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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. (“Twin Lakes”) in the above-captioned matters. As you may recall, Twin Lakes filed an Emergency Petition for Partial Stay Pending Judicial Review (“Emergency Petition”) with the Pennsylvania Public Utility Commission (“Commission”), on November 23, 2021. However, Twin Lakes withdrew its Emergency Petition on December 6, 2021, because the Commission failed to act on the Emergency Petition at its December 2, 2021 Public Meeting. In a letter filed on December 7, 2021, Aqua Pennsylvania, Inc. (“Aqua”) attempts to argue that Twin Lakes’ withdrawal of the Emergency Petition is improper, because it did not request permission to withdraw the petition.

Aqua is incorrect. Twin Lakes requested a stay from the Commission in the first instance by filing the Emergency Petition. However, once the Commission rejected the emergency aspect of the Petition, it was no longer practicable to seek relief from the Commission. Therefore, Twin Lakes was forced to withdraw the Emergency Petition and file an Emergency Application for Partial Stay Pending Appeal with the Commonwealth Court. Twin Lakes’ actions are consistent with, and expressly permitted under, Pennsylvania Rule of Appellate Procedure 1781. Aqua’s contrary arguments are simply another attempt to run out the 30-day escrow period and prevent Twin Lakes from obtaining the relief it is entitled to under Section 529.

Twin Lakes' Emergency Petition

The Commission's 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' 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 its 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. Twin Lakes added that, if it did not receive a ruling from the Commission by December 2nd, Twin Lakes would "conclude that it is not practicable to obtain relief from the Commission, withdraw [the Emergency] Petition, and re-file it with the Commonwealth Court." (Emerg. Pet. at 3 n.3).

However, a Secretarial Letter issued on November 30, 2021 implicitly rejected Twin Lakes' request for Commission consideration by December 2, 2021 by extending 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 As a result, Answers were due on December 3, 2021, after the date by which Commission action was needed.²

The Secretarial Letter further stated 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.³ Even were the Commission to issue an order at its next scheduled

¹ Under the emergency rules, answers would have been due by 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." 52 Pa. Code § 3.2 provides no opportunity to respond to an emergency petition.

² Answers were filed by Aqua and the Office of Consumer Advocate ("OCA"). The Commission's Bureau of Investigation and Enforcement did not file any response.

³ 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.")

Public Meeting, on December 16, 2021, this would occur *only two days before expiration of the 30-day period* imposed by the Commission's Order upon Middlesex as a precondition for Twin Lakes to obtain the Section 529 relief otherwise granted to 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 16, 2021 Public Meeting, or acts at that meeting to deny the Petition. Therefore, the Commission's timeline effectively deprived 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.

On November 30, 2021, Twin Lakes filed a letter reiterating the need for Commission action at its December 2nd Public Meeting, and further requesting that 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—giving the Commission additional time to review the Emergency Petition and avoiding the dire consequences set forth in the Emergency Petition. Unfortunately, the Commission took no action on this request nor did it address the Emergency Petition at its December 2nd Public Meeting. As a result, Twin Lakes was forced to withdraw its Emergency Petition on December 6, 2021 and seek a stay or *supersedeas* with the Commonwealth Court in order to preserve its rights.

Response to Aqua

In its December 7, 2021 letter, Aqua attempts to argue that Twin Lakes' withdrawal of the Emergency Petition was improper because it did not first request the Commission's permission to do so. Aqua's argument ignores Twin Lakes' right to seek a stay or *supersedeas* under the Pennsylvania Rules of Appellate Procedure, and is the latest attempt to "run out the clock" on the 30-day escrow period established by the November 2021 Order.

Pursuant to Pennsylvania Rule of Appellate Procedure 1781, Twin Lakes has the right to seek a stay from the Commonwealth Court where, as here, it is not practicable to obtain a stay from the Commission. Twin Lakes properly sought a partial stay from the Commission in the first instance. However, by failing to treat this as an emergency situation, choosing not to apply procedural rules applicable to emergencies, and declining to stay any action at the Emergency Petition at its December 2nd Public Meeting, the Commission has shown that it is, in fact, impracticable to obtain a stay from the PUC.

As a result, under Rule 1781, Twin Lakes was instead forced seek a stay from the Commonwealth Court in order to prevent the dire consequences that would result from the 30-day period running without Middlesex making the escrow payment.⁴ If it were necessary for

⁴ In its Answer to the Emergency Petition, Aqua argued that the Section 529 proceeding would continue regardless of whether Middlesex satisfies the escrow requirement. (Aqua Answer at 3-4). This argument is groundless, as the PUC's Order clearly, specifically, and unequivocally states:

Twin Lakes to obtain the Commission’s permission to withdraw the Emergency Petition, the time needed for this approval would further interfere with Twin Lakes’ right under Rule 1781 to seek a stay or *supersedeas* from the Commonwealth Court.

It bears noting that Twin Lakes repeatedly notified the Commission that it would be necessary to withdraw the Emergency Petition if no action was taken by December 2, 2021. Twin Lakes clearly stated in the Emergency Petition that, “[i]f Twin Lakes does not receive a ruling from the Commission on or before the December 2, 2021 Public Meeting, Twin Lakes will conclude that it is not practicable to obtain relief from the Commission, withdraw this Petition, and re-file it with the Commonwealth Court, pursuant to Pennsylvania Rule of Appellate Procedure 1781.” (Emerg. Pet. at 3 n.3). Twin Lakes reiterated this point in its November 30, 2021 letter, writing: “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.” (11/30/21 Letter at 2).

Despite the foregoing, the Commission *still* took no action at its December 2nd Public Meeting. It should also be noted that neither Aqua nor OCA objected to Twin Lakes’ statements regarding the potential withdrawal of the Emergency Petition in their Answers. Rather, Aqua waited until after the fact to raise such concerns, which undermines their validity.

Moreover, the Commission never committed to acting on the Emergency Petition prior to the end of the 30-day escrow period, but only said it would act “at a forthcoming Public Meeting.” Even if it did choose to act at its next public meeting on December 16, 2021, anything short of a full grant of Twin Lakes’ Emergency Petition would result in Twin Lakes being deprived to its right to request a stay from Commonwealth Court. Faced with that Hobson’s choice, Twin Lakes elected to preserve its rights under the Pennsylvania Rules of Appellate Procedure.

[T]he Petition of Twin Lakes Utilities, Inc., for a Commission order, pursuant to 66 Pa. C.S. § 529, authorizing the acquisition of Twin Lakes by a capable utility as that term is defined by statute, filed on July 16, 2020 at Docket Number P-2020-3020914, is hereby granted, **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.

(Order at 54 (emphasis added)). Therefore, because the Commission’s grant of Twin Lakes’ Section 529 Petition is “subject to” Middlesex complying with the escrow requirement, it necessarily follows that, if Middlesex fails to meet the requirement, Twin Lakes’ Section 529 Petition will be denied and the Section 529 proceeding will terminate—otherwise, the escrow requirement would be an illusory condition. Were that termination to occur, Aqua’s receivership will end (since such receivership remains for the pendency of the Section 529 proceeding), which is exactly why Twin Lakes filed the Emergency Petition in the first place.

Twin Lakes remains disappointed that the Commission declined to extend the time period imposed for the payment of the escrow by Middlesex at its December 2nd meeting. However, neither Aqua nor any other party has been prejudiced by the withdrawal of the Emergency Petition. Nor could they be, as the same issues and standards will be reviewed before the Commonwealth Court, and the parties will have the ability to dispute them in that forum. Indeed, and in contrast to the Commission, the Commonwealth Court ordered the parties to respond to the Emergency Application within five days of its filing, and it is anticipated that the Commonwealth Court will issue a ruling on the Emergency Application early next week.

Conclusion

For the foregoing reasons, Twin Lakes calls upon Aqua to withdraw its belated opposition to the withdrawal of the Emergency Petition. This is because, among other reasons, Twin Lakes must be able to seek a stay of the escrow condition from a tribunal who is willing, ready, and able to decide the merits of the request before Twin Lakes' customers experience the dire consequences of the Section 529 proceeding terminating, Aqua's receivership ending, and the water system reverting back to an entity that the Commission has already determined lacks the financial or operational means necessary to operate the system.

Respectfully submitted,

/s/ Casey Alan Coyle

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CERTIFICATE OF SERVICE

I hereby certify that I have this day served a copy of Twin Lakes Utilities, Inc.'s Letter Response to Aqua Pennsylvania's Letter upon the persons below in the manner indicated in accordance with requirements of 52 Pa. Code Section 1.54.

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Dated: December 9, 2021

/s/ Casey A. Coyle

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