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February 25, 2021

Via Email Only

Rosemary Chiavetta, Secretary
PA Public Utility Commission
P.O. Box 3265
Harrisburg, PA 17105-3265

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

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

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

Dear Secretary Chiavetta:

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

Sincerely,

/s/ Lauren M. Burge

Lauren M. Burge

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

CERTIFICATE OF SERVICE

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

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Dated: February 25, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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I. INTRODUCTION

Twin Lakes Utilities, Inc. (“Twin Lakes”) submits this Reply Brief pursuant to 52 Pa. Code §§ 5.501 *et seq.* and the January 5, 2021 Briefing Order in this matter. In this Reply Brief, Twin Lakes responds to the Main Briefs (“M.B.”) filed by the Pennsylvania Public Utility Commission’s (“Commission”) Bureau of Investigation and Enforcement (“I&E”) and Aqua Pennsylvania, Inc. (“Aqua”).

Twin Lakes’ Main Brief contains a comprehensive discussion of its position that it is in the public interest for the Commission to order the acquisition of Twin Lakes by a capable public utility pursuant to Section 529 of the Public Utility Code, 66 Pa. C.S. § 529. Twin Lakes will not restate its arguments set forth in the Main Brief here, but rather will respond to arguments raised by I&E and Aqua in their Main Briefs that warrant further response. In doing so, Twin Lakes does not waive its position on contested issues not repeated in this Reply Brief. Twin Lakes incorporates by reference all of the arguments and analyses contained in its Main Brief as well as its Petition and testimonies presented as record evidence in this proceeding.

I&E and Aqua raise arguments in their Main Briefs that are not substantiated by the record evidence in this proceeding and are contrary to the applicable law. Twin Lakes has met its burden of proof to show that the requirements of Section 529(a) have been satisfied. Further, as the Office of Consumer Advocate (“OCA”) argues in its Main Brief, acquisition by a capable public utility is the only practical long-term solution that will result in customers receiving adequate service at reasonable rates. For these reasons and the reasons set forth in its Main Brief, Twin Lakes respectfully requests that the Commission grant its Petition and order the acquisition of Twin Lakes by a “capable public utility,” as that term is defined by statute, pursuant to Section 529 of the Public Utility Code.

II. SUMMARY OF ARGUMENT

Section 529 of the Public Utility Code allows the Commission to order a capable public utility to acquire a small water system if it determines that the small water system has met the six criteria set forth in Section 529(a). All four parties who filed Main Briefs in this proceeding agree that Twin Lakes has met four of the six criteria – specifically, the criteria set forth in Section 529(a)(1),(2),(5) and (6). Three of the four parties who filed Main Briefs in this proceeding – Twin Lakes, I&E and OCA – agree that Twin Lakes has met a fifth criteria, specifically the criteria set forth in Section 529(a)(4). Two of the four parties who filed Main Briefs in this proceeding – Twin Lakes and OCA – agree that Twin Lakes has met all six criteria set forth in Section 529(a).

I&E argues that Twin Lakes has failed to meet the criteria of Section 529(a)(3), which is the requirement that the small water utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.¹ I&E argues that Middlesex Water Company (“Middlesex”), the parent company of Twin Lakes and a New Jersey corporation with its principal place of business in New Jersey, is the entity that should be evaluated under Section 529(a)(3). I&E argues that this is permissible because Middlesex is subject to the jurisdiction of the Commonwealth of Pennsylvania.²

I&E’s arguments regarding personal jurisdiction are irrelevant in the context of this proceeding. These concepts apply to courts of general jurisdiction, and Twin Lakes is not aware of any instance where the Commission has exercised general or specific jurisdiction, Pennsylvania’s long-arm statute, or Pennsylvania’s business registration statute to subject an out-of-state corporation to its jurisdiction. For the reasons discussed herein and in greater detail in

¹ I&E M.B. at 12-16.

² I&E M.B. at 17-24.

Twin Lakes' Main Brief, Twin Lakes is the appropriate entity to evaluate under Section 529(a)(3), not Middlesex. Twin Lakes meets the criteria set forth in Section 529(a)(3).

Aqua also argues that Middlesex, not Twin Lakes, is the proper entity to evaluate under Section 529(a)(3).³ Aqua's arguments suffer from the same infirmities as I&E's arguments. Aqua also argues that that Twin Lakes fails to meet the criteria of Section 529(a)(4) because Aqua's recent appointment as a temporary receiver for the Twin Lakes system constitutes a viable alternative solution to acquisition by a capable public utility. Aqua's argument, however, ignores the practical reality that Aqua's current receivership is temporary in nature and will expire upon the conclusion of this Section 529 proceeding. In the event that Twin Lakes' Petition is denied, Twin Lakes will have no source of financial or operational support. To argue that Aqua's current temporary receivership is a viable long-term solution for Twin Lakes' customers strains credibility. This argument should be rejected. Twin Lakes has satisfied the criteria set forth in Section 529(a)(4) as discussed in its Main Brief.

Aqua next argues that Twin Lakes has failed to meet the criteria set forth in Section 529(c)(6) because, according to Aqua, Middlesex is misusing Section 529 for the nefarious purpose of forcing Aqua to pay more than it would otherwise agree to pay for the Twin Lakes system through an arms-length negotiation.⁴ Aqua narrowly reads Section 529 to only allow for the acquisition of a small water utility in situations "where the owner has passed away...or the inability of the owner to manage the system."⁵ Aqua avers that Middlesex has violated the intent of the statute and that granting Section 529 relief would constitute poor public policy.⁶

³ Aqua M.B. at 23-25.

⁴ Aqua M.B. at 32-36.

⁵ Aqua M.B. at 35.

⁶ Aqua M.B. at 36.

Putting aside the fact that Twin Lakes, not Middlesex, is the Petitioner and party in this proceeding, Aqua misreads the plain text of Section 529 as the statute does not limit the category of small water utilities eligible for Section 529 to systems with dead or incapacitated owners. Nor would the granting of Twin Lakes' Petition constitute poor public policy; in fact, the public interest would be harmed if the Commission were to deny Twin Lakes' Petition due to Twin Lakes' financial and operational inability to sustain safe and reliable service to its customers. Twin Lakes clearly meets the definition of "small water utility" under Section 529(m) and has met the requirements of Section 529(a) more broadly. Acquisition by a capable public utility is clearly warranted and in the public interest, as the record in this proceeding establishes, and Aqua cannot artificially limit the scope of Section 529.

Aqua next argues that Twin Lakes and Aqua have not yet voluntarily negotiated a purchase price for Twin Lakes under Section 529(e).⁷ This fact is irrelevant at this time. Even Aqua admits that Section 529(e) does not require the purchase price to be known to make the requisite finding under Section 529(a) that Twin Lakes has satisfied the criteria necessary for the granting of Section 529 relief.⁸ Aqua avers that if purchase price negotiations fail to recognize both the condition of the system and necessary system improvements, this would demonstrate that Middlesex is attempting to improperly use this proceeding to extract a higher purchase price than would otherwise be negotiated at arm's length.⁹ Aqua cannot point to any evidence on the record supporting this theory, which seems to inappropriately predetermine that Twin Lakes will not

⁷ Aqua M.B. at 36-37.

⁸ Aqua M.B. at 37.

⁹ Aqua M.B. at 37.

negotiate in good faith. In any event, it will be Twin Lakes, not Middlesex, which would be the entity negotiating the purchase price.

Finally, Aqua argues that the Commission should compel Middlesex to set aside \$1,675,000 in an escrow account in the event the Commission orders Aqua to acquire Twin Lakes pursuant to Section 529.¹⁰ In support of this argument, Aqua distorts out of context isolated portions of the testimonies of Twin Lakes witnesses A. Bruce O'Connor and Robert Fullagar to aver that Middlesex, rather than Twin Lakes, will be the entity negotiating the sale of the Twin Lakes system.¹¹ Placing Mr. O'Connor's and Mr. Fullagar's testimonies into their proper context, Twin Lakes – the owner and operator of the Twin Lakes system, the jurisdictional utility, and the Petitioner in this proceeding – will be the entity negotiating any sale of the Twin Lakes system pursuant to Section 529. Further, this argument presupposes that Twin Lakes will not negotiate in good faith and attempts to set conditions on the purchase price negotiations before any such negotiations have occurred. This is impermissible, unjustified, and contrary to the plain language of Section 529.

In sum, Twin Lakes has met its burden of proof to show that the requirements of Section 529(a) have been satisfied, as supported by the evidence in this proceeding. Practically speaking, none of the parties have identified any other long-term solution that would address the system's significant operational and financial issues such that Twin Lakes' customers will receive adequate service at reasonable rates. As such, it is clearly in the public interest for the Commission to grant Section 529 relief in this matter.

¹⁰ Aqua M.B. at 38-40.

¹¹ *Id.*

For all of these reasons, and for the reasons set forth in full in Twin Lakes’ Main Brief, the Commission should grant Twin Lakes’ Petition and order Aqua, as a duly established capable public utility as that term is defined by the statute, to acquire Twin Lakes pursuant to Section 529 of the Public Utility Code.

III. ARGUMENT

A. Twin Lakes Has Met The Requirements of Sections 529(a)(3).

Section 529(a)(3) requires that the small water utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future in order for the Commission to order a capable public utility to acquire the small water utility.¹² Additionally, Section 529(c) sets forth factors that the Commission considers when making its determination that the six elements of Section 529(a) have been met, including the financial, managerial and technical ability of the small water utility.¹³

I&E argues in its Main Brief that Middlesex should be the entity evaluated under Section 529(a)(3) and (c)(1), and that the Commission can assert personal jurisdiction over Middlesex through Pennsylvania’s business registration statute¹⁴ and Pennsylvania’s “long-arm” statute.”¹⁵ I&E argues that Pennsylvania can assert either specific or general personal jurisdiction over Middlesex because of “substantial evidence of Middlesex’s numerous and purposeful contacts with Pennsylvania”¹⁶ According to I&E, these contacts prove that Middlesex “established minimum, and arguably, continuous contacts with Pennsylvania; purposely availed itself of the

¹² 66 Pa. C.S. § 529(a)(3).

¹³ 66 Pa. C.S. § 529(c)(1).

¹⁴ I&E M.B. at 17 (citing Pennsylvania’s business registration statute at 42 Pa. C.S. § 5301).

¹⁵ I&E M.B. at 18 (citing Pennsylvania’s “long-arm” statute at 42 Pa. C.S. § 5322).

¹⁶ I&E M.B. at 19.

Commission and Pennsylvania public utility customers; and, transacted business in Pennsylvania.”¹⁷ I&E dismisses the existence of Twin Lakes, the Pennsylvania subsidiary company established to own, operate and serve as the jurisdictional utility serving the customers of Sagamore Estates as merely the “alter-ego” or “agent” of Middlesex.¹⁸

I&E’s argument is irrelevant in the context of a regulatory proceeding before the Commission. The Commission is a creature of statute, which only has the powers and authority granted to it by the General Assembly and contained in the Public Utility Code.¹⁹ The Commission is not a court of general jurisdiction. I&E has inappropriately attempted to apply jurisdictional concepts that are applicable to courts of general jurisdiction to a regulatory proceeding at the Commission. In its Main Brief, I&E does not point to any prior instances in which the Commission has employed these jurisdictional concepts or applied Pennsylvania’s long-arm statute or basis of jurisdiction statute. In fact, Twin Lakes has not been able to identify a single Commission order applying these concepts or statutes. I&E does not explain why it believes it is necessary for the Commission to exercise specific or general personal jurisdiction over an out-of-state company that is not a jurisdictional utility in Pennsylvania, and that is also not a party to this proceeding, when the Commission has never previously exercised such jurisdictional concepts or acted pursuant to Pennsylvania’s long-arm statute or business registration statute. Meanwhile, Commission clearly has jurisdiction over Twin Lakes, which is the jurisdictional utility and Petitioner here.²⁰

¹⁷ I&E M.B. at 21.

¹⁸ I&E M.B. at 22.

¹⁹ See, e.g., *Tod and Lisa Shedlosky v. Pennsylvania Electric Co.*, Docket No. C-20066937, Opinion and Order entered May 28, 2008; *Feingold v. Bell Tel. Co. of Pa.*, 383 A.2d 791 (Pa. 1977).

²⁰ See Twin Lakes M.B. at 32-39.

I&E’s attempt at an intellectual argument has no practical application in this proceeding. Further, Twin Lakes notes that many aspects of I&E’s legal argument are based on outdated case law.²¹ There is also some question about the constitutionality of Pennsylvania’s long-arm statute and business registration statute based on recent case law regarding personal jurisdiction, as some courts have found these statutes to be unconstitutional.²²

In any event, as explained in Twin Lakes’ Main Brief, Middlesex is a New Jersey Corporation with its principal place of business in New Jersey.²³ Middlesex purposely established a Pennsylvania subsidiary company – Twin Lakes Utilities, Inc. – to incorporate in Pennsylvania, become the owner and titleholder of the Twin Lakes system assets and the jurisdictional public utility in Pennsylvania.²⁴ Twin Lakes is the entity that filed Articles of Incorporation and registered to do business in Pennsylvania with the Pennsylvania Department of State Corporations Bureau.²⁵ Twin Lakes is the entity that entered into the Asset Purchase Agreement to acquire the Twin Lakes system and became the titleholder of the system assets as set forth in the Deed.²⁶ Twin Lakes is

²¹ Regarding general personal jurisdiction, *see, e.g., Daimler A.G. v. Bauman*, 571 U.S. 117, 134 S.Ct. 746 (2014) (rejecting the “substantial business contacts” analysis and, absent a knowing and voluntary waiver, finding that a state’s exercise of personal jurisdiction over a corporation is limited to where the foreign corporation is “at home.” The Court also found that an out-of-state corporation could not be subjected to a state’s assertion of personal jurisdiction based on the minimum business contacts of an in-state subsidiary, or a theory that the in-state subsidiary constituted nothing more than an “alter-ego” or “agent” of the out-of-state corporation (*Daimler* at 134-135).); *see also Goodyear Dunlop Tires Operations, S.A. v. Brown*, 564 U.S. 915, 131 S.Ct. 2846 (2011) (finding that the relevant inquiry is whether the corporation’s affiliations with the State are “so continuous and systematic as to render [it] essentially at home in the forum state.”). Regarding specific personal jurisdiction, *see, e.g., Walden v. Fiore*, 571 U.S. 277 (2014); *Bristol-Myers Squibb Co. v. Superior Court*, 137 S.Ct. 1773 (2017).

²² *See Sullivan v. A.W. Chesterton, Inc. (In re Asbestos Prods. Lia. Litig. No. VI)*, 384 F.Supp.3d 532, 537, 543 (E.D. Pa. 2019).

²³ Twin Lakes M.B. at 35.

²⁴ Twin Lakes M.B. at 35-36.

²⁵ Twin Lakes M.B. at 33.

²⁶ Twin Lakes M.B. at 34.

the entity that filed a tariff with and was accepted by the Commission in 2009.²⁷ Twin Lakes is the entity that petitioned for, and received three rate increases in 2011, 2015 and 2019 from the Commission.²⁸ At no time did Middlesex ever conceal that Twin Lakes was to serve as the jurisdictional entity in Pennsylvania. In April 2011, when an error in how the Commission classified the system was noticed, Middlesex wrote to the Commission, not to change the Commission's records, as I&E alleges, but to *correct* the Commission's records.²⁹ I&E cannot now credibly argue that after nearly 12 years of acknowledging, treating and regulating Twin Lakes as the jurisdictional utility in Pennsylvania, the Commission should now focus instead on Middlesex.

Furthermore, I&E's position is not in the public interest. Even assuming *arguendo* that the Commission were to exercise jurisdiction over Middlesex as I&E argues, this will not result in a long-term solution for Twin Lakes' customers that ensures that customers receive adequate service at reasonable rates. At best it would result in Twin Lakes' 114 customers having to shoulder the burden of an entire system replacement, which is anticipated to cost approximately \$4.8 million.³⁰ This is untenable. Unfortunately I&E has chosen to take a position that is overly technical while also completely ignoring the public interest and the long-term interest of Twin Lakes' customers. I&E has identified no other workable long-term solution to this problem.

In sum, Twin Lakes is incorporated in Pennsylvania, registered to conduct business in Pennsylvania, and was purposely established to serve as a jurisdictional public utility in

²⁷ *Id.*

²⁸ *Id.*

²⁹ Twin Lakes M.B. at 38-39.

³⁰ Twin Lakes M.B. at 29.

Pennsylvania. Twin Lakes is therefore the appropriate corporate entity to evaluate under Section 529(a)(3), and the record in this proceeding is clear that Twin Lakes has met the criteria set forth in Section 529(a)(3).

B. Twin Lakes Has Met The Requirements of Section 529 (a)(4).

Section 529(a)(4) requires Twin Lakes to demonstrate 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.”³¹ In its Main Brief, Aqua argues that the installation of private wells at Sagamore Estates is “not legally impossible” and that Twin Lakes’ acceptance of the PENNVEST grant is not impractical or economically infeasible.³² Twin Lakes addressed these arguments in the testimonies of its witnesses and in its Main Brief and will not repeat those arguments here except to incorporate them by reference.³³

Additionally, Aqua argues in its Main Brief that its temporary receivership of the Twin Lakes system demonstrates that receivership is an alternative to an acquisition of the Twin Lakes system and, under that logic, Twin Lakes fails to meet the criteria of Section 529(a)(4).³⁴ Aqua’s argument is undermined by the *temporary* nature of its current receivership of the Twin Lakes system. In the Commission’s January 14, 2021 Order, Aqua was directed “to act as the Receiver for the Twin Lakes Utilities, Inc. beginning January 15, 2021 *and to continue during the pendency of the current Section 529 proceeding* and in accordance with Appendix A to this Order.”³⁵ In

³¹ 66 Pa. C.S. § 529(a)(4), (b).

³² Aqua M.B. at 27-29.

³³ Twin Lakes M.B. at 9-10, 12-13.

³⁴ Aqua M.B. at 30-32.

³⁵ *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. §529Error! Bookmark not defined.*, Order (entered Jan. 14, 2021) (“Receiver Order”), at Ordering Para. 2 (emphasis added).

other words, Aqua’s current receivership of the Twin Lakes system ends upon the conclusion of this Section 529 proceeding.

Playing Aqua’s argument out logically, in the event that the Commission denies Twin Lakes’ Petition, Twin Lakes will have no source of financial or operational support as Middlesex, formerly its sole source of financial support, has ceased such support and the Service Agreement that served as Twin Lakes’ sole source of operational support has expired by its own terms. To argue that Aqua’s current temporary receivership is a more viable long-term solution for Twin Lakes’ customers than Twin Lakes’ acquisition by a capable public utility pursuant to Section 529 strains credibility.

The record in this proceeding is clear. Twin Lakes has exhaustively considered all alternatives to its acquisition by a capable public utility as was required under Section 529(a)(4) and (b) and found no viable alternative.³⁶ Therefore, Twin Lakes has met the criteria set forth in Section 529(a)(4).

C. Twin Lakes Has Met The Requirements of Section 529 (c)(6).

Section 529(c)(6) states that the Commission, when making a determination under Section 529(a), shall consider “Any other matters which may be relevant.”³⁷ Citing to Section 529(c)(6), Aqua argues that the Commission should deny Twin Lakes’ Petition because of an “improper motive” on the part of Middlesex to, according to Aqua, extract more value from the sale of the Twin Lakes system in place of a voluntary arms-length negotiation with a willing buyer.³⁸ In addition, Aqua avers that Section 529 proceedings are limited to the consideration of “a system

³⁶ Twin Lakes M.B. at 9-14.

³⁷ 66 Pa. C.S. § 529(c)(6).

³⁸ Aqua M.B. at 15.

where the owner has passed away...or the inability of the owner to manage the system.”³⁹ Furthermore, Aqua argues that the acquisition of Twin Lakes by a capable public utility pursuant to Section 529 does not reflect “the intent of the statute and, moreover would constitute poor public policy.”⁴⁰

First, Aqua’s claim that Middlesex is using this Section 529 proceeding as an inappropriate means to force Aqua or any other capable public utility to pay more than it is willing to pay for the Twin Lakes system is as ridiculous as it is categorically false. Aqua has not produced a scintilla of evidence on the record to corroborate this baseless assertion. Twin Lakes has produced substantial evidence detailing its exhaustive efforts for well over a decade to find a long-term solution for the Twin Lakes system.⁴¹ In his Rebuttal Testimony on behalf of Twin Lakes, A. Bruce O’Connor testified that Twin Lakes:

sought Section 529 relief not as a first resort and not as a vehicle to somehow extract additional value out of a capable public utility, but as an absolute last resort after all numerous options – *including the very voluntary arms-length negotiations that Mr. Packer and Mr. Clark [on behalf of Aqua] are now calling for in their rebuttal testimonies, and that included prior negotiations with Aqua – were explored, attempted and exhausted.*⁴²

Mr. O’Connor further testified that prior to December 21, 2020 (the day before rebuttal testimony was filed in this proceeding) neither he nor, to the best of his knowledge, information and belief, any officer or employee of Twin Lakes or its affiliates were aware of any purchase offer by Aqua or any other capable public utility to acquire the Twin Lakes system presently or in the future.⁴³

³⁹ Aqua M.B. at 35.

⁴⁰ Aqua M.B. at 36.

⁴¹ See Twin Lakes M.B. at 9-14.

⁴² Twin Lakes St. No. 2-SR at 4-5 (emphasis added).

⁴³ *Id.* at 3. The parties to this proceeding held an initial settlement conference on December 21, 2020 and have not held settlement discussions since that date.

Second, the statutory text of Section 529 does not limit the section’s application only to small water utilities who have dead or incapacitated owners, as Aqua argues. The intent of Section 529 is clearly set forth in Section 529(a): “The commission may order a capable public utility to acquire a small water or small sewer utility if the commission, after notice and an opportunity to be heard, determines [that the small water utility has met the criteria set forth in Section 529(a)(1) through (6)].”⁴⁴ The statutory definition of “small water utility” is clearly set forth in Section 529(m): “a public utility which regularly provides water service to 1,200 or fewer customer connections.”⁴⁵ Nowhere in Section 529 does there exist language limiting the definition of “small water utility” to only those systems where the owned has passed away or is incapacitated or limiting this definition so as to exclude small water utilities that are affiliated with a corporate parent.

Third, the denial of Twin Lakes’ Petition would not only be inconsistent with the underlying public policy of Section 529, it would be highly injurious to the public interest. As stated by Judge Cheskis in his August 28, 2020 Order denying the OCA’s Emergency Petition:

[I]f the petition is not granted and Twin Lakes is required to continue to operate the system pursuant to its existing certificate of public convenience, the public interest will be injured because of the risk of Twin Lakes’ customers losing access to safe and reliable water service at just and reasonable rates. There is substantial record evidence regarding the injury to the public that may occur if Twin Lakes continues to operate this system. This is certainly injurious to the public interest, especially during a pandemic. The best interests of the customers affected by this petition is paramount.

If the petition is not granted and Twin Lakes continues to provide service as best it can, the public interest would be injured because of the general reliance on large water companies in Pennsylvania, such as Aqua, assisting customers of smaller water companies in Pennsylvania, such as Twin Lakes, when the smaller

⁴⁴ 66 Pa. C.S. § 529(a).

⁴⁵ 66 Pa. C.S. § 529(m).

companies can no longer provide service. Larger companies have been asked in the past to “rescue” smaller companies at times and denying the petition filed by the OCA in this case would contradict such precedent, thereby, injuring the public interest.⁴⁶

While Judge Cheskis was referring to OCA’s Emergency Petition in this Order, Twin Lakes respectfully submits that denial of Twin Lakes’ Petition would be equally injurious to the public interest for the identical reasons set forth in this Order. The Pennsylvania General Assembly did not limit Section 529 to only those small water utilities who are not affiliated with a larger corporate parent. It applied Section 529 to *all small water utilities* as defined in Section 529(m). It is not Aqua’s or the Commission’s place to act as a super-legislature and write into Section 529 such an exclusion where the statute is clear and unambiguous.

Finally, Aqua’s contention that by granting Twin Lakes’ Petition the Commission would be establishing precedent that will cause parent companies to run to the Commission’s doors to divest themselves of small troubled water systems⁴⁷ is not only speculative but also baseless. If Aqua’s concern were even within the realm of probable, there would likely already have been a flood of these kinds of petitions over the years. Twin Lakes has found no such case. Even assuming *arguendo* that future unnamed parent companies of small water systems would be inspired by Twin Lakes to petition the Commission to divest themselves of small water systems, the record evidence presented in this proceeding demonstrates that Twin Lakes is its own unique circumstance likely making it distinguishable from other potential fact patterns.

⁴⁶ *Order Denying Petition of the Office of Consumer Advocate for Issuance of an Interim Emergency Order on an Expedited Basis Filed Pursuant to Sections 3.6, 3.6a and 3.7 of the Commission’s Regulations*, dated Aug. 28, 2020, at 35.

⁴⁷ Aqua M.B. at 39.

The history of Twin Lakes and the record in this proceeding are clear that Twin Lakes is not seeking Section 529 relief as a first resort, but on the contrary *as an absolute last resort after all other numerous options were exhausted*, which included attempts to negotiate acquisition of Twin Lakes by other utilities. For over a decade, Twin Lakes has gone to great lengths to identify and implement a long-term solution that would address the Twin Lakes system’s operational risks while also attempting to ensure sustained reliability of service and to mitigate the need to significantly increase customers’ rates. All options short of an acquisition of Twin Lakes pursuant to Section 529 have been explored and exhausted.⁴⁸

Absent a Commission order authorizing the acquisition of Twin Lakes by a capable public utility, Aqua’s temporary receivership will end and Twin Lakes will have no source of financial or operational support to furnish and maintain adequate, efficient, safe and reasonable service. This result is highly injurious to the public interest and fully inconsistent with the underlying public policy of Section 529. Aqua’s arguments to the contrary simply do not comport with the plain text of and underlying public policy behind Section 529 and would be harmful to the best interests of Twin Lakes’ customers. Twin Lakes has satisfied the criteria set forth in Section 529(c)(6).

D. Authorization of the Acquisition of Twin Lakes By A Capable Public Utility Pursuant To Section 529 (a) Does Not Require Completion of Voluntary Negotiations of a Purchase Price Pursuant To Section 529(e).

Section 529(e) states that “The price for the acquisition of the small water or sewer utility shall be determined by agreement between the small water or sewer utility, subject to a determination by the commission that the price is reasonable.”⁴⁹ Aqua argues that Twin Lakes and

⁴⁸ See Twin Lakes M.B. at 9-14.

⁴⁹ 66 Pa. C.S. § 529(e).

Aqua have not yet voluntarily negotiated a purchase price for Twin Lakes under Section 529(e).⁵⁰ This fact is irrelevant at this time as there is no requirement that a purchase price be negotiated *before* the Commission orders an acquisition under Section 529.

Even Aqua admits that Section 529(e) does not require the purchase price to be known to make the requisite finding under Section 529(a)(6) that Twin Lakes has satisfied the criteria necessary for the granting of Section 529 relief.⁵¹ Aqua avers that if purchase price negotiations fail to recognize both the condition of the system and improvements that will be required to Aqua's satisfaction, that will demonstrate that Middlesex is simply attempting to improperly use this Section 529 proceeding.⁵² Aqua cannot to point to any evidence in the record supporting this theory, and in any event this claim is irrelevant. Twin Lakes is, and will be, the entity negotiating the sale of Twin Lakes as part of any Section 529 process, and Twin Lakes witness O'Connor testified on cross-examination to Twin Lakes' commitment to negotiate a sale price in good faith:

Q: Mr. O'Connor, would you agree with me that, if the Commission grants the relief sought in Twin Lakes's petition, that the price for the acquisition sought by Twin Lakes will be determined by negotiations between Middlesex and the acquiring utility, correct?

A: The negotiations would be between Twin Lakes Utilities, Inc., and the acquiring capable public utility.

Q: You would also agree that negotiations regarding price would be done in good faith?

A: Yes, sir.⁵³

⁵⁰ Aqua M.B. at 36-37.

⁵¹ Aqua M.B. at 37.

⁵² Aqua M.B. at 37.

⁵³ Tr. 238.

Section 529(e) does not require the completion of voluntary negotiations for the purchase price of a small water utility prior to a Commission order authorizing the acquisition of the small water utility pursuant to Section 529(a). Therefore, Aqua's argument on this point should be rejected.

E. Conditioning The Acquisition of Twin Lakes on Middlesex Setting Aside Funds In An Escrow Account Is Inappropriate and Unjustified.

Aqua argues that the Commission should condition any Aqua acquisition of Twin Lakes pursuant to Section 529 on a requirement that Middlesex be compelled to set aside approximately \$1,675,000 in an escrow account.⁵⁴ In support of this argument, Aqua distorts out of context the testimonies of Twin Lakes' witnesses O'Connor and Fullagar to misrepresent Twin Lakes' position as to the identity of the entity that will negotiate an agreement for the sale of Twin Lakes. To be clear, Twin Lakes is the entity that would negotiate an agreement for the sale of Twin Lakes.⁵⁵ Additionally, a requirement that Middlesex set aside funds in escrow is impermissible, unjustified, and contrary to the language of Section 529(e).

In its Main Brief, Aqua cites an isolated portion of its cross-examination of Mr. Fullagar to argue that it is Twin Lakes' position that Middlesex is the entity that will negotiate a purchase price for the Twin Lakes system with Aqua.⁵⁶ Aqua seizes on an isolated portion of Mr. Fullagar's testimony on cross examination while neglecting to disclose its full context to argue, incorrectly, that Middlesex is the entity that would negotiate a sale of the Twin Lakes system with Aqua. Mr. Fullagar was never presented as a financial witness versed in negotiations for the sale of a public

⁵⁴ Aqua M.B. at 38-40.

⁵⁵ Tr. 238.

⁵⁶ Aqua M.B. at 40.

utility system. Indeed, in his Direct Testimony, Mr. Fullagar clearly explained the purpose of his testimony was to “describe the operational challenges and risks to the resiliency of the Twin Lakes system and to explain why, given these challenges, Twin Lakes cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities now or in the future.”⁵⁷

On redirect at the evidentiary hearing, Mr. Fullagar confirmed his expertise is not that of a financial expert on behalf of Twin Lakes:

BY MR. KOOPER:

Q. Mr. Fullagar, are you a financial expert in your capacity for Twin Lakes?

A. No.⁵⁸

Conversely, Twin Lakes witness O’Connor was presented as a financial expert versed in negotiations for the sale of a public utility system. In his Direct Testimony, Mr. O’Connor clearly explained the purpose of his testimony was “to demonstrate that Twin Lakes is financially incapable of complying with the requirements of Section 1501 of the Pennsylvania Public Utility Code.”⁵⁹

Placing Mr. Fullagar’s and Mr. O’Connor’s testimonies into their proper context, Mr. O’Connor has been presented as a financial expert on behalf of Twin Lakes and Mr. Fullagar has been presented as an operations expert on behalf of Twin Lakes. In any negotiations for the sale of the Twin Lakes system to Aqua, it is Mr. O’Connor who would be representing Twin Lakes in such a negotiation in his capacity as an Officer of Twin Lakes Utilities, Inc. Therefore, Mr.

⁵⁷ Twin Lakes St. No. 1 at 1.

⁵⁸ Tr. 228.

⁵⁹ Twin Lakes St. No. 2 at 1; *see also* Tr. 239-240.

O'Connor's testimony is the relevant testimony on this topic, and he has clearly stated that Twin Lakes will be the entity negotiating the purchase price in any acquisition of the Twin Lakes system.

Turning to Aqua's argument that Middlesex should be compelled to deposit \$1,675,000 in an escrow account as a condition for the sale of the Twin Lakes system to Aqua pursuant to Section 529, Twin Lakes submits that any such condition is both improper and unjustified. First, Middlesex is neither the Petitioner nor a party to this Section 529 proceeding. Requiring Middlesex to set aside this sum of money would, at the very least, constitute a violation of Middlesex's due process rights. Additionally, as Twin Lakes witness O'Conner explained, "[i]f the Commission orders Aqua to acquire the Twin Lakes system pursuant to Section 529, Aqua will have an opportunity to request recovery of the system replacement and earn a reasonable return on the prudently incurred investments."⁶⁰ The parties are already in agreement that the rate impact of the acquisition on Aqua's existing customers would be minimal.⁶¹ There is no justifiable reason to require Middlesex to set aside this sum in escrow.

Finally, this sort of predetermined condition on the purchase price is not contemplated by the text of Section 529. The statutory language primarily leaves it to the small water utility and the acquiring capable public utility to negotiate the acquisition price, subject to a Commission determination that the price is "reasonable."⁶² The statute only anticipates the Commission stepping in if the parties are unable to successfully negotiate a price for the acquisition.⁶³ It is inappropriate at this stage of the proceeding for the Commission to presuppose how the purchase price negotiations will proceed and to impose this very significant condition as Aqua has requested.

⁶⁰ Twin Lakes St. No. 2-SR at 5.

⁶¹ See Twin Lakes M.B. at 47-48.

⁶² 66 Pa. C.S. § 529(e).

⁶³ *Id.*

For these reasons, conditioning Twin Lakes' acquisition by Aqua on a requirement that Middlesex set aside \$1,675,000 into an escrow account is impermissible, unjustified, and contrary to the statutory language of Section 529.

IV. CONCLUSION

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

Respectfully submitted,



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