



COMMONWEALTH OF PENNSYLVANIA  
PENNSYLVANIA PUBLIC UTILITY COMMISSION  
COMMONWEALTH KEYSTONE BUILDING  
400 NORTH STREET, HARRISBURG, PA 17120

BUREAU OF  
INVESTIGATION  
&  
ENFORCEMENT

November 12, 2019

Via Electronic Filing

Secretary Rosemary Chiavetta  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17120

Re: In re: The Indian Springs Water Company  
Section 529 Investigation  
Docket No. M-2019-3011972  
**I&E Prehearing Memorandum**

Dear Secretary Chiavetta,

Enclosed please find the Bureau of Investigation and Enforcement's (I&E) **Prehearing Memorandum** in the above-captioned proceeding.

Copies are being served on all active parties of record as evidenced in the attached Certificate of Service. Should you have any questions or concerns, please do not hesitate to contact me.

Sincerely,

Scott B. Granger  
Prosecutor  
Bureau of Investigation and Enforcement  
PA Attorney I.D. No. 63641  
(717) 425-7593  
[sgranger@pa.gov](mailto:sgranger@pa.gov)

SBG/ac  
Enclosure

cc: Honorable Steven K. Haas (*ALJ, PUC Harrisburg*)  
Per Certificate of Service

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: The Indian Springs Water Company       :     Docket No. M-2019-3011972  
      Section 529 Investigation                 :

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**PREHEARING MEMORANDUM  
OF THE  
BUREAU OF INVESTIGATION AND ENFORCEMENT**

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**TO: ADMINISTRATIVE LAW JUDGE STEVEN K. HAAS:**

The Bureau of Investigation and Enforcement (“I&E”) of the Pennsylvania Public Utility Commission (“Commission”) respectfully submits the following Prehearing Memorandum in the above-captioned proceeding regarding the Indian Springs Water Company (“Indian Springs”).

The Bureau of Investigation and Enforcement Prosecutor in this proceeding will be Scott B. Granger. Contact information is as follows:

By mail:                   Scott B. Granger  
                              Pennsylvania Public Utility Commission  
                              Commonwealth Keystone Building  
                              400 North Street  
                              Harrisburg, PA 17120

By e-mail:                 [sgranger@pa.gov](mailto:sgranger@pa.gov)  
By telephone:             (717) 425-7593  
By fax:                    (717) 772-2677 (not preferred)

## I. INTRODUCTION

On August 8, 2019 the Commission issued an Order regarding the Indian Springs Water Company. In summary, the Commission noted Indian Springs provides water service to approximately 54 customers, and serves a total population of 137, in the community of Glen Summit in Fairview Township, Luzerne County, Pennsylvania. The Commission stated since 2015, the Department of Environmental Protection (“DEP”) has issued ten Notices of Violation to Indian Springs for the following issues: failure to issue a Tier 3 public notification for asbestos contaminants; Consumer Confidence Report (“CCR”) not submitted; failure to monitor or report EP disinfectant residual for groundwater; failure to monitor or report for the disinfectant/disinfectant byproduct (“D/DBP”) contaminant specified - chlorine, trihalomethanes, and haloacetic acids (five (“HAA5”)); failure to issue a Tier 2 public notification for lead/copper group contaminants; and failure to do a study or recommend treatment under the Lead and Copper Rule (“LCR”) for lead/copper group contaminants.

Additionally, the Commission noted that the DEP issued a Field Order to Indian Springs on February 7, 2019, for violations identified during an inspection conducted by DEP personnel on February 6, 2019. The Commission also recognized that Indian Springs has been on a “Do Not Consume” advisory since February 7, 2019, due to lead and copper exceedances as well as unsanitary conditions of the water system. Further, and of great concern to the Commission, is the fact that the Commission understands that Indian Springs has been informed multiple times by the DEP that the public notices issued by it are deficient, and that a public notice due May 12, 2019, has not been

provided to the DEP. Further, the Commission attached the supporting DEP documents to its Order as Appendix B. Ultimately the Commission Ordered, in part:

(1) that an investigation shall be instituted into whether the Commission should order a capable public utility to acquire the Indian Springs Water Company pursuant to 66 Pa. C.S. § 529 and as is consistent with its Order;

(2) that the Bureau of Investigation and Enforcement is expected to participate in the investigation proceeding, and water utilities with an interest in this matter may petition to participate as appropriate;

(3) that the Indian Springs Water Company shall provide notice to its customers of the imposition of the receivership and the initiation of a Section 529 proceeding in the same manner as a general rate increase and shall inform its customers to direct future payments for water service to the Receiver as appointed by the Commission;

(4) that pursuant to 66 Pa. C.S. § 529(g), the Commission directs Pennsylvania American Water Company (“PAWC”) to act as the Receiver for the Indian Springs beginning August 19, 2019 in accordance with Appendix A attached to the Commission’s Order, and to continue during the pendency of the Section 529 proceeding ordered by the Commission; and,

(5) that PAWC will continue to provide bottled water to the Indian Springs customers as required in the interim between the Commission’s Order and August 19, 2019.

Louise Knight, Esquire filed a Notice of Appearance on behalf of the Indian Springs Water Company on August 16, 2019.

PAWC filed its Notice of Appearance on August 20, 2019.

The Office of Consumer Advocate (“OCA”) filed a Public Statement and Notice of Appearance on August 21, 2019.

I&E filed its Notice of Appearance on August 29, 2019.

PAWC served the required (66 Pa. C.S. § 529(h)) Notice of Section 529 Acquisition Investigation on existing Indian Springs customers on October 1, 2019.

Additionally, the required (66 Pa. C.S. § 529(h)) Notice of Section 529 Acquisition Investigation was served by the Commission’s Secretary’s Bureau on the Proximate Service Providers and Proximate Municipalities on October 1, 2019. The Notice allowed for responsive pleadings to be filed by October 21, 2019.

Louise Knight, Esquire filed a Notice of Appearance and a Petition to Intervene on behalf of Glen Summit Company on October 21, 2019.

In addition to the issuance of the Commission’s August 8, 2019 Order and the party filings referenced *supra*; I&E has recently learned that on September 5, 2019 a Formal Complaint was filed by Indian Springs water customer Thomas V. Tinsley, Jr alleging reliability, safety, or quality issues with his utility service as well as other issues related to attempts to negotiate the sale of Indian Springs. Mr. Tinsley’s Formal Complaint was docketed at C-2019-3012933.

In his Formal Complaint, Mr. Tinsley also alleges that he is a stockholder of Indian Springs; a former Officer and Director of Indian Springs; as well as a stockholder of the Glen Summit Company.

On October 14, 2019, Mr. Tinsley filed an Addendum to his September 5<sup>th</sup> Formal Complaint.

On November 4, 2019, Indian Springs filed an Answer and New Matter in response to Mr. Tinsley's Formal Complaint and Addendum.

Finally, a Prehearing Conference is scheduled for Wednesday, November 13, 2019, at 10:00 am before Administrative Law Judge Steven K. Haas in Harrisburg, Pennsylvania.

## **II. ISSUES**

The following list represents I&E's preliminary determination of the potential issues in this proceeding. The listing is as complete as can be made at this time. I&E specifically reserves the right to address other issues, as it deems appropriate if any such relevant issues arise. The potential issues are as follows:

- Whether the Commission should order a capable public utility to acquire Indian Springs?
- Due consideration of the six elements of 66 Pa. C.S. Section 529(a).
- Due consideration of the five alternatives listed in 66 Pa. C.S. Section 529(b).
- Due consideration of the five factors set forth in 66 Pa. C.S. Section 529(c).
- Whether abandonment could be an appropriate remedy under the instant circumstances?
- Whether PA American Water Company is a capable public utility for purposes of 66 Pa. C.S. Section 529?
- The rights and responsibilities of PA American Water as the Commission appointed receiver under 66 Pa. C.S. Section 529(g).

- The tariff rates applicable to Indian Springs water customers on a going forward basis in consideration of 66 Pa. C.S. Section 529(f).

### **III. WITNESSES**

It is currently expected that I&E may call the following expert witnesses without being limited thereto:

Christopher Keller, Fixed Utility Financial Analyst  
Scott Orr, Pipeline Safety Engineer

The I&E witnesses may be contacted through the information listed above for Prosecutor Granger. The witness list is provided without the benefit of complete discovery or analysis of the positions of potential other parties to this proceeding. Accordingly, I&E reserves the right to call additional witnesses or withdraw the name of the witnesses listed above.

### **IV. EVIDENCE**

I&E expects to present all written direct, rebuttal and surrebuttal testimony and accompanying exhibits at the evidentiary hearing. Moreover, I&E intends to rely on the appendices attached to the Commission's August 8, 2019 Order, other relevant Pa. DEP documentation, relevant Indian Spring's filing, written testimony, answers to data requests and interrogatories, annual reports and other documents submitted to the Commission, other relevant Commission filings, any other relevant Commonwealth agency letters or reports, and other public documents and reports.

### **V. DISCOVERY**

Discovery in these proceedings will be conducted according to 52 Pa. Code §§5.321 et. seq. No modifications to the rules of discovery have been proposed by I&E.

However, I&E will give due consideration to any discovery modifications proposed by any other party. Also, pursuant to 52 Pa. Code §§5.322 and 5.331(b), discovery has begun and is ongoing.

**VI. SCHEDULE**

The parties have discussed requesting that ALJ Haas suspend the establishment of a procedural schedule to allow the parties additional time to craft and amicable resolution. Therefore, as of this date, the parties have not yet agreed on a schedule nor has a tentative schedule been proposed.

I&E Section 529 Direct Testimony	_____
Other Parties Direct	_____
Rebuttal Testimony	_____
Surrebuttal Testimony	_____
Oral Rejoinder Outlines	_____
Hearings (including Oral Rejoinder)	_____
Main Brief	_____
Reply Brief	_____

**VII. PUBLIC INPUT HEARINGS**

I&E is not aware of any requests at this time with respect to public input hearings. I&E does not propose that any public input hearings be held absent substantial public interest in the Company filing. Should public input hearings be deemed necessary, I&E recommends the Commission consider the use of “smart hearings” to encourage increased participation by the ratepayers and all other interested parties.



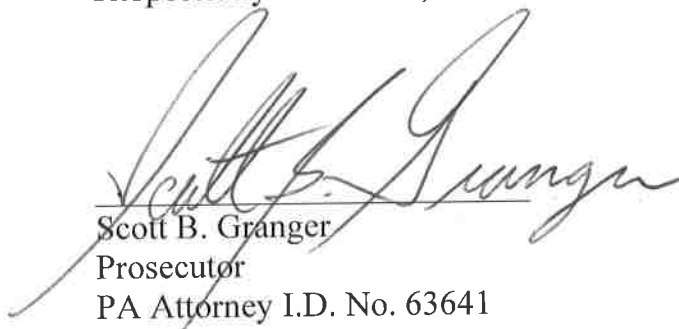
## VIII. SERVICE OF DOCUMENTS

For purposes of satisfying in-hand requirements for discovery responses, prepared testimony and briefs, I&E will accept electronic delivery of documents with a follow-up hard copy provided by regular first-class mail.

## IX. SETTLEMENT

The parties have already held several conference calls to discuss possible amicable resolutions to the issues raised in the Commission's August 8, 2019 Order. Going forward, I&E will maintain an open dialogue and will make good faith efforts to successfully resolve this matter through settlement. In the event settlement discussions fail to result in a full and complete resolution of the matter, I&E will be prepared to fully or partially litigate this proceeding.

Respectfully Submitted,



Scott B. Granger  
Prosecutor  
PA Attorney I.D. No. 63641

Bureau of Investigation and Enforcement  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
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(717) 425-7593  
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Dated: November 12, 2019

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: The Indian Springs Water Company : Docket No. M-2019-3011972  
Section 529 Investigation :

**CERTIFICATE OF SERVICE**

I hereby certify that I am serving the foregoing **Prehearing Memorandum** dated November 12, 2019, in the manner and upon the persons listed below, in accordance with the requirements of 52 Pa. Code § 1.54 (relating to service by a party):

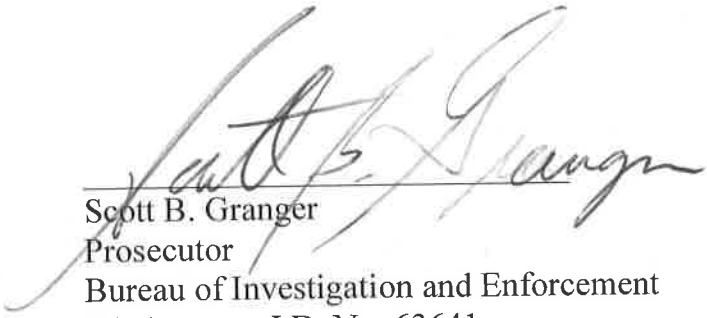
**Served via First Class and Electronic Mail**

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Scott B. Granger  
Prosecutor

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