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February 5, 2021

Via Email Only

Rosemary Chiavetta, Secretary
PA Public Utility Commission
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. § 529 – Docket No. P-2020-3020914

Application of Twin Lakes Utilities, Inc. For a Commission Order *Nunc Pro Tunc* of Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc. and Five Amendments to Service Agreement and Twin Lakes Utilities, Inc. Pursuant to 66 Pa. C.S. § 2102 – Docket No. G-2020-3020941

Affiliated Interest Agreement Between Twin Lakes Utilities, Inc. and Middlesex Water Company – Docket Nos. G-2020-3021018, G-2020-3021021 and G-2020-3021024

Dear Secretary Chiavetta:

Enclosed for electronic filing please find Twin Lakes Utilities, Inc.'s Main Brief with regard to the above-referenced matter. Copies to be served in accordance with the attached Certificate of Service.

Sincerely,

/s/ Lauren M. Burge

Lauren M. Burge

cc: Hon. Joel Cheskis w/enc. (via email only)
Cert. of Service w/enc. (via email only)

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Twin Lakes Utilities, Inc.'s Main Brief upon the persons below in the manner indicated in accordance with requirements of 52 Pa. Code Section 1.54.

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Dated: February 5, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Twin Lakes Utilities, Inc. for a	:	
Commission Order Authorizing the Acquisition of	:	Docket No. P-2020-3020914
Twin Lakes Utilities, Inc. by a Capable Public	:	
Utility Pursuant to 66 Pa. C.S. § 529	:	
	:	
Application of Twin Lakes Utilities, Inc. For a	:	
Commission Order <i>Nunc Pro Tunc</i> of Service	:	
Agreement Between Middlesex Water Company	:	Docket No. G-2020-3020941
And Twin Lakes Utilities, Inc., and Five	:	
Amendments to Service Agreement Between	:	
Middlesex Water Company and Twin Lakes	:	
Utilities, Inc. Pursuant to 66 Pa. C.S. § 2102	:	
	:	
Affiliated Interest Agreement Between Twin	:	Docket Nos. G-2020-3021018
Lakes Utilities, Inc. and Middlesex Water	:	G-2020-3021021
Company	:	G-2020-3021024
	:	

**MAIN BRIEF
OF
TWIN LAKES UTILITIES, INC.**

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I. STATEMENT OF THE CASE

Twin Lakes Utilities, Inc. (“Twin Lakes”) submits this Main Brief pursuant to 52 Pa. Code §§ 5.501 *et seq.* and the Briefing Order issued in this matter on January 5, 2021 by Deputy Chief Administrative Law Judge Joel H. Cheskis (“Judge Cheskis”).¹ This proceeding concerns Twin Lakes’ Petition requesting that the Pennsylvania Public Utility Commission (“Commission”) order a capable public utility to acquire Twin Lakes pursuant to Section 529 of the Public Utility Code, 66 Pa. C.S. § 529 (“Twin Lakes Petition”). For the reasons discussed herein, Twin Lakes respectfully requests that the Commission exercise its discretion under Section 529 to order the acquisition of Twin Lakes by a “capable public utility” as that term is defined in the statute. In addition, for the reasons discussed herein, Twin Lakes respectfully requests that the Commission grant Twin Lakes’ Applications For Approval *Nunc Pro Tunc* of The Three Unsecured Revolving Promissory Notes between Twin Lakes and Middlesex Water Company (“Middlesex”), and dismiss Twin Lakes’ Application For Approval *Nunc Pro Tunc* of the Service Agreement between Twin Lakes and Middlesex and its five amendments as moot as a result of the expiration of such Agreement on January 15, 2021.

II. BACKGROUND AND PROCEDURAL HISTORY

A. History of Twin Lakes Utilities, Inc. and the Twin Lakes Water System

Twin Lakes is a public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania.² Twin Lakes is a wholly-owned subsidiary of Middlesex Water Company, a New Jersey corporation.³

¹ *Petition of Twin Lakes Utilities, Inc. for a Commission Order Authorizing The Acquisition of Twin Lakes Utilities, Inc. By a Capable Public Utility Pursuant To 66 Pa. C.S. §529*, Briefing Order (Jan. 5, 2021) (“Briefing Order”).

² Twin Lakes Petition at ¶ 1; Twin Lakes St. No. 2-R at 3.

³ Twin Lakes St. No. 2-R at 3.

The Twin Lakes system provides water service to the community known as Sagamore Estates located in Shohola Township, Pike County, Pennsylvania.⁴ Twin Lakes presently serves approximately 114 customers and is comprised of one functional well (Well #2), one non-functional well (Well #1), a small treatment/pumping station including an atmospheric 20,000 gallon storage tank integral to the station, approximately 3.7 miles of water main of various diameter, and approximately 120 active and inactive service connections combined.⁵

1. Creation of Twin Lakes Utilities, Inc. and Acquisition of Twin Lakes as a Wholly-Owned Subsidiary of Middlesex.

Prior to the acquisition of the Twin Lakes water system by Twin Lakes Utilities, Inc., the system was beset by longstanding service deficiencies, subject to frequent boil water advisories issued by the Pennsylvania Department of Environmental Protection (“PA DEP”), and water service was frequently suspended due to numerous operational problems.⁶ These conditions were well-known by Commission Staff. Prior to the acquisition, Middlesex received strong encouragement from Commission Staff to acquire the Twin Lakes system and subsequent to the acquisition, the Staff expressed gratitude to Middlesex for the fact the Commission was able to avoid the exercise of State control over the system.⁷

On February 26, 2008, Middlesex filed with the Commission a Letter Application requesting a Certificate of Public Convenience for the purpose of acquiring the assets and to operate the water system of Twin Lakes Water Services, LLC, the then-owner of the Twin Lakes

⁴ Twin Lakes St. No. 2 at 1.

⁵ Twin Lakes St. No. 1 at 1.

⁶ Twin Lakes St. No. 2 at 1-2.

⁷ *Id.*

system.⁸ On May 20, 2008, Middlesex and Twin Lakes Water Services, LLC filed a Joint Application for Commission approval of the acquisition of the assets of Twin Lakes Water Services, LLC.⁹ Each of these filings indicated that Middlesex intended to establish a wholly-owned Pennsylvania subsidiary, created to own and operate the water system serving the Sagamore Estates community.¹⁰

On February 26, 2009, the Commission issued an Order in Docket Numbers A-2008-2050089 and A-2008-2050092 approving the acquisition of the Twin Lakes system.¹¹

On April 6, 2009, Middlesex formed Twin Lakes Utilities, Inc. by filing Articles of Incorporation with the Pennsylvania Department of State Corporation Bureau. As Middlesex is not, nor has it ever been, a duly authorized Pennsylvania corporation, the creation of Twin Lakes as wholly-owned Pennsylvania subsidiary company was necessary to ensure that the system could be operated by an entity incorporated in the Commonwealth of Pennsylvania, as first contemplated in the February 26, 2008 Letter Application.¹²

On November 3, 2009, Twin Lakes entered into an Asset Purchase Agreement For The Assets of Twin Lakes Water Services, LLC By Twin Lakes Utilities, Inc., which subsequently became the owner and titleholder of the assets acquired from Twin Lakes Water Services, LLC,

⁸ Twin Lakes St. No. 2-R, Exh. ABO-1 at 1 (“Letter Application”).

⁹ *Id.*

¹⁰ *Id.*

¹¹ *Joint Application of Middlesex Water Company (Middlesex) and Twin Lakes Water Services, LLC (Twin Lakes) for approval of: 1) the transfer by sale of Twin Lakes to Middlesex; 2) the right of Middlesex to begin to offer, render, furnish and supply water service to the public in the development of Sagamore Estates, Shohola Township, Pike County; and 3) the abandonment of public water service by Twin Lakes, Docket Nos. A-2008-2050089 and A-2008-2050092, Order (entered Mar. 2, 2009) (“Twin Lakes Acquisition Order”).*

¹² Twin Lakes Petition at ¶¶ 4-6.

namely, the Twin Lakes system.¹³ On November 16, 2009, Twin Lakes filed with the Commission a new tariff adopting the rules, rates and regulations contained in the up-to-then present tariff of Twin Lakes Water Services, LLC.^{14,15}

Soon after Twin Lakes began operating the system in November 2009, it became apparent that the condition of the water system was significantly poorer than had been represented by the former owner, or had been visible from the inspection and assessment that was part of the operational due diligence work performed prior to the purchase.¹⁶ As a condition of its approval of the acquisition of the system, the Commission required the installation of water meters for all customers.¹⁷ After the meters were installed and an annual meter reading database was established, Twin Lakes was able to calculate a non-revenue, or unaccounted-for, water usage percentage¹⁸ which was previously unknown by the former owner, the Commission or any other regulatory body. This critical metric revealed the true amount of leakage within the water distribution system, which was extensive, and foreshadowed the operational and financial challenges that would plague Twin Lakes and its customers for the next 11 years.¹⁹

¹³ Twin Lakes Petition at ¶ 5.

¹⁴ *Joint Application of Middlesex Water Company (Middlesex) and Twin Lakes Water Services, LLC (Twin Lakes) for approval of: 1) the transfer by sale of Twin Lakes to Middlesex; 2) the right of Middlesex to begin to offer, render, furnish and supply water service to the public in the development of Sagamore Estates, Shohola Township, Pike County; and 3) the abandonment of public water service by Twin Lakes*, Docket Nos. A-2008-2050089 and A-2008-2050092, Letter From Twin Lakes To Commission Secretary (Nov. 16, 2009) (“Twin Lakes Tariff Letter”).

¹⁵ For reasons unknown to Twin Lakes, the Commission never issued a Certificate of Public Convenience to Twin Lakes or a corresponding Certificate of Abandonment to Twin Lakes Water Services, LLC in November 2009 or thereafter. Twin Lakes St. No. 2-R at 5.

¹⁶ Twin Lakes St. No. 2 at 2.

¹⁷ *Id.*

¹⁸ *Id.*

¹⁹ *Id.*

2. Middlesex's Operational and Financial Support of the Twin Lakes System

Twin Lakes' sole source of equity capital, debt financing and primary operations support has been Middlesex.²⁰ Twin Lakes is a classic small water utility challenge in that it has been unable to establish a credit arrangement at any reasonable cost with any financial institution as a stand-alone entity.²¹ This is due to Twin Lakes' inability to demonstrate that it had the net income and cash flow to adequately support its financial obligations incurred in operating the Twin Lakes water system.²² Beginning in 2009, Twin Lakes' parent company, Middlesex, made equity investments in, and extended credit to, Twin Lakes in order to enable Twin Lakes to maintain service for the Twin Lakes customers and pay for the necessary improvements given the poor condition of the Twin Lakes system.²³ Specifically, Middlesex provided to Twin Lakes the needed working capital and funds for utility plant investment in the form of debt and equity capital under an assumption that Twin Lakes could obtain sufficient rate relief to not only sustain operations, but also to service Twin Lakes' debt and provide a fair return to the equity investor.²⁴

Since 2009, Middlesex has extended financial credit to Twin Lakes through three outstanding Unsecured Revolving Promissory Notes, the first executed in January 2016, the second executed on October 18, 2019, and the third executed on October 29, 2019.²⁵ All three Promissory Notes provide Middlesex with the right as Lender to demand payment from Twin Lakes as Borrower of the total amount due on the Notes together with any unpaid interest accruing

²⁰ Twin Lakes Petition at ¶ 9; Twin Lakes St. No. 1 at 9-10.

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*; Twin Lakes St. No. 2 at 3.

²⁵ Twin Lakes Petition at ¶ 10.

at the rate of 7.0% per annum.²⁶ All three Promissory Notes were disclosed to the Commission and submitted as discovery responses in Twin Lakes’ 2015 and 2019 base rate cases.²⁷ Since the acquisition of the Twin Lakes system in 2009, Middlesex has invested, loaned or advanced over \$2.4 million to Twin Lakes.²⁸

Middlesex also provided operational support to Twin Lakes through a Service Agreement executed between Middlesex and Twin Lakes dated December 1, 2009 (“Service Agreement”).²⁹ Under the terms of the Service Agreement, Middlesex provided operations support for Twin Lakes including, but not limited to: Customer Service, Accounting, Administration, Communications, Corporate Secretarial, Engineering, Financial, Human Resources, Information Systems, Operations, Rates and Revenue, Risk Management, and Water Quality.³⁰ Per the Service Agreement, either party could terminate the Agreement by giving the other party 90 days advance written notice.³¹ The Service Agreement was disclosed to the Commission and submitted as a discovery response in Twin Lakes’ 2011, 2015 and 2019 base rate cases.³²

3. Twin Lakes’ Rate Case History

Within less than 18 months of the change in ownership of the Twin Lakes system, Twin Lakes’ management recognized that existing customer rates were insufficient to support the system

²⁶ *Id.*

²⁷ *Id.*

²⁸ Twin Lakes Petition at ¶ 11.

²⁹ Twin Lakes Petition at ¶ 12.

³⁰ *Id.*

³¹ *Id.*

³² *Id.*

operations and the large investments needed to adequately repair all the leaks,³³ and therefore to maintain reliable service for Twin Lakes' customers. As a result, Twin Lakes sought a series of significant rate increases through base rate cases filed in 2011, 2015, and 2019.

In June 2011, Twin Lakes sought Commission approval to increase rates by 370%.³⁴ Simultaneously, Twin Lakes began what has now become a nearly ten-year effort to identify and implement a viable solution to ensure uninterrupted quality water service to Twin Lakes' customers at affordable rates, as will be discussed in further detail below.³⁵ On March 1, 2012, the Commission issued an Order approving a 124.9% rate increase, to be phased in over a three-year period, an increased annual revenue amount far below Twin Lakes' rate increase request of 370%.³⁶

As critical necessary improvements in the Twin Lakes system continued to be made, on November 11, 2015, Twin Lakes filed a rate case with the Commission seeking an increase in base rates of 257%.³⁷ On June 9, 2016, the Commission issued an Order approving a 164.54% rate increase, to be phased-in over a three year period, and with half of that rate increase (82.27%) only granted upon the subsequent completion of certain additional system improvements.³⁸

Finally, on July 19, 2019, Twin Lakes filed a rate case with the Commission seeking an

³³ Twin Lakes St. No. 2 at 3.

³⁴ *Id.*; see Docket No. R-2011-2246415.

³⁵ Twin Lakes St. No. 2 at 3.

³⁶ *Pa. Public Utility Commission et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2011-2246415, Order (entered Mar. 1, 2012) ("2011 Rate Case Order").

³⁷ Twin Lakes St. No. 2 at 5.

³⁸ *Pa. Public Utility Commission et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2015-2506337, Order (entered June 9, 2016) ("2015 Rate Case Order").

increase in base rates of 158.63%.³⁹ On March 26, 2020, the Commission issued an Opinion and Order approving an 87.91% rate increase.⁴⁰ In granting Twin Lakes a rate increase of only 55% of what the Company sought, the Commission made it clear in its Opinion and Order that affordability of rates would be given supreme priority over allowing Twin Lakes an opportunity to recover its prudent investments.⁴¹ Specifically, the Commission held in its final Opinion and Order that enabling Twin Lakes an opportunity to recover its prudent investments “results in customers not being able to afford water utility service.”⁴² Twin Lakes is not aware of any study or analysis prepared by the Commission which would suggest that the increases requested by Twin Lakes are unaffordable. The 2019 Rate Case Opinion and Order led Middlesex – the sole source of financial and operational support to Twin Lakes – to conclude that no matter what level of investment is needed for, or expenses incurred for, improvements or operation of the Twin Lakes system, the Commission would not allow rates to be set at a level that would enable recovery of prudently incurred costs and expenses.⁴³ Under these circumstances, Middlesex concluded that this level of risk of continuing to invest in this regulated utility – Twin Lakes – is untenable.⁴⁴

³⁹ Twin Lakes Petition at ¶ 17; *see* Docket No. R-2019-3010958.

⁴⁰ *Pa. Public Utility Commission et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2019-3010958, Opinion and Order (entered Mar. 26, 2020) (“2019 Rate Case Order”). In terms of customer bill impacts, a customer bill in 2009, at the time the Twin Lakes system was acquired, was \$282 per year. With the rate change approved by the Commission in the 2019 Rate Case Order, an average annual customer bill now rises to \$2,210.64 per customer. Twin Lakes St. No. 2 at 3.

⁴¹ Twin Lakes St. No. 2-SR at 6.

⁴² 2019 Rate Case Order at 73; Twin Lakes St. No. 2-SR at 6-7.

⁴³ Twin Lakes St. No. 2 at 7.

⁴⁴ *Id.*; Twin Lakes St. No. 2-SR at 7.

4. Twin Lakes' Efforts to Identify a Long-Term Solution to Operational Risks and Rate Affordability.

Over the last ten years, Twin Lakes has gone to great lengths to identify a long-term solution that would address the system's operational risks while also attempting to mitigate the need to significantly increase customers' rates.

Shortly after Twin Lakes filed its June 2011 base rate case, Twin Lakes' management and Aqua America engaged in a discussion regarding the acquisition of the water system by Aqua.⁴⁵ As part of a due diligence program, Twin Lakes provided financial records and hosted a November 2011 site inspection by Aqua representatives.⁴⁶ Despite repeated attempts to re-engage Aqua after the on-site inspection, there was no response from the Aqua due diligence team.⁴⁷ On and off for the next four years, Twin Lakes officials contacted Aqua officials in an attempt to restart the acquisition dialogue without success.⁴⁸

In approximately 2013, a discussion was held between Twin Lakes' management and a representative of American Water Works Company ("American"), the parent company of Pennsylvania American Water Company, regarding any interest in acquiring Twin Lakes.⁴⁹ Given the size of the system, there was no interest expressed by American in performing due diligence or pursuing a transaction.⁵⁰

In late 2014, Twin Lakes officials investigated the possibility of installing individual wells

⁴⁵ Twin Lakes St. No. 2 at 4.

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ *Id.*

⁵⁰ *Id.*

for each of the then approximately 115 customers served by Twin Lakes at that time.⁵¹ Because many of the lot sizes in the Sagamore Estates community did not allow for adequate clearance between the septic system and a well under Pennsylvania regulation, this solution was not deemed viable.⁵²

In April 2015, Twin Lakes senior executives travelled to Harrisburg to meet with the then Chairman of the Commission.⁵³ The sole purpose of this meeting was Twin Lakes' request for assistance in identifying a system take-over solution that would mitigate the inevitable need for Twin Lakes to petition the Commission for another triple-digit increase in base rates for the residents of the Sagamore Estates community.⁵⁴ There were no remedies identified other than to seek an increase in base rates.⁵⁵

In August 2017, a senior Twin Lakes officer met with the Pennsylvania Office of Consumer Advocate ("OCA") to disclose the ongoing Twin Lakes system failure risk due to the loss of the back up well supply and the inability to procure a new well site.⁵⁶ The purpose of Twin Lakes' meeting with OCA was to request assistance in identifying a system take-over solution that would mitigate the risk of losing the only source of supply serving the residents of the Sagamore Estates community, as well as the need for yet another triple-digit rate increase request.⁵⁷ Subsequently, senior Twin Lakes officials held informal conversations with senior executives of Aqua and

⁵¹ *Id.*

⁵² Twin Lakes St. No. 2 at 5.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ Twin Lakes St. No. 2 at 5.

⁵⁷ Twin Lakes St. No. 2 at 5.

American.⁵⁸ These conversations failed to produce a successful outcome.⁵⁹

In November 2017, senior Twin Lakes officials met with Commission Staff to provide an update on the ongoing system failure risk due to the loss of the back up well supply.⁶⁰ In this meeting, Twin Lakes again requested the Commission’s assistance in identifying a system take-over solution that would mitigate the risk of losing the only source of supply serving the residents of the Sagamore Estates community as well as the need for another significant increase in base rates.⁶¹

On February 26, 2018, Twin Lakes issued a letter to the Commission’s Bureau of Technical Utility Services and the Bureau of Investigation and Enforcement, the Acting Consumer Advocate, and the Small Business Advocate informing them of the emergent need to undertake system improvements that would result in increasing Twin Lakes customers’ annual water bills to over \$4,000.⁶² Twin Lakes went on to state in this letter that, given this need and the size of the bill increase to Twin Lakes customers, the Company had three options on how it could practically proceed.⁶³ These three options were (1) file a petition for abandonment of the Twin Lakes system franchise; (2) file for emergency rate relief; or (3) identify a larger investor-owned water utility better positioned to make these necessary improvements to the Twin Lakes system.⁶⁴

On October 23, 2018, Twin Lakes filed a Petition For Abandonment with the

⁵⁸ *Id.*

⁵⁹ *Id.*

⁶⁰ *Id.*

⁶¹ *Id.* at 5-6.

⁶² *Id.* at 6.

⁶³ *Id.*

⁶⁴ *Id.*

Commission.⁶⁵ On October 25, 2018, the Commission summarily rejected Twin Lakes' Petition For Abandonment.⁶⁶

Subsequently, Twin Lakes continued to explore alternative solutions for the continued viability of the Twin Lakes system. On August 7, 2019, Twin Lakes submitted an application to PENNVEST to finance the five-year capital improvement plan submitted in Twin Lakes' prior rate cases.⁶⁷ On January 29, 2020, Twin Lakes was notified that PENNVEST had approved a grant of \$4.66 million.⁶⁸ It was subsequently concluded that an award of the grant would be considered a Contribution In Aid of Construction (CIAC) that is subject to income tax under the Tax Cuts and Jobs Act of 2017.⁶⁹ Therefore, an award of a PENNVEST grant of \$4.66 million would carry with it an income tax liability of \$1.358 million, all properly recoverable from Twin Lakes' customers.⁷⁰ Given the Commission's decision in the 2019 Rate Case Order and the Commission's stated position on affordability, Twin Lakes concluded this income tax liability would increase customer rates significantly and may not be approved for rate recovery by the Commission.⁷¹ This burden would be in addition to the significant remaining investment required for various capital improvements not covered by the PENNVEST grant award.⁷² Therefore, as a result of the tax

⁶⁵ *Id.*; see Docket No. A-2018-3005590.

⁶⁶ *Id.*; see also *Application of Twin Lakes Utilities, Inc. to Abandon Service to its Customers in Sagamore Estates in Shohola Township, Pike County, Pennsylvania*, Docket No. A-2018-3005590, Opinion and Order (entered Feb. 28, 2019).

⁶⁷ Twin Lakes St. No. 1 at 8.

⁶⁸ *Id.*

⁶⁹ *Id.*

⁷⁰ *Id.*

⁷¹ Twin Lakes Petition at ¶ 20; Twin Lakes St. No. 1 at 8-9.

⁷² *Id.*

implication and the unfavorable rate relief provided by the Commission, Twin Lakes was unable to formally accept the PENNVEST grant due to the added financial burden this would place on Twin Lakes' customers and the history of inadequate rate relief awarded by the Commission.⁷³

In November 2019, senior Twin Lakes officials began a dialogue with Utilities, Inc.⁷⁴ Shortly thereafter, Utilities, Inc. performed operational and financial due diligence on water system but did not move forward to pursue a transaction.⁷⁵

In addition, Twin Lakes considered interconnecting with the nearest public-community system of Milford Township.⁷⁶ This alternative was not deemed viable as a Twin Lakes interconnection with the Milford Township system would require a 5 to 6 mile long excavation in State Route 6 accompanied by the construction of booster pumping stations along this route due to the mountainous terrain.⁷⁷ Twin Lakes also considered the installation of private wells for each customer.⁷⁸ This alternative was deemed impractical as Shohola Township Ordinance No. 59 prohibits such private well installations due to the potential for private wells to be contaminated by adjacent subsurface sanitary sewer disposal systems.⁷⁹

On July 14, 2020, as another alternative, Twin Lakes issued a Request For Proposals (“RFP”) for the provision of contract operations, maintenance and management services for the

⁷³ Twin Lakes St. No. 1 at 8-9.

⁷⁴ Twin Lakes St. No. 2 at 6.

⁷⁵ *Id.*

⁷⁶ Twin Lakes St. No. 1 at 7.

⁷⁷ *Id.*

⁷⁸ *Id.*

⁷⁹ *Id.* at 7-8.

Twin Lakes system.⁸⁰ The purpose of the RFP was to solicit proposals from numerous entities for the operation and maintenance of the Twin Lakes system following what was, at the time, the anticipated termination of the Service Agreement between Middlesex and Twin Lakes effective September 1, 2020.⁸¹ One proposal was submitted in response to the RFP by Farnham and Associates.⁸² This sole proposal amounted to little more than a duplication of the laboratory compliance monitoring/reporting and Licensed Operator services agreement that is already provided to Twin Lakes by its current vendor.⁸³ There was no mention or reference in Farnham's proposal for the provision of after-hours and emergency responses, customer service and appointment functions, meter reading and utility oversight and management.⁸⁴ As a result, Twin Lakes deemed Farnham's proposal inadequate.⁸⁵

Given that the foregoing efforts did not result in a long-term solution to the operational risks and affordability issues with the Twin Lakes system, Twin Lakes filed the instant Section 529 petition asking the Commission to order a capable public utility to acquire Twin Lakes.

B. Procedural History of the Section 529 Proceeding and Related Proceedings

On May 28, 2020, Middlesex issued a letter to Twin Lakes demanding immediate payment of the total amounts due on the three outstanding Unsecured Revolving Promissory Notes between

⁸⁰ *Id.* at 9.

⁸¹ *Id.*.

⁸² *Id.*

⁸³ *Id.*

⁸⁴ *Id.*

⁸⁵ *Id.*

Middlesex, as Lender, and Twin Lakes, as Borrower.⁸⁶ On May 29, 2020, Twin Lakes issued a response letter to Middlesex stating that it was unable to meet Middlesex's payment demand requirements and did not expect to have the ability to satisfy any repayment of the three outstanding Notes.⁸⁷ As a result, Middlesex ceased financial support of Twin Lakes effective May 28, 2020, the date Middlesex tendered its demand for payment on the three outstanding promissory notes.⁸⁸ Since that date, Twin Lakes has been unable to establish an independent credit relationship with a financial institution.⁸⁹ On June 1, 2020, Middlesex issued a letter notice of termination of the Service Agreement between Middlesex and Twin Lakes, advising that pursuant to Section 1 of the Service Agreement, the termination would become effective on September 1, 2020.⁹⁰

On June 10, 2020, Twin Lakes issued a letter to the Commission's Bureau of Technical Utility Services and Bureau of Investigation and Enforcement, as well as the Office of Consumer Advocate, notifying these parties of Middlesex's cessation of financial support and the imminent termination of the Service Agreement between Middlesex and Twin Lakes, and requested initiation of a proceeding under Section 529 of the Public Utility Code, 66 Pa. C.S. § 529.⁹¹

The Commission initially accepted Twin Lakes' June 10, 2020 letter for filing and initiated a Section 529 proceeding.⁹² The Commission subsequently required Twin Lakes to re-submit its filing as a Petition, and also directed Twin Lakes to file Applications for approval, *nunc pro tunc*,

⁸⁶ Twin Lakes Petition at ¶ 21, Appendix G.

⁸⁷ Twin Lakes Petition at ¶ 22, Appendix H.

⁸⁸ Twin Lakes Petition at ¶ 23; Twin Lakes St. No. 2-R at 8.

⁸⁹ Twin Lakes St. No. 2 at 7; Twin Lakes St. No. 2-R at 8.

⁹⁰ Twin Lakes Petition at ¶ 24, Appendix I.

⁹¹ Twin Lakes Petition at ¶ 28, Appendix K.

⁹² Twin Lakes Petition at ¶ 29; *see* Docket No. M-2020-3020390.

of the Service Agreement and three outstanding Unsecured Revolving Promissory Notes.⁹³

On July 16, 2020, per the Commission's request, Twin Lakes filed the petition requesting that the Commission order Twin Lakes' acquisition by a capable public utility pursuant to Section 529 of the Public Utility Code. Due to the fact that Middlesex no longer provided financial support to Twin Lakes and would no longer provide operations support to Twin Lakes as of September 1, 2020, Twin Lakes requested that the Commission grant its requested relief at either the Commission's August 6, 2020 or August 27, 2020 Public Meeting.⁹⁴ On July 21, 2020, Twin Lakes filed an Application for approval, *nunc pro tunc*, of the Service Agreement and the three outstanding Unsecured Revolving Promissory Notes, as directed by the Commission on July 13, 2020.⁹⁵

On July 22, 2020, in light of Twin Lakes' request for expedited treatment of the Twin Lakes Petition, an informal, off-the-record conference call was held with interested parties and the presiding officer. A prehearing conference was subsequently held on July 27, 2020.

On July 31, 2020, Twin Lakes issued a notice informing all Twin Lakes customers of the initiation of the Section 529 proceeding and informing them of Middlesex's termination of its Service Agreement with Twin Lakes effective September 1, 2020.⁹⁶

⁹³ Twin Lakes Petition at ¶ 31; *Notice of Termination of Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc.*, Docket No. M-2020-3020390, Secretarial Letter (July 13, 2020) ("July 13, 2020 Secretarial Letter") at 1.

⁹⁴ Twin Lakes Petition at 1, n. 1.

⁹⁵ *Application of Twin Lakes Utilities, Inc. For A Commission Order Nunc Pro Tunc Of Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc., and Five Amendments To Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc. Pursuant To 66 Pa. C.S. §2012*, Docket No. G-2020-3020941 and *Affiliated Interest Agreement Between Twin Lakes Utilities, Inc. and Middlesex Water Company*, Docket Nos. G-2020-3021018, G-2020-3021021 and G-2020-3021024, Application of Twin Lakes Utilities Inc. (July 21, 2020)("Twin Lakes Application").

⁹⁶ Twin Lakes Letter dated Aug. 3, 2020, available at <https://www.puc.pa.gov/pcdocs/1672088.pdf>.

On August 18, 2020, the OCA filed a petition for issuance of an interim emergency order on an expedited basis.⁹⁷ In this petition, the OCA argued that the Commission should appoint a receiver pursuant to Section 529 if Twin Lakes is unable to secure a new system operator by the September 1, 2020 deadline of Middlesex’s termination of the Service Agreement.⁹⁸ The OCA requested that a receiver be appointed to ensure that Twin Lakes’ customers continued to receive water service following Middlesex’s cessation of financial support to Twin Lakes and impending termination of the Service Agreement on September 1, 2020.⁹⁹ The OCA requested expedited treatment of its petition for issuance of an interim emergency order to permit the receiver to have time to work with Twin Lakes before the September 1, 2020 deadline.¹⁰⁰

On August 19, 2020, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a petition for interlocutory review of the July 28, 2020 scheduling order.¹⁰¹ In its petition, I&E asked the Commission to answer the question: “Should the Commission permit a certificated small water or wastewater public utility to proceed by its own petition pursuant to Section 529?” I&E’s suggested answer was “no.”¹⁰²

On August 21, 2020, an evidentiary hearing was conducted by telephone on OCA’s Emergency Petition. Main Briefs were filed by the parties on August 24, 2020 and Reply Briefs

⁹⁷ *Office of Consumer Advocate’s Petition for Issuance of an Interim Emergency Order on an Expedited Basis*, dated Aug. 18, 2020, available at <https://www.puc.pa.gov/pcdocs/1673756.pdf>.

⁹⁸ *Id.* at 1.

⁹⁹ *Id.*

¹⁰⁰ *Id.*

¹⁰¹ *Petition for Interlocutory Review and Order of the Bureau of Investigation and Enforcement Following the July 28, 2020 Scheduling Order of Presiding Deputy Chief Administrative Law Judge Joel H. Cheskis*, dated Aug. 19, 2020, available at <https://www.puc.pa.gov/pcdocs/1673803.pdf>.

¹⁰² *Id.*

were filed on August 25, 2020.

On August 28, 2020, Judge Cheskis, in his capacity as presiding officer, issued an Order denying the OCA's Emergency Petition.¹⁰³ The Order directed Twin Lakes to continue to provide service to its customers consistent with its Certificate of Public Convenience until otherwise permitted by the Commission to cease providing service. The Order also certified a material question to the Commission regarding whether the Commission should order Aqua Pennsylvania, Inc. ("Aqua") to act as a receiver to operate Twin Lakes until the resolution of the Twin Lakes Section 529 Petition.¹⁰⁴

On September 17, 2020, the Commission entered an Opinion and Order ruling on I&E's petition for interlocutory review.¹⁰⁵ As part of this Order, the Commission instituted a Section 529 investigation to determine whether it should order a capable public utility to acquire Twin Lakes, and returned the matter to the Office of Administrative Law Judge for further proceedings.¹⁰⁶

On September 22, 2020, the Commission issued an Opinion and Order affirming the denial of OCA's Emergency Petition.¹⁰⁷ In addition, the Commission prohibited Twin Lakes from terminating water utility service pursuant to its Certificate of Public Convenience until otherwise

¹⁰³ *Order Denying Petition of the Office of Consumer Advocate for Issuance of an Interim Emergency Order on an Expedited Basis Filed Pursuant to Sections 3.6, 3.6a and 3.7 of the Commission's Regulations*, dated Aug. 28, 2020.

¹⁰⁴ *Id.*

¹⁰⁵ *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*, Opinion and Order (entered Sept. 17, 2020) ("Interlocutory Review Order").

¹⁰⁶ *Id.* at Ordering Paras. 4 and 6.

¹⁰⁷ *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*, Opinion and Order (entered Sept. 22, 2020) ("Emergency Petition Order").

directed by the Commission,¹⁰⁸ notwithstanding the fact that without a service agreement in place or financial support, it was becoming an increasingly imminent possibility that Twin Lakes would be physically and financially unable to sustain service to its customers. Further, while the Commission declined to order Middlesex to extend the termination of the Service Agreement that, by then, had been voluntarily extended to October 1, 2020, the Commission encouraged Middlesex to voluntarily extend the termination date until the issuance of a Commission Order on the Amended Service Agreement Application. The Commission also consolidated Twin Lakes' Applications for approval, *nunc pro tunc*, of the Service Agreement and the three outstanding Unsecured Revolving Promissory Notes with the Section 529 Proceeding.¹⁰⁹ Finally, the Commission directed that Aqua conduct due diligence and a reasonable investigation within 90 days to determine whether it would voluntarily act as a receiver of the Twin Lakes system.¹¹⁰

On October 2, 2020, a further prehearing conference was held in which the parties discussed procedural matters, including further litigation of this matter, in light of the Commission's Orders entered on September 17, 2020 and September 22, 2020.

On October 5, 2020, Judge Cheskis issued a third scheduling order detailing the litigation schedule and related matters. Pursuant to this schedule, the parties submitted Direct Testimony on November 17, 2020, Rebuttal Testimony on December 9, 2020, and Surrebuttal Testimony on December 22, 2020, and Aqua submitted status reports regarding its due diligence efforts and investigation.

¹⁰⁸ *Id.* at Ordering Para. 3.

¹⁰⁹ *Id.* at Ordering Para. 5.

¹¹⁰ *Id.* at Ordering Para. 6.

On December 16, 2020, Aqua submitted a letter indicating that it would voluntarily act as receiver of Twin Lakes effective January 4, 2021 during the pendency of the Section 529 proceeding.¹¹¹ Aqua requested a Commission Order appointing Aqua as receiver and specifying Aqua’s duties and responsibilities as receiver.¹¹² After discussions with Judge Cheskis and the parties, Aqua submitted a second letter on December 22, 2020, wherein Aqua indicated that it would begin acting as receiver on January 15, 2021, instead of January 4, 2021, in order to allow the Commission to act on this request at its January 14, 2021 Public Meeting.¹¹³

On December 31, 2020, Judge Cheskis issued an Order certifying a material question to the Commission regarding whether the Commission should adopt the offer of Aqua to act as the emergency receiver of the Twin Lakes water system effective January 15, 2021 as set forth in Aqua’s December 22, 2020 letter, including the unopposed proposed Order Appointing Receiver attached to the letter.¹¹⁴ Judge Cheskis’ suggested answer to the material question was “yes”, and the parties subsequently filed letters not opposing the material question and suggested answer, and requesting expedited treatment to enable the issuance of a Commission Order adopting Aqua’s receivership at its January 14, 2021 Public Meeting.

On January 5, 2021, the evidentiary hearings in this Section 529 proceeding were held before Judge Cheskis. The parties presented a combined total of eight witnesses who were made

¹¹¹ Aqua’s Dec. 16, 2020 Letter, *available at* <https://www.puc.pa.gov/pcdocs/1687366.pdf>.

¹¹² *Id.*

¹¹³ Aqua’s Dec. 22, 2020 Letter, *available at* <https://www.puc.pa.gov/pcdocs/1688432.pdf>.

¹¹⁴ *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, Order Certifying Material Question (issued Dec. 31, 2020) (“December 31, 2020 Order Certifying Material Question”)* at 1.

available for cross-examination and produced pre-served testimony and accompanying exhibits, all of which were admitted into the record.

On January 14, 2021, the Commission issued an Order approving the appointment of Aqua as the receiver of the Twin Lakes system effective January 15, 2021.¹¹⁵ On January 15, 2021, Aqua, pursuant to the Commission’s Receiver Order, assumed receivership of the Twin Lakes system.

C. Current Status of the Twin Lakes System.

As of the date of this Main Brief, the Twin Lakes system’s sole source of financial and operational support is through its receivership under Aqua. Specifically, Middlesex – Twin Lakes’ sole source of financial and operational support prior to Aqua’s receivership – terminated its financial support of Twin Lakes effective May 28, 2020.¹¹⁶ In addition, Middlesex’s operational support of Twin Lakes terminated effective January 15, 2021, which was the expiration date of the Service Agreement voluntarily extended by Middlesex, as it was last amended.¹¹⁷ Absent Aqua’s current receivership of the Twin Lakes system, Twin Lakes has no source of financial or operational support to be able to furnish and maintain adequate, efficient, safe and reasonable service and facilities to the customers located in Sagamore Estates now or in the future.

¹¹⁵ *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*, Order (entered Jan. 14, 2021) (“Receiver Order”).

¹¹⁶ Twin Lakes Petition at ¶ 23; Twin Lakes St. No. 2-R at 8.

¹¹⁷ *Application of Twin Lakes Utilities, Inc. For Commission Approval, Nunc Pro Tunc, of Fifth Amendment To The Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc. Pursuant To 66 Pa. C.S. §2102*, Docket No. G-2020-3020941, Application of Twin Lakes Utilities, Inc. (Dec. 31, 2020), at 2, Appendix A (Fifth Amendment To The Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc., dated December 31, 2020) at ¶ 1.

III. LEGAL STANDARDS

A. Burden of Proof

Section 529(i) of the Public Utility Code sets forth the statutory burden of proof in a Section 529 investigation:

The Bureau of Investigation and Enforcement shall have the burden of establishing a *prima facie* case that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of this section. Once the commission determines that a *prima facie* case has been established:

- (1) the small water or sewer utility shall have the burden of proving its ability to render adequate, efficient, safe and reasonable service at just and reasonable rates; and
- (2) a proximate public utility providing the same type of service as the small water or sewer utility shall have the opportunity and burden of proving its financial, managerial or technical inability to acquire and operate the small water or sewer utility.¹¹⁸

Although I&E bears a statutory burden of proof in a Section 529 proceeding pursuant to 66 Pa. C.S. §529(i), the Commission has held that this burden is not exclusive to I&E.¹¹⁹ Rather, any party may present or rebut a *prima facie* case in support of its position in a Section 529 proceeding.¹²⁰ As a result, because Twin Lakes is seeking Section 529 relief in this proceeding – that is, a Commission Order requiring the acquisition of Twin Lakes by a capable public utility – Twin Lakes has the burden of producing evidence demonstrating that such relief is warranted.¹²¹

¹¹⁸ 66 Pa. C.S. § 529 (i).

¹¹⁹ *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*, Opinion and Order (entered Sept. 17, 2020) (“Interlocutory Review Order”) at 21; *see also Investigation Instituted per Section 529 into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No. I-2016-2526085, Order (entered Jan 28, 2016), at 27.

¹²⁰ *Id.*

¹²¹ Interlocutory Review Order at 21.

B. Legal Standard For Commission to Order Acquisition of a Small Water Utility By A Capable Public Utility Under Section 529 of the Public Utility Code.

Section 529(a) of the Public Utility Code allows the Commission to order a capable public utility to acquire a small water system if it determines the following:

- (1) that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility.
- (2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure.
- (3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.
- (4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible.
- (5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and
- (6) that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.¹²²

¹²² 66 Pa. C.S. § 529 (a).

Section 529(b) of the Public Utility Code requires a small water utility to consider the following alternatives to acquisition by a capable public utility before the Commission may order an acquisition pursuant to Section 529:

- (1) The reorganization of the small water or sewer utility under new management.
- (2) The entering of a contract with another public utility or a management or service company to operate the small water or sewer utility.
- (3) The appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public.
- (4) The merger of the small water or sewer utility with one or more other public utilities.
- (5) The acquisition of the small water or sewer utility by a municipality, a municipal authority or a cooperative.¹²³

Section 529(c) of the Public Utility Code requires the Commission to consider the following factors in making a determination to authorize the acquisition of a small water utility under Section 529(a):

- (1) The financial, managerial and technical ability of the small water or sewer utility.
- (2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service.
- (3) The expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards of utility service.
- (4) The expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water or sewer utility to be acquired.
- (5) The opinion and advice, if any, of the Department of Environmental Resources as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

¹²³ 66 Pa. C.S. § 529 (b).

(6) Any other matters which may be relevant.¹²⁴

Additionally, Section 529(m) defines a “capable public utility” as:

A public utility which regularly provides the same type of service as the small water utility or the small sewer utility to 4,000 or more customer connections, which is not an affiliated interest of the small water utility or the small sewer utility and which provides adequate, efficient, safe and reasonable service. A public utility which would otherwise be a capable public utility except for the fact that it has fewer than 4,000 customer connections may elect to be a capable public utility for the purposes of this section regardless of the number of its customer connections and regardless of whether or not it is proximate to the small sewer utility or small water utility to be acquired.¹²⁵

¹²⁴ 66 Pa. C.S. § 529(c).

¹²⁵ 66 Pa. C.S. § 529(m).

IV. SUMMARY OF THE ARGUMENT

Twin Lakes has established a *prima facie* case that acquisition of Twin Lakes by a capable public utility is in the public interest and in compliance with the provisions of Section 529. Twin Lakes has presented substantial record evidence that absent financial and operational support, Twin Lakes is in violation of statutory and regulatory standards as is required under Section 529(a)(1). In addition, Twin Lakes has presented substantial record evidence that, absent financial and operational support, Twin Lakes cannot comply with Commission or Pennsylvania Department of Environmental Protection orders concerning the safety, adequacy, efficiency or reasonableness of service as is required under Section 529(a)(2).

Further, Twin Lakes, absent financial and operational support, cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities as is required under Section 529(a)(3), and absent such outside financial and operational support, lacks the financial, managerial and technical ability to operate as a standalone small water utility as is required under Section 529(c)(1). Twin Lakes has also presented robust record evidence that it has exhaustively explored alternatives in accordance with Section 529(b) and has determined these alternatives to be impractical or not economically feasible as is required under Section 529(a)(4).

In addition, record evidence has been produced demonstrating that the acquiring capable public utility – Aqua – is financially, managerially and technically capable of acquiring and operating Twin Lakes in compliance with applicable statutory and regulatory standards as is required under Section 529(a)(5). Finally, robust record evidence has been produced confirming that the rates charged by the acquiring capable public utility – Aqua – to its pre-acquisition customers will not increase unreasonably because of Aqua’s acquisition of Twin Lakes as is

required under Section 529(a)(6).

Accordingly, Twin Lakes has established a *prima facie* case and has produced robust record evidence demonstrating that relief is warranted under Section 529, and the Commission can and should order Aqua to acquire Twin Lakes pursuant to Section 529(a).

In addition, with the resolution of this Section 529 proceeding, it is also appropriate that the Commission grant Twin Lakes' Applications For Approval *Nunc Pro Tunc* of The Three Unsecured Revolving Promissory Notes between Twin Lakes and Middlesex, and dismiss Twin Lakes' Application For Approval *Nunc Pro Tunc* of the Service Agreement between Twin Lakes and Middlesex and its five amendments as moot.

V. ARGUMENT

A. Twin Lakes Has Met The Requirements of Sections 529(a)(1) and (2).

Section 529(a)(1) requires that a small water utility be in violation of statutory or regulatory standards for the Commission to order a capable public utility to acquire the small water utility.¹²⁶ Section 529(a)(2) requires that a small water utility must fail to comply with any Order of the Commission or PA DEP concerning the safety, adequacy, efficiency or reasonableness of service including, but not limited to, the provision of adequate volume and pressure.¹²⁷ The record evidence presented in this proceeding demonstrates that Twin Lakes meets the requirements set forth in Sections 529(a)(1) and (2).

Twin Lakes witness Robert Fullagar testified that the Twin Lakes system is continually plagued by excessive unaccounted-for water (“UFW”) loss, ranging from 50% to 87%, due to leaks within the distribution system.¹²⁸ According to Mr. Fullagar, the leaks are a result of a combination of factors including age and quality of the original pipe material and poor quality workmanship associated with leak repairs prior to acquisition of the system by Twin Lakes.¹²⁹ The excessive leakage rate causes the single remaining operating well to consistently over-pump, which in turn stresses the well to the point where its operational viability is at risk.¹³⁰ This over-pumping was a contributing factor in the collapse of Well #1, which rendered it non-usable.¹³¹ Consequently, this condition has increased the stress on Well #2, the only remaining well serving

¹²⁶ 66 Pa. C.S. § 529(a)(1).

¹²⁷ 66 Pa. C.S. § 529(a)(2).

¹²⁸ Twin Lakes St. No. 1 at 2.

¹²⁹ *Id.*

¹³⁰ *Id.*

¹³¹ *Id.*

Twin Lakes customers.¹³² Further, the continued over-pumping of Well #2 is placing this well at increased risk of collapse, as well as at risk of being under the influence of surface water from the adjacent lake.¹³³ Mr. Fullagar also testified that, due to lead action level exceedances incurred in 2019, treatment upgrades including pH adjustment and corrosion control may be necessary.¹³⁴ The existing functional well is not operationally capable of accommodating these treatment upgrades.¹³⁵

Mr. Fullagar further testified that the improvements needed to address Twin Lakes' operational challenges and resiliency risks are estimated to cost \$4.8 million and are comprised of the following:

1. Completion of the Well #1 replacement project including permitting, construction of facilities associated with treatment, pumping, storage, controls, emergency standby power and connection of supply piping to the distribution system.
2. Replacement of the entire distribution system including mains, valves, services and elimination of dead-ends.
3. Rehabilitation of the entire Well #2 facility including design, permitting and construction of treatment, pumping, storage, associated controls and emergency standby power.¹³⁶

When asked about the measures Twin Lakes has taken to try and address these operational and resiliency challenges, Mr. Fullagar testified that Twin Lakes developed a five-year capital improvement plan to address these operational and resiliency challenges, which Twin Lakes

¹³² *Id.*

¹³³ *Id.*

¹³⁴ *Id.*

¹³⁵ *Id.*

¹³⁶ Twin Lakes St. No. 1 at 4.

agreed to implement as part of the Joint Petition For Settlement filed in Twin Lakes’ 2015 rate case.¹³⁷ In addition, Twin Lakes again submitted a five-year capital improvement plan in its 2019 rate case.¹³⁸

Mr. Fullagar further testified that while these five-year capital improvement plans were partially implemented, Twin Lakes did not complete the capital improvements contained in these plans submitted in the 2015 and 2019 rate cases, and identified the aspects of these capital improvement plans that were not implemented.¹³⁹ When asked why Twin Lakes did not follow through with the completion of these capital improvement plans, Mr. Fullagar testified that Twin Lakes was unable to follow through “because the Company received insufficient rate relief in both rate cases to enable Twin Lakes to execute these Plans.”¹⁴⁰ Mr. Fullagar also stated that these improvements are necessary in order to provide safe and adequate service to Twin Lakes’ customers now and in the future.¹⁴¹

The other parties’ testimony reflects the same concerns with the state of the Twin Lakes system and the operational challenges and risks. OCA witness Terry Fought confirmed the high UFW loss situation in the Twin Lakes system, testifying that Twin Lakes calculated its UFW for 2019 to be 85%, and 89.6% for the first three quarters of 2020 based on metered water and water production.¹⁴²

¹³⁷ Twin Lakes St. No. 1 at 6; *see also Pa. Public Utility Commission et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2015-2506337, Joint Petition for Settlement (dated March 24, 2019) (subsequently approved without modification by the 2015 Rate Case Order).

¹³⁸ Twin Lakes St. No. 1 at 6; *see also* 2019 Rate Case Order at 65.

¹³⁹ Twin Lakes St. No. 1 at 6-7.

¹⁴⁰ Twin Lakes St. No. 1 at 7.

¹⁴¹ Twin Lakes St. No. 1 at 4.

¹⁴² OCA St. 2 at 4-5.

I&E witness Esyan Sakaya concurred with the findings that the Twin Lakes system continues to incur high UFW loss and that lead action level exceedances have occurred since Twin Lakes' acquisition of the system in 2009.¹⁴³ Based on these findings, Mr. Sakaya concludes that Twin Lakes has met the criteria set forth in Sections 529(a)(1) and (2).¹⁴⁴

Aqua witness Stephen Clark also concurred with Mr. Sakaya.¹⁴⁵ Mr. Clark further concurs with Mr. Fullagar's description of the Twin Lakes system, the operational challenges and resiliency risks facing the system and the system's history with respect to UFW loss and lead exceedances.¹⁴⁶

Based on the record evidence submitted in this proceeding, Twin Lakes has met the criteria set forth in Sections 529(a)(1) and (2). Section 529(a)(1) requires that a small water utility be in violation of statutory or regulatory standards. Section 1501 of the Public Utility Code, 66 Pa. C.S. § 1501, requires utilities to provide "adequate, efficient, safe, and reasonable service and facilities" and to "make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper..." Despite Twin Lakes' significant operational efforts since 2009, its facilities are not adequate as required by Section 1501, and it has been unable to obtain necessary funding to make the repairs necessary to comply with this statutory requirement.

Further, Section 529(a)(2) requires that a small water utility must fail to comply with any order of the Commission or PA DEP concerning the safety, adequacy, efficiency or reasonableness of service including. As discussed above, the Commission has ordered certain improvements that

¹⁴³ I&E St. No. 1 at 6-12.

¹⁴⁴ I&E St. No. 1 at 12-14.

¹⁴⁵ Aqua St. No. 1-R at 13.

¹⁴⁶ *Id.* at 3-6.

are necessary to provide adequate service as part of recent rate case orders, but Twin Lakes has been unable to comply with these orders due to a lack of sufficient rate relief or availability of other financing options.

Therefore, Twin Lakes has met the criteria set forth in Section 529(a)(1) and (a)(2).

B. Twin Lakes Cannot Reasonably Be Expected to Provide Adequate, Efficient, Safe and Reasonable Service and Facilities in the Future Under Section 529(a)(3).

Section 529(a)(3) requires that the small water utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future in order for the Commission to order a capable public utility to acquire the small water utility.¹⁴⁷ Additionally, Section 529(c) sets forth factors that the Commission considers when making its determination that the six elements of Section 529(a) have been met, including the financial, managerial and technical ability of the small water utility.¹⁴⁸ Based on the record evidence presented in this proceeding, Twin Lakes – the small water utility seeking a Commission order for authorization to be acquired pursuant to Section 529 – is the entity that must be evaluated under Section 529(a)(3) and 529(c)(1), not Middlesex. This evaluation shows that Twin Lakes cannot reasonably be expected to provide adequate, efficient, safe and reasonable service and facilities in the future, and has met the criteria set forth in Section 529(a)(3) and the related Section 529(c)(1).

1. Twin Lakes – Not Middlesex – Is The Correct Entity To Evaluate Under Section 529(a)(3) and (c)(1).

The parties in this proceeding have differing conclusions as to what is the correct entity to evaluate under Sections 529(a)(3) and (c)(1). Twin Lakes and OCA have presented record

¹⁴⁷ 66 Pa. C.S. § 529(a)(3).

¹⁴⁸ 66 Pa. C.S. § 529(c)(1).

evidence demonstrating that Twin Lakes Utilities, Inc., as the owner and operator of the water system, is the correct entity and must be evaluated under Section 529(a)(3) and (c)(1) on its own merits. I&E and Aqua argue that Middlesex Water Company, the parent company of Twin Lakes, is the correct entity to be evaluated under Section 529(a)(3) and (c)(1). These distinctly different perspectives constitute the heart of the dispute that has been in place prior to, and throughout, this Section 529 proceeding. The record evidence presented in this proceeding by Twin Lakes and OCA clearly demonstrate that Twin Lakes is the correct entity to evaluate under Section 529(a)(3) and (c)(1). An evaluation of Twin Lakes shows that it cannot be reasonably expected to maintain adequate service and facilities in the future, as required by 529(a)(3), and that it lacks the financial ability under (c)(1) to provide such adequate service and facilities. Therefore, a Commission Order of Twin Lakes' acquisition by a capable public utility is warranted.

First, as stated in the Twin Lakes Petition, the testimony and exhibits presented by Twin Lakes witness A. Bruce O'Connor demonstrate that Twin Lakes – unlike Middlesex – is a public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania.¹⁴⁹ Twin Lakes is a Pennsylvania entity that was formed through the filing of Articles of Incorporation on April 6, 2009 with the Pennsylvania Department of State Corporation Bureau.¹⁵⁰ As Middlesex is not (and never was) a duly-authorized Pennsylvania corporation, the creation of Twin Lakes was necessary to ensure that the assets of Twin Lakes Water System, LLC, the predecessor owner to the system serving the Sagamore Estates customers, could be operated by an entity incorporated in the Commonwealth of Pennsylvania following the sale of the Twin Lakes system in 2009.¹⁵¹

¹⁴⁹ Twin Lakes Petition at ¶ 1; Twin Lakes St. No. 2-R at 2-4.

¹⁵⁰ Twin Lakes Petition at ¶ 4; Twin lakes St. No. 2-R at 6-7.

¹⁵¹ *Id.*

Second, Twin Lakes is the title owner of the assets comprising the Twin Lakes system. Twin Lakes is the entity that entered into the November 3, 2009 “Asset Purchase Agreement For The Assets of Twin Lakes Water Services, LLC By Twin Lakes Utilities, Inc.”¹⁵² Twin Lakes is the entity listed on the Recorded Deed, filed on November 3, 2009 and recorded on November 9, 2009, as the owner of the Twin Lakes system.¹⁵³

Third, Twin Lakes has been recognized by the Commission as the jurisdictional utility since the acquisition of the Twin Lakes system in 2009. On November 16, 2009, Twin Lakes was the entity that filed a new tariff adopting the rules, rates and regulations contained in the tariff of the predecessor owner of the Twin Lakes system.¹⁵⁴ The Commission accepted that tariff. In three subsequent rate cases filed in 2011, 2015 and 2019,¹⁵⁵ Twin Lakes was recognized as the jurisdictional utility petitioning for rate increases before the Commission.¹⁵⁶ In every rate case, regulatory proceeding and compliance inquiry through present day, the Commission has in word and action acknowledged and treated Twin Lakes as the jurisdictional utility in the Commonwealth of Pennsylvania regulated by the Commission.¹⁵⁷ None of the above facts have been disputed or contradicted on the record by the other parties to this proceeding.

I&E witnesses Christopher Keller and Esyan Sakaya both testified that Middlesex, and not Twin Lakes, is the appropriate entity to evaluate under Section 529(a)(3) and (c)(1). Mr. Sakaya testified that Middlesex is the appropriate entity because of “representations made by Middlesex

¹⁵² Twin Lakes Petition at ¶ 5, Appendix A; Twin Lakes St. No. 2-SR at 3.

¹⁵³ Twin Lakes Petition at ¶ 5, Appendix B; Twin Lakes St. No. 2-R at 2-4.

¹⁵⁴ Twin Lakes Petition at ¶ 7, Appendix C; Twin Lakes St. No. 2-R at 4-5.

¹⁵⁵ See Docket Nos. R-2011-2246415, R-2015-2506337 and R-2019-3010958, respectively.

¹⁵⁶ Twin Lakes Petition at ¶ 8; Twin Lakes St. No. 2-R at 3.

¹⁵⁷ Twin Lakes St. No. 2-R at 3-4.

to the Commission at [the] time [of the filing of the joint application for the sale of the Twin Lakes system in 2009].”¹⁵⁸ Mr. Keller testified that Middlesex was the entity granted a Certificate of Public Convenience by the Commission in March 2009 and produced an exhibit that purports to be the Certificate of Public Convenience that was issued to Middlesex.¹⁵⁹ Mr. Keller further testified that Middlesex was determined to be a capable public utility by the Commission in its 2009 Order approving the sale of the Twin Lakes system.¹⁶⁰ Aqua witnesses William Packer and Stephen Clark likewise testified that Middlesex is the appropriate entity to evaluate under Section 529(a)(3) and (c)(1).¹⁶¹

I&E’s and Aqua’s testimony that Middlesex – and not Twin Lakes – is the small water utility entity that should be evaluated under Section 529(a)(3) and (c)(1) is wholly without merit. First, Middlesex is a New Jersey corporation.¹⁶² Middlesex is incorporated in New Jersey and its principal place of business is in New Jersey.¹⁶³ Middlesex is not a Pennsylvania corporation. Middlesex is not registered to do business in the Commonwealth of Pennsylvania and is not a jurisdictional utility in the Commonwealth of Pennsylvania.¹⁶⁴

Contrary to I&E witness Sakaya’s testimony, Middlesex never held itself out, either on the written record or informally, as the entity that would be the jurisdictional utility in Pennsylvania. As Twin Lakes witness O’Connor testified, from the very first communication seeking approval

¹⁵⁸ I&E St. No. 1 at 14-15.

¹⁵⁹ I&E St. No. 2 at 4-5; I&E Exh. No. 2, Schedule 1.

¹⁶⁰ I&E St. No. 2 at 18.

¹⁶¹ Aqua St. No. 2-R at 7; Aqua St. No. 1-R at 11.

¹⁶² Twin Lakes St. No. 2-R at 2.

¹⁶³ *Id.*

¹⁶⁴ *Id.*

of the acquisition of the Twin Lakes system, Middlesex was fully transparent that the entity acquiring the system, Twin Lakes Utilities, Inc., would be a wholly-owned subsidiary of Middlesex and that Twin Lakes would be incorporated in the Commonwealth of Pennsylvania.¹⁶⁵ This was clearly stated in Middlesex's February 26, 2008 letter application first seeking approval of the acquisition of the Twin Lakes system, which stated that the proposed acquisition anticipated "the creation of a regulated Pennsylvania wholly-owned subsidiary of the MWC [Middlesex Water Company]" that would later become Twin Lakes Utilities, Inc.¹⁶⁶ This was also clearly set forth in the May 20, 2008 Joint Application in an exhibit page that was part of this Joint Application consisting of a journal entry entitled "MIDDLESEX WATER COMPANY – TENTATIVE JOURNAL ENTRIES."¹⁶⁷ In this journal entry, there is a line item entitled "Investment in Subsidiary" in the amount of \$45,000, a line item entitled "Cash" in the amount of \$45,000 and a description stating "*To record the capitalization of a wholly-owned subsidiary created to own and operate the water system serving the Twin Lakes community.*"¹⁶⁸ Any careful reading of the Joint Application would reveal that the intent of the Joint Application to acquire the Twin Lakes system filed on May 20, 2008 was to have a wholly-owned Pennsylvania subsidiary company of Middlesex created to own and operate the Twin Lakes system.

Contrary to I&E witness Keller's testimony, nowhere in the Twin Lakes Acquisition Order does it state that Middlesex is a "capable public utility" as that term is defined in Section 529(m). In addition, Mr. Keller attempted to demonstrate that a Certificate of Public Convenience was

¹⁶⁵ Twin Lakes St. No. 2-R at 6.

¹⁶⁶ Twin Lakes St. No. 2-R at 6; Exh. ABO-1 at 1-2 (Response to Interrogatory M-3) and 6-7 (Feb. 26, 2008 letter).

¹⁶⁷ I&E Exh. No. 2-SR, Schedule 2, page 15 of 19.

¹⁶⁸ *Id.* (emphasis added).

issued to Middlesex rather than Twin Lakes, but produced an exhibit that is not an authentic, valid and binding Certificate, but rather appears to be an unexecuted rough draft of one.¹⁶⁹ As pointed out on the record in testimony that was not refuted, the draft Certificate that Mr. Keller presented as an exhibit contains a space above the Commission Secretary's signature block that is blank.¹⁷⁰ In addition, the date set forth on this rough draft of a Certificate is February 26, 2009, the same date the Commission issued the Twin Lakes Acquisition Order.¹⁷¹ This Order however, required the completion of two conditions subsequent before the Commission would issue a Certificate of Public Convenience.¹⁷² The first condition was that a Notice of Closing had to be provided to the Commission upon the closing of the acquisition (an event that on February 26, 2009 had not yet occurred; in fact, the closing did not occur until November 3, 2009).¹⁷³ The second condition was that Twin Lakes had to file within ten days of the date of the closing a new tariff adopting the rules, rates and regulations contained in the up-to-then present tariff of the predecessor owner.¹⁷⁴ Only when those two conditions were met would a Certificate of Public Convenience be issued to Twin Lakes and a Certificate of Abandonment be issued to the predecessor owner, Twin Lakes Water Services, LLC.¹⁷⁵ Because these events had not yet occurred as of February 26, 2009, it is impossible that the Commission could have issued a Certificate of Public Convenience on that date to any entity, without all the preconditions completed, notwithstanding the fact that the exhibit

¹⁶⁹ I&E Exh. No. 2 at 1.

¹⁷⁰ Twin Lakes St. No. 2-R at 4.

¹⁷¹ *Id.*

¹⁷² *Id.*

¹⁷³ *Id.*

¹⁷⁴ Twin Lakes St. No. 2-R at 4-5.

¹⁷⁵ Twin Lakes St. No. 2-R at 5.

document provided by I&E is not signed and therefore not valid.¹⁷⁶

Mr. Keller declined to respond to these facts in his surrebuttal testimony, calling the draft Certificate he produced as an exhibit “just one piece of a puzzle.”¹⁷⁷ However, the various “puzzle pieces” in the record point to one clear conclusion – that from the very beginning of the process to acquire the Twin Lakes system, Twin Lakes Utilities, Inc., a Pennsylvania corporation, was always intended to be, and subsequently and consistently acknowledged as, the asset owner, title holder and jurisdictional utility in Pennsylvania. One additional fact further demonstrates this. The Commission’s records, separate from a Certificate of Public Convenience, originally erroneously referred to Middlesex as the owner of the Twin Lakes system.¹⁷⁸ This error was corrected through a filing submitted by Twin Lakes on April 4, 2011 and a subsequent Secretarial Letter confirming correction of the error was issued by the Commission on May 17, 2011.¹⁷⁹ In the May 17, 2011 in an additional Secretarial Letter, the Commission Secretary confirmed that the current tariff “already bears the name Twin Lakes Utilities, Inc.” and therefore “tariff supplements were not filed pursuant to 52 Pa. Code §53.5. [the regulation regarding name changes]”¹⁸⁰ The Commission Secretary went on to not require a new filing under 52 Pa. Code Section 53.5 because the Commission recognized Twin Lakes’ tariff filed on November 16, 2009 and changed the Commission’s records to recognize Twin Lakes.¹⁸¹ The fact that the Commission corrected its

¹⁷⁶ *Id.*

¹⁷⁷ I&E St. No. 2-SR at 6.

¹⁷⁸ Twin Lakes St. No. 2-R at 6.

¹⁷⁹ Twin Lakes St. No. 2-R at 6; Twin Lakes Exh. ABO-1 at 19-20.

¹⁸⁰ I&E Exh. No. 2-SR, Schedule 3.

¹⁸¹ *Id.*

erroneous recordkeeping to recognize Twin Lakes as the legal entity who is the rightful owner and operator of the Twin Lakes system, and confirm it as the entity that filed the tariff on November 16, 2009, constitutes additional evidence that Twin Lakes has long been recognized as the jurisdictional utility in Pennsylvania.

For all of these above reasons, the testimonies of Aqua witnesses Stephen Clark and William Packer stating that Middlesex is the small water utility that should be evaluated under Section 529(a)(3) and (c)(1) are equally without merit.

Accordingly, Twin Lakes – not Middlesex – is the correct entity to evaluate under Section 529(a)(3) and (c)(1) in determining whether a capable public utility should be ordered to acquire Twin Lakes.

2. Twin Lakes Cannot Reasonably Be Expected To Furnish And Maintain Adequate, Efficient, Safe And Reasonable Service And Facilities In The Future, pursuant to Section 529(a)(3).

The record evidence in this proceeding is clear that Twin Lakes, as a stand-alone entity, cannot reasonably be expected to maintain adequate, efficient, safe and reasonable service and facilities either in the near-term or for the long-term. Middlesex ceased its financial support of Twin Lakes effective May 28, 2020 and its operational support of Twin Lakes effective January 15, 2021, the termination date of the Service Agreement, as most recently voluntarily amended by Middlesex. As Twin Lakes witnesses O'Connor and Fullagar testified, absent outside financial and operational support from Middlesex, Twin Lakes is at best one or two pipe leaks away from complete financial and operational failure.¹⁸² Twin Lakes witness O'Connor testified that Twin Lakes has been unable to establish an independent credit relationship with a financial institution

¹⁸² Twin Lakes St. No. 2 at 7-8; Twin Lakes St. No. 1 at 5-6.

in the wake of Middlesex's cessation of financial support.¹⁸³ These above facts are not disputed by the parties to this proceeding.

In addition, Middlesex is under no legal or regulatory obligation to provide financial or operational support to Twin Lakes. Middlesex is a foreign corporation under Pennsylvania law that is not registered to conduct business in the Commonwealth of Pennsylvania. It is hornbook law that the Commonwealth of Pennsylvania cannot exercise jurisdiction over a foreign corporation that is not registered to conduct business in the Commonwealth of Pennsylvania. *Sullivan v. A.W. Chesterton, Inc. (In re Asbestos Prods. Lia. Litig. No. VI)* 384 F.Supp.3d 532, 537-538 (E.D. Pa. 2019) (citing *Daimler A.G. v. Bauman*, 571 U.S. 117, 134 S.Ct.746, 187 L.Ed.2d 624 (2014)). In *Sullivan*, the United States District Court for the Eastern District of Pennsylvania, relying on Supreme Court of the United States precedent set forth in *Daimler A.G.*, struck down as unconstitutional a Pennsylvania statutory scheme that explicitly provided that by the mere act of registering to conduct business in Pennsylvania, a foreign corporation consented to the general jurisdiction in Pennsylvania. *Sullivan*, 384 F.Supp.3d at 539. Here, Middlesex is one step further removed from the fact pattern in *Sullivan*. Middlesex never registered to do business in Pennsylvania and never consented to subject itself to the jurisdiction of the Commonwealth of Pennsylvania. In filings for the acquisition of the Twin Lakes system in 2009, Middlesex from the beginning stated its clear intention to form a wholly-owned Pennsylvania subsidiary company that would serve as the asset owner, title holder and regulated utility company to serve as the jurisdictional utility in Pennsylvania. The Commonwealth of Pennsylvania cannot compel Middlesex to continue to lend money to, or make further equity investments in, Twin Lakes, or to continue to provide the services it has provided to Twin Lakes under the Service Agreement, an

¹⁸³ Twin Lakes St. No. 2 at 7.

agreement that Middlesex was well within its legal and contractual rights to terminate. Any attempt by the Commonwealth of Pennsylvania to compel Middlesex is clearly and unequivocally unconstitutional.

Given these circumstances, absent the financial backing and operational support of Middlesex, Twin Lakes lacks the financial and technical capability to operate the system in a manner that does not necessitate Section 529 relief consistent with the criteria set forth in Section 529(c)(1). While I&E witnesses Sakaya and Keller testified that the officers and directors of Twin Lakes possess the managerial expertise to provide safe and adequate service to Twin Lakes,¹⁸⁴ Twin Lakes witness O'Connor testified in response that the challenges facing Twin Lakes are far greater than the managerial expertise of any one Officer, or group of Officers, no matter how experienced, absent the financial and operational support of Middlesex.¹⁸⁵ Twin Lakes alone does not have the financial or technical capability to operate the system in a manner that does not necessitate Section 529 relief.¹⁸⁶ The managerial expertise of the Directors and Officers of Twin Lakes in no way changes that reality.¹⁸⁷

Further, even if Twin Lakes were able to make the \$4.8 million in necessary repairs to the system in order to provide adequate service and facilities in the future,¹⁸⁸ it is unreasonable to expect that the 114 customers in Sagamore Estates could bear the full rate impact of this expenditure. Customer rates would have to increase dramatically, which is particularly concerning

¹⁸⁴ I&E St. No. 1 at 15; I&E St. No. 2 at 9-10.

¹⁸⁵ Twin Lakes St. No. 2-R at 9.

¹⁸⁶ *Id.*

¹⁸⁷ *Id.*

¹⁸⁸ Twin Lakes St. No. 1 at 4.

given that there is already significant concern on the record by the Commission regarding the affordability of Twin Lakes' rates as they currently stand.¹⁸⁹

The record in this proceeding and applicable case law all demonstrate that Twin Lakes is the jurisdictional utility in the Commonwealth of Pennsylvania. The record and applicable case law demonstrate that Twin Lakes is the correct entity to be evaluated under Section 529(a)(3) and (c)(1) to determine whether the Commission should order a capable public utility to acquire Twin Lakes under Section 529. The record clearly demonstrates that Twin Lakes has met the requirements of Section 529(a)(3) and (c)(1) and cannot reasonably be expected to provide adequate, efficient, safe and reasonable service and facilities in the future.

C. Twin Lakes Has Met The Requirements of Section 529(a)(4) For Its Acquisition By A Capable Public Utility.

Section 529(a)(4) requires Twin Lakes to consider the five alternatives to acquisition set forth in Section 529(b) in order to qualify for a Commission order approving its acquisition by a capable public utility pursuant to Section 529(a).¹⁹⁰ The record evidence in this proceeding clearly demonstrates that Twin Lakes considered all of these alternatives and demonstrated that these alternatives are impractical or not economically feasible.

With respect to the first alternative (the reorganization of the small water utility under new management), Twin Lakes witness O'Connor testified that Twin Lakes' sole source of financial support was Middlesex, which ceased support to Twin Lakes on May 28, 2020.¹⁹¹ Mr. O'Connor further testified that Twin Lakes is unable to establish an independent credit relationship with a

¹⁸⁹ See 2019 Rate Case Order at 66-80.

¹⁹⁰ 66 Pa. C.S. § 529(a)(4), (b).

¹⁹¹ Twin Lakes St. No. 2-R at 8.

financial institution.¹⁹² I&E witness Keller concurred with Mr. O'Connor's testimony, further noting that Twin Lakes has stated that it may file a petition for bankruptcy protection if the Commission denies the Twin Lakes Petition.¹⁹³ Thus, Twin Lakes has considered this first alternative under Section 529(a)(4) and has found it to be economically unfeasible.

With respect to the second alternative (the entering of a contract with another public utility or a management or service company to operate the system), Twin Lakes issued an RFP for the operation and maintenance of the Twin Lakes system due to the anticipated departure of Middlesex.¹⁹⁴ Twin Lakes witness Fullagar testified that only one proposal was submitted in response to the RFP by Farnham and Associates and that this proposal was inadequate, as it was limited in scope and did not offer the full range of necessary services.¹⁹⁵ I&E witness Keller concurred with Mr. Fullagar's testimony.¹⁹⁶ Thus, Twin Lakes has explored this alternative and was not successful in identifying another company to adequately maintain and operate the system, notwithstanding the fact that even if an adequate Operator had been identified, without sufficient revenues from customers' rates and external financing financial support Twin Lakes' ability to compensate an alternate Operator is not sustainable.

With respect to the third alternative (the appointment of a receiver), Twin Lakes witness O'Connor testified that Twin Lakes fully supported OCA's August 18, 2020 Petition for Issuance of an Emergency Order on an Expedited Basis that sought the appointment of Aqua as a receiver

¹⁹² Twin Lakes St. No. 2 at 7.

¹⁹³ I&E St. No. 2 at 20.

¹⁹⁴ Twin Lakes St. No. 1 at 9.

¹⁹⁵ *Id.*

¹⁹⁶ I&E St. No. 2 at 21.

for the Twin Lakes system.¹⁹⁷ I&E witness Keller concurred with Mr. O'Connor's testimony.¹⁹⁸ Since that time, Aqua has now been appointed as temporary receiver of the Twin Lakes system effective January 15, 2021, and continuing while this Section 529 proceeding is pending.¹⁹⁹

With respect to the fourth alternative (merger with another public utility), Twin Lakes witness O'Connor provided robust testimony detailing Twin Lakes' numerous efforts since 2011, including discussions with other public utilities, meetings with the then-Chairman of the Commission, Commission Staff and OCA on separate occasions to identify workable alternative solutions including the acquisition of Twin Lakes.²⁰⁰ These efforts are also described in some detail in Section II.A.4, above. I&E witness Keller concurred with Mr. O'Connor's testimony.²⁰¹ As such, Twin Lakes has repeatedly explored the option of merging with another public utility, and these efforts have been unsuccessful.

With respect to the fifth alternative (acquisition by a municipality, municipal authority or cooperative), Twin Lakes witness Fullagar testified that Twin Lakes considered interconnecting with the nearest public community system in Milford Township.²⁰² This alternative was not deemed viable because an interconnection would require a 5 to 6 mile long excavation in State Route 6 accompanied by the construction of booster pumping stations along this route due to the

¹⁹⁷ Twin Lakes St. No. 2 at 6-7.

¹⁹⁸ I&E St. No. 2 at 21-22.

¹⁹⁹ See the Commission's Jan. 14, 2021 Opinion and Order in this proceeding.

²⁰⁰ Twin Lakes St. No. 2 at 4-6.

²⁰¹ I&E St. No. 2 at 22.

²⁰² Twin Lakes St. No. 1 at 7.

mountainous terrain.²⁰³ I&E witness Keller concurred with Mr. Fullagar's testimony²⁰⁴ as did Aqua witness Clark.²⁰⁵ Thus, Twin Lakes has considered the acquisition by a municipality but this option was found to be impractical and not economically feasible.

OCA witness Morgan DeAngelo testified that all five alternatives set forth in Section 529(b) have been considered by Twin Lakes and, with the exception of the third alternative (the appointment of a receiver, which was subsequently ordered by the Commission on January 14, 2021), all are deemed impractical and unfeasible.²⁰⁶ Aqua does not dispute that Twin Lakes demonstrated that the alternatives to acquisition were not practical or feasible.²⁰⁷

Based on the record evidence submitted in this proceeding, Twin Lakes has considered all alternatives to acquisition identified in Section 529(b) and has found the options to be impractical and/or not economically feasible. Therefore, the criteria set forth in Section 529(a)(4) has been met.

D. The Potential Acquiring Utility is a Capable Public Utility Pursuant to Section 529(a)(5).

Section 529(a)(5) requires the identification of an acquiring capable public utility that is financially, managerially and technically capable of acquiring and operating the small water utility in compliance with applicable statutory and regulatory standards.²⁰⁸ The record evidence in this proceeding clearly identifies Aqua as one such acquiring capable public utility.

²⁰³ *Id.*

²⁰⁴ I&E St. No. 2 at 23.

²⁰⁵ Aqua St. No. 1 at 8.

²⁰⁶ OCA St. 1 at 3-4 (noting that OCA was still awaiting responses to outstanding discovery from OCA to the Borough of Milford Water Authority with respect to the fifth alternative).

²⁰⁷ Aqua St. No. 1-R at 14-15.

²⁰⁸ 66 Pa. C.S. § 529(a)(5).

OCA witness DeAngelo testified that Aqua is financially and managerially capable of acquiring and operating Twin Lakes in compliance with applicable statutory standards, noting that, if acquired, Twin Lakes would become part of Aqua's Greater Pennsylvania – Honesdale Division operation.²⁰⁹ Ms. DeAngelo further testified that Aqua anticipated that it would be able to better manage operational expenses and was prepared to make the necessary capital expenditures as part of its management and operation of the Twin Lakes system and to resolve the current system issues.²¹⁰

I&E witness Keller concurred with Ms. DeAngelo's testimony, noting that Aqua currently serves approximately 443,000 water customers and that Aqua has clearly indicated that it is capable of acquiring systems of 5,000 customers, which far exceeds the number of customers served by Twin Lakes.²¹¹ Twin Lakes witness O'Connor also concurred with Ms. DeAngelo's testimony, noting that Aqua is more than capable of acquiring and operating the system in compliance with applicable statutory and regulatory standards.²¹² Aqua witness Clark likewise concurs that Aqua is financially, managerially and technically capable of providing water service to the Twin Lakes system.²¹³

Based on the record evidence submitted in this proceeding, Aqua is the potential acquiring utility, and Aqua clearly has the financial, managerial and technical ability to operate the system in compliance with the applicable requirements. Therefore, the criteria set forth in Section

²⁰⁹ OCA St. 1 at 4.

²¹⁰ *Id.*

²¹¹ I&E St. No. 2 at 27.

²¹² Twin Lakes St. No. 2-R at 11.

²¹³ Aqua St. No. 1-R at 15.

529(a)(5) has been met.

E. Rates for Aqua’s Existing Customers Will Not Increase Unreasonably Because of the Acquisition, Pursuant to Section 529(a)(6).

Section 529(a)(6) requires that the rates charged by the acquiring capable public utility to its pre-acquisition customers will not increase unreasonably because of the acquisition.²¹⁴ The record evidence presented in this proceeding demonstrates that the rates for Aqua’s existing customers will not increase unreasonably if Aqua acquires the Twin Lakes system.

Twin Lakes witness O’Connor testified that a Pennsylvania public utility such as Aqua has a large Pennsylvania customer base over which Aqua can spread its prudently incurred costs to manage and operate the Twin Lakes system with a miniscule impact on any individual customer’s bill.²¹⁵ Mr. O’Connor further noted that Aqua’s ability to spread these costs over a large Pennsylvania customer base also adequately addresses the Commission’s strong policy of ensuring the affordability of customer rates and high quality of service in a manner that Twin Lakes’ continued ownership of the system cannot.²¹⁶

OCA witness DeAngelo corroborated Mr. O’Connor’s testimony with respect to the impact of a Section 529 acquisition of Twin Lakes on Aqua’s customers, calculating that the bill impact borne by Aqua’s existing residential water customers would approximately equal 0.09% of Aqua’s 2019 water revenues from residential metered water customers.²¹⁷

I&E witness Keller also concurred, testifying that the acquisition of Twin Lakes by Aqua

²¹⁴ 66 Pa. C.S. § 529(a)(6).

²¹⁵ Twin Lakes St. No. 2-R at 10-11.

²¹⁶ Twin Lakes St. No. 2-R at 11; Twin Lakes St. No. 2-SR at 7-8.

²¹⁷ OCA St. 1 at 5.

will not unreasonably affect rates for pre-acquisition Aqua customers as Aqua currently supplies water services to approximately 443,000 customers and Twin Lakes' customers would represent less than 0.1% of all water customers.²¹⁸ Mr. Keller further notes that Aqua has demonstrated through the acquisition of several larger wastewater systems that Aqua is capable of acquiring a company such as Twin Lakes without a significant increase in rates for existing customers.²¹⁹

Aqua witness Packer testified that he agreed with the conclusion that an acquisition of Twin Lakes by Aqua would not have a meaningful impact on the rates of Aqua's existing customer base.²²⁰

The record evidence submitted in this proceeding clearly establishes that rates for Aqua's existing customers would not increase unreasonably as a result of Aqua's acquisition of Twin Lakes. Therefore, the criteria set forth in Section 529(a)(6) has been met.

F. Twin Lakes' Applications For Approval *Nunc Pro Tunc* of The Three Unsecured Revolving Promissory Notes Between Twin Lakes and Middlesex Should Be Addressed At This Time and Approved.

Four additional Commission dockets related to this Section 529 proceeding remain pending and should be addressed concomitant with a resolution of this proceeding.

The first three of these additional Commission dockets address Twin Lakes' Applications for Commission approval, *nunc pro tunc*, of the three outstanding Unsecured Revolving Promissory Notes between Twin Lakes and Middlesex.²²¹ These dockets have been consolidated

²¹⁸ I&E St. No. 2 at 27-28.

²¹⁹ I&E St. No. 2 at 28.

²²⁰ Aqua St. No. 2-R at 9.

²²¹ Docket Nos. G-2020-3021018, G-2020-3021021 and G-2020-3021024.

with this Section 529 proceeding.²²² Twin Lakes believes this issue is now ripe for resolution and the Commission should approve Twin Lakes' Application, *nunc pro tunc*, with respect to the three Unsecured Revolving Promissory Notes.

As discussed in Twin Lakes' Application, Middlesex extended financial credit to Twin Lakes through the three Unsecured Revolving Promissory Notes that were executed in January 2016, October 18, 2019 and October 29, 2019 respectively.²²³ All three Promissory Notes contain identical terms; they provide Middlesex with the right as Lender to demand payment from Twin Lakes as Borrower the total amount due on the Notes together with interest payable on the unpaid principal at the rate of 7.0% per annum.²²⁴ All three Promissory Notes were previously disclosed to the Commission, on the record, in the first Twin Lakes rate case following execution of these Notes, specifically the 2019 rate case²²⁵ and the 2015 rate case.²²⁶

As discussed throughout this Main Brief, Middlesex has served as Twin Lakes' sole source of financial support from the 2009 up to Aqua's appointment as Receiver for the system effective January 15, 2021. The three Unsecured Revolving Promissory Notes served as the vehicle to enable the financial support of Twin Lakes. It is therefore unquestionably in the public interest for the Commission to grant approval, *nunc pro tunc*, of the three outstanding Unsecured Revolving Promissory Notes pursuant to 66 Pa. C.S. § 2102.

²²² *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, Third Scheduling Order (Oct. 5, 2020), at Ordering Para. 1.

²²³ Twin Lakes Application at ¶ 10.

²²⁴ *Id.*

²²⁵ *Id.* at ¶ 11; citing *Pa. Public Utility Commission et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2019-3010958, Twin Lakes St. No. 2 at 5-7, Exh. MLT-1.

²²⁶ *Id.* at ¶ 11; citing *Pa. Public Utility Commission et al. v. Twin Lakes Utilities Inc.*, Docket No. R-2015-2506337, Twin Lakes St. No. 1 at 6-7, Exh. ABO-5.

Twin Lakes respectfully submits that the issue of Commission approval of the Promissory Notes is ripe for determination. Under the doctrine of ripeness, an issue is ripe for determination if: (1) the issue is adequately developed for judicial review; and (2) parties will suffer hardship if review is delayed.²²⁷ Here, Twin Lakes, for the reasons discussed above, submits that the issue of whether the three Promissory Notes serve the public interest is more than adequately developed. In addition, further delay of approval of the Promissory Notes, which no party disputes served as an essential part of Twin Lakes' sole source of financial support, only serves to delay final resolution of permanent ownership of the Twin Lakes system, resulting in hardship for the parties to this matter and, more importantly, Twin Lakes' customers.

Accordingly, it is ripe for the Commission to make a determination with respect to Twin Lakes' Application for approval, *nunc pro tunc*, of the three Unsecured Revolving Promissory Notes in Docket Nos. G-2020-3021018, G-2020-3021021 and G-2020-3021024 and the Commission should approve Twin Lakes' Application.

G. Twin Lakes' Application For Approval *Nunc Pro Tunc* of The Service Agreement Between Twin Lakes and Middlesex And Its Five Amendments Should Be Dismissed As Moot.

The fourth and final additional docket related to this Section 529 proceeding is Twin Lakes' Application for Commission approval, *nunc pro tunc*, of the Service Agreement between Twin Lakes and Middlesex inclusive of five amendments to the Service Agreement.²²⁸ This docket was consolidated with this Section 529 proceeding by the Emergency Petition Order entered on

²²⁷ *Bayada Nursed, Inc. v. Department of Labor and Industry*, 607 Pa. 527, 542, 8 A.3d 866, 874 (2010).

²²⁸ *See* Docket No. G-2020-3020941.

September 22, 2020.²²⁹

Twin Lakes' Application for Commission approval, *nunc pro tunc*, of the Service Agreement inclusive of its five amendments should be dismissed as moot. Under the mootness doctrine, an issue may be dismissed for mootness at any time because generally, an actual case or controversy must exist at all stages of the judicial or administrative process.²³⁰ The mootness doctrine requires that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed.²³¹ An issue can become moot as a result of an intervening change in the facts of the case or due to an intervening change in the applicable law.²³²

Here, the Service Agreement, by its original terms, could terminate upon 90-days' advance written notice from either contracting party to the other party.²³³ The expiration date of the Service Agreement was extended through subsequent amendments to the Service Agreement up to its Fifth Amendment, which automatically terminated the Service Agreement effective January 15, 2021.²³⁴ With the termination of the Service Agreement having already taken effect as of January 15, 2021, there remains no case or controversy left to decide with respect Twin Lakes' Application for Commission approval, *nunc pro tunc*, of the Service Agreement inclusive of its five amendments. The issue of whether the Service Agreement was in the public interest pursuant to Section 2102 of the Public Utility Code is no longer necessary to decide as by its terms the Service Agreement is

²²⁹ Emergency Petition Order at Ordering Para. 5.

²³⁰ *Pa. Liquor Control Bd. v. Dentici*, 542 A.2d 229, 230 (Pa. Cmwlth. 1988).

²³¹ *In re Gross*, 382 A.2d 116, 119 (Pa. 1978).

²³² *Id.* at 119-120.

²³³ Twin Lakes Application, Appendix B at 1.

²³⁴ *Application of Twin Lakes Utilities, Inc. Commission Approval, Nunc Pro Tunc, of Fifth Amendment To The Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc. Pursuant to 66 Pa. C.S. § 2012*, Docket No. G-2020-3020941 (Dec. 31, 2020), at ¶ 6, available at <https://www.puc.pa.gov/pcdocs/1688954.pdf>.

expired and Aqua is providing operational support to Twin Lakes through its receivership.

Even assuming *arguendo*, the Commission were to deny Section 529 relief in this case, as already discussed at length in this Main Brief, Middlesex is no longer providing operational support to Twin Lakes through the Service Agreement and is under no legal or regulatory obligation to provide such support as it is a foreign corporation not registered to do business in the Commonwealth of Pennsylvania and is not a jurisdictional utility in Pennsylvania. As such, Middlesex cannot be legally compelled by the Commonwealth of Pennsylvania to enter into a new Service Agreement that amends the terms of or further extends the now-expired Service Agreement.

Accordingly, with the resolution of this Section 529 proceeding, Twin Lakes' Application for Commission approval, *nunc pro tunc*, of the Service Agreement inclusive of its five amendments filed at Docket No. G-2020-3020941 should be dismissed as moot.²³⁵

²³⁵ See *Petition of the Bureau of Investigation and Enforcement of the Pennsylvania Public Utility Commission for the Issuance of an Ex Parte Emergency Order*, Docket No. P-2018-3000281, Order (May 3, 2018), at 11 (citing *Super Tire Engineering Co. v. McCorkle*, 416 U.S. 115, 94 S.Ct. 1694, 40 L.Ed.2d 1 (1974)).

VI. CONCLUSION

WHEREFORE, for all of the reasons set forth above, Twin Lakes Utilities, Inc. respectfully requests that the Commission grant its Petition and: (1) order Aqua (or another capable public utility) to acquire Twin Lakes pursuant to Section 529 of the Public Utility Code; (2) grant Twin Lakes' Applications For Approval *Nunc Pro Tunc* of The Three Unsecured Revolving Promissory Notes between Twin Lakes and Middlesex; and (3) dismiss Twin Lakes' Application For Approval *Nunc Pro Tunc* of the Service Agreement between Twin Lakes and Middlesex and its five amendments as moot.

Respectfully submitted,



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Dated: February 5, 2021

Counsel for Twin Lakes Utilities, Inc.

APPENDIX A

PROPOSED FINDINGS OF FACT

1. Twin Lakes is a public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Twin Lakes Petition at ¶ 1; Twin Lakes St. No. 2-R at 3.
2. Twin Lakes is a wholly-owned subsidiary of Middlesex Water Company, a New Jersey corporation. Twin Lakes St. No. 2-R at 3.
3. The Twin Lakes system provides water service to the community known as Sagamore Estates located in Shohola Township, Pike County, Pennsylvania. Twin Lakes St. No. 2 at 1.
4. Twin Lakes presently serves approximately 114 customers and is comprised of one functional well (Well #2), one non-functional well (Well #1), a small treatment/pumping station including an atmospheric 20,000 gallon storage tank integral to the station, approximately 3.7 miles of water main of various diameter, and approximately 120 active and inactive service connections combined. Twin Lakes St. No. 1 at 1.
5. Prior to the acquisition of the Twin Lakes water system by Twin Lakes Utilities, Inc., the system was beset by longstanding service deficiencies, subject to frequent boil water advisories issued by the Pennsylvania Department of Environmental Protection (“PA DEP”), and water service was frequently suspended due to numerous operational problems. Twin Lakes St. No. 2 at 1-2.
6. On February 26, 2008, Middlesex filed with the Commission a Letter Application requesting a Certificate of Public Convenience for the purpose of acquiring the assets and to operate the water system of Twin Lakes Water Services, LLC, the then-owner of the Twin Lakes system. Twin Lakes St. No. 2-R, Exh. ABO-1 at 1.
7. On May 20, 2008, Middlesex and Twin Lakes Water Services, LLC filed a Joint Application for Commission approval of the acquisition of the assets of Twin Lakes Water Services, LLC. Twin Lakes St. No. 2-R, Exh. ABO-1 at 1.
8. Middlesex intended to establish a wholly-owned Pennsylvania subsidiary, created to own and operate the water system serving the Sagamore Estates community. Twin Lakes St. No. 2-R, Exh. ABO-1 at 1.
9. On February 26, 2009, the Commission approved the acquisition of the Twin Lakes system. *Joint Application of Middlesex Water Company (Middlesex) and Twin Lakes Water Services, LLC (Twin Lakes) for approval of: 1) the transfer by sale of Twin Lakes to Middlesex; 2) the right of Middlesex to begin to offer, render, furnish and supply water service to the public in the development of Sagamore Estates, Shohola Township, Pike County; and 3) the abandonment of public water service by Twin Lakes, Docket Nos. A-2008-2050089 and A-2008-2050092, Order (entered Mar. 2, 2009).*

10. On April 6, 2009, Middlesex formed Twin Lakes Utilities, Inc. by filing Articles of Incorporation with the Pennsylvania Department of State Corporation Bureau. Twin Lakes Petition at ¶¶ 4-6.
11. On November 3, 2009, Twin Lakes entered into an Asset Purchase Agreement For The Assets of Twin Lakes Water Services, LLC By Twin Lakes Utilities, Inc., which subsequently became the owner and titleholder of the assets acquired from Twin Lakes Water Services, LLC, namely, the Twin Lakes system. Twin Lakes Petition at ¶ 5.
12. On November 16, 2009, Twin Lakes filed with the Commission a new tariff adopting the rules, rates and regulations contained in the up-to-then present tariff of Twin Lakes Water Services, LLC. *Joint Application of Middlesex Water Company (Middlesex) and Twin Lakes Water Services, LLC (Twin Lakes) for approval of: 1) the transfer by sale of Twin Lakes to Middlesex; 2) the right of Middlesex to begin to offer, render, furnish and supply water service to the public in the development of Sagamore Estates, Shohola Township, Pike County; and 3) the abandonment of public water service by Twin Lakes*, Docket Nos. A-2008-2050089 and A-2008-2050092, Letter From Twin Lakes To Commission Secretary (Nov. 16, 2009).
13. The Commission never issued a Certificate of Public Convenience to Twin Lakes or a corresponding Certificate of Abandonment to Twin Lakes Water Services, LLC in November 2009 or thereafter. Twin Lakes St. No. 2-R at 5.
14. Soon after Twin Lakes began operating the system in November 2009, it became apparent that the condition of the water system was significantly poorer than had been represented by the former owner, or had been visible from the inspection and assessment that was part of the operational due diligence work performed prior to the purchase. Twin Lakes St. No. 2 at 2.
15. As a condition of its approval of the acquisition of the system, the Commission required the installation of water meters for all customers. Twin Lakes St. No. 2 at 2.
16. After water meters were installed and an annual meter reading database was established, Twin Lakes was able to calculate a non-revenue, or unaccounted-for, water usage percentage which was previously unknown by the former owner, the Commission or any other regulatory body, and which revealed a significant amount of leakage within the water distribution system. Twin Lakes St. No. 2 at 2.
17. Twin Lakes' sole source of equity capital, debt financing and primary operations support has been Middlesex. Twin Lakes Petition at ¶ 9; Twin Lakes St. No. 1 at 9-10.
18. Twin Lakes has been unable to establish a credit arrangement at any reasonable cost with any financial institution as a stand-alone entity due to Twin Lakes' inability to demonstrate that it had the net income and cash flow to adequately support its financial obligations incurred in operating the Twin Lakes water system. Twin Lakes Petition at ¶ 9; Twin Lakes

St. No. 1 at 9-10; Twin Lakes St. No. 2 at 7.

19. Beginning in 2009, Middlesex made equity investments in, and extended credit to, Twin Lakes in order to enable Twin Lakes to maintain service for the Twin Lakes customers and pay for the necessary improvements given the poor condition of the Twin Lakes system. Twin Lakes Petition at ¶ 9; Twin Lakes St. No. 1 at 9-10; Twin Lakes St. No. 2 at 3.
20. Since 2009, Middlesex has extended financial credit to Twin Lakes through three outstanding Unsecured Revolving Promissory Notes, the first executed in January 2016, the second executed on October 18, 2019, and the third executed on October 29, 2019. Twin Lakes Petition at ¶ 10.
21. The three Promissory Notes provide Middlesex with the right as Lender to demand payment from Twin Lakes as Borrower of the total amount due on the Notes together with any unpaid interest accruing at the rate of 7.0% per annum. Twin Lakes Petition at ¶ 10.
22. Since the acquisition of the Twin Lakes system in 2009, Middlesex has invested, loaned or advanced over \$2.4 million to Twin Lakes. Twin Lakes Petition at ¶ 11.
23. Middlesex provided operational support to Twin Lakes through a Service Agreement executed between Middlesex and Twin Lakes dated December 1, 2009. Twin Lakes Petition at ¶ 12.
24. Per the Service Agreement, either party could terminate the Agreement by giving the other party 90 days advance written notice. Twin Lakes Petition at ¶ 12.
25. In June 2011, Twin Lakes filed a rate case with the Commission seeking to increase rates by 370%. Twin Lakes St. No. 2 at 3; *see* Docket No. R-2011-2246415.
26. On March 1, 2012, the Commission issued an Order approving a 124.9% rate increase, to be phased in over a three-year period. *Pa. Public Utility Commission et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2011-2246415, Order (entered Mar. 1, 2012) (“2011 Rate Case Order”).
27. On November 11, 2015, Twin Lakes filed a rate case with the Commission seeking an increase in base rates of 257%. Twin Lakes St. No. 2 at 5.
28. On June 9, 2016, the Commission approved a 164.54% rate increase, to be phased-in over a three year period, and with half of that rate increase (82.27%) only granted upon the subsequent completion of certain additional system improvements. *Pa. Public Utility Commission et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2015-2506337, Order (entered June 9, 2016) (“2015 Rate Case Order”).
29. On July 19, 2019, Twin Lakes filed a rate case with the Commission seeking an increase in base rates of 158.63%. Twin Lakes Petition at ¶ 17; *see* Docket No. R-2019-3010958.

30. On March 26, 2020, the Commission issued an Opinion and Order approving an 87.91% rate increase. *Pa. Public Utility Commission et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2019-3010958, Opinion and Order (entered Mar. 26, 2020) (“2019 Rate Case Order”).
31. In terms of customer bill impacts, a customer bill in 2009, at the time the Twin Lakes system was acquired, was \$282 per year. With the rate change approved by the Commission in the 2019 Rate Case Order, an average annual customer bill is now \$2,210.64 per customer. Twin Lakes St. No. 2 at 3.
32. In 2011, Twin Lakes’ management and Aqua America engaged in a discussion regarding the acquisition of the water system by Aqua, which was ultimately unsuccessful. Twin Lakes St. No. 2 at 4.
33. After discussions occurred in 2011, Twin Lakes officials contacted Aqua officials over the next four years in an attempt to restart the acquisition dialogue without success. Twin Lakes St. No. 2 at 4.
34. In approximately 2013, a discussion was held between Twin Lakes management and a representative of American Water Works Company, the parent company of Pennsylvania American Water Company, regarding acquiring Twin Lakes, but American was not interested in performing due diligence or pursuing a transaction. Twin Lakes St. No. 2 at 4.
35. In April 2015, Twin Lakes senior executives travelled to Harrisburg to meet with the then Chairman of the Commission to request for assistance in identifying a system take-over solution that would mitigate the inevitable need for Twin Lakes to petition the Commission for another triple-digit increase in base rates for the residents of the Sagamore Estates community. There were no remedies identified other than to seek an increase in base rates. Twin Lakes St. No. 2 at 5.
36. In August 2017, a senior Twin Lakes officer met with the Pennsylvania Office of Consumer Advocate to disclose the ongoing Twin Lakes system failure risk due to the loss of the back up well supply and the inability to procure a new well site, and to request assistance in identifying a system take-over solution. Twin Lakes St. No. 2 at 5.
37. In late 2017, senior Twin Lakes officials held informal conversations regarding acquisition with senior executives of Aqua and American which failed to produce a successful outcome. Twin Lakes St. No. 2 at 5.
38. In November 2017, senior Twin Lakes officials met with Commission Staff to provide an update on the ongoing system failure risk due to the loss of the back up well supply, and to request assistance in identifying a system take-over solution that would mitigate the risk of losing the only source of supply serving the residents of the Sagamore Estates community as well as the need for another significant increase in base rates. Twin Lakes St. No. 2 at 5-6.

39. On February 26, 2018, Twin Lakes issued a letter to the Commission's Bureau of Technical Utility Services and the Bureau of Investigation and Enforcement, the Acting Consumer Advocate, and the Small Business Advocate informing them of the emergent need to undertake system improvements that would result in increasing Twin Lakes customers' annual water bills to over \$4,000. The letter stated that, given this need and the size of the bill increase to Twin Lakes customers, the Company had three options on how it could practically proceed: (1) file a petition for abandonment of the Twin Lakes system franchise; (2) file for emergency rate relief; or (3) identify a larger investor-owned water utility better positioned to make these necessary improvements to the Twin Lakes system. Twin Lakes St. No. 2 at 5-6.
40. On October 23, 2018, Twin Lakes filed a Petition For Abandonment with the Commission. Twin Lakes St. No. 2 at 6; *see* Docket No. A-2018-3005590.
41. On October 25, 2018, the Commission rejected Twin Lakes' Petition For Abandonment. Twin Lakes St. No. 2 at 6; *see also Application of Twin Lakes Utilities, Inc. to Abandon Service to its Customers in Sagamore Estates in Shohola Township, Pike County, Pennsylvania*, Docket No. A-2018-3005590, Opinion and Order (entered Feb. 28, 2019).
42. On August 7, 2019, Twin Lakes submitted an application to PENNVEST to finance the five-year capital improvement plan submitted in Twin Lakes' prior rate cases. Twin Lakes St. No. 1 at 8.
43. On January 29, 2020, Twin Lakes was notified that PENNVEST had approved a grant of \$4.66 million. Twin Lakes St. No. 1 at 8.
44. An award of a PENNVEST grant of \$4.66 million would carry with it an income tax liability of \$1.358 million. Twin Lakes St. No. 1 at 8.
45. Twin Lakes was unable to formally accept the PENNVEST grant due to the added financial burden this would place on Twin Lakes' customers and the uncertainty of potential rate relief. Twin Lakes St. No. 1 at 8-9.
46. In November 2019, senior Twin Lakes officials began a dialogue with Utilities, Inc. Shortly thereafter, Utilities, Inc. performed operational and financial due diligence on water system but did not move forward to pursue a transaction. Twin Lakes St. No. 2 at 6.
47. Twin Lakes considered interconnecting with the nearest public-community system of Milford Township, but this alternative was not deemed viable as a Twin Lakes interconnection with the Milford Township system would require a 5 to 6 mile long excavation in State Route 6 accompanied by the construction of booster pumping stations along this route due to the mountainous terrain. Twin Lakes St. No. 1 at 7.
48. Twin Lakes considered the installation of private wells for each customer. This alternative was deemed impractical as Shohola Township Ordinance No. 59 prohibits such private well installations due to the potential for private wells to be contaminated by adjacent

subsurface sanitary sewer disposal systems, and many of the lot sizes in the Sagamore Estates community did not allow for adequate clearance between the septic system and a well under Pennsylvania regulation. Twin Lakes St. No. 1 at 7-8; Twin Lakes St. No. 2 at 4-5.

49. On July 14, 2020, Twin Lakes issued a Request For Proposals (“RFP”) for the provision of contract operations, maintenance and management services for the Twin Lakes system. One proposal was submitted in response to the RFP, which did not provide the necessary services so it was deemed inadequate. Twin Lakes St. No. 1 at 9.
50. On May 28, 2020, Middlesex issued a letter to Twin Lakes demanding immediate payment of the total amounts due on the three outstanding Unsecured Revolving Promissory Notes between Middlesex, as Lender, and Twin Lakes, as Borrower. Twin Lakes Petition at ¶ 21, Appendix G.
51. On May 29, 2020, Twin Lakes issued a response letter to Middlesex stating that it was unable to meet Middlesex’s payment demand requirements and did not expect to have the ability to satisfy any repayment of the three outstanding Notes. Twin Lakes Petition at ¶ 22, Appendix H.
52. Middlesex ceased financial support of Twin Lakes effective May 28, 2020, the date Middlesex tendered its demand for payment on the three outstanding promissory notes. Twin Lakes Petition at ¶ 23; Twin Lakes St. No. 2-R at 8.
53. On June 1, 2020, Middlesex issued a letter notice of termination of the Service Agreement between Middlesex and Twin Lakes, advising that pursuant to Section 1 of the Service Agreement, the termination would become effective on September 1, 2020. Twin Lakes Petition at ¶ 24, Appendix I.
54. On June 10, 2020, Twin Lakes issued a letter to the Commission’s Bureau of Technical Utility Services and Bureau of Investigation and Enforcement, as well as the Office of Consumer Advocate, notifying these parties of Middlesex’s cessation of financial support and the imminent termination of the Service Agreement between Middlesex and Twin Lakes, and requested initiation of a proceeding under Section 529 of the Public Utility Code, 66 Pa. C.S. § 529. Twin Lakes Petition at ¶ 28, Appendix K.
55. On July 21, 2020, Twin Lakes filed an Application for approval, *nunc pro tunc*, of the Service Agreement and the three outstanding Unsecured Revolving Promissory Notes, as directed by the Commission on July 13, 2020. *Application of Twin Lakes Utilities, Inc. For A Commission Order Nunc Pro Tunc Of Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc., and Five Amendments To Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc. Pursuant To 66 Pa. C.S. §2012, Docket No. G-2020-3020941 and Affiliated Interest Agreement Between Twin Lakes Utilities, Inc. and Middlesex Water Company, Docket Nos. G-2020-3021018, G-2020-3021021 and G-2020-3021024, Application of Twin Lakes Utilities Inc. (July 21, 2020).*

56. On July 31, 2020, Twin Lakes issued a notice informing all Twin Lakes customers of the initiation of the Section 529 proceeding and informing them of Middlesex’s termination of its Service Agreement with Twin Lakes effective September 1, 2020. Twin Lakes Letter dated Aug. 3, 2020, *available at* <https://www.puc.pa.gov/pcdocs/1672088.pdf>.
57. On January 15, 2021, Aqua assumed receivership of the Twin Lakes system. *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*, Order (entered Jan. 14, 2021).
58. Currently, the Twin Lakes system’s sole source of financial and operational support is through its receivership under Aqua, given that Middlesex terminated its financial support of Twin Lakes effective May 28, 2020. Twin Lakes Petition at ¶ 23; Twin Lakes St. No. 2-R at 8.
59. Middlesex’s operational support of Twin Lakes terminated effective January 15, 2021, which was the expiration date of the Service Agreement voluntarily extended by Middlesex, as it was last amended. *Application of Twin Lakes Utilities, Inc. For Commission Approval, Nunc Pro Tunc, of Fifth Amendment To The Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc. Pursuant To 66 Pa. C.S. §2102*, Docket No. G-2020-3020941, Application of Twin Lakes Utilities, Inc. (Dec. 31, 2020), at 2, Appendix A (Fifth Amendment To The Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc., dated Dec. 31, 2020) at ¶ 1.
60. The Twin Lakes system is continually plagued by excessive unaccounted-for water (“UFW”) loss, ranging from 50% to 87%, due to leaks within the distribution system. Twin Lakes St. No. 1 at 2.
61. Leaks in the Twin Lakes system are a result of a combination of factors including age and quality of the original pipe material and poor quality workmanship associated with leak repairs prior to acquisition of the system by Twin Lakes. Twin Lakes St. No. 1 at 2.
62. The system’s excessive leakage rate causes the single remaining operating well to consistently over-pump, which in turn stresses the well to the point where its operational viability is at risk. Twin Lakes St. No. 1 at 2.
63. Over-pumping was a contributing factor in the collapse of Well #1, which rendered it non-usable. Consequently, this condition has increased the stress on Well #2, the only remaining well serving Twin Lakes customers. Twin Lakes St. No. 1 at 2.
64. The continued over-pumping of Well #2 is placing this well at increased risk of collapse, as well as at risk of being under the influence of surface water from the adjacent lake. Twin Lakes St. No. 1 at 2.
65. Due to lead action level exceedances incurred in 2019, treatment upgrades including pH

adjustment and corrosion control may be necessary. The existing functional well is not operationally capable of accommodating these treatment upgrades. Twin Lakes St. No. 1 at 2.

66. The improvements needed to address Twin Lakes' operational challenges and resiliency risks are estimated to cost \$4.8 million and are comprised of the following: (1) completion of the Well #1 replacement project including permitting, construction of facilities associated with treatment, pumping, storage, controls, emergency standby power and connection of supply piping to the distribution system; (2) replacement of the entire distribution system including mains, valves, services and elimination of dead-ends; and (3) rehabilitation of the entire Well #2 facility including design, permitting and construction of treatment, pumping, storage, associated controls and emergency standby power. Twin Lakes St. No. 1 at 4.
67. Twin Lakes developed a five-year capital improvement plan to address the operational and resiliency challenges, which Twin Lakes agreed to implement as part of the Joint Petition For Settlement filed in Twin Lakes' 2015 rate case. Twin Lakes St. No. 1 at 6; *see also Pa. Public Utility Commission et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2015-2506337, Joint Petition for Settlement (dated March 24, 2019) (subsequently approved without modification by the 2015 Rate Case Order).
68. Twin Lakes also submitted a five-year capital improvement plan in its 2019 rate case. Twin Lakes St. No. 1 at 6; *see also Pa. Public Utility Commission et al. v. Twin Lakes Utilities, Inc.*, Docket No. R-2019-3010958, Opinion and Order (entered Mar. 26, 2020), at 65.
69. While the five-year capital improvement plans were partially implemented, Twin Lakes did not complete the capital improvements contained in these plans because it received insufficient rate relief to enable Twin Lakes to execute these Plans. Twin Lakes St. No. 1 at 7.
70. The improvements in the five-year capital improvement plans are necessary in order to provide safe and adequate service to Twin Lakes' customers now and in the future. Twin Lakes St. No. 1 at 4.
71. OCA witness Terry Fought confirmed the high UFW loss situation in the Twin Lakes system, testifying that Twin Lakes calculated its UFW for 2019 to be 85%, and 89.6% for the first three quarters of 2020 based on metered water and water production. OCA St. 2 at 4-5.
72. Twin Lakes is the title owner of the assets comprising the Twin Lakes system. Twin Lakes Petition at ¶ 5, Appendices A and B; Twin Lakes St. No. 2-R at 2-4; Twin Lakes St. No. 2-SR at 3.
73. Twin Lakes has been recognized by the Commission as the jurisdictional utility since the acquisition of the Twin Lakes system in 2009. Twin Lakes St. No. 2-R at 3-4.

74. Middlesex is a New Jersey corporation. Middlesex is incorporated in New Jersey and its principal place of business is in New Jersey. Twin Lakes St. No. 2-R at 2.
75. Middlesex is not a Pennsylvania corporation. Middlesex is not registered to do business in the Commonwealth of Pennsylvania and is not a jurisdictional utility in the Commonwealth of Pennsylvania. Twin Lakes St. No. 2-R at 2.
76. Absent outside financial and operational support from Middlesex, Twin Lakes is at best one or two pipe leaks away from complete financial and operational failure. Twin Lakes St. No. 2 at 7-8; Twin Lakes St. No. 1 at 5-6.
77. Aqua is financially and managerially capable of acquiring and operating Twin Lakes in compliance with applicable statutory standards. OCA St. 1 at 4; Twin Lakes St. No. 2-R at 11; Aqua St. No. 1-R at 15; I&E St. No. 2 at 27.
78. Aqua would be able to better manage operational expenses and to make the necessary capital expenditures as part of its management and operation of the Twin Lakes system and to resolve the current system issues. OCA St. 1 at 4.
79. Aqua has a large Pennsylvania customer base over which it can spread prudently incurred costs to manage and operate the Twin Lakes system with a miniscule impact on any individual customer's bill. Twin Lakes St. No. 2-R at 10-11; OCA St. 1 at 5; I&E St. No. 2 at 27-28; Aqua St. No. 2-R at 9.

APPENDIX B

PROPOSED CONCLUSIONS OF LAW

1. Although I&E bears a statutory burden of proof in a Section 529 proceeding pursuant to 66 Pa. C.S. §529(i), the Commission has held that this burden is not exclusive to I&E. Rather, any party may present or rebut a *prima facie* case in support of its position in a Section 529 proceeding. *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*, Opinion and Order (entered Sept. 17, 2020) at 21; *see also Investigation Instituted per Section 529 into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No. I-2016-2526085, Order (entered Jan 28, 2016), at 27.
2. Because Twin Lakes is seeking Section 529 relief in this proceeding – that is, a Commission Order requiring the acquisition of Twin Lakes by a capable public utility – Twin Lakes has the burden of producing evidence demonstrating that such relief is warranted. *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*, Opinion and Order (entered Sept. 17, 2020) at 21.
3. Twin Lakes has established a *prima facie* case that acquisition of Twin Lakes by a capable public utility is in the public interest and in compliance with the provisions of Section 529 of the Public Utility Code, 66 Pa. C.S. § 529.
4. Twin Lakes has met the criteria set forth in Section 529(a)(1) of the Public Utility Code, 66 Pa. C.S. § 529 (a)(1), because the record shows that Twin Lakes’ facilities are not adequate as required by Section 1501, 66 Pa. C.S. § 1501, and it has been unable to obtain necessary funding to make the repairs necessary to comply with this statutory requirement.
5. Twin Lakes has met the criteria set forth in Section 529(a)(2) of the Public Utility Code, 66 Pa. C.S. § 529 (a)(2), because the record shows that the Commission has ordered certain improvements that are necessary to provide adequate service as part of recent rate case orders, but Twin Lakes has been unable to comply with these orders due to a lack of sufficient rate relief or availability of other financing options.
6. Twin Lakes Utilities, Inc., as the owner and operator of the water system, is the correct entity to be evaluated under Section 529(a)(3) and Section 529(c)(1) on its own merits. 66 Pa. C.S. §§ 529 (a)(3), 529(c)(1).
7. Twin Lakes cannot reasonably be expected to provide and maintain adequate, efficient, safe and reasonable service and facilities in the future, and has met the criteria set forth in Section 529(a)(3) and lacks the financial ability under the related Section 529(c)(1) to provide such adequate service and facilities. 66 Pa. C.S. §§ 529 (a)(3), 529(c)(1).

8. The Commonwealth of Pennsylvania cannot exercise jurisdiction over a foreign corporation that is not registered to conduct business in the Commonwealth of Pennsylvania. *Sullivan v. A.W. Chesterton, Inc. (In re Asbestos Prods. Lia. Litig. No. VI)* 384 F.Supp.3d 532, 537-538 (E.D. Pa. 2019) (citing *Daimler A.G. v. Bauman*, 571 U.S. 117, 134 S.Ct.746, 187 L.Ed.2d 624 (2014)).
9. Twin Lakes has considered all of the alternatives in Section 529(a)(4), 66 Pa. C.S. § 529 (a)(4), and has demonstrated that these alternatives are impractical or not economically feasible.
10. Aqua is a “capable public utility” that is financially, managerially and technically capable of acquiring and operating Twin Lakes in compliance with applicable statutory and regulatory standards, as required by Section 529(a)(5), 66 Pa. C.S. § 529 (a)(5).
11. Rates for Aqua’s existing customers would not increase unreasonably as a result of Aqua’s acquisition of Twin Lakes, as required by Section 529(a)(6), 66 Pa. C.S. § 529 (a)(6).
12. It is ripe for the Commission to make a determination with respect to Twin Lakes’ Application for approval, *nunc pro tunc*, of the three Unsecured Revolving Promissory Notes in Docket Nos. G-2020-3021018, G-2020-3021021 and G-2020-3021024.
13. Twin Lakes’ Application for approval, *nunc pro tunc*, of the Service Agreement in Docket No. G-2020-3020941 should be dismissed as moot. An issue may be dismissed as moot at any time because generally, an actual case or controversy must exist at all stages of the judicial or administrative process. *Pa. Liquor Control Bd. v. Dentici*, 542 A.2d 229, 230 (Pa. Cmwlth. 1988). The mootness doctrine requires that an actual controversy must be extant at all stages of review, not merely at the time the complaint is filed. An issue can become moot as a result of an intervening change in the facts of the case or due to an intervening change in the applicable law. *In re Gross*, 382 A.2d 116, 119-120 (Pa. 1978).

APPENDIX C

PROPOSED ORDERING PARAGRAPHS

THEREFORE, IT IS ORDERED:

1. That Aqua Pennsylvania, Inc. shall acquire Twin Lakes Utilities, Inc.;
2. That Twin Lakes' Applications For Approval *Nunc Pro Tunc* of The Three Unsecured Revolving Promissory Notes between Twin Lakes and Middlesex Water Company are granted; and
3. That Twin Lakes' Application For Approval *Nunc Pro Tunc* of the Service Agreement between Twin Lakes and Middlesex Water Company and its five amendments are dismissed as moot as a result of the expiration of such Agreement on January 15, 2021.