



February 11, 2025

VIA E-FILING

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

**Re: Pennsylvania Public Utility Commission, Bureau of Investigation and Enforcement
v. Rock Spring Water Company; Docket No. P-2024-3051313**

**Answer of Pennsylvania-American Water Company to the Office of Consumer
Advocate's Petition for Issuance of an Interim Emergency Order**

Dear Secretary Chiavetta:

Enclosed for filing with the Pennsylvania Public Utility Commission is the Answer of Pennsylvania-American Water Company to the Office of Consumer Advocate's Petition for Issuance of an Interim Emergency Order. A copy of this filing is being served in accordance with the attached Certificate of Service.

Thank you for your attention to this filing. Please contact me if you have any questions or concerns.

Sincerely,

Cozen O'Connor

Counsel for
Pennsylvania-American Water Company

DPZ
Enclosure

cc: Hon. John M. Coogan
Per Certificate of Service
Elizabeth R. Triscari, Esq.
Teresa K. Harrold, Esq.

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Section 529 Investigation of Rock Spring Water Company : Docket No. P-2024-3051313
:

CERTIFICATE OF SERVICE

I hereby certify that I am this 11th day of February, 2025, serving the above-referenced Answer of Pennsylvania-American Water Company to the Office of Consumer Advocate's Petition for Issuance of an Interim Emergency Order upon the persons and in the matter indicated below, which service satisfies the requirements of 52 Pa. Code § 1.54 (related to service by a party).

SERVICE BY E-MAIL ONLY

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Respectfully submitted,



David P. Zambito, Esq.
Counsel for *Pennsylvania-American Water
Company*

VERIFICATION

I, Michael J. Guntrum, hereby state that the facts set forth above are true and correct to the best of my knowledge, information and belief and that I expect to be able to prove the same at a hearing held in this matter. I understand that the statements herein are made subject to the penalties of 18 Pa. C.S. § 4904 (relating to unsworn falsification to authorities).

Date: February 11, 2025



**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

Section 529 Investigation of Rock Spring Water Company : Docket No. P-2024-3051313

**ANSWER OF PENNSYLVANIA-AMERICA WATER COMPANY TO THE
OFFICE OF CONSUMER ADVOCATE’S PETITION FOR ISSUANCE OF AN
INTERIM EMERGENCY ORDER**

Pennsylvania-American Water Company (“PAWC”) submits this Answer to the Office of Consumer Advocate’s (“OCA’s”) Petition for Issuance of an Interim Emergency Order (“Interim Emergency Petition”), which was filed February 6, 2025 with the Pennsylvania Public Utility Commission (“Commission”) pursuant to Sections 3.6 and 5.41 of the Commission’s Regulations, 52 Pa. Code §§ 3.6, 5.41, and Section 529(g) of the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 529(g). In response to the OCA’s Interim Emergency Petition, PAWC states as follows:

INTRODUCTION

PAWC respectfully submits that the Commission exercise its primary jurisdiction and issue an order (i) declaring that a receiver be appointed for Rock Spring Water Company (“Rock Spring”), (ii) recommending and authorizing that the State College Borough Water Authority (“SCBWA”) be appointed receiver, and (iii) allowing the Court of Common Pleas of Centre County to issue an order appointing SCBWA receiver for Rock Spring.

While PAWC is willing and able to serve as receiver for Rock Spring, SCBWA should be named as receiver because of its superior proximity to Rock Spring. However, it is unclear whether the Commission has authority to direct that SCBWA serve as receiver because Rock Spring is not a “capable public utility” as defined in 66 Pa. C.S. § 529(m). Consistent with past cases, PAWC

proposes a process to appoint SCBWA receiver through the Commission’s primary jurisdiction and in acknowledgment of the Court’s jurisdiction over municipal authorities. This approach would best serve the public interest and enable a swift response to the ongoing issues facing Rock Spring and its customers.

ANSWER

I. BACKGROUND

A. SECTION 529 PROCEEDING

1. It is admitted that the Bureau of Investigation and Enforcement (“I&E”) filed a petition in the above-captioned matter on September 20, 2024, requesting the Commission open a Section 529 investigation into the acquisition of Rock Spring due to, among other things, various violations of Pennsylvania Department of Environmental Protection (“DEP”) requirements and administrative orders and other related enforcement orders. This proceeding remains ongoing with hearing dates scheduled before Administrative Law Judge John M. Coogan (the “ALJ”) on April 29-30, 2025.

2. Admitted.

3. Admitted.

4. Admitted.

5. Admitted.

6. Admitted.

7. Admitted, based on PAWC’s knowledge, information and belief.

B. EMERGENCY PETITION FOR APPOINTMENT OF RECEIVER FILED IN COURT OF COMMON PLEAS

8. It is admitted that counsel for Rock Spring filed an emergency petition for appointment of a receiver in the Court of Common Pleas of Centre County, Docket Number 2025-CV-0064-CI.

9. It is admitted that the Commission’s Law Bureau filed a petition to intervene and a motion to dismiss, arguing that the Court lacks jurisdiction to appoint a receiver.

10. Admitted.

11. Denied. On February 5, 2025, the Court issued an order granting the Commission’s petition to intervene and denying Rock Spring’s request to appoint a receiver, finding “that the circumstances at issue here are within the ambit of the PUC’s authority” but also stating that “the PUC’s pleadings overstate the breadth of its jurisdiction in general.” Ct. Common Pleas Order, attached hereto as **PAWC Exhibit A**. On the next day, the OCA filed the subject Interim Emergency Petition. Pursuant to 52 Pa. Code § 3.6(b), a petition for interim emergency relief must include facts showing: (1) the petitioner’s right to relief is clear, (2) the need for relief is immediate, (3) the injury would be irreparable if relief is not granted, and (4) the relief requested is not injurious to the public interest.

II. INTERIM EMERGENCY PETITION

12. Admitted.

13. Admitted.

14. Admitted.

15. Admitted.

16. Admitted.

17. Admitted.

18. This paragraph states a conclusion of law to which no response is required.

19. It is admitted that the OCA requested that the Commission appoint a receiver of Rock Spring on an emergency basis due to the imminent cessation of adequate, efficient, safe, and reasonable water service by Rock Spring and to ensure that Rock Spring's customers continue to receive service.

20. This averment contains a conclusion of law to which no response is required.

21. This averment cites several prior orders of the Commission, which are written documents that speak for themselves.

22. This paragraph contains legal argument, to which no response is required.

23. It is admitted that the Commission has authority to appoint a receiver pursuant to 66 Pa. C.S. § 529(g). It is also admitted that the OCA's right to relief is clear.

24. It is admitted that the need for relief is immediate.

25. It is admitted that the injury to consumers would be irreparable if the relief is not granted.

26. It is admitted that the requested relief would not be injurious to the public interest.

III. IDENTIFICATION OF POTENTIAL RECEIVERS

27. It is admitted that the OCA identified three potential receivers: PAWC, SCBWA, and Aqua Pennsylvania, Inc. ("Aqua").

28. Admitted.

29. Admitted.

30. Admitted.

31. Admitted.

32. This paragraph contains legal argument to which no response is required. By way of further answer, PAWC shares the OCA's concern that the Commission lacks authority, pursuant to 66 Pa. C.S. § 529(g), to direct a municipal authority to serve as a receiver for a public utility.

33. Admitted; as an existing utility, Aqua enjoys a rebuttable presumption that it is financially, managerially, and technically fit. *South Hills Movers, Inc. v. Pa. Pub. Util. Comm'n*, 601 A.2d 1308, 1310 (Pa. Cmwlth. 1992).

34. After a reasonable investigation, PAWC is unable to admit or deny the OCA's "primary concern."

35. PAWC has no reason to doubt the OCA's willingness to collaborate and work with all the parties to this proceeding on an appropriate solution. PAWC is also willing to collaborate and work with all the parties to this proceeding on an appropriate solution.

To that end, PAWC proposes that the Commission exercise its primary jurisdiction over Rock Spring as a certificated public utility and (i) order that a receiver be appointed, (ii) authorize and recommend that SCBWA be appointed receiver, and (iii) allow the Court of Common Pleas of Centre County to issue an order appointing SCBWA receiver for Rock Spring. This cooperation between the Commission and Court of Common Pleas aligns with the doctrine of primary jurisdiction.

[T]he doctrine of primary jurisdiction permits the bifurcation of a plaintiff's claim, whereby a trial court, faced with a claim requiring the resolution of an issue that is within the expertise of an administrative agency, will first cede the analysis of the issue or issues to that agency. Once the agency resolves the particular issue or issues over which it has primary jurisdiction, the trial court may proceed, if necessary, to apply the agency's decision to the dispute remaining before the trial court. The doctrine 'creates a workable relationship between the courts and administrative agencies wherein, in appropriate circumstances, the courts can have the benefit of the agency's views on issues within the agency's competence.

Pettko v. Pa. Am. Water Co., 39 A.3d 473, 479 (Pa. Cmwlth. 2012) (quoting *Elkin v. Bell Telephone Co.*, 491 Pa. 123, 131-32 (1980)). Appointment of a receiver for Rock Spring is within the primary jurisdiction of the Commission, but PAWC agrees with the OCA that the Commission likely lacks the authority to direct that SCBWA be appointed as receiver given its status as a municipal authority. OCA Pet. ¶ 32. The Commission should authorize SCBWA to serve as receiver for Rock Spring and the Commission's emergency order would become effective upon the issuance of a valid court order appointing SCBWA to serve as receiver for Rock Spring. Notably, this approach is how the Commission appointed PAWC to serve as receiver for the East Dunkard Water Authority, a non-jurisdictional entity. *See Joint Petition of Pennsylvania-American Water Company and the Department of Environmental Protection Requesting an Ex Parte Emergency Order in Regard to Receivership of East Dunkard Water Authority*, Docket No. P-2023-3043950 (Ex Parte Emergency Order dated Nov. 1, 2023).

PAWC is willing and able to be appointed receiver of Rock Spring and to serve Rock Spring's customers. However, SCBWA is better positioned to acquire Rock Spring. SCBWA is closer in proximity to Rock Spring. As a result, naming SCBWA as the receiver would be consistent with the Commission's policy of promoting regionalization and consolidation in the water industry. 52 Pa. Code § 69.721. SCBWA has also already been in discussions with Rock Spring to acquire the water system. Appointment of SCBWA as receiver of Rock Spring would pave the path for the eventual acquisition of Rock Spring by SCBWA; whereas the appointment of PAWC as an interim receiver would unnecessarily lead to the duplication of efforts and expenditure of resources by both PAWC and SCBWA. SCBWA has shown itself to be financially, managerially, and technically fit to acquire Rock Spring.

Finally, PAWC notes that the appointment of PAWC as an interim receiver for Rock Spring would impose unnecessary costs upon PAWC's existing ratepayers. PAWC would undoubtedly incur expenses in remediating and operating the Rock Spring system (for which the Commission should permit deferred regulatory accounting treatment and creation of a regulatory asset). Indeed, Rock Spring customers could not bear such costs alone. It is however unfair to impose the costs of receivership upon PAWC's existing customers, particularly where SCBWA will likely acquire Rock Spring eventually. The costs of receivership should be imposed upon SCBWA because such costs could then be spread among SCBWA's customer base, including customers on the Rock Spring system, over time.

IV. CONCLUSION

Accordingly, for the reasons set forth herein, Pennsylvania-America Water Company respectfully requests that the Commission:

- (1) order that a receiver be appointed for Rock Spring Water Company;
- (2) authorize and recommend that the State College Borough Water Authority be appointed receiver provided that it ensures compliance with Rock Spring's obligations as a certificated public utility under the Pennsylvania Public Utility Code until such time that Rock Spring's certificate of public convenience is abandoned,
- (3) pursuant to the primary jurisdiction doctrine, allow the Court of Common Pleas of Centre County to issue an order appointing the State College Borough Water Authority as the receiver for Rock Spring Water Company; and,
- (4) Should the Court of Common Pleas of Centre County fail to appoint State College Borough Water Authority as receiver for Rock Spring Water Company within a reasonable time, entertain a petition for reconsideration by a party to this proceeding to reevaluate the need to

appoint Pennsylvania-American Water Company or another capable public utility as interim receiver for Rock Spring Water Company.

Respectfully submitted,



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Date: February 11, 2025

IN THE COURT OF COMMON PLEAS CENTRE COUNTY, PENNSYLVANIA
CIVIL ACTION - LAW

FILED FOR RECORD
2025 FEB 05 PM 02:57
JEREMY S. BREON
PROTHONOTARY
CENTRE COUNTY, PA

IN RE: ROCK SPRING WATER
COMPANY

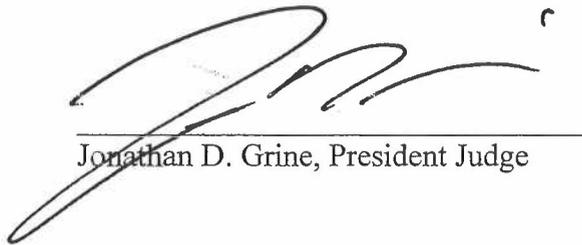
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No. 2025-CV-0064-CI

ORDER

AND NOW, this 5 day of February, 2025, after hearing on the
Emergency Petition for Appointment of Receiver, review of the briefs submitted by Petitioners,
Rock Spring Water Company, and the Public Utilities Commission ("PUC") and review of the
Motion to Dismiss filed by PUC, the Court finds it lacks jurisdiction to appoint a receiver in this
matter. While the PUC's pleadings overstate the breadth of its jurisdiction in general, it is clear
that the circumstances at issue here are within the ambit of the PUC's authority. Therefore, the
Motion to Dismiss filed by PUC is **GRANTED**. The Emergency Petition for Appointment of
Receiver is **DENIED**.

BY THE COURT:


Jonathan D. Grine, President Judge

NOTICE OF ENTRY OF
ORDER OR DECREE,
PURSUANT TO PA. R.C.P.
236 NOTIFICATION. THIS
DOCUMENT HAS BEEN
FILED IN THIS CASE.

PROTHONOTARY, CENTRE
COUNTY, PA.

DATE: 2/16/2025

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