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File #: 181282

December 1, 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 Answer of Aqua Pennsylvania, Inc., to the Petition for Stay of Twin Lakes Utilities, Inc., in the above-captioned proceeding. Copies will be provided per the Certificate of Service.

Respectfully submitted,



Garrett P. Lent

GPL/dmc

Attachment

cc: Office of Special Assistants

ALLENTOWN HARRISBURG LANCASTER MOUNT LAUREL PHILADELPHIA PITTSBURGH WASHINGTON, D.C. WILMINGTON

A PENNSYLVANIA PROFESSIONAL CORPORATION

Rosemary Chiavetta, Secretary  
December 1, 2021  
Page 2

Honorable Joel H. Cheskis

## 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: December 1, 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 :

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**ANSWER OF AQUA PENNSYLVANIA, INC.  
TO THE PETITION FOR STAY OF TWIN LAKES UTILITIES, INC.**

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**TO PENNSYLVANIA PUBLIC UTILITY COMMISSION:**

Pursuant to Section 5.572(e) of the Pennsylvania Public Utility Commission’s (“Commission”) regulations,<sup>1</sup> Aqua Pennsylvania, Inc. (“Aqua PA” or the “Company”) hereby files this Answer to the Emergency Petition For Partial Stay Pending Judicial Review (“Petition for Stay”) dated November 23, 2021, of Twin Lakes Utilities, Inc. (“Twin Lakes”), which seeks a partial stay of the Commission’s Opinion and Order entered on November 18, 2021 in the above-captioned proceeding (“*Final Order*”).<sup>2</sup> Twin Lakes also filed a Petition for Review of

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<sup>1</sup> 52 Pa. Code § 5.572(e).

<sup>2</sup> Twin Lakes filed its Petition for Stay as a “petition for the issuance of emergency order” 52 Pa. Code § 3.2 (establishing the requirements for a petition seeking the issuance of an ex parte emergency order) or, alternatively, a “petition for interim emergency relief” under 52 Pa. Code § 3.6 (establishing the requirements for a petition for interim emergency relief) or a “petition for relief” under 52 Pa. Code § 5.572. Petition for Stay at 1. As explained herein, Aqua PA submits that no emergency exists and, therefore, Twin Lakes’ attempt to improperly cast a petition for stay as a petition for ex parte emergency relief or interim emergency relief should be denied. However, to the extent that the Commission construes the Petition for Stay as a request for the issuance of an ex parte emergency order under 52 Pa. Code § 3.2, the Commission’s regulations do not contemplate the filing of an answer to such a request. See 52 Pa. Code §§ 3.2-3.4. Likewise, to the extent that the Commission construes the Petition for Stay as a request for interim emergency relief under 52 Pa. Code § 3.6, the Commission’s regulations explicitly state that “Allegations set forth in the petition shall be deemed to have been denied by the opposing parties, and an answer is not required.” 52 Pa. Code § 3.6 (emphasis added). Moreover, Aqua PA notes that the Commission’s Secretarial Letter dated November 30, 2021, in this matter established the deadlines for parties to file answers for December 3, 2021, under 52 Pa. Code § 5.572. For these reasons, Aqua PA submits that all allegations set forth in the Petition for Stay are denied. Aqua PA further submits that none of the statements or arguments raised herein should be construed as an admission of any allegation set forth in the Petition for Stay, unless such admission is explicitly stated.

the *Final Order* with the Commonwealth Court of Pennsylvania on November 22, 2021.<sup>3</sup> The *Final Order* granted the 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 (“Petition”), “subject to the condition that within thirty (30) days after the 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.”<sup>4</sup> Twin Lakes seeks a stay of this condition, but makes clear that it “does not seek to stay the next, statutorily required step under Section 529(e) of allowing the parties to negotiate and determine the acquisition price.”<sup>5</sup>

Aqua PA submits that Twin Lakes has failed to satisfy the high-standard for obtaining a stay and, therefore, the Petition for Stay should be denied. However, to the extent that the Commission determines that it should stay the escrow requirement established by Ordering Paragraph 4 of the *Final Order*, Aqua PA alternatively submits that the Commission should stay all of the requirements established in the *Final Order* pending any appeal of the *Final Order*. Twin Lakes and Middlesex’s decision to continue to litigate this matter in two separate jurisdictions along with its request to “negotiate and determine the acquisition price” appears disingenuous, Aqua PA’s strong preference is to proceed with the escrow account intact so it can negotiate the acquisition of the Twin Lakes system in good faith, and with essential parameters in place to protect its customers. A stay of the escrow condition alone would merely absolve Middlesex of the prior failures to thoroughly investigate, and ultimately remediate, the poor condition of this system.

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<sup>3</sup> No. 1289 C.D. 2021.

<sup>4</sup> *Final Order*, Ordering Para. 4.

<sup>5</sup> Petition for Stay at 4; *see also* Petition for Stay ¶¶ 97-105.

As an initial matter, Aqua PA notes that Twin Lakes filed its Petition for Stay pursuant to “52 Pa. Code § 3.2, or in the alternative 52 Pa. Code § 3.6, and 52 Pa. Code § 5.572.”<sup>6</sup> Aqua PA submits that Twin Lakes’ Petition for Stay improperly attempts to cast itself as a “petition for the issuance of an emergency order” under 52 Pa. Code § 3.2 or a “petition for interim emergency relief” under 52 Pa. Code § 3.6.

Importantly, Twin Lakes fails to demonstrate the existence of an “emergency.”<sup>7</sup> Twin Lakes asserts that the basis for the stay is that its parent, Middlesex Water Company (“Middlesex”) has filed a Complaint For Declaratory and Injunctive Relief in the United States District Court for the Middle District of Pennsylvania, contesting the escrow requirement in Ordering Paragraph 4, and because of that Complaint is refusing to pay the escrow amount.<sup>8</sup> As a result, Twin Lakes further asserts “the 30-day deadline for the payment of the escrow amount will lapse unmet” and, therefore, “[u]nder the self-effectuating terms of the November 2021 Order, this will cause the receivership of Aqua to terminate and, once again, place Twins Lakes in possession of the water system.”<sup>9</sup> This, Twin Lakes asserts, will create an “emergency” because Middlesex, and its wholly-owned subsidiary Twin Lakes, will not operate the system.<sup>10</sup> However, Twin Lakes points to no term (self-effectuating or otherwise) in the *Final Order* to

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<sup>6</sup> Petition for Stay at 1.

<sup>7</sup> 52 Pa. Code § 3.1 (defining “emergency” as “A situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled public meeting.”).

<sup>8</sup> Petition for Stay at 2. Moreover, Pennsylvania appellate courts have concluded irreparable harm to mean that the injury is irreversible and cannot be adequately compensated by an award of monetary damages. *See Cosner v. United Penn Bank*, 517 A.2d 1337, 1341 (Pa. Super. 1986); *Schulman v. Franklin & Marshall College*, 538 A.2d 49, 52 (Pa. Super. 1988). Where the courts have found that monetary harm is irreparable, it appears that there is either substantial uncertainty as to whether the party could recover the money at issue if it were successful or there is some other complicating factor in unwinding payments made. *See, e.g., West Penn Power Co. v. Pa. PUC*, 615 A.2d 951, 959 (Pa. Cmwlth. 1992) (concluding that the “irreparable harm criterion was satisfied” because “there was a great deal of uncertainty as to whether or not Mon Valley could recover its good faith deposits”); *Pa. PUC v. Process Gas Consumers Corp.*, 502 Pa. 545, 554-555 (Pa. 1983) (explaining the substantial difficulties involved in unwinding rates issues subject to appeal). Here, no such uncertainty exists; Middlesex would deposit this money into escrow pending the appeal and would be able to recover it if the escrow condition were overturned.

<sup>9</sup> Petition for Stay at 2; *see also* Petition for Stay ¶ 59,

<sup>10</sup> Petition for Stay at 3.

support its claim that Middlesex’s refusal to comply with the escrow amount will terminate Aqua PA’s receivership.

Contrary to Twin Lakes’ assertions, the Commission’s Opinion and Order entered January 14, 2021 (“Receivership Order”) direct Aqua PA to “act as the Receiver for the Twin Lakes Utilities, Inc. beginning January 15, 2021 and to continue during the pendency of the current Section 529 proceeding and in accordance with Appendix A to this Order.”<sup>11</sup> Aqua PA is currently the receiver and, while it may or may not become the ultimate owner of the Twin Lakes system, it will remain the receiver during the pendency of this Section 529 proceeding, which is not yet concluded. Critically, Twin Lakes admits that the “next step in the Section 529 process is the determination of the acquisition price.”<sup>12</sup> As such, this Section 529 proceeding appears to remain pending and, therefore, Aqua PA is required to continue to act as the receiver for the Twin Lakes water system.

These facts reveal that the emergency conditions alleged by Twin Lakes are inaccurate and distorted. It appears that Middlesex—through Twin Lakes—is continuing to attempt to improperly utilize this Section 529 proceeding to extract additional value out of the Twin Lakes system and foist the system and its repair and remediation upon another Pennsylvania public utility.<sup>13</sup> This time, it appears that Middlesex—through Twin Lakes—is anxious to begin

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<sup>11</sup> *Receivership Order*, Ordering Paragraph 2.

<sup>12</sup> Petition for Stay ¶ 99 (emphasis added).

<sup>13</sup> *See, e.g.*, Aqua St. 2-R at 5 (Aqua PA witness testifying 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), 7; Aqua St. 2-SR at 2; Aqua M.B. at 13, 32-36, 38-39; Aqua R.B. at 13-14; Aqua Exc. at 1-4; Aqua Reply Exc. at 4-7; Initial Status Report of Aqua Pennsylvania, Inc., Docket No. P-2020-3020914 at 3-4 (dated March 15, 2021) (explaining that Middlesex was improperly submitting to invoices related to interest on outstanding promissory notes and legal representation to Aqua PA for payment); Second Status Report of Aqua Pennsylvania, Inc., Docket No. P-2020-3020914 at 3-4 (dated June 23, 2021) (explaining that Middlesex was improperly submitting to invoices related to interest on outstanding promissory notes, legal representation and billing system issues to Aqua PA for payment); Third Status Report of Aqua Pennsylvania, Inc., Docket No. P-2020-3020914 at 3-4 (dated Sept. 21, 2021) (explaining that Middlesex was improperly submitting to invoices related to interest on outstanding promissory notes to Aqua PA for payment).

negotiations<sup>14</sup> regarding the purchase price of the Twin Lakes system, but only if it can disconnect those negotiations from the Commission’s critical recognition of the condition of the Twin Lakes system that is represented by the escrow amount. Aqua PA continues to submit that the escrow amount represents a critical part of the negotiations of the purchase price, and is necessary to prevent a financially and operationally capable owner attempting to “eliminate a financially poor performing segment of their overall strong business,”<sup>15</sup> 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.”<sup>16</sup>

Once it is recognized that Aqua PA is continued to require to act as the receiver, contrary to Twin Lakes’ claims, and that Middlesex—through Twin Lakes—is once again attempting to improperly utilize this Section 529 proceeding, it becomes clear that Twin Lakes cannot satisfy the high standard for obtaining a stay pending appeal. The Pennsylvania Supreme Court has stated that a stay is warranted if: (1) the petitioner makes a strong showing that he is likely to prevail on the merits; (2) the petitioner has shown that without the requested relief, he will suffer irreparable injury; (3) the issuance of a stay will not substantially harm other interested parties in the proceedings; and (4) the issuance of a stay will not adversely affect the public interest.<sup>17</sup> Here, Twin Lakes has failed to demonstrate it is likely to prevail on the merits of its appeal. Twin Lakes attempts to ignore uncontroverted evidence demonstrating that the escrow amount condition was appropriate under the unique facts and circumstances presented in this case. Moreover, no irreparable injury will result if the partial stay is not granted; Aqua PA will

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<sup>14</sup> The record in this case is clear: “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.

<sup>15</sup> Aqua St. 1 at 8.

<sup>16</sup> Aqua St. 2-R at 6.

<sup>17</sup> *Pa. PUC v. Process Gas Consumers Grp.*, 467 A.2d 805, 808-09 (Pa. 1983). For a stay pending appeal, the Court found that the petitioner must make a “strong showing” under these criteria to justify the issuance of a stay. *Id.* at 809.

continue to act as the receiver during the pendency of the Section 529 proceeding and the customers served by the Twin Lakes water system will continue to receive service as they have under Aqua PA's receivership. In addition, the issuance of the partial stay requested by Twin Lakes would, in fact, harm Aqua PA by requiring it to attempt to negotiate a purchase price for the acquisition with substantial uncertainty regarding a fundamental component of that purchase price, i.e., the escrow amount. Finally, the issuance of a partial stay would be adverse to the public interest because it would reward a financially and managerial capable public utility for improperly attempting to use the Section 529 process to foist a poor-performing segment of its business onto another public utility.

For these reasons, Aqua PA submits that the Commission should deny the Petition for Stay. Alternatively, to the extent that the Commission determines to issue a stay of the escrow condition pending the appeal to the Commonwealth Court of the *Final Order*, Aqua PA submits that the Commission should stay all of the requirements of the *Final Order*, including the requirement that "Aqua Pennsylvania, Inc. shall acquire Twin Lakes Utilities, Inc. consistent with the above discussion and requirements"<sup>18</sup> and that Aqua PA and Twin Lakes "shall engage in good-faith, arms-length negotiations regarding the sale price of the Twin Lakes Utilities, Inc. water system to Aqua Pennsylvania, Inc., subject to the Commission's approval."<sup>19</sup> The requirement that the parties begin good-faith, arms-length negotiations regarding the sale price of the Twin Lakes system is tied to Middlesex paying the escrow amount ordered by the Commission.<sup>20</sup> Furthermore, as explained above, the escrow conditions represents a critical piece of negotiating the purchase price under the unique facts and circumstances presented by

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<sup>18</sup> *Final Order*, Ordering Paragraph 5.

<sup>19</sup> *Final Order*, Ordering Paragraph 6.

<sup>20</sup> *Final Order*, Ordering Paragraphs 4 (ordering Middlesex to place into escrow \$1,675,000 "within thirty (30) days of the Commission's action in this proceeding") and 6 (ordering negotiations regarding the sale price to begin "within thirty (30) days of the Commission's final action in this proceeding").

this proceeding. Therefore, should the condition be stayed pending review, then negotiations regarding the purchase price for the acquisition of the Twin Lakes system and the subsequent acquisition should also be stayed until the validity of the escrow condition is finally determined.

For the reasons set forth above, Aqua Pennsylvania, Inc. respectfully requests that the Pennsylvania Public Utility Commission (a) deny the Emergency Petition for Partial Stay filed by Twin Lakes Utilities, Inc., or, in the alternative, (b) stay all of the requirements established in the November 18, 2021 Opinion and Order pending any appeal of the November 18, 2021 Opinion and Order.

Respectfully submitted,



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Date: December 1, 2021

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