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May 12, 2021

VIA ELECTRONIC FILING

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

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

Dear Secretary Chiavetta:

Attached please find the Exceptions of Aqua Pennsylvania, Inc. in the above-captioned proceeding. Copies will be provided per the Certificate of Service.

Respectfully submitted,



Garrett P. Lent

GPL/kls
Attachment

cc: Honorable Joel H. Cheskis
Office of Special Assistants (*via email - ra-OSA@pa.gov*)
Certificate of Service

CERTIFICATE OF SERVICE

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

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Date: May 12, 2021

Garrett P. Lent

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**EXCEPTIONS OF
AQUA PENNSYLVANIA, INC.**

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Date: May 12, 2021

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I. INTRODUCTION

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) hereby files these Exceptions to the Recommended Decision (the “RD”) issued by Deputy Chief Administrative Law Judge Joel H. Cheskis (the “ALJ”). In the RD, the ALJ recommends that the Pennsylvania Public Utility Commission’s (“Commission”) grant the Petition of Twin Lakes Utilities, Inc. (“Twin Lakes”) For A Commission Order Authorizing The Acquisition Of Twin Lakes Utilities, Inc. By A Capable Public Utility Pursuant to 66 Pa.C.S. § 529 dated July 26, 2020 (“Petition”), subject to the condition that within thirty (30) days after the Commission’s final action in this proceeding Middlesex Water Company (“Middlesex”), the owner of Twin Lakes, place in escrow \$1,675,000 to be used to offset the costs of replacing and remediating the existing infrastructure of the Twin Lakes water system. RD at 70. Subject to this condition, the RD recommends that Aqua be ordered to acquire the Twin Lakes water system and that Aqua and Twin Lakes are to engage in good-faith arms-length negotiations regarding the sale price of the Twin Lakes system to Aqua, within 30 days of the Commission’s final action. RD at 70.

For the reasons explained below, and those set forth in its Briefs, Aqua submits that Twin Lakes’ Petition should be denied and the Commission should revise the RD, and decline to order Aqua to acquire the Twin Lakes water system as a part of this proceeding. However, to the extent that the Commission determines to order Aqua to acquire the Twin Lakes water system, the Commission should condition such acquisition in the same manner as the RD and require Middlesex to place in escrow \$1,675,000 to be used to offset the costs of replacing and remediating the existing infrastructure of the Twin Lakes water system, within thirty (30) days after the entry of the Commission’s order.

II. EXCEPTIONS

A. **EXCEPTION NO. 1 – THE RD ERRS BY ORDERING AQUA TO ACQUIRE THE TWIN LAKES WATER SYSTEM.**

The RD recommends that Aqua be ordered to acquire the Twin Lakes water system, subject to the condition that within thirty (30) days after the Commission’s final action in this Middlesex place in escrow \$1,675,000 to be used to offset the costs of replacing and remediating the existing infrastructure of the Twin Lakes water system. RD at 59-60, 62-64, 70. The RD incorrectly concludes that Twin Lakes has satisfied its burden of proof under Section 529 of the Public Utility Code, 66 Pa.C.S. § 529, and, moreover, fails to recognize that Middlesex—through Twin Lakes—is attempting to use the Section 529 process for an improper purpose.

Aqua has repeatedly raised its concern that Middlesex is attempting to use the Section 529 process to eliminate a financially poor performing segment of its overall strong business. *See, e.g.*, Aqua MB at 34-35; Aqua RB at 13-14.¹ Aqua demonstrated that: (1) Middlesex remains capable of continuing to own and operate the Twin Lakes system (Aqua MB at 33); (2) Middlesex is the sole source of operational and financial support for Twin Lakes, and has been since it acquired the system (Aqua MB at 33-34); and (3) Middlesex ultimately controls Twin Lakes (Aqua MB at 34). Once it is recognized that Middlesex ultimately owns the Twin Lakes system and controls its operations, the true purpose of this proceeding becomes apparent.

Aqua’s witnesses credibly testified that, typically, a Section 529 proceeding involves “systems [that] have been troubled, in that the service to customers was jeopardized by the owner’s inability to run the system or lack of an owner to do so.” Aqua St. 2-R at 4. However, this

¹ Aqua further notes that it raised this concern in its Post-Hearing Main Brief in Opposition to the OCA’s Petition for Interim Emergency Relief at 17, n.7, in its Post-Hearing Reply Brief in Opposition to the OCA’s Petition for Interim Emergency Relief at 11-12, and in its Brief in Support of the Interim Order Denying the OCA’s Petition for Interim Emergency Relief at 11, n.3.

proceeding is a situation where “the current owner is going through a Section 529 proceeding in order to eliminate a financially poor performing segment of their overall strong business.” Aqua St. 1 at 8. Indeed, the record evidence shows that Middlesex appears to be seeking to use the Section 529 process to have another entity acquire a system that it has the financial, operational and managerial capabilities to manage. Aqua St. 2-R at 5.

Aqua demonstrated that this use of the Section 529 process is concerning and improper, because it could “force a potential acquiring public utility to pay more than it otherwise would agree to pay based upon arms-length negotiations between the parties.” Aqua MB at 35 (quoting Aqua St. 2-R at 6). More specifically, Aqua showed that if a mutually acceptable purchase price to be accepted and/or if the purchase price could be rejected by the Commission, then whomever is ordered to acquire the Twin Lakes system will be forced to use the provisions of the Eminent Domain Code and may be forced to accept a purchase price that would not otherwise have been agreed to in arms-length negotiations. Aqua MB at 35 (citing Aqua St. 2-R at 7). These concerns are particularly acute in that, if the RD is adopted, Aqua will be ordered to acquire the Twin Lakes systems and may be forced to use the provisions of the Eminent Domain Code to determine the purchase price.

Although the RD correctly recognizes that the Twin Lakes system is in exceedingly poor condition (*see, e.g.*, RD at 14, 17, 60) and that it is necessary for any purchase price to recognize the poor condition of the system (*see, e.g.*, RD at 57, 60), it nevertheless concluded that “the petition filed by Twin Lakes will not be denied because there is not yet an agreed upon purchase price.” RD at 57. In this regard, the RD failed to recognize a fundamental concern in this proceeding is that Middlesex appears eager to sell the Twin Lakes system, and Aqua and no other public utility is interested in purchasing the system out of their own business interest. Aqua St. 2-

SR at 2. Thus, it appears that Middlesex—through Twin Lakes—is attempting to use the Section 529 process to avoid writing down the value of the Twin Lakes water system on its financial books of account (Aqua St. 2-SR at 2) and extract more value out of the system than it otherwise could do in good-faith arms-length negotiations. Aqua St. 2-R at 7. Middlesex—through Twin Lakes—should not be permitted to use Section 529 for this purpose and, therefore, the RD should be rejected, and Twin Lakes’ Petition should be denied in full.

Nevertheless, if the Commission adopts the RD and orders Aqua to acquire the Twin Lakes water system, Aqua submits that the condition on such acquisition recommended in the RD is necessary to protect Aqua and its ratepayers, appropriate under the facts and circumstances of this case, and should be adopted without modification. Aqua fully explained that it is necessary to condition any ordered acquisition of the Twin Lakes system in recognition of the fact that Middlesex appears to be attempting to voluntarily divest the Twin Lakes system. Aqua MB at 38-40. In addition, substantial evidence supports the calculation of the proposed amount to be placed in escrow, *i.e.*, \$1,675,000, which represents “\$304,573 of [a PENNVEST] loan and an estimated \$1,358,000 of tax liability” associated with the PENNVEST grant. Aqua St. 2-R at 7-8. Moreover, this condition recognizes the unique facts and circumstances of this case, where a financially and operationally capable owner acquired a small water system, permitted it to deteriorate during its ownership, and now is attempting to foist the system upon a different Pennsylvania public utility and its ratepayers. *See* RD at 57-60. Therefore, if these Exceptions are denied, Aqua submits that the Commission should adopt the RD’s proposed condition on the forced acquisition of the Twin Lakes system.

B. EXCEPTION NO. 2 – THE RD ERRS BY CONCLUDING THAT TWIN LAKES HAS SATISFIED THE REQUIREMENT OF SECTION 529(A)(3), EVEN WHEN CONSIDERING THE FINANCIAL, MANAGERIAL AND TECHNICAL EXPERTISE OF THE PARENT. RD AT 42.

The RD erred by concluding that Twin Lakes—through Middlesex—cannot be reasonably expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. RD at 42. The RD reasoned that while Middlesex has the financial capability to run the system property, “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.” RD at 41. The RD further found that “[i]t 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.” RD at 42.

Aqua demonstrated that the financial, managerial and technical capabilities of Twin Lakes are inextricably intertwined with, and exclusively based upon, the capabilities of Middlesex. Aqua MB at 23-24. And the record evidence demonstrates that Middlesex has the capabilities necessary to own and operate Twin Lakes in a manner that could result in adequate, efficient, safe and reasonable service and facilities. Aqua MB at 25-26. Rather, Middlesex has voluntarily decided not to provide Twin Lakes with the operational and financial support necessary to operate the system and has voluntarily decided to withdraw any operational and financial support. Aqua St. 1 at 8; Aqua St. 2-R at 4-5; *see also* Tr. 237:23-238:1 (“[ATTORNEY LENT] Q. Certainly, Middlesex’s decision to withdraw operational and financial support from Twin Lakes is voluntary, correct? [WITNESS O’CONNOR] A. Yes.”). The RD appears to recognize this fact in another context, as it explained:

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...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.

RD at 47 (emphasis added). As such, contrary to the conclusions of the RD, Twin Lakes—through Middlesex—has the requisite operational and financial capability to operate the system, but has just simply refused to use its capabilities. Instead, Middlesex has sought to distort the purpose of Section 529 in an effort to obtain a higher price than it believes it can obtain through good faith negotiations for the purchase of assets whose physical condition is extremely deteriorated.²

For these reasons, and the reasons more fully explained in Aqua’s testimony and Briefs, Twin Lakes failed to demonstrate that it cannot be reasonably expected to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. The RD’s conclusion to the contrary is in error and, therefore, should not be adopted by the Commission.

² Importantly, the exceedingly poor condition of the Twin Lakes system is not in dispute. See Aqua M.B. at 17-19; Aqua R.B. at 15-16. Despite this poor condition, the problems plaguing the system have not been remediated despite Twin Lakes being granted rate relief. See, e.g., RD at 16 (“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.”).

III. CONCLUSION

WHEREFORE, Aqua Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission (1) revise the Recommended Decision of Deputy Chief Administrative Law Judge Joel H. Cheskis, and (2) deny the above-captioned Petition filed by Twin Lakes Utilities, Inc. In the alternative, if the Pennsylvania Public Utility Commission denies Aqua Pennsylvania, Inc.'s Exceptions and orders Aqua Pennsylvania, Inc. to acquire the Twin Lakes, Inc. water system, then the Pennsylvania Public Utility Commission should adopt the Recommended Decision's condition requiring Middlesex Water Company to place in escrow \$1,675,000 to be used to offset the costs of replacing and remediating the existing infrastructure of the system within thirty (30) days of the Commission's final action in this proceeding.

Respectfully submitted,



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