

COMMONWEALTH OF PENNSYLVANIA



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February 5, 2021

Rosemary Chiavetta, Secretary
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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

Dear Secretary Chiavetta:

Attached for electronic filing please find the Office of Consumer Advocate's Main Brief in the above-referenced proceeding.

Copies have been served as indicated on the enclosed Certificate of Service.

Respectfully submitted,

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cc: The Honorable Joel H. Cheskis (**email only**)
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Certificate of Service

*303576

CERTIFICATE OF SERVICE

Re: Petition of Twin Lakes Utilities, Inc. For A :
Commission Order Authorizing The Acquisition : Docket No. P-2020-3020914
Of Twin Lakes Utilities, Inc. By A Capable Public :
Utility Pursuant To 66 Pa. C.S. § 529 :

I hereby certify that I have this day served a true copy of the following document, the Office of Consumer Advocate's Main Brief, upon parties of record in this proceeding in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant), in the manner and upon the persons listed below:

Dated this 5th day of February 2021.

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BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION

Petition of Twin Lakes Utilities, Inc. For A :
Commission Order Authorizing The :
Acquisition Of Twin Lakes Utilities, Inc. By : Docket No. P-2020-3020914
A Capable Public Utility Pursuant To 66 Pa. :
C.S. § 529 :

MAIN BRIEF OF THE
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TABLE OF CONTENTS

I.	INTRODUCTION.....	1
A.	Procedural History	1
B.	History of Twin Lakes	4
C.	Burden of Proof 529(i).....	6
II.	SUMMARY OF ARGUMENT.....	8
III.	REQUIREMENTS OF SECTION 529(a).....	10
A.	Twin Lakes is in Violation of Statutory or Regulatory Standards (Section 529(a)(1)).	10
B.	Twin Lakes Has Failed to Comply With an Order of the Department of Environmental Resources or the Commission Concerning Safety, Adequacy, Efficiency or Reasonableness of Service (Section 529(a)(2)).	11
C.	Twin Lakes Cannot Reasonably Be Expected to Furnish and Maintain Adequate, Efficient, Safe and Reasonable Service and Facilities in the Future (Section 529(a)(3))..	13
D.	Alternatives to Acquisition Have Been Considered and Have Been Determined to Be Impractical or Not Economically Feasible (Section 529(a)(4)).....	14
E.	Aqua Pennsylvania is Financially, Managerially and Technically Capable of Acquiring and Operating Twin Lakes (Section 529(a)(5)).	16
F.	The Rates Charged by the Acquiring Capable Public Utility to its Preacquisition Customers Will Not Unreasonably Increase (Section 529(a)(6)).	17
G.	Alternatives to Acquisition 529(b) and (g)	19
H.	Other Provisions of Section 529	20
1.	529(e) Acquisition Price.....	20
2.	529(f) Separate Tariffs	20
3.	529(j) Plan for Improvements.	21
4.	529(k) Limitations on Liability	21
5.	529(l) Limitations on Enforcement Actions.....	21
IV.	CONCLUSION	23

TABLE OF AUTHORITIES

Page(s)

Administrative Decisions

Pa. P.U.C. v. Delaware Sewer Company,
Docket No. P-2014-2404341, Order (Jan. 28, 2016) 1, 6-7

Pa. P.U.C. v. Twin Lakes Utilities, Inc.,
Docket No. R-2019-3010958, Order (Mar. 26, 2020) 5, 6, 10-11

Pa. P.U.C. v. Twin Lakes Utilities, Inc.,
Docket No. R-2015-2506337, Order (June 9, 2016) 5, 12-13

Pa. P.U.C. v. Twin Lakes Utilities, Inc.,
Docket No. R-2011-2246415, Order (Mar. 1, 2012)5, 12

Investigation of W.P. Water Co., Inc. and W.P. Sanitary Co., Inc. Pursuant to
Section 529 of the Pennsylvania Public Utility Code, Docket Nos. I-
00070114, P-00072313 and A-230550F2000, 2009 Pa. PUC Lexis 69120

Statutes

66 Pa. C.S. § 529(i)6

66 Pa. C.S. § 529(a)9, 10

66 Pa. C.S. § 529(a)(1).....10

66 Pa. C.S. § 529(a)(2).....11, 13

66 Pa. C.S. § 529(a)(3).....13

66 Pa. C.S. § 529(a)(4).....14

66 Pa. C.S. § 529(a)(5).....16

66 Pa. C.S. § 529(a)(6).....15, 17, 19

66 Pa. C.S. § 529(b)14, 19

66 Pa. C.S. § 529(b)(1)14

66 Pa. C.S. § 529(b)(2)14

66 Pa. C.S. § 529(b)(3)14

66 Pa. C.S. § 529(b)(4)14, 19

66 Pa. C.S. § 529(b)(5)	14, 19
66 Pa. C.S. § 529(e)	20
66 Pa. C.S. § 529(f).....	20
66 Pa. C.S. § 529(j).....	21
66 Pa. C.S. § 529(k).....	21
66 Pa. C.S. § 529(k)(1)	21
66 Pa. C.S. § 529(k)(2)	21
66 Pa. C.S. § 529(k)(3)	21
66 Pa. C.S. § 529(l).....	21, 22
66 Pa. C.S. § 529(l)(1)	21
66 Pa. C.S. § 529(l)(2)	21
66 Pa. C.S. § 529(l)(3)	21
66 Pa. C.S. § 529(l)(4)	21
66 Pa. C.S. § 1501.....	10, 11
Other Authorities	
40 CFR § 141.80(c).....	10, 11
52 Pa. Code § 3.6.....	2
52 Pa. Code § 3.6(b)(1).....	2
52 Pa. Code § 3.6(b)(2).....	2
52 Pa. Code § 3.6(b)(3).....	2
52 Pa. Code § 3.6(b)(4).....	2
52 Pa. Code § 65.20	11
52 Pa. Code § 109.1102(a)(1).....	10, 11

I. INTRODUCTION

A. Procedural History.

Twin Lakes Utilities, Inc. (Twin Lakes or the Company) is a wholly-owned subsidiary of Middlesex Water Company (Middlesex) and provides water service to approximately 113 active residential customers in the Sagamore Estates community located within Shohola Township in Pike County, Pennsylvania. 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 at 1 (Twin Lakes Petition). Twin Lakes' principal place of business is 485C Route 1 South, Suite 400 Iselin, New Jersey 08830-3020. Id.

Pursuant to a Service Agreement between Middlesex and Twin Lakes, Middlesex provides Twin Lakes' sole source of financial and operational support. Twin Lakes Ex. 1, Appendix I. After Middlesex demanded repayment from Twin Lakes on outstanding promissory notes and Twin Lakes' notification to Middlesex that it was unable to meet the demands, Middlesex indicated its intention to terminate the Service Agreement effective September 1, 2020 and provided notice of such to its customers. Twin Lakes Exh. 1, Appendices G and H.

On July 16, 2020, Twin Lakes filed a Petition requesting that the Commission issue an order authorizing the acquisition of Twin Lakes pursuant to Section 529 of the Public Utility Code on an expedited basis, which resulted in the instant proceeding. Answers were filed by the OCA and I&E.¹ On July 22, 2020, an informal, off-the-record conference call was held with the parties

¹On August 19, 2020, I&E also filed a Petition for Interlocutory Review and Answer to Material Question seeking Commission review and answer to whether the Commission should permit a certificated small water or wastewater public utility to proceed by its own petition pursuant to 66 Pa. C.S. § 529 of the Public Utility Code. I&E requested an answer in the negative. By Opinion and Order dated September 17, 2020, the Commission answered the Material Question to clarify the Section 529 procedure and granted Twin Lakes' petition to initiate a Section 529 investigation. The Commission stated that:

and ALJ Joel H. Cheskis (the ALJ or ALJ Cheskis). On July 27, 2020, the parties participated in an Initial Call-in Telephonic Pre-Hearing Conference before ALJ Cheskis.

On August 18, 2020, the OCA filed a Petition for Interim Emergency Order requesting that the Commission immediately appoint a receiver, Aqua PA, to operate Twin Lakes in light of the September 1, 2020 deadline when Middlesex intended to cease providing services to Twin Lakes and Twin Lakes' failure to obtain a reasonable offer to its Request for Proposal (RFP) for a qualified operator of the system.² The OCA argued that the evidence supported the need for emergency relief pursuant to 52 Pa. Code § 3.6.³ I&E and Aqua argued, *inter alia*, that the need for relief is not immediate because it represents a mere threat by Twin Lakes to walk away from the system, and Twin Lakes, with the continued support of Middlesex, is currently capable of providing service. OCA Main Brief Regarding Petition for Interim Emergency Order Appointing a Receiver at 12 (OCA Emergency Petition Main Brief). Aqua also argued that it had not had an opportunity to conduct or complete its due diligence to learn about the risks facing the Twin Lakes system. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. P-2020-3020914, Order Denying Petition of the Office of Consumer Advocate for Issuance of an Interim Emergency Order on an

[t]he express language of the Code does not prohibit a small water or sewer utility from requesting Commission action under Section 529 in the form of a petition for relief, and we have previously initiated Section 529 investigations under a number of different circumstances.

Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. P-2020-3020914, Opinion and Order at 17-18 (Sept. 17, 2020) (citing Delaware Sewer (the Commission commenced a Section 529 investigation based on its ruling on the request in a small wastewater utility's petition)).

² On July 14, 2020, Twin Lakes issued a Request for Proposal (RFP). Twin Lakes' Petition, Appendix J. The RFP sought "Contract Operations & Maintenance Service For The Twin Lakes Utilities, Inc. Community Water System Located In Shohola Township, Pike County, Pennsylvania." Id. The deadline for responses to the RFP was August 14, 2020.

³ A petition for interim emergency relief must be supported by a verified statement of facts that establishes the existence of the need for emergency relief, including facts which support the following four elements: (1) the petitioner's right to relief is clear; (2) the need for relief is immediate; (3) the injury would be irreparable if the relief is not granted; and (4) the relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b) (1)-(4).

Expedited Basis filed Pursuant to Sections 3.6, 3.6a and 3.7 of the Commission's Regulations at 12 (Aug. 28, 2020) (Emergency Petition Order).

On August 19, 2020, a Further Prehearing Conference was held before Administrative Law Judge Joel H. Cheskis to discuss the OCA's Petition. By Order dated August 28, 2020, the ALJ found that while the OCA established that its right to relief is clear under its Petition, the additional elements were not satisfied and the Petition was denied. The ALJ also directed Twin Lakes to continue providing service to its customers consistent with its certificate of public convenience or until given opportunity to abandon service by the Commission. On September 17, 2020, the Commission instituted a Section 529 investigation. By Opinion and Order entered September 22, 2020, the Commission affirmed the denial of the OCA's Petition for Issuance of an Emergency Order but prohibited Twin Lakes from terminating service unless otherwise directed by the Commission. Additionally, the September 22, 2020 Order directed Aqua to begin its due diligence and conduct a reasonable investigation within 90 days as to whether it will voluntarily act as a receiver of the Twin Lakes system. In order to ensure Twin Lakes' customers receive water service during the course of this proceeding, Twin Lakes and Middlesex have extended the Service Agreement on a month-to-month basis since September 1, 2020.⁴

⁴ Twin Lakes filed the following amendments to extend the effective date of its Service Agreement with Middlesex beginning on September 1, 2020:

Application for Commission Approval, *Nunc Pro Tunc*, of First Amendment to the Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc. Pursuant to 66 Pa. C.S. § 2102, Docket No. G-2020-3020914, filed September 1, 2020.

Id., Second Amendment, filed October 1, 2020.

Id., Third Amendment, filed October 30, 2020.

Id., Fourth Amendment, filed December 1, 2020.

Id., Fifth Amendment, filed December 31, 2020.

The OCA supported the amendments because they permitted the continued provision of service by Twin Lakes until the appointment of a receiver.

A Further Pre-Hearing Conference was held on October 2, 2020 where a procedural schedule was discussed and adopted. On December 16, 2020, Aqua submitted a letter pursuant to the Commission's September 22, 2020 Order indicating that it will voluntarily act as receiver effective January 4, 2021. Through this letter Aqua also requested a Commission Order appointing Aqua as receiver and specifying its duties and responsibilities with regard to its role as receiver. An off-the-record conference call was held with ALJ Cheskis and interested parties to discuss the method and timing of obtaining a Commission Order. On December 22, 2020, Aqua submitted a second letter indicating that it would begin acting as receiver on January 15, 2021 instead of January 4, 2021 to allow the Commission to act on its request at its January 14, 2021 Public Meeting. Aqua attached a proposed Order Appointing Receiver to its letter which specified Aqua's duties and responsibilities as receiver. On December 30, 2020, ALJ Cheskis certified a material question to the Commission asking whether the Commission should adopt Aqua's offer to act as receiver with the duties and responsibilities as outlined in Aqua's proposed Order, suggesting an answer in the affirmative. Twin Lakes, OCA and I&E responded via letter indicating that they do not oppose the ALJ's certification of a material question nor the suggested answer. By Opinion and Order entered January 14, 2021, the Commission answered the ALJ's question in the affirmative and appointed Aqua as receiver of Twin Lakes effective January 15, 2021. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. P-2020-3020914 Receivership Order (Jan. 14, 2021).

B. History of Twin Lakes.

On April 6, 2009, Middlesex, a New Jersey corporation, formed Twin Lakes to ensure that the assets of Twin Lakes' predecessor owner, Twin Lakes Water System, LLC, could be operated by an entity incorporated in Pennsylvania. Twin Lakes Petition at 2. 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.” Twin Lakes Petition at 2. A recorded deed was entered evidencing the transfer of assets and Twin Lakes adopted the tariff of Twin Lakes Water Services, LLC. Twin Lakes Petition at 2-3.

Twin Lakes is an extremely troubled water system with its one working well at risk of collapse due to over-pumping. OCA Exhs. 6 and 7. Extraordinarily high unaccounted for water (UFW) percentages up to 86% indicate that customers are paying to treat water that is not being utilized. OCA Exhs. 6 and 7. Twin Lakes has also exceeded the lead action level⁵ and experienced several boil water advisories over the years.⁶ In its 2019 base rate case, Twin Lakes requested an annual increase of \$211,793 (158.63%) and received an increase of \$117,374 (87.91%) which raised significant affordability concerns for its customers.⁷ Twin Lakes 2019 Rate Case at 66-72. Twin Lakes has indicated that the system requires a complete overhaul in order to provide adequate service at reasonable rates, which would increase each customer’s annual water bills to over \$4,000. OCA St. 1 at 3. Twin Lakes has been involved in various unsuccessful attempts to rectify the ailments plaguing its system to ensure its customers are receiving safe, reliable and adequate service. Twin Lakes Petition at 5-6.

Since 2011, Twin Lakes filed three requests for rate increases in 2011, 2015 and 2019.⁸ The 2011 and 2015 Settlements included phased-in increases conditioned upon completion of specific facility improvements, including, *inter alia*, addressing UFW, replacing its collapsed well,

⁵ Pa. P.U.C., et al. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958 Opinion and Order (Mar. 26, 2020), Appendix B (Twin Lakes 2019 Rate Case).

⁶ Id. at 49.

⁷ ALJ Cheskis granted OCA’s request that certain portions of the record in the Twin Lakes 2019 Rate Case be admitted into the record in this proceeding. Tr. 148. OCA Exhibit 4 (OCA St. 1 Direct Testimony of Stacy Sherwood); OCA Exhibit 5 (OCA St. 1 SR Surrebuttal Testimony of Stacy Sherwood), OCA Exhibit 6 (OCA St. 3 Direct Testimony of Terry L. Fought), OCA Exhibit 7 (OCA St. 3 SR Surrebuttal Testimony of Terry L. Fought), OCA Exhibit 8 (Public input hearing transcripts, pages 31-109).

⁸ Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2011-2246415 (Twin Lakes 2011 Rate Case); Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2015-2506337 (Twin Lakes 2015 Rate Case); and Twin Lakes 2019 Rate Case, supra.

and installing or replacing certain mains in the distribution system. See OCA’s Main Brief Regarding the Office of Consumer Advocate’s Petition for Interim Emergency Order Appointing a Receiver. Despite increases received in all three rate cases, Twin Lakes has failed to resolve the problems plaguing its system. See, e.g., Twin Lakes 2019 Rate Case, slip op. at 64. In the 2019 rate case, affordability concerns were raised in customer testimony and by various party witnesses.⁹ Twin Lakes Exh. 1, Petition ¶ 17. Since a complete system overhaul is necessary,¹⁰ the OCA submits that the practical solution to this case is for the Commission to order a capable public utility to acquire Twin Lakes such that costs associated with repairs to the system can be properly spread across the acquiring utility’s existing customers, resulting in fair and reasonable rates for all customers. For additional background, see the OCA’s Main Brief Regarding the Office of Consumer Advocate’s Petition for Interim Emergency Order Appointing a Receiver filed on August 24, 2020 at this docket.

C. Burden of Proof 529(i)

Generally, the Bureau of Investigation and Enforcement (I&E) bears the burden of proof to establish a *prima facie* case that acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of Section 529. 66 Pa. C.S. § 529(i). However, as the Commission provided in Delaware Sewer, that burden is not exclusive to I&E. Pa. P.U.C. v. Delaware Sewer Company, Docket No. P-2014-2404341 Opinion and Order at 27 (Jan. 28, 2016) (Delaware Sewer). The Commission stated that:

While the burden of going forward with evidence is on I&E, I&E is not assigned this task with any predetermined or targeted result in mind and will be guided in making its recommendation by the evidence it adduces. (footnote omitted). This

⁹ The 2019 rate case resulted in a \$114.84 monthly customer charge for a 5/8 inch meter. For a customer using 3,000 gallons per month, the bill cost is \$198 per month. The estimated cost to replace the collapsed Well #1 is \$1,600,000 in addition to the \$611,375 amount recorded in Construction Work in Progress. Twin Lakes St. 3 at 3-4.

¹⁰ Twin Lakes 2019 Rate Case at 49.

does not preclude any other party, however, from producing its own evidence to address the evidentiary and statutory requirements of Section 529.

Id. at 28. Further, it stated:

Thus I&E is charged with the burden of proof to present a *prima facie* case addressing the six Section 529(a) factors, wherever that leads. To the extent DSC seeks an investigation with specific relief and a specific objective in mind, it will be DSC's burden to assure that sufficient evidence is produced to support that relief and objective.

Id.

Therefore, the burden of proof rests with I&E in this case to establish a *prima facie* case that an acquisition would be in the public interest and in compliance with Section 529. As Twin Lakes seeks specific relief as a result of the Section 529 investigation in this case, i.e., acquisition, it is Twin Lakes' burden to assure sufficient evidence supporting acquisition is presented. The OCA also supports acquisition as in the public interest and is not precluded by statute or otherwise from producing its own evidence to address the requirements of Section 529.

II. SUMMARY OF ARGUMENT

Twin Lakes has significant quality of service issues. The evidence in this case and the evidence in the 2019 rate case that has been admitted into this record shows that Twin Lakes has unacceptably high unaccounted for water, as high as 86%, a well that has not been replaced and is not providing service, a remaining well that is in danger of being over-pumped, and exceedances of the lead action level. These quality issues are not newly-discovered. Middlesex became aware of the severity of the problem with the system shortly after it acquired it from the previous owner. Since that time Twin Lakes has requested and received three rate increases tied to specific system improvements, filed an Application to Abandon, and requested that the Commission authorize a takeover of the system. Twin Lakes' customers testified at public input hearings in the 2019 rate case about how the proposed increases would be unaffordable for them, potentially leading to at least one customer having to leave their property, among other negative consequences. Despite these increases, Twin Lakes still has not been able to resolve its quality issues related to leaks and unaccounted for water.

It is OCA's position that standard rate increases will not solve the problems Twin Lakes continues to experience. The rates approved in the 2019 rate case are extremely high. Moreover, to replace the water supply and distribution system would result in rates that would be approximately \$4,000 per year (without the Pennvest grant/loan) which would be unaffordable to many of the 114 customers. As discussed below, alternatives to a mandatory takeover will not resolve these issues. In light of the long history of inadequate service, the replacement of the entire system from supply through distribution, and the high level of rates currently being paid by the customers and that would be required if the system remains a stand-alone system, a mandatory takeover by a larger capable public utility is required as it is in the best interest of Twin Lakes'

customers and will not unreasonably increase the rate of existing water customers of Aqua Pennsylvania. See 66 Pa. C.S. § 529(a).

III. REQUIREMENTS OF SECTION 529(a)

Generally, the Commission may order a capable public utility to acquire a small water or sewer utility if the Commission determines that the following elements are satisfied. The OCA submits that the record evidence supports a finding that each of the 529(a) requirements are met for the reasons detailed below.

A. Twin Lakes is in Violation of Statutory or Regulatory Standards (Section 529(a)(1)).

Section 529(a)(1) requires that the small water or sewer utility at issue be in violation certain statutory or regulatory standards, including but not limited to the Clean Streams Law, the Pennsylvania Sewage Facilities Act, the Pennsylvania Safe Drinking Water Act, or the regulations adopted pursuant to them. 66 Pa. C.S. § 529(a)(1). The OCA submits that Twin Lakes is in violation of Section 1501 of the Public Utility, 40 CFR § 141.80(c)¹¹ (EPA Lead and Copper Rule), and 52 Pa. Code § 109.1102(a)(1) (Pennsylvania Safe Drinking Water Act).¹²

Section 1501 of the Public Utility Code provides that:

Every public utility shall furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public.

66 Pa. C.S. § 1501. The OCA argued throughout the 2019 rate case that Twin Lakes is not, and has not been, providing adequate, safe and reasonable service, nor has it made such repairs and improvements as are necessary to continue providing service to its customers. See, e.g., Twin

¹¹ The lead action level is exceeded if the concentration of lead in more than 10 percent of tap water samples collected during any monitoring period conducted in accordance with § 141.86 is greater than 0.015 mg/L (*i.e.*, if the “90th percentile” lead level is greater than 0.015 mg/L).

¹² The lead action level is 0.015 mg/L. 52 Pa. Code § 109.1102(a)(1). An action level is exceeded when the concentration of a contaminant in more than 10% of tap water samples collected during a monitoring period conducted in accordance with § 109.1103 (relating to monitoring requirements) is greater than the action level. Id. at (a)(3).

Lakes 2019 Rate Case at 33, 39-40, 42-46, 51, 53, 59, 61-63, 79. Specifically, Twin Lakes' UFW has been an issue for several years. Twin Lakes 2019 Rate Case at 51. The Commission deems UFW levels above 20% to be excessive. 52 Pa. Code § 65.20. Twin Lakes' UFW levels have reached as high as 89% in recent years. OCA St. 2 at 5. There is also a significant reliability issue because the system has one collapsed well which is inoperable and only one working well which is at risk of collapse due to over-pumping. Id. If the working well collapses, Twin Lakes will have no source of supply.

Additionally, Twin Lakes exceeded the lead action level in November 2019.¹³ Id. at 53. For these reasons, the OCA submits that Twin Lakes is not providing reasonable service in violation of Section 1501 of the Public Utility Code, 40 CFR § 141.80(c), and 52 Pa. Code § 109.1102(a)(1).

B. Twin Lakes Has Failed to Comply With An Order of the Department of Environmental Resources or the Commission Concerning Safety, Adequacy, Efficiency or Reasonableness of Service (Section 529(a)(2)).

Section 529(a)(2) requires that the small water or sewer utility has demonstrated its failure to comply with any Department of Environmental Resources or Commission order concerning safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability, potability, or palatability of water or provision of water at adequate volume and pressure. 66 Pa. C.S. § 529(a)(2).

Twin Lakes is in violation of Commission Orders adopting Twin Lakes' 2011 and 2015 Settlement Agreements as it failed to comply with requirements therein. During the 2011 rate

¹³ Twin Lakes agreed to include recommendations by OCA witness. Fought in the 2019 rate case requiring the Company to inform customers of the availability of testing for lead levels, the steps customers can take to reduce exposure to lead in drinking water and permit the parties to receive information on testing and other steps that the Company will take to comply with DEP regulations regarding lead action level exceedance. Twin Lakes 2019 Rate Case at 523.

case, Twin Lakes' UFW levels were 55%. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2011-2246415 Recommended Decision at 10 (Jan. 18, 2012), adopted without modification (Order entered Mar. 1, 2012) (Twin Lakes 2011 Rate Case). As part of the Settlement, Twin Lakes agreed to reduce its UFW by 10%, to 49.5%, within 18 months from the effective date of rates in that proceeding. Twin Lakes 2011 Rate Case, Settlement at ¶ 7.c. Over the subsequent 48 months, Twin Lakes agreed to reduce its UFW levels by 10% each year reaching levels of no more than 32.5%. Id. If Twin Lakes did not meet its annual UFW reduction goal, it agreed to install two blow off valves, not to exceed 12 blow off valves over the 66 month period. Id.

Twin Lakes failed to meet these requirements under the 2011 Settlement. The Company was required to reduce its UFW from 55% to 49.5% within 18 months from the effective date of rates in the 2011 rate case. However, during the 2015 rate case, Twin Lakes' UFW had increased significantly to around 80%, where it remains today. This demonstrates that not only has Twin Lakes failed to improve its UFW by the amounts to which it agreed in 2011, its UFW levels have significantly worsened. Despite rate increases received in 2009, 2011 and 2015, Twin Lakes failed to address its UFW problems to date. Discovery in this case included an update on the Company's UFW as part of its 2019 Annual Report to the Commission and additional information provided to the OCA. See OCA St. 2 at 4. The Company calculated its UFW for the first three quarters of 2020 to be 89.6% based on metered water and water production, the highest the Company has reported. OCA St. 2 at 5, Exh. TLF-2. The result is that eight (8) times more water than necessary was pumped during the first three quarters of 2020. OCA St. 2 at 5.

Twin Lakes also failed to meet the requirements under the 2015 Settlement. The 2015 Settlement included a three-year phased-in rate increase contingent upon implementation of various system improvements. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. R-2015-

2506337 Recommended Decision at 9-10 (April 21, 2016), adopted without modification (Order entered June 9, 2016) (Twin Lakes 2015 Rate Case). To trigger the second year rate increase, Twin Lakes agreed to replace Well # 1 which had recently collapsed. Twin Lakes 2015 Rate Case at 10; Settlement ¶ 7(c)(1). The third-year rate increase required Twin Lakes to (1) install a new supply main connecting replacement Well # 1 to the distribution system; (2) replace 4,000 feet of main at five (5) different locations in the system; (3) replace service lines owned by Twin Lakes in conjunction with the above main installations and replacements; and (4) install a new air relief valve. Id.; Settlement ¶ 7(c)(2).

Twin Lakes did not replace Well # 1 as required by the 2015 Settlement. The Company drilled a new well, but it did not equip it or connect it to the distribution system. OCA St. 2 at 3. Additionally, Twin Lakes has not rehabilitated Well # 2. Id. As a result of Twin Lakes' lack of compliance with the Commission's Orders adopting the Settlements in 2011 and 2015, the OCA submits that the requirement under Section 529(a)(2) is met.

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

Section 529(a)(3) provides 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. 66 Pa. C.S. § 529(a)(3). On February 26, 2018, Twin Lakes informed the Commission, OCA and OSBA of its emergent need to undertake system improvements due to ongoing system failure. These improvements were expected to increase each customer's annual water bill to over \$4,000. OCA St. 1 at 3. Twin Lakes is unable to establish a credit arrangement at any reasonable cost with any financial institution as a stand-alone entity. Id. As explained earlier, Middlesex provides Twin Lakes' sole source of financial support through the Service Agreement in which

Middlesex has indicated its unwillingness to participate. Without the support from Middlesex, Twin Lakes cannot reasonably be expected to furnish and maintain adequate, safe and reasonable service into the future. OCA St. 1 at 3.

D. Alternatives to Acquisition Have Been Considered and Have Been Determined to Be Impractical or Not Economically Feasible (Section 529(a)(4)).

Section 529(a)(4) requires that alternatives to acquisition be considered and be determined by the Commission to be impractical or not economically feasible. 66 Pa. C.S. § 529(a)(4). Some alternatives include: (1) reorganization under new management; (2) entering into a contract with another public utility or management or service company to operate the small utility; (3) the appointment of a receiver to assure the adequate, efficient, safe and reasonable service and facilities are provided to the public; (4) the merger of Twin Lakes with one or more other public utilities and (5) the acquisition of Twin Lakes by a municipality, municipal authority or cooperative. 66 Pa. C.S. § 529(b)(1)-(5).

Bruce O'Connor, President of Twin Lakes, stated that the problem with Twin Lakes is the condition of the system and the rates that are charged to customers, not the management of the system. Tr. at 85. The OCA submits that even if new management were obtained to operate the system, customers would continue to experience significant difficulty in affording to pay their bills due to the costs associated with necessary improvements. If Aqua acquires Twin Lakes, however, it plans to use the approved PENNVEST grant and loan. OCA St. 1 at 5. With the projected capital expenditures in the range of \$4.5 to \$4.7 million, an estimated additional revenue requirement in the range of \$258,000 to \$270,000 would result.¹⁴ Id. If all of this additional

¹⁴ This is based upon Aqua's overall rate of return of 6.28% as shown in its 2nd Quarter Earnings Report filed on September 3, 2020. If it is able to use the PENNVEST grant and loan, the cost of debt for the loan portion (1%) would be lower than Aqua's embedded debt cost rate (4.21%) that was used in the OCA's calculation. See Twin Lakes Petition, Appendix F.

revenue requirement is borne by Aqua's existing residential water customers, it would be equal to approximately 0.09% of Aqua's 2019 water revenues from residential metered water customers, an impact that the OCA submits would not be unreasonable under the circumstances presented by this case. Id.; 66 Pa. C.S. § 529(a)(6). Twin Lakes attempted to find another public utility or company to operate its system by issuing an RFP, Twin Lakes Petition at 9, Appendix J, but no viable offers were received by the Company. The Commission has appointed Aqua as a receiver to assure Twin Lakes' customers receive adequate, efficient, safe and reasonable service during the pendency of litigation. However, this is only a temporary solution. Since 2011, Twin Lakes has engaged in discussions with other water companies regarding acquisition of Twin Lakes to no avail. Twin Lakes Petition at 5. Twin Lakes has also met with the PUC and OCA to request assistance in identifying a system takeover solution but has been unsuccessful in securing a voluntary takeover. Id. at 5-6. Twin Lakes has considered connecting its system to the nearby public water system in Milford, Pennsylvania. Id. at 6. This alternative was deemed financially and operationally impractical because it was located five to six miles from Sagamore Estates and would require the installation of water main within the Pennsylvania Route 6 corridor and necessitate booster pumping stations along the route due to the terrain. Id.

In addition to the alternatives above, Twin Lakes considered the potential of drilling an individual well on each customer's property, but this would not provide a solution to all Twin Lakes customers. There is no evidence that all of Twin Lakes' customers would be able to obtain waivers to Shohola Township Ordinance No. 59 in order to have wells drilled on their property. OCA St. 1S at 4. According to Twin Lakes customer and Chairman of the Sagamore Estates Property Owners Association, Sean Kemether, some customers' properties may be considered too small to drill wells near existing septic systems. Tr. at 53. Additionally, there is no record evidence

that customers would have the financial means to drill their own wells. Id. Therefore, there is no evidence that this is a viable alternative to ensure all customers receive safe, adequate and reasonable service. Id.

Furthermore, Twin Lakes was approved for a PENNVEST grant in the amount of approximately \$4.66 million and a loan of up to \$300,000. Twin Lakes Exh. 1, Petition at 7. However, Twin Lakes did not accept the funds because the accompanying tax liability associated with the grant and loan would be properly passed onto customers through rates and would further raise affordability concerns. Id. at 7-8.

E. Aqua Pennsylvania is Financially, Managerially and Technically Capable of Acquiring and Operating Twin Lakes (Section 529(a)(5)).

Section 529(a)(5) requires the acquiring capable public utility to be financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards. 66 Pa. C.S. § 529(a)(5). It is undisputed that Aqua is financially, managerially and technically capable of acquiring and operating Twin Lakes. However, Aqua argues that it should not be ordered to acquire the Twin Lakes system as part of this proceeding because Twin Lakes does not appear to have a financially insolvent or managerial deficient owner. Aqua St. 2-R at 5-6. Rather, Aqua states, “it appears that Middlesex is seeking to eliminate a financial (sic) poor performing segment of its overall business....” Id. at 6.

The OCA submits that the Commission should order Aqua to acquire and operate Twin Lakes and that the capabilities and financial status of Middlesex are irrelevant particularly where Middlesex has unequivocally stated its unwillingness to continue supporting Twin Lakes. Aqua has demonstrated its ability and willingness to operate the Twin Lakes system in the following ways. Aqua stated in a discovery response that if Twin Lakes is acquired, it would become a part

of Aqua's Greater Pennsylvania – Honesdale Division operation. OCA St. 1 at 4. Also in a discovery response, Aqua stated that it anticipates using its own staff and leveraging its corporate purchasing agreements for expenditures like power, chemicals and construction materials. Id. Aqua also stated that it anticipates an approximate \$4.5 million in capital expenditures needed to resolve current system issues. Id. Aqua appears to have engaged in the thought and planning necessary to acquire and operate Twin Lakes. Further, Aqua demonstrated its willingness and ability to take on the duties and responsibilities of operating the Twin Lakes system by voluntarily acting as receiver during the pendency of the Section 529 proceeding. Additionally, Aqua already completed its due diligence on the system so it is aware of its current state of affairs. For these reasons, the OCA submits that Aqua is capable of acquiring and operating Twin Lakes.

F. The Rates Charged by the Acquiring Capable Public Utility to its Preacquisition Customers Will Not Unreasonably Increase (Section 529(a)(6)).

Section 529(a)(6) requires that the “rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.” 66 Pa. C.S. § 529(a)(6). Twin Lakes serves 114 customers and Aqua serves approximately 405,272 water customers. OCA St. 1 at 4. Aqua's main zone water customers with average usage pay a monthly bill of approximately \$65. Twin Lakes' average water customer pays a monthly bill of approximately \$225. Aqua has stated that there will be no immediate effect on the rates of its current customers. Id. at 4-5. The OCA agrees that there will be no immediate effect and the requirement of Section 529(a)(6) is met.

The OCA also looked at the impact of the capital expenditures that will be necessary to replace the Twin Lakes' water supply and distribution system. The projected capital expenditures to fix the Twin Lakes' system are estimated to be \$4.5-\$4.7 million. Assuming that the additional capital expenditures are financed using conventional debt or equity, and using Aqua's overall rate

of return of 6.28%, Ms. DeAngelo estimated the additional revenue requirement for the capital expenditures is in the range of \$258,000-\$270,000. OCA St. 1 at 5. If all of that additional revenue requirement is borne by Aqua's existing residential water customers, Ms. DeAngelo calculated that it would be approximately 0.09% of Aqua's existing residential revenues from its metered residential water customers. OCA St. 1 at 5. Ms. DeAngelo concluded that the impact on Aqua's existing water customers did not appear to be unreasonable under the circumstances presented by this case. Id. Aqua witness Packer agreed with Ms. DeAngelo's conclusion that an acquisition of the Twin Lakes system would not have a meaningful impact on the rates of Aqua's existing customer base. Aqua St. 2-R at 9.

Aqua plans to use the PENNVEST grant/loan, if available, that was approved in February 2020 when PENNVEST approved a \$4.66 million grant and a loan up to \$300,000 for Twin Lakes. Id. at 5. If the PENNVEST grant/loan is used by Aqua, the interest rate for the loan (1%) would be lower than Aqua's embedded debt cost rate of 4.21% that was used in Ms. DeAngelo's revenue requirement calculation. OCA St. 1 at 5, footnote 7. A lower debt cost rate would lower the revenue requirement that Ms. DeAngelo calculated. In addition, the grant funding would decrease the rate base used to calculate the related revenue requirement and that would decrease the resulting revenue requirement.¹⁵ Thus, if the PENNVEST grant/loan is available to Aqua, the resulting revenue requirement to be borne by its existing residential customers would be lower than \$258,700-\$270,000 calculated above. The OCA submits that under either scenario, the rates

¹⁵Aqua argues that if it were ordered to take over Twin Lakes system, a condition should be added that would require Middlesex to escrow \$1.675 million (approximately \$305,000 for the loan and \$1.358 million related to the tax liability). It argues that its shareholders and ratepayers should not be required to bear the entirety of the costs to remediate and replace the existing infrastructure and to hold current ownership responsible. Aqua St. 2-R at 7-8. Even if Aqua's proposed condition is not adopted, the tax liability would be included in the revenue requirement calculation. Given that the impact is less than 1/10 of 1 percent, there is no evidence that this additional revenue requirement would materially change the impact on the existing customers.

charged to Aqua's existing customers will not increase unreasonably because of the acquisition of Twin Lakes and the necessary capital improvements given the circumstances of this case. See 66 Pa. C.S. § 529(a)(6).

G. Alternatives to Acquisition 529(b) and (g).

Section 529(b) requires that alternatives to acquisition be considered before the Commission may order the acquisition of a small water or sewer utility pursuant to Section 529(a). 66 Pa. C.S. § 529(b). Those alternatives include reorganization under new management, contract operations, appointment of a receiver, and merger and acquisition by a municipality. See 66 Pa. C.S. § 529 (b) (1-5). Ms. DeAngelo reviewed each option and concluded that, other than a receiver being appointed for the duration of this proceeding, none of the options were practical, or feasible as long-term solutions to the current inadequate service being provided to the customers of Twin Lakes. See OCA St. 1 at 3-4; OCA St. 1S at 4.

Reorganization and contract management do not address the need for capital improvements (\$4.6 million) or the resulting impact on rates of 114 customers. These alternatives are not practical or economically feasible. OCA St. 1 at 3. The merger with one or more other public utilities or the closest municipal provider (Section 529(b)(4) and (5)) was explored by Twin Lakes but did not result in a feasible solution. Twin Lakes Exh. 1, Petition at 5-6; OCA St. 1 at 3-4; OCA St. 1S at 4.

In rebuttal testimony responding to Twin Lakes witness Fullagar, Aqua witness Clark relies on recent waivers to Shohola Township Ordinance No. 59 received by some Twin Lakes' customers to drill private wells, to conclude that the private well alternative was not legally impossible as claimed by Twin Lakes witness Fullagar. Aqua St. No. 1-R at 8. The evidence shows, however, that some Twin Lakes customers' lots are too small to consider drilling wells

near existing septic systems. Tr. at 53; OCA St. 1S at 4. Mr. Fought explained why a waiver might not be granted in such circumstances:

[T]heir properties do not have a suitable area for both drilling a well and installing a second subsurface disposal system if the existing system fails.

OCA St. 2S at 2. In addition, Mr. Clark has not presented any evidence that customers would have money to drill private wells. Mr. Clark's speculation is without merit and should not be relied upon in making a determination in this case.

H. Other Provisions of Section 529.

1. 529(e) Acquisition Price.

Section 529(e) provides that the price for the acquisition shall be determined by agreement between the small water utility and the acquiring capable public utility subject to a determination by the Commission that the price is reasonable. 66 Pa. C.S. § 529(e). Subsection (e) also provides for a process if the small water or sewer utility and the acquiring public utility are not able to agree on a price. Id. In prior Section 529 cases, the small utility and the acquiring utility have been able to arrive at an agreed-upon price. See e.g., Investigation of W.P. Water Co., Inc. and W.P. Sanitary Co., Inc. Pursuant to Section 529 of the Pennsylvania Public Utility Code, Docket Nos. I-00070114, P-00072313 and A-230550F2000, 2009 Pa. PUC Lexis 691 (WP). The OCA submits that the parties should continue working to find agreement on the purchase price.

2. 529(f) Separate Tariffs.

Section 529(f) permits the establishment of a separate tariff for the acquired customers for a reasonable time after acquisition. 66 Pa. C.S. § 529(f). The OCA submits that this issue should be addressed after the purchase price and plan for improvements are known. To the extent that it is addressed now, the OCA submits that Twin Lakes' rates could be reduced by being included in an existing rate zone.

3. 529(j) Plan for Improvements.

Section 529(j) requires any capable public utility ordered by the Commission to acquire a small water or sewer utility to submit to the Commission a plan for improvement, prior to acquisition, including a timetable for bringing the small water or sewer utility into compliance with applicable statutory and regulatory standards. 66 Pa. C.S. § 529(j). In its PENNVEST funding application, Twin Lakes previously discussed its plans for improvements and how those improvements would address system issues. Twin Lakes Exh. 1, Appendix F: Twin Lakes PENNVEST Funding Application at 1-4. The OCA submits that Aqua should provide a similar plan for improvements to the Commission for approval pursuant to the requirement in Section 529(j).

4. 529(k) Limitations on Liability.

Section 529(k) provides a dollar limit on the liability of the acquiring capable public utility after approval by the Commission of a plan for improvements (66 Pa. C.S. § 529(j)) and the acquisition of the troubled utility. 66 Pa. C.S. § 529(k). There are certain constraints on the limitation of liability. See 66 Pa. C.S. § 529(k)(1)-(3). This provision can be addressed in the Commission's final order approving the acquisition of Twin Lakes by Aqua, after an agreed-upon purchase price and plan for improvements are submitted. See 66 Pa. C.S. § 529(k).

5. 529(l) Limitations on Enforcement Actions.

Section 529(l) provides a limit on the liability of the acquiring capable public utility after approval by the Commission of a plan for improvements (66 Pa. C.S. § 529(j)) and the acquisition of the troubled utility. 66 Pa. C.S. § 529(l). There are certain requirements before the limitation on enforcement actions goes into effect. See 66 Pa. C.S. § 529(l)(1-4). This provision can be

addressed in the Commission's final order approving the acquisition of Twin Lakes by Aqua, after an agreed-upon purchase price and plan for improvements are submitted. See 66 Pa. C.S. § 529(1).

IV. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully submits, for the reasons set forth above, that the criteria in Section 529(a) have been met and the Commission should order the acquisition of Twin Lakes by Aqua Pennsylvania. The other provisions of Section 529 will need to be addressed as part of a remand of this proceeding. Aqua Pennsylvania should continue as receiver during that time.

Respectfully Submitted,

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Dated: February 5, 2021
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