



COMMONWEALTH OF PENNSYLVANIA
PENNSYLVANIA PUBLIC UTILITY COMMISSION
COMMONWEALTH KEYSTONE BUILDING
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

February 5, 2021

Via Electronic Filing

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

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
I&E Main Brief

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Main Brief of the Bureau of Investigation and Enforcement** for the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service.
Due to the temporary closing of the PUC's offices, I&E is only providing electronic service.
Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads "Scott B. Granger". The signature is written in a cursive style.

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SBG/ac
Enclosures

cc: Honorable Joel H. Cheskis, Office of Administrative Law Judge (*via email only*)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Twin Lakes Utilities, Inc. for :
a Commission Order Authorizing the :
Acquisition of Twin Lakes Utilities, Inc. : Docket No.: P-2020-3020914
by a Capable Public Utility Pursuant to :
66 Pa. C.S. §529 :

**MAIN BRIEF
OF THE
BUREAU OF INVESTIGATION & ENFORCEMENT**

Scott B. Granger
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Dated: February 5, 2021

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I. HISTORY AND BURDEN OF PROOF.

A. History.

On July 16, 2020, Twin Lakes Utilities Inc., (“Twin Lakes” or “Company”) filed a Petition (“Twin Lakes Petition” or “Section 529 Petition”) with the Pennsylvania Public Utility Commission (“Commission”) requesting that the Commission issue an order, on an expedited basis, authorizing the acquisition of Twin Lakes pursuant to 66 Pa. C.S. § 529 (“Section 529”) by a “capable public utility” as defined by statute.¹ In its Section 529 Petition, Twin Lakes set forth the history of its ownership by the Middlesex Water Company (“Middlesex”) including references to the record of the acquisition of the Twin Lakes system at Docket No. A-2008-2050092; three rate increase request proceedings; and, a confirmation of its business address in Iselin, New Jersey.²

The procedural history of this case was provided by the Commission in the Commission’s January 14, 2021 Opinion and Order³ appointing Aqua Pennsylvania, Inc. (“Aqua”) as the receiver for the Twin Lakes system; and, has been summarized in several of the ALJ’s scheduling orders, most succinctly in the October 5, 2020 Third Scheduling Order and the ALJ’s January 5, 2021 Briefing Order.

To summarize, an Initial Telephonic Pre-Hearing Conference was held on Monday, July 27, 2020 with Deputy Chief Administrative Law Judge Joel H. Cheskis (“ALJ” or “ALJ Cheskis”) presiding. The ALJ and the parties discussed a potential litigation schedule. The parties represented at the prehearing conference were Twin

¹ Twin Lakes Petition, p. 1.

² *Id.*, pp. 1-3.

³ See Opinion and Order, pp. 2-12, Docket No. P-2020-3020914, Order Entered January 14, 2021.

Lakes; the Office of Consumer Advocate (“OCA”); the Bureau of Investigation & Enforcement (“I&E”); and the Department of Environmental Protection (“DEP”).

On August 18, 2020, the OCA filed a petition for issuance of an interim emergency order on an expedited basis, arguing that the Commission should appoint a receiver pursuant to Section 529. The OCA further averred that all elements of the relevant Commission regulations regarding interim emergency relief have been met and that Aqua should be directed to act as a receiver to operate Twin Lakes until the resolution of the Section 529 proceeding. On August 28, 2020, the ALJ issued an order denying the OCA’s petition for emergency relief. The order directed Twin Lakes to continue to provide service to its customers consistent with its certificate of public convenience until given an opportunity to abandon service by the Commission. Then, on September 22, 2020, by Opinion and Order (“September 22 Order”), the Commission affirmed the denial of the OCA’s August 18, 2020 petition for issuance of an emergency order; and, directed that Aqua conduct due diligence and a reasonable investigation within 90 days as to whether it will voluntarily act as a receiver of the Twin Lakes water system and inform the Commission of its decision.⁴

On August 19, 2020, I&E filed a petition for interlocutory review asking the Commission to consider 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, with the suggested answer as “No.” On September 17,

⁴ See Opinion and Order, Docket No. P-2020-3020914, Order Entered September 22, 2020.

2020, the Commission entered an order (“September 17 Order”)⁵ denying I&E’s petition, and in doing so, the Commission instituted a Section 529 investigation to determine whether the Commission should order a capable public utility to acquire Twin Lakes.⁶ The Commission also directed I&E to participate in the investigation.⁷

A further prehearing conference was held October 2, 2020. Interested parties represented at the further prehearing conference included the OCA, I&E, Aqua, Twin Lakes, and the Sagamore Estates Property Owners Association. The parties discussed petitions to intervene, consolidation of necessary dockets, discovery modifications, further litigation of this matter, and the passage of the deadline for petitions to intervene of October 1, 2020.

A third scheduling order was issued on October 5, 2020 memorializing the matters agreed to during the further prehearing conference and a litigation schedule was set.

During the course of litigation the parties held a series of settlement conferences but were unable to amicably resolve the issues presented in this proceeding.

The evidentiary hearing was held on January 5, 2021. Witnesses were subject to cross examination and pre-served testimony and accompanying attachments were admitted into the record. I&E submitted the following pieces of testimony and exhibits into the record:

- I&E Statement No. 1 and I&E Exhibit No. 1; the Direct Testimony and accompanying Exhibits of Esyan Sakaya.

⁵ See Opinion and Order, Order Entered September 17, 2020.

⁶ September 17 Order, pp. 20-22.

⁷ *Id.*, p. 22.

- I&E Statement No. 1-SR; the Surrebuttal Testimony of Esyan Sakaya.
- I&E Statement No. 2 and I&E Exhibit No. 2; the Direct Testimony and accompanying Exhibits of Christopher Keller.
- I&E Statement No. 2-SR and I&E Exhibit No. 2-SR; the Surrebuttal Testimony and accompanying Exhibits of Christopher Keller.

In addition to the record created in this proceeding, and in order to present all of the underlying relevant facts, it is necessary to provide the entire history of Middlesex and Twin Lakes in Pennsylvania since 2008 as recorded at Docket Number A-2008-2050092.⁸

On February 26, 2008, Middlesex filed Letter of Intent (“2008 Letter of Intent”) with the Commission requesting Commission approval to acquire the existing Twin Lakes system.⁹ The Letter of Intent also requested the Commission issue a Certificate of Public Convenience to Middlesex as a water supplier.¹⁰ Then, on May 20, 2008, Middlesex filed a joint application (“2008 Joint Application”) with the then-existing Twin Lakes Water Services LLC requesting Commission approval of the acquisition of the existing Twin Lakes system.¹¹ Later, on October 2, 2008, Middlesex filed modifications (“2008 Modifications”) to the 2008 Joint Application.¹² The Commission relied on the representations made by Middlesex during the 2008 proceeding and

⁸ See Twin Lakes Petition, p. 3, fn. 2 (Note, Docket No. A-2008-2050092 has a companion Docket No. A-2008-2050089).

⁹ See 2008 Letter of Intent, dated February 26, 2008, Docket No. A-2008-2050092.

¹⁰ 2008 Letter of Intent, Section I Purpose.

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 No. A-2008-2050092.

¹² See 2008 Modifications, dated October 2, 2008, Docket No. A-2008-2050092.

ultimately issued a Commission Order (“2009 Order”)¹³ approving the acquisition of the existing Twin Lakes system and approving the issuance of a Certificate of Public Convenience “authorizing Middlesex Water Company to begin to offer, render, furnish, or supply water service to the public in the Sagamore Estates development, located in Shohola Township, Pike County.”¹⁴

I&E now submits this Main Brief (“I&E MB”) in support of the arguments and recommendations made by the I&E witnesses and the record evidence presented; and in opposition to arguments made by Twin Lakes and the OCA.

B. Legal Standards / Burden of Proof.

It is axiomatic that the burden of proof in any proceeding involving the petition or application filed by a utility proposing a rule or order, or requesting relief from the Commission, is on the utility.¹⁵ More specifically, in this proceeding, the Commission has recognized that even though “I&E bears a statutory burden of proof in a Section 529 proceeding pursuant to 66 Pa. C.S. § 529(i), we have previously stated that the burden is not exclusive to I&E.”¹⁶ Rather, the Commission stated “any party may present or rebut a *prima facie* case in support of its position in the proceeding.”¹⁷ Further, “to the extent Twin Lakes is seeking specific relief in the Section 529 proceeding, it must produce evidence demonstrating that such relief is warranted.”¹⁸

¹³ See 2009 Order, Docket No. A-2008-2050092, Order Entered March 2, 2009.

¹⁴ 2009 Order, p. 6.

¹⁵ 66 Pa. C.S. § 332(a). See generally *Brockway Glass Co. v. Pennsylvania Public Utility Commission*, 437 A.2d 1067 (Pa. Commw. 1981); *Lower Frederick Twp. v. Pennsylvania Public Utility Commission*, 409 A.2d 505 (Pa. Commw. 1980).

¹⁶ September 17 Order, p. 21.

¹⁷ *Id.*

¹⁸ *Id.*

In this case, Twin Lakes must satisfy its burden of proof by presenting a preponderance of evidence.¹⁹ A preponderance of the evidence is such evidence that is more convincing, by even the smallest amount, than that presented by another party.²⁰ If a preponderance of evidence is submitted, the burden of going forward with competing evidence shifts to opposing parties to produce credible evidence of at least equal weight.

This burden is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with evidence to support a particular position.²¹ The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast.²² Further, the Commission must ensure that any adjudication is supported by substantial evidence. “Substantial evidence” is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion.²³

I&E asserts that Twin Lakes has failed to meet its burden regarding the relief it has requested and therefore I&E respectfully requests that the Administrative Law Judge and the Commission deny Twin Lakes’ Petition and not order a capable public utility to acquire the Twin Lakes system. I&E’s request is supported by the substantial record evidence presented by I&E and the persuasive arguments set forth in this I&E Main Brief. Further, I&E asserts that Twin Lakes has failed to present substantial record

¹⁹ *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Commw. 1990).

²⁰ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

²¹ *In re: Loudenslager’s Estate*, 430 Pa. 33, 240 A.2d 477 (1968).

²² *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa. Commw. 1993).

²³ *Norfolk & Western Ry. Co. v. Pennsylvania Public Utility Commission*, 413 A.2d 1037 (Pa. 1980).

evidence to support its allegations in Paragraph 3 of the Twin Lakes Petition and I&E requests the Administrative Law Judge and the Commission find that the Commission still has jurisdiction over Middlesex, the original 2008 filer.

II. QUESTIONS PRESENTED.

Q. Should the Commission deny Twin Lakes' petition requesting that the Commission order a capable public utility to acquire Twin Lakes pursuant to Section 529 of the Public Utility Code?

Suggested Answer: Yes.

Q. Does the Pennsylvania Public Utility Commission still have jurisdiction over Middlesex Water Company, the original 2008 filer and non-resident parent corporation of Twin Lakes?

Suggested Answer: Yes.

III. SUMMARY OF ARGUMENT.

I&E has continually argued that Twin Lakes' parent company, Middlesex, is a technically, managerially, and financially capable public utility. Based on this belief, I&E has concluded that the third element of Section 529(a) is not met, and that no other capable public utility should be ordered by the Commission to acquire Twin Lakes.

Section 529(a) requires that the six enumerated elements be met in order for the Commission to order a capable public utility to acquire the small water or wastewater company. I&E has testified that, in I&E's opinion, elements (1), (2), (4), (5) and (6) of Section 529(a) are all met. The only element of Section 529(a) that I&E believes is not met is element (3) which states: "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." In reaching this conclusion, I&E relied on Section 529(c)(1) and

considered “the financial, managerial and technical ability of the small water or sewer utility” by and through Middlesex, the original 2008 filer and Twin Lakes’ parent company. Therefore, no other capable public utility should be ordered by the Commission to acquire Twin Lakes.

In support of these arguments, I&E asserts that Twin Lakes, by and through Middlesex Water Company, the original 2008 filer and parent company of Twin Lakes, can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. The record in the original 2008 filing at Docket A-2008-2050092 makes it clear the Commission relied on the representations made by Middlesex in the 2008 proceeding when approving the acquisition of the then-existing Twin Lakes system and when approving Middlesex’s request to begin providing water service to the Twin Lakes customers in Pennsylvania. The I&E witnesses provided substantial record evidence illustrating the well documented and publicized financial, managerial, and technical capabilities of Twin Lakes, by and through Middlesex. The substantial evidence supports a finding that Twin Lakes, by and through Middlesex, has the necessary technical and managerial leadership necessary to ensure that Twin Lakes can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. Therefore, no other capable public utility should be ordered by the Commission to acquire Twin Lakes.

Regarding the issue of jurisdiction, the Pennsylvania Public Utility Commission still has jurisdiction over Middlesex, the original 2008 filer and non-resident parent corporation of Twin Lakes. Middlesex has purposefully availed itself of Pennsylvania

through specific acts and a course of dealing with the Pennsylvania Public Utility Commission and Pennsylvania public utility customers.

Generally, Pennsylvania law is well settled regarding the exercise of jurisdiction over non-resident corporations. Pennsylvania law provides for the exercise of jurisdiction by Pennsylvania tribunals over foreign corporations by either general or specific jurisdiction. General jurisdiction, as discussed in 42 Pa. C.S. Section 5301(a)(2) of the Pennsylvania Judicial Code, is premised on the foreign corporation's overall course of contacts or general activity with Pennsylvania and each case is fact specific.

Specific jurisdiction arises out of the foreign corporation's specific contacts with Pennsylvania as they relate to the controversy at issue and is governed by the Uniform Interstate and International Procedures Act, otherwise known as Pennsylvania's "long-arm statute." The exercise of jurisdiction in a particular proceeding requires the tribunal to make an independent factual assessment of the subject foreign corporation's contacts with Pennsylvania to determine whether the tribunal has jurisdiction over the foreign corporation in that particular proceeding. Further, and directly applicable to this proceeding, 42 Pa. C.S. Section 5322(a)(9) states:

(a) General rule. - A tribunal of this Commonwealth may exercise personal jurisdiction over a person ... who acts directly or by an agent, as to a cause of action or other matter arising from such person:

...

(9) Making application to any government unit for any certificate, license, permit, registration or similar instrument or authorization.

By any standard, the Pennsylvania Public Utility Commission has had specific, and arguably general, jurisdiction over Middlesex since 2008.

The creation of Middlesex's wholly owned Pennsylvania subsidiary, Twin Lakes, in April of 2009 simply created the Pennsylvania alter ego of the Middlesex. It is well settled that a Pennsylvania tribunal may exercise jurisdiction over a parent corporation when the subsidiary is merely the alter ego or agent of the parent. To summarize, beginning with the original filing in 2008, it was Middlesex that made contact with and purposefully availed itself of the Pennsylvania PUC and the Pennsylvania ratepayers. And, it was Middlesex that that sought the Certificate of Public Convenience and requested permission to begin servicing Pennsylvania rate payers.

Finally, the record evidence shows that regardless of Middlesex's attempt to change the Commission's records, the Commission has always recognized Middlesex as the capable public utility operating the Twin Lakes system. The record supports a finding that Middlesex's wholly owned subsidiary, Twin Lakes, was created by Middlesex to act solely as Middlesex's agent and alter ego in Pennsylvania for the purpose of operating the Twin lakes system.

In conclusion, I&E respectfully requests the Commission deny Twin Lakes' Petition requesting that the Commission order a capable public utility to acquire Twin Lakes pursuant to Section 529 of the Public Utility Code. Further I&E respectfully requests the Commission find that the Commission has had jurisdiction over Middlesex, the original 2008 filer, since 2008 for purposes of rendering any decision within the Commission's authority in this proceeding.

IV. ARGUMENT.

A. The Commission should deny Twin Lakes' Petition requesting that it order a capable public utility to acquire Twin Lakes pursuant to Section 529 of the Public Utility Code.

I&E has continually argued that Twin Lakes' parent company, Middlesex, is a technically, managerially, and financially capable public utility. Based on this belief, I&E has concluded that the third element²⁴ of Section 529(a) is not met, and that no other capable public utility should be ordered by the Commission to acquire Twin Lakes. Twin Lakes, on the other hand, has argued that I&E has improperly looked at Middlesex as part of I&E's Section 529 investigation. Middlesex, the original entity who sought a certificate of public convenience to own and operate Twin Lakes in 2008,²⁵ mistakenly believes that the Commission no longer has jurisdiction over it.

This brief will first address whether the elements of Section 529 are satisfied. Then, it will address the issue of whether I&E is properly looking at Middlesex, or put another way, whether the Commission has had jurisdiction over Middlesex, the original 2008 filer and non-resident parent corporation of Twin Lakes, since 2008.

1. Section 529 of the Public Utility Code requires that the Commission conduct an investigation to determine whether the six elements enumerated in Section 529(a) are met before the Commission may order a capable public utility to acquire the small water or wastewater company.

Section 529(a) requires that the six enumerated elements be met in order for the Commission to order a capable public utility to acquire the small water or wastewater

²⁴ 66 Pa. C.S. § 529(a)(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."

²⁵ See 42 Pa. C.S. § 5322(a)(9).

company.²⁶ And, Section 529(c)²⁷ lists six factors the Commission shall consider during its investigation of whether the enumerated Section 529(a) elements are met. The I&E investigation focused on the first factor listed in Section 529(c)²⁸ which is the financial, managerial and technical ability of Twin Lakes, by and through its parent Middlesex.

Regarding the overall Section 529 investigation, I&E has testified that elements (1), (2), (4), (5) and (6)²⁹ are all met.³⁰ However, I&E believes element (3) was not met, which states: “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.”³¹ In reaching this conclusion, I&E relied on Section 529(c)(1) and considered “the financial, managerial and technical ability of the small water or sewer utility”³² by and through Middlesex, the original 2008 filer and Twin Lakes’ parent company. Given that Twin Lakes failed to satisfy all the necessary elements, no other capable public utility should be ordered by the Commission to acquire Twin Lakes.³³

2. Twin Lakes, by and through Middlesex Water Company, the original 2008 filer, can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.

The record in the original 2008 filing at Docket A-2008-2050092 makes it clear the Commission relied on the representations made by Middlesex in the 2008 proceeding, as confirmed in the Commission’s 2009 Order, when approving the acquisition of the

²⁶ See 66 Pa. C.S. § 529(a).

²⁷ 66 Pa. C.S. § 529(c).

²⁸ 66 Pa. C.S. § 529(c)(1).

²⁹ 66 Pa. C.S. § 529(a)(1), (2), (4), (5) and (6).

³⁰ See I&E St. No. 1, pp. 6-14; I&E St. No. 2, pp. 19-28.

³¹ 66 Pa. C.S. § 529(a)(3).

³² 66 Pa. C.S. § 529(c)(1).

³³ See generally I&E St. No. 1, pp. 14-17; I&E St. No. 2, pp. 4-19.

then-existing Twin Lakes system.³⁴ The Commission also relied on the representations made by Middlesex when approving Middlesex's request to begin providing water service to the Twin Lakes customers in Pennsylvania.³⁵ In the Commission's 2009 Order approving the acquisition, the Commission held that:

Middlesex Water Company is a large, public water provider who has the managerial, technical and financial capabilities to safely and adequately operate the subject system and make the badly needed repairs and upgrades. The Commission finds that the granting of the joint application of Middlesex Water Company and Twin Lakes Water Services, LLC for approval of the transfer of ownership of the Twin Lakes water system assets is necessary or proper for the service, accommodation, convenience or safety of the public.³⁶

And, as I&E established in its testimony, to this day, Middlesex continues to publicize its managerial, technical and financial fitness.³⁷

I&E witness Mr. Sakaya established that the information regarding the fitness of Middlesex can be found on the Middlesex website.³⁸ Middlesex states that it was "incorporated as a water utility in 1897," and that it "provides a full range of regulated and non-regulated water and wastewater utility and related services in parts in New Jersey, Delaware and Pennsylvania."³⁹ It is undisputed that through its website, Middlesex continually touts that it provides a full range of water and wastewater services in Pennsylvania. Additionally, Mr. Sakaya reminds us that Middlesex states that it has about 350 employees and the Middlesex family of companies serves about 500,000

³⁴ 2009 Order, pp. 3-6.

³⁵ 2009 Order, p. 6.

³⁶ *Id.*

³⁷ See I&E St. No. 1, pp. 14-17; I&E St. No. 2, pp. 4-19.

³⁸ I&E St. No. 1, p. 16, citing www.middlesexwater.com.

³⁹ I&E St. No. 1, p. 16, citing www.middlesexwater.com/about-us/.

customers.⁴⁰ Further, Middlesex reported a net income of \$32.5 million in 2018 and \$33.9 million in 2019, and reported cash dividends per share of \$0.976 in 2018 and \$0.9111 in 2019.⁴¹ Meanwhile the customers of Middlesex's wholly owned subsidiary in Pennsylvania, Twin Lakes, are paying rates for water service that are unaffordable.⁴²

Further, I&E witness Christopher Keller testified that in its Form 10-K, Middlesex reported operating revenues for the year ending December 31, 2019 of \$134.6 million and a net income of \$33.9 million.⁴³ In Middlesex's Management Discussion and Analysis of Financial Condition and Results of Operations in the "Capital Construction Program" section, Middlesex stated that Middlesex plans to invest approximately \$124 million in 2020 in its multi-year capital construction program encompassing numerous projects designed to upgrade and replace utility infrastructure as well as enhance the integrity and reliability of assets to better serve the current and future generations of water and wastewater customers.⁴⁴ Meanwhile, Aqua estimated the capital cost necessary to maintain service to Twin Lakes' customers is approximately \$4,500,000.⁴⁵ This amount represents only 3.6% ($\$4,500,000 \div \$124,000,000$) of Middlesex's already planned capital projects in 2020 to upgrade and replace utility infrastructure.⁴⁶ Clearly, Middlesex has the financial resources available to make the capital improvements necessary to provide safe and adequate service to the Twin Lakes' ratepayers.

⁴⁰ I&E St. No. 1, p. 16, *citing* www.middlesexwater.com/news-room/.

⁴¹ I&E St. No. 1, p. 16-17, *citing* www.middlesexwater.com/news-room/, 2019 Annual Report, p 10.

⁴² *See* Opinion and Order, Docket No. R-2019-3010958, Order Entered March 26, 2020, pp. 66-80. *See also* Recommended Decision, Docket No. R-2019-3010958, Order Entered February 18, 2020, pp. 83-89.

⁴³ I&E St. No. 2, p. 10, *citing* Middlesex Water Company 2019 Form 10-K, p. 24.

⁴⁴ I&E St. No. 2, pp. 10-11, *citing* Middlesex Water Company 2019 Form 10-K, p.21.

⁴⁵ I&E St. No. 2, p. 11, *citing* I&E Exh. No. 2, Sch. 2, p. 2.

⁴⁶ I&E St. No. 2, p. 11.

Regarding management and technical capabilities, Mr. Sakaya testifies that the Middlesex July 2020 Fact Sheet states “OUR MISSION: To provide service in the water, wastewater and related fields in a safe reliable and efficient manner.”⁴⁷ Mr. Keller provides that Middlesex has stated:

Since 1897, we’ve built a reputation as an industry leader in providing water and wastewater solutions. This reputation is backed by a solid financial and managerial network that provide the capital investment and institutional knowledge necessary for successful project completion.⁴⁸

Further, Middlesex has stated “through our affiliated companies, we [Middlesex]⁴⁹ are delivering technical and management capabilities that creatively address challenges such as aging infrastructure and increasing regulatory pressures faced by municipalities, developers, and small owners.”⁵⁰ Middlesex also stated “whether it’s providing a plentiful and reliable supply of safe drinking water or managing wastewater efficiently, we can provide the resources, local knowledge and total management solution that is economically, operationally, and environmentally sound.”⁵¹

Regarding the technical, financial, and managerial expertise of the Middlesex/Twin Lakes officers; we note that members of the Board of Directors and senior management of Middlesex are also the officers and directors of Twin Lakes.⁵² Vice President of Operations for Middlesex, Robert K. Fullagar, is also the President of

⁴⁷ I&E St. No. 1, p. 17, *citing* www.middlesexwater.com/news-room/, Fact Sheet – July 2020, p 1.

⁴⁸ I&E St. No. 2, p. 8, *citing* www.middlesexwater.com/about-us/.

⁴⁹ Middlesex admits that it is Middlesex, and not the affiliates, that is delivering the technical and management capabilities, and that the affiliates are simply the alter ego of Middlesex.

⁵⁰ I&E St. No. 2, p. 8, *citing* www.middlesexwater.com/about-us/.

⁵¹ *Id.*

⁵² I&E St. No. 2, p. 9, *citing* www.middlesexwater.com/about-us/ Leadership Team.

Twin Lakes.⁵³ Mr. Fullagar holds both a professional engineers license and systems operator's license from New Jersey and Pennsylvania.⁵⁴ Mr. Fullagar also has 30 years of experience in water and wastewater utility management, systems operations, infrastructure improvement and capital program implementation, change management, worker safety, physical/cyber security, operational resiliency and emergency management.⁵⁵

A. Bruce O'Conner is the Senior Vice President, Treasurer and Chief Financial Officer and full-time employee of Middlesex as well as the part-time Vice President and Treasurer of Twin Lakes.⁵⁶ Mr. O'Connor is a Certified Public Accountant with a Masters of Business Administration degree.⁵⁷ Mr. O'Connor has been the Senior Vice President, Treasurer and Chief Financial Officer of Middlesex since 1990.⁵⁸ Mr. Fullagar and Mr. O'Connor are highly credentialed and capable individuals with the expertise to provide Twin Lakes with the necessary technical and managerial leadership necessary to ensure that Twin Lakes can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.

Therefore, and reiterating, no other capable public utility should be ordered by the Commission to acquire Twin Lakes.

⁵³ I&E St. No. 2, p. 9.

⁵⁴ I&E St. No. 2, pp. 9-10, *citing* www.middlesexwater.com/about-us/ Leadership Team.

⁵⁵ *Id.*

⁵⁶ Twin Lakes St. No. 2, p. 1 and App. A.

⁵⁷ Twin Lakes St. No. 2, App. A.

⁵⁸ *Id.*

B. The Pennsylvania Public Utility Commission has had jurisdiction over Middlesex Water Company, the original 2008 filer and non-resident parent corporation of Twin Lakes since 2008.

1. Middlesex Water Company, the original 2008 filer, has purposefully availed itself of Pennsylvania through specific acts and a course of dealing with the Pennsylvania Public Utility Commission and Pennsylvania public utility customers.

Generally, Pennsylvania law is well settled regarding the exercise of jurisdiction over non-resident corporations.⁵⁹ Pennsylvania law provides for the exercise of jurisdiction by Pennsylvania tribunals over foreign corporations by either general or specific jurisdiction.⁶⁰ “General jurisdiction” is premised on the foreign corporation's overall contacts or general activity with Pennsylvania and each case is fact specific.⁶¹ Section 5301(a)(2)(iii) of the Pennsylvania Judicial Code permits general jurisdiction over a non-resident corporation if it carries on a continuous and systematic part of its general business within Pennsylvania.⁶² Further, for a Pennsylvania tribunal to exercise jurisdiction over a non-resident corporation, due process requires the defendant to have certain minimum contacts with Pennsylvania such that the maintenance of the proceeding does not offend traditional notions of fair play and substantial justice.⁶³ Additionally, the foreign corporation’s contacts with Pennsylvania must be such that the foreign corporation could reasonably be called to defend itself in Pennsylvania.⁶⁴ Also

⁵⁹ See generally Std. Pa. Prac. 2d §§ 113.22 – 113.53 (Std. Pa. Prac. 2d provides a comprehensive overview of Pennsylvania law regarding personal jurisdiction over foreign corporations with citations to the relevant statutes and case law).

⁶⁰ Std. Pa. Prac. 2d, § 113.22, citing *City of Philadelphia v. Borough of Westville*, 93 A.3d 530, 533 (Pa. Commw. Ct. 2014). See also *Kubik v. Letteri*, 532 Pa. 10, 614 A.2d 1110 (1992).

⁶¹ *Id.*

⁶² 42 Pa. C.S. § 5301(a)(2)(iii).

⁶³ Std. Pa. Prac. 2d § 113.24, citing *Weintraub v. Walt Disney World*, 825 F. Supp. 717 (E.D. Pa. 1993).

⁶⁴ *Id.*

considered is whether the nonresident corporation purposefully established minimum contacts with Pennsylvania and purposefully availed itself of the privilege of conducting activities within Pennsylvania and thus invoking the benefits and protections of Pennsylvania's laws and regulations.⁶⁵

“Specific jurisdiction” arises out of the foreign corporation's specific contacts with Pennsylvania as they relate to the controversy at issue and is governed by the Uniform Interstate and International Procedures Act,⁶⁶ otherwise known as Pennsylvania's “long-arm statute.”⁶⁷ The exercise of jurisdiction in a particular proceeding requires the tribunal to make an independent factual assessment of the subject foreign corporation's contacts with Pennsylvania to determine whether the tribunal has jurisdiction over the foreign corporation in that particular proceeding.⁶⁸ Further, and directly applicable to this proceeding, is the language of 42 Pa. C.S. Section 5322 (a)(9) which states:

(a) General rule. - A tribunal of this Commonwealth may exercise personal jurisdiction over a person ... who acts directly or by an agent, as to a cause of action or other matter arising from such person:

...

(9) Making application to any government unit for any certificate, license, permit, registration or similar instrument or authorization.⁶⁹

The specific jurisdiction inquiry focuses on the nonresident corporation's course of dealing and particular acts, as well as the known benefits incurred by the contact with the

⁶⁵ Std. Pa. Prac. 2d § 113.27 citing *Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

⁶⁶ 42 Pa. C.S. §§ 5321 to 5329.

⁶⁷ *Id.* See generally Std. Pa. Prac. 2d §§ 113.41 to 113.53. See also *Washington v. U.S. Suzuki Motor Corp.*, 257 Pa. Super, 482, 390 A.2d 1339 (1978).

⁶⁸ Std. Pa. Prac. 2d § 113.41, citing *Mellon Bank (East) PSFS, Nat'l Ass'n v. Farino*, 960 F.2d 1217 (3d Cir. 1993).

⁶⁹ 42 Pa. C.S. § 5322(a) (9) (42 Pa. C.S. § 5301(a) defines “persons” to include foreign corporations).

forum state,⁷⁰ and whether the foreign corporation purposefully directed its activities at residents of the forum and purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws.⁷¹

The combined records of this proceeding and the 2008 proceeding contain substantial evidence of Middlesex's numerous and purposeful contacts with Pennsylvania, the Commission, and Pennsylvania ratepayers since 2008 sufficient to support a finding that the Pennsylvania Public Utility Commission has had "specific jurisdiction" over the Middlesex Water Company since 2008.⁷² The record shows, on February 26, 2008, Middlesex filed the 2008 Letter of Intent for the acquisition of the existing Twin Lakes system and the application for a Certificate of Public Convenience as a water supplier.⁷³ In its 2008 Letter of Intent, Middlesex stated that its goal was to obtain a Certificate of Public Convenience as a water supplier in Pennsylvania.⁷⁴ Middlesex then touted its qualifications as a capable public utility including the technical expertise of its staff; concluding that, collectively, Middlesex serves more than 125,000 water and wastewater customers.⁷⁵

Then, on May 20, 2008, Middlesex filed the 2008 Joint Application along with Twin Lakes Water Services LLC⁷⁶ requesting Commission approval of the acquisition of

⁷⁰ 42 Pa. C.S. § 5322(a)(1).

⁷¹ 42 Pa. C.S. § 5322(a)(1)(i)-(ii).

⁷² I&E would also argue that the substantial record evidence in this proceeding would also support a finding of general jurisdiction over Middlesex.

⁷³ See 2008 Letter of Intent, p. 2.

⁷⁴ *Id.*

⁷⁵ *Id.*, pp. 2-10.

⁷⁶ Twin Lakes Water Services LLC is the predecessor water company operating the Twin Lakes system that was owned by Nicolas Braco and was acquired in 2008/2009.

Twin Lakes Water Services LLC by Middlesex.⁷⁷ In the 2008 Joint Application, Middlesex stated it “wished to expand its service territory into Pennsylvania.”⁷⁸ Further, Middlesex stated “the acquisition of the Twin Lakes Water Services LLC would be the Middlesex Water Company’s first Pennsylvania Utility.”⁷⁹ Middlesex also stated “there will be no demonstrable effect to the customers of Twin Lakes Water Services LLC from the proposed transfer other than they will now be serviced by a professionally run Customer Service department located in Iselin, NJ.”⁸⁰

Later, on October 2, 2008, Middlesex filed the 2008 Modifications to the 2008 Joint Application.⁸¹ In its 2008 Modifications to the 2008 Joint Application, Middlesex stated: “MWC [Middlesex Water Company] commits to become familiar with the Commission’s statutes and regulations ...”⁸² Additionally, Middlesex stated that it “agrees to adopt the rules, rates and regulations contained in [Twin Lakes] tariff” and that it will “continue billing the [Twin Lakes] customers monthly as part of its future rate filing.”⁸³

Finally, the Commission stated in its September 22, 2020 Order denying the OCA’s request for an interim emergency order appointing a receiver:

We also note that Middlesex appears to have operated and conducted business in Pennsylvania and directly engaged with Pennsylvania public utility customers pursuant to an affiliated interest agreement with its wholly-owned subsidiary

⁷⁷ See 2008 Joint Application.

⁷⁸ 2008 Joint Application, p. 5.

⁷⁹ 2008 Joint Application, p. 4.

⁸⁰ *Id.*

⁸¹ See 2008 Modifications.

⁸² 2008 Modifications, p. 2.

⁸³ *Id.*

which is now under evaluation, *nunc pro tunc*, in the Amended Service Agreement Application proceeding, now consolidated with this case.⁸⁴

All of the above is substantial record evidence proving that Middlesex, the original 2008 filer, established minimum, and arguably continuous, contacts with the Pennsylvania; purposefully availed itself of the Commission and Pennsylvania public utility customers; and, transacted business in Pennsylvania. The Commission relied on the representations made by Middlesex in the 2008 Joint Application proceeding and ultimately approved Middlesex's request to acquire the existing Twin Lakes system.⁸⁵ The Commission also approved Middlesex's request to begin providing water service to the Twin Lakes customers in Pennsylvania.⁸⁶ And, as stated *supra*, in the Commission's 2009 Order approving the acquisition, the Commission stated:

Middlesex Water Company is a large, public water provider who has the managerial, technical and financial capabilities to safely and adequately operate the subject system and make the badly needed repairs and upgrades. The Commission finds that the granting of the joint application of Middlesex Water Company and Twin Lakes Water Services, LLC for approval of the transfer of ownership of the Twin Lakes water system assets is necessary or proper for the service, accommodation, convenience or safety of the public.⁸⁷

Clearly, by any standard, the Pennsylvania Public Utility Commission has retained specific, and arguably general, jurisdiction over Middlesex since 2008. And, Middlesex

⁸⁴ September 22 Order, p. 32, fn. 9.

⁸⁵ *See generally* 2009 Order.

⁸⁶ *Id.*, p. 6.

⁸⁷ 2009 Order, p. 6.

is still under the Commission's jurisdiction for purposes of this proceeding regardless of any attempt by Twin Lakes to make unsupported statements arguing otherwise.⁸⁸

2. The creation of Middlesex's wholly owned Pennsylvania subsidiary, Twin Lakes, in April of 2009 simply created the Pennsylvania alter ego of the Middlesex Water Company.

Even though this discussion is probably moot because, as established *supra*, it is clear the Commission has had specific jurisdiction over Middlesex as the original 2008 filer, since 2008; it is well settled that a Pennsylvania tribunal may exercise jurisdiction over a parent corporation when the subsidiary is merely the alter ego or agent of the parent.⁸⁹ Further, the parent corporation may be subjected to the jurisdiction of the state in which the activities occurred when the wholly owned subsidiary is found to be the agent of the parent when the subsidiary's activities are of such a character as to amount to doing the business of the parent.⁹⁰

In this case, beginning with the original filing in 2008, it was Middlesex that made contact with and purposefully availed itself of the Pennsylvania, the Pennsylvania Public Utility Commission, and the Pennsylvania ratepayers.⁹¹ Further, it was Middlesex that sought the Certificate of Public Convenience and requested permission to begin servicing Pennsylvania rate payers.⁹² And, it was Middlesex that pledged to familiarize itself with Pennsylvania's statutes and regulations.⁹³

⁸⁸ See Twin Lakes Petition, ¶ 3.

⁸⁹ Std. Pa. Prac. § 113.45, citing *Clark v. Matsushita Elec. Indus. Co., Ltd.*, 811 F. Supp. 1061 (M.D. Pa. 1993).

⁹⁰ *Id.*, citing, *D'Jamous ex rel. Estate of Weingeroff v. Pilatus Aircraft, Ltd.*, 566 F.3d 94 (3d Cir. 2009).

⁹¹ See Section IV B 1, *supra*.

⁹² *Id.*

⁹³ *Id.*

Additionally, in April of 2009, after the 2008 Letter of Intent, the 2008 Joint Application, and the 2008 Modifications had already been filed with the Commission, Middlesex created a wholly owned Pennsylvania subsidiary to step directly into the shoes of Middlesex as the alter ego of Middlesex in Pennsylvania.⁹⁴ It was Middlesex that had already established all of the Pennsylvania contacts and regulatory construct with the Commission.⁹⁵ And, it was Middlesex that declared that it created Twin Lakes in Pennsylvania for the sole purpose of conducting business on the Twin Lakes system in Pennsylvania.⁹⁶

Also instructive on this issue, in April of 2011, Middlesex filed a request to effectuate a name change in the Commission's records. The record evidence shows that regardless of this attempt to change the Commission's records, the Commission has always recognized Middlesex as the capable public utility operating the Twin Lakes system. This is evidenced in the May 17, 2011 Secretarial Letter ("2011 Secretarial Letter") from the Commission's Secretary to Middlesex in response to Middlesex's request to effectuate the name change.⁹⁷ The Commission's Secretary stated:

This is in reference to your letter of April 4, 2011, which notified the Commission that Middlesex Water Company (Company) is doing business in the Commonwealth of Pennsylvania under the name of Twin Lakes Utilities, Inc.⁹⁸

Clearly, the Commission has always recognized Middlesex as the entity that established the initial contacts with the Commission in 2008 and created the regulatory construct

⁹⁴ Section 529 Petition, ¶ 4.

⁹⁵ See Section IV B 1, *supra*.

⁹⁶ Twin Lakes Petition, ¶ 4.

⁹⁷ See 2011 Secretarial Letter, dated May 17, 2011, Docket No. A-2008-2050092.

⁹⁸ 2011 Secretarial Letter, p. 1.

with the Commission in order to procure the Certificate of Public Convenience to provide water service to Pennsylvania ratepayers through the Twin Lakes system.

The substantial record evidence supports a finding that Middlesex's wholly owned subsidiary, Twin Lakes, was created by Middlesex to act as Middlesex's agent and alter ego for the purpose of operating the Twin Lakes system Pennsylvania.

VII. CONCLUSION.

I&E respectfully requests the Commission deny Twin Lakes' Petition requesting that the Commission order a capable public utility to acquire Twin Lakes pursuant to Section 529 of the Public Utility Code. Further, I&E respectfully requests the Commission find that the Commission has had jurisdiction over Middlesex, the original 2008 filer, since 2008 for purposes of rendering any decision within the Commission's authority in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Scott B. Granger".

Scott B. Granger
Prosecutor
PA Attorney ID No. 63641

Dated: February 5, 2021

Findings of Fact

1. On July 16, 2020, Twin Lakes Utilities, Inc. filed a petition with the Pennsylvania Public Utility Commission requesting that the Commission issue an order authorizing the acquisition of Twin Lakes pursuant to 66 Pa. C.S. Section 529 by a capable public utility. Twin Lakes Petition, p. 1, Docket No. P-2020-3020914.
2. In its Section 529 Petition, Twin Lakes sets forth the history of its ownership by the Middlesex Water Company including a reference to Docket No. A-2008-2050092 regarding the acquisition of the Twin Lakes water system. Twin Lakes Petition, pp. 2-3.
3. On February 26, 2008, the Middlesex Water Company filed a Letter of Intent with the Commission requesting Commission approval to acquire the existing Twin Lakes system. 2008 Letter of Intent, dated February 26, 2008, Docket No. A-2008-2050092.
4. The 2008 Letter of Intent requested the Commission issue a Certificate of Public Convenience to Middlesex as a water supplier in Pennsylvania. 2008 Letter of Intent, Section I, Purpose.
5. On May 20, 2008, Middlesex filed a joint application with the then existing Twin Lakes Water Services LLC requesting Commission approval of the acquisition of the existing Twin Lakes water system. 2008 Joint Application, Docket No. A-2008-2050092.
6. In the 2008 Joint Application, Middlesex stated it “wished to expand its service territory into Pennsylvania.” 2008 Joint Application, p. 5.
7. In the 2008 Joint Application, Middlesex stated the “acquisition of the Twin Lakes Water Services, LLC would be the Middlesex Water Company’s first Pennsylvania Utility.” 2008 Joint Application, p. 4.
8. In the 2008 Joint Application, Middlesex stated “there will be no demonstrable effect to the customers of Twin Lakes Water Services, LLC from the proposed transfer other than they will now be serviced by a professionally run customer service department located in Iselin, New Jersey.” 2008 Joint Application, p. 4.
9. On October 2, 2008, Middlesex filed modifications to the 2008 Joint Application. 2008 Modifications, dated October 2, 2008, Docket No. A-2008-2050092.

10. In the 2008 Modifications, Middlesex stated “Middlesex Water Company commits to become familiar with the Commission’s statutes and regulations.” 2008 Modifications, p. 2.

11. In the 2008 Modifications Middlesex stated that “it agrees to adopt the rules, rates and regulations contained in the Twin Lakes tariff and that it will continue billing the Twin Lakes customers monthly as part of its future rate filing.” 2008 Modifications, p. 2.

12. The Commission relied on the representations made by Middlesex in the 2008 Letter of Intent; the 2008 Joint Application; and the 2008 Modifications, in issuing its Commission order approving the acquisition of the existing Twin Lakes system. 2009 Order, Order Entered March 2, 2009, Docket No. A-2008-2050092.

13. The Commission’s 2009 Order authorized the Middlesex Water Company to begin to offer, render, furnish, or supply water service to the public in the Sagamore Estates development, located in Shohola Township, Pike County. 2009 Order, p. 6.

14. The Commission stated that the Middlesex Water Company is a large public water provider who has the managerial and technical and financial capabilities to safely and adequately operate the Twin Lakes system and make the needed repairs and upgrades. 2009 Order, p. 6.

15. The Middlesex Water Company was incorporated as a water utility in 1897. I&E St. No. 1, p. 16.

16. The Middlesex Water Company has a website where it states that it provides a full range of water and wastewater services in Pennsylvania. I&E St. No. 1, p. 16, citing www.middlesexwater.com.

17. Middlesex stated that it has about 350 employees and that the Middlesex family of companies serves about 500,000 customers. I&E St. No. 1, p. 16.

18. Middlesex reported a net income of \$32.5 million in 2018 and \$33.9 million in 2019; and, reported cash dividends per share of \$0.967 in 2018 and \$0.9111 in 2019. I&E St. No. 1, pp. 16-17.

19. In its Form 10-K, Middlesex reported operating revenues for the year ending December 31, 2019 of \$134.6 million and a net income of \$33.9 million. I&E St. No. 2, p. 10.

20. In its Form 10-K, Middlesex's Management Discussion and Analysis of Financial Condition in the Capital Construction Program section, Middlesex stated that it "plans to invest approximately \$124 million in 2020 in its multiyear capital construction program." I&E St. No. 2, pp. 10-11.

21. Aqua estimated the capital costs necessary to maintain service to Twin Lakes customers is approximately \$4.5 million. I&E St. No. 2, p. 11.

22. Middlesex has the financial resources available to make the capital improvements necessary to provide safe and adequate service to the Twin Lakes ratepayers. I&E St. No. 2, p. 11.

23. Middlesex stated on its website that "OUR MISSION: To provide service in the water, wastewater and related fields in a safe reliable and efficient manner." I&E St. No. 1, p. 17.

24. Middlesex has stated "since 1897, we have built a reputation as an industry leader in providing water and wastewater solutions. This reputation is backed by a solid financial and managerial network that provides the capital investment and institutional knowledge necessary for successful project completion." I&E St. No. 2, p. 8.

25. Middlesex has stated "through our affiliated companies, we are delivering technical and management capabilities that creatively address challenges such as aging infrastructure and increasing regulatory pressures faced by municipalities, developers, and small owners." I&E St. No. 2, p. 8.

26. Middlesex has stated "whether it's providing a plentiful and reliable supply of safe drinking water or managing wastewater efficiently, we can provide the resources, local knowledge and total management solution that is economically, operationally, and environmentally sound." I&E St. No. 2, p. 8.

27. Vice President of Operations for Middlesex, Robert K Fullagar, is also the President of Twin Lakes. I&E St. No. 2, p. 9.

28. Robert K Fullagar holds both a professional engineers license and systems operator license from New Jersey and Pennsylvania. I&E St. No. 2, pp. 9-10.

29. Robert K Fullagar has 30 years of experience in water and wastewater utility management, systems operations, infrastructure improvement and capital program implementation. I&E St. No. 2, pp. 9-10.

30. A. Bruce O'Connor is the Senior Vice President, Treasurer, and Chief Financial Officer of Middlesex, as well as the part-time Vice President and Treasurer of Twin Lakes. Twin Lakes St. No. 2, App. A.

31. A. Bruce O'Connor is a Certified Public Accountant with a Masters of Business Administration degree. Twin Lakes St. No. 2, App. A.

32. In its September 22, 2020 Order denying the OCA's request for an interim emergency order appointing a receiver, the Commission stated:

we also note that Middlesex appears to have operated and conducted business in Pennsylvania and directly engaged with Pennsylvania public utility customers pursuant to an affiliated interest agreement with its wholly-owned subsidiary which is now under evaluation.

September 22 Order, p. 32, fn. 9.

33. In a May 17, 2011 Secretarial Letter, the Commission's Secretary stated in response to Middlesex's request to effectuate a name change:

this is in reference to your letter of April 4, 2011, which notified the commission that Middlesex water company is doing business in the Commonwealth of Pennsylvania under the name of Twin Lakes Utilities Inc.

2011 Secretarial Letter, dated May 17, 2011, Docket No. A-2008-2050092.

Conclusions of Law

1. The burden of proof in any proceeding involving the petition or an application filed by a utility proposing a rule or order, or requesting relief from the Commission, is on the utility. 66 Pa. C.S. § 332(a).

2. Although I&E bears a statutory burden of proof in Section 529 proceedings pursuant to 66 Pa. C.S. § 529(i), the burden is not exclusive to I&E. *See* September 16 Order, p. 21, Docket No. P-2020-3020914.

3. Any party in a Section 529 proceeding may present or rebut a *prima facie* case in support of its position in the proceeding, and to the extent the small water utility is seeking specific relief under Section 529, it must produce evidence demonstrating that such relief is warranted. *See* September 16 Order, p. 21, Docket No. P-2020-3020914.

4. Twin Lakes Utilities, Inc., as the petitioner must satisfy its burden of proof by a preponderance of evidence. *Samuel J. Lansberry, Inc. v. Pennsylvania Public Utility Commission*, 578 A.2d 600 (Pa. Commw. 1990).

5. A preponderance of evidence is such evidence that is more convincing, by even the smallest amount, than that presented by another party. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

6. This burden of proof is comprised of two distinct burdens: the burden of production and the burden of persuasion. The burden of production tells the adjudicator which party must come forward with evidence to support a particular position. *In re: Loudenslager's Estate*, 430 Pa. 33, 240 A.2d 477 (1968). The burden of persuasion determines which party must produce sufficient evidence to convince a judge that a fact has been established, and it never leaves the party on whom it is originally cast. *Reidel v. County of Allegheny*, 633 A.2d 1325, 1329 n. 11 (Pa. Commw. 1993).

7. The Commission must ensure that any adjudication is supported by substantial evidence. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Norfolk & Western Ry. Co. v. Pennsylvania Public Utility Commission*, 413 A.2d 1037 (Pa. 1980).

8. Section 529 of the Public Utility Code requires that the Commission conduct an investigation to determine whether the six elements enumerated in Section 529(a) are met before the Commission may order a capable public utility to acquire the small water or wastewater company. 66 Pa. C.S. § 529(a).

9. Element number (3) in Section 529(a) has not been met because Twin Lakes can 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).

10. Section 529(c) lists six factors the Commission shall consider during its investigation of whether the six enumerated elements of Section 529(a) are met. 66 Pa. C.S. § 529(c).

11. When conducting a Section 529 investigation, the Commission shall consider the financial, managerial, and technical ability of the small water or sewer utility. 66 Pa. C.S. § 529(c)(1).

12. The Middlesex Water Company is a large capable public water provider that has the managerial, technical and financial capabilities to safely and adequately operate the Twin Lakes water system. 2009 Order, p. 6, Docket No. A-2008-2050092.

13. Pennsylvania law provides for the exercise of jurisdiction by Pennsylvania tribunals over foreign corporations by either general or specific jurisdiction. *City of Philadelphia v. Borough of Westville*, 93 A.3d 530, 533 (Pa. Commw. Ct. 2014).

14. General jurisdiction is premised on the foreign corporation's overall contacts or general activity with Pennsylvania and each case is fact specific. *Kubik v. Letteri*, 532 Pa. 10, 614 A.2d 1110 (1992).

15. Section 5301(a)(2) of the Pennsylvania Judicial Code permits general jurisdiction over a nonresident corporation if it carries on a continuous and systematic part of its general business within Pennsylvania. 42 Pa. C.S. § 5301(a)(2).

16. For a Pennsylvania tribunal to exercise jurisdiction over a nonresident corporation, the foreign corporation's contacts with Pennsylvania must be such that the foreign corporation could reasonably be called to defend itself in Pennsylvania. *Weintraub v. Walt Disney World*, 825 F. Supp. 717 (E.D. Pa. 1993).

17. "Specific jurisdiction" arises out of the foreign corporation's specific contacts with Pennsylvania as they relate to the controversy at issue and is governed by the Uniform Interstate and International Procedures Act, otherwise known as Pennsylvania's "long arm statute." 42 Pa. C.S. §§ 5321-5329. *Washington v. U.S. Suzuki Motor Corp.*, 257 Pa. Super, 482, 390 A.2d 1339 (1978).

18. A Pennsylvania tribunal may exercise personal jurisdiction over a person or corporation who acts directly, or by an agent, as to a cause of action or other matter arising from such person making application to any government unit for a certificate, license, permit, registration or similar instrument of authorization. 42 Pa. C.S. § 5322(a)(9).

19. A foreign corporation that purposefully directed its activities at residents of Pennsylvania and purposefully availed itself of the privilege of conducting activities within Pennsylvania, thus evoking the benefits and protections of its laws, is subject to the jurisdiction of Pennsylvania. 42 Pa. C.S. § 5322(a)(1).

20. Pennsylvania, and more specifically, the Pennsylvania Public Utility Commission has specific jurisdiction over the Middlesex Water Company. 42 Pa. C.S. § 5322(a)(1); 42 Pa. C.S. § 5322(a)(9); *Washington v. U.S. Suzuki Motor Corp.*, 257 Pa. Super, 482, 390 A.2d 1339 (1978).

21. A Pennsylvania tribunal may exercise jurisdiction over a parent corporation when the subsidiary is merely the alter ego or agent of the parent. *Clark v. Matsushita Elec. Indus. Co., Ltd.*, 811 F. Supp. 1061 (M.D. Pa. 1993).

22. Twin Lakes Utilities, Inc., Middlesex Water Company's wholly owned subsidiary, was created by Middlesex to act as Middlesex's agent and alter ego for the purpose of operating the Twin Lakes water system in Pennsylvania. *Clark v. Matsushita Elec. Indus. Co., Ltd.*, 811 F. Supp. 1061 (M.D. Pa. 1993).

23. The Pennsylvania Public Utility Commission has jurisdiction over the Middlesex Water Company for purposes of rendering any lawful decision within the Commission's authority in this proceeding. 42 Pa. C.S. § 5322(a)(1); 42 Pa. C.S. § 5322(a)(9); *Washington v. U.S. Suzuki Motor Corp.*, 257 Pa. Super, 482, 390 A.2d 1339 (1978); *Clark v. Matsushita Elec. Indus. Co., Ltd.*, 811 F. Supp. 1061 (M.D. Pa. 1993).

Ordering Paragraphs

1. That the 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 is Denied.
2. That the Pennsylvania Public Utility Commission has jurisdiction over the Middlesex Water Company, the non-resident parent company of Twin Lakes Utilities, Inc.
3. That Twin Lakes Utilities, Inc. is prohibited from terminating water utility service pursuant to its Commission approved certificate of public convenience.
4. That Twin Lakes Utilities, Inc. shall continue to provide water utility service to its customers consistent with the Service Agreement between it and Middlesex Water Company, dated December 1, 2009, and all subsequent amendments to the Service Agreement.
5. That Twin Lakes Utilities, Inc., and its non-resident parent company, Middlesex Water Company, shall remain liable for all existing conditions, defects, or regulatory or statutory violations occasioned by Twin Lakes Utilities, Inc.
6. That Twin Lakes Utilities, Inc. and its non-resident parent company Middlesex Water Company, shall remain liable for all debt incurred by Twin Lakes Utilities, Inc.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Twin Lakes Utilities, Inc. for :
a Commission Order Authorizing the :
Acquisition of Twin Lakes Utilities, Inc. : Docket No.: P-2020-3020914
by a Capable Public Utility Pursuant to :
66 Pa. C.S. §529 :

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Main Brief** dated February 5, 2021, in the manner and upon the persons listed below:

Served via Electronic Mail Only

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