

Casey Alan Coyle
(717) 237-7192
ccoyle@eckertseamans.com

November 30, 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

To Secretary Chiavetta:

We represent Twin Lakes Utilities, Inc. in the above-captioned matters. Pennsylvania Public Utility Commission (“Commission”) Order entered November 18, 2021 (“November 2021 Order” or “Order”) places an unprecedented condition on the statutorily proscribed progression of this Section 529 case, by requiring Twin Lakes Utilities, Inc.’s (“Twin Lakes”) New Jersey parent company, Middlesex Water Company (“Middlesex”), to first pay \$1.675 million into “escrow” within 30 days of entry of the Order for the Section 529 process to continue. That escrow due date is December 18, 2021.

Twin Lakes filed an Emergency Petition for Partial Stay Pending Judicial Review (“Emergency Petition”) on November 23, 2021, requesting that the Commission stay the escrow requirement pending disposition of appeals on or before the scheduled Public Meeting of December 2, 2021, to afford adequate time to appeal an adverse ruling before the expiration of the 30-day deadline. However, under Secretarial Letter dated today, Twin Lakes’ request for Commission consideration by December 2nd has been implicitly rejected. This is because the Letter extends the answer period to the Emergency Petition from five days—as required under 52 Pa. Code §

3.6 applicable to **emergencies**—to ten days, utilizing the more leisurely, *non-emergency* provisions of 52 Pa. Code § 5.572.¹ The due date for answers is now December 3, 2021.

The Letter further states that “[t]he Commission will issue an order on the Emergency Petition at a forthcoming Public Meeting,” without identifying when that Public Meeting will be. This leaves Twin Lakes in a dilemma and adversely affects its rights before the Commonwealth Court.² Even were the Commission to issue an order at its next scheduled Public Meeting, on December 16, 2021, this would occur *only two days before expiration of the 30-day period* imposed by the Commission’s November Order upon Middlesex as a precondition for Twin Lakes to obtain the Section 529 relief otherwise granted it by the Order. Two days is an insufficient and unrealistic period time for Twin Lakes to seek relief at the Commonwealth Court. This is true whether the Commission fails to issue an order at the December 16th Public Meeting or acts at that meeting to deny the Petition. Therefore, the Commission’s anticipated timeline effectively deprives Twin Lakes of its rights under the Pennsylvania Rules of Appellate Procedure to appeal an adverse ruling on its *supersedeas* request to the Commonwealth Court.

Accordingly, Twin Lakes requests that, at its December 2nd Public Meeting, the Commission extend the time period imposed for payment of the escrow by Middlesex until a date 30 days after the Commission acts upon the Emergency Petition. This would preserve the ten-day answer period granted by the Secretarial Letter, allow the Commission to study the Emergency Petition, provide a reasonable time frame for Twin Lakes to take the matter to the Commonwealth Court in the event of an adverse decision, and allow Commonwealth Court sufficient time to consider a stay without a forced deadline. Most importantly, this action by the Commission is necessary to avoid the dire consequences set forth in the Emergency Petition.

If the Commission does not act upon this request by its December 2nd Public Meeting, Twin Lakes will be forced to withdraw its Emergency Petition and seek relief directly from the Commonwealth Court, for the reasons explained above and in its Emergency Petition. It is Twin Lakes’ sincere hope, however, that the Commission will extend the time period imposed for payment of the escrow by Middlesex.

¹ The parties had the opportunity to file an answer on under the emergency rules yesterday, November 29, 2021. 52 Pa. Code § 3.6(c). “Allegations set forth in the petition shall be deemed to have been denied by the opposing parties, and an answer is not required. A party may file an answer in the form set forth in § 5.61 (relating to answers to complaints, petitions and motions) no later than 5 days after service of a copy of the petition.” None were filed. 52 Pa. Code § 3.2 provides no opportunity to respond to an emergency petition.

² Rule of Appellate Procedure Rule 1781 states that an “[a]pplication for stay or supersedeas of an order or other determination of any government unit pending review in an appellate court on petition for review shall ordinarily be made in the first instance to the government unit.” Pa.R.A.P. 1781(a); *see also* Pa.R.A.P. 1701(b)(1) (stating that, after an appeal is taken or review is sought, the PUC has authority to “[t]ake such action as may be necessary to preserve the *status quo*, ... grant *supersedeas*, and take other action permitted or required by these rules or otherwise ancillary to the appeal or petition for review proceeding.”)

Respectfully submitted,

/s/ Casey Alan Coyle

Casey Alan Coyle
PA Attorney I.D. # 307712
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
(717) 237-7192
ccoyle@eckertseamans.com

cc: Chairman Gladys Brown Dutrieuille (via email only)
Commissioner Ralph V. Yanora (via email only)
Commissioner John F. Coleman (via email only)
Hon. Joel Cheskis (via email only)
Cert. of Service (via email only)
ra-OSA@pa.gov
Kathryn G. Sophy – ksophy@pa.gov

CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Twin Lakes Utilities, Inc.'s Letter Requesting PUC Action by Dec. 2nd upon the persons below in the manner indicated in accordance with requirements of 52 Pa. Code Section 1.54.

Via Email Only

Christine M. Hoover, Esq.
Pa. Office of Consumer Advocate
555 Walnut Street, 5th Floor
Forum Place
Harrisburg, PA 17101-1923
choover@paoca.org

Pa. Office of Small Business Advocate
Forum Place, 1st Floor
555 Walnut Street
Harrisburg, PA 17101
tereswagne@pa.gov

Alexander Stahl, Esq.
Regulatory Counsel
Aqua Pennsylvania, Inc.
762 W. Lancaster Avenue
Bryn Mawr, PA 19010
astahl@aquaamerica.com

Eric Bartolacci
PA Dept. of Environmental Protection
Office of Field Operations
2174B Route 611
Swiftwater, PA 18370
ebartolacc@pa.gov

Jay L. Kooper, Esq.
Secretary
Twin Lakes Utilities, Inc.
485C Route One South, Suite 400
Iselin, NJ 08830
jkooper@middlesexwater.com

Sean Kemether, Esq.
Sagamore Estates
Property Owners Association
sepoachairman@gmail.com

Scott Granger, Esq.
PA Public Utility Commission
Bureau of Investigation & Enforcement
400 North Street
Harrisburg, PA 17120
sgranger@pa.gov

Michael W. Hassell, Esq.
Garrett P. Lent, Esq.
Post & Schell, P.C.
17 North Second Street, 12th Floor
Harrisburg, PA 17101-1601
mhassell@postschell.com
glent@postschell.com

John H. Klemeyer, Esq.
Attorney for Milford Water Authority
108 Tulip Circle
Shohola, PA 18458
klemeyerjohn@gmail.com

/s/ Lauren M. Burge
Lauren M. Burge, Esq.

Dated: November 30, 2021