



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

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

February 25, 2021

**Via Electronic Filing**

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

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

Dear Secretary Chiavetta:

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

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

Sincerely,

A handwritten signature in black ink that reads 'Scott B. Granger'.

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SBG/ac  
Enclosures

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

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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Scott B. Granger  
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Bureau of Investigation & Enforcement  
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400 North Street  
Harrisburg, PA 17120

Dated: February 25, 2021

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## **I. HISTORY AND BURDEN OF PROOF.**

### **A. History.**

The history of this proceeding was addressed in I&E's Main Brief ("I&E M.B.") and in the main briefs submitted by Twin Lakes ("Twin Lakes M.B."), the Office of Consumer Advocate ("OCA M.B."), and Aqua ("Aqua M.B.") and does not need to be addressed further here.

I&E now submits this Reply Brief ("I&E R.B.") in response to the main briefs of Twin Lakes, OCA, and Aqua and in support of the arguments and recommendations made by the I&E witnesses, the record evidence presented, and I&E's Main Brief. Overall, the arguments made in the parties' main briefs have been raised consistently throughout the litigation process and have already been addressed in I&E's Main Brief. I&E will therefore only enhance its previously set forth arguments in this reply brief as necessary.

### **B. Legal Standards / Burden of Proof.**

I&E fully addressed the applicable burden of proof in its Main Brief<sup>1</sup> as did the parties.<sup>2</sup> Twin Lakes agrees that the Commission explicitly addressed the burden of proof issue in its September 17, 2020 Order<sup>3</sup> when the Commission made it clear that in this proceeding, the Commission has recognized that even though "I&E bears a statutory burden of proof in a Section 529 proceeding pursuant to 66 Pa. C.S. § 529(i), we have

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<sup>1</sup> See I&E M.B., pp. 5-7, *citing* 66 Pa. C.S. § 332(a).

<sup>2</sup> Twin Lakes M.B., pp. 22-25; OCA M.B., pp. 6-7; Aqua M.B., pp. 12-13.

<sup>3</sup> Twin Lakes M.B., p. 22. See also Opinion and Order, Order Entered September 17, 2020.

previously stated that the burden is not exclusive to I&E.”<sup>4</sup> Rather, the Commission stated “any party may present or rebut a *prima facie* case in support of its position in the proceeding.”<sup>5</sup> Further, “to the extent Twin Lakes is seeking specific relief in the Section 529 proceeding, it must produce evidence demonstrating that such relief is warranted.”<sup>6</sup>

I&E re-asserts that Twin Lakes has failed to meet its burden regarding the relief it has requested and therefore I&E respectfully requests that the Administrative Law Judge and the Commission deny Twin Lakes’ Petition and not order a capable public utility to acquire the Twin Lakes system. Further, I&E asserts that Twin Lakes has failed to present substantial record evidence to support its allegations in Paragraph 3 of the Twin Lakes Petition and I&E requests the Administrative Law Judge and the Commission find that the Commission still has jurisdiction over Middlesex, the original 2008 filer.

## **II. QUESTIONS PRESENTED.**

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

**Suggested Answer: Yes.**

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

**Suggested Answer: Yes.**

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<sup>4</sup> I&E M.B., p. 5, *citing* September 17 Order, p. 21.

<sup>5</sup> *Id.*

<sup>6</sup> *Id.*

### **III. SUMMARY OF ARGUMENT.**

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

I&E asserts that Twin Lakes, by and through Middlesex Water Company, the original 2008 filer and parent company of Twin Lakes, can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. The record in the original 2008 filing at Docket A-2008-2050092 makes it clear the Commission relied on the representations made by Middlesex in the 2008 proceeding when approving the acquisition of the then-existing Twin Lakes system and when approving Middlesex's request to begin providing water service to the Twin Lakes customers in Pennsylvania. The I&E witnesses provided substantial record evidence illustrating the well documented and publicized financial, managerial, and technical capabilities of Twin Lakes, by and through Middlesex.

The record supports a finding that the Pennsylvania Public Utility Commission still has jurisdiction over Middlesex, the original 2008 filer and non-resident parent corporation of Twin Lakes. Middlesex has purposefully availed itself of Pennsylvania through specific acts and a course of dealing with the Pennsylvania Public Utility Commission and Pennsylvania public utility customers. Beginning with the original filing in 2008, it was Middlesex that made contact with and purposefully availed itself of

the Pennsylvania PUC and the Pennsylvania ratepayers. And, it was Middlesex that that sought the Certificate of Public Convenience and requested permission to begin servicing Pennsylvania rate payers.

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

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

#### **IV. ARGUMENT.**

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

I&E argued in its main brief that Twin Lakes' parent company, Middlesex, is a technically, managerially, and financially capable public utility.<sup>7</sup> Based on this assertion,

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<sup>7</sup> See I&E M.B., pp. 11-16.

I&E concluded that element (3)<sup>8</sup> of Section 529(a) is not met, and that no other capable public utility should be ordered by the Commission to acquire Twin Lakes.<sup>9</sup> Twin Lakes, on the other hand, continued to argue in its main brief that all six elements of Section 529(a) are met<sup>10</sup> and that I&E has improperly looked at Middlesex as part of I&E's Section 529 investigation.<sup>11</sup>

The arguments raised by Twin Lakes in its main brief have already been addressed in I&E's main brief and are incorporated herein by reference as if fully set forth.<sup>12</sup> It is clear that I&E properly considered Middlesex and that the Commission has had jurisdiction over Middlesex, the original 2008 filer and non-resident parent corporation of Twin Lakes, since 2008.<sup>13</sup>

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

To reiterate from I&E's Main Brief,<sup>14</sup> Section 529(a) requires that the six enumerated elements be met in order for the Commission to order a capable public utility to acquire the small water or wastewater company.<sup>15</sup> And, Section 529(c)<sup>16</sup> lists six factors the Commission shall consider during its investigation of whether the six

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<sup>8</sup> 66 Pa. C.S. § 529(a)(3), "... that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future."

<sup>9</sup> See I&E M.B., pp. 12-16.

<sup>10</sup> See Twin Lakes M.B., pp. 28-32 and 39-48.

<sup>11</sup> See Twin Lakes M.B., pp. 32-39.

<sup>12</sup> See I&E M.B., pp. 11-24.

<sup>13</sup> See I&E M.B., pp. 17-24.

<sup>14</sup> See I&E M.B., pp. 11-12.

<sup>15</sup> See 66 Pa. C.S. § 529(a).

<sup>16</sup> 66 Pa. C.S. § 529(c).

enumerated Section 529(a) elements are met. All of the parties appear to agree on the conclusion that elements (1), (2), (4), (5), and (6) are met or can be met. Those elements will be summarily addressed here. However, element (3), upon which there is disagreement, will be addressed *infra*.

Twin Lakes argued in its main brief that elements (1) and (2) of Section 529(a) are met.<sup>17</sup> Interestingly Twin Lakes couched its argument in terms of “Twin Lakes has met the criteria set forth in Sections 529(a)(1) and (2)” as though it is an accomplishment for a public utility to fail to comply with an Order of the Commission or PA DEP.<sup>18</sup> Nevertheless, as stated in its main brief, I&E agrees that Section 529(a) elements (1) and (2) are unfortunately met.<sup>19</sup>

Twin Lakes also argued in its main brief that elements (4), (5) and (6) are met. Regarding element (4), Section 529(a)(4) requires Twin Lakes to consider the five alternatives to acquisition set forth in Section 529(b) and Twin Lakes argued that Twin Lakes considered all of these alternatives and demonstrated that these alternatives are impractical or not economically feasible.<sup>20</sup> I&E has also concluded that element (4) has been met.<sup>21</sup>

Regarding element (5), Section 529(a)(5) requires the identification of an acquiring capable public utility that is financially, managerially and technically capable of acquiring and operating the small water utility in compliance with applicable statutory

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<sup>17</sup> See Twin Lakes Main Brief, pp. 28-32.

<sup>18</sup> Twin Lakes M.B., p. 31.

<sup>19</sup> I&E M.B., p. 12.

<sup>20</sup> See Twin Lakes M.B., pp. 52-45.

<sup>21</sup> I&E M.B., p. 12, *citing* I&E St. No. 2, pp. 19-23.

and regulatory standards; and, Twin Lakes and the OCA have identified Aqua as one such acquiring capable public utility while arguing that element (5) is met.<sup>22</sup> I&E has recognized that Twin Lakes and the OCA have identified Aqua as a potential capable acquiring public utility.<sup>23</sup> I&E has also identified other potential capable acquiring public utilities.<sup>24</sup> And while I&E has recognized that, in general, Aqua would meet the qualifications of a capable public utility, I&E did not recommend that Aqua be ordered to acquire Twin Lakes.<sup>25</sup> In fact, I&E continues to recommend that the Commission deny Twin Lakes' Petition requesting that the Commission order a capable public utility to acquire Twin Lakes.<sup>26</sup> Nevertheless, if the Commission ultimately ordered Aqua to acquire Twin Lakes, then element (5) would be met.<sup>27</sup>

Regarding element (6), Twin Lakes argues Section 529(a)(6) requires that the rates charged by the acquiring capable public utility to its pre-acquisition customers will not increase unreasonably because of the acquisition, concluding that the rates for Aqua's existing customers will not increase unreasonably if Aqua is ordered acquires the Twin Lakes system.<sup>28</sup> And again, I&E recognizes that if Aqua were ordered to acquire the Twin Lakes system, the rates for Aqua's existing customers will not increase unreasonably.<sup>29</sup> If the Commission ultimately ordered Aqua to acquire the Twin Lakes system, then element (6) would be met. Nevertheless, I&E continues to recommend that

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<sup>22</sup> See Twin Lakes M.B., pp. 45-47. See also OCA M.B., pp. 16-17.

<sup>23</sup> I&E St. No. 2, pp. 23-27.

<sup>24</sup> I&E St. No. 2, p. 25.

<sup>25</sup> See I&E St. No. 2-SR, pp. 3-4.

<sup>26</sup> I&E M.B., p. 24.

<sup>27</sup> See I&E M.B., p. 12. See also I&E St. No. 2, p. 27.

<sup>28</sup> See Twin Lakes M.B., pp. 47-48.

<sup>29</sup> See I&E St. No. 2, pp. 27-28.

the Commission deny Twin Lakes' Petition requesting that the Commission order a capable public utility to acquire Twin Lakes.<sup>30</sup>

Having discussed elements (1), (2), (4), (5), and (6); I&E reiterates its assertion that Twin Lakes, by and through Middlesex Water Company, can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future and therefore element (3), is not met.<sup>31</sup> Finally, given that Twin Lakes failed to satisfy all six elements of Section 529(a), no other capable public utility should be ordered by the Commission to acquire Twin Lakes.<sup>32</sup>

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

Twin Lakes argues in its main brief that element (3) is met because Twin Lakes cannot reasonably be expected to provide adequate, efficient, safe and reasonable service and facilities in the future under Section 529(a)(3).<sup>33</sup> Twin Lakes also cites to the factors to be considered by the Commission set forth in Section 529(c) in support of its position.<sup>34</sup> Additionally, Twin Lakes continued its argument that Twin Lakes, not Middlesex, is the correct entity to be evaluated under Section 529(a)(3) and (c)(1).<sup>35</sup>

Twin Lakes has made both of these arguments throughout the litigation process and I&E addressed these arguments at length in its main brief.<sup>36</sup> This section of this

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<sup>30</sup> I&E M.B., p. 24.

<sup>31</sup> See I&E M.B., pp. 12-16.

<sup>32</sup> *Id.*

<sup>33</sup> See Twin Lakes M.B., pp. 32, 39-42.

<sup>34</sup> Twin Lakes M.B., p. 32.

<sup>35</sup> *Id.*

<sup>36</sup> See I&E M.B., pp. 11-24.

reply brief will support I&E's assertion that Twin Lakes, by and through Middlesex, can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. The following section of this reply brief *infra* will support I&E's assertion that the Commission still has jurisdiction over the original 2008 filer Middlesex, and, therefore Middlesex is the proper entity to be evaluated for purposes of Section 529(a)(3) and (c)(1).

In summary, the record in the original 2008 filing regarding the acquisition of the Twin Lakes system at Docket A-2008-2050092 makes it clear the Commission relied on the representations made by Middlesex in the 2008 proceeding, as confirmed in the Commission's 2009 Order,<sup>37</sup> when approving the acquisition of the then-existing Twin Lakes system.<sup>38</sup> The Commission also relied on the representations made by Middlesex when approving Middlesex's request to begin providing water service to the Twin Lakes customers in Pennsylvania.<sup>39</sup> In the Commission's 2009 Order approving the acquisition, the Commission stated:

Middlesex Water Company is a large, public water provider who has the managerial, technical and financial capabilities to safely and adequately operate the subject system and make the badly needed repairs and upgrades. The Commission finds that the granting of the joint application of Middlesex Water Company and Twin Lakes Water Services, LLC for approval of the transfer of ownership of the Twin Lakes water system assets is necessary or proper for the service, accommodation, convenience or safety of the public.<sup>40</sup>

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<sup>37</sup> See 2009 Order, Docket No. A-2008-2050092, Order Entered March 2, 2009.

<sup>38</sup> I&E M.B., pp. 12-13, *citing* 2009 Order, pp. 3-6.

<sup>39</sup> I&E M.B., p. 13, *citing* 2009 Order, p. 6.

<sup>40</sup> *Id.*

And, as I&E established in its testimony and asserted in its main brief, to this day, Middlesex continues to publicize its managerial, technical and financial fitness.<sup>41</sup>

Regarding management and technical capabilities, the Middlesex July 2020 Fact Sheet states “OUR MISSION: To provide service in the water, wastewater and related fields in a safe reliable and efficient manner.”<sup>42</sup> Middlesex has stated:

Since 1897, we’ve built a reputation as an industry leader in providing water and wastewater solutions. This reputation is backed by a solid financial and managerial network that provide the capital investment and institutional knowledge necessary for successful project completion.<sup>43</sup>

Further, Middlesex has stated “through our affiliated companies, we [Middlesex]<sup>44</sup> are delivering technical and management capabilities that creatively address challenges such as aging infrastructure and increasing regulatory pressures faced by municipalities, developers, and small owners.”<sup>45</sup>

Additionally, members of the Board of Directors and senior management of Middlesex are also the officers and directors of Twin Lakes.<sup>46</sup> Vice President of Operations for Middlesex, Robert K. Fullagar, is also the President of Twin Lakes.<sup>47</sup> Mr. Fullagar holds both a professional engineers license and systems operator’s license from

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<sup>41</sup> I&E M.B., p. 13, *citing* I&E St. No. 1, pp. 14-17; I&E St. No. 2, pp. 4-19.

<sup>42</sup> I&E M.B., p. 15, *citing* I&E St. No. 1, p. 17.

<sup>43</sup> I&E M.B., p. 15, *citing* I&E St. No. 2, p. 8.

<sup>44</sup> Middlesex admits that it is Middlesex, and not the affiliates, that is delivering the technical and management capabilities.

<sup>45</sup> I&E M.B., p. 15, *citing* I&E St. No. 2, p. 8.

<sup>46</sup> I&E M.B., p. 15, *citing* I&E St. No. 2, p. 9.

<sup>47</sup> I&E M.B., pp. 15-16, *citing* I&E St. No. 2, p. 9.

New Jersey and Pennsylvania.<sup>48</sup> Further, Mr. Fullagar has 30 years of experience in water and wastewater utility management and related fields.<sup>49</sup>

A. Bruce O’Conner is the Senior Vice President, Treasurer and Chief Financial Officer and full-time employee of Middlesex as well as the part-time Vice President and Treasurer of Twin Lakes.<sup>50</sup> Mr. O’Connor is a Certified Public Accountant with a Masters of Business Administration degree.<sup>51</sup> Mr. O’Connor has been the Senior Vice President, Treasurer and Chief Financial Officer of Middlesex since 1990.<sup>52</sup> Mr. Fullagar and Mr. O’Connor are highly credentialed and capable individuals with the expertise to provide Twin Lakes with the necessary technical and managerial leadership necessary to ensure that Twin Lakes can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.<sup>53</sup>

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

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

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

Twin Lakes argues that the parties in this proceeding have differing conclusions as

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<sup>48</sup> I&E M.B., p. 16, *citing* I&E St. No. 2, pp. 9-10.

<sup>49</sup> *Id.*

<sup>50</sup> I&E M.B., p. 16, *citing* Twin Lakes St. No. 2, p. 1 and App. A.

<sup>51</sup> I&E M.B., p. 16, *citing* Twin Lakes St. No. 2, App. A.

<sup>52</sup> *Id.*

<sup>53</sup> I&E M.B., p. 16.

to what is the correct entity to evaluate under Sections 529(a)(3) and (c)(1).<sup>54</sup>

Additionally, Twin Lakes argues that Twin Lakes has been recognized by the Commission as the jurisdictional utility since the acquisition of the Twin Lakes system in 2009.<sup>55</sup> But, this argument is simply not supported by the record evidence in this proceeding, and is specifically contradicted by statements made by the Commission and the Commission's Secretary's Bureau in the various documents cited in I&E's Main Brief.<sup>56</sup>

To summarize, generally, Pennsylvania law is well settled regarding the exercise of jurisdiction over non-resident corporations.<sup>57</sup> Pennsylvania law provides for the exercise of jurisdiction by Pennsylvania tribunals over foreign corporations by either general or specific jurisdiction.<sup>58</sup> "General jurisdiction" is premised on the foreign corporation's overall contacts or general activity with Pennsylvania and each case is fact specific.<sup>59</sup> Further, Section 5301(a)(2)(iii) of the Pennsylvania Judicial Code permits general jurisdiction over a non-resident corporation if it carries on a continuous and systematic part of its general business within Pennsylvania.<sup>60</sup> Further, for a Pennsylvania tribunal to exercise jurisdiction over a non-resident corporation, due process requires the defendant to have certain minimum contacts with Pennsylvania such that the maintenance

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<sup>54</sup> Twin Lakes M.B., p. 32.

<sup>55</sup> Twin Lakes M.B., p. 34.

<sup>56</sup> See I&E M.B., pp. 17-24.

<sup>57</sup> See I&E M.B. p. 17.

<sup>58</sup> See I&E M.B., p. 17, citing *City of Philadelphia v. Borough of Westville*, 93 A.3d 530, 533 (Pa. Commw. Ct. 2014). See also *Kubik v. Letteri*, 532 Pa. 10, 614 A.2d 1110 (1992).

<sup>59</sup> *Id.*

<sup>60</sup> I&E M.B., p. 17, citing 42 Pa. C.S. § 5301(a)(2)(iii).

of the proceeding does not offend traditional notions of fair play and substantial justice.<sup>61</sup> Also given consideration is whether the nonresident corporation purposefully established minimum contacts with Pennsylvania and purposefully availed itself of the privilege of conducting activities within Pennsylvania and thus invoking the benefits and protections of Pennsylvania's laws and regulations.<sup>62</sup>

“Specific jurisdiction” arises out of the foreign corporation's specific contacts with Pennsylvania as they relate to the controversy at issue and is governed by the Uniform Interstate and International Procedures Act,<sup>63</sup> otherwise known as Pennsylvania's “long-arm statute.”<sup>64</sup> Directly applicable to this proceeding, is the language of 42 Pa. C.S. Section 5322 (a)(9) which states:

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

...

(9) Making application to any government unit for any certificate, license, permit, registration or similar instrument or authorization.<sup>65</sup>

The specific jurisdiction inquiry focuses on the nonresident corporation's course of dealing and particular acts, as well as the known benefits incurred by the contact with the forum state,<sup>66</sup> and whether the foreign corporation purposefully directed its activities at

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<sup>61</sup> I&E M.B., p. 17, *citing Weintraub v. Walt Disney World*, 825 F. Supp. 717 (E.D. Pa. 1993).

<sup>62</sup> *See* I&E M.B., pp. 17-18, *citing Burger King Corporation v. Rudzewicz*, 471 U.S. 462, 105 S. Ct. 2174, 85 L. Ed. 2d 528 (1985).

<sup>63</sup> I&E M.B., p. 18, *citing* 42 Pa. C.S. §§ 5321 to 5329.

<sup>64</sup> I&E M.B., p. 18. *See also* *Washington v. U.S. Suzuki Motor Corp.*, 257 Pa. Super, 482, 390 A.2d 1339 (1978).

<sup>65</sup> I&E M.B., p. 18, *citing* 42 Pa. C.S. § 5322(a)(9) (42 Pa. C.S. § 5301(a) defines “persons” to include foreign corporations).

<sup>66</sup> I&E M.B., pp. 18-19, *citing* 42 Pa. C.S. § 5322(a)(1).

residents of the forum and purposefully availed itself of the privilege of conducting activities within the forum state, thus invoking the benefits and protection of its laws.<sup>67</sup>

As I&E has argued throughout this proceeding, the combined records of this proceeding and the 2008 proceeding contain substantial evidence of Middlesex's numerous and purposeful contacts with Pennsylvania, the Commission, and Pennsylvania ratepayers since 2008 sufficient to support a finding that the Pennsylvania Public Utility Commission has had "specific jurisdiction" over the Middlesex Water Company since 2008.<sup>68</sup>

No other conclusion can be reached when you consider: (1) the 2008 Letter of Intent<sup>69</sup> for the acquisition of the existing Twin Lakes system; (2) the 2008 Joint Application<sup>70</sup> requesting Commission approval of the acquisition of Twin Lakes Water Services LLC; (3) the 2008 Modifications<sup>71</sup> to the 2008 Joint Application; and (4) the Commission's September 22, 2020 Order<sup>72</sup> in this proceeding denying the OCA's request for an interim emergency order appointing a receiver. The Commission stated in its September 22, 2020 Order:

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

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<sup>67</sup> I&E M.B., p. 19, *citing* 42 Pa. C.S. § 5322(a)(1)(i)-(ii).

<sup>68</sup> *See* I&E M.B., pp. 19-24.

<sup>69</sup> *See* 2008 Letter of Intent, dated February 26, 2008, Docket No. A-2008-2050092.

<sup>70</sup> *See Joint Application of Middlesex Water Company (Middlesex) and Twin Lakes Water Services, LLC (Twin Lakes) for approval of: 1) the transfer by sale of Twin Lakes to Middlesex; 2) the right of Middlesex to begin to offer, render, furnish and supply water service to the public in the development of Sagamore Estates, Shohola Township, Pike County; and 3) the abandonment of public water service by Twin Lakes*, Docket No. A-2008-2050092.

<sup>71</sup> *See* 2008 Modifications, dated October 2, 2008, Docket No. A-2008-2050092.

<sup>72</sup> *See* Opinion and Order, Docket No. P-2020-3020914, Order Entered September 22, 2020.

now under evaluation, *nunc pro tunc*, in the Amended Service Agreement Application proceeding, now consolidated with this case.<sup>73</sup>

All of the above is substantial record evidence proving that Middlesex, the original 2008 filer, established minimum, and arguably continuous, contacts with the Pennsylvania; purposefully availed itself of the Commission and Pennsylvania public utility customers; and, transacted business in Pennsylvania. The Commission relied on the representations made by Middlesex in the 2008 Joint Application proceeding and ultimately approved Middlesex's request to acquire the existing Twin Lakes system.<sup>74</sup> The Commission also approved Middlesex's request to begin providing water service to the Twin Lakes customers in Pennsylvania.<sup>75</sup> And, as stated *supra*, in the Commission's 2009 Order approving the acquisition, the Commission stated:

Middlesex Water Company is a large, public water provider who has the managerial, technical and financial capabilities to safely and adequately operate the subject system and make the badly needed repairs and upgrades. The Commission finds that the granting of the joint application of Middlesex Water Company and Twin Lakes Water Services, LLC for approval of the transfer of ownership of the Twin Lakes water system assets is necessary or proper for the service, accommodation, convenience or safety of the public.<sup>76</sup>

Clearly, the Pennsylvania Public Utility Commission has retained specific, and arguably general, jurisdiction over Middlesex since 2008. And, Middlesex is still under

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<sup>73</sup> I&E M.B., pp. 20-21, *citing* September 22 Order, p. 32, fn. 9.

<sup>74</sup> I&E M.B., p. 21. *See generally* 2009 Order.

<sup>75</sup> I&E M.B., p. 21, *citing* 2009 Order, p. 6.

<sup>76</sup> *Id.*

the Commission's jurisdiction for purposes of this proceeding regardless of any attempt by Twin Lakes to make unsupported statements arguing otherwise.<sup>77</sup>

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

It is clear the Commission has had specific jurisdiction over Middlesex as the original 2008 filer, since 2008; it is well settled that a Pennsylvania tribunal may exercise jurisdiction over a parent corporation when the subsidiary is merely the alter ego or agent of the parent.<sup>78</sup> Further, the parent corporation may be subjected to the jurisdiction of the state in which the activities occurred when the wholly owned subsidiary is found to be the agent of the parent when the subsidiary's activities are of such a character as to amount to doing the business of the parent.<sup>79</sup>

In this case, beginning with the original filing in 2008, it was Middlesex that made contact with and purposefully availed itself of the Pennsylvania, the Pennsylvania Public Utility Commission, and the Pennsylvania ratepayers.<sup>80</sup> Further, it was Middlesex that sought the Certificate of Public Convenience and requested permission to begin servicing Pennsylvania rate payers.<sup>81</sup> And, it was Middlesex that pledged to familiarize itself with Pennsylvania's statutes and regulations.<sup>82</sup>

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<sup>77</sup> I&E M.B., p. 21, *citing* Twin Lakes Petition, ¶ 3.

<sup>78</sup> I&E M.B., p. 22, *citing* *Clark v. Matsushita Elec. Indus. Co., Ltd.*, 811 F. Supp. 1061 (M.D. Pa. 1993).

<sup>79</sup> *Id.*, *citing*, *D'Jamous ex rel. Estate of Weingeroff v. Pilatus Aircraft, Ltd.*, 566 F.3d 94 (3d Cir. 2009).

<sup>80</sup> *See* I&E M.B., pp. 17-21.

<sup>81</sup> *Id.*

<sup>82</sup> *Id.*

Additionally, in April of 2009, after the 2008 Letter of Intent, the 2008 Joint Application, and the 2008 Modifications had already been filed with the Commission, Middlesex created a wholly owned Pennsylvania subsidiary to step directly into the shoes of Middlesex as the alter ego of Middlesex in Pennsylvania.<sup>83</sup> It was Middlesex that had already established all of the Pennsylvania contacts and regulatory construct with the Commission.<sup>84</sup> And, it was Middlesex that declared that it created Twin Lakes in Pennsylvania for the sole purpose of conducting business on the Twin Lakes system in Pennsylvania.<sup>85</sup>

Also instructive on this issue, in April of 2011, Middlesex filed a request to effectuate a name change in the Commission's records. The record evidence shows that regardless of this attempt to change the Commission's records, the Commission has always recognized Middlesex as the capable public utility operating the Twin Lakes system. This is evidenced in the May 17, 2011 Secretarial Letter<sup>86</sup> from the Commission's Secretary to Middlesex in response to Middlesex's request to effectuate the name change. The Commission's Secretary stated:

This is in reference to your letter of April 4, 2011, which notified the Commission that Middlesex Water Company (Company) is doing business in the Commonwealth of Pennsylvania under the name of Twin Lakes Utilities, Inc.<sup>87</sup>

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<sup>83</sup> I&E M.B., pp. 22-23, *citing* Section 529 Petition, ¶ 4.

<sup>84</sup> *See* I&E M.B., pp. 17-21.

<sup>85</sup> I&E M.B., p. 23, *citing* Twin Lakes Petition, ¶ 4.

<sup>86</sup> *See* 2011 Secretarial Letter, dated May 17, 2011, Docket No. A-2008-2050092.

<sup>87</sup> 2011 Secretarial Letter, p. 1.

Clearly, the Commission has always recognized Middlesex as the entity that established the initial contacts with the Commission in 2008 and created the regulatory construct with the Commission in order to procure the Certificate of Public Convenience to provide water service to Pennsylvania ratepayers through the Twin Lakes system.

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

**V. CONCLUSION.**

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

Respectfully submitted,



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Date: February 25, 2021

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Reply Brief** dated February 25, 2021, in the manner and upon the persons listed below:

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