

TWIN LAKES
UTILITIES, INC.

A Middlesex Water Company Affiliate

January 4, 2021

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

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

Dear Secretary Chiavetta:

Enclosed for filing on behalf of Twin Lakes Utilities, Inc. ("Twin Lakes") is the Reply Exceptions filed in response to the Exceptions filed by Complainants John & Donna Hersca in the above-referenced docket.

Twin Lakes files these Reply Exceptions with the Commission and promulgates service on the parties set forth in the enclosed Certificate of Service electronically consistent with the Commission's Emergency Order issued on March 20, 2020 in Docket No. M-2020-3019262 and the December 11, 2020 Notice of Exceptions issued in the above-referenced docket. Please let me know of additional questions or concerns at jkooper@middlesexwater.com.

Very truly yours,



Jay L. Kooper
Secretary
Twin Lakes Utilities, Inc.

cc: Certificate of Service
Office of Special Assistants: ra-OSA@pa.gov

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

John & Donna Hersca

v.

Twin Lakes Utilities, Inc.

Docket No. C-2020-3020883

**REPLY OF TWIN LAKES UTILITIES INC. TO
THE EXCEPTIONS OF JOHN AND DONNA HERSCA**

Twin Lakes Utilities, Inc. (“Twin Lakes” or “the Company”), hereby replies to the Exceptions filed by John and Donna Hersca (collectively, “the Herscas” or “Complainants”) on December 28, 2020 pursuant to Section 5.535 of the Pennsylvania Public Utility Commission’s (“Commission”) regulations, 52 Pa. Code §5.535. As further detailed herein, the Commission should deny the Complainants’ Exceptions, affirm and adopt the Initial Decision¹ in its entirety, sustain the dismissal of the Formal Complaint with prejudice, and mark the proceeding at Docket No. C-2020-3020883 as closed. The findings of fact and conclusions of law set forth in the well-reasoned Initial Decision issued by Deputy Chief Administrative Law Judge Joel H. Cheskis (“Judge Cheskis”) are based on robust record evidence and support dismissal of the Formal Complaint.

PROCEDURAL HISTORY

On July 16, 2020, Complainants filed a Formal Complaint with the Commission against Twin Lakes. In their Complaint, the Herscas averred that they opposed Twin Lakes’ rate and amount billed to them because it was illegal and unjust and in violation of the Public Utility

¹ *John & Donna Hersca v. Twin Lakes Utils., Inc.*, Docket No. C-2020-3020883, Initial Decision (Dec. 10, 2020) (“Initial Decision”).

Code. The Herscas also averred that they do not even drink the water and therefore have to spend even more money out of pocket buying bottled water since the water in their community tested positive for high levels of lead. The Complainants requested that their rate be reduced and that they be refunded for the past monies they have overpaid.

On July 27, 2020, Twin Lakes filed an Answer to the Formal Complaint. In its Answer, Twin Lakes admitted that it provided water service to the Herscas. Twin Lakes stated, however, that the rate and the amount billed by Twin Lakes to the Herscas were calculated pursuant to the Commission's most recent order approving Twin Lakes' rates ("Twin Lakes Rate Order").² Twin Lakes also denied the relief requested by the Herscas, and requested that the Formal Complaint be dismissed in its entirety with prejudice.

On July 30, 2020, the Commission issued a hearing notice establishing an initial telephonic hearing in this matter for October 6, 2020 and assigning Judge Cheskis as the presiding officer.

On August 4, 2020, Twin Lakes filed a Motion for Summary Judgment. In its motion, which was accompanied by a notice to plead, Twin Lakes argued that there is no genuine issue of material fact and the Formal Complaint "constitutes no more than a backdoor attempt to re-litigate the Commission's recently concluded rate case."³ On August 18, 2020, the Herscas filed an Answer to the Motion for Summary Judgment filed by Twin Lakes. In their answer, the Herscas argued that Twin Lakes' motion should be denied because there are genuine issues of material fact that qualify for proceeding to an evidentiary hearing.

² *Pa. Pub. Util. Comm'n v. Twin Lakes Utils., Inc.*, Docket No. R-2019-3010958, Opinion and Order (Mar. 26, 2020) ("Twin Lakes Rate Order").

³ *John & Donna Hersca v. Twin Lakes Utils., Inc.*, Docket No. C-2020-3020883 Motion for Summary Judgment (Aug. 4, 2020) at 1.

On September 15, 2020, Judge Cheskis issued an Order Denying Twin Lakes' Motion For Summary Judgment. In this Order, Judge Cheskis agreed with Twin Lakes' position that any attempt by the Herscas to re-litigate the specific rates approved by the Commission in the Twin Lakes Rate Order was untimely and barred under the doctrine of *res judicata*:

In particular, the Herscas averred that both the rate and the amount billed are illegal. Twin Lakes is correct that the specific rates established by the Commission in the most recent rate base case have been legally determined and are valid and binding. The Herscas had notice and an opportunity to be heard regarding the proposed rate increase as evidenced by the fact that several other customers of Twin Lakes filed formal complaints and participated in that prior proceeding. Twin Lakes is correct that the doctrine of *res judicata* bars any further litigation of the rates established in that case. The Herscas' arguments with regard to those specific rates are untimely and barred by the doctrine of *res judicata*.⁴

Judge Cheskis did find, however, that when viewing the Formal Complaint in a light most favorable to the Herscas (the non-moving party) as is required under the standard for summary judgment, the Formal Complaint raised two issues that warranted an evidentiary hearing. Those two issues were: (1) whether Twin Lakes accurately billed the Herscas; and (2) whether the quality of the water provided by Twin Lakes to the Herscas violated the Public Utility Code.

On October 6, 2020, the evidentiary hearing was held as scheduled. Mr. and Mrs. Hersca appeared *pro se*. Mrs. Hersca testified on behalf of the Complainants as their sole witness and presented ten exhibits that were admitted into the record. Jay L. Kooper, Esq., appeared on behalf of Twin Lakes and presented two witnesses – Jaime Crespo and Robert Fullagar – who sponsored a total of five exhibits that were admitted into the record. A transcript of 65 pages was created. On November 5, 2020, the record in this case closed and the evidentiary hearing transcript was filed with the Commission.

⁴ *John & Donna Hersca v. Twin Lakes Utils., Inc.*, Docket No. C-2020-3020883, Order Denying Motion for Summary Judgment (Sept. 15, 2020) at 4.

On December 10, 2020, Judge Cheskis issued the Initial Decision in which he dismissed the Formal Complaint “because the complainants 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 [provided to the Herscas].”⁵ Judge Cheskis based his decision to dismiss the Formal Complaint on 41 Findings of Fact and 13 Conclusions of Law as set forth in the Initial Decision.⁶

On December 28, 2020, the Herscas filed Exceptions to the Initial Decision issued by Judge Cheskis pursuant to Section 5.533 of the Commission’s regulations, 52 Pa. Code §5.533.

STANDARD FOR EXCEPTIONS

Section 5.533 of the Commission’s regulations sets forth the standard for the filing of exceptions to an initial decision:

- (a) In a proceeding, exceptions may be filed by a party and served within 20 days after the initial, tentative or recommended decision is issued unless some other exception period is provided. Exceptions may not be filed with respect to an interlocutory decision.
- (b) Each exception must be numbered and identify the finding of fact or conclusion of law to which exception is taken and cite relevant pages of the decision. Supporting reasons for the exceptions shall follow each specific exception.
- (c) The exceptions must be concise. The exceptions and supporting reasons must be limited to 40 pages in length. Statements of reasons supporting exceptions must, insofar as practicable, incorporate by reference and citation, relevant portions of the record and passages in previously filed briefs. A separate brief in support of or in reply to exceptions may not be filed with the Secretary under § 1.4 (relating to filing generally).

Id., 52 Pa. Code §5.533.

⁵ Initial Decision at 1.

⁶ Initial Decision at 3-7, 14-16.

As an initial matter, the Exceptions filed by the Herscas must be dismissed because they do not comply with Section 5.533(b) of the Commission's regulations as cited above. First, the four Exceptions submitted by the Herscas fail to identify the specific enumerated finding(s) of fact or conclusion(s) of law to which each exception is taken. Second, the Herscas' Exceptions fail to provide supporting reasons for each exception and instead merely repeat previously raised unsupported, bald assertions. In light of the Herscas' failure to conform to Section 5.533(b) of the Commission's regulations governing exceptions to initial decisions, Twin Lakes respectfully requests that their Exceptions be dismissed due to the Herscas' lack of compliance with this regulation. *See, e.g., Forward Township Municipal Authority v. Western Pennsylvania Water Co.*, No. C-882171, 74 Pa. P.U.C. 421, 1991 WL 476309 (Feb. 15, 1991) ("We note that the Complainant's Exception...constitutes a bald assertion. Consonant with [Section 5.533(b)], we shall deny this Exception of the Complainant."); *Fulton v. PECO Energy Company*, No. C-2004-2502, 2005 WL 1838683, at *3 (Pa.P.U.C. June 29, 2005) ("We will deny the Complainant's Exceptions....Nor does the Complainant cite to any error of the ALJ based upon the record evidence before her.").

REPLY TO EXCEPTIONS

The Exceptions filed by the Herscas must also be dismissed notwithstanding the aforementioned request for dismissal based on nonconformity. That is to say, the Herscas fail to articulate reasons for their disagreement with the Initial Decision, other than highly subjective assertions based on nothing more than their personal beliefs and observations. At no point do the Herscas articulate their disagreement with specific findings of fact or conclusions of law, or substantiate that Judge Cheskis committed an error of law or otherwise abused his discretion in reaching any one of his findings of fact and conclusions of law set forth in the Initial Decision.

Simply put, as Judge Cheskis stated in the Initial Decision, it was the Herscas' burden to present sufficient evidence that: (1) Twin Lakes was charging them anything other than Commission-approved rates; (2) the lead level in the water provided by Twin Lakes to the Herscas was too high; and (3) Twin Lakes violated the Public Utility Code, a Commission order or regulation or a Commission-approved tariff of the Company with regard to the service provided by Twin Lakes to the Herscas. The Herscas had every opportunity in this proceeding to present this evidence, and all testimony and exhibits proffered by the Herscas were admitted into the record without objection. Instead of presenting evidence, the Herscas opted to present nothing more than opinions and bald assertions plus irrelevant legal arguments in a vain attempt to re-litigate and reverse the previous Twin Lakes rate case (Docket No. R-2019-3010958) that they had every opportunity to intervene and participate in, and chose not to.

In response to the Herscas' baseless assertions, Twin Lakes proffered on the record at the evidentiary hearing testimonies and exhibits that clearly demonstrated: (1) the correct Commission-approved rates were properly calculated and applied by Twin Lakes to the Herscas' water bill; (2) the lead level in the water Twin Lakes provided to the Herscas was not high and the Herscas misconstrued the notice Twin Lakes was required by the Pennsylvania Department of Environmental Protection to provide; and (3) Twin Lakes did not violate the Public Utility Code a Commission order or regulation or a Commission-approved tariff of the Company with respect to any part of the water service the Company provided to the Herscas.

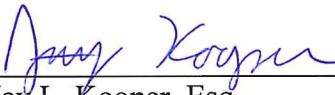
Based on this evidentiary record before him in this case, Judge Cheskis was well within his purview to dismiss the Formal Complaint. The Herscas' Exceptions provide no basis whatsoever for rejecting the Initial Decision's thorough and well-supported Findings of Fact or Conclusions of Law. The Herscas' Exceptions consist mainly of unsubstantiated allegations,

opinions and bald assertions that have no relevance to the pertinent issues addressed in the Initial Decision. For these reasons, there is no basis to reverse Judge Cheskis' dismissal of the Formal Complaint. The Herscas' Exceptions provide no legal justification for reversal of the Initial Decision, and there is no evidence in the record that would permit such a reversal.

CONCLUSION

WHEREFORE, Twin Lakes respectfully requests the Commission to: (1) deny the Complainant's Exceptions; (2) affirm and adopt Judge Cheskis' Initial Decision issued in this proceeding at Docket No. C-2020-3020883; (3) dismiss the Formal Complaint with prejudice; and (4) mark the proceeding at Docket No. C-2020-3020883 as closed.

Respectfully submitted,



Jay L. Kooper, Esq.

Secretary

Twin Lakes Utilities, Inc.

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(Admitted *Pro Hac Vice*)

Date: January 4, 2021

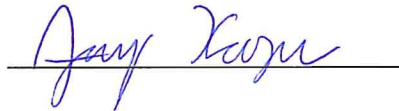
Counsel for Twin Lakes Utilities, Inc.

CERTIFICATE OF SERVICE

I, hereby certify that I have this day served a true copy of the foregoing documents upon the parties, listed below, by electronic mail in accordance with requirements of §1.54 (relating to serve by a party as amended the Emergency Order issued by the Pennsylvania Public Utility Commission on March 20, 2020 in Docket No. M-2020-3019262.

VIA ELECTRONIC MAIL

John and Donna Hersca
110 Sagamore Road
Shohola, PA 18458
E-Mail: donna Hersca@yahoo.com

A handwritten signature in blue ink, reading "Jay Kohn", is written over a horizontal line.

Date: January 4, 2021