



February 18, 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
Petition to Request the Commission Open a Section 529 Investigation into the
Acquisition of Rock Spring Water Company; Docket No. P-2024-3051313**

**Brief of Pennsylvania-American Water Company Concerning 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 Brief of Pennsylvania-American Water Company Concerning 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**

Pennsylvania Public Utility Commission :
Bureau of Investigation and Enforcement :
Petition to Request the Commission Open : Docket No. P-2024-3051313
A Section 529 Investigation into the Acquisition :
of Rock Spring Water Company :

CERTIFICATE OF SERVICE

I hereby certify that I am this 18th day of February, 2025, serving the above-referenced **Brief of Pennsylvania-American Water Company Concerning 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).

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**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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Bureau of Investigation and Enforcement :
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**BRIEF OF PENNSYLVANIA-AMERICAN WATER COMPANY
CONCERNING THE OFFICE OF CONSUMER ADVOCATE'S PETITION
FOR ISSUANCE OF AN INTERIM EMERGENCY ORDER**

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Date: February 18, 2025

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AND NOW COMES Pennsylvania-American Water Company (“PAWC”), pursuant to 52 Pa. Code §§ 5.501 and 5.502 and the February 14, 2025 Briefing Order of the Honorable Administrative Law Judge John M. Coogan (the “ALJ”), to submit this Brief regarding the Petition for Issuance of an Interim Emergency Order (the “Emergency Petition”) filed by the Office of Consumer Advocate (“OCA”) on February 6, 2025. In the Emergency Petition, the OCA asks the Pennsylvania Public Utility Commission (the “Commission”) to appoint a receiver to operate the Rock Spring Water Company (“Rock Spring”) pending the outcome of the on-going Section 529 Investigation of Rock Spring.

PAWC takes no position on whether the Commission should appoint an interim receiver for Rock Spring. If the Commission decides that an interim receiver should be appointed, PAWC submits that the State College Borough Water Authority (“SCBWA”) would be the best choice for interim receiver, in part, because it already has a letter of intent to purchase Rock Spring. PAWC proposes a path by which the SCBWA could be named the interim receiver of Rock Spring.

I. STATEMENT OF THE CASE

A. Procedural History

On September 20, 2024, the Commission’s Bureau of Investigation and Enforcement (“I&E”) filed a Petition to Request the Commission Open a Section 529 Investigation into the Acquisition of the Rock Spring Water Company. I&E is represented in this matter by Carrie B. Wright, Esq. I&E’s Petition identified the following entities as potential capable proximate water service providers: PAWC; SCBWA, Aqua Pennsylvania, Inc. (“Aqua”); Veolia Water

Pennsylvania, Inc. (“VWPA”);¹ and the Huntingdon Area Water and Sewage Authority (“HAWSA”).²

On October 9, 2024, the Office of Consumer Advocate (“OCA”) filed a Notice of Intervention. The OCA was initially represented in this matter by Emily A. Farren, Esq., and Jacob D. Guthrie, Esq. On February 6, 2025, Melanie Joy El Atieh, Esq. entered her appearance as additional counsel for the OCA.

Aqua filed a Petition to Intervene on October 17, 2024. Aqua is represented in this matter by Alexander R. Stahl, Esq.

On October 11, 2024, PAWC filed a Petition to Intervene. PAWC was initially represented in this matter by Elizabeth Rose Triscari, Esq. On October 24, 2024, David P. Zambito, Esq. and Jonathan P. Nase, Esq., entered their appearance as additional counsel on behalf of PAWC. Also on October 24, 2024, Teresa K. Harrold, Esq. entered her appearance as additional counsel on behalf of PAWC.

On October 11, 2024, the Commission issued a notice of a Telephonic Prehearing Conference to be held on October 30, 2024. The ALJ issued a Prehearing Conference Order on October 15, 2024.

On October 21, 2024, SCBWA filed a Petition to Intervene. SCBWA is represented in this matter by Robert A. Mix, Esq.

On October 23, 2024, the Office of Small Business Advocate (“OSBA”) filed a Notice of Intervention. The OSBA was initially represented in this matter by Rebecca Lyttle, Esq. On February 12, 2025, Steven Gray, Esq. filed a Notice of Appearance as additional counsel on behalf of the OSBA.

¹ VWPA has no water systems that are proximate to Rock Spring and therefore is not a party to this proceeding.

² The Huntingdon Area Water and Sewage Authority did not file a Petition to Intervene in this proceeding.

On October 28, 2024, the Pennsylvania Department of Environmental Protection (“DEP”) filed its Petition to Intervene. DEP was initially represented in this matter by Amanda Chaplin, Esq. Glenn Masser, Esq. filed a Notice of Appearance as additional counsel on behalf of DEP on October 30, 2024.

The Prehearing Conference was held as scheduled on October 30, 2024. The ALJ issued his Prehearing Order #1 on November 5, 2024, which granted all the Petitions to Intervene discussed above. In addition, Prehearing Order #1 named Rock Spring as a party and advised it of the need for companies to be represented by counsel in Commission proceedings. Prehearing Order #1 also established a litigation schedule.

On November 11, 2024, Ferguson Township filed its Petition to Intervene. Ferguson Township is represented in this matter by Elizabeth A. Dupuis, Esq. and Morgan A. Madden, Esq. On December 2, 2024, the ALJ issued Prehearing Order #2 granting Ferguson Township’s Petition to Intervene.

On December 10, 2024, James N. Bryant, Esq. and Carolyn M. Larrabee, Esq. filed a Notice of Appearance on behalf of Rock Spring. On February 13, 2025, Rock Spring filed a letter with the Commission alleging that attorneys Bryant and Larrabee had been discharged. At this time, their status as counsel for Rock Spring is unclear.

On February 6, 2024, the OCA filed its Emergency Petition. Answers were filed by Rock Spring, PAWC and DEP.

On February 7, 2025, the Commission issued a Telephonic Hearing Notice for a hearing to be held on February 14, 2025 regarding the OCA’s Emergency Petition. Also on February 7, 2025, a Prehearing Order was issued for the hearing.

The hearing on the OCA's Emergency Petition was held as scheduled on February 14, 2025. Oral and/or written testimony was introduced by I&E, the OCA, Aqua, DEP, PAWC, and SCBWA. The ALJ issued a Briefing Order later that same day.

B. Related Proceedings

On January 13, 2025, Rock Spring filed an Emergency Petition for Appointment of Receiver in the Court of Common Pleas of Centre County (the "Civil Court"). The Commission's Law Bureau petitioned to intervene in the Civil Court proceedings on behalf of the Commission. The Law Bureau also filed a Motion to Dismiss the Civil Court proceedings.

On January 30, 2025, the Civil Court held a hearing on Rock Spring's Emergency Petition and granted the Commission's petition to intervene. The Civil Court received evidence regarding the need for a receiver and ordered that briefs be filed on January 31, 2025.

On February 5, 2025, the Civil Court denied Rock Spring's Emergency Petition. The Court found that it

... lacks jurisdiction to appoint a receiver in this matter. While the PUC's pleadings overstate the breadth of [the PUC's] jurisdiction in general, it is clear that the circumstances at issue here are within the ambit of the PUC's authority.

II. LEGAL STANDARD

52 Pa. Code § 3.6 allows a party to submit a petition for an interim emergency order during the course of a proceeding. The petition must establish the existence of the need for interim emergency relief, including facts to support:

- (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.

As the party requesting relief from the Commission, it is the OCA's burden to establish every element of its case. 66 Pa. C.S. § 332(a).

With respect to the appointment of an interim receiver, the Pennsylvania Public Utility Code (“Code”), 66 Pa. C.S. § 529(g) provides:

(g) Appointment of receiver.--The commission may, in its discretion, appoint a receiver to protect the interests of the customers of the small water or sewer utility. Any such appointment shall be by order of the commission, which order shall specify the duties and responsibilities of the receiver.

The presiding officer is required to issue an order granting or denying interim emergency relief within 15 days of the filing of the petition (here, by February 21, 2025). 52 Pa. Code § 3.7(a). The order is effective immediately upon issuance by the presiding officer. 52 Pa. Code § 3.10(a). When the presiding officer rules on a petition for an interim emergency order, he is to certify the question of the grant or denial of relief to the Commission as a material question. 52 Pa. Code § 3.10(a). Thereafter, the Commission and the parties follow the procedures in 52 Pa. Code § 5.305, if applicable.

52 Pa. Code § 5.305 provides that each party may submit a brief to the Commission within seven days addressing the merits of the certified question. The Commission is to issue a decision within 30 days of receipt of the certified question. That decision may (1) continue, revoke or grant a stay of the proceedings, (2) determine that the certification was improper and return the matter to the presiding officer for resolution, or answer the certified question. Failure of the Commission to act upon a certified question within 30 days of its receipt is deemed to be an affirmance of the decision of the presiding officer. 52 Pa. Code § 5.305.

III. SUMMARY OF ARGUMENT

PAWC takes no position on whether the ALJ should appoint an interim receiver for Rock Spring.

If the ALJ decides that an interim receiver should be appointed for Rock Spring, PAWC respectfully submits that the SCWBA is the most logical choice for receiver. SCWBA would need to be appointed receiver using a procedure that coordinates the respective jurisdictions of the Commission and the civil courts. The recommended procedure is described in detail in Section IV.B. The ALJ's order should include provisions specifying the powers and duties of the SCWBA as receiver, similar to those that are frequently included in Commission orders appointing receivers. Some adjustments would be necessary, however, because the SCWBA is not subject to Commission jurisdiction. The recommended provisions concerning the powers and duties of SCWBA as receiver are set forth in Section V and Appendix A.

In the alternative, PAWC is willing to serve as interim receiver of Rock Spring. If the ALJ decides that PAWC should be appointed the interim receiver of Rock Spring, the ALJ's order should include provisions specifying the powers and duties of PAWC as receiver, similar to those that are frequently included in Commission orders appointing receivers. The recommended provisions concerning the powers and duties of PAWC as receiver are set forth in Section V and Appendix B.

IV. ARGUMENT

The OCA's Emergency Petition presents three questions:

- A. Should the ALJ appoint a receiver to operate Rock Spring pending the outcome of the Section 529 Investigation and/or the abandonment of service by Rock Spring?
- B. If the ALJ decides that an interim receiver should be appointed to operate Rock Spring, who should be the interim receiver?

- C. If the ALJ decides that an interim receiver should be appointed to operate Rock Spring, what duties and responsibilities should the Commission give the interim receiver?³

This Brief will discuss each question in turn.

- A. Should the ALJ appoint a receiver to operate Rock Spring pending the outcome of the Section 529 Investigation and/or the abandonment of service by Rock Spring?**

PAWC takes no position on this issue.

- B. If the ALJ decides that an interim receiver should be appointed to operate Rock Spring, who should be the interim receiver?**

If the Commission decides that a receiver should be appointed to operate Rock Spring pending the outcome of the Section 529 Investigation and/or the abandonment of service by Rock Spring, the OCA's Emergency Petition identifies three entities that could be named as the interim receiver (SCBWA, PAWC and Aqua). The OCA, however, recommends that either PAWC or SCBWA be appointed as interim receiver. OCA St. No. 1 p. 11. The OCA leaves it to the Commission to decide which of these entities should be selected to serve as the interim receiver.

Similarly, I&E contends that an interim receiver should be appointed but does not take a position on which of the three providers identified by OCA should be appointed as the interim receiver. Tr. 146. DEP agrees with the OCA that any of the three parties identified by the OCA could serve as interim receiver, but DEP argues that appointing the SCBWA as interim receiver has advantages over appointing Aqua and PAWC due to proximity and staffing. Tr. 162. Aqua contends that it should not be named as the interim receiver because it is not as proximate to Rock

³ The OSBA argued that the Commission should impose civil penalties on Rock Spring. Transcript ("Tr.") 163. PAWC respectfully submits that this proposal is beyond the scope of the OCA's request for the appointment of an interim receiver for Rock Spring. If this proposal is considered at all in this proceeding, it should be considered as part of the on-going Section 529 Investigation.

Spring as SCBWA and PAWC, but Aqua does not advocate for the appointment of any specific party as interim receiver. Tr. 161.

The OSBA contends that PAWC should be selected as receiver because it has financial and technical resources that are “orders of magnitude larger” than those of SCBWA. Tr. 163-164. The OSBA, however, introduced no evidence to support its position.

If the ALJ decides that a receiver should be appointed to operate Rock Spring pending the outcome of the Section 529 Investigation and/or the abandonment of Rock Spring’s certificate of public convenience, PAWC respectfully submits that SCBWA should be the interim receiver. Appointing SCBWA as the receiver is clearly the most logical choice. SCBWA is managerially, technically and financially fit to operate Rock Spring. SCBWA is, by far, more proximate to Rock Spring than any other potential interim receiver, with facilities located some 4,200 feet from Rock Spring.⁴ Naming SCBWA as the receiver of Rock Spring would therefore promote the Commission’s policy of promoting the consolidation and regionalization of water systems. 52 Pa. Code § 69.721.

Naming SCBWA as the interim receiver is also logical because it appears likely that SCBWA will ultimately acquire Rock Spring.⁵ SCBWA has expressed an interest in acquiring Rock Spring, PAWC St. No. 1-E p. 6, and has a non-binding letter of intent to purchase the system. Tr. 147. Rock Spring has also offered to sell itself to SCBWA. OCA Petition, Exhibit A. If

⁴ PAWC, the next closest provider identified by the OCA as a possible receiver, is approximately 13 miles from Rock Spring. PAWC St. No. 1-E p. 3.

⁵ Section 529 authorizes the Commission to order a “capable public utility” to acquire a small water or wastewater utility. 66 Pa. C.S. § 529(a) and (m). The Commission has several options for achieving this objective. For example, SCBWA could voluntarily submit to Commission jurisdiction or the Commission could order Rock Spring to be sold to a specific capable public utility, conditioned on that utility obtaining Commission approval of an application to immediately sell the system to SCBWA. In the alternative, if SCBWA and Rock Spring voluntarily reach an agreement for the sale/purchase of the system, the Section 529 Investigation could be stayed until the Commission approves an application for Rock Spring to abandon its certificate of public convenience upon the consummation of the transaction.

SCBWA ultimately acquires Rock Spring, SCBWA would be able to recover the costs of its receivership from its entire customer base, including Rock Spring's customers, over time.

In contrast, if PAWC is appointed as the interim receiver but SCBWA ultimately acquires the system, the Commission would face complicated questions of cost recovery. PAWC witness Guntrum testified:

As interim receiver of Rock Spring PAWC would immediately begin to address the lost water in the system and address regulatory compliance issues. To address lost water, leak detection would begin to locate any large leaks that can be repaired quickly. To address regulatory compliance issues, PAWC would have operational staff operate the system on a daily basis. PAWC would also work with the Pennsylvania Department of Environmental Protection to gain emergency permitting to install instrumentation to monitor compliance and provide remote alarms and shutdown in the event of equipment failure. The cost PAWC will incur as the interim receiver will depend on how long PAWC functions in the role of interim receiver, which is unknown at this time. An initial estimate of the costs that PAWC will incur as interim receiver is approximately \$400,000.

PAWC St. No. 1-E p. 8. If PAWC would be appointed as interim receiver, but Rock Spring is ultimately sold to SCBWA, PAWC's ratepayers could unfairly be stuck with a \$400,000 or more bill for improving Rock Spring, which would benefit SCBWA and its customers. This would not be fair to PAWC's ratepayers.

The primary reason for naming either PAWC or Aqua as the interim receiver is that the Commission does not appear to have authority to order SCBWA to serve as interim receiver. Generally, the Commission does not have jurisdiction over municipal authorities. *Pennsylvania Public Utility Commission Bureau of Investigation and Enforcement v. East Dunkard Water Authority*, Docket No. C-2021-3027615 (Opinion and Order entered Nov. 1, 2023) at 7-8. Additionally, SCBWA is unwilling to voluntarily accept an appointment as interim receiver if that appointment means subjecting itself to the jurisdiction of the Commission. Tr. 164.

PAWC, however, has offered a rational, common-sense path by which the SCBWA could be appointed the interim receiver of Rock Spring. This proposal is based on the doctrine of primary

jurisdiction, which is well-established in Pennsylvania law. *See, e.g., Alderwoods (Pa.), Inc., a wholly owned subsidiary of Service Corp. Int'l, t/a Burton L. Hirsch Funeral Home v. Duquesne Light Co.*, Docket No. P-2016-2541570 (Opinion and Order entered Oct. 13, 2016). The doctrine “creates a workable relationship between the courts and administrative agencies” by allowing courts to “have the benefit of the agency’s views on issues within the agency’s competence.” *MCI Telcomm’s Corp. v. Teleconcepts, Inc.*, 71 F.2d 1086, 1105 (3d Cir. 1995). As the Supreme Court of Pennsylvania has explained:

The doctrine serves several purposes, chief of which are the benefits to be derived by making use of the agency’s special expertise in complex areas with which judges and juries have little familiarity. Another important consideration is the statutory purpose in the creation of the agency—the powers granted by the legislature and the powers withheld. And, another fundamental concern is the need to promote consistency and uniformity in certain areas of administrative policy. It has been noted that these purposes are frequently served in, and the doctrine of primary jurisdiction principally applicable to, the controversies concerning the so-called “regulated industries.”

Pettko v. PAWC, 39 A.3d 473, 479 (Pa. Cmwlth. 2012) (quoting *Elkin v. Bell Tel. Co. of Pa.*, 420 A.2d 371, 376 (Pa. 1980)).

The crux of the primary jurisdiction doctrine is that a bifurcated procedure is used to coordinate the respective jurisdictions of the Commission and the courts. Such a procedure is appropriate here, where the Civil Court has already determined that the Commission has jurisdiction to determine whether a receiver is necessary for Rock Spring (a certificated public utility), but the Commission lacks jurisdiction over the entity that is the best choice for appointment as interim receiver (SCBWA). The Commission should not settle for the second-best choice as interim receiver just because it is simpler procedurally.

If the ALJ decides that an interim receiver should be appointed for Rock Spring, PAWC proposes that the ALJ issue an order:

- (i) directing that an interim receiver be appointed to operate Rock Spring until a final order is entered in the Section 529 Investigation or Rock Spring abandons its certificate of public convenience (whichever is later);
- (ii) consenting to and recommending that the Civil Court appoint SCBWA as the interim receiver for Rock Spring;
- (iii) directing that, within a reasonable period after the Commission enters its ratification order,⁶ Rock Spring or SCBWA file an Emergency Petition for Appointment of Receiver with the Civil Court;⁷
- (iv) explicitly stating that, if Rock Spring or SCBWA fails to comply with Paragraph (iii) above within a reasonable period after the Commission enters its ratification order, other parties to this proceeding have the right to file an Emergency Petition for Appointment of Receiver with the Civil Court or to file a Petition for Reconsideration or Amendment with the Commission, asking that the Commission name PAWC as the interim receiver; and
- (v) explicitly stating that, if the Civil Court refuses to name SCBWA as the interim receiver of Rock Spring within a reasonable period after the Commission enters its ratification order, other parties to this proceeding have the right to file a Petition for Reconsideration or Amendment with the Commission, asking that the Commission name PAWC as the interim receiver.

⁶ If the Commission wishes to expedite the process of appointing SCBWA as the interim receiver, it could adopt a ratification order by notational vote rather than waiting for a public meeting.

⁷ Although the ALJ's order would be effective immediately, PAWC recommends against requiring any party to file an Emergency Petition for Appointment of Receiver with the Civil Court until the Commission has ratified the ALJ's decision. This would avoid the situation in which a party requests relief from the Civil Court that is inconsistent with the Commission's ratification order.

The Civil Court has jurisdiction over municipal authorities such as SCBWA. 53 Pa. C.S. § 5607(d)(9) (“[t]he court of common pleas shall have exclusive jurisdiction to determine questions involving rates or service” of municipal authorities); *White Rock Sewage Corp. v. Pa. Pub. Util. Comm’n*, 578 A.2d 984 (Pa. Cmwlth. 1990). Consequently, in response to the Emergency Petition for Appointment of Receiver filed pursuant to Paragraphs (iii) or (iv), the Civil Court could issue an order appointing SCBWA to serve as the interim receiver for Rock Spring.

Wholly consistent with the doctrine of primary jurisdiction, PAWC’s proposal coordinates the respective jurisdictions of the Commission and the Civil Court to produce a result that is in the public interest. Moreover, PAWC’s proposal is similar to the procedure recently used to name PAWC as the interim receiver for the East Dunkard Water Authority. *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 (Ratification Order entered Nov. 20, 2023) (the “*East Dunkard Order*”). In that case, the troubled water provider was a municipal authority that was not subject to the Commission’s authority, so the Commission coordinated its jurisdiction with that of the Commonwealth Court of Pennsylvania (the “Commonwealth Court”) to appoint PAWC as the interim receiver of the troubled system. The Commission stated:

The Emergency Order noted the unusual facts and circumstances of this case and addressed the Commission’s determination that, based upon the specific facts and circumstances in this matter, it was necessary and prudent to take action establishing the rights, duties and obligations of a jurisdictional utility if and when it is appointed by the Commonwealth Court to be the receiver for this non-jurisdictional entity. The Emergency Order stated that this action was necessary because this immediate case presented a serious public health and safety threat that the Commission could not ignore.

Id. at 8.

The instant case also presents unusual facts and circumstances, and involves an alleged serious public health and safety threat. If the ALJ determines that it is necessary and prudent to appoint a receiver for Rock Spring, the Commission should coordinate its jurisdiction with that of the courts to allow a non-jurisdictional entity to become the receiver of Rock Spring.

Significantly, SCBWA would be operating Rock Spring under Rock Spring's certificate of public convenience as a public utility, so SCBWA would need to operate Rock Spring in accordance with the Code. This scenario is similar to a change in control of a public utility, in which the Commission must approve the change in control but the utility remains the certificated entity. *See generally* 52 Pa. Code § 69.901 ("Utility Stock Transfer Under 66 Pa. C.S. § 1102(a)(3) – Statement of Policy"). As interim receiver, SCBWA would be operating the system on behalf of Rock Spring. Tr. 166 (counsel for the SCBWA stated "I think that Rock Spring has to comply with the certificate of public convenience, and as receiver the Authority would have to follow those requirements.") Thus, if a customer of Rock Spring has a complaint about rates or service during the period of the receivership, he or she would still be able to file a complaint at the Commission against Rock Spring for failing to comply with the Code; the customer would not need to file an action against SCBWA in the Civil Court.⁸ SCBWA would be responsible, as receiver, for ensuring that Rock Spring appropriately addresses the customer complaint.

SCBWA supports PAWC's proposal, Tr. 164-165, as does Ferguson Township, Tr. 170, and attorney Bryant (purportedly speaking on behalf of Rock Spring). Tr. 171. DEP also argued that PAWC's proposal merits consideration. Tr. 162. PAWC respectfully requests that the

⁸ This result is no different than if PAWC would be appointed the interim receiver of Rock Spring. In that scenario, Rock Spring's customers could still file a complaint at the Commission against Rock Spring (not PAWC) for failing to comply with the Code during the period of the receivership.

Commission adopt the bifurcated procedure described above for the appointment of SCBWA as interim receiver of Rock Spring.

In the event that the ALJ does not recommend that SCBWA be appointed as the interim receiver of Rock Spring, in order to protect the interests of Rock Spring's customers, PAWC is willing, as a good corporate citizen and a provider of solutions to troubled water and wastewater systems, to be named interim receiver until a final order is entered in the Section 529 Investigation or Rock Spring abandons its certificate of public convenience (whichever is later). PAWC St. No. 1-E p. 7.

C. If the ALJ decides that an interim receiver should be appointed to operate Rock Spring, what duties and responsibilities should the Commission give the interim receiver?

66 Pa. C.S. § 529(g) explicitly states that the Commission's order naming a receiver is to specify the duties and responsibilities of the receiver.

1. If the ALJ Recommends that SCBWA be Appointed Interim Receiver

If the ALJ recommends that SCBWA be appointed the interim receiver for SCBWA, the Civil Court (rather than the Commission) would need to specify the duties and responsibilities of SCBWA. Nevertheless, the Commission -- as the governmental entity responsible for Rock Spring's compliance with the Code -- should condition its approval of the receivership on the Civil Court's imposition of certain duties and responsibilities. The Commission has developed a series of standard provisions in receivership orders that protect customers and the receiver (*e.g.*, provisions requiring the receiver to send customers a "Welcome Letter" and provisions protecting the receiver from liability for preexisting conditions), as well as provisions requiring that the utility cooperate with the receiver. The Commission should condition its approval of the SCBWA's receivership on the Civil Court including these standard provisions in its order naming SCBWA as receiver, except for provisions that are unnecessary for a municipal authority (*e.g.*, provisions

concerning affiliated interests and provisions unique to public utility rate-making procedures). In addition, the Commission should condition its approval on SCBWA being required to operate Rock Spring as a public utility in accordance with the Code. These proposed conditions are set forth in detail in Section V and Appendix A.

These conditions would be enforced by requiring SCBWA or Rock Spring to file the Court's order appointing SCBWA as the receiver with the Commission as a compliance filing. If the Court order does not include any provision required by the Commission, any party to this proceeding could file a Petition for Reconsideration or Amendment with the Commission. This filing could ask the Commission to name PAWC as the receiver.

2. If the ALJ Recommends that PAWC be Appointed Interim Receiver

In the event that the ALJ appoints PAWC as the interim receiver for Rock Spring, PAWC recommends that the ALJ's decision include ordering paragraphs similar to those in the decision of Deputy Chief Administrative Law Judge Mark A. Hoyer in *Venango Water Company – Ex Parte Emergency Order Naming Aqua Pennsylvania, Inc. as Receiver*, Docket Nos. M-2023-3042180, I-2023-3042312 and P-2024-3044205 (Order Granting Petition for Issuance of an Interim Emergency Order on an Expedited Basis and Certifying Material Question to the Commission issued Oct. 17, 2024). However, PAWC recommends that the ALJ attach an appendix that is based on Appendix A to the *East Dunkard Order*. This version of the appendix is preferable because it includes additional provisions regarding deferred accounting treatment of costs incurred by the interim receiver. ¶¶ 1.q.i. and 2.b.i. Proposed ordering paragraphs are set forth in Section V below, and the appendix for PAWC is attached as Appendix B.

Finally, because it is likely that SCBWA will ultimately acquire Rock Spring, the ALJ's decision should give all parties notice that, in rendering a future order on the abandonment of Rock Spring's certificate of public convenience, the Commission will consider requiring that SCBWA

reimburse PAWC for its receivership costs as a condition of Commission approval of the abandonment of Rock Spring's certificate of public convenience.⁹ By considering this issue in a later stage of this proceeding, the Commission would protect PAWC's ratepayers from unfairly having to bear the financial responsibility for the costs of the interim receivership in the event that SCBWA ultimately acquires Rock Spring.

V. CONCLUSION

Wherefore, for all of the above reasons, Pennsylvania-American Water Company:

- (1) Takes no position on whether an interim receiver should be appointed for the Rock Spring Water Company.
- (2) If the ALJ directs that an interim receiver be appointed for the Rock Spring Water Company, PAWC respectfully requests that the ALJ issue an order that would create a process for the appointment of the State College Borough Water Authority as interim receiver. This order would include the following provisions:
 - (a) Directing that an interim receiver be appointed to operate Rock Spring Water Company until a final order is entered in the Section 529 Investigation or until Rock Spring Water Company abandons its certificate of public convenience (whichever is later);
 - (b) Consenting to and recommending that the Court of Common Pleas of Centre County name State College Borough Water Authority as the interim

⁹ The Commission should not make a decision at this stage of this proceeding that will bind it in a later stage of this proceeding, but the Commission can certainly identify issues for the parties to address in future stages of this proceeding.

receiver to operate Rock Spring Water Company, subject to the condition that the Court's order contain the following provisions:

- (i) That the State College Borough Water Authority shall act as the receiver for Rock Spring Water Company on the date following entry of the Court's Order, and to continue until a final order is entered in the Section 529 Investigation or Rock Spring abandons its certificate of public convenience (whichever is later), and in accordance with the attached Appendix A specifying the State College Borough Water Authority's powers and duties;
- (ii) That the State College Borough Water Authority, as Receiver, shall operate the Rock Spring Water Company as a public utility, in accordance with the Pennsylvania Public Utility Code;
- (iii) That the State College Borough Water Authority, as Receiver, shall not assume any debt incurred by Rock Spring Water Company, unless such assumption is approved by Commission Order;
- (iv) That the State College Borough Water Authority, as Receiver, shall not be liable for preexisting conditions, defects or regulatory or statutory violations occasioned by Rock Spring Water Company;
- (v) That utilities serving Rock Spring Water Company are permitted and directed to initiate service to the facilities that are used to serve Rock Spring customers in the name of the State College Borough Water Authority, as receiver;

- (vi) That Rock Spring Water Company shall preserve all hard copy or electronic records, files, bank statements, documents, papers, or any other materials related to its offering of water utility service, including records of all contracts, agreements, loans, payments, and other arrangements with affiliated companies, or be subject to criminal and/or civil prosecution under Chapter 33 of the Pennsylvania Public Utility Code and any other applicable state or federal law;
- (vii) That Rock Spring Water Company shall turn over copies or originals of all books, records, accounts, and any other information used and useful in the provision of utility water service to its customers to the Receiver no later than the day after entry of the Commission's Order, or be subject to criminal and/or civil prosecution under Chapter 33 of the Pennsylvania Public Utility Code and any other applicable state or federal law;
- (viii) That Rock Spring Water Company shall turn over all operations and assets, including keys to locks securing facilities, buildings, and any other property, whether personal or real property, used and useful in the provision of utility water service to its customers to the Receiver no later than the day after entry of the Court's Order, or be subject to criminal and/or civil prosecution under Chapter 33 of the Pennsylvania Public Utility Code and any other applicable state or federal law;

- (ix) That Rock Spring Water Company, its owners and employees, shall provide full and unconditional cooperation with the orderly transition of operations, management and oversight to the Receiver, including the provision of information and access to the facilities of the utility. Facilities include office buildings and buildings that include customer data and control center information. Data includes all financial and customer data. Failure to provide full and unconditional cooperation may result in criminal and/or civil prosecution under Chapter 33 of the Pennsylvania Public Utility Code and any other applicable state or federal law;
- (x) That Rock Spring Water Company shall cease all billings to customers and collections activities involving former customers as of the day after entry of the Court's Order;
- (xi) That the Receiver shall be permitted to install equipment or improvements prior to the day after entry of the Court's Order, as needed, to facilitate the Receiver's start of operations on the day after entry of the Court's Order;
- (xii) That Rock Spring Water Company shall not engage in any purchase, sale, payment, lease, loan, or exchange of any service, property, money, security, right or thing under contract, whether oral or written or under any arrangement with an affiliated interest, the terms of which have not been approved by the Commission, or be subject to criminal and/or civil prosecution under Chapter 33 of the

Pennsylvania Public Utility Code and any other applicable state or federal law;

(xiii) That the Receiver shall not be responsible for any legal bills concerning the Rock Spring Water Company;

(xiv) That the Receiver shall not be responsible for, nor shall it pay, for any amounts either owed or claimed to be owed between or among the officers or shareholders of the Rock Spring Water Company;

(xv) That the owners and employees of Rock Spring Water Company shall provide all documents evidencing ownership or right of access to property upon which Rock Spring Water Company is situated;

(xvi) That Rock Spring Water Company shall immediately provide notice to its customers of the ordering of the receivership in the same manner as a general rate increase and shall inform customers to direct future payments for water service provided by Rock Spring Water Company to the State College Borough Water Authority, Receiver;

(xvii) That the State College Borough Authority, as Receiver for Rock Spring Water Company shall provide an informational “Welcome” letter to all customers as soon as practicable but no later than the first billing following the ordering of the receivership, including contact information for billing and service issues, at minimum;

(c) Directing that, within a reasonable period after the Commission enters its ratification order, Rock Spring Water Company or State College Borough

Water Authority file an Emergency Petition for Appointment of Receiver with the Court of Common Pleas of Centre County;

- (d) Explicitly stating that, if Rock Spring Water Company or State College Borough Water Authority fails to comply with Ordering Paragraph (2)(c) above within a reasonable period after the Commission enters its ratification order, other parties to this proceeding have the right to file an Emergency Petition for Appointment of Receiver with the Court of Common Pleas for Centre County or to file a Petition for Reconsideration with the Commission, asking that the Commission name PAWC as the interim receiver;
- (e) Explicitly stating that, if the Court of Common Pleas of Centre County refuses to name SCBWA as the interim receiver of Rock Spring Water Company within a reasonable period after the Commission enters its ratification order or fails to incorporate the conditions on the receivership as specified in the Commission's order, other parties to this proceeding have the right to file a Petition for Amendment with the Commission, asking that the Commission name PAWC as the interim receiver;
- (f) Directing that, within ten days after the Court of Common Pleas of Centre County issues an order on the Emergency Petition for Appointment of Receiver, Rock Spring Water Company or State College Borough Water Authority shall file a copy of the Court's order with the Commission at this docket and serve a copy upon the parties to the docket;

- (g) Directing that the ALJ's grant of relief by interim emergency order in this proceeding is certified to the Commission as the following material question requiring interlocutory review pursuant to Section 5.305 of the Commission's regulations, 52 Pa. Code § 5.305:

Whether the granting of the Office of Consumer Advocate's Petition for Issuance of an Interim Emergency Order, and consenting to the appointment of the State College Borough Water Authority as Receiver for Rock Spring Water Company, was necessary and proper.

Suggested answer: yes.

- (3) If, however, the ALJ directs that PAWC serve as the interim receiver for Rock Spring Water Company, PAWC respectfully requests that the ALJ issue an order:
- (a) Directing PAWC to act as the receiver for Rock Spring Water Company on the date following entry of the Commission's Order, and to continue until a final order is entered in the Section 529 Investigation or Rock Spring abandons its certificate of public convenience (whichever is later), and in accordance with the attached Appendix B specifying PAWC's powers and duties;
 - (b) Directing that Pennsylvania-American Water Company, as Receiver, shall not assume any debt incurred by Rock Spring Water Company, unless such assumption is approved by Commission Order;
 - (c) Directing that Pennsylvania-American Water Company, as Receiver, shall not be liable for preexisting conditions, defects or regulatory or statutory violations occasioned by Rock Spring Water Company;
 - (d) Directing that utilities serving Rock Spring Water Company are permitted and directed to initiate service to the facilities that are used to serve Rock

Spring customers in the name of Pennsylvania-American Water Company,
as Receiver;

- (e) Directing that Rock Spring Water Company shall preserve all hard copy or electronic records, files, bank statements, documents, papers, or any other materials related to its offering of water utility service, including records of all contracts, agreements, loans, payments, and other arrangements with affiliated companies, or be subject to criminal and/or civil prosecution under Chapter 33 of the Pennsylvania Public Utility Code and any other applicable state or federal law;
- (f) Directing that Rock Spring Water Company shall turn over copies or originals of all books, records, accounts, and any other information used and useful in the provision of utility water service to its customers to the Receiver no later than the day after entry of the Commission's Order, or be subject to criminal and/or civil prosecution under Chapter 33 of the Pennsylvania Public Utility Code and any other applicable state or federal law;
- (g) Directing that Rock Spring Water Company shall turn over all operations and assets, including keys to locks securing facilities, buildings, and any other property, whether personal or real property, used and useful in the provision of utility water service to its customers to the Receiver no later than the day after entry of the Commission's Order, or be subject to criminal and/or civil prosecution under Chapter 33 of the Pennsylvania Public Utility Code and any other applicable state or federal law;

- (h) Directing that Rock Spring Water Company, its owners and employees, shall provide full and unconditional cooperation with the orderly transition of operations, management and oversight to the Receiver, including the provision of information and access to the facilities of the utility. Facilities include office buildings and buildings that include customer data and control center information. Data includes all financial and customer data. Failure to provide full and unconditional cooperation may result in criminal and/or civil prosecution under Chapter 33 of the Pennsylvania Public Utility Code and any other applicable state or federal law;
- (i) Directing that Rock Spring Water Company shall cease all billings to customers and collections activities involving former customers as of the day after entry of the Commission's Order;
- (j) Directing that the Receiver shall be permitted to install equipment or improvements prior to the day after entry of the Commission's Order, as needed, to facilitate the Receiver's start of operations on the day after entry of the Commission's Order;
- (k) Directing that Rock Spring Water Company shall not engage in any purchase, sale, payment, lease, loan, or exchange of any service, property, money, security, right or thing under contract, whether oral or written or under any arrangement with an affiliated interest, the terms of which have not been approved by the Commission, or be subject to criminal and/or civil prosecution under Chapter 33 of the Pennsylvania Public Utility Code and any other applicable state or federal law;

- (l) Directing that the Receiver shall not be responsible for any legal bills concerning the Rock Spring Water Company;
- (m) Directing that the Receiver shall not be responsible for, nor shall it pay, for any amounts either owed or claimed to be owed between or among the officers or shareholders of the Rock Spring Water Company;
- (n) Directing that the owners and employees of Rock Spring Water Company shall provide all documents evidencing ownership or right of access to property upon which Rock Spring Water Company is situated;
- (o) Directing that Rock Spring Water Company shall immediately provide notice to its customers of the ordering of the receivership in the same manner as a general rate increase and shall inform customers to direct future payments for water service provided by Rock Spring Water Company to Pennsylvania-American Water Company, Receiver;
- (p) Directing that the Receiver for Rock Spring Water Company shall provide an informational “Welcome” letter to all customers as soon as practicable but no later than the first billing following the ordering of the receivership, including contact information for billing and service issues, at minimum;
- (q) Directing that the granting of relief by interim emergency order in this proceeding is certified to the Commission as the following material question requiring interlocutory review pursuant to Section 5.305 of the Commission’s regulations, 52 Pa. Code § 5.305:

Whether the granting of the Office of Consumer Advocate’s Petition for Issuance of an Interim Emergency Order and the appointment of Pennsylvania-American Water Company as

Receiver for Rock Spring Water Company was necessary and proper.

Suggested answer: yes.

- (r) That a copy of this Order be posted on the Commission's website at www.puc.pa.gov.

Respectfully submitted,



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Date: February 18, 2025

APPENDIX A

Docket No. P-2024-3051313

State College Borough Water Authority (“SCBWA”), in its capacity as receiver of the Rock Spring Water Company (“Rock Spring”), shall be authorized to take the actions identified in this Appendix and serve as the receiver of Rock Spring subject to the conditions contained in this Appendix.

1. That the receiver, in its capacity as receiver of Rock Spring, shall have the following duties and responsibilities:
 - a. Operate the system in compliance with all State, Federal, and local laws and regulations, including the Pennsylvania Safe Drinking Water Act and the Pennsylvania Public Utility Code.
 - b. Maintain any existing or necessary permits, licenses, approvals, authorizations, orders, consents, registrations, or filings.
 - c. Submit an initial status report to the Commission and the Court within 60 days of assuming operations and then quarterly thereafter to detail any relevant updates pursuant to duties and responsibilities assigned through receivership.
 - i. The status reports should include a listing of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the system, to address or anticipate the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.
 - d. Conduct an evaluation of the system, identify the deficiencies in the system’s physical conditions, facilities and operational procedures, identify and prepare a plan of capital and operational improvements and report the results of such evaluation to the Commission.
 - e. Provide all supervision and personnel necessary to operate the system in a professional, efficient and economic manner, and in accordance with sound operating practices and prudent industry and utility standards.
 - f. Respond to system emergencies by taking necessary action to ensure the continued provision of adequate, efficient, safe and reasonable service.
 - g. Notify appropriate regulatory or governmental agencies regarding any emergency which, in the reasonable judgement of the receiver, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety.

- h. Provide for normal routine maintenance and the provision of supplies for the system.
 - i. Keep financial and accounting records and all pertinent operating data and information relating to the system as prudent industry and utility practices would require.
 - j. Assume Rock Spring's billing and collection functions.
 - k. Provide Rock Spring's customer service.
 - l. Have the authority to receive and utilize grant funds in the name of Rock Spring and borrow money in the name of Rock Spring necessary for the implementation of corrective actions and continued provision of adequate, efficient, safe and reasonable service to the customers of the system.
 - m. Have the authority, but not be required, to file a petition for bankruptcy and participate in any such proceedings on behalf of Rock Spring.
 - n. Comply with Rock Spring's effective rates, rules, and regulations for Rock Spring's customers.
 - o. Submit all necessary paperwork to regulatory agencies of the system on behalf of Rock Spring.
 - p. Make reasonable efforts to establish the financial position of Rock Spring at the time the receiver assumed receivership.
 - q. Track expenses incurred by Rock Spring that are payable to the receiver.
 - r. Petition the Commission and the Court to add or remove any duties or responsibilities; however, the receiver must continue to fulfill all duties and responsibilities until such duties or responsibilities are removed by Commission and Court Order.
 - s. Charge Rock Spring reasonable rates for all services rendered to or for Rock Spring on behalf of the receivership.
2. That the receiver, in its own capacity, shall have the following duties and responsibilities:
- a. Should Rock Spring be unable to obtain necessary financing for ensuring the continued provision of adequate, efficient, safe and reasonable service to the customers of Rock Spring, the receiver, at its option, may either directly provide financing for Rock Spring or file a petition for bankruptcy.

- b. Track expenses incurred by the receiver resulting from this order, including prudent and reasonable legal expenses.
3. The receiver may petition the Commission and the Court for modification or termination of this receivership, or to appoint another, or an additional, entity as a receiver of Rock Spring.

APPENDIX B

Docket No. P-2024-3051313

Pennsylvania American Water Company (“PAWC”), in its capacity as receiver of the Rock Spring Water Company (“Rock Spring”), shall be authorized to take the actions identified in this Appendix and serve as the receiver of Rock Spring subject to the conditions contained in this Appendix.

1. That the receiver, in its capacity as receiver of Rock Spring, shall have the following duties and responsibilities:
 - a. Operate the system in compliance with all State, Federal, and local laws and regulations, including the Pennsylvania Safe Drinking Water Act and the Pennsylvania Public Utility Code.
 - b. Maintain any existing or necessary permits, licenses, approvals, authorizations, orders, consents, registrations, or filings.
 - c. Submit an initial status report to the Commission within 60 days of assuming operations and then quarterly thereafter to detail any relevant updates pursuant to duties and responsibilities assigned through receivership.
 - i. The status reports should include a listing of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the system, to address or anticipate the obsolescence of portions of the system, to reduce the cost of operating the system, to provide cost savings or efficiency innovations to the system, or to comply with existing or anticipated changes to applicable laws and regulations.
 - d. Conduct an evaluation of the system, identify the deficiencies in the system’s physical conditions, facilities and operational procedures, identify and prepare a plan of capital and operational improvements and report the results of such evaluation to the Commission.
 - e. Provide all supervision and personnel necessary to operate the system in a professional, efficient and economic manner, and in accordance with sound operating practices and prudent industry and utility standards.
 - f. Respond to system emergencies by taking necessary action to ensure the continued provision of adequate, efficient, safe and reasonable service.
 - g. Notify appropriate regulatory or governmental agencies regarding any emergency which, in the reasonable judgement of the receiver, is likely to result in material loss or damage to the system or constitute a material threat to human health or safety.

- h. Provide for normal routine maintenance and the provision of supplies for the system.
- i. Keep financial and accounting records and all pertinent operating data and information relating to the system as prudent industry and utility practices would require.
- j. Assume Rock Spring's billing and collection functions.
- k. Provide Rock Spring's customer service.
- l. Have the authority to receive and utilize grant funds in the name of Rock Spring and borrow money in the name of Rock Spring necessary for the implementation of corrective actions and continued provision of adequate, efficient, safe and reasonable service to the customers of the system.
- m. Have the authority, but not be required, to file a petition for bankruptcy and participate in any such proceedings on behalf of Rock Spring.
- n. Comply with Rock Spring's effective rates, rules, and regulations for Rock Spring's customers.
- o. Submit all necessary paperwork to regulatory agencies of the system on behalf of Rock Spring.
- p. Make reasonable efforts to establish the financial position of Rock Spring at the time the receiver assumed receivership.
- q. Establish a deferred expense account for expenses incurred by Rock Spring that are payable to the receiver.
 - i. Operating expenses and capital expenses required to bring the system into Pennsylvania Department of Environmental Protection ("DEP") compliance incurred by PAWC as receiver are eligible for deferred accounting treatment and may be charged to a deferred expenses account.
- r. Petition the Commission to add or remove any duties or responsibilities; however, the receiver must continue to fulfill all duties and responsibilities until such duties or responsibilities are removed by Commission Order or by a court with competent jurisdiction.
- s. Be permitted to use existing Commission-approved affiliated entities to provide services to Rock Spring, provided that the receiver provides the Commission written notice identifying which affiliates are providing services for which approval under 66 Pa. C.S. § 2102 would typically be required.

- t. Satisfy the aforementioned duties and responsibilities either directly, through Commission-approved affiliates, or through competitive operation and maintenance agreements or any combination thereof.
 - u. Charge Rock Spring reasonable rates for all services rendered to or for Rock Spring on behalf of the receivership.
2. That the receiver, in its own capacity, shall have the following duties and responsibilities:
- a. Should Rock Spring be unable to obtain necessary financing for ensuring the continued provision of adequate, efficient, safe and reasonable service to the customers of Rock Spring, the receiver, at its option, may either directly provide financing for Rock Spring or file a petition for bankruptcy.
 - b. Establish a deferred expense account for expenses incurred by the receiver resulting from this order, including prudent and reasonable legal expenses.
 - i. Any costs incurred by PAWC in providing emergency assistance to Rock Spring before it is appointed by the Commission as receiver shall be eligible for the deferred expense account.
3. The receiver may petition the Commission for modification or termination of this receivership, or to appoint another, or an additional, entity as a receiver of Rock Spring.