

COMMONWEALTH OF PENNSYLVANIA



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February 25, 2021

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
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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

Dear Secretary Chiavetta:

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

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

Respectfully submitted,

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

\*304409

CERTIFICATE OF SERVICE

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

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

Dated this 25<sup>th</sup> day of February 2021.

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BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION

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

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REPLY BRIEF OF THE  
OFFICE OF CONSUMER ADVOCATE

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## **I. INTRODUCTION**

The OCA submits this Reply Brief in response to the Main Briefs filed by the Bureau of Investigation and Enforcement (I&E) and Aqua Pennsylvania (Aqua). As set forth in the OCA's Main Brief, the OCA maintains that all Section 529 requirements are met and a Commission order requiring Aqua to acquire Twin Lakes is the most suitable long-term solution to the problems plaguing the system, including the need for an entire system replacement and the accompanying costs that would be passed onto Twin Lakes' 114 customers. Aqua and I&E argue that one or more of the requirements of Section 529 have not been met and an acquisition is not warranted in this case. The OCA will address portions of these arguments below. The OCA does not waive its opposition on contested issues because it does not repeat arguments here and incorporates by reference the arguments and analysis in its Main Brief.

## **II. SUMMARY OF ARGUMENT**

In its Main Brief, the OCA argued that a Section 529 acquisition was justified because all of the requirements of Section 529 had been met and a takeover would be in the interest of Twin Lakes' customers. A takeover under Section 529 would provide a long-term solution to the problems which continue to face the system, including high water bills, boil water advisories and inadequate communication to customers, and past exceedances of the lead action level.

Assuming, *arguendo*, that I&E and Aqua's arguments are accepted, Twin Lakes' customers would find themselves in the same position they are now: receiving inadequate service and struggling with high water bills due to a system that requires complete replacement. If Middlesex's capabilities are determined to be relevant, there is no guarantee that Middlesex would properly fund the replacements. In fact, history demonstrates the opposite. Even while Twin Lakes was

financially supported by Middlesex, it failed to comply with requirements under the settlement agreements in its 2011 and 2015 rate cases to replace mains and drill and equip a new well. Assuming that Middlesex is ordered or agrees to make the replacements, or Aqua makes the necessary repairs during its receivership, the result is the same: costs that would be too high for Twin Lakes' 114 customers to bear. For these reasons and the reasons below, the OCA submits that the Commission should order Aqua to acquire Twin Lakes.

### **III. REQUIREMENTS OF SECTION 529**

The OCA addressed all of the requirements of Section 529(a) in its Main Brief and incorporates all of those arguments herein by reference.<sup>1</sup> Aqua admits that the requirements of Section 529(a)(1), (2), (5) and (6) are met. Aqua M.B. at 20. I&E and Aqua argue that the requirement of 529(a)(3) (small water utility not reasonably expected to furnish adequate service in the future) is not met, and Aqua further argues that the requirement of section 529(a)(4) (alternatives not practical or economically feasible) is not met. For the reasons below, the OCA submits that I&E and Aqua's arguments should be rejected because all of the requirements under Section 529, including subsections (a)(3) and (a)(4), have been met.

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

Section 529(a)(3) requires "that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future." 66 Pa. C.S. § 529(a)(3). I&E argues that because Middlesex is a capable utility and has been Twin Lakes' sole operational and financial provider, Twin Lakes can reasonably be

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<sup>1</sup> See OCA M.B. at 10-17; 66 Pa. C.S. § 529(a)(1)-(6).

expected to provide adequate, efficient, safe and reasonable service and facilities in the future. I&E M.B. at 12-16.

I&E's position fails to consider that Twin Lakes, even with Middlesex's support, has not been furnishing and maintaining adequate, efficient, safe and reasonable service and facilities since Middlesex acquired the system in 2009. See Pa. P.U.C. et al. v. Twin Lakes Utilities, Inc., Docket No. R-2019-3010958 Opinion and Order (Mar. 26, 2020) (Twin Lakes 2019 Rate Case). Twin Lakes is "at best one or two pipe leaks away from complete financial and operational failure." Twin Lakes M.B. at 39, citing Twin Lakes St. No. 2 at 7-8; Twin Lakes St. No. 1 at 5-6. Twin Lakes' unaccounted for water (UFW) levels are currently nearing 90%. Pa. P.U.C. v. Twin Lakes Utilities, Inc., Docket No. P-2020-3020914, Order at 10 (Jan. 14, 2021) (Material Question Order). It has only one working well that is at increased risk of collapse. Id. at 10. Several boil water advisories (BWAs) have been issued without adequate communication to customers about when service was resumed. OCA Exhs. 6 and 7. Twin Lakes' customers already deal with high water bills and face annual bill amounts of over \$4,000 per customer due to projected costs associated with system replacement. OCA St. 1S at 6. Public input testimony in the 2019 rate case demonstrated that bills this high could force customers out of the Sagamore Estates community, affect the re-sale value of their properties, and delay any real solution to the problem. Twin Lakes 2019 Rate Case. Even if Middlesex agreed to support Twin Lakes or it were found that the Commission had jurisdiction over Middlesex to order it to repair the system, the associated costs would be too high for Twin Lakes' 114 customers to bear as a stand-alone entity.

In agreeing with I&E that Middlesex's capabilities are relevant, Aqua argues that:

[D]ue 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.

Aqua M.B. at 23. However, Twin Lakes properly states that Twin Lakes, not Middlesex, is the correct entity to evaluate under Section 529(a)(3). OCA St. 1S at 3. The OCA submits that the Commission should evaluate the capabilities of Twin Lakes under this requirement, and that even if Middlesex's financial and managerial fitness is relevant, Twin Lakes' customers would simply not be able to afford to pay to replace the system.

B. Alternatives to Acquisition Have Been Considered and Determined to Be Impractical or Not Economically Feasible ((Sections 529(a)(4)) and (b)(1)-(5).

Section 529(a)(4) requires "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." 66 Pa. C.S. § 529(a)(4). Section (b) lists some of those alternatives:

Before the commission may order the acquisition of a small water or sewer utility in accordance with subsection (a), the commission shall discuss with the small water or sewer utility, and shall give such utility a reasonable opportunity to investigate, alternatives to acquisition, including, but 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.

66 Pa. C.S. § 529(b)(1)-(5).

The OCA addressed these alternatives in its Main Brief and incorporates that discussion herein by reference.<sup>2</sup> For the reasons below, the OCA submits that all alternatives discussed by Aqua in its Main Brief have been considered and sufficiently shown by Twin Lakes and the OCA to be impractical or not economically feasible.

Aqua argues that the requirements under section 529(a)(4) have not been met because 1) the installation of private wells is not “legally impossible”; 2) Twin Lakes has failed to demonstrate that accepting the PENNVEST grant is impractical or not economically feasible; 3) the responses to Twin Lakes’ Request for Proposal (RFP) demonstrate that the cause of Twin Lakes’ inability to continue operations is due to Middlesex’s voluntary withdrawal of support; and (4) Aqua has agreed to voluntarily act as receiver of Twin Lakes, so an alternative is already in place. Aqua M.B. at 30-32.

1. The Drilling of Private Wells Is Not a Practical Or Economically Feasible Alternative to Acquisition for All Customers.

Aqua states that “the record evidence does not support a finding that customers are prohibited from installing private wells on their properties.” Aqua M.B. at 28. It points out that Twin Lakes witness Mr. Fullagar stated that certain customers have been able to obtain a waiver of Shohola Township Ordinance No. 59 to install private wells. Id. Simply because some customers have been able to obtain a waiver does not mean all customers will seek and/or be approved for a waiver and this could be for various reasons. President of the Sagamore Estates Homeowners’ Association, Sean Kemether, stated that:

[M]any of these properties are very small in size. They’re less than a quarter acre in size where these homes are, and there simply isn’t enough room on the lots to drill a well that would separate it far enough from either the septic system on that lot or a neighboring lot...a fair percentage of the customer base in Sagamore Estates

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<sup>2</sup> OCA M.B. at 14-6, 19-20.

are of moderate income and means so that the cost of digging a well, the thousands of dollars that that would entail, they simply don't have that money.

Tr. at 53-54. It is not reasonable to assume that drilling wells is a viable option for all of Twin Lakes' customers. Therefore, even if this alternative is not "legally impossible" and some customers may choose to seek a waiver and have the means and opportunity to drill a well, it is clearly not a practical long-term solution for each customer.

2. Twin Lakes Has Demonstrated That Acceptance of the PENNVEST Grant is Not a Practical or Economically Feasible Alternative to Acquisition.

Aqua states that Twin Lakes' claim that acceptance of the PENNVEST grant and loan that it applied for does not constitute a feasible alternative should be rejected. Aqua M.B at 28. Aqua states that Twin Lakes did not accept the PENNVEST funds because of "unfavorable rate relief" by the Commission. Aqua M.B at 28, citing Twin Lakes St. 1 at 8-9. This is incorrect. Twin Lakes stated that a PENNVEST grant could be considered a Contribution in Aid of Construction (CIAC) which is subject to income tax under the Tax Cuts and Jobs Act of 2017, and accepting the grant would result in an income tax liability of \$1.358 million properly recoverable from ratepayers. Material Question Order at 10. As emphasized by the OCA throughout the course of the Twin Lakes proceedings and as noted by the Commission in the 2019 rate case, affordability is a concern for Twin Lakes' customers and accepting these funds would increase monthly bill amounts where customers are already struggling. Twin Lakes has sufficiently demonstrated that accepting the grant would be impractical and not economically feasible for Twin Lakes' customers.

3. The Attempt by Twin Lakes to Obtain a Suitable Operator Through the RFP Must Be Considered in the Commission's Evaluation of Alternatives.

Regarding the RFP, Aqua argues that Twin Lakes' attempt to find another operator of Twin Lakes via the RFP "should not be given any weight where the RFP itself was necessitated by Middlesex's voluntary decision." Aqua M.B. at 30. Whether necessitated by a voluntary decision or otherwise, Twin Lakes appropriately attempted to find a new operator for its system in accordance with Section 529(a)(4) and (b)(2) when Middlesex notified it of its decision to withdraw support to Twin Lakes. It is unclear why Aqua argues that Twin Lakes' attempt to find a suitable operator should not be given weight because Twin Lakes' need for such operator is predicated upon Middlesex's decision to cease providing support. Section 529(a)(4) only requires that alternatives, including entering into a contract with another utility, be considered. Therefore, Aqua's argument should be rejected.

4. Aqua's Argument That An Alternative to Acquisition is Already in Place Because it is Voluntarily Acting As Receiver is Without Merit.

Aqua argues that the requirement of Section 529(a)(4) is not met because it has already voluntarily agreed to act as receiver of Twin Lakes and thus, an alternative is already in place. Aqua M.B. at 30-32. This argument is misapplied. Receivership is not meant to be a long-term solution to a failing system, rather, a temporary fix until a permanent owner is established. Even if Aqua makes the necessary repairs as receiver, Twin Lakes' customers would be in the same position of having to bear those costs which would result in an unreasonable level of rates that they simply could not afford. Therefore, Aqua's argument should be rejected.

5. Twin Lakes and Aqua Pennsylvania, Inc. Should Enter Into An Agreement to Determine a Reasonable Acquisition Price Pursuant to Section 529(e).

Section 529(e) requires that the small water or sewer utility and the acquiring capable public utility enter into an agreement for a purchase price subject to the Commission's determination that the price is reasonable. 66 Pa. C.S. § 529(e). Aqua stated that it has not yet made an agreement with Twin Lakes but that such agreement must recognize both (a) the condition of the system and (b) the improvements that Aqua would be required to make so that it could provide reasonable and adequate service. Aqua M.B. at 37.

The OCA is in agreement that Twin Lakes and Aqua should negotiate a reasonable purchase price which considers the condition of the system and the necessary improvements. Twin Lakes witnesses Mr. Fullagar and Mr. O'Connor testified that the purchase price agreed to between Middlesex and the acquiring utility would be negotiated in good faith. Tr. 227 and 238. Aqua has completed its due diligence on the system and has the information necessary to pursue an arm's length negotiation at this time. Therefore, the OCA submits that Twin Lakes and Aqua should begin their attempts to determine a reasonable purchase price pursuant to Section 529(e).

#### IV. CONCLUSION

WHEREFORE, the Office of Consumer Advocate respectfully requests that the Pennsylvania Public Utility Commission grant 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 and order Aqua Pennsylvania, Inc. to acquire Twin Lakes.

Respectfully Submitted,

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