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February 18, 2025

VIA ELECTRONIC FILING

Rosemary Chiavetta, Secretary  
Pennsylvania Public Utility Commission  
Commonwealth Keystone Building  
400 North Street  
Harrisburg, PA 17105-3265

In re: I & E Petition to Request the Commission Open a  
Section 529 Investigation into the Acquisition of Rock  
Spring Water Company - Docket No. P-2024-3051313

Dear Secretary Chiavetta:

Enclosed please find the State College Borough Water Authority's Brief with reference to the Office of Consumer Advocate's Petition for issuance of an interim emergency Order for filing in the above-referenced proceeding.

If you should have any questions, please feel free to contact me.

ROBERT MIX LAW

By: 

Enclosure

cc: All Parties on the Attached Certificate of Service (in the manner specified)

**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: I & E Petition to Request the  
Commission Open a Section 529  
Investigation into the Acquisition of Rock  
Spring Water Company

Docket No. P-2024-3051313

Docket No. I-2024-

**STATE COLLEGE BOROUGH WATER AUTHORITY'S BRIEF RE: THE  
OFFICE OF CONSUMER ADVOCATE'S PETITION FOR ISSUANCE OF  
AN INTERIM EMERGENCY ORDER**

**I. STATEMENT OF THE CASE**

**A. Section 529 Proceeding**

**Procedural History**

1. On September 20, 2024 the Pennsylvania Public Utility Commission (PUC), Bureau of Investigation and Enforcement (Bureau I & E) filed a Petition requesting the Commission open a 529 Investigation into the acquisition of the Rock Spring Water Company (Rock Spring) alleging that it has not satisfied certain components of a Joint Settlement of its 2012 base rate case, and (2) continuously violates numerous Pennsylvania Department of Environmental Protection (DEP) requirements and administrative orders issued by the Commonwealth Court.
2. Rock Spring, a Pennsylvania corporation, is a certificated public utility providing water service to approximately 1000 customers

within its service area in Ferguson Township Centre County, Pennsylvania.

3. Between October 4, 2024 and November 11, 2024, the Pennsylvania Office of Consumer Advocate (OCA), the Pennsylvania-American Water Company (PA American), Aqua Pennsylvania, Inc. (Aqua Penn), the State College Borough Water Authority (SCBWA), DEP and Ferguson Township filed Petitions to Intervene.
4. On October 30, 2024 Administrative Law Judge John Coogan held a prehearing conference and on November 5, 2024 issued a prehearing order setting forth a prehearing schedule of events.
5. On January 23, 2025 the Bureau of I & E filed its direct testimony in accordance with the prehearing order. The direct testimony of other parties and intervenors will be due on February 20, 2025.
6. On January 13, 2025 Rock Spring filed an Emergency Petition for Appointment of a Receiver in the Court of Common Pleas of Centre County, Pennsylvania at Docket No. 2025-CV-0064-CI, asking the Court to appoint the SCBWA to serve its Receiver.
7. On January 22, 2025 the PUC's Law Bureau (Law Bureau) filed a Petition to Intervene and a Motion to Dismiss in the Centre County Action.

8. On January 30, 2025 a hearing was held on Rock Springs Emergency Petition for Appointment of Receiver.
9. On February 5, 2025 the Court granted the Law Bureau's Motion to Dismiss, finding that it did not have jurisdiction to appoint a Receiver for Rock Springs.
10. On February 6, 2025 the OCA filed a Petition for Interim Emergency Order.
11. On February 11, 2025 Rock Spring filed an Answer to the OCA's Petition.
12. On February 12, 2025 DEP filed an Answer to the OCA's Petition.
13. On February 12, 2025 PA American filed an Answer to the OCA's Petition.
14. On February 13, 2025 the SCBWA filed an Answer and New Matter to the OCA's Petition.
15. On February 14, a hearing was held on the OCA's Petition at which the parties and Intervenors entered written and live testimony and exhibits on the record and presented oral arguments.

## **Factual History**

16. Rock Spring, a Pennsylvania corporation, is a certificated public utility providing water service to approximately 1000 customers within its service area in Ferguson Township Centre County, Pennsylvania.
  
17. In its Petition for Entry of an Interim Emergency Order the OCA contends that the cessation of adequate, efficient, safe and reasonable water service to Rock Spring's customers is imminent. (Petition, Paragraph 19)
  
18. In support of this contention the OCA cites the written testimony of the Bureau of I & E's witness Christopher Keller, who recommended that the PUC order a capable public utility to acquire Rock Springs pursuant to Section 529 of the Public Utility Code. Bureau I & E Statement 1 (Keller) at page 4. (Petition Paragraph 16)
  
19. In support of this contention the OCA cites the written testimony of the Bureau of I & E's witness Ethan Cline, who concluded that Rock Spring Cannot reasonably be expected to furnish and maintain adequate, sufficient, safe and reasonable water service and facilities. Bureau I & E Statement 2 (Cline) at page 10. (Petition Paragraph 17)

20. In support of this contention the OCA presumably will also rely on the written testimony of its witness, Nicholas DeMarco, who concluded that the need for relief is immediate because it appears that the current owners of Rock Spring are incapable of managing the system or effectively participating in the Section 529 proceeding. OCA Statement 1, (DeMarco) page 2, lines 18-21 and pages 5 through 9, lines 1-19 each page.

**B. STATEMENT OF THE QUESTIONS INVOLVED.**

1. Whether OCA has met its burden of proving that an interim emergency order appointing a Receiver for Rock Spring is warranted?
2. Whether Aqua Penn, PA American and the SCBWA are financially, technically and managerially capable of serving as Receiver for Rock Spring?
3. Whether Aqua Penn, PA American or the SCBWA should be appointed Receiver for Rock Spring?
4. Whether the SCBWA can be appointed Receiver for Rock Spring without subjecting it to the jurisdiction of the PUC?

### C. SUMMARY OF ARGUMENT

Assuming the ALJ directs that an interim receiver be appointed for the Rock Spring Water Company, and recommends that the State College Borough Water Authority be recommended for that appointment, the State College Borough Water Authority respectfully requests that the ALJ issue an Order in the form attached hereto that would create a process for the appointment of the State College Borough Water Authority as interim Receiver.

### D. ARGUMENT

#### **1. The OCA has met its burden of proving that an interim emergency order appointing a Receiver is warranted.**

The purpose of an interim emergency order is to grant or deny emergency relief during the pendency of a proceeding. 53 Pa. Code. Section 3.1. The essential elements of a request for interim emergency relief are the following:

- (1) The petitioner's right to relief is clear;
- (2) The need for relief is imminent;
- (3) The injury would be irreparable if the relief is not granted;  
and
- (4) The relief requested is not injurious to the public interest.

52 Pa. Code Section 3.6(b).

The stated reason for the OCA's request for the appointment of a Receiver for Rock Spring is that the current managers of the water system are either not competent or unwilling to maintain the water system in a condition which will ensure that its customers will receive adequate, efficient, safe, reasonable and continuous water service. The OCA contends that its right to such an appointment is clear, the need for relief is immediate, the injury would be irreparable if the is not granted and the relief requested is not injurious to the public interest.<sup>1</sup> The OCA cites the written testimony of the Bureau I & E's witnesses Christopher Keller and Eathan Cline and the OCA's witness Nicholas DeMarco<sup>2</sup> which address and support these requirements. None of the other parties / intervenors submitted written testimony or other evidence in opposition to the OCA's request.

It should be noted that the President of Rock Spring submitted a letter stating his opposition to the appointment of a Receiver and denying that he was incompetent or unwilling to properly maintain the water system. It is assumed that since this letter did not meet the procedural standards for admission into evidence, it will not be considered.

**2. Aqua Penn, PA American and the SCBWA are financially, technically and managerially capable of serving as Receiver of Rock Spring.**

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<sup>1</sup> See 52 Pa. Code Section 3.6 (b)

<sup>2</sup> See paragraphs 18-20 for citations to their testimony in the record.

Aqua Penn and PA American are PUC certified public utilities and, as such, are entitled to a presumption of fitness to serve as a Receiver of Rock Spring. At the hearing held on February 14, 2025, the SCBWA presented oral testimony of Brian Heiser, its Executive Director, and Katie McCaulley, its Assistant Executive Director, which showed that it was a Pennsylvania municipal authority providing water service to approximately 15,000 customers in State, College Borough and portions of the surrounding townships of College, Ferguson, Halfmoon, Harris and Patton; that it has sufficient production and distribution facilities to serve the customers of Rock Spring in Ferguson Township, that it had sufficient staff to service and maintain the Rock Spring water system and that it is otherwise financially, technically and managerially capable of serving as Receiver of Rock Spring.<sup>3</sup>

**3. Whether Aqua Penn, PA American or the SCBWA should be appointed Receiver of Rock Spring?**

While Aqua Penn, PA American and the SCBWA are all capable of serving as Receiver of Rock Spring, there are several factors that favor the appointment of the SCBWA as Receiver. The SCBWA has entered into a Letter of Intent with Rock Spring to negotiate toward a sale/purchase of the Rock Spring system. In the event the SCBWA acquires the Rock Spring system, the adjustment of costs and advancements incurred during the receivership period would be easier

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<sup>3</sup> At the time of writing this brief, a transcript of the hearing held on February 14, 2025 was not available. Hence no citation of the pages and lines of the witness' testimony is included.

to resolve. The SCBWA's main office is approximately eight miles from the center of the Rock Spring system, making daily operation and maintenance tasks more convenient. The closest facilities of Aqua Penn and PA American to the Rock Spring system are considerably farther away, making daily operation and maintenance tasks less convenient.

**4. The SCBWA can be appointed Receiver for Rock Spring without subjecting it to the jurisdiction of the PUC.**

While the PUC has jurisdiction to appoint a Receiver for a failing public utility, such as Rock Spring, it does not have jurisdiction over municipal authorities, such as the SCBWA. Sections 102, 501 and 529 of the Public Utility Code (66 PA Code Section 102, 501 and 529). Issues involving a municipal authority's rates and service fall within the exclusive jurisdiction of the Court of Common Pleas. (53 Pa.C.S.A. 5607(d)(9)). In addition, in its Answer and New Matter to the OCA's Petition for Issuance of an Interim Emergency Order, the SCBWA indicated it was unwilling to accept an appointment as Receiver of Rock Spring if, by doing so, it is required to apply for and obtain a certificate of public convenience, whether temporary or permanent, from the PUC and thereby subjecting itself to the jurisdiction of and regulation by the PUC.

The SCBWA submits that by allotting the decisions on certain issues to be made in appointing a Receiver for Rock Spring between the PUC and the Court of Common Pleas of Centre County (Court),

it can be appointed Receiver without subjecting it to the jurisdiction of the PUC. This submission begins with an analysis of the doctrine of primary jurisdiction, which is well-established in Pennsylvania law. The doctrine “creates a workable relationship between the courts and administrative agencies” *MCI Telcommc 'ns Corp. v. Teleconcepts, Inc.*, 71 F.2d 1086, 1105 (3d Cir. 1995). Simply stated, when the subject of a dispute is within an agency's scope, and where the matter requires special knowledge and experience — with which a judge or jury would not have familiarity — referral of the action to the relevant agency is proper. Conversely, where a matter is not one uniquely within an agency's area of expertise, but is one in which the judiciary is equally adept at resolving, a court should not relinquish its traditional jurisdiction. *Elkin v. Bell Tel. Co.*, 420 A.2d 371 (Pa. 1980)

The crux of the primary jurisdiction doctrine is that a bifurcated procedure is used to coordinate the respective jurisdictions of administrative agencies and the Courts. Assuming the PUC determines that appointment of a Receiver is warranted and that the Receiver should be the SCBWA, such a bifurcated procedure would be appropriate here. Although the PUC has jurisdiction to determine whether a Receiver should be appointed and to make a recommendation as to what entity should be appointed, it lacks jurisdiction to appoint the SCBWA. On the other hand, the Court has no jurisdiction to determine whether a Receiver should be appointed and to make a recommendation as to what entity should be appointed, but it has jurisdiction to appoint the SCBWA Receiver, if

that is the PUC's recommendation. By allotting the decisions on certain issues to be made in appointing a Receiver for Rock Spring between the PUC and the Court, the SCBWA can be appointed Receiver. While this procedure may be somewhat unusual, it, nevertheless, would carry out the PUC's decisions in this matter.

In its brief, PA American analogizes this procedure to one employed recently in a similar proceeding. *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*"). The SCBWA incorporates PA American's argument by reference.

## 5. CONCLUSION

If the ALJ directs that an interim receiver be appointed for the Rock Spring Water Company, and recommends that the State College Borough Water Authority be appointed Receiver, the State College Borough Water Authority respectfully requests that the ALJ issue the attached Order that would create a process for the appointment of the State College Borough Water Authority as interim Receiver.

Respectfully submitted

ROBERT MIX LAW

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**BEFORE THE  
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

In re: I & E Petition to Request the  
Commission Open a Section 529  
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Spring Water Company

Docket No. P-2024-3051313

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**PROPOSED ORDER**

AND NOW, this \_\_\_ day of February, upon consideration of the Petition for Issuance of an Interim Emergency Order filed by the Office of Consumer Advocate; the Department of Environmental Protection, Rock Spring Water Company, the Pennsylvania American Water Company, and the State College Borough Water Authority's Answers thereto; and the written and live testimony, exhibits, arguments and briefs presented by said parties / intervenors, the Commission, finds and it is hereby Ordered:

1. That said Petition for Issuance of an Interim Emergency Order is granted and a Receiver for the Rock Spring Water Company shall be appointed.
2. That any Receiver so appointed shall have the duties and responsibilities set forth on Appendix "A" attached hereto.
3. That Rock Springs Water Company shall:
  - a. preserve all hard copy or electronic records, files, bank statements, documents, papers or any other materials related to its offering water service, including records of all contracts, agreements, loans, payments, and other arrangements with affiliated companies;
  - b. turn over copies or originals of all books, accounts, records, and any other information used and useful in the provision of utility service to its customers;
  - c. turn over all operations and assets, including keys to locks securing facilities, buildings and any other property, whether personal or real, used and useful in the provision of water service to its customers;

- d. provide full and unconditional cooperation with the orderly transitions of operations, management and oversight to the Receiver appointed, including the provision of information and access to the facilities of Rock Spring Water Company. Facilities include office buildings and buildings that include customer data and control center information. Data includes all financial and customer data.
- e. cease all billings to customers and collections activities involving former customers as of the effective date of the Receiver's appointment.
- f. not engage in any purchase, sale, payment, lease, loan or exchange of any service, property, money, security, right or thing under contract, the terms of which have not been approved by the Receiver.

4. That any Receiver so appointed shall not:

- a. assume any debt of Rock Spring Water Company;
- b. be liable for and pre-existing conditions, defects, or regulatory or statutory violations occasioned by Rock Spring Water Company;
- c. be required to advance its own funds for the operation, maintenance and repair of the Rock Spring Water Company System;
- d. be responsible for any legal fees and expenses incurred by Rock Springs Water Company.

5. That the State College Borough Water Authority is financially, managerially and technically capable of serving as Receiver of the Rock Spring Water Company until the resolution of the 529 proceeding.

6. That it is recommended that the State College Borough Water Authority be appointed Receiver for the Rock Spring Water Company, provided it ensures compliance with the Rock Spring Water Company's obligations as a certificated public utility under the Pennsylvania Public Utility Code

until such time as Rock Spring Water Company's certificate of public convenience is abandoned.

FURTHERMORE, in the exercise of its primary jurisdiction, the Commission authorizes the Court of Common Pleas of Centre County to issue an Order appointing the State College Borough Water Authority Receiver for the Rock Spring Water Company on terms and conditions set forth above or otherwise satisfactory to it until such time as Rock Spring Water Company's certificate of Public Convenience is abandoned.

Date \_\_\_\_\_

\_\_\_\_\_  
John M. Coogan

Administrative Law Judge

## APPENDIX A

1. That the State College Borough Water Authority (SCBWA), in its capacity as Receiver of Rock Spring Water Company (Rock Spring), shall have the following duties and responsibilities:
  - a. Operate the Rock Spring water system (System) in compliance with all federal, state and local laws and regulations.
  - b. Maintain any existing or necessary permits, licenses, approvals, authorizations, orders, consents, registrations or filings.
  - c. Provide a list of recommended capital improvements, identifying the capital improvements necessary to improve the performance of the System, to address or anticipate the performance 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. 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.
  - e. Respond to system emergencies, by taking necessary action to ensure the continued provision of adequate, safe and reasonable service.
  - f. Notify appropriate regulatory or governmental agencies regarding any emergency, which in the reasonable judgment of the receiver, is likely to result in material loss or damage to the System or constitutes a material threat to human health or safety.
  - g. Provide for normal routine maintenance and the provision of supplies for the system.
  - h. Keep financial and accounting records and all pertinent operating data and information relating to the system as prudent utility and industry practices would require.
  - i. Assume billing and collection functions.
  - j. Provide customer service.

- k. Have the authority to borrow money in the name of Rock Spring necessary for the provision of adequate, efficient, safe, and reasonable service to the customers of Rock Spring.
  - l. Have the authority to file a petition for bankruptcy and participate in such proceedings on behalf of Rock Spring.
  - m. Comply with the Rock Spring respective tariffs for the Rock Spring customers.
  - n. Submit all necessary paperwork to regulatory agencies of the system on behalf of Rock Spring.
  - o. Submit an initial status report to the Commission within 60 days of assuming operations and then quarterly thereafter to detail any relevant updates.
  - p. Participate with discussions with the Commission regarding alternatives to the acquisition of Rock Springs, pursuant to 66 PA.C.S. Section 529 (B).
  - q. Submit testimony regarding each factor delineated under 66 Pa.C.S. Section 529(c) in any future proceeding relating to the acquisition of Rock Springs by a capable public utility.
  - r. Make reasonable efforts to establish the financial position of Rock Springs at the time the receiver assumed the receivership.
  - s. Establish a deferred expense account for expenses incurred by Rock Spring that are payable to the Receiver.
  - t. Petition the Court to add or remove any duties or responsibilities, however, the Receiver must continue to fulfill all duties and responsibilities until such duties and responsibilities are removed by a Court of competent jurisdiction.
  - u. Charge Rock Springs reasonable rates for all services rendered to of for Rock Spring on behalf of the Receivership.
2. That the receivers, respectively, and in their 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 Receivers,

respectively and at their sole option, may either directly provide financing for Rock Spring or file a petition in bankruptcy.

- b. Establish a deferred expense account for expenses incurred by the receivers, respectively, resulting from this Order, including prudent and reasonable legal expenses.
3. The Receivers, respectively, may petition the Court for modification or termination of this Receivership, or to appoint another, or an additional entity as Receiver of Rock Springs.

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Investigation into the Acquisition of Rock  
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Docket No. I-2024-

VIA ELECTRONIC FILING

CERTIFICATE OF SERVICE

I hereby certify that I am this day serving the State College Borough Water Authority's Brief in response to the Office of Consumer Advocate's Petition for Issuance of an interim Emergency Order upon the persons and in the manner indicated below, which service satisfies the requirements of 52 Pa. Code §1.54 (relating to service by a party).

SERVED VIA ELECTRONIC MAIL ON February 18, 2025

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*(Chairman HAW&SA)*

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*(Administrative Law Judge)*

Respectfully submitted

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