
Garrett P. Lent
Associate

glent@postschell.com
717-612-6032 Direct
717-731-1979 Direct Fax
File #: 181282

December 7, 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**

Dear Secretary Chiavetta:

Pursuant to Section 5.94(a) of the Pennsylvania Public Utility Commission's ("Commission") regulations,¹ Aqua Pennsylvania, Inc. ("Aqua PA" or the "Company") hereby files this Response to the Twin Lakes Utilities, Inc.'s ("Twin Lakes") Withdrawal of the Emergency Petition For Partial Stay Pending Judicial Review ("TLU Withdrawal") dated December 6, 2021, which improperly attempts to withdraw, without permission, Twin Lakes' Emergency Petition For Partial Stay Pending Judicial Review ("Petition for Stay") of the Commission's Opinion and Order entered on November 18, 2021 in the above-captioned proceeding ("*Final Order*").

Aqua PA submits that the TLU Withdrawal is a plain attempt to circumvent the Commission's authority to rule upon Twin Lakes' Petition for Stay. Conspicuously absent from the TLU Withdrawal is any reference Section 5.94(a) of the Commission's regulations, 52 Pa. Code § 5.94, which governs the "[w]ithdrawal of pleadings in a contested proceeding." Importantly, Section 5.94(a) states:

Except as provided in subsection (b), a party desiring to withdraw a pleading in a contested proceeding may file a petition for leave to withdraw the appropriate document with the Commission and serve

¹ 52 Pa. Code § 5.94(a) (governing the withdrawal of pleadings in contested proceedings).

it upon the other parties. The petition must set forth the reasons for the withdrawal. A party may object to the petition within 10 days of service. After considering the petition, an objection thereto and the public interest, the presiding officer or the Commission will determine whether the withdrawal will be permitted.²

The clear and unambiguous language of Section 5.94(a) confirms that the withdrawal of a pleading in a contested proceeding is by permission only.

The above-captioned Petition clearly is a contested proceeding; the parties filed several rounds of testimony, submitted briefs and filed exceptions and replies thereto. Moreover, Twin Lakes' Petition for Stay was contested; Aqua PA submitted an Answer to the Petition for Stay on December 1, 2021,³ and the Office of Consumer Advocate filed a Letter in Lieu of an Answer to the Petition for Stay on December 2, 2021.⁴ Furthermore, the Commission advised Twin Lakes it would rule upon the Petition for Stay.⁵ Therefore, Twin Lakes is required by Section 5.94 to seek permission to withdraw the Petition for Stay.

However, the TLU Withdrawal contains no request for permission to withdraw the Petition for Stay as contemplated by Section 5.94(a). Rather, it simply declares that Twin Lakes "hereby withdraws" the petition.⁶ In this regard, the TLU Withdrawal represents the latest attempt in an ongoing pattern of conduct by Twin Lakes 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.⁷ This time, Twin Lakes seeks to improperly

² 52 Pa. Code § 5.94(a) (emphasis added).

³ Aqua PA explained in its Answer to the Petition for Stay that Twin Lakes had, *inter alia*, failed to demonstrate the existence of an emergency, and failed to demonstrate it satisfied the high standard for a stay. Moreover, Aqua PA specifically confirmed that "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." Aqua PA Answer to Petition for Stay at 4.

⁴ While OCA did not take a position as to whether the Commission should grant or deny the Petition for Stay, it clarified certain statements made in the Petition for Stay by Twin Lakes and confirmed that Aqua PA's "existing receivership will remain in place while the appellate and federal proceedings move forward or the Twin Lakes' Petition is granted." OCA Letter in Lieu of Answer at 2.

⁵ November 30, 2021 Secretarial Letter, Docket Nos. P-2020-3020914, G-2020-3020941, G-2020-3021018, G-2020-3021021 and G 2020 3021024 (advising the parties that (a) the petition was accepted, (b) the parties would have 10 day to file answers and (c) the Commission would rule on the petition at a future public meeting).

⁶ TLU Withdrawal at 1, 3.

⁷ *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.

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declare its contested request withdrawn, after the Commission and certain parties have already devoted time and resources to evaluate the request.

For the reasons set forth herein, Aqua PA respectfully submits that the TLU Withdrawal is improper. Any questions regarding this letter can be directed to the undersigned counsel.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Garrett P. Lent". The signature is fluid and cursive, with a large initial "G" and "L".

Garrett P. Lent

GPL/kl

cc: Chairman Gladys Brown Dutrieuille
Commissioner Ralph V. Yanora
Commissioner John F. Coleman
Honorable Joel Cheskis
Certificate of Service

21, 2021) (explaining that Middlesex was improperly submitting to invoices related to interest on outstanding promissory notes to Aqua PA for payment).

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).

VIA E-MAIL ONLY

Lauren M. Burge, Esquire
Eckert Seamans Cherin & Mellott, LLC
U.S. Steel Tower
600 Grant Street, 44th Floor
Pittsburgh, PA 15219
lburge@eckertseamans.com

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

Christine M. Hoover, Esquire
Lauren Guerra, Esquire
Office of Consumer Advocate
555 Walnut Street
Forum Place – 5th Floor
Harrisburg, PA 17101
choover@paoca.org
lguerra@paoca.org

Scott B. Granger, Esquire
Bureau of Investigation and Enforcement
400 North Street – 2nd floor West
Harrisburg, PA 17120
sgranger@pa.gov

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

John H. Klemeyer, Esquire
108 Tulip Circle
Shohola, PA 18458
klemeyerjohn@gmail.com
Counsel for Water Authority of Borough of Milford

Casey Alan Coyle, Esquire
Eckert Seamans Cherin & Mellott, LLC
213 Market Street, 8th Floor
Harrisburg, PA 17101
ccoyle@eckertseamans.com

Date: December 7, 2021



Garrett P. Lent