

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Petition of Twin Lakes Utilities, Inc. for a	:	
Commission Order Authorizing the Acquisition of	:	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	:	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	:	G-2020-3021018
Lakes Utilities, Inc. and Middlesex Water	:	G-2020-3021021
Company	:	G-2020-3021024

RECOMMENDED DECISION

Before
Joel H. Cheskis
Deputy Chief Administrative Law Judge

TABLE OF CONTENTS

	PAGE
I. INTRODUCTION.....	.1
II. HISTORY OF THE PROCEEDING.....	.1
III. FINDINGS OF FACT.....	.7
IV. DISCUSSION.....	22
A. LEGAL STANDARD.....	22
B. DESCRIPTION OF THE COMPANY AND RATE HISTORY	26
C. JURISDICTION	27
1. Position of the parties.....	27
2. Disposition	30
D. 529 CRITERIA.....	33
1. Violations of Statutory or Regulatory Standards	33
2. Compliance with any order regarding safety, adequacy, efficiency or reasonableness of service.....	34
3. Expectation to furnish and maintain adequate, efficient, safe and reasonable service.....	36
4. Alternatives to acquisition.....	42
5. Capabilities of acquiring capable public utility	48
6. Rates charged by acquiring capable public utility.....	49
E. ADDITIONAL ISSUES.....	51
1. Unsecured Promissory Notes and Service Agreement Amendments.....	52
2. Negotiating a price and conditioning any acquisition.....	54
3. Separate tariffs, plan for improvement, limitations on liability and limitation on enforcement actions.....	60
F. CONCLUSION.....	61
V. CONCLUSIONS OF LAW.....	65
VI. ORDER.....	70

I. INTRODUCTION

This decision recommends that a petition filed by a small water utility seeking an order from the Commission directing a capable water utility to acquire the small water utility because all of the necessary statutory requirements have been met be granted. In particular, this decision finds that the small water utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future and that the alternatives to acquisition have been considered and determined to be impractical or not economically feasible. However, the decision is conditioned upon the parent company of the small water utility placing into escrow \$1,675,000 to be used to offset the costs of replacing and remediating the existing infrastructure. This decision also recommends the approval of three outstanding unsecured revolving promissory notes and denial as moot of amendments to the operational service agreement between the small water utility and its corporate parent.

II. HISTORY OF THE PROCEEDING

On July 16, 2020, Twin Lakes Utilities, Inc. (Twin Lakes) filed with the Pennsylvania Public Utility Commission (Commission) a petition for a Commission Order authorizing the acquisition of Twin Lakes pursuant to 66 Pa.C.S. § 529 by a capable utility as that term is defined by statute. Twin Lakes stated that it is a wholly owned subsidiary of Middlesex Water Company (Middlesex), a New Jersey Corporation. Middlesex provided operations support to Twin Lakes through a Service Agreement dated December 1, 2009. On June 1, 2020, Middlesex issued a letter notice of termination of the Service Agreement advising that the termination would become effective on September 1, 2020. Due to the fact that Middlesex would no longer provide operations support to Twin Lakes as of September 1, 2020, Twin Lakes requested that the Commission grant its requested relief at either its August 6, 2020 or August 27, 2020 Public Meeting.

In light of Twin Lakes' request for expedited treatment of the petition, an informal, off-the-record conference call was held on July 22, 2020 with interested parties and the presiding officer. In addition, by Hearing Notice dated July 23, 2020, the Commission scheduled

an Initial Call-in Telephonic Pre-Hearing Conference for this matter for Monday, July 27, 2020 at 2:00 p.m. and formally assigned me as the presiding officer. The prehearing conference convened on July 27, 2020, as scheduled. John Gallagher, Esquire, appeared on behalf of Twin Lakes; Christine Hoover, Esquire, appeared on behalf of the Office of Consumer Advocate (OCA); Scott Granger, Esquire, appeared on behalf of the Commission's Bureau of Investigation and Enforcement (I&E); and Eric Bartolacci, was present on behalf of the Department of Environmental Protection (DEP).

A lengthy discussion was held regarding how to accommodate Twin Lakes' request in its petition for the Commission to act in this matter at either its August 6, 2020 or August 27, 2020 Public Meeting in light of the assertion in the petition that Middlesex will no longer provide operations support to Twin Lakes after September 1, 2020. A scheduling order was issued on July 28, 2020 setting forth a litigation schedule and the parties were reminded that Commission policy promotes settlements.

On August 18, 2020, the OCA filed a petition for issuance of an interim emergency order on an expedited basis. In the petition, the OCA argued that the Commission should appoint a receiver pursuant to Section 529 if Twin Lakes is unable to secure a new system operator by the September 1, 2020 deadline. The OCA noted that Twin Lakes has an ongoing obligation pursuant to its certificate of public convenience to provide service to its customers until the resolution of the Section 529 proceeding or the Commission otherwise approves an abandonment of service. Due to the imminent cessation of water service by Twin Lakes, the OCA requested that a receiver be appointed to ensure that Twin Lakes' customers continue to receive water service and to ensure that Twin Lakes does not cease providing water service to its customers on September 1, 2020. The OCA requested expedited treatment of its petition for issuance of an interim emergency order to permit the receiver to have time to work with Twin Lakes before the September 1, 2020 deadline.

In addition, on August 19, 2020, I&E filed a petition for interlocutory review and order regarding the scheduling order issued on July 28, 2020. In its petition, I&E asked the Commission to answer: Should the Commission permit a certificated small water or wastewater

public utility to proceed by its own petition pursuant to 66 Pa.C.S. § 529 of the Public Utility Code. I&E's suggested answer was "no."

On August 28, 2020, an order denying the OCA's petition for emergency order was issued. The order directed Twin Lakes to continue to provide service to its customers consistent with its certificate of public convenience until given an opportunity to abandon service by the Commission. The order also certified a material question to the Commission regarding whether the Commission should order Aqua Pennsylvania, Inc. (Aqua) to act as a receiver to operate Twin Lakes until the resolution of Twin Lakes' petition filed July 16, 2020 is resolved.

On September 1, 2020, Twin Lakes filed an application for Commission approval, *nunc pro tunc*, of the First Amendment to the service agreement between Middlesex and Twin Lakes under its affiliated interest agreement application filing at docket number G-2020-3020941. The amended agreement provides that the duration of the original service agreement shall be extended until October 1, 2020. This amendment was further extended for an additional month by subsequent filings.

On September 17, 2020, the Commission entered an Opinion and Order answering I&E's question of whether the Commission should permit a certificated small water or wastewater public utility to proceed by its own petition pursuant to Section 529 of the Public Utility Code. In doing so, the Commission instituted a Section 529 investigation to determine whether it should order a capable public utility to acquire Twin Lakes consistent with the Order. The Commission also directed I&E to participate in the investigation and returned the matter to the Office of Administrative Law Judge for further proceedings as may be necessary. The Commission provided additional insight as to the conduct of the proceeding.

By Opinion and Order entered September 22, 2020, the Commission affirmed the denial of the OCA's August 18, 2020 petition for issuance of an emergency order and prohibited Twin Lakes from terminating water utility service pursuant to its Commission approved certificate of public convenience until otherwise directed by the Commission. The Order entered September 22, 2020 also directed that Aqua conduct its due diligence and a reasonable

investigation within 90 days as to whether it will voluntarily act as a receiver of the Twin Lakes water system and inform the Commission as to whether it will do so. The Order also consolidated Twin Lakes' applications for approval, *nunc pro tunc*, of the service agreement filed September 1, 2020. The Commission acknowledged that there are three other recently filed petitions for approval of affiliated service agreements between Twin Lakes and Middlesex regarding unsecured revolving promissory notes. The Commission declined to consolidate those additional proceedings but deferred to the parties and the presiding officer if those proceedings should be consolidated with the Section 529 proceeding.

In light of the Commission Orders dated September 17, 2020 and September 22, 2020, a further prehearing conference was held on October 2, 2020. In attendance were Christine Hoover, Esquire, on behalf of the OCA; Scott Granger, Esquire, on behalf of I&E; Alexander Stahl, Esquire, and Michael Hassell, Esquire, on behalf of Aqua; Jay Kooper, Esquire on behalf of Twin Lakes; and Sean Kemether from the Sagamore Estates Property Owners Association. The parties discussed petitions to intervene, consolidation of necessary dockets, discovery modifications, further litigation of this matter in light of the Commission's Orders entered on September 17, 2020 and September 22, 2020 and the passage of the deadline for petitions to intervene of October 1, 2020. A third scheduling order was issued on October 5, 2020 memorializing the matters agreed to during the further prehearing conference held on October 2, 2020 and formally consolidating the petitions regarding the unsecured revolving promissory notes.

The parties submitted the following pre-served written testimony and accompanying attachments pursuant to the litigation schedule:

Twin Lakes

Statement No. 1 – Direct Testimony of Robert K. Fullagar

Statement No. 2 – Direct Testimony of Bruce O'Connor

Statement No. 2-R – Rebuttal Testimony of Bruce O'Connor

Statement No. 2-SR – Surrebutal Testimony of Bruce O'Connor

I&E

Statement 1 – Direct Testimony of Esyan Sakaya

Statement 1-SR – Surrebuttal Testimony of Esyan Sakaya

Statement 2 – Direct Testimony of Christopher Keller

Statement 2-SR – Surrebuttal Testimony of Christopher Keller

OCA

Statement 1 – Direct Testimony of Morgan DeAngelo

Statement 1-S – Surrebuttal Testimony of Morgan DeAngelo

Statement 2 – Direct Testimony of Terry Fought

Statement 2-S – Surrebuttal Testimony of Terry Fought

Aqua

Statement 1 – Direct Testimony of Stephen Clark

Statement 1-R – Rebuttal Testimony of Stephen Clark

Statement 2-R – Rebuttal Testimony of William Packer

Statement 2-SR – Surrebuttal Testimony of William Packer

In addition, during this time, Aqua submitted status reports regarding its due diligence efforts and investigation and Twin Lakes filed additional amendments to its affiliated interest agreements.

On December 16, 2020, Aqua submitted a letter pursuant to the Commission's Order entered in this proceeding on September 22, 2020 indicating that it will voluntarily act as receiver of Twin Lakes effective January 4, 2021 until resolution of the Section 529 proceeding. Aqua requested a Commission order appointing Aqua as receiver and specifying Aqua's duties and responsibilities as receiver. In response to the letter, an off-the-record conference call was held with the presiding officer and the parties to discuss the method and timing of obtaining an

appropriate Commission order that would appoint Aqua as receiver of Twin Lakes, as Aqua requested.

On December 22, 2020, Aqua submitted a second letter wherein Aqua indicated that it would begin acting as receiver on January 15, 2021, instead of January 4, 2021, in order to allow the Commission to act on this request at its January 14, 2021 Public Meeting. Aqua also attached to its letter a proposed Order Appointing Receiver which is a proposed form of order that appoints Aqua receiver as of January 15, 2021 and specifies Aqua's duties and responsibilities as receiver. Aqua noted that neither I&E, OCA nor Twin Lakes object to the proposed Order Appointing Receiver.

An order certifying material question was issued on December 30, 2020 to address the following question:

Whether the Commission should adopt the offer of Aqua Pennsylvania, Inc. to voluntarily act as a receiver of the Twin Lakes Utilities, Inc. water system effective January 15, 2021 with the duties and responsibilities as set forth in Aqua Pennsylvania, Inc.'s letters to the Commission dated December 16, 2020 and December 22, 2020, including the unopposed proposed Order Appointing Receiver attached to the December 22, 2020 letter.

Suggested Answer: yes.

This order certifying material question was submitted pursuant to Section 5.305 of the Commission's regulations. 52 Pa.Code § 5.305.

On January 5, 2021, a hearing was held on the Twin Lakes petition as directed by the Commission's September 17, 2020 order. Jay Kooper, Esquire and Lauren Burge, Esquire appeared on behalf of Twin Lakes; Christine Hoover, Esquire and Lauren Guerra, Esquire appeared on behalf of the OCA; Scott Granger, Esquire appeared on behalf of I&E; and Garrett Lent, Esquire, Alex Stahl, Esquire and Kim Joyce, Esquire, appeared on behalf of Aqua. Witnesses were subject to cross examination and pre-served testimony and accompanying attachments were admitted into the record. A briefing order was issued on January 5, 2021

memorializing the briefing schedule agreed upon by the parties and addressing additional procedural issues regarding briefs.

On January 14, 2021, in response to the order certifying material question issued on December 30, 2020, the Commission issued an order approving the appointment of Aqua as the receiver of Twin Lakes effective January 15, 2021 while the Section 529 proceeding was pending. Aqua assumed receivership of Twin Lakes on January 15, 2021.

Twin Lakes, Aqua, I&E and the OCA each submitted main briefs on February 5, 2021 and reply briefs were filed on February 25, 2021 pursuant to the agreed upon schedule.

The record in this case closed on February 25, 2021 when the reply briefs were filed. Twin Lakes' petition filed on July 16, 2020 is ready for disposition. For the reasons discussed below, the petition will be recommended for approval subject to the condition that Middlesex place into escrow \$1,675,000 to be used to offset the costs of replacing and remediating the existing infrastructure. As a result, it will be recommended that Twin Lakes and Aqua be directed to commence arms-length negotiations for a purchase price for the Commission's approval. This decision also recommends approval of three outstanding unsecured revolving promissory notes and denial as moot amendments to the operational service agreement.

III. FINDINGS OF FACT

1. The petitioner in this case is Twin Lakes Utilities, Inc.
2. Twin Lakes is a public utility corporation organized and existing under the laws of the Commonwealth of Pennsylvania. Twin Lakes Petition at ¶ 1; Twin Lakes St. 2-R at 3.
3. Twin Lakes is a wholly owned subsidiary of Middlesex Water Company, a New Jersey corporation. Twin Lakes St. 2-R at 3.

4. The Twin Lakes system provides water service to the community known as Sagamore Estates located in Shohola Township, Pike County, Pennsylvania. Twin Lakes St. 2 at 1.

5. On February 26, 2008, the Middlesex Water Company filed a Letter of Intent with the Commission requesting Commission approval to acquire the existing Twin Lakes system. 2008 Letter of Intent dated February 26, 2008, Docket No. A-2008-2050092.

6. Twin Lakes presently serves approximately 114 customers, and the system is comprised of one functional well (Well #2), one non-functional well (Well #1), a small treatment/pumping station including an atmospheric 20,000 gallon storage tank integral to the station, approximately 3.7 miles of water main of various diameter, and approximately 120 active and inactive service connections combined. Twin Lakes St. 1 at 1; Aqua St 1 at 9-10.

7. Prior to the acquisition of the Twin Lakes water system by Twin Lakes Utilities, Inc., the system was beset by longstanding service deficiencies, subject to frequent boil water advisories issued by the Pennsylvania Department of Environmental Protection (“PA DEP”), and water service was frequently suspended due to numerous operational problems. Twin Lakes St. 2 at 1-2; *see also*, I&E St 1 at 7-9.

8. Soon after Twin Lakes began operating the system in November 2009, it became apparent that the condition of the water system was significantly poorer than had been represented by the former owner or had been visible from the inspection and assessment that was part of the operational due diligence work performed prior to the purchase. Twin Lakes St. 2 at 2.

9. As a condition of its approval of the acquisition of the system, the Commission required the installation of water meters for all customers. Twin Lakes St. 2 at 2.

10. After water meters were installed and an annual meter reading database was established, Twin Lakes was able to calculate a non-revenue, or unaccounted-for, water

usage percentage which was previously unknown by the former owner, the Commission or any other regulatory body, and which revealed a significant amount of leakage within the water distribution system. Twin Lakes St. 2 at 2.

11. Twin Lakes' sole source of equity capital, debt financing and primary operations support has been Middlesex. Twin Lakes Petition at ¶ 9; Twin Lakes St. 1 at 9-10; Tr. 107, 236.

12. Twin Lakes has been unable to establish a credit arrangement at any reasonable cost with any financial institution as a stand-alone entity due to Twin Lakes' inability to demonstrate that it had the net income and cash flow to adequately support its financial obligations incurred in operating the Twin Lakes water system. Twin Lakes Petition at ¶ 9; Twin Lakes St. 1 at 9-10; Twin Lakes St. 2 at 7.

13. Since 2009, Middlesex has extended financial credit to Twin Lakes through three outstanding Unsecured Revolving Promissory Notes, the first executed in January 2016, the second executed on October 18, 2019, and the third executed on October 29, 2019. Twin Lakes Petition at ¶ 10.

14. The three Promissory Notes provide Middlesex with the right as Lender to demand payment from Twin Lakes as Borrower of the total amount due on the Notes together with any unpaid interest accruing at the rate of 7.0% per annum. Twin Lakes Petition at ¶ 10.

15. Middlesex provided operational support to Twin Lakes through a Service Agreement executed between Middlesex and Twin Lakes dated December 1, 2009. Twin Lakes Petition at ¶ 12.

16. Per the Service Agreement, either party could terminate the Agreement by giving the other party 90 days advance written notice. Twin Lakes Petition at ¶ 12.

17. In 2011, Twin Lakes' management and Aqua America engaged in a discussion regarding the acquisition of the water system by Aqua, which was ultimately unsuccessful. Twin Lakes St. 2 at 4.

18. After discussions occurred in 2011, Twin Lakes officials contacted Aqua officials over the next four years in an attempt to restart the acquisition dialogue without success. Twin Lakes St. 2 at 4.

19. In approximately 2013, a discussion was held between Twin Lakes management and a representative of American Water Works Company (American), the parent company of Pennsylvania-American Water Company, regarding acquiring Twin Lakes, but American was not interested in performing due diligence or pursuing a transaction. Twin Lakes St. 2 at 4.

20. In April 2015, Twin Lakes senior executives travelled to Harrisburg to meet with the then Chairman of the Commission to request assistance in identifying a system take-over solution that would mitigate the inevitable need for Twin Lakes to petition the Commission for another triple-digit increase in base rates for the residents of the Sagamore Estates community. There were no remedies identified other than to seek an increase in base rates. Twin Lakes St. 2 at 5.

21. In August 2017, a senior Twin Lakes officer met with the Pennsylvania Office of Consumer Advocate to disclose the ongoing Twin Lakes system failure risk due to the loss of the back up well supply and the inability to procure a new well site, and to request assistance in identifying a system take-over solution. Twin Lakes St. 2 at 5.

22. In late 2017, senior Twin Lakes officials held informal conversations regarding acquisition with senior executives of Aqua and American which failed to produce a successful outcome. Twin Lakes St. 2 at 5.

23. In November 2017, senior Twin Lakes officials met with Commission Staff to provide an update on the ongoing system failure risk due to the loss of the back up well supply, and to request assistance in identifying a system take-over solution that would mitigate the risk of losing the only source of supply serving the residents of the Sagamore Estates community as well as the need for another significant increase in base rates. Twin Lakes St. 2 at 5-6.

24. On February 26, 2018, Twin Lakes issued a letter to the Commission's Bureau of Technical Utility Services and the Bureau of Investigation and Enforcement, the Acting Consumer Advocate, and the Small Business Advocate informing them of the emergent need to undertake system improvements that would result in increasing Twin Lakes customers' annual water bills to over \$4,000. The letter stated that, given this need and the size of the bill increase to Twin Lakes customers, the Company had three options on how it could practically proceed: (1) file a petition for abandonment of the Twin Lakes system franchise; (2) file for emergency rate relief; or (3) identify a larger investor-owned water utility better positioned to make these necessary improvements to the Twin Lakes system. Twin Lakes St. 2 at 5-6.

25. On October 23, 2018, Twin Lakes filed a Petition For Abandonment with the Commission at Docket No. A-2018-3005590. Twin Lakes St. 2 at 6.

26. On October 25, 2018, the Commission rejected Twin Lakes' Petition For Abandonment. Twin Lakes St. 2 at 6.

27. On August 7, 2019, Twin Lakes submitted an application to PENNVEST to finance the five-year capital improvement plan submitted in Twin Lakes' prior rate cases. Twin Lakes St. 1 at 8.

28. On January 29, 2020, Twin Lakes was notified that PENNVEST had approved a grant of \$4.66 million. Twin Lakes St. 1 at 8.

29. An award of a PENNVEST grant of \$4.66 million would carry with it an income tax liability of \$1.358 million. Twin Lakes St. 1 at 8.

30. In November 2019, senior Twin Lakes officials began a dialogue with Utilities, Inc. Shortly thereafter, Utilities, Inc. performed operational and financial due diligence on the water system but did not move forward to pursue a transaction. Twin Lakes St. 2 at 6.

31. Twin Lakes considered interconnecting with the nearest public-community system of Milford Township, but this alternative was not deemed viable as a Twin Lakes interconnection with the Milford Township system would require a 5- to 6-mile long excavation in State Route 6 accompanied by the construction of booster pumping stations along this route due to the mountainous terrain. Twin Lakes St. 1 at 7; Aqua St. 1-R at 8.

32. Twin Lakes considered the installation of private wells for each customer. This alternative was deemed impractical as Shohola Township Ordinance No. 59 prohibits such private well installations due to the potential for private wells to be contaminated by adjacent subsurface sanitary sewer disposal systems, and many of the lot sizes in the Sagamore Estates community did not allow for adequate clearance between the septic system and a well under Pennsylvania regulation. Twin Lakes St. 1 at 7-8; Twin Lakes St. 2 at 4-5.

33. Certain Twin Lakes customers have been able to obtain a waiver of Shohola Township Ordinance No. 59 to install private wells. Twin Lakes St. 1 at 3, 7.

34. On May 28, 2020, Middlesex issued a letter to Twin Lakes demanding immediate payment of the total amounts due on the three outstanding Unsecured Revolving Promissory Notes between Middlesex, as Lender, and Twin Lakes, as Borrower. Twin Lakes Petition at ¶ 21, Appendix G.

35. On May 29, 2020, Twin Lakes issued a response letter to Middlesex stating that it was unable to meet Middlesex's payment demand requirements and did not expect

to have the ability to satisfy any repayment of the three outstanding Notes. Twin Lakes Petition at ¶ 22, Appendix H.

36. Middlesex ceased financial support of Twin Lakes effective May 28, 2020, the date Middlesex tendered its demand for payment on the three outstanding promissory notes. Twin Lakes Petition at ¶ 23; Twin Lakes St. 2-R at 8.

37. On June 1, 2020, Middlesex issued a letter notice of termination of the Service Agreement between Middlesex and Twin Lakes, advising that pursuant to Section 1 of the Service Agreement, the termination would become effective on September 1, 2020. Twin Lakes Petition at ¶ 24, Appendix I.

38. On July 14, 2020, Twin Lakes issued a Request For Proposals (“RFP”) for the provision of contract operations, maintenance and management services for the Twin Lakes system. One proposal was submitted in response to the RFP, which did not provide the necessary services; therefore, it was deemed inadequate. Twin Lakes St. 1 at 9.

39. On July 16, 2020, Twin Lakes filed a petition with the Commission requesting that the Commission issue an order authorizing the acquisition of Twin Lakes pursuant to 66 Pa. C.S. Section 529 by a capable public utility. Twin Lakes Petition, p. 1.

40. On January 15, 2021, Aqua assumed receivership of the Twin Lakes system.

41. Currently, the Twin Lakes system’s sole source of financial and operational support is through its receivership under Aqua, given that Middlesex terminated its financial support of Twin Lakes effective May 28, 2020. Twin Lakes Petition at ¶ 23; Twin Lakes St. 2-R at 8.

42. Middlesex’s operational support of Twin Lakes terminated effective January 15, 2021, which was the expiration date of the Service Agreement voluntarily extended

by Middlesex, as it was last amended. *Application of Twin Lakes Utilities, Inc. For Commission Approval, Nunc Pro Tunc, of Fifth Amendment To The Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc. Pursuant To 66 Pa. C.S. §2102*, Docket No. G-2020-3020941, Application of Twin Lakes Utilities, Inc. (Dec. 31, 2020), at 2, Appendix A (Fifth Amendment To The Service Agreement Between Middlesex Water Company and Twin Lakes Utilities, Inc., dated Dec. 31, 2020) at ¶ 1.

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

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

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

46. The system’s excessive leakage rate causes the single remaining operating well to consistently over-pump, which in turn stresses the well to the point where its operational viability is at risk. Twin Lakes St. 1 at 2.

47. Over-pumping was a contributing factor in the collapse of Well #1, which rendered it non-usable. Consequently, this condition has increased the stress on Well #2, the only remaining well serving Twin Lakes customers. Twin Lakes St. 1 at 2.

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

49. Due to lead action level exceedances incurred in 2019, treatment upgrades including pH adjustment and corrosion control may be necessary. The existing functional well is not operationally capable of accommodating these treatment upgrades. Twin Lakes St. 1 at 2.

50. The improvements needed to address Twin Lakes' operational challenges and resiliency risks are estimated to cost \$4.8 million and are comprised of the following: (1) completion of the Well #1 replacement project including permitting, construction of facilities associated with treatment, pumping, storage, controls, emergency standby power and connection of supply piping to the distribution system; (2) replacement of the entire distribution system including mains, valves, services and elimination of dead-ends; and (3) rehabilitation of the entire Well #2 facility including design, permitting and construction of treatment, pumping, storage, associated controls and emergency standby power. Twin Lakes St. 1 at 4.

51. Twin Lakes developed a five-year capital improvement plan to address the operational and resiliency challenges, which Twin Lakes agreed to implement as part of the Joint Petition For Settlement filed in Twin Lakes' 2015 rate case. Twin Lakes St. 1 at 6.

52. Twin Lakes submitted a five-year capital improvement plan in its 2019 rate case. Twin Lakes St. 1 at 6.

53. The five-year capital improvement plans were partially implemented. Twin Lakes St. 1 at 7.

54. The improvements in the five-year capital improvement plans are necessary in order to provide safe and adequate service to Twin Lakes' customers now and in the future. Twin Lakes St. 1 at 4.

55. OCA witness Terry Fought confirmed the high UFW loss situation in the Twin Lakes system, testifying that Twin Lakes calculated its UFW for 2019 to be 85%, and 89.6% for the first three quarters of 2020 based on metered water and water production. OCA St. 2 at 4-5.

56. Absent outside financial and operational support from Middlesex, Twin Lakes is at best one or two pipe leaks away from complete financial and operational failure. Twin Lakes St. 2 at 7-8; Twin Lakes St. 1 at 5-6.

57. Aqua is financially and managerially capable of acquiring and operating Twin Lakes in compliance with applicable statutory standards. OCA St. 1 at 4; Twin Lakes St. 2-R at 11; Aqua St. 1-R at 15; I&E St. 2 at 27; Aqua St. 1 at 16; I&E St. 1 at 26-27.

58. Aqua would be able to better manage operational expenses and to make the necessary capital expenditures as part of its management and operation of the Twin Lakes system and to resolve the current system issues. OCA St. 1 at 4.

59. Aqua has a large Pennsylvania customer base over which it can spread prudently incurred costs to manage and operate the Twin Lakes system with a miniscule impact on any individual customer's bill. Twin Lakes St. 2-R at 10-11; OCA St. 1 at 5; I&E St. 2 at 27-28; Aqua St. 2-R at 9.

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

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

62. The Twin Lakes system has been, since 2016, cited nine times with contamination violations by PA DEP. I&E St. 1 at -9.

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

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

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

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

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

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

69. Aqua previously chose not to pursue an acquisition due to the poor condition of the system, the investment required to remediate the system, and because Aqua did not deem it to be a viable acquisition opportunity such that it was not in the best interests of its existing customers to acquire the system. Aqua St. 1-R at 10-11.

70. No other utility is interested in this system out of their own business interests. Aqua St. 1-SR at 2.

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

72. Capital expenditures would include replacement of the distribution system, construction of a water storage tank, rehabilitation or replacement of the existing wells, installation of new customer meters, and a rebuild of the well station. Aqua St. 1 at 10.

73. Based upon its review of the system, and the information provided by Twin Lakes in its PENNVEST application, Aqua estimated that these improvements will cost at least approximately \$4.6 million. Aqua St. 1 at 16.

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

75. Twin Lakes has a customer base of 114, as compared to Aqua's approximately 443,000 water service customers. I&E St. 1 at 27-28; *see also*, OCA St. 1 at 4-5.

76. If available, Aqua plans to use a low-cost financing option via a PENNVEST grant/loan to finance the acquisition and remediation of the Twin Lakes system. OCA St. 1 at 5.

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

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

79. Middlesex Water Company is a large, public water provider who has the managerial, technical and financial capabilities to safely and adequately operate the subject system and make badly needed repairs and upgrades. I&E St. 2 at 6.

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

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

82. Middlesex provided all customer service functions to Twin Lakes and its customers. Tr. 107.

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

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

85. Middlesex owns stock in Twin Lakes. Tr. 236.

86. Middlesex has a controlling interest in Twin Lakes. Tr. 236.

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

88. Without Middlesex’s support, Twin Lakes in the past could not, and in the future will not, be able to provide water service. Tr. 226.

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

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

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

92. Aqua advised the Commission that it had completed its due diligence and was willing to voluntarily act as receiver of the Twin Lakes system “during the pendency of the

529 Proceeding and until the Commission authorizes a sale to a willing buyer.” Aqua St. 1-R at 17-18.

93. Middlesex ultimately controls Twin Lakes. Tr. 236.

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

95. Middlesex is the entity that would negotiate an agreement to acquire the system and, ultimately, be paid for such acquisition. Tr. 227.

96. In its Section 529 Petition, Twin Lakes sets forth the history of its ownership by the Middlesex Water Company including a reference to Docket No. A-2008-2050092 regarding the acquisition of the Twin Lakes water system. Twin Lakes Petition, pp. 2-3.

97. The 2008 Letter of Intent requested the Commission issue a Certificate of Public Convenience to Middlesex as a water supplier in Pennsylvania. 2008 Letter of Intent, Section I, Purpose.

98. The Middlesex Water Company was incorporated as a water utility in 1897. I&E St. 1, p. 16.

99. Middlesex has about 350 employees and the Middlesex family of companies serves about 500,000 customers. I&E St. 1, p. 16.

100. Middlesex reported a net income of \$32.5 million in 2018 and \$33.9 million in 2019; and, reported cash dividends per share of \$0.967 in 2018 and \$0.9111 in 2019. I&E St. 1, pp. 16-17.

101. In its Form 10-K, Middlesex reported operating revenues for the year ending December 31, 2019 of \$134.6 million and a net income of \$33.9 million. I&E St. 2, p. 10.

102. In its Form 10-K, Middlesex's Management Discussion and Analysis of Financial Condition in the Capital Construction Program section, Middlesex stated that it "plans to invest approximately \$124 million in 2020 in its multiyear capital construction program." I&E St. 2, pp. 10-11.

103. Middlesex has the financial resources available to make the capital improvements necessary to provide safe and adequate service to the Twin Lakes ratepayers. I&E St. 2, p. 11.

104. Vice President of Operations for Middlesex, Robert K Fullagar, is also the President of Twin Lakes. I&E St. 2, p. 9.

105. Robert K Fullagar holds both a professional engineers license and systems operator license from New Jersey and Pennsylvania. I&E St. 2, pp. 9-10.

106. Robert K Fullagar has 30 years of experience in water and wastewater utility management, systems operations, infrastructure improvement and capital program implementation. I&E St. 2, pp. 9-10.

107. A. Bruce O'Connor is the Senior Vice President, Treasurer, and Chief Financial Officer of Middlesex, as well as the part-time Vice President and Treasurer of Twin Lakes. Twin Lakes St. 2, App. A.

108. A. Bruce O'Connor is a Certified Public Accountant with a Master of Business Administration degree. Twin Lakes St. 2, App. A.

IV. DISCUSSION

A. LEGAL STANDARD

In this case, Twin Lakes filed its petition pursuant to Section 529 of the Public Utility Code. Section 529(a) provides:

§ 529. Power of commission to order acquisition of small water and sewer utilities.

(a) *General rule.* —The commission may order a capable public utility to acquire a small water or sewer utility if the commission, after notice and an opportunity to be heard, determines:

- (1) that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L. 1987, No. 394), known as The Clean Streams Law, the act of January 24, 1966 (1965 P.L. 1535, No. 537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P.L. 206, No. 43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility;
- (2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure;
- (3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future;
- (4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible;
- (5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating

the small water or sewer utility in compliance with applicable statutory and regulatory standards; and

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

66 Pa.C.S. § 529(a). In addition, Section 529(b) provides for the consideration of alternatives to an acquisition and states that before the Commission may order the acquisition of a small water or sewer utility in accordance with Section 529, 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). Finally, in making a determination pursuant to Section 529(a)(4), the Commission shall consider the following factors:

- (1) The financial, managerial and technical ability of the small water or sewer utility.
- (2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service.
- (3) The expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards

concerning the adequacy, efficiency, safety or reasonableness of utility service.

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

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

(6) Any other matters which may be relevant.

66 Pa.C.S. § 529(c).

With regard to burden of proof, in most cases, Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a). For example, as a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990). “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950). The offense must be a violation of the Public Utility Code, the Commission’s regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm’n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm’n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

However, in this case, Section 529 sets forth a statutory burden of proof. In particular, Section 529 provides that I&E shall have the burden of establishing a *prima facie* case that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of Section 529. 66 Pa.C.S. § 529(i). Once the Commission determines that a *prima facie* case has been established, the small water or sewer utility shall have the burden of proving its ability to render adequate, efficient, safe and reasonable service at just and reasonable rates and a proximate public utility providing the same type of service as the small water or sewer utility shall have the opportunity and burden of proving its financial, managerial or technical inability to acquire and operate the small water or sewer utility. 66 Pa.C.S. § 529(i).

The issue of which party has the burden of proof was addressed previously in this proceeding because Twin Lakes filed the initial petition commencing this proceeding. As a result, I&E filed a petition for interlocutory review on the issue of whether the Commission should permit a certificated small water or wastewater public utility to proceed by its own petition pursuant to Section 529. The Commission addressed the issue of burden of proof when it disposed of I&E's petition in the September 17, 2020 order. In that order, the Commission determined that "although it is accurate the I&E bears the statutory burden of proof in a section 529 proceeding pursuant to 66 Pa.C.S. § 529(i), we have previously stated that the burden is not exclusive to I&E." September 17, 2020 Order at 21. The Commission added "Rather, any party may present or rebut a *prima facie* case in support of its position in this proceeding." Id., *citing*, Investigation Instituted per Section 529 into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company, Docket No. I-2016-2526085 (Order entered Jan. 28, 2016) ("While the burden of going forward with evidence is on I&E, I&E is not assigned this task with any predetermined or targeted result in mind and will be guided in its recommendation by the evidence it adduces. This does not preclude any other party, however, from producing its own evidence to address the evidentiary and statutory requirements of Section 529."). The Commission concluded: "As a result, to the extent Twin Lakes is seeking specific relief in the Section 529 proceeding, it must produce evidence demonstrating that such relief is warranted." Id.

Finally, it is noted that, on appeal, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & W. Ry. Co. v. Pa. Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Pa. Dep't. of Pub. Welfare, White Haven Ctr., 480 A.2d 382 (Pa.Cmwlth. 1984).

B. DESCRIPTION OF THE COMPANY AND RATE HISTORY¹

Twin Lakes maintains a principal place of business at 485C Route 1 South, Suite 400, Iselin, New Jersey 08830 and serves approximately 115 customers in the Sagamore Estates community in Shohola Township, Pike County, Pennsylvania. Twin Lakes is a wholly owned subsidiary of Middlesex which has a principal place of business at 485C Route 1 South, Suite 400, Iselin, New Jersey 08830. Middlesex is Twin Lakes' only financial and operational support. Middlesex has extended financial credit to Twin Lakes through three promissory notes which provided Middlesex the right to demand payment from Twin Lakes for the total amount due plus interest. Middlesex provides operational support to Twin Lakes through a Service Agreement between Middlesex and Twin Lakes dated December 1, 2009. Twin Lakes' system is comprised of Well #2, its only working well, and Well #1, which is inoperable and at risk of collapse due to over-pumping of Well #2. Twin Lakes also suffers from significant unaccounted for water (UFW) levels rising as high as 86% in recent years.

Twin Lakes has requested and received rate increases three times since 2011, with the 2011 and 2015 rate increases tied to specific improvements to its facilities, generally as follows:

¹ This description of Twin Lakes and the rate case history is taken from the Order denying the OCA's petition for expedited interim emergency relief dated August 28, 2020 with citations omitted.

<u>Date filed</u>	<u>Docket Number</u>	<u>Increase requested</u>	<u>Increase granted</u>
June 10, 2011	R-2011-2246415	\$124,420 (368%)	\$42,060 (124%)
November 16, 2015	R-2015-2506337	\$195,287 (257%)	\$125,000 (164.5%)
July 23, 2019	R-2019-3010958	\$211,793 (158.6%)	\$117,374 (88%)

The specific improvements to facilities tied to these increases included reducing unaccounted for water, conducting annual pressure surveys, providing annual bill notices regarding how it would notify customers of boiled water advisories or other emergencies and multiple infrastructure improvements.

Finally, Twin Lakes recently applied for PENNVEST funding and was notified that it was eligible to receive a grant of \$4.66 million and a loan amount of \$304,573.² However, Twin Lakes expressed its reluctance to accept the funds because of the accompanying \$1.358 million tax liability related to the grant which would be properly recoverable from its customers in rates. Twin Lakes stated that since the Commission has acknowledged that affordability is a factor in this case, it is unsure of its ability to collect this amount from ratepayers if it accepted the funding.

C. JURISDICTION

1. Position of the parties

As a threshold matter, the parties have raised an issue with regard to the proper corporate entity over which the Commission has jurisdiction in this case. As noted above, Twin Lakes is a wholly owned subsidiary of Middlesex, a New Jersey Corporation. Middlesex provides operations support to Twin Lakes through a Service Agreement dated December 1, 2009 that has been continued through a series of subsequent agreements, as discussed further below. In their briefs, Twin Lakes and OCA argued that Twin Lakes is the jurisdictional utility

² PENNVEST is the Pennsylvania Infrastructure Investment Authority. PENNVEST is a Pennsylvania agency that provides low-cost funding for sewer, stormwater and drinking water projects throughout the Commonwealth. See, www.pennvest.pa.gov.

at issue in this matter and is therefore the correct entity to evaluate under Section 529. I&E and Aqua, however, disagree and believe that the Commission has jurisdiction over Middlesex for purposes of this proceeding.

More specifically, in its main brief, Twin Lakes argued that it, not Middlesex, is the correct entity to evaluate in this proceeding. Twin Lakes noted that it, not Middlesex, is a public utility corporation organized and existing under the laws of Pennsylvania. Twin Lakes also noted that it is the title owner of the assets comprising the Twin Lakes system and that it is the entity listed on the recorded deed as the owner of Twin Lakes. Finally, Twin Lakes added that it has been recognized by the Commission as the jurisdictional utility since the acquisition of the system in 2009. Twin Lakes also responded to the arguments of I&E and Aqua that Middlesex is the appropriate entity that should be evaluated in this case, noting the Middlesex is a New Jersey corporation and is not registered to do business in Pennsylvania and not a jurisdictional utility in Pennsylvania. Nor has Middlesex ever held itself out as the jurisdictional entity in Pennsylvania.

In its main brief, I&E argued that Middlesex, as the “original filer,” has purposefully availed itself of Pennsylvania through specific acts and a course of dealing with the Commission and Pennsylvania customers. I&E noted that Pennsylvania law provides for the exercise of jurisdiction by Pennsylvania tribunals over foreign corporations by either general or specific jurisdiction and that due process requires the foreign corporation to have certain minimum contacts with Pennsylvania such that maintenance of the proceeding does not offend traditional notions of fair play and substantial justice. I&E also referenced Pennsylvania’s “long-arm statute” that focusses on the corporation’s course of dealings and particular acts. I&E argued that the record in this proceeding demonstrates Middlesex’s numerous and purposeful contacts with Pennsylvania, the Commission and Pennsylvania ratepayers since 2008, referencing, among other things, Middlesex’s original application to acquire Twin Lakes. I&E then argued that the creation of Middlesex’s wholly owned Pennsylvania subsidiary, Twin Lakes, in April 2009 created the Pennsylvania alter ego of Middlesex, providing several additional arguments in support of this position.

In its main brief, Aqua argued that Twin Lakes, through Middlesex, has the financial, managerial and technical capabilities to continue to own and operate the water system and that, due to the unique facts and circumstances surrounding this case, it is necessary to evaluate the criteria set forth in Section 529 in light of Middlesex's capabilities. Aqua identified several instances in the record of this case raised by witnesses for I&E and Twin Lakes in support of its position that Middlesex's financial and operational support is the exclusive means that have allowed Twin Lakes to own and operate the system. Aqua continued that this appears to be a proceeding where a financial and operational capable owner is voluntarily attempting to eliminate a poor performing segment of its overall strong business.

In response to the arguments raised by I&E regarding whether Twin Lakes or Middlesex is the appropriate entity to be evaluated in this proceeding, Twin Lakes argued in its reply brief that I&E's argument is irrelevant in the context of a regulatory proceeding before the Commission and that I&E has inappropriately attempted to apply jurisdictional concepts that are applicable to courts of general jurisdiction to a regulatory proceeding at the Commission. Twin Lakes noted that I&E did not point to any prior instances where the Commission applied the jurisdictional concepts advocated by I&E in its main brief, adding that there is some question about the constitutionality of Pennsylvania's long-arm statute. Twin Lakes further argued that Middlesex purposely established Twin Lakes Utilities Inc. as the jurisdictional public utility in Pennsylvania. Twin Lakes concluded that I&E's position is also not in the public interest as it would require in this case 114 customers to shoulder the burden of the entire system replacement costing approximately \$4.8 million.

In response to Twin Lakes' arguments regarding the proper entity to be evaluated in this case, Aqua argued in its reply brief that "Twin Lakes' claims are little more than an attempt to use the corporate form to smokescreen the substance of the relationship between the subject system, Twin Lakes, and Middlesex, its parent." Aqua then reiterated the evidence presented by both it and I&E that demonstrates Middlesex's financial and operational support is the exclusive means that have allowed Twin Lakes to own and operate the system and that "Middlesex ultimately controls Twin Lakes and its operations," including that Middlesex would negotiate any agreement to acquire the system and ultimately be paid for such acquisition. Aqua

concluded that “Middlesex should not be permitted to evade its involvement in, and responsibility for, the operational and financial state of its subsidiary where the exclusive means by which its subsidiary can operate are with its support.”

Similarly, I&E argued in its reply brief that Middlesex Water Company filed the original application in 2008 to acquire Twin Lakes and has purposefully availed itself of Pennsylvania through specific acts and a course of dealing with the Commission and Pennsylvania public utility customers. I&E noted that Twin Lakes’ argument that it has been recognized by the Commission as the jurisdictional utility since the acquisition in 2009 is not supported by the record evidence in this proceeding and specifically contradicted by statements made by the Commission and the Secretary’s Bureau in various documents. I&E reiterated its jurisdictional legal arguments and noted that Middlesex has purposefully availed itself of the Commission and Pennsylvania public utility customers and transacted business in Pennsylvania, noting that the Commission retained jurisdiction over Middlesex since it approved its acquisition of Twin Lakes in 2008. I&E argued that Twin Lakes was created by Middlesex to act as Middlesex’s agent and alter ego for the purposes of operating the Twin Lakes system in Pennsylvania.

In its reply brief, the OCA argued that Twin Lakes, not Middlesex, is the correct entity to be evaluated under Section 529 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.

2. Disposition

In this case, substantial record evidence demonstrates that the Commission has jurisdiction over Middlesex. However, for purposes of evaluating the criteria in Section 529 of the Public Utility Code, Twin Lakes is the appropriate entity to be evaluated while still recognizing Middlesex as the corporate parent.

Never before has this Commission been asked to evaluate in a proceeding brought pursuant to Section 529 of the Public Utility Code a Pennsylvania utility that qualifies as a “small water utility” under Section 529(m) that is also owned by a larger corporate entity.³ Most often, Section 529 proceedings involve standalone entities that qualify as a small water utility under Section 529 and these companies are not part of a larger corporate structure.

I&E is correct that Middlesex has had numerous and specific contacts with Pennsylvania, the Commission and Pennsylvania ratepayers since 2008, including that Middlesex was the original filer of the letter of intent in 2008 when it sought to acquire Twin Lakes, noting that the system will be run from the New Jersey offices. As I&E noted as well, in that proceeding, Middlesex agreed to adopt the rules, rates and regulations contained in Twin Lakes’ existing tariffs. I&E also referenced a Secretarial Letter issued by the Commission’s Secretary’s Bureau in 2011 that noted that Middlesex is doing business in Pennsylvania under the name of Twin Lakes Utilities, Inc. Similarly, Aqua is correct that, without Middlesex’s financial and operational support, Twin Lakes could not provide water utility services to its customers and that Middlesex has a controlling interest in Twin Lakes with exclusive voting rights. Executives of Twin Lakes are executives of Middlesex.

In contrast, and in light of the record evidence demonstrating that the Commission has jurisdiction over Middlesex for purposes of this proceeding, the arguments of Twin Lakes are outweighed and will be rejected. For example, the fact that Middlesex established Twin Lakes Utilities, Inc. as the jurisdictional public utility does not diminish Middlesex’s role in operating the system.

All of these factors warrant finding that the Commission has jurisdiction over Middlesex for purposes of this proceeding and that Middlesex must be considered as the corporate parent when evaluating Twin Lakes under Section 529. Middlesex cannot come into

³ Petition of Delaware Sewer Company for the Opening of an Investigation into Whether the Public Utility Should Order a Capable Public Utility to Acquire the Company Pursuant to 66 Pa.C.S. § 529, Docket No. P-2014-2404341 (Opinion and Order entered Jan 28, 2016) involved the Delaware Sewer Company which was a wholly owned subsidiary of Consolidated Pocono Utilities, Inc. That case, however, involved a petition to open an investigation under Section 529 filed pursuant to Section 5.41 of the Commission’s regulations, not the underlying 529 investigation itself.

Pennsylvania to purchase Twin Lakes, provide service to Pennsylvania customers, seek rate increases from the Pennsylvania Commission, and more, and then not be considered as the corporate parent when Twin Lakes files for an investigation under Section 529. Middlesex cannot have it both ways. If Middlesex did not want to be subject to the Pennsylvania Commission's jurisdiction, it should not have purchased a Pennsylvania utility.

I recognize the definition of "small water utility" as provided in Section 529 states that a small water utility is "a public utility which regularly provides water service to 1,200 or fewer customer connections." 66 Pa.C.S. § 529(m). When evaluating the petition filed by Twin Lakes it is appropriate to consider Middlesex as the corporate parent, especially given the public interest involved in this proceeding and the fact that no other small water utility with a corporate parent has filed a petition for an investigation under Section 529, as is the case here. In particular, the public interest present in this case as a result of the poor service provided to the customers on Twin Lakes' system for a prolonged period of time requires an expansive scope of consideration. The customers served by the Twin Lakes system have sustained three substantial rate increases and significantly poor service for more than a decade. Their ability to receive safe and reliable service at just and reasonable rates going forward requires an expansive view. This petition cannot be looked at in a vacuum. This is a unique situation and such circumstances dictate finding that the Commission has jurisdiction over Middlesex as the corporate parent when evaluating Twin Lakes under Section 529.

Significantly, however, as discussed further below, whether or not the Commission has jurisdiction over Middlesex will not change the results of evaluating Twin Lakes in this matter. That is, regardless of whether Middlesex as corporate parent is considered, the evaluation of the criteria in Section 529 in this case results in the same conclusion.

D. 529 CRITERIA

1. Violations of Statutory or Regulatory Standards

Section 529(a)(1) requires a determination that Twin Lakes is in violation of statutory or regulatory standards. 66 Pa.C.S. § 529(a)(1). In its main brief, Twin Lakes argued that its witness, Mr. Fullagar, testified that the system is continually plagued by excessive unaccounted for water loss ranging from 50% to 86% due to leaks within the distribution system and that the leaks are a result of a combination of factors including age of the pipe, original quality of the pipe and poor workmanship. Twin Lakes M.B. at 28. Twin Lakes articulated several other problems with the current system and indicated that Mr. Fullagar further testified that the improvements needed to address the operational challenges and resiliency risks are estimated to cost \$4.8 million. Id. at 28-29. Twin Lakes added that, twice, Twin Lakes agreed to implement a five-year capital improvement plan as part of prior rate cases but that Twin Lakes did not complete the improvements either time because, Twin Lakes claimed, the company did not receive sufficient rate relief. Id. at 29. Twin Lakes noted that the other parties' testimony in this proceeding reflects the same concerns of the state of the Twin Lakes system and operational challenges and claimed that "[d]espite Twin Lakes' significant operational efforts since 2009, its facilities are not adequate as required by Section 1501 [of the Public Utility Code], and it has been unable to obtain necessary funding to make the repairs necessary to comply with this statutory requirement." Id. at 30-31, *citing*, 66 Pa.C.S. § 1501.

In its main brief, Aqua stated that the record evidence supports the requisite findings necessary to satisfy the requirements of Section 529(a)(1). Aqua M.B. at 21. Aqua articulated record evidence presented by the other parties and noted that "these numerous and ongoing statutory and regulatory violations are indicative of the exceedingly poor condition of the system" and "that Twin Lakes is currently in violation of several statutory and/or regulatory standards." Id.

In its main brief, I&E stated that, in its opinion, this element has been satisfied. I&E M.B. at 7, 12.

In its main brief, the OCA argued that Twin Lakes is in violation of Section 1501 of the Public Utility Code, the Environmental Protection Agency (EPA) Lead and Copper Rule and the Pennsylvania Safe Drinking Water Act. OCA M.B. at 10, *citing*, 66 Pa.C.S. § 1501, 40 CFR § 141.80(c) and 25 Pa.Code § 109.1102(a)(1). In support of its argument, the OCA referenced Twin Lakes' high unaccounted for water levels and reliability issues and that Twin Lakes exceeded the lead action level in November 2019. Id. at 10-11.

As a result, substantial record evidence demonstrates that Twin Lakes has satisfied the requirements of Section 529(a)(1) with regard to its petition. Twin Lakes has violated statutory or regulatory standards. The record in this case is replete with examples of such violations, including Section 1501 of the Public Utility Code, the EPA Lead and Copper Rule and the Pennsylvania Safe Drinking Water Act. In particular, Twin Lakes has a substantial history of high unaccounted for water levels as a result of leaks throughout the system. Furthermore, no party has opposed finding that this criterion has been satisfied.

Therefore, Twin Lakes has satisfied the requirement of Section 529(a)(1).

2. Compliance with any order regarding safety, adequacy, efficiency or reasonableness of service.

Section 529(a)(2) requires a determination of whether Twin Lakes has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the Commission concerning the safety, adequacy, efficiency or reasonableness of the service. 66 Pa.C.S. § 529(a)(2). In its main brief, Twin Lakes references its arguments with regard to Section 529(a)(1), *supra*, and noted “[a]s discussed above, the Commission has ordered certain improvements that are necessary to provide adequate service as part of recent rate case orders, but Twin Lakes has been unable to comply with these orders due to a lack of sufficient rate relief or availability of other financing options.” Twin Lakes M.B. at 31-32.

In its main brief, Aqua stated that the record evidence supports the requisite findings necessary to satisfy the requirements of Section 529(a)(2). Aqua M.B. at 22. Aqua noted Twin Lakes has failed to comply with commitments agreed upon in the settlements

approved in the last three base rate proceedings before the Commission and its untimely reporting of Pennsylvania DEP violations to the Commission. Id. at 22. Aqua also noted record evidence that Twin Lakes has a history of service losses, contamination, high bills and poor quality of drinking water. Id.

In its main brief, I&E again stated that, in its opinion, this element has been satisfied. I&E M.B. at 7, 12.

In its main brief, the OCA noted that Twin Lakes is in violation of the Commission orders adopting Twin Lakes' 2011 and 2015 settlement agreements as it failed to comply with the requirements therein, noting in particular the requirement to reduce the unaccounted-for water levels, and related obligations. OCA M.B. at 11-12. The OCA added that “[t]he result is that eight (8) times more water than necessary was pumped during the first three quarters of 2020.” Id. at 12, *citing*, OCA St. 2 at 5. The OCA added that Twin Lakes also failed to meet requirements under the 2015 settlement, including a three-year phased-in rate increase contingent upon implementation of various system improvements, including replacing a collapsed well which was never completed. Id. at 13.

As a result, substantial record evidence in this proceeding demonstrates that Twin Lakes has satisfied Section 529(a)(2) with regard to its petition. Twin Lakes has failed to comply with Commission orders, notably the orders approving the settlements of prior Twin Lakes base rate proceedings which required a reduction in the systems unaccounted for water levels and various improvements be made to the system. Again, no party has contested whether Twin Lakes has satisfied the requirements of Section 529(a)(2).

Therefore, Twin Lakes has satisfied the requirement of Section 529(a)(2).

3. Expectation to furnish and maintain adequate, efficient, safe and reasonable service.

Section 529(a)(3) requires a determination that Twin Lakes 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).

In its main brief, Twin Lakes argued, as a standalone entity, it cannot reasonably be expected to maintain adequate, efficient, safe and reasonable service and facilities in either the near term or the longer term. Twin Lakes M.B. at 39. Twin Lakes stated that “absent outside financial and operational support from Middlesex, Twin Lakes is at best one or two pipe leaks away from complete financial and operational failure.” Id. Twin Lakes said it has not been able to establish an independent credit relationship with a financial institution in the wake of Middlesex’s cessation of financial support. Id. at 39-40. Twin Lakes added that Middlesex is under no legal or regulatory obligation to provide financial or operational support and reiterated that the Commission has no jurisdiction over Middlesex. Id. at 40-41. Twin Lakes further argued that, even if it were able to make the \$4.8 million in necessary repairs, it is unreasonable to expect that the 114 customers could bear the full rate impact of this expenditure. Id. at 41.

In contrast, in its main brief, Aqua argued Twin Lakes, through Middlesex, has the financial, managerial and technical capability to continue to own and operate the water system. Aqua M.B. at 23. Aqua argued that “the crux of the dispute between the parties involves whether it is appropriate to consider evidence of Middlesex’s financial, managerial and operational capabilities to continuing owning and operating the Twin Lakes system.” Id. Aqua added that “due to the unique facts and circumstances surrounding this case, it is necessary for the ALJ and the Commission to evaluate the criteria set forth in Sections 529(a)(3) and 529(c)(1) of the Public Utility Code in light of Middlesex’s financial, managerial and operational capabilities.” Id. Aqua reiterated portions of the history of the acquisition of Twin Lakes by Middlesex approved in 2009 and noted facts it believes “conclusively demonstrates that regardless of Twin Lakes’ equivocations about Middlesex’s role in owning and operating the system, Middlesex’s financial and operational support is the exclusive means that have allowed Twin Lakes to own and operate the system at all.” Id. at 24-25. Aqua added that it is undisputed

that operation and management of the system are not the biggest problems with the system and that Middlesex is not a financially insolvent company. Id. at 25. Aqua concluded that Twin Lakes has failed to demonstrate that it, through Middlesex, lacks the requisite financial, managerial and operational capability to provide water service. Id.

In its main brief, I&E provided extensive argument in support of its position that this third element of Section 529(a) has not been satisfied. In reaching this conclusion, I&E relied on Section 529(c)(1) and considered the financial, managerial and technical ability of Twin Lakes by and through Middlesex, which it calls the original 2008 filer and Twin Lakes' parent company. I&E M.B. at 12. In making this argument, I&E relies on the record in the original 2008 filing and the Commission's 2009 order in that case. Id. at 12-13. I&E also relied on testimony from its witnesses pertaining to information found on Middlesex's website and Form 10-K, among other things, regarding Middlesex's financial, managerial and technical abilities, as well as the expertise of its officers. Id. at 13-16 (citations omitted). I&E concluded that "no other capable public utility should be ordered by the Commission to acquire Twin Lakes." Id. at 16.

In its main brief, and similar to Twin Lakes, the OCA argued that Twin Lakes cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. The OCA noted that Twin Lakes had indicated in 2018 that there was an emergent need to undertake system improvements due to ongoing system failure and that such improvements were expected to increase each customer's annual water bill to over \$4,000. OCA M.B. at 13. The OCA added that Twin Lakes is unable to establish a credit arrangement at any reasonable cost with any financial institution as a standalone entity and that Middlesex provides Twin Lakes' sole source of financial support through the Service Agreement without which Twin Lakes could not be reasonably expected to furnish and maintain adequate, safe and reasonable service into the future. Id. at 13-14, *citing*, OCA St. 1 at 3.

In response to the arguments raised by Aqua and I&E, Twin Lakes argued in its reply brief that I&E's argument that Middlesex is the appropriate entity to be evaluated under Section 529 because Middlesex has the necessary minimum contacts in order for the

Commission to maintain jurisdiction over Middlesex, and because Twin Lakes is the alter ego of Middlesex in Pennsylvania, is taken out of context of a regulatory proceeding before the Commission. Twin Lakes R.B. at 7. Twin Lakes argued that the Commission has not applied the concepts before in a proceeding and that “I&E’s attempt at an intellectual argument has no practical application in this proceeding.” Id. at 8. Twin Lakes reiterated that Middlesex purposely established a Pennsylvania subsidiary company to incorporate in Pennsylvania and be the jurisdictional public utility. Id. at 8-9. Twin Lakes added that I&E’s position is not in the public interest because, assuming that the Commission were to exercise jurisdiction over Middlesex it would result in Twin Lakes’ 114 customers having to shoulder the burden of an entire system replacement estimated to cost \$4.8 million. Id. at 9. Twin Lakes reiterated that it is the appropriate entity to be evaluated under Section 529(a)(3) which it has satisfied.

In its reply brief, Aqua Pa responded to Twin Lakes’ arguments regarding why Middlesex is not the appropriate authority to evaluate under Section 529, noting that Twin Lakes’ arguments “are little more than an attempt to use the corporate form to smokescreen the substance of the relationship between the subject system, Twin Lakes, and Middlesex, its parent.” Aqua R.B. at 6. Aqua noted that Middlesex’s financial and operational support is the exclusive means that has allowed Twin Lakes to own and operate the system at all and that Middlesex ultimately controls Twin Lakes and its operations and would be the entity that would negotiate any agreement to acquire the system and ultimately be paid for its acquisition. Id. Aqua argued that it is appropriate and necessary for the Commission to analyze the capabilities of Middlesex alongside Twin Lakes under Section 529. Id. at 7. Aqua then noted that “it is a critical tenet of the Pennsylvania Public Utility Code that a public utility cannot choose to provide service only where there is a chance for profit.” Id. at 7-8 (citations omitted). Aqua argued that Middlesex’s action “may be deserving of fines or required contributions to undertake the improvements that were expected, rather than allowing Middlesex to improperly use Section 529 to avoid its responsibilities as the owner of Twin Lakes.” Id. at 8.

In its reply brief, I&E responded to Twin Lakes’ arguments that it cannot reasonably be expected to provide adequate, efficient, safe and reasonable service and facilities in the future, noting that the record in the original 2008 filing regarding the acquisition of the

Twin Lakes system makes it clear that the Commission relied on representations by Middlesex when approving the acquisition of the then-existing Twin Lakes system. I&E R.B. at 9. I&E noted that, in that order, 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.” Id. I&E also noted in support of its position that no public utility should be ordered by the Commission to acquire Twin Lakes that the board members and senior management of Middlesex are also officers and directors of Twin Lakes who are highly credentialed and capable individuals with the necessary technical and managerial leadership. Id. at 9-11.

In its reply brief, the OCA responded to I&E’s argument that Middlesex should be considered by noting 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.” OCA R.B. at 3. The OCA reiterated several of the operational deficiencies on record with the system and concluded 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.” Id. at 3-4.

Substantial record evidence demonstrates that Twin Lakes cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. This finding is made when evaluating Section 529(a)(3) for Twin Lakes as a standalone company as well as considering Middlesex as the parent company. Regardless of whether the financial, managerial or technical expertise of Middlesex as Twin Lakes’ parent company is considered when determining whether Section 529(a)(3) has been satisfied, or whether Twin Lakes is considered alone, Section 529(a)(3) is satisfied. That is, even when considering Middlesex’s financial, managerial or technical expertise provided during the past decade when Middlesex was providing financial and operational support to Twin Lakes, the system was poorly run. It is unreasonable to expect that Twin Lakes, with or without the support of Middlesex, can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future.

The record in this case is replete with multiple significant failures on the Twin Lakes system. As the OCA noted, Twin Lakes' level of unaccounted for water has reached as high as 89% in recent years, where the Commission deems such levels above 20% to be excessive. OCA M.B. at 11, *citing*, OCA St. 2 at 5 and 52 Pa.Code § 65.20. The OCA also noted that there is a significant reliability issue because the system has one collapsed well which is inoperable and only one working well which is at risk of collapse due to over-pumping, noting that if the lone well collapses, Twin Lakes will have no source of supply. Id. The OCA also noted that Twin Lakes exceeded the lead action level in November 2019. Id. The OCA noted that there have been several boiled water advisories issued without adequate communication to customers about when service was resumed. OCA R.B. at 3. This evidence is largely undisputed.⁴ Regardless of whether Twin Lakes or Middlesex is responsible for such significant failures is moot. Both Twin Lakes and Middlesex, as corporate parent, have run this system poorly. This system requires better ownership than what either Twin Lakes or Middlesex can provide. The 114 customers on the Twin Lakes system deserve better.

This is particularly true when considering the factors to be considered as articulated in Section 529(c), more specifically, factors (c)(1), (c)(3) and (c)(6). With regard to factor (c)(1), the financial, managerial and technical ability of Twin Lakes, the substantial record evidence noted above supports finding that both Twin Lakes standing alone and with Middlesex as its parent do not have the managerial or technical ability to provide adequate, efficient, safe or reasonable service now or in the future. This is evidenced by the failures noted above. With regard to factor (c)(3), the expenditures necessary to make improvements, record evidence demonstrates that the system needs approximately \$4.8 million in upgrades. Clearly, the 114 customers currently served by the system cannot be held solely responsible for such costs (\$4.8 million divided by 114 customers is \$42,105 per customer) and, for whatever reason, Middlesex has not made such expenditures since it purchased the system in 2009 without triple digit rate increases.

⁴ This evidence is also supplemented by the substantial evidence of record developed in the hearing held on August 21, 2020 regarding the petition for expedited emergency relief filed by the OCA. *See e.g.*, Tr. 50-52.

With regard to factor (c)(6), other relevant matters, it is important to note Middlesex, by its own volition, filed in 2008 to purchase the Twin Lakes system. It is unclear to what extent Middlesex was aware at the time of the condition of the system and the substantial need for upgrades. Regardless, however, Middlesex has been the owner since 2009 and the system is still in a significant state of disrepair. This alone is evidence of poor managerial ability. Despite the attempts to increase rates, and at some point, to abandon service, it is not in the public interest to allow companies to be purchased by non-Pennsylvania corporations and run so poorly for so long. Certainly, many larger utilities have purchased smaller systems that are in disrepair and made substantial investments to repair and maintain the smaller system. Some of these larger utilities are not based in Pennsylvania. Yet, at no point can a larger utility allow a system to linger in such a state of disrepair as Middlesex has allowed the Twin Lakes system to become without making the necessary investments to provide fundamental water service, regardless of whether the money to make such upgrades comes from ratepayers, shareholders or somewhere else. This is a relevant issue that must be considered when determining whether Section 529(a)(3) of the Public Utility Code has been satisfied and supports a finding that it has been.

The arguments of I&E and Aqua to the contrary are without merit and will be rejected. The primary argument from I&E and Aqua is that the resources and capabilities from Middlesex should also be considered when determining whether Twin Lakes can reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. However, it is clear that while it is true, as discussed further below, that Middlesex has the financial capability to run this system properly, it has not done so and neither Twin Lakes standing alone or when considering Middlesex as the corporate parent have the managerial or technical ability to run this system. As the OCA correctly noted, “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,” noting that Twin Lakes is “at best one or two pipe leaks away from complete financial and operational failure.” OCA R.B. at 3 (citations omitted).

Furthermore, while operation and management of the system are not the biggest problems with the system, as Aqua argued, the operation and management of the system have certainly been a major problem with the system. This is true regardless of what Middlesex states in its website, its Form 10-K, its marketing material or its prior representations to the Commission and regardless of the experience of its corporate officers, as I&E argues. It is unclear how I&E and Aqua can reasonably argue that Twin Lakes, through Middlesex, can be expected to furnish and maintain reasonable service in the future after 13 years of experience that Middlesex has failed to do that.

Therefore, Twin Lakes has satisfied the requirement of Section 529(a)(3). This determination is true even when considering the financial, managerial and technical expertise of Middlesex as Twin Lakes' corporate parent.

4. Alternatives to acquisition.

Section 529(a)(4) requires a determination that alternatives to acquisition have been considered in accordance with Section 529(b) and have been determined by the Commission to be impractical or not economically feasible. 66 Pa.C.S. § 529(a)(4). As noted above, Section 529(b) articulates five alternatives to acquisition that the Commission shall consider when determining whether to order a capable public utility to takeover a small water company. 66 Pa.C.S. § 529(b).

In its main brief, Twin Lakes argued that record evidence demonstrates that Twin Lakes considered all of the alternatives and demonstrated that these alternatives are impractical or not economically feasible. Twin Lakes M.B. at 42. Specifically, Twin Lakes noted that reorganization is not possible because Twin Lakes is unable to establish an independent credit relationship with a financial institution. Id. at 42-43. Twin Lakes noted that entering into a contract with another public utility to operate the system is not feasible since Twin Lakes issued a request for proposal (RFP) and the only proposal submitted was inadequate. Id. at 43. With regard to appointing a receiver, Twin Lakes argued that it supported the OCA's petition for interim emergency relief and that Aqua has now been appointed temporary receiver while this

proceeding is underway. Id. at 43-44. With regard to the alternative to merge with another utility, Twin Lakes noted that it has repeatedly explored the option of merging with another public utility and those efforts have been unsuccessful. Id. at 44. Finally, with regard to a municipality, municipal authority or cooperative acquiring the Twin Lakes system, Twin Lakes argued that this option is also not feasible because interconnecting would require the installation of booster pumping stations and 5-6 miles of piping and acquisition by a municipality is not practical or economically feasible. Id. at 44-45.

In contrast, Aqua argued in its main brief that, aside from interconnecting with Milford Township not being economically feasible, Twin Lakes' claims about the remaining alternatives should be rejected. Aqua M.B. at 27. In particular, Aqua argued that the installation of private wells is not legally impossible, "although this alternative may present certain challenges." Id. at 28, *quoting*, Aqua St. 1-R at 8. Aqua also argued that Twin Lakes' arguments about its reasons for rejecting PENNVEST funding are speculative and should be rejected. Id. at 28-29. Next, Aqua argued that Twin Lakes' argument regarding the RFP that Twin Lakes issued should not be given any weight because the RFP itself was necessitated by Middlesex's voluntary decision to terminate the service agreement. Id. at 29-30. Finally, with regard to the alternative of appointment of a receiver, Aqua noted that it has voluntarily agreed to act as a receiver of Twin Lakes following the Commission's order entered September 22, 2020 in response to the OCA's petition for interim emergency relief and has been acting as receiver since January 15, 2021. Id. at 30-32. Aqua then noted that "by agreeing to act as receiver of Twin Lakes, one of the alternatives of forced acquisition of the Twin Lakes system has been shown to be practical and economically feasible." Id. at 32.

In its main brief, I&E stated that, in its opinion, this element has been satisfied. I&E M.B. at 7, 12.

In its main brief, the OCA argued that "the problem with Twin Lakes is the condition of the system and the rates that are charged to customers, not the management of the system." OCA M.B. at 14. The OCA further argued that the costs to improve the system would be more easily managed if Aqua acquired the system. Id. at 14-15. The OCA also noted Twin

Lakes' attempt to find another public utility to operate the system by issuing the RFP but no viable offers were received and that the appointment of Aqua as receiver is only a temporary solution. Id. at 15. The OCA also referenced Twin Lakes' meeting with the Commission and the OCA to request assistance in identifying a system takeover solution, the alternative of Twin Lakes connecting to a public water system 5-6 miles away and the potential of individual wells being drilled on each customer's property, but that none of these were viable alternatives to ensure that all customers receive safe, adequate and reasonable service. Id. at 15-16.

In its reply brief, Twin Lakes argued that Aqua's argument that Aqua's temporary receivership of the Twin Lakes system as part of the Commission's January 14, 2021 order demonstrates that receivership is an alternative to acquisition of the Twin Lakes system is undermined by the temporary nature of the current receivership. Twin Lakes R.B. at 10. Twin Lakes noted that Aqua's current receivership of the Twin Lakes system ends at the conclusion of this proceeding and that "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." Id. at 11.

In its reply brief, Aqua argued that Twin Lakes' description in its main brief of its prior efforts with respect to merging with another utility highlights and reaffirms the concerns noted in Aqua's main brief and stated that Twin Lakes' discussion of its prior efforts to explore an acquisition of the system by Aqua are incomplete and misleading. Aqua R.B. at 9. Aqua noted that there is "a substantial disconnect between the condition of the system, coupled with the cost of the necessary investments that a new owner would need to make in order to comply with the Public Utility Code and other Pennsylvania laws and regulations, and the purchase price apparently being sought for the system." Id. at 10. Aqua also argued that "Twin Lakes should be directed to immediately undertake negotiations with potential buyers at a price that recognizes the distressed nature of the system, which Middlesex clearly failed to support with sufficient investment." Id. Aqua also responded to the OCA's arguments regarding the cost to drill private wells saying these arguments "further highlight what appears to be an attempt to improperly use the Section 529 process by Middlesex, through Twin Lakes." Id. at 10-12.

In its reply brief, the OCA responded to the arguments Aqua made in its main brief regarding alternatives. In response to Aqua's argument that the record evidence does not support a finding that customers are prohibited from installing private wells on their properties, the OCA argued that simply because some customers have been able to obtain a waiver of a township ordinance to install a private well does not mean that all customers will seek and be approved for a waiver. OCA R.B. at 5-6, *citing*, Tr. 53-54. The OCA then addressed Aqua's argument that Twin Lakes' claim that acceptance of the PENNVEST grant and loan does not constitute a feasible alternative should be rejected. The OCA argued that affordability is a concern for Twin Lakes' customers and accepting these funds would increase monthly bill amounts where customers are already struggling. Id. at 6. Next, the OCA argued that "[w]hether necessitated by a voluntary decision or otherwise, Twin Lakes appropriately attempted to find a new operator for its system ... when Middlesex notified it of its decision to withdraw support to Twin Lakes" and Aqua's arguments that Twin Lakes' attempts to find a suitable operator should not be given any weight should be rejected. Id. Finally, the OCA responded to Aqua's argument that Section 529(a)(4) has not been met because Aqua has already agreed to act as a receiver of Twin Lakes and thus an alternative is already in place is misapplied because Aqua acting as a receiver is meant to be a temporary fix until a permanent owner is established. Id. at 7.

Substantial record evidence demonstrates that the alternatives to acquisition have been considered and determined to be impractical or not economically feasible. This includes evaluating Section 529(a)(4) for Twin Lakes as a standalone company as well as considering Middlesex as the parent company and also includes an evaluation of the alternatives to acquisition articulated in Section 529(b).

As Twin Lakes detailed in its main brief, Twin Lakes sought a series of significant rate increases through base rate cases filed in 2011, 2015 and 2019. Twin Lakes M.B. at 7. More significantly, however, over the last ten years, Twin Lakes has made several efforts to identify a long-term solution that would address the system's operational risks while also attempting to mitigate the need to significantly increase customers' rates. Id. at 9-14. This includes prior discussions with Aqua, discussions with American Water Works Company, consideration of installing individual wells for each customer, meeting with the Chairman of the

Commission, meeting with the OCA, meeting with Commission staff, filing a petition for abandonment, exploring PENNVEST funding, exploring interconnection with the nearest community-owned system and issuing the RFP. These efforts warrant consideration when evaluating whether Section 529(a)(4) has been satisfied in this case. Furthermore, none of these efforts to consider alternatives change if the entity at issue in this proceeding is Middlesex or if the factors in Section 529(a) are evaluated based on Twin Lakes as a standalone company.

With regard to the specific factors to be considered that are articulated in Section 529(b), record evidence in this case demonstrates that Twin Lakes' inability to obtain financing independently prohibits Twin Lakes from reorganizing under new management. Similarly, the lack of adequate responses to the RFP and failed discussions with other major utilities prohibits Twin Lakes from entering into a contract with another public utility or a management or service company to operate the system. These efforts also demonstrate that Twin Lakes is unable to merge the system with another utility or be acquired by a municipality, municipal authority or cooperative. Twin Lakes has made these efforts to find alternatives to acquisition, but none have been fruitful. Again, none of these efforts to consider alternatives change if the entity at issue in this proceeding is Middlesex or if the factors in Section 529(a) are evaluated based on Twin Lakes as a standalone company.

Finally, with regard to the appointment of a receiver, Aqua has already been appointed receiver for the duration of this proceeding. Aqua's efforts in this regard are appreciated yet they do not negate the need for a more permanent solution. Nor does Aqua being appointed as a temporary receiver mean that Twin Lakes has not satisfied the requirement of Section 529(a)(4) for purposes of finding a long-term solution to the operation of the Twin Lakes system. Aqua's argument that Aqua being appointed as receiver in the January 14, 2021 order demonstrates that there are alternatives to forcing Aqua to acquire the Twin Lakes system is without merit. Simply put, the consideration in Section 529(b) regarding the appointment of a receiver does not include a temporary receiver where the receivership is temporary. To hold otherwise would mean that the Commission would be undermining its own efforts to ensure safe, adequate and reliable utility service at just and reasonable rates by appointing a temporary receiver. Aqua's argument to the contrary will be rejected.

In addition, Aqua's other arguments to the contrary are also without merit and will be rejected. Installation of private wells in each individual customer's property is not a viable alternative because record evidence demonstrates that some of the properties are too small to accommodate a well. *See, OCA R.B.* at 5-6, *citing*, Tr. 53-54. While *some* customers may be able to receive water service from a well, if not *all* customers can receive water service from a well, then this is not a viable option. Acceptance of a PENNVEST loan is not a viable option because record evidence demonstrates that, even with the low-cost loan, the increase to customers' monthly bills is cost prohibitive. In contrast, if the additional revenue requirement needed to upgrade the system were borne by Aqua's existing residential water customers, it would be equal to approximately 0.09% of Aqua's 2019 water revenue from residential meter water customers. *OCA M.B.* at 14-15. Finally, Aqua's argument that Twin Lakes' RFP demonstrates that the cause of Twin Lakes' inability to continue operations is Middlesex's voluntary withdrawal of financial and operational support will also be rejected. It is clear that this proceeding is necessitated by Middlesex's withdrawal of its financial and operational support and that Middlesex has refused to enter into another service agreement with Twin Lakes. This fact, however, does not preclude a finding that Twin Lakes has not adequately considered alternatives to acquisition sufficient to find that Section 529(a)(4) has been met. Therefore, Aqua's arguments do not preclude a finding that alternatives to acquisition have been considered and have been determined to be impractical or not economically feasible.

Twin Lakes is to be credited for the fact that it has made several attempts to improve the system. For some unknown reason, however, Middlesex has not made a substantial infusion of its own funding in order to make the necessary improvements to the Twin Lakes system it chose to acquire in 2008 after all other alternatives to improve the system were not fruitful. That issue, however, will be discussed further below. One is left to wonder whether these problems could have been avoided had Middlesex made the necessary financial investment to improve the infrastructure when it first acquired the system. It is clear, however, that for purposes of evaluating whether alternatives to acquisition have been considered in accordance with Sections 529(a)(4) and (b) and have been determined to be impractical or not economically feasible, substantial record evidence in this case demonstrates that this factor is satisfied. This

determination is true even when considering the financial, managerial and technical expertise of Middlesex as Twin Lakes' corporate parent.

Therefore, Twin Lakes has satisfied the requirement of Section 529(a)(4).

5. Capabilities of acquiring capable public utility.

Section 529(a)(5) requires a determination that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water utility in compliance with applicable statutory and regulatory standards. 66 Pa.C.S. § 529(a)(5). In its main brief, Twin Lakes argued that Aqua is one such capable acquiring utility company and referenced the testimony from the OCA and I&E witnesses. Twin Lakes M.B. at 46-47. In particular, Twin Lakes noted that I&E witness Keller testified that Aqua currently serves approximately 443,000 water customers and has clearly indicated that it is capable of acquiring systems of 5,000 customers which far exceeds the number of customers served by Twin Lakes. Id. at 46. Twin Lakes noted the concurrence of Aqua witness Clark regarding Aqua being financially, managerially and technically capable of providing water service to the Twin Lakes system. Id.

In its main brief, Aqua stated that the record evidence supports the requisite findings necessary to satisfy the requirements of Section 529(a)(5). Aqua M.B. at 22. Aqua cited its testimony and the testimony from I&E and the OCA that it is financially, managerially and technically able to provide water service over the Twin Lakes system and that Aqua has acquired numerous water and wastewater systems, both large and small, over the past ten years. Id.

In its main brief, I&E again stated that, in its opinion, this element has been satisfied. I&E M.B. at 7, 12.

In its main brief, the OCA argued that “[i]t is undisputed that Aqua is financially, managerially and technically capable of acquiring and operating Twin Lakes” and responded to

Aqua's argument that it should not be ordered to acquire Twin Lakes because Twin Lakes does not appear to have a financially insolvent or managerially deficient owner. OCA M.B. at 16. The OCA argued that the capabilities and financial status of Middlesex is irrelevant where Middlesex has unequivocally stated its unwillingness to continue to support Twin Lakes. Id. The OCA added that Aqua has demonstrated its ability and willingness to operate the Twin Lakes system in responses to discovery and by voluntarily acting as receiver during the pendency of the Section 529 proceeding, noting that Aqua has already completed its due diligence and is therefore aware of its current state of affairs. Id. at 16-17.

In its reply brief, I&E recognized that Twin Lakes and the OCA have identified Aqua as a potential acquiring capable public utility but that it has also identified other potential capable public utilities. I&E R.B. at 7. I&E added that while it recognizes that Aqua would meet the qualifications of a capable public utility, I&E continues to recommend that the Commission deny Twin Lakes' petition. Id. I&E concluded, "[n]evertheless, if the Commission ultimately ordered Aqua to acquire Twin Lakes, then element (5) would be met." Id.

As a result, substantial record evidence in this proceeding demonstrates that Twin Lakes has satisfied Section 529(a)(5) with regard to its petition. Aqua is one of the largest water companies in Pennsylvania with over 443,000 customers. Aqua has acquired systems larger than the Twin Lakes system in the past. Aqua has already conducted its due diligence regarding the Twin Lakes system and has been serving as receiver of the system since January 15, 2021. All of these factors warrant finding that Aqua is a capable public utility that is financially, managerially and technically capable of acquiring and operating Twin Lakes. In fact, Aqua itself has recognized that it is such a company and that this criteria in Section 529 has been met.

Therefore, Twin Lakes has satisfied the requirement of Section 529(a)(5).

6. Rates charged by acquiring capable public utility.

Section 529(a)(6) requires a determination that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of

the acquisition. 66 Pa.C.S. § 529(a)(6). In its main brief, Twin Lakes noted the testimony of its witness O'Connor who stated that Aqua has a large Pennsylvania customer base over which it can spread its prudently incurred costs to manage and operate the Twin Lakes system with miniscule impact on any individual customer's bill. Twin Lakes M.B. at 47, *citing*, Twin Lakes St. 2-R at 10-11. Twin Lakes noted that Aqua acquiring the system will address the Commission's policy of ensuring the affordability of customer rates and high quality of service. Id. Twin Lakes referenced the testimony of OCA's and I&E's witnesses who determined that the bill impact borne by Aqua's existing residential water customers would equal approximately 0.09% of Aqua's 2019 water revenues from residential metered water customers. Id., *citing*, OCA St. 1 at 5, I&E St. 2 at 27-28. Twin Lakes concluded that Aqua witness Packer agreed with these conclusions. Id. at 48.

In its main brief, Aqua stated that the record evidence supports the requisite findings necessary to satisfy the requirements of Section 529(a)(6). Aqua M.B. at 22-23. Aqua noted that Twin Lakes has a customer base of 114 and Aqua has a customer base of 443,000, as well as Aqua's plan to use a low-cost financing option via a PENNVEST grant or loan to finance the acquisition and remediation of the system. Id. at 22. Aqua recognized as well that the acquisition of Twin Lakes system by Aqua would not result in an unreasonable increase in rates for Aqua's current customers but maintained that it should not be ordered to acquire Twin Lakes through this proceeding. Id. at 23.

In its main brief, I&E again stated that, in its opinion, this element has been satisfied. I&E M.B. at 7, 12; *see also*, I&E R.B. at 7-8 (recognizing that if the Commission ultimately ordered Aqua to acquire the Twin Lakes system, then element (6) would be met).

In its main brief, the OCA stated that Twin Lakes' 114 customers pay on average a monthly bill of approximately \$225 whereas Aqua's 405,272 customers pay approximately \$65 per month. OCA M.B. at 17. The OCA noted that Aqua has stated that there will be no immediate effect on the rates of its customers. Id. The OCA also looked at the impact of the capital expenditures that will be necessary to replace the Twin Lakes water supply and distribution system. The OCA noted the projected capital costs of \$4.5-\$4.7 million and

determined the estimated additional revenue requirement. *Id.* at 17-18, *citing*, OCA St. 1 at 5. The OCA also noted that Aqua plans to use the PENNVEST grant/loan, if available, that was approved in February 2020 and that a lower debt cost rate would lower the revenue requirement. *Id.* at 18-19.

As such, substantial record evidence demonstrates that Twin Lakes has satisfied Section 529(a)(5) with regard to its petition. The rates charged by Aqua to its preacquisition customers will not increase unreasonably if Aqua is ordered to acquire and operate the Twin Lakes system as part of this proceeding. This is true based simply on mathematical principles: subsuming the cost of providing service to 114 customers within the cost of providing service to 443,000 customers, even with the substantial capital improvements required to provide such service. This is particularly true given the potential availability of PENNVEST grants or loans to provide low-cost financing for the necessary capital expenditures. Again, Aqua has recognized this basic mathematical outcome and has recognized that Twin Lakes has satisfied Section 529(a)(6). Neither the OCA nor I&E oppose such a finding.

Therefore, Twin Lakes has satisfied the requirement of Section 529(a)(6).

E. ADDITIONAL ISSUES

In addition to evaluating Twin Lakes' petition under Section 529(a), this decision also addresses outstanding unsecured promissory notes and service agreement amendments that are related to this matter, as well as other issues under Section 529.

For example, in its September 22, 2020 order affirming the denial of the OCA petition for interim emergency relief, the Commission declined to order Middlesex to extend the termination of the service agreement by which it had previously been providing Twin Lakes operational and financial support that, by then had been voluntarily extended to October 1, 2020. In doing so, however, the Commission encouraged Middlesex to voluntarily extend the termination date until the issuance of a Commission order on the amended service agreement application. In addition, the Commission also consolidated Twin Lakes' applications for

approval, *nunc pro tunc*, of the service agreement. The three outstanding unsecured revolving promissory notes that were subsequently consolidated with the Section 529 proceeding via the October 5, 2020 scheduling order also remain outstanding. In addition, Aqua has also raised issues in this case arguing that Twin Lakes and Aqua have not yet voluntarily negotiated a purchase price and that, if the Commission orders Aqua to acquire the Twin Lakes water system in this proceeding, it should condition the acquisition. Finally, the OCA raised issues regarding other provisions of Section 529, including separate tariffs, plan for improvement, limitations on liability and limitation on enforcement actions.

Each of these issues will be discussed in turn below.

1. Unsecured Promissory Notes and Service Agreement Amendments

As Twin Lakes noted in its main brief, four additional Commission dockets related to this Section 529 proceeding remain pending and should be addressed concomitant with a resolution of this proceeding. Twin Lakes M.B. at 48.

The first three of these additional dockets addresses the application for Commission approval, *nunc pro tunc*, of the three outstanding unsecured revolving promissory notes between Twin Lakes and Middlesex that were consolidated with this proceeding in the October 5, 2020 scheduling order. Twin Lakes noted that all three promissory notes contain identical terms, provide Middlesex with the right as lender to demand payment from Twin Lakes as borrower the total amount due together with interest and were previously disclosed to the Commission in the 2015 and 2019 rate cases. Id. at 49. Twin Lakes added that these notes served as the vehicle to enable Middlesex to provide Twin Lakes financial support and “it is therefore unquestionably in the public interest for the Commission to grant approval, *nunc pro tunc*, of the three outstanding unsecured revolving promissory notes pursuant to 66 Pa.C.S. § 2102.” Id., *citing*, 66 Pa.C.S. § 2102. Twin Lakes also argued that further delay of approval of these promissory notes only serves to delay final resolution of permanent ownership of the Twin Lakes system. Id. at 50.

The fourth additional docket related to this proceeding is Twin Lakes' application for Commission approval *nunc pro tunc* of the service agreement between Twin Lakes and Middlesex inclusive of five amendments to that agreement, noting that this docket was formally consolidated with this proceeding by the Commission in the September 22, 2020 Order. Id. at 50-51. Twin Lakes argued that this docket should be dismissed as moot. Id. at 51 (citations omitted). Twin Lakes noted that this agreement could terminate upon 90-days' advance written notice and that the expiration date was extended through subsequent amendments up to the Fifth Amendment which automatically expired on January 15, 2021. Id. Twin Lakes noted that the service agreement has already terminated on January 15, 2021 and therefore there remains no case or controversy left to decide. Id. Twin Lakes added that, even assuming *arguendo*, however, that the Commission were to deny Section 529 relief in this case, Middlesex is no longer providing operational support and cannot be legally compelled to enter into a new service agreement that amends the terms of the now-expired service agreement. Id. at 52. Twin Lakes argued that this application should be dismissed as moot. Id.

No party submitted any argument regarding the promissory notes or the amendments to the service agreement or responded to the arguments presented by Twin Lakes. Therefore, the three outstanding unsecured revolving promissory notes between Twin Lakes and Middlesex will be approved and the amendments to the service agreement will be denied as moot.

Section 2102 of the Public Utility Code pertains to approval of contracts with affiliated interest. In particular, this section provides:

(a) General rule. —No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission. If such contract is oral, a

complete statement of the terms and conditions thereof shall be filed with the commission and subject to its approval.

66 Pa.C.S. § 2102(a). Section 2102 also includes provisions regarding “filing and action on contract,” “disallowance of excessive amounts” and “exceptions” that are not relevant here. 66 Pa.C.S. § 2102(b)-(d).

As Twin Lakes noted, these notes served as the vehicle to enable Middlesex to provide Twin Lakes financial support and it is therefore in the public interest for the Commission to grant approval, *nunc pro tunc*. In addition, there is no opposition to approving the notes. Furthermore, the service agreement between Twin Lakes and Middlesex and the five amendments to that agreement that were formally consolidated with this proceeding by the Commission in the September 22, 2020 Order are now moot. The Twin Lakes system has been operated by Aqua since January 15, 2021 and will continue to be operated by Aqua until the conclusion of this proceeding. At that time, the result of this proceeding will dictate the appropriate entity to provide managerial, technical and financial support to the Twin Lakes system. As a result, the agreement and accompanying amendments are now moot.

As such, the three outstanding unsecured revolving promissory notes between Twin Lakes and Middlesex will be recommended for approval and the amendments to the service agreement will be recommended to be denied as moot.

2. Negotiating a price and conditioning any acquisition

In its main brief, Aqua referenced Section 529(e) of the Public Utility Code and noted that, although there is no requirement that a purchase price be known to make a finding under Section 529(a), the Commission has explained that the condition of the assets and the expenditures that the acquiring capable public utility will be required to make to provide reasonable and adequate service is relevant to its determination. Aqua M.B. at 37 (citations omitted). Aqua then argued that “there has been no arm’s length agreement between the owner of the Twin Lakes system and any identified capable public utility regarding purchase price.” Id. Aqua added that Section 529(e) and the Commission’s prior orders make clear that any purchase

price negotiated in good faith must recognize both the condition of the system and the improvements required to provide reasonable and adequate service. Id.

As a result, Aqua further argued that, if the Commission orders Aqua to acquire the Twin Lakes water system in this proceeding, it should condition the acquisition on Middlesex setting aside \$1,675,000 in an escrow account to be used to offset the costs of replacing and remediating the existing infrastructure not covered by the potential PENNVEST funding available and to cover the tax liability associated with the grant. Id. at 38, *quoting*, Aqua St. 2-R at 7. Aqua added that this condition is reasonable because it is undisputed that the facilities and infrastructure comprising the Twin Lakes system are significantly deteriorated and will require substantial remediation or replacement in order to provide the customers served with reasonable and adequate water service. Id. Aqua noted that, under the particular set of facts and circumstances in this case, Aqua’s shareholders and ratepayers should not be required to bear the entirety of the costs to remediate and replace the existing infrastructure and that current ownership should be responsible for a portion of the costs. Id. at 39. Aqua again cautions that Section 529 should not be used to foist the costs of remediating or replacing the system’s infrastructure on another public utility. Id. Aqua also argued that Middlesex should be required to place the money in escrow because Middlesex is the entity that would negotiate an agreement to acquire the system and, ultimately, be paid for such acquisition. Id. at 40, *citing*, Tr. 227.

In addition, the OCA noted in its main brief that Section 529(e) provides that the price for the acquisition shall be determined by agreement of the small water utility and the acquiring capable public utility and subject to approval by the Commission, noting that Section 529(e) provides for a process if the parties are unable to come to an agreement and that parties in prior Section 529 cases have been able to arrive at an agreed-upon price. OCA M.B. at 20.

In response, Twin Lakes argued that Aqua’s position “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.” Twin Lakes R.B. at 16 (emphasis in original). Twin Lakes further argued that there is no evidence in the record to support Aqua’s position that Middlesex is attempting to improperly use the Section 529 proceeding if purchase price negotiations fail to

recognize both the condition of the system and the improvements that will be required. Id. Twin Lakes further responded to Aqua's argument that it will be Middlesex negotiating the sale of Twin Lakes as part of any Section 529 process by noting that it will be Twin Lakes. Id., *citing*, Tr. 238.

Twin Lakes also refuted Aqua's argument that an order directing Aqua to acquire the Twin Lakes system should be conditioned on funds being set aside in an escrow account. Twin Lakes argued that Aqua has distorted out of context the testimonies of Twin Lakes witnesses and reiterated that Twin Lakes is the entity that would negotiate any agreement of sale for the Twin Lakes system. Id. at 17. Twin Lakes noted that the witness Aqua quoted in support of its position is not a financial witness but testified regarding the operational challenges of the system. Id. at 18-19. Twin Lakes also argued that requiring Middlesex to set aside in escrow \$1,675,000 as a result of this proceeding is impermissible and would violate Middlesex's due process rights. Twin Lakes added that parties are already in agreement that the rate impact of the acquisition on Aqua's existing customers would be minimal and added that there is no justifiable reason to require Middlesex to set aside this sum in escrow. Id. at 19. Finally, Twin Lakes argued that "this sort of predetermined condition on the purchase price is not contemplated by the text of Section 529" which leaves it to the parties to negotiate the price and the Commission to determine that the price is reasonable. Id.

In its reply brief, the OCA indicated that it 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. OCA R.B. at 8. The OCA added that the Twin Lakes witnesses have testified that the purchase price agreed upon will be negotiated in good faith and that Aqua has completed its due diligence on the system and therefore has the necessary information to pursue an arm's length negotiation at this time. Id. The OCA encouraged the parties to begin their attempts to determine a reasonable purchase price pursuant to Section 529(e). Id.

Substantial record evidence demonstrates that the fact that there has not yet been established an agreed upon purchase price for the potential future sale of the Twin Lakes system

to a capable public utility is not fatal to finding that the requirements of Section 529 have been satisfied. Furthermore, however, substantial record evidence also demonstrates that, given the condition of the assets and the expenditures that the acquiring capable public utility will have to make in order to provide just and reasonable service, requires Middlesex to place \$1,675,000 into an escrow account as a condition of granting the Twin Lakes petition.

The parties agree that Section 529 does not require that an agreed upon purchase price be determined prior to granting any petition under Section 529. Section 529(e) provides:

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

66 Pa.C.S. § 529(e). As such, the petition filed by Twin Lakes will not be denied because there is not yet an agreed upon purchase price. The parties are encouraged to engage in good faith arms-length negotiations upon Commission approval of this petition in order to effectuate the sale of the Twin Lakes system and such price should consider the condition of the assets and the expenditures that Aqua would be required to expend to provide reasonable and adequate service.

As a result, it is reasonable to condition the approval of Twin Lakes' petition on Middlesex placing \$1,675,000 into an escrow account to be used to offset the costs of replacing and remediating the existing infrastructure so that just and reasonable service can be provided, as advocated by Aqua, in this proceeding. As noted above, this is a unique case where the small water utility that is the subject of the Section 529 proceeding (Twin Lakes) is owned by a larger corporate parent (Middlesex). As discussed above, even though Middlesex is a New Jersey corporation, it has submitted to jurisdiction of the Commission in Pennsylvania by virtue of its

purchase of Twin Lakes, among other actions. It is Middlesex who will be negotiating the sale of Twin Lakes as a result of this petition and it is Middlesex who will be remunerated for such sale.

Yet, at the same time, Middlesex, as the corporate parent of Twin Lakes, has not made the necessary financial investment in the Twin Lakes system over the more than a decade since it purchased the system, aside from filing for three triple-digit base rate increases during that time. This is insufficient and warrants conditioning the approval of the Section 529 petition on Middlesex placing \$1,675,000 into escrow for purposes of improving the system that it has not itself improved during the past decade. Middlesex should not benefit from its failure to properly maintain the Twin Lakes system for the past decade by not having to pay, at least in part, for some of the improvements that are required and have not been made. Had Middlesex been making the necessary improvements to the Twin Lakes system as it should have been during the past decade, it would not be required to place \$1,675,000 into escrow as a condition of the approval of the Section 529 petition, as is the case now. Middlesex has not made such improvements and therefore must pay as such now. Middlesex cannot be allowed to enter Pennsylvania through the purchase of Twin Lakes and allow the system to be so poorly run as to jeopardize the provision of safe and reliable water service at just and reasonable rates. The customers of Twin Lakes deserve better.

Other non-Pennsylvania corporations own Pennsylvania utilities throughout the state and have met their obligations and responsibilities as corporate parents of utilities providing vital utility services. Allowing Middlesex in this case as corporate parent to allow the Twin Lakes system to be run so poorly for so long without having to make the financial commitment as requested by Aqua at the time its petition for Section 529 is being approved creates an incentive for other non-Pennsylvania utilities to purchase Pennsylvania utilities, run them poorly and then have them acquired by a capable utility through the Section 529 process. This case cannot be allowed to be used to create precedent that may result in detriment to other Pennsylvania utility customers. It is recognized that Middlesex has made several efforts to obtain help in properly running the Twin Lakes system, and Middlesex has the right to pursue such opportunities. Overall, however, Middlesex made a commitment to properly run the Twin

Lakes system when it filed its application to purchase the system in 2008 but it has failed to make its own necessary financial commitment to providing such service when all other alternatives failed. Through Aqua's requested escrow, Middlesex will now make its own necessary financial commitment as a condition of approval of this petition. The Commission's jurisdiction over Middlesex, as discussed above, provides the authority to require this condition as part of this proceeding.

In contrast, Twin Lakes' arguments to the contrary are without merit and will be rejected. Twin Lakes' argument that Aqua is distorting out of context the testimony of its witnesses is without merit. Regardless of which Twin Lakes witness was presented for which reason, as Twin Lakes argued in response to Aqua's position, both Mr. Fullagar and Mr. O'Connor have professional responsibilities for both Twin Lakes and Middlesex, *See e.g.*, Tr. 83-84, 105. The fact that Mr. O'Connor would be representing Twin Lakes in any negotiation for the sale of the Twin Lakes system to Aqua does not negate the fact that Mr. O'Connor is also an employee of Middlesex. To allow otherwise would allow Middlesex to play a corporate shell game to avoid liability for its role in the deterioration of the Twin Lakes system over the past decade.

Furthermore, Twin Lakes' argument that approving Aqua's request for a condition is improper because it would violate Middlesex's due process concerns is without merit. Middlesex was fully aware of this proceeding and the arguments made therein and, therefore, had notice and an opportunity to be heard. This is due in part to the fact that Twin Lakes' witnesses in this case also play a major role in Middlesex. These witnesses received the filings made in this case, including testimony and were present during the hearing. Had Middlesex believed that it should have responded to certain arguments raised in this case, it could have done so. Middlesex's argument that requiring it to pay into an escrow account violates its due process rights will be rejected.

Finally, Twin Lakes' argument that this sort of predetermined condition on the purchase price is not contemplated by the text of Section 529 will also be rejected. Twin Lakes is correct that, under Section 529, the purchase price is to be negotiated between the small water

utility and the acquiring capable public utility, subject to a determination by the Commission that such a price is reasonable. The condition proposed by Aqua regarding establishing the escrow account, however, is separate from the negotiations of the purchase price. The condition proposed by Aqua regarding establishing the escrow account is based solely on the poor condition of the Twin Lakes system that Middlesex as corporate parent has allowed to develop over the past decade and the unique facts and circumstances that are present in this case as discussed above. Under such facts and circumstances, this condition falls squarely within the meaning and intent of Section 529 and will be adopted as part of this proceeding.

Twin Lakes' argument that a requirement that Middlesex set aside funds in escrow is impermissible, unjustified and contrary to Section 529(e) will be rejected. Such an escrow fund as requested by Aqua is permissible under the facts and circumstances of this case and consistent with the purposes and intent of Section 529 to allow for the recovery of failed small water systems in Pennsylvania.

Twin Lakes has otherwise not presented any reason to reject imposing Aqua's requested condition of Middlesex placing \$1,675,000 escrow account on the approval of the Twin Lakes' Section 529 petition.

As such, the request of Aqua to condition the approval of Twin Lakes' Section 529 petition on Middlesex placing \$1,675,000 in escrow for purposes of replacing and remediating the existing infrastructure will be recommended for approval.

3. Separate tariffs, plan for improvement, limitations on liability and limitation on enforcement actions.

In its main brief, the OCA recognized Sections 529(f), (j), (k) and (l). These sections address, respectively, separate tariffs, plan for improvement, limitations on liability and limitations on enforcement actions. OCA M.B. at 20-22, *citing*, 66 Pa.C.S. § 529(f), (j), (k) and (l). With regard to separate tariffs, the OCA argued that Twin Lakes' rates could be reduced by being included in an existing rate zone. Id. at 20. With regard to plan for improvements, the OCA noted that Twin Lakes previously discussed its plans for improvements and how those

improvements would address system issues in its PENNVEST application and that Aqua should provide a similar plan for improvements. Id. at 21. In addition, with regard to limitations on liability and limitations on enforcement actions, the OCA noted that there are certain constraints on the limitation of liability and limitation on enforcement actions in Sections 529(k) and (l) and noted that these provisions can be addressed in the Commission's final order approving the acquisition of Twin Lakes by Aqua after an agreed-upon purchase price and plan for improvements are submitted. Id.

In response, Aqua stated in its reply brief that it agrees with the OCA that it is premature to consider the issue of a separate tariff and that it should only be considered if the Commission orders a forced acquisition of Twin Lakes and after a purchase price has been determined. Aqua R.B. at 14. Aqua also argued that it would be necessary to submit a plan for improvements if it is required to acquire Twin Lakes but disagrees that such a plan should list improvements similar to those set forth in Twin Lakes' PENNVEST funding application. Id. at 14-15. Aqua added that any plan submitted to the Commission must reflect the condition that Middlesex be required to place \$1,675,000 in escrow for infrastructure improvements and permit Aqua to use the amount deposited into escrow to make certain of the identified reasonably and prudently incurred costs of improvements. Id. at 15. With regard to the limitations of liability and limitations on enforcement actions, Aqua argued that "any liability limitations should substantially insulate Aqua from the actions and omissions of the current owner of the Twin Lakes system if Aqua is ordered to acquire the system," noting that the system is currently in poor condition and has experienced several violations of the Public Utility Code and other applicable laws and regulations. Id. at 15-16.

The OCA is correct that Section 529 has additional provisions beyond Sections 529(a) through (c) that must be considered as part of any acquisition ordered by the Commission of a small water utility by a capable public utility. However, none of these additional provisions need to be addressed at this point but, rather, could be addressed after the Commission acts on this decision, if necessary. Although Section 529(f) could be addressed at this juncture and given that the rates charged to Twin Lakes' customers have increased dramatically over the past decade, there is not sufficient evidence in the record of this proceeding to direct that separate

tariffs be used for the Twin Lakes' customers. Furthermore, to the extent the Commission determines to order Aqua to acquire the Twin Lakes system as part of this proceeding, the tariff issue, along with the plan for improvement and liability issues, can be addressed at a future time. For now, it is sufficient to determine that there is nothing in Sections 529(f), (j), (k) and (l) that warrants denying Twin Lakes' petition in this proceeding.

F. CONCLUSION

In conclusion, it will be recommended that Twin Lakes has satisfied its burden of proof to demonstrate that all of the six elements in Section 529 support requiring Aqua to acquire the Twin Lakes system. Substantial record evidence demonstrates that Twin Lakes is in violation of several statutory or regulatory standards, Twin Lakes has failed to comply within a reasonable time with orders of the PA DEP or the Commission concerning the safety, adequacy efficiency or reasonable of service and that Twin Lakes cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. In addition, alternatives to requiring Aqua to acquire the Twin Lakes system are impractical or not economically feasible, including reorganizing Twin Lakes, having another entity operate the system, appointing a receiver, merging the system with another public utility or having the system acquired by a municipality, a municipal authority or a cooperative. These determinations are made when considering both Twin Lakes as a standalone system and with Middlesex as Twin Lakes' owner and corporate parent.

Furthermore, record evidence also demonstrates that Aqua is financially, managerially and technically capable of acquiring and operating the Twin Lakes system in compliance with applicable statutory and regulatory standards and that the rates charged by Aqua to its preacquisition customers will not increase unreasonably because of the acquisition.

As a result, it will be recommended that, within thirty (30) days after the Commission's final action in this proceeding, Aqua Pennsylvania, Inc. and Twin Lakes Utilities, Inc. be directed to engage in good-faith, arms-length negotiations regarding the sale price of the Twin Lakes system to Aqua Pennsylvania, Inc. subject to the Commission's approval.

However, as a condition of requiring Aqua to acquire the Twin Lakes system, Middlesex, as owner and corporate parent of Twin Lakes, it is recommended that Middlesex be required to place \$1,675,000 into an escrow account to be used to offset the costs of replacing and remediating the existing infrastructure of the Twin Lakes system as a condition of the acquisition.

This condition is required because, when Middlesex determined to purchase the Twin Lakes system more than a decade ago, such a determination came with the expectation that Middlesex would operate the system in a manner that would ensure safe and reliable utility service at just and reasonable rates. Such a determination came with the understanding that Middlesex would have to use its own financial resources at times on underperforming segments of its footprint to satisfy that expectation. Such is the role and responsibility of a public utility as stewards of vital utility services. Middlesex engaged in several efforts to relieve itself of such obligations, such as finding another owner, seeking base rate increases, etc. But when such efforts failed, Middlesex as owner and corporate parent of the Twin Lakes system was required to use its own financial resources to provide the customers of Twin Lakes with potable drinking water. The 114 customers on the Twin Lakes system deserve no less. Yet, Middlesex has failed to do that over more than a decade. Therefore, conditioning the acquisition of the Twin Lakes system by Aqua on Middlesex placing \$1,675,000 into an escrow to be used to offset the costs of replacing and remediating the existing infrastructure is reasonable, and, as discussed above, consistent with the jurisdiction of the Commission.

The facts and circumstances involved in this case are unique, but what remains constant is the principle that Pennsylvania cannot allow utilities – regardless of whether they are located in Pennsylvania – to acquire smaller systems and then not provide the necessary resources to ensure that safe and reliable service is being provided at just and reasonable rates. As noted above, the establishment of a precedent so inimical to the statutory responsibility of the Commission and sound public policy must not be allowed in this case by facilitating a larger company in shedding itself of unprofitable portions of its system. Doing so would violate the fundamental purpose of utility regulation that has existed for more than a century – in general, no one ratepayer pays the exact cost of providing individual utility service to themselves, but the

customers in the rate base pay by class for the properly allocated, system-wide costs of providing service, consistent with long-standing ratemaking principles. This case is illustrative of the fact that if basic ratemaking principles are not in place, then vital utility services would not be available in portions of the Commonwealth where the cost of providing those services (such as in rural areas), would prohibit the deployment of the infrastructure that is necessary to provide that service. Vital utility service would only be available in more densely populated areas where the cost per customer to provide service is lower. This is not how the utility industry was developed and operates.

The substantial evidence of record in this proceeding establishes that Twin Lakes and its owner and corporate parent Middlesex do not have the managerial ability to provide the necessary resources to operate the Twin Lakes system appropriately. The increase to Middlesex's entire customer base of 443,000 customers would be approximately the same as the increase to Aqua's entire customer base of 500,000 to spread the cost of improving and replacing the infrastructure in the Twin Lakes system. Yet, Middlesex has not made such an investment and is asking Aqua, or another capable public utility, to do so essentially without cost to Middlesex. Such actions cannot be countenanced.

With these concepts in mind, conditioning approval of Twin Lakes petition in this proceeding on Middlesex placing \$1,675,000 into an escrow account to be used to offset the costs of replacing and remediating the existing infrastructure is reasonable.

Finally, the Applications For Approval *Nunc Pro Tunc* of The Three Unsecured Revolving Promissory Notes between Twin Lakes and Middlesex Water Company at docket numbers G-2020-3021018, G-2020-3021021 and G-2020-3021024 will be recommended for approval. The Application For Approval *Nunc Pro Tunc* of the Service Agreement between Twin Lakes and Middlesex Water Company and its five amendments at docket number G-2020-3020941 will be recommended to be dismissed as moot as a result of the expiration of such Agreement on January 15, 2021.

V. CONCLUSIONS OF LAW

1. The Commission has jurisdiction over the subject matter and the parties to this proceeding. 66 Pa.C.S. § 529.

2. The Commission may order a capable public utility to acquire a small water or sewer utility if the commission, after notice and an opportunity to be heard, determines: (1) that the small water or sewer utility is in violation of statutory or regulatory standards, including, but not limited to, the act of June 22, 1937 (P.L. 1987, No. 394), known as The Clean Streams Law, the act of January 24, 1966 (1965 P.L. 1535, No. 537), known as the Pennsylvania Sewage Facilities Act, and the act of May 1, 1984 (P.L. 206, No. 43), known as the Pennsylvania Safe Drinking Water Act, and the regulations adopted thereunder, which affect the safety, adequacy, efficiency or reasonableness of the service provided by the small water or sewer utility; (2) that the small water or sewer utility has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the Commission concerning the safety, adequacy, efficiency or reasonableness of service, including, but not limited to, the availability of water, the potability of water, the palatability of water or the provision of water at adequate volume and pressure; (3) that the small water or sewer utility cannot reasonably be expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future; (4) that alternatives to acquisition have been considered in accordance with subsection (b) and have been determined by the commission to be impractical or not economically feasible; (5) that the acquiring capable public utility is financially, managerially and technically capable of acquiring and operating the small water or sewer utility in compliance with applicable statutory and regulatory standards; and (6) that the rates charged by the acquiring capable public utility to its preacquisition customers will not increase unreasonably because of the acquisition. 66 Pa.C.S. § 529(a).

3. Before the Commission may order the acquisition of a small water or sewer utility in accordance with Section 529, 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; and (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).

4. In making a determination pursuant to Section 529(a)(4), the Commission shall consider: (1) The financial, managerial and technical ability of the small water or sewer utility; (2) The financial, managerial and technical ability of all proximate public utilities providing the same type of service; (3) The expenditures which may be necessary to make improvements to the small water or sewer utility to assure compliance with applicable statutory and regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service; (4) The expansion of the franchise area of the acquiring capable public utility so as to include the service area of the small water or sewer utility to be acquired; (5) The opinion and advice, if any, of the Department of Environmental Resources as to what steps may be necessary to assure compliance with applicable statutory or regulatory standards concerning the adequacy, efficiency, safety or reasonableness of utility service; and (6) Any other matters which may be relevant. 66 Pa.C.S. § 529(c).

5. Section 332(a) of the Public Utility Code provides that the party seeking relief from the Commission has the burden of proof. 66 Pa.C.S. § 332(a).

6. As a matter of law, a complainant must show that the named utility is responsible or accountable for the problem described in the complaint in order to prevail. Patterson v. Bell Tel. Co. of Pa., 72 Pa. PUC 196 (1990).

7. “Burden of proof” means a duty to establish a fact by a preponderance of the evidence, or evidence more convincing, by even the smallest degree, than the evidence presented by the other party. Se-Ling Hosiery v. Margulies, 364 Pa. 54, 70 A.2d 854 (1950).

8. The offense must be a violation of the Public Utility Code, the Commission's regulations, or an outstanding order of the Commission. 66 Pa.C.S. § 701.

9. If a complainant establishes a *prima facie* case, the burden of going forward with the evidence shifts to the utility. If a utility does not rebut that evidence, the complainant will prevail. If the utility rebuts the complainant's evidence, the burden of going forward with the evidence shifts back to the complainant, who must rebut the utility's evidence by a preponderance of the evidence. The burden of going forward with the evidence may shift from one party to another, but the burden of proof never shifts; it always remains on a complainant. Milkie v. Pa. Pub. Util. Comm'n, 768 A.2d 1217 (Pa.Cmwlth. 2001); *see also*, Burleson v. Pa. Pub. Util. Comm'n, 443 A.2d 1373 (Pa.Cmwlth. 1982).

10. Section 529 provides that the Bureau of Investigation and Enforcement shall have the burden of establishing a *prima facie case* that the acquisition of the small water or sewer utility would be in the public interest and in compliance with the provisions of Section 529. 66 Pa.C.S. § 529(i).

11. Although it is accurate that the Bureau of Investigation and Enforcement bears the statutory burden of proof in a Section 529 proceeding pursuant to 66 Pa.C.S. § 529(i), the Commission has previously stated that the burden is not exclusive to I&E; rather, any party may present or rebut a *prima facie* case in support of its position in this proceeding. September 17, Order at 21, citing, Investigation Instituted per Section 529 into Whether the Commission Shall Order a Capable Public Utility to Acquire Delaware Sewer Company, Docket No. I-2016-2526085 (Order entered Jan. 28, 2016).

12. On appeal, the decision of the Commission must be supported by substantial evidence. 2 Pa.C.S. § 704.

13. "Substantial evidence" is such relevant evidence that a reasonable mind might accept as adequate to support a conclusion. More is required than a mere trace of evidence or a suspicion of the existence of a fact sought to be established. Norfolk & W. Ry. Co. v. Pa.

Pub. Util. Comm'n, 489 Pa. 109, 413 A.2d 1037 (1980); Erie Resistor Corp. v. Unemployment Comp. Bd. of Review, 166 A.2d 96 (Pa.Super. 1961); and Pa. Dept. of Pub. Welfare, White Haven Ctr., 480 A.2d 382 (Pa.Cmwlt. 1984).

14. A “small water utility” as provided in Section 529 is “a public utility which regularly provides water service to 1,200 or fewer customer connections.” 66 Pa.C.S. § 529(m).

15. Twin Lakes, as a standalone company and when considering Middlesex as its corporate parent, is in violation of statutory or regulatory standards. 66 Pa.C.S. § 529(a)(1).

16. Twin Lakes, as a standalone company and when considering Middlesex as its corporate parent, has failed to comply, within a reasonable period of time, with any order of the Department of Environmental Resources or the Commission concerning the safety, adequacy, efficiency or reasonableness of the service. 66 Pa.C.S. § 529(a)(2).

17. Twin Lakes, as a standalone company and when considering Middlesex as its corporate parent, 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).

18. Alternatives to acquisition of Twin Lakes, as a standalone company and when considering Middlesex as its corporate parent, have been considered in accordance with Section 529(b) and are impractical or not economically feasible. 66 Pa.C.S. § 529(a)(4).

19. Aqua Pennsylvania, Inc. is financially, managerially and technically capable of acquiring and operating the Twin Lakes system in compliance with applicable statutory and regulatory standards. 66 Pa.C.S. § 529(a)(5).

20. The rates charged by Aqua Pennsylvania, Inc. to its preacquisition customers will not increase unreasonably because of the acquisition. 66 Pa.C.S. § 529(a)(6).

21. No contract or arrangement providing for the furnishing of management, supervisory, construction, engineering, accounting, legal, financial, or similar services, and no contract or arrangement for the purchase, sale, lease, or exchange of any property, right, or thing or for the furnishing of any service, property, right or thing other than those above enumerated, made or entered into after the effective date of this section between a public utility and any affiliated interest shall be valid or effective unless and until such contract or arrangement has received the written approval of the commission. If such contract is oral, a complete statement of the terms and conditions thereof shall be filed with the Commission and subject to its approval. 66 Pa.C.S. § 2102(a).

22. The price for the acquisition of the small water or sewer utility shall be determined by agreement between the small water or sewer utility and the acquiring capable public utility, subject to a determination by the commission that the price is reasonable. If the small water or sewer utility and the acquiring capable public utility are unable to agree on the acquisition price or the Commission disapproves the acquisition price on which the utilities have agreed, the Commission shall issue an order directing the acquiring capable public utility to acquire the small water or sewer utility by following the procedure prescribed for exercising the power of eminent domain pursuant to the act of June 22, 1964 (Sp.Sess., P.L. 84, No. 6), known as the Eminent Domain Code. 66 Pa.C.S. § 529(e).

23. Sections 529(f), (j), (k) and (l) address, respectively, separate tariffs, plan for improvement, limitations on liability and limitations on enforcement actions. 66 Pa.C.S. §§ 529(f), (j), (k) and (l).

VI. ORDER

THEREFORE,

IT IS RECOMMENDED:

1. That the petition of Twin Lakes Utilities, Inc. for a Commission order authorizing the acquisition of Twin Lakes pursuant to 66 Pa.C.S. § 529 by a capable utility as that term is defined by statute, filed on July 16, 2020 at docket number P-2020-3020914, is hereby granted subject to the condition that within thirty (30) days after Commission's final action in this proceeding Middlesex Water Company places in escrow \$1,675,000 to be used to offset the costs of replacing and remediating the existing infrastructure of the Twin Lakes system.

2. That Aqua Pennsylvania, Inc. shall acquire Twin Lakes Utilities, Inc. consistent with the above discussion and requirements.

3. That, within thirty (30) days after the Commission's final action in this proceeding, Aqua Pennsylvania, Inc. and Twin Lakes Utilities, Inc. shall engage in good-faith, arms-length negotiations regarding the sale price of the Twin Lakes system to Aqua Pennsylvania, Inc. subject to the Commission's approval.

4. That the Applications For Approval *Nunc Pro Tunc* of The Three Unsecured Revolving Promissory Notes between Twin Lakes and Middlesex Water Company at docket numbers G-2020-3021018, G-2020-3021021 and G-2020-3021024 are granted.

5. That the Application For Approval *Nunc Pro Tunc* of the Service Agreement between Twin Lakes and Middlesex Water Company and its five amendments at docket number G-2020-3020941 are dismissed as moot as a result of the expiration of such Agreement on January 15, 2021.

6. That this matter be marked closed.

Date: April 22, 2021

_____/s/
Joel H. Cheskis
Deputy Chief Administrative Law Judge