



**VIA E-FILING**

February 18, 2025

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

**Re: The Pennsylvania Public Utility Commission's Bureau of Investigation and Enforcement Petition to Request the Commission Open a Section 529 Investigation Into the Acquisition of Rock Springs Water Company  
Docket No. P-2024-3051313**

Dear Secretary Chiavetta:

Enclosed for filing please find the Post-Hearing Brief of Aqua Pennsylvania, Inc., regarding the Office of Consumer Advocate's Petition for Interim Emergency Order, in the above captioned proceeding.

If you have any questions regarding this filing, please contact me at 610-645-1130 or by email at [astahl@aquaamerica.com](mailto:astahl@aquaamerica.com).

Sincerely,



Alexander R. Stahl  
Regulatory Counsel

cc: Certificate of Service  
The Honorable John M. Coogan, OALJ (via e-mail)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

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**AQUA PENNSYLVANIA, INC.'S  
POST-HEARING BRIEF IN SUPPORT OF  
THE OCA'S PETITION FOR INTERIM EMERGENCY RELIEF**

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Date: February 18, 2025

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## **I. INTRODUCTION**

Aqua Pennsylvania, Inc. (“Aqua” or the “Company”) hereby files this Post-Hearing Main Brief in Support of the Petition of the Office of Consumer Advocate (“OCA”) For Issuance Of An Interim Emergency Order (“Emergency Petition”) on February 6, 2025 to name a capable utility as receiver for Rock Spring Water Company (“Rock Spring”).

## **II. BACKGROUND**

### **A. PROCEDURAL HISTORY**

This proceeding concerns the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) Bureau of Investigation and Enforcement’s (“I&E”) Petition filed on September 20, 2024 to Request the Commission Open a Section 529 Proceeding Investigation into the Acquisition of Rock Spring (“Petition”).

On October 9, 2024, the Office of Consumer Advocate (“OCA”) filed a Notice of Intervention.

On October 10, 2024, Aqua filed a Notice of Appearance of Attorney Alexander R. Stahl, Esq.

On October 10, 2024, Pennsylvania-American Water Company (“PAWC”) filed a Petition to Intervene.

On October 11, 2024, the Secretary’s Bureau issued a Notice of Initial Telephonic Prehearing Conference to be held on October 30, 2024 at 10:00 AM and that Administrative Law Judge (“ALJ”) John M. Coogan was presiding over the matter.

On October 15, 2024, ALJ Coogan issued a Prehearing Conference Order requiring parties to file prehearing memorandum on October 28, 2024 by 4:30 PM.

On October 16, 2024, Aqua filed a Petition to Intervene in the proceeding.

On October 21, 2024, the State College Borough Water Authority (“SCBWA”) filed a Petition to Intervene in the proceeding.

On October 23, 2024, the Office of Small Business Advocate (“OSBA”) filed a Notice of Appearance of Rebecca Lyttle, Esq. and a Notice of Intervention and Public Statement.

On October 24, 2024, PAWC filed a Notice of Appearance of Teresa Harrold, Esq., David Zambito, Esq., and Jonathan Nase, Esq.

On October 28, 2024, the Pennsylvania Department of Environmental Protection (“DEP”) filed a Notice of Appearance of Amanda Chaplin, Esq., and a Petition to Intervene.

On October 28, 2024, Aqua, DEP, I&E, OCA, OSBA, PAWC, SCBWA, and Veolia Water Pennsylvania, Inc. (“Veolia”) filed prehearing memorandum in accordance with ALJ Coogan’s Prehearing Conference Order.

On October 30, 2024, the Prehearing Conference was held via telephone at 10:00 AM.

On October 30, 2024, the DEP filed an Entry of Appearance of Glenn Masser, Esq.

On November 5, 2024, ALJ Coogan issued Prehearing Conference Order No. 1 setting forth a litigation schedule for the proceeding.

On November 11, 2024, Ferguson Township (“Ferguson”) filed a Notice of Appearance of Elizabeth Dupuis, Esq. and Morgan Madden, Esq. and a Petition to Intervene.

On December 2, 2024, ALJ Coogan issued Prehearing Conference Order No. 2 that granted the Petition to Intervene of Ferguson.

On January 15, 2025, the Secretary’s Bureau issued a Telephonic Hearing Notice for Evidentiary Hearings to take place per the litigation schedule on April 29, 2025 and April 30, 2025.

On January 23, 2025, I&E filed I&E Statements No. 1 and 2 – the Direct Testimony of Christopher Keller and Ethan Cline, respectively.

On February 6, 2025, OCA filed a Notice of Appearance of Melanie Joy El Atieh, Esq.

On February 6, 2025, OCA filed a Petition for the Issuance of an Interim Emergency Order (“Emergency Petition”) which requested that the Commission name a capable public utility as Receiver for Rock Spring.

On February 7, 2025, the Secretary’s Bureau issued a Telephonic Hearing Notice for an Evidentiary Hearing on the OCA’s Emergency Petition.

On February 7, 2025, ALJ Coogan issued a Prehearing Conference Order for Telephonic Hearing Regarding the Petition for Interim Emergency Order.

On February 11, 2025, DEP, PAWC, and Rock Spring filed an answer to OCA’s Emergency Petition.

On February 12, 2025, OSBA filed a Notice of Appearance of Steven Gray, Esq.

On February 13, 2025, Aqua, DEP, OCA, and PAWC filed written Direct Testimony in accordance with ALJ Coogan’s February 7, 2025 Prehearing Conference Order on the Emergency Petition.

On February 13, 2025, Rock Spring emailed a letter with information Rock Spring wanted to present regarding the Emergency Petition.

On February 13, 2025, SCBWA filed an Answer and New Matter to the OCA’s Emergency Petition.

A telephonic evidentiary hearing regarding OCA’s Emergency Petition was held on February 14, 2025.

A Briefing Order was issued on February 14, 2025 directing parties to file Briefs by February 18, 2025.

Aqua hereby submits this Brief pursuant to the February 14, 2025 Briefing Order.

## **B. STATEMENT OF THE EVIDENCE PRESENTED**

A telephonic evidentiary hearing regarding OCA's Emergency Petition was held on February 14, 2025.

At the hearing, OCA presented the written testimony of Nicholas DeMarco (OCA Statement No. 1). The DEP presented the written testimony of Nathan White (DEP Statement No. 1) and Sasha Minium (DEP Statement No. 2). PAWC presented the written testimony of Michael Guntrum (PAWC Statement No. 1). Aqua presented the written testimony of Stephen Clark (Aqua Statement No. 1). I&E presented the written testimony previously served on January 23, 2025 of Christopher Keller (I&E Statement No. 1) and Ethan Cline (I&E Statement No. 2). SCBWA presented the oral testimony of Brian C. Heiser and Katie McCalley.

## **C. ISSUE**

**Should the Commission exercise its discretion pursuant to 66 Pa. C.S. § 529(g) and appoint a capable public utility as receiver for Rock Spring?**

**Suggested Answer: Yes.**

**Should the Commission name Aqua as receiver pursuant to 66 Pa. C.S. § 529(g) for Rock Spring?**

**Suggested Answer: No.**

## **III. SUMMARY OF ARGUMENT**

The OCA has shown that the right to relief is clear. It appears that Rock Spring is not currently providing safe, reliable, and adequate service to customers. Rock Spring has not complied with orders and regulations of the DEP and PUC, and settlement agreements from its

base rate case. OCA has shown that the need for the relief it seeks is immediate as a capable utility is needed to operate the Rock Spring system.

The appointment of a receiver would ensure that the customers of Rock Spring are not irreparably injured, and the appointment of a receiver would not be injurious to the public interest. Customers of Rock Spring would have a capable utility to ensure safe, reliable, and adequate water service. Finally, to promote operational efficiency the Commission should appoint either SCBWA or PAWC as receiver as they are closer in proximity to Rock Spring than Aqua.

Therefore, and for the reasons more fully explained below, the OCA's request for an Interim Emergency Order should be granted.

#### **IV. ARGUMENT**

##### **A. OCA HAS DEMONSTRATED THEY ARE ENTITLED TO INTERIM EMERGENCY RELIEF.**

An interim emergency order is an extraordinary remedy that can only be granted after a party meets several "essential prerequisites." See *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995, 1001 (Pa. 2003).

In order to justify the requested relief, OCA must demonstrate all of the following elements: (1) the petitioner's right to relief is clear; (2) the need for relief is immediate; (3) injury would be irreparable if relief is not granted; (4) relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b); *see also Summit*, 828 A.2d at 1001 (citations omitted); *see also Peoples Natural Gas Co. v. Pa. Pub. Util. Comm'n*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989). The OCA, as the petitioner, has the burden to establish that it is entitled to the interim emergency relief it is seeking. *In re: Loudenslager's Estate*, 430 Pa. 33, 240 A.2d 477 (1968). The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util.*

*Comm'n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992). That is, the petitioner's evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

**1. The Right To Relief Is Clear.**

The petitioner when seeking interim emergency relief must first demonstrate that the right to relief is clear. 52 Pa. Code § 3.6(b)(1). In this regard, the Commission has stated that “it is not necessary to determine the merits of a controversy in order to find that a petitioner's right to relief is clear; rather, the basis for determining whether this standard has been met is whether a petition has raised ‘substantial legal questions.’” *Venango Water Company – Ex Parte Emergency Order Naming Aqua Pennsylvania, Inc. as Receiver; Section 529 Investigation of Venango Water Company; Section 529 Investigation of Sugarcreek Water Company, West Hickory Water Company, Plumer Water Company, Fryburg Water Company; Cooperstown Water Company, and Blaine E. Rhodes Sewer Company*, Docket Nos. M-2023-3042180, I-2023-3042312, and P-2024-3045205, Opinion and Order at 16 (Order Entered October 30, 2024) (citations omitted). Here, the substantial legal question is whether a receiver should be appointed to ensure safe, adequate and reasonable service to Rock Spring's customers.

Through the statements entered into the record at the February 14, 2025 Evidentiary Hearing, it appears that Rock Spring is not providing safe, adequate, and reasonable service to its customers. In DEP Statement No. 1, the Direct Testimony of Nathan White, it described that Rock Spring has had five significant deficiencies, eight minor violations, 30 minor deficiencies, and 78 valid monitoring violations between the years 2021-2025. DEP St. No. 1 at 4. Further that the Commonwealth Court issued an Order granting DEP's petition to enforce the 2018 Administrative Order of the DEP, due to Rock Spring's failure to comply with the 2018 Administrative Order.

DEP St. No. 2 at 3-5. The DEP's Direct Testimony notes a continued failure to address or correct deficiencies within the system. See generally, DEP St. No. 1 at 6-16 and DEP St. No. 2 at 2-6.

Rock Spring has also not complied with settlement provisions from its 2012 base rate case, by failing to reduce unaccounted for water ("UFW") in its system. I&E St. No. 1 at 2, citing *Pa. Pub. Util. Comm'n v. Rock Spring Water Company*, Docket No. R-2012-2336662, Settlement Agreement ¶ 7(f) ("Rock Spring agrees to reduce its current level of unaccounted for water (73.2%, per the Jan. 31 report to DEP) by 10% (to 63.2%) within 18 months from the effective date of the rates contained in this settlement. Thereafter, and for a duration of 48 additional months, Rock Spring agrees that it will continue to make 10% reductions (to 53.2%, 43.2%, 33.2%, 23.2%) in its unaccounted for water losses for each 12 month period"). Moreover, as set forth in I&E Statement No. 1, the Direct Testimony of Christopher Keller, Rock Spring itself has filed an Emergency Petition for Appointment of a Receiver in the Court of Common Pleas of Centre County on January 13, 2025. I&E St. No. 1 at 14. Section 1501 of the Public Utility Code requires public utilities to "furnish and maintain adequate, efficient, safe, and reasonable service and facilities, and shall make all such repairs, changes, alterations, substitutions, extensions, and improvements in or to such service and facilities as shall be necessary or proper for the accommodation, convenience, and safety of its patrons, employees, and the public." 66 Pa. C.S. 1501. The continued operation by the current operators does not appear to meet this requirement as repairs and improvements have not been made to the Rock Spring system, along with the requirements of the 2018 Administrative Order and the 2012 base rate case.

For these reasons, OCA has demonstrated that their right to relief is clear.

## **2. The Need For Relief Is Immediate.**

The second element that the petition must show is that the need for relief is immediate. 52 Pa. Code § 3.6(b)(2).

It appears that Rock Spring is not capable of complying with the orders and regulations of the DEP and PUC, and, as such, continued operation of the system could jeopardize the provision of safe, reliable, and adequate service to the public. To ensure that the customers of Rock Spring are provided quality service, a receiver should be appointed to protect the interests of the public. Since it appears that the current operators are not providing safe, reliable, and adequate service to the public the need for relief is immediate.

**3. The Alleged Injury Would Be Irreparable If Relief Is Not Granted.**

The third element that the Commission evaluates in determining whether to grant emergency relief is whether the alleged injury would be irreparable if relief is not granted. 52 Pa. Code § 3.6(b)(3).

The provision of safe, reliable and adequate service is tantamount to public utility service in the Commonwealth. The appointment of a receiver would ensure that the customers of Rock Spring have a qualified and capable operator for the system during the pendency of the Section 529 proceeding. Provision of safe, reliable, and adequate service is essential for customers of Rock Spring and continued violations of the Public Utility Code, DEP orders, and regulations of the PUC and DEP will be injurious to the public. Therefore, the injury to the customers of Rock Springs would be irreparable if the relief is not granted.

**4. The Relief Requested Is Not Injurious To The Public Interest.**

The fourth element that the Commission evaluates in determining whether to grant emergency relief is whether the relief requested is injurious to the public. 52 Pa. Code § 3.6(b)(4).

The requested relief by the OCA through the appointment of a receiver is not injurious to the public interest and, in fact, will further the public interest by ensuring that the customers of Rock Spring have a capable utility to oversee operations. As discussed above in Section IV.A.1. the current operators have failed to comply with orders and regulations of the PUC and DEP.

Appointing a receiver to make necessary improvements, repairs, and ensure proper functioning operations would further the public interest.

For all of the reasons explained above, the OCA has demonstrated that its requested relief is not injurious to the public interest. As such, the Commission should grant the relief requested by the OCA's Emergency Petition.

**B. IF THE ALJ AND THE COMMISSION DETERMINE IT IS NECESSARY TO NAME A RECEIVER FOR ROCK SPRING, AQUA SHOULD NOT BE NAMED AS THE RECEIVER**

Aqua understands the need to ensure continuous water service to the customers served by Rock Spring by a capable operator. However, as described in the Direct Testimony of Stephen Clark, Aqua is not in the best position to serve as Receiver for Rock Spring. Aqua's closest system is a small water system that is approximately 38 miles from Rock Spring. Aqua St. No. 1 at 3. Aqua's closest operations center is approximately 50 miles from Rock Spring. Aqua St. No. 1 at 3. Other utilities are in closer proximity to Rock Spring that would be in a better position to coordinate operations, react to any emergency situations, and ensure that service is being provided under the standards of the Public Utility Code and Commission regulations.<sup>1</sup> As noted in the Direct Testimony of Christopher Keller, SCBWA and PAWC are approximately 0.8 miles and 13 miles from Rock Spring, respectively. I&E St. No. 1 at 9. Therefore, the efficiencies from regionalization and consolidation of systems would be more likely to occur if SCBWA or PAWC was named as receiver of Rock Spring.

While Aqua is a capable public utility operating under certificates of public convenience granted by the Commission, as stated above, Aqua submits that greater efficiency in operations

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<sup>1</sup> See also DEP St. No. 1 at 17 ("Aqua PA Treasure Lake, the most proximate operating office as identified in Discovery Responses to OCA, is about one hour and 19 minutes away from the Rock Spring Water Company water treatment plant. The distance between this operating office and the Rock Spring Water System has the ability to present challenges for Aqua PA if they were to act as an interim receiver.").

can be obtained by naming either SCBWA or PAWC as receiver for Rock Spring. Aqua is currently operating ten (10) water and wastewater systems under receivership: Cooperstown Water Company, Fryburg Water Company, Plumer Water Company, Sugarcreek Water Company, Venango Water Company, West Hickory Water Company, and Blaine E. Rhodes Sewer Company;<sup>2</sup> Deer Haven, LLC (water and sewer);<sup>3</sup> and Twin Lakes Utilities, Inc.<sup>4</sup> While Aqua is financially, managerially, and technically fit to be a receiver, Aqua is already engaged in addressing system deficiencies in other troubled systems throughout the Commonwealth.

For these reasons, and the reasons more fully explained above, the ALJ and the Commission should grant the relief sought by the OCA, and name either SCBWA or PAWC as receiver for Rock Spring.

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<sup>2</sup> See *Venango*, Docket Nos. M-2023-3042180, I-2023-3042312, and P-2024-3045205.

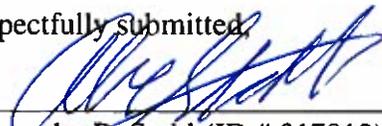
<sup>3</sup> See generally, *Petition of Deer Haven, LLC Requesting an Ex Parte Emergency Order Allowing Aqua Pennsylvania, Inc. to Act as Receiver to Operate the Deer Haven Water and Sewer Systems*, Docket Nos. P-2024-3050545 and P-2024-3050549.

<sup>4</sup> See generally, *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-202-3020914.

V. **CONCLUSION**

WHEREFORE, Aqua Pennsylvania, Inc. respectfully requests that the Administrative Law Judge John M. Coogan and the Pennsylvania Public Utility Commission grant the Petition of the Office of Consumer Advocate For Issuance Of An Interim Emergency Order and that Aqua Pennsylvania, Inc. should not be named as receiver for the Rock Spring Water Company.

Respectfully submitted,



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Date: February 18, 2025

*Counsel for Aqua Pennsylvania, Inc.*

## **APPENDIX A – Proposed Findings of Fact**

1. On September 20, 2024, I&E filed with the Pennsylvania Public Utility Commission (“PUC” or the “Commission”) a Petition requesting that the Commission open an Investigation pursuant to Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, into whether a capable public utility should acquire the Rock Spring Water Company (“Rock Spring”).

2. Rock Spring is a Commission-certificated public utility that provides water utility service to approximately 1,000 people with 494 connections. Emergency Petition ¶ 2.

3. State College Borough Water Authority (“SCBWA”) was incorporated by the Borough of State College in June of 1940 under the Pennsylvania Municipal Authorities Act. (Tr. 125.)

4. Pennsylvania-American Water Company (“PAWC”) is a public utility operating under certificates of public convenience issued by the PUC. I&E St. No. 1 at 9-10.

5. Aqua is financially, managerially, and technically capable public utility. Emergency Petition ¶ 33.

6. SCBWA is approximately 0.8 miles from the Rock Spring system. I&E St. No. 1 at 9.

7. PAWC’s closest system is approximately 13 miles from the Rock Spring system. I&E St. No. 1 at 9.

8. Aqua’s closest system is approximately 38 miles from Rock Spring and Aqua’s closest operations center is approximately 50 miles from Rock Spring. Aqua St. No. 1 at 3.

9. Rock Spring has had five significant deficiencies, eight minor violations, 30 minor deficiencies, and 78 valid monitoring violations between the years 2021-2025. DEP St. No. 1 at 4.

10. Rock Spring has also not complied with settlement provisions from its 2012 base rate case, by not reducing its unaccounted for water (“UFW”). I&E St. No. 1 at 2, citing *Pa. Pub. Util. Comm’n v. Rock Spring Water Company*, Docket No. R-2012-2336662, Settlement Agreement ¶ 7(f) (“Rock Spring agrees to reduce its current level of unaccounted for water (73.2%, per the Jan. 31 report to DEP) by 10% (to 63.2%) within 18 months from the effective date of the rates contained in this settlement. Thereafter, and for a duration of 48 additional months, Rock Spring agrees that it will continue to make 10% reductions (to 53.2%, 43.2%, 33.2%, 23.2%) in its unaccounted for water losses for each 12 month period”).

11. The Commonwealth Court issued an Order granting DEP’s petition to enforce the 2018 Administrative Order of the DEP, due to Rock Spring’s failure to comply with the 2018 Administrative Order. DEP St. No. 2 at 3-5.

12. Rock Spring has filed an Emergency Petition for Appointment of a Receiver in the Court of Common Pleas of Centre County on January 13, 2025. I&E St. No. 1 at 14.

## APPENDIX B – Proposed Conclusions of Law

1. An interim emergency order is an extraordinary remedy that can only be granted after a party meets several, “essential prerequisites.” See *Summit Towne Ctr., Inc. v. Shoe Show of Rocky Mt., Inc.*, 828 A.2d 995, 1001 (Pa. 2003).

2. In order to justify this extraordinary relief, OCA must demonstrate all of the following elements: (1) the petitioner’s right to relief is clear; (2) the need for relief is immediate; (3) injury would be irreparable if relief is not granted; (4) relief requested is not injurious to the public interest. 52 Pa. Code § 3.6(b); see also *Summit*, 828 A.2d at 1001 (citations omitted); see also *Peoples Natural Gas Co. v. Pa. Pub. Util. Comm’n*, 555 A.2d 288, 291 (Pa. Cmwlth. 1989).

3. The OCA, as the petitioner, has the burden to establish that it is entitled to the interim emergency relief it is seeking. *In re: Loudenslager’s Estate*, 430 Pa. 33, 240 A.2d 477 (1968).

4. The burden of proof must be carried by a preponderance of the evidence. *Samuel J. Lansberry, Inc. v. Pa. Pub. Util. Comm’n*, 578 A.2d 600 (Pa. Cmwlth. 1990), *alloc. den.*, 529 Pa. 654, 602 A.2d 863 (1992).

5. The petitioner’s evidence must be more convincing, by even the smallest amount, than that presented by the other party. *Se-Ling Hosiery v. Margulies*, 364 Pa. 45, 70 A.2d 854 (1950).

6. OCA has carried its burden of demonstrating that its right to relief is entirely clear. 52 Pa. Code § 3.6(b)(1).

7. OCA has carried its burden of demonstrating that the need for the relief it has requested is immediate. 52 Pa. Code § 3.6(b)(2).

8. OCA has carried its burden of demonstrating that the alleged injury will be irreparable if its relief is not granted. 52 Pa. Code § 3.6(b)(3).

9. OCA has carried its burden of demonstrating that the relief it seeks will not be injurious to the public interest. 52 Pa. Code § 3.6(b)(4).

**APPENDIX C – Proposed Ordering Paragraphs**

1. The relief sought by the Petition of the Office of Consumer Advocate For Issuance Of An Interim Emergency Order is granted.

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

**The Pennsylvania Public Utility :  
Commission's Bureau of Investigation and :  
Enforcement Petition to Request the : P-2024-3051313  
Commission Open a Section 529 :  
Investigation Into the Acquisition of Rock :  
Springs Water Company :**

**CERTIFICATE OF SERVICE**

I hereby certify that I have, this 18th day of February, 2025, served a true and correct copy of the foregoing document upon the persons and in the manner indicated below:

**VIA ELECTRONIC MAIL**

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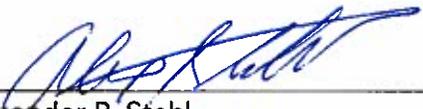
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