

John and Donna Hersca
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December 28, 2020

SENT VIA EMAIL to RCHIAVETTA@PA.GOV and VIA EFILING

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

RE: John & Donna Hersca v. Twin Lakes Utilities, Inc.
Docket No. C-2020-3020883
Exceptions of John & Donna Hersca

Dear Secretary Chiavetta:

Attached for electronic filing please find our, John and Donna Hersca's, Exceptions and Certificate of Service in the above-referenced proceeding.

Copies have been served per the attached Certificate of Service.

Sincerely,



Donna Hersca
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Email: donnahersca@yahoo.com

Enclosures

cc: The Honorable Joel Cheskis, ALJ (via email: jcheskis@pa.gov)
Jay L. Kooper, Esq. (via email: jkooper@middlesexwater.com)
Office of Special Assistants (via email: ra-OSA@pa.gov)

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

John & Donna Hersca

v.

Twin Lakes Utilities, Inc.

:
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: Docket No. C-2020-3020883
:
:

CERTIFICATE OF SERVICE

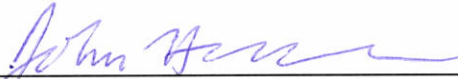
We, John Hersca and Donna Hersca, hereby certify that we have on December 28, 2020 served a true copy via email of the Exceptions of John Hersca and Donna Hersca upon the participants listed below in accordance with the requirements of 52 Pa. Code, Section 1.54 (relating to service by a participant):

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Date: 12/28/20

BEFORE THE PENNSYLVANIA PUBLIC UTILITY COMMISSION

John & Donna Hersca

v.

Twin Lakes Utilities, Inc.

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Docket No. C-2020-3020883

EXCEPTIONS OF JOHN AND DONNA HERSCA

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I. INTRODUCTION

On December 10, 2020, the Public Utility Commission's (Commission) Office of Administrative Law Judge issued the Initial Decision (I.D.) of Deputy Chief Administrative Law Judge (ALJ) Joel H. Cheskis regarding John and Donna Hersca's (the Herscas) formal complaint the Herscas filed against Twin Lakes Utilities, Inc. (Twin Lakes or the Company) regarding their claim of Twin Lakes charging the Herscas unreasonable and unjust rates for their water bills and the Herscas' claim requesting reimbursement for money which the Herscas paid out of pocket due to lead found in the community water where they live. The ALJ denied and dismissed the Herscas' formal complaint as it was the ALJ's opinion that the Herscas failed to satisfy their burden of demonstrating that the water company violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the Company regarding the rates charged or the quality of the water. The Herscas disagree and object to the ALJ's Initial Decision and, for the reasons set forth below, the Herscas respectfully request a reversal of the Initial Decision and a finding in favor of the Herscas regarding the Herscas' claims.

II. EXCEPTIONS

HERSCAS' EXCEPTION #1: The ALJ erred by misrepresenting and not allowing the Herscas' legitimate claim against Twin Lakes Utilities of being charged by TLU illegally high, unreasonable and unjust water rates that are in violation of Chapter 13. Title 66 – Public Utilities, Section 1301 by erroneously concluding that the Herscas were only allowed to be heard at the October 6, 2020 telephonic hearing on an unrelated, non-issue of determining whether the Herscas' bill was correctly calculated by TLU.

The ALJ erred by denying the Herscas' claim that Twin Lakes was, is, and continues to charge outrageously unreasonable and unjustly high water rates in clear violation of 66 Pa. C.S. Section 1301 by concluding that the only appropriate time for the Herscas to have raised issues regarding the level at which TLU's rates are set and whether those rates comply with the Public Utility Code and all applicable statutes and precedent was during the rate case proceeding that concluded with the Commission's order entered March 26, 2020 to docket R-2019-3010958. In Exhibits 3 and 6 from the Herscas' List of Hearing Exhibits which the Herscas provided to the parties prior to the Herscas' October 6, 2020 telephonic hearing, the Herscas set forth the outrageously high and unreasonable and unjust water rates that Twin Lakes is and continues to charge them, which includes the Herscas' last quarterly bill dated September 21, 2020 in the **outrageously unreasonable high amount of \$572.85 for only 8,228 gallons of water** the Herscas used from June 27, 2020 to September 19, 2020.

However, the ALJ did not take into account the Herscas' prior informal comments that they filed with the PUC on August 19, 2019, the prior Informal Complaint the Herscas filed on August 20, 2019, and the prior public input hearing the Herscas' attended and testified at on October 17, 2019 in this matter in lieu of attending the previous water rate hearing (Docket R-2019-3010958) which was an inconvenient, oppressively far venue/forum (forum non conveniens). The Herscas live at 110 Sagamore Road, Shohola, Pa., and the prior water rate hearing which was held in Harrisburg, Pennsylvania is approximately 174 miles away from where the Herscas live (approximately 2 hours and 40 minutes one way). This made the hearing venue a forum non conveniens for the Herscas since it was an oppressively unreasonable and

inconvenient venue for a hearing for water customers such as the Herscas to travel to due to it being too far away to reasonable travel to. Therefore, the Herscas were forced to oppose the unreasonable, unjust water rates of Twin Lakes by utilizing different legitimate options approved by the Commission so they filed an informal complaint against Twin Lakes on August 20, 2019, filed informal comments against Twin Lakes on August 19, 2019, and testified in person on October 17, 2019 at the public input hearing which was held at a reasonable and convenient location at the Shohola Township Municipal Building in the Herscas' home town in Shohola, Pa. These were all options legally approved and accepted by the Commission and given to the Herscas and other water customers by the Commission as set forth on the Commission's web site at www.puc.pa.gov. The Commission and Twin Lakes knew and/or should have reasonably known that the last prior water rate hearings, including the one that was held regarding docket R-2019-3010958, were oppressively unreasonable and inconvenient venues for a hearing because Twin Lakes conducts business in Shohola, Pa. and that is where the Herscas and other Pennsylvania water customers live and receive public water and water service from Twin Lakes. See Cheeseman v. Lethal Exterminator, Inc., 701 A.2d 156 (Pa. 1997) in which the Court noted that the distance that parties or witnesses would have to travel was deemed to be an important consideration in determining that the chosen venue was oppressive.

The ALJ, in its Initial Decision dated December 10, 2020, additionally erred by relying on only the last prior water rate hearing as the only venue where the ALJ felt the Herscas had the opportunity to set forth their water rate claim when, in fact, Twin Lakes has been overcharging the Herscas unreasonable and unjust waters in violation of 66

Pa. C.S. Section 1301 since September, 2016 (see Herscas' Exhibit 6 and the Herscas' List of Exhibits from the October 6, 2020 telephonic hearing), which additionally resulted in price gouging in violation of the Price Gouging Act of October 31, 2006, P.L. 1210, No. 133, especially since Twin Lakes started charging the Herscas even higher and more unjust and unreasonable rates during an international pandemic with COVID19. In Pennsylvania, price gouging is set as a violation under the law of unfair or deceptive trade practices. This shocks the conscience of water customers such as the Herscas when a public utility takes such an unfair advantage of its water customer by charging exorbitant prices for water which is a necessity. In Pennsylvania, price gouging is set as a violation under the law of unfair or deceptive trade practices.

Additionally, the ALJ's conclusion on page 11 of his Initial Decision dated December 10, 2020 wherein he stated that "the appropriate time for the Herscas to raise issues regarding the level at which Twin Lakes' rates are set and whether those rates comply with the Public Utility Code and all applicable statutes and precedent was during the rate case proceeding that concluded with the Commission's order entered March 26, 2020" is wholly without merit and a bald assertion as the ALJ cites no law in support of this. See Rivera v. Phila. Gas Works, Docket No. C-2010-2164222 (Order entered January 12, 2012); *citing* Pa. Bureau of Corrs. V. City of Pittsburgh, 516 Pa. 75, 532 A.2d 12 (1987) setting forth that bald assertions, personal opinions or perceptions do not constitute evidence.

Therefore, for the reasons stated above, the ALJ erroneously barred the Herscas from presenting their legitimate water rate claim at the October 6, 2020 telephonic hearing and erred by only allowing and considering testimony and/or evidence

pertaining to an unrelated, non issue of whether Twin Lakes improperly billed the Herscas throughout the hearing in this above matter regarding this case of docket number C-2020-3020883. As a result, the Herscas' claim requesting compensation in the amount of \$3,447.00 for monies they overpaid to Twin Lakes since September, 2016 should not have been denied and dismissed by the ALJ.

HERSCAS' EXCEPTION #2: The ALJ erred by incorrectly interpreting Section 1301, which states in subsection (b) that the Commission must employ an imputed capital structure of comparable public utilities providing water service, when the ALJ denied the Herscas' comparable statistical comparison of the rates charged by Twin Lakes to the rates charged by other similar water companies throughout the state and throughout the country.

The ALJ erred by concluding on page 11 of his Initial Decision that "Mrs. Hersca's comparison of the rates charged by Twin Lakes to the rates charged by other water companies throughout the state and throughout the country is also without merit." To the contrary, in Herscas' hearing Exhibit No. 7 submitted in this matter, which contained Title 66 – Public Utilities, Chapter 13, Section 1301 – Rates to be Just & Reasonable, it states and mandates under subsection (b) the following: "Municipal corporations. – In determining a just and reasonable rate furnished or rendered by a municipal corporation or by the operating agencies of a municipal corporation providing public utility water or wastewater service beyond its corporate limits, the **commission shall employ an imputed capital structure of comparable public utilities providing water or wastewater service.**" (Emphasis added). Donna Hersca, who has a Juris Doctor Degree and specializes in data research, presented sufficient proof in keeping with this section 1301 when she submitted in her/the Herscas' list of hearing exhibits for the October 6, 2020 telephonic hearing as Exhibit 5 to all the parties supporting

statistical research proving that the national and state average monthly water bill is \$40.00 per month, which also included a sample printout of average monthly rates from the PA Office of Consumer Advocates which showed average monthly water bills from comparable companies that were lower than \$40.00 per month average water rates, and compared these to the Herscas' last quarterly water bill which is an astoundingly outrageously high amount of \$572.85 (which is \$191.00 per month!)! The Commission, at the prompting of Twin Lakes, breached the very law that they are supposed to be upholding by instead of charging reasonable and just rates as mandated by Section 1301 they are making up their own rules as they go along as opposed to remaining within the guidelines of Section 1301.

Additionally, the ALJ further erred by not taking into consideration that, if Twin Lakes had issues of supply, production, distribution, competition, etc. as referred to on page 15 of the ALJ's Initial Decision dated December 10, 2020, Twin Lakes had further violated Section 1301 by shifting their financial burden to the water customers/the Herscas to the point where the water rates became unjust and unreasonable.

Therefore, for the reasons stated above, since the ALJ erroneously concluded that the Herscas' comparison of water rates by similar water companies is without merit, the Herscas' claim requesting compensation in the amount of \$3,447.00 for monies they overpaid to Twin Lakes since September, 2016 should not have been denied/dismissed by the ALJ.

HERSCAS' EXCEPTION #3: The ALJ erred by dismissively referring to the Herscas' legally supported claims as "bald assertions" and by not looking at and considering all of the case law and statutes cited and presented by the Herscas as well as all of the legitimate, statistical evidence/proof the Herscas' submitted in this case.

The ALJ erred by concluding in his Initial Decision that "Mrs. Hersca has failed to present sufficient evidence that Twin Lakes is charging her anything other than Commission-approved rates." This argument is wholly without merit for the reasons stated above in the Herscas' Exception #1 and for the reasons set forth in the Herscas' filings and exhibits submitted and filed in this matter since the Commission previously approved rates deriving from a hearing which had an oppressively unreasonable and inconvenient venue due to it being too far away for the Herscas and other water customers to reasonably travel to (a forum non conveniens) which is the reason in part why the Herscas brought this action standing alone and notwithstanding the prior forum non conveniens water rate hearings. The ALJ's conclusion claiming the Herscas' claims are "bald assertions" is also without merit since the Hersca's filings in this case and the Herscas' List of Hearing exhibits presented in this matter at the October 6, 2020 telephonic hearing set forth the relevant statutes and case law in support of each of their/the Herscas' claims, which included the following statutes, legal references and case law: (1) 66 Pa. C.S. Section 1301 (Rates to be Just and Reasonable); (2) Title 66 – Public Utilities, Chapter 13, Section 1312 (pertaining to refunds); (3) 66 Pa. C.S.A. Section 526; (4) Market St. R. Co. v. Railroad Comm'n of California, 324 U.S. 548 (1945) (case law in support of the Herscas' unjust and unreasonable water rate claim against Twin Lakes); (5) Federal Power Commission v. Hope Natural Gas Co., 320 U.S. 591, 603 (1944) (case law in support of the Herscas' unjust and unreasonable water

rate claim against Twin Lakes); and (6) "Before the Pennsylvania Public Utility Commission - A Guide to Utility Ratemaking" by James H. Cawley and Norman J. Kennard (2018 Edition). These, coupled with all of the proof from the Herscas' list of hearing exhibits, including but not limited to Exhibits 3, 4, 5, and 6, which the Herscas presented at the October 6, 2020 telephonic hearing, were sufficient evidence. The Herscas have clearly satisfied their burden of proving their claims by a preponderance of the evidence throughout this case. Additionally, as set forth herein and throughout the Herscas' case, it is clear that Twin Lakes' unsubstantiated responses and the decision of the Commission in this case were not supported by substantial evidence as required by 2 Pa.C.S. Section 704.

Therefore, for the reasons stated above, since the ALJ erroneously concluded that the Herscas' failed to present sufficient evidence that Twin Lakes is charging them anything other than Commission-approved rates and erroneously referred to the Herscas' proof and supporting law as just "opinions" and "bald assertions", the Herscas' claim requesting a refund in the amount of \$3,447.00 for monies they overpaid to Twin Lakes since September, 2016 should not have been denied and dismissed by the ALJ. Additionally, the ALJ erred by not taking into consideration the fact that Governor Wolf granted to Twin Lakes a Water Infrastructure Grant in the amount of \$4,660,027.00 to replace the entire water distribution system from which the Herscas received water and water service, which Twin Lakes wrongfully refused to accept in bad faith, all to the financial detriment of the Herscas and the other Twin Lakes water customers.

HERSCA'S EXCEPTION #4: The ALJ erred by stating and concluding that the Herscas misconstrued the DEP lead notice Twin Lakes mailed to the Herscas when the ALJ erroneously stated there were no statements in the notice indicating that the Herscas must buy bottled water when, in fact, the notice clearly states the Herscas **should** buy bottled water.

The ALJ erred in concluding on page 13 of his Initial Decision dated December 10, 2020 that the DEP lead notice that Twin Lakes mailed to the Herscas (see Herscas' Exhibit 10 from the October 6, 2020 telephonic hearing) does not contain statements that the Herscas must buy bottled water. This is clearly false since, to the contrary, the DEP notice *clearly* states under #4 of its heading "Steps You Can Take to Reduce Exposure to Lead in Water" as follows: "4. Look for alternative sources or treatment of water. ***You may want to consider purchasing bottled water*** or a water filter." (Emphasis added). Any reasonable water customer who reads this would understand that in order to avoid potential lead poisoning they would have to follow the instructions set forth in the DEP's lead notice, specifically the instruction in #4 above, which Twin Lakes sent to the Herscas. Therefore, to avoid potential lead poisoning, the Herscas did not drink the water provided by Twin Lakes but instead bought and paid out-of-pocket for bottled water from the store, which thereby caused the Herscas' to incur additional out-of-pocket expenses in the amount of \$ 1,200.00 as of September 24, 2020 (the date the Herscas submitted their list of hearing exhibits to the parties for the October 6, 2020 telephonic hearing) due to no fault of their own and all to their financial detriment (see the Herscas' Exhibit No. 6 from the October 6, 2002 telephonic hearing).

Therefore, for the reasons stated above, since the ALJ erroneously concluded on in his Initial Decision dated December 10, 2020 when he stated the Herscas' failed to satisfy their burden with regard to the water quality provided by Twin Lakes, the

Herscas' additional claim herein requesting a refund in the amount of \$1,200.00 for monies they had to pay out-of-pocket for bottled water from the store as of September 24, 2020 should not have been denied and dismissed by the ALJ.

III. CONCLUSION

Based on the foregoing and for the reasons articulated in the Herscas' Formal Complaint, Answer to Twin Lakes' Motion for Summary Judgment, and the Herscas' List of Hearing Exhibits filed and presented in this case to docket C-2020-3020883, Twin Lakes clearly failed to establish a defense in this case based upon substantial evidence and therefore the Herscas respectfully request: (1) That the Herscas' Exceptions be granted and that the Herscas' positions as discussed above and throughout this case be adopted; (2) That the December 10, 2020 Initial Decision of the ALJ be denied/reversed; and (3) that the Herscas' request for compensation/damages from the defendant, Twin Lakes Utilities, in the amount of \$4,647.00 be granted and that Twin Lakes Utilities be ordered to pay said compensation to the Herscas.

Respectfully submitted,



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