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February 5, 2021

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary
Pennsylvania Public Utility Commission
Commonwealth Keystone Building
400 North Street, 2nd Floor North
P.O. Box 3265
Harrisburg, PA 17105-3265

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

Dear Secretary Chiavetta:

Enclosed is the Main Brief of Aqua Pennsylvania, Inc. for filing in the above-referenced proceeding. Copies will be provided as indicated on the Certificate of Service.

Respectfully submitted,



Garrett P. Lent

GPL/jl

cc: Honorable Joel H. Cheskis
Certificate of Service

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing has been served upon the following persons, in the manner indicated, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a participant).

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Date: February 5, 2021

Garrett P. Lent

**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
AQUA PENNSYLVANIA, INC.**

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I. INTRODUCTION

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) hereby files its Main Brief in opposition to 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 dated July 26, 2020 (“Petition”). In the Petition, Twin Lakes, Utilities, Inc. (“Twin Lakes”) requests that the Pennsylvania Public Utility Commission (“Commission”) issue an order authorizing the acquisition of the Twin Lakes water system¹ by a “capable public utility” under Section 529 of the Public Utility Code, 66 Pa.C.S. § 529. Twin Lakes’ Petition was filed as a result of the voluntary decision of Middlesex Water Company (“Middlesex”), the parent company of Twin Lakes, to terminate its Service Agreement with Twin Lakes. Middlesex’s decision to terminate the Service Agreement effectively would result in the termination of water service to Twin Lakes’ customers, because Twin Lakes does not have sufficient assets or expertise to continue service.

Although Twin Lakes would lack the financial, managerial and technical ability to continue to provide reasonable and adequate service to its customers without the support of Middlesex, Twin Lakes has failed to demonstrate that Middlesex’s voluntary decision to withdraw financial and operational support is sufficient to satisfy the requirements of Section 529 of the Public Utility Code or consistent with the purpose of Section 529. Indeed, as explained below, the unrebutted record evidence shows that Middlesex has voluntarily decided to withdraw its support of Twin Lakes despite the fact that Middlesex remains (a) financially solvent, (b) technically capable and (c) managerially capable of continuing to own and operate the system. In this regard, the Petition appears to be nothing more than an attempt by a financially capable owner—*i.e.*, Middlesex—to

¹ The Twin Lakes water system serves a residential community known as “Sagamore Estates.”

eliminate a poor performing segment of its business and force Aqua to purchase this troubled water system for a price potentially well in excess of what Aqua otherwise would offer in a bilateral transaction. In so doing, Middlesex also would shift to Aqua and its customers the cost to repair and rebuild the Twin Lakes system.

For these reasons, and the reasons more fully explained below, Aqua submits that Twin Lakes' Petition should be denied and that the Commission should decline to order Aqua to acquire the Twin Lakes water system as a part of this proceeding. Moreover, to the extent that the Commission deems it appropriate to require Aqua to acquire the Twin Lakes water system, Aqua submits that, given the current financial, managerial and operational condition of Twin Lakes, and Middlesex's voluntary decision to attempt to eliminate this poor performing system from its business, the Commission should condition such an order upon Middlesex contributing to an escrow fund in order to offset the costs of repairing and remediating the system.

II. BACKGROUND

On July 16, 2020, Twin Lakes filed with the Commission a Petition for a Commission Order authorizing the acquisition of Twin Lakes by another capable public utility pursuant to Section 529 of the Public Utility Code, 66 Pa.C.S. § 529.

Twin Lakes is a wholly owned subsidiary of Middlesex, a New Jersey Corporation and water utility providing water service to customers in New Jersey. Middlesex provides operational support to Twin Lakes through a Service Agreement dated December 1, 2009.

On June 1, 2020, Middlesex issued a notice that it would terminate the Service Agreement effective September 1, 2020.

On July 22, 2020, John J. Gallagher filed a Notice of Appearance for Twin Lakes.

On July 23, 2020, the Commission's Bureau of Investigation and Enforcement ("I&E") filed a Notice of Appearance.

On July 24, 2020, the Office of Consumer Advocate (“OCA”) filed a Notice of Appearance.

A Prehearing Conference before Deputy Chief Administrative Law Judge Joel H. Cheskis (the “ALJ”) was held on July 27, 2020.

The OCA filed the Petition of the OCA For Issuance Of An Interim Emergency Order On An Expedited Basis (“OCA Emergency Petition”) on August 18, 2020, requesting that the Commission name Aqua as Receiver for the Twin Lakes system under Section 529 of the Public Utility Code, 66 Pa. C.S. § 529.

On August 19, 2020, Aqua filed a Notice of Appearance in the proceeding.

On August 19, 2020, a further Prehearing Conference was held, and a Second Scheduling Order was issued that same day directing parties to file any answers to the OCA Emergency Petition on August 20, 2020.

Also on August 19, 2020, I&E filed a Petition for Interlocutory Review and Order regarding the Twin Lakes Petition.

On August 20, 2020, Aqua filed an additional Notice of Appearance, entering the appearance of Michael W. Hassell and Garrett P. Lent as additional counsel for Aqua.

Also on August 20, 2020, Aqua, I&E and Twin Lakes each respectively filed an Answer to the OCA Emergency Petition.

A telephonic evidentiary hearing regarding the OCA Emergency Petition was held on August 21, 2020. Twin Lakes, Aqua, OCA and I&E participated in the hearing.

A Briefing Order with respect to the OCA Emergency Petition was issued on August 21, 2020.

On August 24, 2020, the parties submitted Main Briefs regarding the OCA Emergency Petition. Reply Briefs were filed on August 25, 2020.

On August 27, 2020, Twin Lakes filed an Answer and Brief in Opposition to I&E's Petition for Interlocutory Review. OCA also filed a Brief in Opposition.

On August 28, 2020, the ALJ issued an Interim Order Denying Petition Of The Office of Consumer Advocate For Issuance Of An Interim Emergency Order On An Expedited Basis Filed Pursuant To Sections 3.6, 3.6a and 3.7 Of The Commission's Regulations ("*Interim Order Denying Emergency Relief*"). Therein, the ALJ denied OCA's request for interim emergency relief and certified such denial to the Commission as a material question requiring interlocutory review.

On August 31, 2020, I&E filed a Brief In Support of its Petition for Interlocutory Review.

On September 1, 2020, Twin Lakes filed a Motion for Admission *pro hac vice* on behalf of Jay Kooper.

Also on September 1, 2020, the Commission issued a Notice of Section 529 Acquisition Investigation to proximate public utilities and municipalities providing water service near the Twin Lakes system. Aqua was served with this Notice.

On September 4, 2020, I&E and Aqua respectively filed Briefs in Support of the Interim Order Denying Emergency Relief. OCA and Twin Lakes filed Briefs in Opposition.

On September 17, 2020, the Commission issued an Opinion and Order granting I&E's Petition for Interlocutory Review ("*Interlocutory Review Order*")² and concluded that "That the Petition for a Commission Order Authorizing the Acquisition of Twin Lakes by a Capable Public Utility filed by Twin Lakes Utilities, Inc. on July 16, 2020, is granted to the extent we find that

² *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, 2020 Pa. PUC LEXIS 467 (Order entered September 27, 2020).

sufficient cause exists to institute a Section 529 investigation.” *Interlocutory Review Order* at *27. As such, the Commission instituted an investigation into whether it should order a capable public utility to acquire Twin Lakes and ordered I&E to participate in the investigation. *Id.*

The Commission also issued a Prehearing Conference Notice on September 17, 2020, which scheduled a telephonic prehearing conference for September 18.

On September 18, 2020, the parties attended a telephonic prehearing conference. Following the prehearing conference, another Prehearing Conference Notice was issued scheduling a subsequent prehearing conference for October 2, 2020.

On September 21, 2020, Aqua filed a Petition to Intervene in the underlying Section 529 proceeding.

On September 22, 2020, the Commission issued an Opinion and Order (“*September 22 Opinion and Order*”) affirming the *Interim Order Denying Emergency Relief* of the ALJ. Among other things, the Commission order Aqua to conduct due diligence and a reasonable investigate as to whether it would voluntarily act as receiver of Twin Lakes, to complete such investigation in 90 days, to provide updates to the Commission’s Bureau of Technical Utility Services (“TUS”) regarding its due diligence efforts, and to provide written notice to the Commission as to whether Aqua will voluntarily act as receiver once it completed its investigation. *September 22 Opinion and Order* at 43 (Ordering Paragraph 6).

A telephonic prehearing conference was held as scheduled on October 2, 2020. A litigation schedule was adopted at this prehearing conference.

On October 5, 2020, the Commission issued a Call-In Telephone Hearing Notice, which scheduled hearings for January 5-6, 2021, pursuant to the litigation schedule.

On October 6, 2020, the ALJ issued the Third Scheduling Order.

On October 28, 2020, Twin Lakes filed a Notice of Withdrawal and Entry of Appearance, which withdrew the appearance of John J. Gallagher³ and entered the appearance of Lauren M. Burge on behalf of Twin Lakes.

On November 17, 2020, written direct testimony was served by Twin Lakes, OCA, I&E and Aqua. Aqua served one piece of direct testimony: Aqua Statement No. 1, the direct testimony of Stephen Clark.

On November 17, 2020, Aqua also served a Status Report regarding its investigation and due diligence of the Twin Lakes water system.

On December 9, 2020, written rebuttal testimony was served by Twin Lakes and Aqua; I&E and OCA respectively filed letters indicating they were not serving rebuttal testimony. Aqua served two pieces of rebuttal testimony: (1) Aqua Statement No. 1-R, the rebuttal testimony of Stephen Clark; and (2) Aqua Statement No. 2-R, the rebuttal testimony of William C. Packer.

On December 16, 2020, Aqua filed a letter with the Commission, in accordance with Ordering Paragraph 6 of the *September 22 Opinion and Order*, indicating that it was willing to act as receiver of the Twin Lakes system effective January 4, 2021. Subsequently, on December 22, 2020, Aqua filed a letter with the Commission, which advised the Commission that Aqua was willing to act as receiver effective January 15, 2021, in order to accommodate Commission review of Aqua's proposal at the January 14, 2021 public meeting date, and provided the Commission with a form of proposed order.

On December 22, 2020, written surrebuttal testimony was served by Twin Lakes, OCA, I&E and Aqua. Aqua served two pieces of surrebuttal testimony: (1) Aqua Statement No. 1-SR,

³ Counselor Gallagher regrettably passed away on October 16, 2020.

the surrebuttal testimony of Stephen Clark; and (2) Aqua Statement No. 2-SR, the surrebuttal testimony of William C. Packer.

On December 31, 2020, the ALJ issued an Order Certifying Material Question to the Commission regarding Aqua’s status as receiver. Aqua and Twin Lakes filed letters in support on the same day, and I&E and OCA filed letters of non-opposition on January 4, 2021. On January 14, 2021, the Commission entered an Opinion and Order (“*Receivership Order*”) that answered the material question certified by the ALJ in the affirmative, and directed Aqua to act as the receiver for Twin Lakes beginning January 15, 2021 and to continue during the pendency of the current Section 529 proceeding and in accordance with Appendix A to the *Receivership Order*.

On January 5, 2021, evidentiary hearings were held. A Briefing Order was thereafter issued.

Aqua hereby submits this Main Brief pursuant to the January 5, 2021 Briefing Order.

III. LEGAL STANDARDS

A. SECTION 529

Under Section 529(a) of the Public Utility Code, “[t]he commission may order a capable public utility to acquire a small water or sewer utility if the commission, after notice and an opportunity to be heard, determines” that six criteria have been demonstrated. 66 Pa.C.S. § 529(a).

These criteria are:

- (1) that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility;

(2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;

(3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;

(4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible;

(5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and

(6) that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

Id. at § 529(a)(1)-(6) (emphasis added). The Commission has repeatedly confirmed that “the determinations of Section 529(a) appear in the conjunctive” and, therefore, it “must determine that each of the six standards is met before ordering” a capable public utility to acquire a small water utility. *Investigation Instituted into Whether the Commission Should Order a Capable Public Utility to Acquire Clean Treatment Sewage Company Pursuant to 66 Pa. C.S. § 529*, Docket No. I-2009-2109324, 2012 Pa. PUC LEXIS 879 at *10 (Order entered May 25, 2012) (“*CTSC Order*”); *see also Investigation of W.P. Water Co., Inc. and W.P. Sanitary Co., Inc. Pursuant to Section 529 of the Pennsylvania Public Utility Code; W.P. Water Co., Inc. and W.P. Sanitary Co., Inc.; Application of W.P. Sanitary Co., Inc. For Approval of Abandonment of Service*, Docket Nos. I-00070114, P-00072313 and A-230550F200, at p. 12 (Order entered March 31, 2009) (“*W.P. Order*”); *Pennsylvania Public Utility Commission William E. Brown, et al. v. Sunshine Hills Water*

Company, Docket Nos. R-912023, R-912023C001, 1992 Pa. PUC LEXIS 85 at *138-139 (Order entered Aug. 5, 1992) (“*Sunshine Hills*”). Indeed, “the plain language of Section 529 of the Code the Commission has the authority to, after notice and an opportunity to be heard, ‘order a capable public utility to acquire a small water or sewer utility if all six of the requirements in Section 529(a)(1)-(6) are met.’” *Interlocutory Review Order* at *21 (internal quotations omitted). Only after making the determinations set forth in Section 529(a) is the Commission authorized to “issue an order for the acquisition of the small water or sewer utility by a capable public utility,” which “shall provide for the extension of the service area of the acquiring capable public utility.” 66 Pa.C.S. § 529(d).

In making a determination under Section 529(a), the Commission shall consider the following factors, pursuant to Section 529(c):

(1) The financial, managerial and technical ability of the small water or sewer utility.

(2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service.

(3) The expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(4) The expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water or sewer utility to be acquired.

(5) The opinion and advice, if any, of the Department of Environmental Resources as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(6) Any other matters which may be relevant.

66 Pa.C.S § 529(c) (emphasis added).

However, the Commission must discuss with the small water or sewer utility and provide it a reasonable opportunity to investigate several alternatives to acquisition. See 66 Pa.C.S. § 529(b)(1)-(5). These alternatives include, but are not limited to:

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

Id. (emphasis added). As stated in Section 529(a), in making these determinations under Section 529(b), the Commission is authorized to hold a forced acquisition hearing and to order a capable public utility's acquisition of a small water utility only if the "alternatives to acquisition have been considered in accordance with subsection [529](b) and have been determined by the commission to be impractical or not economically feasible." 66 Pa.C.S. § 529(a)(4). It has been explained that Sections 529(a)(4) and 529(b):

reveals a legislative determination that it is in the public interest to encourage a small water utility to avail itself of an alternative to forced acquisition in order to avoid the taking of private property, the costs and the resource commitments engendered by a forced acquisition hearing.

Public Service Water Company v. Fairview Water Company, Docket No. C-00924451, 1992 Pa. PUC LEXIS 75 at *12-13 (Order Treating Act 27 Pleading As A Petition And Denying Motion for Dismissal/Striking/More Specific Pleading dated Dec. 3, 1992) (Paist, J.).

B. SECTION 529(e)

Where the Commission orders the acquisition of a small water utility by a capable public utility, “[t]he price for the acquisition of the small water or sewer utility shall be determined by agreement between the small water or sewer 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).

Although the Commission has explained that “Section 529(e) demonstrates a legislative intent that the purchase price need not be known for us to find, pursuant to Section 529(a)(6), that the rates charged by the acquiring utility to its preacquisition customers will not increase unreasonably because of the acquisition,” *CTSC Order* at *44-45, the Commission has also explained that, when it reviews an acquisition price under Section 529, it will examine the condition of the assets and the expenditures that the acquiring capable public utility will be required to make to provide reasonable and adequate service. *See W.P. Order* at *38-39 (explaining that the acquisition price was reasonable because it took into account the fact that the assets were deficient and substantial capital improvements would be required to bring the system into compliance with applicable statutory and regulatory standards).

Importantly for purposes of this proceeding, where the owner of Twin Lakes, Middlesex, seeks to voluntarily divest its ownership of Twin Lakes by use of Section 529, is the following provision of Section 529(e):

If the small water or sewer utility and the acquiring capable public utility are unable to agree on the acquisition price or the commission disapproves the acquisition price on which the utilities have agreed, the commission shall issue an order directing the acquiring capable public utility to acquire the small water or sewer utility by following the procedure prescribed for exercising the power of eminent domain pursuant to the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code.

66 Pa.C.S. § 529(e). This provision would allow Middlesex to refuse any purchase offer under Section 529, and force the acquiring utility to use eminent domain.

C. BURDEN OF PROOF

Traditionally, a proceeding instituted under Section 529 of the Public Utility Code places the statutory burden of proof upon I&E. 66 Pa.C.S. § 529(i) (“The Bureau of Investigation and Enforcement shall have the burden of establishing a prima facie case...”). However, as the Commission explained in the *Interlocutory Review Order*, “we have previously stated that the burden is not exclusive to I&E. Rather, any party may present or rebut a prima facie case in support of its position in the proceeding.” *Interlocutory Review Order* at *26 (citing *Investigation Instituted per Section 529 into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No, I-2016-2526085 (Order entered Jan. 28, 2016)). As a result, the Commission explained “to the extent Twin Lakes is seeking specific relief in the Section 529 proceeding, it must produce evidence demonstrating that such relief is warranted.” *Interlocutory Review Order* at *26.

Consistent with the Commission’s explanation, Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding. A litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence, which is substantial and legally credible. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990). The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999). Only if the proponent of the rule or order present evidence found to be of greater weight than the other parties, will it have carried its burden of proof. *Morrissey v. Commonwealth*, 225 A.2d 895 (Pa. 1986); *Burleson v. Pa. Pub. Util.*

Comm'n, 641 A.2d 1234, 1236 (Pa. 1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 390 A.2d 163 (Pa. 1978); *Milkie v. Pa. Pub. Util. Comm'n*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm'n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704). Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm'n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). The “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd.*, 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007) (citation omitted).

IV. SUMMARY OF ARGUMENT

Twin Lakes’ Petition should be denied because it has failed to satisfy all of the necessary requirements of Section 529 of the Public Utility Code and, moreover, its Petition appears to be an improper attempt by a financially solvent and operationally capable owner to divest itself of a deteriorated and poor performing public utility system. However, if the Commission determines that a capable public utility should be required to acquire the Twin Lakes system, the Commission should condition such acquisition upon Middlesex depositing into escrow an amount of funds that is sufficient to offset a portion of the costs of remediating the system once it is acquired.

It is undisputed that the Twin Lakes system serving the Sagamore Estates community is in significant disrepair. All of the parties of record agree that the full replacement and/or rehabilitation of every facility will be necessary to (a) remedy the regulatory and statutory violations that have plagued the system since its acquisition and (b) provide safe, adequate and reliable service to the customers served by it. The condition of this system must be recognized in the evaluation of several elements of this case. Specifically, it appears that, to date, Middlesex

may have been unable to negotiate an arms-length acquisition of the system at a price acceptable to Middlesex because of the system's exceedingly poor condition. In addition, the condition of the system is relevant to any consideration or negotiation of a purchase price that may either be agreed to between the current owner and an acquiring public utility or may be approved/rejected by the Commission under Section 529(e).

Regardless of the physical condition of the system, however, Aqua submits that Twin Lakes has failed to demonstrate that it is entitled to the relief it seeks, *i.e.*, a Commission order forcing Aqua to acquire the Twin Lakes system. Although several of the criteria set forth in Section 529(a) are not disputed in this proceeding, the record evidence shows that (a) Twin Lakes has failed to demonstrate that it cannot be reasonably be expected to maintain adequate, efficient, safe and reasonable service and facilities in the future and (b) at least one of the alternatives to a forced acquisition is practical, feasible and already in place.

Regarding the capabilities of Twin Lakes, the record evidence demonstrates that Twin Lakes, through Middlesex, has the financial, managerial and technical capability to continue to own and operate the system. Although Twin Lakes has attempted to dispute Aqua's and I&E's assertions that consideration of the capabilities of Middlesex is both appropriate and relevant to the consideration of the capabilities of Twin Lakes, the testimony of Twin Lakes' own witness, the testimony of I&E's witnesses and a review of filings made by Middlesex before the Commission reveal that Middlesex's financial and operational support is the exclusive means that have allowed Twin Lakes to acquire, own and operate the system at all. Therefore, it is simply not possible or reasonable to divorce the consideration of Twin Lakes' financial, managerial and technical capabilities from the consideration of Middlesex's capabilities.

The Commission must also consider several alternatives to a forced acquisition before it can enter an order requiring a capable public utility to acquire a small water utility. Among these alternatives is “The appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public.” 66 Pa.C.S. § 529(b)(3). Here, the Commission previously ordered Aqua to conduct a reasonable investigation and due diligence of the Twin Lakes system and, based on the results of this investigation, advise the Commission regarding whether it would voluntarily act as receiver. Aqua completed its due diligence and indicated it was willing to do so. As a result, the Commission issued the *Receivership Order* and directed Aqua to act as receiver effective January 15, 2021, and to continue during the pendency of the current Section 529 proceeding, and in accordance with its directives in the *Receivership Order*. Consistent with the *Receivership Order*, Aqua is currently acting as receiver of the Twin Lakes system and, therefore, the Commission has already implemented an alternative to a forced acquisition of the Twin Lakes system consistent with Sections 529(a)(4) and (b).

Moreover, it appears that Middlesex, through Twin Lakes, is attempting to use a Section 529 proceeding in a manner that it was not intended, which is a relevant consideration under Section 529(c)(6) of the Public Utility Code. Indeed, as explained below and in greater detail by Aqua’s witnesses, Middlesex appears to be attempting to extract more value from the sale of the Twin Lakes system by using the Section 529 process than it would otherwise be able to obtain in voluntary arms-length negotiations with a willing buyer. The ALJ and the Commission should reject Middlesex’s attempt to utilize Section 529 in this manner.

Aqua further submits that the lack of an agreed upon purchase price is relevant and important to the Commission’s consideration of Section 529(e). Section 529(e) and a prior Commission order interpreting this section recognize that both (a) the condition of the system and

(b) the improvements the acquiring utility will be required to make to provide reasonable and adequate service are relevant to an evaluation of the purchase price. As such, Aqua submits that any good faith negotiations surrounding purchase price must account for the undisputed poor condition of the Twin Lakes system as well as the significant investments that would be required to replace and remediate existing infrastructure. Middlesex should not be permitted to rely upon the default mechanism of an eminent domain proceeding to obtain a price it is unable to achieve in arm's length negotiations.

Finally, Aqua submits that if the Commission orders Aqua to acquire the Twin Lakes system as a part of this proceeding, it should impose certain conditions on such acquisition that recognize both (a) the capability of the current ultimate owner (*i.e.*, Middlesex) to continue owning and operating Twin Lakes and (b) the exceedingly poor condition of the Twin Lakes system, which current ownership has failed to address. Specifically, the Commission should require Middlesex to deposit an amount into escrow equal to the loan portion and the tax liability of the grant portion of the Pennsylvania Infrastructure Investment Authority ("PENNVEST") grant and loan awarded to Twin Lakes, in order that such funds could be used by Aqua to offset the costs of remediating the system once it is acquired.

For these reasons, and the reasons more fully explained below, Aqua submits that the Commission should deny Twin Lakes' request for an order forcing Aqua to acquire the Twin Lakes water system or, alternatively, condition any such acquisition ordered upon the requirement that Middlesex to establish an escrow account in the amount of \$1,675,000 to be used to offset a portion of the costs of replacing and remediating the existing Twin Lakes water system infrastructure.

V. **ARGUMENT**

A. **OVERVIEW OF THE TWIN LAKES SYSTEM AND ITS PRESENT CONDITION.**

Throughout the course of this proceeding, Aqua has conducted an investigation into and due diligence on the Twin Lakes water system. *See* Aqua St. 1 at 9-10. Aqua conducted this investigation and due diligence pursuant to Ordering Paragraph 6 of the Commission's *September 22 Opinion and Order*. *See* Aqua St. 1 at 9-10.

Based on its review of the Twin Lakes system, Aqua understands that the system is comprised of two permitted source wells and one undeveloped test well. Aqua St. 1 at 9. However, only one of the permitted wells is operable as the other has a collapsed borehole, which raises an immediate question regarding the operational reliability of the system. Aqua St. 1 at 9. In addition, the system includes one 20,000 gallon in-ground atmospheric water storage tank, a water treatment building, approximately 19,500 lateral feet of water mains and approximately 114 customer service connections. Aqua St. 1 at 9-10. Aqua's understanding of the poor condition of the Twin Lakes water system is corroborated by evidence of record presented by other parties. *See* Twin Lakes St. 1 at 1; I&E St. 1 at 5; OCA St. 2 at 2.

Twin Lakes witness Mr. Fullagar further described the cavalcade of issues associated with the infrastructure that comprises the Twin Lakes system as follows:

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

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

Twin Lakes St. 1 at 2. These issues were further highlighted by I&E witness Mr. Sakaya, who detailed the resultant history of non-compliance of the Twin Lakes system with Pennsylvania Department of Environmental Protection's ("PADEP") regulations. I&E St. 1 at 7-9.

It is for these reasons that Aqua witness Mr. Clark explained that "Aqua chose not to [previously] pursue an acquisition due to the poor condition of the system, [and] the investment required to remediate the system...it was not deemed be a viable acquisition opportunity at that time," and that "Aqua concluded it was not in the best interests of its existing customers to acquire the system." Aqua St. 1-R at 10-11. It is also for this reason that Mr. Packer testified "[t]he record shows that no other utility is interested in this system out of their own business interests." Aqua St. 1-SR at 2 (emphasis added). Essentially, it appears that, to date, the extremely poor quality of the system and the necessary investments that any acquiring utility would subsequently be required to make have dissuaded potential buyers from proceeding with an acquisition. *See* Twin Lakes St. 2 at 4-6.

As it is undisputed the Twin Lakes system is in very poor condition, Aqua indicated that significant investment is needed to improve the Twin Lakes system, address system integrity, improve water quality and reduce unaccounted for water. Aqua St. 1 at 10. Capital expenditures would include replacement of the distribution system, construction of a water storage tank, rehabilitation or replacement of the existing wells, installation of new customer meters, and a

rebuild of the well station. Aqua St. 1 at 10.⁴ Based upon its review of the system, and the information provided by Twin Lakes in its PENNVEST application, Aqua estimated that these improvements will cost at least approximately \$4.6 million. Aqua St. 1 at 16.⁵

As explained below, the condition of the Twin Lakes system is important for the ALJ and the Commission to keep in mind when evaluating Twin Lakes' requested relief and Aqua's opposition to this request. All of the parties of record agree that the Twin Lakes system is in such poor condition that it requires the full replacement and/or rehabilitation of every facility in order to (a) remedy the regulatory and statutory violations that have plagued the system since its acquisition and (b) provide safe, adequate and reliable service to the customers served by it. Middlesex appears to be an otherwise financially strong and capable public utility owner that is seeking to use Section 529 of the Public Utility Code to voluntarily eliminate a financially poor performing segment of its business. In this situation, the Commission should either reject the relief request as an improper use of Section 529 or, alternatively, condition any forced acquisition of the troubled water system upon Middlesex establishing an escrow account to be used to offset the costs of replacing and remediating the troubled Twin Lakes water system infrastructure.

B. AQUA SHOULD NOT BE ORDERED TO ACQUIRE THE TWIN LAKES WATER SYSTEM IN THIS SECTION 529 PROCEEDING.

Despite Twin Lakes' attempt to claim that only I&E opposed the relief it seeks (*see* Twin Lake St. 2-R at 11), Aqua has made clear that the Commission should not issue an order in the context of this proceeding that forces it to acquire the Twin Lakes system. Aqua St. 1-R at 3; Aqua

⁴ Aqua notes that Twin Lakes witness Mr. Fullagar similarly identified three improvement projects as being necessary to face the operational challenges and resiliency risks facing the Twin Lakes system, including: (1) replacement of Well #1; (2) replacement of the entire distribution system; and (3) rehabilitation of Well #2. Twin Lakes St. 1 at 4.

⁵ In his rebuttal testimony, Aqua witness Mr. Stephen Clark acknowledged that Twin Lakes witness Mr. Robert Fullagar estimated that approximately \$4.8 million in improvements were necessary. Aqua St. 1-R at 6. Mr. Clark explained that the difference in estimates may be based on differences in assumptions on the location of the replacement well and its proximity to existing infrastructure. Aqua St. 1-R at 6.

St. 2-SR at 1-2. Twin Lakes has failed to demonstrate that it has satisfied the necessary requirements for a Commission order authorizing the acquisition of the system by a capable public utility and, moreover, Middlesex appears to be attempting to use Section 529 for an improper purpose.

1. Twin Lakes Has Failed To Demonstrate That It Has Satisfied The Requirements Of Section 529 Of The Public Utility Code.

Under Section 529, the Commission “may order a capable public utility to acquire a small water...utility” if it determines that: (1) the small water utility is in violation of statutory and regulatory standards; (2) the small water utility has failed to comply within a reasonable time period any PADEP or Commission order “concerning the safety, adequacy, efficiency or reasonableness” of water service; (3) the small water utility “cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;” (4) that the alternatives to acquisition set forth in Section 529(b)(4) are impractical or not economically feasible; (5) the acquiring capable public utility is financially, managerially and technically fit; and (6) the rates charged by the acquiring capable public utility to existing customers will not unreasonably increase due to the acquisition. *See* 66 Pa.C.S. § 529(a)(1)-(6). Importantly, the Commission must determine every one of these requirements is met before it can order an acquisition of a small water company by a capable public utility to occur. *Interlocutory Review Order* at *21; *CTSC Order* at *10; *W.P. Order*, at p. 12. Although the record evidence in this case supports the requisite findings necessary to satisfy the requirements of Section 529(a)(1), (2), (5) and (6), Twin Lakes has failed to demonstrate that it has satisfied the requirements of Section 529(a)(3) and (4). As explained below, Twin Lakes’ failure to satisfy these requirements warrants denial of the relief it seeks.

a. Record Evidence Supports The Requisite Findings Necessary To Satisfy The Requirements of Section 529(a)(1), (2), (5) and (6).

In this case, the record evidence appears to support the requisite findings necessary to satisfy the requirements of Section 529(a)(1), (2), (5) and (6). 66 Pa.C.S. § 529(a)(1), (2), (5) and (6).

First, with respect to Section 529(a)(1), the record evidence shows:

- I&E witness Mr. Sakaya investigated “data and exhibits from the Middlesex website, past Commission filings by Twin Lakes and Middlesex, PA Department of Environmental Protection...water quality reports, public comments from the 2019 rate case, and annual reports submitted by the Company to the Commission.” I&E St. 1 at 6.
- The Twin Lakes system has, over the past decade, had several violations of the PADEP Lead/Copper rule. *See* I&E St. 1 at 7-9.
- The Twin Lakes system has, since 2016, been cited 9 times with contamination violations by PADEP. *See* I&E St. 1 at -9.
- Twin Lakes has failed to resolve the excessive UFW amounts noted in its last three rate cases. *See* I&E St. 1 at 10-12; *see also* OCA St. 2 at 4-5.
- Twin Lakes has failed to implement and complete the capital improvement plans identified in its 2015 and 2019 rate cases. Twin Lakes St. 1 at 6-7.
- Distribution line breaks and outages have continued to occur on the Twin Lakes system since its 2019 rate case. *See* OCA St. 2 at 5-6.

Aqua submits that these numerous and ongoing statutory and regulatory violations are indicative of the exceedingly poor condition of the system, described above. In this regard, I&E witness Mr. Sakaya correctly concludes that Twin Lakes is currently in violation of several statutory and/or regulatory standards affecting the safety, adequacy, efficiency and/or reasonableness of water service. I&E St. 1 at 12.

Second, with respect to Section 529(a)(2), the record evidence shows:

- Twin Lakes has failed to comply with the commitments agreed upon in the settlements approved in its last three base rate proceedings before the Commission. *See* I&E St. 1 at 12-13.
- Twin Lakes has a history of late/untimely reporting of PADEP violations to this agency. I&E St. 1 at 13.
- Twin Lakes has a history of service losses, contamination, high bills and poor quality of drinking water. *See* I&E St. 1 at 13-14; *see also* OCA St. 2 at 5-6.

As such, I&E witness Mr. Sakaya correctly concluded that Twin Lakes has failed to remedy its non-compliance with PADEP and Commission orders regarding its service in a timely manner. I&E St. 1 at 14.

Third, with respect to Section 529(a)(5), the record evidence shows:

- Aqua is financially, managerially and technically able to provide water service over the Twin Lakes system. Aqua St. 1 at 16; I&E St. 1 at 26-27; OCA St. 1 at 4.
- Aqua has acquired numerous water and wastewater systems, both large and small, over the past ten years. Aqua St. 1 at 16; *see also* I&E St. 2 at 26.

As such, both Aqua witness Mr. Clark and I&E witness Mr. Keller testified that record evidence supports a finding under Section 529(a)(5) that Aqua is a capable public utility that is financially, managerially, and technically capable of complying with applicable statutory and regulatory standards regarding the provision of water service.

And fourth, with respect to Section 529(a)(6), the record evidence shows:

- Twin Lakes has a customer base of 113, as compared to Aqua's approximately 443,000 water service customers. I&E St. 1 at 27-28; *see also* OCA St. 1 at 4-5.⁶
- If available, Aqua plans to use a low-cost financing option via a PENNVEST grant/loan to finance the acquisition and remediation of the Twin Lakes system. OCA St. 1 at 5 (citing Aqua response to discovery request OCA-Aqua-I-6).

⁶ OCA witness Ms. D'Angelo notes that Aqua has 405,272 customers. OCA St. 1 at 4. As of 12/31/2020 Aqua reported approximately 443,000 customers.

- The acquisition of the Twin Lakes system by Aqua would not result in an unreasonable increase in rates for Aqua’s current customers. I&E St. 1 at 29; OCA St. 1 at 5; *see also* Aqua St. 1-R at 9.

Aqua notes that, with respect to the requirement set forth in Section 529(a)(6), Aqua witness Mr. Packer testified that, although Aqua agreed “with the 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 did not agree that it should be ordered to acquire the Twin Lakes system through this proceeding. Aqua St. 1-R at 9. Aqua reiterates this point to make clear that a finding satisfying the requirement set forth in Section 529(a)(6)—or any of the other requirements—alone is not sufficient to justify a Commission order requiring Aqua to acquire the Twin Lakes system.

b. Twin Lakes, Through Middlesex, Has The Financial, Managerial And Technical Capability To Continue To Own And Operate The Water System.

Section 529(a)(3) of the Public Utility Code requires that Twin Lakes must demonstrate it “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); *see also* 66 Pa.C.S § 529(c)(1) (similarly stating that the Commission shall consider the “financial, managerial and technical ability of the small water or sewer utility.”). Here, the crux of the dispute between the parties involves whether it is appropriate to consider evidence of Middlesex’s financial, managerial and operational capabilities to continuing owning and operating the Twin Lakes system. Aqua submits that, due to the unique facts and circumstances surrounding this case, it is necessary for the ALJ and the Commission to evaluate the criteria set forth in Sections 529(a)(3) and 529(c)(1) of the Public Utility Code in light of Middlesex’s financial, managerial and operational capabilities.

As an initial matter, Aqua notes that I&E and Twin Lakes devoted substantial portions of their respective testimonies to the history surrounding the acquisition of Twin Lakes Water

Services, LLC by Middlesex Water Company, which was approved by the Commission in 2009.⁷

Importantly, I&E witness Mr. Keller confirmed the following with respect to the ownership and operation of the Twin Lakes system:

- Middlesex holds itself out as providing “regulated and non-regulated water and wastewater utility and related services in parts of New Jersey, Delaware and Pennsylvania.” I&E St. 2 at 5-6 (quoting Middlesex’s website).
- The Commission’s *2009 Acquisition Order* stated 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 badly needed repairs and upgrades. I&E St. 2 at 6 (quoting *2009 Acquisition Order* at 5-6).
- The Certificate of Public Convenience issued as a result of the *2009 Acquisition Order* was directed to Middlesex. I&E Exhibit No. 2, Schedule 1.
- Based on the filings made by Twin Lakes and Middlesex, it was understood that Middlesex’s financial and operational capabilities were the sole basis for Twin Lakes to be able to provide water service. I&E St. 2 at 7-8; I&E St. 2-SR at 7-11.

Moreover, Twin Lakes’ own witnesses confirmed that although they have claimed that Middlesex does not “own” Twin Lakes:

- Middlesex agreed to the condition that water meters be installed for all customers as a condition of the *2009 Acquisition Order*. Twin Lakes St. 1 at 2; Tr. 233:17-234:4.
- Middlesex provides all customer service functions to Twin Lakes and its customers. Tr. 107.
- Middlesex provided all billing and meter reading functions to Twin Lakes and its customers. Tr. 107.
- Middlesex purchased all chemicals necessary to treat the water for Twin Lakes and its customers. Tr. 107.
- Middlesex owns stock in Twin Lakes. Tr. 236:8-9.
- Middlesex has a controlling interest in Twin Lakes. Tr. 236:10-12.
- Middlesex makes managerial decisions for Twin Lakes and “the voting rights in Twin Lakes is[sic] exclusively held by Middlesex.” Tr. 236:13-19.

⁷ *Joint Application of Middlesex Water Company and Twin Lakes Water Services, LLC*, Docket Nos. A-2008-2050092 and A-2008-2050089 (Order entered March 2, 2009) (“*2009 Acquisition Order*”).

- Middlesex is the sole source of capital for Twin Lakes. *See, e.g.*, Tr. 107, 236:20-23.
- And, without Middlesex’s support, Twin Lakes in the past could not, and in the future will not, be able to provide water service. *See* Tr. 226:7-20.

These facts conclusively demonstrate that, regardless of Twin Lakes’ equivocations about Middlesex’s role in owning and operating the system, Middlesex’s financial and operational support is the exclusive means that have allowed Twin Lakes to own and operate the system at all. In this regard, it is simply not possible or reasonable to divorce the consideration of Twin Lakes’ financial, managerial and technical capabilities from the consideration of Middlesex’s capabilities.

Once it is recognized that the financial, managerial and technical capabilities of Twin Lakes are inextricably intertwined with, and exclusively based upon, the capabilities of Middlesex, it becomes clear that Twin Lakes has failed to satisfy Sections 529(a)(3) and 529(c)(1). The record evidence demonstrates that Middlesex has voluntarily placed the Twin Lakes system at risk of being able to operate in the future, despite the fact that it remains a financially solvent and operationally capable owner.

Both of Twin Lakes’ witnesses admitted at the hearing on OCA’s Emergency Petition that the operation and management of the system were not the biggest problem with the system. *See* Tr. 85, 105 (Twin Lakes’ witness admitting on cross that Middlesex is a “well-run company”). It is undisputed that Middlesex is not a financially insolvent company. *See* Aqua St. 1 at 7-8; I&E St. 2 at 10-11; Tr. 238:2-3. In addition, it is undisputed that Middlesex possesses the necessary operational and managerial expertise to own and operate a water utility. *See* I&E St. 2 at 7-10; Tr. 238:4-5 (Mr. O’Connor admitting Middlesex has not lost operational expertise). Furthermore, it is undisputed that the only reason Twin Lakes would lack the operational and financial capability to continue providing service for the system is because Middlesex has voluntarily withdrawn its support and terminated the Service Agreement. *See* Tr. 225:15-18 (Mr. Fullagar admitting that

without the financial and operational support of Middlesex, Twin Lakes would be unable to provide service on an ongoing basis).

As explained by Aqua, the facts presented do not align with the traditional facts involved in typical Section 529 proceedings. Rather, this appears to be a proceeding where a financially and operational capable owner is voluntarily attempting to eliminate a poor performing segment of its overall strong business. *See* Aqua St. 1 at 8; Aqua St. 2-R at 4-5; *see also* Tr. 237:23-238:1 (“[ATTORNEY LENT] Q. Certainly, Middlesex’s decision to withdraw operational and financial support from Twin Lakes is voluntary, correct? [WITNESS O’CONNOR] A. Yes.”). And, as explained below, it appears that Middlesex is attempting to improperly leverage Section 529 to divest itself of the substantially deteriorated and poor performing system. *See* Section V.B.2. *infra*.

For these reasons, Aqua submits that Twin Lakes has failed to demonstrate that it, through Middlesex, lacks the requisite financial, managerial and operational capability to provide water service.

c. Twin Lakes Has Failed To Demonstrate That All Of The Contemplated Alternatives To A Forced Acquisition Are Impractical Or Not Economically Feasible.

Sections 529(a)(4) requires a showing that “alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible.” In turn, Section 529(b) lists the following five alternatives to the Commission ordering an acquisition:

- (1) The reorganization of the small water or sewer utility under new management.
- (2) The entering of a contract with another public utility or a management or service company to operate the small water or sewer utility.

(3) The appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public.

(4) The merger of the small water or sewer utility with one or more other public utilities.

(5) The acquisition of the small water or sewer utility by a municipality, a municipal authority or a cooperative.

66 Pa.C.S. § 529(b) (emphasis added).

With respect to the alternatives to acquisition, Twin Lakes indicated that it considered: (1) interconnecting with the nearest public-community system, *i.e.*, the Milford Township system, as an alternative to replacing Well #1; (2) the installation of private wells for each customer; (3) securing a PENNVEST grant; and (4) the issuance of a Request for Proposals (“RFP”) to third-parties to operate, maintain and manage Twin Lakes. Twin Lakes St. 1 at 7-9. Although Aqua witness Mr. Clark agreed with Twin Lakes’ claim that interconnecting with the Milford Township system was not economically feasible (Aqua St. 1-R at 8),⁸ Twin Lakes’ claims about the remaining alternatives should be rejected for the reasons explained below. Moreover, Twin Lakes has failed to demonstrate and cannot demonstrate that it is impractical or not economically feasible for a receiver to be appointed as an alternative to acquisition; Aqua has already been appointed the receiver of the system after completing its due diligence and voluntarily agreeing to accept this role.

i. The Installation Of Private Wells Is Not Legally Impossible.

Contrary to Twin Lakes’ claims, the installation of private wells for customers currently served by Twin Lakes’ system is not “legally impossible.” Twin Lakes St. 1 at 7-8. Rather, as

⁸ Mr. Clark specifically testified that the construction of a 5 to 6-mile long pipeline with booster stations in a State road would be cost prohibitive. Aqua St. 1-R at 8.

admitted by Twin Lakes witness Mr. Fullagar, certain Twin Lakes customers have been able to obtain a waiver of Shohola Township Ordinance No. 59 to install private wells. Twin Lakes St. 1 at 3, 7.⁹ Aqua witness Mr. Clark further explained that “although this alternative may present certain challenges, it is certainly not ‘legally impossible.’” Aqua St. 1-R at 8. Therefore, the record evidence does not support a finding that customers are prohibited from installing private wells on their properties.

ii. Twin Lakes Has Failed To Demonstrate That Accepting The PENNVEST Grant Is Impractical Or Not Economically Feasible.

Twin Lakes’ further claim that the acceptance of the PENNVEST grant and loan that it applied for does not constitute a feasible alternative should be rejected. Twin Lakes Mr. Fullagar explains that Twin Lakes submitted an application to PENNVEST and was notified it had been approved for a grant of \$4.66 million and loan of \$304,573. Twin Lakes St. 1 at 8. Mr. Fullagar then claims that the PENNVEST grant would be considered a Contribution In Aid of Construction (“CIAC”) that is subject to income tax. Twin Lakes St. 1 at 8. He goes onto speculate that, although the income tax liability associated the PENNVEST grant would be recoverable under the regulatory compact, previous “unfavorable rate relief” led Twin Lakes to be unable to accept the PENNVEST grant. Twin Lakes St. 1 at 8-9.

Aqua witness Mr. Packer rebutted these claims. Importantly, he explained that Twin Lakes had not accepted the PENNVEST grant and loan and, therefore, those amounts would not have been included in any base rate case filed with the Commission. Aqua St. 2-R at 8. As such, Twin

⁹ Aqua further notes that the Shohola Township Board of Supervisors (“Shohola Board”) filed a letter dated December 2, 2020, with the Commission on December 15, 2020. This letter indicated that the Shohola Board had received an application from a resident for a well permit that was denied, but that an appeal hearing was scheduled to occur on December 10, 2020. The letter further advised that other landowners have filed applications for private wells, which were scheduled for hearing in 2021.

Lakes simply speculates about what the Commission may or may not order regarding funds that Twin Lakes has not accepted and has not attempted to recover in base rates. Aqua St. 2-R at 8-9. The Commission should reject this speculation.

iii. The Responses To Twin Lakes' Request For Proposal Process Demonstrate That The Cause Of Twin Lakes' Inability To Continue Operations Is Middlesex's Voluntary Withdrawal Of Financial And Operational Support.

Twin Lakes asserts that it undertook an RFP to operate Twin Lakes as an alternative to a 529 proceeding, but was unable to obtain a proposal to provide all necessary services. Twin Lakes St. 1 at 9. However, the only reason an RFP alternative was considered by Twin Lakes is that its owner, Middlesex, voluntarily chose to terminate the existing service agreement. Aqua witness Mr. Clark explained that the failure to secure a third-party contractor through the RFP highlights the fact that this proceeding is “not a situation where the subject water utility’s owner lacks the capability to manage or operate the utility.” Aqua St. 1-R at 9. Indeed, Mr. Fullagar has admitted that the services and functions which Twin Lakes deemed to be missing from Farnham and Associates’ proposal during the RFP are not services provided by Twin Lakes itself; rather, these were services and functions that were performed by Middlesex under the Service Agreement. Tr. 107:3-10. The only reason the RFP was considered as an alternative is that Middlesex voluntarily withdrew its provision of these services. Tr. 107:11-14.

As confirmed at the prior hearing on OCA’s Emergency Petition, Middlesex provided all customer service functions to Twin Lakes and its customers. Tr. 107. Middlesex also provided all billing and meter reading functions to Twin Lakes and its customers. Tr. 107. Further, Middlesex provided all capital support for Twin Lakes. Tr. 107. In addition, Middlesex purchased all chemicals necessary to treat the water for Twin Lakes and its customers. Tr. 107. Twin Lakes witness further Mr. O’Connor admitted during cross examination during subsequent evidentiary

hearings that Twin Lakes' role in operating the system consists of (1) retaining a licensed operator (*i.e.*, Prosser Labs) and (2) employing one part time worker. Tr. 235:12-25. In this regard, Middlesex effectively performed every public utility service on Twin Lakes' behalf and the RFP was necessitated solely by Middlesex's decision to voluntarily terminate the Service Agreement.

Twin Lakes' claims regarding this alternative should not be given any weight where the RFP itself was necessitated by Middlesex's voluntary decision. Therefore, the ALJ and the Commission should reject Twin Lakes' claims regarding the practicality and feasibility of the RFP process.

iv. Consistent With Section 529(b)(3) of the Public Utility Code, Aqua Has Already Agreed To Voluntarily Act As Receiver Of The Twin Lakes Water System.

As noted above, Section 529(b)(3) specifically lists “[t]he appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public” as an alternative to a Section 529 forced acquisition. 66 Pa.C.S. § 529(b). Relatedly, Section 529(g) of the Public Utility Code provides the Commission with the discretion to “appoint a receiver to protect the interests of the customers of the small water or sewer utility.” 66 Pa.C.S. § 529(g). Through its participation in this proceeding, Aqua has voluntarily agreed to act as receiver of the Twin Lakes system. Therefore, Aqua's record evidence shows that an alternative to an order forcing Aqua to acquire the Twin Lakes system is not only practical and feasible, but is also already in place.

Although, Aqua initially opposed OCA's request that Aqua be appointed the receiver of the Twin Lakes system as interim emergency relief, Aqua explained that it:

objected to the interim emergency relief sought by the OCA Emergency Petition because it would have forced Aqua to take over the operation of the Twin Lakes water system, as a receiver, without Aqua having the opportunity to complete reasonable and customary due diligence of the Twin Lakes system.

Aqua St. 1 at 4. Aqua further explained that it needed time to complete reasonable and customary due diligence of the Twin Lakes system to avoid being subjected to additional “unknown risks” associated with the system and repeating the mistakes made during Middlesex’s acquisition of the Twin Lakes’ system. *See* Aqua St. 1 at 4 (noting the system was previously acquired after relying upon the representations of prior ownership and limited pre-ownership visual inspections). An interim emergency order that forced Aqua to act as receiver and accept the risks of operating the Twin Lakes system would have frustrated Aqua’s responsibilities to its shareholders and existing customers to make prudent and well-vetted business decisions, and to provide quality service at reasonable rates. Aqua St. 1 at 4.

Based on these concerns, the ALJ and the Commission each denied the OCA Emergency Petition. In addition, the Commission ordered Aqua to investigate the Twin Lakes system and, upon completing its investigation, advise the Commission as to whether it would voluntarily act as receiver. *September 22 Opinion and Order* at Ordering Paragraph 6.

Aqua subsequently advised the Commission that it had completed its due diligence and was willing to voluntarily act as receiver of the Twin Lakes system “during the pendency of the 529 Proceeding and until the Commission authorizes a sale to a willing buyer.” Aqua St. 1-R at 17-18.¹⁰ The ALJ issued an Order Certifying Material Question that suggested that the Commission should adopt Aqua’s offer to act as receiver starting January 15, 2021, subject to the duties and responsibilities set forth in Aqua’s letters to the Commission and the unopposed proposed form of Order attached to its December 22, 2020 letter. On January 14, 2021, the Commission entered an Opinion and Order (“*Receivership Order*”) that answered the material question certified by the

¹⁰ On December 22, 2020, Aqua also filed a letter advising the Commission that it was willing to act as receiver of the Twin Lakes system effective January 15, 2020, and also providing the Commission with a proposed form of order that specified Aqua’s duties and responsibilities as receiver.

ALJ in the affirmative, and directed Aqua to act as the receiver for Twin Lakes beginning January 15, 2021 and to continue during the pendency of the current Section 529 proceeding and in accordance with Appendix A to the *Receivership Order*. As such, since January 15, 2021, Aqua has been acting as receiver of the Twin Lakes system.

Importantly, by agreeing to act as receiver of the Twin Lakes, one of the alternatives to a forced acquisition of the Twin Lakes system has been shown to be practical and economically feasible. See 66 Pa.C.S. §§ 529(a)(4) and 529(b)(3). Indeed, by voluntarily agreeing to act as receiver of the Twin Lakes system after completing its investigation and due diligence of the Twin Lakes system, Aqua currently stands in the shoes of a future owner of the system and is “the custodian for the financial, regulatory and operation affairs for the water system until the utility is transferred to a new owner or an alternative action is taken by the Commission.” Aqua St. 1 at 5. In addition, while Aqua remains the receiver, it will continue to ensure the safe and reliable delivery of water service to customers served by this system. Aqua St. 1 at 5.

Therefore, it is neither necessary nor appropriate for the Commission to order Aqua to acquire the Twin Lakes system as a part of this proceeding. As explained below, such an order would (a) credit an apparent attempt by Middlesex to shed a poor performing segment of its overall business and (b) permit Middlesex to extract additional value out of this system via a forced acquisition that it would otherwise not have obtained through voluntary, arms-length negotiations with a willing buyer.

2. Middlesex, Through Twin Lakes, Appears To Be Using The Section 529 Process In A Manner That It Was Not Intended To Be Used.

Section 529(c)(6) of the Public Utility Code states that “[i]n making a determination pursuant to subsection (a), the commission shall consider...(6) Any other matters which may be relevant.” 66 Pa.C.S. § 529(c)(6). Of particular relevance in this proceeding is the basis for Twin

Lakes' filing of the Petition: the voluntary decision of Middlesex to withdraw Twin Lakes' sole source of financial support and operational support, and to terminate the Service Agreement.

As explained in Section V.B.1.b above, the record evidence in this proceeding demonstrates that the only basis for Twin Lakes having the requisite managerial, technical and financial capability to operate the Twin Lakes system is that these capabilities have been supplied by Middlesex since Middlesex acquired the system in 2009.

Importantly, multiple witnesses have confirmed that Middlesex remains capable of continuing to own and operate the Twin Lakes system. Twin Lakes' own witnesses confirmed that its decision to withdraw operational and financial support from Twin Lakes is voluntary. Tr. 237:23-238:1. They further confirmed that Middlesex is not a financially insolvent company, and Middlesex has not lost operational expertise. Tr. 239:2-5.

Rather, since the time Middlesex acquired Twin Lakes, the record evidence suggests that both the Commission¹¹ and Twin Lakes have understood Middlesex's financial and operational capabilities were the sole basis for Twin Lakes to be able to provide water service. Indeed, Twin Lakes witness Mr. Fullagar admitted during cross examination by counsel for Aqua:

Q. I understand the operational challenges you've described. Turning back to my question, without the financial and operational support of Middlesex, Twin Lakes cannot provide water utility service to its customers, correct?

A. Correct.

Q. And that would have been true in the past as well, right?

A. Correct.

Q. Such as when Twin Lakes acquired -- this system was acquired in 2009, Twin Lakes Utilities, Inc., could not provide the service without the financial and operational support of Middlesex?

¹¹ See I&E St. 2 at 7-8; I&E St. 2-SR at 7-11.

A. Yes, I'd have to agree with that.

Tr. 226:7-20 (emphasis added). Moreover, Twin Lakes' witness Mr. O'Connor admitted that Middlesex ultimately controls Twin Lakes. Specifically, he testified on cross examination:

Q. I turn your attention now to your rebuttal testimony, in particular page 8 of your rebuttal testimony.

A. Yes, I'm there.

Q. Okay. On line 6 of page 8 of your rebuttal testimony, you indicate that Middlesex is not the owner of the Twin Lakes system; is that correct?

A. That is correct.

Q. Does Middlesex own stock in Twin Lakes Utilities?

A. Yes, it does.

Q. Would you agree with me that Middlesex has a controlling interest in Twin Lakes Utilities?

A. I wouldn't disagree with it.

Q. Would you agree with me that Middlesex makes managerial decisions for Twin Lakes Utilities?

A. Middlesex hired, has personnel that it is familiar with, that are officers of Twin Lakes, that are appointed by the board of Twin Lakes members; and then the voting rights in Twin Lakes is exclusively held by Middlesex.

Q. Okay. And you would also agree with me that Middlesex is the sole source of capital for Twin Lakes Utilities, correct?

A. Yes. I believe I stated that in my testimony.

Tr. 236:1-23. The testimony of its witnesses undermines any claim that Middlesex does not own and ultimately control Twin Lakes' operations.

Once it is recognized that Middlesex ultimately owns the Twin Lakes system and controls its operations, the true purpose of this proceeding becomes apparent. As described by Mr. Clark in his direct testimony:

This is not a case where the subject water system is operated or managed poorly. Rather, this is a situation where the current owner is going through a Section 529 proceeding in order to eliminate a financially poor performing segment of their overall strong business.

Aqua St. 1 at 8. Typically, a water system that is subject to a Section 529 proceeding involves “systems [that] have been troubled, in that the service to customers was jeopardized by the owner’s inability to run the system or lack of an owner to do so.” Aqua St. 2-R at 4.¹² Here, however, the proceeding does not involve either “a system where the owner has passed away...or the inability of owner to manage the system.” Aqua St. 2-R at 5. Rather, Middlesex appears to be seeking to use the Section 529 process to have another entity acquire a system that it has the financial, operational and managerial capabilities to manage. Aqua St. 2-R at 5.

This represents a concerning and improper use of Section 529, which Aqua noted could “force a potential acquiring public utility to pay more than it otherwise would agree to pay based upon arms-length negotiations between the parties.” Aqua St. 2-R at 6. Where, as here, it appears that prior negotiations by the current owner of the Twin Lakes system with other utilities have faltered, Aqua is concerned that it may not be possible for a mutually acceptable purchase price to be accepted and/or that the purchase price could be rejected by the Commission. *See* Aqua St. 2-R at 7. If either of these scenarios occur, then whomever is ordered to acquire the Twin Lakes system will be forced to use the provisions of the Eminent Domain Code, *see* 66 Pa.C.S. § 529(e), and may be forced to accept a purchase price that would not otherwise have been agreed to in arms-length negotiations. Aqua St. 2-R at 7.

¹² Aqua witness Mr. Packer noted that Aqua has participated in several Section 529 proceedings before the Commission. Aqua St. 1-R at 4. Therefore, he has a basis for his knowledge of the general circumstances surrounding such proceedings.

While the use of the Eminent Domain Code may be necessary where an incapable owner refuses to sell the troubled system to a capable public utility, that is simply not the case here. Middlesex, a financially fit and capable owner, appears eager to sell the Twin Lakes system. Aqua St. 2-R at 7. However, that eagerness apparently does not translate into a willingness to sell at an arms-length negotiated price that takes into account the poor state of the Twin Lakes system. Instead, Middlesex seeks to have another utility be forced to purchase Twin Lakes in order to cure Middlesex's mistakes in failing to undertake due diligence when it first voluntarily acquired Twin Lakes. *See* Twin Lakes St. 2 at 2 (Mr. O'Connor testifying that "it became apparent that the condition of the water system was significantly poorer than had been represented by the former owner, or had been visible from the inspection and assessment that was part of the operational due diligence work performed prior to the purchase"); *see also* Tr. 235:5-8 (confirming that after performing due diligence, Middlesex voluntarily signed an agreement to purchase the Twin Lakes system). The Commission should not permit Middlesex — a financially and managerially capable owner — to use Section 529 to attempt to extract additional value out of a substantially deteriorated and financially poor performing system. That is not the intent of the statute and, moreover, would constitute poor public policy.

For these reasons, and the reasons more fully explained above and in Aqua's testimony, Middlesex's attempt to improperly use Section 529 is relevant to the Commission's determinations under Section 529(c)(6) and demonstrates Twin Lakes' Petition should be denied.

C. TWIN LAKES AND AQUA HAVE NOT YET VOLUNTARILY NEGOTIATED A PURCHASE PRICE.

Under Section 529(e), "The price for the acquisition of the small water or sewer utility shall be determined by agreement between the small water or sewer 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). Although the Commission has previously held that Section 529(e) does not require the purchase price to be known to make the requisite finding under Section 529(a)(6), *see CTSC Order* at *44-45, the Commission has explained that the condition of the assets and the expenditures that the acquiring capable public utility will be required to make to provide reasonable and adequate service are relevant to its determination. *See W.P. Order* at *38-39.

Here, there has been no arm's length agreement between the owner of Twin Lakes and any identified capable public utility regarding purchase price. However, Twin Lakes' witnesses both testified that if the Commission grants the relief sought in the Petition, the purchase price for the system would be negotiated in good faith. *See* Tr. 227:2-9 (Mr. Fullagar testifying that the purchase price agreed to between "Middlesex and the acquiring utility" would be negotiated in good faith); *see also* Tr. 238:6-15 (Mr. O'Connor testifying that the purchase price would be negotiated in good faith). Aqua submits that Section 529(e) and the Commission's prior orders make clear that any purchase price negotiated in good faith must recognize both (a) the condition of the system and (b) the improvements the acquiring utility will be required to make to provide reasonable and adequate service.

If negotiations of purchase price fail to recognize these factors, then Aqua further submits such negotiations would demonstrate that Middlesex is simply attempting to improperly use this Section 529 proceeding to extract additional value out of a significantly deteriorated and financially poor performing system. The ALJ and the Commission should both recognize this concern—as identified and explained by Aqua—and either reject the relief sought in the Petition or impose appropriate conditions upon any forced acquisition of the Twin Lakes system that recognizes Middlesex continues to be financially and managerially capable of owning and operating the system, but has voluntarily sought to divest itself of it.

D. IF THE COMMISSION ORDERS AQUA TO ACQUIRE THE TWIN LAKES WATER SYSTEM IN THIS PROCEEDING, IT SHOULD CONDITION THE ACQUISITION.

The record evidence supports Aqua's concerns that Middlesex, through Twin Lakes, appears to be using this Section 529 proceeding for an improper purpose. *See* Sections V.B.1.b. and V.B.2. *supra*. In recognition of the fact that Middlesex appears to be attempting to voluntarily divest the Twin Lakes system,¹³ Aqua proposed that, in the event the Commission forced another capable public utility to acquire the Twin Lakes system, the Commission's order requiring such acquisition should impose certain conditions.

Specifically, Aqua witness Mr. Packer proposed that:

If the Commission were to order Aqua to acquire the Twin Lakes water system as a part of this proceeding, it should condition the acquisition upon Middlesex setting aside approximately \$1,675,000 in an escrow account to be used to offset the costs of replacing and remediating the existing infrastructure not covered by the...PENNVEST...grant funds available and to cover the tax liability associated with the grant.

Aqua St. 2-R at 7. Mr. Packer further explained that the proposed "breakdown of the escrow funds is approximately \$304,573 of loan and an estimated \$1,358,000 of tax liability." Aqua St. 1-R at 7-8.

The condition upon a forced acquisition proposed by Mr. Packer is reasonable and appropriate. It is undisputed that the facilities and infrastructure comprising the Twin Lakes system are significantly deteriorated, and will require substantial remediation and, in many cases, complete replacement in order to provide the customers served with reasonable and adequate water service. *See* Section V.A. *supra*. Middlesex voluntarily signed an agreement to purchase the system" after performing apparently poor due diligence prior to the acquisition (Tr. 235:5-8), yet

¹³ *See* Aqua St. 2-SR at 2.

failed to remediate or resolve the numerous statutory and regulatory standard violations and the poor condition of the system during its ownership. *See* Section V.B.1.a. *supra*. However, Middlesex is not a financially insolvent and operationally incapable owner. *See* Sections V.B.1.b. and V.B.2. *supra*.

Under this particular set of facts and circumstances, Aqua’s — or any acquiring public utility’s — shareholders and ratepayers should not be required to bear the entirety of the costs to remediate and replace the existing infrastructure. Aqua St. 2-R at 8. Rather, current ownership should be held responsible for a portion of those costs in recognition of the fact that Middlesex remains financially and managerially capable at the time it has sought to divest itself of this system. Aqua St. 2-R at 8.

Aqua further anticipates that Twin Lakes will argue that this condition is “impractical” and “inappropriate” in its Main Brief,¹⁴ and notes that each of the arguments against this condition raised by Twin Lakes’ testimony actually justify this relief. First, Twin Lakes appears to argue that “Aqua will have the opportunity to request recovery of the system replacement and earn a reasonable return on the prudently incurrent investments.” Twin Lakes St. 2-SR at 5. While this may be true, the Commission should be concerned about the policy that would result from such a decision. Essentially, Twin Lakes asks that the Commission establish precedent permitting a current owner, that is otherwise financially and managerially capable of continuing to own and operate a troubled water system, to use Section 529 of the Public Utility Code to foist the costs of remediating or replacing the system’s infrastructure on another public utility. Section 529 should not be used in this manner and a condition that holds a financially and managerially capable owner partially responsible for such costs would dissuade such improper use in the future.

¹⁴ *See* Twin Lakes St. 2-SR at 5-6.

Second, Twin Lakes claims that “Middlesex is not the jurisdictional utility” and cannot be compelled to fund such costs. Twin Lakes St. 2-SR at 5-6. Aqua and other parties have submitted compelling evidence that supports a finding that Middlesex ultimately controls and is responsible for the ownership and operation of the Twin Lakes system. *See* Section V.B.1.b. *supra*. However, it is important for the ALJ and the Commission to recognize that Middlesex is the entity that would negotiate an agreement to acquire the system and, ultimately, be paid for such acquisition. Indeed, Twin Lakes witness Mr. Fullagar clearly testified on cross examination:

Q. You would agree with me that, if the Commission grants the relief sought in Twin Lake's petition and orders another utility to acquire the Twin Lakes system, that the price for such acquisition would be determined by agreement between Middlesex and the acquiring utility?

A. Yes, I would believe that to be the case.

Tr. 227:2-7 (emphasis added). Twin Lakes witness Mr. O'Connor's subsequent attempt to clarify that negotiations would occur “between Twin Lakes Utilities, Inc., and the acquiring capable public utility” is revealing. Tr. 238:11-12. At best, Twin Lakes' witnesses have made contradictory statements regarding who ultimately owns and operates the subject system; at worst, its testimony lays bare the fact that Twin Lakes' witnesses reference Twin Lakes and Middlesex interchangeably and demonstrates Middlesex is the *de facto* public utility that owns and operates the Twin Lakes system. As such, it would be appropriate to condition a forced acquisition of the Twin Lakes system as proposed by Aqua.

For these reasons, Aqua submits that any order by the Commission that forces a capable public utility to acquire the Twin Lakes system should be conditioned upon Middlesex depositing \$1,675,000 in an escrow account covering the loan portion of the PENNVEST award and the tax liability associated with the grant portion of the PENNVEST award, to be used to offset the costs of replacing and remediating the existing infrastructure.

VI. CONCLUSION

WHEREFORE, Aqua Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission: (a) deny 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, to the extent it seeks to require Aqua Pennsylvania, Inc. to acquire the Twin Lakes water system as a part of this proceeding; or, alternatively, (b) condition any grant of the Petition upon the requirement that Middlesex Water Company to establish an escrow account in the amount of \$1,675,000 to be used to offset the costs of replacing and remediating the existing Twin Lakes water system infrastructure.

Respectfully submitted,



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Date: February 5, 2021

Counsel for Aqua Pennsylvania, Inc.

APPENDIX A
PROPOSED FINDINGS OF FACT

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) proposes the following findings of fact:

1. Aqua has conducted an investigation into and due diligence on the Twin Lakes water system. *See* Aqua St. 1 at 9-10.

2. The Twin Lakes system is comprised of two permitted source wells and one undeveloped test well. Aqua St. 1 at 9.

3. Only one of the permitted wells is operable as the other has a collapsed borehole, which raises an immediate question regarding the operational reliability of the system. Aqua St. 1 at 9.

4. The system includes one 20,000 gallon in-ground atmospheric water storage tank, a water treatment building, approximately 19,500 lateral feet of water mains and approximately 114 customer service connections. Aqua St. 1 at 9-10.

5. The Twin Lakes water system is very poor condition. *See* Twin Lakes St. 1 at 1; I&E St. 1 at 5; OCA St. 2 at 2.

6. The Twin Lakes system has experienced excessive unaccounted-for water (“UFW”) loss, ranging from 50% to 87%, due to leaks within the distribution system. Twin Lakes St. 1 at 2.

7. The leaks are the result of a combination of factors including age and quality of the original pipe material and poor quality workmanship associated with leak repairs prior to acquisition of the system by Twin Lakes. Twin Lakes St. 1 at 2.

8. The excessive leakage rate causes the well to constantly over-pump which in turn, stresses the well to the point where its operational viability is at risk. Twin Lakes St. 1 at 2.

9. The over pumping due to the excessive leak rate in the distribution system was a contributing factor in the collapse of Well #1 rendering it non-usable. Twin Lakes St. 1 at 2.

10. This condition has increased the stress on Well #2, the only remaining well serving Twin Lakes customers. Twin Lakes St. 1 at 2.

11. The continued over-pumping of Well #2 is placing this well at increased risk of collapse as well as at risk of being under the influence of surface water from the adjacent lake. Twin Lakes St. 1 at 2.

12. Due to lead action level exceedances incurred in 2019, treatment upgrades including pH adjustment and corrosion control may be necessary. Twin Lakes St. 1 at 2.

13. The existing functional well is not operationally capable of accommodating said treatment upgrades. Twin Lakes St. 1 at 2.

14. The Twin Lakes system has a history of non-compliance of the Twin Lakes system with Pennsylvania Department of Environmental Protection's ("PADEP") regulations. I&E St. 1 at 7-9.

15. I&E witness Mr. Sakaya investigated "data and exhibits from the Middlesex website, past Commission filings by Twin Lakes and Middlesex, PA Department of Environmental Protection...water quality reports, public comments from the 2019 rate case, and annual reports submitted by the Company to the Commission." I&E St. 1 at 6.

16. The Twin Lakes system has, over the past decade, had several violations of the PADEP Lead/Copper rule. *See* I&E St. 1 at 7-9.

17. The Twin Lakes system has, since 2016, been cited 9 times with contamination violations by PADEP. *See* I&E St. 1 at -9.

18. Twin Lakes has failed to resolve the excessive UFW amounts noted in its last three rate cases. *See* I&E St. 1 at 10-12; *see also* OCA St. 2 at 4-5.

19. Twin Lakes has failed to implement and complete the capital improvement plans identified in its 2015 and 2019 rate cases. Twin Lakes St. 1 at 6-7.

20. Distribution line breaks and outages have continued to occur on the Twin Lakes system since its 2019 rate case. *See* OCA St. 2 at 5-6.

21. Twin Lakes has failed to comply with the commitments agreed upon in the settlements approved in its last three base rate proceedings before the Commission. *See* I&E St. 1 at 12-13.

22. Twin Lakes has a history of late/untimely reporting of PADEP violations to this agency. I&E St. 1 at 13.

23. Twin Lakes has a history of service losses, contamination, high bills and poor quality of drinking water. *See* I&E St. 1 at 13-14; *see also* OCA St. 2 at 5-6.

24. “Aqua chose not to [previously] pursue an acquisition due to the poor condition of the system, [and] the investment required to remediate the system...it was not deemed be a viable acquisition opportunity at that time,” and that “Aqua concluded it was not in the best interests of its existing customers to acquire the system.” Aqua St. 1-R at 10-11.

25. “The record shows that no other utility is interested in this system out of their own business interests.” Aqua St. 1-SR at 2.

26. The extremely poor quality of the system and the necessary investments that any acquiring utility would subsequently be required to make have dissuaded potential buyers from proceeding with an acquisition. *See* Twin Lakes St. 2 at 4-6.

27. Significant investment is needed to improve the Twin Lakes system, address system integrity, improve water quality and reduce unaccounted for water. Aqua St. 1 at 10.

28. Capital expenditures would include replacement of the distribution system, construction of a water storage tank, rehabilitation or replacement of the existing wells, installation of new customer meters, and a rebuild of the well station. Aqua St. 1 at 10.¹

29. Based upon its review of the system, and the information provided by Twin Lakes in its PENNVEST application, Aqua estimated that these improvements will cost at least approximately \$4.6 million. Aqua St. 1 at 16.²

30. Aqua opposes the issuance an order in the context of this proceeding that forces it to acquire the Twin Lakes system. Aqua St. 1-R at 3; Aqua St. 2-SR at 1-2.

31. Aqua is financially, managerially and technically able to provide water service over the Twin Lakes system. Aqua St. 1 at 16; I&E St. 1 at 26-27; OCA St. 1 at 4.

32. Aqua has acquired numerous water and wastewater systems, both large and small, over the past ten years. Aqua St. 1 at 16; *see also* I&E St. 2 at 26.

33. Twin Lakes has a customer base of 113, as compared to Aqua's approximately 443,000 water service customers. I&E St. 1 at 27-28; *see also* OCA St. 1 at 4-5.³

34. If available, Aqua plans to use a low-cost financing option via a PENNVEST grant/loan to finance the acquisition and remediation of the Twin Lakes system. OCA St. 1 at 5 (citing Aqua response to discovery request OCA-Aqua-I-6).

¹ Aqua noted that Twin Lakes witness Mr. Fullagar similarly identified three improvement projects as being necessary to face the operational challenges and resiliency risks facing the Twin Lakes system, including: (1) replacement of Well #1; (2) replacement of the entire distribution system; and (3) rehabilitation of Well #2. Twin Lakes St. 1 at 4.

² In his rebuttal testimony, Aqua witness Mr. Stephen Clark acknowledged that Twin Lakes witness Mr. Robert Fullagar estimated that approximately \$4.8 million in improvements were necessary. Aqua St. 1-R at 6. Mr. Clark explained that the difference in estimates may be based on differences in assumptions on the location of the replacement well and its proximity to existing infrastructure. Aqua St. 1-R at 6.

³ OCA witness Ms. D'Angelo notes that Aqua has 405,272 customers. OCA St. 1 at 4. As of 12/31/2020 Aqua reported approximately 443,000 customers.

35. The acquisition of the Twin Lakes system by Aqua would not result in an unreasonable increase in rates for Aqua's current customers. I&E St. 1 at 29; OCA St. 1 at 5; *see also* Aqua St. 1-R at 9.

36. Middlesex voluntarily signed an agreement to purchase the system" after performing apparently poor due diligence prior to the acquisition. Tr. 235:5-8.

37. The Commission authorized the acquisition of Twin Lakes Water Services, LLC by Middlesex Water Company, in 2009. *Joint Application of Middlesex Water Company and Twin Lakes Water Services, LLC*, Docket Nos. A-2008-2050092 and A-2008-2050089 (Order entered March 2, 2009) ("*2009 Acquisition Order*").

38. Middlesex holds itself out as providing "regulated and non-regulated water and wastewater utility and related services in parts of New Jersey, Delaware and Pennsylvania." I&E St. 2 at 5-6 (quoting Middlesex's website).

39. The Commission's *2009 Acquisition Order* stated 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 badly needed repairs and upgrades. I&E St. 2 at 6 (quoting *2009 Acquisition Order* at 5-6).

40. The Certificate of Public Convenience issued as a result of the *2009 Acquisition Order* was directed to Middlesex. I&E Exhibit No. 2, Schedule 1.

41. Middlesex agreed to the condition that water meters be installed for all customers as a condition of the *2009 Acquisition Order*. Twin Lakes St. 1 at 2; Tr. 233:17-234:4.

42. Middlesex provides all customer service functions to Twin Lakes and its customers. Tr. 107.

43. Middlesex provided all billing and meter reading functions to Twin Lakes and its customers. Tr. 107.

44. Middlesex purchased all chemicals necessary to treat the water for Twin Lakes and its customers. Tr. 107.

45. Middlesex owns stock in Twin Lakes. Tr. 236:8-9.

46. Middlesex has a controlling interest in Twin Lakes. Tr. 236:10-12.

47. Middlesex makes managerial decisions for Twin Lakes and “the voting rights in Twin Lakes is[sic] exclusively held by Middlesex.” Tr. 236:13-19.

48. Middlesex is the sole source of capital for Twin Lakes. *See, e.g.*, Tr. 107, 236:20-23.

49. Without Middlesex’s support, Twin Lakes in the past could not, and in the future will not, be able to provide water service. *See* Tr. 226:7-20.

50. Middlesex’s financial and operational capabilities are the sole basis for Twin Lakes to be able to provide water service. I&E St. 2 at 7-8; I&E St. 2-SR at 7-11.

51. Middlesex is not a financially insolvent company. *See* Aqua St. 1 at 7-8; I&E St. 2 at 10-11; Tr. 238:2-3.

52. Middlesex possesses the necessary operational and managerial expertise to own and operate a water utility. *See* I&E St. 2 at 7-10; Tr. 238:4-5.

53. The only reason Twin Lakes would lack the operational and financial capability to continue providing service for the system is because Middlesex has voluntarily withdrawn its support and terminated the Service Agreement. *See* Tr. 225:15-18.

54. Middlesex is a financially and operational capable owner that is voluntarily attempting to eliminate a poor performing segment of its overall strong business. *See* Aqua St. 1 at 8; Aqua St. 2-R at 4-5; *see also* Tr. 237:23-238:1.

55. With respect to alternatives to acquisition, Twin Lakes indicated that it considered: (1) interconnecting with the nearest public-community system, *i.e.*, the Milford Township system, as an alternative to replacing Well #1; (2) the installation of private wells for each customer; (3) securing a PENNVEST grant; and (4) the issuance of a Request for Proposals (“RFP”) to third-parties to operate, maintain and manage Twin Lakes. Twin Lakes St. 1 at 7-9.

56. Twin Lakes’ claim that interconnecting with the Milford Township system, which would require the construction of a 5 to 6-mile long pipeline with booster stations in a State road, would be cost prohibitive. Aqua St. 1-R at 8.

57. Certain Twin Lakes customers have been able to obtain a waiver of Shohola Township Ordinance No. 59 to install private wells. Twin Lakes St. 1 at 3, 7.⁴

58. Twin Lakes has not accepted the PENNVEST grant and loan and, therefore, those amounts would not have been included in any base rate case filed with the Commission. Aqua St. 2-R at 8.

59. It is not known what the Commission may or may not order regarding funds that Twin Lakes has not accepted and has not attempted to recover in base rates. Aqua St. 2-R at 8-9.

60. Twin Lakes undertook an RFP to operate Twin Lakes as an alternative to a 529 proceeding, but was unable to obtain a proposal to provide all necessary services. Twin Lakes St. 1 at 9.

⁴ Aqua further notes that the Shohola Township Board of Supervisors (“Shohola Board”) filed a letter dated December 2, 2020, with the Commission on December 15, 2020. This letter indicated that the Shohola Board had received an application from a resident for a well permit that was denied, but that an appeal hearing was scheduled to occur on December 10, 2020. The letter further advised that other landowners have filed applications for private wells, which were scheduled for hearing in 2021.

61. The services and functions which Twin Lakes deemed to be missing from Farnham and Associates' proposal during the RFP are not services provided by Twin Lakes itself; rather, these were services and functions that were performed by Middlesex under the Service Agreement. Tr. 107:3-10.

62. The only reason the RFP was considered as an alternative is that Middlesex voluntarily withdrew its provision of these services. Tr. 107:11-14.

63. Aqua initially opposed OCA's request that Aqua be appointed the receiver of the Twin Lakes system as interim emergency relief. Aqua St. 1 at 4.

64. Aqua explained that it needed time to complete reasonable and customary due diligence of the Twin Lakes system to avoid being subjected to additional "unknown risks" associated with the system and repeating the mistakes made during Middlesex's acquisition of the Twin Lakes' system. *See* Aqua St. 1 at 4.

65. An interim emergency order that forced Aqua to act as receiver and accept the risks of operating the Twin Lakes system would have frustrated Aqua's responsibilities to its shareholders and existing customers to make prudent and well-vetted business decisions, and to provide quality service at reasonable rates. Aqua St. 1 at 4.

66. Aqua subsequently advised the Commission that it had completed its due diligence and was willing to voluntary act as receiver of the Twin Lakes system "during the pendency of the 529 Proceeding and until the Commission authorizes a sale to a willing buyer." Aqua St. 1-R at 17-18.⁵

67. The ALJ issued an Order Certifying Material Question that suggested that the Commission should adopt Aqua's offer to act as receiver starting January 15, 2021, subject to the

⁵ On December 22, 2020, Aqua also filed a letter advising the Commission that it was willing to act as receiver of the Twin Lakes system effective January 15, 2020, and also providing the Commission with a proposed form of order that specified Aqua's duties and responsibilities as receiver.

duties and responsibilities set forth in Aqua’s letters to the Commission and the unopposed proposed form of Order attached to its December 22, 2020 letter.

68. On January 14, 2021, the Commission entered an Opinion and Order (“*Receivership Order*”) that answered the material question certified by the ALJ in the affirmative, and directed Aqua to act as the receiver for Twin Lakes beginning January 15, 2021 and to continue during the pendency of the current Section 529 proceeding and in accordance with Appendix A to the *Receivership Order*.

69. Since January 15, 2021, Aqua has been acting as receiver of the Twin Lakes system.

70. As receiver, Aqua currently stands in the shoes of a future owner of the system and is “the custodian for the financial, regulatory and operation affairs for the water system until the utility is transferred to a new owner or an alternative action is taken by the Commission.” Aqua St. 1 at 5.

71. While Aqua remains the receiver, it will continue to ensure the safe and reliable delivery of water service to customers served by this system. Aqua St. 1 at 5.

72. Since the Twin Lakes water system was acquired in 2009, Twin Lakes could not provide service without the financial and operational support of Middlesex. Tr. 226:7-20.

73. Middlesex ultimately controls Twin Lakes. Tr. 236:1-23.

74. A Section 529 proceeding typically involves “systems [that] have been troubled, in that the service to customers was jeopardized by the owner’s inability to run the system or lack of an owner to do so.” Aqua St. 2-R at 4.⁶

⁶ Aqua witness Mr. Packer noted that Aqua has participated in several Section 529 proceedings before the Commission. Aqua St. 1-R at 4.

75. This proceeding does not involve either “a system where the owner has passed away...or the inability of owner to manage the system.” Aqua St. 2-R at 5.

76. Aqua is concerned an order forcing an acquisition of the Twin Lakes “force a potential acquiring public utility to pay more than it otherwise would agree to pay based upon arms-length negotiations between the parties.” Aqua St. 2-R at 6.

77. Aqua is concerned that it may not be possible for a mutually acceptable purchase price to be accepted and/or that the purchase price could be rejected by the Commission. *See* Aqua St. 2-R at 7.

78. If either of these scenarios occur, then whomever is ordered to acquire the Twin Lakes system will be forced to use the provisions of the Eminent Domain Code, *see* 66 Pa.C.S. § 529(e), and may be forced to accept a purchase price that would not otherwise have been agreed to in arms-length negotiations. Aqua St. 2-R at 7.

79. Middlesex is a financially fit and capable owner that appears eager to sell the Twin Lakes system. Aqua St. 2-R at 7.

80. Twin Lakes’ witnesses both testified that if the Commission grants the relief sought in the Petition, the purchase price for the system would be negotiated in good faith. *See* Tr. 227:2-9.

81. If the Commission were to order Aqua to acquire the Twin Lakes water system as a part of this proceeding, it should condition the acquisition upon Middlesex setting aside approximately \$1,675,000 in an escrow account to be used to offset the costs of replacing and remediating the existing infrastructure not covered by the PENNVES grant funds available and to cover the tax liability associated with the grant. Aqua St. 2-R at 7.

82. The proposed “breakdown of the escrow funds is approximately \$304,573 of loan and an estimated \$1,358,000 of tax liability.” Aqua St. 1-R at 7-8.

83. Middlesex is the entity that would negotiate an agreement to acquire the system and, ultimately, be paid for such acquisition. Tr. 227:2-7

APPENDIX B
PROPOSED CONCLUSIONS OF LAW

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) proposes the following conclusions of law:

1. Under Section 529(a) of the Public Utility Code, “[t]he commission may order a capable public utility to acquire a small water or sewer utility if the commission, after notice and an opportunity to be heard, determines” that six criteria have been demonstrated. 66 Pa.C.S. § 529(a).

2. The six criteria that must be demonstrated are:

(1) that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L.1987, No.394), known as The Clean Streams Law, the act of January 24, 1966 (1965 P.L.1535, No.537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P.L.206, No.43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility;

(2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;

(3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;

(4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible;

(5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and

(6) that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition.

Id. at § 529(a)(1)-(6).

3. “[T]he determinations of Section 529(a) appear in the conjunctive” and, therefore, it “must determine that each of the six standards is met before ordering” a capable public utility to acquire a small water utility. *Investigation Instituted into Whether the Commission Should Order a Capable Public Utility to Acquire Clean Treatment Sewage Company Pursuant to 66 Pa. C.S. § 529*, Docket No. I-2009-2109324, 2012 Pa. PUC LEXIS 879 at *10 (Order entered May 25, 2012) (“*CTSC Order*”); *see also Investigation of W.P. Water Co., Inc. and W.P. Sanitary Co., Inc. Pursuant to Section 529 of the Pennsylvania Public Utility Code; W.P. Water Co., Inc. and W.P. Sanitary Co., Inc.; Application of W.P. Sanitary Co., Inc. For Approval of Abandonment of Service*, Docket Nos. I-00070114, P-00072313 and A-230550F200, at p. 12 (Order entered March 31, 2009) (“*W.P. Order*”); *Pennsylvania Public Utility Commission William E. Brown, et al. v. Sunshine Hills Water Company*, Docket Nos. R-912023, R-912023C001, 1992 Pa. PUC LEXIS 85 at *138-139 (Order entered Aug. 5, 1992) (“*Sunshine Hills*”).

4. “[T]he plain language of Section 529 of the Code the Commission has the authority to, after notice and an opportunity to be heard, ‘order a capable public utility to acquire a small water or sewer utility if all six of the requirements in Section 529(a)(1)-(6) are met.’” *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, 2020 Pa. PUC LEXIS 467 at *21 (Order entered September 27, 2020) (“*Interlocutory Review Order*”).

5. Only after making the determinations set forth in Section 529(a) is the Commission authorized to “issue an order for the acquisition of the small water or sewer utility by a capable public utility,” which “shall provide for the extension of the service area of the acquiring capable public utility.” 66 Pa.C.S. § 529(d).

6. In making a determination under Section 529(a), the Commission shall consider the following factors, pursuant to Section 529(c):

(1) The financial, managerial and technical ability of the small water or sewer utility.

(2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service.

(3) The expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(4) The expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water or sewer utility to be acquired.

(5) The opinion and advice, if any, of the Department of Environmental Resources as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service.

(6) Any other matters which may be relevant.

66 Pa.C.S § 529(c) (emphasis added).

7. The Commission must discuss with the small water or sewer utility and provide it a reasonable opportunity to investigate several alternatives to acquisition. *See* 66 Pa.C.S. § 529(b)(1)-(5). These alternatives include, but are not limited to:

(1) The reorganization of the small water or sewer utility under new management.

(2) The entering of a contract with another public utility or a management or service company to operate the small water or sewer utility.

(3) The appointment of a receiver to assure the provision of adequate, efficient, safe and reasonable service and facilities to the public.

(4) The merger of the small water or sewer utility with one or more other public utilities.

(5) The acquisition of the small water or sewer utility by a municipality, a municipal authority or a cooperative.

Id. (emphasis added).

8. In making these determinations under Section 529(b), the Commission is authorized to hold a forced acquisition hearing and to order a capable public utility's acquisition of a small water utility only if the "alternatives to acquisition have been considered in accordance with subsection [529](b) and have been determined by the commission to be impractical or not economically feasible." 66 Pa.C.S. § 529(a)(4).

9. Sections 529(a)(4) and 529(b):

reveals a legislative determination that it is in the public interest to encourage a small water utility to avail itself of an alternative to forced acquisition in order to avoid the taking of private property, the costs and the resource commitments engendered by a forced acquisition hearing.

Public Service Water Company v. Fairview Water Company, Docket No. C-00924451, 1992 Pa. PUC LEXIS 75 at *12-13 (Order Treating Act 27 Pleading As A Petition And Denying Motion for Dismissal/Striking/More Specific Pleading dated Dec. 3, 1992) (Paist, J.).

10. Where the Commission orders the acquisition of a small water utility by a capable public utility, "[t]he price for the acquisition of the small water or sewer utility shall be determined by agreement between the small water or sewer 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).

11. Although the Commission has explained that “Section 529(e) demonstrates a legislative intent that the purchase price need not be known for us to find, pursuant to Section 529(a)(6), that the rates charged by the acquiring utility to its preacquisition customers will not increase unreasonably because of the acquisition,” *CTSC Order* at *44-45, the Commission has also explained that, when it reviews an acquisition price under Section 529, it will examine the condition of the assets and the expenditures that the acquiring capable public utility will be required to make to provide reasonable and adequate service. *See W.P. Order* at *38-39.

12. Section 529(e) also provides:

If the small water or sewer utility and the acquiring capable public utility are unable to agree on the acquisition price or the commission disapproves the acquisition price on which the utilities have agreed, the commission shall issue an order directing the acquiring capable public utility to acquire the small water or sewer utility by following the procedure prescribed for exercising the power of eminent domain pursuant to the act of June 22, 1964 (Sp.Sess., P.L.84, No.6), known as the Eminent Domain Code.

66 Pa.C.S. § 529(e).

13. A proceeding instituted under Section 529 of the Public Utility Code places the statutory burden of proof upon I&E. 66 Pa.C.S. § 529(i) (“The Bureau of Investigation and Enforcement shall have the burden of establishing a prima facie case...”).

14. However, “the burden is not exclusive to I&E. Rather, any party may present or rebut a prima facie case in support of its position in the proceeding.” *Interlocutory Review Order* at *26 (citing *Investigation Instituted per Section 529 into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company*, Docket No, I-2016-2526085 (Order entered Jan. 28, 2016)).

15. As a result, “to the extent Twin Lakes is seeking specific relief in the Section 529 proceeding, it must produce evidence demonstrating that such relief is warranted.” *Interlocutory Review Order* at *26.

16. Section 332(a) of the Public Utility Code, 66 Pa. C.S. § 332(a), provides that the party seeking a rule or order from the Commission has the burden of proof in that proceeding.

17. A litigant’s burden of proof before administrative tribunals as well as before most civil proceedings is satisfied by establishing a preponderance of evidence, which is substantial and legally credible. *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950); *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600, 602 (Pa. Cmwlth. 1990).

18. The preponderance of evidence standard requires proof by a greater weight of the evidence. *Cmwlth. v. Williams*, 557 Pa. 207, 732 A.2d 1167 (Pa. 1999).

19. Only if the proponent of the rule or order present evidence found to be of greater weight than the other parties, will it have carried its burden of proof. *Morrissey v. Commonwealth*, 225 A.2d 895 (Pa. 1986); *Burleson v. Pa. Pub. Util. Comm’n*, 641 A.2d 1234, 1236 (Pa. 1983); *V.J.R. Bar Corp. v. P.L.C.B.*, 390 A.2d 163 (Pa. 1978); *Milkie v. Pa. Pub. Util. Comm’n*, 768 A.2d 1217, 1220 (Pa. Cmwlth. 2001).

20. Any finding of fact necessary to support an adjudication of the Commission must be based upon substantial evidence. *Met-Ed Indus. Users Group v. Pa. Pub. Util. Comm’n*, 960 A.2d 189, 193 n.2 (Pa. Cmwlth. 2008) (citing 2 Pa.C.S. § 704).

21. Substantial evidence is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. *Borough of E. McKeesport v. Special/Temporary Civil Serv. Comm’n*, 942 A.2d 274, 281 (Pa. Cmwlth. 2008). The “presence of conflicting evidence in the record does not mean that substantial evidence is lacking.” *Allied Mechanical*

and Elec., Inc. v. Pa. Prevailing Wage Appeals Bd., 923 A.2d 1220, 1228 (Pa. Cmwlth. 2007)
(citation omitted).

22. Twin Lakes has failed to carry its burden of proof and demonstrate that it has satisfied all six of the requirements set forth in Section 529(a), 66 Pa.C.S. § 529(a), to show that it is entitled to obtain an order authorizing the acquisition of the Twin Lakes system by a capable public utility.

APPENDIX C
PROPOSED ORDERING PARAGRAPHS

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) proposes the following ordering paragraphs:

1. 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 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, to the extent it seeks to require Aqua Pennsylvania, Inc. to acquire the Twin Lakes water system as a part of this proceeding, is denied.

2. The Pennsylvania Public Utility Commission orders and authorizes Aqua Pennsylvania, Inc. to continue acting as Receiver of the Twin Lakes water system, in Accordance with Appendix A to the Opinion and Order entered in the above-captioned docket on January 14, 2021.

3. The above-captioned docket is marked closed.

Alternatively, to the extent that the Pennsylvania Public Utility Commission issues an Order requiring Aqua to acquire the Twin Lakes water system as a part of this proceeding, Aqua proposes the following ordering paragraphs:

1. 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 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, to the extent it seeks to require Aqua Pennsylvania, Inc. to acquire the Twin Lakes water system as a part of this proceeding, is granted, subject to the following conditions.

2. Within thirty (30) days of the entry of this Order, Middlesex Water Company is ordered and required to deposit in escrow the amount of \$1,675,000, which is equal to the loan portion and the tax liability of the grant portion of the Pennsylvania Infrastructure Investment Authority (“PENNVEST”) grant and loan awarded to Twin Lakes.

3. Upon closing of the acquisition ordered pursuant to ordering paragraph 1, Aqua Pennsylvania, Inc. shall be authorized to withdraw the amount deposited in escrow by Middlesex Water Company pursuant to ordering paragraph 2 and use these funds to offset the costs of remediating the Twin Lakes water system.

4. The above-captioned docket is marked closed.