



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

BUREAU OF
INVESTIGATION
&
ENFORCEMENT

February 18, 2025

Via Electronic Filing

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

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

Dear Secretary Chiavetta:

Enclosed for electronic filing please find the **Bureau of Investigation and Enforcement's Brief Related to the Office of Consumer Advocate's Petition for the Appointment of a Receiver for the Rock Spring Water Company** in the above-captioned proceeding.

Copies are being served on parties of record per the attached Certificate of Service. Should you have any questions, please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink that reads 'Carrie B. Wright' with a stylized flourish at the end.

Carrie B. Wright
Deputy Chief Prosecutor
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CBW/ac
Enclosures

cc: Administrative Law Judge John M. Coogan (*via email* – jcoogan@pa.gov)
Per Certificate of Service

**BEFORE THE
PENNSYLVANIA PUBLIC UTILITY COMMISSION**

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

**BUREAU OF INVESTIGATION AND ENFORCEMENT’S BRIEF
RELATED TO THE OFFICE OF CONSUMER ADVOCATE’S PETITION
FOR THE APPOINTMENT OF A RECEIVER FOR THE
ROCK SPRING WATER COMPANY**

I. INTRODUCTION

The proceeding involves a Petition filed related to the Section 529 proceeding for Rock Spring Water Company (Rock Spring or Company) which was convened to determine whether another capable public utility should be ordered to acquire the Rock Spring system. Rock Spring is a "public utility" as that term is defined at 66 Pa. C.S. § 102,¹ as it is engaged in providing water service to the public pursuant to a certificate of public convenience (CPC) issued by this Commission. The system serves approximately 1,000 customers with approximately 494 connections.

¹ At 66 Pa. C.S. § 102, "Public utility" is defined under that term at subsection (l)(vii) as:
(1) Any person or corporation now or hereafter owning or operating in this Commonwealth equipment or facilities for:
(ii) Diverting, developing, pumping, impounding, distributing, or furnishing water to or for the public for compensation.

On September 20, 2024, the Commission's Bureau of Investigation and Enforcement (I&E) filed a Petition (Section 529 Petition) requesting that the Commission initiate an investigation under Section 529 of the Public Utility Code, 66 Pa. C.S. § 529, to determine whether the Commission should order a capable public utility to acquire the Company.

This Petition was initiated because of several violations of Commission, Department of Environmental Protection (DEP) and Commonwealth Court mandates. Specifically, Rock Spring has not satisfied certain components of the Joint Settlement of its 2012 base rate case, including: (1) a 50% reduction of Unaccounted For Water (UFW) phased-in over 66 months, with the first 10% reduction achieved within 18 months from the effective date of new rates and additional 10% reductions for each 12 month period over the next four years; and (2) installation of two isolation valves, not to exceed a maximum of ten new isolation valves over the 66-month period, if it fails to achieve the agreed upon 10% reduction. Additionally, Rock Spring has violated, and continues to violate, numerous DEP environmental requirements, administrative orders, and enforcement orders issued by the Commonwealth Court. Currently, it is I&E's understanding that Rock Spring's UFW remains above 50%.

On October 9, 2024, the Office of Consumer Advocate (OCA) filed a Notice of Intervention. On October 10, 2024, Pennsylvania-American Water Company (PAWC) filed a Petition to Intervene. On October 16, 2024, Aqua Pennsylvania, Inc. (Aqua) filed a Petition to Intervene. On October 21, 2024, the State College Borough Water Authority (SCBWA) filed a Petition to Intervene. On October 23, 2024, the Office of Small Business Advocate, (OSBA) filed a Notice of Intervention. On October 28, 2024, the Commonwealth of Pennsylvania, Department of Environmental Protection (DEP) filed a Petition to Intervene.

An initial Prehearing Conference was held on October 30, 2024 before Administrative Law Judge John Coogan (the ALJ).

On or about January 13, 2025, Company counsel, Attorney James N. Bryant and Attorney Carolyn M. Larrabee, filed an Emergency Petition for the Appointment of Receiver for Rock Spring Water in the Court of Common Pleas of Centre County, Pennsylvania.² In said Petition, Rock Spring requested that the SCWBA be appointed as receiver because it has lines within 4000 feet for Rock Spring. The Court of Common Pleas of Centre County issued an order on February 5, 2025, finding that it lacked jurisdiction to appoint a receiver for Rock Spring.³

On February 2, 2025, OCA filed a Petition for Issuance of an Interim Emergency Order (Emergency Petition) to appoint a receiver for the Rock Spring Water Company. In its Petition, OCA identified PAWC, SCWBA, and Aqua as potential receivers for Rock Spring. On February 14, 2025, ALJ Coogan held an evidentiary hearing related to OCA's Emergency Petition during which testimony was taken, and cross examination was conducted. The ALJ also asked for briefs on the Emergency Petition to be submitted February 18, 2025. I&E now submits its brief related to the OCA Emergency Petition.

II. APPOINTMENT OF RECEIVER

In the appointing of a receiver for a public utility, the jurisdiction to do so lies with the Pennsylvania Public Utility Commission. The Commission has jurisdiction over this matter pursuant to 66 Pa. C.S. § 501, which provides in pertinent part: "In addition to any powers expressly enumerated in this part, the commission shall have full power and

² OCA Emergency Petition, Exhibit C.

³ PAWC Answer to OCA Emergency Petition, Exhibit A.

authority, **and it shall be its duty to enforce**, execute and carry out, by its regulations, orders, or otherwise, **all and singular, the provisions of this part, and the full intent thereof . . .**" (emphasis added).

Pursuant to Section 529(g), 66 Pa. C.S. § 529(g), the Commission may take action to ensure that customers of a small water utility will receive safe and adequate service. Section 529(g) provides as follows:

(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.⁴

The Commission has frequently appointed receivers in situations where it has been determined that an emergency need for receivership exists.⁵

Section 3.2 of the Commission's regulations, 52 Pa. Code § 3.2, permits a petition to the Commission for the issuance of an *ex parte* emergency order where supported by a verified statement of facts which establishes the existence of an emergency. The petition must establish facts to demonstrate that:

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;
4. The relief requested is not injurious to the public.

⁴ 66 Pa. C.S. 529(g).

⁵ See, *BIE v/ Winola Water Company Ex Parte Emergency Order*, Docket No. P-2018-3006216, *slip op.* at 1 (Nov. 29, 2018, ratified Dec. 6, 2018, and *In re: The Indian Springs Water Co.*, Docket No. M-2019-3011972, Opinion and Order (Aug. 8, 2019)(*Indian Springs*).

“Emergency” is defined in the Commission's regulations as “[a] situation which presents a clear and present danger to life or property or which is uncontested and requires action prior to the next scheduled meeting.”⁶ The person or entity seeking emergency relief bears the burden of proving the facts and circumstances meet all four of the above requirements.⁷ And the burden of proof must be carried by a preponderance of the evidence.⁸ The petitioner’s evidence must be more convincing, by even the smallest amount, than that presented by the other party.⁹ The Chairperson, a Commissioner, the Commission’s Director of Operations, or the Commission’s Secretary have the authority to issue an emergency order.¹⁰ An emergency order will be ratified, modified or rescinded by the Commission at the next scheduled public meeting after issuance of the order.¹¹ An emergency order will be served by the Secretary as expeditiously as practicable upon the persons directly affected by the decision with copies to the Commissioners and the Director of Operations.¹²

I&E does not object to the appointment of a receiver for the Company if the ALJ and the Commission determine OCA has met its burden of establishing an emergency exists. In its Petition filed in the Centre County Court of Common Pleas, the attorney for Rock Spring stated, “...the water system is in severe state of deferred maintenance and has numerous leaks,” “neither Mr. Campbell nor his daughter are capable of managing a water system or assisting in the neat and orderly transfer of the water system to the SCBWA,” and “the obstinacy of the Campbells and the condition of the physical plant and water line poses a

⁶ 52 Pa. Code § 3.1.

⁷ 66 Pa. C.S. § 332; 52 Pa. Code § 3.2(b).

⁸ *Samuel J Lansberry, Inc. v. Pa. PUC*, 578 A.2d 600 (Pa. Cmwlth. Ct. 1990).

⁹ *Se-Ling Hosiery v. Margulies*, 70 A.2d 854 (Pa. 1950).

¹⁰ 52 Pa. Code § 3.3(a).

¹¹ 52 Pa. Code § 3.3(c).

¹² 52 Pa. Code § 3.3(d).

clear and present danger to all of Rock Springs' customers which cannot be resolved by present management."¹³ These statements were also presented in OCA's Emergency Petition. OCA averred that "[d]ue to the imminent cessation of adequate, safe and reasonable water service by Rock Spring, the OCA respectfully requests a receiver be appointed..."¹⁴

In its Emergency Petition, OCA identified three possible receivers: Aqua, PAWC, and SCBWA. Of these three utilities, it appears that while Aqua would be entirely capable of acting as receiver, it is the least likely option given its proximity to the Rock Spring system. As explained in Aqua Statement No. 1, Aqua's closest operations center is almost 50 miles away and its closest system is approximately 38 miles away.¹⁵ Of the other two potential receivers identified in OCA's Emergency Petition, SCWBA is approximately 0.8 miles away and PAWC is approximately 13 miles away.¹⁶

While both PAWC and SCWBA are geographically closer to the Company, as noted by both OCA and PAWC, it is unclear whether the Commission has the authority to appoint SCWBA as receiver of Rock Spring because it is a municipal authority that does not currently fall under the Commission's jurisdiction.¹⁷ I&E shares the concern noted by OCA and PAWC.

In its Answer to the OCA Emergency Petition, PAWC states that while it is willing and able to act as receiver, it believes that SCBWA should be appointed receiver.¹⁸ PAWC suggests that the Commission go through the same process to appoint SCWBA as receiver as

¹³ OCA Emergency Petition, Exhibit C.

¹⁴ OCA Emergency Petition, para. 19.

¹⁵ Aqua St. No. 1, p. 3.

¹⁶ I&E St. No. 1, p. 9.

¹⁷ OCA Emergency Petition, para. 32, and PAWC Answer to OCA Petition, para. 32.

¹⁸ PAWC Answer, para. 35.

it went through to appoint PAWC receiver of the East Dunkard Water Authority.¹⁹ In that proceeding, the Commission authorized PAWC to act as receiver of the East Dunkard Water Authority upon issuance of a valid Commonwealth Court Order appointing PAWC as the receiver of the East Dunkard Water Authority.²⁰ I&E does not object to PAWC's proposed process; however, there is a concern about how quickly this could occur. For example, in East Dunkard, the Commission issued its Emergency Order designating PAWC as receiver on November 1, 2023, but the Commonwealth Court did not issue an Order appointing PAWC until February 8, 2024. In contrast, in a recent Section 529 proceeding where both parties were jurisdictional involving the utilities owned by the Blaine E. Rhodes estate, the ALJ issued an Interim Order appointing Aqua as receiver on October 17, 2024, which was adopted by the Commission on October 30, 2024 and allowed Aqua to begin operating in its capacity as receiver on October 31, 2024.²¹ Therefore, while I&E is not opposed to PAWC's suggested approach, it is unknown how quickly SCWBA could assume its duties as receiver given the apparent need for the Centre County Court of Common Pleas to also issue an order.

To be clear, given SCWBA's proximity to the Company and expressed willingness, I&E does not oppose its appointment as receiver if the ALJ and the Commission find that there is an emergency warranting receivership and that SCWBA demonstrates it is technically, financially and managerially fit to act as receiver. While there may be additional hurdles given that SCWBA is not currently a regulated utility, it is the closest to and likely the most familiar with the Rock Spring system. Therefore, I&E does not object to SCWBA

¹⁹ *Id.*

²⁰ *Joint Petition of Pennsylvania-American Water Company and the Department of Environmental Protection Requesting an Ex Parte Emergency Order in Regard to Receivership of East Dunkard Water Authority*, Docket No. P-2023-3043950 (Ex Parte Emergency Order dated Nov. 1, 2023).

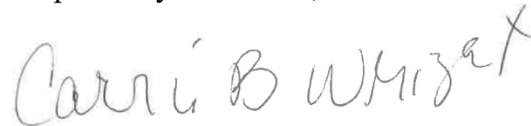
²¹ *In re: Venango Water Co.*, Docket No. M-2023-3042180 (Order issued October 17, 2024).

being appointed if the ALJ and Commission find that a receiver is needed and that it has the requisite fitness.

III. CONCLUSION

For the reasons set forth in this brief, if the Commission determines there is an emergency requiring the appointment of a receiver, I&E respectfully requests that the Commission appoint PAWC or SCWBA as receiver to ensure the continued provision of safe and reliable water service to Rock Spring customers.

Respectfully submitted,

A handwritten signature in cursive script that reads "Carrie B. Wright".

Carrie B. Wright
Deputy Chief Prosecutor
PA Attorney ID No. 208185

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Dated: February 18, 2025

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Rock Spring Water Company	:	

CERTIFICATE OF SERVICE

I hereby certify that I am serving the foregoing **Brief** dated February 18, 2025, in the manner and upon the persons listed below:

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