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May 24, 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**

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Dear Secretary Chiavetta:

Attached please find the Replies to 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 24, 2021

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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 :

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**REPLIES TO EXCEPTIONS OF  
AQUA PENNSYLVANIA, INC.**

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Date: May 24, 2021

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## I. INTRODUCTION

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) hereby files these Replies to the Exceptions of Twin Lakes Utilities, Inc. (“Twin Lakes”). In its Exceptions, Twin Lakes argues that Deputy Chief Administrative Law Judge Joel H. Cheskis (the “ALJ”) erred in the Recommended Decision (“RD”) by: (1) concluding the Pennsylvania Public Utility Commission (“Commission”) has jurisdiction over Twin Lakes’ owner and direct parent, Middlesex Water Company (“Middlesex”); and (2) recommending that the Commission condition the grant of the Petition of 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”) upon Middlesex placing in escrow \$1,675,000 within thirty (30) days of the Commission’s final action. The escrow amount would be used to offset the costs of replacing and remediating the existing infrastructure of the Twin Lakes water system.<sup>1</sup>

For the reasons explained below, and those set forth in the RD, Aqua submits that the ALJ correctly determined that the Commission’s jurisdiction extended to Middlesex given the unique facts presented in this case and Twin Lakes’ Exceptions should be denied. Moreover, as explained in Aqua’s Briefs and its Exceptions, although Aqua maintains that Twin Lakes’ Petition should be denied, if the Commission determines to order Aqua to acquire the Twin Lakes water system, the Commission should adopt the condition set forth in the RD. Contrary to Twin Lakes’ Exceptions, this condition is lawful, appropriate, and necessary, given Middlesex’s refusal to invest in its

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<sup>1</sup> The estimated cost of immediate necessary improvements to the Twin Lakes system is between \$4.6 and \$4.8 Million. RD, Finding of Fact ¶¶ 50 (citing Twin Lakes St. 1 at 4), 73 (citing Aqua St. 1 at 16). It appears that a PENNVest grant and loan could be secured for the improvements; however, the grant would be considered a taxable contribution. The \$1,675,000 is equal to the sum of the tax liability and loan amounts. Aqua MB at 38 (quoting Aqua St. 2-R at 7).

wholly-owned subsidiary and its actions to shift responsibility for that investment to Aqua's shareholders and customers.

## **II. REPLY TO EXCEPTIONS**

### **A. REPLY TO TWIN LAKES EXCEPTION NO. 1 – THE ALJ CORRECTLY CONCLUDED THAT THE COMMISSION HAS JURISDICTION OVER MIDDLESEX. RD AT 30-32.**

Twin Lakes asserts that the Commission lacks jurisdiction over Middlesex for three principle reasons. Twin Lakes Exceptions at 5-12. First, Twin Lakes asserts that it, not Middlesex, is the jurisdictional public utility. Twin Lakes Exceptions at 5-6. Second, Twin Lakes claims that the Commission lacks jurisdiction under the Public Utility Code to assert jurisdiction over Middlesex. Twin Lakes Exceptions at 6-7. Third, Twin lakes raises several arguments to claim that the Commission cannot assert personal jurisdiction over Middlesex. Twin Lakes Exceptions at 7-12. Each of these arguments should be rejected.

Regarding Twin Lakes' claim that Middlesex is not the jurisdictional utility, the RD correctly detailed the extensive record evidence that demonstrates the Commission has jurisdiction over Middlesex. RD at 31; *see also* RD, Findings of Fact ¶¶ 80-89. The record evidence submitted in this case fully supports the RD's determination that "Middlesex has had numerous and specific contacts with Pennsylvania, the Commission and Pennsylvania ratepayers since 2008" and that "the fact that Middlesex established Twin Lakes Utilities, Inc. as the jurisdictional public utility does not diminish Middlesex's role in operating the system." RD at 31. Indeed, Middlesex's financial and operational support is the exclusive means that have allowed Twin Lakes to own and operate the system at all. *See* Aqua MB at 24-25. Once this is recognized, it becomes clear that the voluntary decision of Middlesex to withdraw Twin Lakes' sole source of financial support and operational support, and to terminate the Service Agreement, appears to be designed to permit Middlesex to extract additional value out of the Twin Lakes system and foist the system and its

repair and remediation upon another Pennsylvania public utility. Aqua MB at 32-36. As such, Twin Lakes' arguments should be rejected.

Twin Lakes' second argument that the Commission lacks jurisdiction under the Public Utility Code to assert jurisdiction over Middlesex fails for the same reasons set forth above. In addition, Aqua notes that Twin Lakes' arguments ignore the fact that Middlesex, through Twin Lakes, voluntarily initiated this case before the Commission by cancelling the Service Agreement. *See* RD, Finding of Fact ¶¶ 34 (finding that "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."), ¶ 37 (finding that "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."). These facts are important because, as the RD found, the Commission's jurisdiction is not simply based on Middlesex's status as the parent entity; it exists because Middlesex triggered this case by cancelling the Service Agreement with Twin Lakes, and then directing Twin Lakes to file the instant Petition under Section 529 of the Public Utility Code. *See* RD at 31-32.

Finally, Twin Lakes' argument that the Commission cannot assert personal jurisdiction over Middlesex fails for the same reasons as Twin Lakes' first argument. Aqua further notes that the "three-part" test identified in Twin Lakes' Exceptions is actually satisfied in this proceeding. Twin Lakes Exceptions at 11 (citing *O'Connor v. Sandy Lane Hotel Co.*, 496 F.3d 312, 317 (3d Cir. 2007)). Findings of Fact ¶¶ 80-89 (related to Middlesex's specific and essential involvement in operating the Twin Lakes water system) demonstrate that Middlesex has availed itself of

conducting activities in Pennsylvania. *See O'Connor*, 496 F.3d at 317. The instant Petition arises from Middlesex's voluntary decision to withdraw its specific and essential involvement in operating the Twin Lakes water system. *See id.* And, the exercise of jurisdiction "comports with 'fair play and substantial justice.'" *See id.* As the RD concluded:

Middlesex cannot come into 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.

RD at 31-32.

For these reasons and the reasons more fully explained in the RD, Twin Lakes' Exception No. 1 should be denied.

**B. REPLY TO TWIN LAKES EXCEPTION NO. 2 – TO THE EXTENT THAT THE COMMISSION DETERMINES AQUA SHOULD BE REQUIRED TO ACQUIRE THE TWIN LAKES WATER SYSTEM, THE RD CORRECTLY RECOMMENDED THAT SUCH ACQUISITION BE CONDITIONED UPON MIDDLESEX CONTRIBUTING \$1,675,000 INTO ESCROW TO BE USED TO OFFSET THE COSTS OF REPAIRING AND REMEDIATING THE SYSTEM. RD AT 60, 63.**

Twin Lakes further argues in its Exceptions that the RD erred by recommending that the Commission condition granting the Petition upon Middlesex placing in escrow \$1,675,000 within thirty (30) days of the Commission's final action, to be used to offset the costs of replacing and remediating the existing infrastructure of the Twin Lakes water system. Twin Lakes Exceptions at 13-25. Each of the arguments Twin Lakes advances in support of this Exception should be denied.

First, contrary to Twin Lakes' claims, Section 529 of the Public Utility Code specifically states "In making a determination pursuant to subsection (a), the commission shall consider... Any other matters which may be relevant." 66 Pa.C.S. § 529(c)(6). The voluntary decision of Middlesex to withdraw Twin Lakes' sole source of financial support and operational support, and

to terminate the Service Agreement, is certainly relevant to this proceeding for the reasons identified in Aqua’s Briefs and Exceptions. Aqua MB, Section V.B.2.; Aqua RB at Section III.A.4.; Aqua Exception No. 1. This is simply not a case where the recommended condition is being imposed on a voluntary acquisition between two entities that have already negotiated a purchase price and have sought the necessary approvals for the transaction from the Commission. Rather, the RD correctly recognizes that Middlesex voluntarily acquired this system, failed to make the necessary financial investments in it, and is now attempting to voluntarily withdraw from its ownership and operation of this system and to use the Section 529 process to force another Pennsylvania public utility to acquire the system. *See* RD at 58 (explaining, in part, providing the relief requested by Twin Lakes “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.”). Under these specific circumstances, the recommended escrow condition is necessary and appropriate.

Second, Aqua fully explained why the escrow condition recommended by the RD is necessary in this proceeding. *See* Aqua MB at 34,35 38-40; Aqua Exception No. 1. Indeed, unlike any other Section 529 proceeding that has occurred before this Commission, this proceeding involves a financially and operationally capable owner attempting to “eliminate a financially poor performing segment of their overall strong business,” Aqua St. 1 at 8, and to use the Section 529 process to “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 St. 2-R at 6. As recognized by the RD, the record evidence shows that neither Aqua nor any other public utility is interested

in this system out of their own business interests and the interests of their existing customers. RD, Findings of Fact ¶¶ 69-70.

Furthermore, the RD correctly found that “Middlesex is the entity that would negotiate an agreement to acquire the system and, ultimately, be paid for such acquisition.” Tr. 227. RD, Finding of Fact ¶ 95. Aqua fully explained the import of this admission by Twin Lakes’ witness, Mr. Fullagar, in its Main Brief. Aqua MB at 40.

Third, although Twin Lakes claims that Twin Lakes and Middlesex made “significant efforts to improve the system and to provide a long-term solution for sustainable quality of service for its customers,” Twin Lakes Exceptions at 17, the facts demonstrate otherwise. Despite being granted three separate rate increases since 2011, the Twin Lakes system remains in poor condition and the necessary capital improvements identified in the capital improvement plans identified in its 2015 and 2019 rate cases have not been completed. *See* RD, Findings of Fact ¶¶ 43, 51, 52, 64. Rather than fix this system, Middlesex—through Twin Lakes—appears eager to sell it. *See* Aqua MB at 32-36. However, that eagerness apparently does not translate into a willingness to sell at an arms-length negotiated price that takes into account the poor state of the Twin Lakes system. Aqua MB at 36. Instead, Middlesex seeks to have another utility be forced to purchase Twin Lakes in order to cure Middlesex’s mistakes in failing to undertake due diligence when it first voluntarily acquired Twin Lakes. Aqua MB at 36.

Finally, the Commission should reject Twin Lakes’ claim that Middlesex did not participate in this proceeding and, therefore, the subject condition would deny Middlesex due process to defend against claims regarding the state of the system. *See* Twin Lakes Exceptions at 16-17. The RD notes that both I&E and Aqua presented evidence regarding Middlesex’s responsibilities to maintain, and failure to maintain, the system. *See* RD, Findings of Fact ¶¶ 61-

68, 78, 80-90, 93, 95. Moreover, Middlesex's officers/employees—*i.e.*, the only witnesses presented by Twin Lakes—testified in this proceeding. *See* RD, Findings of Fact ¶¶ 104, 107. Middlesex has participated in this proceeding and has received due process.

For these reasons, and the reasons more fully explained in Aqua's Briefs and Exceptions, Twin Lakes' Exception No. 2 should be denied and, 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.

### III. CONCLUSION

WHEREFORE, Aqua Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission (1) deny the Exceptions of Twin Lakes Utilities, Inc., (2) grant the Exceptions filed by Aqua Pennsylvania, Inc., (3) revise the Recommended Decision of Deputy Chief Administrative Law Judge Joel H. Cheskis consistent with the Exceptions filed by Aqua Pennsylvania, Inc., and (4) 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 Utilities, Inc. water system, then the Pennsylvania Public Utility Commission should deny the Exceptions of Twin Lakes Utilities, Inc. and 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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