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May 24, 2021

Via Electronic Filing

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

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

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

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

Dear Secretary Chiavetta:

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

Sincerely,

/s/ Lauren M. Burge

Lauren M. Burge

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

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

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Dated: May 24, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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

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Dated: May 24, 2021

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I. INTRODUCTION

Twin Lakes Utilities, Inc. (“Twin Lakes”) submits these Reply Exceptions responding to the Exceptions filed by Aqua Pennsylvania, Inc. (“Aqua”) in the above-captioned proceeding. In the Recommended Decision (“RD”), Deputy Chief Administrative Law Judge Joel H. Cheskis (“ALJ” or “Judge Cheskis”) correctly found that Twin Lakes has met all of the necessary statutory requirements of Section 529 of the Pennsylvania Public Utility Code, 66 Pa. C.S. § 529, such that Aqua Pennsylvania, Inc. (“Aqua”) should be ordered to acquire the Twin Lakes system. The RD also conditioned the acquisition of Twin Lakes by Aqua upon the placement of \$1.675 million into escrow by Twin Lakes’ parent company, Middlesex Water Company (“Middlesex”).

On May 12, 2021, Twin Lakes filed Exceptions to the RD. Twin Lakes fully supports the RD’s conclusion that the elements of Section 529 have been met and that Aqua should be ordered to acquire the Twin Lakes system. This is the only correct result based upon the record in this proceeding and the Public Utility Code, and the only outcome that furthers the public interest by ensuring that Twin Lakes’ customers will receive sustainable quality of service in the future. However, Twin Lakes excepted to the escrow condition as being illegal and inappropriate, and in violation of both the Public Utility Code and the United States Constitution.

Twin Lakes’ Exceptions contain a comprehensive discussion of its opposition to the escrow requirement and the attempt to exercise jurisdiction over Middlesex. Twin Lakes will not restate its arguments set forth in the Exceptions here, but rather will respond to arguments raised by Aqua’s Exceptions. Twin Lakes incorporates by reference all of the arguments and analyses contained in its Main Brief, Reply Brief, and Exceptions, as well as its Petition and testimonies presented as record evidence in this proceeding.

As explained herein, Aqua’s Exceptions should be denied. As discussed in Twin Lakes’ Main Brief, all of the necessary statutory requirements of Section 529 have been met, and the RD

appropriately recommended that Aqua be ordered to acquire the Twin Lakes system. Therefore, Twin Lakes respectfully requests that the Commission: (1) order Aqua to acquire the Twin Lakes system; (2) modify the RD to remove any requirement that Middlesex place funds in escrow; and (3) direct Aqua and Twin Lakes to proceed with purchase price negotiations consistent with Section 529.

II. REPLY EXCEPTIONS

A. Reply to Aqua Exception No. 1 – The RD Correctly Ordered Aqua to Acquire the Twin Lakes System.

In its Exception, Aqua argues that Twin Lakes has failed to meet its burden of proof under Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, and that Twin Lakes' corporate parent, Middlesex Water Company ("Middlesex"), is attempting to use Section 529 for an "improper purpose." Aqua Exc. at 2-4. To the contrary, the evidentiary record in this proceeding demonstrates that Twin Lakes has satisfied all necessary elements of Section 529 and the RD correctly found that Aqua should be ordered to acquire the Twin Lakes system. *See* Twin Lakes M.B. at 28-48. Additionally, there is no basis in the statutory language or the evidentiary record for Aqua's argument that this proceeding is using Section 529 for any "improper purpose." For these reasons, Aqua's Exceptions must be rejected.

Aqua argues that this proceeding is an improper use of Section 529 because Twin Lakes has a corporate parent company, and Aqua believes that Section 529 relief should only be available when service is "jeopardized by the owner's inability to run the system or lack of an owner to do so." Aqua Exc. at 2; Aqua St. 2-R at 4. There is no such criteria stated in the statute.

The text of Section 529 nowhere limits the section's application solely to small water utilities that lack an owner or whose owner has a complete inability to operate the system. To the contrary, the legislative intent is concisely expressed in Section 529(a), which provides that "[t]he commission may order a capable public utility to acquire a small water or small sewer utility if the commission, after notice and an opportunity to be heard, determines [that the small water utility has met the criteria set forth in Section 529(a)(1) through (6)]." 66 Pa. C.S. § 529(a).

Additionally, Section 529(m) clearly defines a “small water utility” as “a public utility which regularly provides water service to 1,200 or fewer customer connections.” 66 Pa. C.S. § 529(m).

There is simply no basis for Aqua to insert new and novel criteria into Section 529 or to limit the definition of “small water utility” so as to exclude small water utilities that are affiliated with a corporate parent. *See Twin Lakes R.B.* at 4, 13. The statutory language is clear and no ambiguity exists.

Twin Lakes clearly meets the definition of “small water utility” under Section 529(m) and has met the requirements of Section 529(a) more broadly. Acquisition by a capable public utility is clearly warranted and in the public interest, as the record in this proceeding establishes, and there is no basis for artificially limiting the scope of Section 529.

Aqua further claims that Middlesex is using this Section 529 proceeding as a means to extract a higher purchase price for the Twin Lakes system. *Aqua Exc.* at 3-4. This claim is based upon pure conjecture and Aqua has not produced a scintilla of support on the record to corroborate this assertion. Conversely, Twin Lakes has produced substantial evidence detailing its exhaustive efforts for well over a decade to find a long-term solution that will provide sustainable quality of service for Twin Lakes’ customers at reasonable rates. *See Twin Lakes M.B.* at 9-14; *Twin Lakes Exc.* at 17-22. Twin Lakes has filed for Section 529 relief only as a last resort after these sustained efforts did not result in a long-term solution to the operational risks and affordability issues for customers in the Twin Lakes system. *See Twin Lakes Exc.* at 17-22.

There is no requirement that a purchase price be negotiated *before* the Commission orders an acquisition under Section 529; even Aqua admits that Section 529(e) does not require the purchase price to be known to make the requisite finding under Section 529(a)(6) that Twin

Lakes has satisfied the criteria. Aqua M.B. at 37. Section 529(e) does not require the completion of voluntary negotiations for the purchase price of a small water utility prior to the Commission ordering the acquisition. This is consistent with the Commission's process in prior proceedings under Section 529. There is no basis here to require that the purchase price be negotiated prior to the Commission ordering the acquisition.

Aqua's concern that the purchase price has not yet been negotiated is also premature. Twin Lakes witness A. Bruce O'Connor testified that Twin Lakes is committed to negotiating a sale price in good faith. Tr. 238; Twin Lakes R.B. at 16. Section 529 provides the Commission with the authority to review the reasonableness of the purchase price once it has been negotiated. If the Parties do reach a stalemate on price negotiations, the statute provides for an eminent domain process to resolve the impasse. 66 Pa. C.S. § 529(e). Therefore, Aqua's argument on this point is unfounded and should be rejected.

B. Reply to Aqua Exception No. 2 – The RD Correctly Found That Twin Lakes Has Satisfied the Requirement of Section 529(a)(3).

In this Exception, Aqua argues that the requirements of Section 529(a)(3) have not been met because it believes that Twin Lakes, through Middlesex, has the capability to furnish and maintain adequate, efficient, safe and reasonable service and facilities in the future. Aqua believes that Middlesex has the capability to operate the Twin Lakes system but has simply refused to do so. Aqua Exc. at 5-6. The record in this proceeding clearly shows that, for a number of reasons, Twin Lakes has attempted but has been unable to maintain adequate service and facilities at prices that are within a range that the customers and the Commission consider reasonable. Aqua's Exception should be rejected.

The record evidence in this proceeding is clear that Twin Lakes cannot reasonably be expected to maintain adequate, efficient, safe and reasonable service and facilities either in the near-term or for the long-term. Twin Lakes M.B. at 39. As discussed in Twin Lakes' Main Brief and as Twin Lakes witnesses A. Bruce O'Connor and Robert K. Fullagar testified, Twin Lakes is at best one or two pipe leaks away from complete financial and operational failure. Twin Lakes St. No. 2 at 7-8; Twin Lakes St. No. 1 at 5-6. Twin Lakes has been unable to establish an independent credit relationship with a financial institution to obtain funding for system improvements. Twin Lakes St. No. 2 at 7; Twin Lakes M.B. at 39-40. While Middlesex has provided significant financial support in the past, Middlesex has no legal or regulatory obligation to provide unlimited support to Twin Lakes and was well within its rights to cease such support. Twin Lakes M.B. at 40-41.

As discussed above and throughout this proceeding, Twin Lakes has gone to significant lengths to develop solutions and alternatives that would result in its customers receiving sustainable quality of service in the future, but none of these efforts have been successful. Twin Lakes M.B. at 9-14; Twin Lakes Exc. at 19-22. Twin Lakes alone does not have the financial or technical capability to operate the system in a manner that does not necessitate Section 529 relief. Twin Lakes M.B. at 41-42; Twin Lakes St. No. 2-R at 9.

The bottom line, as has been apparent for some time, is that, even if Twin Lakes were able to make the \$4.8 million in necessary repairs to the system in order to provide reliable service in the future, it is unreasonable to expect that the 114 customers in Sagamore Estates could bear the full rate impact of this expenditure and all future capital improvement expenditures and operational needs. Twin Lakes M.B. at 29, 41-42. Customer rates would have to increase dramatically, which

is particularly concerning given that in prior Twin Lakes rate cases, the parties and the Commission have consistently expressed concerns about affordability of rates for Twin Lakes' customers.

The record clearly demonstrates that Twin Lakes has met the requirements of Section 529(a)(3) and cannot reasonably be expected to provide adequate, efficient, safe and reasonable service and facilities in the future. Therefore, Aqua's Exception must be rejected.

III. CONCLUSION

For the reasons discussed herein, Aqua's Exceptions must be denied. Twin Lakes respectfully requests that the Commission: (1) order Aqua to acquire the Twin Lakes system; (2) modify the RD to remove any requirement that Middlesex place funds in escrow; and (3) direct Aqua and Twin Lakes to proceed with purchase price negotiations consistent with Section 529.

Respectfully submitted,



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Dated: May 24, 2021

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