



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

May 24, 2021

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Replies to Exceptions of the Bureau of Investigation and Enforcement (I&E)** for the above-captioned proceeding.

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

Sincerely,

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

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SBG/jfm
Enclosures

cc: Honorable Joel Cheskis – Office of Administrative Law Judge (*via email*)
Office of Special Assistants (*Word File via email* ra-osa@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**REPLIES TO EXCEPTIONS OF
THE BUREAU OF INVESTIGATION & ENFORCEMENT**

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PA Attorney ID No. 63641

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Dated: May 24, 2021

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I. INTRODUCTION

Pursuant to 66 Pa.C.S. § 332(h) of the Public Utility Code and 52 Pa. Code § 5.535 of the Public Utility Commission regulations, the Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) respectfully submits these Replies to Exceptions filed by the parties in response to the Recommended Decision (“Recommended Decision” or “R.D.”) of Deputy Chief Administrative Law Judge Joel H. Cheskis (“ALJ Cheskis” or the “ALJ”) issued on April 22, 2021.

As summarized in the Recommended Decision, on July 16, 2020, Twin Lakes Utilities, Inc. (“Twin Lakes”) filed with the 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.¹ ALJ Cheskis explained, Twin Lakes stated that it is a wholly owned subsidiary of Middlesex Water Company (“Middlesex”), a New Jersey Corporation.² Middlesex has been providing operations support to Twin Lakes through a Service Agreement dated December 1, 2009.³ On June 1, 2020, Middlesex issued a notice of termination of the Service Agreement advising that the termination would become effective on September 1, 2020.⁴ 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.⁵ The matter was assigned to the Office of Administrative Law Judge, ALJ Cheskis presiding, and from that point forward this case devolved into a highly contested proceeding which

¹ R.D., p. 1.

² *Id.*

³ *Id.*

⁴ *Id.*

⁵ *Id.*

included the filing of various motions as more fully summarized in the Recommended Decision.⁶

The parties in this Section 529 proceeding are Twin Lakes; I&E; the Office of Consumer Advocate (“OCA”); and Aqua Pennsylvania, Inc (“Aqua”).

An evidentiary hearing was held on January 5, 2021 and the parties appeared telephonically. The parties presented certain witnesses and rejoinder testimony subject to cross examination; and, also stipulated to the admission of the remaining pre-served written testimony and waived cross-examination. I&E moved the following testimony and exhibits into evidence: I&E Statement No. 1; I&E Exhibit No. 1; I&E Statement No. 1-SR; I&E Statement No. 2; I&E Exhibit No. 2; I&E Statement No. 2-SR; and, I&E Exhibit No. 2-SR. A court reporter was present, and a Hearing Transcript (“Hrg. Tr.”) was created and distributed to the parties.

The active parties submitted briefs according to the briefing schedule. I&E submitted its Main Brief on February 5, 2021 (“I&E MB”) as did the other active parties. Then, I&E submitted its Reply Brief on February 25, 2021 (“I&E RB”) as did the other active parties.

As stated previously, ALJ Cheskis issued his Recommended Decision on April 22, 2021, which authorized Aqua to acquire Twin Lakes pursuant to Section 529 subject to the condition that Middlesex Water Company place \$1,675,000 in escrow to be used to offset the costs of replacing and remediating the existing infrastructure of the Twin Lakes system within thirty (30) days after the Commission’s final action in this proceeding. Twin Lakes and Aqua filed Exceptions to the Recommended Decision on May 12, 2021. I&E now files

⁶ R.D., pp. 1-7.

these Replies to Exceptions of Twin Lakes, Nos. 1 and 2⁷ (“Twin Lakes Exceptions”) and requests the Commission affirm the Recommended Decision as set forth below.

II. I&E REPLIES TO EXCEPTIONS OF TWIN LAKES

A. I&E Reply to Twin Lakes Exception No. 1: The ALJ properly recommended that the substantial record evidence demonstrates that the Commission has jurisdiction over Middlesex. R.D. at 30.

Once again, Twin Lakes argues, on behalf of Middlesex, that the Commission cannot exercise jurisdiction over Middlesex, the out-of-state parent company of Twin Lakes.⁸

Further, Twin Lakes attempts to argue that “[I]t has been clear at all times that Twin Lakes, not Middlesex, both in form and substance, is the jurisdictional entity in Pennsylvania.”⁹

This argument is simply not credible as noted by the ALJ¹⁰ and as demonstrated in I&E’s Main Brief¹¹ and Reply Brief.¹² Nowhere in the Twin Lakes’ arguments does Twin Lakes acknowledge that Middlesex, not Twin Lakes, was the original filer with the Commission back in 2008.¹³ Twin Lakes only makes a vague reference to “an error” in how the Commission classified the system.¹⁴ Instead, Twin Lakes attempts to argue that Middlesex never purposely availed itself of conducting activities within the forum state.¹⁵ This argument completely ignores the fact that Middlesex, not Twin Lakes, was the original filer for the certificate of public convenience to provide water service in Pennsylvania and that Twin Lakes, the subsidiary, did not exist as a legal entity in Pennsylvania until April of

⁷ I&E did not file replies to Aqua’s exceptions.

⁸ Twin Lakes Exceptions, p. 5.

⁹ *Id.*, p 6.

¹⁰ R.D., p. 31.

¹¹ I&E MB, pp. 12-24.

¹² I&E RB, pp. 8-18.

¹³ *See* R.D., p. 31. *See also* I&E MB, pp. 17-22.

¹⁴ Twin Lakes Exceptions, p. 6, fn. 11.

¹⁵ *Id.*, pp. 10-12.

2009.¹⁶ The facts and substantial evidence presented in this proceeding contradict Twin Lakes' failed arguments at every turn. And while Twin Lakes argues that recent case law added nuances to certain aspects of the applicable case law, none of the cited nuances provide legal justification to overturn the Recommended Decision. Further, Twin Lakes did not argue that any of the recent case law repealed 42 Pa.C.S. Section 532(a)(9).¹⁷ Therefore, the ALJ's well-reasoned Recommended Decision must be upheld.

The ALJ correctly recommended that “[I]n this case, substantial record evidence demonstrates that the Commission has jurisdiction over Middlesex.”¹⁸ ALJ Cheskis also correctly noted:

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.¹⁹

¹⁶ See I&E MB, pp. 17-24; I&E RB, pp. 8-18.

¹⁷ See Twin Lakes Exceptions, pp. 6-10. See also I&E MB, pp. 18-20.

¹⁸ R.D., p. 30.

¹⁹ *Id.*, p. 31.

The ALJ considered the same arguments Twin Lakes makes in its exceptions when deliberating his Recommended Decision and concluded:

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.²⁰

Therefore, ALJ Cheskis correctly recommended that the Commission has jurisdiction over Middlesex for purposes of this proceeding.²¹

B. I&E Reply to Twin Lakes Exception No. 2: The ALJ properly recommended that, as a condition of requiring Aqua to acquire the Twin Lakes system, 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. R.D. at 63.

Twin Lakes takes exception to the ALJ's recommendation to condition the acquisition of Twin Lakes by Aqua on Middlesex placing \$1.675 million into an escrow account to be used to offset the costs of replacing and remediating the existing infrastructure of the Twin Lakes system.²² Twin Lakes states there is no basis in the Public Utility Code for conditioning the grant of Section 529 relief on the surrender of money into an escrow account by an equity owner.²³ But this statement reveals that Twin Lakes and Middlesex continue to ignore the original legislative intent of Section 529. As ALJ Cheskis correctly stated:

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

²⁰ *Id.*

²¹ *Id.*

²² Twin Lakes Exceptions, p. 13.

²³ *Id.*

corporate entity. 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.²⁴

From the very beginning of this proceeding, Twin Lakes, and to a greater extent Middlesex, have both attempted to use Section 529 as both a shield and a sword. But, the legislative intent of Section 529 was to provide the Commission with a vehicle to protect the Pennsylvania ratepayers of troubled and failing small water and wastewater systems while also providing the small troubled systems with due process. Middlesex, through Twin Lakes, now wants to argue that Section 529 somehow doesn't permit the relief recommended by the ALJ in this proceeding, even though it was Middlesex, through Twin Lakes, that stood Section 529 on its head as I&E argued in its *Petition for Interlocutory Review and Order*.²⁵

The fallacy of the Twin Lakes/Middlesex position is highlighted by Twin Lakes' argument that "under Section 529, it is irrelevant that Twin Lakes has a parent company, as the statute does not provide for any different or special treatment in that situation."²⁶ Which is absurd because the legislative intent of Section 529 was to allow the Commission to provide relief for the Pennsylvania ratepayers of small troubled water and wastewater systems, not corporate parents of troubled systems.²⁷ Section 529 does not even contemplate the situation where a large capable public utility uses Section 529 to divest itself of an underperforming subsidiary by using the Commission's statutory authority to order another capable public utility to purchase the underperforming subsidiary. Further, I&E argues that

²⁴ R.D., p. 31.

²⁵ See *Petition for Interlocutory Review and Order of the Bureau of Investigation and Enforcement* and I&E's *Brief in Support of Petition for Interlocutory Review*, filed at this docket.

²⁶ Twin Lakes Exceptions, p. 15.

²⁷ See Section 529(a).

in the context of this unorthodox Section 529 proceeding, Section 529 does in fact provide a basis for the relief recommended by ALJ Cheskis.

Twin Lakes incorrectly argues “[n]othing in Section 529, or any other provision of the Public Utility Code, permits the Commission to exercise such control over any party in connection with negotiations pursuant to Section 529, particularly given that Middlesex is not even a party to this Section 529 proceeding.”²⁸ This argument fails because it completely ignores the provisions of Section 529(c).²⁹ In particular, Sections 529(c)(3), (5), and (6).

Paragraph (3) allows the Commission to consider:

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.³⁰

Paragraph (5) allows the Commission to consider:

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.³¹

And finally, Paragraph (6) allows the Commission to consider:

Any other matters which may be relevant.³²

Twin Lakes is attempting to confuse the issue because Section 529 was never intended for use by a “capable public utility,” such as Middlesex, to divest one of its non-profitable subsidiaries. In this case, ALJ Cheskis correctly considered the provisions in

²⁸ Twin Lakes Exceptions, p. 14.

²⁹ 66 Pa.C.S. § 529(c).

³⁰ 66 Pa.C.S. § 529(c)(3).

³¹ 66 Pa.C.S. § 529(c)(5).

³² 66 Pa.C.S. § 529(c)(6).

Section 529(c) when determining whether the Commission should order a capable public utility to acquire Twin Lakes; and, he continued to correctly consider the provisions of Section 529(c) when fashioning his recommended relief in the context of this unprecedented proceeding. The relief correctly chosen by ALJ Cheskis was essentially forced on him by the unprecedented use of the Section 529 process by Middlesex, by and through its subsidiary, Twin Lakes. As the ALJ so poignantly stated, “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.”³³ Finally, the recommended relief is wholly separate and apart from the determination of a fair purchase price as discussed in Section 529(e).³⁴ And therefore, Twin Lakes’ arguments in that regard fail as well.

Twin Lakes and Middlesex cannot be allowed to use Section 529 as both a sword and a shield. Such a use of what was written as a statute intended to provide regulatory relief to the Pennsylvania ratepayers of truly troubled small water and wastewater systems would be an untenable result. ALJ Cheskis correctly reasoned:

[W]hen 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.³⁵

³³ R.D., p. 63.

³⁴ 66 Pa.C.S. § 529(e).

³⁵ R.D., p. 63.

The ALJ also noted that Middlesex engaged in several efforts to relieve itself of such obligations, such as finding another owner, seeking base rate increases, etc.; adding further:

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.³⁶

Further, ALJ Cheskis correctly opines, “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.”³⁷

Finally, Twin Lakes makes another illogical argument when it states:

Even assuming *arguendo* that Middlesex were subject to personal jurisdiction in Pennsylvania, which Middlesex is not, the Commission has not imposed any such escrow condition on any other small water system pursuant to Section 529. The Commission in this instance would therefore be impermissibly discriminating against Middlesex by conditioning a benefit (Section 529 relief) generally available to other small water systems without that condition.³⁸

The only way to respond to this statement is, of course the Commission has not imposed any such escrow condition on “any other small water system” for obvious reasons. Further,

³⁶ *Id.*

³⁷ *Id.*

³⁸ Twin Lakes Exceptions, p. 24.

Middlesex is NOT a small water system. It defies logic that Middlesex would even make this statement.

Therefore, I&E asserts that ALJ Cheskis correctly recommended that as a condition of requiring Aqua to acquire the Twin Lakes system, Middlesex, as owner and corporate parent of Twin Lakes, 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.

III. CONCLUSION

Wherefore, I&E respectfully submits that for all the foregoing reasons, the Bureau of Investigation and Enforcement respectfully requests that the Recommended Decision of Deputy Chief Administrative Law Judge Joel H. Cheskis, issued on April 22, 2021, be adopted by the Commission pursuant to the I&E Replies to Exceptions set forth above.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Scott B. Granger".

Scott B. Granger
Prosecutor
PA Attorney ID No. 63641

Dated: May 24, 2021

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Replies to Exceptions** dated May 24, 2021, in the manner and upon the persons listed below.

Served via Electronic Mail Only

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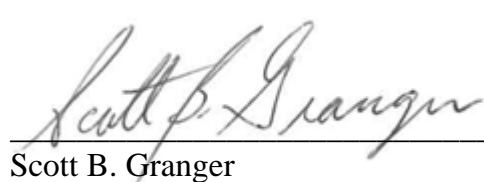
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