin Lakes. Therefore, the specific relief sought by OCA is not necessary to avoid the alleged harms.

For these reasons, the Order correctly held that OCA has failed to demonstrate that irreparable harm would if the specific relief sought by the Emergency Petition is not granted.

**D. THE ORDER CORRECTLY CONCLUDED THE REQUESTED RELIEF WOULD BE INJURIOUS TO THE PUBLIC INTEREST.**

The Order finally concluded that the relief sought by OCA's Emergency Petition would be injurious to the public interest. Order at 34. The Order correctly highlighted two problems with the OCA's specific relief: (1) the relief sought would injure the public interest by requiring Aqua to take on unknown risks associated with operating the system; and (2) the relief sought, if granted, would establish unreasonable precedent that would permit water system owners and operators to simply walk away from providing service to customers. *See* Order at 34-35.

Regarding the first problem, the Order specifically recognized that "the public interest would be injured if the petition is granted because of the unknown risks Aqua would face in taking over a troubled water system that it is not familiar with without being able to perform its due diligence." Order at 35. Aqua presented un rebutted testimony that, if it were required to immediately act as a receiver, it would be forced to take on more "unknown risks" than it would otherwise under normal circumstances, which was recognized and credited by the Order. (*See* Tr. 117, 122.) Aqua witness Mr. Clark explained that, when Aqua is appointed as a receiver for a small water system, it becomes the custodian for the financial, regulatory and operational affairs of the water system, and becomes responsible for the safe and reliable provision of water service to the customers connect to that system. (Tr. 115.) Indeed, once Aqua is appointed a receiver, it faces the same service expectations and obligations from DEP and the Commission as if it were

the owner of the system. (Tr. 117.) As such, before Aqua is appointed as a receiver, it conducts essential due diligence and customer communication and outreach, to investigate and learn about the water system.<sup>3</sup> (See Tr. 116-118.)

With respect to its due diligence efforts, Aqua conducts site visits, water quality sampling and environmental site assessments. (Tr. 115-116.) It also conducts numerous document reviews, including: reviews of the water systems files (to the extent they are available); full reviews of DEP files regarding the water system; and review of financial statements. (Tr. 115-116.) In addition, Aqua develops a capital and expense budget plan, in order to hit the ground running in addressing any problems facing the system. (See Tr. 116.) With respect to its customer communication and outreach efforts, Aqua regularly sends pre-receivership notices to customers and meets with customers in advance. (Tr. 116.) Aqua does this to learn firsthand about the issues faced by the water system's customers. (Tr. 116-117.)

This entire process takes approximately 90 days under normal operating circumstances. (Tr. 117.) However, the COVID-19 pandemic presents specific, additional hurdles to completing these due diligence efforts, including the inability to conduct a full DEP file review. (Tr. 117, 119-120.)

Aqua has not yet conducted normal and reasonable due diligence, and will have no opportunity to do so prior to becoming involved with the Twin Lakes system if OCA's Emergency Petition is granted. Mr. Clark explained:

Q. And in your opinion, if Aqua were appointed as a receiver for Twin Lakes prior to completing its normal due diligence process and normal customer outreach and communication process, would Aqua

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<sup>3</sup> Although Aqua might voluntarily act as a receiver in a true emergency situation where the present owner ceased to exist or was incapable of providing safe and reliable service to customers, that does not appear to be the case here. (Tr. 117-118, 129.) Middlesex remains financially and technically capable of operating the Twin Lakes System. (Tr. 85, 105, 118.) Rather, in Mr. Clark's opinion, it appears that the current owner has simply filed the TLU Petition in an effort to eliminate a financially poor performing segment of their overall business. (Tr. 118.)

be forced to take on more unknown risks than it would under normal circumstances?

A. Yes.

Q. And why is that?

A. Well, without the information that would be obtained through a thorough due diligence, we have to assume that the risk potentials have been fully communicated by the current owner.

Again, I refer back to the notice of termination and the final operational support letter that Middlesex provided to PUC. In that letter they said that soon after beginning to operate the system it became apparent that the condition of this asset was significantly poorer than represented by the former owner had been visible in the inspection and assessment that was part of their due diligence.

So, in their own words, accepting receivership in advance of completing due diligence would be a potential repeat of that mistake; and we just don't want to find ourselves in the same position as Middlesex making a decision maybe without having all the information.

(Tr. 122-123 (emphasis added).) Without being able to obtain this information, there is a substantial risk that Aqua could be placed into a position that perpetuates the same mistakes made by the prior ownership.<sup>4</sup> (Tr. 123.) It is simply not in the public interest to place Aqua, as a receiver, in a position where it is at risk of perpetuating the mistakes of past ownership.

In addition, Mr. Clark explained that Aqua has a responsibility to its shareholders and existing customers to make prudent business decisions and knowingly take on risks. (Tr. 123-124.) The relief sought by OCA would frustrate these responsibilities by forcing Aqua to make specific business decisions with more unknown risks than normal circumstances.<sup>5</sup> (Tr. 124.)

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<sup>4</sup> The due diligence conducted by Twin Lakes appears to have been limited from a visible inspection of aboveground facilities. (Tr. 123.) In addition, Twin Lakes admitted Middlesex was not aware of the physical condition of the Twin Lakes system when it purchase it and that Middlesex purchased the system without knowing its actual condition. (Tr. 105.)

<sup>5</sup> As explained in footnote 1, *supra*, the relief sought by OCA would require to Commission to impermissibly mandate a specific business decision by Aqua, i.e., to take over the operation of the Twin Lakes water system, which would subordinate the independence of Aqua's management to evaluate the known and unknown risks of the Twin Lakes system prior to becoming responsible for its operation.

Although OCA asserted that its proposed relief would reasonably protect Aqua from these risk (see OCA Post-Hearing MB at 24-25), its proposal does not ultimately insulate Aqua, Aqua's shareholders or Aqua's existing customers from the risks associated with immediate responsibility for and operation of the Twin Lakes system. (See Tr. 122-123 (Aqua witness Mr. Clark identifying additional risks Aqua would face if immediately appointed receiver).) As explained by Aqua, OCA's proposal does not include a right to recover expenses associated with the Twin Lakes' system, which ultimately results in Aqua's existing customers paying for OCA's proposal. Aqua Post-Hearing RB at 8-9. Moreover, if Aqua is appointed as a receiver without having the opportunity to conduct reasonable due diligence, and adverse events occur under Aqua's management that result from lack knowledge or information regarding the Twin Lakes system, neither OCA's proposal nor the Public Utility Code would absolve Aqua of the costs incurred if it were sued. Rather, as explained by Mr. Clark, Aqua would be treated as the owner and operator of the system and be subject to the same duties, obligations and risks. (Tr. 115, 117.)

Finally, Mr. Clark explained that the fact that the current owner and operator of the system remains capable of providing adequate service further complicates this matter. Unquestionably, Middlesex and Twin Lakes have more knowledge of the system and all of the associated risks and problems than Aqua does. (Tr. 123.) As such, it is not reasonable to substitute the current system operator with another that knows less about the system. Such an action does nothing to improve the current situation for current customers. (Tr. 124 ("That action really wouldn't do anything to improve the current situation for the customers.") and 136.)

For all of these reasons, Mr. Clark explained that Aqua is willing to participate in the Section 529 process if the Commission determines to begin such a proceeding, but that OCA's Emergency Petition simply seeks to implement the ultimate outcome of that process too fast.

Indeed, Aqua simply needs to time conduct normal due diligence and customer outreach efforts, prior to making a recommendation to its management team as to whether it will agree to voluntarily act as the receiver for the Twin Lakes system. (Tr. 131-132, 137.) As explained in footnote 2, *supra*, providing Aqua that opportunity best balances and protects the interests of all parties to this proceeding.

With respect to the second problem, the Order also recognized that the actions taken by Twin Lakes and Middlesex were unreasonable, and precedent that permits such actions would injure the public. Order at 34. I&E correctly noted that there are unknown consequences of allowing capable owner/parent to simply walk away from its obligations under Section 529. I&E Post-Hearing MB at 12. A decision which permits one capable owner/parent to walk away from its public utility service obligations under the guise of a Section 529 proceeding, could subject other, larger capable water utilities across the state to the increased risks associated with the operation small water systems prior to conducting necessary and reasonable due diligence. *See* Aqua Post-Hearing MB at 17-20 (describing the additional unknown risks that OCA's requested relief would force upon Aqua, its shareholders and its existing customers).

For all of the reasons explained above, the Order correctly concluded that OCA has not demonstrated that its requested mandatory preliminary injunction, which would require Aqua to immediately take over the operation of the Twin Lakes system as its receiver, is not injurious to the public interest.

## **V. STAY OF THE PROCEEDING**

Under Section 5.305(c), parties writing a Responsive Brief to an Interim Emergency Order and Certification of Material Question must address whether a stay of the proceedings is required to protect the substantial rights of a party. 52 Pa. Code § 5.302(c); *see* 52 Pa. Code § 3.10(b) (stating the procedures applicable to interlocutory review of a material question certified by a

presiding officer apply to the Commission's review of an interim emergency order). Aqua does not believe that a stay of the proceedings is appropriate in order to protect the substantial rights of the parties and other affected entities. Therefore, Aqua requests that the Commission immediately affirm the Order and deny the OCA Emergency Petition.

**VI. CONCLUSION**

WHEREFORE, Aqua Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission: (1) affirm the Order of the Deputy Chief Administrative Law Judge Joel H. Cheskis dated August 28, 2020; (2) answer the material question set forth therein in the affirmative; and (3) deny the Petition of the Office of Consumer Advocate For Issuance Of An Interim Emergency Order On An Expedited Basis at this time.

Respectfully submitted,



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